

June 19, 2008

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

Re: El Paso Onsite and Offsite Liabilities  
Request to Enlarge Claims Pending in *In re ASARCO LLC, et al.*, Case No. 05-21207

Dear Mr. Johnson:

I write to request that you enlarge the U.S. Environmental Protection Agency (EPA) claims relating to onsite and offsite contamination in El Paso, Texas currently pending in *In re ASARCO LLC, et al.*, Case No. 05-21207, in the United States Bankruptcy Court for the Southern District of Texas. Enclosed is my prior letter dated June 6, 2008, which also makes the case for why the claims need revision.

### **Onsite Costs**

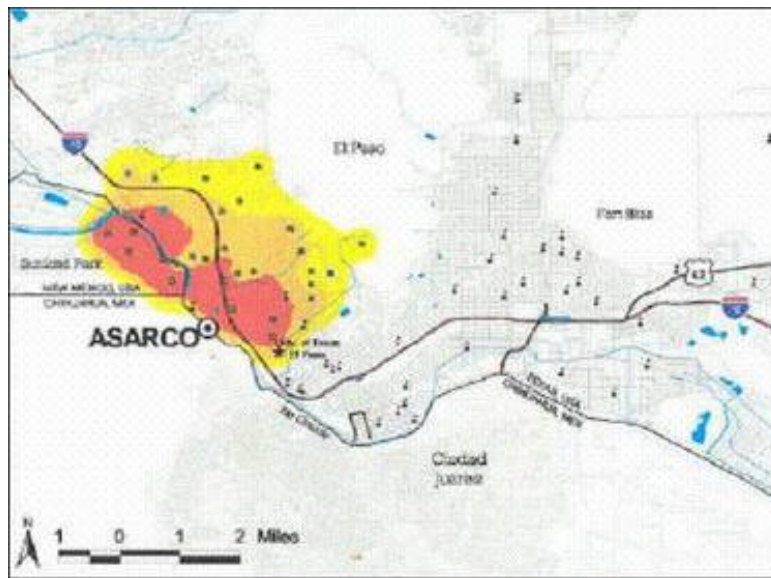
Back in 2001, the EPA informed us that the total cost of cleanup for onsite claims at ASARCO's El Paso copper smelter was \$250 million. As you may know, it was recently announced that the highest bidder for ASARCO LLC's assets was Sterlite Industries. Sterlite is an India-based company and is a subsidiary of Vedanta Resources Ltd., a London-based natural-resources firm with annual sales of about \$6.5 billion. The winning bid was \$2.6 billion. ***It was also reported, and was confirmed in open court last Thursday, that the El Paso smelter was excluded from the list of assets for which Sterlite bid.*** So our community has serious concerns about who will clean up 100 years of lead and arsenic contamination. The cash soon to accrue in the sale of ASARCO's assets is our last clear chance to clean up our community.

Should the El Paso smelter be placed into an environmental remediation trust, the trust will need to be adequately funded so that my community can be assured of all onsite and offsite

remediation. If the cost of full remediation is not included in your claims, we ask you to enlarge your claims.

### Offsite Costs

Back in 2001, I met with EPA officials and asked them to test my community for lead and arsenic contamination. The EPA tested a three-mile radius from the ASARCO smelter to determine the extent and scope of contamination. The survey was done with the following results:



Based on footprints from other contaminated sites like Omaha and Tacoma, we believe that many more properties are contaminated in El Paso. Below please find a chart comparing the number of residential properties tested and remediated at the three ASARCO-impacted locations:

#### ***Residential Properties Tested and Remediated at ASARCO-Impacted Sites***

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

Source: EPA

With regard to offsite costs, we ask that the EPA do two things:

- 1) ***Establish the eastern boundary of the contamination footprint.*** We need to find out the true extent of El Paso's lead and arsenic contamination. Our contamination history is complicated by the fact that 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. As a result, the contamination may extend throughout El Paso County.

Mr. Stephen L. Johnson

June 19, 2008

Page 3

- 2) ***Based on the true eastern boundary of contamination, test properties to establish the scope of contamination.*** Given the histories of other 100 year old smelters, we believe less than 25 percent of the contaminated properties have been tested.
- 3) ***Fully fund the offsite remediation.*** Once the scope of contamination is established, the court should fund an environmental remediation trust designed to remediate all properties to proper EPA standards. In this vein, I note that El Paso cleanup standards for lead are currently 500 parts per million (ppm), while the standard in Tacoma's ASARCO cleanup is 400 ppm. Why is a lower standard being applied to a majority Hispanic community? We ask you to establish a cleanup standard consistent with current science.

Again, I ask that the EPA enlarge their pending claims for both onsite and offsite liabilities. I appreciate your attention to this matter and your willingness to ensure that El Paso residents get the same protections from the EPA as all other Americans. Our office will contact you in the future to arrange a meeting with you and your staff to discuss this matter further. We understand that a final Chapter 11 reorganization plan is due in November 2008.

Very truly yours,



\_\_\_\_\_  
Eliot Shapleigh

ES/de

Enclosure: June 6, 2008 letter from Senator Eliot Shapleigh to U.S. EPA Administrator Stephen Johnson

CC: Mr. Marcus Peacock  
Deputy Administrator  
U.S. EPA

Mr. Richard Greene  
Regional Administrator  
U.S. EPA Region 6

Mr. Jon Rinehart  
Site Assessment Manager  
U.S. EPA Region 6

Mr. Charles Fisher  
On-Scene Coordinator  
U. S. EPA Region 6