

C O U N C I L    C O M M U N I C A T I O N

TO :     THE CITY COUNCIL  
FROM:    THE CITY MANAGER'S OFFICE

COUNCIL MEETING DATE  
AUGUST 3, 1988

SUBJECT:   PROPERTY ACQUISITION - PROPERTY LOCATED AT 107-109 NORTH SCHOOL STREET

PREPARED BY:                    City Manager

RECOMMENDED ACTION:            That the City Council consider the purchase of the property at 109 N. School Street and the lease of the property at 107 N. School Street and take action as deemed appropriate.

BACKGROUND INFORMATION:        Approximately one year ago the City Council authorized the acquisition of the property at 107-109 N. School Street. At that time I advised the owner, Mr. Mark Newfield, that the City would purchase the property subject to certain conditions as outlined in the attached agreement (Exhibit A). The City sought certain assurances from both the San Joaquin Local Health District and the Regional Water Quality Control Board (see memo from Public Works Director to City Attorney - Exhibit B) but none were forthcoming. The City Attorney has responded to the Public Works Director's memo (Exhibit C). Prior to this exchange, I received a letter earlier this year from Mr. Newfield (Exhibit D) in which he sets forth an interesting offer. It is recommended that this offer be incorporated into the draft agreement (Exhibit A) to the maximum benefit to the City. To be sure, there is some risk to proceeding with this acquisition and lease, but both the Public Works Director and I believe the risk to be minimal.

The staff will be prepared to review this matter with the City Council at the Closed Session scheduled for this purpose earlier on the agenda.

Respectfully submitted,



Thomas A. Peterson  
City Manager

TAP :br

Attachments

TXTA.07A COUNC414

EXHIBIT A

SALES AGREEMENT

THIS AGREEMENT, made and entered into this 22nd day of September, 1987, by and between MARK J. NEWFIELD, P. O. Box Q, Woodbridge, California, hereinafter referred to as SELLER, and the CITY OF LODI, a municipal corporation of the State of California, hereinafter referred to as BUYER.

WITNESSETH:

1. Seller, in consideration of the agreements of Buyer, hereby sells and agrees to convey to Buyer by a warranty deed, accompanied by an abstract, evidencing good title in Seller at the date thereof, upon the prompt and full performance by Buyer of this agreement, all that land located in San Joaquin County, State of California, more particularly described as:

Parcel One:

The South 70 Feet of Lot Five (5) and the South 70 Feet of the Easterly 10 Feet of Lot Six (6) in Block Eleven (11), as shown upon Map entitled City of Lodi (formerly Mokelumne) filed for Record August 25, 1869 in Vol. 2 of Original Maps, Page 84, San Joaquin County Records.

Parcel Two:

The South 50 Feet of the North 100 Feet of Lot Five (5) and the South 50 Feet of the North 100 Feet of the East 10 Feet of Lot Six (6) All in Block Eleven (11), as shown upon Map entitled City of Lodi (formerly Mokelumne) filed for Record

August 25, 1869 in Vol. 2 of Original Maps, Page 84, San Joaquin County Records.

More commonly known as 107 and 109 North School Street, Lodi, California 95240. The Assessor's Parcel Numbers are 043-024-08, 09.

2. Buyer, in consideration of the premises hereby agrees to pay Seller at Lodi, California, as and for the purchase price of said premises, the sum of Two Hundred Twenty Thousand Dollars (\$220,000).

3. As a condition precedent to Buyer buying said premises, the Seller shall:

- A. Remove all gasoline tanks on the premises at Seller's expense.
- B. Any and all holes on premises as a result of removing gasoline tanks from the premises shall be filled with material suitable for building over, at Seller's expense.
- C. Obtain from the San Joaquin Local Health District at Seller's expense, an environmental clearance as to any ground contamination by any hazardous and/or toxic waste and/or any hazardous and/or toxic substance release.
- D. Permit Buyer to obtain from an environmental testing firm of Buyer's choosing, and at Seller's cost, an affidavit and/or certification that the ground water located underneath the premises is in no way contaminated by any hazardous and/or

toxic waste and/or any hazardous and/or toxic substance release.

E. Any and all holes on premises as a result of removing any hazardous and/or toxic waste and/or any hazardous and/or toxic substance release from the premises shall be filled with material suitable for building over, at Seller's expense.

F. Seller does agree by this agreement, to hold Buyer harmless from any work and/or other improvement or liability which might occur now or in the future from any hazardous and/or toxic waste and/or any hazardous and/or toxic substance release, on or underneath said premises.

4. If the aforementioned condition precedents are not completed to the satisfaction of Buyer, and are not completed by January 15, 1988, then Buyer shall have no liability to purchase said premises from Seller.

