

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petitions of )  
Lloyd Walker, Walker & Sons Custom )  
Chrome, Inc. and Clifford R. Conroy )  
for Review of March 11, 1980 )  
Cleanup and Abatement Order of the )  
California Regional Water Quality )  
Control Board, Central Valley )  
Region. Our File No. A-270. )  
)

Order No. WQ 80-12

BY THE BOARD:

On May 17, 1979, the California Regional Water Quality Control Board, Central Valley Region (Regional Board), through action of its Executive Officer, issued a Cleanup and Abatement Order to Lloyd Walker, Walker & Sons Custom Chrome, Inc. and Clifford R. Conroy (petitioners). On June 14, 1979, the State Board received a petition for review of this Order.

Prior to our review of this Order, it was rescinded by the Regional Board on March 11, 1980. A new Cleanup and Abatement Order was issued on that date. Subsequently, petitions for review of this new Order were received from petitioners Walker on April 10, 1980, and from Conroy on April 30, 1980. These petitions have been consolidated for purposes of our review. It should be noted that the Conroy petition was not filed within the jurisdictional deadline of Water Code Section 13320. However, because it raises issues similar to those in the Walker petition, it will be reviewed on our own motion.

Background

A commercial metal electroplating business operated from approximately June, 1965 until May 1, 1979 at 172 Commercial Avenue in Chico, California. During this time there was a discharge of some 500 to 1,000 gallons per day of rinse water from the plating process to a trench-leachfield system located on the premises. This disposal system consisted of two gravel-filled trenches. The trenches were 5-6 feet deep, 3-4 feet wide, and 130 feet in length. At the end of the lines was a pit, 10 feet deep and 6 feet in diameter.

Petitioner Clifford R. Conroy was the original owner and operator of the business. The business site was leased to Mr. George E. Boutcher sometime in 1976. Mr. Boutcher operated the business for only a short time and in May 1977 the business site was leased to petitioner Lloyd Walker. Mr. Walker operated the business as Walker & Sons Custom Chrome, Inc., until the business ceased operation May 1, 1979. The site was sold to Thomas Kennedy in the summer of 1979. According to the Regional Board staff, Mr. Kennedy knew of the cleanup and abatement order and indicated that the previous owner had agreed to perform any required cleanup and abatement work.

The property on which the discharge occurred is located in a light industrial district. The ground in the area consists of alluvial deposits from the Sacramento River. These deposits consist of generally porous materials. Groundwater levels vary from 20 feet to 50 feet below ground surface. Groundwater use

is primarily domestic and agricultural, with some industrial uses. The terrain is generally flat, with drainage to the west towards the Sacramento River. There are at least two domestic wells in the vicinity. For example, the company supplying domestic water to the City of Chico has a well approximately 800 feet from the shop site. In addition, the City is expected to continue development in the direction of the business site. Such movement may lead to additional domestic wells in the area. The plating shop had its own well on the premises.

In 1970 the Regional Board issued waste discharge requirements to Mr. Conroy. The major water quality concerns associated with the discharge were the heavy metals contained in the rinse water. The original requirements permitted the discharge but contained the following limitations:

1. The discharge shall not cause a pollution of ground or surface waters.
2. Neither the treatment nor the discharge shall cause a nuisance.
3. The discharge shall not contain more than 0.05 mg/l chromium (hexavalent) and in no event shall it cause an increase in the chromium content of the underlying groundwater.
4. The discharge shall not directly enter surface waters or surface water drainage courses.

Between 1970 and 1977, monitoring reports were made by petitioners and periodic checks of the discharge were made by

Regional Board staff. These reports and inspections indicated a problem with heavy metal concentrations in the rinse water. On February 25, 1977, new requirements were issued which restricted the discharge of heavy metals in the rinse water to specified amounts and prohibited the discharge of rinse water to groundwater effective June 1, 1977. The new requirements were as follows:

A. Discharge Prohibitions

1. The discharge of waste rinse water containing in excess of the following limits to percolation systems is prohibited until June 1, 1977:

<u>Constituent</u>	<u>Unit</u>	<u>Maximum</u>
Chromium (Total)	mg/l	0.05
Copper	mg/l	1.0
Cyanide (CN-)	mg/l	0.01
Nickel	mg/l	1.0
Lead	mg/l	0.05

2. Effective June 1, 1977, the discharge of rinse water to groundwater, surface water, or surface water drainage courses is prohibited.

