



The Senate of the State of Texas

COMMITTEES:

Health and Human Services
Nominations
Transportation and Homeland Security
Veterans Affairs & Military
Installations - Vice Chair
Subcommittee on Base Realignment
and Closure - Chair

Senator Eliot Shapleigh
District 29

July 10, 2008

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Mr. Mark Vickery
Executive Director
Texas Commission on Environmental Quality, MC 109
Post Office Box 13087
Austin, Texas 78711

VIA UNITED STATES MAIL

Re: ASARCO in El Paso - Onsite Remediation

Dear Mr. Vickery:

I write to request a detailed, written response on TCEQ's plans for onsite remediation of El Paso's ASARCO smelter.

On June 25, I had a telephone conversation with Dan Eden, TCEQ's Deputy Director of the Office of Permitting, Remediation, and Registration. During that call, we discussed the recent announcement 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. It was also reported, and was confirmed in open court, that the El Paso smelter was excluded from the list of assets for which Sterlite bid.

Thus, I want to know how TCEQ plans to clean up all onsite contamination should the El Paso smelter cease operations. I ask that you answer the following questions:

1. Does TCEQ and/or the Attorney General have a claim in the bankruptcy court that would cover all onsite remediation?
2. What does TCEQ estimate the cost to be for complete onsite remediation?
3. Who would complete the remediation at the ASARCO site? Under what guidelines and standards?

I ask that you that you respond within 10 days of your receipt of this letter. I look forward to your written response and visiting further with you on this important issue.



Mr. Mark Vickery
June 27, 2008
Page 2

Very truly yours,

Eliot Shapleigh
Eliot Shapleigh

ES/de

CC: Mr. Dan Eden

SG\Environmental Quality, Texas Commission on\VickeryM Onsite Remediation.doc

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution
July 22, 2008

RECEIVED

Senator Eliot Shapleigh, Capitol Office

JUL 24 2008

The Honorable Eliot Shapleigh
Texas Senate
P.O. Box 12068
Austin, Texas 78711-2068

Staff Assigned: _____

Action: _____

Dear Senator Shapleigh:

Thank you for your letter dated July 10, 2008, regarding the onsite remediation at the ASARCO El Paso smelter. The Texas Commission on Environmental Quality (TCEQ) appreciates your concerns related to the closure and remediation of this site.

The TCEQ filed a contingent claim in the ASARCO LLC Chapter 11 bankruptcy proceeding regarding costs associated with onsite remedies. The proposed liquidation plan of reorganization to be filed by ASARCO LLC will call for title to the El Paso smelter site to be transferred to an environmental custodial trust which will be funded to address onsite remedies.

The TCEQ intends to request funds to be placed in this environmental custodial trust to address onsite remedies at the smelter. The TCEQ will oversee the cleanup administered by the trust. The remediation will be subject to the Resource Conservation and Recovery Act (RCRA) and the Texas Risk Reduction Program (TRRP) rules. The TCEQ estimated a present value cost of \$52,005,186 for onsite remedies at the ASARCO smelter. This cost estimate is for onsite management of waste and contamination. These activities will include:

- Groundwater monitoring, recovery, treatment, and installation of a slurry wall;
- Design and construction of an additional waste management cell;
- Additional asphalt paving to prevent exposure;
- Operation and maintenance of the engineered measures; and,
- Demolition of onsite structures including both bridges and installation of an access control fence.

I hope this information is helpful to you. If you have any questions or need further assistance, please contact me at (512) 239-3900 or Dan Eden, Deputy Director of the Office of Permitting, Remediation and Registration, at (512) 239-2104.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark R. Vickery".

Mark R. Vickery, P.G.
Executive Director



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and Closure - Chair

Senator Eliot Shapleigh
District 29

August 19, 2008

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Mr. Mark Vickery
Executive Director
Texas Commission on Environmental Quality, MC 109
Post Office Box 13087
Austin, Texas 78711

VIA UNITED STATES MAIL

Re: ASARCO in El Paso - Onsite Remediation

Dear Mr. Vickery:

I write to follow up on your July 22, 2008 letter regarding onsite remediation at the ASARCO El Paso smelter. As you know, remediation paid for through ASARCO's Chapter 11 bankruptcy is El Paso's last clear chance to get 100 years of ASARCO's lead and arsenic cleaned up.

