

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

ASARCO LLC,

Plaintiff,

v.

NL INDUSTRIES, INC., et al.,

Defendants.

Case No. 4:11-cv-00864-JAR

**SECOND AMENDED CIVIL  
COMPLAINT**

ASARCO LLC (“Asarco”), complains of Defendants and alleges:

**NATURE OF THE ACTION**

1. This is a civil action brought by Asarco pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA” and “SARA”), 42 U.S.C. §§ 9601-9675, for contribution and cost recovery against Defendants for costs and damages incurred by Asarco in the Southeast Missouri Mining District (“SEMO” or “SEMO Sites”). Asarco has recently paid approximately \$80 million to settle all of its CERCLA-related liability at SEMO, including response costs and natural resource damages.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action, and these Defendants, pursuant to 28 U.S.C. §§ 1331 and 1367(a), and Sections 107 and 113 of CERCLA, 42 U.S.C §§ 9607 and 9613.

3. Venue is proper in this judicial district pursuant to 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), 9613(b), and 28 U.S.C. §§ 1391(b).

### **PLAINTIFF**

4. Asarco is a limited liability company organized under the laws of the state of Delaware. Asarco has taken responsibility for the clean-up of all of its known liabilities for any “releases” under CERCLA Section 107(a), *et seq.*, 42 U.S.C. § 9607(a), *et seq.*, for Asarco’s historic smelting operations at SEMO, and Asarco has settled all of its liability at SEMO with the United States and the State of Missouri.

### **DEFENDANTS**

5. NL Industries, Inc., (“NL”) is a New Jersey corporation that has conducted mining, metals processing, storage, transport and/or related operations through facilities in or near SEMO. NL is an “owner,” “operator,” and/or “arranger” of a “facility” pursuant to Sections 101(9) and (20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(9) and (20) and 9607(a)(1) and (2).

6. St. Francois County Environmental Corporation (“SFCEC”) is a Missouri corporation that has conducted mining, metals processing, storage, transport and/or related operations through facilities in or near SEMO. SFCEC is an “owner,” “operator,” and/or “arranger” of a “facility” pursuant to Sections 101(9) and (20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(9) and (20) and 9607(a)(1) and (2).

7. Delta Asphalt Company (“Delta”) is a Missouri corporation that has conducted mining, metals processing, storage, transport and/or related operations through facilities in or near SEMO. Delta is an “owner,” “operator,” and/or “arranger” of a “facility” pursuant to Sections 101(9) and (20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(9) and (20) and 9607(a)(1) and (2).

8. Anschutz Mining Corporation (“AMC”) is a Colorado corporation that has conducted mining, metals processing, storage, transport and/or related operations through facilities in or near SEMO. AMC is an “owner,” “operator,” and/or “arranger” of a “facility” pursuant to Sections 101(9) and (20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(9) and (20) and 9607(a)(1) and (2). AMC is named as a “potentially responsible party” or PRP by the United States Environmental Protection Agency at Madison County. AMC owns what is known as the Madison Mine or Buckeye Mine in Madison County, Missouri. During operation of the Madison mine, mine-related wastes accumulated around the site. The Madison Mine site owned by Anschutz consists of five main tailings piles that cover approximately 200 acres, several ponds, and remnants of a mill, smelter, and refinery complex. Two intermittent creeks also flow through the Anschutz property, which contribute to other surface waters in SEMO, and are pathways for disposal or releases of metals through ongoing erosion. EPA has recognized that tailings from the mine waste piles in this region are easily transported and released to surface water bodies and ambient air via wind and water erosion. AMC or its corporate predecessors thus own or operate or have owned or operated manufacturing, storage, transport and/or related operations of or for hazardous substances through facilities in or near SEMO. AMC is responsible for multiple releases of hazardous substances at or near SEMO, which hazardous substances have come to be located at SEMO, and for which Asarco has paid for the remediation of such hazardous substances through a judicially approved settlement.

