

EPA Region 6 Oversight Work Plan for the Former ASARCO Smelter Site, El Paso, Texas.

PURPOSE

This work plan is in response to concerns expressed by the community of El Paso requesting that the U.S. Environmental Protection Agency (EPA) Region 6 perform additional clean up oversight of the former ASARCO Smelter (Site). The purpose of this work plan is to communicate to the public the roles and responsibilities that the EPA Region 6 has for the remedial activities at the Site. This work plan is intended to support and supplement the on-site management being performed by the ASARCO Texas Custodial Trustee. This work plan is not intended to replace the oversight being performed by Texas Commission on Environmental Quality (TCEQ). This process will bring the best expertise to bear through a collaborative effort that includes several levels of government. To help achieve these goals and objectives, Region 6 has prepared the following Oversight Work Plan.

OBJECTIVE

The objective of the work plan is to identify the specific activities that will be performed by EPA, identify EPA central points of contacts for the community and to define the responsibilities of key parties during the long term implementation of the remediation at the site.

OVERSIGHT MANAGEMENT OBJECTIVE, RESPONSIBILITIES and LINES of COMMUNICATION

The oversight management objective is to ensure that State and Federal environmental laws and regulations are met at the Site, technical performance and costs associated with the various aspects of the project are monitored, and to ensure that community concerns are adequately addressed and/or taken into consideration.

Custodial Trustee Role

The Trustee will provide overall management of the project and will be the principal line of communication for the TCEQ and EPA. The Custodial Trustee is Project Navigator, Ltd.

Texas Commission on Environmental Quality (TCEQ) Role

TCEQ has the lead oversight for Site cleanup activities and to ensure that regulatory requirements are met. The TCEQ Project Manager is Jim Sher and he is the primary point of contact within the TCEQ for all Site related issues and therefore will be the primary contact. Jim Sher's phone number is (512) 239-2444 and email address is

James.Sher@tceq.texas.gov. Additionally, Caroline Sweeny is the TCEQ designated contact for legal issues involving the Site. Caroline Sweeny's phone number is (512)239-0665 and email address is Caroline.Sweeney@tceq.texas.gov

EPA Region 6 Role

Pursuant to the Environmental Custodial Trust Agreement dated December 2009, the EPA Region 6 named authorized representative is Chuck Barnes (6EN-HC), Enforcement Division, Enforcement Officer (EO). In this capacity he has been designated to review financial documents submitted by the Trustee and further assist with the review of technical documents relating to the site assessment and cleanup activities as requested by TCEQ and as required by the Bankruptcy order and/or Trust Agreement. The EO will also review and comment on community issues and Trustee documents related to ground water. The EO will work in partnership with the TCEQ Project Manager and the Trustee during the remediation of the Site. Chuck Barnes's phone number is (214) 665-6535 and email address is barnes.chuck@epa.gov.

The Superfund Division has designated Charles Fisher, to serve as the EPA Oversight Coordinator, to provide overall management coordination within the various EPA programs and provide field oversight activities on an as needed basis. The EPA Oversight Coordinator will work in partnership with the EPA Enforcement Officer, TCEQ Project Manager and the Trustee during the remediation of the Site. Charles Fisher's phone number is (214)665-2224 and email address is fisher.charles@epa.gov.

The Superfund Division has designated a Site Assessment Manager (SAM) to respond to community requests, following a petition from the community, for any new on-site specific areas that may need further investigation. Once received, EPA will determine if the petition contains new information on contamination that has not been previously investigated. EPA will then review the information and work in partnership with TCEQ and the Trustee to ensure that the remediation plans are complete or begin a site evaluation independently and inclusive of the new information.

The Enforcement Division, TX/NM Storm Water Enforcement Section has designated a representative to review and comment on community issues and Trustee documents related to stormwater management.

The Enforcement Division has designated a representative to review and comment on community issues and Trustee documents related to asbestos activities, in relation to the Asbestos National Emission Standard for Hazardous Air Pollutant.

The Office of Regional Counsel has designated a representative to review and comment on community, TCEQ and Trustee legal issues.

The Work Assignment Manager (WAM) for the Technical Assistance Services for Communities (TASC) contract is at EPA Headquarters. An EPA Region 6 contact has been assigned to coordinate with the WAM, community, and TASC contractor. The

TASC contractor will review and comment on the Trustee's Draft Remedial Action Work Plan dated October 2010 and potentially other requests from the community on an as needed basis.

The Office of Environmental Justice has designated a technical representative to review and comment on community and Trustee documents related to Environmental Justice issues.

