



JERRY SANDERS  
MAYOR

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SAN DIEGO  
COUNTY GRAND JURY

July 25, 2008

Honorable Kenneth So  
Presiding Judge  
San Diego County Superior Court  
Main Courthouse, Third Floor  
220 West Broadway  
San Diego, CA 92101

Dear Judge So:

Subject: 2007-2008 San Diego County Grand Jury Report entitled "Want Not, Waste Not – Recycle Now!"

Pursuant to California Penal Code Section 933.05(a), (b), and (c), The City of San Diego provides the following responses to the findings and recommendations in the above-entitled Grand Jury Report:

## FINDINGS

### *Finding 1*

**A mandatory ordinance accompanied by both an aggressive educational program designed to increase public awareness and support coupled with a specific enforcement mechanism will extend the life of the Miramar Landfill.**

**Mayor's Response: Agree.** The City's newly enacted Recycling Ordinance, San Diego Municipal Code Sections 66.0701 through 66.0718, which became effective on December 20, 2007, emphasizes education and technical assistance as its primary means to increase recycling and waste diversion with enforcement measures (fines) that can be applied on a case-by-case basis if the education and technical assistance fail to achieve the needed results.

### *Finding 2*

**Even with recycling awareness and an ordinance in place there is no incentive for an individual or company to maximize the waste diverted into the recycling stream without a fee that is proportionally tied to the amount of non-recyclable waste generated.**

**Mayor's Response: Agree.** The City's current residential refuse and recyclables collection program does not provide an economic incentive for increasing recycling. However, the City can not implement a Pay-As-You-Throw (PAYT) fee system unless the People's Ordinance is first repealed or amended. Refuse collection fees for businesses and multi-family residences using commercial collection services are charged on a PAYT basis depending on the size of the

container and frequency of collection and thus have an incentive to increase the amount of material recycled and to reduce the amount of material disposed of as waste.

*Finding 3*

**Assuming that the two new programs have been fully implemented by January 1, 2010, there will be a reduction in the mass of material put into the Miramar Landfill. According to ESD, these two new initiatives along with the proposed twenty-foot height increase will extend the life of the landfill by 5½ to 6 years.**

**Mayor's Response: Partially disagree.** If approved, the height increase is projected to provide a four year life extension and the diversion of C&D waste from landfill disposal will also extend the life of the landfill. Gaining one and a half to two years of additional life as a result of that diversion may be possible; however, the department's planning efforts are being conservatively based on a projected 2016 closing date.

*Finding 4*

**Implementation of the C&D Ordinance will reduce the revenue in the City's Refuse Disposal Fund by approximately \$7 million dollars per year. To ensure the solvency of the city's Refuse Disposal and Recycling Funds, this loss of revenue needs to be addressed immediately.**

**Mayor's Response: Agree.** The City has addressed this issue by adopting new flat rate disposal fees at the Miramar Landfill effective January 1, 2008, and adopting a requirement for residents to pay for replacement and additional automated refuse collection containers. These measures, and cost containment efforts, are expected to mitigate the anticipated fiscal (cash flow) impacts from the C&D Ordinance to the Refuse Disposal Fund or the Recycling Fund in fiscal years 2008 and 2009. Any shortfalls in revenue to the two enterprise funds will be made up from fund balances in the short term. After analyzing the actual results of the ordinance in reducing C&D disposal at the Miramar Landfill, and the fiscal impacts to the department's enterprise funds, ESD will determine if proposals need to be brought forward for additional mitigation measures for FY 2010 to maintain a positive cash flow in those funds.

*Finding 5*

**Increasing the flat rate disposal fee at the Miramar Landfill as well as the Refuse Container Replacement Fee are justifiable mitigation measures for dealing with the increased costs associated with these ordinances.**

**Mayor's Response: Agree.** Both of these measures were adopted by the City Council on November 20, 2007.

*Finding 6*

**Disposal facilities for hazardous materials are not readily accessible to many residents.**

**Mayor's Response: Partially disagree.** The City's full service household hazardous waste (HHW) disposal facility is centrally located in the Kearny Mesa area at the entrance to the Miramar Landfill and is convenient to a significant portion of San Diego residents. However, it is not as convenient to the City's most northern and southern communities. To provide additional opportunities for residents to dispose of HHW, ESD customer service representatives refer

callers to locations in their neighborhood to recycle automotive waste products (batteries, motor oil, oil filters, etc.), household batteries, cell phones and e-waste. Additionally, ESD holds seven to eight automotive product recycling events annually in neighborhoods for do-it-yourself mechanics and provides limited door-to-door HHW collection for qualifying elderly and disabled residents.

