

2019

Environmental Crimes and Civil Violations Associated with Cannabis Cultivation

Prepared by Matt Carr, CDAA Senior Circuit Prosecutor



California District Attorneys Association
Environmental Circuit Prosecutor Project
921 11th Street, Suite 300
Sacramento, CA 95814
(916) 443-2017

All rights reserved. © March 2019. CDAA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use this material and to authorize others to do so. No part of this material may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, storing in an information-archival system, posting on an Internet or intranet site, or otherwise, without prior written permission of the California District Attorneys Association.

This material has been published to aid prosecutors and law enforcement only. It is not intended for distribution to the general public. It is distributed with the understanding that CDAA is not rendering legal or other professional services. Recipients are advised not to legally rely on this outline in substitution of their own professional judgment and legal research.

Table of Contents

Crimes that can be charged as a felony, either alone or with priors, appear in *italics*. Crimes that are listed in Proposition 64 as “environmental enhancements” appear in **bold**. Crimes are listed first; potentially useful civil and other miscellaneous authorities are listed afterward.

CANNABIS CULTIVATION PROPOSITION 64 2

H&S § 11358(d)—Cannabis cultivation by adult, felony “environmental crime enhancements”

WATER POLLUTION, STREAM ALTERATION, AND UNLAWFUL DIVERSION OF WATER 4

F&G § 1602—Substantial Diversion/Obstruction/Use of Stream

F&G § 5650(a)(1)—Water Pollution: Petroleum Products

F&G § 5650(a)(6)—Water Pollution: Deleterious Substances

Gov. Code § 8670.64(a)—Petroleum Pollution to Waters of State

F&G § 5652(a)—Disposal of Trash w/in 150 ft. of Water Body

F&G § 5901—Dams that Unlawfully Block Fish Passage

Pen. C. § 374.2—Malicious discharge of harmful materials to sewer

Pen. C. § 374.7—Disposal of Trash w/in 150 ft. of Water Body

Pen. C. § 374.8(b)—Knowingly Depositing Hazardous Substance

Pen. C. § 592—Theft of Stored Water

Water C. § 13272—Petroleum in Water w/out Notifying CalOES

Water C. § 13387—Discharge of Pollutants in Navigable Water

Water C. § 1052—Unlawful Use of Water (see “miscellaneous authorities”)

Water C. §§ 13264(a) & 13265—Discharge of Waste Material to Waters of State w/out Enrollment in Water Board’s Cannabis General Order

Water C. 13260—Cultivation of Cannabis w/out Authorization from State Water Board

PESTICIDE-RELATED VIOLATIONS

Consider calling local Agricultural Commissioner, Dept. of Pesticide Regulation, and/or CalOES11

Division 6 Container Violations

3 Cal. Code Regs. § 6670—Hazardous Storage of Pesticides

3 Cal. Code Regs. § 6672(b)—Storage of Pesticides in Locked Area

3 Cal. Code Regs. § 6674—Pesticide Storage Warning Signs

3 Cal. Code Regs. § 6680—No Pesticide Stored in Food/Drink Containers

Division 7 Pesticide Use Violations

3 Cal. Code Regs. § 6609—Pesticide Mixing, Storing, Etc. Near Well

3 Cal. Code Regs. § 6416—RUP in Groundwater Protection Area

3 Cal. Code Regs. § 6614—Cannot Risk Harm to People or Animals

3 Cal. Code Regs. § 6616—Apply Pesticide to Property w/o Permission

3 Cal. Code Regs. § 6622—Apply Pesticide to Ag. Commodity w/o Permit

Food & Ag. § 12972—Use of Pesticide Must Prevent Drift

Food & Ag. § 12973—Pesticide Use in Conflict with Label

Food & Ag. § 12995—Possession of Unregistered Pesticide

Food & Ag. § 14015—Possession of Restricted Pesticide

Food & Ag. § 14011—Catch-All Provision re: Restricted Pesticides

Labor Code § 6423—Workplace Safety Violation re: Pesticides

POACHING.....14

F&G § 2000—Unlawful Taking

F&G § 2001(a)*—Take Outside of Season

F&G § 2001(a)*—Exceeding Bag Limit

F&G § 2002—Unlawful Possession

F&G § 2020*—Violation of a 14 CCR Regulation

F&G § 2080—Violation of California Endangered Species Act

F&G § 3513—Taking Birds Protected Under Migratory Bird Treaty Act

F&G § 3800*—Take of Non-Game Bird

F&G § 4304—Waste of Game Animal

F&G § 4330*—Taking Deer w/out Tag

F&G § 4336(a)—Proper Use of Deer Tag

F&G § 4336(b)—Possession of Untagged Deer

F&G § 4750*—Taking Bear w/out Tag

F&G § 4753—Proper Use of Bear Tag

F&G § 4753—Possession of Untagged Bear

F&G § 4800(b)*—Take of Mountain Lion

* these statutes can be underlying violations for F&G 2000 charge

AIR QUALITY VIOLATIONS	18
H&S § 41800—Prohibited Outdoor Fires	
H&S § 42400(a)—Violation of Local Air Board Rules, Etc.	
FORESTRY VIOLATIONS	19
Pub. Res. C. § 4571(a)—Timber Operations Require Permit	
Pub. Res. C. § 4581—Timber Operations Require Timber Harvest Plan	
Pub. Res. C. § 4601—Various Violations of Forest Practices Act & Regs	
Pen. C. § 384a(a)(2)—Remove/Mutilate Tree w/out Written Permission	
Pen. C. § 602(a)—Trespass/Injury to Timber	
LITTERING/DUMPTING/ILLEGAL DISPOSAL	20
Pen. C. § 374.3(a)—Illegal Dumping	
Pen. C. § 374.3(h)(1)—Disposal of Waste Matter in Commercial Quantity	
Pen. C. 374.8(b)—Knowingly Depositing Haz. Substance on Land of Another or in WOS	
H&S § 117555—Depositing Sewage on Ground or into Water	
NUISANCE	21
Pen. C. §§ 370, 372—Public Nuisance	
HAZARDOUS WASTE DISPOSAL	22
H&S § 25189.5(b)—Unlawful Disposal of Hazardous Waste	
H&S § 25189.6—Unlawful Disposal of Hazardous Waste Risking Fire, Exposion, SBI, or Death	
H&S § 25189.7—Burning/incinerating hazardous w/o permit	
H&S § 25190—Various Violations of Haz. Waste Control Law & Regs	
Pen. C. § 374.8(b)—Knowingly Depositing Hazardous Substance	
POSSIBLE COUNTY CODE VIOLATIONS	23
Illegal Grading	
Illegal Sewage Disposal	
Must Inhabit Only Proper Structures	
Illegal Wells	
Erosion Controls	
Storage of Garbage	
Cannabis Cultivation and Sales Regulations	

POTENTIAL CIVIL REMEDIES	24
F&G § 1615—Substantial Stream Alteration/Diversion/Use of Materials	
F&G § 5650.1—Water Pollution	
F&G § 12025—Enhanced Civil Remedies re Stream-Related Laws	
F&G § 12025.1—Enhanced Civil Remedies re Blocking Fish Passage	
Food & Ag. § 11893—Pesticide Violations (Division 6/Regs Only)	
Food & Ag. § 12998—Pesticide Violations (Division 7/Regs Only; Priorable)	
H&S § 25189(b)—Intentional or Negligent Viol. of Haz. Waste Law/Regs	
H&S § 25189—Strict Liability Violation of Haz. Waste Law/Regs	
Gov. Code § 8670.66(a)—Petroleum Pollution to Waters of State	
H&S § 11470.1—Recovery of Remediation Costs	
H&S § 42402 et seq.—Unlawful Release of Air Contaminants	
Code Civ. Proc. § 733—Triple Damages for Timber Trespass	
Bus. & Prof. § 17200 et seq.—Unfair Competition Law (UCL)	
Bus. & Prof. § 26038—Unlawful Commercial Marijuana Activity w/out License	
MISCELLANEOUS AUTHORITIES, CRIMINAL AND OTHER	30
Water C. § 1052—Unlawful Use of Water	
Veh. C § 34620(a)—Commercial Water Trucks; Requirement to Possess a Motor Carrier Permit / Impoundment Authority	
F&G §§ 12015 & 12016—Civil Liability for Restoring Watercourses	
Pen. C. § 594—Vandalism	
Pen. C. § 498—Utility Theft	
Veh. C § 2810.2—Stop Vehicles and Seize Unlawfully Possessed Irrigation Supplies on Certain Lands	
APPENDICES	33
APPENDIX A —Suggestions re Charging & Plea Offers in Cultivation Cases	
APPENDIX B —Restricted Pesticides (By Brand Name and Active Ingredient)	
APPENDIX C —Matrix of Common Pesticides Found at Cannabis Cultivation Sites	
APPENDIX D —Legal Pest Management Practices for Cannabis Growers	
APPENDIX E —Statutory Hazardous Wastes — Listed by Common Names	
APPENDIX F —Deer Zone Map, Game Birds, Game Mammals	
APPENDIX G —Current Cultivation License Fees	
APPENDIX H —Current Non-Cultivation License Fees	
APPENDIX I —Overview of Cannabis Regulatory Structure in California	

Contacts

Resources in each of California's 58 counties, that is, local resources, are not listed below.

County CUPA (usually environmental health, sometimes fire department) can help with hazardous waste issues. See <http://cersapps.calepa.ca.gov/Public/Directory> to find your local CUPA contact information.

Your local agricultural commissioner can help with pesticide issues and questions.

<https://www.cdfa.ca.gov/exec/county/documents/countycommissionersealercontactinfo.pdf> or <http://www.google.com/>

California Office of Emergency Services (OES)

OES is should be notified for most spills and may have information on a spill should you need information.

State Warning Center – (916) 845-8911 or (800) 852-7550

See Release Reporting Requirement Matrix at:

<http://www.caloes.ca.gov/FireRescueSite/Documents/Release%20Reporting%20Matrix%20-%20Feb2014.pdf>

Department of Pesticide Regulation — <http://www.cdpr.ca.gov/>

Enforcement Branch – (916) 324-4100

(DPR may refer caller to County Ag Commissioner's Office)

Department of Toxic Substances Control

Duty Officers/Emergency Response

M-F (8:00 a.m. – 5:00 p.m.): (916) 255-6504 or (800) 260-3972

After Hours: (800) 852-7550

State Water Board — email the following attorneys with questions:

Dan Kippen: Dan.Kippen@waterboards.ca.gov

Heather Mapes: Heather.Mapes@waterboards.ca.gov

Andrew Tauriainen: Andrew.Tauriainen@waterboards.ca.gov

Or you may call (916) 341-5272.

California Department of Fish and Wildlife

CalTIP – (888) 334-2258

https://www.citizenobserver.com/tips/new?alert_group_id=3568

text message to: 847411: Enter "CALTIP" followed by message (all reports are anonymous)

Main Offices

Northern Region: (530) 225-2300

North Central Region: (916) 358-2900

Bay Delta Region: (707) 944-5500

Central Region: (559) 243-4005 ext. 151

South Coast Region: (858) 467-4201

Inland Deserts Region: (909) 484-0167

Marine Region: (831) 649-2870

Cannabis Cultivation—Proposition 64

Proposition 64, passed by California voters on November 8, 2016, legalized possession and cultivation of cannabis, within certain limits.

Possession. Adults without a medical cannabis recommendation can possess up to one ounce of cannabis bud and up to 8 grams of concentrated cannabis; amounts beyond that cultivated by an adult must be stored in the home. Adults with a valid medical cannabis recommendation may possess cannabis in an amount that is reasonably related to the medical condition for which they are seeking relief. Laws concerning possession by persons under 21 vary.

Cultivation in General. An adult may cultivate up to six cannabis plants for personal use, subject to local land use controls. Cultivation of more than this amount, i.e., seven or more plants, is deemed “commercial” in nature, and requires a host of permits before such cultivation is lawful under state law. Commercial cultivation without a permit is generally a misdemeanor, unless: (1) one of the “enhancements” in Prop 64 applies, which relate to certain environmental violations “that resulted” from the cultivation, as discussed in detail below, (2) if the cultivator has two or more 11358(c) cultivation priors, or (3) if the cultivator is a PC 290 sex-offender registrant or has a prior for certain extremely serious felonies. Significant civil penalties may be brought against persons conducting unlawful commercial cannabis cultivation, regardless of environmental or other violations, pursuant to Business and Professions Code section 26038, below.

Medical cultivation. Medical cultivation under Proposition 215 is still allowed, and thus still serves as an affirmative defense in a cannabis cultivation case. The laws that govern commercial medical cultivation have been set forth in the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA,” codified at Business and Professions Code, Division 10, commencing at section 26000), as well as by related regulations promulgated thereto. Pursuant to Business and Professions Code section 26033, the regulations governing commercial medical cannabis do not apply to medical cannabis grown by a person for that person’s own use, or when a “personal caregiver” cultivates cannabis for up to five qualified patients.

The principle criminal code section governing the cultivation of cannabis remains Health & Safety Code section 11358, which was modified by Prop 64. One purpose of this Guide is to break down complicated statutes with which the reader may not have close familiarity; as such, the statutes and regulations in this Guide are broken down “element by element,” with key terms italicized and explained. Broken down in this manner, section 11358 reads as follows:

Amended Health & Safety Code section 11358(d) (2017) – Unlawful Cultivation, Processing, Etc. of Cannabis:

A [1] person over 18 who [2] plants, cultivates, harvests, dries, or processes [3] seven or more cannabis plants [4] resulting in a violation of certain environmental laws, may be punished as either a felony or misdemeanor, pursuant to Penal Code section 1170(h).

A felony may also be charged if a person cultivates, harvests, dries, or processes seven more cannabis plants and that person has two or more 11358 priors, is a 290 sex-offender registrant, or has a prior conviction for extremely serious felonies set forth in Penal Code section 667(e)(2)(C)(iv).

Persons under 18 may suffer no more than an infraction for cultivation of cannabis, regardless of the number of plants or priors.

The environmental laws that serve as a felony enhancement relating to cannabis cultivation are as follows. Each is set forth in greater detail later in this Guide, since each such violation must be plead and proved for a felony conviction under section 11358:

- **Water C. § 1052**—relating to illegal diversion of water.
- **Water C. § 13260, 13264, 13272, or 13387, and F&G § 5650 or 5652**—relating to water pollution.
- **F&G § 1602**—relating to substantial changes to rivers, streams, lakes, and other water bodies, water diversions, use of material, etc.
- **H&S § 25189.5, 25189.6, or 25189.7, and Pen. C. § 374.8**—relating to disposal of hazardous waste.
- **F&G § 2000, 2080, or 3513**—relating to the unlawful taking or attempted taking of fish and wildlife.
- **H&S 11358(d)(3)(G) “Prop 64 Catch-All**—“Intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.”

General Defenses re: Cannabis Cultivation under H&S section 11358:

The new cannabis statutory scheme provides for at least two types of defenses, relating to medical cultivation or licensure status. They are that the defendant was:

1. A qualified patient having cannabis exclusively for his or her personal medical use. (B&P § 26033(a).)
2. A primary caregiver who has cannabis for personal medical use for no more than five specified qualified patients. (B&P § 26033(b).)
3. A licensee, or one of its employees or agents cultivating the cannabis. (B&P § 26037(a).)
4. A person who in good faith allowed his or her property to be used by a licensee or its employees or agents. (B&P § 26037(b).)

If the defendant’s cultivation was otherwise felony-eligible due to the existence of environmental or other violations, the above defenses nonetheless preclude conviction under section 11358, for either a felony or a misdemeanor. However, the underlying environmental violations may be prosecuted regardless of the legal status of the cannabis cultivation enterprise. Those crimes are set forth in the next section of this Guide.

Also, consider review of Appendix A, “Suggestions re Charging & Plea Offers in Cultivation Cases.”

