

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

THE STATE OF TEXAS
COUNTY OF TRAVIS
I hereby certify that this is a true and correct copy of a Texas Natural Resource Conservation Commission document, which is filed in the permanent records of the Commission.
Given under my hand and the seal of office on



Gloria A. Vasquez
Gloria A. Vasquez, Chief Clerk
Texas Natural Resource
Conservation Commission AUG 29 1996

IN THE MATTER OF

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BEFORE THE

ASARCO INCORPORATED

TEXAS NATURAL RESOURCE

SWR NO. 31235, WQ 02321

CONSERVATION COMMISSION

AGREED ORDER

DOCKET NO. 96-0212-MLM-E

Assessing Administrative Penalties and
Requiring Corrective Actions of ASARCO Incorporated under the Authority
of the Solid Waste Disposal Act, TEX. HEALTH AND SAFETY
CODE ANN. Chapter 361 (Vernon 1992 and Supp. 1994) and the Texas Water Code, Chapter
5 and 26 (Vernon 1988 and Supp. 1994).

At its AUG 28 1996 agenda, the Texas Natural Resource Conservation Commission (the "Commission" or "TNRCC") considered the oral report to the Commission alleging violations of the Solid Waste Disposal Act, TEX. HEALTH AND SAFETY ANN. Chapter 361 (Vernon 1992 and Supp. 1994) (the "Act"), the Texas Water Code, Chapter 5 and 26 (Vernon 1988 and Supp. 1994) (the "Code") and the rules of the Texas Natural Resource Conservation Commission pertaining to solid waste management and requesting appropriate relief, including the imposition of administrative penalties. The facility made the subject of this Agreed Order is ASARCO Incorporated (ASARCO), located at 2301 West Paisano Drive, City of El Paso, El Paso County, Texas.

After proper notice, the parties appeared and announced before the Commission that they had reached a settlement and requested the Commission to enter this Agreed Order.

ASARCO understands that it has certain procedural rights, including but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, ASARCO agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed

severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon ASARCO and upon its successors and assigns.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

- (1) ASARCO owns and operates a copper smelter (facility operations previously included lead and zinc smelting) located at 2301 West Paisano Drive, City of El Paso, El Paso County, Texas (the "Facility").
- (2) Activities conducted at the Facility include the storage and management of industrial and hazardous wastes generated at the site.
- (3) During a Compliance Evaluation Inspection conducted on May 31 through June 13, 1994 (the 1994 inspection), and a follow-up sampling event conducted on January 12-13, 1995, TNRCC Region 6 field investigators documented the following unauthorized discharges of industrial solid waste, wastewater and storm water:
 - (a) Investigators noted that water from Pond Nos. 1 and 6 was being utilized for dust suppression. Sediment and surface water samples were obtained from Pond Nos. 1 and 6 during the 1994 inspection and the January 1995 sampling event. Analytical results confirmed the presence of elevated levels of metals evidencing the presence of industrial solid waste in the ponds;
 - (b) During the 1994 inspection, investigators noted that an asphalt-lined surface impoundment located west of the Converter Building Ventilation Baghouse was being used as a spill containment area. Water samples were collected and analytical results confirmed the presence of elevated levels of metals evidencing the presence of industrial solid waste in the impoundment. Investigators also noted cracks in the impoundment's asphalt surface and noted evidence of leakage through the expansion joints in the impoundment's concrete containment wall. Analytical results of soil samples taken from an area located adjacent to the containment wall confirmed the presence of elevated levels of metals in the soil. During the January 1995 sampling event, investigators noted the presence of approximately eight inches of sludge and sediment in part of the impoundment;

