

# Marine

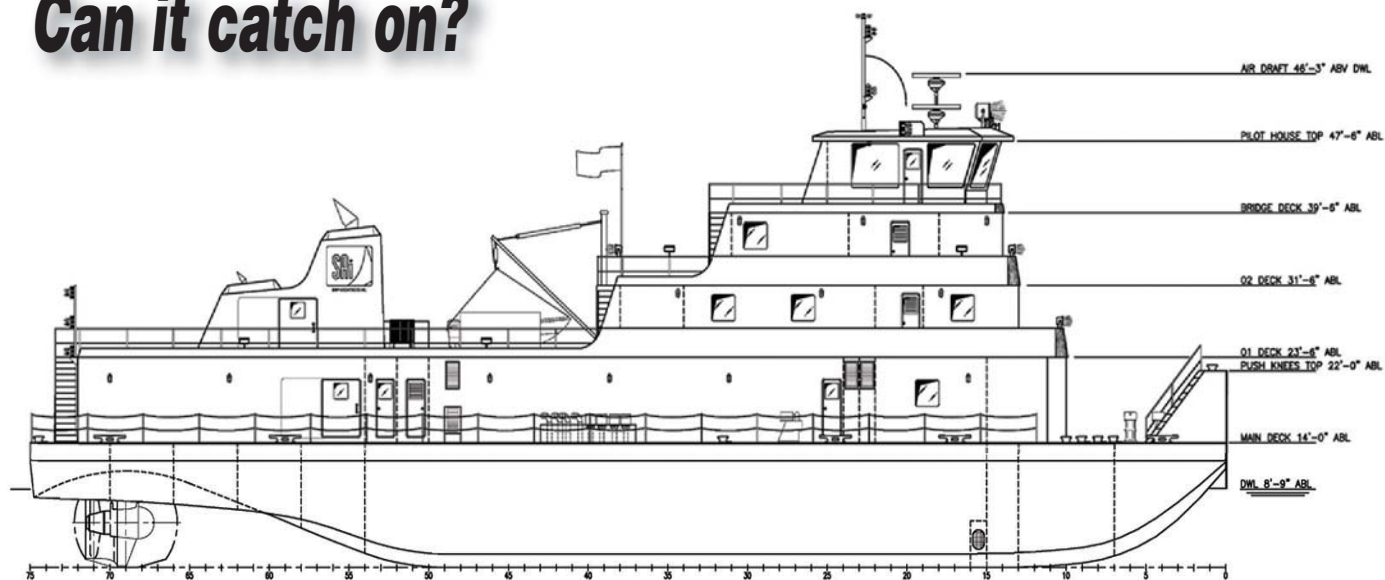
## News

FEBRUARY 2011

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When, Who & How to Test



# MarineNews

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## POSTMASTER Time Value Expedite



## On the Cover LNG-Powered Towboat

*Pictured on this month's cover is the Outboard profile of Ship Architects, Inc.'s LNG-powered towboat concept design. See full story starting on page 26.*



Image courtesy Ship Architects, Inc.

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When, Who & How to Test

# USCG Post-Accident Regs Explained

By Frederick B. Goldsmith



In my last column I explained the U.S. Coast Guard’s marine casualty reporting regulations, which require immediate reporting to the Coast Guard of events the agency defines as “Marine Casualties,” usually satisfied by a phone call followed within five days by a written report on Form CG-2692 (Report of Marine Accident, Injury or Death) ([http://www.uscg.mil/forms/cg/CG\\_2692.pdf](http://www.uscg.mil/forms/cg/CG_2692.pdf)).

A “Serious Marine Incident,” or “SMI” in Coast Guard parlance, is a step-up in severity from a “Marine Casualty.” The occurrence of a SMI triggers the Coast Guard’s chemical, drug and alcohol testing requirements and procedures. These requirements and procedures, as set forth in the agency’s regulations, are lengthy and reticulated. I try to make better sense of them here.

## Serious Marine Incident: Trigger for Drug & Alcohol Testing

A Serious Marine Incident is defined in 46 C.F.R. § 4.03–2 and includes the following events involving a commercial vessel:

“(a) Any marine casualty or accident as defined in § 4.03–1 [falls overboard, groundings, strandings, foundering, floodings, collisions, allisions, explosions, fires, losses of electrical power, propulsion, or steering; events which impair any aspect of a vessel’s operation, components, cargo, seaworthiness, efficiency, or fitness for service or route; incidents involving significant harm to the environment; and diving accidents] which is required by § 4.05–1 [the Marine Casualty reporting regulation]... to be reported to the Coast Guard and [emphasis added]... which results in any of the following:

- (1) One or more deaths;



A civilian undergoes a field sobriety test.

Coast Guard photograph by PA2 Bobby Nash.

- (2) An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties;
- (3) Damage to property, as defined in § 4.05-1(a) (7) of this part, in excess of \$100,000 [versus \$25,000 for a "Marine Casualty"];
- (4) Actual or constructive total loss of any vessel subject to inspection under 46 U.S.C. 3301;
- (5) Actual or constructive total loss of any self-propelled vessel, not subject to inspection under 46 U.S.C. 3301, of 100 gross tons or more;
- (b) A discharge of oil of 10,000 gallons or more into the navigable waters of the United States, as defined in 33 U.S.C. 1321, whether or not resulting from a marine casualty;
- (c) A discharge of a reportable quantity of a hazardous substance into the navigable waters of the United States, or a release of a reportable quantity of a hazardous substance into the environment of the United States, whether or not resulting from a marine casualty."