9. Defendant Union Pacific Railroad Company (“Union Pacific”) is a Delaware corporation that has conducted storage, transport and/or related operations through facilities in or near SEMO. Union Pacific is an “owner,” “operator,” and/or “arranger” of a “facility” pursuant to Sections 101(9) and (20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(9) and (20) and

9607(a)(1) and (2). Union Pacific Railroad Company or its corporate predecessors has owned or operated manufacturing, storage, transport and/or related operations of or for hazardous substances through facilities in or near SEMO. Union Pacific Railroad Company is responsible for multiple releases of hazardous substances at or near the SEMO, which hazardous substances have come to be located at SEMO, and for which Asarco has paid for the remediation of such hazardous substances through a judicially approved settlement.

10. Each Defendant listed in paragraphs 6 to 10 above is a “person,” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and a “covered person” under 42 U.S.C. § 9607(a).

#### **FACTUAL BACKGROUND**

11. SEMO is comprised of five sub-sites: (a) Madison County / Catherine Mine; (b) Big River / Federal Mine Tailings (St. Francois County); (c) West Fork Mine; (d) Sweetwater Mine; and (e) Glover Smelter. The Madison County / Catherine Mine Sub-site is located approximately 90 miles south of St. Louis, Missouri in an area of southeast Missouri known as the “Old Lead Belt.” The “Old Lead Belt” covers an area of approximately 110 square miles and the area was the nation’s largest producer of lead from approximately 1907 to 1953. Approximately eight million tons of lead were produced, resulting in the production of 250 million tons of mine waste. The Big River drainage basin which drains the Old Lead Belt is estimated to contain 3,000 acres of tailings. EPA has recognized that tailings from the mine waste piles are easily transported and released to surface water bodies and ambient air via wind and water erosion. The Big River Mine was developed by St. Joseph Lead Company and operated by St. Joe Minerals from 1929 through 1958. The Federal Mine Tailings site is now part of the St. Joe State Park, the third largest state park in Missouri. The West Fork Mine Sub-

site is an active mine in Reynolds County producing lead sulfide and zinc sulfide. The Sweetwater Mine Sub-site is an active mine in Reynolds County producing primarily lead sulfide and zinc sulfide. The Glover Smelter is no longer in operation.

- a. Madison County / Catherine Mine Sub-site – This Sub-site is located approximately 90 miles south of St. Louis, Missouri in an area of southeast Missouri known as the “Old Lead Belt.” The Madison County Mines Sub-site has been broken down into three Operable Units (OUs), along with the Fredericktown Time Critical Removal and an old lead processing facility previously investigated.
- b. Big River / Federal Mine Tailings Sub-site – This Sub-site is comprised of three elements: Federal Mine Tailings, Big River Mine Tailings, and residential yards in St. Francois County. Asarco operated a subsidiary in Missouri, the Federal Lead Company, from 1905 to 1923, which is partially responsible for the Federal Mine Tailings site, which is now part of the St. Joe State Park, the third largest state park in Missouri. The Big River Mine was developed by St. Joseph Lead Company (aka St. Joe Minerals Corporation) in 19296 (after Asarco’s sale of all of its southeast Missouri holdings to St. Joe in 1923) and operated by St. Joe from 1929 through 1958. St. Francois County area-wide residential yards have been impacted by mining and metals processing operations remediation. Mine wastes in the area have migrated to residential yards, surface waters and sediments, which are being addressed as part of the Big River area-wide remedial and removal activities.

