



16200
August 12, 2021

[REPRESENTATIVE]
[ADDRESS]

RE: Activity No. 5774550
[PARTY]
[VESSEL]
\$1,500.00

Dear [REPRESENTATIVE]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Activity No. 5774550, which includes your appeal on behalf of [PARTY], as operator of the recreational [VESSEL]. The appeal is from the action of the Hearing Officer in assessing a \$1,500.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 U.S.C. § 2302(c)	Operating a vessel while under the influence of alcohol or a dangerous drug.	\$1,500.00

The alleged violation took place on the evening of July 13, 2019, when Coast Guard personnel observed your client operating the vessel in Boston Harbor, near Boston, Massachusetts. On appeal, you protest that your client is being prosecuted in State court for the same actions that are the subject of this civil penalty proceeding, and he had requested that this proceeding be stayed until the criminal case was concluded, meanwhile invoking his Constitutional right to remain silent. Your appeal is denied, for the reasons given below.

There is no legal basis for the notion that this administrative proceeding was required to be stayed until the related criminal proceeding was concluded. That this proceeding went forward while your client was in criminal jeopardy was not a violation of his Constitutional rights. I note that there were three persons aboard the vessel in addition to your client at the time of the boarding. Relevant observations by witnesses other than your client, if submitted in this proceeding, would not have impaired your client's rights.

The Hearing Officer concluded that your client was under the influence of alcohol based upon the behaviors observed by the Coast Guard boarding team, performance on field sobriety tests (FSTs), and a chemical test.

According to 33 CFR § 95.020(a), an individual is considered to be operating under the influence of alcohol when “[t]he individual is operating a recreational vessel and has a Blood Alcohol Concentration (BAC) level of .08 percent or more, by weight, in their blood.” Your client’s BAC was .201. His behaviors and his performance on FSTs corroborate the conclusion that he was under the influence of alcohol.

You mention a jurisdictional ground for appeal. If you are suggesting a lack of Coast Guard jurisdiction in a case where a State proceeding is underway, there is concurrent State and Federal jurisdiction over cases arising in navigable waters along the coast of a State. There is no doubt of jurisdiction in this case.

I find substantial evidence in the record to support the Hearing Officer’s conclusion that your client was operating the vessel while under the influence of alcohol. The penalty is within the amount authorized. The decision of the Hearing Officer was neither arbitrary nor capricious and is affirmed.

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

Payment of \$1,500.00, 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 the payment to:

U.S. Coast Guard - Civil Penalties
P.O. Box 979123
St. Louis, MO 63197-9000

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. 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,

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

Copy: Coast Guard Hearing Office
Coast Guard Finance Center