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

August 14, 2002

RE: MV99005662
[REDACTED]
M/V [REDACTED]
\$16,000.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Case MV99005662, which includes your appeal on behalf of [REDACTED] as owners of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$16,000.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 USC 2115	Failure to implement or conduct chemical testing for dangerous drugs or for evidence of alcohol.	\$5,000.00
46 USC 2302(a)	Operating a vessel in a negligent or interfering manner that endangers the life, limb or property of a person.	\$1,000.00
46 CFR 4.05-1	Failure to give immediate notice of a marine casualty involving the occurrence listed in 46 CFR 4.05-1.	\$10,000.00

The violations were first noted on June 8, 1999, during a Coast Guard investigation of a marine casualty that occurred while the M/V [REDACTED] was moored to the Mobile Offshore Drilling Unit (MODU) Cliffs Drilling 153, located at East Cameron Block 38, in the Gulf of Mexico.

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On appeal, you do not deny that [REDACTED] ([REDACTED]) committed violations of either 46 USC 2115 or 46 USC 2302(a); however, you deny the company's alleged violation of 46 CFR 4.05-1. By reading 46 USC 6101 and 46 CFR 4.05 conjunctively, you conclude that [REDACTED]'s filing of Coast Guard Form 2692 within three days of the incident met the Coast Guard's marine casualty reporting requirements. You cite 46 CFR 4.05-10(b) and contend that since [REDACTED]'s filing of Form 2692 was "without delay", that filing met the notice requirements of 46 CFR 4.05-1(a). You conclude that "[b]ecause [REDACTED] timely submitted the CG-2692, the immediate notice requirement of §4.05-1 was satisfied." Your appeal is denied for the reasons described below.

Before I begin, I believe a brief recitation of the facts is in order. On June 7, 1999, the M/V [REDACTED] departed from the port of Fouchon, Louisiana, for the MODU Cliffs Drilling 153, located at East Cameron Block 38. At or about 10:30 p.m. on the evening of June 7, 1999, personnel from the M/V [REDACTED] contacted the drilling rig to discuss the vessel's estimated time of arrival and to inform the rig that the vessel's bow thruster was not operating correctly. During discussion of the bow thruster, the Master of the M/V [REDACTED] asked the Superintendent of the drilling rig if the vessel would be allowed to anchor at the site. The Superintendent later indicated that the vessel could anchor at the site, if it did so on the starboard bow of the rig, where there would be no interference with pipelines.

The M/V [REDACTED] arrived at the drilling rig at approximately 3:00 a.m. on June 8, 1999. Having already been told to anchor, the vessel requested mooring lines so that it could be tied to the rig while anchored. At 3:30 a.m., the vessel's anchor windlass failed, disabling both of the vessel's anchors. Even though the vessel's bow thruster was not operating correctly, the vessel's master chose to use the bow thruster and two stern lines, not the vessel's anchor, to maintain the vessel's position at the rig. While the vessel was moored, there was a five to seven knot current and an approximate wind speed of 15 knots from the vessel's port side. Neither the failure of the vessel's anchor nor the problems with the vessel's bow thruster were reported to either the rig or the Coast Guard.

In the early morning hours of June 8, 1999, the M/V [REDACTED] offloaded four personnel from [REDACTED] ([REDACTED]), chartered passengers of the vessel, including [REDACTED] and [REDACTED]. The disembarked [REDACTED] personnel went onto the rig to set up equipment for pumping operations that were to occur later that morning. At approximately 9:20 a.m., the vessel's bow thruster failed. Because of prevailing winds and a strong current, the vessel quickly drifted to starboard. Because the vessel's anchor was inoperable, its crew could not mitigate the drift by deploying the anchor. The stern/port mooring line was severed due to excessive strain caused by the vessel's drift. The severed mooring line drifted to the vessel's port side and fouled the propeller, temporarily impairing operation of the port main engine. The vessel continued its hard drift to starboard and allided with the rig's structure. The vessel was temporarily held in position against the rig by the prevailing current and the coflex hose. The coflex hose extended from a reel on the stern of the vessel upward toward the rig's main production area and acted, temporarily, as a restraining device for the vessel while it was adrift. The vessel pulled against the coflex hose with a high degree of tension, which the master was unable to lessen because of the vessel's fouled propeller. When the master attempted to release more coflex hose from the reel, the brake on the reel did not

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deactivate and no hose was released. At that time, the master informed rig personnel of the emergency that existed on the M/V [REDACTED].

