



CITY OF GARDEN GROVE

(714) 741-5104

August 20, 2007

Honorable Nancy Wieben Stock
Presiding Judge of the Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

William J. Dalton
Mayor
Mark Rosen
Mayor Pro Tem
Dina Nguyen
Council Member
Bruce A. Broadwater
Council Member
Steven R. Jones
Council Member

Re: City of Garden Grove Response to 2006-2007 Orange County Grand Jury Report entitled "Assembly Bill 939 Waste Diversion: Are We Finally Making Progress"

Dear Judge Wieben Stock:

The City of Garden Grove has reviewed the Grand Jury report "Assembly Bill 939 Waste Diversion: Are We Finally Making Progress." All Orange County cities are required to respond to Finding F6 and Recommendation R6 related to the issue of non-franchise haulers and unauthorized waste bins in the cities. In Garden Grove, the Garden Grove Sanitary District (GGSD), a subsidiary district of the City, is responsible for the provision and management of solid waste services. The GGSD provides the following responses to finding F6 and recommendation R6.

Finding F-6

The presence of non-franchise haulers and so-called "Ghost Haulers" bins, in cities, which bypass the recycling system, needs to be corrected to establish the waste haulers confidence that their municipalities are looking out for their best interests.

GGSD Response

The GGSD agrees with the finding. The presence of non-franchised haulers and unauthorized bins ("Pirate" haulers) operating within a franchise city undermines the City's recycling efforts and AB 939 compliance. The GGSD Code of Regulations, Section 5.10.200, prohibits unauthorized bins and is strictly enforced. However, misreported tonnage, or "Ghost Tonnage" is difficult to mitigate since the misreporting occurs at the landfills. The landfills should enact policies that seek to confirm the originating source and location of the tonnage.

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Recommendation R-6

Municipalities need to solve their unauthorized waste bin problems by enacting city ordinances forbidding these practices, imposing fines, including stepped-up fines for additional violations, and impounding unauthorized bins.

GGSD Response

The recommendation has been implemented. The GGSD adopted a Code of Regulations in 2004 that codified an ordinance that was already in place, making it unlawful for any person or entity, other than the exclusive franchisee, to collect solid waste from locations within the GGSD. The Code of Regulations also authorizes the impounding of illegal bins and imposing of fines. This Code of Regulations is strictly enforced through a joint effort between the City, GGSD, and franchise hauler. A copy of the relevant code section is included for your reference.

Should you require additional information, please contact Environmental Compliance and Streets Manager, A.J. Holmon at (714) 741-5956.

Sincerely,



WILLIAM J. DALTON
GGSD Chairperson

Enclosure: GGSD Code of Regulations, Section 5.10.200, Unlawful Containers
- Notice of Violation

Cc: City Council Members
Matthew Fertal, City Manager
Keith Jones, Public Works Director
A.J. Holmon, Environmental Compliance/Streets Manager

5.10.200 Unlawful Containers - Notice of Violation.

- A. Unauthorized Containers. No person other than the District or its authorized representative shall place or leave standing any container on any public or private property within the District for the purpose of providing solid waste handling services.
- B. Removal of Unlawfully Placed Container.
1. The General Manager may cause the posting of a notice to remove, as described below, in a conspicuous place on any container placed on any public or private property within the District in violation of this chapter.
 2. Notices to remove posted pursuant to the provisions of this chapter shall specify the nature of the violation and shall state that the container must be removed within twenty-four (24) hours or it may be removed and stored by the District, and the contents disposed of, at the expense of the owner thereof. The posting of a notice to remove shall constitute constructive notice to the owner and user of the requirement to remove the container.
 3. If the container is not removed within twenty-four (24) hours after the notice to remove is posted, the Director may direct the removal and storage of the container and the disposal of its contents if they consist of solid waste, putrescible matter, medical waste, hazardous waste or qualified household hazardous waste, or if the container together with its contents exceeds applicable weight limits. The contents shall be deemed to consist of solid waste, whether or not some or all of the contents are potentially recyclable, in all cases where the owner of the container, whether acting alone or in concert with others, including any affiliate, agent, broker or subcontractor, has solicited, accepted or arranged for, directly or indirectly, the payment of a fee or other consideration in any form or amount from the customer in exchange for rendering all or any aspect of the service for which the container was supplied. The owner of the container shall be responsible to reimburse the District for the actual cost of removal, storage and disposal. All amounts due to the District for the cost of removal, storage and disposal must be paid before the container may be returned to the owner. Such amounts shall constitute a debt owed by the owner to the District, and the owner shall be liable to the District in an action brought by the District for the recovery of such amounts.
 - a. The owner may contest the District's claim that the container was illegally placed or left standing by giving notice to the District within ten (10) calendar days of receipt of notification from the District that the container was impounded. Where the owner asserts that the placement or use of the container was for a legitimate recycling activity not proscribed by this ordinance, the

