

Appendix H

Violation Report/Complaint for ~~the Administrative~~
~~Imposition of Civil Penalties Liability~~

File:
Permit:
Date Mailed:
35th Day After Mailing:
60th Day After Mailing:
Hearing Date:

Violation Report/Complaint for Administrative Civil Liability
[Insert Name(s) of Respondent(s)]

~~FAILURE TO RESPOND TO THIS VIOLATION REPORT/COMPLAINT FOR THE ADMINISTRATIVE~~
~~IMPOSITION OF CIVIL PENALTIES LIABILITY~~ BY COMPLETING THE ENCLOSED STATEMENT OF DEFENSE
FORM AND ENCLOSING ALL PERTINENT DECLARATIONS UNDER PENALTY OF PERJURY, PHOTOGRAPHS,
LETTERS, AND OTHER WRITTEN DOCUMENTS COULD RESULT IN A CEASE AND DESIST ORDER, A PERMIT
REVOCAION ORDER, OR ~~CIVIL PENALTY~~ AN ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY AND
IMPOSING A SUBSTANTIAL CIVIL PENALTY BEING ISSUED TO YOU OR IN A SUBSTANTIAL
~~ADMINISTRATIVE CIVIL PENALTY BEING IMPOSED ON YOU~~ WITHOUT YOUR HAVING AN OPPORTUNITY
TO CONTEST THEM BY RAISING ANY DEFENSES OR MITIGATING FACTORS OR TO INTRODUCE ANY
EVIDENCE.

The San Francisco Bay Conservation and Development Commission is issuing this violation
report/complaint for ~~the administrative imposition of civil penalties liability~~ and the enclosed statement
of defense form because the Commission's staff believes that you may be responsible for or involved
with a possible violation of either the Commission's laws or a Commission permit. The report/complaint
contains a brief ~~summary~~ description of the alleged violation, a summary of all the pertinent information
~~that currently known to staff, and a list of all supporting evidence relied on by staff - currently relies on.~~
All the listed supporting evidence is attached to or accompanies that this report/complaint or will be
provided to you in electronic format upon request. - refers to is available in the enforcement file for this
matter located at the Commission's office. You can arrange to review the Commission's enforcement file
for this matter located at the Commission's offices and/or have copies of these materials at the
Commission's office of to have copies made at your expense or both by contacting
_____ of the Commission's staff at telephone number ~~415-557-3686~~ 352-
3600. The ~~staff also intends that the report/complaint informs you of the nature of the possible violation~~
and lists the supporting evidence so that you can fill out the enclosed Statement of Defense form and
otherwise be prepared for the Commission enforcement proceedings.

Receipt of the report and the enclosed statement of defense form is the first step in ~~formal~~
Commission enforcement proceedings. Subsequently, either the Commission or its enforcement
committee may hold an enforcement hearing and the Commission will determine what, if any,
enforcement action to take.

Careful reading and a timely response to these materials is are essential to allow to present your
side of the case to the Commission. A copy of the Commission's enforcement regulations is also included

so that you can fully understand the Commission's enforcement procedures. If you have any questions concerning either the ~~violation-report/complaint~~, the enclosed statement of defense form, the procedures that the Commission and its enforcement committee follow, or anything else pertinent to this matter, you should contact ~~as quickly as possible~~ _____ of the Commission's staff as quickly as possible at telephone number 415-~~557-3686~~ 352-3600. Thank you for your cooperation.

1. Person or persons believed responsible for the violation or illegal unauthorized activity:

2. Brief description of the nature of the violation or illegal unauthorized activity:

3. Description of and location of the property on which the violation or illegal unauthorized activity occurred:

4. Name of owner, lessee (if any), and other person(s) (if any) who controls property on which violation or illegal unauthorized activity occurred:

5. Approximate date (and time if pertinent and known) that the violation or illegal unauthorized activity occurred:

6. Summary of all pertinent information currently known to the staff in the form of proposed findings of fact with references to all pertinent supporting evidence listed in an attachment to the report/complaint contained in the staff's enforcement file (the file is available at the Commission's offices for your review; you should call the above listed staff enforcement officer to arrange to review the file):

7. Provisions of law or Commission permit that the staff alleges ~~has~~have been violated:

8. If the staff is proposing that the Commission impose an administrative civil penalty as part of this enforcement proceeding, ~~the amount of the proposed penalty:~~

(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 the Commission's regulations, in determining the total amount of the proposed administrative civil penalties; and

9. Any other statement or information that the staff believes is either pertinent to the alleged violation or unauthorized activity or important to a full understanding of the alleged violation or unauthorized activity:

10. A list of all supporting evidence relied on by staff, including any declarations under penalty of perjury, that is attached to or accompanies this report/complaint or that will be provided to you in electronic format upon request.

Appendix I

Statement of Defense Form

BY _____, 20__ : ~~FAILURE (1) TO COMPLETE THIS FORM (OR A DOCUMENT PROVIDING THE INFORMATION REQUESTED BY THIS FORM), (2) TO INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLARATIONS, UNDER PENALTY OF PERJURY, AND OTHER EVIDENCE YOU WANT PLACED IN THE RECORD TO BE CONSIDERED BY THE COMMISSION, (3) TO LIST ANY WITNESSES WHOSE DECLARATION IS PART OF THE STAFF CASE AS IDENTIFIED IN THE VIOLATION REPORT/COMPLAINT FOR ADMINISTRATIVE CIVIL LIABILITY THAT YOU WISH TO CROSS-EXAMINE, THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE WITNESS, AND THE INFORMATION YOU HOPE TO ELICIT BY CROSS-EXAMINATION, AND (4) TO RETURN THE COMPLETED FORM AND ALL INCLUDED MATERIALS TO THE SF SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION STAFF. FAILURE TO DO SO, OR TO SUBMIT A WRITTEN EXTENSION REQUEST (AS DISCUSSED BELOW), OR TO CONTACT _____ OF THE SF BAY COMMISSION ENFORCEMENT STAFF BY _____~~ 19 MEANS THAT YOU WILL WAIVE THE OPPORTUNITY TO RAISE ANY DEFENSES OR MITIGATING FACTORS OR TO INTRODUCE ANY EVIDENCE AND THAT THE ENFORCEMENT COMMITTEE OR COMMISSION CAN REFUSE TO CONSIDER SUCH ANY STATEMENTS AND EVIDENCE THAT YOU SUBMIT AT A LATER DATE WHEN THE ENFORCEMENT COMMITTEE OR COMMISSION HEARS THIS MATTER.

~~DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE SF BAY COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM (OR IN A DOCUMENT PROVIDING THE INFORMATION REQUESTED BY THIS FORM) WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.~~

~~YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE SF BAY COMMISSION ENFORCEMENT STAFF.~~

This form is enclosed with a violation report/complaint for administrative civil liability. The violation report/complaint indicates that you may be responsible for or in some way involved in wither a violation of the Commission's laws, a Commission permit, or a Commission cease and desist order. The violation report/complaint summarizes what the possible violation involves, who may be responsible for it, where and when it occurred, if the Commission staff is proposing any administrative civil penalty and, if so, how much, and other pertinent information concerning the possible violation.

This form requires you to respond to be the alleged facts contained in the violation report/complaint, to raise any affirmative defenses that you believe apply, ~~to request any cross-examination that you believe necessary~~, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing. Failure to raise a defense or mitigating factor in or to submit evidence with your response to the violation report/complaint will waive your right to raise such defense or mitigating factor or to submit such evidence at the enforcement hearing on this matter. This form also requires you to identify by name any person whose declaration under penalty of perjury was submitted by staff with the violation report/complaint whom you may want to cross-examine ~~prior to~~ at the enforcement hearing on this matter, the area of

knowledge that you want to cover in the cross-examination, the nature of the testimony that you hope to elicit, and the reasons that you believe other means of producing this evidence are unsatisfactory. Finally, if the staff is only proposing a civil penalty, ~~i.e., no~~ (i.e., issuance of either a cease and desist order or a permit revocation order is not proposed), this form allows you ~~alternatively~~ to pay the proposed ~~fine~~ civil penalty without contesting the matter if you chose to do so, subject to notification of the amount by the Commission.

~~IF YOU WANT TO CROSS-EXAMINE ANY PERSON ON WHOSE TESTIMONY THE DECLARATION UNDER PENALTY OF PERJURY STAFF HAS RELIED IN SUBMITTED WITH THE VIOLATION REPORT/COMPLAINT, YOU MUST COMPLETE PARAGRAPH SEVEN EIGHT TO THIS STATEMENT OF DEFENSE FORM. THIS PARAGRAPH REQUIRES YOU TO SET OUT (1) THE NAME(S) OF THE PERSON(S) YOU WANT TO CROSS-EXAMINE, (2) REFERENCES TO ANY DOCUMENTS ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (3) THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (4) THE INFORMATION THAT YOU BELIEVE CAN BE ELICITED BY CROSS-EXAMINATION, AND (5) THE REASON WHY BELIEVE THIS INFORMATION CANNOT BE PRESENTED BY DECLARATION OR OTHER DOCUMENT.~~

You should complete ~~the~~ this form as fully and accurately as you can and as quickly as you can and return an original and one copy of the completed form and an original and one copy of all documents that you want to be made part of the record of the enforcement proceeding, ~~it~~ no later than 35 days after ~~its having been~~ this form was mailed to you, to the Commission's enforcement staff at the following address:

San Francisco Bay Conservation and Development Commission
~~30 Van Ness Avenue, Suite 2011~~ 375 Beale Street, Suite 510
San Francisco, CA ~~94102~~ 94105

In addition, you should submit electronic copies of both the completed statement of defense form and all supporting documents in a format that allows for posting on the Commission's website in compliance with current Americans with Disabilities Act accessibility guidelines. These documents should be submitted to _____ at the following email address: _____@bcdc.ca.gov. If these documents cannot be submitted in a format that allows for posting consistent with ADA Guidelines, provide a statement explaining the reasons.

If you believe that you have good cause for not being able to complete this form and submit all written documents and any declarations under penalty of perjury that you want the Commission to consider within the required 35 days of its having been mailed-mailing, you may, within that time, submit a written extension request explaining why you need additional time to respond. If the staff has issued a combined violation report and complaint for administrative liability, or only a complaint for administrative liability, your extension request must include a waiver of and consent to extend the 60-day time limit for a hearing on the complaint under Government Code 66641.6(b). please complete it to the extent that you can and within 35 days of the mailing of the violation report send the statement of defense form completed as much as possible with a written explanation of what additional information you need to complete the form in its entirety, how long it will take to obtain the additional information needed to complete the form, and why it will take longer than 35 days to obtain the additional information, and send all of this to the Commission's staff at the above address. Following this procedure does not mean that the Executive Director will automatically allow you to take the additional time to complete the form. Only if the Executive Director determines that you have shown good cause

for the delay and have otherwise completed the form as much as is currently possible will be grant an extension to complete the form.

If the ~~staff~~ violation report/complaint that accompanied this statement of defense form included a proposed administrative civil penalty, you may, ~~if you wish,~~ resolve the civil penalty aspect of the alleged violation by simply providing to the staff a certified cashier's check in the amount of the proposed ~~fine~~ civil penalty within the 35-day time period. If you choose to follow this alternative, the Executive Director will cash your check and place a brief summary of the of the violation and proposed administrative civil penalty along with a notation that you are choosing to pay the civil penalty rather than contesting it on an administrative permit listing. (See 14 C.C.R. § 11322(g).) If no Commissioner objects to the amount of the administrative civil penalty, your payment will resolve the civil penalty portion of the alleged violation. If a Commissioner objects to the amount of the proposed payment of the administrative civil penalty, the Commission shall determine by a majority of those present and voting whether to accept or object to let the proposed civil penalty ~~stand~~. If such a majority votes to let accept the proposed civil penalty ~~stand~~, your payment will resolve the civil penalty portion of the alleged violation. If such a majority ~~does not let the~~ objects to the proposed civil penalty ~~stand~~, the Commission shall direct the staff to return the money paid to you and shall direct you to file your completed statement of defense form and all supporting documents within 35 days of the Commission's actions. Of course, you also have the opportunity of contesting the fine from the outset by completing this form and filing it and all supporting documents within 35 days of its having been mailed to you.

If you have any questions, please contact ~~as soon as possible~~ _____ of the Commission Enforcement Staff as soon as possible at telephone number 415-557-3686 352-3600.

1. Facts or allegations contained in the violation report/complaint that you admit (with specific reference to the paragraph number in the violation report/complaint):

2. Facts or allegations contained in the violation report/complaint that you deny (with specific reference to paragraph number in the violation report/complaint):

3. Facts or allegations contained in the violation report/complaint of which you have no personal knowledge (with specific reference to paragraph number in the violation report/complaint):

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identify such evidence by name, date, type, and any other identifying information and provide the original or a copy if you can):

5. If the staff is proposing that the Commission impose an administrative civil penalty as part of this enforcement proceeding and if you would be unable to pay the proposed penalty or paying the proposed penalty would have a substantial adverse effect on your ability to continue in business, provide factual information establishing such inability to pay or such adverse effect. Submit all relevant supporting documentation which may include but not be limited to audited financial statements and reports (or if not audited, then those that are the basis of tax returns or regulatory filings), balance sheets, profit and loss statements, statements of net worth, annual budgets, bond prospectuses, and tax returns including supporting forms and schedules as may be appropriate. Before submitting this information redact (cover or blackout) all personal information including your social security or tax-payer identification number, driver's license/state identification number, financial account number and any other private, non-public personal information including a residential address, personal telephone numbers, or personal email address:

5-6. Any other information, statement, etc. that you want to make:

6.7. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to or enclosed with this statement to support your answers or that you want to be made part of the administrative record for this enforcement proceeding. (Please list in chronological order by date, author, and title and enclose a copy with this completed form):

7.8. Name of any person whose declaration under penalty of perjury was ~~listed in~~ submitted with the violation report/complaint as being part of the staff's case who the respondent wants to cross-examine, identify all documents referred to in such person's declaration about which you want to cross-examine the person, the area or areas of information about which the respondent wants to cross-examine the witness person, and the information that the respondent hopes to elicit in cross-examination, and state the reason(s) why some other method of providing this information is unsatisfactory.

DRAFT