



MEMORANDUM

Date: January 5, 2010

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: ASARCO, LLC – Notice of Air Quality Violation

I am enclosing information from our Department of Environmental Quality regarding issuance of a Notice of Violation to ASARCO for fugitive dust emissions beyond regulatory and permitted standards and failure to take appropriate and reasonable measures to contain dust emissions. This December 23, 2009 NOV was issued for a violation that occurred on November 12, 2009. A second NOV, dated December 31, 2009, was issued to ASARCO for the violation that occurred on December 22, 2009. Copies of these NOVs are attached (Attachments 1A and 1B).

The air pollution in the Green Valley area from particulate matter related to mine tailings is historic and problematic. The most recent violations by ASARCO show poor management practices with regard to the tailings impoundments and the need to contain and/or relocate the tailings impoundments in the Green Valley area.

I asked our staff to prepare a more comprehensive report with regard to air quality issues associated with ASARCO and the tailings facilities. I have attached hereto (Attachment 2) the December 29, 2009 memorandum report from our Department of Environmental Quality. Its attachments, however, are voluminous in scope and nature and are not enclosed. These attachments are available for your review at <http://www.pima.gov/> under the *County Administrator Reports* section. Of interest in this communication is the fact that the air quality permit under which ASARCO is operating expired, and operations have continued without renewal due to ASARCO's bankruptcy. The bankruptcy has now been resolved, and I have asked staff to diligently pursue a new, more effective permit.

The maximum penalties will be sought for the violations, and in negotiating a new permit, appropriate mitigation and restoration measures will be required such that the tailings impoundments will be maintained at all times to control the generation of excessive particulate matter and upon closure will be restored to a somewhat natural condition with topsoil replacement and revegetation occurring as a requirement of permit issuance.

The Honorable Chairman and Members
Pima County Board of Supervisors
Re: ASARCO, LLC – Notice of Air Quality Violation
January 5, 2010
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I have asked the County Attorney to review the options available to the County to compel compliance and to pursue appropriate civil penalties and other actions against ASARCO as may be appropriate from a legal perspective given the current facts of this situation. I will ask the County Attorney to seek the maximum penalty due to the recurring violations and the fact that they appear to have occurred as a result of voluntary operational actions of ASARCO, as well as ASARCO's clear knowledge that altering the operational aspects of the tailing ponds could possibly significantly impact air quality. These violations have plagued the Green Valley community for far too long and require resolution.

CHH/mjk

Attachments

c: John Bernal, Deputy County Administrator for Public Works
Christopher Straub, Chief Civil Deputy County Attorney
Ursula Kramer, Director, Department of Environmental Quality
Richard Grimaldi, Deputy Director, Department of Environmental Quality

ATTACHMENT 1A

T: 17 R: 13 Sec: 15
Latitude: 31.950431
Longitude: -111.003845
Parcel No.: 303-33-013A
SD: 4



DEPARTMENT OF ENVIRONMENTAL QUALITY
150 W. Congress Street
Tucson, Arizona 85701-1317
www.deq.pima.gov

December 23, 2009

CERTIFIED MAIL
Return Receipt Requested

ASARCO, LLC
Attn: Mr. Richard Rhoades
4201 W. Pima Mine Road
Sahuarita, AZ 85629

Permit #: 2026

NOTICE OF VIOLATION # PC 0911-061

The Pima County Department of Environmental Quality (PDEQ) has reason to believe that ASARCO, LLC - Mission Complex located at 4201 W. Pima Mine Road, Sahuarita, Arizona, has violated requirements of the Arizona Revised Statutes (ARS), rules within the Pima County Code (PCC), and an applicable permit. The PDEQ authorized representative discovered the violations alleged below during a complaint inspection conducted on November 12, 2009, at the facility and through review of an excess emissions report dated November 13, 2009. The findings were reported to Jamie Ekholm, Environmental Engineer.

