

# Enforcement Workplan

Commission Agenda Item 8

Priscilla Njuguna

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# Outline

- **Enforcement Program Changes**
  - *Enforcement Program Goals*
  - *Procedural Improvements*
  - *Case Prioritization Improvements*
- **Enforcement Program BCDC Responses to State Audit**
  - *Regulations*
  - *New Policies*
  - *Procedures*
  - *Technology*
- **Enforcement Case Resolution Update**
- **Next Steps**

# Enforcement Program Changes:

# Enforcement Program Goals

- **Deterrence:** Removing violator incentives obtained by violating BCDC laws, policies and regulations
- **Fairness:** Removing any competitive economic advantage from non-compliance; treating all violators fairly
- **Transparency:** Maintaining a clear, documented enforcement process that is publicly transparent
- **Consistency:** Procedurally treating violations with similar nature and impact to the Bay and public access similarly (will not necessarily equate to the same outcome)

# Enforcement Program Changes: Procedural Improvements

## Action: *Case Management Procedure = Milestones*

- Case progression: Intake → Assignment → Investigation → Resolution → Closure
- Result—real time tracking of case resolution progress

## Action: *Case Review Procedure*

- Result—timely case resolution, effective tracking of progress towards resolution

## Action: *Initial Violator Contact Letters for new case reports*

- Result—timely case resolution, early external state agency coordination

# Enforcement Program Changes: Case Prioritization Improvements

Enforcement Committee directed staff to prioritize cases that represent:

- Significant harm
- Most harm to the bay
- Significant limitations on public access
- Unpermitted but permissible
- Integrate case context
- Grouping cases by respondent
- Pairing cases by respondent

# State Audit Response: Regulations

(1 of 2)

## **Action: *Defined “Significant Harm”***

- Three Enforcement Committee briefings (July, August, September 2019)
- Committee approved proposed definition (October 2019)
- Future comprehensive rulemaking

## **Action: *Permit fee adjustment—Permit fee amendment implemented***

- On April 13, 2020, the Office of Administrative Law approved amendments to the BCDC’s permit application fees regulations. The new fees were adopted by the Commission on January 16, 2020 and will go into effect on July 1, 2020. The permit fees will be adjusted in the future in accordance with the regulations.

# State Audit Response: Regulations

(2 of 2)

## Action: *Citizen's Advisory Committee*

- On January 3, 2019, the Commission considered reconstituting the CAC and determined substantial public participation is provided through BCDC's various Commissioner working groups, Bay Plan amendment processes, Commission public hearings and workshops, design and engineering advisory boards, and Enforcement Committee meetings.
- Virtual Enforcement Committee meetings are enabling broader public participation

# State Audit Response: New Policies

(1 of 2)

## **Action: *Develop Written Penalty Policy***

- Three Enforcement Committee discussions on penalty elements since August 2019
  - initial amounts; economic benefit; deterrence; ability to pay; voluntary resolution; degree of culpability
- Draft policy will be developed for Committee and Commission approval by September 2020
- Future comprehensive rulemaking

## **Action: *Supplemental Environmental Projects Policy***

- Two presentations to the Enforcement Committee since November 2019
- Presentation on evaluation of monetary value of work completed through projects and determining viable projects
- Draft policy will be developed for Committee and Commission approval by December 2020

# State Audit Response: New Policies

(2 of 2)

## **Action: *Criteria for Delineating Violations***

- Four Enforcement Committee discussions on criteria used to combine violations when assessing penalties
- Draft guidance or policy to be developed for Committee and Commission approval by September 2020
- Future comprehensive rulemaking

## **Action: *Structured, Documented, Consistent Enforcement--Defined Enforcement Goals***

- Three Enforcement Committee discussions on 4 goals - *Deterrence, Fairness, Transparency, and Consistency*
- Bimonthly Enforcement Committee meetings since July 2019
- Commission updates every two months to show progress in meeting goals

# State Audit Response: Procedures--Definitions

**Caseload:** The sum of all cases, including active cases, pending cases, and old cases.

**Active cases:** The cases actively being pursued.

**Pending cases:** Cases within the case management process that have not yet been resolved.

**Old cases:** All cases opened in 2016 or earlier.

**Oldest cases:** A subset of old cases; cases opened in 2000 or before.

**Closed cases:** All cases that have been resolved.

# State Audit Response: Procedures

(1 of 3)

## Action: *Case Management Procedures and Milestones*

- Five Enforcement Committee discussions
  - July, August, September, December 2019, and March 2020
- Created draft procedures in January 2020
  - Milestones: *Intake-Assignment-Investigation-Resolution-Closure*
- Stale case prevention--Aged Case Report; Case resolution--Closed Case Report
- Full implementation of Case Management Procedures by Spring 2020—Briefing to Enforcement Committee April 2020; Briefing to Commission May 7

