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CONFIDENTIAL

ASARCO INCORPORATED
CLOSED PLANT UNIT

PROFESSIONAL SERVICES AGREEMENT
Contract No. _____

FOR

Project Name El Paso Smelter
Air Quality Modeling
Audit for TCEQ

BY AND BETWEEN

ASARCO LLC

AND

ARNOLD R. SRACKANGAST

Immediate

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PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made the 20th day of February by and between:
Arnold Srackangast whose address is:

4516 McCall Creek Rd

Blanco, Texas 78606

(hereinafter called the "CONSULTANT") and ASARCO LLC whose address is:

(hereinafter called the "OWNER").

The CONSULTANT and the OWNER, for and in consideration of the mutual covenants set forth herein, agree as follows:

1. GOVERNING TERMS

This Agreement constitutes the sole, exclusive and entire agreement between OWNER and CONSULTANT. Any modifications must be in writing and signed by both parties and subject to review and approval by the Executive Director of the Texas Commission on Environmental Quality (TCEQ). This Agreement and the attached Exhibit A shall control in the event of any inconsistency in any document referred to or incorporated herein, or provided by the CONSULTANT.

2. SCOPE of SERVICES

CONSULTANT agrees to perform all Services described in Exhibit A (the "Services" or the "Work"). No change or increase in the Scope of Services shall be valid unless agreed to in writing in advance of performance of the Services.

3. TIME for PERFORMANCE

The CONSULTANT shall commence immediately and complete the Services as soon as practical. In performing the Services, time shall be of the essence.

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4. MATERIALS, EQUIPMENT and LABOR

CONSULTANT shall furnish all labor, transportation, tools, supplies, materials and related equipment necessary to complete the required Services.

5. PAYMENTS

The OWNER shall pay CONSULTANT the agreed amount for Services rendered in accordance with the terms set forth in Exhibit A. CONSULTANT shall submit invoices monthly and such invoices shall be paid within 30 days of receipt.

Notwithstanding any payment provisions elsewhere in this Agreement, including any exhibits, amendments, or attachments thereto, the CONSULTANT acknowledges that the work to be performed may be subject to payment procedures and processes established for the Environmental Trust (Trust), which has been created pursuant to the provisions of Section VII of the Consent Decree between the U.S. Department of Justice and Environmental Protection Agency and OWNER (CV 02-2079-PHX-RCB *United States of America v. Asarco, Inc. and Southern Peru Holdings Corporation*), and the Asarco Trust Agreement. To be eligible for consideration for payment from the Trust, work must be paid directly to the CONSULTANT from the Trust. The Trustee is authorized to directly reimburse CONSULTANT for work authorized under the approved annual budget upon submittal of unpaid CONSULTANT invoices, accompanied by OWNER's statement that the CONSULTANT has not yet been paid and is to be paid directly by the Trustee. The OWNER, U.S. Department of Justice and Environmental Protection Agency, and Trustee have established procedures for invoice submittal, review and approval in order that work be paid directly from the Trust as permitted in the above-referenced Consent Decree and Asarco Trust Agreement. CONSULTANT agrees that if any or all work under this Agreement is subject to direct payment by the Trust, it will comply with the procedures established for direct payment from the Trust. In addition, CONSULTANT agrees that it will not submit any claim to the OWNER for direct payment, unless i) OWNER has first expressly authorized the work and the payment outside the Trust prior to any work being performed under this Agreement, or ii) the claim has been submitted to the Trustee and denied pursuant to the terms and conditions of the Asarco Trust Agreement.

6. WARRANTY

CONSULTANT warrants that all Services rendered hereunder shall be performed using the highest degree of skill and care normally exercised by recognized industry professionals in Texas at this time performing services of the same nature required hereunder under similar time and budget constraints, and that such services shall conform to all requirements of this Agreement.

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7. FORCE MAJEURE

If either party is prevented in whole or in part from performing its obligations under this Agreement by unforeseeable events or causes beyond its control and without its fault or negligence, then during the course of such event or cause the party so prevented shall be excused from whatever performance is affected by such event or cause; provided that such party provides prompt written notice to the other party of such condition. Force Majeure events or causes include, but are not limited to: acts of God; unusually severe weather; labor disputes; fires; riots; civil commotion; acts of federal, state or local governmental authorities; and acts of war.

8. CONSULTANT CLAIMS

In the event CONSULTANT sustains a delay, damage or loss of any kind or encounters a change or unexpected condition during performance of this Agreement, CONSULTANT's sole remedy against OWNER shall be an award of an extension of time for performance. In no event may CONSULTANT recover any monetary relief from OWNER, including but not limited to damages, consequential or otherwise.