5. Title is to be free of liens, encumbrances, easements, restrictions, rights and conditions of record or known to Seller. Seller shall furnish to Buyer at  $\frac{1}{2}$  Buyer and  $\frac{1}{2}$  Seller expense, a standard California Land Title Association policy issued by Founders Title Company, showing title vested in Buyer subject only to liens, encumbrances, easements, restrictions, rights and conditions of record as set forth above. If Seller fails to deliver title as herein

provided, Buyer at his option may terminate this agreement and any deposit shall thereupon be returned to Buyer.

6. The amount of any bond or assessment which is a lien shall be assumed by Buyer. Seller shall pay cost of documentary stamps on deed.

7. Escrow instructions signed by Buyer and Seller shall be delivered to the escrow holder within three days from the Seller's acceptance hereof and shall provide for closing when possible from the Seller's acceptance hereof, subject to written extensions signed by Buyer and Seller.

8. Upon the agreement to purchase said premises by the signature hereon of Buyer, Seller shall open an escrow at the Founders Title Company, 330 South Fairmont Avenue, Lodi, California, 5405 North Pershing Avenue, Stockton, California.

9. This agreement may be recorded.

10. Herein is set forth the whole of this agreement. The performances of this agreement constitutes and shall relieve Buyer of all further obligations or claims.

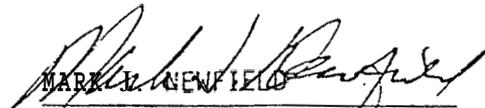
11. This agreement is binding on heirs, executors, administrators and assigns of the parties hereto.

12. In the event either party hereto breaches the terms, conditions and covenants of this agreement, then the party prevailing in any suit to enforce this agreement or to restrain the breach thereof, shall in addition to any other relief or damages awarded, be entitled to a reasonable attorney's fee and all costs of suit to be set and determined by any court of competent jurisdiction and added to any judgment obtained.

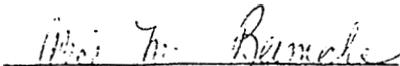
CITY OF LODI, a municipal corporation  
BUYER

SELLER

  
THOMAS A. PETERSON  
City Manager

  
MARK V. NEWFIELD  
MARK V. NEWFIELD

ATTEST:

  
ALICE M. REIMCHE  
City Clerk

Approved As To Form:

  
RONALD M. STEIN  
City Attorney

AGRNEWFI .ELD/TXTA.01V

EXHIBIT B

MEMORANDUM, City of Lodi , Public Works Department

TO: City Attorney  
Public Works Director  
DATE: July 19, 1988  
SUBJECT: Proposed Purchase by City of Lodi of 109 N. School Street

The Regional Water Quality Control Board and the San Joaquin Local Health District were mailed the attached letter dated June 7, 1988. After two weeks had passed, I called the Local Health District and found that they had recently discussed the letter with Mr. Boggs and determined that they would not respond until the Regional Board had responded to us.

The Local Health District did indicate that Mr. Boggs had a problem with signing the letter as it was and it was their feeling that he would be in contact with me. Since that time I have had a total of four discussions with Mr. Boggs' office. However, not with Mr. Boggs personally. On two occasions, I formally requested a written status response in order that I could inform the City Manager and the property owner of the project status. I was told that we would be receiving something from their legal office and that if I wanted a response I should contact them. I clearly made it known that I felt that it was Mr. Boggs' responsibility to provide me with a response and not for me to have to call other offices. On July 5, 1988, our office received the attached document dated May 8, 1987. This document was received with no cover letter. The last call to Gordon Boggs was on Friday, July 15; he was not in and he was to return my call. We received a message from his office indicating the letter we were expecting would be in the mail today and that they would forward a fax copy to us. Attached is a copy of the undated letter that was faxed. \*

The question is: What is the City's liability for clean-up if we buy a parcel knowing that there may be groundwater contamination under it? Can you evaluate the attached data in order to make a recommendation to the City Council on the proposed purchase of 109 N. School Street?

Dollars have been budgeted for this purchase. At this point, it is clear that we are not going to get a clear-cut answer on our responsibilities from the Regional Board. I would appreciate any help that you could give us on this matter in order that we can inform the property owner of our intentions to purchase or not purchase the property.

  
Jack L. Ronsko  
Public Works Director

ma

Attachments

cc: City Manager  
Mark Newfield

\* P.S. As of today July 20<sup>th</sup>  
we have not received  
the mailed letter

CITY COUNCIL

JAMES W. PINKERTON, Jr., Mayor  
JOHN R. (Randy) SNIDER  
Mayor Pro Tempore  
DAVID M. HINCHMAN  
EVELYN M. OLSON  
FRED M. REID

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
CALL BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 334-5634  
TELECOPIER (209) 333-6795  
June 7, 1988

THOMAS A. PETERSON  
City Manager  
ALICE M. REIMCHE  
City Clerk  
BOB McNATT  
City Attorney

Regional Water Quality Control Board  
Attention: Gordon L. Boggs  
3443 Routier Road  
Sacramento, CA 95827-3098

SUBJECT: Proposed Purchase of 109 N. School Street by City of Lodi

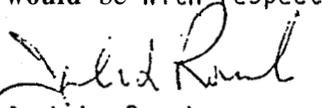
The City of Lodi was interested in purchasing the parcels located at 107 and 109 N. School Street (see attached sketch). The Assessor Parcel Numbers of these properties are 043-024-09 and 043-024-08.

