



Agenda Report

File #: 2019-497, **Version:** 2

FROM: James D. Herberg, General Manager
Originator: Lan Wiborg, Director of Environmental Services

SUBJECT:

SETTLEMENT AGREEMENT WITH ASEPTIC TECHNOLOGY, LLC

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION: Recommend to the Board of Directors to:

Authorize the General Manager to execute a Settlement Agreement to settle industrial wastewater discharge enforcement matters with Aseptic Technology, LLC, a facility that discharged without a valid Orange County Sanitation District permit, for \$185,000 plus applicable fees and interest, in a form approved by General Counsel.

BACKGROUND

Orange County Sanitation District's (Sanitation District) pretreatment program is responsible for controlling discharges to the sewer from industrial users in the Sanitation District's service area. Certain facilities are required to be issued wastewater discharge permits in accordance with the U.S. Clean Water Act and the Sanitation District's Wastewater Discharge Regulations (Ordinance No. OCSD-53).

On June 18, 2019, the Sanitation District informed Aseptic Technology, LLC (Aseptic), an industrial discharger located in Yorba Linda, that the Sanitation District intended to initiate administrative proceedings against the company for non-compliance. This was based on the Sanitation District's determinations that for at least 37 days, from April 1, 2019 through June 17, 2019, Aseptic had discharged industrial wastewater without a valid discharge permit, in violation of the Ordinance.

Aseptic has operated a beverage and dietary supplements manufacturing operation located at 24855 Corbit Place, Yorba Linda, CA, 92887, since 2013. In January 2016, due to a delinquency in making timely payments for user charges, the Sanitation District Board of Directors approved a 12-month payment agreement with Aseptic in the amount of \$199,228.03. Aseptic made timely payments in accordance with the agreement and completed the 12-month schedule in January 2017. However, Aseptic Technology failed to make payments against quarterly invoices after January 2016; thus, necessitating a second payment agreement request in July 2017 for delinquent amounts totaling \$451,161.54, which was paid in full. The second payment agreement also required Aseptic to remit timely payments against new obligations occurring during the term of the agreement.

In January 2018, Aseptic requested a third payment agreement for delinquencies owed in the amount

of \$252,315.72, which was paid in full. This payment agreement request was authorized, and it required a letter of credit and a stipulation that current invoices were to be paid in a timely manner. As a result of the payment agreement, a typical two-year Class 1 permit was not issued to Aseptic, and the permit was renewed for only three months at a time. Due to Aseptic's repeated failure to make timely payments pursuant to this payment agreement, the Sanitation District did not renew the permit which expired on March 31, 2019. However, Aseptic continued to discharge industrial wastewater to the sewer. An Order to Cease Discharge Without a Valid Permit was issued on April 11, 2019.

The permit which expired March 31, 2019 was not renewed until May 6, 2019 when a payment was received - the facility had discharged to the Sanitation District without a permit throughout April and the first week of May - serious violations of the Sanitation District's Wastewater Discharge Regulations Ordinance. When the May 2019 permit expired on May 31, 2019, it was not renewed due to the facility's non-payment of user charges. Another Order to Cease Discharge Without a Valid Permit was issued on June 5, 2019. The Sanitation District met with Aseptic on June 18, 2019 and agreed to settle the violations associated with discharging without a permit.

Pursuant to Government Code Sections 54739-54740.5 and Section 616 of the Sanitation District's Ordinance, the Sanitation District is authorized to impose administrative civil penalties up to \$5,000 for each day of discharge in violation of any waste discharge limit or permit requirement imposed by the Sanitation District.

Pursuant to Resolution No. OCSD 11-04, settlement negotiations then took place between the Sanitation District staff and Aseptic. As a result of these negotiations, Sanitation District staff recommended the settlement of all matters related to the enforcement action in return for payment by Aseptic of \$185,000. This amount is based on the allowable penalties considering the magnitude, frequency, duration, intent, and impact of the violations. The staff is willing to accept \$185,000 with required provisions for Aseptic to return to compliance. Aseptic is willing to settle on these terms.

In accordance with Resolution No. OCSD 11-04, a committee consisting of the General Manager, or his designee, the Assistant General Manager/Director of Finance and Administrative Services, and the Director of Engineering has the authority to approve settlement of claims up to \$100,000, and the Board of Directors have the authority to approve settlement of claims above \$100,000.

RELEVANT STANDARDS

- OCSD Ordinance No. 48 Wastewater Discharge Regulations
- CA Government Code Sections 54739-54740.5
- Resolution No. OCSD 11-04, Article IV

PROBLEM

Aseptic discharged without a valid Sanitation District permit and is therefore subject to administrative penalties. Aseptic's CEO expressed interest in reaching a settlement, however, any settlement agreement negotiated by the Sanitation District's staff committee that is above \$100,000 must be approved by the Sanitation District's Board of Directors.

PROPOSED SOLUTION

The Sanitation District staff recommend that the Board of Directors approve the Settlement Agreement.

TIMING CONCERNS

Aseptic has requested a 12-month payment schedule to pay the \$185,000 in civil penalties (approximately \$193,000 including interest and fees). A delay in approving the settlement agreement would delay the initiation of this payment schedule.

RAMIFICATIONS OF NOT TAKING ACTION

The Sanitation District would not be able to settle this particular enforcement matter as per staff's recommendation and the Aseptic CEO's request and would instead move to a costly and resource-intensive administrative hearing process.

PRIOR COMMITTEE/BOARD ACTIONS

December 2017/January 2018 - Approved the deferred payment agreement negotiated by the General Manager for collection of all charges and fees owed for sanitary sewer service charges. In lieu of denying the request for a 3rd deferred payment agreement, negotiated a resolution whereby the permit was extended for 90 days to allow Aseptic to become current with payments.

July 2017 - Approved the deferred payment agreement negotiated by the General Manager for collection of all charges and fees owed for sanitary sewer service charges, plus interest of 6.00% annum, with Aseptic Technology, in a form approved by General Counsel.

January 2016 - Approved the deferred Payment Agreement negotiated by the General Manager for collection of all charges and fees owed for sanitary sewer service charges, plus interest of 5.25% annum, with Aseptic Technology, in a form approved by General Counsel.

FINANCIAL CONSIDERATIONS

Aseptic is currently delinquent at this location for an approximate amount of \$91,000.

ATTACHMENT

The following attachment(s) are included in hard copy and may also be viewed on-line at the OCSD website (www.ocsd.com) with the complete agenda package:

- Memorandum regarding the Settlement Agreement between Aseptic Technology, LLC and Orange County Sanitation District
- Draft Settlement Agreement between Aseptic Technology, LLC and Orange County Sanitation District