

AMENDED IN ASSEMBLY APRIL 9, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 11**

**Introduced by Assembly Members Escutia, Bustamante,  
Knox, and Sweeney**

December 2, 1996

An act to amend Section 5650 of the Fish and Game Code, relating to water pollution, and making an appropriation therefore.

LEGISLATIVE COUNSEL'S DIGEST

AB 11, as amended, Escutia. Water pollution.

(1) Existing law makes it a crime for a person, as defined, to deposit in, permit to pass into, or place where it can pass into the waters of this state any of specified substances, including any petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum, or carbonaceous material or substance.

Existing law excepts from the application of that prohibition a discharge or release that is expressly authorized pursuant to the terms of a permit issued by the State Water Resources Control Board or a regional water quality control board.

This bill would instead except from the application of that prohibition a discharge or release that is expressly authorized by quantity, duration, characteristics, and constituents pursuant to *and in compliance with* the terms of a ~~waste discharge or National Pollution Discharge Elimination System~~ permit issued by the State Water Resources Control



Board or a regional water quality control board *after a public hearing or that is expressly authorized by quantity, duration, characteristics, and constituents pursuant to and in compliance with the terms and conditions of a federal permit for which the State Water Resources Control Board or a regional water quality control board has, after a public hearing, issued a water quality certification.* The bill would make that exception inapplicable ~~unless the Department of Fish and Game prescribes specific terms in the permit to protect fish and wildlife and the Wildlife Protection Division of the department certifies the permitted discharges will not be deleterious to fish and wildlife by countersigning the permit to a discharge or release that results in pollution, a nuisance, or a violation of water quality objectives, as defined.~~

(2) Existing law also makes the proof of specified additional circumstances an affirmative defense to a charge of violating the prohibition described in (1).

~~This bill would change the circumstances that must be proved to constitute the affirmative defense to the prohibition, including proof the defendant cleaned up the discharge or release and completed appropriate restoration of any area affected by the discharge or release, proof the discharge or release was not intentional and was not a repeated incident or violation of the prohibition, as specified, and the discharge or release did not injure fish or wildlife or damage public or private property not owned or controlled by the defendant provide that the affirmative defense does not apply and may not be raised by any defendant who has on 2 prior occasions in the previous 5 years pled nolo contendere, been convicted of violating the above provisions, or settled a civil suit or suffered a judgment for violating certain provisions.~~

(3) Existing law continuously appropriates the money in the Fish and Game Preservation Fund to the department to pay expenses incurred in carrying out the Fish and Game Code and other laws for the protection and preservation of birds, mammals, reptiles, and fish.

Because this bill would impose new duties on the department relating to permits for discharges or releases of materials to waters, the bill would make an appropriation.



Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1.—Section 5650 of the Fish and Game Code~~  
2     SECTION 1. *Section 5650 of the Fish and Game Code*  
3     *is amended to read:*  
4     5650. (a) Except as provided in subdivision (b), it is  
5     unlawful to deposit in, permit to pass into, or place where  
6     it can pass into the waters of this state any of the following:  
7     (1) Any petroleum, acid, coal or oil tar, lampblack,  
8     aniline, asphalt, bitumen, or residuary product of  
9     petroleum, or carbonaceous material or substance.  
10    (2) Any refuse, liquid or solid, from any refinery, gas  
11    house, tannery, distillery, chemical works, *or* mill or  
12    factory of any kind.  
13    (3) Any sawdust, shavings, slabs, *or* edgings.  
14    (4) Any factory refuse, lime, or slag.  
15    (5) Any cocculus indicus.  
16    (6) Any substance or material deleterious to fish, plant  
17    life, or bird life.  
18    (b) This section does not apply to a discharge or a  
19    release that is expressly authorized *by quantity, duration,*  
20    *characteristics, and constituents* pursuant to *and in*  
21    *compliance with* the terms *and conditions* of a permit;  
22    ~~license, or waiver~~ issued by the State Water Resources  
23    Control Board or a regional water quality control board  
24    *after a public hearing*, or that is expressly authorized *by*  
25    *quantity, duration, characteristics, and constituents*  
26    pursuant to *and in compliance with the terms and*  
27    *conditions of* a federal permit ~~or license~~ for which the  
28    State Water Resources Control Board or a regional water  
29    quality control board has, *after a public hearing*, issued a  
30    water quality certification pursuant to Section 13160 of  
31    the Water Code. This section does not confer additional  
32    authority on the State Water Resources Control Board, a  
33    regional water quality control board, or any other entity.  
34    *This subdivision does not apply to a discharge or release*  
35    *that results in pollution, a nuisance, or a violation of water*