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- (c) During the 1994 inspection, effluent samples were collected from the 90,000 gallon tank which serves the Unloading Building's wastewater treatment plant. Analytical results confirmed the presence of elevated levels of metals evidencing the presence of contaminants in the tank. Investigators documented that effluent from the 90,000 gallon tank was being used for wash down in the bedding building and, unloading building, and for dust suppression on miscellaneous piles of material stored around the Facility;
- (d) During the 1994 inspection and the January 1995 sampling event, investigators noted that spent scrubber saddles, discarded brick, wood, plastic, flues and flue residue had been deposited in the area referred to as the boneyard on top of the slag pile (the "boneyard"). Soil samples were obtained from the boneyard during the 1994 inspection. Analytical results confirmed the presence of elevated levels of metals in the soil;
- (e) During the 1994 inspection, ASARCO representatives informed investigators of a sulfuric acid spill at Acid Plant No. 2. During the January 1995 sampling event, investigators observed an additional discharge of sulfuric acid on the ground at Acid Plant No. 2;
- (f) During the 1995 sampling event, soil samples were obtained from the base of a slope located outside ASARCO's perimeter fence just west of Acid Plant No. 2. Analytical results confirmed the presence of elevated levels of metals in the soil;
- (g) During the 1994 inspection, soil samples were obtained from an area of stained soil adjacent to a roll-off container located just west of Acid Plant No. 2. Analytical results confirmed the presence of elevated levels of metals in the soil;
- (h) During the 1994 inspection, investigators observed soil displacement and erosion of a berm located west of the Lead Plant and south of the closed Copper Roaster indicating that the berm had been breached. Soil samples were collected adjacent to the breach point by ASARCO. Analytical results confirmed the presence of elevated levels of metals in the soil;
- (i) During the 1994 inspection, investigators observed soil displacement and erosion of the berm located south of the lined storm water pond indicating that the berm had been breached. Soil samples were collected adjacent to the breach point by ASARCO. Analytical results confirmed the presence of elevated levels of metals in the soil; and

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- (j) During the 1994 inspection, investigators noted that storm water was bypassing a sump located adjacent to the Facility's entry gate and discharging off-site. Samples of the discharge were obtained and analytical results confirmed the presence of elevated levels of metals in the storm water run-off. Investigators also noted that ASARCO had failed to monitor the unauthorized discharge for pH, Chemical Oxygen Demand (COD), oil and grease and metals as required by ASARCO's water quality permit.
- (4) During the 1994 inspection, investigators documented that ASARCO failed to perform a waste determination and failed to amend its Notice of Registration concerning the generation of the following solid wastes:
- (a) Air conditioning filters in a dumpster south of Acid Plant No. 2;
 - (b) Spent catalyst in a poly-bag found west of Acid Plant No. 2;
 - (c) Lathe cleaning solvent found in the machine shop;
 - (d) Anti-freeze and freon recycling machine filters in the auto shop;
 - (e) Waste oils from the auto shop;
 - (f) Scrubber saddles in the boneyard;
 - (g) Brick material in the boneyard;
 - (h) Residues in flues located in the bone yard;
 - (i) Waste oil, grease, and other liquids and solids in drums stored in the Zig Zag building;
 - (j) Bags from the Spray Dryer Baghouse; and
 - (k) Drums containing spent solvents and waste oil located, (1) adjacent to the compressor station north of the unloading building, (2) north of the bedding plant, and (3) west of Acid Plant No. 2.
- (5) During the 1994 inspection, investigators documented that ASARCO failed to amend its Notice of Registration concerning the following waste management units:
- (a) The 90,000 gallon wastewater treatment plant which consists of a drum filter, a thickener and the 90,000 gallon tank used for storing the wastewater (this tank was subsequently replaced with a 60,000 gallon tank);
 - (b) The 1,000 gallon laboratory wastewater holding tank which is used to hold wastewater and chemicals used in the laboratory;
 - (c) The RCC pre-treatment wastewater treatment plant; and
 - (d) The RCC wastewater treatment plant.

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- (6) During the 1994 inspection, investigators documented that ASARCO failed to properly label the following hazardous waste containers with correct accumulation start dates or the words "Hazardous Waste":
 - (a) The bulk hauler trailer located at the RCC wastewater treatment plant; and
 - (b) A roll-off container located west of Acid Plant No. 2.

- (7) During the 1994 inspection, investigators documented that the following hazardous waste containers were uncovered when waste was not being added or removed:
 - (a) The bulk hauler trailer located at the RCC wastewater treatment plant; and
 - (b) Drums containing grease, waste oil or spent solvent located, (1) adjacent to the compressor station north of the unloading building, (2) north of the bedding plant, and (3) west of Acid Plant No. 2.

- (8) On-site and off-site groundwater monitoring wells were sampled during a sampling event undertaken during May 1995. Analytical results confirm the presence of elevated levels of arsenic and other metals in some on-site and off-site groundwater monitoring wells.

