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Senator Eliot Shapleigh
District 29

June 6, 2008

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Mr. Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

VIA UNITED STATES MAIL AND FACSIMILE

Re: ASARCO in El Paso / Who Will Clean Up the Lead?

Dear Mr. Johnson:

I write with respect to ASARCO in El Paso. We want to know who will clean up the 100 year legacy of ASARCO lead and arsenic in our community.

As you know, ASARCO has declared one of the nation's largest environmental bankruptcies. As of October 2007, ASARCO had pending nearly \$11 billion in environmental claims. ASARCO has left communities in 75 communities in 16 states with environmental liabilities, which are the subject of the pending Chapter 11 bankruptcy in filed in Corpus Christi, Texas. Many across the country view the case as a prime example of future bankruptcies to come. By shedding environmental liabilities through a Chapter 11 filing, ASARCO and other similarly situated companies will attempt to saddle taxpayers with future remediation costs.

One of the regions most affected is my community of El Paso, along with Southern New Mexico and Juarez, Mexico. With respect to ASARCO's operation in El Paso, here are the facts:

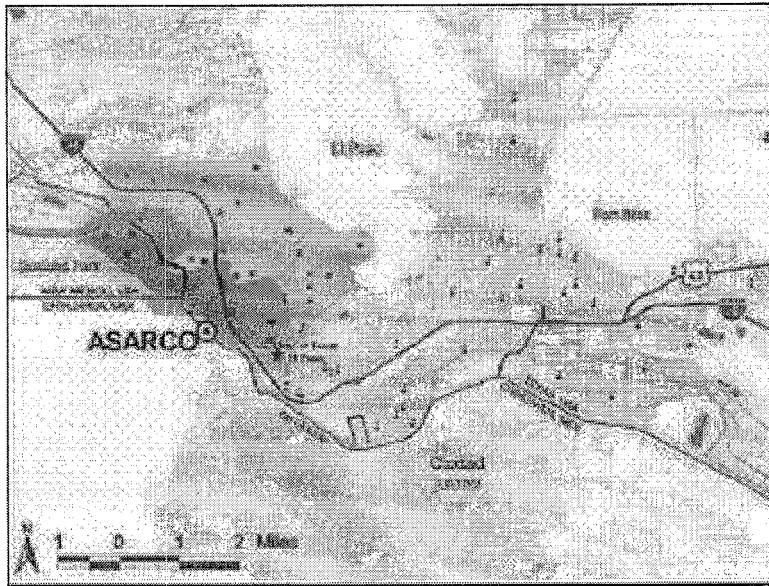
- In the early 1970s, children living near the smelter were found to have very high blood-lead levels, resulting in the relocation of the families and the razing of their homes.
- After an initial EPA survey limited to a 3 kilometer radius, ASARCO was found to have contaminated at least 1,097 El Paso homes and businesses with lead and arsenic.



- Between 1992 and 1997, ASARCO illegally burned hazardous waste in their El Paso smelter. ASARCO and its Corpus Christi subsidiary, Encycle, had a permit to extract metals from hazardous waste, but instead simply sent it to El Paso to be burned in an attempt to save money. As a result, more than 5,000 tons of waste was illegally burned in my city, including more than 300 tons of chemical warfare agents from the Rocky Mountain Arsenal outside Denver, Colorado. ASARCO thus was fined \$20 million by the EPA in 1999.
- Standing unified in opposition to the reopening of the smelter are Governor Bill Richardson, Congressman Silvestre Reyes, and the mayors of El Paso, Juarez, and Sunland Park, amongst others. The reopening of ASARCO will define the region, and particularly El Paso, for the next generation. We will brand ourselves either as a polluted city dependent on 19th century industry or a clean city on the move in a 21st century economy.

With ASARCO's money-making assets about to be auctioned in bankruptcy court, we have serious concerns about on- and off-site lead contamination in El Paso. We are also very concerned that both the EPA and the negligent TCEQ will leave El Paso landowners and taxpayers with significant liabilities because their interests were not adequately protected in the bankruptcy. My community demands that they be protected from the lead, arsenic, and other pollutants that have been deposited in their air, soil, and water over the past century. In this regard, we ask you to provide written answers to the following questions:

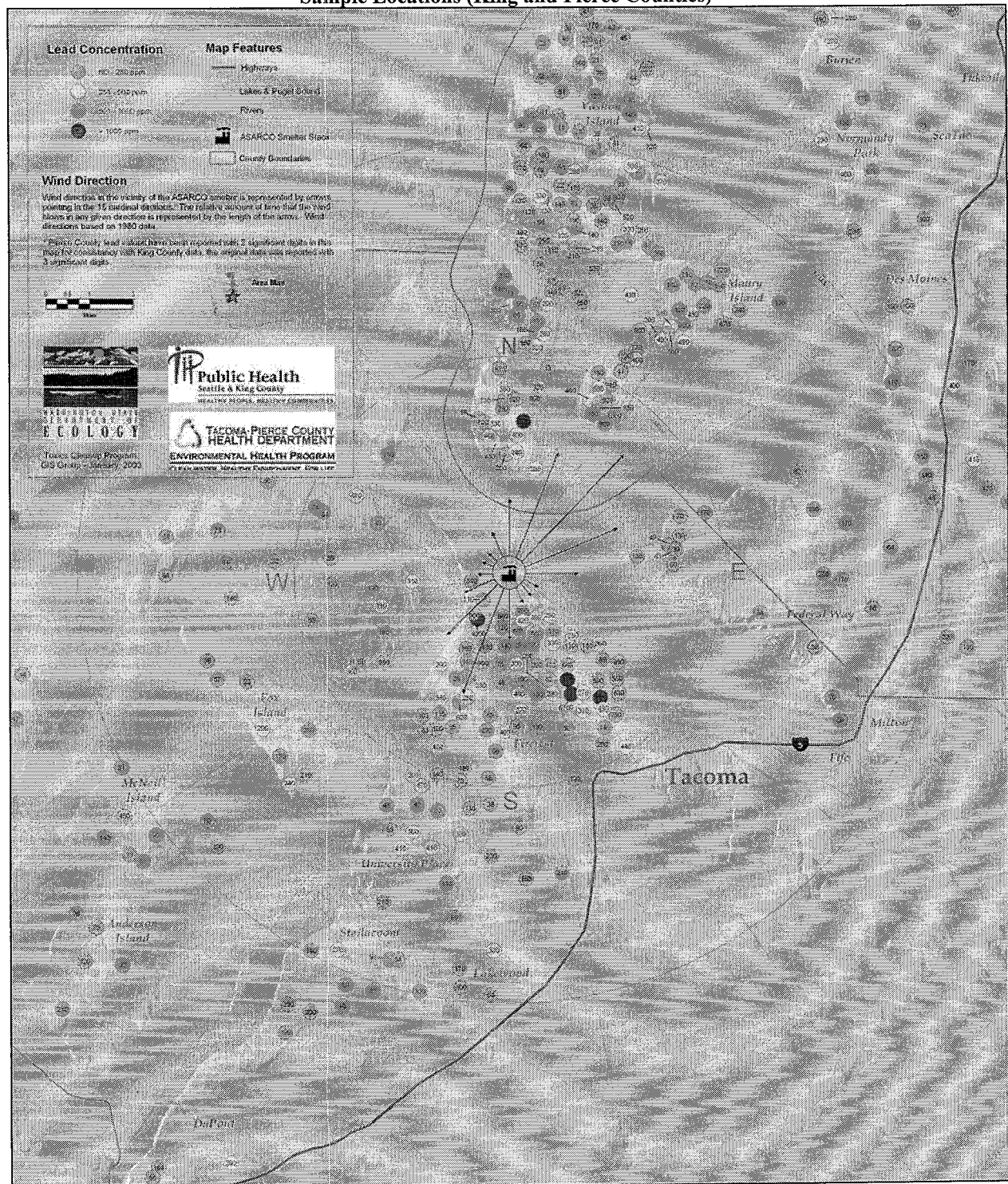
1. If ASARCO assets are indeed sold as a result of the ongoing bankruptcy, will the EPA secure via the creation of a trust or other means all *on-site* liabilities? In other words, will ASARCO or any subsequent owners of the ASARCO property be required to clean up all on-site liabilities or place in trust sufficient funds to ensure such a clean up? Or will the EPA allow ASARCO to pass the buck to my community's taxpayers, local home owners, and local businesses?
2. If ASARCO assets are indeed sold as a result of the ongoing bankruptcy, will the EPA secure via the creation of a trust or other means all *off-site* liabilities? Please note the EPA map below, which shows the lead contamination in El Paso.



