

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510 San Francisco, California 94105 Tel. 415 352 3600 Fax 415 352 3606
State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Agenda Item 5

October 8, 2021

TO: Enforcement Committee Members

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

**SUBJECT: Third Quarter Enforcement Report
(For consideration October 14, 2021)**

Summary

This report summarizes the progress of enforcement case resolution in the third quarter of 2021. It also summarizes actions undertaken by the BCDC staff since the last Enforcement Committee meeting held on June 23, 2021.

During the third quarter, staff closed 55 cases, opened 37 cases, and issued 7 after-the-fact permits. Staff received the final \$44,093 civil penalty payment consistent with the Lind Tug and Barge Inc settlement agreement for a total recovery of \$132,279 for unauthorized oyster shell mining and the final \$5,000 of the civil penalty owed by Salt River Construction under CCD2019.001.00. On September 8, 2021, following a unanimous vote by the Commission on September 2, 2021, the Executive Director signed a settlement agreement with the Richardson's Bay Regional Agency Board Director resolving enforcement case ER2010.038. The total balance of the Bay Clean Up and Abatement fund on September 30, 2021, was \$842,736.

In September, Staff held a joint meeting with representatives from the Cities of Alameda and Oakland, the Regional Water Quality Control Board, the United States Coast Guard and the United States Environmental Protection Agency to discuss a coordinated effort to address concerns raised about the Oakland Estuary to prevent a recurrence of the level of environmental pollution that led to the \$9.1 million cleanup as part of the [Oakland Estuary Enhancement Project](#) which began in August 2013 and was completed August 2014.

Enforcement Definitions

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

Active cases are the cases actively being pursued.

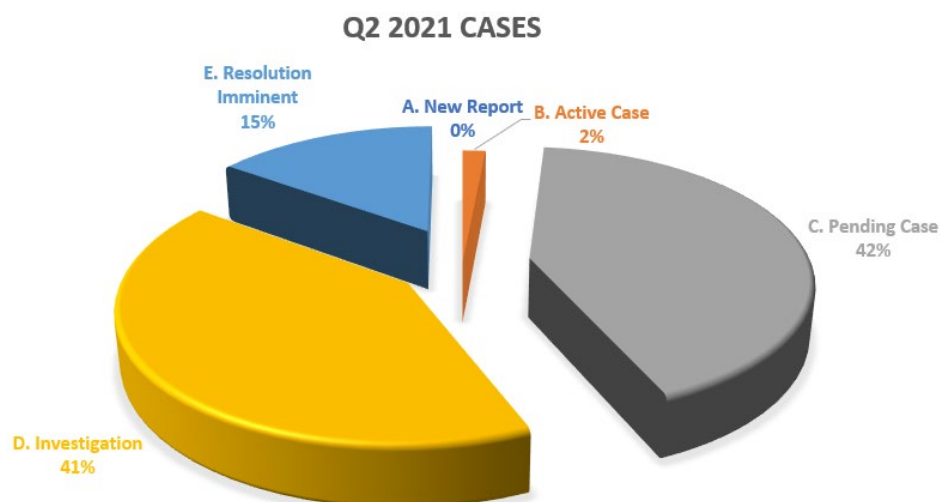
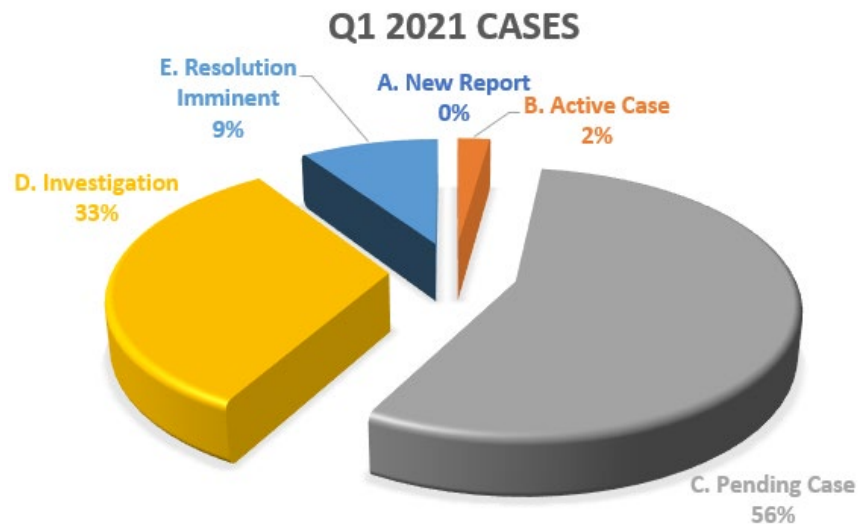
Pending cases are cases within the case management process that have not yet reached the "resolution" milestone. These milestones are defined to include assignment, investigation, negotiation. Cases are pending for various reasons, including but not limited to pending permit applications, pending monitoring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

