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GCMA REPORT #R-429-G, Rev.2 (Series)

DATE: February 24, 2007

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File# GCM-59 [Repository of related GCMA correspondence]
 [Publication History: Originally published as GCMA Report# R-291 on Feb. 21, 2000. First Revision published, April 17, 2002. Expanded and renumbered as #R-429-G, Rev. 2 (Series) on Feb. 24, 2007.]

REPORT TO CONGRESS: SHARPENING ACCIDENT INVESTIGATION TOOLS BY ESTABLISHING LOGBOOK STANDARDS FOR LOWER-LEVEL MARINERS

TABLE OF CONTENTS

Adopting Clear Logbook Standards	1
GCMA Resolution on Towing Vessel Logbooks	1
Coast Guard Told Us They Lack Statutory Authority	2
Fatigue and Vessel Manning Issues.....	2
The Coast Guard Thwarted NTSB Work-Hours Initiative.....	2
American Waterways Operatorsø(AWO) Standard Logbook Entries	3
øSmooth Logö Versus øRough Logö	4
Advantages of Standardized Entries	4
Congress Expresses Concern Over Hours of Service	5
GCMAø Legislative Proposal	5
Different Types of Logbooks	6
Set a Goal to Reduce Unnecessary Paperwork.....	7
The Logbook Issue Has Its Day in Court.....	9
Enclosure #1 øTypical øRough Logö.....	11

ADOPTING CLEAR LOGBOOK STANDARDS

The Members and Board of Directors of the Gulf Coast Mariners Association (GCMA), shortly after its founding in April 1999, assigned its **FIRST PRIORITY** to efforts to establish logbook standards to protect our lower-level mariners. This matter stands as follows:

On February 21, 2000, the GCMA Board of Directors prepared, and our membership at an open meeting unanimously accepted, a resolution that urged the Coast Guard to establish logbook standards for uninspected towing

vessels for the reasons stated.

GCMA then sent a sizeable delegation to the Towing Safety Advisory Committee (TSAC)⁽¹⁾ meeting held at Coast Guard Headquarters in Washington, DC, on March 16, 2000.

We were allotted a few minutes to speak during the segment of the meeting open to the public at the conclusion of the meeting. Although we formally presented the resolution printed below to TSAC at that time, the subject was never placed on the agenda of a future TSAC meeting for discussion. [⁽¹⁾TSAC is a Congressionally mandated Federal Advisory Committee described in GCMA Report #R-417.]

Sensing that little would happen as a direct result of our TSAC presentation, within a week GCMA made a separate formal written request to Coast Guard Commandant James Loy to initiate rulemaking to establish logbook standards.

On August 30, 2000 GCMA wrote to Department of Transportation Secretary Slater citing and comparing longstanding regulations in the trucking industry at 49 CFR §395 dating back to December 1968 that require certain truck drivers to maintain a record of their hours of operation. We clearly suggested that a parallel exists between the maritime and trucking industries, especially when our mariners engage in round-the clock activities in areas where statutes and regulations govern their work hours.

During the six months after we filed our rulemaking initiative with Commandant Loy, the controversy over the blatant abuses of the 12-Hour Rule (i.e., the two-watch system) led us to ask Rear Admiral Robert North, then Assistant Commandant for Marine Safety and Environmental Protection, in a letter dated October 6, 2000 to expand our logbook request then limited to uninspected towing vessels to include all vessels⁽¹⁾ manned by "lower-level"⁽²⁾ mariners. [⁽¹⁾Other classes of vessels include offshore supply vessels and small passenger vessels. GCMA further delineated manning and watchstanding problems in GCMA Report # R-279, Rev. 5, Dec. 19, 2002. Review and Set Safe Manning Standards for Offshore Supply Vessels and Uninspected Towing Vessels. ⁽²⁾**Vocabulary: "Lower-level"** is a Coast Guard licensing term that categorizes merchant mariners who work on vessels that admeasure less than 1,600 gross register tons.]

GCMA received a letter from RADM Robert North in reply to our letters stating that he was considering our request. However, after two years passed and we had not received a decision from the Coast Guard Marine Safety Council or the Coast Guard's Office of Operating and Environment Standards (G-MSO) as to whether they would consider initiating a rulemaking project to accomplish the goals set out in our petition. In fact, we never even received the courtesy of a reply to several follow-up letters from the Marine Safety Council. We subsequently reported this unacceptable inattention and received an apology from the Vice Commandant of the Coast Guard.

GULF COAST MARINERS ASSOCIATION RESOLUTION ON TOWING VESSEL LOGBOOKS

WHEREAS Title 46, Code of Federal Regulations contains these provisions establishing manning standards which apply to uninspected towing vessels: §§15.701; 15.705; 15.710; 15.720; 15.730; 15.801; 15.805; 15.810; 15.820; 15.825;

15.840; 15.850; 15.855; 15.905; 15.910; 15.915...

WHEREAS these manning standards include provisions that limit hours of operation by any licensed towing vessel officer or operator to a maximum of 12 hours in any 24 hour period...

WHEREAS 33 CFR §164.80 (inter alia) requires inspection and testing of various items of towing vessel equipment and logging the results as follows: "To ensure compliance with this rule, the Coast Guard requires a record of tests even if nothing fails. In the interest of minimizing these reports, the Coast Guard has not dictated the format of the entry and will continue to allow companies to use their established procedures."⁽¹⁾

WHEREAS 46 CFR §27.355 requires instructions, drills, and safety orientations conducted on both new and existing towing vessel with the presumption that these events will be logged...

WHEREAS many of our members, as "employees at will," report that they have no choice but to disregard certain manning regulations in order to hold their jobs...

WHEREAS many of our members report operating in a fatigued condition...

WHEREAS Coast Guard boarding officers cannot adequately and fairly enforce statutory hours of work and rest and other manning regulations in 46 CFR Part 15 without viewing adequate logbook entries...

THEREFORE, BE IT RESOLVED THAT THE GULF COAST MARINERS ASSOCIATION petition the Coast Guard to initiate rulemaking action⁽²⁾ to require masters, mates, pilots, or operators of uninspected towing vessels to accurately and fully log the working hours of all crew members at the end of each watch in a suitable vessel logbook containing consecutively numbered pages and that such accumulated logbooks be kept onboard at all times to fully disclose compliance with all applicable work hour and manning regulations for the past 90 days.

