

Kathleen Hartnett White, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 20, 2005

Mr. Thomas Aldrich  
ASARCO, Vice President Environmental Affairs  
2575 East Camelback Road  
Suite 500  
Phoenix, Arizona 86016-4240

CERTIFIED MAIL # 8855  
RETURN RECEIPT REQUESTED

Re: ASARCO Corrective Action Proposal - Conditional Approval  
TCEQ SWR No. 31235  
TCEQ Agreed Order Docket No. 96-0212-MLM-B  
EPA ID No. TXD990757668

Dear Mr. Aldrich,

The Texas Commission on Environmental Quality (TCEQ) is reissuing the April 1, 2005 remediation directives with modifications after meeting with ASARCO and reviewing ASARCO's response dated April 22, 2005. The modifications appear in bold in the following original TCEQ remedial directives.

### Conditions of Approval

- Modified boundaries of the AOC are designated in the attached map (Attachment 1).
- Construction of the on-site Landfill and cap shall be based on ASARCO Construction Technical Specifications On-Site Landfill, dated January 29, 2004. ASARCO will finalize the on-site landfill location and design and submit their proposal to the TCEQ for review by December 15, 2005. The final design of the landfill shall include cost estimates for operation, management, and monitoring of the Landfill.
- ASARCO shall provide the TCEQ with financial assurance for the closure and post-closure care of the on-site landfill. ASARCO shall determine the form and the amount of the required financial assurance in accordance with the provisions of 40 CFR 264, Subpart H, Financial

Requirements. For the purposes of this condition, the on-site landfill is considered a "new facility". ASARCO shall provide the financial assurance before placement of waste in the Landfill, but not later than September 15, 2006.

- Capacity of the landfill shall be designed to accept all "Category I" material identified in ASARCO's Phase III Remedial Investigation Report, dated November 19, 2001 and delineated in the April 2003 TCLP sampling event. This material includes remediation waste that will be excavated from areas that failed TCLP in the April 2003 sampling event, other on-site wastes which are determined not to be Bevill exempted, and any other waste approved by the TCEQ.
- ASARCO shall not terminate the remedial excavations until soil analytical sampling results demonstrate that concentrations protective of human health and the environment have been reached, pursuant to the Risk Reduction Rules or other Risk Reduction Rules adopted by the TCEQ. For areas in which there may be interferences with the remedial excavation, ASARCO will need to propose an alternative remedy and have the remedy approved by the TCEQ. Excavated areas shall be backfilled to grade with clean soil. Some of these areas may have to be capped to protect human health and the environment.
- ASARCO shall comply with all substantive requirements of the Resource, Conservation and Recovery Act (RCRA) within the AOC, including, but not limited to, the requirements of 40 CFR 264, Subpart I (Use and Management of Containers) and Subpart J (Tank Systems). Excavated hazardous materials or wastes within the AOC shall not be staged or stored in containers or bins longer than one year. If the waste placement process for the AOC requires storage longer than a one-year period as a result of construction logistics, ASARCO will provide justifiable reason(s) and request an extension from the TCEQ. The accumulation start dates shall be posted on each bin or container. Excavation, consolidation, and management of AOC wastes within the AOC will not trigger the Land Disposal Restrictions provisions of RCRA.
- Category II areas displayed on Figure 2-2 in ASARCO El Paso Copper Smelter Remedial Design Report, dated November 2001, will be graded and covered with asphalt. Asphalt will meet the technical requirements outlined in the TCEQ letter, dated August 27, 2002. Figure 2-2 is provided in this letter as Attachment 2.
- ASARCO shall have a minimum of five down-gradient and one up-gradient groundwater monitor wells surrounding the constructed on-site landfill. Wells will be sampled for RCRA metals and will be used for detection monitoring. Determination of a release will trigger an assessment and, if necessary, corrective action response. ASARCO may propose utilizing

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some of the existing monitor wells for detection monitoring provided that the well(s) location and construction details are technically approved.