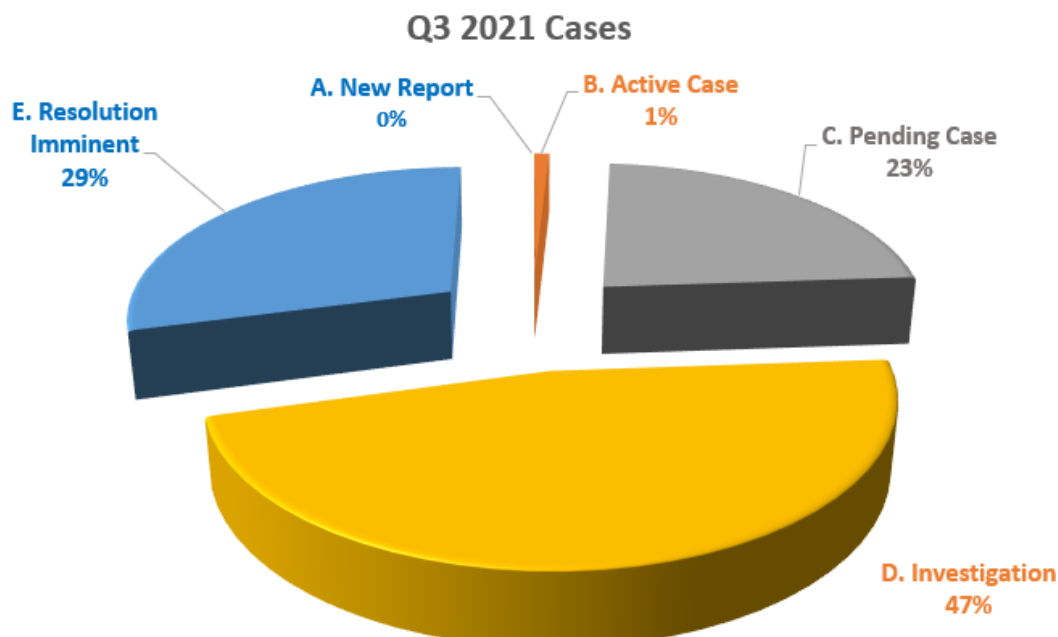


Old cases are all cases opened in 2016 or earlier, before the Enforcement Committee began regularly meeting and hearing cases, and that have been previously defined as the “backlog”. The **Oldest cases** are a subset of old cases and this term is used to describe cases opened in 2000 or before.

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

Actions taken





1. The caseload at the end of the third quarter of 2021 was 113 a 21 case decrease from the caseload on June 30, 2021. Thirty-seven (37) cases were opened this quarter, which is 3 more than the 34 cases that were opened during the same period last year. As more cases progressed into the pending case and investigation phases, one case is in active case phase. The return of the staff member previously on temporary reassignment has had a positive impact on the case resolution rate.
2. Fifty-five cases were closed in the third quarter of 2021, three more than the fifty-two cases closed in the same period in 2020. Sixteen of those cases were closed without any violation having been found. In thirty-two cases were resolved after respondents produced, or enforcement staff independently obtained documentation proving that the violations had been resolved and 5 cases were duplicative reports of existing cases. Two cases were placed in the Compliance Monitoring status code. In one case the final civil penalty was received pursuant to cease and desist order CCD2019.001.00 while in the other case the Richardson's Bay Regional Agency signed a settlement agreement with the Commission.
3. The process of integrating simplified case status codes onto the enforcement tracking system is complete. A review of cases to assure correct updated status code is ongoing.
4. Of the fifteen grouped cases, no cases were closed leaving three open grouped cases. The remaining cases have specific information missing that has been requested from the respondents to enable case resolution.

5. There have been ongoing discussions to resolve the oldest cases, with periodic updates to the Enforcement Committee on the progress being made. The Committee received an update about the progress in the resolution of the oldest cases on October 14, 2021. The subsequent update will be during an Enforcement Committee meeting on or about December 2021.
6. In September Staff, in collaboration with the State Lands Commission, with financial commitment from the Regional Water Quality Control Board and in-kind support from the Contra Costa Sheriff's Marine Patrol Unit and the East Bay Regional Park District, submitted a letter of intent to the National Marine Fisheries Service to apply for a one hundred and ten thousand grant (\$110,000) NOAA Marine Debris Removal Program Grant for the removal of the Tug Polaris. The Polaris, is an abandoned commercial derelict vessel run aground in 2013 Contra Costa County in Carquinez Strait between Lone Tree Point Park and the Rodeo Marina. Local government agencies have been unable to abate the vessel despite different collaborative efforts over the years because of funding constraints. If NOAA invites BCDC to apply for the grant the complete application would be processed in January 2022 and funds would be released in September 2022. Other anticipated project partners will include in-kind support from the California Department of Fish and Wildlife's Oil Spill Response section and the United States Coast Guard Sector San Francisco's Incident Management Division. Information obtained from the California Office of Environmental Health Hazard Assessment was invaluable in providing information on the Justice, Equity, Diversity and Inclusion requirement for the letter of intent.
7. Staff learned that a bill, [AB-1539](#), was introduced by Assembly Member Levine on February 19, 2021, it was re-referred to the Assembly's Transportation Committee on March 25, 2021. The bill is seeking to add a section to the Harbors and Navigation Code requiring a minimum of one million dollars (\$1,000,000) of protection and indemnity insurance for commercial vessels to cover wreck removal costs of the vessel and allowing the imposition of civil penalties for non-compliance. This bill, if passed, would help bridge a recognized gap in funding for the removal of abandoned derelict commercial vessels across the Bay.

Future Agenda Items

8. The Enforcement Committee will hold hearings to assist in the resolution of complex cases including considering proposed cease and desist orders.