- (9) During a Compliance Evaluation Inspection conducted on April 28 through May 8, 1995 (the 1995 inspection), investigators documented the following unauthorized discharges of industrial solid waste:
 - (a) A dark colored sludge was observed flowing from a storage bin located at the Acid Plant wastewater treatment plant;
 - (b) A pile of sediment containing broken pieces of spent scrubber saddles was observed adjacent to a containment wall west of the Converter Building Ventilation Baghouse;
 - (c) Broken pieces of spent scrubber saddles were observed on the ground adjacent to roll-off containers located in the southwest yard;
 - (d) Waste materials, similar in nature to those observed during the 1994 inspection, were observed in the boneyard; and
 - (e) A leaking 35 gallon drum containing lubricating oil was observed adjacent to the Zig Zag building.

- (10) During the 1995 inspection, investigators documented that ASARCO failed to amend its Notice of Registration concerning the generation of the following solid wastes:
 - (a) Air conditioning filters in a dumpster south of Acid Plant No. 2;

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- (b) Anti-freeze and freon recycling machine filters in the auto shop;
 - (c) Scrubber saddles in the boneyard;
 - (d) Brick material in the boneyard;
 - (e) Residues in flues located in the boneyard; and
 - (f) Bags from the Spray Dryer Baghouse.
- (11) During the 1995 inspection, investigators documented that ASARCO failed to amend its Notice of Registration concerning the following waste management units:
- (a) The 90,000 gallon wastewater treatment plant which consists of a drum filter, a thickener and the 90,000 gallon tank used for storing the wastewater (this tank was subsequently replaced with a 60,000 gallon tank);
 - (b) The 1,000 gallon laboratory wastewater holding tank which is used to hold wastewater and chemicals used in the laboratory;
 - (c) The Zig Zag building; and
 - (d) The RCC wastewater treatment plant.
- (12) During the 1995 inspection, investigators documented that ASARCO had failed to perform a waste determination on the following wastes:
- (a) A 55 gallon drum containing contaminated grease; and
 - (b) A 55 gallon drum containing an unidentified grey sludge. Both drums were located in the Zig Zag building.

CONCLUSIONS OF LAW

- (1) ASARCO has managed industrial and hazardous solid waste at its copper smelting facility located in El Paso County, Texas and is therefore subject to the jurisdiction of the Texas Natural Resource Conservation Commission pursuant to the Solid Waste Disposal Act (the "Act"), TEX. HEALTH AND SAFETY ANN. Chapter 361 (Vernon 1994), the Texas Water Code (the "Code"), Chapter 5 and 26 (Vernon 1988 and Supp. 1994) and the rules of the Texas Natural Resource Conservation Commission pertaining to solid waste management.
- (2) As evidenced by Finding of Fact Nos. 3(a)-(j), 8 and 9, ASARCO has caused, suffered, allowed, or permitted the disposal of industrial solid waste in such a manner so as to cause the discharge or imminent threat of discharge of such waste into or adjacent to waters in the state without obtaining specific authorization for such a discharge in violation of 30 TAC §335.4 and the Texas Water Code §26.121.

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- (3) As evidenced by Finding of Fact Nos. 4, 5, 10 and 11, ASARCO has violated 30 TAC §335.6(c) by failing to notify the Commission of all generated wastes and associated waste management units.
- (4) As evidenced by Finding of Fact No. 6, ASARCO has violated 30 TAC §335.69(a)(2) and 40 CFR §262.34(a)(2) by failing to label containers of hazardous waste with a correct accumulation start date.
- (5) As evidenced by Finding of Fact No. 6, ASARCO has violated 30 TAC §335.69(a)(3) and 40 CFR §262.34(a)(3) by failing to label containers of hazardous waste with the words "Hazardous Waste".
- (6) As evidenced by Finding of Fact No. 7, ASARCO has violated 30 TAC §335.112(a)(8) and 40 CFR §265.173 by storing hazardous waste in open containers when waste was not being added or removed.
- (7) As evidenced by Finding of Fact Nos. 4 and 12, ASARCO has violated 30 TAC §335.62 and 40 CFR §262.11 by failing to make a waste determination on all wastes generated at the Facility.
- (8) The Commission has the authority to assess administrative penalties for violations of the Act and the Code pursuant to §361.252 of the Act and §26.136 of the Code.
- (9) The Commission has the authority to issue enforcement orders directing compliance with the Act, the Code, and Commission rules pursuant to §26.019 of the Code, §361.302 of the Act and 30 TAC §70.5.
- (10) An administrative penalty of One Hundred Sixty-Eight Thousand Four Hundred Dollars (\$168,400.00) is justified by the facts recited herein, considered in light of the factors set forth in §361.252 of the Act and §26.136 of the Code.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION ORDERS that ASARCO shall be assessed an administrative penalty of One Hundred Sixty-Eight Thousand Four Hundred Dollars (\$168,400.00) for violations of the Solid Waste Disposal Act, the Texas Water Code, and the rules of the Texas Natural Resource Conservation Commission. ASARCO has paid Eighty-Four Thousand Two Hundred Dollars

