

City of Calabasas

JAN 20 2025

Case No. 25STCP00642

v.

David W. Slayton, Executive Officer/Clerk of Court

By: R. Mendoza, Deputy

Hearing: December 15, 2025

Location: Stanley Mosk Courthouse

Department: 82

Judge: Stephen I. Goorvitch

County of Los Angeles, *et al.*

Order Denying First Amended Petition for Writ of Mandate

INTRODUCTION

The City of Calabasas (the “City” or “Petitioner”) filed this petition for writ of mandate against the County of Los Angeles (the “County”) and the Los Angeles County Sanitation District No. 2 (the “District”) (collectively, “Respondents”). The City challenges the County’s decision to deposit fire debris from the Pacific Palisades Fire into a Class III landfill located within the City (the “Landfill” or the “Calabasas Landfill”). The City’s own testing results confirm that there were no elevated levels of lead, asbestos, hexavalent chromium, chloride, polyaromatic hydrocarbons, dioxins, or airborne contaminants in the fire debris deposited at the Landfill. The City’s Mayor, Peter Kraut, admitted that “volatile organic compounds (VOCs) and other airborne contaminants . . . were not present at hazardous levels and would not require additional monitoring.” (Resp. COE Exh. 116.)

The City argues that there are elevated levels of copper, zinc, and other chemicals, which give rise to environmental concerns. Accordingly, the City seeks a writ of mandate under Code of Civil Procedure section 1085 “to conduct an inspection as to likely loads of hazardous waste pursuant to Code of Civil Procedure section 1085.” (Opening Brief (“OB”) 4:25-27.) Respondents argue that it has complied with all requirements of the applicable permit, including the inspection requirement. The court only has authority to require the County to exercise a ministerial duty, which is a duty that must be performed in a “prescribed manner” and without discretion. The court does not have authority to review Respondents’ discretionary decisions in terms of how they fulfill their ministerial duties.

The issue is not moot so the court will reach the merits of the petition. The evidence establishes that Respondents are complying with their ministerial duties under the permit. Every load of fire debris is remediated to remove hazardous wastes, which are deposited at other landfills authorized to accept hazardous waste. The loads are inspected by the staff before being deposited into areas of the Landfill underlain with engineered composite liners and leachate collection systems. The staff also confirms that each load is accompanied by a certification that it does not contain hazardous waste. The City cannot demonstrate that this process violates the permit or applicable regulations. Nor can the City demonstrate that this process was so unsuccessful that it necessarily was arbitrary and capricious. At heart, the City seeks a different process, but as discussed, the court does not have authority to interfere with Respondents’ exercise of discretion. This is an issue for the Board of Supervisors, not the court. Therefore, the petition for writ of mandate is denied on the merits. The court need not reach

Respondents' remaining arguments that the Governor's executive orders suspended the requirements of the Landfill's permit and the State Water Resources Control Board's order authorized Respondents to use the Landfill for fire debris.

BACKGROUND

A. The Landfill and its Solid Waste Permit

The Landfill is owned by the County and operated by the District. (Respondents' Compendium of Evidence ("Resp. COE") Exh. 2.) The Local Enforcement Agency ("LEA") is the County of Los Angeles Department of Public Health, which is deemed to be carrying out a state function when exercising the authority and fulfilling the duties set forth in Public Resources Code § 45000, et seq., including issuing solid waste facility permits. (See Public Resources Code §§ 43200.5, 44001.) The LEA's ability to issue and/or modify the Landfill's permit requires the concurrence of the California Department of Resources Recycling and Recovery ("CalRecycle"), a state agency. (See COE, Exh. 2, at 1751 [§ 8; "CalRecycle Concurrence Date"].)

The Landfill is regulated pursuant to the terms of various permits and air and water regulations, including a Solid Waste Facility Permit No. 19-AA0056 dated April 4, 2016 (the "Permit" or "SWFP") issued by the LEA and CalRecycle. (First Amended Petition for Writ of Mandate ("FAP") ¶ 32; COE Exh. 2.) In a section titled "Prohibitions," the Permit states that the permittee is prohibited from accepting the following wastes:

Hazardous, radioactive, untreated medical, liquid, designated, sludge, large dead animals or other wastes requiring special treatment or handling, except as identified in the current Joint Technical Document and approved amendments thereto and as approved by the enforcement agency and other federal, state, and local agencies.

