

SAN JOSE/SANTA CLARA TREATMENT PLANT ADVISORY COMMITTEE

CHUCK REED, CHAIR
BOB LIVENGOOD, VICE-CHAIR
KEVIN MOORE, MEMBER
PATRICIA MAHAN, MEMBER
MADISON NGUYEN, MEMBER

DIANE MCNUTT, MEMBER
CURTIS HARRISON, MEMBER
ED SHIKADA, MEMBER
NORA CAMPOS, MEMBER

AMENDED AGENDA

4:30 p.m.

January 8, 2009

Room T-1047

1. ROLL CALL

2. MINUTES

A. Minutes of December 11, 2008

3. UNFINISHED BUSINESS

4. CORRESPONDENCE

5. REPORTS

A. Open Purchase Orders Greater Than \$100,000
The attached monthly Procurement and Contract Activity Report summarizes the purchase and contracting of goods with an estimated value between \$100,000 and \$1 million and of services between \$100,000 and \$250,000.

B. Tributary Agencies Available Plant Capacity-2008

6. AGREEMENTS

A. Technical Committee Recommendation (Handout)

B. Action Item – TPAC Recommendation for Approval Requested

The following item is scheduled to be approved by the San Jose City Council on January 13, 2009:

1. Adopt the following 2008-2009 Appropriation Ordinance amendments in the San Jose-Santa Clara Treatment Plant Capital Fund (512):
 - a. Increase the appropriation for Transfer to the Clean Water Financing Authority for Series 2005A/B Bond by \$3,700,000;
 - b. Establish an appropriation for 2005A Bonds Reserve Fund in the amount of \$5,402,000; and

2. Adopt a resolution authorizing the Governing Board of the San Jose-Santa Clara Clean Water Financing Authority (the "Authority") to issue its Sewer Revenue Refunding Bonds, Series 2009A (the "2009A Bonds") in an aggregate principal amount not to exceed \$35,000,000, in connection with the refinancing of certain public capital improvements to the San Jose-Santa Clara Water Pollution Control Plant, to be sold through negotiated sale, and authorizing the execution of certain financing documents and other actions as necessary in connection with the issuance of the 2009A Bonds.

C. Action Item – TPAC Recommendation for Approval Requested

The following item is scheduled to be approved by the San Jose City Council on January 27, 2009:

1. Accept this status report on the nature and content of the discussions of the Recycled Water Liaison Committee concerning a long term agreement on joint development of recycled water facilities and direct staff to continue to support discussions and provide periodic reports on future progress and policy recommendations.

D. Action Item – TPAC Recommendation for Approval Requested

The following items are scheduled to be heard by the Transportation and Environment Committee on February 2, 2009:

1. Accept this report and recommend that Council:
 - a. Approve the proposed Dental Amalgam Program; and
 - b. Direct the City Attorney's Office to draft an ordinance amending Chapter 15.14 of the San Jose Municipal Code to regulate dental practices under a Dental Wastewater Permit and require the installation of amalgam separators and implementation of Best Management Practices.
2. Accept this report and recommend that Council direct the City Attorney's Office to draft an ordinance amending Chapter 15.14 of the San José Municipal Code to require that:
 - a. Food service establishment operators periodically pump, clean and maintain grease removal devices and keep maintenance records on-site for three years; collect yellow grease for recycling; install grease removal devices where there has been a sanitary sewer overflow or blockage; and remove food grinders under specified circumstances; and;
 - b. Property owners be responsible for operation and maintenance of any shared grease interceptor serving multiple food service establishments.

7. **MISCELLANEOUS**

- A. The next TPAC meeting will be Thursday, February 12, 2009, at 4:30 p.m. City Hall, Environmental Services, 10th Floor, Room 1047.

8. **OPEN FORUM**

9. **ADJOURNMENT**

NOTE: If you have any changes or questions, please contact Monica Perras, Environmental Services, 408-975-2515.

To request an accommodation or alternative format for City-sponsored meetings, events or printed materials, please call Monica Perras at (408) 975-2515 or (408) 294-9337 (TTY) as soon as possible, but at least three business days before the meeting/event.

Availability of Public Records. All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at San Jose City Hall, 200 East Santa Clara Street, 10th Floor, Environmental Services at the same time that the public records are distributed or made available to the legislative body.

AMENDED DRAFT
MINUTES OF THE
SAN JOSÉ/SANTA CLARA
TREATMENT PLANT ADVISORY COMMITTEE
City Hall, Environmental Services, 10th Floor, Room 1047
Thursday, December 11, 2008 at 4:30 p.m.

1. ROLL CALL

Minutes of the Treatment Plant Advisory Committee convened this date at 4:30 p.m. Roll call was then taken, with the following members in attendance:

Committee members: Chuck Reed (Chair), Patricia Mahan, Kevin Moore, Diane McNutt, Madison Nguyen, Nora Campos, Curtis Harrison.

Staff present: Monica Perras, Dale Ihrke, Bhavani Yerrapotu, Dave Sykes, Tim Tung, Mollie Dent, Cheryl Wessling, Kirsten Struve.

Others present: Robert Reid (West Valley Sanitation), Alan Kurotori (City of Santa Clara), Steve Machida (Cupertino Sanitary District), Paul Marino (City of San Jose), David Wall (San José City Resident).

2. APPROVAL OF MINUTES

Minutes of November 13, 2008.

Motion by Committee member Nguyen and Second by Committee member McNutt to accept the minutes of November 13, 2008. Abstention: Committee member Harrison.

3. UNFINISHED BUSINESS

- A. **Verbal update on Refunding of Sewer Revenue Bonds, Series 2005B:**
Recommend that the City Councils of San Jose and the Santa Clara City Council authorize the Clean Water Financing Authority to issue bonds to refund the 2005 B Sewer Revenue Bond and that the San Jose City Council adopt Appropriation ordinance amendments be adopted as necessary to reflect new debt service requirements.
Tim Tung gave a verbal update.

4. CORRESPONDENCE

- A. Information Memo: Plant Master Plan-Baseline Survey Results
Cheryl Wessling gave a verbal report.

5. **REPORTS**

- A. **Open Purchase Orders Greater Than \$100,000**
The attached monthly Procurement and Contract Activity Report summarizes the purchase and contracting of goods with an estimated value between \$100,000 and \$1 million and of services between \$100,000 and \$250,000.

Motion by Committee Member Nguyen and unanimously accepted to note and file the Open Purchase Orders.

6. **AGREEMENTS**

- A. **Technical Committee Recommendation (Handout)**

Motion by Committee Member Harrison and seconded by Committee Member McNutt to accept the recommendation.

- B. **Action Item – TPAC Recommendation for Approval Requested**

The following item is scheduled to be approved by the San Jose City Council on December 16, 2009:

1. Report on bids and award of contract for the construction of the Environmental Services Building Repair Project to the lowest responsible bidder, Zolman Construction & Development, Inc., for the base bid in the amount of \$3,600,000, and approval of a contingency in the amount of \$540,000.
2. Adoption of a resolution authorizing the City Manager to negotiate and execute the second amendment to the agreement with Allana Buick & Bers, Inc. for professional services related to the repair and modifications of the San José/Santa Clara Water Pollution Control Plant's Environmental Services Building, modifying the scope of services and increasing the compensation by an amount not to exceed \$200,000 for a total maximum amount not to exceed \$787,495; and extending the term of the agreement by five months to December 31, 2010.

Motion by Committee Member Nguyen and seconded by Committee Member Campos to accept Items 6.B.1 & 2.

- C. **Informational Item – TPAC Item Previously Recommended for Approval**

None

7. **MISCELLANEOUS**

- A. The next TPAC meeting will be Thursday, January 8, 2009, at 4:30 p.m. City Hall, Environmental Services, 10th Floor, Room 1047.

8. **PUBLIC COMMENT**

10. **ADJOURNMENT**

- A. The Treatment Plant Advisory Committee adjourned at 4:50 p.m.

