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Amendments to BCDC Regulations Chapter 13. Enforcement Procedures.

1. No amendments are proposed to Section 11300 which reads as follows:

§ 11300. Grounds for the Issuance of Cease and Desist Orders.

Any one of the following actions shall constitute grounds for the issuance by the Commission of a cease and desist order: (1) the undertaking or threat to undertake an activity that requires a Commission permit without having obtained a Commission permit, (2) the violation of a term or condition of a Commission permit, or (3) the inclusion of inaccurate information in a permit application or at the public hearing on the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

2. Amend Section 11301 to read as follows:

§ 11301. Grounds for Permit Revocation.

Any one of the following actions shall be grounds for the complete or partial revocation of a Commission permit:

(1) the violation of a term or condition of a permit,

(2) the violation of a Commission cease and desist order or an Executive Director's cease and desist order, or

(3) the inclusion of inaccurate information in a permit application or at the public hearing on a permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641(d); Government Code; Sections 29600-29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

3. Amend Section 11302 to read as follows:

§ 11302. Grounds for the Imposition of Administrative Civil ~~Penalties~~ Liability.

Any one of the following actions shall constitute grounds for the imposition of administrative civil penalties liability 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.

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NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e) and 66641.6, Government Code; and Sections 29610-29611, Public Resources Code.

4. Amend Section 11303 to read as follows:

§ 11303. Referral to the Attorney General by the Commission or the Executive Director.

(a) A violation of any one of the following shall be grounds for the referral of the violation by the Commission or the Executive Director to the Attorney General's Office without the Commission's having issued either a cease and desist order or a permit revocation order: (1) the McAteer-Petris Act, (2) the Suisun Marsh Preservation Act, (3) the Federal Coastal Zone Management Act, or (4) a term or condition of a Commission permit.

(b) In addition, a violation of either a Commission cease and desist order or a Commission permit revocation order shall also be grounds for the referral of the violation by either the Commission or the Executive Director to the Attorney General's Office.

(c) A referral made to the Attorney General's Office pursuant to subsections (a) and (b) may include any other unresolved, alleged violation including those of the type enumerated in Section ~~11386~~11390.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections ~~66641(d)~~, 66640(a), 66641(b), and 66642(a), Government Code; and Sections 29601, and 29610-29611 Public Resources Code.

5. Amend Section 11310 to read as follows:

§ 11310. Definitions.

The following definitions are applicable to this chapter:

(a) "Complaint," as used in subsection (b) of Section 66641.6 of the Government Code, means the document that initiates the possible imposition of administrative civil ~~penalties~~ liability by the Commission. A complaint shall contain the information required by Government Code Section 66641.6(b) and ~~otherwise~~ follow the format and include the information for a staff violation report/complaint as set out in Appendix H.

(b) "Enforcement committee," as used in this chapter, means a committee that the Commission has established pursuant to Commission resolution or by appointment by the Chair ~~without the concurrence of the Commission objection~~ to assist the Commission in carrying out its enforcement responsibilities. The enforcement committee shall consist of no fewer than four and no more than six Commission members or other representatives of the Commission. A quorum of the enforcement committee necessary to conduct business, to hold hearings and to vote on recommended enforcement decisions shall consist of three members notwithstanding the total number of enforcement committee members. The enforcement committee shall select from its members a chair, who shall serve for a period agreed upon by a majority of the enforcement committee members. The enforcement committee shall conduct its hearings in accordance with the Commission's laws and regulations upon matters referred to

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it by either the Executive Director or the Commission. The Chair of the Commission may change the membership of the Commission from time to time provided that he or she notifies the Commission prior to such change at a Commission meeting and the Commission concurs.

(c) “Enforcement hearing,” as used in this chapter, means any public hearing held before a hearing officer, the enforcement committee, or the Commission as part of a Commission enforcement proceeding.

(d) “Hearing Officer,” means any person appointed by the Commission or by the Chair with the concurrence of the Commission to receive evidence, hear arguments, make findings of fact, and recommend to the Commission what action it should take on an enforcement matter.

(e) “Person,” as used in Sections 66637 through 66642 of the Government Code and in this chapter, means any individual, firm, association, organization, partnership, business trust, corporation, company, or governmental agency.

(f) “Respondent,” as used in this chapter, means a person to whom the Commission staff has issued a violation report or complaint and a statement of defense form in accordance with Section 11321(c).

(g) As used in this Chapter, “significant harm to the Bay’s resources or to existing or future public access” shall be determined based on both the context and intensity of the violation.

(1) “Context” refers to the location of the violation and the characteristics of the area where it occurs. Areas with important environmental or ecological significance (e.g. habitat or refugia for sensitive species) are generally considered to be more significant than previously degraded habitat or areas with limited habitat value, and highly visible and/or frequently used areas are generally considered to be more significant than isolated areas with low visibility or infrequent usage.

(2) “Intensity” refers to the severity of the impact and the degree to which it affects the environment or public access. Violations presenting significant ecosystem hazards (e.g. toxic or biohazardous fill) or involving large portions of a particular site may generally be considered to be more severe. In addition, violations that substantially interfere with the ability to use designated public access or encompass large portions of a designated public access area will be considered to be more significant.

(3) Where multiple violations are alleged at a site, if a single violation results in harm that is individually limited but cumulatively significant when added to other violations at the site, it may be determined that the violation has resulted significant harm to the Bay’s resources or to existing or future public access.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641(d), 66641.5(e), and 66641.6; Government Code; Sections 29601 and 29610-29611, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

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6. Amend Section 11320 to read as follows:

§ 11320. Staff Investigation and Discovery.

As part of any enforcement investigation, the Executive Director may issue ~~subpenas~~ subpoenas and the staff may send interrogatories, conduct depositions, and inspect property at any time.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11180-11181, 66637, 66638, 66641.5(e), 66641.6, and 66643, Government Code; and Sections 29601, and 29610-29611, Public Resources Code.

7. Amend Section 11321 to read as follows:

§ 11321. Commencing Commission Enforcement Proceedings.

(a) If the Executive Director believes ~~that~~ as the results of an enforcement investigation that any person has caused or threatens to cause significant harm to the Bay's resources or to existing or future public access, or that the nature, circumstance, extent, and gravity of the violation or violations so warrant, the Executive Director shall commence Commission enforcement proceedings by issuing at least 45 days prior to holding an enforcement hearing on the matter the following materials to the last known address of each party that the Executive Director believes may be legally responsible in some manner for the alleged violation:

(1) a violation report that ~~complies with~~ follows the format and contains the information set out in Appendix H,

(2) a complaint for administrative civil penalties liability that ~~complies with~~ follows the format and contains the information set out in Appendix H if the staff seeks civil penalties, and

(3) a statement of defense form that ~~complies with~~ follows the format and requests the information set out in Appendix I. The violation report and complaint for administrative civil penalties liability can be combined into a single document so long as it contains all the information required for both.

(b) The violation report and/or complaint shall ~~refer to~~ list all documents, including any declarations under penalty of perjury, on which the staff relies to provide a prima facie case of the violations alleged and give notice that the documents may be inspected at the Commission's office and that copies will be provided with five days prior notice and upon payment of the cost of copying of all such documents shall be attached to or accompany the violation report and/or complaint or shall be provided to the respondent in electronic format upon request.

(c) Issuance of a violation report and/or complaint shall occur when the violation report and/or complaint is mailed by certified mail to all persons or entities named as a respondent in the violation report and/or complaint. ~~Issuance of a complaint for civil penalties shall occur when the complaint for civil penalties is mailed by certified mail to all persons or entities name as a respondent in the complaint.~~ Upon written consent of the respondent or respondent's

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authorized representative, a violation report and/or complaint may be mailed to the respondent or the respondent's authorized representative by email.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), and 66641.6, Government Code; and Sections 29601 and 29610-29611, Public Resources Code.