Environmental Crimes Associated with the Cultivation of Cannabis

Caveats

1. All crimes listed are misdemeanors unless otherwise stated. A separate section sets forth offenses that may be charged in a civil action.
2. Some statutes have been modified to make this document easier to use; this document should not be used for charging purposes.
3. There are a number of felonies listed in this document, including the Clean Water Act, Hazardous Waste Control Law, and pesticide-related violations where the violation potentially harmed human health or the environment. A “wobbler” is a crime that can be charged as either a misdemeanor or a felony.
4. The crimes listed below apply to most agricultural enterprises, but cannabis cultivation is the focus of this document given the severity of environmental harms often caused by it and the frequency of occurrence of those harms.
5. Miscellaneous resources are listed following civil causes of action, relating to, e.g., collecting damages.
6. Appendixes at the end of this document may be useful in deciding how to charge some of the below-listed crimes and civil wrongs.

Notice an error or something that can be improved? Please send all comments and suggestions to Matt Carr at mcarr@cdaa.org.

Water Pollution, Stream Alteration, and Unlawful Diversion of Water	
F&G § 1602 <i>Obstruct flow, change, or use material from stream; substantial diversion of water</i> PROP. 64-LISTED	An entity may not [1a] obstruct the natural flow of, or [1b] <i>substantially</i> divert the flow of, or [1c] <i>substantially</i> change, or [1d] <i>substantially</i> use any material from the bed, channel, or bank of [2] any river, <i>stream</i>, or lake, [3] without first notifying the Department of Fish and Game pursuant to Fish and Game Code section 1602(a)(1). [1] <i>Substantially</i> is not defined, but is more than a little. Would a jury in the jurisdiction call it “substantial?” Evidence of substantiality may include ecological effects of action. For diversion, aggregate water taken is probably not considered; rather, it is what portion of the flow during the act of diversion is taken: 5% is clearly not substantial; 10% is a maybe; 90% is a sure-win. Consider whether a jury would likely agree with your contention of substantiality before proceeding with this section. Note that while the adjective arguably does not modify each verb in the statute, “unsubstantial” cases likely do not warrant attention. [2] A <i>stream</i> is a “body of water that flows at least periodically or intermittently through a bed or a channel having banks and supports fish or other aquatic life.” (14 Cal. Code Regs. § 1.72.) “A continuous flow of water is not necessary to constitute a stream.” (<i>Mogle v. Moore</i> (1940) 16 Cal.2d 1, 9.) In addition, an entity may not [1] deposit or dispose of [2] debris, waste, or other material containing crumbled, flaked, or ground pavement [3] where it may pass into any river, stream, or lake, [4] without first notifying the Department of Fish and Game pursuant to Fish and Game Code section 1602(a)(1).
F&G § 5650(a)(1) <i>Petroleum in waters of the state (WOS)</i> PROP. 64-LISTED	It is unlawful to [1a] deposit in, [1b] permit to pass into, or [1c] place where it can pass into the [2] <i>waters of the state</i> [3] any petroleum, acid, ... tar, ... asphalt, ... carbonaceous ... substance, or residuary product of petroleum. [2] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in California. (Water C. § 13050(e).)

F&G § 5650(a)(6) <i>Substance or material deleterious to fish, plant life, mammals, or bird life in WOS</i> PROP. 64-LISTED	It is unlawful to [1a] deposit in, [1b] permit to pass into, or [1c] place where it can pass into the [2] <i>waters of the state</i> [3] any substance or material [4] <i>deleterious to fish, plant life, mammals, or bird life</i>. [2] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in California. (Water C. § 13050(e).) [4] <i>Deleterious to fish, plant life, mammals, or bird life</i>: can the substance harm fish, birds, mammals, and aquatic bugs? Plants? Note: Can include soil placed into a stream, or soil spoils piled where they could pass into a stream during a storm event. Loose soil can cause turbid (cloudy) water that harms fish, kills their prey, and decreases successful reproduction. Note: Authorities on-site should contact DFW to have wardens and/or biologists conduct a site visit and collect evidence. If that is not possible, safely secure evidentiary water samples of pollutant source, upstream, and downstream if possible.
Gov. Code § 8670.64(a) <i>Knowing spill or discharge of petroleum to WOS; failure to begin cleanup immediately</i> <i>This is a WOBBLER</i>	A [1] <i>person</i> who [2] <i>knowingly</i> [3] does any of the following may be charged with a misdemeanor or felony: [3a] engages in or causes the <i>discharge</i> or <i>spill</i> of oil into <i>waters of the state</i>, or who reasonably should have known that he or she was engaging in or causing the <i>discharge</i> or <i>spill</i> of oil into <i>waters of the state</i> (unless discharge is authorized); or [3b] fails to begin cleanup, abatement, or removal of <i>oil spilled</i>, as required by Gov. Code § 8670.25. [1] <i>Person</i> means an individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. <i>Person</i> also includes a city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law. (Gov. Code § 8670.3(t).) [2] <i>Knowingly</i> is not defined in the Act, but Pen. Code § 7 requires only an awareness of the facts. [3a/3b] <i>Spill, discharge</i>, or <i>oil spill</i> means a release of any amount of oil into <i>waters of the state</i> that is not authorized by a federal, state, or local government entity, e.g., through a permit. (Gov. Code § 8670.3(ac).) [3a/3b] <i>Oil</i> means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas. (Gov. Code § 8670.3(o).) [3a/3b] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in CA. (Water C. § 13050(e).) Note: Fines range from not less than \$2,500 up to \$250,000, before penalty assessments. (Gov. Code § 8670.64(c).) Note: Additional crimes listed in subdivision (c)(2), relating largely to knowingly mis-reporting a spill, support fines up to \$500,000. Note: Companion civil cause of action is set forth in Civil Authorities section, below. Note: This statute is perhaps best charged when the violator has been previously warned, to establish “knowing” element.
F&G § 5652(a) <i>Disposal of trash within 150 ft. of high water mark of WOS</i> PROP. 64-LISTED	It is unlawful to [1a] deposit in, [1b] permit to pass into, or [1c] place where it can pass into the [2] <i>waters of this state</i> OR to [3a] abandon, [3b] dispose of, or [3c] throw away, [4] <i>within 150 feet of the high water mark of waters of the state</i>, [5] any cans, bottles, garbage, motor vehicle or parts thereof, rubbish, litter, refuse, waste, debris, or the viscera or carcass of any dead mammal, or the carcass of any dead bird. [2] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in California. (Water C. § 13050(e).) [4] <i>Within 150 feet of the high water mark of the waters of the state</i> usually means from the stream bank or high tide mark. Note: Must prove either [1]+[2]+[5] or [3]+[4]+[5], or both.

F&G § 5901 <i>Obstructing fish passage through stream</i>	Except as otherwise provided in this Code,* it is unlawful to [1a] construct or [1b] maintain [2] <i>in any stream in most of California</i> [3] any device or contrivance that prevents, impedes, or tends to prevent or impede the passing of fish up and down stream. [2] The law applies to streams in specified “Fish & Game Districts,” a map of which is found at the back of the Fish and Game Code. The law covers most of CA inland of the beach, except its extreme southeast (District 22), the Mendocino Coast (District 7), and most of extreme N.E. California (Modoc/Lassen/Siskiyou counties, District 1¾). (See F&G §§ 11001–11039.) [3] The most obvious example is a dam, but the law is worded broadly. Note: It is unlikely that an exemption applies, but see Division 6 (Fish), Chapter 3 of the Fish and Game Code. Section 5901 is found therein.
Pen. C. § 374.2 <i>Malicious discharge of harmful materials into a public sewer</i> <i>Wobbler if priors.</i>	It is unlawful for [1] any <i>person</i> to [2] <i>maliciously</i> [3a] discharge, dump, release, place, drop, pour, or otherwise deposit, or to [3b] cause to be discharged, dumped, released, placed, dropped, poured, or otherwise deposited [3] any substance capable of causing substantial damage or harm to the operation of a public sewer sanitary facility. [1] <i>Person</i> means an individual, trust, firm, partnership, joint stock company, LLC, or corporation. (Pen. C. § 374.2(b).) [2] <i>Maliciously</i> means an intent to do a wrongful act. (Pen. C. § 374.2(a).) It is unlawful [1] any <i>person</i> to [2] <i>deposit commercial quantities</i> of any substance [3] into a manhole, cleanout, or other sanitary sewer facility not intended for use as a point of deposit for sewage which is [4] connected to a public sanitary sewer system [5] without possessing a written authorization by the sewer system authority. [1] <i>Person</i> means an individual, trust, firm, partnership, joint stock company, LLC, or corporation. (Pen. C. § 374.2(b).) [2] <i>Deposited in commercial quantities</i> refers to any substance deposited or otherwise discharged in any amount greater than for normal domestic sewer use. (Pen. C. § 374.2(b).) Note: Lack of specific knowledge that the facility into which the prohibited discharge or release occurred is connected to a public sanitary sewer system shall not constitute a defense to a violation charged under this section. (Pen. C. § 374.2(c).)
Pen. C. § 374.7 <i>Littering or dumping into or within 150 ft. of a stream</i>	It is unlawful to [1a] <i>litter</i> or dump or cause to be littered or dumped, [2] <i>waste matter</i> [3] 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. [1a] <i>Littering</i> means the willful or negligent throwing, dropping, placing, depositing, or sweeping, or causing any such acts, of any waste matter on land or water in other than appropriate storage containers or designated areas. (Pen. C. § 374(a).) [2] <i>Waste matter</i> means discarded, used, or leftover substances including, but not limited to, a lighted or non-lighted cigarette, cigar, match, or any flaming or glowing material, or any garbage, trash, refuse, paper, container, packaging or construction material, carcass of a dead animal, any nauseous or offensive matter of any kind, or any object likely to injure any person or create a traffic hazard. (Pen. C. § 374(b).)

Pen. C. § 374.8(b) <i>Knowingly causing deposit of a hazardous substance on the land of another or in a WOS</i> <i>This is a WOBBLER</i> PROP. 64-LISTED	It is unlawful to [1] knowingly cause [2] any <i>hazardous substance</i> [3] to be deposited into or upon [4a] any road, street, highway, alley, or railroad right-of-way [4b] or upon the land of another, without the permission of the owner, [4c] or into the <i>waters of this state</i>. [2] In relevant part, a <i>hazardous substance</i>, per Pen. Code § 374.8(c), is any material that: • poses significant present/potential hazard to human health/safety or to environment if released to environment; OR • is listed in the “Hazardous Substances List” at http://www.dir.ca.gov/title8/339.html. The statute also includes circumstances when a manufacturer is required to produce an MSDS pursuant to Labor Code § 6390, but that is essentially the same as whether the substance is on the Hazardous Substance List. Thus, that list is key. Cntrl-F can be useful to search. [See Labor Code §§ 6380, 6382, and 6390 and California Code of Regulations title 8, section 339]; OR • the administering agency or a handler has a reasonable basis for believing would be injurious to the health and safety of persons or harmful to the environment if released into the environment. [4] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in California. (Water C. § 13050(e).) Note: Does not apply if deposit occurred as a result of emergency that person promptly reported to the appropriate regulatory authority.
Pen. C. § 592 <i>Theft of water from a conveyance/reservoir</i> <i>WOBBLER given value of water or priors</i>	Every person who [1] takes water from any [2] <i>canal, ditch, flume, or reservoir</i> [3] that is used for holding or conveying water [4] for manufacturing, agricultural, mining, irrigating, generating power, or domestic uses [5] without authority of the owner of a managing agent and [6] with the <i>intent to defraud</i>, is guilty of a misdemeanor. [2] “Canal” and “ditch” aren’t legally defined; a “flume” is “an elevated artificial channel, opened or closed” (8 C.C.R. § 320); and a “reservoir” is a body of water impounded by a dam (Water C. § 6004.5). These all seem to be human-made systems. [6] The “intent to defraud” appears to require an intent to deceive. (See Pen. C. § 8 and applicable case law.) If the value of the water is at/above \$950 or defendant has a prior water theft conviction, it’s a wobbler, with a 16-2-3 felony. Note: Consider charging Pen. Code § 498 if water is stolen from a water “utility.” Can be charged as grand theft in unusual case that value of the water stolen is more than \$950.00. (Pen. C. §§ 489-490.) Electricity theft may also apply—see Pen. C. § 498.
Water C. § 13272 <i>Discharge of ≥ barrel* of oil or petroleum into WOS without notifying Office of Emergency Services</i> \$500-5,000/1 yr. max. PROP. 64-LISTED	It is unlawful to [1a] cause or [1b] permit [2] more than 42 gallons* of any oil or petroleum product [3a] to be discharged into any <i>waters of the state</i>, or [3b] to be discharged or deposited where it is, or probably will be, discharged into any <i>waters of the state</i>, [4] without notifying the Office of Emergency Services (OES) OR the appropriate regional water board per Water C. § 13267 or 13383 [5] as soon as is possible, once the person has knowledge of the discharge and such notification can be provided without substantially impeding cleanup or other emergency measures. [3] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in California. (Water C. § 13050(e).) Note: Does not apply to discharges to land unless pollutant would have gone into water but-for cleanup by government. Note: May be less than 42 gallons if regional board adopts a more stringent standard for that water body. (Water C. § 13272(f).)

Water C. § 13387

Discharge of pollutants into navigable waters without filing a report with the Regional Board; Violates a Regional State Board Order; Discharge of pollutants to Navigable Waters without a permit

WOBBLER depending on intent of violator: Knowing is a felony, and Negligent is a misdemeanor, unless there is a prior.

**PROP. 64-
LISTED**

It is unlawful to [1a] *knowingly* or [1b] *negligently* [2a] violate *Water Code section 13376* (Report of Waste Discharges), [2b] violate any prohibition or order contained in a Water Board water quality control plan or waste discharge requirement, or [2c] violate any requirement of *sections 301 or 401 of the Clean Water Act*. Note: other violations are not set forth here.

[1a] *Knowingly* does not require knowledge that the pollutant they are discharging is listed, only knowledge that they are making a discharge to a *navigable water* (no mistake of law defense based on lack of knowledge of the listed pollutants).

[1b] *Negligently* means a failure to take due and reasonable care to prevent discharge of pollutants.

[2a] *Section 13376* prohibits discharges of [2a1] *pollutants* into [2a2] *navigable waters* [2a3] without filing a *report of waste discharge* in compliance with *Water Code section 13260*. Common pollutants associated with agriculture are in bold below:

[2a1] *Pollutants*: **dredged spoil**, solid waste, incinerator residue, **sewage**, **garbage**, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, **rock**, **sand**, cellar dirt and industrial, municipal, and **agricultural waste** discharged into water. (33 U.S.C. § 1362(6).) Sediment has been construed by case law to constitute a “pollutant” under the CWA. See, e.g., *Pronsolino v. Marcus*, 91 F.Supp.2d 1337, 1351 (N.D.Cal. 2000) and cases cited therein.

[2a2] *Navigable waters*: streams and rivers in California are likely to fall within the jurisdiction of the CWA, and most lakes will qualify, but wetlands are more questionable, especially if they do not connect directly to a stream or river. More specifically, this includes navigable-in-fact rivers and streams (can a kayak go down it?), their tributaries (the “tributary rule”), wetlands that are connected to them above-ground, and if not connected above-ground, wetlands that alone or as a group have a significant effect on the physical, chemical, and biological properties of the water bodies such wetlands flow into. (See, e.g., *Rapanos v. U.S.*, 547 U.S. 715 (2006) and *Northern Calif. River Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir 2007).)

[2a3] *Report*: report by the polluter to Regional Board, in compliance with *Water Code section 13260*. In California, this functions essentially as the “permit to pollute” under the CWA.

[2b] *Order*: an order issued by a regional board a Basin Plan establishing Total Maximum Daily Loads (TMDLs) for certain pollutants. Prohibition can include non-point source discharges of certain pollutants if TMDL in place. Contact regional board staff to determine if Order exists for the affected navigable water, and how such an order applies to the facts at hand. The Water Boards’ Cannabis General Order is **not** a qualifying order (it was not issued pursuant to *Water Code sections 13243 or 13301*) (see § 13264).

