

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 83-cv-2388-WYD (Consolidated with Civ. Action No. 86-cv-1675-WYD)

STATE OF COLORADO,

Plaintiff,

v.

ASARCO INCORPORATED, et al.,

Defendants and Third-Party Plaintiffs,

v.

LEADVILLE CORPORATION, et al.,

Third Party Defendants,

UNITED STATES OF AMERICA,

Plaintiff,

v.

APACHE ENERGY AND MINERALS
COMPANY, et al.,

Defendants.

**MODIFICATION OF 1994 CONSENT DECREE
AFFECTING OPERABLE UNIT 9**

I. BACKGROUND

A. On August 6, 1986, the United States of America (“United States”), at the request of the United States Environmental Protection Agency (“EPA”), filed a complaint against, among others, ASARCO Incorporated (now ASARCO, LLC and hereinafter referred to as “ASARCO”) pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606, 9607. The complaint sought injunctive relief for performance of response actions and for reimbursement of costs incurred and to be incurred by the United States in response to the release or threat of release of hazardous substances at the California Gulch Superfund Site (the “Site”) located in and around Leadville, Colorado.

B. On December 9, 1983, the State of Colorado (the “State”) filed a complaint against ASARCO and others under Section 107 of CERCLA, 42 U.S.C. § 9607, for injury, destruction, or loss of natural resources associated with the release of hazardous substances and the cost of assessment of such injury from the Yak Tunnel and associated mine workings. The State amended its complaint on April 8, 1985, to include additional claims under Section 107 of CERCLA, 42 U.S.C. § 9607, for reimbursement of costs incurred and to be incurred in response to the release or threat of release of hazardous substances at the Yak Tunnel, associated mine workings, California Gulch, and portions of the Arkansas River.

C. The federal and state actions were consolidated on February 3, 1987. On August 26, 1994, the Court approved and entered a Consent Decree in this matter (the “1994 Decree”). As part of the 1994 Decree, ASARCO agreed, among other things, to undertake response actions at Operable Unit 9 (Residential Populated Areas) of the Site (“OU9”) to address the risk of children in residential areas of Leadville being exposed to lead, establish a trust to fund such response actions, and pay the future costs of EPA in overseeing ASARCO’s work. In return, the United States and the State provided certain covenants not to sue ASARCO.

D. On September 2, 1999, EPA, in consultation with the Colorado Department of Public Health and Environment (“CDPHE”) and the Lake County Health Department, issued a Record of Decision for OU9 selecting a remedial action for OU9 designated as the Lake County Community Health Program (“LCCHP”).

E. On or about June 27, 2001, ASARCO entered into the Lake County Community Health Program Trust Agreement (“Trust Agreement”) with EPA, CDPHE, Lake County, Colorado, and Wells Fargo Bank West, N.A. (“Trustee”). The Trust Agreement establishes a trust fund to finance implementation of the LCCHP. ASARCO funded the trust account in accordance with the Trust Agreement. EPA, CDPHE, and Lake County, Colorado are named beneficiaries under the Trust Agreement.

F. The Trust Agreement provides for ASARCO to each year submit a written budget for the approval of EPA for the response actions to be completed by ASARCO as part of the LCCHP, including soil, dust, and paint remediation at residential properties, and monitoring the

blood lead levels of children in the community. Once the final budget is approved by EPA, the Trustee disburses trust funds to ASARCO to be used to finance implementation of the LCCHP for that year.

G. On August 9, 2005, ASARCO filed a petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court") in a pending case jointly administered as Case No. 05-21207. Prior to filing its petition, on or about June 23, 2005, the Trustee had disbursed \$963,639 to ASARCO pursuant to the terms of the Trust Agreement to implement the LCCHP. ASARCO segregated these trust monies into the following two Wells Fargo bank accounts: Account No. 12831822 (an investment account) and Account No. 412-8683752 (a checking account) (collectively the "LCCHP Accounts").

H. On or about August 1, 2006, the United States filed a Supplemental Proof of Claim in the ASARCO bankruptcy proceeding concerning, among other things, ASARCO's obligations under the 1994 Consent Decree to complete work at OU9 and reimburse EPA response costs associated with first overseeing and subsequently taking over work at OU9, and the status of the trust monies in the LCCHP accounts. The State filed a similar Proof of Claim on July 27, 2006.

