

## Response to 2013-2014 Grand Jury Report Form

Report Title: Temporary Food Facilities in Ventura County

Report Date: April 18, 2014

Response by: Resource Management Agency (RMA) – Environmental Health Division (EHD)

### FINDINGS


- I (we) agree with the findings numbered: FI-01, FI-03, FI-07, and FI-09
- I (we) disagree wholly or partially with the findings numbered: FI-02, FI-04, FI-05, FI-06, and FI-08  
*(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefore.)*

### RECOMMENDATIONS

- Recommendations numbered R-03, R-07, R-08, R-10, R-11, R-12 have been implemented.  
*(Attach a summary describing the implemented actions.)*
- Recommendations numbered R-04 have not yet been implemented, but will be implemented in the future.  
*(Attach a timeframe for the implementation.)*
- Recommendations numbered R-05, R-06 require further analysis.  
*(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)*
- Recommendations numbered R-01, R-02, R-09 will not be implemented because they are not warranted or are not reasonable.  
*(Attach an explanation.)*

Date: 7-9-14

Signed: \_\_\_\_\_

  
Chris Stephens, RMA Director

Number of pages attached: 0

## **BACKGROUND**

In Fiscal Year 2001/02 there were approximately 39 community events held in Ventura County and approximately 400 temporary food facilities (TFF) that operated at these events. In an effort to reduce permit fees charged to TFFs and community event organizers, the Board of Supervisors directed the Environmental Health Division (EHD) to waive the entire permit fee for the non-profit TFFs and organizers, and provide a 50% fee reduction to any for-profit organizer and TFFs, provided they completed an annual Food Handlers Training class offered by the EHD. The rationale for this action was that TFF operators and event organizers who successfully completed this course would be more familiar and operate in conformance with state standards concerning the design, maintenance and operation of these types of transient food facilities, thereby reducing the EHD staff's regulatory oversight of these facilities.

Although the EHD expected its oversight to decrease, the EHD continued to conduct permit inspections of all TFFs on the day they were to operate, and prior to them operating. In Fiscal Year, 2012/13 there were 457 community events and approximately 2,100 TFFs operating at these events all of which were being inspected by EHD staff.

The steady increase in the number of community events and TFFs operating at these events coupled with the permit inspections conducted by the EHD and the fee waivers and reductions, resulted in ongoing staff resource issues and overall operational problems within the EHD. In May 2013 the EHD brought these issues to the Board of Supervisors and requested direction concerning: 1) establishing criteria that will be used to determine which events qualify as community events; 2) confirm the continuation of fee waivers and reductions; 3) determine the appropriate type of permit for mobile food facilities (MFF).

In summary, the Board established two criteria that are used to determine which events qualify as community events; affirmed continuation of the fee waivers and reductions to community event organizers and TFF operators; and imposed a one year grace period to allow mobile food facilities that do not meet state MFF requirements to continue operating as TFFs. This would also give the EHD time to meet with mobile food facility owners and operators to explore options for these operators to come into compliance with state mobile food facility requirements.

Following receipt of that Board direction, the EHD accelerated its efforts to reduce its regulatory oversight of the TFFs that operate at community events, and began to explore ways to streamline the application submittal and review process. We also changed our inspection protocols to reduce or eliminate permit/set up inspections, and moved to discontinue routine inspections of non-profit charitable TFFs that sell only pre-packaged non-potentially hazardous food.

## **Findings**

**FI-01: The TFF program has been operating at a significant loss of revenues for the past several years.**

Response: The EHD agrees with this finding. The previously established policy that allowed for fee-waivers for certain TFFs and CE organizers resulted in over \$200,000 in waived fees in Fiscal Year 2012-2013 and approximately \$180,000 in waived fees in Fiscal Year 2011-2012.

**FI-02: The Food Handling Training Classes have not resulted in TFF operators who are more compliant with the Code.**

Response: The EHD disagrees partially with this finding. Since the food handling classes were initiated in 2001, we have not tracked statistics to verify the difference in compliance levels between TFF operators that have and have not attended the class. Overall, the training classes offered by the Environmental Health Division staff have been well received and we frequently receive compliments about these classes. Based on the number of TFFs operating each year and the relatively few permit suspensions and notice of violations that we issue related to these operations, our determination is that these classes have been successful in providing information about safe food handling practices. We recognize that not all attendees will put into practice the information offered in these classes.

**FI-03. The online certificate renewal training classes have not been adequately updated to reflect current operating procedures.**

Response: The EHD agrees with this finding. After further evaluation the EHD has determined that the online certificate renewal class cannot provide the same level of technical detail and does not afford the open discussion among participants nor an opportunity to ask questions as during the in-house certification class. Therefore, we are proposing to suspend the online certificate renewal class.

**FI-04. Creating two separate food handling classes, one for TFF operators and one for CE organizers, will make the training more relevant to each group.**

Response: The EHD disagrees with this finding. Many CE organizers are also TFF operators and requiring them to attend two separate classes would create an unnecessary burden. Providing a combined class allows CE organizers and TFF operators the opportunity to understand the requirements for both

organizers and operators, since each community event is the result of the combined efforts between organizers and operators. In the past we have held specific classes for organizers but the attendance was very poor.

**FI-05. The EHD has reduced inspections of some food handling operators in the County, possibly allowing for potentially unsafe conditions.**

Response: The EHD disagrees partially with this finding. While we agree that inspections conducted during TFF set up and permit issuance have been reduced, we disagree these reductions have created potentially unsafe food handling conditions. Since May 2013, we implemented a risk based inspection protocol which means our regulatory oversight is focused on TFF operations that produce or handle and serve foods that are considered potentially hazardous. These types of foods, if improperly prepared and handled, pose a greater risk for resulting in food borne illness. Conversely, pre-packaged non-potentially hazardous foods pose very little risk to the public, thus regulatory oversight can be significantly reduced. Ultimately, the TFF operators are responsible for compliance with State safe food handling requirements and implementing safe food handling practices commensurate with the types of food they prepare, handle and serve. Also, every effort is made by the EHD staff to provide guidance, information, etc. (through the TFF class, handouts, phone calls and emails) to the TFF operators and CE organizers so that they know how to safely handle food.

**FI-06. The EHD was not able to conduct inspections on all TFFs because the EHD had insufficient staff complement, possibly allowing for potentially unsafe conditions.**

Response: The EHD disagrees with this finding. See response to FI-05. Furthermore, although the EHD has reduced/discontinued set up and permitting inspections of each TFF, we have increased operational monitoring inspections of TFF operations which we believe provides a more accurate view of actual food handling practices. The inspection focus has shifted from observations of TFF set up (pre-operation) to conducting risk based inspections observing actual food preparation during the event to identify and address potentially unsafe food handling conditions and practices.

**FI-07. MFFs operating as TFFs have created a conflict with the previously permitted MFFs, because the MFFs must pay more for permits than TFFs operating under fewer requirements.**

Response: The EHD agrees with this finding. Per the Board of Supervisors direction at a May 2013 Board hearing, this issue is being looked into and analyzed for further discussion. See response under R-05.

**FI-08. The blurred lines between public and private CEs and profit and nonprofit CEs make it difficult for the EHD to distinguish the differences; therefore, more time is required for the permitting process.**

Response: The EHD disagrees with this finding. In May 2013, the EHD with concurrence from the Board, recognized the existing list of over 400 community events and established criteria for adding new community events to this list. Because very few new community events are proposed each year, coupled with the new criteria for determining what qualifies as a community event, the “blurred lines” no longer exist.

**FI-09. Processing returning, experienced, compliant CE organizers as “Preferred Organizers” would require less time and energy to process their permits and inspections; a minimized process would free up inspectors’ time.**

Response: The EHD agrees partially with this finding. The term “Preferred Organizer” and identifying which organizer would be considered “Preferred” would be subjective and difficult to determine. We agree that a system to recognize “returning” organizers (e.g. those that have organized the same or multiple events in the past and are experienced) is necessary. Systems to recognize these organizers, and streamline and expedite the application process are currently being reviewed. The intent is to eliminate the multiple face-to-face meetings with the EHD staff, thus making the application review process more expedient. A Kaizen was recently completed for this process and suggested outcomes are being reviewed.

## **Recommendations**

**R-01. The Grand Jury recommends that EHD require every CE organizer and TFF operator to take the Food Handling Training Class in the classroom every two years.**

Response: This recommendation will not be implemented. The California Health and Safety Code (CalCode) prohibits the EHD from “requiring” food handling training classes. Moreover, if the Board of Supervisors implements recommendation R-07, the financial incentive for TFF operators and community event organizers to attend the EHD food handling training class will no longer exist. The EHD will continue to offer “voluntary” food handler classes for all

organizers and owners/operators of TFFs to attend. In addition to the food handling classes, the information available on the EHD website about organizer requirements and how to set up a temporary food facility will be improved to provide the information currently covered in the classes.

If the Board continues the fee waiver for both non-profit TFF operators and CE organizers, the Division will continue to offer safe food handling classes. The EHD is considering classroom attendance for certification renewal every three years.

**R-02. The Grand Jury recommends that the EHD offer separate food handling classes to:**

- **CE organizers**
- **TFF operators**
- **Certified farmers' market manager/employees, and certified producers**
- **TFF operators at farmers' markets**

Response: This recommendation will not be implemented. See responses to FI-04 and R-01. As stated previously, many CE Organizers are also TFF operators and requiring two separate classes would create an unnecessary burden. Additionally, safe food handling practices for TFFs are the same regardless of where the community event is held.

**R-03. The Grand Jury recommends that the EHD format the Food Handling Training Classes to follow the importance of Centers for Disease Control criteria:**

- **Improper holding temperatures**
- **Poor personal hygiene**
- **Cross-contamination**
- **Inadequate cooking**
- **Food from unsafe sources**

Response: This recommendation has been implemented. The EHD will evaluate the content of our classroom safe food handling class to ensure the focus continues to be on the CDC risk factors. Proper set up for TFFs will also be discussed since the structural requirements (e.g. proper hand wash facilities and waste water disposal) can impact safe food handling practices. Instructions on TFF construction and how to complete applications will also be provided via handouts, and through our website. The EHD updated its training curriculum effective July 1, 2014.

