

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD
Complainant

vs.

MONROE L. WIGHTMAN, III,
Respondent

Docket Number: CG S&R 02-0063
CG Case No. 1482374

DECISION AND ORDER

Issued by: Honorable Archie R. Boggs, Administrative Law Judge

APPEARANCES:

FOR THE U.S. COAST GUARD

BM1 Tony Leiato, Esq.,
United States Coast Guard
Marine Safety Office
433 Ala Moana Boulevard
Honolulu, Hawaii 96813

FOR THE RESPONDENT

P. Michael Watson,
President of Dream Cruises
306 Kamani Street
Honolulu, Hawaii 96813

I. PRELIMINARY STATEMENT

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 a complaint on January 28, 2002, charging Respondent Monroe L. Wightman, III with one count of Violation of Law or Regulation resulting from a failure to secure the overboard sewage discharge valve on board the M/V AMERICAN DREAM, while operating within the limits of the U.S. territorial seas.

The violation of law or regulation charge against Respondent Wightman is supported by one (1) factual allegation, which reads as follows:

1. The Coast Guard alleges that the Respondent, did, on or about January 23, 2002, while operating the vessel inside the limits of the waters of U.S. territorial seas, fail to secure the vessel's Type III device in a manner which prevented discharge of sewage, to wit: the vessel's overboard sewage discharge valve was left in the open position, a violation of 33 CFR 159.7(c).

The Respondent filed an answer to the complaint and requested a hearing. More specifically, Respondent Wightman admitted all jurisdictional allegations contained in the complaint but pled insufficient information to answer the factual allegations supporting the charge.

The hearing in this matter was initially set for April 16, 2002 at the Marine Safety Office in Honolulu, Hawaii. However, the proceeding was rescheduled for hearing on June 4, 2002 at the Prince Jonah Kuhio Kalaniana'ole Federal Building.

The hearing convened as scheduled. The hearing was conducted in accordance with the Administrative Procedure Act as amended and codified in 5 U.S.C. §§ 551-559, and the Coast Guard procedural regulations in 33 C.F.R. Part 20. Boatswain Mate First Class Tony Leiato represented the Coast Guard. Respondent Wightman was accompanied by his employer and president of Dream Cruises, P. Michael Watson, who served as a non-attorney authorized representative.

A total of six (6) witnesses, including Respondent Wightman, testified. The Coast Guard introduced five (5) exhibits, and the Respondent introduced four (4) exhibits into evidence. The exhibits are listed in Appendix I.

It is concluded that the Coast Guard has established by a preponderance of reliable and credible evidence that Respondent Wightman committed an act of violation of law or regulation on January 23, 2002 when he failed to secure or have secured the vessel's overboard discharge valve while operating within three nautical miles from shore.

II. FINDINGS OF FACT

1. On January 7, 2002, an anonymous report was filed with the Coast Guard stating that the AMERICAN DREAM had been routinely pumping sewage overboard, approximately one mile from shore as it traversed from its berth to a mooring station. (*Transcript ("Tr.") 25-26, 30*).
2. Wayne Amedy, an agent with the Coast Guard Criminal Investigation Office in Honolulu, received the telephone call. (*Tr. 11*). Mr. Amedy did not inquire how the anonymous caller determined whether the substance being discharged was in

fact sewage. (*Tr. 28*). Instead, he promptly sent a field intelligence report to the Marine Safety Office and the Coast Guard Investigation Department initiated a watch to monitor the AMERICAN DREAM. (*Tr. 24-26, 30-31*).

3. On January 23, 2002, while Respondent was serving as master aboard the M/V AMERICAN DREAM, the overboard sewage discharge valve on the vessel was left in the open position, allowing for the potential discharge of sewage inside the limits of the U.S. territorial seas. (*Entire Transcript*).
4. Respondent Wightman is the holder of U.S. Coast Guard License No. 926905. He is licensed to operate steam or motor vessels up to one hundred tons on coastal waters and to engage in domestic commercial towing. (*Tr. 8-9*).
5. The AMERICAN DREAM is a 100-foot long vessel owned by the Dream Cruise Company. The company offers daily snorkeling and whale watching cruises off the shore of Waikiki Beach, Honolulu. (*Tr. 6, 17, 115*).
6. The AMERICAN DREAM has three lavatories on board, all of which drain into a single gravity discharge holding tank. (*Tr. 56*). When the sewage discharge valve is open, anything contained within the holding tank, including sewage, feeds through a discharge pipe on the bottom of the vessel. (*Tr. 56*). If the lavatory is used when the valve is open and the vessel is moving, sewage could potentially be discharged into the ocean. (*Tr. 56- 57*).
7. Company policy implemented by Dream Cruise requires that the captain of the vessel maintain and possess the key to unlock the sewage valve. (*Tr. 45*). Company policy further requires that the holding tank discharge valve remain chained and padlocked during all operations, except as directed by the captain.

