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**BEFORE THE SURFACE TRANSPORTATION BOARD**

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ASARCO Incorporated and Americas Mining Corporation, Petitioners

DOCKET NO. 35291

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**DECLARATION OF GREGORY EVANS IN SUPPORT OF REPLY IN  
OPPOSITION BY ASARCO INCORPORATION AND AMERICAS MINING  
CORPORATION TO STERLITE (USA), INC. – ACQUISITION AND  
OPERATION EXEMPTION – COPPER BASIN RAILWAY, INC., LINE IN  
PINAL AND GILA COUNTIES, AZ, VERIFIED NOTICE OF EXEMPTION OF  
STERLITE (USA), INC. PURSUANT TO 49 C.F.R. §§ 1150.31-1150.34**

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Americas Mining Corporation

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STERLITE (USA), INC. PURSUANT TO 49 C.F.R. §§ 1150.31-1150.34**

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I, GREGORY EVANS, declare under penalty of perjury, under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the following statements are true and correct, to the best of my knowledge:

1. I am duly licensed to practice law in California, and, under 49 C.F.R. § 1103.2, may practice before the Surface Transportation Board (the “STB”). I am a member of the law firm Milbank, Tweed, Hadley & McCloy LLP, counsel for ASARCO Incorporated and Americas Mining Corporation in the above captioned action. I submit this declaration in connection with the Reply in Opposition of ASARCO Incorporated and Americas Mining Corporation to Sterlite (USA), Inc. – Acquisition and Operation Exemption – Copper Basin Railway, Inc., Line in Pinal and Gila Counties AZ, Verified Notice of Exemption of Sterlite (USA), Inc. Pursuant to 49 C.F.R. §§ 1150.31-1150.34.

2. Attached hereto as Exhibit A is a true and correct excerpted copy of the Transcript of the Deposition of Thomas Aldrich, July, 15, 2009, which contains

testimony of the Vice President of Environmental Affairs of the Copper Basin Railway's (the "CBRY") current owner, ASARCO, LLC, regarding the derailment of the CBRY and release of hazardous material.

3. Attached hereto as Exhibit B is a true and correct excerpted copy of "Vedanta Resources plc Counter Report 2005 Ravages Through India" which documents environmental indiscretions by Sterlite and its parent company.

4. Attached hereto as Exhibit C is a true and correct copy of a U.S. House of Representatives, Committee on the Judiciary letter to U.S. Attorney General Mukasey, June 27, 2008, in which members Judiciary Committee request that the Attorney General carefully study Sterlite's environmental record prior to supporting its proposed purchases, which include the purchase of the CBRY.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 25, 2009

By:           /s/ Gregory Evans            
Gregory Evans

**Exhibit A**

**Deposition Transcript of Thomas Aldrich, July 15, 2009**

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

\_\_\_\_\_  
In re: ) **CERTIFIED**  
 ) **TRANSCRIPT**  
ASARCO LLC, et al., ) No. 05-21207  
 ) Chapter 11  
Debtors. )  
\_\_\_\_\_) Volume I

DEPOSITION OF THOMAS L. ALDRICH  
15th day of July, 2009

Tucson, Arizona

BY: G. ALLEN SONNTAG, CRR,  
Arizona Certified Reporter No. 50194

1 Q But you understand now, having applied the 16:23:40  
2 term threatened to the NOV process, what I mean by 16:23:42  
3 threatened with NOV; right? Have you got that clear? 16:23:45  
4 In other words, a regulator comes out and he 16:23:48  
5 says, "Hey, I'm giving you a warning: You deal with 16:23:51  
6 this asbestos that's exposed all over this place where 16:23:54  
7 workers are working or I'm issuing an NOV. Take care 16:23:59  
8 of it, Tom." 16:24:03  
9 That's what I mean by a threat. Do you have 16:24:05  
10 that in mind? 16:24:07  
11 A Okay. 16:24:08  
12 Q So when the NOV was issued with respect to 16:24:08  
13 the exposed asbestos on the property at Hayden, was 16:24:11  
14 there a threat of an NOV before it came? 16:24:16  
15 A No. 16:24:24  
16 Q All right. So now having applied the term to 16:24:25  
17 a real-life scenario, let me apply it to the Copper 16:24:28  
18 Basin Railway and see if you are aware of any threat 16:24:34  
19 of environmental law violation. 16:24:35  
20 Are you aware, Mr. Aldrich, of any claim, a 16:24:40  
21 threat, by a governmental agency that it will bring an 16:24:43  
22 action, a Notice of Violation or other regulatory 16:24:48  
23 action, against Copper Basin Railway regarding 16:24:52  
24 environmental issues on the railway? 16:24:55  
25 A I'm not -- I'm not personally aware of 16:25:00

