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THE NOTICE OF VIOLATION (NOV) PROGRAM

TICKETS FOR POLLUTION

Break the law and the Coast Guard will give you a ticket. This doesn't sound like a strange or unusual law enforcement practice, but it is a relatively new one for the Coast Guard.

As applied to small oil discharges less than 100 gallons, the Coast Guard's standard civil penalty assessment procedure proved to be slow, cumbersome, and inefficient. It was not uncommon for a responsible party (RP) to accumulate additional violations before being notified that action was in progress on an earlier violation.

In 1995 the Coast Guard introduced a process where a simple Notice of Violation (NOV) can be issued in the field to permit early resolution of apparent small oil spill and pollution prevention violations.⁽¹⁾ This process saved time, reduced the cost of unnecessary internal review, improved deterrence, and enabled earlier corrective action. The responsible party (RP) was given an option to pay a proposed penalty or to pursue his right to a full hearing. [⁽¹⁾Refer to 59 FR 16558, Apr. 7, 1994.]

This new approach using a Notice of Violation (NOV) did not disrupt the existing civil penalty process for large pollution cases or other types of cases. In its first few months of operation, the personnel of one Coast Guard Marine Safety Office zealously handed out more than 500 of these new NOV "tickets" to offending polluters in its marine inspection zone.

EXPANDING THE TICKETING OF VIOLATORS BEYOND POLLUTION CASES

Coast Guard Policy Letter G-MOA 4-03 announced the expansion of the Notice of Violation program to include oil discharge violations for spills of 1,000 gallons or less as well as for violations of designated Marine Safety and the new security regulations. Additionally, the maximum proposed penalty for all violations noted on the Notice of Violation "ticket" was increased to \$10,000. This policy went into effect on **January 4, 2004**.

A notice appeared in the Federal Register of June 2, 2002 where you are considered to be in default if you either decline

to pay the "proposed" penalty within 45 days or simply don't pay it at all. Uncle Sam has a new collection tool!

Not every marine safety and security regulation is currently eligible for issuance of the Notice of Violation. Consequently, the Coast Guard provided two enclosures listing those offenses can be covered by this simplified procedure. Don't let the word "proposed" penalty fool you! It is one of those propositions you can't refuse.

In general, these offenses are covered:

- É Oil Spills and Discharges.
- É Failing to report a casualty listed in 46 CFR 4.05-1 immediately. This is of particular concern to mariners who are "masters, operators, or persons in charge." The regulation states:

46 CFR §4.05-1 Notice Of Marine Casualty.

- (a) Immediately after the addressing of resultant safety concerns, the owner, agent, master, operator, or person in charge, shall notify the nearest Marine Safety Office, Marine Inspection Office or Coast Guard Group Office whenever a vessel is involved in a marine casualty consisting in--
- (a)(1) An unintended grounding, or an unintended strike of (allison with) a bridge;
 - (a)(2) An intended grounding, or an intended strike of a bridge, that creates a hazard to navigation, the environment, or the safety of a vessel, or that meets any criterion of paragraphs (a)(3) through (7);
 - (a)(3) A loss of main propulsion, primary steering, or any associated component or control system that reduces the maneuverability of the vessel;
 - (a)(4) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure of or damage to fixed fire-extinguishing systems, lifesaving equipment, auxiliary power-generating equipment, or bilge-pumping systems;
 - (a)(5) A loss of life;
 - (a)(6) An injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed on board a vessel in commercial service, that renders the individual unfit to perform his or her routine duties; or
 - (a)(7) An occurrence causing property-damage in excess of \$25,000, this damage including the cost of labor and material to restore the property to its condition before the occurrence, but not including the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage.
- (b) Notice given as required by 33 CFR 160.215 satisfies the requirement of this section if the marine casualty involves a hazardous condition as defined by 33 CFR 160.203.

- É Failure to report a marine casualty in writing within 5 days to the OCMI
- É Failure of a marine employer to complete chemical testing (e.g., drug and alcohol) for individuals directly involved in a serious marine incident.
- É Failure of a marine employer to submit required reports and chemical tests for a serious marine incident.
- É Failure of a marine employer to comply with a chemical testing regulation in accordance with 46 CFR Part 16 and/or DOT regulations at 49 CFR Part 40.

