



16780
June 20, 2002

[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00002976
[REDACTED]
UNNAMED ([REDACTED])
\$2,000.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00002976, which includes your appeal as owner/operator of the UNNAMED jetski registered as [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$2,000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
19 USC 1581(d)	Failure to stop vessel for boarding when signaled by vessel employed by customs.	\$2,000.00

The violation was observed on June 13, 2000, when Coast Guard boarding officers observed you operating your jet ski in the vicinity of Grosse Ile-Stony Island on the Detroit River, in Michigan.

On appeal, citing 14 USC 89, you contend that the Coast Guard is only authorized to board vessels upon "notification." To that end, you contend that you were not "notified" as required by 14 USC 89. You further contend that the Coast Guard's report of the incident incorrectly reflects your position during the boarding. You conclude by requesting a "copy of the USCG file regarding this matter" so that you are "assure[d]...of every benefit of the appeal process." Your appeal is denied for the reasons described below.

I will first address your concerns regarding the Coast Guard's authority to stop and board your vessel. The courts have long held that the Coast Guard may exercise plenary authority under 14 U.S.C. 89(a) to stop and board vessels on the navigable waters of the United States to conduct safety and documentation inspections even in the complete absence of suspicion of criminal activity. See e.g. *United States v. Kubiak*, 704 F.2d 1545, 1547-48 (11th Cir.1983); *United States v. Clark*, 664 F.2d 1174, 1175 (11th Cir.1981); *United States v. Williams*, 617 F.2d 1063, 1086 (5th Cir. 1980) (en banc); *United States v. Warren*, 578 F.2d 1058, 1064-65 (5th Cir.1978) (en banc), cert. denied, 446 U.S. 956, 100 S. Ct. 2928, 64 L. Ed. 2d 815 (1980). Furthermore, 14

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USC 89(a) makes clear that “[f]or such purposes, commissioned, warrant, and petty officers may at any time go on board of any vessel subject to the jurisdiction, or to the operation of any law, of the United States, address inquiries to those on board, examine the ship’s documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance.” Given the Coast Guard’s plenary authority to board vessels on the navigable waters of the United States and for the reasons discussed above, your contention that “notification” of the boarding is required is without merit. In the instant case, the boarding of your jet ski was completely legal and without fault on the part of the Coast Guard.

I will now address your assertion that “[s]ince...[you]...did not receive the rebuttal comments referenced in the letter...[you]...have never had the opportunity to respond to them.” Under 33 C.F.R. 1.07-70(a), 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 prior to the final decision, your right to have it considered has been waived. The record indicates that the rebuttal comments in issue were mailed to you on April 6, 2001, and that the Hearing Officer’s Final Letter of Notice was issued on August 22, 2001. I note that you claim to have received only the April 6, 2001 cover letter from the Hearing Officer and not the actual comments. The cover letter clearly indicates that rebuttal comments were enclosed. If they were not, you had more than three months to request another copy. Although you contend that you called the Hearing Office several times to request copies of the rebuttal notice, there is simply no evidence in the record to support that assertion. The Coast Guard Hearing Office is staffed with several administrative personnel who are trained to respond to telephone inquiries. I find it difficult to believe that you made repeated telephone calls that were simply ignored. Based on the record, I find that you have waived your right to raise this issue.

I will now address your request for a copy of the Coast Guard’s file for the incident. The Hearing Officer’s Preliminary Letter of Assessment, dated December 4, 2000, indicates that you were provided, as enclosure number two, a “Copy of civil penalty case file MV00002976.” I am, therefore, confident that you have been provided a copy of the Coast Guard’s file.

Finally, I will address the actual violation in issue. In relevant part, 19 USC 1581(d) makes clear that “[a]ny vessel...[that]...is directed to come to a stop by...signal made by...any officer of the customs...shall come to a stop, and upon failure to comply a vessel...so directed to come to a stop shall become subject to pursuit.” Under 14 USC 143 and 19 USC 1401, U.S. Coast Guard petty officers, warrant officers, and commissioned officers are also designated as customs officers. Although you contend that you were never aware that the Coast Guard was stopping your vessel, there is ample evidence to conclude otherwise. In addition to the statements of two of the Coast Guard boarding officers, there is evidence that, upon fleeing your jetski, you attempted to pay two young men to use their boat. Furthermore, the statement of the [REDACTED] indicates that you admitted (to both the Sheriff’s Department and to the Coast Guard) that you had fled from the Coast Guard because you feared that the Coast Guard would take your vessel due to an unpaid ticket in Canada and because you mistook the U.S. Coast Guard for the Canadian Coast Guard. I should also note that, although you and the Coast Guard offer conflicting views of the factual occurrences that transpired during the incident in issue, it is the responsibility of the Hearing Officer to evaluate the weight of the factual claims and make a

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determination as to what happened during the incident in question. In reviewing the record, I do not find the instant decision an abuse of this discretionary authority. Therefore, I find the violation proved and will not mitigate the penalty any further.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that you are the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$2,000.00 rather than the \$5,000.00 maximum permitted by statute to be appropriate in light of the seriousness of the violation.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$2,000.00** 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