1 anything. 16:25:03

2 Q Have there ever been any claims of 16:25:04

3 environmental issues related to the operation of the 16:25:09

4 Copper Basin Railway? 16:25:13

5 A I believe there have. 16:25:13

6 Q Has there ever been a derailment on the 16:25:15

7 railway? 16:25:18

8 A There has. 16:25:20

9 Q Has that been disclosed? 16:25:20

10 A Hmmm. I believe. I believe there has 16:25:22

11 been -- that that's been disclosed. 16:25:24

12 Q Can you point to where it's been disclosed in 16:25:28

13 the Disclosure Statement? 16:25:32

14 A I couldn't, right offhand. 16:25:33

15 MR. JANOE: Counsel, for the record, I'm 16:25:34

16 looking through Exhibit 15 now and I don't actually 16:25:35

17 see the disclosure schedules attached to Exhibit 15. 16:25:37

18 MR. EVANS: Right. Exhibit 15 is the 16:25:42

19 Purchase and Sale Agreement for the Debtor form; but 16:25:47

20 if you would like those, if you would like for some 16:25:50

21 reason -- I don't think there is a question pending on 16:25:53

22 those, on those; but we can get to those, if 16:25:55

23 necessary. 16:25:57

24 MR. JANOE: It's listed in the Table of 16:25:59

25 Contents of this and I just -- as a disclosure 16:26:01

1 schedule to this document. Do we -- 16:26:09

2 MR. EVANS: I mean, if you would like -- I 16:26:11

3 haven't used it yet. 16:26:12

4 MR. JANOE: Okay. Got it. 16:26:13

5 MR. EVANS: You -- 16:26:13

6 MR. JANOE: Okay. We are going to get there. 16:26:14

7 I'm sorry, Greg. I just -- I thought you were asking 16:26:15

8 him questions about it. 16:26:17

9 BY MR. EVANS: 16:26:19

10 Q Now on to the derailment sir. 16:26:19

11 Was there a release of hazardous materials 16:26:21

12 under Federal environmental laws at the time of that 16:26:23

13 derailment? 16:26:24

14 A I believe sometime in the '90's there was a 16:26:27

15 derailment and sulfuric acid was spilled as a result. 16:26:29

16 Q And, in fact, one of the things transported 16:26:32

17 between Ray and Hayden -- one of the two things 16:26:35

18 transported between those two locations are tank cars 16:26:38

19 of sulfuric acid and hopper cars of ore; right? 16:26:41

20 A That's correct. 16:26:46

21 Q And together those roll down the grade from 16:26:46

22 Ray to Hayden and from Hayden to Ray when we are 16:26:49

23 talking about sulfuric; right? 16:26:54

24 A That's correct. 16:26:55

25 Q Okay. So there was a derailment with a spill 16:26:56

1 of sulfuric acid. 16:27:00  
2 Does that mean that the tank car was 16:27:02  
3 breached? 16:27:05  
4 A That's correct. 16:27:05  
5 Q Was that reported? 16:27:06  
6 A Hmmm. I believe it was. 16:27:09  
7 Q Was that under your watch? 16:27:10  
8 A No. 16:27:11  
9 Q Why wasn't it under your watch, 16:27:12  
10 Mr. Aldrich? 16:27:14  
11 A It was in the '90's and I wasn't in charge of 16:27:15  
12 environmental affairs at that point. 16:27:19  
13 Q Did you respond as a wholly owned 16:27:20  
14 environmental consultant to that derailment? 16:27:26  
15 A No. 16:27:28  
16 Q Did you investigate the derailment? 16:27:29  
17 A No. 16:27:31  
18 Q Did you feel that it was necessary to report 16:27:32  
19 that spill in the Disclosure Statement? 16:27:34  
20 A Once again, I can't remember exactly what is 16:27:39  
21 in the Disclosure Statement but I believe that those 16:27:41  
22 are in -- but, once again, they are in the data room 16:27:44  
23 and that that has been disclosed over time, that that 16:27:47  
24 occurred. 16:27:50  
25 Q So you are saying that the derailment 16:27:50

1 material is in the data room? 16:27:52

2 A Yes. 16:27:55

3 Q Everything related to it? 16:27:56

4 A I don't know about everything; but the 16:27:57

5 fact -- 16:27:58

6 Q What's the status of that, of that issue? 16:27:59

7 A It happened 20 years ago, so it's been long 16:28:01

8 past closed. 16:28:05

9 Q You have received regulatory closure? 16:28:06

10 A Once again, I don't know if. I assume that 16:28:11

11 there has been, yeah. It was much before my time. 16:28:14

12 Q Have you had any interaction with the FRA, 16:28:37

13 the Federal Railway Administration? 16:28:40

14 A I have not. 16:28:43

15 Q Do you know whether the FRA governs the 16:28:44

16 operation of the Copper Basin? 16:28:47

17 A I don't have any personal knowledge of that; 16:28:50

18 but, obviously, there would be other people in ASARCO, 16:28:51

19 LLC, who do. 16:28:57

20 Q Well, as Vice-President of Environmental for 16:28:59

21 LLC and as a company that, as we speak, is moving tank 16:29:03

22 cars 24-7 between Ray and Hayden and Hayden and Ray 16:29:08

23 that contain or contained sulfuric acid, do you think 16:29:15

24 it's important for you to know what the status is of 16:29:19

25 the environmental compliance on that railway? 16:29:24

1           A     I think it's absolutely important for ASARCO     16:29:26  
2     to know that, yes.     16:29:30  
3           Q     What is the status of that compliance?     16:29:31  
4           A     To my knowledge, there is no noncompliance.     16:29:39  
5           Q     Thank you.     16:29:45  
6                     Is there somebody else that the FRA or the     16:29:58  
7     EPA would contact within ASARCO without you knowing     16:30:00  
8     about it as it relates to the compliance with Federal     16:30:07  
9     regulations on the Copper Basin Railway?     16:30:12  
10          A     The President of the Copper Basin railroad.     16:30:16  
11          Q     Would he tell you about it if -- is it in the     16:30:19  
12     ordinary course something that he would tell you about     16:30:23  
13     as it relates to Notices of Violation or other     16:30:25  
14     regulatory noncompliance on the Copper Basin?     16:30:28  
15          A     In terms of environmental performance, I     16:30:33  
16     think so, yes.     16:30:35  
17          Q     And you, as you sit here, have no knowledge     16:30:36  
18     of any such issue?     16:30:38  
19          A     None that comes to mind.     16:30:41  
20          Q     Do you know whether Sterlite has contacted     16:30:43  
21     the Federal Railway Administration regarding Copper     16:30:47  
22     Basin?     16:30:52  
23          A     I do not.     16:30:52  
24          Q     So as you sit here, you don't know anything     16:30:53  
25     about Sterlite's contact with Federal environmental     16:30:55

**Exhibit B**

**Vedanta Resources plc Counter Report 2005, Ravages Through India**

VEDANTA RESOURCES plc COUNTER REPORT 2005

# Ravages through India



ASACONF09-00085455  
CONFIDENTIAL

reserves of iron ore in the world and those two commodities ... are kind of like the holy grail of mining at this time, because the markets have been so strong for the past two or three years."

