

# San Francisco Bay Conservation and Development Commission

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## Agenda Item 5

July 9, 2020

**TO:** Enforcement Committee Members

**FROM:** Priscilla Njuguna, Enforcement Policy Manager ([priscilla.njuguna@bcdc.ca.gov](mailto:priscilla.njuguna@bcdc.ca.gov))

**SUBJECT:** Enforcement Report

### Summary

This report summarizes the progress of enforcement case resolution in the first half of the second quarter of 2020. It also summarizes actions undertaken by the BCDC staff since the last Committee meeting held on June 24, 2020.

During the second quarter, staff closed sixty-one cases, opened thirty-two cases, and issued three enforcement-related after-the-fact permits. Staff and the Committee also took action toward the issuance of one cease and desist order, although the Commission remanded the case back to the Committee on May 7, 2020. In the second quarter, \$2,000 in standardized fines were deposited into the Bay Clean-Up and Abatement Fund. In Fiscal Year 2019-2020 \$90,000 has been collected to date; the total balance of the fund, as of June 30, 2020, is \$1,160,000.

### Enforcement Definitions

**Caseload** is the sum of all cases, including active cases, pending cases, and old cases.

**Active cases** are the cases actively being pursued.

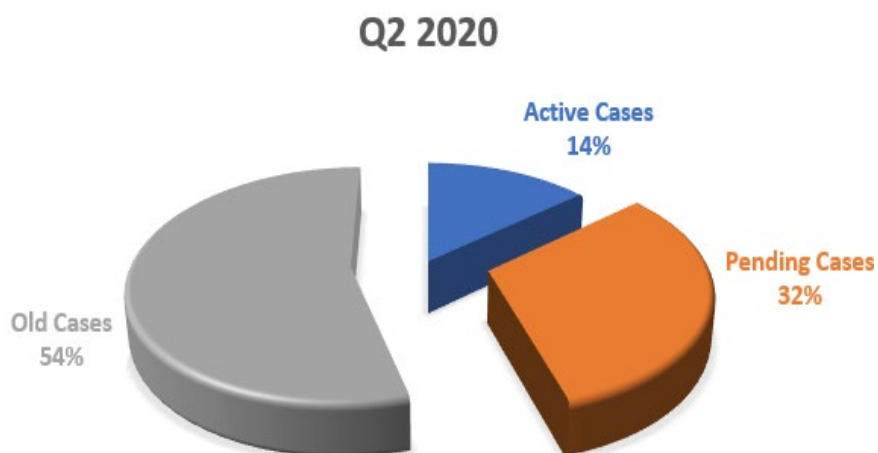
**Pending cases** are cases within the case management process that have not yet reached the “resolution” milestone. These milestones are defined to include assignment, investigation, negotiation. Cases are pending for various reasons, including but not limited to pending permit applications, pending monitoring reports, pending site remediation, and pending enforcement cases/permits with other state and local government agencies, etc.

**Old cases** are all cases opened in 2016 or earlier, before the Enforcement Committee began regularly meeting and hearing cases, and that have been previously defined as the “backlog”. The **Oldest cases** are a subset of old cases and this term is used to describe cases opened in 2000 or before.



**Closed cases** are cases that have been resolved. Cases are resolved for various reasons, including, but not limited to, no violation being found, BCDC reaching a settlement with the violator, orders being issued, or a judgment being rendered after litigation.

### Actions taken



1. The caseload at the end of the second quarter 2020 was 259. Thirty-two cases were opened this quarter, which is 18 more than the 14 that were opened during the same period last year. Thirty-four cases were active cases, including five of the oldest cases. The departure of one of BCDC's three enforcement staff had an impact on the case resolution

rate, reducing the total number of cases actively under review. Hiring for that vacancy is currently underway.

2. Sixty-one cases were closed in the second quarter of 2020, compared to six cases closed in the same period in 2019. Twenty-six of those cases were closed without any violation having been found: six cases were outside BCDC's jurisdiction, and nineteen cases were resolved by reviewing permit terms and conditions, and documentation from respondents, which established that no violations occurred. Of the other thirty-five cases that were closed, twenty-eight cases were resolved after respondents produced, or enforcement staff independently obtained, documentation proving that the violations had been resolved. The remaining seven cases were duplicate reports of existing cases.
3. The process of integrating simplified case status codes onto the enforcement tracking was completed. A review of cases to assure correct updated status code is ongoing.
4. Of the fifteen grouped cases, five were closed based on documentation indicating the violation was resolved, leaving eleven open grouped cases. The remaining cases have specific information missing that has been requested from the respondents to enable case resolution.
5. There have been ongoing discussions to resolve the oldest cases, with substantial progress having been made towards the resolution of one of the oldest cases, Enforcement Case No. ER1999.026 located on managed wetlands at the Rich Island Duck Club. Monthly coordinated progress meetings have proved beneficial in advancing the resolution of this case more effectively than the resolution of the other Oldest Cases. Additional details on the oldest cases will be presented at the July 9 Enforcement Committee meeting.
6. Attached to this report is a summary of the ongoing enforcement program improvements. The summary documents the Committee's contributions and defines the next steps to enable Committee members to readily track progress and set defined expectations for achieving defined improvements.

#### Future Agenda Items

7. In the coming months, the Committee will conduct public workshops to solicit input on proposed changes to the enforcement regulations. The anticipated focus areas will include standardized fines and civil penalties and other recommendations in the State Auditor's May 14, 2019 audit of BCDC's Enforcement program, as well as issues that the Committee has recently discussed, including the development of criteria for the use of Supplemental Environmental Projects.