For years, an El Paso-based fertilizer company, Ionate, sold a fertilizer that was used on the lawns all across our community. This fertilizer was laden with lead, arsenic, and other hazardous heavy metals. The now out-of-business company used slag from the Oglebay Norton slag-crushing company in west El Paso as part of the fertilizer. Oglebay Norton obtained the slag, a byproduct of the smelting process, from ASARCO. ***The fact is the EPA's initial survey stopped at 3 kilometers and never established the eastern boundary of lead contamination in El Paso. We don't know the full extent of lead on yards in El Paso, but it is significantly more than what ASARCO reports in the Corpus Christi bankruptcy court.*** Thus, will ASARCO or any subsequent owners of the ASARCO property be required to clean up all off-site liabilities? Or will the EPA allow ASARCO to pass the buck to the local taxpayers?

Our research indicates that Tacoma, Washington was in a similar circumstance. Tacoma was home to an ASARCO copper smelter that contaminated an area demonstrated to cover over 1,000 square miles. The map on the following page shows the extent of contamination in the northwest Washington area.

**Maximum Lead Concentration at Tacoma Smelter Plume
Sample Locations (King and Pierce Counties)**



In June 1984, ASARCO announced that it would be closing the copper smelter, which by that point was the nation's largest source of arsenic pollution. At the time, an ASARCO vice president claimed that the smelter was closing due to depressed copper prices and "federal, state, and local environmental regulations ..." ASARCO never completely cleaned up the property, despite a 1997 consent decree between the company and EPA mandating cleanup of the uplands

portions of the smelter property. Further, a 2000 EPA administrative order required ASARCO to permit sediment and groundwater work, much of which was not completed as of 2006.

Fortunately, the federal government recently reached an agreement with ASARCO that will allow the company to sell the smelter property with a Washington-based developer. The developer intends to clean up the land to residential environmental standards and then undertake residential and commercial development on the property. As Granta Nakayama, EPA's assistant administrator for Enforcement and Compliance Assurance said, "[t]he cleanup and redevelopment of this land is a win all around. It enhances the environment, improves the local community, and promotes economic development."

Omaha, Nebraska was also subject to the toxic pollutants spewed from ASARCO smokestacks. From 1899 to 1997, ASARCO operated a lead refinery in the heart of Omaha, Nebraska. While the refinery was at one point the largest employer in Omaha, ASARCO eventually became the only smelter or refinery in town. When Mayor Hal Daub took office in 1995, he pinpointed the ASARCO plant as a major impediment to the revitalization of a downtown area that was "dying," in Daub's words. This "contaminated and polluted" 800 acre area of the city was "just sitting there except for the ASARCO plant." On December 31, 1997, the ASARCO facility ceased operations and began the process of demolition, which was completed in late 1999. Through the closure of the ASARCO facility, the once contaminated and polluted area of downtown is now vibrant, serving as the location of the city's convention center, the Qwest Center Omaha.

In 1998, the Omaha City Council solicited help from EPA in addressing problems with lead contamination in Omaha as a result of ASARCO's pollution. According to the EPA, during ASARCO's operational period, "lead and other heavy metals were emitted into the atmosphere through smoke stacks and fugitive emissions from plant activities." ASARCO left a cleanup so large that had to be addressed through federal action. In April 2003, the EPA placed Omaha on the National Priority List for Superfund cleanup, making it the largest residential Superfund site in the country. As of this month, EPA had tested over 32,000 residential properties since March 1999, with cleanup consisting of the removal and replacement of contaminated soil.

Based on the length of ASARCO's operations in Omaha, Tacoma, and El Paso, we believe that the footprint of contamination in El Paso is far larger than the EPA has reported. For example, in Tacoma, the state is dealing with 1,000 square miles of contamination. In Omaha, over 32,000 properties were tested. Compare this to the 3 kilometer testing radius and fewer than 3,700 properties tested in El Paso. Given the fact that no eastern boundary of lead contamination has been established and the history of using pollutant-laden slag as fertilizer, we want to know the true extent of lead and arsenic contamination in our region.

We are also troubled by the differences in lead cleanup standards. In Omaha, the lead screening standard was 400 parts per million (ppm). Yet in my community of El Paso, it is 500 ppm. Further, the chart on the following page highlights the disparities in the number of residential properties tested and remediated at the three ASARCO-impacted locations:

Residential Properties Tested and Remediated at ASARCO-Impacted Sites

	Properties Tested	Properties Remediated
El Paso, Texas	3,683	970
Ruston, Washington	3,717	2,150
Omaha, Nebraska	32,669	3,815

Source: EPA

We see a close similarity between those disparities in lead cleanup standards and other "standards" for majority Hispanic areas in the United States. In a 1990 investigation of an ASARCO smelter in Hayden, Arizona, William E. Craig, an ASARCO worker with the Local 886 Steelworkers Union, found that Mexican-Americans who received OSHA physicals had their results falsified to show healthier results than those actually collected. He reported:

Basically, if a Hispanic employee has a pulmonary function of 85% of capacity, when using the Company's [ASARCO's] method, this employee is still rated as having 100% of pulmonary function because of the 15% margin the Company has infact [sic] self-imposed upon all Hispanics being tested at this time.