Gilbertson could hardly have rated Sterlite/Vedanta's prospects more highly, nor the pretended pliability of Indian citizens, despite their government's bureaucracy: "[I]t's always easier for people in the country to develop deposits, undertake the challenges. India, I guess, is reputedly a very bureaucratic country and some countries (sic) have battled for a long time to get deposits developed and have been unsuccessful." But what excited Gilbertson most was the prospect of exploiting a "very highly educated" workforce which "... is paid a fraction of what Westerners would be paid, and I'm very happy (sic) to work with those wags."

### An Indian Summer All-Year Round

Vedanta's portfolio is certainly impressive. It encompasses copper, bauxite, aluminium, zinc, lead, and gold exploits, not just across India, but also in Australia, Armenia (where it operates two mines), Mexico and Russia. (Until 2000, its subsidiary Sterlite Gold Ltd, registered on the Toronto Stock Exchange, also held mineral rights in Burma).

In 2002 Sterlite apparently controlled just under half (42%) the Indian market in copper; nearly a quarter (21%) of the country's aluminium output, and a whopping 62% of its trade in zinc. A year later Sterlite also won the bid to "develop" Zambia's Konkola Copper Mines (KCM) which Anglo American relinquished when it couldn't raise the capital to modernise the operations.

Agarwal and Gilbertson quickly set underway their US\$2 billion plan "to expand current operations and drive down unit costs, and to develop a portfolio of attractive greenfield projects." But the single biggest chunk of cash was reserved for Sterlite's aluminium operations in India; more than tripling capacity at Balco's smelters in Chhattisgarh; boosting output from its Madras Aluminium (MALCO) subsidiary; and—through newly incorporated Vedanta Alumina—constructing a one million tonnes a year refinery in Orissa at Lanjigarh, along with a captive mine across the Nyamgiri hills.

### The Sterlite Express

Sterlite started life as a minor business delivering copper cables for telecommunications companies in India. From

1988, as Information Technology became the subcontinent's millennial mantra, so the supremely opportunistic Agarwal followed close behind. But he was also determined to own and control the raw materials on which the boom depended, processing them for striking profit by using cheap contract (casual, non-unionised) labour. He set a course from which he has never deviated except that, as his greed has grown, so have his ambitions and the scandals of his stock play.

In the first quarter of 2003, Sterlite's sales rose 14%. Its export turnover grew threefold (by 201%), while its domestic turnover fell by nearly a quarter. The company's tax provision tumbled by 84%, to a large extent because the increase in exports enabled the company to benefit from tax breaks on export profits.

### Disaster

Domestic scrutiny of Agarwal's enterprises started more than a decade ago when Sterlite tried locating a copper smelter in the state of Maharashtra. Many local people (especially fisher folk) vigorously opposed the project and they won the day. In October 1994, and with Tamil Nadu state backing, Sterlite brought the smelter on-stream at Tuticorin, on India's southernmost tip.

Environmentalists accused the company of issuing the Tuticorin Environmental Impact Assessment (EIA), although not all the data was in—then changing its parameters after the event. Greenpeace's Dave Santillo in 1995 described the EIA as "one of the most shoddy pieces of work I have ever seen." It omitted critical assessment of suspended particulates and heavy metals in the smelter discharges. Coastal protection regulations forbidding the location of industrial plant within 25kms of the Gulf of Mannar biosphere reserve were flagrantly ignored. And the plant emitted large quantities of arsenic, sulphur dioxide, lead, cadmium, antimony and bismuth.

The unions were also incensed that Sterlite repeatedly violated basic safety standards at the Tuticorin plant and exploited ill-trained contract workers. Warnings of a likely disaster were ignored until, in mid 1997, the top of a rotary kiln exploded causing molten metal to shower down upon the workforce, maiming two men and reducing two others to charred bone.

Finally, in 1999, following a short enforced closure, the Tamil Nadu Pollution Control Board allowed the plant to re-open, though Sterlite was instructed it must submit a new environmental management plan. In mid-2001,

**PART TWO**

**Vedanta's Score Card India: 2004 – July 2005**

**The Hills are Dead from the Impacts of Mining**

No one today would seriously propose mining Snowdon, the highest mountain in England and Wales. When Britain's second biggest mining company, Rio Tinto, threatened to do so in 1972, public outrage led to the founding of Friends of the Earth and its first campaign success.

But, a recent five month study of Vedanta's Indian operations (*undertaken by contributors to this report*) reveals that Britain's newest mining multinational is carrying out mountain-top desecration on a huge scale. The company's MAICO subsidiary has already shaved the tops off several of the country's richest *ghats* (hills); its BALCO subsidiary has opened a new strip—mine adjacent to a world—renowned tiger reserve; and Vedanta Alumina plans to rip the summit from a mountain sacred to indigenous people.

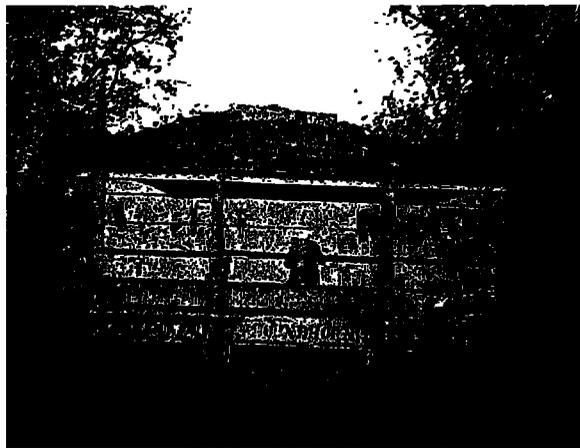
**In the Smelting Pot**

But, in the immediate future, it is Vedanta's expansion of its Tuticorin copper smelter which may prove most threatening to people and ecology. Imported from Australia in 1994 as a second-hand, decommissioned plant (Agarwal freely boasts he got it on the cheap), the smelter was rejected by the state of Maharashtra as too dangerous, and finally constructed nine kms from the Gulf of Mannar special biosphere reserve, in violation of marine protection rules.

