



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: February 18, 2020

Title: Regular Session Agenda Item - Regional Wastewater Reclamation

Introduction/Background:

Staff recommends that the Board of Supervisors approve the following pretreatment Negotiated Settlement Agreement (NSA). The NSA is a result of an enforcement action by the 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 NSA discussed below.

Discussion:

The Department and LHM CORP TDR, doing business as Larry H. Miller Dodge Ram Tucson, propose an NSA to settle a violation of the County's wastewater discharge limitations at LHM CORP TDR automotive dealership and repair facility. As part of the agreement, LH CORP TDR will pay a penalty of \$2,000 for violating the Industrial Wastewater Ordinance, and will send at least one representative to IWC's Pollution Prevention School within one year from the date of the NSA in accordance with the Industrial Wastewater Enforcement Response Plan.

Conclusion:

If approved, the NSA 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 NSA.

Recommendation:

That the Board of Supervisors approve the 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: Deputy County Attorney Michael LeBlanc **Telephone:** 520-724-5700

Department Director Signature/Date: ANDREW FLAGG 2/3/2020

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: _____

FER 0370M0454PCC KTF RD

AS

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6

3
4
5
6
7

901

2

- 3
4
5
6
7
8
9
0
1
2
3
4
5
6

pretreatment requirements.

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

II. FINDINGS

7. LHM Corp. operates an automotive dealership and repair facility located at 4220 East 22nd Street in Tucson that discharges industrial wastewater into Pima County's wastewater treatment system.
8. LHM Corp.'s facility discharges industrial wastewater under the authority of Industrial Wastewater Discharge Permit 10178.
9. Industrial Wastewater Ordinance § 13.36.070(1)(o) provides that an Industrial User cannot exceed the discharge limit of 200 mg/l for oil and grease.
10. Industrial Wastewater Ordinance § 13.36.060(A)(1) prohibits "any gasoline, benzene, naphtha, solvent, fuel oil or any other liquids, solids or gasses which may create or tend to create a fire or explosion hazard in the [Publically Owned Treatment Works ("POTW")], or may be injurious in any other way to the POTW, including but not limited to, wastestreams with a closed cup flash point of less than 140 °F."
11. On or before October 3, 2019, LHM Corp. accidentally discharged oil into the POTW.
12. Pima County's Industrial Wastewater Control collected samples of the wastestream from LHM Corp. on October 4, 2019. The samples had a concentration of oil in the amount of 466.83 mg/l which exceeds the discharge limitation for oil in Industrial Wastewater Ordinance § 13.36.070(1)(o). The samples had a flash point of 132 °F which is prohibited by Industrial Wastewater

1 Ordinance § 13.36.060(A)(1).

2 13. On October 22, 2019, IWC issued LHM Corp. Notification of Violation No. 2019-
3 D-002 for exceeding the discharge limit for oil and for discharging wastewater
4 with an ignitability of less than 140°.

5 14. LHM Corp.'s violation of the Industrial Wastewater Ordinance subjects LHM
6 Corp. to civil penalties consistent with the federal Clean Water Act.

7
8 III. TERMS AND CONDITIONS

9 15. Settlement. Pima County and LHM Corp. have entered into this Agreement in
10 order to resolve all identified disputes between them according to the following
11 terms and conditions:

12 a. LHM Corp. agrees to pay a penalty of \$2,000 for violating the Industrial
13 Wastewater Ordinance within 30 days from execution of this agreement by
14 the Chairman of the Board of Supervisors. In the event that payment in full
15 is not made within 30 days, LHM Corp. agrees to pay interest on any
16 outstanding portion at a simple interest rate of 10 percent per annum. In the
17 event that payment is not made within 60 days, this Agreement becomes
18 voidable at the discretion of Pima County, and the County may file a
19 complaint in Superior Court and seek all available civil penalties against
20 LHM Corp.

21 b. LHM Corp. agrees to send at least one representative to IWC's Pollution
22 Prevention School within a year from the date of this Agreement.

23 The payment of the penalty and attendance at Pollution Prevention School
24 represent the full settlement of penalties imposed by Pima County under P.C.C.,
25 Title 13, Chapter 13.36 for the violations alleged in the Notification of Violation.
26

1 16. Failure of Compliance. The parties agree that it is the responsibility of LHM Corp.
2 to achieve and maintain compliance with all applicable Federal, State and local
3 laws, regulations and permits. Compliance with this Agreement shall not be a
4 defense to any enforcement actions commenced pursuant to said laws, regulations,
5 or permits and based on LHM Corp. activities or omissions occurring after the
6 date of this agreement.

7 17. Entire Agreement. This Agreement contains the entire agreement between Pima
8 County and LHM Corp., and the terms, conditions, and provisions of this
9 Agreement are contractual and not a mere recital.

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

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

24 20. Non-Waiver Provisions. This Agreement in no way relieves LHM Corp. of its
25 responsibility to comply with all applicable Federal, State, local laws, or permits
26

conditions in operating its facility in Pima County.

21. 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.

22. 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.

23. 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 LHM Corp..

24. 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.

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

26. Date of Public Notice. Public notice of the thirty (30) day comment period shall be given at a Pima County Board of Supervisors' Meeting.

PIMA COUNTY

ATTEST:

By _____
Chairman, Board of Supervisors

By _____
Julie Castañeda
Clerk of the Board of Supervisors

Date _____

Date _____

APPROVED AS TO FORM:

By [Signature]
Michael LeBlanc
Deputy Pima County Attorney

LHM CORP TDR

By [Signature]
Stacey Barnett
General Manager

Date 11/15/2019

STATE OF ARIZONA)
COUNTY OF PIMA) ss

The foregoing signature was acknowledged before me this 15 day of
November, 2019, by Stacey Barnett, a General manager
(name) (title)
with authority to enter into this contract on behalf of LHM CORP TDR an Arizona corporation.

[Signature]

Notary Public

My Commission Expires:

