



Environmental
Protection Agency

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

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FILE COPY

March 17, 2011

Mr. Jay A. Steinberg, President
ASARCO Multi-State Custodial Trust Trustee
35 East Wacker Drive – Suite 1550
Chicago, Illinois 60601

RE: **Notice of Violation – ASARCO Incorporated Columbus Facility National Pollutant Discharge Elimination System (NPDES) Ohio EPA Permit 4IN00017**

Dear Mr. Steinberg:

This correspondence serves as a **Notice of Violation** for the diversion of wastewater from the ASARCO Columbus Facility NPDES-permitted treatment works into the City of Columbus separate storm sewer system. The diversions bypass the approved treatment system, are illicit discharges to a publicly owned storm sewer, and result in violations of the water quality criteria for cadmium and zinc in American Ditch, a water of the State of Ohio. In addition, high levels of zinc and hardness in all sampled storm sewers and conveyances bordering the ASARCO Columbus property during dry weather indicate there is a high likelihood that contaminated groundwater from ASARCO is migrating off site and resulting in additional violations of the water quality criteria for zinc in American Ditch.

Listed below are the findings based upon Ohio EPA data and information collected by the City of Columbus and shared with Ohio EPA concerning the above referenced concerns.

1. **Finding:** Dry weather water quality samples of American Ditch and the Windsor Avenue Storm Sewer show zinc and cadmium concentrations are acutely toxic to aquatic life and greatly exceed water quality criteria.

The City of Columbus (the City) storm water facilities are permitted under NPDES Ohio EPA Permit 4PI00000 which requires, in part, the City to perform dry weather monitoring to detect illicit discharges to its storm sewer system. The City performed dry weather sampling of the storm sewers and American Ditch in the vicinity of ASARCO in 2010. The high zinc results of these samples prompted the Ohio EPA to sample the area on December 14, 2010. Table 1 summarizes the zinc and cadmium levels detected in American Ditch downstream of the Windsor Ave Storm Sewer discharge and upstream of the ASARCO NPDES permitted outfall, the levels detected in the Windsor Ave Storm Sewer, and compares these values to the Aquatic Life Outside Mixing Zone Maximum criteria as established in Ohio Administrative Code Chapter 3745-1-07.

Table 1. Water Quality Summary of Windsor Ave Storm Sewer and Vicinity			
Site	Date	Zinc (g/l)	Cadmium (g/l)
Outside Mixing Zone Maximum	--	390	22
American Ditch at Joyce Ave downstream Windsor	6/18/10	3500	20.8
	10/1/10	4160	26
	12/14/10	4940	237
Windsor Ave Storm Sewer upstream American Ditch	12/14/10	11200	189
	2/18/11	15000	136
Windsor Ave Storm Sewer further west	2/18/11	23000	189

Note: **Bolded** values exceed water quality criteria.

Due to the extreme concentrations of zinc and cadmium detected in the Windsor Storm Sewer in December, Ohio EPA requested the City televise and sample the sewer which they did in February 2011.

2. **Finding:** Illicit connections exist from the wastewater collection system for the ASARCO Columbus facility to the City of Columbus Windsor Avenue storm sewer.

On March 3, 2011, the City of Columbus informed Ohio EPA of illicit connections documented during an inspection of the Windsor Avenue storm sewer. In February, City personnel televised the storm sewer and the initial findings show at least two active (discharging at the time of the video) taps, two inactive taps, and four buried inlets from the ASARCO property into the storm sewer.

Requested Action: Ohio EPA requests that ASARCO cease the illicit discharges as expeditiously as possible. All wastewater from the ASARCO Columbus facility must be routed to an appropriately sized treatment facility with a NPDES permitted discharge. The current treatment system must be evaluated to determine if it can effectively treat the additional flows from the illicit discharge points before additional wastewater is routed to it.

3. **Finding:** Dry weather sampling of the Joyce Ave Storm Sewer potentially indicate ground water contaminated with zinc is contributing to exceedences of the zinc water quality criteria in American Ditch. In addition, dry weather surface water samples on the ASARCO Columbus facility property show elevated levels of zinc may also indicate shallow groundwater contamination is occurring.

Observations and water quality data collected by City staff indicate that the Joyce Ave Storm Sewer may have contaminated groundwater intruding into it at a point just upstream of Windsor Ave. The storm sewer, which is dry at the upstream access point, has standing water at the next downstream access point, and flowing water at the downstream access point. This water is very hard and is present during dry periods indicating it is potentially groundwater. Zinc concentrations from samples of this water range between 415 – 1010 :g/l. Zinc is the only metal that is elevated in these samples.

A sample taken on 12/14/10, from American Ditch where it daylights on the ASARCO Columbus property had an elevated zinc concentration of 1760 :g/l. An off-site source of zinc is possible; however, storm sewer maps of this area indicate that a storm sewer may still exist from the ASARCO property and discharge to American Ditch upstream of this sampled point.

Requested Action: Ohio EPA requests that ASARCO determine if there is migration of contaminated groundwater from the ASARCO Columbus site. If it is determined that contaminated groundwater is migrating offsite, ASARCO will need to prevent continued offsite migration of contaminated groundwater.

4. **Finding:** ASARCO, or a subsequent property owner, must maintain NPDES permit 4IN00017 for as long as there is a discharge from the wastewater treatment system currently on site. The draft 2011 ASARCO Multi-State Custodial Trust 3-yr Budget as submitted recently to Ohio EPA-DERR does not allocate funds to maintain the NPDES permit after 2012.

Requested Action: Ohio EPA requests that ASARCO escrow sufficient funds to provide reasonable long-term coverage of the operation and maintenance of the current treatment system and its NPDES permit requirements. These escrowed funds need to be stipulated for operation and maintenance of the NPDES permit and the wastewater treatment system associated with it. Alternatively, ASARCO could re-engineer its remedy so that there is no discharge requiring an NPDES permit associated with the site.

A written response to the requested actions is needed by **May 1, 2011**. An interim conference call involving the Ohio EPA Central District Office Divisions of Surface Water, Drinking and Groundwater, and Emergency and Remedial Response, the City of Columbus, and the appropriate persons involved with the ASARCO Columbus Custodial Trust, its budget, and its environmental site is recommended.

Please note that the Ohio EPA has the authority to seek civil penalties as provided in section 6111.09 of the Ohio Revised Code (ORC). This letter or information pursuant to this letter does

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not constitute a waiver of Ohio EPA's authority to seek civil penalties as provided in the ORC. The decision on whether or not to seek such penalties will be made by Ohio EPA at a later date.

If you have any questions, or wish to arrange a conference call, please contact me at erin.sherer@epa.ohio.gov or at (614) 728-3839.

Sincerely,

Erin Sherer

Erin Sherer
Supervisor, Compliance and Enforcement
Division of Surface Water
Central District Office

Enclosures

- ec: Doug Crandall, DERR/CDO
- Audrey Rush, DERR/CO
- Jason Reed, DDAGW/CDO
- Harry Kallipolitis, DSW/CDO
- Cole Miller, DSW/CDO
- Bill Fischbein, Legal
- Mark Navarre, Legal
- Jeff Cox, City of Columbus

JAY

DAVID DANE
US DOJ

Not covered } problems
known }

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Trust
358K request for more to USEPA
Very tight budget