



16731  
February 02, 2009

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
Attn: [REDACTED]

RE: Case No. 2170041  
[REDACTED]  
[REDACTED]  
\$100.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. 2170041, which includes your appeal on behalf of [REDACTED], as owner/operator of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$600.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 25.30-20(a)(1)	Required number of Coast Guard approved fire extinguishers were not on board.	\$100.00
33 CFR 155.450	A ship 26ft+ in length must have a placard of at least 5x8 inches of durable material fixed in a conspicuous place with prescribed statement.	Warning
33 CFR 151.59	Failure to properly display Annex V Placard.	Warning
46 CFR 15.401	Employment of an individual, or service in a position by an individual, without the appropriate license.	\$500.00

The violations are alleged to have been observed on May 10, 2004, after Coast Guard boarding officers boarded the [REDACTED] while it was underway on the Barateria Waterway near Lafitte, Louisiana.

On appeal, you contest only the alleged violation of 46 CFR 15.401. In that regard, you contend that because the [REDACTED] “is not a ‘small passenger vessel’ as defined in 46 USC 2101(35),” the violation must be dismissed. In that vein, you assert that the vessel does not carry “passengers for hire,” and assert that the vessel only carries employees of [REDACTED]. You further assert that because the only individuals who are transported aboard the vessel are employees of [REDACTED] who do not contribute consideration for their passage aboard the vessel, “46 USC 2101(22)(A) would not apply to the situation at hand.” Finally, with respect to 46 USC 2101(21)(B), you note that [REDACTED], the employer of the individuals transported by the vessel, “did not charter...[the]...vessel as it is...[its]...sole owner.” Although you acknowledge that “[i]t is understood that a vessel that meets the definition of ‘small passenger vessel,’ is bound by the regulations set forth in Title 46 of the Code of Federal Regulations,” you conclude that the [REDACTED] does not meet the statutory definition of the term “small passenger vessel” and conclude that a violation of 46 CFR Part 15 could not have occurred. Irrespective of your arguments concerning the alleged violation of 46 CFR 15.401, via your appeal, you acknowledged [REDACTED]’s willingness to pay the \$100.00 penalty assessed for the alleged violation of 46 CFR 25.30-20(a)(1).

Since you do not contest the alleged violation of 46 CFR 25.30-20(a)(1) (improper number of fire extinguishers), 33 CFR 155.450 (missing garbage placard), and 33 CFR 151.59 (missing pollution placard), given the evidence contained in the record, including the fact that the record shows that at the time of the boarding, the vessel had only one of the two required fire extinguishers aboard it and did not have either a garbage placard or a pollution placard posted, I find that the record contains substantial evidence to support a conclusion that the violations occurred.

I will now turn my attention to the alleged violation of 46 CFR 15.401. The “Details of the Violation” portion of the Coast Guard Enforcement Summary Report shows that the violation was alleged as a result of the fact that, at the time of the boarding, the vessel was “operating without an operator’s license.” I take this to mean that the person who operated the vessel at the time of the boarding did not have a Coast Guard issued Merchant Mariner License. 46 CFR 15.401 states as follows:

A person may not employ or engage an individual, and an individual may not serve, in a position in which an individual is required by law or regulation to hold a license, certificate of registry, or merchant mariner’s document, unless the individual holds a valid license, certificate of registry, or merchant mariner’s document, as appropriate, authorizing service in the capacity in which the individual is engaged or employed and the individual serves within any restrictions placed on the license, certificate or registry, or merchant mariner’s document.

February 02, 2009

A careful review of the Coast Guard case file shows that the statutory authority for the alleged violation was set forth at 46 USC 8101(d) and 46 USC 8901. Chapter 81 of Title 46, United States Code, establishes the general requirements for the complement of inspected vessels. In that regard, 46 USC 8101(d) states that “[a] vessel to which this section applies may not be operated without having in its service the complement required in the certificate of inspection.” Conversely, the laws in Chapter 89 of Title 46, United States Code—the second statutory authority for the alleged violation—establish small vessel manning requirements. In that regard, 46 USC 8901 makes clear that “[a] freight vessel of less than 100 gross tons...shall be operated by an individual licensed by the Secretary to operate that type of vessel.” Other portions of Chapter 89 mandate, among other things, that small passenger vessels and uninspected passenger vessels be similarly operated by licensed individuals.

While I suspect, based on your appeal arguments, that the violation at issue resulted from the fact that the Coast Guard determined that the [REDACTED] was a passenger vessel required to be operated by a licensed individual, the record does not contain any specific information as to the true nature of the charge. In fact, if my interpretation of the circumstances surrounding the violation is correct, the appropriate statutory authority was not properly indicated within the case file. Rather, the only evidence presented by the Coast Guard was that noted on the Coast Guard Form 4100 Boarding Report (noting an “operator license” violation) and supplemental statements contained in the “Details of the Violation” portion of the Enforcement Summary Report (indicating that the vessel was operating without an operator’s license). Noticeably absent from the case file is either a copy of the vessel’s Certificate of Inspection or any other indication, such as an assertion that the vessel is a small passenger vessel required to be operated by a licensed individual, as to why the vessel would be required to have a licensed operator in the first place. As such, I do not find that there is substantial evidence in the record to support the Hearing Officer’s conclusion that the violation occurred. Accordingly, I will dismiss the violation and associated \$500.00 penalty

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer’s determination that the violations of 46 CFR 25.30-20(a)(1), 33 CFR 155.450, and 33 CFR 151.59 occurred and that you are the responsible party. The Hearing Officer’s decision with respect to those violations was neither arbitrary nor capricious and is hereby affirmed. I find the \$100.00 penalty assessed by the Hearing Officer for those violations to be appropriate under the circumstances of the case. However, for the reasons discussed above, I do not find that the record contains substantial evidence to support the Hearing Officer’s determination with regard to the alleged violation of 46 CFR 15.401 and that violation has been dismissed.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$100.00** 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 70945  
Charlotte, NC 28272

February 02, 2009

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 1.0% 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