

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

CERTIFIED MAIL

June 26, 2018

Salt River Construction Corporation
c/o Richard Moseley, Registered Agent
5643 Paradise Drive, Unit 8
Corte Madera, CA 94925

SUBJECT: Issuance of Violation Report /Complaint for the Imposition of Administrative Civil Penalties; Salt River Construction Corporation, (BCDC Enforcement File Nos. ER2017.035 and ER2018.021)

Dear Mr. Moseley:

As you may know, there are violations of the McAteer-Petris Act that we have been unable to resolve with Salt River Construction Corporation ("SRCC"). BCDC Staff is concerned with SRCC's recent actions involving unpermitted dredging activities within BCDC's jurisdiction, despite staff's prior instruction not to engage in similar behavior in the past. Commission staff has therefore decided to commence a formal enforcement proceeding. The first step in this process is to issue the enclosed Violation Report/Complaint for the Imposition of Administrative Civil Penalties ("Violation Report/Complaint") that sets forth the Commission staff's allegations.

The Commission's law provides you with the opportunity to submit a "statement of defense" within 35 days of the date of mailing of the Report/Complaint, or **by no later than July 31, 2018**. Thereafter, the Enforcement Committee, a six-member subcommittee of the Commission, will hold a public hearing to consider the facts and determine whether it should recommend that the Commission issue a cease and desist and civil penalty order. The Enforcement Committee is scheduled to hold its public hearing no later than August 26, 2018. The full Commission will make the final determination whether to issue a cease and desist and civil penalty order after the Enforcement Committee's public hearing and adoption of its recommended enforcement decision.

I have enclosed the following documents: (1) the Violation Report/Complaint; (2) a Statement of Defense form; and (3) a copy of Chapter 13 of the Commission's regulations, which govern the formal enforcement proceedings. Please let me know if you would like me to email an electronic copy of the Statement of Defense form. If you have any questions, please don't hesitate to contact me by phone at (415) 352-3600 or by email at myles.saron@bcdc.ca.gov.

Sincerely,



MYLES SARON
Attorney

MS/gg

cc: Adrienne Klein, Chief of Enforcement
Brenda Goeden, Dredging Program Manager



San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

Number: ER2017.035; ER2018.021

Permit Number: None

Date Mailed: June 26, 2018

35th Day After Mailing: July 31, 2018

60th Day After Mailing: August 27, 2018

Enforcement Committee Hearing Date: August 23, 2018

**VIOLATION REPORT/COMPLAINT
FOR THE ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES
ENFORCEMENT INVESTIGATION NO. ER2017.035/ER2018.021
SALT RIVER CONSTRUCTION CORPORATION AND RICHARD MOSELEY**

FAILURE TO RESPOND TO THIS VIOLATION REPORT/COMPLAINT FOR THE ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES 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 OR A CIVIL PENALTY ORDER BEING ISSUED TO YOU, OR A SUBSTANTIAL ADMINISTRATIVE CIVIL PENALTY BEING IMPOSED ON YOU WITHOUT YOUR HAVING AN OPPORTUNITY TO CONTEST THEM OR TO INTRODUCE ANY EVIDENCE.

The Executive Director of the San Francisco Bay Conservation and Development Commission (Commission or BCDC) is issuing this Violation Report/Complaint for the Administrative Imposition of Civil Penalties (Report/Complaint) and statement of defense form because the Commission's staff believe that you may be responsible for or involved with possible violations of the Commission's laws and permits issued by the Commission. The Report/Complaint contains a brief summary of all the pertinent information staff currently have concerning the possible violations and reference to all the pertinent evidence on which the staff currently rely. All the evidence this Report/Complaint refers to is available in the administrative record for this matter located at the Commission's office. You may review these materials at the Commission's office or have copies made at your expense or both by contacting Myles Saron of the Commission's staff at telephone number (415) 352-3600. This Report/Complaint also informs you of the nature of the possible violations so that you may fill out the enclosed statement of defense form and otherwise be prepared for Commission enforcement proceedings.

Issuance of this Report/Complaint and the enclosed statement of defense form is the first step in formal Commission enforcement proceedings. Subsequently, the Commission will hold an enforcement hearing and will determine what, if any, enforcement action to take.

Careful reading of and a timely response to these materials is essential to allow you to present your side of the case to the Commission. A copy of the Commission's enforcement regulations is also included so you may fully understand the Commission's enforcement procedures. If you have any questions concerning either this 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 Myles Saron of the Commission's staff at telephone number (415) 352-3600 as quickly as possible. Thank you for your cooperation.

I. Person or Persons Believed Responsible for Illegal Activity

Salt River Construction Corporation
Richard Moseley, Registered Agent
5643 Paradise Drive, Unit 8
Corte Madera, CA 94925

Richard Moseley, President
5643 Paradise Drive, Unit 8
Corte Madera, CA 94925

II. Name of Owner, Lessee (If Any), and other Person(s) (If Any) Who Controls Property on Which Illegal Activity Occurred

Salt River Construction Corporation (SRCC) is a dredging contractor with offices in Corte Madera, California. Richard Moseley is listed as acting President of and registered agent for SRCC. SRCC, and Richard Moseley are hereafter collectively referred to as SRCC.

III. Description of and Location of Property on Which Illegal Activity Occurred

This Report/Complaint concerns alleged violations that occurred at several different locations and times. The first alleged violation occurred on property near Schoonmaker Point Marina, which is located in Richardson's Bay in Marin County (the Richardson's Bay Site). The remaining alleged violations occurred on property in and around Belmont Slough located in Foster City, San Mateo County (the Belmont Slough Site).

The Richardson's Bay and the Belmont Slough Sites (Sites) are subject to the jurisdiction of the Commission under the McAteer-Petris Act (MPA) as established by California Government Code Section 666610. More specifically, the Sites are in the Commission's "San Francisco Bay" jurisdiction as defined in California Government Code Section 666610(a).

IV. Brief Description of the Nature of the Illegal Activity

A. SRCC has violated the MPA by conducting unpermitted activities at the Sites as described herein, including but not limited to:

1. **Richardson's Bay Site.** Placement of fill in waters of San Francisco Bay by unpermitted and dangerous dredging operations including propelling a SRCC dredging barge across the mud at low tide by use of an excavator bucket mounted on the dredge barge; and

2. **Belmont Slough Site.** Unpermitted dredging of materials by dredging in excess of the volume and depth allowances near the Foster City Intake Channel; unauthorized fill in waters of San Francisco Bay by mooring SRCC dredging barges for an extended period of time (at least 55 days); and potentially submitting false information regarding SRCC's volume and disposal operations.

V. Approximate Date Illegal Activities Occurred

The violations summarized in Section IV.A.1, above, and described more fully in Section VI.A, below, occurred on November 25, 2018.

The violations summarized in Section IV.A.2, above, and described more fully in Section VI.B and VI.C, below, occurred on or around February 1, 2018 and continued through at least March 27, 2018.

VI. Summary of All Pertinent Information Currently Known to Commission Staff in the Form of Proposed Findings with References to All Pertinent Supporting Evidence Contained in the Staff's Enforcement File

This Report/Complaint is based on the following proposed findings. The administrative record in support of these proposed findings includes: (1) all documents and other evidence cited herein or attached as exhibits hereto; and (2) all additional documents listed in the Index of Administrative Record attached hereto as Exhibit A. You may review the administrative record at BCDC's office or obtain copies of any or all documents contained in the record at your expense.

A. Unpermitted Dredging: Richardson's Bay

1. On November 25, 2017, a San Francisco Baykeeper (Baykeeper) patrol boat operator witnessed a barge near Schoonmaker Marina in Richardson's Bay, Marin County California being propelled by an excavator bucket. Members of the public who were kayaking in the area and witnessed the same event also contacted Baykeeper to report their concerns.
2. On December 1, 2017, Sienna Courter of Baykeeper notified BCDC by email about the above suspicious dredging activity her staff observed.¹ The email provides photographs and videos of the event. The photographs and videos show the dredging operator submerging the excavator bucket into the water to the Bay floor, dragging the bucket through the sediment on the Bay floor to propel the barge forward, then removing this sediment material from the Bay with the excavator bucket, and finally placing the extracted material back into the Bay by releasing it from the excavator bucket. The Commission did not authorize this extraction and placement of fill.

