

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD  
COMPLAINANT,

vs.

License No. 886918

and

Merchant Mariner's Document  
No. 439 76 1432

Issued to:

James E. Callais

Respondent

Docket No. 00-0549

PA No. 00001546

DECISION AND ORDER

Before: Archie R. Boggs  
Administrative Law Judge

PRELIMINARY STATEMENT

This proceeding is brought pursuant to the authority contained in 5 USC 551-559; 46 USC Chapter 77; 46 Code of Federal Regulations, Parts 5 and 16; and 33 CFR Part 20.

James E. Callais was served with a Complaint dated 30 August 2000 which was issued by U.S. Coast Guard Investigating Officer CWO Gerald Philbrook, Marine Safety Office Morgan City, LA.

The statutory authority is 46 USC 77 04 (c) "Use of or Addiction to the Use of Dangerous Drugs" and the regulatory authority is 46 CFR 5.35.

The factual allegations are that on 25 June 2000 while serving as master of the M/V Susan W the Respondent wrongfully refused to submit a urine specimen for a reasonable cause drug and alcohol test as required by E. N. Bisso and Son, Inc.

On 8 September 2000 Mr. Callais through counsel Scotty E. Chabert, attorney at law, Cut Off, LA. filed an Answer admitting the jurisdictional allegations and denying the factual allegations. He requested a hearing.

A hearing was held on 29 November 2000 at the Marine Safety Office, 800 David Drive, Morgan City.

In support of the Complaint the Investigating Officer introduced in evidence the testimony, of (1) George Flanagan, operations manager for E. N. Bisso and Son, Inc. (2) Robert Albe, relief captain on the M/V Susan W on a voyage from New Orleans to Booth Bay Harbor, Maine; and (3) Edward W. Ryaken, physician's assistant at St. Andrews hospital, Booth Bay Harbor.

In addition to the testimony of the three (3) aforementioned witnesses the Investigating Officer introduced in evidence thirteen (13) exhibits.

I.O. Exhibit No. 1 – a letter from the Investigating Officer addressed to Mr. Callais which indicates that the Complaint was served on Mr. Callais by certified mail.

I.O. Exhibit No. 2 – a U.S. Postal Service return receipt No. 177482207 which indicates that Mr. Callais was properly served.

I.O. Exhibit No. 3 – a copy of a three page handwritten statement dated 8/26/00 signed by Captain James E. Callais.

I.O. Exhibit No. 4 – a copy of a letter from George D. Flanagan addressed to the U.S. Coast Guard Marine Safety Office, New Orleans, which notified the Coast Guard that Mr. Callais “refused to submit to a probable cause DOT Drug and Alcohol Screening on June 25, 2000.”

I.O. Exhibit No. 5 – a copy of a certificate of training from Global Safety and Security Inc., dated 23 October 2000 which George Flanagan holds.

I.O. Exhibit No. 6 – another certificate of training issued to George Flanagan.

I.O. Exhibit No. 7 – a copy of E. N. Bisso and Son, Inc., rules and regulations.

I.O. Exhibit No. 8 - a statement signed by Captain Callais indicating that he read the rules and agreed to abide by them.

I.O. Exhibit No. 9 – a copy of a written memorandum from Mr. Flanagan addressed to Walter Kristiansen.

I.O. Exhibit No. 10 – a one page hand written statement signed by Relief Captain Elbe.

I.O. Exhibit No. 11 – a copy of a St. Andrews hospital work schedule showing that Mr. Ryken was on duty on June 25, 2000.

I.O. Exhibit No. 12 – a copy of a letter dated November 1, 2000 addressed to Investigating Officer Philbrook signed by Captain A. G. Daigre, personnel manager, E. N. Bisso, & Son, Inc.

I. O. Exhibit No. 13 – a one page typed statement by Robert R. Reed, of E. N. Bisso & Son, Inc.

Captain Callais testified under oath in his own defense. He also called his wife, Judy Ann Choest Callais, as a witness.

In addition to his and his wife's testimony he introduced in evidence six (6) exhibits.

Respondent Exhibit A – a letter dated June 27, 2000 addressed to Captain Callais from E. N. Bisso & Son, Inc., personnel manager, notifying him of his termination from employment.

Respondent Exhibit B - a completed "Captain's evaluation form" on the Respondent James Callais.

