

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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Washington, DC 20593-0001
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16731

November 21, 2001

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00001427
[REDACTED]
T/B [REDACTED]
\$15,200.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00001427, which includes your appeal on behalf of the owners of the T/B [REDACTED] (ex [REDACTED]). The appeal is from the action of the Hearing Officer in assessing a \$22,700.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 15.610	Failure to have an uninspected towing vessel over 26 ft in length, under the control of a properly licensed individual.	\$750.00
46 CFR 12.02-7	Failure to comply with the requirements for Merchant Mariners' Documents.	\$2750.00
46 CFR 15.705	Failure to comply with the requirements for watches and watch standing.	\$5000.00
33 CFR 88.05	Failure of operator of self propelled vessel 12 meters or more in length to carry on board and maintain for ready reference copy of Rules.	DISMISSED WITHOUT PREJUDICE
33 USC 1602 (Rule 22)	Failure to comply with Rules concerning visibility of lights as specified in Annex I of the	\$2500.00

	International Rules.	
46 CFR 16.201	Failure to conduct chemical testing of personnel required under 46 CFR Part 16, Subpart B.	\$2500.00
46 CFR 25.26-20(a)	Failure of owner of a manned uninspected commercial vessel 11 meters or more in length to operate vessel with the required EPIRB on board.	DISMISSED WITHOUT PREJUDICE
33 CFR 155.450	A ship 26 ft. or more in length must have a placard of a least 5x8 inches of durable material fixed in a conspicuous place with prescribed statement.	DISMISSED WITHOUT PREJUDICE
33 CFR 155.420	Failure to comply with oily mixture discharge requirements for oceangoing vessels of 100-400 GT.	DISMISSED WITHOUT PREJUDICE.
33 CFR 155.720	Failure to have oil transfer procedures.	WARNING
33 CFR 159.7	Vessel's installed Marine Sanitation Device not labeled, certified, operable, or on board.	\$2200.00
33 CFR 151.59	Failure to properly display Annex V Placard.	\$5000.00
33 CFR 151.57	Failure to have a waste management plan on board or failure to follow the plan.	\$2000.00
46 CFR 67.123	Failure to comply with the marking requirements for the name and the hailing port of the vessel.	DISMISSED WITHOUT PREJUDICE

November 21, 2001

The violations were observed on April 20, 2000, when Coast Guard boarding officers boarded the U.S. Flag T/B [REDACTED] while it was moored in the port of Miami, Florida, to conduct an uninspected towing vessel examination. During the examination, the vessel was moored outboard of the Belize Flag T/B [REDACTED].

On appeal, you deny the violations of 33 USC 1602 (Rule 22), 33 CFR 159.7, 33 CFR 151.59, and 33 CFR 151.57. Regarding the alleged violation of 33 USC 1602 (Rule 22), you contend that the “USCG erred in the initial assessment of inadequate lighting” and contend that the lighting on board the T/B [REDACTED] was “approved and proper according to the inspectors at USCG in the Great Lakes area.” Addressing the alleged violation of 33 CFR 159.7, you contend that “the [REDACTED] had no crew onboard, or living [on]board” and thus, the “shape” of the toilet at the time of inspection was irrelevant. You further add that the “Owners have renovated the toilet and added a 300 gallon sewage reserve tank for all waste products.” Addressing the alleged violation of 33 CFR 151.59, you contend that a violation did not occur because, at the time of the incident, “[t]he vessel had onboard a proper placard.” Finally, in addressing the alleged violation of 33 CFR 151.57, you assert that the vessel had a waste management plan on board but that a “cadre of USCG officers” conducting the inspection failed to ask to see a copy of the plan. You do not deny that violations of 46 CFR 15.610, 46 CFR 12.02-7, 46 CFR 15.705 and 46 CFR 16.201 occurred, but you seek mitigation of the penalties assessed. You contend that “a fine of \$22,700 USD will significantly harm the company’s financial condition.” Because you do not deny these violations, I consider them proved. Your appeal is granted, in part, and denied, in part, for the reasons described below.