8. Amend Section 11322 to read as follows:

§ 11322. Respondent's Required Response to the Violation Report or Complaint, the Executive Director's Consideration of the Respondent's Response, and Extensions of Time.

(a) Within thirty-five (35) days of the issuance of the violation report and/or complaint and the statement of defense form, each respondent shall submit to the Commission as at its office an original and five one copies copy of the completed statement of defense form (or an original and one copy of a document providing the information requested by the form) and an original (or verified copy) and five one copies copy of all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters. Electronic copies of both the completed statement of defense form and all supporting documents shall also be submitted in a format that allows for posting on the Commission's website in compliance with current Americans with Disabilities Act accessibility guidelines. If these documents cannot be submitted in a format that allows for posting in compliance with ADA Guidelines, the respondent shall include a statement explaining the reasons. Once submitted, all such declarations and documents shall be permanently retained by the Commission as part of the enforcement record.

(b) If a respondent believes that cross-examination of a person relied on by whose declaration under penalty of perjury has been submitted with staff in it's the violation report and/or complaint is needed to show or contest a fact alleged in the violation report and/or complaint, the respondent shall request such cross-examination in the completed statement of defense form. The completed statement of defense form or an addendum shall list the name of each person whose declaration under penalty of perjury has been submitted with the violation report and/or complaint that the respondent wants to cross examine, all documents referred to in such person's declaration about which the respondent wants to cross-examine, a description of the area of knowledge about which the respondent wants to cross-examine the person, including a specific reference to the fact or information respondent disputes, the information that respondent believes can be elicited by cross-examination, and the reasons the respondent believes that the information can best be provided by cross-examination rather than by the submittal of declarations or other written evidence.

(c) Within 35 days of the issuance of a complaint for administrative civil penalties liability and a statement of defense form, each respondent shall submit to the Commission at its office either (1) a certified cashier's check in the amount of the proposed administrative civil penalty or (2) the completed statement of defense form, and copies of all documents that the respondent wants to be made part of the record of the enforcement proceeding in accordance

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~~with subsection 11322(a), including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters, and any request to allow cross-examination in accordance with subsection 11322(b).~~

(d) If the staff wants to cross-examine any person whose declaration under penalty of perjury has been submitted with a respondent's completed statement of defense form, the staff shall, within seven days of receiving a the completed statement of defense form, mail to all respondents a list of all persons whose declaration under penalty of perjury has been submitted by respondent that the staff wants to cross examine, all documents referred to in such person's declaration about which staff wants to cross-examine the person, a description of the area or areas of knowledge about which the staff wants to cross-examine the witness, and the information that the staff hopes to elicit in cross-examination.

(e) If the Executive Director sends a violation report and a complaint for administrative civil penalties liability together, paying the civil penalties will not release the respondent from the possible issuance of a cease and desist order or permit revocation order.

(f) ~~If the Executive Director issues a violation report only, and not a complaint for administrative civil liability, the Executive Director may at his or her discretion extend the 35-day time limit imposed by paragraph (a) of this section upon receipt within the 35-day time limit of a written request for such extension and demonstration of good cause. The~~ If the Executive Director issues a violation report and complaint for administrative civil liability or only a complaint for administrative civil liability, the Executive Director may at his or her discretion extend the 35-day time limit imposed by paragraphs (a) and (c) of this section upon receipt within the 35-day time limit of a written request for such extension, and a written demonstration of good cause, and waiver of or consent to extend the 60-day time limit for a hearing on the complaint under Government Code section 66641.6(b). The ~~Any~~ extension shall be valid only to those specific items or matters that the Executive Director identifies to the requesting party as being exempt from the 35-day filing requirement and shall be valid only for such additional time as the Executive Director allows.

(g) If a respondent responds to a complaint for ~~the imposition of administrative civil penalties liability~~ by submitting a cashier's check in the appropriate amount of the penalty proposed in the complaint to the Executive Director in a timely fashion, the Executive Director shall cash the check and list the violation, the amount of the proposed penalty, and the fact that the respondent has agreed to pay the penalty as part of the administrative permit listing within 30 days of receipt of the check.

(h) At the next Commission meeting after receiving the listing, the Commission can object to the amount of a proposed administrative civil penalty that a respondent has paid by voting by a majority of those present and voting. If the Commission so objects, the Executive Director shall return the respondent's money and the respondent shall ~~file~~ submit his or her completed statement of defense form and supporting documents within 35 days of the Commission's action. Thereafter, the enforcement matter shall proceed according to these regulations.

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(i) At any time after issuance of a violation report and/or complaint, the Executive Director and a respondent may agree on the terms of a proposed stipulated order or a proposed settlement agreement to resolve a violation or violations, which may include a schedule of corrective actions to be implemented by the respondent and payment of administrative civil penalties. The Executive Director shall include the proposed stipulated order or proposed settlement agreement in his or her recommended enforcement decision prepared in accordance with Section 11326. If the Commission fails to adopt the proposed stipulated order or proposed settlement agreement, and the respondent has not submitted a completed statement of defense form, copies of any supporting documents, and any request for cross-examination in accordance with subsections 11322(a) and (b), the respondent shall submit his or her completed statement of defense form, copies of any supporting documents, and any request for cross-examination within 35 days of the Commission's failure to adopt the proposed stipulated order or proposed settlement agreement. Thereafter, the enforcement matter shall proceed according to these regulations. If the Commission fails to adopt the proposed stipulated order or proposed settlement agreement, and the respondent has previously submitted a completed statement of defense form, copies of any supporting documents, and any request for cross-examination, the Executive Director shall prepare a new recommended enforcement decision in accordance with Section 11326 within 30 days of the Commission's failure to adopt the proposed stipulated order or proposed settlement agreement, and thereafter, the enforcement matter shall proceed according to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11415.60, 66638, 66641.5(e), and 66641.6, Government Code; and Sections 29601 and 29610-29611, Public Resources Code.

9. Amend Section 11323 to read as follows:

§ 11323. Distribution of Notice of Enforcement Hearings.

(a) At least ten (10) days prior to the initial enforcement hearing on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed Commission civil penalty order, whether held before the enforcement committee, the Commission, or a hearing officer, the Executive Director shall mail by ~~regular mail~~ first class mail or send by email, and shall also make available on the Commission's website, a written notice of the date, time, and place of the initial enforcement hearing to all respondents at their last known address, the Deputy Attorney General advising the enforcement committee, Commission, or hearing officer, and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the respondent if the respondent has already received notice of the hearing in a cease and desist order issued by the Executive Director. A meeting notice mailed and posted on the Commission's website pursuant to California Government Code Section 11125 will meet this notice requirement.

(b) After the initial enforcement hearing, notice of further enforcement hearings may be given by either announcing the date, time, and place of the further meeting on the record at the close of the preceding enforcement hearing or by mailing by first class mail or sending by email, and also making available on the Commission's website, written notice of the date, time,

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and place of the further meeting to all respondents at least 10 days prior to the further enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), and 66641.6, Government Code; and Sections 29601, and 29610-29611 Public Resources Code.

10. Amend Section 11324 to read as follows:

§ 11324. Distribution of the Violation Report, Complaint, Statement of Defense Form(s), and Recommended Enforcement Decision.

At least ten (10) days prior to the enforcement hearing, the Executive Director shall make available on the Commission's website and shall mail by regular mail first class mail or send by email the following materials to each respondent, and to the committee members if the enforcement hearing will be held before the enforcement committee, to the hearing officer if the enforcement hearing will be held before a hearing officer, or to the Commission if the enforcement hearing will be held before the Commission, and to the Deputy Attorney General advising the enforcement committee, Commission, or hearing officer: (1) the violation report and/or complaint for administrative civil liability and all documents or other evidence cited therein or listed on an index of supporting documents or evidence attached thereto, (2) each completed statement of defense form and the enclosed exhibits, with a notation that indicates if any of the statements have been filed in an untimely fashion, and (3) a recommended enforcement decision that complies with Section 11326.

