

# AFTER THE BUST: LANDOWNER'S LIABILITY WHEN THE PROPERTY IS USED FOR THE MANUFACTURE OF METHAMPHETAMINE

## INTRODUCTION

The threat of harm from the proliferation of clandestine drug manufacturing in California has become too real to ignore. Aside from the common dangers of the criminal environment, the manufacture of methamphetamine creates a risk of unprecedented harm to people and land. The Central Valley of California, known worldwide for its agriculture, is becoming notorious for the manufacture of speed or methamphetamine.<sup>1</sup> This illegal production can result in a substantial loss to the farm owner who may be legally accountable to maintain its integrity. The objectives of this paper are: to define some of the dangers involved in methamphetamine production, to explore the current law-enforcement efforts, and to recognize the liability to the rural landowner when the property is used for clandestine drug laboratory operations.

The perils of the illegal manufacture and trafficking of methamphetamine are a reality for the landowner because toxic chemicals have been found in remote agricultural land.<sup>2</sup> People involved in the manufacturing of large quantities of the drug seek the privacy that exists when neighbors are distant and reporting is unlikely. Because of the high rate of proliferation of production sites, a war against the

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<sup>1</sup> Steve Weigand, Mareva Brown, Crystal Carreon, Russell Clemings, Michael Doyle, Michael Krikorian, Ty Phillips, Marijke Rowland, and Nancy Weaver Teichert, *Special Report: A Madness Called Meth*, THE MCCLATCHY COMPANY'S CALIFORNIA NEWSPAPERS, October 8, 2000, at 10 [hereinafter *A Madness Called Meth*].

<sup>2</sup> Memorandum from Paul L. Seave, Les Weidman, and William Ruzzamenti on the Central Valley High Intensity Drug Trafficking Area Background Information, prepared for the Central Valley Methamphetamine Summit 5 (January 20, 2001) [hereinafter HIDA] (on file with San Joaquin Agricultural Law Review).

manufacture of methamphetamine is raging in Central California.<sup>3</sup> Professor Omar Saleem believes using environmental laws targeted at the wrongdoer and enforcing farm owner's duty to repair their property are effective ways to combat the problem of illegal drug proliferation.<sup>4</sup>

#### I. THE MANUFACTURE OF METHAMPHETAMINE IN CALIFORNIA

Over the past four years, California's Central Valley has become a primary source for the manufacturing, distribution, and consumption of illegal narcotics, and of methamphetamine in particular.<sup>5</sup> Many of these clandestine methamphetamine laboratories are operated by organized drug cartels based in Mexico.<sup>6</sup> Law enforcement believes the area is ideal because of the proximity to the State's chemical supply companies and interstate highways.<sup>7</sup>

The Eastern District is the second most populous district in California.<sup>8</sup> Cities like Modesto, Fresno, Stockton, and Sacramento have some of the highest crime rates in California.<sup>9</sup> The District covers eighty-seven thousand square miles and thirty-four counties from the Oregon border to the city of Bakersfield.<sup>10</sup>

The Eastern District has been identified as the highest source of methamphetamine production in all of the western states.<sup>11</sup> California's methamphetamine laboratories supply more than one quarter of the quantity consumed in the nation.<sup>12</sup> This fact has been the impetus behind designating the Central Valley as a High Intensity Drug Trafficking area (HIDTA).<sup>13</sup>

The Central Valley HIDTA covers the counties of Fresno, Kern, Kings, Madera, Merced, Sacramento, San Joaquin, Tulare, and Stanis-

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<sup>3</sup> *Id.*, 109 at 3.

<sup>4</sup> Omar Saleem, *Killing the Proverbial Two Birds With One Stone: Using Environmental Statutes And Nuisance To Combat The Crime of Illegal Drug Trafficking*, 100 DICK. L. REV.686, 693-96 (1996) [hereinafter Saleem].

<sup>5</sup> See HIDTA, *supra* note 2, at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Memorandum from Paul L Seave, United States Attorney on the critical shortage of DEA and FBI agents 1 (January 5, 2001) (on file with San Joaquin Agricultural Law Review).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

laus.<sup>14</sup> Some of the HIDTA goals include the identification of threats and the decrease of drug trafficking in these areas.<sup>15</sup> It aims to collect data that up to this point has been primarily anecdotal.<sup>16</sup> According to a local HIDTA report, a concerted effort of various law-enforcement agencies will provide a more accurate assessment of the problem.<sup>17</sup> The Central Valley has been called “ground zero” because a significant amount of drug manufacturing originates in this area.<sup>18</sup>

## II. METHAMPHETAMINE AND ITS TOXIC EFFECTS

Amphetamines belong to a group of drugs manufactured and prescribed for appetite suppression and are considered the standard for the evaluation of new drugs in this classification.<sup>19</sup> The drug may be taken orally, intra-nasally, intravenously or by smoking.<sup>20</sup> Immediately after intake, the user experiences an intense sensation described as highly pleasurable.<sup>21</sup> The psychological effects of methamphetamine are considered analogous to those of cocaine.<sup>22</sup> Tolerance tends to develop with continuous use.<sup>23</sup> Its effects on the central nervous system include mood elevation, wakefulness, and decreased appetite.<sup>24</sup> Long term effects include anxiety, paranoia, and “amphetamine psychosis” where the user experiences suspicions, hallucinations, fatigue, and exhaustion.<sup>25</sup>

Long term drug users experience physical symptoms such as kidney damage, heart and lung disorders, malnutrition, immune deficiency, and damage to the blood vessels of the brain.<sup>26</sup>

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<sup>14</sup> See HIDTA, *supra* note 2, at 2.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.* at 6.

<sup>19</sup> AMERICAN MEDICAL ASSOCIATION, AMA DRUG EVALUATIONS 1249 (W. B. Saunders Company 5th ed. 1983) [hereinafter AMA DRUG EVALUATIONS].

<sup>20</sup> See *A Madness Called Meth*, *supra* note 1, at 3.

<sup>21</sup> *Id.*

<sup>22</sup> ALFRED GOODMAN GILMAN, LOUIS S. GOODMAN, AND ALFRED GILMAN, GOODMAN AND GILMAN'S THE PHARMACOLOGICAL BASIS OF THERAPEUTICS 554 (Macmillan Publishing Co., Inc. 6th ed. 1980) [hereinafter GOODMAN & GILMAN].

<sup>23</sup> *Id.* at 555.

<sup>24</sup> *Id.* at 554.

<sup>25</sup> GOODMAN & GILMAN, *supra* note 22 at 555; see also AMA DRUG EVALUATIONS, *supra* note 19, at 1251 (discussing the common side effects of methamphetamine use).

<sup>26</sup> GOODMAN & GILMAN, *supra* note 22 at 556; see also, *A Madness Called Meth*, *supra* note 1, at 15 (addressing the long-term effects of methamphetamine abuse).