- c. West Fork Mine Sub-site – The West Fork Mine Sub-site is an active mine in Reynolds County producing lead sulfide and zinc sulphide.
- d. Sweetwater Mine Sub-site – The Sweetwater Mine Sub-site is an active mine in Reynolds County producing primarily lead sulfide and zinc sulfide.
- e. Glover Smelter Sub-site – Asarco operated a smelter from 1968 until 1998 in Iron County in southeastern Missouri, approximately 100 miles southwest of St. Louis, Missouri. The smelter is located in a sparsely populated area near the confluence of Big Creek and Scoggins Branch at the foot of the slopes on the west side of the Big Creek stream valley. During the period of ASARCO’s ownership of the smelter, it processed ore concentrates from nearby mines, including West Fork and Sweetwater, as well as ore concentrates from other operators in the New Lead Belt. Asarco sold the smelter to Doe Run.

12. On August 9, 2005, Asarco filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”).

13. On March 3, 2008, Asarco filed a motion in the Bankruptcy Court for approval of certain unsecured general claims resolving its CERCLA liabilities SEMO (“SEMO Claims Settlement”). The total amount of allowed claims was approximately \$80 million.

14. The SEMO Claims Settlement was approved by the Bankruptcy Court on May 12, 2008.

15. On November 13, 2009 Asarco's plan of reorganization, under which Asarco would make full payment on its environmental claims as approved by the Bankruptcy Court, was approved by the District Court for the Southern District of Texas.

16. On December 9, 2009 Plaintiff's plan of reorganization became effective, enabling disbursement of funds for environmental settlements, including funds for the SEMO Claims Settlement. Asarco fully funded the SEMO Claims Settlement at one hundred cents on the dollar as part of its reorganization.

17. Asarco has settled all of its CERCLA-related liability at SEMO.

18. Defendants are all potentially responsible parties ("PRPs") under CERCLA at the Sites and thus co-liable with Asarco for contamination at SEMO as of the time Asarco funded the SEMO Claims Settlement.

19. Union Pacific is a PRP at all SEMO Sub-sites. Specifically, Asarco has investigated the history of railroad use and construction in SEMO. Materials from the United States Bureau of Mines and other government agencies confirm that railroad construction at SEMO was accomplished by purchasing tailing piles and mining wastes to use as road ballast. These ballast beds would frequently impact water ways. Asarco has estimated that Union Pacific thus owns and is responsible for over 10 million cubic feet of waste at SEMO and almost half a million tons of mining waste. This mining waste is or has been "disposed" or "released" into SEMO and its waterways. Union Pacific is also a PRP because historic operations would involve releases and spillage as ore through open ore cars and trucks was transported through rail to distant facilities for further smelting or refining, which would dispose or release metals and contribute to SEMO metals contamination.

20. NL is a PRP at the Big River/Federal Mine Tailings Sub-site and the Madison County Sub-site.

21. SFCEC is a PRP at the Big River/Federal Mine Tailings Sub-site.

22. Delta is a PRP at the Madison County Sub-site. Specifically, Delta is owns or has owned the Catherine Mine Site, including waste piles, in Madison County.

23. AMC is a PRP at the Madison County Sub-site AMC. AMC owns or has owned the Madison Mine in Madison County. As further described in paragraph 8 above, Anschutz owns or has owned five main tailings piles that cover approximately 200 acres, several ponds, and remnants of a mill, smelter, and refinery complex. The area also features intermittent creeks which are tributaries to larger waterways. EPA has recognized that tailings from the mine waste piles in this region are easily transported and released to surface water bodies and ambient air via wind and water erosion. AMC or its corporate predecessors thus own or operate or have owned or operated manufacturing, storage, transport and/or related operations of or for hazardous substances through facilities in or near SEMO. AMC is responsible for multiple releases of hazardous substances at or near SEMO, which hazardous substances have come to be located at SEMO, and for which Asarco has paid for the remediation of such hazardous substances through a judicially approved settlement.

**COUNT I**  
**CLAIM FOR CONTRIBUTION UNDER SECTION 113(F) OF CERCLA**

24. Plaintiff incorporates by reference paragraphs 1 through 23 as if fully set forth herein.

25. The SEMO Sites, including composite sub-sites Madison County/Catherine Mine, Big River/Federal Mine Tailings (St. Francois County), West Fork Mine, Sweetwater Mine, and



Glover Smelter, are “facilities” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. “Hazardous substances,” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of, placed, released, or otherwise became located in SEMO at times relevant to this action by Defendants.

