

# San Francisco Bay Conservation and Development Commission

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## Via Email Only

June 2, 2020

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## **SUBJECT: One Year Progress Report on Implementing Enforcement Audit Recommendations**

Dear Bay Area Legislative Delegation:

In May 2019, the State Auditor released its report making significant recommendations to improve the San Francisco Bay Conservation and Development Commission's (BCDC) enforcement program. The Commission and its staff publicly agreed with most of the report's recommendations and the Commission directed staff to use those recommendations as a springboard to improve the enforcement program.

At this one-year anniversary, I am sending you three documents that demonstrate how the Commission and its staff have substantially improved the enforcement program and are continuing to improve it further. Those documents are:



**(1) A staff presentation on progress made by the enforcement program delivered at the Commission's May 7, 2020 meeting.** This briefing included updates on several process improvements including case management procedures, case review procedures, database improvements, and the new "Initial Contact" letters sent to permittees when BCDC receives a report of a violation. The presentation also described new policies that implement several of the Audit's recommendations including addressing penalty calculations and establishing criteria for combining and/or separating violations.

**(2) A table that explains BCDC's actions to date regarding each Audit recommendation.** This shows the actions undertaken by the enforcement program staff, with Enforcement Committee oversight, to implement individual Audit recommendations matched with the specific recommendation associated with it.

**(3) A two-page memo outlining the Enforcement Committee's work during the past year.** The Enforcement Committee meets semi-monthly, and the memo describes the issues discussed at each of the Enforcement Committee meetings held during the past year.

We believe that BCDC has made substantial progress during the past year to improve the enforcement program moving forward. However, while staff has continued to resolve cases, the substantial amount of time spent on program improvements has resulted in less time available for resolving cases. Nevertheless, the reforms implemented have changed how cases are handled and should result in increased compliance with BCDC's laws and policies, resulting in a reduced enforcement caseload.

Staff and Commissioners will continue to move BCDC's enforcement program forward based on the Audit's recommendations. Please do not hesitate to contact me at [larry.goldzband@bcdc.ca.gov](mailto:larry.goldzband@bcdc.ca.gov) with any questions or concerns that you may have.