9. SUBCONTRACTS

The CONSULTANT shall not employ any Subcontractors without the prior written approval of the OWNER. For the Subcontracted Work, the CONSULTANT shall require each such Subcontractor to adhere to the terms and conditions of this Agreement. Nothing herein shall be deemed to create a contractual relationship between any such Subcontractor and the OWNER. For the purposes of this paragraph, analytical laboratories, drilling companies, and companies providing routine services such as reproduction, are not considered to Subcontractors.

10. ASSIGNMENT

Neither party shall assign this Agreement in whole or in part without the prior written consent of the other party. Nor shall the CONSULTANT assign any monies due or to become due it hereunder without the prior written consent of the OWNER.

11. COMPLIANCE WITH ALL LAWS AND ENVIRONMENTAL SAFETY AND HEALTH POLICY

CONSULTANT acknowledges that compliance with laws and providing a safe and healthy workplace and protection of the environment is an OWNER priority. CONSULTANT agrees to abide by that priority in all of its actions that relate to OWNER. CONSULTANT agrees, represents and warrants that in providing Services hereunder it will maintain copies of and will fully comply with all applicable federal, state and local laws, rules, regulations, standards and other governmental requirements including but not limited to: the Federal

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Occupational Safety and Health Act ("OSHA"), Federal Mine Safety and Health Act ("MSHA") the statutes enforced by the U.S. Environmental Protection Agency ("EPA"), their state and local equivalents and all regulations, policies and orders issued by or pursuant to them (the "Acts"). The inclusion in this Agreement of any specific laws or regulations shall not relieve CONSULTANT of its obligation to comply with all federal, state and local laws, rules, statutes, regulations and ordinances. CONSULTANT further agrees that any of its officers, agents, employees, contractors or subcontractors that enter OWNER's premises will be trained, certified and/or licensed both as required by such laws and Acts and in the methods and procedures for compliance with them. CONSULTANT acknowledges and agrees that it has instituted a policy that mandates compliance with this provision.

12. ENVIRONMENTAL HEALTH AND SAFETY PROVISIONS

CONSULTANT agrees to comply with all of OWNER's safety, health and environmental rules and procedures relating to Services performed on, access to and use of, OWNER's facility, including but not limited to the following general safety and health, and environmental provisions:

(a) CONSULTANT shall designate a job site representative to be its supervisor responsible for compliance with all laws, and that person shall be responsible for promoting health, safety and accident prevention, environmental protection, compliance with applicable laws, rules and regulations and coordinating such activities with OWNER.

(b) CONSULTANT shall convey in writing to its employees and employees of its subcontractors that they must notify CONSULTANT and OWNER's representative immediately of any environmental, safety or health concerns or hazards, or problems they may have or encounter in performing this Agreement or any of its requirements. CONSULTANT agrees to evaluate the concern, take protective actions, if needed, and notify OWNER of such concerns and actions in writing.

(c) CONSULTANT agrees to limit its travel on OWNER's facilities solely to that necessary for performing this Agreement and require that its employees, agents and subcontractors be accompanied by OWNER's personnel and a representative of TCEQ, unless a particular employee, agent or subcontractor is authorized by OWNER to be unaccompanied and TCEQ approves of the same.

(d) CONSULTANT agrees to become familiar with and train its employees and those of its subcontractors in the characteristics of the site, including, but not limited to, any hazards, restricted areas, protective measures and applicable emergency and evacuation procedures.

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(e) CONSULTANT agrees to provide and utilize safe, functional equipment and non-hazardous materials and to possess or obtain, prior to entering OWNER's site, any training, testing, licenses or certifications that are necessary, appropriate or required for utilizing all equipment, materials and tools used to perform this Agreement. CONSULTANT also agrees to maintain such equipment, materials and tools in good order and working condition, and utilize personal protective equipment whenever appropriate or required by law or OWNER's policies.

(f) CONSULTANT shall promptly advise OWNER of any investigation or inspection by any federal, state or local governmental agency in any way related to or concerning OWNER or Work under this Agreement.

(g) CONSULTANT shall immediately notify OWNER (and if requested, provide a detailed written report) of every accident or incident involving injury to personnel or occupational illness, or damage to OWNER's property, or environmental incident or event occurring in connection with this Agreement. CONSULTANT agrees to assist OWNER with any investigation thereof, and agrees to record and report all required information by and to all appropriate federal, state and local regulatory agencies. CONSULTANT shall provide notice and copies of such reports and information to OWNER. On a monthly basis, CONSULTANT shall also report to OWNER employee days and hours worked while on OWNER's premises. Such information may be provided as part of CONSULTANT's invoices.

