

OHIO EPA.

SEP 25 2015

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Blue Tee Corp.
250 Park Avenue South
New York, New York 10003

Respondent

For the Site Known As:

Former ASARCO Facility
and American Ditch
Columbus, Ohio

Director's Final
Findings and Orders
Cost Recovery Settlement

I certify this to be a true and accurate copy of the
official documents as filed in the records of the Ohio
Environmental Protection Agency.

By:  Date: 9-25-15

PREAMBLE

It is hereby agreed to by the Parties as follows:

I. JURISDICTION

1. These agreed Director's Final Findings and Orders ("Orders") are issued to Blue Tee Corp. ("Respondent") pursuant to the authority vested in the Director of Ohio EPA under Ohio Revised Code ("ORC") §§ 3734.13, 3734.20, 6111.03, and 3745.01. This cost recovery settlement is entered into by the Parties pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9607, and ORC §3745.01. Respondent consents to and agrees not to contest Ohio EPA's jurisdiction to issue and enforce these Orders.

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law.

3. No change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall in any way alter Respondent's obligations under these Orders.

4. Each signatory to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these Orders.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, all terms used in these Orders or in any appendices shall have the same meaning as defined in ORC Chapters 3734 and 6111 and the rules promulgated thereunder. Whenever the terms listed below are used in these Orders, or any appendices attached hereto, the following definitions shall apply:

a. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

b. "Contaminant" or "contamination" means (1) any "hazardous waste" under ORC § 3734.01(J); (2) any "industrial waste" under ORC § 6111.01(C); and (3) any "other wastes" under ORC § 6111.01(D).

c. "Day" means a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or state holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or state holiday, the period shall run until the close of the next business day.

d. "Facility" means the former zinc oxide production facility property located at 1363 Windsor Avenue in Columbus, Ohio, now owned by Le Petomane XXV, Inc., the ASARCO bankruptcy custodial trustee, formerly owned and operated by the American Zinc Oxide Company, a corporate entity for which Respondent is a successor in interest, and later formerly owned and operated by ASARCO, LLC ("ASARCO").

e. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.

f. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.

g. "Orders" means these Director's Final Findings and Orders and the ASARCO Bankruptcy Settlement (Appendix A), and the Amended Bankruptcy Settlement (Appendix B) attached hereto and incorporated by reference herein.

- h. "Paragraph" means a portion of these Orders identified by an arabic numeral or an uppercase or lowercase letter.
- i. "Parties" means Respondent and Ohio EPA.
- j. "Respondent" means Blue Tee Corporation.
- k. "Response Costs" means all costs incurred by Ohio EPA with respect to the Site that are not inconsistent with the NCP, including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, oversight costs, legal and enforcement-related costs, laboratory costs, and the costs of reviewing plans, reports, and other items related to the Site, or otherwise implementing or enforcing these Orders.
- l. "Section" means a portion of these Orders identified by a Roman numeral.
- m. "Site" means (i) the Facility and (ii) the American Ditch, the section of stream/ditch beginning at Joyce Avenue south of Windsor Avenue and north of East 12th Avenue, which flows approximately 0.6 miles to Woodland Avenue and approximately 0.3 miles south on the western side of Woodland Avenue, and includes open flow segments of approximately 0.1 miles on the northeastern side of Woodland Avenue near the intersection of East 5th Avenue and Leonard Avenue, in the city of Columbus, where the treatment, storage, and/or disposal of hazardous waste, and/or the placement or discharge into waters of the state of industrial waste or other waste has occurred from the Facility, including any other area where such hazardous wastes, industrial wastes and/or other wastes have migrated or threaten to migrate.

IV. FINDINGS

- 6. The Director of Ohio EPA has determined the following findings. Nothing in the findings shall be considered to be an admission by Respondent of any matter or law or fact:

Former ASARCO Facility

- a. Between 1920 and 1971, the American Zinc Oxide Company ("American Zinc"), a corporate entity for which Respondent is a successor in interest, owned and operated a zinc oxide production facility at 1363 Windsor Avenue, in Columbus, Ohio ("Facility"). In 1971, ASARCO purchased the Facility and continued operation of the zinc oxide production facility until 1986. During operation, about 60 to 65 tons per day of zinc oxide were produced, to be used in the manufacture of

commercial and consumer products, such as paint and tires. As a result of the zinc oxide operations, zinc slag accumulated at the Facility. A sulfuric acid manufacturing plant located on property north of the zinc oxide plant was purchased by American Zinc in 1963 and continued in operation through ASARCO's ownership of the Facility.

b. From 1986 until at least 1995, the Facility continued to be used for the storage and transfer of sulfuric acid.

c. The Facility is approximately 47.9 acres; approximately 8 acres are located on the north side of Windsor Avenue and approximately 40 acres are located on the south side of Windsor Avenue. The ore processing and sulfuric acid operations were conducted on the northern portion of the Facility, and the furnace, cooling pond, railroad spurs and zinc refinery were located on the southern portion of the Facility.

d. The zinc slag (or clinker) that accumulated at the Facility contains elevated levels of zinc and cadmium. Water that has leached through the clinker is collected and drained through a series of ditches. Prior to 1989, this water was discharged directly to American Ditch which flowed to a combined sewer discharging to the city of Columbus Southerly Wastewater Treatment plant (with overflow to Alum Creek). After June, 1989, as part of storm sewer modifications associated with Interstate-670 construction, the flow from American Ditch was diverted to discharge into Alum Creek via storm sewers.

e. In June 1994, ASARCO received a National Pollutant Discharge Elimination System ("NPDES") permit from Ohio EPA for the effluent from ASARCO's on-site water treatment plant, which discharges to the American Ditch and then to Alum Creek via storm sewer.

f. In September 1995, Ohio EPA prepared an integrated assessment report for the Facility. The report described the 28 samples collected on April 11, 1995. Significant findings included elevated levels of various polycyclic aromatic hydrocarbon compounds, along with cadmium, mercury and zinc in the shallow soil, sediment and surface water samples collected at the Facility.

g. On November 27, 1995, Ohio EPA met with ASARCO representatives to discuss remedial alternatives for the Facility. By letter dated December 1, 1995, Bridgeview Management, Inc. (a wholly owned subsidiary of ASARCO, LLC), on behalf of ASARCO, notified Ohio EPA of ASARCO's intention to pursue remediation of the Facility through the Voluntary Action Program ("VAP") rather than through an interim action administrative consent order. By letter dated April 26, 1996, Ohio EPA acknowledged ASARCO's December 1st request for VAP technical

assistance, and Ohio EPA's intention to review and comment on ASARCO's draft remedial action plan for the Facility.