# State Audit Response: Procedures

(2 of 3)

## Action: *Case Review Procedures (Prioritization, Oldest Cases, Case Briefings)*

- Six Enforcement Committee discussions
  - July, August, September, December 2019, and March 2020
- Draft case review procedures with streamlined status codes – January 2020
- Full implementation of case review procedures in Spring 2020  
Briefing to Enforcement Committee April 2020; briefing to Commission May 7

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# State Audit Response: Procedures

(3 of 3)

## Action: *Compliance Improvements*

- Three Enforcement Committee briefings since July 2019
- Wholistic approach to enforcement--Coordinate BCDC enforcement response with other BCDC departments and other resource agencies
- Notices of Completion, Certifications of Compliance, designated respondent representatives, tagging monitoring reports
- Next step--Centralized Compliance Calendar

# State Audit Response: Technology

## Action: Database Improvements

- Streamlined case status codes, database dashboard update, tagged monitoring reports
- Integrated database options vendor presentations
- Electronic signatures
- Virtual Enforcement Committee meetings for additional public participation

# Case Resolution Progress Over Time

## Where we were in April 2019

Opened: 18                      Closed: 7

Total Cases: 244

Active Open: 27

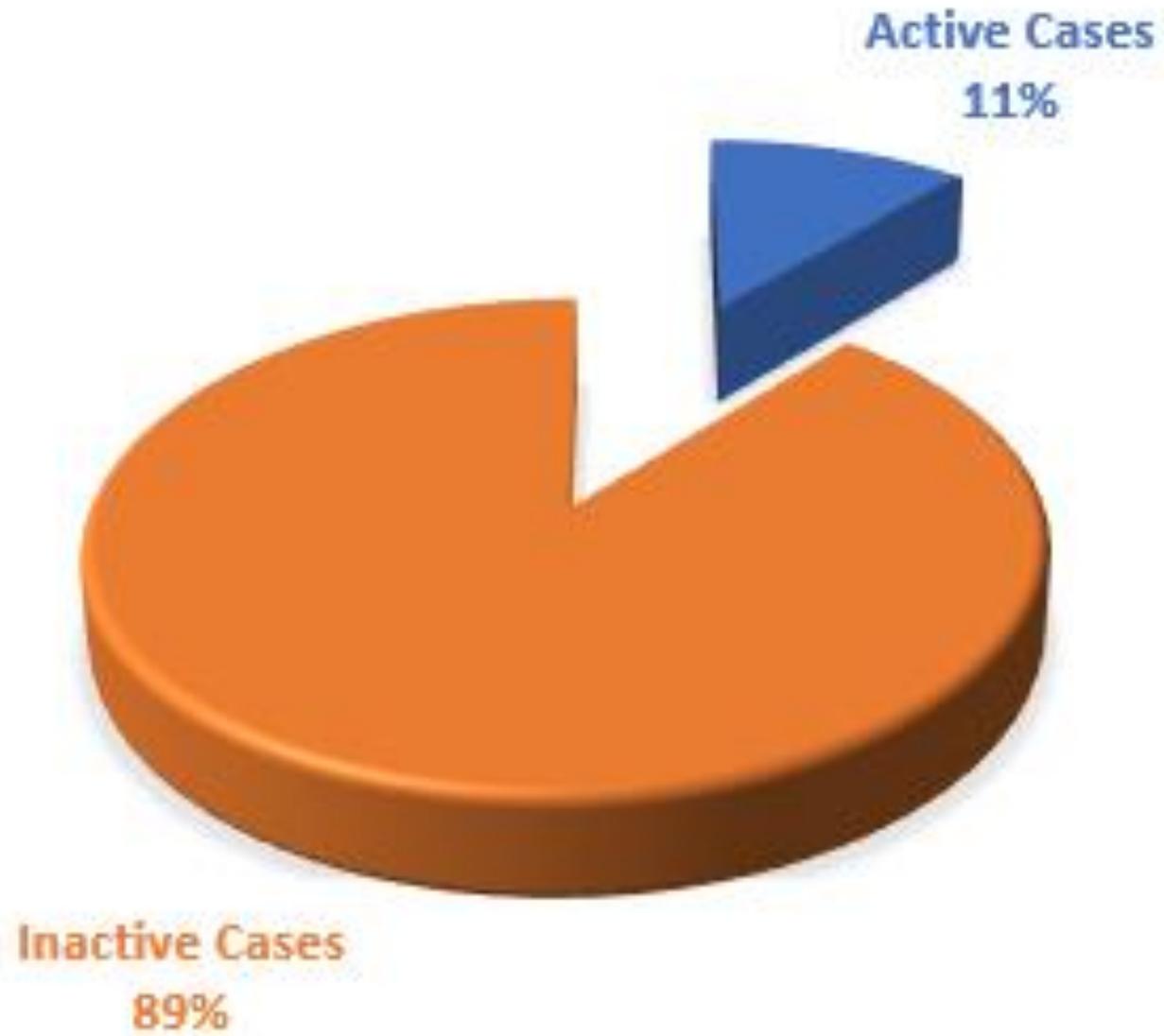
Inactive Open: 217

(included Old cases: 145,              Oldest cases: 9)