*Finding 7*

**Take back programs by vendors in San Diego are almost non-existent.**

**Mayor's Response: Disagree.** There is an extensive array of take back programs currently being operated in San Diego in response to State legislation and market conditions and the number of take back programs is anticipated to increase in the future. While this extensive array exists, there could be more producer responsibility measures implemented, e.g. alkaline batteries, fluorescent lights, etc., to further divert universal wastes from landfill disposal.

Existing take back programs include:

1. Used Motor Oil and Oil Filters. There are approximately 100 Certified Used Oil Collection Centers in the City of San Diego and approximately 250 within San Diego County.
2. E-Waste. There are 52 State approved e-waste collectors and recyclers in San Diego County and services are also provided by certified collectors from other counties. Additionally, cell phone retailers take back used cell phones and many electronics retailers take back used electronics (e-waste) when customers purchase new electronic products.
3. Rechargeable Batteries. Retailers that sell rechargeable batteries are required to take back used batteries from consumers. In San Diego this includes Ace Hardware, Batteries Plus, Best Buy, Circuit City, Grainger, Home Depot, Lowes, Office Depot, Radio Shack, Staples and several drug store chains. Many of these locations also accept alkaline batteries for recycling.
4. Lead Acid Batteries. Retailers take back the old battery when a new battery is purchased.
5. Manufacturer Mail Back Programs. Manufacturers such as Apple, Dell, HP and Sony offer prepaid mailers for used printer ink cartridges in addition to the take back programs at retailers such as Office Depot and Staples.

*Finding 8*

**Even with the new ordinance in full effect, the City of San Diego will be recycling only a few categories of household and commercial waste materials.**

**Mayor's Response: Disagree.** The breadth of materials recycled in San Diego and through City recycling programs is equivalent to those recycled throughout California and includes all paper, cardboard, metal containers, and plastic and glass bottles and jars. The two new recycling ordinances will enhance the amount of recycling and, especially in the area of mixed C&D wastes, will increase the types of materials recovered for recycling. For recycling to actually occur, there must be a strong viable market for the recovered and processed materials and ESD staff is continually monitoring those markets to determine if additional materials can be added to the materials currently collected in the City's recycling programs. In most commercial recycling

programs the bulk of the materials collected, by percentage and weight, are paper products, cardboard boxes and plastics.

*Finding 9*

**Many San Diegans do not participate in programs to separate their trash more finely than just putting a few designated categories into recycling bins.**

**Mayor's Response: Disagree.** San Diego residents are highly supportive of recycling programs. Customer satisfaction surveys have shown the City's recyclables collection program has been consistently ranked as one of the top rated services provided by the City. Residents continually utilize the blue recycling bins to the extent that over 70,000 tons of recyclables are recovered every year. Similarly, many residents take advantage of the household hazardous materials collection and recycling programs. These services range from the City's full service household hazardous waste (HHW) disposal facility, the City-funded automotive waste products recycling programs at selected automotive retail outlets, and the seven to eight automotive product recycling events held annually in neighborhoods for do-it-yourself mechanics. Additionally, ESD provides limited door-to-door HHW collection for qualifying elderly and disabled residents. However, while many residents seem eager to participate in the HHW recycling programs, surveys have shown that they are not willing to drive more than a few miles to the drop-off centers. It is currently cost-prohibitive for the City to open any additional full-service HHW disposal facilities. The City has supported "Product Stewardship" legislation that would require the manufacturers of products to provide an easy, cost-free way to recycle their products.

*Finding 10*

**The 1919 ordinance serves only a portion of San Diego residents yet the costs associated with it are borne by everyone through the General Fund.**

**Mayor's Response: Agree.** Approximately 60% of the City's total residential units are served by the City's residential refuse collection program with its costs borne by the General Fund. The language in the People's Ordinance places restrictions on the City's collection program so it can not be extended to all residential units.

