

## Cost Recovery for Contamination To Groundwater

June 16, 2004

Hatch & Parent's Environmental Quality Group is monitoring an important court case that may affect municipalities throughout California.

In the underlying case, *City of Modesto Redevelopment Agency v. Superior Court*, the City of Modesto and the Redevelopment Agency (RDA) sued dry cleaning operators for contamination to groundwater, along with the suppliers of the dry cleaning equipment, those that supplied the chemicals and others as well.

The Court found that there is nothing that precludes a finding of possible responsibility under nuisance or negligence per se (negligent violation of a statute), whether under the Polanco Act - which allows Redevelopment Districts wide ranging powers to address contamination - or not, as long as those defendants did more than merely supply the product. That is, they have had to have said or done something that caused or permitted the release of the contaminants into the groundwater to take place.

The Court stated:

1       The Polanco Act allows a local agency to recover the costs of cleaning up hazardous substances from parties that did not directly discharge wastes, control the site of the discharge, or have authority to prevent the discharge of those substances (such as chemical suppliers, machine manufacturers, etc.) where that third party's actions or inactions "causes or permits" the discharge/release of hazardous substances to occur.

2       That the concept of negligence per se as applied by use of specific provisions of the Water Code, Health & Safety Code and Fish & Game Code also allows the same avenues of recovery as noted above in discussing Polanco.

This means that the nuisance and negligence per se claims are not limited necessarily to the owner and/or operator of the facility. Equipment suppliers, chemical suppliers, building contractors may also be liable. This can be an especially powerful tool if the site no longer has owners or operators who can be made part of a suit, or where the owners and/or operators do not have the financial means to respond adequately.

If you would like more information on cost recovery for contamination of groundwater, please feel free to contact me at (310) 440-5081 or email at [SHoch@HatchParent.com](mailto:SHoch@HatchParent.com).