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

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

SETTLEMENT AGREEMENT REGARDING RESPONSE COSTS AT THE EAST HELENA SUPERFUND SITE

WHEREAS, the East Helena Superfund Site ("Site") located in East Helena, Montana includes a former lead smelter facility, the City of East Helena, nearby residential subdivisions, numerous rural developments such as farms and homes, railroad right-of-way areas and other undeveloped lands;

WHEREAS, pursuant to its authority under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9605, in September 1984 the United States Environmental Protection Agency ("EPA") added the Site to the National Priority List;

WHEREAS, the United States, and the State of Montana ("State"), by and through the Montana Department of Environmental Quality ("DEQ"), allege that ASARCO, LLC, formerly known as ASARCO Incorporated, a New Jersey corporation ("ASARCO"), and ASARCO Master Inc. are potentially responsible parties with respect to the Site;

WHEREAS, EPA segregated the Site into operable units;

WHEREAS, Operable Unit No. 2 addresses the cleanup of contaminated soils in residential areas and Undeveloped Lands (as defined below) within the Site but not contaminated groundwater thereunder, if any;

WHEREAS, EPA and ASARCO entered into an Administrative Order on Consent for Removal Action, Docket No. CERCLA- VIII- 91-17, issued 7/19/91 ("AOC"), to conduct a removal action to carry out the cleanup of certain contaminated soils in Operable Unit No. 2 and, as amended, to fund the East Helena Lead Education and Abatement Program ("LEAP"), which was established to educate the public about lead exposure prevention and risk abatement and to promote assessments of homes for lead contamination of interior dust, yard soil, drinking water and paint;

WHEREAS, since 1991, and in accordance with the AOC, ASARCO has conducted soil remediation involving at least 658 residential yards, at least 443 sections of alleys, road and road aprons, and various irrigation ditches, flood channels, school playgrounds, public parks and other public areas, and has also funded LEAP;

WHEREAS, in January 2007, EPA issued a Proposed Plan that set forth the preferred alternatives for EPA's final remedial action for Operable Unit No. 2 ("Proposed Plan");

WHEREAS, EPA's Proposed Plan used the term "undeveloped lands" to describe certain areas within the Site, including: agricultural lands and all other undeveloped lands impacted by the smelter's operations, including but not limited to water-conveying ditches and channels, railroad rights of way, the rodeo grounds and the residential soil repository (collectively, "Undeveloped Lands");

WHEREAS, EPA's Proposed Plan would require: (a) continued funding of the existing LEAP; (b) soils cleanup of the remaining, existing, qualifying residential yards and vacant lots; (c) soils cleanup of remaining contaminated unpaved streets, aprons and alleys in existing residential areas; (d) cleanup of remaining identified contaminated historic irrigation ditches and water spreading channels when they are located within or adjacent to residential areas; (e) soil cleanup of approximately seven acres of the railroad right-of-way; (f) soil sampling of any Undeveloped Lands if in the future those lands are subject to a change in use that requires a more stringent cleanup standard; (g) soil cleanup of Undeveloped Lands that are subject to a change in use as described above if the soil sampling results indicate lead concentration levels in the soil in excess of EPA's cleanup action level of 500 parts per million; (h) establishment of certain institutional controls; and (i) ensuring that soil cleanup actions based on lead concentration levels also remediate soil arsenic concentration levels that are greater than risk-based levels for each specified use;

WHEREAS, from January through April 2007, EPA held a public comment period with respect to the Proposed Plan and intends, after State involvement and consideration of public comment, to issue a Record of Decision setting forth the final remedy for some or all of Operable Unit No. 2;

WHEREAS, ASARCO and ASARCO Master Inc. ("Debtors") filed with the United States Bankruptcy Court for the Southern District of Texas voluntary petitions for relief under Title 11 of the United States Bankruptcy Code on August 9, 2005 (the "Bankruptcy Case");

WHEREAS, the United States on behalf of EPA and the State on behalf of the DEQ each filed Proofs of Claim in the Bankruptcy Case (numbers 8375, 11008, 11009, 10746 by the United States and 10524, 10525, 10526, 10527 by the State) ("Proofs of Claim") setting forth claims against Debtors under Section 107 of CERCLA for oversight costs, penalties and various past and future response costs as defined under CERCLA in connection with the Site. Such future costs include but are not limited to the future funding of cleanup or other response activities identified in the Proposed Plan, including but not limited to the future funding of LEAP; completion of the soil cleanup of residential yards, historic irrigation ditches, water-conveyance channels, and other areas, soil cleanup of a certain railroad right-of-way area, conduct of remedial work plan and remedial design studies; any future necessary investigation and soil cleanup of Undeveloped Lands; and payment of future EPA and State oversight costs;

WHEREAS, the State Proofs of Claim also set forth claims against Debtors for penalties under the Resource Conservation and Recovery Act related to the Site ("State Penalty");

WHEREAS, Debtors have disputed the claims with respect to the Site filed by the United States and the State as set forth in the Proofs of Claim and/or various expert reports submitted by the United States and the State;

WHEREAS, the Court established a process for estimating the claims of the United States and the State with respect to the unowned portions of the Site, including the use of mediation;

WHEREAS, having entered into mediation the United States, the State and Debtors ("Parties") hereto desire to settle, compromise and resolve their disputes with

respect to Operable Unit 2, as provided herein, without the necessity of an estimation hearing;

WHEREAS, this Settlement Agreement is intended to serve as a settlement as provided herein of the claims by the United States and the State against Debtors with respect to all response costs incurred or to be incurred for remediation of soils at Operable Unit No. 2 at the properties that are not owned by ASARCO or ASARCO Master Inc. ("Unowned Properties"), any past penalties assessed by EPA or DEQ with respect to Unowned Properties, and the State Penalty;

WHEREAS, this Settlement Agreement does not address those properties within Operable Unit No. 2 that are owned by ASARCO and ASARCO Master Inc. ("Owned Properties") or groundwater under the Unowned Properties or Owned Properties;

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

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

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

I. JURISDICTION

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

II. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

2. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the Parties hereto, their legal successors and assigns, and any trustee, examiner or receiver appointed in the Bankruptcy Case.

III. ALLOWANCE OF CLAIMS AND STIPULATION REGARDING CERTAIN WORK AT OPERABLE UNIT 2

3. In settlement and satisfaction of all claims and causes of action of the United States and the State with respect to any and all response costs incurred or to be incurred at the Unowned Properties (including but not limited to all future cleanup or other response activities identified in EPA's Proposed Plan as described above and all liabilities and obligations asserted in the Proofs of Claim and other pleadings filed in the Bankruptcy Court by the United States and the State relating to the Unowned Properties, such as the State's claim for 10 percent matching for response costs) and subject to the obligations and provisions in Section IV and the reservation of rights set forth in Section VII, the United States on behalf of EPA shall have an allowed general unsecured claim in the total amount of $13,209,783.

4. Distributions received by EPA for its allowed claims under Paragraph 3 shall be deposited in a Site-wide Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

5. The allowed claims under this Settlement Agreement shall not be subordinated to other general unsecured claims pursuant to any provisions of the Bankruptcy Code or other applicable law that may be contended to authorize or provide for subordination of

allowed claims, including without limitation sections 105 and 510 of the Bankruptcy Code.

6. Although the claims granted to the United States herein are described as general unsecured claims, this description is without prejudice to the United States' alleged secured right of set-off against ASARCO's claim for tax refunds and nothing in this Settlement Agreement shall modify or waive such alleged secured claim of set-off.

7. With respect to the allowed unsecured claim set forth in Paragraph 3 for the United States on behalf of EPA, only the amount of cash received by the agency (and net cash received on account of any non-cash distributions) under this Settlement Agreement for the allowed general unsecured claim and not the total amount of the allowed claim, shall be credited by the agency to its account for the particular site, which credit shall reduce the liability to the EPA of non-settling potentially responsible parties for the particular site by the amount of the credit.

IV. FUTURE OBLIGATIONS UNDER CERCLA

8. The Parties agree that the cost of some of the remaining work in Operable Unit 2 may be less expensive if ASARCO rather than EPA performs the work.

9. The Parties hereby agree that certain response actions to be performed at the Site will be addressed by stipulation, thereby eliminating the need to estimate the cost of that work as an allowed claim. Hence, ASARCO stipulates it will not object to any Proposed Annual Budget -- in an amount or amounts up to $5,773,371 -- from the Asarco Environmental Trust Fund for the reimbursement of costs to the extent incurred to conduct certain response activities in Operable Unit 2 consisting of: (i) the response actions to be taken to remediate the approximately 73 remaining residential yards and

nine (9) vacant lots at the Site, (ii) remediation of irrigation ditches, including certain ditches, and approximately seven acres of railroad right-of-way owned by Burlington Northern Santa Fe Railroad specifically referenced in the Proposed Plan, (iii) the cost to prepare or conduct any remedial work plans, remedial designs, and five-year reviews (collectively "Studies") with respect to Operable Unit No. 2, (iv) EPA and State costs for oversight of the Studies, and (v) ASARCO further stipulates that it shall continue to fund the LEAP program in 2008. Subject to this Stipulation, all budgeting and payments under the ASARCO Environmental Trust shall occur pursuant to the requirements and processes set forth in that Trust.