[2c] *Sec. 301 of CWA* (33 U.S.C. § 1311): prohibits [2c1] *discharge of pollutants to navigable waters* from a [2c2] *point source*.

[2c1] *Discharge of pollutants*: addition of any *pollutant* to *navigable waters* from any *point source*. See list of *pollutants* in section [2a1] above, as well as definition of *navigable waters* that fall under ambit of this law. (33 U.S.C. § 1362(12).)

[2c2] *Point source*: any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, etc. The term does *not* include return flows from irrigated agriculture. (33 U.S.C. § 1362(14).) Discharges from heavy equipment like excavators and tractors are, however, considered discharges from point sources pursuant to case law.

Note: Despite the relative complexity of the above, a simple case under the CWA can be made from a discharge of a pollutant from a point source; in other words, most garden-variety pollution cases will likely fall within the ambit of the CWA and its powerful penalties.

Water C. § 1052— <i>Unlawful use of water</i> PROP. 64- LISTED	See “Miscellaneous Authorities,” below for details. Statute is only actionable by Water Boards or through H&S § 11358(d)(3)(A).
Water C. § 13264(a) & Water C. § 13265 — <i>Water pollution, i.e.: Discharge of waste material to waters of state without enrollment in Water Board’s Cannabis General Order</i> Misdemeanor, Administrative, and Civil Violations per Water C. § 13265 PROP. 64- LISTED	No [1] <i>person</i> [2] shall initiate any new <i>discharge of waste matter</i> (or make material changes to a discharge or create an injection well) [3] to <i>waters of the state</i> [4] from a site where <i>commercial cannabis</i> is being cultivated [5] without first enrolling in the Water Board’s Cannabis General Order (or securing a waiver of such requirement). [1] <i>Person</i> includes any city, county, district, the state, and the United States, to the extent authorized by federal law. (Wat. Code § 13050(c)) [2] <i>Discharge of waste matter</i> means addition of “waste matter” to water. (See Water C. § 13373 and Clean Water Act § 502(12).) Types of waste matter discharged from cannabis cultivation sites include sediment, irrigation runoff, fertilizer, pesticides (including herbicides), petroleum products, trash, and human waste. <i>Waste</i> includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal. (Water C. § 13050(d).) [3] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, within the boundaries of the state. (Water C. § 13050(e)). [4] <i>Commercial cannabis</i> means cultivation of 7 or more plants. Cultivation of 6 or fewer plants constitutes “personal use” and is specifically exempted from the CGO. [5] <i>Enrollment in the Water Board’s Cannabis General Order</i> means to register and/or enroll in the State Water Resources Control Board’s “General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities” (Cannabis General Order). This requires, among other things, submitting certain information and an enrollment fee to the appropriate Regional Water Quality Control Board. Note: Violation of Water C. § 13264 may be charged as a misdemeanor pursuant to Water C. § 13265(a), if a warning is first given to the discharger by the appropriate Regional Water Quality Control Board. Administrative and civil liability is also authorized, pursuant to Water C. § 13265(b). Note: In the context of cannabis cultivation, sections 13260 and 13264 operate jointly to prohibit discharges of waste material from a commercial cannabis cultivation operation to waters of the state without enrollment in the state Cannabis General Order (“CGO”). A key distinction is that Water C. § 13260 only requires a threat of discharge, while Water C. § 13264 requires proof of an actual discharge. To allege a violation of Water C. § 13264 we need evidence that a discharge occurred and that the landowner has (1) not filed a report pursuant to Water C. § 13260 (e.g., not enrolled in the CGO), (2) has materially changed the discharge reported when applying for the CGO, or (3) submitted an application for enrollment in CGO but not yet received a Notice of Applicability (issued to cultivators who have applied for CGO and paid the associated fee). Unlike section 13387, this statute applies to all waters of the state.

Water C. § 13260

*Cultivation of Cannabis
Without Authorization
from State Water Board*

**PROP. 64-
LISTED**

A person discharging waste, or proposing to discharge waste, that could affect the quality of the waters of the state, other than into a community sewer system, shall file a report of discharge and obtain coverage under waste discharge requirements (WDRs) or a waiver of WDRs.

Note: See definitions of key terms in preceding discussion of Water C. § 13264.

Note: Water Code section 13149 authorizes the State Water Board to adopt requirements to reduce water quality impacts due to cannabis cultivation. The State Water Board determined that many cannabis cultivation operations “pose similar types of threats to water quality” and therefore it was appropriate to waive the obligation of those cultivators to obtain site-specific WDRs under Water Code section 13260, if those cultivators comply with the Cannabis General Order (Order WQ 2017-0023-DWQ). The Cannabis General Order contains requirements to reduce water quality impacts frequently caused by cannabis cultivation. Cultivators who are enrolled under the Cannabis General Order receive a “waiver” of the obligation to obtain WDRs which would otherwise be required by Water Code section 13260.

Except for certain limited exceptions for small cultivation operations referenced below, and certain indoor cultivation operations, cultivation of cannabis without enrolling in the Cannabis General Order (or filling a site-specific report of waste discharge) is a violation of Water Code sections 13260 and 13264. Section 13260 is only actionable pursuant to actions under H&S 11358 (cannabis cultivation, etc.).

Certain cultivation types do not need to apply for coverage under the Cannabis General Order: “personal use” and “medical” sites that disturb less than 1,000 square feet in aggregate, as well as some small commercial cultivators who disturb less than 2,000 square feet, if the cultivator complies with certain conditions specified in the Cannabis General Order.

Questions regarding the applicability of the Cannabis General Order to a specific site can be addressed to the cannabis attorneys of the State Water Board’s Office of Enforcement, who drafted this write-up of section 13260:

- Andrew Tauriainen: Andrew.Tauriainen@waterboards.ca.gov
- Dan Kippen: Dan.Kippen@waterboards.ca.gov
- Heather Mapes: Heather.Mapes@waterboards.ca.gov

Pesticide-Related Violations **Consider calling local Agricultural Commissioner, Dept. of Pesticide Regulations, and/or CalOES**

Appendix B lists relevant Restricted Pesticides; Appendix C contains a Matrix of Certain Pesticides and Laws Implicated at Many Grow Sites; and Appendix D lists legal pest management practices for cannabis growers.

Since the term “pesticide” is used in all of the laws but has a particular meaning, it is set forth below:

“Pesticides” include herbicides and defoliants. Pesticides are defined to include “any substance” intended to be used for (a) defoliating plant growth, (b) regulating plant growth, or (c) preventing, destroying, repelling, or mitigating any pest. (Food & Ag. § 12753.) “Pest” is defined broadly and includes large animals all the way to bacteria and viruses. (Food & Ag. § 12754.5.)

CONSEQUENCES OF A PESTICIDE-RELATED VIOLATION: Misdemeanors, Felonies, and/or Civil Charges

Violation of every statute and regulation set forth below, except 3 C.C.R. 6614, is punishable per Food & Ag. § 12996 (misdemeanor/felony) and 12998 (civil), because they are in or promulgated pursuant to Division 7 of the Food & Ag. Code. These are the “stronger” provisions to use.

Alternatively, violation of every *regulation* (but not statutes) below may be punished per Food & Ag. Code § 11891 (misdemeanor) and 11893 (civil), because they were promulgated pursuant to Division 6 of the Food & Ag. Code.

Crimes (two-year statute of limitation, generally)

§ 12996: misdemeanor OR felony; up to six months in county jail; \$500–5,000 fine on first offense and \$1,000–10,000 fine on subsequent offenses; each violation is a separate offense. Felony chargeable if an intentional or negligent violation created or reasonably could have created a hazard to human health or the environment.

§ 11891: misdemeanor; **minimum 10-days county jail**, up to six months; \$500–5,000 fine; each violation a separate offense.

Civil Charges

§ 12998: civil penalties of \$1,000–\$10,000 for each violation are authorized for a first violation; subsequent similar violations and those that could cause a hazard to human health or the environment may be penalized from \$5,000 to \$25,000 per violation.

§ 11893: civil penalties of \$1,000–10,000 for each violation are authorized for a first violation. No consideration of priors in penalty.

3 Cal. Code Regs. § 6670 <i>Storage of pesticides where they cause a hazard to people, wildlife, or property</i>	[1] Pesticides, emptied containers or parts thereof, or equipment that holds or has held a pesticide, shall not be [2] stored, handled, emptied, disposed of, or left unattended [3] in such a manner or at any place where they may present a hazard to persons, animals (including bees), food, feed, crops or property. Note: Agricultural Commissioner can take possession of offending pesticides and containers to abate a hazard (as defined above).
3 Cal. Code Regs. § 6672(b) <i>Pesticides must be stored in a locked area</i>	It is unlawful for [1] containers that hold or have held a pesticide [2] that are not under the personal control of the person who controls the use of the property on which the container is found [3] to be stored other than in a locked enclosure. Note: If the container is 55 gallons or more, it is sufficient if the container itself is locked; it need not be put into an enclosure.

3 Cal. Code Regs. § 6674 <i>Warning signs for storage area</i>	If a [1] storage area [2] contains containers that hold or have held <i>pesticides that must be labeled with the signal words “warning” or “danger,”</i> [3] a sign visible for 25 feet therefrom must be posted [4] which reads: “DANGER. POISON STORAGE AREA. ALL UNAUTHORIZED PERSONS KEEP OUT. KEEP DOOR LOCKED WHEN NOT IN USE.” [2] Read pesticide container or see Appendix B for list of pesticides that must be labeled with the words “warning” or “danger.”
3 Cal. Code Regs. § 6680 <i>Pesticides in a food or household product container forbidden</i>	In no case shall a pesticide be placed or kept in any container of a type commonly used for food, drink, or household products.
3 Cal. Code Regs. § 6609 <i>Mixing, loading, storage of pesticides w/in 100 ft. of well</i>	It is unlawful to, within 100 feet of a well: mix, load, or store pesticides, rinse spraying equipment, and maintain spraying equipment. Note: If well is situated and/or engineered such that irrigation and rain water will not contact or collect around the wellhead or any part of its foundation, this provision does not apply.
3 Cal. Code Regs. § 6416 <i>Permit needed for application of RUP in Groundwater Protection Area</i>	It is unlawful to [1a] possess OR [1b] use [2] without a permit [3] a pesticide containing a chemical in California Code of Regulations, title 3, section 6800 when the pesticide is [4] applied in agricultural, outdoor institutional, or outdoor industrial use [5] within a <i>runoff ground water protection area or ground water leaching protection area</i>. [2] Section 6800 contains most restricted use products (RUP) as well as Malathion and Carbaryl. See Appendix A for list. [5] <i>Ground water protection area/ground water leaching protection area:</i> Consult local regional board to determine status. Note: Must prove elements [2]–[5] and either [1a] or [1b]. Mere possession without evidence of use would make for a weak case.
3 Cal. Code Regs. § 6614 <i>Protection of persons, animals, and property from pesticides</i>	It is unlawful to [1] apply pesticide when: [2a] there is a reasonable possibility of contamination of the bodies or clothing of persons not involved in the application process; [2b] there is a reasonable possibility of damage to non-target crops, animals or other public or private property; or [2c] there is a reasonable possibility of contamination of non-target public or private property, including the creation of a <i>health hazard</i>, preventing normal use of such property. [2c] In determining a <i>health hazard</i>, consider amount and toxicity of the pesticide, type and uses of the property, etc.
3 Cal. Code Regs. § 6616 <i>Apply pesticide to Property w/out Permission</i>	It is unlawful to [1] directly discharge [2] a pesticide [3] onto a property [4] without the consent of the owner or operator of the property.

3 Cal. Code Regs. § 6622 <i>Purchase or apply pesticide in production of agricultural commodity w/out operator ID from Ag. Commissioner</i>	[1] Prior to [2] the purchase and use of a pesticide [3] for the production of an <i>agricultural commodity</i>, [4] the <i>operator of the property</i> (or the operator's authorized representative) shall obtain an operator identification number from the agricultural commissioner of each county where pest control work will be performed. [2] <i>Agricultural commodity</i> “means an unprocessed product of farms, ranches, nurseries and forests.” (3 Cal. Code Regs. § 6000.) Accordingly, “back yard grows” do not seem to fall under this requirement. Larger commercial grows probably do. [4] <i>Operator of the property</i> essentially means the owner, lessee, or other legal user. (3 Cal. Code Regs. § 6000.)
Food & Ag. § 12972 <i>Use of pesticide must prevent drift</i>	It is unlawful to [1] use pesticides in such a manner [2] that allows <i>substantial drift</i> to non-target areas. [2] <i>Substantial drift</i> means the quantity of pesticide outside of the area treated is greater than that which would have resulted had the applicator used due care. (3 Cal. Code Regs. § 6000.)
Food & Ag. § 12973 <i>Use of pesticide in conflict with label</i>	The use of any pesticide [1] shall not conflict with [2a] labeling registered pursuant to this chapter which is delivered with the pesticide or [2b] with any additional limitations applicable to the conditions of any permit issued by the director or commissioner. [2a] Registration status can be retrieved at http://www.cdpr.ca.gov/docs/label/prodnam.htm. Read labels for allowable uses.
Food & Ag. § 12995 <i>Possession of unregistered pesticide</i>	It is unlawful for [1] any person, acting alone or through another, [2] to possess or use any pesticide [3] that is either not registered pursuant to this chapter, or for which registration has been suspended. [3] All pesticides are registered by the Department of Pesticide Regulations. Registration status can be retrieved at http://www.cdpr.ca.gov/docs/label/prodnam.htm. Note: Contact Agricultural Commissioner to see if an exception by regulation or notice of suspension or cancelation applies to pesticide.
Food & Ag. § 14015 <i>Possession of restricted pesticide only by certified private applicator or commercial applicator</i>	It is unlawful to [1a] use or [1b] possess [2] a <i>restricted material</i> unless it is [3a] under the direct supervision of a <i>certified private applicator</i>, or a [3b] <i>certified commercial applicator</i>. [1a] Use means pre-application activities, application of pesticide, and post-application activities such as transportation, cleaning, and control and management of the application area. (3 Code Cal. Regs. § 6000.) [2] <i>Restricted material</i>: See Appendix B and https://bit.ly/2O2BsHR (3 Code Cal. Regs. § 6400.) [3a] <i>Certified private applicator</i> means a private applicator holding a valid private applicator certificate issued by the Agricultural Commissioner (or the state director in any county where there is no commissioner). (3 Cal. Code Regs. § 6000.) [3b] <i>Certified commercial applicator</i>: Person holding a valid license, pest control aircraft pilot’s certificate, or applicator certificate issued by state Department of Pesticide Regulation director; technical certificate issued by vector control; or structural pest control operator/field representative license issued by Structural Pest Control Board. (3 Cal. Code Regs. § 6000.) Note: Contact county Agricultural Commissioner to determine if state regulation carves out from regulation the pesticide at issue. Note: Food and Agriculture Code sections 14006.5 and 14090 are similar to section 14015, but the latter is likely the better statute to use. It is not recommended to charge additional statutes based on the same act, as it is likely to engender confusion and will not likely result in more punishment due to the likely application of Penal Code section 654.

Food & Ag. § 14011 <i>Catch-all provision</i>	It is unlawful for [1] any person [2] to apply [3] any <i>restricted material</i> for which regulations have been adopted [4] except as provided in the regulations which are adopted by the director. [2] <i>Restricted material</i>: See Appendix B and https://bit.ly/2O2BsHR (3 Cal. Code Regs. § 6400.) [2] <i>Applicable regulations</i>: See title 3, California Code of Regulations, Division 6.
Labor Code § 6423 <i>Workplace safety re: pesticides</i>	Serious or repeated violations of workplace safety standards, including those relating to pesticides, may constitute misdemeanor violations of Labor Code § 6423. At minimum, all workers must be provided equipment necessary to comply with pesticide safety labels. Contact the local Agricultural Commissioner or Cal/OSHA for further details on suspected pesticide worker-safety violations.

