



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: 8/2/2022

**= Mandatory, information must be provided*

Click or tap the boxes to enter text. If not applicable, indicate "N/A".

***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's Regional Wastewater Reclamation Department's Industrial Control Group. Pursuant to A.R.S. § 49-391, the Board of Supervisors held a public comment period starting on June 7, 2022, and Pima County did not receive any public comments during the public comment period regarding the pretreatment Negotiated Settlement Agreement listed below:

***Discussion:**

Busy "D" Pumping, Inc., Case No. C2021-D-001 and Case No. C2021-D-002. The proposed completion of Supplemental Environmental Project terms in lieu of a monetary penalty is 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 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: Pima County Attorney's Office

Telephone: 520-724-5700

Contact: Chief Civil Deputy Sam Brown

Telephone: 520-724-5700

Department Director Signature: _____

Date: 7/18/2022

Deputy County Administrator Signature: _____

Date: _____

County Administrator Signature: _____

Date: _____

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IN THE MATTER OF:)	NEGOTIATED SETTLEMENT
)	AGREEMENT
BUSY "D" PUMPING, INC.)	
)	
)	NO. C2021-D-001
)	C2021-D-002
PERMIT NO: 12738)	

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

I. LEGAL AUTHORITY

1. Pima County is a political subdivision of the State of Arizona with authority under A.R.S. § 11-264 to establish and maintain a wastewater treatment system.
2. Pima County's wastewater treatment system discharges treated wastewater into designated waters of the United States and, therefore, is subject the Arizona Discharge Elimination System (AZPDES) permitting requirements of the Clean Water Act.
3. As required by its AZPDES permit and as authorized by A.R.S. § 49-391(A), Pima County has enacted an Industrial Wastewater Ordinance, which is included in the Pima County Code and regulates the industrial users of Pima County's wastewater treatment system.
4. Busy D is an industrial user of Pima County's wastewater treatment system as defined in the Industrial Wastewater Ordinance § 13.36.040(Z).
5. Busy D is a centralized waste treatment source that accepts wastewater with some combination of metals, oils, and organic wastes subject to the categorical pretreatment standards under Code of Federal Regulations, Title 40, Chapter I,

1 Subchapter N, Part 437.

2 6. Under A.R.S. § 49-391(C), Pima County has the authority to enter into this
3 Agreement with Busy D with regard to the local enforcement of wastewater
4 pretreatment requirements.

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

7 II. FINDINGS

8 8. Busy D operates a facility located at 3255 East District Street that discharges
9 industrial wastewater and septage into Pima County's wastewater treatment system
10 under the authority of Industrial Wastewater Discharge Permit 12738 (the
11 "Permit").

12 9. The Permit requires that Busy D monitor its industrial wastewater for parameters
13 of p-Cresol, chromium, cobalt, titanium, o-Cresol, antimony, arsenic, copper, and
14 vanadium.

15 10. The Permit sets the maximum daily limits for discharges of p-Cresol, chromium,
16 cobalt, titanium, o-Cresol, antimony, arsenic, copper, and vanadium.

17 11. The Permit sets the maximum monthly average limits for discharges of p-Cresol,
18 chromium, titanium, o-Cresol, antimony, arsenic, copper, and vanadium.

19 12. Federal regulation 40 C.F.R. § 437.47(b) and the Permit set the same maximum
20 daily limit and maximum monthly average limit for p-Cresol, titanium, cobalt, o-
21 Cresol, antimony, arsenic, copper, and vanadium.

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

25 14. Industrial Wastewater Ordinance § 13.36.130(A) requires industrial users to
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1 “comply with all applicable Federal rules, regulations, or Pretreatment standards,
2 or any applicable more stringent State or local rules, regulations or standards,
3 whether or not contained in a permit.”

4 15. At various times during the period between April 1, 2021 through September 30,
5 2021, Busy D exceeded the maximum daily limit and maximum monthly average
6 limit for p-Cresol, titanium, o-Cresol, antimony, arsenic, copper, and vanadium in
7 violation of the Permit and 40 C.F.R. § 437.47(b).

8 16. On November 5, 2021, IWC issued Busy D Notification of Violation, No. 2021-D-
9 001 for exceeding the maximum daily and maximum monthly average limits for p-
10 Cresol, titanium, o-Cresol, antimony, arsenic, copper, and vanadium.

11 17. At various times during the period between October 1, 2021 through March 30,
12 2022, Busy D exceeded the maximum daily limit and maximum monthly average
13 limit for chromium, copper, nickel, and zinc. And on November 9, 2021, Busy D
14 exceeded the maximum daily limit for cobalt.

15 18. On April 12, 2022, IWC issued Busy D Notification of Violation, No. 2021-D-002
16 for exceeding the maximum daily and maximum monthly average limits for
17 chromium, copper, nickel, and zinc as well as for exceeding the maximum daily
18 limit for cobalt.

19 19. In Notice of Violation No. 2021-D-002, IWC determined that Busy D is in
20 significant noncompliance, as defined in Industrial Wastewater Ordinance §
21 13.36.040(VV)(b), for copper discharges during the period between October 1,
22 2021 through March 30, 2022. IWC also determined that Busy D discharged
23 chromium, nickel, and zinc at concentrations that meet the requirements for slug
24 loads as defined in Industrial Wastewater Ordinance § 13.36.040(WW).

25 20. Busy D is a small, locally-owned company and it has made good faith efforts with
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IWC to resolve this enforcement action.

21. Busy D and IWC have negotiated the terms of a Supplemental Environmental Project (SEP) in lieu of a monetary penalty as authorized by section 2.4(C) of Pima County's Enforcement Response Plan.¹

22. Busy D's violations of the Permit and federal regulations as documented in Notice of Violation No. 2021-D-001 and 2021-D-002 subjects Busy D to administrative orders and civil penalties consistent with the federal Clean Water Act.