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(\$84,200.00) of the assessed penalty. The remaining Eighty-Four Thousand Two Hundred Dollars (\$84,200.00) of the assessed administrative penalty shall be remitted with the condition that the Company shall implement the Supplemental Environmental Project (SEP) defined in Attachment A, in accordance with §361.252(o) of the Act and §26.136(n) of the Code. ASARCO is hereby ordered to comply with all provisions in Attachment A which is attached hereto and incorporated herein by reference. If ASARCO complies with all provisions of the SEP set out in Attachment A, ASARCO's obligation to pay the conditionally remitted portion of the administrative penalty assessed shall be discharged. If ASARCO fails to comply with all provisions of the SEP agreement, including the deadlines associated with it, the Executive Director may require ASARCO to immediately pay all or part of the conditionally remitted portion of the administrative penalty. The imposition of this administrative penalty resolves only those alleged violations of the Act, the Code and the rules of the TNRCC pertaining to solid waste management arising from the TNRCC inspections of May 31 through June 13, 1994 and January 12-13, 1995 and sampling events conducted in May and December 1995 and January 1996. The Commission shall not be constrained in any manner from considering administrative penalties for violations of the Act, the Code or the regulations occurring after this Agreed Order is signed or which are not raised in this Agreed Order.

IT IS FURTHER ORDERED BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION that:

- (1) Within 30 days of the effective date of this Order, ASARCO shall certify that ASARCO is then in compliance with the requirements of 30 TAC §335.6(c). Certification shall be provided in writing.
- (2) Within 30 days of the effective date of this Order, ASARCO shall certify that ASARCO is then in compliance with the requirements of 30 TAC §335.69 and 40 CFR §262.34. Certification shall be provided in writing.
- (3) Within 30 days of the effective date of this Order, ASARCO shall certify that ASARCO is then in compliance with the requirements of 30 TAC §335.112(a)(8) and 40 CFR §265.171. Certification shall be provided in writing.
- (4) Within 60 days of the effective date of this Order, ASARCO shall certify that ASARCO is then in compliance with the requirements of 30 TAC §335.62 and 40 CFR §262.11. Certification shall be provided in writing.
- (5) Within 75 days of the effective date of this Order, ASARCO shall submit to the TNRCC a plan for the remedial investigation to determine the vertical and horizontal extent of the

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contamination identified as a result of the 1994 and 1995 inspections and the January 1995 sampling event (the "Remedial Investigation"). The Remedial Investigation must also include an assessment of contamination identified during the May and December 1995 and January 1996 sampling events where off-site groundwater contamination was documented and/or confirmed. The objectives of the Remedial Investigation are to determine the source(s) and to characterize the nature, extent, direction, rate of movement, volume, composition, and concentration of contaminants in environmental media in Texas in accordance with 30 TAC Chapter 335 Subchapter S Risk Reduction Standards, or later-adopted Texas Risk Reduction Rules, whichever are in effect at the time the plan for the Remedial Investigation is due. The Remedial Investigation shall include, but is not limited to the following elements:

- (a) A detailed site history including previous site owners, previous known site activities, previous known waste management, and current waste management practices.
- (b) A site characterization of the local soil, geology, groundwater, and surface water conditions based upon a literature review.
- (c) A sufficient number of samples of environmental media to define background conditions, hydraulic gradient(s), source(s) of contamination, and the vertical and horizontal extent of contamination. ASARCO shall pursue contamination across property boundaries in the State of Texas as necessary to determine the extent of contamination. If ASARCO is unable to obtain off-site access, they shall document their efforts and notify the TNRCC Enforcement Division's Multi-Media Section within 5 days of a determination by ASARCO that their efforts to obtain access have failed.
- (d) Samples of environmental media shall be analyzed using appropriate EPA-approved analytical methods to detect site contaminants as delineated in Appendix A.

