

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.
ASARCO LLC, a Limited Liability Company,
Respondent.

Pima County Department of Environmental
Quality Case Nos.: PC 1212-045, PC 1301-
055

**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 Notices of Violation against ASARCO LLC ("Respondent"), dated January 11, 2013 and January 25, 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 Notices of Violation attached to this Settlement Agreement as Exhibits 1 & 2 (the "NOVs"). In addition, PDEQ and Respondent have disagreed on whether Respondent took reasonably necessary and feasible precautions to control fugitive dust from the tailings dams that were commensurate with the size and scope of the emissions source.

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 Exhibits 1 & 2, 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.

1 D. PDEQ and Respondent wish to resolve the allegations in Exhibits 1 & 2 in the
2 manner set forth in this Settlement Agreement.

3 E. Respondent knowingly and voluntarily enters into this Settlement Agreement.
4

5 **PROVISIONS**

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

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

12 3. Respondent and PDEQ agree to abide by the provisions and conditions of this
13 Agreement. Respondent does not admit to any of the findings or allegations in this Agreement
14 or in the NOV's, nor does Respondent admit liability or admit any issues of law or fact contained
15 in this Agreement or in the NOV's. This Agreement shall not be admissible in any other judicial
16 or quasi-judicial proceedings except those necessary to enforce the terms of this Agreement or
17 for the limited purpose of seeking enhanced penalties for violations of the Pima County Code
18 alleged after February 8, 2013.

19 4. Respondent will pay \$40,000.00 as a civil penalty as partial settlement of the
20 alleged violations. The civil penalty is due and payable within (30) thirty days of execution of
21 this Agreement by Respondent. Payment must be sent to PDEQ at 33 N. Stone Ave., Suite 700,
22 Tucson, Arizona 85701-1429 and the check made out to the "Pima County Treasurer".
23

24 5. Respondent will submit a separate check for \$30,000.00 for the purpose of
25 funding a Supplemental Environmental Project ("SEP") in lieu of additional civil penalties. The
26

1 SEP payment is due and payable within (30) thirty days of execution of this Agreement by
2 Respondent. Payment must be sent to PDEQ at 33 N. Stone Ave., Suite 700, Tucson, Arizona
3 85701-1429 and the check made out to the "Pima County Treasurer". PDEQ will deposit the
4 SEP monies into a special revenue fund (Fund: 4018, Unit: 1630, Program CPR.PRSRPI, Phase:
5 003) set up for exclusive use by The Loop project to assure compliance with the requirements of
6 the SEP. The SEP consists of a one-time donation to "The Loop" project facilitated by Pima
7 County Public Works consisting of 131 miles of shared-use paths connecting Rillito River Park,
8 Santa Cruz River Park, and Pantano River Park with Julian Wash and the Harrison Greenway.
9

10 6. Additional efforts made by the Respondent as part of the settlement are
11 committing to a continued effort to reach out to the Town of Sahuarita and in particular, the
12 residents of the Rancho Resort Community. The Respondent offers to maintain contact with the
13 Town and Community management to request feedback on how to better serve the residents with
14 information pertinent to mine operations and dust control efforts. To accomplish this, the
15 Respondent offers to provide a semi-annual newsletter to the Rancho Resort Association and
16 Town of Sahuarita advising the residents of the current activities at the facility for a period of
17 two years from the date of execution of this agreement. The newsletter will also provide key
18 management contact phone numbers to receive complaint and operational questions at any time
19 from the public. Finally, the Respondent agrees to offer, upon request, annual tours of the
20 facility to the residents of the Rancho Resort Association and Council Members of the Town of
21 Sahuarita for a period of two years from the date of execution of this agreement in an effort to
22 provide transparency and a better understanding of the mining operation.
23
24

25 7. If the payments are not received within the parameters of the executed
26 Agreement, PDEQ may nevertheless execute and enforce this Agreement as a contract and shall

1 be entitled to its court costs and reasonable attorneys' fees as provided below. Failure by
2 Respondent to make full and timely payments as agreed shall subject Respondent to interest
3 assessed pursuant to A.R.S § 44-1201. In addition, PDEQ may pursue a complaint under A.R.S.
4 § 49-513 and seek all civil penalties and injunctive relief available at law or in equity.
5

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

10 9. Upon timely payment, PDEQ shall accept the sums set forth in paragraphs 4 and 5
11 above as full payment and complete satisfaction of any and all claims against, and all amounts
12 owed by Respondent to PDEQ arising as a result of or in connection with the allegations in the
13 NOVs.
14

15 10. PDEQ agrees to provide documentation to the Respondent of completion of the
16 SEP projects. PDEQ also agrees not to request EPA to consider any other enforcement action
17 under EPA authority for violations alleged in the NOVs. In no way does this Agreement limit
18 the authority of EPA to bring an action on any violations alleged in this Agreement.
19

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

24 12. This Agreement may not be altered, amended or modified in any way except by
25 written agreement signed by PDEQ and Respondent.
26

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

4 14. The persons executing this Agreement expressly represent and warrant that they
5 are authorized to execute the Agreement. The terms, conditions and provisions of this
6 Agreement shall be construed only according to their fair import.

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

10 16. If at any time PDEQ believes that Respondent has breached this Agreement by
11 failing to make a payment as set forth in paragraphs 4 and 5 above, PDEQ will provide written
12 notice to Respondent setting forth the amount PDEQ claims is owed. Within 10 days of such
13 written notice, Respondent shall pay such amount or set forth a binding, written offer of what it
14 believes is owed. If suit is brought successfully by PDEQ for the recovery of any payment due
15 under this Agreement or for the breach of any provision of this Agreement, Respondent agrees to
16 pay all reasonable costs in connection with the suit, including reasonable attorneys' fees,
17 regardless of whether the suit proceeds to judgment. A suit is "successful" if it recovers an
18 amount owing under this Agreement greater than the amount offered by Respondent in its
19 binding, written offer. The amount of reasonable costs and attorneys' fees shall be determined
20 by the Court and not by a jury.

21 17. 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.

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18. This Agreement shall be governed by the laws of the State of Arizona, and all actions under it shall be brought in Pima County, Arizona.

IN WITNESS WHEREOF the parties have entered into this Agreement this 19 day of September, 2013.

PIMA COUNTY AIR QUALITY CONTROL DISTRICT

ASARCO LLC,
Respondent

By Ursula Kramer
Ursula Kramer, Control Officer

By [Signature]
Its Manuel E. Ramos, President and COO

By [Signature]
Thomas L. Aldrich, Vice President of
Environmental Affairs

ATTACHMENT(S): January 11, 2013 Notice of Violation (Exhibit 1)
January 25, 2013 Notice of Violation (Exhibit 2)