



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

16731  
November 14, 2002

RE: MV00002725  
[REDACTED]  
F/V [REDACTED]  
\$1,500.00

Dear Ms. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00002725, which includes your appeal on behalf of [REDACTED], as operator of the F/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$1,500.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 USC 2007 (Rule 7)	Failure to use all navigable means to determine if risk of collision exists.	\$500.00
33 USC 2008 (Rule 8)	Failure to take appropriate action to avoid collision.	\$500.00
33 USC 2034 (Rule 34)	Failure of vessel, when in sight of another vessel, to make appropriate maneuvering or warning signals.	\$500.00

The violations are alleged to have occurred on December 3, 1999, when the F/V [REDACTED] collided with the M/V [REDACTED] in the Houston Ship Channel near Houston, Texas.

You do not raise any specific issues on appeal. Consequently, I have thoroughly reviewed the file for substantial evidence to support the Hearing Officer's conclusions with respect to the violations alleged. Following that review, I find that there is substantial evidence in the record to support the Hearing Officer's conclusions and your appeal is denied for reasons described below.

Before I begin, I believe a brief recitation of the facts surrounding the violations is in order. In the early morning hours of December 3, 1999, the M/V [REDACTED] left anchorage and began transiting inbound in the Houston Ship Channel. At approximately 2:12 a.m., the M/V [REDACTED] first observed the F/V [REDACTED] approximately one mile ahead in the Houston Ship Channel. At that time, the fishing vessel was not engaged in fishing activities and it had neither its outriggers deployed, nor its fishing nets in use. The F/V [REDACTED] was proceeding at a speed of approximately 8 knots in the far right side of the same shipping lane as the M/V [REDACTED] approached it. Upon closer observance, the crew of the M/V [REDACTED] saw an extremely bright working light on the aft portion of the fishing vessel. Although the M/V [REDACTED] attempted to contact the fishing vessel via radio, they received no response. At approximately 2:22 a.m., the fishing vessel crossed the bow of the M/V [REDACTED], from starboard to port. The pilot of the [REDACTED] immediately sounded the danger signal, but, again, received no response from the fishing vessel. During the crossing maneuver, the fishing vessel made no maneuvering sounds or signals. Subsequently, both vessels were on a parallel course for approximately five minutes. At that time, the [REDACTED] was proceeding north in the ship channel on the "red side" while the fishing vessel proceeded north on the "green side." While on a parallel course, the pilot of the M/V [REDACTED] concluded that a danger of collision no longer existed. However, at approximately 2:27 a.m., the F/V [REDACTED] suddenly altered its course 60 degrees and turned starboard towards the [REDACTED]. The pilot of the [REDACTED] immediately sounded the danger signal and repeatedly tried to hail the fishing vessel via radio. The pilot ordered an avoidance maneuver of 20 degrees starboard rudder while the fishing vessel made no attempt to avoid collision. The pilot then ordered an immediate rudder amidship to avoid going aground on the "red side" of the channel. A collision could not be avoided and the bow of the M/V [REDACTED] struck the F/V [REDACTED], causing significant damage to the fishing vessel. Following the collision, both vessels proceeded to their moorings without further incident.

I will now address the violations in issue. As noted above, [REDACTED] is charged with three violations of the Inland Navigation Rules, 33 USC 2007(a) (Rule 7), 33 USC 2008(a) (Rule 8), and 33 USC 2034(a) (Rule 34). In relevant part, Inland Rule 7 states that "[e]very vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt, such risk shall be deemed to exist." 33 USC 2007. In applying the rule, courts have long held that "[i]t is the risk of collision, not the collision itself, that masters must avoid." *Ocean S.S. Co. v. United States*, 38 F.2d 782, 784 (2<sup>nd</sup> Cir. 1930). In the same vein, the courts have noted, "risk of collision does not mean certainty of collision; but only that prudence demands that the navigators shall watch each other's navigation, and be prepared to do whatever safety may demand." *Socony Vacuum Transp. Co. v. Gypsum Packet Co.*, 153 F.2d 773, 776 (2<sup>nd</sup> Cir. 1946). Inland Rule 8 deals specifically with actions required to avoid collisions. In pertinent part, Rule 8 makes clear that "[a]ny action taken to avoid collision shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship." Finally, Rule 34 makes clear that "[w]hen power-driven vessels are in sight of one another and meeting or crossing at a distance within half a mile of each other, each vessel underway, when maneuvering as authorized or required by these Rules...shall indicate that maneuver" by making a specific whistle blast.

Upon a thorough review of the record in this case, it is evident that, as master of the F/V [REDACTED], [REDACTED] did not take the steps necessary to comply with the Inland Rules. First, it is readily apparent that [REDACTED] did not use all means appropriate to avoid a collision in this case. The actions of the F/V [REDACTED] clearly indicate it was operating in a manner that was totally oblivious to its surroundings, thus placing it in risk of collision. At approximately 2:22 a.m., [REDACTED] maneuvered the fishing vessel from the starboard bow of the M/V [REDACTED] to the port bow without acknowledging the vessel or making any signals to indicate movement. Then, after the vessels remained on a parallel course for five minutes, [REDACTED] suddenly turned his fishing vessel, altering its course by approximately 60 degrees. Once again, [REDACTED] failed to indicate his movement or sound any warning signals. Although [REDACTED] contends that his steering gear failed, there is simply no credible evidence in the record to support this assertion. Indeed, immediately after the incident, Coast Guard Inspecting Officers inspected the entire steering system and found no evidence or signs of the steering chain jumping off its sprockets or any wearing, scarring or grooving of the steering shaft. Furthermore, I note that, throughout the incident, the F/V [REDACTED] could not be reached via radio although several attempts were made on the part of the M/V [REDACTED]. Taken together, it is clear that [REDACTED], by not listening to the radio and erratically operating his vessel, failed to take the steps necessary to avoid the collision, a clear violation of Rule 7.

Likewise, I find that there is sufficient evidence in the record to allow me to conclude that [REDACTED] committed a violation of Rule 8. Based upon the facts noted above, it is clear that [REDACTED] did not make any efforts to avoid the collision in issue. As I have already noted, [REDACTED] steered his vessel directly towards the M/V [REDACTED]. Although the [REDACTED] attempted to alter its course to avoid the collision, there is no evidence in the record that the smaller, more maneuverable fishing vessel attempted to alter its course, in any manner, before the collision. Instead, the record clearly indicates that the fishing vessel dramatically altered its course and headed directly towards the [REDACTED]. In so doing, it made no effort to signal its movement or warn the larger vessel of its change in course. Since no attempts were made to avoid the collision, I find the violation of Rule 8 proved.

Finally, I find that there is ample evidence in the record to support a conclusion that [REDACTED] committed a violation of Rule 34. There is simply no evidence in the record to allow me to conclude that [REDACTED] sounded his whistle at any time during the incident in issue. The statement of the Master of the [REDACTED] clearly indicates that the [REDACTED] did not sound its whistle at any time during the incident. Even [REDACTED]'s statement makes no mention of any whistle blowing. Therefore, I find significant evidence in the record to support the Hearing Officer's conclusion that a violation of Rule 34 occurred.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred and that [REDACTED] is the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find the \$1,500.00 penalty assessed, rather than the \$4,500.00 preliminarily assessed

RE: CIVIL PENALTY  
November 14, 2002

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or \$16,500.00 maximum permitted by statute appropriate in light of the seriousness of the violations.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$1,500.00** 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 3% 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, Coast Guard Hearing Office  
Commanding Officer, Coast Guard Finance Center