David Peter Crocker

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February 7, 2012

VIA EXPRESS MAIL
EB866525526US

Cdr. M. Hammond
Hearing Officer
US Coast Guard
4200 Wilson Blvd/MS 7160
Arlington, VA 20598-7160

Re: Activity No. 3854213
Party: [redacted]
Date of Alleged Violation: September 5, 2010
Subject: *Chippewa*

Dear Cdr. Hammond:

This office represents [redacted] in connection with the above matter. Reference is made to my letter of January 2, 2012, in which I requested the opportunity to present written arguments and additional evidence in lieu of a hearing pursuant to 33 CFR § 1.07-25(a). This communication is in formal response.

I. State of the Record.

At the outset, the written record provided by the Investigating Officer ("IO") appears to be incomplete. By letter dated October 13, 2010, this office informed the Investigating Officer that this office represented [redacted], Inc. This letter (attached) included legal and factual arguments in response to the IO's citation of my client for its alleged violation of 46 CFR § 4.05-1 and provided attachments from the regulations and the Marine Safety Manual. The October 13, 2010, letter and its attachments should be included in the record and its arguments incorporated herein. At the same time, we request that this current letter and included attachments, together with the declarations of [redacted], [redacted] and [redacted] also be included.

Subsequent to my letter, Capt. [redacted] and I had a personal interview with the IO and Lt.(jg) Kevin Beck on October 20, 2010, at the South Portland, Maine, Coast Guard base. I have attached an email from the IO confirming the meeting. After discussion, the Investigating Office and Lt.(jg) Beck agreed that it was appropriate to mitigate the proposed $5,000.00 penalty and Lt.(jg) Beck confirmed this understanding during a phone call to Capt. [redacted] later that day. Needless to say, both Capt. [redacted] and I were surprised that the IO is still requesting the same penalty over a year later, based on an incomplete record.

II. Argument.

A. The Investigating Office Has Misapplied 46 CFR § 4.05-1(a).

The sole violation alleged is failure to provide an immediate notice of a marine casualty per 46 CFR § 4.05-1(a). This is the initial notice and not the follow-up written report as required by 46 CFR §4.05-10(a).[1] Per 46 CFR § 4.05-5, the substance of the marine casualty notice is very basic. Neither section 4.05-1(a) nor section 4.05-5 specify *how* the notice is to be delivered. That is left up to the master. Moreover, section 4.05-1(a) leaves it to a vessel's master to determine what is necessary to address "resultant safety concerns" - that is, safety concerns resulting *from* the marine casualty. Section 4.05-1(a)'s plain language leaves the determination of what those safety concerns are in the first instance to the master - not the IO. Moreover, it is clear that the purpose of marine casualty notification is not to request any immediate response from the Coast Guard it is not a distress call but to provide sufficient information to enable the IO to commence his investigation and submit reports and recommendations.[2]

Under the regulations, marine casualties are normally addressed in a two-step process: initial notification (section 4.05-1(a)) with the follow-up five-day report (section 4.05-10(a)).

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[1]While the IO states in paragraph 2 of the "Aggravating/Mitigating Factors" ("AMF") section of his enforcement summary that Capt. [redacted] also failed to provide the written report per 46 CFR §4.05-10(a), he has not cited my client for this purported violation. As noted in [redacted] declaration, Capt. [redacted] delayed presenting the required written report to the Coast Guard because the Investigating Office insisted that Capt. [redacted] provide it to him personally, which was not possible within the five-day deadline because the IO was away. As per the declaration, the IO told Capt. [redacted] not to worry about it and when Capt. [redacted] provided the report to the IO on September 16, 2010, the IO placed his signature stamp over the date to obscure it. To repeat, the IO has not cited my client concerning the written report but he mentions it in his enforcement summary in an apparent attempt to prejudice my client with the hearing officer.