Poaching For penalties, see Fish and Game Code sections 12000 et. seq.	
F&G § 2000 <i>Take of any bird, mammal, fish, or reptile except in accordance with law</i> PROP. 64-LISTED	It is unlawful to [1] <i>take</i> [2] any bird, mammal, fish, reptile, or amphibian [3] except as provided by law. [1] <i>Take</i> means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) Note: For purposes of Prop. 64, growers who also illegally take wildlife as part of their grow make themselves liable for felony prosecution. For instance, to kill a deer that is eating cannabis plants, a grower would need to have a hunting license and duly tag the deer when taken, among other various requirements tied to the take of that species. Each species has different rules tied to lawful methods of take, if any. This means that many violations of the Fish & Game Code could constitute enhancements under Prop. 64. Note: Possession of a bird, mammal, fish, or reptile or parts thereof in or on the fields, forests, or waters of this state, or while returning therefrom with fishing or hunting equipment is prima facie evidence the possessor took the bird, mammal, fish or reptile. Note: This statute is appropriately charged as a companion to more specific game violations, similar to Fish and Game Code section 2002, set forth below. Note: F&G § 12012 sets forth a three-year SOL for a misdemeanor unlawful take, if done “for profit or personal gain.” Likewise, the penalties for “personal gain”-related offenses are \$5,000 to \$40,000. (F&G § 12012.)
F&G § 2001(a) <i>Take outside of season</i> Can be Prop 64 enhancement via F&G § 2000	It is unlawful to [1] <i>take</i> [2] mammals, birds, fish, reptiles, and amphibians [3] outside of established seasons. [1] <i>Take</i> means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) [3] Seasons vary by species. For example, see California Code of Regulations, title 14, section 360 for deer (a portion of August–December, depending on location), and section 365 for bear (similar season to deer). Contact Game Warden for more info.

F&G § 2001(a) <i>Exceeding bag limits; exceeding possession limits</i> Can be Prop 64 enhancement via F&G § 2000	It is unlawful to [1] exceed any [2] <i>bag limit</i>. [2] <i>Bag limits</i> means the maximum limit, in number or amount, of birds, mammals, fish, reptiles, or amphibians that may be lawfully <i>taken</i> during a specific period of time. (F&G § 18.) Bag limits vary by county and species; document in field if unable to ascertain limit while in field. <i>See</i> California Code of Regulations title 14, § 360 for deer; a person may only take one bear per year per 14 Cal. Code Regs. § 365(c). It is unlawful to [1] exceed any [2] <i>possession limit</i> established in this code or by regulations. [2] <i>Possession limits</i>: the maximum number or amount of birds, mammals, fish, reptiles, or amphibians that may be lawfully possessed by one person. (F&G § 19.) Thus, possession limit will always equal or exceed the bag limit for a particular species. Note: F&G § 2001 states that either this section “or” a more animal-specific bag/possession limit statute may be charged.
F&G § 2002 <i>Possession of birds, mammals, etc. in violation of law</i> Can be Prop 64 enhancement via F&G § 2000 <i>See also</i> F&G § 3801.6	It is unlawful to [1] <i>possess</i> [2a] any bird, mammal, fish, reptile, or amphibian, or [2b] parts thereof, [3] <i>taken</i> in violation of any of the provisions of this code, or of any regulation made under it. [1] Possession can be constructive. Analogize to a group of people sitting around a pile of cocaine. [3] <i>Take</i> means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) Note: As with F&G § 2000, this statute is likely to be charged along with a violation regarding manner/timing of take of animal.
F&G § 2020 <i>Violation of Regulation</i> Possibly can be Prop 64 enhancement via F&G § 2000	It is unlawful to violate any regulation of Division 1 of Title 14 of the California Code of Regulations. Note: See F&G § 12000 <i>et. seq.</i> for penalties. Many violations of section 2020 are infractions. Note: Violation of these regulations when they concern an illegal take of a bird, mammal, fish, reptile, or amphibian constitute a violation of F&G § 2000, which is an enhancement under Prop. 64.
F&G § 2080 <i>Violation of California Endangered Species Act (ESA)</i> PROP. 64- LISTED	No person shall [1a] import into this state, [1b] export out of this state, or [1c] <i>take</i>, [1d] possess, [1e] purchase, or [1f] sell within this state, [2a] any endangered or threatened species, or [2b] any part or product thereof. Attempts to do the same are also unlawful. [1c] <i>Take</i> means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) [2] Endangered plants and animals are listed in California Code of Regulations title 14, sections 670.2 and § 670.5, respectively. Federal and State classified endangered and threatened animals can also be found at www.dfg.ca.gov/wildlife/nongame/t_e_spp/ Note: Exceptions are detailed in the Native Plant Protection Act (NPPA) (F&G §§ 1900 <i>et seq.</i>) and the California Desert Native Plants Act (CDNPA) (F&A §§ 80001 <i>et seq.</i>). In addition, takes with federal Incidental Take Permits do not fall within ambit of this law. Note: Act may also be a violation of federal ESA. (See 16 U.S.C. § 1538(a).) That crime must be prosecuted in federal court.

F&G § 3513 Taking birds specially protected under Migratory Bird Treaty Act PROP. 64-LISTED F&G § 3800 Take of non-game bird Can be Prop 64 enhancement via F&G § 2000	It is unlawful to [1a] <i>take</i> or [1b] possess [2a] any migratory <i>non-game bird</i> as designated in the <i>Migratory Bird Treaty Act</i> or [2b] any part of such migratory <i>non-game bird</i> [3] except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act (MBTA). [1a] <i>Take</i> means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) [2] <i>Non-game bird</i>. Fish and Game Code section 3500 lists all game birds; if a species is on the list it does not fall under the ambit of this statute and is regulated elsewhere in the Fish and Game Code as a game bird. Common game birds include quail, pheasants, grouse, turkeys, ducks, coots, pigeons, and doves. See Appendix F for a list of game birds. [2] Migratory Birds under the MBTA are listed at http://www.fws.gov/birdhabitat/Grants/NMBCA/Birdlist.shtm [3] Exceptions to MBTA include European starlings, common pigeon (rock dove), and other non-native species. It is unlawful to [1] take [2] any non-game bird [3] unless excepted by the Fish and Game Code or regulations promulgated thereto. [1] & [2]: see above. [3] Exceptions include English sparrows, starlings, and if crops or property is injured. (F&G §§ 3800–3806.)
F&G § 4304 Waste of Game Animal	It is unlawful to [1] leave through carelessness or neglect to go needlessly to waste [2] any <i>game mammal</i> or <i>game bird</i>, or any portion of the flesh usually eaten by humans. [2] Game birds are listed in F&G § 3500; game mammals are listed in F&G § 3950. See Appendix F for a list of these species. Note: This law does not apply to takes of black-tailed jackrabbits, muskrats, non-native red foxes, and red fox squirrels that are found injuring crops or other personal property (F&G §§ 4152 and 4183).
F&G § 4330 Taking deer w/out tag Can be Prop 64 enhancement via F&G § 2000 F&G § 4336(a) Proper use of deer tag; reporting of take	It is unlawful to [1] <i>take</i> [2] any deer [3] without <i>first procuring a deer tag or permit</i> authorizing the <i>taking</i> of that deer. [1] <i>Take</i> means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) [3] See Code of California Regulations title 14, section 360 for deer tag regulations. Varies depending on location. Note: See Appendix D for Deer Zone Map. Upon the killing of any deer, the hunter must immediately do all of the following to be in compliance with law: • Legibly fill out tag completely in permanent ink; • Cut out or punch out notches for month/date of kill; • Attach tag to antlers of antlered deer or ear if not antlered; • Keep tag on deer until 15 days after season closes; • Get the tag countersigned by a valid party as soon as possible before further transport (F&G § 4341); and • Notify Department of Fish and Game of take.

F&G § 4336(b) <i>Possession of untagged deer</i>	It is unlawful to [1] possess [2] any untagged deer. Note: Section 4336 can be charged through §§ 2020, or 12000(a), which makes all violations of the code/regulations a misdemeanor.
F&G § 4750 <i>Taking bear w/out tag</i> Can be Prop 64 enhancement via F&G § 2000 F&G § 4753 <i>Proper use of bear tag; reporting of take</i> F&G § 4753 <i>Possession of untagged bear</i>	It is unlawful to [1] <i>take</i> [2] any bear with [3] firearm, trap, or bow and arrow [4] without first procuring a tag authorizing the <i>taking</i> of that bear in accordance with this chapter. [1] <i>Take</i> means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) [4] See California Code of Regulations title 14, section 365 for bear-tag and other bear hunting restrictions. Upon the killing of any bear, the hunter must immediately do all of the following to be in compliance with law: • Legibly fill out tag completely in permanent ink; • Cut out or punch out notches for month/date of kill; • Attach tag to ear of bear; • Keep tag on bear until 15 days after season closes; • Get the tag countersigned by a valid party as soon as possible before further transport (F&G § 4755); and • Notify Department of Fish and Game of take. Note: Section 4753 can be charged through §§ 2020, or 12000(a), which makes all violations of the code/regulations a misdemeanor. It is unlawful to [1] possess [2] any untagged bear.
F&G § 4800(b) <i>Taking mountain lion w/o depredation permit or direct threat to person or livestock</i> Can be Prop 64 enhancement via F&G § 2000	It is unlawful to [1a] <i>take</i>, [1b] injure, [1c] possess, [1d] <i>transport</i>, [1e] import, or [1f] sell [2a] any mountain lion or [2b] any part or product thereof, [3] except as specifically provided in this chapter. [1a] <i>Take</i> means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) [1d] <i>Transport</i> includes offer or receive for transportation. [3] Self-defense, defense of livestock being attacked, or take with depredation permit are common exceptions to the law. Note: Penalty prescribed in subsection (c): up to \$10,000 fine, plus standard misdemeanor terms.

Air Quality Violations	
H&S § 41800 <i>Prohibited outdoor fires</i>	No person shall [1] use [2] open outdoor fires [3a] for the purpose of disposal or burning of petroleum wastes, demolition debris, tires, tar, trees, wood waste, or other combustible or flammable solid or liquid waste, [3b] or for metal salvage or burning of motor vehicles. Note: Health and Safety Code sections 41802 and 41804 exempt certain activities in a residential context, including residential brush burning. Consult local air district staff to determine if a specific outdoor disposal fire is permitted, as rules are air-basin specific.
H&S § 42400(a) <i>Unlawful acts regarding air pollution – general prohibition statute</i> <i>Note re: diesel generators</i>	It is unlawful for [1] a person [2a] to violate a rule, [2b] to violate a regulation, [2c] to violate a permit, or [2d] to violate an order [3] issued by the local or state air board pursuant to Health and Safety Code sections 39000-42710, inclusive. [3] Includes nearly all air-pollution-related laws/rules/regulations that do not concern vehicles. Note: Civil and criminal proceedings are mutually exclusive per Health and Safety Code section 42400.7. Note: Penalties are increased for more culpable conduct and state of mind and can get very high. (See H&S § 42400-42410.) Note: Each day of violation is a separate offense. (H&S § 42400(e).) Note: More specific statutes (e.g., 42400.1, -.2, -.3, -.3.5, and -.4) may apply in lieu of or in addition to this strict-liability provision. Generally speaking, portable diesel generators rated at 50 brake horsepower (bhp) and greater must be permitted by the local Air District. (See e.g. Amador County APCD, Rule 402(C)(3); Shasta County AQMD Rule 3:28(C)(3); Yolo-Solano AQMD Rule 3.2(105).) That said, many local Air Districts exempt diesel generators used directly and exclusively for agricultural operations such as the growing of crops. (See, e.g., North Coast Unified AQMD Rule 102(D)(12); Placer County APCD Rule 203(A)(7); Yolo-Solano AQMD Rule 3.2 (105).) Consult local Air District staff to determine whether cannabis cultivation qualifies for such exemption.



Example of a 50 b.h.p. generator.

Forestry Violations	
Pub. Res. C. § 4571(a) <i>Timber operations for commercial purposes [land conversion] without a permit</i>	No person shall [1] engage in <i>timber operations</i> [2] until that person has obtained a license from CalFIRE. [1] <i>Timber operations</i> means the cutting or removal, or both, of timber or other solid wood forest products, including Christmas trees, from [a] <i>timberlands</i> for [b] a <i>commercial purpose</i>. Such operations include “incidental work” such as road building, stream crossings, etc. (Pub. Res. C. § 4527(a).) [a] <i>Timberlands</i> are lands which are available for and capable of growing a crop of trees of a commercial species used to produce lumber and other forest products. (Pub. Res. C. § 4526.) Oak woodlands do not usually qualify as such, nor do federal lands and state experimental forests. Consider Pen. Code sections 384a and 594, below, if not a “timberland.” [b] <i>Commercial purpose</i> is not only the selling and bartering of trees, but converting timberland to another use, such as a marijuana cultivation site. (Pub. Res. C. § 4527(a)(2).) Note: Certain activities are exempted under Public Resources Code section 4584, which are unlikely to apply at a marijuana cultivation site. Contact CalFIRE. A commonly used three-acre exemption does not apply unless the landowner applied for and got the exemption. Even when landowner secures 3-acre exemption lawfully, timber operations still require a licensed timber operator, among other things. Note: Violation is a misdemeanor per Public Resources Code section 4601; civil penalties are available through section 4601.1(a).
Pub. Res. C. § 4581 <i>Timber operations require timber harvest plan</i>	[1] No person shall conduct <i>timber operations</i> [2] unless a <i>timber harvesting plan</i> (THP) <i>prepared by a registered professional forester</i> [3] has been submitted for such operations to CalFIRE. [1] <i>Timber operations</i> is defined above. It is nuanced. [2] <i>Timber harvesting plan prepared by a registered professional forester</i> means a plan in conformance with Pub. Res. C. § 4582. Note: The harvesting plan requirement is separate from and in addition to the license required by Public Resources Code section 4571. Contact local CalFIRE office to see if a Timber Harvesting Plan has been submitted for a given parcel.
Pub. Res. C. § 4601 <i>Violations of statutes, rules, or regulations are unlawful</i>	It is unlawful to violate any provision of the Forest Practices Act (Pub. Res. C. §§ 4511-4628) or related CalFIRE rules and regulations. Regulations likely applicable include, but are not limited to: • 14 Cal. Code Regs. § 916.3(c)—construction of wet-ford logging roads in Class I, II, III, or IV watercourses (14 Cal. Code Regs. § 936.9), wetland protection zone (WLPZ), marshes, wet meadows, and other wet areas are forbidden, unless explained in the Timber Harvesting Plan (THP) by the Registered Professional Forester (RFP) (14 Cal. Code Regs. § 895) and permitted by the Director of CalFIRE (14 Cal. Code Regs. § 895.1); • 14 Cal. Code Regs. § 916.3(b)—Accidental depositions of soil or other debris in lakes or below the watercourse or lake transition line in waters classed I, II, and IV (14 Cal. Code Regs. § 936.9) shall be removed immediately after the deposition or as approved by the Director. • 14 Cal. Code Regs. § 916.11.1—failure to implement protection measures in Coho salmon watersheds; • 14 Cal. Code Regs. § 923.2(d)—failure to stabilize slopes of a logging road near a watercourse; and • 14 Cal. Code Regs. § 923.4(c)—failure to maintain a logging road with water breaks maintained as specified in section 914.6. Note: If there is evidence of a violation of one or more of the above regulations, consider calling CalFIRE for investigation expertise.

