

**No. S180720**

(Court of Appeal, Second Appellate Dist., Div. Five. No. B215788)  
(County of Los Angeles Super. Ct. No. BS116362)

**IN THE SUPREME COURT OF  
THE STATE OF CALIFORNIA**

---

**SAVE THE PLASTIC BAG COALITION,**  
an unincorporated association

PLAINTIFF AND RESPONDENT

V.

**CITY OF MANHATTAN BEACH,**

a municipal corporation

DEFENDANT AND APPELLANT

---

**PLAINTIFF'S ANSWER TO AMICUS BRIEF OF  
LEAGUE OF CALIFORNIA CITIES AND  
CALIFORNIA STATE ASSOCIATION OF COUNTIES**

---

**STEPHEN L. JOSEPH**

State Bar No.189234

350 Bay Street, Suite 100-328

San Francisco, CA 94133

Phone: (415) 577-6660

Fax: (415) 869-5380

E-mail: [sljoseph.law@earthlink.net](mailto:sljoseph.law@earthlink.net)

ATTORNEY FOR PLAINTIFF AND RESPONDENT  
**SAVE THE PLASTIC BAG COALITION**

## TABLE OF CONTENTS

	<b>Page</b>
<b>I. INTRODUCTION</b>	1
<b>II. ARGUMENT</b>	1
A. The Court Of Appeal In <i>Waste Management</i> Ruled That Whether A Corporation Has CEQA Standing “Must Be Resolved In Light Of The Particular Circumstances Presented” And “The Context In Which The Dispute Arises”	2
B. The Court Of Appeal In <i>Burrtec</i> Ruled That A Corporation Has CEQA Standing If It Asserts An Environmental Basis For Its Action, Even If It Has An Economic Interest In The Outcome	4
C. The Court Of Appeal In <i>Regency</i> Applied The <i>Waste Management</i> And <i>Burrtec</i> Rulings	6
D. The Coalition Has Standing	8
<b>III. CONCLUSION</b>	10
Word Count	11
Proof of Service	12

## TABLE OF AUTHORITIES

### CASES

	<b>Page</b>
<i>Bozung v. Local Agency Formation Commission</i> (1975) 13 Cal.3d 263	8
<i>Burrtec Waste Industries, Inc. v. City of Colton</i> (2002) 97 Cal.App.4th 1133	<i>passim</i>
<i>Port of Astoria v. Hodel</i> 595 F.2d 467 (9th Cir. 1979)	2
<i>Ranchers Cattlemen Action Legal Fund v. United States Department of Agriculture</i> 415 F.3d 1078 (9th Cir. 2005)	2
<i>Regency Outdoor Advertising, Inc. v. City of West Hollywood</i> (2007) 153 Cal.App.4th 825	<i>passim</i>
<i>Waste Management v. County of Alameda</i> (2000) 79 Cal.App.4th 1223	<i>passim</i>

## **I. INTRODUCTION**

**“Don’t kill the messenger.”<sup>1</sup>**

Plaintiff Save The Plastic Bag Coalition (the “Coalition”) answers the amicus brief filed by the League of California Cities and the California State Association of Counties (collectively the “League”). In this answer, the Coalition discusses only the standing issue. The fair argument issue is discussed in the consolidated answer to the amicus briefs filed by Californians Against Waste, Heal the Bay, and the Manhattan Beach Residents Association.

## **II. ARGUMENT**

The portion of the League’s brief that discusses standing appears on pages 8-16 of its submission. The principal cases on whether business entities may have CEQA standing are as follows:

1. *Waste Management v. County of Alameda*  
(2000) 79 Cal.App.4th 1223
2. *Burrtec Waste Industries, Inc. v. City of Colton*  
(2002) 97 Cal.App.4th 1133
3. *Regency Outdoor Advertising, Inc. v. City of West Hollywood*  
(2007) 153 Cal.App.4th 825

Contrary to the League’s reading of these authorities, each one of these cases ruled that business entities could have standing under CEQA. The Coalition discusses each case separately and in chronological order.

---

<sup>1</sup> Shakespeare, Henry IV, part 2.