(h) Upon request, CONSULTANT agrees to provide OWNER with its written environmental, safety and health programs and documents applicable to its presence at OWNER's facility and to provide any requested additional documentation or certification.

13. EFFECT OF OWNER'S VOLUNTARY ACTIONS

(a) CONSULTANT's duties of indemnity towards OWNER pursuant to Paragraph 18 shall apply with full force and effect even if OWNER provides CONSULTANT with safety, health and environmental information, training, materials, inspections, goods or services, or otherwise voluntarily assists CONSULTANT in protecting people and the environment and meeting CONSULTANT's compliance obligations hereunder.

(b) CONSULTANT acknowledges that it is fully and solely responsible for compliance with all laws and regulations and that any assistance provided by OWNER as referenced herein is provided voluntarily and solely for the purposes of promoting the parties' mutual interests in health, safety and the environment.

(c) Any actions by OWNER in volunteering environmental, safety and health information, training, materials, equipment and services shall not be alleged to,

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nor constitute a change in, or diminish or relieve CONSULTANT of any contractual or governmental responsibilities in these areas. Such OWNER's voluntary actions also shall not constitute, nor be alleged by CONSULTANT in any inspection, investigation or legal proceeding to constitute control, supervision or direction of its employees.

14. ENVIRONMENTAL SAFETY AND HEALTH VIOLATIONS AND ASSESSMENTS

CONSULTANT acknowledges that violations by CONSULTANT of health, safety, environmental and other statutory and regulatory laws and authority may result in the imposition of civil and/or criminal penalties or in other damage and loss to both OWNER and CONSULTANT. CONSULTANT agrees that OWNER shall have the right to assess or back charge CONSULTANT an amount equal to that which OSHA, MSHA or the EPA or their state or local equivalents actually assess OWNER for violations due to violations by CONSULTANT. OWNER also shall have the right to inspect or audit CONSULTANT's records, conduct or actions related to this Agreement for the purpose of monitoring CONSULTANT's compliance with, and for enforcing the terms of, this provision. OWNER's remedies against CONSULTANT for violations of the environmental, health and safety provisions of this Agreement shall not be limited to those set forth above.

15. CONFIDENTIALITY and CONFLICTS of INTEREST

The CONSULTANT agrees to hold in strict confidence any and all information provided by OWNER or obtained from OWNER's site and any data, findings, and results of CONSULTANT's Work (the "Information"). This section shall not apply to any Information or portions of such Information which (a) are or become generally available to the public other than as a result of a disclosure by CONSULTANT, or (b) become available to the CONSULTANT on a non-confidential basis from a source other than the OWNER, (c) is the subject of a written release letter provided by OWNER, (d) is required to be provided by law. If there is a reasonable doubt about the confidential status of any information, the CONSULTANT must inquire with the OWNER in writing, or (e) except as provided in Exhibit A hereto.

16. STATUS AND RESPONSIBILITY OF CONSULTANT AND ITS PERSONNEL

The status of CONSULTANT hereunder is that of an independent contractor and any Worker's Compensation Insurance coverage, required training, tax payments or employee's benefits for CONSULTANT's personnel shall be the sole responsibility of CONSULTANT. CONSULTANT shall at all times enforce strict discipline and good order among its employees or agents that enter OWNER's site, and shall not employ on the site any unfit or untrained person or anyone not skilled in the work assigned to him. OWNER may require changes in personnel assigned to perform Services on OWNER's site when, in

(FORM PSA Rev. 6/99)

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OWNER's opinion, CONSULTANT's Services are not being performed timely or satisfactorily.

17. INSURANCE

A. Minimum Scope and Limits of Insurance

The CONSULTANT shall procure, pay for and maintain in full force and effect at all times during the performance of the Services and until final acceptance of the Services, policies of insurance issued by financially responsible carriers with Best's ratings of no less than A:VII, that afford the following coverage's:

Commercial General Liability Policy (ISO occurrence or claims made form) including bodily injury, property damage, completed operations and products coverage's. (Completed operations shall be provided for a period of two years from final acceptance of the work by OWNER. If a general liability policy is written on a claims-made basis, the OWNER's interest must continue to be covered for an additional two-year period after policy expiration.)	Not less than \$1 million per occurrence combined single limit for both bodily injury and property damage.
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B. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. With respect to Commercial General Liability and Automobile Liability, these policies shall:

- (a) name the OWNER, its parents, subsidiaries, agents and affiliated companies, and its directors, officers, agents and employees as *Additional Insureds*;
- (b) expressly include a *severability of interest* clause; and
- (c) be *primary insurance* as respects the OWNER, its parents, subsidiaries, agents and affiliated companies, and its directors, officers, agents and employees.

Any failure to comply with reporting provisions of these policies shall not affect coverage provided to the OWNER.