Chuck Reed, Chair
Treatment Plant Advisory Committee

City Manager's Contract Approval Summary
For Procurement and Contract Activity between \$100,000 and \$1 Million for Goods and \$100,000 and \$250,000 for Services

November 24, 2008 - December 15, 2008

Description of Contract Activity ¹	Fiscal Year	Req#/RFP#	PO#	Vendor/Consultant	Original \$ Amount	Start Date	End Date	Additional \$ Amount	Total \$ Amount	Comments
Pipeline/ Tank Cleanout	2008/09	09002		PSC Industrial Outsourcing	\$140,000	12/10/08	8/1/09		\$140,000	

¹ This report captures in process contract activity (Requisition Number or RFP Number) and completed contract activity (Purchase Order Number, Contract Term, and Contract Amount)

November 18, 2008

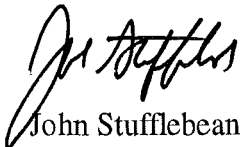
TO: Treatment Plant Advisory Committee

SJ: Tributary Agencies Available Plant Capacity - 2008

The Master Agreements require that the Treatment Plant Advisory Committee file annually with the legislative bodies of San Jose, Santa Clara and member agencies a report on plant capacity. The attached report, Tributary Agencies Available Plant Capacity - 2008, has been prepared to satisfy this requirement and to identify each agency's 2008 plant capacity as well as available (unused) capacity.

It is recommended that the Treatment Plant Advisory Committee approve the attached report.

Sincerely,



John Stufflebean
Director
Environmental Services Department

Attachment

**CITY OF SAN JOSE
ENVIRONMENTAL SERVICES DEPARTMENT
SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
TRIBUTARY AGENCIES' AVAILABLE PLANT CAPACITY - 2008**

November 2008

**CITY OF SAN JOSE
ENVIRONMENTAL SERVICES DEPARTMENT
SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT**

TRIBUTARY AGENCIES' AVAILABLE PLANT CAPACITY - 2008

This analysis was prepared to comply with the terms of the Master Agreements which require that the operational capacity and productive use of the treatment plant be determined annually. Tables I through IV contain the Plant Capacity, the 2008 Peak Week (5-day average) Flow, and the Remaining Available Capacity for the entire plant and for each individual member for 2008.

2008 PLANT CAPACITY

The nominal capacity of the treatment plant during the 2008 peak week is 167 MGD. The agencies' capacity rights in the 167 MGD plant are shown on Tables I through IV and were determined in accordance with the provisions of the Master Agreements.

2008 PEAK WEEK FLOW

The 2008 peak dry weather flow of 112.00 MGD occurred during the week of June 16 - 20. Tables I through IV contain the agencies' flow and loadings for the 2008 peak week which were obtained from the following sources:

- WEST VALLEY SANITATION DISTRICT - Wastewater Flow Report dated 9/25/08, submitted by the District.
- CUPERTINO SANITARY DISTRICT - Metered Flow Reports.
- CITY OF MILPITAS - Metered Flow Reports.
- COUNTY SANITATION DISTRICT 2-3 - 2008-2009 Revenue Program.
- BURBANK SANITARY DISTRICT - 2008-2009 Revenue Program.
- SUNOL SANITARY DISTRICT - Wastewater Flow Report dated 9/3/08, submitted by the District.
- CITY of SAN JOSE and CITY of SANTA CLARA - The 2008 Peak Week flow and loadings remaining after subtracting the other agencies' reported flows and loadings are attributed to San Jose and Santa Clara as joint owners of the facilities. These were allocated, in accordance with the 1959 Agreement, to the two cities based on current assessed valuation ratios of 83.877% for San Jose and 16.123% for Santa Clara.

2008 AVAILABLE CAPACITY

The Agencies' peak week flows and loadings were subtracted from their capacities in the 167 MGD plant to obtain their 2008 available capacities.

TABLE I

**CITY OF SAN JOSE
ENVIRONMENTAL SERVICES DEPARTMENT
SAN JOSE/SANTA CLARA WATER POLLUTION PLANT
TRIBUTARY AGENCIES' AVAILABLE PLANT CAPACITY - 2008**

Agency	FLOW	2008 Plant Capacity MGD	2008 Peak Week Flow MGD	Available Capacity MGD
San Jose	83.877%	109.522	72.315	37.207
Santa Clara	16.123%	21.053	13.900	7.153
Subtotal	100.000%	130.575	86.215	44.360
West Valley Sanitation District (1) (3)		12.052	10.207	1.845
Cupertino Sanitary District		8.600	4.633	3.967
City of Milpitas (3)		13.500	8.952	4.548
County Sanitation District 2-3 (2)		1.523	1.523	0.000
Burbank Sanitary District		0.400	0.333	0.067
Sunol Sanitary District		0.350	0.137	0.213
Subtotal		36.425	25.785	10.640
Total		167.000	112.000	55.000

(1) Reflects transfer of capacity from West Valley Sanitation District to San Jose/Santa Clara resulting from annexations as of June 2008.

(2) In January 1985, County Sanitation District 2-3 entered into an agreement with the Cities of San Jose and Santa Clara, as joint owners of the plant, electing not to participate in a fixed capacity. Capacity is determined annually in accordance with the methods and restrictions prescribed in the agreement.

(3) Reflects transfer of capacity from West Valley Sanitation District to Milpitas in July 2006.

TABLE II

**CITY OF SAN JOSE
ENVIRONMENTAL SERVICES DEPARTMENT
SAN JOSE/SANTA CLARA WATER POLLUTION PLANT
TRIBUTARY AGENCIES' AVAILABLE PLANT CAPACITY - 2008**

BOD

Agency		2008 Plant Capacity KLBS/D	2008 Peak Week Flow KLBS/D	Available Capacity KLBS/D
San Jose	83.877%	387.752	230.851	156.901
Santa Clara	16.123%	74.534	44.375	30.159
Subtotal	100.000%	462.286	275.226	187.060
West Valley Sanitation District (1) (3)		29.283	22.646	6.637
Cupertino Sanitary District		16.419	11.664	4.755
City of Milpitas (3)		27.249	20.540	6.709
County Sanitation District 2-3 (2)		3.149	3.149	.000
Burbank Sanitary District		.815	.677	.138
Sunol Sanitary District		1.799	.298	1.501
Subtotal		78.714	58.974	19.740
Total		541.000	334.200	206.800

(1) Reflects transfer of capacity from West Valley Sanitation District to San Jose/Santa Clara resulting from annexations as of June 2008.

(2) In January 1985, County Sanitation District 2-3 entered into an agreement with the Cities of San Jose and Santa Clara, as joint owners of the plant, electing not to participate in a fixed capacity. Capacity is determined annually in accordance with the methods and restrictions prescribed in the agreement.

(3) Reflects transfer of capacity from West Valley Sanitation District to Milpitas in July 2006.

TABLE III

CITY OF SAN JOSE ENVIRONMENTAL SERVICES DEPARTMENT SAN JOSE/SANTA CLARA WATER POLLUTION PLANT TRIBUTARY AGENCIES' AVAILABLE PLANT CAPACITY - 2008 SUSPENDED SOLIDS				
Agency		2008 Plant Capacity KLBS/D	2008 Peak Week Flow KLBS/D	Available Capacity KLBS/D
San Jose	83.877%	343.721	190.574	153.147
Santa Clara	16.123%	66.071	36.632	29.439
Subtotal	100.000%	409.792	227.206	182.586
West Valley Sanitation District (1) -3		27.812	19.656	8.156
Cupertino Sanitary District		17.856	9.406	8.450
City of Milpitas (3)		24.433	14.596	9.837
County Sanitation District 2-3 (2)		3.125	3.125	.000
Burbank Sanitary District		.853	.658	.195
Sunol Sanitary District		2.129	.253	1.876
Subtotal		76.208	47.694	28.514
Total		486.000	274.900	211.100
<p>(1) Reflects transfer of capacity from West Valley Sanitation District to San Jose/Santa Clara resulting from annexations as of June 2008.</p> <p>(2) In January 1985, County Sanitation District 2-3 entered into an agreement with the Cities of San Jose and Santa Clara, as joint owners of the plant, electing not to participate in a fixed capacity. Capacity is determined annually in accordance with the methods and restrictions prescribed in the agreement.</p> <p>(3) Reflects transfer of capacity from West Valley Sanitation District to Milpitas in July 2006.</p>				