[2]As the Inspector General's Report OIG-08-01 (May 2008) makes clear: "According to the Coast Guard's Marine Safety Manual, the objective of the marine casualty program is to obtain information for the prevention of similar casualties, as far as practicable. According to 46 Code of Federal Regulations (CFR) § 4.07-1, *the investigations of marine casualties and accidents and determinations made are for the purpose of taking appropriate measures to promote safety of life and property at sea, and are not intended to fix civil or criminal responsibility. Based upon information gathered during an investigation, the Coast Guard may take corrective actions, such as instituting standards for safety and recommending marine safety legislation."* Report at 2 (emphasis added). This view is further confirmed by the plain language of 46 CFR § 4.01-1.

However, as 46 CFR § 4.05-10(b) makes clear, the follow-up written report can serve as the initial notice if filed "without delay after the occurrence of the marine casualty". The Marine Safety Manual (2008), Vol. V (Investigations and Enforcement), Part B, Chapter 2, Section B.1, provides the definitive interpretation of section 4.05-10(b):

> Under 46 CFR 4.05-10(b), however, a written report can serve the purpose of the notice if that report is filed "without delay." Without delay should not be interpreted to mean the five-day standard found in 46 CFR 4.05-10(a). If operators wish to submit written reports in lieu of the required notice, such reports must be written and delivered quickly in order to allow the Coast Guard to determine appropriate action.

Thus, section 4.05-10(b) itself provides insight as to the meaning of "immediately" in section 405-1(a). Indeed, as the Marine Safety Manual makes clear, the reason for marine casualty reporting is *investigative*. It is not intended to elicit Coast Guard assistance with the immediate casualty itself. Vol. V (Investigations and Enforcement), Chapter 1, Parts A.1-A.7 indicate that notification and reporting is part of the process (borrowed from the IMO) by which the Coast Guard analyzes incidents to provide safety recommendations and, as necessary, determine whether the incident itself was caused by some failure human or otherwise that is a violation of law or regulation (A.7).

There is no disagreement on the basic facts. When the *Chippewa* suffered its engine casualty on September 5, 2010, Capt. [redacted] addressed the resultant safety concerns: he dropped anchor when he lost headway at the edge of the Portland Harbor ship channel and within minutes, several other vessels came to *Chippewa's* assistance and removed all passengers. This was done in an orderly way under conditions of fair weather, calm seas and unlimited visibility. There was no shipping in the channel, which would have been visible for miles in any event. When all passengers had been removed, Capt. [redacted] had *Chippewa* towed back to its berth, a distance of approximately 1.5 miles as indicated by the chart reference provided by the IO. Capt. [redacted] noticed the Coast Guard per the regulation when his passengers were safe and the *Chippewa* was berthed in short, when the resultant safety concerns had been addressed. As acknowledged by the IO, from the engine casualty to Capt. [redacted]'s call, approximately one hour elapsed. This hour in no way prejudiced the IO's ability to initiate his investigation. *See* Declarations of [redacted]

As 46 CFR § 4.05-10(b) makes clear, Capt. [redacted] could have satisfied the initial reporting requirement by completing Form CG-2692 and running it to the Coast Guard base in South Portland that same day. It should also be noted that the IO does not allege in his summary that the engine casualty itself was caused by error or negligence nor does he allege any error or negligence in Capt. [redacted]'s efforts to transfer passengers or quickly return *Chippewa* to its

berth.[3] In short, Capt. [redacted] and [redacted] are being cited for a process violation and not for any substantive infraction. The dispute comes down to approximately one hour and the construction of the term "immediately" which necessarily involves the IO's second-guessing what is or is not a "resultant safety concern".

B. The IO Misconstrues the Word "Immediately" in 46 CFR § 4.05-1(a) by Improperly Using 46 CFR § 185.203 (Notice of Hazardous Conditions) as an Interpretive Gloss on 46 CFR § 4.05-1(a).

