

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

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Investigation of:

MV ETHAN ALLEN,
LAKE GEORGE, NEW YORK,
OCTOBER 2, 2005

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* Docket No.: DCA 06 MM 001
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Interview of: BRIAN KEMPF

Fort William Henry Resort and
Conference Center

Tuesday,
October 11, 2005

The above-captioned matter convened, pursuant to
notice, via telephone, at 1:15 p.m.

BEFORE: MORGAN TURRELL

APPEARANCES:

MORGAN TURRELL
National Transportation Safety Board

BRIAN CURTIS
National Transportation Safety Board

ROB HENRY
National Transportation Safety Board

SGT. WALTER SCHEDEL
New York State Park Police

TOM McCARTHY
State Parks

MAURICE ALDRICH
Warren County Sheriff's Office

SEAN QUIRK
Shoreline Cruises

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I N T E R V I E W

(1:15 p.m.)

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2
3 MR. TURRELL: Okay, good afternoon. It's September
4 11. We're at the Fort William Henry Conference Center. The
5 time is about 1:15. We're doing interviews with the New York
6 State Parks and Recreation for events surrounding the Ethan
7 Allen accident on October 2. My name is Morgan Turrell of the
8 National Transportation Safety Board. And to my right?

9 MR. ALDRICH: Investigator Mo Aldrich with the Warren
10 County Sheriff's.

11 SGT. SCHEDEL: Walt Schedel, New York State Park
12 Police.

13 MR. CURTIS: Brian Curtis, NTSB.

14 MR. HENRY: Rob Henry, NTSB.

15 MR. QUIRK: Sean Quirk, Shoreline Cruises.

16 MR. MCCARTHY: Tom McCarthy, State Parks.

17 MR. KEMPF: Brian Kempf, State Parks.

INTERVIEW OF BRIAN KEMPF

18
19 BY MR. TURRELL:

20 Q. And, Brian, would you mind spelling your name,
21 please.

22 A. Last name is spelled Kempf, K-E-M-P-F.

23 Q. And, Brian, what do you do for New York Parks?

24 A. I'm the Senior Marine Service Representative. I work
25 in the Office of Parks and Recreation. And amongst a number of

1 things, one of the issues relevant to this case is that we are
2 in charge of commercial vessel certification and operator
3 licensing in the sole state waters of New York.

4 Q. And how long have you been the Senior Marine Service
5 Rep?

6 A. About twenty years.

7 MR. TURRELL: Okay, Rob Henry?

8 BY MR. HENRY:

9 Q. Mr. Rob Henry, NTSB. Brian, could you give us a
10 description of your area of responsibility geographically over
11 which you have jurisdiction?

12 A. Yeah. As I mentioned, we have responsibility for the
13 interior waterways of the state, (indiscernible) under the
14 jurisdiction of the U.S. Coast Guard and the federal
15 government. So Lake George would be one of those lakes.

16 Q. Over what other lakes do you have commercial
17 (indiscernible)?

18 A. Numerous lakes, some of the Finger Lakes, Chautauqua
19 Lake out west, a number of lakes up in the Adirondacks,
20 Saratoga, to name a few.

21 Q. Could you tell us where you have co-jurisdiction with
22 the Coast Guard (indiscernible)?

23 A. We do have an MOU with the First District Coast Guard
24 out of Boston, not relevant to commercial vessel inspection.
25 But it does encompass areas of marine enforcement, accident

1 reporting, marine, marine regattas, events of that type, search
2 and rescue, mutual aid agreements and the Coast Guard
3 auxiliary.

4 Q. Can you give us a profile on the number, size and
5 number of passenger vessels that you all have designated as
6 public vessels (indiscernible)?

7 A. Not specifically. I can say that we do
8 approximately -- or, we inspect annually approximately 300
9 vessels, give or take depending on the year. The vast majority
10 of those vessels are much smaller recreational type vessels
11 involved in such things as water ski schools, fishing charters,
12 things of that sort. Right now, I'd be hard pressed for an
13 exact answer, but I'd probably say somewhere in the area of 50
14 vessels probably fall in the area, say, carry more than 6
15 passengers at one time out of that 300.

16 Q. Is this something (indiscernible)?

17 A. Yeah. Yeah, that can be done.

18 Q. (Indiscernible). Can you tell me about the size of
19 your office (indiscernible), what your duties are?

20 A. Well, at the moment we're down a few spots. There's
21 myself and two other marine inspectors at the moment to conduct
22 all these inspections. Principally their done from the latter
23 portion of May through early July. All these boats have to be
24 done in that time frame because they do need an annual
25 certificate, which means everybody wants to get done right in

1 that same time frame. That's just one of the functions.

2 We have an array of duties and responsibilities in
3 the office above and beyond commercial marine inspection that
4 also occupies our time. Do you need some elaboration on that?

5 Q. I'm just trying to get a feel for -- you had
6 mentioned that normally you have a staff of five?

7 A. Yes.

8 Q. (Indiscernible).

9 A. That's right. There are five positions in our office
10 that are comparably tasked.

11 Q. Has this reduction in the staff affected the quality
12 of your inspections in any way?

13 A. I don't think it necessarily affects the quality. It
14 does mean there's a whole lot more work to be done in a shorter
15 period of time with fewer people. But I don't think it impacts
16 the quality.

17 Q. Can you tell us in general terms about the laws,
18 regulations, (indiscernible) of the policy that affect the
19 regulation of -- I guess we're going to use the term of public
20 vessels, which is a term specific to New York State.

21 A. Yes.

22 Q. It's different (indiscernible). Go through the
23 hierarchy of what you have (indiscernible).

24 A. Okay, yeah, the guiding legal perspective on that is
25 the State Navigational Law, which is sections 50 to 68, I

1 think, 68, 69, which basically, in very broad terms, tells you
2 and tells us what the responsibilities as far as licensing
3 individuals, inspecting the boats they operate, and checking
4 the equipment that's carried onboard those vessels. There's a
5 related section in the New York Code of Rule and Regulation
6 which addresses the equipment specifically, and I believe it's
7 449 in the Code of Rule and Reg. I think you have a copy of
8 that. And principally that's it. Those are the two guiding
9 documents for us.

10 Q. There's a -- there was an additional reference that
11 was given to us (indiscernible).

12 A. Oh, you may be referring to the Operator's Guide?

13 Q. Yes.

14 A. Okay, this isn't so much for us as it is for the
15 operators, people that want to take the exam to operate
16 vessels. So this is kind of a study guide of the law and best
17 practices, so that they can take the exam and be successful
18 with it.

19 Q. (Indiscernible). In so far as the Ethan Allen, can
20 you tell me what sort of documents you would have expected to
21 have found on the vessel?

22 A. I believe she's under 10 ton, so she isn't required
23 to carry her certificate with her. But it's a general practice
24 that boats of this size oftentimes are carrying and posting
25 their certificate. I believe we found an old dated one onboard

1 that hadn't been changed in a decade or so. So they're not
2 actually required to carry the Certificate of Inspection,
3 although, again, most of the time they will.

4 They are, though, required to carry the licenses of
5 the operators. That's a requirement, regardless of the size of
6 the vessel. And those should have been carried onboard the
7 vessel.

8 Q. Okay, this is a copy of the Certificate of Inspection
9 for the Ethan Allen. Do you have a copy handy?

10 A. No, I don't.

11 UNIDENTIFIED SPEAKER: I have a copy, Mo.

12 BY MR. HENRY:

13 Q. Do you want to pass that around?

14 A. Anyone else need copies? No? Go ahead.

15 Q. While we're (indiscernible), I've also got a
16 memorandum dated November 14, 1986, that concerns crew
17 requirements of public vessels.

18 A. Yes.

19 Q. And so you have your marine and recreation vehicle
20 law. You have your marine and recreational vehicle law. You
21 have your -- part 449. How much additional (indiscernible)
22 requirements do you have in a formal form, such as memorandums,
23 policies like this?