I. The United States, the State, and ASARCO entered into a Settlement Agreement Regarding Operable Unit 9 of the California Gulch Site that was approved by the Bankruptcy Court on August 23, 2007. A copy of the Settlement Agreement and the Bankruptcy Court's Order approving the Settlement Agreement are attached as Exhibit A.

J. This Modification of 1994 Consent Decree Affecting Operable Unit 9 ("Consent Decree Modification") is entered into by the United States, the State of Colorado, and ASARCO to conform with the parties' settlement in the ASARCO bankruptcy case regarding OU9. The Parties recognize, and the Court by approving and entering this Consent Decree Modification finds, that this Consent Decree Modification has been negotiated by the Parties in good faith, and that implementation of this Consent Decree Modification is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607, and 9613(b). Solely for the purposes of this Consent Decree Modification, ASARCO waives all objections and defenses it may have to jurisdiction of the Court or to venue in this District. ASARCO shall not challenge the terms of

this Consent Decree Modification or this Court's jurisdiction to enter and enforce this Consent Decree Modification.

III. PARTIES BOUND

2. This Consent Decree Modification applies to and is binding upon the United States and the State, and upon ASARCO and its legal successors and assigns, and any trustee, examiner, or receiver appointed in the Bankruptcy Case (individually a "Party" and collectively the "Parties"). Any change in ownership or corporate status of ASARCO shall in no way alter such ASARCO's responsibilities under this Consent Decree Modification.

IV. PAYMENT AND TRANSFER OF FUNDS

3. Within 30 days after the approval and entry of this Consent Decree Modification (the "Effective Date"), ASARCO shall pay all the funds in the LCCHP Accounts, including all accrued interest therein, to EPA. ASARCO shall make such payment by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case No. 90-11-3-08633 and EPA Site/Spill ID Number 082909. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Colorado. At the time of payment, ASARCO send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov and mail to

U.S. Environmental Protection Agency
Superfund Payments
P.O. Box 979076
St. Louis, MO 63197-9000

and by email to walker.martha@epa.gov and mail to

Martha Walker, FMO
Financial Management Program
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466.

4. EPA shall establish a new special account, to be known as the California Gulch Superfund Site OU9 Special Account (the "OU9 Special Account"), within the EPA Hazardous Substance Superfund. The total amount paid by Debtor pursuant to this Consent Decree Modification shall be deposited by EPA in the OU 9 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with Operable Unit 9 at the Site, or to be transferred by EPA to the EPA Hazardous

Substance Superfund.

V. TRUST FUND AMENDMENT

5. ASARCO shall consent to amendment of the Trust Agreement deleting all references to ASARCO under the terms of the Trust Agreement in order to remove ASARCO from any future role in the implementation of the LCCHP and the disbursement or use of the Trust monies, as well as participating in any future amendments to the Trust Agreement. ASARCO agrees to perform in a timely manner any actions required to finalize such amendments to the Trust Agreement.

VI. COVENANTS NOT TO SUE

6. Except as specifically provided in Paragraph 8 (Reservation of Rights), the United States and the State covenant not to sue or assert any claims or causes of action against ASARCO pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, with respect to OU9.

7. ASARCO covenants not to sue and agrees not to assert any claims or causes of action against the United States and State of Colorado with respect to OU 9, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims against the United States and the State of Colorado, its departments, agencies or instrumentalities, and any claims arising out of response activities at OU9. Nothing in this Consent Decree Modification 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). For example, ASARCO reserves its rights to object to claims for past response costs relating to OU9.

V. RESERVATION OF RIGHTS

8. The covenants not to sue set forth in Paragraph 6 do not pertain to any matters other than those expressly specified therein. The United States and the State reserve, and this Consent Decree Modification is without prejudice to, all rights against ASARCO with respect to all other matters, including but not limited to: (1) any action to enforce the terms of this Consent Decree Modification and (2) any action for the payment of response costs for OU9 incurred by EPA or CDPHE prior to August 23, 2007.

