



16780  
March 31, 2008

REDACTED  
REDACTED  
REDACTED

RE: Case No. REDACTED  
REDACTED  
REDACTED  
\$150.00

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 \$300.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 173.15(a)(2)	Failure to display a number issued on the vessel.	\$50.00
33 CFR 173.27(a)(4)	Failure to have vessel's number, as required by 172.15, with spaces or hyphens equal to the width of a letter between letter and number groupings.	WARNING
33 CFR 173.21(a)(1)	Use of a vessel without a valid Certificate of Number or temporary certificate on board.	WARNING
33 USC 2033(b)(Rule 33)	Failure to have some means of making an efficient sound signal for a vessel less than 12 meters in length.	\$250.00

The violations were first observed on September 9, 2005, when Coast Guard boarding officers boarded your vessel while it was underway on Lake Michigan near the Navy Pier in Chicago, Illinois.

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On appeal, although you do not deny that the violations occurred, you seek mitigation of the penalty assessed by the Hearing Officer because “[a]fter receiving the citation...[you]...took immediate steps to remedy the violations.” To that end, you explain that the reason that you did not provide pictures to show that you had corrected the vessel’s numbering issues is “[b]ecause the boat was in storage for the winter” and, therefore, you “could not obtain pictures showing [that] the...[violation had been]...corrected.” At the same time, you address the alleged violation of 33 USC 2033(b)(Rule 33) by stating that you had “the horn fixed while it was in storage” and insist that although “[i]t had been serviced previously...an additional problem was found when the power of the boat drops below a certain level.” You assert that this defect caused the vessel’s horn to work “intermittently.” To further support your assertion in this regard, you have provided a copy of an invoice for a new horn that you purchased for the vessel and claim that you did not receive this invoice until you “brought the boat out [of storage] in May.” Your appeal is granted, in part, and denied, in part, for the reasons discussed below.

The Coast Guard’s civil penalty program is a critical element in the enforcement of numerous marine safety 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. Procedural rules, at 33 CFR 1.07, are designed to ensure that parties are afforded due process during informal administrative proceedings. The procedures in 33 CFR 1.07 have been sanctioned by Congress and upheld in the Federal courts. *See* H. Rep. No. 95-1384, 95th Cong., 2d Sess. 27 (1978); S. Rep. No. 96-979, 96th Cong., 2d Sess. 25 (1980); H. Rep. No. 98-338, 98th Cong., 1st Sess. 133 (1983); *United States v. Independent Bulk Transport, Inc.*, 480 F. Supp. 474 (S.D.N.Y. 1979).

After a careful review of the record in light of the fact that you, yourself, do not deny the violations, I find that there is substantial evidence in the record to support the Hearing Officer’s conclusion that the violations occurred and that you are an appropriate party to be charged with the violations. As such, the sole issue now presented is whether the penalty assessed by the Hearing Officer is appropriate in light of evidence contained in the case file.

Your appeal focuses on the Hearing Officer’s assessment of monetary penalties for the alleged violations of 33 CFR 173.15(a)(2) (failure to display a number issued on the vessel) and 33 USC 2033(b)(Rule 33) (failure to have some means of making a sound signal). Because you do not make any specific assertions with regard to violations for which warnings were assessed, the remainder of this decision will focus on whether mitigation of the monetary penalties assessed by the Hearing Officer for the violations of 33 CFR 173.15(a)(2) and 33 USC 2033(b)(Rule 33) is appropriate under the circumstances of this case.

To support your assertion that the \$50.00 penalty assessed by the Hearing Officer for the violation of 33 CFR 173.15(a)(2) should be mitigated, you have provided a photograph of the vessel, to purportedly show that state numbers have now been properly affixed to the vessel’s bow. First, I note that under 33 C.F.R. 1.07-70(a), only issues that have been properly raised before the Hearing Officer and jurisdictional questions may be raised on appeal. The record shows that you did not provide the Hearing Officer with a copy of the relevant photograph until after she issued her Final Letter of Decision in your case. As such, your right to have the

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photograph considered has been waived under the operative procedural rules. Irrespective of that fact, however, I note that even if I were to consider the photograph, the record shows that the violation occurred and, as a result, the assessment of a penalty with respect to the violation would be appropriate. Moreover, I note that the Enforcement Activity Summary Report for the relevant violations indicates that the violation resulted from the fact that there was “no state numbering on [the] forward half of the port side of [the] vessel at [the] time of boarding.” The photo that you submitted appears to be of the vessel’s starboard side. As such, the evidence that you submitted is not relevant as to a determination whether the numbering violation on the vessel’s port side has been corrected. Accordingly, I am not persuaded that mitigation of the nominal penalty (\$50.00 when the maximum penalty available by statute is \$1,100.00) assessed by the Hearing Officer is appropriate.

With regard to the \$250.00 penalty assessed by the Hearing Officer for the violation of 33 USC 2033(b), you have provided a copy of a receipt which shows that you purchased a horn on February 7, 2006. You claim that you were unable to provide the Hearing Officer with a copy of this document because you did not receive the bill until you removed the vessel from storage in May. While I again acknowledge, as I did above, that your right to have this evidence considered may have been waived under the applicable procedural rules, I note that the Hearing Officer’s Final Letter of Assessment implied that if you had provided photographic evidence of compliance, the penalty for the violation would likely have been mitigated further. Accordingly, although I do not believe that the \$200.00 penalty assessed by the Hearing Officer was either arbitrary or capricious, I do believe that, in the interest of fairness, mitigation of the penalty is appropriate under the circumstance of this case.

First and foremost, I note that a careful review of the invoice that you provided shows that you purchased a sound producing device—a horn—and therefore corrected the violation of 33 USC 2033(b)(Rule 33) on February 7, 2006. That was several weeks before you received the Hearing Officer’s initial notification of the violation (the Hearing Officer’s Preliminary Assessment Letter). Irrespective of that fact, however, as I have already stated, the record clearly shows that the violation occurred. Compliance with Coast Guard regulations helps prevent environmental damage, loss of life, personal injury and property damage. Your failure to comply with the Coast Guard’s regulations—especially an important safety regulation like 33 USC 2033(b)(Rule 33), could have resulted in serious consequences for your vessel, your passengers and yourself. That being said, however, the Coast Guard’s primary purpose in enforcing its regulations, via the remedial Civil Penalty Process, is to ensure maritime safety and to protect the environmental quality of the navigable waters of the United States. As such, after careful consideration of both the evidence contained in the case file and the evidence of subsequent compliance that you have now provided, I find a penalty of \$100.00 to be appropriate under the circumstances of this case.

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 that the violations occurred was neither arbitrary nor capricious and is hereby affirmed. For the reasons discussed above, I find a total penalty of \$150.00, rather than the \$300.00 penalty assessed by the Hearing Officer or \$9,800.00 maximum permitted by statute to be appropriate under the circumstances of the case.

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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 1.00% 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,

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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