I. FINDINGS OF FACT

ALLEGED VIOLATION #1

PCC 17.16.040 and 17.16.050.B

Permit Condition, Part "B", Section I.C.2

No person shall cause or permit the effluent from a single emission point, multiple emission points, or fugitive emissions source to have an average optical density greater than 20 percent subject to the following provisions:

[SIP Rule 321, PCC 17.16.040, and PCC 17.16.050.B]

- a. Opacities (optical densities) of an effluent shall be measured by a certified visible emissions evaluator with his natural eyes, approximately following the procedures which were used during his certification, or by an approved and precisely calibrated in-stack monitoring instrument.

b. A violation of an opacity standard shall be determined by measuring and recording a set of consecutive, instantaneous opacities, and calculating the arithmetic average of the measurements within the set unless otherwise noted herein. The measurements shall be made at approximately fifteen-second intervals for a period of at least six minutes, and the number of required measurements shall be 25. Sets need not be consecutive in time, and in no case shall two sets overlap. If the average opacity of the set of instantaneous measurements exceeds the maximum allowed by any rule, this shall constitute a violation.

Findings

On November 12, 2009, ASARCO, LLC - Mission Complex caused and allowed fugitive emissions from tailings dam #8 to have an average optical density greater than 20 percent.

Requested Corrective Action(s)

- Immediately employ all necessary control measures required to prevent effluent from fugitive emissions sources to remain below the applicable opacity standard.
- Immediately develop and implement all necessary control methods to be employed to prevent recurrent excess emissions from tailings dams.

ALLEGED VIOLATION #2

PCC 17.16.050.D

Permit Condition, Part "B", Section I.C.3

No person shall cause, suffer, allow, or permit diffusion of visible emissions, including fugitive dust, beyond the property boundary line within which the emissions become airborne, without taking reasonably necessary and feasible precautions to control generation of airborne particulate matter. Sources may be required to cease temporarily the activity or operation which is causing or contributing to the emissions until reasonably necessary and feasible precautions are taken.

[SIP Rule 343 and PCC 17.16.050.D]

- a. Sources required to obtain an air quality permit under ARS § 49-426, § 49-480 or Rule 17.12.470 may request to have the actions constituting reasonably necessary and feasible precautions approved and included as permit conditions. Compliance with such permit conditions shall be considered compliance with this provision.
- b. This subsection shall not apply when wind speeds exceed twenty-five (25) miles per hour (using the Beaufort Scale of Wind-Speed Equivalents, or as recorded by the National Weather Service). This exception does not apply if control measures have not been taken or were not commensurate with the size or scope of the emission source.

Findings:

On November 12, 2009, ASARCO, LLC - Mission Complex caused and permitted the diffusion of visible emissions from tailings dam #8 beyond the property boundary of Helmet

Peak Road without taking reasonably necessary and feasible precautions to control the fugitive emissions. The control measures taken by ASARCO, LLC – Mission Complex were not commensurate with the size and scope of tailings dam #8 in berm building mode.

Requested Corrective Action(s)

- Immediately employ all necessary control measures commensurate with the size and scope of current berm building to prevent diffusion of visible emissions beyond the property boundary line.
- Immediately develop and implement all necessary control methods to prevent diffusion of visible emissions from tailings dams during future berm building.

ALLEGED VIOLATION #3

Permit Condition, Part “B”, Section I.C.3

The Permittee shall monitor to ensure that tailings piles, during the berm building mode, have been smeared (i.e., with light coat of fresh, moist tailings on the surface of the dam) once every 60 days unless otherwise warranted by meteorological conditions.

Findings:

ASARCO, LLC – Mission Complex initiated berm building on tailings dam #8 on September 14, 2009, and did not monitor to ensure that the tailings pile surface was smeared within 60 days.