B. Discharge Prohibitions

1. The discharge shall not cause a pollution or nuisance as defined by the California Water Code.

2. The discharge shall not cause degradation of any water supply.
3. The discharge shall remain within the designated disposal area at all times.
4. Effective June 1, 1977, the mean, daily, dry weather, rinse water discharge shall not exceed 1,000 gallons (3,785 liters).
5. The discharge shall not have a pH less than 6.5 nor greater than 8.5.
6. The discharge shall not cause concentrations of any material in ground or surface waters which are deleterious to human, plant, animal, or aquatic life.

Mr. Walker, who operated the business beginning in May 1977, claims that he was unaware of the discharge requirements until advised by Regional Board staff in June 1978. From that time on, samples and analyses indicated that the discharge was in violation of requirements. Eventually the business was closed down voluntarily on May 1, 1979. Mr. Walker at that time indicated that compliance with the requirements was economically unfeasible.

Subsequent to the cessation of operations, the Regional Board staff took samples of the soil adjacent to the leachfield and of well water in the vicinity. The Regional Board's Executive Officer, finding that the years of discharge of electroplating rinse water had contaminated the soil around the leachfield, may have polluted the groundwater and presently threatens such

pollution, issued a Cleanup and Abatement Order on May 17, 1979. Evidence utilized by the Regional Board to support the May 17, 1979 Order included the documented violations of requirements and results of soil and water samples taken by the Regional Board staff on April 23, 1979.

While the results of these samples appear to support the findings contained in the original cleanup and abatement order, soil samples taken by the Regional Board subsequent to issuance of the Order are not consistent with the April 23, 1979 test results. There were several possible explanations for this difference in test results:

1. The results of one of the samples are incorrect;
2. The second sample missed the leachfield area; or
3. The contaminated area is localized.

Given the difference in the test results, the Regional Board conducted further testing in an attempt to resolve this evidentiary conflict. This testing was performed on January 10, 1980. Soil samples were taken at various locations under and adjacent to the leachline. The Regional Board's Executive Officer thereafter issued a new Cleanup and Abatement Order on March 11, 1980. The Executive Officer's action was equivalent to action by the Regional Board itself.<sup>1/</sup>

The Cleanup and Abatement Order (Order) requires the petitioners to take the following action:

1. Under the direction of a California Registered Civil Engineer or Certified Engineering Geologist:

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<sup>1/</sup> Water Code Section 13223.

- a. Propose construction, location and sampling program for a shallow ground water monitoring well. Submit proposal for approval by the Executive Officer by April 7, 1980. Report results of sampling program to the Executive Officer by April 30, 1980. If the Executive Officer concludes there is no present indication of waste metals in the ground water, recommend mitigative measures, including a time schedule to assure that metals do not enter ground water in the long term. Recommend a future ground water monitoring program. After approval by the Executive Officer of the recommendations, proceed to d. If the Executive Officer concludes waste metals are indicated, proceed to b, c, and d.
- b. Develop and submit for approval by the Executive Officer a program and time schedule to test soils around the leachfield to determine the extent of metal deposits and the degree of threat to ground water.
- c. Submit a written report to the Executive Officer for his approval describing the results, and interpretation of soil and analysis required in b. The report shall also recommend whether any

mitigative soil or ground water work is required (with an appropriate time schedule).

- d. Perform required mitigative work and ground water monitoring.

The Cleanup and Abatement Order of March 11, 1980 is the subject of the petitions. Petitioners ask that all provisions of the Order be rescinded or, in the alternative, that further evidence be required to determine the reasonableness and validity of the Order. Since petitioners' contentions are similar, they will be consolidated for discussion purposes.

#### Contentions and Findings

1. Contention: Several of petitioners' arguments can be categorized as a threshold attack on the validity of using a Cleanup and Abatement Order in this particular instance. These arguments include the fact that prior orders issued by the Regional Board permitted the discharge of rinse water, the fact that the business had operated prior to the adoption of the Porter-Cologne Act, and the fact that the cost of complying with the Order had not been considered.

#### Findings:

- a. In General

Water Code Section 13304 authorizes the issuance of a Cleanup and Abatement Order to a person who has discharged waste in violation of requirements or who



has intentionally or negligently "caused or permitted" a discharge or deposit which in turn caused or threatens to cause a condition of pollution or nuisance.

b. Issuance of Prior Orders

The fact that petitioners had been issued requirements which permitted a discharge of rinse water does not insulate them from a subsequent Cleanup and Abatement Order. While the requirements permitted a discharge, there were limitations placed on such discharge. The record indicates that, at least as early as 1974, there was evidence of violations of requirements. Additional violations are documented in the record. Furthermore, even an absence of evidence of violations would not preclude the issuance of a Cleanup and Abatement Order where other applicable criteria of Water Code Section 13304 are met.