(Tr. 84). Under company policy, the captain may delegate the responsibility of ensuring the discharge valve is secure to the first officer. The first officer cannot open the discharge valve without first obtaining the key from the captain and the first officer must return the key to the captain after the holding tank is emptied and the valve has been relocked and secured. (Tr. 50-51, 72-73).

8. On the morning of January 23, 2002, Captain Wightman conducted the second of two whale watching cruises. (Tr. 70).
9. When the AMERICAN DREAM was more than three nautical miles offshore, Captain Wightman called the first officer, Gino Dayton, to the bridge to give him the key to the sewage-dumping valve. (Tr. 70-71, 84). As the first officer on board the vessel, Mr. Dayton was responsible for taking the key to unlock the valve and empty the holding tank. (Tr. 71, 84).
10. When Gino Dayton failed to respond, another crewmember, Warren Asp appeared in his place. (Tr. 71-72). Warren Asp was also qualified as a first officer and was familiar with company policy and procedure regarding the sewage discharge valve. (Tr. 83-84). As such, Captain Wightman gave the key to Mr. Asp and directed him to have Mr. Dayton open the valve and complete the discharge process. (Tr. 72, 83-84, 88).
11. When Warren Asp returned the key five minutes later, Captain Wightman believed that the valve had been opened and emptied while the vessel was more than three miles offshore and securely relocked in compliance with normal required procedure. (Tr. 72-73, 84).

12. Captain Wightman did not inquire whether the valve had actually been closed and secured, nor did he leave the bridge to personally inspect the tank. *(Tr. 87)*.
13. Captains employed by Dream Cruises are the only licensed crewmembers onboard the vessels. They are charged primarily with the safety and comfort of their guests. As such, the primary duty of the captain is to control the vessel's motion and limit the potential for passenger injury. *(Tr. 115)* Although the company does not have a policy forbidding the captains to leave the bridge, they may do so only under conditions that are safe for the guests onboard. *(Tr. 115-116)*.
14. If a captain were to leave the bridge to ensure that the valve was locked, it would take an average of four minutes to examine the valve and return to the bridge. *(Tr. 116-117)*.
15. On the morning of January 23, 2002, the Coast Guard Investigation Department was directed to inspect the AMERICAN DREAM and determine the accuracy of the anonymous report of illegal sewage dumping. *(Tr. 32)*. In connection with the investigation, BM1 Tony Leiato and Petty Officer Clayton Statler from the Marine Safety Office waited for the American Dream to return to port. *(Tr. 11, 34)*.
16. After the Coast Guard explained the purpose of their visit, Petty Officer Statler and Captain Wightman went down to the aft lazarette to check the overboard discharge valve. *(Tr. 11, 35)*.

17. Once down below, Petty Officer Statler noticed a padlock and chain lying on the deck. At this time, Captain Wightman picked up the chain and lock and secured the valve. (*Tr. 11, 35*).
18. Captain Wightman informed the Coast Guard that the discharge occurred three miles off of Diamond Head but was unable to produce an exact position, as he did not record the data in the logbook at the time. (*Tr. 12*).
19. Company policy requires the captain to log the discharge of sewage in the vessel's logbook but does not state whether the captain must log the distance entry in port or immediately after the discharge. (*Tr. 80, 82-83*). On the morning of the incident, Captain Wightman waited until after the cruise to log the discharge. (*Tr. 79-81, 83*).

III. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Monroe L. Wightman, III and the subject matter of this hearing are properly within the jurisdiction of the United States Coast Guard in accordance with 46 U.S.C. §§ 6301 and 7703(1)(B) (West Supp. 2002); 46 C.F.R. Part 5 (2001); and 33 C.F.R. Part 20 (2001).
2. At all relevant times, Respondent Wightman was the holder of and acted under the authority of his U.S. Coast Card issued License No. 926905, while serving as captain aboard the vessel M/V AMERICAN DREAM on January 23, 2002.
3. As master of the vessel, Captain Wightman was responsible for supervising the crew and ensuring that all Coast Guard rules and company policy regarding the proper discharge of sewage are complied with in full.

4. The evidence in the record as a whole demonstrates that Respondent Wightman, as captain of the AMERICAN DREAM on January 23, 2002, failed to secure or have secured the vessel's overboard discharge valve in a manner that would prevent the release of untreated sewage while operating within the limits of the U.S. territorial seas. As a result, Respondent Wightman failed to comply with a U.S law or regulation.
5. The charge of "**VIOLATION OF LAW OR REGULATION**" against the Respondent is found **PROVED** by a preponderance of the reliable and credible evidence.

IV. OPINION

The purpose of Coast Guard suspension and revocation proceedings is to promote safety at sea. 46 U.S.C. § 7701 (West Supp. 2002). If it is shown that a holder has committed a violation of law or regulation in performing his duties relating to the vessel, his license may be suspended or revoked. 46 U.S.C. § 7703 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 a violation of law or regulation by a preponderance of the evidence. 46 C.F.R. § 7703; 33 C.F.R. §§ 20.701-02 (2000); Appeal Decision 2485 (YATES). A violation of law or regulation includes a failure to comply with any law or regulation intended to promote marine safety or to protect navigable waters. 46 C.F.R. § 5.33. The federal regulations governing marine sanitation devices and the requirements for vessel operators provided in 33 C.F.R. § 159.7(c) fall within the scope of 46 C.F.R. § 5.33. More specifically, the governing regulations maintain that when operating a vessel on a body of water where the discharge of

untreated sewage is prohibited, the operator must secure each Type III device in a manner that prevents such discharge of sewage. See 33 CFR § 159.7(c).

Here, the Coast Guard has established that Respondent Wightman violated a law or regulation on January 23, 2002 by failing to secure the overboard discharge valve onboard his vessel, thereby allowing for the potential discharge of sewage within the limits of the U.S. territorial seas.

Although the Respondent conceded that the discharge valve was left in an unsecured position, he contended that as master onboard the AMERICAN DREAM, he followed all requisite procedures to ensure that the valve was properly secured according to federal regulations. He claimed that failure to comply with the regulations governing discharge of sewage resulted when an inadequately trained crewmember with a personal bias against him deliberately neglected his duties. He said that once the vessel was more than three nautical miles offshore, he delegated the task of emptying the holding tank to Mr. Gino Dayton, who was the acting first officer onboard the vessel on the day of the incident. As such, Mr. Dayton was directly responsible for properly securing the valve once the discharge process was complete. Captain Wightman further stated that when the key that unlock the valve was returned several minutes later, he believed that the valve had been opened and emptied while the vessel was more than three miles offshore and securely relocked in compliance with the required procedure.

Despite Respondent's contentions that all necessary procedures were followed, at least on his part, he cannot escape responsibility. The law is well established that the master of a vessel is in command and, therefore, is responsible for the care and safety of the vessel and crew. Appeal Decision 2293 (RUBY & SMITH); also Appeal Decision

2321 (HARRIS). As such, the master is on duty at all times and is responsible for the proper management and safety of the vessel. Appeal Decision 360 (CARLSEN). While the captain may delegate duties to others, he may not rely on such delegations to escape responsibility for the results. Appeal Decision 2321 (HARRIS). Rather, because the captain of a vessel bears such heavy responsibility, he must take all reasonable precautions to nullify the effects caused by the mistakes of others. Appeal Decision 360 (CARLSEN).

In this case, Captain Wightman relied on a company policy that delegated the duty to empty the holding tank and secure the discharge valve to the crewmember who acts as first officer onboard the AMERICAN DREAM. However, the fact that the first officer should have complied with this order does not relieve the Respondent of the responsibility for ensuring that it was conducted according to proper procedure. At the very least, Captain Wightman must have assured that the discharge valve was secured by those to whom he assigned the task.

