

*ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE*  
*ENVIRONMENTAL*  
*PROTECTION DIVISION*  
*Prosecution of Illicit Discharges*



*Kevin Wong*  
*Deputy District Attorney*  
*Alameda County District Attorney's Office*  
*Environmental Protection Division*

*[CONFIDENTIAL OFFICIAL INFORMATION – EVIDENCE CODE 1040]*

# Legal Disclaimer

The presentation is solely for educational purposes and provides only a general description of various regulatory requirements and laws. For a complete description, please consult the relevant state and/or federal statutes, regulations and case authority. Nothing in this presentation constitutes legal advice and should not be construed as such.



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# ENVIRONMENTAL PROTECTION DIVISION



- **DEPUTY DISTRICT ATTORNEYS**
- **DISTRICT ATTORNEY INSPECTORS**

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# **ENVIRONMENTAL PROTECTION DIVISION**

## **(TYPES OF CASES)**

- **FISH AND GAME VIOLATIONS**
  - **WATER POLLUTION**
  - **STREAMBED ALTERATION**
  - **HUNTING AND PROHIBITED SPECIES CASES**
- **HAZARDOUS WASTE VIOLATIONS**
- **HAZARDOUS MATERIALS VIOLATIONS**
  - **HMBP**
  - **“HAZ MAT” TRANSPORTATION**
- **UNDERGROUND STORAGE TANK (UST) VIOLATIONS**



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# ENVIRONMENTAL CASE ORIGINS

- California Department of Fish & Wildlife
- Regulatory Agencies (“alphabet soup”)
  - CUPAs, CALEPA, DTSC, ARB, SWRCB, USEPA, USF&W
- Federal and Local law enforcement
- District Attorney Inspectors
- Whistle-blowers
- Citizen complaints



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# ENVIRONMENTAL PROTECTION DIVISION (PROSECUTION OPTIONS)



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# ENVIRONMENTAL PROTECTION DIVISION (PROSECUTION OPTIONS)



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# **WATER POLLUTION VIOLATIONS**

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# **WATER POLLUTION VIOLATIONS**

## **(F&G §5650)**

### **Makes it a violation to:**

- Deposit into,
- Permit to pass into, or
- Place where it can pass into
- The Waters of the State of California

### **Applies to a variety of substances, including:**

- Petroleum Products
- Any liquid or solid refuse from mill or factory
- Sawdust, shavings, slabs or edgings
- Anything that is deleterious to fish, plant life, mammals or birds

# **WATER POLLUTION VIOLATIONS**

## **(F&G §5650 – Strict Liability & Penalty)**

### **Liability = Strict Liability**

- The state does not have to establish criminal negligence or intent.
- Not a defense - “Didn’t know it was wrong”; “Did not intend to dump”; “It was a mistake or accident.”

**Criminal penalty = misdemeanor**

**Civil penalty = up to \$25,000 per violation**

# **WATER POLLUTION VIOLATIONS**

## **(F&G §5650)**



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# WATER POLLUTION VIOLATIONS (F&G §5650)



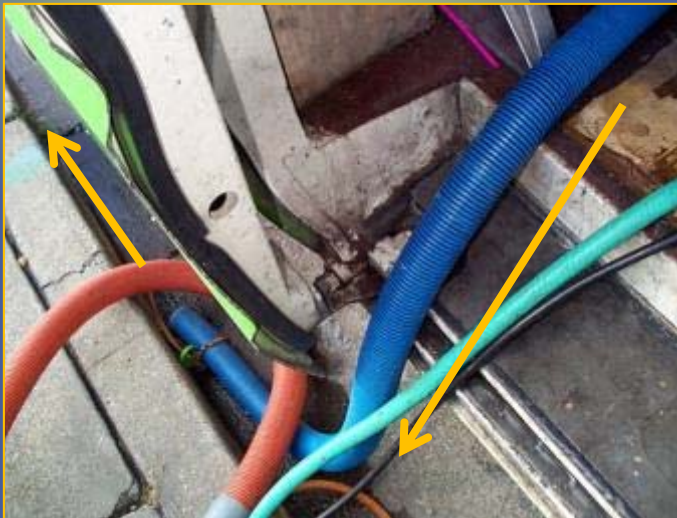
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# WATER POLLUTION VIOLATIONS (F&G §5650)



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# WATER POLLUTION VIOLATIONS (F&G §5650)



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# WATER POLLUTION VIOLATIONS (MUNICIPAL CODES)

## Emeryville Municipal Code - 6-13.201 Discharge of Pollutants.

The discharge of non-stormwater discharges to the City storm sewer system is prohibited. All discharges of material other than stormwater must be in compliance with an NPDES permit issued for the discharge[.]

