



## BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: February 2, 2016

Title: El Molinito, Inc., case no. C2015-D-004

### 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 Pretreatment Settlement Agreement.

### Discussion:

The proposed settlement of a \$1,000 penalty and \$4 77.29 for Pima County's remediation costs, as well as the acquisition of an Industrial Wastewater Discharge Permit and the attendance of Pollution Prevention School 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 approves 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:

**TOM WEAVER**

1/15/16

Deputy County Administrator Signature/Date:

County Administrator Signature/Date:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

)
)
)
)
)
)

NO. C2015-D-004

) )

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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. El Molinito is an industrial user of Pima County's wastewater treatment system as defined in the Industrial Wastewater Ordinance § 13.36.040(Z).
5. Under A.R.S. § 49-391(C), Pima County has the authority to enter into this Agreement with El Molinito with regard to the local enforcement of wastewater pretreatment requirements.
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. El Molinito operates a restaurant located at 5380 East 22<sup>nd</sup> Street that discharges  
5 industrial wastewater into Pima County's wastewater treatment system.

6 8. To ensure compliance with the Industrial Wastewater Ordinance, section  
7 13.36.130(J) requires an industrial user to "properly operate and maintain all  
8 facilities and systems of treatment and control (and related appurtenances) which  
9 are installed or used by the user to achieve compliance with the conditions of a  
10 permit or the Ordinance."

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

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

17 11. Industrial Wastewater Ordinance § 13.36.210 provides that "[a]ny user who  
18 discharges or causes the discharge of wastewater which causes damage to the  
19 POTW, interference, pass-through, upset, bypass or [sanitary sewer overflow] or  
20 any other damages resulting in costs to the POTW shall be liable for all damages  
21 occasioned thereby."

22 12. On or about April 17, 2015, El Molinito discharged oil and grease into the POTW  
23 in excess of the discharge limits so as to directly or proximately cause sewage to  
24 overflow from a Pima County manhole onto a public street.

25 13. The Pima County Regional Wastewater Reclamation Department (RWRD)  
26 remediated the sanitary sewer overflow resulting in costs to the County.

1 14. During the remediation, RWRD inspectors found grease in the sewer system pipe  
2 downstream from El Molinito and in the manhole where the overflow occurred.

3 15. On April 24, 2015, Pima County's Industrial Wastewater Control (IWC)  
4 conducted an inspection of El Molinito's restaurant. The inspection revealed that  
5 the Gravity Grease Interceptor (GGI) for the restaurant was not properly  
6 maintained in violation of Industrial Wastewater Ordinance § 13.36.130(J)

7 16. IWC collected a sample of the industrial wastewater discharged from the GGI.  
8 The collected samples exceeded the discharge limit for oil and grease in violation  
9 of Industrial Wastewater Ordinance § 13.36.070(A)(o).

10 17. On August 12, 2015 IWC issued El Molinito a Notification of Violation, No.  
11 2015-D-004 for being in significant non-compliance with the discharge limitations  
12 for oil and grease and for failing to properly operate and maintain systems of  
13 treatment and control.

14 18. El Molinito's violations of the Industrial Wastewater Ordinance before or since  
15 April 17, 2015 are a violation of Industrial Wastewater Ordinance §§  
16 13.36.070(A)(o), 13.36.130(J), 13.36.050, and 13.36.060(A)(4), and consistent  
17 with the federal Clean Water Act, subjects El Molinito to civil penalties.

18  
19 **III. TERMS AND CONDITIONS**

20 19. Settlement. Pima County and El Molinito have entered into this Agreement in  
21 order to resolve all identified disputes between them according to the following  
22 terms and conditions:

- 23 a. El Molinito agrees to secure an Industrial Wastewater Discharge Permit and  
24 monitor its discharge on a quarterly basis. After one year of compliance, El  
25 Molinito may petition IWC that the permit be deactivated;  
26 b. El Molinito agrees to pay a penalty of \$1,000 for exceeding the oil and

1 grease limitations and pay \$477.29 toward Pima County's remediation  
2 costs within 30 days from execution of this agreement. In the event that  
3 payment in full is not made within 30 days of the date of this Agreement, El  
4 Molinito agrees to pay interest on any outstanding portion at a simple  
5 interest rate of 10 percent per annum. In the event that payment is not made  
6 within 60 days from the date of this Agreement, this Agreement becomes  
7 voidable at the discretion of Pima County, and the County may file a  
8 complaint in Superior Court and seek all available civil penalties against El  
9 Molinito.

- 10 c. El Molinito agrees to send at least one representative to IWC's Pollution  
11 Prevention School within a year from the date of this Agreement.

12 The acquisition of the Discharge Permit, the payment of the penalty and  
13 remediation cost, and attendance at Pollution Prevention School, represent the full  
14 settlement of penalties and costs imposed by Pima County under P.C.C., Title 13,  
15 Chapter 13.36 for the violations alleged in the Notification of Violation.

16 20. Failure of Compliance. The parties agree that it is the responsibility of El Molinito  
17 to achieve and maintain compliance with all applicable Federal, State and local  
18 laws, regulations and permits. Compliance with this Agreement shall not be a  
19 defense to any enforcement actions commenced pursuant to said laws, regulations,  
20 or permits and based on El Molinito activities or omissions occurring after the date  
21 of this agreement.

22 21. Entire Agreement. This Agreement contains the entire agreement between Pima  
23 County and El Molinito, and the terms, conditions, and provisions of this  
24 Agreement are contractual and not a mere recital.

25 22. Attorneys' Fees. In the event that either Pima County or El Molinito finds it  
26 necessary to employ legal counsel to bring an action at law or other proceeding

1 against the other party to enforce any of the terms, conditions, or provisions of this  
2 Agreement, the party prevailing in such action shall be paid all reasonable  
3 attorneys' fees by the other party, and in the event that any judgment is secured by  
4 the prevailing party in such action or proceeding, all reasonable attorneys' fees  
5 shall be included in said judgment. The amount of reasonable attorneys' fees shall  
6 be determined by the court and not by a jury.

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

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

17 To Pima County:

To El Molinito:

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

Wayne Hallquist  
El Molinito Inc.  
4701 Calle Jabali  
Tucson, AZ 85711

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

25 **26. Severability.** The provisions of this Agreement shall be severable, and should any  
26 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.

27. 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.

28. 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 El Molinito.

29. 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.

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

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

**PIMA COUNTY**

ATTEST:

By \_\_\_\_\_  
Chair, Board of Supervisors

By \_\_\_\_\_  
Robin Brigode  
Clerk of the Board of Supervisors

Date \_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

By  \_\_\_\_\_  
Michael LeBlanc  
Deputy Pima County Attorney

1 **EL MOLINITO, INC.**

2 By

3 Margaret Hallquist  
Director

4 Date

5 10/19/15

6  
7 STATE OF ARIZONA )

8 COUNTY OF PIMA ) ss

9 The foregoing Agreement was acknowledged before me this 19 day of  
10 October, 2014, by Margaret Hallquist, a Director  
(name) (title)  
11 on behalf of El Molinito, Inc. an Arizona corporation.

12  
13  
14 My Commission Expires:

8/31/2016

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
Notary Public

