



16200

Mr. [Redacted]
[Redacted]
[Redacted]

August 10, 2011

RE: Case No. 3014138
Mr. [Redacted]
[REDACTED]
\$500.00

Dear Mr. [Redacted]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 3014138, which includes your appeal as owner/operator of the unnamed recreational vessel [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$500.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 175.15(a)	No person may use a recreational vessel unless at least one Type I, II, or III PFD is on board for each person.	\$500.00

The violation occurred on July 28, 2007, when a Coast Guard boarding officer boarded the recreational vessel [REDACTED] while it was underway on Ocean City Inlet near Ocean City, Maryland.

On appeal, although you do not deny that the violation occurred, you offer several items for consideration. Your appeal is denied for the reasons discussed below.

33 CFR 175.15(a) provides: "No person may use a recreational vessel unless **at least one PFD . . . is on board for each person.**" (emphasis added) The record shows that although there were 11 people aboard the vessel (5 adults and 6 children), you were only able to produce 5 PFDs (4 child-sized PFDs plus 1 adult PFD). Hence a violation of 33 CFR 175.15(a) clearly occurred. The sole issue remaining for consideration in this case is whether the \$500.00 penalty assessed by the Hearing Officer for the violation was appropriate.

You imply that the circumstances surrounding the boarding warrant mitigation of the assessed penalty. You state that on the evening of the boarding, your vessel was boarded 100 yards from the dock, and that you were required to go 4 miles to a public dock so that a violation ticket could be written. You also state that when you offered to return to the dock with an additional PFD, the boarding officer refused to allow you to do so. Finally, you say that the \$500.00 fine is excessive for miscounting life jackets.

According to the record, your voyage was terminated and you were escorted to the West Ocean City boat ramp. In the absence of termination of the voyage, most likely the ticket could have been written at the original boarding location. 46 USC 4308 specifically authorizes a boarding officer to terminate a voyage upon observing a recreational vessel being operated without sufficient lifesaving devices. There is nothing to indicate that the boarding officer did anything improper in deciding where to escort your vessel.

You were 6 PFDs short when your vessel was boarded and the 11 people aboard your boat had only 5 PFDs available to them (including the 6 children had only 4 child-sized PFDs available). This is more than merely "miscounting." As the Hearing Officer stated in his letter of April 24, 2009: "The violation is not for miscounting PFDs. It is for failure to have the required PFDs on board while operating and therefore putting the lives of others at risk."

The maximum penalty that may be assessed for a violation of 33 CFR 175.15(a) is \$1,100.00. Given the circumstances, I do not find the \$500.00 penalty to be an abuse of the Hearing Officer's discretion.

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 penalty is within the amount authorized by statute. The Hearing Officer's decision was neither arbitrary nor capricious and is affirmed.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action.

Payment of **\$500.00** 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 531112
Atlanta, GA 30353-1112

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,

//S//

L. I. McCLELLAND
Civil Penalty Appellate Authority
By direction of the Commandant

Copy: Coast Guard Hearing Office
Coast Guard Finance Center
Coast Guard LSC-5, Claims and Collections Branch
Coast Guard Atlantic Area 4100 Processing Center