



Enforcement Program



How Violations Are Discovered

- * Permit Monitoring
- * Site Visits
- * Reports from the Public
- * Agency Referrals



2015 / 2016 Overview



- * Total Staff = 3
- * Total Cases = 212
- * Opened = 67 + 33
- * Closed = 13 + 16
- * Issued = 1 Orders
- * Standardized
Fines = \$37,600
- * Civil Penalties = \$0

The Good and the Bad

- * Most Permits Have Violations
- * Effective Enforcement Tools
- * Takes Time to Fix Violations
- * Large Backlog of unresolved cases



Enforcement Committee's Role

What is a Formal Enforcement Proceeding?

- * Violation Report and Complaint for Civil Penalties
- * Statement of Defense
- * Recommended Enforcement Decision by staff (and then by Enforcement Committee)
- * Proposed Cease and Desist and / or Civil Penalty Order
- * Public Hearing

Timing - Formal Enforcement Proceeding

- * Respondent must submit Statement of Defense within 35 days of Issuance of the Violation Report
- * Enforcement Committee or Commission must consider the matter within 60 days of issuance of the Violation Report
- * An Extension of Time May be Sought and Granted

Resolution No. 93-09

- * Chair is authorized to appoint six Commissioners to serve on the Enforcement Committee
- * Three members constitute a quorum
- * Enforcement Committee selects its Chair by majority vote, who shall serve for an agreed upon period of time

Enforcement Committee Hearing

- * Record is Comprised of VR, SOD, Staff Report and Order
- * Both Parties Summarize Position with Emphasis on Matters of Controversy
- * Committee Members May Set Time Limits for Presentations and Ask Questions

Enforcement Committee Hearing

- * Committee Acts on Recommended Enforcement Decision
- * Committee can adopt - with or without change - the Staff Recommended Enforcement Decision
- * Majority Vote Carries Motion

Enforcement Committee Hearing

- * Oral Testimony Generally Not Allowed
- * Rules Governing Admissibility of Late Evidence
- * Ex Parte Contacts Discouraged

Commission Hearing on EC's Recommended Enforcement Decision

- * The Staff Recommended Enforcement Decision to the EC becomes the EC's Recommended Enforcement Decision to the Commission
- * Staff, Respondents and Public may Address the Commission
- * Time Limits may be Set

Commission Hearing on EC's Recommended Enforcement Decision

- * Adopt Recommendation - In Full or In Part
- * Dismiss Recommendation
- * Remand Recommendation to EC or Staff
- * Reject Recommendation and Consider Matter De Novo



Bay Fill Clean-up and Abatement Fund (Section 66647)



Role of Enforcement Program



Protection of the Bay's Natural Resources

Provision of Public Access and Mitigation
(Sections 66605 and 66632.4)

Enforcement Toolbox



- * Standardized Fines – Staff
- * Settlement in lieu of litigation
- * Cease and Desist and Orders - ED and Commission
- * Permit Revocation Orders - ED and Commission
- * Civil Penalty Orders - Commission
- * Litigation - Includes Court-Imposed Penalties, Injunction, Misdemeanor



Administrative Penalties (1987) & Standardized Fines (1993)

[Section 66641.5(e) and Regulation 11386]

Staff's Role

Best Tool - Standardized Fines



Section 66641.5(e) and Regulation 11386

- * Notify Party
- * Outline Steps to Resolve Violation
- * Pre-Established, Non-negotiable Fine Amounts
- * 35-Day “No Fine” Grace Period
- * Approx. Duration – One Year



Appeal of Standardized Fines

(Regulation 11386)

Cease and Desist and Civil Penalty Orders - 1973

Executive Director Order (Section 66637)

- * Ongoing or Imminent Threat to Bay Resources or Public Access
- * 90-Day Duration



Commission Order (Section 66638)

- * Sets a Schedule to Require:
- * Fill Removal
- * Permit Obtainment
- * Permit Compliance



Civil Penalty Order

Section 66641.6

- * \$30,000 / Violation =
Maximum Administrative
Penalty Per Violation
- * Usually Combined With
Cease and Desist Order



Permit Revocation Order

Regulation 11301

- * Authority Not Yet Used
- * Violation of Permit
- * Violation of an Order
- * Inclusion of Inaccurate Information

Cease and Desist and Civil Penalty Orders

- * Two Public Hearings
- * Adopt/Modify/Remand
- * Majority Vote
- * Issue Order
- * Staff Follow Through



Determining Civil Liability

(Section 66641.9)

- * Gravity of the Violation
- * Susceptibility to Resolution
- * Ability to Pay
- * Voluntary Removal Efforts
- * Prior History of Violation
- * Economic Savings
- * Degree of Culpability



Violation of an Order

* Refer for Litigation

(Section 66640)

* \$6,000 / Day =
Maximum Court
Imposed Penalty
(Section 66641)



Legal Actions



- * Complaint for Civil Penalties
(Section 66641.7)
- * \$30,000 = Any Violation
(Section 66641.5)
- * Administrative OR Court Penalties but Not Both for Same Violation
(Section 66641.8)
- * Direct Referrals to the Attorney General for Litigation
- * Injunction
(Section 66640)

Resolution No. 78 – Enforcement Policy

- * Violations of the law are not condoned
- * Unauthorized work should be stopped
- * Consider “after-the-fact” applications on their own merits & as if work has not occurred
- * Staff to advise alleged violator of alternatives under the law
- * Staff should coordinate with local government

Resolution 92-07

- * Commission directs staff to inform all violators that even voluntary resolution of a violation may result in the imposition of civil penalties of at least the mandated minimum of \$10/day for the period during which the violation persisted
- * Such a penalty is appropriate absent issuance of a cease and desist order or other formal enforcement proceeding

Questions