Use of non compound-specific analysis (e.g., total petroleum hydrocarbons, total organic carbon, etc.) may, where appropriate for the site contaminants, be used to aid in the determination of the horizontal and vertical extent of contamination, but must be appropriately supported by compound-specific analysis to assess the risk to human health and the environment, and to demonstrate the attainment of cleanup levels in accordance with 30 TAC §335.553 (d) (Required Information), or subsequently applicable regulations. Contaminants related to two ongoing diesel remediations need not be addressed under this Order. Any action under this Order

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which impacts those remediation efforts will be coordinated with the Petroleum Storage Tank Division of the TNRCC.

Sampling quality assurance/quality control (QA/QC) procedures shall include the use of field duplicates, equipment blanks, and trip blanks to measure any problems which may result from incomplete decontamination, atmospheric conditions, variability in samples, incomplete homogenization, or lab error.

- (e) Assessment of Texas sensitive receptors within an area one-half mile hydraulically downgradient of the property owned by ASARCO between Interstate Highway 10 and West Paisano Drive in El Paso, Texas. The term "sensitive receptor" includes, but is not limited to, water wells, basements, subsurface utilities, manholes, or any other known below ground structures located hydraulically downgradient of the operating plant site. In addition to any surveys of registered water wells, ASARCO shall also interview any potentially affected property owners or occupants to determine if any groundwater user in the receptor zone utilizes unregistered water wells.

Information on all water wells, both registered and unregistered, to the extent available, shall include: current owner; date of construction, well completion logs; current water depth; screened interval; producing geologic unit(s); total well depth; water quality data; and current and historical uses(s). All wells potentially impacted by the facility shall be sampled and the analytical results included in the Remedial Investigation Report required by Ordering Provision No. 6.

Assessment of subsurface utilities shall include a determination of the location and integrity of all on-site wastewater and storm water drains, sumps and ancillary piping in order to determine if they are sources of releases to soil or groundwater.

- (f) Determination of the hydraulic parameters porosity, transmissivity, hydraulic conductivity and storativity of saturated zones found to contain free-phase or dissolved-phase contamination.
- (g) All generated wastes shall be managed as an industrial solid waste in accordance with 30 TAC Chapter §335, Subchapter A - Industrial Solid Waste and Municipal Hazardous Waste Management in General; Subchapter C - Standards Applicable to Generators of Hazardous Waste; and Subchapter R - Waste Classification.
- (h) A schedule to implement the Remedial Investigation upon TNRCC approval.

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- (6) Within 120 days of the completion of the Remedial Investigation, ASARCO shall submit a Remedial Investigation Report which summarizes the findings of the investigation for written approval, or approval with modifications, from the Executive Director. The report shall contain at a minimum:
- (a) A site map(s) drawn to a scale capable of showing the locations for all current and known historical facility structures, operations, and storage areas; all areas of visible and suspected contamination; sampling locations, including locations of soil borings and monitor wells; adjacent properties; all significant topographic features in the vicinity of the site; and locations of both on-site and adjacent utilities, structures, roads, surface drainage, and surface waters located in the State of Texas. All components and symbols (i.e., legend, scale, and north arrow) for each map shall be legible and clearly identified.
 - (b) Copies of field logs and lithologic logs, construction details, and description of drilling and construction procedures for all wells used during the assessment. Top of casing, screened interval, and groundwater elevations for all wells shall be shown on the logs.
 - (c) Geologic cross sections of the area covered by this investigation showing each hydrogeologic unit and screened intervals of all monitoring wells and sampling depths within all soil borings.
 - (d) The results of the Sensitive Receptor Survey and map(s) drawn to scale showing any Texas water-sensitive receptors and all Texas water wells within an area one-half mile hydraulically downgradient of the property owned by ASARCO between Interstate Highway 10 and West Paisano Drive.
 - (e) Descriptions of sampling and analysis protocols, including: sampling equipment and techniques; procedures for taking measurements of water level elevations in the monitor wells; procedures for detecting any phase-separated liquids and their thickness, if present; well evacuation procedures including purged water or water quality prior to sampling and handling; sampling and analysis protocol for field measurements; procedures for decontaminating sampling equipment between sampling events; disposal of field-generated waste; sample handling and preservation techniques, including chain of custody documentation; and sampling quality assurance/quality control (QA/QC) procedures.