h. On May 15, 1996, Ohio EPA prepared draft comments on ASARCO's draft remedial action plan, and on June 25, 1996, Ohio EPA met with ASARCO representatives to discuss those draft comments. By letter dated August 26, 1996 and by technical memorandum dated August 30, 1996, Ohio EPA provided comments on ASARCO's remedial action plan. By letter dated October 4, 1996, Bridgeview Management, Inc., on behalf of ASARCO, responded to Ohio EPA's August 26th comments, and on November 1, 1996, Ohio EPA met with ASARCO representatives to discuss the remedial action plan. By letter dated December 18, 1996, Ohio EPA addressed ASARCO's October 4th response to comments on the remedial action plan for the Facility.

i. ASARCO's voluntary action work and Ohio EPA's VAP technical assistance continued. By letter dated March 17, 1998, Ohio EPA provided comments on ASARCO's Phase I property assessment for the Facility. By letter dated July 24, 1998, SECOR International Inc., on behalf of ASARCO, submitted a revised Phase I property assessment for the Facility. By letter dated September 17, 1998, Ohio EPA provided comments on SECOR's revised Phase I property assessment.

j. In 1999, Respondent reached a settlement with ASARCO with respect to allocation of environmental liabilities for the Facility. Pursuant to that settlement ASARCO agreed to complete the remedial work necessary to secure a covenant not to sue under the VAP.

k. SECOR International, Inc., on behalf of ASARCO, prepared a preliminary Phase II property assessment in February 2000. By letter dated September 25, 2001, Ohio EPA provided comments on the preliminary Phase II property assessment. By letter dated November 9, 2001, SECOR International Inc., on behalf of ASARCO, responded to Ohio EPA's comments on the preliminary Phase II property assessment. Following a telephone conference on December 4, 2001, and a letter from SECOR International on behalf of ASARCO, dated January 11, 2002, Ohio EPA provided further comments, by letter dated January 23, 2002, on ASARCO's preliminary Phase II property assessment for the Facility.

l. SECOR International, Inc., on behalf of ASARCO, prepared an additional Phase II property assessment in May 2002, and responded to Ohio EPA's January 23rd comments by letter dated May 15, 2002. Ohio EPA provided further comments by letters dated June 7 and October 3, 2002. SECOR finalized its Phase I property assessment and its Phase II property assessment for the Facility in December 2002.

m. On June 19, 2003, a VAP no further action (“NFA”) letter for the Facility was submitted to Ohio EPA by SECOR International, on behalf of Bridgeview Management Co., Inc., with a request for a VAP covenant not to sue. The NFA letter described investigational and remedial activities conducted at the Facility, including: a Phase I property assessment; a Phase II property assessment; a property-specific risk assessment; a 1.5 foot-thick cap including 1.0 feet of clay and a vegetated topsoil layer; and a passive water treatment system with a geochemical barrier treatment system, pH stabilization tank, storm water retention pond, and NPDES discharge outfall. Ohio EPA noted deficiencies in the NFA letter with regard to compliance with the VAP.

n. In 2005, ASARCO filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of Texas (“Bankruptcy Court”) in the matter of *In re: ASARCO, LLC, et al.*, Case No. 05-21207. The State of Ohio filed proofs of claim under environmental laws in this proceeding, with respect to both the ASARCO property and American Ditch. Respondent filed a proof of claim under environmental laws with respect to American Ditch.

o. In 2008, ASARCO submitted a revised NFA letter to Ohio EPA for approval and issuance of a covenant not to sue. After an Ohio EPA site visit in September 2008, Ohio EPA noted a number of deficiencies with the revised NFA letter and site conditions that would need to be addressed before Ohio EPA could issue a covenant not to sue.

p. In March 2009, the State of Ohio entered into an “Amended Consent Decree and Settlement Agreement Establishing a Custodial Trust” (“Amended Consent Decree”) for approval and entry by the Bankruptcy Court. Through the Amended Consent Decree, the State of Ohio sought \$420,000 to address and fund future environmental actions and certain oversight costs with respect to the Facility, to be deposited in the Custodial Trust Environmental Cost Account (“Custodial Trust”) for the site. Pursuant to the Amended Consent Decree, the Custodial Trustee was to use this money to fund future environmental actions and oversight costs at the Facility. The Bankruptcy Court entered the Amended Consent Decree on June 8, 2009.

q. By letter dated June 10, 2009, Ohio EPA notified ASARCO and its certified professional of certain unresolved deficiencies in the NFA letter and Ohio EPA’s conditional recommendation to deny the request for a covenant not to sue. By letter dated June 17, 2009, ASARCO’s certified professional responded to Ohio EPA’s notice of deficiencies. By letter dated July 29, 2009, Ohio EPA acknowledged ASARCO’s July 17, 2009 withdrawal of its NFA letter and request for a covenant not to sue.

r. From 2009 to the present, the Custodial Trustee under the oversight of Ohio EPA has expended funds from the Custodial Trust on certain activities, costs and fees, but the concerns regarding the adequacy of ASARCO's remedial activities raised by Ohio EPA in 2009 remain. There are now insufficient funds remaining in the Custodial Trust to continue or complete remedial actions at the Facility.

American Ditch

s. American Ditch flows as an open stream/ditch for approximately 750 feet on the Facility and approximately 1 mile downstream of the Facility. American Ditch then enters a city of Columbus storm sewer that drains to Alum Creek. The portion of American Ditch downstream of the Facility begins at Joyce Avenue south of Windsor Avenue and north of East 12th Avenue, and flows approximately 0.6 miles to Woodland Avenue and approximately 0.3 miles south on the western side of Woodland Avenue, and includes open flow segments of approximately 0.1 miles on the northeastern side of Woodland Avenue near the intersection of East 5th Avenue and Leonard Avenue, in the city of Columbus.

t. Beginning in 1970, Ohio EPA files document surface water discharges from the Facility to American Ditch. The clinker generated leachate with elevated cadmium and zinc concentrations that flowed into American Ditch. In addition, sulfuric acid was periodically released to American Ditch.

u. Prior to June 1989, American Ditch entered a combined sewer tributary to the city of Columbus Southerly Wastewater Treatment Plant (with overflow to Alum Creek). Therefore, the city of Columbus held regulatory authority for this discharge. On several occasions, the city of Columbus cited ASARCO for exceeding applicable discharge criteria. The city of Columbus required ASARCO to remove clinker and initiate treatment of the water discharge. In response, ASARCO removed a significant quantity of clinker and initiated treatment of the water discharge.

