

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
008 OCT 30 PM 5:26

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Fire Department
DATE: November 12, 2008

RE: **Report And Resolution Authorizing The City Administrator Or Designee To Apply, Accept And Appropriate An Aboveground Petroleum Storage Act (APSA) Program Grant From The California Environmental Protection Agency In The Amount Of Sixty-Five Thousand Two Hundred And Sixty-Nine Dollars and Seventy-Nine Cents (\$65,269.79) To The Oakland Fire Department.**

SUMMARY

The Aboveground Petroleum Storage Act Assembly, Bill 1130 (Laird) chaptered October 13, 2007, transferred the responsibility for the implementation, enforcement, and administration of the Aboveground Petroleum Storage Act (APSA) from the State Water Resources Control Board (SWRCB) to the Certified Unified Program Agencies (CUPA).

The bill authorized the expenditure of a portion of the funds in the Environmental Protection Trust Fund (EPTF), upon appropriation by the Legislature, in an amount determined by the Secretary for Environmental Protection (Secretary) in consultation with the CUPA, to a training account established and maintained by the Secretary to be used for purposes of training CUPA personnel in the requirements of the act.

The bill allocated all remaining funds to the CUPA for expenditure to implement the act, but limits to 80% or less the allocation to a CUPA in advance of actual expenditure. The bill also made conforming changes to ensure consistency with the federal Spill Prevention Control and Countermeasure (SPCC) rule provided in the U.S. Code of Federal Regulations, Title 40, part 112 (40CFR11)

The Oakland Fire Department is incorporating the implementation of the Aboveground Petroleum Storage Act (APSA) Program into the existing Unified Program structure established for the City of Oakland. The current activities of verifying preparation of an SPCC and referrals to the Regional Water Quality Control Board was replaced by full implementation and administration of the APSA, as of on July 1, 2008.

FISCAL IMPACT

The Oakland Fire Department has incorporated the APSA Program into the existing Unified Program (UP) Fee Accountability system, accounting for the fee schedule, the actual amount

Item: _____
Public Safety Committee
November 12, 2008

billed, and the revenue collected. 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 incorporated in the City of Oakland Master Fee Schedule before incorporating it into the current CUPA single fee system. The Oakland Fire Department's fee accountability program includes the following elements:

- Accounting services for the fee schedule, the actual amount billed, and the revenue collected;
- Discrete billable services, categorized as general;
- Staff work hours required to implement the APSA program;
- Direct program expenses (including durable and disposable equipment);
- Indirect program expenses (including overhead for facilities and administrative functions);
- The number of businesses regulated under the APSA Program in the City of Oakland; and,
- 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 was accomplished in June 30, 2008.

Unified Program Single Fee System

Prior to January 1, 2010, the Fire Department will request adoption of the APSA program fee as part of the UP Single Fee system. The APSA Program fee will be established at a level sufficient to pay the necessary and reasonable costs incurred by the Fire Department in administering the APSA Program, including, but not limited to, inspections, enforcement, and administrative costs.

By January 1, 2010, the Oakland Fire Department 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 "Single Fee Invoice." Beginning in January 2010, each regulated business will be assessed the APSA Program fee as part of the single fee invoice.

The Oakland Fire Department UP fee schedules will be available to interested parties on the City of Oakland Web Site (Oaklandnet.com) or upon request to the Fire Prevention Bureau.

The Oakland Fire Department's dispute resolution procedures will be amended to incorporate the APSA Program, which will guide the resolution of fee disputes that arise with the businesses regulated under the APSA Program element.

Item: _____
Public Safety Committee
November 12, 2008

Existing CUPA staff will be temporarily redirected to assist with the start up activities. Upon the establishment of a permanent funding mechanism by the State (January 1, 2010), the Fire Department will request authorization to employ half-time staff or a consultant to assist with the inspection activities associated with implementing the APSA Program in the City of Oakland. Funding from the grant will be appropriated to the Hazardous Materials Inspections Fund (1740), Fire Marshal Office Organization (20321), in the Inspection Fees Account (45114), CUPA/Fire Prevention Bureau Program (PS23). The Fire Prevention Bureau, Hazardous Materials Program will administer the grant, which will be used to help reimburse the City for ASPA inspection activities performed by OFD.

BACKGROUND

Aboveground Petroleum Storage Act authorizes the expenditure of a portion of the Environmental Protection Trust Fund (EPTF), upon appropriation by the Legislature, in an amount determined by the Secretary for Environmental Protection (Secretary) in consultation with the CUPA, to a training account established and maintained by the Secretary for training CUPA personnel in the requirements of the act.