A year before, Dr. David K. Parkinson, with the SUNY-Stony Brook School of Medicine, delivered a letter to the medical director for ASARCO, Dr. Charles Hine, raising the identical concern. Dr. Parkinson wrote:

... I noted that the predicated values in Hispanics were being reduced by 15%. I do not know of any literature which supports this practice except in Blacks and I would be grateful if you could comment on this practice and provide any literature documenting the 15% reduction.

In response, ASARCO's medical director, Dr. Hine, is quoted by *Arizona Republic* columnist E.J. Montini as saying, "Blacks had better performance (in lung-capacity tests), and we put the Hispanics closer to blacks. ... Somebody had studied it—a long time ago."

With these practices allegedly in effect so recently as twenty years ago, former workers may be suffering health consequences today which may have been avoided—but for the color of their skin. We have enclosed relevant documents for your review. Why then should the cleanup standard in a Hispanic community be 25 percent less effective than that in Omaha?

With this history in mind, we ask what the EPA will do to ensure that our three state region will be cleaned up? Please put your response in writing so that we can know what to expect from the EPA. The cash in ASARCO's bankruptcy is our last chance to clean up a 100 year old mess.

Very truly yours,



Eliot Shapleigh

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Enclosures: Preliminary Analysis of: ASARCO's Medical Surveillance Program, Arsenic Exposure and their Correlative Effects, William E. Craig, Jr., Oct. 26, 1990.
Letter from Dr. Parkinson to Dr. Hine, Nov. 3, 1989.
Letter from Dr. Parkinson to Dr. Hine, Jan. 10, 1990.
Last gasp all that's left of smelter story, E.J. Montini, Arizona Republic, April 15, 1990.
A little guy pays a price for asking, E.J. Montini, Arizona Republic, May 16, 1990.

CC: The Honorable Rick Perry
The Honorable David Dewhurst
The Honorable Greg Abbott
The Honorable John Cornyn
The Honorable Kay Bailey Hutchison
The Honorable Silvestre Reyes
The Honorable Jeff Bingaman
The Honorable Bill Richardson
The Honorable Max Baucus
The Honorable Barbara Boxer
The Honorable Maria Cantwell
The Honorable Benjamin L. Cardin
The Honorable Thomas R. Carper
The Honorable Hillary Rodham Clinton
The Honorable Amy Klobuchar
The Honorable Frank R. Lautenberg
The Honorable Joseph I. Lieberman
The Honorable Bernard Sanders
The Honorable Sheldon Whitehouse
The Honorable Henry A. Waxman
The Honorable Edward J. Markey
The Honorable Rick Boucher
The Honorable Edolphus Towns
The Honorable Frank Pallone, Jr.
The Honorable Bart Gordon
The Honorable Bobby L. Rush
The Honorable Anna G. Eshoo
The Honorable Bart Stupak
The Honorable Eliot L. Engel
The Honorable Gene Green
The Honorable Diana DeGette
The Honorable Lois Capps
The Honorable Mike Doyle
The Honorable Jane Harman
The Honorable Tom Allen
The Honorable Jan Schakowsky
The Honorable Hilda L. Solis

Mr. Stephen L. Johnson

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The Honorable Charles A. Gonzalez

The Honorable Jay Inslee

The Honorable Tammy Baldwin

The Honorable Mike Ross

The Honorable Darlene Hooley

The Honorable Anthony D. Weiner

The Honorable Jim Matheson

The Honorable G. K. Butterfield

The Honorable Charlie Melancon

The Honorable John Barrow

The Honorable Baron P. Hill

The Honorable John D. Dingell

Mr. Mark Vickery

Preliminary Analysis of: ASARCO'S Medical Surveillance Program, Arsenic Exposure and their Correlative Effects.

Prepared by:
William E. Craig Jr.
Local 886
Investigations Committee Chairman
Winkelman, Arizona

HISTORICAL BACKGROUND INFORMATION:

On October 10, 1989, while at the Hayden Plant Clinic on Local Union business, the then present Company Doctor, Michael Snyder, informed this investigator that he had something very important to discuss with me. Since the clinic was rather busy at that time, I told the Doctor I would contact him with in the next few days at a site that offered more privacy and he then could talk to me about what his concerns were.

It was shortly afterward that I saw the Company Doctor at another location and was informed that basically; as ordered by the current corporate Medical Director, Dr. Charles H. Hine, M.D., San Francisco, Calif., the Company has directly disregarded test results as required by OSHA, when the test results may reflect work site involvement at the Hayden Plant. Also the Company Doctor alleged that under the direction of the current Medical Director, Dr. Charles H. Hine, the Company has stopped taking sputum samples and has set other standards relative to, other than those outlined by OSHA.

At this point I began an investigation into the allegations and asked the Doctor to contact the USWA Doctor and relate what was told to me to the Union Doctor and also for the need for some type documentation that basically confirms what Dr. Snyder was alleging against Asarco, which Dr. Snyder did in short order¹.

On October 20, 1989, Dr. Michael Snyder provided documentation to substantiate his allegations relative to seven (7) Hayden Plant employees

¹ ASARCO memo and Dr. Snyder's medical notes marked as exhibit #1.

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currently employed that recently had OSHA physicals performed.

On October 22nd, after preparing the medical release forms for union members, I contacted Dr. Snyder and interviewed him extensively as to the allegations and the information he supplied to me earlier. Dr. Snyder explained the Hispanic Standard for pulmonary testing as required by OSHA and the manner ASARCO benefited from such a practice and the possible consequences to those affected.

However, lacking the proper qualifications to consider most of the medical information available I felt it would be better if the Union had an expert opinion as to the content and substance of most of the allegations and evidence thus far provided by Dr. Snyder. That was my recommendation to Dr. David K. Parkinson; USWA Doctor based in New York. Dr. David K. Parkinson requested that I obtain some medical files of current employees for his review when he arrived in Arizona.

When first giving the Company the medical release forms for the employees involved the Company refused to release these medical records. At that same time Mr. Bill Burrell, Industrial Relations Manager, told me the Company was being nice by letting employees continue working and that I was going to cost some employees their jobs if I raised a fuss over the Company's practices. Management officials also expressed their concern about the confidentiality and the maintaining of such, if the records were release to a layman in the union. I personally concurred with this concern and agreed to the records being released to Union Doctor David Parkinson at the Hayden Plant. Thus the stage was set for the visit of Dr. David Parkinson on November 2 and 3rd.

Doctor David Parkinson reviewed the medical records obtained on November 2, 1989 and interviewed Dr. Michael Snyder as to his expressed concerns in the manner the Company under shadows the medical test results from the OSHA physicals.

