



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: March 6, 2018

Title: Regular Session Agenda Item: 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 Regional Wastewater Reclamation Department's Industrial Wastewater Control Section. Pursuant to A.R.S. § 49-391(C), a public comment period was held and passed with no public comment having been made regarding the Negotiated Settlement Agreement discussed below.

Discussion:

The proposed settlement provides that Busy "D" agrees to complete a Supplemental Environmental Project (SEP) in lieu of a monetary penalty as allowed by section 2.4(C) of Pima County's Enforcement Response Plan. The proposed SEP will modify operations at the Busy "D" Pumping facility and will constitute a pollution prevention project that will address the cause of the violations. Busy "D" Pumping will complete the SEP within one year from the date of the NSA.

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 violation will be resolved as set forth in the Agreement.

Recommendation:

That the Board of Supervisors approve the Negotiated Settlement Agreement.

Fiscal Impact:

Board of Supervisor District:

1 2 3 4 5 All

Department: Pima County Attorney's Office Telephone: 520-724-5700

Contact: Michael LeBlanc, Deputy County Attorney Telephone: 520-724-5700

Department Director Signature/Date: *[Signature]* ANDREW FLAGG 2/22/18

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 BUSY "D" PUMPING, INC.) AGREEMENT
5)
6) NO. C2017-D-006
7 PERMIT NO: 12738)

8 This Negotiated Settlement Agreement is made and entered between Pima County,
9 Arizona, a body politic, ("Pima County") and Busy "D" Pumping Inc. ("Busy D")
10 pursuant to A.R.S. § 49-391(C).

11 I. LEGAL AUTHORITY

- 12 1. Pima County is a political subdivision of the State of Arizona with authority under
13 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 Arizona
16 Discharge Elimination System (AZPDES) permitting requirements of the Clean
17 Water Act.
- 18 3. As required by its AZPDES permit and as authorized by A.R.S. § 49-391(A),
19 Pima County has enacted an Industrial Wastewater Ordinance, which is included
20 in the Pima County Code and regulates the industrial users of Pima County's
21 wastewater treatment system.
- 22 4. Busy D is an industrial user of Pima County's wastewater treatment system as
23 defined in the Industrial Wastewater Ordinance § 13.36.040(Z).
- 24 5. Under A.R.S. § 49-391(C), Pima County has the authority to enter into this
25 Agreement with Busy D with regard to the local enforcement of wastewater
26 pretreatment requirements.

1 6. The parties acknowledge that final approval of this Agreement is subject to a
2 mandatory 30 day public notice and comment period under A.R.S. § 49-391(C).

3 II. FINDINGS

4 7. Busy D operates a special facility, as defined in Pima County Code § 13.20.020(51),
5 located at 3255 East District Street that discharges industrial wastewater and septage
6 into Pima County's wastewater treatment system.

7 8. Busy D's facility discharges industrial wastewater and septage under the authority
8 of Industrial Wastewater Discharge Permit 12738 (the "Permit").

9 9. The Permit requires that Busy D monitor its industrial wastewater for parameters
10 of p-Cresol.

11 10. The Permit sets the maximum daily limit for p-cresol at .698 milligrams per liter
12 ("mg/l") and the maximum monthly average limit at .205 mg/l.

13 11. Industrial Wastewater Ordinance § 13.36.130(G)(1) requires industrial users to
14 comply with all conditions of the discharge permit. Noncompliance is a violation
15 of the ordinance and grounds for enforcement action.

16 12. Industrial Wastewater Ordinance § 13.36.130(A) requires industrial users to
17 "comply with all applicable Federal rules, regulations, or Pretreatment standards,
18 or any applicable more stringent State or local rules, regulations or standards,
19 whether or not contained in a permit."

20 13. Federal regulation 40 C.F.R. § 437.47(b) sets the maximum daily limit for p-cresol
21 at .698 milligrams per liter ("mg/l") and the maximum monthly average limit
22 at .205 mg/l.

23 14. Industrial Wastewater Ordinance § 13.36.150(A)(1)(b) requires industrial users to
24 notify the Industrial Wastewater Control Section of the Pima County Regional
25 Wastewater Reclamation Department ("IWC") of the exceedance of any discharge
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1 limitation in the permit within 24 hours.

2 15. On May 3, 2017, June 7, 2017, September 6, 2017, October 25, 2017, and
3 November 1 & 15, 2017, Busy D exceeded the maximum daily limit for p-Cresol
4 in violation of the Permit and 40 C.F.R. § 437.47(b).

5 16. During the months of April, May, June, August, September, October, and
6 November 2017, Busy D exceeded the maximum monthly average limit for p-
7 Cresol in violation of the Permit and 40 C.F.R. § 437.47.

8 17. Busy D did not notify IWC within 24 hours of the exceedances that occurred
9 before September 2017 which violates Industrial Wastewater Ordinance §
10 13.36.150(A)(1)(b).

11 18. Busy D is in significant noncompliance with the Industrial Wastewater Ordinance
12 as defined in Industrial Wastewater Ordinance § 13.36.040(VV)(1)&(2).

13 19. On November 14, 2017, IWC issued Busy D a Notification of Violation, No.
14 2017-D-006 for being in significant non-compliance for exceeding the maximum
15 daily and monthly limits for p-Cresol and for failing to notify IWC of the
16 exceedances within 24 hours.

17 20. Busy D has proposed a Supplemental Environmental Project to the Department in
18 order to resolve this enforcement action.

