



## DRAWBRIDGE VIOLATIONS – UNREASONABLE DELAYS AND UNNECESSARY OPENINGS

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Unreasonable delays and unnecessary openings constitute the majority of the drawbridge operation cases received at the Hearing Office. This article briefly discusses each type of case, and highlights the important elements of each violation as well as challenges that arise in the adjudication of these cases.

The regulations governing the operation of drawbridges are found at Title 33 Code of Federal Regulations (CFR), Part 117. These regulations are divided into two subparts. Subpart A prescribes the general and special drawbridge operating regulations that apply to all drawbridges across the navigable waters of the United States. Subpart B contains the specific requirements for the operation of some individual drawbridges, which may supersede the general requirements of Subpart A where specified. Violations of drawbridge operating regulations are serious and can result in civil penalties of up to \$25,000.00.

### *Unreasonable Delays*

33 CFR § 117.5 requires that drawbridges open “promptly and fully” when a request or signal is given. (The means of signaling that may be used are described at § 117.15). Title 33 CFR § 117.9 states: No person shall unreasonably delay the opening of a draw after the signals required by § 117.15 have been given.” To find a violation of this cite, there must have been a delay in the opening of the particular drawbridge, and the delay must have been unreasonable--but what constitutes an unreasonable delay?

Given the high-speed, time constrained nature of today’s society, I’d be willing to bet that most vessel operators would say that *any* delay in the opening of a drawbridge is unreasonable. Clearly, there are some vessel operations for which a delay in a bridge opening is more burdensome, and presents a greater safety risk, than others. Depending on the circumstances of a particular case, however, a delay may not be deemed “unreasonable” under the applicable regulations.

The term “unreasonable delay” is not defined in 33 CFR 117 Subpart A. The maximum time permitted for delay for some specific bridges however, is defined in Subpart B. For example, for bridges across the Hackensack River, 33 CFR § 117.723(a)(3) states: “Train and locomotives shall be controlled so that any delay in opening the draw shall not exceed 10 minutes...”

The typical cases received by the Hearing Office for alleged violations under 33 CFR § 117.9 involve railroad bridges and delays associated with train crossings. 33 CFR § 117.9 contains a note which states: “Trains are usually controlled by the block method. That is, the track is divided into blocks or segments of a mile or more in length. When a train is in a block with a drawbridge, the draw may not be able to open until the train has passed out of the block and the yardmaster or other manager has ‘unlocked’ the drawbridge controls...”

For example, a delay might not be unreasonable if a train were “in the block” of a drawbridge at the time that the signal to open was received. If a drawbridge operator were to allow additional trains to approach and enter the block while the first train was crossing the bridge, however, and delayed the bridge opening further until subsequent trains cleared the bridge, then the resultant delay might be considered unreasonable.

Oftentimes case files received by the Hearing Office lack sufficient evidence to support a conclusion that a delay was unreasonable. Detailed evidence, including logbook entries showing times, locations, communications, mechanical issues etc., is helpful to the Hearing Officer in determining if a violation under 33 CFR § 117.9 did or did not occur.

### **Unnecessary Openings**

According to 33 CFR § 117.11, no vessel owner or operator shall “(a) Signal a drawbridge to open if the vertical clearance is sufficient to allow the vessel, after all lowerable non-structural vessel appurtenances that are not essential to navigation have been lowered, to safely pass under the drawbridge in the closed position; or (b) Signal a drawbridge to open for any purpose other than to pass through the drawbridge opening.”

In the typical case received by the Hearing Office for an alleged violation under this cite, a sport fishing vessel operator requests a bridge opening to accommodate the height of the vessel’s outriggers or antennae. In most cases

those outriggers or antennae can be made lowerable. These types of cases are often returned for correction or dismissed for lack of evidence.

In order for a violation under this cite to have occurred, it must be shown that after all lowerable, non-structural vessel appurtenances that are not essential to navigation have been lowered, the vertical clearance of the subject bridge was sufficient to allow the vessel to safely pass. It must also be shown that the appurtenance(s) for which the bridge opening was requested is/are lowerable, non-structural, and not essential to navigation.

It's important to have a clear understanding of what "lowerable non-essential vessel appurtenances not essential to navigation" means. The following definitions are found at 33 CFR § 117.4:

*Lowerable* means a non-structural vessel appurtenance that is or can be made flexible, hinged, collapsible or telescopic so that it can be mechanically or manually lowered. (Underlining added.)

*Nonstructural* means that the item is not rigidly fixed to the vessel and can be relocated or altered.

*Appurtenance* means an attachment or accessory extending beyond the hull or superstructure that is not an integral part of the vessel and is not needed for a vessel piloting, propelling, controlling, or collision avoidance capabilities.

*Not essential to navigation* means that a nonstructural vessel appurtenance, when in the lowered position would not adversely affect the vessel's piloting, propulsion, control, or collision-avoidance capabilities.

Detailed evidence, including the vertical clearance of the bridge involved, the reason for the requested opening, and the subject vessel's height when all non-structural appurtenances are lowered, among other factors, can be helpful to the Hearing Officer in making her/his determination.