STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of HAROLD AND JOYCE LOGSDON For a Stay and Review of Cleanup and Abatement Order and Resolution No. 84-002 of the California Regional Water Quality Control Board, Central Valley Region. Our File No. A-348.	ORDER NO. WQ 84-6

BY THE BOARD:

On November 7, 1983, the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Board) issued a Cleanup and Abatement Order to Harold W. Logsdon and Joyce J. Logsdon. The Order requires cleanup activities at a non-operating wood treating and preserving facility in Turlock, California. The facility is located on land formerly owned by the Logsdons. The Regional Board revised and ratified this Cleanup and Abatement Order at a special meeting January 19, 1984 in Resolution No. 84-002. Harold and Joyce Logsdon (petitioners) appealed this action to the State Board on February 16, 1984. Petitioners also requested a stay of the Regional Board order on March 5, 1984. As this order disposes of the issues raised in the petition, there is no need for us to act upon the stay request.

I. BACKGROUND

The basic issue raised on appeal by the petitioners is whether the Regional Board acted properly in naming petitioners individually in the Cleanup and Abatement Order. Before discussing this issue, it is helpful to review the history of disposal operations and enforcement actions at the wood treating site.

The site was owned by petitioners. It is now owned by Valley Wood Preserving, Inc. (VWP). Petitioner Harold Logsdon is president of VWP. The Regional Board was first contacted by an agent of Harold Logsdon regarding a proposed wood treating facility at the site in June 1973. In August 1973, the Regional Board sent a letter to Harold Logsdon requesting a report of waste discharge. No such report was received. On September 11, 1973, Stanislaus County granted a land use permit to Harold Logsdon for a wood treating facility with a condition that the use be conducted in compliance with the Regional Board requirements.[1] During the fall of 1973, a wood treating plant was constructed and operations began. Petitioners owned the site at that time. Wood treating operations were conducted on the site from 1973 until November 1979.

During wood treating operations, a water-based Copper-Chromate-Arsenic (CCA) solution was used to preserve wood. The solution contained more than 10,000 mg/l Chromium in predominately the hexavalent form. Such Chromium is designated a hazardous waste by the Department of Health Services. Operating practices at the site resulted in discharges of the CCA wood treating solution to soils both on and near the site and to groundwater.

The Regional Board began investigating the site in 1979. On a Regional Board staff inspection in March 1979, toxic chemicals were found in a shallow unlined pond. Valley Wood Preserving, in response to another Regional Board request for a report of waste discharge, filed a report on June 6, 1979,

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[1] Use permits to expand the site were also issued to Harold Logsdon on December 21, 1976 and March 5, 1979.

and Regional Board adopted waste discharge requirements in late July 1979. Upon finding that hazardous levels of arsenic, chromium and copper had been discharged to ground and to underlying groundwater,[2] the Regional Board issued Cleanup and Abatement Orders to Valley Wood Preserving in August 1979 and again in April 1980. The Cleanup and Abatement Orders required studies of the extent of the pollution and removal of contaminated soil.

During this time, Stanislaus County also became concerned about the discharge. In November 1979, the County Board of Supervisors revoked the zoning and land use permit for Valley Wood Preserving and Harold Logsdon, finding that permittees have caused groundwater pollution, had failed to comply with Regional Board cleanup and abatement orders and that continued operation of the business constituted a serious health threat.

The discharger VWP violated the April 1980 Cleanup and Abatement Order, and the Regional Board referred the matter to the Attorney General in May 1980.

Throughout 1980 and 1981, the Regional Board continued to address the contamination problem, working with VWP's consultants on monitoring, evaluation, treatment, and removal issues. VWP began treating contaminated groundwater in July 1980.[3] Sporadic work and treatment of contaminated groundwater continued through June 1983. Neighbors of Valley Wood Preserving began reporting elevated levels of chromium in a domestic well during this time period.

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[2] Chromium concentrations as high as 87 mg/l have been found in underlying groundwater. The drinking water standard is 0.05 mg/l.

[3] Concentrations in groundwater under the site have been reduced to 9 mg/l in part due to these cleanup efforts. However, soils on the site continue to leach chromium well in excess on drinking water standards.