In your July 22 letter, you wrote that TCEQ estimates "a present value cost of \$52,005,186 for onsite remedies at the ASARCO smelter." However, in the draft reorganization plan filed in the U.S. Bankruptcy Court on July 31, the schedule of environmental custodial trust funding cites \$43,800,000 as the remedial cost, plus \$8,200,000 as the administrative cost. See the enclosed pages. I thus ask that you address the following questions:

- Did the figure in your July 22 letter include the administrative costs associated with cleanup? Or is the remedial cost figure cited in the schedule of environmental custodial trust funding thus short over \$8,200,000 when compared to the \$52,005,186 figure cited in your July 22 letter?
- I am curious as to how you reached the estimated cost of \$52,005,186 for onsite remedies at the ASARCO smelter. What supporting information do you have for that figure?
- Has TCEQ determined whether there is a vendor that is willing and able to completely clean up the ASARCO smelter site for \$52,005,186?



Mr. Mark Vickery
August 19, 2008
Page 2

- Who is the responsible party, both at TCEQ and the Office of Attorney General, for determining the cost estimate for onsite cleanup and ensuring that level of funding is secured through the reorganization plan?
- In your July 22 letter, you state that TCEQ will oversee the onsite cleanup and the remediation will be subject to the Resource Conservation and Recovery Act (RCRA) and the Texas Risk Reduction Program (TRRP) rules. Can we thus assume that TCEQ is the responsible party for ensuring that the remediation will be done to the appropriate standards set out in RCRA and the TRRP rules?
- If the actual remediation costs more than the level of funding secured in the final reorganization plan, where will the additional funding come from? I assume, of course, that TCEQ would not allow the site to be only partially remediated.

Due to the numerous deadlines involved with the ongoing bankruptcy case, I ask that you that you respond within 10 days of your receipt of this letter. I look forward to your written response and visiting further with you on this important issue.

Very truly yours,



Eliot Shapleigh

ES/de

CC: Mr. Dan Eden

Enclosed: *In re: ASARCO, LLC, et al.*, Case No. 05-21207, Joint Plan of Reorganization for the Debtors Under Chapter 11, Exhibit 10 (U.S. Bankruptcy Court, S.D. Texas, July 31, 2008).

PLAN EXHIBIT 10

**LIST OF DESIGNATED PROPERTIES TO BE TRANSFERRED TO
ENVIRONMENTAL CUSTODIAL TRUSTS AND SCHEDULE
OF ENVIRONMENTAL CUSTODIAL TRUST FUNDING**

CUSTODIAL TRUST PROPERTIES & FUNDING			
Site	Remedial Cost	Administrative Cost**	Total
Montana Custodial Trust			
East Helena, MT	\$ 100,000,000		
Black Pine, MT	\$ 17,500,000		
Mike Horse, MT	\$ 10,000,000		
Iron Mountain, MT	\$ 1,900,000		
<i>Trust Subtotal</i>	<i>\$ 129,400,000</i>	<i>\$ 8,900,000</i>	<i>\$ 138,300,000</i>
Texas Custodial Trust			
El Paso Smelter, TX	\$ 43,800,000		
Amarillo, TX	\$ 80,000		
<i>Trust Subtotal</i>	<i>\$ 43,880,000</i>	<i>\$ 8,200,000</i>	<i>\$ 52,080,000</i>
Other Custodial Trust			
Sacaton, AZ	\$ 20,000,000		
Globe, CO	\$ 16,000,000		
[Perth Amboy, NJ]*	\$ 10,000,000		
Alton, IL	\$ 7,000,000		
Taylor Springs, IL	\$ 4,500,000		
Silverton, CO	\$ 4,000,000		
Trench/Salero, AZ	\$ 2,825,000		
Murray, UT	\$ 2,430,000		
Magdalena, NM	\$ 1,340,000		
Whiting, IN	\$ 1,200,000		
Beckmeyer, IL	\$ 200,000		
McFarland, WA	\$ 200,000		
Ragland, AL	\$ 200,000		
Van Buren, AR	\$ 200,000		
[Sand Springs, OK]	\$ 130,000		
Deming, NM	\$ 120,493		
Columbus/Blue Tee, OH	\$ 100,000		
Gold Hill/Belshazzar, UT	\$ 100,000		
<i>Trust Subtotal</i>	<i>\$ 70,545,493</i>	<i>\$ 12,900,000</i>	<i>\$ 83,445,493</i>
Total Costs	\$ 243,825,493	\$ 30,000,000	\$ 273,825,493

* Governments have not agreed to inclusion of Perth Amboy in the Custodial Trust

** Amount of Administrative Costs is subject to ASARCO Board approval

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 29, 2008

The Honorable Eliot Shapleigh
Texas Senate
P.O. Box 12068
Austin, Texas 78711-2068

RECEIVED
~~Senator Eliot Shapleigh~~, Capitol Office

SEP 03 2008

Re: ASARCO in El Paso – Onsite Remediation

Staff Assigned: _____
Action: _____

Dear Senator Shapleigh:

Thank you for your letter dated August 19, 2008, regarding the ASARCO El Paso smelter. The Texas Commission on Environmental Quality (TCEQ) appreciates your concerns related to the closure and remediation of this site. I hope you will find the following responses to your questions helpful.