TABLE IV

**CITY OF SAN JOSE
ENVIRONMENTAL SERVICES DEPARTMENT
SAN JOSE/SANTA CLARA WATER POLLUTION PLANT
TRIBUTARY AGENCIES' AVAILABLE PLANT CAPACITY - 2008**

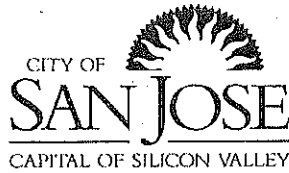
AMMONIA

Agency		2008 Plant Capacity KLBS/D	2008 Peak Week Flow KLBS/D	Available Capacity KLBS/D
San Jose	83.877 %	33.977	18.628	15.349
Santa Clara	16.123 %	6.531	3.581	2.950
Subtotal	100.000 %	40.508	22.209	18.299
West Valley Sanitation District (1) (3)		2.914	2.517	.397
Cupertino Sanitary District		2.506	1.140	1.366
City of Milpitas (3)		2.628	1.787	.841
County Sanitation District 2-3 (2)		.423	.423	.000
Burbank Sanitary District		.297	.091	.206
Sunol Sanitary District		.324	.033	.291
Subtotal		9.092	5.991	3.101
Total		49.600	28.200	21.400

(1) Reflects transfer of capacity from West Valley Sanitation District to San Jose/Santa Clara resulting from annexations as of June 2008.

(2) In January 1985, County Sanitation District 2-3 entered into an agreement with the Cities of San Jose and Santa Clara, as joint owners of the plant, electing not to participate in a fixed capacity. Capacity is determined annually in accordance with the methods and restrictions prescribed in the agreement.

(3) Reflects transfer of capacity from West Valley Sanitation District to Milpitas in July 2006.



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Scott P. Johnson
John Stufflebean
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: December 8, 2008

Approved

Deanna Johnson

Date

12/15/08

COUNCIL DISTRICT: City-Wide

SUBJECT: APPROVAL OF THE SALE AND ISSUANCE OF BONDS AND RELATED BOND DOCUMENTS FOR SAN JOSE-SANTA CLARA CLEAN WATER FINANCING AUTHORITY SEWER REVENUE REFUNDING BONDS, SERIES 2009A AND ADOPTION OF RELATED APPROPRIATION ORDINANCE AMENDMENTS

RECOMMENDATION

- a. Adopt the following 2008-2009 Appropriation Ordinance amendments in the San Jose-Santa Clara Treatment Plant Capital Fund (512):
 1. Increase the appropriation for Transfer to the Clean Water Financing Authority for Series 2005A/B Bond by \$3,700,000;
 2. Establish an appropriation for 2005A Bonds Reserve Fund in the amount of \$5,402,000; and
 3. Decrease the Ending Fund Balance by \$9,102,000.
- b. Adopt a resolution authorizing the Governing Board of the San José-Santa Clara Clean Water Financing Authority (the "Authority") to issue its Sewer Revenue Refunding Bonds, Series 2009A (the "2009A Bonds") in an aggregate principal amount not to exceed \$35,000,000, in connection with the refinancing of certain public capital improvements to the San José-Santa Clara Water Pollution Control Plant, to be sold through negotiated sale, and authorizing the execution of certain financing documents and other actions as necessary in connection with the issuance of the 2009A Bonds.

OUTCOME

Approval of these recommendations will allow the issuance of the San José–Santa Clara Clean Water Financing Authority Sewer Revenue Refunding Bonds, Series 2009A for the purpose of refinancing certain capital improvements financed with variable rate debt of the Authority.

EXECUTIVE SUMMARY

This staff report recommends the issuance of fixed rate sewer revenue refunding bonds to refinance the Authority’s existing series of variable rate sewer revenue refunding bonds and fund related financing costs. The staff report also describes the terms and conditions of the financing documents that require City Council approval. In addition, this report recommends certain budget actions related to the San José–Santa Clara Clean Water Financing Authority’s variable rate sewer revenue refunding bonds reflecting increased debt service costs in fiscal year 2008-09 and the need to cash fund a portion of the bond reserve requirement due to the recent disruption in the municipal bond market.

BACKGROUND

The City of San José (the “City”), on behalf of the San José–Santa Clara Clean Water Financing Authority (the “Authority”), is recommending the refunding of the Authority’s outstanding Variable Rate Sewer Revenue Refunding Bonds, Series 2005B (the “2005B Bonds”). The Authority is a joint exercise of powers agency formed in 1981 by the City of San José and the City of Santa Clara to finance the acquisition and construction of improvements to the San José–Santa Clara Water Pollution Control Plant (the “Treatment Plant”) pursuant to the Second Amended and Restated Joint Exercise of Powers Agreement, dated as of October 17, 1995 (“CWFA Agreement”).

In 2005, the Authority issued its Sewer Revenue Refunding Bonds, Series 2005A in the aggregate principal amount of \$54,020,000 (the “2005A Bonds”) and the 2005B Bonds in the aggregate principal amount of \$27,130,000 in order to refund the Authority’s Sewer Revenue Bonds, Series 1995A and its Sewer Revenue Bonds, Adjustable Rate Series 1995B (collectively, the “1995 Bonds”). The 1995 Bonds financed a portion of the cost of facilities for recycling highly treated wastewater produced by the Treatment Plant (“South Bay Water Recycling Project”). The 2005A Bonds and 2005B Bonds (collectively, the “2005 Bonds”) are secured by a pledge of the Net System Revenues from San José’s Wastewater Enterprise.

The 2005 Bonds were issued pursuant to a Master Indenture between the Authority and The Bank of New York Mellon Trust Company, N.A. as successor to J.P. Morgan Trust Company, National Association, dated as of October 1, 2005 (the “Master Indenture”) as supplemented by a First Supplemental Indenture and a Second Supplemental Indenture.

The 2005B Bonds were issued as variable rate demand bonds with bond insurance provided by Financial Security Assurance (“FSA”) and a liquidity facility provided by Depfa Bank plc (“Depfa”) under a Standby Bond Purchase Agreement. The ratings on the 2005B Bonds at the time of issuance and as of the date of this memo are summarized in the table below.

**San José–Santa Clara Clean Water Financing Authority
Sewer Refunding Revenue Refunding Bonds, Series 2005B
Ratings Summary**

<u>Rating Agency</u>	<u>Short-term Rating</u>	<u>Insured Rating</u>	<u>Underlying Rating</u>
At time of Issuance:			
Moody’s Investors Service	VMIG 1	Aaa	Aa3
Standard and Poor’s	A-1+	AAA	AA
Fitch Ratings	F1+	AAA	AA
As of 12/8/2008			
Moody’s Investors Service	VMIG 1	Aa3	Aa3
Standard and Poor’s	A-2	AAA	AA
Fitch Ratings	F1	AAA	AA

The uncertainty in the financial markets related to the default potential of subprime mortgages has continued to disrupt the variable rate municipal bond market and has spread to the broader financial markets as evidenced by the bankruptcy of Lehman Brothers and the near collapse of AIG. For the financial institutions providing credit support to the 2005B Bonds, the disruption has resulted in downgrades of Depfa’s short-term ratings in September 2008 by Standard and Poor’s and Fitch Ratings from A-1+ and F1+ to A-2 and F1, respectively, and a downgrade of FSA’s long-term rating in November 2008 by Moody’s Investors Service from Aaa to Aa3.

As a result of these downgrades, the marketability of the 2005B Bonds has been drastically impaired resulting in interest rates on the 2005B Bonds in excess of the rates typically paid on variable rate bonds. Additionally, the 2005B Bonds have experienced failed remarketings causing 2005B Bonds to be tendered to Depfa and held as bank bonds under the Standby Bond Purchase Agreement.