NOTE: Authority cited: Section 66632(f), Government Code, and Section 29201(e), Public Resources Code. Reference: Sections ~~66637~~-66638, 66641.5(e), and 66641.6, Government Code; and Sections ~~29601~~, and 29610-29611, Public Resources Code.

11. Amend Section 11326 to read as follows:

§ 11326. Contents of an Executive Director's Recommended Enforcement Decision.

(a) The Executive Director shall prepare a recommended enforcement decision on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed ~~civil penalty~~ order setting administrative civil liability.

(b) The Executive Director's recommended enforcement decision shall be in writing and shall include:

(1) a ~~brief~~ summary of (A) any background to the alleged violation, (B) the ~~essential~~ allegations made by staff in its violation report and/or complaint, (C) ~~a list of all essential~~ the allegations either admitted or not contested by respondent(s), and (D) all defenses and mitigating factors raised by the respondent(s); ~~and (E);~~

(2) any staff response to the defenses, mitigating factors, or arguments raised by the respondent(s) and any rebuttal evidence raised submitted by the staff to matters raised in the statement of defense form with references to supporting documents;

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~~(2)~~ (3) a summary and analysis of all ~~unresolved~~ disputed issues;

(4) a recommended enforcement decision on a proposed order setting administrative civil liability shall identify all violations for which administrative civil penalties are proposed and include:

(i) the total amount of proposed administrative civil penalties; and

(ii) a statement of the applicable factors set forth in Government Code section 66641.9 that the Executive Director considered, consistent with the Administrative Civil Penalty Policy in Appendix O of these regulations, in determining the total amount of the proposed administrative civil penalties;

~~(3)~~ (5) a statement of whether the Executive Director has issued a cease and desist order and its expiration date; ~~and~~

~~(4)~~ (6) a recommendation on what action the Commission should take; and

~~(5)~~ (7) the proposed text of any cease and desist order, permit revocation order, or ~~civil penalty~~ order setting administrative civil liability that the Executive Director recommends that the Commission issue.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections ~~66637-66638~~, 66614.5(e), ~~and~~ 66641.6, and 66641.9, Government Code; and Sections 29601 and 29610-29611, Public Resources Code.

12. Amend Section 11327 to read as follows:

§ 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

(a) the Chair, enforcement committee chair, or hearing officer shall announce the matter, ask all respondents or their attorneys present to identify themselves for the record, ~~indicate what matters are already part of the record~~, and announce any imposition of time limits for presentations to be made by the staff, the respondent(s), and the public at the hearing;

(b) the Chair, enforcement committee chair, or hearing officer may impose time limits based on the circumstances of the alleged violation(s), the number of other items contained on the meeting agenda, the number of persons who intend to speak, and such other factors as the ~~Chair~~ he or she believes relevant;

(c) the staff shall summarize the violation report and/or complaint for administrative civil liability and recommended enforcement decision with particular attention to limiting its presentation to issues of controversy;

(d) each respondent shall summarize its position(s) on the matter(s) relevant to the alleged violation or proposed order with particular attention to those issue(s) where an actual controversy exists between the staff and the ~~reported~~ respondent party(s);

(e) members of the public ~~other speakers~~ may speak concerning the matter;

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(f) presentations made by the staff, a respondent, and ~~other speakers~~ the public shall be limited to responding to (1) evidence already made part of the enforcement record and (2) the policy implications of such evidence; the enforcement committee, any hearing officer and or the Commission shall not allow oral testimony unless the committee, hearing officer, and or Commission believes that such testimony is essential to resolve any factual issues that remain unresolved after reviewing the existing written record and whose resolution is essential to determining whether a violation has occurred or to determining what remedy is appropriate. If the committee or Commission allows oral testimony, such testimony shall be taken under oath, and all representatives of the staff and all respondents shall be given a right to examine or cross-examine all witnesses who are allowed to testify and a right to have rebuttal witnesses similarly testify;

(g) cross-examination of any witness whose declaration under penalty of perjury has become part of the enforcement record shall be permitted only if the party who wishes to cross-examine has identified in writing pursuant either to Section ~~11322(a)~~ 11322(b) or Section ~~11322(c)~~ 11322(d) the person to be cross-examined, the area or areas of information into which the cross-examination will delve, and the information sought to be uncovered. Following cross-examination of a witness whose declaration under penalty of perjury has become part of the enforcement record, a representative of the opposing party shall be entitled to examine the witness on the area or areas of information addressed during cross-examination. Neither cross-examination nor direct examination shall be allowed of any person who has not submitted a declaration under penalty of perjury which has become part of the enforcement record and who has not been identified in writing pursuant to either Section 11322(b) or Section 11322(d), including any member of the public who has commented on an enforcement matter or submitted information related to an alleged violation.

(h) Committee members, a hearing officer, and Commissioners may ask questions at any time during the hearing or deliberations.

(i) the enforcement committee, hearing officer, or Commission shall close the public hearing after the staff, all respondents, and the public have completed their presentations and committee members, the hearing officer, or Commissioners have completed their questioning;

(j) the enforcement committee, hearing officer, or Commission shall rule on any objections to the admissibility of evidence or the acceptance of late evidence and identify any evidence submitted but rejected because it was not filed in a timely manner or in violation of section 11328.

~~(j)~~ (k) the enforcement committee or Commission shall deliberate and vote on an enforcement matter; and

~~(k)~~ (l) if a hearing officer has been appointed for an enforcement matter, the hearing officer shall render a written decision that follows the format of an Executive Director's recommended enforcement decision within 14 days of the closing of the enforcement hearing.

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NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections ~~66637~~-66638, 66641.5(e), and 66641.6, Government Code; and Sections 29601 and 29610-29611, Public Resources Code.

13. Amend Section 11328 to read as follows:

§ 11328. Acceptance of Late Evidence.

The introduction of surprise testimony and exhibits at enforcement hearings shall be discouraged. All documents and declarations under penalty of perjury shall be submitted with the completed statement of defense form except to the extent the Executive Director has extended the time for such submittal pursuant to Section ~~11322(d)~~ 11322(f) or the Commission, enforcement committee, or any hearing officer admits the evidence testimony into the record pursuant to Section 11327(f) and this section. To this end, the Commission, any hearing officer, ~~and or~~ the enforcement committee shall not accept into the record or consider any statement of defense form or any written evidence not filed in a timely manner unless the Commission, hearing officer, or enforcement committee finds that (1) the person seeking to introduce the evidence made all reasonable efforts to obtain and submit the evidence in a timely manner but was unable to do so and would be substantially ~~harmed~~ prejudiced if the evidence were not admitted and (2) no other party would suffer substantial prejudice by its admission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, 66641.5(e), and 66641.6, Government Code; and Sections 29601, and 29610-29611, Public Resources Code.

14. Amend Section 11329 to read as follows:

§ 11329. Admissibility of Evidence.

(a) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

(b) Hearsay evidence, including but not limited information provided by the public to the Commission or staff or in public comments, may be admitted and used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action or unless it is in the form of a declaration under penalty of perjury ~~or in the form of another document referred to in a violation report or complaint for the imposition of civil penalties~~ and the declarant ~~or author of the other document~~ is subject to cross-examination as provided in Sections ~~11321~~, 11322, and 11327.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant or unduly repetitious evidence shall be excluded.

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(d) The Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall have the final authority to determine whether any evidence whose admissibility is challenged by objection shall be admitted into evidence and become part of the record.

