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**DEPARTMENT OF  
PUBLIC WORKS**

**CITY OF SACRAMENTO  
CALIFORNIA**

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OFFICE OF THE DIRECTOR

February 18, 1992

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Law and Legislation Committee  
Sacramento, California

ADMINISTRATION  
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Honorable Members in Session:

**SUBJECT: AB 181 (TANNER) -- HAZARDOUS SUBSTANCES LIABILITY**

**LOCATION**

City.

**SUMMARY**

Under existing law, owners and operators of hazardous waste facilities and transporters and disposers of hazardous substances are liable for remedial and removal actions pertaining to hazardous waste clean-up. AB 181 will define "responsible party" and "liable person", as related to liability for hazardous waste clean-up, "to exclude any city, county, district, or other local agency which, on or before January 1, 1990, provided incidental solid waste handling services, as defined, solely because of the act of providing those services." "Incidental solid waste handling services" is a term which is to be determined by the State Department of Toxic Substances Control (DTSC) or a court. Under AB 181, the City's liability for clean-up of a hazardous waste site would require DTSC to make a determination that the contamination was caused by "nonincidental solid waste handling services". Under AB 181, if DTSC was to find the City liable for clean-up costs, liability would be apportioned on the basis of the quantity and characteristics of the hazardous substances disposed of by the City.

**STAFF RECOMMENDATION**

Staff recommends that the City's Legislative Advocate convey the City's support for AB 181 for the purpose of reducing the City's hazardous waste liability.

**BACKGROUND**

The City of Sacramento is always at risk from "deep pocket" liability arising from the clean-up of hazardous waste sites. The actual liability may be many times greater than our real responsibility, if any. That is, cities run the risk of being used to pay for clean-up costs which sometimes go well beyond the incidental handling of solid waste associated with such sites

and the relationship of that activity to the sites actual contamination. AB 181 is the "first step" in the direction of limiting a city's liability from potentially expensive hazardous waste clean-up costs that bear little connection to our real responsibility.

**FINANCIAL CONSIDERATIONS**

The passage of AB 181 could save the City of Sacramento from expensive litigation and potential clean-up costs of hazardous waste sites.

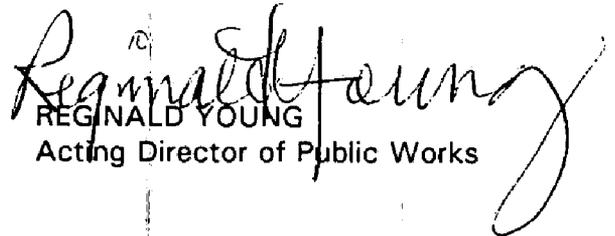
**POLICY CONSIDERATIONS**

Staff has recommended that the City's Legislative Advocate convey the City's support for State legislation which will reduce the City's hazardous waste liability. Support for AB 181 is consistent with the City Council's desire to limit the City's liability as a "deep pocket" for unreasonable costs, in this instance, costs which would arise from the "incidental" handling of solid waste.

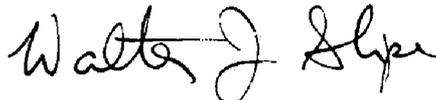
**MBE/WBE**

Since no goods or services are being purchased, M/WBE efforts are not applicable.

Respectfully submitted,

  
REGINALD YOUNG  
Acting Director of Public Works

Recommendation Approved:



FOR  
DAVID R. MARTINEZ  
Deputy City Manager

Contact Person:  
Gary Van Dorst, Waste Reduction  
Coordinator  
264-7561

**FOR COMMITTEE MEETING OF:**  
February 18, 1992

AMENDED IN ASSEMBLY JANUARY 9, 1992

CALIFORNIA LEGISLATURE—1991-92 REGULAR SESSION

ASSEMBLY BILL

No. 181

Introduced by Assembly Member Tanner

January 3, 1991

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An act to amend Section ~~25179.5~~ of 25363 of, and to add Sections 25323.7 and 25363.5 to, the Health and Safety Code, relating to hazardous waste substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 181, as amended, Tanner. ~~Nonliquid hazardous waste~~  
*Hazardous substances liability.*

~~Under existing law, the State Department of Health Services is required to adopt by January 1, 1988, criteria for the disposal of nonliquid hazardous wastes in a hazardous waste landfill, as specified.~~

~~This bill would delete that requirement.~~

*Under existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act provides for the recovery of costs incurred and payable from the Hazardous Substance Account or Hazardous Substance Cleanup Fund for remedial and removal actions to hazardous substance release sites from the liable person. The terms 'liable person' and 'responsible party' are defined for purposes of the act with reference to the federal Comprehensive Response, Compensation, and Liability Act of 1980, which generally makes liable the owners and operators of hazardous substance facilities and the transporters and disposers of hazardous substances, except as specified. Any party found liable for these costs is required to pay only for the portion of the costs attributable to that party's action if the party establishes this attribution by preponderance of the evidence, unless the trier of fact fi*

he evidence insufficient to establish each party's portion of he costs or expenditures.

