



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: May 17, 2016

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:

RA Sushi Tucson Corp., Case No. 2015-D-009. The proposed settlement of payment in the amount of \$2,400.00 for penalty costs; the retention of an industrial waste discharge permit and quarterly monitoring; and 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 Settlement Agreement.

Fiscal Impact:

None

Board of Supervisor District:

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☒ All

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

Department Director Signature/Date: _____

TOM WEAVER

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: _____

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NO. 2015-D-009

NO. 2015-D-009

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1 pretreatment requirements.

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

- 6 8. RA Sushi operates a restaurant located at 2905 East Skyline Drive #289, that
7 discharges industrial wastewater into Pima County's wastewater treatment system.
8 9. The Industrial Wastewater Ordinance § 13.36.070(A)(o) sets the allowable
9 discharge limit for oil and grease at 200 milligrams per liter of water.
10 10. Industrial Wastewater Ordinance §§ 13.36.150(A)(1)(b) requires industrial users
11 to "notify the industrial wastewater control section by telephone within twenty-
12 four hours from the time the user becomes aware of the circumstances in which
13 any discharge exceeds any effluent limitation in the permit, or exceeds a
14 maximum discharge limitation for any of the pollutants listed in this chapter."
15 11. Industrial Wastewater Ordinance § 13.36.040(VV)(a) provides that an industrial
16 user is in significant noncompliance for chronic violations – "those in which 66
17 percent or more of all the measurements taken for the same pollutant parameter
18 during a six-month period exceed (by any magnitude) a numeric Pretreatment
19 Standard or Requirement..."
20 12. On June 26, 2015, RA Sushi sampled its industrial wastewater discharged from its
21 restaurant.
22 13. The collected sample exceeded the discharge limit for oil and grease in violation
23 of Industrial Wastewater Ordinance § 13.36.070(A)(o).
24 14. RA Sushi did not notify IWC that the sample exceeded the oil and grease limits
25 until September 14, 2015.
26

- 1 15. The measurement of the June 26, 2015 sample was the only measurement reported
2 by RA Sushi during the period of January 1, 2015 to June 30, 2015.
- 3 16. On October 22, 2015, IWC issued RA Sushi Notification of Violation, No. 2015-
4 D-009 for being in significant non-compliance with the discharge limitations for
5 oil and grease and for violating the notification requirements of the ordinance.
- 6 17. RA Sushi's violations Industrial Wastewater Ordinances §§ 13.36.070(A)(o) and
7 13.36.150(A)(1)(b) subjects RA Sushi to civil penalties consistent with the federal
8 Clean Water Act.

9

10 III. TERMS AND CONDITIONS

- 11 18. Settlement. Pima County and RA Sushi have entered into this Agreement in order
12 to resolve all identified disputes between them according to the following terms
13 and conditions:
- 14 a. RA Sushi agrees to retain its Industrial Wastewater Discharge Permit and
15 monitor its discharge on a quarterly basis. After one year of compliance,
16 RA Sushi may petition IWC that the permit be deactivated;
- 17 b. RA Sushi agrees to pay a penalty of \$2,400 for exceeding the oil and grease
18 limitations and for failing to notify IWC of the exceedance. In the event
19 that payment in full is not made within 30 days of the date of this
20 Agreement, RA Sushi agrees to pay interest on any outstanding portion at a
21 simple interest rate of 10 percent per annum. In the event that payment is
22 not made within 60 days from the date of this Agreement, this Agreement
23 becomes voidable at the discretion of Pima County, and the County may
24 file a complaint in Superior Court and seek all available civil penalties
25 against RA Sushi.
- 26 c. RA Sushi agrees to arrange for at least one representative to attend IWC's

1 Pollution Prevention School.

2 The Discharge Permit, the payment of \$2,400, and attendance at Pollution
3 Prevention School, represent the full settlement of penalties and costs imposed by Pima
4 County under P.C.C., Title 13, Chapter 13.36 for the violations alleged in the Notification
5 of Violation.

6 19. Failure of Compliance. The parties agree that it is the responsibility of RA Sushi
7 to achieve and maintain compliance with all applicable Federal, State and local
8 laws, regulations and permits. Compliance with this Agreement shall not be a
9 defense to any enforcement actions commenced pursuant to said laws, regulations,
10 or permits and based on RA Sushi's activities or omissions occurring after
11 December 11, 2015, the date of negotiation of this agreement.

12 20. Entire Agreement. This Agreement contains the entire agreement between Pima
13 County and RA Sushi, and the terms, conditions, and provisions of this Agreement
14 are contractual and not a mere recital.

15 21. Attorneys' Fees. In the event that either Pima County or RA Sushi finds it
16 necessary to employ legal counsel to bring an action at law or other proceeding
17 against the other party to enforce any of the terms, conditions, or provisions of this
18 Agreement, the party prevailing in such action shall be paid all reasonable
19 attorneys' fees by the other party, and in the event that any judgment is secured by
20 the prevailing party in such action or proceeding, all reasonable attorneys' fees
21 shall be included in said judgment. The amount of reasonable attorneys' fees shall
22 be determined by the court and not by a jury.

23 22. Authority. The persons executing this Agreement expressly represent and warrant
24 that they are authorized to execute the same. Further, Pima County and RA Sushi
25 expressly acknowledge that they have been given the opportunity to be
26 represented by their respective attorneys in the negotiation of this Agreement. The

1 terms, conditions and provisions of this Agreement shall be construed only
2 according to their fair import.

3 23. Form of Notice. Unless otherwise provided for in this Agreement, any notice or
4 communication between the parties shall be deemed submitted on the date they are
5 postmarked and sent by certified mail, return receipt requested, and shall be
6 addressed as follows:

7 To Pima County:
8 Doug Kirkland
9 Wastewater Reclamation Department
10 Industrial Wastewater Control
11 2955 West Calle Agua Nueva
Tucson, AZ 85745

To RA Sushi:
Antonio Clark
Regional Manager
2905 E. Skyline Dr. #289
Tucson, AZ 85718

12 24. Non-Waiver Provisions. This Agreement in no way relieves RA Sushi of its
13 responsibility to comply with all applicable Federal, State, local laws, or permits
14 conditions in operating its facility in Pima County.

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

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

22 27. Limitations. It is the intent of the parties that this Agreement shall not be used in
23 any judicial proceedings or in any other manner against RA Sushi.

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

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

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
Michael LeBlanc
Deputy Pima County Attorney

RA Sushi

By Antonio

Date 2/18/16

STATE OF ARIZONA)
COUNTY OF PIMA) ss

The foregoing Agreement was acknowledged before me this 18th day of February, 2016, by Antonio, a General Manager on behalf of RA Sushi Tucson Corp. an Arizona corporation.

My Commission Expires:

