



September 7, 2004

Ms. Debbie Kring
Community Involvement Coordinator
US EPA – Region 7
901 North 5th Street
Kansas City, Kansas 66101

Re: Proposed Plan – Omaha Lead
Superfund Site

Dear Ms. Kring:

ASARCO Incorporated (Asarco) is taking this opportunity to comment on the **PROPOSED PLAN, RESIDENTIAL YARD SOILS, OMAHA LEAD SITE, OMAHA, NEBRASKA**, dated July 16, 2004. The Plan solicits public comment on the agency's proposal to approve a \$77.2 million interim remedy, based on analysis contained in a more comprehensive Feasibility Study prepared for the agency by Black & Veatch in June, 2004, Asarco is making these general comments without waiving any of the objections and comments it has previously made on this site, either in writing or in meetings with the EPA or the Community Advisory Group (CAG).

Before turning to the substance of Asarco's comments, let me note that ASARCO was obliged to obtain a copy of the Proposed Plan from a third party, curious in light of the fact that the Plan asserts, wrongly, that Asarco was a significant contributor to the lead at issue. We have concerns about the Proposed Plan in two general areas. First, it is far from clear, despite its significant projected cost, that the preferred alternative will realistically achieve the stated Remedial Action Objective. Second, we believe the Plan's narrative description inaccurately focuses on alleged industrial air emissions by Asarco and others, while inappropriately downplaying the impact of other sources such as lead-based paint and leaded gasoline. Similarly, the Plan also unfairly describes the industrial potentially responsible parties ("PRPs") as absent from the process, notwithstanding Asarco's past participation in remediation, site analysis, and funding of response costs.

The likely impact of these deficiencies will be public confusion about the necessity and effectiveness of the proposed alternative. Because it suggests inappropriately that industrial air emissions are the dominant source of lead levels, and proposes actions to address these alleged emissions, the Plan threatens to leave unaddressed the other sources truly driving the site risk: lead paint and leaded gasoline.

The Public Health Assessment written for the Omaha Site by ATSDR states that 96% of the children with blood leads greater than or equal to 10ug/dl live in residences with lead based paint. The Remedial Action Objective (RAO) for this site is to reduce the risk of exposure of young children to lead such that an individual child, or group of similarly exposed children, have no greater than a 5 percent chance of having a blood-lead concentration exceeding 10 ug/dl.

When viewed together it seems obvious that meeting the RAO at this site will require a comprehensive plan that deals directly with the risk of exposure of children to lead based paint and other urban sources of lead. Blood leads in Omaha reflect the classic correlation that is predicted by the National Health And Nutrition Examination Surveys (NHANES) for any urban area. Blood leads correspond directly to age of housing, income levels and to racial and ethnic groupings. EPA recognizes that risk from lead based paint may be significant at some homes but states that Section 104 (a) (3) of CERCLA precludes EPA from addressing interior lead contamination. Exterior lead based paint can be addressed only at sites where exterior lead based paint threatens to re-contaminate soils that have been remediated. Interior paint and re-painting after external lead based paint is removed are not addressed by the plan. EPA is calling for cooperative agreements with other community groups to fill some of these gaps but EPA appears to be unwilling to allow these community groups to be the program driver and the proposed plan offers no assurance that cooperative agreements will be made.

The clean up plan EPA has devised appears to be an example of "the tail wagging the dog". EPA's one-dimensional plan focuses almost exclusively on addressing lead in soils, with the significant problem of addressing lead based paint and other sources of urban lead meriting only a vague reference to partnering with community groups. The correlation between lead in soil concentrations and blood leads is at best an indirect correlation, and as such there is every indication that this proposed plan will lead to hundreds of millions of dollars being spent on soil remediation with little or no chance of meeting the RAO for the site. The soil removal program should not be proceeding without direction and need while spending scarce remediation dollars without benefit.

Asarco believes that there should have been another alternative considered for the Omaha Lead Site. That alternative would consider health education and institutional control with focused soil excavation as necessary. Asarco believes that the community groups and PRP's that EPA proposes to partner with should

be given credit for their participation and, in fact, should take the lead role in a risk reduction program with EPA's ability to replace soils functioning as one of the program's tools. Asarco feels such a program would be cost effective, provide for local control, and not leave the community with the uncertainty of an "Interim Remedy" or the uncertainty of a remedy that might be reversed.

