

WHY DID IT TAKE SO LONG FOR THE COAST GUARD TO SEND ME A
PRELIMINARY CIVIL PENALTY ASSESSMENT LETTER?

Robert Bruce, February 2017

The Coast Guard Hearing Office regularly hears from charged parties in civil penalty cases who are wondering why it took many months for the Coast Guard to notify them of the civil penalty case against them. A typical comment is something to the effect of: the boarding officer told me that if I do not hear anything from the Coast Guard in thirty days, then nothing will happen. Others want to know why it took the Coast Guard six months to send them notice of civil penalty proceedings, but they are only given thirty days to respond to the notice. Recently, a charged party, submitting evidence of compliance with recreational boating safety equipment regulations he had violated, advised that since the Coast Guard only gave him thirty days to respond, that he would give the Hearing Officer seven days to respond to his proof of compliance.

Clearly, the length of time between the alleged violation date and when the Hearing Officer sends out the preliminary assessment letter to the charged party is a matter the Hearing Office pays attention to, and the enforcement officers submitting civil penalty cases should be paying attention also.

The Coast Guard civil penalty process is remedial. That means that the civil penalty is not assessed as a punishment. It is assessed to affect the behavior of the

charged party, and achieve compliance and deter future violations. Aggravating factors, such as the seriousness of the violation or proof that the violation was intentional, and mitigating factors, such as taking responsibility and minimizing the effects of a violation, may result in a higher or lower penalty amount. In cases where violations are proved, the sooner we can try to influence the charged party's behavior, to encourage compliance and deter future violations, the better. The impact of the civil penalty process is likely to be greater, if it occurs while the events are still reasonably current, and resolving the case while events are still reasonably current can also assist the fact finding process.

The Coast Guard directive on Hearing Officer procedures, Commandant Instruction 16200.5B, includes this discussion of timeliness:

Prompt adjudication of alleged violations after the Coast Guard obtains the relevant facts promotes the remedial goals of the civil penalty process and deterrence of future violations. Timely receipt of a civil penalty case file at the Hearing Office is of utmost importance. Timely processing by processing officials allows notice to the charged party before the material information in the case becomes stale or unavailable. Ideally, a civil penalty case file should be forwarded to the Hearing Office immediately upon completion of the examination, inspection, or investigation of a matter. Certain interim steps by the unit or processing official, such as compliance incentives or case reviews, may reasonably result in a minimal delay in the forwarding of a case. Dismissal of cases for lack of timely processing is at the Hearing Officers' discretion on a case-by-case basis. The Hearing Officer will take into account the impact of the lack of timeliness on the entire case, all parties, and the overall civil penalty process.

Over the past several months, the Hearing Office has been receiving civil penalty cases an average of four and a half months after the violation date. As the discussion above notes, there are some good reasons that cases do not reach the Hearing Office sooner. In most cases involving recreational boating safety or commercial fishing vessel violations the responsible Coast Guard field units work with the Coast Guard Violation

Case Coordination Center to ensure that appropriate enforcement action occurs. In many of those cases enforcement officials will offer the charged party a compliance incentive before initiating the civil penalty process. This usually involves giving the charged party forty-five days to prove to the enforcement officials that they have corrected the alleged deficiency. In more serious violation cases, a district commander may present the case to the United States Attorney for criminal prosecution, and only pursue a civil penalty if criminal prosecution is declined. That process can take many months.

More mundane factors are also involved. Many Coast Guard units are busy with numerous boarding, investigation, or inspection cases at certain times, so there may be a time lag in putting together the information required for a civil penalty case while higher priority activities are addressed. Some cases may be prepared with critical errors, such as an incorrect charged party or an incorrect citation to the law, or necessary information may be missing. This means that time is spent making corrections or seeking additional evidence before the charged party can be notified of the alleged violation. In cases where the Violation Case Coordination Center has requested corrections or additional information from the originating unit, it is important for the unit to respond promptly so the Violation Case Coordination Center can proceed with the case.

On average, the Hearing Office issues a preliminary assessment letter nine days after receipt of a civil penalty case file. That number excludes cases that have to be returned to enforcement officials because of errors that prevent the case from going

forward. That average is well below the goal of issuing the preliminary assessment letter within thirty days of receipt.

There is a statute that addresses the timeliness of civil penalty actions. It is 28 United States Code § 2462. That provision establishes a five year statute of limitations for commencement of an action to enforce a civil penalty. It isn't entirely clear that this provision is applicable to the Coast Guard's informal civil penalty assessment process, but even assuming that it is, it is not a severe limitation. As a matter of policy, and to effectively carry out its law enforcement missions, the Coast Guard typically would not want to wait five years to initiate civil penalty proceedings.

With respect to the time that a charged party has to respond to a preliminary assessment letter, Hearing Officers do not arbitrarily demand that charged parties respond within thirty days. Rather, the time to respond is governed by regulation at 33 Code of Federal Regulations § 1.07-25(a). Hearing Officers do not have the power to override statutes or regulations, but the regulations do allow Hearing Officers discretion to grant requests to extend the time to respond to a preliminary assessment letter, if the request is reasonable.

Although the timeliness of Coast Guard civil penalty cases is reasonably good, we can always strive to do better. I would encourage Coast Guard enforcement officials to make every effort to complete high quality civil penalty cases and forward them to the Hearing Office as quickly as possible. I'd also encourage enforcement officials to avoid

any statement to charged parties that may create an unrealistic expectation about when they will receive notice of an alleged violation.