

**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  
Debtors. ) Chapter 11

**SETTLEMENT AGREEMENT REGARDING THE  
ASARCO HAYDEN PLANT SITE**

**WHEREAS**, the Asarco Hayden Plant Site ("Site") consists of the Asarco Hayden Smelter and associated facilities owned or operated by ASARCO, LLC in Hayden, Arizona, and any areas where hazardous substances from those facilities have come to be located;

**WHEREAS**, pursuant to its authority under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604 ("CERCLA"), the United States Environmental Protection Agency ("EPA") has conducted various investigations at the Site, including a preliminary assessment, a removal assessment, collection and testing of residential soil samples, and a remedial investigation and human health risk assessment, to address the release of hazardous substances at the Site;

**WHEREAS**, the United States has alleged that ASARCO, LLC, formerly known as ASARCO Incorporated ("ASARCO" or the "Debtor"), is a potentially responsible party with respect to the Site;

**WHEREAS**, the United States alleged that it has incurred past 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 filed Proof of Claim No. 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 Proof of Claim;

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

**WHEREAS**, on March 19, 2008, EPA and ASARCO entered into an Administrative Settlement Agreement and Order on Consent ("March 19, 2008 AOC") which resolved claims of the United States for performance of removal work on the fifteen most contaminated residential yards within the Site and recovery of Oversight Costs associated with such removal work. March 19, 2008 AOC;

**WHEREAS**, on May 27, 2008, this Court approved an Administrative Settlement Agreement and Order on Consent among the United States, ASARCO, and the Arizona Department of Environmental Quality ("ADEQ") ("May 27, 2008 AOC") (Document # 7902), which resolved claims of the United States and ADEQ for performance of removal work and recovery of oversight costs associated with the removal work at the Site. In that agreement, the United States expressly reserved its claims for its past costs of response at the Site. May 27, 2008 AOC, Paragraph 80(b).

**WHEREAS**, this Settlement Agreement (“Settlement Agreement”) is intended to serve as a settlement of the claims by the United States against ASARCO with respect to EPA’s costs relating to or in connection with the Site, incurred on or before May 27, 2008;

**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; 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 all costs of response incurred by EPA in connection with the Site prior to May 27, 2008, the United States on behalf of the EPA shall have an allowed

general unsecured claim in the total amount of \$3,000,000.00 with respect to the Site. Distributions received by the United States on behalf of the EPA shall be deposited in the Asarco Hayden Plant Special Account, which is 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 shall be transferred by EPA to the EPA Hazardous Substance Superfund.

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 EPA (and net cash received by the EPA 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 EPA to its account for the Site, which credit shall reduce the liability to the EPA of non-settling potentially responsible parties for the Site by the amount of the credit.

**IV. COVENANTS NOT TO SUE**

7. With respect to response costs at the Site incurred by EPA on or before May 27, 2008, and except as specifically provided in Section V (Reservation of Rights) and in the March 19, 2008 AOC, the United States covenants not to sue or assert any civil claims or causes of action against ASARCO pursuant to Sections 107(a) or 113 of CERCLA, 42 U.S.C. §§ 9607(a), and 9613; or any liabilities or obligations asserted in the Proofs of Claim.

8. 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.

9. Without in any way limiting the covenant not to sue set forth in Paragraph 7 (and the reservations thereto) and notwithstanding any other provision of this Settlement Agreement, such covenant not to sue shall also apply to ASARCO's successors, assigns, officers, directors, employees, agents, and trustees, but only to the extent that the alleged liability of the successor, assign, officer, director, employee, agent, or trustee of ASARCO is based solely on its status as and in its capacity as a successor, assign, officer, director, employee, agent, or trustee of ASARCO.

10. The covenants not to sue contained in Paragraphs 7 and 9 of this Settlement Agreement extend only to ASARCO and the persons described in Paragraphs 7 and 9 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 9. 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.

11. 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.

12. Debtor covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the response costs at the Site incurred by EPA on or before May 27, 2008, 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; and 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.

**V. RESERVATION OF RIGHTS**

13. 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:

a. Claims based on a failure of ASARCO to meet a requirement of this Settlement Agreement; the March 19, 2008 AOC; and/or the May 27, 2008 AOC; and

b. Matters reserved under the March 19, 2008 AOC and the May 27, 2008 AOC, other than claims for response costs prior to May 27, 2008 that are not "Oversight Costs" under the March 19, 2008 AOC.

14. 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**

15. 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 response costs at the Site incurred by EPA on or before May 27, 2008.

**VII. PUBLIC COMMENT**

16. 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 17 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**

17. 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**

18. 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**

19. This Settlement Agreement shall be effective upon approval by the Court in accordance with Paragraphs 16 and 17 hereof.



**XI. SIGNATORIES/SERVICE**

20. 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.

21. This Settlement Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

**FOR THE UNITED STATES**

Date: 5-14-09

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Bruce S. Gelber  
Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice

Date: 5.14.09

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Alan S. Tenenbaum  
David L. Dain  
Amy R. Gillespie  
Environment and Natural Resources  
Division  
Environmental Enforcement Section  
U.S. Department of Justice

**FOR ASARCO, LLC**

Date: June 8, 2009

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Thomas L. Aldrich  
Vice President, Environmental Affairs

Date: June 5, 2009

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Douglas E. McAllister  
Executive Vice President, General Counsel

