

PUBLIC COMMENTS

EXHIBIT 1



The Senate of the State of Texas

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Bankruptcy & Collections

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and Closure - Chair

Senator Eliot Shapleigh
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April 7, 2009

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Mr. Hal Morris
Assistant Attorney General
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Austin, Texas 78711-2548

Ms. Ashley Bartram
Assistant Attorney General
Bankruptcy & Collections Division
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VIA UNITED STATES MAIL, RETURN RECEIPT REQUESTED, CERTIFIED MAIL
NUMBER 7000 1530 0001 8427 9140, AND HAND DELIVERY ON APRIL 7, 2009

Re: Comments on Proposed Settlement of Environmental Claims - ASARCO LLC

Dear Mr. Morris and Ms. Bartram:

I write to comment on the proposed settlement of environmental claims resulting from a century of pollution from ASARCO LLC.

In short, I am asking that you work with your counterparts in the Environmental Protection Agency (EPA) and the Department of Justice (DOJ) to reassess the true cost of cleanup of ASARCO's onsite property in El Paso. The century-old polluter is attempting to shed \$250 million of cleanup costs with a remediation plan developed by a Bush-era EPA, the Texas Commission on Environmental Quality (TCEQ), and ASARCO itself. What happens in this case matters across the country, as it will set a precedent for polluters regarding their ability to shed environmental liabilities through the bankruptcy process.

Here are our specific concerns with the proposed settlement:



1. ***The El Paso settlement was negotiated prior to the addition of approximately \$6 billion from the Americas Mining Corporation/ASARCO LLC litigation.*** On April 1, 2009 in Brownsville, Texas, U.S. District Judge Andrew Hanen ruled that Grupo Mexico must pay ASARCO LLC about \$6 billion in damages. The damages ruling stems from an August decision by Judge Hanen that Grupo Mexico's Americas Mining Corporation unit harmed ASARCO creditors by stripping the company's stake in a valuable Peruvian copper mine. In August, Hanen found Americas Mining Corporation liable for fraudulent transfer, aiding and abetting a breach of fiduciary duty, and civil conspiracy. In terms of damages, Hanen specifically ruled that Grupo Mexico must return ASARCO's 30 percent stake in Peruvian copper miner Southern Copper Corporation and pay \$1.9 billion in related dividends and interest. When the bankruptcy estate more than triples, it merits reexamining and renegotiating settlements previously reached when the estate was significantly smaller. This enormous difference can have a large impact on communities such as El Paso. For example, the current settlement calls for \$52 million to remediate onsite environmental liabilities. In previous conversations with EPA officials, however, I was told that the cost is likely—at a minimum—\$250 million. Ample funds now exist in the debtor's estate to pay for a full cleanup.
2. ***The cleanup standard is the minimum standard and will severely restrict any future use.*** Under the cost estimate agreed upon by EPA, TCEQ, and ASARCO, 100 acres of the ASARCO facility would be remediated to an industrial standard based on present use. Such a standard will bar future uses such as a park, residential use, and perhaps even research facilities for the University of Texas at El Paso. Why should our community have to settle for 100 acres of capped asphalt that is sitting on top of millions of gallons of arsenic-laden water and tons of lead, ringed by monitoring wells, and containing a permanent 500' x 500' x 33' crypt for toxic waste? Why should El Paso be left with 75 feet of slag towering over the Rio Grande—a monument to a century of pollution and disregard for our community's health? We ask that the cleanup standard be reevaluated and raised to allow for a broader set of potential future uses.
3. ***The ASARCO cleanup plan fails to address 250 acres of contiguous property owned by ASARCO but not located on the principal 100 acre smelter site.*** Despite the fact that this land is owned by ASARCO, is contiguous to the smelter site, and has served as a dumping ground for ASARCO's slag runoff, TCEQ failed to include this acreage in their cleanup cost estimates. To make matters worse, this land is upstream from the smelter site in terms of groundwater flow, thus negatively impacting any groundwater cleanup efforts at the 100 acre smelter site. All of the lead, arsenic, and other heavy metals on the eastern acreage will flow to the smelter site, over 100 acres of impervious coverage, and down toward the Rio Grande and American Canal. Contamination on this additional property must be fully examined, and the cost of cleanup needs to be included in any settlement considered by the bankruptcy court.
4. ***Amarillo and El Paso.*** The cleanups for the El Paso and Amarillo sites and their respective allocations under the settlement should be listed separately and placed in separate, segregated accounts.

Mr. Hal Morris and Ms. Ashley Bartram

April 7, 2009

Page 3

5. ***The Bush administration's DOJ negotiated this settlement, and we fear that the El Paso's interests were less of a priority than ASARCO's.*** We are concerned that any settlements negotiated under the Bush administration's DOJ may be tainted by values that polluting companies should win, not communities; that profits be maximized, not the public good. As such, we ask that the current administration's DOJ reexamine the conclusions reached by its predecessor.
6. ***For years, ASARCO's slag was used as a fertilizer and now contaminates properties across El Paso.*** Ionate, an El Paso-based fertilizer company, sold a fertilizer that contained slag from the Oglebay Norton slag-crushing company in west El Paso. Oglebay Norton obtained the slag, a byproduct of the smelting process, from ASARCO. The settlement does not address this contamination. What do we tell those homeowners when they have to spend \$30,000 to clean lead and arsenic from Mom's home before they sell it?
7. ***Over a century of ASARCO's pollution has created a 233 million cubic foot contaminated groundwater plume around the smelter.*** We have concerns as to whether the cleanup plan will adequately address the groundwater issues. The remediation plan calls for monitoring and extraction wells, as well as a slurry wall, to be placed around the ASARCO facility in an attempt to prevent contaminants from migrating into our community's drinking water. El Paso residents must be completely assured that their drinking water will not be polluted by ASARCO's arsenic and lead.

Again, I ask that the proposed settlement of environmental claims against ASARCO LLC be reexamined and renegotiated to the benefit of El Paso.

Very truly yours,



Eliot Shapleigh

ES/de

EXHIBIT 2



COUNTY OF EL PASO

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May 1, 2009

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RE: Comments on Proposed Settlement of Environmental Claims – ASARCO LLC

Dear Mr. Morris and Ms. Bartram:

This letter seeks to address the proposed settlement of the remaining environmental claims established by the Texas Commission on Environmental Quality (TCEQ) in the ASARCO LLC, et al. bankruptcy case.