With regard to the second issue, like the FS before it, the Proposed Plan's description of the site inaccurately portrays Asarco as a dominant source – suggesting that addressing alleged air emissions from Asarco will in fact allow the RAO to be achieved – and unfairly portrays Asarco and other PRPs as recalcitrants. For instance, the Proposed Plan asserts on page 3, under Site Background, that, "To date, potentially responsible parties (PRP's) have not participated in studies with the EPA or implementation of response actions at the site". At least with regard to Asarco, that statement is incorrect. In letters dated August 13, 1999 and July 17, 2002 Asarco informed EPA that Asarco's view of the evidence made it clear that Asarco did not have significant responsibility, if any, for lead contamination at the residential properties in Omaha. Nevertheless, in the spirit of cooperation, Asarco agreed to accept residential soil that EPA's contractor was removing from day care centers in Omaha at Asarco's Omaha Refinery and incorporate these soils into the sub-cap of the refinery remediation prior to site closure. This cooperation contributed greatly to the cost-effectiveness of the remedy. Additionally, while disagreeing with the justification for such an action, Asarco has observed EPA extracting \$3.0 million from an Environmental Trust Fund for work at the Omaha Lead Site during 2003 and 2004. This money was set aside for work at Asarco sites where liability had clearly been established. Asarco disputes the fact that the Omaha site falls into that category.

The reality is that PRP's have participated in the response actions at the site and EPA has refused to acknowledge that participation and has effectively precluded further participation by refusing to grant the PRP's credit for their participation. Asarco is attaching its letters of August 13, 1999 and July 17, 2002 and reiterates its position of having limited or no responsibility at the site as stated in these letters and supported by historical modeling and environmental investigation.

Similarly, in the "Site Background" discussion, the Proposed Plan states that the site is "centered around downtown Omaha, Nebraska" where Asarco and Gould operated for many years. That description conveys the impression that the site surrounds an alleged major source area when in fact the alleged major source area is at the extreme eastern end of the site. Given this unusual relationship and the patchwork type lead contamination pattern, Asarco believes a case is made for the major source of lead not being Asarco and/or Gould but rather well documented sources in older inner city areas of lead based paint, residue from leaded gasoline and other urban sources of lead. This relationship is also born out by EPA's bioavailability analysis and the need to use an alternative to the

bioavailability default input value in the application of the IEUBK model (lead in paint products being more readily available than lead from pyrometallurgical emissions). In short, the Proposed Plan inaccurately describes industrial air emissions as the predominant source of lead emissions, while ignoring bioavailability and speciation data suggesting that other urban lead sources dominant the lead-impacted soil requiring remediation.

The proposed plan states that soil excavations at residential properties would continue until the lead concentration measured at the exposed surface of the excavation is less than 400 ppm in the initial foot, or less than 1,200 ppm at depths greater than one foot. Asarco agrees in principle that soil replacement down to a depth of one foot is protective of human health and the environment and, that soil below that level can remain in place even if they exceed the clean up action level. Asarco's concern in regards to this provision of the proposed plan is based on EPA's predisposition to allow retroactive decision-making to reverse this provision in residential clean-ups. EPA reversed itself at the Circle Smelting Site in Beckemeyer, Illinois. After the work plan was approved and work begun, EPA reversed the approval of the use of a marker being placed at the one-foot depth level by stating the following:

"This practice is not protective of the residents, who have stated that they will come into contact with the contaminated material as a matter of course in working on their homes and yards. Secondly, this practice would require the property owners to have to inform potential buyers on the Illinois Residential Property Disclosure form that the owners are aware of the presence of unsafe levels of lead contamination conditions. The residents believe that this will negatively impact their property values. Finally the practice of excavating only 12-inches of contaminated soil and then installing a visual barrier above deeper contaminated material is inconsistent with the recently published Agency guidance document regarding lead-contaminated residential clean-ups. This guidance states that this is a "minimum approach" practice that should only be employed when the depths of contamination exist over an extremely large area and it would not be cost-effective to remove all the contaminated material."

While the Omaha Site is clearly larger than Beckemeyer, the premises of risk and diminished value remain the same at Omaha as they were in Beckemeyer and the potential for a retroactive reversal of the remedy adds to the uncertainty of this proposed plan.

Should questions about Asarco's comments occur, do not hesitate to give me a call at 602-977-6513..

Sincerely,

A handwritten signature in cursive script that reads "Donald A. Robbins".

Donald A. Robbins
Director of Environmental Services

Cc: D.E. McAllister
T.L Aldrich
R.A. Litle