19 21. Busy D's violations of the Permit and Industrial Wastewater Ordinance before or
20 since April 1, 2017 subjects Busy D to civil penalties consistent with the federal
21 Clean Water Act.

22 III. TERMS AND CONDITIONS

23 22. Settlement. Pima County and Busy D have entered into this Agreement in order to
24 resolve all identified disputes between them. Busy D agrees to perform a
25 Supplemental Environmental Project (SEP) in lieu of a monetary penalty as
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1 allowed by section 2.4(C) of Pima County's Enforcement Response Plan.¹ An SEP
2 is appropriate to resolve this enforcement action for the following reasons:

- 3 a. The proposed SEP will modify operations at the Busy D facility and will
4 constitute a pollution prevention project that will correct the exceedances of
5 p-cresol limits at the Busy D facility.
- 6 b. The Department has determined that there is a direct relationship between
7 the exceedance of p-cresol limits at the Busy D facility and the
8 environmental benefits to be derived from the proposed SEP.
- 9 c. Busy D does not have a pattern of non-compliance with the Industrial
10 Wastewater Ordinance.
- 11 d. Busy D will complete the SEP within one year from the date of execution
12 of this Agreement. In the event that the SEP is not completed within one
13 year from the date of execution of this Agreement, this Agreement becomes
14 voidable at the discretion of Pima County, and the County may file a
15 complaint in Superior Court and seek all available civil penalties against
16 Busy D.
- 17 e. Upon completion of the SEP, IWC may modify the Permit to include
18 changes at the facility that are in compliance with the Industrial Wastewater
19 Ordinance.
- 20 f. The SEP represents the full settlement of penalties imposed by Pima
21 County under the Industrial Wastewater Ordinance for the violations
22 identified in paragraphs 15, 16, and 17 above.
- 23

24 ¹ The Enforcement Response Plan was approved by the Board of Supervisors on June 18,
25 2013 and is available online at:
26 http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Wastewater%20Reclamation/IWC/EnforcementResponsePlan.pdf

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23. Failure of Compliance. The parties agree that it is the responsibility of Busy D 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 Busy D activities or omissions occurring after the date of this agreement.

24. Entire Agreement. This Agreement contains the entire agreement between Pima County and Busy D, and the terms, conditions, and provisions of this Agreement are contractual and not a mere recital.

25. Attorney Fees. In the event that either Pima County or Busy D finds it necessary to employ legal counsel to bring an action at law or other proceeding against the other party to enforce any of the terms, conditions, or provisions of this Agreement, the party prevailing in such action shall be paid all reasonable attorney fees by the other party, and in the event that any judgment is secured by the prevailing party in such action or proceeding, all reasonable attorney fees shall be included in said judgment. The amount of reasonable attorney fees shall be determined by the court and not by a jury.

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

27. Form of Notice. Unless otherwise provided for in this Agreement, any notice or communication between the parties shall be deemed submitted on the date they are

1 postmarked and sent by certified mail, return receipt requested, and shall be
2 addressed as follows:

3 To Pima County: To Busy D:
4 Jason Grodman Paul Edwards
5 Regional Wastewater Reclamation Department Busy "D" Pumping, Inc.
6 Industrial Wastewater Control 3255 East District Street
7 2955 West Calle Agua Nueva Tucson, AZ 85714
8 Tucson, AZ 85745

- 8 28. Non-Waiver Provisions. This Agreement in no way relieves Busy D of its
9 responsibility to comply with all applicable Federal, State, local laws, or permit
10 conditions in operating its facility in Pima County.
- 11 29. Severability. The provisions of this Agreement shall be severable, and should any
12 provision be declared by a court of competent jurisdiction to be inconsistent with
13 Federal or State law, and therefore unenforceable, the remaining provisions of this
14 Agreement shall remain in full force and effect.
- 15 30. Good Faith. The parties agree that each of them shall take such further action and
16 execute such further documents, if any, which may be necessary or appropriate to
17 implement this Agreement according to all of its terms and conditions.
- 18 31. Limitations. It is the intent of the parties that this Agreement shall not be used in
19 any judicial proceedings or in any other manner against Busy D.
- 20 32. Binding Effect. The provisions of this Agreement shall be binding upon the
21 parties, their officers, directors, agents, servants, employees, successors, assigns
22 and all persons, firms, and corporations in active concert with them.
- 23 33. Governing Law. The terms and conditions of this Agreement shall be governed by
24 the law of the State of Arizona.
- 25 34. Date of Public Notice. Public notice of the thirty (30) day comment period shall
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be given at a Pima County Board of Supervisors' Meeting.

PIMA COUNTY

ATTEST:

By _____
Chair, Board of Supervisors

By _____
Julie Castañeda
Clerk of the Board of Supervisors

Date _____

Date _____

APPROVED AS TO FORM:

By _____
Michael LeBlanc
Deputy Pima County Attorney

BUSY "D" PUMPING, INC.

By _____
Paul Edwards, President

Date 1/4/18

STATE OF ARIZONA)
) ss
COUNTY OF PIMA

The foregoing signature was acknowledged before me this 4 day of
JANUARY, ²⁰¹⁸2017, by PAUL EDWARDS, a PRESIDENT
(name) (title)
with authority to enter into this contract on behalf of Busy "D" Pumping, Incorporated an
Arizona corporation.

Catherine Friggle
Notary Public

My Commission Expires: 3/28/19