⁽¹⁾ Refer to CGD 94-020, 61 FR 35070, July 3, 1996. Some companies use a rubber stamp with or without a signature to "certify" that all tests required by 33 CFR §164.80 were performed without specifying either the nature of the tests or their results.

⁽²⁾ Under the provisions of 33 CFR §1.05-20.

**THE COAST GUARD TOLD US
THEY "LACK STATUTORY AUTHORITY"**

In a letter dated December 2, 2002, Captain M.W. Brown, Chief, Operating and Environmental Standards (G-MSO) stated: "Research conducted by the Coast Guard Headquarters legal staff indicated that the Coast Guard lacks the requisite statutory authority to generate regulations requiring logbooks on vessels not already required to have logbooks by 46 U.S. Code §11301(a). For vessels required to have logbooks, the additional entry requirements requested by GCMA's petition are outside the scope of 46 U.S. Code §11301(b). Based on this and the general lack of statutory authority, the Coast Guard will not initiate a

rulemaking project.

Legislative Change Proposal?

We then pursued a new route and asked the Coast Guard to initiate a Legislative Change Proposal (LCP) to ask Congress for the requisite statutory authority. This consumed more time yet garnered no results although GCMA determined the procedure to follow to make a LCP and determine that such a path would lead to another dead end within Coast Guard Headquarters. Consequently, in light of the Coast Guard's apparent lack of interest in improving one of their key investigative tools to render it more useful in accident investigation, we now seek direct Congressional support to make a meaningful change to both protect our mariners and improve the quality of investigations to support existing and future regulations. We believe this is especially important in light of Section 415 of the Coast Guard Authorization Act of 2004 that amended 46 U.S. Code §3301(15) to inspect towing vessels. GCMA has actively participated in the ongoing rulemaking process.⁽¹⁾ [⁽¹⁾ Refer to GCMA Report #R-276, Rev. 9, June 1, 2005. Towing Vessels Must Be Regulated Like Every Other Inspected Vessel. And GCMA Report #R-276-A, Nov. 9, 2006. Towing Vessel Inspection: Mariner Suggestions & Initiatives Submitted to the TSAC Towing Vessel Inspection & Licensing Work Groups.]

FATIGUE AND VESSEL MANNING ISSUES

One of the principal concerns for our lower-level mariners is that the absence of a statutory requirement for consistent logbook standards facilitates the cover-up of mariner abuse. GCMA revealed the principal abuses in the following reports posted on our internet website:

- GCMA Report #R-370. Jun. 16, 2003. 12 Hour Rule Violation: The Verret Case.
- GCMA Report #R-370-A (Draft) Oct. 11, 2006. Report to Congress: Violation of the 12-Hour Rules: Webbers Falls Accident Revisited.
- GCMA Report #R-370-B, Rev.4, Jun. 1, 2006. Violation of the 12-Hour Rules: The Tug Chinook Strikes & Damages The Lake Washington Bridge.
- GCMA Report #R-370-C, Rev.2, Jun. 5, 2006. 12-Hour Rule Violations: The Winkler Case.
- GCMA Report #R-370-D. Jun. 28, 2006. Work-Hour Abuse, Whistleblower Protection and Deadhead Transportation. (13 pgs.)
- GCMA Report #R-370-E, July 6, 2006. Crew Endurance: Work-Hour Laws and Regulations Need Review.
- R-370-F., July 6, 2006. Crew Endurance Management Systems.
- R-370-G. Nov. 21, 2006. Crew Endurance: The Call Watch Cover-up.

**THE COAST GUARD THWARTED
NTSB WORK-HOURS INITIATIVE**

GCMA also contacted the National Transportation Safety Board (NTSB) in reference to fatigue in general and

our logbook initiative in particular. The National Transportation Safety Board is an independent Federal agency and not part of the U.S. Department of Transportation. NTSB furnished a copy of a Coast Guard letter dated October 8, 1999 in reference to NTSB fatigue recommendations. In the final paragraph of that letter, Vice Admiral T.W. Josiah, Coast Guard Chief of Staff, states that the "...complexities of the marine transportation system preclude the Coast Guard from establishing scientifically based hours of service at this time."

Since the Coast Guard resisted taking a meaningful first step to require lower-level mariner's to record their actual hours of service aboard commercial vessels, they fell even farther behind other modal administrations in implementing the NTSB's hours-of-service safety recommendations, specifically:

(NTSB M-99-1). "Establish within 2 years scientifically based hours-of-service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements."

The Coast Guard is almost 40 years behind the trucking industry in requiring its lower-level mariners to log their hours of service. GCMA believes NTSB Recommendation M-99-1 has merit and must no longer be ignored. We also believe that requiring **overtime pay** beyond 40 hours per week in the maritime industry would encourage accurate recordkeeping and lessen the abuse of existing work-hour regulations documented by our Association.⁽¹⁾ Furthermore, the **use of time clocks** to record hours of work on larger commercial vessels and required logbook entries made in ink deserve careful consideration.⁽²⁾ ⁽¹⁾*The matter of overtime pay extends beyond the scope of this report.* ⁽²⁾*The National Highway Traffic Safety Administration is evaluating sophisticated time and data recorders for installation in long-haul trucks while the Coast Guard hasn't even considered time clocks!*

**AMERICAN WATERWAYS OPERATORS'
STANDARD LOGBOOK ENTRIES**

The American Waterways Operators (AWO) Responsible Carrier Program (RCP) under its "Sample Policies and Procedures" listed a number of acceptable logbook recommendations that we list below.

GCMA notes that the Coast Guard actively promotes the Responsible Carrier Program (RCP) and even signed a safety partnership agreement with this trade association to encourage safety in the towing industry. The towing industry has a poor safety record that it needs to improve upon.⁽¹⁾ ⁽¹⁾*Refer to GCMA Report # R-351. Rev.1. Oct. 24, 2006. How Safe Is The Towing Industry?*

We commend and support these specific logbook recommendations to the Coast Guard and to Congress as we believe they would:

- improve the investigation of accidents by Coast Guard Investigating Officers,
- improve enforcement of work-hour statutes and

regulations,

- provide a record of the persons standing watch and the times at which the watch was relieved, and
- serve as a repository of information required to be logged by existing and proposed regulations.

GCMA urges that logbook requirements should be extended to all commercial vessels under 1,600 gross register tons and to any larger vessels in domestic service that are not required to fill out an official logbook.

