

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

In re:)
)
ASARCO LLC, et al.) Case No. 05-21207
) Chapter 11
)
)
Debtors.)

**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**

WHEREAS, the El Paso Smelter facility, described in more detail in Attachment A hereto (the “El Paso Smelter Site”) is owned in whole or in part by ASARCO LLC and has been and will be the subject of environmental response activities and other work. The ASARCO-owned portion of the El Paso Smelter Site is referred to herein as the “El Paso Designated Property” and is described more fully in Attachment B substantially in the form attached hereto and the Parties agree to cooperate in good faith to finalize this legal description as soon as practicable;

WHEREAS, the Amarillo Zinc smelter site (the “Amarillo Site”), described in more detail in Attachment A hereto, is owned in whole or in part by ASARCO LLC and has been and will be the subject of environmental response activities and other work. The ASARCO-owned portion of the Amarillo Site is referred to herein as the “Amarillo Designated Property” and is described more fully in Attachment B substantially in the form attached hereto and the Parties agree to cooperate in good faith to finalize this legal description as soon as practicable;

WHEREAS, the property in Corpus Christi, described in more detail in Attachment A (the “Corpus Christi Site,” collectively with the El Paso Smelter Site and the Amarillo Site, the “Sites”), is subject to a conservation easement. The ASARCO-owned portion of the Corpus

Christi Site (subject to the conservation easement) is referred to herein as the “Corpus Christi Designated Property” as more fully described in Attachment B (collectively with the El Paso Designated Property and the Amarillo Designated Property, the “Texas Designated Properties”);

WHEREAS, the United States on behalf of the Environmental Protection Agency (“US EPA”) and the Texas Commission on Environmental Quality (“TCEQ”) (together, the “Governments”) have alleged that ASARCO LLC, formerly known as ASARCO Incorporated, and/or affiliated debtors¹ (collectively “ASARCO” or “Debtors”) are potentially responsible parties or are otherwise liable for costs with respect to the Sites;

WHEREAS, the United States on behalf of US EPA has alleged that it incurred past response costs and/or may incur future response costs, under federal environmental laws, statutes, and regulations in connection with certain of the Texas Designated Properties and/or the Sites for which ASARCO allegedly is liable and that ASARCO is liable for all post-petition response costs and the performance of work under, *inter alia* CERCLA and RCRA, relating to certain of the Texas Designated Properties as a present owner thereof;

WHEREAS, the TCEQ has alleged that it may incur future response costs, under CERCLA, RCRA, or state environmental law in connection with certain of the Texas Designated Properties and/or the Sites for which ASARCO allegedly is liable and that ASARCO is allegedly liable for all post-petition environmental response costs, and the performance of work under

¹ The Asbestos Subsidiary Debtors consist of the following five entities: Lac d’Amiante du Québec Ltée (f/k/a Lake Asbestos of Quebec, Ltd.); Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc. (f/k/a/ Cement Asbestos Products Company); and Cement Asbestos Products Company. The 2005 Subsidiary Debtors are: ASARCO Consulting, Inc.; Encycle, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations Inc.; AR Sacaton, LLC, an Arizona limited liability company; Asarco Master, Inc.; Asarco Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; Covington Land Company; Government Gulch Mining Company, Limited; and Salero Ranch, Unit III, Community Association, Inc. Encycle/Texas, Inc. also filed a petition for relief; but its case, which was later converted to a chapter 7 case, is being administered separately. The 2006 Subsidiary Debtors are: Southern Peru Holdings, LLC; AR Sacaton, LLC, a Delaware limited liability company; and ASARCO Exploration Company, Inc. The 2008 Subsidiary Debtors are: Alta Mining and Development Company; Blackhawk Mining and Development Company, Limited; Green Hill Cleveland Mining Company; Peru Mining Exploration and Development Company; Tulipan Company, Inc.; and Wyoming Mining and Milling Company. Collectively, all of these entities are referred to herein as the “Affiliated Debtors.”

CERCLA, RCRA, or state law relating to certain of the Texas Designated Properties as a present owner thereof;

WHEREAS, ASARCO filed with the United States Bankruptcy Court for the Southern District of Texas a voluntary petition for relief under Title 11 of the United States Bankruptcy Code on August 9, 2005 (the “Bankruptcy Case”);

WHEREAS, the United States filed Proofs of Claim Nos. 8375, 10746, and 11008 in the Bankruptcy Case protectively setting forth claims or causes of action for future response costs and work pursuant to ASARCO’s status as present owner of certain of the Texas Designated Properties and/or the Sites;

WHEREAS, the TCEQ filed Proofs of Claim Nos. 10451, 10453, 10460, 10462, in the Bankruptcy Case setting forth claims and causes of action under environmental laws and pursuant to ASARCO’s status as present owner of certain of the Texas Designated Properties and/or the Sites;

WHEREAS, the Debtors and the United States have entered into separate settlements relating to the International Boundary and Water Commission (“IBWC”) Site (a location at which hazardous substances from the El Paso Smelter Site have come to be located) and relating to past response costs at the El Paso County Metals Site (collectively, the “Separately Settled Matters”);

WHEREAS, the Dona Ana site is located near ASARCO’s El Paso, Texas Smelter in Dona Ana County, New Mexico, and includes locations at which hazardous substances from this property have come to be located (the “Dona Ana Site”); the El Paso County Metals Survey Site is located near ASARCO’s El Paso, Texas Smelter in El Paso County, Texas, and includes locations at which hazardous substances from this property have come to be located (the “El

Paso Metals Site”); the United States filed Proof of Claim number 10746 regarding the El Paso Metals Site and the Dona Ana Site; the TCEQ filed Proofs of Claim numbers 10450, 10454, 10459, and 10463 regarding the El Paso Metals Site; which sites were addressed in the Stipulation Relating to Proofs of Claim for El Paso County Metals Survey Site and Dona Ana Metal Site and Modification of Case Management Order [#5775-2] (the “El Paso Metals/Dona Ana Stipulation”); the claims in such El Paso Metals/Dona Ana Stipulation are being resolved by this Settlement Agreement, with the exception of the response actions described in Paragraph 24 below;

WHEREAS, ASARCO has disputed the claims and protective claims with respect to the Texas Designated Properties and/or the Sites filed by the United States and the TCEQ as set forth in their respective Proofs of Claim;

WHEREAS, on July 31, 2008 as amended on September 12, 2008 and September 25, 2008, Debtors filed a plan of reorganization (the “2008 Plan”) that incorporated a proposed resolution of the claims for the Texas Designated Properties and the Sites in the 2008 Plan Exhibit 12;

WHEREAS, on October 20, 2008, the Bankruptcy Court suspended all proceedings on the 2008 Plan;

WHEREAS, the Debtors, the United States, and the TCEQ wish to enter into this Settlement Agreement (“Settlement Agreement”) for the Texas Designated Properties and the Sites;

WHEREAS, the Debtors and the Governments (together, the “Parties”) desire to settle, compromise and resolve their disputes relating to the Texas Designated Properties and the Sites, other than Separately Settled Matters;

WHEREAS, this Settlement Agreement is intended to serve as a comprehensive settlement of the claims and causes of action of the United States and TCEQ against Debtors with respect to all past costs and any potential future costs incurred and work performed by the United States or the TCEQ in connection with the Texas Designated Properties and the Sites, other than Separately Settled Matters;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, the Parties hereby agree to the terms and provisions of this Settlement Agreement;

WHEREAS, the settlement amounts herein are in the nature of compromises and these amounts are a compromise of what the Governments would claim in the absence of this settlement; and

WHEREAS, this Settlement Agreement is fair and reasonable, in the public interest, and is an appropriate means of resolving this matter.

