

Public Comments Submitted by Ex-ASARCO Workers, El Paso Regional Sierra Club,  
Sunland Park Grassroots Environmental Group

1. General Concerns

A. The Trustee's plans fail to identify sources of information

Project Navigator ("the Trustee") has failed to identify specific sources of information in the El Paso Draft Community Relations Plan (CRP), Draft Community Assurance Plan (CAP), Demolition Health and Safety Plan (HASP), Draft Final Site Health and Safety Plan, Draft Remediation Action Work Plan (RAWP) (collectively referred to as "the plans"). The plans are fraught with conclusory language that cannot easily be cross-checked by community members due to the lack of specific references. The Trustee's failure to identify the source of information (author, name of publication, date of publication, page numbers, and physical location of the publication) impedes the community's ability to verify the validity of the Trustee's assessment of the site and the planned remediation of the same.

Request: The final plans should cite the source of information referenced after each conclusory statement.

**Response: The Plans referenced above have been written to provide the public information on the work the Trust will complete at the site, to direct the collection of additional data to fill data gaps identified from previous remedial investigations and to assure that current on-site workers and the public are protected from hazards at the site during remediation activities. The Draft Community Assurance Plan is a summary/informational document that describes the actions that will be taken by the Trust for the safety of the community surrounding the smelter during activities at the site; it does not include a reference list. References are provided in the following Plans:**

- **Draft Community Relations Plan, in Section 1.2**
- **Demolition Health and Safety Plan, in each SOP attached to the Plan**
- **Draft Final Site Health and Safety Plan, in Section 1.6**
- **Draft Remediation Action Work Plan, in Section 10**

**To provide additional clarity, applicable references used in developing the RAWP will also be listed in the beginning of each section of the revised Plan. The statements made in the RAWP are based on previous documents that are referenced (available in the public record) and the Trust's opinion based on extensive experience at similar sites.**

B. The Trustee's plans do not incorporate the Ex-ASARCO Worker's concerns

The plans make several reference to input from the former ASARCO-El Paso employees ("Ex-ASARCO Workers"). See for example, Draft Remedial Action Work Plan (RAWP), page 1-1/ The Trustee has failed to identify what comments were provided by

the Ex-ASARCO Workers and how those comments were actually incorporated into the draft plans.

Request: Due to the Ex-ASARCO Worker's general dissatisfaction with the plans and the limited participation they have been afforded in the creation of the plans, they respectfully request that each and every mention of the "former employee input" be removed from the plans.

**Response: At their request, the Trust has provided site access and listened to the Ex-ASARCO Workers more than any other stakeholder associated with the project. The Trust has met with the Ex-ASARCO Workers on the following occasions:**

- **June 16, 2010: Office meeting to discuss upcoming project with Ex-ASARCO Workers, Mariana Chew, Heather McMurray and Bill Addington to discuss information that Ex-ASARCO Workers had regarding smelter operations, ENCYCLE materials handled at the site and a sample collected from the attic of a local residence.**
- **July 13, 2010: Site tour with the Ex-ASARCO Workers to have them point out the locations that they thought should be tested due to the potential presence of materials from ENCYCLE. During this site tour the project team recorded the locations where the Ex-ASARCO Workers stated they saw materials of concern to them, including areas around the loading and unloading area, the bedding building, and the anode pour area. All of the locations noted during the tour were included for further investigation in the draft final RAWP.**
- **October 12, 2010: Office meeting to present the draft final RAWP to the Ex-ASARCO Workers based on the information that the project team had received to date. Additional information, including the use of hydrazine in the acid plants and potential PCB impacts east of the acid tanks, was presented in the meeting by the Ex-ASARCO Workers; this information is being evaluated for inclusion in the final RAWP (See the response to comments III.C and III.D). A Public meeting was also held on October 19, 2010 where the Plans were discussed.**

**As a matter of public record, The Trust is obligated to document meetings with members of the public, regulatory agencies, City officials and other entities and to document any actions we have taken based on information they have provided. The information provided by the Ex-ASARCO Workers was helpful and has been carefully considered in the preparation of the Draft Final RAWP. We will edit the RAWP stating specifically which sample locations and analytes were added based on these meetings.**