(e) In determining whether to admit testimony or exhibits into the record over objection, the Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall consult with the Deputy Attorney General ~~in attendance~~ advising the Commission, enforcement committee, or hearing officer at the hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), and 66641.6, Government Code; ~~and Sections 29601, and 29610-29611, Public Resources Code and Section 351, Evidence Code.~~

15. Amend Section 11330 to read as follows:

§ 11330. Adoption of an Enforcement Committee or a Hearing Officer Recommended Enforcement Decision.

(a) After the enforcement committee or a hearing officer has closed the enforcement hearing and completed its deliberations, it shall adopt a recommended enforcement decision, which shall include all of the following:

~~(a)(1) all of the matters required by Section 11326; and~~ a summary of (A) any background to the alleged violations, (B) the allegations made by staff in its violation report and/or complaint, (C) the allegations either admitted or not contested by respondent(s), (D) the defenses and mitigating factors raised by the respondent(s), and (E) the staff's response to the defenses, mitigating factors, or arguments raised by the respondent(s);

(2) a statement of any rulings by the enforcement committee;

(3) a recommended enforcement decision on a proposed order setting administrative civil liability shall identify the violations for which penalties are proposed and include:

(i) the total amount of proposed administrative civil penalties; and

(ii) a statement of the applicable factors set forth in Government Code section 66641.9 that the enforcement committee considered, consistent with the Administrative Civil Penalty Policy in Appendix O of these regulations, in determining the total amount of the proposed administrative civil penalties;

(4) a statement of whether the Executive Director has issued a cease and desist order and its expiration date;

~~(b)~~ (5) any further written report on or explanation of the enforcement proceedings as the enforcement committee or hearing officer believes is appropriate.;

(6) a recommendation on what action the Commission should take; and

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(7) the proposed text of any cease and desist order, permit revocation order, or order setting administrative civil liability that the Executive Director recommends that the Commission issue.

(b) The enforcement committee or a hearing officer can adopt with or without change the staff Executive Director's recommended enforcement decision. The chair of the enforcement committee or hearing officer may direct BCDC counsel to prepare the enforcement committee or hearing officer recommended enforcement decision, provided that: (1) BCDC counsel shall submit the enforcement committee or hearing officer recommended enforcement decision to the respondent(s) by email for review not less than three days before the Executive Director mails the recommended decision to the Commission and respondent(s) in accordance with section 11331; and (2) if the respondent(s) provides written comments on or objections to the recommended decision within two days of receipt thereof, the Executive Director may modify the recommended decision based on such comments or objections and shall include the respondent's comments or objections when mailing the recommended decision to the Commission and respondent(s) in accordance with section 11331.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, ~~and 66641.5(e)~~, 66641.6, ~~and 66641.9~~, Government Code; and Sections ~~29601 and 29610-29611~~, Public Resources Code.

16. Amend Section 11331 to read as follows:

§ 11331. Referral of the Recommended Enforcement Decision to the Commission.

At least ten (10) days prior to the Commission's consideration of a recommended enforcement decision referred to it either directly by the Executive Director, by the enforcement committee, or by a hearing officer, the staff shall mail by first class mail or send by email, and shall also make available on the Commission's website, the recommended enforcement decision to all respondents, ~~and~~ to all Commissioners, and to the Deputy Attorney General advising the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, ~~and 66641.5(e)~~, ~~and 66641.6~~, Government Code; and Sections ~~29601 and 29610-29611~~, Public Resources Codes.

17. Amend Section 11332 to read as follows:

§ 11332. Commission Action on Recommended Enforcement Decision.

(a) Except as provided in subsection 11332(c), ~~when~~ the Commission acts on a recommended enforcement decision, the Commission shall allow representatives of the staff, each respondent, and members of the public an opportunity to present their respective arguments or comments on the recommendation, subject to such reasonable time limits as the Chair may impose and subject to a prohibition against the introduction of any new evidence unless the Commission proceeds either to remand the matter to the enforcement committee or hearing officer or hold a de novo evidentiary hearing.

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(b) Thereafter, the Commission shall do one of the following:

(1) adopt the recommended enforcement decision without any change in any proposed cease and desist order, permit revocation order, or ~~civil penalty order~~ setting administrative civil liability;

(2) either (A) dismiss the entire matter by voting not to issue any proposed cease and desist order, proposed permit revocation order, or proposed order setting administrative civil penalty order liability or (B) ~~if adopt~~ the recommended enforcement decision ~~with regard to~~ includes one or more of a proposed cease and desist order, a proposed permit revocation order, and a proposed order setting administrative civil penalty order liability, adopt the recommended enforcement decision with regard to one or more proposed orders and dismiss the other proposed order(s) recommended in the recommended enforcement decision by voting not to issue them;

(3) remand the matter to the enforcement committee, hearing officer, or the staff for further action as the Commission directs; or

(4) reject the recommended enforcement decision and decide to consider the entire matter de novo. In this event, the Commission shall continue the public hearing to the next available Commission meeting, when it shall proceed in accordance with the same procedural requirements as the Commission must follow under these regulations pursuant to Section 11327. As part of this de novo proceeding, the Commission can accept additional evidence only in compliance with Sections 11327 and 11328 or if the Commission provides the staff, all respondents, and the public a reasonable opportunity to review and respond to the additional evidence prior to the Commission's de novo review.

(c) If the respondent(s) agrees in writing to accept the recommended enforcement decision of the enforcement committee or a hearing officer, and if the Executive Director also agrees to accept the recommended decision, the Executive Director shall calendar the recommended enforcement decision as a consent item on a Commission meeting agenda. At the Commission meeting, after allowing public comment on the consent item the Commission shall determine by a majority of those commissioners present and voting whether to adopt the recommended enforcement decision on consent without any change and without any further proceedings. If a majority of those commissioners present and voting do not determine to adopt the recommended decision on consent, the Commission shall proceed to act on the matter in accordance with subsections (a) and (b).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections ~~66638, and 66641.5(e), 66641.6 and 66641.9,~~ Government Code; and Sections 29601 and 29610-29611, Public Resources Code.

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18. Amend Section 11333 to read as follows:

§ 11333. Commission Hearing Procedures on Direct Referral of an Enforcement Matter by the Executive Director.

When the Executive Director refers an enforcement matter directly to the Commission rather than to the enforcement committee or a hearing officer, the Commission shall follow the procedures set out in Sections 11327 through 11329 and in Section 11334.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, ~~and 66641.5(e), and~~ 66641.6, Government Code; and Sections 29601 and 29610-29611, Public Resources Code.

19. Amend Section 11334 to read as follows:

§ 11334. Voting on a Proposed Commission Cease and Desist Order, a Proposed Commission Permit Revocation Order, or a Proposed Commission Civil Penalty Order.

(a) The Commission shall vote on a recommended enforcement decision, a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed order setting administrative civil penalty order liability by roll call in alphabetical order except that the Chair shall vote last;

(b) Any member may change his or her vote at any time before the Chair announces the final tally; and

(c) The decision of whether or not to issue an order shall be by majority vote of those present and voting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5(e), ~~and~~ 66641.6, Government Code; and Sections 29601 and 29610-29611, Public Resources Code.

20. Amend Section 11340 to read as follows:

§ 11340. Contents of Cease and Desist Orders.