The current settlement, entitled "Consent Decree and Settlement Agreement Establishing a Custodial Trust for the Owned Smelter Site in El Paso, Texas and Owned Zinc Smelter Site in Amarillo, Texas," worked to resolve all pending claims by the Texas Commission on Environmental Quality (TCEQ) against ASARCO. Currently, the settlement states that the 450 acres owned by ASARCO in El Paso will be placed into an environmental custodial trust which will carry out administrative and property management functions related to the property as well as conduct manage and/or fund implementation of environmental actions with respect to the property. The trust will be funded by a payment of \$52 million, with oversight by TCEQ and the Environmental Protection Agency (EPA).

It is our sentiment that the remediation as it stands, does not adequately address the full costs associated with pollution caused by ASARCO. Several issues abound with the settlement as is.

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Proposed Settlement on ASARCO Claims
May 1, 2009

First, the full settlement does not include all final costs associated with the cleanup of the property owned by ASARCO. Recently, U.S. District Judge Andrew Hanen of Brownsville, in the case Americas Mining Corporation/ASARCO LLC, ruled in favor of ASARCO in the amount of \$6 billion in damages after it was determined that Group Mexico's American Mining Corporation unit harmed ASARCO's creditors by in stripping the company's stake in a valuable Peruvian copper mine. Conversations with the EPA have estimated the cost of cleanup in El Paso to be nearly \$250 million, yet the current settlement calls for a \$52 million for onsite cleanup of only 100 acres, when ASARCO owns an additional 250 contiguous acres. It seems that ASARCO has not been fully held accountable for its irresponsible behavior and has left a community footing the bill despite their ability to pay. An accurate study on all contamination, including the 250 contiguous acres owned should be conducted and included in the settlement.

It was a community effort to hold ASARCO accountable for its actions and so it will be a community effort to decide what the best use of the land will be once remediated. As our community moves forward in thinking through possible uses for the site, suggestions such as a community park and other great suggestions have been provided which would benefit our community as a whole. Our goal is to turn this contaminated site into a community asset, yet we are limited in our possibilities. The land will only be remediated to an industrial standard, which heavily restricts its use. The current standard should be raised to allow our community to use the site in the best possible manner.

Our community has been severely affected by the decisions made by ASARCO, we are now asking for fair and just decisions be made by EPA and TCEQ. The way we handle this case will set a precedent for current and future polluters regarding their ability to shed environmental liabilities through the bankruptcy process. We must take a strong stance against companies who prey on communities that have for centuries served as dumping grounds. We have allowed for ASARCO to be held accountable to only part of its mistake, we hope you will help reconsider the original settlement and come to a conclusion that truly reflects the extent of the contamination that El Paso has been left with.

I appreciate your consideration and continued transparency through the process. Should you have any questions of me, please feel free to contact me at (915) 546-2111.

Sincerely,



Veronica Escobar
County Commissioner, Precinct 2

EXHIBIT 3

Gordon Mott & Davis P.C.

ATTORNEYS AND COUNSELORS AT LAW

H. Christopher Mott

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April 9, 2009

Hal F. Morris, Esq.
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Re: *In re Asarco LLC*/Public Comment

Dear Hal and Ashley:

To the extent necessary, please consider the enclosed Response to Motion Under Bankruptcy Rule 9019 for Order Approving Settlement of Environmental Claims filed by the City of El Paso in the Asarco LLC bankruptcy case, to be a "public comment" to the proposed settlement regarding the El Paso Smelter site. The City is expressly reserving, and it is not waiving, any rights in submitting the enclosed as a public comment as a precautionary measure.

Very truly yours,

GORDON MOTT & DAVIS P.C.

By:



H. Christopher Mott

HCM/tm
Enclosure



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

IN RE: § Case No. 05-21207
ASARCO LLC, *et al.* §
§ Chapter 11
§ Debtors. § (Jointly Administered)
§

**RESPONSE TO MOTION UNDER BANKRUPTCY RULE 9019
FOR ORDER APPROVING SETTLEMENT OF ENVIRONMENTAL CLAIMS**

TO THE HONORABLE RICHARD S. SCHMIDT, U.S. BANKRUPTCY JUDGE:

THE CITY OF EL PASO ("City"), a creditor and party-in-interest in this case, files this response and limited objection to the Motion Under Bankruptcy Rule 9019 for Order Approving Settlement of Environmental Claims ("Motion") (dkt no. 10534) filed by the Asarco entities ("Asarco" or the "Debtors"), and in support thereof would show the Court as follows:

Procedural Background

1. On March 12, 2009, the Debtors filed the Motion seeking approval of several settlement agreements relating to numerous environmental sites, including environmental cleanup of the El Paso Smelter site. On March 19, 2009, in connection with the Motion, the Debtors filed a proposed "Consent Decree and Settlement Agreement Establishing a Custodial Trust for the Owned Smelter Site in El Paso, Texas and the Owned Zinc Smelter Site in Amarillo, Texas" between the Texas Commission on Environmental Quality ("TCEQ"), the Environmental Protection Agency ("EPA"), and the Debtors (dkt no. 10567) (collectively "Settlement Agreement").

Smelter Background

2. Asarco and its predecessors produced copper, lead, zinc, and sulfuric acid at its owned Smelter facility in El Paso, Texas for some 100 years. Asarco's smelting operations in El Paso generated emissions of lead, arsenic, and other metals, which have settled onto the plant and adjoining property.

3. The Asarco El Paso Smelter is in the City limits, and is located immediately adjacent to both a state border (Texas/New Mexico) and an international border (United States/Mexico), as well as in the middle of two thriving metropolitan areas (El Paso, Texas/Ciudad Juarez, Mexico) and next to the Rio Grande River.

4. In 1999, Asarco ceased smelting copper and operations at its El Paso Smelter. Thus, the El Paso Smelter has been dormant and has not operated for almost 10 years.

5. Beginning in 2008, the EPA expressed significant concerns regarding Asarco's air permits that were necessary for operation of the Smelter. In February 2009, Asarco requested and the TCEQ voided Asarco's state and federal operating permits for the Smelter. Accordingly, it is now clear that the Smelter will not reopen as an operating facility, and what remains is cleanup of the environmental contamination at the Smelter property caused by Asarco.

Response to Motion

6. The City has an important interest in seeing that the environmental contamination at the Smelter property (which is located in the middle of the City) is timely and properly cleaned up.

7. In general, under the proposed Settlement Agreement, the Smelter property would be transferred to a Texas Custodial Trust with cash funding as an

administrative expense claim with its own independent Trustee to cleanup and dispose of the Smelter property. Although conceptually the City would support such a settlement, there are a few areas in which the proposed Settlement Agreement appears to have deficiencies and should be examined by the Court.

