



# Coast Guard Hearing Office

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

Adjudicate civil penalty cases in support of the Marine Safety Mission and Vision, in the Coast Guard’s Marine Safety Performance Plan, regarding compliance enforcement, to: ensure the safety of U.S. mariners, passengers on ferries and other vessels, and recreational boaters; protect the marine environment; and minimize disruptions to maritime commerce. The assessment of appropriate civil penalties through a fair and informal administrative process promotes compliance with standards developed to ensure maritime safety, security and environmental protection.

## **GREETINGS**

From Robert Bruce  
Chief, Coast Guard Hearing Office

*The Hearing Office Newsletter is intended to serve two purposes. One purpose is to provide information about the civil penalty adjudication process, so the process is more transparent and easier to understand. The other purpose is to improve the civil penalty process by discussing topics that arise frequently in civil penalty cases but that seem to be poorly understood. In this edition we have an original article concerning how compliance incentive programs work with the civil penalty process. Compliance incentive programs are not under the control or direction of the Hearing Office. Once a civil penalty case is referred to the Hearing Office, the Hearing Officer will assess the case on its merits. Evidence of timely compliance is usually a strong mitigating factor in safety equipment violation cases.*

*Some topics seem to come up again and again, and there is little we can say that hasn’t already been said. For that reason we are reprinting a couple of articles from previous editions of the Newsletter. With the summer boating season there is usually an uptick in Boating Under the Influence cases. We are reprinting an article discussing the basics of Boating Under the Influence case preparation. The topic of warnings regularly presents itself in all seasons.*

*Have a safe and enjoyable summer !*

*These newsletters are posted on our website [www.uscg.mil/legal/cgho](http://www.uscg.mil/legal/cgho) and on the Coast Guard’s website HOMEPORT.*



## **HEARING OFFICE NEWS**

The Hearing Office is located in Arlington, Virginia, but we afford charged parties the opportunity to have a hearing at locations all around the country. Hearings that are not held in Arlington are conducted by video teleconference (VTC). Most often the VTC hearings are held at Coast Guard District Offices in major US cities. Sometimes arrangements are made for a VTC Hearing at a Coast Guard Sector or at the charged party’s expense. Affording the right to a hearing, when a party wants one, is an indispensable part of the civil penalty process. We appreciate the assistance of Coast Guard personnel who assist us with making the arrangements for VTC hearings.

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**RESPONDING TO A COMPLIANCE INCENTIVE PROGRAM OR A CIVIL PENALTY CASE—*Know the difference***

*CDR Mark Hammond*

Coast Guard compliance incentive programs allow persons cited for violations of federal boating safety regulations the opportunity to avoid a civil penalty by correcting the specific violation(s) and showing compliance within a prescribed timeframe. While the specifics of compliance incentive programs vary depending on the Coast Guard unit or office offering the program, the common goal is to promote public awareness and improve boating safety by ensuring compliance with applicable federal boating safety regulations.

A compliance incentive program may be offered by the boarding officer's unit, a civil penalty processing office, or both. Typically, persons cited are given 30 to 45 days to respond with evidence showing that any alleged violations were corrected in order to avoid further enforcement action. If satisfactory proof of compliance is shown within the timeframe given, the matter is closed. Failure to respond within the prescribed timeframe, however, will most likely result in civil penalty action. This means your case file will be forwarded to the Hearing Office for adjudication.

Once a case is received by the Hearing Office, the case file is examined by a Hearing Officer. If the Hearing Officer finds prima facie evidence that the alleged violation(s) occurred, the Hearing Officer then issues a Preliminary Assessment Letter ("PAL") to the charged party. The PAL notifies the charged party of the alleged violation(s) against him/her, the maximum civil penalty that may be assessed, and the preliminary penalty amount assessed for each violation. The PAL also explains the party's options to respond within 30 days of receipt. (*See Hearing Office Newsletter article: "The Public in our Process," Vol: VI, Oct 2009.*) In formulating a final assessment for violations found to have been proved, Hearing Officers take into consideration, among other things, mitigating factors such as timely compliance. (*See Hearing Office Newsletter article: "Evidence of Compliance," Vol: 10, Jan 2011.*)

