

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD

Complainant

vs.

EDWARD K. HANSEN

Respondent.

Docket Number: CG S&R 07-0435
CG Case No. 3045601

DECISION AND ORDER

Issued: February 20, 2008

Issued by: Michael J. Devine, Administrative Law Judge

Appearances:

For Complainant

LT Chester K. Warren, LCDR David M. Sherry
United States Coast Guard
USCG Sector Hampton Roads
200 Granby St., Suite 700
Norfolk, Virginia 23510

For Respondent

David N. Ventker
101 West Main Street, Suite 810
Norfolk, Virginia 23510

PRELIMINARY STATEMENT

The United States Coast Guard (Coast Guard) initiated this administrative action seeking a one (1) month outright suspension of Edward K. Hansen's (Respondent) Merchant Mariner's Document (MMD) number 051623 and Merchant Marine License (MML) number 1165160.¹

This action is brought pursuant to the legal authority contained in 46 U.S.C. 7703 and its underlying regulations codified at 46 CFR Part 5.

The original Complaint, issued on September 2, 2007, charged Respondent with one (1) count of Violation of Law or Regulation. The Coast Guard amended the Complaint's factual allegations on September 24, 2007, and again on December 4, 2007. The final Amended Complaint alleges that on September 1, 2007, Respondent towed the tank barge (T/B) ATLANTIC SULPHUR NO.1, O.N. 283904 beyond the boundary line without a valid load line certificate or coastwise exemption letter, a violation of U.S. laws and regulations set forth in 46 U.S.C. 5102, 46 U.S.C. 5103, and 46 CFR 42.07-1.

Respondent filed an Answer to the original Complaint on September 21, 2007, and to the first Amended Complaint on October 16, 2007. In the Answers, Respondent denied all jurisdictional and factual allegations. Respondent did not file an Answer to the final Amended Complaint. Respondent was not required to file an answer to the final Amended Complaint since that Complaint was submitted less than twenty (20) days before the hearing. See 33 CFR 20.308(a). Because the final Amended Complaint did not create any new issues, it merely provided a more specific law and regulation citation, Respondent's denial of the allegations in

¹ Although Respondent failed to bring his MML to the hearing, his license number 1165160 was verified. (Tr. at 8; I.O. Ex. 1). Respondent did, however, bring his MMD number 051623 with him to the hearing. During the hearing and in the Complaint, Respondent's social security number (SSN) was cited as the MMD number. This was an error. SSN's are no longer used to represent the MMD's number. Instead, a unique identifier is located on the MMD itself; Respondent's MMD number is 051623. (I.O. Ex. 11).

his prior Answers are considered an adequate denial of the allegations asserted in the final Amended Complaint.

On September 26, 2007, this case was assigned to the undersigned judge for adjudication. On October 3, 2007, the parties participated in a pre-hearing telephone conference during which preliminary matters were discussed and a hearing date was set.

The hearing commenced in Norfolk, Virginia on December 11, 2007. The proceeding was conducted in accordance with the Administrative Procedure Act, as amended and codified at 5 U.S.C. 551-59, and Coast Guard procedural regulations located at 33 CFR Part 20. LT Chester Warren and LCDR David Sherry represented the Coast Guard at the hearing. Respondent appeared at the hearing and was accompanied by counsel, David Ventker of Ventker and Warman, PLLC. A total of six (6) witnesses, including Respondent, testified in this proceeding. During the hearing, the Coast Guard introduced eleven (11) exhibits into evidence; Respondent introduced ten (10) exhibits into evidence. The witnesses and exhibits are listed in Attachment A.²

On January 10, 2008, the Coast Guard submitted a post hearing brief. This post hearing brief contained enumerated (1) Proposed Findings of Fact and (2) Proposed Ultimate Findings of Fact and Conclusions of Law. Rulings on these proposed findings and conclusions are found in Attachment B. On January 10, 2008, Respondent filed a post hearing brief in support of his argument that the Coast Guard failed to prove jurisdiction or a violation of law or regulation. This post hearing brief did not contain enumerated Findings of Fact or Conclusions of Law, therefore, individual rulings on Respondent's Findings of Fact or Conclusions of Law are not

² Coast Guard Exhibits are identified as "IO Ex." using numerical numbers. Respondent Exhibits are identified as "Resp. Ex." using alphabetic letters. All citations to the official transcript are designated by "Tr." followed by the applicable page numbers.

made. However, all the facts and issues raised in Respondent's post hearing brief have been addressed throughout the body of this Decision.