- ASARCO shall install a groundwater remediation system which prevents metals above regulated Maximum Contaminant Levels (MCL) from migrating beyond ASARCO's property boundary since ASARCO does not have the authority to discharge contaminated groundwater onto any adjacent property.
- ASARCO shall ensure adequate dust suppression at all times during excavation activities.

#### Schedule of Implementation

1. ASARCO shall submit to the TCEQ the final design of ASARCO's on-site Landfill by December 15, 2005. Construction of the on-site Landfill Cell 1 in accordance with the approval or approval with conditions shall begin by March 15, 2006. ASARCO shall complete construction of the on-site Landfill Cell 1 by September 15, 2006. ASARCO shall complete construction of any remaining Landfill cells by June 30, 2009.
2. The excavation and transfer of waste into Landfill Cell 1 will begin within 30 days after completion of the construction of the on-site Landfill Cell 1. The excavation and transfer of all wastes shall be completed no later than June 30, 2009.
3. Construction of an approved cap/cover for the landfill shall begin within 90 days of any of the following two conditions occurs: 1) completion of excavation and disposal of waste into Landfill; or 2) the individual Landfill cell(s) has reached its maximum capacity. Cap/cover construction shall be completed within 180 days from the start of construction of the cap/cover.
4. The asphalt capping project shall be completed by March 30, 2010.
5. Authorization for the AOC will terminate on March 30, 2010, thereafter any excavation, transfer, treatment, storage, and disposal of wastes shall comply with existing rules and regulations.
6. ASARCO shall start an initial groundwater remediation system to prevent contaminated groundwater from migrating beyond ASARCO's boundary by July 30, 2005. ASARCO shall evaluate the groundwater remediation system every 6 months toward the ultimate goal of preventing all metals above MCLs from migrating beyond ASARCO's property boundary. ASARCO shall submit evaluation of the groundwater remediation system to the TCEQ for approval or comments/additions to the groundwater remediation

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system. ASARCO may expand their groundwater remediation system without TCEQ's formal approval. Reducing the remediation system or changing the groundwater remedy needs TCEQ approval.

This authorization directs ASARCO to begin the implementation of the conditionally approved remediation plan by June 30, 2005, per Ordering Provision 7 of TCEQ's Agreed Order. A failure to comply with any condition of this letter or the Provisions of the Agreed Order will result in referral of this case to the State of Texas Attorney General's Office. Additionally, a noncompliance may result in revocation of the AOC option in favor of more conservative options under the Industrial and Hazardous Waste Program.

The facility name, location, and identification number(s) in the TCEQ reference line above should be included in all reports submitted to the TCEQ. Please call Brad Wilkinson at (512) 239-2350 if you need additional information. Thank you for your cooperation in this matter.

