

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Vessel Documentation Center

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16713/5/2
February 22, 2006

William N. Myhre, Esq.
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1735 New York Avenue N.W., Suite 500
Washington, D.C. 20006-5209

Dear Mr. Myhre:

We are writing in response to your letter of January 5, 2006 with regard to the vessel OCEANIC (ex-OCEANIC INDEPENDENCE), O. N. 261147, (the "Vessel"). Your letter seeks confirmation of your understanding that (i) upon completion of certain reconstruction work in a U.S. shipyard (your "Phase One") the Vessel will retain its current official number and will not be considered a new vessel within the meaning of 46 C.F.R. § 67.3 and (ii) assuming that certain subsequent work performed to the vessel's hull and superstructure in a foreign shipyard (your "Phase Two") is less than 7.5% of the Vessel's steel weight (or discounted lightweight weight) prior to the commencement of the foreign work, that the Vessel will not be considered to have been rebuilt foreign under 46 C.F.R. § 67.177.

Based upon the information you have already provided, we confirm your understanding as to the effect of Phase One. As you have correctly noted, Coast Guard regulations specifically define the term "New vessel" at 46 C.F.R. § 67.3 as follows:

"New vessel means a vessel:

- (1) The hull and superstructure of which are constructed entirely of new materials; or
- (2) Which is constructed using structural parts of an existing vessel, which have been torn down so that they are no longer advanced to a degree which would commit them to use in the building of a vessel."

Neither prong of this definition has been met in this case. The Vessel will not have been "constructed entirely of new materials" in the course of Phase One as virtually the entire keel and inner bottom structure of the Vessel, comprising approximately 10% of the Vessel's steel weight, will be retained as the basis of the hull of the reconstructed Vessel. Moreover, those segments of the hull structure that will be retained will clearly not have been "torn down so that they are no longer advanced to a degree which would commit them to use in the building of a vessel". Consequently, upon completion of Phase One the Vessel would retain its current official number and would not be considered a new vessel within the meaning of 46 C.F.R. § 67.3.

With regard to Phase Two, however, this letter is not intended as our formal response to your request. We write, instead, to invite you to provide a further brief, if you are inclined to do so, as to the phased nature of your request as it relates to Phase Two in particular. We emphasize that, in extending this invitation, we have not yet drawn any conclusion as to Phase Two and at this time we are neither inclined nor disinclined to confirm your understanding.

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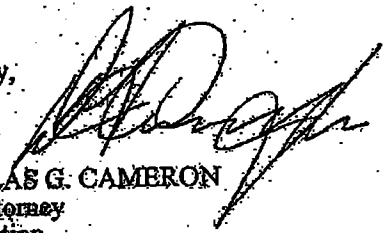
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The issue that we invite you to address further is the nature of the project as a single project, or as differentiated projects (you tend to refer to the project in the singular but as having different "phases" or "portions"), and the legal effect, if any in your view, of that characterization based upon a reading of the plain meaning of the relevant statute. We refer, of course, to 46 App.U.S.C. § 883, the pertinent part of which is excerpted, and highlighted in part, below:

"Provided further, That no vessel which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, and which has later been rebuilt, shall have the right thereafter to engage in the coastwise trade, unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, is effected within the United States, its Territories (not including trust territories), or its possessions:..." (emphasis added)

We have noted your citation to the Letter Ruling in the case of the *MONTERRBY*, and related litigation and rulemaking, a case which preceded (although it may well have led to) existing regulations. Before we rule on this phase, however, we invite you to expound further on this issue, in the post-*MONTERRBY* and post-1996 regulations context, if you are inclined to do so. Again, we have not yet formed a conclusion one way or the other on this issue but will ultimately do so in a further response to your request whether or not you elect to accept this invitation.

Sincerely,



DOUGLAS G. CAMERON
Staff Attorney
By direction