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2. With respect to all coverage's except Professional Liability Insurance, every policy shall contain a *Waiver of Subrogation* endorsement in favor of the OWNER, its parents, subsidiaries, agents and affiliated companies, and its directors, officers, agents and employees.

C. Verification of Coverage

Before any equipment or personnel is brought on to OWNER's premises, CONSULTANT agrees to deliver to OWNER an original *Certificate(s) of Insurance* evidencing the above coverage's. All policy deductibles and/or self-insured retentions must be shown on the Certificate(s) and are subject to approval by the OWNER. Certificates shall express provide that no less than thirty (30) days prior written notice shall be given OWNER in the event of material alteration to or cancellation of the coverage evidenced by such policies. Upon renewal of each policy, CONSULTANT shall provide to OWNER a *Certificate(s) of Insurance* evidencing all of the provisions specified in this Article.

CONSULTANT will maintain the original of all policies and endorsements and provide OWNER with copies of the same upon request of OWNER.

D. Subcontractors

CONSULTANT shall include all subcontractors as insureds under its policies or shall furnish separate Certificates and Endorsements for each subcontractor. For the purposes of this paragraph, analytical laboratories and companies providing routine services, such as reproduction, are not considered to be Subcontractors .

18. INDEMNIFICATION

CONSULTANT agrees to indemnify, defend and hold harmless OWNER from and against all claims, suits or demands of any kind and description, and from and against all alleged or actual damages, loss, fines or penalties which OWNER or OWNER's property may sustain, incur, suffer or receive and which arise or allegedly arise in whole or in part from CONSULTANT's performance under this Agreement or from any other conduct, actions or inactions by CONSULTANT. CONSULTANT's indemnity obligations include, but are not limited to, payment of all judgments, legal fees and expenses incurred by OWNER. OWNER's rights and CONSULTANT's indemnity obligations hereunder shall apply with full force and effect even if OWNER or any third party is or may be liable or responsible in part for the claim, suit, demand, damage, loss, fine or penalty sustained, incurred, suffered, or received. However, CONSULTANT's indemnity obligation shall apply for the amount and to the

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extent that CONSULTANT is at fault for or the cause of such loss or damages. OWNER's rights and CONSULTANT's obligations hereunder shall survive the expiration or termination of this Agreement.

19. RIGHT TO TERMINATE AGREEMENT

A. Termination For Cause.

OWNER may terminate or cancel this Agreement in whole or in part for cause if: (1) CONSULTANT's performance does not conform in all respects to CONSULTANT's warranty or the terms of this Agreement; (2) CONSULTANT fails to timely and satisfactorily provide its Services to OWNER; (3) any reasonable question arises concerning CONSULTANT's financial condition or solvency. Where a basis for termination exists, OWNER will give CONSULTANT written notice specifying the CONSULTANT's deficiencies. If the OWNER reasonably determines that the deficiencies cannot be corrected to its satisfaction, the notice shall so state and the Contract will be deemed terminated for cause. If the OWNER deems the deficiencies curable and the deficiencies are not corrected to the satisfaction of OWNER within seven (7) days of the date of CONSULTANT's receipt of written notice, or such other time period set forth in OWNER's notice, the OWNER may terminate this Agreement by giving the CONSULTANT written notice of termination. Any notice of termination shall specify the extent to which performance under the Agreement is terminated, and the effective termination date. The OWNER shall pay CONSULTANT for performance received, approved and accepted by OWNER prior to the effective date of termination, minus any additional costs of completion and damages that OWNER may incur as a result of the termination.

CONSULTANT may stop work or terminate this Agreement for cause, without prejudice to any other right or remedy it may have under this Agreement or as a matter of law if, i) any proceeding is instituted by or against the CONSULTANT seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or seeking the entry of an order of relief or the appointment of a receiver, trustee or other similar official for it or any substantial part of its property; or ii) the CONSULTANT admits its inability or fails to pay its debts generally, or shall make general assignment for the benefit of its creditors; or iii) CONSULTANT is not paid within 90 days of receipt by OWNER or Trust of invoice. If CONSULTANT is terminated for cause, OWNER is still liable for the unpaid balances due on all work performed by CONSULTANT.

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B. Termination For Convenience (Without Cause).

OWNER may, by written notice, terminate or cancel this Agreement in whole or in part, at any time and for any reason for OWNER's convenience. In the event this Agreement is terminated for convenience or canceled, CONSULTANT shall be entitled to recover the balance due on the Agreement price only for the services received, approved and accepted by the OWNER up through the date of termination, less previous payments made and any costs OWNER has incurred as a result of CONSULTANT's actions under the terminated or canceled Agreement. In no event may CONSULTANT recover from OWNER any damages, direct, consequential or otherwise or lost profits arising from termination of this Agreement.

