

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:	§	Case No. 05-21207
	§	
ASARCO LLC, et al.	§	Chapter 11
	§	
Debtors.	§	(Jointly Administered)
	§	

**SETTLEMENT AGREEMENT REGARDING
THE COLUMBUS, OHIO NON-OWNED SITE**

This Settlement Agreement (“Settlement Agreement”), dated as of October 8, 2008, is hereby entered into by and between ASARCO LLC (“ASARCO”) or “Debtor”), the State of Ohio (the “State”) and Blue Tee Corp. (“Blue Tee”) all collectively, “the Parties”).

I. RECITALS

WHEREAS, the Columbus, Ohio Owned Site (the “Owned Site”) occupies approximately 48 acres of real property located at 1363 Windsor Avenue, Columbus, Franklin County, Ohio and was formerly the location of a zinc oxide production facility operated from 1920 until 1984;

WHEREAS, American Smelting and Refining Company, an ASARCO predecessor in interest, purchased the Owned Site from American Zinc Company, a Blue Tee predecessor in interest on November 24, 1971, and American Zinc Company owned and operated the Owned Site from 1920 to November 24, 1971;

WHEREAS, the Owned Site was remediated under the Ohio Voluntary Action Program and ASARCO and the State are working toward issuance of a No Further Action letter and Covenant Not to Sue resolving Owned Site liabilities;

WHEREAS, ASARCO and Blue Tee entered into a settlement agreement in February 1999 settling an action initiated in April 1997 by ASARCO regarding Owned Site cleanup costs, including costs associated with the future clean-up of certain portions of the American Ditch and/or Alum Creek (the “Prior Settlement Agreement”);

WHEREAS, the Owned Site cleanup did not address contamination originating from the Owned Site which has come to be located outside the boundaries of the Owned Site (the “Columbus, Ohio Non-Owned Site”) or “Non-Owned Site”);

WHEREAS, the Prior Settlement Agreement established an allocation between ASARCO and Blue Tee for future costs at the Owned Site and certain portions of the Non-Owned Site known as American Ditch and Alum Creek;

WHEREAS, the American Ditch is an urban drainage ditch which received and continues to receive discharges from the Owned Site and which flows 1.2 miles from the Owned Site outfall to where it discharges into Alum Creek at Maryland Avenue;

WHEREAS, the American Ditch portion of the Non-Owned Site has been identified through sampling to potentially require remediation;

WHEREAS, the State has incurred past costs associated with oversight and work performed with respect to the Non-Owned Site, and the State and Blue Tee may incur future costs associated with oversight and/or work contemplated with respect to the Non-Owned Site;

WHEREAS, on August 9, 2005 ASARCO filed with the United States Bankruptcy Court for the Southern District of Texas voluntary petitions for relief under the United States Bankruptcy Code (the “Bankruptcy Cases”);

WHEREAS, the State and Blue Tee each filed Proofs of Claim in the Bankruptcy Cases (numbers 7865 and 9993 by the State; and numbers 11055 and 11200 by Blue Tee

collectively the “Proofs of Claim”) setting forth various claims in connection with the Non-Owned Site and other alleged obligations of Debtors;

WHEREAS, the Debtor has disputed the amount of the liabilities with respect to the Non-Owned Site filed by the State and Blue Tee as set forth in the Proofs of Claim;

WHEREAS, the Court established a process for estimating the Debtor’s liabilities with respect to the Non-Owned Site;

WHEREAS, the Parties intend this Settlement Agreement to settle, compromise and resolve those disputes which may have otherwise been the subject of an estimation hearing, without the necessity of an estimation hearing;

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:

II. JURISDICTION

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

III. 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.

IV. ALLOWANCE OF CLAIMS

3. In settlement and satisfaction of all claims and causes of action of the State and Blue Tee against the Debtors with respect to any and all costs of response, remedial action and natural resource damages incurred or to be incurred in connection with the Non-Owned Site (including but not limited to the liabilities and other obligations asserted in the Proofs of Claim and any other pleadings filed in the Bankruptcy Court by the State and Blue Tee relating to the Non-Owned Site): (a) the State shall have an allowed general unsecured claim against ASARCO in the total amount of \$1,254,000.00 for future Non-Owned Site costs (the "Future Allowed Claim"); (b) the State shall have an allowed general unsecured claim against ASARCO in the total amount of \$106,661.33 for past costs incurred at the Non-Owned Site; (c) all other claims relating to the Non-Owned Site filed against the Debtor by the State and Blue Tee shall be disallowed; and (d) the Debtor shall have no further responsibility or obligations with respect to the Non-Owned Site, including but not limited to costs of response related to remediation of American Ditch.