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- (f) Tabulations of all analytical results including a separate tabulation of results which exceed background conditions. Soil sample results shall be reported in units of mg/kg, and groundwater sample results shall be reported in units of mg/l or $\mu\text{g/l}$.
 - (g) Copies of the original laboratory data and results of data evaluation regarding: analytical methods, quantitation limits, qualifiers and codes, blanks, and tentatively identified compounds.
 - (h) Contaminant isopleth maps and cross sections for each Appendix A contaminant discovered showing the lateral and vertical extent of constituents in the soil and all saturated zone(s) in which groundwater samples were taken.
 - (i) Potentiometric surface maps showing hydraulic gradient, static water elevations, groundwater flow paths, and the thickness of any phase-separated liquids determined during the investigation.
 - (j) Saturated zone characteristics, i.e., hydraulic conductivity, porosity, storativity, transmissivity, etc. of all zone(s) found to contain free-phase or dissolved-phase contamination.
 - (k) Identification of areas identified as sources of releases to soil or groundwater.
 - (l) A general proposal for corrective action stating the Risk Reduction Standard to be achieved and a detailed schedule for remediation of any contaminated media identified during the assessment necessary to meet the selected Risk Reduction Standard. The purpose of this proposal and schedule is to assure appropriate remediation in compliance with 30 TAC Chapter 335, Subchapter S, Risk Reduction Standards, or later-adopted Texas Risk Reduction Rules, whichever are in effect at the time the Remedial Investigation Report is due.
- (7) Within 90 days after receiving written approval, or approval with modifications from the Executive Director of the Remedial Investigation Report (including the corrective action proposal), ASARCO shall begin implementation of the approved proposal for corrective actions required by Ordering Provision No. 6(l) in accordance with the approved schedule.
- (8) Within 90 days of the effective date of this Agreed Order, ASARCO shall submit for approval or approval with modifications a Closed Plant Evaluation Plan. The plan shall include a proposal to evaluate the closed plant areas in order to determine if the closed areas are responsible for any releases of contaminants to the environment.

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- (9) Within 30 days of receiving written approval, or approval with modification from the Executive Director of the Closed Plant Evaluation Plan, ASARCO shall implement the plan in accordance with the approved schedule.
- (10) All plans, reports, submittals, specifications, and other documents which relate to this enforcement action shall be submitted in duplicate to:

Executive Director
c/o John L. Sadlier
Enforcement Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
MC 128
Austin, Texas 78711-3087

and a copy of the materials shall be submitted to:

Region 6 Manager
Texas Natural Resource Conservation Commission
7500 Viscount Blvd., Suite 147
El Paso, TX 79925

- (11) If ASARCO fails to comply with any of the technical ordering provisions in this Agreed Order within the prescribed schedules, and that failure is caused by an act of God, war, riot, or other catastrophe beyond the control of ASARCO, that failure shall not be construed as a violation of this Agreed Order. ASARCO has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. ASARCO shall notify the Executive Director within seven (7) days after ASARCO becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize the delay.
- (12) The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report or other document submitted pursuant to this Agreed Order, upon written and substantial showing of good cause. All requests for extensions by ASARCO shall not extend any deadlines contained in this Agreed Order until it has received written approval for extension from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
- (13) The Executive Director may refer this matter to the Office of the Attorney General for further enforcement proceedings without notice to ASARCO if the Executive Director

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determines that ASARCO is noncompliant with the requirements set forth in this Agreed Order.

- (14) This Agreed Order shall terminate 5 years from its effective date or upon compliance with all terms and conditions set forth in the order, whichever is later.

The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the mailing date, as provided by 30 TAC §70.10(b).

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



Barry R. McBee, Chairman

ATTEST:



Gloria A. Vasquez, Chief Clerk

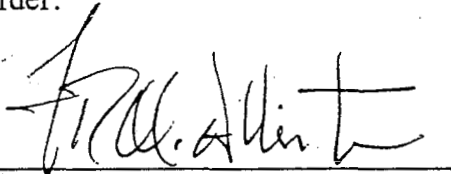
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I, the undersigned, have read and understand the attached Agreed Order in the matter of ASARCO Incorporated.

I am authorized to agree to the attached Agreed Order on behalf of ASARCO Incorporated, and do agree to the specified terms and conditions.

