

**§ 401.101**

**Subpart B—Penalties—Violations of Seaway Regulations**

AUTHORITY: 33 U.S.C. 981-990, 1231 and 1232; and 49 CFR 1.52.

**§ 401.101 Criminal penalty.**

(a) A person who willfully and knowingly violates a regulation shall be fined not more than \$50,000 for each violation or imprisoned for not more than five years, or both, and any person who, in the willful and knowing violation of this Act or any regulation issued hereunder, uses a dangerous weapon, or engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce the provisions of this Act or the regulations issued hereunder, shall, in lieu of the penalties prescribed in this paragraph be fined not more than \$100,000 or imprisoned for not more than ten years, or both.

(b) For the purpose of paragraph (a) of this section, a "person" is deemed to be anyone who

(1) Handles any vessel contrary to the provisions of these regulations or of any rules or directions of the Corporation, or an officer thereof, given under the regulations;

(2) Is a party to any act described in paragraph (b)(1) of this section; or

(3) Is the owner, charterer or master of any vessel by means of which any act described in paragraph (b)(1) of this section is committed.

[39 FR 12746, Apr. 8, 1974, as amended at 47 FR 20582, May 23, 1982]

**§ 401.102 Civil penalty.**

(a) A person, as described in § 401.101(b), who violates a regulation is liable to a civil penalty of not more than \$27,500.

(b) In assessing or collecting any civil penalty incurred under paragraph (a) of this section, the Corporation may, in its discretion, remit, mitigate or compromise any penalty.

(c) Upon failure to collect a penalty levied under this section, the Corporation may request the United States Attorney General to commence any action for collection in any district court of the United States. A vessel by means of which a violation of a regulation is

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committed shall be liable in rem and may be proceeded against accordingly.

[39 FR 12746, Apr. 8, 1974, as amended at 47 FR 20582, May 23, 1982; 61 FR 54734, Oct. 22, 1996]

**Subpart C—Assessment, Mitigation or Remission of Penalties**

AUTHORITY: Sec. 106, Pub. L. 92-340, 86 Stat. 424, unless otherwise noted.

SOURCE: 39 FR 18443, May 28, 1974, unless otherwise noted.

**§ 401.201 Delegation of authority.**

(a) The Secretary of Transportation, by 49 CFR 1.52 (a) has delegated to the Administrator of the Saint Lawrence Seaway Development Corporation the authority vested in the Secretary under sections 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of the Port and Tanker Safety Act of 1978, Pub. L. 95-474 (92 Stat. 1471), as it pertains to the operation of the Saint Lawrence Seaway.

(b) The Administrator hereby authorizes the Corporation's Associate Administrator to administer this statute in accordance with the procedures set forth in this subpart.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended; sec. 104, Pub. L. 92-340, 86 Stat. 424 and secs. 12 and 13 at sec. 2 of Pub. L. 95-474, 92 Stat. 1471, and 49 CFR 1.52)

[50 FR 10963, Mar. 19, 1985, as amended at 51 FR 4340, Feb. 4, 1986]

**§ 401.202 Statute providing for assessment, mitigation or remission of civil penalties.**

Section 13 of sec. 2 of the Port and Tanker Safety Act of 1978 authorizes the assessment and collection of a civil penalty of not more than \$25,000 from anyone who violates a regulation issued under that section.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended; and secs. 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[47 FR 20582, May 13, 1982]

**§ 401.203 Reports of violations of Seaway regulations and instituting and conducting civil penalty proceedings.**

(a) Violations of Seaway Regulations, Subpart A of this part, will be brought to the attention of the alleged violator

at the time of detection whenever possible. When appropriate, there will be a written notification of the fact of the violation. This notification will set forth the time and nature of the violation and advise the alleged violator relative to the administrative procedure employed in processing civil penalty cases. The alleged violator will be advised that he or she has 15 days in which to appear before the Associate Administrator or submit a written statement for consideration. The Associate Administrator shall, upon expiration of the 15-day period, determine whether there has been a violation of the Seaway Regulations.

(b) If the Associate Administrator decides that a violation of Seaway Regulations has occurred, a determination will be made as to whether to invoke no penalty at all and close the case or whether to invoke a part or full statutory penalty. In either event, a written notice of the decision shall be given to advise the violator. If a penalty is assessed, such notice will advise the violator of the right to petition for relief within 15 days or such longer period as the Associate Administrator, in his or her discretion, may allow. The Associate Administrator may mitigate the penalty or remit it in full, except as the latter action is limited to paragraph (f) of this section. The violator may appear in person before the Associate Administrator. If the violator does not apply for relief but instead maintains that he or she has not committed the violation(s) charged, and the Associate Administrator, upon review, concludes that invocation of the penalty was proper, no remission or mitigation action will be taken. On the other hand, should the violator petition the Associate Administrator for relief without contesting the determination that violation did, in fact, occur, relief may be granted as the circumstances may warrant.

