

**Proposed Amendments to
BCDC Chapter 13 Enforcement Regulations**

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Commission Meeting

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Item 9

§ 11310. Definitions.

The following definitions are applicable to this chapter:

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(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 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.

§ 11320. Staff Investigation and Discovery, and Appointment of a Hearing Officer.

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

(b) At the request of the Executive Director or the chair of the enforcement committee, or on its own initiative, the Commission may appoint a hearing officer to conduct an investigation or hearing, make proposed findings of fact, and recommend to the Commission what action it should take on an enforcement matter. A hearing officer appointed to conduct an enforcement hearing shall proceed in accordance with the procedural requirements of Section 11327 and shall adopt a recommended enforcement decision in accordance with Section 11330.

§ 11310. Definitions.

The following definitions are applicable to this chapter:

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(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.

§ 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;

ADMINISTRATIVE CIVIL PENALTY POLICY

PENALTY CALCULATION METHODOLOGY

PART 1 – Determine the Base Penalty for Each Violation,

Establish a base penalty amount by evaluating:

- (1) the gravity of the violation and the degree of deviation from the requirement at issue:
- (2) whether an adjustment is warranted based on the susceptibility of the violation to removal or resolution. Discretionary downward adjustment by as much as -10% if the violation is susceptible to removal or resolution.

PART II – Adjustments Specific to the Violator

Step 1 – Degree of culpability. Either an upward or downward adjustment of + or -25% based on the violator's degree of culpability.

Step 2 – History of violations. Upward adjustment by as much as +10% where a violator has a history of violations.

Step 3 – Voluntary removal or resolution efforts and efforts to cooperate. Downward or upward adjustment of - or +25% based on the violator's voluntary removal or resolution efforts and cooperation.

Step 4 – Other factors.

- BCDC may seek to recover the costs of investigating and pursuing an enforcement action.
- "Other factors as justice may require."

PART III – Economic Benefit

- Evaluate the economic benefit that a violator derived from its unauthorized action or failure to act.
- The proposed policy states that the penalty amount should be set at a sum that is at least 10% higher than the economic benefit amount to ensure that civil penalties are not construed as a cost of doing business and are assessed at an amount sufficient to deter future violations.
- The proposed policy recognizes that the precise economic benefit amount may be difficult to calculate and describes the costs that should be considered in making this calculation.

PART IV – Addressing ability to pay/ability to continue in business

- Examine any evidence presented by the violator to demonstrate an inability to pay the calculated penalty or an adverse impact on the violator's ability to continue in business.
- The proposed policy makes it clear that such information should be presented by the violator and that this issue will be evaluated only if raised by the violator.
- The proposed policy also sets forth the information that should be presented by the violator to demonstrate an inability to pay or an adverse effect on ability to continue in business.

SUPPLEMENTAL ENVIRONMENTAL PROJECTS

- A Supplemental Environmental Project (SEP) is an environmentally beneficial project that a violator agrees to undertake and complete voluntarily in partial resolution of an enforcement action, which the violator is not otherwise legally required to perform and for which BCDC agrees to offset a portion of the monetary administrative civil penalty that would otherwise apply as a result of the violation(s).
- A SEP may be performed either directly by a violator or by a third-party other than the violator using funds provided by the violator.
- While SEPs may be useful in the resolution of enforcement actions, the funding of SEPs is not a primary goal of BCDC's enforcement program, nor is it necessary that a SEP always be included in the resolution of an enforcement action that assesses a monetary administrative civil penalty.
- The decision to accept a proposed SEP is within BCDC's sole discretion and may depend on the specific facts of a particular case.

SEP Guidelines

- A SEP should have an adequate nexus to BCDC's statutory mandate to protect the Bay's resources and ensure public access to the Bay and its shoreline. There should also be an adequate nexus between the nature or location of the violation(s) at issue and the nature or the location of the SEP.
- BCDC has identified the following four categories of projects which may qualify as a SEP: (1) Removal of Bay fill; (2) Enhancement of the Bay's resources, including habitat restoration; (3) Cleanup or abatement of pollution or contamination; and (4) Enhancement of existing public access to the Bay or its shoreline. A SEP may fall into more than one category.
- The amount of the penalty to be offset by a SEP shall not exceed 25% of the total administrative civil penalty amount that the violator is required to pay for the violation(s).
- A SEP must be enforceable against a violator pursuant to a stipulated order setting administrative civil liability or a settlement agreement.
- BCDC establishes the following preferences for a SEP: (a) a project with a community nexus (*i.e.*, a project located in the same general area in which the violation(s) occurred); and (b) a project benefitting a vulnerable or disadvantaged community that is located in, adjacent to, or in close proximity to the same general area in which the violation(s) occurred.
- The following are examples of projects that are not acceptable as SEPs: (a) projects that would benefit the violator or a property owned or controlled by the violator; (b) cash or in-kind donations to community groups, environmental organizations, state/local/federal entities, or any other third-party that are not directed towards a specific, approved project; (c) cash or in-kind contributions to environmental research, studies, assessments, or monitoring programs that are not directed towards a specific, approved project; and (d) general public educational or public environmental awareness projects.

Requirements for Stipulated Orders or Settlement Agreements Authorizing a SEP.