- Did the figure in your July 22 letter include the administrative costs associated with cleanup? Or is the remedial cost figure cited in the schedule of environmental custodial trust funding thus short over \$8,200,000 when compared to the \$52,005,186 figure cited in your July 22 letter?

The \$52,005,186 figure cited in our July 22, 2008 letter does include administrative costs.

- I am curious as to how you reached the estimated cost of \$52,005,186 for onsite remedies at the ASARCO smelter. What supporting information do you have for that figure?

To arrive at the estimated costs, the TCEQ first considered the corrective actions ASARCO was required to perform as an operating facility. Then, we assessed what actions would be required to protect human health and the environment if the facility was permanently shut down. (For example, demolition of the existing structures and removal of any contaminated soil that was beneath the structures.) Finally, we looked at a wide variety of sources to develop defensible and reliable cost estimates for completion of these activities. These sources include cost data from existing TCEQ remediation contracts, ASARCO reports, and databases from the Texas Department of Transportation and the Federal Remediation Technologies Roundtable. Enclosed is a spreadsheet of the specific tasks with associated estimated costs for addressing the facility.

- Has TCEQ determined whether there is a vendor that is willing and able to completely clean up the ASARCO smelter site for \$52,005,186?

The TCEQ has not solicited vendors for remediation of the facility. The selection of the vendor will be made by the trustee for the environmental custodial trust. However, we have confidence that the tasks specified on the enclosed spreadsheet can be completed within the estimated \$52,005,186.

- Who is the responsible party, both at TCEQ and the Office of Attorney General, for determining the cost estimate for onsite cleanup and ensuring that level of funding is secured through the reorganization plan?

The Remediation Division of the TCEQ was responsible for preparing the engineering cost estimate for ASARCO - El Paso. The TCEQ is represented by the Bankruptcy and Collections Division of the Office of Attorney General in the ASARCO Bankruptcy proceedings.

- In your July 22 letter, you state that TCEQ will oversee the onsite cleanup and the remediation will be subject to the Resource Conservation and Recovery Act (RCRA) and the Texas Risk Reduction Program (TRRP) rules. Can we thus assume that TCEQ is the responsible party for ensuring that the remediation will be done to the appropriate standards set out in RCRA and the TRRP rules?

While the trustee will also have direct responsibility for ensuring compliance, the TCEQ is the oversight agency that will ensure the remediation is done to the appropriate standards.

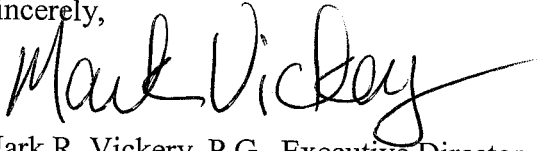
- If the actual remediation costs more than the level of funding secured in the final reorganization plan, where will the additional funding come from? I assume, of course, that TCEQ would not allow the site to be only partially remediated.

The TCEQ is confident in the estimated cost for addressing remediation of the site. However, the TCEQ will not allow the site to be partially remediated. If additional funds are needed, the TCEQ will pursue funding from its State Superfund Program.

The Honorable Eliot Shapleigh
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Please be assured that, in keeping with the agency's mission statement, we strive to protect El Paso's human health and natural resources. If you have any questions concerning this matter, please contact me or Carlos Rubinstein at (512) 239-3900.

Sincerely,

A handwritten signature in black ink that reads "Mark Vickery". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right.

