



16780  
March 12, 2003

[REDACTED]  
[REDACTED].  
[REDACTED]

RE: MV01002415  
[REDACTED]  
UNNAMED ([REDACTED])  
\$300.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV01002415, which includes your appeal as operator of the recreational vessel [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$300.00 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
33 CFR 175.15(a)	No person may use a recreational vessel unless at least one Type I, II, or III PFD is on board for each person.	\$150.00
46 USC 4102(a)	Failure to keep fire extinguishers in condition for immediate and effective use and so placed as to be readily accessible.	\$50.00

The violations were observed on June 12, 2001, when Coast Guard boarding officers boarded the recreational vessel [REDACTED] while it was underway in Lake Michigan, near Kenosha, Wisconsin.

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On appeal, you do not deny the violations, however, you contend that “all the items...[the Coast Guard requests]...was brought and proven...in a sensible way.” While you note that you are not the owner of the vessel, you nonetheless contend that the owner has provided all of the information necessary to achieve compliance and has taken “full responsibility...[for]...this problem.” You further assert that, because you are not the owner of the vessel, the Coast Guard should not have brought the civil penalty case in issue against you. Your appeal is denied for the reasons described below.

Since you do not deny that the violations occurred, the sole issue in the instant case is whether you are an appropriate party to be charged with the violations in light of the fact that you are not the owner of the [REDACTED]. I believe that you are. 33 CFR 173.21(a)(1) makes clear, in relevant part, that “...no person may use a vessel to which this part applies unless it has on board...a valid certificate of number or temporary certificate for that vessel issued by the issuing authority in the State in which the vessel is principally used.” Likewise, 33 CFR 175.15(a) makes clear that “no person may use a recreational vessel unless at least one PFD...is on board for each person.” As operator of the [REDACTED], you were clearly “using” the vessel and are, as a consequence, an appropriate party to be charged with the violations of 33 CFR 173.21(a)(1) and 33 CFR 175.15(a).

I will conclude by addressing your alleged violation of 46 USC 4102. 46 USC 4102 applies to “uninspected vessel[s].” 46 USC 2101(43) makes clear that the term “uninspected vessel” “means a vessel not subject to inspection under section 3301 of this title that **is not a recreational vessel.**” Because the record clearly indicates that you were operating a recreational vessel at the time of the boarding, 46 USC 4102 is not the correct statutory citation for the instant violation. However, since the correct nature of the violation was described throughout the civil penalty proceedings, and because the correct violation, 46 CFR Subpart 25.30, was indicated on the Coast Guard Form 4100 Boarding Report for the incident, I believe that you have been adequately apprised of the violation.

I will now discuss whether you are an appropriate party to be charged with a violation of 46 CFR Subpart 25.30. The statutory authority for the issuance of a civil penalty for a violation of 46 CFR Subpart 25.30, 46 USC 4311, makes clear, in relevant part, that the statute applies to “a person violating” the provisions of Chapter 43 of the U.S. Code. The record makes clear that, during the boarding at issue, you were the operator of the [REDACTED]. Therefore, pursuant to the regulations and statutes noted above, you are an appropriate party to be charged with that violation.

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. The Hearing Officer’s decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$300.00 rather than the \$7,700.00 maximum permitted by statute to be 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 **\$300.00** by check or money order payable

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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