

EXHIBIT A

**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
)	
<u>Debtors.</u>)	

SETTLEMENT AGREEMENT REGARDING THE AZURITE SITE

WHEREAS, the Azurite Mine Site (“Site”) consists of an approximately 80-acre inactive former mine and mill site located in Whatcom County, Washington, that is currently owned by the United States and is under the jurisdiction, custody and control of the United States Department of Agriculture, Forest Service (“Forest Service”);

WHEREAS, beginning in 2005, pursuant to its authority under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604 (“CERCLA”), the Forest Service ordered ASARCO, LLC, formerly known as ASARCO Incorporated (“ASARCO” or the “Debtor”) to study the Site and draft an Engineering Evaluation/Cost Assessment (“EE/CA”);

WHEREAS, Debtor has submitted two drafts of the EE/CA and the Forest Service will be selecting a remedy for the Site;

WHEREAS, the United States has alleged that ASARCO is a potentially responsible party with respect to the Site;

WHEREAS, the United States alleged on behalf of the Forest Service that it has incurred past response costs, and will incur additional future response costs, under CERCLA in connection with the Site for which ASARCO allegedly is liable;

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

WHEREAS, the United States, on behalf of the Forest Service filed Proof of Claim Nos. 8375 and 10746 in the Bankruptcy Case setting forth claims against ASARCO under Section 107 of CERCLA for various past and future response costs as defined under CERCLA in connection with the Site;

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

WHEREAS, the Court established a process for estimating the claims of the United States with respect to the Site;

WHEREAS, the Court has set a date for a hearing for the purpose of estimating the claims of the United States with respect to the Site;

WHEREAS, the parties hereto desire to settle, compromise and resolve their disputes without the necessity of an estimation hearing;

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

3. In settlement and satisfaction of all claims and causes of action of the United States with respect to any and all costs of response incurred, or to be incurred, by the Forest Service in connection with the Site (including but not limited to the liabilities and other obligations asserted in the Proof of Claim and other pleadings filed in the Bankruptcy Court by the United States), (a) the United States on behalf of the Forest Service shall have an allowed general unsecured claim in the total amount of \$5,000,000.00 with respect to the Site; and (b) Asarco shall not object to the Forest Service's use of the 2007 approved funding in the amount of \$300,000 for the Site from the Asarco Environmental Trust Fund ("Fund"); and (c) if any of the 2007 approved funding is not used, Asarco shall not object to any request made by the Forest Service to the Fund for a disbursement or payment up to the unused amount in calendar year 2008

or 2009. Distributions to the Forest Service shall be deposited in a special account to be retained and used to conduct or finance response actions at or in connection with the Site.

4. All 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.

5. 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.

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

IV. COVENANTS NOT TO SUE

7. With respect to the Site (including releases of hazardous substances from any portion of the Site, and all areas affected by natural migration of such substances from the Site) and except as specifically provided in Section V (Reservation of Rights), the United States covenants not to sue or assert any civil claims or causes of action against

ASARCO pursuant to Sections 106, 107(a) or 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613; or any similar state law; for any liabilities or obligations asserted in the Proofs of Claim.

8. Except as provided in Section V, the United States, on behalf of EPA, agrees that upon confirmation of a plan of reorganization in the Bankruptcy Case, any and all obligations or liabilities under Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, or Section 7003 of RCRA, 42 U.S.C. § 6973, related to the Azurite Site will be discharged. Moreover, the United States, on behalf of EPA, agrees not to assert a claim in the Bankruptcy Case for such obligations or liabilities, except as provided in Section V.

9. 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.

10. Without in any way limiting the covenant not to sue (and the reservations thereto) set forth in Paragraph 7 and notwithstanding any other provision of this Settlement Agreement, such covenant not to sue shall also apply to ASARCO's 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 ASARCO is based solely on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of ASARCO.

11. The covenants not to sue contained in Paragraphs 7 and 10 of this Settlement Agreement extend only to ASARCO and the persons described in Paragraphs 7 and 10 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 ASARCO, the United States, and the persons described in Paragraph 10. The United States and ASARCO 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 or ASARCO may have against all other persons, firms, corporations, entities, or predecessors of ASARCO for any matter arising at or relating in any manner to the Site and/or claims addressed herein.

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

13. Debtor covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site, 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; any claims against the United States, including any of their departments, agencies or instrumentalities, under Section 107 or 113 of CERCLA, 42

U.S.C. §§ 9607, 9613; and any claims arising out of the response activities at the Site.

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).

V. RESERVATION OF RIGHTS

14. The covenants not to sue set forth in Section IV do not pertain to any matters other than those expressly specified therein. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor or other persons with respect to all other matters, including but not limited to: (i) any action to enforce the terms of this Settlement Agreement; and (ii) liability for response costs and injunctive relief under CERCLA Sections 106 and 107 for Debtor's future acts creating liability under CERCLA that occur after the date of this agreement. Debtor's future acts creating liability under CERCLA do not include continuing releases related to Debtor's pre-petition conduct.

15. 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.

VI. CONTRIBUTION PROTECTION

16. The parties hereto agree that, as of the Effective Date, ASARCO is entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) for matters addressed in this Settlement Agreement. The matters addressed in this Settlement Agreement include all costs of response incurred or to be incurred by the United States relating to or in connection with the Site.

VII. PUBLIC COMMENT

17. 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 concurrent with the judicial approval process under paragraph 18 hereof. The United States reserves the right to withdraw or withhold its 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 will provide the Court with copies of any public comments and its response thereto.

VIII. JUDICIAL APPROVAL

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

IX. RETENTION OF JURISDICTION

19. This Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the parties hereto, for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply to the 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.

X. EFFECTIVE DATE

20. This Settlement Agreement shall be effective upon approval by the Court in accordance with Paragraphs 17 and 18 hereof.

XI. SIGNATORIES/SERVICE

21. 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
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: _____

Alan S. Tenebaum
David L. Dain
Frederick Phillips
Environment and Natural Resources
Division
Environmental Enforcement Section
U.S. Department of Justice

FOR ASARCO, LLC

Date: _____

Thomas L. Aldrich
Vice President, Environmental Affairs

Date: _____

Douglas E. McAllister
Executive Vice President, General Counsel