C. The Trustee's plans ignore neighboring residences and schools

The Trustee's Draft Community Relations Plan (CRP) briefly mentioned some accommodations that will be made during the remediation for the residents of the La Calavera Subdivision, located yards away from land controlled by the trust. See CRP,

page 6-1. However, none of the plans mention accommodations for any other surrounding neighborhoods or impacted communities, including the two schools in Anapra, Mexcio which are half a mile and a mile away from the ConTop. See Transcript of Lucy Fraiser, SOAH Docket No. 582-05-0593, Air Quality Permit No. 20345, TR 1398-1399.

Request: The plans should identify neighboring communities and schools and should provide a procedure for notifying them of planned activities on site that may adversely impact their health, so that they can appropriately curtail their outdoor activities.

**Response: Based on the information provided in the comment, the Trust assumes you are referring to the Community Assurance Plan (CAP), instead of the CRP referenced above. The Trust operates under the direction of the TCEQ and EPA and will keep these agencies apprised on the schedule of operations. The TCEQ and EPA can make the determination to inform the U.S. State Department; which is responsible for cross-border matters.**

**Section 6 of the Draft Final Site Health and Safety Plan defines three components of air monitoring: worker air monitoring, work area air monitoring and perimeter air monitoring. The worker monitoring component focuses on protection of workers. The work area monitoring component focuses on controlling airborne constituents on-site. The perimeter monitoring component focuses on confirming the prevention of airborne dust migration from the site. These components each include action levels, response actions (up to and including stopping work) and reporting requirements designed to protect site workers and the surrounding communities. If measured values exceed standards, TCEQ will be notified and proactive measures will be taken to prevent a reoccurrence.**

**The schedule for onsite activity is posted on the project website (<http://www.recastingthesmelter.com>) on a regular basis and is available for anyone in the community to view.**

- D. The Trustee's RAWP minimizes the community's use of surface water affected by contamination at ASARCO

The Trustee's RAWP fails to mention that surface water from the Rio Grande provide irrigation and drinking water for El Paso, Texas. See RAWP, page 2-3; See [www.epwu.org](http://www.epwu.org).

Request: This omission should be corrected.

**Response: The plan will be revised to read "Water is released from Elephant Butte Reservoir to the Rio Grande during spring and summer and is used for irrigation and drinking water purposes."**

## II. The Trustee's Plans Grossly Minimize the Contamination at ASARCO Resulting from the Encycle Hazardous Waste

### A. The Trustee ignores evidence of serious health effects caused by the Encycle hazardous waste

The Ex-ASARCO Worker Group is comprised of former employees, of the El Paso smelter afflicted by disabling illnesses, including multiple sclerosis (MS), blood cancers, cancers, mysterious and painful rashes, among others. When the ASARCO-El Paso smelter ("ASARCO") shut-down in February of 1999, most of the former employees were years from retirement. They expected to live healthy, productive lives well into their 70's and 80's, just as their predecessors and relatives at ASARCO had. However, many of them found themselves filing and qualifying for disability benefits in their late 40's and early 50's, much sooner than they had anticipated.

In 2006, the work of Heather McMurray resulted in the El Paso community learning for the first time about ASARCO's *sham* recycling at the ASARCO subsidiary, Encycle, Inc., in Corpus Christi and at ASARCO-El Paso. See Attachment A: New York Times Articles, Copper Plant Illegally Burned Hazardous Waste, EPA Says, October 11, 2006, available at <http://www.nytimes.com/2006/10/11/us/11toxic.html>. From 1992 to 1997, over 40,000 tons of hazardous and unmanifested material was shipped from Encycle to ASARCO-El Paso and other ASARCO facilities. The activities at Encycle and ASARCO did not constitute recycling, rather, they were serious violations of the Resource Conservation and Recovery Act (RCRA). The EPA concluded that Encycle and ASARCO engaged in extensive sham recycling and stated, "there is no dispute that substantial amounts of hazardous wastes were received by Encycle and put directly into the "products" bins without any processing whatsoever at Encycle." See Attachment B: EPA Response to Encycle/ASARCP Settlement Statement, p. 11, July 31, 1998. This led to a 1999 consent decree between ASARCO and the EPA ("The Encycle Consent Decree") See <http://www.epa.gov/compliance/resources/decrees/civil/mm.asarcophs2cd.pdf>.

During the last few months, the Ex-ASARCO Worker Group has conducted dozens of occupational health studies of former ASARCO workers. Their research has revealed that exposure to hazardous waste from Encycle is the common denominator among the workers with serious illnesses.

**Request:** The Trustee's plans should not minimize the impact of the Encycle material that was shipped, handled and disposed of at ASARCO and, further, should state that the material may be related to serious illnesses afflicting the last generation of workers at ASARCO-El Paso.

**Response:** The Trust's mandate is defined by the Bankruptcy Court to design and install a protective remedy considering current and future human health and the environment. The Trust's mandate does not include a forensic assessment of Ex-ASARCO Worker health. As described in the Draft Final RAWP, the Trust has

**completed a detailed review of available documents regarding materials managed at ENCYCLE. This review was completed to help assure the Trust has fulfilled its obligation to design and install a protective remedy. Because of the nature of these records we have assumed any of the materials managed at ENCYCLE could be present at the El Paso site. We will be sampling and testing for analytes present in those materials as described in the Draft Final RAWP. We have also added analytes based on our review of the historical smelting operations and reagents used in the smelting process.**

**In addition, the proposed scope of work, as discussed on page 1-1 of the RAWP, includes the completion of a Remedial Investigation Report which will provide a detailed discussion and interpretation of the sampling and analysis results. This report will also include an updated baseline risk assessment of current and future potential exposures utilizing the new data in combination with the existing data.**

B. The Trustee's plans mischaracterize the Encycle hazardous waste

Throughout the plans, the Trustee, refers to the material from the Encycle as "recycle materials." See, for examples, RAWP, page 2-2. To the contrary, the EPA's enforcement action against Encycle and ASARCO was premised on the fact that the companies engaged in extensive sham recycling, stated "there is no dispute that substantial amounts of hazardous wastes were received by Encycle and put directly into "product" bins without any processing whatsoever at Encycle." See Attachment B, p. 11. A document recently released by the EPA and authored by a whistleblower Encycle confirms that Encycle and ASARCO were engaged in sham recycling. See Attachment C, Encycle/Texas Inc., Background p. 2.

Request: The plans should identify the Encycle material as hazardous waste.

**Response: The Trust will change the text on page 2-2 to read "In the 1992 to 1997 timeframe ENCYCLE/Texas Inc., an ASARCO subsidiary located in Corpus Christi, Texas, transported materials to the ASARCO Smelter Facility that included hazardous waste, referred to collectively as the ENCYCLE material." All subsequent references to the "recycled material" have been changed to read "ENCYCLE material".**

C. The Trustee's plans ignore serious data gaps regarding the Encycle hazardous waste

The Trustee states that a "comprehensive review of the Encycle waste records was completed." See RAWP 4-2. This is a misleading overstatement. The Trustee has verbally informed the Ex-ASARCO Workers that ASARCO, Inc. has provided the Trustee all of the documents related to the ASARCO-El Paso. However, the undersigned know first-hand that the Trustee does not have any information on site related to Encycle. The Trustee has instead relied on information provided by community members, including Heather McMurray, and most recently, by documents posted on an EPA

website. See RAWP; [www.epa.gov/region6/asarco\\_documents/asarco\\_documents.html](http://www.epa.gov/region6/asarco_documents/asarco_documents.html). ASARCO's documents about Encycle are still missing. Many of the RCRA violations committed by Encycle/ASARCO surrounding the lack of recordkeeping by the company, including the lack of shipment manifests. Therefore, serious data gaps will remain until ASARCO provides all information it has regarding Encycle.

