UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA **UNITED STATES COAST GUARD,** **Complainant,** **vs.** **DANNIE CARD,** **DOMENIC RIZZO,** **Respondents**	**Docket Numbers:** **00-0580,** **00-0581** **Case Numbers:** **PA00001373,** **PA00001374** **DECISION AND ORDER**

BEFORE: HONORABLE JOSEPH N. INGOLIA
Chief Administrative Law Judge
U.S. Coast Guard

APPEARANCES:

FOR THE U.S. COAST GUARD
LCDR John Nadeau and
LT Russell Bowman
Activities Baltimore
2401 Hawkins Point Road
Baltimore, Maryland 21226

FOR THE RESPONDENTS
Geoffrey S. Tobias, Esquire and
Eric M. Veit, Esquire
Ober, Kaler, Grimes & Shriver
120 E. Baltimore Street
Baltimore, Maryland 21202-1643

I. PRELIMINARY STATEMENT

The United States Coast Guard ("Coast Guard") initiated this administrative action seeking a two (2) month outright suspension of Merchant Mariner's License Number 770050 issued to respondent Dannie Card and Merchant Mariner's License Number 776162 issued to respondent Domenic Rizzo. This administrative action was brought pursuant to the legal authority contained in 46 U.S.C. § 7703 and its underlying regulations codified at 46 C.F.R. Part 5. The Coast Guard issued two complaints on September 11, 2000, which charged each respondent Card and Rizzo with Negligence, resulting from the sinking of the barge, PEQUECO II, in the upper Chesapeake Bay on January 30, 2000 at approximately 1810.

The negligence charge against respondent Card is supported by eight (8) factual allegations, which read as follows:

1. The Coast Guard announced the expected ice conditions for the northern Chesapeake Bay over the VHF radio on 30 January 2000 in a Broadcast Notice to Mariners (BNTM). The broadcast informed mariners that 90% of the C&D Canal was covered with ice up to 1' thick.

2. At approximately 1130, you were operating the tug JOHN TURECAMO when it departed Chester, PA en route Baltimore, MD, pushing the barge PEQUECO II.

3. When you departed Chester, PA, the barge PEQUECO II had approximately 12" of freeboard and was loaded with approximately 1072 tons of sodium silicate, a Category C noxious liquid substance.

4. As you transited, you saw water and ice come over the headlog and onto the deck of the PEQUECO II.

5. At approximately 1545, you woke the captain because you were aware that the freeboard at the bow of the PEQUECO II had decreased and the tow was behaving abnormally.[1]

[1] Factual allegation 5 contained a typographical error. The Coast Guard inadvertently omitted the word "you" in the factual allegation. In these proceedings, an Administrative Law Judge may, sua sponte, amend charges to correct minor errors such as the Coast Guard's omission of the word "you" in factual allegation 5. See generally Appeal Decision 2449 (VANRIGHT). Pursuant to this authority, the factual allegation in this case has been amended by the undersigned by adding the word "you."

6. At approximately 1630, you saw the starboard running light and its stanchion, a pipe approximately 1 ½ " in diameter, welded to the deck, get knocked off the deck of the PEQUECO II. The starboard running light was located approximately 10' forward and 10' outboard of the vent for cargo tanks 1 port and starboard.

7. The vent for cargo tanks 1 port and starboard and the vent for the rake were damaged by the ice, allowing the water that was coming over the headlog to flood these spaces.

8. At approximately 1810, the PEQUECO II sank in the upper Chesapeake Bay, just south of Turkey Point, resulting in approximately 100 gallons of diesel oil pollution, a 5 week salvage response, and approximately $150,000 in damages.

The negligence charge against respondent Rizzo is supported by seven (7) factual allegations, which read as follows:

1. The Coast Guard announced the expected ice conditions for the northern Chesapeake Bay over the VHF radio on 30 January 2000 in a Broadcast Notice to Mariners (BNTM). The broadcast informed mariners that 90% of the C&D Canal was covered with ice up to 1' thick.

2. When you departed Chester, PA, the barge PEQUECO II had approximately 12" of freeboard and was loaded with approximately 1072 tons of sodium silicate, a Category C noxious liquid substance.

3. As you transited, you saw water and ice come over the headlog and onto the deck of the PEQUECO II.

4. At approximately 1545, you went aboard the PEQUECO II and noticed that:

    a. the freeboard had decreased to approximately 2",

    b. the port and starboard lifeline stanchions were bent and the lifeline was dragging in the water,

    c. pieces of ice up to 1' thick were on the deck of the barge, and

    d. approximately 35' aft of the headlog, on the port side, the hull appeared breached and a milky-white substance was leaking into the water.

5. In lieu of seeking safe haven or intentionally grounding the PEQUECO II to prevent it from sinking, you chose to continue the voyage to Baltimore.

6. The vent for cargo tanks 1 port and starboard and the vent for the forward rake were damaged by the ice, allowing the water that was coming over the headlog to flood these spaces.

7. At approximately 1810, the PEQUECO II sank in the upper Chesapeake Bay, just south of Turkey Point, resulting in approximately 100 gallons of diesel oil pollution, a 5 week salvage response, and approximately $150,000 in damages.

Both respondents filed answers to the Coast Guard's complaints and requested a hearing. More specifically, respondent Rizzo admitted all jurisdictional allegations contained in the complaint and denied paragraphs 1 and 4 through 7 of the factual allegations; whereas respondent Card denied paragraph 1 (concerning his address) of the jurisdictional allegations and denied paragraphs 1, 3, and 6 through 8 of the factual allegations contained in the complaint. The hearing for respondent Rizzo was initially set for January 18, 2001 in Baltimore, Maryland and the hearing for respondent Card was initially set for January 23, 2001. Pursuant to the Coast Guard's unopposed Motion to Consolidate Hearings, the hearings for both respondents were consolidated into a single proceeding, which did not prejudice the rights of the parties. The consolidated case was scheduled for hearing on January 23, 2001.

The consolidated hearing convened on January 23, 2001 in Baltimore, Maryland before the Honorable Joseph N. Ingolia, Chief Administrative Law Judge of the United States Coast Guard. The hearing was conducted in accordance with the Administrative Procedure Act as amended and codified at 5 U.S.C. §§ 551-559, and the Coast Guard procedural regulations located at 33 C.F.R. Part 20. Lieutenant Commander John Nadeau and Lieutenant Russell Bowman represented the United States Coast Guard at the hearing. Both respondents also appeared at the hearing and were represented by the same counsel, Geoffrey S. Tobias, Esq. and Eric M. Veit, Esq..

A prehearing conference was held before the commencement of the hearing in which the parties submitted joint Stipulations of Fact, which were admitted into the record. A total of eleven (11) witnesses, including respondents Card and Rizzo, testified in this proceeding. At the hearing, the Coast Guard introduced ten (10) exhibits into evidence, together with its

Memorandum of Points and Authorities. Likewise, respondents introduced ten (10) exhibits into evidence at the hearing.

On May 16, 2001, the respondents sent a letter to the undersigned in which they enclosed newspaper articles describing a recent sinking of a tugboat not connected to this case. It is unclear whether respondents are requesting the undersigned to take official notice of this event pursuant to 33 C.F.R. § 20.806, or whether their submission is an amendment or supplementation for the record submitted pursuant to 33 C.F.R. §§ 20.305(b) and 20.602. Regardless, the undersigned finds that the respondents' letter contains no facts or, for that matter, any legal argument to support their case. Moreover, correspondence of this nature, even when copied to the opposing party, is an improper filing. Motions should be filed in accordance with pertinent regulations located at 33 C.F.R. § 20.309(2000). As such, respondents' post-hearing submission will not be included as part of the record in these proceedings.

After careful review of the facts and applicable law in this case, I find that the Coast Guard has established by a preponderance of reliable and credible evidence that respondents Dannie Card and Domenic Rizzo both committed acts of negligence on January 30, 2000 by attempting to transport the barge PEQUECO II, a seaworthy vessel, from Chester, Pennsylvania to Baltimore, Maryland through the Chesapeake and Delaware Canal ("canal"), despite receiving published reports of harsh weather and severe ice conditions. In doing so the respondents disregarded the fact that the PEQUECO II was heavily loaded; thus, creating a noticeably diminished freeboard of approximately one foot, which, at times, dipped under water.

II. FINDINGS OF FACT

The Findings of Fact found herein are based on the joint Stipulation of Facts submitted by the parties, documentary evidence and the testimony of the witnesses.

1. This case involves the sinking of an uninspected barge, the PEQUECO II, which was fully loaded with over a thousand tons of sodium silicate. The barge was navigated and operated by Captain Domenic Rizzo and Mate Dannie Card from its facility at Chester, Pennsylvania down the Delaware River to the Chesapeake and Delaware Canal. The barge sank on January 30, 2000 at approximately 7:10 p.m. local time and settled on the western edge of the bottom of the Turkey Point to Old Town Point Wharf Channel. At the time of the casualty, the U.S. Coast Guard issued a Broadcast Notice to Mariners, indicating that severe ice warnings were in effect. *(Entire Record).*
2. Mate Card has primarily worked on the Chesapeake Bay and Delaware River since 1962. *(Tr. 377, 384-87, 380).* He has held a Coast Guard document since 1967, a license since 1986, and has never previously been involved in a suspension and revocation proceeding. *(Tr. 385, 389).*
3. On January 30, 2000, Dan Card was serving as operator aboard the tug JOHN TURECAMO. During this time period, Mr. Card was the holder of, and serving under the authority of, his Coast Guard Issued License (No. 770050). (*Stipulation 1).*
4. Captain Rizzo has continuously served in the towing industry since graduating from the Maine Maritime Academy in 1986. *(Tr. 499).* He has held a Coast Guard license since 1986 and has never previously been involved in a suspension and revocation hearing. *(Tr. 499).*

5. On January 30, 2000, Domenic Rizzo was serving as master aboard the tug JOHN TURECAMO. During this time period, Capt. Rizzo was the holder of, and serving under the authority of, his Coast Guard issued License (No. 776162). (*Stipulation 2).*

6. A Broadcast Notice to Mariners (BAL-BNM-036-00) was broadcast by the Coast Guard over channel 16 throughout the day on January 30, 2000. (*Stipulation 6).*

7. The Broadcast Notice to Mariners: Ice Report as of January 29, 2000 (BAL-BNM-036-00) included the following:

    - As of 2000 on January 29, 2000, the specific ice conditions in the Chesapeake and Delaware canal were "90% coverage, up to 1 ft," pack ice rafting."
    - As of 2000 on January 29, 2000, the specific ice conditions from Welch Point to Worton Point were "90% coverage 8", pack ice."
    - As of 2000 on January 29, 2000, the specific ice conditions from Worton Point to Tolchester Beach were "100% coverage 4-6", pack ice."
    - As of 2000 on January 29, 2000, the specific ice conditions from Tolchester Beach to Swan Point were "70% coverage 1 ft", pack ice."
    - As of 2000 on January 29, 2000, the specific ice conditions for Patapsco River and Baltimore Harbor were "100% coverage 1-2", pack ice."
    - A Captain of the Port Baltimore advisory for " . . . steel hulled vessels only, with a minimum of 2400 horsepower twin screw, on waters between Tolchester Beach and Town Point in the Elk Neck River upper Chesapeake . . ."
    - A general statement indicating, "these are advisories only and mariners should remain vigilant for those areas which may require greater precaution."
    - A general statement indicating "Mariners are cautioned that buoys may be extinguished or dragged off station and minor lights and day beacons may be destroyed due to ice."

(Stipulation 28).

8. As a result of severe ice conditions in the Chesapeake and Delaware Canal from Pennsylvania all the way through Baltimore, Maryland, the Coast Guard had imposed a 2400-horsepower restriction on vessels operating in those waters, which was in effect on January 30, 2000. (*Tr. 512-513*).
9. On the morning of Sunday, January 30, 2000, the JOHN TURECAMO, an uninspected towing vessel rated at 3000 horsepower, was assigned the movement of the barge PEQUECO II from the barge's facility at Chester, Pennsylvania on the Delaware River to the regular discharge berth at Grace Chemical in Baltimore, Maryland. *(Tr. 512-513, Stipulation 3).*
10. Captain Rizzo and Mate Card had previously used the JOHN TURECAMO to tow the barge PEQUECO II on a prior round trip voyage (Chester-Baltimore-Chester), approximately six weeks earlier, in December of 1999. *(Tr. 505).*
11. The PEQUECO II is a 170' x 35' x 10'6" barge dedicated to the carriage of sodium silicate, a Category C noxious liquid substance, which may be carried by uninspected barges operating only on inland routes. The PEQUECO II is not inspected or certified by the Coast Guard. *(I.O. Exhibits C, H and J).*
12. For the transit on January 30, 2000, the barge PEQUECO II was fully loaded with over a thousand tons of sodium silicate. *(Tr. 34, Stipulation 4).*
13. Per Annex II of the International Convention for the Prevention of Pollution from Ships (MAPOL), sodium silicate is classified as a Category C noxious liquid substance, which is defined as:

    - Noxious liquid substance which if discharged into the sea from tank cleaning or deballasting operations would

> present a minor hazard to either marine resources or human health or cause minor harm to amenities or other legitimate uses of the sea and therefore require special operation conditions.

