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Administrator
Enforcement Division
Department of Environmental Quality
1520 E. Sixth Avenue
P. O. Box 200901
Helena, Montana 59620-0901

Dear Sir:

Asarco appreciated the opportunity to meet on January 10, 2006 with representatives of the Montana Department of Environmental Quality (Department) and the United States Environmental Protection Agency (USEPA) to discuss the strategy for completing our obligations under the February 17, 2005 Consent Decree with the State of Montana (Montana Decree), as well as existing decrees and orders with the USEPA. Asarco is encouraged by the prospects of completing the Montana Decree obligations in a manner that satisfies the regulatory objectives of the Department while conforming to Asarco's overall plan for emerging from bankruptcy.

By way of background, the Montana Decree requires development of yearly Work Plans for calendar years 2004-2006 that set forth actions for the removal, storage, and proper disposal or recycling of remaining materials from certain process units within the East Helena Plant. These Work Plans have been and will be developed using a Decision Matrix Table designed to determine the priority for managing recyclable material from identified process locations within the East Helena Plant. The terms of the three-year Montana Decree are set to expire on December 31, 2006.

2004 Work Plan

In April 2004 (and in subsequent amendments), Asarco submitted the 2004 Work Plan as required under the Montana Decree (the final terms of which were still being negotiated at that time, but which both parties in good faith treated as being controlling). Using the 2004 Work Plan Decision Matrix Table, Asarco and the Department prioritized the removal of process material from the former zinc plant baghouse system, the dross plant, and the blast furnace during calendar year 2004. The disposition of chemicals removed from Asarco Consulting and the Asarco East Helena Plant laboratories was also included in the 2004 Work Plan.

Following the Department's acceptance of the 2004 Work Plan, Asarco initiated removal of zinc oxide dust from the former zinc plant baghouse system. Complications arising from Asarco's inability to safely removal the final 1% of accumulated zinc oxide on inaccessible beams, within enclosed hoppers, and along elevated baghouse ledges ultimately necessitated the demolition of

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the former zinc plant baghouse system. In late September 2004, Asarco hired Shumaker Trucking and Excavation, Inc. to demolish the former zinc plant baghouse system. Removal of asbestos transite wall and roof panels was initiated in October 2004 and completed in December 2004. Demolition of the former zinc plant baghouse system commenced in mid-November 2004 and was completed in the first quarter 2005.

Asarco initiated cleaning of the dross plant during the third quarter 2004. The unexpected volumes of material and difficulty in accessing extensive areas of accreted material presented removal problems that were both time consuming and manpower intensive. Furthermore, employee urinary arsenic readings could not be maintained at acceptable levels while working in the dross plant, despite improved work practices. In consultation and agreement with the Department, Asarco re-directed its 2004 Work Plan cleaning efforts from the dross plant to the water treatment facility.

Asarco completed the cleaning of the water treatment facility and blast furnace areas in December 2004. The disposal of laboratory chemicals took place on July 13, 2004. All materials removed in 2004 were shipped off-site by June 29, 2005, within the 15-month time limit set forth in the 2004 Work Plan.

2005 Work Plan

The initial 2005 Work Plan was approved by the Department on March 23, 2005. Using the 2005 Work Plan Decision Matrix Table, Asarco and the Department prioritized the removal of process material from the sinter plant and dross plant during calendar year 2005.

In June 2005, Asarco proposed addressing four specific areas contained within the former Zinc Plant and Blast Furnace process locations, in lieu of cleaning the dross plant. These four process locations – which were not part of the original scope of work when the Montana Decree was negotiated - scored higher on the Decision Matrix Table when compared to the dross plant. Based on this new information, Asarco and the Department agreed to postpone the cleaning of the dross plant and prioritized the cleaning of the 1) zinc plant holding furnace, 2) No.1 blast furnace ventilation flue, 3) Monier flue at the blast furnace baghouse, and 4) old breaking floor during calendar year 2005. The cleaning of recyclable materials and hazardous waste from the sinter plant remained within the 2005 Work Plan. At the Department's request, Asarco included the removal of the sulfuric acid from the acid storage vessels as part of the 2005 Work Plan. A revised Work Plan incorporating the above referenced revisions was approved by the Department on August 8, 2005

Asarco completed the cleaning of the zinc plant holding furnace, Monier flue at the blast furnace baghouse, and old breaking floor during calendar year 2005. Asarco hired Envirocon to clean and demolish the No.1 blast furnace ventilation flue. This task was completed in December 2005. The removal of the sulfuric acid from the acid storage vessels was completed in November 2005. The details of these cleaning and removal projects will be more fully described in the 2005 Work Plan Completion Report that will be submitted to the Department no later than January 31, 2006.