Regional Board records indicate that on June 17, 1983, the groundwater treatment unit was shut down and has not operated since that time. Cleanup has removed only parts of the contaminated soil and groundwater. VWP refused or failed to submit a number of required technical reports, and frequently did not submit complete monitoring reports as required. Additionally, no monitoring records have been submitted since June 15, 1983. A preliminary injunction was issued by Stanislaus County Superior Court at the request of the Attorney General on behalf of the Regional Board on September 12, 1983 ordering Valley Wood Preserving to abide by the monitoring of the waste discharge requirements, to implement a soil and groundwater investigation. Questions ensued as to whether Valley Wood Preserving's insurance company would pay for the cleanup. The attorney for Valley Wood Preserving indicated to the Regional Board staff that if the insurance company did not pay, bankruptcy was an option. In the absence of remedial work, a plume of chromium polluted groundwater continues to move off-site.

In November 1983 the Regional Board notified Valley Wood Preserving that it had violated the Court's Preliminary Injunction, and the Executive Officer issued yet another cleanup and abatement order. This order was issued to Harold and Joyce Logsdon, individually. The order, as ratified by the Regional Board in January 1984, is the subject of the petition. Additionally, the Regional Board has referred this matter to the Attorney General for enforcement of the Cleanup and Abatement Order.

Water Code Section 13304 authorizes a Regional Board to issue cleanup and abatement orders. It provides, in pertinent part:

> "(a) Any person who has discharged or discharges waste into the waters of this state in violation of any waste

discharge requirement or other order or prohibition issued by a regional board of the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up such waste or abate the effects thereof or, in the case of threatened pollution or nuisance, take other necessary remedial action. Upon failure of any person to comply with such clean or abatement order, the Attorney General, at the request of the board, shall petition the superior court of that county for the issuance of an injunction requiring such person to comply there with. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

* * *

"(e) 'Threaten,' for purposes of this section, means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources." (Emphasis added)

II. CONTENTIONS AND FINDINGS

Petitioners make the following contentions in support of their request that the Regional Board's order be revoked.

1. Contention: Petitioners were never in the wood preserving business. Petitioners allege they leased the site to Valley Wood Preserving in 1973 and sold the site to Valley Wood Preserving, Inc., in 1976.

Findings: The Regional Board's position is that regardless of whether it was VWP which actually discharged the waste, petitioners through their failure to act as responsible landowners permitted the discharges to occur. The issue of ownership must therefore be scrutinized. We have extensively reviewed the record in this matter. The Logsdons owned the site in

1973. Wood treating operations began that year. The record contains a lease agreement between Harold and Joyce Logsdon and Valley Wood Preserving executed October 31, 1974. (See Record A-11-29.) The lease was for two years, from October 1, 1973 to September 30, 1975. Thus, for almost a year, Valley Wood Preserving operated on petitioner's property with no lease at all. The lease is for a vaguely described "three acres of the 10 acre parcel of land owned by landlord". Notably, the lease contains provisions that the tenant shall not commit waste or nuisance on the premises, that the tenant obey governmental use laws and that the landowner has reentry rights upon failure of the tenant to abide by the lease. While the lease terms contemplated an option for a long-term lease, duly recorded, such a long-term lease was never recorded after the September 30, 1975 expiration date. Additionally, as the Regional Board points out, it is unclear whether such option was ever exercised at all. No copy of a long-term lease appears in the record. Additionally, the executed lease calls for the tenant to pay all taxes after entering into the long-term lease. The Regional Board introduced evidence of the Stanislaus County Secured Assessment Rolls showing that taxes on the land were not charged to Valley Wood Preserving, Inc., but rather to Harold and Joyce Logsdon until 1980. While petitioners submitted copies of the Stanislaus County Unsecured Assessment Taxes which were billed to and paid by Valley Wood Preserving, these documents do not indicate that Valley Wood Preserving owned the land or paid taxes on the land as would have been required pursuant to the executed lease had the option been exercised. (See Record, A-8.)

