



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

16731  
March 17, 2003

RE: MV01002162  
[REDACTED]  
F/V [REDACTED]  
\$350.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV01002162, which includes your appeal on behalf of the owners of the fishing vessel [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$650.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 28.110	Failure to meet the requirements for life preservers or other personal flotation devices.	\$150.00
46 CFR 28.160	Failure to provide the proper type and amount of required fire extinguishers.	\$300.00
46 CFR 28.215	Failure to have suitable guards for exposed hazards.	\$200.00

The violations were observed on March 6, 2001, when Coast Guard boarding officers boarded the F/V [REDACTED] in the Gulf of Mexico, 34.8 nautical miles east of Port Isabel, Texas.

On appeal, you do not deny the violations, but contend that a subsequent Coast Guard boarding report issued on August 20, 2001, proves that the violations "brought to...[your]...attention on March 6, 2001 when the vessel was boarded have been corrected." In addition, you have provided a copy of an invoice for fire extinguishers that "show[s] that they were fixed and that a few were bought." Your appeal is granted, in part, and denied, in part, for the reasons described below.

March 17, 2003

The Coast Guard's primary purpose in enforcing its regulations is to ensure maritime safety and to protect the environmental quality of the navigable waters of the United States. Compliance with Coast Guard regulations helps prevent environmental damage, loss of life, personal injury and property damage. The Coast Guard's regulation of fishing vessels like the F/V [REDACTED] is particularly important because of the inherent dangers associated with the commercial fishing industry. Your failure to comply with the Coast Guard's regulations could have resulted in serious consequences for your vessel, your crew and yourself. Therefore, since you do not deny the violations, I find them proved.

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 issues you present on appeal were not previously submitted to the Hearing Officer, your right to have them considered has been waived. However, in the instance of fairness, I have reviewed the record with the issues that you raise in mind.

As I have already indicated, you assert that the Coast Guard Boarding Report issued on August 20, 2001, proves that the violations in issue were corrected. I do not find your assertion persuasive. The record evidences that the Coast Guard sent [REDACTED] ([REDACTED]) a letter on March 16, 2001, informing it that it had 30 days within which to achieve compliance with Coast Guard regulations. The company failed to respond to that notification and civil penalty proceedings were commenced. On December 11, 2001, a Coast Guard Hearing Officer sent [REDACTED] a Preliminary Letter of Assessment informing the company that it had 30 days to respond to the alleged violations. [REDACTED] failed to respond to the Hearing Officer's initial notification and, on April 3, 2002, nearly 90 days after the issuance of the preliminary letter, the Hearing Officer issued his Final Letter of Notice and assessed the monetary civil penalty in issue. While I acknowledge that the August 20, 2001, boarding report seems to indicate that the violations were corrected, that report does not change the fact that the violations occurred or that [REDACTED] failed to respond to the Coast Guard within the allotted time period. However, for the reasons noted below, I will mitigate the penalty assessed by the Hearing Officer.

In his rebuttal comments, the Commander of the Eighth Coast Guard District indicated that "[a]fter reviewing the case package and our database, it appears the Owner of the F/V [REDACTED] did correct the Fire Extinguisher." The rebuttal comments further indicated that the Commander believes that "we should give the owner a second chance to contact his local Fishing Vessel Examiner." I do not agree. As noted above, the record clearly evidences that [REDACTED] was given ample time to prove its subsequent compliance with Coast Guard regulations and failed to do so. However, in light of the Eighth District's comments and because the company provided an invoice indicating that fire extinguishers were purchased within 30 days of the violation, I will mitigate the \$300.00 penalty assessed by the Hearing Officer for the violation of 46 CFR 28.160 to a warning.

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. For the reasons noted above, I find a penalty of \$350.00 rather than the \$650.00

March 17, 2003

assessed by the Hearing Officer 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 **\$350.00** 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 4.25% 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