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the Parties by their attorneys and authorized officials it is hereby agreed as follows:

I. DEFINITIONS

1. “Closing Date” shall mean the effective date of the Settlement Agreement, as provided in Paragraph 39 hereof.
2. “Custodial Trust Parties” shall mean the Custodial Trust, the Custodial Trustee, and the Custodial Trustee’s employees, consultants, agents or other parties professionals or representatives employed by the Custodial Trust or Custodial Trustee. In the event the Trustee is a corporation, “Custodial Trust Parties” shall also include the Custodial Trustee’s officers, directors and shareholders.

3. “Custodial Trustee” shall mean the Custodial Trust by and through its trustee not individually but solely in its representative capacity.

4. “Environmental Actions” shall mean any response, removal, investigation, remediation, reclamation, closure, post-closure, corrective actions, institutional controls, and operation and maintenance activities selected and approved by the TCEQ with respect to the Texas Designated Properties.

5. “Environmental Law” means any Law² pertaining to health, industrial hygiene, public safety, occupational safety, mining, mine reclamation, natural or cultural resources, fish, wildlife or other protected species or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et. seq.*); the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et. seq.*); the Toxic Substances Control Act (15 U.S.C. § 2601, *et. seq.*); the Clean Water Act (33 U.S.C. § 1251, *et. seq.*); the Oil Pollution Act of 1990 (33 U.S.C. § 2701, *et. seq.*); the Clean Air Act (42 U.S.C. § 7401, *et. seq.*); the Atomic Energy Act (42 U.S.C. § 2011, *et. seq.*); the Hazardous Materials Transportation Act (49 U.S.C. § 5101, *et. seq.*); the Emergency Planning and Community Right-To-Know Act (42 U.S.C. 11001, *et. seq.*); the Endangered Species Act of 1973 (16 U.S.C. §1531, *et. seq.*); the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701, *et. seq.*); the Lead-Based Paint Exposure Reduction Act (15 U.S.C. § 2681, *et. seq.*); the Safe Water Drinking Act Amendments of 1996 (42 U.S.C. § 300); the National Historic Preservation Act of 1966; the Mine Safety and Health Act (30 U.S.C. 801 *et seq.*); the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*) and state and local counterparts of each of the foregoing.

² “Law” means any federal, tribal, state or local or provincial law (including common law), statute, code, ordinance, rule, regulation, executive order, Order, administrative or judicial decision, judgment or decree or other requirement enacted, promulgated, issued or entered by a Governmental Authority.

6. “Prepetition ASARCO Environmental Trust” means the trust created pursuant to the Consent Decree entered in *United States v. ASARCO Inc., et al.*, Civil Action No. 02-2079, filed in the United States District Court for the District of Arizona.

7. The “Texas Designated Properties” are as set forth substantially in the form in Attachment B hereto and the Parties agree to cooperate in good faith to finalize these legal descriptions as soon as practicable.

8. Capitalized terms not otherwise defined herein shall have the meanings provided for in CERCLA or otherwise applicable environmental law, as applicable. In the case of a conflict between a term under CERCLA and other applicable Texas environmental law, Texas law shall apply.

II. JURISDICTION

9. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

III. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

10. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the Parties hereto, their legal successors and assigns, including any debtors under a confirmed plan of reorganization in the Reorganization Cases (the “Reorganized Debtors”), and any trustee, examiner or receiver appointed in the Bankruptcy Case.

IV. FORMATION AND PURPOSES OF THE CUSTODIAL TRUST

11. The Custodial Trust.

- a. On the effective date of the plan of reorganization that the Bankruptcy Court approves in the Reorganization Cases (the “Effective Date”) and simultaneously with the receipt of the payments to the Custodial Trust under Subparagraph 12(d), Debtor shall establish a separate Custodial Trust for the El Paso Designated

Property and the Amarillo Designated Property. On the Effective Date, Debtors will transfer all of their right, title, and interest in and to, including, without limitation, all of their fee ownership in, all appurtenances, rights, easements, rights-of-way, appurtenant groundwater rights, associated surface water rights, claims, and filings, permits, and other interests in, to, related to, or benefiting the El Paso Designated Property and the Amarillo Designated Property, that they hold to that Custodial Trust (“Custodial Trust”) (including without limitation all fixtures, improvements, and equipment located thereon as of the Effective Date) with the exception of equipment and other items of personal property on Attachment C. Debtors shall retain no ownership or other interest whatsoever in the El Paso Designated Property and the Amarillo Designated Property (except to the extent property is listed on Attachment C as referenced above). The transfer of ownership shall be by quit claim deed substantially in the form of Attachment F of all of the Debtors’ rights, title and interests and shall be free and clear of all claims, liens, and interests against the Debtors other than any liability to the United States, the State of Texas or the TCEQ under this Settlement Agreement, but subject to any existing *in rem* claims other than liens for the payment of monetary claims such as property taxes or other monetary claims asserted or that could have been asserted in the Reorganization Cases. Debtors, Reorganized Debtors, or the entity administering the plan of reorganization for the benefit of the creditors, as applicable, will cooperate with the Governments and the Custodial Trustee to record or cause to be recorded in the appropriate real property records the transfer documents within five business days of the Effective

Date. Debtors shall pay all property taxes relating to the El Paso Designated Property and the Amarillo Designated Property prorated through the Effective Date.

- b. The purpose of the Custodial Trust will be to own the El Paso Designated Property and the Amarillo Designated Property, carry out administrative and property management functions related to such properties, conduct, manage, and/or fund implementation of future Environmental Actions with respect to such properties, and ultimately to sell, transfer, or otherwise dispose of all or part of such properties, if possible. With respect to the El Paso Smelter Site, the purposes of this Texas Custodial Trust further include: 1) addressing contamination (including without limitation Hazardous Substances) on and in the structures, soils, surface water, and groundwater at such site; and 2) remediating such site to standards that are protective of human health and the environment with the oversight of the TCEQ. The proceeds of the sale of the El Paso Designated Property shall be held in the Texas Custodial Trust and may be used for funding any Environmental Actions and administrative costs of the Custodial Trust at the El Paso Designated Property that have been approved by the TCEQ after consultation with US EPA after the original funds from this Settlement Agreement have been exhausted. The remaining proceeds from any such sale will be distributed as provided in Subparagraph 12.i.(2) below. In the event of any approved sale or lease or other disposition of the Amarillo Designated Property, any net proceeds from the sale or lease or other disposition shall be paid to the Custodial Trust (subject to Subparagraph 12(i)(1) and Paragraph 13 hereof).