As you are aware, there is known soil contamination at 107 N. School Street. This contamination was found at the time of the removal of five waste oil and petroleum storage tanks. The City of Lodi is proposing to buy 109 N. School Street (AP #043-024-08) now, and 107 N. School Street (AP #043-024-09) when the site contamination is removed.

We want to confirm our responsibilities as owner of 109 N. School Street with respect to the contamination which is present on the adjoining parcel to the south, 107 N. School Street. At the April 1, 1988 meeting that we had at the Regional Board office with Gordon Boggs and Laurie Cotulla present, Mr. Boggs indicated that any soil or groundwater contamination originating from 107 N. School Street would be the responsibility of the owner of 107 N. School Street. Mr. Boggs pointed out that the City should ensure that there was no contamination originating from the parcel the City was going to buy,

Before the City buys the 109 N. School Street parcel, we want to confirm that we interpreted the statements of Mr. Boggs correctly and that this is the position of your agency. If this is your agency's position, please sign one copy of this letter and return it to me in the enclosed self-addressed envelope.

If this is not your position, we would appreciate an early response to what the actual responsibilities of the new owner of 109 N. School Street would be with respect to underground contamination on the adjacent parcel.

  
Jack L. Ronsko  
Public Works Director

APPROVED BY:

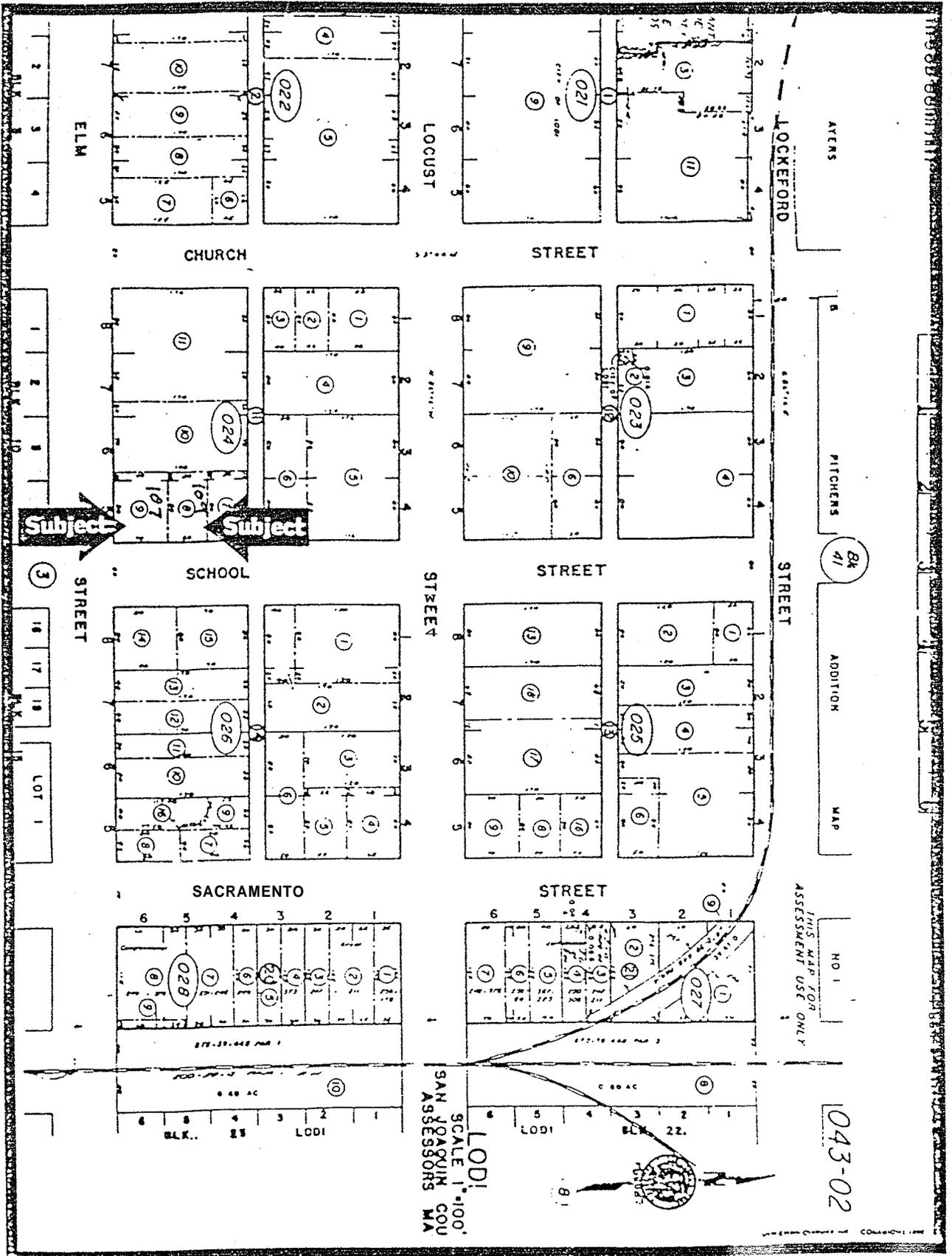
JLR/ma

\_\_\_\_\_  
(Name)

