



16200
DEC 07, 2020

[PARTY]
[ADDRESS]

RE: Activity No. 5769033
[PARTY]
[VESSEL]
\$500.00

Dear [PARTY]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 5769033, which includes your appeal as owner of the vessel [VESSEL]. The appeal is from the action of the Hearing Officer in assessing a \$500.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR § 25.25-15(b)	Failure to attach at least 200 sq. cm. (31 sq. in.) of retroreflective material to the front and back of lifesaving device, equally distributed.	WARNING
46 CFR § 25.25-5(b)(2)	Operation of a vessel carrying passengers for hire with an insufficient number or type of approved or suitably sized personal flotation devices (PFDs).	WARNING
33 CFR § 173.21(a)(1)	Use of a vessel without a valid Certificate of Number or temporary certificate on board.	WARNING
46 CFR § 25.30-20(a)(1)	Required number of Coast Guard approved fire extinguishers not on board.	WARNING
46 CFR § 16.201	Failure of marine employer to comply with the requirements	WARNING

	concerning chemical testing of personnel in accordance with this subpart and 49 CFR Part 40.	
46 CFR § 15.605	Failure to have an uninspected passenger vessel under the control of a properly licensed individual.	\$500.00

The alleged violations occurred on May 25, 2019, when the Coast Guard boarded [VESSEL], underway on Capri Pass, near Marco Island, Florida. At the time of boarding the operator was operating the vessel with six passengers aboard, five of whom had paid for passage, according to information given to the boarding officer. The vessel did not have certain equipment and did not have on board a Certificate of Number. [OPERATOR] did not hold a license, and was not enrolled in a random drug testing program.

You are charged as owner of the vessel. The Certificate of Number shows, as owner, “[COMPANY], [PARTY].” You do not dispute your ownership of the vessel.

In his Final Assessment Letter, the Hearing Officer found each of the six charges proved. For the first five charges, he assessed only warnings, but for the sixth charge, for violation of 46 CFR § 15.605, he assessed a monetary penalty of \$500.00.

On appeal, you dispute the Hearing Officer’s finding that [VESSEL] was carrying passengers for hire, and therefore subject to 46 CFR § 15.605. If charge 6 is not dismissed, you request that the assessed penalty be reduced to a warning.

The Hearing Officer’s finding that [VESSEL] was carrying passengers for hire established that the vessel was operating as an uninspected passenger vessel, under the definition provided at 46 U.S.C. § 2101(51)(B)(i): “‘uninspected passenger vessel’ means an uninspected vessel . . . of less than 100 gross tons . . . carrying not more than 6 passengers, including at least one passenger for hire” The finding that [VESSEL] was carrying passengers for hire was therefore necessary to the Hearing Officer’s conclusion that you had violated 46 CFR § 15.605, a regulation requiring a licensed individual to operate a self-propelled uninspected passenger vessel (charge 6). It was also necessary to the conclusions that you had violated the retroreflective material requirement (charge 1), the PFD requirement (charge 2), and the chemical testing requirement (charge 5), each of which applies to a vessel carrying passengers for hire or otherwise in commercial use. Concerning charge 2, because the PFDs aboard the vessel were all Type II or Type III, they would not meet the requirement of 46 CFR § 25.25-5(b)(2) for a vessel carrying passengers for hire to have on board Type I PFDs (that is, PFDs marked with approval number 160.055, 160.155, or 160.176).

The Coast Guard boarding officer’s narrative account describes his interactions with the passengers onboard [VESSEL]: “I then asked the passengers onboard who were actual paying

passengers. Mrs. [SBW] stated that she and four others were. Mrs. [MPN] stated that she wasn't a paying [passenger,] she was just along for the ride as she was a friend of [the owner]." This is the primary evidence relied upon by the Hearing Officer to find that [VESSEL] was carrying passengers for hire.

On appeal, you maintain that none of the passengers were passengers for hire, because they were club members, and did not pay for passage. The Hearing Officer considered, and rejected, your argument as to the status of the passengers. In his Final Assessment Letter, he stated, "Regarding Charge 6 you wrote, 'club members take turns on vessel, no club members pay to use it.' Upon review, I do not find your position compelling" In your appeal letter, you explain that Mrs. SBW was referring to the yearly membership when she acknowledged being a paying passenger.

According to 46 U.S.C. § 2101(30), "'passenger for hire' means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner . . . or any other person having an interest in the vessel."

It appears that membership in the club, for which a membership fee (consideration) was paid, was a condition of carriage on the vessel. Hence the members were passengers for hire. The Hearing Officer did not err in finding that [VESSEL] was carrying passengers for hire. I will not revisit or reverse that finding of fact.

You ask that, if charge 6 is not dismissed, the penalty be reduced to a warning, in light of your otherwise compliance with uninspected passenger vessel regulations, and because you are unable to pay.

I have considered these arguments, and do not find that they justify reduction of the penalty assessed. The Hearing Officer took into account your demonstrated efforts toward compliance, interpreting them generously, and the final penalty assessed, \$500.00, was significantly less than the proposed penalty of \$1,650.00. If you are unable to pay the penalty amount, you may request establishment of a payment plan, as noted at the end of this letter.

Finally, your appeal letter notes that the Hearing Officer was mistaken in finding that you had enrolled [OPERATOR] in a random drug testing consortium: "I did NOT send you anything from or about him. He is NOT a captain, and not part of my drug consortium."

Based on his apparent misunderstanding of the evidence you submitted, the Hearing Officer found that you had enrolled [OPERATOR] in a drug testing consortium. The Hearing Officer therefore reduced the penalty for charge 5, for failure to comply with the requirements concerning chemical testing of marine employees, to a warning. You do not ask for any further revision as to that charge, and I will not disturb it on this appeal.

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

In accordance with the regulations governing civil penalty proceedings, 33 CFR Subpart 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 979123
St. Louis, MO 63197-9000

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 2% 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.

If you are financially unable to pay the penalty amount, you may request establishment of a payment plan by contacting the collection office at (510) 437-3644.

Sincerely,

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

Copy: Coast Guard Hearing Office
Coast Guard Finance Center