24 A. There's a couple of pieces, not a large amount of
25 paper. We developed guidance memos, such like this is, for

1 operators. Because at one point we noticed the staffing
2 requirements on the different public vessels were very
3 haphazard. Some boats would have a crew of persons. Some
4 boats would not. They were carrying the same number of people.
5 So we thought we would bring that under one umbrella, so to
6 speak, and get everybody uniform. So that was the November 14,
7 '86 memo. We established a criteria for how many passengers to
8 how many crew would be required, and we notified each operator
9 accordingly.

10 On the larger vessels, also, we noted a lack of
11 station bills for directing the crew persons in the event of an
12 emergency or a drill. So we also developed a template for
13 station bill, which they could or could choose not to use.
14 They could use their own station bill. Basically it outlined
15 what the signals were for emergency, fire, whatever the drill
16 might be, and what the responsibilities were of the different
17 crew persons onboard the vessel. So we provided that -- that
18 to them as well.

19 Generally speaking, any additional guidance would be
20 specific to each vessel and probably would be found in their
21 specific folder. Any corrective action on the date of the
22 annual inspection would be noted on their annual or temporary
23 inspection report, whichever the vessel gets, in the spring.
24 Those deficiencies have been corrected and they sign off on
25 that that they must be corrected and they will be corrected

1 before the vessel operation.

2 Q. If there are any discrepancies (indiscernible)?

3 A. Right, any minor discrepancy -- any discrepancy at
4 all, it can't go out. If it's a minor discrepancy, they can
5 self-correct and they sign off to that, that they do
6 understand. A self-correction can be something as simple as a
7 bulb, a navigation light has blown. If they don't happen to
8 have them with them, we're not going to hold up the
9 certificate. We just have them sign off on the fact that they
10 need to get a bulb and stick it in before they run the boat.

11 Q. As far as the memorandum dated November 14, 1986,
12 does this have any effect on state law? Have you ever been
13 challenged on this memorandum?

14 A. Not to my knowledge, no.

15 Q. So far as (indiscernible) to be state law?

16 A. Yeah.

17 Q. On the Certificate of Inspection for this particular
18 vessel, it indicates it carries 48 passengers, 1 joint pilot
19 and engineer and 1 crew?

20 A. Yes.

21 Q. But it doesn't go into any detail when you need those
22 additional crew members. Are you telling us it's understood by
23 everybody that the memorandum applies in this situation?

24 A. What should appear on the Certificate of Inspection,
25 and it doesn't on this one and I can't explain why, is that

1 some of the smaller operators, particularly on a boat of the
2 size of the Ethan Allen, if they're only carrying 5 people,
3 their question has always been, "Do I have to carry a crew
4 person with just 5 passengers?" And what we've reiterated to
5 them is if you're going to carry less than 20 passengers you
6 can do that just with the operator. Once you go to 21 or
7 higher, then you have to abide by the one additional crew
8 person. And that's, in my opinion, fairly common knowledge and
9 frequently discussed with the operations, because that's a
10 common question they have: Do I always have to carry a full
11 compliment of crew, even though I may not have a full
12 complement of passengers.

13 Q. Okay, so you would expect on this vessel, because
14 they're carrying 21 or more passengers, (indiscernible) a crew
15 member?

16 A. That's correct.

17 Q. How do you define "crew member"?

18 A. We don't statutorily define a crew member or a crew
19 person, but it's largely inferred -- again, in the memo it does
20 describe that the crew person is, in the event of an emergency,
21 a float. Should the operator become incapacitated, the crew
22 person is supposed to assist the docking, undocking, and acting
23 as a lookout for the vessels. So these are talents, skills,
24 what have you, that wouldn't necessarily belong to any person
25 that just happened to walk on the boat. It's someone who's

1 familiar with the boat, familiar with the operation, and an
2 employee of the company.

3 Q. It doesn't necessarily have to be somebody with a
4 pilots license?

5 A. Oh, no. No, not at all. Not at all.

6 Q. So if an employee of the Shoreline Cruises could be
7 qualified as a crew member?

8 A. Oh, sure, sure.

9 Q. How about a tour director on the tour bus?

10 A. Generally speaking, no. Because that person wouldn't
11 necessarily be familiar with the safety operation of that
12 vessel or who would be a mariner themselves. So that would not
13 be consistent with what we would think of as a crew person.

14 Q. Now how is the requirement to carry a crew member
15 enforced by the state?

16 A. Well, it's inscribed on the Certificate of
17 Inspection, as are all the conditions of operation. And the
18 operator is responsibility for complying with those conditions.

19 Q. But it's not something (indiscernible)?

20 A. They could. Oh, yeah, any statewide -- any officer
21 with statewide authority can enforce the provisions of a
22 navigation law and the public vessel law.

23 Q. I'm looking at the Certificate of Inspection. Can
24 you tell us about the requirements, what kind of requirements
25 are set for life saving and firefighting equipment?

1 A. Pretty much we mirror what the Coast Guard requires.
2 We require a type one jacket, that has to be immediately
3 accessible, that they be serviceable, and that they carry an
4 additional 10 percent of child jackets onboard.

5 Q. (Indiscernible)?

6 A. Right.

7 Q. And is there a state requirement as to what
8 (indiscernible) if the operator carries more than the number
9 lifejackets that are onboard for children?

10 A. Say that again?

11 Q. If the operator takes out a tour of children
12 (indiscernible).

13 A. Oh, yes, they are responsible for having the
14 appropriate sized jackets for the people that they're taking
15 out.

16 Q. And each operator does have those in case that
17 becomes a necessity?

18 A. Most boats don't carry a large percentage of
19 children, most of the smaller boats. I would dare say in most
20 cases the 10 percent is adequate, but most operators have
21 additional jackets and if need be they can borrow them from
22 some of their other vessels. We don't like to see that, but
23 they can borrow the other children's jackets from other vessels
24 for the short duration of one trip.

25 Q. Can you describe during the annual inspection how the

1 state inspects lifejackets?

2 A. Oh yeah, a lot of finger pressing and poking and
3 pulling, but we will take the jacket out of its storage area or
4 the overhead or below the seat, wherever it might be. We
5 physically inspect each jacket. We check the straps. We check
6 the buckles. We check the integrity of the bags, if it's
7 kapok. We check to make sure the seams aren't ripped, that the
8 sun hasn't diminished the fabric. In a lot of the polyester
9 jackets they tend to wear with the weather. So in any one year
10 we do tend to fail quite a few jackets.

11 Q. Are they normally laid out for you to test when
12 you --

13 A. We like to see that. It helps us out quite a bit,
14 given the fact we have so few inspectors to go around. But
15 that's hit or miss. Sometimes they're stowed away and other
16 times they are laid out for us.

17 Q. I haven't had a chance to read through the
18 regulations to be that knowledgeable. Is there requirement by
19 the state that these jackets are readily available?

20 A. Yes, again, readily available, accessible and
21 serviceable.

22 Q. How do you define "readily accessible"?

23 A. Well, close to where they're going to be needed at
24 the time should an emergency arise. Practically, though, in
25 some vessels that's not immediately where the person is sitting

1 or standing. If it is in a cabinet or a locker on the deck, we
2 do require that it be labeled as such with the number of
3 jackets in it, so that anybody who may not be familiar with
4 where they're located can easily see that.

5 Q. On the larger vessels (indiscernible), I would expect
6 that there would be several locations for lifejackets?

7 A. Yeah, we try to disperse them throughout the vessel
8 as proportionally as we can. So assuming a natural
9 distribution of people throughout the three or four decks,
10 whatever might be on the vessel, they can easily access these
11 jackets.

