

San Francisco Bay Conservation and Development Commission

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ENFORCEMENT PROGRAM IMPROVEMENT PROGRESS REPORT

PROJECT SUMMARY

REPORT DATE	PROJECT NAME	PREPARED BY
July 9, 2020	Enforcement Program Improvements	Priscilla Njuguna, Enforcement Policy Manager

STATUS SUMMARY

This document is a cumulative summary of the efforts that the Enforcement Committee and BCDC staff have undertaken to improve BCDC's Enforcement Program beginning July 2019. In 2019, BCDC added an Enforcement Attorney and an Enforcement Policy Manager to enforcement staff to assist in the program improvements that were initiated in 2017. Recent program improvements rely on a structural framework built on achieving four defined program goals: deterrence, consistency, transparency, and fairness. The procedures described below, when used appropriately, serve to *deter* non-compliant behavior, enhance *transparency* in the enforcement process, promote *fairness* in the application of BCDC laws, policies and regulations; and define a *consistent* process so as to set expectations for the regulated community as well as define internal guidelines.

The Case Management Procedure defines individual staff roles and responsibilities and sets case resolution milestones namely: *Assignment* within 45 days of the enforcement case report; *Investigation* within 100 days of assignment; *Negotiation* within 240 days of assignment; and *Resolution* within 90 days of negotiation completion. This procedure also uses an Aged Case Report and a Closed Case Report to prevent case stagnation and promote timely resolution by verifying that the milestone requirements are timely.

Similarly, the Case Review Procedure defines individual staff roles and responsibilities and provides step-by-step instructions on the staff-level resolution process and the commission-level resolution process and defines how cases are prioritized based on relative potential or actual harm to the Bay and/or restrictions on shoreline public access. In addition, the procedure defines when cases are escalated to the Regulatory Division Director, the Executive Director, the Enforcement Committee, and the Commission. Cases are escalated when they are not meeting case management milestones because of lack of good faith efforts by the violator or because the violator opts to go to the Commission instead of pursuing a negotiated resolution at the staff level. This procedure is distinguishable from the previously discussed procedure in that it includes case status codes that track the progress of a case through phases including: *New Report*; *Active Case*; *Pending Case*; *Investigation*; *Eminent Resolution*; and *Closed Case*. Cases that are resolved using an order or agreement are managed using the *Compliance Monitoring* status code. Closed cases are either simply in a *Closed* status or a *Closed-No Violation* status when staff determines that another federal, state, or local government agency is better suited to resolve the case and/or the reported conduct does not violate BCDC laws, regulations or policies. The case review procedure includes a Grouped Case Report and a Paired Case Report, both of which enable staff to build efficiency by combining cases when possible for group resolution when the types of violations are similar and/or related. The distinction between the Grouped Case Report and the Paired Case Report is that the former combines 10 or more cases whereas the later combines two or more cases.

Work has been initiated on developing the following policies: Penalty Policy; Criteria for Aggregating Violations for Civil Penalty purposes; and a Supplemental Environmental Project policy. The concepts that will be included in these policies have been presented to the Enforcement Committee and, based on the Committee input, staff are developing draft policies for Committee review in 2020. Committee-approved policies would then be forwarded to the full Commission for its consideration. There is also a plan to pursue an update of the regulations, which will, in part, address the concerns that were raised in the Audit including, for example, the recommendation that that BCDC develop a definition of “significant harm,” a term that appears in section 11386 of the regulations. Draft regulation language will be presented to the Committee for discussion following public workshops beginning in late July 2020 to enable the public to provide their input on changes that should be made to the enforcement regulations, potentially raising the amount of standardized fines collected pursuant to the procedure set forth in the existing regulation in section 11386.