Asarco commenced interior cleaning of the sinter plant during the second quarter 2005. Throughout the second and third quarter 2005, some progress was achieved. However, the hardened physical state of the accumulated material and the physical constraints of the buildings

(e.g., many tight and confined spaces) limited the effectiveness of conventional cleaning methods. The difficulty in conducting cleanup of the sinter plant, which resulted in a slower than expected pace of progress, led Asarco to determine that, as was the case with the zinc plant baghouse system, demolition was the only economical and timely method to ensure removal of all materials to a degree that would satisfy the Department. A contract for the cleaning and demolition of the sinter plant is currently being negotiated with Envirocon.

In an October 28, 2005 letter and November 9, 2005 meeting, Asarco advised the Department of its inability to clean all the process material from the sinter plant by the end of calendar year 2005. The Department reviewed the proposal and in a November 17, 2005 letter tentatively accepted Asarco amendment to postpone the cleaning and demolition of the sinter plant until calendar year 2006, pending review and approval of the draft Envirocon Work Plan. Asarco will soon be submitting to the Department a draft Work Plan for completing the cleaning and demolition of the sinter plant.

2006 Work Plan

The Montana Decree requires Asarco to complete the remaining cleanup of areas originally identified in the Montana Decree by the end of calendar year 2006. These major process locations include the 1) ore storage, 2) ore receiving, 3) sinter plant, 4) acid plant, and 5) dross plant. Other process locations not specifically identified when the Montana Decree was negotiated, but subsequently identified as requiring cleaning include, but are not limited to the 1) blast furnace flue crossovers, 2) numerous small baghouses, and 3) stacks interiors. Similar to the completed cleanup in the former zinc plant baghouse system, No.1 blast furnace ventilation flue, and scheduled cleaning in the sinter plant, many of these remaining process locations likely will require demolition in order to meet the expected cleaning criteria.

During the January 10, 2006 meeting, Asarco presented its 2006 budget of $3.068 million for conducting work at the East Helena Plant under the Montana Decree and the May 1998 RCRA Consent Decree. The projected 2006 budget was arrived through an analysis of expected cash flow as compared to other obligations Asarco faces, in consultation with the financial adviser retained by Asarco as part of its ongoing reorganization efforts.

Through a 50% credit from Asarco's environmental trust fund, EPA has strongly encouraged Asarco to allocate $1 million from the 2006 budget for long-term monitoring, groundwater remediation, source control interim measures, and/or removal of saturated aquifer material under the USEPA RCRA Consent Decree. As part of the Montana Decree, $568,000 has been set aside for demolition of the sinter plant (which was deferred in 2005) and $100,000 has been allocated for disposition of material that was removed in 2005. The remaining $1.4 million is available for work under the Montana Decree. Asarco has no predetermined ideas on which process locations should be cleaned under the 2006 Work Plan, and is seeking input from the Department on this issue before preparing the 2006 Work Plan. Asarco feels that of the originally identified areas the dross plant and/or acid plant would be assigned the highest priority using the agreed upon Decision Matrix Table, but that some other areas not originally identified may score even higher. Asarco values the Department's thoughts on prioritizing cleaning and/or demolition under the 2006 Work Plan and looks forward to further discussing this issue.

Regardless of how Asarco's East Helena 2006 budget is allocated, the entire cleanup contemplated in the Montana Decree cannot be completed by the end of calendar year 2006. Between the unexpected difficulty in removing accreted material from some areas and the decision to address other areas not originally identified, the cost of performing all the work anticipated in the Montana Decree in a 3-year period has proven difficult in terms of Asarco's financial ability. Asarco remains committed to completing all the work if it is successful in reorganizing, but will need additional time to do so, as discussed further below. We have also devised an approach that we believe will help reduce the cost for material management, which will in turn increase the likelihood that we will be able to complete the required activities in a reasonable period.