12 Q. On the Ethan Allen the adult lifejackets were located
13 in one locker?

14 A. That's correct.

15 Q. And do you view that -- does that fit the description
16 of readily available?

17 A. Yes.

18 Q. And how about the firefighting equipment?

19 A. Generally speaking, we do require a combination of
20 handheld Coast Guard approved extinguishers as well as -- if
21 there's a gasoline engine on board, we would require a remote
22 control suppression system onboard the boat. On diesel engines
23 it's not the case. We don't necessarily require an
24 extinguishing system onboard a diesel engine, but we would
25 require a shut-off system for the diesel. The fire

1 extinguishers are predicated on the size of the vessel and how
2 many decks it might have. On a vessel the size of the Ethan
3 Allen, I believe we had one type two on there, if I'm not
4 mistaken. I'm not sure -- two, two type twos.

5 Q. How do you test those for suitability?

6 A. We --

7 Q. Or determine (indiscernible)?

8 A. The preferred way to do it is they have them sent
9 out. And I know Shoreline does this. They sent them out or
10 have somebody come in annually and check all their
11 extinguishers and tag them each year.

12 Q. Since you brought up the topic of fuel shut-offs for
13 the diesel, what typically do you find in the way of shut-offs
14 for the main engine?

15 A. A combination of remote shut-offs, either at the deck
16 level or right on the engine space, somewhat removed from the
17 engine but in the engine area, where they can shut down the
18 fuel flow, a simple valve.

19 Q. And did the Ethan Allen have this (indiscernible)?

20 A. I believe it was fitted that way.

21 Q. (Indiscernible)?

22 A. No, I can't say for sure. I haven't inspected that
23 boat in awhile.

24 Q. Is that an item that's a check-off item on your
25 annual inspection?

1 A. Well, it probably would be part of the overall fuel
2 system check-off, yes.

3 Q. When we -- when we were looking at the other
4 vessels -- I believe it was the (indiscernible) while there was
5 a fuel shut-off valve it wasn't connected to the fuel shut-off.

6 A. I did notice that.

7 Q. (Indiscernible)?

8 A. Yes.

9 Q. (Indiscernible) is required?

10 A. No.

11 Q. How did this form change had there been a requirement
12 for stability?

13 A. The inspection form that you're referring to there
14 probably would not necessarily reflect that. This is an annual
15 inspection, a year-to-year kind of form. Anything that would
16 be impacting the stability or reference letters to that would
17 be in the file.

18 Q. And there's no reference, I'm assuming, on the
19 inspection form as to stability?

20 A. No, never has been.

21 Q. Where would I find the standards for the requirements
22 for stability for public vessels in the State of New York?

23 A. The state law is silent on those. There's no
24 specific reference to a stability test or the need to conduct
25 one.

1 Q. Do you have a memorandum or any documentation at all
2 where it describes the requirements for stability?

3 A. The only resource that we reference is the U.S.C.,
4 the C.F.R., and that would be the Coast Guard simplified
5 stability test.

6 Q. Where is that referenced?

7 A. It's not.

8 Q. So what is the state requirement for (indiscernible).
9 Is there a state requirement, official or unofficial, for an
10 owner of a public vessel meeting stability for (indiscernible)?

11 A. I'm sorry?

12 Q. Where would an owner find (indiscernible) for
13 stability if he wanted to operate a public vessel in New York?

14 A. He would generally call and contact us. Oftentimes a
15 new boat builder, if he's bringing a new boat to the state,
16 whether it's been -- a lot of the boats that come to New York
17 are already certified on tidal waters by the Coast Guard
18 already, so it's pretty much a slam dunk. We take the
19 certificate. If it's a new boat or it's new construction, if
20 they contact us early on, we advise them that there will be a
21 stability test required. And we advise them of what section in
22 the USC to look and tell them. He can either have an able
23 architect to undertake that or he can have us come in and do a
24 simplified test. And oftentimes they will defer to their own
25 builder, because they know we're going to come in with the

1 water weights and they don't want to deal with the mess.

2 Q. So for the Ethan Allen (indiscernible)?

3 A. If it had been a brand new boat, we would have done a
4 simplified stability test on water to establish the safe
5 bearing capacity.

6 Q. Now for the larger vessels, are your requirements
7 unofficially compared to the Coast Guard as far as size and
8 where they break (indiscernible)?

9 A. That's what we defer to naval architects. That's
10 beyond our expertise. So if the steamboat company -- like they
11 recently modified the Minne-Ha-Ha. That was all undertaken
12 with their architects in Boston.

13 Q. And that was (indiscernible) Gilbert?

14 A. Gilbert, right.

15 Q. He performed the calculations and would you use them
16 for reference?

17 A. We'd look at them as best we can, but we get a letter
18 from the architect attesting to the calculations and to the
19 maximum capacity that the boat is qualified to carry.

20 Q. (Indiscernible)?

21 A. Yes.

22 Q. Do you accept that?

23 A. Yeah.

24 Q. So the Ethan Allen would have received a simplified
25 stability test. Are you aware of any prior stability tests

1 done on this vessel (indiscernible)?

2 A. Not since they came to the State of New York. I know
3 there is the original Certificates of Inspection, when they
4 were certified in Connecticut. And there is a reference to a
5 stability letter on at least the one COI, which was for the
6 Double Dolphin, which is, in fact, the Ethan Allen. So I would
7 assume at the time she came to New York the inspectors relied
8 on that stability letter and COI.

9 Q. When that vessel was transferred to New York
10 (indiscernible) definite canopy arrangement?

11 A. I understand all three of them came out with separate
12 canopies, yes.

13 Q. Now would that have been the same canopy arrangement
14 that would have been on the vessel when it was seen in the
15 first test that (indiscernible) may have happened?

16 A. I'm not certain.

17 Q. The canopy may have been -- the original canopy may
18 have been a feature on the vessel that you were going to set
19 the stability based on the wind (indiscernible)?

20 A. I would think so, yes.

21 Q. How does the State of New York determine for an
22 existing vessel if there is some modification, if you can tell
23 me what those modifications are, when it would need to have to
24 reassess the stability?

25 A. Well, clearly, if the dimensions of the haul change,

1 like again in the case of the Minne-Ha-Ha, if you're going to
2 put 40 feet onto the ship you've got a whole new ship from the
3 start. So that has to be redone. If you want to up the number
4 of passengers you wish to carry, regardless of the number of
5 decks that you have onboard, we would then do another stability
6 test on a boat like that. If there is a significant change to
7 the structure of the boat and we're somewhat suspect as to what
8 its impact on the stability of the vessel is, then we'd
9 probably request that a stability test be done on that boat.

10 Q. So reengineering the boat may not have --

11 A. May or may not have. Yeah, if in the inspector's
12 opinion, the one engine was a swap for the other, regardless of
13 the brand, if it was approximately the same size and weight,
14 they may decide that's not a significant change.

15 Q. No. These vessels no longer have the original
16 engines.

17 A. Correct.

18 Q. And I understand (indiscernible) modified will last
19 five or ten years. Would that (indiscernible) made?

20 A. We would have to have observed it, because we will
21 look in the engine specs.

22 MR. HENRY: Okay, I'm going to pass the questions on
23 at this point to Brian Curtis of NTSB.

24 BY MR. CURTIS:

25 Q. Brian, so if the engine was changed out, would that

1 probably be recognized in the inspection some way under
2 inspection?

3 A. More than likely. I mean, I can only speak to
4 myself. When I do an inspection and I go through a boat, I'll
5 reference the prior year's inspection report. And if it says
6 Mercruiser, and now I'm seeing an Isuzu, I would make note that
7 the engine is no longer the same engine that was on board that
8 boat, and I would assess it at that point to see if there was
9 any significance in the change of that engine.

10 Q. (Indiscernible) requested --

11 UNIDENTIFIED SPEAKER: Yes. In fact, trying to find
12 it.

13 UNIDENTIFIED SPEAKER: Okay, so (indiscernible).

14 UNIDENTIFIED SPEAKER: Well, I think the
15 (indiscernible) back to '97.

16 UNIDENTIFIED SPEAKER: '97, okay. All right,
17 (indiscernible).

18 UNIDENTIFIED SPEAKER: (Indiscernible) we've asked
19 the Coast Guard to find (indiscernible) the inspection
20 (indiscernible) these the ones that back to '97?

