



16731  
August 10, 2009

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

RE: Case No. 2528261  
[REDACTED]  
[REDACTED]  
Dismissed

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. 2528261 which includes your appeal on behalf of [REDACTED], as operator of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$20,000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 160.212(a)(3)(i)	Failure to provide notice of arrival at least 96 hours before entering a port or place of destination when embarked on a voyage of 96 hours or more.	\$20,000.00

The violation first came to the attention of Coast Guard personnel on October 13, 2005, when the [REDACTED] was discovered anchored at the Jamestown Anchorage, near Jamestown, Rhode Island. The violation resulted from the fact that the Coast Guard did not receive an Advance Notice of Arrival from the vessel prior to its anchorage.

The record shows that although you properly requested that the matter be appealed to the Commandant, United States Coast Guard, via a letter dated April 13, 2007, the Coast Guard Hearing Office “misfiled” the matter and the Hearing Officer’s final assessment was accepted as final agency action. As a consequence, the case file was sent to collections and, because the assessed penalty remained outstanding, the Coast Guard arrested the [REDACTED] on July 21, 2008, in Miami, Florida. The record shows that although you questioned the status of Caribbean Transport’s appeal, the \$20,000.00 penalty was paid to secure the release of the vessel. In short, the record shows that in the case at hand, the penalty assessed by the Hearing Officer was taken as final agency action without according [REDACTED] the opportunity to satisfy its appeal rights.

The record shows that when the case file was forwarded to my office for review, the Hearing Officer included the following statement:

The time line of the case is detailed in my letter dated October 27, 2008. Following the aforementioned letter, the case was inadvertently filed and not forwarded. Due to the mishandling of this case by the Coast Guard Hearing Office over multiple years, the age of the case, and after review of all evidence presented by the party by a single Hearing Officer, I recommend that the violation be dismissed and the \$20,000.00 paid should be refunded to the party.

The Coast Guard’s civil penalty program is a critical element in the enforcement of numerous marine safety, security and environmental protection laws. The civil penalty process is remedial in nature and is designed to achieve compliance through either the issuance of warnings or the assessment of monetary penalties by Coast Guard Hearing Officers when violations are found proved. Procedural rules, at 33 CFR 1.07, are designed to ensure that parties are afforded due process during informal adjudicative proceedings. The procedures in 33 CFR 1.07 have been sanctioned by Congress and upheld in Federal courts. *See* H. Rep. No. 95-1384, 95th Cong., 2d Sess. 27 (1978); S. Rep. No. 96-979, 96th Cong., 2d Sess. 25 (1980); H. Rep. No. 98-338, 98th Cong., 1st Sess. 133 (1983); *United States v. Independent Bulk Transport, Inc.*, 480 F. Supp. 474 (S.D.N.Y. 1979).

In Coast Guard civil penalty proceedings, it is the Hearing Officer’s responsibility to decide the reliability and credibility of the evidence presented and to resolve any conflicts in that evidence. Given the obvious procedural errors that occurred throughout the administration of this case, including the Hearing Office’s failure to forward your appeal to my office in a timely fashion, I will honor the Hearing Officer’s request that the instant civil penalty case be dismissed. More importantly, I will ensure that the Coast Guard’s collection office takes the steps necessary to refund the \$20,000.00 paid in this case to [REDACTED].

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action.

Sincerely,

/s/

F. J. KENNEY  
Captain, U. S. Coast Guard  
Chief, Office of Maritime and International Law  
By direction

Copy: Commanding Officer, Coast Guard Hearing Office  
Commanding Officer, Coast Guard Finance Center