

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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Washington, DC 20593-0001
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Phone: (202) 267-1527
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16780
January 24, 2003

[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00003100
[REDACTED]
UNNAMED ([REDACTED])
\$50.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00003100, which includes your appeal as owner/operator of the UNNAMED dinghy numbered [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
33 USC 2020(a) (Rule 20)	Failure to comply with rules concerning lights and shapes (in any weather).	\$50.00
33 CFR 175.110(b)	No visual distress signals on board vessel less than 16 feet in length suitable for night use when boat was used between sunset and sunrise.	\$50.00

The violations were observed on June 25, 2000, when Coast Guard boarding officers boarded your vessel in Lake Erie near Put In Bay, Ohio.

On appeal, you admit that you did not have the registration on board but deny the remaining violations. You contend that the boarding took place "4 minutes after sunset" and add that it

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took the Coast Guard “longer than that” to board your vessel. You further contend that your vessel’s motor was not running and add that “all that was required was a flashlight for night lighting.” You assert that the Coast Guard forced you to engage your motor when they made you “power out to them about 200 yards” and add that the violations did not occur because the Coast Guard forced you to “stay out way past sunset after they almost grounded a 50’ Coast Guard vessel.” You conclude that the boarding only occurred because “a band of very young vigilantes were out on an expensive joy ride at the expense of the US Government and were the one that should’ve been cited.” Your appeal is granted, in part and denied, in part, for the reasons described below.

I will begin by addressing the alleged violation of 33 CFR 173.21(a)(1). Since you do not deny that you did not have the required certificate on board the vessel, I consider the violation proved. Given the nominal nature of the penalty assessed by the Hearing Officer and because you do not contest the violation, I will not mitigate the penalty.

I will now address the remaining violations. Both 33 USC 2020 (Rule 20) and 33 CFR 175 deal with the use of lights to enhance both vision and safety at night. You have continually asserted that the boarding in issue began during daylight hours and was prolonged by Coast Guard boarding Officers. The record indicates that a program representative of the Fifth Coast Guard District has commented that “we should drop the NAV LIGHTS and VDS charge” because “[t]he boarding officer is no longer in the Coast Guard and not available to further comment.” In light of these comments and in view of the evidence contained in the record, I will dismiss the violations.

I also want to comment on your allegations regarding the actions of the Coast Guard crew at the time of the boarding. You describe them as “young vigilantes...on an expensive joy ride.” I note that you appropriately addressed a letter to the Commanding Officer of Station Marblehead on this matter. Since the civil penalty case file does not indicate if your allegations were investigated, I am unable to comment on their validity. Admittedly, there may be times when some of our young personnel take actions that more experienced personnel may not take. Whether or not this was the situation in your case is unknown to me. On the other hand, I do know that the Coast Guard asks a great deal from many of its young petty officers and non-rated personnel as they engage in law enforcement patrols. They work long hours and face many dangers as maritime law enforcement officers. Their job is made more difficult by individuals who do not respect their authority and who actively obstruct the Coast Guard’s right to conduct vessel examinations and terminate unsafe voyages. Again, I do not know if that was the situation in your case, although I note the boarding report does describe you as being uncooperative. I sincerely hope that should you be boarded in the future, the boarding will be characterized by mutual respect between the parties involved.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer’s determination that the 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. I find the penalty of \$50.00 rather than the \$1,100.00 maximum permitted by statute to be appropriate in light of the seriousness of the violation.

RE: CIVIL PENALTY

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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:

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