CASE NO. A158323

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

WASTE CONNECTIONS US, INC., MADERA DISPOSAL SYSTEMS, INC., PORTERO HILLS LANDFILL, INC., and WASTE SOLUTIONS GROUP OF SAN BENITO, LLC,

Defendants and Appellants,

v.

ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY,

Plaintiff and Respondent.

BRIEF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF RESPONDENT ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY

On Appeal from Judgment

Of the Superior Court, County of Contra Costa

Case No. CIVMSC18-01546

Hon. Steven K. Austin

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL FIRST APPELLATE DISTRICT, DIVISION TWO	COURT OF APPEAL CASE NUMBER: A158323
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: DEREK P. COLE (SBN 204250) FIRM NAME: COLE HUBER LLP STREET ADDRESS: 2281 LAVA RIDGE COURT - SUITE 300 CITY: ROSEVILLE STATE: CA ZIP CODE: 95661 TELEPHONE NO.: (916) 780-9009 FAX NO.: (916) 780-9050 E-MAIL ADDRESS: dcole@colehuber.com ATTORNEY FOR (name): Amicus Curiae League of California Cities	SUPERIOR COURT CASE NUMBER: CIVMSC18-01546
APPELLANT/ PETITIONER: WASTE CONNECTIONS US, INC., et al. RESPONDENT/ REAL PARTY IN INTEREST:	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): ☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

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1. This form is being submitted on behalf of the following party *(name)*: Amicus Curiae, League of California Cities

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest *(Explain):*
(1)		
(2)		
(3)		
(4)		
(5)		

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: November 3, 2020

Derek P. Cole
(TYPE OR PRINT NAME)

▶ /s/ Derek P. Cole
(SIGNATURE OF APPELLANT OR ATTORNEY)

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APPLICATION TO FILE AMICUS BRIEF ON BEHALF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES

The League of California Cities ("League") seeks leave to file the attached amicus brief in support of Respondent Alameda County Waste Management Authority.

The League is an association of 476 California cities united in promoting open government and home rule to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life in California communities. The League is advised by its Legal Advocacy Committee, which is composed of 24 city attorneys representing all regions of the State. The committee monitors appellate litigation affecting municipalities and identifies those cases, such as the instant matter, that are of statewide significance.

The League offers the proposed amicus brief to be heard concerning the interpretation of Public Resources Code section 41821.5(g), the statute at issue in this appeal. Subdivision (g) of this section authorizes waste management agencies to inspect the records of solid-waste haulers and disposal facilities for purpose of administration of their solid-waste disposal fees. Section 41821.5 is part of the California Integrated Waste Management Act of 1989, more commonly known by its enacting bill name, "AB 939." Cities are required under AB 939 to provide for the disposal and diversion of solid waste originating within their jurisdictions.

A decision in this appeal could greatly affect cities' abilities to carry out their responsibilities under this comprehensive legislation. The League believes the Petitioners advocate for an unduly restrictive interpretation of section 41821.5(g) that substantially restricts waste management agencies' right to inspect records of solid waste deposited at disposal facilities. As cities are often members of waste management agencies, and because cities remain independently responsible for AB 939 responsibilities, the League is concerned its members would be adversely affected should the Petitioners' position in this appeal be accepted.

No party in this action authored this brief in whole or in part. Nor did any party or person contribute money toward the research, drafting, or preparation of this brief, which was authored entirely on a pro bono basis by the undersigned counsel.

Dated: November 3, 2020 COLE HUBER LLP

By: ***/s/ Derek P. Cole***
Derek P. Cole
Attorneys for Amicus Curiae
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AMICUS BRIEF OF
LEAGUE OF CALIFORNIA CITIES

I. INTRODUCTION

Amicus Curiae League of California Cities ("League") provides this brief in support of Respondent Alameda County Waste Management Authority ("Authority"). The League joins with Authority in requesting the Court affirm the Superior Court decision below and reject the Petitioners' interpretation of the statute at issue, Public Resources Code section 41821.5(g). This section is part of the California Integrated Waste Management Act of 1989, better known by its enacting bill name, "AB 939." This landmark legislation establishes California's comprehensive scheme for regulating the disposal of solid waste and, importantly, for reducing the volume of waste that goes into the state's landfills.