Clearly, Capt. [redacted] satisfied the marine casualty notification requirements contained in 46 CFR § 4.05-1(a) at least when one takes the notification regulations on their own terms. Yet, the IO in paragraph 8 of the AMF states flatly that "considerable interpretation of immediate notification does not exist" and bases his statement on the proposition that the "Federal Register cross-references 46 CFR § 4.05-1 with 33 CFR § 160.215, reporting of hazardous conditions." This is not accurate. The cited portion of the Federal Register, 59 FR 39469 (August 3, 1994) was an interim rule that amended 46 CFR § 4.05-1 to provide that the notice should be given "immediately" after addressing resultant safety concerns instead of "as soon as possible". The interim rule did not eliminate the alternative method of notification by written report contained in section 4.05-10(b) and the Marine Safety Manual as cited above continues to discuss the written report as an alternative for the initial notice.

The interim rule did, however, create section 4.05-1(b), which provides that a "Notice of Hazardous Condition" pursuant to 46 CFR § 160.215 could serve as notice pursuant to section 4.05-1(a) "if the marine casualty involves a hazardous condition". According to the interim rule, this eliminated what had previously been a dual reporting requirement for marine casualties and hazardous conditions. In the present case, the IO conflates the notice required for a hazardous condition with that required for a marine casualty and uses the former as a gloss on the latter. The two provisions, however, are separate both by regulation and by statute and the hazardous condition notification is only applicable under very specific conditions not germane to the present case.

First, it should be observed that noticing and reporting of marine casualties and noticing of hazardous conditions arise under separate legislation. The former arises under 46 U.S.C. §§ 6101-6104 ("Reporting Marine Casualties"). 46 U.S.C. § 6103 specifies penalties for failure to

[3] In paragraph 11 of the AMF, the IO states that "additional safety risks were created" when Capt. [redacted] transferred passengers although he does not state what these were or what Capt. [redacted] should have done differently regarding his passengers. In fact, the IO complains only that Capt. [redacted] did it "without the assistance or oversight of the Coast Guard". Yet, the marine casualty notification and reporting regulations do not contemplate any immediate Coast Guard assistance and are for the initiation of "prompt corrective or investigative efforts" – directly quoting the IO in paragraph 8. I would further note that paragraph 3 states that none of the fine is allocated to corrective measures. The IO's investigation therefore apparently turned up nothing that required correction – including Capt. [redacted] s prompt and professional actions in transferring his passengers and returning his vessel to its berth.

report a casualty and 46 CFR § 4.05-01 was promulgated under this legislation. The latter arises, however, under the Ports and Waterways Safety Act, 33 U.S.C. §§ 1221-1236, which contain its own separate civil penalties for violations of regulations issued under the Act (*see* 33 U.S.C. §1232). It is important to note that while 46 CFR § 4.05-1(b) provides that a hazardous condition notification can serve as marine casualty notification, the two are not indistinguishable. Rather, a hazardous condition notification can serve when the two overlap with one another which they do not do in the present case.[4]

Second, the application of the hazardous condition notification regulation, 33 CFR § 160.215, is limited in its application. It is found in Subpart C of Subchapter P of the regulations (sections 160.201-215) under the heading, "Notifications of Arrival, Hazardous Conditions and Certain Dangerous Cargoes"). Section 160.202 ("Applicability") provides that "this subpart applies to U.S. and foreign vessels bound for or departing from ports or places in the United States." By its own terms, therefore, the marine hazard notification provision would only apply if the *Chippewa* were moving between ports within the United States. This view is buttressed by Policy Letter 16711/33CFR160.204 dated July 28, 2006, which provides interpretation of the definitions of "port or place of departure" and "port of place of destination" as found in section 160.204 and as applied to arrival and departure notifications (which my client is also not required to do). The policy letter states that merely moving between berths within a port does not constitute movement between ports. As the IO very well knows, the *Chippewa* is an excursion boat that only operates within the Port of Portland.