The Custodial Trustee shall have no authority to engage in any trade or business.

The Debtor and the TCEQ will exchange information and reasonably cooperate to determine the appropriate disposition of any executory contracts or unexpired leases that relate to the El Paso Designated Property and the Amarillo Designated Property. The Custodial Trust shall be funded as specified in Paragraph 12 herein.

- c. ASARCO will appoint a Custodial Trustee selected by TCEQ and the United States at least 10 days prior to the Effective Date (not individually but solely in its representative capacity) in accordance with this Settlement Agreement and a Custodial Trust Agreement substantially in the form attached hereto as Attachment D.
- d. No later than the earlier of (i) 90 days after the Closing Date, or (ii) the Effective Date, the Debtor shall make available to the Custodial Trustee all environmental information and/or data in the state and condition in which such records are found regarding the El Paso Designated Property and the Amarillo Designated Property in possession of Debtor or its contractors. With respect to environmental information and/or data located at the Debtor's offices in Tucson, upon request of the Custodial Trustee, the Debtor shall ship all non-privileged information and/or data maintained by Tom Aldrich and the employees who report to him to the Trustee. With respect to any non-privileged environmental information and/or data not maintained by Tom Aldrich and the employees who report to him, the Debtor shall provide reasonable assistance to the Trustee in locating such records

and the Bankruptcy Court will retain jurisdiction to hear any discovery disputes. With respect to environmental information and/or data located at the Sacaton warehouse, to the extent that any indices, itemizations or other characterizations of the documents exist and are reasonably available, those shall be promptly furnished to the Trustee. The Debtor shall provide reasonable assistance to the Governments in locating requested records.

12. The Custodial Trust Account

- a. There shall be created a segregated Custodial Trust Account to provide funding for future Environmental Actions with respect to the El Paso Designated Property and the Amarillo Designated Property as well as to fund the payment of real estate taxes, insurance, and other administrative costs of the Custodial Trust.
- b. Funds in the Custodial Trust Account shall be held in trust by a financial institution selected by the United States and the TCEQ prior to the Effective Date. The United States and the TCEQ shall be the sole beneficiaries of the Custodial Trust Account.
- c. All interest shall be retained in the Custodial Trust Account and used only for the same purposes as the principal in that account as provided in this Settlement Agreement, subject to any reallocation approved by the United States and the TCEQ in accordance with the terms of this Settlement Agreement.
- d. In settlement and full satisfaction of all claims against Debtors other than the Separately Settled Matters related to the El Paso Designated Property and the Amarillo Designated Property and the El Paso Smelter Site and the Amarillo Site

(including but not limited to the liabilities and other obligations asserted in the United States' and TCEQ's Proofs of Claim and other pleadings filed or evidence presented to the Bankruptcy Court relating to the those Designated Properties and Sites other than the Separately Settled Matters), Debtors shall make cash contributions to the Custodial Trust Account totaling Fifty-Two Million Eighty Thousand Dollars (\$52,080,000.00) (which shall be reduced as provided in Paragraph 12(e) below) on the Effective Date to fund future Environmental Actions and administrative costs of the Custodial Trust. The Parties will reasonably cooperate to find an appropriate disposition of the Corpus Christi Designated Property, including if needed placing the property into a separate custodial trust, the funding of which will either be agreed to or will be decided by the Bankruptcy Court. The funding of such separate custodial trust or other agreed upon disposition shall be in full resolution of all claims of EPA and TCEQ against Debtors related to the Corpus Christi Designated Property and Site, but any easements on the Corpus Christi Designated Property and Site will survive provided any obligations of Debtors thereunder shall be extinguished.

- e. The amount of payment for any Texas Designated Property under Subparagraph 12(d) shall be reduced to reflect actual expenditures by Debtors at a Texas Designated Property for Capital Expenditure Response Costs³ for work performed between February 1, 2009 and the Effective Date. The costs that Debtors receive credit for shall not be associated with the Prepetition ASARCO Environmental Trust. Such costs must be approved in writing in advance by TCEQ for the Texas

³ "Capital Expenditure Response Costs" are third party contractor costs for response actions that are capital expenditures and are not operations and maintenance expenditures and which are either consistent with the National Contingency Plan or in compliance with applicable law being administered by the TCEQ at the Designated Property.

Designated Property. Debtors shall include an estimate of the expenditures in any such requests. The TCEQ shall seek to respond within 15 business days of any requests for approval of expenditures. If the TCEQ has ordered or otherwise directed in writing that ASARCO perform specific remediation at a Texas Designated Property between February 1, 2009 and the Effective Date, but rejects ASARCO's proposed plan and related Capital Expenditure Response Costs for such work, TCEQ may provide an alternative plan to accomplish the remediation within 10 business days after the rejection. If, in the case of an order or other written direction by TCEQ, and either TCEQ fails to respond within 10 business days of any requests for approval of expenditures or TCEQ fails to provide an alternative within 10 business days, and TCEQ does not indicate or otherwise agree that ASARCO should delay work until TCEQ responds or provides an alternative plan for remediation, then ASARCO may perform work and seek approval from the Bankruptcy Court for determination of appropriate credit for the performance of such work; provided, however, this Paragraph is subject to Paragraph 15(h). Following completion of any work under this Paragraph, the Debtor shall provide documentation to the TCEQ of the exact amount of the expenditure. No reduction shall be made for expenditures of Debtors that are not reimbursements of third party contractors. No reduction shall be made for work performed that does not also receive final TCEQ approval after such work is performed, provided that if TCEQ fails to make a determination within 10 business days from the date Debtors request such approval or TCEQ denies final approval for some or all of the costs of a project, ASARCO may seek approval

from the Bankruptcy Court for determination of appropriate credit for the performance of such work and the Bankruptcy Court's decision shall be final. To the extent there is any work in progress that is not anticipated to be completed prior to the Effective Date, the Parties agree to work cooperatively to determine an appropriate stopping point for Debtors' work prior to the Effective Date and to finalize any credit for such work. No reduction shall be made for expenditures on property not owned by Debtors. The Parties further agree that, at a minimum, the following work is not eligible for a reduction of the \$52,080,000.00: 1) the remediation of the diesel in the groundwater, including operation, sampling, and analyticals of the diesel recovery system; 2) semi-annual groundwater sampling to monitor the stability of the groundwater plume contaminated with metals and semi-annual surface water sampling to ensure no impacts to surface water; 3) removal and disposal of excess material from Cell #3; and 4) completion of the cap construction for the three repository cells. The parties further agree, subject to the above requirements and limitations of this Subparagraph, that the following work, at a minimum is eligible for a reduction of the \$52,080,000.00: (1) the costs to site, design, construct, and cap Cell #4.