27. Defendants are responsible for “disposals” or “releases” within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) into the environment at or from SEMO at times relevant to this action.

28. Response costs for the Sites are consistent with the National Contingency Plan (the “NCP”), pursuant to Section 107(a)(4)(B) of CERCLA, 42 U.S.C. § 9607(a)(4)(B) and implementing regulations.

29. Any person may seek contribution from any other person who is liable or potentially liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), 42 U.S.C. § 9613(f)(1).

30. A person is liable under Section 107(a) of CERCLA if the person is the owner and operator of a facility. 42 U.S.C. § 9607(a)(1).

31. A person is liable under Section 107(a) of CERCLA if the person owned or operated any facility at which such hazardous substances were disposed. 42 U.S.C. § 9607(a)(2).

32. A person is liable under Section 107(a) of CERCLA if the person arranged, by contract or otherwise, with a transporter for transport or disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances. 42 U.S.C. § 9607(a)(3).

33. A person is liable under Section 107(a) of CERCLA if the person accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs. 42 U.S.C. § 9607(a)(4).

34. All Defendants are persons who are liable for owning and operating facilities under 42 U.S.C. § 9607(a)(1), owning and/or operating facilities at or from which hazardous substances were disposed under 42 U.S.C. § 9607(a)(2), for arranging transport or disposal of hazardous substances under 42 U.S.C. § 9607(a)(3), and/or transporting hazardous substances in, among, or between the SEMO Sites, under 42 U.S.C. § 9607(a)(4).

35. Asarco has resolved CERCLA liability for response action with the United States and the State of Missouri through the judicially approved bankruptcy reorganization and may seek contribution pursuant to Section 113(f) of CERCLA, 42, U.S.C. § 9613(f).

36. To date, Asarco has incurred approximately \$80,000,000 for response action consistent with the NCP pursuant to 42 U.S.C. § 9607(a)(4)(B) and for natural resource damages. This amount represents more than Plaintiff's allocable share of costs related to its releases or disposal of hazardous substances at SEMO.

37. Because each Defendant qualifies as a responsible party under CERCLA § 107(a), each Defendant is liable for its equitable share of any overpayment incurred by Asarco.

38. WHEREFORE, Plaintiff respectfully requests that judgment be entered in its favor and against Defendants:

- a. Ordering each Defendant to pay contribution to Plaintiff in a sum to be determined by the Court to be owed to Plaintiff for response costs and natural resource damages;

- b. Awarding Plaintiff its costs and attorneys' fees; and
- c. Awarding Plaintiff all other relief that the Court deems appropriate.

Respectfully submitted,

Dated: February 8, 2012

/s/ Gregory Evans

Gregory Evans

*Admitted Pro Hac Vice*

William R. Pletcher

*Admitted Pro Hac Vice*

Integer Law Corporation

811 West Seventh Street, Twelfth Floor

Los Angeles, California 90017

Telephone: (213) 627-2268

Facsimile: (213) 627-2579

E-Mail: [gevans@integerlegal.com](mailto:gevans@integerlegal.com)

E-Mail: [wpletcher@integerlegal.com](mailto:wpletcher@integerlegal.com)

W. James Foland (SBN 25022)

Michael L. Belancio (SBN 50115)

Foland, Wickens, Eisfelder, Roper & Hofer, PC

911 Main Street, 30th Floor

Kansas City, Missouri 64105

Telephone: (816) 472-7474

Facsimile: (816) 472-6262

E-Mail: [jfoland@fwpclaw.com](mailto:jfoland@fwpclaw.com)

E-Mail: [mbelancio@fwpclaw.com](mailto:mbelancio@fwpclaw.com)

Attorneys for Asarco LLC