**A. The Court Of Appeal In *Waste Management* Ruled That Whether A Corporation Has CEQA Standing “Must Be Resolved In Light Of The Particular Circumstances Presented” And “The Context In Which The Dispute Arises”**

The plaintiff in *Waste Management* openly admitted that it filed its CEQA action for the sole purpose of imposing the extra costs of an EIR on its competitor. (*Waste Management, supra*, 79 Cal.App.4th at 1235.) The court stated:

Accordingly, in its respondent’s brief, Waste Management asserts a beneficial interest by complaining it was required to undertake the substantial expense of EIR review and mitigation while Browning-Ferris was not, *and it identifies its injury as the extra costs it incurred and continuing competitive injury due to Browning-Ferris’s lower costs*. The assertion fails.

CEQA is not a fair competition statutory scheme. Numerous findings and declarations were made by the Legislature with respect to CEQA. (Pub. Res. Code, §§ 21000-21005.) None of them suggest a purpose of fostering, protecting, or otherwise affecting economic competition among commercial enterprises.

Thus, Waste Management’s commercial and competitive interests are *not within the zone of interests CEQA was intended to preserve or protect* and cannot serve as a beneficial interest for purposes of the standing requirement.

(*Waste Management, supra*, 79 Cal.App.4th at 1235, emphasis added.)

The *Waste Management* court did *not* state that corporations cannot have standing under the public interest exception to the beneficial interest rule. Rather, the court stated as follows:

The matter of a citizen’s action is a long-established exception to the requirement of a personal beneficial interest. The exception applies where the question is one of public right and the object of the action is to enforce a public duty -- in which case it is sufficient that the plaintiff be interested as

a citizen in having the laws executed and the public duty enforced.

This exception promotes a policy of guaranteeing citizens an opportunity to ensure that the purpose of legislation establishing a public right is not impaired or defeated by a governmental agency....

(*Id.* at 1236-37, citations omitted.)

A corporation may, in some instances, be accorded attributes of a citizen. However, where a corporation attempts to maintain a citizen suit, it is appropriate to require the corporation to demonstrate it should be accorded the attributes of a citizen litigant, since it generally is to be expected that a corporation will act out of a concern for what is expedient for the attainment of corporate purposes.

**In our view, when a nonhuman entity claims the right to pursue a citizen suit, the issue must be resolved in light of the particular circumstances presented,** including the strength of the nexus between the artificial entity and human beings **and the context in which the dispute arises. Among the factors which may be considered** are whether the corporation has demonstrated a continuing interest in or commitment to the subject matter of the public right being asserted; whether the entity is comprised of or represents individuals who would be beneficially interested in the action; whether individual persons who are beneficially interested in the action would find it difficult or impossible to seek vindication of their own rights; and whether prosecution of the action as a citizen's suit by a corporation would conflict with other competing legislative policies.

(*Id.* at 1237-38, emphasis added, citations omitted.)

As the above excerpt shows, *Waste Management* does not disqualify the Coalition from filing a CEQA case. Standing for entities such as the Coalition is based on the circumstances and the context of the dispute. There are no hard and fast rules or criteria.

**B. The Court Of Appeal In *Burrtec* Ruled That A Corporation Has CEQA Standing If It Asserts An Environmental Basis For Its Action, Even If It Has An Economic Interest In The Outcome**

The plaintiff in *Burrtec* was a trash company that operated a solid waste facility. It complained that a CEQA notice regarding an application for its competitor to process solid waste had not been properly posted. As a result, *Burrtec* did not find out about the application for the amended Conditional Use Permit until after it was too late to comment on the application or to appeal the decision of the city to approve it. (*Burrtec*, *supra*, 97 Cal.App.4th at 1136.)

The Court of Appeal in *Burrtec* held that the plaintiff had standing under CEQA to complain about the lack of notice. The court stated:

Taormina, however, asks this court to deny standing to *Burrtec* because it is a corporation, not a citizen, and a business competitor. CEQA litigants often may be characterized as having competing economic interests. [Footnote: See *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 81-82. **But, under CEQA, a corporation is a person entitled to receive notice and to bring a suit for noncompliance.** [Footnote: Section 21066.] Furthermore, as noted by the trial court, the interest **asserted** by *Burrtec* in its writ petition is not a commercial one but an issue involving the adequacy of the public notice required by CEQA. **Where a plaintiff seeks by mandamus to enforce a public duty, especially under CEQA, standing is properly conferred:** “[S]trict rules of standing that might be appropriate in other contexts have no application where broad and long-term effects are involved.” [Footnote: *Bozung v. Local Agency Formation Com.*, *supra*, 13 Cal.3d at page 272.]