- f. The Custodial Trustee shall at all times seek to have the Custodial Trust treated as a "qualified settlement fund" as that term is defined in Treasury Regulation section 1.468B-1. For purposes of complying with Section 468B(g)(2) of the Internal Revenue Code of 1986, as amended, this Settlement Agreement shall constitute a Consent Decree between the Parties. Approval of the Bankruptcy Court, as a unit of the District Court, will be sought and the Bankruptcy Court

shall retain continuing jurisdiction over the Custodial Trust sufficient to satisfy the requirements of Treasury Regulation section 1.468B-1. The Custodial Trustee will not elect to have the Custodial Trust treated as a grantor trust. The Custodial Trust will be treated as a separate taxable entity. The Custodial Trustee shall cause any taxes imposed on the earnings of the Custodial Trust to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Custodial Trust under applicable tax laws. The Custodial Trustee shall be the “administrator” of the Custodial Trust pursuant to Treasury Regulation section 1.468B-2(k)(3).

- g. The Custodial Trustee shall use the Custodial Trust Account to fund future Environmental Actions pursuant to CERCLA, RCRA, or environmental State statutes with respect to the El Paso Designated Property and the Amarillo Designated Property as well as to fund the administrative costs of the Custodial Trust that have been approved by the TCEQ after consultation with US EPA.
- h. Within sixty days of the Effective Date in the first year and thereafter by January 1 of each year following the Effective Date, the Custodial Trustee shall provide to US EPA and the TCEQ, a balance statement, fee schedule, annual scope of work and proposed budget for the coming year. The TCEQ shall have the authority to approve, disapprove or modify the proposed budget, fee schedule and scope of work after consultation with US EPA.
- i. Upon the completion of all final actions and disbursement of all final costs for the El Paso Designated Property and the Amarillo Designated Property and/or such

sites, any funds remaining in the Custodial Trust Account shall be transferred as follows:

(1) for all funds remaining from the initial \$52,080,000 payment (which shall be reduced pursuant to Subparagraph 12(e) hereof) to the Texas Custodial Trust, to the following in the order designated: (A) first, in accordance with instructions provided by the United States Department of Justice and the TCEQ to custodial trust accounts that may be established for property in Texas, with remaining actions to be performed and a need for additional trust funding, including but not limited to the Federated Metals State Superfund site and the Encycle/Texas site, or to TCEQ or US EPA for their oversight costs at the Texas Designated Properties and/or Sites; provided, notwithstanding anything to the contrary in this Settlement Agreement, no funds shall be transferred to an account to the extent that expenditures by, or work funded by, such account may reduce (directly or indirectly) any liabilities of ASARCO, the Debtors, the Reorganized Debtors, Americas Mining Corporation, ASARCO USA Incorporated, their successors, their affiliates, or any Persons related to any of the preceding (within the meaning of section 468B(d)(3) of the Internal Revenue Code); (B) second, then in accordance with instructions provided by the United States Department of Justice after consultation with the TCEQ, to any of the other Custodial Trust Environmental Cost Accounts established pursuant to the other environmental settlement agreements⁴ established in the Reorganization Cases for a Property in

⁴ These settlement agreements consist solely of the Amended Settlement Agreement and Consent Decree Regarding Residual Environmental Claims for the Coeur D'Alene, Idaho, Omaha, Nebraska, and Tacoma, Washington Environmental Sites; the Consent Decree and Settlement Agreement Regarding the Montana Sites; and the

another State with remaining actions to be performed and a need for additional trust funding; and (C) third, then to the EPA Hazardous Substance Superfund (the “Superfund”).

(2) for remaining funds from the proceeds of sale of all or a portion of the El Paso Designated Property, to the Reorganized Debtors for the benefit of: (i) Reorganized Debtors to the extent of any resulting taxes relating to this Subparagraph incurred by the Reorganized Debtors, and (ii) the creditors of Debtors as provided in the plan of reorganization that is ultimately approved by the Bankruptcy Court;

The creditors or their representatives shall not by virtue of their interest from the proceeds from this possible sale have standing to object to the manner in which the El Paso Designated Property is remediated. The Trustee shall use ordinary and prudent judgment in considering a proposal to sell the real estate associated with the El Paso Designated Property and may consider criteria other than sales price. Any sale by the Trustee shall however be for at least fair value.

13. The TCEQ and the United States may agree in writing at any time after one year from the Effective Date that based on new information about the estimated cost of cleanup or administration or the assumption of liability by a financially qualified buyer or other party for remediating a Site, that the funding in the Custodial Trust Account is more than is conservatively projected to be needed. Upon such an agreement, any such excess funding remaining in the

Custodial Trust Account shall be transferred as set forth in Paragraph 12(i) (subject to any limitation described therein).

14. Debtor shall continue, at its own expense, the operations of any required ongoing environmental activities being performed by Debtor at a Texas Designated Property until the payments required by Paragraph 12(d) of this Settlement Agreement are made (subject to any credit pursuant to Subparagraph 12(e)). Debtors may receive credit for such activities to the extent permitted pursuant to Subparagraph 12(e) of this Settlement Agreement.

15. Custodial Trust Miscellaneous Provisions

- a. In no event shall the Custodial Trust Parties be held liable to any third parties for any liability, action, or inaction of any other party including each other.
- b. The Custodial Trust Parties shall be deemed to have resolved their civil liability under CERCLA, RCRA and similar State environmental statutes, to the United States and the TCEQ, and have protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) or similar state law for matters addressed in this Settlement Agreement. For purposes of this Subparagraph 15(b), the matters addressed in this Settlement Agreement are all Environmental Actions and past costs and oversight costs with respect to the Texas Designated Properties and Sites other than the Separately Settled Matters.
- c. The Custodial Trustee shall implement any institutional controls or deed restrictions requested by the TCEQ with respect to the Texas Designated Properties. Additionally, the Custodial Trustee shall abide by the terms of any institutional controls or deed restrictions in place or of record as to the Texas Designated Properties.

