



The Senate of the State of Texas

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Senator Eliot Shapleigh
District 29

May 12, 2006

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Mr. Glenn Shankle
Executive Director
Texas Commission on Environmental Quality
Post Office Box 13087
Austin, Texas 78711

VIA UNITED STATES MAIL

Re: Investigation by Executive Director of Texas Commission on Environmental Quality for
Application by ASARCO, Inc., to Renew Air Quality Permit No. 20345

Dear Mr. Shankle:

Recently, I was copied on a troubling letter that you sent to Lairy Johnson of ASARCO in regard to the investigation you are required to conduct under the Commission's March 10, 2006 Interim Order.

In the letter, you indicated that the required investigation "exceeds the scope of the agency's normal permit renewal process and will require resources beyond those appropriated to the agency for that process ..." As a result, you stated that you must require additional information from ASARCO. In order to obtain that information, you are requiring "that ASARCO retain one or more qualified independent third parties to perform" three tasks, including 1) a modeler to audit all modeling performed by ASARCO; 2) a process engineer to determine the condition and effectiveness of all air quality control equipment; and 3) a process engineer to review air quality control equipment in comparison with ASARCO's existing air permit.

Allowing ASARCO to select the investigating third parties presents a blatant conflict of interest that will only serve to harm El Paso and the surrounding areas.

Despite the fact that you will require ASARCO to submit their proposed third party selections and accompanying contracts to your office for approval, ASARCO will no doubt have their own interests in mind when selecting potential third parties. Indeed, ASARCO should have no role in determining who will conduct the investigation required by the Interim Order.



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Thus, I am asking that you, not ASARCO, select and make arrangements with objective, independent third parties. The task of selecting and hiring investigators must not be left up to the party being investigated. In fact, your own letter states that it would be "a preferable and more expeditious approach" to have the Executive Director (ED) select and hire the third parties, then allow ASARCO reimburse the ED for these expenses. This should have been the only approach your office considered.

TCEQ must stand up for the rights of all Texans. By allowing ASARCO to influence the investigation into their air permit renewal, your agency sides with the company at the expense of citizens.

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,

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: Governor Rick Perry; Lieutenant Governor David Dewhurst; Mayor John Cook

SG\Environmental Quality, Texas Commission on\ShankleG ASARCO Investigation.doc