*Waste Management* does not compel a different result. Sufficient evidence supports the superior court's determination that the **express** beneficial interest **asserted** by *Burrtec* is not **rank commercialism** but rather the need for public notice under CEQA. The record establishes *Burrtec* has a genuine and continuing concern for environmental

matters and for compliance with the CEQA process. According to Eric Herbert, a Burrtec officer, the company encourages and monitors environmental compliance, including CEQA determinations, by itself and other waste companies in Southern California. Burrtec even reviewed the initial approval of Taormina's Colton site although it did not comment on it.

(*Burrtec, supra*, 97 Cal.App.4th at 1138-39, emphasis added.)

The plaintiff in *Burrtec* could have been seeking a way to block its competitor's application for business reasons. Nevertheless, the court based its decision on the environmental concern as *expressed* and *asserted* by the plaintiff, that is the lack of a properly posted notice deprived the public of an opportunity to comment.<sup>2</sup>

The Coalition is encouraging and monitoring environmental compliance to ensure that the environmental impacts of banning plastic bags are disclosed. Further, the Coalition has identified numerous specific environmental harms, which the plaintiff in *Burrtec* did not do. The Coalition has a much stronger basis for standing than the *Burrtec* plaintiff.

---

<sup>2</sup> The same rule applies to standing under the National Environmental Policy Act ("NEPA"). (See *Ranchers Cattlemen Action Legal Fund v. United States Department of Agriculture*, 415 F.3d 1078, 1102 (9th Cir. 2005) ["A plaintiff can, however, have standing under NEPA even if his or her interest is primarily economic, as long as he or she also alleges an environmental interest or economic injuries that are 'causally related to an act within NEPA's embrace.'"] (quoting *Port of Astoria v. Hodel*, 595 F.2d 467, 476 (9th Cir. 1979)).

**C. The Court Of Appeal In *Regency* Applied The *Waste Management And Burrtec* Rulings**

The League makes numerous references to the *Regency* case. However, the League never discusses the facts of that case or the basis for the ruling.

Regency Outdoor Advertising was in the billboard and sign business. In 2000, the City of West Hollywood permitted Regency to place a tall wall sign on a building at 9229 Sunset Boulevard and determined no CEQA review was required for the Regency sign. In 2001, the City amended its zoning ordinance to state that a tall wall sign could only be placed on a wall if windows covered less than 15% of the wall. The 2001 amendment meant that Regency had to remove its sign at 9229 Sunset because windows covered about 25% of the wall. In 2004, the city amended the ordinance restoring its original language, which affected only 9229 Sunset. That meant that a tall wall sign could once again be placed on that building.

Regency filed a petition for writ of mandate to invalidate the 2004 amendment, as it had not been subjected to CEQA review. Regency did not assert any environmental impact as the basis for its petition. (*Regency, supra*, 153 Cal.App.4th at 830.) The court described the basis for Regency's petition as follows:

Objecting to the amendment, Regency noted that the [2001 amendment] had forced Regency to remove its sign from 9229 Sunset, resulting since then in three years' lost income. Complaining that competitors (real parties in interest Elevations Media and Sunset Sierra Properties, Inc.) now owned the prospective right to place a tall wall sign on 9229 Sunset, Regency alleged the city was playing political favorites by reviving the earlier language. Regency also objected then, and argues now on appeal, that the city needed to review the restored language's potential environmental effects under CEQA.

(*Id.* at 827-28.)

The Court of Appeal held that Regency did not have standing under the circumstances of the case. The court stated:

Regency contends that instead of relying on Waste Management, the trial court should have found *Burrtec Waste Industries, Inc. v City of Colton* (2002) 97 Cal.App.4th 1133 (*Burrtec*) to be controlling. We disagree. In that decision, the court found Burrtec had standing to seek a writ compelling a competitor to give public notice under CEQA of the competitor's application for a permit to process solid waste. **The Burrtec court acknowledged Burrtec would gain economically by forcing its competitor to give notice, but observed that a commercial benefit is not, by itself, disqualifying for standing under CEQA if standing exists on some other ground.** (*Id.* at p. 1138.) In *Burrtec*, that additional ground was the public's right to notice, without which the public could not participate in the CEQA proceeding. As Regency explains, "in *Burrtec* it is the lack of an opportunity for public involvement . . . that is so counter to the fundamental purposes of CEQA." Here, in contrast, Regency does not allege it lacked notice of the city's proceedings to amend the ordinance. Instead, Regency simply disagrees with the outcome of those proceedings in which it participated.