Within its first year's operation the smelter was closed three times by state government order, after thousands of fisherpeople, backed by inhabitants of Tuticorin, took to the streets in protest. But it was allowed to re-open, though manifestly unsafe (unauthorised discharges of waste had already been made into streams outside the plant) and brimming with toxic materials. Last September, the Supreme Court Monitoring Committee on Hazardous Wastes (SCMC), set up by India's Supreme Court, was horrified to discover a "mountain" of phospho-gypsum dumped at one end of the site, and "several thousand tonnes of arsenic bearing slag" at the other, all open to the wind and rain.

Not only was an urgent order to remove these wastes ignored by Vedanta, but an expert team, reporting to the Supreme Court the following month, found that the company had nearly doubled its design capacity, illegally bringing new facilities on-stream and thus contributing further to the over-load (*see APPENDIX ONE*). Our own visits to Tuticorin in April confirmed that Vedanta had done nothing to reduce the volume of these hazardous wastes.

Exasperated by these procrastinations and Vedanta's illegal actions, in late July 2005 the SCMC drafted an order to shut down the smelter for "fully violating the Hazardous Waste Rules 1989 and the order of the Apex court dated 14-10-2003 and the consent of the Tamil Nadu Pollution Control Board (TNPCB)."



A Vedanta truck leaves the Balmadies coffee plantation, uncovered and spraying silica-laden bauxite dust on children returning from school.  
PHOTOS: Roger Moody

## Peak Pressures

Meanwhile, Agarwal has been speeding up Vedanta's ambitious bauxite mining operations, along with new alumina refining and smelting capacity. India possesses around an eighth of the world's untapped, higher-grade, bauxite—the raw material for the so-called “green metal.” However, these reserves are found only on peaks above 1,000 metres, inaccessible except by narrow roads and tracks that cling precariously to the hill sides. Despite widespread deforestation over the past twenty years, as tourism, mining and plantations have taken their toll, these remain some of the richest areas of biodiversity in the subcontinent. They are home to thousands of India's indigenous people, tigers, elephants, bison, deer and rare medicinal plants, as well as the unique shola forests which mount up from deep ravines.

The authors of this report inspected virtually all of Vedanta's major bauxite mining sites, spread across the states of Chhattisgarh and Tamil Nadu. Without exception, we discovered that the company has been violating basic environmental standards, while exploiting its work-



ers to a degree that would be unacceptable to many home grown Indian companies. At Mainpat, the biggest single bauxite mining complex in Chhattisgarh, we met around thirty tribal workers, un-helmeted, clad in shirts and sarees under a blazing sun, as the lateritic overburden was blasted. They then moved in with a few iron pikes and hammers, to break and sort the ore before loading it by hand onto waiting trucks.

Virtually all Vedanta's bauxite miners are contract labourers. Those we met at Mainpat informed us that, on a good day they can earn just over 60 rupees (less for women), or roughly eighty pence, for delivering one tonne of ore. Their habitations are small thatched hovels, perched over the quarry, deprived of electricity and adequate water. “There's only one hand pump to serve 150 families,” a young tribal woman worker, Mati Shahu, told us. “The company provides no medical facilities and if someone's injured we have to take them ourselves by taxi down to the plains.” Villagers at another, slightly better-appointed settlement close by, complained that, day and night, the silica-laden dust from the mining blew into their windows, covering walls and floors.

Little wonder that, last month, Vedanta's contract labourers at Mainpat went on strike against the “appalling conditions” to which they are subjected.

And, on July 18 2005, another 2,500 contract workers at the Balco Korba expansion project 200 kms further north, went on strike to protest a worker's death on duty. They reportedly smashed the windows of three vehicles and set a company ambulance on fire, accusing the management of being “casual in their demand for security equipment.”

A Centre of Indian Trade Unions (CITU) leader claimed that eight workers have died at the Balco expansion work site during the previous 12 months. “Yesterday (July 19th), police baton-charged the striking workers, injuring seven, instead of consoling the family of the deceased that has four children.” (*IANS report, July 20 2005*)

Further to the south, up in the breathtaking Shevaroyan hills of Tamil Nadu, labour conditions are marginally better (and a daily wage can rise to 80 rupees or around £1). Here we found a couple of JCB earth-movers breaking the ore before its dressing by the manual workers—“semi-mechanisation” (as it's euphemistically called). But the environmental impacts are worse. At least in Mainpat there has been a token effort at reclamation, albeit using fast growing exotic trees rather than hardier native species,

and haphazardly mixing topsoil with overburden before chucking it in the pits. No such pretence is made by Vedanta in the Shevaroyans, where the peaks have methodically been haemorrhaged, vast raw-red gashes standing out against the clouds. The workings descend in large steps, almost vertically down the mountain sides; wastes and top soil are simply pushed over the edge. The consequences were vividly described to us by Pastor Arulanandam, who manages the Balmadies coffee plantation at Manjakuttai, operated largely by tribal women.

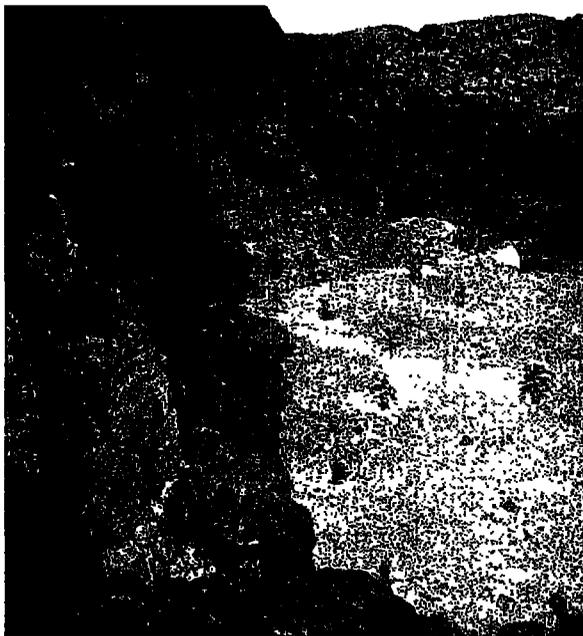
“One of our hills has been sliced off two hundred feet by Vedanta,” he said. “Now Balco has started a new mine, number six, on the opposite peak. Wild bison have charged through the trees, frightened by the blasting. The company did plant some seedlings but they’ve mostly died. Worst of all, when it rains, water floods uncontrollably through our land. During the dry season, it’s the opposite: perennial streams have simply been drying up.”