Requested Corrective Action(s)

- Immediately smear the tailings piles with a light coat of fresh, moist tailings on the surface of the tailings dam #8.
- Develop and implement a plan to smear the tailings piles with a light coat of fresh, moist tailings on the surface of the dam during future berm building mode at least once every 60 days. Develop criteria when meteorological conditions warrant more frequent application, to control fugitive emissions.

II. CITATION OF AUTHORITY

ARS § 49-471 et seq

17.28.010, PCC Title 17, Violations and Order of Abatement

III. REQUESTED COMPLIANCE DOCUMENTATION

ASARCO, LLC – Mission Complex shall submit a written response to PDEQ within **thirty (30)** calendar days of receipt of this notice. The response shall include:

- A thorough explanation of those actions that led to each violation
- The corrective actions taken to meet compliance
- The corrective measures taken to prevent future violations of this type

The above documentation shall be deemed "submitted" when received by PDEQ at the following address:

Pima County Department of Environmental Quality
Air Program
Attn: James M. Jones
150 W. Congress
Tucson, AZ 85701

IV. STATEMENT OF CONSEQUENCES

Failure to achieve compliance or enter into a Consent Order will result in PDEQ initiating a unilateral enforcement action. Achieving compliance does not preclude PDEQ from seeking civil penalties. A unilateral enforcement action may result in a civil penalty. A civil penalty may be imposed for each violation for the entire non-compliance period.

PDEQ believes that alleged violations identified in a Notice of Violation (NOV) are significant and advises you they may be used to determine a pattern of non-compliance or used to determine civil penalties pursuant to ARS § 49-513. As such, PDEQ believes that an NOV is an appealable agency action as defined in ARS § 49-471(4).

A person whose legal rights, duties or privileges were determined by an appealable agency action or who will be adversely affected by an appealable agency action and who exercised any right to comment on the action provided by law, rule or ordinance may appeal the action to the air pollution hearing board established pursuant to ARS § 49-478.

V. ADMINISTRATIVE INFORMATION

OFFER TO MEET

PDEQ personnel are willing to schedule a meeting to discuss the NOV and corrective action. If you would like to meet, please contact me at (520) 740-3340. Before meeting, please submit the following:

- An agenda that specifies the objectives you wish to discuss.
- The names and affiliations of the participants that will be accompanying you.

COMPLIANCE ASSISTANCE

PDEQ personnel are also willing to help you achieve and maintain compliance. If you need assistance complying with the regulations please contact our department at (520) 740-3340.

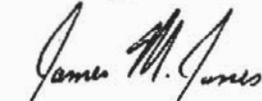
NOTICE OF NON-DISCRIMINATION

The Pima County Department of Environmental Quality does not discriminate on the basis of race, color, national origin, sex, disability religion, or age in its programs or activities in accordance with applicable laws and regulations. Further, any person who is in need of special services (e.g., written material in large type, signer for the hearing impaired, or for free assistance in Spanish), please contact PDEQ's Environmental Justice Program Manager, Beth Gorman, 150 W. Congress Street, Suite 109, Tucson, Arizona, 85701, Phone (520) 740-3343, email beth.gorman@deq.pima.gov.

AVISO DE NO DISCRIMINACIÓN

El Departamento del Condado de Pima de Calidad Ambiental no discrimina en base de la raza, el color, el origen nacional, el sexo, la religión, discapacidad, o la edad en sus programas o actividades de acuerdo con leyes y regulaciones aplicables. Además, cualquier persona que esté necesitando los servicios especiales (e.g., material escrito en letra grande, intérpretes de lenguaje con señas, o para obtener asistencia gratuita en español), por favor contacte a la encargada del Programa de Justicia Ambiental del Departamento Calidad Ambiental del Condado de Pima, Beth Gorman, 150 W. Congress Street, Suite 109, Tucson, Arizona, 85701, teléfono (520) 740-3343, email beth.gorman@deq.pima.gov.