(c) When the penalty is mitigated, such mitigation will be made conditional upon payment of the balance within 15 days of notice or within such other longer period of time as the Associate Administrator, in his or her discretion, may allow.

(d) The violator may appeal to the Administrator from the action of the

Associate Administrator. Any such appeal shall be submitted to the Administrator through the Associate Administrator within 15 days of the date of notification by the Associate Administrator, or such longer period of time as the Associate Administrator, in his or her discretions, may allow.

(e) Should the alleged violator require additional time to present matters favorable to the case at any stage of these penalty proceedings, a request for additional time shall be addressed to the Associate Administrator who will grant a reasonable extension of time where sufficient justification is shown.

(f) Under the following circumstances, the Corporation's Chief Counsel shall forward cases involving violations of the Seaway Regulations to the United States Attorney with the recommendation that action be taken to collect the assessed statutory penalty:

(1) When, within the prescribed time, the violator does not explain the violation, appeal for mitigation or remission, or otherwise respond to written notices from the Associate Administrator; or

(2) When, having responded to such inquiries, the violator fails or refuses to pay the assessed or mitigated penalty, or to appeal to the Administrator, within the time prescribed; or

(3) When the violator denies that the violation(s) was committed by him or her, the Associate Administrator, upon review, disagrees and the violator thereafter fails to appeal to the Administrator, or to remit payment of the assessed penalty within the time prescribed (see paragraph (b) of this section); or

(4) When the violator fails to pay within the prescribed time the penalty as determined by the Administrator after consideration of the violator's appeal from the action of the Associate Administrator.

(g) If a report of boarding or an investigation report submitted by a Corporation employee or investigative body discloses evidence of violation of a Federal criminal statute, the Corporation's Chief Counsel, in accordance with § 401.204, shall refer the findings to

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the United States Attorney for appropriate action.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended sec. 104, Pub. L. 92-340 86 Stat. 424 and secs. 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471, and 49 CFR 1.52)

[50 FR 10963, Mar. 19, 1985, as amended at 51 FR 4340, Feb. 4, 1986]

### § 401.204 Criminal penalties.

(a) Prosecution in the Federal courts for violations of Seaway Regulations enforced by the Corporation that provide, upon conviction, for punishment by fine or imprisonment is a matter finally determined by the Department of Justice. This final determination consists of deciding whether and under what conditions to prosecute or to abandon prosecution.

(b) The Corporation's Chief Counsel is hereby authorized to determine whether or not a violation of the Seaway Regulations carrying a criminal penalty is one that would justify referral of the case to the U.S. Attorney.

(c) The Corporation's Chief Counsel will identify the regulations that were violated and make specific recommendations concerning the proceedings to be instituted by the U.S. Attorney in every case.

(d) Referral of a case to the U.S. Attorney for prosecution terminates the Corporation's authority with respect to the criminal aspects of a violation.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended sec. 104, Pub. L. 92-340 86 Stat. 424 and secs. 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471, and 49 CFR 1.52)

[50 FR 10963, Mar. 19, 1985]

### § 401.205 Civil and criminal penalties.

(a) If the violation of the Seaway Regulations carries a criminal penalty, the Corporation's Chief Counsel is hereby authorized to determine whether to refer the case to the U.S. Attorney for prosecution in accordance with § 401.204, which outlines the appropriate procedure for handling criminal cases.

(b) The decision of the U.S. Attorney as to whether to institute criminal proceedings shall not bar the initiation of

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civil penalty proceedings by the Associate Administrator.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended sec. 104, Pub. L. 92-340 86 Stat. 424 and secs. 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471, and 49 CFR 1.52)

[50 FR 10963, Mar. 19, 1985, as amended at 51 FR 4341, Feb. 4, 1986]

### § 401.206 Procedure for payment of civil penalty for violation of the Seaway regulations.

(a) The payment must be by money order or certified check payable to the order of the Saint Lawrence Seaway Development Corporation and mailed to the Comptroller. If the payment is made in person at the offices of the Saint Lawrence Seaway Development Corporation, the payment may be in cash or by postal money order or check payable to the order of the Saint Lawrence Seaway Development Corporation.

(b) The payment of any penalty will be acknowledged by written receipt.

(c) If the penalty paid is determined by the Associate Administrator to have been improperly or excessively imposed, the payor will be notified and requested to submit an application for a refund which should be mailed to the Saint Lawrence Seaway Development Corporation, attention of the Chief Engineer. Such application must be made by the payor within one year of the date of notification provided for in this section.

(d) In the event the alleged violator is about to leave the jurisdiction of the United States, he or she will be required, before being allowed to depart, to post a bond in the amount and manner suitable to the Associate Administrator, from which bond any subsequent assessed or mitigated penalty may be satisfied.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended sec. 104, Pub. L. 92-340 86 Stat. 424 and secs. 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471, and 49 CFR 1.52)

[50 FR 10964, Mar. 19, 1985, as amended at 51 FR 4341, Feb. 4, 1986]

## PART 402—TARIFF OF TOLLS

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402.1 Purpose.