After careful review of the facts and applicable law in this case, the undersigned finds the Coast Guard has established by a preponderance of reliable and credible evidence that Respondent committed one (1) act of failing to comply with a law or regulation.

FINDINGS OF FACT

The Findings of Fact are based on documentary evidence, witness testimony, and the entire record as a whole.

1. Respondent is the holder of MML number 1165160. (IO Ex. 1). He is licensed as Master of steam, or motor vessels of not more than 1600 gross registered tons (domestic tonnage), 3000 gross tons (ITC tonnage) upon oceans, and of towing vessels upon oceans and western rivers. (Id.).
2. Respondent is the holder of MMD number 051623. (IO Ex. 11).
3. Respondent has held a Coast Guard credential for over thirty-five (35) years. (Tr. at 23).
4. On September 1, 2007, while employed by Island Maritime Services, Inc., Respondent served as the master on board the motor vessel (M/V) BETTY. (Tr. at 22-6; IO Ex.2).
5. On September 1, 2007, Respondent, while serving as master of the M/V BETTY, took the T/B ATLANTIC SULPHUR NO.1 in tow pursuant to a contract with Island Maritime Services, Inc. and Island Shipping. (Id.).
6. The M/V BETTY is a 197 gross ton (GRT), 99.5 foot towing vessel. (IO Ex. 3).
7. The T/B ATLANTIC SULPHUR NO.1 is a 1578 GRT, 225 foot barge. (IO Ex. 5).
8. The boundary line for the Chesapeake Bay extends from Cape Charles Light to Cape Henry Light. 46 CFR 7.50; (Tr. at 170-171).

9. During the voyage of September 1, 2007, the M/V BETTY and the T/B ATLANTIC SULPHUR NO.1 proceeded past the boundary line of the Chesapeake Bay. (Tr. at 49, 94-97; IO Ex. 4).
10. On September 1, 2007, the T/B ATLANTIC SULPHUR NO.1 was owned by a U.S. company. (Tr. at 75-83; IO Ex. 5, 6, 7, 8).
11. On September 1, 2007, the T/B ATLANTIC SULPHUR NO.1 did not possess a valid load line certification. (Tr. at 108-111; IO Ex. 5).
12. The T/B ATLANTIC SULPHUR NO.1 was not overloaded on September 1, 2007 and was determined to be seaworthy by a later survey. (Tr. at 198-99).

DISCUSSION

The purpose of Coast Guard suspension and revocation proceedings is to promote safety at sea. 46 U.S.C. 7701. To assist in this goal, Administrative Law Judges (ALJs) have the authority to suspend or revoke mariner documents if the mariner commits an act of violation of law or regulation during the performance of his duties. See 46 U.S.C. 7703. Under Coast Guard procedural rules and regulations, the Coast Guard bears the burden of proof and shall prove any violation by a preponderance of the evidence. See 33 CFR 20.701-702; see also Appeal Decision 2485 (YATES) (1989). In this case, the Coast Guard seeks to prove Respondent committed a violation of law or regulation.

JURISDICTION

Respondent does not dispute the fact that he was the master of the M/V BETTY on September 1, 2007, and that, on that date, he undertook a voyage to tow the T/B ATLANTIC SULPHUR NO.1 to Honduras. (Tr. at 22-6). However, Respondent does not concede that he

was acting under authority of his license. Therefore, it is required for the Coast Guard to prove that Respondent was acting under authority of his license for jurisdiction to exist.

Under 46 CFR 15.610, every towing vessel of at least twenty-six (26) feet in length must be under the direction of a Coast Guard licensed master. Any person, who is “employed in the service of a vessel is considered to be acting under the authority . . .” of his credentials when required by law. 46 CFR. 5.57. If such a person commits a violation of law or regulation “when acting under the authority of that license . . .,” then the undersigned has jurisdiction to suspend or revoke that mariner’s license. See 46 U.S.C. 7703; 46 CFR 5.19(b).

