

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

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UNITED STATES COAST GUARD  
Complainant

vs.

HAROLD LANGLEY

Respondent

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Docket Number 2009-0397  
Enforcement Activity No. 3590096

**ORDER DENYING MOTION TO AMEND DECISION AND ORDER,  
AND GRANTING REQUEST FOR EXCERPT OF TRANSCRIPT**  
**Issued: March 26, 2010**

**By Administrative Law Judge: Honorable Michael J Devine**

**Appearances:**

**James T. Staton  
Sector Hampton Roads**

**For the Coast Guard**

**PHILIP N. DAVEY, Esq.**

**For the Respondent**

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On March 8, 2010, the Respondent, through counsel submitted a Motion seeking to amend the written Decision and Order dated March 2, 2010 issued in this case citing to 33 CFR 20.103(c) and Federal Rules of Civil Procedure 59(e). The regulations contained in 33 CFR Part 20 provide the specific procedures for Coast Guard administrative hearings and the Federal Rules of Civil Procedure (FRCP) are not applicable unless there is no specific provision provided in 33 CFR Part 20. There is no reason to refer to the FRCP in this matter since there are specific

regulations that apply to this issue. The procedure for a post hearing motion of this nature is contained in 33 CFR 20.904 and Respondent's Motion has been considered as a motion to reopen the record under that regulation. Any party may move to reopen the record of a proceeding 30 days or less after the closing of the record and the ALJ may reopen the record if he or she believes that any change in fact or law, or the public interest warrants reopening it. 33 CFR 20.904. The Coast Guard has not submitted any response to the motion and has waived the opportunity to submit an objection. 33 CFR 20.904(b)(2).

After a hearing conducted on February 25 and 26, 2010 the undersigned Administrative Law Judge issued a decision orally from the bench in keeping with 33 CFR 20.902(c). The regulations further provide that:

If the ALJ renders the initial decision orally, and if a party asks for a copy, the Hearing Docket Clerk shall furnish a copy excerpted from the transcript of the record. The date of the decision is the date of the oral rendering of the decision by the ALJ.  
33 CFR 20.902(d)

The oral decision stated on the record on February 26, 2010 is part of the official record and constitutes the initial decision of record in this matter and is only supplemented by the written decision issued on March 2, 2010. Since the official record already contains the statement that Respondent seeks to have included by amending the written order there is no basis to justify reopening of the record under 33 CFR 20.904. As provided in 33 CFR 20.902(d) a party may request an excerpt of the transcript regarding the decision. Respondent has made such a request. The excerpt of the transcript stating the initial decision is attached to this order as Enclosure (1).

WHEREFORE,

**IT IS HEREBY ORDERED**, Respondent's Motion to Amend the Decision and Order in this matter is **DENIED**.

**IT IS HEREBY FURTHER ORDERED**, that Enclosure (1), an excerpt of the transcript is provided for Respondent.

**PLEASE TAKE FURTHER NOTICE**, that the time period for exercising appeal rights relating to the initial decision issued in this matter is governed by the regulations in 33 CFR Part 20 including 33 CFR 20.904(d) and 33 CFR 20.1001-1003.

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**Michael J Devine**  
**US Coast Guard Administrative Law Judge**

Date: March 26, 2010

ENCLOSURE (1): Excerpt from Transcript

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UNITED STATES OF AMERICA  
UNITED STATES DEPARTMENT OF HOMELAND SECURITY  
UNITED STATES COAST GUARD

UNITES STATES COAST GUARD,                    )           Docket No.  
  )           2009-0397  
  )           Coast Guard  
  )           Enforcement No.  
HAROLD LANGLEY,                                )           3590096  
  )           Respondent.

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

VOLUME II  
Norfolk, Virginia  
February 26, 2010

Before: The Honorable MICHAEL J. DEVINE, Judge

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TAYLOE ASSOCIATES, INC.  
Registered Professional Reporters  
Telephone: (757) 461-1984  
Norfolk, Virginia

1 me a little bit longer than that to be able to give a  
2 decision, but hopefully sometime between 10:30 and 11:00 I  
3 will be prepared to do it. It will take me to at least  
4 10:30. If I can do it then, I will.

5 We'll follow then the procedure and, as I said,  
6 in keeping with 33 CFR 20.710 I'll basically issue an oral  
7 order, and I have to state some findings of fact and  
8 conclusions of law based on the matters presented in  
9 hearing from both sides.

10 Any questions by either party?

11 MR. STATON: No, sir.

12 MR. DAVEY: No, Your Honor.

13 THE COURT: Then the hearing is recessed

14 while I review the matter, and the parties should be  
15 prepared to be back here at 10:30.

16 Thank you.

17 (A recess was taken.)

18 THE COURT: As noted before we recessed, I'm  
19 going to issue a bench decision in this matter in  
20 keeping with the regulations and thank both counsel for  
21 presenting the case in an effective manner.

22 I will issue a written order sometime early  
23 next week that may expand on this a little bit, because  
24 this is an abbreviated process and -- but provided by the  
25 regulations to issue a prompt decision.

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1 My findings are as follows, based on a complete  
2 consideration of all the evidence presented in this  
3 matter, including all the exhibits and testimony  
4 presented, subject to the evidentiary rulings that I have  
5 made in this matter.

6 One: Respondent Harold Langley is the holder  
7 of merchant mariner document 057127 and was a member of  
8 the crew of the USNS REGULUS on June 29th, 2009.

9 The subject matter of this proceeding is within  
10 the jurisdiction of the Coast Guard under the authority of  
11 46 United States Code Chapter 77 and 46 CFR 5.57.

12 Two: On June 29th, 2009 there was a urinalysis  
13 conducted in keeping with company policy for both the  
14 REGULUS and the POLLUX, both vessels.

15 No. 3: Respondent Harold Langley submitted a  
16 urinalysis specimen on June 29th, 2009 with specimen ID  
17 No. 6122863 in connection with his company-ordered random  
18 test.

19 Four: The specimen No. 6122863 was documented  
20 and collected and forwarded to the lab, Quest Diagnostics  
21 in this matter, in keeping with the requirements of the  
22 DOT regulations.

23 Five: Evidence presented by the Coast Guard  
24 regarding testing conducted on January -- June 29th, 2009  
25 included testimony by the collector on how individuals are

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