¹ Email from Sienna Courter to Marc Zeppetello/Adrienne Klein, SUBJECT: Pollution Report: Questionable Dredging on Richardson's Bay, 12/1/17; Email Attachment: Photos and Videos showing Richardson's Bay Dredging Incident (AR Doc #1).

3. BCDC staff subsequently identified known SRCC-owned equipment shown in the videos and photographs.
4. Placement of fill without a permit from the Commission is a violation of the California Government Code 66632 which states, "Any person or governmental agency wishing to place fill, to extract materials ... within the commission's jurisdiction shall secure a permit from the commission." SRCC did not request or receive a permit for extraction of materials from or placement of fill in Richardson's Bay. Therefore, by extracting and placing fill without a BCDC permit, SRCC violated California Government Code Section 66632.

B. Unpermitted Dredging: Foster City Intake Channel

1. On August 15, 1978 the Commission issued BCDC Permit No. M1978.057.00 to the City of Foster City, San Mateo County, to dredge sediment from Belmont Slough to clear the water intake structure for the Foster City Lagoons.² Subsequently, on December 29, 1978, the Commission issued BCDC Permit No. M1978.057.01, a time extension for the original permit.³ On August 30, 2017 the Commission issued Permit No. M1978.057.02 authorizing further dredging of Belmont Slough at the West Intake Channel for the Foster City Lagoon ("Foster City Dredging Project").⁴
2. Section I.A.2 of BCDC Permit No. M1978.057.02 authorized the permittee, City of Foster City, to do the following:
 - a. "Mechanically dredge up to 12,800 cubic yards (cy) of sediment to an authorized depth of minus 5 feet (ft) Mean Low Water (MLLW) plus one foot of authorized overdredge allowance, in the West Intake Channel for the Foster City Lagoon and place the material at the Cullinan Ranch Restoration Project (Cullinan Ranch) or other suitable and authorized upland location..."
3. Foster City contracted with SRCC to perform the dredging work described above.
4. On September 14, 2017, pursuant to Permit Special Condition II.F.3, SRCC submitted to BCDC staff a Dredge Operation Plan ("DOP") for the dredging to be performed for the Foster City Dredging Project.⁵ The DOP describes the dredging operations to be employed at the Site. Specifically, the DOP describes the following:
 - a. Dredging is to be performed by Salt River Construction Corporation, represented by Richard Moseley.
 - b. The estimated dredge volume was 11,930 cubic yards (cy) to achieve project depth (-5 feet MLLW) and 870 cy of sediment in the one-foot overdredge allowance, for a total authorized dredge volume 12,800 cy for the episode.

² BCDC Permit No. M1978.057 (AR Doc #2)

³ BCDC Permit No. M1978.057.01 (AR Doc #3)

⁴ BCDC Permit No. M1978.057.02 (AR Doc #4)

⁵ SRCC Dredge Operation Plan For Maintenance Dredging at the Foster City Lagoon Intake Structure, 08/09/2017 (AR Doc #5)

- c. The designed dredging depth of the project is -5 feet MLLW, with an overdredge allowance of one foot for a maximum dredge depth allowance of -6 feet MLLW.
 - d. SRCC's dredging depth will be controlled by installing tide staffs visible to the dredge operator and taking frequent soundings during the dredging operation. The depth of dredge cut will be controlled by referencing the tide staff to determine existing water surface elevation and lowering the excavator bucket to the design dredge depth aided by markings placed on the excavator arm.
 - e. SRCC's disposal site is Upland Disposal at Cullinan Ranch.
5. By letter dated September 15, 2017, BCDC provided episode approval for dredging operations at the Foster City Dredging Project.⁶ As part of the episode approval, BCDC required compliance with the DOP provided by SRCC.
 6. Following various time extensions, SRCC completed the dredging operations at Foster City on February 1, 2018. Pursuant to Special Condition II.3.c. of the permit, Huffman-Broadway Group, Inc., an environmental consulting group, submitted the "Post-Dredge Survey Report, Dredging at the Lagoon Intake Structure (CIP 301-629) Project, USACE Permit #2015-00405S, Episode No. 1" (Post-Dredge Report) on behalf of SRCC on March 2, 2018.⁷ According to the Post-Dredge Report, SRCC dredged a total volume of 13,674 cy, which is 1,744 cy beyond the designed dredge volume of 11,930 cy for the project and 874 cy more than the maximum authorized in the City of Foster City's permit and the episode approval letter. The Post-Dredge Report also shows that SRCC dredged beyond the permitted -5 feet MLLW depth and one-foot overdredge allowance throughout the intake channel, in some places reaching a depth of -7.2 feet MLLW, which results in a more than a foot of unauthorized dredging. Attached to the Post-Dredge Report is a Topographical Map confirming the depth and volume of dredged material SRCC dredged from the Foster City Intake Channel.⁸ Bathymetric readings in the bathymetric survey are accurate to within 0.1 feet, as stated on the Post-Dredge Report notes.
 7. Before dredging operations began, sediment analysis for the site was determined to be suitable for placement at Cullinan Ranch for sediment down to a depth of -6.5 feet MLLW.⁹ No sediment testing was performed for sediment lying below a depth of -6.5 feet MLLW. As the sediment below this depth was not characterized for chemical constituents or biotoxicity, BCDC does not have assurance that the dredged material removed by SRCC was not contaminated or that a layer of contaminated sediment has not been exposed.

⁶ Letter from Anniken Lydon to Allan Shu, SUBJECT: Foster City Intake 2017 Maintenance Dredging Episode Approval; BCDC Permit No. M1978.057.00, Amendment No. Two, 9/15/2017 (AR Doc # 6)

⁷ Post-Dredge Survey Report, Dredging at the Lagoon Intake Structure (CIP 301-629) Project, USACE Permit #2015-00405S, Episode No. 1, 2/26/18 (AR Doc. #7)

⁸ TOPOGRAPHICAL MAP: "Post-Dredge 2-01-2018", revised through 2/6/18 (AR Doc. #8).

⁹ Sampling and Analysis Plan: Sampling and Testing of Sediments Dredging at the Lagoon Intake Structure (CIP 301-629), January 2016 (AR Doc. #9)

8. As noted above, untested dredged sediment was placed at Cullinan Ranch. Cullinan Ranch was once part of an extensive network of tidal marshes in North Bay. As part of the project to restore subsided portions of diked former tidal marshes in the area, the Cullinan Ranch accepts dredged sediment to help raise the site to marsh plain elevation. Placement of dredged sediment at Cullinan Ranch requires the sediment to be properly analyzed to ensure it meets appropriate acceptance criteria. Because SRCC dredged beyond the characterized sediment and then placed sediment of unknown quality at Cullinan Ranch, this unauthorized dredging may have resulted in adverse impacts to the Bay environment, including the Cullinan Ranch.
9. Extracting materials without a BCDC permit is a violation of the MPA, California Government Code Section 66632 which states, "Any person or governmental agency wishing to place fill, to extract materials ... within the commission's jurisdiction shall secure a permit from the commission." SRCC was authorized to dredge a total volume of 12,800 cy and to a maximum depth of -6.0 feet MLLW based on their DOP. SRCC's dredging operations beyond these limits was not authorized by the Commission. SRCC did not seek approval for such dredging. Therefore, both by extracting materials and placing fill without a BCDC permit, SRCC violated California Government Code Section 66632.