Respondent Exhibit C – a letter dated February 17, 1998 from Walter Christenson addressed to Captain Callais with an enclosure of a letter of "appreciation and admiration for the professionalism" of Captain Callais for the towage of a NASA barge to Port Canaveral, Florida.

Respondent Exhibit D – a letter dated July 2, 1997 from Mr. Christenson addressed to Captain Callais which forwarded a letter from Crescent River Port Pilots Association commending Captain Callais.

Respondent Exhibit E – a letter from L. J. Gaudin, Port Captain, E. N. Bisso & Son, Inc. addressed to Officer in Charge, Marine Inspection, New Orleans indicating Captain Callais' employment from 6/3/92 to 8/26/93.

Respondent Exhibit F – another letter from E. N. Bisso & Son, Inc. indicating Captain Callais' employment from 8/27/93 to 11/5/98.

At the conclusion of the hearing the Administrative Law Judge took the matter under advisement.

It is now concluded that the drug testing procedure which was attempted to be used by Mr. Flanagan as a DOT test was not in accord with DOT or U.S. Coast Guard regulations which are set forth in 49 CFR Part 40 and 46 CFR Part 16.

FINDINGS OF FACT

1. The Coast Guard's and Respondent's accepted proposed of Findings of Fact are adapted as the Administrative Law Judge's Findings.

COAST GUARD'S  
PROPOSED ULTIMATE FINDING

NOT ACCEPTED

1. James E. Callais, being the holder of the above captioned license and document, did on June 25, 2000, fail to submit a specimen for a reasonable cause drug and alcohol test that was ordered by his employer, E.N. Bisso & Son, Inc.

COAST GUARD'S  
PROPOSED EVIDENTIARY FINDINGS

NOT ACCEPTED

1. On June 25, 2000, James E. Callais was serving as master on board the M/V SUSAN W, and held U.S. Coast Guard license number 887038 and Merchant Mariner's Document number 439-76-1432. On this date, he failed to report to St. Andrew's Hospital in Boothbay Harbor, ME and provide a specimen for a reasonable cause drug and alcohol test as directed by his employer, E. N. Bisso & Son, Inc. (IO Exhibit 4, Mr. Flanagan's testimony)

ACCEPTED

2. E. N. Bisso & Son, Inc. is a zero tolerance drug and alcohol company. (IO Exhibit 7, Mr. Flanagan's testimony)

ACCEPTED

3. Mr. Callais was aware of E. N. Bisso & Son, Inc's zero tolerance drug and alcohol policy. (IO Exhibit 8)

ACCEPTED

4. Mr. George Flanagan, Operations Manager for E. N. Bisso & Son, Inc., was directed by Mr. Walter Kristiansen, CEO for E. N. Bisso & Son, Inc., to go to Boothbay Harbor, ME and conduct an investigation into the report that there were "real problems" on board the M/V SUSAN W, which included drinking of alcohol onboard and marijuana use. (IO Exhibit 9, Mr. Flanagan's testimony)

ACCEPTED

5. Mr. George Flanagan has received training on the behavioral indicators of probable cause drug and alcohol use that meets the requirements of 46 CFR 16. (IO Exhibits 5 & 6, Mr. Flanagan's testimony)

ACCEPTED

6. Mr. Flanagan arrived in Boothbay Harbor, ME during the afternoon of June 25, 2000. He then boarded the M/V SUSAN W and proceeded to interview the crew, including Mr. Callais, regarding the allegations made to the company office regarding the use of drugs & alcohol onboard. (IO Exhibit 9, Mr. Flanagan's and, Mr. Albe's testimony)

NOT ACCEPTED.

The procedure proposed was not in accord with the drug testing regulations.

7. As a result of these interviews and Mr. Flanagan's observation of Mr. Callais (slurred speech, bloodshot eyes, lack of attention), Mr. Callais was directed by Mr. Flanagan to report to St. Andrew's Hospital, located in Boothbay Harbor, ME, for a reasonable cause drug and alcohol test. (IO Exhibit 9, Mr. Flanagan's and, Mr. Albe's testimony)

ACCEPTED

8. During the hearing, Mr. Callais admitted leaving the vessel the night of June 24, 2000 and drinking alcoholic beverages.

ACCEPTED

9. IO Exhibit 7 and witness testimony from Mr. Flanagan and Mr. Albe revealed that drinking while attached to the vessel was against the company's zero tolerance drug and alcohol policy.