In this case, the Coast Guard has established that the M/V BETTY is a U.S. flagged towing vessel greater than twenty-six (26) feet in length and is therefore required to be under the direction of a Coast Guard licensed master. (IO Ex. 3); see 46 CFR 15.610; see also 46 U.S.C. 8904(a). The Coast Guard has also established that Respondent was the master of the M/V BETTY on September 1, 2007, as it operated in the Chesapeake Bay area. (Tr. at 22-6, 94-97, 177-181; IO Ex.2). Since a license was required for Respondent to operate the M/V BETTY, Respondent is found to have been acting under the authority of his Coast Guard license while he operated the M/V BETTY.

In Respondent’s post hearing brief, Respondent argues that 46 U.S.C. 8905(b) exempts towing vessels under 200 tons from having a qualified master aboard. If this were true, one could conclude Respondent was not acting under the authority his license. However, Respondent’s argument is without merit. The statute to which Respondent cites, 46 U.S.C. 8905(b), applies only to vessels in the offshore oil industry. As the House Report notes regarding this section specifically state, "Subsection (b) [of 46 U.S.C. 8905] exempts an offshore supply vessel of less than 200 gross tons from the licensed operator requirement under section

8904 when used in the offshore mineral and oil industry." H.R. REP. 98-338 (1983), 1983 U.S.C.C.A.N. 924, 1983 WL 25324 (Leg.Hist.). Respondent has provided no evidence that his towing vessel was involved in the offshore oil industry; therefore, the exemption provided under 46 U.S.C. 8905(b) does not apply. Respondent is found to have been acting under authority of his license on September 1, 2007, and therefore, in accordance with 46 U.S.C. 7703, jurisdiction is established.

VIOLATION OF LAW OR REGULATION

The Coast Guard charges Respondent with one (1) count of Violation of Law or Regulation. The issue is whether there was compliance with the requirements for a valid load line certificate or an exemption letter as required by 46 U.S.C. 5102, 46 U.S.C. 5103, and 46 CFR 42.07-1. Violation of Law or Regulation under 46 CFR 5.33 requires proof of a violation of a statute or regulation and proof of the particular manner in which it was allegedly violated.

Violation Proved

In this case, the Amended Complaint alleges a violation of 46 U.S.C. 5102, 5103 and 46 CFR 42.07-1. Under 46 CFR 42.07-1, load lines shall be accurately marked in accordance with the requirements set forth in Part 42. In addition to the physical marking, Part 42 also mandates that "load line marks placed on a vessel shall be attested to by a valid load line certificate" 46 CFR 42.07-5. The master, or individual in charge of a vessel, shall maintain load lines in the way prescribed by the regulations. See 46 U.S.C. 5103(b).

The Coast Guard has provided evidence that Respondent violated the above referenced law and regulations. Evidence establishes that Respondent, as master of the M/V BETTY, undertook the tow of the T/B ATLANTIC SULPHUR NO.1 on September 1, 2007. (Tr. at 22-6; IO Ex.2). The T/B ATLANTIC SULPHUR, being a barge of more than 149 GRT, is required to

comply with the load line requirements prior to engaging in a voyage by sea; furthermore, Respondent concedes that the barge is subject to statutory load line requirements. See 46 USC 5103; (Resp't Post Brief at 8). The Coast Guard also presented evidence that the T/B ATLANTIC SULPHUR NO. 1. had been out of service and that its previous load line certificate was invalid. (Tr. at 108-111; IO Ex. 5). Respondent was generally familiar with the requirements for load lines however, as required by 46 CFR 42.07-1, Respondent did not verify the existence of a valid load line certificate prior to taking the barge in tow during the voyage of September 1, 2007. (Tr. at 22-6, 35-37; IO Ex.2). The facts establish that Respondent committed one (1) act of violation of law or regulation.