The bill allocates all remaining funds to the CUPA for expenditures to implement the act, but limits to 80% or less the allocation to a CUPA in advance of actual expenditure by the CUPA. The bill also makes conforming changes to ensure consistency with the federal Spill Prevention Control and Countermeasure (SPCC) rule provided in the U.S. Code of Federal Regulations, title 40, part 112 (40CFR112).

Previous law required the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCB) to administer the program with regard to a tank facility that is subject to specified federal regulations. CUPA, during routine compliance inspections conducted at tank facilities pursuant to other Unified Program elements, were required to verify that an SPCC plan has been prepared. If an SPCC plan had not been prepared, the CUPA were required to submit a referral to the appropriate RWQCB for enforcement. Previous law also required a tank facility owner or operator to file a storage statement with the SWRCB and pay the fee specified in law to the SWRCB.

The key provisions of the new act:

- Define key terms, such as: *aboveground storage tank; petroleum; storage capacity; tank facility; etc* and identifies when tank facilities are subject to and exempt from the APSA.
- Transfers the authority and responsibility for administration of the APSA from the SWRCB and RWQCB to the CUPA.
- Requires the owner or operator of a tank facility, with an aggregate storage capacity greater than 1,320 gallons of petroleum, to prepare and implement an SPCC plan in accordance with federal law, 40CFR112.

Item: _____
Public Safety Committee
November 12, 2008

- Requires the CUPA to conduct inspections at tank facilities with an aggregate storage capacity $\geq 10,000$ gallons of petroleum at least every three years, to determine compliance with the SPCC plan requirements of the APSA.
- Allows the CUPA to develop an alternative inspection and compliance plan, subject to approval by the Secretary.
- Provides that an inspection conducted by a CUPA does not require the oversight of a professional engineer.
- Provides that the person conducting the inspection shall complete an aboveground storage tank training program and satisfactorily pass an examination on the SPCC plan provisions and safety requirements for aboveground storage tank inspections. The training program and examination are to be developed by the Secretary.
- Requires the owner or operator of a tank facility to annually file a tank facility statement with the CUPA. The submission of a business plan satisfies the requirement to submit the tank facility statement.
- Requires that the governing body of the CUPA establish a fee, as part of the single fee system, at a level sufficient to pay the necessary and reasonable costs incurred by the CUPA in administering the APSA, including but not limited to inspections, enforcement and administrative costs.
- Prevents CUPA from assessing and collecting an APSA-related fee from tank facilities until January 1, 2010.
- Allows a CUPA to waive the APSA related single fee for a state or local government agency that submits a tank facility statement.
- Requires each owner or operator of a tank facility to immediately report, upon discovery, to the Governor's Office of Emergency Services and the CUPA, the occurrence of a spill or release of 42 gallons or more of petroleum.

There are over fifty aboveground storage tanks in the City of Oakland that would be regulated by this program.

KEY ISSUES AND IMPACTS

Inspection and Compliance Plan

As part of the Oakland Fire Department Unified Inspection and Enforcement Program, the Fire Prevention Bureau will ensure all regulated businesses subject to the APSA Program are in compliance with all the program requirements, including SPCC Plan preparation and implementation, annual submission of facility statements, and spill notifications.

Item: _____
Public Safety Committee
November 12, 2008

Exempt tank facilities will be periodically reviewed to verify that their total tank capacity is less than 20,000 gallons and to ensure they are performing and documenting daily tank inspections. Tank facilities with storage capacity of greater than 1,320 and less than 10,000 gallons will be periodically reviewed to verify that total tank capacity is less than 10,000 gallons and to ensure that owners have prepared and are implementing an SPCC Plan, are submitting annual facility statements, and are paying the APSA Program fee.

Tank facilities with storage capacity of greater than 10,000 gallons will be inspected at least once every three years to ensure that owners have prepared and are implementing an SPCC Plan in compliance with U.S. Code of Federal Regulations, Title 40, and Part 112. The inspection will also include a visual inspection of a representative sample of the tanks at the tank facility.

The inspection and all violations discovered during the inspections will be documented on an inspection report form. Minor violations will be clearly identified and require correction within 30 days.

The owner/operator of the tank facility will be required to certify that all minor violations have been corrected. For more significant or serious violations, the Fire Prevention Bureau will either initiate an administrative enforcement action or refer the case to the Alameda County Office of the District Attorney for civil enforcement.

POLICY DESCRIPTION

The Oakland Fire Department'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.

Regulated Business Outreach Activities

The Oakland Fire Department will develop educational and guidance materials for those businesses regulated under the APSA Program. The educational and guidance materials will include fact sheets and guidance documents to assist regulated businesses in complying with all requirements of the APSA Program.

In addition to these educational and guidance materials, the Oakland Fire Department will hold two Compliance Assistance Workshops beginning November 2008. The workshops will be held in the evening and afford the regulated businesses the opportunity to learn about the APSA Program requirements and ask questions concerning specific requirements or appropriate methods of compliance.