Petitioners allege that they sold the site to Valley Wood Preserving in 1976, some three years after operations began. Our review of the record and the Regional Board's unrefuted testimony does not support this contention. The

record does contain an "Agreement of Contract" for sale of certain real property in Stanislaus County from Harold and Joyce Logsdon to Valley Wood Preserving dated December 21, 1976. Petitioners did not submit and the record does not contain the necessary "legal description attached and made a part hereof" referred to in the Agreement. This Agreement must have the attachment in order to adequately describe what parcel is being conveyed. The "Agreement" is thus fatally vague and cannot support petitioner's contention that the property was sold in 1976.

We note further, that even if the record did contain a complete document, there are a myriad of additional considerations that indicate that a change of ownership did not occur in 1976. The Regional Board points out that the County was not informed until 1980 of the alleged sale in 1976. Taxes continued to be charged to the Logsdons. The conveyance itself had problems, as the land was owned by both Harold and Joyce Logsdon as tenants in common (as shown by the 1980 Grant Deed), yet the contract of sale was impermissibly signed only by Harold Logsdon.

Confusion also remains as to which parcel was sold. The Agreement itself is of no help in this issue. The actual area used in connection with wood treating by Valley Wood Preserving includes two parcels, northern (consisting of 4.3 acres) and southern. Operations began in 1973 on the southern parcel (presumed by the Regional Board to be the area covered by the lease). However, it appears that the parcel intended to be covered by the Agreement of Sale is only the northern parcel for at least two reasons: (1) the minutes of a special meeting of December 21, 1976 of the Board of Directors of VWP refers to authorization to purchase land owned by Harold Logsdon "adjacent to the property used by the Corporation as the Corporations business

address" (see Record, A-11-27); and (2) a December 21, 1976 special use permit to "expand existing non-conforming...wood pressure treating business onto the 4.3 acre parcel" (see Record A-11-22). Petitioners produced no evidence to demonstrate that they had indeed sold both parcels to Valley Wood Preserving in 1976.

The record demonstrates that petitioners continued to act as owner of the property in question after 1976. For example, in March and October of 1979, applications were made to Stanislaus County for facility expansion. The County issued permits to Harold Logsdon, and named him as landowner. (See Record, A-11-32 and A-11-33.)

Harold and Joyce Logsdon did execute a Grant Deed to Valley Wood Preserving on August 2, 1980, one month after Valley Wood Preserving had first begun treating contaminated groundwater.

In sum, we conclude that the Logsdons owned the site until 1980. Furthermore, even if they had sold the property in 1976, they were owners for the initial three year period during which substantial discharges took place. As we find below, petitioners permitted these discharges to occur and thus are subject to Water Code Section 13304.

2. Contention: Petitioners did not permit their tenant to discharge wastes into state waters, or even know that Valley Wood Preserving was discharging into state waters.

Petitioners are not legally responsible for the acts of their tenant of which they had no knowledge.

Findings: Petitioners have contended (see Record, A-11-21B, p. 17) that after the lease discussed above terminated, Valley Wood Preserving continued to operate on a month-to-month basis. In the petition before us, the

Logsdons further urge that they did not permit VWP to discharge into state waters, or know that VWP was discharging. Petitioners cite one case to support the proposition that a landlord is not responsible for acts of a tenant for condition of which he has no knowledge. (Uccello v. Lauderslayer, (1975) 44 Cal.App.3d 514, 118 Cal.Rptr. 741.)

We will examine this contention, assuming that petitioners were landowners and lessors for all or part of the property, from 1973 to 1980.

We note that historically the common law has precluded a landlord's liability for injury to his tenants or others resulting from defective conditions on the premises. (3 Witkin Summary of Calif. Law, 8th Ed., Section 453) However, Uccello v. Lauderslayer, supra, at 745, lists a number of exceptions, including: (1) where there is a nuisance existing on the premises at the time the lease is made or renewed; (2) where the injury occurs in a part of the premises where the landlord retains control, and (3) where a safety law is violated. (3 Witkin, supra, id.)