Respondent's Rebuttal

In Respondent's post-hearing brief, Respondent alleges that "the Coast Guard utterly failed to prove a violation of the cited statutes or regulations, and the regulatory basis for proceeding is invalid as a matter of law." (Resp't Post Brief at 7). In support of this claim, Respondent asserts that, (1) Respondent did not have a duty to ensure the barge was in compliance with load line requirements, (2) the statute by which Respondent has been charged does not require load line certificates, it only requires load line markings, (3) the load line regulations at 46 CFR 42.07-1 are no longer valid, and (4) the Coast Guard has failed to consistently enforce its load line regulations. The undersigned finds that these arguments are without merit.

First, Respondent asserts that he, as a tug boat operator, had no duty to ensure the barges he pushed were in compliance with load line regulations. As stated by Respondent:

Thousands of barges are moved by tugboats in the United States every day, many for trips of only hours or a few days, and it is plainly not the intention of the statute to impose on the captains of tugs who move those barges the reasonability for permanently placing load line on those vessels, or for

second guessing the decisions of the companies and person who are actually operating and in charge of the barges. (Resp't Post Brief at 9).

Respondent asserts the industry standard is for tugboat operators to merely inspect the barges for load line markings and seaworthiness – they do not inspect the barges for load line certification. (Tr. at 48-49; Resp't Post Brief at 8-9). However, even assuming an industry standard exists, it may be inadequate, cf. The T. J. Hooper, 60 F.2d 737, 1932 A.M.C. 1169 (2d Cir. 1932) and compliance with the law is still required. Furthermore, Respondent's contention that he had no duty to verify the load line certification is clearly at odds with the applicable statutes and case precedent. Title 46 U.S.C. 5103(b) holds, "[t]he . . . master, and individual in charge of a vessel shall mark and maintain the load lines permanently and conspicuously in the way prescribed by the Secretary." The need for masters to ensure load line compliance is essential for maritime safety, "[s]ince the failure to comply with [load line] regulations might endanger ships, cargoes and lives, it is obvious that a very high degree of care is required of Masters to make certain that there is strict compliance with these statutes and regulations." Appeal Decision 611 (ZISKOWSKI) (1951)(compliance could not be delegated); see also Appeal Decision 2478 (DUPRE) (1988). Masters have a duty to ensure their vessels are in compliance with load line regulations.

Second, Respondent asserts that "[t]he statute which Capt. Hansen is alleged to have violated requires no certificate or other piece of paper be carried by Capt. Hansen – it requires only that the vessel be marked with load lines." (Resp't Post Brief at 9-10). Respondent states that the barge was "marked" with load lines; therefore, he did not violate the alleged statute. Respondent is correct that 46 CFR 42.07-1 requires vessels to be marked with load lines. However, 46 CFR 42.07-1 also requires that load lines shall be accurately marked in accordance with the requirements set forth in Part 42. Part 42 requires that all load line marks "shall be

attested to by a valid load line certificate” 46 CFR 42.07-5. To place a random load line on a vessel, with no supporting documentation to indicate that the load line is correct, would defeat the purpose of the load line regulations. Therefore, while 46 CFR 42.07-1 mandates that load lines be placed on vessels, it also mandates that these load lines be marked in an regulated manner – to include being attested to by a supporting load line certificate.

Third, Respondent asserts that “[e]ven if [the Coast Guard] had presented evidence to show a violation of the regulation (it did not), the Coast Guard is faced with the problem that [46 CFR 42.07-1] is invalid.” (Resp’t Post Brief at 10). While the undersigned finds the underlying regulations to be valid, this issue will not be addressed since it is outside the scope of these proceedings. Suspension and Revocation Proceedings are conducted in accordance with the Administrative Procedure Act and the regulations set forth in 46 C.F.R. Part 5 and 33 CFR Part 20. See Appeal Decision 2611 (CIBULKA) (1999). These regulations “detail the authority of the ALJ at the hearing level and the Commandant at the appellate level.” Id. The ALJ has no authority to make rulings on the validity of the underlying regulations. See id. Federal courts are the proper venue to assert such challenges.

