



16200

[REPRESENTATIVE]
[REPRESENTATIVE ADDRESS]

RE: Activity No. 5765674
[PARTY]
[VESSEL]
\$50.00

Dear [REPRESENTATIVE]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 5765674, which includes your appeal on behalf of [PARTY] as operator of the personal watercraft [VESSEL]. 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.	Warning
33 U.S.C. § 1608 (Rule 20)	Failure of a vessel to comply with Rules pertaining to lights and shapes.	\$50.00
46 U.S.C. § 2302(a)	Operating a recreational vessel in a negligent manner that endangers life, limb or property of a person.	\$300.00

The alleged violations occurred on the evening of March 26, 2019, when the Coast Guard observed the [VESSEL] underway on Bellingham Bay, near Fairhaven, Washington. For Charge 1, the Hearing Officer found that your client did not have a Certificate of Number on his vessel at the time. For Charge 2, the Hearing Officer found that your client's vessel did not have functioning navigation lights when the boarding team observed it operating after sunset. For Charge 3, the Hearing Officer found that your client was observed operating at a high rate of speed through a boat anchorage and within close proximity to kayakers after sunset with no navigation lights.

On appeal, you contest the Hearing Officer's findings. Your appeal is denied in part and granted in part.

As to the alleged violation of 33 CFR § 173.21(a)(1), you provided evidence of current compliance. The Hearing Officer found Charge 1 proved, but reduced the preliminarily assessed penalty to a Warning given the evidence of compliance. On appeal, you simply contest the finding. Given the clear evidence supporting the finding, the Hearing Officer did not err in finding Charge 1 proved.

As to the alleged violation of 33 U.S.C. § 1608 (Rule 20), again you contest the finding. The Rule provides in pertinent part: "The Rules concerning lights shall be complied with from sunset to sunrise."¹ The specific rule that applies in this case, Rule 23(d)(i), states: "A power-driven vessel of less than 12 meters in length may in lieu of the lights prescribed in Rule 23(a) exhibit an all-round white light and sidelights." In this case, there is substantial evidence that sunset took place at 1931 hours and the vessel, a jet ski, was observed operating without navigation lights after sunset. The Hearing Officer did not err in so finding, based on a preponderance of the evidence.

As for the third charge, 46 U.S.C. § 2302(a) provides that a person operating a vessel in a negligent manner so as to endanger life, limb, or property of a person is liable for a civil penalty. As used in 46 U.S.C. § 2302(a), negligence is the failure to use the care that a reasonable person would exercise. In this case, there is no evidence of a standard of care, that is, what a reasonable person would or would not do in the circumstances. As the Hearing Officer did not consider what standard of care was breached, the third charge cannot stand.

I find that there is substantial evidence in the record to support the Hearing Officer's conclusion that the other violations occurred and that [PARTY] is the responsible party. The Hearing Officer's decisions for the first two charges were neither arbitrary nor capricious and they are hereby affirmed.

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

Payment of **\$50.00** 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 979123
St. Louis, MO 63197-9000

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 1% accrues from the date of this letter if payment is not received within 30 days. Payments

¹ The cited rule is from the International Regulations for Preventing Collisions at Sea (72 COLREGS, or COLREGS). According to 33 CFR § 80.1395, "The 72 COLREGS shall apply on all waters of Puget Sound and adjacent waters"

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