

1943 NOV 4 PM 1 34

Commander Kaplan - Legal

SS Mary Ashley Townsend

RECEIVED

Ind-1  
DCGO, 8th Naval District (ops)  
229-661  
1 November, 1943

1943 NOV 5 AM 2 11

PORT SECURITY SECTION

To: The Commandant.

Subj: Oil Pollution Act; enforcement of.

1. Forwarded with attention invited to my 1st Indorsement on COTP, Galveston letter to the Commandant dated 25 October, 1943, file 6614.

2. The instances covered in basic letter emphasizes the confusion existing in applying the oil pollution act to WSA vessels. The position of the U. S. Attorney, Southern District of Houston, Texas, as indicated by his letters to COTPs is not in accord with HQ letter to all DCGOs 18 August, 1943, file CG-100.18 MIN.

3. The recommendation of the COTP, Houston that he be authorized to use his discretion in reporting oil pollution cases is not approved. The Oil Pollution Act does not provide for the exercise of discretion on the part of the reporting officer. His duty is complete when he files his report. Adjudication of the matter is the province of the court. Any other procedure would inevitably lay the service liable to charges of discrimination by those against whom violation reports were made.

W. H. LESLIE,  
Acting.

CC: COTP, Houston.





UNITED STATES COAST GUARD



COAST GUARD STATION

COTP, Houston, Texas

File: 229-661

29 October, 1943

NEW ORLEANS DISTRICT  
U. S. COAST GUARD  
NEW ORLEANS, LOUISIANA

OCT 30 11 28 AM '43

AN ACP BP AX GM E F IOF L MED MIN MV NV OSO OP ORD PA P PT SC PUI ST

To: Commandant.

Via: District Coast Guard Officer, Eighth Naval District.

Subj: Oil Pollution Act; enforcement of.

1. In accordance with DCGO, 8ND, letter of 11 October, 1943, file 661-6614 (ops), enclosure 1 is forwarded herewith.

2. Also enclosed herewith are copies of letters of 20 October, 1943, from the District Engineer, Galveston, Texas, and 22 October, 1943, from the U. S. Attorney, Southern District of Texas, Houston. Enclosures 2 and 3 both pertain to the S.S. MARY ASHLEY TOWNSEND case and are self-explanatory.

3. Enclosed also is a copy of letter of 21 October, 1943, from the U. S. Attorney, Southern District of Texas, to this office on the general subject of oil pollution violations. Apparently the three cases referred to in this letter are those of the S.S. ROBERT M. WILLIAMSON, 4 September, 1943; S.S. FAIRENO, 6 October, 1943; and the S.S. MARY ASHLEY TOWNSEND case of 13 October, 1943. Copies of statements of witnesses and all other available information on these cases have already been furnished to your office.

4. Contrary to paragraph 1 of the District Attorney's letter of 21 October, the WILLIAMSON report stated, "The Robert M. Williamson, a liberty ship, is operated under the U. S. War Shipping Administration. Lykes Brothers Steamship Company is the agent." The FAIRENO report stated, "The S.S. FAIRENO is owned and operated by the War Shipping Administration and Cities Service Oil Co., New York City." The MARY ASHLEY TOWNSEND report stated, "The S.S. MARY ASHLEY TOWNSEND is operated under the U. S. War Shipping Administration and chartered by the Pan American Transportation Company." Verbatim copies of these reports, the originals of which were submitted to the U. S. Engineer, were furnished in all cases to the U. S. Attorney.



COTP, Houston, Texas  
File: 229-661  
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5. It was realized that the WILLIAMSON and the FAIRENO cases were not very strong and a special effort was made in the incident of the TOWNSEND to secure a tight case. Both the COTP, Houston, and his Executive Officer personally visited this ship and secured statements and photographs which were felt to be conclusive. Apparently the District Engineer agrees in this view, as indicated by his letter of 20 October. The District Attorney, however, does not concur and his letter of 21 October implies that the only action available to him is the libeling of the vessel involved, while on October 18 he wrote in regard to the WILLIAMSON, "In view of the fact that there is no evidence apparent of any gross inattention to duties, this office will not take any action in this matter, and we are considering it closed." Thus, he suggests that action against individuals could be taken if gross inattention to duties were present, as is also indicated by Paragraph 432, Chapter 9, Title 33, U. S. C., which this office interprets to mean that action could be taken against masters, officers or crewmen as might be indicated by existing circumstances. In the case of the TOWNSEND, there is a signed admission that the improper valve was turned, clearly opening the possibility of inattention to duties; nevertheless, the District Attorney, in declining action on this case, states, "In addition the report does not set out any act of gross negligence or wilful violation. We are marking our records closed."