4. The State's 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.

V. OTHER/PRIOR AGREEMENTS

5. All obligations of ASARCO to perform work under the Ohio Voluntary Action Program, as described in the No Further Action Letter and attachments, as amended, are not modified or affected in any way by this Settlement Agreement.

6. Upon distribution, the State's allowed claim shall be considered future costs as defined under the Prior Settlement Agreement and will count toward satisfying ASARCO's threshold responsibility at the Owned Site and American Ditch/Alum Creek. However, as set forth in Section IV (Allowance of Claims), the Debtor shall have no further responsibility or obligations under the Prior Settlement Agreement with respect to the Non-Owned Site. No provisions of the Prior Settlement Agreement which address the Taylor Springs/Hillsboro, Illinois Site are modified or affected in any way by this Settlement Agreement.

7. All funds distributed to the State under Paragraph 3(a) as and for the Future Allowed Claim shall be deposited by the State in a special interest-bearing account (the "Special Account") which will be used exclusively to pay for the costs incurred by the State or Blue Tee for performing the work at the Non-Owned Site subsequent to the Effective Date of the Settlement Agreement. All issues regarding the work to be performed, the process to be utilized and the timing thereof as to the Non-Owned Site shall be subject to a separate agreement between the State and Blue Tee to be negotiated. At the reasonable request of Blue Tee, the State will provide Blue Tee with an accounting and documentation of the amounts in the Special Account.

VI. COVENANTS NOT TO SUE

8. With respect to the Non-Owned Site (including any and all response costs relating to any release or threatened release of a hazardous substance at or from any portion of the Non-Owned Site, and all areas affected by migration of such substances from the Non-Owned Site, and any and all costs related to natural resource damages and all other claims that have been or could have been brought) and except as specifically provided in Section VIII (Reservation of Rights), the State and Blue Tee covenant not to sue or assert any civil claims or causes of action against the Debtor pursuant to Sections 106, 107, and 113 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and 9613; the Resource Conservation and Liability Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*; the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*; the Ohio Revised Code ("ORC") Chapters 3734, 3745, and 6111; any other applicable federal or State law; common law; or any liabilities or obligations asserted in the Proofs of Claim with regard to the Non-Owned Site; provided, however, that the covenant shall not be construed to waive, release, or discharge the Debtor from any of its obligations under this Settlement Agreement.

9. The Debtor covenants not to sue and agrees not to assert any claims or causes of action against the State and Blue Tee with respect to the Non-Owned Site, 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; any claims against the State and Blue Tee, including any of their departments, agencies or instrumentalities, under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613 or comparable provisions under State law; and any claims arising out of response activities at the Non-Owned Site; provided, however, that the foregoing release shall

not be construed to waive, release, or discharge the State and Blue Tee from any of their obligations under this Settlement Agreement and further provided that the foregoing release shall not be construed to waive, release or discharge the Debtor from any of its obligations as to the Owned Site. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d), or comparable provisions under State law.

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

VII. MUTUAL RELEASES

11. As of the Effective Date, the State and Blue Tee for themselves, their successors and assigns, hereby waive, release, and forever discharge the Debtor, as well as the Debtor's past, present, and future officers, directors, partners, members, employees, trustees, agents, and servants from any and all claims, obligations, demands, actions, causes of action and liabilities, of whatsoever kind and nature, character and description, whether in law or equity, whether sounding in tort, contract or other law (expressly including all claims for indemnification or contribution whether under common law, ORC, CERCLA, or other statutory provision), whether known or unknown, and whether anticipated or unanticipated, which the State and Blue Tee has ever had as of the Effective Date, or may ever have, arising from any

event, transaction, matter, circumstance or fact in any way arising out of, arising as a result of, related to, with respect to, or in connection with the Non-Owned Site; provided, however, that the foregoing release shall not be construed to waive, release, or discharge the Debtor from any of its obligations under this Settlement Agreement.

