



Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street
Chicago, IL 60611

Legislation Details (With Text)

File #: 10-1319 **Version:** 1

Type: Agenda Item **Status:** Adopted

File created: 10/22/2010 **In control:** Judiciary Committee

On agenda: 11/4/2010 **Final action:** 11/4/2010

Title: Authority to settle MWRD v. Optimum Food Group, LLC, EA # 83294, et al., (Show Cause Action) and In Re: Optimum Food Group, LLC, DA No. 26550-1, (Appeal of Denial of Request for Renewal of Discharge Authorization)

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
11/4/2010	1	Committee of the Whole	Recommended	Pass
11/4/2010	1	Board of Commissioners	Approved	Pass

TRANSMITTAL LETTER FOR BOARD MEETING OF NOVEMBER 4, 2010

COMMITTEE ON JUDICIARY

Mr. Richard Lanyon, Executive Director

Authority to settle MWRD v. Optimum Food Group, LLC, EA # 83294, et al., (Show Cause Action) and In Re: Optimum Food Group, LLC, DA No. 26550-1, (Appeal of Denial of Request for Renewal of Discharge Authorization)

Dear Sir:

Optimum Food Group, LLC ("Optimum") operates a food manufacturing facility located at 2900 Shermer Road, Northbrook, Illinois, which is classified as a Significant Industrial User ("SIU") by the Metropolitan Water Reclamation District of Greater Chicago ("District") and is subject to the District's Sewage & Waste Control Ordinance ("Ordinance").

On July 9, 2010, the District filed a thirteen count Verified Show Cause Complaint against Optimum arising out of alleged violations of the District's Ordinance limit for Fat, Oils and Greases ("FOG") and its failure to have a Secondary Spill Containment Plan in place and a Class K Licensed Pre-Treatment Plant Operator employed at the facility.

For many months, Optimum had been working with the Enforcement Section of the Monitoring & Research ("M&R") Department to resolve all the enforcement actions pending against it and had already made significant progress toward that goal at the time the Show Cause action was filed.

A Pre-Hearing Conference was conducted on July 8, 2010, before Hearing Officer James A. Thomas and continued to August 26, 2010. In response to District's demand that Optimum pay civil penalties associated with the alleged violations of the Ordinance, Optimum advised that its current financial condition, which would continue for the foreseeable future, prevented it from paying significant civil penalties.

At the August 26, 2010 status hearing, the parties agreed that Optimum would provide the District with evidence of its financial condition, including financial statements. That information was provided, including financial statements for the years 2008, 2009 and the first quarter of 2010. The District's Finance Department reviewed this information and verified the company's financial condition. Thereafter, the parties entered into settlement negotiations that resulted in Optimum agreeing to pay \$43,000.00 over a two-year period in full and final settlement of all civil penalties assessed against it in the Show Cause action, contingent upon the Board of Commissioners approval. The proposed settlement takes into account Optimum's distressed financial condition balanced with its apparent good faith efforts to come into compliance with the District's Ordinances under a management team that has been in place less than a year.

In accordance with the Ordinance, Optimum has paid all administrative charges related to the enforcement actions issued against it.

On April 16, 2010, the M&R Department referred to Law Optimum's Appeal of the Denial of the Request for Renewal ("DAR") of its Discharge Authorization. Renewal of Optimum's Discharge Authorization was denied because of the pending enforcement matters. On July 30, 2010, the DAR appeal was consolidated with the Show Cause matter before Hearing Officer Thomas. The M&R Department has agreed to issue Optimum a six (6) month Discharge Authorization upon finalization of the Show Cause settlement, but the Discharge Authorization will be contingent upon Optimum remaining in compliance with the Sewage and Waste Control Ordinance and the Discharge Authorization, as well as remaining current with the payment plan.

Subject to the approval of the Board of Commissioners, the parties will execute a Settlement Agreement indicating there has been a resolution of this matter on the above-stated terms as further set forth therein. The Hearing Officer retained by the Board of Commissioners to adjudicate this matter has approved the settlement on these terms and the M&R Department has no objection to same. Therefore, the General Counsel requests that the Board of Commissioners approve the settlement of this case. Further, the General Counsel requests authority to execute such documents as may be necessary to effectuate settlement.

Requested, Frederick M. Feldman, General Counsel, FMF:RMH:MTC:jys

Respectfully Submitted, Terrence J. O'Brien, Chairman Committee on Judiciary

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for November 4, 2010