

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Executive Office

SUBMITTAL DATE:
August 28, 2012

**SUBJECT: Response to the Grand Jury Report: 2011-12 Grand Jury Report:
Riverside County Waste Management Department**

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve with or without modifications, the attached response to the Grand Jury's recommendations regarding Riverside County Waste Management Department.
- 2) Direct the Clerk of the Board to immediately forward the Board's finalized response to the Grand Jury, to the Presiding Judge, and the County Clerk-Recorder (for mandatory filing with the State).

BACKGROUND: On June 26, 2012, the Board directed staff to prepare a draft of the Board's response to the Grand Jury's report regarding Riverside County Waste Management Department.

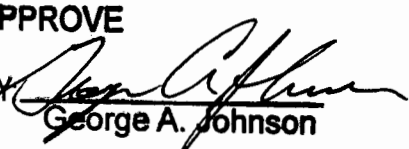
Section 933 (c) of the Penal Code requires that the Board of Supervisors comment on the Grand Jury's recommendations pertaining to the matters under the control of the Board, and that a response be provided to the Presiding Judge of the Superior Court within 90 days.

90dayresponsef11wastemgmt08.12

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year:

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30
	Requires 4/5 Vote

C.E.O. RECOMMENDATION: **APPROVE**

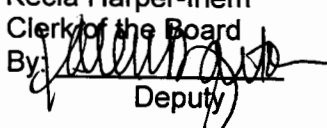
BY: 
George A. Johnson

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Benoit and Ashley
 Nays: None
 Absent: Stone
 Date: August 28, 2012
 xc: EO, Grand Jury, Presiding Judge, Waste, Recorder

Kecia Harper-Ihem
 Clerk of the Board
 By: 
 Deputy

Prev. Agn. Ref.: 3.5 – 06/26/12 | District: | Agenda Number: **3.12**

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

Departmental Concurrence

Policy Policy
 Consent Consent
 Dept't Recom. Per Exec. Ofc.:

**2011-2012 Grand Jury Report
Riverside County Waste Management Department**

FINDINGS

1. Hostile Work Environment

Grand Jury interviews of current and former employees, testifying under oath, indicated the management team claims to have a long memory. An employee labeled as "not a team player" is viewed less favorably for advancement opportunities while other, less qualified people, are hired and/or promoted because they are in the right "clique".

RESPONSE:

Respondent disagrees wholly with the finding.

During an advancement opportunity, all employees are encouraged to apply. The resumes are then reviewed by the County's Human Resources Department, and the most highly qualified candidates are referred to the Department for interview. Competitive interviews are held in accordance with County policy and procedure. The most qualified individual, as rated by the Department's interviewing panel, is recommended for advancement. The recommended candidate is submitted to the County's Human Resources Department. The finding in the Grand Jury report does not reference a specific case, but the Department is confident that in all cases the selected candidates are the most qualified, experienced, and best-suited of all applicants for the position.

Grand Jury investigation revealed a lack of communication exists between senior management and line staff.

RESPONSE:

Respondent disagrees wholly with the finding.

Without specific examples presented in the report it is unclear what the basis is for this finding. The Department adheres to the chain of command to disseminate information; however, senior management staff is approachable and available to line staff on an almost daily basis. At the regional landfills (Badlands and Lamb Canyon) where the majority of field employees are located, project supervisors are based there and have a full-time presence. The Engineering Project Managers for each site divide their time between the office and the landfill as necessary. Additionally, all sites and divisions within the office hold bi-weekly safety meetings that provide opportunities for interaction and an ability to raise issues and concerns. Also, the Assistant Chief Engineer visits the regional landfills at a minimum on a quarterly basis in order to interact with staff.

It was further substantiated through interviews with current and former employees of the Department, as well as County Human Resources Department (HR) managers, that the work environment of the Department is hostile. Since Fiscal Year 2006, there have been 21 harassment and/or discrimination complaints filed against the Department. Thirteen resulted in an HR investigation for misconduct. According to sworn testimony, senior management, as well as some supervisors, are deemed unapproachable. Also,

according to those interviewed, this atmosphere is pervasive in the field, i.e., the Badlands and the Lamb Canyon landfills.

RESPONSE:

Respondent disagrees wholly with the finding.

It is possible that some people might mistake the Department's very serious efforts to promote employee accountability, safety and fiscal discipline across all facets of our operation as hostility. It is well-documented that landfills are extremely dangerous operations in a highly competitive environment. As a result, the department's first priority is to ensure the safety of its employees and the public, while providing cost-effective disposal options for the ratepayers in Riverside County.

Every one of the 21 claims mentioned in the finding was investigated by HR, as county policy requires. Not a single one has been substantiated. Thirteen of the 21 claims were filed in 2011; 11 of those 13 were filed by two employees. One of those employees filed five complaints in nine days. To put this in perspective, more than half (52%) of the total complaints were filed by two employees in 2011; therefore, the Department disagrees with the Grand Jury's assertion that these figures indicate a pervasive hostile work environment.

The County of Riverside "Speak Out!" program has been developed to engage the participation of employees and the public to help meet the commitment to maintaining the highest level of ethics and integrity in all County operations. It is intended to be used to help the County eliminate fraud, waste, and abuse by using "Speak Out!" to report concerns.

Everyone has free, unlimited access to the anonymous and confidential third-party reporting system powered by "MySafeWorkplace." This service is available 24 hours a day, 7 days a week via the Internet. Examples of the types of incidents that can be reported through "Speak Out!" including the following:

- *Fraud*
- *Waste*
- *Abuse*
- *Ethic Violations*
- *Retaliation*
- *Discrimination*
- *Safety Violations*

The website further states: "Retaliation of any sort will not be tolerated by the County of Riverside in accordance with California Labor Code 1102.5 and 1106."

RESPONSE:

Respondent agrees with the finding.

2. Corrective and Disciplinary Action

Definitions of County HR's first steps of corrective action per County of Riverside Managers and Supervisors Disciplinary Process Manual include:

- *Directive Memorandum informs employee or group of employees how to complete a task or what the rules are and directs employee to perform correctly in the future.*
- *Corrective Memorandum is a warning memorandum, which informs an employee that, even after previous direction, a task is still being completed incorrectly or improper behaviors are still occurring.*
- *Corrective Counseling Confirmation Memorandum is a warning summary memo from a formal counseling interview which includes dialogue between supervisor and employees.*
- *Written Reprimand is the first, formal disciplinary step.*

Waste Management Department Policy A-10 (1e) states:

Supervisors shall maintain files on direct reports to document items related to behavior, discipline, and attendance. These documents/notes shall not be kept longer than twelve (12) months.

Sworn testimony given to this Grand Jury indicated those interviewed fear incidents, documented in Directive Memorandums, Corrective Memorandums, and Corrective Counseling Confirmation memorandums, which are not formal disciplinary action, may be brought up beyond one year and used as a springboard into disciplinary action. Copies of these written notices are kept in the supervisor's file.

RESPONSE:

Respondent disagrees partially with the finding.

The Department memorializes informal discipline in Performance Evaluations in compliance with the County's Disciplinary Process training. Therefore, there is no reason for a Supervisor to keep informal discipline longer than 12 months. We are aware that in certain instances informal discipline has remained in Supervisors' files beyond 12 months due to lapses in file maintenance.

All disciplinary memos/actions are reviewed by the Human Resources Department for compliance with County policy and practice. Outdated actions are not considered. As stated in the County of Riverside Managers and Supervisors Disciplinary Process Manual, "depending on the severity of the behavior, all, some, or possibly none of the early progressive steps need be taken." Although those interviewed may fear that incidents may be brought up beyond one year after the incidents, such incidents may not and are not used as a springboard for further discipline.

3. Ongoing Training

Board Policy C-23 (1) "Disciplinary Process Policy" states:

Agency/department heads, managers, and supervisors shall attend a disciplinary process training program administered by Human Resources prior to or within 90 days of appointment.

As attested by HR, Department managers and supervisors attend mandatory refresher training every two years on Discipline Process, Sexual Harassment, Family Medical Leave Act, Workplace Violence, and Management Harassment Prevention. Based on testimony received, this biennial training fails to address sufficiently the skills requisite to perform the complex supervisorial and managerial responsibilities of the position.

Department management has been advised by HR that "employees need to be appreciated" and the Department environment needs "to be about promoting motivation and improving culture."

The Center for Government Excellence is a County-wide resource for performance solutions, providing quality programs that anticipate and meet the changing needs of Riverside County. These programs strive to build a sustainable culture of continuous learning and excellence in Riverside County. According to sworn testimony given to the Grand Jury about the Center for Government Excellence, this center is underutilized.

RESPONSE:

Respondent disagrees partially with the finding.

The Department has worked closely with CGE since its inception. Mandatory training for all Department employees is up-to-date and tracked in a Department training database. The Department agrees that the mandatory biennial training classes offered by CGE and referenced in the above finding do not address all the complex supervisorial and managerial responsibilities of the position. For this reason, many of the Department 's managers and supervisors have completed CGE's Leadership Initiative, Management Academy or Supervisory Academy, which provide more intensive training.

4. Annual Performance Evaluation Report

Board Policy C-21 (2) "Annual Performance Evaluation Reports" states:

Agency/department managers shall prepare, or cause to be prepared, a written, confidential evaluation of the performance of each regular employee assigned to their management responsibility. Evaluations shall be in a form prescribed by the agency/department, as reviewed by Human Resources, but shall comply with the principles encompassed in this policy.