While he attempts to link 46 CFR § 4.05-1(a) with 33 CFR § 160.215 in paragraph 8 of the AMF, he deliberately ignores the question of whether section 160.215 even applies.[5] Instead, he jumps away from section 160.215 in paragraph 8 to a discussion in paragraph 11 of similar marine casualty and hazardous condition notification provisions found in 46 CFR §§ 185.202, 203 (part of Subchapter T, applying to small passenger vessels under 100 gross tons) and again tries to link "immediate" in section 185.203 (hazardous conditions) with section 185.202(a) (marine casualties) without asking whether section 185.203 applies. In fact, the language of section 185.203 supplies the answer: the notification is to be given to the "Captain of the Port of the port of [sic] place of destination *and* the Captain of the Port of the port or place in which the vessel located". (emphasis added) This is not a different requirement than 33 CFR § 160.215 but rather the same requirement. In fact, the Federal Register supports this view. 61 FR 879-880 (January 10, 1996)(attached) states that new section 185.203 merely incorporates 33 CFR § 160.216. Therefore, 46 CFR §185.203 no more applies to the present case than does 33 CFR § 160.216. This means that the marine casualty notification regulation must stand on its own without any attempt by the IO to apply an interpretive gloss. Applying such a gloss would be difficult in any event: 46 CFR § 185.206 also provides like 46 CFR § 4.05-10 that the written report of a marine casualty can serve as the notice if provided without delay. The

[4]Also note that the IO has not cited my client for failing to report a hazardous condition.

[5]This point was discussed with the IO during the October 20, 2010, meeting.

alternative form of marine casualty notification is therefore preserved in Subchapter T.

C. The Cases and Incidents Cited by the IO Bolster the [redacted]'s Case.

The IO cites two incidents in support of his argument. Both assist my client. In Coast Guard Decision and Order 2009-0085 (*USCG v. Ailsworth*)(attached), the ALJ did indeed find the master of a sinking barge in violation of 46 CFR § 4.05-1 for failing to provide notice of a marine casualty. In *Ailsworth*, the master grounded a listing barge in order to prevent it from listing further and sinking. As noted in the finding of facts (Slip Op. at 6-7), the master took a number of steps to pump the barge and otherwise correct the list prior to grounding the barge on January 11, 2009. These steps took place over a twenty-hour period (January 10 11, 2009). When the master subsequently attempted to move the grounded barge to a pier, it sank. As the ALJ noted:

> Although the initial situation of the barge listing on January 10, 2009, may not have created the type of situation that triggers the reporting requirement, it is clear at the point Respondent deemed it necessary to take action to ground the SL-119 at approximately 0900 on January 11, 2009 due to concerns over its stability; a notice under 46 CFR 4.05-1(a)(4) was required.

(Slip Op. at 20)

In short, after the master had addressed the resultant safety concerns (pumping the barge and grounding it) he should have noticed the Coast Guard. Observe that the ALJ implicitly acknowledged that the master had some latitude to determine and address the safety concerns resulting from the flooding of a fully-loaded barge over a twenty-four hour period before providing notice.[6] This is borne out by the ALJ's statement of the Respondent's fourth violation at the beginning of the opinion:

> The Coast Guard alleged that while serving as the master of a towing vessel on January 10, 2009, Respondent noticed an occurrence materially and adversely affecting one of his barge's [sic] seaworthiness. *After addressing the safety concerns*, the Coast Guard alleged Respondent failed to notify the Coast Guard of the problems, as required by 46 CFR 4.05-1.

(Slip Op. at 3, emphasis added).

In the present case, Capt. [redacted] assessed the situation and removed his passengers fast. With equal dispatch, he removed his vessel from the edge of the ship channel and returned it to its berth. He addressed the resultant safety concerns professionally and then provided the

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[6]Observe as well that in *Ailsworth* the Respondent was not cited for failing to provide notice of a hazardous condition. Although the opinion is silent on this point, it's easy to understand why there was no citation: the incident took place entirely within the Port of Hopewell, Virginia. Contrast with *United States v. Canal Barge Company, Inc., et al,* No. 09-0388 (6th Cir. 2011) in which the defendants – moving barges between ports on the Mississippi and Ohio rivers – *were* subject to 33 CFR § 160.215.

required notice, all within approximately one hour.

