

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

CITY OF WEST SACRAMENTO,
CALIFORNIA; and PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiffs,

v.

R AND L BUSINESS MANAGEMENT, a
California corporation, f/k/a
STOCKTON PLATING, INC., d/b/a
CAPITOL PLATING INC., a/k/a
CAPITOL PLATING, a/k/a CAPITAL
PLATING; CAPITOL PLATING, INC.,
a dissolved California
corporation; et al.,

Defendants.

No. 2:18-cv-00900 WBS EFB

AMENDED MEMORANDUM AND ORDER
RE: PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT ON THEIR
CLAIMS UNDER THE GATTO ACT
AND THE HSAA

-----oo0oo-----

Plaintiffs City of West Sacramento, California and the
People of the State of California (collectively, "plaintiffs")
brought this action to address toxic levels of soil and
groundwater contamination resulting from the release of hazardous
substances from a metal plating facility formerly located at 319

1 3rd Street, West Sacramento, California (the "Site").

2 The court has previously granted summary judgment for
3 plaintiffs on the issue of liability on their claim under the
4 Comprehensive Environmental Response, Compensation, and Liability
5 Act ("CERCLA"), 42 U.S.C. § 9607(a), against defendants R and L
6 Business Management ("R&L"), John Clark, and the Estate of Nick
7 E. Smith (collectively, "defendants"). (Order at 10 (Docket No.
8 125).) The court has also found that triable issues of material
9 fact remain as to plaintiffs' claims under the Resource
10 Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 7002(a),
11 California public nuisance law, and the Porter-Cologne Water
12 Quality Control Act, Cal. Water Code § 13304(c). (See id. at 14-
13 16; Docket No. 211.) Additionally, after an evidentiary hearing
14 the court has determined that defendants' contribution to the
15 pollution at the Site is not divisible from the total
16 contamination present at the Site under CERCLA. (See Mem. and
17 Order re: Defendants' Divisibility Defense ("Divisibility Order")
18 (Docket No. 203).) The facts and procedural background of the
19 case have been discussed fully in these prior Orders, and will
20 not be repeated here. (See Docket Nos. 125, 203, 211.)

21 The remaining motion before the court is plaintiffs'
22 motion for partial summary judgment on their Carpenter-Presley-
23 Tanner Hazardous Substance Account Act ("HSAA") claim, Cal.
24 Health & Safety Code §§ 25363(d), and on their claim under the
25 Gatto Act, Cal. Health & Safety Code §§ 25403.1, 25403.5 and.
26 (See Pls.' Mot. Partial Summ. J. ("Pls.' Mot.") (Docket No.
27 204).) On their Gatto Act claim, the City requests a permanent
28 injunction requiring defendants to investigate and clean up

1 releases of hazardous materials at the Site. (See id. at 32-35.)

2 II. Discussion

3 A. HSAA

4 The HSAA allows any “person who has incurred response
5 or corrective action costs in accordance with [CERCLA to] seek
6 contribution or indemnity from any person who is liable pursuant
7 to [the HSAA].” Cal. Health and Safety Code § 25363(d). For the
8 purposes of the HSAA, a “‘responsible party’ or ‘liable person,’
9 . . . means those persons described in section 107(a) of
10 [CERCLA].” Id. § 25323(a)(1). Thus, a cost recovery claim under
11 the HSAA has the same elements as a cost recovery claim under
12 CERCLA. Orange Cty. Water Dist. v. Alcoa Glob. Fasteners, Inc.,
13 12 Cal. App. 5th 252, 297 (2017); Castaic Lake Water Agency v.
14 Whittaker Corp., 272 F. Supp. 2d 1053, 1084 n.40 (C.D. Cal. 2003)
15 (“HSAA creates a scheme that is identical to CERCLA with respect
16 to who is liable.”).

17 Because the court has already found defendants to be
18 liable under CERCLA § 107 (see Docket No. 125), defendants do not
19 dispute that plaintiffs have satisfied the elements of liability
20 on their claim under the HSAA. (See Defs.’ Opp’n at 2.)
21 Accordingly, plaintiffs’ motion summary judgment on the issue of
22 liability under the HSAA will be granted. Damages have yet to be
23 determined, and plaintiffs do not seek summary judgment on the
24 amount of damages at this time.