v. Beginning in June 1989, as part of storm sewer modifications associated with Interstate-670 construction, the flow from American Ditch was diverted to discharge into Alum Creek at the Maryland Avenue storm sewer outfall. As a result, regulatory authority shifted from the city of Columbus to Ohio EPA's Division of Surface Water ("DSW"). DSW then required ASARCO to obtain an NPDES permit for its discharge to American Ditch.

w. Zinc oxide production operations at the Facility ceased in 1986. Ohio EPA's Division of Emergency and Remedial Response ("DERR")

observed Facility conditions during a 1995 Integrated Assessment. At that time, a majority of the Facility was not in use and had fallen into disrepair. The northern section of the Facility property consisted of abandoned structures. Only the sulfuric acid operation, which stored and distributed sulfuric acid produced at other ASARCO locations, remained active. The southern section of the Facility property had a few remaining buildings and several clinker piles.

x. Beginning in approximately 2006, as part of storm sewer improvements performed by the city of Columbus, the flow from American Ditch was diverted to a discharge into Alum Creek at a new location approximately 0.3 miles upstream of the Maryland Avenue outfall. Also, during this work, the most downstream reach (approximately 268 feet) of American Ditch was enclosed within a culvert. ASARCO's NPDES permit remains in effect.

y. The NPDES permit required that ASARCO perform sediment sampling in American Ditch and in Alum Creek near the Maryland Avenue outfall. ASARCO's contractor, SECOR, performed the required sampling during November 2003. Ohio EPA DSW and DERR assisted by collecting and splitting samples with SECOR. The analytical results of Ohio EPA's split samples were summarized in DERR's 2010 Site Assessment Report ("Ohio EPA 2010").

December 2013 American Ditch Sampling Event

z. On December 2 and 3, 2013, Ohio EPA's DSW and DERR conducted additional sediment and soil sampling in and along American Ditch at several locations. The purpose of this sampling was to develop additional information regarding the width and depth of sediment contamination in American Ditch. Ohio EPA included this data in DSW and DERR's 2014 Sediment Assessment Report ("Ohio EPA 2014"). This sampling event identified cadmium in sediment and soil at levels up to 172 mg/kg, and zinc in ditch sediment at levels up to 35,300 mg/kg.

ASARCO Bankruptcy Settlement for American Ditch

aa. The State of Ohio ("State"), ASARCO, and Respondent Blue Tee Corp. reached a settlement on October 8, 2008, of the State's bankruptcy claim regarding American Ditch in the ASARCO bankruptcy. By Order dated October 24, 2008, the United States Bankruptcy Court for the Southern District of Texas approved a settlement agreement in the matter of ASARCO, LLC, et al., Case No. 05-21207 ("ASARCO Bankruptcy Settlement"), attached to these Orders as Appendix A. The ASARCO

Bankruptcy Settlement included an allowance to the State of a general unsecured claim of \$1,254,000 for American Ditch remediation costs. As a result, in December 2009, the State received \$1,601,067.31, of which (a) \$434,077.61 has been deposited in the State of Ohio's Hazardous Waste Clean-up Fund (ORC §3734.28) for payment of response costs (and interest on those costs) incurred by Ohio EPA prior to February 2, 2015 and (b) \$1,166,989.70 has been deposited in the State of Ohio's Environmental Protection Remediation (ORC §3734.281) and Hazardous Waste Clean-up (ORC §3734.28) Funds, and designated for American Ditch (hereafter referred to as the "Bankruptcy Funds"), to be available for payment of appropriate, properly-invoiced costs for the American Ditch remediation to be contracted by Ohio EPA, and for payment of response costs incurred by Ohio EPA after February 2, 2015.

bb. On August 20, 2015, the State of Ohio and Respondent filed a joint motion in the Bankruptcy Court in the matter of *In re: ASARCO, LLC, et al*, Case No. 05-21207 ("Motion"), attached to these Orders as Appendix B. If the Motion is granted and an order is entered by the Bankruptcy Court, as requested, such order is expected to authorize the allocation of the Bankruptcy Funds at the discretion of the State for remediation of the Facility as well as the American Ditch.

General Findings

cc. Respondent is a "person" as defined in ORC §§ 3734.01(G) and 6111.01(I).

dd. Because of their quantity, concentration, physical or chemical characteristics, some contaminants of concern found at the Site, including cadmium and zinc, constitute "hazardous wastes" as defined in ORC § 3734.01(J).

ee. The Site is a hazardous waste facility, solid waste facility, or other location where hazardous waste was treated, stored or disposed, within the meaning of ORC § 3734.01(N). Respondent generated contaminants at the Site, and/or directly or indirectly allowed and/or directed the placement and/or disposal of contaminants at the Site.

ff. Conditions at the Site are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination within the meaning of ORC § 3734.20(B).

gg. Contaminants found at the Site, including cadmium and zinc, are "industrial wastes" or "other wastes," as defined in ORC § 6111.01 (C) and (D), respectively.

hh. The migration and threatened migration of these contaminants to ground water and surface water at or from the Site constitutes the discharge of industrial wastes or other wastes into "waters of the state," as that term is defined in ORC § 6111.01(H).

ii. The payments required to be made by Respondent pursuant to these Orders will be used by Ohio EPA to contribute to the abatement of the discharge of contaminants to waters of the state.

jj. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders, and evidence relating to conditions calculated to result from compliance with these Orders, and their relation to the benefits to the people of the State to be derived from such compliance.

kk. Pursuant to ORC section 131.02(E), the Attorney General's Office has reviewed the circumstances summarized herein and agrees with Ohio EPA that this cost recovery settlement is in the best interests of the State.

ll. Ohio EPA has incurred and continues to incur Response Costs associated with the Site.

V. GENERAL PROVISIONS

7. Objectives of the Parties

The objectives of the Parties in entering into these Orders are: (a) to provide for the protection of public health and safety and the environment from the disposal, discharge, or release of contaminants at the Site through a defined monetary contribution by Respondent toward (i) the performance of remedial actions to be conducted by or on behalf of Ohio EPA at the Site and (ii) the reimbursement of Response Costs incurred and to be incurred by Ohio EPA in connection with the Site; and (b) to resolve the liability of Respondent to the State of Ohio for conditions at the Site.

8. Commitment of Respondent

Respondent agrees to pay to Ohio EPA the sum of One Million, Four Hundred Thirty Five Thousand, Six Hundred and Seventy Two Dollars (\$1,435,672), as provided in the Reimbursement/Payment of Ohio EPA's Response Costs Section of these Orders, to be used by Ohio EPA for (a) the performance of remedial actions to be conducted by or on behalf of Ohio EPA at

the Site and (b) the reimbursement of Response Costs incurred and to be incurred by Ohio EPA in connection with the Site.

