

Audit Response & Upcoming Committee Meetings

June 26, 2019

Karen Donovan, Attorney



August 2019

				1 Commission Meeting	2	3
4	5	6	7	8 Enforcement Committee Meeting	9	10
11	12	13	14	15 	16	17
18	19	20	21 ???	22	23	24
25	26	27	28 Enforcement Committee Meeting??	29	30	31

November 2019

					1	2
3	4	5	6	7 Commission Meeting	8	9
10	11	12	13	14 Enforcement Committee	15	16
17	18	19	20	21	22	23
24	25	26	27 Enforcement Committee Meeting??	28 Thanksgiving 	29 Day after Thanksgiving	30

Recommendations – Policies & Regulations

Recommendation:	Action:	Timeframe/process:
<p>Create a penalty calculation worksheet and create formal policies, procedures and criteria to provide guidance on applying the worksheet</p>	<p>Penalty policy, with procedures and criteria for calculating penalties</p>	<p>Multiple meetings on aspects of policy (July 11; August 8; Sept 25; Oct 23) Proposed policy mid-November</p>
<p>Create and implement regulations that identify required milestones and time frames for enforcement</p>	<ul style="list-style-type: none"> -New procedures -Develop case management plan, with milestones, for each new case -Systemic changes to move cases 	<p>December 12 – Committee briefing on process improvements</p>
<p>Create and implement regulations to allow BCDC to use limited monetary fines to resolve selected minor violations that do not involve substantial harm to the Bay</p>	<p>Evaluation of standardized fines regulations with possible amendments</p>	<p>July 24 – briefing December 12 – Decision on whether amendments to standardized fines regulations will be pursued</p>

Recommendations – Policies & Regulations

Recommendation:	Action:	Timeframe/process:
<p>Create and implement regulations that define substantial harm, and specify a process to handle any necessary exceptions to the criteria</p>	<p>Guidance OR amendment to standardized fines regulation OR new regulation</p>	<p>Multiple meetings (Aug 28; Oct 23) Proposal mid-November</p>
<p>Create and implement regulations that provide explicit criteria for calculating the number of violations present in individual enforcement cases, and specify a process to handle any necessary exceptions to the criteria</p>	<p>Include in penalty policy OR New regulations</p>	<p>Multiple meetings (Aug 28; Oct 23) Proposal mid-November</p>

Recommendations – Process changes

Recommendation:	Action:	Timeframe/process:
<p>Develop and implement procedures to ensure that management adequately reviews staff enforcement decisions. Procedures should document and substantiate violations, case resolutions, and rationale for imposing fines and procedures should require proactive enforcement, such as site visits, as resources allow</p>	<p>Surnaming process. File management improvements</p>	<p>December 12 – briefing on procedural changes</p>
<p>Develop and implement procedures to ensure that staff open, investigate, and close cases in a manner that is consistent with state law and encourages responsible use of staff time</p>	<p>Procedural improvements / regular case review meetings</p>	<p>December 12 – briefing on procedural changes</p>

Recommendations – Process changes

Recommendation:	Action:	Timeframe/process:
<p>Develop guidance that enumerates the violation types that the commissioners deem worthy of swift enforcement action, those that staff can defer for a specified amount of time, and those that do not warrant enforcement action or that can be resolved through fines</p>	<p>Review of prioritization / Evaluation and potential changes to standardized fines regulations</p>	
<p>Simplify its system for prioritizing enforcement cases</p>	<p>Revise prioritization matrix</p>	<p>November 27 – briefing December 12 – briefing on procedural changes</p>
<p>Develop a procedure to identify stale cases and seek appropriate settlements</p>	<p>Ongoing case review</p>	<p>December 12 – briefing on procedural changes</p>

Recommendations – Additional Resources

Recommendation:	Action:	Timeframe/process:
<p>Conduct a workforce study of all its permit and regulatory activities and determine whether it requires additional staff, including supervisors, to support its mission</p>	<p>Workforce study for all regulatory needs through outside consultant</p>	
<p>Implement a permit compliance position to support the efforts of enforcement staff and implementation of process changes. If necessary, seek additional funding</p>	<p>Will seek funding for position</p>	
<p>Update its existing database or create a new database</p>	<p>Working on updates as staff time allows. Will seek funding for additional technology needs</p>	<p>October 10 – presentation on database and technological resources</p>

Recommendations – The other stuff

Recommendation:	Action:	Timeframe/process:
Evaluate and update permit fees every five years in accordance with its regulations	Pursuing increase in permit fees, will update in the future consistent with regulations	
Conduct a comprehensive review of local agency compliance with the marsh program and issue recommendations as necessary to implement the protections outlined in the Suisun Marsh Preservation Act	Moving forward consistent with prior Commission direction	
Appoint a new citizens' advisory committee		
Create a policy by January 2020 for disbursing Bay Fill Cleanup and Abatement Fund money	Evaluating but must ensure that funds are available for enforcement staff	

Upcoming Meeting Schedule

- **Meeting #1 – July 11, 2019 – 9:30 a.m. at 375 Beale Street**
 - Overview of other agency penalty policies and matrices (Penalty Policy Mtg 1)
 - Administrative Procedures Act and regulatory process
- **Meeting #2 – July 24, 2019 – 9:30 a.m.**
 - Review of current case backlog
 - Overview of standardized fines and process for minor violations
- **Meeting #3 – August 8, 2019 – 9:30 a.m. at 375 Beale Street**
 - Violation factors – evaluating nature, extent, gravity (Penalty Policy Mtg 2)
 - Case management plans – milestones and timeframes



