



16731  
October 17, 2001

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: MV00001225  
[REDACTED]  
and [REDACTED]  
M/V [REDACTED]  
\$150.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00001225, which includes your appeal as owner/operator of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$300.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 67.121	Failure to comply with the marking requirements for the official number of the documented vessel.	\$100.00
46 CFR 25.30-20(a)(1)	Failure to have required number of Coast Guard approved fire extinguishers on board	\$100.00
33 CFR 155.450	A ship 26 feet in length must have a placard of at least 5 x 8 inches of durable material fixed in conspicuous place with prescribed statement	\$100.00

The violations were observed on November 16, 1999, when Coast Guard boarding officers boarded the M/V [REDACTED] one-half mile south of Sparrow's Point, Baltimore, Maryland.

On appeal, you do not deny the violations but seek mitigation of all penalties assessed. You contend that your financial position would not allow you to pay the penalties assessed and that you believed that [REDACTED], the Coast Guard Inspecting Officer would provide the Hearing Office with the inspection results, thereby relieving you of any obligation to provide further

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proof of compliance to the Hearing Office. Your appeal is granted, in part, and denied, in part, for the reasons described below.

Under the Coast Guard's civil penalty procedures, only issues that have been properly raised before the Hearing Officer and jurisdictional questions may be raised on appeal. As the issue you present on appeal was not previously submitted to the Hearing Officer, your right to have it considered may have been waived. However, I will accept your contention that you believed that Coast Guard Inspecting Officer [REDACTED] would provide the Hearing Officer the inspection results. Therefore, I have considered the entire record in assessing your appeal.

Since you do not dispute that the violations occurred and, because you corrected the violations, I find them proved. The only issue in the instant case is the appropriateness of the penalty based upon your rectification of all the violations and your financial status. I note that [REDACTED], co-owner of the M/V [REDACTED] responded to the Hearing Office on May 3, 2000 and on June 28, 2000. [REDACTED] declined the hearing and requested that he resolve the marine violation via correspondence. He told the Hearing Officer that he would have the vessel re-inspected and would forward the documentation to the Hearing Officer. At the same time, he requested a 30-day extension to allow time for compliance. An extension was granted on July 3, 2000. Despite the fact that [REDACTED] responded, you were charged with the violations, therefore I will continue to address my correspondence to you.

While I have no reason to doubt that you did, in fact, believe that Inspecting Officer [REDACTED] would provide the results to the Hearing Officer, I must note that neither you, nor [REDACTED] provided the Coast Guard with copies of the inspection results, as had been requested. When you did not hear back from the Coast Guard, you should have assumed responsibility and contacted the Hearing Officer to ensure that all paper work was in order. Instead, you allowed the extension date to expire. The Coast Guard is very concerned about fishing vessel safety. Primary responsibility rests with the owners and operators of fishing vessels to ensure that their vessels are equipped with the appropriate safety devices. Fishing vessel safety is not achieved if owners and operators wait until the Coast Guard identifies deficiencies. I believe that the Hearing Officer considered your income and your attempts at compliance by allotting you an extension of thirty-nine days prior to the mailing of the final assessment letter to you. The record clearly shows that a period of eight months lapsed before the vessel was re-inspected. Therefore, I find the \$300.00 civil penalty assessed appropriate under these circumstances. Nevertheless, based solely upon the Hearing Officer's statement in his letter of October 4, 2000 that the inspection results would have made a difference in the penalty assessment, I will mitigate the penalty to \$150.00. Should you still believe that you are financially unable to pay these penalties, you may request establishment of a payment plan. Request for relief should be directed to the Chief, Claims Branch, Maintenance and Logistics Command Pacific, Coast Guard Island, Alameda, California, 94501-5100.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred and that you are the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed, subject to my further mitigation of the civil penalty to \$150.00.

RE: CIVIL PENALTY

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In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$150.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard - Civil Penalties  
P.O. Box 100160  
Atlanta, GA 30384

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 5 % accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Sincerely,

//S//

DAVID J. KANTOR  
Deputy Chief,  
Office of Maritime and International Law  
By direction of the Commandant

Copy: Commanding Officer, U.S. Coast Guard Hearing Office  
Commander, Finance Center