**[American Waterways Operators]
A.1/A.2 VESSEL OPERATING PROCEDURES
h. Vessel Log/Required Logbook Entries**

A. GENERAL GUIDANCE/OVERVIEW

- This procedure establishes guidelines for the maintenance of vessel logs on board Responsible Towing Company vessels.
- It is extremely important that entries regarding accidents be completed, regardless of how trivial an incident may seem at the time. The log must contain a true and accurate record of the event, and any questions concerning the information to be included in the log should be referred to the Operations Manager.

B. PROCEDURES

1. Each *Responsible Towing Company* vessel must maintain an official log. The following guidelines for maintaining the log must be adhered to:
 - a) The log must kept daily, accurately, and legibly;
 - b) The log must be retained aboard the vessel for a period of one year;
 - c) Log entries, properly dated, must be made as soon as possible after the occurrence for which the entry is made;
 - d) No errors or erasures should be made in the log. Any incorrect statements must be corrected by drawing a single line through the entry and initialing it; and,
 - e) The log must be returned to the Responsible Towing Company main office by January 15th of the following year.
2. The following information is required to be entered in the *Responsible Towing Company* logbook:
 - a) Details of all required monthly fire, boat, man overboard, abandon ship, damage control and vessel response plan drills;
 - b) Details of steering gear, navigation equipment, and communications gear tests conducted prior to departure from port;
 - c) Results of weekly and monthly testing of emergency lighting and power systems;
 - d) Fuel and lube oil data, including the amount of fuel or lube oil transferred to or from the other vessel;
 - e) Offenses by and/or disciplinary actions against crewmembers, including a statement concerning the notification of such an entry to the crewmember. Any reply by the crewmember must be recorded in the log and a copy of the entries must be furnished to the crewmember, duly executed by the master and another member of the crew;
 - f) The nature of any illness suffered by a crew-member, including medical treatment administered and the name of the individual who administered it;

- g) Any personal injuries reported, whether to a crew-member or another individual aboard the vessel. Where there are no injuries, make the notation, "No personal injuries reported today";
 - h) The name of every crewmember who ceases to be a member of the crew other than by death, with the place, time, manner, and cause of departure;
 - i) Report of any death and cause of death;
 - j) Report of any collision, stranding or grounding;
 - k) Search for contrabands or stowaways;
 - l) The number and description of any non-crew-members carried onboard the vessel their boarding and departure points, and the reason or authorization for their being aboard;
 - m) General condition of the vessel and its equipment, at least monthly;
 - n) The times and places of all arrivals and departures of the vessel including changes of river segments, locks, bridges, etc.;
 - o) Intermittent operations such as drops or additions or barges, standby time, hire of tug, and change of river segment, along with notations as to where, by whose orders, and for what purpose these operations were undertaken;
 - p) A complete list of vessel crewmembers, including their jobs, ratings, and/or licenses;
 - q) Crew change times, and a listing of persons relieved and coming on duty;
 - r) Brief description of equipment and supplies received and any damage to these items that may have occurred;
 - s) Report of any vessel damage;
 - t) Notation of any machinery or equipment not properly working, and all repairs undertaken;
 - u) Notation of any repair work undertaken by an outside contractor along with any tickets or invoices;
 - v) Any purchases of groceries or supplies made for the vessel including the name of the vendor;
 - w) Any rope, hawser or wires broken during the day's operations;
 - x) Weather conditions affecting navigation;
 - y) Navigation time, including geographic departure point and arrival point, and reason for trip (deliver cargo, receive cargo, etc.);
 - z) Details of all crew safety meetings;
 - aa) Times of any delays (groundings, Coast Guard boarding, traffic, lock closures, etc.);
3. In the event of abandoning ship, the log book should be taken from the vessel.

Conclusions:

This list is not dramatically different from the list of requirements published in front of the Coast Guard's "Official Logbook" and reflects recommended practices in the towing industry. Unfortunately, of an approximately 900 to 1,100 towing companies, only about 220 companies are members of the American Waterways Operators committed to these standards. Furthermore, **these standards currently are not supported by statute or regulation.** We ask Congress to change this.

SMOOTH LOG VERSUS ROUGH LOG

The logbook described here is a log that is retained on board the vessel for a period of one year and then returned to company custody no later than January 15th of the following year. We identify this logbook in common parlance as a "**Rough Log**" in contrast to a **Smooth Log** (i.e. "Billing Log") used to document invoices sent to the vessel's charterer. This is unlike the "Official Logbook" required by 46 U.S. Code §11301 that is supposed to be distributed by the Coast Guard, remains Coast Guard property, and is required to be surrendered to the Coast Guard after the conclusion of an international or intercoastal voyage.

ADVANTAGES OF STANDARDIZED ENTRIES

From GCMA's experience, of all the logbook entries, the most important items to be recorded in a neat and orderly fashion are the actual hours worked by all lower-level officers and crewmembers on commercial vessels. We believe this is necessary to curtail widespread abuses of the 12-hour rules that our Association documented in June 2000 in our book titled Mariners Speak Out on Violation of the 12-Hour Work Day.⁽¹⁾ [⁽¹⁾This book appears on our internet website as GCMA Report #R-20 and was widely distributed to senior Coast Guard officials in 2000 and 2001 and ignored.]

Logbooks will help assure that vessels served by lower-level mariners maintain legitimate watchstanding schedules. This, in turn, will require that sufficient crewmembers adequately man the vessel for the hours of service it is in operation. Current regulations for towing vessels at 33 CFR §§164.78(b) and 164.80 also require certain equipment checks be logged aboard towing vessels. However, aside from this list, mariners have no regulatory guidance of items that should be logged as is required in an Official Logbook.

Official Logbooks, published by the Coast Guard, are seldom used by lower-level mariners and their entries are not routinely checked by Coast Guard inspectors and boarding parties. Some logbooks are so poorly maintained as to be without value to either the vessel owners for commercial purposes or to the Coast Guard for regulatory enforcement.

Clear Logbook Standards Facilitates Investigations Of Accidents and Injuries

A standardized set of logbook requirements would encourage Coast Guard investigating officers to apprehend widespread abusers of our mariners and facilitate their investigative work.

