Administrative Record
SF File Number
1020400

ASARCO

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EAST HELENA PLANT
J. B. Davis
MANAGER

REGIONAL ADMINISTRATORS OFFICE
1991 JUN -3 PM 12:33
1991 MAY 31 PM 4:06
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May 31, 1991

VIA HAND DELIVERY

Mr. James J. Scherer
Regional Administrator
U. S. Environmental Protection Agency
Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202

RE: East Helena Superfund Site
Disputed Response Costs

Dear Mr. Scherer:

This letter responds to your letter dated May 24, 1991 in which you request ASARCO Incorporated ("Asarco") to provide written agreement terminating the informal negotiation period effective May 31, 1991, pursuant to Section XIV of the Consent Decree, CV90-46-H-CCL. Asarco received your letter by telecopy after the close of business on May 28, 1991 and as a result of such unreasonable notice will not agree to ending the informal negotiation period on May 31, 1991.

While Asarco is also interested in resolving this matter in an expeditious manner, particularly since we are currently accruing interest on the disputed costs, accepting an effective three day notice of termination of informal dispute resolution is not possible. Asarco will, however, agree to terminate the informal negotiation period on July 1, 1991 if the previously requested documentation is provided to Asarco no later than June 7, 1991. Asarco believes this is an adequate period of time for EPA to collect this information since it is the same information requested in our March 28, 1991 letter in which Asarco advised EPA of its intent to dispute certain past response costs. In addition, it is our understanding most of these documents are already part of the Administrative Record and could be provided to Asarco with little additional effort by EPA.

ASARCO Incorporated, P.O. Box 1230, East Helena, MT 59635
(406) 227-7100
Fax No: (406) 227-8897

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As you noted in your letter, EPA and Asarco met on May 17, 1991 to discuss additional documentation supporting these response costs and to provide Asarco and its financial consultant an opportunity to review the Administrative Record. The financial consultant flew to Helena because Asarco was advised that the most complete set of documents was located there and that many of the requested documents were located in the Administrative Record which is maintained by the Montana EPA office. While the meeting did occur, Asarco representatives were advised that many of the documents they requested from the Administrative Record contained Confidential Business Information ("CBI") and therefore were not available for review. Asarco not only questions whether there is CBI in these financial documents but believes that EPA cannot now designate <u>any</u> information in the Administrative Record as CBI since a significant number of entities and individuals have already reviewed the Administrative Record, including "CBI" documents. It appears that Asarco is being denied adequate access to the Administrative Record, which is necessary to effectively evaluate the supporting documentation for the over $3,000,000 of assessed response costs.

In addition, we have requested the Standard Cost Documentation Package for invoice #1T011. Ms. Bohan's response letter dated April 17, 1991 advises Asarco that this documentation will not be available for "approximately 3 months time," and that "it would be more useful to Asarco to meet with the finance coordinator who compiled the East Helena costs and . . . explain how these costs were incurred and compiled." It is not clear whether EPA intends to provide the Standard Cost Documentation Package or if the May 17, 1991 meeting - which did not elucidate Asarco as to how EPA compiled the costs - is considered an adequate substitute. Asarco again requests the Standard Cost Documentation Package for invoice #1T011.

Attached is a detailed list of documents that were requested from EPA in our March 28, 1991 letter and that were further discussed with EPA at the May 17, 1991 meeting. The first category, "A", represents documents which we believe EPA is providing; however, Asarco has not received any additional documentation. Category "B" identifies documents that Asarco has requested but has not yet received a response from EPA regarding whether they will be provided. Documents which Asarco understands EPA is willing to provide if they do not contain CBI are listed under category "C". We have been advised that EPA must first determine whether the documents actually do contain CBI and that this information has not been previously disclosed. EPA regulations regarding CBI require EPA to evaluate the information

at the time it is submitted to determine if it contains CBI, therefore this information should have been previously reviewed to identify CBI prior to inclusion in the Administrative Record. If the information is CBI, Asarco is willing to enter into an order protecting the confidential nature of the information. And finally, category "D" identifies the documents that EPA has determined that it will not provide to Asarco.