To substantiate sworn testimony, this Grand Jury requested and received access to the Employee Performance Management System. Investigation of information retrieved from this system revealed annual performance evaluations are not performed in a timely manner throughout the County, and at times, not at all.

Board Policy C-21 (3) states:

The frequency of evaluations prescribed by this policy shall be as follows: (b) All...regular employees of Riverside County shall be evaluated on an annual basis, approximately on the anniversary of their initial employment with county or on the anniversary of promotion or entry into their current job classification.

Department Policy B-12 states, in part: "...on or near the anniversary date of current job classification entry." Interviews conducted by the Grand Jury, coupled with random checks of Department employee personnel files, revealed that the Department is in violation of these policies.

RESPONSE:

Respondent disagrees partially with the finding.

The Department strives to maintain a 100% compliance record regarding performance evaluations. Currently, the Department's compliance record is near 80%. This is due, in part, to the increased staff-to-supervisor ratios as a result of downsizing over the last four years. Compliance numbers are reviewed with Department managers and supervisors on a bi-monthly basis. While maintaining 100% compliance is the County's goal, certain circumstances may affect a department's ability to reach this goal.

5. Board Policy C-21 (5,d)

Board Policy C-21 (5, d) "Employee Performance Evaluation Reports" states:

Anytime an agency/department anticipates giving an employee an overall rating of unacceptable or improvement needed, the agency/department should notify Human Resources and seek its review and support of the evaluation.

RESPONSE:

Respondent agrees with the finding. Evaluations reflecting an overall sub-standard rating are reviewed by the Human Resources Department for compliance with County policy and practice prior to being issued.

6. Zero Tolerance Standard

The Board has the following policy regarding behavior "...implied...indirect...that subjects another individual to emotional distress." Board Policy C-27 "Workplace Violence, Threats and Securities" states:

The County of Riverside does not tolerate any type of workplace violence committed by or against employees. Employees are prohibited from making threats or engaging in violent activities. The list of zero tolerance behaviors with regard to threats and/or violence shall include, but not be limited to, the following proactive measures and/or prohibited behaviors:

1. *Engaging or allowing engagement in violent conduct or making threats of violence, implied, actual, direct, or indirect, or causing actual physical injury to another person at a county workplace or in connection with the conduct of county business.*

2. *Any aggressive or hostile behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress.*

During the Grand Jury interview process with current and former Department employees and other County employees, this Grand Jury was advised of several incidents in which derogatory, racially-inflammatory remarks and/or behavior have been reported and/or documented. Instances cited:

- During sworn testimony from separate sources and independent Grand Jury investigation, it was found there is a history in the Department regarding racial discrimination. In 1989 an African-American equipment operator filed a grievance with his union against a supervisor at the Badlands landfill. After that filing, this supervisor's son-in-law, a Department employee since 1982 and a current Lamb Canyon project supervisor, followed the equipment operator to a gas station and called him a derogatory racial term. There is also reference to a restraining order against the father-in-law by this same equipment operator. On May 21, 1990, a lawsuit (Case Number 2052431) was filed by the equipment operator against the County of Riverside "for damages for discrimination on the basis of race."*
- A review of Department personnel files by this Grand Jury revealed a reprimand of a former Department employee. This reprimand, issued September 20, 2004, followed an eight-day investigation conducted by HR, which found the employee guilty of making stereotypical racial comments about African-Americans to an African-American who took offense. At that time, the employee's direct supervisor, a current Lamb Canyon supervisor, refused to sign the reprimand.*
- According to three sworn sources, an operations and maintenance supervisor at Lamb Canyon is known for using racial slurs regarding Department employees of African-American descent.*
- Two of these independent sources claim an additional operations and maintenance supervisor is known for using racial slurs against African-Americans working in the Department.*
- One of these sources, a former Department employee who is African-American, testified under oath he was told, "You get your black ass out there and eat in that trailer." This former equipment operator said, "The trailer is crawling with rats and cats and their droppings, as well as insects." He further testified he was "called a nigger" and "was treated like a nigger" during his eight years with the Department, up through November 2011.*

RESPONSE:

Respondent agrees partially with the finding.