20. DISPUTES

Any dispute arising out of or in connection with this Agreement shall first be subject to mediation administered by the American Arbitration Association. Any dispute, which cannot be amicably settled through mediation between the parties shall be finally settled by arbitration under the Rules of Commercial Arbitration of the American Arbitration Association. A demand for arbitration may be made as soon as it becomes apparent that the matter cannot be settled through mediation. The mediation or arbitration shall take place at a mutually convenient location in the city closest to OWNER's facility originating this Agreement. The resulting decision of the arbitrators shall be final and binding on the parties. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. No request or demand for mediation or arbitration shall be made after the date on which the applicable statute of limitations would expire.

21. GOVERNING LAW

This Agreement, including performance and all disputes hereunder, shall be governed by the laws of the state or commonwealth in which OWNER will receive the direct beneficial use of the Services.

22. CONFLICTS

In the event of conflict between the provisions of this Agreement and any Attachment(s) or Exhibit(s) attached hereto, the provisions of this Agreement shall govern.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

OWNER:

By: TL Hall

Its: VP Env. Affairs

Date: Feb 26, 2007

CONSULTANT:

By: Arnold R. Machanant

Its: Sole Proprietor U

Date: Feb 12th, 2007

ASARCO LLC:

By: D. E. McAllister

Its: Exec VP

Date: 2.26.07

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PROFESSIONAL SERVICES AGREEMENT
EXHIBIT A

2006 SCOPE OF SERVICES:

Consultant shall review air dispersion modeling ("Modeling") submitted by ASARCO in support of a renewal of TCEQ Air Permit No. 20345 for ASARCO's El Paso smelter plant. The review shall be conducted to determine whether the Modeling complies with TCEQ protocols including, specifically, the Modeling protocol provided to ASARCO on May 5, 2006 (enclosed). The review shall include a Final Report to the TCEQ Executive Director. The Final Report shall include such information and conclusions as called for by the Executive Director's May 5, 2006, protocol.

Consultant shall exercise his independent professional judgment in conducting the review and in preparing the Final Report. Consultant is advised that TCEQ staff will consider and rely on the Final Report in preparing its own independent review of the modeling. Because Consultant's services are intended to be an independent professional review of the Modeling submitted by ASARCO, it is not contemplated that either ASARCO or TCEQ will be bound to agree with Consultant's conclusions, and neither ASARCO's nor TCEQ's agreement or disagreement with the conclusions of Consultant's report shall be considered evidence of either compliance with, nor a breach of, this agreement. Consultant's services under this contract shall be limited to the services described herein (as they may be modified from time to time in accordance with all requirements of this Contract.)

Because Consultant is performing an independent review of the Modeling submitted by ASARCO to TCEQ, and making a Final Report to the TCEQ Executive Director, ASARCO and TCEQ intend that all direction and communication to Consultant under this Agreement be made jointly by TCEQ and ASARCO. ASARCO and Consultant therefore agree to communicate with each other only in the presence of a TCEQ (physical or by teleconference) representative, to copy TCEQ on all written or electronic communications, and to provide TCEQ with reasonable notice and (if applicable) planned agendas for all meetings, conference calls, and similar activities. Further, no modifications or explanations of the Work under this Agreement shall be made or binding unless communicated in accordance with this paragraph as well as any other relevant provisions of this Agreement relating to contract modification. Consultant shall not proceed under any modification, explanation, or direction regarding the Work under this contract unless it has been communicated in accordance with this paragraph as well as any other relevant provisions of this Agreement relating to contract modification.

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Compensation to Consultant shall be on a time and materials basis not to exceed \$30,000 unless agreed to by ASARCO and Consultant in writing.

Consultant shall retain all documents collected, received or maintained in the course of execution of this agreement, including drafts, and shall maintain them as confidential for the duration of this agreement. At the conclusion of the agreement, all such documents shall be the property of, and delivered to, ASARCO.

Upon request, Consultant shall provide information identified under Article 15 to TCEQ under a claim of confidentiality by ASARCO and subject to the limitations imposed by Section 15. Consultant and ASARCO acknowledge that all such information may be subject to public release by the TCEQ as may be provided for under the Texas Public Information Act. Consultant shall refer any requests for such information from parties other than ASARCO or TCEQ to the TCEQ, with notice to ASARCO; Consultant shall not release such information to anyone other than the TCEQ or ASARCO except as provided for under exceptions (a) through (d) of Article 15.

Consultant shall be available at a minimum for weekly conference calls with ASARCO and TCEQ. If Consultant needs to communicate outside these calls with ASARCO and TCEQ on any issue related to this contract, Consultant shall advise the parties in writing and include the general nature of the issue. E-mail is acceptable.