C. Potential Submission of False Disposal Site Summary Log

1. As stated in SRCC's DOP described above, the total volume of dredged material authorized by BCDC was 12,800 cy. The DOP also states that "Dump Logs will be submitted every Monday following the previous week of dredging."
2. According to the Post-Dredge Report, SRCC completed dredging at Foster City on February 1, 2018. The report also states that SRCC dredged a total of 13,674 cy of sediment from the Foster City Intake Channel. As described above, bathymetric readings in the bathymetric survey are accurate to within 0.1 foot.
3. On April 13, 2018, BCDC received the "Disposal Site Verification and Summary Log" (Disposal Log) from SRCC summarizing the dredged material offloading at Cullinan Ranch for sediment from the Foster City Dredging project.¹⁰ The Disposal Log shows the date and time dredged material was offloaded at Cullinan Ranch, the vessel that delivered the material, the volume of material offloaded during each event, as well as a running total of the volume of dredged sediment offloaded for the Foster City Dredging Project.
4. As of February 1, 2018, the time SRCC states that it had completed the Foster City dredging, the Disposal Log shows that only 6,000 cy of the 13,674 cy of dredged material had been offloaded at Cullinan Ranch. Material from the project continued to be offloaded at Cullinan Ranch through April 11, 2018, over two months after SRCC reported having finished dredging at Foster City. It is not clear where SRCC stored the remaining 7,674 cy of the total 13,674 total cy of dredged material after it

¹⁰ Disposal Site Verification and Summary Log, 4/13/18 (AR Doc. #10)

finished dredging at the Foster City Site on February 1, 2018, but before this material was offloaded at Cullinan Ranch. Since the same barges/scow are recorded as offloading at Cullinan Ranch multiple times after the completion of the dredging, it is not clear how the same barge/scows could be filled with a new load of sediment for offloading if no additional dredging occurred past February 1, 2018.

5. Furthermore, the Disposal Log shows that a final total of 12,800 cy had been placed at Cullinan Ranch, exactly matching the authorized volume of dredged material for the project. However, as described above, the Post-Dredge Report shows that 13,674 cy had been dredged. The excess 874 cy is unaccounted for in the Disposal Log. This discrepancy implies that SRCC either: (1) disposed the excess 874 cy of material at Cullinan Ranch and submitted false information in its Disposal Log regarding the total volume of dredged material disposed at Cullinan Ranch; or (2) unlawfully disposed of the excess 874 cy of sediment at some other, unknown location.

D. Unpermitted Fill: Belmont Slough

1. On March 27, 2018 Mark D'Avignon, a senior project manager for the U.S. Army Corps of Engineers, emailed BCDC staff regarding the unlawful storage of two barges in Belmont Slough located off the coast of Foster City, California.¹¹ The email describes two SRCC barges that had been moored in the slough since approximately February 1, 2018. The barges are believed to have been moored in the slough following the completion of SRCC's dredging operations for the Foster City Dredging Project. Allan Shu, the managing engineer for the Foster City Dredging Project, contacted SRCC about moving the barges. On March 27, 2018, SRCC informed Allan Shu that it would move the barges from the site. A photograph taken by Robert Perrera on April 11, 2018 confirmed that the barges had been removed from Belmont Slough near the Foster City Dredging Project site.
2. On April 2, 2018, Foster City emailed BCDC staff a map of the Foster City Dredging Project showing the approximate locations where the SRCC's barges were moored in Belmont Slough.¹² The portion of Belmont Slough where the barges were located is designated as a California Department of Fish and Wildlife ("CDFW") Ecological Reserve (Redwood Shores Ecological Reserve), as well as a nature preserve by the Foster City Municipal Code (Belmont Slough Nature Preserve), and a Wildlife Refuge Priority Use Area in the Commission's San Francisco Bay Plan Map Number 6. The Redwood Shores Ecological Reserve contains endangered species such as the salt marsh harvest mouse as well as the Ridgway's rail, whose environment may have been disturbed by SRCC's barges and activities. Additionally, Ridgway's rail breeding season begins annually around February 1st, and SRCC's

¹¹ Email from Mark D-Avignon to James Mazza, SUBJECT: FW: Foster City, 3/27/2018 (AR Doc. # 11)

¹² Email from Robert Perrera to Anniken Lydon, SUBJECT: Salt River Scow and Barge in Belmont Slough, 4/2/18; Email Attachments: 11AM @ Foster City Intake.jpg; location map.pdf (AR Doc. #12)

equipment and activities occurred at this location after February 1st. BCDC staff cannot be certain that SRCC's equipment and activities at this location did not have an adverse impact on this protected species in the marsh adjacent to Belmont Slough. Further, the use of SRCC's barges in Belmont Slough is a violation of the California Code of Regulations as well as Foster City's Municipal Code. According to the California Code of Regulations, "only lightweight, hand-carried boats may be launched or operated within [Redwood Shores Ecological Reserve]." (14 C.C.R. § 632(b)(62)(C) Redwood Shores State Marine Park). Further, according to the Foster City Municipal Code regarding Belmont Slough, "Boats shall not be permitted within the marked boundaries of the preserve except when under direct supervision of parks and recreation department staff." (Foster City Municipal Code Ch. 12.24 §12.24.040). The unauthorized mooring of SRCC's barges for extended periods of time may have caused damaging effects to this sensitive habitat and species.

3. Placing fill without a permit from BCDC is a violation of the MPA, California Government Code Section 66632(a) which states, "Any person or governmental agency wishing to place fill, to extract materials ... within the commission's jurisdiction shall secure a permit from the commission." According to California Government Code Section 66632(a), "fill" includes, "structures floating at some or all times and moored for extended periods." SRCC did not request or receive a permit for mooring their dredging barge in Belmont Slough. SRCC's mooring of barges for an extended period of time constitutes unauthorized fill without a permit and therefore violates California Government Code 66632(a).

VII. Provisions of Law or Commission Permit that the Staff Alleges Has Been Violated

Government Section 66632. Permit for Fill, Extraction of Materials or Substantial Change in Use of Land, Water or Structure; Application for Permits.

Any person wishing to place fill, extract materials, or make any substantial change in use of any water, land, or structure, within the area of the Commission's jurisdiction, including at the Site, is required to obtain a permit from the Commission. "Fill" is defined as earth or any substance or material over \$20 in value, including structures floating at some or all times and moored for extended periods.

VIII. If the Staff is Proposing that the Commission Impose An Administrative Penalty As Part of this Enforcement Proceeding, the Amount of the Proposed Penalty

Staff proposes a penalty of \$31,500 under Section 66641.5(e) of the California Government Code for the following violations:

Description	Violation(s)	Amount
Failure to obtain a BCDC permit for placing fill and extracting materials from Richardson's Bay.	Placement of fill [\$2,000 per day maximum per day] November 25, 2017	\$2,000
Failure to obtain a BCDC permit for dredging in Foster City Intake Lagoon beyond authorized volume and depth limit as described in SRCC's Dredge Operation Plan.	Extraction of Fill Beyond Authorized Volume and Depth Limit	\$2,000
Failure to obtain BCDC permit for mooring SRCC barge #1 in Belmont Slough for an extended period of time following Foster City Intake Dredging Project.	Placement of fill [\$2,000 maximum per day assessed at \$250 per day] February 1, 2018 through March 27, 2018 (55 Days)	\$13,750
Failure to obtain BCDC permit for mooring SRCC barge #2 in Belmont Slough for an extended period of time following Foster City Intake Dredging Project.	Placement of fill [\$2,000 maximum per day assessed at \$250 per day] February 1, 2018 through March 27, 2018 (55 Days)	\$13,750

A complete penalty chart is attached to this Report/Complaint as Exhibit B.

IX. Any other Statement or Information that the Staff Believes is Either Pertinent to the Alleged Violation or Important to A Full Understanding of the Alleged Violations

- A. In July of 2016, Brian Ross, a member of the Dredging & Sediment Management, Wetlands Regulatory Office for the Environmental Protection Agency emailed BCDC a video showing an SRCC barge grounded in a shallow portion of the Strawberry Channel in Mill Valley, Marin County.¹³ In an attempt to free itself, SRCC used its dredging arm and excavator bucket to drag itself through the channel, and pulled up sediment from the channel floor. After receiving this evidence of SRCC propelling its barge using at excavator bucket, BCDC staff specifically instructed SRCC to not engage in this activity and warned against the environmental risks that such action may have on the Bay environment. Despite this warning, SRCC continues to operate its equipment in an irresponsible manner as reflected in Section VI.A of this Report.