Request: The Trustee needs to obtain documentation and information regarding Encycle from ASARCO. If ASARCO has destroyed information regarding Encycle, the Trustee should notify the EPA and the Bankruptcy Court.

**Response: The Trust has performed the most detailed evaluation of available information on the ENCYCLE material to date. The critical documents that show what materials were managed and potentially shipped to the El Paso smelter from ENCYCLE are hazardous waste manifests.**

**We have reviewed the documentation that you referenced above and found no additional information beyond the information available from EPA. If the Ex-ASARCO Workers have additional documentation or information related to the shipment of materials to the El Paso Smelter we request, for the protection of site workers and the community, that copies be provided to the Trust at the earliest opportunity.**

**The Trust has continued to search for additional information related to shipments to the ASARCO El Paso Smelter. If credible evidence related to additional analytes of interest is found, these chemicals will be added to the RAWP.**

**Under RCRA, generators of hazardous waste are required to prepare waste manifests for every shipment of hazardous waste that is shipped to a permitted treatment and/or disposal facility. This manifest contains information on the type and quantity of waste being transported, the designated facility to receive the waste, and instructions for handling the waste. Each party in the chain of shipping, including the generator, must sign and keep a copy of the manifest. Once the waste reaches its destination, the receiving facility reviews the manifest for any discrepancies and returns a signed copy of the manifest to the generator confirming that the waste has been received. If the generator does not receive a copy of the manifest signed by the designated facility within 45 days (60 days if small quantity generator) the generator must file a report with EPA. The regulations make the generator of the hazardous waste responsible to ensure the waste reaches its intended destination. The Trust reviewed every manifest available for material shipped to the ENCYCLE facility and prepared the expanded list of analytes based on this review assuming all wastes managed at ENCYCLE were shipped to the El Paso smelter. Both EPA and TCEQ agree that this is a comprehensive approach.**

- D. The Trustee's plans call for testing of Encycle analytes of concern *after* demolition of buildings

The Trustee plans to test for an “expanded list of metals and organic compounds’ derived from some Encycle waste codes after demolition of the buildings in the smelter area and the antimony plant area. See RAWP, p. 4-3. E. As recently as August of 2010, the Trustee assured the Ex-ASARCO Workers that he would allow them to accompany his staff when they sampled inside the buildings. He also agreed to allow them to receive split sample.

For the last several months, the Trustee has begun dismantling building components and has proceeded to sell them after a power wash with soap and water. See [http://www.recastingthesmelter.com/?page\\_id=5](http://www.recastingthesmelter.com/?page_id=5). None of these components have been sampled prior to sale and represent a serious hazard to the recipients who will likely be unaware that the components were exposed to military hazardous waste. The building components that are not sold will remain at the site, to be demolished, and buried in underground cells. The standards for the containment of these materials, including liners, cannot be appropriately selected without an adequate characterization of the hazardous to be buried on-site.

Further, the remediation employees will not be adequately protected during the demolition, as the sampling data that would dictate the degree of protection required will not be available.

Request: As promised, the Trustee must sample several key buildings for the Encycle related analytes of concern prior to selling building components and demolishing the buildings; the Trustee must immediately halt the sale of site components until they are adequately tested; the Ex-ASARCO Workers must be involved in identifying the buildings where Encycle material was located on site; the Trustee must provide the Ex-ASARCO Workers split samples.

**Response: The material leaving the property is being washed or cleaned prior to the sale of the asset to remove any dust or material that may be a source of gross contamination. The majority of the assets being sold was not part of the smelter process and is generally located in warehouses and machine shops which would not be in direct contact with materials in the smelting process. All workers coming on-site are briefed on the health and safety issues associated with the property and are provided appropriate personal protective equipment.**

**As described in the Draft Final RAWP, the Trust plans to conduct sampling of the loading and unloading area, bedding area, and anode pour area for constituents of concern and analytes of interest associated with the ENCYCLE material prior to the demolition of the buildings, as well as to confirm previous sampling results. Some of these sampling locations were identified by the Ex-ASARCO Workers during the on-site visit as locations that could have been impacted by ENCYCLE material. The Trust anticipates collecting these samples in the first quarter of 2011. Soil samples will be taken under existing structures, where deemed appropriate, once demolition is complete and access is facilitated as described in the Draft Final RAWP.**