46 C.F.R. § 4.05-12 requires the marine employer to determine whenever there is a "Marine Casualty" if "there is any evidence of alcohol or drug use by individuals directly involved in the casualty" and, if so, to include on Form CG-2692 (1) the names of crewmen from whom evidence of drug or alcohol use, or evidence of intoxication, has been obtained and (2) the method used to obtain such evidence, such as personal observation of the individual, or by chemical testing of the individual.

Section 4.05-12 also requires if the vessel has an official log book an entry be made as to "those individuals for whom evidence of intoxication is obtained," while informing the individual of this and having the log entry witnessed by another person. Finally, this section states if the "individual directly involved in a casualty refuses to submit to, or cooperate in, the administration of a timely chemical test, when directed by a law enforcement officer or by the marine employer, this fact shall be noted in the official log book, if carried, and in the written report (Form CG-2692), and shall be admissible as evidence in any administrative proceeding."

**How Marine Employers Conduct Drug & Alcohol Testing**

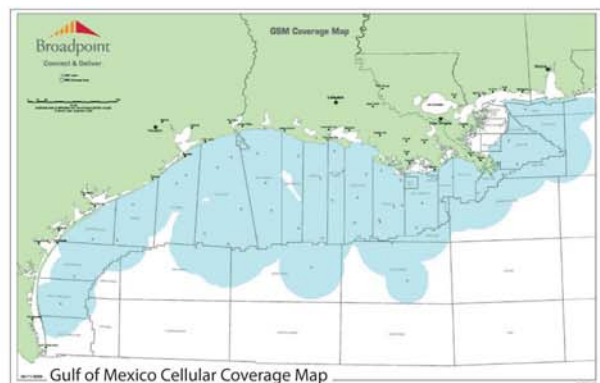
According to section 4.06-1, whenever a Marine Casualty, discharge of oil into the navigable waters of, or

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## LEGAL BEAT

of hazardous substance into the environment of, the United States occurs and is, or is likely to become, a SMI, the marine employer shall take all practicable steps to have each individual engaged or employed on board the vessel who is directly involved in the incident (defined in section 4.03-4 to include “an individual whose order, action or failure to act is determined to be, or cannot be ruled out as, a causative factor in the events leading to or causing a serious marine incident”) chemically tested for evidence of drug and alcohol use. If a law enforcement officer determines additional crewmen are directly involved in the SMI, the marine employer must have these additional individuals drug and alcohol tested too.

This section also requires the marine employer to train its crewmen on the SMI triggers and drug and alcohol testing requirements.

The regulations then go on, in section 4.06-3, to detail who must be drug and alcohol-tested in the event of a SMI and the time limits/deadlines for the testing and sample collection:

Alcohol testing must be conducted on those crewmen directly involved in the SMI within two hours of the SMI, “unless precluded by safety concerns directly related to the incident,” in which case it must be performed “as soon as the safety concerns are addressed.” The regs state, though, that alcohol testing does not have to be “conducted more than eight hours after the occurrence of the SMI,” apparently in recognition that alcohol dissipates from the bloodstream and an inaccurate or useless test would result. Drug testing must be conducted, through specimen collection, on each crewman directly involved in an SMI within 32 hours of when the SMI occurs, unless precluded by safety concerns directly related to the incident, in which case, as soon as the safety concerns are addressed.

### How Mariners Comply & Submit to Testing

Not unreasonably, the regulations also speak directly to vessel crewmen, stating in section 4.06-5 that any crewman “directly involved in an SMI must provide a blood, breath, saliva, or urine specimen for chemical testing when directed to do so by the marine employer or a law enforcement officer.” This section goes on to state, however, if a crewmember does not wish to comply with drug and alcohol testing, they don’t have to, but they will face consequences: “refusal to provide specimens is a violation of this subpart and may subject the individual to suspension and revocation proceedings under part five of this chapter, a civil penalty, or both.”

### Devices, Sample Handling, Report Submission

The regulations, in section 4.06-15, describe how the marine employer must have a sufficient number of alcohol testing devices and urine specimen collection and shipping kits aboard its vessels, unless the testing can be performed within two hours and obtaining the kits and collecting the urine specimen can be completed within 32 hours elsewhere, presumably ashore. This section also explains the technical specifications for testing devices.

Section 4.06-20 details the drug and alcohol testing procedures required for mariners directly involved in a SMI, while sections 4.06-40 and 4.06-50 provide instructions to the marine employer on how to promptly ship the mariner’s drug and alcohol test samples to approved laboratories, and adherence to chain of custody rules.

After the SMI has been recognized and the crewmembers directly involved in it identified, tested, and sampled, section 4.06-60 explains how the marine employer should report the drug and alcohol test results to the Coast Guard. The marine employer is required to use Form CG-2692B (Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident) ([http://www.uscg.mil/forms/cg/CG\\_2692B.pdf](http://www.uscg.mil/forms/cg/CG_2692B.pdf)). This section also explains where to submit the form and test results.

### Civil Penalties for Failure to Comply

Failure to comply with the Coast Guard’s post-accident drug and alcohol testing regulations exposes the marine employer and mariner to significant sanctions, including civil penalties and, if applicable, license suspension and revocation proceedings. 46 C.F.R. § 4.06-70 states that violation of the drug and alcohol testing regulations subjects one to the civil penalties provided by federal statute, 46 U.S. Code § 2115. Section 2115 informs that failure to implement, conduct, or comply with the drug and alcohol testing regulations exposes one to a civil penalty of not more than \$5,000 for each violation, and that each day of a continuing violation equals a separate violation.

**MN**

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