NOT ACCEPTED

The procedure proposed was not in accord with the drug testing regulations.

10. Mr. Robert Albe, second captain onboard the M/V SUSAN W, witnessed Mr. Flanagan direct Mr. Callais to take a reasonable cause drug and alcohol test. (IO Exhibit 10, Mr. Albe's testimony)

ACCEPTED, except it was not a  
“reasonable cause” drug and alcohol test.

11. Mr. Callais was aware that Mr. Flanagan wanted him to take a reasonable cause drug and alcohol test. (IO Exhibit 3, Mr. Callais’s testimony)

ACCEPTED except it was not a  
“reasonable cause” drug and alcohol test.

12. Mr. Flanagan relieved Mr. Callais as the master of the M/V SUSAN W after directing him to go to St. Andrew’s Hospital for a reasonable cause drug and alcohol test. (IO Exhibit 9, Mr. Flanagan’s testimony)

ACCEPTED, except Mr. Flanagan described  
it as a “probable cause” test.

13. Mr. Flanagan instructed Mr. Albe to call St. Andrew’s Hospital and make arrangements for a reasonable cause drug and alcohol test. (IO Exhibit 9, Mr. Flanagan and, Mr. Albe’s testimony)

ACCEPTED

14. Mr. Rykken, Physician’s Assistant at St. Andrew’s Hospital, who was working on June 25, 2000, received a phone call from Mr. Albe regarding arrangements for a drug and alcohol test. (IO Exhibit 11, Mr. Albe and, Mr. Rykken’s testimony)

ACCEPTED, even though Mr. Albe testified that  
Mr. Rykken told him the hospital was not capable of conducting the test.

15. Mr. Rykken testified that the hospital was capable of conducting the drug and alcohol test.

NOT ACCEPTED.

16. Mr. Callais failed to go to St. Andrew’s Hospital as directed and produce a specimen for a reasonable cause drug and alcohol test. (IO Exhibit 4 & 9, Mr. Flanagan, Mr. Albe and, Mr. Rykken’s testimony)

ACCEPTED

17. Mr. Callais left Boothbay Harbor, ME in a taxicab, which was called by Mr. Albe, and went to Portland, ME. (Mr. Albe and, Mr. Callais’s testimony)

ACCEPTED, except it was not a “reasonable cause” test.

18. Mr. Callais called Mr. Robert Reed, dispatcher for E. N. Bisso & Son, Inc., upon arrival in Portland, ME and asked how he was going to get back to New Orleans, LA. He did not mention the fact that Mr. Flanagan had directed him to take a reasonable cause drug and

alcohol test, that he was confused as to where to report for the test and that he needed more guidance. (IO Exhibit 3 & 13)

ACCEPTED, except it was not a "reasonable cause" test.

19. Mr. Callais, upon his returning to New Orleans, LA on June 26, 2000, called Mr. Al Daigre, Personnel Manager for E. N. Bisso & Son, Inc., to check in. Again Mr. Callais failed to mention the fact that Mr. Flanagan had directed him to take a reasonable cause drug and alcohol test, that he was confused as to where to report for the test, and that he needed more guidance. Mr. Callais was informed by Mr. Daigre that he had been terminated as of 1800, June 25, 2000, for his failure to comply with a company management directive to present himself for a reasonable cause drug and alcohol test.  
(IO Exhibit 12)

### CONCLUSIONS OF LAW

#### ACCEPTED

1. A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder, when acting under the authority of that license, certificate, or document, has committed an act of incompetence, misconduct, or negligence. (46 USC 7703 (1) (B) )

#### ACCEPTED

2. The United States Department of Transportation (DOT) and the U. S. Coast Guard are charged with enforcing United States dangerous drug laws against the holder of a license or merchant mariner's document, if the holder is found to have used a dangerous drug. (46 USC 7704)

#### ACCEPTED

3. A marine employer is required to conduct chemical testing of their employees. (46 CFR 16)

#### ACCEPTED

4. Chemical testing shall be conducted in accordance with 49 CFR Part 40.

#### ACCEPTED

5. An employer shall require any crewmember engaged or employed onboard a vessel owned and operated in the United States that is required by law or regulation to engage, employ or be operated by an individual holding a license, certificate of registry, or merchant mariner's document issued under this subchapter, who is reasonably suspected of using a dangerous drug, to be chemically tested for dangerous drugs. (46 CFR 16.250 (a) )

