



# MEMORANDUM

*Office of the Fire Marshal*

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**To:** Honorable Mayor and City Council Members  
**From:** Patricia Joki, Fire Marshal  
**Through:** Clare Frank, Fire Chief  
**Subject:** **Staff Report - Amendment to the Agreement between the County of Santa Clara and the City of Milpitas for Administration of the Unified Hazardous Waste and Hazardous Materials Management Program**  
**Date:** September 26, 2008

**Executive Summary:** In 1997 the City approved an agreement between Santa Clara County and the City for the implementation of certain State hazardous material and hazardous waste programs. This is the first amendment to the agreement and contains two items. The first alteration reflects changes in State law transferring responsibility for implementation of the Aboveground Petroleum Storage Act (APSA) from the State Water Quality Control Board to the County and includes grant monies for staff training to undertake business outreach and education activities, and second transfers responsibilities for the Single Fee System and Permit Consolidation from the City to the County.

**Background:** In 1994, the State legislature passed into law Senate Bill 1082, which mandated the consolidation of certain hazardous waste and hazardous material regulatory programs. In 1997, the City and County entered into an agreement to implement this law that met the needs of the City and County, and satisfied the State regulations.

The agreement provided for the City to continue implementing all the regulatory programs it traditionally provided and for the County to continue its traditional programs. In addition, the City continued to function as the primary point of contact for businesses within the City, to proceed with the single billing and collection activities for all affected regulatory programs (whether City or County directed), and, to conduct the single inspection program for certain small and moderate sized businesses covered by these programs.

**Discussion:** In 2007, Assembly Bill 1130 (Laird) transferred the responsibility for the implementation, enforcement and administration of the APSA program to Santa Clara County Environmental Health (Certified Unified Program Agency) from the State Water Quality Control Board, and, made consistent State and Federal requirements for aboveground tanks.

The APSA regulates facilities storing petroleum products in containers and tanks in amounts greater than 55 gallons. The law requires preparation of a spill prevention control and countermeasure plan and the payment of fees to cover costs incurred to administer the requirements including, but not limited to, inspections, enforcement and administrative costs<sup>1</sup>.

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<sup>1</sup> Health & Safety Code 25270.6(b)

The APSA requires the City as a Participating Agency to complete an aboveground storage tank training program and pass an examination developed by the secretary of Cal EPA, and perform facility inspections once every three years.

California Environmental Protection Agency (CalEPA) has established grant monies to reimburse agencies for their costs in training and business outreach activities to education business community in the APSA program. The County entered into a grant agreement with CalEPA, which provides \$ 91,069 in grant funds to the County for these activities from January 1, 2008 to December 31, 2009<sup>1</sup>. Pursuant to the proposed amendment under consideration, the funding allocation will be based on the County CUPA and PA's facility and tank inventories, with both entitled to a "prorate share of the grant allocation based on the size of their inventory and estimated time to implement the program." The County will notify the City of its share of the grant no later than December 31, 2008. The City has 20 facilities regulated by the APSA.

Currently, the Fire Department annually inspects these 20 sites while enforcing the California Fire Code regulations. Some requirements of the APSA are contained within the Fire Code<sup>2</sup>, and are reviewed during the annual visit. By including the remainder of the APSA program requirements into the annual inspection program, the Fire Department is keeping with the intent of the legislation<sup>3</sup> and subsequent agreement: to consolidate multiple State programs to reduce the impact on business of multiple fees, repetitious inspections and duplicative administrative requirements through the consolidation, coordination and consistency of hazardous material and hazardous waste requirements.

By using grant money and adjusting annual inspection fees, if necessary, the APSA program implementation would be staff and cost neutral. The other PA's within the County are amending their agreements to incorporate the APSA program too<sup>4</sup>.

For the past eleven years, the City and County have coordinated to implement the State programs by sharing inspection and enforcement data; for seven years the City has implemented the State mandated Single Fee System and Permit Consolidation program. The Single Fee System requires one invoice to be issued showing all State program fees. The coordination efforts for billing and fee collection have had a significant impact on City staff, particularly the Fire Department, as Fire staff must maintain County and State program element information and coordinate this with the Finance Department so that businesses are accurately billed, credited payment, and tracked for collection if necessary. Staff must reconcile revenue, and, remit payment to the County for both County and State fees collected.

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<sup>1</sup> After 2009, fees can be established by the agency to cover the costs of the program. Health & Safety Code 25270.6(b)

<sup>2</sup> The requirements for a hazardous Materials Business Plan meet those of a tank facility statement required by the APSA. HSC 25270.6(2)

<sup>3</sup> Senate Bill 1082 (Calderon) passed into law 1993

<sup>4</sup> Cities of San Jose, Mountain View, Palo Alto and those covered by Santa Clara County Fire District

Because of this impact City and County staff have evaluated a reversal to the existing process, and, recent changes in software now enable the County to electronically communicate with Fire Department's databases, enabling the County to obtain current information and continuously update its database with limited staff involvement. Accordingly, staff has developed a process and schedule for reimbursement. The Finance Department has been involved in all meetings, has reviewed the process and agrees this change would be more efficient. The alteration meets the State law for the Single Fee system.

