



## **THE RECOMMENDED PENALTY**

*Written by: Hearing Office Staff*

Periodically parties will question the “recommended penalty” amount on an Enforcement Summary and also the preliminary penalty amount assessed by a Hearing Officer.

The recommended penalty amount reflected on an Enforcement Summary is simply an amount that the processing official recommends as appropriate for the cited violations. It is but one factor among many factors that the Hearing Officer considers.

All too often, a processing official fails to articulate the factors that led to the determination of the recommended penalty amount thereby diminishing its usefulness as a factor for consideration by the Hearing Officer. Hearing Officers consider all evidence from the unit including any aggravating factors that are articulated and sufficiently explained.

It is important to understand that Hearing Officers are impartial and independent in the execution of their duties and are not bound by the recommended penalty amount. They make a determination as to the penalty amount based on the facts and circumstances of the violation.

Remember, the goals of the civil penalty amount are compliance and deterrence. Penalty amounts are formulated to gain mariner compliance with laws and regulations that the Coast Guard enforces and to deter mariners from future violations.

For these reasons, the Hearing Officer’s preliminary penalty may be higher than the recommended penalty. The civil penalty process is not a process that seeks to punish mariners for violations as a criminal process might do. Therefore, penalty amounts are not determined in the context of being “punishment” for violations. In a case of a declined Notice of Violation (NOV), the party is not “punished” in the civil penalty process for declining the NOV.

Penalty amounts are determined in such cases in the same manner as non-NOV civil penalty cases.

Additionally, it is important to remember that the recommended penalty is based on the unit's view of the alleged violation. Often the final penalty is substantially lower than what the unit might have recommended. The unit at the time of determining the recommended penalty amount does not have the benefit of having seen or heard the party's evidence.

The Hearing Officer in formulating the final penalty considers all of the party's evidence in defense, mitigation, and extenuation. It is this evidence that often causes the final penalty to be lower than the recommended penalty amount.