(a) Cease and desist orders shall be signed by the Executive Director and shall contain the following:

(1) a statement of whether the Executive Director is issuing the order pursuant to Section 66637 of the Government Code or the Commission is issuing the order pursuant to Section 66638 of the Government Code;

(2) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;

(3) identification of the property where the activity has been undertaken or may be undertaken;

(4) a description of the activity;

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(5) the effective date of the order;

(6) the expiration date, if any, of the order;

(7) any terms, conditions, or other provisions necessary to bring the activity into compliance with the provisions of the McAteer-Petris Act, the Suisun Marsh Preservation Act, or a permit;

(8) written findings that (1) explain the decision to issue the order and (2) provide the factual and legal basis for the issuance of the order;

(9) in the case of an order issued by the Executive Director, notice of the date and place of any public hearing to be held on any cease and desist order proposed to be issued by the Commission relating to the same activity if the Executive Director has scheduled one;

(10) notice that a respondent may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order; and

(11) such other provisions that the Commission has approved, including provisions relating to:

(A) a disclaimer of any effect of the order upon any duties, rights, or obligations under private agreements or under regulations of other public bodies;

(B) the obligation to conform strictly to the order and the consequences of the failure to do so; and

(C) the fact that the order does not constitute a recognition of property rights.

(b) A cease and desist order can be combined with a permit revocation order and/or a-an order setting administrative civil penalty order liability so long as the combined order contains all the information required under these regulations for ~~both such~~ each type of orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 ~~and 66641.5-66641.6~~, Government Code; and Section 29601, Public Resources Code.

21. Amend Section 11341 to read as follows:

§ 11341. Modifications of Cease and Desist Orders Issued by the Executive Director.

The Executive Director may modify a cease and desist order that he or she has issued for good cause, but he or she shall not do so in a manner that extends the 90-day expiration period provided for in Section 66637 of the Government Code unless a respondent stipulates in writing to the extension. The Executive Director may, however, issue consecutive cease and desist orders for a persisting violation or a persisting threatened violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections ~~66638, 66637, and 66641.5-66641.6~~, Government Code; and Section 29601, Public Resources Code.

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22. Amend Section 11342 to read as follows:

§ 11342. Modification of Cease and Desist Orders Issued by the Commission.

The Executive Director may modify a cease and desist order issued by the Commission for good cause if the modification would not be a material alteration of the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and ~~66641.5-66641.6~~, Government Code; and Section 29601, Public Resources Code.

23. Amend Section 11343 to read as follows:

§ 11343. Appeal from the Modification of a Commission Cease and Desist Order.

(a) A person who has been personally served with a Commission cease and desist order or to whom the Commission has mailed by certified mail a cease and desist order and to whom the order is directed may appeal to the Commission any modification of the order by the Executive Director by filing a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is ~~complete and~~ filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals ~~to~~ of modifications of a cease and desist order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and ~~66641.5-66641.6~~, Government Code; and Section 29601, Public Resources Code.

24. Amend Section 11350 to read as follows:

§ 11350. Contents of Permit Revocation Orders.

(a) Commission permit revocation orders shall be signed by the Executive Director and shall contain the following:

(1) the names of the person or persons who have violated a term or condition of a Commission permit or a Commission cease and desist order or who have misstated any information on a permit application or at a public hearing;

(2) an identification of the term or condition of a permit or a cease and desist order that was violated, or the information that was misstated on the permit application;

(3) the effective date of the order;

(4) the work and uses that are no longer authorized and the date by which any corrective actions or termination of uses must occur;

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(5) any terms, conditions, or other provisions that the Commission may determine that, if complied with, could avoid revocation of the permit;

(6) written findings that (A) explain the decision to issue the permit revocation order and (B) provide the factual and legal basis for the issuance of the order;

(7) notice that an aggrieved party can file with the superior court a petition for a writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) A permit revocation order can be combined with a cease and desist order and/or a an order setting administrative civil penalty order liability so long as the combined order contains all the information required by these regulations for ~~both~~ each types of orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641(d), Government Code; ~~and~~ Sections 29600-29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

25. Amend Section 11351 to read as follows:

§ 11351. Modification of Permit Revocation Orders.

The Executive Director may modify a permit revocation order for good cause if the modification would not materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641(d), Government Code; and Sections 29600-29601, Public Resources Code.

26. Amend Section 11352 to read as follows:

§ 11352. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a permit revocation order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of the personal service or mailing by certified mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is ~~complete and~~ filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals ~~to~~ of modifications of a permit revocation order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641(d), Government Code; and Sections 29600-29601, Public Resources Code.

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27. Amend Section 11360 to read as follows:

§ 11360. Preparation and Execution of Commission Cease and Desist Orders, ~~and Permit Revocation Orders,~~ and Orders Setting Administrative Civil Liability.

The Executive Director shall prepare and sign a cease and desist order, ~~or a permit revocation order,~~ or an order setting administrative civil liability authorized by the Commission no later than the fifth (5th) working day following approval.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections ~~66637-66642~~ 66638, 66641(d), 66641.5(e), and 66641.6, Government Code; and Sections 29600-29601 and 29610-29611, Public Resources Code.

28. Amend Section 11361 to read as follows:

§ 11361. Issuance.

“Issuance” of a cease and desist order, a permit revocation order, ~~a~~ an order setting administrative civil penalty order liability, or of any modification of such orders, is complete when the Executive Director executes the original ~~copies~~ copy of the order or modification and ~~they are~~ it is stamped “Issued BCDC” with the date.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638, 66641(d), 66641.5(e), and 66641.6, Government Code; and Sections 29600-~~and~~29601 and 29610-29611, Public Resources Code.

29. Amend Section 11362 to read as follows:

§ 11362. Service of Copies.

(a) Persons to Whom the Order or Modification is Issued. The Executive Director shall cause to be personally served or mailed by certified mail an original copy of a cease and desist order, a permit revocation order, and of any modifications of such orders to each person to whom the order or modification is being issued and the owner of the property on which any violation addressed by the order occurred no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director may serve any such order or order modification by email. The Executive Director shall cause to be personally served or mail by registered mail ~~a~~ an order setting administrative civil penalty order liability or modification to such order to each person to whom the order is being issued no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director may serve any such order or modification by email.

(b) Other Interested Persons. The Executive Director shall personally serve on or shall mail by ~~regular~~ certified mail a copy of a cease and desist order or a permit revocation order authorized by the Commission and of any modification of such an order to each person who appeared at the hearing and submitted a written request for a copy ~~as soon as possible after the Commission authorized the order or modification~~ no later than the second working day following the date of issuance, except that with the written consent of the party to be served,

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the Executive Director may serve any such order or order modification by email. ~~(For civil penalty orders, see subdivision (d) of Government Code Section 66641.6.)~~ The Executive Director shall cause to be personally served or mail by registered mail an order setting administrative civil liability or modification to such order to each person who appeared at the hearing and submitted a written request for a copy, except that with the consent of the party to be served, the Executive Director may serve any such order or order modification by email. In addition, the Executive Director shall post on the Commission's website a copy of a cease and desist order, permit revocation order, or an order setting administrative civil liability, or any modification of such orders no later than the second working day following issuance.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638, 66641(d), 66641.5(e), and 66641.6, Government Code; and Sections ~~29600- and 29601~~ and 29610-29611, Public Resources Code.

30. Amend Section 11370 to read as follows:

§ 11370. Enforcement Record.