*Finding 11*

**An ordinance that provides free waste collection for some residents while others must pay for this service is fundamentally inequitable and cannot be justified as a policy that furthers the collective good.**

**Mayor's Response: Partially agree.** City provided residential waste collection services are not free. There is a cost associated with providing the services; however, the People's Ordinance, SDMC § 66.010127 (c) (1) requires that "Residential Refuse shall be collected, transported, and disposed by the City at least once each week and there shall be no City fee imposed or charged for this service by City Forces". Trash collection is paid for by the General Fund which is made up of revenue collected from property tax, sales tax, transient occupancy tax, property transfer tax, licenses and permits, revenue from money and property, revenue from other agencies, charges for current services and transfers from other funds.

When the People's Ordinance was adopted on April 8, 1919, San Diego had a population of approximately 25,000 residents and it was far less complicated to provide waste collection

services then than it is now in a City with a population of almost 1.3 million residents. The People's Ordinance was amended twice, in 1981 and 1986. These amendments recognized commercial and industrial waste collection as separate and distinct from residential waste and limited the scope of City provided waste collection services. These amendments created differences in which types of residential units were eligible for City provided waste collection services. For example, multifamily units which do not have access to public streets for their resident's trash must use commercial trash collection services. Also, single family units on private streets without a hold harmless agreement predating the 1986 amendment cannot utilize the City's waste collection services.

In theory, it may be more equitable for all residents to pay directly for refuse collection services they received; however, San Diego's voters have chosen the current system and that system can only be changed by a majority vote of the electorate to amend or repeal the People's Ordinance.

*Finding 12*

**The city diverts approximately \$37 million annually from the General Fund to cover the waste collection needs of only a segment of San Diego residents.**

**Mayor's Response: Agree.** The City's refuse collection program services approximately 60% of the City's total residential units at an annual cost of approximately \$37 million. The remaining residential units in the City receive refuse collection services from City franchised haulers and pay a fee, directly or indirectly, for that service.

*Finding 13*

**Apartment dwellers and those who live in other types of multiple family dwellings currently pay indirectly for their waste collection through rents/leases/mortgages etc., but also pay a portion of the trash collection needs of single-family homeowners through their contributions to the General Fund.**

**Mayor's Response: Agree.** While it is intuitive that apartment dwellers and those who live in other types of multi-family dwellings pay directly or indirectly for waste collection services, the City does not have information on how or to what degree owners of these dwellings pass these costs through to their tenants.

*Finding 14*

**The money siphoned from the General Fund in order to provide some residents with free trash pick-up as a result of the Peoples' Ordinance is better spent shoring up the long-term health of, and preventing deficits in, the city's Refuse Disposal and Recycling Enterprise Funds.**

**Mayor's Response: Partially disagree.** The General Fund monies currently used to fund residential refuse collection services could certainly be used to fund other critical City services; however, the General Fund pays disposal fees for all materials taken to the Miramar Landfill for disposal as well as paying AB939 fees to the Recycling Enterprise Fund at the same rate as commercial haulers. Therefore, amending or repealing the People's Ordinance would benefit the General Fund to a far greater extent than it would benefit the Disposal Fund and Recycling Fund.

*Finding 15*

**The Peoples' Ordinance prohibits the city from passing along refuse collection and disposal costs to a very large contingent of waste producers and limits the city's ability to create more natural economic incentives for recycling.**

**Mayor's Response: Agree.**

*Finding 16*

**The intent of the 1919 Peoples' Ordinance was to make trash collection revenue neutral. However, today the amendments to the Ordinance and changes to the housing conditions in the City of San Diego have created, in effect, a double charge for residents living in multiple family dwellings.**

**Mayor's Response: Agree.**

*Finding 17*

**The Kröll Report on San Diego city government reform recommended that managed competition be explored as an option for all city departments, excluding public safety.**

**Mayor's Response: Agree.**

## **RECOMMENDATIONS**

**Recommendation 08-43: Consider reducing the size or eliminating the volume exemption in the new recycling ordinance.**

**Mayor's Response:** The recommendation will not be implemented because it is not reasonable due to being premature. The Recycling Ordinance applies first to the larger generators, and not to those that would qualify for the volume exemption. In developing the City's recycling ordinance, ESD staff reviewed recycling ordinances from other jurisdictions and talked with their counterparts to determine what was needed for the ordinance to be successful and reasonable for residents and business to implement. The exemption was modeled largely on the Sacramento Regional Solid Waste Authority's Business Recycling Ordinance with some modifications arrived at after discussions with local business groups.