I understand that by entering into this Agreed Order, ASARCO Incorporated waives certain procedural rights, including but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal.

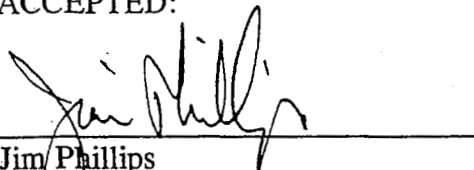
I agree to the terms of this Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.



Authorized Representative
ASARCO Incorporated

Date: August 9, 1996

ACCEPTED:



Jim Phillips
Deputy Director
Office of Legal Services
Texas Natural Resource Conservation Commission

Date: 8/12/96

APPENDIX A

arsenic
cadmium
chromium
copper
iron
selenium
zinc
lead
pH
specific conductivity
TDS

Attachment A
SUPPLEMENTAL ENVIRONMENTAL PROJECT

The Texas Natural Resource Conservation Commission ("TNRCC") agrees to remit a portion of the administrative penalty assessed in this Agreed Order with the condition that ASARCO, Incorporated ("the Company") shall perform and comply with the following Supplemental Environmental Project ("SEP") provisions. The total amount of the conditional remittance for this SEP, upon completion according to the terms and schedule listed below, shall be Eighty-Four Thousand Two Hundred Dollars (\$84,200.00) of the assessed penalty of One Hundred Sixty-Eight Thousand Four Hundred Dollars (\$168,400.00).

1. Project Description

The Company agrees to demolish the following facilities located at the El Paso Plant site:

- A. Copper Wedge Roaster Building and the brick flue that served the reverberatory furnace.
- B. Blast furnaces, dross reverberatory furnace, flues and baghouse.
- C. Zinc plant area which includes that cooling tubes, flues, rotary kilns and baghouse.

The above facilities will be demolished down to the concrete foundations with all demolition rubble being properly managed. The Company shall comply with all applicable state and federal laws and regulations when implementing this SEP.

The Company has estimated that it will incur capital costs of One Million One Hundred Thirty-Six Thousand Dollars (\$1,136,000.00) to complete the demolition as described above. The Company agrees that it will incur capital costs of at least One Million One Hundred Thirty-Six Thousand Dollars (\$1,136,000.00) to implement this SEP.

2. Performance Schedule

The Company shall begin implementation of the project described in Section 1 within 30 days of the effective date of this Agreed Order.

The Company shall submit to the TNRCC SEP Coordinator quarterly reports. The first quarterly report shall be submitted within 90 days of effective date of this Agreed Order. Subsequent quarterly reports shall be submitted within 90 days of the submittal date of the previous report.

The Company shall complete this SEP within 50 months of the effective date of this Agreed Order.

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ATTACHMENT A
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The Company shall submit to the TNRCC SEP Coordinator a final report summarizing the project within 30 days of completion of the SEP.

3. **Records and Reporting**

The Company shall document all capital costs incurred under the terms of this SEP.

The quarterly reports and the final report shall include documentation of capital costs incurred, including copies of receipts and invoices for expenditures. The final report shall delineate all costs of each project, describe each project, and summarize the environmental benefits expected.

Reports shall be submitted to the following address:

SEP Coordinator
Litigation Support Division
Texas Natural Resource Conservation Commission
MC-175
P.O. Box 13087
Austin, Texas 78711-3087

4. **Failure to Fully Perform**

In the event that the Company does not satisfy its obligations under this SEP, the Executive Director may require the Company to immediately pay all or part of the Eighty-Four Thousand Two Hundred Dollar (\$84,200.00) conditional remittance to the TNRCC for deposit in the General Revenue Fund of the State of Texas.

The check for any amount due shall be made out to the "State of Texas - General Revenue Fund" and mailed to:

Texas Natural Resource Conservation Commission
Financial Administration Division, Revenues
Attention: Cashier, MC 214
Austin, Texas 78711-3088

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A copy of the check shall be mailed to the TNRCC SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Company must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TNRCC. Such statements include, but are not limited to, advertising, public relations, and press releases.

6. Clean Texas 2000 Program

The Company shall not include this SEP in any application made to TNRCC under the "Clean Texas 2000" (or any successor) program(s). Similarly, the Company may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TNRCC or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Company under any other Agreed Order, negotiated with the TNRCC or any other agency of the state or federal government.