## III. COOKING METHAMPHETAMINE IS A HIGHLY DANGEROUS ACTIVITY

Cooking methamphetamine involves a substantial risk because persons involved in this activity use a variety of dangerous and highly volatile ingredients, with virtually no safety or environmental precautions.<sup>27</sup> The first stage of the process is mixing of the pseudoephedrine tablets with flammable solvents.<sup>28</sup> “Cooking” the drug involves heating pseudoephedrine or ephedrine, red phosphorus, and hydriodic acid. This separates the pseudoephedrine molecule, producing the methamphetamine.<sup>29</sup> Overheating the compound produces a toxic phosphene gas.<sup>30</sup> Next, the heated mixture or “sludge” is cooled and strained to remove the red phosphorus from the rest of the mixture.<sup>31</sup> Caustic soda is added to the drained compound, generating a substantial amount of heat. This cooling process requires the containers to be cold and ice is often added to the solution.<sup>32</sup> A chlorofluorocarbon, such as Freon, is added to separate the mixture into several layers, one which is pure methamphetamine.<sup>33</sup> Finally, hydrogen chloride gas is “bubbled-in” to produce the finished crystals of methamphetamine chloride.<sup>34</sup>

During the manufacturing process fumes often permeate the room and its structures.<sup>35</sup> Manufacturing also generates a large amount of solid waste such as: containers, filters, gas cylinders, rubber gloves, respiratory masks, remnants of liquid solvents, and other chemicals.<sup>36</sup> The liquid waste is carelessly discarded in sinks, septic tanks, sewer, or dumped along a roadside or canal banks.<sup>37</sup>

From the law perspective, manufacturing methamphetamine is an inherently dangerous activity. It is a felony that allows application of the felony-murder rule when a homicide occurs during its manufacture.<sup>38</sup> In *People v. Messina*, the defendant was charged with possession of methylamine and phenyl-2-propanone with the intent to manufacture

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<sup>27</sup> *A Madness Called Meth*, *supra* note 1, at 5.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *A Madness Called Meth*, *supra* note 1 at 5; *see also*, *People v. James*, 62 Cal. App. 4th 244, 263 (1998).

<sup>35</sup> *A Madness Called Meth*, *supra* note 1, at 5.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *See People v. James* 62 Cal. App. 4th 244, 270-271 (1998).

methamphetamine.<sup>39</sup> The defendant ultimately entered a plea of guilty and was sentenced to state prison for a term of three years.<sup>40</sup> Information leading to his arrest was based on an informant's tip that someone was manufacturing methamphetamine.<sup>41</sup> The police officer, given his years of experience and training, was able to identify the distinctive smell of methamphetamine coming from the residence and determined that methamphetamine was being cooked.<sup>42</sup> The officer called the Fire Department for assistance and entered the premises without a search warrant.<sup>43</sup> The court held that given the characteristic odor of the chemicals commonly used for the manufacture of methamphetamine, exigent circumstances existed for the warrantless search of the premises.<sup>44</sup>

The California Supreme Court in *People v. Burroughs*, defined a felony inherently dangerous as one that "by its very nature, . . . cannot be committed without creating a substantial risk that someone will be killed. . . ."<sup>45</sup> The court in *James* followed the definition in *Burroughs* holding that cooking methamphetamine was an inherently dangerous activity.<sup>46</sup> James, the defendant, was cooking methamphetamine in her kitchen using highly volatile chemicals.<sup>47</sup> During the manufacturing, an explosion led to a fire that destroyed her mobile home and killed three of her children.<sup>48</sup> James supported her household by manufacturing one batch of methamphetamine a week.<sup>49</sup> The court held the act of cooking methamphetamine furnished the requisite malice to convict her of second degree murder.<sup>50</sup> Malice is implied when a homicide occurs during the manufacture of methamphetamine, and ignorance of such dangers by the defendant are irrelevant.<sup>51</sup>

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<sup>39</sup> *People v. Messina*, 165 Cal. App. 3d 937, 939 (1985).

<sup>40</sup> *Id.* at 940.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 941.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 945.

<sup>45</sup> *People v. Burroughs*, 35 Cal. 3d 824, 833 (1984).

<sup>46</sup> *See People v. James*, 62 Cal. App. 4th 244, 276 (1998).

<sup>47</sup> *Id.* at 251 (the defendant was using "Coleman" fuel, a petroleum distillate and mixing it with acetone a highly flammable combination).

<sup>48</sup> *Id.* at 250.

<sup>49</sup> *Id.* at 250-251.

<sup>50</sup> *Id.* at 250.

<sup>51</sup> *Id.* at 257-258.

## IV. THE ECONOMICS OF METHAMPHETAMINE

Setting aside illegality and dangerousness, methamphetamine is inexpensive to make and profitable. A pound of methamphetamine costs around three thousand dollars to manufacture and yields a street price of five to six thousand dollars.<sup>52</sup> Between January, 2000 and December 1, 2000, seventy-eight methamphetamine clandestine drug laboratories (CDL) were seized in the Central Valley.<sup>53</sup> Fifty-four of these were considered "super-labs."<sup>54</sup> The term super-lab is used when the CDL can yield over twenty pounds per cooking cycle.<sup>55</sup>

In Central California, these "super-labs" are sophisticated, concealed, and heavily guarded.<sup>56</sup> They can produce two hundred pounds of pure methamphetamine per cooking cycle making it a multi-million dollar business.<sup>57</sup> CDL's can exist anywhere.<sup>58</sup> However, due to the unpleasant odor in the manufacturing process, these high-yield CDL's are mostly found in rural areas, including agricultural farms.<sup>59</sup> In remote areas, the toxic chemicals can be easily discarded.<sup>60</sup> The California Department of Toxic Substance Control estimated that nine HIDTA Counties accounted for 28.12% of the total state clean-up costs for the first six months of the year 2000.<sup>61</sup> During the same period, the State of California spent \$670,308 cleaning the Central Valley.<sup>62</sup> Clean up is complex, expensive, and given the current scheme, largely shouldered by property owners who may be innocent of any crime.<sup>63</sup>

California Health and Safety Code Section 11379.6 established that "every person who manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, any con-

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<sup>52</sup> *A Madness Called Meth*, *supra* note 1, at 4.

<sup>53</sup> HIDTA, *supra* note 2, at 4.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 2.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *A Madness Called Meth*, *supra* note 1, at 3-4.

<sup>59</sup> See HIDTA, *supra* note 2, at 5; see also, Saleem, *supra* note 4, at 697-698; see also CALIFORNIA FARM BUREAU FEDERATION, METH LABS UNWELCOME BY AGRICULTURE (March 12, 2003) available at <http://www.cfbf.com/programs/agcrime/meth.asp> (copy on file with *San Joaquin Agricultural Law Review*) (a third of the labs seized in 1999 were located in agricultural lands).

<sup>60</sup> HIDTA, *supra* note 2, at 5.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

trolled substance. . . shall be punished by imprisonment in the state prison for three, five, or seven years and by a fine not exceeding fifty thousand dollars.”<sup>64</sup> The court in *People v. Sanchez* held that a property owner permitted the use of the premises for the manufacture of methamphetamine, in violation of Health & Safety Code section 11379.6, if he had a specific intent to facilitate the manufacturing process.<sup>65</sup> In *Sanchez*, an employer allowed the defendant to use his land and home free of rent and the defendant allowed others to use the premises to manufacture methamphetamine.<sup>66</sup> The defendant was convicted because he had knowledge of the unlawful purpose.<sup>67</sup>

#### V. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (RICO) STATUTES

As drug trafficking continues to escalate, communities are coming together to minimize crime’s detrimental effects.<sup>68</sup> *Ex Rel Gallo v. Acuna* provides an interesting legal precedent.<sup>69</sup> In this case, the residents of a crime-riddled community used the Street Terrorism Enforcement and Prevention Act (STEP), to fight back and regain control of the community.<sup>70</sup> A Latino gang had transformed the community into a gang territory by congregating around the residential area to carry out their unlawful activities.<sup>71</sup> The community residents intimidated by the violence, felt inhibited in their own neighborhood.<sup>72</sup>

In *Ex Rel Gallo*, the City brought an action seeking injunctive relief against the street gang defendants and was granted the preliminary injunction.<sup>73</sup> The defendants appealed arguing their First and Fifth Con-

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<sup>64</sup> CAL. HEALTH & SAFETY CODE § 11379.6(a) (Deering, LEXIS through 2000 Sess.).

<sup>65</sup> *People v. Sanchez*, 27 Cal. App. 4th 918, 923 (1994).

<sup>66</sup> *Id.* at 920-921.

<sup>67</sup> *Id.* at 921.

<sup>68</sup> *See Saleem, supra* note 4, at 694-695.

<sup>69</sup> *Ex rel Gallo v. Acuna*, 14 Cal. 4th 1090 (1997).

<sup>70</sup> *Ex Rel Gallo*, 14 Cal.4th, at 1101-1102; CAL.PENAL CODE § 186.22a(c) (West 2001) (provides that the California legislature enacted STEP in response to the growing concerns over the violent environment of street gangs. Under the STEP program, the Attorney General is able to maintain an action for money damages on behalf of plaintiffs).

<sup>71</sup> *Ex Rel Gallo*, 14 Cal. 4th, at 1100 (the declaration from residents described activities such as smoking dope, sniffing toluene, drive-up drug sales, snorting cocaine, and gang related violence such as fist fights, assaults, acts of vandalism, arson, drive-by shootings, attempted murder and murder).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 1101.

stitutional Amendment rights were violated.<sup>74</sup> The California Supreme Court held that neither the First nor Fifth Amendments had been violated by the injunction, which prohibited the defendants from associating anywhere in public view with other gang defendants.<sup>75</sup> While the Constitutional right to association is fundamental, the court held the injunction burdened the defendants only to the extent necessary to meet its overriding public interest to abate the public nuisance.<sup>76</sup> The residents of Rocksprings in *Ex Rel Gallo*, succeeded in transforming their community which shows that a community can come together to restore peace in a crime-ridden neighborhood.<sup>77</sup>

The RICO Act's original purpose of fighting large scale organized crime has been expanded to curtail illegal drug trafficking and gang activities.<sup>78</sup> According to one commentator, "the RICO Act can be a powerful method for attacking the organization and economic benefits of criminal enterprises, such as criminal street gangs."<sup>79</sup> Since the manufacture of methamphetamine involves a complex multi-level scheme, RICO statutes may be used by residents to fight the criminal activity. The RICO Act states:

It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.<sup>80</sup>

The RICO statutes apply to a combination of activities that foster racketeering.<sup>81</sup> The manufacturing of methamphetamine, which commonly includes the illegal transportation of chemicals across state or national borders, gang activity, money laundering, and other violent crimes, can readily fall within the statutory purpose of RICO. Under RICO, a person who derives profit from racketeering may be subject to severe fines.<sup>82</sup> Violators may be fined up to two times the earned

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 1122.

<sup>76</sup> *Id.* at 1121.

<sup>77</sup> Bergen Herd, *Injunctions as a Tool to Fight Gang-Related Problems in California after People Ex Rel Gallo v. Acuna: A Suitable Solution?*, 28 GOLDEN GATE U. L. REV. 629, 679 (Spring 1998) (taking a look at the effects of the *Gallo* decision).

<sup>78</sup> *Id.* at 632-633.

<sup>79</sup> *Id.* at 634.

<sup>80</sup> 18 U.S.C.S. § 1962(b) (LEXSTAT, LEXIS through P.L.106-580) (2000).

<sup>81</sup> 18 U.S.C.S. § 1962(a), (b), and (c) (LEXSTAT, LEXIS through P.L.106-580) (2000).

<sup>82</sup> 18 U.S.C.S. § 1963(a) (LEXSTAT, LEXIS through P.L.106-580) (2000).

profits obtained during the life of the violation.<sup>83</sup> In addition,

[w]hoever violates any provision . . . shall forfeit to the United States, irrespective of any provision of State Law. . . any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity on unlawful debt collection in violation of section 1962.<sup>84</sup>

A landowner who participates in the illegal manufacture of drugs, may be criminally liable and may risk forfeiture of the land under RICO statutes.<sup>85</sup> The wrongdoer forfeits any property derived from the commission of a crime.<sup>86</sup> While such forfeiture is intended to be commensurate with the violation of laws, potential for disproportionate penalties exist.<sup>87</sup>

## VI. LAND FORFEITURE

Federal administrative and enforcement statutes have been formulated to prevent drug abuse and provide that real property can be civilly or criminally forfeited.<sup>88</sup> This includes:

[a]ll real property, including any right, title, and interest (including any leasehold interest) in whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment.<sup>89</sup>

Forfeiture is addressed in *People v. \$9,632.50 United States Currency*.<sup>90</sup> In this case, the defendant admitted to earning \$8,000 by allowing a third person to run an illegal laboratory in his barn.<sup>91</sup> The trial court ordered the entire sum of his savings account to be forfeited to the state.<sup>92</sup> Of the \$9,632.50 in the savings account, only \$700.00 could be traced to illegal activities.<sup>93</sup> The appellate court stated that

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<sup>83</sup> 18 U.S.C.S. § 1963(a)(3) (LEXSTAT, LEXIS through P.L.106-580) (2000).

<sup>84</sup> 18 U.S.C.S. § 1963(a)(3) (LEXSTAT, LEXIS through P.L.106-580) (2000).

<sup>85</sup> 18 U.S.C.S. § 1963(c) (LEXSTAT, LEXIS through P.L.106-580) (2000).

<sup>86</sup> 18 U.S.C.S. § 1963(a)(3) (LEXSTAT, LEXIS through P.L.106-580) (2000).

<sup>87</sup> *United States v. Anderson*, 637 F. Supp. 632, 637 (N.D. Cal.1986) (defendants were indicted for manufacturing marijuana and the government sought to seize defendant's property pursuant to the federal RICO forfeiture statutes, the court held that forfeiture should be limited to the portion of land used to commit or facilitate commission of the crime).

<sup>88</sup> 21 U.S.C.S. § 881(a) (LEXSTAT, LEXIS through P.L.106-556) (2000).

<sup>89</sup> 21 U.S.C.S. § 881(a)(7) (LEXSTAT, LEXIS through P.L.106-556) (2000).

<sup>90</sup> *People v. \$9,632.50 United States Currency*, 64 Cal. App. 4th 163, 168 (1998).

<sup>91</sup> *Id.* at 166.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 174.

only property traced to the commission of a crime is subject to forfeit action by the government.<sup>94</sup> In this case, all but the amount which could be traced to the illegal activities was returned to the appellant.<sup>95</sup>

Historically, asset forfeiture laws allowed the government to bring a civil action in rem to forfeit property derived from or used in the commission of an offense.<sup>96</sup> The premise behind the law expressed a duty of land owners to supervise the leased premises.<sup>97</sup> Defenses available to landowners in criminal and civil cases led to inconsistent decisions because each circuit interpreted the statutes differently, and some of the statutes had no innocent owner provisions at all.<sup>98</sup> Some of the courts did not distinguish between the property that had been acquired before the illegality and those interests which existed after the illegality and basically treated all property as if acquired before the illegality and thus subject to forfeiture.<sup>99</sup>

The Supreme Court made a landmark decision in *United States v. 92 Buena Vista Avenue* regarding forfeiture of a parcel purchased with funds traceable to a criminal offense.<sup>100</sup> The respondent had purchased her home with money given to her by the man with whom she was living and she denied knowing that the source for the money was illegal activity.<sup>101</sup> She was not a bona fide purchaser for value because she received the money as a gift, therefore, the government claimed the innocent owner defense did not apply to her situation.<sup>102</sup> The Supreme Court concluded that protection to an innocent owner is not limited to bona fide purchasers and allowed the respondent to assert

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<sup>94</sup> *Id.* at 170.

<sup>95</sup> *Id.* at 175.

<sup>96</sup> Stefan D. Cassella, *Special Feather Developments in Asset Forfeiture Law: The Uniform Innocent Owner Defense to Civil Asset Forfeiture: The Civil Asset Forfeiture Reform Act of 2000 Creates a Uniform Innocent Owner Defense to Most Civil Forfeiture Cases Filed by the Federal Government*, 89 KY. L. J., 654 (2000).

<sup>97</sup> *Id.* at 658.

<sup>98</sup> *See id.* at 660.

<sup>99</sup> *Id.* at 662.

<sup>100</sup> *United States v. 92 Buena Vista Avenue*, 507 U.S. 111, 115 (1993).

<sup>101</sup> *Id.*

<sup>102</sup> 18 U.S.C.S. § 983(d)(3)(A) (LEXSTAT, LEXIS through P.L.107-178) (2002) (states, “[w]ith respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term ‘innocent owner’ means a person who, at the time that person acquired the interest in the property— (i) was a bona fide purchaser seller for value (including a purchaser or seller of goods or services for value); and (ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture”).

the innocent owner defense.<sup>103</sup> According to the Court, "If the Government wins a judgment of forfeiture, . . . the vesting of its title in the property relates back to the moment when the property became forfeitable. Until the Government does win such a judgment, however, someone else owns the property. That person may therefore invoke any defense available to the owner of the property before the forfeiture is decreed" by a court of law.<sup>104</sup>

The Civil Asset Forfeiture Reform Act of 2000 (CAFRA), enacted into law on August, 2000, had a uniform innocent owner defense applicable to civil forfeitures under federal law.<sup>105</sup> Under its provisions, a landowner who wants to defend a forfeiture action in court has the burden to show he did not know his property was involved in a criminal activity or that he did all that was reasonable under the circumstances to terminate such use once he discovered the illegality.<sup>106</sup>

California follows the Federal law, which protects the innocent landowner and forfeits only the proceeds that can be traced to illegal activities.<sup>107</sup> In California, the burden rests on the state to prove forfeitability by clear and convincing evidence or, in criminal cases, beyond a reasonable doubt.<sup>108</sup> The government must show the property is subject to forfeiture. The burden then shifts to the claimant to show the property is not forfeitable by using the innocent owner affirmative defense.<sup>109</sup> To protect the innocent owner, only those assets directly traced to the illegality are within the bounds of forfeiture laws.<sup>110</sup>

However, the courts have not always reached the same outcome. In *United States v. Littlefield*, the defendant was charged with possession of over seven hundred marijuana plants with intent to distribute.<sup>111</sup> The government sought to seize the forty-acre property where the plants were cultivated.<sup>112</sup> The defendant's motion argued that forfeiture should be limited to those portions of land where the marijuana was

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<sup>103</sup> See *Buena Vista*, 507 U.S. at 123; See also 18 U.S.C.S. § 983(d)(3)(B) (LEXSTAT, LEXIS through P.L.107-178) (2002).

<sup>104</sup> See *Buena Vista*, 507 U.S. at 127.

<sup>105</sup> See Cassella, *supra* note 96, at 655.

<sup>106</sup> 18 U.S.C.S. § 983(d)(2)(B) (LEXSTAT, LEXIS through P.L.107-178) (2002).

<sup>107</sup> See *People v. \$9,632.50 United States Currency*, 64 Cal. App. 4th 163, 168 (1998).

<sup>108</sup> *Id.* at 169.

<sup>109</sup> *Id.*; see also 18 U.S.C.S. § 983(d)(1) (LEXSTAT, LEXIS through P.L.107-178) (2002).

<sup>110</sup> See *\$9,632.50 United States Currency*, 64 Cal. App. 4th at 173-174.

<sup>111</sup> *United States v. Littlefield*, 821 F. 2d 1365, 1366 (9th Cir.1987).

<sup>112</sup> *Id.*

cultivated.<sup>113</sup> The appellate court held that the entire parcel was subject to forfeiture.<sup>114</sup> It reasoned that broad construction and leniency should not be used to override the congressional directive.<sup>115</sup> It held that “forfeiture of the entire property on which drugs were cultivated together with other punishments imposed is not so disproportionate to the offense committed as to violate the Constitution.”<sup>116</sup> Under California law, seizure of property requires notice and hearing procedures unless exigent circumstances exist.<sup>117</sup> These procedures provide the constitutionally required due process.

## VII. NUISANCE ABATEMENT

The word “nuisance” is derived from the French word meaning “harm, annoyance or inconvenience.”<sup>118</sup> The concept is confusing because nuisance is not a particular tort.<sup>119</sup> A public nuisance is defined as the invasion of a public right and it is covered by statute.<sup>120</sup> Nuisance applies to the unreasonable interference with the public right to health, safety, peace, comfort, and convenience.<sup>121</sup>

Since the 1970s, American law regarding landlord and tenants has undergone significant changes from its roots in the English common law.<sup>122</sup> Under common law, the landlord was not liable for personal injuries resulting from the condition of the premises, and had no duty to repair the leased property.<sup>123</sup> Modernly, however, the landlord is liable for personal injuries caused by concealed or latent defects, negligent repairs, breach of agreements to repair, and defects on premises leased for public use.<sup>124</sup> These laws can affect the liability of a landowner who transfers possession of land known to be toxic due to previous methamphetamine manufacture.

Nuisance laws can be used to protect the individual’s privacy inter-

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 1367.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 1368.

<sup>117</sup> CAL. HEALTH & SAFETY CODE §11471(e) (West 2001).

<sup>118</sup> JOHN W. WADE ET AL., PROSSER, WADE AND SCHWARTZ’S CASES AND MATERIALS ON TORTS 810 (The Foundation Press, Inc., 9th ed. 1994) (1951).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 811.

<sup>122</sup> JOHN G. SPRANKLING, UNDERSTANDING PROPERTY LAW 202 (LEXIS Publishing 2000) [hereinafter SPRANKLING]

<sup>123</sup> *Id.* at 255.