21 UNIDENTIFIED SPEAKER: I believe (indiscernible).

22 UNIDENTIFIED SPEAKER: Okay, I'll review those later.
23 Thank you (indiscernible).

24 BY MR. CURTIS:

25 Q. You say if they were to re-power, are there any

1 criteria that you would need a report on a specific horsepower
2 changeover, or just the inspector would record that?

3 A. Well, the protocol is to notify our office any time
4 there is a change to the vessel at all, and then leave it to us
5 to decide if it's significant enough for us to follow up on.
6 The same applies if there's an incident onboard the vessel or
7 if there's an accident, they are to notify is immediately to
8 determine when any follow up is required.

9 Q. Regarding that, to notify you of injury, would it be
10 minimal injury, or what's the criteria for your notice?

11 A. Generally if it meets the criteria for the state, you
12 know, there's a physical injury beyond first aid, if there's a
13 person -- fatality, or if there's damage to any vessel more
14 than a thousand dollars.

15 Q. When an inspection is done, is there a particular
16 checklist that's followed or is there a checkbook? What's the
17 guidance that the inspector would use on the inspection?

18 A. Basically what you've got right there. There's a
19 check-off list applicable to just about every boat. It starts
20 out with everything from anchoring cable and works its way all
21 the way down to propulsion systems and fire suppression,
22 lifejackets, what have you.

23 Q. You mentioned you're down to three inspectors now?

24 A. Yes.

25 Q. And previously you were at five?

1 A. Five.

2 Q. Is that due to reduction in personnel or is that just
3 normal attrition?

4 A. Attrition and tough time recruiting.

5 Q. Any current plans to bring those numbers back up or
6 (indiscernible)?

7 A. Yes, we're working with Civil Service now. We have
8 to develop a new Civil Service list from which to select our
9 candidates. Plus, I do at the moment have a waiver from the
10 hiring freeze to fill one position.

11 Q. The frequency of the vessel inspections, how
12 frequently is that?

13 A. At least annually. The law requires that they be
14 done at least annually, or at the discretion of the Commission.
15 But typically they are done annually.

16 Q. There is no intermediate inspection, just annually?

17 A. The only time there would be an intermediate is if a
18 vessel fails, if it's in the process of undergoing an overhaul
19 at the time we stop by and it's not up for inspection, we will
20 schedule at a later date or have them call us when they're
21 ready for an inspection.

22 Q. When these inspections are done, are there any
23 requirements for showing efficiency for emergency situations
24 (indiscernible)?

25 A. Only on the larger vessels. And we do that in

1 concert with their licensing protocol. Almost every year the
2 larger vessels will have one or two applicants for engineer and
3 master. So what we'll do is we do take them out for a
4 practical as well as have them take a written exam. When they
5 go out for the practical, we'll have them do something like a
6 man-overboard drill or fire emergency drill and have that
7 entered into the log book.

8 Q. And what differentiates a small from a larger vessel?

9 A. Well, a large vessel would require a master, a
10 master's license. And that's anything that carries over 50
11 passengers.

12 Q. Now on the vessel as far as the Ethan Allen, the type
13 of (indiscernible)?

14 A. Joint pilot and engineer.

15 Q. What's the requirement been to obtain that license?

16 A. Well, again, that's the lesser of the two licenses,
17 the master being for the larger vessel. The joint pilot and
18 engineer is the smaller, lesser license, for lack of a better
19 term, where the vessel can be deemed to be operated exclusively
20 by one person, so from the propulsion end of things and then
21 the navigation end of things. Prerequisites for the license,
22 minimum of 18 years of age. We look for some prior experience
23 working with vessels of that approximate size. And they have
24 to take an exam and pass it with a minimum of 75 in order to
25 get a license.

1 Q. Are there any hands-on requirements for that vessel?

2 A. Not for that license, no.

3 Q. (Indiscernible) what's required for navigational --
4 navigational communications equipment? Are there any
5 requirements, minimal requirements?

6 A. No. Well, I shouldn't say no. Every vessel has to
7 be fitted with the appropriate navigation lights, sound
8 signaling devices, horns and whistles. There has to be a clear
9 line of sight, so the operator can see the lake in an unimpeded
10 fashion. But as far as navigation goes, that would probably be
11 the extent of it, sound signaling, navigation lights.

12 Q. Is communication equipment required?

13 A. Not specifically, no.

14 MR. CURTIS: Thank you. That's all I have right now.

15 BY MR. TURRELL:

16 Q. Okay, I'd like to go back to the office structure.
17 You said you have three current employees. What are their jobs
18 and their particular job descriptions? Is there a difference
19 between those inspectors and their qualifications?

20 A. Generally the three of us have the exact same
21 qualifications. Mine is more of a supervisory position, but
22 I'm not really charged with any more or any less than any of
23 the other inspectors at the moment. There's a number of other
24 tasks that each of the reps are charged with, everything from
25 recreational boating accidents, recreational boating education,

1 mandatory education, personal watercraft operation. We handle
2 state aid to localities for the 60 municipalities around the
3 state. We're involved in marine law enforcement training, the
4 different aspects of personal watercraft, basic marine law
5 enforcement, advanced law enforcement, vessel operation, public
6 outreach, national boating safety events, things of that sort.

7 Q. And I notice some of the employees I've been working
8 with are police or law enforcement officers. How does that
9 break down in relationship with the Park Police?

10 A. That's kind of a recent marriage or arrangement of
11 sorts. We now have a marine sergeant in our officer to liaison
12 with the local marine law enforcement agencies as well as our
13 own Park Police personnel, and that assists with our training
14 end of things. It also gives us some expertise in the area of
15 specific law enforcement issues. And that's an additional
16 person. So we have the three marine reps. We have the Park
17 Police sergeant. We have one recreational boating safety
18 specialist. That person is charged full-time with the
19 mandatory education program and the very aspects of that. And
20 then we have two support staff people, principally answering
21 the phone and doing data entry.

22 Q. Now these other two, the Park Police and the safety
23 specialist --

24 A. Yes.

25 Q. Are they also doing vessel inspections?

1 A. No, they are not technically qualified.

2 Q. Can you just give us a rough idea -- you told us 300
3 vessels are being -- how many operators, vessel operators,
4 would that be?

5 A. I think it shakes out to somewhere around 800. A
6 good percentage of those, we do a lot of camps, summer camps.

7 Q. I guess when I say operators I mean operating
8 companies.

9 A. Oh, operating companies. I couldn't give you a
10 number off the top of my head, obviously less than 300, because
11 there are several that have multiple boats.

12 Q. Okay. And you said the actual operators, you said
13 probably about 800 licensees. Is that about right?

14 A. Yeah, easily 800 people have a license each year.

15 Q. What do they go through to -- once they get their
16 license is there a re-inspection or re-qualification
17 requirement?

18 A. There's an annual renewal process, which is in large
19 part just a financial issue. They have to renew with the
20 state, otherwise the full force of their license will lapse.
21 What we've been trying to implement over the last few years to
22 some extent is a renewal exam -- just like the Coast Guard does
23 right now. It's an open book exam -- so that we can get the
24 more seasoned people who may not have stuck their nose into the
25 rules of the road of late to just do that and look up the

1 answers. But that would be the extent of it.

2 Q. What interval are you looking at to do that?

3 A. Ten.

4 Q. Ten years?

5 A. Yes.

6 Q. When you are initially licensed as an operator, is
7 there a requirement for any physical examination or any medical
8 information provided?

9 A. No.

10 Q. Can you give us a brief history of your experience
11 with Shoreline Cruises and your experience as oversight with
12 their operation from your viewpoint? Just give us a brief
13 description of your history, of your inspection history with
14 them.