Additionally, the more recent trend of California cases is contrary to this traditional rule of landlord's nonliability subject to certain exceptions. In Rowland v. Christian (1968) 69 Cal.2d 108, 70 Cal.Rptr. 97, 443 P.2d 651, California repudiated the traditional classification of duties governing the liability of an owner or possessor of land and substituted the basic approach of foreseeability of injury to others. (See, e.g., 3 Witkin, Summary of California Law (8th Ed., 1980 Supp.) Section 453A, Uccello v. Lauderslayer, supra at 564, Brennan v. Cockrell Investments, Inc. (1973), 35 Cal.3d 796, 111 Cal.Rptr. 172.

The court in Uccello held that an enlightened public policy requires that a landlord owes a duty of care to correct a dangerous condition created by

a tenant, where the landlord has actual knowledge of the condition and an opportunity and the ability to obviate it. "To permit a landlord in such a situation to sit idly by in the face of the known danger to others must be deemed to be socially and legally unacceptable." (44 Cal.App.3d at 513.)

In Brennan, the court held a landlord should be subject to the ordinary rules of negligence, noting, "It is no part of fairness and rationality to transform possession and control from mere factors bearing on negligence into barriers to consideration of that issue." (35 Cal.App.3d at 802.) The court also noted that the trend of decisions in other jurisdictions is to follow California's lead in applying ordinary rules of negligence to owners and occupiers of land. (See also Levy-Zentner Co. v. Southern Pacific Transportation Co. (1977) 74 Cal.3d 762, 796; 142 Cal.Rptr. 1, 21, Stoiber v. Honeychuck (1980) 101 Cal.3d 903, 162 Cal.Rptr. 194 and Rosales v. Stewart (1980) 113 Cal.3d 162, 169 Cal.Rptr. 660.)

The issues thus become whether petitioners as landlords had (1) actual knowledge of the dangerous condition and (2) an opportunity to obviate it.

As to the first issue, the Regional Board persuasively urges that the Logsdons knew or were chargeable with the knowledge that waste was being discharged or placed where it could be discharged on the property. (See Record, A-7-8, 9, 16, 17.) These reasons include the following:

a. Petitioner's agent had contacted the Regional Board regarding the proposed facility in 1973. Petitioners received the Regional Board's August 3, 1973, letter explaining that a report of waste discharge requirements should be submitted even for a so-called "closed" system. (We note California Evidence Code Section 641 that a letter properly addressed and placed in the

mail is presumed received.) Although petitioner claims to have been unaware of this letter (and also conditions in the special use permits discussed below), we agree with the Regional Board that knowledge of an agent is imputed to his principal by operation of law even in situations where the knowledge was not in fact communicated. (California Civil Code Sections 2330, 2332, 2338.)

b. Harold Logsdon was an officer in Coast Wood, Inc., a corporation treating wood in Ukiah, California, and as such was aware that Coast Wood had waste discharge requirements for a similar operation.

c. Harold Logsdon was a defendant in a lawsuit brought by the North Coast Regional Water Quality Control Board in 1972 to obtain corrections of discharge problems at the Coast Wood site.

d. Harold Logsdon received copies of several letters from the manager of Coast Wood pointing out what was being done to correct discharge problems.

e. Petitioners or their agents received and signed the 1973 and 1976 special use permits from Stanislaus County issued to Harold Logsdon personally and containing the condition that the wood treating operation must be conducted in accord with Regional Board requirements.

f. Valley Wood Preserving treated wood for over five years at the site. Petitioner was President of the Corporation. Additionally, Mr. Cox, whose property borders the site, testified that he saw Mr. Logsdon routinely visiting the site. (See Transcript, 4:20 p.m., 1/19/84, pp. 64-65.)

Based upon these factors we conclude that petitioners either had or should have had knowledge of discharges of waste at the site. Given the hazardous nature of the waste, such discharges can be presumed dangerous.

Turning to the second issue raised above, it appears that the petitioners did have the opportunity to obviate the dangerous condition on the

property. As discussed before the lease specifically contained a provision that the tenant shall not commit waste or nuisance on the premises, and shall obey all laws, state, federal and local, with respect to the use of the premises. Tenant Valley Wood Preserving was not adhering to the terms of either state law or the County Special Use Permit by failing to obtain waste discharge requirements. Another specific provision of the lease authorized the Logsdon's to re-enter the premises upon the failure of VWP to perform any of its obligations under the lease. We find that the petitioners had the ability to obviate the condition.