(Stipulation 5).

14. The PEQUECO II has a single skin hull with rakes (voids) fore and aft of the cargo block, which has three pairs of cargo tanks. Each pair of cargo tanks shares one 18" x 30" rectangular vent, which is located on the centerline. The deck has some sheer at both rakes, gradually increasing the depth of the barge from 10'6" to 11'6" at the extreme bow and stern. The barge also has a 2' headlog. *(I.O. exhibits H and J).*

15. The forward rake tank is a void space between the headlog of the barge and first cargo tank. *(Tr. 289).* The headlog is the most forward part of the barge located in front of the forward rake, and it drops down approximately a foot and a half to two feet. *(Tr. 396).*

16. Before getting underway on the morning of the incident, Captain Rizzo listened to the Coast Guard's broadcast notice and was aware of severe ice warnings in the Chesapeake and Delaware Canal. *(Tr. 512).* He knew there was a front coming in and he anticipated problems with ice. *(Tr. 593, 597).* So, Captain Rizzo wanted to get through the canal during daylight hours. *(Tr. 595).*

17. In addition, Captain Rizzo called the canal dispatcher directly by cell phone to determine whether the canal was open. *(Tr. 512-13).* He also gave a security call on Channel 13 to inquire whether any vessels in the area had come through the canal and could give an eyewitness account of the ice and weather conditions. Captain Rizzo contacted the captain of the tug TENACIOUS, who had been through the canal the day before. *(Tr. 514).* Captain Rizzo also spoke with one other person, whose name he could not recall. In addition, Captain Rizzo spoke with the deckhand, Vance Holly, who had made a previous

trip through the canal a few days earlier and was able to get Mr. Holly's eyewitness account of the ice and weather conditions at that time. *(Tr. 515).*

18. From these sources, Captain Rizzo determined that the conditions were bad but other vessels successfully made it through the canal. *(Tr. 514).*

19. Although Captain Rizzo was well aware of the ice and weather conditions in the canal, Mate Card was not aware of those conditions because he had not listened to the Coast Guard's broadcast notice and Captain Rizzo had only informed him that the canal was open. (*Tr. 416, 463*).

20. Captain Rizzo and his crew were not responsible for loading the barge and the crew had no knowledge of the cargo's characteristics. *(Tr. 34).*

21. Furthermore, none of the fittings on the barge were labeled, no PEQUECO II personnel were present at the dock, an information sheet with the ullages to explain the cargo calculations was never provided to Captain Rizzo,[2] nor was he given a Material Safety Data Sheet about the cargo, and no one informed him of how many tanks were on the barge. *(Tr. 519-520).* Prior to getting underway, Captain Rizzo never requested the above information from the office. *(Tr. 634).*

22. Captain Rizzo and Mate Card inspected the barge before leaving Chester, Pennsylvania because they had heard that the PEQUECO II had recently undergone extensive metal work. Mr. Card noticed that the barge was in excellent condition, expect for the stanchions, which he felt were unsafe to hold any weight. *(Tr. 395).* He did not detect any defects or signs of rustage or wastage. *(Tr. 398).* However, he was aware that the PEQUECO II was loaded differently than on the previous trip taken six weeks earlier. He observed that the

barge did not have any noticeable rake and the stern was deeper in the water than the bow. *(Tr. 397)*. Mr. Card also noticed that because the PEQUECO II was loaded deeper than normal, there was approximately only one foot of freeboard, which was significantly less than on the previous trip. *(Tr. 454)*.

23. Captain Rizzo also noted the difference in the vessel's freeboard. Captain Rizzo knew that on the previous trip in December, the after draft was greater than the forward draft, which is ideal for towing in any mode. In January, however, the barge was even keeled. *(Tr. 512)*.

24. Captain Rizzo and Mate Card agreed to arrange the tow so that the barge would be pushed ahead rather than on the hip or towed astern. *(Tr. 517-518, Stipulation 10)*. Although this was the first time they had pushed the PEQUECO II in that configuration, Captain Rizzo believed this was the preferred method of towing. *(Tr. 503)*.

25. On the morning of January 30, 2000, Mr. Holly, the deckhand, noticed the barge was sitting considerably lower than usual. Specifically, there was only about three feet of freeboard above the waterline. (Tr. 84).

26. Because the barge was heavily loaded, more water washed across the deck when pushed by the JOHN TURECAMO than when formerly towed by the barge's usual tug, the CYNTHIA MORAN. *(Tr. 84-86)*.

27. Mr. Edward D. Bishop, the engineer on the JOHN TURECAMO noticed that the amount of power pushing behind the barge caused the bow to bury and dip down into the water. Mr. Bishop observed ice wash over the bow and accumulate on the barge as it was being pushed through the icier areas. This, in turn, caused the bow to grow heavy and eventually cause it to draw more water on the deck. *(Tr. 35 –36)*.

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[2] The ullages can be used to gauge the amount of the product in the tank by measuring either the distance from the cargo on the top of the tank to the bottom of the tank or the distance from the bottom of the tank to the top of the

28. Around 11:30 a.m., the JOHN TURECAMO got underway with Mate Card at the wheel of the tug and Captain Rizzo alongside of him. Mate Card operated the tug from the time it departed the PQ corporation facility in Chester, Pennsylvania until the PEQUECO II sank. *(Stipulation 8).*

29. Soon after leaving the pier, Captain Rizzo went to the deck of the barge to assist the deckhands. *(Tr. 400).* When Captain Rizzo returned to the tug's wheelhouse, Mr. Card increased the speed through the Delaware River to full throttle at 13 knots and then dropped back to about 11.6 or 11.7 knots. *(Tr. 400).* Shortly thereafter, Captain Rizzo retired to his room in order to rest before taking the second shift. Mate Card remained in the wheelhouse for the first watch. *(Tr. 522).*

30. During the voyage, ice was encountered in the Delaware River. As a result of the barge's wake, ice and water washed on deck. *(Tr. 401).* Mr. Card did not see large chunks of ice strike the barge's vents or light poles. *(Tr. 402).*

31. Since the ebb tide was behind it, the JOHN TURECAMO and its tow entered the canal from the Delaware River in a little under two hours, which is a slightly faster time than normal. (*Tr. 403*).

32. When the JOHN TURECAMO and its tow entered the canal, there were moderate patches of ice in the water. *(Tr. 87).* The ice became denser as the vessels traveled further down the canal into larger bodies of water. *(Tr. 87).* As the JOHN TURECAMO, under the direction of Mate Card, pushed the barge through thicker patches of ice, specifically between Schaefer's and Dan's Yard, ice began to accumulate on the PEQUECO II's bow. *(Tr. 87-88).*

33. Around Chesapeake City, the water started to become solid sheets of ice. *(Tr. 87-88).*

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cargo.

34. Around Turkey Point, the canal was packed with solid ice. *(Tr. 236).*

35. Around Reedy Point Bridge, between 1330 and 1350, the JOHN TURECAMO and its tow passed another tug and tow, the KARA C, operated by John N. DiFranks. *(Stipulation 11).* The vessels came within one hundred feet of each other, allowing Mr. DiFranks to observe the condition of the PEQUECO II. Mr. DiFranks noticed that the bow of the barge was submerged underwater and ice had accumulated on the deck. *(Tr. 237-238).* Mr. DiFranks also notice that water free-flowed over the PEQUECO II's headlog onto the bow, about twenty or thirty feet back. *(Tr. 238).*

36. Upon passing the KARA C, the JOHN TURECAMO proceeded to the Railroad Bridge at 1406. The respondents arrived at Chesapeake City, where the canal dispatcher's office is located, around 1442. *(Tr. 405).*

37. Mr. Allen M. Dias, the traffic controller at Chesapeake City, looked out of his station window to see the JOHN TURECAMO and the PEQUECO II pass by on January 30th. He noticed the barge had been loaded rather heavily and that there was more than a usual amount of ice on the deck. *(Tr. 257).* When he observed the PEQUECO II's condition, he was a little concerned because the tug and barge were running against the tide. *(Tr. 258).* In addition, it was unusual to see a barge being pushed from behind, as they are usually pushed alongside through the canal. *(Tr. 262).* This was also the first time he had seen the PEQUECO II pass through in that configuration. *(Tr. 262).*

38. After the vessels entered the canal, Mate Card noticed ice and water wash onto the barge, between twenty-five and thirty-five feet from the bow, and free itself off the port and starboard sides as they went along. (Tr. 408-09). Because the ice was washing off, Mr. Card did not consider the situation dangerous.

39. When the first patch of heavy ice was encountered, Mate Card noticed the canal was seventy-five percent covered with ice. *(Tr. 419-20, Stipulation 12).* Mr. Card felt that the tug and tow were too close to the canal bank to go around so he decreased the speed of the vessels. When a field of ice was encountered, which caused the vessels to slow down even further, Mr. Card increased the speed so the vessels could run straight and not shear to either side. *(Tr. 419-20).* Although it was possible to decrease the speed even further, Mate Card believed the barge could not push through and break the ice at a slower pace. *(Tr. 422-23).*

40. After the Chesapeake City Bridge, Mate Card saw a second field of ice at Dan's Yard, whereupon he decreased the speed of the vessel before actually hitting the ice. *(Tr. 428, Stipulation 13).* At this point, additional ice settled on the barge's bow. *(Tr. 428).* When Mr. Card passed Dan's Yard his attempts to increase the speed were unsuccessful, as the barge was down by the head and lower in the water than normal. *(Tr. 428, 430, 480).* Although the barge was running at a lower speed, the same amount of water was coming on deck as when it was running at a higher speed earlier in the voyage. *(Tr. 496).*

41. The barge's ride was sluggish and Mate Card thought the barge may have been taking on water. *(Tr. 496).* It was at this moment that he first became concerned and instructed the engineer to wake Captain Rizzo. *(Tr. 431).*

42. When Captain Rizzo met Mate Card in the wheelhouse, he noticed that the barge was taking the same amount of water at her slower speed than when they were coming down the Delaware River. *(Tr. 431).* In addition to the barge's decreased freeboard and sluggish movement, Captain Rizzo and his crew noticed a white milky substance in the water,

seeping out near the forward rake and the No. 1 tank area on the port side. *(Tr. 51, 436).* At that point, they reduced the speed to idle ahead.

43. Captain Rizzo and Mate Card did not want to reverse the tug and barge and back up to Dan's Yard for fear of tripping the vessel. *(Tr. 497, 546*). They did not believe there was a suitable place to tie up the vessels. *(Tr. 465, 546).* Mate Card disregarded the first clearing at Dan's Yard because he thought that it might be too shallow to draw enough water. *(Tr. 465).* However, nobody contacted Dan's Yard to actually determine if they could safely enter. *(Tr. 466).*
44. Captain Rizzo's first objective was to clear the canal. *(Tr. 548).* Although it is physically possible to beach the barge anywhere, he believed that for safety reasons he needed to clear the canal first. *(Tr. 546).* Similarly, he did not want to stop the vessel in the middle of the canal, believing there was a possibility that ice could push them onto the rocks. Captain Rizzo felt they needed to maintain at least headway in order to control the steerageway. *(Tr. 548).*
45. Captain Rizzo immediately contacted the Moran office on his cell phone to inform them of the situation. *(Tr. 432, 658).*
46. Thereafter, Captain Rizzo and Mr. Holly, the deckhand, went onto the barge to remove the accumulated ice and reduce the amount of weight on the bow. *(Tr. 30, 529, Stipulation 16).* Ice had accumulated on the front and side of the barge and around the forward cargo vent. However, Captain Rizzo did not see any ice leaning on the vent. (Tr. 525, 530). Mr. Holly noticed the ice had accumulated as far back on the barge as the first cargo hold and ran along the side, down past the rake vent.