<sup>124</sup> *Id.* at 256.

ests.<sup>125</sup> When property interests are threatened by the illegal manufacturing of drugs, individuals may seek to eliminate the intrusions.<sup>126</sup> Nuisance laws can be used against illegal drug trafficking when other laws have failed.<sup>127</sup> California has codified the common law regarding nuisance and holds that any place used for possession or distribution of illegal drugs is a nuisance.<sup>128</sup> California law defines nuisance as:

[A]nything which is injurious to health, including but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstruct the free passage or use, in the customary manner, of any navigable lake, or river bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.<sup>129</sup>

Under California Law, premises used for criminal activities are a nuisance that can be enjoined or abated, and those who suffer damages can bring legal action.<sup>130</sup> While no civil penalty can be assessed against the innocent owner, the law in California allows that “the Attorney General may maintain an action for money damages on behalf of the community or neighborhood injured by that nuisance.”<sup>131</sup>

Presumably, there are obstacles to the imposition of liability when the property owner is not able to exert control of the leased premises.<sup>132</sup> Modernly, the courts expect the property owner to fulfill a duty to the community if he has control over the premises.<sup>133</sup> In *Coltrain v. Shewalter*, the landlords of an apartment complex brought a suit against a group of tenants and neighbors claiming trade libel, defamation, and intentional infliction of emotional distress.<sup>134</sup> The defendants filed legal action against the landlords based on nuisance because the building was a focal point for crime in the community.<sup>135</sup> The small-claims actions were transferred to the superior court where the defendants prevailed in establishing the landlords’ actions constituted a strategic lawsuit against public participation.<sup>136</sup> The complaint was dis-

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<sup>125</sup> See Saleem, *supra* note 4, at 710.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> CAL. HEALTH & SAFETY CODE §11570 (Deering LEXIS through 1999 Sess.).

<sup>129</sup> CAL. CIV. CODE § 3479 (Deering LEXIS through 2000 Sess.).

<sup>130</sup> CAL. PENAL. CODE § 186.22a(a) (West 2001).

<sup>131</sup> CAL. PENAL. CODE § 186.22a(c) (West 2001).

<sup>132</sup> Sprankling *supra* note 122 at 257.

<sup>133</sup> *Id.*

<sup>134</sup> *Coltrain v. Shewalter*, 66 Cal. App. 4th 94, 99 (1998).

<sup>135</sup> *Id.* at 96, 99.

<sup>136</sup> *Id.* at 96.

missed with prejudice, but the tenants achieved their goal.<sup>137</sup> The landlords agreed to provide improvements that included the landlords' participation in the city's Crime Free Multi-Housing Program.<sup>138</sup>

Even if the tenant has possession, a landowner may be required to ensure the safety of the premises.<sup>139</sup> In *United States v. Calumet*, the court held the property owner has a duty to confront those who use the premises for illegal drug activities.<sup>140</sup> In this case, a landlord leased his property to be used as a "senior citizen's hall."<sup>141</sup> During the lease, the building was "frequently raided" by the police.<sup>142</sup> The tenant altered the property by installing steel doors, barricading windows, and placing mirrors at the entrance.<sup>143</sup> Such alterations were in violation of the lease provisions and later found to be designed to further the tenant's illegal drug activity.<sup>144</sup> The landlord claimed that he did not know about the illegal activities.<sup>145</sup> The court in *Calumet* disagreed with the landlord because the lease agreement itself expressed the grounds for default if the tenant conducted illegal activities or made any alteration to the premises.<sup>146</sup> While the default on the lease was discretionary, the court went on to express that "land ownership entails duties to the community in which the land is situated. A landowner may face legal consequences for failure to correct a nuisance about which he was totally unaware."<sup>147</sup> Once on notice, the landlord may be liable for criminal activities conducted on premises he owns.<sup>148</sup> The innocent owner defense is applicable if the landlord does not know or has any reason to know of the illegal activities on the premises.<sup>149</sup> However, once the owner is on notice of illegal activities on the premises, the "duty to do all that reasonably could be expected to prevent the illegal use of the property increases."<sup>150</sup>

In *Lew v. Alameda County*, tenants brought action against the own-

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<sup>137</sup> *Id.* at 108.

<sup>138</sup> *Id.*

<sup>139</sup> See SPRANKLING, *supra* note 122, at 257, 258.

<sup>140</sup> *United States v. 2011 Calumet*, 699 F. Supp.108, 110 (S.D. Tex.1988).

<sup>141</sup> *Id.* at 109.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 110.

<sup>146</sup> *Id.* at 109.

<sup>147</sup> *Id.* at 110.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

ers of their apartment building.<sup>151</sup> The building had been used as a distribution center for illegal drugs and the tenants claimed the owners failed to do what a reasonable landlord should have done under the circumstances.<sup>152</sup> The court held that owners knew, or should have known, of the illegal activities after the tenants began to take some action to remedy the situation.<sup>153</sup> Two salient points in *Lew* are that the court allows tenants to consolidate their damages, and relies on California legislation to establish that such illegal activity constitutes a nuisance.<sup>154</sup> Health and Safety Code section 11570 states that:

Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, precursor, or analog specified in this division and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.<sup>155</sup>

If a land owner is warned of criminal drug activities in his property, tenants and neighbors can sue in nuisance to enjoin the illegal methamphetamine activity or for money damages.

#### VIII. CLEANING THE CLANDESTINE LABORATORIES

Managing toxic chemicals is expensive, complex, and time consuming.<sup>156</sup> In situations where toxic chemicals are discarded into the open, there is a potential risk of contaminating the drinking water creating pollution that affects the public in general.<sup>157</sup> It has been estimated that every ounce of manufactured methamphetamine results in between three to six ounces of waste.<sup>158</sup> Since 1995, the Environmental Protec-

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<sup>151</sup> *Lew v. Alameda County*, 20 Cal. App. 4th 866, 869 (1993).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* at 870.

<sup>154</sup> CAL. HEALTH & SAFETY CODE §11570 (Deering, LEXIS through 2000 Sess.).

<sup>155</sup> *Id.*

<sup>156</sup> 42 U.S.C.S. § 6901 (b) (6) (LEXSTAT, LEXIS through P.L.106-504) (2000); see also Christine Bedell, *Meth Labs Cooking up Ecological Hazards*, THE BAKERSFIELD CALIFORNIAN, April 22, 2002, available at <http://ww2.bakersfield.com/2002/meth/stories/toxicity.asp> (last visited March 11, 2003) (copy on file with San Joaquin Agricultural Law Review).

<sup>157</sup> *People v. \$9,632.50 United States Currency*, 64 Cal. App. 4th 163, 168 (1998). 42 U.S.C.S. § 6901 (b) (5) (LEXSTAT, LEXIS through P.L.106-504) (2000); see also Bedell *supra* note 156.