8. First, the Settlement Agreement provides that the El Paso Smelter and certain property in Amarillo, Texas, will be transferred into the same Texas Custodial Trust with \$52,080,000 cash funding. Although it is the City's understanding from the TCEQ and the Debtors¹ that only \$80,000 is for the Amarillo property (which only has a minor amount of maintenance and security remaining) and the balance (\$52 million) is for the El Paso Smelter property, the Settlement Agreement itself does not clearly reflect this important allocation of funds. Accordingly, the Court should order (or the Settlement Agreement should be required to specifically provide)² that \$80,000 is allocated for the Amarillo property and the balance of the funding is allocated for the El Paso Smelter property.

9. Second, the Settlement Agreement provides that the actual transfer of the Smelter property and cash funding (as an administrative expense claim) by Asarco into the Texas Custodial Trust will be delayed until the "effective date" of a Plan of Reorganization to be confirmed in the Debtors' case. However, there is no justification to delay the establishment and funding of the Trust until a Plan "effective date". Instead,

¹ See Debtors' Plan Exhibit 10 filed on March 16, 2009 (dkt no. 10554-11).

² In the other pending environmental settlements involving custodial trusts, the settlement agreements specifically allocate dollar amounts for different sites within the same trust. See e.g., Amended Consent Decree and Settlement Agreement Establishing Custodial Trust for multiple sites filed on March 27, 2009 (dkt no. 10642); Consent Decree and Settlement Agreement Regarding the Montana Sites filed on March 13, 2009 (dkt no. 10539). Thus, the allocation should be contained for the Amarillo property and the Smelter property in the Settlement Agreement.

the Smelter property and funding should be transferred to the Trust upon approval by the Court of a settlement, so that the environmental cleanup of the Smelter property by an independent trustee can promptly commence.³

10. The settlement expressly contemplates that the cleanup funding for the Smelter will be granted administrative expense status, which is entirely proper as the Smelter is an "owned" property of Asarco. The Debtors have over \$1 billion in cash on hand, and have already paid tens of millions in administrative expense claims (including professional fees) before any Plan confirmation. The administrative claim for the Smelter cleanup funding to the Trust can properly be paid prior to Plan confirmation. See 11 U.S.C. §503; 28 U.S.C. §959. It is now clear that the Smelter will not reopen as an operating facility, that under the settlement Asarco cannot sell and must transfer the Smelter property to the Trust, and what remains is the environmental cleanup of the Smelter (which is the purpose of the Trust). The El Paso community and region have been waiting for decades for serious environmental cleanup efforts to start at the Smelter property that would enable the property to ultimately be put back into productive use. The Debtors' bankruptcy case has now been pending for close to four years. Given the staunch opposition of various constituencies to the Debtor's "new" Plan and attendant sale to Sterlite and the complexities to be encountered in connection with confirmation of any Plan in this case, there can be little assurance that a Plan will be confirmed and become effective in the immediate future. The El Paso community should not be required to wait any longer for cleanup of the Smelter property to commence,

³ Indeed, expediting remedial activities is one of the explicit statutory settlement goals of CERCLA. See *United States v. Cannons Eng. Corp.*, 899 F.2d 79, 89, 91 (1st Cir. 1990); *United States v. Wallace*, 893 F.Supp. 627, 635-636 (N.D. Tex.—Dallas 1995), discussed *infra*.

and the Trust should be established and funded so remediation of the Smelter property by the Trustee can be started promptly upon approval by the Court of a settlement.

11. Third, the Court should examine whether the \$52 million proposed by the settlement will, in fact, be enough funding to cleanup and remediate the environmental contamination at the El Paso Smelter. In reviewing environmental settlements for approval, courts engage in both a procedural and substantive analysis under CERCLA of whether the settlement is (i) fair; (ii) reasonable; and (iii) faithful to the objectives of the governing statute. *United States v. Cannons Eng. Corp.*, 899 F.2d 79, 84 (1st Cir. 1990); *United States v. Wallace*, 893 F.Supp. 627, 632 (N.D. Tex.–Dallas 1995). With respect to the “reasonable” requirement, courts examine: (i) whether the settlement effectively provides for environmental cleanup of the site – which is of “*cardinal importance*”; (ii) whether the settlement adequately *compensates the public for the actual and anticipated costs associated with the response and remedial measures*; and (iii) the relative strength of each party’s litigation positions. *Cannons*, 899 F.2d at 89-90; *Wallace*, 893 F.Supp. at 635 (emphasis added). With respect to the “objectives of the statute” requirement, the goals of CERCLA have been described as “accountability, desirability of unsullied environment, and promptness of response activities,” and a “party should bear the harm for which it is legally responsible.” *Cannons*, 899 F.2d at 91; *Wallace*, 893 F.Supp. at 635-636. Further, a settlement should “protect public health and the environment *to the greatest extent possible*.” *Wallace*, 893 F.Supp. at 631 (emphasis added) (citations omitted).

12. Here, there is and can be no dispute that Asarco is solely responsible for the environmental contamination of the Smelter property that it currently owns and has owned for some 100 years. Asarco must bear the full cost of remediating the Smelter

property, and the Court should closely examine the settlement to determine if the proposed \$52 million funding by Asarco to the Trust will, in fact, be enough to pay for all costs associated with environmental remediation of the Smelter property.

13. Fourth, the identity of the Trustee of the Texas Custodial Trust is not set forth in the settlement; instead the Settlement Agreement provides that the Trustee will be selected by the TCEQ and EPA at least 10 days prior to the Effective Date. Given the great importance of the Trustee's environmental cleanup duties to the El Paso community and discretion provided to the Trustee in the Settlement Agreement, the City requests that its input concerning selection of the appropriate Trustee be given significant consideration.

14. The City expressly reserves the right to make any further responses, objections, or comments to the proposed settlement as it may be modified or amended.

WHEREFORE, PREMISES CONSIDERED, the City of El Paso requests that the Court grant the Motion and approve the Settlement Agreement only if these concerns are adequately addressed, and for such other and further relief to which it may show itself to be justly entitled.

Dated: April 6, 2009

Respectfully submitted,

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(915) 545-4433 (Fax)

By: /s/ H. Christopher Mott
H. Christopher Mott
Texas Bar No. 14596430
E-mail: cmott@gmdep.com
Attorneys for the City of El Paso

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 6, 2009, he caused a true and correct copy of the foregoing Response to be sent via email to the parties as shown on attached Exhibit A, as well as electronic noticing through the Court's ECF filing system.

/s/ H. Christopher Mott
H. Christopher Mott

EXHIBIT A

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EXHIBIT 4

EVERGREEN

THE EVERGREEN STATE COLLEGE

May 3, 2009

Hal Morris and Ashley Bartram, Assistant Attorneys
General Bankruptcy and Collections Division
Office of the Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Dear Attorneys Morris and Bartram:

We are members of the faculty at The Evergreen State College in Olympia, Washington. Since 2005 we have been researching and filming some of the communities in the U.S. that have had long-standing relationships with ASARCO, formerly the American Smelting and Refining Company. As part of our research we have made frequent visits to El Paso, Texas, and have worked with public officials, community members, former ASARCO employees, medical professionals and others with significant concerns about potential long-term health impacts resulting from ASARCO's emissions.

We are writing to express our concern about the proposed settlement offered through the bankruptcy court. It calls for \$52 million to be spent in clean-up operations at the ASARCO site. It does not include funding for regional testing or remediation, even though ASARCO's emissions are believed to have contaminated a much larger area of El Paso, including residential neighborhoods and parts of the University of Texas at El Paso. ASARCO's emissions are also likely to have contaminated residential communities in New Mexico, especially Anapra and Sunland Park, and areas of Juarez, Mexico. There are well documented research studies that attest to this public health issue; in 2006, chemist Michael E. Ketterer, from the University of Northern Arizona, completed extensive testing for lead and other hazardous substances that revealed a probable link between ASARCO's emissions and soil contamination in El Paso, Anapra and Juarez ("The ASARCO El Paso Smelter: A Source of Local Contamination of Sites in El Paso, Ciudad Juarez and Anapra," January 27, 2006).

We recently completed a documentary film about El Paso entitled "Borders of Resistance." We interviewed residents of El Paso, New Mexico and Mexican communities who have chronic health problems they believe could be connected to the smelter. Former employees are also ill and suffering from severe health problems that could very well be caused by workplace exposure. This is a growing concern that is documented in our film, as well as in a segment of a CNN report called "Scorched Earth." The public health literature on arsenic and lead exposure and the particular

patterns of exposure at other ASARCO sites attest to the risks facing the communities around the El Paso site.

In addition to lead and arsenic emissions, ASARCO was found by the EPA and the Department of Justice to have illegally incinerated hazardous waste from Department of Defense military storage sites at the El Paso smelter. This is a matter of public record, confirmed by a GAO report (GAO-08-74, "Hazardous Waste – Information on How DOD and Federal and State Regulators Oversee the Off-Site Disposal of Waste from DOD Installations"). While ASARCO was fined, no testing was done to determine what toxic materials were burned at Asarco or possible continuing effects on the air, soil and water of the El Paso-New Mexico-Juarez region. There was also no study of ASARCO's employees to determine the impacts of the hazardous exposures on their health.

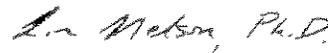
We were first drawn to this project by our interest in an ASARCO smelter that existed for many years in Ruston, Washington. The smelter closed in 1985, but remediation of yard soils continued until 2005 when the company declared bankruptcy. The Washington State Departments of Health and Ecology have identified a 1000 square-mile, 4-county area of probable impact. The widespread presence of chronic, low-level exposures to arsenic and other contaminants from Asarco is a matter of public record in our state. Through the bankruptcy process Washington state received \$2 billion for an extended clean-up process to safeguard public health. In Tacoma/Pierce County, the area closest to the former smelter site, the Department of Health has developed a campaign to educate the public about the continuing danger from exposure to arsenic and lead, especially in soils found at residences, schools and parks. This is a strategic response to an unresolved public health issue in our region caused by the impacts of ASARCO's emissions.

It was gratifying to know that our state would receive resources through the bankruptcy to continue this important public health work. It seems to us that the state of Texas has not been well or equally served by the bankruptcy court. We hope that Texas, and El Paso, will press for the funds needed for adequate air, water and soil testing, remediation, and a health study of affected residents and former ASARCO workers.

Sincerely,



Anne Fischel, Ph.D.



Lin Nelson, Ph.D.

Members of the Faculty, The Evergreen State College

EXHIBIT 5

SILVESTRE REYES
16TH DISTRICT, TEXAS

PERMANENT SELECT COMMITTEE
ON INTELLIGENCE
CHAIRMAN

COMMITTEE ON ARMED SERVICES
SUBCOMMITTEE ON AIR AND LAND FORCES
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Congress of the United States
House of Representatives
Washington, DC 20515

April 27, 2009

Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

RE: Asarco LLC, DJ Ref. No. 90-11-3-08633

I am writing in regards to the proposed consent decree and settlement agreement between Asarco LLC, the United States, and the State of Texas under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

As the Representative in Congress for the Sixteenth District of Texas, I take issue with aspects of the proposed agreement and request that the Department of Justice hold a public meeting in El Paso so that my constituents will be afforded the opportunity to express their concerns about the impact of the proposed settlement on our community.

Understanding that the funding amount (\$52 million) stipulated in the agreement for the remediation of the Asarco smelter site is only part of an overall global agreement which includes other sites, it will undoubtedly fall well short of the actual resources necessary to appropriately address severe contamination levels at the site. It is likely that four to five times that amount will be necessary. Given the precedent costs associated with the cleanup of other Asarco sites around the nation, the underfunded settlement figure will only place a significant burden on our community in the years to come. It appears the figure for the El Paso site was derived more as a result of simple division of limited resources, ignoring the fact that the smelter operation is unique in its location directly within an urban community.

Additionally, remediation under the proposed settlement targets a limited portion of the polluted complex, ignoring contiguous areas that clearly contain significant contamination, possibly rendering the overall site as undevelopable for appropriate future use and impacting the environmental and economic well being of El Paso. Many of my constituents have shared with me their grave concern that the smelter site will end up as the equivalent of an abandoned industrial site, and the settlement as proposed provides no assurances that this will not happen.

Page two

I am also concerned that the limited funding level will dictate how vigorous the effort will be to protect groundwater. As you know, the Texas Commission on Environmental Quality (TCEQ) reports that *“two separate releases have contributed to the groundwater plume at the facility. One source of contamination is attributed to two diesel releases from leaking petroleum storage tanks and the metals release is from the plant smelter operations. The diesel and metal plumes are commingled. The groundwater plume is migrating westward towards the Rio Grande.”* The limited groundwater provisions as outlined in the remediation plan may be wholly insufficient to prevent the further migration of heavy metals into the river and should be re-evaluated.

The settlement also fails to address the issue of Asarco’s illegal disposal of hazardous waste from the Department of Defense (DoD) Rocky Mountain Arsenal. The Government Accountability Office investigation that I requested of Asarco’s storage and unpermitted burning of the waste from the arsenal revealed that Asarco skirted the permit process for disposition of toxic wastes, which would have required that the public be notified of what materials and byproducts were being released into the air. At a minimum, the settlement agreement should have required Asarco to provide the EPA, the Texas Commission on Environmental Quality, and the City of El Paso with detailed information regarding their handling of DoD waste so that the remediation plan can be adjusted accordingly.