Under this proposal questions on invoice amounts would continue to be directed to Fire Department staff and businesses would still receive one invoice, but would submit payment to the County. A business friendly improvement is that within the next year payment could be accepted by credit card, unlike the City's current system.

The City Attorney's Department has reviewed and approved the changes to the agreement.

**Recommendations:** Approve of the amendment to the agreement to incorporate the Aboveground Petroleum Storage Act and transfer responsibilities for the Single Fee System and Permit Consolidation program.

**FIRST AMENDMENT TO PARTICIPATING AGENCY AGREEMENT  
BETWEEN COUNTY OF SANTA CLARA AND CITY OF MILPITAS  
PROVIDING FOR ADMINISTRATION OF THE UNIFIED HAZARDOUS  
WASTE AND HAZARDOUS MATERIALS MANAGEMENT PROGRAM**

This is the First Amendment to the Participating Agency Agreement (“Agreement”) entered into on September 8, 1997, between the County of Santa Clara (“County”) and the City of Milpitas (“Agency” or “PA”) providing for administration of the Unified Hazardous Waste and Hazardous Materials Management Program (“Unified Program”).

**RECITALS**

WHEREAS, Assembly Bill 1130 (Laird) went into effect on January 1, 2008, and transferred the responsibility for the implementation, enforcement and administration of the Aboveground Petroleum Storage Act (APSA) from the State Water Quality Control Board to the Certified Unified Program Agencies (CUPAs); and

WHEREAS, the County has entered into an agreement with the State of California for implementation of the APSA which agreement provides \$91,069 in grant monies to the County to implement the APSA from January 1, 2008 to December 31, 2009, which funds need to be encumbered and expended by December 31, 2009; and

WHEREAS, the Agency as Participating Agency (“PA”) will implement, enforce and administer the APSA Program within its jurisdiction and will share appropriately in the grant funds allocated to the County along with other Participating Agencies; and

WHEREAS, in addition to adding the APSA Program to PA responsibilities and to allow for the distribution of grant funding, this First Amendment also transfers the responsibility for administering the collection of the single Unified Program fee and the issuance of the Consolidated Program Permit from the Agency to the County beginning November 1, 2008; and

WHEREAS, this First Amendment updates the Attachment A to the Agreement which indicates the Assignment of Unified Program Elements;

NOW, THEREFORE, AGENCY AND COUNTY AGREE AS FOLLOWS:

**1. PURPOSE**

The purpose of this First Amendment is to authorize Agency to implement, enforce and administer the APSA Program within its jurisdiction; to allocate a proportionate share of the grant funds for the APSA Program to Agency under the terms and

conditions stated herein; to transfer the responsibility for the administering the collection of the single Unified Program fee and the issuance of the Consolidated Program Permit from the Agency to the County beginning November 1, 2008; and to update the Assignment of Unified Program Elements, Attachment A, to the Agreement.

## **2. ASSIGNMENT OF UNIFIED PROGRAM ELEMENTS**

Attachment A to said Agreement, Assignment of Unified Program Elements, is amended in full as shown in the attachment hereto and is incorporated by reference herein.

## **3. APSA PROGRAM AND FUNDING ALLOCATION**

The APSA Program Grant Application approved by the California Environmental Protection Agency (Cal/EPA) detailing the County CUPA and the PA work plan for the implementation of the program is in Attachment B. The funding allocation will be based on the County CUPA and PAs' facility and tank inventories. County CUPA and the PAs will be entitled to a prorata share of the grant allocation based on the size of their inventory and estimated time to implement the program. County will notify Agency of their share of the grant no later than December 31, 2008.

The APSA implementation activities are from January 1, 2008 through December 31, 2009. Cal/EPA will be providing aboveground storage tank (AST) inspection training in March of 2009 for the County and PA's inspectors. Outreach at AST sites may be conducted but no AST inspection may be performed until the training is received. A final list of regulated businesses will be categorized by their total petroleum tank storage capacity and the list will be made available to Cal/EPA by December 1, 2008.

Beginning January 1, 2010, each regulated business will be assessed the APSA Program fee as part of the single fee invoice. CUPA and PA cannot assess or collect any of the APSA fees until January 2010. Commencing in January 2010 the APSA Program will be a Program Element included in the Single Fee System.

## **4. INVOICES AND REPORTING PERIOD FOR THE APSA PROGRAM**

Agency will bill County for incurred costs for the APSA Program from January 1, 2008 to December 31, 2009 including personnel services. Agency may only bill County for allowed costs up to the amount allocated for the Agency. County will not be liable for any costs incurred by the PA beyond the grant money awarded for PA activities by the APSA Grant, or not allowed by the terms of the Grant. A brief description of all actions taken and the work activities performed during the reporting period specified below shall be included along with the invoice. The personnel services shall be calculated by using sum of the salaries (hourly rate x work hours) multiplied by the employee benefits factor. Indirect costs may be charged but may

not exceed 35 percent. Invoices are due 30 days after the end of each reporting period indicated below. Invoices will be paid within 30 days following the receipt of the invoice after the execution of this First Amendment.