The IO also cites the 2010 collision in the Delaware River between DUKW 34 and Barge *Carribean Sea* for the proposition that "there was no immediate call to the Coast Guard as well in this casualty." Unfortunately for the IO's analysis, the NTSB report in the matter (attached) also appears to bolster my client's case. The DUKW was run down by the barge in the very center of an *active* shipping channel a mere seven minutes after losing propulsion and dropping anchor, after refusing assistance from another DUKW operated by the same company. (Report at 4) Moreover, the barge operator failed to respond to numerous warning calls by the DUKW operator on VHF radio (Report at 5). In the end, the NTSB assigned the probable cause of the incident to the barge tow operator, who was inattentive. (Report at 72) He was subsequently criminally charged and convicted of misconduct while operating the tow. Ride the Ducks International LLC (the company operating DUKW 34) was not cited and the NTSB's sole recommendation to Ride the Ducks International LLC was as follows:

> Review Ride The Ducks International's existing safety management program and develop improved means to ensure that your company's safety and emergency procedures are understood and adhered to by employees in safety-critical positions.

(Report at 73) The NTSB did find as a contributing cause the DUKW operator's failure "to take actions appropriate to the risk of anchoring his vessel in an active navigation channel." (Report at 72) These included failure to instruct the deck hand to act as lookout, accept assistance when offered and follow *company* procedures requiring a call to the Coast Guard.[7] Put another way, the operator of DUKW 34 was faulted for *not* addressing resultant safety concerns. Clearly, this is not the case with Capt. [redacted] He acted with remarkable swiftness in removing his passengers and getting his vessel back to its berth. He took "actions appropriate to the risk". And for this he is faulted by the IO and potentially subject to a hefty fine.

III. Conclusion.

To apply 46 CFR § 4.05-1(a) to the facts of this case as urged by the IO would be a frank error of law and an injustice. The IO states in paragraph 8 of the AMF that "the master continues to insist that his notification was timely" as if Capt. [redacted]'s failure to agree to an injustice were a strike against him. This case illustrates the continuing confusion and uneven application of the casualty notification and reporting rules. This uneven application continues even after issuance of the Inspector General Report OIG-08-51 in 2008. Capt. Alan Bernstein noted the continuing confusion in the December 2010 issue of *WorkBoat* magazine ("Marine Casualty Confusion" - attached). As noted, the advice that Coast Guard gives on marine

[7] According to the report, the company had incorporated into its policies and procedures 46 CFR § 4.05-1(a). The NTSB faulted the operator for not following company procedure and taking steps appropriate to his situation. (Report at 63) Ride the Ducks International LLC was not cited by the NTSB for failure to follow section 4.05-1 and was criticized only for not following a company procedure that incorporated the regulation.

casualty reporting can vary from port to port.[8] The IO did not cite my client for failing to report a hazardous condition.[9] Indeed, he did not do so because he could not by law. Yet, he is trying in his zeal to graft the hazardous reporting requirement onto the casualty reporting provision.

For the many reasons discussed in this response, you should find that my client has not violated the marine casualty notification regulation. To find a violation and impose a civil penalty would be an error of law under the facts of this case.

Yours sincerely,

David P. Crocker

DPC/mbs
enclosures
cc: [redacted] Inc.
Attachments

[8]Also included is a newsletter from the Kenai, AK Coast Guard, advising mariners that "[a] phone call when you return to the dock" meets the notice requirement. Available online at http://www.docstoc.com/docs/6585479/COAST-GUARD-NEWSLETTER-COAST-GUARD-MARINE-SAFETY-DETACHMENT-KENAI

[9]Presumably, if the IO could have cited my client for failure to report a hazardous condition, he could have also cited the captains who rendered assistance to the *Chippewa.* Yet, he has not done so.