Under AB 939, waste management agencies charge statutorily authorized fees on solid waste haulers and disposal facilities to fund their planning, compliance, and enforcement activities. To effectively and fairly charge these fees, waste management agencies must have regular and uninhibited access to records of the wastes originating within their jurisdictions. Public Resources Code section 41821.5(g) assures local agencies of their right to review such records, known as "weight tags," at waste disposal facilities.

In this appeal, the Petitioners, who operate landfills outside of Alameda County, challenge the Authority's effort to inspect weight tags dating to the beginning of 2015. The Petitioners focus on one term in section 41821.5(g) to advocate for an unduly restrictive interpretation of Authority's inspection rights. The Petitioners' interpretation imbues the term "as necessary" in this section with a meaning that is not consistent with legislative intent and that does not provide for effective local regulation. If accepted, the Petitioners' interpretation would greatly hinder waste management agencies in accurately determining and collecting fee revenue and in ensuring a level playing field in a competitive industry.

II. OVERVIEW OF AB 939

Before outlining its position in support of Authority, the League believes it helpful to outline the comprehensive requirements of AB 939. This act imposes many obligations on cities regarding the disposal and diversion of solid waste.

A. SOLID WASTE-DIVERSION REQUIREMENTS

Under AB 939, local agencies including cities are responsible, in conjunction with the state, for solid-waste management. (Pub. Res. Code, § 40001(a).) The Legislature has declared that imposing this burden on local agencies is necessary for "preservation of health and safety, and the well-being of the public." (*Id*., § 40002(a).) To achieve these objectives, state law authorizes local agencies to enter into franchise agreements with

private companies to provide for solid waste collection. (*Id*., § 40059(a)(2).) Local agencies may also provide for waste collection themselves. (*Davis v. City of Santa Ana* (1952) 108 Cal.App.2d 669, 676.)

Regardless of whether they contract for or provide such services, cities are ultimately responsible for solid waste collection within their territories. This is because all cities are obligated under AB 939 to divert solid wastes from landfills. (Pub. Res. Code, § 40051.) Under AB 939, cities must adopt "source reduction and recycling elements," or "SRREs," that include, among other things, descriptions of the measures they will take to reduce waste and promote recycling. (*Id*., §§ 41000(a), 41003(b)-(c), 41050.) Initially, these elements were required to provide for the diversion of 25% of waste from landfills. (*Id*., § 41780(a)(1).) Although the legislative goal is for 75% diversion by this year, AB 939 presently mandates that cities achieve at least a 50% diversion rate. (*Id*., §§ 41780(a)(2), 41780.01; see also *id*., § 41780.05 [requiring that an agency's diversion rate be calculated on a per capita basis after 2009].)

Cities must meet this diversion standard within regional frameworks and under state supervision. SRREs for each city within a county are required to be included in a countywide integrated waste management plan, along with other mandatory elements. (*Id*., § 41750(a), 41750.1(a).) Countywide plans must be approved by each city, and subsequently must be reviewed by the California Department of Resources Recycling and

Recovery, or "CalRecycle," every five years. (*Id*., §§ 41760, 41770(a), 41800(a).) Each city is also responsible for the submission of annual reports to CalRecycle regarding its source reduction and recycling progress, among other items. (*Id*., § 41821.) Cities may, and often do, team up with other cities and counties in forming regional agencies to administer these responsibilities. (*Id*., § 40971.) But even when cities join regional agencies, they remain individually responsible for AB 939 obligations. (*Id*., § 40970.)

The consequences of noncompliance with AB 939's waste diversion requirements can be severe. If CalRecycle determines a city has not complied with its diversion requirements, it may issue an order requiring the city to comply. (*Id*., § 41825(d).) Noncompliant cities can be fined up to $10,000 for each day they remain out of compliance with their source reduction obligations. (*Id*., § 41850(a).)

B. FEE AUTHORITY

Of relevance to this case are certain financial provisions of AB 939. To ensure satisfaction of their solid-waste diversion obligations, the act requires waste management agencies to demonstrate a funding source sufficient for "preparing, adopting, and implementing" their SRREs. (Pub. Res. Code., § 41900.) Under the act, agencies may enact fees on solid waste generators to fund these activities. (*Id*., § 41901.) Cities may collect these fees directly or through their franchise haulers. (*Id*., § 41902.) Fees

are charged on a cost-of-service, weight, volume, or material type basis and must be adopted at a public hearing in the manner specified by the Mitigation Fee Act. (*Id*., § 41901 [incorporating the process and requirements of Gov. Code, § 66016].)

