



16731  
OCT 26, 2006

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

RE: Case No. [REDACTED]  
[REDACTED]  
[REDACTED]  
\$20,000.00

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 on behalf of [REDACTED] (hereinafter "[REDACTED]"), as operator of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$32,500.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 160.212(a)(3)(ii)	Failure to provide notice of arrival before departure or at least 24 hours before entering the port or place of destination when embarking on a voyage less than 96 hours.	\$32,500.00

The violation is alleged to have taken place on April 7, 2004, when the [REDACTED] arrived at the Port of Charleston, South Carolina, after having provided the Coast Guard with approximately 12 hours advance notice of its arrival, rather than the 24-hour notice required by Coast Guard regulation.

On appeal, although you do not deny that the violation occurred, you seek either dismissal or significant mitigation of the penalty assessed by the Hearing Officer given the circumstances surrounding the violation. To that end, you assert that although [REDACTED] made a good faith attempt to file a Notice of Arrival (hereinafter "NOA") for the [REDACTED] voyage within the required 24-hour time-period, a "computer error" occurring within [REDACTED]'s servers, for which "[n]either [REDACTED] nor [REDACTED] personnel are at fault," resulted in the NOA not being received by the Coast Guard within the required time-period. As a result, you conclude that "[w]ere it not for the computer problem...[Coast Guard]...officials would have received the NOA on April 5, roughly 32 hours in advance of the vessel's scheduled arrival at Charleston at 0700 on Wednesday, April 7." In addition, you contend that the Coast Guard's actions in response to the violation—ordering the vessel to immediately leave port to await clearance for re-entry, an action which led to the stranding of nearly 400 passengers who disembarked the vessel when it berthed—resulted in "additional costs" and "negative publicity"

that “are punishment enough for the violation.” In addition, you contend that [REDACTED]’s record of prior NOA violations should not have any effect on the instant case because “[a]lthough it appears that the vessel received a warning for an NOA violation on April 11 and 14 of 2003...prior to this incident, [REDACTED] was unaware that a prior violation had occurred because the Master who received the warnings did not inform [REDACTED] Officials.” Finally, you conclude that a significant monetary penalty is not warranted in this case because the Coast Guard did receive a NOA for the vessel within 12 hours of its arrival at Charleston and “the delay in transmitting the NOA posed no threat to the safety or security of the port or to the citizens of Charleston, as the [REDACTED] passengers had been screened in a U.S. port (Baltimore) prior to departure for Charleston.” Your appeal is granted, in part, and denied, in part, for the reasons discussed below.

Pursuant to Coast Guard regulation, “all vessels must submit NOAs” within certain specified time-periods, prior to entering ports in the United States. *See* 33 CFR 160.212(a). 33 CFR 160.212(a)(3)(ii) makes clear that vessels engaged in voyages less than 96 hours in duration must file NOAs “[b]efore departure but at least 24 hours before entering the port or place of destination.” In this case, the record shows that the [REDACTED] arrived at the Port of Charleston, SC, after a transit of approximately 35 hours from Baltimore, MD. As a result, the vessel was required to file its NOA for Charleston at least 24 hours prior to its arrival at the port. The record shows that the Coast Guard received the [REDACTED] NOA at 7:13 p.m. on April 6, 2004, approximately 12 hours before the vessel was scheduled to arrive in Charleston. Given the facts of record, I find that the Hearing Officer was correct to find the violation proved; the Coast Guard did not receive the [REDACTED] NOA within 24 hours of the vessel’s arrival at Charleston. As a result, the sole issue remaining before me is whether the Hearing Officer was correct to impose a penalty of \$32,500.00, the maximum penalty available for the violation, in this case.

The Coast Guard’s civil penalty program is a critical element in the enforcement of numerous marine safety, security, and environmental protection laws. The civil penalty process is remedial in nature and is designed to achieve compliance through either the issuance of warnings or the assessment of monetary penalties by Coast Guard Hearing Officers when violations are proved. As such, it is the Hearing Officer’s responsibility to decide the reliability and credibility of evidence and to resolve any conflicts presented within the evidence of record.

In this case, although the Hearing Officer’s Final Letter of Decision shows that she “took into account the circumstances presented in the file,” a careful review of the letter shows that “[t]he vessel’s prior violations loom[ed] large in” her decision to assess the maximum penalty permitted by statute in this case. Although I do not find that the Hearing Officer was either arbitrary or capricious in electing to afford significant consideration to the vessel’s violation history, given the ultimate disposition of the vessel’s prior cases, all three resulted in the issuance of warnings rather than the assessment of monetary penalties, I do not find it appropriate to impose the maximum penalty in this case. In addition, I note that the Hearing Officer did not find [REDACTED]’s assertions with respect to the company’s attempts to comply with the applicable notification requirements to be incredible. As such, the record supports a conclusion that [REDACTED] attempted to achieve compliance with the applicable regulation. Indeed, the

record shows that, upon learning that the required NOA had not been received by the Coast Guard, [REDACTED] filed a subsequent NOA that was received approximately 12 hours before the [REDACTED] arrived at Charleston. Although [REDACTED] committed a violation by failing to file its NOA within the 24-hour period required by 33 CFR 160.212(a)(3)(ii), given the facts or record, I do not find the imposition of the maximum penalty to be appropriate under the circumstances of this case. Therefore, considering the facts presented and [REDACTED]'s violation history, I will mitigate the penalty assessed by the Hearing Officer to \$20,000.00.

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 that the violation occurred was neither arbitrary nor capricious and is hereby affirmed. For the reasons discussed above, I find a penalty of \$20,000.00, rather than the \$32,000.00 penalty assessed by the Hearing Officer to be appropriate under 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 **\$20,000.00** 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 100160  
Atlanta, GA 30384

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 4.0% 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