



[REDACTED]
[REDACTED]
[REDACTED]

16780
Dec 26, 2006

RE: Case No. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
\$250.00

Dear Mr. Malony:

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 of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$250.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 173.27(a)(4)	Failure to have vessel's number, as required by 173.15, with spaces or hyphens equal to width of a letter between and number groupings.	\$100.00
46 CFR 25.35-1(a)	Vessel was not equipped with an acceptable means of backfire flame control.	\$150.00

The violations were first observed on October 6, 2002, when Coast Guard boarding officers boarded the [REDACTED] while it was underway on the Potomac River near Cobb Island, Maryland.

On appeal, you do not deny that the violations occurred. Rather, you contend that you are not an appropriate party to be charged with the violations. Instead, you assert that your father is the actual owner of the vessel and assert that you are only associated with the vessel because you assisted your father in purchasing it. In addition, you assert that you "signed the title and sent it" to your father because he sold the boat. As a result, you request that I dismiss the charges without penalty. Your appeal is granted, in part, and denied, in part, for the reasons discussed below.

First and foremost, the Coast Guard's civil penalty procedural rules make clear that "[t]he only issues which will be considered on appeal are those issues specified in the appeal which were properly raised before the Hearing Officer and jurisdictional questions." *See* 33 CFR 1.07-70(a). The record shows that you did not respond to any of the Hearing Officer's correspondence in this case. You acknowledge this fact in your letter of appeal when you state that although you attempted to contact the Hearing Officer after you received her September 24, 2003, Preliminary Assessment Letter, "the matter went out of...[your]...head" because you "never really owned the vessel." Although your right to have issues considered now, after having failed to raise any issues before the Hearing Officer, may have been waived, in the interest of fairness, I have reviewed the record to determine if there is substantial evidence to support the Hearing Officer's conclusion that the violations occurred and that you are the responsible party.

The record shows that you do not deny that the violations occurred. In addition, the case file contains a copy of the Supplemental Boarding Report signed by the Coast Guard boarding officer responsible for initiating the case. With respect to the alleged violation of 33 CFR 173.27(a)(4), that report states that the "vessel's state numbering did not have any spaces between 'D' and '5' and between 'G' and 'S'." In this case, although a space is certainly required between the "D" and the "5," a space is not required between the "G" and the "S." I suspect the report contains a typographical error and should have read that the vessel did not have a space between the "8" and the "G." Given both the clear evidence of a lack of spacing between the "D" and the "5" the fact that you do not deny that the violation occurred, I find the violation proved. However, given the uncertainty in the record as to the spacing between the "D" and the "5," I will mitigate the violation to a warning.

With respect to the alleged violation of 46 CFR 25.35-1(a), the Supplemental Boarding Report states that the "vessel did not have a backfire flame control device in place" and adds that the "device was located in stowage area without hardware to reattach it to [the] engine." Given the potential safety risks associated with the violation, the fact that you do not deny that the violation occurred and, in light of the evidence contained within the case file, I find the alleged violation proved. Therefore, the only issue remaining for consideration is whether you are an appropriate party to be charged with either of the violations.

In spite of your assertions regarding the ownership of the vessel, I, nonetheless, find that there is sufficient evidence in the record to support a conclusion that you are or were the "owner" of the vessel. 33 CFR 173.3 makes clear that for the purposes of Coast Guard regulation, the term "owner" "means a person who claims lawful possession of a vessel by virtue of legal title or equitable interest therein which entitled him to such possession." In your letter of appeal you stated that after the violations occurred you "signed the title and sent it to...[your]...father because he sold the boat." Therefore, the record shows that the vessel's title was in your name. As a result, pursuant to 33 CFR 173.3, you may properly be considered the owner of the vessel.

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. For the reasons discussed above, I find a penalty of \$150.00, rather than the \$250.00 penalty assessed by

the Hearing Officer, or \$8,800.00 maximum permitted by statute to be appropriate in light of the circumstances of the case.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$150.00** 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