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OPINION	:	No. 81-703
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THE HONORABLE ALEX R. CUNNINGHAM, DIRECTOR, OFFICE OF EMERGENCY SERVICES, has requested an opinion on questions that we have rephrased as follows:

1. May the law enforcement agency having primary traffic investigative authority on the highway where a "hazardous materials incident" occurs delegate the authority to manage operations at the scene of the incident to another agency (such as the fire department) with more expertise, capability, and experience in handling hazardous and toxic substance releases?

2. Does the fact that an agency has not been vested with the authority to manage the scene of "hazardous materials incidents" by Vehicle Code section 2454 and Government Code section 8574.8 affect its ability to receive funding for specialized equipment and training to respond to such incidents?

## CONCLUSIONS

1. The law enforcement agency having primary traffic investigative authority on the highway where a hazardous materials incident occurs may not delegate scene management responsibility to another agency.

2. The fact that an agency has not been vested with authority to manage the scene of "hazardous materials incidents" by Vehicle Code section 2454 and Government Code section 8574.8 does not affect its ability to receive funding for specialized equipment and training to respond to such incidents, unless the grant of funds is conditioned elsewhere upon the agency having such responsibility.

## ANALYSIS

When a hazardous or toxic substance spill occurs upon a highway (i.e., a "hazardous materials incident"), the services of a number of state and local agencies may be required to address the incident. Needless to say, the scale of the response, the skills brought to bear on the problem and hence the agencies which will participate in the emergency organization will be geared to the nature of each incident.<sup>1</sup> Section 8574.8 of the Government Code vests the authority for the management of the scene of an on-highway "toxic" spill or disaster "in the appropriate law enforcement agency having primary traffic investigative authority on the highway where the incident occurs" and Vehicle Code section 2454 does the same for an on-highway

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<sup>1</sup> For example *state* assignments could involve participation of the California Highway Patrol, the Office of Emergency Services, the State Water Resources Control Board, the State Lands Commission, the Office of the Fire Marshal, the Air Resources Board, the Military Department, the Public Utilities Commission, the Office of the Attorney General and the Departments of Fish and Game, Conservation (oil and gas), Transportation, Health Services, Food and Agriculture, Industrial Relations, Water Resources, Forestry, Parks & Recreation, General Services, Rehabilitation, Social Services, and Corrections. On the local level, participation of the local emergency services coordinator, and *local* law enforcement, fire service, health, agriculture, air pollution and public works agencies may be involved, as well as the supervisors/councilmen, schools, and hospitals. In addition, an incident may require the involvement of *federal agencies* (e.g., the Coast Guard, the Environmental Protection Agency, the Departments of Energy and Transportation, and the Federal Emergency Manager Agency) and for *non-governmental and quasi-governmental* agencies (e.g., the American National Red Cross, the Salvation Army, Industry Co-Ops, the Civil Air Patrol, and private hospitals, ambulances, facility owners, and waste services).

"hazardous substance" spill or disaster.<sup>2</sup>

Thus generally speaking, when such spills take place on state highways, the responsibility for "scene management" would rest with the California Highway Patrol and when they occur on local streets and highways, responsibility would rest with the local police or sheriff. (Veh. Code, § 2400; I.L. 77-100 (March 28, 1977) pp. 6-7; see also 47 Ops.Cal.Atty.Gen. 191 (1966); I.L. 79-54 (Oct. 26, 1979).)

However, as we are told by the requester, of all the agencies which may first respond or be involved (cf. fn. 1, *ante*), it is accepted that the fire department is the best trained, best equipped and most experienced in handling a hazardous or toxic materials incident especially when combustion occurs. It has therefore been suggested that the fire department should assume the lead role of scene manager for all such materials incidents regardless of whether fire is involved, and a question is first raised as to whether the law enforcement agency having primary traffic investigative authority on a highway where an incident occurs can delegate its statutory authority for the management of the scene to the local fire department (or other agency).

