



DEPARTMENT OF ENVIRONMENTAL QUALITY

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April 27, 2010

Permit #: 2026

ASARCO LLC - Mission Complex
Attn: Richard Rhodes, General Manager
4201 W. Pima Mine Road
Sahuarita, Arizona 85629

Re: Final Compliance Determination for Notices of Violation 0911-061 and 0912-067

Dear Mr. Rhodes,

The Pima County Department of Environmental Quality (PDEQ) has reviewed the response letter associated with the above referenced Notices of Violation (NOVs) issued to your facility. Due to the impact of these emissions on the surrounding residents and the enforcement history of your facility, PDEQ believes these violations warrant escalated enforcement.

PDEQ disagrees with ASARCO's position that it had taken all reasonable precautions to prevent visible emissions from crossing the property line as identified in the NOV 0911-061 and 0912-067. With respect to ASARCO's response to the specific violations, PDEQ takes the following position:

Violation #1

PDEQ acknowledges the admission by ASARCO that violations of the Visibility Emission Standard, PCC 17.16.050.B occurred on November 12, 2009 and December 22, 2009. PDEQ believes the control measures taken were not commensurate with the size and scope of the emission source. PDEQ's position is that immediately employing all necessary control measures to reduce emissions on days where the wind generates visible emissions is not a precautionary, but rather a reactive response.

Violation #2

PDEQ disagrees that reasonably necessary and feasible precautions were taken to control the generation of airborne particulate matter from the vast areas of the tailings dam not affected by

the berm building equipment. Inspections documented that large areas in the middle of the tailings dam were the source of the excess emissions during the windy days. While the area in the middle of the tailings dam appeared wet early on during berm building, it appeared completely dry on December 22, 2009. Additionally, the inspection of December 22, 2009 shows the area being traversed by water trucks adjacent to the decanting tower indicating that the entire surface area could have had dust suppressant applied to it prior to that date.

PDEQ also contends that the wind speed applicability exemption found in PCC 17.16.050.D.2 does not apply in this case because PDEQ believes the control measures taken were not commensurate with the size and scope of the emission source. It is PDEQ's position that ASARCO did not employ all necessary control measures until the end of December as supported by the December 22, 2009 inspection report and ASARCO's subsequent December 23, 2009 Excess Emissions Report documenting a maximum 6-minute opacity average of 75.4%. The excess emission report advised PDEQ that the smearing of the tailings impoundment commenced on December 22, 2009. The PDEQ inspection conducted on January 7, 2010 documented 30–40% of the dam to be smeared with wet tailings and records show that the next gusty day (above 35-40 mph) in the area was not until January 21, 2010 when a majority of tailings dam #8 would have been smeared.

As a comparison, PDEQ reviewed the measures that ASARCO took in 2006 to address a similar violation with regard to emissions occurring during berm building at tailings dam #8. At that time ASARCO utilized the services of Ecosystems and Stuart A. Bengson to develop dust control measures to prevent emissions during berm building. With respect to the actions taken in 2006 and the recent violations that occurred at tailings dam # 8, PDEQ requests additional records to further evaluate ASARCO's claim they had taken reasonable precautions to prevent fugitive dust emissions from crossing the property boundary during the berm building activity that occurred in the fall of 2009.

Pursuant to Arizona Revised Statutes, § 49-510; Violations; Production of Records and Pima County Code, 17.28.020; Production of Records, PDEQ hereby requires ASARCO, LLC to provide the following records:

1. Copies of all documentation of the dust control project conducted on tailing impoundments #8 in 2006 by Environmental Products & Applications, Inc. Records should include the following information.
 - Total acreage treated – Tailing Impoundment #8 only
 - Total acrylic polymer applied in gallons (after dilution) – When & Where?
 - Type of acrylic polymer applied
 - Water to polymer mixture ratio used
 - Total green dye used and where applied
 - Type and capacity of application equipment used
 - Total time to complete project
 - Total cost of project