- d. The United States and the TCEQ may jointly direct in their sole discretion that the Custodial Trustee be replaced in accordance with the Custodial Trust Agreement.
- e. The Custodial Trust, through the Custodial Trustee, and the Custodial Trustee shall take such actions and execute such documents as are reasonably requested by Debtor with respect to effectuating the Plan and the transactions contemplated thereby, provided that such actions are not inconsistent with the terms of this Settlement Agreement.
- f. The Custodial Trust is intended to be governed by the terms of the Texas Custodial Trust Agreement and shall not be subject to any provision of the Uniform Custodial Trust Act as adopted by any state, now or in the future.
- g. As material condition of this compromise and settlement, no sale of the El Paso Designated Property shall take place out of the bankruptcy estate. Any sale of such property shall only take place after the El Paso Designated Property has been transferred to and in accordance with the terms of the Custodial Trust.
- h. It is the express intent of the Parties that Debtors' total financial obligations at each Texas Designated Property shall not exceed the amount of funding provided for the Custodial Trust Account related to that Texas Designated Property; provided, however, this Subparagraph: (i) does not to apply to funds expended from the Prepetition ASARCO Environmental Trust; (ii) does not limit the amount of penalties relating to Debtors conduct occurring between February 1, 2009 and the Effective Date pursuant to Paragraph 22; (iii) does not limit the United States' and Texas' reservation of rights for liability in Paragraph 31, subpart (ii) and (iii); (iv) does not apply to any costs required to be incurred prior

to the Effective Date that are not Capital Expenditure Response Costs; and (v) does not apply to the following four items to the extent costs related to these items are incurred prior to the Effective Date (1) the remediation of the diesel in the groundwater, including operation, sampling, and analyticals of the diesel recovery system; (2) semi-annual groundwater sampling to monitor the stability of the groundwater plume contaminated with metals and semi-annual surface water sampling to ensure no impacts to surface water; (3) removal and disposal of excess material from Cell #3; and (4) completion of the cap construction for the three repository cells.

- i. The United States and Texas agree that they will not oppose the below provisions in any plan of reorganization in the Reorganization Cases that provides for an entity to administer the plan of reorganization for the benefit of the creditors, assets or funds held by the entity administering the plan of reorganization for the benefit of the creditors, or provides for a Reorganized Debtor and which is consistent with this Consent Decree and Settlement Agreement and contains provisions A and B below (a “Qualifying Plan”):

- A. The releases, discharges, satisfactions, exonerations, exculpations and injunctions provided under this Plan and the Confirmation Order shall not apply to any liability to a governmental agency arising after the Effective Date; provided, however, that, no governmental agency shall assert any claim or other cause of action under Environmental Laws against the entities administering the plan of reorganization for the benefit of the creditors, the assets or funds being held by the entities

administering the plan of reorganization for the benefit of the creditors, or Reorganized Debtor based on or arising from acts, omissions or conduct of the Debtors prior to February 1, 2009 (including but not limited to continuing releases related to acts, omissions or conduct prior to February 1, 2009) except provided, further, however, nothing in the Plan or the Confirmation Order (i) precludes the enforcement of the Hayden Settlement Agreement, the Mission Mine Settlement Agreement, or the Arizona NRD Settlement Agreement as provided therein, (ii) shall prevent the Governments or Custodial Trusts from recovering under any confirmed Plan on any allowed claim or payment due with respect to any Site listed on Attachment E, or for any allowed claim for a permit fee or similar assessment or charge owed to the Governments under Environmental Laws, (iii) releases, discharges, precludes, or enjoins the enforcement of any liability to a governmental agency under Environmental Law that any Entity is subject to as the current owner or current operator of property after the Effective Date, (iv) releases, discharges, precludes, or enjoins any allowed claim or liability of Debtor's estate as the current owner or current operator of property between February 1, 2009 and the Effective Date, (v) for sites covered by an approved Custodial Trust Settlement Agreement, permits the Governments or Custodial Trusts to recover more than permitted under the approved Custodial Trust Settlement Agreement, nor does it effect the covenants not to sue in the Custodial Trust Settlement Agreements or the

reservation of rights, (vi) releases, discharges, precludes, or enjoins any on-site liability of Debtor's estate as the owner, operator, or lessee of the Ray Mine, the Mission Mine, the Hayden Smelter, the Amarillo Copper Refinery, the Tucson Office, or the Ventura Warehouse, (vii) precludes enforcement by the United States or a State of any requirements under an Environmental Custodial Trust Agreement against an Environmental Custodial Trustee, or (viii) releases, discharges, precludes, or enjoins the enforcement of liability to a Governmental Unit under Environmental Law for criminal liability (except to the extent that such liabilities are dischargeable).

B. Prepetition ASARCO Environmental Trust:

The Prepetition ASARCO Environmental Trust shall remain in existence, and shall be unaffected by the Reorganization Cases or any related settlements. The Plan Administrator or Reorganized Debtor shall succeed to ASARCO's administrative role, and shall, in its sole discretion, act as Performing Entity (as defined in the trust) from time to time, but shall assume no affirmative liabilities or obligations associated with that role.

The funds remaining in the Prepetition ASARCO Environmental Trust are separate from and without prejudice to the distributions to be made to holders of environmental claim under this Plan.

To allow for the possibility that AMC fails to make a required payment due under the note that funds the Prepetition ASARCO Environmental Trust, the plan will provide that distributions shall be held back in an

amount equal to the amount that the Prepetition ASARCO Environmental Trust would receive if AMC were to have made the required payment, \$25 million plus accrued interest in accordance with the note, and place such amount in the Prepetition ASARCO Environmental Trust Escrow. In the event that AMC fails to make any of the payments remaining due under the note, the Plan Administrator and the United States shall reasonably cooperate in determining the most efficient mechanism to recover the amounts owed by AMC. Upon AMC's payment of amounts due under the note, the Plan Administrator may release a corresponding amount from the Prepetition ASARCO Environmental Trust Escrow and distribute such funds in accordance with the terms and conditions of this Plan and the Confirmation Order.

For the avoidance of doubt, if a plan is confirmed that contains the provisions above, and if there is a site at which acts, omissions or conduct by the Debtors created liability under Environmental Laws prior to February 1, 2009 (other than those sites listed on Attachment E and sites owned by the Debtors as of February 1, 2009), no government agency may bring a cause of action or recover under Environmental Laws from the Debtors' estate, the Plan Administrator, Plan Administration Reserve, or Reorganized Debtor, even if the government agencies are not currently aware of such liability. This shall not prevent any governmental agency from filing a claim or otherwise taking action to enforce or perfect rights in the event a Qualifying Plan is not confirmed. Debtors agree that any plan of reorganization that they file or support will be consistent with this Consent Decree and Settlement Agreement.

All of the provisions of this Paragraph and Settlement Agreement shall apply solely to civil liability under Environmental Laws. The Governments and Debtors reserve all rights with respect to criminal liability or Plan provisions as they may relate to criminal liability.

The Governments have agreed to the language of this Paragraph based on the highly unique facts and circumstances present in this case and nothing in the Paragraph shall be treated as precedential in any other bankruptcy case.

16. The Custodial Trustee shall provide the United States and the TCEQ and their representatives and contractors access to all portions of the Texas Designated Properties that it owns at all reasonable times for the purposes of conducting Environmental Actions at or near the Texas Designated Properties. The Custodial Trustee shall execute and record with the appropriate recorder's office any easements or deed restrictions requested by the Governments for restrictions on use of the Texas Designated Properties in order to protect public health, welfare or safety or the environment or ensure non-interference with or protectiveness of any action. Any existing easements or deed restrictions of record as to the Texas Designated Properties prior to the Effective Date shall survive the Settlement Agreement.