First, I believe a brief recitation of the facts surrounding this incident is in order. The T/B [REDACTED] (T/B [REDACTED] at that time) was towed to the Bahamas in December, 1999 by the T/B [REDACTED]. The tug’s captain, Captain [REDACTED], remained with the tug until April, 2000, while it underwent repairs. The T/B [REDACTED] left the Bahamas on April 17, 2000 under the tow of the T/B [REDACTED]. The T/B [REDACTED] was not meant to operate under its own power during the voyage from the Bahamas to Miami, Florida. However, the T/B [REDACTED] lost power in one of its engines and its generator. Following the casualty, the Captain and crew decided to turn the vessels around and use the T/B [REDACTED] to tow the T/B [REDACTED] into Miami for repairs. The T/B [REDACTED] and the T/B [REDACTED] entered U.S. waters on April 18, 2000.

I will now address the issues that you raise on appeal, beginning with the proven violations. You contend that due to the small nature of [REDACTED], all accepted penalties should be mitigated. In your letter dated November 27, 2000, in addition to seeking an appeal of the penalties assessed, you requested that the Hearing Officer afford you an extension of time to “allow you to close out the company’s books, and therefore present [the Coast Guard with] . . . a completely current and updated financial statement of the company.” To facilitate this, you requested that the extension be until January 15, 2001. While the Hearing Officer did not specifically grant your request for time extension, I note that he did not forward the file to the Commandant until January 25, 2001—10 days after the proposed extension date. During that period, you had sufficient time to present the Coast Guard with evidence of your company’s financial position but failed to do so. Thus, the record contains no evidence in support of your assertions regarding the company’s financial position. Furthermore, the record indicates that the

November 21, 2001

Hearing Officer reduced the penalty assessed for these violations by \$2500.00. In light of the serious nature of the violations and because the record contains no evidence to support your claims concerning Florida Marine's financial position, I will not mitigate the penalty any further.

I will now address the violations that you deny, beginning with the alleged violation of 33 USC 1602 (Rule 22). Rule 22 dictates that "vessels of 12 meters or more in length but less than 50 meters in length" should have lights visible at a minimum range of 2 miles (3 miles for the masthead light). The record indicates that all of the navigation lights on the 81.7 ft T/B [REDACTED] were simply "40 watt, household, screw base, lamps." You cite the report of Intermodal Transportation Services, Inc. and assert that "the vessel's external lights are 'Pauluhn' vapor proof." You further contend that "the lighting onboard the [REDACTED] was adequate and that any occasional lights being of commercial 40 watt variety were not in abundance but may have been occasional only and that this infraction has been overstated." You add that the vessel was inspected and its lights found to be sufficient when it was used in the Great Lakes before [REDACTED]'s purchase of it. Rule 22 states that "[t]he lights prescribed in these Rules shall have an intensity as specified in Section 8 of Annex I to these Regulations." Annex I §8 provides a formula for the calculation of the minimum luminous intensity of vessel lights. Although the Coast Guard contends that the T/B [REDACTED]'s lights violated the regulation because they were merely 40 watt household bulbs, the record contains absolutely no information as to whether such bulbs would meet the minimum standards set forth in Annex I or were not visible at two miles. Therefore, because the record does not contain sufficient evidence to support the violation, I will dismiss the penalty.

33 CFR 151.7 makes clear that "[n]o person may operate any vessel equipped with installed toilet facilities unless it is equipped with: (1) An operable Type II or III device that has a label on it under §159.16 or that is certified under §159.12 or §159.12a; or (2) An operable Type I device that has a label on it under §159.12." It cannot be contradicted that the T/B [REDACTED] was operated while its toilet was not fitted to a marine sanitation device. During that time, the toilet discharged directly overboard when flushed. The Coast Guard's marine violation charge sheet notes that, upon pouring a bucket of water into the toilet, "[t]he contents of the bucket discharged directly overboard on the vessel's starboard side immediately forward of amidships." Actual use of the toilet is not in issue when determining whether a violation has occurred under 33 CFR 151.7. The regulation simply forbids the operation of a vessel while its toilet is improperly equipped. In the instant case, the T/B [REDACTED] was operated while its toilet was not attached to a marine sanitation device, a clear violation of the regulation. Furthermore, I am not persuaded by your assertion that the toilet onboard the T/B [REDACTED] was not used during the voyage. The record indicates that the T/B [REDACTED], presumably equipped with appropriate living quarters, broke down just off the shore of the Bahamas. Following the breakdown, all crew aboard the T/B [REDACTED], in your words, "moved. . .onboard the [REDACTED]" for the remainder of the voyage. While you mention "the crew was onboard for less than a 24 hour period," you fail to acknowledge that they were, in fact, on board the T/B [REDACTED] for a considerable period of time. Given that the voyage from the Bahamas was in excess of 12 hours and given the fact that the T/B [REDACTED] broke down "within a short distance of the [Bahamas] shore," I am convinced that the crew were onboard the T/B [REDACTED] in excess of 10 hours. I cannot believe that at least one of the six men aboard