The Coast Guard studied their own investigative methods on two occasions. GCMA posted both reports on our internet website as:

- R-429-A. (Series) May 24, 2005. U.S. Coast Guard Investigations. This is a report of an evaluation by outside experts in Coast Guard Report #CG-D-13-95, titled U.S. Coast Guard Marine Casualty Investigation and Reporting: Analysis and Recommendations for Improvement published in August 1994.
- R-429-B. (Series), July 21, 2006. Report of the USCG Quality Action Team on Marine Safety Investigations. 1996.

GCMA also is critical of the effectiveness of Coast Guard investigators. GCMA Report # R-429, Aug. 29, 2006, titled GCMA Report to Congress: How Coast Guard Investigations Adversely Affect Lower Level Mariners also

appears on our website.

Congress requested the Department of Homeland Security's Office of the Inspector General to investigate the Coast Guard's Marine Casualty Investigation Program and submit a report in the summer of 2007.

We also believe that true adherence to the existing work-hour statutes and regulations would have led to greater mariner satisfaction and retention by giving mariners greater control over their working conditions. Mariner retention is a serious national and international problem.

We believe that the success of establishing meaningful logbook standards is important to protecting all "lower-level" mariners.

CONGRESS EXPRESSES CONCERN OVER "HOURS OF SERVICE"

Section 409 of the Coast Guard Authorization Act of 2004 (P.L. 108-293) amended 46 U.S. Code §8904 by adding one paragraph, (c), as follows:

Crew Endurance Management Demonstration Project

(c) The Secretary may prescribe by regulation requirements for maximum hours of service (including recording and recordkeeping of that service) of individuals engaged on a towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding the sheer).

Congress also ordered a "Demonstration Project" of Crew Endurance Management Systems (CEMS) be conducted before prescribing any new regulations. The Department of Homeland Security delivered the Report on Demonstration Project : Implementing the Crew Endurance Management System (CEMS) on Towing Vessels to Congress on March 29, 2006.

Congress Explained What it Expected

Congress also provided the following wording in a "Joint Explanatory Statement of the Committee of Conference" regarding Section 409:

"Section 409 of the House bill grants the Secretary of the Department in which the Coast Guard is operating the authority to prescribe maximum hours of service for individuals engaged on a towing vessel that is required to have a licensed operator under section 8904 of title 46 United States Code. However, before prescribing these regulations, the Secretary is required to conduct and report to Congress on the results of a demonstration project involving the implementation of Crew Endurance Management Systems on these vessels."

The Senate amendment does not contain a comparable provision.

"The Conference substitute adopts the House provision."

"In September 2001, a towing vessel struck a bridge at South Padre Island, TX. The bridge collapsed, and 5 people died when their cars and trucks went into the water. On May 26, 2002, a towing vessel struck the I-40 highway bridge over the Arkansas River at Webbers Falls, OK. The bridge collapsed, and 14 people died when their cars and trucks went into the Arkansas River."

"As a result of these accidents, the Coast Guard and the American Waterways Operators established a joint working group to examine the statistics of bridge collisions and measures that could be taken to help prevent these types of casualties. The study used a database of 2,692 bridge collision cases between 1992 and 2001. One of the recommendations of the working group's May 2003 report is to "require the implementation of Crew Endurance Management Systems (CEMS) throughout the towing industry as a means of improving decision making fitness." In addition, on June 1, 1999, the National Transportation Safety Board issued Recommendation M-99-1 to the Coast Guard that stated that the Coast Guard should "Establish within 2 years scientifically-based hours-of-service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements." This section would give the Coast Guard legal authority to implement these recommendations.

"The (Senate and House) Conferees expect that the Secretary will carefully evaluate the results of the demonstration project prior to determining the need to establish maximum hours of service regulations as permitted under subsection (a). Prior to promulgating any such regulations, the Conferees also expect that the Secretary will evaluate the costs and benefits of establishing hours of service requirements on towing vessels. This evaluation should include a review of Coast Guard casualty data to determine whether there is statistical evidence to support the need for new hours of service regulations."

GCMA Position on CEMS

GCMA followed the progress of the Crew Endurance Management Systems (CEMS) project and supports the scientific findings of the Coast Guard study. Training using the scientific findings will provide benefits to mariners who may be expected to perform additional duties if another member of the crew is incapacitated for any reason. However, we do not support CEMS as a substitute for full and safe manning of any vessel or for purposely "sailing short" in any case other than a bona fide emergency. GCMA seeks to have the safety and health aspects of the existing "two-watch" system on all vessels manned by "lower-level" mariners re-evaluated in terms of the scientific findings reported in the Coast Guard's Demonstration Project and other applicable literature provided to GCMA by Mr. James Magill (G-MSO) during an earlier study by the National Offshore Safety Advisory Committee.⁽¹⁾ [⁽¹⁾Refer to GCMA File A-772.]

[GCMA Comment: At the time of this writing, Congress is still evaluating the results of the CEMS report.]

GCMA'S LEGISLATIVE PROPOSAL

[This proposal is based upon the AWO model cited above]

Amend 46 U. S. Code. §11301 by adding new paragraphs "c" and "d": wording:

C. GENERAL GUIDANCE/OVERVIEW

- This procedure establishes guidelines for the maintenance of vessel logs on board each commercial vessel of less than 1,600 gross tons.
- All entries regarding accidents must be completed, regardless of how trivial, so the log contains a true and accurate record of the event.