Where it can be shown that requirements are violated, issuance of a Cleanup and Abatement Order is clearly authorized. Thus, petitioners' contention on this issue must be rejected.

c. Operation of Business Prior to Passage of Porter-Cologne Act

Statutory authority for issuance of a Cleanup and Abatement Order is contained in the Porter-Cologne Act. (Water Code Section 13304.) The Porter-Cologne Act became effective January 1, 1970. Absent specific language to the contrary, a statute is generally given only prospective application. As Section 13304 does not contain express language providing for retroactive effect, a Cleanup and Abatement Order can only apply to post-1970 discharges or to present effects of pre-1970 discharges. Although the petitioners may have actually discharged waste prior to 1970, the potential and actual consequences of such discharge may be present today. The Regional Board has jurisdiction to order the cleanup and abatement of such post-1970 effects. (A similar conclusion was reached in Order No. 74-13.)

Cost Factor

The consideration of economic factors is not specifically required prior to the adoption of any enforcement action by the Regional Board. Notwithstanding this fact, the record indicates that economic considerations were before the Executive Officer and that it was clear the costs of compliance would be substantial. In fact, a review of the order clearly indicates costs were considered. For example, much of the remedial action

proposed need only be performed if the required sampling program indicates the presence of waste metals in the groundwater. Petitioner Walker further contends that the cost of compliance is overly-burdensome on him because he only operated the site for slightly more than 1 1/2 years of a total operation of 14 years. Since it is clear from the record that petitioner Walker contributed to the problem through violation of requirements, he is properly named in the Cleanup and Abatement Order. In a situation where several dischargers have caused a water quality problems, a Regional Board need not attempt to apportion the blame or focus on a particular discharger when ordering cleanup efforts.<sup>2/</sup>

2. Contention: Petitioners contend that there is not sufficient evidence to support findings of pollution, probability of future discharge of metals to groundwaters, or the threat of future discharge of metals to groundwater through rain or future use of the premises.

Finding: As was indicated earlier, Section 13304 authorizes issuance of a Cleanup and Abatement Order whenever waste has been discharged in violation of requirements without regard to whether the discharge has caused pollution or nuisance. This particular Cleanup and Abatement Order was based on certain

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<sup>2/</sup> Such a conclusion is consistent with the general rule of law, that where the actions of several persons lead to an injury, such persons may be held jointly liable for such injury (Cal. Jur. 2d, Torts Section 8).

findings. Included were the findings that the discharges were in violation of requirements and have resulted in metal deposits in the soil around the leachlines which probably will be discharged to groundwater. While these findings would support a Cleanup and Abatement Order, the critical issue in this petition is whether the evidence in the record supports the findings. We find that it does.

Evidence utilized by the Regional Board included the results of soil and water samples taken by the Regional Board staff on April 23, 1979. The results of this sample are as follows:

	<u>Chromium</u>	<u>Copper</u>	<u>Zinc</u>	<u>Nickel</u>	<u>Cyanide</u>
Domestic Well (Total Metals-mg/l)	0.10	0.00	0.24	0.0	
Soil Sample (Available Metals-mg/kg)	36	1000	7200	4400	0.8

Drinking Water Standards - Public Health - Title 17 are as follows:

Arsenic	0.10 mg/l
Cadmium	0.01 mg/l
Chromium	0.05 mg/l
Cyanide	0.02 mg/l
Copper	1.0 mg/l
Zinc	5.0 mg/l

Additional evidence includes the results of the more comprehensive soil testing performed by the Regional Board on January 10, 1980. The results of these samples are as follows:

<u>SAMPLE</u>	<u>Soil #1</u>	<u>Soil #2</u>	<u>Soil #3</u>	<u>Soil #4</u>	<u>Soil #5</u>
I.D.#	80-0138	80-0139	80-0140	80-0141	80-0142
<u>ANALYSIS</u>					
Tot. Chromium, ppm	273	105	16	8.8	7.2
Avail. Chromium, ppm	--	3.70	0.05	--	--
Hexavalent Chromium, ppm	72	18	3.5	<0.05	<0.05
Tot. Copper, ppm	1610	680	105	51	12
Avail. Copper, ppm	--	20.0	0.35	--	--
Tot. Zinc, ppm	680	1420	2040	564	564
Avail. Cyanide, ppm	--	33.1	1.95	--	--
Tot. Cyanide, ppm	0.76	0.09	0.02	0.03	<0.01
Conductance (1:5) unho/cm	1300	250	200	160	140
pH	5.8	6.5	7.5	7.4	8.1