In connection with the second question, we are told by the requester that certain fire departments in the state have taken steps to enhance their ability to respond to hazardous or toxic materials incidents by purchasing special equipment and vehicles and by specialized training, but that there is concern about their being able to continue in those endeavors if the prime responsibility to manage the scene of an incident is not theirs. We are therefore asked whether the fact that an agency does not have authority to manage the

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<sup>2</sup> The Government Code defines a "toxic disaster" as "an occurrence where toxic substances are dispensed in the environment in such a manner as to cause, or potentially cause, injury or death to a significant number of persons or significant harm to the natural environment . . . . . through direct or indirect contact with such toxic substances" (Gov. Code, § 8571.9.) For highway transportation purposes it defines "toxic substances" as those "materials designated as hazardous by the United States Department of Transportation for purposes of [49 C.F.R.] parts 172, 173 and 177 . . . . ." (*ibid.*), and calls upon the toxic disaster contingency plan to "provide a listing of the kinds of toxic substances which could be the subject of a toxic disaster." (*Ibid.*) . . . . . The Vehicle Code defines "hazardous substance" as "any hazardous material defined pursuant to [its] section 2402.7 [which incorporates the D.O.T definitions], any hazardous waste defined pursuant to section 25117 of the Health and Safety Code, and any toxic substance defined pursuant to section 28745 of [that] code." (Veh. Code, § 2152.)

While the class of "toxic substances" may not be exactly the same as the class of "hazardous substances," for the purposes of this opinion we need not be concerned with any incongruity; the conclusions we reach would be the same regardless of whether a "toxic spill or disaster" or a "hazardous substance spill or disaster" is involved.

scene of an on-highway hazardous or toxic materials spill or disaster affects its ability to obtain funding for equipment and training to respond to such incidents.

We conclude that the actual ultimate authority vested by Vehicle Code section 2454 and Government Code section 8574.8 for the management of the scene of an on-highway toxic or hazardous substance spill or disaster may not be delegated to another agency by the law enforcement agency having primary traffic investigative authority on the highway where the spill occurs, but the fact that such other agency does not have that authority does not affect its ability to still obtain funding for equipment and training to respond to such incidents.

In 1980, the Legislature enacted Senate Bill 193 (Stats. 1980, ch. 805, § 1) adding article 3.7 (§§ 8574.7-8574-9) to the Government Code to require the Governor to establish a "state toxic disaster contingency plan" pursuant to its terms. (Gov. Code, § 8574.7.) While the legislation was general and did not specify the actual plan to be established, it did provide certain limitations thereon in section 8574.8 which reads as follows:

"(a) A state toxic disaster contingency plan established pursuant to this article shall provide for an integrated and effective state procedure to respond to the occurrence of toxic disasters within the state. *The plan shall provide for specified state agencies to implement the plan, for interagency coordination of the training conducted by state agencies pursuant to the plan, and for on-scene coordination of response actions.*

"Notwithstanding any provision of the plan, the authority for the management of the scene of an on-highway toxic spill or disaster shall be vested in the appropriate law enforcement agency having primary traffic investigative authority on the highway where the incident occurs. During the preparation of the toxic disaster contingency plan, the Office of Emergency Services shall adopt the recommendations of the Department of the California Highway Patrol in developing response and on-scene procedures for toxic disasters which occur upon the highways, based upon previous studies for such procedures, insofar as the procedures are not inconsistent with the overall plan for initial notification of toxic disasters by public agencies and for after-incident evaluation and reporting."

In the same year, upon finding that "a statewide program for the management of hazardous substances highway spills, under the Jurisdiction of the California Highway Patrol, is necessary to protect the public health and environment" (Veh. Code, § 2451), the Legislature enacted the Hazardous Substances Highway Spill Containment and Abatement

Act (Stats. 1980, ch. 922, § 1; Assem. Bill No. 2109) adding article 4 (§§ 2450-2454) to the Vehicle Code to achieve that end. The Act made the California Highway Patrol the "statewide information, assistance, and notification coordinator for all hazardous substances spill incidents occurring on highways within the state . . ." (Veh. Code, § 2453) and required it to "establish a single notification mechanism to serve as a central focus point for [the] response system." (*Ibid.*) Section 2454 of the Act, parallels the above emphasized language of section 8574.8 of the Government Code with respect to toxic spills or disasters, provides that:

"The authority for the management of the scene of an on-highway *hazardous substance spill or disaster* shall be vested in the appropriate law enforcement agency having primary traffic investigative authority on the highway where the spill occurs."

