



CITY MANAGER

July 23, 2019

Honorable Anita Santos, Judge of the Superior Court  
Richard S. Nakano, Foreperson, 2018-2019 Contra Costa County Civil Grand Jury  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553  
*Also via email to [ctadmin@contracosta.courts.ca.gov](mailto:ctadmin@contracosta.courts.ca.gov)*

RE: City of Hercules' Response to Report No. 1907 "Stormwater Trash Reduction"

Dear Judge Santos and Foreperson Nakano:

In June 2019, the Contra Costa County Civil Grand Jury issued Report No. 1907 entitled "Stormwater Trash Reduction." This response was approved by the Hercules City Council on July 23, 2019.

First, we would like to clarify some information set forth in the Report in regard to Hercules which we believe was based on out of date information.

- The City of Hercules officially reached 80% compliance March 27, 2019, which was communicated to the Regional Water Quality Control Board in writing at that time (i.e. ahead of the Board's July 1, 2019 goal), 2 months prior to the Report approved by the Grand Jury on May 22, 2019.
- The City of Hercules was omitted from the list of cities that implemented ordinances banning single-use plastic bags prior to the ban becoming law in California. Hercules implemented Ordinance No. 480 in 2015 which banned single-use plastic bags. In addition, in 2008 the City of Hercules adopted Ordinance No. 436 imposing restrictions on polystyrene use by restaurant and food service establishments.

Below find the City of Hercules' required responses to the report's findings and recommendations as requested by the Grand Jury. In addition, we have elected to provide a response to Finding 8, though not requested.

## **FINDINGS**

Finding 1. The 2015 Municipal Regional Stormwater Permit requires most of the cities, towns and the County to take action to reduce trash discharges by 80%, from 2009 baseline levels, by July 1, 2019.

City Response: Agree.

Finding 4. In June, 2018, Hercules and Pinole were issued Cease and Desist Orders by the Water Board requiring them to improve their performance in meeting their trash reduction goals.

City Response: Partially Agree. As noted above, while Hercules was provided with a Cease and Desist Order, the City was in compliance as of March, 2019, well before the actual deadline.

Finding 6. Both the CCCWP and LAFCO report that unfunded federal and state mandated stormwater permit compliance programs are a challenge for cities, towns, and the County.

City Response: Agree.

Finding 7. Concord, El Cerrito, Hercules, Lafayette, Martinez, Pinole, Pittsburg, Richmond, San Pablo, and Walnut Creek have established ordinances banning Styrofoam food packaging in their communities.

City Response: Agree.

Finding 8: Caltrans reports that highways and ramps along portions of Highways 4 and 24, Interstates 80, 580, and 680 in Antioch, El Cerrito, Richmond, and in the unincorporated areas of the County are high trash generation areas.

City Response: Partially disagree. We believe that there are parts of Highway 4 and Interstate 80 in Hercules which are also high trash generation areas which also results in trash being spread into Hercules.

Finding 9: No narrative summary of the accomplishments, challenges, costs, and funds needed to fully comply with the Permit is provided in the required annual reports prepared by the CCCWP, the County, and each city and town.

City Response: Partially agree. Information as described may not be fully captured in the required annual reports, however, there is information available in other City documents including the annual budget, specifically for the City's Stormwater Fund which operates at an annual deficit.

## **RECOMMENDATIONS**

**Recommendation 1.** The City Councils of Hercules and Pinole should consider directing their city manager to implement trash controls to bring them into compliance with their 80% trash reduction goal by December 31, 2019.

**City Response:** Disagree. As noted above, the City was in full compliance as of March, 2019.

**Recommendation 3.** The Board of Supervisors and all City/Town Councils should consider directing their staff to provide a concise summary of their Annual Reports, citing their accomplishments, challenges, costs, and funds needed to fully comply with their permit by December 31, 2019.

**City Response:** This recommendation will not be implemented by the City of Hercules as it should be done through the CCCWP which exists expressly for this purpose and the City will provide input into that process. . T

**Recommendation 4.** The Board of Supervisors and all City/Town Councils should consider identifying additional revenue sources to fully fund Permit requirements in order to comply with the Permit and avoid potential liability, by June 30, 2020.

**City Response:** The recommendation will not be implemented. The City of Hercules currently does not have adequate funding to meet Board trash reduction mandates associated with municipal stormwater systems. The City's Stormwater Fund in meeting these mandates operates at an annual deficit which is covered on a de facto basis by the City's General Fund, and that deficit amount is increasing annually. As an unfunded State mandate, funds should come from the State of California. In addition, trash also enters waterbodies including creeks and the shoreline due to wind, from homeless encampments, and the State highway system. Additional funding is needed to comprehensively address this problem and the burden has been inappropriately placed solely on the backs of local government.

The true source of trash is at the point of sale between the consumer and commercial business, when the consumer takes ownership of the product. For the most part this transaction is subject to sales tax. Currently only 1% of the base sales tax of 7.25% to the local agency. While both the State and local agency receive revenue from the sale, only the local agencies are financially responsible for the cost to clean up the associated trash, which along with the sale price represents the true cost of the product. In addition, the State should enact laws to reduce packaging which ultimately becomes trash or require more packaging to be biodegradable.

The City of Hercules believes the State should provide revenue through the proceeds from their portion of the sales tax, either by grants or percentage return, to pay for their fair share of trash reduction. Additionally, this request should be made by the Regional Water Quality Control Board as they are the State agency who are administering the permit.

We appreciate the Grand Jury's efforts on behalf of our communities and the residents of Contra Costa County.

Please feel free to contact me for additional information regarding the City's response at (510) 799-8216.

Sincerely,

A handwritten signature in black ink that reads "David C. Biggs". The signature is written in a cursive style with a large, stylized 'D' and 'B'.

David Biggs  
City Manager