VI. REIMBURSEMENT/PAYMENT OF OHIO EPA'S RESPONSE COSTS

9. Reimbursement / Payment by Respondent. Respondent shall pay to Ohio EPA the sum of One Million, Four Hundred Thirty Five Thousand, Six Hundred and Seventy Two Dollars (\$1,435,672), as follows:

- a. Seven Hundred Seventeen Thousand, Eight Hundred and Thirty Six Dollars (\$717,836), by October 31, 2015.
- b. Seven Hundred Seventeen Thousand, Eight Hundred and Thirty Six Dollars (\$717,836), by March 31, 2016.

10. Respondent shall remit payments to Ohio EPA pursuant to this Section as follows:

- a. Payment shall be made by bank check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, 50 West Town Street, Columbus, Ohio 43216-1049.
- b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 50 West Town Street, Columbus, Ohio 43216-1049, Attn: Steve Snyder or his successor, and to the DERR Site Coordinator, Ohio EPA, Central District Office, P.O. Box 1049, Columbus, Ohio 43216-1049, Attn: Douglas Crandall or his successor.

VII. ACCESS TO INFORMATION

11. Upon request, Respondent shall provide, and/or shall use reasonable best efforts to have its contractors or agents provide, to Ohio EPA within fourteen (14) days, access to or copies of all documents and information within its or its contractors' or agents' possession or control relating to events or conditions at the Site including, but not limited to, manifests, reports, correspondence, or other documents or information related to the Site; provided, however, that requests for documents created prior to the effective date of these Orders shall be provided as promptly as is reasonably practical under the circumstances, which may exceed fourteen (14) days.

12. Respondent may assert a claim that documents or other information submitted to Ohio EPA pursuant to these Orders are confidential under the provisions of OAC 3745-49-03 or ORC § 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when submitted

to Ohio EPA, the documents or information may be made available to the public without notice to Respondent. No claim of confidentiality shall be made with respect to any Site-related sampling, analytical, or monitoring data in the possession or control of Respondent.

13. Respondent may assert that certain documents or other information are privileged under the attorney-client privilege, the work-product doctrine or other right of non-disclosure recognized by state law. If Respondent makes such an assertion, Respondent shall identify the date, subject, author and known recipients of the privileged document or information, the privilege being asserted by Respondent, and the grounds upon which the assertion is made.

14. Respondent shall preserve for the duration of these Orders and for a minimum of ten (10) years after termination of these Orders, one (1) complete set of all non-privileged Site-related documents in possession or control of Respondent (or its contractors or agents) as of the Effective Date of these Orders, notwithstanding any document retention policy to the contrary. Respondent may preserve such documents by microfiche or other electronic or photographic device. At the conclusion of this document retention period, Respondent shall notify Ohio EPA at least sixty (60) days prior to the destruction of these non-privileged documents or other information; and upon request, shall deliver such non-privileged documents and other information to Ohio EPA.

VIII. MODIFICATIONS

15. These Orders may be modified only by agreement of the Parties. Modifications shall be in writing, signed by an authorized representative of each Respondent and by the Director, and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

IX. OTHER CLAIMS

16. Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not a party to these Orders, for any liability arising from, or related to, events or conditions at the Site.

X. RESERVATION OF RIGHTS

17. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondent for noncompliance with these Orders. Except as provided herein, Respondent reserves any and all rights it may have to raise any legal or

equitable defense in any action brought by or on behalf of Ohio EPA to enforce the terms and conditions of these Orders.

18. Ohio EPA reserves the right to terminate these Orders, in the event that the requirements of these Orders are not wholly complied with within the time frames required by these Orders.

19. Respondent reserves any and all rights, claims, demands and causes of action it may have against any and all persons and entities who are not parties to these Orders, including rights of contribution against any other parties who may be liable for actual or threatened releases of contaminants at the Site.

XI. CONTRIBUTION AND AGREEMENT NOT TO REFER

20. With respect to matters addressed in these Orders, the Parties agree that these Orders constitute an administrative settlement for purposes of CERCLA sections 113(f)(2) and 113(f)(3)(B), 42 U.S.C. §§ 9613(f)(2) and 9613(f)(3)(B), pursuant to which Respondent has resolved its liability to the State with respect to the Site, and that Respondent is entitled to contribution protection and contribution rights as of the effective date of these Orders as to any liable persons who are not parties to these Orders, as provided by CERCLA sections 113(f)(2) and 113(f)(3)(B), 42 U.S.C. §§ 9613(f)(2) and 9613(f)(3)(B), provided that Respondent complies with these Orders. The "matters addressed" in these Orders are all investigative and remedial actions taken or to be taken and all response costs incurred or to be incurred by Ohio EPA or any other person with respect to the Site.

21. During the implementation of these Orders, and provided Respondent is in compliance with these Orders, Ohio EPA agrees not to refer to the Ohio Attorney General's Office for enforcement or to take administrative enforcement action against Respondent or its present or future agents, successors, subsidiaries or assigns for payment or reimbursement of Response Costs or to order further investigative or remedial actions with respect to the Site. Upon termination of these Orders pursuant to the Termination Section of these Orders, Ohio EPA agrees to not refer Respondent to the Ohio Attorney General's Office for enforcement or to take administrative enforcement action against Respondent or its present or future agents, successors, subsidiaries or assigns for payment or reimbursement of Response Costs or to order further investigative or remedial actions with respect to the Site.

XII. TERMINATION

22. Respondent's obligations under these Orders shall terminate upon Ohio EPA's approval in writing of Respondent's written certification to Ohio EPA that

all payments or reimbursement of response costs required to be made under these Orders have been completed. Respondent's certification shall contain the following attestation: "I certify that to the best of my knowledge the information contained in or accompanying this certification is true, accurate, and complete." This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. The termination of Respondent's obligations under these Orders shall not terminate the parties' rights or obligations under the Reservation of Rights, Access to Information, Other Claims, and Contribution and Agreement Not to Refer sections of these Orders.

XIII. WAIVER AND AGREEMENT

23. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent consents to the issuance of these Orders, and agrees to comply with these Orders.

24. Respondent hereby waives the right to appeal or to otherwise seek administrative or judicial review of the issuance, terms and conditions, and service of these Orders either in law or equity.

25. Notwithstanding the limitations herein on Respondent's right to appeal or seek administrative or judicial review, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIV. EFFECTIVE DATE

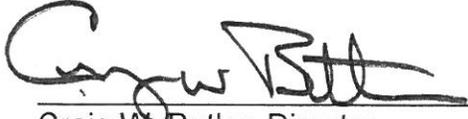
26. The effective date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

XV. SIGNATORY AUTHORITY

27. Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these Orders.

