

**BEFORE THE DIRECTOR OF THE ARIZONA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

State of Arizona,
Misael Cabrera, Director, Arizona
Department of Environmental Quality,

and

**Hill Brothers Chemical Company, A
California corporation**

No:

**ADMINISTRATIVE SETTLEMENT
PURSUANT
TO A.R.S. §§ 49-287.05, 292**

DRAFT

Table of Contents

I. RECITALS.....	1
II. INCORPORATION OF RECITALS.....	2
III. PURPOSE.....	2
IV. DEFINITIONS	3
V. SPECIFIC OBLIGATION OF SETTLOR.....	6
VI. NO ADMISSION OF LIABILITY	8
VII. COVENANT NOT TO SUE	8
VIII. RESERVATION OF RIGHTS.....	9
IX. ALLOCATION OF LIABILITY	9
XI. WITHDRAWING AND VOIDING THIS ADMINISTRATIVE SETTLEMENT AGREEMENT; EXECUTION BY ADEQ.....	9
XII. COMPLETE AGREEMENT.....	9
XIII. BINDING EFFECT	9
XIV. MODIFICATIONS.....	10
XV. COOPERATION AND ACCESS TO INFORMATION.....	10
XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT.....	11
XVII. NOTIFICATION.....	12
XVIII. GOVERNING LAW	13

I. RECITALS

A. The State of Arizona, on behalf of the Director of the Arizona Department of Environmental Quality (“ADEQ”), and pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* (“CERCLA”) and the Water Quality Assurance Revolving Fund, A.R.S. § 49-281 *et seq.* (“WQARF”), seeks to enter into this Administrative Settlement Agreement (“Agreement”), pursuant to A.R.S. § 49-292, with Hill Brothers Chemical Company, a California corporation, licensed to do business in Arizona (the “Settlor” or “Hill Brothers”), relating to Settlor’s liability for releases and threatened releases of hazardous substances at or from the Facility (as defined in Section IV, paragraph 14 below) relating to the site known as the West Central Phoenix-North Plume WQARF Site (“Site”).

B. ADEQ placed the Site on the WQARF Registry on April 15, 1998.

C. On August 17, 2015, the Governor of the State of Arizona designated Misael Cabrera as Director of the ADEQ, and on August 31, 2015, designated Mr. Cabrera as the Natural Resource Trustee for the State of Arizona pursuant to CERCLA, 42 U.S.C. § 9607(f)(2)(B). Pursuant to A.R.S. § 49-292, Director Cabrera is authorized to execute and enter into this Agreement to resolve and settle Settlor’s liability.

D. Pursuant to CERCLA, 42 U.S.C. § 9601(9) and WQARF, A.R.S. §49-281, Settlor was an owner and operator at the property located at 4450 N. 42nd Avenue, Phoenix, Arizona, 85019-3303, where releases or threatened releases of hazardous substances have occurred related to the Site, making the Settlor a responsible party under CERCLA 42 U.S.C. §9607(a) and WQARF, A.R.S. §49-283. Warranty Deed Recording 19690032167, setting forth the legal description of the property, is attached as Exhibit 1.

E. ADEQ issued the A.R.S. § 49-287.05 Notice of Liability Allocation on August 6, 2020.

F. Hill Brothers is a Responsible Party for the unpermitted release.

G. ADEQ and Settlor (collectively the “Parties”) have reached a settlement pursuant

to A.R.S. § 49-287.05(A)(9).

H. The Parties desire to establish certain rights and obligations between themselves with respect to liability for releases and threatened releases of hazardous substances at, or from, the Facility relating to the Site.

I. The Parties agree that settlement of this matter, and entering into this Agreement, is made in good faith in an effort to avoid further expenses of protracted litigation, without any admission of any liability by Settlor for any purpose.

J. The Parties agree that this Agreement has been negotiated by the Parties in good faith and at arms' length and that this Agreement is fair, reasonable, and in the public interest.

K. The Parties agree to be bound by the terms of this Agreement.

NOW, THEREFORE, IT IS AGREED BY THE PARTIES AS FOLLOWS:

II. INCORPORATION OF RECITALS

1. The Recitals are a material part of this Agreement and are incorporated herein by reference.

III. PURPOSE

2. The purposes of this Agreement are as follows:

A. To protect the public health and welfare and the environment;

B. To resolve Settlor's WQARF and CERCLA liability to ADEQ for Covered Matters as defined herein by providing a covenant not to sue to Settlor;

C. To provide all accompanying rights and protections afforded by State or Federal law; and

D. To obligate Settlor to make monetary payment as described herein.

3. Settlor recognizes that while this Settlement, as of the Effective Date, will resolve its WQARF and CERCLA liability for Covered Matters, it does not resolve its liability for matters not covered by this Agreement, if such matters or liability exist.

