



# Memorandum

**TO:** TRANSPORTATION AND  
ENVIRONMENT COMMITTEE

**FROM:** Kerrie Romanow

**SUBJECT:** SEE BELOW

**DATE:** March 17, 2021

Approved

Date

3/19/21

**SUBJECT: SAN JOSÉ-SANTA CLARA REGIONAL WASTEWATER FACILITY'S  
PRETREATMENT PROGRAM AND REVISIONS TO SEWER USE  
ORDINANCE**

## **RECOMMENDATION**

1. Accept the update on the San José-Santa Clara Regional Wastewater Facility's Pretreatment Program; and
2. Accept the update on an ordinance amending or adding various Sections of Chapter 15.14 of Title 15 of the San José Municipal Code (Sewer Use Regulations) to (1) incorporate findings from a 2019 Pretreatment Compliance Audit and (2) make other technical and conforming changes to the sewer use regulations and update the City's Schedule of Fines.

## **OUTCOME**

Inform the Committee on the key functions of the Pretreatment Program, recent activities, and programmatic enhancements. Provide an overview of the proposed changes to the San José Municipal Code to ensure the City is consistent with federal regulations governing the Pretreatment Program.

## **BACKGROUND**

The 1972 Federal Clean Water Act establishes water quality standards for water bodies such as streams, rivers, bays, and oceans. In addition, the law created the National Pollution Discharge

Elimination System (NPDES) permit program to control the discharge of pollutants from point sources including direct dischargers like the San José-Santa Clara Regional Wastewater Facility (RWF) and indirect dischargers that discharge into a sewage collection system for conveyance to a wastewater treatment facility. The City of San Jose's Pretreatment Program is required by Federal regulation and is designed to monitor and to regulate industrial discharges to protect the sanitary sewer system, the RWF, and the San Francisco Bay.

Since its inception, over several decades ago, the Pretreatment Program has worked to reduce pollutant loading to the RWF. Originally designed to monitor food processing and cannery operations, the Pretreatment Program has evolved with Silicon Valley, adapting its regulatory approach as the Valley's industrial base has shifted from agricultural to high tech. Since the late 1980s, overall loadings of pollutants to the RWF – including heavy metals and toxics – have declined significantly due in part to the regulatory and outreach efforts of the Pretreatment Program.

## **ANALYSIS**

### **PROGRAM UPDATE**

The City's Pretreatment Program (Program) permits, inspects, educates, and conducts surveillance on approximately 250 industrial facilities and approximately 850 dental practices in the San José-Santa Clara Regional Wastewater Facility's 300-square mile service area. This area includes the City of San José, City of Santa Clara, and City of Milpitas, the Cupertino Sanitary District, County Sanitation Districts 2-3, the Burbank Sanitary District, and the West Valley Sanitation District serving the cities of Campbell, Los Gatos, Saratoga, and Monte Sereno (collectively known as the Tributary Agencies). Additionally, City staff collects over 1,000 wastewater samples and reviews approximately 500 industry-submitted self-monitoring reports annually.

The Program staff administers local, State, and Federal Pretreatment Regulations. These regulations include nationwide standards for select types of industrial discharge (e.g., metal finishers, pharmaceutical manufacturers, semiconductor fabricators, etc.) in addition to local, water quality-based standards specific to RWF operations and the conditions of the South San Francisco Bay, the ultimate receiving water following treatment at RWF.

The Program is also subject to the regulation of State and Federal regulatory agencies, including the California State Water Resources Control Board, the San Francisco Bay Regional Water Quality Control Board (RWQCB), and the Federal Environmental Protection Agency (EPA). Since 2009, RWQCB and EPA have conducted seven program audits and inspections of the Pretreatment Program. The Pretreatment Program has implemented findings from these audits and inspections with the goal of continuous program improvement.

### ***COVID-19 Pandemic Adjustments***

Amid the ongoing COVID-19 pandemic, and in response to the Order of the Health Office of the County of Santa Clara the Program staff modified operations to ensure safety while continuing to meet regulatory obligations. Since March 2020, all program staff have been working remotely and adjusting their duties to ensure adequate monitoring. These modifications include the use of remote conferencing applications to conduct site inspections, transition to full electronic approval and issuance of Wastewater Discharge Permits, revisions to field sampling procedures to ensure staff safety, and streamlined data collection and processing. Additionally, Pretreatment Program staff supported ongoing COVID-19 monitoring efforts at both the RWF and within San Jose's sewage collection system. Data collected from these efforts has been instrumental to developing a regional picture of trends relate to the pandemic.

The Program has also prepared comprehensive Safety Addenda for Field Inspection and Sampling Standard Operating Procedures. These safety plans, which include recommendations for social distancing, occupancy limitations, and modifications to onsite interviewing and records review processes, were vetted by EOC in July/August 2020 to facilitate re-initiation of in-person field activities. These safety addenda continue to be updated as County Orders are modified.

The Program provided regular updates to RWQCB throughout the Pandemic to update on program efforts and regulatory outcomes. While overall inspection and sampling numbers were down due to the County Order, the Program successfully conducted inspections to ensure compliance with Federal minimum inspection frequencies.