Pen. C. § 384a(a)(2) <i>Remove/Mutilate Tree, Plant, etc. w/o Written Permission</i>	It is unlawful to [1] willfully or negligently [2] cut, destroy, mutilate, remove [3] most types of <i>plant life</i> [4] growing on public or private property that's not his/her own [5] without a specific <i>written permit</i>. [3] <i>Plant life</i> includes: trees, shrubs, ferns, herbs, bulbs, cactuses, flowers, huckleberry greens, redwood greens, & leaf molds. [5] The <i>written permit</i> must be notarized and signed by the landowner, and must state the nature of the requested cutting/removal and a legal description of the property on which it will occur. (Pen. Code § 384a(c).) Note: Statute is best used when large trees, such as oaks, are cut down and are not included as “timberland” in the above statutes. Otherwise, the ambit of this statute is almost absurdly broad, and can include many routine, everyday occurrences.
Pen. C. § 602(a) <i>Trespass by Timber Cut w/o Permission</i>	It is unlawful to [1] <i>willfully</i> [2] cut down, destroy, or injure [3] any kind of wood or timber [4] standing on or growing on the land of another [5] <i>by trespass</i>. [1] <i>Willfully</i> means a purpose or willingness to commit the act; does not require intent to violate the law. (Pen. C. § 7(1)) [5] <i>By trespass</i> means, basically, without permission, i.e., “tortious infringement on rights of another.” (PG&E, 102 Cal.App.422)

Littering/Dumping/Illegal Disposal	
Pen. C. § 374.3(a) <i>Illegal dumping</i> INFRACTION See also § 374.4, a “littering” law with a similar penalty scheme.	It is unlawful to [1a] dump or [1b] cause to be dumped [2] <i>waste matter</i> [3a] in or upon a public or private highway or road, including any portion of the right-of-way thereof, or [3b] in or upon private property into or upon which the public is admitted by easement or license, or [3c] upon private property without the consent of the owner, or [3d] in or upon a public park or other public property other than <i>property designated or set aside for that purpose</i> by the governing board or body having charge of that property. [2] <i>Waste matter</i> means discarded, used, or leftover substances, including, but not limited to, a lighted or non-lighted cigarette, cigar, match, or any flaming or glowing material; or any garbage, trash, refuse, paper, container, packaging or construction material, carcass of a dead animal, any nauseous or offensive matter of any kind, or any object likely to injure any person or create a traffic hazard (Pen. C. § 374(b)). Boldfaced forms of solid waste are most likely found on cannabis grow sites. [3c] For example, a city or county dump. Note: Each day the waste remains placed, deposited, or dumped is a separate violation. (Pen. C. § 374.3(c).) Note: Mandatory fines are \$250, \$500, and \$1,500 for first, second, and subsequent violations, before penalty assessments. Note: The court may require the defendant to clean the site or pay for such cleanup as a probation condition. (Pen. C. § 374.3(f).)
Pen. C. § 374.3(h)(1) <i>Disposal of waste matter in commercial quantities (>1 yd³)</i>	It is unlawful for [1] a person to [2a] place, deposit, or dump, or [2b] cause to be placed, deposited, or dumped, [3] <i>waste matter</i> [4] <i>in violation of this section</i> [5] <i>in commercial quantities</i>. [1] <i>Person</i> means an individual, trust, firm, partnership, joint stock company, joint venture, or corporation. (Pen. Code § 374(i).) [3] <i>Waste matter</i> is defined above, under Penal Code section § 374.3(a). [4] The prohibited act must occur on certain property, as set forth in Elements [3a-3d] of Penal Code section 374.3(a), above. [5] <i>Commercial quantities</i> means an amount equal to or in excess of one cubic yard (27 cubic feet), OR an amount of waste matter generated in the course of a trade, business, profession, or occupation. (Pen. C. § 374(h)(2).) Note: This law does not apply to dumping of household waste at a person’s residence, unless nuisance or hazard. (Pen. C. § 374(d).) Note: For reference, a standard 8-foot-long pickup truck bed will hold approximately 2.5 cubic yards of material when loaded level-full.

Pen. C. § 374.8(b) <i>Knowingly causing deposit of a hazardous substance on the land of another or in a WOS</i> <i>This is a WOBBLER</i> PROP. 64-LISTED	It is unlawful to [1] knowingly cause [2] any <i>hazardous substance</i> [3] to be deposited into or upon [4a] any road, street, highway, alley, or railroad right-of-way [4b] or upon the land of another, without the permission of the owner, [4c] or into the <i>waters of this state</i>. [2] In relevant part, a <i>hazardous substance</i>, per Pen. Code § 374.8(c), is any material that: • poses significant present/potential hazard to human health/safety or to environment if released to environment; OR • is listed in the “Hazardous Substances List” at http://www.dir.ca.gov/title8/339.html The statute also includes circumstances when a manufacturer is required to produce an MSDS pursuant to Labor Code § 6390, but that is essentially the same as whether the substance is on the Hazardous Substance List. Thus, that list is key. Cntrl-F can be useful to search. [See Labor Code §§ 6380, 6382, and 6390 and California Code of Regulations title 8, section 339]; OR • the administering agency or a handler has a reasonable basis for believing would be injurious to the health and safety of persons or harmful to the environment if released into the environment. [4] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in California. (Water C. § 13050(e).) Note: Does not apply if deposit occurred as a result of emergency that person promptly reported to the appropriate regulatory authority.
H&S § 117555 <i>Depositing sewage/septic tank effluent/solid waste</i>	It is unlawful to [1a] place, deposit, or dump, or cause to be placed, deposited, or dumped, or [1b] cause or allow to overflow, [2] sewage, sludge, cesspool or septic tank effluent, accumulation of human excreta, or solid waste, [3a] in or upon a street, alley, public highway, or road in common use or [3b] upon a public park or other public property other than property designated or set aside for that purpose, or upon private property without the owner's consent. Note: Deposits on private property with permission are allowed under the statute so long as it does not create a public health, safety, or fire hazard, or a nuisance as determined by the local enforcement agency.

Nuisance	
Pen. C. §§ 370, 372 <i>Public Nuisance</i>	Anything which is [1a] injurious to health, or [1b] is indecent, or [1c] offensive to the senses, [2] so as to interfere with the comfortable enjoyment of life or property by [3] an entire community or neighborhood, or by any considerable number of persons, is a public nuisance. In addition, an obstruction to the free use of or passage through lakes, rivers, bays, streams, canals, basins, public parks, public squares, or highways may be considered a nuisance as defined in Penal Code section 370. [2] Result of the act must interfere with comfortable enjoyment of life/property, but interference need not be substantial; and [3] A “considerable amount of persons” must be affected, but they need not be affected directly. Note: Pen. C. § 373(a) may also be used to pursue a nuisance abatement, following warning by DA or health officer. Note: <i>People v. McDonald</i> (2006) 137 Cal.App.4th 521 is the seminal case on the application of criminal nuisance law.

Hazardous Waste Disposal	
H&S § 25189.5(b) Unlawful disposal of hazardous waste This is a WOBBLER PROP. 64-LISTED	It is unlawful to [1a] <i>knowingly dispose</i> of or [1b] <i>knowingly cause the disposal</i> of or [1c] or <i>dispose</i> or cause <i>disposal</i> when one should have reasonably known they were <i>disposing</i> or causing <i>disposal</i> of [2] any hazardous waste at [3] <i>an unauthorized point or a facility which does not have a permit</i>. [1] <i>Knowingly</i> only requires that the actor had knowledge of the facts, not the law. Circumstantial evidence of knowledge may exist when, for example, a labeled pesticide container is abandoned and left in the open: the actor knows both that he abandoned it, and he knows what the substance is. (See <i>People v. Taylor</i> (1992) 7 Cal.App.4th 677.) [1] <i>Disposal</i> means discharge, deposit, injection, dumping, spilling, leaking, or placing hazardous waste onto land or water so it may enter the environment, such as air or water; or abandonment of hazardous waste. (22 Cal. Code Regs. § 66260.10.) [2] <i>Hazardous waste</i> must both be (a) waste, and (b) hazardous. (a) <i>Waste</i> is any material which has been discarded. (H&S § 25124 and 22 Cal. Code Regs § 66261.2.) This means, among other things, that the waste was relinquished, disposed of, or burned/incinerated. Abandonment makes it waste. (b) <i>Hazardous</i> means that the waste exhibits the properties of toxicity, carcinogenicity, ignitibility, or reactivity. A list of such substances is attached as Appendix C and can be found at California Code of Regulations title 22, section 66261.126, Appendix X. Weed killer, un-rinsed pesticide containers, pesticides, and insecticide are among those substances listed as “hazardous.” [3] An <i>unauthorized point</i> is any place where disposal occurs for which there is no permit for such disposal. Note: Storage of hazardous waste may be an alternative legal theory. Note: Use a plea form; priors can be later alleged for enhanced penalties per § 25189.4. Note: Common hazardous wastes at grows include unrinsed pesticide containers, leftover pesticides, fuel waste, solvents, weed killer, etc.
H&S § 25189.6 Unlawful disposal of hazardous waste causing unreasonable risk of fire, explosion, serious injury, or death This is a WOBBLER PROP. 64-LISTED	It is unlawful for [1] a <i>person</i> to [2a] <i>knowingly</i> or [2b] with reckless disregard for the risk [3] treat, handle, transport, <i>dispose</i>, or store [4] any <i>hazardous waste</i> [5] in a manner which causes any unreasonable risk of fire, explosion, serious injury, or death. [1] <i>Person</i> means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, and corporation, including, but not limited to, a government corporation. “Person” also includes any city, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law. (H&S § 25118.) [2a] <i>Knowingly</i> is defined in section 25189.5, above. [3] <i>Dispose</i> is defined in section 25189.5, above. [4] <i>Hazardous waste</i> is defined in section 25189.5, above. [5] <i>Unreasonable risk</i> must be determined by an expert, such as fire, CUPA, or other emergency personnel. Note: This law may be most pertinent to manufacture of concentrated cannabis and the waste streams associated therewith, e.g., disposal of non-empty canisters of butane or other flammable fuels. Note: This penalty for this statute is large: not less than \$5,000 or more than \$250,000 per day, before penalty assessments are imposed. Note: Placing another in imminent danger of death or SBI is punishable with a 3-6-9 triad. (H&S § 25189.6(b).)

H&S § 25189.7 <i>Burning or incinerating hazardous waste without a permit.</i> <i>This is a WOBBLER</i> PROP. 64-LISTED	[1] A <i>person</i> who [2a] <i>knowingly</i> or [2b] who reasonably should have known that he or she [3a] was burning or incinerating, or [3b] causing the burning or incineration of [4] any <i>hazardous waste</i>, [5] at an unauthorized location, may be charged with a misdemeanor or felony. [1] <i>Person</i> is defined in section 25189.6(a), above. [2a] <i>Knowingly</i> is defined in section 25189.5, above. [4] <i>Hazardous waste</i> is defined in section 25189.5, above. Note: An prison and fine enhancement under subdivision (c) applies if the person caused great bodily injury or caused a substantial probability that death could have resulted.
H&S § 25190 <i>Subsequent violations are WOBBLERS</i>	It is unlawful to violate any provision of the Hazardous Waste Control Law (H&S §§ 25100-25258.2) or any <i>regulations</i> or rules promulgated under that law. Note: Regulations promulgated under the Hazardous Waste Control Law are codified in division 4.5 of title 22 of the California Code of Regulations. Note: Defendant should use a plea form, as the offense is priorable as a wobbler, pursuant to subdivision (b). Note: This is a strict-liability statute. (<i>People v. Matthews</i> (1992) 7 Cal.App.4th 1052, 1057–1058.)
Pen. C. § 374.8(b) <i>Knowingly causing deposit of a hazardous substance on the land of another or in a WOS</i> <i>This is a WOBBLER</i> PROP. 64-LISTED	Discussion of this crime is set forth in the Water Pollution section of this document, page 7.

Possible County Code Violations Please contact local agencies for details regarding the respective county ordinances they enforce. Shasta County Code sections are provided as an example, but county approaches to these issues vary.	
<i>Illegal grading</i>	Often an infraction, but may be a misdemeanor or include civil penalties in some jurisdictions. Usually only triggered when grading is in excess of one acre, or past a certain depth. Can include grow sites or roads to them. (Shasta Co. Code §§ 12.12.040 & 12.12.050.)
<i>Illegal sewage disposal</i>	Dwellings must provide for proper sewage disposal. Camps associated with grow-ops likely violate these provisions. See also Health and Safety Code section 117555, as set forth in the littering section above. (Shasta Co. Code § 8.40.030)

<i>Must inhabit only proper structures</i>	Long-term camps, live-in travel-trailers, and other similar structures may violate county codes. Dwellings must be up to county building, fire, and other codes. (Shasta Co. Code §§ 16.04.015 (buildings require permits); 17.88.280(B) (illegal habitation of RV on private property); and 8.52.040 (illegal camping).)
<i>Illegal wells</i>	Wells must be permitted by the local county Department of Environmental Health. (Shasta Co. Code § 8.56.030.)
<i>Erosion controls</i>	Some counties require installation of erosion control devices such as straw wattles and grass seedling when grading is done. Note: Regional Water Quality Control Boards’ respective Basin Plans may also have like restrictions having to do with required erosion control measures, and violations thereof may constitute violations of Water Code section 13387(a)(3), which is set forth above.
<i>Storage of garbage</i>	County codes often prohibit the “storage” of garbage and other materials out in the open, on the ground. The landowner, rather than the person storing the items, may be liable. (Shasta Co. Code §§ 8.32.110; see also Del Norte Co. Code § 7.08.310(B)(8).)
<i>Cannabis cultivation and sales regulations</i>	Counties and cities will likely have specific regulations that govern the cultivation and sales of cannabis within those jurisdictions, if they are not a “dry” county that forbids all commercial cultivation and/or sales. (Shasta Co. Code § 17.88.320(D).)

POTENTIAL CIVIL REMEDIES	
F&G § 1615— <i>Substantial Stream Alteration/Diversion, Civil Remedy</i>	For violations of F&G § 1602, above, section 1615 allows for a penalty of up to \$25,000 per violation. Penalty factors are specified. See also F&G § 12025 penalty enhancement, below, which applies in addition to the penalty set forth in this section.
F&G § 5650.1— <i>Water Pollution, Civil Remedy</i>	For violations of F&G § 5650, above, section 5650.1 allows for a civil penalty of up to \$25,000 per violation. Penalty factors are specified. Subdivision (i) allows for an additional penalty of up to \$10 per gallon or pound of pollutants not removed from waters of the state. See also F&G § 12025 penalty enhancement, below, which applies in addition to the penalty set forth in this section. Note that this statute cannot be used concurrently with Lempert-Keene-Seastrand’s enforcement provisions relating to petroleum spills, pursuant to subdivision (j). The prosecutor may find in cases of petroleum that the better remedy is with Lempert-Keene-Seastrand.

F&G § 12025—
Enhanced Civil
Remedies re Stream-
Related Laws

The chart below details the enhanced civil penalties that apply to “the production or cultivation of a controlled substance” (i.e., cannabis) when one of the following laws is violated, depending on whether the property is owned/leased by the violator or not:

Code Section	Short Description of Law	Enhanced Penalty – “Trespass Grows” [§ 12025(a)]	Enhanced Penalty – Violator Owns/Leases Land [§ 12025(b)]
F&G § 1602	Obstruct flow, change, or use material from stream; substantial diversion water	\$10,000	\$8,000
F&G § 5650	Water pollution - state waters	\$40,000	\$20,000
F&G § 5652	Littering near a stream	\$40,000	\$20,000
Pen. C. § 374.3(a)	Dumping (littering)	\$40,000	\$20,000
Pen. C. § 374.3(h)(1)	Dumping in commercial quantities	\$40,000	\$20,000
Pen. C. § 374.8(b)	Illegal dumping of hazardous substance	\$40,000	\$20,000
Pen. C. § 384a	Cut trees without notarized permission	\$10,000	\$10,000
Pub. Res. C. § 4571(a)	Cut timber for commercial purpose w/out timber harvesting license	\$10,000	\$8,000
Pub. Res. C. § 4581	Cut timber for commercial purpose w/out Timber Harvesting Plan	\$10,000	\$8,000
F&G § 2000	Unlawful take of bird, mammal, fish, reptile, or amphibian	\$10,000	\$8,000
F&G § 2002	Unlawful possession of bird, mammal, fish, reptile, or amphibian	\$10,000	\$8,000

“*Trespass Grows*” include those on land under the management of the Department of Parks and Recreation, the Department of Fish and Wildlife, the Department of Forestry and Fire Protection (CalFIRE), the State Lands Commission, a regional park district, the United States Forest Service, the United States Bureau of Land Management, and very large TPZ landowners, i.e., those “within the respective ownership of a timberland production zone, as defined in Chapter 6.7 (commencing with Section 51100) of Part 1 of division 1 of title 5 of the Government Code, of more than 50,000 acres.” (F&G § 12025(a).)