VI. EFFECT OF CONSENT DECREE MODIFICATION

9. Upon the Court's approval and entry of this Consent Decree Modification, ASARCO shall have no further obligation under the 1994 Consent Decree with respect to OU9.

10. Nothing in this Consent Decree Modification shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree Modification.

VI. LODGING AND OPPORTUNITY FOR PUBLIC NOTICE

11. This Consent Decree Modification shall be lodged with the Court for a period of not less than thirty days for public notice and comment. The United States and the State reserve the right to withdraw or withhold their consent if the comments on this Consent Decree Modification disclose facts or considerations which indicate that it is inappropriate, improper, or inadequate. ASARCO consents to the entry of this Consent Decree Modification without further notice.

12. If for any reason the Court should decline to approve this Consent Decree Modification in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used in evidence in any litigation between the Parties.

VII. SIGNATORIES/SERVICE

13. This Consent Decree Modification may be signed in counterparts, and its validity shall not be challenged on that basis.

14. Each undersigned representative of ASARCO, each undersigned representative of the State, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree Modification and to execute and legally bind such Party to this document.

15. ASARCO agrees not to oppose entry of this Consent Decree Modification by this Court or to challenge any provision of this Consent Decree Modification unless the United States or the State has notified ASARCO in writing that it no longer supports entry of the Consent Decree.

SO ORDERED THIS ____ DAY OF _____, 2008.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY(IES) enter into this Final Modification of 1994 Consent Decree with ASARCO in the above captioned matter relating to the California Gulch Superfund Site.

FOR THE UNITED STATES OF AMERICA

U.S. DEPARTMENT OF JUSTICE

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

March 4, 2008

Date

~~JERRY~~ ("JERRY") L. ELLINGTON
MARK C. ELMER
Attorneys
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, CO 80294

March 11, 2008

Date

**UNITED STATES ATTORNEY'S OFFICE
DISTRICT OF COLORADO**

TROY A. EID
United States Attorney

STEPHEN D. TAYLOR
Assistant United States Attorney
District of Colorado
1225 Seventeenth Street, Suite 700
Denver, CO 80202

March 11, 2008

Date

FOR THE STATE OF COLORADO

Date: 12/18/07

By: Jason E. King, Colorado Assistant Attorney General

Date: 1/3/08

By: James B. Martin, Executive Director of Colorado Department of Public Health and Environment

Date: December 14, 2007

By: Ronald W. Cattany, Division Director, for the Colorado Division of Reclamation

FOR ASARCO:

Date: 2/08/2008

Thomas L. Aldrich
Vice President, Environmental Affairs

Date: 2/08/2008

Douglas E. McAllister
Executive Vice President, General Counsel

Exhibit A
to
Modification of 1994 Consent Decree Affecting Operable Unit 9



ENTERED
08/23/2007

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

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

**ORDER APPROVING COMPROMISE AND SETTLEMENT
OF FUTURE RESPONSE COSTS AND FUTURE LIABILITIES AT
OPERABLE UNIT 9 OF THE CALIFORNIA GULCH SUPERFUND SITE**

Upon consideration of the Motion Approving Compromise and Settlement of Future Response Costs and Future Liabilities at Operable Unit 9 of the California Gulch Superfund Site (the "Motion"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtor and its estate and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that the compromise and settlement among ASARCO, LLC ("ASARCO"), the United States of America and the Colorado Department of Public Health and the Environment, as described in greater detail in the Motion, is approved; and it is further

ORDERED that ASARCO is authorized to enter into and implement the settlements; and it is further

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

Dated: August 23, 2007

RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

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

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

**SETTLEMENT AGREEMENT REGARDING OPERABLE UNIT 9 OF THE
CALIFORNIA GULCH SUPERFUND SITE**

WHEREAS, on or about June 27, 2001, ASARCO, LLC, formerly known as ASARCO Incorporated, ("ASARCO" or the "Debtor") entered into the Lake County Community Health Program Trust Agreement ("Trust Agreement") with the United States Environmental Protection Agency ("EPA"), the Colorado Department of Public Health and Environment ("CDPHE"), Lake County, Colorado, and Wells Fargo Bank West, N.A. ("Trustee"), a true and correct copy of which is attached hereto as Attachment A;