ACCEPTED

6. The marine employer's decision to test must be based on a reasonable and articulable belief that the individual has used a dangerous drug based on direct observation of specific, contemporaneous physical, behavioral, or performance indicators of probable use. (46 CFR 16.250 (b) )

ACCEPTED

7. Collection site is defined as a place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs. (49 CFR 40.3)

ACCEPTED

8. When the marine employer requires testing of an individual under the provisions of 46 CFR 16.250 (a), the individual must be informed of that fact and directed to provide a urine specimen as soon as practical. (46 CFR 16.250 (c) )

ACCEPTED

9. The definition of refusal to submit means that a crewmember fails to provide a urine sample as required by 49 CFR part 40, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process. (46 CFR 16.105)

ACCEPTED

10. A marine employee shall exercise due diligence to assure compliance with the applicable provisions of 33 CFR Part 95. (33 CFR 95.050 (a) )

ACCEPTED

11. Only a law enforcement officer or a marine employer may direct an individual operating a vessel to undergo a chemical test when reasonable cause exists. (33 CFR 95.035 (a) )

ACCEPTED

12. An individual is considered to be operating a vessel when the individual is a crewmember (including a licensed individual), pilot, or watchstander not a regular member of the crew, of a vessel other than a recreational vessel. 33 CFR 95.015 (b)



ACCEPTED

13. If an individual refuses to submit to or cooperate in the administration of a timely chemical test when directed by the marine employer based on reasonable cause, evidence of the refusal is admissible in evidence in any administrative proceeding. (33 CFR 95.040 (b) )

ACCEPTED

14. If the marine employer has reason to believe that an individual is intoxicated, the marine employer shall not allow that individual to stand watch or perform other duties. (33 CFR 95.050 (b) )

RESPONDENT'S CONTENTIONS AND COAST GUARD REBUTTALNOT ACCEPTED

1. The respondent contends that a drug and alcohol test wasn't offered.

NOT ACCEPTED

1a. The Coast Guard has shown by IO Exhibits 3, 4, 9, and 10, and witness testimony from Mr. Flanagan, and Mr. Albe, that Mr. Callais was directed to take a reasonable cause drug and alcohol test.

ACCEPTED

1b. Mr. Callais stated during his testimony that he was aware that the test was ordered.

NOT ACCEPTED – it wasn't properly arranged.

2. The respondent contends that a drug and alcohol test wasn't arranged.

ACCEPTED

2a. The Coast Guard has shown by IO Exhibits 4 and 9, and witness testimony from Mr. Flanagan, Mr. Albe, and Mr. Rykken that arrangements were made at St. Andrew's Hospital in Boothbay Harbor, ME.

ACCEPTED

3. The respondent contends that in every other drug and alcohol test that he has ever been a part of, someone came to the vessel to do the collection.

ACCEPTED

3a. The Coast Guard finds nothing in the law that states the collector must come to the vessel to collect specimens for a drug and alcohol test. 46 CFR 16.250 (c) states that an individual must be informed of the fact that he is being required to take a reasonable cause chemical test and he is to provide a urine specimen as soon as practicable.

ACCEPTED

3b. 49 CFR 40.3 defines a collection site as a place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

ACCEPTED

3c. Mr. Flanagan was asked during his testimony why he did not have a collector come to the vessel. He answered that it was Sunday evening and he knew that St. Andrew's Hospital was close by because he passed it on his way to the vessel earlier that day.

ACCEPTED

4. The respondent contends that he was confused and didn't know where to report for the test.

NOT ACCEPTED

4a. The Coast Guard has shown by IO Exhibits 4 and 9, and witness testimony by Mr. Flanagan, and Mr. Albe that Mr. Flanagan informed Mr. Callais where to report for the test.

ACCEPTED

4b. The Coast Guard has shown by IO Exhibits 12 and 13 that Mr. Callais contacted an E.N. Bisso & Son, Inc. representative on different occasions after leaving the M/V SUSAN W. During those conversations, he did not state, at any time, that he was confused regarding where he was to take the test, nor did he request additional guidance.

ACCEPTED

5. The respondent contends in his statement and during testimony that he was informed that the cab driver had all the information regarding where to go for the drug and alcohol test.

ACCEPTED, except it was not a "reasonable cause" test.