List of Attachments

1. Declaration of [redacted]
2. Declaration of [redacted]
3. Declaration of [redacted]
4. Email from IO to David Crocker (October 16, 2010)
5. Policy Letter 16711/33CFR160.204 dated July 28, 2006
6. 61 FR 879-880 (January 10, 1996)
7. *USCG v. Ailsworth* - Decision and Order
8. NTSB Report - Collision of Tugboat/Barge *Caribbean Sea*/*The Resource* with Amphibious Passenger Vehicle *DUKW 34* Philadelphia, Pennsylvania July 7, 2010
9. Inspector General Report OIG-08-51
10. Excerpt from *Workboat Magazine* (December 2010 - "Marine Casualty Confusion") Available online at www.workboat.com/newsdetail.aspx?id 4295000139
11. Newsletter from the Kenai, AK Coast Guard. Available online at www.docstoc.com/docs/6585479/COAST-GUARD-NEWSLETTER-COAST-GUARD-MARINE-SAFETY-DETACHMENT-KENAI
12. Letter (with attachments) dated October 14, 2010 from David Crocker to IO

U.S. Department of Homeland Security

United States Coast Guard

Commandant (CG-094HO)
Coast Guard Hearing Office

4200 Wilson Blvd/ MS 7160
Arlington, VA 20598-7160
Phone:202-493-6870
Fax:202-493-6924
Toll-free:866-801-6178
www.uscg.mil/legal/cgho

RECEIVED
APR 23 2012
BY:.....

[redacted], INC
C/O DAVID PETER CROCKER
158 PLEASANT AVENUE
PORTLAND, ME 04103-3204

Activity No. 3854213
Party: [redacted], INC
Date of Violation: September 05, 2010
Subject: CHIPPEWA
Amount: $0.00
Date: April 19, 2012
Re: **FLD**

Dear Mr. Crocker:

I am in receipt of your letter dated February 7, 2012 submitted on behalf of [redacted] Inc, in this matter. Your letter has been added to the case file. The Coast Guard alleges that on September 5, 2010 [redacted] Inc, as owner of the small passenger vessel CHIPPEWA, failed to give immediate notice of a marine casualty involving an occurrence listed in Title 46 Code of Federal Regulations (CFR), Section 4.05-1; namely a loss of propulsion while operating on the Fore River, Casco Bay, Maine.

According to the evidence in the case file, on September 5, 2010 at 4:30 p.m., the small passenger vessel CHIPPEWA suffered a loss of propulsion while underway on the Fore River, Casco Bay Maine with 105 passengers on board. The evidence also shows this incident was not reported to the Coast Guard until 5:37 p.m.; one hour and seven minutes after the vessel lost propulsion. On December 6, 2011 following an examination of the case file, I issued a preliminary assessment letter (PAL), in which I assessed a preliminary civil penalty of $5,000.00. Having previously been granted an extension of time in order to respond to the PAL, you now present [redacted] Inc's formal response in lieu of a hearing. [redacted] Inc, disputes the violation in this case occurred as alleged and you have submitted evidence and argument for my consideration. Having considered your response along with the other evidence in the case file, I now proceed to final determination.

Before addressing the specific violation in this matter, I will first address the issue you raise in your letter with respect to the "state of the record". In your letter you state that the written report provided by the Investigating Officer appears to be incomplete because it does not include a letter from your office dated October 13, 2010 which included factual and legal arguments in response to the IO's citation. The letter also provided attachments from the regulations and the Marine Safety Manual. You state: "The October 13, 2010 letter and its attachments should be included in the record and its arguments incorporated herein."

My adjudication of this case depends on the evidence in the case file that has been made available to me and evidence you produce. This is because the Coast Guard has provided in the case package, of which you have a copy, all of the evidence they are relying on to support the alleged violation. You were provided an opportunity to comment on the evidence in the case package provided to you. The letter which you are referring to is actually dated October 14, 2010. I acknowledge that this letter and its attachments are submitted as attachment 12 to your letter of February 7, 2012 and have been made a part of the case file.