The record of an enforcement proceeding shall consist of

- (a) the violation report, including all documents referred to in the report;
- (b) any complaint for administrative civil penalties liability;
- (c) all timely filed statement of defense form(s), including all documents submitted therewith;
- (d) all untimely filed statement of defense forms that have nevertheless been admitted into evidence;
- (e) the ~~staff~~ Executive Director's recommended enforcement decision, including all documents and any other evidence referred to or included in the recommendation,
- (f) minutes or a verbatim transcript of all enforcement committee and Commission enforcement hearings and deliberations, provided, that if ~~eyewitness or expert~~ any oral testimony or any cross-examination and direct examination of a person whose declaration under penalty of perjury has become part of the enforcement record is allowed at the enforcement hearing, a verbatim transcript of such testimony shall also be included;
- (g) all evidence submitted but rejected because it was not filed in a timely manner or violated Section 11328, with a notation that it was rejected and is included in the record only so that a reviewing court will know what evidence was rejected;
- (h) any enforcement committee's or hearing officer's recommended enforcement decision,
- (i) any order that the Commission issues,
- ~~(j) all other materials maintained in the Commission's file for the enforcement matter,~~
- ~~(k)~~ (j) such other permit or other Commission files as have explicitly been made a part of the record,

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- ~~(k)~~ (k) the McAteer-Petris Act, if relevant to any of the issues raised in the proceeding,
- ~~(l)~~ (l) the San Francisco Bay Plan, if relevant to any of the issues raised in the proceeding,
- ~~(m)~~ (m) the Suisun Marsh Preservation Act, if relevant to any of the issues raised in the proceeding,
- ~~(n)~~ (n) the Suisun Marsh Protection Plan, if relevant to any of the issues raised in the proceeding,
- ~~(o)~~ (o) the Suisun Marsh Local Protection Program, if relevant to any of the issues raised in the proceeding, and
- ~~(p)~~ (p) the Commission's regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section ~~29210(e)~~29201(e), Public Resources Code. Reference: Sections ~~66639-66638~~, 66640, 66641, 66641.5(e), 66641.6, and 66641.7, Government Code; and Sections 29600-~~and~~ 29601 and 29610-29611, Public Resources Code.

31. Amend Section 11380 to read as follows:

§ 11380. Content of Complaint for Administrative ~~Imposition of Civil Penalties~~ Liability.

The complaint shall follow the ~~same format as required for a Violation Report~~ and contain the information set out in Appendix H to these regulations. The complaint shall identify the violations for which administrative civil penalties are proposed and include:

- (a) a list or table of all alleged violations for which staff is proposing a penalty;
- (b) the total amount of proposed administrative civil penalties; and
- (c) a statement of the applicable factors set forth in Government Code section 66641.9 that the Executive Director considered, consistent with the Administrative Civil Penalty Policy in Appendix O of these regulations, in determining the total amount of the proposed administrative civil penalties;

Note: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6, and 66641.9, Government Code; and Sections 29601 and 29610-29611, Public Resources Code.

32. Amend Section 11381 to read as follows:

§ 11381. Commission Hearing on Complaint for Administrative ~~Imposition of Civil Penalties~~ Liability.

(a) The Commission shall comply with the requirements of Cal. Govt. Code Section 66641.6(b) by either: (1) hearing the matter itself within 60 days of the service of the complaint; or (2) by having the enforcement committee hold a hearing within 60 days of the service of the complaint. With the written consent of the respondent(s) to whom a complaint

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is issued, the Executive Director may extend the 60-day time limit for a hearing on the complaint under Government Code section 66641.6(b).

(b) The Executive Director shall determine whether to refer a complaint for ~~the~~ administrative ~~imposition of civil penalties~~ liability to the Commission or to the enforcement committee.

(c) When the Executive Director determines whether to refer a complaint for ~~civil penalties~~ to the Commission or to the enforcement committee, he or she shall consider the following factors:

(1) the time that it would take the Commission or enforcement committee to complete consideration of the complaint,

(2) whether the Executive Director has issued a cease and desist order for the violation or violations alleged in the complaint, and whether the Executive has proposed that any order setting administrative civil liability be combined with a Commission cease and desist order and/or a permit revocation order,

~~(2)~~ (3) the relative workloads of the Commission and the enforcement committee at the time,

~~(3)~~ (4) whether the complaint involves any policy issues that should be determined by the Commission initially,

~~(4)~~ (5) whether the Commission or the enforcement committee has already heard any enforcement matter that is related to the complaint, and

~~(5)~~ (6) any request by the Commission that it hear the matter directly.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e) and 66641.6, Government Code; and Sections 29601 and 29610-29611, Public Resources Code.

33. Amend Section 11382 to read as follows:

§ 11382. Further Procedures for Commission Review of Complaints for ~~the Issuance of Administrative Civil Penalty Orders~~ Liability.

The Commission shall follow the procedures established by Sections ~~11310 and 11321~~ through 11334 and ~~Sections 11361 through 11370~~ of these regulations when it considers a recommended enforcement decisions from either the staff or the enforcement committee or a hearing officer relative to the possible imposition of administrative ~~imposition of civil penalties~~ liability.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6, and 66641.9, Government Code; and Sections 29601 and 29610-29611, Public Resources Code.

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34. Amend Section 11383 to read as follows:

§ 11383. Contents of a Commission ~~Civil Penalty Order~~ Setting Administrative Civil Liability.

(a) A Commission ~~civil penalty order~~ setting administrative civil liability shall be signed by the Executive Director and shall contain the following:

(1) the name(s) of the person(s) required to pay the ~~civil penalty~~ penalties;

(2) the amount of the ~~civil penalty~~ penalties and a statement of the applicable factors set forth in Government Code section 66641.9 that the Commission considered in determining the amount of the civil penalties;

(3) the date by which the ~~civil penalty~~ penalties must be paid in full, or, if the penalties are to be paid in installments, the amount of each installment and the date by which each installment must be paid;

(4) written findings that (1) explain the decision to issue ~~the civil penalty order~~ setting administrative civil liability and (2) provide the factual and legal basis for the issuance of the order, and

(5) notice that a person to whom the Commission issues ~~a civil penalty order~~ setting administrative civil liability may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order.

(b) ~~A civil penalty~~ An order setting administrative civil liability can be combined with a cease and desist order or a permit revocation order so long as the combined order contains all the information required under these regulations for ~~both is contained in the combined orders~~ each type of order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6, and 66641.9, Government Code; and Sections 29601 and 29610-29611, Public Resources Code.

35. Amend Section 11384 to read as follows:

§ 11384. Modification of a Commission ~~Civil Penalty Order~~ Setting Administrative Civil Liability.

The Executive Director may modify ~~a civil penalty~~ an order setting administrative civil liability for good cause if the modification would not alter the total amount of the ~~penalty~~ civil penalties or otherwise materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6, and 66641.9, Government Code; and Sections 29601 and 29610-29611, Public Resources Code.

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36. Amend Section 11385 to read as follows:

§ 11385. Appeal from Modification of a Permit Revocation an Order Setting Administrative Civil Liability.

(a) A person to whom the Commission has issued a ~~civil penalty~~ an order setting administrative civil liability may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of personal service or mailing by registered mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is ~~complete and~~ filed within ten days of the personal service or mailing by registered mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals ~~to~~ of modifications of a ~~civil penalty~~ an order setting administrative civil liability by the Executive Director cannot be filed more than ten days after the personal service or mailing by registered mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6, and 66641.9, Government Code; and Sections 29601 and 29610-29611, Public Resources Code.

37. Amend Section 11386 by adding Article 3 to Chapter 13, Subchapter 2, revising section 11386, and adding new sections 11387 through 11391, all to read as follows:

Article 3. Standardized Fines

§ 11386. ~~Standardized Fines~~ Applicability of Article.

(a) This ~~Section~~ Article shall apply to an enforcement action if the Executive Director determines:

(1) that an alleged violation is one of the types identified in ~~subsection 11386(e)~~ Section 11390;

(2) that the alleged violation has not resulted in significant harm to the Bay's resources or to existing or future public access; and

(3) that the alleged violation can be corrected in a manner consistent with the Commission's laws and policies.

(b) For purposes of this Article, "significant harm to the Bay's resources or to existing or future public access" shall be determined in accordance with Section 11310(g).