D. PROCEDURES

1. Each commercial vessel of less than 1,600 gross tons must maintain a vessel log and adhere to these guidelines:
 - a) Keep the log daily, accurately, and legibly;
 - b) Retain the log aboard the vessel for a period of one year;
 - c) Make and date log entries as soon as possible after the occurrence;
 - d) Make no errors or erasures in the log. Correct incorrect statements by drawing a single line through the entry and initialing it; and,
 - e) Return the log to the vessel owner or operating company by January 15th of the following calendar year.
2. Enter this information in the vessel log:
 - a) Details of all required monthly fire, boat, man overboard, abandon ship, damage control and vessel response plan drills;
 - b) Details of steering gear, navigation equipment, and communications gear tests conducted before departure from port;
 - c) Results of weekly and monthly testing of emergency lighting and power systems;
 - d) Fuel and lube oil data, including the amount of fuel or lube oil transferred to or from the other vessel;
 - e) Offenses by and/or disciplinary actions against crewmembers, including a statement concerning the notification of such an entry to the crewmember. Any reply by the crew member must be recorded in the log and a copy of the entries must be furnished to the crewmember, duly executed by the master and another member of the crew;
 - f) The nature of any illness suffered by a crew member, including medical treatment administered and the name of the individual who administered it;
 - g) Any personal injuries reported, whether to a crew member or another individual aboard the vessel. Where there are no injuries, make the notation, "No personal injuries reported today";
 - h) The name of every crew member who ceases to be a member of the crew other than by death, with the place, time, manner, and cause of departure;
 - i) Report of any death and cause of death;
 - j) Report of any collision, stranding or grounding;
 - k) Search for contraband or stowaways;
 - l) The number and description of any non-crew members carried onboard the vessel their boarding and departure points, and the reason or authorization for their being aboard;
 - m) General condition of the vessel and its equipment, at least monthly;
 - n) The times and places of all arrivals and departures of the vessel including changes of river segments, locks, bridges, etc.;
 - o) Intermittent operations such as drops or additions or barges, standby time, hire of tug, and change of river segment, along with notations as to where, by whose

orders, and for what purpose these operations were undertaken;

- p) A complete list of vessel crew members, including their jobs, ratings, and/or licenses;
 - q) Crew change times, and a listing of persons relieved and coming on duty;
 - r) Brief description of equipment and supplies received and any damage to these items that may have occurred;
 - s) Report of any vessel damage;
 - t) Notation of any machinery or equipment not properly working, and all repairs undertaken;
 - u) Notation of any repair work undertaken by an outside contractor along with any tickets or invoices;
 - v) Any purchases of groceries or supplies made for the vessel including the name of the vendor;
 - w) Any rope, hawser or wires broken during the day's operations;
 - x) Weather conditions affecting navigation;
 - y) Navigation time, including geographic departure point and arrival point, and reason for trip (deliver cargo, receive cargo, etc.);
 - z) Details of all crew safety meetings;
 - aa) Times of any delays (groundings, Coast Guard boardings, traffic, lock closures, etc.);
3. In the event of abandoning ship, take the log book from the vessel.

DIFFERENT TYPES OF LOGBOOKS

Most workboats (including tugs, towboats, small passenger vessels, oilfield support vessels etc.) have at least two different types of logbooks ó one that contains pages that can be torn out and sent to the company office for payroll and billing purposes (i.e., a "Billing Log" or "Smooth Log" of blank forms) and a logbook retained aboard the vessel as a permanent record of vessel activity (i.e., a "Rough Log" or "Boat Log").

[GCMA Comment: In this report, our sole concern is to standardize procedures to insure that licensed officers properly and accurately maintain the vessel's Rough Log to comply with existing Coast Guard regulations, policies and guidelines subject to periodic review by Coast Guard officials. The "Smooth Log" should fulfill company needs and should avoid duplicating entries in the Rough Log unless absolutely necessary.]

Avoiding Duplication

That said, a vessel operating company (the company) is generally required to back up its invoicing with a record of the vessel's service for its paying customers. The company also must obtain accurate payroll information from the vessel regarding the number of days (and often the major portions of a day) actually served aboard the vessel to go to the payroll department. This is rarely broken down into actual hours. Furthermore, the company must learn of the vessel's needs so they may be supported in terms of groceries, supplies, spare parts, outside repair services, etc. Much of this information can be gathered electronically by radio, telephone, fax, or the internet. In this report, we do not want to discourage the electronic collection of this type

of information or discourage strictly editorial revisions.

Many companies are concerned about the appearances of the **Smooth Log** (Billing Log) they send to their customers. Use of computers allows company offices to present a neat, businesslike document to their customer representing a professional corporate image and avoiding embarrassing misspellings or comments they would prefer to remain in house. The result is likely to be a somewhat altered, artificial document designed to project a positive image. Even if it contains a Captain's signature, that signature is likely to reflect the company policy of maintaining its corporate image. However, the vessel's Master should not be held responsible for any editorial revisions and/or resulting discrepancies between the version he submits and the version transmitted to the customer.

Our concern is that the **Rough Log** that remains on the vessel and is in a bound-book format with daily or at least numbered pages contains and contains a more complete and unvarnished signed account of matters of concern to Investigating Officers. Since the Master of the vessel may serve 12 hours standing watch, it is reasonable that entries in the **Rough Log** contain entries by his Mate/Pilot and, on occasion, as dictated to an unlicensed watchstander on duty. Each entry should be signed and initialed.

Coast Guard Regulations on Voyage Records

Coast Guard Investigators and Boarding Parties should have a reasonable expectation of finding voyage records when they board any commercial vessel. The pertinent regulation follows:

46 CFR §4.05-15 Voyage records, retention of.

(a) The owner, agent, master, or person in charge of any vessel involved in a marine casualty shall retain such voyage records as are maintained by the vessel, such as both rough and smooth deck and engine room logs, bell books, navigation charts, navigation work books, compass deviation cards, gyro records, stowage plans, records of draft, aids to mariners, night order books, radiograms sent and received, radio logs, crew and passenger lists, articles of shipment, official logs and other material which might be of assistance in investigating and determining the cause of the casualty. The owner, agent, master, other officer or person responsible for the custody thereof, shall make these records available upon request, to a duly authorized investigating officer, administrative law judge, officer or employee of the Coast Guard.

(b) The investigating officer may substitute photo static copies of the voyage records referred to in paragraph (a) of this section when they have served their purpose and return the original records to the owner or owners thereof.

Enclosure 5 to COMDTINST 16.200.3A provides for a maximum penalty of \$1,000 for violation of 46 CFR §4.05-15(a) for "failure to retain voyage records of a vessel involved in a marine casualty." GCMA maintains that waiting for a casualty to occur is "reactive" rather than "pro-active." Part of vessel inspection should include an examination of the rough logs and other paperwork in the cited regulation to see that it is present on the boat and at least appears to be maintained with some degree of professional care to avoid "Horrible Examples" as described below.

Horrible Example #1: Towboat "Polaris" Sank Polluting & Blocking Channel to Port of Iberia

[Source: Mistle Activity #2383735 & 2606791, June 3, 2005. FOIA #05-1781. GCMA File #R-477 (Consolidated)]

The M/V Polaris was a decrepit 92.3 foot 1955 vintage towboat of 211 gross tons with an abominable safety record that brought it to the attention of the GCMA Board of Directors on at least three occasions. Reports of these conditions to the local Marine Safety Office brought few results until the boat sank in the canal blocking the Port of New Iberia for three days and releasing 3,000 gallons of diesel fuel. An early review of vessel logs in previous boardings could have averted the disaster briefly outlined below.