- “Non-stormwater discharge” means any discharge that is not substantially composed of stormwater.

# **WATER POLLUTION VIOLATIONS**

**(Water Code 13376/13387)**

- **Discharge “pollutant”**
- **Into waters of the state**
- **Negligently – misdemeanor**
- **Knowingly - felony**

# HAZARDOUS WASTE VIOLATIONS

## (Health and Safety Code 25189.2(c))

- A person who disposes, or causes the disposal of, a hazardous or extremely hazardous waste at a point that is not authorized [by law] is liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation.
- “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into the environment. (H&S 25113)
- This is a strict liability offense (ie. accident is not a defense).

# DEPOSITING HAZARDOUS SUBSTANCE

(PENAL CODE §374.8)

Any person who knowingly causes any hazardous substance to be deposited into or upon any road, street, [or] into the waters of this state is punishable by :

- Prison (felony) or county jail (misdemeanor) and fine not more than \$10,000

# LITTERING OF WATERS OR SHORE

(PENAL CODE §374.7)

A person who litters or causes to be littered, or dumps or causes to be dumped, waste matter into a bay, lagoon, channel, river, creek, slough, canal, lake, or reservoir, or other stream or body of water, or upon a bank, beach, or shore within 150 feet of the high water mark of a stream or body of water, is guilty of a misdemeanor.

- County jail (misdemeanor) and fine (no less than \$250 nor more than \$1000)
  - 2<sup>nd</sup> conviction - \$500 / \$1500
  - 3<sup>rd</sup> conviction - \$750 / \$3,000
  - Probation may include pick up of litter for not less than 8 hours.

# DUMPING IN COMMERCIAL QUANTITIES

(PENAL CODE §374.3)

Any person who places, deposits, or dumps waste matter in commercial quantities in or upon private property without the permission of the owner is punishable by:

- County jail (misdemeanor) and fine
  - 1<sup>st</sup> conviction – no less than \$1000, no more than \$3000
  - 2<sup>nd</sup> conviction - \$3000 / \$6000
  - 3<sup>rd</sup> conviction - \$6000 / \$10,000

# CALIFORNIA'S UNFAIR COMPETITION LAW

(BUSINESS & PROFESSIONS CODE 17200)

- “Unfair competition” is defined, in part, by Business and Professions Code section 17200 as any unlawful act or practice.
- Each water pollution violation is also a UCL violation.
- A business is liable for up to \$2,500 in civil penalties for each separate violation, and for each day of violation.
- UCL Civil penalties are cumulative to each other and to those of all other laws of California.



# RIGHT AWAY REDY MIX, INC.

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# CLEMENT & WILLOW, ALAMEDA

(JUNE 25, 2007)



[CONFIDENTIAL OFFICIAL INFORMATION – EVIDENCE CODE 1040]

# 2365 EAST 21<sup>ST</sup> STREET, OAKLAND

(OCTOBER 14, 2008)



[CONFIDENTIAL OFFICIAL INFORMATION – EVIDENCE CODE 1040]