15 A. Okay. Well, much like a lot of the larger operations
16 around the state, we've been inspecting them since I started
17 with the agency, and that was back in '84. They have numerous
18 boats. They've always had a number of boats and a larger
19 number of smaller boat, because they are largely involved in
20 water skiing, or I should say parasailing, delivery operations,
21 rentals, jet ski operations of late, but I think they're out of
22 that business now. So they're one of the larger operations
23 that we have. They're one of our bigger stops, probably next
24 to the Lake George Steamboat Company. We used to do them at
25 the same time, at least the larger boats.

1 More or less the same year-to-year protocol. There's
2 always something you find on any boat when you go onboard in
3 the spring. There's something that's not the way it should be
4 and there's a number of corrective things that need to be
5 looked at. But again, that's not uncommon and oftentimes
6 they're just minor things anyway.

7 Q. Okay, well --

8 A. Where there are bigger issues, then we address those
9 issues.

10 Q. Have you -- I guess in your experience, what have
11 been the larger issues with Shoreline in your tenure?

12 A. I guess it was the Defiance. The Defiance had sprung
13 a hole in the bottom and we found it by putting a hammer
14 through it when we were down in the bilge one day and tink,
15 tink, oops. So we required to do a complete underwater survey
16 of the boat for haul thickness and integrity. They completely
17 removed and patched the skin of the boat in the area in
18 question. This boat was in salt water service before for a
19 number of years. So what we suspected happened was a lot of
20 the water fittings had dripped onto the steel plating and
21 caused corrosion in that area, so they needed to be replaced.

22 Q. To your knowledge, do your inspectors actually
23 provide the regulations to the operators or do you find that
24 they actually have a copy of their own or they're knowledgeable
25 about these regulations?

1 A. Largely I think most of the operators rely heavily on
2 the manual itself. If they want a specific reference, we'll
3 gladly give them a photocopy of the section.

4 Q. Okay. Alcohol testing after major accidents, can you
5 tell me from the agency's point of view what the rule is on
6 drug and alcohol testing after an accident?

7 A. Well, the way I understand it, and I'm not the expert
8 on intoxicated boaters, but I believe that if there is an
9 accident and there is a fatality, you have cause to require a
10 blood draw.

11 Q. And to your knowledge in this accident do you know
12 why the drug and alcohol test wasn't performed by law
13 enforcement?

14 A. I can't comment on that. I don't know.

15 Q. Okay. I was reading the study guide, and I guess on
16 page 78 there was an example of the accident report, boating
17 accident report. To your knowledge, was one filled out for
18 this particular incident?

19 A. Knowing the insurance department I'm sure they're in
20 the process of filling it out. But we have not yet received it
21 because the case is still open. And that's fairly typical, we
22 don't get one until the case is closed.

23 Q. So this is normally filled out by the law enforcement
24 involved?

25 A. Generally it would be the sheriff's department or the

1 Lake George Park Commission.

2 Q. To your knowledge on Lake George how many boating
3 accidents they've had recently, to your knowledge? Not
4 Shoreline, but in general on the lake?

5 A. We haven't had any commercial accidents up here,
6 but -- I don't think we've had any fatals this year, as far as
7 recreational goes. But it's a very heavy lake, so we do get a
8 lot of fender-bender accidents and that kind of stuff. But I
9 think we had two or three last year. I can't recall.

10 Q. What would be the threshold in order to fill one of
11 these reports out, as far as damage, not deaths but damage.

12 A. I believe it's on there. I think it's a thousand
13 dollars. It's got to be here somewhere. If it's not, it's on
14 the flip side. I found it on the form. It's a thousand
15 dollars.

16 Q. A thousand dollars now?

17 A. A thousand dollars.

18 Q. So how --

19 A. Total damage.

20 Q. Total damage. So how long do you retain these forms
21 for?

22 A. I believe we keep them for seven years in accordance
23 with the agency's retention.

24 Q. And are they separated out by lake or are they just
25 in one annual file?

1 A. They're filed numerically based on the order in which
2 they're received in the office, and then there's a database
3 into which they're compiled. So the database is more often,
4 you know, referenced for information.

5 Q. Okay. Now the individuals that have master's
6 licenses, I understand they do a practical examination?

7 A. Yes, they do.

8 Q. Who performs -- from your agency, who performs those
9 practical exams?

10 A. Only the three of us can do that, one of the three
11 marine inspectors.

12 Q. And can you kind of give us a brief description of
13 what standard is used to observe these individuals for this?

14 A. I wish I brought that with me. We do have a form. I
15 can get that for you. It's basically a check-off list and we
16 developed that because we didn't really have anything prior to
17 other than general nautical knowledge. But it requires that
18 the candidate for the license take the boat through its full
19 processes on a typical trip. So we'll come up and ride the
20 boat on a cruise. We'll have them take the (indiscernible),
21 check out the entire system, power up steering, navigation
22 systems, get everything on line, and then take the boat away
23 from the dock. We'll observe their undocking, their whistle
24 signals, their attentiveness to different things like
25 passengers on board, other vessels in the area. We'll make

1 note of how they handle the ship, how responsible they seem to
2 be behind the wheel. And then we'll take them out on a cruise.
3 We'll ask them an array of questions with respect to rules of
4 the road, passing, crossing, overtaking situations. What do
5 you do here? What do you do there?

6 At some time during the trip I usually tell the
7 master who's on board, the licensed operator, that we'll be
8 doing some kind of a drill, tell the individual what that's
9 going to be. I just go down and identify one of the crew
10 persons on deck, and we either throw something overboard or we
11 create a fire, make believe fire in the galley, or something on
12 fire. And then we'll observe how they pass the word, how it
13 gets up to the bridge, what actions the master takes on the
14 bridge to mitigate seeing the fire. Or if it's a man
15 overboard, how he turns the helm to get the stern of the vessel
16 away from the person in the water to reduce the chance of
17 clipping a person in the water. If he effects a Williamson
18 turn or whatever, to come back to that location, people don
19 lifejackets, all these things, you know, what they do. Are
20 they standing by with polls or a swimmer ready. The passengers
21 are instructed what to do to get away from the area where
22 they're working.

23 Once that's over and done with, we resume the trip.
24 We continue to observe their observations, questions, ask them
25 some general knowledge about the lake, as far as what to do in

1 the event of a emergency. We have a heart attack on board.
2 Who can we call? Where can we lay this larger ship up to
3 evacuate to an ambulance? What channels do we need to be
4 monitoring on VHF? What agencies on the lake are easiest to
5 respond? Depending on where you are on the lake, again,
6 different agencies can give you faster response times. Take
7 the trip back, continue pretty much the same thing, watch how
8 he handles, or she, handles different situations, the other
9 vessels on the lake, their speed, their observance to their
10 wake, general shipboard operation.

11 And then we'll take it right back to the dock and see
12 how well they land it and get it into the slot where it needs
13 to be.

14 Q. Okay.

15 A. If we feel they have sufficiently completed the trip
16 and we are confident and we feel good in their actions and
17 haven't given them any red flags during the trip, we'll more
18 than likely give them a license.

19 Q. Are there any formalized procedures in your office
20 guiding your inspectors as to what to look for in particular,
21 how to conduct their investigations?

22 A. No so much as a manual, and that's something we
23 probably need to address in the future. We really heavily on
24 each inspector's professional and academic background and
25 general knowledge, and their licensing background, to give them

1 that credibility and knowledge.

2 Q. Okay. To your knowledge, have there been any
3 operators in New York State that have gone out of business due
4 to actions taken by your agency, either loss of license or --
5 have there ever been operations that have been shut down by
6 your agency since you've been there?

7 A. There have been occasions where we've suspended
8 certificates in the past. We haven't driven anybody out of
9 business, per se. But we've brought that hammer down in cases
10 where they were blowing us off or were not showing compliance
11 with our requirements, where we just suspended their
12 certificate. I know we back that up by calling local
13 enforcement to make sure the boat didn't go out, and if they
14 did they would be boarded and turned around.