Again, the question for resolution is whether those investitures of scene management may be delegated by the law enforcement agency having primary traffic investigative authority on the highway where the spill or disaster occurs to another agency (such as a fire department) which might have more expertise, capability, and experience in handling the type incident. Once again, we conclude it may not be so delegated. As we proceed to explain, the parallel legislative investitures of authority to manage the scene of an on-highway toxic or hazardous substances spill or disaster in the "law enforcement agency having primary traffic investigative authority on the highway where the incident occurs" (Veh. Code, § 2454 [hazardous substance spills]; Gov. Code, § 8574.8 [toxic spills]) was a deliberate determination by the Legislature that such authority should be vested therein and nowhere else. The Legislature having determined where the authority in question should lie, its further delegation or abdication by the delegatee would be improper.

To ascertain the intent of the Legislature on this issue so as to effectuate the purpose of the laws (*Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645), we turn to the legislative histories of the respective legislation which are valuable toward that end. (*California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844, citing *Steilberg v. Lackner* (1977) 69 Cal.App.3d 780, 785 and *Alford v. Pierno* (1972) 27 Cal.App.3d 682, 688; see also *People v. Ventura Refining Co.* (1928) 204 Cal. 286, 291; *County of San Diego v. Milotz* (1953) 119 Cal.App.2d Supp. 871, 880.)

When Assembly Bill 2109 was originally introduced on January 21, 1980, no mention was made of a "scene manager" for hazardous substance spill incidents. The proposed addition of section 2454 to the Vehicle Code merely directed the California Highway Patrol to "establish and conduct a mandatory, ongoing statewide hazardous substances spill containment training program for local and state emergency response personnel" and provided that that program "include a *method for designation an incident*

*coordinator from the law enforcement agency with primary responsibility for traffic control on the highway exposed to a hazardous substance spill."* On April 7, 1980, the investiture of authority to manage the scene of a hazardous substances spill incident was added. The foregoing language was deleted and the following placed in its stead:

*"Authority for management of a hazardous substance spill on a highway shall be vested in the law enforcement agency having traffic control and investigative authority for the highway where the spill occurs."*

On April 16, 1970, the section was amended to read as eventually enacted:

*"The authority for the management of the scene of an on-highway hazardous substance spill or disaster shall be vested in the appropriate law enforcement agency having primary traffic investigative authority on the highway where the spill occurs."*

A similar legislative development took place with Senate Bill 183: when originally introduced on January 9, 1979 the proposed addition of Government Code section 8574.8 contained no mention of a scene manager for on-highway toxic spill incidents; the proposed addition merely called for the establishment of a state chemical disaster contingency plan (1) which would provide for effective procedures to combat the occurrence of chemical disasters within the state and (2) which would provide "for specified state agencies to implement the plan." Even when amended in the Senate on January 21, 1980, no mention was made of a scene manager; that revision merely provided that the state plan also provide for "interagency coordination of the training conducted by specified state agencies . . . and for *on-scene coordination of response actions*." It was by an amendment made *in the Assembly* on March 3, 1980, that the parallel investiture of authority to manage the scene of an on-highway *toxic* spill or disaster took place: the section was amended to change the reference from "chemical" disasters to toxic disasters, and to add the language in the bill as eventually enacted which is the focus of our concern:

*"Notwithstanding any provision of the plan, the authority for the management of the scene of an on-highway toxic spill or disaster shall be vested in the appropriate law enforcement agency having primary traffic investigative authority on the highway where the incident occurs."*

These legislative histories are most revealing. We view them as evidence of a deliberate determination by the Legislature that the authority for the management of the on-highway scene of *both* the on-highway toxic spill or disaster and the hazardous substances spill or disaster should be vested *in the law enforcement authority* having primary traffic investigative authority on the highway where the incident occurs and