47. The ice was approximately 18 inches thick; however, some pieces were up to three-to-four inches thick, and a sheet of ice up to one-to-two feet thick. *(Tr. 93, 116, 530).* Mr. Holly and Captain Rizzo chopped the ice with an axe and sledgehammer because the pieces were too large and heavy to pick up. *(Tr. 89).* Although, they managed to remove the majority of ice, some ice remained on the rake end. *(Tr. 439).*

48. While on the deck of the barge, Captain Rizzo and Mr. Holly discovered that the ice had caused damage. Several stanchions on the port and starboard bow were torn off and there were safety wires hanging in the water. *(Tr. 635-636).* The stanchions, which had been welded to the deck, were about two inches in diameter. *(Tr. 97).* The effect of the stanchions being pushed off by ice caused the weld in the hold to come loose. *(Tr. 101).* Neither Mr. Holly nor Captain Rizzo noticed any damage to the vent at that time. *(Tr. 117-118, 635).*

49. Captain Rizzo was never able to determine the exact location of the cargo leak. (*Tr. 123-124*).

50. No one attempted to sound the cargo tanks or rakes to determine the level of the tanks by gauging. *(Tr. 39, 96).*

51. Captain Rizzo did not look into any of the cargo tanks because he was not familiar with the characteristics of the product sodium silicate or whether it was toxic. *(Tr. 532).*

52. When Captain Rizzo returned to the JOHN TURECAMO, he telephoned the Moran office a second time. *(Tr. 441).* While Captain Rizzo was on the telephone, the barge and tow proceeded onward, running at about 3.5 or 4 knots. When they got to Sandy Point, a third field of ice, which stretched across the canal, was encountered. From the wheelhouse, the engineer and Mr. Card observed a solid sheet of ice come across the barge's bow. The ice

broke around and took the starboard running light then fell on top of the running light. Two more sheets of ice washed on the deck and fell on top of the first piece of ice like a staircase. *(Tr. 37, 39, 442).*

53. Captain Rizzo informed the Moran office that there was a problem with the barge and something had to be done immediately. Because the PEQUECO II appeared to be sinking, Captain Rizzo considered beaching the barge once they cleared the canal. *(Tr. 659).* Captain Rizzo knew that they could not continue with the worsening ice and weather conditions. *(Tr. 659).* While on the telephone, he collaborated with the Moran office to determine what actions should be taken. Captain Rizzo knew, however, that the final decision was ultimately his. *(Tr. 552-553).*
54. The Moran office informed Captain Rizzo that even with one cargo tank breached, there should be enough reserve buoyancy in the remaining tanks to keep the barge afloat. *(Tr. 552).*
55. The Moran Company suggested reconfiguring the tow. *(Tr. 659).* Although the tow could be reconfigured, Captain Rizzo's concerns were not abated because beaching the barge would not be possible if it continued to lose freeboard once it was out of the notch. *(Tr. 660).* The office assured Captain Rizzo that two tugs were being immediately dispatched, one from Philadelphia and one from Baltimore. Whereupon, Captain Rizzo chose to tow the barge astern rather than beach her. *(Tr. 552-553).*
56. The JOHN TURECAMO and PEQUECO II continued on to the triangle in the Old Town Point, the first clearing where they could reconfigure the barge. By this time, only a couple of inches of freeboard remained at the lowest point on the barge's bow. *(Tr. 489).* Captain Rizzo and Mate Card felt it would have been impractical and unsafe to reconfigure the

barge at an earlier point because the channel was too narrow. *(Tr. 446, 559).* Specifically, the tug, which was 100 feet long, and the barge, which was 170 feet long, totaling 270 feet in length. The channel was 450 feet long. *(Tr. 23).*

57. It was getting late in the day and it started to get dark by the time they reconfigured the barge. *(Tr. 58).* Snow began to fall, which turned into freezing rain. *(Tr. 446).*

58. After they rearranged the tow, the barge was placed on a hawser about eighty to one hundred feet in length. *(Tr. 630).* Captain Rizzo monitored the barge from the galley on the stern by looking though a porthole. *(Tr. 666).* The barge appeared to be towing steadily with no noticeable change in the draft. *(Tr. 630).*

59. Captain Rizzo's objective was to keep the barge afloat until the second tug arrived. *(Tr. 562).* He estimated that it would take about three to four hours for the tugs to reach them and did not anticipate any help before then. *(Tr. 650).* Although the company informed Captain Rizzo that the tugs were coming from both directions, east and west, he did not inquire how long it would take for help to arrive. *(Tr. 652-653).*

60. The ice west of the canal was about eighty-percent coverage. *(Tr. 447).* The barge and tow increased speed to about 4.5 to 5 knots. *(Tr. 467).* As the Respondents started towing, the four-to-five feet high mound of ice, which had previously accumulated on the deck, washed off. This appeared to have very little effect on the barge. *(Tr. 43).* They towed the barge astern for about one hour. *(Tr. 121).* Suddenly, the barge rolled over onto its starboard side and heeled. When the barge began to sink, Captain Rizzo attempted to maneuver the barge out of the channel so it would not interfere with the shipping traffic. (Tr. 121). They pulled for about fifteen minutes, until the barge disappeared and they eventually had to cut the line. *(Tr. 667).*

61. At approximately 1810 on January 30, 2000, the PEQUECO II sank and settled on the western edge of the bottom of the Turkey Point to Old Town Point Wharf Channel. *(Stipulation 9).*

62. The PEQUECO II was raised on March 5, 2000. *(Stipulation 17).*

63. After five weeks of being underwater, a joint survey was conducted on March 15, 2000 in the Lyons Shipyard in Norfolk, VA. Those present where Mr. Kim I. MacCartney, the principal surveyor for Inamar, a company that had been insuring the Pequeco II Corporation since the early 1980's, and Mr. William R. Tye, an independent surveyor hired to represent Moran Company. *(Tr. 155-56, 284, Stipulation 18).*

64. The nature of damages to the PEQUECO II consisted of the following: 1) extensive damage to the structure on the deck; 2) the edges of the No.1 vent were ragged and rusted, which showed the vent had been impacted and ripped from the deck where it has previously been welded; 3) there was minimal damage to the plating and knuckle of the barge; 5) the only damage found below the waterline was caused by the brackets used to lift the barge; and 6) it was determined that there was no damage to the barge that would have impacted the watertight integrity below deck level. *(Tr. 157-59).*

65. The damage to the vents was consistent with what the surveyors would have expected to find on a light-gauge metal vent that had been impacted by a heavy piece of ice. *(Tr. 162-163).* The vents had been subjected to severe external forces sufficient to rip the steel and cause the vent to open. *(Tr. 189).* The evidence shows that the damage was caused by pushing the barge into ice and allowing the ice to roll over the headlog and down the deck of the barge. *(Tr. 166).*

66. The cost to repair the damages observed was estimated at approximately $149,790. *(Stipulation 19).*

67. There was no measured or objective evidence of pollution by sodium silicate as a result of the PEQUOCO II sinking. *(Stipulation 5).* However, as a result of the marine casualty, oil was discharged from the barge's five hundred gallon deck tank, which contained approximately two hundred gallons of fuel oil. *(Tr. 580).*

III. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondents, Dannie K. Card and Domenic Rizzo, and the subject matter of this hearing are properly within the jurisdiction of the United States Coast Guard and the Administrative Law Judge in accordance with 46 U.S.C. §§ 6301 and 7703(1)(B) (West Supp. 2000); 46 C.F.R. Part 5 (2000); and 33 C.F.R. Part 20 (2000).
2. At all relevant times, respondent Domenic Rizzo was the holder of and acted under the authority of his U.S. Coast Card issued License, No. 776162 while serving as master aboard the tug JOHN TURECAMO.
3. At all relevant times, respondent Dan Card was the holder of and acted under the authority of his U.S. Coast Card issued License, No. 770050 while serving as operator aboard the tug JOHN TURECAMO.
4. The testimony of Mr. William R. Tye that the cargo tank vents were severely corroded before the barge sank, which compromised the watertight integrity of the main deck, is not deemed credible. The testimony of Mr. MacCartney, who surveyed the PEQUECO II for

condition and valuation at least three times prior to the joint survey, is considered a more accurate representation of the facts.

5. Dan Card and Domenic Rizzo were both responsible for the safe passage of the PEQUECO II, a seaworthy vessel, on January 30, 2000. In performing their duties relating to the vessel's navigation, the respondents failed to conform to the standard of care required of reasonably prudent mariners under the circumstances surrounding the voyage. Appropriate action taken by either respondent at numerous decision points along the voyage could have reasonably prevented the barge's sinking.
6. The Complaints of "**NEGLIGENCE**" against both respondents are found **PROVED** by a preponderance of the reliable and credible evidence and testimony as taken from the record considered as a whole.

IV. OPINION

The purpose of Coast Guard suspension and revocation proceedings is to promote safety at sea. See 46 U.S.C. § 7701 (West Supp. 2000). If it is shown that a holder has committed an act of negligence in performing his duties relating to the vessel, his license may be suspended or revoked. See 46 U.S.C. § 7703(1)(B) and 46 C.F.R. § 5.569.

In suspension and revocation proceedings, the burden of proof is on the Coast Guard to establish a prima facie case of negligence by a preponderance of the evidence. See 46 C.F.R. § 7703; 33 C.F.R. § § 20.701-02 (2000); see also Appeal Decision 2485 (Yates). Negligence is defined in 46 C.F.R.§ 5.29 as " the commission of an act which a reasonable and prudent person of the same station, under the same circumstances, would not commit, or the failure to

perform an act which a reasonable and prudent person of the same station, under the same circumstances, would not fail to perform." In order establish negligence, the Coast Guard must show that the respondents' conduct, in some manner, failed to conform to the standard of care required of reasonably prudent mariners under the same circumstance. See Appeal Decision 2321 (Harris); see also Appeal Decision 2282 (Littlefield).

Here, the Coast Guard has established that both respondents committed acts of negligence on January 30, 2000, which resulted in the sinking of the barge PEQUECO II. More specifically, respondent Card is negligent because he allowed ice to accumulate on the deck of the barge and water to wash on to the bow, which ultimately flooded the cargo vents, and he did not promptly notify respondent Rizzo of the existing barge and weather conditions. Likewise, respondent Rizzo is negligent because after he was notified of the deteriorating conditions of the barge, he decided to rearrange the tow and continue the voyage to Baltimore and he failed to initiate a reasonable emergency response, such as beaching the barge, pumping the tanks, or reversing the vessel to the nearest port. The actions of both respondents failed to conform to the standard of care exercised by reasonably prudent mariners of the same station under the same circumstances. Because of the respondents' failure to navigate the vessel JOHN TURECAMO and its tow with due caution, the barge PEQUECO II sank at 1810 on January 30, 2000 and settled on the western edge bottom of the Turkey Point to Old Town Point Wharf Channel.

In defense of their actions taken on January 30, 2000, the respondents raise the following arguments, which will all be addressed in further detail. The respondents argue that:

I) They operated the vessel with the amount of skill and care required under the special circumstances;

II) They were unaware that the PEQUECO II was unseaworthy and the corroded state of the barge's tank vents compromised the watertight integrity of the main deck; thus, allowing the forward cargo rake to flood, which decreased the freeboard and ultimately caused the barge to sink;

III) Based on the legal presumption of seaworthiness, Captain Rizzo had no reason to refuse the tow;

IV) Pushing the barge ahead was the safest course;

V) Mate Card committed neither negligence nor an error in judgment in his care and navigation of the barge;

VI) Captain Rizzo's decision to continue the voyage was prudent; and

VII) The Coast Guard's involvement in the casualty was significant.

For the reasons stated herein, all of the respondents' arguments are rejected.

I The Respondents were Entrusted with the Vessel's Safety and were Required to Perform Their Duties with the Reasonable Care and Skill Necessary for the Given Situation

It is well-established law that the operator of a vessel is the person in command and, therefore, has the responsibility to ensure the safety of the vessel and its crew. See, Appeal Decision 2293 (SMITH & RUBY); see also, Appeal Decision 2321 (HARRIS). In order to ensure proper management and safety of the vessel and its crew, the operator is required to be aware of any serious defects in the vessel and to keep himself well informed of any hazardous conditions that may pose a significant danger to life or property. See (HARRIS). In addition, an operator is under a continuing duty to know where his vessel is at all times, and he should be in possession of all other pertinent facts relating to the voyage. See Appeal Decision 2416

(MOORE). Specifically, an operator is responsible for knowing how the tug and barge will cope with any particular set of navigational conditions considering its horsepower, handling, his own experience, and the size and configuration of the barge. See Appeal Decision 2367 (SPENCER).

In this case, Captain Rizzo and Mate Card were both responsible for knowing the characteristics of the PEQUECO II, as well as those of the canal. Therefore, they each had an independent duty to inspect the barge and keep it under close supervision during the towing operations. See Aiple Towing v. LYNNE E. QUINN, 534 F. Supp. 409, 411 (D.C. La 1982). Likewise, both respondents had an independent obligation to monitor the available weather reports in order to operate the vessels in a manner consistent with the foreseeable risks and both respondents are chargeable with knowledge of the weather forecasts, regardless of whether they were aware of the weather conditions. See Aiple Towing v. LYNNE E. QUINN, 534 F. Supp. at 411.

Although the influence of a senior official within a mariner's company may place that mariner in a difficult situation, it is the licensed mariner who must make situational decisions as to safety of the vessel and its crew on the water. Therefore, orders from an employer will not excuse the negligent operation of a vessel. See (SPENCER); see also Appeal Decision 2325 (PAYNE). By the same token, reliance on an employer's assurances concerning operation of a vessel will not excuse a licensed mariner from the ultimate responsibility for the safe navigation of the vessel, including the mariner's duty to make a reasonable effort to become aware of any deficiencies in the vessel or to discover other potential hazards. See (SPENCER); see also (PAYNE).

Finally, the undersigned recognizes that, even with the proper navigation and towing of a vessel, known risks are involved. Therefore, when faced with navigational challenges, such as preventing the barge from overtaking and "tripping the tug when reversing or towing astern," the respondents in this case were obligated to perform their duties with such reasonable care and maritime skill as prudent mariners usually employ in similar undertakings and with such consideration as the special circumstances required. See Curtis Bay Towing Co. of Va. v. Southern Lighterage Corp., 200 F.2d 33, 35 (4th Cir1952); Hart v. Blakemore, 410 F.2d 218, 221 (5th Cir. 1969); McDermott Inc. v. Amclyde, 1997 A.M.C. 692, 701,1996 WL 875074 (E.D. La 1996).