cc: City Manager  
San Joaquin Local Health District

\_\_\_\_\_  
{Title}

\_\_\_\_\_  
(Date)



AVENS

LOCKEFORD

CHURCH

STREET

ELM

LOCUST

PITCHENS

84  
41

ADDITION

MAP

SCHOOL

STREET

STREET

STREET

STREET

SACRAMENTO

STREET

NO 1

THIS MAP FOR  
ASSESSMENT USE ONLY

043-02

LODI  
SCALE 1"=100'  
SAN JOAQUIN COU  
ASSESSORS MA



# Memorandum

5

DATE: 7-5-1988

Received from  
RWQCB Board  
July 5, 1988  
No cover letter

**RECEIVED**

JUL 05 1988



**CITY OF LODI**  
PUBLIC WORKS DEPARTMENT

/s/ W. R. Attwater  
William R. Attwater  
Chief Counsel

From : STATE WATER RESOURCES CONTROL BOARD

Subject: INCLUSION OF LANDOWNERS IN WASTE DISCHARGE REQUIREMENTS AND ENFORCEMENT ORDERS

Attached is a memo explaining many of the issues addressed in State Board orders regarding the inclusion of landowners in waste discharge requirements and enforcement orders. Also included in the memo is a brief explanation of the legal basis for decisions. By no means are all of the possible situations which may confront you addressed by State Board orders or the memo. However, to the extent that the State Board has already dealt with some of these questions, it is important that there be substantial consistency by the Regional Boards.

The basic principles involved in naming landowners in orders can be summarized in a few key points:

1. Anyone who owns land on which a discharge is occurring is a discharger under Porter-Cologne.
2. Any discharger can be named in waste discharge requirements and made generally responsible for what goes on with regard to the property.
3. Enforcement orders can be issued to a landowner only if the cleanup involves something about which the landowner knew or should have known and over which he or she had some measure of control.
4. If the landowner is another public entity which has the legal duty to protect the environment, it is proper to name the agency in waste discharge requirements but it should only be made the subject of enforcement actions after it is clear that the actual discharger will not comply and that the public entity is not moving quickly to rectify the situation.
5. Findings of each element of a landowner's responsibility must be supported by substantial evidence.

**THE REPRODUCTION OF THIS DOCUMENT CANNOT BE IMPROVED DUE TO THE CONDITION OF THE ORIGINAL**

MAY 08 1967

In addition, it may be advisable to make enforcement orders more realistic by assigning duties to a landowner which recognize that the landowner, in many cases, must wait to see whether the tenant does the required task before assuming the responsibility for doing *it*.

Attachment

THE REPRODUCTION OF THIS  
DOCUMENT CANNOT BE  
IMPROVED DUE TO THE  
CONDITION OF THE ORIGINAL

MAY 08 1987

In addition, it may be advisable to make enforcement orders more realistic by assigning duties to a landowner which recognize that the landowner, in many cases, must wait to see whether the tenant does the required task before assuming the responsibility for doing it.

Attachment

cc: Fresno, Redding, and  
Victorville Offices

Dale Claypoole  
Program Control Unit

bcc: C. David Willis  
Deputy Director  
Toxic Substances Control  
Division  
Department of Health Services  
**714/744** P Street  
Sacramento, CA **95814**

R. H. Connett  
Assistant Attorney General  
**Office** of Attorney General  
1515 K Street, Suite 511  
Sacramento, CA **95514**

Roderick E. Walston  
Deputy Attorney General  
**Office** of Attorney General  
350 McAllister Street, Room 6000  
San Francisco, CA 94102

Sarah C. Michael  
c/o George R. Steffes  
Legislative Advocates  
1121 L Street, Suite 909  
Sacramento, CA **95814**

Randy Kanouse  
Office of Legislative and  
Public Affairs  
State Water Resources  
Control Board

# Memorandum

To : State Board Members

Date : MAY 04 1987

  
William R. Attwater  
Chief Counsel  
From : STATE WATER RESOURCES CONTROL BOARD

Subject: RESPONSIBILITY FOR CLEANUP

## QUESTION

What is the proper basis for holding someone responsible for the cleanup of a site which threatens to pollute or is polluting a water source?