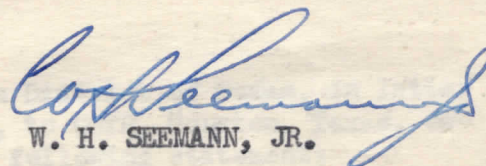
6. If the TOWNSEND case can be used as a criterion of the action of the District Attorney's office on future cases submitted to it here, it is felt that nothing would be accomplished by the presentation to the District Attorney of the facts surrounding every incident of pollution, regardless of the circumstances involved, except possibly the antagonizing of that office against this office, the District Attorney's office here apparently being very reluctant to even consider a case of pollution where a War Shipping Administration or Maritime Commission vessel is involved. If this is so it might be more beneficial to the general war effort if this office would be authorized to refer to the District Attorney only such cases as would likely be prosecuted; in other words, cases where wilful violations, gross negligence or gross inattention to duties or other unfavorable circumstances could be clearly established. In this connection it can be stated that the terminal operators in this port, as well as crews of most of the vessels, have been very careful in the matter of pollution and there is not known to this office any case which occurred during the last year and a half which could be termed wilful and very few, if any, caused by gross negligence. There were a few incidents sometime back in connection with Liberty ships built here, as the crewmen at first apparently had some difficulty in understanding the bunkering in these ships. This situation has been corrected, however,



COTP, Houston, Texas  
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for some time, and the correction was effected, at least in part, by the vigilance of the COTP details during the bunkering operations. Thus the desired result, namely, security of the vessels and the port, has been accomplished without the necessity for prosecution which would have involved a considerable loss of time and manpower to the war effort. Even the MARY ASHLEY TOWNSEND case, for example, could be said to present some extenuating circumstances in that (1) it is one of the first of a new type of tanker converted from Liberty ships, with the unusual tanker arrangement of engines amidships and tanks fore and aft, which general arrangement, particularly the piping system of the ship, is still unfamiliar to both officers and crewmen; and (2) the young seaman (Robeau) who caused the second spill on the TOWNSEND, appeared to be a clean-cut conscientious young American trying to do the job right, but who through inexperience, made a mistake. It might be said that it is up to the owners and operators not to let anyone without sufficient experience work aboard a tanker, but in view of the present manpower situation the impossibility of this attitude would no doubt be conceded by everyone concerned.

7. It is felt that inasmuch as the COTP is already charged with the responsibility of the vessels and docks involved, it might also be possible to let him pass on the nature of any violation that might occur and determine whether or not an attempt to make a case should be made. This practice was unwittingly followed for some time by the COTP here prior to his being definitely advised that it was his duty in all cases to submit a formal report to the U. S. Engineers, with copies to the U. S. Attorney, etc., on every case of possible pollution, regardless of the circumstances involved. It is believed that the net results in this particular port were better when judgement was used on the spot by the COTP and it is hoped that permission to pass on these cases in the future might be granted. In any event an expression from Headquarters on this matter, which apparently has become rather a sore subject to the District Attorney here, would be appreciated as a matter of future guidance for this office.

  
W. H. SEEMANN, JR.

Encls

1. Report of violation of Oil Pollution Act  
by S.S. MARY ASHLEY TOWNSEND
2. Copy of letter of 20 October, 1943, from District Engineer, Galveston.
3. Copy of letter of 22 October, 1943 from U.S. Attorney, Houston.
4. Copy of letter of 21 October, 1943 from U.S. Attorney, Houston.



VIOLATION OF: Oil Pollution Act (Title 33, U.S.C., Sects 431-437).

BY: S/S Mary Ashley Townsend (U. S. Tanker).

OWNED BY: War Shipping Administration.

