

ADDITIONAL INFORMATION REQUIRED

YES (SEE ATTACHED)

NO

BOARD OF SUPERVISORS AGENDA SUMMARY

Requested Board Meeting Date: February 10, 2015

ITEM SUMMARY, JUSTIFICATION & SPECIAL CONSIDERATIONS:

Staff recommends that the Board of Supervisors approve the following Pretreatment Settlement Agreement. The Settlement Agreement is a result of enforcement actions by Pima County Wastewater Management Department's Industrial Wastewater Control Group. Pursuant to *A.R.S. § 49-391*, a public comment period has been held and has passed with no public comment having been made regarding the Pretreatment Settlement Agreement listed below:

- Sawmill Restaurant, L.L.C., Case No. C2014-D-004. The proposed settlement of the acquisition of an Industrial Wastewater Discharge permit, a suspended payment of \$1,000 that will be waived if Sawmill remains compliant with the Industrial Wastewater Ordinance during the first year of the permit, and a representative's attendance to Pollution Prevention School are in accordance with the Industrial Wastewater Enforcement Response Plan.

Please place the settlement on the Board of Supervisors agenda for February 10, 2015. If funds are received in the settlement, they are placed in Wastewater's Enterprise fund.

STAFF RECOMMENDATION:

That the Board of Supervisors approves the Pretreatment Settlement Agreement.

TOTAL COST TO PIMA COUNTY: \$ None

FUNDING SOURCE: N/A

HAS FUNDING BEEN APPROVED IN THIS FISCAL YEAR'S BUDGET: YES NO
UNKNOWN

ADVERTISED PUBLIC HEARING: YES NO

REQUEST FOR: x Action Discussion Discussion/Action

EFFECTIVE DATE: Unknown TERMINATION DATE: Unknown

BOARD OF SUPERVISOR DISTRICT 1 2 3 4 5 X All

IMPACT:

IF APPROVED:

The Negotiated Settlement Agreement will be ratified in accordance with the requirements of A.R.S. § 49-391(C) and the pretreatment violations will be resolved as set forth in the Agreement.

IF DENIED:

The violations will be unresolved.

AGENDA ITEM INITIATED BY: Thomas Weaver, Chief Civil Deputy 

DEPARTMENT NAME: Pima County Attorney's Office

CONTACT PERSON: Michael LeBlanc, Deputy County Attorney 

DATE AND TELEPHONE NUMBER: January 27, 2015 / 740-5750

1 **BEFORE THE PIMA COUNTY BOARD OF SUPERVISORS**

2
3 IN THE MATTER OF:) NEGOTIATED SETTLEMENT
4 SAWMILL RESTAURANT, L.L.C.) AGREEMENT
5)
6 PERMIT NO: N/A) NO. C2014-D-004

7 This Negotiated Settlement Agreement is hereby made and entered into this ____
8 day of _____, 2015, between Pima County, Arizona, a body politic, ("Pima
9 County") and Sawmill Restaurant, L.L.C. ("Sawmill") pursuant to A.R.S. § 49-391(C).

10
11 **I. LEGAL AUTHORITY**

12 1. Pima County is a political subdivision of the State of Arizona with authority
13 under A.R.S. § 11-264 to establish and maintain a wastewater treatment system.

14 2. Pima County's wastewater treatment system discharges treated wastewater into
15 designated waters of the United States and, therefore, is subject the National Discharge
16 Elimination System (NPDES) permitting requirements of the Clean Water Act.

17 3. As required by its NPDES permit and as authorized by A.R.S. § 49-391(A),
18 Pima County has enacted an Industrial Wastewater Ordinance, which is included in the
19 Pima County Code and regulates the industrial users of Pima County's wastewater
20 treatment system.

21 4. Sawmill is an industrial user of Pima County's wastewater treatment system as
22 defined in the Industrial Wastewater Ordinance § 13.36.040(Z).

23 5. Under A.R.S. § 49-391(C), Pima County has the authority to enter into this
24 Agreement with Sawmill with regard to the local enforcement of wastewater pretreatment
25 requirements.

