

U.S. Department  
of Transportation

United States  
Coast Guard



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U. S. Coast Guard

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16593  
September 24, 2001

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

RE: MV98005186  
[REDACTED]  
[REDACTED]  
[REDACTED]  
\$1,000.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV98005186, which includes your appeal on behalf of the owners of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$2100.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 117.5	Failure to open drawbridge promptly and fully when request to open was given in accordance with 33 CFR Part 117 Subpart A.	\$1000.00
33 CFR 117.9	Causing an unreasonable delay in opening a draw after signals required by paragraph 117.15 were given.	WARNING
33 CFR 117.35(b)	Failure of drawbridge owner to notify District Commander immediately when draw was rendered inoperable due to damage or vital repair/work.	WARNING
33 CFR 117.7(b)(2)	Drawbridge owner failed to maintain operating machinery of the draw in a serviceable condition.	\$1,100.00

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The violations were noted on October 7, 1998, when the M/V [REDACTED] was delayed at the [REDACTED], located at mile 366.1 on the Missouri River, from approximately 2:18 p.m. until 4:10 p.m.

On appeal, regarding the alleged violation of 33 CFR 117.7(b)(2), you assert that “[t]here is simply no evidence in the case file that the bridge operator failed or neglected to maintain the machinery in a serviceable condition.” You further contend that “[t]he fact that the main motor failed is not by itself evidence of a failure to maintain the machinery in a serviceable condition” and note that “[t]he federal regulation does not provide for a violation simply upon the failure of mechanical equipment.” You conclude, stating: “[t]o equate a mechanical failure with the failure to maintain the equipment in a serviceable condition constitutes a misreading of the federal regulation and imposes a standard of strict liability on the bridge owner.” Since you do not address the remaining violations, I consider them proved. Your appeal is granted, in part, and denied, in part, for the reasons described below.

First, a brief recitation of the facts surrounding this incident is in order. On October 7, 1998, at 1:30 pm, the pilot of the M/V [REDACTED] requested an opening of the [REDACTED], owned and operated by the [REDACTED]. (hereinafter “[REDACTED]”). The vessel passed through the ASB Bridge, approximately one-half mile downriver of the [REDACTED] at 2:18 pm and was ready to transit the [REDACTED] shortly thereafter. The vessel did not pass under the bridge until 4:10 p.m., nearly two hours later. Between 3:40 and 4:10 p.m., attempts were made to fix the bridge; a repair crew spent 15 minutes repairing the toggler leveling mechanism and another 15 minutes opening the bridge using the emergency motor. The aforementioned delay lead to the assessment of civil penalties by the Hearing Officer.

The only issue on appeal is whether a violation of 33 CFR 117.7(b)(2) occurred. The regulation clearly states that “owners of drawbridges shall ensure that. . .[t]he operating machinery of the draw is maintained in a serviceable condition.” There is clear evidence in the record of a mechanical failure on the part of the bridge. Your letter to Mr. [REDACTED], dated December 4, 1998 states that “the bridge operator encountered 30 minutes of mechanical failure. . .[when]. . .[t]he main motor failed.” That letter also indicates that the bridge was opened “using the emergency motor.” In his letter dated December 21, 1998, the Coast Guard’s Bridge Program Administrator, Mr. [REDACTED], makes clear that the failure of the bridge’s main motor led to the assessed penalty for violation of 33 CFR 117.7(b)(2). In a hand written note contained in the Coast Guard’s case description, Mr. [REDACTED] concludes that “[m]echanical failure does not provide excuse for delay” and adds “[m]echanical problems happen to [the [REDACTED] bridge] frequently” allowing him to conclude that the bridge is not adequately maintained. While there is evidence in the record showing nine other civil penalty cases pending against the [REDACTED] and [REDACTED], there is no evidence that the company has, in this instance, failed to maintain the operating machinery of the draw in a serviceable condition. To satisfy its burden of proving a case with substantial evidence, the Coast Guard is obligated to document its case file with factual detail sufficient to satisfy the standard. Here, other than showing that other civil penalties were assessed against [REDACTED] and that, on the relevant day the motor failed, there is little else in the way of evidence. I am not persuaded that the regulation is meant to be enforced absent a clear showing of insufficient maintenance in the record. Therefore, I cannot find the violation proved and will dismiss the penalty.

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Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations of 33 CFR 117.5, 33 CFR 117.9, and 33 CFR 117.35(b) occurred and that [REDACTED] is the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$1,000.00 rather than the \$2,100.00 assessed by the Hearing Officer 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 **\$1,000.00** 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