According to M/V Polaris logs for that date, the vessel arrived in the Port of Iberia at or about 1230 and offloaded its barges. This was the last logbook entry anyone bothered to make for the day. The POLARIS logs were handwritten on unlined computer paper. They did not list such details as who was operating the vessel or any kinds of drills or required tests. The Coast Guard Investigating Officer reported: "The logs from the Polaris also show a repeated history of violation of law and regulation by use of unlicensed individuals as masters of the vessel. The logs were kept as "pay logs" and were based on grade on the vessel. On these logs, ■ identifies himself as being on the wheel of the vessel. Mr. ■ does not possess a Coast Guard license.

"The evidence in this case reveals misconduct of the crew and the operator of the Polaris. Repeated vessel safety and integrity problems were addressed in a substandard manner, which led (to) the condition under which the vessel sank, The crew knowingly violated regulation in relation to operation without proper documentation.. Civil penalties against the lessee of the Polaris were considered but (he) passed away in an auto accident on September 21, 2005. Penalty action against Mr. ■ was initiated for unlicensed operation."

Horrible Example #2: Ask Nothing, Expect Nothing

[Enclosure #1] is a page from the **Rough Log** of one of the largest offshore tugboats operating in the Gulf of Mexico. The vessel is described further in the enclosure.

Any Coast Guard officer investigating an accident might find only a minimal amount of information to support an accident, injury, or personnel investigation in reviewing such a logbook on scene. He might or might not have access to the vessel's **Smooth Log**. In any event, the information he may be seeking should probably be in the **Rough Log**.

A number of investigators express frustration in the lack of information, the wide use of abbreviations that are non-standard and not catalogued, illegibility, lack of care and attention to detail, and lack of signatures identifying the person or persons making the entries. Since the Coast Guard is tasked with investigating a variety of occurrences, they need to have greater access to usable information.

A Master has reason to fear for his job if he makes certain entries on a **Smooth Log** that he transmits within a day or so to the front office and will be reviewed by his employer. The Master submits these logs and will be held responsible for them.

At the same time, the Master also requisitions spare repair parts, services, supplies and groceries that he may note in the

Rough Log. He may or may not receive what he asks for. At some future date he may need to refer to this information if an accident or injury results in spite of his best efforts to prevent it by asking for supplies or support from the company. The **Rough Log** may contain vital evidence that provides background material useful for investigating the occurrence. **However, the Coast Guard has no standards for maintaining a record in the Rough Log.** On the other hand, the American Waterways Operators has such guidance in their Responsible Carrier Program for towing vessels but only for member companies. The Coast Guard has roughly comparable requirements but only for those vessels required to carry an Official Logbook. This leaves a huge gap. Our mariners need the protection afforded by making certain entries in a **Rough Log** that reflect the true situation on their vessel and that are subject to Coast Guard scrutiny during unannounced boardings or regular inspections.

Title 46 U.S. Code §3315(a), "Disclosure of defects and protection of informants" states in part: "Each individual licensed under part E of this subtitle shall assist in the inspection or examination under this part of the vessel on which the individual is serving, and shall point out defects and imperfections known to the individual in matters subject to regulations and inspection. The individual shall also make known to officials designated to enforce this part, at the earliest opportunity, any marine casualty producing serious injury to the vessel, its equipment, or individuals on the vessel."

Section (b) protects the name of the individual from disclosure (i.e., Whistleblower Protection).⁽¹⁾ [⁽¹⁾ Refer to GCMA Report #R-370-D, Jun. 28, 2006. Work-Hour Abuse, Whistleblower Protection and "Deadhead Transportation"]

**SET A GOAL TO
REDUCE UNNECESSARY PAPERWORK**

**Many Officers Are Engulfed
In a Paperwork Blizzard**

Our request for standardizing required logbook entries does not seek to increase the paperwork burden on lower-level mariners only to more closely delineate the voyage information Coast Guard investigators should expect to find when they board a commercial inspected vessel.

Many Masters complain their employers seriously overwork them by requiring them to accomplish work that front-office clerical employees are capable of performing. After all, an officer working under the "two-watch" system already stands watch for 12 out of 24 hours every day – often steering or maneuvering his vessel under stressful conditions.

Coast Guard policy⁽¹⁾ defines "Work" as "any activity that is performed on behalf of a vessel, its crew, its cargo, or the vessel's owner or operator. This includes standing watches, performing maintenance on the vessel or its appliances, unloading cargo, or performing administrative tasks, whether underway or at the dock." [⁽¹⁾ Refer to Policy Letter G-MOC 04-00 under "definitions" in GCMA Report # R-258, Rev.2. Apr. 20, 2006. Watchkeeping and Work-Hour Limitations on Towing Vessels, Offshore Supply Vessels (OSV) & Crewboats Utilizing a Two Watch System]

**Coping With Heavy Administrative Burdens
Under a "Two Watch" System**

[Source: GCMA received this letter from an East Coast tugboat Master in December 2005. The letter outlines the administrative tasks his employer holds him responsible for in managing a 5-man tugboat. Accomplishing all these tasks is almost impossible. Attempting to do so and please his employer can force him to break the law and operate his vessel in a fatigued condition. Although this letter was not written in response to an accident, the danger that excessive paperwork poses on a small vessel with a limited number of officers actively engaged in commerce is clear. Excerpt from GCMA REPORT #R-413.]

Dear ■,

This is a list of the duties, drills, and meetings required by the Responsible Carrier Program (RCP) and by my employer as normal boat business.

We like many things about the American Waterways Operators' Responsible Carrier Program (RCP). RCP has helped promote safety. However, as you can see, this has become more a safety maintenance system than a physical inspection system in design.

As Captain, I do not appreciate the shift of responsibility (SOR)** from management to crew. I do not think RCP should be used as a substitute or a model for a physical inspection of towing vessels for the following reason. The RCP does not take into account the time needed to conduct drills, hold meetings, and do the required paperwork. The crew off-watch must participate on its own time in this additional work.