Businesses and facilities that are the first required to comply with the ordinance will, in the vast majority of cases, not qualify for the volume exemption. After the smallest businesses and facilities are required to comply with the ordinance, during the last phase of implementation, there will be more information available on the effectiveness of the ordinance and appropriateness of the volume exemption. The volume exemption can be revisited at that time if appropriate.

**Recommendation 08-44: Revise the recycling ordinance to specify penalties for non-compliance.**

**Mayor's Response:** The recommendation will not be implemented because it is not warranted due to the fact that specific penalties for non-compliance with the Recycling Ordinance are already included in the San Diego Municipal Code (SDMC). Section 66.0718 (b) states that violations may be prosecuted as misdemeanors subject to the penalties provided in SDMC

section 12.0201 and/or by use of the administrative remedies that are also provided in the SDMC. The remedies available under those sections will provide sufficient flexibility for dealing with future issues without detailing a list of fines and penalties in the Recycling Ordinance.

**Recommendation 08-45: Require recycling information to be distributed to all residents of the city and periodically place informational material in the various media.**

**Mayor's Response:** This recommendation has been implemented. ESD annually distributes an information mailer to all customers it services regarding recycling and waste reduction and how to fully utilize City provided recycling services. The Recycling Ordinance now requires the party responsible for providing recycling services to its occupants or employees (i.e., property manger, business owner, etc.) to provide recycling educational materials to new tenants or employees and annually there after.

ESD is in the process of developing new signs for the City's refuse and recyclables collection vehicles to promote recycling. In addition, ESD proactively sends out press releases about recycling and waste reduction to the television, print and radio media. In FY 2008, ESD was cited in approximately 100 recycling related print articles and television and radio interviews.

Examples of ESD's recycling education out reach efforts include:

- Enviro Tour where junior and senior high school students are given educational tours of the Miramar Landfill, the Greenery and the recycling buy-back center.
- Enviro School is used for promoting recycling and environmental education for up to 3,500 elementary students annually.
- Technical training in partnership with other public and private entities, including the USEPA, SDG&E, and the City's Project Management and Construction Management Academies.
- Awards to businesses with successful recycling programs.
- Airing a variety of recycling videos on the City's cable access channel.
- Regular updates to the ESD website and the City's home page with the most recent information on recycling with links to other reuse and recycling websites.
- Staffing an environmental booth at large community events.
- Sponsoring an environmental category in the annual Innovative Video in Education awards.
- Providing recycling presentations to youth and adult groups.

**Recommendation 08-46: Encourage large entities to seek out sources of income from the recycling of revenue-generating materials.**

**Mayor's Response:** This recommendation has been implemented as an on-going effort by ESD and has achieved excellent results. Many of the larger entities in San Diego, such as Sony, HP, Solar, Sea World, SDSU, UCSD, etc., have active recycling programs with markets for the recovered materials that provide them with a new source of revenue. As an example, in 2006 Sea World diverted 63% of its waste, received \$72,678 in revenue and avoided \$434,000 in waste hauling costs and landfill disposal fees. ESD, through its annual business awards program, makes this information available to a wide segment of San Diego's business community. The City's

franchised haulers also work with their larger customers to achieve a balance of service between waste collection and the collection of recyclable materials.

ESD also compiles recycling guides that list the facilities that recycle various materials and indicates whether those facilities charge or pay to accept recyclable materials. The recycling guides are widely distributed. In addition, ESD provides no cost waste audits to businesses and multi-family residential complexes that assess how trash collection costs can be reduced by enhanced recycling and estimates the value of the recyclable material that can be recovered.

**Recommendation 08-47: Bring the C&D ordinance into full implementation without delay by not permitting extensions of the deadlines and by actively encouraging private entities to implement the provisions of the ordinances even before the maximum time permitted by law.**

**Mayor's Response:** This recommendation will not be implemented because it is not reasonable. The implementation schedule for the C&D Ordinance was carefully considered during its development because of the time and investment needed to develop the infrastructure to process the quantities of C&D wastes to be diverted from landfill disposal. The first C&D facility in the County has been operating for less than a year and has been certified to achieve a 57% diversion rate. At this time, there are no facilities that could achieve the 75% diversion rate required for full implementation of the C&D Ordinance; however, it is anticipated that diversion rate can be achieved during the current phased implementation period. To eliminate the phased implementation schedule, before sufficient processing facilities and markets for recovered materials are available, would be burdensome on the local building industry and could be counterproductive to overall C&D recycling efforts.

