



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: February 7, 2017

Title: Regular Session, Regional Wastewater Reclamation

Introduction/Background:

Staff recommends that the Board of Supervisors approve the following pretreatment Negotiated 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 was held and passed with no public comment having been made regarding the pretreatment Negotiated Settlement Agreement listed below:

Discussion:

Duralar Technologies, LLC, Case No. 2016-D-003. The proposed settlement of payment in the amount of \$4,100.00 for penalties and the attendance of at least one representative at Pollution Prevention School are in accordance with the Industrial Wastewater Enforcement Response Plan.

Conclusion:

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

Recommendation:

That the Board of Supervisors approve the Pretreatment Negotiated Settlement Agreement.

Fiscal Impact:

None.

Board of Supervisor District:

1 2 3 4 5 All

Department: PCAO/Michael LeBlanc, Deputy County Attorney Telephone: (520) 740-5750 - 724-5700

Department Director Signature/Date: **TOM WEAVER** [Signature] 1/23/17

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: _____

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

2
3 IN THE MATTER OF:) NEGOTIATED SETTLEMENT
4 Duralar Technologies, L.L.C.) AGREEMENT
5)
6) NO. 2016-D-003

7 This Negotiated Settlement Agreement is made and entered into between Pima
8 County, Arizona, a body politic, (“Pima County”) and Duralar Technologies, L.L.C.
9 (Duralar) pursuant to A.R.S. § 49-391(C).

10 I. LEGAL AUTHORITY

- 11 1. Pima County is a political subdivision of the State of Arizona with authority under
12 A.R.S. § 11-264 to establish and maintain a wastewater treatment system.
- 13 2. Pima County’s wastewater treatment system discharges treated wastewater into
14 designated waters of the United States and, therefore, is subject the Arizona
15 Discharge Elimination System (AZPDES) permitting requirements of the Clean
16 Water Act.
- 17 3. As required by its AZPDES permit and as authorized by A.R.S. § 49-391(A),
18 Pima County has enacted an Industrial Wastewater Ordinance, which is included
19 in the Pima County Code and regulates the industrial users of Pima County's
20 wastewater treatment system.
- 21 4. Duralar is a significant industrial user of Pima County’s wastewater treatment
22 system as defined in the Industrial Wastewater Ordinance § 13.36.040(UU).
- 23 5. Under A.R.S. § 49-391(C), Pima County has the authority to enter into this
24 Agreement with Duralar with regard to the local enforcement of wastewater
25 pretreatment 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 II. FINDINGS

3 7. As part of its industrial operations, Duralar uses a metal parts cleaning line at its
4 facility located at 7620 N. Hartman Lane. The metal parts cleaning line produces
5 industrial wastewater.

6 8. On March 23, 2016, Industrial Wastewater Control (IWC) personnel inspected the
7 Duralar facility and discovered that Duralar discharged its industrial discharge from
8 the metal parts cleaning line into the County's sanitary sewer system.

9 9. As of March 23, 2016, Duralar had not obtained an Industrial Wastewater Discharge
10 permit or authorization letter from Pima County. Duralar ceased discharging the
11 industrial wastewater on March 23, 2016.

12 10. Section 13.36.110(A)(1) of the County's Industrial Wastewater Ordinance provides
13 "[n]o person shall discharge or cause to be discharged any industrial wastewater
14 directly or indirectly to the [publicly owned treatment works] without first obtaining
15 an Industrial Wastewater Discharge permit or an authorization letter."

16 11. Section 13.36.040(VV)(h) Industrial Wastewater Ordinance provides that an
17 Industrial User is in Significant Noncompliance for any violation which the Director
18 determines will adversely affect the operation or implementation of the local
19 pretreatment program.

20 12. On August 24, 2016, IWC issued Duralar Notification of Violation No. 2016-D-003
21 for discharging industrial wastewater without a permit.

22 13. Duralar submitted an application for an Industrial Wastewater Discharge permit on
23 August 26, 2016.

24 14. Duralar's violations of the Industrial Wastewater Ordinance before March 24, 2016
25 are a violation of Industrial Wastewater Ordinance § 13.36.110(A)(1) and,
26 consistent with the federal Clean Water Act, subjects Duralar to civil penalties.