(c) If an enforcement action involves both an alleged violation that has not resulted in significant harm to the Bay's resources or to existing or future public access and an alleged violation that has resulted in significant harm to such resources or public access or that is otherwise not subject to resolution under this Article, the Executive Director may commence

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Commission enforcement proceedings for all the alleged violations by following the procedures established by Sections 11321 through 11334 of these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

§ 11387. Notice of Alleged Violation.

~~(b) Except as provided in subsection (g), if~~ If this Section Article applies to an enforcement action, the Executive Director shall mail a written notice to the person(s) believed to be responsible for the alleged violation(s) that contains all of the following information:

~~(1) (a)~~ (a) the nature of the alleged violation(s) and each and every action that must be taken to correct the alleged violation;

~~(2) (b)~~ (b) the fact that if the alleged violation(s) is/are fully corrected within 35 days of the mailing of the notice, the Commission shall not impose any fine or civil penalty; and

~~(3) (c)~~ (c) the fact that if the alleged violation(s) is/are not fully corrected within 35 days of mailing of the notice, the person believed to be responsible for the alleged violation(s) may be subject to the payment of a fine or administrative civil penalty and may resolve ~~the penalty portion of~~ the alleged violation(s) by taking each and every corrective action required by the notice and paying the standardized fine specified in subsections (e), and (f) Section 11390(a) or 11390(b) without having to go through a formal Commission enforcement proceeding pursuant to Sections 11300 through 11385 11321 through 11334, except as provided in subsection (h) section 11390(d).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

§ 11388. Opportunity to Complete Corrective Action without Imposition of a Standardized Fines.

~~(c)-~~ Except as provided in ~~subsection (g) Section 11390(c),~~ if the person believed to be responsible for the alleged violation(s) submits to the Executive Director information demonstrating that the alleged violation(s) have not occurred or that such person has ~~completes~~ completed each and every corrective action specified in the notice pursuant to ~~subsection (b) Section 11387~~ within thirty-five (35) days after the mailing of the notice, the Commission shall not impose any standardized ~~or other~~ fine or civil penalty.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

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§ 11389. Opportunity to Complete Corrective Action with Imposition of a Standardized Fines.

~~(d)~~ Except as provided in ~~subsections (g) and (h)~~ Sections 11390(c) and 11390(d), if the person ~~believed to be~~ responsible for the alleged violation(s) fails to submit to the Executive Director information that such person has ~~complete one or more of the~~ completed each and every corrective actions required by the notice pursuant to ~~subsection (b)~~ Section 11387 within thirty-five (35) days after the date of the mailing of the notice, the responsible person may resolve the ~~penalty portion of the~~ alleged violation(s) by completing each and every corrective action required by the notice sent pursuant to ~~subsection (b)~~ Section 11387 and by paying a fine in the amount provided in ~~subsections (e) and (f)~~ Sections 11390(a) or 11390(b).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

§ 11390. Violations Subject to a Standardized Fines and Schedule of Standardized Fines.

~~(e)~~ (a) The following standardized ~~civil penalties~~ fines shall apply to the following types of alleged violations:

(1) for the failure to return an acknowledged executed Commission permit before commencing the work authorized by the permit, or, for any permit issued to authorize previously commenced or completed work, for failure to return an acknowledged executed permit within the time period stated in the permit:

(A) if the fully executed permit is returned between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387: ~~ONE TWO THOUSAND DOLLARS (\$1,000.00~~2,000.00); or

(B) if the fully executed permit is returned more than sixty-five (65) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387: ~~THREE FIVE THOUSAND DOLLARS (\$3,000.00~~5,000.00) plus ~~ONE FIVE HUNDRED DOLLARS (\$100.00~~500.00) per day from the sixty-fifth (65) day to the date the fully executed permit is received by the staff.

(2) for the failure to submit any document other than an acknowledged executed Commission permit in the form, manner or time required by a Commission permit:

(A) if a required document is submitted between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387: ~~ONE TWO THOUSAND DOLLARS (\$1,000.00~~2,000.00) per document;

(B) if a required document is submitted between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387: ~~THREE FIVE THOUSAND DOLLARS (\$3,000.00~~5,000.00) per document; or

(C) if a required document is submitted more than ninety-five (95) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387: ~~THREE FIVE THOUSAND DOLLARS (\$3,000.00~~5,000.00) for each document plus ~~ONE FIVE HUNDRED DOLLARS~~

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(\$~~100.00~~500.00) per day for each document, from the ninety-sixth (96th) day to the date the document is received by the staff.

(D) If a document submitted pursuant to this subsection (a)(2) is required by a Commission permit to be approved by or on behalf of the Commission, the number of days after the date of mailing of the notice required by Section 11387 shall be tolled for any days the document is under review by Commission staff.

(3) for the failure to comply with any condition required by a Commission permit not covered by subsections ~~(e)(1)~~ (a)(1) and ~~(e)(2)~~(a)(2):

(A) if corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387: ~~ONE TWO THOUSAND DOLLARS~~ (\$~~1,000.00~~2,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387: ~~THREE FIVE THOUSAND DOLLARS~~ (\$~~3,000.00~~5,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety-five (95) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387: ~~THREE FIVE THOUSAND DOLLARS~~ (\$~~3,000.00~~5,000.00) for each violation of each separate permit requirement, plus ~~ONE FIVE HUNDRED DOLLARS~~ (\$~~100.00~~500.00) per day for each violation, from the ninety-sixth (96th) day to the date violation is corrected or the required improvements are provided.

(D) If to correct a violation pursuant to this subsection (a)(3) any condition of a Commission permit requires a plan, report, or other document to be approved by or on behalf of the Commission, the number of days after the date of mailing of the notice required by Section 11387 shall be tolled for any days the plan, report, or other document is under review by Commission staff.

(4) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a major or an administrative permit:

(A) if either a ~~filed~~ complete and properly executed application accompanied by a check or money order for the applicable application fee is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387 or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387: TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a ~~filed~~ complete and properly executed application accompanied by a check or money order for the applicable application fee is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387 or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of

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the mailing of the notice required by ~~subsection (b)~~ Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00);

(C) if a ~~filable~~ complete and properly executed application accompanied by a check or money order for the applicable application fee is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: FIVE THOUSAND DOLLARS (\$5,000.00) plus ~~ONE FIVE HUNDRED DOLLARS (\$100.00)~~ 500.00 per day from the ninety-sixth (96th) day to the date a ~~permit is obtained~~ the fully complete and properly executed application accompanied by a check or money order for the applicable application fee is submitted or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit or an abbreviated regionwide permit:

(A) if either a ~~filable application~~ complete notice of intent to proceed under a regionwide permit or abbreviated regionwide permit is submitted between thirty-six (36) and sixty-five (65) days and a ~~permit is obtained~~ the Executive Director approves the notice of intent to proceed within one hundred and fifty-five (155) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387 or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387: ~~ONE TWO THOUSAND DOLLARS (\$1,000.00)~~ 2,000.00;

(B) if either a ~~filable application~~ complete notice of intent to proceed under a regionwide permit or an abbreviated regionwide permit is submitted between sixty-six (66) and ninety-five (95) days and a ~~permit is obtained~~ the Executive Director approves the notice of intent to proceed within one hundred and eighty-five (185) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387 or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387: ~~TWO FOUR THOUSAND DOLLARS (\$2,000.00)~~ 4,000.00;

(C) if a ~~filable application~~ complete notice of intent to proceed under a regionwide permit or an abbreviated regionwide permit is submitted more than ninety-five (95) days after the date of the mailing of the notice required by ~~subsection (b)~~ Section 11387 or the unauthorized activity is completely corrected within the same time limits: ~~TWO FOUR THOUSAND DOLLARS (\$2,000.00)~~ 4,000.00 plus ~~ONE FIVE HUNDRED DOLLARS (\$100.00)~~ 500.00 per day from the ninety-sixth (96th) day to the date a ~~permit is obtained~~ the complete notice of intent to proceed is submitted or the unauthorized activity is completely corrected.