Finally, petitioners cite Copfer v. Golden (1958) 135 Cal.App.3d 623, 288 P.2d 90 for the proposition that a prior owner of land is not responsible for injuries after he gives up title and possession. As we discussed above, we have found that petitioners continued to own the land until 1980. Furthermore, Copfer deals with a personal injury suit under common law negligence principles by private parties against the former landowners for injuries sustained by a visitor or trespasser on the land. Copfer expressly indicates that there may be liability of a former owner for artificial conditions which create an unreasonable risk to persons outside the land (288 P.2d 90 at 97.) In fact, liability in such situations is well-recognized:

> "[I]t is generally agreed that the creator of a nuisance does not, by conveying his property to a third person, release himself from liability for the continuation of the nuisance...." (58 Am.Jur.2d Nuisances, Section 50.)

As the record shows, chromium has been found in wells off of the property. We concur with the Regional Board that the people of the State of

California have an interest in preventing degradation of groundwater which is both under the petitioner's land and the land of others. A landowner who permitted such degradation to occur may not escape responsibility by hiding behind his or her tenant.

3. Contention: Petitioners argue that the three-year statute of limitations has run.

Findings: Petitioners cite California Code of Civil Procedure 338(1), 338(3) and 338(9), to support the proposition that there is a three-year statute of limitations on actions to enforce the Porter-Cologne Act. Petitioners offer no cases or additional analysis to support their points. These sections are found in Title 2, Chapter 3 of the Code of Civil Procedure. Title 2 is entitled "Of the Time of Commencing Civil Actions". The general limitation is found at Section 312, which provides:

> "Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where in special cases, a different limitation is prescribed by statute."

Chapter 3 of Title 2 is entitled "The Time of Commencing Actions Other Than for the Recovery of Real Property". Section 335 states:

> "PERIODS OF LIMITATION PRESCRIBED. The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:

Set forth after this section are the sections cited by petitioners, which are:

> "Section 338. [Liability created by statute: Trespass or injury to property: Fraud or mistake: Bond of public official: Notary Public.]

"Within three years:

"1. An action upon a liability created by statute, other than a penalty or forfeiture.

* * *

"3. An action for taking, detaining, or injuring any goods, or chattels, including actions for the specific recovery of personal property.

* * *

"9. An action commenced under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000 of the Water Code or the provisions of California law relating to hazardous waste control (Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code)). The cause of action in that case shall not be deemed to have accrued until the discovery by the State Department of Health Services, the State Water Resources Control Board or a regional water quality control board of the facts constituting grounds for commencing actions under this jurisdiction."

In response, the Regional Board makes three separate arguments as to why the statute of limitations sections cited by petitioners are inapplicable. If any one of these arguments applies, petitioners' contention would fail. In fact, we find each of the Regional Board's arguments persuasive and conclude that the ability of the Regional Board to take its administrative action was not barred by statute of limitations.

First, the Regional Board asserts that the statute of limitations sections cited by petitioners apply only to the commencement of civil suits and not to administrative actions, such as the issuance of a cleanup and abatement order. We agree. Code of Civil Procedure Section 22 defines "action" to be an ordinary proceeding in a court of justice. The courts have consistently held that a statute of limitations barring a civil action is inapplicable to quasi-

judicial proceedings of a state administrative action.[4] At issue here is ratification of a cleanup and abatement order, not commencement of a civil suit. We note that "adjudicative proceedings of administrative agencies are not civil actions within the purview of statutes and limitations generally." 2 Cal.Jur.3d, Admin. Law Section 144.

The Regional Board's remaining two arguments apply even if it could be successfully argued that there is a statute of limitations applicable to an administrative enforcement action. In its second argument, the Regional Board contends that it was unaware of Mr. Logsdon's ownership of the land involved until very recently. This contention is uncontroverted by petitioners. Code of Civil Procedure Section 338(9) clearly states that the three-year statute of limitations does not begin to run until the Regional Board discovers facts upon which to commence an action.

