



[REDACTED]
Attn: Mr. [REDACTED]
[REDACTED]
[REDACTED]

16731
December 30, 2002

RE: MV01003318
M/V [REDACTED]
[REDACTED]
\$250.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV01003318, which includes your appeal as owner/operator of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$250.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 182.530	Vessels 7.9 meters (26 feet) in length must have visual and audible alarm to indicate high water level in unmanned spaces specified in this subpart.	\$250.00

The violation was initially observed on August 25, 2001, when the M/V [REDACTED] was randomly selected for an unannounced inspection under the "Snapshot" program initiated by MSO LA/Long Beach at [REDACTED] in [REDACTED], California, following a fishing expedition.

On appeal, although you acknowledge that the Hearing Officer's decision is "fair and just according to the evidence," you assert that the penalty should be dismissed because the "licensed master that should be held responsible has not even been implicated." You assert, "[a]ny violation on...[your]...part was not only unintentional but...[you]...had previously taken measures to prevent this very thing from happening." You note "[t]he violation of 46 CFR 182.530 was originally directed at [REDACTED] for 'intentionally' violating that section." To that end, you assert that [REDACTED] has "never made any intentional violation" and express your concern that the violation will be reflected on her record. You note that the "captain that was responsible for this violation has been terminated for this and other careless reasons" and add that you are "reluctant to take the blame for something...[you]...specifically have tried to avoid while the licensed master responsible is not even implicated." You conclude by indicating that "[s]afety is...[your]...highest priority." Your appeal is denied for the reasons described below.

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Before I begin, I believe a brief recitation of the circumstances surrounding the violation is in order. The record evidences that, at some point during the M/V [REDACTED]'s voyage on August 25, 2001, the vessel's digital compass "went out." As a crewman assessed the problem with the compass, he found that the wire connecting the bilge alarm was disconnected. When the crewman reconnected the alarm, it continuously sounded although it was readily apparent that there was no flooding of the vessel. Shortly thereafter, it was determined that a minor repair would correct the problem, however, to do so, necessary parts would have to be obtained when the vessel returned to its dock. [REDACTED], Captain of the M/V [REDACTED] during the voyage in issue, determined that a previous master of the vessel had likely disconnected the alarm for the same reason. [REDACTED] elected to continue the voyage although the alarm was disconnected. When the vessel returned to port, Coast Guard inspectors were present to conduct an unannounced "snapshot" inspection. During the inspection, both [REDACTED] and a deckhand revealed that the bilge alarm had been disabled during the voyage. The alarm was fixed before the completion of the Coast Guard inspection.

While I acknowledge that a different master may have been responsible for the initial disablement of the alarm, the record clearly indicates that [REDACTED] learned of the deactivation during her voyage of August 25, 2001, and elected to continue operating the vessel with passengers aboard anyway—an action that could have resulted in disastrous consequences for the vessel, its passengers and its crew. Contrary to your assertions, 46 CFR 182.530, makes neither knowledge nor intent an element necessary for proof of a violation of the regulation. Instead, the regulation simply states, in relevant part, "[o]n a vessel...a visual and audible alarm must be provided at the operating station to indicate a high water level." Since the required alarms were not available during the vessel's operation on August 25, 2001, a violation of the regulation clearly occurred. Therefore, I find the violation proved.

The sole issue remaining is whether mitigation of the penalty assessed by the Hearing Officer is appropriate under the circumstances of the case. I do not believe that it is. The Coast Guard Report of the Incident clearly evidences that the vessel has a history of non-compliance with the regulation in issue. During a Coast Guard inspection conducted on April 18, 2001, boarding officers noted that "[v]isual alarm indicator in pilot house for high water alarm did not operate...[and that]...[b]ilge high water alarm for lazarette did not operate during the initial test." Likewise, during an inspection on March 6, 2001, boarding officers noted that the vessel's "[b]ilge high level alarm system...[was]...inoperable." Furthermore, the boarding report for the boarding of January 11, 2001, indicated that the "bilge alarms were not installed to meet the requirements of 46 CFR 182.530." Similarly, the boarding report of November 23, 1999, indicated that "[n]one of the alarms operated properly and the lazarette does not have a high level alarm installed." Given this information, I do not believe that mitigation of the penalty is appropriate.

Finally, I note that the record evidences that you have expressed some confusion as to the identity of the appropriate party to be charged with this violation. In your letter dated February 15, 2001, you asserted that "[t]he violation of 46 CFR 182.530 was originally directed at [REDACTED] for 'intentionally' violating that section." Upon a thorough review of the record, I do not agree with this assertion. The Hearing Officer's initial correspondence in this matter, dated October 18, 2001, was addressed to [REDACTED], as was all subsequent correspondence. However, I note that, because of [REDACTED]'s initial correspondence to the Hearing Officer

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dated October 29, 2001, the letters noted above were sent to [REDACTED]'s attention. That being said, the record is clear that [REDACTED], owner of the M/V [REDACTED], has at all times, been the party charged with the violation in issue. However, the statutory authority for the regulation cited, 46 USC 3318, makes clear that "the owner, charterer, managing operator, agent, master, or individual in charge of a vessel operated in violation of this part or a regulation prescribed under this part...[is]...liable to the United States Government for a civil penalty." Therefore, either [REDACTED] or [REDACTED] could appropriately have been assessed the penalty in issue. Therefore, your arguments with respect to the implication of [REDACTED] are simply without merit.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that [REDACTED] is the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find a penalty of \$250.00 rather than the \$1,500.00 preliminarily assessed by the Hearing Officer or \$5,500.00 maximum permitted by statute 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 **\$250.00** 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 3% 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