IT IS SO ORDERED AND AGREED:

OHIO ENVIRONMENTAL PROTECTION AGENCY



Craig W. Butler, Director
Ohio Environmental Protection Agency

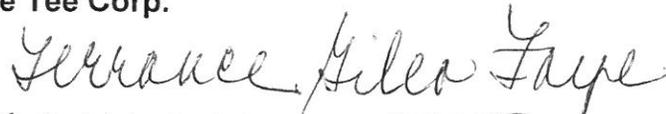
AUG 25 2015

Date

IT IS SO AGREED:

Blue Tee Corp.

BY:


TERRANCE GILED FAYE

[printed name]

Date

7/22/15

SPECIAL COUNSEL
[title]

LIST OF APPENDICES

APPENDIX A

ASARCO Bankruptcy Settlement

APPENDIX B

Amended Bankruptcy Settlement

Appendix A



ENTERED
10/24/2008

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:	§	Case No. 05-21207
	§	
ASARCO LLC, <i>et al.</i> ,	§	Chapter 11
	§	
Debtors.	§	Jointly Administered
	§	

**ORDER APPROVING SETTLEMENT REGARDING
THE COLUMBUS, OHIO NON-OWNED SITE**

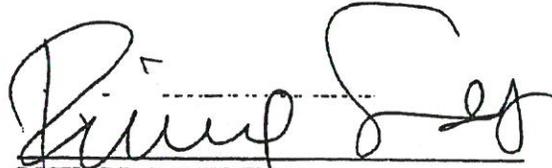
Upon consideration of the Motion for Order Approving Settlement Regarding the Columbus, Ohio Non-Owned Site (the "Motion"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided; and it is further appearing that the relief requested in the Motion is in the best interest of ASARCO LLC ("ASARCO") and its estate and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion and the settlement set forth in Exhibit A to the Motion are approved; and it is further

ORDERED that ASARCO is authorized pursuant to section and 363(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9019 to enter into and implement the settlement agreement; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: October 24, 2008

A handwritten signature in cursive script, appearing to read "Richard S. Schmidt", written over a horizontal line.

RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	§	Case No. 05-21207
	§	
ASARCO LLC, <i>et al.</i>	§	Chapter 11
	§	
Debtors.	§	(Jointly Administered)
	§	

**SETTLEMENT AGREEMENT REGARDING
THE COLUMBUS, OHIO NON-OWNED SITE**

This Settlement Agreement ("Settlement Agreement"), dated as of October 8, 2008, is hereby entered into by and between ASARCO LLC ("ASARCO") or "Debtor"), the State of Ohio (the "State") and Blue Tee Corp. ("Blue Tee") all collectively, "the Parties").

I. RECITALS

WHEREAS, the Columbus, Ohio Owned Site (the "Owned Site") occupies approximately 48 acres of real property located at 1363 Windsor Avenue, Columbus, Franklin County, Ohio and was formerly the location of a zinc oxide production facility operated from 1920 until 1984;

WHEREAS, American Smelting and Refining Company, an ASARCO predecessor in interest, purchased the Owned Site from American Zinc Company, a Blue Tee predecessor in interest on November 24, 1971, and American Zinc Company owned and operated the Owned Site from 1920 to November 24, 1971;

WHEREAS, the Owned Site was remediated under the Ohio Voluntary Action Program and ASARCO and the State are working toward issuance of a No Further Action letter and Covenant Not to Sue resolving Owned Site liabilities;

WHEREAS, ASARCO and Blue Tee entered into a settlement agreement in February 1999 settling an action initiated in April 1997 by ASARCO regarding Owned Site cleanup costs, including costs associated with the future clean-up of certain portions of the American Ditch and/or Alum Creek (the "Prior Settlement Agreement");

WHEREAS, the Owned Site cleanup did not address contamination originating from the Owned Site which has come to be located outside the boundaries of the Owned Site (the "Columbus, Ohio Non-Owned Site") or "Non-Owned Site");

WHEREAS, the Prior Settlement Agreement established an allocation between ASARCO and Blue Tee for future costs at the Owned Site and certain portions of the Non-Owned Site known as American Ditch and Alum Creek;

WHEREAS, the American Ditch is an urban drainage ditch which received and continues to receive discharges from the Owned Site and which flows 1.2 miles from the Owned Site outfall to where it discharges into Alum Creek at Maryland Avenue;

WHEREAS, the American Ditch portion of the Non-Owned Site has been identified through sampling to potentially require remediation;

WHEREAS, the State has incurred past costs associated with oversight and work performed with respect to the Non-Owned Site, and the State and Blue Tee may incur future costs associated with oversight and/or work contemplated with respect to the Non-Owned Site;

WHEREAS, on August 9, 2005 ASARCO filed with the United States Bankruptcy Court for the Southern District of Texas voluntary petitions for relief under the United States Bankruptcy Code (the "Bankruptcy Cases");

WHEREAS, the State and Blue Tee each filed Proofs of Claim in the Bankruptcy Cases (numbers 7865 and 9993 by the State; and numbers 11055 and 11200 by Blue Tee

collectively the "Proofs of Claim") setting forth various claims in connection with the Non-Owned Site and other alleged obligations of Debtors;

WHEREAS, the Debtor has disputed the amount of the liabilities with respect to the Non-Owned Site filed by the State and Blue Tee as set forth in the Proofs of Claim;

WHEREAS, the Court established a process for estimating the Debtor's liabilities with respect to the Non-Owned Site;

WHEREAS, the Parties intend this Settlement Agreement to settle, compromise and resolve those disputes which may have otherwise been the subject of an estimation hearing, without the necessity of an estimation hearing;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, the Parties hereby agree to the terms and provisions of this Settlement Agreement; and

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving this matter.

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the Parties by their attorneys and authorized officials, it is hereby agreed as follows:

II. JURISDICTION

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

III. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

2. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the Parties hereto, their legal successors and assigns, and any trustee, examiner or receiver appointed in the Bankruptcy Case.

IV. ALLOWANCE OF CLAIMS

3. In settlement and satisfaction of all claims and causes of action of the State and Blue Tee against the Debtors with respect to any and all costs of response, remedial action and natural resource damages incurred or to be incurred in connection with the Non-Owned Site (including but not limited to the liabilities and other obligations asserted in the Proofs of Claim and any other pleadings filed in the Bankruptcy Court by the State and Blue Tee relating to the Non-Owned Site): (a) the State shall have an allowed general unsecured claim against ASARCO in the total amount of \$1,254,000.00 for future Non-Owned Site costs (the "Future Allowed Claim"); (b) the State shall have an allowed general unsecured claim against ASARCO in the total amount of \$106,661.33 for past costs incurred at the Non-Owned Site; (c) all other claims relating to the Non-Owned Site filed against the Debtor by the State and Blue Tee shall be disallowed; and (d) the Debtor shall have no further responsibility or obligations with respect to the Non-Owned Site, including but not limited to costs of response related to remediation of American Ditch.