The issues outlined above need to be addressed appropriately before the settlement is finalized. Only then can El Pasoans have some assurances that the site will not pose a risk to their health and well being.

Sincerely,

A handwritten signature in black ink, appearing to read 'Silvestre Reyes', followed by a horizontal line extending to the right.

Silvestre Reyes
Member of Congress

EXHIBIT 6



April 21, 2009

In re Asarco LLC, DJ Ref. No. 90-11-3-08633

Assistant Attorney General
Environmental and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611

These comments are being submitted on behalf of the Lone Star Chapter of the Sierra Club and its 26,000 members. They are being submitted in response to the Notice of Lodging of Proposed Settlement Agreement under the Comprehensive Environmental Response, Compensation and Liability Act Notice, proposed Consent Decree and Settlement Agreement regarding two sites in Texas in re Asarco LLC, No. 05-21207.

The Sierra Club is glad to see Asarco and the Department of Justice taking the first steps toward cleaning up the Asarco contaminated sites, but we do have several concerns about the proposed cleanup plan:

1. Weak industrial cleanup standards under the Texas Risk Reduction Rules and related rules will be applied by the Texas Commission on Environmental Quality to address toxic contamination of the ASARCO El Paso copper smelter site limiting the potential future uses of the site to dirty industrial facilities.

The Texas Commission on Environmental Quality (TCEQ) will rely on a set of remediation rules known as the Texas Risk Reduction Rules (TRRR) and related agency rules that it will most likely apply to the ASARCO El Paso copper smelter site allowing significantly higher concentrations of toxic heavy metals to be left on the surface and in the shallow ground at the site, including lead, cadmium, arsenic, and many other harmful metals.

The fundamental problem with the TCEQ's use of the TRRR is they are weak industrial cleanup standards and allow far too much toxic contamination to remain at industrial sites to save companies costs by cutting corners in essence and leaving a mess in the ground. The TCEQ's use of the Texas Risk Reduction Rules typically allows much higher levels of pollution to stay in the ground and groundwater than is safe for the public.

The use of the TCEQ's weak industrial cleanup standards under the TRRR basically means that the remediated ASARCO El Paso copper smelter site could almost never be utilized for the public good such as a community park or playground, or residential sites, a school, businesses, and

similar non-industrial uses.

The TCEQ will work with ASARCO to place an asphalt cap over the proposed 100 acre site and leave in place massive volumes of contaminated water loaded with toxic heavy metals like arsenic, lead, cadmium, chromium VI, etc. ASARCO's remediated plant site would under this scenario become a massive burial site of toxic waste that needs to be removed so that future El Paso generations can enjoy a cleaned smelter site rather than dealing with a continuing toxic nightmare. The dimensions of the massive ASARCO smelter's primary burial site would be 500 feet wide by 500 feet long by 33 feet deep with up to 8.25 million cubic feet of toxic soil and tainted water. The asphalt cap can crack and toxic material could escape as dust particles or carried off by rain downstream spreading the contamination beyond the site.

ASARCO attempted previously to seek permission from TCEQ and EPA to use a weaker cleanup standard for lead in the soil in community areas, and yet in the NE Austin area in the early 1990s, the City of Cedar Park worked with the agency to require a lead cleanup down to 100 ppm lead in the soil after a sandblasting contractor contaminated local residential properties with lead dust exceeding 100 ppm in the soil. The soil lead cleanup standard was 100 ppm, not 500 ppm as used by EPA. The lead cleanup area in Cedar Park can not be described as a low income, EJ community.

ASARCO and the TCEQ need input from the US EPA, the City of El Paso, El Paso, County, and local citizens. One option is to organize a broad spectrum El Paso community stakeholder cleanup panel that meets regularly to discuss the cleanup progress and accept public input from community members as well as from US EPA remediation experts. Otherwise, the TCEQ and ASARCO will run the process and limit public input except at the beginning such as this process. The TCEQ has a chronic problem of serving industrial interests and ignoring community concerns across the state in too many cases to the extent that citizens frequently have negative perceptions of the state environmental agency and don't trust it to protect public health and the environment.

2. Public concerns about the low estimate for the cleanup costs to survey and carefully conduct a detailed site assessment such as a comprehensive sampling and analysis protocol. Comprehensive ASARCO copper smelter site assessment with a thorough multi-media sampling and chemical analysis that needs to be performed for a broad range of toxic metals, inorganic compounds, organic compounds including more complex dioxins/dibenzofurans & polycyclic aromatic hydrocarbons, polychlorinated biphenyls, radionuclides, and other toxic constituents.

Extensive smelter site multi-media sampling and analysis needs to be conducted. The ASARCO copper smelter site's soil and water samples need to be comprehensively tested for the range of polychlorinated biphenyls, dioxins, dibenzofurans, radionuclides, heavy metals, polycyclic aromatic hydrocarbons, inorganic compounds such as fluorides plus acidic & caustic chemicals, toxic waste from onsite & offsite sources, and any other toxic contaminants present on the property.

ASARCO may have had spills and leaks of PCBs since PCBs were still present recently in the transformers and potentially other electrical equipment inside the power plant at the smelter site, according to PCB Warning Signs posted on the personnel entry doors to the power plant building in March, 2005. Extensive sampling and testing needs to include PCBs.

The cost of performing a comprehensive ASARCO copper smelter site assessment with a

thorough multi-media sampling and chemical analysis could alone cost several million dollars due to laboratory analytical costs for analyzing several thousand samples. A single dioxin/dibenzofuran sample analysis can cost \$2,000- \$2,500, for example, and PCB analysis is also expensive.

Citizens are gravely concerned about the presence of significant volumes of offsite toxic hazardous wastes brought to the El Paso ASARCO smelter site for storage, treatment and disposal over the last 100 years from other facilities such as ENCYCLE in Corpus Christi, Texas when it was owned and operated by ASARCO. ASARCO received violations and fines from the EPA for improper and illegal receipt of offsite toxic wastes from ENCYCLE that appear to have originated from the Rocky Flats Nuclear facilities in Denver, Colorado, although many details are lacking.

3. The proposed ASARCO cleanup plan completely ignores and fails to address 250 acres of adjacent contaminated property owned by ASARCO but which is not located on the primary 100 acre copper smelter plant site. The 250 acres has served as a dumping ground by the primary smelter site.

The 250 acres of adjacent contaminated property owned by ASARCO needs to be considered in the cleanup plan since it is contiguous with the primary smelter site and is contaminated with similar if not identical toxic substances like lead, arsenic, cadmium, and other toxins due to ASARCO's smelter operations dumping its smelter wastes there for a century. The 250 acre site also sits upstream from the copper smelter's 100 acres and will serve as a source of future heavy metal contamination of remediated areas if it is not addressed. Future contamination must be avoided and the 250 acres must be thoroughly evaluated for toxic waste and toxic substances. The 250 acre site would also contaminate the Rio Grande river and American Canal.