15 Q. Can you give us some more detail, not particulars,
16 but just some detail about that situation and what --

17 A. We had one here on Lake George maybe 10 years ago,
18 one of the larger vessels. We had some questions with respect
19 to the integrity of the stiffeners and the transverse members
20 of the boat. They were timber. They were starting to show
21 cracks, in our opinion excessive cracks for a boat of its age.
22 We asked them to have that survey. We gave them a period of
23 time to do it. They did not do it. We went back for the
24 follow-up inspection, saw that it wasn't done. We immediately
25 suspended their Certificate of Operation, and we had the

1 sheriff's department return them to the dock.

2 Q. Okay.

3 A. And they immediately called a naval architect.

4 Q. Since the time you've been with the Parks have you
5 had any complaints about the Lake George Steamship Company in
6 regards to the damage because of their wake of the Mohican?

7 A. Anecdotally I've heard people say that sometimes
8 those vessels do throw considerable wake, but they are larger
9 vessels. I don't recall any formal written complaints, but,
10 again, anecdotally someone from time to time does say, yeah,
11 it's a big boat, and they shake things up a little bit. But I
12 attribute that a lot to -- a lot of these complaints come from
13 people with much smaller boats, and they're just not used to
14 being knocked around a little bit.

15 Q. So has your office received a damage of over a
16 thousand dollars when one of these reports have been -- these
17 damage reports have been filled out?

18 A. I'm not saying we never did, but I can't recall
19 getting one.

20 Q. Does your office propose any immediate changes in
21 light of this accident?

22 A. Yes.

23 Q. Have you guys -- perhaps you can elaborate on that.

24 A. Last Friday we immediately instituted a policy
25 whereby we drop back the number of passengers on all the larger

1 vessels by approximately 20 percent, to comply with the
2 approximately 174 pound proposed weight by the NTSB. We
3 thought that was prudent at this time, because most of those
4 folks were probably testing to the 140 criteria, more than
5 likely. Plus the waters in the state are considered protected.

6 Q. Any other immediate changes planned?

7 A. Yes. We're going to review all the files on all the
8 larger vessels in the coming months to see if there are any
9 much like the Ethan Allen that may have been operating prior to
10 coming onboard with the agency and where there may or may not
11 have been a stability test done on that boat, and where up to
12 this point we've just accepted the prior numbers on those
13 vessels. I think that's imp to do.

14 Q. To your knowledge, does New York State require any
15 kind of safety briefing for passengers?

16 A. We do not require a safety briefing.

17 UNIDENTIFIED SPEAKER: I think that's in the package
18 of proposed changes as well.

19 MR. KEMPF: We're also going to give better
20 definition on the word "crew person."

21 MR. TURRELL: Okay.

22 MR. KEMPF: Obviously that needs to be addressed.

23 UNIDENTIFIED SPEAKER: And there are probably a
24 number of other legislative proposals that will be -- that will
25 be made in the coming months as well.

1 MR. TURRELL: Sure.

2 BY MR. TURRELL:

3 Q. Another question I have is radios. You mentioned VHF
4 radios on the lake for communications and that they're not
5 required on commercial boats. You're saying that's one of the
6 primary means of communicating back and forth generally, but
7 commercial boats aren't required to have it.

8 A. Statutorily they're not required to have it, but I
9 can tell you I'm pretty positive that all the vessels have VHF
10 communication and cell phone communication, as well as radar.
11 But that's probably, again, something we'll need to address and
12 establish a criteria for those pieces of navigational equipment
13 and safety gear.

14 Q. I asked you about Shoreline. If you could also give
15 us a brief history on the Lake George Steamship Company, your
16 relationship, your office's relationship with their operation,
17 and also the Sagamore Morgan operation.

18 A. Okay, I'll start with the Morgan operation. The
19 Sagamore, that's a smaller operation. I'm trying to think now.
20 They started back around '89, somewhere around there. Largely
21 that boat is used for accommodation of the guests of the hotel,
22 although it still meets the qualification or definition of a
23 public vessel so it's subject to our annual inspection. I
24 don't have -- it's a quite unique operation with the Sagamore,
25 because that's largely a hotel concession kind of operation and

1 you don't necessarily have the same professional background
2 managing the vessel as you do with Lake George Steamboat and at
3 Shoreline. So there's been an educational curve there and we
4 always try to keep them a little bit under closer tabs.

5 There's been a fairly high turnover rate in
6 management up there as well, which is something that tends to
7 catch my attention. So I like to keep tabs on who that person
8 is and what they know and what they don't necessarily know
9 about running a boat. Operationally she's been running fine.
10 We did have the one issue with her and structural integrity of
11 the boat, which they did address. They did quite a bit of work
12 into her years ago and she's quite a much stronger vessel today
13 than she was.

14 The number of incidents, I know she broke down once
15 when she was underway and had to haul her back in. She's got
16 one engine, so when that one gave out they basically had to
17 wait for someone to come tow in her in, not a real emergency
18 situation. In fact, I remember an interesting picture in the
19 newspaper, where they had this very small boat towing her back
20 to the dock and it's got a funny look picture in the newspaper.
21 And there was one instance as well where they were hit by a
22 microburst while at anchor, and I think they tore her anchor or
23 something and they had to drop a second anchor. But there was
24 nobody on board at the time. That's all that comes to mind
25 right now.

1 Q. And the Lake George Steamship Company?

2 A. Lake George Steamboat, they've been around a hundred
3 years. They are a pretty top shelf operation. As I mentioned,
4 they have an able architect that does everything and anything
5 that they get involved with. He's intimately involved with it.
6 So from the get go you don't have to tell them, "get them."
7 They've already got them. Operationally, they're fairly
8 compliant. Anything that you do request they do. There's
9 never any issues with what you want done. In years past there
10 were some issues with questions of watertight integrity and
11 bulkheads and lifejackets and things of that sort. But
12 basically they're in the past now. Again, they're right out
13 there in front.

14 Q. Okay.

15 A. And everything is up to snuff.

16 Q. Could you describe the role of the lake George
17 Commission on the lake?

18 A. Well, depending on who you talk to, I would say they
19 tend to supplement the county sheriff's department. But they
20 might think otherwise. They're a seasonal secondary
21 enforcement unit up here. They're charged largely with
22 enforcing the provisions of the Lake George Park Commission,
23 which are very specific to the lake. I don't know the
24 specifics, the details, nuances. But they're very picayune, I
25 guess, on certain issues. Environmental, dockside, marina

1 permits, they're very big on getting everybody's boat permit
2 for the lake and all this stuff. But they're fully -- their
3 officers are fully charged with the enforcement powers, so they
4 can enforce the provisions and navigational as well. And,
5 again, a seasonal operation, I think they may have eight or ten
6 officers, I don't know, during the summer months.

7 Q. Okay. From your experience as a statewide regulator,
8 what are the problems with other operators in your jurisdiction
9 as far as characterizing any problems, maintenance or
10 operations? What are the big issues in your organization right
11 now that you're looking at?

12 A. In general?

13 Q. In general.

14 A. Most of the issues that we're looking at right now
15 involve recreational boats. Those are issues related to
16 lifejacket wear. We have a bill pending right now that would
17 have PFD wear requirements during the winter months for small
18 boats under 21 feet, because that's where we lose about a third
19 of our people each winter. We just got a PWC minimum age bill
20 through, pushing that up from 10 to 14. That's a pretty
21 significant advancement in that regard. We obviously would
22 like to see some bolstering of the boating while intoxicated
23 bill, something closer to on the road, implied consent.

24 Q. Okay. As far as the commercial operators, what
25 problems are you seeing statewide?

1 A. A lot of the same things you see, early spring
2 breakout issues that almost everybody has or launching of the
3 boats have that need to be remedied. And largely I think
4 that's why we're charged with getting out there on an annual
5 basis, to make sure when this boats come out of winterization
6 everybody is looking at all the different aspects of the boat.