OPERATED BY: International Freighting Corp., New York City,  
Chartered by Pan American Transportation Company.

DATE OF OFFENSE: 13 October, 1943.

LOCATION: Humble Docks, Houston Ship Channel, Baytown, Texas.

OUTLINE OF OFFENSE: One spill occurred when the second mate misjudged the amount of oil bunkers already in No. 4 port tank, thereby allowing it to overflow before cutting off the intake valve. An overflow from No. 8 port tank occurred when a seaman inadvertently opened No. 8 intake valve instead of No. 9 intake valve which resulted in an overflow from No. 8 port tank which was already full.

VIOLATION REPORT FILED: 15 October, 1943.

ORIGINAL ROUTED TO:	DISTRICT ENGINEER, U. S. ARMY:	<u>X</u>
	COMMANDANT, U. S. COAST GUARD:	<u>X</u>
	U. S. ATTORNEY:	<u>X</u>
	DCGO, 8ND:	<u>X</u>
	MERCHANT MARINE INSPECTION:	<u>X</u>
	FILE:	<u>X</u>

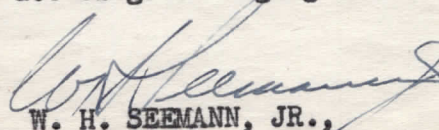
DATE OF TRIAL: - -

COURT IN WHICH TRIES: - -

RESULT OF TRIAL: - -

COMMENT: United States Attorney, Southern District of Texas, in letter dated 22 October, 1943, File 27-A3153, to COTP, Houston, Texas, declined to prosecute the case with the following statement:

"Inasmuch as this vessel is apparently owned by the United States War Shipping Administration and is merely operated by the Pan American Transportation Company, it is the writer's opinion that a libel proceeding against this vessel would be, in effect, a suit against the United States, and for this reason we decline prosecution. In addition, the report does not set out any act of gross negligence or wilful violation."

  
W. H. SEEMANN, JR.,  
Captain of the Port.

(1)



DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY  
Department of Justice

UNITED WAR DEPARTMENT  
UNITED STATES ENGINEER OFFICE

Houston, Texas  
Galveston, Texas  
20 October, 1943

In replying please refer  
to this file number  
27-11173

Captain of the Port  
Lieutenant W. H. Seemann, Jr.  
Captain of the Port  
U. S. Coast Guard  
Captain of the Port Bldg.  
Esperson Building  
Houston, Texas

Dear Sir:

In Re: S/S MARY ASHLEY TOWNSEND  
Reference is made to your letter of 18 October, 1943, file 661, submitting statements of witnesses concerning a violation of the Oil Pollution Act by the S/S "Mary Ashley Townsend" which occurred at Baytown, Texas on 13 October, 1943.

The evidence was referred to the United States Attorney for appropriate action since the evidence indicates that the pollution resulted from negligence or inexperience and could not be considered unavoidable. Inasmuch as this vessel is apparently owned by the United States War Shipping Administration and is merely operated by the Captain of the Port, it will be appreciated if you will furnish copies of statements of witnesses in duplicate.

For the District Engineer:

Yours very truly,

R. B. Gillette, Jr.  
Principal Engineer

Assistant



COPY

DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY

Department of Justice

UNITED STATES ATTORNEY

Houston, Texas

Houston, Texas

October 22, 1943

In replying please refer  
to this file number  
27-41473

Captain of the Port  
Lieutenant W. H. Seemann, Jr.  
Captain of the Port  
United States Coast Guard  
Mellie Esperson Bldg.  
Houston, Texas

Dear Sir: Re: OIL POLLUTION VIOLATIONS

In Re: S/S MARY ASHLEY TOWNSEND  
embarrassing position (Your File: 661)  
vessel owned by either the War Shipping Administration or  
the Maritime Commission, United States.  
Reference is here made to your report bearing  
date of October 18, 1943, relative to a violation of the  
Oil Pollution Act by the S/S "Mary Ashley Townsend", occur-  
ring at Humble Oil & Refining Company docks, Baytown, Texas,  
on October 13, 1943.  
Information which has been requested here-  
before relative to the ownership and/or operation of each  
vessel. Inasmuch as this vessel is apparently owned by the  
United States War Shipping Administration and is merely  
operated by the Pan American Transportation Company, it is the  
writer's opinion that a libel proceeding against this vessel  
would be, in effect, a suit against the United States, and  
for this reason we decline prosecution. In addition, the re-  
port does not set out any act of gross negligence and wilful  
violation of the vessel. The name of the agent of the vessel  
can be ascertained very readily from the Captain of the vessel.

