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ENVIRONMENTAL  
PROTECTION AGENCY

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MONTANA OFFICE

**VIA FEDERAL EXPRESS**

Mr. Scott Brown  
United States Environmental Protection Agency  
Federal Building  
10 West 15th Street, Suite 3200  
Helena, MT 59626

Re: ASARCO LLC Comments  
Proposed Plan For Final Cleanup of East Helena's Residential Soils and  
Undeveloped Land (OU2)

Dear Mr. Brown:

ASARCO LLC ("ASARCO") submits the following comments regarding the United States Environmental Protection Agency's ("EPA's") Proposed Plan for soil remediation in Operable Unit 2 of the East Helena Super Fund Site ("Proposed Plan"). As outlined in more detail below, ASARCO generally supports EPA's selected cleanup alternatives both for residential and undeveloped areas.

**A. Residential Soils**

**1. Alternative 2R is an Effective Choice For Addressing Residential Soils.**

ASARCO agrees with EPA's selection of Alternative 2R to address residential soils in East Helena. As noted in the EPA's announcement of the Proposed Plan (the "Announcement"), Alternative 2R "consist[s] of completing the residential soil cleanup according to protocols that are currently in place for the ongoing removal action." Announcement at 17. Implementation of these protocols has significantly lowered children's blood-lead levels in East Helena.

As noted by EPA, not a single child sampled since 2001 has had a blood-lead level that exceeded 10 ug/dl and 98% of the these children have had blood-lead levels of 4 ug/dl or less. Announcement at 12. To date, the program has surpassed all goals established locally, as well as national goals for lead sites. *See id.* at 14. Indeed, average children's blood-lead levels in East Helena are below the national average. *See id.* at 16. These data are compelling proof that the protocols upon which Alternative 2R is based are proven to be an effective means of protecting human health and the environment in East Helena.

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**2. Alternative 2R is Superior to Alternative 3R as the Most Cost-Effective Alternative.**

In choosing removal alternatives, EPA must select a remedy that is consistent with CERCLA and the nine National Contingency Plan ("NCP")<sup>1</sup> criteria. Of the nine criteria, two are viewed as threshold criteria - protection of human health and the environment and compliance with applicable or appropriate and relevant requirements ("ARARs"). See EPA, *The Role of Cost in the Super Fund Remedy Selection Process*, OSWER 9200.3-23, 4-5 (Sept. 1996) ("*1996 Cost Guidance*"). Alternatives that meet these threshold criteria are to be compared to one another based upon the remaining seven criteria. *Id.* As noted by EPA, Alternative 2R and 3R are functionally equivalent as to the threshold criteria. See Announcement at 26-7.<sup>2</sup> Of the remaining seven criteria, cost-effectiveness is the one that most distinguishes Alternative 2R from Alternative 3R.

EPA estimates that Alternative 3R will be almost four times as expensive to implement as Alternative 2R - \$38 million versus \$10 million<sup>3</sup>. As previously noted, Alternative 3R does not provide any comparative advantage as to protection of human health and the environment or compliance with ARARs. Accordingly, this cost discrepancy alone is enough to warrant adoption of Alternative 2R as the appreciably more cost-effective remedy.

The selection of the most cost-effective remedy among various options - all being generally equivalent in terms of protection of public health and the environment - has long been a central tenet of CERCLA. CERCLA dictates that EPA "shall select appropriate remedial actions determined to be necessary to be carried out under [CERCLA] which are in accordance with the section and, to the extent practicable, the national contingency plan, and *which provide cost-effective response.*" 42 U.S.C. § 9621(a) (emphasis added). Moreover, CERCLA emphasizes that when selecting a remedy, EPA "shall select a remedial action...*that is cost effective.*" *Id.* § 9621(b)(1) (emphasis added). In implementing this cost-effectiveness mandate, EPA has emphasized that gross discrepancies in relative costs of equally protective alternatives are a sound bases upon which to eliminate an alternative. See 40 C.F.R. § 300.430(e)(7)(ii) ("*costs that are grossly excessive compared to the overall effectiveness of alternatives may be considered as one or several factors used to eliminate alternatives.*") (emphasis added). As such,

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<sup>1</sup> The nine NCP criteria are (1) overall protection of human health and the environment; (2) compliance with applicable or relevant and appropriate requirements; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume through treatment; (5) short-term efficiency; (6) implentability; (7) cost; (8) state acceptance; and (9) community acceptance.

<sup>2</sup> ASARCO agrees with EPA's conclusion regarding the lack of any statistical differences between child blood-lead levels in areas with soil leads in the 500 - 1000 ppm range and these with soil leads off less that 500 ppm. Reliance on such "real world" data is an appropriate way of measuring risk and setting action and cleanup levels at residential lead sites. See EPA, *Clarification to the 1994 Revised Interim Soil Lead Guidance for CERCLA sites and RCRA Corrective Action Facilities*, OSWER 9200.4-27P, 2-3 (1998).

<sup>3</sup> ASARCO takes no position as to whether these figures accurately reflect an appropriate estimate of the costs of implementing the identified remedies except to note that Alternative 3R would obviously cost far more to implement than would Alternative 2R.

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ASARCO believes that EPA's selection of Alternative 2R is on all fours with the requirements of CERCLA and the NCP.

**3. Community Acceptance Strongly Favors Adopting Alternative 2R Instead of Alternative 3R.**

As noted by EPA, key constituencies including the East Helena City Council and the Lewis and Clark City Council Board of Health have expressed support for Alternative 2R. *See* Announcement at 29. As a member of the East Helena community, ASARCO supports the adoption of Alternative 2R. Moreover, judging by the comments made by various citizens in public meetings concerning the adoption of this Proposed Plan, the vast majority of local citizens in East Helena support the adoption of Alternative 2R. Indeed, many of the most vociferous objections voiced at these meetings were from citizens concerned that EPA would implement Alternative 3R and needlessly inconvenience the people in East Helena with an unnecessary program of more extensive remediation.

**B. Undeveloped Land**

For the same reasons outlined above, ASARCO agrees with EPA's selection of Alternative 4U to address undeveloped lands in East Helena.<sup>4</sup>

**C. Conclusion**

In light of the foregoing, ASARCO respectfully urges that EPA formally adopt Alternative 2R as the preferred alternative for residential soils and Alternative 4U as the preferred alternative for undeveloped land at the East Helena Site. We appreciate the opportunity to submit these comments and would welcome a chance to discuss these alternatives with EPA at a convenient time.

Respectfully submitted,

BAKER BOTTS, LLP

By:   
J. Scott Janøe

JSJ:138

cc: Tom Aldrich  
J. Chris Pfahl

<sup>4</sup> ASARCO takes no position as to whether these figures accurately reflect an appropriate estimate of the costs of implementing the identified remedies.  
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