Finally, the Regional Board urges that where there is a continuing wrong, the statute of limitations does not run. In this case, we find that the on-going spread of chromium to waters of the state, as documented in the record, constitutes such a continuing wrong. Civil Code Section 3490 provides that "[n]o lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right", together with various cases.[5] Wade v. Campbell (1962) 200 Cal.App.3d 54, 19 Cal.Rptr. 173 deals with defendant operating a dairy found by the court to be a public nuisance. The court held the defense of laches and statute of limitations to be inapplicable noting:

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[4] Bold v. Board of Medical Examiners (1933), 133 Cal.App. 23, 25, 23 P.2d 826, Hartman v. Board of Chiropratic Etc. (1937) 20 Cal.App.2d 76, 78, 66 P.2d 705; Rudolph v. Athletic Commission (1960) 177 Cal.App.2d, 22, 1 Cal.Rptr. 898; Bernd v. Fong Eu (1979) 100 Cal.App.3d 511, 515, 161 Cal.Rptr. 58.

[5] See also 2 Witkin, Calif. Procedure Section 321.

"Every repetition of a continuing nuisance is a separate wrong for which the person injured may bring successive actions for damages and injunctive relief until the nuisance is abated, even though an action based on the original wrong may be barred by the statute of limitations." (19 Cal.Rptr. 173, at 177.)[6]

4. Contention: Petitioners argue that the cleanup and abatement order is based on hearsay.

Findings: Petitioners make the general allegation that the Regional Board order is based on hearsay, but do not specify which portions of the order are thereby objectionable. The transcript of the proceedings is also replete with objections by counsel for petitioners that hearsay is being admitted.

The Regional Board is virtually required to admit hearsay testimony. Title 23, Cal.Admin.Code Section 648.4, which governs proceedings of the State and Regional Boards, provides in pertinent part:

"(a) ... Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.

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[6] See also Vowinckel v. N. Clark & Sons (1932) 216 Cal.156, 13 P.2d 733, and Town of Cloverdale v. Smith (1900) 128 Cal. 230, 60 Pac. 851. Additionally, we note in passing the analogy we see here with the continuing spread of chromium into the groundwater and the raising of the statute of limitations as a defense by a former landowner and Avner v. Longridge Estates (1969) 272 Cal.App.2d 607, 77 Cal. 633. In Avner, a homeowner sued a previous landowner, who was the developer, for damages resulting from failure of the lot's rear slope and settling of the lot. The damage complained of occurred in 1965, suit was filed in 1966, although the developer sold the property in 1960. The court refused to dismiss the suit against the original landowner based on the statute of limitations.

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"(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." (Emphasis added.)

The Cleanup and Abatement Order is based on two fundamental premises. One, there is polluted groundwater under the site. Two, during at least a part of the time the pollution originated, Harold and Joyce Logsdon owned the property. Both of these premises are more than adequately supported by the record and are not supported solely by inadmissable heresay.

First, the Regional Board staff has undertaken extensive monitoring and obtained numerous reports to determine the spread and level of pollutants in the groundwater. These are a part of the Regional Board record and were before the Regional Board at the hearing. As public and business records, these are not considered inadmissable hearsay pursuant to Evidence Code Sections 1271 and 1280.

Second, there were a number of documents before the Regional Board relating to the issue of land ownership. Some of these were submitted by the petitioners themselves. Documents which are pertinent include among others the Stanislaus County Assessors Tax Rolls for Secured and Unsecured Property; the 1980 Grant Deed from the Logsdons to Valley Wood Preserving; the 1976 Agreement of Contract; the 1974 Lease, and the 1979 Stanislaus County Special Use Permit and Application by Harold Logsdon. As business records, public records and dispositive writings, none of these would be considered inadmissable hearsay pursuant to Evidence Code Sections 1271, 1280 and 1330. We note further that some of these exhibits were also admitted in court proceedings in the case of

Elliott v. Valley Wood Preserving, heard in September 1983 in Stanislaus County Superior Court (where neighboring landowners brought an action for damage.)

5. Contention: Petitioners contend that the Regional Board does not have the legal authority to order petitioners to go onto property they do not own to conduct cleanup activities.