Finally, Respondent states that the Coast Guard has failed to consistently enforce its load line regulations because it does not understand the regulations. (Resp’t Post Brief at 11-12). Respondent’s contention that the Coast Guard fails to evenly enforce its own regulations is not a valid defense. An investigating officer’s judgment of who will be charged with a violation is a “subject to review by his superiors, it is not a matter for review in suspension and revocation proceedings.” Appeal Decision 2512 (OLIVO) (1990). Whether the Coast Guard has proceeded or may proceed against others for load line violations is not relevant to this matter.

Respondent’s assertion that “the Coast Guard utterly failed to prove a violation of the

cited statutes or regulations, and the regulatory basis for proceeding is invalid as a matter of law” is without merit. (Resp’t Post Brief at 7). The Coast Guard successfully established that Respondent, while acting as the master of the T/B ATLANTIC SULPHUR NO. 1., failed to ensure the barge had a valid load line certificate. Respondent committed one (1) act of Violation of Law or Regulation.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent and the subject mater of this hearing are properly within the jurisdiction of the Coast Guard and the ALJ in accordance with 46 U.S.C. §§ 6301 and 7703, 46 CFR Part 5, and 33 CFR Part 20.
2. Respondent was the holder of and acted under the authority of his Coast Guard License number 1165160 while serving as the master of the M/V BETTY on September 1, 2007.
3. The T/B ATLANTIC SULPHUR NO.1 was required by law and regulation to have a valid load line certificate or a load line exemption letter before it could be lawfully towed out to sea. 46 U.S.C. 5102, 5103; 46 CFR 42.07-1, 42.07-5; (Tr. at 170-176).
4. On the voyage of September 1, 2007, the M/V BETTY with the T/B ATLANTIC SULPHUR NO.1 in tow was required to be operated by a licensed master under the authority of a Coast Guard license in keeping with 46 CFR 15.610. (IO Ex. 2, Tr. at 178-182).
5. The factual allegation of the single charge, that on September 1, 2007: The Respondent towed the T/B ATLANTIC SULPHUR NO.1, O.N. 283904, beyond the boundary line without a valid load line certificate or coastwise exemption letter, “A Violation of U.S. Laws and Regulations” set forth in 46 U.S.C. 5102, 46 U.S.C. 5103, and 46 CFR 42.07.1

against Respondent is found PROVED by a preponderance of the reliable and credible evidence and testimony as taken from the record considered as a whole.

SANCTION

It is the nature of this administrative proceeding to “promote, foster, and maintain the safety of life and property at sea.” Appeal Decision 2294 (TITTONIS) (1983). These proceedings are remedial, not penal in nature, and “are intended to help maintain standards for competence and conduct essential to the promotion of safety at sea.” 46 CFR 5.5.

The preponderance of evidence in the entire record supports findings that Respondent failed to ascertain the validity of the load lines for the T/B ATLANTIC SULPHUR NO.1, resulting in one (1) act of violation of law or regulation. It is within the duties of the undersigned to order any of a variety of sanctions. See 46 CFR 5.569; see also Appeal Decision 2569 (TAYLOR) (1995). However, the undersigned is not bound by 46 CFR 5.569 or the average order table. (Id.). Consideration of mitigating or aggravating factors and evidence may justify a lower or higher sanction than the range suggested in the average order table. 46 CFR 5.569(d).

In this case, Respondent is an accomplished mariner with over thirty-five (35) years of experience and no prior blemishes on his maritime record. (Tr. at 23). Respondent complied with the direction of the Coast Guard to return to port. (Tr. at 91). While there was a violation of the load line requirements there was no evidence of overloading of the barge and it was subsequently determined to be seaworthy by a later survey. (Tr. at 198-99).

Following the administrative hearing on December 11, 2007, Respondent was allowed to retain his MML and MMD. In consideration of the record as a whole an order of suspension for one (1) month on two (2) months probation will satisfy the remedial purpose of this proceeding.

ORDER

IT IS HEREBY ORDERED that the Respondent, Edward K. Hansen, holder of Merchant Mariner's License Number 1165160 and Merchant Marine Document number 051623 is hereby suspended for one (1) month on two (2) months probation (ending on April 20, 2008). If another suspension and revocation charge is found proved against Respondent during the period of probation, the Coast Guard may request that the probationary suspension be enforced.