Asarco's Proposal for Placement of Material in a CAMU Cell

A major component of Asarco's strategy for the 2006 Work Plan is to manage materials generated under the 2006 Work Plan in a Phase 2 on-site Corrective Action Management Unit (CAMU).

In a letter dated October 27, 1999, from William P. Yellowtail, EPA Region VIII Administrator to Asarco, the USEPA approved the CAMU proposal as an interim measure under the RCRA Consent Decree. This approval followed a public notice and comment period, which included a September 8, 1999 public meeting in which Asarco and the USEPA presented the design criteria. As stated in the draft Design Report (Hydrometrics, 1997), the purpose of the CAMU was to "dispose of soils, sediment, and demolition debris resulting primarily from smelter site remedial cleanup activities." The final Design Analysis Report (Hydrometrics, 2000) further explained that "the CAMU is also designed to allow construction of additional cells should they be necessary. It is likely that additional plant soils, sediment or debris will be generated as a result of RCRA Facility Investigations (RFI) and Corrective Measures Study (CMS) for the East Helena site..."

In the recent Trust Fund Statement of Work (SOW, January 9, 2006) for East Helena site, the USEPA acknowledged the application of future CAMU cell(s) for placement of remediation wastes that would be generated under RCRA Consent Decree interim measures. The work described under the Trust Fund SOW indicates "removal of the saturated aquifer materials is also an appropriate (source control) option...(and)...would include the drying of the removed wastes and placement of those waste in a CAMU cell".

Although the CAMU Phase 1 Cell was primarily used to dispose of contaminated soils, it was approved for disposal of a wide variety of wastes, which were generically referred to as debris. The materials placed within the CAMU Phase 1 Cell included waste materials derived from:

- Historic construction projects that were stored in the outside lower ore storage area,
- Excavated materials from the Lead SIP projects,
- Excavated material from construction of the concentrate storage and handling building (CSHB),
- Soils from the area between Lower and Upper Lake, and
- Sediment from the dredging of Lower Lake (pursuant to the Process Ponds Record of Decision (ROD)).

Specific components of these wastes included soils, concrete (sized less than 2 feet), tree limbs, asbestos panels, crushed metal barrels, whole and partial railroad ties, and other similar debris. A

gas collection system was designed into the CAMU Phase 1 Cell to accommodate large volumes of organics. In a July 2001 response letter, the USEPA allowed placement in the CAMU Phase 1 Cell of material that could be characterized as "non-remediation" wastes including 1) debris and concrete from the former zinc plant area, 2) MRL switching yard and track cleanup debris (a large pile that was pushed up from a collection of ties, cardboard, and waste), and 3) road sweeping (from the plant and City of East Helena, Lead SIP). Asarco believes that future waste materials generated in meeting our obligations under the Montana Decree are not substantially different in character than those previously placed into the CAMU Phase 1 cell.

Asarco's strategy for the 2006 Work Plan anticipates storing removed material (less recoverable assets such as steel) in facilities that meet 40 C.F.R. 265 Subpart DD, Containment Building requirements. The concentrate storage and handling building located at the East Helena Plant is an example of such a facility. The storage of removed material would take place while awaiting construction of the CAMU Phase 2 Cell. The materials being stored, and ultimately placed in the CAMU Phase 2 Cell, will require some segregation. The purpose of the segregation will allow consolidation of the stored materials during placement and compaction in the CAMU Phase 2 Cell that will result in a homogeneous mass with minimal amounts of voids.

During our January 10, 2006 meeting, a question was raised regarding the possible impact of 40 C.F.R. Part 268 Land Disposal Restrictions (LDRs) and treatment standards on the potential placement of materials into a CAMU Phase 2 cell. The design of the East Helena CAMU (including provisions for the construction of an initial Phase 1 Cell and two subsequent cells) was approved in October 1999, and construction commenced shortly thereafter. A map describing the three cells was included in the approved final Design Analysis Report and is attached to this letter.