ANALYSIS

The decline of the subprime mortgage market and the significant loss of value of mortgage-backed securities have led to a liquidity crisis in the variable rate debt market. This lack of liquidity has caused Banks to be unable to allocate capital to support municipal issuers’ variable

rate bond programs. Furthermore, typical variable rate municipal bond investors, such as money market funds, have seen large fund outflows as investors seek the safety of U.S. Treasury securities. As a result, the interest the Authority pays on its variable rate bonds has increased significantly over the last two months.

Refunding and Bond Financing Structure

The 2005B Bonds are currently outstanding in the amount of \$27,130,000 and are remarketed weekly by Citigroup Global Markets Inc. (“Citigroup”). The Standby Bond Purchase Agreement expires on November 15, 2020. The 2005B Bonds mature on November 15, 2020, but can be optionally redeemed at par at any time.

The 2009A Bonds will be issued by the Authority pursuant to a Third Supplemental Indenture to the Master Indenture under the authority of the CWFA Agreement, the resolution to be adopted by the Authority, and the laws of the State of California in a not-to-exceed par amount of \$35,000,000. Per the CWFA Agreement, both the City of San José and the City of Santa Clara must authorize the Authority’s issuance of the 2009A Bonds. The Santa Clara City Council is scheduled to authorize its approval on January 13, 2009.

Under the Master Indenture, the Authority may issue refunding bonds if it meets the refunding test or the additional bonds test. In this case, the Authority meets the additional bonds test as Net System Revenues will be equal to at least 115% of the debt service on the 2005 Bonds and the 2009A Bonds.

The bond proceeds will be the primary source of funding to refund the outstanding 2005B Bonds (See “Estimated Sources and Uses of Funds” below). The 2009A Bonds will be secured by the Net System Revenues of the San José Wastewater Enterprise, as pledged by the City under the Improvement Agreement dated November 1, 1995, as amended to date and by the Third Amendment to the Improvement Agreement proposed in this memorandum, executed by and among the Authority, the City and the City of Santa Clara. The City of Santa Clara is not responsible for repayment of the 2005 Bonds or the proposed 2009A Bonds as it cash funded its portion of the cost of the South Bay Water Recycling Project.

The financial advisor to the City, Public Resources Advisory Group (“PRAG”) provided a comparative analysis of issuing variable rate bonds and fixed rate bonds in the current market. The outcome of the analysis was that there would be minimal all-in interest cost benefit to issuing variable rate bonds while exposing the City to interest rate volatility risk, credit support renewal risk, and counterparty risk. Based on this analysis and internal discussions, City staff recommends that the 2009A Bonds be issued as fixed rate bonds with principal maturities from November 15, 2010 through November 15, 2021. Early redemption provisions for the 2009A Bonds will be set at the time of pricing of the 2009A Bonds in January 2009; however, it is possible that the 2009A Bonds will be sold as non-callable bonds.

The 2009A Bonds will be sold on a negotiated basis. The underwriter, Citigroup, will oversee the negotiated sale with assistance from City staff and PRAG. Currently, the financing schedule calls for the negotiated sale of the 2009A Bonds to occur the week of January 19, 2009.

San José-Santa Clara Clean Water Financing Authority
2009A Sewer Refunding Revenue Refunding Bonds
Estimated Sources and Uses of Funds ⁽¹⁾

Sources of Funds

Par Amount of Bonds.....	\$ 30,780,000
Net Original Issue Discount.....	(149,558)
Total Sources of Funds	\$ 30,630,442

Uses of Funds

Redemption of Series 2005B Bonds	\$ 27,130,000
Debt Service Reserve Fund.....	3,078,000
Cost of Issuance ⁽²⁾	253,152
Underwriter's Discount	169,290
Total Uses of Funds.....	\$ 30,630,442

⁽¹⁾ Preliminary; subject to change.

⁽²⁾ Includes fees and expenses of bond counsel, disclosure counsel, financial advisor, issuer fee, rating agencies, trustee, printer and various other costs of issuance.

Tributary Agency Payoff Opportunity

The tributary agencies to the Treatment Plant pay a proportionate share of debt service on the 2005B Bonds with the exception of the City of Milpitas. The City of Milpitas elected to pay their pro-rata share of the project costs with cash in lieu of paying debt service.

The refunding provides an opportunity for the tributary agencies to pay off all or a portion of their respective obligations in cash and either eliminate or reduce their debt service obligation on the 2009A Bonds. City staff is currently working with the tributary agencies to determine their interest in this payoff opportunity. A supplemental memo will be forthcoming prior to January 13, 2009 with the terms and conditions of the Payoff Agreement(s) with Tributary Agencies, if applicable.

Ratings and Credit Enhancement

The City intends to seek credit ratings on the 2009A Bonds from Moody's Investors Service, Standard & Poor's, and Fitch Ratings, respectively. The credit ratings are expected to be released in early January 2009 prior to the pricing of the 2009A Bonds.

Based on the expected high credit ratings on the 2009A Bonds, it is unlikely that bond insurance will be necessary in order to provide the lowest borrowing cost. City staff and PRAG will evaluate the potential benefit from bond insurance in January 2009.

Budget Actions

Debt Service Adjustments The \$21,180,000 of 2005B Bonds that are currently held by Depfa (the “Bank Bonds”) are subject to the terms and conditions of the Standby Bond Purchase Agreement. Among the provisions related Bank Bonds are requirements that the City begin accelerated amortization of principal if the Bank Bonds are not purchased or remarketed within 120 days from the date that the Bank Bonds were initially purchased by Depfa. If the Bank Bonds are not remarketed by February 5, 2009, the Authority will be required to make a principal amortization payment of approximately \$1 million. If the Bank Bonds are not remarketed by May 5, 2009, the Authority will be required to make a second principal amortization payment of approximately \$1 million.

Although the 2005B Bonds are scheduled to be refunded prior to the required principal amortization payment on February 5, 2009 as described below, City staff recommends that the City Council increase the debt service appropriation for the 2005B Bonds by \$3.7 million in order to accommodate the principal amortization payments in the event that it is not possible to consummate the financing in a timely manner due to market access issues or for any other reason.

2005A Bonds Reserve Fund The reserve requirement for the 2005A Bonds is currently equal to 10% of the 2005A Bonds par amount at the time of issuance, or \$5,402,000. The reserve requirement was initially met through the purchase of a surety bond policy provided by FSA. In order for the surety bond policy to qualify as a valid Reserve Financial Guaranty under the terms of the Master Indenture, FSA is required to be rated in the highest rating category by Standard and Poor’s and Moody’s Investors Service. Since FSA was downgraded by Moody’s as mentioned above, the surety bond policy no longer fulfills the reserve requirement for the 2005A Bonds and it is necessary to meet the reserve requirement through an alternative method.

City staff recommends meeting the 2005A Bonds reserve requirement by making the 2009A Bonds Reserve Fund available to the holders of the 2005A Bonds in conjunction with a cash contribution of approximately \$2,400,000; however, if this arrangement is determined to be infeasible then it will be necessary to cash fund the full reserve requirement of \$5,402,000.

Bond Financing Documents

There are a number of bond financing documents that require City Council approval to proceed with the issuance of the 2009A Bonds. In addition, there are number of documents requiring only the approval of the Authority. The major documents are described below. These documents, in substantially final form, will be available for review in the City Clerk’s office on

or about December 23, 2008. The documents to be executed by the City will be posted on the City's website. The Preliminary Official Statement will be transmitted to the City Council on January 5, 2009.

City staff recommends that the City Manager, Director of Finance, Deputy of Director of Finance, and Debt Administrator or their authorized designees (collectively, "Designated Officers") be authorized to execute documents on behalf of the City. As modifications may be required prior to the closing of the 2009A Bonds, City staff also recommends that the Designated Officers each be authorized to execute the final version of each of these documents as may be modified upon consultation with the City Attorney's Office.

Preliminary Official Statement The Preliminary Official Statement, or prospectus, has been prepared for the Authority by bond counsel/disclosure counsel. Appendix A to the Official Statement describes the current demographic information and financial information related to the City with the focus upon the San José Wastewater Enterprise, and provides other information useful to investors regarding the City. It has been prepared by City staff in close coordination with the City Attorney's Office, the Environmental Services Department, and other City departments as necessary, the financial advisor and bond counsel/disclosure counsel.

The Preliminary Official Statement generally discloses material information on the bond issue, such as the project to be refinanced, the repayment source, investment risks and credit ratings. Investors use this information to evaluate the credit quality of the 2009A Bonds. Following the sale of the 2009A Bonds to the underwriter and prior to the closing, bond counsel/disclosure counsel will prepare a final Official Statement for the 2009A Bonds. City staff has carefully reviewed the information contained in the Preliminary Official Statement and believes it to be accurate and complete in all material respects.

City staff recommends that the Designated Officers each be authorized to execute certificates regarding these documents as required to comply with securities laws and to authorize the underwriters to distribute these documents for the purpose of marketing the 2009A Bonds.

If any councilmember has any personal knowledge that any of the material information in the Official Statement is false or misleading, the councilmember must raise these issues prior to approval of the distribution of the document.

City staff, bond counsel/disclosure counsel, and the financial advisor will be available at the City Council meeting on January 13, 2009, to address any questions, issues and/or concerns.

Third Amendment to the Improvement Agreement The Improvement Agreement is by and among the Authority, the City, and the City of Santa Clara. The Third Amendment to the Improvement Agreement amends the Improvement Agreement in order to authorize the issuance of the 2009A Bonds and to make technical changes.

Continuing Disclosure Certificate The Continuing Disclosure Certificate is executed by the City for the benefit of the bondholders and obligates the City to immediately disclose to the marketplace the occurrence of any material events that are required to be disclosed by federal Securities Laws. It also requires the City to prepare an annual report to the marketplace, the contents of which are outlined in the Continuing Disclosure Certificate. These actions are taken in accordance with Rule 15c2-12(b) adopted by the Securities and Exchange Commission.

Third Supplemental Indenture The Third Supplemental Indenture is an agreement between the Authority and the Trustee. It sets forth the specific terms of the 2009A Bonds. In addition, in reviewing the Master Indenture in connection with the issuance of the 2009A Bonds, City staff identified amendments that should be made to the Master Indenture. These include technical changes in order to clarify ambiguities in the Master Indenture and the clarifications and changes described below.

The proposed amendments related to the Master Reserve Fund will apply to the 2005A Bonds, the 2009A Bonds and any future bonds issued pursuant to the Master Indenture. The other amendments will be effective upon the consent of the requisite percentage of bondholders. The consent of the 2009A bondholders will be automatic as they will be purchasing the bonds subject to these provisions.

Refunding Test. Revisions to the requirements for issuing refunding bonds so that the Authority may issue refunding bonds to pay off bonds that have become Bank Bonds without having to meet the current requirements in the Master Indenture for the issuance of refunding bonds or additional bonds.

Master Reserve Fund. Under the Master Indenture, the Authority may issue multiple series of bonds. The amendment will allow the Authority to establish, at the Authority's option, a master reserve fund for multiple series of bonds.

Surety Requirements. The Master Indenture permits the Authority to satisfy the reserve requirement for a series of bonds with a surety bond. The issuer of the surety bond must meet certain rating requirements. The Master Indenture now provides that in the event the issuer of the surety bond is downgraded by either Standard & Poor's or Moody's, then the Authority is obligated to either provide a replacement surety that meets the rating requirements or deposit cash in the amount of the reserve requirement. The proposed amendment will eliminate these requirements. Instead, the test for whether the surety bond meets the requirements in the Master Indenture is whether the rating requirements are met on the date the surety bond is issued.

Bond Purchase Agreement The Bond Purchase Agreement is a contract between the Authority and the underwriter as the purchaser of the 2009A Bonds. The Bond Purchase Agreement specifies the representations and warranties of the Authority and the City, the

documents to be executed at closing, the final interest rates and prices of the 2009A Bonds and the conditions that allow the purchaser to cancel the purchase of the 2009A Bonds.

Financing Team Participants

The financing team participants consist of:

- Financial Advisor Public Resources Advisory Group
- Bond and Disclosure Counsel Nixon Peabody LLP
- Underwriter Citigroup Global Markets, Inc.
- Trustee The Bank of New York Mellon Trust Company N.A.

Financing Schedule

The key dates in the balance of the financing schedule are as follows:

- San José City Council Approval January 13, 2009
- Santa Clara City Council Approval January 13, 2009
- Authority Approval January 14, 2009
- Negotiated Sale of 2009A Bonds Week of January 19, 2009
- 2009A Bonds Closing and 2005B Bonds Refunding January 29, 2009

EVALUATION AND FOLLOW-UP

This memorandum presents the set of recommendations related to the City Council’s approval of the issuance of the 2009A Bonds and requires no follow-up to the City Council.

PUBLIC OUTREACH/INTEREST

City staff will be meeting with the Technical Advisory Committee to the Tributary Agencies (“TAC”) on January 5, 2009.

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

COORDINATION

This report has been prepared by the Finance Department in coordination with the Environmental Services Department and the City of San José City Attorney’s Office and is scheduled to be heard by the Treatment Plant Advisory Committee (“TPAC”) on January 8, 2009.

FISCAL/POLICY ALIGNMENT

The proposed financing plan is consistent with the City’s Debt Management Policy which establishes the following equally important objectives in order to obtain cost-effective access to the capital markets:

- Minimize debt service and issuance costs;
- Maintain access to cost-effective borrowing;
- Achieve the highest practical credit rating;
- Full and timely repayment of debt;
- Maintain full and complete financial disclosure and reporting; and
- Ensure compliance with applicable State and Federal laws.

COST SUMMARY/IMPLICATIONS

Costs associated with the refunding will be paid from bond proceeds. The financial advisor and bond counsel/disclosure counsel work on a contingency basis and are only paid upon the successful sale and close of the 2009A Bonds.

BUDGET REFERENCE

The table on the following page identifies the fund and appropriation proposed to fund the action recommended in this memorandum.

SAN JOSE-SANTA CLARA CLEAN WATER FINANCING AUTHORITY BOARD

December 8, 2008

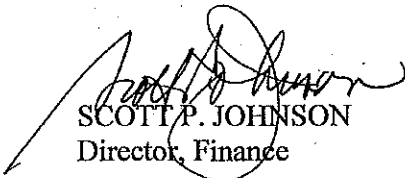
Subject: SJ-SC CWFA Sewer Revenue Refunding Bonds, Series 2009A

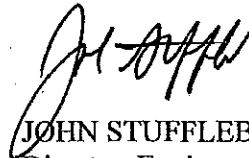
Page 11

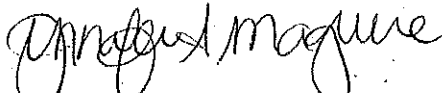
Fund No.	Appn No.	Appn Name	Total Appn	Additional Amount for Debt Service and Reserve Fund	2008-09 Adopted Operating Budget (Page)	Last Budget Action (Date, Ord. No.)
512	8999	Ending Fund Balance	\$14,587,159	\$9,102,000	V-148	10/21/2008, 28422

CEQA

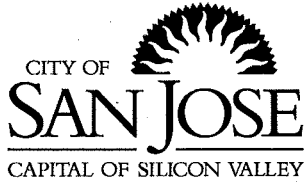
Not a project.


SCOTT P. JOHNSON
Director, Finance


JOHN STUFFLEBEAN
Director, Environmental Services


JENNIFER A. MAGUIRE
Budget Director

For questions please contact Scott P. Johnson, Director of Finance, at (408) 535-7001.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 12-17-08

Approved *Deanna Adams*

Date *12/18/08*

COUNCIL DISTRICT: City-Wide

SUBJECT: PROGRESS REPORT ON RECYCLED WATER LIAISON COMMITTEE'S DISCUSSIONS TOWARD A LONG TERM AGREEMENT TO DEVELOP RECYCLED WATER FACILITIES

RECOMMENDATION

Accept this status report on the nature and content of the discussions of the Recycled Water Liaison Committee concerning a long term agreement on joint development of recycled water facilities and direct staff to continue to support discussions and provide periodic reports on future progress and policy recommendations.

OUTCOME

To provide the Council with an update on discussions with Santa Clara Valley Water District and Council to provide staff with policy direction as discussions relating to the future of South Bay Water Recycling continue.

BACKGROUND

Since August 2008, the Recycled Water Liaison Committee (Committee) has met to discuss development of a long term agreement on recycled water and joint development of future recycled water facilities extending the South Bay Water Recycling program and use of recycled water. The committee is comprised of the following members:

- Kansen Chu, Council Member, City of San Jose
- Pierluigi Oliverio, Council Member, City of San Jose
- Patricia Mahan, Mayor, City of Santa Clara and Chair of Treatment Plant Advisory Committee
- Tony Estremera, Board Member, Santa Clara Valley Water District
- Rosemary Kamei, Board Member, Santa Clara Valley Water District
- Patrick Kwok, Board Member, Santa Clara Valley Water District

The Committee membership represents the interests the City of San Jose (as lead agency for the San Jose/Santa Clara Water Pollution Control Plant (Plant)), the City of Santa Clara (as joint owner of the Plant and Treatment Plant Advisory Committee representative), and the Santa Clara Valley Water District.

ANALYSIS

The Committee has met four times since August 2008. The meetings to-date have focused on understanding the key issues relating to the history of recycled water use in Santa Clara County and the development of South Bay Water Recycling. Other key issues that were discussed:

- future water needs in the county;
- potential to further expand the use of recycled water as a water supply resource;
- institutional structure and financing mechanisms of the District and the Plant;
- physical location of Plant and District infrastructure and possible interconnection points; and
- governance structures that could support interests of each party in expanding the recycled water system.

As the discussion has progressed, the Recycled Water Liaison Committee has discussed a number of potential terms and conditions that might be included in any long term agreement. The key terms include:

- roles and responsibilities;
- quantity and quality of recycled water;
- rates and charges;
- operation and maintenance; and
- alternative institutional and governance structures.

Most recently, the Committee focused on two alternative governance structures: a cooperative agreement and a joint powers agreement. At the November meeting, the Committee directed staff to present specific examples based on work at other agencies (particularly the long-term agreement between Orange County Water District and Orange County Sanitation District). This discussion, and recommended terms and conditions, will be the focus of the Committee meeting scheduled for February 19, 2009. Further discussions by the Committee are expected to result in direction to staff to incorporate the preferred terms and conditions into a draft agreement for a long-term collaboration between the District and the City to develop recycled water resources for the community.

EVALUATION AND FOLLOW-UP

Future meetings of the Recycled Water Liaison Committee are scheduled for February 19, 2009 and March 19, 2009. In addition, a joint meeting of the full City Council and Santa Clara Valley Water District Board of Directors to review status and recommendations is scheduled for April 23, 2009.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action does not meet the criteria above at this time. The Committee agenda packets are posted at the City Clerk and Brown Act posting sites.

COORDINATION


This memo has been coordinated with the City Attorney and is scheduled to be considered at the January 8, 2009 meeting of the Treatment Plant Advisory Committee.

COST SUMMARY/IMPLICATIONS

Not applicable. Any future recommendations that have budget implications will be brought to the Treatment Plant Advisory Committee and the City Council as appropriate.

CEQA

Not a project.


JOHN STUFFLEBEAN
Director, Environmental Services

For questions please contact Mansour Nasser, Deputy Director at (408) 277-2558.



Memorandum

TO: TRANSPORTATION AND
ENVIRONMENT COMMITTEE

FROM: John Stufflebean

SUBJECT: DENTAL AMALGAM PROGRAM

DATE: 12-15-08

Approved

Christine J. Shippey

Date

12-22-08

RECOMMENDATION

Accept this report and recommend that Council:

1. Approve the proposed Dental Amalgam Program; and
2. Direct the City Attorney's Office to draft an ordinance amending Chapter 15.14 of the San José Municipal Code to regulate dental practices under a Dental Wastewater Permit and require the installation of amalgam separators and implementation of Best Management Practices.

OUTCOME

The City Attorney's Office will return with an ordinance amending Municipal Code Chapter 15.14 requiring dental practices to obtain a Wastewater Discharge Permit and to control mercury amalgam discharges to the sanitary sewer system. The approved dental amalgam program will reduce mercury in wastewater discharged from dental offices and further reduce mercury in the effluent discharged to the Bay from the San Jose/Santa Clara Water Pollution Control Plant (Plant), as well as mercury in the Plant's biosolids.

BACKGROUND

The California Regional Water Quality Control Board (Regional Board) released Order No. R2-2007-007 – Waste Discharge Requirements for Municipal and Industrial Wastewater Discharges of Mercury to San Francisco Bay – for the purpose of implementing the San Francisco Bay Mercury Total Maximum Daily Load (TMDL) wasteload allocations. The Order stipulates implementation of a mercury reduction program by all Municipal and Industrial Wastewater Dischargers to San Francisco Bay and establishes a target to achieve an 85% participation rate among applicable dental offices within 5 years of the effective date of the Order. The requirement became effective February 2008 and will be included in the upcoming renewal of the Plant's National Pollutant Discharge Elimination System (NPDES) Permit.

Sources of mercury amalgam in dental wastewater include the placement of and removal of amalgam fillings (restorations). Of the dental amalgam constituents, mercury is of greatest concern to human

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Subject: Dental Amalgam Program

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health because it is a persistent bioaccumulative toxic chemical. The major route for human exposure to mercury in wastewater discharges is through the consumption of mercury-contaminated fish. Fish advisories have been issued for the San Francisco Bay and a study conducted by the San Francisco Estuary Institute found several types of fish to have levels of mercury that is of concern.

Agencies administering wastewater pretreatment programs at several Publically Owned Treatment Works (POTWs) in the Bay Area have implemented dental amalgam reduction programs similar to the program proposed by staff. These agencies include the San Francisco Public Utilities Commission, East Bay Municipal Utilities District, Regional Water Quality Control Plant in Palo Alto, Union Sanitary District, and the Central Contra Costa Sanitary District. Results from these programs show reductions of mercury in their influent and sizeable reductions of amalgam particulates in their sludge.

ANALYSIS

Although the amount of mercury used by dentists has decreased significantly during the past ten years, there is still a substantial legacy of amalgam fillings that will remain in the environment for the next several decades. The Environmental Protection Agency (EPA) report "Health Services Industry Detailed Study – Dental Amalgam, August 2008" states that while mercury used in dental offices accounts for only a small percentage of the total mercury discharged to air and waste each year, mercury in the form of dental amalgam is among the largest sources of mercury found in wastewater influent reaching POTWs. From late 2006 into early 2007, the Environmental Services Department collected wastewater samples as part of a sector loading study at residential, commercial, dental, and industrial dischargers. Samples were tested for total mercury and findings concluded that 61% of the mercury found was discharged from dental offices located in the Plant's tributary area.

The Plant is very effective at treating and removing pollutants from wastewater. It removes 99% of mercury from the wastewater before discharge to the Bay. However, virtually all the amalgam particulate received by the Plant in wastewater ends up in the biosolids. Studies have demonstrated that amalgam separator technology can remove 95% or more of the mercury amalgam particulates in dental process wastewater. Requiring amalgam separators at dental offices will further reduce the presence of mercury in the Plant's effluent and biosolids.

To meet the requirements of the Regional Board's Order, staff proposes that dental practices located within the Plant's treatment area be regulated under a five-year Dental Wastewater Discharge Permit. The Permit effective date for practices located within the City of San José is estimated to be September 2009 and April 2010 for those located within the other tributary cities. The proposed Dental Permit would have two primary requirements:

1. Equipment
 - Install an amalgam separator device by December 31, 2010.
2. Best Management Practices (BMPs)
 - Implement BMPs for Dentists, as suggested by the American Dental Association, within 90 days of the effective date of their permit.