(FAP ¶ 35 & Exh. 1.) The Permit also requires "self-monitoring" of "[t]he types and quantities of hazardous wastes, medical wastes, or otherwise prohibited wastes found in the waste stream and the disposition of these wastes." (*Ibid.*) In addition, the Permit requires the Landfill's owner and operator to comply with the approved Hazardous Waste Screening Program, as described in the current Joint Technical Document ("JTD") for the Landfill. (*Ibid.*) The JTD requires that: "[a] random load-checking program to monitor for hazardous wastes is conducted at the site. Each day, loads at the landfill are randomly selected for inspection and examined in detail by trained inspectors in accordance with the SWFP [Solid Waste Facility Permit] requirements." (*Id.* ¶ 35 & Exh. 2 at 8-7.)

B. The Los Angeles Wildfires and Governor Newsom's Executive Orders

On January 7, 2025, Governor Gavin Newsom declared "a State of Emergency to exist in Los Angeles and Ventura Counties due to the Palisades Fire and windstorm conditions." (Respondents' Request for Judicial Notice ("RJN") Exh. 110.) On January 15, 2025, the Governor issued Executive Order N-8-25, which states in relevant part:

WHEREAS in response to my request, President Biden quickly issued a Major Disaster Declaration on January 8, 2025....

WHEREAS rebuilding efforts cannot commence until hazardous debris is removed from affected properties; and

WHEREAS on January 14, 2025, I announced that the Federal Emergency Agency mission-tasked the United States Environmental Protection Agency (US EPA) to remove and dispose of hazardous debris from homes and structures impacted by these fires as soon as it is safe to enter the affected areas;

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Order would prevent, hinder, or delay the mitigation of the effects of these fires and windstorm conditions....

IT IS HEREBY ORDERED THAT: The United States Environmental Protection Agency (US EPA), the Federal Emergency Management Agency (FEMA), and any other individual or entity performing work at their direction, shall have full power to provide mutual aid to the State of California and any areas affected by the proclaimed state of emergency, and shall have the authority to enter private property in Los Angeles County to remove debris that may contain hazardous substances and to conduct any testing appropriate to ensure the hazards are mitigated. Any state law, regulation, or rule impeding provision of this mutual aid is suspended to the extent necessary to provide this mutual aid to impacted areas of Los Angeles....

(RJN Exh. 111.)

C. The Landfill Accepts Disaster-Related Waste

On January 15, 2025, the County's Department of Public Health issued an order stating that "debris and ash from residential and other structural fires contain hazardous substances that can result in adverse health impacts to the public" and that "transport and disposal of fire debris can spread hazardous substances throughout the community." (FAP ¶ 5.) According to the petition, hazardous wastes created by the Palisades and Eaton fires are "likely" to include asbestos-containing wastes, metal sludge, and paper sludge/pulp. (*Id.* ¶ 21, citing 22 Cal. Code of Regs. Div. 4.5 Ch. 11, Appendix XII California Hazardous Waste Codes.)

On January 27, 2025, the County of Los Angeles and the District announced that the disposal of fire debris would be permitted at the Landfill. (*Id.* ¶ 1.) On its website, the District announced the following requirement for disposal of fire debris:

This site [Calabasas Landfill] CAN accept disaster-related waste, including green waste created by the recent high winds. However, per LA County order, fire debris, including burnt green waste, MUST have a certificate that the waste is non-hazardous. Customers

who bring unacceptable waste will be charged at least \$500 for the extra cost incurred by the Districts.

(FAP ¶ 1.)

D. Fire Cleanup Effort by the Federal Agencies

The federal agencies charged with the wildfire cleanup established a two-phase intensive process for cleaning up hazardous waste from the thousands of properties burned in the wildfires, and then removing and disposing of the fire debris that remained after the hazardous debris cleanup was completed. (Sheppard Decl. ¶ 2.) Under Phase 1, conducted by the federal Environmental Protection Agency (the “EPA”), hazardous material was removed from all burned properties regardless of whether such properties would later “opt in” to the additional “Phase 2” cleanup process. (*Id.* ¶¶ 2-5, 7). The Phase 1 cleanup occurred automatically for all burned properties with no owner pre-approval required nor sought. (*Id.* ¶ 3.) Hazardous materials, such as paints, cleaners, oils, pesticides, aerosols, and visible asbestos, were not taken to the Calabasas Landfill but, rather, sent to an appropriate alternative landfill authorized to accept hazardous waste. (*Id.* ¶ 4.)