4. The State's allowed claims under this Settlement Agreement shall not be subordinated to other general unsecured claims pursuant to any provisions of the Bankruptcy Code or other applicable law that may be contended to authorize or provide for subordination of allowed claims, including without limitation Sections 105 and 510 of the Bankruptcy Code.

V. OTHER/PRIOR AGREEMENTS

5. All obligations of ASARCO to perform work under the Ohio Voluntary Action Program, as described in the No Further Action Letter and attachments, as amended, are not modified or affected in any way by this Settlement Agreement.

6. Upon distribution, the State's allowed claim shall be considered future costs as defined under the Prior Settlement Agreement and will count toward satisfying ASARCO's threshold responsibility at the Owned Site and American Ditch/Alum Creek. However, as set forth in Section IV (Allowance of Claims), the Debtor shall have no further responsibility or obligations under the Prior Settlement Agreement with respect to the Non-Owned Site. No provisions of the Prior Settlement Agreement which address the Taylor Springs/Hillsboro, Illinois Site are modified or affected in any way by this Settlement Agreement.

7. All funds distributed to the State under Paragraph 3(a) as and for the Future Allowed Claim shall be deposited by the State in a special interest-bearing account (the "Special Account") which will be used exclusively to pay for the costs incurred by the State or Blue Tee for performing the work at the Non-Owned Site subsequent to the Effective Date of the Settlement Agreement. All issues regarding the work to be performed, the process to be utilized and the timing thereof as to the Non-Owned Site shall be subject to a separate agreement between the State and Blue Tee to be negotiated. At the reasonable request of Blue Tee, the State will provide Blue Tee with an accounting and documentation of the amounts in the Special Account.

VI. COVENANTS NOT TO SUE

8. With respect to the Non-Owned Site (including any and all response costs relating to any release or threatened release of a hazardous substance at or from any portion of the Non-Owned Site, and all areas affected by migration of such substances from the Non-Owned Site, and any and all costs related to natural resource damages and all other claims that have been or could have been brought) and except as specifically provided in Section VIII (Reservation of Rights), the State and Blue Tee covenant not to sue or assert any civil claims or causes of action against the Debtor pursuant to Sections 106, 107, and 113 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and 9613; the Resource Conservation and Liability Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*; the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*; the Ohio Revised Code ("ORC") Chapters 3734, 3745, and 6111; any other applicable federal or State law; common law; or any liabilities or obligations asserted in the Proofs of Claim with regard to the Non-Owned Site; provided, however, that the covenant shall not be construed to waive, release, or discharge the Debtor from any of its obligations under this Settlement Agreement.

9. The Debtor covenants not to sue and agrees not to assert any claims or causes of action against the State and Blue Tee with respect to the Non-Owned Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law; any claims against the State and Blue Tee, including any of their departments, agencies or instrumentalities, under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613 or comparable provisions under State law; and any claims arising out of response activities at the Non-Owned Site; provided, however, that the foregoing release shall

not be construed to waive, release, or discharge the State and Blue Tee from any of their obligations under this Settlement Agreement and further provided that the foregoing release shall not be construed to waive, release or discharge the Debtor from any of its obligations as to the Owned Site. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d), or comparable provisions under State law.

10. Without in any way limiting the covenants not to sue (and the reservations thereto) set forth in this Section VI, and notwithstanding any other provision of this Settlement Agreement, such covenants not to sue shall also apply to the Debtor's successors, assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor, assign, officer, director, employee, or trustee of the Debtors is based solely on its status as and in its capacity as a successor, assign, officer, director, employee, or trustee of the Debtor.

VII. MUTUAL RELEASES

11. As of the Effective Date, the State and Blue Tee for themselves, their successors and assigns, hereby waive, release, and forever discharge the Debtor, as well as the Debtor's past, present, and future officers, directors, partners, members, employees, trustees, agents, and servants from any and all claims, obligations, demands, actions, causes of action and liabilities, of whatsoever kind and nature, character and description, whether in law or equity, whether sounding in tort, contract or other law (expressly including all claims for indemnification or contribution whether under common law, ORC, CERCLA, or other statutory provision), whether known or unknown, and whether anticipated or unanticipated, which the State and Blue Tee has ever had as of the Effective Date, or may ever have, arising from any

event, transaction, matter, circumstance or fact in any way arising out of, arising as a result of, related to, with respect to, or in connection with the Non-Owned Site; provided, however, that the foregoing release shall not be construed to waive, release, or discharge the Debtor from any of its obligations under this Settlement Agreement.

12. As of the Effective Date, the Debtor, its bankruptcy estate under section 541 of the Bankruptcy Code and its successors and assigns, hereby waives, releases, and forever discharges the State and Blue Tee, as well as the State's and Blue Tee's past, present, and future officers, directors, partners, members, employees, trustees, agents, and servants from any and all claims, obligations, demands, actions, causes of action and liabilities, of whatsoever kind and nature, character and description, whether in law or equity, whether sounding in tort, contract or other law (expressly including all claims for indemnification or contribution whether under common law, ORC, CERCLA, or other statutory provision), whether known or unknown, and whether anticipated or unanticipated, which the Debtor has ever had as of the Effective Date, or may ever have, arising from any event, transaction, matter, circumstance or fact in any way arising out of, arising as a result of, related to, with respect to, or in connection with the Non-Owned Site; provided, however, that the foregoing release shall not be construed to waive, release, or discharge the State and Blue Tee from any of their obligations under this Settlement Agreement.

13. This Settlement Agreement in no way impairs the scope and effect of the Debtor's discharge under section 1141 of the Bankruptcy Code as to any third parties or as to any claims that are not addressed by this Settlement Agreement.

14. The releases and covenants not to sue contained in Sections VI and VII extend only to the Debtor, the State and Blue Tee and the persons described in Paragraphs 8

through 12 above, and do not extend to any other person. Nothing in Sections VI and VII is intended as a covenant not to sue or a release from liability for any person or entity other than the Debtor, the State and Blue Tee, and the person described in Paragraphs 8 through 12 above. The Debtor, the State and Blue Tee expressly reserve all claims, demands, and causes of action either judicial or administrative, past, present or future, in law or equity, which these entities may have against all other persons, firms, corporations, entities, or predecessors of the Debtor for any matter arising at or relating in any manner to the Non-Owned Site or claims addressed herein.

15. Nothing in this Settlement Agreement shall be deemed to limit the authority of the State to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the State pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the State under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable law or regulation, or to excuse the Debtor from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable law or regulation.

