



**PENALTY ASSESSMENT FACTORS APPLICABLE TO VIOLATIONS OF
33 U.S.C. § 1321 (b)(3)**

Written By CDR M. Hammond

In determining an appropriate civil penalty amount for violations found proved under Title 33 United States Code (U.S.C.), Section 1321(b)(3) for a discharge of oil or a hazardous substance into the navigable waters of the U.S., Hearing Officers are required by 33 U.S.C. § 1321(b)(8) to consider the following:

“the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.”

In considering these factors, (whether aggravating or mitigating), Hearing Officers can only rely on the information contained within the case file; (i.e., the Coast Guard’s enforcement activity case and the evidence the party presents). The case file should contain a sufficient amount of detail in order for the Hearing Officer to fully address these considerations. In addition to specific details of the discharge (i.e., product type, source, amount, location responsible party, cause, etc.), the case file should contain among other factors information regarding the responsible party’s culpability, the impact of the discharge, the party’s response and mitigating efforts (or lack thereof); and the success of such efforts to minimize the impact of the discharge. Depending on the circumstances of the case, the degree of a party’s culpability for a discharge, and their actions taken to minimize environmental impact could significantly influence the Hearing officer’s determination of the final assessed civil penalty amount.

Because the Hearing Officer must by law, consider several factors in determining the final assessed penalty amount for violations under 1321(b)(3), careful attention should be given to documenting important details in support of the above factors when putting a case together, or when responding to a preliminary assessment letter.

This will greatly assist the Hearing Officer in formulating an appropriate final assessment commensurate with the circumstances of each case while supporting the overarching goal of compelling compliance and deterring future violations.