PLEASE TAKE NOTICE that service of this Decision on the parties and/or parties' representative(s) serves as notice of appeal rights set forth in 33 CFR 20.1001 – 20.1004. (Attachment C).

Done and dated February 20, 2008
Norfolk, VA

**MICHAEL J. DEVINE
ADMINISTRATIVE LAW JUDGE
U.S. COAST GUARD**

ATTACHMENT A

WITNESS AND EXHIBIT LISTS

WITNESS LIST

COAST GUARD WITNESSES

IO Witness 1	Edward K. Hansen
IO Witness 2	M. Angelini (via telephone)
IO Witness 3	R. Starr
IO Witness 4	P. Francisco
IO Witness 5	J. Schmeckenbecker
IO Witness 6	P. Zohorsky

RESPONDENT WITNESS

Resp't Witness 1	Edward K. Hansen
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EXHIBIT LIST

COAST GUARD EXHIBITS

IO Ex. 1	Marine Information for Safety and Law Enforcement (MISLE) extract of information on Edward K. Hansen for current CG License.
IO Ex. 2	Tug Betty (O.N. 506044) crew list
IO Ex. 3	Vessel Critical Profile for the Tug BETTY.
IO Ex. 4	Tug BETTY Automated Identification System (AIS) track line from September 1, 2007 indicating Tug's position past the boundary line
IO Ex. 5	Vessel Critical Profile for the T/B ATLANTIC SUPHUR NO.1

- IO Ex. 6 Bill of Sale for ATLANTIC SULPHUR NO.1 Ireland Barge Inc. (seller) to Dragon Marine, Inc. (buyer).
- IO Ex. 7 Bill of Sale for ATLANTIC SULPHUR NO.1 Dragon Marine Inc. (seller) to Island Shipping, Inc. (buyer)
- IO Ex. 8 Abstract of Title ATLANTIC SUPHUR NO.1
- IO Ex. 9 Copy of driver's license for witness Marco Angelini
- IO Ex. 10 Copy of Merchant Marine Officer License for Edward K. Hansen
- IO Ex. 11 Copy of U.S. Merchant Mariner's Document for Edward K. Hansen

RESPONDENT EXHIBITS

- Resp't Ex. A Resume CAPT Edward K. Hansen
- Resp't Ex. B Island Marine Services, Inc. Contract to tow Barge ATLANTIC SULPHUR NO.1
- Resp't Ex. C Coastwise Load Line Certificate for ATLANTIC SULPHUR NO 1 dated September 20, 2007.
- Resp't Ex. D Survey
- Resp't Ex. E CG letter of November 9, 2007 approving Captain Edward K. Hansen as a "Designated Examiner" for Towing Vessel Assessments.
- Resp't Ex. F Coast Guard Vessel documentation ATLANTIC SULPHUR NO.1
- Resp't Ex. G Coast Guard Load Line Policy Notes (Rev. 12 Jul 2007), Excerpt from Section 4 - Load Line Conventions, Statutes and Regulations
- Resp't Ex. H Coast Guard Marine Safety Manual, Excerpts from Chapter 7 Load Line Investigations.
- Resp't Ex. I Coast Guard Load Line Policy Notes (Rev. 12 Jul 2007), Excerpts from Section 5 - Administration of Load Lines.
- Resp't Ex. J Coast Guard Load Line Policy Notes (Rev. 12 Jul 2007), Excerpts from Section 9 - General Load Line Requirements.

ATTACHMENT B

RULINGS ON PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COAST GUARD PROPOSED FINDINGS OF FACT

1. At all relevant times, Respondent was the holder of a MML and MMD issued by the United States Coast Guard (See TR. At 6-7; See IO Ex. 01, 10, 11).

ACCEPTED

2. On September 1, 2007, Respondent acted under authority of that license and/or document by serving as Master aboard the tug BETTY, official no. 506044 as required by 46 CFR 15.610 (See TR. At 24, 94-97, 177-181, See IO Ex.02).