Contacts for all direction and communications shall be:

For ASARCO:

Lairy Johnson, P.G.
Plant and Environmental Manager
ASARCO LLC
P.O. Box 1111
El Paso, Texas 79999
(915) 541-1819
(915) 521-3651 - Fax
ljohnson2@asarco.com

Mr. David Cabe
Zephyr Environmental
1515 Capital of Texas Highway South
Suite 300
Austin, Texas 78746-6544
(512) 329-5544
(512) 329-8253 - Fax
DCabe@zephyrenv.com

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Rodman Johnson
Brown McCarroll, L.L.P.
111 Congress Avenue
Suite 1400
Austin, Texas 78701
(512) 479-9735
(512) 479-1101 - Fax
rjohnson@mailbmc.com

For TCEQ:

Robert Opiela
Texas Commission on Environmental Quality
P. O. Box 13087
MC-163
Austin, Texas 78711
(512) 239-1147
(512) 239-1300 - Fax
ropiela@tceq.state.tx.us

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 5, 2006

RECEIVED

MAY 16 2006

Mr. Lairy Johnson
ASARCO, Incorporated
P.O. Box 1111
El Paso, Texas 79999-1111

ASARCO INC.
EL PASO PLANT
ENVIRONMENTAL

Re: Application by ASARCO, Incorporated, to Renew Air Quality Permit No. 20345, Texas Commission on Environmental Quality Docket No. 2004-0049-AIR

Dear Mr. Johnson:

As you know, the Commission entered an Interim Order (Interim Order) on March 10, 2006, finding that ASARCO, Incorporated (ASARCO), has failed to demonstrate the effectiveness of its existing emission control equipment and practices as provided in Texas Health and Safety Code (THSC) §382.055, which is a minimum condition for renewal of its permit. Accordingly, both the Executive Director (ED) and ASARCO are required to perform certain assessments to supplement ASARCO's air quality permit renewal application for its primary copper smelter in El Paso (Copper Smelter) given the length and scope of shutdown by ASARCO. ASARCO ceased its copper smelting operations in 1999 and remains in an extended condition of inoperation. The Commission directed ASARCO to submit additional information regarding all emissions from its Copper Smelter and their impacts on surrounding areas, including current modeling results. The ED is directed to conduct a vigorous investigation of all air quality control equipment, including related practices, and based on this investigation and results of all information submitted by ASARCO, prepare a report and any related schedule on the sufficiency of existing plant control equipment and practices. The ED is also directed to assess the appropriateness of a permit amendment application for equipment that has not been previously authorized or that requires repair or replacement.

The ED has determined that because ASARCO has failed to demonstrate the effectiveness of its existing emission control equipment and practices, the investigation required to comply with the Interim Order exceeds the scope of the agency's normal permit renewal process and will require resources beyond those appropriated to the agency for that process (and funded through operating fees assessed and collected to fund agency actions). Therefore, the ED must require additional information from ASARCO in order that the ED may complete the investigation required in the Interim Order; in order to determine the condition and effectiveness of existing emission equipment and practices; to avoid a condition of air pollution; and to determine any additional requirements in light of the effect of the surrounding area as specified in THSC §382.055 and 30 Texas Administrative Code §116.311(b).

To ensure all necessary information is obtained, the ED requires that ASARCO retain one or more qualified independent third parties to perform the tasks set out below. In order to ensure the qualifications and objectivity of the independent contractors, the ED requires that ASARCO submit the proposed contractor selections and the proposed contracts to the ED for approval prior to entering the contracts. The ED also

Mr. Lairy Johnson
Page 2
May 5, 2006

requires that all direction to the contractors and all communication with the contractors be done jointly by the ED's staff and ASARCO or that ASARCO direct its contractors to follow the direction of the ED and authorize the ED to provide specific direction and handle communications between ASARCO and its contractors. The information required of ASARCO, and therefore the contracts and tasks which must be entered and performed, are:

- a qualified modeler to perform an audit of all modeling performed by ASARCO in accordance with the attached modeling protocol;
- a process engineer to determine the condition and effectiveness of all air quality control equipment and related practices located at the Copper Smelter pursuant to Ordering Provision 3 of the Interim Order; and,
- a process engineer to review all air quality control equipment in comparison with all requirements of ASARCO's existing permit 20345 pursuant to Ordering Provision 3 of the Interim Order. Additionally, the process engineer will review and determine whether the Copper Smelter will operate in accordance with industry standards and practices.