Doctor David Parkinson confirmed several areas of expressed concern by

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Dr. Michael Snyder to this investigator².

These concerns are as follows:

X-Ray Machine

(A). Dr. Michael Snyder stated that some of the X-rays taken at the Hayden Plant are unreadable, this concern was seen to be true in some cases. The problem basically is because of the age of the present X-ray machine and the physical stature of some employees at the Hayden Plant. The present system lacks the power to take readable X-rays on individuals who are overweight and or thick chested in stature; because of the density of the chest cavity of certain employees. Also the reporting of the results of the X-ray itself needs to be done on the approved OSHA forms for such reports. This has not been done at the Hayden Plant for some time, if at all; it is my experience that this form has never been used at the Hayden Plant for reporting purposes. It is my understanding that the correct form has the space available to were the comments of the person reading the X-ray can grade the quality of the X-ray itself; as far as readability is concerned. It is unknown if the Company has required the unacceptable X-rays to be retaken at an other location or if this poor quality x-ray is indeed evaluated as best as can be and entered as a matter of medical record.

Pulmonary Testing

(B). The pulmonary function testing equipment at the Hayden Plant is to say the least, obsolete and has not been calibrated for at least two years; perhaps longer. It is because of the age and lack of calibration of this testing device that the Union questions the accurateness of the testing from this particular machine.

² Copy of Parkinson's findings enclosed marked as exhibit #2

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It is my understanding that the cost factor is not that high to warrant the Company not to replace this particular machine with a model that can meet the needs of the employees in a fashionable manner.

There is at this time, reason to question the Company practice of reducing the standards by 15% for all Mexican—Americans who receive OSHA physicals at the Hayden Plant. The reduction of the current pulmonary standard is warranted in Negros and Asiatic individuals, however; at this time, there isn't any creditable scientific evidence to suggest such a reduction is warranted for those of the Hispanic race.

Such a reduction as practiced by the Company, it has been seen, can lead to testing results that are misleading as to the pulmonary function of those employees that are tested when using this standard. Basically, if a Hispanic employee has a pulmonary function of 85% of capacity, when using the Company's method, this employee is still rated as having 100% of pulmonary function because of the 15% margin the Company has infact self—imposed upon all Hispanics being tested at this time. This practice instills a false sense of security within the employee. By developing such a false sense of security the affected probably wouldn't seek medical attention for the pulmonary reduction until perhaps reaching the untreatable stages and his or her breathing was greatly labored. *From appearances and considerations it seems this practice could have a direct effect on the higher than normal lung cancer rate in the Hayden/Winkelman area.*

As the evidence indicates at this time, such a practice by the Company has been directed by the current Medical Director for ASARCO Inc., Dr. Charles Hines. While this practice is questionable itself; it becomes even more alarming when other practices are combined to have an overall effect on Hayden Plant employees.

It seems the motivation for the Company to practice this self—imposed standard, is perhaps the following:

Since the majority of the employees who are subject to testing under the

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OSHA standard are infact Hispanic in origin; that same group performs the majority of the work that is required to be done in areas where the working conditions are, at most very questionable. Because of this, the Hispanic race has a much higher probability of incurring some type of work induced illness or condition that impacts their health, because the Hispanic race makes up the majority of the hourly work force at the Hayden Plant.

Therefore, it is understandable the Company's considerations for implying the reduced standard upon the racial group of Hispanics; as to trying to lessen their liability in the majority of those being tested. This reduced standard has been practiced at the Hayden Plant for a considerable length of time. Although there isn't any direct evidence to suggest that this practice is being implied at other ASARCO units; it should be questioned since the same Medical Director, Dr. Charles Hines, is infact, the person who directs the Company on this issue and other medical considerations in other plant locations.

Sputum Testing

Sputum testing at the Hayden Plant under OSHA guidelines, happens to be optional at this time and seems to have been the accepted practice for some time at the Hayden Plant.

Dr. Snyder stated that because of the very dry climate, it is very hard to obtain a good sputum sample from the employees, short of resorting to radical methods to produce the sputum sample. The sputum test is designed to indicate early forms of malignancy in the pulmonary system of those tested. It is my understanding that even when a good sample is obtained for testing; the results of the test are not always a true indication of early malignancy within the pulmonary system of those tested.

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Elevated Enzyme Levels

(D). *"Elevated Liver enzyme levels with in the workforce are suggestive of the chronic use of alcohol by a large portion of those that work at the Hayden Plant. With the location of the Hayden Plant being remote in nature and the absence of any major form of recreation in the area as well; the use of alcohol by the majority of those that work at the Hayden Plant is, indeed wide spread."* This was the Company's basic response to my asking about the inflated rates of abnormal liver enzyme findings with in the work force at the Hayden Plant. *This issue was researched in-depth and it was found that arsenic exposure would also cause the same type of medical findings.*

The rate of diabetes seems unusually high at the Hayden Plant, again with the majority of those effected being Hispanics within the work force. There isn't any evidence to indicate that the high rate of diabetes within the workforce is work induced at this time, however; this point should be researched to determine if long term exposure to extremely high concentrations of SO₂, lead, arsenic, etc., which the new flash furnace technology at the Hayden Plant emits on a constant basis. There are other health factors that should be researched as well.

Heart disease and the cancer rates are high in the Hayden—Winkelman area; the media recently announced that the *Hayden—Winkelman area has one of the six highest cancer risk rates in the nation.*³

It is this investigators belief, that Hayden Plant has a direct bearing on this very high cancer rate, there has been other basic studies that relate arsenic, lead and other carcinogenic substances to the nonferrous industry and the affects of these substances on the human body.⁴

The Hispanic standard was exposed to the work force and general public on April 11, 1990 by means of the Local's newsletter the SlagDump. On April

³ Newspaper clippings marked as exhibit #3.

⁴ Reference material related to arsenic exposure marked as exhibit #4

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13, 1990, Arizona Republic Columnist, E. J. Montini, contacted the present plant manager, Mr. D. Himmesoete, about the alleged Hispanic Standard as implied by management.⁵ It is interesting to note that Mr. D. Himmesoete remarked to the Arizona Republic that the Company stopped the practice during the summer of 1989 yet Dr. Michael Snyder's medical notes confirmed along with the union doctors opinion that the Hispanic Standard was indeed being imposed on employees during October 1989.

Also on this same date the management of the Hayden Plant removed the editor of the SlagDump from his bidded work area which he has worked in for the last seven years without incident. Management also gave the editor a verbal warning on the basis that he left his work area without permission.

Shortly afterward, Jim Valente, International Union Safety and Health Representative arrived to develop a direction for the Local and International to pursue safety and health issues related to the Hayden Plant and the medical surveillance program as implied. That afternoon a member of management approached Mr. Valente and myself and told both of us that he knew the Company was out to fire me because of the newsletter and the issues exposed. Mr. Valente instructed me to file 11c charges against the Company with OSHA, which I did so accordingly.⁶

On April 9, 1990, Arizona Republic Reporter, Sam Negri, published a article about the Company's action directed against me.⁷ The Company is very upset with me for exposing this standard and several employees have

⁵ D. Himmesoete admitted to the Company using such a standard in the past but stated they had stopped the practice as of July 1989. Copy of Montini's article enclosed marked as exhibit #5

⁶ Grievance were filed, which at this time the Company has denied them; I also filed 11c charges with OSHA against the Company. The conclusion of the investigation was basically that the Company did take extraordinary action against myself; OSHA couldn't prove that the actions by the Company was not for reasons other than safety.

⁷ A copy of this article enclosed marked as exhibit #6.

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come forth and told me they have overheard two maintenance department superintendents discussing just how they were going to get rid of the editor of the SlagDump.

The continuing investigation has brought forth other information from sources within the ranks of management that may suggest that management has knowingly distorted information regarding the amounts of arsenic contained in certain material which employees and those who live nearby are possibly exposed to because of the fugitive emissions of the Hayden Plant.⁸

Doctor Snyder was very concerned about some of the medical evidence and their possible effects on the individuals if not addressed.⁹ With this warning still bearing in this investor's mind, I continued to investigate the Company's manner of implying their medical surveillance program. Dr. Snyder also told this investigator that Biotrace, the ASARCO owned testing lab., was having problems with testing creditability and accuracy because of both the heat during the warmer months and the time element also having a negative effect on test samples. It is a matter of record that Local 886 has been successful in contesting several drug test results supplied by BIOTRACE as being faulty.

DUCKS

This investigator has heard from several Hayden Plant employees that normally work in the Water Treatment Plant, that have been instructed by management to take all waterfowl that is taken from the wastewater sludge pond at the Hayden Plant and to burn it at once at the slagdump.

These same employees have made statements that management is fearful of someone finding these dead birds and using them as evidence against them. It was also noted that all waterfowl found at the pond was dead.

⁸ Production figures for Feb. 2, 1989 and SBD arsenic figures marked as exhibit # 7.

⁹ Also enclosed is a copy of his note to Dr. Hine about Dr. Hines's instructions, see ASARCO memo, instructing Dr. Snyder as to what direction to take.

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Hayden Plant employees claim that this very same wastewater pond has leaked from the bottom and sides, the rubber lining being damaged by a heavy equipment operator. This damage was repaired on the side of the pond but not the bottom and thus still leaks from the damage suffered to the bottom of the structure. As of October 1990 this same structure is close to overflowing its' banks. A major storm entering Arizona could produce enough runoff to overflow the banks of this toxic waste dump site, perhaps polluting the ground water supply and perhaps the Gila River.

It is important to note that the figures of the wastewater sludge does not seem to correlate with the MSDS for SBD water and the MSDS for wastewater sludge which is basically a dehydrated version of SBD water. The method of measurement by the Company to determine the arsenic levels of the SBD water is not clear to this investigator but it is assumed that perhaps the figures may be listed as parts per million. From appearances, it suggests that the arsenic levels are much higher than claimed by Asarco in their MSDS form.

The practice of using sprays to mist the SBD water located at the Wastewater Treatment Pond could very well also add to toxic exposure. SBD water is sprayed into the air to speed evaporation but this mist being caught by wind currents could possibly expose other areas with toxic elements.

Good Samaritan Hospital

Presently the management of the Hayden Plant has developed the tactic, when having employees that test high regarding arsenic values, to tell the employees that their elevated arsenic levels are because eating shellfish or fish and not because of their work experience at the Hayden Plant.

The acting Company doctors which also are employed by Good Samaritan Hospitals on the same exact basis as alleged by Dr. Snyder, have in the past and apparently continue to do so, have become allies with management by instructing affected employees in the same manner and reasoning as management as done.

It has been confirmed that Asarco Inc., subsidizes Good Samaritan

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Hospitals and that is perhaps the basis of motivation for the medical staff to highly deviate from established and known medical facts and treatment procedures and assisted management in the conspiracy of misleading employees. This very same medical institution has also become very sympathetic towards the Company's wanting to return employees back to work after suffering industrial injuries.

Such type of medical judgements by other physicians are deemed as highly questionable however; the Good Samaritan Doctor who acts also on the Company's behalf will overrule the attending physician's wishes and return the employee back to work without the Company suffering a lost-time injury.

It is clear and undisputable that Good Samaritan has in the past and present practiced a type and substance of medicine that is highly sympathetic to the Company's interest and not the direct interest of those seeking medical treatment.

Domingo Candelaria

Mr. Domingo Candelaria, who has worked for Asarco Inc., at the Hayden Plant for the last 17 years, is a classic example of the affect of all the above upon a human being as implied by Asarco Inc., Hayden Plant management.¹⁰ It is my firm belief that Local 886 and the International should highly consider assisting Mr. Candelaria with his case appeal.

Two salary foremen possibly effected

Presently there are two salary maintenance foreman who are suffering from classic symptoms when discussing arsenic exposure. While not having any basic evidence to substantiate my fears I predict that the numbers of those affected by arsenic exposure will surely rise within the next 5 to 10 years.

¹⁰ See October issue of the SlagDump marked as exhibit #10.

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I make this statement because the current average age of the hourly workforce is presently 42.5 years of age. The majority of the hourly work force has worked at the Hayden Plant for approximately 20 years and the latency period for arsenic exposure is known to be anywhere from 5 to 30 years once exposed to small amounts of arsenic.

Also the new technology of the flash furnace that began operation in 1983 has greatly increased the amounts and concentrations of carcinogenic substances to be produced by the Hayden Plant. The established policy of Asarco Inc., is to operate this furnace at elevated levels, greatly exceeded design limits both in production figures and emissions control; also the management of the Hayden Plant allows the condition of nonproduction related items to deteriorate to the point to where it is nonfunctional, causing excessive fugitive emissions to be produced.

The flash furnace technology has allowed the Company to smelt much higher grades of copper ore than the old reverb furnace method. Generally speaking, higher levels of lead, arsenic and cadmium will also be found in high grade copper ore. The Hayden Plant has also developed the practice of recycling flu-dusts of various types and the wastewater treatment sludge back into fresh copper concentrate and again smelting the entire mixture. The end effect of perhaps re-concentrating concentrates time and time again may perhaps lead to the multiplying of already high arsenic levels.

Also the flash furnace has allowed the Company to greatly increase the amount of tonnage smelted over the old technology. Arsenic levels of .2 or .02 percent seem small until one figures the tonnage smelted; then the amounts of arsenic produced during the smelting process is considerable in nature.

Preliminary Analysis of: ASARCO'S Medical Surveillance Program, Arsenic Exposure and their Correlative Effects.