26 6. The parties acknowledge that final approval of this Agreement is subject to a

1 mandatory 30 day public notice and comment period under A.R.S. § 49-391(C).

2
3 II. FINDINGS

4 7. Sawmill operates a restaurant located at 11230 East Turkey Run Road, Mount
5 Lemmon, that discharges industrial wastewater into Pima County's wastewater treatment
6 system.

7 8. The Industrial Wastewater Ordinance § 13.36.070(A)(o) sets the allowable
8 discharge limit for oil and grease at 200 milligrams per liter of water.

9 9. To ensure compliance with the Industrial Wastewater Ordinance, section
10 13.36.130(J) requires an industrial user to "properly operate and maintain all facilities
11 and systems of treatment and control (and related appurtenances) which are installed or
12 used by the user to achieve compliance with the conditions of a permit or the Ordinance."

13 10. Industrial Wastewater Ordinance §§ 13.36.050 and 13.36.060(A)(4) prohibits
14 the discharge of "any biodegradable fats, oils, or greases such as lard, tallow or vegetable
15 oil, in concentrations that may cause adverse effects on the POTW [(publically owned
16 treatment works)]."

17 11. On July 22, 2014, Pima County's Industrial Wastewater Control (IWC)
18 conducted an inspection of Sawmill. During the inspection, IWC collected a sample of
19 the industrial wastewater discharged from Sawmill's Gravity Grease Interceptor (GGI).

20 12. The collected samples exceeded the discharge limit for oil and grease in
21 violation of Industrial Wastewater Ordinance § 13.36.070(A)(o).

22 13. On September 5, 2014 IWC issued Sawmill a Notification of Violation, No.
23 2014 D-004 for being in significant non-compliance with the discharge limitations for oil
24 and grease.

25 14. Sawmill's violations of the Industrial Wastewater Ordinance before or since
26 July 22, 2014, are a violation of Industrial Wastewater Ordinance § 13.36.070(A)(o) and,

1 consistent with the federal Clean Water Act, subjects Sawmill to civil penalties.

2
3 III. TERMS AND CONDITIONS

4 15. Settlement. Pima County and Sawmill have entered into this Agreement in
5 order to resolve all identified disputes between them according to the following terms and
6 conditions:

- 7 a. Sawmill agrees to secure an Industrial Wastewater Discharge Permit and
8 monitor its discharge on a quarterly basis. After one year of compliance,
9 Sawmill may petition IWC that the permit be deactivated;
- 10 b. Sawmill agrees to pay a penalty of \$1,000 for exceeding the oil and grease
11 limitations. Pima County agrees to suspend payment of the penalty as long
12 as Sawmill remains compliant with the Industrial Wastewater Ordinance
13 during the first year of the Discharge Permit. Pima County agrees to waive
14 the penalty amount if Sawmill has maintained compliance with the
15 Ordinance during the entire first year of the Discharge Permit. If Sawmill
16 violates the Ordinance at any time during the first year of the Permit, IWC
17 will provide notice of the violation to Sawmill and Sawmill agrees to pay
18 the full penalty amount within 30 days of the date of the notice. In the event
19 that payment in full is not made within 30 days of the date of notice,
20 Sawmill agrees to pay interest on any outstanding portion at a simple
21 interest rate of 10 percent per annum. In the event that payment is not made
22 within 60 days from the date of notice, this Agreement becomes voidable at
23 the discretion of Pima County, and the County may file a complaint in
24 Superior Court and seek all available civil penalties against Sawmill.
- 25 c. Sawmill agrees to send at least one representative to IWC's Pollution
26 Prevention School.

1 The acquisition of the Discharge Permit, the suspended payment of \$1,000, and
2 attendance at Pollution Prevention School, represent the full settlement of penalties and
3 costs imposed by Pima County under P.C.C., Title 13, Chapter 13.36 for the violations
4 alleged in the Notification of Violation.