The Respondent unsuccessfully contended that it would have been a greater danger to have left an unlicensed mate or deck hand at the wheel while he personally checked to see whether the first officer had properly secured the valve. It is well recognized that a requirement necessitating a vessel to maintain a licensed operator aboard does not mean that the individual holding such a license be physically at the wheel whenever the vessel is underway. See Commandant v. Oldow, NTSB Order No. EM-121 (1986). Rather, it means that there must be someone aboard at all times who is responsible for the vessel's navigation, by virtue of his or her licensed status, without regard to who is actually steering the vessel at any given point in time. Thus, the captain

of a vessel may momentarily leave the wheelhouse if the circumstances are such that an unlicensed crewmember can temporarily steer the vessel without any appreciable increase in risk to its safe navigation. Appeal Decision 2058 (SEARS).

In the case at hand, although it may not be practical to spot-check the valve in every situation, under normal conditions, it would take an average of four minutes to quickly examine the valve and return to the bridge. (*Tr. 116-117*). In situations that do not permit the captain to leave the bridge, nothing prevents the captain from delegating the duty of spot-checking the valve to a second crewmember. Either of these scenarios would afford the captain additional assurance that the discharge valve was closed and secured, whereby he does not have to rely solely on the word of the first officer.

Here, Captain Wightman did not implement any additional assurances. In fact, he did not even receive word from the first officer that the discharge valve was relocked and secured. Rather, Captain Wightman merely assumed that the discharge process was completed according to procedure because the valve key had been returned. In actuality, the padlock remained unlocked, leaving the valve unsecured in a manner that would allow untreated sewage to be discharged into the U.S. territorial seas. As such, the Respondent failed to comply with federal regulation 33 C.F.R. 159.7(c).

V. CONCLUSION

The preponderance of evidence supports a finding that the Respondent violated a law or regulation when he failed to comply with the 33 C.F.R. § 159.7(c) requiring him, as operator of a vessel, to secure the overboard discharge valve in a manner that prevents the release of untreated sewage into a protected body of water.

It is well within the power of the undersigned to order any of a variety of sanctions, including suspension. 46 C.F.R. § 5.569; also Appeal Decision 2569 (TAYLOR). The Table of Suggested Range of an Appropriate Order codified in 46 C.F.R. § 5.569(d) recommends an order of 1 to 3 months suspension for failure to comply with U.S. law or regulations. In this case, the Coast Guard has proposed that the Respondent receive a three (3) month outright suspension of his license. The undersigned, however, is not bound by the Table of an Appropriate Order. (TAYLOR). The Table of an Appropriate Order merely serves as guidance to an ALJ, and consideration of mitigating or aggravating factors may justify a lower or higher order than the range suggested in the table. 46 C.F.R. § 5.569(d).

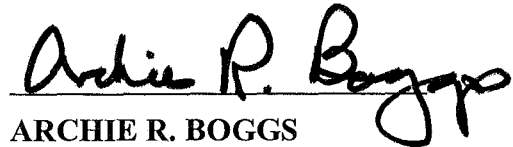
In light of all the circumstances a one (1) month outright suspension is deemed appropriate. This case does not involve a Respondent who has a prior record of violations. Rather, Captain Wightman is held in high regard among his peers in terms of reputation, background, and experience. He appears to be a highly responsible person who was overseeing the operation of a whale watching tour at sea, which at times can be demanding. Since this incident, Captain Wightman has implemented additional procedures to ensure compliance with both government regulations and company policy pertaining to the vessel's sewage discharge valve. Moreover, there is no evidence in the record that this incident resulted in the discharge of untreated sewage or other pollutants. Consequently, the minimal suspension period set forth in the Table of Orders is the appropriate sanction.

VI ORDER

It is hereby ordered that U.S. Coast Guard License No, 926905, issued to Monroe L. Wightman, III is hereby suspended for one (1) month . Respondent is ordered to immediately surrender his License to the U.S. Coast Guard Marine Safety Office Honolulu.

The procedure for appeal is set forth in 33 C.F.R. §§ 20.1001-20.1003.

(Attachment A)



ARCHIE R. BOGGS
Administrative Law Judge
U.S. Coast Guard

Dated 4 October 2002
New Orleans, Louisiana