A preferable and more expeditious approach is to reimburse the ED for the expenses of this review and assessment. Accordingly, the ED would select and make arrangements with independent third parties and enter into a contractual arrangement with ASARCO. Reimbursement will be required in advance to ensure that the ED will have sufficient funds in hand to pay the contractor's charges as they become due.

Because the Interim Order requires all of the above actions to occur within six months of the issuance date, the ED requests that all information obtained and assessments performed be submitted to the ED by September 8, 2006. If ASARCO feels that it is necessary to seek and obtain the approval of the Bankruptcy Court in order to enter contracts as described in this letter, the ED encourages ASARCO to seek expedited approval in order that the timeline may be met. Failure to provide this information will preclude the ability of the ED to prepare the report as required by Ordering Provision 3, which in turn will prevent the ED from providing information necessary for permit renewal to the Commission.

If you have any questions, please do not hesitate to contact Stephanie Bergeron Perdue of the Office of Legal Services at (512) 239-0615.

Sincerely,



Glenn Shankle, Executive Director
Texas Commission on Environmental Quality

cc: See Distribution List on the following page

Mr. Lairy Johnson
Page 3
May 5, 2006

Distribution List

cc: Chairman Kathleen Hartnett White, Texas Commission on Environmental Quality
Commissioner Larry R. Soward, Texas Commission on Environmental Quality
The Honorable John Cornyn, U.S. Senate
The Honorable Eliot Shapleigh, Texas Senate
Richard Lowerre, Lowerre & Frederick
Eric Groten, Vinson & Elkins
Michael Wyatt, Texas Rio Grande Legal Aid, Inc.
Laura Prendergast Gordon, Deputy City Attorney, City of El Paso
Taylor Moore, Southside Low Income Housing Development
Erich Birch, Birch & Becker, L.L.P.
Bill G. Newchurch, State Office of Administrative Hearings
Veronica S. Najera, State Office of Administrative Hearings, El Paso
John Steib, Deputy Director, Office of Compliance and Enforcement, TCEQ
Dan Eden, Deputy Director, Office of Permitting, Remediation and Registration, TCEQ
Stephanie Bergeron Perdue, Acting Deputy Director, Office of Legal Services, TCEQ
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ASARCO Air Quality Analysis Protocol

Project Overview

The purpose of the air quality analysis is to demonstrate ASARCO's potential contribution to the existing air quality in Texas, New Mexico, and Mexico from its authorized emissions. Normal modeling practice and procedure should be followed except as noted in the protocol. This analysis is required by Commission order and is unique; that is, some modeling requirements may differ from routine modeling practice for air permit applications.

For this air quality analysis, ASARCO must perform air dispersion modeling for all primary and secondary sources of air contaminants at the site and for all short-term and long-term averaging periods. ASARCO should obtain short-term and long-term Effects Screening Levels (ESLs) for all contaminants that do not have standards, and ensure that the most current ESLs are used in the analysis. ASARCO will not have to demonstrate compliance with the Chapter 111 ground-level concentration standards if the commission repeals the standards before the analysis is due to be submitted to the TCEQ.

ASARCO should obtain available ambient air monitoring data in New Mexico and Mexico within 50 kilometers of the site to use as background concentrations that represent existing air quality. Maximum predicted concentrations from ASARCO may be added to representative background concentrations to predict potential air quality if ASARCO resumes operations.

ASARCO should obtain available ambient air monitoring data in Texas within 50 kilometers of the site to use as background concentrations that represent existing air quality. Maximum predicted concentrations from ASARCO may be added to representative background concentrations to predict potential air quality if ASARCO resumes operations. If ambient air monitoring data for criteria pollutants is not available in Texas within 50 kilometers of the site, ASARCO should develop a stationary source emissions inventory for those criteria pollutants and include those emissions in the modeling analysis.

Plot Plan

ASARCO should provide a plot plan that shows a representation of locations of emission sources and buildings. It is preferred that ASARCO submit the plot plan electronically in either "dwg" or "dxf" formats.

Area Map

ASARCO should provide an area map that shows a representation of the current property line, topography, and location of practicably known schools and ambient air monitors located within 50 kilometers. School is defined in the Texas Health and Safety Code § 382.052 as an elementary, junior high, or senior high school.

Air Monitoring Data

ASARCO should obtain available ambient air monitoring data from Texas, New Mexico and Mexico within 50 kilometers of the site. These data will be used as representative background concentrations of air quality. For short-term (averaging periods of 24-hours or less) standards and ESLs, provide the highest monitored concentrations from data within the most recent three

years. For quarterly and annual standards and ESLs, provide the highest monitored concentrations from complete quarters or years within the most recent three years.

If monitoring data within the past three years are not available for a contaminant that ASARCO would be authorized to emit, older monitoring data from a period when ASARCO facilities were shut down could be used.