II PEQUECO II was a Seaworthy Vessel to the Degree that Any Corrosion Found on the Vents Did Not Jeopardize the Watertight Integrity of the Barge

In the instant case, the respondents argue that the forward tank vents on the PEQUECO II were severely wasted where welded to the deck, and this weakening and corrosion was not visible on the day of the voyage as the vents were recently painted. Respondents' expert witness, Mr. Tye, an independent marine surveyor, testified that corrosion of the tank vents seriously deteriorated the watertight integrity of the main deck. According to Mr. Tye, the PEQUECO II sank as a result of the combination of severe ice conditions, ice coming on the deck, and the deterioration of the vents, which sheared when struck by ice. Mr. Tye's opinion that the wasted conditions existed before the barge sank was based on the vast amount of corrosion found on the forward tank vents during a joint survey conducted by PQ Corporation and Moran Towing, approximately five weeks after the barge sank.

Captain Rizzo and Mate Card both had an opportunity to inspect the PEQUECO II on two separate occasions prior to the sinking of the barge. The first occasion was during towing

operations using the JOHN TURECAMO in December 1999. The second occasion was on January 30, 2000, approximately six weeks later, on the morning of the voyage in question. The respondents argue that they acted reasonably in inspecting the PEQUECO II during those two separate occasions, but they did not notice any defects. The respondents contend that, based on applicable case law, competent mariners in their position are not responsible for latent defects in the barge and competent mariners could reasonably presume that the barge was in a sufficient state of repair to make the intended trip. See Ingram Ind. v. Eagle Towing, 1986 AMC 1414, 1418 (S.D. Ala. 1985); Massman v. Sioux City & New Orleans Barge, 462 F. Supp. 1362, 1369 (W.D. Mo. 1979); see also, A.S. Wikstrom v. Julia C. Moran, 190 F. Supp. 250, 251 (S.D.N.Y. 1960).

Respondents are correct in their position that competent mariners may reasonably presume a barge is in a sufficient state of repair to make the intended trip. Indeed, a tugboat master/operator is not responsible for latent defects in the tendered barge. See Massman, *supra*; and A.S. Wikstrom, *supra*. However, the evidence introduced at this hearing does not indicate that the PEQUECO II was anything less than a seaworthy vessel on the day it sank. Moreover, even though the respondents may have acted reasonably in inspecting the PEQUECO II for defects prior to the voyage at issue, caution and preparation exercised by an operator before a voyage does not absolve the operator from liability resulting from negligent operation and navigation of a vessel once underway.

The evidence in this case shows that the respondents were aware that the PEQUECO II had recently undergone extensive metal work just prior to the January 30, 2000 voyage. As a matter of fact, the respondents commented about the barge's vast improvements following the repairs. Mr. Card even testified at the hearing that the barge was "in beautiful condition" with

the exception of the stanchions, which he felt were unsafe to hold any weight. *(Tr. 395).* He further stated that he did not notice any defects or signs of rustage or wastage. (Tr. 398). Mr. MacCartney, the principal surveyor of the PEQUECO II, provided additional information concerning the barge's condition prior to the incident. Mr. MacCartney surveyed the vessel for condition and valuation at least three times prior to March 15, while the barge was dry-docked at Lyons Shipyard in Norfolk, Virginia after being raised. In Mr. MacCartney's expert opinion, the barge was extremely well maintained.

Suggestions that the PEQUECO II was unseaworthy at the time of the voyage stem only from the testimony of respondents' expert witness, Mr. Tye. However, given the discrepancies in Mr. Tye's report and his admitted unfamiliarity with the barge, his opinion is viewed as inaccurate and unreliable. First, Mr. Tye testified that water in the forward rake "at some point in time" was one factor, which contributed to the sinking of the barge. *(Respondents' Exhibit 3, pg. 9).* This conclusion was solely based on his observation of a water level tidemark stain on the bulkheads inside the forward rake. Mr. Tye also admitted that the water level tidemark stain could have existed prior to the voyage. *(Tr. 290, 327-328).* Based on Mr. Tye's testimony, it is unclear whether he believed that the rake contained water prior to the voyage and thus reduced the vessel's buoyancy, or whether he simply meant to imply that, on the day of the voyage, water flooded the vent, thus contributing to the casualty.

Second, Mr. Tye testified at the hearing that the tank vents were severely corroded and wasted before the casualty occurred, but he failed to document this in the survey report. (*Tr. 285).* According to Mr. Tye, this issue was discussed with the Moran Company and the parties agreed to remove and repair the vents. *(Tr. 286-287).* However, assuming that a discussion about the preexisting corrosion of the tank vents occurred, it seems implausible that no

indication of the preexisting condition was ever noted in the survey report. At the very least, Mr. Tye had a responsibility to his client to make a written notation somewhere in the survey report that the vents, which were to be repaired, had been corroded prior to the marine incident.

In addition, Mr. Tye's opinion as to the cause, nature, and extent of damage to the PEQUECO II was based solely on his observations of the barge after its exposure to the canal's environment for five weeks. In his report, Mr. Tye listed several items that he needed in order to ascertain the cause of the incident and render opinions. *(Respondents' Exhibit 3, pg. 12).* However, on cross-examination, Mr. Tye testified that he never determined vital facts, such as the departure drafts or speed of the tow, and he never interviewed any of the crewmembers. (*Tr. 319).* Because Mr. Tye's expert opinion was rendered without this vital information, his conclusions as to the ultimate causes of damage are of little weight.

At the hearing, Mr. Tye reviewed photographs of the PEQUECO II and described the wasted condition of the lower part of the No. 1 cargo tank vent pipe as razor blade thin. He further stated that the original metal of the tank vent was gone. *(Tr. 281-82).* Because the vent was severely corroded, Mr. Tye believed that the wasted condition existed before the barge sank. However, this conclusion is incorrect as it is based on the amount of material left after the barge remained underwater for five weeks. Mr. Tye admitted that he did not know how thick the metal was in its original state but speculated that the original thickness of the vent was 5/16" (0.3125"). Mr. Tye also admitted that he had no knowledge of the barge prior to the survey, nor had he ever seen the PEQUECO II in its original condition. *(Tr. 319, 334-35).* Accordingly, Mr. Tye's conclusions as to the original thickness of the material and the vent's condition before the casualty are viewed as mere conjecture and speculation when viewed in the light of additional information provided by more informed and reliable sources.

The testimony of the Coast Guard's expert witness, Mr. MacCartney, is more credible. According to Mr. MacCartney, the thickness of the vents on a barge like the PEQUECO II should actually be 14 gauge galvanized (or .0747"). *(Tr. 191).* Although, there are no Coast Guard standards for the construction and maintenance of vents on inland uninspected barges, such as the PEQUECO II, metal with a thickness of 14 gauge is in line with common good marine practice. (*Tr. 161, 190).* Moreover, 14 gauge is consistent with the vents' intended purpose. Mr. MacCartney explained that vents are only there to allow air to come in, air to go out, and to keep the rain off the cargo, as well as the normal splash of sea water, which may wash over the barge during normal operation. (*Tr. 162).*

Mr. MacCartney further described the condition of the vents as he observed them on March 15th during the joint survey. Specifically, the edges of the No 1 cargo vents were ragged and rusted, evidencing that the vents had been impacted and ripped from the deck where it was previously welded. According to Mr. MacCartney, the damage was consistent with what one would have expected to find on a light-gauge metal vent, which had been impacted by a heavy piece of ice. (*Tr. 162-63).* The damage was not consistent with damage resulting from the salvage operation or the flow of water over the deck. (*Tr. 164).* In his expert opinion, Mr. MacCartney stated that the damage was caused by pushing the barge into ice and the ice rolling over the headlog and down the barge's deck. (*Tr. 166).* This opinion was supported by the fact that the vents had been subjected to severe external forces sufficient to rip the steel and cause the vents to open. (*Tr. 189).*

It is undisputed that damage to the cargo tank vents allowed water to enter the rake and ultimately caused the PEQUECO II to sink. Respondents' own expert, Mr. Tye, testified that there were no holes in the body of the barge and that the vessel sank as a result of water

washing over the deck and invading the forward rake tank. (*Tr. 332)*. Mr. Card and Mr. Rizzo also agree that the PEQUECO II sank because the damaged vents allowed water to enter into the cargo compartment. (*Tr. 495, 657)*. The parties also agree that the PEQUECO II would not have sunk, had it not been for the ice. (*Tr. 166, 331, 495, 657)*. This evidence establishes that the casualty did not occur because of an unseaworthy vessel, but rather, was the result of pushing the PEQUECO II into ice and allowing the ice to roll up over the headlog and down the barge's deck. (*Tr. 166)*.

III. Captain Rizzo had Sufficient Reason to Refuse the Tow on the Morning of the Voyage

The Respondents' argument that they had no barge-related reason to refuse the tow is untenable. In support of their argument, Captain Rizzo contends that he had no frame of reference or other experience with the PEQUECO II, which would indicate that the barge was loaded in an improper or unseaworthy fashion. According to the respondents, the barge was loaded essentially as it had been during the December 1999 trip. Since the PEQUECO II is an "uninspected" barge, there was no "load line" to indicate a maximum safe load or draft. Furthermore, the respondents were not provided any documentation containing relevant information about the barge or its cargo, nor is this material typically given to tug captains. However, Captain Rizzo argues that he acted as a prudent mariner by consulting every available source in ascertaining whether the assigned trip was reasonably safe given the reported ice conditions. The respondents further argue that when a reasonable mariner learns that the waters to be transited are legally, practically, and physically open, they have no reason not to proceed with the voyage.

Captain Rizzo's contention that there was no frame of reference or indication that the barge was loaded in an improper or unseaworthy fashion is incorrect. The respondents'

assertion that the barge was loaded essentially as it had been during the December 1999 trip is in direct contradiction with their testimony where they described the barge's diminished freeboard. More specifically, Mate Card testified that on the morning of the January 30, 2000 voyage, he noticed that the PEQUECO II was loaded differently. The barge was carrying a heavier load than usual and there was approximately one foot of freeboard visible, which was significantly less than the previous trip where the freeboard was set between three to five feet. (*Tr. 454*). The barge also did not have a noticeable rake, whereby the stern was deeper in the water than the bow. (*Tr. 397).* Captain Rizzo also noticed the difference in the freeboard. Captain Rizzo testified that on the previous trip in December, the after draft was greater than the forward draft, which is ideal for towing in any mode. In January, however, the barge was even keeled. (*Tr. 511-12).* The record does not indicate that any previous trip involved pushing a barge with approximately one foot of freeboard through an area forecasted to have a minimum of one foot of ice. Therefore, Respondents' argument that the voyage in question was identical to the December 1999 trip is rejected. The undersigned finds that the limited freeboard combined with the forecasted ice conditions on the morning of January 30, was reason enough to refuse the tow, or at least consider an alternate towing configuration to pushing ahead (e.g. towing astern with an assisting tug to prevent "tripping").

In addition, Captain Rizzo's assertion that no documentation containing relevant information about the barge or its cargo was provided is unsubstantiated and does not relieve him of a duty to know such pertinent facts. Although information concerning the barge or its cargo is typically not given to tug captains, the evidence shows that Captain Rizzo never even attempted to ascertain such information from his employer before undertaking the voyage. (*Tr.* 634). Instead, Captain Rizzo relied on the assurances of his employer, who told him that it was

not his duty to be familiar with the barge's characteristics and loading conditions. (*Tr. 616-17*). In hindsight, Captain Rizzo admits that information concerning the nature of the product, the barge's tank arrangement, and the vessel's loading configuration is critical to the decision making process and to the safety of his crew. (*Tr. 625*). To proceed without this information or any effort to attain it prior to getting underway was negligent.

Moreover, Captain Rizzo's position that he consulted every available source in ascertaining whether the assigned trip was reasonably safe given the reported ice conditions is inaccurate. Captain Rizzo asserts that, in addition to listening to the Broadcast Notice to Mariners, he consulted the three "live" and most current sources of information available to him concerning ice. These sources included the Moran dispatcher, the canal dispatcher and those inland vessel captains who had just completed the eastbound canal transit. According to Captain Rizzo, none of these sources gave him a reason not to proceed. In actuality, Captain Rizzo's attempt to ascertain the severity of the ice conditions is inadequate, and contrary to his assertion, the sources he did consult provided him sufficient reason not to commence the voyage.

By listening to the Coast Guard Broadcast Notice to Mariners, Captain Rizzo became aware of the severe ice conditions, up to twelve inches thick and up to 90 percent coverage, in the northern bay, all the way down to Baltimore. In his conversation with the Moran office, Captain Rizzo also learned that a 2400-horsepower restriction had been imposed on vessels transiting the canal. With the information obtained from these two sources, Captain Rizzo should have been concerned about the vessel's horsepower, the extreme ice conditions, and the barge's cargo and its loading conditions. However, Captain Rizzo disregarded these concerns because he believed it was not a part of his duty.

Captain Rizzo also contacted the canal dispatcher to relieve any doubts regarding the horsepower restriction. *(Tr. 513).* In this conversation, Captain Rizzo learned that although the canal was open, the ice conditions were heavier towards the western end; thus, confirming the Broadcast Notice to Mariners' report. In support of the decision to proceed with the voyage, Respondents argue that when reasonable mariners learn the waters to be transited are legally and physically open, they have no reason not to proceed with the voyage. This assumption is incorrect and unsound. Although Captain Rizzo believes that the dispatcher will close the canal if he determines the conditions are impassible *(Tr. 646),* this procedure, like the Coast Guard-imposed restrictions, is not a guarantee of transit safety. It is the professional mariners who must make situational decisions as to safety on the water. These decisions include, among other considerations, towing configurations and speed, which are uniquely within the mariner's purview.