Sincerely,



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LG/mm



# Enforcement Workplan

Commission Agenda Item 8

Priscilla Njuguna

May 7, 2020

# 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

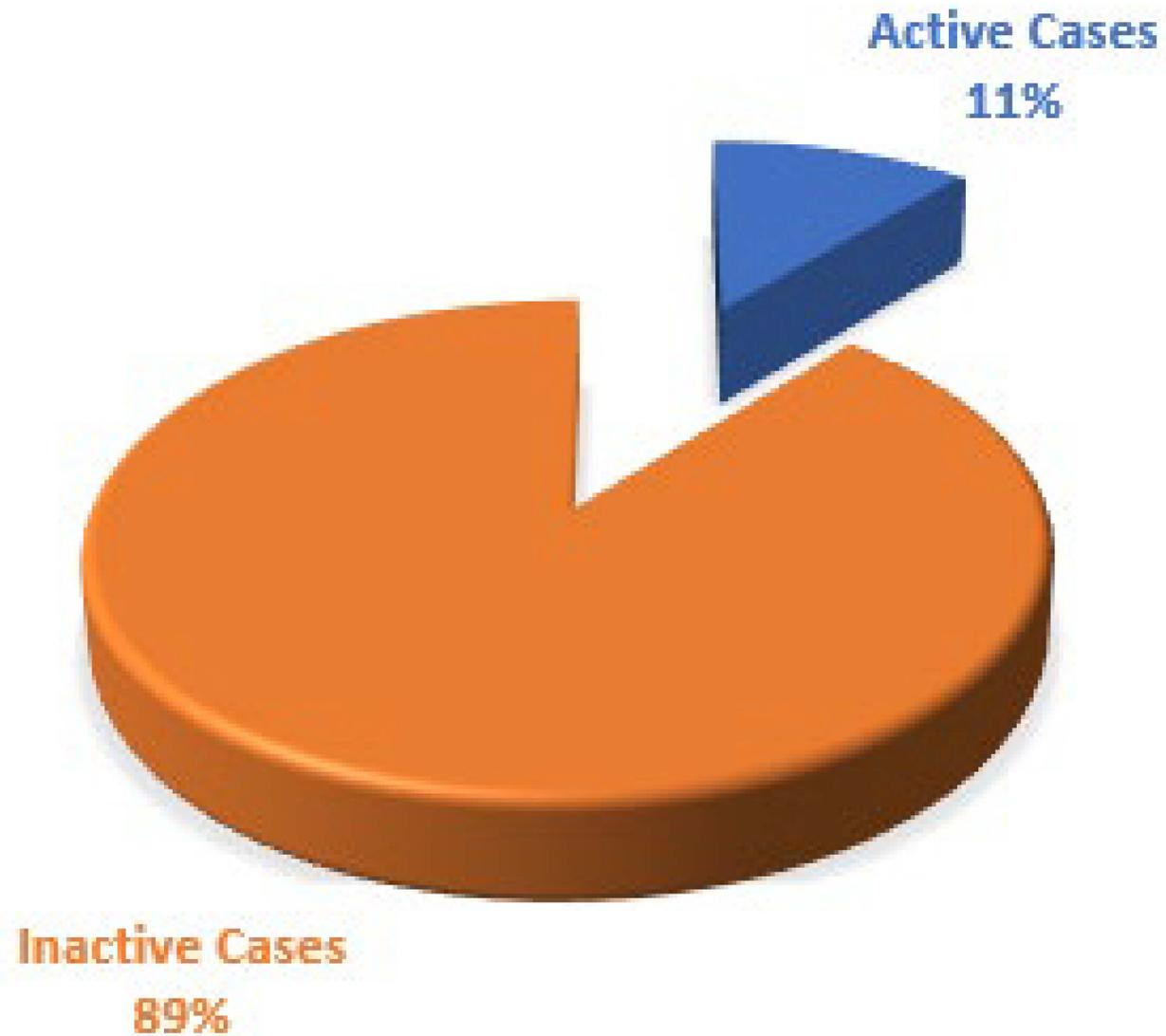
Inactive Open: 217

(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

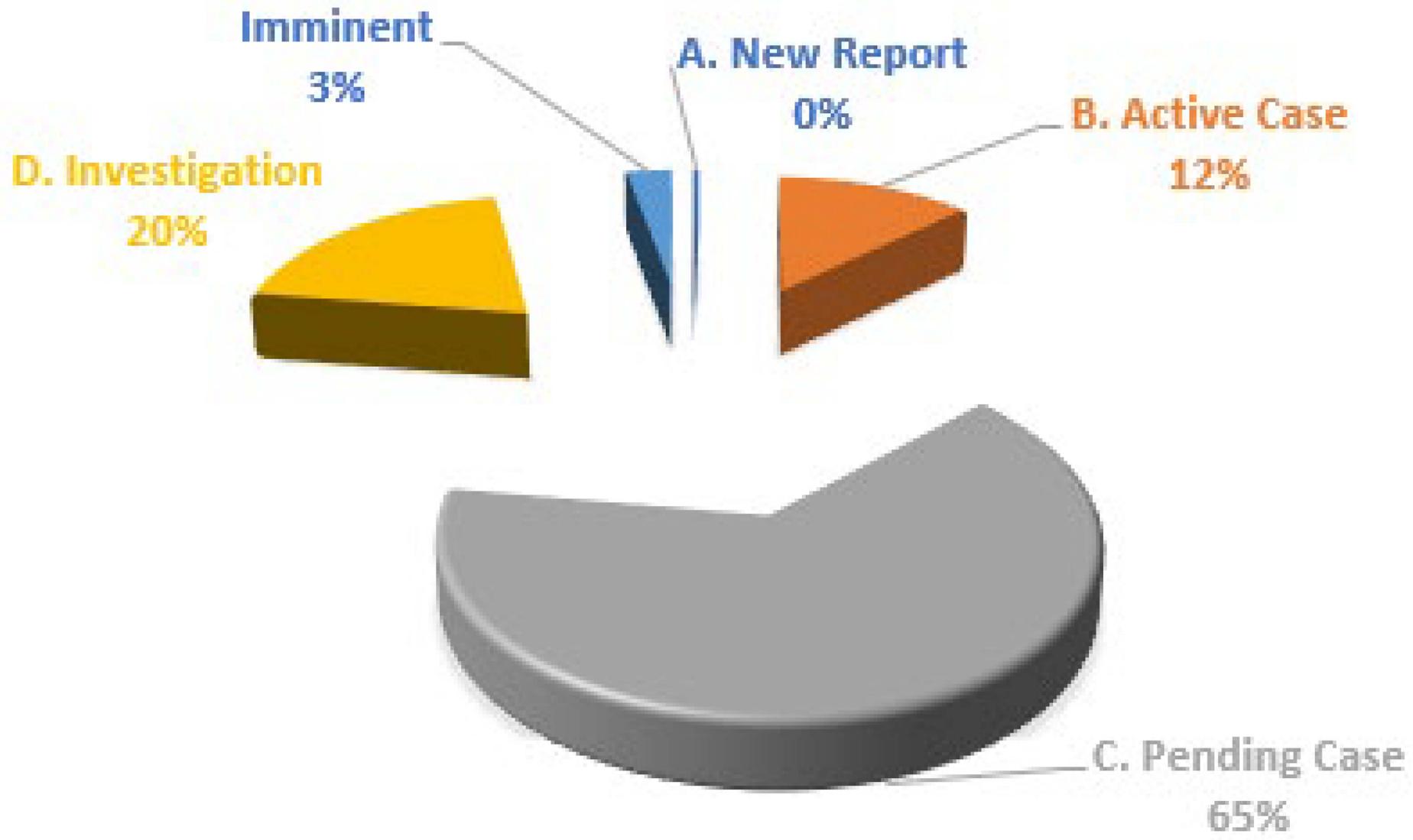
Total cases: 271

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...