We are marking our records closed.

If a vessel is owned by the War Shipping Administration  
or the Maritime Commission, the  
libel proceedings under any circumstances against said  
vessel for violation of the Oil Pollution Act, an  
offense. However, if the vessel is owned by the  
and chartered to the War Shipping Administration, then in  
that event, this office will make prosecutive action  
if the facts warrant same.

Yours very truly,  
DOUGLAS W. MCGREGOR  
United States Attorney  
By  
Assitant



1943 OCT 21 1110 37

C O P Y

DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY  
Southern District of Texas

In replying please refer  
to this file number  
27-41478

Captain of the Port  
Houston, Texas

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October 21, 1943

Houston, Texas  
October 21, 1943

Captain of the Port  
United States Coast Guard  
Mellie Esperson Building  
Houston, Texas

Dear Sir:

In Re: OIL POLLUTION VIOLATIONS

On October 16, 1943, this office was placed in the embarrassing position for the third time of libeling a vessel owned by either the War Shipping Administration or the Maritime Commission, both agencies of the United States. The libels in each instance were, therefore, in effect, an action by the United States of America against the United States of America. In each instance this office was not furnished with information which has been requested heretofore relative to the ownership and/or operation of each vessel.

It will be greatly appreciated, in the future in making reports relative to oil pollution violations, if the ownership of said vessel and the facts relative to its operation be incorporated in the report. This information can be ascertained from the Captain of each vessel involved or the agent of the vessel. The name of the agent of the vessel can be ascertained very readily from the Captain of the vessel.

If a vessel is owned by the War Shipping Administration or the Maritime Commission, this office will not institute libel proceedings under any circumstances against said vessel for violation of the Oil Pollution Act or other maritime offenses. However, if the vessel is privately owned and chartered to the War Shipping Administration, then in that event, this office will undertake prosecutive action if the facts warrant same.



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Captain of the Port  
Houston, Texas

-2-

October 21, 1943

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PORT SECURITY SECTION

The foregoing request is submitted in order that the interest of every agency of the Government may be protected and the war effort furthered in the most expedient manner by this office under the peculiar wartime conditions existing.

Supervisors Office, Galveston, Texas.

in violation of.

Yours very truly,

DOUGLAS W. MCGREGOR  
United States Attorney

By /s/ W. F. LEIGH  
Assistant

part tank resulted when Elmer E. Johnson, second mate, S.S. Mary Ashley Toward, No. 4 tank, Houston, Texas, while laboring in the Houston Ship Channel. The same vessel had a spill which occurred when the second mate, John F. Glass, already in No. 4 tank, Unre- The overflow from No. 8 tank inadvertently opened No. 8 intake valves instead of No. 9 which resulted in an overflow from No. 8 tank which was already full. The oil from No. 4 tank spilled over on the deck and was cut through the scuppers for about ten minutes. The amount of oil WFL\*mk from the No. 8 tank can be calculated to have been about thirty-five barrels, inasmuch as bunkers were being taken on at approximately 4,000 barrels per hour with the overflow lasting at least thirty seconds before the intake was cut off.

2. Copies of signed statements from the following witnesses are attached for your information.

- Statement from John F. Baker, second mate, S.S. Mary Ashley Toward.
- Statement from Elmer E. Johnson, second mate, S.S. Mary Ashley Toward.
- Statement from John F. Glass, Chief Mate, S.S. Mary Ashley Toward.
- Statement from Bernard J. Henneman, Coxswain, U.S. Coast Guard.
- Statement from Gerald F. Lewis, No. 4 tank, U.S. Coast Guard.
- Statement from L. E. Niley, Box 123, Baytown, Texas, Dealer for Humble Oil & Refining Co.
- Statement from G. L. Odom, Box 121, Baytown, Texas, Dealer for Humble Oil & Refining Co.