Captain Rizzo's final inquiry about the canal's condition was to inland vessel captains who had recently transited the canal. The accounts from these mariners, however, are unreliable. First, while Captain Rizzo testified that he spoke directly to the captain of the tug, TENACIOUS, he is uncertain whether the captain of the TENACIOUS had been through the canal the previous day or on the morning of the incident in question. (*Tr. 514, 603).* Second, Captain Rizzo's conversation with a mariner who had only completed the eastern half of the canal approximately five to ten hours before Captain Rizzo's voyage (*Tr. 598-599*) is insufficient. According to all reported sources, the severity of ice conditions began at the western end. Therefore, the reports from the TENACIOUS and the unidentified captain who had only completed the eastern half of the canal could not have provided the respondents with an accurate account of the most recent weather and ice conditions to be expected. This is

especially true in light of the fact that the severity of the ice conditions changed for the worse with each passing hour.

Finally, Captain Rizzo failed to inquire about the towing configurations or loading conditions of the vessels he contacted. As such, he did not know whether they faced the same challenges under the exact or similar combination of horsepower, barge construction, towing method, freeboard, and product characteristics. Regardless, the custom of operators who transit the area under similar circumstances does not provide evidence of reasonable care and will not serve to justify the negligence of another mariner accountable in a suspension and revocation proceeding. See Appeal Decision 2416 (MOORE). Accordingly, the fact that other vessels may have transited through the ice in the Chesapeake and Delaware Canal without incident cannot excuse the actions of the respondents in this case.

IV. The Tug and Tow were in an Improper Towing Configuration

Captain Rizzo and Mate Card mutually agreed to place the PEQUECO II in a pushing configuration because both men believed that this was the best arrangement for the expected ice and weather conditions. It is important to note the difference between a tow that is properly made up under normal conditions and the level of care that is required when faced with the special circumstances encountered by the respondents on the day of the voyage in question. In this case, severe ice and harsh weather was reported and the barge was heavily loaded with a diminished freeboard. Therefore, in the case at hand, the respondents' use of an uninspected barge with minimal design and manufacturing standards as a de facto icebreaker for the tug was, in itself, negligent. Although the tow itself was properly made up before undertaking the voyage, negligence has been found in cases where a barge is pushed through heavy ice, rather than "towing astern." See Consolidated Grain & Barge Co., Inc. v. Consolidated Towing Co.,

404 F. Supp. 634 (D.C. Mo 1975); see also, Conners-Standard Marine Corp. v. Oil Transfer Corp., 120 F. Supp. 180 (E.D.N.Y. 1953). Here, by pushing the tow, sheets of ice were allowed to wash across the bow and cause extensive damage to the barge. This was a breach of the respondent's duty of care as prudent mariners.

While respondents argue that the best arrangement for the PEQUECO II was a push gear configuration, the custom and practice of tug operators and the towing history of this barge, indicate the opposite. The Coast Guard's expert witness, Mr. Fredrick Christian Berg, a tugboat operator of twenty years, testified that it was not prudent for a mariner to get underway with a tow pushing a barge, given the predicted ice and weather conditions because it was too much power for such a little barge. (*Tr. 204*). Although Mr. Berg indicated that when towing a barge in ice it is possible for the momentum of a loaded barge to overtake and literally ride up on the tug (*Tr. 216-17, 221*), and Mr. Berg admitted that he would have pushed the barge through the thicker ice, as respondents did on January 30, 2000 -- he stressed that he would not have proceeded to Baltimore if he noticed the bow was dipping and the barge was losing clearance. (*Tr. 229-230)*.

In addition, the traffic controller at Chesapeake City, who had witnessed thousands of tugs and commercial vessels travel in and out of the canal, testified that barges are usually pushed when they are heavily loaded. However, he did not specify whether the barges are pushed from behind or alongside. This distinction is crucial as the dispatcher noted earlier in his testimony that it was unusual to see the PEQUECO II pass through in a push gear configuration. In fact, he stated that this was the first time he had ever known it to travel through the canal like that, as it was always arranged alongside. (*Tr. 262)*.

As a matter of fact, the deckhand, Vance Holly, made a previous trip, towing the PEQUECO II on the hip through the canal and successfully made it to Baltimore despite harsh weather and thick ice. On the return trip, the barge was put on a hawser and towed astern so the tugboat could break the ice. Despite a brief setback where the vessels were stuck in ice, the tug and tow ultimately completed the transit without sinking and without damage.

V. Mate Card Failed to Operate the Tug and Tow with Reasonable Skill and Navigation

The respondents argue that Mate Card acted in an appropriate manner on January 30, 2000, while transiting the Chesapeake and Delaware Canal, and his operation and navigation of the vessels constitute neither negligence nor an error in judgment. The respondents characterize the events that occurred during Mate Card's watch as uneventful. The respondents assert that when Mate Card turned into the canal to proceed westbound, there was light to moderate ice, as expected. Respondents further claim that the amount of water and ice that washed over the deck was not uncommon on a fully loaded barge and the vents were expected to withstand it. According to the respondents, Mate Card proceeded westbound in the canal with appropriate speed and course, and he did not observe any accumulation of ice around the vents or resulting damage. The respondents believe that stopping in the middle of the canal when there was no detection of a hazardous condition would have been inappropriate and unwise. The respondents claim that the problems with the barge did not occur until after they encountered the second patch of heavy ice, at which time, Captain Rizzo was immediately notified.

The respondents' claims are inconsistent with the preponderance of evidence contained in the record that supports a finding of negligence. First, to support their position, respondents

point to witness and expert testimony throughout the record, which indicates that water and ice are expected on deck. However, it is important to distinguish between the expected bow wash and ice buildup that occur during the normal course of towing a barge with adequate freeboard and the vast amount of water and ice that was allowed to accumulate on the deck in this case. In severe weather conditions, water that washes over the deck may freeze to the bow of the vessel and accumulate over time. In turn, the added weight and the free surface of moving water have a detrimental effect on the vessel's stability. Therefore, a prudent mariner must carefully monitor this condition.

In this case, the barge's minimal freeboard allowed water and ice to come across the bow and accumulate to such a degree as to create concern in the minds of a passing mariner and the canal operator. Once in the canal, the JOHN TURECAMO passed another barge and tow, the KARA C, operated by John N. DiFranks, who testified for the Coast Guard at the hearing. According to Mr. DiFranks, the vessels came within one hundred feet of each other. Mr. DiFranks recalled that water was running over the bow of the PEQUECO II and ice had accumulated on the deck. (*Tr. 237).* Mr. DiFranks described the water as free-flowing over the barge's headlog to the bow, about twenty or thirty feet back. He observed that the bow was underwater. (*Tr.* 238). The canal dispatcher at Chesapeake City described the condition of the PEQUECO II on January 30, 2000 in a similar fashion. The canal dispatcher testified that the PEQUECO II was heavily loaded and there was more than the usual amount of ice on the deck. (*Tr. 257, 270*). This testimony directly refutes respondents' assertion that Mate Card did not observe an unusual amount of water and ice accumulation on the bow. As such, the transit down the bay to the canal cannot be considered as uneventful. Mate Card should have observed this accumulation of ice and he should have recognized the risks associated with

allowing ice to accumulate on deck. Prudent action would have included, at a minimum, reassessing the risk of proceeding to push the barge, already laden with an unusual amount of ice on the bow, into known heavier ice conditions.

Moreover, the undersigned is not convinced that at the time of the first ice encountered at Chesapeake City, no problems or noticeable change in trim had been observed to justify Mate Card's lack of concern. The record indicates that as early as the entrance into the eastern side of the canal, the amount of ice buildup and level of freeboard had reached an alarming and excessive rate. At approximately 1330, when the tug and tow passed the KARA C, the bow was awashed and ice had accumulated on the deck. Mate Card proceeded to operate the vessels into Chesapeake City, where the canal dispatcher noted their arrival at approximately 1440. As the respondents continued to transit down the canal, the tug and tow encountered two separate incidents where heavy sheets of ice washed onto the deck, the latter causing noticeable damage. At this point in time, well over an hour later, Mate Card notified Captain Rizzo of the situation. A reasonable and prudent mariner placed in a similar situation, as Mate Card would have slowed down and notified the captain as soon as water and ice began to wash over the headlog and free flow across the deck**.**

Next, the nature and design of the deck vents are inconsistent with respondents' expectation as to their performance. The vents were not designed to withstand the excessive amount of water and ice encountered during the transit in question. Rather, they are intended only to keep rainwater and spray out, while allowing air to freely flow in and out of the cargo tanks. Given the purpose and construction of these vents, any action or inaction in the course of navigation that permitted ice to damage these vents, thereby allowing water to flood the forward rake and ultimately cause the PEQUECO II to sink, is negligent.

Mr. Card's actions and negligent operation of the PEQUECO II created a reasonably foreseeable situation and, therefore, cannot be considered simply an error in judgment. An error in judgment arises and a person is not considered negligent when the individual is placed in a position not of his own making where he must decide between two apparently reasonable alternatives and chooses an alternative using prudent judgment at the time that later proves to be a poor choice under the circumstances. See Appeal Decision 2366 (MONAGHAN). In this case, however, Mr. Card placed himself in a position of his own making through a series of conscious decisions regarding the manner in which the PEQUECO II was navigated through severe ice conditions.

VI. Captain Rizzo's Decision to Continue the Voyage After Assessing the Nature of the Barge's Condition was Negligent

Respondents argue that Captain Rizzo's decision to continue the voyage after being notified of the situation was prudent based on the information provided him. Respondents further contend that this decision should be viewed in light of the facts available to Captain Rizzo on the day in question. However, an evaluation of Captain Rizzo's decisions and actions pertaining to the incident cannot be based solely on this factor and must include the information he should have known in order to properly make the critical decisions entrusted to him as master of the vessel. Such information includes, among other things, the characteristics of the product aboard the PEQUECO II, its loading condition, and any serious defects in the barge.

Respondents argue that Captain Rizzo complied with the requirement to keep himself informed by inspecting the barge on three separate occasions, including the time he and the deckhand went aboard the vessel's bow after product was seen leaking into the water.

Respondents assert that after each of these inspections, no problems with the watertight integrity of the deck were observed. According to the respondents, significant damage was noticed for the first time only after they encountered the third patch of heavy ice at Sandy Point, near the western end of the canal. However, the record of this case viewed as a whole, as well as the testimony of both respondents describing the extent of damages, reveals an awareness of the barge's deteriorating state well before the third encounter of heavy ice.

Testimony at the hearing indicates that both respondents observed the same amount of water was washing over the deck at a slower speed through the canal than when they were coming down the Delaware River. *(Tr. 431, 496).* In addition to the barge's decreased freeboard and sluggish movement, Captain Rizzo and his crew noticed a white milky substance in the water, seeping out near the forward rake on the port side. *(Tr. 51, 431, 565).* Thereafter, they reduced the speed to idle ahead, while Captain Rizzo and the deckhand went onto the barge to remove pieces of ice up to 18 inches thick and to assess the situation. Considerable damage to the vessel's deck was observed at this point, including holes in the deck, approximately two inches in diameter, where several stanchions had been torn off by ice and safety wires hanging in the water. *(Tr. 635-636).*

Expert witness testimony presented at the hearing supports a finding that Captain Rizzo's ultimate decision to continue the voyage to Baltimore, despite the myriad of observed problems and his feelings that the hull was breached, constitutes negligence. Mr. Fredrick Christian Berg, a tugboat operator of twenty years, testified at the hearing for the Coast Guard and stressed that a change in the freeboard, causing it to get closer to the water, becomes a matter of life and death. Mr. Berg listed several emergency actions that could have been performed by Captain Rizzo in lieu of traversing another 45 miles through the thickening ice.

Among them included finding a port or beaching the vessel to keep it from sinking. *(Tr. 206-207).*

Similarly, the undersigned is not convinced that there was no immediate danger of the barge sinking or that the only viable option was to clear the canal and reconfigure the tow. First, Captain Rizzo's own testimony demonstrates that the respondents were in fact concerned that the barge appeared to be sinking. *(Tr. 658-59).* Specifically, Captain Rizzo informed the Moran office that the voyage could not continue with the worsening ice and weather conditions, as there was a problem with the barge, and further stressed that something had to be done immediately. *(Tr. 658).* The first clearing at Dan's Yard was disregarded because respondents believed the port might be too shallow to draw enough water and serve as a suitable place to tie up the vessel. *(Tr. 464-65, 546).* However, the record indicates that nobody contacted, or even attempted to contact, Dan's Yard to actually determine if they could safely enter.

Further, Captain Rizzo's conversations with his company, as documented throughout the record, clearly contributed to his decision to continue the voyage toward Baltimore. First, it appears that Captain Rizzo blindly relied on his company's assurances that the barge would continue to float with one tank breached. Although the respondents believed the hull had been breached, they did not undertake any action to ascertain the gravity of the situation. No one attempted to sound the forward rakes in order to determine the level of the tanks by gauging. Similarly, Captain Rizzo purposely chose not to look inside the cargo tank, stating that he was unfamiliar with the characteristics of the product sodium silicate or whether it was toxic. *(Tr. 32).* Captain Rizzo made no attempt to alleviate this concern by inquiring about the product characteristics in any of his numerous phone conversations with the company.