The Army Corps of Engineers then moved to “Phase 2” for any properties that “opted in” and were eligible for this stage of the cleanup process. (*Id.* ¶ 8.) Approximately 9,673 properties underwent the Phase 2 cleanup. (*Id.* ¶¶ 13, 16.) Phase 2 was a comprehensive, step-by-step approach to catalogue and remove all fire debris. (*Id.* ¶ 9.) After Phase 2 was completed, the remaining soil and ash, along with other fire debris, was taken to a Class III landfill, such as the Calabasas Landfill. (*Id.* ¶ 10.) A certification process was put into place by the County to ensure that all fire debris received for disposal at the Landfill had been through this phased process and was deemed to be non-hazardous. (*Id.* ¶ 11.) Under this process, fire debris will not be accepted at the Landfill without such a certificate. (*Id.* ¶ 12.) The certificate employed for this process declares that the load has “undergone the screening process” and is therefore “not a regulated hazardous waste and is safe for disposal at the Calabasas Landfill.” (Resp. COE, Exh. 101.)

Approximately 2,166 properties “opted out” or were not eligible for the Army Corp’s Phase 2 cleanup. (Sheppard Decl. ¶ 13.) For such “opt out” properties, “the property owners were required to obtain from the County a Fire Debris Removal Permit and follow all the same debris clearing protocols employed by the Army Corps, and to use a licensed and certified contractor.” (*Id.* ¶ 14.)

E. The Petition

On February 20, 2025, the City filed its petition for writ of mandate. In the operative first amended petition, the City alleges that Respondents breached their duties to ensure that only nonhazardous waste from the fire debris wastes is deposited at the Landfill. (FAP ¶ 47; *see generally id.* ¶¶ 37-55.) The City seeks a writ directing Respondents to “[v]acate and rescind any approvals, decisions, or website announcements suggesting acceptance of any fire debris waste at the Calabasas Landfill until such time as the Respondents have developed processes and

procedures to ensure that the fire debris to be disposed of at the Landfill does not contain any hazardous wastes.” (FAP Prayer ¶ 1.) The City also seeks a writ compelling “[c]ompliance with the Hazardous Waste Screening Procedures set forth in the 2024 JTD section 8.11.” (*Ibid.*) The permit itself contains several ministerial duties that are relevant to this case, including the following:

- The Landfill is prohibited by the Solid Waste Facilities Permit (the “Permit” or “SWFP”) from accepting “hazardous, radioactive, untreated medical, liquid, designated, sludge, large dead animals or other wastes requiring special treatment or handling.” (FAP ¶ 35, citing SWFP, § 14.)
- When the landfill accepts dirt, the loads shall be inspected for oil contamination prior to acceptance. (*Id.* at p. 12-13, citing JTD, § 7.5.4.)
- The owner/operator shall submit the results of all self-monitoring programs to the LEA, which shall include “the types and quantities of hazardous waste ... found in the waste stream and the disposition of those wastes.” (*Id.* at p. 13, citing SWFP, § 16.)
- The operator shall comply with all State Minimum Standards for solid waste handling and disposal as specified in Title 27, California Code of Regulations. (*Id.* at p. 13.)
- The Landfill operator shall comply with the approved Hazardous Waste Screening Program (“HWSP”) as described in the Joint Technical Document (“JTD”). (*Id.* at p. 14.)
- As required by the SWFP and JTD, waste loads are to be randomly inspected at a minimum of one load-check per 500 tons of waste per day. (*Ibid.*, citing SWFP, § 17.B.1.c.) Furthermore, “[t]he operator shall inspect all waste vehicle loads if there is any reason to believe the loads may contain prohibited wastes.” (*Ibid.*; *see also* FAP Exh. 2 at 8-7.)

STANDARD OF REVIEW

The petition seeks a writ of ordinary mandate pursuant to Code of Civil Procedure section 1085. There are two essential requirements to the issuance of an ordinary writ of mandate: (1) A clear, present, and ministerial duty on the part of the respondent; and (2) A clear, present, and beneficial right on the part of the petitioner to the performance of that duty. (*California Ass’n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) “Generally, mandamus is available to compel a public agency’s performance or to correct an agency’s abuse of discretion when the action being compelled or corrected is ministerial.” (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700.) “A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act’s propriety or impropriety, when a given state of facts

exists.” (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916.) “To compel the [respondent] to take some action the [petitioner] must plead and prove the [respondent] has failed to act, and its failure to act is arbitrary, beyond the bounds of reason, or in derogation of the applicable legal standards.” (*AIDS Healthcare Foundation, supra*, 197 Cal.App.4th at 704.)

