UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,	)	
	)	
and	)	
	)	
STATE OF TEXAS,	)	
	)	CONSENT DECREE
Plaintiffs,	)	
	)	
v.	)	
	)	
ENCYCLE/TEXAS, INC.	)	
	)	
and	)	Civil Action No:
	)	
ASARCO INCORPORATED,	)	
	)	
Defendants.	)	

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I. BACKGROUND

WHEREAS, Encycle/Texas, Inc. (“Encycle”) owns and operates a facility in Corpus Christi, Texas (“Corpus Christi Facility” or “ Encycle Facility”);

WHEREAS, ASARCO Incorporated (“ASARCO”) owns and operates facilities in El Paso, Texas (“El Paso Facility”), Amarillo, Texas (“Amarillo Facility”), and in East Helena, Montana (“East Helena Facility”) and in Tennessee (“Tennessee Mines”) (“the Facilities”);

WHEREAS, the United States, the State of Texas ("State"), on behalf of the Texas Natural Resource Conservation Commission (“TNRCC”), and Encycle, have engaged in negotiations to resolve environmental compliance issues at the Encycle Facility;

WHEREAS, the United States and ASARCO have been engaged in national negotiations to resolve environmental compliance issues at ASARCO facilities in a cooperative, innovative manner, without the transaction costs associated with protracted litigation;

WHEREAS, concurrently with the lodging of this Consent Decree (“Consent Decree” or “Decree”), Plaintiffs, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA") and the State of Texas,(collectively “Plaintiffs”) are filing a complaint (the "Complaint") against Defendants, Encycle and ASARCO as provided

herein;

WHEREAS, the United States' claims are brought pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et. seq. ("RCRA") and the Federal Clean Water Act, 33 U.S.C. § 1301 et. seq.("CWA"), and seek the imposition of civil penalties and injunctive relief pursuant to the authority of Section 3008(a), (g) and (h) of RCRA, 42 U.S.C. §§ 6928(a),(g) and (h), and Section 309 (b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d);

WHEREAS, the State's claims are brought pursuant to RCRA, and Chapter 361 of the Texas Health and Safety Code, Tex. Health & Safety Code Ann. § 361.001 et seq. and Chapter 7 of the Texas Water Code, Tex. Water Code Ann. § 7.001 and the rules and regulations promulgated pursuant to those statutes;

WHEREAS, Encycle and ASARCO dispute the allegations of the Complaint, and their assent to this Consent Decree shall not constitute or be construed as an admission of liability;

WHEREAS, an agreement has been reached embodied in this Consent Decree which provides for resolution of the RCRA, CWA and State law civil claims in the Complaint by the United States and Texas against ASARCO, and Encycle;

WHEREAS, the United States and the State (collectively "Plaintiffs"), and ASARCO and Encycle (collectively "Settlors"), agree and the Court, by entering this Decree, finds that

settlement of this matter, without protracted litigation, is fair, reasonable, and in the public interest.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and Section 309 of the CWA, 33 U.S.C. § 1319, and 28 U.S.C. §§ 1331, 1345, 1355, and 1367.

2. Venue is proper in the Southern District of Texas pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, Section 309(b) of the CWA, 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1391 and 1395(a). The Complaint states a claim upon which relief may be granted.

III. BINDING EFFECT

3. This Decree shall apply to, and be binding upon Settlors and their successors and assigns, jointly and severally. Settlors certify that their undersigned representatives are fully authorized to enter into the terms and conditions of this Consent Decree, to execute it on behalf of ASARCO and Encycle, and to legally bind ASARCO and Encycle to its terms.

4. The Settlors agree to be bound by this Decree and not to contest its validity in any subsequent proceeding to implement

or enforce its terms.

5. Except as provided in Paragraph 63, no change in ownership or corporate or other legal status including, but not limited to, any transfer of assets or property, shall alter Settlors' responsibilities under this Decree. No later than

30 days prior to sale or transfer of ownership or operation of the Corpus Christi, El Paso or Tennessee Mines Facilities, Settlors shall give written notice of this Decree to each purchaser or successor in interest. Upon such sale or transfer, Settlors shall provide a copy of this Decree to each such purchaser or successor in interest. The sale or transfer of ownership or operation of the Corpus Christi or El Paso Facility will not relieve Settlors of their obligations under this Decree, unless this Decree is modified pursuant to Part XXVII (Modification) to reflect such a change. Settlors shall notify in writing the United States Department of Justice (DOJ), EPA and the TNRCC of such purchaser or successor in interest at least 30 days prior to any sale or transfer.

6. Settlors shall provide a copy of this Decree to each contractor retained to perform any activity required by this Decree. In any action to enforce this Consent Decree, Settlors shall not raise as a defense the failure by any of its agents, servants, contractors, employees, successors or assigns to take

actions necessary to comply with this Decree except as provided in Part XXI (Force Majeure).

IV. OBJECTIVES

7. It is the purpose of the parties in entering this Decree to further the objectives of RCRA, and the Clean Water Act and applicable State law. All plans, studies, construction, maintenance, monitoring programs, and other obligations in this Decree or resulting from the activities required by this Decree shall have the objective of causing Settlors to come into compliance expeditiously, and remain in full compliance with RCRA, the CWA, and other applicable State law.

V. DEFINITIONS

Unless otherwise defined herein, terms used in this Decree shall have the meaning given to those terms in RCRA the regulations promulgated thereunder, the Texas Solid Waste Disposal Act, the Texas Health and Safety Code Chapter 361, the Texas Water Code Chapter 26, or the CWA, and the regulations promulgated thereunder.

Acceptable shall mean that the quality of Submittals or completed work is sufficient to warrant review by the TNRCC and/or the EPA in order to determine whether the Submittal or work meets the terms and conditions of this Decree, including attachments, guidance documents, approved Work Plans and/or the TNRCC's or the EPA's written comments. Acceptability of

Submittals or work, however, does not necessarily imply that they will be approved. Approval by the TNRCC and/or the EPA, of Submittals or work, however, establishes that those Submittals were prepared, or work was completed, in a manner acceptable to the TNRCC and/or the EPA.

Administrative Record shall mean the record compiled and maintained by the EPA and the TNRCC in connection with an administrative decision regarding the implementation of this Decree.

AMS Standard shall mean, for purposes of this Decree only, the ASARCO Management System Standard dated November 17, 1997 attached to the Consent Decree entered in case number CV-98-3-H-CCL by the United States District Court for the District of Montana on May 5, 1998 and any future revisions thereto - which affect ASARCO's obligations under this Decree as identified and described more fully in Paragraphs 62-79 below. This shall not be construed to prevent ASARCO from modifying its AMS Standard for all other purposes.

Area of Concern (AOC) shall mean any area where a Release to the environment from the Facility of any Hazardous Waste or Hazardous Constituents has occurred, is suspected to have occurred, or may occur, regardless of the time, frequency or duration of the Release. The Areas of Concern include areas and/or discernible units at which solid wastes have been placed,

at any time, irrespective of whether the area or unit was intended for the management of solid waste or Hazardous Waste. Examples of Areas of Concern include, but are not limited to, landfills, surface impoundments, pits, waste piles, land treatment units, incinerators, tank systems (including any storage, treatment, or accumulation tank system), container storage units, elementary neutralization units, waste or wastewater treatment systems that received solid waste or Hazardous Waste or Hazardous Constituents, or Released Hazardous Waste or Hazardous Constituents at any time.

ASARCO El Paso Facility shall mean the ASARCO, Incorporated, copper smelter, and contiguous areas under ASARCO ownership and control in El Paso, Texas.

ASARCO Operations shall mean unit(s) and complex(es) listed in Exhibit 8, which is incorporated by reference into this Consent Decree.

CAP shall mean the "RCRA Corrective Action Plan (Final)," OSWER Directive 9902.3-2A, dated May 1994.

Compliance Plan shall mean a corrective action plan which is issued to Hazardous Waste permitted facilities as required under Texas regulations 30 TAC § 335.401 and implements compliance monitoring and corrective action requirements of 30 TAC §§ 335.156-167 (40 CFR §§ 264.90-101).

Corrective Measures shall mean those measures or actions

appropriate to remediate, control, prevent, or mitigate the Release, potential Release or movement of Hazardous Waste or Hazardous Constituents into the environment or within or from one media to another.

EPA shall mean the United States Environmental Protection Agency, and any successor departments or agencies of the United States.

EMS Policy shall mean, for purposes of this Decree only, the Environmental Management System Policy dated December 12, 1997 attached to the Consent Decree entered in case number CV-98-3-H-CCL by the United States District Court for the District of Montana on May 5, 1998 (and any future revisions thereto - which affect ASARCO's obligations under this Decree as identified and described more fully in Paragraphs 62-79 below). This shall not be construed to prevent ASARCO from modifying its EMS Policy for all other purposes.

Environmental Compliance Auditing Procedures shall mean, for purposes of this Decree only, the ASARCO Environmental Compliance Auditing Procedures, Exhibit 9 hereto (and any future revisions thereto - which affect ASARCO's obligations under this Decree as identified and described more fully in Paragraphs 62 to 79 below - upon mutual agreement of the parties and approval of

the Court), which describes the corporate-wide environmental compliance audit program. This shall not be construed to prevent ASARCO from modifying its Environmental Compliance Audit Procedures for all other purposes.

Environmental Management System (EMS) shall mean the comprehensive corporate-level environmental management system required by and detailed in Paragraphs 152 through 174 of the Consent Decree entered in case number CV-98-3-H-CCL by the United States District Court for the District of Montana on May 5, 1998.

Environmental Requirements shall mean all applicable federal, state, and local environmental statutes and regulations, including permits and enforceable agreements between Settlors and the respective environmental regulatory agencies.

Facility as used in the term "the Facility" or in the term "the Encycle Facility" shall mean the Encycle/Texas, Incorporated, facility located at 5500 Up River Road in Corpus Christi, Texas.

Feedstock shall mean a material shipped to the Encycle Facility from suppliers, which is used for making Encycle Output, except for materials used at the Encycle Facility as effective substitutes for commercial products in accordance with 40 C.F.R. § 261.2(e)(1)(ii); or materials legitimately used by Encycle's customers as flux substitutes and reagents in accordance with 40 C.F.R. § 261.2(e)(1)(ii), as approved by the TNRCC, in

consultation with EPA.

Ground Water shall mean the water in the saturated zone beneath the land surface.

Hazardous Constituents shall mean those constituents listed in Appendix VIII of 40 CFR Part 261 or any constituent identified in Appendix IX of 40 CFR Part 264 or any approved subset of Appendix IX of 40 CFR Part 264.

Hazardous Waste shall mean hazardous waste as defined in 40 CFR § 261.3 and 30 TAC § 335.1.

Imminent Threat shall mean any Release, or threatened Release, of solid waste or Hazardous Waste or a Hazardous Constituent, at or from the Facility, which may present an imminent or substantial endangerment to human health and/or the environment.

Interim Measure or IM shall mean those actions which can be, or are, initiated in advance of implementation of the final Corrective Measures.

Liquid Feedstocks shall mean Feedstocks that are not Solid Feedstocks.

Load shall mean a single discrete material received at the Encycle Facility on a single manifest, bill of lading or any other shipping document.

Output shall mean the managed or processed material at the Encycle Facility meeting customer specifications, which is

shipped off-site for reclamation or use. Materials shipped off-site for treatment (not reclamation) and/or disposal are not Output.

Paragraph(s) shall mean a paragraph or paragraphs of this Decree numbered with arabic numerals, including all subparagraphs contained therein.

Part shall mean a portion of this Decree identified by an upper case roman numeral.

Pay Metal(s) shall mean chromium, cobalt, copper, lead, nickel, tin, and zinc, antimony, bismuth, selenium, tellurium, titanium, tungsten, vanadium, aluminum, molybdenum, cadmium and the Rare Earths as defined herein.

Permit shall mean the Hazardous Waste Storage Permit No. HW-50221-001 originally issued to Encycle, by the TNRCC on September 27, 1988 and subsequent modifications, renewals or amendments, approved by the TNRCC.

Precious Metal(s) shall mean gold, platinum, palladium, and silver, rhodium and ruthenium.

Rare Earths shall mean cerium group and yttrium group.

RCRA shall mean the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by, inter alia, the Hazardous and Solid Waste Amendments of 1984.

RCRA Facility Investigation or RFI shall mean the investigation and characterization of the source(s) and/or

Releases of Hazardous Wastes and/or Hazardous Constituents and the nature, extent, direction, rate, movement, and concentration of such Releases of Hazardous Wastes and/or Hazardous Constituents, that have been, or may be Released or may reasonably be expected to be Released into the environment.

RCRA metals include arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver.

Receptors shall mean those animals (including humans) or plants, and their habitats which are or may receive or be affected by Releases of Hazardous Waste or Hazardous Constituents.

Release shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, seeping, leaching, dumping, placing, or disposing into the environment.

Risk Assessment shall mean the process or framework for characterizing risk to human and ecological Receptors.

Settlors refers to Encycle and ASARCO.

Solid Feedstocks shall mean Feedstocks which contain minimal or no free liquids. Any free liquids, as determined pursuant to 40 CFR 260.11, present in arriving shipments of solid Feedstocks shall be absorbed (solidified) and/or decanted before the Feedstock may be placed as a Solid Feedstock in bins.

Submittal shall mean any Work Plan, report, progress

report, or any other written document Settlors are required by this Decree to send to TNRCC and EPA.

TAC shall mean Texas Administrative Code.

Tennessee Mines Facilities shall mean the following mines and mills owned and operated by ASARCO in eastern Tennessee: Coy Mine, Young Mine, Young Mill, New Market Mine and Mill, and Young Mine (Beaver Creek Shaft), all located in Jefferson County, Tennessee; and Immel Mine, located in Knox County, Tennessee.

TNRCC shall mean the Texas Natural Resource Conservation Commission or the Executive Director for the Texas Natural Resource Conservation Commission as appropriate, and any successor departments or agencies.

Violation(s) shall mean actions, omissions, failures, or refusals to act by the Settlors that result in a failure to meet the terms and conditions of this Decree.

Work Plans shall mean the detailed plans prepared by the Settlors to satisfy requirements of this Decree. The requirements for each Work Plan are set forth in this Decree. All Work Plans and modifications or amendments thereto, shall be incorporated into this Decree by reference and are enforceable components of this Decree when approved in writing by the TNRCC and/or EPA, unless otherwise required under Part VII of this Decree.

VI. OPERATING REQUIREMENTS: ENCYCLE FACILITY

A. PERMIT APPLICATION

8. Settlors submitted to the TNRCC a permit renewal and amendment application, dated September 26, 1998. Settlors shall use their best efforts to complete the permit application process as expeditiously as possible.

B. GENERAL REQUIREMENTS

9. This Consent Decree shall, in addition to the Permit, govern industrial and Hazardous Waste management at the Encycle Facility. This Decree does not, however, authorize Settlors or any entity to operate any part of the operation at the Encycle Facility following denial of any permit application related to that part of the operation or return of such application for incompleteness [See 30 TAC §§ 281.17-18 and 40 C.F.R. § 270.10(c)] and Settlors shall immediately cease any unpermitted activity for which a permit was sought and denied, upon receipt of such denial, even if an activity is interim-authorized by this Decree.

10. Settlors shall comply with the applicable provisions of 30 TAC Chapter 335, except as provided in this Consent Decree, as to all aspects of the Facility regarding industrial or Hazardous Waste management for all operations at the Facility where industrial or Hazardous Wastes have been or will be managed that are not currently permitted. These requirements shall be

directly enforceable under this Consent Decree.

11. Settlors shall cease to cause, suffer, allow, or permit any industrial solid waste or Hazardous Waste to be stored, processed, or disposed of at the Facility as specified in 30 TAC §§ 335.2 and 335.43, unless such activity is authorized by either a permit, this Consent Decree, or other authorization from the TNRCC after the date of entry of this Decree.

12. Settlors shall manage the following types of materials generated or received at the Facility as Hazardous Waste until the materials are ultimately lawfully reclaimed completely at Encycle, at a smelter or other legitimate reclamation facility. Except as provided in Paragraph 12c, this commitment is notwithstanding any contentions by Settlors that one or more of the following types of materials may qualify for an exemption or exclusion under Subtitle C of RCRA or its implementing regulations, unless such exemption is expressly approved by TNRCC, in consultation with EPA, in writing:

a. any listed Hazardous Waste or characteristically hazardous spent materials, or materials which contain, or are derived from, listed Hazardous Waste or characteristically hazardous spent materials, whether processed at the Encycle Facility or not, unless the characteristically hazardous spent material is treated so as to create a newly generated material which is

not listed, and is destined for reclamation or use;

b. any material which has been stored or processed in a unit that has been used to store or process: listed Hazardous Waste, where the unit has not been properly decontaminated as specified in Paragraph 31 prior to storage of the material; or, characteristically hazardous spent material which has not been properly removed so that the contents remaining in the unit no longer exhibits the characteristics associated with the spent material.

c. This provision does not apply to the following characteristic spent materials or listed Hazardous Wastes when they are used as effective substitutes for commercial products (specifically reagents or fluxes) in accordance with 40 C.F.R.§261.2(e)(1)(ii),, or used as ingredients in an industrial process to make a product in accordance with 40 C.F.R. §261.2(e)(1)(i), : copper chloride, copper sulfate, sodium hydroxide, silica (sands, glass, etc.), iron hydroxide, sodium sulfide, acids and nickel carbonate, if properly managed.

13. Settlors agree that their management of the above-described materials in accordance with the above Paragraph will continue during the pendency of this Decree irrespective of a

determination by any State, other than Texas, which purports to exempt said materials from the requirements of RCRA for Hazardous Waste.

14. Except as expressly provided in this Consent Decree, with regard to all non-exempt Hazardous Waste management at the Encycle Facility, Settlors shall comply, in particular, as follows:

a. Settlors shall comply with general inspection requirements pursuant to 30 TAC § 335.112(a)(1)[40 CFR Part 265 Subpart B] including 40 CFR 265.15.
b. Settlors shall comply with the record keeping and reporting as required by 30 TAC §§ 335.112(a)(4) and 114 [40 CFR Part 265, Subpart E].
c. Settlors shall conduct waste analysis and recordkeeping as required by 30 TAC §§ 335.509-510 [40 CFR § 268.7].
d. Settlors shall comply with the tank system requirements for storing or treating Hazardous Waste in tanks as required by 30 TAC §335.112(a)(9[40 CFR Part 265, Subpart J]
e. Settlors shall comply with the container storage area requirements for storing or treating Hazardous Waste in containers as required by 30 TAC §335.112 (a)(8) [40 CFR Part 265 Subpart I]

f. Settlors shall comply with the containment building requirements for storing or treating Hazardous Waste in containment buildings as required by 30 TAC §335.112(a)(21) [40 CFR Part 265 Subpart DD]

g. Settlors shall maintain an updated contingency plan at all times as required by 40 CFR §264.54 [Permit Provision VIIIA or, upon approval by TNRCC of a subsequent permit modification, renewal, or amendment, the applicable permit requirement].

h. Settlors shall fully comply with the applicable closure requirements as required by 30 TAC §335.112 (a)(6) [40 CFR Part 265, Subpart G] and Paragraphs 33-38 and 54 of this Consent Decree.

i. Settlors shall fully comply with the applicable financial assurance requirements as required by 30 TAC §335.112 (a)(7) [40 CFR Part 265, Subpart H] and Part IX of this Consent Decree.

j. Settlors shall install a monitoring system to continuously measure and record ambient air concentrations of hydrogen cyanide and hydrogen sulfide. [Permit Provision IX.E.3 or, upon approval by TNRCC of a subsequent permit modification, renewal, or amendment, the applicable permit requirement if any].

k. Settlors shall follow the approved Waste Analysis Plan

(WAP), attached hereto as Exhibit 6, provide notices, keep and provide adequate records, conduct required performance testing or testing using the proper test methods, and follow the approved sampling and analysis procedures as required by 40 CFR §264.13(b) [Permit Provision IX.B or, upon approval by TNRCC of a subsequent permit modification, renewal, or amendment, the applicable permit requirement, if any].

l. Settlors shall maintain all Hazardous Waste containers in good condition as required by 30 TAC 335.112(a)(8) incorporating 40 CFR §265.171.

m. Settlors shall maintain accurate lists of all items to be inspected at each unit and component on the inspection forms used at the Facility for inspections as required by 40 CFR § 264.15 [Permit Provision III.B.7 or, upon approval by TNRCC of a subsequent permit modification, renewal, or amendment, the applicable permit requirement].

n. Settlors shall conduct required training and maintain the necessary personnel training documents at the Facility as required by 40 CFR §264.16(d) [Permit Provision III.B.8 or, upon approval by TNRCC of a subsequent permit modification, renewal, or amendment, the applicable permit requirement].

o. Settlors shall post legends in English and Spanish as required by 40 CFR §264.14(c) [Permit Provision III.B.10 or, upon approval by TNRCC of a subsequent permit modification, renewal, or amendment, the applicable permit requirement].

p. Settlors shall transfer Hazardous Waste from off-site transport trucks or railcars only in areas of the Facility provided with appropriate secondary containment. [Permit Provision III.B.13 or, upon approval by TNRCC of a subsequent permit modification, renewal, or amendment, the applicable permit requirement].

q. Settlors shall not store Hazardous Waste except as expressly authorized by the Permit or this Consent Decree as required by 30 TAC §335.2 and 40 CFR §270.1 [Permit Provision IIB and D or, upon approval by TNRCC of a subsequent permit modification, renewal, or amendment, the applicable permit requirement].

15. Settlors shall use all reasonable efforts to ensure that generators comply with the manifesting requirements as required by 30 TAC §335.10 and 40 CFR Part 262, Subpart B and packaging, labeling, marking and placarding as required by 30 TAC §335.63-68 [40 CFR Part 262, Subpart C and Subpart F] with respect to the shipment of incoming wastes from foreign and

domestic generators to the Encycle Facility.

16. Settlors shall comply with all applicable requirements for manifesting Hazardous Waste as required by 30 TAC Chapter 335 Subchapter C [40 CFR Part 262, Subpart B] and packaging, labeling, marking and placarding as required by 30 TAC §§335.63-68 [40 CFR Part 262, Subpart C] with respect to the shipment of Outputs from the Encycle Facility to any location, including, but not limited to, the shipment of Outputs to domestic and foreign smelters and other metal extractors, except in the event Settlors apply for and receive a commodity-like variance for any Outputs produced at the Facility from the TNRCC, in consultation with the EPA.

17. Settlors shall comply with the applicable requirements for exporting Hazardous Waste as required by 30 TAC §335.76 [40 CFR Part 262, Subpart E], and shall comply with all applicable treaties or compacts governing the international shipment of such material.

18. Settlors shall comply with TNRCC Regulations regarding the management of Non-hazardous industrial waste as required by 30 TAC § 335.

19. Settlors shall comply with the applicable regulations of 30 TAC §335.12(a) [40 CFR 264, Subpart E] relating to Hazardous Waste manifests.

20. Settlors shall comply with the applicable regulations

of 30 TAC §335.152(a)(8) [40 CFR §264.195(d)] relating to record keeping.

21. Settlors shall ensure that all industrial solid waste and any other Output or pollutant, is managed in such a way that they do not cause the discharge or imminent threat of discharge of waste into or adjacent to waters in the State, and that they comply with the requirements of 30 TAC §335.4 and §26.121 of the Texas Water Code. If any accidental discharge of industrial solid waste or pollutant occurs from any activity which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity shall provide all required notifications, including notification of the TNRCC, upon determination that a reportable discharge or spill ("reportable spill") has occurred, as soon as possible and not later than twenty-four (24) hours after the discovery. The responsible person shall take action to immediately abate contain or control the spill or discharge and also begin reasonable response actions. Notification and response actions shall be in accordance with the spill requirements found in 30 TAC Chapter 327, and remediation of any impacted media shall conform to 30 TAC 335 Subchapter S, and any other applicable requirements. Verification samples collected for closure of the incident shall include samples sent for laboratory analysis of all constituents of concern contained within the spilled material or listed waste

as specified by a Uniform Hazardous Waste manifest under which the material arrived at the Facility. A reportable spill that was preventable (consistent with industry standards for operations and maintenance or corrective action activities) shall constitute a violation of this Consent Decree.

22. Settlors shall comply with Permit Provision IX.A.2. or, upon approval by TNRCC of a subsequent permit modification, renewal, or amendment, the applicable permit requirement, and accordingly inform the TNRCC Office of Air Quality and TNRCC Permits Division of any process changes.

C. NOTIFICATION REQUIREMENTS

23. Within 15 days after the date of entry of this Decree, Settlors shall submit to TNRCC complete notification in accordance with the requirements of 30 TAC § 335.6, of all Facility solid waste management and recycling activities (i.e. notification information on each of its wastes and waste management and recycling units) utilizing electronic notification software provided by TNRCC. This Submittals shall include notification information, as appropriate, for all solid waste management units including the individual tanks used in the current industrial wastewater treatment system and all the units used for the current management of industrial waste and Hazardous Waste.

D. INVENTORY DISPOSITION REQUIREMENTS

24. Settlors shall comply with all applicable speculative accumulation and storage limitations specified in 30 TAC § 335.1 [40 CFR §§ 261.1, 261.2, and 268.50], with regard to management of materials at the Facility. Settlors shall have six months from the date of entry of this Decree, to complete off-site shipments from the Facility of all those materials identified on Exhibit 7, except that Settlors shall have twelve months from the date of entry of this Decree to complete off-site shipments of nickel hydroxide "A" and nickel hydroxide "B" material unless otherwise specified in any commodity-like variance obtained by Settlors from TNRCC. Settlors shall be allowed to store inventory in units as described in Exhibit 7 for twelve months from the date of entry of this Decree. Settlors shall have nine months from the date of entry of this Decree to complete off-site shipment of the present inventory of 400 tons of cathode ray tube glass to a lawful recipient.

E. OPERATING REQUIREMENTS

25. Immediately upon entry of this Consent Decree, Encycle shall implement and follow a Facility Operating Plan for the Facility containing at least the following chapters, which are more fully described in Paragraphs 27-32, below:

a. Operating Procedures

b. Material Management Areas and Processing Units Listing

c. Material Tracking System Standard Operating Procedure

d. Decontamination Standard Operating Procedures

e. Waste Analysis Plan

Encycle, however, shall have until one year from entry of this Decree, or the anniversary date of the contract, whichever is sooner, to complete implementation of Feedstock acceptance procedures in Section II.C. of Exhibit 2 for Feedstocks received under contracts in effect at the date of lodging of this Consent Decree. During this period, Encycle shall comply with all other applicable procedures, and at a minimum the requirements of Paragraph 28 herein, as to these Feedstocks.

26. A paper copy of the dated, current Facility Operating Plan (FOP)(exclusive of the chapter listing material management areas and processing units, which may be maintained exclusively in electronic form, so long as paper documentation records changes, and dates of changes, in the status of individual areas or units) shall be maintained on-site and be made available for review by TNRCC or EPA representatives upon request. In addition, dated paper copies of all previous versions of all chapters of the FOP in use any time after the date of entry of this Decree shall also be maintained on-site and be made available for review by TNRCC or EPA representatives upon request. The primary purpose of the FOP shall be to define

mandatory standard operating plans,practices, and procedures that Encycle will follow, in accordance with Paragraph 25, to ensure that all materials, Feedstocks, waste, and Outputs are properly managed for legitimate recycling of metals or other authorized management. The FOP shall also describe procedures for ensuring that all receipt, storage, processing, and treatment of industrial and Hazardous Waste at the Facility is authorized as specified by either the Permit or this Consent Decree.

27. OPERATING PROCEDURES - The Facility Operating Plan shall include a dated chapter that describes both general and specific operating procedures, responsibilities, and authorities, as appropriate, to be followed when Settlors are (a) deciding whether to produce a certain Output, (b) deciding whether and how to test potential feedstock materials, (c) planning and scheduling Facility production, (d) accepting Feedstock and other material shipments, (e) managing, processing, monitoring and tracking materials while on-site, and (f) shipping materials and Output off-site. The Operating Procedures chapter shall be developed by Settlors consistent with the outline included as Exhibit 2 and shall specifically include, at a minimum, the information described therein. Specific Feedstock acceptance criteria, described in Paragraph 28, below, shall be incorporated into the Operating Procedures chapter of the FOP and shall be followed by the Settlors at all times. The Operating Procedures chapter shall

be updated, and the date of the most recent revision indicated on each page of the paper copy maintained at the Facility, whenever any change occurs in a described procedure or a new procedure is added. New or revised procedures shall be followed beginning on the revision date, in accordance with Paragraph 25, above.

28. FEEDSTOCK ACCEPTANCE CRITERIA - The Operating Procedures chapter of the Facility Operating Plan shall incorporate the attributes of legitimate recycling provided in EPA guidance at 50 Fed. Reg. 638 (January 4, 1985), 63 Fed. Reg. 28,556, 28,587 (May 26, 1998) and the memorandum dated April 26, 1989 to Hazardous Waste Management Division Directors attached hereto as Exhibit 1. The acceptance criteria and any revisions thereto shall also consider any regulations promulgated, or guidance issued by EPA and Texas after the execution of this Decree. The Operating Procedures chapter shall also fully describe Feedstock acceptance procedures in accordance with Exhibit 2, and shall incorporate the following:

a. Each Load of Solid Feedstock that is to be directly blended with other solid Outputs and Solid Feedstocks shall contain, upon acceptance at the Facility, at least 2% of a principal Pay Metal (Rare Earths at 2% total) of the intended Output, on a dry weight basis (e.g., the copper concentration in Feedstock used to make a copper Output must be at least 2%). For

Precious Metals, the Feedstock must have a minimum of 0.14 troy oz./ton for gold, palladium, platinum rhodium or ruthenium, or a minimum of 5.0 troy oz./ton for silver.

b. Each Load of Solid Feedstock that is to be hydrometallurgically processed shall contain, upon acceptance at the Facility, a minimum concentration of a principal Pay Metal of the intended Output or a minimum Precious Metal content, as specified in the following list:

Principal Pay Metal	Solid Feedstock Minimum Concentration (dry weight basis)
Chromium	2.0%
Cobalt	0.59%
Copper	0.66%
Lead	2.0%
Nickel	1.04%
Tin	1.10%
Zinc	2.0%
Antimony	2.0%
Bismuth	2.0%
Selenium	2.0%
Tellurium	2.0%
Titanium	2.0%
Tungsten	2.0%
Vanadium	2.0%
Aluminum	2.0%
Molybdenum	2.0%
Cadmium	2.0%
Rare Earths	2.0 % total

Precious Metals

Gold	0.14 troy oz./ton

Silver	5.0 troy oz./ton
Palladium	0.14 troy oz./ton
Platinum	0.14 troy oz./ton
Ruthenium	0.14 troy oz./ton
Rhodium	0.14 troy oz./ton

c. Each Load of Liquid Feedstock that is to be hydrometallurgically processed shall contain, upon acceptance at the Facility: (1) a minimum concentration of a principal Pay Metal of the intended Output or a minimum precious metal content, as specified below, and (2) sufficient Pay Metal to yield a material containing a principal Pay Metal of the intended Output at a 2% concentration (Rare Earths at 2% total) or gold, platinum, palladium, rhodium or ruthenium at 0.14 troy ounce/ton or silver at 5 troy ounce/ton, on a dry weight basis, based on current bench-scale or plant-trial testing results. For Pay Metals, except cobalt, titanium, tungsten, vanadium and Rare Earths, the minimum concentration shall be at least 400 milligrams per liter. For cobalt, titanium, tungsten and vanadium, the minimum concentration shall be at least 100 milligrams per liter. For Rare Earths, the total concentration shall be at least 5 milligrams per liter. For precious metals, the Liquid Feedstock shall have at least 0.25 milligrams per liter of gold, palladium, platinum or rhodium, or 2.5 milligrams per liter

ruthenium, or at least 15 milligrams per liter of silver.

d. Liquid materials received at the Facility which are not acceptable Feedstocks shall be rejected, or accepted and treated in either an authorized Hazardous Waste unit or an authorized wastewater treatment unit. If the resulting sludge from such authorized treatment contains a principal Pay Metal or Precious Metal meeting the criteria of Paragraph a. above, it may be considered for direct Feedstock blending. If the resulting sludge meets the criteria specified in b. above, it may be considered for hydrometallurgical processing. If the criteria in a. or b. above are not met, the sludge shall not be further processed at the Encycle Facility unless authorized by permit, except for dewatering in a wastewater treatment unit or slurrying for purposes of transport to a dryer prior to disposal off-site.

e. Settlors shall not accept Hazardous Waste exhibiting any of the properties listed in Permit Provision II.A.4, including radioactivity or, upon approval by TNRCC of a subsequent permit modification, renewal, or amendment, the applicable permit requirement.

f. Settlors shall not accept Hazardous Waste that contains in excess of 1000 ppm VOC as required by Permit

Provision IX.C.3 or, upon approval by TNRCC of a subsequent permit modification, renewal, or amendment, the applicable permit requirement.

g. Settlors shall follow all required procedures with regard to any intent to receive Hazardous Waste from foreign sources at the Encycle Facility as required by 30 TAC §335.152 [40 CFR §264.12(a)].

h. Settlors shall immediately sign and return a copy of the signed manifest to transporters as required by 30 TAC 335.12(b)(2)(3) [40 CFR 264.71(b)(3)(4)(c)].

i. Settlors shall not dilute Ouput with materials which do not contribute to meet customer specifications or other legitimate purpose.

29. MATERIAL MANAGEMENT AREAS AND PROCESSING UNITS

The Facility Operating Plan shall include a chapter containing a list of all material management areas and processing units at the Facility. The list may be maintained exclusively in electronic form, in accordance with Paragraph 26 and the following provisions. Settlors shall not manage or process materials in any area or unit not contained in the list.

The list, in electronic form shall be in a spreadsheet format and contain the information noted in Exhibit 3. For each unit, the list shall include the Encycle Facility unit number, designation, and description; Texas Notice of Registration (NOR)

unit number; and Permit unit number as applicable.

30. MATERIAL TRACKING SYSTEM PLAN STANDARD OPERATING PROCEDURE

The Facility Operating Plan shall include a chapter containing the Material Tracking System Standard Operating Procedure (SOP)which describes procedures that Settlors shall follow to track and document the movement of incoming Feedstock and waste materials through the storage and processing units from the time of entry in the Encycle Facility until the finished Output or waste is shipped off-site. The SOP shall incorporate the provisions of Exhibit 4, and specifically describe procedures to track incoming waste materials, by appropriate regulatory classification through the storage and processing facilities to ensure, and document that materials in different classes are not inadvertently commingled. The Material Tracking System SOP shall also ensure that Settlors are able to document with a high degree of accuracy, that listed Hazardous Waste and characteristically hazardous spent materials are not inadvertently mixed with other materials. If Hazardous Waste is knowingly mixed with other materials, the SOP shall prescribe that the mixture is handled and documented in compliance with Hazardous Waste regulations. The SOP shall insure the creation of a “paper trail” that will provide documentation adequate to determine the regulatory status of all materials managed at Encycle/Texas.

31. DECONTAMINATION STANDARD OPERATING PROCEDURES

Settlors have agreed to final closure of applicable units as provided in Paragraph 54 below. Therefore the following transitional decontamination procedures shall apply. The Facility Operating Plan shall include a chapter containing Transitional and Operational Decontamination Standard Operating Procedures (SOPs) for all operational units, including but not limited to tank systems, bins, dryers, filters, and other equipment and units. The purpose of these SOPs is to prevent cross-contamination in each unit, and to describe the transitional and operational decontamination requirements and procedures. The Decontamination SOPs chapter of the FOP shall be subdivided into two subchapters: Transitional Decontamination and Operational Decontamination. The Transitional Decontamination subchapter shall describe (1) decontamination procedures, as more fully discussed in subparagraph A. below, and (2) how information obtained will be used to develop operational decontamination SOPs. The Operational Decontamination subchapter shall include the developed SOPs for units which will require operational decontamination, as more fully described in subparagraph B. below. Encycle shall maintain records at the Facility documenting all transitional and operational decontaminations. These decontamination records shall be made available, upon request, to representatives of the TNRCC and EPA. Documentation shall include at a minimum the dates and times of the decontamination, volumes of decontamination media

used, notation of the material contained in the unit prior to decontamination, names of staff completing the procedure, results of all sample data, documentation of proper collection and disposal of removed contaminants and rinsate and other appropriate supporting documentation from the decontamination.

A. TRANSITIONAL DECONTAMINATION

(1) Transitional decontamination for all equipment requiring transitional decontamination as listed in Table 5 of Exhibit 5, except for units described in subparagraph (2) below, shall be completed within 120 days after entry of this Consent Decree or, as applicable, within 60 days after approval of a baseline alternate concentration limit, except that: (a) transitional decontamination of tanks used for processing of nickel hydroxide A and the tanks that are identified as wastewater pretreatment tanks in Table 5 to Exhibit 5 shall be completed prior to these tanks being put into another service; (b) transitional decontamination of any tanks out of service at the time this Consent Decree is lodged shall be completed prior to putting the tank back into service; and, (c) transitional decontamination of tanks that are identified as stormwater tanks in Table 5 of Exhibit 5 shall be completed within sixty days of closure of the

lagoons in accordance with Part VII of this Decree. Certifications stating that all transitional decontamination was completed regarding the tanks identified in Table 5 of Exhibit 5 requiring such decontamination, in accordance with the specified transitional decontamination procedures, shall be submitted within 150 days of entry of this Consent Decree or, as applicable, within 90 days after approval of a baseline alternate concentration limit, or within 30 days of transitional decontamination for the nickel hydroxide A, wastewater, stormwater reclamation and out of service tanks.

(2) Transitional decontamination for all bins listed Exhibit 5, Table 5, except nickel hydroxide bins and bin S shall be completed by nine months after entry of this Decree and certifications regarding these bins shall be submitted within 30 days thereafter. All transitional decontamination for the nickel hydroxide bins as identified in Exhibit 7 and bin S shall be completed by Settlors within fifteen months from entry of this Decree. Settlors shall submit a certification stating that all transitional decontamination was completed in accordance with the specified transitional decontamination procedures for these bins within thirty

30 days thereafter.

(3) The procedures for transitional decontamination shall incorporate Exhibit 5, and include at a minimum:

a. Agitating and rinsing with water or other media, or high pressure wash, or, if necessary, low pressure wash for units that are structurally unable to withstand high pressure wash;

b. Provisions for sampling final decontamination media from each unit and analyzing for the eight RCRA metals. Representative grab samples of the unit's final decontamination media shall be collected and analyzed for eight RCRA metals following methods described by "Test Methods for the Evaluation of Solid Waste" (EPA SW-846 Method 6010), "Standard Methods for the Examination of Water and Wastewater," or American Society for Testing and Materials (ASTM) Standard Methods (Method 3120). Before analysis is conducted for the eight RCRA metals, the detection limit of the instrument shall be determined. Detection Limits shall be below the levels listed in the following standard. For units that require low pressure wash, if the decontamination media is not less than the standard (as defined in the list below), a baseline alternate concentration limit(s) shall be proposed and submitted to the TNRCC for review and approval;

Standard for Final Rinsate or Media from Decontamination

RCRA Metal	* Concentration
Arsenic	5.0
Barium	100.0
Cadmium	0.5
Chromium	5.0
Lead	1.5
Mercury	0.2
Selenium	1.0
Silver	2.0

* Units for liquid decontamination media is mg/L
Units for solid decontamination media is mg/kg

c. Provisions for continuing decontamination process and analysis until final rinsate is less than the standard or approved baseline concentration limit, described above;

d. Provisions for documentation of the decontamination process which was successful in meeting the standard for each unit, including the volume of decontamination media used; and

e. Procedures for developing information obtained during the transitional decontamination into operational decontamination SOPs for each type of unit.

B. OPERATIONAL DECONTAMINATION

The purpose of operational decontamination is to prevent the unintentional carry through of hazardous waste codes from a

production lot of Hazardous Waste to a subsequent production lot. The operational decontamination SOPs shall include at a minimum the following elements:

(1) Use of decontamination procedures established in the transitional decontamination;

(2) Procedures for collection of a final econtamination media sample from each unit;

(3) After collection of a sample, generation of a random number between 0 and 1. If the random number is equal to or greater than 0.65 the sample must be analyzed. However, a minimum of one sample must be analyzed for each ten operational decontaminations;

(4) Samples requiring analyses must be tested for the eight RCRA metals. Representative grab samples of the unit's final decontamination media shall be collected and analyzed for the eight RCRA metals following, as appropriate, methods described by "Test Methods for the Evaluation of Solid Waste" (EPA SW-846 Method 6010), "Standard Methods for the Examination of Water and Wastewater," or American Society for Testing and Materials (ASTM) Standard Methods (Method 3120). Before analysis is conducted for the eight RCRA metals, the detection limit of the instrument shall be determined. Detection Limits shall be below the standard as shown in the list under Transitional Decontamination.

(5) Following completion of a production lot containing a listed hazardous waste in any processing unit, and prior to placing in that unit another process lot that is not intended to carry the same set of waste codes as the previous process lot, the unit will be decontaminated using the appropriate operational decontamination SOP. As soon as the final decontamination media sample has been obtained, processing of the new process lot may begin. If the final decontamination media sample is analyzed, and any RCRA metal concentration is determined to be equal to or greater than either the standard or baseline concentration limit, the unit must be decontaminated again immediately following completion of the subsequent process lot. Additional material may not be processed in the unit (without waste code carry-through) until one of the following occurs:

a. A decontamination media sample, collected following application of the decontamination SOP, exhibits concentrations of the RCRA metals that are below either the standard or established baseline concentration limits.

b. A specific decontamination SOP has been developed for that unit, which results in RCRA metal concentrations in the decontamination media sample

that are below either the standard or baseline concentration limits.

c. For any unit that is eligible for low-pressure decontamination, new or revised baseline concentration limits are proposed and submitted to TNRCC.

(6) If new or revised baseline concentration limits are proposed, the new or revised baseline concentration limits will be effective unless disapproved in writing by TNRCC. If TNRCC disapproves one or more new or revised baseline concentration limits, the proposed limits will be effective only from the time they are proposed until completion of the process lot that is in production when Settlors receive notice of TNRCC's disapproval, or 5 days after receiving such notice, whichever is sooner. Material that is processed in the unit after the new baseline concentration limits are proposed will not carry-through waste codes for as long as the proposed new baseline concentration limits are effective.

32. WASTE ANALYSIS PLAN - The Facility Operating Plan shall include a Waste Analysis Plan (WAP) chapter which shall include the WAP dated 10/26/98 (and any future revisions thereto as a result of a permit action, or any other revisions upon mutual

agreement of the parties and approval of the Court), which is attached to this Decree as Exhibit 6. Encycle shall manage waste at the Facility in accordance with this Waste Analysis Plan, which shall supersede the WAP referenced in the Permit. Immediately upon entry of this Decree, Settlors shall apply the WAP attached to this Decree to all operations at the Facility. Settlors shall use their best efforts to install and operate as soon as possible an x-ray fluorescence spectrometer for use in analyzing metal content in Solid Feedstock for compliance with Feedstock acceptance criteria. Between entry of this Consent Decree and the date on which the x-ray fluorescence spectrometer is operational, which shall be no later than June 1, 1999, except for CC-5112, preshipment samples of bulk Solid Feedstocks shall be taken to confirm compliance with all applicable acceptance criteria, including those contained in Paragraph 28 herein. During this period, confirmation samples shall be analyzed on receipt of each shipment. If the preshipment sample demonstrates compliance with the acceptance criteria but the confirmation sample does not confirm such compliance then future shipments of such material shall not be unloaded prior to receipt of analysis results confirming that the materials meet acceptance criteria.

VII. CORRECTIVE ACTION

A. CORRECTIVE ACTION REQUIREMENTS EAST AND WEST LAGOONS

33. Within 90 days of the date of entry of this Decree,

Settlors shall submit to the TNRCC for review, possible modification and approval, a technically and administratively complete Closure Plan for the two surface impoundments referred to as the East and the West lagoons. The Closure Plan shall be submitted in accordance with all applicable requirements of 30 TAC §§335.8, 335.112(a)(10), 335.119, 30 TAC Subchapter S. The closure plan shall include, at a minimum, the following:

a. A detailed description of the areas at the Facility which will undergo closure and a detailed, step-by-step description of all closure activities required to complete closure of the surface impoundments.

b. Methods to be used to conduct a complete characterization of all wastes, sludges, and subsoils which will be removed from the areas undergoing closure, and/or which will remain in place after closure. This characterization shall include a proper Hazardous Waste determination, in accordance with the requirements of 30 TAC §§335.501 -335.515, including analysis using the Toxicity Characteristic Leachate Procedure (TCLP); and analysis for constituents listed in 40 CFR Part 261, Appendix VIII:

c. A detailed description of methods which will be used to manage any liquid wastes, sludges, and contaminated liner materials and/or subsoils, including engineering

specifications for a protective cap and cover, if industrial solid waste is to be disposed of on-site;

d. A schedule by which each closure task will be accomplished, including, at a minimum, inspections to be performed by an independent Texas registered, professional engineer who will certify that the closure has been completed in accordance with the approved Closure Plan. The schedule must indicate that closure will commence immediately upon approval by the TNRCC and be completed within the approved closure schedule, which may take account of seasonal factors, as appropriate, such as the need to use the lagoons for stormwater management during the rainy season.

34. Upon receipt of the TNRCC's approval or approval with modifications of the Closure Plan, and the closure schedule required in Paragraph 33 above, Settlors shall commence closure of the Surface Impoundments known as East and West lagoons. Settlors shall perform closure activities in accordance with the approved closure schedule.

35. Within 60 days of completion of the closure of the surface impoundments known as East and West lagoons, a certification report shall be submitted to the TNRCC. This report shall include the following:

a. Certification by a corporate officer of Encycle and

ASARCO, and by an independent Texas registered, Professional Engineer that the closure was completed in accordance with the closure plan approved or approved with modifications by the TNRCC;

b. A summary of the closure activities performed;

c. A copy of the deed recordation required by 30 TAC §335.5 or shall meet the 30 TAC Subchapter S deed recordation requirements (if industrial solid waste is disposed or left on-site);

d. The results of the determination made in accordance with Paragraph 33b of this Consent Decree; and

e. Copies of all appropriate waste shipment documents, laboratory analysis results, field and laboratory quality control/quality assurance, and analytical procedure detection limits.

36. Within 90 days of entry of this Decree, Settlors shall comply with the requirements of 30 TAC §§ 335.116 and 335.117 and 30 TAC §335.112(a)(5), relating to the Ground Water monitoring program at the two surface impoundments known as East and West lagoons.

37. Within 90 days of the entry date of this Decree, Settlors shall submit to the TNRCC for review, possible modifications, and approval, a plan which describes the necessary steps Settlors shall take to prevent unauthorized discharges to the surface

impoundments including emergency discharges directly from the reactor clarifier, as well as discharges from the wastewater treatment system, both during and after the closure of surface impoundments. The plan shall also list any alternative units which Encycle may use to manage wastewater during unavoidable circumstances, in accordance with all applicable regulations. Encycle shall also include a provision for managing storm water during the closure of the surface impoundments.

38. Immediately upon receipt of the TNRCC's approval or approval with modifications, Settlors shall implement the plan submitted pursuant to the above section of this Decree.

B. CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS AND AREAS OF CONCERN

39. Corrective Action Obligations -The Settlors shall conduct corrective action as necessary to protect human health and the environment for all Releases of Hazardous Waste and Hazardous Constituents from any Solid Waste Management Unit (SWMU) and/or Area of Concern (AOC). The Settlors shall fulfill this obligation by conducting Corrective Action under 30 TAC 335.167 and 40 C.F.R Part 264.101, which consists of the RCRA Facility Investigation (RFI), and if necessary, Stabilization/ Interim Corrective Measures, Baseline Risk Assessment (BLRA)/Corrective Measures Study (CMS) and Corrective Measures Implementation (CMI). The Settlors shall conduct an RFI to determine whether Hazardous Waste or Hazardous Constituents listed in 40 CFR Part 261, Appendix VIII

and/or 40 C.F.R Part 264, Appendix IX have been Released into the environment. If the TNRCC, in consultation with EPA, determines that Hazardous Waste or Hazardous Constituents have been or are being Released into the environment, then the TNRCC in consultation with EPA, may require the Settlors to conduct Stabilization/Interim Corrective Measures, a BLRA, a CMS and/or a CMI which is protective of human health and the environment. Settlors agree to perform these actions at the Facility as required by TNRCC and EPA under this Decree.

40. The Settlors shall submit all deliverables to the TNRCC and EPA. The TNRCC shall receive an original and one (1) copy of all deliverables and EPA shall receive one copy of the same. The TNRCC, in consultation with EPA, will provide the Settlors with its written approval, conditional approval, approval with modification, rejection as not Acceptable, disapproval with comments and/or modifications, or notice of intent to draft and approve, for any work plan, report (except progress reports), specification or schedule submitted pursuant to or required by this Decree. The TNRCC, in consultation with EPA, may reject and not comment on, any Submittals which the TNRCC, in consultation with EPA, determines is not Aacceptable.

41. UNUSED

42. SWMU(s) and/or AOC(s) Required for Investigation - Settlors shall conduct an RFI which shall include all media (soil,

air, Groundwater, surface water and sediment) and determine the full nature and extent of contamination for each constituent. The RFI shall include but is not limited to the SWMUs/AOCs listed below. In fulfilling this requirement, the Settlors may include the investigative results of the current RCRA Facility Investigation (RFI) being completed under its permit issued by TNRCC.

a. 01 Landfill

b. East and West Lagoons (as provided above)

c. Waste Pile

d. Railroad Tracks Area

e. Feed Tanks 1 and 2

f. Road Leading to the West of Building C

g. Grain Elevator

h. Former Sludge Drying Beds

i. Reactor Clarifier

j. Facilities 1, 2, and 3

k. West Cell House

l. NOR 43

m. Product Storage Building (Building C)

n. Product Storage Bins

o. Building North of Facility 2 (3-sided bin)

p. Old Casting Building

q. Any affected on- or off-site areas subject to

Releases from past or current operations.

r. Storm sewer system

43. RCRA Facility Investigation (RFI) - Within one hundred and twenty (120) days from the date this Consent Decree is entered by the Court, Settlors shall submit for approval a Work Plan and schedule for completion of the RFI(s) for the SWMUs and/or AOCs described above. Any RFI Work Plan shall be prepared in accordance with RCRA, its implementing regulations, all applicable, relevant and appropriate State regulations and EPA and TNRCC guidance documents including but not limited to the CAP and the relevant documents listed in Exhibit 10, RCRA Corrective Action Reference List. The RFI Work Plan shall document the procedures the Settlors shall use in conducting investigations necessary to:

a. characterize the source(s) of Hazardous Waste or Hazardous Constituents Releases or potential Releases of any Hazardous Waste or Hazardous Constituent;

b. identify and determine the presence, magnitude, nature, extent, and the rate of horizontal and vertical migration of Releases of Hazardous Wastes or Hazardous Constituents from or to affected media within and beyond the Facility boundary.

c. determine and characterize the potential pathways of migration of Releases of Hazardous Waste or Hazardous

Constituents, if any, at or from the Facility including characterization of the geology and hydrology of the Facility;

d. determine the degree and extent of, or threat of, migration of Releases of Hazardous Waste and Hazardous Constituents at or from the Facility;

e. identify actual and potential Receptors;

f. support the development of corrective measure alternatives from which Corrective Measures will be selected; and

g. be definitive enough to support the selection of Corrective Measures.

44. The Settlors shall notify the TNRCC within fifteen (15) days of any discovery of any additional SWMU or AOC subsequent to the entry of this Consent Decree. If the TNRCC determines that there has been a Release or there is a potential for Release that warrants further investigation, the Settlors shall conduct an investigation and perform necessary corrective action in accordance with this Consent Decree. The Settlors shall initiate the investigations in accordance with the approved schedule and shall comply with the CAP, the preamble to the regulations that EPA proposed in 1990 to promulgate as 40 C.F.R. Part 264, Subpart S, and Texas regulations which have been incorporated into the federally authorized program. The Settlors shall submit the

results of the RFI to the TNRCC and EPA for approval in the form of an RFI Report within the time frame established in this Consent Decree.

45. The RFI Report must document results of the investigation(s). The TNRCC will consider the Report complete when the full nature and extent of the contamination, the Quality Assurance/Quality Control procedures and the Data Quality Objectives are documented and the TNRCC, in consultation with, EPA is satisfied that all requirements have been met. The Settlors may utilize previous investigations during the RFI phase of the Corrective Action process. After the RFI phase is completed, the TNRCC may permit the Settlors to defer certain Corrective Measures at operating production units/areas until closure of the units/areas or final closure. This deferral does not apply to Releases which pose an Imminent Threat to human health or the environment. Such Releases shall be addressed within approved or specified time frame(s).

46. Stabilization/Interim Corrective Measures (S/ICMs) Program - Settlors shall propose or conduct Stabilization/ Interim Corrective Measures, as necessary, to protect human health and the environment. The Stabilization/Interim Corrective Measure (S/ICM) Program applies to SWMU(s) or AOCs for which a final Corrective Action Remedy has not been formerly approved. The objectives of the S/ICM Program is to remove, decontaminate,

and/or stabilize the source (i.e., waste and waste residues) and contaminated media to protect human health and the environment. The Settlors may modify the S/ICM Program, as necessary, to achieve these objectives.

47. The TNRCC may require or authorize the Settlors to design, construct, operate and maintain a S/ICM Program for SWMUs/AOCs for which Interim Measures are necessary to protect human health and the environment. The S/ICM Program shall be operated until final Corrective Measures have been approved. At a minimum, the S/ICM Program shall consist of the following:

a. Specific performance goals to protect human health and the environment;

b. If waste or contaminated media is left in place, a monitoring system may be warranted to evaluate and determine if the objectives outlined in Paragraph 46 are being met. All S/ICM monitoring wells must comply with the requirements of EPA's RCRA Ground-water Monitoring; Draft Technical Guidance, November 1992.

c. An implementation schedule to initiate and monitor S/ICMs;

d. Submittal of a S/ICM report specifying the design of the S/ICM upon installation. During implementation of the S/ICM, periodic S/ICM Status Reports shall be submitted which document that the objectives of

Paragraph 46 are being achieved. An original copy and one additional copy of the periodic S/ICM Status Report shall be submitted to the TNRCC for review; and,

e. A procedure to modify the design, as necessary, to achieve objectives of protecting human health and the environment.

48. Baseline Risk Assessment (BLRA)/Corrective Measures Study (CMS)- Upon approval of RFI Report, if the TNRCC, in consultation with EPA, determines that there has been a Release of Hazardous Waste or Hazardous Constituents (listed in 40 CFR Part 261, Appendix VIII and/or 40 CFR Part 264 Appendix IX) into the environment, then Settlors shall propose a remedy, if necessary, in accordance with the TNRCC risk reduction rules or as otherwise specified by TNRCC . This will require a BLRA and/or CMS Report to be submitted for review and approval 120 days after final approval of the RFI reports or within the time frame(s) specified by the TNRCC, in consultation with EPA. This Report shall identify and evaluate risk for all potential Receptors, and if necessary, identify and evaluate corrective measure alternatives and recommend appropriate corrective measure(s) to protect human health and the environment. The BLRA and/or CMS Report shall comply with the TNRCC Risk Reduction Rules (30 TAC §§ 335.551-335.569) and follow all applicable guidance documents including, but not limited to, the applicable items in the CAP and applicable

documents listed in Appendix A, RCRA Corrective Action Reference List. Consistent with the objectives of this Consent Decree to protect human health and the environment, the TNRCC, in consultation with EPA may determine that certain tasks, including investigatory work, engineering evaluations, or remediation measures study or implementation are necessary in addition to the tasks and documents included in this Consent Decree. If the TNRCC, in consultation with EPA makes such a determination, TNRCC shall notify the Settlors in writing that additional tasks are necessary, and shall specify the basis and reasons for such determination and the time frame for performing such work. Settlors shall perform such work as required by the TNRCC, in consultation with EPA.

49. The Settlors shall submit an Acceptable CMS report. If the TNRCC and/or EPA deems the report unapprovable then the Government will furnish the Settlors with comments identifying deficiencies and concerns. The Settlors shall resubmit to TNRCC and EPA a revised CMS report which shall address the governments' comments. If the EPA, in consultation with TNRCC, determines that the Report is not approvable, then the EPA may make the remedy decision and Settlors shall perform the corrective action as determined by EPA. Upon approval of the CMS or determination of the final Corrective Measures, the Settlors shall provide the public the opportunity to comment on any corrective action by

publishing public notice in a local newspaper of general circulation of the availability of the RFI and BLRA/CMS reports. The TNRCC shall be responsible for collecting all public comments and shall furnish all public comments to the Settlors for response. The Settlors shall complete a Responsiveness Summary report appropriately addressing all public comments. This report shall be furnished to the TNRCC and EPA for approval prior to distribution to the public. The Government shall have the authority to make any changes to the Responsiveness summary necessary to appropriately address public concerns. Where necessary, the Settlors shall modify the CMS/BLRA to accommodate public concerns.

50. Corrective Measures Implementation (CMI) - If on the basis of the RFI and the BLRA/CMS, the TNRCC determines that there is a risk to the human health and environment, then Settlors shall submit for approval a CMI Workplan(s) within ninety (90) days of receipt of approval of the BLRA/CMS Report or as directed by TNRCC. The CMI Workplan shall address all of the applicable local, state and federal laws, and items in the CAP. The CMI Workplan shall contain detailed final proposed engineering design, monitoring plans and time frames necessary to implement the selected remedy and assurances of financial responsibility for completing the corrective action. Following review and approval, and upon installation of a corrective action system based upon the

approved CMI Workplan, the Settlors shall submit a CMI Report which includes as-built drawings of the corrective action system. The CMI Report shall address all the applicable items in the CAP.

51. If the CMI Workplan proposes a long-term remedy, then the CMI Workplan shall be submitted as an application for a Compliance Plan within the time frames specified by the TNRCC. All the requirements of the previous Paragraph apply to the Corrective Measures implemented through the Compliance Plan. In this case, implementation of the Corrective Measure(s) that require long term monitoring shall be addressed through issuance of a Compliance Plan. Settlors shall implement the plan within the time frames specified by the TNRCC.

52. To report the progress of the Corrective Measures, the Settlors shall submit periodic CMI Progress Reports to the TNRCC and EPA in accordance with the schedule specified in the Compliance Plan, or as otherwise directed.

53. Submittals

Settlors shall provide draft and final Work Plans and reports to TNRCC and EPA in accordance with the following schedule:

ACTIVITY	DUE DATE
RFI Work plan	120 days after date Consent Decree has been entered by the Court
RFI Report	Per schedule contained in

	the TNRCC approved RFI Work plan
CMS Report	120 days after final approval of the RFI report or as directed by the TNRCC
CMI Work plan	90 days after approval of CMS Report or as directed by the TNRCC
CMI Report	Per schedule contained in the TNRCC-approved CMI Work plan or as directed by the TNRCC

VIII. FINAL FACILITY CLOSURE REQUIREMENTS

54. Within 30 days of the entry date of this Decree, Settlors shall submit to TNRCC and EPA for review, possible modification, and approval, a revised final Facility closure plan and post-closure plan, as appropriate. The plan shall include revised closure cost estimates and be written to meet the requirement of 30 TAC §335.112 (a) (6) and 40 CFR Part 265 Subpart G. The Revised Closure Plan and as appropriate, post-closure plan, shall include at a minimum the units identified in Table 5 of Exhibit 5 requiring closure and the units interim authorized in Part X of this Decree.

IX. FINANCIAL ASSURANCE

55.a.Financial Assurance: Closure

Within 30 days of the entry date of this Consent Decree and thereafter, as necessary, Settlors shall update financial assurance coverage for the Facility to include the revised closure cost estimates required by Part VIII above. The financial

assurance shall be maintained in accordance with the requirements of the Permit and 30 TAC 335.112(a)(7)and 40 CFR Part 265 Subpart H and this Consent Decree.

b. Financial Assurance: Corrective Action

(1) During the period that any Corrective Measures under this Consent Decree are being implemented, Settlors shall establish and maintain financial security as necessary and appropriate to assure completion of their corrective action obligations.

(2) Within 90 days of approval or determination of a CMI workplan as provided in Paragraph 50-51 above, and annually thereafter, Settlors shall develop and maintain a single cost estimate for the remaining corrective action work with respect to approved corrective measures pursuant to this Decree. Annual cost estimates after 1999, shall include an adjustment for inflation in accordance with 40 C.F.R. § 264.142(b). Annual cost estimates shall be transmitted with the annual progress reports required by this decree. (Except as otherwise allowed or required below), at

Settlors' election, Settlors shall use one or more of the following forms to establish and maintain the required financial security:

a. A surety bond or fund guaranteeing performance of the work;

b. One or more irrevocable letters of credit equaling the total estimated cost of the necessary assurance;

c. A trust fund;

d. A demonstration that Settlors satisfy the requirements of 40 C.F.R. § 264.143(f);

e. A guarantee to perform the work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Settlors, provided that such guarantor establishes its ability to provide such security through one or more of the mechanisms provided in subsections a., b., c., or d., of this Paragraph, on the same schedule as otherwise required herein of Settlors; or

f. A demonstration by Settlors that:

(1) they have assets located in the United States amounting to at least ninety percent (90%) of total assets or at least six (6) times the sum of the current cost estimate for work to be performed under this Decree and any other environmental obligation and liabilities for which Settlors are providing assurance by means of a financial test; and

(2) It can satisfy any two of the following three criteria:

(i) A ratio of current assets to current liabilities that equals 1.25 or greater.

(ii)Tangible net worth (as defined in 40 C.F.R. § 264.141) greater than the sum of the cost estimate for work to be performed under this Decree and any other environmental obligations and liabilities for which ASARCO is providing assurance by means of a financial test, plus $10 million.

(iii) Either of the following alternative (A) or (B):

(A) (1) Total assets less total liabilities (as these terms are defined in 40 C.F.R. § 264.141) shall be no less than $500 million, with “total liabilities” including the sum of the current cost estimate for all work to be performed under this Decree and any other obligations and liabilities for which ASARCO is providing assurance by means of a financial test; or

(2) The ratio of ASARCO’s net income, plus depreciation, depletion, and amortization, minus $10 million to total liabilities (as defined in 40 C.F.R. § 264.141 and subparagraph (A)(1) above) is greater than 0.10.

(B) A current bond rating for ASARCO’s most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor’s or Aaa, Aa or Baa as issued by Moody’s. This bond must be issued by ASARCO and not a corporate parent or other affiliate. Financial calculations for purposes

of this subparagraph f. shall be in accordance with generally accepted accounting principles on a consolidated basis, except that LIFO inventories shall be included in “current assets” at their replacement cost.

(3) In any calendar year, if Settlors can show that the estimated cost to complete the remaining work has diminished below the amount calculated at the end of the prior calendar year (or as previously recalculated during that calendar year), Settlors may submit a proposal for reduction to TNRCC and EPA, and may reduce the amount of the security upon approval by TNRCC and EPA.

(4) In any calendar year, if Settlors become aware, or should become aware, that the estimated cost to complete the remaining Work has increased by ten percent (10%) or more above the amount calculated by the end of the prior calendar year, documentation of financial security for that increase shall be provided sixty (60) days following the increase in the cost estimate.

(5) Should any change(s) in circumstances occur which causes, or Settlors anticipate might reasonably cause in the short term, the financial security mechanism then in place to fail to meet the requirements herein, Settlors shall immediately either begin use of a different means for financial assurance, or upgrade

its existing affected mechanism(s) to bring it into compliance. Settlors shall not have more than sixty (60) days from the date on which Settlors become aware, or should have become aware of such change(s), to come into compliance with this subsection.

(6) Settlors may change the form of financial security provided under this Part at any time, upon notice to and approval by TNRCC and EPA, provided that the new form of assurance meets the requirements of this Part.

(7) Settlors' inability to maintain financial security hereunder at any time during the pendency of this Decree shall not excuse or be a defense to allegations of failure to perform any requirements of this Decree.

(8) In the event of a dispute regarding financial security, Settlors may only lower the amount of and/or alter the form of the financial security after, and in accordance with an effective informal resolution, or final administrative or judicial decision resolving the dispute.

(9) Settlors shall be released from financial assurance requirements for corrective action at the time the final corrective action report required by this consent decree is approved by TNRCC, in consultation with EPA.

X. INTERIM UNIT AUTHORIZATION REQUIREMENTS FOR STORAGE OF HAZARDOUS WASTE

56. In addition to the management of Hazardous Waste as provided in the Permit and under Paragraph 24 of this Decree,

Settlors are authorized to manage hazardous and industrial nonhazardous waste in the following units subject to the limitations specified in this Decree below unless the Permit modification required in Part VI is denied or returned for incompleteness [See 30 TAC §§ 281.17-18 and 40 C.F.R. § 270.10(c)] as to any of these units.

Interim Authorized Units and Functions Authorized

a. Containment Building - Product Bldg. 2 - numbered Bins

Storage and treatment (limited to bulking, blending, drying, and absorption/ solidification) of authorized solid industrial and Hazardous Waste with maximum capacity 5,973 cubic yards.

b. Container Storage Area - Truck Staging Area

The Truck Staging Area shall be limited to a capacity of 4 lanes holding up to 4 trucks or eight 40 cubic-yard roll-off containers for a storage time period of 10 days.

c. Container Storage Area - Rail Car Loading / Unloading Staging Area

The Rail Car Loading/unloading area shall be limited to a capacity of two - 30,000 gallon railcars for a storage time period not to exceed 10 days from the date of receipt.

d. Container Storage Area - East Container Storage Area

(Product Bld. 3)

Storage of containerized solid and liquid Hazardous Waste & industrial waste - maximum capacity 77,792 gallons.

e. Container Storage Area - Building B.

Limited to storage of containerized liquid hazardous and industrial wastes with a maximum capacity of 242,352 gallons.

57. Prior to use, Encycle shall ensure that the interim authorized units meet the applicable requirements of 30 TAC §§335. 112 (a)(8), (9), and (21), and 40 CFR Part 265 Subparts I and DD, except as provided in this Consent Decree.

58. In addition, within 30 days of the completion of requirements specified in Paragraph 57 Encycle shall submit certifications completed by a qualified independent Texas registered professional engineer that the units listed below meet the applicable requirements of 40 CFR Part 265 as listed below including the specified secondary containment requirements.

Unit	Requirement
Product Bld.2 (Containment Bld) numbered Bins	40 CFR Part 265 Subpart DD
Truck Staging Area	40 CFR Part 265 Subpart I
Rail Car Loading/Unloading Staging Area	40 CFR Part 265 Subpart I

East Container Storage Area (Product Bld. 3) storage of containerized liquid and solid hazardous & ind. Waste	40 CFR Part 265 Subpart I
Bld B. To add storage of containerized liquids	40 CFR Part 264 Subpart I

XI. FIELD WORK NOTIFICATION REQUIREMENTS

59. Settlors shall notify the TNRCC Corpus Christi regional office in writing by mail or facsimile at least ten working days prior to any sampling event related to Corrective Action and/or closure performed pursuant to this Consent Decree.

XII. SUBMITTAL REQUIREMENTS

60. All correspondence, reports, and documentation required to be submitted by this Consent Decree for the Encycle Facility, the Corpus Christi Conservation Easement, or the Metals Recycling Project shall be sent in duplicate to the following addresses:

J. Mac Vilas, R.E.M, Technical Specialist
Waste Section
Enforcement Division, MC 128
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

Agatha Benjamin, Enforcement Officer
Hazardous Waste Enforcement Branch
Environmental Protection Agency, Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

with an additional copy to:

Russell Lewis, Manager, Waste Section

Corpus Christi Regional Office
Texas Natural Resource Conservation Commission
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
Re: DOJ #90-7-1-910

For purposes of Part VII of this Decree (Corrective Action) documents to be submitted shall be copied to the attention of the Project Managers:

The TNRCC project manager is:

Brad Wilkinson
Corrective Action Section
Remediation Division, MC 127
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-2350

The EPA project manager is:

Warren Arthur
Environmental Protection Agency
Region VI
1445 Ross Avenue
Dallas, Texas
(214) 665-8504

All correspondence, reports, and documentation required to be submitted by this Consent Decree regarding the ASARCO El Paso Facility, Tire Recycling Project, and the El Paso Paving Project shall be sent in duplicate to the following addresses:

J. Mac Vilas, R.E.M, Technical Specialist
Waste Section

Enforcement Division, MC 128
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

Samuel Tates, Enforcement Officer
Hazardous Waste Enforcement Branch
Environmental Protection Agency, Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

with an additional copy to:

Terry McMillan, Manager, Waste Section
El Paso Regional Office
Texas Natural Resource Conservation Commission
7500 Viscount Blvd., Suite 147
El Paso, Texas 79925-5633

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
Re: DOJ #90-7-1-910

All correspondence, reports, and documentation required to be submitted by this Consent Decree regarding the Coy Mine Wetland Project shall be sent in duplicate to the following address:

Compliance Officer - ASARCO Coy Mine
Clean Water Act Enforcement Section
Water Programs Enforcement Branch
Environmental Protection Agency, Region 4
61 Forsyth St. SW
Atlanta, Georgia 30303

with an additional copy to:

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
Re: DOJ #90-7-1-910

All correspondence, reports, and documentation required to be submitted by this Consent Decree regarding the auditing provisions (Part IV) shall be sent in duplicate to the following addresses:

Director, Multimedia Enforcement Division
(Mail Code 2248-A)
Office of Regulatory Enforcement, U.S.E.P.A.
401 M Street, S.W.
Washington, D.C. 20460

and

Steve Sisk
National Enforcement Investigations Center
Building 53
P.O. Box 25227
Denver Federal Center
Denver, Colorado 80225

with an additional copy to:

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
Re: DOJ #90-7-1-910

XIII. ASARCO: EL PASO

61. Settlors shall complete corrective action and remediation pursuant to the TNRCC Agreed Order Docket No. 96-0212-MLM-E issued on August 29 , 1996.

XIV. AUDITING PROVISIONS

62. ASARCO shall conduct Environmental Management System (EMS) audits and Environmental Compliance audits at the Operations listed in Exhibit 8, as further specified below.

63. However, in the event ASARCO no longer has ownership interest or operational control at an Operation listed in Exhibit 8, ASARCO shall notify EPA in writing and provide supporting documentation of the transaction, including copies of the documents effecting the transfer. ASARCO, thereafter, shall no longer be obligated to perform the requirements contained in Part XIV of this Decree for that Operation.

64. Further, in the event that an Operation listed in Exhibit 8 has been placed on standby for a period of six (6) months or longer, or shut down, ASARCO shall notify EPA in writing and provide supporting documentation. ASARCO, thereafter, shall no longer be obligated to perform the requirements contained in this Part of this Decree for that Operation, unless ASARCO resumes operations during the pendency of this Decree at that Operation.

ENVIRONMENTAL MANAGEMENT SYSTEMS AUDITS

65. ASARCO shall develop and implement a five-year EMS audit program to assess whether an effective Environmental Management System (EMS) is being implemented at each ASARCO Operation listed in Exhibit 8. This program will commence effective January 1, 2000. The EMS audit program, as further described in the following Paragraphs, is structured into three phases with specific progressive objectives for each phase. The primary objective of the Phase 1 audits (first two audits of this program) shall be to provide ASARCO with feedback on EMS implementation

progress, and with information needed for planning future improvements. ASARCO's goal is to have substantially implemented an EMS at its Operations listed in Exhibit 8 before the third audit year of this program. The primary objectives of the Phase 2 and Phase 3 audits shall be: (a) to assess the EMS at each ASARCO Operation listed in Exhibit 8 to determine whether its implementation by ASARCO meets the criteria defined by the AMS Standard and ASARCO EMS Policy; (b) to identify any issues that may require further improvements or evaluations; and (c) to determine if the EMS is being maintained, and that continuous improvement has been institutionalized.

66. ASARCO shall ensure that the auditors performing the EMS audits and drafting the audit reports, required by this Consent Decree, are qualified, meaning that they satisfy the the requirements of ISO 14012 (First edition, 1996-10-01) before conducting any of the audits required by this Decree, with the exception that on-the-job training shall be completed during the first three years after this Decree is entered by the Court. Classroom training shall include successful completion of an accredited ISO 14000 auditing course or equivalent within two (2) years after entry of this Decree by the Court. ASARCO shall identify any and all site-specific training requirements for the auditors so they can effectively and safely conduct the required audits and shall ensure that their training is completed prior to

conducting an audit.

67. ASARCO shall employ at least six (6) qualified auditors within the Operations listed in Exhibit 8 or the ASARCO Technical Services Center. These qualified auditors shall compose the group from which the audit teams shall be selected for conducting the company-led EMS audits required by this Decree. Each audit team for Phase II audits shall have at least two (2) qualified auditors, one of which is designated and qualifies as a Lead Auditor, and neither of which is from the Operation being audited. Other qualified auditors or auditors in training from elsewhere in ASARCO may participate or assist in the audits.

68. As part of the audit program specified in Paragraph 65 above, ASARCO shall conduct or have conducted EMS audits at each ASARCO Operation listed in Exhibit 8 in accordance with subparagraphs A through C, below. General audit requirements are further identified in Paragraphs 69 and 70.

A. Phase 1 - Audit Years 1 and 2 (2000 and 2001). These EMS audits shall be conducted by qualified auditors, as described by Paragraphs 66 and 67, at each ASARCO Operation listed in Exhibit 8. These audits shall incorporate the following provisions and the objective shall be as stated in Paragraph 65.

1.To verify progress on those elements addressed by each Operation’s EMS Development Plan (EMS Development

Plans are required by Paragraphs 165 and 166 of the ASARCO Montana Consent Decree, Civil Action No. 98-3-H-CCL);

2. To evaluate, where systems have been implemented, conformance to the environmental criteria specified in the AMS Standard and ASARCO Environmental Management System Policy; and

3. To determine whether ASARCO is effectively communicating environmental requirements to affected parts of the organization, including contractors and on-site service providers.

B. Phase 2 - Audit Years 3, 4 and 5 (2002, 2003 and 2004). These annual EMS audits shall be conducted by qualified auditors, as described by Paragraphs 66 and 67, at each ASARCO Operation listed in Exhibit 8. These audits shall incorporate the following provisions and shall be conducted in accordance with ISO 14011 (First edition, 1996-10-01), using ISO 14010 (First edition, 1996-10-01) as supplemental guidance. Each audit's objectives shall be as stated in Paragraph

The EMS audit shall encompass an evaluation of the adequacy of EMS implementation, from the Operations manager down through the Operation. The auditors shall determine conformance

of the EMS with the AMS Standard and ASARCO EMS Policy, by assessing the following:

1. Whether there is a defined program or planned task for the EMS element;
2. Whether the program or task has been implemented, is being maintained, and to what extent;
3. Adequacy of each Operation's internal self-assessment procedures for programs and tasks composing the EMS;
4. Whether ASARCO is effectively communicating environmental requirements to affected parts of the organization, including contractors and on-site service providers;
5. Whether further improvements should be made to the EMS; and,
6. Whether there are observed deviations from ASARCO's written requirements or procedures.

C. Phase 3 - Audit Years 4 and 5 (2003 and 2004). By the end of Phase 3, one EMS audit shall be conducted at each Operation listed in Exhibit 8. ASARCO shall contract for a qualified, independent, third-party auditor(s) (Contract Auditor) to conduct these audits. The Contract Auditor will be selected and paid by ASARCO. ASARCO shall provide a copy of this

Consent Decree to each Contract Auditor who is retained to conduct any of the EMS audits required by this Consent Decree. Not later than 30 days before the first audit conducted by the Contract Auditor, ASARCO shall provide to EPA in writing: (1) the name, affiliation and address of the Contract Auditor(s) selected by ASARCO to conduct the Phase 3 audits at each Operation listed in Exhibit 8 and (2) demonstrate how the selected Contract Auditor satisfies the qualification requirements of ISO 14012 (First edition, 1996-10-01). Each Contract Auditor must be capable of exercising the same independent judgment and discipline that a certified public accounting firm would be expected to exercise in auditing a publicly held corporation.

The audits conducted by the Contract Auditor shall conform to the requirements stated in Paragraph 68 B above, and shall not be conducted concurrently with the Phase 2 audits. The Contract Auditors may also report on areas of concern identified during the course of the audits, that, in their judgement, merit further review or evaluation for potential environmental or regulatory impacts.

69. ASARCO shall prepare and provide to EPA, by January 31 of each year of the Phase 2 and 3 audit programs required by this Consent Decree, a schedule indicating the month during which the EMS audit will be conducted at each ASARCO Operation. The schedule may be revised by ASARCO, provided the required EMS

audits are conducted in accordance with this Consent Decree.

70. For each EMS audit in Phase 2 and Phase 3, ASARCO shall prepare, or have prepared, a written EMS Audit Plan, Audit Report, and EMS Audit Action Plan for the Operation. Each Action Plan shall be developed in a timely fashion and corrective actions shall be implemented in an expeditious manner.

71. ASARCO shall prepare an Annual Report for the Phase 2 and 3 EMS audits required by this Consent Decree. The Annual Report shall be submitted to EPA by January 31 of the year following the year in which the audits were conducted (i.e., reports are due in 2003, 2004 and 2005). The report shall list the dates and locations at which audits were conducted, the personnel who conducted each audit, and the date the Action Plan was drafted. It shall also contain a certification by a responsible corporate officer that all required audits were conducted in accordance with the provisions of this Decree.

COMPLIANCE AUDITS

72. ASARCO shall conduct a five-year compliance audit program to assess ASARCO's compliance at all ASARCO Operations listed in Exhibit 8. This program will commence effective January 1, 2000. ASARCO shall follow the Environmental Compliance Auditing Procedures, attached hereto as Exhibit 9, when conducting these compliance audits at ASARCO Operations.

73. ASARCO shall ensure that the auditors performing the

environmental compliance audits and drafting the audit reports, required by this Consent Decree, are qualified, meaning that they satisfy the the requirements of ISO 14012 (First edition, 1996-10-01) before conducting any of the audits required by this Decree, with the exception of the on-the-job training requirements. All lead auditors shall satisfy the on-the-job training requirements before conducting any of the audits required by this Decree. Classroom training may include internally developed instruction on environmental compliance auditing. ASARCO shall identify any and all site-specific training requirements for the auditors so they can effectively and safely conduct the required audits and shall ensure that their training is completed prior to conducting the audit.

74. ASARCO shall employ at least six (6) qualified auditors within the Operations listed in Exhibit 8 or the ASARCO Technical Services Center. These qualified auditors shall compose the group from which the audit team shall be selected for conducting the company-led environmental compliance audits required by this Decree. Each audit team shall have at least two (2) qualified auditors, one of which is designated and qualifies as a Lead Auditor, and neither of which is from the Operation being audited. Other qualified auditors or auditors in training from elsewhere in ASARCO may participate or assist in the audits.

75. ASARCO shall prepare and provide to EPA an annual

schedule indicating the month during which the compliance audit will be conducted at each ASARCO Operation, by January 31 of each year, beginning in 2000 and ending in 2004. The schedule may be revised by ASARCO, provided the required compliance audits are conducted in accordance with this Consent Decree.

The general audit schedule shall be as follows, for Operations listed in Exhibit 8.

YEAR	OPERATIONS AUDITED
2000	Group 1
2001	Groups 1 and 2
2002	Group 1
2003	Groups 1 and 2
2004	Group 1

76. ASARCO shall develop Audit Reports and Action Plans for each environmental compliance audit required by this Decree in accordance with the provisions of the Environmental Compliance Auditing Procedures. Each Action Plan shall be developed in a timely fashion and corrective actions shall be implemented in an expeditious manner.

77. ASARCO shall submit annual reports to EPA containing a certification by a responsible corporate officer that the compliance audits conducted during the reporting period pursuant to this Decree, were performed in accordance with the Environmental Compliance Auditing Procedures and in accordance with the provisions of this Decree for all ASARCO Operations listed in Exhibit 8 audited during the reporting year. The Annual

Reports shall be submitted to EPA by January 31 each year, beginning in 2001 and ending in 2005. The report shall list the dates and locations at which audits were conducted, the personnel who conducted each audit, and the date the Action Plan was written.

78. ASARCO shall enter into a contract with a qualified, independent, third-party audit consultant (“Consultant Auditor”) to conduct all Compliance Audit Program Conformance Reviews of ASARCO’s environmental compliance audits required by this Decree. The objective of these Conformance Reviews shall be to determine if ASARCO’s compliance audits are being conducted in conformance with the Environmental Compliance Auditing Procedures and the following provisions.

A. Compliance Audit Program Conformance Review Schedule - The Conformance Reviews shall be conducted in accordance with the following schedule.

		CONFORMANCE REVIEWS*	
YEAR	COMPLIANCE AUDITS	GROUP 1	GROUP 2
2001	Groups 1 and 2	2	2
2002	Group 1	2	0
2003	Groups 1 and 2	2	1
2004	Group 1	1	0

* For Group 1 Operations, a Conformance Review of the environmental compliance audits at the East Helena Lead Smelter and the Encyle/Texas Plant shall be conducted twice during the 5-

year compliance audit program required by this Decree. For Group 2 Operations, one of the Conformance Reviews shall be conducted on a compliance audit of the Tennessee Mines Division conducted during the compliance audit program required by this Decree. The Consultant Auditor shall select other Operations whose compliance audits will be reviewed for conformance with the Environmental Compliance Auditing Procedures.

B. Selection of Consultant Auditor

ASARCO, prior to September 1, 2000 , shall propose to EPA for approval, the selection of an independent Consultant Auditor who meets the qualification requirements of ISO 14012 (First edition, 1996-10-01); and has expertise and competence in the regulatory programs under federal and state environmental laws. The Consultant Auditor will be paid by ASARCO. The Consultant Auditor must not directly own any stock in ASARCO or in any parent or subsidiary, and must have no other direct financial stake in the outcome of the compliance audits conducted by ASARCO pursuant to this Consent Decree. The Consultant Auditor must be capable of exercising the same independent judgment and discipline that a certified public accounting firm would be expected to exercise in auditing a publicly held corporation. If ASARCO has any other contractual relationship with the Consultant Auditor, ASARCO

shall disclose to EPA such past or existing contractual relationships. EPA will notify ASARCO in writing of its approval or disapproval as expeditiously as possible. If, in EPA's judgment, such past or existing relationship would affect the Consultant Auditor's ability to exercise the independent judgment and discipline required to conduct the Compliance Audit Program Conformance Review, such Consultant Auditor shall not be retained by ASARCO and another Consultant shall be proposed within thirty (30) days of ASARCO's receipt of EPA's determination. If ASARCO wishes to contract a new Consultant Auditor, ASARCO shall notify EPA in writing and provide an explanation for the change, and shall propose another Consultant Auditor to EPA for approval. Any subsequent Consultant Auditor must satisfy the qualification requirements of this Paragraph.

C. Conformance Review Workplan

ASARCO shall provide a copy of this Consent Decree to each Consultant Auditor who is retained to conduct any of the conformance reviews required by this Consent Decree. Within sixty (60) days prior to the beginning of the first Conformance Review, the Consultant Auditor shall prepare and submit to ASARCO and EPA, for review and comment, a proposed Workplan for the Compliance Audit Program Conformance Review. The proposed Workplan shall specify the Consultant Auditor's

plan for conducting the conformance reviews, and shall be designed to meet the objectives and criteria set forth in this Part. The Workplan shall describe the procedure for annually selecting the Operations whose compliance audits will be reviewed for conformance with the Environmental Compliance Auditing Procedures. The Consultant Auditor shall follow the approved workplan when selecting Operations' audits and conducting the Conformance Reviews required by this Decree. ASARCO shall cooperate with the Consultant Auditor in connection with the preparation and submission of this Workplan, and its subsequent execution. ASARCO shall provide the Consultant Auditor documents necessary for conducting the conformance review, including, but not limited to, audit procedures, reports, and action plans, as well as access to audited Operations and staff participating in the compliance audits.

D. Compliance Audit Program Conformance Review Report Submittal

The Consultant Auditor shall prepare and submit a Conformance Review Report to ASARCO in a timely fashion. ASARCO, thereupon, shall submit the Conformance Review Report prepared by the Consultant Auditor to EPA by January 31 each year, beginning in 2002 and ending in 2005. This report shall describe ASARCO's conformance and instances of non-conformance with the Environmental Compliance Auditing

Procedures, and shall contain the following information listed in ISO 14010 (First Edition, 1996-10-01), Section 4.7 (“Audit Report”).

1. The identification of the Operations reviewed by the Consultant Auditor;
2. The objectives and scope of the Conformance Review;
3. The criteria against which the Conformance Review was conducted;
4. The period covered by the Conformance Review and the date(s) it was conducted;
5. The identification of the Conformance Review team members;
6. The identification of the ASARCO representatives participating in the Conformance review;
7. A statement of the confidential nature of the contents;
8. The distribution for the Conformance Review Report
9. A summary of the Conformance Review process, including any obstacles encountered;
10. The conclusions of the Conformance review, including the conformance and instances of non-conformance, if any, with the Environmental Compliance Auditing Procedures; and
11. The timeliness and thoroughness of the compliance

audits, whether an Action Plan was developed and implemented, and whether the Action Plan was effective when completed.

XV. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

CORPUS CHRISTI ENVIRONMENTAL EASEMENT

79. a. Within 15 days of entry of this Consent Decree, Settlors shall file the executed Deed of Conservation Easement ("Easement") attached hereto as Exhibit 11, in the Recorder's Office or Registry of Deeds [or other appropriate land records office] of Nueces County, State of Texas. It is the purpose of the Easement to assure that the property will be retained forever predominantly in its natural condition, with certain adaptations for public use, and to prevent any use of the property that will significantly impair or interfere with the conservation and public enjoyment and education values of the property. Settlors shall confine the use of the property to such activities as are consistent with the conservation purposes of the Easement, including, without limitation, habitat enhancement and conservation, public use, environmental research and monitoring, and education.

b. Within 60 days of entry of this Consent Decree, Settlors shall complete a biological assessment of the Property which will provide all necessary information for the development of a management plan for the property. Within 90 days of the

entry of this Consent Decree Settlors shall develop, in consultation with local subject matter experts familiar with the biology and ecology of the Corpus Christi ecosystem, who shall include persons with biological expertise from the local campus of Texas A and M University, and submit for review and approval, or approval with modifications, to TNRCC and EPA, a proposed management plan (the “Plan”) for the property that implements the purpose of the Easement attached hereto as Exhibit 11. The proposed plan shall include, but not be limited to:

(1) confirmation that the subject property has been remediated as approved by the TNRCC by its letter dated January 6, 1999;

(2) proposed upgrades to the property consistent with use as a conservation area open to the public, including, trails, markers, displays, and other amenities appropriate for the development of an outdoor environmental education area; (3) steps to be taken to enhance and preserve the property to advance the goals of conservation; (4) the proposed location for the permanent and secure installation of an air monitoring station which will be maintained and checked periodically by TNRCC personnel; and

(5) proposed measures to obtain community involvement in the establishment and maintenance of the property, including, public comment on the proposed management plan and scheduling of public meetings as necessary to address community concerns relating to the management plan.

c. Settlors shall implement and fund said plan in accordance with the approved schedule upon approval of said plan by TNRCC and EPA. Settlors, their heirs and assigns, shall maintain this Easement, attached hereto as Exhibit 11, in accordance with its terms and will confine the use of the property to such activities as are consistent with the purposes of the Easement, including, without limitation, habitat enhancement and conservation, public use, environmental research and monitoring, and education into perpetuity.

d. If Settlors completely fail to establish the conservation area as provided above, Settlors shall pay a stipulated penalty to TNRCC and EPA of $1.0 million.

80. EL PASO PARTICULATE MATTER REDUCTION PROJECT

a. ASARCO shall spend a minimum of $1,850,000 over a five year period to pave roads, alleyways, parking lots and/or medians in the El Paso, Texas area.

b. The purpose of this Supplemental Environmental Project (SEP) is to protect human health and the environment by reducing the amount of particulate matter in the air in the El Paso, Texas air shed area.

c. Beginning in the year 2000, ASARCO shall spend a minimum of $370,000 each year (plus or minus 10% per year, as long as the total after five years is $1,850,000) for five consecutive years to complete its obligations under this SEP. Each paving project

shall meet applicable paving specifications of the Texas Department of Transportation, City of El Paso, El Paso County or the University of Texas at El Paso.

d. For each year, not later than the end of January, ASARCO shall meet with representatives of the TNRCC, EPA, the El Paso City-County Health and Environmental District, the Public Works Department of the City of El Paso, and the University of Texas at El Paso (the “Representatives”) to identify eligible projects with an aggregate estimated paving cost of at least $500,000 that will be eligible for paving during the calendar year (“eligible projects ”) based on the purposes specified in subparagraph 80b. above. The date and location of each meeting shall be set by agreement of the Representatives. In the event of a disagreement among the Representatives regarding eligibility of a project for paving the EPA’s decision as to eligibility shall prevail.

e. Each year ASARCO shall select projects totaling at least $370,000 (plus or minus 10%, as long as the total after five years is $1,850,000) from those projects determined by the Representatives or EPA to be eligible for that year, and shall complete the selected projects by contracting with a public or private entity to conduct the paving.

f. By January 31 of 2001 and of each of the following four years, ASARCO shall document that it contracted for the completion

of paving projects selected from eligible projects and expended a minimum of $370,000.00 per year (plus or minus 10% per year, as long as the total after five years is $1,850,000) on the projects by submitting to EPA and TNRCC a detailed accounting of its contracting and payments for the paving.

g. This SEP shall be deemed complete when ASARCO has documented that it has expended $370,000 per year for five years on paving projects (plus or minus 10% per year, as long as the total after five years is $1,850,000) from the eligible projects identified for each year and that these projects have been completed and EPA has verified that ASARCO has completed at least $1,850,000 of eligible projects. EPA makes no warranty or representation as to the quality or maintenance of the paving.

h. For each failure to meet the deadlines associated with this SEP, ASARCO shall pay the following stipulated penalties:

(1) failure to complete and document paving project contracting and expenditures aggregating $370,000 (plus or minus 10%) to EPA for any year of the project by January 31st of the following year: $2,000 per day until contracting and expenditures have been completed and documented.

(2) failure to complete paving projects worth at least a total of $1,850,000 by the end of the five year project period:

$3000 per day until the projects are completed.

81. TENNESSEE MINES WETLANDS PROJECT - COY MINE

a. In addition to work already performed by ASARCO to address the CWA violations at ASARCO's Tennessee Mines alleged in the Complaint, ASARCO shall perform the following Supplemental Environmental Project ("Coy Mine SEP") designed to restore diverse native riparian and wetland vegetation communities in a four-acre floodplain portion of the Coy Mine site along Mossy Creek. Project objectives that support this goal include:

b. Grade the area to form natural wetland topography that promotes wetland function, creates wetland habitat for vegetative communities, expands and enhances wildlife habitat, and integrates the area into the landscape;

c. Construct the wetland area with appropriate substrate materials to enhance the establishment of vegetation and wildlife habitat;

d. Grade and vegetate non-wetland perimeter sites in the project area to diversify the ecosystem, creating riparian and upland vegetation and wildlife habitat adjacent to the wetland area;

e. Establish vegetative screening of urban and industrial locations along the project area perimeter to enhance wildlife habitat and reduce local noise and air pollution.

Statement of SEP Work

f. The Coy Mine SEP is further described in the Proposed

Supplemental Environmental Project (SEP) for the ASARCO Coy Unit, Hydrometrics, Inc., January which is appended as Exhibit 12 (the "Coy Mine Proposal"). In order to determine the success of this COY Mine SEP for creating a wetlands habitat, a target wetland in the general area of the Coy Mine will be identified (the "Target Wetland") for comparison purposes. The vegetation and wildlife density and diversity will be measured within the Target Wetland using transect surveys and/or other survey techniques approved by EPA.

g. ASARCO, within sixty (60) Days after the effective date of this Consent Decree, shall submit to EPA (Region 4) for approval a Statement of SEP Work which incorporates the provisions of the Coy Mine Proposal and a schedule for completion of the work set forth in the Coy Mine Proposal. Disputes between EPA and ASARCO concerning the Statement of SEP Work shall be resolved in accordance with Part XXII (Dispute Resolution) of this Consent Decree.

ASARCO must obtain all necessary permits and consents

h. Nothing in this Consent Decree shall be construed as an authorization or permit to construct the Coy Mine SEP. ASARCO shall be solely responsible for obtaining all necessary permits and consents. Failure to obtain such permits and consents in a timely fashion shall not relieve ASARCO of its obligations pursuant to this Consent Decree. However, in the event ASARCO, after using its best efforts, is denied any necessary permit

certification, authorization or approval to implement all or any part of the Coy Mine SEP, ASARCO shall notify EPA in writing within fifteen (15) days of receipt of such notice. ASARCO shall thereafter pay a stipulated penalty in accordance with the provisions of subparagraph (j) below.

Completion of the SEP

i. The growth and development of vegetation and the presence of wildlife will be monitored at the site for three years following the completion of construction. Monitoring of reference vegetation will be conducted in a manner similar to the method that was used at the Target Wetlands to establish diversity and density. If at any time prior to the end of three years, the diversity and density of the wetlands vegetation is equal to or greater than seventy (70) per cent of the wetlands reference vegetation at the Target Wetlands, the project will be deemed a success. This determination will be made by EPA.

Stipulated Penalty for SEP

j. (1) In the event that ASARCO is unable to implement all or substantially all of the Coy Mine SEP, ASARCO shall pay a stipulated penalty of $200,000. (2) If, after three years following the completion of construction, the Coy Mine SEP is not deemed a success as defined in Paragraph 81(i)above, ASARCO may apply to EPA for up to an additional twelve (12) months to achieve the 70 percent objective. In the event it does not achieve the objective prior to the expiration of any extension of time granted

by EPA, ASARCO will pay a stipulated penalty calculated by multiplying $100,000 by a factor derived by deducting from 70 percent (0.7) the percentage of density and diversity actually achieved. This determination shall be made by EPA. (3) If the Coy Mine SEP is deemed a success as defined in Paragraph 81(i)above, but ASARCO's net total expenditure was less than $260,000, ASARCO shall pay a stipulated penalty of $100,000, in accordance with the payment provisions of Part XIX (Stipulated Penalties) of this Decree. Any stipulated penalty imposed shall be paid in accordance with the payment provisions of Part XIX (Stipulated Penalties) of this Decree.

82. For so long as this Decree is in effect, Settlors agree that whenever they publicize any of the supplemental environmental projects performed under this Decree or the results of any of these projects they will state in a prominent manner that the project was undertaken as part of the settlement of an enforcement action.

XVI. RECYCLING PROJECTS

83. EL PASO DISCARDED TIRE RECYCLING PROJECT

ASARCO agrees to perform the following tire recycling project at the El Paso Facility:

a. For the five years from the date this Consent Decree is entered, during all periods that the El Paso smelting furnace is

operating and utilizing coke for smelting, ASARCO shall recycle, by charging to the smelter as a substitute for coke, at least 1200 tons per year of discarded shredded automobile and truck tires. This required yearly recycling rate shall be prorated for periods that the smelter is not operating.

b. In the event ASARCO fails to perform this recycling project as provided in a. above, ASARCO shall pay stipulated penalties at the rate of $111,000 per year prorated to account for any performance during the year.

84. CORPUS CHRISTI METALS RECYCLING PROJECT

Settlors agree to perform the following metals recycling project at the Corpus Christi Facility:

a. For a period of five years commencing one year from the date this consent decree is entered, Settlors shall use innovative electrowinning technology to recycle at least an average of 522,000 pounds of nickel, copper, chrome and/or tin per year from wastes such as wastewater treatment sludges, rinse waters, spent etching solutions and spent plating baths from metal finishing operations.

b. In the event Settlors fail to recycle as provided in a. above, a total of 2,610,000 pounds of nickel, copper, chrome or tin over the five year period beginning one year from the date of entry of this decree, Settlors shall pay a stipulated penalty of $2,250,000 prorated to account for any recycling performed as

required in a. above.

85. Unused

XVII. REPORTING

86. All reports to be filed pursuant to this Consent Decree (including reports under approved Statements of Work and reports required by this Part) shall be considered reporting obligations subject to Part XIX (Stipulated Penalties).

Annual Reporting: Overall Consent Decree Compliance

87. In addition to the other reports required by this Consent Decree, Settlors shall submit annual certified progress reports regarding their compliance with this Consent Decree to EPA and TNRCC, except that Settlors shall submit progress reports regarding the Corpus Christi environmental conservation area project semi-annually until the conservation area is fully established. These semi-annual reports shall be provided no later than the 20th day of January and the 20th day of July.

88. The annual progress reports are to be sent to EPA and TNRCC starting no later than the twentieth (20th) day of January after this consent decree is entered for as long as the Consent Decree is in effect. Each report is to provide a summary of the previous year's activities performed by Settlors' to comply with this Consent The report shall, at a minimum:

a. Describe the actions, progress, and status of all activities which have been undertaken pursuant to this Decree;

b. Identify any requirements under this Decree that were not completed in a timely manner, and problem or anticipated problem areas affecting compliance with this Decree;

c. Describe actions completed during the prior year, as well as the actions scheduled for the next year;

d. Describe, and estimate the percentage of completion of all actions to be performed under this consent decree;

e. Describe and summarize all findings to date regarding corrective action requirements under this Consent Decree;

f. Describe actions being taken to address any problems, including any material rejected for reclamation under Encycle's acceptance criteria;

g. Identify changes in key personnel during the year;

h. If not previously provided to EPA and TNRCC, include copies of the results of sampling and tests conducted and other data generated pursuant to corrective action performed under this Decree since the last Progress Report. Settlors may also submit data that have been validated and confirmed by Settlors to supplement any prior submitted data. Updated validated and confirmed data shall be included with the RFI Report if not delivered before; and

i. Describe the status of financial assurance mechanisms, including whether any changes have occurred, or are expected to occur which might affect them, and the status of efforts to bring such mechanisms back into compliance with the requirements of this Decree.

89. Reporting: Recycling Projects

a. El Paso Tire Recycling Project

No later than sixty (60) days after ASARCO completes the El Paso Tire Recycling Project, ASARCO shall provide EPA and TNRCC a Recycling Project Completion Report containing the following information: (i) A description of the project as fully implemented; (ii) A description of the environmental benefits resulting from performance of the project; (iii) an itemized accounting of the project including costs and environmental benefits; and (iv) A certification that the project has been fully implemented pursuant to the provisions of this Consent Decree with supporting documentation.

b. Corpus Christi Metals Recycling Project

No later than sixty (60) days after Settlors complete the Corpus Christi metals recycling project, ASARCO shall provide EPA and TNRCC a Recycling Project Completion Report containing the following information: (i) A description of the project as fully implemented; (ii) A description of the environmental benefits resulting from implementation of the project; (iii) an itemized

accounting of the project including costs and environmental benefits; and (iv) A certification that the project has been fully implemented pursuant to the provisions of this Consent Decree with supporting documentation.

90. Reporting: Supplemental Environmental Projects

Corpus Christi Environmental Easement

a. No later than sixty (60) days after ASARCO completes the establishment of the Corpus Christi conservation easement in accordance with the approved plan as provided in Paragraph 79 above, ASARCO shall provide EPA and TNRCC a SEP Completion Report containing the following information: (i) A description of the SEP as fully implemented; (ii) A description of the environmental benefits resulting from implementation of the easement; (iii) an itemized cost accounting of the SEP; and (iv) A certification that the easement has been fully implemented pursuant to the provisions of this Consent Decree and the approved plan, with supporting documentation. Thereafter, settlors will submit an annual report to the TNRCC detailing information necessary to provide assurances that the property is being managed and maintained in accordance with the terms of the SEP as defined by this Consent Decree and the Easement, attached hereto as Exhibit 11. Settlor shall make the report available to the public and publish public notice of the availability of the report.

El Paso Air Quality Paving Project

b. No later than sixty (60) days after ASARCO completes the

El Paso Air Quality Paving Project as provided in Paragraph 80 above, ASARCO shall provide EPA a SEP Completion Report containing the following information: (i) A description of the SEP as fully implemented; (ii) A description of the environmental benefits resulting from implementation of each SEP; (iii) an itemized cost accounting of the SEP; and (iv) A certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree with supporting documentation.

c. Coy Mine SEP

In accordance with Paragraph 81, a Statement of Work for the Coy Mine SEP shall be submitted to EPA within sixty (60) days of entry of the Consent Decree. Additional reports shall be filed according to the schedule approved by EPA in the Statement of SEP Work. All reports to be filed pursuant to the EPA-approved Statement of SEP Work shall be considered reporting obligations subject to Part XIX (Stipulated Penalties). No later than sixty (60) days after ASARCO completes the Coy Mine SEP as defined in Paragraph 81, ASARCO shall provide EPA a SEP Completion Report containing the following information: (i) A description of the SEP as fully implemented; (ii) A description of the environmental benefits resulting from implementation of each SEP; (iii) an itemized cost accounting of the SEP; and (iv) A certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree and the Statement of SEP Work, with supporting documentation.

XVIII. PENALTY FOR PAST VIOLATIONS

91. Within 30 days after the date of entry of this Decree, Settlors shall pay to the United States and the State a civil penalty in the amount of $5.5 million, plus interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, calculated from the date of lodging of this Decree until the date of payment. Settlors shall pay to the United States $3.5 million, plus the interest on that amount. Settlors shall pay to the State $2 million, plus the interest on that amount.

XIX. STIPULATED PENALTIES

92. If Settlors fails to submit any report required by Part XVII (Reporting) on or before the specified due date, Settlors shall pay a stipulated penalty of $1,000 per day. Provided, however, the time period during which stipulated penalties accrue for failure to submit a report shall not exceed the date the next such periodic report required by that particular part of the Decree is submitted if the later report contains all information required to be submitted in the first (and any subsequently missed) reports.

93. If Settlors fails to comply with any other requirement of this Decree, unless such noncompliance is excused pursuant to Part XV (Force Majeure), Settlors shall pay stipulated civil penalties as follows:

Period of Failure to Comply	Penalty
1st to 14th day	$1000 /day per violation

15th to 30th day	$2000 /day per violation
After 30 days	$3000 /day per violation

The stipulated penalties in this paragraph and Paragraph 92 apply unless specific stipulated penalties are provided for in Part XV (Supplemental Environmental Projects) or Part XVI (Recycling Projects).

94. Nothing herein shall preclude the simultaneous accrual of stipulated penalties for separate Violations of this Decree.

95. All stipulated penalties begin to accrue on the day of the noncompliance or on the day after Settlors fails to submit a required report. Stipulated penalties shall continue to accrue through the final day of noncompliance or until the day a late report is submitted, except as provided in Paragraph 92, above. Stipulated penalties shall continue to accrue during any related dispute resolution period, but shall not be imposed unless the United States or State prevails in the dispute.

96. Settlors shall pay stipulated penalties in the manner set forth in Part XIV (Manner of Payment) by the fifteenth day of the month following the month in which Settlors knew, or should reasonably have known that the Violation(s) occurred, and each month thereafter, for so long as the Violations continues, together with a letter summarizing the Violation(s) for which the payment is made. Any stipulated penalties paid by Settlors shall be paid 50% percentage to the United States and 50% percentage to Texas, except that stipulated penalties paid in connection with the Coy Mine SEP shall be paid solely to the United States.

Penalties paid pursuant to this Decree shall not be tax deductible for purposes of federal, State, or local law.

97. The stipulated penalties herein shall be in addition to other remedies or sanctions available to the United States or to the State by reason of Settlors's failure to comply with the requirements of this Decree, RCRA or the CWA. If, however, the United States or the State collects a stipulated penalty under this Decree and subsequently seeks and is awarded a monetary penalty pursuant to a statutory claim for penalties for the same act(s) or omission(s), Settlors shall receive a credit against the penalty for the amount of the stipulated penalty already paid by Settlors for the act or omission. The payment of stipulated penalties shall not relieve Settlors from specific compliance with this Decree or federal or State law, or limit the authority of the United States or the State of Texas to require compliance with such laws.

98. In any dispute over the applicability of stipulated penalties, Settlors shall bear the burden of proving that it is not subject to stipulated penalties.

XX. MANNER OF PAYMENT

99. All payments made to the United States under this Decree shall be made by electronic funds transfer using instructions provided by the U.S. Attorney’s Office or certified or cashier's check made payable to "Treasurer, United States of America" and shall be sent to:

Financial Litigation Unit
Office of the United States Attorney
P.O. Box 61129
Houston, Texas 77208

together with a letter tendering the check. A copy of the letter and the check shall be sent to DOJ and EPA at each address provided in Part XII.

100. All payments made to the State of Texas under this Consent Decree shall be by certified of cashier's check made payable to the "State of Texas" and shall be mailed to the Chief, Natural Resources Division, Attorney General's Office, P.O. Box 12548, Austin, Texas 78711. The check shall bear the identifying number "AG# 98-922367".

101. If the civil and stipulated penalties provided for in this Decree are not timely paid, this Decree shall be considered an enforceable judgment for purposes of post-judgment collection of any unpaid amounts, and interest, in accordance with Rule 69 of the Federal Rules of Civil Procedure and other applicable federal or State authority. Interest shall accrue at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. Settlors shall be liable for attorneys' fees and costs incurred by the United States or the State to collect any amounts due under this Decree.

XXI. FORCE MAJEURE

102. Settlors's obligation to comply with the requirements of this Decree shall only be deferred to the extent and for the

duration that the delay is caused by a "Force Majeure Event." A "Force Majeure Event" is defined as circumstances beyond the control of the defendant or an entity controlled by the Settlors that could not have been foreseen and prevented by the exercise of due diligence.

103. If any Force Majeure Event occurs which causes or may cause Settlors to violate any provision of this Decree, Settlors shall notify in writing DOJ, EPA, and TNRCC within ten (10) days of the event. The notice shall specifically reference this Part of the Decree and describe in detail the anticipated length of time the Violations may persist, the precise cause or causes of the Violations, the measures taken or to be taken by Settlors to prevent or minimize the Violations as well as to prevent future Violations, and the schedule by which those measures will be implemented. Settlors shall adopt all reasonable measures necessary to avoid or minimize any such Violation. Failure by Settlors to comply with the notice requirements of this Part shall constitute a waiver of Settlors's right to obtain an extension of time for its obligations under this Part of the Decree based on such event.

104. If Settlors assert in their notice, and EPA and TNRCC agree, that the Violation has been or will be caused by a Force Majeure Event, the time for performance of such requirement may be extended for a period not to exceed the actual delay resulting from such event and stipulated penalties shall not be due for said

delay.

105. EPA and TNRCC shall notify Settlors in writing of their agreement or disagreement with Settlors's claim of a Force Majeure Event within thirty (30) days of receipt of Settlors's notice under this Part.

106. If EPA and TNRCC disagree, Settlors may submit the matter for resolution pursuant to Part XXII of this Decree (Dispute Resolution). If Settlors submit the matter to the Court for resolution and the Court determines that the Violation was caused by a Force Majeure Event, Settlors shall be excused from stipulated penalties as to that Violation, but only for the period of time the Violation continues due to such circumstances.

107. Unanticipated or increased costs or expenses associated with the implementation of this Decree, or changed financial circumstances, shall not, in any event, serve as a basis for changes in this Decree, except as provided by the Financial Assurance requirements in IX of this Decree.

108. Compliance with any requirement of this Decree by itself shall not constitute compliance with any other requirement. An extension of one compliance date based on a particular incident does not result in an automatic extension of other subsequent compliance date or dates. Settlors must make an individual showing of proof regarding each requirement for which an extension is sought.

