

# **BRIEFING ON CALCULATION OF VIOLATIONS**

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ITEM #7

# Audit recommendation

The commission should take the following actions by January 2021:

Create and implement regulations that define substantial harm, **provide explicit criteria for calculating the number of violations present in individual enforcement cases, and specify a process to handle any necessary exceptions to the criteria.**

# Overarching goal of enforcement – furthering BCDC's mission

- Protection of the Bay
- Ensuring maximum feasible public access to the Bay and shoreline

# Enforcement mission and goals

- **Fairness and Consistency**

- Provide equitable treatment and be both consistent and flexible enough to allow for adjustments for legitimate differences in situations and cases

- **Efficient and Effective Deterrence**

- Provide firm disincentives to noncompliance (deterrence) and effective incentives to resolve violations quickly

- **Transparency**

- Actions should be clear and based in policy, regulations, and statute

- **Swift and timely action**

- Ensure that violations involving risk to the Bay or public access are resolved swiftly and not allowed to continue

# BCDC Law

- McAteer-Petris Act section 66641.5(e)

Civil liability may be administratively imposed by the commission in accordance with Section 66641.6 on any person or entity for **any violation of this title or any term or condition of a permit** issued by or on behalf of the commission in an amount which shall be not less than ten dollars (\$10), nor more than two thousand dollars (\$2,000), for each day in which that violation occurs or persists, but the commission may not administratively impose a fine of more than thirty thousand dollars (\$30,000) for a single violation.

## **BCDC Regulations Section 11302**

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.**

# DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)

## 22 CCR 66272.64 Multiple Violations

(a) At the discretion of the Enforcement Agency, a single initial penalty may be assessed for multiple violations. **Multiple violations subject to this section are multiple instances of the same violation, where each is a violation in itself.**

(b) The assessment of a single initial penalty may be appropriate for multiple violations in the following cases:

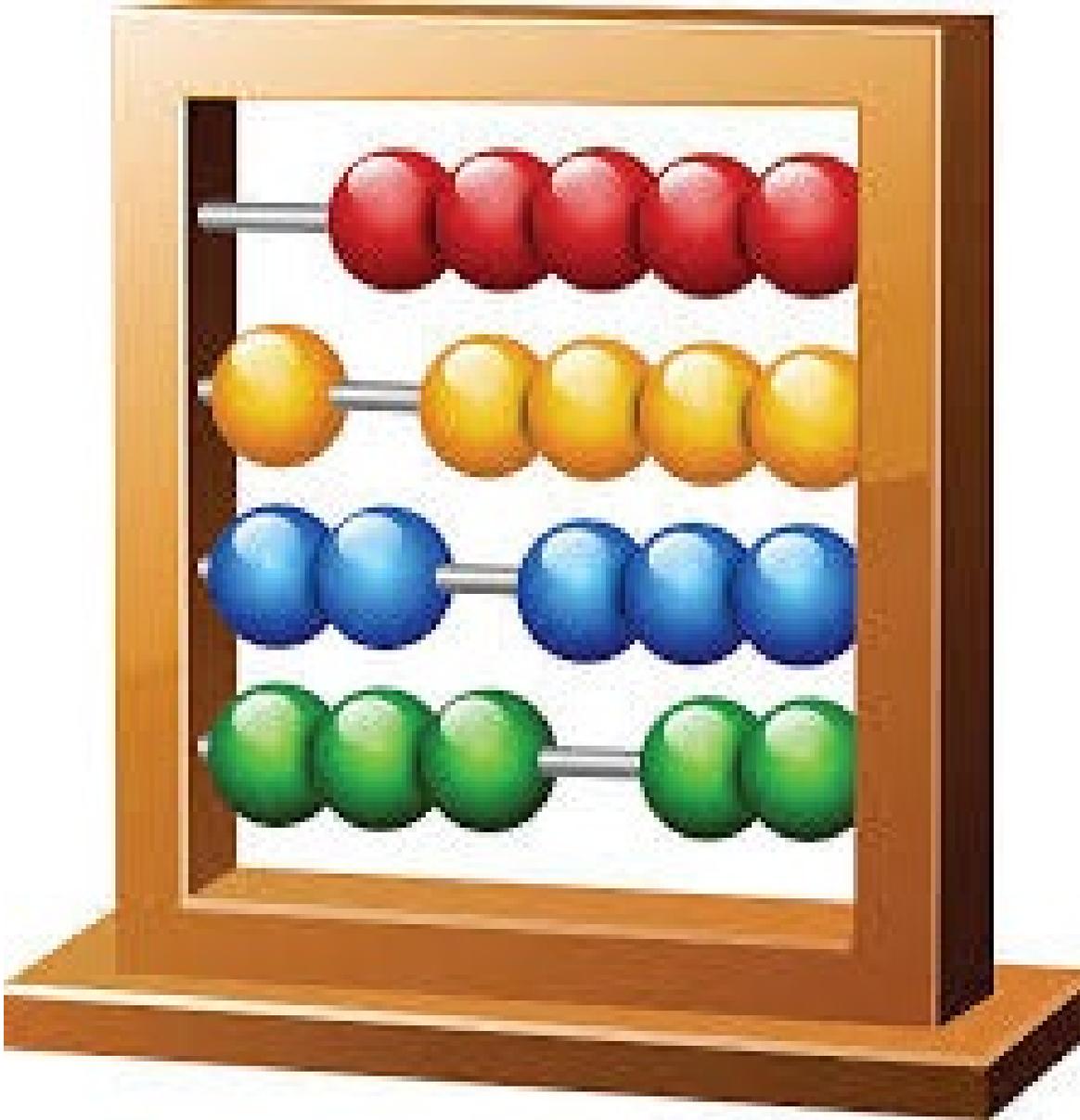
(1) The facility has violated the same requirement at one or more locations (e.g. units) within the facility.