<sup>158</sup> ENVIRONMENTAL HEALTH FORUM, UNLAWFUL LAB LEFTOVERS, (describing the toxic waste left after a CLD is seized) available at <http://ehpnet1.niehs.nih.gov/docs/2001/109-12/forum.html> (July 17, 2002) (copy on file with San Joaquin Agricultural Law Review)[*hereinafter* ENVIRONMENTAL HEALTH FORUM].

tion Agency (EPA), Department of Toxic Substance Control, has been in charge of cleaning former methamphetamine laboratory sites and during that year, reported cleaning 963 CDL's.<sup>159</sup> During those early years, the national budget for cleaning CDL's was \$1.5 million per year, but the cost exceeded the budget by a million dollars.<sup>160</sup> The cost of cleaning a methamphetamine site can be as much as \$100,000 depending of the extent of the CDL activity.<sup>161</sup> California was home to 36% of all the CDL's seized in the United States during 1999.<sup>162</sup> The Governor's proposal in 2002 of \$50 million targeted for expansion of federal anti-meth programs although not intended for cleaning former methamphetamine labs, was decreased to \$14 million on the 2002-03 State budget.<sup>163</sup> The commitment of dollars show that prevention of further harm is being supported at the top state government level.

The initial phase for cleaning a meth lab is carried out by specially-trained law enforcement agencies. They seal off the property until the investigation is complete, the site is decontaminated, and the premises are once again habitable.<sup>164</sup> Selected law-enforcement officers are trained to recognize and handle the unusual risks associated with a CDL.<sup>165</sup> Common toxic compounds in methamphetamine laboratories are highly combustible, and in addition, the meth producers tend to leave the site booby-trapped against possible trespassers, with electrified door knobs and refrigerators rigged to explode.<sup>166</sup> The pressurized

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<sup>159</sup> Rafer Guzman, *Toxic Wasteland*, Metroactive News and Issues, available at <http://www.metroactive.com/papers/metro/08.15.96/cover/speed2-9633.html> (July 17, 2002) (copy on file with San Joaquin Agricultural Law Review).

<sup>160</sup> *Id.*

<sup>161</sup> ALEX BREITLER, Meth the devil's drug: 'Poor man's cocaine' cheap to cook, costly to combat available at [http://www.redding.com/specials/meth\\_series/meth\\_02.htm](http://www.redding.com/specials/meth_series/meth_02.htm) (July 17, 2002) (copy on file with San Joaquin Agricultural Law Review).

<sup>162</sup> SMART CHOICES METH FACTS, shows on a map of the United States the number of CDL's seized during 1999 available at <http://www.makesmartchoices.org/methlabs.htm> (July 17, 2002) (copy on file with San Joaquin Agricultural Law Review).

<sup>163</sup> CALIFORNIA STATE ASSEMBLY REPUBLICAN CAUCUS, CALIFORNIA'S 2001-2002 BUDGET HIGHLIGHTS, available at <http://republican.assembly.ca.gov/Issues/Budget/budgethilites.htm> (last visited July 17, 2002) (copy on file with San Joaquin Agricultural Law Review); see also 2002-03 GOVERNOR'S BUDGET SUMMARY available at [http://www.dof.ca.gov/HTML/Budget02-03/05\\_pubsafety.pdf](http://www.dof.ca.gov/HTML/Budget02-03/05_pubsafety.pdf) (March 10, 2003) (copy on file with San Joaquin Agricultural Law Review).

<sup>164</sup> ENVIRONMENTAL HEALTH FORUM, *supra* note 158.

<sup>165</sup> *Id.*

<sup>166</sup> Jonathan Martin, *Environmental Nightmare*, MSNBC SPECIAL REPORT PART IV about the toxic pollution which is left behind after the production of

cylinders that hold the anhydrous ammonia poses the greatest of risks to the initial cleanup. These are removed and holes are shot into them with high-power rifles so that they cannot be reused.<sup>167</sup>

Professionals trained in the removal of hazardous materials remove the solid waste and contaminated equipment. Because large-scale operators dig holes on the ground and drain the chemicals right into the ground to avoid detection, these teams must do a complete assessment of the property including the evaluation of the soil and septic systems, where the liquid waste are often discarded.<sup>168</sup> During this period of time, the structure cannot be occupied, which means the farm is sealed and idle.<sup>169</sup>

The cost of cleaning is the responsibility of the property owner. In some instances, owners choose to abandon the property when it is too expensive to make habitable.<sup>170</sup>

The initial cleaning of the property is supervised by local agencies and the demands on these agencies outnumber the resources available.<sup>171</sup> Due in part to a lack of understanding and in part to the desperation of the farm owner to make the property productive again, private cleaning companies stand to make a small fortune.<sup>172</sup> There is a potential for the farm owner to fall prey to unscrupulous meth lab cleaning contractors. It is unclear just how much cleaning will make a property habitable because the cost is based on many factors and few people know which factors are crucial. If the site is abandoned by the owners, the cost will be borne by the state.<sup>173</sup>

The walls of structures often need to be gutted because the vapors from the methamphetamine production permeate into the wall, carpet, and wood structures.<sup>174</sup> If wall gutting is not feasible, the surfaces are scrubbed with industrial-grade cleaners and sealed with paint. The toxic materials are still in the structure but the residents are “pro-

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methamphetamine available at <http://www.msnbc.com/news/498830.asp?cp1=1> (last visited July 17, 2002) (copy on file with *San Joaquin Agricultural Law Review*).

<sup>167</sup> See ENVIRONMENTAL HEALTH FORUM, *supra* note 158.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> Martin, *supra* note 166.

<sup>172</sup> *Id.*

<sup>173</sup> See Martin, *supra* note 166; see also Guzman *supra* note 159.

<sup>174</sup> MISSOURI DEPARTMENT OF HEALTH. CLEANING UP FORMER METHAMPHETAMINE LABS – GUIDELINES. SECTION FOR ENVIRONMENTAL PUBLIC HEALTH available at <http://www.health.state.mo.us> (July 17, 2002) (copy on file with *San Joaquin Agricultural Law Review*) [hereinafter *MODOH*]; see also Martin, *supra* note 166.

tected” by the paint.<sup>175</sup> Little is known about the effect of degradation of the sealing paint over time.

California continues to crack down on availability of ingredients to make methamphetamine, namely, pseudoephedrine tablets. The sale of this over-the-counter decongestant is regulated in California and those who sell it are expected to be vigilant.<sup>176</sup> However, the demand is such, that when a source is foreclosed, another supplier emerges. In 2000, law enforcement shut down most the US-based distribution of pseudoephedrine, and by 2001 it was apparent that Canada was emerging as a distributor.<sup>177</sup>

One of the major challenges facing the western states is the absence of national standards that define a clean site. The state of Oregon has the highest standards for a previous methamphetamine lab site.<sup>178</sup> They consider 0.5 micrograms of meth making chemicals per square foot to be an adequate threshold; in Idaho the threshold is set at 5 micrograms per square foot.<sup>179</sup> In states such as Idaho where the cleanup is left to the discretion of the owner, some people do not do the required work because of expense considerations.<sup>180</sup> The variance between the states creates problems because some of the sites may or may not be clean depending on the guidelines used. California is expected to publish the state’s standards in the near future but experts are concerned that the risks of exposure have not been adequately studied.<sup>181</sup>

The long-term effect of the toxins is largely unknown, but as public awareness increases, so will the demand for clear standards.<sup>182</sup> Additionally, as risks are ascertained, home buyers will demand laws that protect their interests.<sup>183</sup> California requires a disclosure when a seller of real estate is aware of any unlawful manufacture of

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<sup>175</sup> See MODOH *supra* note 174.