(6) for the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission's laws and policies ~~but is an activity similar in size and scope to the activities listed in Sections 10601(a) through 10601(e)~~:

(A) if the violation is corrected and the area restored to its prior status between thirty-six (36) and sixty-five (65) days after the mailing of the notice required by ~~subsection (b)~~ Section 11387: THREE THOUSAND DOLLARS (\$3,000.00);

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(B) if the violation is corrected and the area restored to its prior status between sixty-six (66) and ninety-five (95) days after the mailing of the notice required by ~~subsection (b)~~ Section 11387: EIGHT THOUSAND DOLLARS (\$8,000.00);

(C) if the violation is corrected and the area returned to its prior status more than ~~ninety-five~~ 95 (95) days after the mailing of the notice required by ~~subsection (b)~~ Section 11387: EIGHT THOUSAND DOLLARS (\$8,000.00) plus ~~ONE FIVE HUNDRED DOLLARS (\$100.00)~~ 500.00 per day to the date the violation is completely corrected.

~~(f) (b)~~ A person ~~believed to be~~ responsible for any alleged violation must pay double the amount listed in ~~subsection (e)~~ subsection (a) to resolve the civil penalty portion of the alleged violation if that person has previously paid or has been assessed but has failed to pay any standardized fine pursuant to ~~section 11386~~ subsection (a) and Section 11391 within the five years prior to resolution of the alleged violation.

~~(g) (c)~~ If a violation resolved pursuant to ~~subsection (e)~~ Section 11388 is repeated by the same person within five years of the resolution of the prior violation, ~~subsections (c), (e), and (f)~~ Sections 11388, 11390(a), and 11390(b) shall not apply. Instead, the person ~~believed to be~~ responsible for the subsequent ~~alleged~~ violation may resolve the civil penalty portion of the subsequent alleged violation by paying ~~ONE TWO HUNDRED DOLLARS (\$200.00)~~ ONE TWO HUNDRED DOLLARS (\$200.00) per day for each day the subsequent alleged violation occurs or persists after the date of the mailing of the notice required by Section 11387.

~~(h) (d)~~ If the person responsible for the alleged violation does not complete all the required corrective actions and ~~pay the appropriate standardized civil penalties within the time limits specified by the Executive Director or, if no time limit is specified, within 125 days of the notice mailed pursuant to~~ subsection (b) Section 11387 or does not pay the amount of standardized fines assessed in accordance with Section 11390 when payment is due under Section 11391(c) or (d), the Executive Director may commence Commission enforcement proceedings in accordance with ~~Sections 11300 through 11385~~ 11321 through 11334. If the Executive Director determines that ~~an alleged violator~~ the person responsible for the violation has not made a good-faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for ~~settlement~~ resolution of the violation using the standardized fine process ~~thirty five (35) days after~~ by mailing a notice stating that the process will is no longer be available. After mailing such notice, the Executive Director may commence Commission enforcement proceedings in accordance with Sections 11321 through 11334 to resolve the violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

§ 11391. Notice of Liability for Standardized Fines and Opportunity to Appeal or to Resolve Violation through Commission Enforcement Proceedings.

~~(i) (a)~~ After the violation has been completely resolved, the Commission staff shall notify the person responsible for the violation by first class mail or email of the amount of standardized

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fines assessed in accordance with Section 11390. The notice shall state that if any person subject to the standardized civil penalties fines listed in subsections (e), (f), and (g) believes that the amount of standardized fines is inappropriate or was not properly determined in accordance Section 11390, that person can appeal the proposed amount of the penalty fines to the Executive Director and the Chair, by submitting to the Executive Director within 21 days of the date of the notice a written statement that the person is appealing and the reasons for the appeal. ~~who~~ The Commission staff may submit to the Executive Director a response to the appeal within 14 days after receipt thereof. The Executive Director and the Chair can reduce the amount of the standardized civil penalty fines to an amount that they believe is appropriate and can establish a schedule for the payment of the standardized fines in installments.

~~(j)~~(b) If any person subject to the standardized civil penalties fines listed in subsections (e), (f), and (g) Sections 11390(a) or 11390(b) believes that the 35-day time limit for resolution without a standardized fine established pursuant to subsection (h) Sections 11387 and 11388 is inappropriate not feasible, that person may appeal the time limit to the Executive Director and the Chair, ~~who~~ by submitting to the Executive Director within 35-days of the notice mailed pursuant to Section 11387 a written statement that the person is appealing the 35-day time limit, the reasons for the appeal, and proposing an alternative date to complete the required corrective action. The Executive Director and the Chair can modify the 35-day time limit and the time periods for accrual of standardized fines set forth in Section 11390(a) for the violation as they believe appropriate.

(c) If any person subject to standardized fines does not appeal the amount of such fines within 21 days of receiving notice from Commission staff under subsection (a), the full amount of such fines shall be due and payable by cashier's check thirty (30) days after the date of the notice provided under subsection (a).

(d) If any person subject to standardized fines appeals the amount of such fines within 21 days of receiving notice from Commission staff under subsection (a), any fines the Executive Director and Chair determine to be appropriate shall be due and payable by cashier's check by the date or dates specified in their decision on the appeal.

~~(k)~~ (e) Any person receiving a notice under Section 11387 ~~believed to be responsible for an alleged violation is entitled to a formal~~ may waive the opportunity to resolve the violation under this Article by submitting a letter to the Executive Director indicating such a waiver and requesting that the violation be resolved through Commission enforcement hearing proceedings according to in accordance with ~~sections 11300 through 11385~~ Sections 11321 through 11334 if that person believes ~~it is~~ such proceedings are necessary to fairly determine liability for the violation, the appropriate remedy, or the appropriate fine or administrative civil penalty amount. A waiver of the opportunity to resolve a violation under this Article and request that the violation be resolved through Commission enforcement proceedings may be submitted at any time after receipt of a notice under Section 11387 but no later than: (1) twenty one (21) days after the date of the notice provided by Commission staff under subsection 11391(a) of amount of standardized fines assessed, if the person receiving such notice elects not to appeal the amount of such fines to the Executive Director and Chair; or (2) fourteen (14) days after the date of the decision of the Executive Director and Chair on any

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appeal of the amount of standardized fines. If a letter waiving the opportunity to resolve a violation under this Article and requesting that the violation be resolved through Commission enforcement proceedings is submitted after the Commission staff has provided notice under subsection 11391(a) of the amount of standardized fines assessed or after the decision of the Executive Director and Chair on any appeal of the amount of standardized fines, no such fines shall be due pursuant to that notice or that decision, and the appropriate amount of fines or administrative civil penalties shall be determined through Commission enforcement proceedings.

(f) If a person subject to standardized fines fails to pay such fines when due under subsection (c) or (d), as applicable, and if such person has not submitted a letter waiving the opportunity to resolve a violation under this Article and requesting that the violation be resolved through Commission enforcement proceedings under subsection (d), the Executive Director may, at his or her sole discretion, either: (1) refer the matter to the Attorney General to file a civil action to recover the amount of standardized fines due under subsection (b) or (c), as applicable; or (2) commence Commission enforcement proceedings in accordance with Sections 11321 through 11334 to resolve the violation. If the Executive Director refers the matter to the Attorney General, in any civil action to recover the amount of standardized fines due under (b) or (c), as applicable, the person subject to such fines may not contest his or her liability for the violation or that the violation occurred, and the court shall determine only whether the amount of standardized civil penalties was properly calculated in accordance with Section 11390.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections ~~66632(f)~~ and 66641.5(e), Government Code; and Sections ~~29201(e)~~ and 29610, Public Resources Code.