25 B. The Gatto Act

26 The Gatto Act authorizes California “local agencies,”
27 including cities and counties, to investigate and clean up
28 properties within their jurisdiction that have been contaminated

1 by hazardous materials and to recover the costs of investigation
2 and cleanup from responsible parties. See Cal. Health & Safety
3 Code §§ 25403.1, 25403.5. Section 25403.1 provides local
4 agencies with investigatory and cleanup authority, subject to
5 certain procedural requirements:

6 A local agency may, in accordance with this
7 chapter, take any action that the local
8 agency determines is necessary and that is
9 consistent with other state and federal laws
10 to investigate and clean up a release on,
11 under, or from blighted property that the
12 local agency has found to be within a
blighted area within the local agency's
boundaries due to the presence of hazardous
materials following a Phase I or Phase II
environmental assessment

13 Cal. Health & Safety Code § 25403.1(a)(1)(A).

14 This section applies "whether the local agency owns
15 that property or not." Id. In other words, without the need for
16 a court order a local agency may enter blighted property that it
17 does not own to investigate and clean up the property so long as
18 (1) the agency provides the owner of the property with 60 days'
19 notice to respond and to propose an investigation and/or cleanup
20 plan, and (2) the owner fails to respond or provides an
21 inadequate response. See id. §§ 25403.1(a)(1)(A),
22 25403.1(b)(2)(A).

23 Section 25403.5 further allows local agencies to
24 recover the costs they incur during the investigation and cleanup
25 of a site. See id. § 25403.5. "[I]f a local agency undertakes
26 action to investigate property or clean up, or to require others
27 to investigate or clean up, including compelling a responsible
28 party through a civil injunctive action, a release of hazardous

1 material, the responsible party shall be liable to the local
2 agency for the costs incurred in the action.” Id. Like the
3 HSAA, a “responsible party” for the purposes of the Gatto Act is
4 anyone who qualifies as a responsible party under CERCLA
5 § 107(a). See id. §§ 25403.5(a), 25403(s), 25323.5(a)(1).

6 Defendants again concede that they are responsible
7 parties under the Gatto Act § 25403.5 because the court has
8 already found them to be liable under CERCLA §107(a). (See
9 Defs.’ Opp’n at 2; Docket No. 125.) Defendants also do not
10 dispute that the City has fulfilled the remaining Gatto Act
11 requirements set out in section 25403.1--namely, (1) that
12 “releases” have occurred on the Site, (2) that the City has
13 determined the Site to be a “blighted property” within a
14 “blighted area” within the City’s boundaries due to the release
15 of hazardous materials, (3) that the City’s determination
16 followed Phase I and Phase II environmental assessments of the
17 Site, and (4) that the City provided defendants with requisite
18 notice to respond and to propose an investigation and/or cleanup
19 plan. See id. § 25403.1(a)(1)(A).

20 Therefore, as the court reads the Gatto Act, the City
21 is entitled to enter the Site and take the necessary action to
22 clean up the contamination. No order of this court is required
23 for the City to do so. However, the City asks the court to go
24 further and to order defendants to do the investigation and
25 cleanup themselves. Considering the present posture of this
26 case, the court determines that such an order would be premature
27 and impractical at this time.

28 District courts have broad discretion “to manage their

1 own affairs so as to achieve the orderly expeditious disposition
2 of cases.” Dietz v. Bouldin, 136 S. Ct. 1885, 1891 (2016)
3 (quoting Link v. Wabash R. Co., 370 U.S. 626, 630-31 (1962)); see
4 also Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th
5 Cir. 2002). Though the court has already found defendants to be
6 liable under plaintiffs’ CERCLA claim (see Docket No. 125) and
7 this Order finds them to be liable under plaintiffs’ HSAA claim,
8 several of plaintiffs’ claims remain outstanding, including their
9 claims under RCRA, the Porter-Cologne Water Quality Control Act,
10 California public nuisance law, California trespass law, and for
11 declaratory relief. (See Third Am. Compl. (“TAC”) (Docket No.
12 45); Docket Nos. 125, 203, 211.) For the reasons that follow,
13 the court finds that deferring its determination as to whether
14 the City is entitled to permanent injunctive relief under the
15 Gatto Act until final resolution of those remaining claims will
16 aid in the orderly and expeditious disposition of the case. See
17 Dietz, 136 S. Ct. at 1087.