It is important, however, for charged parties to realize that compliance incentive programs are separate and distinct from the civil penalty process. Once civil penalty action has been initiated and a party receives a PAL from a Hearing Officer, the party must respond to the Hearing Officer and not back to the unit or processing center office that originally offered the opportunity to participate in a compliance incentive program. If a party fails to respond to the Hearing Officer's PAL within 30 days, a final assessment letter ("FLAN"), will automatically be generated and sent to the party, and the preliminary assessed amount will become the final civil penalty amount assessed.



Hearing Officers often receive evidence forwarded from the boarding officer's unit or the processing center office that the party submitted after the PAL

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had been mailed and well beyond the compliance incentive program deadline. In such cases, the Hearing Officer will typically consider the eventual compliance as a mitigating factor but will likely not give it the same weight as compliance that is achieved in a more timely manner.

Hearing Officers occasionally receive responses in which the party claims they had previously submitted evidence of timely compliance to the boarding officer's unit or the processing center office within the compliance incentive program deadline. For



this reason, it is important for unit and case processing officials to closely track and log compliance achieved under a compliance incentive program, and take appropriate action to ensure civil penalty cases are not initiated

inadvertently. Generally, in this case, if a party presents proof that evidence of compliance had previously been submitted in accordance with a compliance incentive program, and civil penalty action was initiated inadvertently, the Hearing Officer will dismiss the case.

*Remember:*

(1) If you are cited for an alleged violation of a federal boating safety regulation and you are offered the option of complying with the regulation in a timely fashion, then, in order to avoid civil penalty action, and assuming you do not dispute the alleged violation:

- (a) send proof of compliance within the prescribed deadline to avoid further action; and
- (b) keep copies of any documentation you submit.

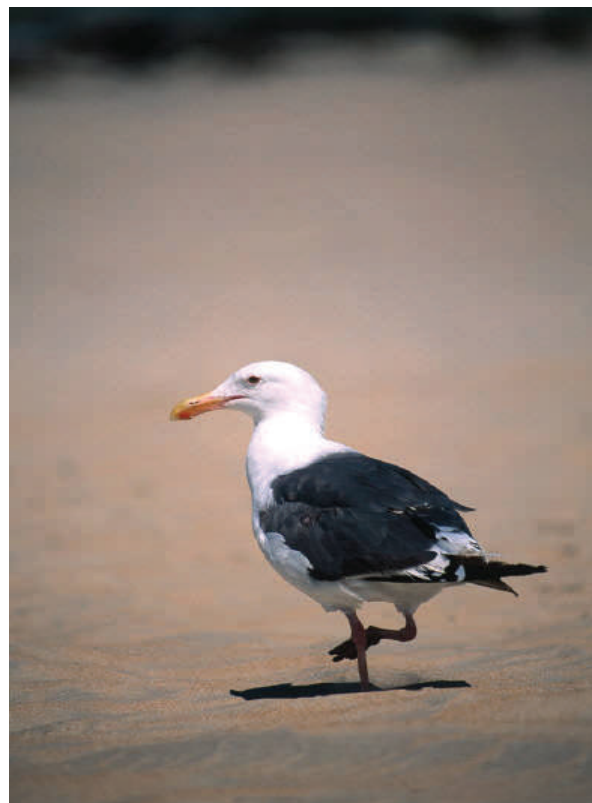
(2) If you receive a Preliminary Assessment Let-

ter (PAL), from a Hearing Officer notifying you of an alleged violation against you, you must respond to the Hearing Officer in accordance with the PAL even if you were previously sent a compliance incentive program letter.



Of course, the one sure-fire way to avoid either of the above scenarios is to ensure at the outset that your vessel is in compliance with all applicable federal boating safety regulations.