This bill would define the term 'responsible party' and liable person' to exclude any city, county, district, or other local agency which, on or before January 1, 1990, provided incidental solid waste handling services, as defined, solely because of the act of providing those services. The bill would require the Department of Toxic Substances Control to make a specified finding concerning the contamination of a hazardous substance release site where the department determines that a city, county, district, or other local agency is, or may be, a responsible party or a potentially responsible party for that site as a result of that local agency's provision of nonincidental solid waste handling services. The bill would require that, if the department makes that finding, liability for the site is to be apportioned based on the quantity and characteristics of the hazardous substances disposed of by the local agency, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25179.5 of the Health and Safety Code is amended to read:

2 25179.5. Notwithstanding any other provision of law, 3 except as provided in Section 25179.9, no person shall 4 dispose of liquid waste, liquid hazardous waste, or 5 hazardous waste containing free liquids in a hazardous 6 waste landfill.

7 SECTION 1. Section 25323.7 is added to the Health and Safety Code, to read:

8 25323.7. (a) Notwithstanding this chapter, 9 "responsible party" or "liable person" does not include 10 any city, county, district, or other local agency which, on 11 or before January 1, 1990, provided incidental solid waste 12 handling services, solely because of the act of providing 13 those services.

14 (b) For purposes of this section, "incidental solid 15 waste handling services" means those services

1 determined by the department or a court to be 2 incidental, but shall include authorizing the issuance of 3 business licenses or franchises to solid waste haulers.

4 SEC. 2. Section 25363 of the Health and Safety Code 5 is amended to read:

6 25363. (a) Except as provided in subdivision (f) and 7 in Section 25363.5, any party found liable for any costs or 8 expenditures recoverable under this chapter who 9 establishes by a preponderance of the evidence that only 10 a portion of those costs or expenditures are attributable 11 to that party's actions, shall be required to pay only for 12 that portion.

13 (b) Except as provided in subdivision (f) and in 14 Section 25363.5, if the trier of fact finds the evidence 15 insufficient to establish each party's portion of costs or 16 expenditures under subdivision (a), the court shall 17 apportion those costs or expenditures, to the extent 18 practicable, according to equitable principles, among the 19 defendants.

20 (c) The state account shall pay any portion of the 21 judgment in excess of the aggregate amount of costs or 22 expenditures apportioned under subdivisions (a) and 23 (b).

24 (d) The standard of liability for any costs or expenses 25 recoverable pursuant to this chapter is strict liability.

26 (e) Any person who has incurred removal or remedial 27 action costs in accordance with this chapter or the federal 28 act may seek to recover these costs from any person who 29 is liable pursuant to this chapter, except that no claim 30 may be asserted against a person whose liability has been 31 determined and which has been or is being, fully 32 discharged pursuant to Section 25356.6, or against a 33 person who is actively participating in a pending 34 apportionment proceeding pursuant to Section 25356.6. 35 An action to enforce a claim may be brought as a 36 cross-complaint by any defendant in an action brought 37 pursuant to Section 25360, or in a separate action after the 38 person seeking cost recovery has paid removal or 39 remedial action costs in accordance with this chapter or 40 the federal act. In resolving claims for cost recovery, the

1 court may allocate costs among liable parties using those  
2 equitable factors which are appropriate.

3 (f) Notwithstanding this chapter, any response action  
4 contractor, as defined in subdivision (h) of Section  
5 25364.6, who is found liable for any costs or expenditures  
6 recoverable under this chapter and who establishes by a  
7 preponderance of the evidence that only a portion of  
8 those costs or expenditures are attributable to the  
9 response action contractor's actions, shall be required to  
10 pay only that portion of the costs or expenditures  
11 attributable to the response action contractor's actions.

12 *SEC. 3. Section 25363.5 is added to the Health and*  
13 *Safety Code, to read:*

14 *25363.5. (a) At any hazardous substance release site*  
15 *where the department determines that a city, county,*  
16 *district, or other local agency is, or may be, a responsible*  
17 *party or a potentially responsible party as a result of the*  
18 *local agency's provision of nonincidental solid waste*  
19 *handling services, the department shall make a finding as*  
20 *to whether the hazardous substances present in the solid*  
21 *waste disposed of by the local agency at that site*  
22 *contributed to the conditions of contamination which*  
23 *exist at the site. If the department finds that these*  
24 *hazardous substances did make such a contribution,*  
25 *liability for the costs and expenditures recoverable under*  
26 *this chapter for the site shall be apportioned based on the*  
27 *quantity and characteristics of the hazardous substances*  
28 *disposed of by the local agency, and not on the quantity*  
29 *of solid waste disposed of by the local agency.*

30 *(b) This section does not affect the liability of a city,*  
31 *county, district, or other local agency for its negligent*  
32 *acts.*

33 *(c) This section does not apply to a city, county,*  
34 *district, or other local agency with regard to a solid waste*  
35 *disposal facility issued a permit under Part 4*  
36 *(commencing with Section 43000) of Division 30 of the*  
37 *Public Resources Code which is owned or operated by*  
38 *that local agency.*

39 *(d) For purposes of this section, 'solid waste' has the*  
40 *same meaning as in Section 40191 of the Public Resources*

1 *Code, and 'nonincidental solid waste handling services'*  
2 *means those services which are not incidental solid waste*  
3 *handling services, as defined in subdivision (b) of Section*  
4 *25323.7.*