

1 authorized by A.R.S. § 49-471.01(A)(16) to enter into this Settlement Agreement. Respondent
2 acknowledges receipt of Exhibit 1 and hereby waives any right to appeal the violations to a
3 hearing board or administrative law judge as allowed under A.R.S. § 49-471.01(A)(12) and (13).

4 D. PDEQ and Respondent wish to resolve the allegation(s) in Exhibit 1 in the
5 manner set forth in this Settlement Agreement.

6 E. Respondent knowingly and voluntarily enters into this Settlement Agreement.

7 **PROVISIONS**

8 1. The foregoing "Recitals" are incorporated by this reference into the "Provisions"
9 section of this Settlement Agreement.

10 2. The parties agree not to contest the authority of PDEQ to enter into this
11 Settlement Agreement ("Agreement") and Respondent hereby agrees that Exhibit 1 states a basis
12 for a cause of action under A.R.S. § 49-513 upon which, if the allegations were proven, relief
13 could be granted against the Respondent.

14 3. Respondent and PDEQ agree to abide by the provisions and conditions of this
15 Agreement. Respondent does not admit to any of the findings or allegations in this Agreement
16 or in Exhibit 1, nor does Respondent admit liability or admit any issues of law or fact contained
17 in this Agreement or in Exhibit 1. This Agreement shall not be admissible in any other judicial
18 or quasi-judicial proceedings except those necessary to enforce the terms of this Agreement or
19 for the limited purpose of seeking enhanced penalties for violations of the Pima County Code
20 alleged after January 24, 2020

21 4. Respondent will pay \$55,000.00 as a civil penalty as settlement of the alleged
22 violations. The civil penalty is due and payable within (30) thirty days of execution of this
23 Agreement by Respondent. Payment must be sent to PDEQ at 33 N. Stone Ave., Suite 700,
24 Tucson, Arizona 85701-1429 and the check made out to the "Pima County Treasurer".

1 5. In the event that the payment is not received with the executed Agreement, PDEQ
2 may nevertheless execute and enforce this Agreement as a contract and shall be entitled to its
3 court costs and reasonable attorneys' fees as provided below. Failure by Respondent to make
4 full and timely payment as agreed shall subject Respondent to interest assessed pursuant to
5 A.R.S § 44-1201. In addition, PDEQ may pursue a complaint under A.R.S. § 49-513 and seek
6 all civil penalties and injunctive relief available at law or in equity.

7 6. Respondent acknowledges that whether the civil penalty is deducted as a business
8 expense is a matter of state and federal law and that PDEQ makes no representations concerning
9 the deductibility of this payment but is nonetheless willing to pay the penalty to settle the alleged
10 violation.

11 7. Upon timely payment, PDEQ shall accept the sum set forth above as full payment
12 and complete satisfaction of any and all claims against, and all amounts owed by Respondent to
13 PDEQ arising as a result of or in connection with the allegations in Exhibit 1. PDEQ also agrees
14 not to request EPA to consider any other enforcement action under EPA authority for violations
15 alleged in Exhibit 1. In no way does this Agreement limit the authority of EPA to bring an
16 action on any violations alleged in this Agreement.

17 8. PDEQ agrees not to request EPA to consider any other enforcement action under
18 EPA authority for the violation alleged in the NOV. In no way does this Agreement limit the
19 authority of EPA to bring an action on any violation alleged in this Agreement.

20 9. PDEQ declares and represents that no promises, inducements or agreements not
21 herein expressed in this Agreement have been made to Respondent and that this Agreement
22 contains the entire agreement between the Parties hereto, and that the terms of this Agreement
23 are contractual and not mere recitals.

1 10. This Agreement may not be altered, amended or modified in any way except by
2 written agreement signed by PDEQ and Respondent.

3 11. This Agreement does not relieve Respondent of its legal obligation to comply
4 with all applicable federal, state and local environmental laws, regulations, rules, and permit
5 conditions.

6 12. The person(s) executing this Agreement expressly represent and warrant that they
7 are authorized to execute the Agreement. The terms, conditions and provisions of this
8 Agreement shall be construed only according to their fair import.

9 13. All of the clauses of this Agreement are distinct and severable, and if any clause
10 shall be deemed illegal, void, or unenforceable, it shall not affect the validity, legality, or
11 enforceability of any other clause of this Agreement.

12 14. If at any time PDEQ believes that Respondent has breached this Agreement by
13 failing to make a payment as set forth in paragraphs 4 above, PDEQ will provide written notice
14 to Respondent setting forth the amount PDEQ claims is owed. Within 10 days of such written
15 notice, Respondent shall pay such amount or set forth a binding, written offer of what it believes
16 is owed. If suit is brought by PDEQ for the recovery of any payment due under this Agreement
17 or for the breach of any provision of this Agreement, Respondent agrees to pay all costs in
18 connection with suit including reasonable attorneys' fees, regardless of whether the suit proceeds
19 to judgment. The amount of reasonable attorneys' fees shall be determined by the Court and not
20 by a jury.

21 15. PDEQ and Respondent agree that each of them shall do such further action and
22 execute such further documents, if any, which may be necessary or appropriate to implement this
23 Agreement according to its terms.

24 16. This Agreement shall be governed by the laws of the State of Arizona, and all

CONTROL OFFICER
PIMA COUNTY AIR QUALITY CONTROL DISTRICT
33 N. Stone Ave., St., 7th Floor
Tucson, AZ 85701-1429
(520) 724-7400

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actions under it shall be brought in Pima County, Arizona.

17. This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF the parties have entered into this Agreement this 19 day of August, 2020.

PIMA COUNTY AIR QUALITY
CONTROL DISTRICT

FREEMPORT-McMoRAN SIERRITA, INC.
Respondent

By Ursula K. Nelson
Ursula K. Nelson, Control Officer

By David Rhoads
Its GENERAL MANAGER

ATTACHMENT: PC 2001-039 Notice of Violation (Exhibit 1)