



## **LACK OF RECORDS DOES NOT ALWAYS MEAN FAILURE TO DO THE ACTS REQUIRED**

*Written by: Hearing Office Staff*

Inspections often involve the request for records or documentation to reflect that an event occurred. But the lack of documentation does not always mean that the event did not occur. Take for example, the enforcement activity forwarded to the Hearing Office for violation of the requirement to conduct facility security exercises once each calendar year. The violation is “discovered” during a spring 2007 inspection and is based upon the facility’s failure to produce, upon Coast Guard request, the records documenting the occurrence of the exercises. The Hearing Office sends a preliminary assessment letter to the party notifying the party of the violation and the amount of civil penalty that appears to be warranted. The party responds to the Hearing Office and forwards a copy of a letter the facility sent to the Coast Guard unit who conducted the inspection, three weeks after the inspection occurred. The letter to the unit included copies of previous annual exercise records and explained that the records were not at the facility at the time of the inspection because they had been destroyed by water during Hurricane Katrina. New copies of the records were obtained from the facility’s contractor responsible for conducting the exercises.

The Coast Guard unit, assumed to have received the letter and records three weeks after the inspection, should have considered the records as highly relevant evidence and cleared the violation. If the records were insufficient to clear the violation, then the enforcement activity should have included the letter and records along with an explanation as to why the records were insufficient. In this case, the enforcement activity did not include the party’s letter or the records.

The lesson to be learned is to consider all evidence available before identifying a violation. When identifying the violation, be careful to

focus on what the party did or did not do. The lack of records or documentation may simply mean lost paper and the inability to present it at the time, and nothing more. The party presented the records within three weeks of the inspection. The violation for failure to conduct the exercises was in error. The appropriate violation in this case would have been for failure to make the records available to the Coast Guard upon request.