<sup>176</sup> Marilyn Berlin Snell, *Welcome to Meth Country*, SIERRA MAGAZINE, January/February 2001 available at <http://www.sierraclub.org/sierra/200101/Meth.asp> (July 17, 2002) (copy on file with San Joaquin Agricultural Law Review); Peter Eisler and Donna Leinwand, *Canada top source for drug chemical*, USA TODAY, January 9, 2002 available at <http://www.usatoday.com/news/nation/2002/01/10/usat-canada.htm> (July 17, 2002) (copy on file with San Joaquin Agricultural Law Review).

<sup>177</sup> Eisler, *supra* note 176.

<sup>178</sup> Martin *supra* note 166; KOCH CRIME INSTITUTE, CLEANING UP FORMER METHAMPHETAMINE LABS available at [http://www.kci.org/meth\\_info/meth\\_cleanup.htm](http://www.kci.org/meth_info/meth_cleanup.htm) (July 9, 2002).

<sup>179</sup> Martin, *supra* note 166.

<sup>180</sup> *Id.*

<sup>181</sup> Bedell, *supra* note 156.

<sup>182</sup> Martin *supra* note 166.

<sup>183</sup> *Id.*

methamphetamine on the property.<sup>184</sup> Such a disclosure will likely decrease the value of a farm that had been used as a CDL. Insurance provisions are likely to contain a contamination exclusion leaving the property owner to pay for the cleaning costs.<sup>185</sup>

The Western Governors Association formed a coalition to fight the problem of CDL's because they recognize the problem as one uniquely affecting the western states.<sup>186</sup> As the rancher's way of life is giving away to modernization and technology, grazing land is being sold and purchased by methamphetamine producers where production can be started literally, overnight.<sup>187</sup> The governors are concerned that without assistance from the federal government, the states will not be able to afford the full restoration of previous methamphetamine sites. They seek support through federal legislation that will maintain the funding to the states plagued by clandestine labs.<sup>188</sup>

Missouri developed a guideline for the cleaning of former methamphetamine laboratories. It outlines the necessary steps for cleaning structures and make it habitable. In the absence of national guidelines, the farm owner or a person looking to buy a farm will need to investigate prior activities or could end up spending lots of money cleaning up a former methamphetamine site. The Missouri cleaning guidelines provide the average person with simple non-technical information on the extent of cleaning that is required. But those doing the cleaning need to follow standards that ensure safe

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<sup>184</sup> CAL. CIV. CODE § 1102.18 (Deering, LEXIS through 2001 Sess.) (§ 1102.18(b)(1) states: "Any owner of residential real property who knows as provided in paragraph (2), that any release of an illegal controlled substance has come to be located on or beneath that real property shall, prior to the sale of the real property by that owner, give written notice of that condition to the buyer pursuant to Section 1102.6 . . . ." Section 1102.18(b)(4) provides; "Failure of the owner to provide written notice to the buyer when required by this subdivision shall subject the owner to actual damages and any other remedies provided by law."); *see also* Senate Press Release Senator Debra Bowen, Bowen Bill to Protect Homeowners and Renters From Meth Lab Contamination Signed by Governor *available at* <http://democrats.sen.ca.gov/senator/bowen> (October 5, 2001) (*copy on file with San Joaquin Agricultural Law Review*).

<sup>185</sup> Martin, *supra* note 166.

<sup>186</sup> WESTERN GOVERNORS' ASSOCIATION. POLICY RESOLUTION 00-025 - METHAMPHETAMINE MANUFACTURING, TRANSPORTATION, USE AND SALE Adopted June 13, 2000 *available at* <http://www.westgov.org/wga/policy/00/00025.htm> (July 17, 2002) (*copy on file with San Joaquin Agricultural Law Review*)[*hereinafter* WESTERN GOVERNORS].

<sup>187</sup> Berlin Snell, *supra* note 176.

<sup>188</sup> WESTERN GOVERNORS, *supra* note 186.

reoccupation.<sup>189</sup>

On a brighter note, California law enforcement agencies are turning to new technology that can detect infrared rays given off by the chemicals used in the manufacture of methamphetamine.<sup>190</sup> This could prove beneficial to the unsuspecting buyer although likely to be expensive.

#### IX. HAZARDOUS WASTE LEGISLATION

The Resource Conservation and Recovery Act (RCRA) handles the regulation of hazardous waste from inception to disposal, and establishes regulations for waste management programs, research, and management of hazardous waste such as the type found in CDL's.<sup>191</sup> The legislation imposes sanctions for a person who "knowingly generates, stores, treats, transports, [or] disposes of . . . any hazardous waste . . . ." <sup>192</sup>

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) applies to the management of hazardous waste.<sup>193</sup> Under this Act, dollars recoverable in an action are set aside in what is called the Hazardous Substance Superfund.<sup>194</sup> Under CERCLA, liability is established for "any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of."<sup>195</sup> CERCLA has been associated primarily with toxic waste disposal resulting from industrial activities, however such laws can be applied to the cleaning of a CDL. According to CERCLA provisions, there is no liability if the property owner can establish by a preponderance of the evidence, that releases were caused by an "act of God or war, or by an act or omission of a third party not an employee or agent."<sup>196</sup> In addition, a defendant is required to prove due care in respect to the hazardous substance, taking precautions against foreseeable illegal acts of third parties.<sup>197</sup> Once the property owner is appraised of the presence of the

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<sup>189</sup> MODOH, *supra* note 174.

<sup>190</sup> JOHN HOLLAND, US CA: NEW WEAPON IN WAR ON METH LABS, MEDIA AWARENESS PROJECT available at <http://www.mapinc.org/drugnews/v00.n1368.a02.html> (July 17, 2002) (copy on file with *San Joaquin Agricultural Law Review*).

<sup>191</sup> 42 U.S.C.S. § 6926 (b) (LEXSTAT, LEXIS through P.L. 106-580) (2000).

<sup>192</sup> 42 U.S.C.S. § 6928 (d) (4) (LEXSTAT, LEXIS through P.L. 106-580) (2000).

<sup>193</sup> 42 U.S.C.S. § 9607 (LEXSTAT, LEXIS through P.L. 106-580) (2000).

<sup>194</sup> 42 U.S.C.S. § 9607(a) (LEXSTAT, LEXIS through P.L. 106-580) (2000).

<sup>195</sup> 42 U.S.C.S. § 9607(a)(2) (LEXSTAT, LEXIS through P.L. 106-580) (2000).

<sup>196</sup> 42 U.S.C.S. § 9607(b)(1-3) (LEXSTAT, LEXIS through P.L. 106-580) (2000).