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Agreement, the words and terms used in this Agreement have the meanings assigned to them under WQARF and CERCLA as of the date this Agreement becomes final. Where a conflict exists between the definition of a word or term used under WQARF and CERCLA, the definition under WQARF shall control.

5. "ADEQ" means the Arizona Department of Environmental Quality.

6. "Administrative Settlement Agreement" means this Agreement and all exhibits attached hereto. In the event of a conflict between this Agreement and any exhibit, the Agreement shall control.

7. "Business Records" specifically includes facts, opinions, and other data contained in documents and reports prepared by Settlor's employees, agents, and contractors with respect to environmental conditions at the Site.

8. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq. (1995), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499, 100 Stat. 1613 (1986), as amended from time to time, and all rules, regulations, and guidelines promulgated thereunder.

9. "Covered Matters" means any civil claim or civil cause of action as authorized by law under WQARF and CERCLA arising out of releases or threatened releases of any known hazardous substance at or from the Facility relating to the Site before the Effective Date of this Agreement. "Covered Matters" does not include:

- A. Any claim arising out of Settlor's failure to comply with any term of or obligation arising out of this Agreement or any access agreement entered into pursuant to this Agreement;
- B. Any liability not expressly included within Covered Matters;
- C. Any future liability arising out of conditions that are unknown to ADEQ at

the time ADEQ enters into this Agreement as set forth in A.R.S. § 49-292(B);

D. Any liability arising out of any criminal act;

E. Any liability arising under laws other than WQARF and CERCLA or arising out of the violation of any state or Federal law, rule, or regulation after the Effective Date of this Agreement;

F. Any liability arising out of the release, disposal, generation, treatment, storage, or transportation by Settlor of any hazardous substance at or from the Facility relating to the Site after the Effective Date of this Agreement or arising out of Settlor's exacerbation of any hazardous substance at or from the Facility relating to the Site after the Effective Date of this Agreement;

G. Any liability arising out of the release, disposal, generation, treatment, storage, or transportation of hazardous substances at, to, or from real property, other than the Facility, owned or operated by Settlor. This includes any hazardous substances on real property, other than the Site, at any time, or any liability, arising out of the exacerbation of any hazardous substance;

H. Any liability for any hazardous substance on real property located outside of the Site boundaries, including any substances originally located within the Site boundaries that have migrated beyond the Site boundaries.

I. Any liability for any personal injuries or property damage arising out of the release or threat of a release of a hazardous substance at or from the Facility relating to the Site; and

J. Damages to, destruction of, and/or loss of the State's natural resources, including the costs of any natural resource damage assessments.

10. "Day" means a calendar day. In computing any period of time under this Agreement, the day of the act from which the designated time period begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day

which is not a Saturday, Sunday, or legal holiday.

11. “Director” means the Director of ADEQ.

12. “Document” means all written materials, papers, audio tapes, video tapes, magnetic tapes, compact discs, computer discs, photographs, reports, electronic data, and similar items that are not subject to Settlor’s attorney-client privilege.

13. “Effective Date of this Agreement” means the date this Agreement is signed by all parties regardless of whether a challenge is made to this Agreement.

14. “Facility”, as defined in A.R.S. § 49-281(6), means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice located at 4450 N. 42nd Avenue, Phoenix, Arizona, 85019-3303. The location of the property is attached hereto as Exhibit 2.

15. “Parties” means ADEQ and the Settlor.

16. “Remedial Action Costs” means all costs incurred or to be incurred by any person, including ADEQ except those costs classified as non-recoverable costs by A.R.S. § 49-281(9), in responding to releases or threats of releases of hazardous substances relating to the Facility or Site.

17. “Site” means the West Central Phoenix-North Plume WQARF Site, located in Phoenix, County of Maricopa, Arizona, and is approximately bounded by Highland Avenue to the north, Grand Avenue on the northeast, Indian School Road on the south, 37th Avenue on the east and 43rd Avenue on the west. As used herein, Site means and includes all areas where hazardous substances have come to be located, or will come to be located in the future, including but not limited to the full geographical areal extent of contamination as depicted on the map attached as Exhibit 3.

