



# LP Bulletin

Friday 11<sup>th</sup> March 2011

## **Bulletin 749 - 03/11 - US Ports and Waterways Safety Act: reporting - USA**

**The Club would wish to bring to Members attention a recent decision made by the U.S. Court of Appeals, 6<sup>th</sup> Circuit. The Court found that the crew of a tug & barge which failed to report a hazardous condition to the U.S.C.G. amounted to a knowing or wilful criminal violation of the Ports and Waterways Safety Act. Members should take notice of the potentially serious penalties that may follow for a violation of this Act, and ensure that their employees immediately notify the Coast Guard of any hazardous condition or marine casualty.**

The Ports and Waterways Safety Act requires that any hazardous condition onboard a vessel operating in U.S. waters be immediately reported to the nearest Coast Guard office. Please be advised that the term "hazardous condition" is broadly defined to include "any condition that may adversely affect the safety of any vessel".

The negligent failure to report a hazardous condition in violation of this regulation may be assessed civil penalties, not to exceed \$25,000 for each violation under 33 U.S.C. § 1232(a). Please note that each day that the hazardous condition is not reported shall be considered a separate violation of the Act. In addition, the wilful or knowing failure to report these conditions may be prosecuted criminally as a Class D felony. These criminal charges could be brought against the employee responsible for reporting such conditions and his employer under 33 U.S.C. § 1232(b). Finally, a vessel used in violation of these regulations may be subject to in rem liability under 33 U.S.C. § 1232(c).

The recently announced U.S. v. Canal Barge Co. decision by the U.S. Court of Appeals, 6<sup>th</sup> Circuit involved criminal charges brought against the barge owners, the shore-side manager and two tug boat captains for their failure to immediately report a hazardous condition to the Coast Guard. The hazardous condition involved a crack in the barge's hull which was noticed and temporarily repaired using an epoxy patch on 16 June 2005 in the Mississippi River. The barge was carrying approximately 400,000 gallons of benzene at the time. The patch failed on 20 June 2005, while it was under the control of another tug company in the Ohio River. The Captain of the new tug boat immediately reported the hazardous condition to the nearest Coast Guard office in Louisville, Kentucky. Environmental crews cleaned the deck of the barge and permanent repairs were completed.

The trial court jury found all defendants guilty of wilful failure to report the hazardous condition. However, the trial court subsequently acquitted the defendants on the grounds that the failure to report took place in a different judicial district from the one where the charges were filed. The 6<sup>th</sup> Circuit overturned the acquittal and found that the failure to immediately report a hazardous condition constituted a continuing violation and therefore charges could be brought in any district through which the barge passed. Also, the 6<sup>th</sup> Circuit held that since defendants were aware of the crack but failed to report it, there was sufficient evidence to support a finding that the crew knowingly or wilfully failed to report the hazardous condition. The Court noted the

fact that the defendants were aware of the type of cargo being transported and that a potential discharge of this cargo was potentially hazardous.

Please find the link below for a full reading of the U.S. v. Canal Barge Co. decision.  
<http://caselaw.findlaw.com/us-6th-circuit/1551755.html>

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