

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

THE STATE OF COLORADO,)
)
) Civil Action No. 83-V-02383-JRC
)
 Plaintiff,)
)
)
 v.)
)
)
 Le Petomane XXV, Inc., not individually,)
 but solely in its representative capacity as)
 Trustee of the ASARCO Multi-State)
 Custodial Trust,)
)
)
 Defendant.)
)

JOINT NOTICE OF LODGING PROPOSED TERMINATION OF CONSENT DECREE

Plaintiff, State of Colorado (“State”) and Defendant, Le Petomane XXV, Inc., not individually, but solely in its representative capacity as Trustee (“Trustee”) of the ASARCO Multi-State Custodial Trust, (“Custodial Trust”) hereby submit this Joint Notice of Lodging Proposed Termination of Consent Decree providing for the remedial obligations of the Trustee at the former Asarco Globe Plant Site (“Site”) to be terminated and transferred to Globeville I, LLC (“Globeville”).

The original Consent Decree provided for the settlement of litigation between the previous defendant, Asarco Incorporated, and the State over remediation of the Site. The State filed a complaint in this matter on December 9, 1983 against Asarco Incorporated for natural

resources damages pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607, with respect to the Asarco Globe Plant, which was owned and operated by Asarco Incorporated. The State amended its complaint to include response costs pursuant to Section 107 CERCLA on April 8, 1985. A Final Consent Decree, Order, Judgment, and Reference to Special Master, As Modified was entered by the court on July 15, 1993.

Asarco Incorporated changed its name to Asarco LLC in 2005. On August 9, 2005, Asarco LLC filed a petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Case No. 05-21207. The State filed a claim in the bankruptcy for multiple sites in Colorado where Asarco LLC had environmental liabilities. Asarco LLC and the State agreed upon settlements for all of the sites, including the Globe Plant Site, under various agreements.

The settlement for the Globe Plant is set forth in the Amended Consent Decree and Settlement Agreement Establishing A Custodial Trust For Certain Owned Sites In Alabama, Arizona, Arkansas, Colorado, Illinois, Indiana, New Mexico, Ohio, Oklahoma, Utah, and Washington (“Settlement Agreement”), which provides for the establishment of an environmental custodial trust following confirmation of a plan of reorganization. Le Petomane XXV, Inc., not individually but solely in its representative capacity as Trustee of the ASARCO Multi-State Custodial Trust , by and through Jay A. Steinberg, not individually but solely in his representative capacity as President of the Custodial Trust Trustee, was appointed as the Trustee to administer the Custodial Trust.

In accordance with the Settlement Agreement and the Plan of Reorganization confirmed on November 13, 2009, title to the Site was transferred to the Custodial Trust by the reorganized debtor Asarco. The Custodial Trust is the current owner of the Site and responsible for completion of remediation of the Site, subject to the terms of the Amended Consent Decree and Settlement Agreement Establishing A Custodial Trust For Certain Owned Sites In Alabama, Arizona, Arkansas, Colorado, Illinois, Indiana, New Mexico, Ohio, Oklahoma, Utah, and Washington.

The Settlement Agreement also stated that Asarco LLC would be removed as a party to the Consent Decree as of the effective date of the confirmed plan of reorganization. The State and the Trustee submitted a Joint Motion and Stipulated Order to Amend the 1993 Consent Decree to Substitute Parties on December 8, 2009. The Court entered the Order on April 12, 2010, thereby substituting the Trustee for Asarco as the defendant.

The Consent Decree was amended on January 6, 2012 to further delineate the remedial action requirements at the Globe Plant Site (“2012 Amended Consent Decree”). The Trustee’s obligations under the 2012 Amended Consent Decree have been completed by the Trustee and/or its affiliates or will be completed by Globeville, pursuant to the Enforceable Agreement to be executed by the State and Globeville, attached as Exhibit C to the Memo in Support of the Joint Motion for Order Terminating Consent Decree (the “Enforceable Agreement”). The State and the Trustee each agree to the Termination of the Consent Decree being lodged with the Court today. The Termination of the Consent Decree is contingent upon the State and Globeville’s execution of the Enforceable Agreement, which requires Globeville to complete

the remaining remedial actions required at the Site. The Enforceable Agreement to be executed completely replaces the terms of the 2012 Amended Consent Decree, and sets forth the work to be performed and the terms under which Globeville will continue and complete the remediation at the Site. The Enforceable Agreement allows remediation of the Site to continue after the funds obtained under the Settlement Agreement of the State's claim in the Asarco bankruptcy have been depleted, the remediation will be consistent with the National Contingency Plan, and the terms are fair, reasonable and in the public interest.

After the close of the public comment period, the State will submit a responsiveness summary to the Court responding to the public comment, and may modify the Termination of the Consent Decree as a result of such public comment. The State and the Trustee then expect to move the Court for entry of the Termination of the Consent Decree.

Respectfully submitted this ____ day of August, 2014.

FOR PLAINTIFF, STATE OF COLORADO:

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