The legal standard for finding an agency’s actions are arbitrary or capricious is high. “Courts exercise limited review out of deference to the separation of powers between the Legislature and the judiciary, to the legislative delegation of administrative authority to the agency, and to the presumed expertise of the agency within its scope of authority.” (*Carrancho v. California Air Resources Board* (2003) 111 Cal.App.4th 1255, 1265.)

In sum, the court may issue a writ of mandate requiring Respondents to perform ministerial duties under the Permit, e.g., inspections of incoming loads, if they fail to do so or do so in an arbitrary or capricious manner. However, the court does not have authority to order a “better” process, as doing so would violate the separation of powers and presumed expertise of Respondents.

EVIDENTIARY ISSUES

A. The City’s Requests for Judicial Notice

The City requests judicial notice of five exhibits—Exhibit A through Exhibit E—which are regulations and related documents. Respondents do not object to this request for judicial notice. Therefore, the request is granted under Evidence Code section 452(c).

B. Respondents’ Request for Judicial Notice

Respondents request judicial notice of eight exhibits—Exhibit 109 through Exhibit 117—consisting of a court order, the Governor’s executive orders, publications from the County and federal agencies concerning the cleanup, a statement from the City’s mayor, and the declaration of William O’Braitis filed in opposition to the demurrer. The City does not object to this request for judicial notice. Therefore, the request is granted under Evidence Code section 452(c).

C. The City’s Evidentiary Objections

1. Declaration of Carlos Orozco – Overruled.

D. Respondents’ Evidentiary Objections

1. Declaration of William O’Braitis – The court overrules Objection Numbers 1 through 4. The court sustains Objection Number 5.
2. Declaration of Norman DuPont – Overruled.

3. Supplemental Evidence in Support of Petition for Writ of Mandate – Overruled.
4. Exhibit 27 – Sustained.
5. Declaration of Terry Dipple – The court overrules the first objection. The court need not rule on the second objection because it will assume without deciding that this petition is not moot.
6. Declaration of Baltazar Maldonado – Sustained. Regardless, even if the court considered the contents of this declaration, it would not change the court’s decision.

DISCUSSION

A. The Petition Is Not Moot

Respondents argue that the petition is moot because the fire cleanup process is complete. (Oppo. at 23:17-24:21.) At the hearing, Respondents’ counsel represented that the County does not *expect* to deliver any more fire debris to the Landfill. However, Respondents’ counsel would not stipulate to a court order to this effect. As the court noted at the hearing, there is a difference between *planning* not to do something and *agreeing* not to do something. Accordingly, the petition is not moot. The court need not reach Petitioner’s additional argument that the petition is not moot because this is an issue of public interest that is likely to reoccur.

B. Respondents Complied with their Ministerial Duties

The City contends that Respondents have not complied with the SWFP conditions requiring them to conduct random inspections of fire-debris related wastes. (Opening Brief (“OB”) 9-14.) The City cites the following deposition testimony of Carlos Orozco, the Refuse Site Superintendent for the Landfill:

Q. Do *you* conduct random inspection of incoming loads of fire-debris waste if they have a certificate?

A. Can you clarify?

Q. If a truck is bringing in fire-debris waste and it has a certificate for EEC [sic-ECC]¹, do *you* conduct any further random inspection of that load?

A. No.

(Pet. COE Exh. 19 at 79 [emphasis added]; see also Resp. COE Exh. 103 at 322:14-22 [emphasis

¹ ECC Contractors was retained by the Army Corps of Engineers for the wildfire response. (OB 9, fn. 3; Pet. COE Exh. 4 at LACSD0000102; Pet. COE 11.)

added].) However, it is clear that Orozco was referring to himself personally, not the Sanitation District.

Mr. Lee: By "you," are you referring to him individually, or are you referring to the operator of the site, which is the Sanitation District?

Mr. DuPont: I am referring to Mr. Orozco.

Mr. Lee: Orozco.

Mr. DuPont: Orozco.

(Resp. COE Exh. 103 at 273:14-20.) In fact, Orozco testified that there is a hazardous waste inspector conducting the required inspections:

Q. What do you do to comply with the Approved Hazardous Waste Screening Program as described in the current Joint Technical Document?

...