WHEREAS, the Trust Agreement was entered into in accordance with a Consent Decree settling certain consolidated actions entitled "State of Colorado v. ASARCO Incorporated, et al. v. Leadville Corporation et al.," Civil Action No. 83-C-2388, and "United States of America v. Apache Energy and Minerals et al.," Civil Action No. 86-C-1675, in the United States District Court for the District of Colorado ("Consent Decree");

WHEREAS, the Trust Agreement establishes a trust fund to finance implementation of the Lake County Community Health Program ("LCCHP") which

addresses the risk of children in residential areas of Leadville being exposed to lead including the Lead Risk Reduction Program;

WHEREAS, the LCCHP is part of a remedial action selected by EPA in the Record of Decision for Operable Unit 9 (Residential Populated Areas) for the California Gulch Superfund Site on September 2, 1999, to address lead contamination at the Site under the Comprehensive Environmental Response, Liability and Compensation Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"), from the Debtor's mining operations;

WHEREAS, under the Consent Decree, ASARCO funded a trust account in the amount of \$8.6 million to cover the cost of the LCCHP in accordance with the Trust Agreement;

WHEREAS, the EPA, CDPHE, and Lake County, Colorado are the named beneficiaries with specific rights under the Trust Agreement;

WHEREAS, the Trust Agreement provides for ASARCO to each year submit a written budget for the approval of EPA for the response actions to be completed by ASARCO as part of the LCCHP, including soil, dust, and paint remediation at residential properties, and monitoring the blood lead levels of children in the community. Once the final budget is approved by EPA, the Trustee disburses trust funds to ASARCO to be used to finance implementation of the LCCHP for that year;

WHEREAS, the Trust Agreement obligates ASARCO to provide an annual accounting of the actual income realized and expenditures incurred with respect to any trust monies disbursed to ASARCO;

WHEREAS, the Trust Agreement provides that no share or interest of the trust is an asset in any bankruptcy of ASARCO under any circumstances;

WHEREAS, prior to its bankruptcy filing, on or about May 24, 2005, ASARCO proposed a budget of \$1,003,630.00 for implementation of the LCCHP, for the period from May 2005 through April 2006, which EPA approved. on or about June 21, 2005, in the amount of \$963,639.00;

WHEREAS, on or about June 23, 2005, the Trustee disbursed \$963,639 to ASARCO pursuant to the terms of the Trust Agreement to be used to implement the LCCHP;

WHEREAS, ASARCO specifically segregated these trust monies in two Wells Fargo bank accounts Account Number 12831822 (the "LCCHP Investment Account") and Account Number 412-8683752 (the "LCCHP Checking Account") for the implementation of the LCCHP (collectively the "LCCHP Accounts");

WHEREAS, as of the date of ASARCO's bankruptcy filing, approximately \$868,000 of this amount was retained by ASARCO;

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 Code (the "Bankruptcy Code") on August 9, 2005;

WHEREAS, at the time of its bankruptcy filing, ASARCO continued to hold the LCCHP Accounts;

WHEREAS, as of March 31, 2007, the LCCHP Investment Account totaled \$904,150.72, including accrued interest, and the LCCHP Checking Account totaled \$150,524.99, including accrued interest;

WHEREAS, on or about August 1, 2006, the United States filed its Supplemental Proof of Claim, which asserted, inter alia, that the LCCHP Accounts were subject to a constructive or equitable or other form of trust and asserted a secured claim to such proceeds;

WHEREAS, on or about July 26, 2006, CDPHE filed a Proof of Claim, which asserted, inter alia, that the LCCHP Accounts were not property of the bankruptcy estate or are subject to a constructive trust, a resulting trust, an express trust by implication, or other form of trust under Colorado law and asserted a secured claim to such proceeds;

WHEREAS, the parties hereto desire to settle, compromise, and resolve their disputes concerning the LCCHP Accounts so that these funds may be used to implement the LCCHP;

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. PAYMENT OF FUNDS

3. Within 30 days of the District Court approval of appropriate modifications of the Consent Decree, the Debtor shall pay all the funds in the LCCHP Accounts, including all accrued interest therein, to EPA which shall place the funds in a Special Account for performance of the LCCHP.

4. Debtor shall make the payment required by Paragraph 3 by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing, EPA Site/Spill ID Number 082909. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Colorado.

At the time of payment, Respondent shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov, to

Dana Anderson, NWD
EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268,

and by email to walker.martha@epa.gov, to:
Martha Walker, FMO
Financial Management Program
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466

The total amounts to be paid by Debtor pursuant to this Settlement Agreement shall be deposited by EPA in the California Gulch Superfund Site OU 9 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with Operable Unit 9 at the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

5. When requested by EPA and CDPHE, Debtor shall consent to amendment of the Trust Agreement deleting all references to the Debtor under the terms of the Trust Agreement in order to remove the Debtor from any role in the implementation of the LCCHP and the disbursement or use of the Trust monies, as well as participating in any future amendments to the Trust Agreement, so long as such amendments create no obligations for the Debtor beyond the obligations presently set out in the Trust Agreement. Debtor agrees to perform in a timely manner any actions required to finalize amendments to the Trust Agreement.

6. The United States, CDPHE, and Debtor shall seek appropriate modifications to the Consent Decree to make it consistent with this Settlement Agreement. Any proposed modifications shall be subject to the objections of non-parties to this Settlement Agreement and approval of the District Court.

IV. COVENANTS NOT TO SUE

7. Except as specifically provided in Paragraph 8 (Reservation of Rights), EPA and CDPHE covenant not to sue or assert any claims or causes of action pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, with respect to Operable Unit 9 of the California Gulch Superfund Site. This Settlement Agreement shall serve as settlement for all existing EPA

and CDPHE claims for future response costs and future liability for Operable Unit 9 contingent upon the Debtor's payment of the funds outlined in Paragraphs 3. This Settlement Agreement does not pertain to the Debtor's liability for any Past Response Costs for Operable Unit 9 of the California Gulch Superfund Site, which costs were incurred prior to the last date of signing of this Settlement Agreement by the parties.

V. RESERVATION OF RIGHTS

8. The covenants not to sue set forth in Paragraph 7 do not pertain to any matters other than those expressly specified therein. EPA and CDPHE reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtor or other person with respect to all other matters, including but not limited to: (1) any action to enforce the terms of this Settlement Agreement and (2) any action for Past Response Costs.

9. Debtor covenants not to sue and agrees not to assert any claims or causes of action against the United States and State of Colorado with respect to Operable Unit 9 of the California Gulch Superfund Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims against the United States and the State of Colorado, its departments, agencies or instrumentalities, and any claims arising out of response activities at Operable Unit 9 of the California Gulch Superfund 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). For example, Debtor reserves its rights to object to claims for past response costs relating to this Operable Unit.

10. 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. JUDICIAL APPROVAL

11. 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 Bankruptcy Court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval.

VII. EFFECTIVE DATE

12. The Effective Date of this Settlement Agreement shall be the date upon which it is approved by the Bankruptcy Court.

VIII. SIGNATORIES/SERVICE

13. 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: July 18, 2007

By: _____

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

Date: July 18, 2007

By: _____

Alan S. Tenenbaum
David L. Dain
Jerel ("Jerry") L. Ellington
Mark C. Elmer
Environment and Natural
Resources Division
Environmental Enforcement
Section
U.S. Department of Justice

Date: July 18, 2007

By: _____

Carol Rushin
Assistant Regional Administrator
Office of Ecosystems Protection &
Remediation
U.S. EPA, Region 8

Date: July 18, 2007

By: _____

Michael T. Risner
Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice
U.S. EPA, Region 8

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND THE ENVIRONMENT:

Date: July 18, 2007

By: James Martin
Executive Director

FOR ASARCO:

Date: 11/09/2007

Thomas L. Aldrich
Vice President, Environmental Affairs

Date: 11/09/2007

Douglas E. McAllister
Executive Vice President,
General Counsel