¹³ Video: SRCC Dragging Strawberry Channel, July 2016 (AR Doc. #13)

- B. BCDC staff has also advised SRCC to not moor its barges for extended periods of time throughout the Bay. In at least three separate occasions, BCDC staff has opened enforcement investigations against SRCC for unauthorized storing and mooring of its barges. Below is a list of these enforcement reports and brief summary generated for SRCC:
1. **ER2011.024.** In 2011, SRCC, without authorization, stored a yellow lash barge near the East Bay Regional Park District Aquatic Center beginning in May 2011 through August 25, 2011 following dredging work performed at the center. The center is located in San Leandro Bay, Alameda County.¹⁴
 2. **ER2011.028.** In 2011, SRCC, without authorization, stored boat dock sections for an extended period of time (over 12 months) in Point San Pablo Yacht Harbor, Contra Costa County. The boat dock sections were later towed out of the harbor at BCDC staff's urging.¹⁵
 3. **ER2015.002.** In 2014, several Bay Area residents notified BCDC that barge equipment was being stored, without authorization, offshore of Paradise Cay near Tiburon, Marin County for several months. BCDC staff identified the equipment belonging to SRCC and instructed it to remove the equipment from Paradise Cay.¹⁶
- C. While SRCC has since removed its barges and equipment from these areas, its actions illustrate a pattern of unauthorized behavior, even after instructed by BCDC to desist, which continues to reoccur as shown in Section VI.D above.
- D. In a prior enforcement action, the Executive Director issued Cease and Desist Order No. ECD 2016.02 to SRCC in July, 2016 for unlawful dredging activities in Lucky Channel, Corte Madera Creek, Marin County.¹⁷ BCDC staff observed an SRCC employee disposing of dredged material into Lucky Channel rather than in the dredge material disposal scow for transporting to an authorized disposal site. Thereafter, on July 7, 2016, BCDC and SRCC entered into a settlement agreement to resolve the matter.¹⁸ As part of the agreement, SRCC was required to complete a personal training seminar on how to properly conduct dredging activities in Larkspur Marina. While BCDC did not seek a penalty for the unlawful dredging activities, SRCC agreed that a future violation at the project site would result in "a penalty of \$10,000 per violation."
- E. Although Foster City is the permittee for the Foster City Dredging Project, and therefore is potentially liable for the actions of SRCC, staff is not pursuing an enforcement action against Foster City at this time. Foster City is aware of the violations committed by SRCC, but did not participate in those violations. Further, Foster City has cooperated with staff to help resolve the matter.

¹⁴ BCDC Enforcement Report ER2011.024 (AR Doc. #14)

¹⁵ BCDC Enforcement Report ER2011.028 (AR Doc. #15)

¹⁶ BCDC Enforcement Report ER2015.002 (AR Doc. #16)

¹⁷ BCDC Cease and Desist Order No. ECD2016.02

¹⁸ Settlement Agreement Concerning Maintenance Dredging At Larkspur Marina, July 7, 2016

EXHIBIT A

Document No.	Document Description	Date
1	Email from Sienna Courter to Mark Zeppetello/Adrienne Klein, SUBJECT: Pollution Report: Questionable Dredging on Richardson Bay. Email Attachment: Photos and Videos showing Richardson Bay Dredging Incident	12/1/17
2	BCDC Permit No. M1978.057.00	8/15/78
3	BCDC Permit No. M1978.057.01	12/29/78
4	BCDC Permit No. M1978.057.02	8/30/17
5	SRCC Dredge Operation Plan For Maintenance Dredging at the Foster City Lagoon Intake Structure	8/9/17
6	Letter from Anniken Lydon to Allan Shu, SUBJECT: Foster City Intake 2017 Maintenance Dredging Episode Approval; BCDC Permit No. M1978.057.00, Amendment No. Two	9/15/17
7	Post-Dredge Survey Report, Dredging at the Lagoon Intake Structure (CIP 301-629) Project, USACE Permit #2015-00405S, Episode No. 1	2/26/18
8	TOPOGRAPHICAL MAP: "Post-Dredge 2-01-2018"	2/6/18
9	Sampling and Analysis Plan: Sampling and Testing of Sediments Dredging at the Lagoon Intake Structure (CIP 301-629), January 2016	04/07/17
10	Disposal Site Verification and Summary Log	4/13/18
11	Email from Mark D'Avignon to James Mazza, SUBJECT: FW: Foster City	3/27/18
12	Email from Robert Perrera to Anniken Lydon, SUBJECT: Salt River Scow and Barge in Belmont Slough Email Attachments: 11AM @ Foster City Intake.jpg; location map.pdf	4/2/18
13	Video: SRCC Dragging Strawberry Channel	07/2016
14	BCDC Enforcement Report ER2011.024	7/8/11
15	BCDC Enforcement Report ER2011.028	7/15/11
16	BCDC Enforcement Report ER2015.002	2/12/15
17	BCDC Cease and Desist Order No. ECD2016.02	7/1/16
18	Settlement Agreement Concerning Maintenance Dredging At Larkspur Marina	7/7/16

EXHIBIT B

Prohibited Activity	Violated McAteer-Petris Section	Duration of Days of Prohibited Activity/Date	Minimum Penalty at \$10/Day	Maximum Penalty at \$2,000/Day	Proposed Daily Penalty	Proposed Penalty	Remarks
1) Failure to obtain a BCDC permit for placing fill and extracting materials from Richardson Bay .	\$66632	1/ November 25, 2017	\$10	\$2,000	\$2,000	\$2,000	
2) Failure to obtain a BCDC permit for dredging in Foster City Intake Lagoon beyond authorized volume and depth limit as described in SRCC's Dredge Operation Plan	\$66632	1/ February 1, 2018	\$10	\$2,000	\$2,000	\$2,000	
3) Failure to obtain BCDC permit for mooring SRCC barge #1 in Belmont Slough for an extended period of time following Foster City Intake Dredging Project	\$66632	55/ February 1, 2018 through March 27, 2018	\$550	Capped at \$30,000	\$250	\$13,750	
4) Failure to obtain BCDC permit for mooring SRCC barge #2 in Belmont Slough for an extended period of time following Foster City Intake Dredging Project	\$66632	55/ February 1, 2018 through March 27, 2018	\$550	Capped at \$30,000	\$250	\$13,750	
						Total Proposed Penalty - \$31,500	

§ 11211. Submittal of an Amendment.

(a) Within ten (10) working days of receipt by the Commission of a proposed amendment to the local protection program or component thereof, the Executive Director shall determine whether the proposed amendment meets the submittal requirements of Section 11210.

(b) If the Executive Director determines that the proposed amendment and supporting materials meet the submittal requirements of Section 11210, the Executive Director shall stamp all the materials "Filed BCDC" and the date of filing and notify the entity that submitted the proposed amendment of its filing.

(c) If the Executive Director determines that the proposed amendment does not satisfy the requirements of Section 11210, the Executive Director shall transmit to the entity that proposed the amendment a written explanation of why the proposed amendment and supporting materials do not comply with Section 11210.

(d) The filing of a proposed amendment and supporting materials shall constitute submittal of the amendment pursuant to California Public Resources Code Section 29410.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11212. Processing Amendments to the Local Protection Program or Component Thereof.

The Commission shall process a proposed amendment to the Suisun Marsh local protection program or to any component thereof in accordance with Sections 11202 through 11208, except that amendments designated as minor by the Executive Director under Sections 11213 and 11214 shall be processed only as provided in Section 11214.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11213. Definition of a Minor Amendment.

A minor amendment to the Suisun Marsh local protection program or any component thereof is an amendment that is consistent with California Public Resources Code Sections 29000 through 29612 and the Suisun Marsh Protection Plan and that is one or more of the following:

(a) changes in wording, maps, or diagrams of any general, specific, or area plan, other policy document, zoning ordinance, zoning district map, regulation, or standard that does not change the designated, allowable, or permitted use, density, or intensity of land use or sphere of influence or boundary of any city; or

(b) changes in any certified management plan or policy document of the Suisun Resource Conservation District or the Solano County Mosquito Abatement District that does not change the permitted or allowable use of any land and does not change any water management program or practice.

NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11214. Designation of an Amendment as Minor.