A. Make sure that the hazardous waste inspector is up there on top inspecting every load.

Q. And who is the hazardous waste inspector for the Calabasas Landfill?

A. It depends on what day. But the supervisor is Guadalupe [Lupe], hazardous waste inspector supervisor.

...

Q. Does Ms. Lupe examine any of the trucks that have certificates related to fire debris waste?

A. No.

Q. Do you know if anyone else with hazardous waste training inspects any of the trucks carrying fire-debris waste that have certificates?

A. Yes.

Q. Who?

A. The hazardous waste on the site.

Q. I'm sorry. I don't follow, sir. "The hazardous waste on the site?"

A. Inspector. There is someone stationed at the Calabasas Landfill. Guadalupe is the one that oversees her inspectors on a daily basis, and the hazmat inspector is -- normal protocol call for them to be on-site checking loads.

Q. And do they check the loads of fire-debris waste when those loads have certificates?

A. Yes. To verify that the load that they are unloading matches what the certificate is saying.

Q. And how do they do that, sir?

A. By visually inspecting the load.

(Resp. COE Exh. 103 at 273:14-276:14.)

Respondents submit additional evidence that the Landfill performs random inspections of waste loads to detect and remove hazardous waste. (Rodriguez Decl. ¶¶ 9-11; Orozco Decl. ¶¶ 7-8.) Guadalupe Rodriguez, a Supervising Engineering Technician of Hazardous Waste at the Landfill, summarizes the random inspection process as follows:

As set forth in Section 8.11 of the JTD (Hazardous Waste Screening Program), the District is required to conduct “random inspection[s] of incoming loads” and to maintain “Records of inspections.” Pursuant to Section B.1(c)(1) the Solid Waste Facility Permit, the District is required to make one (1) random inspection “for every 500 tons of municipal solid waste and other materials.” As reflected in the Solid Waste Facility Permit (Section 4.c), the Landfill is permitted to accept 3,500 tons per day of waste materials. Therefore, up to seven (7) random inspections are required per day pursuant to the Permit based on waste intake levels.

Under my direction, the District, for more than two (2) years, has required at least ten (10) daily random inspections of waste loads entering the Landfill, including on days in which the total inbound waste loads do not reach the allowable 3,500-ton daily limit. Random inspections are made of any type of waste loads, including fire debris loads from the 2025 wildfires and non-fire-debris loads (i.e., general waste loads). Therefore, the District’s “random” inspection program (as part of its Hazardous Waste Screening Program) actually exceeds the requirements set forth in the Solid Waste Facility Permit.

(Rodriguez Decl. ¶¶ 9-10.) In addition, Respondents’ evidence shows that all fire debris loads are subject to the District’s specific procedures adopted in response to the 2025 wildfires, which are designed to ensure that all fire debris entering the Calabasas Landfill is:

(1) visually inspected by hazardous waste technicians (aka “Load Inspections”) (Rodriguez Decl. ¶¶ 12-14);

(2) is certified as containing non-hazardous waste (Sheppard Decl. ¶¶ 11-12, 17); and

(3) is disposed of in the Calabasas Landfill in areas underlain with engineered composite liners and leachate collection systems. (Rodriguez Decl. ¶ 12; Orozco Decl. ¶ 5; Tantoco Decl. ¶¶ 4-6; Resp. COE Exh. 105 at 377 [Figure 2, Map showing locations of where fire debris was deposited at the Calabasas Landfill].)

This evidence makes clear that Respondents have a process in place to inspect loads of fire debris coming into the Landfill. This evidence also makes clear that the process is not arbitrary or capricious. As discussed, the court does not have authority to interfere with Respondents' discretion in terms of how to implement the Permit's requirements, e.g., the inspection requirement.

The City argues that the District has a mandatory duty to train its employees on detecting hazardous waste, and that Orozco's lack of knowledge about such training establishes a breach of that mandatory duty. (OB 9-11, citing Pet. COE Exh. 6, 7, 8.) The City did not plead this claim in the FAP. Regardless, the persuasive evidence establishes that the District has a training program for employees on hazardous waste detection. (Rodriguez Decl. ¶¶ 3-7.)

