

# Briefing on Standardized Fines Process

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# Introduction

- Administrative civil penalty authority
- Standardized fine provisions
- Proposed process improvements
- Possible regulatory changes
- Discussion

# Section 66641.5(e), McAteer-Petris Act

- Administrative civil liability authority
  - \$30,000 maximum for a single violation
  - Not less than \$10 nor more than \$2,000 for each day in that violation occurs or persists
- To a person or entity for any violation of the MPA or any term or condition of any Commission-issued permit
- No administrative civil penalty authority in the Suisun Marsh Preservation Act

# Regulation 11386(e) Violation Types (1 of 2)

Ca. Code of Regulations, Title 14. Natural Resources, Division 5. SF  
BCDC

- (e)(1) - Failure to return an executed Commission permit before commencing the work authorized by the permit
- (e)(2) - Failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit
- (e)(3) - Failure to comply with any condition required by a Commission permit not covered by (e)(1) and (e)(2)

# Regulation 11386(e) Violation Types (2 of 2)

- (e)(4) - Failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit
- (e)(5) - Failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit
- (e)(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)

# When Can Staff Use the Standardized Fines?

- Section 11386(e) applies when the Executive Director determines that the violation:
  - Is one of the six types described above; and
  - Has not resulted in significant harm to the Bay's resources or to existing or future public access; and
  - Can be corrected consistent with the Commission's law and policies
- Fine clock commences date of mailing correspondence (a.k.a. "35-day letter")
  - No fines accrue for the first 35 days

# Hypothetical Violation in Shoreline Band

(1 of 2)

- Failure to obtain plan approval before commencing construction - (e)(3)
  - Failure to submit any document other than an executed Commission permit as required by the permit
  - *\$1000 total* *36 – 65 days*
  - *\$3,000 total* *66 - 95 days*
  - *\$3,000 plus \$100/day* *96 days onward*
- Failure to install all of the required public shore parking signs – (e)(3)
  - Failure to comply with any other permit condition (i.e. onsite physical violations vs. documentation)
  - *\$1000* *36 – 65 days*
  - *\$3,000* *66 - 95 days*
  - *\$3000 plus \$100/day* *96 days onward*
- Unauthorized construction in the shoreline band outside the required public access area – (e)(4)
  - Failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit
  - *\$2000* *36 – 65 days*
  - *\$5,000* *66 - 95 days*
  - *\$5000 plus \$100/day* *96 days onward*

# Hypothetical Violation in Shoreline Band

(2 of 2)

- Plan approval for public shore parking signs obtained on Day 65
  - \$1,000 (violation fully corrected within 36 - 65 days)
- Public shore parking signs Installed pursuant to approved plans on Day 75
  - \$3,000 (violation fully corrected within 66 - 95 days)
- Permit amendment issued on Day 376
  - Respondent submits filed application on Day 300 and staff issues permit amendment on Day 376
  - $376 \text{ days} - 95 \text{ days} = 281 \text{ days} \times \$100/\text{day} = \$28,100$
  - $\$5,000 + 28,100 = \$33,100$  (Caps at \$30,000 per violation)
- Total Accrued Fine
  - $\$1,000 + \$3,000 + \$30,000 = \$34,000$  – letter sent assessing \$34,000 in fines
  - Respondent may appeal the penalty

# Penalty Appeal Process

## Sections 11386(i) and (k)

- After the violation has been completely resolved
  - Respondent may appeal penalty if s/he believes amount of fine is inappropriate
  - Appeal to Executive Director and Commission Chair, who can reduce civil penalty to an amount they believe is appropriate

# Respondent and Staff Can Elevate Cases to Enforcement Committee

Sections 11386 (h) and (j)

- Respondent may request a formal enforcement proceeding if s/he believes it is necessary to fairly determine the appropriate remedy (pre-resolution) or civil penalty (post-resolution)
- ED may terminate the opportunity for resolution using standardized fines and commence a formal enforcement proceeding
  - If responsible party does not correct the violation and pay the standardized fines within the time limits specified by ED, usually 125 days
  - If s/he determines that the responsible party has not made a good faith effort to correct the violation
  - 35 days after mailing a notice stating that standardized fines process will no longer be available

# Repeat Violations

## Section 11386 (f) and (g)

- If previously paid any standardized fine within the past five years to resolve a prior violation
  - Pay double the amount in section (e) to resolve the civil penalty portion of the current violation
- If violation previously resolved within 35 days of receiving staff's violation notice is repeated by the same person within five years of resolution of the prior violation
  - No "second" 35-day grace
  - \$100/day for each day the subsequent violation occurs or persists

# Staff-Instituted Changes That Are Working

- Focusing on fewer cases; therefore, pursuing each through resolution
- Elevating cases to EC once the penalties have reached the administrative maximum of \$30,000/violation
- Pursuing procedures to elevate all cases to EC for which staff has already issued a 35-day letter and time periods have passed

# Potential Changes to Regulation 11386

- Define substantial harm
- Modify to explicitly include dredging violations within the categories of actions appropriate for standardized fines
- Extend period beyond 5 years for double fines for repeat violators who have previously paid a fine [Subsection (f)]
- Increase amount above \$100/day for quick fix, repeat violations [Subsection (g)]
- Allow for automatic adjustment of fines amounts for inflation

# Questions and Discussion