

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

2100 Second Street, SW
Washington, DC 20593-0001
Staff Symbol: G-LMI
Phone: (202) 267-1527
FAX: (202) 267-4496

16731

June 14, 2001

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

RE: MV00001059
[REDACTED]
M/V [REDACTED]
\$500.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00001059, which includes your appeal as owner of the F/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing an \$800.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR §173.27(a)(1)	Failure to have vessel's number, as required by 33 CFR §173.15, painted on or permanently attached to each side of the forward half of the vessel.	\$200.00
46 CFR §28.250	Failure to equip a vessel 36 feet or over with the required high water alarms.	\$400.00
46 CFR §28.215	Failure to have suitable guards for exposed hazards.	\$100.00
46 CFR §25.25-13(d)	The personal flotation device with non-replaceable or with a replaceable power source was in use with a past expiration date or was not serviceable.	\$100.00

June 14, 2001

The violations were observed on February 24, 2000, when Coast Guard boarding officers boarded the F/V [REDACTED] in the Atlantic Ocean at 37°07 Latitude, 075°11.9W Longitude.

On appeal, you do not raise any specific issues and simply state that you wish “to appeal the case regarding the vessel [REDACTED].” I have, nevertheless, reviewed the file to independently determine if the Hearing Officer’s decisions are supported by substantial evidence. The record shows that, prior to this appeal, you contended that the violations should have been dismissed because you did not “have a way to prove that. . .[the]. . .conditions were corrected due to the fact that the vessel ha[d] been run aground and lost.” At the same time, you assessed the legitimacy of the violations levied against you; you admitted to a violation of 33 CFR §173.27(a)(1), but denied all other violations. Your appeal is granted, in part and denied, in part, for the reasons described below.

As a preliminary matter, I would like to discuss your contention that the alleged loss of the vessel should serve to mitigate the penalties assessed against you. While the loss of a vessel may mitigate pending civil penalties, such mitigation is only allowed where the record adequately reflects the loss. The Hearing Officer appropriately addressed this point and requested “a casualty report or other means of documenting your loss.” You were given ample time to provide this information and failed to do so. As a consequence, the record shows no substantiated evidence of the vessel’s loss. I find, therefore, that the Hearing Officer did not abuse his discretion in not considering the vessel’s alleged loss in arriving at his final decision.

In your letter dated June 16, 2000, you admit that at the time of the Coast Guard boarding, you “hadn’t gotten around to changing” the F/V [REDACTED]’s numbers as had been previously directed by the Coast Guard. Regardless of this delay, I believe there is a more fundamental question regarding the applicability of 33 CFR §173.27(a)(1) to the F/V [REDACTED]. The case file indicates that the [REDACTED] is a documented vessel of the United States. As such, 33 CFR §173.27(a)(1) does not apply since 33 CFR §173.11(e) excludes documented vessels from the requirements of subpart B of 33 CFR §173. Therefore, the violation and penalty for failure to comply with 33 CFR §173.27(a)(1) are hereby dismissed.

The record shows that you have also asserted that you were not in violation of 46 CFR §28.250, because “[t]he high water alarm was in complete working order.” To bolster this contention, you stated that the master had informed you that “he had not lifted the correct float switch” and that that action had resulted in the failed high water test. I notice that on August 27, 1997, during a Coast Guard boarding, boarding officers found the high water alarm to be inoperable. While the alarm may have been fixed in the interim, the record holds no proof to that effect. 46 CFR §28.250 states, in relevant part, that “[o]n a vessel 36 feet (11.8 meters) or more in length, a visual and audible [high water] alarm must be provided at the operating station to indicate high water level.” At the time of the Coast Guard boarding, this alarm did not operate and, as a consequence, a violation occurred.

June 14, 2001

Additionally, you asserted that a violation of 46 CFR §28.215 did not occur because a “guard on the alternator was indeed in place.” You note that the guard consisted of “two vertical pieces of angle iron attached to a horizontal piece of angle iron that made it impossible to get your hand in the belts” and contend that “[t]he pump had no guard at all because its location rendered it impossible to get yourself tangled in the belt.” The record indicates that “pulleys for the deck wash pump and the alternator had no guards covering them.” In relevant part, the language of 46 CFR §28.215 clearly states that “[s]uitable hand covers, guards, or railing must be installed in way of machinery which can cause injury to personnel, such as gearing, chain or belt drives, and rotating shafting.” The Hearing Officer considered your assertions prior to his final decision and found the information that you provided unpersuasive. I agree with the Hearing Officer’s findings and will not disturb his ruling with respect to the violation of 46 CFR §28.215

Finally, you contend that a violation of 46 CFR §25.25-13(d) did not occur because the immersion suit found to be in violation did not belong to you and was not intended for use by the crewmembers of the F/V [REDACTED]. You maintain that the suit in question was “labeled BORN AGAIN for the boat that it belonged to” and contend that you “had enough survival suits on board the vessel that were labeled [REDACTED] to outfit the crew and all were legal and at the ready.” The record clearly shows that the suit was a “chem. stick type” that expired in September of 1999. 46 CFR §25.25-13(d) clearly states, “if a personal flotation device light has a replaceable power source, the power source must be replaced on or before its expiration date and the light must be replaced when it is no longer serviceable.” The record shows that on February 24, 2000, your vessel had an immersion suit on board with an expired power source. Therefore, I find the violation proved.

Nevertheless, I will accept your contention that the suit did not belong to the [REDACTED]. While an allegation of third party responsibility is not a defense to the imposition of a civil penalty, it is one of the factors that may be considered in determining the gravity of the offense. Therefore, while I find that violation proved, I believe that mitigation of the penalty to a Warning is warranted in light of the fact that there were enough survival suits on board the vessel for the crew, absent the suit in question.

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. While I do not find that Hearing Officer’s decision either arbitrary or capricious, as discussed above, I find a \$500.00 penalty appropriate.

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

RE: CIVIL PENALTY

16731

June 14, 2001

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,

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