



EL PASO'S ORIGINAL NEWS SOURCE

## Asarco Opposition, On the Road to Austin

by Sito Negron

*Newspaper Tree hitched a ride to Austin with a group of UTEP students who opposed the Asarco emissions permit renewal, and takes a look at a quick day that ended without a resolution, other than that the issue will linger.*

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The Asarco emissions permit renewal hearing Feb. 8 in Austin drew more than 100 El Pasoans in opposition. The Texas Commission on Environment Quality ended up sending the issue back to Asarco and its technical staff for more discussions on the emissions estimates, which a panel of two state Administrative Law Judges found lacking. [[fns article](#)] [[ep times article](#)]



Opponents hoped the finding by the ALJs would be enough to deny the permit renewal, something that never has happened in Texas, where an estimated 700 such applications are in the pipeline at any given time, according to a commission spokeswoman.

Andrea Morrow said a final order is not yet available and won't be until it is issued in a formal document called the "marked agenda." She summarized the action taken as follows: "The commission issued an interim order saying based on evidentiary record, from the state Office of Administrative Hearings, Asarco failed to prove effective emissions control, therefore they requested more modeling done and they instructed the executive director to conduct an investigation of Asarco's equipment and practices and provide a written assessment.

"Once the executive director makes this assessment and Asarco submits the required modeling it will be sent back to the commission for consideration; they will then issue a recommended report, make it available to all parties on the mailing list and will open it up for public comment; the public will then have opportunity to comment on the report, the executive director will then respond to comments, and then it will come back to the commission to issue a final report to comply with state law."

Morrow said she was not clear on the time frame, but expected it to be eight or nine months. She said the commission was attempting to comply with state law 382.033, which forces the commission to issue a report before denying an emissions permit renewal denial. [[state law](#)]

"Rather than deny the permit and have to go through the reporting process anyway they elected to go through the reporting process first and get public comments and the best information possible," Morrow said. Because Asarco is not in operation, she said, the commission's decision "would set a precedent for other companies that may be in similar situations so they (the commissioners) are being very cautious."

Newspaper Tree traveled to Austin with a group of UTEP students who opposed the emissions permit renewal. The following is a brief selection of photographs with brief narratives describing the trip.

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About 50 UTEP students bused to Austin for the hearing, leaving Tuesday night and getting home Thursday morning. The students represented members of student government and the Democratic Party's student association, and were quick to say it was not a university-sponsored event. The trip was coordinated with El Paso Acorn and the Sierra Club, groups opposing the Asarco air permit renewal. [[sierra club beyond the borders program](#)] [[el paso acorn](#)]

The students arrived in Austin at about 10 a.m., donned bright red shirts, and joined the others, including members of the Get the Lead Out Coalition, who had come from El Paso to oppose the permit renewal. State Sen. Eliot Shapleigh and other Asarco opponents, including El Paso city officials and Mexican politicians, gathered to make a public announcement of opposition to the air permit renewal. Shapleigh called the binational opposition "historic." [[binational resolution news release](#)]



El Paso Mayor John Cook and his wife Tram were part of the opposition group. Before the hearing, and after the news conference at the Capitol, the groups split up, with members of Acorn and other opponents staying on the capitol lawn for lunch. Cook was mobbed by people wanting to take a picture with him.





Shapleigh and Mexican Sen. Jeffrey Jones (PAN-Chih.), spoke to an Austin television news crew at the Capitol before the hearing. Jones was part of the binational opposition group,

which included several other Mexican politicians, Ruben Segura, mayor of Sunland Park, and El Paso city representatives and the mayor. During the hearing, Jones told commissioners Asarco was bad for the region, from both health and economic perspectives. He also urged that the smelter's impact be measured regionally, instead of only from an El Paso perspective: "The main body of evidence put before this commission is only what affects the U.S. side, as if the other side didn't exist."



The hearing room was packed with opposition to Asarco. The crowd was estimated at more than 100 people. They left mostly disappointed, and confused. The general intent of the commission, to get more information before making a decision, was clear, but the specific order won't be clear until it is issued in a written form. Eric Groton, Asarco's lawyer, said he was looking forward to the order for clarification if the air pollution estimates would include New Mexico and Mexico. "This is sort of a first-time process, and other questions will come up. I expect we'll have a clear idea what we'll do when we see the order."

Groton called the commission's decision fair: "We still have more work to do. In that respect it wasn't a clear victory but my reaction to those that were offended by what happened -- they shouldn't be. We went through an extra process precisely because I assume that's what a majority of the crowd was interested in having happen."

Erich Birch, the lawyer representing the city of El Paso, said "I think it was a win for both. We were very pleased the commission did not renew the permit. That was a win for us. They very easily could have voted to approve the permit. That Asarco is going to have to basically prove the permit should be approved is a win ... it was a win for Asarco that the commission did not deny the permit. And it was largely a matter of procedures -- they felt their hands were tied and could not deny the permit without additional work."

Lairy Johnson, Asarco plant manager, and Teresa Montoya, who said she works with Asarco to "get the correct facts out." Eric Groton, Asarco's lawyer, opened his statements to the commission by saying the Asarco support group was smaller than the opponents'. He introduced Johnson, Tom Aldridge, vice president for environmental affairs at Asarco, and Amarillo plant manager Larry Caster. Groton first argued the ALJ's finding was flawed because it was based in part on an incorrect reading of a table, and that even with that, Asarco opponents failed to prove the plant was so out of compliance with pollution laws as to warrant denying the renewal. The argument that hit home with the commission, however, was his use of the state law 382.055 requiring the commission issue a report on the action. [[asarco web site](#)]



Leaving the hearing room, a sharp-eyed observer noticed the magazine in the rack by the elevators, and remarked on the irony of the cover story juxtaposed with the action taken by the commission. [[cover story](#)]



KVIA Channel 7 was the only television station from El Paso to make the trip to Austin to report on the hearing. Following the hearing, which took several hours, Shapleigh, Jones and Cook rallied briefly outside the North Austin commission

chambers.

Later in the evening, Shapleigh, Jones, El Paso city Rep. Beto O'Rourke, El Paso Independent School District board member Lisa Colquitt-Munoz and state Sen. Gonzalo Barrientos of Austin, rallied the 100 or so people who had traveled the 600 miles from El Paso.



The UTEP students left Austin at about 10 p.m., and after the whirlwind trip, hitting Downtown El Paso was a welcome sight that meant they were minutes from the dropoff at the Sun Bowl. It was before 8 a.m.

Student leader Annalisa Cordova, a member of the UTEP student government, gets off the bus with a sign showing Asarco pollutants. [[utep student opposition news release](#)]



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