# Questions?

# San Francisco Bay Conservation and Development Commission

## Enforcement Audit Response as of May 7, 2020

<i>RECOMMENDATION</i>	<i>RESPONSE</i>	<i>STATUS</i>
<b><i>Promoting Efficiency and Effectiveness</i></b>		
Create and implement regulations to use limited fines to resolve minor violations	Reviewed existing standardized fines regulations and implemented procedural changes to maximize efficiency of § 11386 standardized fine process	Written case review procedures define cases for prompt resolution; in progress, complete by mid-2020
Develop guidance on violations worthy of swift action, those that can be deferred and those that do not warrant action or that can be resolved through fines	Improved prioritization and reviewed existing standardized fines regulations and implemented procedural changes to maximize efficiency of § 11386 standardized fine process	Prioritization in written case review procedures; in progress, complete by mid-2020; addressed by existing regulation section 11386
Update database to ensure that violations within each case can be tracked and identified and include when standardized fines process initiated	Improved the existing geospatial tracking system to include information on standardized fine notices and other case tracking information	Completed in October 2018
Simplify system for prioritizing cases to focus efforts on cases with greatest potential for harm to the Bay	Evaluated existing prioritization framework to determine whether changes to scoring system are needed	After Committee briefing in September 2019, Committee was satisfied that scoring system is adequate
Develop procedure to identify stale cases and seek appropriate settlements	Reviewed oldest cases and engaging in efforts to resolve	3 of the oldest identified cases resolved; 4 remaining cases in progress, complete by late-2021.
Create and implement regulations to identify milestones and timeframes for enforcement	Developed and implemented written procedures with milestones and timeframes to prevent case stagnation	In progress, complete by mid-2020
Develop and implement procedures for proactive enforcement, including site visits	Developed violator “Initial Contact” letters to elicit prompt response when reports of violations are received; implemented certification of compliance forms; tagging monitoring reports stored electronically to ensure monitoring compliance; defining and implementing a	Completed

<b>RECOMMENDATION</b>	<b>RESPONSE</b>	<b>STATUS</b>
	process for monitoring report review; ongoing site visits as circumstances allow	
<b><i>Promoting Efficiency and Effectiveness</i></b>		
Implement a permit compliance position to support the efforts of enforcement staff and, if necessary, seek funding	Department of Finance review ongoing	State budget uncertain for FY 20-21
Develop and implement procedures to ensure management reviews decisions and include requirements on documenting violations, resolutions, and rationale for fines	Developing and implementing written case review procedures, documentation regarding case processing, progression, and integrating rationales for fines assessed	In progress, complete by late-2020 with long term ongoing refinement
Conduct a workforce study of permit and regulatory activities and determine whether additional staff is required	Department of Finance review ongoing	State budget uncertain for FY 20-21
Update the existing database or create a new database	Updated existing database to reflect case resolution progress in real time on the dashboard; to document new case review status codes; and to track Initial Contact letters. Evaluated alternate database from private vendor	State budget uncertain for FY 20-21
Evaluate and update permit fees every five years	Permit fee update completed; adopted by Commission January 16, 2020 and approved by the Office of Administrative Law on April 13, 2020	New fees effective July 1, 2020
<b><i>Ensuring Consistency in Enforcement</i></b>		
Create regulations that define substantial harm	Developed definition of significant harm	Enforcement Committee approved language in October 2019; rulemaking required, expect to initiate by December 2020
Provide criteria for calculating the number of violations present in an enforcement action	Developing guidance involving multiple unauthorized actions included in an enforcement action to determine appropriate fines	3 Committee Meetings; in progress, complete by mid-2020
Create a penalty calculation worksheet and create policies, procedures, and criteria for application	Developing a penalty policy and reviewing means of implementing once it is finalized	3 Committee Meetings; in progress, complete by mid- 2020