Sincerely,

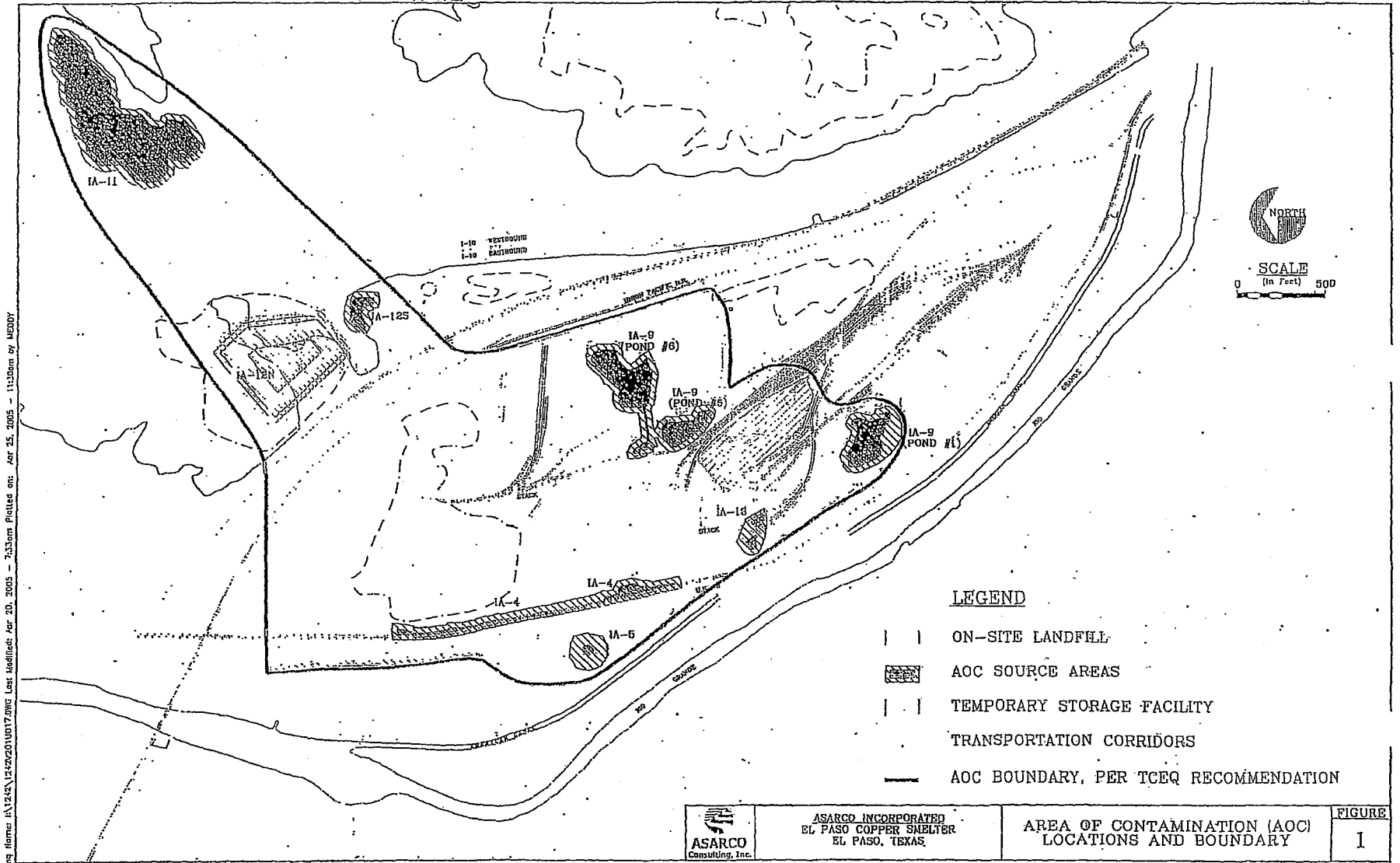


Ata-Ur-Rahman, Ph.D.  
Section Manager, Corrective Action Section  
Remediation Division  
Texas Commission on Environmental Quality

