



16672
17 June 2011

MEMORANDUM

From: 
L. J. Argenti, CAPT
CGD THIRTEEN (dl)

Reply to dl
Attn of: LT Houck
x7110

To: CGD THIRTEEN (dpi)

Subj: ISSUING A NOTICE OF VIOLATION FOR COLREGS RULE 5 VIOLATION

- Ref:
- (a) Navigation Rules International – Inland, COMDTINST M16672.2D
 - (b) Notice of Violation User's Guide, COMDTINST M5582.1A
 - (c) Email between Mr. Dan Hardin D13 (dpi) and Mr. Brian Corrigan D13 (dre) of 09 MAY 11
 - (d) Email between LT Jesse Houck D13 (dl) and LT Dorothy Hernaez COMDT (CG-531) of 08 JUN 11
 - (e) 28 USC § 2462

1. Per reference (a), Rule 5 requires that "[e]very vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision."
2. Per reference (b), "[f]ailure to maintain proper look-out by sight/hearing/all available means appropriate in the prevailing circumstances," is a violation of 33 USC § 2005; the first violation carries a proposed penalty amount of \$250, the second \$750.
3. Per reference (c), it appears that the master of the F/V MEMORIES admitted to NOAA Agents on two separate occasions 30JUL10 and 07SEP10 that he was allowing his vessel to drift at night. This is presumably because the vessel was not manned to maintain a proper look out as required by Rule 5 of reference (a). The alleged violations of Rule 5 by the F/V MEMORIES constitute actionable non-oil discharge violations, which are eligible for issuance of a notice of violation (NOV).
4. Per reference (d), if D13 or another authorized Coast Guard unit elects to take action against the F/V MEMORIES, it would be possible to issue a NOV using an official statement from the NOAA official to whom the master made the incriminating statements. The official statement would provide support for the NOV when issued and later adjudicated. The fact that no Coast Guard personnel witnessed the violation speaks only to the weight of the evidence.
5. Reference (b) details that the NOV is designed to provide the responsible party with timely notification of the alleged violations and proposed penalty. As these alleged violations occurred nearly a year ago, the NOV would be untimely. However, that is not a bar to issuance; reference (e) provides a five year window from the time of the offense.
6. Reference (b) provides further guidance on how to appropriately issue the NOV.