The record further indicates that pressure from the employer influenced Captain Rizzo's decision to reconfigure the tow once the vessels cleared the canal. According to Captain Rizzo's testimony the Moran office did not want him to beach the barge and suggested the vessels be rearranged instead. *(Tr. 658, 659).* Captain Rizzo further stated that although the tow could be reconfigured, his concerns were not abated because it would be impossible to beach the barge once it was out of the notch if it continued to lose freeboard. *(Tr. 660).* In addition, although Captain Rizzo was notified that two tugs were being immediately dispatched, this assurance should not have been utilized in deciding whether to tow the barge astern, especially since Captain Rizzo had no indication of how long it would take for assistance to arrive. *(Tr. 652-53).*

Finally, the new arrangement placed the damaged bow of the sinking barge approximately 250 feet behind the tug, without proper supervision. By the time the tow was rearranged and placed on a hawser, the bow of the barge was submerged and no freeboard remained. (Tr. 665). The limited visibility was further hindered by darkness and snow that soon turned into freezing rain. Captain Rizzo claims to have been monitoring the barge from the galley on the stern by looking through a porthole. (Tr. 666). Although, Captain Rizzo alleges the barge stabilized fifteen to thirty minutes after the tow was reconfigured, a proper lookout could not possibly have been maintained given the stated impediments.

VII. The Coast Guard's Passive Involvement is not a Factor in Assessing the Blameworthiness of Individuals Placed in a Situation of Their Own Making

Although the respondents do not contend that the Coast Guard caused the casualty, the respondents argue that the agency's involvement was more than passive and must be considered in assessing the blameworthiness of individuals placed in a situation not of their

own making. The respondents further contend that they acted in a manner consistent with the Coast Guard's own participation. Specifically, the Coast Guard did not require a safe minimum freeboard, or load line, upon which operators of a towing vessel could rely, nor did the agency require an inspection of certain appurtenances, like vents, which respondents believe are essential to the vessel's watertight integrity. The PEQUECO II is not certified by the U.S. Coast Guard, as it is an uninspected barge to be operated only on inland routes. However, even without such standards the respondents observed the diminished freeboard of approximately one foot, which was significantly less than the freeboard visible on the December 1999 trip. Although the Coast Guard did not require a minimum load line for this uninspected barge, the respondents could reasonably determine that the vessel was heavily loaded before getting underway. Likewise, the Coast Guard does not require an inspection of the vents as they are not a structural part of the barge and are only there to ventilate the cargo rake and to and keep rain water out.

Respondents also argue that the Coast Guard declared the canal open for vessels with a minimum horsepower of 2400, and, therefore, respondents' employment of a towing vessel rated at 3000 horsepower was consistent with the agency's involvement. Respondents, however, inappropriately rely on this restriction and cannot reasonably expect that their compliance would ensure a successful passage. The Coast Guard-imposed restriction is not an absolution of transit safety.

Respondents further assert that the Coast Guard was timely apprised of the developing problems, yet did not offer an alternate suggestion as to how the situation should be contained. The record, however, is devoid of any evidence of either respondent personally consulting the Coast Guard or ever attempting to do so. With limited second hand information, the Coast

Guard is not in a position to make the crucial decisions properly entrusted to the license mariners on scene.

Furthermore, contributory negligence, even if alleged as being that of the Coast Guard, is not a valid defense. The sole issue in a Coast Guard suspension and revocation proceeding is the negligence of the individual[s] charged without respect to the involvement, if any, of others**.** See Appeal Decision 2492 (RATH)(held that the negligence of the individual charged is the only issue); see also Appeal Decision 2380 (HALL)(to prevail, the individual charged must show that the sole fault of the casualty rests with another party); Appeal Decision 2031 (CANNON)(the possible fault or negligence of another person in no way mitigates the Appellant's negligence or contribution); Appeal Decision 2021 (HERRINGTON)(the fault of another can not be used to excuse fault on the part of the party charge).

In separate complaints, both respondents are charged with negligence stemming from the same incident. The factual allegations arise from the circumstances surrounding the same marine casualty and the actions of the respondents while serving together aboard the tug JOHN TURECAMO on January 30, 2000. Respondents can neither look to the negligence of the other as a defense nor to the possible involvement of the charging agency in assessing blame.

Lastly, the evidence viewed as a whole supports a finding that the casualty involved in this case was avoidable at numerous decision points, starting with the decision to get underway, and, therefore, must be considered of both the Respondents' making.

VI CONCLUSION

The preponderance of evidence in the record supports a finding that both respondents acted negligently with respect to the navigation and operation of the PEQUECO II. This

incident was foreseeable and could have been avoided by the actions of either respondent at numerous decision points throughout the voyage.

It is well within the power of the undersigned to order any of a variety of sanctions, including suspension. The U.S. Coast Guard has recommended that the respondents received a two (2) month outright suspension. In light of all the circumstances and facts surrounding this case, a two (2) month outright suspension is deemed an appropriate sanction. In so holding, the undersigned would note that this case does not involve respondents who have a prior record of violations. Rather, it is an unfortunate, isolated instance wherein both acted in a negligent manner that the undersigned feels will not again be repeated. WHEREFORE,

VI. ORDER

IT IS ORDERED that the charges of Negligence against both Dannie Card and Domenic Rizzo and the supporting factual allegations thereunder are **PROVED**, and it is further,

ORDERED that the Merchant Mariner's License No. 776161, issued to Respondent Domenic Rizzo, is hereby **SUSPENDED** for a period of two (2) months to begin upon surrender. Likewise, Merchant Mariner's License No. 770050, issued to Respondent Dan Card, is hereby **SUSPENDED** for a period of two (2) months to begin upon surrender. Respondents are ordered to immediately surrender their respective Merchant Mariner's Licenses to the Investigating Officers at Activities Baltimore, Maryland. It is hereby further,

ORDERED that the service of this Decision on the Respondents' counsel will serve as notice to the Respondents of their right to appeal, the procedure for which is set forth in 33 C.F.R. ⇓⇓ 20.1001-20.1003. (Attachment A)

_____

JOSEPH N. INGOLIA
Chief Administrative Law Judge
U.S. Coast Guard

Dated this 27th day of August, 2001
Baltimore, MD

Copy:

Activities Baltimore, Attn: Investigations Department
Geoffrey S. Tobias, Esq., Counsel for Respondent
Eric M. Veit, Esq., Counsel for Respondent

APPENDIX A

UNITED STATES COAST GUARD v. MAYLON E. GREEN
DOCKET NUMBER: 00-0826
PA NUMBER: 00002131

LIST OF WITNESSES AND EXHIBITS

INVESTIGATING OFFICER (IO) EXHIBITS

1. Facsimile Copy of Broad Cast Notice to Mariners
2. Copy of Agency's Incident Action Plan
3. Three (3) Photographs of the PEQUECO II
4. Four (4) Photographs of Ice Covered Waterway taken on January 31, 2000
5. Three (3) Photographs of Salvage Operation of the PEQUECO II
6. Eleven (11) Photographs of Damage to the Deck of the PEQUECO II
7. Copy of Agency's Investigation Report
8. Copy of Curriculum Vitae for Kim I. MacCartney
9. Copy of Field Survey Report with Photographs
10. Copy of Telephone Transcript Recorded by U.S. Coast Guard on February 17, 2000

INVESTIGATING OFFICER (IO) WITNESS LIST

1. Edward D. Bishop
2. Vance C. Holly
3. Lieutenant Nicholas Cucinelli
4. Kim I. MacCartney
5. Frederick Christian Berg

INVESTIGATING OFFICER (IO) WITNESS LIST (continued)

6. John N. DiFranks
7. Lieutenant Commander John Nadeau

RESPONDENT EXHIBIT LIST

1. Chesapeake and Delaware Canal Traffic Log Recorded on January 30, 2000
2. Copy of Respondent Dannie Card's Career Synopsis
3. Original Marine Survey Report from W.R. Tye & Associates (Norfolk Virginia USA) Inc. with Thirteen (13) Photographs
4. Original Chart of the Chesapeake and Delaware Canal (approximately 3 feet long and 2 feet wide)
5. Original Drawing of the PEQUECO II Indicating the Barge's Length and Width
6. Telephone Log From Bell Atlantic Mobile
7. Two (2) Photographs of the PEQUECO II After the Barge was Raised and Repaired
8. One (1) Photograph of the Portside of the PEQUECO II
9. One (1) Photograph of the Portside of the PEQUECO II with Bucket
10. One (1) Photograph of the Portside of the PEQUECO II

RESPONDENT WITNESS LIST

1. Allen M. Dias
2. William R. Tye
3. Dannie K. Card
4. Domenic Rizzo

APPENDIX B

UNITED STATES COAST GUARD v. MAYLON E. GREEN
DOCKET NUMBER: 00-0826
PA NUMBER: 00002131

RESPONDENT'S PROPOSED FINDINGS OF FACT:

1. On January 30, 2000, Domenic Rizzo was serving as master aboard the tug JOHN TURECAMO. During this time period, Capt. Rizzo was the holder of, and serving under the authority of, his Coast Guard issued License (No. 776162). Administrative Law Judge Exhibit No. 1 ("ALJ") ¶ 2.

   ACCEPTED AND INCORPORATED

2. Captain Rizzo was 39 years of age at the time of the casualty and has served continuously in the towing industry since his graduation from the Maine Maritime Academy in 1986. Transcript, p. 499. This service was generally in the New York Harbor and Delaware River areas. 500. He has been serving as Master of the Tug JOHN TURECAMO since 1997. 500. During his towing career he regularly encountered ice conditions on the Hudson and Delaware Rivers. 501.

   ACCEPTED AND INCORPORATED IN PART: no determination was ever made as to how often Captain Rizzo encountered ice conditions throughout his career, similar to those present on the day of the casualty.

3. Captain Rizzo has had a Coast Guard license continuously since 1986 and has never previously been involved in a suspension and revocation hearing. 499.

   ACCEPTED AND INCORPORATED

4. On January 30, 2000, Dan Card was serving as operator aboard the tug JOHN TURECAMO. During this time period, Mr. Card was the holder of, and serving under the authority of, his Coast Guard issued License (No. 770050). ALJ ¶ 1.

   ACCEPTED AND INCORPORATED

5. Mate Dannie Card was 55 years of age at the time of the casualty (377) and has been working primarily on the Chesapeake Bay and Delaware River since 1962. 384-7, 389. Since 1986 he has served on tugs as a mate or captain (386) and has been a mate on Moran Towing Corporation tugs since 1996 (387) and mate on the JOHN TURECAMO for approximately two years. 389.

   ACCEPTED AND INCORPORATED

6. Moran acquired the JOHN TURECAMO in the late 1990s. 387.

   ACCEPTED AND INCORPORATED, noting that the tug JOHN TURECAMO was properly acquired by the Moran Corporation.

7. Mr. Card has held a Coast Guard document since 1967 (385), a license since 1986 and has never previously been involved in a suspension and revocation proceeding. 389.

   ACCEPTED AND INCORPORATED

8. The JOHN TURECAMO is a uninspected towing vessel rated at 3000 horsepower with official number D544747. ALJ ¶ 3. At the time of the casualty her actual maximum horsepower was approximately 2800. 392; 513-14.

   ACCEPTED AND INCORPORATED

9. Captain Rizzo, with Mate Card, had command of the JOHN TURECAMO for one prior round trip (Chester-Baltimore-Chester) with the Barge PEQUECO II, approximately six weeks before, in December of 1999. 505.

   ACCEPTED AND INCORPORATED

10. Prior to beginning the December trip, Captain Rizzo was told that extensive metal repairs had been completed on the Barge. 511.

    ACCEPTED AND INCORPORATED

11. During this December trip, Captain Rizzo and Mate Card made a thorough inspection of the Barge in Baltimore (395; 506), the discharge port for the cargo of sodium silicate (ALJ ¶ 4). They looked at, *inter alia*, the vents and found the Barge freshly painted and apparently in good shape (506), except for the handrails. 395. There was no wasted metal visible nor were there rust streaks around the vents (399; 511); the Barge appeared seaworthy. 606.

    ACCEPTED AND INCORPORATED

12. On the morning of Sunday, January 30, the JOHN TURECAMO was assigned the movement of the Barge from the PQ facility at Chester, Pennsylvania, on the Delaware River to the regular discharge berth at Grace Chemical in Baltimore. 512.

    ACCEPTED AND INCORPORATED

13. Captain Rizzo regularly checked the ice reports broadcast by the Coast Guard, and was aware of the ice report for January 30, referred to at ALJ ¶ 6 and in Investigating Officers' Exhibit A ("IO-A"). 512.

