



# Coast Guard Hearing Office

*“Hearing Office is our Name,  
Maritime Safety and Security is our Aim”*

Hearing Office Mission: Adjudicate civil penalty cases. The civil penalty process is remedial in nature. Its goals are to gain compliance with statutes and regulations the Coast Guard enforces and to deter future violations. A fair and informal administrative process promotes maritime safety, security and environmental protection.

## **GREETINGS**

From Robert Bruce  
Chief, Coast Guard Hearing Office



## **HEARING OFFICE NEWS**

*If a charged party wants to respond to a Preliminary Assessment Letter (PAL), either to request a hearing or to submit evidence for the Hearing Officer to consider, the response should be sent to the Hearing Office address in Virginia. Recently, the Hearing Office has received many responses from charged parties that were mailed to the Collections Office in California or the address for paying penalties in Georgia. The reason for these misdirected responses may have been that charged parties were not carefully reading the PAL, which provides the Collections address for persons wanting to negotiate a payment plan and the payment address for persons that want to pay the preliminary penalty without disputing the preliminary penalty amount.*

*As a result, the Hearing Office has revamped its PAL letter to more clearly explain that any response for the Hearing Officer's consideration should be addressed to the Hearing Office in Virginia. I am hoping that this significantly reduces the number of responses that are mailed to the wrong address.*

*If you have received a PAL, please read it carefully. The regulations that guide our process provide a reasonably short period for exercising the right to request a hearing, or to submit evidence disputing the alleged violation or to support a lessened penalty amount. Sending the response to the wrong address will delay its delivery to the Hearing Officer or could result in its not reaching the Hearing Officer at all.*

Within the Coast Guard, it is the season of hail and farewell. The Hearing Office recently bid farewell to Commander Mark Hammond, who is retiring after more than thirty-five years of active duty in the Coast Guard. Commander Hammond served as a Hearing Officer for four years and his superb performance was recognized with the award of a Meritorious Service Medal. Among other things, he participated in the disposition of more than 2,200 civil penalty cases, and presided over thirty-one in-person hearings.

The Hearing Office hailed the arrival of Commander Scott Klinke, who comes to us from Coast Guard Headquarters. He will serve as a Hearing Officer. Commander Klinke has more than twenty years of active duty service, both as an enlisted man and a commissioned officer. Among other things, he has experience as a marine inspector, foreign vessel examiner, and marine casualty investigator.



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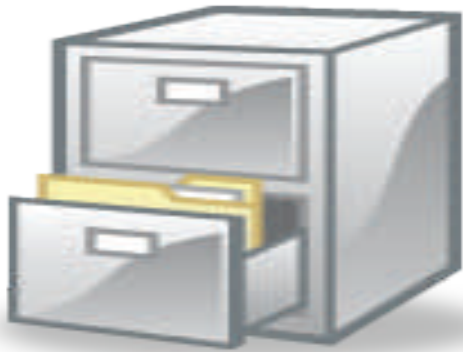
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**Suggesting a History of Similar Violations Without Evidence Is Not Helpful**

*CDR Evan Hudspeth*

In the Preliminary Assessment Letter (PAL) sent to the charged party there is a sentence that is often overlooked which simply states that, “Whatever you want me to consider should be supported by evidence, or else it might not be very persuasive.” The same advice could be given to a Coast Guard unit that is initiating a case for an alleged offense. If you want the Hearing Officer to consider in aggravation a history of similar violations, then documentation should be provided showing that the charged party does in fact have a violation history.

During the preliminary review of the case file, the Hearing Officer takes a serious look at any evidence of previous similar violations to assist in the assessment of an appropriate preliminary civil penalty amount. Most often, the larger the number of similar past violations, the greater the preliminary penalty amount will be, because the Hearing Office’s goal is to gain compliance and ensure deterrence. It follows that if a violation is repeated, then the previous penalty amount was not an effective deterrent, and a greater penalty amount is necessary to prevent future similar violations.

It is important to understand that the only information and evidence that the Hearing Officer may consider is that which is in the case file, and has been shared with the charged party. The Hearing Officer and the charged party do not have access to the Marine Information for Safety and Law Enforcement

(MISLE) database. Typically, the Enforcement Summary section titled “Past Violation(s) History” is the only information provided in the case file concerning a charged party’s repeat offense(s). This section of the Enforcement Summary only provides: the law or regulation and its description, the violation date and activity number, the finding (proved or dismissed), and the penalty amount. This information tends to leave the Hearing Officer with more questions than answers about the details of previous offenses. In some cases, amplifying evidence that explains how the previous violation(s) relate to the current alleged violations may make for a more persuasive case.

Timely submission of case files is important because a case that is still being adjudicated cannot be considered “history;” it hasn’t been finally “proved” yet. Giving a verbal warning to an alleged violator usually is not recorded as part of their violation history. Generally speaking, if there is no evidence of a past proved violation in the case file, then the Hearing Officer will assume that there is no violation history, and the alleged offense is the first for the charged party.

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**Timely Filing of Civil Penalty Cases**

*LCDR Michele Bouziane*

We've said it before, and we'll say it again: the purpose of the civil penalty process is to seek:  
 1) compliance with regulatory requirements, and  
 2) deterrence of violations of the regulations. In other words, the process is remedial, not punitive.

It stands to reason, then, that the sooner the charging unit submits a civil penalty case, the sooner the charged party will be prompted to achieve compliance with the regulation(s) s/he is alleged to have violated.

In some cases, such as oil pollution cases, compliance may not be an option. For example, the vessel or facility may already have leaked oil which has discharged into navigable U.S. waters. Deterrence of future discharges may be the only achievable outcome.



Suppose your unit delays forwarding oil pollution cases against a party, and then

sends the Hearing Office five oil pollution cases against the same party with alleged violation dates spanning a period of months or years. The Coast Guard has lost the possibility of deterring the party from committing the latter four violations by taking timely and effective civil penalty action in the first case.

Remember, however, that it's not "officially" a violation until it has been completely adjudicated. In other words, when the Coast Guard's final agency action on a civil penalty case results in a finding that the party has committed a violation, the violation then properly can be considered part of the charged party's violation history.

The Coast Guard, as a marine safety agency, can more effectively achieve its remedial goals and have a greater impact on a party's behavior if civil penalty cases are submitted to the Hearing Office in a timely manner.

\* \* \* \* \*

**K.N.O.T.  
 (Knowledge Note or Tip)**



When choosing a cite to charge in a case involving required safety equipment, remember that there is a difference between the proper cite for cases where the equipment is not onboard or the quantity onboard is insufficient, and the proper cite for cases where the equipment is unserviceable or improperly maintained. By necessity, if there is no applicable serviceability requirement, the cite for not having the equipment on board may be used. For instance, in the case of fire extinguishers, the Coast Guard considers an unserviceable or improperly maintained fire extinguisher to be unacceptable to meet the requirement for having the proper number of approved fire extinguishers on board.

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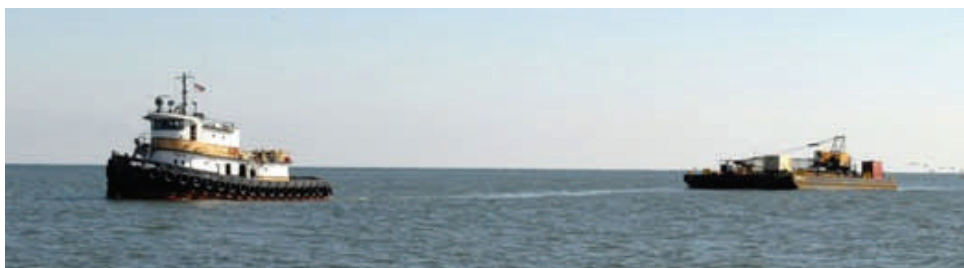


# JUST FOR FUN: SLACK IN THE LINE!

Ensure your cases are complete and your MISLE entries are accurate—help prevent delays or foul ups by holding up your end of the slack.

In this special feature of Just for Fun help prevent the slack in the line by answering the questions below. Answers can be found throughout past newsletters and the Civil Penalty Case Guide.\*

Let's get your vessel home safe to the pier. The letters with stars underneath are used to figure out the docking sentence. You must unscramble them to figure out what it says. The sentence gives you a clue, but be warned if you answer incorrectly; you could get fouled up and not be able to uncover the docking sentence.



### QUESTIONS:

1. What should be exactly the same in the case file as it is in MISLE?

— \* — \* — — \* — — —

2. During a boarding, the Boarding Officer should ensure the mailing address is...

— — — — —

3. To prove a violation, each element of the violation must be established by a preponderance of the ...

— \* — — — \* — — — —

4. When mailing the case file to the Hearing Office how many copies should be inside the file?

— \* — \* — \*

5. Four things that should be redacted from a case file in addition to any unnecessary PII?

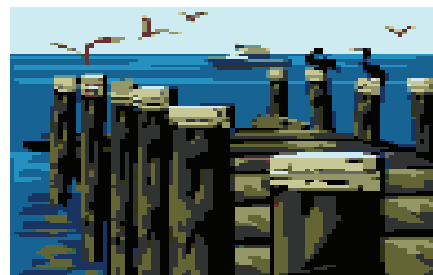
- 1. — — — — — — — — — — \*
- 2. — — — — — — — — — — \*
- 3. — \* — \* — — — \* — — — —
- 4. — — — — — — — — — —

### Docking Sentence:

At the end of a rescue or a long day's work there is nothing like ....

— — — — — — — — — —  
— — — — — !

(\*For you "slackers," however, answers are on next page.)



**WHAT'S IN A NUMBER?**

A number is nothing in and of itself. A number is a creation used in counting and measuring. Numbers can convey “magnitude “ or “degree.” Numbers are relative and can be expressed as a ratio or percentage. Sometimes numbers are used simply as convenience for certain functions such as telephone numbers, lock combinations, etc. To-day we hear much about business measures or business metrics. Often these “metrics” are used to measure the success or failure of a desired outcome.

Here are some Coast Guard Hearing Office metrics (as of June 30, 2013) that provide a “how goes it” glimpse into our work:

Number of case files received by the Hearing Office with violation dates in 2009: 1444

Number of case files received by the Hearing Office with violation dates in 2010: 1500

Number of case files received by the Hearing Office with violation dates in 2011: 1627

Number of case files received by the Hearing Office with violation dates in 2012: 1495

Number of case files received by the Hearing Office with violation dates in 2013: 188

Number of case files received by the Hearing Office in 2013 regardless of violation date: 670

Number of preliminary assessments issued in 2013: 729

Number of final assessments (FLAP, FLAN, FLW, and FLD) issued in 2013: 532

Number of violation case files returned to the program manager for deficiencies in 2013: 62

Number of hearings held in 2013: 3