5a. The Coast Guard has shown that Mr. Flanagan directed Mr. Callais to take a reasonable cause drug and alcohol test. That Mr. Callais admitted in his testimony he had been directed to take a drug and alcohol test. Mr. Flanagan instructed Mr. Albe to call St. Andrew's Hospital and make Arrangements for the drug and alcohol test. Mr. Albe stated in his testimony that he made arrangements for the drug and alcohol test and that he called a cab so

Mr. Callais would have transportation to the hospital. Mr. Flanagan as a representative of E. N. Bisso & Son, Inc. expected Mr. Callais, a master with 30 years of experience, to abide by the order and go to the hospital and submit a specimen as directed.

ACCEPTED

6. The respondent contends that during his 8 years with E.N. Bisso & Son, Inc., he had been rewarded numerous times for his excellent performance.

ACCEPTED

6a. The Coast Guard commends Mr. Callais on his past performances, however awards given Mr. Callais in the past, do not give him the right to determine which drug and alcohol tests he will, or will not participate in.

ARGUMENT

NOT ACCEPTED

The Coast Guard contends that it has proved its case by substantial evidence of a reliable and probative nature as required under 46 CFR 5.63.

ACCEPTED except it was not a "reasonable cause" test.

E.N. Bisso & Son, Inc. is a zero tolerance drug and alcohol company as evidenced by its written policy. The company tests its employees for drugs as required by 46 CFR part 16. Mr. Flanagan, Operations Manager for E.N. Bisso & Son, Inc. has undergone training on the behavioral indicators of probable cause drug and alcohol use. Mr. Flanagan, utilizing his training, determined that Mr. Callais was showing behavioral indicators of probable drug and alcohol use, and Mr. Callais himself, admitted during the hearing to drinking the night before. Mr. Flanagan, as required by 46 CFR 16.250 (a) and 33 CFR 95.015 (b), directed Mr. Callais to report to St. Andrew's Hospital for a reasonable cause drug and alcohol test. Additionally Mr. Flanagan relieved Mr. Callais as master of the M/V SUSAN W for cause as required by 33 CFR 95.050 (b). Mr. Callais was aware that he had been directed to take a test and he knew the test was to be conducted at St. Andrew's Hospital. Arrangements for the test were made at the hospital through Mr. Rykken, and a cab was called to assist Mr. Callais with transportation to the hospital.

Mr. Callais contends that he was confused and did not know where he was to report to submit a specimen for the drug and alcohol test. As a master of 30 years experience he should have made sure he fully understood his instructions before departing the vessel. Furthermore, after Mr. Callais left the vessel he made two phone calls to company representatives and did not seek additional guidance.

ACCEPTED

Decision of the Commandant on Appeal 2578 (Coast Guard vs. Daniel J. Callahan) is a similar case where one of the specifications supporting the charge was that the mariner refused to

provide a specimen for a post incident drug test. In this appeal the Commandant, stated in his opinion that a refusal to submit to a post incident chemical test raised a serious doubt about a mariner's ability to perform safely and competently in the future. Furthermore, if mariners could refuse to submit to chemical testing and face a lesser order, it is difficult to imagine why anyone that may have used drugs would ever consent to be tested.

CONCLUSION

NOT GRANTED

The Coast Guard requests that the charge be found proven and an order for revocation be issued.

The Respondent's Proposed Findings of Fact and the rulings thereon are as follows:

ACCEPTED

1. James E. Callais testified that he never refused a drug test.

ACCEPTED

2. Captain Robert Albe testified that he never heard or saw James E. Callais refuse a drug test.

ACCEPTED

3. All parties testified that James E. Callais did not make the arrangements for the transportation from the vessel to Portland via the taxicab.

ACCEPTED

4. All parties testified that James E. Callais did not make the necessary arrangements for the hotel room located in Portland.

ACCEPTED

5. All parties testified that James E. Callais did not make the necessary flight arrangements from Portland to New Orleans, Louisiana.

ACCEPTED

6. George Flanagan testified that he instructed Captain Robert Albe to make the necessary transportation arrangements concerning James E. Callais.

ACCEPTED

7. Captain Robert Albe testified that he never instructed the cab driver to take James E. Callais to the hospital, but rather that he instructed the taxi cab driver to take James E. Callais to Portland.

ACCEPTED. He was not furnished Mr. Callais' name

8. Dr. Edward Rykken testified that there is no evidence that a James E. Callais was scheduled to take a drug test on the date in question.

