



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: February 2, 2016

Title: Happy Rooster, LLC, case no. C2015-R-005

Introduction/Background:

Staff recommends that the Board of Supervisors approve the following 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 has been held and has passed with no public comment having been made regarding the Negotiated Settlement Agreement listed in Discussion.

Discussion:

The proposed settlement of a \$500.00 penalty for failing to provide a quarterly self-monitoring report 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(C) and the pretreatment violations will be resolved as set forth in the Agreement.

Recommendation:

That the Board of Supervisors approve the Pretreatment Settlement Agreement.

Fiscal Impact:

Board of Supervisor District:

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ All

Department: PCAO/Michael LeBlanc, Deputy County Atty. Telephone: (520) 740-5750

Department Director Signature/Date: _____

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1/15/16

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: _____

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

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3 IN THE MATTER OF:)
4 Happy Rooster, L.L.C.)
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9 PERMIT NO: 13016)
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7 This Negotiated Settlement Agreement is hereby made and entered between Pima
8 County, Arizona, a body politic, ("Pima County") and Happy Rooster, L.L.C. ("Happy
9 Rooster") 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. Happy Rooster is an industrial user of Pima County's wastewater treatment system
22 as 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 Happy Rooster with regard to the local enforcement of
25 wastewater pretreatment requirements.
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- 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).
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4 II. FINDINGS

- 5 7. Happy Rooster operates a restaurant located at 1114 South Sarnoff Drive that
6 discharges industrial wastewater into Pima County's wastewater treatment system.
7 8. Happy Rooster's restaurant discharges industrial wastewater under the authority of
8 Industrial Wastewater Discharge Permit 13016 (the "Permit").
9 9. The Permit requires Happy Rooster to submit quarterly self-monitoring reports to
10 the Pima County Regional Wastewater Reclamation Department.
11 10. Industrial Wastewater Ordinance § 13.36.040(VV)(f) provides that an Industrial
12 User is in Significant Noncompliance for "[f]ailure to provide, within 45 days
13 after due date, required reports such as baseline monitoring reports, 90-day
14 compliance reports, periodic self-monitoring reports, and reports on compliance
15 with Compliance Schedules."
16 11. Happy Rooster failed to submit a self-monitoring report for the period from
17 February 1, 2015 to April 30, 2015 within 45 days after the due date of May 28,
18 2015.
19 12. On August 19, 2015 IWC issued Happy Rooster a Notification of Violation, No.
20 2015-R-005 for being in significant non-compliance for failing to provide a self-
21 monitoring report within 45 days of the due date as required by the Permit.
22 13. Happy Rooster's violations of the Industrial Wastewater Ordinance before or since
23 April 17, 2015 are a violation of the Permit and, consistent with the federal Clean
24 Water Act, subjects Happy Rooster to civil penalties.
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III. TERMS AND CONDITIONS

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

- a. Happy Rooster agrees to pay a penalty of \$500 for failing to provide a quarterly self-monitoring report within 30 days from execution of this agreement. In the event that payment in full is not made within 30 days of the date of this Agreement, Happy Rooster 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 Happy Rooster.

The payment of the penalty represent 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.

15. Failure of Compliance. The parties agree that it is the responsibility of Happy Rooster 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 Happy Rooster activities or omissions occurring after the date of this agreement.

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

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

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

15 **19. Form of Notice.** Unless otherwise provided for in this Agreement, any notice or
16 communication between the parties shall be deemed submitted on the date they are
17 postmarked and sent by certified mail, return receipt requested, and shall be
18 addressed as follows:

19 To Pima County:

 To Happy Rooster:

20 Wastewater Reclamation Department
21 Industrial Wastewater Control
22 2955 West Calle Agua Nueva
23 Tucson, AZ 85745

 Richard Flory
 Happy Rooster, L.L.C.
 8360 S. Taylor Lane
 Tucson, AZ 85736

24 **20. Non-Waiver Provisions.** This Agreement in no way relieves Happy Rooster of its
25 responsibility to comply with all applicable Federal, State, local laws, or permits
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1 conditions in operating its facility in Pima County.

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

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

9 23. Limitations. It is the intent of the parties that this Agreement shall not be used in
10 any judicial proceedings or in any other manner against Happy Rooster.

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

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

16 26. Date of Public Notice. Public notice of the thirty (30) day comment period shall
17 be given at the Pima County Board of Supervisors' Meeting scheduled on *December*
18 *1*, 2015.

19 **PIMA COUNTY**

20 ATTEST:

21 By _____
22 Chair, Board of Supervisors

21 By _____
22 Robin Brigode
23 Clerk of the Board of Supervisors

23 Date _____
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23 Date _____
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1 APPROVED AS TO FORM:

2
3 By 
4 Michael LeBlanc
Deputy Pima County Attorney

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6
7 **HAPPY ROOSTER, L.L.C.**

8 By 
9 Richard Flory
Member

10 Date 11-5-15
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