



16200

[Redacted Company Name]
Attn: Mr. [Redacted Name]
[Redacted Address]

September 20, 2011

RE: Case No. 2966019
[Redacted Company Name]
M/V [Redacted Vessel]
Dismissed

Dear Mr. [Redacted Name]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 2966019, which includes your appeal on behalf of [Redacted Company Name], as owner/operator of the M/V [Redacted Vessel]. The appeal is from the action of the Hearing Officer in assessing a \$5,000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 160.105	Failure to comply with an order pertaining to the control of vessel or facility operations.	\$5,000.00

The violation is alleged to have occurred on May 30, 2007, after the [Redacted Vessel] was involved in an incident while it was towing barges near Galveston, Texas.

On appeal, you deny that the violation occurred and seek dismissal of the case. You contend that there was a miscommunication between [Redacted Company Name] and the Coast Guard caused by the use of after-hours faxes.

The facts of the case are as follows. On Wednesday, May 30, 2007, the M/V [Redacted Vessel] and its tow of two barges were near Galveston, Texas, when the [Redacted Vessel]'s engines failed due to water contaminating the vessel's fuel tank. One of the barges in tow, [Redacted Barge], went aground after the [Redacted Vessel]'s engines failed. Coast Guard personnel from Marine Safety Unit Galveston attended the [Redacted Vessel] at Bolivar Moorings following the incident and issued a four-item worklist. Included in the worklist was a requirement to, prior to departure, provide a proposal for transiting to the shipyard. The worklist was acknowledged by the [Redacted Vessel]'s captain at 1515 hours.

Before the end of the workday, personnel in [Redacted Company Name]'s Bourg, Louisiana office received a phone call from the [Redacted Vessel]'s master. During this call, the master informed [Redacted Company Name] that it would have to provide the Coast Guard with a transit plan for the [Redacted Vessel] prior to departure for repairs. The vessel's master did not indicate that any further clearance was required prior to the movement of the vessel. [Redacted Company Name] sent a fax to Coast Guard Sector Houston-Galveston providing the transit plan for the [Redacted Vessel]. [Redacted Company Name] personnel then went home for the night. In accordance with the plan, the [Redacted Vessel] was towed to a shipyard later that night.

[Redacted Company Name] received an order by fax from Coast Guard Sector Houston-Galveston time-stamped 1647. The order, pertaining to the [Redacted Barge], required a transit plan to be submitted to Marine Safety Unit Galveston for approval prior to departure from Bolivar Moorings (emphasis added). The order pertaining to the [Redacted Barge] is not at issue in this case. However, the fax phone number from which this fax came was used to fax the transit plan for the [Redacted Vessel] to the Coast Guard.

[Redacted Company Name] received another order by fax from Coast Guard Sector Houston-Galveston time-stamped 1807. This order, pertaining to the [Redacted Vessel], required a transit plan to be submitted to Marine Safety Unit Galveston for approval prior to departure from Bolivar Moorings (emphasis added). [Redacted Company Name] found the order on the fax machine the next morning when it opened for normal business operations.

33 CFR 160.105 provides, "Each person who has notice of the terms of an order issued under this subpart must comply with that order." Thus, the issue presented here is whether [Redacted Company Name] had notice that it was required to obtain approval of its transit plan prior to moving the M/V [Redacted Vessel] to a shipyard for repairs.

The worklist requirement reads: "Prior to departure, provide proposal for transiting to shipyard." The Coast Guard argues that the terms of the worklist were sufficient to inform [Redacted Company Name] that the transit plan had to be approved before the vessel was moved, with emphasis on the word "proposal." The actual order alleged to have been violated, containing the added words "for approval," was issued a few hours later. [Redacted Company Name] contends that because the order including the words "for approval" was issued after business hours to an office that was not staffed overnight, and was not received and read until after the vessel had been moved, a violation did not occur.

Neither the Coast Guard nor [Redacted Company Name] stands on solid ground in this case. The Coast Guard failed to ensure that the initial worklist requirement was explicit in requiring [Redacted Company Name] to obtain approval of its transit plan, and failed to ensure that notice of the official order was received. To me, [Redacted Company Name] appears to have been willfully obtuse in assuming that it could carry out its transit plan without obtaining Coast Guard approval. Internal communications of both parties also left something to be desired.

Given the lack of evidence that [Redacted Company Name] had notice of the order, the violation has not been proved. The charge is dismissed.

In accordance with the regulations governing civil penalty proceedings, 33 CFR Subpart 1.07, this decision constitutes final agency action.

Sincerely,

L. I. McCLELLAND
Civil Penalty Appellate Authority
By direction of the Commandant

Copy: Coast Guard Hearing Office
Coast Guard MSU Galveston