C. DISPOSAL REPORTING

Agency reporting requirements under AB 939 also bear on the issues in this appeal. In carrying out their duties under the act, cities are responsible for annually reporting the solid wastes generated from within their territories. (*Id*., § 41821(a)(1).) To facilitate such documentation, the act requires disposal facility operators to submit information on disposal tonnages by jurisdiction or region of origin to CalRecycle. (*Id*., § 41821.5(a).) These facility operators are, in turn, required to obtain information about the origin of the solid waste that haulers and transfer stations deposit with their facilities. (*Ibid.*)

Importantly, under the provision at issue in this litigation, subdivision (g)(1) of Public Resources section 41821.5, any "government entity," including a city,[1] "may, at a disposal facility, inspect and copy records related to tonnage received at a facility … and originating within the government entity's geographic jurisdiction." The entity has the right

[1] "Government entities" under this section are defined to be the same as defined by the term "jurisdiction" in Public Resources Code section 40145, which includes cities. (Pub. Res. Code, § 41821.5(g)(4).)

to review "weight tags that identify the hauler, vehicle, quantity, date, type, and origin of waste received at a disposal facility." These records are available to the entity "for the purposes of subdivision (a)" (i.e., reporting concerning jurisdictional origin of tonnages deposited) and "as necessary to enforce the collection of local fees." Section 41821.5 recognizes these records may contain trade secret information, but this does not preclude the right of public-entity inspection. The sensitivity of the records is protected in that the records are not deemed public and are subject to appropriate redactions before agency review. (*Id*., § 41821.5(g)(2), (7).)

III. DISCUSSION

The Petitioners characterize this appeal as presenting only pleading issues. They argue that because their answer below challenged the factual allegations of the Authority's operative pleading, they should have been allowed to proceed to at least the discovery phase of a traditional civil action. Critical to this position is the Petitioner's argument that Public Resources Code section 41821.5(g) envisions some type of court-supervised "fact-finding" proceeding whenever disposal facilities object to a waste management agencies request to inspect their weight-tag records.

In making this argument, the Petitioners read requirements into section 41821.5(g) that are not supported by the AB 939 statutory text or scheme. They incorrectly argue, for instance, that the agencies must have "narrowly-tailored good cause" to demonstrate that inspection of weight

tags is "necessary." (Appellants' Opening Brief ["AOB"] 29.) They also wrongly assert agencies must demonstrate they do not have other means to access the information the weight tags would provide. (AOB 11-12, 19.)

The Authority has thoroughly and persuasively refuted these unduly restrictive interpretations of section 41821.5(g). The League does not repeat the Authority's many arguments for rejecting WCI's stilted reading of the term "as necessary" in that subdivision. The League instead offers additional observations about section 41821.5 in the context of the overall AB 939 statutory scheme.

As a starting point, the League observes that the highly constrained right of inspection the Petitioners advocate is not consistent with the act's legislative goals. The AB 939 scheme is premised on the notion that "the responsibility for solid waste management is a *shared responsibility* between state and local governments." (Pub. Res. Code, § 40001(a), emphasis added.) The act declares as "an essential part of the state's comprehensive program for solid waste management" and "for the preservation of health and safety" that "it is in the public interest for the state" to "authorize and require local agencies … to make adequate provision for solid waste handling …." (*Id*., § 40002(a).) Given these declarations of local government's importance to effective solid-waste policy, it makes little sense to interpret local agencies' right to inspect disposal facility records as being constrained in the manner the Petitioners

advocate. As noted above, the Legislature has set very ambitious goals for the diversion of solid-waste from landfills. It has required agencies to comprehensively plan to ensure they meet these goals and has authorized significant fines against agencies for noncompliance. Maintaining adequate fees to fund these activities is critical to local agencies' abilities to carry out their AB 939 obligations. For this reason, there is no logical reason why the Legislature would intend that agencies jump through the many hoops the Petitioners advocate to obtain disposal facility records.