Item: _____
Public Safety Committee
November 12, 2008

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	X
Staffing			X						
Regulated Businesses				X					
Training			X						
Procedures				X					
Outreach				X					
Inspections									X

The Oakland Fire Department is the only Unified Program Agency within the jurisdictional boundaries of the City of Oakland.

SUSTAINABLE OPPORTUNITIES

The life safety provisions for existing and new aboveground storage tanks in the proposed inspection program provide for improvements in fire safety which promotes socio-economic sustainability by providing:

Economic: Inspections and enforcement are one means of ensuring that properties operating aboveground storage tanks located in the City of Oakland are maintained in a safe manner. The fire safety rating of a city has a direct relationship to its ability to attract new residents and businesses.

Environmental: The spill prevention provisions in the proposed inspection program provide for the protection of the residents, property and the environment by promoting the use of spill prevention strategies.

Social Equity: The life safety provisions for new and existing buildings in the proposed spill prevention program provide for fire safety improvements and maintenance which promote socio-economic sustainability by improvements in fire safety for the residents of the City of Oakland working and living near facilities that operate aboveground storage tanks.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no ADA or senior citizen access issues contained in this report.

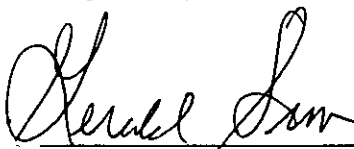
RECOMMENDATION(S) AND RATIONALE

Staff recommends that the City Council approve the report and resolution authorizing the City Administrator Or Designee To Apply, Accept And Appropriate An Aboveground Petroleum Storage Act Program (APSA) Grant From The California Environmental Protection Agency In The Amount Of Sixty-Five Thousand Two Hundred And Sixty-Nine Dollars and Seventy-Nine Cents (\$65,269.79) To The Oakland Fire Department.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the report and resolution.

Respectfully submitted,

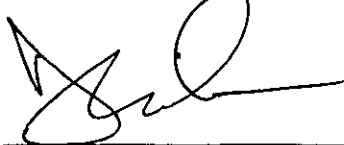


Gerald Simon
Chief, Fire Department

Reviewed by: James D. Edwards
Deputy Chief/Fire Marshal
Fire Prevention Bureau

Prepared by: Leroy Griffin
Assistant Fire Marshal
Fire Prevention Bureau

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:



Office of the City Administrator

Item: _____
Public Safety Committee
November 12, 2008


City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

2008 OCT 30 PM 5:26 RESOLUTION No. _____ C.M.S.
Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO APPLY, ACCEPT AND APPROPRIATE AN ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM GRANT FROM THE CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY IN THE AMOUNT SIXTY-FIVE THOUSAND TWO HUNDRED AND SIXTY NINE DOLLARS AND SEVENTY NINE CENTS (\$65,269.79) FOR THE OAKLAND FIRE DEPARTMENT

WHEREAS, Aboveground Petroleum Storage Act Assembly Bill 1130 (Laird) Chaptered October 13, 2007 transfers the responsibility for the implementation, enforcement, and administration of the Aboveground Petroleum Storage Act (APSA) from the California Environmental Protection Agency/ State Water Resources Control Board to the Certified Unified Program Agencies (CUPA), And the Oakland Fire Department is the local CUPA agency; and

WHEREAS, The bill authorizes the expenditure of a portion of the funds in the Environmental Protection Trust Fund (EPTF) for training CUPA personnel to carry out the requirements of APSA which includes: inspection and enforcement activities such as issuance of warnings and notices, meetings with affected parties, administrative and legal proceedings, preparation of documentation, permit activities such as application reviews, modifications and revisions, facility evaluations and in-field, meeting, seminar, workshop, course and literature review training; and

WHEREAS, City of Oakland, Fire Department/ CUPA shall use these grant funds in accord with California Health and Safety Code Section 25270.11 and the APSA grant agreement to implement the requirements of the Aboveground Petroleum Storage Tank Act; now, therefore, be it

RESOLVED: That the Council of the City of Oakland authorizes the City Administrator or designee to apply for, accept and appropriate grant funds in the amount of Sixty-Five Thousand and Two Hundred and Sixty-Nine Dollars and Seventy-Nine Cents (\$65,269.79) from the California Environmental Protection Agency / State Water Resources Control Board to Certified Unified Program Agencies (CUPA) for the City of Oakland Fire Department to carry out the above described CUPA activities; and be it

FURTHER RESOLVED: The City Council authorizes the City Administrator or designee to enter into a grant agreement for the above-described purposes and to amend or execute a new grant agreement for the purposes of accepting and appropriating additional funds that may become available in the future from the California Environmental Protection Agency / State Water Resources Control Board for the APSA program.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California