It is Asarco's position that pursuant to the USEPA's RCRA corrective action regulations, the East Helena on-site CAMU qualifies as a grandfathered CAMU under 40 C.F.R. Part 264.550(b) because it was approved prior to April 22, 2002. The placement of the proposed material into the CAMU Phase 2 and 3 Cells of the previously approved East Helena CAMU would be within the scope of the CAMU as approved because of the similarity of this material to the previously-approved remediation materials. Because no changes to CAMU design or operation are proposed, Asarco believes that the proposed placement of materials would not constitute land disposal of hazardous waste pursuant to 40 C.F.R. Part 264.551(a)(1) and therefore would not be subject to land disposal restrictions.

Placement of the materials generated under the 2006 Work Plan (and possibly future Work Plans) in a CAMU Phase 2 Cell would represent a monumental cost savings when compared to off-site disposal. For example, Asarco's cost for transport and disposition of the materials to an off-site landfill is about $275 per ton. Based on preliminary estimates, this cost would consume most of the remaining available budget for 2006. By contrast and based upon our experience with the CAMU Phase 1 Cell, we believe that placement of material in a Phase 2 Cell would range closer to $20 per ton. As demonstrated, should waste materials generated under the 2006 Work Plan (and anticipated future Work Plans) not be allowed in a CAMU cell, a significant portion of Asarco's budget would need to be directed towards transportation and off-site disposal. Not only will this action reduce the number and/or extent of process locations that are addressed, it will also threaten Asarco's ability to complete the Montana Consent Decree obligations.

Construction and placement of wastes (derived from both the Montana Decree Work Plan and the RCRA Consent Decree activities) into the Phase 2 or Phase 3 CAMU cells represents a practical, long-term solution that satisfies multiple objectives. Construction of a CAMU Phase 2 Cell would likely occur in calendar year 2007. Waste material generated from 2006 and 2007 calendar year cleaning and demolition would be placed into this CAMU cell. Future CAMU Cell(s) are contemplated as part of Asarco's strategy, discussed below.

Asarco's Strategy

During the January 10, 2006 meeting, Asarco introduced a proposal for completing the cleaning of remaining process locations over a five-year period. The cleaning would proceed under a plan to remove all remaining process material from the East Helena Plant – including areas not originally identified when the Montana Decree was being negotiated – which we now estimate to be by the end of calendar year 2011, or approximately 6 years. Although the exact details of cleaning each remaining process location have yet to be determined, Asarco anticipates some degree of demolition of on-site facilities will occur. As with the 2006 Work Plan, waste materials removed under this strategy would be placed in the on-site CAMU Cells.

Pursuant to paragraph 30 of the Consent Decree, Asarco is hereby notifying the Department of its inability to clean all of the process material from the originally identified process locations by the end of calendar year 2006. In accordance with paragraph 30, Asarco is hereby providing the following information:

a. **An explanation of the reasons for the delay;**
   Asarco is unable to complete the cleaning of the process materials in the remaining process locations by the end of calendar year 2006. As explained above, the unexpected difficulty of removing accreted material from certain areas, the consequent need to demolish some buildings, decision to focus some attention on areas not originally contemplated in the Decree, and budgetary constraints prevent the cleaning completion of all process locations by the end of calendar year 2006.

b. **The expected duration of the delay; and**
   Asarco estimates that the cleaning and/or demolition of the remaining process location not identified in the 2006 Work Plan will be completed over a 6-year time period, ending at the end of calendar year 2011.

c. **A description of all actions taken, or to be taken, to prevent or minimize the delay and a schedule for implementation of these actions.**
   Asarco is committed to budgeting $3.086 million in calendar year 2006 for work associated with both the USEPA RCRA Consent Decree and the Montana Decree. In addition, we will continue to work with both the State of Montana and the USEPA to develop future remedial plans which will hopefully work within our ability to reorganize under Chapter 11. The East Helena site is one of Asarco's top environmental priorities.

   As was noted at the January 10, 2006 meeting, if Asarco's proposal is accepted, the final deadline in the Montana Decree will need to be modified, as will provisions on removed material disposition (in order to allow placement in an on-site CAMU).

Asarco understands that the Department will review the request for extension to complete the remaining work under the Decree and will respond within 15 days. If you have any questions on this matter, please do not hesitate to contact me. Asarco looks forward to continuing to work with the Department and the USEPA to develop a long-term approach to the remaining issues at the East Helena Plant.