As Captain, I am not left in a position to make the RCP a priority over my boat's performance. The real world comes first! If there is not enough time in a hitch to complete the REC requirements they simply remain unfinished.

I have been pressured to complete documents with a "satisfactory" report when weather or other factors; prevented us from actually conducting drills or holding meetings. It forced me to work over the 12-hour work rule many times.

I say this in confidence. All the enclosed documents would no doubt be considered sensitive proprietary materials to AWO and others including my employer. However, I need to show them to you in hopes they help you understand the paperwork required by the RCP and will bring to light some of the hidden problems it causes for working mariners.

Oh, yes not to mention five men, 24 hours per day, 365 day a year must operate and maintain a very active towing vessel. This includes engine and deck maintenance, shopping for food and boat supplies, carrying them back to the boat, traveling, and of course – all the administrative work.

Thank You. [Name redacted].

Enclosures:

[*These records include maintaining logbooks in addition to a "Smooth Log" (Document #7) and a "Rough Log" discussed in the report. **SOR = An opinion that this reflects an unwarranted Shift of Responsibility from

company administrators, port captains, and other supervisors ashore to licensed officers afloat.]

- Document # 1 : Declaration of Security.
- *Document #2: Ballast Water Reporting Form. (This is a running log and daily reporting requirement.)
- Document #3: Voyage Plan. (Required before each sailing.)
- Document #4: Report due before each crew change. I consider this to be a shift in responsibility. (SOR)
- Document #5: Request for money for food rations before each crew change. (SOR)**
- Document #6: Monthly tow wire report. (SOR)**
- Document #7: Daily billing log. (Not an RCP item.)
- Document #8: Company accident report. (Completed as needed. Not an RCP item.)
- Document #9: Line inventory. (Due before each crew change. Not an RCP item.)
- Document #10: Release and indemnity agreement. Completed for each visitor,
- *Document #11: Radio Log. A running log record.
- Document #12 - New crewmember orientation checklist.
- Document #13: Post orientation performance evaluation. (This report caused many problems.)
- Document #14: New crewmember drug and alcohol policy.
- Document #15: Repair request report. (SOR)**.
- Document #16: Towing Investigation Report. Each incident.
- Document #17: Reporting & Chemical Testing Requirement (Procedures).
- Document # 18: Parts Requisition. Weekly.
- Document #19: Supply List Inventory & Requisition. Monthly (SOR)**
- Document #20: Overall Checklist for an Uninspected Towing Vessel. Due at Crew change. 88 items. (SOR)**
- Document #21: Ice Report (Winter season only.)
- Document #22: Safety Meeting Report. Weekly.(SOR).**
- Document #23: Fire & Boat Drill and Safety Meeting 23. Weekly. (SOR)**
- *Document #24-: A running trash log record book.
- Document #25: Local Notice to Mariners. This requires the time to download the document. It takes additional time to correct and update the charts.
- *Document #26: U.S. Army Corps of Engineers. Vessel Operations Report is a running log and reporting requirement.

Also include time I spend for:

- Daily Navigation Equipment & Communications Check.
- Weekly test of the general alarm system.
- Time to prepare minutes for weekly safety meeting and fire drill and then execute my plans.
- Weekly abandon ship drill.
- Weekly steering failure or loss-of-power drill.
- Bi-weekly man-overboard drill.
- Weekly test of emergency lighting and power.

THE LOGBOOK ISSUE HAS ITS DAY IN COURT

[Note: This letter contains several minor editorial changes.]

February 16, 2007

ATTN; Judge Parlen McKenna
U.S. Coast Guard Administrative Law Judge
Coast Guard Island Building 54C
Alameda, CA 94501-5100

Subject: Amicus Curiae Submission
File #GCM-59; Correspondence. #ocma0214.2A

Your Honor:

I was in attendance in the courtroom at MSU Morgan City, LA, during the hearing U.S. Coast Guard v. Captain (Name Redacted) that you presided over on February 14, 2007. I was very favorably impressed by your persistence in ascertaining the truth in all matters brought before the court. I am Secretary of the Gulf Coast Mariners Association. Our Association speaks for the interests of credentialed lower-level mariners serving on vessels of less than 1,600 GRT.

At the end of the hearing, you characterized the issues as "Very serious" and "Goes to the structure of the Coast Guard's regulatory program." I agree.

Since much of the case revolved around "Logbooks" I would like to address this subject from several viewpoints. I will draw no conclusions that reference this particular case but directly but request that you consider this letter and its Enclosures. I expect no reply to this letter.

I believe that in order to adequately supervise the performance of the duties of certificated mariners at sea Congress mandated in 46 U.S. Code §11130(b) that "The Master of the vessel shall make or have made in the official logbook certain entries. The words 'have made' appear to indicate that the actual entries may be made by a person other than the Master of the vessel.

The same statute enumerates twelve entries. 46 U.S. Code §11302 describes the manner of making entries. I believe this law is reasonable and its twelve enumerated article are reasonable requirements for most applicable vessels. I encouraged and applauded the work of Captain Richard Stewart, a distinguished faculty member and former Department Head at the U.S. Merchant Marine Academy and Chairman of the Merchant Marine Personnel Advisory Committee (MERPAC), who last revised and validated the Coast Guard's Official Logbook in 2003.

Unfortunately, Congress in the same law, limited the application of these requirements to vessels on international and intercoastal voyages and to vessels of over 100 tons. Our Association is actively trying to convince both the Coast Guard and Congress to set standards for maintaining logbooks on all commercial vessels and not just vessels over 100 GRT. Our efforts began in 2000 and are reflected in GCMA Report #R-291, Revision 1⁽¹⁾. In the case before the court, since the vessel was less than 100 GRT and was not on an international or intercoastal voyage, it did not require an "Official Logbook." ⁽¹⁾ i.e., an earlier edition of this report.

The American Waterways Operators, a trade association representing only one segment of the marine industry, does have logbook requirements listed (above). Our Association agrees with and fully supports these "standards." Unfortunately, these standards apply only to AWO member companies and are not enforceable unless they are part of

something like an established company policy as could be construed from reading 46 CFR §5.27 ó Misconduct. We opine that reasonable logbook entries should be required and subject to regulation. We also agree with the Coast Guard's Official Logbook and the instructions it provides.