2. Copies of all documentation of the dust control project conducted on tailings dam #8 in 2009 by ASARCO staff. Records should include the following information.
 - Total acreage treated – Tailing Impoundment #8 only
 - Total acrylic polymer applied in gallons (after dilution) – When & Where?
 - Type of acrylic polymer applied
 - Water to polymer mixture ratio used
 - Total green dye used and where applied
 - Type and capacity of application equipment used
 - Total time to complete project
 - Total cost of project

PDEQ agrees with the necessity for additional self-monitoring of operations and actions to be taken in the future as outlined in your response. This proactive approach is a necessary step to address excessive dust emissions being generated during construction of a new lift for a tailing impoundment. PDEQ understands that this type of operation can take up to 6 months to complete. Due to the length of such projects, it is reasonable and prudent to plan that high winds will occur. PDEQ's position is that ASARCO did not adequately plan for or have reasonable alternative control measures in place to prevent diffusion of visible emissions beyond the property boundary line during the berm construction phase of tailing impoundment #8.

PDEQ believes the tailings impoundment should have been more closely monitored and additional steps taken to minimize the fugitive dust generated on windy days. The excess emissions stemmed from an activity and foreseeable event that could have been avoided through increased planning, operations and maintenance practices.

Violation #3

PDEQ disagrees with ASARCO's allegation that Permit 2026, Part B, Condition II.F.1 was reproduced in the permit in error. The five year operating permit issued by PDEQ to ASARCO contained the language in question as it currently appears. PDEQ has no record of ASARCO objecting to the permit language.

ASARCO stated that "it is infeasible to 'slime' tails before berm building (because that would cause equipment to sink into the tails) or during the construction phase (because the tailing line is disassembled)." However, during settlement discussions with ASARCO to resolve the 2006 violation mentioned above, PDEQ questioned ASARCO staff as to why the entire surface of the tailings dams must be dried out for the berm building process and inquired if the process could be segmented. ASARCO's engineering staff responded that this was infeasible for the above quoted reasons. In reviewing the proposed Berm Building Dust Control Plan attached to the January 27, 2010 NOV response, ASARCO is now proposing the segmented strategy suggested by PDEQ more than six years ago. It therefore appears that this strategy could have been reasonably employed by ASARCO to prevent these latest violations.

During past compliance and enforcement discussions, the consensus between both PDEQ and ASARCO has been that control measures that expedite the berm building phase of the process are a key factor in complying with regulatory dust control requirements. In 2006, the building of a six foot berm rather than a ten foot berm was employed as a strategy to expedite the process. PDEQ questions why, dust control measures such as these were reasonably necessary and feasible in the past but were not in 2009.

PDEQ agrees that Permit 2026, Part B, Condition II.F.1 is a monitoring requirement that should have been incorporated into Part B Condition I.C as well as Condition II.F.1. PDEQ recalls the 60-day time period was a time frame discussed and agreed upon by both sides during past compliance and enforcement discussions. It is not PDEQ's position to determine how sources can best comply with the dust regulations.

In closing, PDEQ reiterates that we disagree that ASARCO employed reasonably necessary and feasible precautions to control the generation of airborne particulate matter from tailings impoundment # 8. The emission limiting standard requires that the source employ reasonable precautions that will prevent emissions violations like those documented on November 12, 2009 and December 22, 2009. PDEQ's position is that employing dust control measures incompletely as evidenced by the emission violations is not a reasonable precaution given the forecasting of weather patterns. PDEQ will work to approve the proposed Berm Building Dust Control Plan; however, it is the sources responsibility to achieve compliance with all applicable regulatory requirements.

Please respond to this letter within 30 days. Because of the magnitude of the violations, the impact of the emissions on the surrounding residents and the enforcement history of your facility, PDEQ believes that a penalty is warranted for these violations.

Offer to Meet

If ASARCO would like to meet with PDEQ staff to discuss this final compliance determination, please submit an agenda and a list of the attendees with your written request. If you have any questions regarding this letter, do not hesitate to contact me at (520) 243-7383.

Sincerely,



P. Scott Porter
Enforcement Manager

Cc: Case files: PC 0911-061 and 0912-067