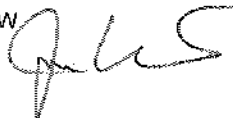


**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT County Administrative Office	(2) MEETING DATE August 18, 2009	(3) CONTACT/PHONE Geoff O'Quest, 781-5014
(4) SUBJECT Request to approve the recommended responses to the 2008-2009 Grand Jury report titled "Polluters: To Fine or Not to Fine."		
(5) SUMMARY OF REQUEST Among the reports released by the San Luis Obispo County Grand Jury in its FY 2008-2009 Final Report was "Polluters: To Fine or Not to Fine." The report examines a complaint alleging that the fines levied by the County Health Agency for violations of State hazardous materials regulations are insufficient to assure compliance with the regulations. Two responses are required to the Presiding Judge and the Grand Jury on this report: The Health Agency is required to respond to Findings 1 – 3 and Recommendations 1 – 3 of the report by August 20, 2009. The Board of Supervisors is required to respond to the same Findings and Recommendation by September 19, 2009.		
(6) RECOMMENDED ACTION It is recommended that your Board adopt the response to the Grand Jury Report on "Polluters: To Fine or Not to Fine," and that the adopted response be forwarded to the Presiding Judge of the Superior Court by August 20, 2009, with a copy to the Grand Jury.		
(7) FUNDING SOURCE(S) N/A	(8) CURRENT YEAR FINANCIAL IMPACT N/A	(9) ANNUAL COST N/A
(10) BUDGETED? <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A		
(11) OTHER AGENCY INVOLVEMENT/IMPACT (LIST): The Health Agency has contributed to this report.		
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____		
(13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input checked="" type="checkbox"/> All	(14) LOCATION MAP <input type="checkbox"/> Attached <input type="checkbox"/> N/A	(15) Maddy Act Appointments Signed-off by Clerk of the Board <input type="checkbox"/> N/A
(16) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)	(17) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig) <input type="checkbox"/> Contracts (Orig + 3 Copies) <input type="checkbox"/> Ordinances (Orig) <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Email Resolution and Ordinance to CR_Board_Clerk (in Word)	
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A	(19) BUDGET ADJUSTMENT REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A	(21) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	(22) Agenda Item History <input checked="" type="checkbox"/> N/A Date _____
(23) ADMINISTRATIVE OFFICE REVIEW 		


County of San Luis Obispo

COUNTY GOVERNMENT CENTER, RM. D430 • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5011



JIM GRANT
INTERIM COUNTY ADMINISTRATOR

TO: Board of Supervisors

FROM: Geoff O'Quest, Administrative Analyst 

DATE: August 18, 2009

SUBJECT: Request to approve the recommended responses to the 2008-2009 Grand Jury report titled "Polluters: To Fine or Not to Fine."

RECOMMENDATION

It is recommended that your Board adopt the response to the Grand Jury Report on "Polluters: To Fine or Not to Fine," and that the adopted response be forwarded to the Presiding Judge of the Superior Court by August 20, 2009, with a copy to the Grand Jury.

DISCUSSION

The San Luis Obispo County Grand Jury has released its FY 2008-2009 Final Report. Among the topics investigated was "Polluters: To Fine or Not to Fine." The report examines a complaint alleging that the fines levied by the County Health Agency for violations of State hazardous materials regulations are insufficient to assure compliance with the regulations.

The Grand Jury has stipulated that two responses are required to the Presiding Judge and the Grand Jury on this report. First, the Health Agency is required to respond to Findings 1 – 3 and Recommendations 1 – 3 of the report by August 20, 2009. The response from the Department of the Health Agency is attached. Second, the Board of Supervisors is required to respond to the same Findings and Recommendation by September 19, 2009. The Board's responses are as follows:

Grand Jury Finding #1:

All Class 1 violations [the most serious hazardous waste violations] are not treated the same by a local CUPA [Certified Program Enforcement Agent—the Health Agency in SLO County] official because some violators are administered a formal AEO [Administrative Enforcement Order], while others are cited with an informal NOV [Notice of Violation].