CONCLUSION

Therefore, it is very apparent to this investigator that the effect of the fugitive emissions on Hayden Plant employees and perhaps those who live within the environmental influence of the Hayden Plant is considerable. While it is also most impossible to determine the effectiveness of the present arsenic standard. The amounts Asarco has been found to exceed the present standard, 109 times, make it impossible to determine if the present standard would be effective at the Hayden Plant if maintained by Asarco management.

Since the flash furnace was installed, management has basically had to rebuild the flash furnace every year or so; once rebuilt the operation is ran at over design capacity and thus deteriorates very quickly. Management has never attempted to maintain the operation in a creditable manner, specially with high copper prices as experienced over the last few years.

Asarco management has the resources to determine true levels of carcinogenic substances and levels produced at the Hayden Plant and it appears that there is a vast amount of medical knowledge regarding exposures to these known levels as produced at the Hayden Plant, management has indeed been negligent in certain areas related to the Clean Air Act and OSHA standards.

IT is my belief that the investigation performed has shown that ASARCO has willingly misrepresented medical evidence as gathered through the medical surveillance program at the Hayden Plant Clinic and implied other standards which are highly questionable when considering the effects of those standards upon the employees of the Hayden Plant. Such evidence, if known by the affected, may have allowed certain past and present employees of the Hayden Plant to claim industrial illness or disease and almost certainly would of allowed them to seek treatment to address the medical problems, thus they have without a doubt in the past, have been denied certain important medical information that may have perhaps allowed the affected to increase their lifespan. Dr. Snyder told me that most employees are not even told of

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having any medical problems come to light through the medical surveillance¹¹ program at the Hayden Plant Clinic.

Also Asarco Inc., and other parties have conspired with a sense of intense maliciousness to distort, misrepresent and mislead, its' employees, the public sector and various state and federal agencies important information needed to protect the work force and the surrounding communities from excessive arsenic exposure. Asarco and perhaps other parties have conspired jointly to look the other way and protect their interest regarding legal, moral and ethical responsibilities and has done so for a number of years.

The affects of the combined actions of Asarco Inc., and their representatives have caused some to suffer from severe medical problems, cancer, liver and kidney damage and in some cases even death.

It is very clear that the Company's motivation was for financial gain regardless to the consequences of others. It is also very clear that those of Asarco knew directly the consequences of their actions on those affected.

Therefore, it seems that the issue of basic criminal intent for profitable gain is present within the ranks of Asarco Inc.

Also one must certainly ask why various public and worker protective agencies have not taken action against the Hayden Plant but merely publish study results relating to the medical problems of the area.

During the course of the investigation I have developed the opinion that the Asarco Hayden Plant management has intentionally withheld all arsenic testing results obtained before 1986. I myself have recently seen some of these documents but wasn't able to obtain a copy at the time, I am unsure if they have been destroyed or if they are still at the location last seen. The figures on some of the reports witnessed by myself were to say the very least,

¹¹ After after reviewing the MSDS form supplied by the Company (RE: Elements generated during normal smelting operations) I see a very strong correlation between the medical problems discussed with Dr. Snyder and the MSDS forms. The Company contends that these effects are because of the use of alcohol by our members.

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astronomical in lead, arsenic and cadmium levels for those employees tested.

Asarco Hayden Plant management has denied even having a arsenic testing program until 1986, however, the testimony of many Hayden Plant employees will confirm that tests were indeed conducted. During the Industrial hearing for Mr. Domingo Candelaria Company representatives testified, under oath, that the Company didn't test for arsenic exposure until 1986. This fact is confirmed indeed false and shows the type and substance of the maliciousness and the levels of conspiracy that have been used by past and present management to circumvent the Company's responsibility for industrial exposure to carcinogenic substances within the Hayden Plant.

Present management recently (10/23/90) stated that 10 years ago no one tested positive for arsenic poisoning and currently 50 employees are tested per month; out of those 50 employees, 12 to 15 employees will show elevated levels of arsenic. This statement confirms to this investigator that Asarco indeed conduct arsenic tests on employees before 1986, which is confirmed also using other testimony. Asarco has been aware of the ever growing arsenic problem and hasn't taken any steps what so ever to contain or correct the emissions.

While the emissions that are processed through the control devices and released through the 1000 ft. stack may very well be within emissions limits, it is apparent that the fugitive emissions released over the years, are in all probability, responsible for the medical problems experienced both by the work force and the public sector in the Hayden/Winkelman area. These emissions are not processed through the pollution control devices of the Hayden Plant and thus pose the greatest threat to all involved.

During this investigation there have been many times that one of the many issues involved didn't seem to maintain any relative importance, when considered singularly by itself; however, it is when considering its' overall effect combined with other elements of this investigation that the effect becomes rather significant in its' overall impact.

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From all appearances thus far, it is this investigator's opinion that a major criminal investigation should be conducted by the State of Arizona and perhaps at the federal level as well. While it appears that Asarco did not start out to expose large numbers of people to toxic substances, it is clear that once they became aware of the problems they did not take any action what so ever to correct or contain the problem.

What action that was taken by Asarco management was for the sole purpose of misleading the affected employees, on an issue that perhaps directly affected their health and the ability to obtain a normal lifespan. Also Asarco has intentionally withheld testing results and knowingly made false statements under oath regarding the arsenic testing standard as imposed by OSHA with the Company's statement that the Hayden Plant did not test for arsenic until 1986 and after.

While continuing this investigation that began a little over a year ago; I have tried my very best to insure an objective and realistic attitude as to the facts and the effect of those facts on this investigation. I have often worried that I was too close to the issue and thus would render a biased opinion. The lack of formal information regarding industrial carcinogenic exposure in the Copper Basin area has also been a hurdle to contend with in regards to obtaining creditable information to base objective determinations on available evidence.

Therefore, to this investigator, the results thus far of the investigation indicate to this investigator that;

Asarco Inc., past and present management, has indeed conspired to undermine the intent of certain OSHA regulations and standards and possibly other federal and state regulations.

The various combined actions of Asarco Hayden Plant management has also had a very adverse effect not only upon union membership but salary and other contracted employees, who either presently work within the Hayden Plant or in the past. The actions of management have been to instill

Preliminary Analysis of: ASARCO'S Medical Surveillance Program, Arsenic Exposure and their Correlative Effects.

an elaborate system in which, from all the combined evidence, sole purpose and intent is to deny workers their legal rights regarding industrial exposures to carcinogenic substances within the confines of the Hayden Plant. The effect of the Company's action as directed against their employees seems to be for financial gain and to relieve the company's legal liability when considering such exposures.

The use by Asarco of an ethnic standard for determining pulmonary function of employed Hispanics without any medical evidence to indicate such a standard is warranted has been proven beyond a doubt. This standard was imposed to provide relief to the Company from those suffering respiratory develop indicative to chemically induced emphysema from high concentrations of SO₂, dusts, smoke and various fumes produced in the smelting process. This standard would also have a direct effect on medical indications regarding forms of respiratory malignancies within the workforce.

The effect of the Company not telling employees of past medical conditions as exposed by the medical surveillance program and basically placing little importance on the employees right to know the true findings; was also confirmed by this investigation. The sole purpose of this practice as implied by the Company is to protect Asarco's liability and its financial consequences to Asarco because of exposures incurred within the confines of the Hayden Plant.

The Company clearly has not maintained the OSHA Standard regarding the keeping of medical records of all present and past employees as called for regarding OSHA standard 1910. 1018; the employer shall maintain or assure that the physician maintains medical records for atleast 40 years or for the duration of employment plus 20 years which ever is longer. The Company stated in the Domingo Candelaria case that it did not begin arsenic testing until 1986, which is completely false.

In combination of all the above Asarco has shown a complete disregard to either control or contain fugitive emissions released by the Hayden Plant as

Preliminary Analysis of: ASARCO'S Medical Surveillance Program, Arsenic Exposure and their Correlative Effects.

EPA figures clearly confirm.

RECOMMENDATION

(A.) In consideration of the above evidence one must clearly question the Company's actions and their combined effects as to be maliciously criminal in nature. The overall appearance of a conspiracy within the ranks of corporate management and individuals within local management as well, is very strong and overbearing in nature.

(B.) The consequences suffered by past and present employees is difficult to ascertain exactly at this time. It is therefore asked that this investigation continue in order to develop evidence in this area.

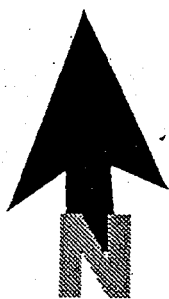
(C.) The element of criminal intent should also be referred to a higher authority for consideration.

(D.) Also a direction must be taken for any employee affected in an adverse manner by the combination of the Company's actions in regards to compensation.

(E.) A study of mortality rates that encompasses all known affects of arsenic exposure when listed as primary or secondary causes of death should be pursued to establish a correlation of direct or indirect involvement with the Hayden Plant, should be pursued by Local 886.

(D.) Request well-water sampling data to ascertain arsenic involvement in the water table and the Gila River within a 12.5 mile radius of the Hayden Plant.

William E. Craig Jr.
Investigations Committee Chairman
Local 886 USWA
October 26, 1990



Lab.

Office Building

Change
Room

Concentrates
stored at
this location

Major
Fugitive
Emissions
Problem

Unloading
Department

Repair
Shops

Converter
Department

Major
Fugitive
Emissions
Problem

Flash
Furnace

Major
Fugitive
Emissions
Problem

Asarco Hayden Plant Map

*Prevailing wind currents
from east to west or west
to east*

Storage
Area for
Concentrates
and Waste
Dusts

Major
Fugitive
Emissions
Problem

Water
Treatment
Plant

*Hayden located a short
distance to the west*

Waste
Water
Sludge
Pond

Endanger of
exceeding its'
banks and other
questionable management
practices

Acid
Plant

Major
Fugitive
Emissions
Problem
at times

*Winkelman
located to the
southeast*

Division of Occupational Medicine
Department of Community and Preventive Medicine
School of Medicine
Health Sciences Center
State University of New York at Stony Brook
Stony Brook, New York 11794-8036
telephone: (516) 444-2186

Stony Brook

Nov 3 1989

Charles Hine
Medical Director
ASARCO

Re: Hayden Plant USWA Local 886

Charlie
Dear Dr. Hine

I was asked by the Local Union to investigate some concerns in regard to the medical surveillance program at Hayden. These concerns had been heightened by the resignation of Dr. Snyder at the Samaritan Clinic and the lack of any replacement at the moment.

I reviewed three medical records for which signed consent forms had been obtained and identified a number of issues which I believe should be resolved.

Confidentiality

The complete medical records were provided to me by the plant manager. This indicates that he has access to confidential medical records. I believe that the medical record should be stored in the medical department and access only given to health related personnel.

Pulmonary Function

A number of tracings did not meet criteria of acceptability, with problems such as short expiration times and absence of plateau. ~~In addition, I noted that the predicted values in Hispanics were being reduced by 15%. I do not know of any literature which supports this practice except in Blacks and I would be grateful if you could comment on this practice and provide any literature documenting the 15% reduction.~~

The spirometer was an old one which had not been calibrated for more than two years. No calibration syringe was available. I would recommend that a new spirometer be purchased and a calibrator, The new Jones calibrator performs several volume checks and I would suggest that this

Exhibit 2. Dr. Parkinson's Response

would be ideal. Incidentally the secretary who made appointments for OSHA medicals felt that if she had a computer and a program to schedule appointments that the medicals would be arranged more efficiently. This could be interfaced to the spirometer and would allow all PFTs to be archived.

Chest X-rays

The Chest X-rays are performed at the Plant and the equipment is old. On the day I was there the processor was not working well and the X-rays would have to be repeated. Chest X-rays taken on larger men were underpenetrated and I suspect the machine is incapable of adjustment for large individuals.

The quality of the X-rays in normal weight individuals was perfectly satisfactory but the X-ray reports from Tucson are not presented on the NIOSH/ILO reporting form. I presume the Radiologist is a 'B' Reader.

Is it possible that Chest X-rays on overweight individuals could be done in Kearney.

Blood Chemistry

The medical records did not consistently have blood lead and urine arsenic values on those individuals in the medical program. In addition sputum cytology was frequently not satisfactory. Many of the chemistry results indicated other probably non-work related problems such as Diabetes and Liver enzyme abnormalities. Although some of these results had obviously been discussed with the individual I wondered if you had a consistent policy on informing workers of abnormalities that need follow up by their family physician.

I would welcome a meeting with you at the plant to discuss the above concerns. In addition I understand that there is some concern about exposures in the plant which may be producing long term lung dysfunction. I would like to do a plant tour if possible and have the opportunity to review recent results of Industrial Hygiene monitoring,

Regards,

David

David K. Parkinson MD.

Exhibit 2. Dr. Parkinson's Response

Jan. 10 1990

Re. Hayden Plant

Dear Dr. Hine,

I was somewhat surprised with your response to my letter about the deficiencies in the medical program at the Hayden Plant. The documented problems with X-rays and Pulmonary Function testing need to be addressed as quickly as possible. I agree that in my present hirsute state I could not wear a respirator, but I can assure you that either I would shave it off or arrange for a clean shaven industrial hygienist to do the inspection. Please arrange a meeting to discuss the problems as soon as possible,

Yours sincerely

David K. Parkinson

cc. Willy Craig
Mike Wright

Willy, I have asked Mike
Wright to try to get another
meeting going

Exhibit 2. Dr. Parkinson's Response

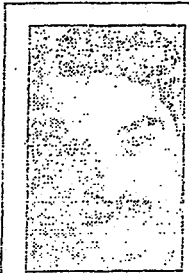
Last gasp all that's left of smelter story

No one knows how long the ~~unfortunate~~ practice went on, only that it was halted last July.

