

## **Questions re: Citizen Request for an Investigation and Report on How Pinal County Government officials conducted themselves in relation to Johnson Utilities Hydrogen Sulfide Violations.**

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### **What happened before the June 21, 2017 Board of Supervisors meeting?**

1. Why did JU invite Todd House to take a tour of the WWTP before inviting Mike Goodman? Members of the community think it looks suspicious, and think it appears that JU may have attempted to preemptively influence Todd House, or seek to collect favors as a result of JU's previous campaign contributions to Todd House.

RESPONSE: Please contact JU regarding its decision making.

### **What happened at the June 21, 2017 Board of Supervisors meeting?**

2. Why did House and Rios seek to weaken the county's bargaining position with JU, and argue to amend the motion to delay granting authority to PCAQCD despite reasonable argument for the need to obtain negotiating leverage with Johnson Utilities made by Kevin Costello, Senior Attorney for Pinal County.

RESPONSE: The County disagrees that the County's bargaining position was weakened by suggesting amendments to the motion. It is common practice for supervisors to offer motions/amendments to motions as a way to voice issues, gain consensus or explore alternative strategies they feel are worthy of consideration. Please see recording of June 21, 2017 meeting available on the Pinal County web site for additional information. To the extent this question requests information discussed in executive session that information is privileged under A.R.S. § 38-431.03B.

3. Why was the Rios amendment to the motion described as a "friendly amendment" when from a technical perspective it was an "unfriendly amendment" due to the fact that it did not enjoy unanimous consent due to Mike Goodman's "nay" vote?

RESPONSE: The phrase "friendly amendment" refers to a common practice in parliamentary procedure and is used as a means to show respect for the maker of the original motion.

4. Why did Todd House try to blame the victims, with his erroneous “waiver of smells” argument, and excuse JU by using the minimizing language of “nuisance odors” instead of using the accurate language of hydrogen sulfide exceedance violations?

RESPONSE: The County denies that Supervisor House’s comments were intended to “blame the victims”. The comments were an attempt to use commonly understood everyday terms instead of technical verbiage. Please see recording of June 21, 2017 meeting available on the Pinal County web site. To the extent this question requests information discussed in executive session that information is privileged under A.R.S. § 38-431.03B

5. Why did Todd House conflate poisonous hydrogen sulfide exceedance violations with “nuisance odors”?

RESPONSE: Please see the response to #4 above.

6. Did Todd House consult with, coach, or provide instruction, in any way, to Brad Cole regarding how or what to answer to questions posed by the BOS, prior to Brad Cole’s June 21, 2017 testimony to the BOS? If yes, why did Mr. House provide such coaching or instruction? If No, why did it look like Mr. House provided such coaching or instruction?

RESPONSE: No

7. Brad Cole stated in his June 21, 2017 testimony before the BOS that representatives from Parkson Company were planning to come to the JU Section 11 WWTP on or about June 22, 2017. Did anyone from PCAQCD, the BOS, or any Pinal County staff receive any information or a report from JU as to what representative from the Parkson Company told JU about their recommendations for Biolac mechanical WWTP? Where is the report from Parkson Company? Did JU provide the BOS or PCAQCD a copy of the report from the Parkson Company? What did it say? Did the Parkson Company recommend a mechanical plant or not? If the Parkson Company recommended a mechanical plant, why wasn’t it made part of the OAC?

RESPONSE: Pinal County does not have a copy of the referenced report.

8. Did Todd House or Pete Rios consult with Anthony Smith about the JU matter before the June 21, 2017 BOS meeting?

RESPONSE: No

9. Did either Todd House or Pete Rios attempt to persuade Anthony Smith to waive penalties prior to the June 21, 2017 BOS meeting?

RESPONSE: No

10. Did Mr. Smith consult with Michael Sundblom of PCAQCD regarding the PCAQCD's Pinal County Air Quality Violation Penalty Calculation Policy before making his statement on June 21, 2017?

RESPONSE: No

**What happened before the Order of Abatement by Consent (OAC) was signed on August 21, 2017?**

11. Did JU have discussions, or have any correspondence, or any verbal or written agreement with any responsible Pinal County officials including the County Manager, the Director of PCAQCD, members of the BOS, or the Pinal County Attorney, before the OAC was reached, that indicated JU intended to build a Biolac mechanical WWTP?

RESPONSE: The agreement between JU and the County is reflected in the Order of Abatement by Consent (OAC). An OAC is a negotiated settlement authorized by A.R.S. § 49-511E. An OAC is used to get a regulated party back into compliance and resolve alleged violations without incurring the time, expense and risk of litigation. While administrative penalties can be part of an OAC, Counties lack the authority to unilaterally impose penalties, therefore Pinal did not "waive" any penalties. In order to collect penalties as part of an OAC the parties must agree to the penalty amount. The Air Quality Department has developed a penalty policy. This is used as a guide for staff to determining a beginning point for negotiation of a potential penalty amount. If a settlement is not reached, the County may seek to have the superior court impose penalties for violations of its air quality regulations; however, this requires that the County prove the violation(s) in court and convince the court that penalties are appropriate. It would be up to the court to determine the amount of the penalty.