BW/bw

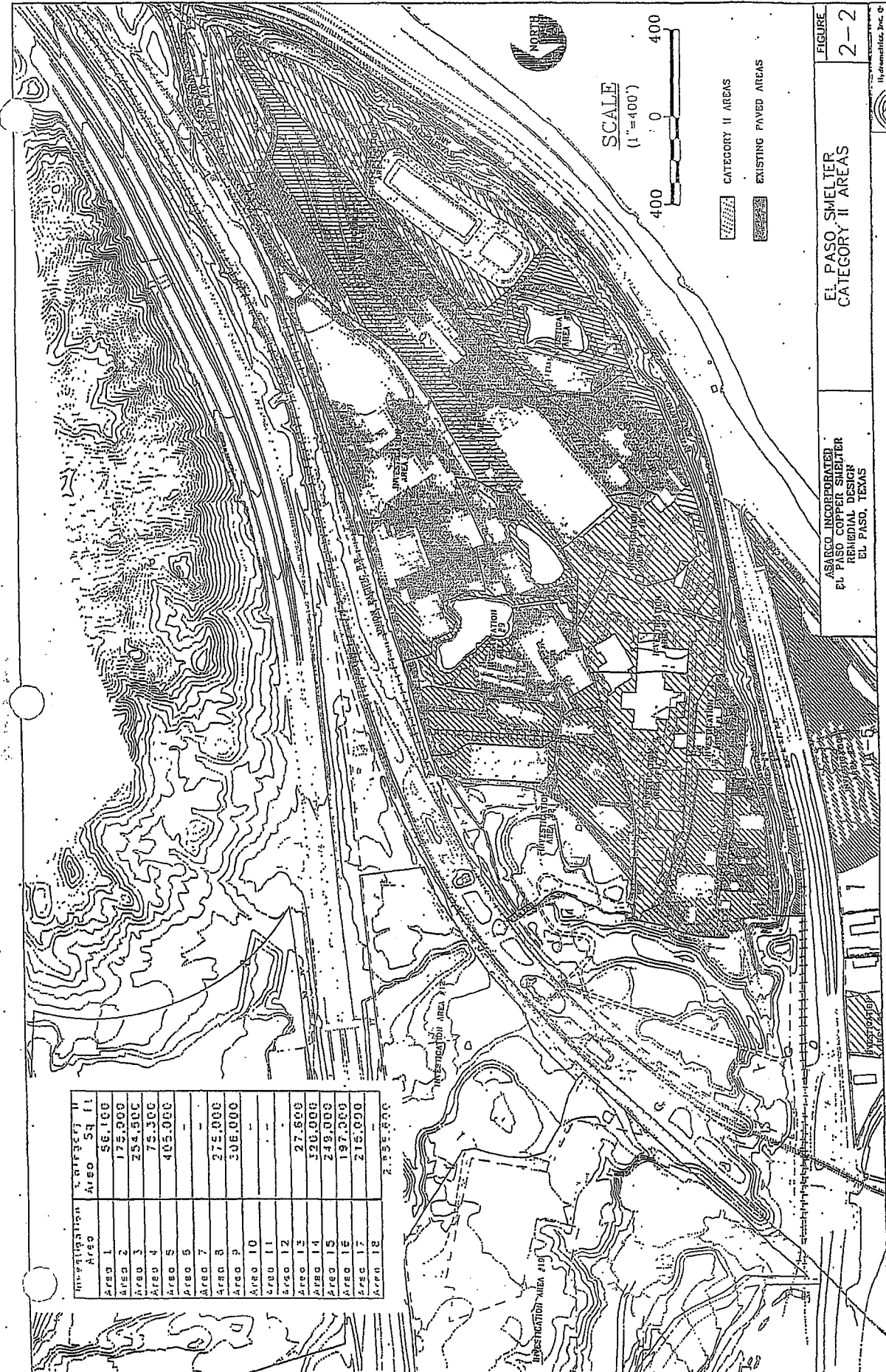
Attachments

cc: Mr. Lairy Johnson, Environmental Manager, ASARCO Incorporated-El Paso  
Ms. Terry Sykes, Senior Counsel, EPA Region 6, Legal RCRA Enforcement Branch-Dallas  
Albert Bronson, Assistant Attorney General, State of Texas Attorney Generals Office  
Waste Program Manager, TCEQ Region 6 Office, El Paso



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Attachment 1



ASARCO INCORPORATED  
 EL PASO COPPER SMELTER  
 REMEDIAL DESIGN  
 EL PASO, TEXAS

EL PASO SMELTER  
 CATEGORY II AREAS

FIGURE  
 2-2

Hydro-Metallurgy, Inc. ©

Investigation Area	Category II Area	Sq Ft
Area 1	56,100	
Area 2	175,000	
Area 3	254,800	
Area 4	75,300	
Area 5	403,000	
Area 6		
Area 7		
Area 8	275,000	
Area 9	306,000	
Area 10		
Area 11		
Area 12		
Area 13	27,500	
Area 14	320,000	
Area 15	249,000	
Area 16	197,000	
Area 17	215,000	
Area 18		
		2,335,800

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