<sup>197</sup> 42 U.S.C.S. § 9607(b)(3) (LEXSTAT, LEXIS through P.L. 106-580) (2000).

hazardous substance, he must exercise due care in the containment and management of such substances.<sup>198</sup> Under CERCLA, any conveyance of such property can not be construed to hold the grantor harmless if there is liability for the release or threat of release of hazardous waste.<sup>199</sup>

A common method for shifting the risk is through the use of insurance policies. When it comes to toxic waste liability, the insured has the burden to show that a particular claim is within the stipulations of the coverage.<sup>200</sup> In *Travelers Casualty v. Santa Clara County*, Lockheed Martin Corporation attempted to obtain liability insurance coverage for the cleanup and environmental contamination of a landfill that was used for hazardous waste disposal.<sup>201</sup> The site had come under investigation by the Environmental Protection Agency (EPA) after finding contaminants in the groundwater.<sup>202</sup> The insurance company claimed that the policy had a qualified pollution exclusion.<sup>203</sup> Lockheed claimed that it was covered because the EPA was concerned about the dispersion or groundwater contamination, and not the initial discharge of pollutants into the area.<sup>204</sup> Lockheed argued that leakage into the groundwater was “sudden and accidental” due to excessive rain or earthquakes and without any action on their part.<sup>205</sup> The court held that the burden of proof was on the insured to establish a “sudden and accidental” exception to the exclusion by the insurer.<sup>206</sup> Lockheed was not able to show that leakage of contaminants was due to a sudden and accidental event.<sup>207</sup> The appellate court held the “sudden and accidental” exception was to be applied only to the initial discharge into the disposal site and not to subsequent leakage of toxins from a containment reservoir.<sup>208</sup> This is important in relation to the landlord’s liability in the leased farm since his farming neighbors could object to the dumping of toxic chemicals from a CDL into the groundwater. Should the city, the state, or neighbors bring a cause of

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<sup>198</sup> *Id.*

<sup>199</sup> 42 U.S.C.S. § 9607(e)(1) (LEXSTAT, LEXIS through P.L. 106-580) (2000).

<sup>200</sup> *Travelers Casualty and Surety Co. v. Santa Clara County*, 63 Cal. App. 4th 1440, 1453 (Cal. Ct. App. 1998).

<sup>201</sup> *Id.* at 1444-1445.

<sup>202</sup> *Id.* at 1445.

<sup>203</sup> *Id.* at 1447-1448.

<sup>204</sup> *Id.* at 1448.

<sup>205</sup> *Id.* at 1461.

<sup>206</sup> *Id.* at 1455.

<sup>207</sup> *Id.* at 1460.

<sup>208</sup> *Id.* at 1459.

action for damage caused to the groundwater, the courts in California are likely to conclude that such a dispersion would not have occurred but for the initial dumping of toxic chemicals into the property and, given the criminal activity, such action is neither sudden nor accidental.<sup>209</sup>

#### X. CONCLUSIONS AND RECOMMENDATIONS

It is fair to say that methamphetamine manufacture is everyone's problem in California. Resolving such monumental problem, will necessitate everyone working together. Establishing legal duties upon the land owner, in isolation of other strategies, could be counter productive since it places the land owner in a policing role of controlling illegal activities in his or her property.<sup>210</sup> Imposing liability on the landowner can increase the overall incentive to be aware of activities on the leased premises. However, it runs counter to tenants' right to peaceful habitation, which is inherent in the covenant of quiet enjoyment.<sup>211</sup> Placing such a duty on the land owner is onerous when he is powerless to control the criminal conduct of a tenant and where the fulfilment of such duty is at a personal risk.<sup>212</sup>

The effort to control illegal CDL activities places a substantial burden on the property owner if he is expected to police and prevent the commission of crimes on his or her property.<sup>213</sup> The landowner nevertheless, may be subject to legal consequences such as fines and risk of forfeiture. It would seem unrealistic for the landowner to handle such a complex situation without assistance. Community and state strategies are required to succeed at such a monumental endeavor.

According to the California Farm Bureau Federation, nearly a third of the labs found in the country in 1999 were situated in remote farming areas.<sup>214</sup> In rural California, where criminals use farm property to carry out illegal activities, the landlord does not have sufficient resources to become an effective first line of prevention.<sup>215</sup> If the owner is to engage in regularly patrolling the premises, there are costs, risks, and legal limitations unless exceptions are stipulated in the lease

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<sup>209</sup> *Id.*

<sup>210</sup> B. A. Glesner, *Landlords as Cops: Tort, Nuisance, & Forfeiture Standards Imposing Liability on Landlords for Crime on the Premises*, 42 CASE W. RES. L. REV. 679, 683 (1992).

<sup>211</sup> *Id.* at 778-779.

<sup>212</sup> *Id.* at 707.

<sup>213</sup> *Id.* at 779.

<sup>214</sup> CALIFORNIA FARM BUREAU FEDERATION, *supra* note 59.

<sup>215</sup> B.A. Glesner, *supra* note 210 at 780.

agreement.<sup>216</sup> However, choosing to do nothing can no longer be an option. The owner bears the burden for the damaged property and is not immune from legal actions from neighbors, government, or future owners. Since restoring the property can be very expensive, owners need to know who is leasing their land. Landowners should review and revise their lease provisions to avoid liability.

First and foremost, the farm owner must become knowledgeable about the current methamphetamine crisis in Central California. The HIDTA is in the process of developing strategies to address the impact of this crime on agriculture.<sup>217</sup> During the methamphetamine summit, these strategies included providing key information to assist the farm owner in making decisions regarding prevention and waste management. Easy to read standards must be available to ensure compliance with regulations.

Tackling the clean-up of the methamphetamine laboratories is not only a landowner's nightmare, but also a community's problem. Cost to the taxpayer can escalate as California pays for the initial cleanup of the most dangerous part of the laboratory equipment and chemicals. The property owner waiting to get a clean bill of health may wait a long time because state resources are overburdened, given the current methamphetamine crisis in Central California.

One major threat is the contamination of the water table.<sup>218</sup> This is a sensitive issue in the Central Valley, which is so dependent on water for farming subsistence. The contamination, given the proliferation of these CDL's, will likely threaten the agricultural economy, which is the lifeblood of the Central Valley. Taking adequate measures to restore agricultural health will become a major issue since for each CDL discovered, there are many more that go undetected and remain operational.<sup>219</sup>

Those who have researched the issue assert that to fight the war on drugs, the community has to be empowered through education, advocacy, and collaboration. Lawyers have a key role by helping their clients understand the implications of nuisance and environmental laws.<sup>220</sup> The legal community has much to offer by way of educating the farm owner regarding rights and responsibilities. The environmental complexities and legal consequences to the farmer can be daunting.

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<sup>216</sup> *Id.* at 779-780.

<sup>217</sup> See HIDTA, *supra* note 2, at 6.

<sup>218</sup> See Berlin Snell, *supra* note 176.

<sup>219</sup> See HIDTA, *supra* note 2, at 5.

<sup>220</sup> See Saleem, *supra* note 4, at 694.

The agricultural landowner needs to learn how to legally protect the farm from CDL's and its highly dangerous aftereffects.

Preventive goals are theoretically preferable because once the harm is done, the cost of cleanup is prohibitive for the average ranch owner. Prevention, however, is quite a different proposition in the rural setting where the presence of CDL's tend to go undetected. Since organized drug cartels are attracted to the remote locations in California's Central Valley, prevention can become a complex and risky proposition. Prevention entails making routine inquiries into the condition of his or her property, talking to farming neighbors, and creating cooperative strategies where all neighbors look after each other's land. If the farm is no longer isolated, it becomes less desirable as a meth lab. Alliances among law enforcement, state legislation, judicial agencies, and the community at large albeit cumbersome, may be the only viable solution.

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