(2) The violation occurs on separate occasions, unless the facility has been notified of the violation and has had sufficient time to correct the violation, and the violation is not a violation that continues uninterrupted for more than one day.

(3) When violations are not independent or are not substantially distinguishable. For such violations, the Enforcement Agency shall consider the extent of violation in terms of the most significant violation.

**(c) Where it is necessary to deprive the violator of the economic benefit of multiple violations, the Enforcement Agency shall cite such violations separately and assess an initial penalty for each violation.**

# PROPOSAL



# PROPOSAL

As set forth in the existing regulations (section 11302), any of the following actions is a violation:

- (1) The undertaking of any activity that requires a permit without obtaining a permit;
- (2) Any violation of any term or condition of a permit.

# CRITERIA TO BE REFERENCED IN CASES INVOLVING MULTIPLE VIOLATIONS

At the discretion of the agency, a single penalty may be assessed for multiple violations in the following situations:

- (1) For violations of the terms or conditions of a permit, a single penalty may be appropriate if:
  - (a) the violations involve the same permit term or condition;
  - (b) the harm resulting from the violations is not distinguishable;
  - (c) the violations are not substantially separated in time and there has been no intervening enforcement action between the actions that resulted in a violation

# ADDITIONAL CRITERIA TO BE REFERENCED IN CASES INVOLVING MULTIPLE VIOLATIONS

(2) For violations involving activities undertaken without a permit, a single penalty may be appropriate if:

- (a) the harm resulting from the violations is not distinguishable;
- (b) the violations are not substantially separated in time and there has been no intervening enforcement action between the undertaking of the first and second violation

## **ADDITIONAL CRITERIA**

Where necessary to deprive the violator of the economic benefit of multiple violations, multiple violations should be cited separately

# CONSIDERATIONS

- Important to **deter** entities for engaging in multiple unauthorized acts
- **Consistent** interpretation of permit requirements and **fair** treatment of regulated entities
- **Transparency** to ensure that entities understand requirements

# NEXT STEPS

- Draft written guidance
- Develop language, as necessary, for revised enforcement regulations

# QUESTIONS