Racial discrimination incidents have occurred within the Department during its history. The two specific incidents cited, occurring in 1989 and 2004, were handled in accordance with BOS policy and in consultation with County Human Resources. Until the report was issued, the Department was not aware of the issues cited in the last three bullet points referring to a supervisor "known for using racial slurs against African-Americans". Without specificity it is more difficult to verify the veracity of this claim; nevertheless, in response to the aforementioned claims, County Human Resources staff conducted an investigation and interviewed 10 supervisors/employees and determined that the allegations could not be substantiated. Additionally, it is important to note that of the 21 harassment/discrimination complaints since 2006 mentioned in Finding 1,

none was for racial discrimination. The Department is also unaware of the claim by a former African American employee regarding eating conditions at the landfill as this issue was never brought forward by the employee. The lunch areas at the landfill are not "crawling with rats and cats" as the individual claimed; however, the presence of rodent droppings is an unfortunate reality in some areas at landfills. The trailers where Lamb Canyon operations employees take their breaks and have lunch are clean. All sites are provided with baits and traps and professional extermination companies are utilized as needed. Most importantly, the Department strongly objects to the implication in this finding that racially motivated discrimination, behavior or remarks are tolerated, condoned, overlooked or ignored. Department management recently re-emphasized the County's zero-tolerance policy at a Department-wide meeting of all managers and supervisors, and those employees were reminded to report any such incidents so they can be acted upon.

RECOMMENDATIONS

1. *The County must publicize the existence of "Speak Out!" to all Waste Management Department employees, as well as provide frequent information about this program to County employees and County residents.*

RESPONSE:

The recommendation has been implemented.

2. *The County HR Department must receive a copy of all written memorandums, i.e., Directive Memorandums, Corrective Memorandums, and Corrective Counseling Confirmation Memorandums. HR must dispose of these copies after one year. Department supervisors must adhere to Waste Management Department Policy A-10, "Records Retention."*

RESPONSE:

The recommendation has been implemented. With the exception of Department-specific general policy directives, the Department already submits all written memorandums, i.e., Directive Memorandums, Corrective Memorandums and Corrective Counseling Confirmation Memorandums to HR for review before they are issued to employees. Once issued, the Department retains these memorandums in supervisor's files so that they can be referenced during the preparation of annual performance evaluations. As mentioned above in the response to Finding #2, there is no reason for a Supervisor to keep informal discipline longer than twelve (12) months. Department Policy A-10 has been amended to reflect current practice. However, given the number of employees the County has, the recommendation for HR to maintain these records on behalf of all Departments is not warranted or reasonable.

3. *Agency/department heads, managers, and supervisors must receive mandatory training by the Center for Government Excellence, focusing on the areas provided in the "Better Riverside County Supervisor Competency Clusters":*

- *Communicating Effectively*
- *Inspiring Others*
- *Managing Diverse Relationships*
- *Being Open and Receptive*

HR will document and ensure there is frequent and ongoing training of supervisors and managers, which is provided by the Center for Government Excellence in its Management and Supervisory Excellence Academies.

RESPONSE:

The recommendation has been implemented. All mandatory training is current for all Department employees and the Department will continue to encourage managers and supervisors to utilize the Center for Government Excellence to develop managerial and supervisory skills. Human Resources does document the training it provides, and produces reports for the departments on request.

- 4. Board Policy C-21 and Department Policy B-12 must be enforced, holding managers and supervisors accountable for failure to comply. The Riverside County Executive Office must require HR to devise, or cause to be devised, a tracking system to identify upcoming annual employee evaluations. This procedure must provide a specific completion date.*

RESPONSE:

The recommendation has been implemented. A tracking system is available which identifies employee evaluation completion dates.

Failure on the part of department management to adhere to the completion date will result in formal disciplinary action.

RESPONSE:

Recommendation will not be implemented because it is not warranted. While the Waste Management Department will include employee evaluation completion rates as part of management performance evaluations, urgent needs might temporarily delay completion. The County does not agree that formal disciplinary action is warranted based solely on the completion rate.

- 5. Board Policy C-21 (5, d) "Employee Performance Evaluation Reports" must be reworded to say "will" instead of "should."*

RESPONSE:

Recommendation will not be implemented because it is not warranted. Human Resources is already aware of and reviews all of the Department's anticipated Below Standards performance evaluations in accordance with Board Policy C-21. The recommended change in wording is not necessary.

6. *In accordance with Board Policy C-27, managers and/or supervisors, as well as other employees who are guilty of using derogatory, racially-inflammatory remarks and/or behavior must be subject to appropriate corrective action and follow-up disciplinary action per the Zero Tolerance policy. The Board will enforce Policy C-27 II "Zero Tolerance Standard" Enforcement:*

*b. All reports of threats and violent behavior, **implied**, actual, direct, or **indirect**, will be documented and investigated. Such documentation shall include a narrative of the incident including names and other appropriate identification of the parties involved, verbal comments made or a description of the violent behavior, witness names, and witness statements.*

*The Board will enforce Policy C-27 III "Responsibilities" D (see Attachment 2).
(Also see Recommendations 1 & 4)*

RESPONSE:

Recommendation has been implemented. It is consistent with current practice.