Regarding the alleged violation in this case, 46 CFR 4.05-1(a) states: "Immediately after addressing the resultant safety concerns, the owner, agent, master, operator, or person in charge, shall notify the nearest Sector Office, Marine Inspection Office or Coast Guard Group Office whenever a vessel is involved in a marine casualty consisting in -", and paragraph (2) goes on to say: "An intended grounding, or an intended strike of a bridge, that creates a hazard to navigation, the environment, or the safety of a vessel, or that meets any criterion of paragraphs (a) (3) through (8)." 46 CFR 4.05-1(a)(3) includes: "A loss of main propulsion..."

It is undisputed that on September 5, 2010 at 4:30 p.m. the CHIPPEWA was involved in a marine casualty that required notification under 46 CFR 4.05-1. What is at issue in this case is the point at which resultant safety concerns had been addressed and the point at which immediate notice was required. The Coast Guard alleges that [redacted] Inc, failed to notify Sector Northern New England immediately after addressing the resultant safety concerns following the marine casualty. Although the Coast Guard does not identify what the "resultant safety concerns" were in this case or what time they were addressed.

You offer that the master of the CHIPPEWA, [redacted] reported the casualty immediately after addressing the resultant safety concerns. In support of this, you offer Mr. [redacted]'s Declaration of [redacted], Inc dated February 3, 2012 submitted on behalf of himself and [redacted] Inc. In his declaration Mr. [redacted] described the chain of events following the loss of propulsion and states in part as follows:

- **"At the time the *Chippewa* lost main propulsion from what turned out to be a thrown rod in the main diesel. We secured the diesel and determined that there was no immediate fire of flooding danger."**

- **"When the *Chippewa* lost headway, I ordered the anchor dropped at the edge of the harbor ship channel near the Portland Pipeline pier."**

- **"Because *Chippewa* had lost power and was at anchor at the edge of the ship channel, I was naturally concerned for my passengers' safety and therefore decided to remove my passengers as quickly as possible to other vessels. I called the *St. Croix* because it was departing at 1630 for a passenger run. The *Lucky Lady* and *Sea Tow* were passing and asked if I needed assistance. All three vessels stood by and within minutes we began transferring passengers....The transfer was complete within approximately 20 minutes with the passengers completing their trip to House Island in safety."**

- **"When the passenger's safety had been assured my next concern was to prevent the *Chippewa* from becoming a hazard to navigation and decided to remove the *Chippewa* from the edge of the ship channel. The *Lucky Catch* then took the *Chippewa* in tow back to Long Warf.... The entire evolution was complete in a little more than an hour and when my passengers were safe and the *Chippewa* secured, I called the Coast Guard to report the casualty."**

In view of the evidence presented, I find that the master of the CHIPPEWA Mr. [redacted], made a determination as to his safety concerns resulting from the vessel losing propulsion on September 5, 2010. Further, I find that after addressing the resultant safety concerns as described above, the loss of propulsion was immediately reported to the Coast Guard.

Having carefully weighed the evidence in this case, I find there is insufficient evidence to support a finding that a violation of 46 CFR 4.05-1 occurred as alleged. Therefore, I am dismissing this case and no monetary penalty will be assessed.

This is my final determination in this matter.

This dismissal is without prejudice to the right of the District Commander who began this matter to re-file this case if more evidence becomes available, as allowed under 33 CFR 1.07-65. If that happens, you will have a further opportunity to respond. Otherwise, you may consider this matter closed.

Sincerely,

M. HAMMOND
Commander, U. S. Coast Guard
Coast Guard Hearing Officer

Encl: (1) Charge sheet

Marine Violation Charge Sheet

Total Charges/ 1 Current Activity Number/ 3854213

Charged Party: [redacted], INC

1. Charge/ 46 CFR 4.05-1 Finding/ Dismissed w/out Prejudice

Penalty Amount/ $0.00 Max Penalty/ $35,000.00

Regulation Description/

Failure to give immediate notice of a marine casualty involving the occurrence listed in 46 CFR 4.05-1.