Finally, the City argues that the County's inspection program improperly relies on the certificates of inspection completed by the Army Corps of Engineers and licensed/certified contractors, and that Respondents' ministerial duties to inspect hazardous waste are "non-delegable." (OB 12, citing Pet. COE Exh. 11-13, 15-16; OB 8, citing *Evard v. Southern California Edison* (2007) 153 Cal.App.4th 137, 146.) The court disagrees. Simply, the County's duty is one of inspection, a process which may rely on remediation efforts before the debris arrives at the Landfill. Petitioners cite no persuasive authority in support of their argument that the County cannot rely on the Army Corps of Engineers and licensed/certified contractors to remove the hazardous waste before it gets to the Landfill. Nor do Petitioner cite any evidence suggesting that the County's reliance on the federal government or licensed/certified contractors was arbitrary and capricious. For example, Petitioners cite no evidence suggesting that these third parties did not, in fact, perform the services required or that the certifications were false. To the contrary, the lack of many hazardous chemicals suggests that they did, in fact, perform these services. In addition, all fire debris loads are subject to the District's specific, discretionary procedures adopted by Respondents in response to the 2025 wildfires to ensure that all fire debris entering the Landfill do not contain hazardous waste. *Evard* did not involve a public entity or its discretion in how to comply with its ministerial duties. Therefore, the evidence shows that Respondents have complied with their ministerial duties to inspect waste loads.

C. The City's Testing Does Not Establish any Violation of Ministerial Duties

The City argues that neither Orozco "nor anyone under his supervision—including hazardous materials (i.e., 'hazmat') inspectors—ever uncovered, suspected, or reported to the LEA the existence of prohibited hazardous waste materials in the fire load debris." (OB 17:22-26, citing Pet. COE Exh. 8 at 34-36.) This is not evidence that Respondents are not complying with the Permit or that their processes are arbitrary and capricious. Indeed, the City's own testing results confirm that there were no elevated levels of lead, asbestos, hexavalent chromium, chloride, polyaromatic hydrocarbons, dioxins, or airborne contaminants in the fire debris deposited at the Landfill. Furthermore, the City's Mayor, Peter Kraut, admitted that "volatile

organic compounds (VOCs) and other airborne contaminants . . . were not present at hazardous levels and would not require additional monitoring.” (Resp. COE Exh. 116.)

Nevertheless, the City argues that its own sampling of fire debris “showed levels of copper and zinc that are deemed hazardous under California regulations” and “detections of various PFAS-related compounds, such as PFOA and PFOS, above laboratory detection and reporting limits.” (OB 15.) On May 28, 2025, the City sampled soil at a fire-impacted property located at 1158 Chautauqua Boulevard in Pacific Palisades, California. (O’Braitis Decl. ¶ 5.) On August 11, 2025, the City inspected and tested soil from fire-affected properties that was accepted and deposited at the Landfill. (*Ibid.*; see also Pet. COE Exh. 21.) This testing included taking soil samples from four different trucks disposing of fire debris at the Landfill on August 11, 2025: three trucks were from the Army Corps opt-in properties, while one truck was from an opt-out property. (Resp. COE Exh. 117, ¶ 21.) Enthalpy Analytical, an accredited environmental laboratory, analyzed the samples. (O’Braitis Decl. ¶¶ 10-11; Pet. COE Exh. 21.) The laboratory results show the following:

- a fire debris sample from an opt-out location collected at 1158 Chautauqua Boulevard contained 28,000 mg/kg of zinc, which exceeds the California standards TTLC (Total Threshold Limit Concentration) value threshold for zinc of 5,000 mg/kg. (O’Braitis Decl. ¶ 12.)
- a fire debris sample from an opt-out truck collected at the Landfill contained 3,400 mg/kg of copper which exceeds the California standards TTLC (Total Threshold Limit Concentration) value threshold for copper of 2,500 mg/kg. (*Id.* ¶ 14.)
- fire debris samples from opt-in trucks collected at the Landfill contained concentrations of various per- and polyfluoroalkyl substances (PFAS) above the laboratory detection and reporting limits. (*Id.* ¶ 15.)

Based on this sampling, the City asserts that “it is more probable than not that a significant number of fire debris loads sent to the Landfill contain hazardous waste” and that Respondents have failed to comply with their ministerial duties to inspect fire debris. (OB 16:7-8, citing O’Braitis Decl. ¶ 16.) The court sustains Respondents’ evidentiary objections to Paragraph 16 of the O’Braitis declaration. O’Braitis does not lay the foundation for how “it is more probable than not that a significant number of fire debris loads deposited at the Calabasas Landfill contain hazardous levels” based on a single test result of four soil samples which showed only slightly elevated levels of copper at the Landfill. This is especially true because O’Braitis does not identify deficiencies in Respondents’ approach of first removing the hazardous wastes and then depositing them at other landfills authorized to accept hazardous waste.