109. Settlors shall bear the burden of raising and proving

that any delay or Violation of any requirement of this Decree was caused by a Force Majeure Event. Settlors shall also bear the burden of proving the duration and extent of any delay or Violation found attributable to such circumstances.

XXII. DISPUTE RESOLUTION

110. The dispute resolution procedures of this Part shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree. However, the procedures set forth in this Part shall not apply to actions by the United States or the State to enforce obligations agreed to herein by Settlors that have not been disputed in accordance with this Part.

111. Any dispute which arises under or with respect to this Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless such period is modified by written agreement of the parties. The dispute shall be considered to have commenced when either the Settlors, or EPA or TNRCC, sends the other parties a written Notice of Dispute. The dispute notice shall set forth the specific points of the dispute, the basis for the objection of the disputing parties, and any matters, or other information, which the disputing parties consider necessary or appropriate.

112. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the

position advanced by EPA and/or TNRCC, shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settlors invoke the formal dispute resolution procedures of this Part by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, all non-privileged factual data, analysis and/or opinion relevant to the disputed matter(s). The Statement of Position may highlight any submitted information supporting Settlors's position and any supporting documentation relied upon by Settlors.

113. Within fourteen (14) days after receipt of Settlors's Statement of Position, EPA and/or TNRCC will serve on Settlors a Statement of Position, including EPA and/or TNRCC's position regarding the disputed matter(s), and all non-privileged factual data, analysis, and/or opinion relevant to the disputed matter(s) not submitted by Settlors. The EPA and/or TNRCC Statement of Position may highlight any submitted information supporting EPA or TNRCC's position and any supporting documentation relied upon by EPA or TNRCC.

114. If there is disagreement as to whether dispute resolution should proceed under Paragraph 115 or 116, the parties shall follow the procedures set forth in the Paragraph determined by EPA or TNRCC to be applicable. However, if Settlors ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the

standards of applicability set forth in Paragraphs 115 and 116.

115. Formal dispute resolution for disputes pertaining to the selection or adequacy of any Corrective Measures and all other disputes that are accorded review on the Administrative Record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph.

a. An Administrative Record of each formal dispute under this Paragraph shall be maintained by EPA or TNRCC and shall include all statements of position, including supporting documentation, submitted pursuant to this Part. Where appropriate, EPA and TNRCC may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director, Multimedia Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, EPA Headquarters ("MMED") will issue a final administrative decision resolving disputes arising under Part XIV of this Consent Decree (Auditing Provisions). The Director, Compliance Assurance and Enforcement Division, EPA Region VI ("EPA Region VI Director"), or Deputy Director for Enforcement, TNRCC ("TNRCC Deputy Director"), will issue a final administrative decision resolving any disputes related to this Consent Decree regarding Texas facilities. The Director, Water Enforcement Division, EPA Region IV

("EPA Region IV Director") will issue a final administrative decision resolving any disputes related to this Consent Decree regarding Tennessee Mine Facilities. All such final administrative decisions will be based on the Administrative Record described in subparagraph a. above. This decision shall be binding upon Settlors when Settlors receive the decision, subject only to the right to seek judicial review pursuant to subparagraphs c. and d. below.

c. Any administrative decision made by EPA or TNRCC pursuant to subparagraph b. above shall be reviewable by this Court, provided that a notice of judicial appeal is filed by Settlors with the Court and served on all Parties within 10 days of Settlors' receipt of the EPA or TNRCC decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Decree. The United States or the State may file a response to Settlors's notice of judicial appeal.

d. In any judicial proceedings on any dispute governed by this Paragraph, Settlors shall have the burden of demonstrating that the decision is arbitrary and

capricious or otherwise not in accordance with law. Judicial review of the EPA or TNRCC decision shall be on the Administrative Record compiled pursuant to subparagraph a. above.

116. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any Corrective Measures nor are otherwise accorded review on the Administrative Record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Statements of Position submitted pursuant to Paragraphs 112 and 113, the MMED, EPA Region VI Director, TNRCC Deputy Director, or EPA Region IV Director, will issue a final administrative decision resolving any disputes arising under this Decree. The decision shall be binding on Settlors unless, within 10 days of receipt of the decision, Settlors file with the Court and serves on the United States and the State a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Decree. The United States and State may file a response to Settlors’s notice of judicial appeal.

b. Judicial review of any dispute governed by this

Paragraph shall be governed by applicable provisions of law.

117. The filing of a petition asking the Court to review the resolution of a dispute by the MMED, EPA Region VI Director, EPA Region IV Director, or TNRCC Deputy Director shall not itself postpone or affect any deadline for Settlors to meet its obligation under this Decree. The deadline shall remain as specified in this Decree and accompanying documents containing compliance requirements, unless the parties agree in writing or the Court orders otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Decree. In the event that Settlors do not prevail on the disputed issue, stipulated penalties shall be paid as provided in Part XIII of this Decree (Stipulated Penalties).

XXIII. ACCESS

118. At all reasonable times, EPA, TNRCC, and/or any authorized EPA or TNRCC representative shall be authorized to enter and freely move about all properties affected by this Decree during the time period this Decree is in effect for the purposes of, inter alia: interviewing personnel and contractors; inspecting records, operating logs, and contracts related to this Decree; conducting such tests, sampling or monitoring as EPA

deems necessary; using a camera, sound recording, or other similar type equipment; verifying the reports and data submitted to EPA and/or TNRCC by Settlors; and any other activities necessary to properly review the progress of Settlors in carrying out the terms of this Decree. To the extent that such information is business confidential or proprietary, Settlors shall so advise such persons in writing, and 40 C.F.R. Part 2 procedures shall be followed.

119. Settlors shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to activities undertaken pursuant to this Decree. To the extent that such information is business confidential or proprietary, Settlors shall so advise such persons in writing, and 40 C.F.R. Part 2 procedures shall be followed.

120. EPA shall reciprocate with respect to information collected or generated by EPA pertaining to this Decree and upon request by Settlors, EPA shall provide Settlors with split samples of any samples taken by EPA.

121. This provision in no way affects or reduces any rights of entry or inspection that the United States or the State has under any law or regulation.

XXIV. EFFECT OF DECREE

122. Settlors' payment of all civil penalties due, and Settlors’s commitments to pay all stipulated penalties due and

owing under this Decree, and Settlors' commitment to fully and successfully complete the requirements of this Decree, shall constitute full satisfaction of the claims for civil penalties for civil violations alleged in the complaint of the United States and the State that occurred prior to the date of lodging of this Decree. This release is conditioned upon the complete and satisfactory performance by Settlors of their obligations under this Decree.

a) Settlors agree not to assert any claims or causes of action against the United States or the State of Texas, including any department, agency or instrumentality of the United States or the State, with respect to matters related to this Decree, including, but not limited to, 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), 111, 112, 113 or any other provision of law; any claim against the United States or the State, including any department, agency or instrumentality of the United States or the State, under CERCLA Sections 107 or 113 related to the Facilities, or this Decree. Nothing in this Decree shall be deemed 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).

b) In any subsequent administrative or judicial

proceeding initiated by the United States or the State, for injunctive relief, penalties, recovery of response costs, or other appropriate relief relating to any Settlors' Facilities, Settlors shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this subparagraph affects the enforceability of this Paragraph 122.

123. This Decree does not limit the United States' or the State's right to obtain penalties or injunctive relief under RCRA, or other federal or State statutes or regulations, except as expressly specified in Paragraph 122, and notwithstanding compliance with the terms of this Decree, Settlors are not released from liability, if any, for the costs of any response actions taken or authorized by EPA or TNRCC under any applicable statute, including CERCLA.

124. EPA and the State reserve all of their statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which pertain to Settlors' failure to comply with any of the requirements of this Decree, including the assessment of penalties under RCRA.

125. This Decree shall not be construed as a covenant not to

sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA or the State has under RCRA, or any other statutory, regulatory, or common law authority, except as provided in Paragraph 122 above.

126. Except as expressly provided in this Decree, compliance by Settlors with the terms of this Decree shall not relieve Settlors of their obligations to comply with RCRA or any other applicable local, state or federal laws and regulations.

127. By consenting to the entry of this Decree, the United States and the State do not warrant or aver that Settlors' compliance with this Decree will constitute or result in compliance with RCRA, or any other federal, State, or local permit, law, rule or regulation. Notwithstanding EPA's and/or the TNRCC's review and approval of any plans formulated pursuant to this Decree, Settlors shall remain solely responsible for compliance with RCRA, this Decree, and any other applicable federal, State, or local permit, law, rule, or regulation. Compliance with this Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits, except as specifically provided in Paragraph 122 of this Part.

128. Except as expressly provided herein, nothing in this Decree shall constitute or be construed as a release from any claim, cause of action or demand in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of, or relating in any way to, the

generation, storage, treatment, handling, transportation, Release, management or disposal of any Hazardous Wastes, Hazardous Constituents, hazardous substances, hazardous materials, pollutants, or contaminants found at, on, or under, taken to or from, or migrating to, from or through the Facilities.

129. This Decree is not intended to be nor shall it be construed as a permit. This Decree is not admissible, nor shall it be used in any way in any legal or administrative proceeding relating to any permit application, including, as precedent for the approval of any permit application. This Decree does not relieve Settlors of any obligation to obtain and comply with any local, state, or Federal permits. Unless otherwise expressly provided in this Decree, the pendency or outcome of any proceeding concerning the issuance, reissuance, or modification of any permit shall neither affect nor postpone Settlors's duties and liabilities as set forth in this Decree.

130. Neither the United States Government, nor its agencies, departments, agents, and employees (the "U.S. Government"), shall be held out or construed to be a party to any contract entered into by Settlors in carrying out activities pursuant to this Decree.

131. The U.S. Government shall not be liable for any injury or damages to persons or property resulting from acts or omissions of Settlors or its contractor(s) in implementing the

requirements of this Decree, or any EPA-approved Work Plans or planning documents submitted and/or approved pursuant to this Decree.

132. The U.S. Government shall not be considered agent, independent contractor, receiver, trustee and assign, in carrying out activities required by this Decree.

133. Neither the State of Texas, nor its agencies, departments, agents, and employees, shall be held out or construed to be a party to any contract entered into by Settlors in carrying out activities pursuant to this Decree.

134. The State shall not be liable for any injury or damages to persons or property resulting from acts or omissions of Settlors or its contractor(s) in implementing the requirements of this Decree, or any approved Work Plans or planning documents submitted and/or approved pursuant to this Decree.

135. The State shall not be considered agent, independent contractor, receiver, trustee and assign, in carrying out activities required by this Decree.

XXV. COSTS OF SUIT

136. Each party shall bear its own costs and attorney's fees in this action. Except that, should Settlors subsequently be determined to have violated this Decree, then Settlors shall be liable to the United States and the State for any costs and attorney's fees incurred by the United States and/or the State in any actions against Settlors for noncompliance with this Decree.

XXVI. CERTIFICATION

137. Any notice, report, certification, data presentation or other document submitted by Settlors under or pursuant to this Decree, which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Settlors' compliance or non-compliance with any requirement(s) of this Decree shall contain the following certification by a responsible corporate officer or duly authorized representative of Settlors:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature _____

Name
Title

A "responsible corporate officer" means a president,

secretary, treasurer, or vice-president of Settlors in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.

XXVII. MODIFICATION

138. Modifications to Work Plans submitted pursuant to this Decree that do not materially alter the Work Plans may be made by agreement of the parties and are effective and become an enforceable part of this Decree upon approval by EPA and TNRCC. Otherwise, there shall be no modification of this Decree without written approval of all of the parties to this Decree and the Court or through dispute resolution under this Decree. Nothing herein shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Decree.

XXVIII. PUBLIC COMMENT

139.

a. The parties agree and acknowledge that final approval by the United States and entry of this Decree is subject to notice of the lodging of the Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. The United States reserves the right to withdraw its consent to this Decree based on public comment received.

b. The parties agree and acknowledge that final approval by the State and entry of this Decree is subject to publication of notice of settlement of the Decree in

the Texas Register, an opportunity for public comment, and consideration of any comments. The State reserves the right to withdraw its consent to this Decree based on public comment received on this Decree.

140. Settlors shall not withdraw their consent to this Decree during the period of governmental and judicial review between lodging and entry of this Decree, and hereby consent to entry of this Decree without further notice.

XXIX. CONTINUING JURISDICTION OF THE COURT

141. The Court shall retain jurisdiction to enforce this Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Decree.

XXX. TERMINATION

142. This Decree shall be terminated in two stages as set forth in this Part upon completion of all requirements of this Decree applicable to each stage as follows:

Stage I. As to the requirements of this Decree regarding compliance by Encycle's operations with the hazardous waste management standards of RCRA and State law as set forth in Sections VI and Section X, this Decree shall terminate upon joint motion of the parties any time after five years from the date of entry of this decree provided:

a. TNRCC or EPA has issued Encycle a new hazardous waste

management permit under RCRA covering Encycle's operations at the Corpus Christi Facility;

b. Settlors are in compliance with the terms of this permit and the terms of this Decree;

c. Settlors have submitted a certification to the United States and the States that conditions a. and b. above have been met; and

d. the United States and State, has concurred in writing with Settlors's contention that conditions a. and b. have been met. If the United States or the State, disputes Settlors' contention, the dispute resolution provision of this Decree (Part XXII) shall be invoked and this Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

Stage II. As to all other provisions of this Decree, upon joint motion of the parties after each of the following has occurred:

a. Settlors have completed all actions required by this Decree;

b. Settlors have paid all monies and penalties due under this Decree;

c. Settlors have submitted a certification to the United States and the State that conditions a. and b., above, have been met; and

d. The United States and State, has concurred in writing with Settlors's contention that conditions a. and b. have been met. If the United States or the State, disputes Settlors' contention, the dispute resolution provision of this Decree (Part XXII) shall be invoked and this Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

Dated and entered this ____ day of _____.

_____
UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Decree, subject to the public notice requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES OF AMERICA:

DATE

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

DATE

MICHAEL D. GOODSTEIN
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

United States Attorney

DATE

Assistant United States Attorney

Of Counsel:

PETER MOORE, Esquire
TERRY SYKES, Esquire
CHARLES, FIGUR, Esquire
ZYLPHA PRYOR, Esquire
United States Environmental Protection Agency

WE HEREBY CONSENT to the entry of this Decree, subject to the public notice requirements of 28 C.F.R. § 50.7.

DATE	STEVEN A. HERMAN Assistant Administrator for Enforcement U.S. Environmental Protection Agency Washington, D.C.

WE HEREBY CONSENT to the entry of this Decree, subject to the public notice requirements of 28 C.F.R. § 50.7.

DATE	GREGG A. COOKE Regional Administrator U.S. Environmental Protection Agency, Region VI

WE HEREBY CONSENT to the entry of this Decree, subject to the public notice requirements of 28 C.F.R. § 50.7.

DATE

WILLIAM YELLOWTAIL
Regional Administrator
U.S. Environmental Protection Agency,
Region VIII

THE STATE OF TEXAS CONSENTS to the entry of this Decree, subject to the public notice requirements of Tex. Water Code Ann. § 7.110.

Date:

_____
ALBERT M. BRONSON
Assistant Attorney General
State Bar No. 03057500

EUGENE CLAYBORN
Assistant Attorney General

Natural Resources Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Tel: (512) 463-2012
Fax: (512) 320-0911

ATTORNEYS FOR THE STATE OF TEXAS

WE HEREBY CONSENT to the entry of this Decree, subject to the public notice requirements of 28 C.F.R. § 50.7.

FOR ASARCO INCORPORATED and ENCYCLE/TEXAS, INC.:

DATE _____
Name:
Title:

DATE _____
Name:
Title: