

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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**BEFORE THE CONTROL OFFICER OF THE
PIMA COUNTY AIR QUALITY DISTRICT**

PIMA COUNTY AIR QUALITY
CONTROL DISTRICT and URSULA
KRAMER, Control Officer of the Pima
County Air Quality Control District,
v.
Freeport-McMoRan Sierrita, Inc.,
Respondent.

Pima County Department of Environmental
Quality Case No.: PC 1307-099

**SETTLEMENT
AGREEMENT**

RECITALS

A. The Pima County Air Quality Control District and Ursula Kramer, Control Officer of the Pima County Air Quality Control District and Director of the Pima County Department of Environmental Quality (collectively "PDEQ") have issued a Notice of Violation to Freeport-McMoRan Sierrita, Inc. ("Respondent"), dated August 27, 2013 alleging violations of Pima County's air quality rules set forth in Title 17 of the Pima County Code, which were adopted pursuant to A.R.S. § 49-479. The specific code violations are set forth in the Notice of Violation attached to this Settlement Agreement as Exhibit 1 (the "NOV").

B. In lieu of pursuing enforcement pursuant to A.R.S. § 49-511 or filing a lawsuit for civil penalties pursuant to A.R.S. §§ 49-511 and 49-513 for the violations set forth in Exhibit 1, PDEQ and Respondent agree to enter into this Settlement Agreement.

C. PDEQ has jurisdiction over this matter pursuant to A.R.S. § 49-513 and is authorized by A.R.S. § 49-471.01(A)(16) to enter into this Settlement Agreement.

D. PDEQ and Respondent wish to resolve the allegations in Exhibit 1 in the manner set forth in this Settlement Agreement.

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

2 **PROVISIONS**

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

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

10 3. Respondent and PDEQ agree to abide by the provisions and conditions of this
11 Agreement. Respondent does not admit to any of the findings or allegations in this Agreement
12 or in the NOV, nor does Respondent admit liability or admit any issues of law or fact contained
13 in this Agreement or in the NOV. This Agreement shall not be admissible in any other judicial
14 or quasi-judicial proceedings except those necessary to enforce the terms of this Agreement or
15 for the limited purpose of seeking enhanced penalties for violations of the Pima County Code
16 alleged after the NOV date.

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18 4. Respondent will pay \$35,000.00 as a civil penalty as settlement of the alleged
19 violations. The civil penalty is due and payable within (30) thirty days of execution of this
20 Agreement by Respondent. Payment must be sent to PDEQ at 33 N. Stone Ave., Suite 700,
21 Tucson, Arizona 85701-1429 and the check made out to the "Pima County Treasurer".

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23 5. In the event the payment is not received within the parameters of the executed
24 Agreement, PDEQ may nevertheless execute and enforce this Agreement as a contract and shall
25 be entitled to its court costs and reasonable attorneys' fees as provided below. Failure by
26 Respondent to make full and timely payments as agreed shall subject Respondent to interest

1 assessed pursuant to A.R.S § 44-1201. In addition, PDEQ may pursue a complaint under A.R.S.
2 § 49-513 and seek all civil penalties and injunctive relief available at law or in equity.

3 6. Respondent acknowledges that whether the civil penalty is deducted as a business
4 expense is a matter of state and federal law and that PDEQ makes no representations concerning
5 the deductibility of this payment. Respondent is nonetheless willing to pay the penalty to settle
6 the alleged violations.

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8 7. Upon timely payment, PDEQ shall accept the sum set forth in paragraph 4 above
9 as full payment and complete satisfaction of any and all claims against, and all amounts owed by
10 Respondent to PDEQ arising as a result of or in connection with the allegations in the NOV.

11 8. PDEQ agrees not to request EPA to consider any other enforcement action under
12 EPA authority for the violations alleged in the NOV. In no way does this Agreement limit the
13 authority of EPA to bring an action on any violations alleged in this Agreement.

14 9. PDEQ declares and represents that no promises, inducements or agreements not
15 expressed in this Agreement have been made to Respondent and that this Agreement contains the
16 entire agreement between the Parties, and that the terms of this Agreement are contractual and
17 not mere recitals.
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19 10. This Agreement may not be altered, amended or modified in any way except by
20 written agreement signed by PDEQ and Respondent.

21 11. This Agreement does not relieve Respondent of its legal obligation to comply
22 with all applicable federal, state and local environmental laws, regulations, rules, and permit
23 conditions.
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1 12. The persons executing this Agreement expressly represent and warrant that they
2 are authorized to execute the Agreement. The terms, conditions and provisions of this
3 Agreement shall be construed only according to their fair import.

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

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

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

21 16. This Agreement shall be governed by the laws of the State of Arizona, and all
22 actions under it shall be brought in Pima County, Arizona.
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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 21st day of January, 2014.

PIMA COUNTY AIR QUALITY CONTROL DISTRICT

Freeport-McMoRan Sierrita, Inc.
Respondent

By Ursula Kramer
Ursula Kramer, Control Officer

By [Signature]
Its Senior Vice President

By [Signature]
Its vice President & General Manager, Sierrita

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PIMA COUNTY AIR QUALITY CONTROL DISTRICT
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ATTACHMENT: August 27, 2013 Notice of Violation (Exhibit 1)