Furthermore, the admissible evidence does not establish that Respondents have failed to perform any ministerial duties in the SWFP because:

- The City relies on a single soil sample from an “opt-out” property at 1158 Chautauqua Boulevard to prove the presence of zinc at the Landfill. (O’Braitis Decl. ¶ 12.) With the moving papers, the City did not submit any evidence that this sampled/tested soil was slated to go to the Landfill nor that it ever did make its way to the Landfill. The City does not offer evidence that the samples collected at the Landfill had any exceedances for zinc. (*Id.* ¶ 12.)
- The single elevated showing of copper was taken from a testing sample from an opt-out property truck. The other three trucks taken from the Army Corps opt-in properties had no elevated levels of copper. (O’Braitis Decl. ¶ 14; Pet. COE Exh. 21.) One sample, showing elevated levels of copper, cannot establish the violation of a ministerial duty.
- Finally, there are no requirements imposed by the Regional Water Quality Control Board mandating the District to test for Per- and Polyfluoroalkyl (“PFAS”) or Perfluorooctanoic Acid (“PFOA”) at the Landfill. (Pierce Decl. ¶ 8.) The City also concedes that the “EPA has not yet established levels of contamination for PFOS in soils” and “Cal EPA has not set formal levels.” (OB 16, fn. 7.) The City’s test results reflect PFAS levels only “above laboratory detection and reporting limits” (OB 15), not any actual regulatory standard. Therefore, these sampling results do not prove that the violation of a ministerial duty.

In reply, the City submits a declaration of a Compliance Inspector at EEC Environmental stating that he observed workers loading fire debris from the property at 1158 Chautauqua Boulevard; he followed the trucks to the Landfill; and he “stayed on site just outside the Calabasas Landfill and observed the same trucks exiting the Calabasas Landfill with no cover on the back and no fire debris.” (Maldonado Decl. ¶¶ 2-4.) The City does not show good cause to submit this evidence for the first time in reply. (See *Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010.) Further, even if considered, this reply evidence is inconclusive and does not prove that fire debris loads sent to the Landfill contain hazardous waste.

D. Respondents Have Discretion to Determine How to Comply with the Permit

The permit requires that waste vehicle loads are to be randomly “inspected.” (COE Exh. 2 at p. 5, ¶ B.1.c(1).) The Landfill operative shall “inspect” all waste vehicle loads “if there is any reason to believe the loads may contain prohibited waste.” (*Ibid.*) However, the permit does not prescribe how the inspections should be conducted. In the absence of regulatory guidance, Respondents have discretion in terms of how they conduct the inspections. The court has neither the authority nor the expertise to interfere with Respondents’ exercise of discretion. Petitioner’s counsel argues that visual inspections are arbitrary and capricious given the nature of the waste, i.e., a visual inspection will not detect hazardous chemicals amongst the ash. The court might have agreed if that is all the Landfill was doing. However, the inspection also includes verification that the waste is accompanied by a certification that the remediation process was

followed. (See Sheppard Decl. ¶¶ 11-14 & Exh. A.) The existence of the certificates—and the process before the debris arrived at the Landfill—render the visual inspection non-arbitrary/capricious under the circumstances. Nothing in the permit prohibits Respondents from relying on prior remediation processes in determining what constitutes a sufficient inspection once the debris reaches the Landfill. At heart, Petitioners seek to require Respondents to adopt a different process. This is not a basis to issue a writ of traditional mandate.

E. The Court Need Not Address the State Water Resources Control Board’s Order

Respondents argue that fire-debris wastes may be disposed of at the Landfill. In 2020, the State Water Resources Control Board (the “State Water Board”) issued Order WQ 2020-0004-DWQ General Waste Discharge Requirements for Disaster-Related Wastes (the “General Order”). The General Order recognized that debris from catastrophic events, including fires, may necessarily contain waste materials:

Catastrophic events such as fires, storms, floods, landslides, earthquakes, mass animal mortalities, spills, and other emergencies can create large amounts of disaster-related waste such as burn ash, concrete, wood, green waste, appliances, computer equipment, dead animals, food items, cars, household chemicals, paint, etc., collectively referred to as disaster-related wastes. ***Waste materials resulting from these catastrophic events may be mixed such that individual components are not practicably separable for purposes of waste management.***

(COE Exh. 24 at p. 1 [emphasis added].) Accordingly, the General Order provides that in catastrophic events (like fires), “ash from fire disaster areas” is excluded from the definition of “hazardous waste” and may be discharged at a “Class III landfill” regardless of its constituent parts:

Wastes such as paint cans, gas cans, solvents, poisons, household cleaners, drums with unknown contents, electronic wastes, refrigerators, or any potentially hazardous (***other than ash from fire disaster areas***) are prohibited from being discharged at a Class II or Class III landfill and must be removed from the disaster-related waste stream...