Time and again villagers—trying to till their fields below Vedanta’s operations—made the same point. Since bauxite mining has accelerated in the hills of Tamil Nadu, formerly abundant springs have failed. The explanation is not hard to find. These high-plateau bauxite deposits

have a unique ability to store and release rainwater throughout the lower slopes, feeding the plains below. Vedanta seems woefully ignorant about this basic hydrology. In a recent statement of “corporate social responsibility,” MALCO boldly states that “bauxite does not support vegetation (while) mining helps improve forestation.” Dr. Marimuthu, a naturalist who for many years has studied the Kolli hills (where Vedanta has several other bauxite mines) vehemently denies the claim. “These plateaus used to be home to India’s mystical medicine men, the Siddhars, and the country’s largest known reserves of medicinal plants. Remove the topsoil, dig beneath, and these resources will never return.”

### Clear and Present Dangers

The mines we visited have a limited life. In order to fulfill his dream of becoming India’s “aluminium czar,” Anil Agarwal must strike further afield. Balco has now started test drilling a new prospect in Chhattisgarh, at Bodai-Daldali. In typical fashion, Baigha inhabitants from the first of four tribal settlements in the project’s pathway have been ejected from their homes, without due legal process, and dumped on the plains in the heart of a non-tribal community. They had to leave behind their crops



An un-reclaimed pit and waste rock dump belonging to Vedanta just above farm land in the Kolli Hills, Tamil Nadu  
PHOTOS: Roger Moody

## That Zincing Feeling

It all seems pretty innocuous. Indeed Hindustan Zinc Ltd (HZL) boasts that it is an example of "corporate social responsibility." Who could oppose the bringing of water to people in one of the most parched areas of India?

But, in fact, the company's scheme to lift water from the Mansi-Wakal dam to Udaipur in Rajasthan—and for which it is contributing 30% of the finance as well as managing the construction—is manifestly self-serving. Worse, it will have been carried out (completion is expected this year) in the teeth of a sixteen year struggle by local people to prevent it.

While it's true that attempts to construct the dam were first undertaken when HZL was publicly owned, moves to seize village land for the project moved up several gears after Sterlite took over HZL in 2002.

The dam is being completed on the Joi and Wakal rivers in a Scheduled Area, supposedly governed by the provisions of the 5th Schedule of the Constitution and the Panchayati Raj (Extension to Scheduled Areas) Act 1996. This legislation clearly states that each village administration (gram sabha) shall be competent to safeguard and "preserve the traditions and customs of its people, their cultural identity, community resources and customary mode of conflict resolution." They must also be "consulted before ...acquisition of land in the scheduled areas for development projects and before resetting or rehabilitating persons affected by such projects in the scheduled areas."

More than 80% of the traditional population, local to Mansi-Wakal, is *Adivasi* (tribal), dependent on forests and farming for its subsistence. Back in 1989 it was already known that 6,500 people from six villages (Chandwas, Gayariyawas, Talai, Mundawali, Dewas and Gorana) would be directly impacted by the first phase of the project, since their homes and land would be inundated. The construction phase would threaten an additional 17 villages, making a total population of around 13,500 project-affected persons (PAPs).

When the state government failed to inform the people what the project would entail, they organised themselves under an NGO called Chandreshwara Kisan Sangharsh Samiti (CKSS), to oppose construction of the dam.

After the government reneged on its promise to provide CKSS with a copy of the drilling report, the organisation then wrote hundreds of letters to government officials and ministers—all to no avail.

In 1999, local people held a peaceful demonstration to protest against construction of a road to the site. Police opened fire on the demonstrators, severely injuring 16 people. Instead of consulting affected villages separately, the District Collector (administrator) called just one meeting at Chandwas panchayat (village) in June 2000, arriving there with a large police force. After the DC left, villagers were incensed to find that they were recorded as agreeing that the project should proceed. Although they immediately passed a resolution to the contrary, shortly afterwards HZL announced it would, in part, finance Mansi-Wakal.

Another public hearing was held on 22 February, 2001; again none of the villagers spoke in favour of the dam. Despite this, a press release issued by the government declared that "an equal number of people" had spoken in favour of the project as against it. Four months later, more than 1,000 armed policemen were deployed to the area to ensure completion of the drilling. There were numerous instances of beatings and other intimidations.

Finally, the head of one village (Talai) succumbed. Last year (by which time HZL was firmly under Vedanta's control) the company, with strong backing from the government and assisted by armed police, took over the disputed land, and it was cleared.

*Sources: www.struggleindia.com, April 8 2004, and information from Arun Kumar Singh, author of "The Privatisation of Rivers in India", Vikas Anandhayan Kendra, Delhi 2004; see also "Dams, displacement, policy and law in India" in "Dams and Development", published for the World Commission on Dams by Earthscan, London, November 2000.*

of maize, oil seed, gram and mustard, abandoning their cows, buffalos and goats and are now trying to survive on half the acreage they once possessed. Balco's largesse, according to the project manager, has so far consisted of 25,000 rupees (around £300) for new houses, a recently surfaced approach road, and a hand pump. There had been some compensation but, he admitted, it was too low. "If the government tells us to pay more, we'll do so." Clearly discomfited by the injustices we exposed, the manager agreed that no more removals should take place, at least for the time being.

In July, the Chhattisgarh Chief Minister belatedly conceded that these families had been abused and promised

some redress. At the same time yet another serious allegation was made against Balco—this time for stealing government land [see *BOX*].