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*The below article first appeared in the Vol: I, May 2008 Newsletter. It is valid, timely and relevant, and reprinted here with minor edits.*

**SUMMER BOATING SEASON AND  
“BOATING UNDER THE INFLUENCE”**

*Danielle Davis*

It is that time of the year when we begin to see a rise in the number of alcohol-related boating violations. “Boating Under the Influence” is a violation of 46 USC § 2302(c). Coast Guard boarding teams may conduct Field Sobriety Tests (FSTs), obtain breathalyzer readings, and observe the overall behavior and appearance of a mariner to make a determination whether the mariner is under the influence of alcohol or a dangerous drug. Frequently these tests are done by local authorities. Anyone operating a vessel while found to be under the influence may be charged with this violation and subject to a civil penalty.

*Copies of the FST forms with all of the blocks completed in a readable manner and with signatures as required, breathalyzer readings obtained by Coast*

*Guard and local authorities, documented observations of behavior and appearance, and a narrative of the events of the boarding help to determine and support that a violation occurred. Additionally, if the mariner refuses a breathalyzer test,*

*the circumstances of the offer and refusal of the test should be documented. Regulation 33 CFR § 95.040 provides that a refusal creates a presumption of intoxication. Regulation 33 CFR § 95.030 makes*



either personal observations or a chemical test sufficient to form a basis for a charge that the mariner is Boating Under the Influence.

Boating Under the Influence is a serious violation. Mariners have a responsibility to avoid Boating Under the Influence. Boarding teams have a responsibility to properly and accurately record the events, FSTs, breathalyzer readings or refusal of breathalyzer testing when alleging that a mariner has been Boating Under the Influence.



\* \* \* \* \*

*The below article first appeared in the Vol: VII, Jan 2010 Newsletter. The information bears repeating and is reprinted here with minor edits.*

**PROMISE OF A WARNING FROM THE  
BOARDING OFFICER**

*YN3 Victor Anderson, YN3 Christopher Brown*

The Coast Guard Hearing Office receives calls from mariners after they have received our letters making preliminary civil penalty (monetary ) assessments against them for violations of marine safety regulations. In these calls, mariners often claim that the Boarding Officer issued a warning for the violations and advised that no civil penalty would be assessed. Other calls concern the Boarding Officer’s promise that a warning only will be issued concerning the violations if the mariner fixes the discrepancies and brings proof of compliance to the local Coast Guard unit.

Although well-intentioned, the Boarding Officer cannot foresee what action will ultimately take place concerning a noted violation. Generally, once

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a violation is noted, the potential for civil penalty action exists. There is one exception to this general rule, and that is when a written warning is issued in accordance with 33 CFR Subpart 1.08.

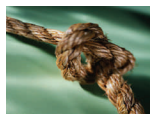
Boarding Officers do not issue “verbal” warnings. Nor should they make any “promise” that a warning will be issued at a later time or in lieu of civil penalty action. Hearing Officers do not automatically dismiss violations or issue a warning in every case where there is proof of compliance. If a written warning is issued in accordance with 33 CFR Subpart 1.08, then it should be documented as part of the boarding. This is the only type of warning that can be issued by the boarding officer. Please refer to our Newsletter articles concerning written warnings and mariners who show proof of compliance. *(See especially Vol: II, Sep 2008, “Written Warning v. Civil Penalty,” and Vol IV: Apr 2009, “Compliance.”)*

Processing officials may recommend to the Hearing Officer that a warning be issued for a violation included in a civil penalty case. This should be clearly reflected on the Enforcement Summary and include the rationale and/or support for the recommendation under “Aggravating/Mitigating Factors.”