ACCEPTED AND INCORPORATED

14. In addition to listening to the ice reports, Captain Rizzo called the Moran office. He learned that the Chesapeake & Delaware Canal ("C&D" or "Canal") was open to navigation, but that there was a minimum 2400 horsepower, twin screw, steel hull restriction imposed by the Coast Guard because of ice. 513. Captain Rizzo confirmed with the Canal dispatcher (an employee of the Army Corps of Engineers) that the Canal was (physically) open. 513. In addition to (1) listening to the ice reports, (2) inquiring with the Moran office and (3) checking with the Canal dispatcher, Captain Rizzo put out a general call on VHF radio channel 13, and learned that while conditions were "bad," other tug/barge combinations had completed the transit. 514. Ice 6"-10" thick was reported and the intended passage to Baltimore was passable, not just to ocean-going vessels, but to other tugs and barges. 598-9, 601. The Canal dispatcher told Captain Rizzo that the Canal was "mostly clear" with ice "heavier toward the western end." 647. According to the Coast Guard's expert, making these inquiries was the prudent thing to do. 215.

ACCEPTED AND REJECTED IN PART, as provided in the Decision and Order.

15. The JOHN TURECAMO was the smallest Moran tug with a horsepower rating exceeding the required 2400. IO-H, "Findings of Fact" No. 4.

ACCEPTED AND INCORPORATED, noting that the JOHN TURECAMO was the smallest vessel owned by the Moran Corporation that exceeded the horsepower limitation set by the Coast Guard.

16. Upon arriving at the PQ loading dock at mid-morning, the JOHN TURECAMO was made up in the pushing notch of the Barge. 516. Captain Rizzo and Mate Card agreed that this was the best arrangement for the conditions expected. 516.

ACCEPTED AND INCORPORATED

17. The Coast Guard's expert testified that this was the correct choice: pushing was the safest means of moving the Barge. 229. Towing the Barge might lead to the Barge overrunning or "tripping" (capsizing) the Tug. 221-2; 516-18.

REJECTED, as provided in the Decision and Order.

18. Contrary to its appearance, the Barge was not seaworthy because the vents and sounding pipes, while freshly painted, were severely rusted and weakened. 280-81; Respondents' Exhibit ("R") 3.

REJECTED: as provided in the Decision and Order.

19. When the Tug arrived at the PQ Chester facility, there were no PQ personnel present. No information whatsoever with regard to cargo loading, tank configuration, etc. was

provided to the Tug crew. 519-20, 615, 627-8. The Barge's deep draft was similar to what had been observed on the December trip. 511-12.

ACCEPTED AND REJECTED IN PART: as provided in the Decision and Order.

20. Capt. Rizzo was provided with no information as to the cargo's characteristics or a Material Safety Data Sheet. 519-20.

ACCEPTED AND INCORPORATED

21. Captain Rizzo supervised the deckhands as the Barge was checked and made up for the passage to Baltimore and stayed on the Barge with them after departure to ensure that the mooring lines, etc., were properly secured. 521.

ACCEPTED AND INCORPORATED IN PART, no determination was made regarding Captain Rizzo's supervision over the deckhands' security measures, either prior to departure or once underway.

22. Mate Card was at the control of the Tug as they got underway at approximately 1130 hours. ALJ ¶¶ 1, 8. Mate Card directed the Tug and Barge downriver in the Delaware toward the C&D at a reduced speed until the Captain and deckhands returned to the Tug. 400; 522. Then Mate Card brought the speed up to 11.6-11.7 knots, although the Tug was capable of pushing at 13. 400-01.

ACCEPTED AND REJECTED IN PART, no determination was ever made as to whether the speed of the tug and tow maintained by Mate Card was appropriate given the surrounding conditions.

23. Captain Rizzo observed the tow when it came up to speed, found conditions satisfactory and then left the wheelhouse, inasmuch as the1200-1800 watch is normally stood by the Mate. 400.

ACCEPTED AND INCORPORATED IN PART, as provided in the Decision and Order.

24. The Tug and Barge moved downriver without difficulty, in a normal manner. 49; 401-02.

REJECTED IN PART: as provided in the Decision and Order.

25. The Tug and Barge turned right to head westbound in the C&D, passing the entrance marker, Reedy Point, at 1318 hours. 403; R-1.

ACCEPTED AND INCORPORATED

26. Upon entering the C&D, Mate Card reduced speed to 7.8 -7.9 knots. 408-9.

ACCEPTED AND INCORPORATED IN PART, as provided in the Decision and Order.

27. The Tug and Barge proceeded westbound in the C&D, meeting the eastbound KARA SEA near the Reedy Point Bridge. 237; 404.

ACCEPTED AND INCORPORATED

28. The person in charge of the KARA SEA, an experienced mariner (235) who was completing an eastbound transit of the C&D, observed the PEQUECO II. 237. He did not warn Mate Card of any particular conditions in the C&D. 239.

ACCEPTED AND INCORPORATED IN PART, no determination was ever made regarding communication between Captain Rizzo and the captain of the KARA SEA.

29. As the Tug and Barge proceeded westbound in the C&D past the Reedy Point and railroad bridges, some ice and water came over the raised "headlog," a 3" thick steel bumper-like appurtenance across the bow of the barge. This ice and water washed off in a normal manner. 45, 49-51; 408-9.

ACCEPTED AND REJECTED IN PART: as provided in the Decision and Order.

30. The distance between Reedy Point and the railroad bridge is approximately 6.4 miles. NOAA Chart No. 12277, R-4. According to the times recorded by the Canal dispatcher (R-1), witness Dias, the Tug and Barge proceeded at 8 knots, the reduced speed testified to by Mate Card. 408.

ACCEPTED AND INCORPORATED IN PART, noting the approximate distance between Reedy Point and the railroad bridge is 6.4 miles. However, no determination was made regarding the speed of the tug and tow maintained by Mate Card as he passed the canal dispatcher's office.

31. The Barge is equipped with a centerline running light directly ahead of the No. 1 tank vent, and the latter connects the port and starboard No. 1 cargo tanks with the atmosphere. Several feet forward of the running light stanchion was the anchor holder or "slide" (to port) and anchor (centerline), with the towing wires and bridle on top of that. 412, 415, R-5. The No. 1 tank vent was approximately thirty feet from the bow. 413; R-5. As the Barge proceeded through the C&D in the area just before the Dispatcher's station east of Chesapeake City, no ice was coming in contact with the centerline running light stanchion or the No. 1 tank vent. 56; 415-16; R-5. The ice was washing off and not piling up. 88; 416. Conditions were as anticipated. 416.

ACCEPTED AND REJECTED IN PART: as provided in the Decision and Order.

32. As the Tug and Barge approached the area just east of the Dispatcher's station, Mate Card could see a heavier ice concentration ahead. 419. Mate Card reduced speed to 1.8

knots prior to meeting the heavier ice (422, 427), which he could not avoid (419), and then increased speed to move through it. 420.

ACCEPTED AND INCORPORATED

33. Some ice remained on the deck of the Barge, but did not pile up. 421. No damage to vents or stanchions was observed, and there was no change in the Barge's trim. 421.

ACCEPTED AND REJECTED IN PART: as provided in the Decision and Order.

34. The distance from the railroad bridge to Chesapeake City is 4.7 miles. R-4. Running time was 36 minutes (R-1), for an average speed of 7.9 knots.

ACCEPTED AND INCORPORATED IN PART, noting that the distance between the railroad bridge and Chesapeake City is approximately 4.7 miles with a running time of 36 minutes.

35. The Tug and Barge continued past the Chesapeake City Bridge at the reduced speed of 5.5 knots. 427. Mate Card observed a second heavier patch of ice west of the Chesapeake City Bridge, and again reduced speed even more. 427-28.

ACCEPTED AND INCORPORATED

36. After passing through this second heavier concentration, when Mate Card increased speed, the Barge was slightly down by the head. 428. No damage to lights or vents was observed. 429. Until then, the ice and water were washing off the Barge.

ACCEPTED AND REJECTED IN PART: as provided in the Decision and Order.

37. Mate Card handled the Tug and Barge through the heavier ice in a normal, skillful manner. 52. What ice that did accumulate was not unusual. 68-69.

REJECTED: as provided in the Decision and Order.

38. As soon as Mate Card saw that the Barge's trim had changed, he called Captain Rizzo to the wheelhouse, at approximately 1455. 428, 527-8. This was proper response. 206.

REJECTED: as provided in the Decision and Order.

39. Captain Rizzo observed the change in trim (430), reduced speed to bare steerage-way (431, 524) and called the Moran office in Philadelphia (432, 435; R-6), requesting that the office notify the Coast Guard. 526. By this time the Tug and Barge were just west of Dan's Yard. 524. Backing up or turning around to reach the Yard was a practical impossibility (411, 424; 536) and the Yard was not accessible anyway because of draft, ice and other restrictions. 425.

ACCEPTED AND REJECTED IN PART, as provided in the Decision and Order.

40. From the wheelhouse, Captain Rizzo observed the ice on the Barge, but saw no damage to any vents or stanchions. 526. He and the rest of the crew also observed what appeared to be cargo escaping from the Barge. 51; 526. Ice was not seen around the No. 1 tank vent area. 91.

ACCEPTED AND REJECTED IN PART, as provided in the Decision and Order.

41. Captain Rizzo, taking the deckhand, Vance Holly, with him, went out on to the Barge, and instructed the deckhand to remove ice. 529. Captain Rizzo went up to the No. 1 vent ("touched it") and observed no damage to it or the running light stanchions. 531, 533-4. The deckhand did not observe damage except for two lifeline stanchions, and a wire washed partially overboard. 94, 117. Any damage to the vent would have been seen. 118.

ACCEPTED AND REJECTED IN PART, as provided in the Decision and Order. In addition, no determination was made as to whether Captain Rizzo actually located and touched the No. 1 tank vent.

42. The forward-most space on the Barge, the "rake tank," was inaccessible (532) and Captain Rizzo thought it both pointless and unsafe to open and inspect the cargo tanks. 533; 547-8. He thought it dangerous because he had been given no information on the cargo, beyond that it was a chemical (532-3), and pointless because he had no ullages to use as a starting point or reference. 547-8. There was what appeared to be cargo leaking from the hull of the Barge on the port side, 35' aft of the bow. 530, 535. There was no cargo on deck. 523.

ACCEPTED AN INCORPORATED IN PART, as provided in the Decision and Order.

43. Subsequent to the sinking, the Barge was raised and repaired. There is a steel patch on the port side hull in the vicinity of where the cargo was seen escaping. 536-545.

ACCEPTED AND REJECTED IN PART, no determination was made as to whether a steel patch was in fact placed on the barge's port side hull. Similarly, there was no determination regarding a period of time in which this alleged repair was made.

44. After removing the ice from the Barge, Captain Rizzo returned to the Tug's wheelhouse to call the Moran office a second time. 548-9. The Tug and Barge had to continue pushing ahead and clear the C&D -- there was no place to tie up or beach (ground) the Barge until the Barge was through and clear of the Canal. 546-8. Beaching was discussed with the Moran office, but Captain Rizzo decided it was a more dangerous option, compared to proceeding slowly to Baltimore. 549-53.

ACCEPTED AND REJECTED IN PART: as provided in the Decision and Order.

45. The Tug and Barge continued to proceed at the slowest safe speed of 2.5 to 3 knots (443) westbound, and at Sandy Point (443, 557) encountered a third patch of heavier ice. By this time Captain Rizzo had returned to the wheelhouse. 556. It was at this time that the first damage to a running light stanchion was observed. 557.

ACCEPTED AND REJECTED IN PART: as provided in the Decision and Order.

46. The Tug and Barge proceeded slowly westbound to an area identified as the "triangle," bounded, approximately, by buoys numbered 18-20. 445; 557-60. There, at the first geographic opportunity to do so (445-6), the tow was reconfigured, so as to tow the Barge astern on a short hawser. The Barge's stern was rigged as the "working bow." 560-1. Captain Rizzo was informed that the Coast Guard was involved in this decision not to attempt a beaching, but to reverse tow. 630.

ACCEPTED AND REJECTED IN PART: as provided in the Decision and Order.

47. Captain Rizzo was informed that the Barge had sufficient reserve buoyancy to float if one cargo tank was breached. 552. Captain Rizzo had no reason to doubt this information. 219.

ACCEPTED AND REJECTED IN PART: as provided in the Decision and Order.

48. The Coast Guard was informed of the plan to tow the Barge, instead of pushing or beaching it, and did not object. 674-5.

REJECTED: as provided in the Decision and Order.

49. Once on the hawser, the Barge's trim appeared stabilized and it towed satisfactorily, (447, 561) for an hour. 448. The Barge was towed at the reduced speed of approximately 4.7 knots. 672. Once south of Turkey Point (NOAA Chart No. 12274), the Barge took a sudden, unanticipated list, which was immediately observed by the respondents. Mate Card turned right, out of the channel, at full speed. 666. The Barge sank on the western edge of the Turkey Point - Old Town Point Wharf Channel. ALJ-1 ¶ 9.

ACCEPTED AND REJECTED IN PART: as provided in the Decision and Order.

50. There was no measured or objective evidence of pollution by sodium silicate as a result of the Barge's sinking. ALJ-1, ¶ 5.

