



The Senate of the State of Texas

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Senator Eliot Shapleigh
District 29

February 25, 2009

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Ms. Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

VIA UNITED STATES MAIL, FACSIMILE, AND E-MAIL

Re: Remediation Cost Estimates for El Paso's ASARCO Site

Dear Ms. Jackson:

I write with critical and time sensitive concerns regarding the cost estimate for the onsite remediation of the ASARCO smelter in El Paso, Texas. I am asking that you work with your counterparts in the Department of Justice (DOJ) to temporarily halt the filing of any final claims in ASARCO's bankruptcy court, especially those that pertain to my community of El Paso.

In short, the century-old polluter is attempting to shed \$250 million of cleanup costs with a remediation plan developed by a Bush-era Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), and ASARCO itself. We have recently received word that by the end of this week the DOJ intends to file their claims in ASARCO's bankruptcy court, thus settling the future costs for onsite and offsite remediation of the ASARCO smelter in El Paso. What happens in this case matters across the country, as it will set a precedent for polluters regarding their ability to shed environmental liabilities through the bankruptcy process.

This week, I spoke with the EPA Region 6 Acting Director Larry Starfield and members of his staff. I expressed to them our keen concerns with the inadequate cost estimate and the pressing nature of ensuring that the shortfalls are resolved. Here are our concerns:

1. ***The cleanup standard is the minimum standard and will severely restrict any future use.*** Mr. Starfield promised information on what constitutes "industrial" in terms of remediation standards. Under the cost estimate agreed upon by EPA, TCEQ, and



ASARCO, 100 acres of the ASARCO facility would be remediated to an industrial standard based on present use. Such a standard will bar future use such as a park, certainly residential use, and perhaps even research facilities for the University of Texas at El Paso. We are interested in learning what is the threshold for various contaminants of concern to ensure that El Paso is not left with a polluted piece of property that no developer or future user will touch.

2. ***The ASARCO cleanup plan fails to address 250 acres of contiguous property owned by ASARCO but not on the principal 100 acre smelter site.*** Mr. Starfield promised information on why the plan does not include such a large portion of ASARCO's land. Despite the fact that this land is owned by ASARCO, is contiguous to the smelter site, and has served as a dumping ground for ASARCO's slag runoff, TCEQ failed to include this acreage in their cleanup cost estimates. To make matters worse, this land is upstream from the smelter site in terms of groundwater flow, thus negatively impacting any groundwater cleanup efforts at the 100 acre smelter site. All of the lead, arsenic, and other heavy metals on the eastern acreage will flow to the smelter site, over 100 acres of impervious coverage, and down toward the Rio Grande and American Canal.
3. ***We understand that the DOJ intends to file the claim with the bankruptcy court this Friday, thus locking my community in to an underfunded and inadequate remediation plan.*** Mr. Starfield promised information on whether the DOJ can reexamine the universal bankruptcy settlement of the numerous ASARCO sites across the nation. We are concerned that any settlements negotiated under the Bush administration's DOJ may be tainted by values that polluting companies should win, not communities; that profits be maximized, not the public good.
4. ***For years, ASARCO's slag was used as a fertilizer and now contaminates properties across El Paso.*** Mr. Starfield promised information on how to address this contamination. Ionate, an El Paso-based fertilizer company, sold a fertilizer that contained slag from the Oglebay Norton slag-crushing company in west El Paso. Oglebay Norton obtained the slag, a byproduct of the smelting process, from ASARCO. What do we tell those homeowners when they have to spend \$30,000 to clean lead and arsenic from Mom's home before they sell it?
5. ***Over a century of ASARCO's pollution has created a 233 million cubic foot contaminated groundwater plume around the smelter.*** We have concerns as to whether the cleanup plan will adequately address the groundwater issues, so Mr. Starfield promised additional information on the plume. The remediation plan calls for monitoring and extraction wells to be placed around the ASARCO facility in an attempt to prevent contaminants from migrating into my community's drinking water, but we need to know just how polluted our region's groundwater is as a result of ASARCO's century of operation.

Again, I ask that you place a temporary halt on the filing of any final claims in the ASARCO bankruptcy and convene an in-depth evaluation of all pending claims, especially those

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that might impact El Paso. With a \$5 billion Peruvian mine now returned to the debtor's estate, ASARCO's ability to pay pollution liabilities needs to be reevaluated and renegotiated.

We would be happy to provide any further information that you may require. Should you have any questions, please contact my staff member David Edmonson at 1-800-544-1990 or david.edmonson@senate.state.tx.us.

Very truly yours,

A handwritten signature in black ink that reads "Eliot Shapleigh". The signature is written in a cursive, slightly slanted style.

Eliot Shapleigh

ES/de

CC: The Honorable Tom Udall
 The Honorable Jeff Bingaman
 The Honorable Silvestre Reyes
 The Honorable Ciro Rodriguez
 The Honorable Harry Teague
 The Honorable Bill Richardson
 The Honorable John Cook
 Mr. Scott Fulton
 Mr. Larry Starfield
 Mr. Alan Tennenbaum
 Mr. Carlos Rubinstein