



16200

May 14, 2019

[REDACTED PARTY NAME]
[REDACTED ADDRESS]

RE: Case No. 4989419
[REDACTED PARTY NAME]
[REDACTED VESSEL]
\$1,350.00

Dear [REDACTED PARTY NAME]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 4989419, which includes your appeal as operator of the [REDACTED VESSEL]. The appeal is from the action of the Hearing Officer in assessing a \$6,350.00 penalty for the following violations:

| <u>LAW/REGULATION</u> | <u>NATURE OF VIOLATION</u> | <u>ASSESSED PENALTY</u> |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 1. 33 CFR 161.19 | Failure to make Sailing Plan Report at least 15 minutes before navigating a VTS area. | \$500.00 |
| 2. 46 CFR 15.610 | Failure to have an uninspected towing vessel over 26 feet in length under the control of a properly licensed individual. | \$850.00 |
| 3. 33 CFR 161.18(c) | Failure to comply with the requirements to maintain a listening watch, promptly respond to VTS, and communicate in English. | Warning |
| 4. 33 CFR 160.105 | | DISMISSED |
| 5. 33 CFR 160.105 | Failure to comply with an order pertaining to the control of a vessel or facility operations. (Failure to submit transit plan.) | \$5,000.00 |

The violations occurred on June 16-17, 2014, in the San Joaquin River when the [REDACTED VESSEL] was towing the vessel [REDACTED 2ND VESSEL] from Burlingame, in south San Francisco Bay, to Stockton, California.

On appeal, you contest the \$5,000.00 penalty assessed by the Hearing Officer for the violation alleged in Charge 5. You do not contest the first three violations. The record contains substantial evidence to support the Hearing Officer's findings that they occurred. Therefore those findings and the penalty amounts will not be disturbed.

Concerning Charge 5, you argue:

I was assured by the captain of the assist vessel (licensed) that he had been in contact with the Coast Guard and that everything was good to go. The Coast Guard allowed us to move from Lost Isle. . . . We were under close observation by the Coast Guard I do not think that I did anything wrong. We were in contact with the Coast Guard all of the time. My mistake was thinking that my captain did submit a tow plan and that the Coast Guard would not allow us to move without it or would have notified us that we needed to file a tow plan before we were allowed to move. We did not move at any time without talking to Vessel Traffic and kept in constant radio contact with them.

I am mitigating the penalty for Charge 5 to a Warning for the reasons stated below.

Charge 5 resulted from your operation of the [REDACTED VESSEL] on June 17, 2014. On that date, you were operating the [REDACTED VESSEL] as it towed the vessel [REDACTED 2ND VESSEL] from Burlingame to Stockton, California. The [REDACTED VESSEL] lost control of its tow at a certain point in the San Joaquin River; at that time, movement toward Stockton was interrupted. The Coast Guard Captain of the Port of San Francisco issued Captain of the Port Order No. 14-066, Amendment 1, to you. COTP Order No. 14-066 required that you obtain an assist tug and "provide a satisfactory transit plan to my Waterways Safety Branch" before moving the [REDACTED VESSEL] and the [REDACTED 2ND VESSEL] from their location. After you received COTP Order No. 14-066, and after some other events not relevant to this issue, the [REDACTED VESSEL] proceeded with the [REDACTED 2ND VESSEL] and an assist tug from Lost Isle to Stockton. The Coast Guard alleges that you did so without submitting the required transit plan to the Coast Guard.

On appeal, you do not explicitly deny that the violation occurred, but you argue that the licensed individual operating the assist tug assured you that he had contacted the Coast Guard and "everything was good to go," and further that Coast Guard personnel on scene did not object to the movement of the vessels. The Hearing Officer's finding that the violation occurred is supported by substantial evidence and is affirmed.

However, I cannot condone the Coast Guard's posture in this matter. According to your statements, both to the Hearing Officer before his final decision and on appeal, Coast Guard personnel were present throughout the movement of the [REDACTED VESSEL] and the [REDACTED 2ND VESSEL] that is the subject of this violation (from Lost Isle to Stockton). The Coast Guard, given three opportunities to rebut your various statements, never did so. The Captain of the Port undoubtedly had most or all of his initial information about the incident from the Vessel Traffic Service, and from the Coast Guard personnel from Coast Guard Station

Rio Vista who were on scene early in the incident, according to a witness statement from one such Coast Guard petty officer. Coast Guard Sector San Francisco, which the Captain of the Port commands, was the superior command over Station Rio Vista and any other Coast Guard station that provided personnel during the movement of the two vessels, as well as over the Vessel Traffic Service.¹ An observer knowing of COTP Order No. 14-066 would have every reason to expect that the Coast Guard personnel on scene were communicating with appropriate officials in the higher command. Apparently, Sector San Francisco's Waterways Safety Branch passively waited for a transit plan while other elements of the local Coast Guard actively monitored the movement of the vessels, with no coordination or effort to implement the transit-plan-related intent of COTP Order No. 14-066. This is unbecoming to the Coast Guard and should not be the basis of a significant monetary penalty. Accordingly, the penalty for Charge 5 is reduced to a Warning.

The penalties for the first three charges remain, for a total of \$1,350.00.

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

Payment of **\$1,350.00**, by check or money order payable to the U.S. Coast Guard, is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard - Civil Penalties
P.O. Box 531112
Atlanta, GA 30353-1112

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 1.00% accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

If you are unable to pay the penalty in full, you may contact the collection office at (510) 437-3644 to discuss a payment plan.

Sincerely,

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

Copy: Coast Guard Hearing Office
Coast Guard Finance Center

¹ Even if the Sector was not the superior command over every station involved, active coordination is to be expected.

