



The Senate of the State of Texas

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Health and Human Services
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and Closure - Chair

Senator Eliot Shapleigh
District 29

February 23, 2009

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The Honorable Frank Lautenberg
Chairman
Subcommittee on Superfund, Toxics and Environmental Health
Hart Senate Office Building, Suite 324
Washington, DC 20510

The Honorable Edward Markey
Chairman
Subcommittee on Energy and Environment
2108 Rayburn House Office Building
Washington, DC 20510

VIA UNITED STATES MAIL, FACSIMILE, AND E-MAIL

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

Dear Chairmen Lautenberg and Markey:

I write regarding a matter of immediate and grave concern to my community of El Paso, Texas. In short, a century-old polluter is attempting to shed \$250 million of onsite cleanup costs with a remediation plan developed by a Bush-era Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), and the polluter itself. What happens here matters across the country, as it will set a precedent for polluters regarding their ability to shed environmental liabilities through the bankruptcy process.

We have just 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. This claim was negotiated based on Bush-era values that polluting companies should win, not communities; that profits be maximized, not the public good.

For numerous reasons outlined below, those cost estimates fall far short of the true cost of onsite cleanup, which EPA officials have previously estimated at \$250 million. Without your urgent and direct assistance, my community's future will be determined without ever having had



the chance to deliberate. We are asking you to intervene on our behalf, delay the filing of the cleanup settlement claim, have the EPA renegotiate a fair deal, and conduct an oversight hearing in El Paso.

By way of history, ASARCO operated a lead and copper smelter in the middle of my community for over a century. After shuttering the smelter in 1999, declaring bankruptcy in 2005, and putting El Paso through a seven year air permit renewal battle, the company announced in early February that it was ending all attempts to reopen the smelter. We are now faced with cleaning up over a century of arsenic, lead, cadmium, mercury, and other heavy metals. Millions of gallons of ASARCO's arsenic have created a large plume of toxic water in aquifers right near the Rio Grande. ASARCO's bankruptcy estate is our last chance at remediation not paid out of taxpayers' pockets.

TCEQ, the Bush-era EPA represented by the Department of Justice (DOJ), and ASARCO, however, have privately reached a \$52 million settlement figure that falls far short of true remediation. Enclosed for your review is the TCEQ cleanup plan that reflects that deal.

First, the plan simply paves over ASARCO's 100 acre facility, leaving our community with a limited set of options for re-use. TCEQ justified doing the least possible by stating that their intention is simply to return the land to a state suitable for its "present use" - i.e., industrial. This ties El Paso's hands in terms of how the property may be used in the future. Why should our community have to settle for 100 acres of capped asphalt that is sitting on top of millions of gallons of arsenic-laden water and tons of lead, ringed by monitoring wells, and containing a permanent 500' x 500' x 33' crypt for toxic waste?

Second, the plan fails to address approximately 250 acres of contaminated ASARCO-owned land east of the 100 acre smelter site. 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. While TCEQ may argue that their plan's slurry wall and extraction wells are aimed at containing any contaminated groundwater from migrating into our community's drinking water, we cannot settle for anything less than a full cleanup.

Third, the plan fails to address the hundreds of homes all across El Paso where ASARCO slag was used as fertilizer on home lawns. For years, an El Paso-based fertilizer company, Ionate, sold a fertilizer that was used on lawns across our community. 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. 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?

We need your help. We ask that you contact the DOJ to have them review and revise their plan, the related cost estimate, and TCEQ's related proofs of claim. If nothing else, we need the DOJ to delay filing their claim with ASARCO's bankruptcy court until our community is given a chance to voice its concerns and participate in the negotiations. It is our understanding that the DOJ attorney overseeing the matter is Mr. Alan Tennenbaum of Washington, D.C., and the EPA attorney is Ms. Terry Sykes of Dallas. At TCEQ, the key parties are Mr. Carlos Rubenstein and Ms. Caroline Sweeney.

Additionally, we ask you to hold an investigative field hearing on the serious problems surrounding the cleanup of the ASARCO plant and other affected sites in El Paso, Texas, Anapra, New Mexico, and Sunland Park, New Mexico.

We will be contacting the new EPA administrator to determine their authority to review and revise independently the cleanup cost estimate. After all, we are far overdue for an environmental agency that fights for our needs, not ASARCO's.

We greatly appreciate your past records on environmental protection and hope and trust that you will assist our community in our time of need. We would be happy to provide any further information that you or your subcommittee 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.

I look forward to your response.

Very truly yours,



Eliot Shapleigh

ES/de

Enclosed: *ASARCO in El Paso*
"Estimation of Costs to Perform Cleanup at the ASARCO El Paso Smelter,"
TCEQ

CC: The Honorable Silvestre Reyes
The Honorable Ciro Rodriguez
The Honorable Bill Richardson
The Honorable Jesus Reyes Baeza
The Honorable John Cook
The Honorable José Reyes Ferriz
The Honorable Martin Resendiz
Ms. Lisa Jackson
Mr. Larry Starfield
Mr. William Luthans