**It is the understanding of the Trust that the EPA has not provided funding to any stakeholders through a Technical Assistance Grant. However, as previously discussed with the Ex-ASARCO Workers, split-samples can be provided to the group on the condition that they are collected under standard environmental sampling procedures in accordance with the site Field Sampling Plan and Quality Assurance Plan, collected by qualified personnel, shipped directly to a certified laboratory and analyzed for a defined list of analytes that has been agreed upon prior to sample collection. The collection and analysis of the split-samples will not be at the Trust's expense.**

E. The Encycle analytes of concern list is incomplete

The Trustee plans to test for an “expanded list of metals and organic compounds” consistent with waste codes for the Encycle material. See RAWP, p. 4-3. This list is insufficient, as it is based on incomplete information.

Request: The Trustee must expand the list of constituents of concern to include more contaminants that have been associated with Encycle and the military arsenal and other sources that shipped hazardous material to Encycle and ultimately, to ASARCO-El Paso. The Ex-ASARCO Worker Group must be involved in the further expansion of the Encycle analytes of concern.

**Response: As described at the October 12 meeting with the Ex-ASARCO Workers and in the October 19 public meeting, the analytes of interest currently identified include chemicals that were documented on the manifests shipped to ENCYCLE. If the Ex-ASARCO Workers have additional documentation related to the shipment of materials to the El Paso Smelter we request, for the protection of site workers and the community, that copies be provided to the Trust at the earliest opportunity.**

**As discussed above, the Trust has continued to search for additional information related to shipments to the ASARCO El Paso Smelter. If credible evidence related to additional analytes of interest is found, these chemicals will be added to the analytes of interest list.**

### III. The Trustee's Plans Have Serious Data Gaps

A. The data used by the Trustee was generated by ASARCO

The Trustee's plans do not rely on data gathered and analyzed by an independent source. Rather, the Trustee relies on information generated by Hydrometrics, Inc. formerly known as ASARCO Consulting, Inc., a subsidiary of ASARCO, Inc. According to records of the Secretary of State of Texas, Hydrometrics, Inc. and ASARCO, LLC have shared the same board members, including Douglas E. McAllister, General Counsel form ASARCO and Thomas L. Aldrich, Vice President of Environmental Affairs form ASARCO. See Attachment D. Further, the mailing address for Hydrometrics is the same

as ASARCO's. This conflict of interest belies the need for sampling that is not compromised.

Request: The Trustee cannot not rely on Hydrometric's data and must conduct new sampling.

**Response: The information generated previously during remedial investigations conducted by ASARCO has previously been accepted by both TCEQ and EPA. As presented in our meeting on October 12, 2010, the Trust and the project team conducted a complete review of the data at the start of the project. The team reviewed the sample collection procedures, the analytical methods performed by the laboratories and laboratory reports. The project team found that the data produced by Hydrometrics were consistent with standard engineering practices, the samples were analyzed by certified laboratories, and the data were validated by a third-party. The data are appropriate for decision making and will be used with the data generated in future sampling and analysis.**

B. Serious data gaps remain regarding areas of concern, including 5 landfills located on ASARCO property

The occupational health interviews conducted by the Ex-ASARCO Workers have revealed the existence of at least 5 landfills located on ASARCO property. The Trustee's plans do not provide additional sampling of these sites. This is particularly alarming because the Trustee's plans will result in the capping of the ASARCO site with asphalt, however, properties that was located off-site, east of I-10, will not be capped, or remediated. They will be sold private parties and according to the plans, will be used for *residential purposes*. See RAWP p. 4-6. According to the RAWP a handful of samples will be taken at a former ASARCO "landfill" located east of I-10. See RAWP P. 7-1, 7-2. The samples will be tested for a limited number of contaminants of concern and analytes of interest. Upon information and belief, the landfill located east of I-10 contains PCB's (see below).