Sincerely,



James M. Jones
Civil Engineering Assistant

Attachment: Complaint Investigation Report dated November 12, 2009

cc: Permit File #: 2026

ATTACHMENT 1B



MEMORANDUM

Pima County Department of Environmental Quality

DATE: December 31, 2009

TO: C. H. Huckelberry
County Administrator

FROM: Richard Grimaldi *RG*
Deputy Director

RE: ASARCO Air Quality December 2009 Notice of Violation

Attached is the Notice of Violation (NOV) issued to ASARCO today for violations of Pima County Air Quality Code, Title 17, and their air quality permit. The violations were documented on December 22, 2009 by Pima County Department of Environmental Quality (PDEQ) staff who observed excessive amounts of dust being transported from ASARCO's mine tailing dam No. 8. ASARCO failed to take necessary actions to control wind blown dust from this tailings dam which allowed dust to cross their property line, impacting surrounding neighborhoods. The dust emissions exceeded the opacity standard and ASARCO failed to adequately smear the tailings dam with fresh moist tailings during the berm building violating their air quality permit.

PDEQ will be requesting legal actions from the Pima County Attorney's Office to address this ongoing problem.

If you have any questions or would like to discuss this issue, please feel free to contact me at your convenience. I can be reached at X10-3332.

Attachment: December 22, NOV to ASARCO

cc: John Bernal, Deputy County Administrator for PW
Ursula Kramer, Director, PDEQ

T: 17 R: 13 Sec: 15
Latitude: 31.950431
Longitude: -111.003845
Parcel No.: 303-33-013A
SD: 4



DEPARTMENT OF ENVIRONMENTAL QUALITY
150 W. Congress Street
Tucson, Arizona 85701-1317
www.deq.pima.gov

Ursula Kramer
Director

(520) 740-3340
FAX (520) 882-7709

December 31, 2009

CERTIFIED MAIL
Return Receipt Requested

ASARCO, LLC
Attn: Mr. Richard Rhoades
4201 W. Pima Mine Road
Sahuarita, AZ 85629

Permit #: 2026

NOTICE OF VIOLATION # PC 0912-067

The Pima County Department of Environmental Quality (PDEQ) has reason to believe that ASARCO, LLC - Mission Complex located at 4201 W. Pima Mine Road, Sahuarita, Arizona, has violated requirements of the Arizona Revised Statutes (ARS), rules within the Pima County Code (PCC), and an applicable permit. The PDEQ authorized representative discovered the violations alleged below during a complaint inspection conducted on December 22, 2009, at the facility and through review of an excess emissions report dated December 23, 2009. The findings were reported to Jamie Ekholm, Environmental Engineer.

I. FINDINGS OF FACT

ALLEGED VIOLATION #1

PCC 17.16.040 and 17.16.050.B

Permit Condition, Part "B", Section I.C.2

No person shall cause or permit the effluent from a single emission point, multiple emission points, or fugitive emissions source to have an average optical density greater than 20 percent subject to the following provisions: [SIP Rule 321, PCC 17.16.040, and PCC 17.16.050.B]

- a. Opacities (optical densities) of an effluent shall be measured by a certified visible emissions evaluator with his natural eyes, approximately following the procedures which were used during his certification, or by an approved and precisely calibrated in-stack monitoring instrument.

b. A violation of an opacity standard shall be determined by measuring and recording a set of consecutive, instantaneous opacities, and calculating the arithmetic average of the measurements within the set unless otherwise noted herein. The measurements shall be made at approximately fifteen-second intervals for a period of at least six minutes, and the number of required measurements shall be 25. Sets need not be consecutive in time, and in no case shall two sets overlap. If the average opacity of the set of instantaneous measurements exceeds the maximum allowed by any rule, this shall constitute a violation.

Findings

On December 22, 2009, ASARCO, LLC - Mission Complex caused and allowed fugitive emissions from tailings dam #8 to have an average optical density greater than 20 percent, as documented during three separate observation periods.

