

CONTROL OFFICER
PIMA COUNTY AIR QUALITY
CONTROL DISTRICT
33 N. Stone Ave., St. 7th Floor
Tucson, AZ 85701-1429
(520) 243-7400

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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 0911-061, PC 0912-
067, PC 1004-134, PC 1008-066

**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 December 23, 2009, December 31, 2009, April 27, 2010 and September 17, 2010 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 (the "NOVs"). In addition, PDEQ and Respondent have disagreed on whether Respondent timely completed a stack test on baghouse units M311-E37 through E40 and M311-E78 and E79 when it stack tested them on February 15-17, 22 and March 8, 2010.

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 or the stack testing issue referenced in Recital A, PDEQ and Respondent agree to enter into this Settlement Agreement.

1 C. PDEQ has jurisdiction over this matter pursuant to A.R.S. § 49-513 and is
2 authorized by A.R.S. § 49-471.01(A)(16) to enter into this Settlement Agreement. Respondent
3 acknowledges receipt of the NOV's and waives any right to appeal the violations to a hearing
4 board or administrative law judge as allowed under A.R.S. § 49-471.01(A)(12) and (13).

5
6 D. PDEQ and Respondent wish to resolve the allegations in Exhibit 1 in the manner
7 set forth in this Settlement Agreement.

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

9 **PROVISIONS**

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

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

16
17 3. Respondent and PDEQ agree to abide by the provisions and conditions of this
18 Agreement. Respondent does not admit to any of the findings or allegations in this Agreement
19 or in the NOV's, nor does Respondent admit liability or admit any issues of law or fact contained
20 in this Agreement or in the NOV's. This Agreement shall not be admissible in any other judicial
21 or quasi-judicial proceedings except those necessary to enforce the terms of this Agreement or
22 for the limited purpose of seeking enhanced penalties for violations of the Pima County Code
23 alleged after June 16, 2010.

24
25 4. Respondent will pay \$100,000.00 as a civil penalty as partial settlement of the
26 alleged violations. The civil penalty is due and payable to the Pima County Air Quality Control

1 District within (30) thirty days of execution of this Agreement by Respondent. Payment must be
2 sent to PDEQ at 33 N. Stone Ave., Suite 700, Tucson, Arizona 85701-1429 and the check made
3 out to the "Pima County Treasurer".

4 5. Respondent will pay \$350,000.00 for the purpose of funding a Supplemental
5 Environmental Project ("SEP") in lieu of an additional civil penalty. The SEP projects will be
6 completed in accordance with the detailed project specifications attached to this Agreement as
7 Exhibit 2. All SEP projects are exclusively related to the Canoa Conservation Park project in
8 Green Valley, Arizona. The projects will be facilitated by the Pima County Natural Resources,
9 Parks and Recreation Department (NRPR) and all SEP funds will be deposited in a special
10 revenue fund created exclusively for the allocation of these funds. SEP payments made payable
11 to the "Pima County Treasurer" must be sent to the Pima County Air Quality Control District at
12 33 N. Stone Ave., Suite 700, Tucson, Arizona 85701-1429 for deposit to a special revenue fund.
13 SEP payments must be made on the following schedule:

16 \$100,000.00 due within 90 days after execution of this Agreement by Respondent

17 \$100,000.00 due within 180 days after execution of this Agreement by Respondent

18 \$100,000.00 due within 270 days after execution of this Agreement by Respondent

19 \$50,000.00 due within 360 days after execution of this Agreement by Respondent

20
21 Within 30 days of receipt of each payment, PDEQ will provide a receipt showing that the funds
22 received were transferred to the special revenue fund for the Canoa Conservation Park project.

23 Respondent has no obligation to make subsequent payments under this provision 5 until the latter
24 of the scheduled due date or 10 days after it receives the receipt for the prior payment.

25 6. 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 § 49-113(B). In addition, PDEQ may pursue a complaint under
4 A.R.S. § 49-513 and seek all civil penalties and injunctive relief available at law or in equity.

5
6 7. Respondent acknowledges that whether the civil penalty and SEP are deducted as
7 a business expense is a matter of federal law but is nonetheless willing to pay the penalty to settle
8 the alleged violations.

9 8. Upon timely payment, PDEQ shall accept the sums set forth above as full
10 payment and complete satisfaction of any and all claims against, and all amounts owed by
11 Respondent to PDEQ arising as a result of or in connection with the allegations in the NOV's.
12 PDEQ agrees to provide documentation to the Respondent of completion of the SEP projects.
13 PDEQ also agrees not to request EPA to consider any other enforcement action under EPA
14 authority for violations alleged in the NOV's. In no way does this Agreement limit the authority
15 of EPA to bring an action on any violations alleged in this Agreement.

16
17 9. PDEQ declares and represents that no promises, inducements or agreements not
18 expressed in this Agreement have been made to Respondent and that this Agreement contains the
19 entire agreement between the Parties, and that the terms of this Agreement are contractual and
20 not mere recitals.

21
22 10. This Agreement may not be altered, amended or modified in any way except by
23 written agreement signed by PDEQ and Respondent.

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

1 12. The person(s) 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, PDEQ will provide written notice to Respondent setting forth the
9 amount PDEQ claims is owed. Within 10 days of such written notice, Respondent shall pay such
10 amount or set forth a binding, written offer of what it believes is owed. If suit is brought
11 successfully by PDEQ for the recovery of any payment due under this Agreement or for the
12 breach of any provision of this Agreement, Respondent agrees to pay all reasonable costs in
13 connection with the suit, including reasonable attorneys' fees, regardless of whether the suit
14 proceeds to judgment. A suit is "successful" if it recovers an amount owing under this
15 Agreement greater than the amount offered by Respondent in its binding, written offer. The
16 amount of reasonable costs and attorneys' fees shall be determined by the Court and not by a
17 jury.
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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
25 actions under it shall be brought in Pima County, Arizona.
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IN WITNESS WHEREOF the parties have entered into this Agreement this 15 day of

October, 2010.

PIMA COUNTY AIR QUALITY CONTROL
DISTRICT

ASARCO LLC,
Respondent

By Ursula Kramer
Ursula Kramer, Control Officer

By [Signature]
Its VP Env. Affairs

APPROVED AS TO FORM:

By [Signature]
Its President & COO

By not required
Deputy County Attorney

By _____
Attorney for Respondent

- ATTACHMENT(S):
- December 23, 2009 Notice of Violation (Exhibit 1)
 - December 31, 2009 Notice of Violation (Exhibit 1)
 - April 27, 2010 Notice of Violation (Exhibit 1)
 - September 17, 2010 Notice of Violation (Exhibit 1)
 - Supplemental Environmental Project(s) Specifications (Exhibit 2)

EXHIBIT 2

2010 ASARCO PDEQ SETTLEMENT AGREEMENT

Canoa Ranch SEP Projects



EDUCATIONAL COMPLEX RESTROOM FACILITY:

Professional outside services (design/project management)	\$ 25,000.00
Construction contracts (Building and Septic System)	\$ 125,000.00

WELL REDEVELOPMENT:

Well drilling, casing and production enhancements	\$ 80,000.00
Well pumps, storage and distribution relocation	\$ 60,000.00
NRPR project management costs (mileage and salaries)	\$ 10,000.00

SANTA CRUZ WATERSHED RESTORATION:

Site location and design services	\$ 5,000.00
Construction contract (labor and expenses)	\$ 30,000.00
Materials, equipment rental and tools	\$ 10,000.00
NRPR project management costs	<u>\$ 5,000.00</u>

Total: **\$ 350,000.00**