## ANSWER

In general, the law imposes the duty to protect the public from a condition of pollution or nuisance on a site on those who are aware or should be aware of the problem and who are in a position to do something about it. There are, however, many subtleties in the business of assessing responsibility and such determinations are highly dependent on the facts of each case.

## DISCUSSION

The Porter-Cologne Water Quality Act paints with a broad brush when it comes to assessing responsibility for the cleanup of polluted sites. Section 13304 of the Water Code provides that any person "who has discharged or discharges waste" or any person "who has caused or permitted, causes or permits, or threatens to cause or permit" the discharge of waste into water or where it might get into water may be ordered to clean it up by the Regional Board.

The word "discharge" is not defined in the Water Code nor does the case law offer any precise definition. The State and Regional Boards have consistently taken a broad view of the word's meaning and have applied it to indirect as well as direct releases of pollution causing substances. Thus, allowing an existing source of contamination to spread from the soil to nearby ground water is as much a discharge as pouring a barrel of the stuff into a sump. (See, for example, Ioecon Corporation Order No. WQ 86-2 and Stuart Petroleum Order No. WQ 86-15.)

THE REPRODUCTION OF THIS  
DOCUMENT CANNOT BE  
IMPROVED DUE TO THE  
CONDITION OF THE ORIGINAL

In an opinion of the Attorney General issued in 1955, the term "discharge" is discussed.

"The term 'discharge' is not defined in the act but is apparently used in two senses in Water Code Section 13054: (1) as a verb meaning, 'to emit; to give outlet to; to pour forth', and (2) as a noun meaning either, 'A flowing or issuing out,' or 'that which is emitted' (Webster's New International Dictionary 742 [2d ed. unab. 1951])."

The opinion goes on to apply that analysis to an abandoned mine which continued to discharge tainted water after it was closed down.

"It is immaterial that the mining operations may have terminated before either purchased his present interest because the discharge for which they are accountable is the existing and continuing drainage from their holdings, not the now discontinued mining." (26 Ops.Atty.Gen. 88.)

in light of the broad Porter-Cologne coverage and the general use of the word "discharge," the State Board has adopted a series of orders dealing with several permutations of the landlord-tenant and owner-former/owner dicotomies. Each of the State Board orders has been based, at least in part, on the line of California cases which has assigned increasing responsibility to landowners for most bad things that happen on their property. Among the leading cases are Uccello v. Laudenslayer (44 Cal.App.3d 504, 118 Cal.Rptr. 741), a 1975 case involving the landlord's knowledge of a vicious dog owned by his tenants, Copfer v. Golden (1955, 135 Cal.App.2d 623, 288 P.2d 90), assessing the liability of a former owner for injuries which occur after the sale, and Sewell v. Loverde (1969), 70 Cal.2d 666, 75 Cal.Rptr. 889), concerning the ability of a landowner to pass along certain responsibility; to a tenant through lease provisions. These and other cases all point in one direction: A landowner may be held accountable for what transpires on the property he or she owns but the courts will look to how much the landlord knew about what was happening on the property and how much control the landowner had over the dangerous condition or activity. No bright-line standards have been drawn by the courts. Each case differs slightly from the others and the courts take pains to look to those distinctions.

For example, in the Uccello case, the plaintiff won the legal point and achieved reversal of a non-suit. A later case, Lundy v. California Realty (1985, 170 Cal.App.3d 813, 26 Cal.Rptr. 575) held that Uccello applied on the law but found that the facts failed to show that the landlord knew about the danger posed by the dog on the premises.

THE REPRODUCTION OF THIS  
DOCUMENT CANNOT BE  
IMPROVED DUE TO THE  
CONDITION OF THE ORIGINAL

MAY 04 1987

California courts have not, as yet, dealt with the situation where the landowner responsibility is judged in light of the exercise of the state's police power function. The cases have uniformly considered the competing rights of two or more private parties. The public policy questions considered by the courts have involved how fault and compensation are apportioned among a handful of individuals. A few federal cases have begun to look at the question of how the generalized rights of the public and the taxpayers can be reconciled with the occasional unfairness visited on individual landowners.

In U.S. v. Mirabile (15 ELK 20994, DC EPA 1985) a federal court relieved a secured creditor from liability for the costs of cleaning up polluted land it had recently acquired through foreclosure. But in U.S. v. Maryland Bank and Trust Company (632 F.Supp. 573, DC Md 1986) another court held a bank responsible for EPA's costs of a site cleanup even though the bank only owned the property through foreclosure. The only real difference between the two cases is that the Maryland bank had owned the property about four times as long as the Pennsylvania bank. In one case the court sought to protect the interests of lenders who may have all the equity in a piece of property wiped out by a cleanup bill. The other court wanted to reimburse EPA for the cost of cleanup.