Bodai-Daldali lies adjacent to the world-renowned Kanha National Park, the forests immortalised in Rudyard Kipling's *Jungle Book*. According to Vedanta, India's wildlife commission had recently concluded the area was not a tiger corridor but this may simply be a self-fulfilling prophecy. When full scale bauxite extraction commences, accompanied by regular heavy blasting and the pounding of eighty trucks a day bearing ten tonnes of ore down narrow roads, Sher Khan and his clan will disappear even further into the dwindling forests.

### Two Types of Land Grab

- Balco was accused in June 2005 of "grab[bing] about 1,000 acres of government land, besides cutting down 20,000 trees without taking permission from the agencies concerned," allegedly in order to embark on its nearly threefold expansion of the Korba refining and smelting complex.
- The accusation was leveled by Chhattisgarh's Revenue Minister, Mr. Kanwar—who was promptly shifted by Anil Agarwal's friend, Chhattisgarh Chief Minister, Ramon Singh, to the agriculture ministry with additional charge of forests. In his new capacity, Kanwar then demanded that "BALCO.....free the land. I want to take the battle with BALCO to a logical end without consuming too much time."
- Villagers from the area had first lodged a complaint about the encroachment six months earlier. According to Balco's chief of corporate communications, Deepak Pachpore, the land was legally allotted to Balco between 1968 and 1975. But, after a "high-level inquiry," under supervision of the commissioner of land records, on July 13th, the new state Revenue and Law Minister, Brijmohan Agrawal, confirmed Vedanta's

delinquency. "The Chhattisgarh government will not allow Balco to continue with its illegal possession of the land. The company has to surrender all the encroached land with massive penalty."

- At the time this counter-report was published, Vedanta had not replied to the government's notice but instead obtained a stay order from the High Court.
- Meanwhile, Raman Singh finally addressed the plight of some twenty families, thrown off their land to make way for Balco's newest bauxite mine at Bodai-Daldali in Kawardha district. Following a meeting with members of the Baigha people—who declared that the new mine had "totally devastated" their houses and agriculture—Singh reportedly ordered the district administration to ensure early and proper rehabilitation of all the relocated families, as well as providing "sufficient and safe agriculture and housing land to compensate the loss due to mining."

Sources: "Land grab mud on Balco" *The Telegraph, Calcutta, June 18 2005*; *NewIndpress, June 24 2005*; *Indo-Asian News Service (IANS), July 13 2005*; *IANS, July 25 2005*

## Orissa: Where the Sacred is Not Sacrosanct

Tigers certainly inhabit the lush Nyamgiri ranges of Orissa, sacred to the Dongaria Khonds, and site of Vedanta's most important target mine. (Ironically, the British geologist who "discovered" these rich deposits nearly a century ago, dubbed them "khondalite" in a back-handed tribute to the people who guided him there). If the project is allowed to advance to full design capacity, some 660 hectares of prime forest will be destroyed—more than 90% of the total reserve—and up to a hundred streams could dry up, threatening the vital rivers to which they are tributary—in particular, the Vansadhara, that waters much of the plains.

The Vansadhara skirts Vedanta's refinery; indeed, the company's current plans include dumping toxic "red mud" (caustic soda wastes) actually on to the banks of the river.

So convinced was Agarwal that the project would clear all legal hurdles that, in 2003, he commissioned Worley Parsons, the big Australian engineering conglomerate, to fast track the building of an alumina refinery at Lanjigarh,

in order to process the Nyamgiri bauxite. Construction started without clearance from the central government's Ministry of Environment and Forests. In 2004, two Majhi Khond villages were razed to the ground, their inhabitants brutally and illegally removed to a concrete resettlement camp. Since then another two villages have been "cleared," as the refinery rapidly sequesters indigenous and forest land.

As confirmed in a July 2005 study by The Environment Protection Group Orissa (EPGO), the entire Nyamgiri deposit lies atop of a protected forest area which is home to a variety of rare and threatened fauna and flora. Their diversity is scarcely equaled in the rest of south Asia and includes thirty medicinal plants, at least fifteen kinds of epiphytic orchid, twenty wild ornamental plants, more than ten kinds of wild relatives of crop plants (including some protected under an international undertaking), tigers, leopards, elephants, sloth bears, palm civet, and other animals, many of which are listed as endangered by the International Union for the Conservation of Nature (IUCN). There are also rare birds, the unique Golden Gecko lizard and wild snakes including a rare type of viper.\*



Not so long ago there were people in Kinari. Now it is part of Vedanta's Lanjigarh refinery

PHOTO: Simon Williams

Had it not been for the zeal of Indian environmentalists and tribal rights advocates, the company might already be plundering these hills. In September 2004, geologist Dr. Sreedhar Ramamurty (director of the Academy for Mountain Environics), joined by well-known Orissa environmental activist, Biswajit Mohanty, and human rights campaigner, Prafulla Samantara, petitioned a Supreme Court sub-committee set up to investigate and prevent encroachments on India's protected forests, to halt the company's operations.

In response, two experts were sent to Lanjigarh in December 2004, under the auspices of the Supreme Court's Central Empowered Committee (CEC), to register the true situation. Their key conclusions were that Vedanta, with the complicity of the Orissa state government, had illegally destroyed protected forests and embarked upon the refinery construction without proper permits, while local inhabitants had been removed from their homes and land without the due process of a public hearing (see APPENDIX TWO).

The fourth CEC hearing into "the Vedanta case" took place in Delhi on April 28, 2005 where the company—through its chief lawyer, C. A. Sundarem—tried to argue that its work on the Lanjigarh refinery was minimal. It was a transparent falsehood confirmed not only by the first CEC visit in late 2004, but by statements and photographs in Vedanta's own Annual Reports for 2004 and 2005, and a statement on its website by the Australian construction company, Worley Parsons, that the project is proceeding on "a very tight schedule."

Vedanta at this point said it would relinquish that part of its refinery site which falls on forest land, while claiming it had no designs on the Nyamgiri hills. According to Sundarem, it was now up to the Orissa State Mining Corporation (OMC) whether or not to proceed with the application for a mine permit. This is highly disingenuous, to say the least. Not only had the CEC already pointed to the impropriety of the state government indelibly linking the mine with the refinery and accepting just one environmental impact statement to cover both projects. But Sterlite also has a Memorandum of Understanding (MOU) with the Orissa Mining Corporation, dating back to 1997 (updated in June 2003). The lease granted last year enables the UK company to provide the majority of the capital and management expertise for a putative Nyamgiri mine and have first call on its output.

