



[REDACTED]
[REDACTED]
[REDACTED]

16780
March 3, 2003

RE: MV01003820
Unnamed ([REDACTED])
[REDACTED]
\$350.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV01003820, which includes your appeal as owner/operator of the recreational vessel [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$350.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 173.21(a)(1)	Use of a vessel without a valid Certificate of Number or temporary certificate on board.	\$50.00
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.	\$100.00
46 CFR 25.30-20(a)(1)	Required number of Coast Guard approved fire extinguishers were not on board.	\$100.00
33 USC 1602 (Rule 23)	Failure of power-driven vessel to exhibit lights when underway.	\$100.00

The violations were observed on June 3, 2001, when Coast Guard boarding officers boarded your recreational vessel while it was underway in Matanzas Pass, near Fort Myers Beach, Florida.

On appeal, you deny the violations and contend that you "always do have on board...[your]...vessel proof of registration, a fire extinguisher, and 6 personal flotation devices, and proper navigation lights." You further assert "[t]hese items are stored in the vessel and are

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kept there at all times.” You contend, “several error’s (sic) or mis-understandings...were made” on the part of the Hearing Officer in his assessment of your case. To that end, you contend that, contrary to the Hearing Officer’s conclusion, you “did dispute them [the violations] immediately by telephone.” You contend that, although your fiancé called “the Miami office” several times to inform the Coast Guard of your difficulties in fixing the vessel’s motor problems and to ascertain what steps to take to achieve compliance, you were told not to send partial information to the office and that “delay was fine.” However, you note that full evidence of compliance was sent to the Coast Guard on September 18, 2001, via Federal Express. You conclude that you “thought that...[you]...correctly disputed all of the alleged violations that took place” and add that you “at all times follow all Coast Guard Regulations.” Your appeal is denied for the reasons described below.

The Coast Guard's civil penalty program is a critical element in the enforcement of numerous marine safety and environmental 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. Coast Guard Hearing Officers are obligated to be mindful of national goals underlying the Congressional intent. Procedural rules, at 33 CFR 1.07, are designed to ensure that parties are afforded maximum due process during informal adjudicative proceedings. By balancing procedural fairness and legislative intent, the civil penalty process plays an important and essential role in furthering national maritime safety and environmental goals.

Having said that, I note that there appears to be some confusion in the record as to the disposition of this matter. On July 9, 2001, the Commander of the Seventh Coast Guard District sent you a “Letter of Inquiry” indicating that he had received information concerning the violations noted above. The letter made clear that your response was required to be in writing and that any telephone responses would not be accepted. In addition to affording you the opportunity to achieve compliance, the letter made clear that your case would be forwarded to a Coast Guard Hearing Officer for penalty assessment if you failed to respond within thirty days. The record further indicates that a second “Letter of Inquiry” was sent to you on September 6, 2001. That letter is virtually identical to the letter sent on July 9, 2001, however, it was sent to a different address and zip code. You first responded to these letters on September 18, 2001, when you informed the Coast Guard that you were “still working on the violation” and that you would forward evidence of compliance “immediately” after you vessel was “fixed”. Although the Hearing Officer’s Final Letter of Decision, dated March 25, 2002, indicated that your initial response to the Coast Guard was “not timely,” under the circumstances of this case, I do not agree. The Commander of the Seventh Coast Guard District sent you two “Letters of Inquiry.” As I noted above, the first letter, dated July 9, 2001, was incorrectly addressed while the second letter, dated September 6, 2001, was not. Because your first response was dated September 18, 2001, I believe that it is likely that you did not receive the Coast Guard’s first letter and, therefore, the record evidences that your response to the Coast Guard’s Seventh District was made in a timely manner.

Although you contend that the Coast Guard informed you, via telephone, that your delay in achieving compliance was “not a problem,” the Coast Guard presents a different view of the incidents. The record indicates that you sent a copy of your registration and pictures of life preservers and a fire extinguisher to the Coast Guard’s Seventh District along with your letter of

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September 18, 2001. In his letter to the Hearing Officer dated May 21, 2002, Legal Instrument Examiner [REDACTED] confirmed that, while the Seventh Coast Guard District was processing the case, he did, in fact, speak with your fiancé. However, Mr. [REDACTED] contends that he “explained what had to be done” to her and noted that your fiancé “agreed and stated she would send proof of compliance.” While I have no reason to doubt that you sent proof of compliance to the Coast Guard on September 18, 2001, the record indicates that that information was not received until you re-sent it to the Hearing Officer on March 4, 2002. Therefore, I can only conclude that that information was not received by the Coast Guard’s Seventh District. In the instance of fairness, I have reviewed the information that you submitted on September 18, 2001, and while I will consider that information to have been timely submitted, I do not believe that it proves your compliance with Coast Guard regulations on the day of the boarding.

Although you contend that your vessel has always been in compliance with Coast Guard regulations, the record clearly evidences that, during the Coast Guard boarding of June 3, 2001, you had no Certificate of Registration on board your vessel, no Personal Flotation Devices, no fire extinguisher and inoperable navigation lights. The record further indicates that you have provided photos of life preservers and a fire extinguisher, as well as a copy of your vessel’s Certificate of Registration to prove that you were in compliance with Coast Guard regulations on the day of the boarding. Furthermore, I note that at the time you submitted your evidence of compliance, you indicated that you were still “having problems with...[your]...electric,” presumably indicating that your navigation lights were still inoperable. While I commend you for ensuring that your vessel now has its registration, personal flotation devices and a fire extinguisher on board, I note that you have provided no evidence to allow me to conclude that these items were present at the time of the boarding. Therefore, I consider the violations of 33 CFR 173.21(a)(1), 33 CFR 175.15(a), and 46 CFR 25.30-20(a)(1) proved. In addition, because you have provided no evidence to indicate that the vessel’s navigational lights are operational, I find the violation of 33 USC 1602 (Rule 23) proved.

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 was neither arbitrary nor capricious and is hereby affirmed. I find a penalty of \$350.00 rather than the \$550.00 assessed by the Hearing Officer or the \$13,200.00 maximum permitted by statute to be appropriate in light of 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 **\$350.00** 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 4.25% 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

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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