



REDACTED
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16780
31 MARCH 2008

RE: Case No. 2124455
REDACTED
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\$420.50

Dear REDACTED:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. 2124455, which includes your appeal as owner/operator of the REDACTED. The appeal is from the action of the Hearing Officer in assessing a \$950.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 28.120	Failure to comply with the requirement for a survival craft.	\$800.00
46 CFR 28.140	Failure to maintain, inspect, or have lifesaving equipment readily accessible and ready for immediate use.	\$100.00
33 USC 1602 (Rule 26)	Failure to exhibit appropriate lights and or day shapes – fishing vessels.	\$50.00
33 CFR 173.21(a)(1)	Use of a vessel without a valid Certificate of Number or temporary certificate on board.	Warning

The violations were first observed on February 29, 2004, when Coast Guard boarding officers boarded the REDACTED while it was underway on the Gulf of Maine, approximately .7 nautical miles from Baker Island, Maine.

On appeal, although you do not deny that the violations occurred, you contend that a voluntary dockside examination of your vessel on November 8, 2005, revealed that all of your vessel's deficiencies had been corrected. You further note that the examiner of your vessel "said that he had gone online and vacated all deficiencies," implying that, as a result, it is improper for the

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Coast Guard to now impose monetary penalties for the violations. Your appeal is granted, in part and denied, in part, for the reasons discussed below.

Before I address the violations, I will discuss both the factual circumstances surrounding the boarding of your vessel and the procedural progression of your case. The record shows that on February 29, 2004, a boarding team from the Coast Guard Cutter MORAY boarded your vessel to perform an administrative inspection. During the boarding, the boarding officers observed the 4 violations noted above. Subsequently thereafter, on October 21, 2004, a Coast Guard Hearing Officer sent you a Preliminary Assessment Letter that identified the alleged violations, informed you of the maximum penalties available for the violations, the preliminarily assessed penalties and that you would have 30 days within which to either accept the preliminarily assessed penalty, request a hearing in the matter, or provide written evidence in lieu of a Hearing. The record shows that you responded to the Hearing Officer's initial notification letter via a letter dated November 9, 2004. In that letter, you informed the Hearing Officer that you were unaware of the requirement for a buoyant apparatus, that you purchased the necessary flares and provided receipts for the same, admitting you were "guilty" of not flying the appropriate dayshape and also admitting that you were confused over when the certificate of registration needed to be renewed. Thereafter, the Hearing Officer sent you a letter in which she offered you an additional 45 days to provide proof that you purchased a buoyant apparatus before she issued a final assessment letter. You responded that you did not intend to use the REDACTED until the following summer and, therefore, did not intend to purchase a buoyant apparatus until the following spring. Subsequently, on January 30, 2005, the Hearing Officer sent you a letter and allowed you until May 30, 2005, to provide evidence that you purchased a buoyant apparatus.

In the meantime, your case was reassigned to a new Hearing Officer. On July 7, 2005, the Hearing Officer sent you a final letter of assessment. In the letter, the Hearing Officer noted that you had not responded to the previous letter allowing you until May 30, 2005, to acquire a buoyant apparatus. As such, the Hearing Officer found the charge proved and assessed a penalty of \$800.00. The Hearing Officer took into account that you purchased the required flares and reduced the penalty from \$200.00 to \$100.00. Based on your admission, the Hearing Officer also lowered the violation for failure to fly the proper dayshape from \$200.00 to \$50.00. Finally, since you admitted to not having the proper registration onboard, the Hearing Officer lowered the proposed penalty from \$100.00 to a warning. In all, you were assessed a total penalty of \$950.00. On July 26, 2005, you sent a letter to the Hearing Officer along with evidence that you ordered the buoyant apparatus on June 8, 2005, and received it on June 23, 2005. The Hearing Officer did not reopen your case and you subsequently appealed.

The Coast Guard's primary purpose in enforcing its regulations is to ensure maritime safety and to protect the environmental quality of the navigable waters of the United States. Compliance with Coast Guard regulations helps prevent environmental damage, loss of life, personal injury and property damage. The Coast Guard's regulation of fishing vessels like the REDACTED is particularly important because of the inherent dangers associated with the commercial fishing industry. Your failure to comply with the Coast Guard's regulations could have resulted in serious consequences for you and your vessel. Since you do not deny the violations and only offer evidence in mitigation, I, therefore, find all of the violations proved.

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Even though after-the-fact correction of violations does not provide a basis to dismiss charges in these proceedings, I am persuaded by the fact that you took measures to correct the deficiencies. In particular, I note that you ordered and received the requisite buoyant apparatus prior to the Hearing Officer sending you a Final Assessment Letter. You provided evidence indicating that you spent \$529.50 on the buoyant apparatus. I will deduct that amount from the \$800.00 assessed by the Hearing Officer and assess you a penalty of \$270.50 for the violation of 46 CFR 28.120. Since you have admitted to the remaining violations and have not provided any further evidence to support their mitigation, I will not adjust those penalties.

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 decision of the Hearing Officer was neither arbitrary nor capricious and is hereby affirmed. For the reasons discussed above, I find a total penalty of \$420.50, rather than the \$950.00 assessed by the Hearing Officer or \$20,600.00 maximum permitted by statute to be appropriate in light of the circumstances of the violations.

Payment of **\$420.50** 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

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.

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