



16731
Nov 17, 2006

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

RE: Case No. [REDACTED]
[REDACTED]
[REDACTED]
\$4,000.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. [REDACTED], which includes your appeal as owner/operator of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$4,000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 176.600	Failure to make vessel available for drydock examinations and internal structural examinations required by Coast Guard regulation.	\$4,000.00

The violation is alleged to have occurred on November 22, 2002, when personnel from Coast Guard Marine Safety Office Chicago, Illinois, conducted a drydock and structural examination of the [REDACTED].

On appeal, although you do not deny that the violation occurred, you seek further mitigation of the penalty assessed by the Hearing Officer. To that end, you contend that “[t]he fine amount far outweighs the violation charged for, especially for a small struggling minority business.” In addition, you assert that the violation is likely the result of the “MSO’s police like attitude” which, rather than fostering compliance with the applicable regulations, has lead the local community to be wary of the Coast Guard. You further assert that the fact that you have been “outspoken” about the issue may have lead to the “damming comment[s]” of the initiating unit and, ultimately, the violation. Although you acknowledge that the vessel was “not ready for inspection” and that “the bilges were dirty,” you contend that you have always “tried to the best of...[your]...ability to cooperate” and achieve compliance with the applicable regulations. Your appeal is denied for the reasons discussed below.

I will begin by addressing the violation. 46 CFR 176.600 makes clear that “[t]he owner or managing operator shall make a vessel available for drydock examinations, internal structural

examinations, and underwater surveys...required by this section.” The Hearing Officer addressed the violation as follows in his Final Letter of Decision:

The inspector noted several deficiencies but any single deficiency standing alone would have been a violation. The investigative file noted that (1) two gate valves had not been removed; (2) deck covers that should have been removed were covered with carpeting; (3) space was obstructed by 5 twenty-five pound CO2 bottles; and (4) bilges were not cleaned.

The Hearing Officer further noted that your responses “did not offer a categorical denial of all of the allegations” and that rebuttal comments submitted by the initiating unit showed that you should have been aware of the procedures that needed to be conducted to ensure that the vessel was ready for inspection. A careful review of the Hearing Officer’s decision shows that he did not find your assertions credible and, as a result, found the violation proved. Given the evidence contained in the case file and your admission on appeal that the vessel was “not ready for inspection,” I find that the Hearing Officer did not err in finding the violation proved.

I will now address the penalty. The record shows that, throughout the course of these proceedings, you have asserted that you cannot afford to pay a penalty of the magnitude assessed in this case. The record also shows that, upon considering your assertions in this regard, the Hearing Officer mitigated the initially assessed penalty of \$6,500.00 to \$4,000.00. In his Final Letter of Decision, the Hearing Officer explained that a significant penalty was appropriate in this case due to your “extensive violation history.” With respect to the amount of the assessed penalty, the Hearing Officer further stated that “[a]gency guidelines suggest that when there are repeated violations by a single party that the penalty amounts should be close to the maximum.” Given your violation history and the fact that the Hearing Officer mitigated the initially assessed penalty due to your financial assertions, I will not mitigate the penalty further.

Finally, I will address what amounted to the bulk of your appellate argument, that the MSO in this case improperly conducted itself with a “police like attitude.” In so stating, you imply that the MSO, rather than attempting to educate the local maritime community and foster compliance through cooperation, assesses violations in a “police like” manner and, in so doing, is improperly punitive. First and foremost, the record contains evidence in direct opposition to your statements in this regard. Indeed, the record contains both a Letter of Warning and a Letter of Concern issued to you by the operative Officer in Charge, Marine Inspection. These letters show that, rather than immediately commencing violation cases, the local Coast Guard unit attempts to foster compliance through education and cooperation. Moreover, there would be no error, even if the Coast Guard unit immediately initiated violation cases rather than issuing written warnings, as you seem to imply is most appropriate. That is because the numerous statutes and regulations that the Coast Guard enforces allow for the initiation of penalty cases when there is *prima facie* evidence of a violation, regardless of whether there are attempts to foster compliance. Therefore, your assertions with respect to the “police like attitude” of the local Coast Guard unit are wholly 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. For the reasons discussed above, I find the \$4,000.00 penalty assessed by the Hearing Officer, rather than the \$6,500.00 maximum permitted by statute to be appropriate in light of the circumstances of the violation.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$4,000.00** 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

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 4.00% 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