The extent of toxic chemical contamination on the 250 acres of adjacent property owned by ASARCO needs to be comprehensively investigated and surveyed since adequate site information is lacking.

The cost of cleanup of the 250 acres of adjacent property owned by ASARCO needs to be included in any settlement considered by the bankruptcy court.

4. The proposed ASARCO cleanup plan of the ASARCO El Paso Copper smelter's primary 100 acre site may exceed the low ball estimate of \$52 million and the total costs could easily reach \$200-300 million or more as the extent of the contamination is revealed and depending on exactly what is done with all of ASARCO's contamination at the 100 acre smelter site and the adjacent 250 acres of contaminated property.

The cleanup costs of the ASARCO El Paso Copper smelter's primary 100 acre site alone can quickly exceed \$50 million if the estimates were too subjective and inaccurate as to the volume of contaminated to remediate. A great deal of ASARCO's toxic contamination in the soil and water is heavy metals that will never under go biological degradation or natural decay since metals are indestructible substances that do not break down in the environment over time like many organic compounds do. In other cleanup cases, cleanup costs have escalated over initial estimates depending on many factors.

If the proposed cleanup cost of \$52 million is grossly incorrect due to under estimates, uncertainties, changing costs, unexpected considerations and errors, the state and federal taxpayers might be forced to pay for the additional cleanup costs beyond \$52 million if the TCEQ

and ASARCO are able to finalize the El Paso Copper smelter's remediation plan.

The projected \$52 million cleanup costs do not appear to consider the need to remediate another 250 acres of adjacent contiguous property owned and contaminated by ASARCO. Including the 250 acres of contiguous contaminated property could double or triple the cleanup costs from \$52 million to \$100-150 million if it is significantly contaminated and large volumes of slag and soil need to be removed.

Recently, on April 1, 2009 in Brownsville, Texas, U.S. District Judge Andrew Hanen ruled that Grupo Mexico must pay ASARCO LLC about \$6 billion in damages. The damages ruling stems from an August decision by Judge Hanen that Grupo Mexico's Americas Mining Corporation unit harmed ASARCO creditors by stripping the company's stake in a valuable Peruvian copper mine. In August, Judge Hanen found that Americas Mining Corporation was liable for fraudulent transfer, aiding and abetting a breach of fiduciary trust, and civil conspiracy. Judge Hanen ordered Grupo Mexico to return ASARCO's 30 percent stake in the Peruvian copper mine Southern Copper Corporation and pay \$1.9 billion in related dividends and interest. The tripling of the bankruptcy estate means there is a serious need to reexamine and renegotiate settlements reached at the time the estate was much smaller. The communities in El Paso and surrounding areas can be heavily impacted by additional cleanup funds, and especially if taxpayers are not saddled with ASARCO cleanup costs or even worse leaving a toxic industrial waste site behind with limited future uses.

5. Proposed cleanups at ASARCO's smelter sites at Amarillo and El Paso, Texas need to be separated and kept under separate accounts.

Despite the settlement to lump the ASARCO smelter sites at Amarillo and El Paso into one proposed plan, the respective allocations under the settlement need to be listed separately and maintained in separate accounts. This will allow the public and outside concerned parties to track the spending of cleanup funds and help assure that sufficient funds are being allocated for each site.

6. Public concern that the Bush administration's Department of Justice negotiated settlement with ASARCO was not conducted with the best interests of citizens in El Paso and other impacted communities.

The public is seriously concerned that the ASARCO settlement negotiated by the Bush DOJ was done to favor bad actor companies like ASARCO with a tragic environmental record to help the firm minimize cleanup costs and leave a toxic legacy for communities such as El Paso's to suffer from for years into the future. The current administration's DOJ needs to thoroughly reexamine the settlement and conclusions reached by the Bush DOJ.

7. ASARCO's toxic slag was used as a fertilizer and now contaminates properties across the city of El Paso.

A local El Paso-based fertilizer company named Ionate sold a fertilizer mixture containing slag from the Oglebay Norton slag-crushing company in west El Paso. ASARCO provided the slag from its copper smelting process and other smelting processes to Oglebay Norton. The proposed ASARCO settlement does not consider this toxic contamination all over the City of El Paso and

possibly outside the City. All of the homeowners who bought fertilizer from Ionate need to be contacted and removal of the contaminated fertilizer needs to be offered with soil sampling and analysis for toxic metals and any other toxic substances that may have been present in the slag sold to Oglebay Norton. Otherwise, homeowners could be stuck with paying \$10,000 - \$50,000 to have their yards remediated of lead, arsenic, cadmium and other toxic metals.

8. Potential for massive contaminated groundwater plume underneath and adjacent to ASARCO's copper smelter due to more than 100 years of toxic substances leaching into the groundwater.

One estimate is that the massive groundwater plume exists containing toxic substances underneath ASARCO's copper smelter site has 233 million cubic feet of contamination water. A major public question is whether the proposed ASARCO cleanup plan comprehensively addresses groundwater remediation and to what level of remediation. If the Texas Risk Reduction Rules are being used in the groundwater cleanup, a serious public concern is that extensive contamination could be left behind.

The proposed ASARCO cleanup provides for monitoring wells and extraction wells as well as a slurry wall to be constructed and placed around the ASARCO facility in order to attempt to prevent ASARCO's smelter contamination from reaching into the drinking water for the City of El Paso. However, this proposed part of the cleanup plan could encounter serious financial escalation and problems if the slurry wall needs millions of dollars in repairs 10, 15 or 20 years from now but no more ASARCO funds are left to pay for it, leaving the City of El Paso with a disastrous situation in providing drinking water to residents. It's obvious that significant uncertainty exists in this aspect of the proposal ASARCO smelter cleanup and that contingency funds of \$10-20 million need to be placed into an account held for this purpose.

What would be cost if the ASARCO smelter site slurry wall fails and El Paso is faced with importing millions of gallons of clean drinking water?

If the cleanup costs to remediate this massive volume of contaminated groundwater doubled or tripled over time, the funds necessary to cover these costs could easily fall short.

9. Dona Ana site cleanup concerns located at Dona Ana County, New Mexico where ASARCO dumped hazardous industrial waste from the ASARCO El Paso Copper smelter site.

Public concerns about the estimate for the cleanup costs to survey and carefully conduct a detailed site assessment such as a comprehensive sampling and analysis protocol. Comprehensive Dona Ana hazardous waste dump site assessment with a thorough multi-media sampling and chemical analysis that needs to be performed for a broad range of toxic metals, inorganic compounds, organic compounds including more complex dioxins/dibenzofurans & polycyclic aromatic hydrocarbons, polychlorinated biphenyls, radionuclides, and other toxic constituents.

