

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

DECISION ON ADMINISTRATIVE APPEAL
RE: PUBLIC WORKS CASE NO. 2005-007

STREET SWEEPING
CITY OF SANTA CLARITA

I. INTRODUCTION

On June 1, 2005, the Acting Director of the Department of Industrial Relations ("Department") issued a public works coverage determination ("Determination") finding that the street sweeping contracted by and for the City of Santa Clarita ("City") does not constitute the public work of maintenance, subject to the payment of prevailing wages. On June 30, 2005, Operating Engineers Union Local No. 3, AFL-CIO ("Operating Engineers") filed an administrative appeal of the Determination. Thereafter, submissions were made by interested parties, CleanStreet and City.

All of the submissions have been considered carefully. Except as noted below, they raise no new issues not already addressed in the Determination, and for the additional reasons stated herein, the appeal is denied, and the Determination dated June 1, 2005, is affirmed and incorporated herein by reference.

II. ISSUES

Operating Engineers provides the following reasons why it believes the Department's Determination that the street sweeping at issue is not maintenance is in error:

- the work is necessary to protect the public health from vermin, germs and disease that breed in debris;

- the work is necessary to maintain the roadways in a safe and continually usable condition and to protect the public from hazards caused by accumulated debris in the roadway and gutters;

- the work is necessary to ensure storm water facilities continue to work and provide adequate drainage during rains and protect the public from flooding;

- the work is one of the most effective ways of removing metal particles and hazardous waste products deposited on roadways by vehicles; these waste products are virtually invisible, extremely harmful to fish, other wildlife, and the general public, if allowed to run into rivers, creeks, beaches and bays; the work protects the water supply and the environment; and

- the work is one of the best ways to control and improve water quality, a public service that must be maintained in good order.

III. DISCUSSION

A. PUBLIC HEALTH CONCERNS ARE NOT THE BASIS FOR FINDING A WORK TO CONSTITUTE "MAINTENANCE."

While protecting the public health from vermin, germs and disease that breed in debris is an important public policy matter, public health concerns are not a basis for finding work to constitute maintenance under California Code of Regulations, title 8, section 16000.

B. PUBLIC SAFETY CONCERNS RAISED IN PW 2001-005, TRASH/DEBRIS REMOVAL FROM RAILROAD RIGHTS-OF-WAY AND FACILITIES, BLUE AND GREEN LINES/LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (AUGUST 8, 2001) ARE NOT IMPLICATED HERE.

Operating Engineers argues that the street sweeping work is necessary to maintain the roadways in a safe and continually usable condition and to protect the public from

hazards caused by accumulated debris in the roadway and gutters. City counters that such a position is not well-taken in that the "sweeper does not go down the middle of the street to sweep debris, it stays on the curb and the side brush sweeps debris out of the curb and into the main brush at the rear of the sweeper." City further states "[t]he City has a Public Works Street Maintenance division that repairs potholes, removes items spilled or dumped on the roadway, and maintains the roadway in a safe and continually usable condition."

In PW 2001-005, *Trash/Debris Removal from Railroad Rights-of-Way and Facilities, Blue and Green Lines / Los Angeles County Metropolitan Transportation Authority* (August 8, 2001), the work in question was the "removal of paper, refuse, dead vegetation, automobile parts, shopping carts, tires, bicycles, furniture, etc." The work allowed the light rail system to be kept free of trash and debris for safe train movements, and for that reason, the work was found to constitute maintenance. Here, the public safety concern is not implicated because the city streets, unlike a light rail train system, remain in a safe and continually usable condition even absent the curbside street sweeping.

Further, as City has indicated, to the extent that streets were to become unsafe and unusable, City would engage its Street Maintenance Division to fix the street and/or remove items spilled or dumped on the street.

C. WORK PERFORMED ON STORM DRAINS TO AVOID FLOODING IS NOT AT ISSUE; THAT WORK, IN ANY EVENT, IS PERFORMED BY CITY'S MAINTENANCE DIVISION.

Operating Engineers argues that the street cleaning is necessary to ensure storm facilities continue to work and to provide adequate drainage during rains and protect the public from flooding. The work at issue here is the

cleaning of city streets, not work performed on storm drains. That work is performed by City's Storm Water Maintenance crew which cleans out City-owned catch basins four times per year. City also contracts with Los Angeles County Flood Control to clean thousands of catch basins per year.

D. ENVIRONMENTAL CONCERNS ARE NOT THE BASIS FOR FINDING A WORK TO BE "MAINTENANCE."

Lastly, Operating Engineers argues that street sweeping work is one of the most effective ways of removing metal particles and hazardous waste products deposited on the roadways by vehicles. It states that these types of waste products are virtually invisible and are extremely harmful to fish and other wildlife, and the general public, if allowed to run into rivers, creeks, beaches and bays. It further argues that street sweeping is one of the best ways to control and improve water quality. While environmental concerns, like public health concerns, are an important public policy matter, they are not a basis for finding a work to be maintenance.

The recent precedential determination, PW 2005-014, *Sediment Removal from Storm Drains/California Department of Transportation* (October 31, 2005), is guidance.¹ In that case, a federal court issued an injunction ordering Cal Trans to reduce or eliminate the discharge of hydrocarbon and lead-contaminated sediments from storm drains into Santa Monica Bay, as those materials were found to be harmful to wildlife. The storm drains at issue in that determination were "self-flushing." If large debris were to accumulate and clog the

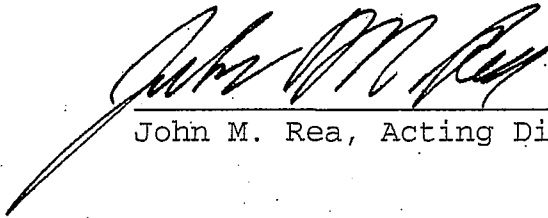
¹ While PW Case No. 2005-014, *Sediment Removal from Storm Drains / California Department of Transportation* (October 31, 2005) was not the law at the time this Determination issued on June 1, 2005, it is cited in this decision as consistent with the Department's position on the matter.

drain, a Cal Trans maintenance crew would perform work to remove the debris and restore the drain to its normal operable condition. The determination concluded that the purpose of the removal of the sediment was to protect the environment, which, alone, did not constitute a ground for a finding of maintenance.

IV. CONCLUSION

In summary, for the reasons set forth in the Determination, as augmented by this Decision on Administrative Appeal, Operating Engineer's appeal is denied and the Determination that the street sweeping work performed for the City of Santa Clarita is not a public work is affirmed. This decision constitutes the final administrative action in this matter.

Dated: 7 Feb 06


John M. Rea, Acting Director