(see pg 16 chart)

Cease and Desist Orders presented to Committee: 1

# 2019 CASES



# Case Resolution Progress Over Time

## Where we are in April 2020

Opened: 32                      Closed : 41

Total cases: 271

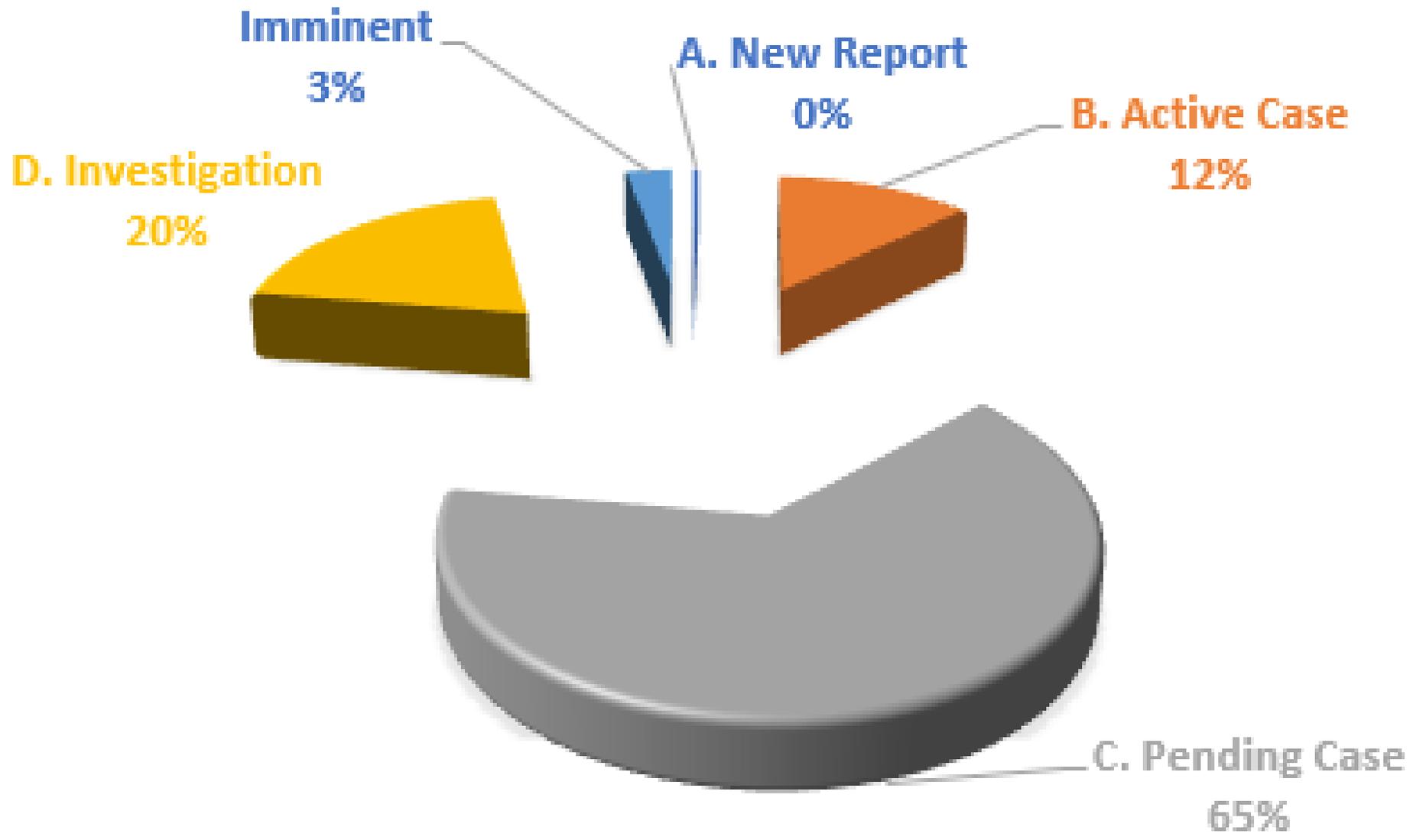
Actively pursuing: 34

Old cases: 139                      Oldest cases: 7

(see pg 18 chart specific case status codes)

Cease and Desist Orders presented to Committee: 1

# E. Resolution 2020 CASES



# Next Steps

Formal policy and guidance development and implementation, integrated database, and comprehensive rulemaking

While resolving cases...

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# Questions?