For *non-trespass grows*, each day a violation “occurs or continues to occur” shall constitute a separate violation. If the grow is a trespass grow, oddly, it seems that a “per day” penalty cannot be pursued. (Compare § 12025(a) with 12025(b)(2).)

Penalties are to be apportioned as follows:

- 30% to county, with funds to be first used to reimburse the DA for any investigation/prosecution;
- 30% to the investigating agency to reimburse costs directly related to the investigation; and
- 40% to Timber Regulation and Forest Restoration Fund used for grants to remediate effects of grows. (§ 12025(d).)

The Dep’t of Fish & Wildlife has been granted powers to pursue these cases administratively. The recently approved regulations for DFW’s administrative program can be found in title 14 of the California Code of Regulations, section 748.5 (2016).

F&G § 12025.1— <i>Enhanced Civil Remedies re Blocking Fish Passage</i>	In addition to any other penalties provided for by law, a violation of section 5901, relating to blocking fish passage, is punishable by a civil penalty of up to \$8,000. Section 5901 is detailed above. Each day that a violation of section 5901 occurs or continues without a good faith effort by the person to cure the violation after receiving notice from DFW shall constitute a separate violation. Penalties associated with cultivation of cannabis shall be apportioned as set forth in sec. 12025, above.
Food & Ag. § 11893— <i>Pesticide Container Violations, Civil Remedy</i>	Violation of every pesticide-related <i>regulation</i> (but not statutes) set forth in this document may be punished per Food & Ag. § 11893, because they were promulgated pursuant to Division 6. Section 11893 allows for civil penalties of \$1,000-\$10,000 for each violation. Consider using section 12998, below, in lieu of, or in addition to, this statute, as 12998 is more powerful.
Food & Ag. § 12998— <i>Pesticide Use Violations, Civil Remedy</i>	Violation of every pesticide-related statute and regulation set forth in this document, except 3 CCR 6614, is punishable through a civil penalty per Food & Ag. § 12998, because they are in or promulgated pursuant to Division 7. Section 12998 allows for civil penalties of \$1,000-\$10,000 for each violation when a first violation; subsequent similar violations and violations that could cause a hazard to human health or the environment may be penalized from \$5,000 to \$25,000 per violation. You may also likely allege violations of section 11893 in the same complaint.
H&S § 25189.2— <i>Mismanagement of Hazardous Waste, Civil Remedy</i> See also § 25189, which contains similar prohibitions with a higher mens rea (intentional or negligent) and the same penalties. The two statutes may not be alleged together in the same action.	<i>Catch-all.</i> A penalty of up to \$70,000 is authorized for a [1] person who [2] violates a provision of Division 20, Chapter 6.5 of the HSC, or a permit, rule, regulation, standard, or requirement promulgated under said Chapter 6.5. (H&S § 25189.2(b).) <i>Mislabeling.</i> A penalty of up to \$70,000 is authorized for a person who [1] makes a false statement or representation [2] in a ... label, manifest, or other document, [3] used for purposes of compliance with Division 20, Chapter 6.5. (H&S § 25189.2(a).) <i>Disposal and Storage.</i> [1a] <i>Disposal</i> or [1b] <i>storage</i> of a [2a] <i>hazardous waste</i> (or extremely hazardous waste) [3] at an <i>unauthorized point</i>, is punishable by a civil penalty of up to \$70,000. (See H&S § 25189.2(c) and (d).) [1a] <i>Disposal</i> means discharge, deposit, injection, dumping, spilling, leaking, or placing hazardous waste onto land or water so it may enter the environment, such as air or water; or abandonment of hazardous waste. (22 Cal. Code Regs. § 66260.10.) [1b] <i>Storage</i> generally means accumulation of the hazardous waste for over 90 days, so long as certain conditions are met. (22 Cal. Code Regs. §§ 66262.34 and 66260.10.) [2a] <i>Hazardous waste</i> must both be (a) waste, and (b) hazardous. (a) <i>Waste</i> is any material which has been discarded. (H&S § 25124 and 22 Cal. Code Regs § 66261.2.) This means, among other things, that the waste was relinquished, disposed of, or burned/incinerated. Abandonment counts. It also includes mislabeled and inadequately-labeled materials in certain circumstances. (22 Cal. Code Regs § 66261.2(f).) (b) <i>Hazardous</i> means that the waste exhibits the properties of toxicity, carcinogenicity, ignitibility, or reactivity. A list of such substances is attached as Appendix C and can be found at California Code of Regulations title 22, section 66261.126, Appendix X. Weed killer, un-rinsed pesticide containers, and pesticides are among those substances listed as “hazardous.”

	[3] An <i>unauthorized point</i> is any place where disposal occurs for which there is no permit for such disposal. Note: Each day that the waste is stored or disposed of, and no action is taken under agency or other official guidance to remedy the situation, constitutes a separate violation. (H&S § 25189.2.) Note: These penalties are separate and in addition to any other penalty provided for by law. (H&S § 25189(f).) Note: Prior violations of 25189 or 25189.2 can be later alleged for enhanced penalties of \$5,000-\$50,000 per day, per § 25189.4.
Gov. Code § 8670.66(a) <i>Intentional or negligent responsibility for spill of petroleum product; failure to begin cleanup immediately</i>	A [1] <i>person</i> who [2] intentionally or negligently [3] does any of the following is liable for a civil penalty of \$50,000 to \$1,000,000: [3a] <i>Is responsible for a spill; or</i> [3b] Fails to begin cleanup, abatement, or removal of <i>oil spilled, as required by Gov. Code § 8670.25.</i> [1] <i>Person</i> means an individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. <i>Person</i> also includes a city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law. (Gov. Code § 8670.3(t).) [3a/3b] <i>Is responsible for</i> is not defined in the Act, but is easy to understand, though definitions of “responsible party” and “party responsible” are defined, and may add meaning given the situation. (See Gov. Code § 8670.3(y).) [3a/3b] <i>Spill or oil spill</i> means a release of any amount of <i>oil</i> into <i>waters of the state</i> that is not authorized by a federal, state, or local government entity, e.g., through a permit. (Gov. Code § 8670.3(ac).) [3a/3b] <i>Oil</i> means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas. (Gov. Code § 8670.3(o).) [3a/3b] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in CA. (Water C. § 13050(e).) [3a/3b] <i>As required by Gov. Code § 8670.25</i> means that the person who causes the spill shall immediately contain, clean up, and remove the oil in the most effective manner that minimizes environmental damage and in accordance with the applicable contingency plans, unless ordered otherwise by the Coast Guard or the administrator. (Gov. Code § 8670.25.) Note: Civil penalties range from not less than \$50,000 up to \$1,000,000, for each violation and for each day or partial day of violation. (Gov. Code § 8670.66(a).) Note: Administrative suits and actions under section 5650 cannot be brought with an action under this section. (Fish & G. Code § 5650.1(j).)

H&S § 11470.1— <i>Recovery of Costs Relating to Seizing, Eradicating, Destroying, and Taking Cannabis, and Remediation of Hazardous Substances Issues at a Grow</i>	This section authorizes law enforcement to recover expenses of seizing, eradicating, destroying, and taking cannabis unlawfully grown. It also includes authorization for recovery of expenses incurred in “taking remedial action” on a grow when such actions “are consistent with a permanent remedy” and “are taken instead of, or in addition to removal actions in the event of a release or threatened release of a hazardous substance, including but not limited to monitoring, assessment, and evaluation of a release. Unfortunately, this statute may not provide authority for recoupment of costs for the mere removal of a hazardous substance, such as a pesticide waste, from a grow site. Furthermore, it clearly does not include authority to recoup costs for removal of solid waste, such as abandoned drip line. A criminal conviction is required to recoup expenses under this provision, pursuant to subdivision (c), effective January 1, 2017. It seems that section 11470.2, which covers remediation in the context of a criminal prosecution, suffers from the same defects.
H&S § 42402 et seq. — <i>Unlawful Release of Air Contaminants</i>	Any person who emits an air contaminant and thereby violates any statute ... or any rule, regulation, permit, or order of an air district, or of the state air resources board is: 42402: Strictly liable for a civil penalty of up to \$10,000 per day of violation. 42402.1: Liable, if negligently emitted air contaminants, for a civil penalty of up to \$25,000 per day of violation. 42402.2: Liable, if knew of emission and failed to take corrective action, for a civil penalty of up to \$40,000 per day of violation. 42402.3: Liable, if willfully and intentionally emits an air contaminant, for a civil penalty of up to \$75,000. Example: Intentional garbage fire, in violation of H&S § 41800, if willful and intentional, may result in \$75,000 in maximum liability. Note: Factors in determining an appropriate penalty are set forth in Health and Safety Code section 42403(b). Note: Civil and criminal proceedings are mutually exclusive per Health and Safety Code section 42400.7. Note: If injury occurred, especially if great bodily injury, penalties may be enhanced; see various subdivisions of sections cited above.
Code Civ. Proc § 733— <i>Triple Damages for Timber Trespass</i>	A person who, with the intent to vex, harass, annoy, or injure, cuts down or injures any tree on the land of another (or public land) is liable to the owner of such land for three times the amount of the damages which might be assessed for damages to that/those trees. Note: See <i>Salazar v. Matejcek</i> (2016) 245 Cal.App.4th 634, 646 for a good discussion of this law. Note: See also Code Civ. Proc § 3346, allowing for double-damages in cases of negligence by the tree-cutter.

Bus. & Prof. Code § 17200 et seq. <i>Unfair Competition Law (UCL)</i>	Any [1] <i>person</i> who [2] engages, has engaged, or proposes to engage in [3] <i>unfair competition</i> shall be liable for a civil penalty of up to \$2,500 for [4] <i>each violation</i>. [1] <i>Person</i> includes natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons. Recall that the person’s acts must be related to business; the statute does not encompass non-business behavior. [3] <i>Unfair competition</i> means and includes any unlawful, unfair or fraudulent business act or practice. This would include violations of statutes, regulations, court orders, local ordinances, and terms of a permit when compliance with the permit is required by law. [4] Aggregation of <i>each violation</i> is at the discretion of the court. (See, e.g., <i>Hewlett v. Squaw Valley Ski Corp.</i> (1997) 54 Cal.App.4th 499, 536–537 (concerning whether each tree illegally cut constitutes a separate violation).) Note: Caution may be warranted when using the UCL against those who are not “conducting business,” such as illegal cultivators and non-commercial Prop 215 growers, as such actions may exceed the scope of the statute if they are not “business act[s] or practices[s].”
Bus. & Prof. Code § 26038 <i>Unlawful commercial marijuana activity without a license: civil penalties and destruction of cannabis</i>	A [1] <i>person</i> [2] engaging in <i>commercial cannabis activity</i> [3] without the appropriate license issued by the state pursuant to Business & Professions Code, Division 10 (“Cannabis”) shall be liable for: (a) civil penalties of up to three times the amount of the applicable license fee for each day of violation and (b) a court may order destruction of cannabis associated with such violations, at the expense of the violator. [1] <i>Person</i> includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit. (Bus. & Prof. Code § 26001(an).) [2] <i>Commercial cannabis activity</i> includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products as provided for in division 10 of the Business & Professions Code. (Bus. & Prof. Code § 26001(k).) Note: Criminal penalties apply in addition to these treble civil penalties, pursuant to subdivision (c). Note: See Appendix G for current cultivation license fees and Appendix H for current non-cultivation license fees.

Miscellaneous Authorities, Criminal and Other

Vehicle Code § 34620(a) <i>Water truck driver must have proper permit; possible impound of water truck</i>	A [1] <i>motor carrier of property</i> shall not [2] operate a <i>commercial motor vehicle</i> [3] on any public highway ... unless it [4] holds a valid California <i>motor carrier permit</i>. [1] and [2] VC § 34601(a) and 34601(c) together define <i>motor carrier of property</i> and <i>commercial motor vehicles</i> to include nearly any sort of commercial water truck. [4] <i>Motor carrier permits</i> are issued by the DMV. Note: This may be a useful tool to stop illegal water haulers and deliveries. Regardless of right to water, need to convey water legally. Note: Driver cannot drive truck without motor carrier permit, unless someone else with such a permit comes along. Note: CHP can impound vehicle if associated with violation of this statute, per VC § 34660(d). Contact CHP.
F&G §§ 12015 and 12016 <i>Liability for Removal of Pollutant or Obstruction to Waterway</i>	12015. Any person responsible for [1a] polluting, [1b] contaminating, [1c] obstructing or [1d] despositing or discharging materials <i>threatening to</i> pollute, contaminate, or obstruct [2] a water of the state [3] to the detriment of fish, plant, bird or animal life in such waters [5] shall be required to remove any material threatening to pollute, contaminate, or obstruct such water of the state, or to pay the DFW for the costs to remove the same. [*] For definitions, see F&G 1602 and 5650, above, in the water pollution section. 12016. Any person who [1a] discharges or [1b] deposits [1c] allows a situation that threatens to deposit [2] any substance deleterious to fish, plant, bird, or animal life <i>or their habitat</i>, [3] is liable for all actual damages to fish, plant, bird, or animal life <i>or their habitat</i> <u>and</u> [4] the reasonable costs of [a] cleaning up the deleterious material, [b] abating its effects, or both. [1-2] In other words, one who violates section 5650 of the Fish & Game Code, set forth above. [3] This is liability both for the critters that were harmed, and for their habitat, i.e., the rivers, trees, and other places they live. [4] This combines with sec. 12015 to provide somewhat overlapping authority for requiring a site remediation or paying for it.
Pen. C. § 594 <i>Vandalism</i> <i>WOBBLER if damage exceeds \$400</i>	It is unlawful to [1] <i>maliciously</i> [2] damage or destroy [3] real or personal property not owned by the person. [1] Maliciously means only that the person intended to do a wrongful act. Note: Consider using this statute when trees are felled for cultivation sites but it is not “timberland” under Forest Practices Act (e.g., oak trees), or when roads, etc. are cut on another’s land. Note: Court may require repair or replanting as a condition of probation or as restitution to victim. Note: Fines can be high, especially after penalty assessments.

Pen. C. § 498 <i>Utility theft, tampering with meters, unlawful connections, etc.</i>	It is unlawful and a misdemeanor for [1] any <i>person</i> who, with [2a] intent to obtain for himself or herself <i>utility services</i> without paying the full lawful charge therefor, or with [2b] intent to enable another person to do so, or with [2c] intent to deprive any <i>utility</i> of any part of the full lawful charge for <i>utility services</i> it provides [3] commits, authorizes, solicits, aids, or abets to [4] do the acts in 4a, 4b, 4c, 4d, or 4e below. [1] <i>Person</i> means any individual, or any partnership, firm, association, corporation, limited liability company, or other legal entity. (Pen. C. § 498(a)(1).) [2a] <i>Utility service</i> means the provision of electricity, gas, water, or any other service provided by the utility for compensation. (Pen. C. § 498(a)(4).) [2a] <i>Utility</i> means any electrical, gas, or water corporation as those terms are defined in the Public Utilities Code, and electrical, gas, or water systems operated by any political subdivision. (Pen. C. § 498(a)(2).) [4a] <i>Diverts</i> or causes to be <i>diverted</i> utility services, by any means. <i>Divert</i> means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility. (Pen. C. § 498(a)(5).) [4b] Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by any other means. <i>Tamper</i> means to rearrange, injure, alter, interfere with, or otherwise prevent from performing a normal or customary function. (Pen. C. § 498(a)(6).) [4c] <i>Tampers</i> with any property owned by or used by the utility to provide utility services. [3c] <i>Tamper</i> means to rearrange, injure, alter, interfere with, or otherwise prevent from performing a normal or customary function. (Pen. C. § 498(a)(6).) [4d] Makes or causes to be made any connection with or <i>reconnection</i> with property owned or used by the utility to provide utility services without the authorization or consent of the utility. <i>Reconnection</i> means the reconnection of utility service by a customer or other person after service has been lawfully disconnected by the utility. (Pen. C. § 498(a)(7).) [4e] Uses or receives the direct benefit of all or a portion of utility services with knowledge or reason to believe that the diversion, tampering, or unauthorized connection existed at the time of that use, or that the use or receipt was otherwise without the authorization or consent of the utility. Note: The statute permits certain legal inferences based on certain circumstances, as set forth in subdivision (c). Note: The offense is chargeable as a felony if the value of services illegally obtained exceeds \$950 or upon proof of a prior.
--	--

Vehicle Code § 2810.2 <i>Stop and seizure of vehicles with unlawfully possessed irrigation supplies</i>	On [1] unpaved or rock roads that are [2a] through <i>large or designated Timber Production Zones</i> (“TPZ”) or [2b] <i>on most government property</i> [3] <i>in a county that has implemented this statute</i> [4] a vehicle carrying <i>agricultural irrigation supplies</i> [5] in plain view [6] may be stopped by a peace officer [6] to inspect the bills of lading, shipping, or delivery papers, or other evidence that the driver is in <i>legal possession of the load</i> [7] and upon reasonable suspicion that the irrigation supplies are unlawfully possessed [8] the peace officer may seize the vehicle and said unlawfully possessed agricultural irrigation supplies and turn them over to the local county sheriff. [2] Such lands include those on land under the management of the Department of Parks and Recreation, the Department of Fish and Wildlife, the Department of Forestry and Fire Protection (CalFIRE), the State Lands Commission, a regional park district, the United States Forest Service, the United States Bureau of Land Management, and very large TPZ landowners, i.e., those “within the respective ownership of a timberland production zone, as defined in Chapter 6.7 (commencing with Section 51100) of part 1 of division 1 of title 5 of the Government Code, of more than 50,000 acres.” See statute for details. [3] Check to see if your county has implemented this statute by resolution/ordinance. https://www.municode.com/library/ca [4] <i>Agricultural irrigation supplies</i> are defined to include agricultural irrigation water bladders and one-half inch diameter or greater irrigation line. [6] It is unclear under what circumstances possession of irrigation supplies is not <i>legal possession of the load</i>, aside from if the irrigation supplies were stolen.
--	---

APPENDIX A

Suggestions re Charging & Plea Offers in Cultivation Cases

Consider the following charging and settlement tips, to ensure that sites are restored and dealt with adequately:

1. **Charge environmental crimes associated with cultivation of cannabis, particularly when the site needs restoration.** While it may be possible to charge felonies that carry greater consequences, they do not necessarily allow for site restoration. Fish & Game Code section 12015 requires site restoration in many respects by defendants, and plea bargain authority allows the DA to require site restoration (assuming not a “charge-bargain” county). Charging the misdemeanors thus becomes important. Also, charging environmental crimes allows the prosecutor to tell the whole story to the jury and sentencing court about why “this” grow site was particularly problematic.
2. **Get “Harvey Waivers” on environmental crimes that are dismissed pursuant to a plea.** Should the plea be to charges not related to site restoration, with a Harvey Waiver, the court reserves jurisdiction to have the cultivation site restored, per the above authorities, even if those counts are dismissed.
3. **To restore site, order compliance with any NOVs issued, particularly by DFW.** Agencies may have issued notices of violation (NOVs) or other compliance orders that require the violator do certain things to restore the property, including re-grading to remove or improve roads or stream obstructions, removal of pollutants, cleanup of hazardous substances, planting of trees to replace cut trees, and so forth. Consider having the court order the violator(s) to comply with the NOV (or other such order) *nunc pro tunc*, that is, as if the order was issued on the date of the plea. The NOV thus becomes a court order. Defendant should agree because site restoration is legally required by sec. 12015 of the Fish & Game Code and s/he still gets a plea bargain.
 - a. *Consider modifying the NOV to make dates sensible/practical*, and consider that often deadlines are set for October 15, to ensure that all work is done prior to the rainy season. Ensure term of probation is long enough for the work to be done and its success to be evaluated. Work these practical issues out in advance with the defense so that at the time of the plea, you have a workable work-plan as a term of the probation order.
 - b. *If the NOV is vague, fix it*, by either (1) having an amended NOV issued by DFW prior to the plea, or (2) stating on the record what the DA will require that’s different to the NOV’s terms. Vague terms mean difficult-to-enforce terms. Ensure to place on record that violator is responsible for ensuring that any permits required are secured. Bring copies of the NOV to court so that the court can review and include in the file.
 - c. *Secure a right of consent* for agency staff to see the property and assess compliance. Consider requiring monitoring reports if NOV doesn’t.
 - d. *If the NOV merely requires creation of a Corrective Action Plan, require such CAP to be prepared by a licensed engineer* (if CAP doesn’t already require it), and ensure that your terms of probation require not only compliance with the NOV (which usually requires

preparation of a CAP), but *lawful implementation* of the CAP as well, by a specified date the defendant agrees is reasonable. If the CAP must be stamped by a licensed engineer, it limits the ability of violators to prepare a deficient CAP and avoids arguments regarding sufficiency. The “lawful” qualifier on the implementation implicitly requires that all permits for such work are secured.

e. *Require issuance of a Fish & Game Code § 1602 Lake & Stream Alteration Agreement for the restoration work.* Violation of LSAA terms is a new violation of section 1602, and may be easy to prove up. LSAA also ensures implementation is done appropriately, as it provides a (usually) complimentary set of directives with regard to implementing the Corrective Action Plan. This is especially important if there are concerns with respect to the adequacy of the CAP the engineer/consultant prepared, as DFW cannot tell the engineer what to do, but is entitled to set forth its own terms under the LSAA.

4. **Include cost of damage to environment in resolution, if water pollution has caused damage to the environment that can be calculated.** Sections 12015 and 12016 of the Fish & Game Code requires a polluter to pay for all damage to fish, plants, birds, or animals *and their habitat* caused by their water pollution, as well as do cleanup. Monetizing this damage may be difficult without a Natural Resources Damages Assessment; without one, consider stipulating to estimated natural resource damages. These figures are often significant.
5. **Remind defense counsel that cases with site restoration requirements are different, and require a bit more post-sentencing oversight.** Put on the record that the defendant knows exactly what is required by the plea deal, including the terms of any NOV, and the fact that complying with the NOV by implementing the CAP/LSAA may be costly. Prepare for post-judgment work.
6. **Calendar NOV deadlines.** Work with defense to ensure the work is done. File Violation of Probation petition if necessary, and remind the defense that jail is possible if the terms of the plea deal are violated. Consider performance deadlines to keep the violator on-task. Prepare to grant reasonable extensions.
7. **Consider securing agency costs of investigation and whether there are any victims that require restitution as part of your plea deal.**

APPENDIX B

Restricted Pesticides (By Brand Name and Active Ingredient)

“Restricted Pesticides” may only be used by certain people. See Food & Ag. 14015, above. “Restricted Materials” & “Restricted Pesticides” are the same in this guide.

Boldfaced chemicals are most likely to be found at a cannabis grow site. This list is not fully-inclusive; see 3 Cal. Code Regs. § 6400 for the full authority.

See also Appendix C for a matrix that lists restricted pesticides commonly found on grow operations.

1. First, the U.S. E.P.A. has developed an extensive list of Restricted Pesticides. This is a list of pesticides for which use is restricted to certain permitted people.

Available at <http://1.usa.gov/22J6YZL> or at <https://www.epa.gov/sites/production/files/2016-02/documents/rupreport-sec3-update-jan2016.pdf>

2. Second, in California, pesticides with the following chemicals are also considered Restricted Pesticides. Since these are the chemical formulations, not the brand names, you must cross check the pesticide’s label with this list. It is like brand name medications versus generic names; these are the “generic names.” Note: When an asterisk (*) appears after a chemical, there are exceptions that must be reviewed. See 3 Cal. Code Regs. § 6400(e).

Acrolein*	Difenacoum	Paraquat (Gramoxone)
Aldicarb (Temik)	Difethialone	Parathion-methyl
Aluminum phosphide (Phostoxin)	Disulfoton (Di-Syston)*	Phorate (Thimet)
4-Amino pyridine (Avitrol)	Endosulfan (Thiodan)*	Phosphine Gas
Azinphos-methyl (Guthion)	Ethoprop (Mocap)*	Potassium N-methyldithiocarbamate (metam-potassium)*
Brodifacoum	Fenamiphos (Nemacur)	Propanil (3,4-dichloropropionanilide)
Bromadiolone	Lindane*	Sodium cyanide
Calcium cyanide	Magnesium Phosphide	Sodium fluoroacetate (compound 1080)
Carbaryl (Sevin)*	Metam sodium*	Sodium tetrathiocarbonate (Enzone)
Carbofuran (Furadan)	Methamidophos (Monitor)	Strychnine*
Chloropicrin	Methidathion (Supracide)	Sulfotepp
Chlorpyrifos*	Methomyl (Lannate)*	Sulfuryl Fluoride
3-Chloro-p-toluidine hydrochloride (Starlicide)	Methyl bromide	Thiobencarb (Bolero)
Dazomet (Basamid)*	2-methyl-4-chlorophenoxyacetic acid (MCPA)*	Tribufos (DEF, Folex)
Dicamba (Banvel)*	Methyl Iodide	Tributyltin, organotin*
2,4-dichlorophenoxyacetic acid (2,4-D)	Methyl isothiocyanate (MITC)*	Zinc phosphide*
2,4-dichlorophenoxybutyric acid (2,4-DB)*	Mevinphos (Phosdrin)	
2,4-dichlorophenoxypropionic acid (2,4-DP)*	Molinate (Ordram) — unregistered	
1,3-Dichloropropene (Telone II)	Oxydemeton-methyl (Metasystox-R)	

3. Third, pesticides with the following chemicals are deemed Restricted Pesticides per 3 Cal. Code Regs. §§ 6400(d) & 6800(a), which list chemicals that could pollute groundwater. Like the chemicals in No. 2 above, these are chemical formulations (“generic names”) and you must cross check with pesticide label.

Atrazine	Diuron (except for products	Prometon
Simazine	with less than 7% diuron	Bentazon (Basagran)
Bromacil	that are applied to foliage)	Norflurazon

APPENDIX C

Matrix of Common Pesticides Found at Cannabis Cultivation Sites

Note: Prosecutors should not rely on this chart, and should independently verify each pesticide. These pesticides were found during Operation Trident.

"Registered Pesticides" means that the pesticide has been registered (i.e. approved for use) with the State of California. Pesticides are registered by brand name. Registration status found here: <http://www.cdpr.ca.gov/docs/label/prodnam.htm>.

"California Restricted Materials List" is the list of ingredients found in Appendix B.

WARNING LABEL MEANINGS: This is how much would **kill** average adult:



DANGER (POISON) – mere taste to teaspoon!

WARNING – Teaspoon to tablespoon

CAUTION – Ounce to Pint

Note: this is for oral ingestion. Many of these chemicals are harmful to the touch or if inhaled.

COMMON FOREIGN PESTICIDES - Pesticides with foreign labels are almost certainly unregistered and a violation of Food & Ag. 12995. Many such pesticides also contain restricted active ingredients, which may implicate Food & Ag. 14015. Below is a list of common foreign pesticides found on grow sites. None are registered, and all contain restricted materials.

Pesticide Name	Active ingredient
"Agro-Fum 57"	Aluminum phosphide
"Bratton"	Methyl parathion
"Fosfuro de Zinc"	Zinc phosphide
"Furadan"	Carbofuran
"Metafos"	Methamidophos
"Ratone: Forsfuro de Zinc"	Zinc phosphide
"REICO"	Methamidophos
"Tamaron"	Methamidophos
"Tres Pasitos" ; EPA banned in 2010	Aldicarb (carbamate insecticide)

COMMON UNREGISTERED PESTICIDES, CONTAINING ACTIVE INGREDIENTS ON CALIFORNIA RESTRICTED MATERIALS LIST - The below list of pesticides may implicate both Food & Ag. 12995 [poss. unregistered pesticides] and Food & Ag. 14015 [poss. restricted use pesticides].

Pesticide Name	Active ingredient	Toxicity Signal
"Denkarin Grains"	Zinc phosphide	DANGER (POISON)
"Drex PH3"	Aluminum phosphide	DANGER (POISON)
"Gopha-rid"	Zinc phosphide	CAUTION
"M-parathion"	Methyl parathion	DANGER (POISON)
"Monitor"	Methamidophos	DANGER (POISON)
"Phosuini"	Zinc phosphide	DANGER (POISON)
"Pollux"	Zinc phosphide	DANGER (POISON)
"Ratol"	Zinc phosphide	DANGER (POISON)
"Ridall"	Zinc phosphide	CAUTION
"Rodenticide AG"	Zinc phosphide	CAUTION
"Surestop gopher killer"	Zinc phosphide	CAUTION
"Temik"	Aldicarb	DANGER (POISON)

COMMON REGISTERED PESTICIDES, CONTAINING ACTIVE INGREDIENTS ON CALIFORNIA RESTRICTED MATERIALS LIST - The below list of pesticides may implicate Food & Ag. 14015 [poss. of restricted use pesticides].

Pesticide Name	Active ingredient	Toxicity Signal
"Sevin"	Carbaryl (insecticide granules)	CAUTION
"Lannate"	Methomyl	DANGER (POISON)
"Diazinon"	Diazinon	CAUTION
"Final", "Havoc", "Jaguar", "Talon" (and others)	Brodifacoum	CAUTION
"Contrac", "Resolv", "Just One Bite" and others	Bromadiolone	CAUTION
"Firststrike", "Generation", "Hombre" (and others)	Difethialone	CAUTION
"Di-Kill", "Prescription", "Victor" (and others)	Difenacoum	CAUTION

COMMON UNREGISTERED PESTICIDES, CONTAINING ACTIVE INGREDIENTS NOT ON CALIFORNIA RESTRICTED MATERIALS LIST - Possession of the below pesticides in California implicates Food & Ag. 12995. Note: California has more stringent pesticides law than many other states. These pesticides may be registered in other states.

Pesticide Name	Active ingredient	Toxicity Signal
Cov-R-Tox	Warfarin	DANGER (POISON)
"Gopher Gone"	Chlorophacinone	CAUTION
"Orthenex"	Triforine; acephatel; Resmethrin)	WARNING
"RAX (69)"	Warfarin	WARNING or CAUTION
Rotenone-based pesticides	Rotenone	WARNING
"Tox-Hid (56)"	Warfarin	WARNING or CAUTION

APPENDIX C (Cont.)

COMMON REGISTERED PESTICIDES, CONTAINING ACTIVE INGREDIENTS NOT ON CALIFORNIA RESTRICTED MATERIALS LIST; BUT ILLEGAL WHEN APPLIED IN FIELD - The products listed below are only used legally in and around man-made structures (or underground) and their field use may cause illegal take of wildlife.