III. TERMS AND CONDITIONS

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

- a. Busy D will complete the terms of the SEP in lieu of a monetary penalty as provided in Attachment A to this agreement.

The SEP represents the full settlement of penalties imposed by Pima County under P.C.C., Title 13, Chapter 13.36 for the violations alleged in the Notification of Violation.

24. 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.

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

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

4 26. Attorney Fees. In the event that either Pima County or Busy D 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 attorney
8 fees by the other party, and in the event that any judgment is secured by the
9 prevailing party in such action or proceeding, all reasonable attorney fees shall be
10 included in said judgment. The amount of reasonable attorney fees shall be
11 determined by the court and not by a jury.

12 27. Authority. The persons executing this Agreement expressly represent and warrant
13 that they are authorized to execute the same. Further, Pima County and Busy D
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 28. 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 certified mail, return receipt requested, and shall be
21 addressed as follows:

22 To Pima County:
23 Jason Grodman
24 Regional Wastewater Reclamation Department
25 Industrial Wastewater Control
26 2955 West Calle Agua Nueva
Tucson, AZ 85745

To Busy D:
Paul Edwards
Busy "D" Pumping, Inc.
3255 East District Street
Tucson, AZ 85714

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29. Non-Waiver Provisions. This Agreement in no way relieves Busy D of its responsibility to comply with all applicable Federal, State, local laws, or permit conditions in operating its facility in Pima County.
30. 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.
31. 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.
32. 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 Busy D.
33. 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.
34. Governing Law. The terms and conditions of this Agreement shall be governed by the law of the State of Arizona.
35. Date of Public Notice. Public notice of the thirty (30) day comment period shall be given at a Pima County Board of Supervisors' Meeting.

21 **PIMA COUNTY**

22 ATTEST:

23 By _____
24 Sharon Bronson
Chair, Board of Supervisors

By _____
Melissa Manriquez
Clerk of the Board of Supervisors

25 Date _____

Date _____

1 APPROVED AS TO FORM:

2
3 By

Michael LeBlanc
Deputy Pima County Attorney

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5
6 BUSY "D" PUMPING, INC.

7 By

Paul Edwards, President

8
9 Date

5-28-2022

10
11 STATE OF ARIZONA

12 COUNTY OF PIMA

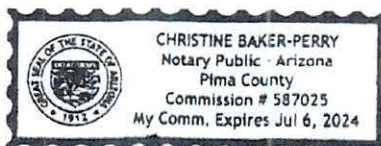
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13 The foregoing signature was acknowledged before me this 28 day of
14 May, 2022, by Paul Edwards, President, with authority to enter into this contract on
15 behalf of Busy "D" Pumping, Incorporated.

16 Christine Baker-Perry
Notary Public

17 My Commission Expires:

7-6-24



Supplemental Environmental Project Terms and Conditions
for Busy D Pumping, Inc.

Busy D. Pumping, Inc. and Pima County agree to incorporate the following terms and conditions of this Supplemental Environmental Project (SEP) into the Negotiated Settlement Agreement and agree that completion of the SEP is appropriate to resolve Notification of Violation 2021-D-001 and 2021-D-002.

A. Monitoring and Sampling Requirements

1. Beginning with the sampling period starting on 8/1/2022 and continuing for a period of 12 months, Busy D. will sample at least twice a month its wastewater at location No. 2, as designated in Part I.A.2 of Permit 12738, for all regulated metals.
2. The County may conduct Field Investigations and Surveillance Sampling, as the County deems necessary in response to violations of the pretreatment standards for regulated metals or to support modification of Permit 12738.

B. Pretreatment Standards for Centralized Waste Sources

1. Before August 31, 2022, Busy D. will contract for the services of a licensed professional engineer to provide a written report on whether Busy D. is providing the equivalent treatment for the subcategories of wastes (i.e. metals, oils, and organics) that Busy D. accepts for pretreatment as required by 40 C.F.R. § 437.47 (the "Report").
2. Busy D will provide the Industrial Wastewater Control Section of the Pima County Regional Wastewater Reclamation Department ("IWC") with a copy of the Report no later than October 31, 2022.
3. Within 30 days after proving the Report to IWC, Busy D. will either:
 - i. Submit to IWC a petition to modify Permit No. 12738 to change the Centralized Waste Treatment Point Source Category for Busy D. under the Code of Federal Regulations Title 40, Chapter I, Subchapter N, Part 437; or

- ii. Propose in writing to IWC for approval of changes that Busy D will make to its pretreatment facility and its operation that are necessary to provide the equivalent treatment for the subcategories of wastes (i.e. metal, oil, and organic wastes) that Busy D. accepts for pretreatment as required by 40 C.F.R. § 437.47.
4. If IWC approves of the changes proposed by Busy D. in accordance with paragraph B(3)(ii), Busy D. will both:
- i. Within 60 days of completing the approved changes, submit a revised Baseline Monitoring Report (BMR) as required in 40 C.F.R § 403.12; and
 - ii. Before May 13, 2024, submit to the County an initial certification statement for the equivalent treatment system in accordance with 40 C.F.R § 437.47(a)(2).

C. Disposition of Notification of Violation 2021-D-001 and 2021-D-002

Busy D. understands that a failure to fulfill the terms of this SEP is a breach of the Negotiated Settlement Agreement and the County may bring an action against Busy D. to enforce the terms and conditions of the Negotiated Settlement Agreement or pursue remedies provided in Article VI of the Industrial Wastewater Ordinance, including but not limited to civil penalties, permit suspension, or permit revocation.