Modeling Emissions Inventory

For this air quality analysis, all primary and secondary sources of air contaminants emitted from the site must be included in the site-wide analysis whether authorized by permit-by-rule (standard exemption), standard permit or other new source review permit or authorization. Contaminants include: all pollutants with National Ambient Air Quality Standards (NAAQS) except ozone - e.g. PM₁₀, PM_{2.5}, SO₂, Pb, NO₂, and CO; state regulated pollutants listed in Chapters 111 and 112 of 30 Texas Administrative Code; and pollutants with an Effects Screening Level (ESL).

If ambient air monitoring data for criteria pollutants is not available in Texas within 50 kilometers of the site, ASARCO should develop an emissions inventory for those contaminants and include those emissions in the modeling analysis.

ASARCO should provide a table listing the correlation between source identifications (IDs) used in the analysis and the emission point numbers (EPNs) listed on the permit application Table 1(a).

ASARCO should provide a description of source characterizations used in the analysis and an explanation why those characterizations are appropriate. For example, if an area source representation is chosen, the source should physically be emitting pollutants nearly homogeneously throughout a horizontal plane.

ASARCO should provide justification for any claimed adjustments to predicted concentrations due to certain source characterizations. For example, the modeling adjustment factor for fugitive emissions may be used with the Industrial Source Complex Short-Term (ISCST3) model (third revision) but not with the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD). According to AERMOD technical references, AERMOD should be more representative in accounting for turbulence effects related to low wind speeds and stable atmospheric conditions than ISCST3. The TCEQ has not determined if adjustment factors should be developed for AERMOD at this time.

Models Proposed and Modeling Techniques

ASARCO may select ISCST3 version 02035 or AERMOD version 04300. If ISCST3 is selected and predicts the occurrence of a re-circulation cavity on the leeward side of a structure that extends off-property, then ISC-PRIME (Plume Rise Model Enhancement) (version 04269) should be used to predict concentrations for the receptors within the cavity.

Selection of Dispersion Coefficients

ASARCO should provide documentation on how dispersion coefficients for use with ISCST3 were chosen. For AERMOD, ASARCO should provide documentation for the choice of albedo, Bowen Ratio, and roughness length.

Building Wake Effects

For ASARCO sources only, provide a table listing all downwash structures used in the modeling demonstration and the associated building/tier heights.

Terrain

If ASARCO chooses to use ISCST3, then the flat terrain option should be used when modeling fugitive emissions and the complex terrain option should be used when modeling stacks. Predicted concentrations resulting from fugitive sources should be added to the predicted concentrations resulting from stacks.

If ASARCO chooses to use AERMOD, then terrain should be included for all sources, buildings, and receptors.

Receptor Grid

ASARCO should develop a receptor grid that extends 50 kilometers from the ASARCO site for all modeling runs. Receptors should be placed in Texas, Mexico, and New Mexico. All identified schools and ambient air monitors within 50 kilometers in Texas, Mexico, and New Mexico should be modeled as discrete receptors. ASARCO should place additional discrete receptors around the school and monitor receptors per standard modeling guidance.

Meteorological Data

ASARCO should use all available on-site meteorological data for criteria pollutant (NAAQS) modeling. For all other modeling, ASARCO should use the on-site meteorological data from 1976. If AERMOD is used, ASARCO should provide documentation on how these data were formatted for use in AERMOD and what adjustments, if any, were made.

Modeling Results

ASARCO should provide results in maps and tables for each modeled contaminant and for each applicable short-term and long-term averaging period. The maps and tables should include the applicable standard or ESL, overall maximum predicted concentrations anywhere off-property, predicted maximum concentrations at the location of each identified school and ambient air monitor located within 50 kilometers, and representative observed concentrations at the monitor locations. For short-term ESLs, the maps and tables should include both magnitude and frequency of exceedance information.

If the results of the analysis show that a standard or ESL could be exceeded when the ASARCO maximum predicted concentration is added to a monitored background concentration, ASARCO should discuss whether the prediction is not representative due to meteorological factors and should be excluded. ASARCO should then provide the highest representative concentration to be used in the analysis.

If non-ASARCO sources are included in the criteria pollutant modeling analysis, ASARCO should provide a source contribution analysis that separates the ASARCO contribution from the total contribution.

Documentation

ASARCO should provide all calculations and supporting information used to derive or determine all modeling input values and parameters and should justify all modeling techniques.

In addition, ASARCO should provide all electronic files used as input for the model or generated as a result of performing the air quality analysis and a table listing each file name, contaminant, and air quality review type associated with each electronic file. If the modeling analysis involves multiple operating scenarios, ASARCO should specify which files are associated with each scenario.