18. “State” means the State of Arizona and the ADEQ.

19. “WQARF” means the Water Quality Assurance Revolving Fund, A.R.S. § 49-281 et seq., as amended, and all rules, regulations, and guidelines promulgated thereunder.

V. SPECIFIC OBLIGATION OF SETTLOR

20. As part of the A.R.S. § 287.05 Notice of Liability Allocation, ADEQ calculated that Hill Brothers is responsible for the following costs:

a. Past Costs: \$958,945.90

b. Future Costs: \$215,824.13

c. Total Remedial Costs (sum of above): \$1,174,769.13

21. Any party who seeks settlement pursuant to A.R.S. § 49-287.05 (A)(9) is entitled to pay seventy-five percent (75%) of the total remedial costs allocated to the party.

22. Hill Brothers total allocated amount with the discount is \$881,076.85.

23. As part of the ongoing remediation, Hill Brothers agreed to perform remedial actions pursuant to A.R.S. §§ 49-282.05 and 282.06. Hill Brothers submitted invoicing for the work performed pursuant to the working agreement. ADEQ approved \$951,402.87 in work credits for the remedial actions; the work credits exceed the allocated Hill Brothers remedial costs.

24. Hill Brothers owes no additional funds in further settlement of this matter.

25. As part of the agreed settlement amount, the parties do hereby agree to the following:

a. That ADEQ shall grant Hill Brothers a full and final settlement and release of all further responsibility for any further remedial action costs or remedial actions associated with the West Central Phoenix-North Plume Site.

26. Settlor shall cooperate and act in good faith with ADEQ in performance of any remedial actions at the Site.

27. Settlor shall cooperate and act in good faith with ADEQ in performance of any remedial actions at the Site. Settlers shall execute, within 10 (ten) days of the Effective Date, the access agreement attached as Exhibit 4.

28. That Settlor shall abandon any well on site used as part of the remedial actions in

accordance with the Arizona Department of Water Resources requirements.

VI. NO ADMISSION OF LIABILITY

29. The acceptance of this settlement agreement and the assumption of any other obligations by Settlor in this Agreement are not to be construed as an admission of liability for any purposes by Settlor, by whom liability is expressly denied. Settlor retains the right to controvert any facts or determinations in any subsequent proceedings. This Agreement shall not be offered into evidence or otherwise deemed as an admission of any facts or of the liability by Settlor in any judicial or administrative proceeding as to the facts, evidence or extent of its alleged liability with respect to Covered Matters.

VII. COVENANT NOT TO SUE

30. Settlor's assumption of the obligations under this Agreement by payment of the Settlement Amount constitutes adequate consideration for the covenant not to sue granted to Settlor and all accompanying rights and protections afforded by State or Federal law.

31. Except as specifically provided in Section VIII ("Reservation of Rights"), the State covenants not to sue Settlor under WQARF or CERCLA based upon any claim or cause of action arising out of the Covered Matters except, as provided in A.R.S. § 49-292(B), this covenant not to sue shall not prevent the Director from suing the Settlor concerning future liability from the release or threatened release that is the subject of this covenant if the liability arises out of conditions that are unknown to the Director at the time the Director enters into this covenant.

32. Settlor covenants not to sue the State, its agencies, department officials, employees, contractors or agents under WQARF or CERCLA based upon any claim or cause of action arising out of Covered Matters.

33. Nothing in this Agreement shall be construed as granting a covenant not to sue or release of any kind to any person who is not a party to this Agreement. This Agreement applies only to ADEQ and Settlor and does not release or affect in any way the liability of any other person, including Settlor's insurers and sureties, if any. Except as otherwise

provided in this Agreement, the Parties reserve the right to bring an action against any person who is not a party to this Agreement.

VIII. RESERVATION OF RIGHTS

34. The covenant not to sue granted to Settlor is valid only as to Covered Matters. ADEQ expressly reserves all rights of action against Settlor with respect to matters not covered by this Agreement.

35. The Parties reserve all rights not specifically covered by this Agreement.

IX. ALLOCATION OF LIABILITY

36. The remedial investigation and feasibility study (WQARF, A.R.S. § 49-287.03) may establish facts which cause the Director to determine that cost recovery is appropriate and that Settlor should be assigned a proportionate share of liability pursuant to A.R.S. § 49-287.04(C) in order to achieve the 100% cost recovery allocation required by A.R.S. § 49-287.05. Settlor waives all right to challenge the Director's determination of Settlor's proportionate share of liability and the Director's assignment of its allocated share of remedial action costs, whether such right is by way of participation in settlement discussions, mediation or settlement conferences, an allocation hearing conducted pursuant to A.R.S. § 49-287.06, or the filing of a judicial appeal as provided in A.R.S. § 49-287.07.