Both cases are statutory interpretation exercises. The recent Superfund amendments, known as SARA (Superfund Amendments and Reauthorization Act of 1986), attempt to deal with the problem created by the language of Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) which led to the conflicting judicial interpretations laid out above. Among other things, the amendments include what is known as the "innocent landowner defense." A purchaser of land will not be held accountable for the costs of cleanup if he or she did not know and had no reason to know that a hazardous substance was deposited there. A public entity has no responsibility if it takes the property by escheat or condemnation. An owner is not liable if the property passes by inheritance or bequest. The exceptions have a few exceptions but the most important aspect of the new rules is that a bank or other lender is put on notice that inquiry into the past and proposed uses of the property is important before a mortgage is granted.

To date the State Board has not been asked to deal with the rather sticky "mortgagor as landowner" issue. State Board orders have dealt, however, with a wide variety of factual settings. Beginning in 1984 with the Logsdon Order (No. WQ 84-6), the State Board dealt with the naming of landowners in cleanup and abatement orders. There the landlords claimed not to know what was happening on the property they leased to a wood preserving company. They also claimed to be unable to do anything to prevent it. The facts supported the Regional Board on both issues. The petitioners were shown to be well aware of the nature of the wood preserving business based on earlier involvement at another site. Furthermore, the lease gave the landlords the right and ability to enter the property to prevent the very sort of thing that was going on there.

THE REPRODUCTION OF THIS  
DOCUMENT CANNOT BE  
IMPROVED DUE TO THE  
CONDITION OF THE ORIGINAL

MAY 04 1987

Order No. WQ 85-7 (Exxon) found the State Board overruling the regional Board on the inclusion of an oil company in a leaking tank cleanup. Exxon was only involved in the distribution of fuel to the service station and was not responsible for the inspection or maintenance of the tanks into which the fuel was poured. The only evidence connecting Exxon with the ownership of the site was some personal property tax records which, on closer inspection, showed Exxon's holdings on the site to consist of some furniture, some tools, a credit card imprinter, and two used pumps.

Five State Board orders were issued on the general topic of landowner responsibility during 1986. The first, Order No. WQ 86-2 (Zoecon) considered the plight of a company which had recently acquired a property from prior owners who had discharged a variety of hazardous chemicals into the ground. The Regional Board looked to the current owner to clean up the site even though others were likely to be far more culpable. The State Board upheld the Regional Board action. Because there was an actual movement of waste from soil to water on the site, a continuing discharge existed for which the current owner could be held responsible.

State Board Order No. WQ 86-11 (Southern California Edison) approved the inclusion of a landowner in waste discharge requirements issued to the operator of two solar power plants. No cleanup was involved and the order recognized the importance of including the ultimately responsible party in the requirements issued to the less permanent user of the site. The order approved the regional Board decision to distinguish between the day-to-day responsibilities of the site user and the underlying responsibility of the landowner.

in Order No. WQ 85-15 (Stuart Petroleum) the issue was whether an absentee/sublessor could be held to account for a site cleanup along with the on-site operator (sublessee) and the property owner. The conclusion was that, given sufficient proof that the sublessor knew of the activities on the site and that it had the power under the lease agreements to regulate the activity, the inclusion in the order was proper.

The next order adopted by the State Board, No. WQ 86-13 (Stines-Western), considered a petition from a former landowner who felt that there was not enough proof that the discharge was caused during its time in possession to include it in a cleanup order. The board applied the standard it set up in the Exxon order and found that there was substantial evidence in the record to support the Regional Board's conclusion.

The last of the 1986 orders, No. WQ 86-18 (Vallico Park), sustained a cleanup order issued by the Regional Board to both the current and former tenants of a site and to the landowner. The latter appealed contending that it was unable to regulate the on-site activities of the tenants. The State board found that

THE REPRODUCTION OF THIS  
DOCUMENT CANNOT BE  
IMPROVED DUE TO THE  
CONDITION OF THE ORIGINAL

MAY 04 1987

the record supported the Regional board decision and that the landowner had sufficient recourse under the lease agreement to regulate the conduct of the tenants. Furthermore, the State Board recognized that the Regional board intended to look to the landowner for cleanup only if the two principle parties defaulted on their responsibilities.

The most recent order adopted by the State Board, No. WQ 87-5 (U.S. Forest Service), dealt for the first time with the naming of another regulatory agency/landowner in waste discharge requirements. The Board took special care to tell the Regional Board that any enforcement action should be taken first against the lessee and only as a last resort against the Forest Service. However, the inclusion of the federal agency in the waste discharge requirements was found to be entirely proper.

As can be seen from the orders issued by the Board, a distinction has been made between the issuance of waste discharge requirements and cleanup and abatement orders. The former may properly be issued to landowners without regard to their actual involvement in the discharge; the latter are subject to the restrictions discussed above. Two Board orders (Southern California Edison and U.S. Forest Service) involve waste discharge requirements and each specifically says that the Regional Board should be careful in assessing responsibility for site cleanup. But each order makes it clear that waste discharge requirements may be issued based on the ownership of the land and need not consider the other factors.