Board of Supervisors Response:

The Board adopts the response of the Health Agency. The Health Agency disagrees wholly with this Finding. The Agency states that it follows an enforcement policy that offers violators the opportunity to comply willingly, without penalties. If this is unsuccessful, an AEO with penalties is issued. Particularly egregious violations are issued an AEO right away, and may be referred to the District Attorney for criminal prosecution.

Grand Jury Finding #2:

The CUPA director does not administer the process for all Class 1 pollution violations consistent with Cal/EPA and the state Department of Toxic Substance Control policies.

Board of Supervisors Response:

The Board adopts the response of the Health Agency. The Health Agency disagrees wholly with this Finding. The Agency states that the CUPA does not agree with the way Cal/EPA interprets the governing law, and this question is currently under review by the State. The Agency points out that, according to state law, issuance of an AEO is at the discretion of the local CUPA, i.e. the County Health Agency. The State Department of Toxic Substance Control policies does not apply to counties.

Grand Jury Finding #3:

The result of current enforcement policies suggests the local CUPA program may soon need additional support from the county general fund to continue its enforcement efforts at the current level.

Board of Supervisors Response:

The Board adopts the response of the Health Agency. The Health Agency disagrees wholly with this Finding. The Agency states that revenue from penalty fines offsets the cost of fees charged to the public for other environmental health activities. If, through successful enforcement, the primary goal of the CUPA program, these fines were to decrease, fees would be increased to make up the difference. This is in keeping with the Board of Supervisors' adopted Budget Policy # 14, which states that, wherever reasonable, County fees should be set at a level that recovers the full cost of doing business.

Grand Jury Recommendation #1:

To be fair and ensure compliance with health and safety codes, local CUPA officials should address all Class 1 pollution violations through formal enforcement procedures consistent with Cal/EPA and DTSC policies.

Board or Supervisors Response:

The Board adopts the response of the Health Agency. The Health Agency states that the recommendation will not be implemented because it is not reasonable. The Agency states that there is no basis in law for automatically taking formal

enforcement action (i.e., issuing an AEO), that its current policy is fair, ensures compliance, and protects both the public and the environment.

Grand Jury Recommendation #2:

The County Board of Supervisors should monitor the local CUPA program on an annual basis to assure the board that fines and permit fees are assessed at a level sufficient to assure that county general funds will not be required to sustain the program.

Board or Supervisors Response:

The Board adopts the response of the Health Agency. The Health Agency states that the recommendation will not be implemented because it is not warranted. In sum, the purpose of the fines is to drive compliance with the law and deter future violations, not to insure funding for the program.

Grand Jury Recommendation #3:

If total funds being collected are insufficient to assure that the program is self-supporting, the Board of Supervisors should consider convening a task force to study the appropriate mix of fines and permit fees to assure compliance with hazardous material health and safety regulations.

Board or Supervisors Response:

The Board adopts the response of the Health Agency. The Health Agency states that the recommendation will not be implemented because it is not warranted. The Agency states that fees are and will continue to be the primary funding source for the CUPA program. As stated above, fines subsidize the cost of fees charged to the public, but would be adjusted upward if fine revenue were to decline significantly.

OTHER AGENCY INVOLVEMENT

The Health Agency has contributed to this report.

FINANCIAL CONSIDERATIONS

There are no financial considerations associated with this item.

RESULTS

Adoption of the findings and recommendations will fulfill the County's obligation to respond to Grand Jury reports as specified in Section 933 of the Penal Code.

ATTACHMENTS

1. Health Agency response to the FY 2008-2009 Grand Jury Report on "Polluters: To Fine or Not to Fine."
2. The FY 2008-2009 Grand Jury Report "Polluters: To Fine or Not to Fine."