ACCEPTED

9. George Flanagan testified that James E. Callais was one of the top performers of the company.

ACCEPTED

10. George Flanagan testified that there were no drugs, alcohol or contraband found on James E. Callais or in his quarters.

ACCEPTED

11. George Flanagan testified that he considered James E. Callais to be a man of integrity.

ACCEPTED

12. Captain Robert Albe testified that he never observed James E. Callais ever refusing a drug test the day in question, nor any time during their employment together.

ACCEPTED

13. James E. Callais received several letters of commendation from his employer for a job well done.

ACCEPTED

14. In the exhibit marked as Resondent "A," Mr. Callais' employer plainly states that his employment with E. N. Bisso & Son, Inc. was terminated effective 1800 hours, Sunday, June 25, 2000.

ACCEPTED

15. George Flanagan testified that his conversation with Captain James E. Callais concerning the request for a drug test occurred after 1800 hour, Sunday, June 25, 2000.

ACCEPTED

16. James E. Callais took approximately 25-30 drug tests before the time in question and he has never failed any of these drug tests.

### CONCLUSIONS OF LAW

The Respondent and the subject matter of this hearing are within the jurisdiction vested in the U. S. Coast Guard under the provisions of 46 USC Chapter 77, Section 7704.

Complaint, not proved. Complaint, dismissed.

### OPINION

The regulations which provide for chemical testing of mariners are set forth in 46 CFR Part 16. Those regulations list five (5) different categories for testing as follows:

Pre-employment (46 CFR 16.210)

Periodic (46 CFR 16.220)

Random (46 CFR 16.230)

Serious Marine Incident (46 CFR 16.240), and

Reasonable Cause Testing (46 CFR 16.250)

There is no indication that Mr. Callais is a user of dangerous drugs. He has served as master of towboats during the past 21 years. Obviously, he must have taken numerous drug tests during his years of operating towboats. In spite of the fact that Captain Callais was fired by E. N. Bisso & Son, Inc., Mr. Flanagan testified that he was a "top notch performer" for the company.

It is important that the federal government's drug testing program be administered so as to eradicate the use of drugs in the American workplace. However, it goes without saying, the program must be administered with justice and fairness to each person tested, or directed to be tested.

The employer's function in the drug testing procedure is a vital link. The collector's function is a vital link. The laboratory's function is a vital link. The medical review officer's

function is a vital link. All persons involved in the procedure must strictly abide by the regulations.

According to the testimony of Mr. Flanagan Captain Callais was directed to take a “probable cause DOT drug and alcohol screening on June 25, 2000” and he refused to do so. He ordered Captain Callais to report to St. Andrews hospital in Booth Bay Harbor to furnish a urine specimen for a DOT test for use of dangerous drugs. That procedure is completely foreign to DOT and Coast Guard regulations set forth in 49 CFR Part 40 and 46 CFR Part 16, respectively.

The pertinent sections of 46 CFR Part 16 are as follows:

“16.101(a) The regulations in this part provide a means to minimize the use of intoxicants by merchant marine personnel and to promote a drug free and safe work environment.

(b) These regulations prescribe the minimum standards, procedures, and means to be used to test for the use of dangerous drugs.”

“16.201 (a) Chemical testing of personnel must be conducted as required by this subpart.”

“16.301 Drug testing programs subject to this part shall be conducted in accordance with 49 CFR part 40. Procedures for Transportation Workplace Drug Testing Programs. This subpart summarizes requirements for drug testing programs contained in those regulations. Those regulations should be consulted to determine the specific procedure which must be established and utilized. Drug testing programs required by this part shall use only drug testing laboratories certified by the Department of Health and Human Services (DHHS).

“16.310 (a) Collection site. The employer shall ensure that the collection site is adequate to provide for the collection, security, temporary storage, and shipping of specimens to a certified drug testing laboratory.” (All underscoring added for emphasis.)

As previously indicated the drug testing procedure which Mr. Flanagan attempted to initiate had no foundation in either DOT or Coast Guard regulations.

The Complaint is not proved. The Complaint is dismissed.

A handwritten signature in black ink that reads "Archie R. Boggs". The signature is written in a cursive style with a large, prominent initial "A".

ARCHIE R. BOGGS  
ADMINISTRATIVE LAW JUDGE

Dated: 25 July 2001  
New Orleans, Louisiana