



MEMORANDUM

CITY MANAGER'S OFFICE

To: Mayor Esteves and City Council

From: Tom Williams, City Manager

By: Greg Armendariz, Public Works Director/City Engineer *[Signature]*
 Kathleen Phalen, Utility Engineer *[Signature]*

Subject: April Odor Report

Date: April 25, 2011

This memorandum summarizes odor complaints received through the Bay Area Air Quality Management District (BAAQMD) rapid notification system from March 31, 2011 through April 22, 2011 and provides information about odor reduction actions. The following exhibits are attached to this report:

- Exhibit 1: October 2003 – April 22, 2011 Odor Complaint Summary
- Exhibit 2: March BAAQMD report of odor complaints
- Exhibit 3: Odor Complaint Locations (March 31 to April 22, 2011) Map
- Exhibit 4: April 15, 2011 Memorandum to San Jose Mayor and City Council

1. Benefits of Calling the BAAQMD Rapid Notification Odor Complaint Hotline

Council asked for a summary of the benefits to the community from reporting odor complaints to the Bay Area Air Quality Management District. There is a concern that the process may be of limited value since BAAQMD confirms relatively few of the sources of these complaints. However, the benefit of submitting complaints is not limited to obtaining BAAQMD confirmations, but rather in keeping public pressure on the odor sources to improve their performance. Neither San Jose nor Allied Waste, owners of the two primary sources, wants to be perceived as a bad neighbor (as further described in items 4 and 5 below). The position of the City Council of San Jose is that the regional odor problem needs to be addressed in an accelerated manner to promote public good, allow economic development, protect San Jose from legal action, and to have San Jose be a good neighbor to other jurisdictions. This is a tremendous success for Milpitas because San Jose's leadership and assistance will be fundamental to accomplishing permanent regional odor reduction. In addition to operating the Water Pollution Control Plant, San Jose permits, inspects, and controls the operations of the Allied Waste Newby Island facility and is now demonstrably motivated to bring both facilities into good neighbor status.

The BAAQMD Rapid Notification Hotline is a key component of the City's Odor Action Plan which depends on stakeholder cooperation. As such, it serves two important purposes:

1. It gives the odor generators rapid feedback of an odor impact in the community so that they can check their operations and, as feasible, halt their odor-causing activities until

meteorological conditions improve. This rapid feedback serves to emphasize the importance of continuous odor control if the facilities want to be perceived to be good neighbors. During stakeholder meetings, sources identified real-time information to be the most effective way to help them control odors from their sites since active reporting allows them to potentially correlate "live" odor events to specific plant/facility operations.

2. It gives city staff and staff of the San Jose Local Enforcement Agency rapid feedback that odors are being experienced, and triggers staff inquiries to the generators as to the cause and correction of these odors. This serves to emphasize the importance of continuous odor control and the duty that the generators have to be good neighbors.

The following is an example of the rapid notification email BAAQMD sends to all stakeholders including the generators, San Jose Local Enforcement Agency, and city staff.

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To:          MILPITAS ODOR
Subject:     Milpitas_Complaint 209120 received by BAAQMD
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COMPLAINT NO: 209120
ALLEGED SITE: A9013 International Disposal Corporation of Calif
                1601 W Dixon Landing Rd, Milpitas, CA 95035
TYPE: Odor
DESCRIPTION: compost
OCCURRENCE: 04/21/11 07:45
GENERAL LOCATION: 100 BEAUMERE WAY
                Milpitas CA95035
RECEIVED: 04/21/11 07:51
ONGOING: Yes
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----- Sent by automatic email system. Do not reply -----
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On October 7, 2003, the City Council held a public hearing to receive testimony about chronic odor episodes. Stakeholder attendance included members of the community, regulatory agencies, and odor-generating facilities. Council directed staff to work with stakeholders to develop and implement an odor action plan. The objective was to reduce odor incidents by obtaining the cooperation and coordination of stakeholders and by simplifying the complaint reporting process. Staff prepared the Odor Action Plan according to the following principles:

- Centralized Complaints Handling. Publicizing use of the BAAQMD Hotline (1-800-334-6367) would reduce confusion about how to submit odor complaints.
- Rapid Notification of Odor. Quick feedback to potential sources about odor events would allow them to adjust or stop their odor generating processes. Sources identified this component as the most effective way to help them control odors from their sites.
- Prevention/Oversight Accountability. Development and implementation of best management practices at each potential source would yield consistent, responsive and effective odor control.

The reason the City adopted a strategy of urging these sources to be “good neighbors” is because the City has no enforcement authority over facilities outside its city limits. The regulatory agencies with enforcement authority are the San Jose Local Enforcement Agency for composting operations, and BAAQMD for all other operations. However, these agencies do not have direct enforcement authority for odors. There are no numerical standards for odors or even qualitative definitions of odors that are forbidden by law.

The limited authority BAAQMD possesses is to make a finding of public nuisance caused by odor. Therefore, a third benefit of complaints to BAAQMD is that it gives data for BAAQMD to begin a verification effort that may culminate in a finding of public nuisance and issuance of a notice of violation. Reports to BAAQMD are anonymous and cannot be used by the City or the San Jose Local Enforcement Agency to bring legal action against the odor sources.

Public outreach to advice of the BAAQMD complaint number has included the following:

- Message on utility bills
- Postcard mail out to residences
- Flyers placed at public counters
- Message on City website
- Public Service Announcements on City Media (1510AM, KMLP15 – TV)
- Advertisements in “City Information Pages”
- Flyers at city-sponsored events

2. Number of Citations issued by BAAQMD from 2003 to present

Since 2003, the Air District reports that it issued nine notices of violation (NOV) to the San Jose/Santa Clara Water Pollution Control Plant; but only one, dated October 21, 2004, was for odor-related public nuisance which resulted in a \$3,000 fine. The Air District issued nine NOVs to Allied Waste Services, but again only one, dated November 10, 2004, was for an odor-related public nuisance which resulted in a \$1,000 fine. Public nuisance penalties are generally in the range of \$1,000 to \$3,000. The amounts can increase depending upon the frequency of negligence and/or proof of negligence with intent. The latter is hard to prove.

3. Pilot Program - City of Milpitas Odor Reporting Hotline / Website

As noted in Section 1, the City’s purpose in approving the Odor Action Plan and publicizing the BAAQMD odor complaint line was to work cooperatively with the odor generators to urge them be “good neighbors” by reducing odors. However, should the City decide to change strategy and pursue legal action against the odor sources, it cannot rely on the BAAQMD data. Since BAAQMD promises anonymity to complainants, it will not release its full data set to the City. The City Attorney’s Office advises that if the City should decide to pursue legal action, it will need its own record of odor impacts. To this purpose, the staff has developed both a city voicemail line and city web complaint form to document odor impacts to the community. Upon Council approval, staff will activate these complaint lines for a six-month pilot program to allow the public to submit odor complaints through the City’s website or to a City hotline number. The phone number and web line will be posted on the City’s web-site.

A pilot link at www.ci.milpitas.ca.gov/government/engineering/odor_report.asp shows the proposed form and content of the complaint form. Requested information includes key dates, odor description and contact information. A hotline number (408/586-2727) has also been established which requests similar information.

4. City of San Jose Plant Master Plan and Regional Odor Study

On April 19, 2011, the San Jose City Council approved preparation of an Environmental Impact Report for the Plant Master Plan Preferred Alternative. Fourteen members of the public provided comments on this item, four were urging prompt elimination of odors. The preferred alternative consists of long-term wastewater treatment capital projects, including odor control projects and changes to the Plant's biosolids drying, filtration and disinfection processes and change in use of the Plant lands to add a mix of recreation, environmental, and economic development uses. The draft document will take two years to prepare. The complete council agenda item is on the San Jose website at: <http://www.sanjoseca.gov/clerk/Agenda/20110419/20110419a.pdf>. A summary of the odor-related discussion in this packet is as follows:

- *4/15/11 Memorandum from Mayor Reed, Vice Mayor Nguyen & Councilmembers Chu, Rocha & Liccardo to the San Jose Mayor and City Council*

San Jose Council incorporated the recommendations of this short, but important memorandum, attached as Exhibit 4, into its action. These include providing an analysis of the feasibility of implementing odor mitigation work in three to seven years at a May 2011 San Jose Council meeting. The memo states:

Odor has been, and will continue to be an issue in the North San Jose area, with the Plant acting as a potential contributor. In the interest of furthering the greatest amount of public good, promoting our own economic development opportunities in the region, protecting the City from legal action, and generally acting as a good neighbor to the other jurisdictions, it's imperative that odor be addressed in an accelerated manner...

In order for us to proceed with our planning, our Environmental Impact Review also needs to be sound in order to avoid any legal challenges from neighboring jurisdictions or private interests with regard to the City's commitment to timely mitigation. The best way to protect our investment, tax dollars, and resources is to proceed with clear and purposeful direction on this issue. Staff is planning to present information on alternative odor mitigation delivery models to Council in May. This direction will clarify that discussion by providing a measurable alternative to the current proposal of completion in 11-15 years.

- *Selection of Preferred Alternative – 3/24/11 Staff Report to T & E Committee*

Staff developed the Draft Recommended Alternative with stakeholder input including the Milpitas Guiding Principals for San Jose /Santa Clara Water Pollution Control Plant Master Plan Reconstruction and Land Use Alternatives. The goals and objectives of the Plant Master Plan include reduce visual, noise, and odor impacts from Plant operation neighboring land uses to the extent practicable. The Preferred Technical Alternative

proposes new, enclosed mechanical dewatering and drying processes for the biosolids that will minimize odors and result in a smaller footprint. In addition to increased odor control, the new processes prepare the Plant for future greenhouse gas regulations and provide alternate biosolids reuse options, needed when Newby Island can no longer accept the biosolids as alternate daily cover. The cost for all biosolids improvements are estimated at \$530 million with \$230 million to be expended by 2025 to transition from the open-air biosolids lagoons and drying beds. Milpitas' share of this cost is 7.36% based on its share of capacity rights. This is equivalent to \$39 million over 30 years, with \$16.9 million expended by 2025. The Preferred Alternative also includes project to further reduce odors from the headwork's, primary, and thickening processes at a cost of \$70 million.

- *Draft Plant master Plan Executive Summary – April 2011*

The Plant Master Plan incorporates odor control into its primary goals and objectives, which results in odor control discussion as a fundamental purpose and evaluation criteria for all aspects of the Plan. The following summary highlights how odor control is addressed in the Plant Master Plan.

1. Purpose of the Master Plan - The Plant Master Plan development was a three-year process to develop a planning document to guide improvements over the next 30 years.
2. Plant Master Plan Process – The process had five phases: 1) defining the major goals, 2) brainstorming solutions, 3) developing viable alternatives, 4) evaluating alternatives, and 5) developing the recommended program. The “fatal flaw” technical screening criteria for the alternatives include being a good neighbor and providing public value, and ability to mitigate odor impacts. The Master Plan process was informed by internal stakeholders, community meetings, a community advisory group, technical advisory group, and coordinating with State and federal agencies.
3. Goals and Objectives – Fifteen objectives guided development of the preferred alternatives:
 - Reduce the footprint of the existing biosolids treatment area; and
 - Reduce visual, noise, and odor impacts from Plant operation to neighboring land uses to the extent practicable.
4. Anticipated Future Needs/Project Triggers – These are infrastructure critical condition, regulatory requirements, economic benefit, improvement performance, and policy decision. Elimination of odor is considered a policy direction.
5. Major Benefits of the Plan – These include addressing aging infrastructure; improving water quality, turning wastewater into usable energy, byproducts, and recycled water; and addresses odors to be a good neighbor. On this last point, the plan states that to reduce odors in the region, the Plant has both changed its operation practices and is also planning to participate in a regional odor study with neighboring facilities. The Plan proposes covering and ventilating selected process tanks as they are repaired or replaced and to treat the air to further reduce odors. The most significant odor control modification will include converting the lagoons and drying beds to mechanical dewatering and drying. As

a result, the biosolids processing area reduces from approximately 500 to 200 acres. This is the largest individual project over the next 30 years, and will enable the proposed land uses.

6. Implementation Plan/Costs – The Plan proposes a \$2.2 billion, 30-year capital improvement program that includes improvements to every process area of the Plant, adds odor control to impacted process, relocates and reduces the biosolids dewater and drying process...[Costs] will be funded by ratepayers through a combination of rate increases and bonds. Projected rate increases will be determined by each partner agency based on the own rate structure requirements. Bonding options will also be analyzed.

7. Land Use Alternatives – Land uses include areas for economic development, recreation, environmental restoration and enhancements. The first two uses depend on satisfactory odor control.

8. Economic Benefits – Revenues at buildout should off-set increased operating costs, including those for mechanical dewatering.

9. A Sustainable Plan – The Preferred Alternative reduces odor emission sources.

- *Regional Odor Study*

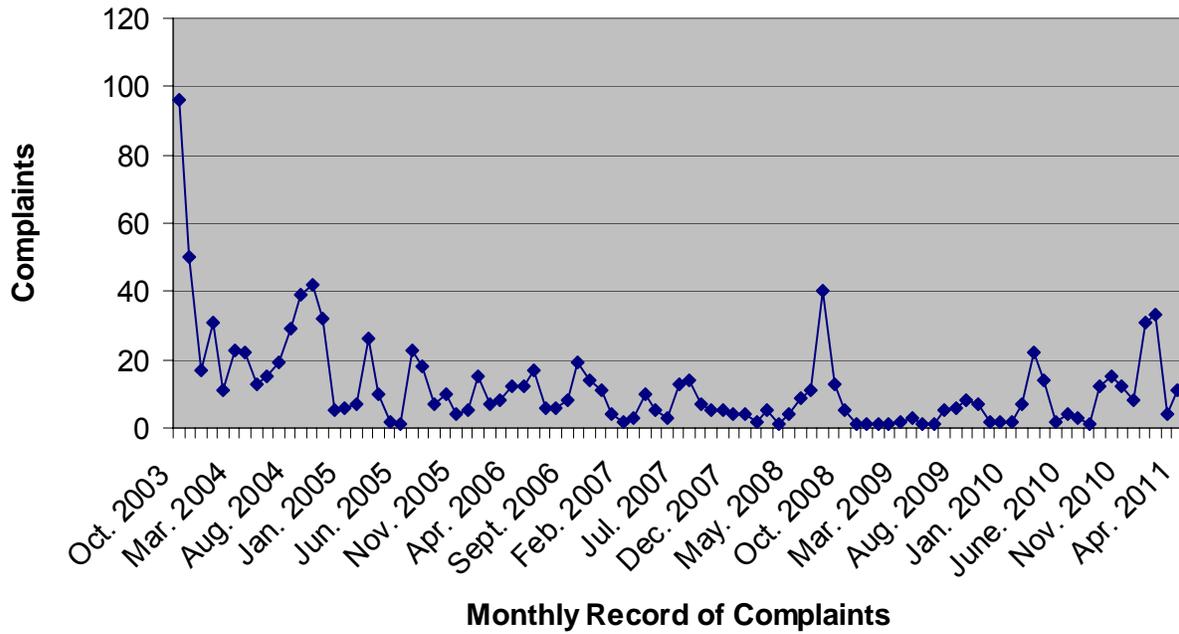
In December 2011, San Jose City Council directed its staff to conduct a regional odor study to identify and prioritize for elimination odors impacting Milpitas and North San Jose. San Jose staff and consultants conducted site visits of a number of regional facilities and concluded that the primary sources are the Plant and the Newby Island facilities. In May, San Jose staff is directed to bring a status report to its council on the efforts to prioritize the identification of regional sources and planned activities to further identify and quantify the impacts of the sources.

5. Allied Waste Newby Landfill and Resource Recovery Park

Allied reports that it continues the following best management practices:

- Operates extensive fixed and mobile odor control devices,
- Operates gas control system,
- Minimizes landfill working face and cover every night,
- Makes operational changes on compost as needed based on weather conditions,
- Keeps biosolids used as alternate daily cover stockpiled near face and used only as needed,
- Monitors wind speed and direction and makes associated operational changes as needed,
- Responds to odor complaints,
- Works with BAAQMD on any issues or concerns,
- Conducts outreach with community as needed,
- Working with San Jose consultants on regional odor study,
- Working with Milpitas staff to develop long-term odor control agreement,
- Committed to doing all we can to minimize and control odors and be a good neighbor.

Exhibit 1: October 2003 - April 22, 2011 Odor Complaint Summary

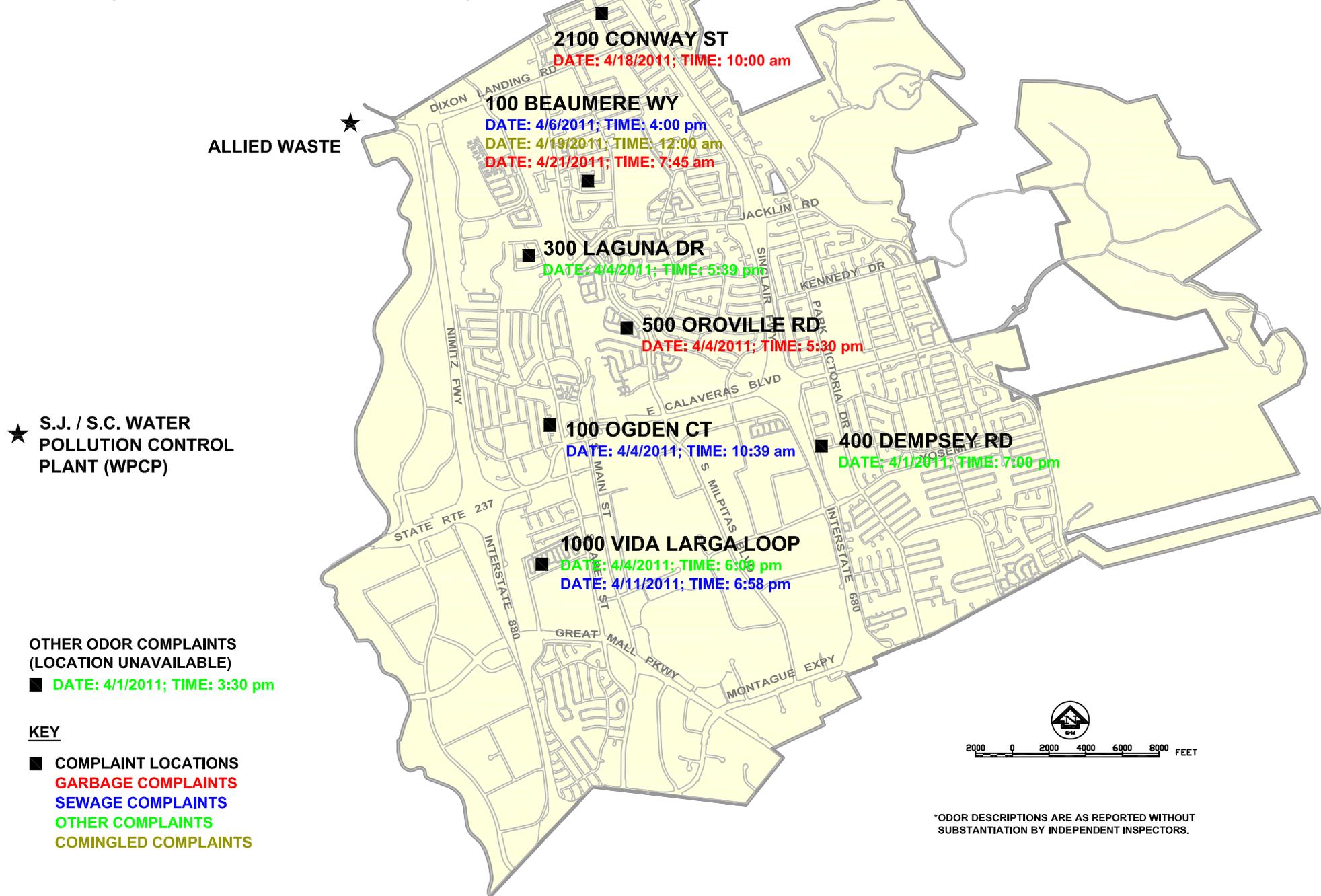


Milpitas Complaints

Received by BAAQMD From 03/01/20 to 03/31/2011

<u>Complaint#</u>	<u>Received</u>	<u>Occured</u>	<u>Alleged Source</u>	<u>Description</u>	<u>General Location</u>	<u>Status</u>	<u>Attributed Site#</u>	<u>Referral</u>	<u>Comments</u>
208905	3/12/11 23:40	3/12/11 21:00	BFI - The Recyclery	garbage	100 RAIN WALK	Unconfirmed			
208947	3/21/11 9:32	3/21/11 9:00	NONE	garbage	600 SANTA RITA DR	Unconfirmed			
208973	3/28/11 19:26	3/28/11 19:25	NONE	TRASH	100 RAIN WALK	Unconfirmed			
208986	3/30/11 16:59	3/30/11 0:00	NONE	bad sewer	500 OROVILLE RD	Pending			
208988	3/30/11 19:01	3/30/11 17:00	San Jose Water Treatment Plant	sewage	200 CALAVERAS BLVD	Unconfirmed			
208989	3/30/11 20:29	3/30/11 20:25	NONE	sewage/garbage	1000 MATTERHORN CT	Unconfirmed			
208995	3/31/11 13:20	3/31/11 8:00	BFI - The Recyclery	rotten garbage	600 KEVENAIRE DR	Unconfirmed			
Total:	7								

EXHIBIT 3: ODOR COMPLAINT LOCATIONS* (MARCH 31 - APRIL 22, 2011)



*ODOR DESCRIPTIONS ARE AS REPORTED WITHOUT SUBSTANTIATION BY INDEPENDENT INSPECTORS.

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Mayor Chuck Reed
Vice Mayor Nguyen
Councilmember Chu
Councilmember Rocha
Councilmember Liccardo

SUBJECT: PLANT MASTER PLAN -
SELECTION OF PREFERRED
ALTERNATIVE

DATE: April 15, 2011

Approved

Chuck Reed *Nguyen* Date *4/15/11*
Chu *Rocha* *Liccardo*

RECOMMENDATIONS

Approve staff recommendations with the following modifications:

- A. During the May 2011 Council update, provide an analysis of the feasibility of implementing odor mitigation work in three to seven years.
- B. Direct staff to return to the T&E Committee with regular project status updates.

BACKGROUND

The Plant Master Plan and rebuild is a complex undertaking, which staff has done an excellent job coordinating. The process has allowed for extensive community participation and input.

Odor has been, and will continue to be an issue in the North San Jose area, with the Plant acting as a potential contributor. In the interest of furthering the greatest amount of public good, promoting our own economic development opportunities in the region, protecting the City from legal action, and generally acting as a good neighbor to other jurisdictions, it's imperative that odor be addressed in an accelerated manner. We also have an opportunity to implement a public works project on a timeline that would provide for much needed investment in our local economy and job market.

In order for us to proceed with our planning, our Environmental Impact Review also needs to be sound in order to avoid any legal challenges from neighboring jurisdictions or private interests with regard to the City's commitment to timely mitigation. The best way to protect our investment, tax dollars, and resources is to proceed with clear and purposeful direction on this issue. Staff is planning to present information on alternative odor mitigation delivery models to Council in May. This direction will clarify that discussion by providing a measurable alternative to the current proposal of completion in 11-15 years.