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Office of  
Captain of the Port  
Houston, Texas

PORT SECURITY SECTION

File: 661

18 October, 1943

To: District Engineer, U. S. Engineers Office, Galveston, Texas.

Subj: Oil Pollution Act; apparent violation of.

1. At or about 0045, 13 October, 1943, the S.S. MARY ASHLEY TOWNSEND, moored at Humble Oil & Refining Co., docks, Baytown, Texas, while bunkering had an oil spill from No. 4 port tank into the Houston Ship Channel. Also, at approximately 0430, 13 October, 1943, the same vessel had a spill from No. 8 port tank. The first spill occurred when the second mate, John D. Baker, misjudged the amount of oil bunkers already in No. 4 tank, thereby allowing it to overflow before cutting it off. The overflow from No. 8 port tank resulted when Elmer W. Robeau, seaman, inadvertently opened No. 8 intake valves instead of No. 9 which resulted in an overflow from No. 8 tank which was already full. The oil from No. 4 tank spilled over on the deck and ran out through the scuppers for about ten minutes. The amount of oil spilled from the No. 8 tank can be calculated to have been about thirty-five barrels, inasmuch as bunkers were being taken on at approximately 4,300 barrels per hour with the overflow lasting at least thirty seconds before the intake was cut off.

2. Copies of signed statements from the following witnesses are attached for your information.

- Statement from: John D. Baker, second mate, S.S. Mary Ashley Townsend.
- Statement from: Elmer W. Robeau, seaman, S.S. Mary Ashley Townsend.
- Statement from: John P. Olsan, Chief Mate, S.S. Mary Ashley Townsend.
- Statement from: Bernard J. Hennessey, Coxswain, U.S.Coast Guard.
- Statement from: Gerald F. Lewis, Mo.M.M.2c., U.S.Coast Guard.
- Statement from: L. E. Riley, Box 123, Baytown, Texas, Dockman for Humble Oil & Refining Co.
- Statement from: C. L. Odneal, Box 121, Baytown, Texas, Dockman for Humble Oil & Refining Co.



Office of Captain of the Port  
Houston, Texas  
File: 661  
18 October, 1943

Oct. 13, 1943

3. The original statements, samples of the pollution, as well as pictures taken at the scene will be supplied upon request.
4. The S.S. MARY ASHLEY TOWNSEND is operated under the U. S. War Shipping Administration and chartered by the Pan American Transportation Company.

I went a beamy over to look and just as he looked it was at the top, and before it could be cut and it ran over.

W. H. SEEMANN, JR.  
/s/ John D. Baker  
CC  
Commandant, U. S. Coast Guard  
District Coast Guard Officer, Eighth Naval District.  
United States Attorney, Houston, Texas.  
Bureau of Marine Inspection and Navigation, Galveston, Texas.



Statement from Elmer W. Robeau, Seaman, S/S Mary Ashly Townsend.  
Statement from John F. O'Sullivan, S/S Mary Ashly Townsend.

At 4:30 A.M. I had finished closing No. 7 valve and was sent to No. 9 to open 2 turns on each side. I looked into No. 9 tank which was empty, then opened No. 8 valves 2 turns. I looked again into No. 9 and thought I saw oil coming in so I came forward. The Mate asked if I had No. 9 open and I told him yes. A little while later we saw her running over. I made the mistake of opening No. 8 valve instead of No. 9 which I was told to and intended to do.

/s/ Elmer W. Robeau

I did not see the over flow when it first started, but I did see it overflow for about 30 seconds. I saw it overflow 30 seconds before it was cut off.

Before this spill happened, I had never done any loading on oil tankers or unloading except for one time on this ship while loading and unloading.

/s/ Elmer W. Robeau  
A.B. No. 12



Statement from John P. Olsan, Ch. Mate., S/S Mary Ashly Townsend.

From: Bernard J. Hennessey, Cox. 810/3/43 at Guard  
To: Captain of the Port, Houston.

At one A.M. this date the Second Officer, Mr. Baker, reported to me that he had been having the Port No. 4 cargo tank to overflow spilling some of the cargo on the deck and that he had ordered the loading stopped. Mr. Baker reported that he had checked on No. 4 and decided that it would take another 15 minutes to fill the tank and that the tank overflowed before he looked at the tank again.