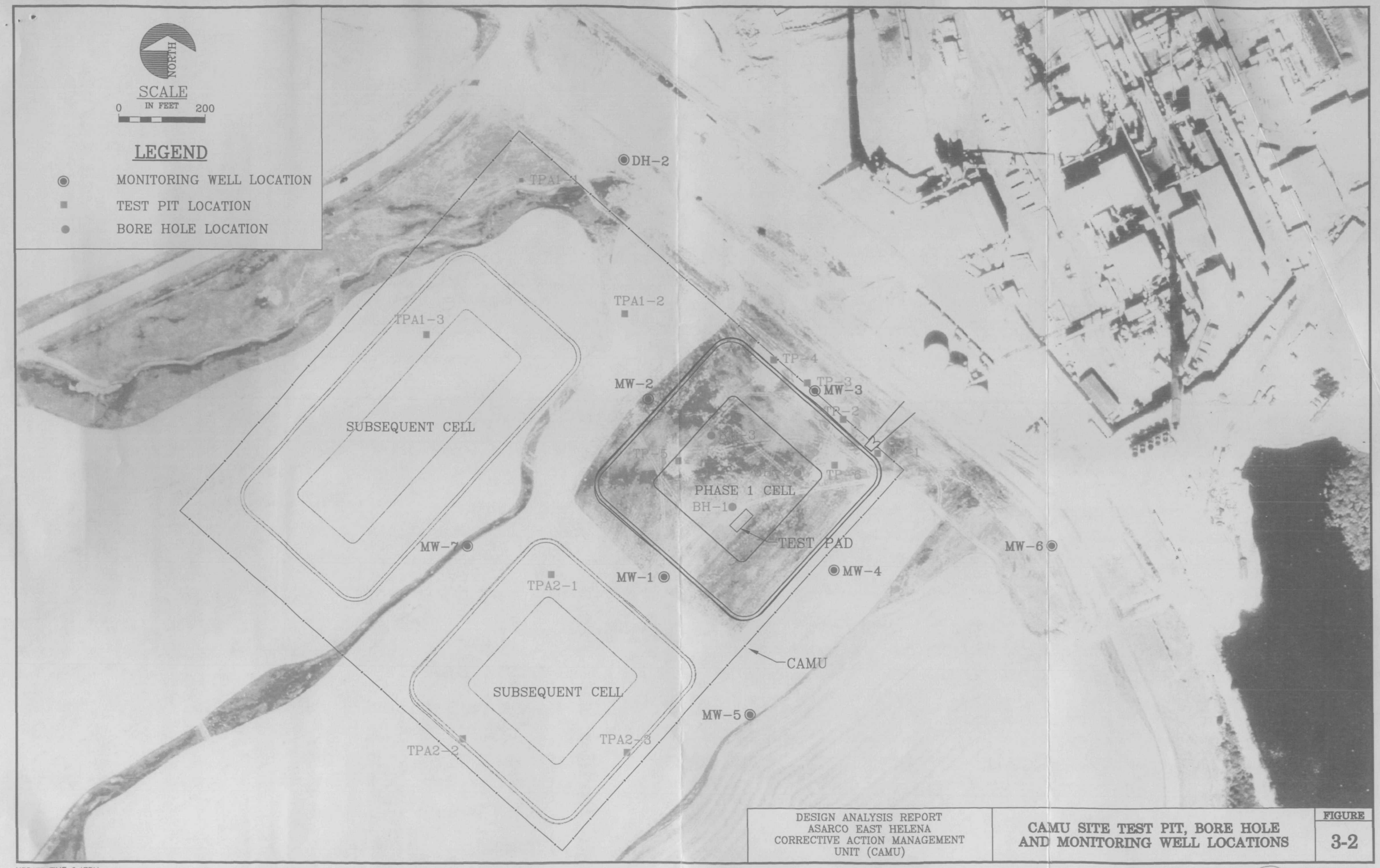
Sincerely,

Jon L. Nickel

For Thomas L. Aldrich

Enclosure: CAMU Site Map

Cc: John Wardell, EPA
Jon Nickel, Asarco



DESIGN ANALYSIS REPORT
ASARCO EAST HELENA
CORRECTIVE ACTION MANAGEMENT
UNIT (CAMU)

CAMU SITE TEST PIT, BORE HOLE AND MONITORING WELL LOCATIONS

FIGURE
3-2

UPDATE TIME: 2:47PM
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Hydrometrics, Inc.