Notably, the Petitioners' Opening and Reply Briefs neglect any serious discussion as to *why* the Legislature could have intended the interpretation of section 41821.5(g) they advocate. They infer several requirements limiting agency inspections from a single phrase in that subdivision, but they offer no discussion as to how this interpretation fits within the overall AB 939 scheme. Presumably, if pressed on this subject, the Petitioners might raise the confidential and proprietary nature of the information disposal facilities collect. But the Legislature has addressed this concern. It has made clear that any records public entities obtain from facilities are not public records. (Pub. Res. Code, § 41821.5(g)(1).) Public entities are also prevented from disclosing the names of haulers using certain landfills except for law-enforcement purposes or for enforcement of franchises. (*Ibid*.) And facilities are authorized to make certain redactions to the records they produce to exclude confidential pricing information.

(*Id*., § 41821.5(g)(7).) The Legislature has included ample safeguards to protect confidential information contained in disposal facility records.

In short, the Petitioners advocate an interpretation of section 48121.5(g) that is supported by neither the text of that subdivision nor the legislative goals underlying AB 939. Effectively, the Petitioners argue that disposal facility operators must first satisfy *themselves* that public entities' record-inspection requests are reasonable and properly tailored before granting access to the entities. If *the operators* decide the entities' requests are not justified or appropriately limited, the Petitioners argue, the entities' only recourse is to file civil actions, engage in traditional motion and discovery practice, and then bring the records disputes to trial. The Legislature is no doubt aware of the expenses traditional civil litigation can have, as well as the amount of time it can take to secure judgment. It strains credulity to suggest the Legislature would intend public entities undertake such a burdensome process just to obtain records to verify haulers and disposal facilities are paying applicable fees without expressly requiring such process.[2]

[2] Indeed, it is clear the Legislature intended the opposite. Section 41821.5 states that an entity may seek injunctive or declaratory relief "to enforce its authority under" subdivision (g)(2). The quoted phrase indicates an intention that litigation over record inspections be the exception, rather than the norm—i.e., that litigation be brought by entities to "enforce" their right to inspect, not to determine if they can prove their need for the inspections.

This Court should reject the self-serving interpretation the Petitioners offer of section 41821.5(g). The interpretation of when it is "necessary" for agencies to inspect disposal facility records should be determined by what best serves the goals of AB 939. To that end, the League notes that the right to inspect the records of disposal facilities is important to local agencies for a number of reasons. First, inspections ensure that agencies can collect all the revenue due from the fees they charge to fund their AB 939 program. Ensuring adequate funding for these programs is a critical factor in securing the programs' success. Second, inspections assist agencies in ensuring the records upon which they base and charge their fees are accurate. This allows fees to be fairly charged to disposal facilities and haulers at no more than a cost-of-service basis. And third, inspection of records allows agencies to confirm they are charging all haulers and disposal facilities that dispose of waste originating within their jurisdictions. Solid waste collection is a very competitive industry. Verifying that all haulers and facilities are paying their full fees allows agencies to provide for evenly regulated markets—ones in which some haulers do not escape payment and gain competitive advantages over those that do pay.

In sum, to best effectuate the goals of AB 939, the Court should construe section 41821.5(g) as the Authority advocates. The adoption of the Petitioners' interpretation of "as necessary," as used in that

subdivision, would impose an undue burden on agencies that would hinder collection of the fee revenues needed to fund effective solid-waste planning, compliance, and enforcement, and undermine the legislature's intent in enacting AB 939.

IV. CONCLUSION

For the reasons described above, as well as in the Authority's Responding Brief, the League requests that the Court affirm the judgment of the Superior Court.

Dated: November 3, 2020 COLE HUBER LLP

By: ***/s/ Derek P. Cole***
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CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA RULES OF COURT RULE 8.204(c)(1)

Pursuant to California Rules of Court Rule 8.204(c)(1), I certify that according to Microsoft Word the attached brief is proportionally spaced, has a typeface of 13 points and contains 2,922 words.

Dated: November 3, 2020 COLE HUBER LLP

By: ***/s/ Derek P. Cole***
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PROOF OF SERVICE

Waste Connections US, Inc., et al. v. Alameda County Waste Management Authority
First District Court of Appeal Case No.: A158323

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Placer, State of California. My business address is 2281 Lava Ridge Court, Suite 300, Roseville, CA 95661.

On November 3, 2020, I served true copies of the following document(s) described as

BRIEF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY

on the interested parties in this action as follows:

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BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 3, 2020, at Roseville, California.

/s/ Kirsten Morris
Kirsten Morris

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Waste Connections US, Inc., et al. v. Alameda County Waste Management Authority
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