

San Francisco Bay Conservation and Development Commission

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Agenda Item 5

April 7, 2020

TO: Enforcement Committee Members

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

SUBJECT: Enforcement Report

Summary

This report summarizes the progress for enforcement case resolution in the first quarter of 2020. It also summarizes actions undertaken by the BCDC staff since the last Committee meeting held on March 12, 2020.

During this quarter staff closed eight cases, opened nineteen cases, issued one enforcement related after-the-fact permit, and presented one cease and desist order voted on by the Enforcement Committee on March 12. No standardized fines or civil penalties were collected.

Enforcement Definitions

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

Active cases mean the cases actively being pursued.

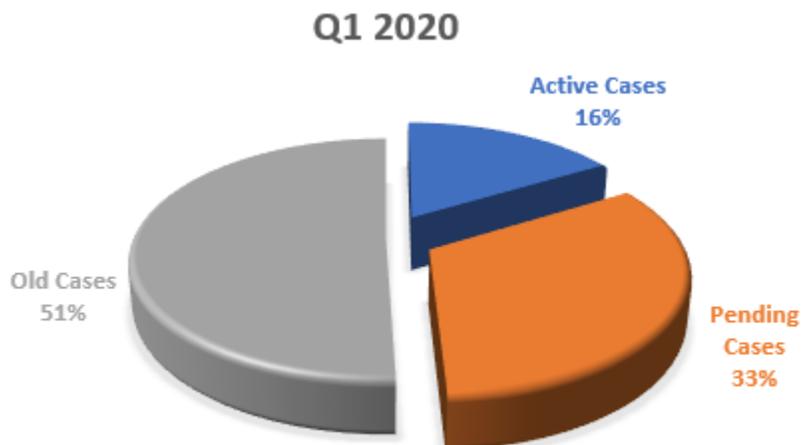
Pending cases mean cases within the case management process that have not yet got to the resolution milestone. These milestones are defined to include assignment, investigation, negotiation. Cases are pending for various reasons including but not limited to pending permit applications, pending monitoring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

Old cases mean all cases opened in 2016 or earlier, before the Enforcement Committee began meeting and hearing cases more regularly, 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 mean all cases that have been resolved. Cases are resolved for various reasons including but not limited to no violation was found, BCDC reached a settlement with the violator, orders were issued, or judgments were rendered after litigation.



Actions taken



1. The caseload at the end of the first quarter 2020 was 287. Nineteen cases were opened this quarter; this represents a seven case increase from the twelve new cases opened in the first quarter of 2019. Forty-seven cases were active cases including seven of the oldest cases.
2. Eight cases were closed in the first quarter of 2020 compared to two cases closed in the first quarter of 2019. Five of those cases were closed without any violation having been found: two cases were outside BCDC jurisdiction, two were duplicates of existing cases, and one case had insufficient information to pursue the alleged violation. Of the other three cases that were closed, two involved respondents that produced documentation proving that the violations had been resolved, and one case involved an alleged violation that was unsupported by the evidence in BCDC's independent investigation.
3. The four-month pilot of the Initial Contact Violation Notice letters ended on March 31, 2020. A total of 8 letters were mailed during this period. One letter resulted in a case being closed within 11 days of the contact letter being mailed after a City inspector verified no violation occurred. Another case was resolved within 22 days of the letter being mailed after a City Manager provided documentation that the violation was resolved. The pilot helped refine the language used in contact letters to increase their effectiveness and highlighted that early integration of other regional regulatory agencies will assist in streamlined case resolution. We have determined that ongoing use of these letters will not only increase timely resolution of new violations but also potentially result in more violation notices being sent.

4. Further refinements to BCDC enforcement program were made following a three-month implementation review of the new procedures that integrated proven processes and documented new steps to build efficiencies. The refinements included simplifying the case status codes, and the criteria used for violation delineation consistent with the direction from the Enforcement Committee on March 12. The process of integrating simplified case status codes onto ArcGIS (the database used to track enforcement cases) is underway and expected to be completed by the end of the second quarter.
5. Of the fifteen grouped cases, one case was closed based on documentation indicating the violation was resolved. One case is linked to a feasibility study for the Bay Trail alignment between the Zampa Bridge and the Martinez-Benicia Bridge, which may delay resolution for as long as one year. Three cases are expected to be closed when site visits can be completed. The other cases have specific information missing that has been requested from the respondent to enable case resolution.
6. On April 9, 2020, the Committee will receive briefings on the management of vessels in Richardson's Bay from staff, the Richardson's Bay Regional Agency, and the City of Sausalito. These briefings will enable the Committee to discuss whether the parties have met the requirements of the enforcement letter mailed December 3, 2019, that included a deadline of March 31, 2020, for documented abatement of derelict vessels and plans, with reasonable timelines, for the transition of all other vessels off Richardson's Bay waters.

Future Agenda Items

7. The Committee will receive a briefing on the uncontested Order for the Union Point Park case in Oakland, California. The Committee will consider time extensions related to the Coronavirus (COVID-19) and the public health requirements that affect the City of Oakland's approach to addressing homeless encampments.