VIII. RESERVATION OF RIGHTS

16. The covenants not to sue and the mutual releases herein do not pertain to any matters other than those expressly specified therein. The State and Blue Tee reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtor or other persons with respect to all other matters, including but not limited to any action to enforce the terms of this Settlement Agreement.

17. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

IX. CONTRIBUTION PROTECTION

18. The Parties hereto agree that, as of the Effective Date, the Debtor is entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) and applicable sections of ORC for matters addressed in this Settlement Agreement; provided, however, that the foregoing protection shall not be construed to waive, release, or discharge the Debtor from any of its obligations under this Settlement Agreement. The matters addressed in this Settlement Agreement include all past and future costs of response and all claims for natural resource damages and past and future costs of assessment with respect to the Non-Owned Site.

X. JUDICIAL APPROVAL

19. The settlement reflected in this Settlement Agreement shall not become effective unless and until the following condition precedent has been met: the entry of an order by the Bankruptcy Court, pursuant to Bankruptcy Rule of Procedure 9019, approving the terms and conditions of this Settlement Agreement.

20. If for any reason the Court issues a final order not approving this Settlement Agreement, (a) this Settlement Agreement shall be null and void and the Parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the Parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; (c) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value and it shall be as if they had never been executed; and (d) this Settlement Agreement, any statements made in connection with settlement discussions, and any

documents prepared in connection herewith may not be used as evidence in any litigation between or among the Parties.

21. The Debtor shall move promptly for Bankruptcy Court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval.

XI. RETENTION OF JURISDICTION

22. This Bankruptcy Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the Parties hereto, for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the Settlement Agreement Parties to apply to the Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement, or to effectuate or enforce compliance with its terms.

XII. EFFECTIVE DATE

23. The Effective Date of this Settlement Agreement shall be the date upon which this Settlement Agreement has been approved by a final order of the Bankruptcy Court under Rule 9019.

XIII. SIGNATORIES/SERVICE

24. The signatories for the Parties each certify that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

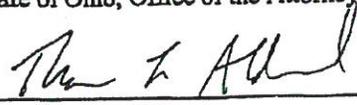
FOR THE STATE OF OHIO

Date: 10/8/08

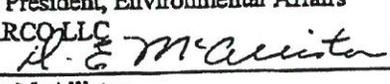

Michelle Sutter
Principal Assistant Attorney
General Environmental Enforcement Section
State of Ohio, Office of the Attorney General

FOR ASARCO LLC

Date: 10/9/2008

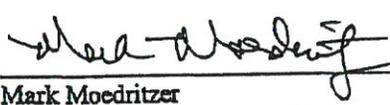

Thomas L. Aldrich
Vice President, Environmental Affairs
ASARCO LLC

Date: 10-9-2008


Doug McAllister
Vice President, General Counsel
ASARCO LLC

FOR BLUE TEE CORP.

Date: 10-8-08


Mark Moedritzer
Shook, Hardy & Bacon L.L.P.

Appendix B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:	:	Case No. 05-21207
	:	
ASARCO LLC, <i>et al.</i> ,	:	Chapter 11
	:	
Reorganized Debtors.	:	Jointly Administered

**JOINT MOTION TO MODIFY THE OCTOBER 10, 2008 SETTLEMENT
AGREEMENT REGARDING THE COLUMBUS, OHIO NON-OWNED SITE**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE ANDREW HANEN, UNITED STATES DISTRICT JUDGE:

The State of Ohio, Ohio Environmental Protection Agency (“State of Ohio”) and Blue Tee Corp. (“Blue Tee”) (collectively, “Movants”), by and through counsel, respectfully move this Court for an Order modifying the October 10, 2008 Settlement Agreement Regarding the Columbus, Ohio Non-Owned Site, entered into by and between the State of Ohio, Blue Tee Corp., and ASARCO LLC, and approved by this Court on October 24, 2008.

JURISDICTION AND VENUE

The Bankruptcy Court has jurisdiction over this subject matter pursuant to 28 U.S.C. §§157, 1331, and 1334. Venue of this proceeding is proper in this district under 28 U.S.C. §§ 1408 and 1409.

The statutory predicates for the relief requested herein are Section 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

BACKGROUND

The Columbus, Ohio Owned Site (the “Owned Site”) occupies approximately 48 acres of real property located at 1363 Windsor Avenue, Columbus, Franklin County, Ohio and was formerly the location of a zinc oxide production facility.

This Court approved an Amended Consent Decree and Settlement Agreement Establishing a Custodial Trust for Certain Owned Sites in several states, including Ohio, in March 2009, which provided, *inter alia*, for the payment of \$420,000, to be deposited in the Custodial Trust Environmental Cost Account, to fund future environmental actions and certain future oversight costs with respect to the Owned Site.

The Owned Site environmental actions did not address contamination originating from the Owned Site that came to be located outside the boundaries of the Owned Site, including the American Ditch, which flows 1.2 miles from the Owned Site outfall to where it discharges into Alum Creek at Maryland Avenue (the “Columbus, Ohio Non-Owned Site” or “Non-Owned Site”).

Movants and ASARCO LLC entered into a Settlement Agreement Regarding the Columbus, Ohio Non-Owned Site, dated October 10, 2008, which provided, *inter alia*, for the

award to the State of Ohio of an allowed general unsecured claim against ASARCO LLC of \$1,254,000 for future Non-Owned Site costs.

Movants anticipate that the costs of future Non-Owned Site environmental actions to be performed in order to complete environmental remediation of the Non-Owned Site will be less than the funds awarded to the State of Ohio for future Non-Owned Site costs.

Movants have learned that the costs of Owned Site environmental actions already performed and remaining to be performed in order to complete environmental remediation of the Owned Site exceed the \$420,000 deposited in the Custodial Trust Environmental Cost Account pursuant to the March 2009 Amended Consent Decree and Settlement Agreement Establishing a Custodial Trust for Certain Owned Sites.

Movants have entered into an administrative consent order whereby Blue Tee has agreed to pay \$1,435,672 to the State of Ohio in settlement of claims by the State of Ohio with respect to the Owned Site.

The State of Ohio, by the Director of the Ohio Environmental Protection Agency, has determined that it would be appropriate to reallocate excess funds from the allowed general unsecured claim of \$1,254,000 awarded to the State of Ohio for future Non-Owned Site costs (which were paid to the State of Ohio pursuant to the Settlement Agreement Regarding the Columbus, Ohio Non-Owned Site dated October 10, 2008), to pay the additional costs of Owned Site environmental actions remaining to be performed in order to complete environmental remediation of the Owned Site.