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III. TERMS AND CONDITIONS

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

- a. Duralar agrees to pay a penalty of \$4,100 for failing to obtain an Industrial Wastewater Discharge permit prior to discharging industrial wastewater water into the publicly owned treatment works and . In the event that payment in full is not made within 30 days of the date of this Agreement, Duralar agrees to pay interest on any outstanding portion at a simple interest rate of 10 percent per annum. In the event that payment is not made within 60 days from the date of this Agreement, this Agreement becomes voidable at the discretion of Pima County, and the County may file a complaint in Superior Court and seek all available civil penalties against Duralar.
- c. Duralar agrees to arrange for at least one representative to attend IWC's Pollution Prevention School.

The payment of \$4,100 and attendance at Pollution Prevention School represents the full settlement of penalties and costs imposed by Pima County under P.C.C., Title 13, Chapter 13.36 for the violations alleged in the Notification of Violation.

16. Failure of Compliance. The parties agree that it is the responsibility of Duralar to achieve and maintain compliance with all applicable Federal, State and local laws, regulations and permits. Compliance with this Agreement shall not be a defense to any enforcement actions commenced pursuant to said laws, regulations, or permits and based on Duralar's activities or omissions occurring after September 14, 2016, the date of negotiation of this agreement.

1 17. Entire Agreement. This Agreement contains the entire agreement between Pima
2 County and Duralar, and the terms, conditions, and provisions of this Agreement
3 are contractual and not a mere recital.

4 18. Attorneys' Fees. In the event that either Pima County or Duralar finds it necessary
5 to employ legal counsel to bring an action at law or other proceeding against the
6 other party to enforce any of the terms, conditions, or provisions of this
7 Agreement, the party prevailing in such action shall be paid all reasonable
8 attorneys' fees by the other party, and in the event that any judgment is secured by
9 the prevailing party in such action or proceeding, all reasonable attorneys' fees
10 shall be included in said judgment. The amount of reasonable attorneys' fees shall
11 be determined by the court and not by a jury.

12 19. Authority. The persons executing this Agreement expressly represent and warrant
13 that they are authorized to execute the same. Further, Pima County and Duralar
14 expressly acknowledge that they have been given the opportunity to be
15 represented by their respective attorneys in the negotiation of this Agreement. The
16 terms, conditions and provisions of this Agreement shall be construed only
17 according to their fair import.

18 20. Form of Notice. Unless otherwise provided for in this Agreement, any notice or
19 communication between the parties shall be deemed submitted on the date they are
20 postmarked and sent by mail or email, and shall be addressed as follows:

21 To Pima County:	To Duralar:
22 Jason Grodman	Marion McEuen
23 Wastewater Reclamation Department	Chief Operating Officer
24 Industrial Wastewater Control	Duralar Technologies, L.L.C.
25 2955 West Calle Agua Nueva	7620 North Hartman Lane, Suite 132
26 Tucson, AZ 85745	Tucson, AZ 85743

21. Non-Waiver Provisions. This Agreement in no way relieves Duralar of its

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responsibility to comply with all applicable Federal, State, local laws, or permits conditions in operating its facility in Pima County.

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

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

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

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

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

27. Public Notice. Public notice of this Agreement will be given to allow for a 30 day public comment period in accordance with A.R.S. § 49-391(C).

PIMA COUNTY

ATTEST:

By _____
Chair, Board of Supervisors

By _____
Julie Castañeda
Clerk of the Board of Supervisors

Date _____

Date _____

1 APPROVED AS TO FORM:

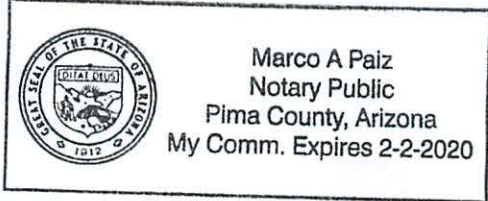
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By 
Michael LeBlanc
Deputy Pima County Attorney

Duralar Technologies, L.L.C.

By 
Marion McEuen, Chief Operating Officer

Date 10/10/2016



STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing Agreement was acknowledged before me this 10 day of October, 2016, by Marion McEuen, Chief Operating Officer on behalf of Duralar Technologies, an Arizona limited liability company.

My Commission Expires: 2-2-2020 
Notary Public

My Comm. Expires 2-2-2020
Pima County, Arizona
Notary Public
MARC A PAIS



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