<u>SAMPLE</u>	<u>Soil #6</u>	<u>Soil #7</u>	<u>Soil #8</u>	<u>Soil #9</u>	<u>Soil #10</u>	<u>WATER Cir. K Htg. Chico</u>
I.D.#	80-0143	80-0144	80-0145	80-0146	80-0147	80-0148
<u>ANALYSIS</u>						
Tot. Chromium, ppm	67	30	8.4	560	4.8	< 0.005
Avail. Chromium, ppm	--	--	--	--	--	--
Hexavalent Chromium, ppm	11.2	0.24	< 0.05	464	< 0.05	< 0.002
Tot. Copper, ppm	350	208	37	130	6.9	0.01
Avail. Copper, ppm	--	--	--	--	--	--
Tot. Zinc, ppm	864	1210	184	8.9	7.2	0.476
Avail. Zinc, ppm	--	--	--	--	--	--
Tot. Nickel, ppm	824	1040	258	85	18	0.012
Avail. Cyanide, ppm	--	--	--	--	--	--
Tot. Cyanide, ppm	0.18	0.04	< 0.01	12.01	< 0.01	< 0.002*
Conductance (1:5) ppm	200	200	190	110	29	--
pH	6.4	7.3	7.3	3.7	8.1	--

\*NOTE: Sample was acidified before arrival at laboratory -- possible loss due to volatization.

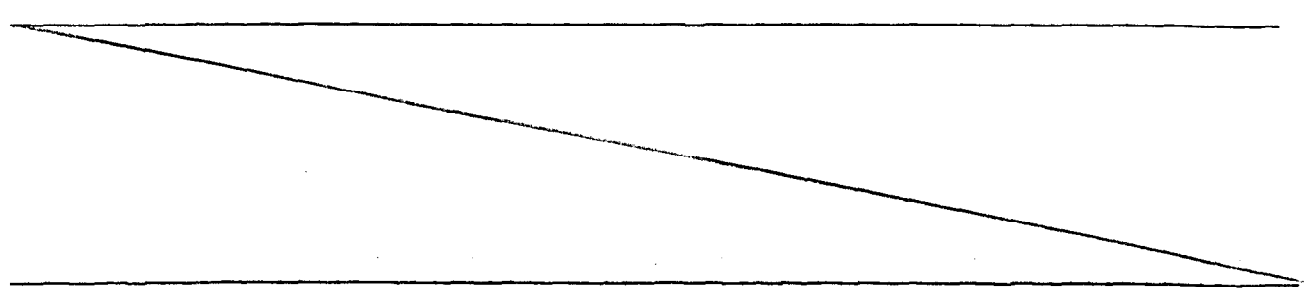
These samples corroborate the documented violations of requirements. Additionally, the amounts of metals shown to be deposited in the soil around the leachline appear sufficient to cause a pollution problem should these metals be discharged to groundwater. Since the soils in the area appear permeable the Regional Board was justified in finding that such metals could be so discharged. Given these factors, we conclude that the Regional Board had adequate grounds to issue a Cleanup and Abatement Order.

3. Contention: Petitioner Walker contends that any condition of a pollution or nuisance that might properly be the subject of a Cleanup and Abatement Order can and should be attributable to prior users.

Finding: As discussed above, a Regional Board need not determine which dischargers to name in a Cleanup and Abatement Order where it is clear that several dischargers, through violations of their requirements, have caused a water quality problem.

#### Conclusions

After review of the record, and for the reasons expressed in this Order, we conclude that the evidence before the Regional Board was adequate to support issuance of a Cleanup and Abatement Order.



Order

IT IS HEREBY ORDERED that the March 11, 1930 Cleanup and Abatement Order is appropriate and proper and that these petitions for review are therefore dismissed.

DATED:

6-19-80

ABSENT

Carla H. Bard, Chairwoman

/s/William J. Miller

William J. Miller, Vice-Chairman

/s/L. L. Mitchell

L. L. Mitchell, Member

/s/Jill B. Dunlap

Jill B. Dunlap, Member

/s/F. K. Aljibury

F. K. Aljibury, Member