# 2365 EAST 21<sup>ST</sup> STREET, OAKLAND

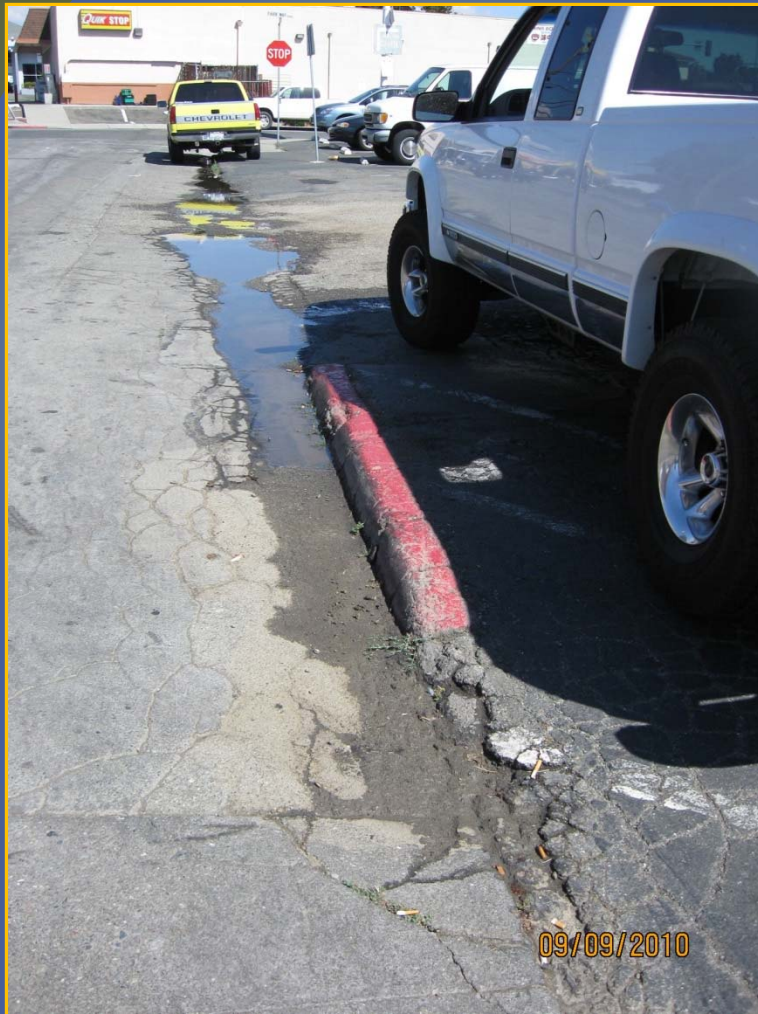
(OCTOBER 14, 2008)



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# 2652 CASTRO VALLEY BLVD, CASTRO VALLEY, CA

(SEPTEMBER 9, 2010)



Wastewater pH = 11

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# 1400 BLOCK OF 8<sup>TH</sup> STREET, OAKLAND

(SEPTEMBER 14, 2010)



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# PARK WAY & PALA, PIEDMONT

(SEPTEMBER 21, 2010)



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# 120 ESTATES DRIVE, PIEDMONT, CA

(SEPTEMBER 30, 2010)\*



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# RIGHT AWAY REDY MIX, UNION CITY 30100 UNION CITY BOULEVARD (December 15, 2010)



[CONFIDENTIAL OFFICIAL INFORMATION – EVIDENCE CODE 1040]

# RIGHT AWAY REDY MIX, UNION CITY

## 30100 UNION CITY BOULEVARD

(December 15, 2010)



[CONFIDENTIAL OFFICIAL INFORMATION – EVIDENCE CODE 1040]

# RIGHT AWAY REDY MIX, UNION CITY

## 30100 UNION CITY BOULEVARD

(December 15, 2010)



[CONFIDENTIAL OFFICIAL INFORMATION – EVIDENCE CODE 1040]

## **PENAL CODE §374.8**

**DEPOSIT OF HAZARDOUS SUBSTANCES ON RAILROAD  
RIGHT-OF WAY OR LANDS OF ANOTHER**

## **PENAL CODE §374.3**

**DUMPING IN COMMERCIAL QUANTITIES**

## **HEALTH & SAFETY CODE §25507**

**REPORT OF RELEASE OF HAZARDOUS MATERIAL**

## **BUSINESS & PROFESSIONS CODE §17200**

**UNFAIR BUSINESS PRACTICES**

1 NANCY E. O'MALLEY  
2 District Attorney, County of Alameda  
3 Kevin Wong (SBN. 215446)  
4 Deputy District Attorney  
5 Consumer & Environmental Protection Division  
6 7677 Oakport Street, Suite 650  
7 Oakland, CA 94621  
8 Telephone: (510) 383-8600  
9 Facsimile: (510) 383-8615

10 *Attorneys for Plaintiff*

ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 06 2011

CLERK OF THE SUPERIOR COURT  
By CHARLOTTE MARIN  
Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

v.

RIGHT AWAY REDY MIX, INC.,

Defendant.