Request: The Ex-ASARCO Workers should be allowed to accompany officials from the EPA, TCEQ, and the Trustee onto ASARCO property so that they can identify all of the landfills located on ASARCO property. Once the landfills have been identified, the Trustee must expand the list of constituents of concern and analytes of interest to include at a minimum, PCB's and must conduct more sampling.

Request: The Trustee must gather more samples at the former ASARCO "landfill" located east of I-10; must expand the list of constituents of concern and analytes of interest to include, at a minimum, PCB's; and must disclose to potential buyers the location of the landfill and all data associated with the site.

**Response: The Trust is aware of the following landfills or waste piles on the property; all of which have either been addressed in the past or will be addressed as part of the Trust's activities.**

- **Cells 1, 2 and 3: Former on-site ponds that have been excavated to native material, lined and then filled with Category I and Category II material and capped.**
- **Fines Pile: Based on the samples collected as part of the RAWP the Trust will determine the most appropriate action.**
- **Former Landfill Material East of I-10: This former landfill has been identified during previous Remedial Investigations. The material will be excavated to native soils and placed in a new cell on the plant site as part of the long-term remediation strategy.**
- **Various Waste Piles east of I-10: As described in the RAWP each identified waste pile will be sampled for waste characterization purposes. The material will be removed from the property prior to selling or transferring the property to another owner in order to meet the requirements of a residential land use.**

**If the Ex-Asarco Workers have additional information related to undocumented landfills or buried waste on ASARCO property we request, for the protection of site workers and the community, that this information be provided at the earliest opportunity.**

C. The Trustee ignores the existence of PCB's on ASARCO property

The Trustee plans fail to mention any past sampling of PCB's. In 1994, the EPA and ASARCO entered into a consent agreement and consent order that dealt with the PCB transformers, capacitors, articles, and items at ASARCO. See Attachment E, Preliminary Statement, U.S. EPA, Docket No. TSCA-VI-598C. Upon Information and belief, PCB's can be found at the 5 landfill sites that have been identified by the Ex-ASARCO Workers.

Request: The Trustee must sample for the PCB's in the building and soils identified in the 1994 EPA/ASARCP Consent Decree and other sites identified by the Ex-ASARCO Workers; the trustee must allow Ex-ASARCO Workers to be present when the samples are taken; the resulting samples must dictate the level of remediation that ensues.

**Response: Preparation of the Draft Final RAWP was completed prior to the October 12, 2010 meeting with the Ex-ASARCO Workers, during which a request was made to investigate potential PCB storage on the plant property, specifically east of the acid tanks. The project team has reviewed the request and will add two additional five-foot borings to the Final RAWP for this purpose. If PCBs are encountered during the demolition process all appropriate safety precautions and PCB handling protocols will be followed.**

D. The Trustee ignores the use of hydrazine on ASARCO property

The 1993, ASARCO began planning to add hydrazine, a substance reasonably anticipated to be carcinogenic, to sulfuric acid in order to reduce nitrate levels and increase the acid's

marketability. See Attachment F. The Trustee had assured the Ex-ASARCO Workers that hydrazine would be added to the list of constituents of concern and the analytes of interest to be sampled prior to the demolition of the buildings, however, the plans do not include hydrazine.

Request: The Trustee must sample for hydrazine in the relevant buildings and soils; the trustee must allow Ex-ASARCO Workers to be present when the samples are taken; and the resulting samples must dictate the level of remediation that ensues.

**Response: Preparation of the Draft Final RAWP was completed prior to the October 12, 2010 meeting with the Ex-ASARCO Workers. The Trust has reviewed the information that the Ex-ASARCO Workers provided during the meeting regarding hydrazine. The project team has reviewed the chemistry of hydrazine and discovered that there are no standard EPA methods for hydrazine in the environment, primarily due to the reactive nature of the compound. The Trust has informed the demolition team that hydrazine may be present in the acid plant area. All necessary safety precautions will be taken when work is performed in this area.**