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**OFFICE OF THE
CITY ATTORNEY**

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**CITY OF SACRAMENTO
CALIFORNIA**

October 21, 1991

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Mayor and City Councilmembers
City Hall
Sacramento CA 95814

**Re: Amicus Participation--City of Turlock Regional Water
Quality Control Board Proceedings**

Honorable Members in Session:

Summary

The Director of Public Works and the City Attorney recommend that the City of Sacramento add its name to the amicus curiae brief filed by the City of San Diego, in the City of Turlock proceedings before the Regional Water Quality Control Board ("Board"), where the question is whether Turlock should be declared a "discharger" of certain chemicals which are deposited into its municipal sewer system by private businesses.

Background

The Board staff has placed before the Board the question of whether the City of Turlock should be declared to be a "discharger" of PCE, which certain dry cleaning businesses deposit into the city's municipal sewer. The Board staff's theory is that the city's sewers leak, which in turn causes the PCE to be deposited in (i.e., in technical terms, "discharged to") the soils and water beneath the leaking area.

If the city is declared to be a discharger in this instance, it would mean that municipal sewer operators are strictly responsible for all materials deposited into the system by private businesses or other property owners, and would have to obtain an NPDES permit, with applicable conditions and discharge requirements. The significance of this is that such conditions and requirements would involve a significant cost to provide a "fix" for a problem not created by the city.

Attached as attachment A is a copy of a memorandum describing in more detail the difficulties which would be posed by an adverse decision in the Turlock case.

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BY THE CITY COUNCIL

OCT 29 1991

OFFICE OF THE
CITY CLERK

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Financial Data

See attachment A. Participation in these proceedings as amicus would involve no direct cost to the city. The only cost would be staff time of the Public Works Department, and the City Attorney's office, in representing the city's interests in the proceedings.

Policy Matters

See attachment A.

MBE/WBE

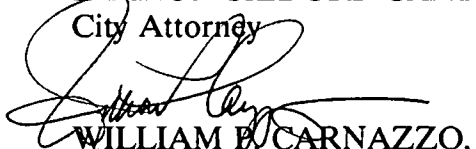
Not applicable.

Recommendation

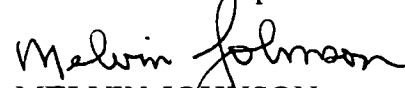
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Respectfully submitted,

SHARON SIEDORF CARDENAS,
City Attorney


WILLIAM P. CARNAZZO,
Senior Deputy City Attorney

Public Works Department

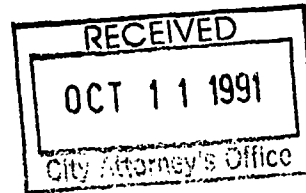

MELVIN JOHNSON,
Director

Recommendation Approved:


Walter J. Slipe, City Manager

October 29, 1991
District: CITY

Contact Person:
William P. Carnazzo, Senior Deputy
City Attorney - 449-5346



DEPARTMENT OF
PUBLIC WORKS
OFFICE OF THE DIRECTOR

CITY OF SACRAMENTO
CALIFORNIA
MEMORANDUM

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TO: Melvin Johnson, Director of Public Works/Utilities
William Carnazzo, Senior Deputy City Attorney

FROM: Don Dodge, Deputy Director of Public Works *DD*

DATE: October 10, 1991

SUBJECT: California Regional Water Quality Control Board (Central Valley Region)
Amicus Brief in Support of City of Turlock

The City of Sacramento should join in this amicus effort. Over 70 California cities have currently joined with the City of San Diego and have the same reasons as the City of Sacramento. Briefly these are:

1. Presently discharges of perchloroethylene (PCE) near dry cleaners in the City of Turlock, including along sewer collection mains leading away from the present (as well as previous) dry cleaner establishments show soil and groundwater contamination. The California Regional Water Quality Control Board (Central Valley Region) proposed order would require dry cleaners, manufacturers of dry cleaning equipment, and the CITY OF TURLOCK to investigate and clean up the contamination.
2. The State Board has provided regional boards with specific criteria for holding non-operating landowners responsible as dischargers. It has never imposed liability upon a municipality which is not a landowner, simply for providing a municipal service. If the City of Turlock is determined to be a discharger under the Act, other municipalities, such as Sacramento, may be included as dischargers in future orders.
3. Determining that municipalities are dischargers under the Act will have profound and devastating effects upon the provision of one of the most basic and necessary services provided by a city: sewer service. Such a rule would require a city to act as a guarantor of acts over which it has no control. The risk to a city in providing sewer services to its citizenry will become so great,

ATTACHMENT A

and the cost of attempted compliance with state requirements so prohibitive, that a city may have no choice but to discontinue such services.

4. Every municipality must operate its public sewer system according to the Regional Board's permit to discharge waste under the National Pollutant Discharge Elimination System ("NPDES permit") (Water Code section 13374). These permits are reviewed every five years and revised if appropriate (Water Code section 13380). As municipalities, we have generally made the reasonable assumption that when we have been reviewed by a regional board and found to be operating in compliance with the terms of a waste discharge permit, we are not in violation of any law when discharging our municipal waste.
5. Virtually every municipality within the state has dry cleaning businesses within its city limits. The businesses are connected to the city sewer system and they may discharge perchloroethylene (PCE) into the system.
6. Because municipalities have not been informed by the agencies regulating them, nor had any reason to know independently that they should pretreat such discharges before they enter the sewer system, or that they should monitor or regulate dry cleaning businesses within their city limits, most municipalities in this state currently do not have in place any program to either regulate dry cleaning businesses or to pretreat such discharges prior to discharge into the city sewer system.
7. Normally, cities do not have an invested interest in the land upon which a dry cleaning business is being operated. Furthermore, it has no stake in the success or failure of such a business. It does not have an ownership interest in the business venture, and certainly gains nothing by the dry cleaning businesses disposing of PCE. Consequently, the landowner rationale is inapplicable to such facts.
8. Also, no municipality can have knowledge or control over every discharge made within its limits; the State Board's rationale for extension of liability for cleanup costs cannot and should not be expanded to municipalities on these facts.
9. Finally, the Regional Board is seeking to impose liability against a city which has complied with every condition of its permit. The city of Turlock passed its annual inspection, and the Regional Board recommended no additional changes to its operating procedures. The Regional Board, after indicating

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that the City of Turlock was operating in total compliance with its permit, now finds, without warning, that the City of Turlock may be a discharger under the Act. Such action invites close scrutiny on the basis of equity and fairness, especially considering the fact that the City of Turlock had no prior knowledge or warning that failure to regulate certain businesses discharging certain chemicals, which the City was not required to regulate under the terms of its permit, could result in liability against the City of Turlock as a discharger under the Act.

DMD:rl