18 Several of plaintiffs’ other outstanding claims also
19 seek some form of permanent injunctive relief requiring
20 defendants to investigate and clean up the Site. (See TAC ¶ 85
21 (“The City is entitled to injunctive relief under RCRA § 7002(a),
22 42 U.S.C. § 6972(a), compelling each defendant jointly and
23 severally to conduct a complete, timely, and appropriate
24 investigation and abatement of all actual and potential
25 endangerments arising from the presence of the Contaminants in
26 the environment at the Site, and to obtain regulatory closure of
27 the Site.”); id. ¶ 144 (“Plaintiffs are entitled to injunctive
28 relief compelling defendants jointly and severally, promptly and

1 competently to take such action as may be necessary to abate the
2 public nuisance at the Site and to obtain regulatory closure of
3 the Site.”); id. ¶ 157 (“The City is entitled to injunctive
4 relief compelling the defendants jointly and severally, promptly
5 and competently to take such action as may be necessary to abate
6 the trespass”).)

7 Because injunctive relief “must be narrowly tailored to
8 remedy the specific harm shown,” City and Cty. of San Francisco
9 v. Trump, 897 F.3d 1225, 1244 (9th Cir. 2018) (quoting Bresgal v.
10 Brock, 843 F.2d 1163, 1170-71 (9th Cir. 1987)), the precise
11 nature and extent of injunctive relief to which plaintiffs are
12 entitled will depend on which, if any, of those claims are
13 successful.¹

14 For example, RCRA § 7002(a) authorizes an injunction
15 where a plaintiff can successfully show that a defendant was a
16 past or present generator of hazardous waste, contributed to the
17 handling, storage, treatment, or disposal of hazardous waste, and
18 that the hazardous waste “may present an imminent and substantial
19 endangerment to health or the environment.” See 42 U.S.C. §
20 6792(a); Meghrig v. KFC W., Inc., 516 U.S. 479, 484 (1996);
21 LAJIM, LLC v. Gen. Elec. Co., 917 F.3d 933, 943 (7th Cir. 2019).
22 California public nuisance law also authorizes injunctive relief
23 to abate a nuisance--i.e., something that is “injurious to
24 health” or “offensive to the senses”--where a plaintiff can show
25 that a defendant was a substantial factor in causing the
26

27 ¹ The court expresses no opinion in this Order as to the
28 merits of any of plaintiffs’ claims beyond their Gatto Act and
HSAA claims.

1 nuisance, that the nuisance is "substantial and unreasonable,"
2 and that the nuisance affects an entire community or neighborhood
3 at the same time. See Cty. of Santa Clara v. Atl. Richfield Co.,
4 137 Cal. App. 4th 292, 306 (2006); Cal. Code Civ. P. § 731.

5 Thus, if defendants are found to be liable under RCRA
6 § 7002(a), and the court finds that injunctive relief is
7 warranted, the court will have to shape any injunctive relief to
8 account for the "imminent and substantial endangerment" that the
9 hazardous waste at the Site poses to health or the environment.
10 See 42 U.S.C. § 6792(a); San Francisco, 897 F.3d at 1244. But if
11 defendants are also found to be liable under public nuisance law,
12 the injunction may take a different form, as the court will have
13 to ensure that the Site is remedied to the point that conditions
14 there are no longer "substantial and unreasonable" or "injurious
15 to health or offensive to the senses." Santa Clara, 137 Cal.
16 App. 4th at 306.

17 Because plaintiffs' remaining claims have the potential
18 to alter the scope and extent of any eventual injunctive relief
19 in this way, the court finds that, regardless of whether the City
20 is entitled to an injunction under the Gatto Act,² issuing a

21 ² Whether the Gatto Act authorizes suits for injunctive
22 relief is not entirely clear. Section 25323.5 of the Act
23 contemplates that, in instances where a local agency "undertakes
24 action to investigate property or clean up, or to require others
25 to investigate or clean up, including compelling a responsible
26 party through a civil injunctive action, a release of hazardous
27 material, the responsible party shall be liable to the local
28 agency for the costs incurred in the action." See Cal. Health &
Safety Code §§ 25323.5(a). One California Court of Appeals has
held that similar language contained in the Polanco Redevelopment
Act, when read in concert with language authorizing redevelopment
agencies to take "any action" necessary to remove hazardous
substances from properties within a redevelopment project area,