7 Q. Okay. The licenses that the operators hold, the
8 master's and joint pilot and engineers, is there a connection
9 if one of these people got a DWI driving in their private
10 vehicle? Is there any link to their maritime license?

11 A. No direct link, no. If we are advised of it -- and
12 we do get the tickets in the office and we do look at them.
13 And if we see that these are public vessels, we'll pull those
14 particular tickets and investigate why the operator got the
15 summons.

16 Q. So you are looking at the -- how do you -- you say
17 you're getting the tickets in the office. But if they're the
18 motor vehicles that they're getting a ticket, you're actually
19 getting that in your office?

20 A. If they get a boating while intoxicated, it's on the
21 uniform ticket, the Parks ticket. It doesn't go on the V&T
22 tickets.

23 Q. If they were driving in their own private vehicle,
24 however, a car --

25 A. We wouldn't see that.

1 Q. You wouldn't see that, okay.

2 A. No crossover.

3 Q. Okay.

4 A. That's another thing we'd like to do.

5 MR. TURRELL: Tom, do you have anything?

6 BY MR. McCARTHY:

7 Q. (Indiscernible).

8 A. In navigation law, section 30, 40 -- 43. If you're
9 trying to find out what the classes are, I think it's 40 -- no,
10 40 is equipment. Forty-one is lights.

11 Q. (Indiscernible)

12 A. It's in the low 40s. I forget exactly which one it
13 is.

14 Q. The Ethan Allen was a class (indiscernible)?

15 A. No.

16 Q. What type class vessel was it?

17 A. We'll have that in a second as soon as
18 (indiscernible) can open it up -- section 43, vessels
19 classified. So when I say it's less than 16 feet, class 1 is
20 16 to less than 26. I believe these are all postulated on some
21 old Coast Guard standards from years ago.

22 Q. So the Ethan Allen was a class 2?

23 A. It would have been a class 2.

24 Q. And under class 2 it requires a power operated bilge
25 pump?

1 A. Yes, I believe so.

2 Q. Is there a requirement under class 2 for
3 (indiscernible)?

4 A. No.

5 Q. (Indiscernible)?

6 A. No.

7 Q. Is there a requirement in any of the classes, 2, 3, 4
8 (indiscernible)?

9 A. No.

10 Q. Not even on the larger (indiscernible) class of
11 vessels?

12 A. That's correct.

13 Q. Is there any reason that (indiscernible)?

14 A. I can't really address that answer. I don't know.

15 Q. Has that ever been something that your office has
16 proposed as a reasonable requirement.

17 A. I know it's been required on some vessels because of
18 the configuration and maybe lack of departmentization for those
19 vessels, but it's not an across-the-board requirement at this
20 point.

21 Q. Okay. I read in the (indiscernible) paper that the
22 governor was proposing some new standards. And in reading the
23 paper it talked about increasing the average weight for the
24 passengers for the application of stability.

25 A. I thought.

1 Q. I saw some conflicting numbers (indiscernible) 174.
2 (Indiscernible).

3 A. Yeah, I don't know where that 150 came from.

4 Q. It's nothing that you're familiar with?

5 A. No.

6 Q. Or ever been applied?

7 A. No.

8 Q. So 140 now is the state's standard for
9 (indiscernible)?

10 A. Yes, until last Friday. Maybe you stepped out of the
11 room while we were talking about that.

12 Q. No, I heard it had been proposed.

13 A. We made that Friday.

14 Q. It's now a requirement under what, under the law or
15 under government decree?

16 A. The governor's directive is that it be raised to 174,
17 and that's consistent with the letter that he sent to Admiral
18 Collins, that he supports the 174.

19 Q. As an owner, where would I now find that requirement
20 if I can't find a stability document in the first place?

21 A. Well, you would have gotten a mailing from our office
22 and we would have indicated what you were previously certified
23 to carry based on whatever criteria. And now with the 174-
24 pound criteria, you'll now be certified to carry this many.

25 Q. And it's in that memo is referenced the standards for

1 Coast Guard stability?

2 A. No, no. It just references a review of the records,
3 and in light of the accident involving the Ethan Allen we are
4 increasing the average weight per person based on the FAA
5 recommendation and the NTSB to 174, until further -- such time
6 as we can further investigate the need to address carrying
7 capacity.

8 Q. Now you area also, in addition to that, directing
9 operators to take a 20 percent cut in their passenger loading?

10 A. Well, that is the same thing, yes.

11 Q. Oh, so that is --

12 A. Yeah.

13 Q. Okay. And you're aware on the Ethan Allen, when we
14 tested that vessel (indiscernible)?

15 A. That's correct.

16 Q. So there may well be a class of vessels that are
17 limited by passenger (indiscernible), where changing the number
18 of passengers may not in effect reduce -- you know, improve the
19 vessel's stability?

20 A. I see what you're saying.

21 Q. Based on wind (indiscernible)?

22 A. Right, correct. We need to look at that.

23 Q. (Indiscernible). We had an opportunity to
24 (indiscernible) to the engineer about some construction, and
25 most of them felt good about the construction. And they

1 pointed out pressure vessels and he also pointed out the Minne-
2 Ha-Ha, which is steam propulsion.

3 A. Steam and diesel.

4 Q. These are fairly sophisticated systems for
5 inspection.

6 A. Mm-hmm.

7 Q. Are you're -- are you and your staff qualified to
8 inspect these types of systems?

9 A. The steam plant has to be inspected by the State
10 Department of Labor. That is the agency that's responsible for
11 steam plants, whether it's landside or waterside. At the
12 moment we don't have any engineering licenses on staff. That's
13 something we are aspiring to do, but at the moment we don't
14 have any engineers on board. We go through the systems onboard
15 during inspection with the chief engineer at that facility, and
16 we go stem to stern and ask questions and have them explain
17 everything, trace out the systems for us, explain why things
18 have been changed. And usually they'll take us through that
19 without any question.

20 Q. (Indiscernible). How would you know that --

21 A. Again, there is an architect that's involved whenever
22 they do something along those lines?

23 Q. (Indiscernible)?

24 A. We'd ask for them to run it past their architect to
25 make sure it's proper.

1 Q. In the navigation (indiscernible) and recreational
2 vehicle laws it talked about -- something about the
3 (indiscernible). It talks about the carriage of passengers and
4 the carriage of crewmen and the violations of those as being
5 misdemeanors?

6 A. Yes.

7 Q. To your knowledge, has Shoreline Cruises ever been
8 cited for misdemeanors for carriage -- for improper carriage of
9 too many passengers or not enough crew members?

10 A. Not that I'm aware of.

11 Q. Or any of the operators (indiscernible)?

12 A. Not that I'm aware of.

13 MR. HENRY: Thank you. That's all the questions I
14 have.

15 MR. TURRELL: Walt?

16 SGT. SCHEDEL: I have no questions.

17 MR. TURRELL: Sean? Sean (indiscernible), Shoreline
18 Cruises.

19 BY MR. QUIRK:

20 Q. You've been a senior investigator for 23 years, 20
21 years?

22 A. Twenty-one years.

23 Q. (Indiscernible) inspectors of Ethan Allen before
24 you --

25 A. Oh, yeah, none of those people are still around.

1 Q. Is it common practice to take a boat from another
2 state and (indiscernible) you just adopt the U.S. Coast Guard
3 stamp of approval of the boat?

4 A. Yeah.

5 Q. You do adopt that?

6 A. If the boat came with a COI from federal
7 jurisdiction, we, of course, would look at it and more or less
8 accept what the Coast Guard said was fine.

9 Q. And I think we touched on the changing of the rules
10 (indiscernible).

11 A. Right.

12 Q. It would be your basis of (indiscernible) need to be
13 done or other testings?

14 UNIDENTIFIED SPEAKER: Can you restate that one?

15 MR. QUIRK: Okay. Well, (indiscernible). Okay,
16 thank you.

17 MR. TURRELL: Rob Henry?

18 BY MR. HENRY:

19 Q. I think I had one more questions about
20 (indiscernible). This is just an add-on to a question that was
21 just asked. Rob Henry from the NTSB. You said you had 30
22 vessels in the state that carried more than 6 passengers
23 (indiscernible)?