nowhere else. Although this deliberate intention may be more clearly expressed by the language of Government Code section 8574.8 with respect to the scene management of an on-highway toxic spill or disaster than in the language of Vehicle Code section 2454 relating to the scene management of on-highway hazardous substance spills or disasters,<sup>3</sup> the parallel and contemporaneous development of the language of each section, and especially the fact that the crucial language of section 8574.8 was added to *Senate Bill 183 by the Assembly* which ultimately changed the proposed language of section 2454 in its own Bill 2109 to dovetail with it, convinces us that the same deliberate intention undergirds the passage of each. (*Old Homestead Bakery, Inc. v. Marsh* (1925) 75 Cal.App. 247, 259 ("[T]he rule that statutes *in pari materia* should be construed together applies with peculiar force to statutes passed at the same session of the legislature; it is to be presumed that such acts are imbued with the same spirit and actuated by the same policy . . ."); cf. *People v. Jackson* (1866) 30 Cal. 428, 429-430; *In re Marriage of Pinto* (1972) 28 Cal.App.3d 86, 89.) In terms which are mandatory and which appear more so in light of the legislative history, the Legislature has declared that "the authority for the management of the scene of an on-highway [hazardous substance or toxic] spill or disaster shall be vested in the appropriate law enforcement agency having primary traffic investigative authority on the highway where the [spill or incident] occurs." (Veh. Code, § 2454; Gov. Code, § 8574.8.) We consider that ultimate language to be the culmination of a process in which the Legislature determined where scene management responsibility for on-highway spill incidents should lie.<sup>4</sup> As such, that resolution may not be compromised by further delegation.

Pursuing this tack, we note that, as a general rule, powers conferred upon public agencies and officers which involve the exercise of judgment or discretion cannot be surrendered or delegated in the absence of statutory authorization. (*California Sch. Employees Assn. v. Personnel Commission* (1970) 3 Cal.3d 139, 144; *Webster v. Board of Education* (1903) 140 Cal. 331, 332; *Moss v. Board of Zoning Adjustment* (1968) 262 Cal.App.2d 1, 10; *Schechter v. County of Los Angeles* (1968) 258 Cal.App.2d 391, 396; 56

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<sup>3</sup> The legislative use of the phrase "notwithstanding any provision of the plan" is the clearest indication that the state toxic disaster contingency plan may not gainsay what follows, i.e., where authority for scene management of a toxic spill or disaster incident rests. (*In re Marriage of Dover* (1971) 15 Cal.App.3d 675, 678, fn. 3; cf. *State of California v. Superior Court (Fuller)* (1967) 252 Cal.App.2d 637, 639; *State of California v. Superior Court (Vincent)* (1965) 238 Cal.App.2d 691, 695, 696.)

<sup>4</sup> We would muse that, given the type of coordination necessary to address a hazardous substance or toxic spill incident, scene management is probably best performed by a law enforcement agency which has the wherewithal to provide that coordination. While a fire department would certainly be better equipped to actually handle a fire, it does not follow that it would be better equipped to handle the other responsibilities of a scene manager.

Ops.Cal.Atty.Gen. 399, 402 (1973); I.L. 73 159 (Sept. 17, 1973).)<sup>5</sup> As we observed on a previous occasion, the rationale for not permitting that delegation has been based on various theories, to wit, that their conference is in the nature of a public trust; that their delegation would be anomalous; that the delegation is purely personal; and that there is a presumption that the officer in which the powers are reposed was selected because of his fitness and competency to exercise them. (56 Ops.Cal.Atty.Gen., *supra*, at p. 402, citing *California Sch. Employees Assn. v. Personnel Commission*, *supra*; *Schechter v. County of Los Angeles*, *supra*; and *Burkholder v. Lauber* (Ohio 1965) 216 N.E.2d 909, 911, respectively.) Although the rule has usually been used to test the propriety of the delegation of powers and duties to subordinates or deputies of the legislative delegatee, it has been, and was in the seminal case, applied to delegations made to third parties outside the legislative delegatee's agency.

Thus in *Morton Bros. v. Pacific Coast S.S. Co.* (1898) 122 Cal. 352, the court held improper certain action of a steamship company, to whom the harbor commissioners had delegated the power "to set apart and assign suitable wharves . . . for the exclusive use of its vessels," in granting exclusive privileges on piers occupied by its vessels. Said the court:

"These commissioners had power to grant to the steamship company only those rights and interests which the statute declares they may grant. For the power and control over the waterfront delegated by the statute to the commissioners may be exercised by them alone, and they can delegate none of those powers, and no part of that control, to third parties." (122 Cal. at p. 354.)

"The measure of the power of the harbor commissioners is found in [the] language . . . [of the statute (former Pol. Code, 2524), and construing the power 'to set apart and assign suitable wharves . . . for the exclusive use of vessels' as not to include the power to give the entire control and occupancy of those wharves to an assignee] the assignment to the steamship company only gave that company the exclusive privilege of using these piers in the loading and unloading of freight and passengers. In all other things these piers are under the control and authority of the harbor commissioners, and subject to all reasonable rules and regulations they may promulgate."