The four [REDACTED] personnel previously embarked to the rig responded to the master's call and began undertaking efforts to forcibly disconnect the coflex hose from the rig. [REDACTED], a [REDACTED] employee stepped into the bight of the hose between the coflex hose and the V-door backstop while attempting to disconnect the hose. The coflex hose mounting hardware broke due to the excessive tension caused by the vessel and the vessel immediately pulled the hose. The hose pinned [REDACTED] to the V-door backstop. Both of [REDACTED]'s legs were severed during the incident. Another [REDACTED] employee, [REDACTED] was injured by the run away coflex hose. As the hose was freed from the rig, [REDACTED] saw that it was being pulled toward him. As he attempted to jump out of the way, the hose made contact with his left boot and severely damaged his left foot. Both [REDACTED] and [REDACTED] were taken by helicopter from the drilling to the nearest hospital for immediate medical attention. Eventually, both of [REDACTED]'s legs were amputated below the kneecaps while [REDACTED] underwent several surgeries to save his foot.

Following the serious injuries of [REDACTED] and [REDACTED], the drilling rig terminated all drilling operations indefinitely. The M/V [REDACTED] departed the rig at 2:45 p.m. and returned to the Port of Cameron, LA by 7:00 p.m. on June 8, 1999. The vessel did not inform the Coast Guard of the incidents that occurred at the drilling rig until 3:50 p.m.

Since you do not deny the violations of either 46 USC 2115 or 46 USC 2302(a), I consider them proved. The only issue remaining is whether a violation of 46 CFR 4.05-1 occurred. As you have noted, 46 CFR 4.05-1(a) makes clear that “[i]mmediately after the addressing of resultant safety concerns, the owner, agent, master, operator, or person in charge, shall notify the nearest Marine Safety Office, Marine Inspection Office or Coast Guard Group Office whenever a vessel is involved in a marine casualty.” In relevant part, 46 CFR 4.05-1 states that the term “marine casualty” includes the following:

- (3) A loss of main propulsion, primary steering, or any associated component or control system that reduces the maneuverability of the vessel; or
- (4) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding of or damage to fixed fire-extinguishing systems, lifesaving equipment, auxiliary power-generating equipment, or bilge-pumping systems.
- (6) An injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed on board a vessel in commercial service, that renders the individual unfit to perform his or her routine duties.

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In the instant case, it is clear that several reportable marine casualties occurred. My examination of the case file indicates that you do not contest that this incident constituted a “marine casualty.” The failure of the vessel’s bow thruster and the fouling of its port side main propeller (fouled by the severed mooring line) were losses of propulsion and primary steering that reduced the maneuverability of the vessel. In addition, the failure of the vessel’s anchor windless was an occurrence that adversely affected the vessel’s seaworthiness. Finally, the injuries of [REDACTED] and [REDACTED] were injuries that required professional medical treatment. Since the aforementioned occurrences fall within the occurrences denoted as reportable marine casualties in 46 CFR 4.05-1, they were, pursuant to the regulation, required to be immediately reported to the nearest Marine Safety Office, Marine Inspection Officer or Coast Guard Group Office.

You contend that, because [REDACTED] submitted Coast Guard Form 2692 to the Coast Guard within three days of the relevant incidents, the company met the reporting requirements of 46 USC 6101 (within 5 days). You further contend that the marine casualty reporting requirements of 46 CFR 4.05-1 are “modified” by the written report requirements contained in 46 CFR 4.05-10. As you noted, 46 CFR 4.05-10 states:

- (a) The owner, agent, master, operator, or person in charge shall, within five days, file a written report of any marine casualty. This written report is in addition to the immediate notice required by §4.05-1. This written report must be delivered to the Coast Guard Marine Safety Office or Marine Inspection Office. It must be provided on form CG-2692...
- (b) If filed without delay after the occurrence of the marine casualty, the notice required by paragraph (a) of this section suffices as the notice required by §4.05-1(a).

You conclude that because [REDACTED] filed CG Form 2692 within three days of the incident, that filing was “without delay” and that, per 46 CFR 4.05-10(b), the reporting requirement of 46 CFR 4.05-1(a) was satisfied. To support your position, you rely on the Commandant’s decision in the *Bracken* case. Appeal Decision 2523 (BRACKEN). I do not agree with your conclusions and find your reliance on the *Bracken* case to be misplaced.