RELIEF REQUESTED

Movants respectfully request that the Court enter an order substantially in the form attached hereto, modifying the October 10, 2008 Settlement Agreement Regarding the

Columbus, Ohio Non-Owned Site to authorize the expenditure of funds from the allowed general unsecured claim of \$1,254,000 awarded to the State of Ohio for future Non-Owned Site costs (which were paid to the State of Ohio pursuant to the October 10, 2008 Settlement Agreement Regarding the Columbus, Ohio Non-Owned Site), to pay future costs of Owned Site environmental remediation or Non-Owned Site environmental remediation, where determined to be appropriate by the Director of the Ohio Environmental Protection Agency.

Respectfully submitted,

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

/s/ Michael E. Idzkowski

Michael E. Idzkowski (OH Reg. #0062839)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Phone: (614) 466-2766
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Michael.Idzkowski@OhioAttorneyGeneral.gov

*Attorney for the State of Ohio,
Ohio Environmental Protection Agency*

/s/ Mark Moedritzer by Michael E. Idzkowski

Per e-mail authorization
Mark Moedritzer, Esq. (MO Reg. #34687)
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, Missouri 64108
Phone: (816) 474-6550
Fax: (816) 421-5547
mmodritzer@shb.com

Attorney for Blue Tee Corp.

CERTIFICATE OF SERVICE

I certify that on the 20th day of August, 2015, a true and correct copy of the foregoing document was served electronically upon those parties entitled to receive service through the Court's Electronic Case Filing System ("ECF") in the above-captioned bankruptcy case.

/s/ Michael E. Idzkowski

Michael E. Idzkowski (OH Reg. #0062839)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:	:	Case No. 05-21207
	:	
ASARCO LLC, <i>et al.</i> ,	:	Chapter 11
	:	
Reorganized Debtors.	:	Jointly Administered

**ORDER MODIFYING THE OCTOBER 10, 2008 SETTLEMENT AGREEMENT
REGARDING THE COLUMBUS, OHIO NON-OWNED SITE**

This matter is before the Court pursuant to the Joint Motion to Modify the October 10, 2008 Settlement Agreement Regarding the Columbus, Ohio Non-Owned Site (the “Motion”) filed by the State of Ohio, Ohio Environmental Protection Agency (“State of Ohio”) and Blue Tee Corp. (collectively, “Movants”), and approved by this Court on October 24, 2008.

WHEREAS, this Bankruptcy Court has jurisdiction over the subject matter of this Order pursuant to 28 U.S.C. §§157, 1331, and 1334. Venue of this proceeding is proper in this district under 28 U.S.C. §§ 1408 and 1409.

WHEREAS, the statutory predicates for the relief requested herein are Section 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

WHEREAS, the Columbus, Ohio Owned Site (the “Owned Site”) occupies approximately 48 acres of real property located at 1363 Windsor Avenue, Columbus, Franklin County, Ohio and was formerly the location of a zinc oxide production facility.

WHEREAS, this Court approved an Amended Consent Decree and Settlement Agreement Establishing a Custodial Trust for Certain Owned Sites in several states, including Ohio, in March 2009, which provided, *inter alia*, for the payment of \$420,000, to be deposited in

the Custodial Trust Environmental Cost Account, to fund future environmental actions and certain future oversight costs with respect to the Owned Site.

WHEREAS, the Owned Site environmental actions did not address contamination originating from the Owned Site that came to be located outside the boundaries of the Owned Site, including the American Ditch, which flows 1.2 miles from the Owned Site outfall to where it discharges into Alum Creek at Maryland Avenue (the "Columbus, Ohio Non-Owned Site" or "Non-Owned Site").

WHEREAS, Movants and ASARCO LLC entered into a Settlement Agreement Regarding the Columbus, Ohio Non-Owned Site, dated October 10, 2008, which provided, *inter alia*, for the award to the State of Ohio of an allowed general unsecured claim against ASARCO LLC of \$1,254,000 for future Non-Owned Site environmental costs.

WHEREAS, on October 24, 2008, the Court approved the October 10, 2008 Settlement Agreement Regarding the Columbus, Ohio Non-Owned Site.

WHEREAS, Movants anticipate that the costs of future Non-Owned Site environmental actions to be performed in order to complete environmental remediation of the Non-Owned Site will be less than the funds awarded to the State of Ohio for future Non-Owned Site costs.

WHEREAS, Movants have learned that the costs of Owned Site environmental actions already performed and remaining to be performed in order to complete environmental remediation of the Owned Site exceed the \$420,000 deposited in the Custodial Trust Environmental Cost Account pursuant to the March 2009 Settlement Agreement.

WHEREAS, Movants have entered into an administrative consent order, whereby Blue Tee has agreed to pay \$1,435,672 to the State of Ohio in settlement of claims by the State of Ohio with respect to the Owned Site.

WHEREAS, the State of Ohio, by the Director of the Ohio Environmental Protection Agency, has determined that it would be appropriate to reallocate excess funds from the allowed general unsecured claim of \$1,254,000 awarded to the State of Ohio for future Non-Owned Site costs (which were paid to the State of Ohio pursuant to the Settlement Agreement Regarding the Columbus, Ohio Non-Owned Site, dated October 10, 2008), to pay the additional costs of Owned Site environmental actions remaining to be performed in order to complete environmental remediation of the Owned Site.

WHEREAS, Movants have requested that the Court modify the October 10, 2008 Settlement Agreement Regarding the Columbus, Ohio Non-Owned Site to authorize the expenditure of funds from the allowed general unsecured claim of \$1,254,000 awarded to the State of Ohio for future Non-Owned Site costs (which were paid to the State of Ohio pursuant to the October 10, 2008 Settlement Agreement Regarding the Columbus, Ohio Non-Owned Site), to pay future costs of Owned Site environmental remediation or Non-Owned Site environmental remediation, where determined to be appropriate.

WHEREAS, upon consideration of the Motion, and for good cause shown, it is hereby ORDERED that the Motion is granted; and it is further

ORDERED that the October 10, 2008 Settlement Agreement Regarding the Columbus, Ohio Non-Owned Site is modified to authorize the expenditure of funds from the allowed general unsecured claim of \$1,254,000 awarded to the State of Ohio for future Non-Owned Site costs, to pay future costs of Owned Site environmental remediation or Non-Owned Site environmental remediation, where determined to be appropriate by the Director of the Ohio Environmental Protection Agency; and it is further

ORDERED, with the exception of the modification above, the October 10, 2008 Settlement Agreement Regarding the Columbus, Ohio Non-Owned Site shall remain unchanged and in full force and effect.

This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____

ANDREW HANEN
UNITED STATES DISTRICT JUDGE