

# **BRIEFING ON CALCULATION OF VIOLATIONS**

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# Audit recommendation

The commission should take the following actions by January 2021:

Create and implement regulations that define substantial harm, **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.**

# Overarching goal of enforcement – furthering BCDC's mission

- Protection of the Bay
- Ensuring maximum feasible public access to the Bay and shoreline

# Enforcement mission and goals

- **Fairness and Consistency**

- Provide equitable treatment and be both consistent and flexible enough to allow for adjustments for legitimate differences in situations and cases

- **Efficient and Effective Deterrence**

- Provide firm disincentives to noncompliance (deterrence) and effective incentives to resolve violations quickly

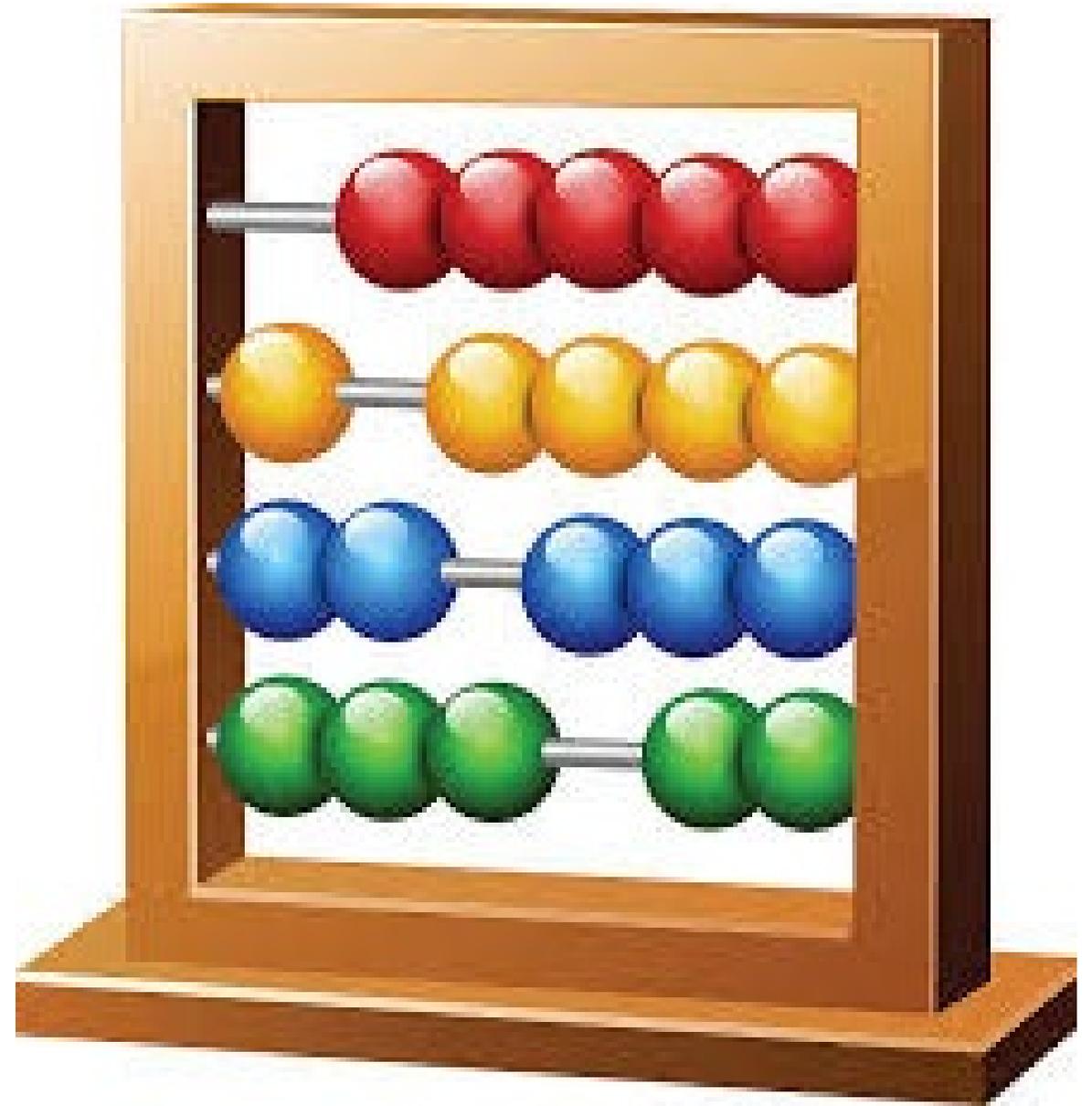
- **Transparency**

- Actions should be clear and based in policy, regulations, and statute

- **Swift and timely action**

- Ensure that violations involving risk to the Bay or public access are resolved swiftly and not allowed to continue

# WHAT BCDC IS CURRENTLY DOING



# BCDC Law

- McAteer-Petris Act section 66641.5(e)

Civil liability may be administratively imposed by the commission in accordance with Section 66641.6 on any person or entity for **any violation of this title or any term or condition of a permit** issued by or on behalf of the commission in an amount which shall be not less than ten dollars (\$10), nor more than two thousand dollars (\$2,000), for each day in which that violation occurs or persists, but the commission may not administratively impose a fine of more than thirty thousand dollars (\$30,000) for a single violation.

- Suisun Marsh Preservation Act section 29610

(a) Any person who intentionally or negligently **violates any provision of this division** shall be subject to a civil fine of not to exceed five thousand dollars (\$5,000)

(b) [A]ny person who intentionally and knowingly **commences any development in violation of this division** shall be subject to a civil fine . . .

## **BCDC Regulations Section 11302**

Any one of the following actions shall constitute grounds for the imposition of civil penalties by the Commission:

**(1) the undertaking of any activity that requires a Commission permit without having obtained the Commission permit or**

**(2) the violation of any term or condition of a Commission permit.**

# WHAT OTHER AGENCIES ARE DOING



**Other agency approaches:**

**Nuclear Regulatory Commission Enforcement Policy**

**Violation** is the failure to comply with a requirement

## Health & Safety Code Sections 25404 and 25110.8.5

(a)(3) “Minor violation” means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following: . . . .

“Class I violation” means any of the following:

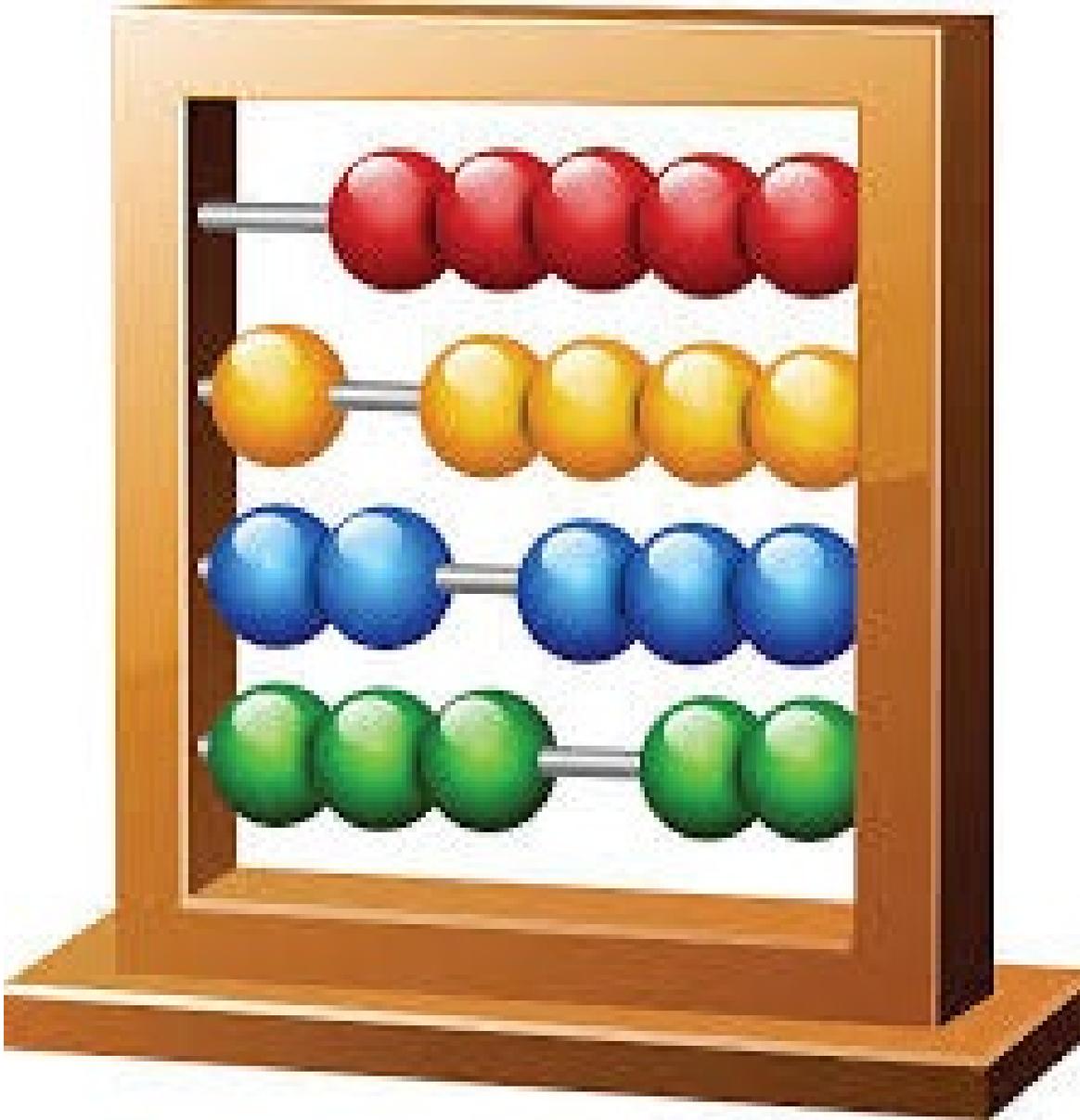
(a) A deviation from the requirements of this chapter, or any regulation, standard, requirement, or permit or interim status document condition adopted pursuant to this chapter that is any of the following: . . .

# DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)

## 22 CCR 66272.64 Multiple Violations

- (a) At the discretion of the Enforcement Agency, a single initial penalty may be assessed for multiple violations. Multiple violations subject to this section are multiple instances of the same violation, where each is a violation in itself.
- (b) The assessment of a single initial penalty may be appropriate for multiple violations in the following cases:
- (1) The facility has violated the same requirement at one or more locations (e.g. units) within the facility.
  - (2) The violation occurs on separate occasions, unless the facility has been notified of the violation and has had sufficient time to correct the violation, and the violation is not a violation that continues uninterrupted for more than one day.
  - (3) When violations are not independent or are not substantially distinguishable. For such violations, the Enforcement Agency shall consider the extent of violation in terms of the most significant violation.

# PROPOSAL



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- Any violation of the statutes, regulations, or any term or condition of a permit is a violation
- Violations may be combined at BCDC's discretion based on specified principles

# CONCEPTUAL PRINCIPLES FOR DISCUSSION

Reasons to Separate	Reasons to Combine
Distinguish activities that are substantially separate in time	Combine violations of requirements that serve the same purpose
Distinguish activities that require separate filing requirements or approvals (including from other agencies)	Combine closely related violations relating to activities that occur at the same location
Distinguish activities that relate to separate special conditions	
Distinguish separate revenue-generating activities	
Distinguish vertical depth of dredging from horizontal footprint of dredging	
Distinguish dredging from disposal of dredged material	

# ADDITIONAL CONCEPTUAL PRINCIPLES FOR DISCUSSION

Reasons to Separate	
Where necessary to deprive the violator of the economic benefit of multiple violations, violations may be cited separately	

# QUESTIONS