The OAC with Johnson regarding the hydrogen sulfide exceedances was drafted by staff of the Pinal County Air Quality Department in consultation with counsel from the Pinal County Attorney's Office. Any advice given by the County Attorney's Office

would be subject to attorney client privilege. In negotiating an OAC Pinal County has the authority to require compliance with applicable regulatory standards but cannot dictate the method for achieving compliance. The Director of the Pinal County Air Quality Department has the authority to enter into an OAC as the Control Officer. For additional information see the testimony of Michael Sundblom before the ACC in Docket No. WS-02987A-18-0050. Information concerning how to order transcripts is available on the Arizona Corporation Commission website. To the extent this question requests information discussed in executive session that information is privileged under A.R.S. § 38-431.03B.

12. Was there any discussion or any documents drafted that memorialized any understanding between the negotiators that JU intended or planned to build a Biolac mechanical WWTP before Pinal County waved close to \$1 million in potential penalties?

RESPONSE: See the response to #11 above.

13. Was the OAC drafted by Pinal County officials with the understanding that JU would not build a Biolac mechanical WWTP as part of their compliance plan?

RESPONSE: See the response to #11 above.

14. (The BOS received that JU letter dated July 19, 2017 before the OAC was signed on August 21, 2017.) Based upon that Letter, was it the understanding of the BOS that JU intended to build a mechanical Biolac treatment system? Yes or no? If yes, did that understanding have any bearing on the decision to waive over \$1 million in potential penalties? Did Brad Cole's representations in the July 19, 2017 letter to the BOS have any bearing on the decision to waving over \$1 million in potential penalties by anyone operating in an official capacity for Pinal County involved in negotiations with the JU including: members of the BOS, PCAQCD, Director Michael Sundblom, the Pinal County Manager Gregory Stanley, or Pinal County staff or attorneys?

RESPONSE: See the response to # 11 above.

15. Did the August 10, 2017 letter to ACC Commissioner Tobin have any effect on how calculations were made as to the amount of penalties imposed upon JU as memorialized in the OAC that was signed on August 21, 2017?

RESPONSE: See the response to # 11 above.

16. Who are the drafters of the OAC? (Exhibit 4)

RESPONSE: See the response to # 11 above.

17. Was the OAC reviewed by anyone from the Pinal County Attorney's office or any other attorney working for any Pinal County Government authority that had jurisdiction in the drafting or enforcement of the OAC?

RESPONSE: See the response to # 11 above.

18. Specifically who decided upon and/or approved the amount of the penalties that should be imposed upon Johnson Utilities? How did they calculate the amount of those penalties? Was the Pinal County Air Quality Violation Penalty Calculation Policy consulted in those calculations? If so, please explain the calculations that were made. (Exhibit 5)

RESPONSE: See the response to # 11 above.

19. Was the Pinal County Air Quality Violation Penalty Calculation Policy discussed and weighted before deciding to waive \$1 million in penalties? Why or why not? Who was involved in the discussions and when and where did the discussions take place?

RESPONSE: See the response to # 11 above.

20. Was the Penalty imposed upon JU calculated using the Pinal County Air Quality Violation Penalty Calculation Policy?

RESPONSE: See the Response to # 11 above.

21. The Pinal County Air Quality Violation Penalty Calculation Policy describes using a calculation worksheet to calculate penalties. The Calculation worksheet is supposed to be retained in a PCAQCD file. Does the calculation worksheet show that the Pinal County Air Quality Violation Penalty Calculation Policy was used as a basis of calculating the final penalty that was ultimately imposed upon JU as part of the OAC?

RESPONSE: See the response to # 11 above.

22. Is there any evidence to show that the BOS was aware of, or understood that PCAQCD had a policy that memorialized the Pinal County Air Quality Violation Penalty Calculation Policy? If yes, were members of the BOS provided copies of the calculation worksheet before discussions, recommendations, or votes took place about waving potential penalties against JU?

RESPONSE: Resolution of the air quality enforcement action against Johnson for the Notices of Violation was discussed in the open meeting of the Pinal County Board of Supervisors on June 21, 2017. A recording of the meeting(s) is available on the County's web site. Discussions of the enforcement action were also held in executive session. Proceedings in executive session are privileged and not subject to disclosure A.R.S. § 38-431.03B.

23. Did the BOS provide an answer to the public as to why or why not the Pinal County Air Quality Violation Penalty Calculation Policy was consulted?