## A Litany of Disease and Pain

MALCO's integrated aluminium facilities at Mettur, in northern Tamil Nadu, display the worst health and environmental impacts of a notoriously polluting industrial sector, as well as toxic effects from an unsafe coal-fired captive power plant. Vedanta claims it is disposing of its vast residues of "red mud" (caustic soda wastes) and fly ash, by using them in bricks. In itself, this is a highly questionable "solution" and would, in all probability, take years to fully implement. Meanwhile, the red mud oozes onto agricultural land, contaminates water resources and kills animals. Emissions from the refinery and power plant blight the lives of numerous local residents, in particular Dalits (belonging to the so-called Scheduled Castes).

In April this year, many of those affected by MALCO testified before an "Investigation into the Environmental and Human Rights Violations of Chemplast Sanmar and MALCO Ltd," organised by the Indian People's Tribunal on Environment & Human Rights in May 2005.

The people—some of them workers—spoke of suffering from a range of ailments, including serious respiratory, skin and eye diseases, stomach disorders, chest and limb pains.

*(Summaries of some of these graphic testimonies are in APPENDIX THREE)*

Coinciding with the July 2005 EPGO revelation of Nyamgiri's extraordinary biodiversity, another investigative team was to underscore the parlous situation in which tribal communities around the Lanjigarh project now find themselves. From May 30 to June 2, 2005, the Human Rights Forum-Andhra Pradesh (HRF) visited three aluminium projects in Orissa, including Vedanta's. The seven-member team was led by HRF General Secretary, K. Balgopal, joined by Dr. Burra Ramulu, President of HRF; V. S. Krishna, the Secretary; K. Murali, Convenor of Hyderabad City Committee; Sathyam, Executive Committee member of Warangal

District Committee; Dr. Jagdishwar and Jaisingh Rathod. It consulted with "hundreds of people" in the villages, as well as "such representatives...[of] Vedanta as were present at the work site and were willing to talk to us."

The team affirmed that "the mining lease given to Vedanta Alumina Limited in Lanjigarh block of Kalahandi district [is] illegal, in fact unconstitutional. The area where the lease has been given is Scheduled Area, that is to say territory governed by the Fifth Schedule to the Constitution of India. The Supreme Court in *Samatha vs State of Andhra Pradesh (AP)*, 1997, categorically held that transfer of land by any means including lease by the Government to a non-tribal is impermissible under the Fifth Schedule.

"It appears that the Government of Orissa is arguing that the judgment applies only to Andhra Pradesh and not to Orissa. That is not so. The Supreme Court took this view based on the A.P. Scheduled Areas Land Transfer Regulation, 1959 as amended by Regulation 1 of 1970, and Sec. 11(5) of the Mines (Development & Regulation) Act as amended by A.P., but it also categorically held that the conclusion follows from the Fifth Schedule to the Constitution itself. As such, it applies to all the Scheduled areas so declared under the Fifth Schedule any where in India."

The HRF investigators also asserted that police intimidation of project opponents was continuing, and the procedure on Public Hearings had not been followed. "...Without answering a single one of the questions posed by the people, the Government is employing the police to terrorise them and coerce them into giving up their opposition... It is evident that the police are following the instructions of the Government in this regard. Even the public hearings that are mandatory under the environment rules have been reduced to an ugly joke by the coer-

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## ***There is nothing that may be called development***

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cive methods employed by the Government functionaries."

Except for "the handful of jobs that the highly mechanized mining and refining may provide," the team concluded that "there is nothing that may be called development that the State will see.

As for the local people, they

may not get more than a fraction of even those few jobs. The companies have... promise[d] jobs only to one member of each family whose house site is acquired. They are being given training in various trades, but [have] been careful not to put it down in writing anywhere that, at the end of the training, they will get jobs as a matter of right... There are any number of projects in the country where promise of employment to displaced persons has been made, and they have been given training in various trades ostensibly to prepare them for receiving the bounty, but at the end were told that the training itself is the bounty... [E]ven this applies to only 123 [persons] in Vedanta."

The HRF went on to address the likely impacts of the Lanjigarh refinery. "Red mud and other polluting matter from the mines and the refineries... will be let into the local streams, rivers and the slurry ponds built for this purpose. The streams provide irrigation to *Adivasi* (tribal) lands in the forests and also form part of the catchments of the Nagavali, Jhanjhavari and Vamsadhara rivers that are the lifeline of agriculture in this part of Orissa, as well as Srikakulam and Vizianagaram districts of A.P. This water resource will be polluted seriously. In fact, it is argued by environmentalists that the mining will drastically reduce the water retention capacity of the hills, and so the very catchments of these rivers will be affected."

\* The illustrated, downloadable, report of the Environment Protection Group Orissa can be obtained by contacting: [epgorissa@gmail.com](mailto:epgorissa@gmail.com)

**Exhibit C**

**U.S. House of Representatives, Committee on the Judiciary, Letter to U.S. Attorney  
General, June 27, 2008**

**U.S. House of Representatives  
Committee on the Judiciary**

**Washington, DC 20515-6216  
One Hundred Tenth Congress**

June 27, 2008

The Honorable Michael B. Mukasey  
United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Mukasey:

We write to express our interest in reports questioning the Department of Justice's representation of the federal government as a creditor in a pending Chapter 11 bankruptcy reorganization case. That case concerns ASARCO, LLC ("ASARCO"), one of our Nation's largest copper mining, smelting and refining companies.<sup>1</sup> Reports questioning the Department's approach to the case have centered on the proposed sale of ASARCO's facilities in Texas and Arizona.