Findings: In support of this contention, petitioners state merely that the Regional Board's remedy against an owner is limited to Water Code Section 13305. No additional analysis or case law is presented. Further, petitioners assert, again without citations, that the court cannot order a party to do an unlawful act, such as trespass on the property of others.

Water Code Section 13305 provides a mechanism whereby a Regional Board may correct a condition of pollution or nuisance resulting from a nonoperating industry or business. The Regional Board may take remedial action. The costs incurred become a lien upon the property.

While this is one route a Regional Board may take to correct a condition of pollution or nuisance, it is by no means the only one. Water Code Section 13304 as discussed previously and other sections provide other enforcement tools to a Regional Board. Here, the Regional Board adopted a cleanup and abatement order pursuant to Water Code Section 13304 against petitioners who were found to have caused or permitted waste to be discharged into the waters of the State.

Further, we do not believe that the Regional Board impermissibly ordered petitioners to "trespass" on the land of others. The Regional Board has suggested in its response to the petition that it could either amend the cleanup and abatement order adopted against Valley Wood Preserving, Inc. ordering them to allow cleanup, or use funding supplied by petitioners to do

the necessary work itself under Water Code Section 13304(b). Obviously, this would be one method of dealing with the so-called "trespass" issue. However, we do not feel that the Regional Board need expend additional time and effort to take such action.

Petitioners' argument that the Regional Board is requiring the Logsdons to "trespass on the property of others" appears to us to be disingenuous. We note that Harold Logsdon is now, and has been since 1973, the President of Valley Wood Preserving. The record before the Regional Board reflects this exchange between Mr. Cronin, counsel for petitioners and staff (A. Vorster):

> "Q: [Mr. Cronin] Well, you know yourself since 1980 when Shurtliff left the company had no employees, did they?
>
> "A: [A. Vorster] I don't know.
>
> "Q: And he was the only man in the corporation you could address it to." (See Transcript, 4:20 Hearing, 1/19/83, p. 19.)

Petitioner thus seems to be implying that he would keep himself off of the property that he has every right to be on. Petitioners have submitted no authority for the proposition that Valley Wood Preserving could bar them from the property. In any event, we do not agree that the entry of petitioners onto the Valley Wood Preserving site to effect groundwater cleanup would be conduct which constitutes a "trespass". For example, 59 Cal.Jur.3d "Trespass to Realty" Section 4 indicates that: "And necessity may justify conduct which would otherwise constitute a trespass as where an entry onto another person's lands is prompted by the motive of preserving life or property...."

And further, 58 Am.Jur.2d "Nuisances" Section 211 indicates that a person "may enter upon the land or premises of another for the purpose of abating the nuisance if he can do so in a peaceable manner".[7]

California Civil Code Section 3495 provides "[a]ny person may abate a public nuisance which is specially injurious to him by removing, or, if necessary, destroying the thing which constitutes the same, without committing a breach of the peace or doing unnecessary injury".

All of this together indicates to us that Valley Wood Preserving would not be able to bring successfully a trespass action against its own President for abating a condition of pollution as ordered by the Regional Board.

III. CONCLUSIONS

1. There exists at the Valley Wood Preserving site a significant pollution of groundwater by chromium.

2. The Regional Board acted properly in revising and ratifying a cleanup and abatement order against Harold and Joyce Logsdon. The record supports the findings that the Logsdons owned the property up until August 1980.

3. During the period in which the Logsdons both owned and leased the property to Valley Wood Preserving, they had a responsibility to assure that discharges of waste into state waters did not occur.

4. The statute of limitations does not bar the Regional Board action.

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[7] Finally, we note that even if a transferor of land and creator of a nuisance was unable to go lawfully on the land to abate, this is held not to relieve him of liability. 58 Am.Jur.2d "Nuisances" Section 50.

5. The cleanup and abatement order does not contain findings supported solely by inadmissable hearsay.

6. The Regional Board may properly order petitioners to cleanup a site they no longer own.

IV. ORDER

The petition and request for stay are hereby dismissed.

V. CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 19, 1984.

Aye:

Carole A. Onorato
Warren D. Noteware
Kenneth W. Willis
Darlene E. Ruiz

No:

Absent:

Abstain:

for Walter G. Pettit
Michael A. Campos
Executive Director