BACKGROUND SITE INFORMATION and AGREEMENT BACKGROUND

The facility began operation in 1887, as the El Paso Lead smelter founded by Robert S. Towne. In 1899, the smelter became part of American Smelting and Refining Company (ASARCO). In 1911, a copper smelter was added, and a crushing plant was installed in 1928. A zinc plant was installed in 1948. Sometime in 1982, the zinc plant was shut down, with lead plant operations being suspended in 1985. In 1999, facility operations were suspended and the plant was placed on care and maintenance status.

On August 9, 2005, 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 (the "Bankruptcy Case"). During March 2009, the Consent Decree and Settlement Agreement was signed and it is intended to serve as a comprehensive settlement of the claims and causes of action of the United States EPA and TCEQ against ASARCO with respect to all past costs and any potential future costs incurred and work performed by the United States or the TCEQ in connection with the Texas Designated Properties (which include the El Paso, Texas smelter and the Amarillo, Texas zinc smelter properties). Pursuant to Subparagraph 12(h), page 15, of the Settlement Agreement, the Custodial Trustee shall provide to U.S. EPA and the TCEQ, a balance statement, fee schedule, annual scope of work and proposed budget for the coming year. The TCEQ shall have the authority to approve, disapprove or modify the proposed budget, fee schedule and scope of work after consultation with U.S. EPA.

On December 9, 2009, the Environmental Custodial Trust Agreement (Texas Custodial Trust) was signed by ASARCO (debtor) and Project Navigator, Ltd., in its capacity as Custodial Trustee of the ASARCO Texas Custodial Trust. On the Plan Effective Date, the Settlor caused the transfer to the Custodial Trust Account Cash in the amount of \$52,080,000. The purposes and functions of the Texas Custodial Trust are to own the Designated Properties, carry out administrative and property management functions related to the Designated Properties, conduct, manage, and/or fund implementation of future Environmental Actions with respect to the Designated Properties, and ultimately to sell, transfer or otherwise dispose of all or part of the Designated Properties, if possible, all as provided in the Settlement Agreement, with no objective or authority to engage in any trade or business. With respect to the El Paso Smelter Site, the purposes of this Texas Custodial Trust further include: 1) addressing contamination (including without limitation Hazardous Substances) on and in the structures, soils, surface water, and groundwater at such site; and 2) remediating such site to standards that are protective of human health and the environment with the oversight of the TCEQ. The Texas Custodial

Trust is established pursuant to this Agreement and the Settlement Agreement and approved by the Bankruptcy Court for the purpose of resolving claims asserting environmental liabilities of the Settlor with respect to the Designated Properties and the other purposes set forth in this Agreement and the Settlement Agreement. The Bankruptcy Court shall retain continuing jurisdiction over the Texas Custodial Trust. The Texas Custodial Trust satisfies all the requirements of, and is intended by the Parties to be classified as, a qualified settlement fund (for which no grantor trust election has been made) pursuant to section 468B of the Internal Revenue Code and related Treasury Regulations.

International Boundary and Water Commission (IBWC) Site

The December 9, 2009, Texas Custodial Trust agreement states that the Custodial Trustee, in evaluating groundwater impacts at the El Paso Smelter Site, shall consult with IBWC and may, with the consent of TCEQ, combine remediation efforts/funds to address groundwater issues if the Custodial Trustee and IBWC conclude there is overlap and that combining efforts relating to groundwater would be cost effective and in the best interests of both the Texas Custodial Trust and IBWC. Groundwater from the Site ultimately discharges to the Rio Grande and Sections of the IBWC American Canal. ASARCO and the IBWC have entered into separate settlements for past and future environmental costs (approximately \$19 million) relating to the IBWC Site.

EPA Off-Site Residential Sampling and EPA/ASARCO Off-Site Residential Clean Ups

Since 2001 the EPA has worked to address community concerns related to off-site contamination and has performed sampling investigations and cleaned up residential properties outside the boundaries of the ASARCO property. First, EPA determined an area to be sampled by performing air dispersion modeling and confirmation sampling. EPA then worked with the cities of El Paso, Texas and Sunland Park, New Mexico, as well as neighborhood associations, to assure effective communication about the off-site sampling results and cleanup efforts. It was necessary for EPA to obtain permission from owners to gain access to take samples from private property, and unfortunately, a small number of residents chose to deny access to sample, or denied access for cleanup on their property. All properties where EPA was granted access for sampling have been sampled. All properties where EPA and/or ASARCO were granted access for cleanup have been cleaned up. As of August 2009, EPA gained access and sampled nearly 4,000 properties. As of August 2009, EPA and ASARCO have cleaned up a total of 1,088 properties, of which 1,064 were within the city limits of El Paso and 24 were within the city limits of Sunland Park.