RESPONSE: See the response to # 22 above. In addition Chairman Todd House and Supervisor Stephen Miller provided testimony regarding their knowledge of the process leading to the Order of Abatement by Consent during the hearings before the Arizona Corporation Commission in Docket # WS-02987A-18-0050. Information regarding ordering a transcript of the testimony is available on the ACC website.

24. Did the BOS provide an answer to the public as to how they reasoned and calculated to ultimately come up with \$20,000 in penalties?

RESPONSE: See the response to # 23 above.

25. Specifically who decided and approved the amount of the penalties that should be imposed upon JU?

RESPONSE: See the response to # 11 above.

26. Please explain how each section of the Pinal County Air Quality Violation Penalty Calculation Policy was used to determine the penalty imposed against JU in the OAC that was signed on August 21, 2017.

RESPONSE: See the testimony of Michael Sundblom before the Arizona Corporation Commission in Docket # WS-02987A-18-0050. Information regarding ordering a transcript of the testimony is available on the ACC website.

27. Was there any discussion among Pinal County officials that waiving over \$1 million in penalties might create negative publicity for the county or raise questions of impropriety?

RESPONSE: Resolution of the air quality enforcement action against Johnson for the Notices of Violation was discussed in the open meeting of the Pinal County Board of Supervisors on June 21, 2017. A recording of the meeting(s) is available on the County's web site. Discussions of the enforcement action were also held in executive session. Proceedings in executive session are privileged and not subject to disclosure A.R.S. § 38-431.03B.

**What happened when JU submitted their compliance plan to PCAQCD on October 20, 2017?**

28. Why did Brad Cole give an indication that a mechanical plant would be built before the OAC was reached to both the BOS and the ACC, then after the million dollars in penalties was waived, the compliance plan that JU submitted to PCAQCD had no Biolac mechanical plant?

RESPONSE: The County cannot speak for Brad Cole. Regarding the County's actions in reaching the OAC, please see the response to # 11 above.

29. Why did the BOS and PCAQCD allow an agreement that simply allowed a "written compliance plan" and not a specific detailed plan for compliance requiring a Biolac mechanical plant to be written in the OAC? Was that an oversight or intentional?

RESPONSE: Please see the response to # 11 above.

30. Exactly who was responsible for drafting the part of the OAC that failed to specify exactly what was expected? Or was what was presented by JU in their "written compliance plan" what was expected by Pinal County officials?

RESPONSE: Please see the response to # 11 above.

31. Why was JU not required to admit to the violations alleged in the order as a condition of the OAC?

RESPONSE: Please see the response to # 11 above.

32. Did Pinal County government officials including the BOS, the Pinal County Manager, the PCAQCD, the Pinal County Attorney, or any other Pinal County staff involved in the negotiations or approval of the OAC, expect that JU would be allowed to not build a Biolac mechanical plant as a result of the language used in the OAC that simply required a “written compliance plan”?

RESPONSE: Please see the testimony of Chairman Todd House, Supervisor Stephen Miller and Michael Sundblom before the Arizona Corporation Commission in Docket No. WS-02987A-18-0050.

33. Did the BOS intend that JU would not be required to build a Biolac mechanical plant as a result of the language used in the OAC only requiring a “written compliance plan” even though JU’s representative Brad Cole stated in a letter to the BOS dated July 19, 2017 (Exhibit 2) and a letter dated August 10, 2017 to Commissioner Boyd of the Arizona Corporation Commission, (Exhibit 3) that JU was going to build a Biolac mechanical plant?

RESPONSE: Please see the response to # 11 above as well as the testimony of Chairman Todd House, Supervisor Stephen Miller and Michael Sundblom before the Arizona Corporation Commission in Docket No. WS-02987A-18-0050.

34. Did the drafters of the OAC foresee that JU would be allowed to not build a Biolac mechanical plant by use of the term “written compliance plan” as used in the OAC?

RESPONSE: Please see the response to # 33 above.

35. In retrospect, does the BOS consider that the use of the term “written compliance plan” as used in the OAC, is too ambiguous?

RESPONSE: Please see the response to # 11 above.

36. Did the BOS enter the OAC expecting that JU would not be required to build a Biolac mechanical plant as a result of the OAC? If the answer is no, has anybody been held accountable for the results of the OAC?

RESPONSE: Please see the response to # 33 above.

**What happened after JU submitted their compliance plan to PCAQCD on October 20, 2017?**

37. When the “written compliance plan” was submitted by JU why was there no questions or “pushback” by the BOS and PCAQCD? Had JU, the BOS and PCAQCD already planned in advance for a “written compliance plan” that did not include a Biolac mechanical plant? (Exhibit 6)

RESPONSE: Please see the response to # 27 above.