(*Regency, supra*, 153 Cal.App.4th at 833, emphasis added.) The court went on to discuss citizen standing in the following paragraph:

Regency also contends it has "citizen standing" under CEQA. Ordinarily, corporations may not exercise citizen standing because they are not citizens (even if the law considers them "persons.") (*Waste Management, supra*, 79 Cal.App.4th at p. 1237.) **A corporation attempting to vindicate or enforce an important public right may enjoy citizen standing, however, if it meets certain criteria.** These criteria include (1) a continuing interest or commitment to the subject matter; (2) by a corporation consisting of or representing individuals beneficially interested in the action; (3) who would find it difficult or impossible to act on their own; and, (4) citizen standing does not conflict with other public policies. (*Id.* at pp. 1237-1238; see also *Imagistics Intern., Inc. v. Department*

of *General Services* (2007) 150 Cal.App.4th 581 [affirms the criteria].) Bearing those criteria in mind, we can envision a prototypical corporation with citizen standing would likely be a non-profit public interest group such as the Sierra Club. The criteria do not, however, apply to Regency, a for profit corporation whose principal activity is owning billboards and tall wall signs.

(*Regency, supra*, 153 Cal.App.4th at 833.)

The *Waste Management* court stated that criteria such as those listed in *Regency* are merely “[a]mong the factors which *may* be considered.” (*Waste Management, supra*, 79 Cal.App.4th at 1238, emphasis added.)<sup>3</sup>

#### **D. The Coalition Has Standing**

The Coalition has standing based on the *Waste Management*, *Burrtec*, and *Regency* criteria.

- The Coalition has demonstrated a “continuing interest or commitment” to the subject matter since its formation. (*Regency, supra*, 153 Cal.App.4th at 833.)
- Disclosure of environmental impacts to decision makers and the public is “within the zone of interests CEQA was intended to preserve or protect.” (*Waste Management, supra*, 79 Cal.App.4th at 1235.)
- The Coalition is representing and advancing the public interest and enforcing an important public right by ensuring that the truth is

---

<sup>3</sup> In another CEQA case, this Court stated: “[S]trict rules of standing that might be appropriate in other contexts have no application where broad and long-term effects are involved.” (*Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 272.)

disclosed about the environmental impacts of banning plastic bags.<sup>4</sup>

- Members of the public would find it difficult or impossible to act on their own in enforcing CEQA compliance, including litigating against the City.
- Standing does not conflict with any public policies.
- Standing serves the important public policy in CEQA of disclosure of environmental impacts to decision makers and the public.

The Coalition has played and is continuing to play a critical and indispensable environmental role. If the Coalition had not intervened, CEQA would have been unenforced. The City would have adopted the ordinance based on the inadequate June 3, 2008 Staff Report that said nothing whatsoever about the negative impacts of paper bags. (AR 16-19.) There would have been no Initial Study. No environmental organization acted to enforce CEQA in Manhattan Beach.

The Coalition does not belong in the same category as the *Waste Management* and *Regency* plaintiffs. The plaintiffs in those cases did not allege any environmental impacts. Their actions were based solely on the financial impacts on their businesses. Their allegations were obviously outside the zone of interests that CEQA is designed to protect.<sup>5</sup>

---

<sup>4</sup> Paragraph 13 of Plaintiff's Petition For Writ Of Mandate states: "This action involves public rights, and Petitioner's objective in bringing this action is that of an interested citizen seeking to procure enforcement of Respondent's public duties and compliance with applicable state and local laws." (AA 16-32 at 18.)

<sup>5</sup> The name "Save The Plastic Bag" is based on the propositions that banning plastic bags (i) is not justified by the environmental *facts*; and (ii) would result in greater environmental harms including more paper bags.