Requested Corrective Action(s)

- Immediately employ all necessary control measures required to prevent effluent from fugitive emissions sources to remain below the applicable opacity standard.
- Immediately develop and implement all necessary control methods to be employed to prevent recurrent excess emissions from tailings dams.

ALLEGED VIOLATION #2

PCC 17.16.050.D

Permit Condition, Part "B", Section I.C.3

No person shall cause, suffer, allow, or permit diffusion of visible emissions, including fugitive dust, beyond the property boundary line within which the emissions become airborne, without taking reasonably necessary and feasible precautions to control generation of airborne particulate matter. Sources may be required to cease temporarily the activity or operation which is causing or contributing to the emissions until reasonably necessary and feasible precautions are taken. [SIP Rule 343 and PCC 17.16.050.D]

- a. Sources required to obtain an air quality permit under ARS § 49-426, § 49-480 or Rule 17.12.470 may request to have the actions constituting reasonably necessary and feasible precautions approved and included as permit conditions. Compliance with such permit conditions shall be considered compliance with this provision.
- b. This subsection shall not apply when wind speeds exceed twenty-five (25) miles per hour (using the Beaufort Scale of Wind-Speed Equivalents, or as recorded by the National Weather Service). This exception does not apply if control measures have not been taken or were not commensurate with the size or scope of the emission source.

Findings:

On December 22, 2009, ASARCO, LLC - Mission Complex caused and permitted the diffusion of visible emissions from tailings dam #8 beyond the property boundaries of Helmet Peak Road and La Canada Drive without taking reasonably necessary and feasible precautions to control the fugitive emissions. The control measures taken by ASARCO, LLC – Mission Complex were not commensurate with the size and scope of tailings dam #8 in berm building mode.

Requested Corrective Action(s)

- Immediately employ all necessary control measures commensurate with the size and scope of current berm building to prevent diffusion of visible emissions beyond the property boundary line.
- Immediately develop and implement all necessary control methods to prevent diffusion of visible emissions from tailings dams during future berm building.

ALLEGED VIOLATION #3

Permit Condition, Part “B”, Section I.C.3

The Permittee shall monitor to ensure that tailings piles, during the berm building mode, have been smeared (i.e., with light coat of fresh, moist tailings on the surface of the dam) once every 60 days unless otherwise warranted by meteorological conditions.

Findings:

ASARCO, LLC – Mission Complex initiated berm building on tailings dam #8 on September 14, 2009, and did not monitor to ensure that the tailings pile surface was smeared within 60 days. Tailings dam #8 remained in berm building mode on December 22, 2009. ASARCO, LLC – Mission Complex commenced application of fresh tailings to the northwest section of tailings dam #8 at noon on December 22, 2009. The initial application of fresh tailings remained confined to the berm building trench at the outer perimeter of tailings dam #8 and did not cover the surface of the tailings dam where the generation of excessive fugitive dust was originating.

Requested Corrective Action(s)

- Immediately smear the tailings piles with a light coat of fresh, moist tailings on the surface of the tailings dam #8. Ensure that the fresh tailings do not flow into the berm building trench at the outer perimeter of tailings dam #8 and do flow out onto the surface of the tailings where the generation of fugitive dust is occurring.
- Develop and implement a plan to smear the tailings piles with a light coat of fresh, moist tailings on the surface of the dam during future berm building mode at least once every 60 days. Develop criteria when meteorological conditions warrant more frequent application, to control fugitive emissions.