The Coast Guard claims that Congress has not authorized it to enforce its "Official Logbook" standards vessels other than those specified in the statutes cited. While the logbook issue is very important to our mariners, it seems to be of no significance to the Coast Guard and is not yet on Congress's radar screen in spite of six years of effort on our part. This leaves you, as an Administrative Law Judge, to pick through a "Hard Log" (aka **Rough Log**) and a "Money Log" (aka Company **Billing Log**) to try to ascertain who was on duty and when. Apparently, neither logbook mentioned that any "accident" involving damage to the vessel or significant pollution occurred (in the case before you).

I am a maritime educator and author/editor of a number of textbooks written specifically for lower-level mariners. I also edit a number of logbooks (specimen enclosed). I am not an attorney although our Association has a number of plaintiffs' attorneys as members. One area that few if any courses, including those approved by the National Maritime Center for lower-level mariners, even cover are regulations in 46 CFR Parts 4 & 5 (Casualties and Investigations), Part 16 (Chemical Testing) and 49 CFR Part 40 (Drug & Alcohol Testing). These are issues that you, as an Administrative Law Judge, must deal with. They are issues that our Association instructs its mariners in through a number of our GCMA reports all posted on our internet website. (Example: GCMA Report R-315-series). There is absolutely no training given to any lower-level mariner about the responsibility for maintaining an accurate logbook of any type, probably because there is a void in the regulations that cover it. Even 46 U.S. Code §11303 considers very minimal penalties of \$150/\$200 that relegate entries even in a Congressionally-mandated "Official Logbook" to insignificance. This is reflected in industry practice as testimony revealed.

As a reasonable consequence, most mariners and even company owners feel that accurate logbooks are an insignificant part of the job. As such, the testimony in this case accurately represented normal industry practice. In this case, only the "Billing Log" was important because that is how the company substantiates its invoices to the (charterer). In fact, the boat owner asserted that regaining control of stolen logbook pages was very important ó not because they contained potentially fraudulent entries but because of their commercial value in obtaining reimbursement for services rendered. We often remind our mariners that the boat owner owns the logbook.

[GCMA Comment: It would be helpful if this fact was backed by an appropriate law or regulation.]

The "Billing Log" is a specialized commercial logbook. The company must purchase this book commercially whereas the government is mandated to supply ships with "Official Logbooks." (Parenthetically, although the Coast Guard through Captain Richard Stewart has done an admirable job in editing their "Official Logbook," they have done an inadequate and pitiful job of making it available to

the public ó as I am prepared to report to Congress). I have had "Official Logbooks" on order for over one year from MSU Morgan City. Apparently, they have been unable to obtain them through their ordinary supply channels. Yet, the Coast Guard refuses to allow commercial publication of the "Official Logbook." I am prepared to document these statements.

The "Rough Log" described in the courtroom and presented by the respondent's attorney comes closest to telling the real story of how the vessel operates on a daily basis except it lacks signatures to identify who is responsible for making the entries and contains no schedule of who was on watch at any given time. The "Rough Log," in effect, is often a "Diary" also lacks "structure" in that the Master is not reminded to make certain entries and is not told what type of entries to make except by reading some other specific written company policy not introduced into testimony. (The enclosed specimen) is an example of a structured logbook.

The "Billing Log" in this case apparently also has structure but it fills a specialized purpose. If the Coast Guard expects the officers to collect information on a voyage, they need to be specific as to what type of information to maintain. The Coast Guard has not done that. Nor have they seen fit to include maintaining accurate records as a part of the courses they approve at the National Maritime Center for lower-level licensed officers. A part of this training should include the responsibility for truthful reporting. You pointed out on two occasions that 18 U.S. Code §1001 contained significant penalties for untruthful statements. Yet, the only time the average certificated mariner is ever directed to this statute is when he applies for or attempts to renew his license. I maintain this statute has a much broader applications and that the Coast Guard has placed much more emphasis on it since 9/11.

I believe that the Coast Guard's ability to investigate accidents and to uncover other types of "unsavory conduct" that you correctly alluded to at the conclusion of this hearing is impaired substantially if they do not have a reasonable expectation that licensed officers will maintain a detailed and accurate logbook. This was the thrust of (this) GCMA Report. However, as far as regulation and guidance are concerned, since the Coast Guard asks for nothing in the way of an accurate record of a voyage, therefore that is exactly what they can expect to receive ó nothing.

Since amending the statute to give the Coast Guard additional authority in the matter of logbooks falls to Congress, I will further direct these comments in that direction. I will submit a Freedom of Information Act request to Jim Wilson to obtain copies of all subsequent decisions and orders in this case as they are issued.

Very truly yours,

Richard A. Block

Master #1014425, Issue #8

Secretary, Gulf Coast Mariners Association

Cc: Jim Wilson, Esq. (For the Coast Guard)

Michael G. Helm, Esq. (Attorney for the respondent.)

[Find Enclosure #1, mentioned on Page 7 on the next page]

This is a copy of the Master's Logbook for Wednesday, January 2, 2002 for a new 10,000 horsepower oceangoing tug currently operating from Port Fourchon, LA. This is a typical hard-bound logbook and is practically useless for purposes of investigation. The International Tonnage of this vessel is 1,108 tons, but her domestic gross register tonnage was purposely kept at only 299 tons to avoid vessel inspection requirements. The vessel is ABS certified and SOLAS certified. The vessel is 143.4 feet long with a beam of 50 feet and a depth of 20 feet. While the vessel is in domestic service, it does not need to carry an Official Logbook. Consequently, the information that appears above is all that was recorded for the day in question. Although the vessel was underway but no further information is available concerning the watches that were set or the hours worked. Comments concerning positions held were added to the copy of the page.

JANUARY 2 WEDNESDAY

2nd day - 363 days follow

0001: Stowed by 21 South Timberline
0540: Under way for Fourchon
0700: Abeam Bell Pass Sea Buoy
0745: All Secured Public dock, East Slip #1.
Turn to Ship's Work
~~Now Turn to CIT~~
Now Stand Public dock
Now Turn to Night Watch
2400: Stand by same as before.
No illness, injuries or vessel accidents to report.

Crew

C. Buet capt J. Saunders ^{MR} ₉₅ Feb 145, 83

A. Chermie ^{MR} C. DeBilney ^{MR} ₉₅ LOB 1,280

C. Badden ^{SR} ₉₅ D. Davis ^{MR} ₉₅ PARRA

E. Jordan ^{MR}

[ENCLOSURE # 1]