### III. CONCLUSION

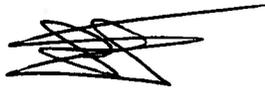
The purpose of CEQA is to determine and disclose the truth about environmental impacts. Despite its unpopularity in city councils and boards of supervisors, the Coalition is forcing the environmental truth to be told.

Whether a business entity has CEQA standing depends on the “particular circumstances presented” including “the context in which the dispute arises.” *Waste Management, supra*, 79 Cal.App.4th at 1238. The Coalition clearly qualifies for standing under the circumstances of this case.

This Court should affirm the rulings of the Superior Court and the Court of Appeal that the Coalition has standing.<sup>6</sup>

DATED: September 15, 2010

**STEPHEN L. JOSEPH**



---

Attorney for Plaintiff  
SAVE THE PLASTIC BAG COALITION

---

<sup>6</sup> The Residents Association complains: “Members of the Manhattan Beach Residents Association and other residents were allowed only two minutes each to talk at the June and July, 2008 City Council meetings while [the Coalition] used the threat of possible litigation to wrangle a much longer time to present their arguments.” (MBRA 3, n.3; see AR 631 [“limit your comments to two minutes, please”].) Precisely! That’s what the cities and counties want. Two minutes and be gone!

**WORD COUNT**

I certify that the number of words in this brief is 2,711. This number includes footnotes and excludes the Table of Contents, the Table of Authorities, this Word Count certificate, and the Proof of Service. The word count was generated by Microsoft Word.

DATED: September 15, 2010

**STEPHEN L. JOSEPH**



---

Attorney for Plaintiff  
SAVE THE PLASTIC BAG COALITION

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

I am an active member of the State Bar of California and not a party to the within action. My business address is 350 Bay Street, Suite 100-328, San Francisco, CA 94133. I served the foregoing document described as **PLAINTIFF'S ANSWER TO AMICUS BRIEF OF LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES** on the interested parties and amici in this action as follows.

**BY FEDERAL EXPRESS:** I maintain an account with Federal Express. On September 15, 2010, I placed a true copy of said document in a sealed Federal Express container and deposited it in a Federal Express drop-off receptacle in San Francisco, California. The Airbill was marked "FedEx Priority Overnight (Next business morning)" delivery; payment to be charged to sender's account; and permit delivery without signature. The names and addresses on the Airbill was as follows:

Counsel for Defendant/Appellant  
City of Manhattan Beach:  
Robert V. Wadden, Jr.  
City Attorney  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266  
Phone: (310) 802-5061

Counsel for Defendant/Appellant has stipulated in writing to accept service by Federal Express.

**BY MAIL:** On September 15, 2010, I placed true copies of said document in sealed envelopes with postage fully prepaid in the U.S Mail at San Francisco, California. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing stated herein. The envelopes were addressed as follows:

Office of the Clerk  
Second District Court of Appeal  
300 S. Spring Street, Second Floor  
Los Angeles, CA 90013

Hon. David P. Yaffe, Judge  
Department 86  
Los Angeles Superior Court  
111 North Hill Street  
Los Angeles, CA 90012

John B. Murdock  
1209 Pine Street  
Santa Monica, CA 90405  
(Counsel for Amicus Heal the Bay)

Remy, Thomas, Moose and Manley, LLP  
James G. Moose  
Ashle T. Crocker  
Jennifer S. Holman  
455 Capitol Mall, Suite 210  
Sacramento, CA 95814  
(Counsel for Amicus Californians Against Waste)

William G. Benz  
Carico Johnson Toomley LLP  
841 Apollo Street, Suite 450  
El Segundo, CA 90245  
(Counsel for Amicus The Manhattan Beach Residents  
Association)

Christian L. Marsh  
Peter S. Prows  
Briscoe Ivester & Bazel LLP  
155 Sansome Street  
Seventh Floor  
San Francisco, CA 94104  
(Counsel for Amici League of California Cities and California  
State Association of Counties)

M. Reed Hopper  
Joshua P. Thompson  
Pacific Legal Foundation  
3900 Lennane Drive, Suite 200  
Sacramento, CA 95834  
(Counsel for Amicus Pacific Legal Foundation)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 15, 2010 at San Francisco, California.

---

STEPHEN L. JOSEPH