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BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35291

**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**

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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

ASARCO Incorporated and Americas Mining Corporation hereby submit their Reply in Opposition to Sterlite (USA), Inc. (“Sterlite”) – 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 (STB Finance Docket No. 35291) (“Reply in Opposition”). For the reasons set forth herein, Sterlite’s Verified Notice of Exemption (“Notice of Exemption”) fails to comply with requirements for the effectiveness of such a notice for exemption, and should therefore be rejected until Sterlite has fully complied with these requirements.

I. INTRODUCTION

Having refused to stipulate to STB’s jurisdiction over Sterlite’s attempted purchase of the Copper Basin Railway (“CBRY”), Sterlite now acknowledges STB’s jurisdiction and is attempting to hurry STB approval through a Notice of Exemption filed August 14, 2009. The STB should reject Sterlite’s Notice of Exemption for two reasons.

First, Sterlite has not filed an Environmental Report pursuant to 49 C.F.R. § 1105 and circumstances demand such a filing. Because of the environmental sensitivity of CBRY's operations as well as Sterlite's reported history of environmental non-compliance, the STB should require Sterlite to file an Environmental Report. Second, Sterlite has not complied with employee notice requirements under 49 C.F.R. § 1150.32(e) as it has not yet provided 60 days notice to CBRY employees.¹ As such, the STB should not allow Sterlite's Notice of Exemption.

II. STERLITE IS SUBJECT TO ENVIRONMENTAL REPORTING REQUIREMENTS PURSUANT TO 49 C.F.R. § 1105 BECAUSE ITS PROPOSED OPERATIONS OF THE CBRY INCLUDE TRANSPORTATION OF HAZARDOUS MATERIAL WHICH POSE A DEMONSTRABLE ENVIRONMENTAL RISK

Under governing regulations, Sterlite should not be permitted to operate the CBRY prior to filing an Environmental Report. The purpose of 49 C.F.R. § 1105 is sweeping; it mandates the STB to assure adequate consideration of environment factors in the Board's decision-making process. *See* 49 C.F.R. § 1105.1. Because of the environmental sensitivities in the operation of the CBRY, and due to Sterlite's reported history of environmental violations, the STB should require Sterlite to report upon environmental issues and consult with state, local and federal regulators by filing an Environmental Report under 49 C.F.R. § 1105, and related regulations.

¹ Sterlite has petitioned for waiver of the 60 day notice requirement. However, Sterlite's argument for the granting of that waiver contradicts STB decisions on and public policy underpinning that requirement. *See* Reply of ASARCO Incorporated and Americas Mining Corporation in Opposition to Sterlite (USA), Inc. – Acquisition and Operation Exemption – Copper Basin Railway, Inc., Line in Pinal and Gila Counties, AZ, Petition for Waiver of 49 C.F.R. § 1150.32(e) (filed concurrently with Reply in Opposition). As such, Sterlite should not be granted a waiver, and it therefore has not met with this requirement for the effectiveness of its Notice of Exemption.

A. New Management of the CBRY Poses Significant Risks to the Environment and Public Health

Sterlite, a non-carrier with no history of compliance with environmental law or regulations in the United States, seeks to operate a railway which transports sulfuric acid and ore in uncovered railroad cars. This transportation will occur, in part, in environmentally sensitive areas, near waterways, and adjacent to state highways.

The CBRY carries this hazardous freight through Winkelman, Arizona, between active mining operations at Ray and Hayden, across Arizona State Route Highway 79, and offloads at the Union Pacific Railroad junction in the town of Magma, Arizona. Thus, its operations, especially in the hands of an inexperienced manager, pose significant risks to the environment and to public health.² Under these circumstances heightened caution and scrutiny is warranted. Consequently, it would be appropriate under federal regulations to require Sterlite to vet and disclose potential hazards related to operations of the CBRY through an Environmental Report.

B. Sterlite's History of Environmental Noncompliance Warrants Heightened Scrutiny of its Proposed Operations of the CBRY

Sterlite has a known history of environmental indiscretion in its foreign operations which may carry over to its operations of the CBRY.³ This history prompted the United States House of Representatives Judiciary Committee to request that the

² Indeed, the CBRY derailed in the 1990's resulting in a spilling of sulfuric acid. *See* Declaration of Gregory Evans in Support of 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, attached hereto as Attachment 1 (“Evans Decl. ISO Opposition to Notice of Exemption”), ¶ 2, Ex. A, Deposition Transcript of Thomas Aldrich, July, 15, 2009, 105:20-107:15. Mr. Aldrich is the Vice President of Environmental Affairs for the CBRY's current owner, ASARCO, LLC.

³ *See* Evans Decl. ISO Opposition to Notice of Exemption, ¶ 3 Ex. B, Ravages Through India, 3, 10 -17.

United States Attorney General “carefully stud[y]” Sterlite’s environmental violations prior to deciding whether to support a plan of reorganization which contemplates Sterlite’s purchase of the CBRY.⁴

Sterlite’s blanket assertion that the proposed transaction is one for which an Environmental Report is not normally required ignores its own record of environmental degradation in other countries and the importance of being accountable to the STB on this issue.⁵ Sterlite’s proposed purchase and operation of the CBRY – a railroad which transports hazardous materials near populated areas of Arizona and crosses a public highway – and any ensuing failure to comply with environmental safeguards could have harmful consequences. The public has the right to know how Sterlite, if it acquires the CBRY, will manage environmental challenges facing the CBRY. These circumstances warrant the exercise of STB discretion provided by the language in 49 C.F.R. § 1105.6(b) to ensure that environmental implications of rail operation is given adequate consideration.

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⁴ See Evans Decl. ISO Opposition to Notice of Exemption, ¶ 4 Ex. C, U.S. House of Representatives, Committee on the Judiciary, Letter to U.S. Attorney General, June 27, 2008 (also noting that the Sterlite’s wholly owning corporate parent, Vedanta, is alleged to have a poor environmental record outside the United States: “There assuredly have been numerous reports that raise serious questions about Vedanta’s history of compliance with EHS [environmental, health and safety] laws and regulations.” (*internal quotations omitted.*))

⁵ Sterlite’s mere statement that its proposed transaction is of the sort where such an environmental report is not ordinarily prepared does not mean the STB may not require such a report. The language in 49 C.F.R. § 1105.6(b) indicates that the STB may require a party filing notice of exemption to submit such a report even when such a report is not “normally” required.

IV. CONCLUSION

For the foregoing reasons, Sterlite's Notice of Exemption should be rejected as ineffective and exemption of the STB approval process should not be granted until Sterlite has demonstrated compliance with all requirements for a notice of exemption.

Dated: August 25, 2009

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By: /s/ Gregory Evans

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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the above and foregoing document by electronic mail on this 25th day of August, 2009 on all parties of record in this proceeding.

/s/ Jason Cole

Jason Cole