No. **HC11606575**

STIPULATED FINAL JUDGMENT

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, appearing through its attorneys NANCY E. O'MALLEY, District Attorney of Alameda County and Kevin Wong, Deputy District Attorney, and Defendant RIGHT AWAY REDY MIX (hereinafter "Defendant"), having stipulated and consented to the filing of this Stipulated Final Judgment without the taking of proof and without trial or adjudication of any fact or law herein, and without this Stipulated Final Judgment constituting evidence or an admission by Defendant of liability or of any issue of law or fact alleged in the Complaint, and the Court having considered the matter and good cause appearing therefore,

# INJUNCTIVE TERMS

5 and to its officers, agents, partners, employees, representatives, successors and assigns,  
6 and any and all of them.

7 3. Defendant is hereby restrained and enjoined from violating:

8 a. California Fish and Game Code section 5650;

9 b. California Penal Code sections 374.8 and 374.3;

10 c. California Health and Safety Code section 25507; and

11 d. California Business and Professions Code section 17200.

12 4. Within sixty (60) days of the signing of this Stipulated Final Judgment, Defendant shall  
13 implement a training program (hereafter "Training Program"), approved and taught by

# TRAINING PROGRAM

12 4. Within sixty (60) days of the signing of this Stipulated Final Judgment, Defendant shall  
13 implement a training program (hereafter "Training Program"), approved and taught by  
14 Dynamic Construction Services, LLC, a business located in San Francisco and Oakland,  
15 California, with the goal of preventing violations of California Fish and Game Code  
16 section 5650. The Training Program shall contain, but not be limited to, the following  
17 components:

- 18 a. All new employees shall complete the Training Program within 15 days of starting  
19 their employment;  
20  
21 b. All employees shall complete the Training Program annually;  
22  
23 c. Defendant shall create and retain the following records/documents:  
24 1. A binder demonstrating the practices taught during the Training Program;  
25 2. Declarations signed and dated by new employees affirming that they  
26 successfully completed the Training Program; and  
27

# AUDITING PROGRAM

8           5. Within sixty (60) days of the signing of this Stipulated Final Judgment, Defendant shall  
9           implement an auditing program (hereafter "Auditing Program") with the goal of  
10          ensuring that employees comply with the practices taught in the Training Program and  
11          that violations of California Fish and Game Code section 5650 are not occurring. The  
12          Auditing Program shall contain, but not be limited to, the following components:

13          a. An "auditor," who is an employee designated by Defendant, shall conduct  
14             surveillance of other employees at randomly selected job sites no less than four (4)  
15             times per month to ensure that the employees are complying with the practices taught  
16             in the Training Program. The employees at the job site shall not know of the  
17             auditor's surveillance.

18          b. If the auditor observes during surveillance an employee who is not complying with  
19             the practices taught in the Training Program or those required by law, the violating  
20             employee shall be disciplined as follows:  
21

- 22             1. A first violation shall result in a written warning to employee;
- 23             2. A second violation shall result in a temporary suspension without pay; and
- 24             3. A third violation shall result in termination of employment.

25          c. Defendant shall create and retain the following records/documents:

# CIVIL PENALTIES

report each July 1st.

8. Defendant shall pay a total settlement amount of seventy thousand dollars (\$70,000.00) payable as costs and civil penalties. Such payments shall be delivered to the District Attorney of Alameda County, Consumer and Environmental Protection Division, 7677 Oakport Street, Suite 650, Oakland, California 94621-1934, to the attention of Kevin Wong, Deputy District Attorney as follows:

- (a) Defendant shall present one (1) cashier check or money order, made payable to "*Alameda County District Attorney's Office*," in the amount of THIRTY THOUSAND DOLLARS (\$30,000.00), as costs of past investigation and monitoring compliance with settlement terms, prior to December 15, 2011.
- (b) Defendant shall present one (1) cashier check or money order, made payable to "*Treasurer of Alameda County*," in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), as penalties, pursuant to Business and Professions Code section 17200, prior to December 15, 2011.
- (c) Defendant shall present one (1) cashier check or money order, made payable to "*Alameda County Environmental Health Services*," in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00), as costs of past investigation, prior to August 15, 2012.
- (d) Defendant shall present one (1) cashier check or money order, made payable to "*Fish and Game Sub account/Alameda County Hazardous Materials Program Training and Response Account*," in the amount of THREE



# QUESTIONS?

*Kevin Wong  
Deputy District Attorney  
Alameda County District Attorney's Office  
Environmental Protection Division  
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