December 15, 2008

Subject: Dental Amalgam Program

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An exemption would be established for practices that place or remove dental amalgam fillings three days or fewer in a calendar year and specialties that do not remove or place amalgam fillings such as orthodontics, periodontics, and oral and maxillofacial surgery. There are approximately 1,500 licensed dentists in the Plant's service area with an estimated 500 dental practices. Through the permitting application process, staff will determine the actual number of dental practices that will be required to obtain a dental wastewater discharge permit.

Pending adoption of the proposed ordinance, staff would send a permit application packet to dental practices, beginning with those located in San José in July 2009. Packets would be sent to the balance of the practices in the Plant's tributary cities in January 2010. The following is the proposed permit application timeline:

Application packet sent to San José dentists	7/1/09
San José Dental Permits Issued	9/1/09
BMPs certification due	12/1/09
Proof of installation for San José practices	3/1/10
Application packet sent to Tributary Area dentists	1/1/10
Tributary Area Dental Permits Issued	4/1/10
BMPs certification due	7/1/10
Proof of installation due	10/1/10

City of San José Environmental Inspectors would inspect permitted dental practices no less than once during the five-year permit term. Scheduled inspections would be conducted to verify that a certified amalgam separator is installed correctly, proper maintenance and record keeping is occurring, and that BMPs are implemented.

An Enforcement Response Plan that outlines the procedures to be followed by the Dental Program inspection staff to identify, document, and respond to all program violations would be developed. Incorporated into the enforcement plan would be specific criteria by which staff can determine the enforcement action most appropriate to the nature of the violation. Enforcement actions would include verbal warnings, warning notices, notices of violation, administrative citations, and compliance meetings. Oversight of any enforcement action will be conducted by the supervisory staff.

Staff estimates that implementation of the required inspections will require one FTE, which will be managed within existing staffing in the Environmental Services Department. Additionally, staff is exploring whether the required inspections can be integrated into work already done by the City of San José Fire Safety group or the Santa Clara County Department of Environmental Health (SCDEH). While it is possible that coordinating these inspections with an existing inspection program could be considered a more efficient approach for the City and the dental practices, constraints on how those entities operate may actually increase costs and limit the City's ability to manage program activities.

Estimated costs to dental offices include \$750-\$1,000 for the initial purchase and installation of an amalgam separator, and \$300 annually for maintenance and disposal of the amalgam. These estimated costs are based on averages from similar dental programs implemented by jurisdictions located in the Bay Area.

EVALUATION AND FOLLOW-UP

The Attorney's Office will return to Council in April 2009 with a draft ordinance amending Chap.15.14 of the Municipal Code. Staff will work concurrently with Treatment Plant Advisory Committee (TPAC) and tributary agencies on amendments to their ordinance and operational codes. Once the City approves the pretreatment program changes, existing inter-agency agreements require that they must also be adopted by all agencies discharging to the Plant. Results and progress will also be reported annually to the Regional Water Board as part of the Pollution Prevention Annual Report.

POLICY ALTERNATIVES

Alternative #1: Augment the recommendation by providing a financial incentive in the form of rebates to the first 100 dental practices to complete installation of an amalgam separator in San José; provide financial incentives in the form of rebates to first 100 dental practices to complete installation of amalgam separator in other tributary cities. This suggestion was offered by the Santa Clara Valley Dental Society to assist dentists with the financial burdens of meeting the new requirements.

Pros: Helps alleviate the costs to the dentists for the purchase and installation of an amalgam separator. Provides an incentive to comply with the permit requirements early.

Con: Extra cost to the City. No financial incentives for those practices that installed an amalgam separator prior to the program.

Reason for not recommending: In addition to the cost for the rebates themselves, the City would incur additional administrative costs to manage the rebates. The City and County of San Francisco has been the only jurisdiction in California to offer financial incentives for early adopters to their program. They gave \$200 to the first 100 dental practices to install separators as "early adopters" and \$400 to about 15 dental practices that provide free dental services to low-income populations as part of community service. Funding for the rebates came from a \$20,000 Source Reduction Grant from EPA Region 9 and from their operating budget.

PUBLIC OUTREACH/INTEREST

Staff has used direct correspondence and coordination through the Santa Clara County Dental Society to outreach to local dental practices. On August 29, 2008, staff conducted a general stakeholder workshop at City Hall attended by more than 50 dentists. This workshop was promoted via direct mail to all area dentists and through the Dental Society. Additional coordination with the Dental Society included two meetings with their Board of Directors to discuss the proposed program requirements and active participation in two general membership dinner meetings in September and October 2008.

Response from the dental community has been generally supportive. They are aware of the concerns of mercury in the environment and understand the regulatory issues driving the need to implement a dental amalgam program. However, they expressed concern about the costs the program is asking them to bear for the purchase, installation and maintenance of the separator units. They have asked that the City explore the feasibility of rebates to help offset these costs.

A minimum of two workshops with vendor fairs are planned for Spring 2009. These workshops would include a review of the program requirements, training on the permit process, and guidance on the purchase and maintenance of an appropriate amalgam separator. Amalgam separator manufacturers and distributors would be invited to display their products as part of a vendor fair at the workshops.

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This recommendation meets Criteria #2: This memorandum will be posted on the City's website for the January 2009 Transportation and Environment Committee Agenda.

COORDINATION

This memorandum has been coordinated with Mollie Dent, Senior Deputy City Attorney, City Attorney's Office and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

Not applicable

COST SUMMARY/IMPLICATIONS

Start-up of the program will continue until December 2010 and covers development and mailing of permit application packets, development of the database, processing of permits, and data entry. Non-personal start-up costs are estimated to not exceed \$50,000.

Ongoing program costs include inspections of dental practices, maintenance of the data base, enforcement, permitting new practices, and outreach.

Ongoing project costs and staffing for program operation are included within the existing staffing levels and base budget for the Pollution Prevention Program.

December 15, 2008

Subject: Dental Amalgam Program

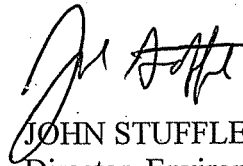
Page 6

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	RC #	Total Appn	Amt. for Recommendation	2008-09 Proposed Operating Budget (Page)	Last Budget Action (Date, Ord. No.)
Remaining Project Costs							
513	0762	NP/Equip – Env. Svcs.	700725	\$32,009,421	\$50,000	VIII - 38	10/21/08, 28422
Total Funding for Projects							

CEQA

Not a project.



JOHN STUFFLEBEAN
Director, Environmental Services

For questions please contact Elaine Marshall, Environmental Services Program Manager, at 408-277-5697.



Memorandum

TO: TRANSPORTATION AND ENVIRONMENT COMMITTEE

FROM: John Stufflebean

SUBJECT: FATS, OILS, AND GREASE CONTROL PROGRAM ORDINANCE REVISIONS

DATE: 12-19-08

Approved

Christine J. Shippen

Date

12/22/08

RECOMMENDATION

Accept this report and recommend that it be placed on the Council Agenda for discussion, with the following recommendation:

- Direct the City Attorney's Office to draft an ordinance amending Chapter 15.14 of the San José Municipal Code to implement the enhanced FOG Control Program.

OUTCOME

The Municipal Code revisions will update the FOG Control Program and enable staff to more effectively administer the Program requirements. By making FOG requirements more explicit and enforceable, this recommendation will result in improved inspection efficiency and help to mitigate the impacts of grease on wastewater management, including reducing blockages in the sanitary sewer system, sanitary sewer overflows, collection system maintenance costs, and grease-related removal and disposal costs at the San Jose/Santa Clara Water Pollution Control Plant (Plant).