24 A. I think I said maybe 40 or more.

25 Q. (Indiscernible)?

1 A. Yeah.

2 Q. Do you know what percentage of those have a stability
3 requirement?

4 A. Off the top of my head, no, I couldn't tell you that.
5 I could tell you that if the boat was built new in the State of
6 New York, we would have followed the criteria for simplified
7 stability on that vessel to determine the safe carrying
8 capacity. If it was a vessel that came from outside and from
9 federal jurisdiction with a COI, we would go with the
10 established criteria for the passenger carrying load as
11 established by the COI. How many of those vessels actually had
12 stability tests done on them, I'd have to research. I don't
13 know.

14 Q. That was going to be my last question. What
15 percentage of those would you have accepted the prior stability
16 endorsement? We've asked you to (indiscernible) of these
17 vessels. Would it be too much more effort to determine whether
18 stability had been assessed by either the Coast Guard or state?
19 Would you all perform stability assessment (indiscernible)
20 by --

21 A. Another party?

22 Q. (Indiscernible).

23 A. Okay, we can do that.

24 MR. HENRY: Thank you.

25 MR. TURRELL: Walter? Sure, we can give you a

1 minute. Sure. We can just pause for a second here. We're
2 going to pause for a moment.

3 (Off the record.)

4 (On the record.)

5 MR. TURRELL: Okay, we're resuming. Go ahead, Rob.

6 MR. HENRY: Rob Henry from the NTSB. The question
7 (indiscernible) was that in the regulations or in the law under
8 carriage of passengers (indiscernible), and also for them to
9 require (indiscernible). My question to him was,
10 (indiscernible) for violations or misdemeanors of that law.
11 And he acknowledged that (indiscernible).

12 MR. TURRELL: Do you have something to add there,
13 Peter -- Brian, sorry?

14 MR. KEMPF: No. But I think the question -- I might
15 be getting off track, but the question McCarthy asked was could
16 an officer enforce the crewing and the licensing requirement
17 even though that officer might not have state authority. And
18 the answer to that question is, yes, the Lake George Park
19 Commission, the local county sheriff could enforce the
20 provisions of navigational law and board that vessel on Lake
21 George.

22 UNIDENTIFIED SPEAKER: The only requirement would be
23 that when the violation takes place in your geographical area
24 (indiscernible)?

25 UNIDENTIFIED SPEAKER: So where this all leads, we're

1 just basically asking the (indiscernible). That would be a
2 question that should be directed to the state and to the county
3 as well (indiscernible).

4 MR. TURRELL: So I guess I'll ask the question.

5 BY MR. TURRELL:

6 Q. Can another law enforcement agency besides the Parks
7 and Recreation of Lake George enforce the crewing regulations
8 on the boat, the Ethan Allen?

9 A. Yeah.

10 Q. And those enforcement agencies would be?

11 A. The state police, the DEC, Department of
12 Environmental Conservation, or if you had a local municipal
13 harbormaster or constable.

14 Q. Or in this case the Warren County Sheriff?

15 A. Correct.

16 BY MR. HENRY:

17 Q. Rob Henry of the NTSB, would that go the other way as
18 well, would the Coast Guard be able to enforce that
19 (indiscernible)?

20 A. I don't believe so, no.

21 MR. TURRELL: Brian Curtis?

22 MR. CURTIS: I have a couple of questions. Do you
23 want me to interrupt?

24 MR. TURRELL: Sure. Rob, do you have -- were you
25 don?

1 MR. HENRY: I'm done.

2 MR. TURRELL: Okay, Brian.

3 BY MR. CURTIS:

4 Q. Brian Curtis, NTSB. Brian, in doing the annual
5 inspections, do they run the engines for those inspections?

6 A. Of big boats, yes.

7 Q. Small boats?

8 A. Sometimes yes, sometimes no.

9 Q. Are there any requirements for them to inspect below
10 decks for leaks (indiscernible)?

11 A. Oh, yeah. We do a full internal inspection.

12 Q. (Indiscernible) during those inspections?

13 A. Generally, no.

14 Q. I did just a quick perusal of the checklist. It
15 didn't identify fuel shutoff. That would be (indiscernible)?

16 A. Well, there again, that's a general discretionary
17 item that the inspector would, as an issue of day-to-day
18 routine have that requirement?

19 Q. That isn't mandatory requirement, fuel shutoff?

20 A. No.

21 MR. CURTIS: That's all I have.

22 BY MR. TURRELL:

23 Q. Brian, I didn't ask you your professional history, if
24 you could just give that to us.

25 A. Much like the other two inspectors in the office.

1 The tree of us right now are graduates of either the State
2 University College Maritime or the federal Kings Point Academy.
3 We all came to the jobs with a minimum of third mate or third
4 engineer's licenses on limited oceans tonnage. And some of us
5 came with some sea time, others very little sea time.

6 Q. And you in particular, if you would just give us from
7 college on your background before you arrived at the state.

8 A. I studied for a year with Military Sealifts in the
9 Far East, returned home and worked five years with Sunoco
10 aboard ships. I came to the state in '84.

11 Q. So you graduated from SUNY Maritime. Is that
12 correct?

13 A. SUNY Maritime.

14 Q. In what year?

15 A. '78.

16 Q. 1978.

17 A. And received my master's in '82 -- I think it was
18 '83.

19 Q. You have a master's in?

20 A. Transportation management.

21 Q. From which institution?

22 A. SUNY Maritime.

23 MR. TURRELL: Walt, do you have a question?

24 SGT. SCHEDEL: No, question, but I do want to clarify
25 a thing.

1 MR. TURRELL: Okay.

2 SGT. SCHEDEL: Regarding Mr. Henry's question about
3 the naming of the vessel, that section 59 of the navigation law
4 that deals with that makes it a misdemeanor to not properly
5 crew a vessel. It doesn't specifically cite crew members. All
6 right, it's basically licensed positions, a masters, joint
7 pilot/engineer. Violation of those is a misdemeanor. If you
8 don't have or are not meeting the appropriate crew
9 requirements, it's not a misdemeanor offense. It goes just to
10 a violation, and that's just violating conditions of your
11 contract or your license. All right, so a misdemeanor charge
12 would not apply to improper crewing, as long as that's not a
13 licensed crew position.

14 MR. TURRELL: Sean Quirk?

15 BY MR. QUIRK:

16 Q. Sean Quirk of Shoreline. I have in my notes here,
17 but less than 20 people, you did not require (indiscernible)?

18 A. Correct.

19 MR. TURRELL: I have nothing further, Rob?

20 MR. HENRY: Nothing.

21 MR. TURRELL: Brian?

22 MR. CURTIS: No.

23 MR. TURRELL: Walt?

24 SGT. SCHEDEL: No.

25 MR. TURRELL: Do you have any questions or

1 clarifications?

2 UNIDENTIFIED SPEAKER: No, thanks.

3 MR. TURRELL: Sean?

4 MR. QUIRK: No.

5 MR. TURRELL: Okay, Mr. Kempf, if you would just
6 acknowledge that this has been recorded, it is a public stmt,
7 and we'll end the interview.

8 MR. KEMPF: So acknowledged.

9 (Whereupon, the interview in the above-entitled
10 matter was concluded.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Investigation of MV Ethan Allen
 Lake George, New York
 October 2, 2005
 Interview of Brian Kempf

DOCKET NUMBER: DCA 06 MM 001

PLACE: Washington, D.C.

DATE: October 11, 2005

was held according to the record, and that this is the original, complete, true and accurate transcript which has been compared to the recording accomplished at the hearing.

Phyllis Jarvis
Transcriber