

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
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16731
February 7, 2002

[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00004463
[REDACTED]
Unnamed ([REDACTED])
\$50.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00004463, which includes your appeal as the owner/operator of an unnamed jet ski ([REDACTED]). The appeal is from the action of the Hearing Officer in assessing a \$150.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 173.21(a)(1)	Use of a vessel without a valid Certificate of Number or temporary certificate on board	\$50.00
46 USC 2302(a)	Operating a vessel in a negligent manner or interfering with the safe operation of a vessel, so as to endanger the life, limb, or property of a person. (Vessel was swerving between other vessels.)	\$100.00

The violations are alleged to have occurred on August 26, 2000, when a Coast Guard boarding officer observed you operating your jet ski ([REDACTED]) in the Sturgeon Bay Channel.

On appeal, you do not deny the violation of 33 CFR 173.21(a)(1), but you do deny the violation of 46 USC 2302(a). You contend that you were in a no wake zone and appropriately following Coast Guard regulations. You seem to believe that the Coast Guard boarding officer misinterpreted the situation as it occurred, and contend that you neither accelerated nor veered until after leaving the no wake zone. Your appeal is granted, in part, and denied, in part, for the reasons described below.

February 7, 2002

Since you do not dispute that the violation of 33 CFR 173.21 occurred and because you corrected the violation, I find it proved. The only issue remaining in the instant case is whether a violation of 46 USC 2302 (a) occurred. For the reasons discussed below, I will dismiss the negligence charge because there is insufficient evidence in the record to support the Hearing Officer's finding.

First, I believe a brief recitation of the facts is in order. On August 26, 2000, at approximately 4:00 p.m., boarding officer [REDACTED] observed you pass by his port side while he was onboard a Coast Guard 41-foot UTB. You then "cut" behind the UTB, passing between the Coast Guard vessel and a following pleasure craft. During the boarding, Officer [REDACTED] discovered that there was no certificate or registration card on board the vessel.

46 USC 2302(a) states that "[a] person operating a vessel in a negligent manner or interfering with the safe operation of a vessel, so as to endanger the life, limb, a property of a person is liable for a civil penalty." As used in 46 USC 2302 (a), negligence is a failure to use that care which a reasonable person would exercise under similar circumstances. It is the operator's breach of that standard of care that endangers the life, limb, or property of a person and constitutes a violation of the law. Therefore, in this case, if you had operated your jet ski in an erratic manner while in a clearly marked "no wake zone", there would have been a clear violation of the statute.

However, I am not convinced that sufficient proof of negligence is contained in the record. First, there is some confusion in the record as to the exact number of jet skis that were active in the presence of the boarding officer on the day of the incident. Officer [REDACTED] contends that there were two jet skis operating in Sturgeon Bay on the day of the incident, while you contend there were three. Furthermore, the only report of the incident contained in the record is an abbreviated statement on the Coast Guard Form 4100 completed by Officer's [REDACTED]. He has not supplemented the case file with a sufficiently detailed narrative statement of any kind. I find his short account of this incident insufficient to prove this offense with substantial evidence. In view of the confusion and lack of evidence in the record, I will dismiss the violation. There is simply not enough evidence to support a finding that you were negligent.

Accordingly, I find there is substantial evidence in the record to support the Hearing Officer's determination that a violation of 33 CFR 173.21(a)(1) occurred and that you are the responsible party. The Hearing Officer's decision with respect to that violation was neither arbitrary nor capricious and is hereby affirmed. However, as has been noted above, the record does not support the Hearing Officer's determination that the violation of 46 USC 2302(a) occurred and I have, therefore, dismissed that violation.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$50.00** 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:

RE: CIVIL PENALTY

16731
February 7, 2002

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
Commander, Ninth Coast Guard District
Commanding Officer, U. S. Coast Guard Station Sturgeon Bay