17. The Custodial Trustee may at any time seek the approval of US EPA and the TCEQ for the sale or lease or other disposition of all or part of the Texas Designated Properties. In the event of any approved sale or lease or other disposition under this Paragraph, any net proceeds from the sale or lease or other disposition shall be paid to the Custodial Trust.

18. No Custodial Trust Party shall be personally liable unless the Bankruptcy Court, by a final order, finds that it was grossly negligent or committed fraud or willful misconduct after the Effective Date in relation to the Custodial Trustee's duties. It shall be an irrebuttable

presumption that any action taken or not taken with the approval of the Bankruptcy Court shall not constitute gross negligence or willful misconduct.

19. Except to the extent that they are found by a final order of a Court to have been grossly negligent or committed fraud or willful misconduct after the Effective Date in relation to the Custodial Trustee's duties, the Custodial Trust Parties are exculpated by all persons, including without limitation, holders of claims or other parties in interest, of and from any and all claims, causes of action and other assertions of liability relating in any way to Debtors or arising out of the ownership of Custodial Trust assets and the discharge of the powers and duties conferred upon the Custodial Trust and/or Trustee by the Plan, this Settlement Agreement, the Custodial Trust Agreement, or any order of court entered pursuant to or in furtherance of the Plan, this Settlement Agreement, the Custodial Trust Agreement, or applicable law or otherwise. No person, including without limitation, holders of claims and other parties in interest, will be allowed to pursue any claims or cause of action against any Custodial Trust Party for any claim against Debtors, for making payments in accordance with this Settlement Agreement or any order of court, or for implementing the provisions of the Plan, this Settlement Agreement, the Custodial Trust Agreement, or any order of court. Nothing in this Paragraph or the Settlement Agreement shall preclude the Governments from enforcing the terms of this Settlement Agreement against the Custodial Trust Parties.

20. Except as may otherwise be provided herein: (a) the Custodial Trust Parties may rely, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties; (b) the Custodial Trust Parties may consult with legal counsel, financial or accounting advisors and other

professionals and (c) persons dealing with the Custodial Trust Parties shall look only to the Custodial Trust assets that may be available to them consistent with the Settlement Agreement to satisfy any liability incurred by the Custodial Trust Parties to such person in carrying out the terms of this Agreement, or any order of the Bankruptcy Court and the Custodial Trust Parties shall have no personal obligations to satisfy any such liability other than as provided in Paragraph 18.

21. Neither the United States, the TCEQ, nor any of the Debtors shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Custodial Trust or the Custodial Trust Parties, or to be an owner or operator of the Texas Designated Properties on account of this Settlement Agreement or actions contemplated thereby.

V. OUTSTANDING OBLIGATIONS

22. Except as specifically provided in Paragraph 24 with respect to the El Paso Metals/Dona Ana Stipulation, all obligations of Debtors to perform work pursuant to any outstanding Consent Decree, Unilateral Administrative Order, Agreed Order, or Administrative Order on Consent regarding any of the Texas Designated Properties, and any statutory, stipulated, or other penalties allegedly due as of February 1, 2009 related to such orders or decrees, are fully resolved and satisfied by this Settlement Agreement. Debtor shall be removed as a party to such orders or decrees pursuant to the terms hereof on the Effective Date including but not limited to the TCEQ Agreed Order Docket No. 96-0212-MLM-E and any directives issues thereunder and the consent decree entered by the U.S. District Court for the Southern District of Texas on October 6, 1999 in United States of America and State of Texas v. Encycle/Texas, Inc. and ASARCO LLC, Cause No. H-99-1136 (the “1999 Consent Decree”); provided, however, that all requirements to retain records shall remain in full force and effect until the Effective Date, and that Debtor shall produce, or make available for production in the state and condition in which such records are

found any such records so retained to the United States or TCEQ with respect to the Texas Designated Properties. With respect to the 1999 Consent Decree the United States and ASARCO will file papers with the U.S. District Court for the Southern District of Texas to modify the Consent Decree to conform to this Settlement Agreement and remove ASARCO as a party to the Consent Decree. Debtors shall continue to perform work with respect to the El Paso Metals Site until the Effective Date if Debtors are designated as the Performing Entity under the 2009 Annual Budget of the Prepetition ASARCO Environmental Trust at these properties to the extent funds are made available. A government agency may not impose any statutory, stipulated, or other penalties allegedly due from Debtors for Debtors' conduct occurring between February 1, 2009 and the Effective Date with respect to the Designated Properties or Sites unless it has given notice to the Debtors, the Official Committee of Unsecured Creditors of ASARCO LLC, the Official Committee of Unsecured Creditors for the Subsidiary Debtors, and the Future Claims Representative of the terms of any potentially applicable statutory, stipulated, or other penalties prior to the date the Debtors' allegedly actionable conduct occurred. Moreover, if a government agency seeks to impose any such penalties, the amount of the penalty and circumstances under which it is imposed shall be negotiated before the penalty is applied.

VI. COVENANTS NOT TO SUE

23. With respect to the Texas Designated Properties and the Sites (including releases of hazardous substances from any portion of the Texas Designated Properties and Sites and all areas affected by natural migration of such substances from the Texas Designated Properties and Sites) and except as specifically provided in Section VII (Reservation of Rights), the United States, on behalf of US EPA, and the TCEQ covenant not to sue or assert any civil claims or causes of action against Debtors, the Reorganized Debtors, and the Custodial Trust Parties pursuant to Sections 106, 107 of CERCLA, 42 U.S.C. §§ 9606, 9607; RCRA §§ 3008, 7002, 7003, 42

U.S.C. §§ 6928, 6972, 6973; and any similar state law; or any liabilities or obligations asserted in the United States' and TCEQ's Proofs of Claim except as to Separately Settled Matters.

24. With respect to the El Paso Metals Site (including releases of hazardous substances from any portion of the El Paso Metals Site and all areas affected by natural migration of such substances from the El Paso Metals), the United States, on behalf of EPA, and the TCEQ further covenant not to sue or assert any civil claims or causes of action against Debtors, the Reorganized Debtors, and the Custodial Trust Parties pursuant to Sections 106, 107 of CERCLA, 42 U.S.C. §§ 9606, 9607; RCRA §§ 3008, 7002, 7003, 42 U.S.C. §§ 6928, 6972, 6973; and any similar state law; or any liabilities or obligations asserted in its Proofs of Claim, except 1) as to Separately Settled Matters, and 2) that the Debtors agree to propose in any plan of reorganization that the Plan Administrator shall have the obligation to enter into agreements with third party contractors to conduct and complete the uncompleted portion of the residential yard cleanups required under the El Paso Metals/Dona Ana Stipulation to the extent funded by the Prepetition ASARCO Environmental Trust or the Prepetition ASARCO Environmental Trust Escrow provided, however, that any agreement entered into by the Plan Administrator and any third party with respect to such response actions shall not include any indemnification obligation by ASARCO, any other Debtor, Reorganized ASARCO, or the Plan Administrator. In the event that the Plan Administrator is unable to enter into an agreement with a third party contractor in respect of such response actions without providing indemnification to the third party, the Plan Administrator shall be excused from any and all obligations with respect to the performance of such response actions. In no event can any funds from the Custodial Trust be used for the uncompleted portion of the residential yard cleanups required under the El Paso Metal/Dona Ana

Stipulation until all the funds available under the Prepetition ASARCO Environmental Trust and the Prepetition ASARCO Environmental Trust Escrow have been exhausted.