**Recommendation 08-48: Actively monitor and adjust waste disposal rates to maintain and encourage a natural incentive to divert C&D debris from the landfill into the recycling stream.**

**Mayor's Response:** This recommendation has been implemented. Fees for the disposal of C&D wastes at the Miramar Landfill were significantly increased effective April 1, 2008 to provide an incentive for recycling over landfill disposal. According to EDCO, the operator of the certified C&D recycling facility, this resulted in a large increase in the tonnage of C&D delivered for processing. ESD has seen a 50% reduction in C&D landfill disposal since the new fees and surcharges became effective.

ESD will continue to monitor the flow of C&D wastes to the landfill and the certified processing facility and will recommend adjustments to disposal fees as needed to achieve the goals of the C&D Ordinance.

**Recommendation 08-49: Increase efforts to expand the variety and quantity of materials going into the recycling stream.**

**Mayor's Response:** This recommendation has been implemented. Relative to adding new commodities to the recycling stream, ESD continually monitors the market for recyclable materials and consults with local recyclable materials processors to determine if additional materials can be added to its recycling programs. The materials currently accepted in the City's



curbside recyclables collection program constitute the majority of the recyclables generated at a typical residential unit. For a material to actually be recycled, there needs to be a market available and a value sufficient to cover the costs of processing the material. As an example, ESD recently considered adding plastic bags to the materials collected in its curbside program. Discussions with the curbside materials processors determined that markets for this material were not consistent or stable enough to add this material to the curbside program at the present time.

In terms of increasing the amount of materials presently included in our recycling mix, the City conducts an on-going education and public outreach effort (see response to recommendation 08-45) to inform and encourage the public to recycle as much of these materials as possible. In addition to curbside recycling, the City sponsors other recycling activities. The used oil recycling program is offered to residents primarily through public-private partnerships with automotive repair and retail outlets, as well as collection events held periodically throughout the City. The City also offers residents an option to use the Household Hazardous Waste Transfer Facility at the Miramar Landfill, which is open nearly every Saturday and collects household materials. None of it can be disposed of in the landfill, but much of it can be properly recycled. This includes paint, batteries, and other commodities. Lastly, the City's partnership with Allen Company at the Miramar Landfill provides a drop-off location for nearly all recyclable materials, much of which has a monetary value that is passed on to the resident.

**Recommendation 08-50: Increase the number and accessibility of sites and/or means for disposing of recyclable hazardous materials.**

**Mayor's Response:** The recommendation has been implemented. Recyclable household hazardous waste (HHW) includes latex paint, used oil, oil filters, household batteries, lead-acid batteries, fluorescent bulbs, electronic waste, ink and toner cartridges. A successful recycling program exists for products that have the recycling cost built into the purchase cost of the item, and this includes cell phones, Cathode Ray Tubes (TVs and computer monitors), computers, laptops, and motor oil. Many retail locations within the City of San Diego collect one or more of the recyclable HHWs. They include hardware stores (e.g. Home Depot, Lowe's, Ace, IKEA) auto part and service centers (e.g. Autozone, Kragen, Firestone, Jiffy Lube, Pep Boys), office supply and electronic retailers (e.g. Office Depot, Staples, Best Buy, Circuit City, Radio Shack) and drugstores (e.g. Long's, CVS, Rite-Aid, Walgreens). Another resource available to City residents are one-day electronic waste recycling events hosted by a number of private sector entities, including Goodwill, the Industrial Environmental Association, SeaWorld, Recycle San Diego, and E-world Recyclers. There are also "mail-back" programs available for recycling batteries; fluorescent bulbs; cell phones and electronics; ink and toner cartridges; and sharps, such as needles and syringes.

The City is pursuing inter-jurisdictional agreements with other HHW facilities in the region. This would expand the number of HHW recycling facilities available for use by residents. If the discussions are successful, then an agreement will be brought forward for City Council review in FY 2009. Typically, there is an end cost to recycle HHWs and electronic waste, and the City of San Diego strongly supports legislation that would advance extended producer responsibility or other funding mechanisms that do not place the financial burden on local governments.

**Recommendation 08-51: Make efforts to encourage merchant participation in take-back programs.**

**Mayor's Response:** This recommendation has been implemented. The City seeks to involve merchants in take back programs and has partnered with local firms, such as Kragen, using grant funds to establish take back locations for automobile products and other products that would otherwise have to be handled by the City as a hazardous waste. ESD provides residents with information on the type of products which have merchant take back programs and the locations of participating merchants.

Take-back programs are most effective if the program requirements are statewide and a revenue source is available to offset the cost of the program to the merchants. An example of such a program is the statewide used tire take back program in which purchasers of new tires are charged a fee which is used to fund the take back and recycling or disposal of the old tires.

The City's legislative agenda also includes supporting legislation increasing producer responsibility for taking back products that contain universal wastes, a category of hazardous wastes, to make it more convenient for consumers to safely dispose of those products. Examples of the types of products where take back programs are in effect or being considered include: used motor oil, automobile batteries, household batteries, electronic waste, fluorescent light bulbs, etc.

**Recommendation 08-52: Repeal the People’s Ordinance.**

**Mayor’s Response:** This recommendation will not be implemented as the People’s Ordinance can only be amended or repealed by a vote of the electorate of the City of San Diego.

**Recommendation 08-53: Adopt a Pay As You Throw (PAYT) or variable pricing system whereby individuals and companies pay proportionately for waste disposal based on the amount of non-recyclable waste generated in order to encourage a natural diversion of waste into the recycling stream.**

**Mayor’s Response:** This recommendation will not be implemented as it is not warranted. It would be premature to adopt a PAYT pricing system for City provided residential solid waste collection services before the electorate approves amendments to or the repeal of the People’s Ordinance. Should the People’s Ordinance be amended to permit the charging of fees for collection services, then the adoption of a PAYT pricing system will be given serious consideration.

The City’s franchised solid waste haulers, who provide all commercial waste collection services for San Diego businesses, utilize a variable pricing system where rates are based on the number, size and frequency of collection of commercial refuse containers and work with customers to establish recycling collection programs to reduce the amount of waste requiring landfill disposal. As an additional incentive to move materials from landfill disposal to recycling, franchise fees are assessed on waste collected for landfill disposal but materials that are collected for recycling are exempt from those fees. This provides an additional \$12 per ton incentive for recycling.

**Recommendation 08-51: Launch a formal study concerning the potential cost savings of privatizing the curbside collection and disposal services as well as the management of the city’s landfill.**

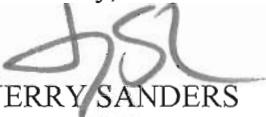
**Mayor’s Response:** The recommendation has been implemented. The City has completed and announced studies (pre-competition assessments) of 18 City functions or services for potential savings through managed competition or privatization. Eleven functions, including 20% of the solid waste collection services, will move directly into the competitive process. The use of a phased approach to move the City’s solid waste collection services into competitive procurement will reduce the risk associated with competing this function by allowing the City to maintain its ability to provide this critical service should there be any default by a contractor. Competitive procurement for future phases of solid waste collection services will also occur in increments equal to one-fifth of the current collection routes. The timetable for moving additional increments to competitive procurement will be set following an evaluation of the first round of competition.

The tentative schedule for the initial competitive procurement envisions developing the specifications, Request for Proposals and advertising for initial solicitations by the end of Summer 2008. Proposals will be reviewed and initial award recommendations will be made by the end of 2008, with the transition to the selected service provider completed by Summer 2009.

At this time the decision regarding managed competition for the management and operation of the Miramar Landfill is being delayed pending receipt of approvals for the landfill's vertical height expansion.

Please contact Chris Gonaver, Director, Environmental Services Department at (858) 573-1212 if you have additional questions.

Sincerely,



JERRY SANDERS  
Mayor

cc: San Diego County Grand Jury  
Chief Operating Officer  
San Diego City Council  
Deputy Chief, Community Services  
Director, Environmental Services  
City Clerk  
Administration Department Director