Extensive Dona Ana, New Mexico hazardous waste dump site multi-media sampling and analysis needs to be conducted. The Dona Ana site's soil and water samples need to be comprehensively tested for the range of polychlorinated biphenyls, dioxins, dibenzofurans, radionuclides, heavy metals, polycyclic aromatic hydrocarbons, inorganic compounds such as fluorides plus acidic & caustic chemicals, toxic waste from onsite & offsite sources, and any other toxic contaminants present on the property.

The cost of performing a comprehensive Dona Ana, New Mexico hazardous waste dump site assessment with a thorough multi-media sampling and chemical analysis could alone cost several million dollars due to laboratory analytical costs for analyzing several thousand samples. A single dioxin/dibenzofuran sample analysis can cost \$2,000- \$2,500, for example, and PCB analysis is also expensive.

10. El Paso County Metals Survey Site cleanup concerns located in El Paso County, Texas where ASARCO dumped hazardous industrial waste from the ASARCO El Paso Copper smelter site.

Public concerns about the estimate for the cleanup costs to survey and carefully conduct a detailed site assessment such as a comprehensive sampling and analysis protocol. Comprehensive El Paso County Metals Survey Site's hazardous waste dump site assessment with a thorough multi-media sampling and chemical analysis that needs to be performed for a broad range of toxic metals, inorganic compounds, organic compounds including more complex dioxins/dibenzofurans & polycyclic aromatic hydrocarbons, polychlorinated biphenyls, radionuclides, and other toxic constituents.

Extensive El Paso County Metals Survey Site's hazardous waste dump multi-media sampling and analysis needs to be conducted. The El Paso County Metals Survey Site's soil and water samples need to be comprehensively tested for the range of polychlorinated biphenyls, dioxins, dibenzofurans, radionuclides, heavy metals, polycyclic aromatic hydrocarbons, inorganic compounds such as fluorides plus acidic & caustic chemicals, toxic waste from onsite & offsite sources, and any other toxic contaminants present on the property.

The cost of performing a comprehensive El Paso County Metals Survey Site's hazardous waste dump site assessment with a thorough multi-media sampling and chemical analysis could alone cost several million dollars due to laboratory analytical costs for analyzing several thousand samples. A single dioxin/dibenzofuran sample analysis can cost \$2,000- \$2,500, for example, and PCB analysis is also expensive.

11. Demolition activities of the ASARCO copper smelter site pose significant community hazards due to the toxic cocktail or complex soup of metals (lead, cadmium, arsenic), organic chemicals, and hazardous industrial waste from its smelting operations that may be scattered throughout the ASARCO El Paso Copper smelter site in harmful concentrations.

Demolition activities at the ASARCO copper smelter's El Paso site need to be conducted with care, caution and adequate control measures to avoid any additional contamination outside the plant fence line. All ASARCO toxic chemicals and waste must be completely contained within the plant site during demolition.

Smokestacks will be demolished at some point in time, but it may be a challenge due to the probably presence of toxic levels of lead, cadmium, arsenic, and other chemical stuck to the insides and outside of the double stack of 828 feet high. The entire large 828 stack and other stacks need to be regarded as Toxic Waste.

Before the whole smelter site undergoes demolition and disposal to a commercial hazardous waste landfill such as the WCS RCREQ landfill at Andrews, the smelter site has to be extensively

surveyed for contamination down in the soils and potential underground water contamination.

If the smokestacks are contaminated, then they have to be treated as hazardous waste! This could be a major concern if the smokestacks are demolished with dynamite in such a way that a cloud of toxic particles with lead, arsenic, cadmium and other toxins are blown into the air of the community. This would be tragic since cleaned up neighborhoods could be recontaminated with lead.

There is high probability that the smokestacks are toxic waste and filled with lead dust.

12. Onsite and Offsite Air Monitoring during the ASARCO Smelter Site Cleanup and Demolition Activities is a Critical Public Concern to Confirm that Toxic Air Contaminants are not Escaping from the Site

Air monitoring during demolition is a serious public health concern to verify that toxic contamination is being adequately controlled on the ASARCO smelter site.

Air monitoring needs to be conducted Onsite and Offsite. Onsite air monitoring confirms what levels of air pollutants are occurring pre-demolition, during and immediately post-demolition.

Community needs to be kept informed such as a website for the tracking of air pollution levels measured onsite and offsite.

TCEQ and EPA need to make available the air monitoring data as quickly as possible--even on a real-time basis---during the demolition and cleanup activities to keep the community informed as fast as possible of levels of dust and air pollution off the ASARCO smelter site.

Real-time lead/cadmium/arsenic data needs to be made available!

It is doubtful that the TCEQ plans to make such Real-time lead/cadmium/arsenic data available since the TCEQ is probably not planning to do real-time ambient air monitoring at ASARCO's fence line due to costs.

TCEQ would provide such data later and the community would not know for weeks or months what the toxic lead dust levels were off the ASARCO site during cleanup and demolition.

13. Cessation of Demolition Activities at the ASARCO Smelter with High Wind Conditions

Windy conditions are a concern during the demolition activities at the ASARCO smelter because of the potential for causing offsite impacts of toxic substances. Demolition activities at the ASARCO El Paso smelter should avoid being conducted if the wind speed rises to 15 mph or more since windy conditions will tend to blow toxic dust particles offsite and into local neighborhoods and businesses exposing the public to toxic materials. TCEQ and EPA need to have real-time wind speed monitoring instruments set up at the ASARCO smelter and this data should be made available to the public on a real-time basis. Unfortunately ASARCO is located at the actual "Pass of the North" and winds are unpredictable.

During a March 2005 plant tour, toxic dust materials were common throughout the ASARCO smelter and were not being adequately wetted down sufficiently to control these toxic materials as much as possible. No water sprays or plant watering was observed at the time of the 2005 plant tour.

14. Request for a public hearing

It is requested that a public hearing be held in El Paso, TX so that the citizens have the opportunity to express their opinions about the proposed settlement.

15. Worker Health

It is requested that funds be set aside for surveys and testing of adverse health affects on former Asarco workers and citizens in the region due to health problems from the toxins that were emitted.