Upcoming Meeting Schedule

- **Meeting #4 – August 28, 2019 – 9:30 a.m.**
 - Defining significant harm / substantial harm
 - Calculating violations
- **Meeting #5 – September 12, 2019 – 9:30 a.m. at 375 Beale Street**
 - Richardson's Bay
 - Other cases
- **Meeting #6 – September 25, 2019 – 9:30 a.m.**
 - Violator considerations – culpability, economic savings (Penalty Policy Mtg 3)



Upcoming Meeting Schedule

- **Meeting #7 – October 10, 2019 – 9:30 a.m. at 375 Beale Street**
 - Cases & Issues
 - Database & technology presentation
- **Meeting #8 – October 23, 2019 – 9:30 a.m.**
 - Violator factors – ability to pay & continue in business, other matters as justice requires (Penalty Policy Mtg 4)
 - Defining significant harm / substantial harm (Mtg 2)
 - Calculating violations (Mtg 2)
- **Meeting #10 – November 14, 2019 – 9:30 a.m. at 375 Beale Street**
 - Proposed Penalty Policy (Penalty Policy Mtg 5)
 - Proposal on defining significant harm / substantial harm (Mtg 3)
- **Meeting #11 – November 27, 2019 – 9:30 a.m.**
 - Stale cases /resolving cases
 - Prioritization discussion



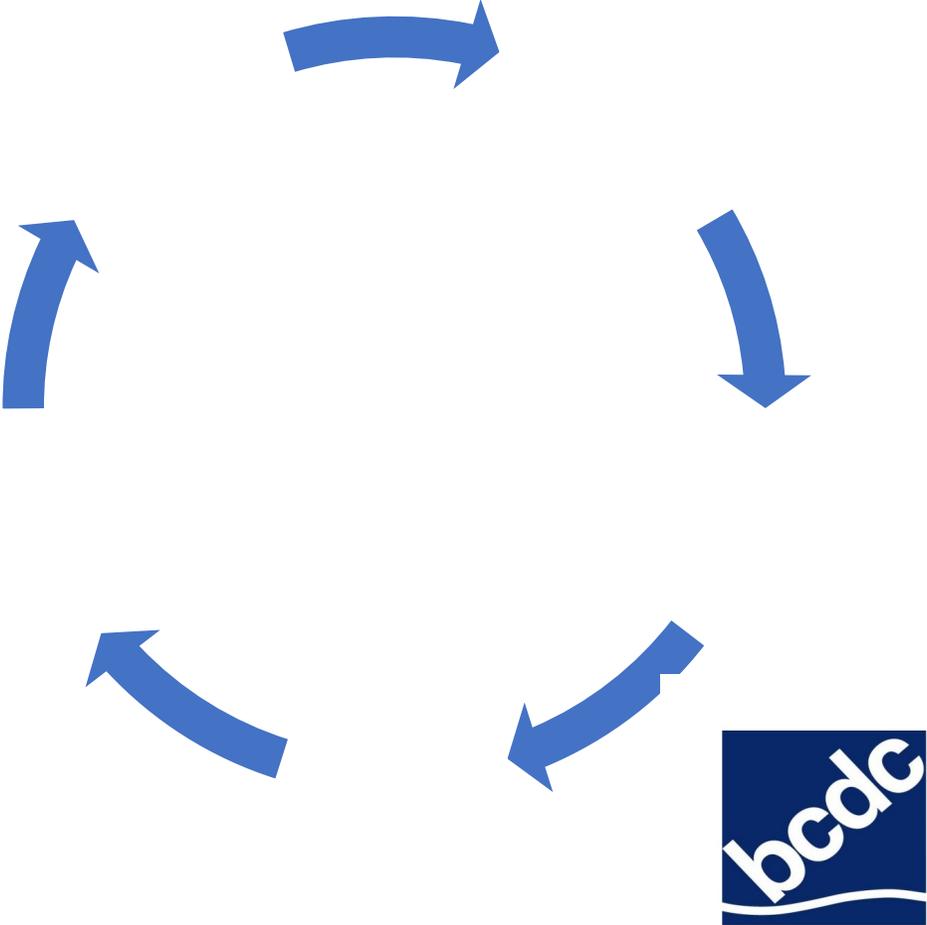
Upcoming Meeting Schedule

- **Meeting #12 – December 12, 2019 – 9:30 a.m. at 375 Beale Street**
 - Briefing on Process Improvements



Additional Improvements & Changes

- Reporting on cases
- _____
- _____
- _____



Semi Annual Reporting to NOAA

Action Taken	Number of cases or amount collected
As of 7/1/18, open enforcement investigations	254
New investigations initiated	18
Cases resolved without Commission action	10*
<i>*Includes one case resolved in March 2018 that was erroneously excluded from the Jan. to Jun. 2018 semi-annual report.</i>	
As of 12/31/2018, open enforcement investigations	261
Enforcement related permits or amendments issued	2
Violation Reports Issued (leads to Order issuance)	0
Cease and Desist and Civil Penalty Orders Issued	0
Commission-issued Settlement Agreements Issued	1
Standardized fines collected (1 case)	\$30,000
Civil penalties collected pursuant to orders	\$0
Other penalties (see below): <i>A special payment of \$75,000 was made to the Marine Science Institute by the respondent, Westpoint Harbor, pursuant to a Commission-issued Settlement Agreement. These funds were not paid to the Commission or to the State of California.</i>	\$75,000

Questions?