#### CONCLUSION

There is near total consistency between the way that the State Board has dealt with the various ownership/responsibility questions, the case law within California, and the current federal approach to apportioning liability in such things as Superfund cleanups. The basic principle is legally supportable and makes good sense as a matter of public policy. So long as the Owner of a piece of land is aware of what is happening on the land (or should be expected to be aware) and has the power to regulate the conduct of which he or she is aware, the landowner, not the public treasury, should bear the costs of cleaning up pollution and nuisances that occur on the land.

cc. James L. Easton

THE REPRODUCTION OF THIS  
DOCUMENT CANNOT BE  
IMPROVED DUE TO THE  
CONDITION OF THE ORIGINAL

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD—  
CENTRAL VALLEY REGION  
3443 ROUTER ROAD  
SACRAMENTO, CA 95827-3098



Received from  
RWQC Board  
by FAX on  
July 15, 1988

TO: LANDOWNER

SUBJECT: RESPONSIBILITY FOR CLEANUP AND ABATEMENT

In addressing the responsibility of a landowner for a waste discharge into waters of the state that creates a condition of pollution or nuisance, the Regional Board is guided by the following general principles:

1. Anyone who owns land on which a discharge is occurring *may* be considered a discharger under the Porter-Cologne Water Quality Control Act.
2. Any discharger can be named in waste discharge requirements and made generally responsible for discharges of waste which may affect water quality.
3. Enforcement orders, such as an Order to Clean Up and Abate, can be issued to a landowner. Such orders will be issued when the landowner knew or should have known of the discharge, and had some measure of control over the discharge. If the landowner is a separate entity from the operator of the facility, primary responsibility for cleanup may be placed upon the operator.

These general principles may not apply to all possible situations, and the Board will examine each case on its own merits.

Landowners seeking to determine their responsibilities for cleanup and abatement of a condition of pollution or nuisance are advised to obtain the assistance of legal counsel.

A handwritten signature in cursive script, reading "William H. Crooks".

WILLIAM H. CROOKS  
Executive officer

EXHIBIT C

MEMORANDUM

To: Jack L. Ronsko, Public Works Director  
From: Bob McNatt, City Attorney  
Date: July 25, 1988  
Re: Proposed Purchase by City of Property at 109 N. School Street

The petroleum contamination on the property at 107 N. School Street will apparently continue to be a problem for the City's proposed purchase of the parcel next door at 109 N. School Street. After some legal research and a phone call to Gordon Boggs of the Regional Water Quality Control Board, it appears that there is at least a possibility that if the City should purchase the property at 109 N. School Street, and it is later found to be contaminated, the City could be required to clean up the property should the present owner fail or refuse to do so.

I was successful in contacting Mr. Boggs by telephone on July 22, 1988. He sounded exasperated that we were still trying to get him to clarify some of his previous statements and to provide further guidance or suggestions on how the City should proceed. Boggs stated that he knew the site at 107 N. School Street was contaminated, but had no information indicating that the contamination had spread to 109 N. School Street. He also stated that he felt it was absolutely Mr. Newfield's responsibility for the cleanup of both sites should it be necessary although he also stated that if Mr. Newfield did not do so, the Regional Water Quality Control Board would look to the City for cleanup. He also expressed puzzlement as to why the City would want to purchase a site that had such a good possibility of being contaminated.

I have done some cursory research through the Federal statutes (Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U. S. C. § 9601 et seq.) and the pertinent State provisions (the Porter-Cologne Act, Cal. Water Code § 13000 et seq.). Although the Federal statute does not appear to be an imminent problem, the State legislation may be applicable and could cause the City some problems if it purchases the site at 109 N. School and then discovers that the parcel is contaminated.

Mr. Boggs indicated that the City of Sacramento was in a similar situation, and had acquired a parcel which was found to be contaminated with petroleum products. Since no previous owner could be located, the Regional Water Quality Control Board imposed the responsibility upon the City of Sacramento to clean up the site, according to Mr. Boggs.

Jack L. Ronsko, Public Works Director  
Page 2

I spoke with Tamara Harmon, Sacramento City Attorney's office, who is handling a similar problem. She has concluded that the City cannot avoid the responsibility for cleaning up the contaminated site, and believes Lodi is in the same position. She agrees with me that California law mandating clean-up makes no exception for public agencies.

Addressing the specific query in your memo of July 19, 1988, I believe the answer is that the City is liable for cleanup of the parcel if we buy it knowing that there ~~may be~~ groundwater contamination, and if the seller fails or refuses to clean it up. There may be considerations of which I am unaware, but my preliminary recommendation to the City Council on this proposed purchase would be to receive from the seller some additional assurance, either in the form of contract or surety, that if it becomes necessary to decontaminate the site, the seller would be responsible. However, economic factors may make this an impractical approach.