Pesticide Name	Active ingredient	Toxicity Signal (Warning Labels)
"Assault", "Black Flag", "Cykill", "Fastrac", "JT Eaton", "Just One Bite", "Real-Kill", "Rampage", "Tomcat" (and others)	Bromethalin	CAUTION
"Agrid3", "Terad3"	Cholecalciferol	CAUTION
"Bonide", "Kaput", "Rodex" (and others)	Warfarin	CAUTION
"D-Con", "Diphacinone", "Ditrac", "Gopher Getter", "Tomcat" "Ramik", "Kaput" (and others)	Diphacinone	CAUTION
"Gopher Getter", "Martin's", "Strychnine" (and others)	Strychnine	DANGER (POISON)
"Go Die", "Wilco", "ZP" (and others)	Zinc Phosphide	CAUTION
"Rozol", "Ortho Home Defense", "JT Eaton", "Chlorophacinone" (and others)	Chlorophacinone	CAUTION

Note: This appendix does not purport to show which pesticides may be legally *used on* cannabis, putting aside federal illegality of cannabis, as all pesticides must be applied in compliance with the instructions that come with the pesticide. (See Food and Ag. § 12973.) This chart is principally designed to assist with an assessment of whether Food and Ag. §§ 12995 and 14015, relating to *possession* of certain pesticides, apply to a chemical.

See Appendix D for California-approved methods of pest control.

COMMON REGISTERED PESTICIDES, CONTAINING ACTIVE INGREDIENTS NOT ON CALIFORNIA RESTRICTED MATERIALS LIST - The below list of pesticides generally do not implicate Food & Ag. 12995 and 14015.

Pesticide Name	Active ingredient	Toxicity Signal (Warning Labels)
"Avid"; legal for use on ornamental plants only	Abamectin	WARNING
"Bayer" (multi-insect or ant)	Imidacloprid	CAUTION
Bifenthrin-based pesticides	Bifenthrin	WARNING or CAUTION
"Floramite" prohibited in irrigation systems, only labeled for use on ornamentals	Bifenazate	CAUTION
"Havahart critter ridder"	Piperine, Oil of Black Pepper, Capsicum oleoresin	CAUTION
Malathion-based insecticides	Malathion	WARNING or CAUTION
"Ortho fungicide"	Chlorothalonil	WARNING
"Ortho fungicide" (concentrate)	Copper octanoate	CAUTION
"Ortho Max" (various)	Bifenthrin; dicamba, dimethylamine salt; triclopyr, trimethylamine salt; MCPA	WARNING or CAUTION
"Ortho Volck Oil Spray" (common insecticide for fruit trees)	Mineral oil	CAUTION
Rodex Blox-1	Warfarin	CAUTION
"Spectricide Triazicide" (various)	Gamma cyhalothrin; or Lambda-cyhalothrin	CAUTION

APPENDIX D

Legal Pest Management Practices for Cannabis Growers

The active ingredients of the below-listed pesticides have been approved for use on cannabis, per the California Department of Pesticide Regulation. See <http://www.cdpr.ca.gov/docs/county/cacfltrs/penfltrs/penf2015/2015atch/attach1502.pdf>

Table 1. Active ingredients that are exempt from residue tolerance requirements^a and either exempt from registration requirements^b or registered for a use broad enough to include use on cannabis. [updated on September 22, 2017]

ACTIVE INGREDIENT		PEST OR DISEASE	
1	azadirachtin ^a	aphids, whiteflies, fungus gnats, leafminers, cutworms	
2	<i>Bacillus amyloliquefaciens</i> strain D747 ^{a1}	root and crown diseases, powdery mildew, Botrytis	
3	<i>Bacillus subtilis</i> QST ^{a1}	root diseases, powdery mildew	
4	<i>Bacillus thuringiensis</i> ^{a4} subsp. <i>kurstaki</i>	moth larvae (e.g., cutworms, budworms, borers)	
5	<i>Bacillus thuringiensis</i> ^{a4} subsp. <i>israelensis</i>	fly larvae (e.g., fungus gnats)	
6	<i>Beauveria bassiana</i> ^{a5}	whiteflies, aphids, thrips	
7	<i>Burkholderia</i> spp. strain A396 ^{a4}	mites, leafhoppers, aphids, whiteflies, thrips, moth larvae	
8	capsaicin ^a (= capsicum oleoresin)	repellent (insects + vertebrates); mites, leafhoppers, whiteflies, thrips, moth larvae	
9	castor oil ^b	repellent (moles, voles, gophers)	
10	cinnamon, cinnamon oil ^b	slugs and snails, mites, leafhoppers, aphids, whiteflies, moth larvae	
11	citric acid ^b	bacteria, fungi, mites, insects	
12	cloves and clove oil ^b	bacteria, fungi	
13	corn oil ^b	fungi, mites, insects	
14	cottonseed oil ^b	fungi, mites, insects	
15	garlic and garlic oil ^b	mites, leafhoppers, aphids, whiteflies, moth larvae	
16	geraniol ^b	fungi, rodent repellent, mites, insects	
17	<i>Gliocladium virens</i> ^{a2}	root diseases	
18	horticultural oils ^a (petroleum oil)	mites, aphids, whiteflies, thrips, powdery mildew	
19	insecticidal soaps ^a (potassium salts of fatty acids)	aphids, whiteflies, cutworms, budworms	
20	iron phosphate ^a , sodium ferric EDTA ^a	slugs and snails	
21	<i>Isaria fumosorosea</i> ^{a5*}	mites, aphids, whiteflies, thrips	
22	neem oil ^a	mites, powdery mildew	
23	peppermint, peppermint oil ^b	bacteria, fungi, mites, leafhoppers, aphids, whiteflies, moth larvae	
24	potassium bicarbonate ^a ; sodium bicarbonate ^a	powdery mildew	
25	potassium silicate ^a	powdery mildew, mites, aphids	
26	potassium sorbate ^b	fungi, mites, insects	
27	predatory nematodes ^a	fungus gnats	
28	putrescent whole egg solids ^b	squirrel, rabbit, and deer repellent	
29	rosemary, rosemary oil ^b	bacteria, fungi, leafhoppers, aphids, whiteflies, moth larvae	
30	sesame and sesame oil ^b	mites, leafhoppers, aphids, whiteflies, moth larvae	
31	sodium chloride ^b	[minor active ingredient in some fungicide and insecticide formulations]	
32	soybean oil ^b	mites, insects	
33	<i>Reynoutria sachalinensis</i> extract ^{a3}	powdery mildew	
34	sulfur ^a	mites, flea beetles	
35	<i>Trichoderma harzianum</i> ^{a2}	root diseases	
36	thyme oil ^b	mites, leafhoppers, aphids, whiteflies, moth larvae	

^a 40 CFR (Code of Federal Regulations)

^b FIFRA §25(b) and 3 CCR §6147 [FIFRA = the Federal Insecticide, Fungicide, and Rodenticide Act; CCR = California Code of Regulations]

* *Isaria fumosorosea* was formerly *Paecilomyces fumosoroseus*

¹ Bacterial-based fungicide

² Fungal-based fungicide

³ Plant-based fungicide

⁴ Bacterial-based insecticide

⁵ Fungal-based insecticide

APPENDIX E

Statutory Hazardous Wastes – Listed by Common Name

Boldfaced chemicals are most likely to be found at a cannabis cultivation site.

22 Cal. Code Regs. § 66261.126, Appendix X(b) (2016)

§ 66261.126. Management of Special Wastes

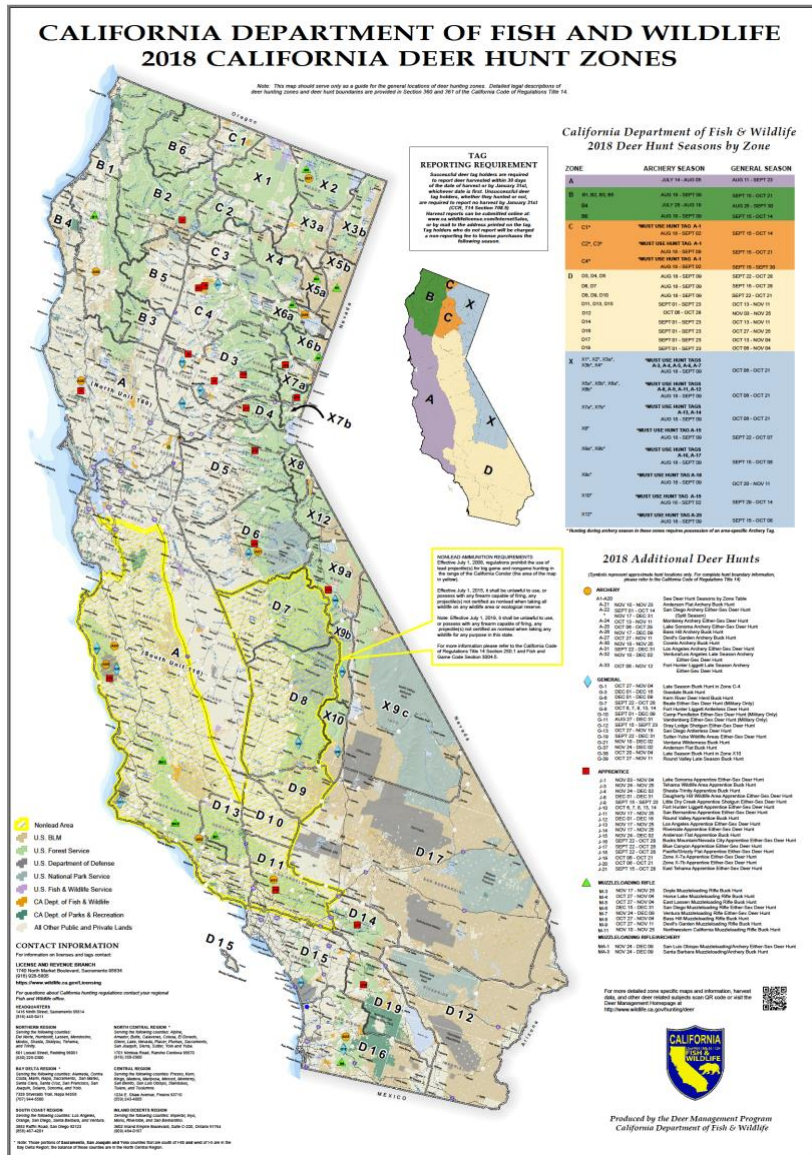
(b) This subdivision sets forth a list of common names of wastes which are presumed to be hazardous wastes unless it is determined that the waste is not a hazardous waste pursuant to the procedures set forth in section 66262.11. The hazardous characteristics which serve as a basis for listing the common names of wastes are indicated in the list as follows:

(X) toxic, (C) corrosive, (I) ignitable and (R) reactive.

Acetylene sludge (C)	Caustic wastewater (C)	Obsolete explosives (R)	Spent (or waste) cyanide solutions (X,C)
Acid and water (C)	Cleaning solvents (I)	Oil and water (X)	Spent mixed acid (C)
Acid sludge (C)	Corrosion inhibitor (X,C)	Oil Ash (X,C)	Spent plating solution (X,C)
AFU Flocc (X)	Data processing fluid (I)	Paint (or varnish) remover/stripper (I)	Spent sulfuric acid (C)
Alkaline caustic liquids (C)	Drilling fluids (X,C)	Paint thinner (X,I)	Stripping solution (X,I)
Alkaline cleaner (C)	Drilling mud (X)	Paint waste (or slops) (X,I)	Sulfonation oil (I)
Alkaline corrosive battery fluid (C)	Dyes (X)	Pickling liquor (C)	Tank bottom sediment (X)
Alkaline corrosive liquids (C)	Etching acid liquid or solvent (C,I)	Pigments (X)	Tanning sludges (X)
Asbestos waste (X)	Fly ash (X,C)	Plating waste (X,C)	Toxic chemical toilet wastes (X)
Ashes (X,C)	Fuel waste (X,I)	Printing Ink (X)	Unrinsed pesticide containers (X)
Bag house wastes (X)	Insecticides (X)	Retrograde explosives (R)	Unwanted or waste pesticides --
Battery acid (C)	Laboratory waste (X,C,R,I)	Sludge acid (C)	an unusable portion of active
Beryllium waste (X)	Lime and sulfur sludge (C)	Soda ash (C)	ingredient or undiluted
Bilge water (X)	Lime and water (C)	Solvents (I)	formulation (X)
Boiler cleaning waste (X,C)	Lime sludge (C)	Spent acid (C)	Waste epoxides (X,I)
Bunker Oil (X,I)	Lime wastewater (C)	Spent caustic (C)	Waste (or slop) oil (X)
Catalyst (X,I,C)	Liquid cement (I)		Weed Killer (X)
Caustic sludge (C)	Mine tailings (X,R)		

APPENDIX F

Deer Zone Map, Game Birds, Game Mammals



APPENDIX G

Current Cultivation License Fees

3 CCR § 8200

§ 8200. Annual License Fees.

An annual license fee shall be paid to the department prior to issuance of a license or renewal license. The fee schedule is as follows:

(a) Specialty Cottage Outdoor	\$1,205
(b) Specialty Cottage Indoor	\$1,830
(c) Specialty Cottage Mixed-Light Tier 1	\$3,035
(d) Specialty Cottage Mixed-Light Tier 2	\$5,200
(e) Specialty Outdoor	\$2,410
(f) Specialty Indoor	\$19,540
(g) Specialty Mixed-Light Tier 1	\$5,900
(h) Specialty Mixed-Light Tier 2	\$10,120
(i) Small Outdoor	\$4,820
(j) Small Indoor	\$35,410
(k) Small Mixed-Light Tier 1	\$11,800
(l) Small Mixed-Light Tier 2	\$20,235
(m) Medium Outdoor	\$13,990
(n) Medium Indoor	\$77,905
(o) Medium Mixed-Light Tier 1	\$25,970
(p) Medium Mixed-Light Tier 2	\$44,517
(q) Nursery	\$4,685
(r) Processor	\$9,370

APPENDIX H

Current Non-Cultivation License Fees

(a) Fees by the Bureau of Cannabis Control re: Testing, Distribution, and Retail

16 California Code of Regulations, section 5014		
License Type	Operations (\$ Max. Per License)	Fee Per License
Testing Laboratory	Up to 50 million	\$12,500
	Greater than 50 million to 500 million	\$45,000
	Greater than 500 million	\$90,000
Distributor	Up to 3 million	\$1,200
	Greater than 3 million to 12 million	\$10,000
	Greater than 12 million to 60 million	\$50,000
	Greater than 60 million to 120 million	\$100,000
Distributor Transport Only Self-Distribution	Up to 3 million	\$500
	Greater than 3 million to 12 million	\$1,500
	Greater than 12 million	\$4,000
Distributor Transport Only	Up to 3 million	\$1,000
	Greater than 3 million to 12 million	\$2,800
	Greater than 12 million	\$6,000
Retailer	Up to 0.75 million	\$4,000
	Greater than 0.75 million to 2.5 million	\$20,000
	Greater than 2.5 million to 7.5 million	\$64,000
	Greater than 7.5 million	\$120,000
Microbusiness	Up to 0.75 million	\$10,000
	Greater than 0.75 million to 2.5 million	\$30,000
	Greater than 2.5 million to 7.5 million	\$100,000
	Greater than 7.5 million	\$180,000

APPENDIX H (cont'd)

(b) Fees by Dep't of Public Health re: Manufacturing (Concentrated Cannabis)

17 California Code of Regulations, section 40150(b).

Application and License Fees.

(b) The annual license fee shall be calculated as follows:

- (1) For a licensed premises with an annual gross revenue of up to \$100,000 (Tier I), the fee shall be \$2,000;
- (2) For a licensed premises with annual gross revenue of \$100,001 to \$500,000 (Tier II), the fee shall be \$7,500;
- (3) For a licensed premises with annual gross revenue of \$500,001 to \$1,500,000 (Tier III), the fee shall be \$15,000;
- (4) For a licensed premises with annual gross revenue of \$1,500,001 to \$3,000,000 (Tier IV), the fee shall be \$25,000;
- (5) For a licensed premises with annual gross revenue of \$3,000,001 to \$5,000,000 (Tier V), the fee shall be \$35,000;
- (6) For a licensed premises with an annual gross revenue of \$5,000,001 to \$10,000,000 (Tier VI), the fee shall be \$50,000;
- (7) For a licensed premises with an annual gross revenue of over \$10,000,000 (Tier VII), the fee shall be \$75,000.

APPENDIX I

Overview of Cannabis Regulatory Structure in California