12. As of the Effective Date, the Debtor, its bankruptcy estate under section 541 of the Bankruptcy Code and its successors and assigns, hereby waives, releases, and forever discharges the State and Blue Tee, as well as the State's and Blue Tee's past, present, and future officers, directors, partners, members, employees, trustees, agents, and servants from any and all claims, obligations, demands, actions, causes of action and liabilities, of whatsoever kind and nature, character and description, whether in law or equity, whether sounding in tort, contract or other law (expressly including all claims for indemnification or contribution whether under common law, ORC, CERCLA, or other statutory provision), whether known or unknown, and whether anticipated or unanticipated, which the Debtor has ever had as of the Effective Date, or may ever have, arising from any event, transaction, matter, circumstance or fact in any way arising out of, arising as a result of, related to, with respect to, or in connection with the Non-Owned Site; provided, however, that the foregoing release shall not be construed to waive, release, or discharge the State and Blue Tee from any of their obligations under this Settlement Agreement.

13. 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.

14. The releases and covenants not to sue contained in Sections VI and VII extend only to the Debtor, the State and Blue Tee and the persons described in Paragraphs 8

through 12 above, and do not extend to any other person. Nothing in Sections VI and VII is intended as a covenant not to sue or a release from liability for any person or entity other than the Debtor, the State and Blue Tee, and the person described in Paragraphs 8 through 12 above. The Debtor, the State and Blue Tee expressly reserve all claims, demands, and causes of action either judicial or administrative, past, present or future, in law or equity, which these entities may have against all other persons, firms, corporations, entities, or predecessors of the Debtor for any matter arising at or relating in any manner to the Non-Owned Site or claims addressed herein.

15. Nothing in this Settlement Agreement shall be deemed to limit the authority of the State 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 State pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the State under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable law or regulation, or to excuse the Debtor from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable law or regulation.

VIII. RESERVATION OF RIGHTS

16. The covenants not to sue and the mutual releases herein do not pertain to any matters other than those expressly specified therein. The State and Blue Tee reserve, 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 any action to enforce the terms of this Settlement Agreement.

17. 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.

IX. CONTRIBUTION PROTECTION

18. The Parties hereto agree that, as of the Effective Date, the Debtor 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) and applicable sections of ORC for matters addressed in this Settlement Agreement; provided, however, that the foregoing protection shall not be construed to waive, release, or discharge the Debtor from any of its obligations under this Settlement Agreement. The matters addressed in this Settlement Agreement include all past and future costs of response and all claims for natural resource damages and past and future costs of assessment with respect to the Non-Owned Site.

X. JUDICIAL APPROVAL

19. The settlement reflected in this Settlement Agreement shall not become effective unless and until the following condition precedent has been met: the entry of an order by the Bankruptcy Court, pursuant to Bankruptcy Rule of Procedure 9019, approving the terms and conditions of this Settlement Agreement.

20. If for any reason the Court issues a final order not approving this Settlement Agreement, (a) this Settlement Agreement shall be null and void and the Parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the Parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; (c) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value and it shall be as if they had never been executed; and (d) this Settlement Agreement, any statements made in connection with settlement discussions, and any

documents prepared in connection herewith may not be used as evidence in any litigation between or among the Parties.

21. The Debtor shall move promptly for Bankruptcy Court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval.

XI. RETENTION OF JURISDICTION

22. This Bankruptcy 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 Settlement Agreement 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.

XII. EFFECTIVE DATE

23. The Effective Date of this Settlement Agreement shall be the date upon which this Settlement Agreement has been approved by a final order of the Bankruptcy Court under Rule 9019.

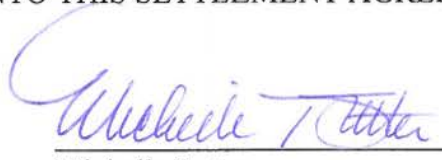
XIII. SIGNATORIES/SERVICE

24. 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.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR THE STATE OF OHIO

Date: 10/8/08



Michelle Sutter
Principal Assistant Attorney
General Environmental Enforcement Section
State of Ohio, Office of the Attorney General

FOR ASARCO LLC

Date: _____

Thomas L. Aldrich
Vice President, Environmental Affairs
ASARCO LLC

Date: _____

Doug McAllister
Vice President, General Counsel
ASARCO LLC

FOR BLUE TEE CORP.

Date: _____

Mark Moedritzer
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