"The story you're pursuing," one man told me, "no longer exists."

Perhaps that is the best way to think of this: It is certainly a story about a group of people whose existence we do not often dwell upon.

They are the ~~conner workers~~ living in the mining communities of ~~Hayden, Winkelman and Kearney~~.



E.J.
MONTIN
Republic
Columnist

They work, as their parents and grandparents worked, at the giant smelter in Hayden.

You would get there by driving east and a little south of Phoenix, out of the city and into a beautiful, stark country where the hills are all stuck over with houses and the towns are joined like beads on a string of highway.

It can be paradise and hell at once.

In January, the U.S. Environmental Protection Agency issued a

report saying that the residents of Hayden had a 1-in-1,000 chance of getting cancer, probably because of smelter pollutants. The EPA considers odds of less than 1 in 1 million too dangerous for humans.

Physical exams every 6 months

The people of Hayden, however, were not alarmed. Most were born there and grew up there and will die there, sooner or later. They love the place.

Because the dangers at the plant are significant, the federal government requires physical examinations for some smelter employees every six months.

As part of the examination, a test is given to measure lung capacity. A person's lung capacity differs depending on age and height and weight. And there is a difference in lung capacity between black people and Caucasians. Medical studies have shown that blacks' is somewhat greater.

Doctors working for Asarco, the giant corporation that owns the smelter, decided that Hispanics, too, have a greater lung capacity.

No one seems to be quite sure why this decision was made.

As a matter of routine, however, 15 percentage points were added to the test results of Hispanic men at the plant.

This meant that a Hispanic man with a lung capacity of 85 percent would be told that his lungs were functioning at 100 percent. ~~Many of the men working at the plant are Hispanic.~~

NY physician re-evaluates practice

When the United Steelworkers union last Hayden found out about the practice, it hired David Parkinson, an expert in occupational medicine from New York, to evaluate it.

Late last year, Dr. Parkinson wrote to Asarco director of medicine, Dr. Charles Hine, saying: "do not know of any literature which supports practice."

The union believes the lung-capacity tests inflated, at least in part, ~~for the employees~~.

~~company~~, however, says it was all a mistake. It says that the practice has been halted.

The plant's manager, Darrell Himmesote, me Friday, "As soon as we recognized (what going on), we discontinued it. That was last July. At that time, a new physician came on board at plant. He said it was an outdated, archaic procedure. And we stopped it."

Himmesote suggested I contact Dr. Hine to could explain why the 15 percentage points were added to Hispanics' tests in the first place. I reached Dr. Hine at his San Francisco office Friday.

"Blacks had better performance (in lung-capacity tests), and we put the Hispanics closer to blacks," he said. "Somebody had studied it — a long time ago."

It's not going on anymore

No one knows how many workers were affected or what has happened to them.

Willie Craig, who works at the smelter, put warnings about the lung testing in a newsletter. He didn't know that the practice had been changed.

"We tried to ask Dr. Hine about it, but he responded very kindly to our questions," he said.

Plant manager Himmesote told me Friday, "I'm glad you check things out before you write a story. This one is over. It's not going on anymore."

This made Himmesote breathe easier.

Just as it probably comes as a relief to smelter workers and their families and makes it appear some that the story I was following does not exist, it does.

~~As for the men and women from the smelter who have been there long and worked in the plant, they are still doing now — the ones who will never breathe easy.~~

A little guy pays a price for asking

You don't read much about guys like Willie Craig anymore — working stiffs with guts and smarts and maybe a little too much spirit for their own good. Maybe we never did read much about them, I don't know. I only know that I used to believe there were a lot of them around and, these days, there aren't.

It's never been easy to be such a person. It's even tougher, now, as the labor movement continues to weaken and its membership declines. Soon, union activists will be nothing more than characters in books, myths.

Willie Craig is not a myth.

He is a maintenance worker at the Asarco Inc. smelter in Hayden. He has lived in the mining community engulfing Hayden and Winkelman for 12 years. He enjoys the work. He likes the people and the place. His family is happy there.

For the past seven years, Craig had worked the graveyard shift at the smelter. There were fewer

management types around late at night, which appealed to him, and there is a pay differential for the overnight workers that made the hours tolerable.

Besides, the night shift gave Craig time during regular business hours to put together a monthly newsletter called *The Slag Dump* for United Steelworkers of America Local 886.

Raising questions

The newsletter is only a couple of pages long. The idea behind it, Craig says, is to keep members informed about union and company activities, and maybe to raise a few interesting questions. A little over a month ago, someone in Hayden sent me a copy of it.

In that issue, Craig claimed that Asarco had been fudging the results of some health tests given to Hispanic workers at the facility. The tests involved workers' lung capacity, and Craig said the company had been using the wrong standards for Hispanics, a practice that made Hispanic workers appear healthier than they really were.

After reading the newsletter, I contacted Asarco's principal physician in California, and he ~~wrote~~ stated that the discriminatory practice had taken place.

I then telephoned the plant manager at Hayden, Darrell Himmesoete. He told me the testing procedure had been discontinued last July, that the mistake had been corrected, and that ~~Craig was~~ making a fuss over nothing.

Craig is not yet convinced, however. He contacted



W. J. MONTINI
Republic
Columnist

I did a column about the health-testing problem at the plant. In it, I mentioned Willie Craig's name. The next day, he was taken off the overnight shift.

He was also given a reprimand for leaving work site without approval. It was the first time a thing had happened to him, and Craig says that he has witnesses who can prove his supervisor OK'd request to leave.

Among other things, OSHA now is looking into complaint filed by Craig alleging that Asarco retaliating against him for his work on newsletter.

"I didn't figure on any trouble when I started doing the newsletter," Craig told me. "I just thought it was a way for the workers to talk to management. But now, they're calling me troublemaker. And they want to try to fire me."

Plant manager Himmesoete said Craig's allegations are "totally untrue."

A spokesman for OSHA, meanwhile, has said: an investigation into Craig's complaint will take couple of months to complete.

New issue 'in the open'

This month, *The Slag Dump* has published another story about health issues at the Hayden smelter, this time complaining about Asarco's replacement of a medical doctor with a part-time nurse-practitioner.

"I figure that I'm just trying to get some stuff out in the open," Craig said. "Little guys like me can't really fight a big company. I don't even want to. I'm really not any kind of crusader. Asking questions isn't fighting, though. Is it? It's just a way of trying to make things a little better for the people at the plant. Maybe a little safer. Would you believe that asking questions would get a person into serious trouble?"

I would, Willie Craig. I surely would.

CHSM-189

Exhibit 6