NOTICE OF VIOLATION GUIDANCE FOR OIL DISCHARGE VIOLATIONS

1. If all of the following elements of a violation are present:	2. If:	3. If all of the following concerning the discharge are true:	4. If all of the following concerning the discharge are true:	5. If the amount of the discharge was:	6. Then the Proposed Penalty is:
<p>(1) Oil was discharged</p> <p>(2) From a vessel, an onshore facility, or an offshore facility;</p> <p>(3) Into or upon a navigable water of the United States, an adjoining shoreline, or a water of a contiguous zone and/or which may affect the natural pertaining to the United States;</p> <p>(4) The responsible party (owner, operator, and/or person in charge) can be identified; and</p> <p>(5) The spill created a visible sheen, film, sludge, or emulsion.</p>	<p>All elements can be found and documented in the field</p>	<p>Noncommercial Entity</p>	<ul style="list-style-type: none"> • Minor spill(1000 gallons or less) • Unintentional • Noncommercial source • No significant gravity or culpability 	50 gallons or less	<p>1st Offense = \$50.00 2nd Offense = \$100.00 3rd Offense = \$250.00</p>
				51-250 gallons	<p>1st Offense = \$250.00 2nd Offense = \$500.00 3rd Offense = \$1000.00</p>
				251-500 gallons	<p>1st Offense = \$500.00 2nd Offense = \$1000.00 3rd Offense = \$2000.00</p>
				501-1000 gallons	<p>1st Offense = \$1000.00 2nd Offense = \$2000.00 3rd Offense = \$5000.00</p>
		<p>Commercial Entity</p>	<ul style="list-style-type: none"> • Minor spill(1000 gallons or less) • Unintentional • Noncommercial source • No significant gravity or culpability 	25 gallons or less	<p>1st Offense = \$250.00 2nd Offense = \$500.00 3rd Offense = \$1000.00</p>
		26-250 gallons		<p>1st Offense = \$500.00 2nd Offense = \$1000.00 3rd Offense = \$3000.00</p>	
		251-500 gallons		<p>1st Offense = \$1500.00 2nd Offense = \$3000.00 3rd Offense = \$6000.00</p>	
		501-1000 gallons		<p>1st Offense = \$3000.00 2nd Offense = \$6000.00 3rd Offense = \$10,000.00</p>	
	<p>All elements can be documented in the field</p>	<p>Commercial Individual</p>	<p>Same as Commercial Entity</p>	<p>Same as Commercial Entity</p>	<p>Half Commercial Entity Proposed Penalty</p>
	<p>NOV is not issued in this field, but may be issued at a later time.</p>				

*If an oil discharge does not meet the criteria in columns 1 through 5, a NOV shall not be used.

Notice of Violations Guidance for Marine Safety and Security Violations

Proposed Penalty Amounts Listed in the Table below is for a Commercial Entity

Proposed Penalty Amounts for an Individual are half the Proposed Penalty Amount for a Commercial Entity

Cite	Description	Proposed Penalty		
		1 st Offense	2 nd	3 rd
33 CFR 104.310	Failure to submit a completed Vessel Security Assessment (VSA) report \$10,000.00	\$10,000	*	*
33 CFR 104.410	Failure to submit a completed Vessel Security Plan (VSP)	*	*	*
33 CFR 105.310	Failure to submit a completed Facility Security Assessment (FSA) report	\$10,000	*	*
33 CFR 105.410	Failure to submit a completed Facility Security Plan (FSP)	*	*	*
33 CFR 106.310	Failure of an Outer Continental Shelf (OCS) facility to submit a completed Facility Security Assessment (FSA) report	\$10,000	*	*
33 CFR 106.410	Failure of an Outer Continental Shelf (OCS) facility to submit a completed Facility Security Plan (FSP)	*	*	*
33 CFR 160.206	Failure of a Notice of Arrival to provide any of the below listed information items numbered 1-16;	\$3,000	\$10,000	*

Vessel Information:

1. Country of Registry;
2. Call sign;
3. Name of charterer,
4. Name of classification society

Voyage Information:

5. Dates of arrival and departure for the last five ports or places visited;
6. For each port or place in the U.S. to be visited, the estimated date and time of departure;
7. The location (port or place and country) or position (latitude and longitude or waterway and mile marker)
8. of the vessel at time of reporting;
9. The name and telephone number of a 24-hour point of contact

Information for each crewmember on board:

10. Position or duties on the vessel;
11. Where the crewmember embarked (list port or place and country)

Information for each person on board in addition to crew:

12. Where the person embarked (list port or place and country);

Operational condition of equipment required by 33 CFR 164.35

International Safety Management (ISM) Code Notice:

13. The date of issuance of the DOC;
14. The date of issuance of the vessel's SMC;
15. The name of the Flag Administration, or the RSO representing the vessel Flag Administration, that issued those certificates.
16. Cargo Declaration (Customs Form 1302), as described in 19 CFR 4.7 (requirement suspended)

Notice of Violations Guidance for Marine Safety and Security Violations

Proposed Penalty Amounts Listed in the Table below are for a Commercial Entity

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Cite	Description	Proposed Penalty		
		1 st Offense	2 nd	3 rd
33 CFR 160.208	<p>Failure to provide changes to a Notice of Arrival for any of the below listed information items numbered 1-15 within the times required by 160.212</p> <p>Vessel Information:</p> <p>1 Country of Registry;</p> <p>2 Call sign;</p> <p>3 Name of charterer;</p> <p>4 Name of classification society</p> <p>Voyage Information:</p> <p>5 Dates of arrival and departure for the last five ports or places visited;</p> <p>6 For each port or place in the U.S. to be visited, the estimated date and time of departure;</p> <p>7 The location (port or place and country) or position (latitude and longitude or waterway and mile marker of the vessel at time of reporting.</p> <p>8 The name and telephone number of a 24-hour point of contact</p> <p>Information for each crewmember on board:</p> <p>9 Where the crewmember embarked (list port or place and country)</p> <p>Information for each person on board in addition to crew:</p> <p>10 Where the person embarked (list port or place and country);</p> <p>11 Operational condition of equipment required by 33 CFR 164.35 International Safety Management (ISM) Code Notice:</p> <p>12 The date of issuance of the DOC;</p> <p>13 The date of issuance of the vessel's SMC;</p> <p>14 The name of the Flag Administration, or the RSO representing the vessel Flag Administration, that issued those certificates.</p> <p>15 Cargo Declaration (Customs Form 1302), as described in 19 CFR 4.7 (requirement suspended)</p>	\$1,500.00	\$5,000.00	\$10,000.00

46 CFR 4.05-1	Failure to give immediate notice of a marine casualty involving an occurrence listed in 46 CFR 4.05-1.	\$5,000.00	\$10,000.00	
46 CFR 4.05-5	Failure to include required items in the notice of a marine casualty.	\$1,000.00	\$3,000.00	\$6,000.00
46 CFR 4.05-10(a)	Failure to report a marine casualty in writing within five days to the Officer in Charge, Marine Inspection.	\$1,000.00	\$3,000.00	\$6,000.00
46 CFR 4.06-1(b)	Failure of a marine employer to complete chemical testing for those individuals directly involved in a serious marine incident.	\$1,000.00	\$2,000.00	\$4,000.00
46 CFR 4.06-1(c)	Failure of a marine employer to complete chemical testing for those individuals determined by a law enforcement officer to be directly involved in a serious marine incident.	\$1,000.00	\$2,000.00	\$4,000.00

Notice of Violations Guidance for Marine Safety and Security Violations

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<u>Cite</u>	<u>Description</u>	<u>Proposed Penalty</u>		
		<u>1st Offense</u>	<u>2nd</u>	<u>3rd</u>
46 CFR 4.06-60	Failure of a marine employer to submit required reports and chemical test results for a serious marine incident.	\$1,000	\$ 2,000	\$4000
46 CFR 16.201	Failure of a marine employer to comply with the requirements concerning chemical testing of personnel in accordance with this subpart and 49 CFR Part 40.	\$1,000	\$ 2,000	\$4000

A proposed penalty amount of * indicates that issuance of an NOV is not authorized.