1 permanent injunction prior to final judgment would be premature.
2 Cf. Lincoln Props., Ltd. v. Higgins, No. S-91-760 DFL GGH, 1993
3 WL 217429 at *16 (E.D. Cal. Jan. 21, 1993) (stating that,
4 although plaintiff was entitled to injunctive relief under RCRA
5 and public nuisance law at summary judgment stage, "[t]he precise
6 nature and scope of injunctive relief shall be determined, and
7 the injunction shall issue, at a later date").

8 Moreover, issuing permanent injunctive relief at this
9

10 authorized redevelopment agencies to seek injunctive relief
11 requiring responsible parties to clean up hazardous substances on
12 property within a redevelopment project area. See Redev. Agency
13 of San Diego v. San Diego Gas & Elec. Co., 111 Cal. App. 4th 912,
14 920 (2003). This interpretation may also apply to the language in
15 the Gatto Act, inasmuch as the California Legislature has declared
16 the Gatto Act to be the "policy successor to the Polanco
17 Redevelopment Act" and "that any judicial construction or
18 interpretation of the Polanco Redevelopment Act also apply to [the
19 Gatto Act]." Cal. Health & Safety Code § 25403.8.

20 On the other hand, plaintiffs do not point to, and the
21 court is not aware of, any case in which a local agency has
22 obtained an injunction under the Gatto Act compelling a
23 responsible party to investigate or clean up a site contaminated
24 with hazardous materials. The Act's text and structure seem
25 overwhelmingly concerned with authorizing local agencies to
26 investigate, clean up, and recover costs for contaminated sites
27 themselves. See Cal. Health & Safety Code § 25403.1-25403.5.
28 For instance, the Act imposes a number of detailed requirements
on local agencies to ensure that their investigations and/or
cleanups receive California Department of Toxic Substances
Control ("DTSC") or the appropriate regional water board
approval. See, e.g., id. § 25403.1(a)(2)(B) (requiring that the
local agency "submit an investigation plan and cost recovery
agreement to the regional board or the department for review and
approval" before taking action to clean up the release); §
25403.1(a)(2)(C) ("After completion of the investigation plan,
have a cleanup plan prepared by a qualified independent
contractor."). These requirements would seem to be superfluous
if local agencies were simply entitled to injunctive relief
compelling responsible parties to investigate and clean up the
site instead of the agency. However, the court does not resolve
that issue at this time.

1 juncture would be inconsistent with Orders previously issued by
2 the court pertaining to plaintiffs' CERCLA § 107 claim. (See
3 Docket Nos. 125, 203). Since the court has already found
4 defendants to be jointly and severally liable for plaintiffs'
5 necessary response costs under CERCLA § 107 (see id.), this Order
6 finds that the defendants are also liable under the HSAA, and the
7 City has its remedies under the Gatto Act, the City will be
8 entitled to enter the Site, perform its own investigation and
9 cleanup, and to recover the resulting costs from defendants. See
10 42 U.S.C. § 9607(a); Cal. Health & Safety Code §§ 25363(d),
11 25403.5. Either the City should do the cleanup or the defendants
12 should; to have both of them doing it at the same time would
13 potentially lead to chaos. This potential conflict would more
14 appropriately be resolved at the time of final judgment, when the
15 precise scope of the plaintiffs' remedy under CERCLA and their
16 other claims are determined after hearing.

17 IT IS THEREFORE ORDERED that plaintiffs' motion for
18 summary judgment on the issue of liability on their claim under
19 the Carpenter-Presley-Tanner Hazardous Substance Account Act,
20 Cal. Health & Safety Code §§ 25363(d), is hereby GRANTED;

21 AND IT IS FURTHER ORDERED that plaintiffs' motion for
22 summary judgment on their claim for violation of the Gatto Act,
23 Cal. Health & Safety Code §§ 25403.1, 25403.5, is hereby DENIED.

24 Dated: December 15, 2020



25 **WILLIAM B. SHUBB**
26 **UNITED STATES DISTRICT JUDGE**
27
28