38. Did the BOS and PCAQCD know before they signed the OAC that the intention of the JU was to forgo or delay building a mechanical plant, even though JU expressly stated to the BOS and ACC that JU’s intended to build a mechanical plant?

RESPONSE: Please see the response to # 11 above as well as the testimony of Chairman Todd House, Supervisor Stephen Miller and Michael Sundblom before the Arizona Corporation Commission in Docket No. WS-02987A-18-0050.

39. Did written representations made by JU’s Brad Cole in a letter to the BOS dated July 19, 2017 (Exhibit 2) and/or letter dated August 10, 2017 to Commissioner Boyd of the Arizona Corporation Commission, (Exhibit 3) serve to provide a reason to the BOS and/or the PCAQCD to calculate that by waiving the potential \$1 million dollar penalty, the penalty could essentially be applied to the Biolac mechanical plant?

RESPONSE: Please see the response to # 38 above.

40. Why weren’t the stipulated penalties specified in the OAC imposed upon JU for failure to submit all of the required components of the “required compliance plan”?

RESPONSE: Please see the response to # 38 above.

41. In light of the fact that H<sub>2</sub>S is heavier than air, and typically travels along the ground during inversions, is it the best professional judgment of the BOS and the PCAQCD, that based upon the best available scientific evidence, that the placement of the two (2) monitors, [one (1) H<sub>2</sub>S monitor owned by the JU and one (1) H<sub>2</sub>S monitor owned by PCAQCD], right next to each other at the same location (within less than 5 feet of each other), approximately 450’ from the fence line perimeter of the JU section 11 WWTP, and significantly farther (approx., 1500’)

from the mid-point of the perimeter of the JU identified probable primary sources of the emissions (polishing ponds), and obstructed by two rows of two story houses, each encircled by multiple walls of solid brick 6' high fences, was the best location for the only H<sub>2</sub>S monitor owned by PCAQCD (as the time) during the critical period right after the OAC was signed, to measure the effectiveness of JU's self-constructed and (non ADEQ approved) compliance plan, done in the best interest of the public, or the best interest of JU? Was the public's health considered in the decision making process? How was it considered? Please explain.

RESPONSE: monitoring locations have been determined and verified based on modeling analysis from the Arizona Department of Environmental Quality and the availability of resources.

42. What criteria was used by the drafter of the OAC for selecting the monitoring location of the fence line H<sub>2</sub>S monitoring that JU was required in paragraph 40 of the OAC?

RESPONSE: The criteria for placement of the required JU monitoring location considered representative exposure of residents (at an occupied structure) security, and accessibility. The maintenance building site is located within the neighborhood south of the WWTP and represents H<sub>2</sub>S exposure of residents in the area. As JU was required to operate the monitor, placing it at a company controlled facility offered the security and accessibility necessary for continuing and ongoing data collection.

43. Was there any air dispersion modeling studies conducted to assist PCAQCD in ordering JU as to where to place their JU H<sub>2</sub>S monitor?

RESPONSE: See the response to # 41 above.

44. Did PCAQCD provide and/or did ADEQ request records of the hundreds of H<sub>2</sub>S violations recorded by PCAQCD over the past three years to better assist them in their study?

RESPONSE: Please see the testimony of Michael Sundblom before the Arizona Corporation Commission in Docket No. WS-02987A-18-0050.

45. Why did PCAQCD think it was completely sufficient to only have 1 PCAQCD owned H<sub>2</sub>S violations recorded by PCAQCD over the past three years to better assist them in their study?

RESPONSE: Please see the response to # 41 above.

46. Who is responsible for writing into the OAC location of the H2S monitor that JU placed?

RESPONSE: Please the response to # 11 above.

47. Why didn't the OAC require JU to place the H2S monitor on North West portion of the fence line of the JU WWTP closest to the polishing ponds, the specific location Brad Cole stated to the BOS on June 21, 2017 that JU believed to be the "source of the odor", instead of where the OAC specified "within the secured boundaries of the Gold Club at Oasis' Maintenance Shop" which was located hundreds of feet from the South East corner of the WWTP fence line, which was the farthest location from the "source of the odor"? (See paragraph 40 of the OAC)(Exhibit 4)

RESPONSE: Please see the response to #'s 11 & 41 above.

48. What events or circumstances occurred preceding the PCAQCD placing their H2S monitor next to the location of where JU placed their H2S monitor ("within the secured boundaries of the Golf Club at Oasis' Maintenance Shop") as part of the OAC?

RESPONSE: Please see the response to # 44 above.

49. Why didn't the PCAQCD keep their H2S monitor at the nearest residence to the WWTP?

RESPONSE: Please see the response to # 44 above.

50. Who was involved in the decision to move the PCAQCD H2S monitor next to JU's H2S monitor? Why was that decision made?

RESPONSE: Please see the response to # 44 above.