ACCEPTED

3. The tug BETTY is 99.5 feet in length, United States flagged, owned and operated by Island Marine Services, Inc. (See TR. At 26, 181, See IO Ex. 03)

ACCEPTED

4. The Respondent was serving as master aboard the tug BETTY and towing the ATLANTIC SULPHUR NO. 1, official no. 283904 on September 1, 2007. (See TR. At 24-25).

ACCEPTED

5. The boundary line for the Chesapeake Bay extends from Cape Charles, Virginia to Cape Henry, Virginia. (46 CFR 7.50).

ACCEPTED

6. Island Maritime, the Respondent's employer, executed a BIMCO contract with Island Shipping, Roatan, Honduras to tow the tank barge ATLANTIC SULPHUR NO. 1. (See TR at 26, Resp. Ex. B).

ACCEPTED

7. The Respondent towed the tank barge ATLANTIC SULPHUR NO. 1 for hire. (See TR at 25-27, Resp. Ex. B).

ACCEPTED

8. At all relevant times, the tank barge ATLANTIC SULPHUR NO. 1 was owned by a U.S. company and U.S. laws and regulations applied to the barge. (See TR at 75, 83, IO Ex. 06, 07, 08).

ACCEPTED

9. The tank barge ATLANTIC SULPHUR NO. 1 was required by law and regulation to have a valid load line certificate or a load line exemption letter before it could be towed out to sea, past the boundary line 46 U.S.C. § 5102, 46 U.S.C. § 5103, and 46 CFR § 42.07-1. (See Tr. at 142-144, 166-176, IO Ex. 05, 09).

ACCEPTED

10. United States Coast Guard, Sector Hampton Roads command center established radio contact with the Respondent, while operating the tug BETTY on September 1, 2007. The command center duty officer plotted the tug BETTY at sea, past the boundary line, using the National Automated Identification System (NAIS). (See Tr. 95, IO Ex. 04).

ACCEPTED

PROPOSED ULTIMATE FINDINGS OF FACT AND CONCLUSION OF LAW

1. The subject matter of this hearing and Respondent are properly within the jurisdiction vested in the United States Coast Guard by 46 U.S.C. 7703.

ACCEPTED

2. The jurisdictional and factual allegations of Violation of Law or Regulation against the Respondent is found PROVED.

ACCEPTED

ATTACHMENT C

NOTICE OF ADMINISTRATIVE APPEAL RIGHTS

33 CFR 20.1001 General.

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
 - (1) Whether each finding of fact is supported by substantial evidence.
 - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
 - (3) Whether the ALJ abused his or her discretion.
 - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

33 CFR 20.1002 Records on appeal.

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
 - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
 - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

33 CFR 20.1003 Procedures for appeal.

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
 - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --

- (i) Basis for the appeal;
 - (ii) Reasons supporting the appeal; and
 - (iii) Relief requested in the appeal.
- (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
- (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
- (c) No party may file more than one appellate brief or reply brief, unless --
- (1) The party has petitioned the Commandant in writing; and
 - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
- (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

33 CFR 20.1004 Decisions on appeal.

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.
- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.

Certificate of Service

I hereby certify that I have forwarded the attached document by Facsimile to the following persons:

ALJ Docketing Center
Attn: Hearing Docket Clerk
U.S. Custom House, Room 412
40 South Gay Street
Baltimore, MD 21202
Fax (410) 962-1746

LT Chester K. Warren
Sector Hampton Roads
200 Granby Street, Suite 700
Norfolk, Virginia 23510-1888
Fax (757) 668-5549

I hereby certify that I have forwarded the attached document by Federal Express to the following person(s):

LCDR David M. Sherry
Legal Department
MLCLANT
431 Crawford Street
Portsmouth, VA 23704
Sent by Federal Express

Mr. David N. Ventker, Esq.
101 West Main Street
Suite 810
Norfolk, Virginia 23510
Sent by Federal Express

Done and dated this 20th of February 2008 at
Norfolk, VA

JANICE PARKER
Paralegal Specialist to the
Administrative Law Judge