While standing approximately midship of the vessel but out on the deck, about one minute after the engine yell, I noticed oil flowing through the scuppers on port side midship and down over the side of the ship, the Mary Ashly Townsend, a tanker taking on cargo at number two berth.

Then the oil started to flow from the /s/ John P. Olsan port side, running aft. The oil continued to flow from the various scuppers for about 10 minutes, although the flow was getting very small and slow. At 0058, I was relieved of duty by C. F. Lewis, No. 2, U. S. Coast Guard. We went aboard the vessel and noticed a film of oil on the deck and along the Port side of the deck running aft.

The source of the oil, was the overflow of No. 4 tank. Lewis went aboard to the mate's cabin and I returned to the decks, the channel.

I noticed the oil on the water alongside the port side of the ship. It was about two thirds the length of the ship on port side to the stern of the vessel. It started to spread on the water covering a larger area.

The wind was blowing about Southeast and the force was about 5.

The current of the water was ebbing in.

At 0130 I left the decks and proceeded to C.S.R. 411 on which I am quartered.



Statement from Bernard J. Hennessey, Cox., U. S. Coast Guard.

From: Bernard J. Hennessey, Cox. U. S. Coast Guard  
To: Captain of the Port, Houston.  
Subject: Pollution.

1. On October 13, 1943 about 0050, while patrolling No. 1 dock at Humble Refinery, Baytown, Texas, I came abreast of the number two berty shack. Suddenly I heard someone yell "to cut off the valve". I was standing approximately amidship of the vessel but was on the docks. About one minute after the sudden yell, I noticed oil flowing through the scuppers on port side amidship and down over the side of the ship, the Mary Ashly Townsend, a tanker taking on cargo at number two berth.

Then the oil started to flow from the various scuppers on port side, running aft. The oil continued to flow from the various scuppers for about 10 minutes, although the flow was getting very small and slow. At 0058, I was relieved of duty by G. F. Lewis, Mo.M.M. 2c, U. S. Coast Guard. We went aboard the vessel and noticed a film of oil on the deck and along the Port side of the deck running aft.

The source of the oil, was the overflow of No. 4 tank. Lewis went aboard to the mate's cabin and I returned to the docks.

I noticed the oil on the water alongside the port side of the ship. It was about two thirds the length of the ship on port side to the stern of the vessel. It started to spread on the water covering a larger area.

The wind was blowing about Southeast and the force was about 3.

The current of the water was coming in.

At 0130 I left the docks and proceeded to C.G.R. 411 on which I am quartered.



Statement from G. F. Lewis, Mo. M.M. 2c/, U. S. Coast Guard. for Humble Oil & Refining Co., and G. L. O'Neal, Box 121, Baytown, Texas, Deckman for Humble Oil & Refining Co.

On taking my watch at dock No. one of Humble Oil and Refining Co., time 0045, October 13, 1943, I discovered that oil was pouring from the scuppers of the tanker "Mary Ashly Townsend".

I boarded the above ship and inquired of the Second Mate what the circumstances were.

The second mate answered that the cause of the spill was evidently a miscalculation on the remaining capacity of the No. 4 port tank.

I obtained a written statement from the Second Mate and reported same to our Baytown Coast Guard Office.

At 0440 of same date, No. 8 port tank of the Mary Ashly Townsend ran over.

The first mate who was on watch said a seaman confused his (the mates) instructions and opened the valves into the No. 8 port tank which was full instead of the valves into No. 9 tank which had not been topped off.

The first mate would give only a verbal statement at that time.

A considerable amount of oil ran over the deck and into the channel.

I reported the above to our office immediately.

/s/ G. F. Lewis, Mo.M.M. 2c.



Statement from L. E. Riley, Box 123, Baytown, Texas., Dockman for Humble Oil & Refining Co., and C. L. Odneal, Box 121, Baytown, Texas, Dockman for Humble Oil & Refining Co.

I witnessed the U. S. Coast Guard take samples of pollution about four feet from the water line of the tanker ship S/S Mary Ashly Townsend at about nine fifteen o'clock on the 13th of October.

/s/ L. E. Riley

/s/ C. L. Odneal