The reporting period for CUPA to submit reports to Cal/EPA for grant funds is:

- 1<sup>st</sup> Report for work performed from January 1, 2008 to June 30, 2008;
- 2<sup>nd</sup> Report for work performed from July 1, 2008 to December 31, 2008;
- 3<sup>rd</sup> Report for work performed from January 1, 2009 to June 30, 2009;
- 4<sup>th</sup> Report for work performed from July 1, 2009 to December 31, 2009.

Submission of the reports and invoices to Cal/EPA are as follow:

- 1<sup>st</sup> Report & Invoice due August 1, 2008,
- 2<sup>nd</sup> Report & Invoice due February 1, 2009,
- 3<sup>rd</sup> Report & Invoice due August 1, 2009,
- 4<sup>th</sup> Report & Invoice due March 1, 2010.

## **5. SINGLE FEE SYSTEM AND PERMIT CONSOLIDATION**

Section 5.0 of said Agreement, Single Fee System and Permit Consolidation, is amended in full effective November 1, 2008, as shown in Attachment C hereto and is incorporated by reference herein.

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ATTACHMENT A

First Amendment to Agreement Providing for Administration of the Unified Hazardous Waste  
and Hazardous Materials Management Program in Santa Clara County

**Assignment of Unified Program Elements**

**Jurisdiction: Milpitas**

<b>UNIFIED PROGRAM ELEMENT</b>	<b>COUNTY</b>	<b>CITY/AGENCY</b>
UST Permit Program	P, B/C, \$	I, E *
Aboveground Petroleum Storage Tank	P, B/C, \$	I, E *
Hazardous Materials Business Plan	P, B/C, \$	I, E *
UFC Hazardous Materials Inventory	P, B/C, \$	I, E *
Acutely Hazardous Materials CalARP	P, B/C, I, E, \$	--
Hazardous Waste Generator Program	P, B/C, I, E, \$	--
Onsite Hazardous Waste Treatment (CE, CA, PBR)	P, B/C, I, E, \$	--
Other Optional Program Elements (specify)		
CITY: Minimal storage sites (Short Form permits)	P, B/C	I, E (surcharge does not apply)
<b>UNIFIED PROGRAM FUNCTION</b>		
Single Point of Contact in City		Milpitas Fire Department 408-586-3365
Implementation date:		Effective January 1, 2008 except for B/C for Single Fee which transfers to County on November 1, 2008.

Key to Entries:

I = Inspection    P = Permit Issuance    E = Enforcement    B/C – Billing & Collection    \$ = Remit service charge to Cal/EPA

\* County may conduct Administrative Enforcement Orders in coordination with the City.

ATTACHMENT B

ABOVEGROUND PETROLEUM STORAGE ACT PROGRAM  
GRANT AGREEMENT  
BETWEEN THE  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
AND  
COUNTY OF SANTA CLARA  
CERTIFIED UNIFIED PROGRAM AGENCY

AGREEMENT NO. 07-687-550

State and Grantee hereby agree as follows:

1. PROVISIONS. The following statute authorizes the State to enter into this Grant Agreement:

A. California Health and Safety Code, division 20, chapter 6.67, section 25270.11

2. PURPOSE. The State shall provide a grant to and for the benefit of the Grantee for the purpose of allocating moneys from the Environmental Protection Trust Fund (EPTF) to the Certified Unified Program Agencies (CUPAs), in accordance with the formula and process determined by the Secretary for Environmental Protection (Secretary) in consultation with the CUPAs. Up to 80% of the grant is authorized by statute to be paid in advance and will be paid upon approval of the grant. The CUPAs shall expend those funds for the purpose of implementing the Aboveground Petroleum Storage Act (APSA).

3. GRANT AMOUNT. \$91,069.18

4. TERM OF AGREEMENT. The term of the Agreement shall begin on January 1, 2008, and end on March 1, 2010. The grant is for the implementation of the APSA Program from January 1, 2008, through December 31, 2009. ABSOLUTELY NO FUNDS MAY BE REQUESTED AFTER June 1, 2011.

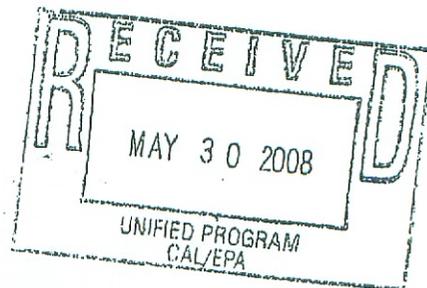
5. REPRESENTATIVES. Either party may change its Representative(s) upon written notice to the other party. The Representatives during the term of this Agreement will be:

California Environmental Protection Agency <b>GRANT MANAGER</b>
John Paine, Staff Environmental Scientist
1001 "I" Street, 4 <sup>th</sup> Floor
Sacramento, California 95814
Phone (916) 327-5092
Fax (916) 322-6555
jpaine@calepa.ca.gov

County of Santa Clara CUPA <b>GRANTEE</b>	<b>GRANT CONTACT</b> (if different from Project Director)
Name of Project Director, Title: Greg Van Wassenhove, Director	Name: Nicole Pullman
Street Address: 1553 Berger Drive	Street Address: 1553 Berger Drive, Suite 300
City, Zip: San Jose, 95112	City, Zip: San Jose, 95112
Phone: (408) 918-4646	Phone: (408) 918-1984
Fax: (408) 286-2460	Fax: (408) 280-6479
e-mail: greg.van.wassenhove@era.sccgov.org	e-mail: nicole.pullman@deh.sccgov.org

6. STANDARD AND SPECIAL PROVISIONS. The following exhibits are attached and made a part of this Agreement by this reference:

- Exhibit A REPORTING AND INVOICING PROVISIONS
- Exhibit B SPECIAL AND GENERAL PROVISIONS
- Exhibit C APSA GRANT APPLICATION



7. GRANTEE REPRESENTATIONS. The Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Grantee in its application, accompanying documents, and communications filed in support of its request for grant funding.

8. DEFINITIONS. The following defined terms apply throughout this Agreement:

- "APSA" means the Aboveground Petroleum Storage Act;
- "AST" means aboveground storage tank;
- "Cal/EPA" means the California Environmental Protection Agency;
- "CUPA" means the Certified Unified Program Agency;
- "EPTF" means the Environmental Protection Trust Fund;
- "Grantee" means the County of Santa Clara CUPA;
- "PA" means the Participating Agency;
- "Project" means the implementation of the Aboveground Petroleum Storage Act;
- "Secretary" means the Secretary of the California Environmental Protection Agency; and
- "State" means the State of California, including Cal/EPA.

IN WITNESS THEREOF, the parties have executed this Agreement on the dates set forth below.

By:

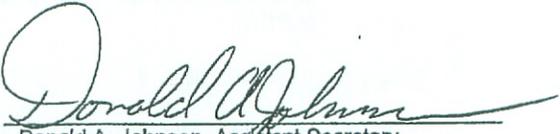
  
\_\_\_\_\_  
Grantee Signature (as authorized in the resolution)

Greg Van Wassenhove, Director  
Dept. of Agriculture & Env. Management  
\_\_\_\_\_  
Grantee Name, Title (Typed/Printed)

Date

5/27/08

By:

  
\_\_\_\_\_  
Donald A. Johnson, Assistant Secretary  
California Environmental Protection Agency

Date

30 May 2008

## EXHIBIT A

### REPORTING AND INVOICING PROVISIONS

#### A. REPORTING PROVISIONS

1. The Grantee shall prepare and submit APSA Program Implementation Status Reports, including invoices for documentation of expenditures, and an inventory of aboveground storage tank (AST) facilities to the Cal/EPA Grant Manager at the following address:

California Environmental Protection Agency  
Unified Program Section  
c/o John Paine, Staff Environmental Scientist  
1001 "I" Street, 4<sup>th</sup> Floor  
Sacramento, California 95814

2. Each report shall provide a brief description of all the actions taken and work activities performed during the reporting period. As necessary, the report shall also include a description of any problems encountered or potential issues identified that may affect the terms, conditions, provisions, or commitments contained under this Agreement.
3. Each report shall have a cover letter certified by the Project Director or the Grant Contact.
4. For purposes of the APSA Program Implementation Status Reports, the reporting period is as follows:
  - a. 1<sup>st</sup> Report = January 1, 2008, to June 30, 2008
  - b. 2<sup>nd</sup> Report = July 1, 2008, to December 31, 2008
  - c. 3<sup>rd</sup> Report = January 1, 2009, to June 30, 2009
  - d. Final Report = July 1, 2009, to December 31, 2009
5. Submission of the reports and invoices shall be in accordance with the following schedule:

a. 1 <sup>st</sup> Report & Invoice	<u>Due Date</u>	<b>August 1, 2008</b>
b. 2 <sup>nd</sup> Report & Invoice	<u>Due Date</u>	<b>February 1, 2009</b>
c. 3 <sup>rd</sup> Report & Invoice	<u>Due Date</u>	<b>August 1, 2009</b>
d. Final Report & Invoice	<u>Due Date</u>	<b>March 1, 2010</b>
6. For purposes of the inventory of AST facilities, the Grantee shall submit a revision of the Cal/EPA list of AST facilities for the CUPA's jurisdiction. The revision will serve to determine the final percentage share for each CUPA for any funds remaining from the Environmental Protection Trust Fund. The Grantee shall use the format provided in the Cal/EPA list of AST facilities.
7. The Grantee shall submit the revised inventory of AST facilities to Cal/EPA no later than **December 1, 2008**.

#### B. INVOICING PROVISIONS

1. Invoices shall be used to depict the expenditures incurred by the Grantee in implementation of the APSA Program from January 1, 2008, through December 31, 2009.
2. The invoice shall include all APSA Program implementation expenditures (direct and indirect) incurred by the Grantee during the reporting period.
3. The invoice shall be submitted as an attachment to the "Implementation Status Report," in accordance with the submission schedule provided above.
4. The Grantee shall use the invoice template format provided by Cal/EPA.

## EXHIBIT B

### SPECIAL AND GENERAL PROVISIONS

#### A. SPECIAL PROVISIONS

1. **AMENDMENTS:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on any of the parties.
2. **DISPUTES:** The Grantee shall continue with the responsibilities under this Agreement during any dispute. Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Cal/EPA Assistant Secretary for Local Programs or an authorized representative. The decision shall be in writing and a copy thereof furnished to the Representatives of this Agreement. The decision of the Assistant Secretary shall be final and conclusive unless, within thirty (30) calendar days after mailing of the decision to the Grantee, the Grantee furnishes a written appeal of the decision to the Secretary for Environmental Protection, with carbon copies furnished to the Cal/EPA Assistant Secretary for Local Programs and the Cal/EPA Grant Manager. The decision of the Secretary shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Grantee shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement. This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the Cal/EPA Assistant Secretary for Local Programs or the Secretary, on any question of law.
3. **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Agreement. The Grantee further agrees that it will maintain financial accounts in accordance with generally accepted accounting principles. Without limitation of the requirement to maintain financial management systems and accounting standards in accordance with generally accepted fiscal and accounting principles, the Grantee agrees to:
  - a. Establish a financial account(s) and accounting system(s) that will adequately and accurately depict all EPTF amounts received and expended during the term of this Agreement, including but not limited to:
    - i. EPTF advance allocation amounts, including interest earned;
    - ii. Additional EPTF allocations amounts;
    - iii. All APSA Program implementation expenditures (direct and indirect); and
    - iv. Running balance of EPTF allocations and expenditures.
4. **RECORDS MANAGEMENT:** Maintain all documentation and financial records, as may be necessary, for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations. Establish an official file for the EPTF allocation that shall adequately document all significant activities and actions relative to the implementation of the APSA Program, including but not limited to:
  - a. Fiscal accounting;
  - b. APSA Implementation Status Reports; and,
  - c. Invoicing and supporting documentation.
5. **TIMELINESS:** Time is of the essence in this Agreement. The Grantee shall proceed with APSA Program implementation in an expeditious manner. The Grantee shall prepare and submit all required reports and invoices as stipulated in this Agreement.

6. WITHHOLDING OF GRANT DISBURSEMENTS: Cal/EPA may withhold all or any portion of the EPTF allocations provided for by this Agreement in the event the Grantee:
  - a. Materially violates, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
  - b. Fails to maintain reasonable progress toward implementation of the APSA Program.

**B. GENERAL PROVISIONS**

1. ASSIGNMENT: This grant is not assignable by the Grantee, either in whole or in part, without the consent of the State.
2. AUDIT: Grantee agrees that the Cal/EPA, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the expenditure of allocated EPTF moneys and performance of this Agreement. The Grantee agrees to maintain such records for a possible audit for a minimum of three (3) years after term of the Agreement, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Grantee agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of this Agreement.
3. COMPUTER SOFTWARE: The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
4. CONFLICT OF INTEREST: The Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
5. GOVERNING LAW: This grant is governed by and shall be interpreted in accordance with the laws of the State of California.
6. INDEPENDENT ACTOR: The Grantee, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State.
7. NONDISCRIMINATION: During the performance of this Agreement, the Grantee and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, disability, sexual orientation, medical condition, marital status, age (over 40) or denial of family-care leave, medical-care leave, or pregnancy-disability leave. The Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment.
8. NO THIRD PARTY RIGHTS: The parties to this grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this grant Agreement, or of any duty, covenant, obligation or undertaking established herein.
9. TERMINATION: The State may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Grantee agrees, upon demand, to immediately return the remaining unused portion, if any, of the Grantee's allocation of the EPTF.
10. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement shall continue to have full force and effect and shall not be affected thereby.

**EXHIBIT C**

**APSA GRANT APPLICATION**

**ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM  
GRANT APPLICATION**

**1. Entity Information:**

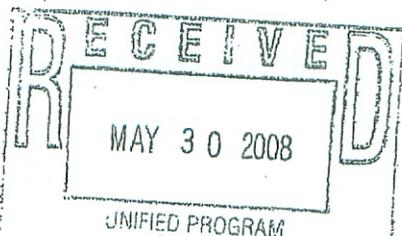
Name of Grantee: <b>County of Santa Clara</b>
Name of Project Director: <b>Greg Van Wassenhove</b>
Address: <b>1553 Berger Drive</b>
City, Zip: <b>San Jose, CA 95112</b>
Phone: <b>(408) 918-4646</b>
Fax: <b>(408) 286-2460</b>
E-Mail: <b>greg.van.wassenhove@era.sccgov.org</b>
Name of Grant Contact (if applicable): <b>Nicole Pullman</b>
Address: <b>1555 Berger Drive, Suite 300</b>
City, Zip: <b>San Jose, CA 95112</b>
Phone: <b>(408) 918-1984</b>
Fax: <b>(408) 280-6479</b>
E-Mail: <b>nicole.pullman@deh.sccgov.org</b>

**2. Grant Amount: \$91,069.18**

**3. Work plan: (Scope of Work)**

**Santa Clara County AST Implementation Plan**

The County of Santa Clara CUPA has five (5) Participating Agencies (PA). They are the Cities of Milpitas, Mountain View, Palo Alto and San Jose and the Santa Clara County Fire Department. Regulatory authority over the aboveground petroleum storage facilities have been assumed by the PAs and CUPA within each jurisdiction. The County of Santa Clara CUPA will incorporate the implementation of the Aboveground Petroleum Storage Act (APSA) Program into the existing Unified Program structure established for the County of Santa Clara. The current activities of verifying preparation of a Spill Prevention Control Countermeasure (SPCC) and referrals to the Regional Water Quality Control Board will be replaced with full implementation and administration of the APSA, beginning on January 1, 2008. The following work plan, and associated timelines for completion, address all aspects related to County of Santa Clara's planned APSA implementation activities from of the January 1, 2008, through December 31, 2009.



**ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM  
GRANT APPLICATION**

**A. Work Plan**

**I. Fee Accountability Program**

The County of Santa Clara CUPA and PAs will incorporate the APSA Program into the existing Unified Program (UP) Fee Accountability system, accounting for the fee schedule, the actual amount billed, and the revenue collected. In addition to the Fee Accountability system, the Department will request of the Board approval for an annual fee increase based upon the Consumer Price Index (CPI-U) as outlined by County Ordinance. The Fee Accountability program is designed to encourage more efficient and cost-effective operation of the program for which the single fee is assessed. For the APSA Program, the Fee Accountability program will be instituted before incorporating it into the single fee system. The County of Santa Clara CUPA and PA's Fee Accountability program includes the following elements:

- o Accounting for: the fee schedule, the actual amount billed, and the revenue collected;
- o Discrete billable services, categorized as general;
- o Staff work hours required to implement the APSA program;
- o Direct program expenses (including durable and disposable equipment);
- o Indirect program expenses (including overhead for facilities and administrative functions);
- o The number of businesses regulated under the APSA Program in Santa Clara County within CUPA and PA's jurisdiction; and,
- o The Quantity and range of services provided, including frequency of inspection.

The incorporation of the APSA Program into the Unified Program Fee Accountability System and Program will be accomplished by January 31, 2009.

**II. Unified Program Single Fee System**

Prior to January 1, 2010, the County of Santa Clara Board of Supervisors and the PAs governing bodies will adopt the APSA program fee as part of the UP Single Fee system in the County of Santa Clara CUPA. The APSA Program fee will be established at a level sufficient to pay the necessary and reasonable costs incurred by the CUPA and PAs in administering the APSA Program, including, but not limited to, inspections, enforcement, and administrative costs.

By January 1, 2010, the County of Santa Clara CUPA's "UP Single Fee Invoice" will be amended to include a line item for the APSA Program fee. Fees for non-recurring APSA Program activities of the CUPA such as, but not limited to, the fee for an initial permit or special inspection, may be billed separately from the "UP Single Fee Invoice." Beginning in January 2010, each regulated business will be assessed the APSA Program fee as part of the single fee invoice.

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The County of Santa Clara CUPA UP fee schedules will be available to interested parties on the county Web Site or upon request to the CUPA.

The Santa Clara County CUPA's dispute resolution procedures will be amended to incorporate the APSA Program, which will guide the resolution of fee disputes that arise between the businesses regulated under the APSA Program element.

**III. Staffing Plan**

The County of Santa Clara CUPA and PAs do not believe it is necessary to add new permanent, or contract staff, to accomplish the goals of this new program element. In order to confirm that existing staff are capable of incorporating new APSA tasks into the CUPA program the following will be considered:

- Number of verified facilities regulated under the APSA
- Time necessary to evaluate documentation applicable to APSA compliance
- Staff time to provide quality inspection and enforcement functions
- Staff training requirements as determined by CalEPA
- Data maintenance and reporting requirements
- Accounting and Clerical Support
- Supervision and management needs

The staffing assessment will be completed by January 31, 2009

**IV. Identification of ASAP Regulated Facilities**

CalEPA provided a list of known APSA facilities within our jurisdiction. This list was updated, returned to CalEPA and now appears to be reasonably complete. To verify the accuracy of the facility list, each facility will be contacted in order to obtain appropriate information. If necessary, inspectors will conduct facility evaluations.

A complete, verified list of facilities, that handles petroleum materials in amounts equal to or in excess of 1,320 gallons, will be compiled. Facilities will be categorized by their total petroleum tank storage capacity.

A final list will be made available to CalEPA by December 1, 2008.

**V. Staff Training Plan**

All CUPA and PA staff will complete the prescribed APSA training program as established by CalEPA. Staff will successfully pass the required examination prior to conducting field inspections. In-house refresher training will be provided annually. Classes provided at the annual CUPA Conference will also be attended.

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All staff will have completed training by October 31, 2008

**VI. Inspection and Compliance Plan**

The County of Santa Clara CUPA and PAs will ensure all regulated facilities subject to the APSA program are in compliance with all requirements: This will include SPCC Plan preparation and implementation, annual submission of facility statements and fees and preparation and distribution of spill notifications. The County of Santa Clara CUPA and PAs will meet the inspection frequency established by the new law/regulation. An inspection and compliance plan will be developed for regulated tank facilities with storage capacities between 1,320 and 9,999 gallons. Under the CUPA and PA's work plan, combined routine (compliance) inspections will be conducted which will include a visual inspection. Those facilities with capacities equal to or greater than 10,000 will be inspected annually to ensure that they are in full compliance with U.S. Code of Federal Regulations, Title 40, Part 112. The inspections will include a visual inspection of all tanks as noted above.

All inspections will be documented on an inspection report form. Violations will be noted on the inspection report form. Violations will be appropriately categorized as minor or significant. Facility operators will be required to correct minor violations within 30 days. Significant violations necessitate administrative or civil enforcement action.

The inspection / enforcement plan will be completed by September 30, 2008

**VII. UP Administrative Procedures**

The County of Santa Clara CUPA and PA's administrative policy and procedures will be reviewed and updated, as necessary to incorporate all relevant aspects of the APSA Program. All revisions will be completed by December 31, 2008.

**VIII. Regulated Business Outreach Activities**

The Santa Clara County CUPA and PAs will develop educational and guidance materials for those businesses regulated under the APSA Program. The educational and guidance materials may include fact sheets and guidance documents to assist regulated businesses in complying with all requirements of the APSA Program. This material will be developed prior to September 2008. In addition to these educational and guidance materials, the County of Santa Clara CUPA will make available on the Department of Environmental Health website prior to September 2008, the APSA Program requirements. Requirements will address specific issues or appropriate methods of compliance which may be accessed by the regulated businesses.

**ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM  
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**IX. Other Implementation Activities**

Within the County of Santa Clara there are four CUPAs (City of Gilroy CUPA, City of Santa Clara CUPA, City of Sunnyvale CUPA and the County of Santa Clara CUPA) within the jurisdictional boundaries of the county. The Santa Clara County CUPA has five Participating Agencies (PA): They are the Cities of Milpitas, Mountain View, Palo Alto and San Jose and the Santa Clara County Fire Department. Regulatory authority over the aboveground petroleum storage facilities have been assumed by the PAs and CUPA within each jurisdiction. The County of Santa Clara CUPA's jurisdiction include Los Altos, Los Altos Hills, Monte Sereno, Saratoga and unincorporated territory. Santa Clara County Fire Department's jurisdiction include Campbell, Cupertino, Los Gatos and Morgan Hill. Santa Clara County CUPA and PAs will coordinate activities and responsibilities in the implementation of APSA Program. CUPA/PAs agreements will be reviewed. Necessary amendments to the CUPA/PAs agreements are expected to be completed by December 1, 2009. The PAs will submit to CUPA a list of regulated tank facilities which will be compiled as one (1) list and submitted to Cal/EPA by December 1, 2008 by CUPA. Santa Clara CUPA assumes responsibilities as a pass through agency for financial arrangements for the grant activities under the scope of work and will reimburse the PAs for expenditures of their direct program costs. The County of Santa Clara CUPA will be performing the reporting requirements to CalEPA under this grant.

**B. Implementation Timeline**

Activity	2008				2009				2010
	Jan - Mar	Apr - Jun	Jul - Sept	Oct - Dec	Jan - Mar	Apr - Jun	Jul - Sept	Oct - Dec	Jan - Mar
Fee Accountability					X				
Single Fee								X	X
Staffing	X								
Regulated Businesses				X					
Training			X						
Procedures				X					
Outreach				X					
Inspections									X

*Training to start  
March 09*

**ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM  
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**4. Projected Budget:**

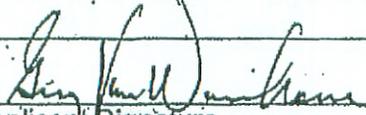
Direct Program Costs:

*Personnel Services	143.5 hours @ \$72.46	\$ 10,398.01
Operating Expenses (prorated for project)		\$
Travel Expenses		
Supplies/Materials (less than \$5,000 per item)		
Equipment (\$5,000 or more per item)		\$
Professional/Consultant Services (Participating Agencies)		\$ 78,741.30
Indirect Cost (18.56%)(Rate applied to Personnel Services only)		\$ 1,929.87
<b>TOTAL</b>		<b>\$ 91,069.18</b>

\*Salary is based on hourly rate and includes fringe benefits.

**5. CERTIFICATION**

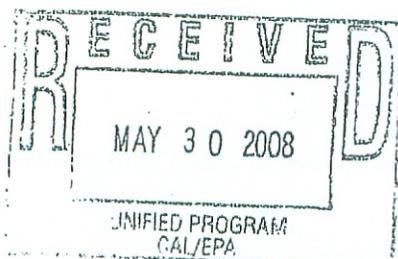
I certify under penalty of perjury that the information I have entered on this application is true and complete to the best of my knowledge and that I am an employee of the applicant authorized to submit the application on behalf of the applicant. I further understand that any false, incomplete, or incorrect statements may result in the disqualification of this application. By signing this application, I waive any and all rights to privacy and confidentiality of the proposal on behalf of the applicant, to the extent provided in this program.

 Applicant Signature	4/27/08 Date
--	-----------------

Greg Van Wassenhove

Printed Name of Applicant

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APSA GRANT APPLICATION - February 2008



# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



LINDA S. ADAMS  
SECRETARY FOR  
ENVIRONMENTAL  
PROTECTION

1001 I STREET, SACRAMENTO, CALIFORNIA 95814 • P.O. BOX 2815, SACRAMENTO, CALIFORNIA 95812-2815  
(916) 323-2514 • (916) 324-0908 FAX • [WWW.CALEPA.CA.GOV](http://WWW.CALEPA.CA.GOV)

ARNOLD  
SCHWARZENEGGER  
GOVERNOR

June 4, 2008

Certified Mail: 7003 1680 0000 6167 6360

Mr. Greg Van Wassenhove, Director  
Santa Clara County  
Department of Agriculture and Environmental Management  
1553 Berger Drive  
San Jose, California 95112

Dear Mr. Van Wassenhove:

The California Environmental Protection Agency (Cal/EPA) has received and signed the Aboveground Petroleum Storage Act (APSA) Grant Agreement for the County of Santa Clara Department of Environmental Health Certified Unified Program Agency (CUPA). Please find the enclosed copy of the signed APSA Grant Agreement for your records. The CUPA's initial advance check should be received in a few weeks.

If you need further assistance or have questions regarding the APSA grant, you may contact John Paine at (916) 327-5092 or [jpaine@calepa.ca.gov](mailto:jpaine@calepa.ca.gov).

Sincerely,

Jim Bohon, Manager  
Unified Program  
California Environmental Protection Agency

Enclosure

cc: Ms. Nicole Pullman (Sent via email)  
Santa Clara County Department of Environmental Health  
1553 Berger Drive, Suite 300  
San Jose, California 95112

## ATTACHMENT C

### 5.0 Single Fee System and Permit Consolidation

- 5.1 **Single Fee system Implementation.** County and Agency are implementing a Single Fee System in accordance with Health and Safety Code (HSC) § 25404(d) and 25404.5, California Code of Regulations, Title 27 (27 CCR) § 15210.
- 5.2 **Development of Single Fee System.** Agency has had a Single Fee/Permit system in place for all Unified Program elements and service fees since January 2001. Agency is turning over to the County the responsibility to administer the collection of the single Unified Program fee.
- 5.3 **County Collection of Single Fee.** Effective November 1, 2008, County shall administer the collection of the single Unified Program fee. A list of the facilities and the appropriate fees for each Program Element being implemented by Agency has been provided to County using mutually agreeable electronic transfer protocols where appropriate. Upon request by County, Agency shall make available for County review, all applicable records regarding Agency's fees, collections, transfers and retentions. County shall be entitled to recover its cost of implementing the single fee system through Permit Fees for the Programs Elements being implemented by County, or through a Unified Program administrative fee which shall be incorporated into the single fee system.
- 5.4 **Issuance of Consolidated Program Permit.** The single fee to be issued to each regulated facility shall include a summary sheet itemizing fees associated with each Program Element, including the annual State service charge. Each facility shall pay County all fees for Program Elements delineated in the single fee billing statement within thirty (30) days of the invoice date, unless County and Agency have mutually agreed to adoption of a deferred or installment payment plan as part of development of the unified fee system. Upon receipt of full payment, a consolidated permit may be issued to the facility by County.
- 5.5 **Disbursement of Fees.** County shall transmit all funds collected for Agency, to Agency. on the following schedule: December, January, February, March and quarterly thereafter Each transmittal of funds to Agency shall include an itemized listing of Agency's GL account number, business name and site address, the total amount due, the fees that were collected and any balance due. Partial payments shall be apportioned to the County, Agency and the State based on the proportionate amount due to each agency.

- 5.6 **Collection of Delinquent Fees.** County will transmit a list of those facilities that have failed to fully pay Agency fees within sixty (60) days after the fees have become delinquent. Agency shall be responsible for collecting any delinquent Agency fees, including any late payment penalty imposed by the Agency. County shall be responsible for collecting any delinquent County fees, including any late payment penalty imposed by County.
- 5.7 **County Remission of State Surcharge.** County will continue to transmit to the Secretary all collected State surcharge revenues within sixty (60) days of the end of each State fiscal quarter in which the revenue is collected.
- 5.8 **Non-Recurring Fees.** Each of the Parties shall be entitled to continue independent billing and collection of all non-recurring fees, including but not limited to fees associated with additional inspection costs, one-time permits, or new businesses or facilities.
- 5.9 **Fee Collection since Implementation of Single Fee System.** Agency has been collecting fees since January 2001 and effective November 1, 2008 County will begin collection of all fees billed under the Single Fee System.
- 5.10 **Fee Accountability program.** Prior to implementation of the Single Fee System, County and Agency reviewed their existing fee accountability programs and made necessary modifications to comply with HSC §25404.5(c) and 27 CCR §.15210(b). County and Agency shall review and update their fee accountability programs as necessary to maintain compliance with unified program agency requirements
- 5.11 **Authorization of Single Fee.** This First Amendment constitutes authorization for the County as of November 1, 2008, to collect the State surcharge and any amount(s) established as Unified Program fees, including any Unified Program Administrative Fee(s), adopted by ordinance or resolution of the County Board of Supervisors or Agency City Council.