II. CITATION OF AUTHORITY

ARS § 49-471 *et seq*

17.28.010, PCC Title 17, Violations and Order of Abatement

III. REQUESTED COMPLIANCE DOCUMENTATION

ASARCO, LLC – Mission Complex shall submit a written response to PDEQ within **thirty (30)** calendar days of receipt of this notice. The response shall include:

- A thorough explanation of those actions that led to each violation
- The corrective actions taken to meet compliance
- The corrective measures taken to prevent future violations of this type

The above documentation shall be deemed "submitted" when received by PDEQ at the following address:

Pima County Department of Environmental Quality
Air Program
Attn: Dustin Fitzpatrick
150 W. Congress St.
Tucson, AZ 85701

IV. STATEMENT OF CONSEQUENCES

Failure to achieve compliance or enter into a Consent Order will result in PDEQ initiating a unilateral enforcement action. Achieving compliance does not preclude PDEQ from seeking civil penalties. A unilateral enforcement action may result in a civil penalty. A civil penalty may be imposed for each violation for the entire non-compliance period.

PDEQ believes that alleged violations identified in a Notice of Violation (NOV) are significant and advises you they may be used to determine a pattern of non-compliance or used to determine civil penalties pursuant to ARS § 49-513. As such, PDEQ believes that an NOV is an appealable agency action as defined in ARS § 49-471(4).

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V. ADMINISTRATIVE INFORMATION

OFFER TO MEET

PDEQ personnel are willing to schedule a meeting to discuss the NOV and corrective action.

If you would like to meet, please contact me at (520) 740-3340. Before meeting, please submit the following:

- An agenda that specifies the objectives you wish to discuss.
- The names and affiliations of the participants that will be accompanying you.

COMPLIANCE ASSISTANCE

PDEQ personnel are also willing to help you achieve and maintain compliance. If you need assistance complying with the regulations please contact our department at (520) 740-3340.

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Sincerely,



Dustin Fitzpatrick
Air Compliance Supervisor

Attachment: Complaint Investigation Report dated December 22, 2009

cc: Permit File #: 2026

ATTACHMENT 2



MEMORANDUM

Pima County Department of Environmental Quality

DATE: December 29, 2009

TO: C. H. Huckelberry
County Administrator

FROM: Richard Grimaldi *RG*
Deputy Director

RE: ASARCO Air Quality Permit and Inspection Information

The ASARCO mine in Green Valley is currently operating under a permit that expired in 2008 but continues to remain in effect pursuant to Pima County Code Title 17 (Attachment 1). Because of ASARCO's bankruptcy proceedings, the renewal of this permit had been delayed at ASARCO's request. Now that the bankruptcy issues have been resolved, PDEQ will begin processing ASARCO's permit renewal.

In response to complaints, PDEQ conducted inspections on October 21 and 27, 2009, and issued an Opportunity to Correct on December 4, 2009, for failure to monitor dust emissions weekly and for allowing dust to cross property boundaries without taking adequate controls (Attachment 2). ASARCO responded to the Opportunity to Correct on December 23, 2009 (Attachment 3).

As a permit requirement, ASARCO developed a Visible Observation Plan (Attachment 4). This plan requires ASARCO to inspect their operations for dust emissions and document dust mitigation activities. When ASARCO monitors violations of the dust standard, they must submit an Excess Emissions Report to PDEQ. ASARCO reported violations of the opacity standard from their mine tailing to PDEQ on November 13 and December 23, 2009 (Attachment 5).

On December 23, 2009, PDEQ issued a Notice of Violation (NOV) to ASARCO for reported violations that occurred November 13, 2009, of the opacity standard, allowing dust to cross the property line without taking adequate controls, and failing to smear the tailing with fresh moist tailings during the berm building mode (Attachment 6). PDEQ inspected ASARCO on December 22, 2009 (Attachment 7) in the afternoon during high winds. Based on the findings of that inspection, PDEQ will be issuing another Notice of Violation for the same violations documented in the previous NOV.

ASARCO may appeal any NOV to the Air Quality Hearing Board which is comprised of five members appointed by the Board of Supervisors. Arizona Revised Statutes § 49-513 allows Pima County to recover civil penalties up to \$10,000 per day per violation.

If you would like to discuss this information or need additional information, I am available to meet at your convenience.

Attachments

cc: John Bernal, Deputy County Administrator for PW
Ursula Kramer, Director, PDEQ