25. With respect to the Dona Ana Site (including releases of hazardous substances from any portion of the Dona Ana Site and all areas affected by natural migration of such substances from the Dona Ana Site), the United States on behalf of US EPA further covenants not to sue or assert any civil claims or causes of action against Debtors, the Reorganized Debtors, and the Custodial Trust Parties pursuant to Sections 106, 107 of CERCLA, 42 U.S.C. §§ 9606, 9607; RCRA §§7002, 7003, 42 U.S.C. § 6972, 6973; and any similar state law; or any liabilities or obligations asserted in its Proofs of Claim, except 1) as to Separately Settled Matters, and 2) as provided in Paragraph 24 above.

26. This Settlement Agreement in no way impairs the scope and effect of the Debtor's discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any claims that are not addressed by this Settlement Agreement.

27. Without in any way limiting the covenants not to sue (and the reservations thereto) set forth in Paragraphs 23-25 and notwithstanding any other provision of this Settlement Agreement, such covenants not to sue shall also apply to Debtors' and Reorganized Debtors' successors, assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor, assign, officer, director, employee, or trustee of Debtors or Reorganized Debtors is based solely on its status as and in its capacity as a successor, assign, officer, director, employee, or trustee of Debtors or Reorganized Debtors.

28. The covenants not to sue contained in Paragraphs 23-25 of this Settlement Agreement extend only to Debtors, Reorganized Debtors, and the persons described in Paragraph 27 above and do not extend to any other person. Nothing in this Agreement is intended as a covenant not

to sue or a release from liability for any person or entity other than Debtors, Reorganized Debtors, the United States, the TCEQ, and the persons described in Paragraph 27. The United States, the TCEQ, Debtors, and Reorganized Debtors expressly reserve all claims, demands, and causes of action either judicial or administrative, past, present or future, in law or equity, which the United States, TCEQ, Debtors, or Reorganized Debtors may have against all other persons, firms, corporations, entities, or predecessors of Debtors for any matter arising at or relating in any manner to the Texas Designated Properties and the Sites and/or claims addressed herein.

29. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States or the TCEQ to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States or the TCEQ pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States or the TCEQ under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable federal or state law or regulation, or to excuse the Debtors from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable federal or state law or regulation.

30. With respect to the Texas Designated Properties and Sites and the El Paso Metals Site, Debtors and Reorganized Debtors covenant not to sue and agree not to assert claims or causes of action against the United States or the TCEQ for any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law; any claims against the United States or the TCEQ, including any of their departments, agencies or instrumentalities pursuant to Section

107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613; and any claims arising out of the response activities at the Designated Properties or the Sites, provided nothing herein shall preclude the Plan Administrator from receiving funds from the Prepetition ASARCO Environment Trust or the Prepetition ASARCO Trust Escrow as provided in Paragraph 24. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d). With respect to the Dona Ana Site, Debtors, or Reorganized Debtors covenant not to sue and agree not to assert claims or causes of action against the United States for any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law; any claims against the United States, including any of their departments, agencies or instrumentalities pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613; and any claims arising out of the response activities at the Designated Properties or the Sites. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

VII. RESERVATION OF RIGHTS

31. The covenants not to sue set forth in Section VI do not pertain to any matters other than those expressly specified therein. The United States and the TCEQ reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtors, Reorganized Debtors, or other persons with respect to all other matters, other than those referred to in Paragraphs 23 – 25, including but not limited to: (i) any action to enforce the terms of this Settlement Agreement; (ii) the Separately Settled Matters; and (iii) liability for response costs and injunctive relief under CERCLA Sections 106 and 107, RCRA Sections 7002 and 7003, or state laws for Debtors' or

Reorganized Debtors' future acts creating liability under CERCLA, RCRA, or state law that occur after the Closing Date. Debtors' or Reorganized Debtors' future acts creating liability under CERCLA, RCRA, or state law do not include continuing releases related to Debtors' conduct prior to the Closing Date. The United States and TCEQ also reserve, and this Settlement Agreement is without prejudice to, any liability of Debtors' successors, assigns, officers, directors, employees, and trustees for response costs and injunctive relief under CERCLA Sections 106 and 107, RCRA Sections 7002 and 7003, and state laws for any future acts by any such respective entity creating liability under CERCLA, RCRA, or state law. Future acts creating liability under CERCLA, RCRA, or state law do not include continuing releases related to these entities' conduct prior to the Closing Date.

32. Subject to the provisions of Subparagraph 12(e) hereof, the United States and Texas also reserve all rights against Debtors until the Effective Date (as defined in Paragraph 11(a) hereof), provided however, this paragraph is subject to Paragraph 15(h).

33. The Debtors and Reorganized Debtors reserve, and this Settlement Agreement is without prejudice to all rights against the United States and TCEQ with respect to: (i) all other matters than those set forth in Paragraph 30 and (ii) any action to enforce its rights under the terms of this Settlement Agreement. In addition, Debtors' and Reorganized Debtors' covenant not to sue under Paragraph 30 shall not apply in the event that the United States or TCEQ brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 31 (ii) and (iii) and 32, but only to the extent that Debtors' or Reorganized Debtors' claims arise from the same response action, response costs, or other relief or damages that the United States or TCEQ is seeking pursuant to the applicable reservations.

34. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

VIII. CONTRIBUTION PROTECTION

35. The Parties hereto agree that, as of the Closing Date, Debtors and Reorganized Debtors are entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) or similar state law for matters addressed in this Settlement Agreement. The matters addressed in this Settlement Agreement include all Environmental Actions, costs of response, including oversight costs, incurred or to be incurred by the United States and the TCEQ or any other person relating to or in connection with the Texas Designated Properties, the Sites, the Dona Ana Site, and the El Paso Metals Site, including releases of hazardous substances from any portion of the Texas Designated Properties, the Sites, the Dona Ana Site, and the El Paso Metals Site, and all areas affected by natural migration of such substances from such sites. Matters addressed in this Settlement Agreement do not include the Separately Settled Matters.

IX. PUBLIC COMMENT

36. This Settlement Agreement will be subject to a thirty (30) day public comment period following notice published in the Federal Register and the Texas Register which may take place concurrent with the judicial approval process under Paragraph 37 hereof. The United States and the TCEQ reserve the right to withdraw or withhold their consent if the public comments regarding the Settlement Agreement disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate. At the conclusion of the public comment period, the United States and the TCEQ will provide the Court with copies of any public comments and their response thereto.

X. JUDICIAL APPROVAL

37. The settlement reflected in this Settlement Agreement shall be subject to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. The Debtor shall move promptly for court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval.

XI. RETENTION OF JURISDICTION

38. This Bankruptcy Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the Parties hereto, for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the Parties to apply to the Bankruptcy Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement, or to effectuate or enforce compliance with its terms.

XII. CLOSING DATE

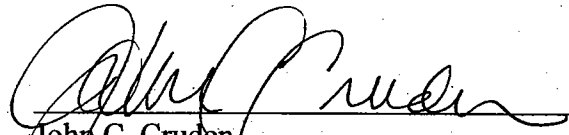
39. This Settlement Agreement shall be effective after the close of the public comment period in accordance with Paragraph 36, and upon approval by the Bankruptcy Court pursuant to Paragraphs 36 and 37 of this Settlement Agreement.

XIII. SIGNATORIES/SERVICE

40. The signatories for the Parties each certify that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT
FOR THE UNITED STATES

Date: 3/20/2009 _____


John C. Cruden
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

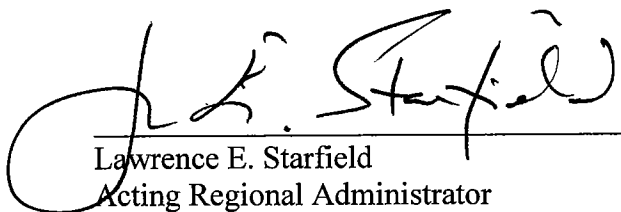
Date: 3/20/2009 _____

//s// Alan Tenenbaum _____

David L. Dain
Eric D. Albert
Environment and Natural Resources Division
Environmental Enforcement Section
U.S. Department of Justice

FOR THE UNITED STATES


Date: 3/10/09

A handwritten signature in black ink, appearing to read "L. E. Starfield", written over a horizontal line.

Lawrence E. Starfield
Acting Regional Administrator
Region VI
U.S. Environmental Protection Agency

FOR THE UNITED STATES

Date: 3/13/09


Catherine R. McCabe
Acting Assistant Administrator
Office of Enforcement and Compliance
Assurance

U.S. Environmental Protection Agency

FOR THE STATE OF TEXAS

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

RONALD R. DEL VENTO
Assistant Attorney General
Chief, Bankruptcy & Collections Division

Date: 3/19/09

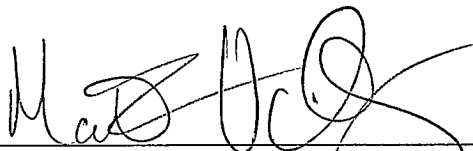
Hal F. Morris, by AFB

HAL F. MORRIS
Managing Attorney Bankruptcy Regulatory Section
Texas State Bar No. 14485410
S. Dist. Bar No. 13068
ASHLEY F. BARTRAM
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Attorneys for the Texas Commission On
Environmental Quality(TCEQ)

FOR THE STATE OF TEXAS

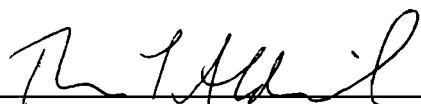
Date: 3-19-09



Mark R. Vickery, P.G.
Executive Director
Texas Commission on Environmental Quality


FOR ASARCO LLC and American Smelting and Refining Company

Date: March 19, 2009



Thomas L. Aldrich
Vice President, Environmental Affairs

Date: March 19, 2009



Douglas E. McAllister
Executive Vice President, General Counsel



ENTERED
06/05/2009

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

In re:	§	Case No. 05-21207
ASARCO LLC, <i>et al.</i> ,	§	Chapter 11
Debtors.	§	Jointly Administered

**ORDER AND JUDGMENT APPROVING 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
[DOCKET NOS. 10534, 10567, 10584, 11290, 11316, 11343, 11365, AND 11519]**

Upon consideration of the Motion Under Bankruptcy Rule 9019 For Order Approving Settlement of Environmental Claims (the "Motion"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it appearing that public comment on the Texas Custodial Trust Settlement Agreement¹, which was filed on March 19, 2009 (a supplemental Attachment C thereto was filed on March 25, 2009), has occurred and the United States and the Texas Commission on Environmental Quality have filed their responses to comments; and a stipulation clarifying paragraph 12(d) of the Texas Custodial Trust Settlement Agreement was entered on May 21, 2009 [Docket No. 11383]; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, for the reasons set forth in the Court's Findings of Fact and Conclusions of Law on Debtors' Motion For Order Approving Settlement

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

of Environmental Claims including but not limited to the specific findings at paragraphs 146, 150 through 158, 239, and 259 through 264, it is

ORDERED that the Texas Custodial Trust Settlement Agreement, which sets forth a settlement of environmental claims by and between the United States, ASARCO, American Smelting and Refining Company, and the Texas Commission on Environmental Quality is approved; and it is further

ORDERED that, the Debtors are authorized to enter into and implement the Texas Custodial Trust Settlement Agreement; and it is further

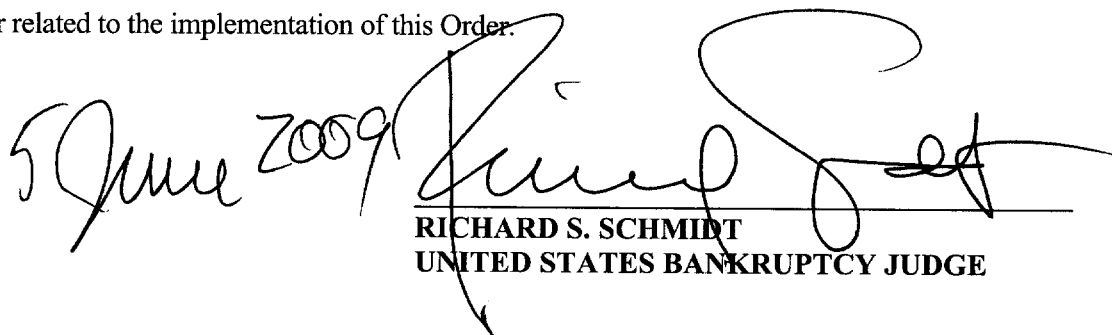
ORDERED that the Texas custodial trust settlement payments totaling \$52.08 million shall be treated as administrative expense priority claims in accordance with Section 1129 of the Bankruptcy Code and be paid in cash, in full on the effective date; and it is further

ORDERED that the Texas Custodial Trust Settlement Agreement is fair, reasonable, and consistent with environmental law; and it is further

ORDERED that the standards set forth in *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968) and Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) or other applicable environmental law have been met with regard to the Texas Custodial Trust Settlement Agreement; and it is further

ORDERED that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated:

5 June 2009 

RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE