



[REDACTED]  
[REDACTED]  
[REDACTED]

16731  
June 13, 2002

RE: MV00000464  
[REDACTED]  
M/V [REDACTED]  
\$2,500.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Case MV00000464, which includes your appeal as owner of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$2,500.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 USC 1602 (Rule 23)	Failure of power-driven vessel to exhibit appropriate lights when underway.	\$250.00
46 CFR 15.605	Failure to have an uninspected passenger vessel under the control of a properly licensed individual.	\$1,000.00
33 CFR 160.105	Failure to comply with a COTP or a District Commander order affecting a vessel or a facility.	\$750.00
46 CFR 26.03	Failure of a vessel subject to this part to comply with the regulations for special operating requirements.	\$400.00
33 CFR 173.21	Failure to produce a Certificate of Number for inspection of a vessel in use.	\$100.00

The violations were noted during a Coast Guard investigation of the operating procedures of the M/V [REDACTED] in July of 1999. The investigation began after the Coast Guard received a report of an alleged grounding of the vessel on July 8, 1999, on the Wood River, in Alaska.

June 12, 2002

You do not raise any specific issues on appeal. Consequently, I have thoroughly reviewed the file for substantial evidence to support the Hearing Officer's conclusions with respect to the violations alleged. Following that review, I am confident that there is substantial evidence in the record to support the Hearing Officer's conclusions and your appeal is denied for reasons described below.

Before I begin, I believe a brief recitation of the facts surrounding the violation is in order. On July 13, 1999, MSO Anchorage received a report from [REDACTED], an individual licensed by the Coast Guard, alleging that you, the owner/operator of the M/V [REDACTED], had been operating the vessel in an unsafe manner. Specifically, [REDACTED] alleged that on July 8, 1999, you grounded the M/V [REDACTED] in the Wood River while you were under the influence of alcoholic beverages. [REDACTED] further alleged that, after the vessel was freed, you continued down river for approximately 2 miles after sunset and absent navigational lights. She concluded that the vessel's passengers were all concerned for their safety during this incident.

As a result of [REDACTED]'s report, MSO Anchorage began an investigation. Because the incident occurred within the boundaries of the [REDACTED] State Park, MSO Anchorage involved Park Rangers with the investigation. Together with Park Ranger [REDACTED], personnel from MSO Anchorage boarded the M/V [REDACTED] on July 15, 1999. At the time of that boarding, [REDACTED] was not onboard the vessel, but you, a cook, and two passengers were. Because you no doubt realized that it was illegal for you to take passengers for hire on board the vessel, you first intimated that the two passengers were friends of yours. Eventually, you admitted that the passengers were for hire. During the boarding, the Coast Guard also determined that you did not have a valid Drug and Alcohol program in place, a further violation of Coast Guard regulations. The Coast Guard boarding officer at the scene issued a verbal Captain of the Port order instructing you that you were not to operate the M/V [REDACTED] with passengers on board until you obtained a valid Captain's license. On July 17, 1999, Park Ranger [REDACTED] called MSO Anchorage to inform it that he had observed you operating the M/V [REDACTED] in violation of that order.

Although you do not raise any specific issues on appeal, you specifically address the issues in question in your letter to the Hearing Officer dated June 15, 2001. I have carefully reviewed the arguments that you made in that letter, paying particular attention to the violations in issue. I will address each of the violations separately below. In general, however, you contend that the allegations made by [REDACTED] are "totally without merit." To that end, you contend that [REDACTED] "went out of her way to sabotage...[your]...operation and curry favor with Ranger [REDACTED]." You further contend that "Ranger [REDACTED] had been harassing...[you]...for many years, at the behest of the land build lodges in the [REDACTED] State Park, who were irritated that...[your]...floating lodge was siphoning off potential clients from them." You further contend that [REDACTED] told you that "she didn't really want to be a guide, and that her ultimate goal was to be a park ranger." Therefore, you contend that she "concluded that causing...[you]...grief would work in her favor." You conclude that, for these reasons, [REDACTED] fabricated the story that she reported to the Coast Guard.

I will begin by addressing your alleged violation of 33 USC 1602 (Rule 23). Although, in your letter of June 15, 1999, you admit that the M/V [REDACTED] did not have navigation lights installed at the time of the incident, you contend that you "never operated the boat between sunset and sunrise." You further contend that, on July 7, 1999, you began moving the vessel at approximately 10:30 p.m. and that you were at your new anchorage by 10:45 p.m. The record indicates that the M/V

June 12, 2002

[REDACTED] had only an anchor light onboard and that it does not have sidelights, port lights or starboard lights installed. In relevant part, 33 USC 1602 (Rule 23) states:

- (a) A power-driven vessel underway shall exhibit:
  - (i) A masthead light forward;
  - (ii) A second masthead light abaft of and higher than the forward one; except that a vessel of less than 50 meters in length shall not be obliged to exhibit such light but may do so;
  - (iii) Sidelights; and
  - (iv) A sternlight

33 USC 1602 (Rule 20) makes clear that the rules concerning navigation lights “shall be complied with from sunset to sunrise.” Therefore, since the record evidences that the M/V [REDACTED] had only one navigation light, its anchor light, a violation clearly occurred if the vessel was operated between sunset and sunrise. Although you contend that you moved the vessel between 10:30 p.m. and 10:45 p.m. on the evening in question, approximately one hour before sunset, the statements of several of your passengers and [REDACTED] indicate that you actually moved the vessel sometime after midnight on the evening in question. It is the Hearing Officer’s responsibility to decide the reliability and credibility of evidence and resolve any conflicts in evidence. Therefore, although you and the other interested parties offer conflicting views as to whether the vessel was operated after sunset, it is the Hearing Officer’s role to evaluate the weight of the factual claims and make a determination as to what happened during the incident in question. In reviewing the record, I do not find the instant decision an abuse of this discretionary authority. [REDACTED]’s account of this violation is corroborated by both [REDACTED] and [REDACTED]. Therefore, I find the violation proved and will not mitigate the penalty assessed by the Hearing Officer.

I will now address your alleged violation of 46 CFR 15.605. The regulation makes clear that “[e]ach self-propelled, uninspected vessel carrying not more than six passengers...must be under the direction and control of an individual licensed by the Coast Guard.” Responding to the violation in your June 15, 1999, letter, you admit that your license “expired on 4/29/99” and contend that “[k]nowing that...[y]our license couldn’t be issued before...[your]...first scheduled trip on 6/26...[you]...hired two CG licensed Captains to operate the [REDACTED] and the skiffs.” You further note that, on July 4, 1999, as your clients were enroute to Alaska, one of those captains quit, leaving you ill prepared for the voyage at hand. While you acknowledge that you knew that you “shouldn’t have left without...[your]...license,” you note that, to you, “it was just a technical violation” and add that you believed that your “license would be sitting in...[your]... P.O. box” when you returned from the voyage. Since you do not deny the violation, I consider it proved. Given the clarity of the regulation and your knowing violation of it, I will not mitigate the penalty assessed by the Hearing Officer.

I will now address your alleged violation of 33 CFR 160.105. The regulation states that “[e]ach person who has notice of the terms of an order issued under this subpart must comply with that order.” The record indicates that on July 15, 1999, Coast Guard Chief Warrant Officer [REDACTED] issued a verbal order to you, instructing you not to operate the M/V [REDACTED] with passengers aboard until your Coast Guard license had been renewed. On the following day, Park Ranger [REDACTED] informed the Coast Guard that he had observed you operating the vessel with two passengers on board. A subsequent Coast Guard investigation confirmed Ranger

June 12, 2002

[REDACTED]'s report. With respect to the alleged violation, you contend that the passengers were not passengers, but rather, they were friends of yours who were vacationing in the area. While you acknowledge that the passengers had paid for food and fuel, you assert that you did not "make a profit" off the trip. The Coast Guard's definition of "passenger" is found at 46 USC 2101(21). In relevant part, the statute indicates that the word "passenger" means:

- (A) an individual carried on the vessel except—
  - (i) the owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer individual representative of the charterer;
  - (ii) the master; or
  - (iii) a member of the crew engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for on board services

Regardless of whether the people on board your vessel had paid for your services, or not, it is evident that they were, pursuant to the Coast Guard's definition, passengers on board your vessel. Therefore, I find the violation proved and will not mitigate the penalty assessed by the Hearing Officer.

I will now address your alleged violation of 46 CFR 26.03. The record indicates that this violation represents the combination of two separate violations. The first violation, noted as violation 6a. on the Coast Guard's Marine Violation Charge Sheet, concerns your alleged failure to perform safety orientation before getting underway (a violation of 46 CFR 26.03-1). The second violation, noted as violation 6b. on the Marine Violation Charge Sheet, concerns your alleged failure to ensure that an emergency checkoff list is posted on board the vessel (a violation of 46 CFR 26.03-2). In your June 15 letter, you deny the former violation and contend that "in 21 years, not one hired guide, chef, or paying client has ever alleged that...[you] failed to point out the location of the life preservers or otherwise inform passengers of safety procedures." You conclude that any statements to the contrary are the result of "Captain [REDACTED]...pursing her own agenda, and the [REDACTED] and [REDACTED]...backing her up for their refund claim." However, the statements of Mr. [REDACTED], [REDACTED] and [REDACTED] indicate that you did not give your passengers any safety instructions when they boarded the vessel. Again, since there is conflicting evidence in the record as to whether safety instructions were given, it was the Hearing Officer's responsibility to decide the reliability of the evidence and make a determination as to the factual occurrences in issue. Given the evidence in the record, I am confident that the Hearing Officer did not err in determining that you failed to give your passengers safety instructions during the voyage in issue. I, therefore, find the violation of 46 CFR 26.03-1 proved. Likewise, because you do not deny the alleged violation of 46 CFR 26.03-2, I find it proved. Given the seriousness of the violations, I will not mitigate the assessed penalty.

Finally, I will address your alleged violation of 33 CFR 173.21(a)(1). Your June 15 letter indicates that, you do not deny the violation. However, you note that you "did have all the required decals for the certificate." You further assert that you did, in fact, "subsequently obtained the certificate." Since you do not deny the violation, I consider it proved. I am confident that the Hearing Officer considered your subsequent compliance when he mitigated the penalty from \$500.00 to \$100.00. Therefore, I will not mitigate the penalty further.

June 12, 2002

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 \$2,500.00 penalty assessed, rather than the \$28,000.00 preliminarily assessed or \$119,700.00 maximum permitted by statute 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 **\$2500.00** 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 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