(Oppo. 12, 21-22; Pet. COE Exh. 24 at p. 7, ¶ 8 [emphasis added].) Consistent with this authority, the District filed a Notice of Intent (“NOI”) with the WRCB stating its intention to accept fire debris and outlining its inspection process. (COE Exh. 25.) In response, the WRCB approved the disposal of fire debris at the Landfill subject to certain conditions. (COE Exh. 106.)

The City argues that the Water Control Board cannot override CalRecycle’s requirements, because they are two different agencies with different areas of regulatory focus. The City also argues that this order is expressly limited to water quality issues, and depositing fire debris at the Landfill creates or contributes to a condition of pollution or nuisance in violation of the order. The court need not resolve these issues in order to rule on the petition for writ of mandate. Nevertheless, the State Water Board’s finding that waste materials from fires “are not practicably separable” demonstrates that no inspection process will be perfect.

F. The Court Need Not Address the Governor's Executive Orders

Respondents argue that any ministerial duties arise from the Landfill's permit, which has been suspended by the Governor's executive orders. Petitioner argues that these orders are limited in scope and do not include CalRecycle or the permit for the Calabasas Landfill. The court need not resolve these issues in order to rule on the petition for writ of mandate.

G. A Writ Requiring Transfer of Hazardous Waste Is Not Necessary

Petitioner focuses on the duty of inspection in the briefing and during oral argument, arguing that the cleanup efforts should cease until this issue is resolved. However, the operative petition also seeks "[i]solation and subsequent re-transfer of any detected hazardous waste after the screening process" (FAP Prayer ¶ 1(g); OB 21.) Petitioner seeks the following remedy: "If concealed loads of hazardous waste are found at the landfill, the loads are *transferred* by licensed haulers to an appropriate hazardous waste disposal site." (FAP Prayer ¶ 1(g); OB 21 [emphasis added].)

Given Petitioner's briefing and argument, the court interprets this language as seeking to divert any incoming loads containing hazardous waste to other sites as part of the inspection process, not to dig-up and remove any copper at the Landfill. For example, Petitioner's counsel wrote that the City seeks "a mandatory writ precluding the County from ignoring its duty to *conduct an inspection as to likely loads of hazardous waste* pursuant to Code of Civil Procedure section 1085." (OB 4:24-27 [emphasis added].) Similarly, Petitioner's counsel never clearly requested removal of any copper in the briefing or arguments. Finally, Petitioner's counsel seeks "transfer" not "removal."

Petitioner does not demonstrate the necessity of a writ of mandate to transfer incoming loads containing hazardous wastes to other sites. That is already part of Respondents' inspection process at the Landfill. (See *Hutchison v. Reclamation Dist. No. 1619* (1927) 81 Cal.App.427, 432-433 [Recognizing that a writ of mandate compelling a ministerial act is properly denied when the respondent shows a willingness to do the act, or the writ is unnecessary because the petitioner will obtain the relief sought without the writ].) The Landfill does not accept fire debris without a certification that the hazardous waste has been removed. (Sheppard Decl. ¶ 11.)²

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² It is not clear that the copper exceeds allowable limits. The limit for copper is 2,500 milligrams per kilogram. (O'Braitis Decl. ¶ 14.) One sample contained 3,400 milligrams per kilogram. (*Ibid.*) As Respondent's counsel argued, this may not evidence an exceedance, considering the number of loads (i.e., the total kilograms) deposited at the Landfill. The court need not resolve this issue.

CONCLUSION AND ORDER

Based upon the foregoing, the court orders as follows:

1. The petition for writ of mandate is denied.
2. The parties shall meet-and-confer and lodge a proposed judgment forthwith.
3. The court's clerk shall provide notice.

IT IS SO ORDERED

Dated: January 20, 2025



Stephen I. Goorvitch
Superior Court Judge