ASARCO and certain related entities filed their Chapter 11 case in 2005. ASARCO "is one of the leading producers of copper and one of the largest nonferrous metal producers in the United States with over 2000 employees in Arizona and Texas alone."<sup>2</sup> We understand that ASARCO is associated with approximately 100 Superfund sites in the United States. The media have reported that ASARCO agreed with the Environmental Protection Agency in 2003 to set up a \$100 million trust fund to help pay the company's environmental cleanup costs.<sup>3</sup> It is estimated that ASARCO's Superfund liabilities may range up to \$1 billion.<sup>4</sup>

Recently, ASARCO's board of directors accepted a \$2.6 billion purchase offer from Sterlite Industries (USA) Ltd. ("Sterlite USA") to buy substantially all of the debtor's principal assets, subject to approval by the United States Bankruptcy Court. We understand that these assets include ASARCO's facilities in Texas and Arizona. Sterlite USA will also assume certain

<sup>1</sup>Case No. 05-21207 (Bankr. S.D. Tex.).

<sup>2</sup>ASARCO, LLC Restructuring-Information Website, at <http://www.asarcoreorg.com> (last visited June 10, 2008).

<sup>3</sup>See Marilyn Berlin Snell, *Going for Broke - How a copper giant plans to make the public pay for its toxic mess*, SIERRA MAGAZINE, May/June 2006, at <http://www.sierraclub.org/sierra/200605/goingforbroke/page1.asp> [hereinafter "*Going for Broke*"].

<sup>4</sup>*Id.*

The Honorable Michael B. Mukasey  
Page Two  
June 27, 2008

of the debtor's liabilities. The obligations of Sterlite USA under the purchase and sale agreement are guaranteed by Sterlite Industries (India) Ltd.<sup>5</sup>

Sterlite USA is an affiliate of Vedanta Resources Plc ("Vedanta"), which owns a controlling interest in Sterlite (India).<sup>6</sup> Prior to the ASARCO board's acceptance of Sterlite USA's offer, the bankruptcy court issued an order requiring the board to consider "any bidder's and its affiliates' history of compliance or noncompliance with environmental regulations."<sup>7</sup> Sterlite USA's affiliate, Vedanta, however, is alleged to have a poor environmental record outside the United States.<sup>8</sup> There assertedly have been "numerous reports that raise serious questions about Vedanta's history of compliance with EHS [environmental, health and safety] laws and regulations."<sup>9</sup>

We are not aware of whether bidders who competed with Sterling USA before ASARCO's board and their affiliates have environmental records better than, similar to, or worse than Vedanta's. Further, we understand that environmental concerns are implicated, not only by what entity assumes control of ASARCO's assets, but by such other factors as delays in the resolution of ASARCO's Chapter 11 case and delays in plan distributions. Thus, Vedanta's environmental record is not the only environmental factor that the Department confronts as it conducts its representation of the United States in the ASARCO bankruptcy.

We expect the Department to consider appropriately all of the environmental considerations posed by ASARCO's case. Based on recent events in the matter, however, we are not yet sure that the Department is adequately doing so. For example, at a recent hearing held in the ASARCO case before the United States Bankruptcy Court, in which the Sterlite USA and Vedanta issues were presented, an attorney for the Justice Department explained that "the environmental laws are less strict abroad so we think they're of limited value in determining what the record of compliance would be in the United States." He added, "And given the

<sup>5</sup>Debtor's Mot. for Final Approval of Bid Protections in Connection with a Sale of Substantially All the Assets of ASARCO LLC to Sterlite (USA), Inc. and Notice of Final Hr'g, at 2, *In re: ASARCO, LLC*, 05-21207 (June 2, 2008).

<sup>6</sup>*Id.* at n. 1.

<sup>7</sup>Interim Order Granting Mot. of ASARCO LLC for an Order Approving Bid Procedures in Connection with Selecting a Chapter 11 Plan Sponsor and Exit Transaction under a Chapter 11 Plan - Ex. A, Evaluation of Highest and Best Offer, *In re: ASARCO, LLC*, 05-21207 (Mar. 25, 2008).

<sup>8</sup>*See, e.g.*, Expert Report of Stephen D. Ramsey (submitted on behalf of Harbinger), at 14-22, *In re: ASARCO, LLC*, 05-21207 (June 8, 2008) [hereinafter "Ramsey Report"]; Cherian Thomas & Debarati Roy, *Sterlite to Acquire Asarco's Assets for \$2.6 Billion (Update 2)*, Bloomberg.com, May 31, 2008, at <http://www.bloomberg.com/apps/news?pid=20601087&sid=ae5bhkCQdio8&refer=home>; India Resource Center, *Ravages Through India*, Vedanta Resources plc Counter Report (2005), available at <http://www.indiaresource.org/issues/globalization/2005/RavagesThroughIndia365.pdf>.

<sup>9</sup> Ramsey Report, *supra* note 8, at 14.

The Honorable Michael B. Mukasey  
Page Two  
June 27, 2008

disparity in the bids we think that it was not a dispositive disqualifying factor."<sup>10</sup> This statement may reflect an attempt to summarize the Department's efforts to assess all of the relevant environmental factors, but we cannot be sure.

Given the considerable federal liabilities associated with ASARCO based on its involvement with contaminated sites,<sup>11</sup> and in light of the above, we believe that Vedanta's environmental track record overseas, as well as all relevant environmental factors bearing on the ASARCO bankruptcy, should be carefully studied before the Department adopts a final position on whether Sterlite USA or any other bidder should be allowed to acquire ASARCO's assets in the United States.

In addition, we ask that you explain in writing the Department's policy with respect to assessing the bona fides of a potential bidder that may present environmental concerns. In particular, we would like to know whether it is the Department's policy to take into consideration factors beyond the cash value of an offer and the potential bidder's environmental track record in the United States and abroad before offering Department support for the consummation of a sale.

Sincerely,

  
John Conyers, Jr.  
Chairman

  
Lamar Smith  
Ranking Member

<sup>10</sup>Mot. Hr'g Tr. 23: 16-25, *In re: ASARCO, LLC*, 05-21207 (June 3, 2008).

<sup>11</sup>*Going for Broke*, *supra* note 3.