PROJECT TIMING OVERVIEW

TASK	% DONE	DUE DATE	DRIVER	NOTES
Case Management and Case Review Procedures	100%	06/30/2020	Audit recommendations; internal need to build efficiency and promote case resolution and reduce unresolved case numbers.	Enforcement Committee meetings 7/1/19, 9/25/19, 11/14/19, 12/12/19, 4/9/20, 6/24/20. Discussed prioritizing cases, resolving the oldest cases, preventing case stagnation.
Guidance on aggregating violations	75%	9/30/2020	Audit recommendation; achieving goals of fairness, consistency, and transparency.	Enforcement Committee meetings 10/1/19, 3/12/20.
New staff position dedicated to compliance improvements	25%	TBD	Audit recommendation; internal understanding that 50% of caseload is attributable to failure to fully implement and comply with permit requirements.	Because funding shortfalls limit ability to implement the Audit recommendation to hire for an additional position, staff have been working on process improvements to further compliance. An internal tracker for permit status was initiated in 2014 and is in use and being updated. When enforcement cases are closed respondents sign a certification of term and condition compliance and a responsible contact is designated for future concerns to be addressed.
Oldest case resolution	75%	6/30/2021	Audit recommendation; need to deter violators by swiftly resolving cases in a majority of instances.	Enforcement Committee briefing on the progress being made to resolve cases opened before 2000. Eight cases reported 8/14/19, reduced to 6 unresolved cases for 3/12/20 report, and reduced to 5 cases for 7/9/20 update. Monthly meetings to track progress on cases with multi-agency involvement.
Penalty Policy development	75%	9/30/2020	Audit recommendation; regulation update.	Enforcement Committee meetings 8/8/19, 8/14/19, 9/25/19, 6/11/19.

Supplemental Environmental Projects Policy development	75%	9/30/2020	To enhance transparency and consistency in process, articulate principles for use of SEPs for regulated community	Enforcement Committee first discussion 11/14/19 with direction to limit use to specific cases that warrant the potential use of SEPs.
Standardized fine process improvements	50%	12/31/2020	Audit recommendation; examination of the existing regulation for opportunities to improve effectiveness of the regulation as applied and pursue regulatory changes.	Enforcement Committee briefing on 7/24/19.
Significant harm definition	75%	12/31/2020	Audit recommendation; regulation update in progress.	Enforcement Committee discussion on 8/8/2019 and approval of proposed definition 10/10/2019. Next step: waiting for rule making process to integrate definition into regulations
Timely case resolution	ongoing	ongoing	Audit recommendation; achieving goals of deterrence, fairness, consistency.	Case discussions at Enforcement Committee: Union Point Park cease and desist order (4/22/20 next 8/13/20); Richardson's Bay periodic progress updates to track defined transition plan for vessel removal and eelgrass habitat restoration (11/20/19, 4/9/20, 7/9/20); case resolution updates during enforcement reports.
Workforce study	TBD	ongoing	Audit recommendation; internal goal of adequate personnel and software resources to help improve program efficiency.	Began 10/2019 ongoing and anticipated to be complete no later than 3/31/2021.

NEXT STEP SUMMARY

ISSUE	ASSIGNED TO	DATE
Bay Fill Cleanup and Abatement Fund spending. Depends on alternative source of state funding for enforcement staff	Larry Golzband, Executive Director	TBD
Policy developments for Enforcement Committee approval then Commission adoption Penalty Policy SEP Policy Criteria for Aggregating Violations	Karen Donovan, Staff Attorney	No later than 9/30/2020 for presentation to Enforcement Committee. Presentation to the Commission no later than December 2020.
Documented progress in the resolution of the old cases with quarterly detailed enforcement reports	Priscilla Njuguna	Until all the cases opened 2016 or earlier are closed.
Proposed regulation change discussions beginning July 2020 for subsequent rule making process	Marc Zeppetello, General Counsel	No later than 12/31/2020 progress toward rule making process.
Workforce study outcome	Department of Finance	TBD final report anticipated 3/31/2021.

CONCLUSIONS/RECOMMENDATIONS

Systematic progress is being made. Additional work is ongoing to resolve the oldest cases and needed to update the regulations, which have not been updated in over a decade.