November 21, 2001

did not use the toilet during that time. Thus, I am convinced that a violation of 33 CFR 151.7 occurred and I will not mitigate the penalty.

You next contend that a violation of 33 CFR 151.59 did not occur because “[t]he vessel had onboard a proper placard. . . [that] was clearly posted on the vessel.” The regulation makes clear that “[t]he master or person in charge of each ship. . . shall ensure that one or more placards meeting the requirements of this section are displayed in prominent locations and in sufficient numbers so that they can be read by the crew and passengers.” The regulation further adds that “[t]hese locations must be readily accessible to the intended reader and may include embarkation points, food service facilities, garbage handling spaces, and common spaces on deck.” The evidence that you submitted indicates that the MARPOL placard was posted “directly eye level of the door leading from the deck into the crew quarters which then leads directly to the pilot house.” There is no evidence that the Hearing Officer disagreed with your contention that the placard was onboard the vessel at the relevant time. He based his decision on the fact that the placard was not “posted in [a] ‘prominent location.’” as required by the regulation. I cannot agree with the Hearing Officer’s conclusion. The regulation’s main purpose is to ensure that the vessel’s crew and/or passengers see the placard. The regulation emphasizes this purpose when it requires that the placard be “readily accessible to the intending reader.” The door leading from the deck to crew quarters and pilothouse is certainly accessible to the crew and it is a location that all members of the crew are likely to transit during the voyage. Therefore, I cannot find that a violation of the regulation occurred and I will dismiss the penalty.

Finally, you deny the violation of 33 CFR 151.57. You contend that the vessel had a valid waste management plan onboard at the time of the inspection and that the crew was not asked to provide the Coast Guard inspectors with a copy of the plan. The Hearing Officer reviewed the evidence that you presented—the affidavit of [REDACTED] and a copy of the plan—and was not persuaded that the Coast Guard inspectors did not ask to see a copy of the vessel’s waste management plan. The Hearing Officer notes “[REDACTED] signed the boarding report and should have been aware of the noted deficiencies.” He concludes that, because [REDACTED] did not object to the violations, they must have occurred. Because it is the Hearing Officer’s responsibility to decide the reliability and credibility of evidence, I can disturb his findings only where there is an abuse of his discretion. In this case, there is no such abuse of discretion. Furthermore, the waste management plan that you provided is unconvincing. That plan is “for transportation of hazardous waste upon the waters of the Gulf of Mexico and adjoining waters” and contains contact persons relevant to the area of inaction of the plan. The people contained in the plan specifically cover the Alabama, Texas, and Louisiana areas of the Gulf coast. While western Florida clearly rests on the Gulf Coast, Eastern Florida, with Miami included, is located on the Atlantic Ocean, an area clearly not covered by the plan that you provided. I find it highly unlikely that the T/B [REDACTED] transited the Gulf of Mexico or adjoining waters thereto while it was enroute from the Bahamas to Miami. Thus, even if I did find that the plan provided was onboard the vessel at the time of the incident, I could neither dismiss nor mitigate the penalty assessed because the plan does not cover the area transited by the vessel.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer’s determination that the violations occurred and that [REDACTED] is the responsible party. The Hearing Officer’s decision was neither arbitrary nor capricious and is hereby

November 21, 2001

affirmed. I find the penalty of \$15,200.00 rather than the \$22,700.00 assessed by the Hearing Officer or \$36,700.00 preliminarily assessed appropriate in light of the seriousness of the violations.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$15,200.00** 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 5% 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//

DAVID J. KANTOR
Deputy Chief,
Office of Maritime and International Law
By direction of the Commandant

Copy: Commanding Officer, U.S. Coast Guard Hearing Office
Commander, Finance Center