## **SEWER USE ORDINANCE REVISIONS**

### ***2019 Pretreatment Compliance Audit Requirements and Recommendations***

In April 2019, the RWQCB, along with EPA's contractor, PG Environmental, conducted a Pretreatment Compliance Audit of the Pretreatment Program. The audit report identified specific changes to the City's Sewer Use Ordinance (SUO) to clarify language and provide better alignment with federal regulations. The proposed Ordinance updates to Chapter 15.14 include language that addresses findings from the Pretreatment Compliance Audit:

- Adding the definitions of 'Duly Authorized Representative of the User', 'Indirect Discharge', and 'Publicly Owned Treatment Works'.
- Clarifying transfers of Industrial Wastewater Discharge Permits to incorporate federally required components as described in 40 CFR 403.8(f)(1)(B)(2).
- Clarifying requirements on Baseline Monitoring Reports to incorporate report timeframes and to establish the authority to require submittal of baseline monitoring reports within the timeframe described in 40 CFR 403.12(b).

- Clarifying deadlines for industrial discharger compliance with categorical pretreatment standards as outlined in 40 CFR 403.12(d).
- Incorporating data accuracy certifications and authorized signatory statements pursuant to 40 CFR 403.6(a)(2)(ii).
- Clarifying the City's authority to immediately halt an actual or threatened discharge by an industrial user pursuant to 40 CFR 403.8(f)(1)(vi)(B).
- Clarifying the City's authority to enforce its Enforcement Response Plan pursuant to 40 CFR 403.8(f)(1)(vi) and 403.8(f)(5).
- Revising the definition of "Pretreatment Standard" to include reference to the prohibited discharge limits established under 40 CFR 403.5 that are included in the federal definition of "National Pretreatment Standard, Pretreatment Standard, or Standard" at 40 CFR 403.3(l).
- Clarifying conditions for Compliance Schedules as described in 40 CFR 403.12(c)(1)-(3).
- Revising provisions for the submission of Self-Monitoring Reports as outlined in 40 CFR 403.12(e) & (h).
- Revising sample collection procedures pursuant to 40 CFR 403.12(g)(3) & (4).
- Clarifying the City's authority to conduct inspections, surveillance activities, and other actions to assess compliance pursuant to 40 CFR 403.8(f)(1)(v).
- Clarifying maximum effluent limitations for toxic substances.

### ***Staff Recommended Updates***

After further review of Chapter 15.14, staff also recommends making several additional updates to the ordinance and to the City's Schedule of Fines to better align with the EPA Model Ordinance which includes incorporating language from EPA's Dental Office Point Source Category at 40 CFR 441, and streamline the enforcement of code violations. These updates also clarify requirements for permitted Industrial Users throughout the RWF's service area. These proposed Ordinance updates to Chapter 15.14 include the following:

- Clarifying requirements for the implementation of Best Management Practices to prevent the release of pollutants to the storm and sanitary sewer systems.
- Clarifying the definition of 'Significant Change' to incorporate specific time periods.
- Clarifying resampling requirements for Industrial Users in response to violations.
- Clarifying and incorporating federal requirements for dental office dischargers.
- Clarifying violations and civil penalties.
- Incorporating charging language and updated fines to better enforce violations of Permit Conditions.

The Pretreatment Program submitted the proposed draft ordinance revisions to the RWQCB on February 25, 2021 for review in accordance with Federal regulations at 40 CFR 403.18(d). If the RWQCB has no comments following the 45-day comment period, the City may proceed with implementation of the ordinance updates. A copy of this notification and the proposed changes to the SUO and Schedule of Fines is attached.

## **EVALUATION AND FOLLOW-UP**

Following RWQCB's review of the proposed Sewer Use Ordinance updates, the Program intends to seek full Council approval to implement the updates. Following adoption by the San José City Council, Program staff will work with the Tributary Agencies to adopt and implement the Sewer Use Ordinance updates into their respective municipal or operations codes to ensure a uniform Sewer Use Ordinance is in place across the RWF service area.

## **CLIMATE SMART**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

## **PUBLIC OUTREACH**

- ☐ **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 does not meet any of the criteria listed above. This memorandum will be posted on the City's website for the April 5, 2021 Transportation & Environment Committee Agenda.

## **COORDINATION**

This report has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

### **COST SUMMARY/IMPLICATIONS**

There are no cost implications to the City as a result of these actions. Although some increases in fine amounts are proposed, most of the proposed changes to the Administrative Citation Schedule of Fines will enable staff to more effectively administer program requirements by making requirements more explicit and enforceable. The anticipated fiscal impact from these actions is assumed to be minimal.

### **CEQA**

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment

/s/

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Director, Environmental Services

For questions, please contact Rajani Nair, Deputy Director, at [rajani.nair@sanjoseca.gov](mailto:rajani.nair@sanjoseca.gov) or (408) 799-7462.

Attachment A – Notification letter to RWQCB with proposed changes to the SUO

Attachment B – Schedule of Fines