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<sup>5</sup> The rule follows the related maxims "delegata potestas non potest delegari" (a delegated power cannot be delegated) and "delegatus non potest delegare" (a delegate cannot delegate, a person to whom an office or duty is delegated cannot lawfully devolve the duty on another unless he be expressly authorized to do so). (Black's Law Dict. (4th ed.) at pp. 512, 513.)

"... [The] matter of granting or refusing privileges of the kind here involved is a matter with the harbor commissioners alone, and a matter which they should control and manage by reasonable rules and regulations." (122 Cal. at p. 356.)

In enacting Vehicle Code section 2454 and Government Code section 8574.8 the Legislature has *deliberately* and purposefully specifically placed the power to manage the scene of an on-highway toxic or hazardous substances spill or incident *in the law enforcement agency* having traffic control and investigative authority on the highway involved. (Cf. fn. 4, *ante*.) Given the variety of incidents which could be addressed, the authority of scene management would certainly involve the exercise of judgment and discretion and could not be said to be merely ministerial in nature (Cf. *Schechter v. County of Los Angeles*, *supra*, 258 Cal.App.2d 391, 397 and 397, fn. 6.) Absent an express statutory authorization for its further delegation, we conclude that the law enforcement agency having primary traffic investigative authority on a highway where such incidents occur may not delegate scene management responsibility to another agency.

This is not to say, however, that that other agency is thereby necessarily shorn of its ability to receive funding and make expenditures for procurement of specialized equipment or to provide training in preparation for responding to on-highway hazardous substance or toxic spill incidents. If the traditional abilities of the individual respective agencies to respond to such incidents were so curtailed, their collective ability to provide an effective response would be seriously hampered. But such result would run counter to the purpose for which the statutes in question were enacted (i.e., to provide a mechanism for Just that type of effective response), and it must therefore be eschewed. (*Stewart v. Board of Medical Quality Assurance* (1978) 80 Cal.App.3d 172, 179, *People v. Shirokow* (1980) 26 Cal.3d 301, 306-307, *Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal.3d 152, 153; *People v. Ventura Refining Co.*, *supra*, 204 Cal. at p. 292.)

Thus we are amply satisfied that neither piece of legislation was ever meant to curtail or discourage the ability of any agency to respond in its traditional role, now according to plan, to an on-highway spill incident, if otherwise permitted by its budget. Rather we perceive the legislation to have been premised on the supposition that its ability to carry on its traditional response would continue to exist but would not be enhanced by being directed or channeled in a well integrated and effective system (the plan) which would coordinate the responses of other agencies' roles as well. In fact, we believe it was also contemplated that the scene manager might well defer to the expertise of other agencies in combatting an incident with respect to a particular problem.

From the words of the statutes themselves (*Moyer v. Workmen's Comp. Appeals Board* (1973) 10 Cal.3d 222, 230; *Steilberg v. Lackneer*, *supra*, 69 Cal.App.3d at

p. 785; *People v. Knowles* (1950) 35 Cal.2d 175, 182), we see that, in addressing the situation involving *toxic* spills, the Legislature mandated the Governor to "establish a state toxic disaster contingency plan" (Gov. Code, § 8574.7) as none had been required before (Legislative Counsel's Digest to Sen Bill 183; cf. *Stewart v. Board of Medical Quality Assurance*, *supra*, 80 Cal.App.3d at pp. 193) and required that the plan so establish provide (1) "for an *integrated and effective* state *procedure* to respond to the occurrence of [such incidents]" (Gov. Code, § 8574.8 subd. (a)) and also to provide "for specified state agencies *to implement* the plan, for *interagency coordination of the training* conducted by state agencies pursuant to the plan, and for on-scene *coordination of response actions*." (*Ibid.*)<sup>6</sup> We believe the crucial word in the legislation and the key to understanding the Legislature's intention is the twice used "coordination." By terms of section 8574.8, subdivision (a), the plan must provide for coordination both of the training conducted by state agencies and for their on-scene response actions. By the requirement for "coordination" does not mean that the individual characteristics and abilities of the entities being coordinated are lost or even necessarily deleted, or their traditional roles curtailed. To the contrary, the word "coordination" implies that such will be kept intact consistent with the concerted action, "coordination" being defined as a "combination in suitable relation for most effective or harmonious results." (Websters Third New Internat. Dict. (4th ed) at p. 502; cf. "coordinate" defined as "to bring into a common action, movement, or condition: regulate and combine in harmonious action" (*id.*, at p. 501.) Noteworthy in this regard too is the use of state agencies." That usage would seem to imply that, with respect to their training and response action, the individual agencies' traditional programs, methods, command structure, et cetera, will remain unaffected except as it is inconsistent with the overall plan.