10. The position of the United States and the State is that the estimated cost to ASARCO to perform the work identified in the previous Paragraph 9 will not exceed $5,773,371. This estimate is premised on the assumption that ASARCO, and not the EPA, shall perform that remaining work set forth in Paragraph 9, above. Upon request by EPA in consultation with DEQ, ASARCO shall conduct (or fund in the case of EPA and State costs for oversight of the Studies) those certain response activities listed above in Paragraph 9(i)-(v) that are identified in the Proposed Plan and may be identified in any ROD for Operable Unit No. 2 which ROD has not yet been issued by EPA; provided, however, that ASARCO's obligation to conduct (or fund in the case of EPA and State costs for oversight of the Studies) such response activities listed above in Paragraph 9(i)-(v) is contingent on the availability of sufficient funds from the Asarco Environmental Trust Fund or the Prepetition Asarco Environmental Trust Escrow (in the event the Debtors' pending plan is confirmed) and ASARCO shall not be required to expend more than $5,773,371 from either or both of those sources for those response activities.

11. This Settlement Agreement is without prejudice to the Parties' positions regarding the work requirements of the above-referenced AOC.

V. OUTSTANDING OBLIGATIONS

12. Except as specifically provided in Paragraph 20, all obligations of Debtors to perform work pursuant to the Administrative Order on Consent for Removal Action, *In the Matter of East Helena Site - Site No. 8T30* (EPA Docket No. CERCLA-VIII-91-17), are deemed fully satisfied and Debtors shall be removed as a party to such order pursuant to the terms hereof; provided, however, that all requirements to retain records shall remain in full force and effect until the Effective Date of this Settlement Agreement, and that Debtors shall produce, or make available for production, any such records so retained to EPA in the state and condition in which such records are found. Such order shall be deemed modified or otherwise conformed to the terms of this Settlement Agreement.

13. Between the date this Settlement Agreement is lodged with the Court and the date a plan of reorganization is confirmed by the Court, EPA may request that Debtors provide or make available in the state and condition in which such records are found any records retained pursuant to the order identified in Paragraph 12. Debtors shall produce such records, or make such records available for production, in the state and condition in which such records are found, to EPA within thirty (30) days of any such request and in any event prior to the confirmation of a plan of reorganization.

VI. COVENANTS NOT TO SUE

14. Except as specifically provided in Section VII (Reservation of Rights) and except for that work covered in Section IV (Future Obligations), the United States on behalf of EPA and the State on behalf of DEQ covenant not to sue or assert any civil claims or

causes of action against Debtors with respect to: (a) any and all response costs incurred or to be incurred in connection with the soils at the Unowned Properties, including any and all response costs relating to any release or threatened release of a hazardous substance at or from any portion of the Unowned Properties, pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Sections 711, 715(2)(A), and 722 of the Montana Comprehensive Environmental Cleanup and Responsibility Act ("CECRA"), Mont. Code Ann. §§ 75-10-701, 75-10-715(2)(A) and 75-10-722, (b) any and all response costs incurred or to be incurred at the Site (but not on Owned Properties), in which for the purposes of the covenants and reservations the Site includes all areas where hazardous substances originating at the Site have come to be located through natural migration (other than to Owned Properties) pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Sections 711, 715(2)(A) and 722 of CECRA, Mont. Code Ann. §§ 75-10-701, 75-10-715(2)(A) and 75-10-722, (c) any other liabilities or obligations asserted in their Proofs of Claim for the soils at the Unowned Properties, or (d) any other liabilities or obligations asserted in the State Proofs of Claim for the State Penalty. These covenants not to sue are conditioned upon the satisfactory performance by Debtors. The United States and the State reserve, and this Settlement Agreement is without prejudice to, all rights against Debtors with respect to all matters not expressly included within these Covenants Not to Sue.

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

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

17. The covenants not to sue contained in Paragraph 14 of this Settlement Agreement extend only to Debtors and the persons described in Paragraphs 14 and 16 above and do not extend to any other person. Nothing in this Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than Debtors, the United States, the State and the persons described in Paragraph 16. The United States, the State and Debtors expressly reserve all claims, demands, and causes of action either judicial or administrative, past, present or future, in law or equity, which the United States, the State or Debtors may have against all other persons, firms, corporations, entities, or predecessors of Debtors for any matter arising at or relating in any manner to the sites or claims addressed herein.

18. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States or the State to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable federal or state law or regulation, including but not limited to the Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 to 6992k ("RCRA"), or to alter the applicable legal principles governing judicial review of any action taken by the United States or the State pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit

the information gathering authority of the United States or the State under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable State or federal law or regulation, including RCRA, or to excuse the Debtors from any disclosure or notification requirements imposed by CERCLA or any other applicable federal or state law or regulation, including RCRA.

19. Debtors covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Unowned Properties and the Site (but not with respect to the Owned Properties), 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), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law (or similar claim for reimbursement under State law); any claims against the United States or the State, including any of their departments, agencies or instrumentalities, under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613 or comparable provisions under State law; and any claims arising out of response activities at the Unowned Properties or the Site (but not with respect to the Owned Properties). Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

VII. RESERVATION OF RIGHTS

20. The covenants not to sue set forth in Section VI do not pertain to any matters other than those expressly specified therein. The United States and the State reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtors or any

other person with respect to all other matters. The United States and the State also specifically reserve: (i) any action to enforce the terms of this Settlement Agreement, including but not limited to those responsibilities set forth in Section IV (Future Obligations); (ii) liability arising from actions of Debtors at the Unowned Properties or the Site after the Effective Date; (iii) any liability for property owned by Debtors; (iv) any liability for groundwater contamination, including all areas where contamination from the Owned Property has come to be located; and (v) any liability under the Consent Decree entered in United States v. ASARCO, CV 98-3-H-CCL (D. Mont. 1998); provided, however, that Debtors reserve all rights to contest any such liability with respect to the matters under subparagraphs (ii) through (iv). Debtors also reserve any action to enforce their rights under the terms of this Settlement Agreement.

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

VIII. CONTRIBUTION PROTECTION

22. The Parties hereto agree that, as of the Effective Date, Debtors are entitled to protection from contribution actions or claims, as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, and Section 719(1) of CECRA, Mont. Code Ann. § 75-10-719(1) for matters addressed in this Settlement Agreement. The matters addressed in this Settlement Agreement include all response costs incurred or to be incurred by the United States and the State of Montana in connection with the soils at the Unowned Properties.

IX. PUBLIC COMMENT

23. This Settlement Agreement will be subject to a thirty (30) day public comment period following notice published in the Federal Register, which may take place concurrently with the judicial approval process under Paragraph 24 hereof. The United States and the State each reserve the right to withdraw or withhold their consent if the public comments regarding the Settlement Agreement disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate. At the conclusion of the public comment period, the United States and the State will provide the Court with copies of any public comments and their response thereto.

X. JUDICIAL APPROVAL

24. The settlement reflected in this Settlement Agreement shall be subject to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. The Debtors shall move promptly for court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval. If this Settlement Agreement is not authorized and approved by the Bankruptcy Court, this Settlement Agreement shall be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of any Party with respect to the matters contained herein.

XI. RETENTION OF JURISDICTION

25. This Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the Parties, for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction and relief as may be

necessary or appropriate for the construction or interpretation of this Settlement Agreement, or to effectuate or enforce compliance with its terms.

XII. EFFECTIVE DATE

26. This Settlement Agreement shall be effective upon approval by the Court in accordance with Paragraph 24 hereof.

XIII. SIGNATORIES/SERVICE

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

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR THE UNITED STATES

Date: _____

_____
Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

_____
Elliot M. Rockler
Alan S. Tenenbaum
David L. Dain
Environment and Natural Resources Division
Environmental Enforcement Section
U.S. Department of Justice

Date: _____

_____
Matthew Cohn
Supervisor Attorney
Legal Enforcement Program
EPA Region 8

Date: _____

_____
Sharon L. Kercher, Director
Technical Enforcement Program
EPA Region 8

FOR THE STATE OF MONTANA

Date: _____

_____
Richard H. Opper
Director
Montana Department of Environmental Quality

Date: _____

_____
Mary Capdeville
Assistant Attorney General
Montana Department of Justice

FOR ASARCO, LLC

Date: Sept 11, 2008

Thomas L. Aldrich
Vice President, Environmental Affairs

Date: September 11, 2008

Douglas E. McAllister
Executive Vice President, General Counsel

FOR ASARCO MASTER INC.

Date: Sept 11 2008

Thomas L. Aldrich
Vice President, Environmental Affairs