(a) If the Executive Director intends to determine that a proposed amendment is minor, he or she shall notify the Commission of this intent by summarizing the proposed amendment and stating the intent as part of the administrative listing of administrative permits and consistency determinations that Section 10620 requires.

(b) The Executive Director shall send the listing to or shall otherwise notify in writing the County of Solano, the Cities of Benicia, Fairfield, and Suisun City, the Solano County Local Agency Formation Commission, the Solano County Mosquito Abatement District, the Suisun Resource Conservation District, the California Department of Fish and Game, the United States Fish and Wildlife Service, and the United States

Bureau of Reclamation at least nine (9) working days before the meeting at which the Commission may comment on the listing.

(c) If two (2) or more members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the determination shall not become effective and the Commission shall process the amendment pursuant to Section 11212.

(d) If less than two (2) members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the proposed determination shall become effective and the amendment shall become effective on the tenth (10th) working day following the meeting at which the amendment was listed.

(e) The Executive Director shall give written notice of final action on the proposed amendment to the entity that proposed the amendment and to all persons who have requested in writing that they receive such notice.

NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11215. Frequency of Amendments.

No local government, district, nor the Solano County Local Agency Formation Commission shall submit an amendment to the Commission or the Executive Director for certification more frequently than three (3) times during any calendar year.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Section 29418, Government Code; and Section 65361, Government Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

Chapter 13. Enforcement Procedures**Subchapter 1. General Provisions****§ 11300. Grounds for the Issuance of Cease and Desist Orders.**

Any one of the following actions shall constitute grounds for the issuance by the Commission of a cease and desist order: (1) the undertaking or threat to undertake an activity that requires a Commission permit without having obtained a Commission permit, (2) the violation of a term or condition of a Commission permit, or (3) the inclusion of inaccurate information in a permit application or at the public hearing on the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11300 to Section 11301, and new Section 11300 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11301. Grounds for Permit Revocation.

Any one of the following actions shall be grounds for the complete or partial revocation of a Commission permit:

- (1) the violation of a term or condition of a permit,
- (2) the violation of a Commission cease and desist order or an Executive Director's cease and desist order, or
- (3) the inclusion of inaccurate information in a permit application or at the public hearing on a permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d); Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

HISTORY

1. Renumbering and amendment of former Section 11301 to Section 11303, and renumbering and amendment of former Section 11300 to Section 11301 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11302. Grounds for the Imposition of Administrative Civil Penalties.

Any one of the following actions shall constitute grounds for the imposition of civil penalties by the Commission:

- (1) the undertaking of any activity that requires a Commission permit without having obtained the Commission permit or
- (2) the violation of any term or condition of a Commission permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5, Government Code; and Sections 29610–29611, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Repealer and new section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11303. Referral to the Attorney General by the Commission or the Executive Director.

(a) A violation of any one of the following shall be grounds for the referral of the violation by the Commission or the Executive Director to the Attorney General's Office without the Commission's having issued either a cease and desist order or a permit revocation order: (1) the McAteer–Petris Act, (2) the Suisun Marsh Preservation Act, (3) the Federal Coastal Zone Management Act, or (4) a term or condition of a Commission permit.

(b) In addition, a violation of either a Commission cease and desist order or a Commission permit revocation order shall also be grounds for the referral of the violation by either the Commission or the Executive Director to the Attorney General's Office.

(c) A referral made to the Attorney General's Office pursuant to subsections (a) and (b) may include any other unresolved, alleged violation including those of the type enumerated in Section 11386.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11303, and renumbering and amendment of former Section 11301 to Section 11303 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment filed 5–22–2003; operative 6–21–2003 (Register 2003, No. 21).

Subchapter 2. Procedures for the Issuance of Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

Article 1. Definitions

§ 11310. Definitions.

The following definitions are applicable to this chapter:

(a) "Complaint," as used in subsection (b) of Section 66641.6 of the Government Code, means the document that initiates the possible imposition of administrative civil penalties by the Commission. A complaint shall contain the information required by Government Code Section 66641.6(b) and otherwise follow the format for a staff violation report as set out in Appendix H.

(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 Commission objection to assist the Commission in carrying out its enforcement responsibilities.

(c) "Enforcement hearing," as used in this chapter, means any public hearing held before a hearing officer, the enforcement committee, or the Commission as part of a Commission enforcement proceeding.

(d) "Hearing Officer," means any person appointed by the Commission to receive evidence, hear arguments, make findings of fact, and recommend to the Commission what action it should take on an enforcement matter.

(e) "Person," as used in Sections 66637 through 66642 of the Government Code and in this chapter, means any individual, firm, association, organization, partnership, business trust, corporation, company, or governmental agency.

(f) "Respondent," as used in this chapter, means a person to whom the Commission staff has issued a violation report and a statement of defense form in accordance with Section 11321(c).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11310 to Section 11710, and renumbering and amendment of Section 11010 to Section 11310 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 86, No. 39 and 73, No. 50.
2. Renumbering of former subsection (a) to subsection (e), repealer of former subsections (b) and (c), new subsections (a)–(d), and renumbering of former subsection (d) to subsection (f) filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

Article 2. Commission Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

§ 11320. Staff Investigation and Discovery.

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

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11180–11181, 66637, 66638 and 66643, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11320, and renumbering and amendment of former Section 11331 to Section 11320 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11321. Commencing Commission Enforcement Proceedings.

(a) If the Executive Director believes that the results of an enforcement investigation so warrant, the Executive Director shall commence Commission enforcement proceedings by issuing at least 45 days prior to holding an enforcement hearing on the matter the following materials to the last known address of each party that the Executive Director believes may be legally responsible in some manner for the alleged violation:

(1) a violation report that complies with the format set out in Appendix H,

(2) a complaint for civil penalties that complies with the format set out in Appendix H if the staff seeks civil penalties, and

(3) a statement of defense form that complies with the format set out in Appendix I. The violation report and complaint for civil penalties can be combined into a single document so long as it contains all the information required for both.

(b) The violation report shall refer to all documents on which the staff relies to provide a prima facie case and give notice that the documents may be inspected at the Commission's office and that copies will be provided with five days prior notice and upon payment of the cost of copying.

(c) Issuance of a violation report shall occur when the violation report is mailed by certified mail to all persons or entities named as a respondent in the violation report. Issuance of a complaint for civil penalties shall occur when the complaint for civil penalties is mailed by certified mail to all persons or entities named as a respondent in the complaint.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Sections 29610–29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and Section 11322 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11322. Respondent's Required Response to the Violation Report.

(a) Within thirty-five (35) days of the issuance of the violation report and the statement of defense form, each respondent shall submit to the Commission as its office an original and five copies of the completed statement of defense form and an original (or verified copy) and five copies of all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters. Once submitted, all such declarations and documents shall be permanently retained by the Commission as part of the enforcement record.

(b) If a respondent believes that cross-examination of a person relied on by staff in its violation report is needed to show or contest a fact alleged in the violation report, the respondent shall request such cross-examination in the statement of defense form. The addendum shall list the name of each person the respondent wants to cross examine, all documents about which the respondent wants to cross examine, a description of the area of knowledge about which the respondent wants to cross-examine the person, including a specific reference to the fact or information respondent disputes, the information that respondent believes can be elicited by cross-examination, and the reasons the respondent believes that the information can best be provided by cross-examination rather than by the submittal of declarations or other written evidence.

(c) Within 35 days of the issuance of a complaint for civil penalties and a statement of defense form, each respondent shall submit to the Commission at its office either (1) a certified cashier's check in the amount of the proposed civil penalty or (2) the completed statement of defense form and all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters, and any request to allow cross-examination.

(d) If the staff wants to cross-examine, the staff shall, within seven days of receiving a statement of defense form, mail to all respondents a list of all persons that the staff wants to cross examine, the area or areas of knowledge about which the staff wants to cross-examine the witness, and the information that the staff hopes to elicit in cross-examination.

(e) If the Executive Director sends a violation report and a complaint for civil penalties together, paying the civil penalties will not release the respondent from the possible issuance of a cease and desist order or permit revocation order.

(f) 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. The 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.

(g) If a respondent responds to a complaint for the imposition of administrative civil penalties by submitting a cashier's check in the appropriate amount to the Executive Director in a timely fashion, the Executive Director shall cash the check and list the violation, the amount of the proposed penalty, and the fact that the respondent has agreed to pay the penalty as part of the administrative permit listing within 30 days of receipt of the check.

(h) At the next Commission meeting after receiving the listing, the Commission can object to the amount of a proposed administrative civil penalty that a respondent has paid by voting by a majority of those present and voting. If the Commission so objects, the Executive Director shall return the respondent's money and the respondent shall file his or her completed statement of defense form and supporting documents within 35 days of the Commission's action. Thereafter, the enforcement matter shall proceed according to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Section 29610-29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330(d) to Section 11322 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11323. Distribution of Notice of Enforcement Hearings.

(a) At least ten (10) days prior to the initial enforcement hearing on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed Commission civil penalty order, whether held before the enforcement committee, the Commission, or a hearing officer, the Executive Director shall mail by regular mail a written notice of the date, time, and place of the initial enforcement hearing to all respondents at their last known address and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the respondent if the respondent has already received notice of the hearing in a cease and desist order issued by the Executive Director. A meeting notice mailed pursuant to California Government Code Section 11125 will meet this notice requirement.

(b) After the initial enforcement hearing, notice of further enforcement hearings may be given by either announcing the date, time, and place of the further meeting on the record at the close of the preceding enforcement hearing or by mailing written notice of the date, time, and place of the further meeting to all respondents at least 10 days prior to the further enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5, and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Former Section 11337 to Section 11323 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11324. Distribution of the Violation Report, Statement of Defense Form(s), and Recommended Enforcement Decision.

At least ten (10) days prior to the enforcement hearing, the Executive Director shall mail by regular mail the following materials to each respondent, and to the committee members if the enforcement hearing will be held before the enforcement committee, to the hearing officer if the enforcement hearing will be held before a hearing officer, or to the Commission if the enforcement hearing will be held before the Commission: (1) the violation report, (2) each completed statement of defense form and the enclosed exhibits, with a notation that indicates if any of the statements have been filed in an untimely fashion, and (3) a recommended enforcement decision that complies with Section 11326.

NOTE: Authority cited: Section 66632(f), Government Code, and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11325. Ex Parte Contacts.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Repealer filed 12-27-2004; operative 1-26-2005 (Register 2004, No. 53).

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

(a) The Executive Director shall prepare a recommended enforcement decision on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order.

(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 (C) a list of all essential allegations either admitted or not contested by respondent(s), (D) all defenses and mitigating factors raised by the respondent(s), and (E) any rebuttal evidence raised by the staff to matters raised in the statement of defense form with references to supporting documents;

(2) a summary and analysis of all unresolved issues;

(3) a statement of whether the Executive Director has issued a cease and desist order and its expiration date; and

(4) a recommendation on what action the Commission should take; and

(5) the proposed text of any cease and desist order, permit revocation order, or civil penalty order that the Executive Director recommends that the Commission issue.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66642 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

(a) the Chair shall announce the matter, ask all respondents or their attorneys present to identify themselves for the record, indicate what matters are already part of the record, and announce any imposition of time limits for presentations to be made by the staff, the respondent(s), and the public at the hearing;

(b) the Chair may impose time limits based on the circumstances of the alleged violation(s), the number of other items contained on the meeting agenda, the number of persons who intend to speak, and such other factors as the Chair believes relevant;

(c) the staff shall summarize the violation report and recommended enforcement decision with particular attention to limiting its presentation to issues of controversy;

(d) each respondent shall summarize its position(s) on the matter(s) relevant to the alleged violation or proposed order with particular attention to those issue(s) where an actual controversy exists between the staff and the reported party(s);

(e) other speakers may speak concerning the matter;

(f) presentations made by the staff, a respondent, and other speakers shall be limited to responding to (1) evidence already made part of the enforcement record and (2) the policy implications of such evidence; the committee and the Commission shall not allow oral testimony unless the committee and 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 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) or Section 11322(c) 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.

(h) Committee members, a hearing officer, and Commissioners may ask questions at any time during the hearing or deliberations.

(i) the enforcement committee, hearing officer, or Commission shall close the public hearing after the staff, all respondents, and the public have completed their presentations and committee members, the hearing officer, or Commissioners have completed their questioning;

(j) the enforcement committee or Commission shall deliberate and vote on an enforcement matter; and

(k) if a hearing officer has been appointed for an enforcement matter, the hearing officer shall render a written decision that follows the format of an Executive Director's recommended enforcement decision within 14 days of the closing of the enforcement hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11328 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11328. Acceptance of Late Evidence.

The introduction of surprise testimony and exhibits at enforcement hearings shall be discouraged. All documents and declarations under penalty of perjury shall be submitted with the completed statement of defense form except to the extent the Executive Director has extended the time for such submittal pursuant to Section 11322(d) or the Commission admits the evidence into the record pursuant to Section 11327(f) and this section. To this end, the Commission, any hearing officer, and the enforcement committee shall not accept into the record or consider any statement of defense form or any written evidence not filed in a timely manner unless the Commission, hearing officer, or enforcement committee finds that (1) the person seeking to introduce the evidence made all reasonable efforts to obtain and submit the evidence in a timely manner and would be substantially harmed if the evidence were not admitted and (2) no other party would suffer substantial prejudice by its admission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11329. Admissibility of Evidence.

(a) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

(b) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action or unless it is in the form of a declaration under penalty of perjury or in the form of another document referred to in a violation report or complaint for the imposition of civil penalties and the declarant or author of the other document is subject to cross-examination as provided in Sections 11321, 11322, and 11327.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant or unduly repetitious evidence shall be excluded.

(d) The Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall have the final authority to determine whether any evidence whose admissibility is challenged by objection shall be admitted into evidence and become part of the record.

(e) In determining whether to admit testimony or exhibits into the record over objection, the Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall consult with the Deputy Attorney General in attendance at the hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11339 to section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of portions of subsection (a) to create new subsections (b) and (c) and relettering of former subsections (b) and (c) filed 9-3-92; operative 10-5-92 (Register 92, No. 36).

§ 11330. Adoption of an Enforcement Committee or a Hearing Officer Recommended Enforcement Decision.

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) all of the matters required by Section 11326; and
- (b) any further written report on or explanation of the enforcement proceedings as the enforcement committee or hearing officer believes is appropriate.

The enforcement committee or a hearing officer can adopt with or without change the staff recommended enforcement decision.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and 11322, and new Section 11330 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11331. Referral of the Recommended Enforcement Decision to the Commission.

At least ten (10) days prior to the Commission's consideration of a recommended enforcement decision referred to it either directly by the Executive Director, by the enforcement committee, or by a hearing officer, the staff shall mail the recommended enforcement decision to all respondents and to all Commissioners.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11331 to Section 11320, and new Section 11331 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11332. Commission Action on Recommended Enforcement Decision.

(a) When the Commission acts on a recommended enforcement decision, the Commission shall allow representatives of the staff, each respondent, and members of the public an opportunity to present their respective arguments on the recommendation, subject to such reasonable time limits as the Chair may impose and subject to a prohibition against the introduction of any new evidence unless the Commission proceeds either to remand the matter to the enforcement committee or hearing officer or hold a de novo evidentiary hearing.

(b) Thereafter, the Commission shall do one of the following:

(1) adopt the recommended enforcement decision without any change in any proposed cease and desist order, permit revocation order, or civil penalty order;

(2) either (A) dismiss the entire matter by voting not to issue any proposed cease and desist order, proposed permit revocation order, or proposed civil penalty order or (B) adopt the recommended enforcement decision with regard to one or more of a proposed cease and desist order, a proposed permit revocation order, and a proposed civil penalty order and dismiss the other proposed order(s) recommended in the recommended enforcement decision by voting not to issue them;

(3) remand the matter to the enforcement committee, hearing officer, or the staff for further action as the Commission directs; or

(4) reject the recommended enforcement decision and decide to consider the entire matter de novo. In this event, the Commission shall continue the public hearing to the next available Commission meeting, when it shall proceed in accordance with the same procedural requirements as the Commission must follow under these regulations pursuant to Section 11327. As part of this de novo proceeding, the Commission can accept additional evidence only in compliance with Section 11327 or if the Commission provides the staff, all respondents, and the public a reasonable opportunity to review and respond to the additional evidence prior to the Commission's de novo review.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Repealer and new section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11333. Commission Hearing Procedures on Direct Referral of an Enforcement Matter by the Executive Director.

When the Executive Director refers an enforcement matter directly to the Commission rather than to the enforcement committee, the Commission shall follow the procedures set out in Sections 11327 through 11329 and in Section 11334.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325, and new Section 11333 filed 10-11-89; operative 11-10-89 (Register 89, No. 30). For prior history, see Register 87, No. 30.

§ 11334. Voting on a Proposed Commission Cease and Desist Order, a Proposed Commission Permit Revocation Order, or a Proposed Commission Civil Penalty Order.

(a) The Commission shall vote on a recommended enforcement decision, a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order by roll call in alphabetical order except that the Chair shall vote last;

(b) Any member may change his or her vote at any time before the Chair announces the final tally; and

(c) The decision of whether or not to issue an order shall be by majority vote of those present and voting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11334, and renumbering and amendment of former Section 11341 to Section 11334 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11335. Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11336. Distribution of Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11337. Notice of Public Hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11337 to Section 11323 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11338. Public Hearing Procedure.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11338 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11339. Admissibility of Evidence.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11513 and 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11339 to Section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11340. Contents of Cease and Desist Orders.

(a) Cease and desist orders shall be signed by the Executive Director and shall contain the following:

- (1) a statement of whether the Executive Director is issuing the order pursuant to Section 66637 of the Government Code or the Commission is issuing the order pursuant to Section 66638 of the Government Code;
- (2) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;
- (3) identification of the property where the activity has been undertaken or may be undertaken;
- (4) a description of the activity;
- (5) the effective date of the order;
- (6) the expiration date, if any, of the order;
- (7) any terms, conditions, or other provisions necessary to bring the activity into compliance with the provisions of the McAteer-Petris Act, the Suisun Marsh Preservation Act, or a permit;
- (8) written findings that (1) explain the decision to issue the order and (2) provide the factual and legal basis for the issuance of the order;
- (9) in the case of an order issued by the Executive Director, notice of the date and place of any public hearing to be held on any cease and desist order proposed to be issued by the Commission relating to the same activity if the Executive Director has scheduled one;
- (10) notice that a respondent may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order; and
- (11) such other provisions that the Commission has approved, including provisions relating to:
 - (A) a disclaimer of any effect of the order upon any duties, rights, or obligations under private agreements or under regulations of other public bodies;
 - (B) the obligation to conform strictly to the order and the consequences of the failure to do so; and
 - (C) the fact that the order does not constitute a recognition of property rights.

(b) A cease and desist order can be combined with a permit revocation order or a civil penalty order so long as the combined order contains all the information required under these regulations for both such orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11340, and renumbering and amendment of former Section 11343 to Section 11340 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11341. Modifications of Cease and Desist Orders Issued by the Executive Director.

The Executive Director may modify a cease and desist order that he or she has issued, but he or she shall not do so in a manner that extends the 90-day expiration period provided for in Section 66637 of the Government Code unless a respondent stipulates in writing to the extension. The Executive Director may, however, issue consecutive cease and desist orders for a persisting violation or a persisting threatened violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11341 to Section 11334, and renumbering and amendment of former Section 11344(a) to Section 11341 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11342. Modification of Cease and Desist Orders Issued by the Commission.

The Executive Director may modify a cease and desist order issued by the Commission if the modification would not be a material alteration of the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370, and renumbering and amendment of former Section 11344(b) to Section 11342 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11343. Appeal from the Modification of a Commission Cease and Desist Order.

(a) A person who has been personally served with a Commission cease and desist order or to whom the Commission has mailed by certified mail a cease and desist order and to whom the order is directed may appeal to the Commission any modification of the order by the Executive Director.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a cease and desist order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11343 to Section 11340, and renumbering and amendment of former Section 11344(c) to Section 11343 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11344. Amendments to Cease and Desist Orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; Section 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) Cal. App. 3d 936, 940.

HISTORY

1. Renumbering and amendment of former Section 11344 to Sections 11341, 11342, and 11343 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11350. Contents of Permit Revocation Orders.

(a) Commission permit revocation orders shall be signed by the Executive Director and shall contain the following:

(1) the names of the person or persons who have violated a term or condition of a Commission permit or a Commission cease and desist order or who have misstated any information on a permit application or at a public hearing;

(2) an identification of the term or condition of a permit or a cease and desist order that was violated, the information that was misstated on the permit application;

(3) the effective date of the order;

(4) the work and uses that are no longer authorized and the date by which any corrective actions or termination of uses must occur;

(5) any terms, conditions, or other provisions that the Commission may determine that, if complied with, could avoid revocation of the permit;

(6) written findings that (A) explain the decision to issue the permit revocation order and (B) provide the factual and legal basis for the issuance of the order;

(7) notice that an aggrieved party can file with the superior court a petition for a writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) A permit revocation order can be combined with a cease and desist order and a civil penalty order so long as the combined order contains all the information required by these regulations for both types of orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11351. Modification of Permit Revocation Orders.

The Executive Director may modify a permit revocation order if the modification would not materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11352. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a permit revocation order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of the personal service or mailing by certified mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a permit revocation order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11360. Preparation and Execution of Commission Cease and Desist Orders and Permit Revocation Orders.

The Executive Director shall prepare and sign a cease and desist order or a permit revocation order authorized by the Commission no later than the fifth (5th) working day following approval.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11051 to Section 11360 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.

§ 11361. Issuance.

"Issuance" of a cease and desist order, a permit revocation order, a civil penalty order, or of any modification of such orders, is complete when the Executive Director executes the original copies of the order or modification and they are stamped "Issued BCDC" with the date.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11050 to Section 11361 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11362. Service of Copies.

(a) Persons to Whom the Order or Modification is Issued. The Executive Director shall cause to be personally served or mailed by certified mail an original copy of a cease and desist order, a permit revocation order, and of any modifications to each person to whom the order is being issued no later than the second working day following the date of issuance. The Executive Director shall cause to be personally served or mail by registered mail a civil penalty order or modification to such order to each person to whom the order is being issued no later than the second working day following the date of issuance.

(b) Other Interested Persons. The Executive Director shall personally serve on or shall mail by regular mail a copy of a cease and desist order or a permit revocation order authorized by the Commission and of any modification to each person who appeared at the hearing and submitted a written request for a copy as soon as possible after the Commission authorized the order or modification. (For civil penalty orders, see subdivision (d) of Government Code Section 66641.6.)

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11052 to Section 11362 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11370. Enforcement Record.

The record of an enforcement proceeding shall consist of

(a) the violation report, including all documents referred to in the report;

(b) any complaint for civil penalties;

(c) all timely filed statement of defense form(s);

(d) all untimely filed statement of defense forms that have nevertheless been admitted into evidence;

(e) the staff recommended enforcement decision, including all documents referred to in the recommendation,

(f) minutes of all enforcement committee and Commission enforcement hearings and deliberations, provided, that if eyewitness or expert testimony is allowed at the enforcement hearing, a verbatim transcript of such testimony shall also be included;

(g) all evidence submitted but rejected because it was not filed in a timely manner or violated Section 11328, with a notation that it was rejected and is included in the record only so that a reviewing court will know what evidence was rejected;

(h) any enforcement committee's or hearing officer's recommended enforcement decision,

(i) any order that the Commission issues,

(j) all other materials maintained in the Commission's file for the enforcement matter,

(k) such other permit or other Commission files as have explicitly been made a part of the record,

(l) the McAteer-Petris Act,

(m) the San Francisco Bay Plan,

(n) the Suisun Marsh Preservation Act,

(o) the Suisun Marsh Protection Plan,

(p) the Suisun Marsh Local Protection Program, and

(q) the Commission's regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29210(e), Public Resources Code. Reference: Sections 66639-66640 and 66641.7, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370 filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11380. Contents of Complaint for Administrative Imposition of Civil Penalties.

The complaint shall follow the same format as required for a Violation Report in Appendix H to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11381. Commission Hearing on Complaint for Administrative Imposition of Civil Penalties.

(a) The Commission shall comply with the requirements of Cal. Govt. Code Section 66641.6(b) by either (1) hearing the matter itself within 60 days of the service of the complaint or (2) by having the enforcement committee hold a hearing within 60 days of the service of the complaint.

(b) The Executive Director shall determine whether to refer a complaint for the administrative imposition of civil penalties to the Commission or to the enforcement committee.

(c) When the Executive Director determines whether to refer a complaint for civil penalties to the Commission or to the enforcement committee, he or she shall consider the following factors:

(1) the time that it would take the Commission or enforcement committee to complete consideration of the complaint,

(2) the relative workloads of the Commission and the enforcement committee at the time,

(3) whether the complaint involves any policy issues that should be determined by the Commission initially,

(4) whether the Commission or the enforcement committee has already heard any enforcement matter that is related to the complaint, and

(5) any request by the Commission that it hear the matter directly.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11382. Further Procedures for Commission Review of Complaints for the Issuance of Civil Penalty Orders.

The Commission shall follow the procedures established by Sections 11310 and 11321 through 11334 and Sections 11361 through 11370 of these regulations when it considers recommended enforcement decisions from either the staff or the enforcement committee or a hearing officer relative to the possible administrative imposition of civil penalties.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11383. Contents of a Commission Civil Penalty Order.

(a) A Commission civil penalty order shall be signed by the Executive Director and shall contain the following:

(1) the name(s) of the person(s) required to pay the civil penalty;

(2) the amount of the civil penalty;

(3) the date by which the civil penalty must be paid;

(4) written findings that (1) explain the decision to issue the civil penalty order and (2) provide the factual and legal basis for the issuance of the order, and

(5) notice that a person to whom the Commission issues a civil penalty order may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order.

(b) A civil penalty order can be combined with a cease and desist order or a permit revocation order so long as the information required under these regulations for both is contained in the combined order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11384. Modification of a Commission Civil Penalty Order.

The Executive Director may modify a civil penalty order if the modification would not alter the amount of the penalty or otherwise materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11385. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a civil penalty order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of personal service or mailing by registered mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by registered mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a civil penalty order by the Executive Director cannot be filed more than ten days after the personal service or mailing by registered mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11386. Standardized Fines.

(a) This Section 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);

(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) Except as provided in subsection (g), if this Section applies to an enforcement action, the Executive Director shall mail a written notice to the person(s) believed to be responsible for the alleged violation that contains all of the following information:

(1) the nature of the alleged violation and each and every action that must be taken to correct the alleged violation;

(2) the fact that if the alleged violation is fully corrected within 35 days of the mailing of the notice, the Commission shall not impose any civil penalty; and

(3) the fact that if the alleged violation is not fully corrected within 35 days of mailing of the notice, the person believed to be responsible for the alleged violation may be subject to the payment of a civil penalty and

may resolve the penalty portion of the alleged violation by paying the standardized fine specified in subsections (e), and (f) without having to go through a formal enforcement proceeding pursuant to Sections 11300 through 11385 except as provided in subsection (h).

(c) Except as provided in subsection (g), if the person believed to be responsible for the alleged violation completes each and every corrective action specified in the notice pursuant to subsection (b) within thirty-five (35) days after the mailing of the notice, the Commission shall not impose any standardized or other fine.

(d) Except as provided in subsections (g) and (h), if the person believed to be responsible for the alleged violation fails to complete one or more of the corrective actions required by the notice pursuant to subsection (b) within thirty-five (35) days after the date of the mailing of the notice, the responsible person may resolve the penalty portion of the alleged violation by completing each and every action required by the notice sent pursuant to subsection (b) and by paying a fine in the amount provided in subsections (e) and (f).

(e) The following standardized civil penalties shall apply to the following types of alleged violations:

(1) for the failure to return an executed Commission permit before commencing the work authorized by the permit:

(A) if the fully executed permit is returned between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00); or

(B) if the fully executed permit is returned more than sixty-five (65) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the sixty-fifth (65) day to the date the fully executed permit is received by the staff.

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

(A) if a required document is submitted between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) per document;

(B) if a required document is submitted between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) per document; or

(C) if a required document is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each document plus ONE HUNDRED DOLLARS (\$100.00) per day for each document, from the ninety-sixth (96th) day to the date the document is received by the staff.

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

(A) if corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate requirement, plus ONE HUNDRED DOLLARS (\$100.00) per day for each violation, from the ninety-sixth (96th) day to the date the required improvements are provided.

(4) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and

fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): FIVE THOUSAND DOLLARS (\$5,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: FIVE THOUSAND DOLLARS (\$5,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: TWO THOUSAND DOLLARS (\$2,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained, or the unauthorized activity is completely corrected.

(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 but is an activity similar in size and scope to the activities listed in Sections 10601(a) through 10601(e):

(A) if the violation is corrected and the area restored to its prior status between thirty-six (36) and sixty-five (65) days after the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00);

(B) if the violation is corrected and the area restored to its prior status between sixty-six (66) and ninety-five (95) days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00);

(C) if the violation is corrected and the area returned to its prior status more than 95 days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day to the date the violation is completely corrected.

(f) A person believed to be responsible for any alleged violation must pay double the amount listed in subsection (e) to resolve the civil penalty portion of the alleged violation if that person has previously paid any standardized fine pursuant to section 11386 within the five years prior to resolution of the alleged violation.

(g) If a violation resolved pursuant to subsection (c) is repeated by the same person within five years of the resolution of the prior violation, subsections (c), (e), and (f) shall not apply. Instead, the person believed to

be responsible for the subsequent alleged violation may resolve the civil penalty portion of the subsequent alleged violation by paying ONE HUNDRED DOLLARS (\$100.00) per day for each day the subsequent alleged violation occurs or persists.

(h) If the person responsible for the alleged violation does not complete all the required corrective actions and pay the appropriate standardized civil penalties within the time limits specified by the Executive Director or, if no time limit is specified, within 125 days of the notice mailed pursuant to subsection (b), the Executive Director may commence enforcement proceedings in accordance with Sections 11300 through 11385. If the Executive Director determines that an alleged violator has not made a good-faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for settlement using the standardized fine process thirty-five (35) days after mailing a notice stating that the process will no longer be available.

(i) After the violation has been completely resolved, if any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the amount is inappropriate, that person can appeal the proposed amount of the penalty to the Executive Director and the Chair, who can reduce the amount of the standardized civil penalty to an amount that they believe is appropriate.

(j) If any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the time limit established pursuant to subsection (h) is inappropriate, that person may appeal the time limit to the Executive Director and the Chair, who can modify the time limit as they believe appropriate.

(k) Any person believed to be responsible for an alleged violation is entitled to a formal enforcement hearing according to sections 11300 through 11385 if that person believes it is necessary to fairly determine the appropriate remedy or civil penalty amount.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66641.5,

Government Code; and Sections 29201(e) and 29610, Public Resources Code.

HISTORY

1. New section filed 2-26-93; operative 3-29-93 (Register 93, No. 9).
2. Amendment filed 6-26-97; operative 7-26-97 (Register 97, No. 26).
3. Amendment of section and NOTE filed 12-9-98; operative 1-8-99 (Register 98, No. 50).
4. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).

Chapter 14. Marsh Development Permits Issued by Local Governments and Appeals Therefrom

Subchapter 1. Marsh Development Permits Issued by Local Governments

Article 1. Application

§ 11400. Application of Chapter.

This Chapter shall govern the issuance of a marsh development permit or any other local permit that incorporates the provisions of a marsh development permit, hereinafter referred to as "a marsh development authorization," by local governments pursuant to California Public Resources Code Section 29502(a) and appeals from marsh development authorizations issued by local governments.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29502, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11225 to Section 11400 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

[The next page is 539.]