

**Response to Comments
on the Draft Title V Permit to Operate
for ASARCO Mission Mine Complex - San Xavier (TO-ROP 05-05)
December 15, 2005**

I. Summary of Provisions of the Draft Permit Changed in the Final Permit

1. The company name on the title page has been changed to ASARCO, LLC.
2. EPA has deleted the references to Parts 60 and 61 in the citation of origin and authority for condition III.B.2., III.Q.1.(i).
3. EPA has deleted the requirement that compliance certifications state whether the methods or other means used to determine compliance provide continuous or intermittent data from condition III.C.2.b.
4. EPA has deleted the following sentence from condition III.D:

The permittee shall also provide additional information as necessary to address any requirements that become applicable to the facility after this permit is issued.
5. EPA has deleted the references to a solid waste incineration unit combusting municipal waste subject to standards under section 129 of the Clean Air Act from condition III.N.
6. EPA has corrected typographical error in conditions III.O.1.(f), III.Q.1.(i), and III.Q.2.(iv).
7. Due to the timing of the issuance of the final permit, EPA has deleted condition III.C.1.a., which required ASARCO to submit a compliance certification covering the period November 22, 2004 through November 21, 2005. Condition III.C.1.b. in the draft permit has been renumbered to III.C.1.a in the final permit, and now refers to first certification following the issuance of the permit.

II. Response to Comments Raised During the Public Comment Period

A. Written comments submitted by ASARCO, dated November 23, 2005

The only comments on the draft permit submitted to EPA were from ASARCO.

1. Draft Permit, cover page

The proper entity is ASARCO LLC. ASARCO Incorporated was reorganized as an LLC.

EPA Response:

EPA has made the change.

2. Draft Permit, condition III.B.2 (Blanket Compliance Statement)

As authority, this paragraph cites 40 CFR § 60.11(g) and § 61.12. However, as stated in section 3 of the Statement of Basis, the New Source Performance Standards of 40 CFR Part 60 and National Emissions Standards for Hazardous Air Pollutants do not apply to ASARCO's facility. Thus, ASARCO proposes removing the references to 40 CFR § 60.11(g) and § 61.12.

EPA Response:

EPA has deleted the references to Parts 60 and 61 in the citation of origin and authority.

3. Draft Permit, condition III.C.2.b. (Compliance Certification)

This paragraph requires that ASARCO's compliance certification state whether the compliance method ASARCO uses to demonstrate compliance provides continuous or intermittent data. However, there is no requirement in Part 71 that an operator provide this information. *See* 40 CFR § 71.6(c)(5). This appears to be an artifact of the prior language in § 71.6(c)(5). Consequently, ASARCO proposes striking this requirement from the permit.

EPA Response:

ASARCO is correct that 40 CFR § 71.6(c)(5) no longer requires permittees to state in compliance certifications whether the methods used to determine compliance were continuous or intermittent. We note that the revision to Part 71 that included this change (*See* 68 Fed. Reg. 63188, June 27, 2003) also revised this Part 71 provision to require that compliance certifications state whether compliance during the period covered by the certification was continuous or intermittent. Therefore EPA has deleted the requirement that compliance certifications state whether the methods or other means used to determine compliance provide continuous or intermittent data from condition III.C.2.b., but preserved the requirement that certifications state whether compliance was continuous or intermittent in condition III.C.2.d.

4. Draft Permit, condition III.D (Duty to Provide and Supplement Information)

This paragraph requires that the permittee "provide additional information as necessary to address any requirements that become applicable to the facility after this permit is issued." The cited reference is 40 CFR § 71.5(b). This regulation, however, requires the permittee to supplement or correct the permit *application*. *See id.* In total, it states:

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

Id. This provision only requires the permittee to address those requirements that become effective prior to the release of the draft permit. *Id.* The permit contains provisions requiring reopening if additional requirements become applicable to the facility (*See* draft permit § III.H Reopening for Cause). Thus, ASARCO believes that the final sentence of paragraph III.D is redundant and unnecessary. ASARCO proposes that EPA remove the sentence “The permittee shall also provide additional information as necessary to address any requirements that become applicable to the facility after this permit is issued.”

EPA Response:

EPA has deleted the sentence because §71.5(b) states that the obligation to provide additional information about newly applicable requirements ends at “the release of the draft permit.”

5. Draft Permit, condition III.H.1.a. (Reopening for Cause)

This paragraph outlines one circumstance in which the permit may be reopened for cause. ASARCO does not object to the language adopted from 40 CFR § 71.7(f)(1)(i). However, ASARCO proposes that the permit include the entire language from that regulation. This protects ASARCO from a permit reopening if the effective date on an additional applicable requirement is *after* the expiration date of this permit. Consequently, ASARCO proposes revising the language in the paragraph to read:

- a. Additional applicable requirements under the Act become applicable to a major part 71 source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to paragraph III.N.3 of this permit.

EPA Response:

EPA has not added the suggested language to the permit. Unlike permit modifications, which are initiated by sources, permit reopenings are initiated by

permitting authorities. The regulatory language suggested by ASARCO describes EPA's obligations with respect to the timing of permit reopenings. The language does not impose any requirements on ASARCO, and would therefore not be appropriate to include in the permit.

6. Draft Permit, condition III.M.3. (Off-Permit Changes)

ASARCO proposes that EPA revise paragraph 3 as follows:

Changes under this provision may not include changes or activities subject to any requirements ~~under~~ promulgated pursuant to Title IV or that are modifications under any provision of Title I of the Clean Air Act;

EPA Response:

We note that ASARCO's comment does not cite a reason for the suggested change. We see no difference in meaning between the two versions and, for the sake of consistency with other Part 71 permits, have not revised the permit.

7. Draft Permit, condition III.N. (Permit Expiration and Renewal)

ASARCO proposes that EPA remove paragraph 1.a. This paragraph governs the expiration of a permit to combust municipal waste at a solid waste incineration unit subject to the standards of Clean Air Act § 129. This provision is inapplicable to ASARCO's operations and this permit. Likewise, because paragraph 1.a is inapplicable, the first clause of paragraph 1.b, "for sources other than those identified in subparagraph III.N.1.a above;" should also be removed.

EPA Response:

EPA agrees and has deleted these provisions.

8. Draft Permit, condition III.O. (Administrative Permit Amendments)

The internal cross-reference in paragraph 1.f should be changed to read, "subparagraphs (a) through (e)."

EPA Response:

EPA has corrected the typographical error.

9. Draft Permit, condition III.Q. (Group Processing of Minor Permit Amendments)

The internal cross-reference in paragraph 1(i) is incorrect. The paragraph should read "modification procedures under paragraphs III (P)(1) of this permit".

The internal cross-reference in paragraph 2(iv) is incorrect. The paragraph should read “under subparagraph (1)(ii) above.”

The reference in paragraph 3 is incorrect. The paragraph should reference § 71.7(e)(2)(iv).

EPA Response:

EPA has corrected the two internal cross-reference typographical errors. The § 71.7(e)(1)(vi) citation in the permit shield provision is correct and has not been changed. The provision cited by ASARCO, § 71.7(e)(2)(iv), addresses the timetable for permit issuance, and is unrelated to provision that prohibits permit shields for group processing of minor permit modifications.