5 16. Failure of Compliance. The parties agree that it is the responsibility of
6 Sawmill to achieve and maintain compliance with all applicable Federal, State and local
7 laws, regulations and permits. Compliance with this Agreement shall not be a defense to
8 any enforcement actions commenced pursuant to said laws, regulations, or permits and
9 based on Sawmill's activities or omissions occurring after October 15, 2014, the date of
10 negotiation of this agreement.

11 17. Entire Agreement. This Agreement contains the entire agreement between
12 Pima County and Sawmill, and the terms, conditions, and provisions of this Agreement
13 are contractual and not a mere recital.

14 18. Attorneys' Fees. In the event that either Pima County or Sawmill finds it
15 necessary to employ legal counsel to bring an action at law or other proceeding against
16 the other party to enforce any of the terms, conditions, or provisions of this Agreement,
17 the party prevailing in such action shall be paid all reasonable attorneys' fees by the other
18 party, and in the event that any judgment is secured by the prevailing party in such action
19 or proceeding, all reasonable attorneys' fees shall be included in said judgment. The
20 amount of reasonable attorneys' fees shall be determined by the court and not by a jury.

21 19. Authority. The persons executing this Agreement expressly represent and
22 warrant that they are authorized to execute the same. Further, Pima County and Sawmill
23 expressly acknowledge that they have been given the opportunity to be represented by
24 their respective attorneys in the negotiation of this Agreement. The terms, conditions and
25 provisions of this Agreement shall be construed only according to their fair import.

26 20. Form of Notice. Unless otherwise provided for in this Agreement, any

1 notice or communication between the parties shall be deemed submitted on the date they
2 are postmarked and sent by certified mail, return receipt requested, and shall be addressed
3 as follows:

4 To Pima County:

To Sawmill:

5 Wastewater Reclamation Department
6 Industrial Wastewater Control
7 2955 West Calle Agua Nueva
8 Tucson, AZ 85745

Robert Zimmerman
Sawmill Restaurant, L.L.C.
11230 E. Turkey Run Road
Mt. Lemmon, AZ 85619

9 21. Non-Waiver Provisions. This Agreement in no way relieves Sawmill of its
10 responsibility to comply with all applicable Federal, State, local laws, or permits
11 conditions in operating its facility in Pima County.

12 22. Severability. The provisions of this Agreement shall be severable, and
13 should any provision be declared by a court of competent jurisdiction to be inconsistent
14 with Federal or State law, and therefore unenforceable, the remaining provisions of this
15 Agreement shall remain in full force and effect.

16 23. Good Faith. The parties agree that each of them shall take such further
17 action and execute such further documents, if any, which may be necessary or
18 appropriate to implement this Agreement according to all of its terms and conditions.

19 24. Limitations. It is the intent of the parties that this Agreement shall not be
20 used in any judicial proceedings or in any other manner against Sawmill.

21 25. Binding Effect. The provisions of this Agreement shall be binding upon the
22 parties, their officers, directors, agents, servants, employees, successors, assigns and all
23 persons, firms, and corporations in active concert with them.

24 26. Governing Law. The terms and conditions of this Agreement shall be
25 governed by the law of the State of Arizona.

26 27. Date of Public Notice. Public notice of the thirty (30) day comment period

1 shall be given at the Pima County Board of Supervisors' Meeting scheduled on
2 JANUARY 6, 20145.

3 **PIMA COUNTY**

4 ATTEST:

5 By _____
6 Chair, Board of Supervisors

5 By _____
6 Robin Brigode
7 Clerk of the Board of Supervisors

7 Date _____

7 Date _____

9
10 APPROVED AS TO FORM:

11
12 By [Signature]
13 Michael LeBlanc
14 Deputy Pima County Attorney

14 **SAWMILL RESTAURANT, L.L.C.**

15
16 By [Signature]
17 Robert Zimmerman
18 Manager

18 Date _____

19
20 STATE OF ARIZONA)
21 COUNTY OF PIMA) ss

22 The foregoing Agreement was acknowledged before me this 11 day of
23 Nov, 2014, by Robert Zimmerman, a Manager
24 on behalf of Sawmill Restaurant, L.L.C. an Arizona corporation.
25
26

My Commission Expires:
10/12/15

[Signature]
Notary Public