Once Asarco has received the additional requested documentation from EPA, an evaluation of the response costs can be performed to determine if there has been an accounting error or if the assessment includes costs which are inconsistent with the National Contingency Plan ("NCP"). Absent this additional information, Asarco cannot comply with your request for "further articulation of A[sarco]'s basis for contesting response costs". As Asarco previously advised EPA in its letter dated March 28, 1991, adequate documentation to evaluate whether the response costs are inconsistent with the NCP has not been provided to Asarco. Since EPA has provided only minimal additional documentation, Asarco is in no better position than it was on March 28, 1991 to evaluate these costs.

We look forward to resolving this matter as soon as possible. Please notify Jon Nickel at (406) 227-7191 immediately if you require additional clarification regarding the documents Asarco is requesting. Please contact Cynthia S. Leap at Holland & Hart, 555 Seventeenth Street, Suite 2900, Denver, Colorado 80202, phone number (303) 295-8342, if you have any other questions regarding this matter.

Sincerely,

J. B. Davis/CSL

J. B. Davis

Enclosures

cc: Suzanne J. Bohan, Esq.
Michael Goodstein, Esq.
Mr. David Sturn
Mr. Scott D. Brown
Mr. Dale R. Jensen
William O. Hart, Esq.
Mr. Jon C. Nickel
Cynthia S. Leap, Esq.

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East Helena Smelter Superfund Site
Status of Cost Documentation Requested

	CH2M Hill	State of Montana Cooperative Agreements	U.S. Dept. of Health and Human Services
A. Cost documentation not received on 5/17/91 but which EPA agreed to provide:			
Monthly or quarterly progress reports	X (1)	X	
Work plans	X (1)	X	X
Contracts, amendments, modifications and change orders	X	X	
B. Cost documentation not received on 5/17/91 but which is hereby requested:			
Monthly or quarterly progress reports			X (2)
Payroll summaries	X	X	X
Indirect costs documentation	X	X	X
Subcontractor invoices and supporting documentation	X	X	X
Audit reports	X (3)	X (3)	X (3)
Award Fee Performance Event Reports	X		
Contractor invoices and supporting documentation		X	X

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East Helena Smelter Superfund Site
Status of Cost Documentation Requested

	CH2M Hill	State of Montana Cooperative Agreements	U.S. Dept. of Health and Human Services
C. Cost Documentation that EPA indicated may contain confidential business information (CBI):			
Monthly or quarterly progress reports	X		
Indirect costs documentation	X		
Work plans	X		
Award Fee Performance Event Reports	X		
D. Documents that EPA stated will not be provided:			
Pre-award documents	X	X	X

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East Helena Smelter Superfund Site
Status of Cost Documentation Requested

Footnotes

(1) At the 5/17/91 meeting, EPA agreed to provide these documents, except for certain financial information within these documents that EPA considers to be CBI.

(2) State of Montana, Department of Health and Human Services progress reports 3 and 8 onward, if applicable, as well as cost documentation for reports 1, 2, 4, 5, 6 and 7, dated 10/21/83, 2/10/84, 8/16/84, 11/7/84, undated, and 4/29/85, for the quarters ended 9/30/83, 12/31/83, 6/30/84, 9/30/84, 12/31/84 and 3/31/85, respectively, are hereby requested from EPA. In addition, all related U.S. Department of Health and Human Services progress reports with supporting cost documentation are also requested. The interagency agreement between EPA and the U.S. Department of Health and Human Services requires "an accounting of funds obligated to date and during the current reporting period."

(3) General audit reports for CH2M Hill, State of Montana, and the U.S. Department of Health and Human Services, as well as specific audit reports relating to East Helena Smelter Superfund Site costs or to underlying contracts, contractors, subcontractors or indirect cost rates, are hereby requested.