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JUN 29 2007

[REDACTED]

649 Jeffrey
P.O. Box 44
Calumet City, IL 60409

RE: Case No. 2340445
Mr. Orlando Wooten
M/V CARRIE LEE
\$250.00

Dear Mr. Wooten:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. 2340445, which includes your appeal as owner/operator of the M/V CARRIE LEE. The appeal is from the action of the Hearing Officer in assessing a \$250.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 175.110(a)	No visual distress signals on board the vessel suitable for day use and for night use, or suitable for both day and night use.	\$250.00

The violation is alleged to have occurred on August 20, 2004, when Coast Guard boarding officers boarded the M/V CARRIE LEE while it was underway on Lake Michigan, near Chicago, Illinois.

On appeal, you do not deny that the violation occurred; instead, you note that you have purchased a flare gun in order to bring the M/V CARRIE LEE into compliance and insist that if I "reverse" the Hearing Officer's decision, you "will be a better boater/safer for years to come." For the reasons set forth below, I find that there was substantial evidence in the record to support the Hearing Officer's decision and your appeal is denied.

33 CFR 175.110(a) makes clear that "[n]o person may use a boat 16 feet or more in length...unless visual distress signals...are onboard" and adds that "[d]evices suitable for day use and devices suitable for night use, or devices suitable for both day and night use, must be carried." The record shows that your vessel is 36 feet in length. As such, you are required to

carry visual distress signals aboard your vessel. Given the evidence contained in the record and the fact that you do not deny that the violation occurred, I find the violation proved. Therefore, the sole issue remaining before me is whether mitigation of the penalty assessed by the Hearing Office is appropriate under the circumstances of the case.

The Coast Guard Activity Summary Report, contained within the record shows that your vessel was boarded approximately one week prior to the incident at issue in these proceedings and that, during that boarding, you were issued a warning for not having required visual distress signals aboard your vessel. Irrespective of that fact, approximately one year after the boarding at issue occurred, on April 29, 2005, the Commander, Coast Guard Atlantic Area, sent you a "Preliminary Inquiry, Recreational Vessel" letter which afforded you yet another opportunity to avoid civil penalty action in the case if you provided evidence of compliance within 45 days of receipt of the letter. The record shows that you did not provide such information to the Atlantic area and that, as a result, the case file was sent to the Hearing Officer for further action. The record similarly shows that although the Hearing Officer afforded you the opportunity to respond to the alleged violation, you did not do so and that, indeed, your first correspondence in the matter came after the Hearing Officer issued her Final Letter of Decision in the case. The procedural regulations governing the instant case, at 33 CFR Part 1.07, 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." Since the record shows that you did not raise any issues before the Hearing Officer and have not, at any time, denied that the violation occurred, I find the penalty assessed by the Hearing Officer to be appropriate under the circumstances of the case.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that you are the responsible party. The decision of the Hearing Officer was neither arbitrary nor capricious and is hereby affirmed. I find the \$250.00 penalty assessed by the Hearing Officer, rather than the \$1,100.00 maximum penalty permitted by statute to be appropriate under the circumstances of the case.

Payment of **\$250.00** 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. Payment should be directed to:

U.S. Coast Guard - Civil Penalties
P.O. Box 70945
Charlotte, NC 28272

Interest at the annual rate of 1% accrues from the date of this letter but will be waived if payment is received within 30 days. In accordance with 33 USC 1321(b)(6)(H), if payment is not received in 30 days, in addition to the interest, an administrative charge of \$12.00 per month for the cost of collecting the debt will be assessed. Furthermore, if the debt remains unpaid for over 3 months, and for every 3 months thereafter, an additional quarterly nonpayment penalty of 20% of the aggregate amount of the assessed penalty and all accrued quarterly nonpayment penalties will be added to the debt, and you will be liable for all attorney's fees incurred and all other costs of collection.

In accordance with the regulations governing civil penalty proceedings, 33 C.F.R. § 1.07, this decision constitutes final agency action.

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