Mark R. Vickery, P.G., Executive Director
Texas Commission on Environmental Quality

Enclosure

Asarco El Paso Smelter - Cost Estimate Waste Management [Present Value Calculation]
Sitewide Evaluation - June 2008
El Paso, Texas

	Quantities	units	Unit Price	Total
Demolition of Structures [One time]				
Demolition of Structures (steel)	264,141	sq. ft.	\$11	\$2,905,551
Demolition of Structures (Brick and concrete)	191,157	sq. ft.	\$17.50	\$3,345,248
Demolition of Structures (Wood railroad trestle)	40,025	sq. ft.	\$40	\$1,601,000
Demolition of Structures (I-10 Bridge and Slag bridge)	17,625	sq. ft.	\$16	\$282,000
Demolition of two Smokestacks	1	Lump Sum	\$750,000	\$750,000
Subtotal of demolition of structure				\$8,883,799
Groundwater [construction and 50 years operation]				
Construction [One time]				
Slurry Wall (Bentonite soil mix, 3 feet wide) Design and installation	3,000	feet	\$590	\$1,770,000
Additional Extraction Wells will use existing wells whenever possible	50	well	\$4,500	\$225,000
Injection Well (800 foot injection well for discharge of treated groundwater)	1	well	\$100,000	\$100,000
Design and Construction of Groundwater Treatment system	1	system	\$5,000,000	\$5,000,000
Subtotal of Groundwater construction				\$7,095,000
Continuous operation [Present value of 50 years annuity factor of 25.72976]				
Operation and Maintenance	25.72976	Annual Cost	\$563,600	\$14,501,293
Monitor Well Plugging and Abandonment [One time charge 50 years later, using Present Value factor of 0.22811]	0.22811	Lump Sum	\$64,800	\$14,782
Semi-annual groundwater reports (2 reports per year @ \$5000 per report)	25.72976	Annual Cost	\$10,000	\$257,298
Subtotal of Groundwater operation				\$14,773,372
Subtotal of Groundwater construction and operation				\$21,868,372
Asphalt Paving to manage exposure [One time]				
Acres left to be paved from May 20, 2005 Corrective Action Directive letter Northern Section of Smelter	16	acres	\$130,000	\$2,080,000
Former Building and Process footprint	8	acres	\$130,000	\$975,000
Subtotal of asphalt paving	52	acres	\$130,000	\$6,760,000
Subtotal of asphalt paving				\$9,815,000
Fencing to control access in Northern Section of the Smelter [One time]				
	2800	feet	\$25	\$68,628
Engineering Design and Construction of Disposal unit Cell 4 [One time]				
Engineer and Construction of Cell 4 for disposal of:				
Minus 50 Slag waste pile (255,111 cubic yds)	1	Cell	\$4,000,000	\$4,000,000
Abrasive Blasting Area (1,111 cubic yds.)				
Soil underneath Process area (20,000 cubic yds Estimated)				
Category I soils from May 5, 2005 letter (25,000 cubic yds Estimated)				
Excavation and Disposal of material in Cell 4 [One time]	303,000	cubic yds.	\$6	\$1,818,000
Verification of Waste Excavation of materials to Cell 4	100	soil samples	\$250	\$25,000
Completion Report	1	report	\$5,000	\$5,000
Subtotal of design and construction of disposal unit cell 4				\$5,838,000
Long term monitoring of engineering control and groundwater [Present Value of 400 years annuity factor of 33.333]				
Annual site inspection report is covered under the groundwater report for the first 50 years	0	reports	\$0	\$0
Monitoring and Sampling (Management of Waste) 30 wells biannual (\$150 per sample)	33.333	Annual Cost	\$9,000	\$299,997
TCEQ Oversight	33.333	Annual Cost	\$11,024	\$367,463
TCEQ travel (once a year)	33.333	Annual Cost	\$1,000	\$33,333
Annual site inspection report [Present Value of 350 years annuity factor of 33.332]	33.332	Annual Cost	\$5,000	\$166,660
General repairs per year (Fence and Asphalt Cap)	33.333	Annual Cost	\$32,500	\$1,083,323
Assume 1% of fence is required repair [1300 lf x \$25 LF]	33.333	Annual Cost	\$40,000	\$1,333,320
Assume 0.5% of 98 Acres asphalt cover is required repair [\$2.00/sf x 20,000 SF]				
Subtotal of long term monitoring				\$3,284,095
SUBTOTAL FOR WASTE MANAGEMENT				
				\$49,767,893
Trustee Management				
Fee for one time charge	1	Lump Sum	\$1,253,907	\$1,253,907.00
Fee for 50 years groundwater operation	25.72976	Annual Cost	\$28,680	\$737,929.52
Fee for 350 yrs Long term monitoring	33.332	Annual Cost	\$7,364	\$245,456.85
Subtotal of Trustee Management Fee				\$2,237,293.00
TOTAL FOR WASTE MANAGEMENT AND TRUSTEE COSTS				
				\$52,005,186.00