37. If Settlor's allocated share is determined by the Director, or an allocator, whichever occurs later, to be greater than the agreed upon amount, the difference shall be deemed an orphan share of liability pursuant to A.R.S. § 49-281(10).

38. If Settlor's allocated share is determined by the Director, or an allocator, whichever occurs later, to be less than the agreed upon amount, Settlor shall have no recourse against the State nor any right of any reimbursement or credit of any kind from the State or WQARF for all or part of the amount paid in excess of the allocated share.

XI. WITHDRAWING AND VOIDING THIS ADMINISTRATIVE SETTLEMENT AGREEMENT; EXECUTION BY ADEQ

39. If this Agreement or any portion thereof is reversed or modified by any court, either ADEQ or Settlor may withdraw from this Agreement. ADEQ shall retain the Settlement Amount, if previously paid, and Settlor shall receive no benefit under this Agreement, except a credit equal to the Settlement Amount against any WQARF or CERCLA liability Settlor may have with respect to the Site.

40. If Settlor fails to satisfy any material obligation under this Agreement, ADEQ may void this Agreement. If this Agreement is voided, ADEQ shall retain the Settlement Amount, if previously paid, and Settlor shall receive no benefit under this Agreement, except a credit equal to the Settlement Amount against any WQARF or CERCLA liability the Settlor may have with respect to the Site.

41. Settlor acknowledges that ADEQ will not execute this Agreement prior to the close of the public comment period, pursuant to Section XVI.

XII. COMPLETE AGREEMENT

42. This Agreement and its exhibits constitute the complete settlement agreement between ADEQ and Settlor as to Covered Matters and supersedes all previous agreements or understandings, whether oral or written. Except as provided in Section XIV ("Modifications") of this Agreement, no modification shall be made to this Agreement without prior written notification to and written approval of ADEQ and Settlor.

XIII. BINDING EFFECT

43. This Agreement shall apply to and be binding upon the Parties, their successors and assigns. No change in ownership or corporate status of a Party, including any transfer of assets or real or personal property, shall in any way alter Settlor's obligations under this Agreement. Settlor shall provide a copy of this Agreement to each successor and assign.

44. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to any person, or be construed as a release from any claims, or cause of action, against any person not a signatory to this Agreement.

XIV. MODIFICATIONS

45. Except as otherwise provided in this Agreement, neither ADEQ nor Settlor may withdraw from or modify this Agreement after it has been signed by the Parties. After this Agreement is signed, the Parties may modify this Agreement only if the modification is in writing and signed by the Parties.

XV. COOPERATION AND ACCESS TO INFORMATION

46. Settlor shall cooperate with ADEQ and grant ADEQ and its representatives, authorized agents, attorneys, investigators, consultants, advisors, and contractors prompt access to Settlor's non-privileged Business Records, Documents, and such other information relating to the release, disposal, generation, treatment, storage, or transportation of any hazardous substance at or from the Facility relating to the Site. Settlor's cooperation shall include, but not be limited to:

A. Making all Business Records available to ADEQ and the State;

B. Making Settlor's current and future employees, agents, contractors, officers, directors, and appointed and elected officials who may have knowledge of relevant facts reasonably available for personal interviews by representatives, authorized agents, attorneys, investigators, consultants, advisors, and contractors of ADEQ, and waiving any objection or right of confidentiality related to the release, disposal, generation, treatment, storage, or transportation of any hazardous substance at or from the Facility relating to the Site;

C. Identifying and attempting to locate Settlor's former employees, agents, contractors, officers, directors, and appointed and elected officials who may have knowledge of facts related to the release, disposal, generation, treatment, storage, or transportation of any hazardous substance at, or from, the Facility relating to the Site and

agreeing not to assert any claim of privilege or confidentiality to any fact, data, or regarding the conditions, releases at the Facility or the Site;

D. Cooperating with and providing reasonable assistance to ADEQ in connection with any investigation related to the release, disposal, generation, treatment, storage or transportation of any hazardous substance at or from the Facility relating to the Site and in preparing for any hearing, allocation, or other proceeding related to the Facility or Site;