**R-04. The Grand Jury recommends that the EHD minimize the application process for well-established organizers by designating them as “Preferred Organizers,” to facilitate a less time-consuming process.**

Response: This recommendation will be implemented. See response to FI-09. EHD is reviewing the recommendations developed during the Kaizen to streamline the application review and permit issuance processes. We agree that a streamlined application submittal and review process is necessary and are evaluating which community events and organizers would benefit most from this process. The EHD expects to implement its streamlined application process by January 1, 2015.

**R-05. The Grand Jury recommends that the EHD not allow MFFs operating in the County to operate as TFFs if they don't meet the requirements of an MFF.**

Response: This recommendation requires further analysis. In recent years EHD has seen a steady increase in the number of requests for “Gourmet Food Truck” events throughout the County. Many times the event organizers will invite vehicles from outside Ventura County to participate in these events. Many of these vehicles are older and do not meet State code requirements for mobile food facilities, and EHD cannot issue them an MFF permit. Due to the popularity of these events and to accommodate these requests, EHD started permitting these vehicles as Temporary Food Facilities (TFF) instead of mobile food facilities. TFFs can only operate at community events, whereas MFF are not subject to this limitation. In May 2013, the Board of Supervisors directed EHD to offer a one year grace period during which vehicles would be allowed to operate as TFFs and during this time EHD would meet with the vehicle owners/operators to explore options that may be available in order for them to obtain permits as MFFs. EHD has met numerous times with owners/operators whose vehicles do not meet code requirements and is working with them to bring their vehicles into compliance with the code.

**R-06. The Grand Jury recommends that the EHD hire additional full-time staff in order to better handle the increase in CEs.**

Response: This recommendation requires further analysis. The EHD believes changes to the application review process described in R-04 and the inspection process improvements described in the response to FI-06 and elsewhere will allow existing weekend TFF staff to conduct routine inspections of TFFs operating at community events. Over the next few months after implementation of the changes described in R-04, the EHD will evaluate the effectiveness of this change in addition to our revised inspection protocols to determine if hiring

additional staff is necessary. Even if R-07 is implemented, the additional revenue will only cover existing staff costs, and not the costs to hire additional staff.

**R-07. The Grand Jury recommends that the BOS terminate the policy that offers any waivers or reductions in permit fees.**

Response: This recommendation has been partially implemented. As part of the Fiscal Year 2014-15 EHD Rates & Fees schedule, the Board discontinued fee reductions for the for-profit TFFs and CE organizers. Discontinuance of fee reductions for non-profit TFFs and CE organizers depends on future Board direction and action.

**R-08. The Grand Jury recommends that the EHD eliminate the distinctions between profit and nonprofit events in the permit policy.**

Response: This recommendation has been partially implemented. The California Health and Safety Code defines a community event as “an event that is of civic, political, public, or educational nature, including state and county fairs, city festivals, circuses, and other public gathering events approved by the local enforcement agency.” This definition is very broad and clearly reflects the legislature’s intent to provide the local enforcement agency wide latitude to determine which types of events qualify as a community event. In May 2013, the Board of Supervisors established two criteria to further clarify which events would be considered a community event. For an event to be considered a “community event” one of the following criteria must be met: 1) the event is held on public property and is organized or sponsored by a non-profit charitable organization; or 2) the event is on private property and the local governmental jurisdiction has issued a Resolution or Proclamation designating the event as a community event as defined in the California Health and Safety Code.

**R-09. The Grand Jury recommends that the EHD eliminate the distinctions between private and public land locations in the permit policy.**

Response: This recommendation will not be implemented. As described in the response to R-08, the definition of a community event in the state code does not distinguish between events held on private or public property. The criteria adopted by the Board of Supervisors in May 2013, was to further clarify which events qualify as a “community event.” See responses under R-07, R-08.



**R-10. The Grand Jury recommends that the EHD issue annual permits for TFF Type-2 operators.**

Response: This recommendation has been implemented. The EHD began issuing annual permits for TFF Type-2 operators July 1, 2014.

**R-11. The Grand Jury recommends that the EHD suspend permits of TFF operators who do not comply with the Code.**

Response: This recommendation has been implemented. The California Health and Safety Code authorizes the EHD to temporarily suspend the permit and order the food facility immediately closed if any imminent health hazard is observed. The EHD has and will continue to implement this provision for temporary food facilities that handle potentially hazardous food and facilities that only handle pre-packaged non-potentially hazardous food.

**R-12. The Grand Jury recommends that the EHD conduct at least one inspection semi-annually, whether random or routine, on all TFFs to ensure that the food that is sold is as indicated on the permit application.**

Response: This recommendation has been implemented. The EHD has implemented a risk based inspection protocol that identifies an inspection frequency based on the types of foods handled, prepared, and served by the facility. Facilities that serve foods considered potentially hazardous will receive more regulatory oversight/inspections (the target is three inspections per year) compared to a facility that only serves pre-packaged non-potentially hazardous foods.