  
Bob McNatt  
City Attorney

BM:vc

cc: Honorable Mayor and Council  
City Manager

PWSCHOOL.ST/TXTA.01V

EXHIBIT D

  
**aladdin**  
REAL ESTATE, INC.

March 3, 1988

Mr. Tom Peterson  
City Manager's Office  
Lodi, CA 55240

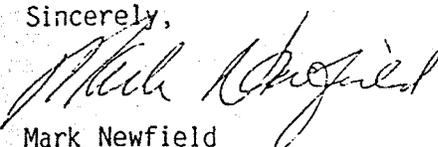
Dear Tom

I propose to sell and lease my two properties; 105 N. School Street and 107 N. School Street, to the City of Lodi as follows:

- 1). The City of Lodi to purchase 109 N. School Street for \$110,000.00 (Half the appraised value).
- 2). The City of Lodi to LEASE 107 N. School Street for 100 years at \$1.00 per year "NET NET NET," or until the Seller can satisfy the County Health Department that the property poses no health hazard to the environment.
- 3). At such time that Seller satisfies the Health Department, the City will then purchase 109 N. School Street for \$110,000.00 within 30 days of satisfaction.
- 4). The City of Lodi will have the option to purchase the leased property at any time during the lease period for \$110,000.00.

I think you'll agree that this proposal is a "Win Win" situation for both the Buyer and Seller. The City gets what it wants; namely, both properties for half price, and Buyer satisfies his obligation to the bank, whose note continues to draw interest.

Sincerely,

  
Mark Newfield

MN:pjv



REALTOR®

330 S. Fairmont, Suite 1, (209) 334-2141 / Stockton (209) 948-6171

P. O. Box 797 / Lodi, California 95241

Homes / Ranches / Commercial / Industrial and Investment Properties

MEMORANDUM

To: Jack L. Konsko, Public Works Director

From: Bob McNatt, City Attorney

Date: July 25, 1988

Re: Proposed Purchase by City of Property at 109 N. School Street

The petroleum contamination on the property at 107 N. School Street will apparently continue to be a problem for the City's proposed purchase of the parcel next door at 109 N. School Street. After some legal research and a phone call to Gordon Boggs of the Regional Water Quality Control Board, it appears that there is at least a possibility that if the City should purchase the property at 109 N. School Street, and it is later found to be contaminated, the City could be required to clean up the property should the present owner fail or refuse to do so.

I was successful in contacting Mr. Boggs by telephone on July 22, 1988. He sounded exasperated that we were still trying to get him to clarify some of his previous statements and to provide further guidance or suggestions on how the City should proceed. Boggs stated that he knew the site at 107 N. School Street was Contaminated, but had no information indicating that the contamination had spread to 109 N. School Street. He also stated that he felt it was absolutely Mr. Newfield's responsibility for the cleanup of both sites should it be necessary although he also stated that if Mr. Newfield did not do so, the Regional Water Quality Control Board would look to the City for cleanup. He also expressed puzzlement as to why the City would want to purchase a site that had such a good possibility of being contaminated.

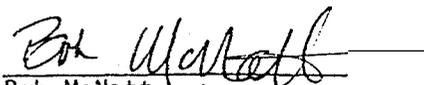
I have done some cursory research through the Federal statutes (Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U. S. C. § 9601 et seq.) and the pertinent State provisions (the Porter-Cologne Act, Cal. Water Code § 13000 et seq.). Although the Federal statute does not appear to be an imminent problem, the State legislation may be applicable and could cause the City some problems if it purchases the site at 109 N. School and then discovers that the parcel is contaminated.

Mr. Boggs indicated that the City of Sacramento was in a similar situation, and had acquired a parcel which was found to be contaminated with petroleum products. Since no previous owner could be located, the Regional Water Quality Control Board imposed the responsibility upon the City of Sacramento to clean up the site, according to Mr. Boggs.

Jack L. Ronsko, Public Works Director  
Page 2

I spoke with Tamara Harmon, Sacramento City Attorney's office, who is handling a similar problem. She has concluded that the City cannot avoid the responsibility for cleaning up the contaminated site, and believes Lodi is in the same position. She agrees with me that California law mandating clean-up makes no exception for public agencies.

Addressing the specific query in your memo of July 19, 1988, I believe the answer is that the City is liable for cleanup of the parcel if we buy it knowing that there may be groundwater contamination, and if the seller fails or refuses to clean it up. There may be considerations of which I am unaware, but my preliminary recommendation to the City Council on this proposed purchase would be to receive from the seller some additional assurance, either in the form of contract or surety, that if it becomes necessary to decontaminate the site, the seller would be responsible. However, economic factors may make this an impractical approach.

  
Bob McNatt  
City Attorney

BM:vc

cc: Honorable Mayor and Council  
City Manager

PWSCHOOL.ST/TXTA.01V