ACCEPTED AND INCORPORATED

APPENDIX C

UNITED STATES COAST GUARD v. MAYLON E. GREEN
DOCKET NUMBER: 00-0826
PA NUMBER: 00002131

COAST GUARD'S PROPOSED FINDINGS OF FACT:

1. On January 30, 2000, Dan Card was serving as operator aboard the tug JOHN TURECAMO. During this time period, Mr. Card was the holder of, and serving under the authority of, his Coast Guard issued License (No. 770050). *(Stipulations)*

ACCEPTED AND INCORPORATED

2. On January 30, 2000, Domenic Rizzo was serving as master aboard the tug JOHN TURECAMO. During this time period, Capt. Rizzo was the holder of, and serving under the authority of, his Coast Guard issued License (No. 776162). *(Stipulations)*

ACCEPTED AND INCORPORATED

3. The JOHN TURECAMO is a rated 3000 horsepower uninspected towing vessel with official number D544747. *(Stipulations)*

ACCEPTED AND INCORPORATED

4. The barge PEQUECO II is a 170' x 35' x 10'6" barge dedicated to the carriage of sodium silicate, a Category C noxious liquid substance which may be carried by uninspected barges operating only on inland routes. The PEQUECO II is not inspected or certificated by the Coast Guard. *(I.O. Exhibits C, H and J).*

ACCEPTED AND INCORPORATED

5. The PEQUECO II has a single skin hull with rakes (voids) fore and aft of the cargo block, which has 3 pairs of cargo tanks. Each pair of cargo tanks shares one 18" x 30" rectangular vent, which is located on the centerline. The deck has some sheer at both rakes, gradually increasing the depth of the barge from 10'6" to 11'6" at the extreme bow and stern. The barge also has a 2' headlog. *(I.O. exhibits H and J)*

ACCEPTED AND INCORPORATED

6. For the transit on January 30, 2000, the barge PEQUECO II was loaded with sodium silicate. *(Stipulations)*

ACCEPTED AND INCORPORATED

7. Per Annex II of the International Convention for the Prevention of Pollution from Ships (MARPOL), sodium silicate is classified as a Category C noxious liquid substance, which is defined as:

   - Noxious liquid substances which if discharged into the sea from tank cleaning or deballasting operations would present a minor hazard to either marine resources or human health or cause minor harm to amenities or other legitimate uses of the sea and therefore require special operational conditions. *(I.O. Exhibits C & H)*

ACCEPTED AND INCORPORATED

8. Throughout the transit and up until the sinking of the PEQUECO II, neither Mr. Card or Mr. Rizzo were aware of the characteristics of the product or the arrangement and configuration of the cargo tanks on the barge they were towing. *(Transcript Pages 49, 526:14, 532:18, 616:7 et seq.)*

ACCEPTED AND INCORPORATED

9. A Broadcast Notice to Mariners (BAL-BNM-036-00) was broadcast by the Coast Guard over VHF-FM channels 16 and 22A at or around 0300, 0705, 1130, 1600 and 2030 on January 30, 2000. This Broadcast detailed ice conditions on the waters of the Northern Chesapeake Bay, including the Chesapeake and Delaware Canal as follows:

   - As of 2000 on January 29, 2000, the specific ice conditions in the Chesapeake and Delaware canal were "90% coverage, up to 1 ft", pack ice rafting."
   - As of 2000 on January 29, 2000, the specific ice conditions from Welch Point to Worton Point were "90% coverage 8", pack ice."
   - As of 2000 on January 29, 2000, the specific ice conditions from Worton Point to Tolchester Beach were "100% coverage 4 – 6", pack ice."
   - As of 2000 on January 29, 2000, the specific ice conditions from Tolchester Beach to Swan Point were "70% coverage 1 ft", pack ice."
     (Stipulations)

ACCEPTED AND INCORPORATED

10. Mr. Card was not aware of the Coast Guard's Broadcast Notice to Mariners detailing the ice conditions for the waterways along his intended route. *(Tr. 486:17-587:3)*

ACCEPTED AND INCORPORATED

11. The predicted current in the C&D canal for 30 January 2000 was:
    - 1204 EST 0.06 knots slack, flood begins
    - 1440 EST 1.98 knots max flood
    - 1810 EST –0.05 knots slack, ebb begins
      (Stipulations)

ACCEPTED AND INCORPORATED, noting that the predicted current in the canal on the day of the incident ranged from –0.05 to 1.98 knots.

12. The tug CYNTHIA MORAN (D273285), a rated 1750 horsepower uninspected towing vessel, is normally used to tow the PEQUECO II. *(Tr. 513:7)*

ACCEPTED AND INCORPORATED, noting that the tug CYNTHIA MORAN, which was not employed on the day of the casualty, is normally used to tow the PEQUECO II.

13. Mr. Card was operating the tug JOHN TURECAMO on January 30, 2000, from the time it departed the PQ Corporation facility in Chester, Pennsylvania at approximately 1130 until the PEQUECO II sank. *(Stipulations)*

ACCEPTED AND INCORPORATED

14. Until the tow was rearranged on or about 1645, the tug JOHN TURECAMO was pushing the PEQUECO II from astern. *(Stipulations)*

ACCEPTED AND INCORPORATED

15. On getting underway, the freeboard of the PEQUECO at midship was estimated by Mr. Card at somewhere between a 10" and a foot. *(Tr. 455).* The barge does not have a loadline. *(Tr. 398:13, I.O. Exhibits H and J)*

ACCEPTED AND INCORPORATED

16. As the JOHN TURECAMO pushed the PEQUECO II from astern during the transit from Chester, Pennsylvania to its intended destination of Baltimore, Maryland on January 30, 2000, the bow of the PEQUECO II dipped, allowing water and ice to come over the headlog and onto the deck of the barge. The dipping, or "burying" action could be easily seen from the tug. *(Tr. 35 and 44)*

ACCEPTED AND INCORPORATED IN PART: as provided in the Decision and Order.

17. At or around 1330 on January 30, 2000, the JOHN TURECAMO and PEQUECO II passed the tug KARA SEA. The KARA SEA was leaving the C&D Canal as the JOHN TURECAMO was entering. Mr. John DiFranks, operator of the KARA SEA, observed an estimated 1' of freeboard on the PEQUECO II. Additionally, he noticed water and large chunks of ice going over the bow and traveling approximately 20-30' aft on the deck of the barge. *(Tr. 238)*

ACCEPTED AND INCORPORATED

18. At or around 1435 on January 30, 2000, while proceeding at approximately 5 knots just east of Chesapeake City *(Tr. 459:8)*, the JOHN TURECAMO pushed the PEQUECO II through a large sheet of ice (referred to in the record as "increased ice") approximately five (5) inches thick. *(Tr. 463:13)*

ACCEPTED AND INCORPORATED

19. At or around 1442 on January 30, 2000, Mr. Al Dias, who was working at the C&D canal dispatcher's office in Chesapeake City from 0800-1600 saw the JOHN TURECAMO and PEQUECO II pass. He noticed a lot of ice on the deck of the PEQUECO II and estimated that approximately 85% of the canal was covered with sheets 8 - 12" thick. *(Tr. 265:21- 266:5)* Mr. Dias characterized the ice on the PEQUCO II's bow as she entered the Canal as unusual. Further, he was concerned about the buildup and minimal freeboard. *(Tr. 263, 270:6-18)* The C&D canal traffic log maintained by Mr. Dias indicates the JOHN TURECAMO and PEQUECO II passed Reedy Point at 1318, the "R.R. Bridge" at 1406, Chesapeake City at 1442, and Town

Point at 1617. A general entry under the "remarks" portion of the log indicated the weather was "clear/calm". *(Respondents' Exhibit 1)*

ACCEPTED AND INCORPORATED IN PART: no determination was made regarding the weather status contained in the canal traffic log.

20. At or around 1445 on January 30, 2000, while proceeding at approximately 5 knots just west of Chesapeake City, the JOHN TURECAMO pushed the PEQUECO II through another large sheet of ice (referred to in the record as "second ice" *Tr. 429*) approximately five (5) inches thick. *(Tr. 463:16)*

ACCEPTED AND INCORPORATED IN PART: no determination was made regarding the actual thickness of the second patch of ice encountered in the canal.

21. At or around 1445, after striking the (second) sheet of ice just west of Chesapeake City, Mr. Card noticed the bow of the PEQUECO II dipped and didn't want to wash or come back up despite changes in speed. *(Tr. 428 & 430)*

ACCEPTED AND INCORPORATED

22. Shortly after 1445 on January 30, 2000, Capt. Rizzo was woken. *(Tr. 435; 527)*

ACCEPTED AND INCORPORATED

23. Capt. Rizzo boarded the barge and noticed that the freeboard at the bow had decreased to approximately 2" *(Tr. 489:18, 490*) and the stanchions on both the port and starboard sides were now bent, with a line dragging in the water. He saw pieces of ice up to 18 inches thick on the barge. *(Tr. 530:3)* Approximately 35' aft of the headlog, on the port side, Capt. Rizzo saw what appeared to be a milky-white substance leaking into the water. He thought that the hull was breached and cargo was leaking. *(Tr. 535)*

ACCEPTED AND INCORPORATED

24. Both Respondents saw one of the PEQUECO's installed running lights get sheared off by ice coming over the bow. *(Tr. 442, 491 and 557)*

ACCEPTED AND INCORPORATED IN PART: as provided in the Decision and Order.

25. Capt. Rizzo and the Operations Manager discussed Capt. Rizzo's recommendation to intentionally ground, or "beach", the barge outside of the canal. *(Tr. 549 & 557:13)* Rather than ground the barge at this time, Capt. Rizzo ultimately made the decision to break out of the notch, tow the barge stern first, and continue to Baltimore. *(Tr. 553; 658 et. seq.)* Additional tugs were dispatched to assist the JOHN TURECAMO, *(Tr. 582:9)* However, their ETA on scene was unknown *(Tr. 653)* and not taken into account during the decision to proceed to Baltimore.

ACCEPTED AND INCORPORATED IN PART: as provided in the Decision and Order.

26. At approximately 1545, Capt. Rizzo boarded the PEQUECO II to reconfigure the tow. He noticed that there was no longer any freeboard at the bow. *(Tr. 634)* The crew rigged the tow with a short hawser (approx. 170') from the tug to the starboard quarter of the PEQUECO II. In this configuration, the barge appeared stable and they began to proceed at approximately 5 knots. Although the ice which had accumulated on the bow washed off, the barge freeboard did not significantly increase. *(Tr. 42)*

ACCEPTED AND INCORPORATED IN PART: as provided in the Decision and Order.

27. At approximately 1750, Capt. Rizzo was in the galley and saw the barge suddenly roll to starboard. He ran to the wheelhouse to notify Mr. Neff and told Mr. Card to head northwest, in an attempt to clear the channel. *(Tr. 666)*

ACCEPTED AND INCORPORATED IN PART: as provided in the Decision and Order.

28. Shortly afterwards, they were no longer able to make headway, the heel decreased, the stern rose up in the air, the towline was cut, and the barge slid under the water. *(Tr. 98)*

ACCEPTED AND INCORPORATED

29. At approximately 1810 on January 30, 2000, the PEQUECO II sank and settled on the western edge of the bottom of the Turkey Point to Old Town Point Wharf Channel, in approximate position 39-26.385 N Latitude and 076-00.141 W Longitude. *(I.O. Exhibit H)*

ACCEPTED AND INCORPORATED IN PART: as provided in the Decision and Order.

30. Approximately 100 gallons of diesel oil were discharged into the Chesapeake Bay from the diesel tank that was on the deck of the PEQUECO II. *(I.O. Exhibit H)*

ACCEPTED AND INCORPORATED

31. The PEQUECO II was raised on March 5, 2000. *(I.O. Exhibits H and J)*

ACCEPTED AND INCORPORATED

32. On March 15, 2000, while it was dry-docked at Lyons Shipyard in Norfolk, Virginia, a joint survey of the PEQUECO II was conducted by representatives of both PQ Corporation and Moran Towing. The barge was closely examined and air testing was conducted in the forward tanks and rake. *(Tr. 159 & 167)* There were no penetrations to the side shell or bottom plating. *(Tr. 158 & 332)* However, the vent for the two forward most cargo tanks (1 port and 1 starboard) was severely damaged and separated from the deck, creating an 30" x 18" hole in the deck over tanks 1 port and starboard. Similarly, the vent for the forward rake and the stanchion for the starboard running light were missing, leaving two holes approximately in the deck over the forward rake. Both surveyors attributed the flooding to these openings. (*Tr. and 166 and 332*) Additionally, many stanchions for the lifelines on both the port and starboard sides were missing or significantly bent aft, indicating they had been struck. *(Tr. 164) (I.O. Exhibits D, E, F, G, H & J)*

ACCEPTED AND INCORPORATED, noting that the joint survey consisted of, among other things, air testing in the forward tanks and rake.

33. All of the observed damage is attributed to the impact from the ice which was coming on the deck of the barge as it was pushed through the water during the transit on 30 January2000. *(Tr. 163, 325 & 331)*

ACCEPTED AND INCORPORATED

34. The proximate cause of the PEQUECO II sinking was water ingress into the forward rake and #1 cargo tank *(IO Exhibit H).* The barge would not have sunk if water and ice had not been allowed on deck. *(Tr. 331 & 337)*

ACCEPTED AND INCORPORATED

35. The cost to repair the damages sustained by the barge as a direct result of sinking was approximately $149,790. *(I.O. Exhibits H and J)*

ACCEPTED AND INCORPORATED