A stipulated order setting administrative civil liability or a settlement agreement authorizing a SEP shall:

- Accurately and completely describe the SEP, including a project description or scope of work, budget, schedule, and any relevant supporting materials, and provide reliable, measurable, and objective means to verify timely completion.
- Require that all SEP funds must be expended, and the SEP completed, within 36 months of Commission adoption of the order or agreement, unless the Executive Director grants an extension for good cause shown as to why the project has been delayed.
- Require a written acknowledgment by either the violator or third-party performing the SEP that any funds intended for the SEP, including all funds received by any third-party from the violator, shall be spent in accordance with the terms of the order or agreement on the specific, defined project.
- Require the violator or third-party performing the SEP to provide BCDC with a full accounting of project expenditures.
- State that the SEP penalty offset amount that will be satisfied by performing the SEP shall be treated as a suspended administrative civil penalty, and that if the SEP is not fully implemented in accordance with the terms of the order or agreement, BCDC shall be entitled to recover the full amount of the suspended administrative civil penalty, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim project milestone.
- Require periodic reporting on agreed upon SEP performance milestones by the violator or third-party performing the SEP so that BCDC is able to monitor the timely and successful completion of the SEP.
- Require the violator or third-party performing the SEP to provide a final completion report to BCDC certifying completion of the SEP. BCDC shall review the SEP documentation and if it concurs with the certification shall provide the violator with a statement indicating that the SEP has been completed in accordance with the terms of the order or agreement and that any remaining suspended administrative civil penalty amount is waived.

§ 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.

* * *

(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.

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§ 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.

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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.

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

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(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;

~~(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;

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§ 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

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

(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 ~~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.

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§ 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;

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(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.

§ 11332. Commission Action on Recommended Enforcement Decision.

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(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).

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

§ 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) Failure to return an executed Commission permit before commencing the work authorized by the permit:

Permit returned 36-65 days after notice date	ONE TWO THOUSAND DOLLARS (\$1,000.00 <u>2,000.00</u>)
Permit returned more than 65 days after notice date	THREE FIVE THOUSAND DOLLARS (\$3,000.00 <u>5,000.00</u>) plus ONE FIVE HUNDRED DOLLARS (\$100.00 <u>500.00</u>) per day from the 65 th day to the date the permit is received

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

Document submitted 36-65 days after notice date	ONE TWO THOUSAND DOLLARS (\$1,000.00 <u>2,000.00</u>)
Document submitted 66-95 days after notice date	THREE FIVE THOUSAND DOLLARS (\$3,000.00 <u>5,000.00</u>)
Document submitted more than 95 days after the notice date	THREE FIVE THOUSAND DOLLARS (\$3,000.00 <u>5,000.00</u>) plus ONE FIVE HUNDRED DOLLARS (\$100.00 <u>500.00</u>) per day from the 96th day to the date the document is received

(3) Failure to comply with any condition required by a Commission permit not covered by subsections (a)(1) and (a)(2):

If corrected 36-65 days after notice date	ONE TWO THOUSAND DOLLARS (\$1,000.00 <u>2,000.00</u>) for each violation
If corrected 66-95 days after notice date	THREE FIVE THOUSAND DOLLARS (\$3,000.00 <u>5,000.00</u>) for each violation
If corrected more than 95 days after notice date	THREE FIVE THOUSAND DOLLARS (\$3,000.00 <u>5,000.00</u>) plus ONE FIVE HUNDRED DOLLARS (\$100.00 <u>500.00</u>) per day from the 96th day to the date violation is corrected

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

(4) Failure to obtain a permit or a permit amendment prior to undertaking any activity that can be authorized by an administrative permit or an amendment to previously issued permit:

If a complete permit application is submitted or the unauthorized activity is corrected 36-65 days after notice date	TWO THOUSAND DOLLARS (\$2,000.00)
If a complete permit application is submitted or the unauthorized activity is corrected 66-95 days after notice date	FIVE THOUSAND DOLLARS (\$5,000.00)
If a complete permit application is submitted or the unauthorized activity is corrected more than 95 days after notice date	FIVE THOUSAND DOLLARS (\$5,000.00) plus ONE FIVE HUNDRED DOLLARS (\$100.00) FIVE HUNDRED DOLLARS (\$500.00) per day from the 96th day

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

If a complete notice of intent is submitted or the unauthorized activity is corrected 36-65 days after notice date	ONE TWO THOUSAND DOLLARS (\$1,000.00) TWO THOUSAND DOLLARS (\$2,000.00)
If a complete notice of intent is submitted or the unauthorized activity is corrected 66-95 days after notice date	TWO FOUR THOUSAND DOLLARS (\$2,000.00) FOUR THOUSAND DOLLARS (\$4,000.00)
If a complete notice of intent is submitted or the unauthorized activity is corrected more than 95 days after notice date	TWO FOUR THOUSAND DOLLARS (\$2,000.00) FOUR THOUSAND DOLLARS (\$4,000.00) plus ONE FIVE HUNDRED DOLLARS (\$100.00) FIVE HUNDRED DOLLARS (\$500.00) per day from the 96th day

(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:

If the violation is corrected and the area restored to its prior status 36-65 days after notice date	THREE THOUSAND DOLLARS (\$3,000.00)
If the violation is corrected and the area restored to its prior status 66-95 days after notice date	EIGHT THOUSAND DOLLARS (\$8,000.00)
If the violation is corrected and the area returned to its prior status more than 95 days after notice date	EIGHT THOUSAND DOLLARS (\$8,000.00) plus ONE FIVE HUNDRED DOLLARS (\$100.00) FIVE HUNDRED DOLLARS (\$500.00) per day until the violation is corrected

§ 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 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.

~~(i)(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.

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

(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 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.

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