The notion of *coordination* is also present in the Hazardous Substances Highway Spill Containment Act. The purpose of that act, found in the Legislature's express finding and declaration, was to protect the public health and environment by providing a statewide program for the management of hazardous substances highway spills under the jurisdiction of the California Highway Patrol. (Veh. Code, § 2451.) Toward the end, as previously mentioned, the Legislature had the Patrol "serve as the statewide information, assistance, and *notification coordinator* for all hazardous substances spill incidents occurring on highways within the state . . . ." (*Id.*, § 2453.) And while the California Highway Patrol was also directed to "establish a single *notification* mechanism to serve as a central focus point for a hazardous substances spill response system" (*ibid.*) to

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<sup>6</sup> As previously mentioned, when originally introduced the legislation (i.e., SB 183) merely called for the plan to combat the occurrence of what was then termed "chemical disasters" within the state and for specified state agencies to implement the plan. The specific requirements that the plan provide: (a) for an integrated and effective *procedure* to respond to the incidents, (b) for interagency training coordination, and (c) for on-scene coordination of response actions, were added later (i.e., when amended on Jan. 21, 1980).

complement that established by the Office of Emergency Procedures pursuant to Government Code section 8574.8, subdivision (b) for toxic disasters (*ibid.*), we do not believe the Legislature meant to thereby affect the training programs or response procedures of the individual agencies which might respond to such incidents. The legislative history in fact more clearly indicates otherwise. When Assembly Bill No. 2109 was originally introduced, proposed section 2451 to the Vehicle Code contained the following language with respect to hazardous substance spill incident response:

"The program established by the California Highway Patrol under this article *shall preempt all local regulations and conflicting state regulations concerning the management, identification, containment, cleanup, disposal, and site restoration for hazardous substances spill incidents* occurring on highways."

And with respect to training programs, the bill at that time contained the following in its proposed section 2454:

"(a) *The California Highway Patrol shall establish and conduct a mandatory, ongoing statewide hazardous substances spill containment training program for local and state emergency response personnel.* The program shall include, but not be limited to, the development of clearly defined containing and cleanup guidelines, procedures, and alternatives. The guidelines shall be made available to all state and local emergency response personnel and law enforcement agencies.

"(b) *The training program shall include a method for designating an incident coordinator from the law enforcement agency with primary responsibility for traffic control on the highway exposed to a hazardous substances spill.*"

Both proposed additions however *were deleted from the bill* when amended in the Assembly on January 21, 1980, and from that we can only infer a legislative intention *not to curtail* the training programs and response actions of the individual agencies who might become involved in a hazardous substance incident.

Given the foregoing we would be hard pressed to conclude that the vesting of *scene management authority* in the law enforcement agency having primary traffic investigative authority on a highway where a toxic or hazardous spill incident takes place was meant to affect the abilities of other agencies to receive funds for their training and responding to such incidents. Whatever the meaning of the full scope of scene management might be, as it will be defined in either plan, we do not believe it was meant by the

Legislature to intrude on the abilities of individual agencies to participate in the scene or affect the traditional roles they played thereof. Perhaps an analogy can be made to the orchestra conductor: while he manages, conducts and supervises the scene of a performance, the violinists still have to purchase, still have to train with and still have to play on their own violins.

Accordingly, we conclude that although the authority for scene management of a toxic or hazardous materials spill incident under Vehicle Code section 2454 and Government Code section 8574.8 may not be delegated by the law enforcement agency having primary traffic investigative authority on the highway where the incident occurs to another agency which might have more expertise, capability and experience in handling such incidents, the fact that that other agency does not have such scene management authority does not affect its ability to received funding and make expenditures for specialized equipment and training to respond to such incidents according to plan.

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