1 *quality objectives, as those terms are defined in Section*  
 2 *13050 of the Water Code.*

3 (c) It shall be an affirmative defense to a violation of  
 4 this section if the defendant proves, by a preponderance  
 5 of the evidence, all of the following:

6 (1) The defendant complied with all applicable state  
 7 and federal laws and regulations requiring that the  
 8 discharge or release be reported to a government agency.

9 (2) The substance or material did not enter the waters  
 10 of the state or a storm drain that discharges into the  
 11 waters of the state.

12 (3) The defendant took reasonable and appropriate  
 13 measures to effectively mitigate the discharge or release  
 14 in a timely manner.

15 (d) The affirmative defense set forth in subdivision (c)  
 16 shall not apply and may not be raised in an action for civil  
 17 penalties or injunctive relief pursuant to Section 5650.1.

18 (e) *The affirmative defense in subdivision (c) does not*  
 19 *apply to, and may not be raised by, any defendant who has*  
 20 *on two prior occasions in the previous five years, in any*  
 21 *combination, pled nolo contendere, been convicted of a*  
 22 *violation of this section, or settled a civil suit or suffered*  
 23 *a judgment for a violation of this section or Section 5650.1.*

24 ~~is amended to read:~~

25 ~~5650. (a) Except as provided in subdivision (b), it is~~  
 26 ~~unlawful to deposit in, permit to pass into, or place where~~  
 27 ~~it can pass into the waters of this state any of the following:~~

28 ~~(1) Any petroleum, acid, coal or oil tar, lampblack,~~  
 29 ~~aniline, asphalt, bitumen, or residuary product of~~  
 30 ~~petroleum, or carbonaceous material or substance.~~

31 ~~(2) Any refuse, liquid or solid, from any refinery, gas~~  
 32 ~~house, tannery, distillery, chemical works, mill, or factory~~  
 33 ~~of any kind.~~

34 ~~(3) Any sawdust, shavings, slabs, or edgings.~~

35 ~~(4) Any factory refuse, lime, or slag.~~

36 ~~(5) Any cocculus indicus.~~

37 ~~(6) Any substance or material deleterious to fish, plant~~  
 38 ~~life, or bird life.~~

39 ~~(b) This section does not apply to a discharge or a~~  
 40 ~~release that is expressly authorized by quantity, duration,~~



1 characteristics, and constituents pursuant to the terms of  
2 a waste discharge or National Pollution Discharge  
3 Elimination System permit issued by the State Water  
4 Resources Control Board or a regional water quality  
5 control board. This section does not confer additional  
6 authority on the State Water Resources Control Board, a  
7 regional water quality control board, or any other entity.  
8 This subdivision does not apply unless the department  
9 prescribes specific terms in the permit to protect fish and  
10 wildlife and the Wildlife Protection Division of the  
11 department countersigns the permit to certify that the  
12 permitted discharge or release will not be deleterious to  
13 fish and wildlife.

14 (c) It shall be an affirmative defense to a violation of  
15 this section if the defendant proves, by a preponderance  
16 of the evidence, all of the following:

17 (1) The defendant complied with all applicable state  
18 and federal laws and regulations requiring that the  
19 discharge or release be reported to a government agency.

20 (2) The substance or material did not enter the waters  
21 of the state or a storm drain that discharges into the  
22 waters of the state.

23 (3) The defendant cleaned up the discharge or release  
24 by removing and properly disposing of the discharge or  
25 release and completed appropriate restoration of any  
26 area affected by the discharge or release in a timely  
27 manner.

28 (4) The discharge or release was not intentional and  
29 was not a second or subsequent incident, or second or  
30 subsequent violation of subdivision (a), which involved  
31 the same or similar circumstances as the prior incident or  
32 violation.

33 (5) The discharge or release did not injure fish or  
34 wildlife and did not damage public property or private  
35 property not owned or controlled by the defendant.

36 (d) The affirmative defense set forth in subdivision (c)  
37 does not apply and may not be raised in an action for civil



1 ~~penalties or injunctive relief pursuant to Section 5650.1.~~  
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