\* \* \* \* \*

**K.N.O.T.**

**(Knowledge Note or Tip)**



**WASTE MANAGEMENT PLAN REQUIREMENT**

Certain vessels 40 feet or more in length are required to have a written waste management plan by 33 CFR § 151.57. The applicability provisions for the waste management plan requirement are unusually complex, and, among other things, require proof that a vessel is an “ocean-going” ship. The definitions of “ocean-going” and “ship” are located in 33 CFR § 151.05. A non-US ship is an

“ocean-going” ship. A US ship that is engaged in international voyages, and US ships with a Certificate Of Inspection for ocean service or coastwise service beyond three miles from land are “ocean-going” ships. Aside from those vessels, a US ship is an “ocean-going” ship if it operates seaward of the outermost boundary of the US territorial sea. Hearing Of-



ficers have recently dismissed several cases alleging a failure to comply with the waste management plan requirement because there was no evidence that the party’s vessel was an “ocean-going”

ship. These cases involved uninspected fishing vessels that were boarded within the US territorial sea. Although it is likely that these fishing vessels sometimes operate at sea outside the US territorial sea, unless there is evidence in the case file to show that, the requirement cannot be enforced in a civil penalty case. If a Boarding Officer is going to allege a violation of the waste management plan requirement, s/he should be mindful of proving that the vessel involved is an “ocean-going” ship.

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**DECKPLATE RIVET**



Sometimes the following words appear at the end of an Activity Summary Report: “Activity conducted using P[ersonal] D[igital] A[ssistant].” In such a case, the Hearing Officer expects to see, and should see, the PDA-generated Boarding Report in the case file. If the PDA-generated Boarding Report is unavailable, there should be an explanation of why it could not be included in the case file. The case file will still need to contain all of the evidence gathered during the boarding that is relevant to the alleged violations.

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**JUST FOR FUN** by ADMIN staff

1. Which lighthouse can be found in the channel of San Francisco Bay? It was built in 1852 and was a functional lighthouse until 1906 when an earthquake destroyed it beyond repair. Later the lighthouse tower was rebuilt and served as a military prison and later upgraded to a max security prison for the federal government.

- A. Alligator Reef
- B. Bird Island
- C. Old Cape Henry
- D. Alcatraz Island

2. This lighthouse can be found on the old stomping grounds of Edward Teach, a.k.a. Blackbeard. This lighthouse is the shortest on the Outer Banks because it marks an inlet rather than the coast.

- A. Ocracoke Island Light House
- B. Sullivan’s Island
- C. Cape Hatteras
- D. Cape Lookout

3. In Lake Superior you can find one of the prettiest lighthouses around. This lighthouse was built in 1896 and was the location of a murder in the book and movie “Anatomy of a Murder.” This lighthouse was known to be haunted, but it is said that the ghost has been quiet these days.

- A. Big Bay Point Lighthouse
- B. Bass Harbor
- C. Long Point
- D. Intake Crib

4. The area of this lighthouse got its name from John Meares. He attempted to cross over the Columbia River bar, but he missed. Because of intense fog in this location a 1600 pound bronze bell was used as a fog signal. But the bell was inadequate due to the pounding surf and dead spots.

- A. Long Point
- B. Cape Lookout
- C. Cape Disappointment Lighthouse
- D. Brier Island

5. This lighthouse is the tallest in the State of Washington. This lighthouse serves both as a harbor light for Port of Westport and a coastal light between Willapa Bay and Destruction Island.

- A. Bass Harbor
- B. Grays Harbor Lighthouse
- C. Cape Disappointment Lighthouse
- D. Bird Island

Information found on [www.us-lighthouses.com](http://www.us-lighthouses.com)

**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. Today 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, 2012) that provide a “how goes it” glimpse into our work:

Number of case files received by the Hearing Office with violation dates in 2008: 947

Number of case files received by the Hearing Office with violation dates in 2009: 1443

Number of case files received by the Hearing Office with violation dates in 2010: 1497

Number of case files received by the Hearing Office with violation dates in 2011: 1610

Number of case files received by the Hearing Office with violation dates in 2012: 221

Number of case files received by the Hearing Office in 2012 regardless of violation date: 583

Number of preliminary assessments issued in 2012: 621

Number of final assessments (FLAP, FLAN, FLW, and FLD) issued in 2012: 584

Number of violation case files returned to the program manager for deficiencies in 2012: 76

Number of hearings held in 2012: 8

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