I initially note that the wording of 46 CFR 4.05-1 has been changed since the Commandant’s decision in the *Bracken* case. This change was the direct result of the tragic derailment of Amtrak’s Sunset Limited passenger train near Mobile, Alabama on September 22, 1993. The derailment occurred following an allision by an uninspected towing vessel with a railroad bridge that altered its alignment. The Coast Guard investigation of this incident led to a study entitled Review of Marine Safety Issues Related to Uninspected Towing Vessels. This study contained a number of recommendations to enhance maritime safety. One of the recommendations called for a regulatory project to improve procedures whereby information concerning allisions and other hazardous conditions is promptly reported. This recommendation was based on a finding that there was a substantial potential for misunderstanding the then-existing regulations as to which incidents required immediate notice, by whom, and to whom.

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To clarify matters, changes were made to both 46 CFR Part 4 and 33 CFR Part 160 in separate rulemaking projects in 1994. 46 CFR 4.05-1 was changed to require that specified marine casualties be reported **immediately** after addressing resultant safety concerns. The prior iteration of 46 CFR 4.05-1 required that notice be given “as soon as possible” in specified situations. Clearly, the new wording conveys more urgency. In addition, the aforementioned study also found that the phrase “as soon as possible” allowed for considerable personal interpretation and, thus, did not effectively promote maritime safety. The use of the word “immediate” is much less prone to varying interpretation. Quite simply, the report must be provided immediately after safety concerns have been addressed. That clearly was not done in this case. Although the incident in issue occurred at approximately 9:20 a.m., [REDACTED] did not notify the Coast Guard until 3:50 p.m., more than six hours later. Moreover, the Coast Guard report of the incidents indicates that “[c]ircumstantial evidence indicates that immediate safety concerns had been addressed within 30 minutes...on or about 9:50 a.m.” This, in no way, can be regarded as an immediate report.”

This brings us to the requirement of 46 CFR 4.05-10 which requires the filing of a written report of a marine casualty within five days. This is a separate and distinct requirement from the immediate notice requirement of 46 CFR 4.05-1(a). Indeed, 46 CFR 4.05-10 makes clear that “[t]his written report is in addition to the immediate notice required by §4.05-1.” In essence, two reports of the marine casualty are required: 1) an initial notification (presumably bereft of all of the information required by CG Form 2692) immediately after any safety concerns are addressed; and 2) a CG Form 2692. However, 46 CFR 4.05-10(b) provides that when the CG Form 2692 is filed “without delay”, it will satisfy the initial reporting required by 46 CFR 4.05-1. I believe that the purpose of this provision is that, when a CG Form 2692 is filed immediately after any safety concerns are addressed, that form will meet the reporting requirements of both 46 CFR 4.05-1 and 46 CFR 4.05-10. That certainly did not happen in this case. In a situation involving a hazardous condition, such as the Amtrak incident, submission of a written report that is not immediate could have catastrophic consequences. Even a one hour delay could prove to be disastrous. Thus, while the regulation does not specifically define what the phrase “without delay” means, I believe that the history of these provisions makes clear that there is little, if any, time distinction between the two reporting requirements. In this case, Form 2692 would have to have been received at approximately 9:50 a.m. on June 8, 1999. Since that form was not submitted to the Coast Guard until three days later, the notification contained therein was not “without delay” and; therefore, does not satisfy the requirement of 46 CFR 4.05-10(b).

As previously indicated, I find Appeal Decision 2523 (BRACKEN) unpersuasive. The problem for the Coast Guard in *Bracken* was its evidentiary failure to prove delay on the part of the Appellant. The Commandant noted that there was nothing in the record to indicate whether Appellant could “have reasonably filed the form in a more expeditious manner.” Here, the evidence shows that the safety concerns were quickly addressed and the vessel was ready to resume operations several hours before the approximate 3:50 p.m. notification was made by ERT. A written notification that arrives three days later certainly does not satisfy the “without delay” requirement of 46 CFR 4.05-10(b) under the facts of this case.

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Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations 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 \$16,000.00 penalty, rather than the \$33,600.00 maximum permitted by statute to be appropriate in light of the circumstances of the case.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$16,000.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

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

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 3% 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, Coast Guard Hearing Office
Commanding Officer, Coast Guard Finance Center