<b>RECOMMENDATION</b>	<b>RESPONSE</b>	<b>STATUS</b>
<b>Ensuring Consistency in Enforcement</b>		
Conduct a review of local agency compliance with the Suisun Marsh program	Commission staff reviewed compliance of each of the components of the Suisun Marsh Local Protection Program (LPP) for consistency with the Commission's Suisun Marsh Protection Plan and provided each of the LPP agencies with a written analysis and recommendations on January 31, 2020.	Completed compliance review January 31,2020. In February 2020, the Commission started a collaborative process with the Suisun local governments and agencies to prepare a comprehensive review of the Marsh Plan and LPP for any needed amendments.
Create a policy identifying the minimum amounts from the Bay Fill Clean-up and Abatement Fund that BCDC will disburse and prioritize projects that will be supported through disbursements	Other funds to pay enforcement staff are unavailable	State budget uncertain for FY 20-21
Appoint a new citizens advisory committee	Commission reviewed existing working groups and other opportunities for citizen participation	Commission decided not to reconstitute in January 2019
Update regulations on administrative permit issuance	Changes to regulations on administrative permit issuance to be explored as part of comprehensive regulatory package	Potential changes being considered as part of comprehensive review of permitting regulations currently underway; expect to initiate rulemaking by September 2020

# San Francisco Bay Conservation and Development Commission

As of May 7, 2020

## Enforcement Committee Briefings/Discussions Topics

After the State Auditor released her report on BCDC’s enforcement program in mid-May 2019, the Commission’s Enforcement Committee established a formal twice-monthly meeting schedule. Since then, the Committee has reviewed, analyzed, and discussed the issues listed below. More policy briefings are scheduled through the end of 2019 and into 2020. The Committee plans to update the full Commission on new procedural developments and make recommendations on how best to improve the program in Q1 and Q2 of 2020. Below is a list of those meetings and the issues that have been briefed and discussed; the numbers in parentheses correspond to the assigned number for the Auditor’s 17 recommendations to the Commission:

<b>Meeting</b>	<b>Topics</b>
6/26/19	Initial post-audit meeting
7/1/19	Penalty policy overview (1) Case management approaches (1), (2), (5), (16) Administrative procedures and rulemaking process
7/24/19	Backlog – remedies and alternatives (2), (3), (14) Standardized fines (2), (5), (16)
8/8/19	Inactive cases update (3) Penalty policy development 1 – initial penalty amount (1) Violations with significant harm (1), (5), (15)
8/14/19	Penalty policy development 2 – economic benefits and deterrence (1), (3), (5) Database limitations and technology (13)
9/12/19	Richardson’s Bay and Abandoned and Derelict Vessels
9/25/19	Case management update (3), (5), (16) Case prioritization (2), (3), (4), (6), (14) Penalty policy development 3 – ability to pay, voluntary resolution, degree of culpability (1), (5)
10/1/19	Definition of significant harm (1), (3), (15) Criteria for Violation Delineation (1), (2), (5), (13), (15)
10/17/19	Announcement of new Enforcement Policy Manager (Commission meeting)
10/23/19	Permits review Compliance improvements (1), (2), (3), (12)
11/14/19	Case management update (3), (5), (16) Supplemental Environmental Projects (1), (2), (15)
11/20/19	Richardson’s Bay and Abandoned Vessels case update Union Point Park Restoration enforcement recommendation Workforce study scheduled CA Department of Finance (10)

# San Francisco Bay Conservation and Development Commission

As of May 7, 2020

<b>Meeting</b>	<b>Topics</b>
12/12/19	Procedural improvements, including case management milestones; “Initial Contact” letters; case review Aged Case reports and Closed Case reports; Case prioritization (1), (2), (3), (4), (6), (15)
3/12/20	Oldest case resolution efforts (3) Delineation of violations (1), (2), (5), (13), (15) Union Point Park proposed uncontested cease and desist order
4/9/20	Summary of 2019 Case management and review case resolution results (1), (2), (3), (5), (16) Richardson’s Bay and Abandoned vessel management transition plan update
4/22/20	Union Point Park proposed uncontested cease and desist order amendments to extend deadlines at City request
5/14/20	Criteria for Violation Delineation (multiple unauthorized activities combine or separate) (1), (2), (5), (13), (15)

## ***Issues Not Yet Discussed/Not Scheduled for Committee Discussion:***

- (7) Permit fees: Commission approved – Changes take effect July 1, 2020
- (8) Suisun Marsh Program: Completed compliance review January 31, 2020. In February 2020, the Commission started a collaborative process with the Suisun local governments and agencies to prepare a comprehensive review of the Marsh Plan and LPP for any needed amendments
- (9) Citizens Advisory Committee: Commission discussion on January 3, 2019 with decision not to reconstitute
- (10) Bay Fill Clean-up and Abatement Fund spending: State budget uncertain for FY 20-21
- (11) Workforce study: Review began through CA Department of Finance November 2019 ongoing; State budget uncertain for FY 20-21
- (12) New compliance position: State budget uncertain for FY 20-21; evaluation of enforcement cases related to permit non-compliance initiated