



[REDACTED]
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[REDACTED]

16593
June 17, 2002

RE: MV99005739
[REDACTED]
[REDACTED],
[REDACTED]
\$1,100.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Case MV99005739, which includes your appeal on behalf of the owners of the [REDACTED] ([REDACTED]). The appeal is from the action of the Hearing Officer in assessing a \$1,100.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 117.5	Failure to open drawbridge promptly and fully when request to open was given in accordance with 33 CFR Part 117 Subpart A.	\$1,100.00

The violation occurred on November 14, 1999, when the M/V [REDACTED] was delayed at the [REDACTED], located at [REDACTED] on the Upper Mississippi River, from approximately 12:40 p.m. to 1:15 p.m.

On appeal, you do not deny that the drawbridge was not opened in a timely fashion; however, you contend that the delay was unavoidable. To that end, you contend that the #6 [REDACTED] train that had stopped before crossing the bridge, "had reached the point where the bridge could not be lined back for opening before it crossed, nor reversed to a position to where the bridge could be opened." Your appeal is denied for the reasons described below.

First, a brief recitation of the facts surrounding this incident is in order. On November 14, 1999, at 12:30 p.m., the pilot of the M/V [REDACTED] requested an opening of the [REDACTED], at [REDACTED] on the Upper Mississippi River. At 12:40 p.m., the bridgmaster informed the pilot that the bridge could not be immediately opened because it was aligned for a train. Subsequently, the train experienced mechanical problems at a location approximately one mile from the bridge and was delayed. The train did not clear the drawbridge until 1:11 p.m. The bridge opened to maritime traffic at 1:15 p.m., approximately 45 minutes after the M/V

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[REDACTED] called for the opening. Information contained in your letter of January 31, 2000 to [REDACTED] indicates a delay of no more than 25 minutes since the M/V [REDACTED] indicated an arrival at the bridge at approximately 12:51 p.m. This delay led to the assessment of a civil penalty by the Hearing Officer.

33 CFR 117.5 makes clear, in relevant part, that “[e]xcept where otherwise required by this subpart, drawbridges shall open promptly and fully for the passage of vessels when a request to open is given.” With no applicable special operating requirements for the drawbridge in issue, pursuant to Coast Guard regulation, that bridge is required to be opened on demand. Although this provision plainly states that drawbridges shall be promptly and fully opened upon a proper request, 33 CFR 117.9 indicates that any delay in opening shall not be unreasonable. Reading these two provisions together, if it can be shown that the delay was reasonable, then there can be no violation of 33 CFR 117.5. In fact, 33 CFR 117.9 provides an example of what would constitute a reasonable delay—trains in a block where the draw is incapable of being opened to navigation until the train has passed or someone has unlocked the drawbridge controls. Thus, it must be determined if the delay caused to the M/V [REDACTED] was reasonable or not.

In the instant case, I find that you have not satisfied your burden of proving that the delay was reasonable. When the case file was originally reviewed by the Hearing Officer, the only explanation provided as to why the bridge was not opened for the M/V [REDACTED] was that the bridge had been aligned to allow the transit of [REDACTED] #6. It was not made clear if the bridge could not physically be opened because of the train being in the block or if it was just too much trouble to re-open the bridge to navigation once aligned. There is evidence in the file to suggest the latter. The Coast Guard file indicates that the failure to open the bridge violated a long-standing agreement that if any train, having already been given the bridge, was to stop for any reason whatsoever before arriving at the bridge, the bridge was to be immediately given to any waiting vessels. This indicates that the bridge could readily be opened even if a train was in the block. Your failure to respond to the Hearing Officer’s letter dated May 11, 2001 was a lost opportunity to fully address this point. While your appeal letter dated July 31, 2001, states that the bridge could not be lined back for opening nor reversed to a position to where the bridge could be opened, it really was too little, too late. It was sketchy at best and insufficient for me to reverse the Hearing Officer’s finding. Therefore, I find the violation proved. The only issue remaining is whether mitigation of the penalty assessed by the Hearing Officer is appropriate under the circumstances of this case. I do not believe that it is. The record indicates that the [REDACTED] has an extensive history of committing violations of 33 CFR 117.5. Indeed, the record indicates that there were numerous cases of violations in the past several years. The narrative statements concerning the previous violations indicate that the violations each involved situations where vessels were delayed in favor of trains. Given that navigation rights take precedence over the rights of surface traffic and [REDACTED]’s consistent violation of the regulation, I will not mitigate the penalty assessed by the Hearing Officer.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer’s determination that the violation of 33 CFR 117.5 occurred and that [REDACTED] is the responsible party. The Hearing Officer’s decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$1,100.00 assessed by the Hearing Officer appropriate in light of the seriousness of the violation.

RE: CIVIL PENALTY

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In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$1,100.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard - Civil Penalties
P.O. Box 100160
Atlanta, GA 30384

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 5 % accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Sincerely,

//S//

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

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