BACKGROUND

The US Environmental Protection Agency (EPA) has identified grease as a leading cause of blockages in sanitary sewer systems. These blockages can cause sanitary sewer overflows and endanger public health and pollute local rivers, creeks, and the South San Francisco Bay. The California State Water Resources Control Board released requirements for Sanitary Sewer Systems Water Quality Order No. 2006-0003, on May 2, 2006. This order requires collection systems to:

1. Develop and implement Sewer System Management Plans (SSMP), and
2. Report all sanitary sewer overflows to the State database.

The City Council approved the current SSMP on August 26, 2008. The FOG Control Program is element #7 of the SSMP and includes building design and construction standards, facility inspections, sewer investigations, and outreach.

There are approximately 4,500 food service establishments (FSEs) in San Jose and the tributary area to the Plant which prepare and/or sell food for consumption either on or off the premises or wash utensils or dishes on premises that would contribute grease to the sewer system. These establishments include but are not limited to restaurants, sandwich shops, delicatessens, bakeries, pizzerias, cafeterias, markets, bed and breakfast inns, motels, hotels, meeting halls, caterers, retirement, and nursing homes.

The City began FSE inspections in San Jose approximately six years ago focusing on compliance with stormwater permit requirements. Two years ago, the program was enhanced to also emphasize indoor inspection in order to comply with the State's SSMP requirements and to minimize FOG impacts on the collection system. A new inspection unit was created to expand the stormwater inspections of FSEs to include inspections of grease traps, interceptors, and maintenance records. These inspections have been heavily focused on educating these facilities on how to minimize their impacts on the storm and sanitary sewers by using Best Management Practices (BMPs). Facilities are inspected on a one- to three-year rotation based on issues identified at the facility. The program is currently being geographically expanded into the Plant's tributary area.

For the 2007 calendar year the City reported 189 sanitary sewer overflows to the State database. Of these 160 or 85% were caused by grease and the remainder by root intrusion. For the same year, the Plant removed and disposed of 639.5 tons of at a cost of \$24,978.

ANALYSIS

During development of the SSMP, staff evaluated the service area and inspection program performance and identified several opportunities to improve the program's effectiveness. U.S. EPA studies have shown that a strong FOG control program translates to less grease in the sewer system which results in lower maintenance costs and fewer sanitary system overflows. Specific opportunities for improvement identified include:

1. Codifying existing BMPs,
2. Clarifying and formalizing grease control requirements,
3. Additional outreach to FSEs, and
4. Additional focus on "hot spots" in the sanitary sewer system.

This recommendation addresses items 1 and 2 listed above. Outreach and hot spots are being addressed through program implementation. Current Municipal Code provisions related to FOG control are set forth in Attachment 1. These requirements have not been updated in approximately 20 years. Staff is proposing updates to the Code to clarify program requirements and formalize existing best practices.

Compliance with the FOG control program has been achieved predominately through education and training of FSE personnel through the use of BMPs. For FY 2007-08, the City issued 903 verbal warnings issued and identified 1,414 site issues at the 1,344 facilities inspected. Staff experience in the field has shown that formalization of these BMP requirements in Municipal Code would further clarify program requirements for the businesses thereby improving overall program compliance. For example, staff is proposing that cleaning frequencies for grease control devices, based on the BMP, be specified in the Municipal Code.

Several of the proposed changes would improve inspection efficiency. It is common that a single facility be visited multiple times to complete the inspection. Of the 1,344 facilities inspected, approximately 1,100 facilities required two or less inspections while 240 facilities required three or more inspections for completion. Modifying the Code provision to specify that maintenance documents must be kept on site would reduce some instances of required follow-up inspections. A full list of the proposed enhanced FOG Control Program modifications and additional requirements for implementation of BMPs is shown in Attachment 2.

Enforcement for the FOG Program will continue to follow the model of the City's other Environmental Enforcement programs. Staff employs a tiered, progressive enforcement response, depending on the severity and persistence of a violation. Education is used as a first tool; businesses are provided educational materials, which are routinely available in multiple languages, and given an opportunity to comply.

EVALUATION AND FOLLOW-UP

The Attorney's Office will return to Council in April 2009 with a draft ordinance amending Chapter 15.14 of the Municipal Code. San José will work concurrently with Treatment Plant Advisory Committee (TPAC) and tributary agencies on amendments to their ordinance and operational codes. Once San José approves the pretreatment changes, existing inter-agency agreements require that they must also be adopted by all agencies discharging to the Plant.

PUBLIC OUTREACH/INTEREST

Staff has used direct correspondence and coordination through business organizations such as the California Restaurant Association (CRA) to outreach to local restaurants. On November 6, 2008, staff conducted a general stakeholder workshop at City Hall attended by approximately 70 stakeholder representatives. A CRA representative provided opening remarks. Outreach for this

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workshop was conducted via direct mail to approximately 4,500 facilities in the tributary area using the City's enforcement database. Workshop information was available in English, Spanish, and Vietnamese. Staff received minimal comments on the proposed ordinance changes, and provided clarifications to questions. The presentation, workshop questions, and answers were posted on the ESD web site.

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
(Required: E-mail and Website Posting)
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

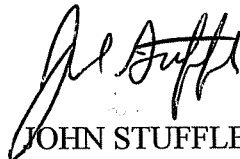
This recommendation meets Criteria #2: This memorandum will be posted on the City's website for the January 2009 Transportation and Environment Committee Agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the Redevelopment Agency, and the Office of Economic Development, and is scheduled to be considered at the January 8, 2009 meeting of the Treatment Plant Advisory Committee.

CEQA

Not a project.



JOHN STUFFLEBEAN
Director, Environmental Services

For questions please contact John Mukhar, Environmental Services Program Manager, at 408-277-5696.

Attachments 1, 2

Attachment 1
Current Municipal Code Provisions Related to FOG Control

Municipal Code Section	Summary
15.14.305	Defines dispersed and floatable grease.
15.14.535	Requires property owners to take measures to prevent accidental discharges, reduce objectionable characteristics, contents or rate of discharge into the sanitary sewer system to prevent damage or interference with the system.
15.14.540	Allows ESD Director to require any user to install wastewater monitoring facilities.
15.14.550	Prohibits the direct or indirect discharge into the sanitary sewer system of substances that tend to obstruct or injure the sewer system or interfere with its proper operation and maintenance.
15.14.565	Prohibits the discharge of liquid or waste containing fats, oil or grease in excess of 150 parts per million by weight.
15.16.625	Requires food waste from homes, restaurants and eating establishments to be processed through a grinder or garbage disposal before discharge into sewer system.
15.14.630	Establishes requirements for grease removal devices at businesses or establishments where grease may be discharged into sewer, including maintenance requirements and record keeping.

Attachment 2
Summary of Proposed Modification of Existing Code Provisions and
New Requirements on FSEs for implementation of BMPs

Application of Requirement	Summary of Proposed Changes
Food Service Facilities with an interceptor	Required to pump out, clean and maintain the interceptor on at least a quarterly basis, and any time more than 25% of the interceptor's functional capacity is taken up by solids and grease
Food Service Facilities with a grease trap	Required to pump out, clean and maintain the trap on a monthly basis
All Food Service Facilities	Required to collect yellow grease for recycling and prohibit the discharge of yellow grease to the sewer system
All Food Service Facilities	Required to keep pumping and maintenance records on site for a three year period
All Food Service Facilities	Required to install or upgrade a grease removal device where FOG has caused or contributed to a sanitary sewer overflow, or a 25% or greater loss of sewer line capacity, in a line downstream of the facility,
All Food Service Facilities	Allowed to apply for and obtain alternative schedule for pumping and cleaning interceptors and grease traps upon showing, that an alternative schedule can maintain at least 75% the interceptor or trap functional capacity, based on the FSE's historic, current and planned operations.
All Food Service Facilities	All food grinders shall be removed from an existing FSE upon: (i) operational change to FSE resulting in a required plan check process; or (ii) any remodeling or construction valued at \$500 or more.
Property owner with a shared interceptor by multiple food service establishments	Will be required to operate and maintain this interceptor.