47. Settlor represents and warrants that as of the date this agreement is signed by Settlor, neither Settlor nor any person will alter, mutilate, discard, destroy, or otherwise dispose of any Business Record, Document, or other information relating to the release, disposal, generation, treatment, storage, or transportation of any hazardous substance at or from the Facility relating to the Site. For thirty (30) years after the date of entry of this Agreement, Settlor shall retain and, upon request, grant ADEQ and its authorized agents, attorneys, investigators, and contractors prompt access to all such Business Records for inspection and copying in Arizona. Settlor shall maintain and preserve all such Business Records where such Business Records are normally kept. In the event ADEQ requests to inspect the Business Records, Settlor shall make them available to ADEQ. If Settlor intends to destroy or otherwise dispose of any such Business Records, Documents, or other information at any time after expiration of the thirty-year retention period, Settlor shall deliver written notice of such destruction or disposal to ADEQ at least ninety (90) days prior to the date of such destruction or disposal and ADEQ shall have the right to take immediate possession of and title to all such Business Records free of charge.

48. By signing this Agreement, Settlor certifies that it will fully comply with any and all ADEQ requests for information regarding the Facility or the Site pursuant to A.R.S. § 49-288.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

49. Within ten (10) days of the Effective Date, Settlor shall, at its own expense,

publish notice of this Agreement at least one (1) time in a newspaper of general circulation in the county in which the Site is located. The notice shall state the material terms of this Agreement and that the entire Agreement is available for review and comment. Settlor shall deliver a copy of the notice to ADEQ at least five (5) days before it is published and ADEQ may furnish the notice to any person it deems appropriate and may post it on ADEQ's web site. Settlor bears the risk that the publication is defective or otherwise insufficient.

50. Settlor acknowledges that prior to execution by ADEQ, notice of this Agreement shall be published in accordance with A.R.S. § 49-289.03(A)(4) and A.A.C. R18-16-301. The public comment period shall run for thirty (30) days from the date the notice of this Agreement is published. All comments shall be submitted to, and considered by, ADEQ. ADEQ may decline to execute this Agreement after considering any public comments that indicate that this Agreement is not in the public interest.

XVII. NOTIFICATION

51. Whenever notice is required to be given under this Agreement, it shall be in writing and delivered to the persons at the addresses identified below. If the notice is hand-delivered, it is deemed given and effective on the date it is received. If the notice is sent by certified mail, it is deemed given and effective on the date the return receipt is signed. If the return receipt is either not signed or signed but not dated, the notice is deemed given and effective five (5) days after the date the notice is postmarked by the United States Postal Service.

52. Notices and other written communications between the Parties related to this Agreement shall be delivered to the following persons at the following addresses:

To ADEQ:

Arizona Department of Environmental Quality
Attn: Remedial Projects Section Manager
1110 W. Washington
Phoenix, Arizona 85007

To Settlor:

[Property Owner]

Copies of all such notices and other communications shall be simultaneously sent by regular first class mail, postage prepaid, to:

Arizona Department of Environmental Quality:

Tom Titus, Project Manager
Remedial Projects Unit
Arizona Department of Environmental Quality
1110 W. Washington
Phoenix, Arizona 85007

Attorney for ADEQ:

Rick Zeise, Esq.
Assistant Attorney General
Environmental Enforcement Section
Office of the Attorney General
1275 West Washington Street
Phoenix, AZ 85007

If any Party changes its address, written notice of the change shall be delivered to the other Party.

XVIII. GOVERNING LAW

53. This Agreement shall be governed, interpreted, and enforced according to the laws of the State of Arizona. Proper venue for any civil action, proceeding, or arbitration arising out of this Agreement shall be Maricopa County, Arizona. To the extent required by A.R.S. § 12-1518(B) and as set forth in A.R.S. § 12-133, at the direction of the court, the Parties shall submit any breach or dispute arising out of this Agreement to arbitration pursuant to Ariz. R. Civ. P. Rules 72-77.

XIX. FINAL AGREEMENT

54. Upon execution of this Agreement, this Agreement shall constitute an administratively approved settlement between ADEQ and Settlor.

FOR THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____
Laura L. Malone, Director
Waste Program Division

Date: _____

THE UNDERSIGNED PARTY enters into this Agreement

<Defendant>, a <State> [insert business type]

By: _____
Adam Hill

Date: 4/13/2022

Its: President/CEO

SUBSCRIBED before me this 13th day of April, <Year>. 2022

P. Santana
Notary Public

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