owner shall provide the District with information to substantiate that assertion. Said information shall be submitted with the notice from the owner and shall include, at a minimum, the following:

- (i) A description of the materials of value deposited in the container and an estimate of their value;
 - (ii) The address, telephone number and contact person of the facility or facilities with whom the owner has arranged for the contents to be processed or recycled, and proof of that arrangement;
 - (iii) Evidence that the facility or facilities where the contents are destined to be processed or recycled carries all requisite approvals, permits, or other forms of authorization required by any governmental agency having jurisdiction, to conduct processing or recycling activities;
 - (iv) A declaration from the customer receiving service, signed under penalty of perjury, that the customer paid no broker's, consultant's or other fee or consideration in any form or amount to the service provider, or to any other person, in exchange for service, and that the contents of the container were either donated or sold by the customer to the service provider/owner;
 - (v) The District shall have the right to request such additional information as may be necessary or useful in determining the validity of the owner's contest.
- b. If the District, acting through the General Manager or his designee, determines, in the exercise of reasonable discretion, that the owner has supplied evidence sufficient to support its contention that it was engaged in a legitimate recycling activity involving donated or sold materials, the container shall be returned to the owner without any charge for removal or storage of same.
4. If the identity of the owner of a container that has been removed by the District is known to the General Manager, the General Manager shall promptly cause notice to be mailed to the owner to claim the stored property. If the container is not claimed within ninety-five (95) days after removal and notice to the owner, or ninety (90) days after removal if the identity of the owner is unknown to the Director, the container and its contents shall be deemed abandoned property and may be disposed of accordingly. Where the contents present imminent threat to public health and safety, as determined by the District, they may be processed or

disposed of without awaiting the expiration of the ninety (90) day claim period.

5. After a container has once been removed by the District pursuant to a notice to remove, the owner thereof shall be deemed to have actual notice of the provisions of this chapter, including the prohibition against the placement of unauthorized containers. In the event of a subsequent placement of a container owned by the same owner, or an affiliate of the owner, the General Manager may immediately, without the posting of a notice to remove, direct the removal and storage of the unlawfully placed container and shall, in such case, give notice to the owner to claim the container. In such event, the owner shall, subject to the provisions of subsection 3 of this section, be responsible to reimburse the District for the actual cost of such removal, storage and disposal, which cost shall be paid by the owner before the container may be returned to the owner. If the container is unclaimed after notice is mailed to the owner and the expiration of the period set forth in subsection 4 of this section, the container and its contents shall be deemed abandoned property and may be disposed of accordingly. The costs incurred by the District for removal, storage and disposal shall constitute a debt owed to the District by the owner, who shall be liable therefor in an action by the District for the recovery of such amounts.
- C. Summary Abatement of containers of unidentified owners. Notwithstanding any other provision of this Section to the contrary, the General Manager is authorized to direct the immediate removal, without notice, of any container placed on public or private property within the District in violation of this Section where the owner of the container is unidentified and cannot be ascertained from the owner or lessee of the property where the container is placed, and by an inspection of the container.

5.10.210 General Penalty—Infraction. Unless otherwise specified, any violation of this Chapter 5.10 shall be deemed to be an infraction. In addition, the District's legal counsel is authorized to cite violators for a misdemeanor offense pursuant to the general penalty provisions of this Code as an alternate remedy at counsel's discretion.

5.10.220 Franchisee Remedies. Nothing in this chapter shall be deemed to limit the right of a franchisee or the District to bring a civil action against any person who violates this chapter, nor shall a conviction for such violation exempt any person from a civil action brought by a franchisee or the District.