Sincerely,

Neil Carman, Ph. D.
Clean Air Program Director
Lone Star Chapter, Sierra Club

cc: Mr. Hal Morris
Assistant Attorney General
Bankruptcy & Collections Division
Office of the Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Ms. Ashley Bartram
Assistant Attorney General
Bankruptcy & Collections Division
Office of the Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

EXHIBIT 7

AFFIDAVIT

BEFORE ME, the undersigned authority, on this day personally appeared NIKKI GONZALEZ, who being by me duly sworn, did state as follows:

“My name is Nikki Gonzalez. I am employed as a Legal Assistant at the Texas Attorney General’s Office, Bankruptcy & Collections Division. I have first-hand knowledge of the matters stated herein. On April 22, 2009, I accessed the following web site:

<https://secure2.convio.net/sierra/site/Advocacy?pagename=homepage&page=UserAction&id=1995&autologin=true&JServSessionIdr010=0vkz7lbw82.app20a>

through the following web site links:

“Will you contact the Department of Justice and tell them you want Asarco to pay for a comprehensive cleanup of the El Paso site?” and “Tell them it’s time to clean up their mess – all of it – so we can build a cleaner future together”.

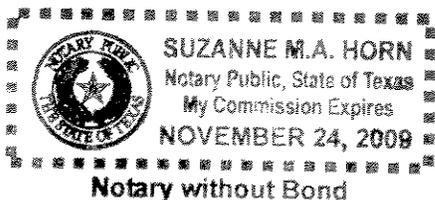
Attached are true and correct copies of the computer screens from that web site as of today’s date.”

Nikki Gonzalez
NIKKI GONZALEZ

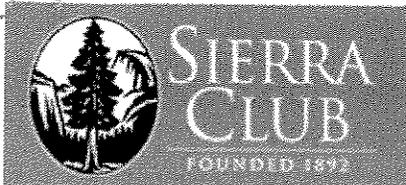
THE STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Nikki Gonzalez, who being duly sworn, upon her oath states that she has personal knowledge of the facts set forth in the forgoing affidavit and is duly authorized to make such affidavit, and that all the facts stated herein are true and correct.

SUBSCRIBED AND SWORN TO before me this 14th day of May , 2009.



Suzanne M.A. Horn
Notary Public in and for the State of Texas



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Tell Asarco to Clean Up its Mess!

1. Personalize the message text on the right with your own words, if you wish.
2. Complete the form below with your information.
3. Click the Send Message button to send your letter to the Department of Justice.

If you prefer to mail your letter, [click here for information](#).

* = Required Fields

* Title:

* First Name:

* Last Name:

* Address 1:

Address 2:

* City:

* State / Province:

Choose a State

* ZIP / Postal Code:

Country:

Choose a Country

Phone Number:

* Your Email:

Yes, I would like to receive periodic updates and communications from Sierra Club.

Remember me. [What's this?](#)

Send Message

In re Asarco LLC, DJ Ref. No. 90-11-3-08633

Dear [Decision Maker],

The Asarco copper smelter in El Paso operated for more than a century, emitting hundreds of tons of lead, arsenic and cadmium on to surrounding homes, schools and businesses. Now that the dirty facility is closed, I want to make sure that Asarco pays for a comprehensive cleanup of the entire affected area. The puny cleanup proposal that Asarco offered is inadequate. I encourage you to ask for \$250 million to comprehensively test, cleanup and remediate the El Paso, Ciudad Juárez and New Mexico areas polluted by Asarco.

Please personalize your message

Because of all the heavy metals, hazardous waste and toxins built up at the Asarco smelter for more than a century, a comprehensive cleanup must include the water, the soil and the air. Lead and arsenic from Asarco have made people sick, and it's up to the polluter to pay for a comprehensive cleanup. There can be no shortcuts when our families and our future are concerned.

Please hold a public hearing in El Paso, Texas so

Sincerely,

[Your Name]
[Your Address]
[City, State ZIP]

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EXHIBIT 8



www.gettheleadout.net

April 21, 2009

Volume 4/Issue 1

Please read, add your name and address and send the letter below to the DOJ at the email address listed by April 25, 2009

This is important to make sure Asarco is cleaned up fully and that the site is not left as a permanent hazardous waste dump in the middle of our beautiful city.

April 21, 2009

Assistant Attorney General Environment and Natural Resources Division U.S. Department of Justice P.O. Box 7611 Washington, DC 20044-7611

Re: ASARCO LLC, DJ Ref. No. 90-11-3-08633

To Whom It May Concern:

I the undersigned would like to convey my comments concerning the recent settlement reached between the City of El Paso, TX and ASARCO as part of the bankruptcy proceedings, as follows;

Request that a public hearing be held in El Paso, TX so that the citizens have the opportunity to express their opinions about the settlement.

Request that at least \$250 Million be allocated for cleaning up for both onsite and in the El Paso County neighborhoods. The initial \$52 million under the current settlement (which is to be split with Amarillo and Corpus Christi) is not nearly enough to repair Asarco's 100 years of lead, arsenic, and other hazardous contaminants to our region. In fact, two other cities with ASARCO smelters, Omaha, Nebraska and Tacoma, Washington have each had cleanup costs of about \$250 million, and are still incurring additional costs they had not anticipated.

Request that money be set aside for surveys and testing of adverse health affects on former ASARCO workers and citizens in the region due to health problems from the toxins that were emitted. Former ASARCO employees should be compensated for their medical expenses due to their employment with

Request that all smokestacks on the ASARCO site be taken down as soon as possible. This will return the land to a condition conducive to economic development, and will eliminate the possibility of any future occupancy by other smelters. Stacks should be tested for hazardous-waste prior to demolition.

Respectfully yours, (Please print name, address and sign)

This letter should be mailed to the above address and/or e-mailed to: pubcomment-ees.enrd@usdoj.gov.

Asarco Permit Renewal

Chart the Facts on ASARCO's Pollution

ASARCO seeks to pollute El Paso's air for another 10 years. If ASARCO's smelter is permitted to reopen, it will be given a license to once again emit serious contaminants into the atmosphere at the rate of 7,924 tons of pollutants per year, which can result in serious health problems for El Pasoans.

[Click here to view the ASARCO pollution chart.](#)

GTLO Mission Statement

We Believe El Paso Deserves Better

The Get the Lead Out Coalition is a group of parents, UTEP students, community leaders, neighborhood groups, schools and school children and concerned citizens, whose mission is to;

- Protect the health of border residents in El Paso, Texas, Ciudad Juarez, and Southeastern New Mexico, and,
- Encourage community dialogue to prevent the reopening of American Smelting and Refining Company (ASARCO) and to promote sustainable growth for El Paso that is ecologically and economically sound

Collectively, the GTLO Coalition will hold public officials accountable for their action or inaction in safeguarding the health of border residents, will utilize medically accurate data to document the health damage resulting from ASARCO's operations, and will use governmental and industry information to expose the history of environmental damage from ASARCO and motivate our citizens to make a difference in our quality of life.

We believe El Paso deserves better.

www.gettheleadout.net

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