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RON CURRY
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April 8, 2008

Mayor Richard Greene
Regional Administrator (6-A)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Dear Mayor Greene:

I am writing this letter to ask for the U.S. Environmental Protection Agency's (EPA) assistance to remedy substantial failings in the permitting process conducted by the Texas Commission on Environmental Quality (TCEQ) for the Asarco, Inc. smelter in El Paso, Texas. I have serious concerns about the environmental harm and public health impacts that may occur with the reactivation of the Asarco plant, especially in Doña Ana County, New Mexico. Those concerns are exacerbated by the poor environmental track record of Asarco nationally, as well as the bankrupt status of the company.

The New Mexico Environment Department (NMED) has voiced technical concerns about the permit renewal for Asarco for several years, which TCEQ has failed to address. TCEQ has also essentially ignored extensive and detailed comments and pleadings by the City of El Paso, numerous citizens' comments, and even the decision of Administrative Law Judges with Texas' State Office of Administrative Hearings. With a shared airshed between Texas and New Mexico that has historical problems with air pollution and soil contamination issues, the Asarco permit renewal by TCEQ has interstate implications that justify the use of EPA's oversight authority.

One of the major technical concerns raised by NMED is TCEQ's refusal to provide a timely analysis of whether Prevention of Significant Deterioration (PSD) requirements should apply to the facility due to the extended period of shutdown. Under well established EPA policy, a facility shutdown of more than two years gives rise to the presumption that the cessation of operations was intended to be permanent, meaning that a restart of the facility would trigger PSD requirements. NMED and other Asarco opponents have on several occasions called on TCEQ to provide an analysis to the public regarding whether PSD should apply but TCEQ has consistently refused to do so.

TCEQ's rationale for not addressing PSD applicability during the permit renewal process is unreasonable. TCEQ Executive Director Shankle, in his response to comments on this issue, apparently argued that (1) because PSD is a federal requirement, it is not appropriate for consideration in renewing a state permit, and (2) consideration of PSD applicability is not ripe until the facility is on the verge of actually restarting operations. The first position is contradicted by Texas regulations that explicitly make federal

requirements part of the permit renewal. See 30 TAC 116.311(b). The second position makes a mockery of the PSD review: By waiting until the facility is within 90 days of restarting, TCEQ would deny itself a meaningful opportunity to determine PSD applicability and to make a Best Available Control Technology (BACT) determination in time for implementation before start-up.

In addition to the failure to consider PSD applicability, other concerns with the permit we have raised include but are not limited to:

- Lack of sufficient testing, monitoring, and recordkeeping requirements in the permit.
- Lack of specific protocols for evaluation of control system readiness.
- Inadequate air quality modeling.
- Failure to use Sunland Park monitoring data in evaluating the modeling output.
- Failure to address Asarco's poor compliance history, including allegations of illegal incineration of hazardous wastes.

Please see attachments 1 – 4 for more details regarding those concerns. In summary, as the permit stands, the reactivation of the Asarco plant may threaten public health and interfere with our efforts to achieve cleaner air quality for the citizens who live in the Paso del Norte airshed.

Therefore, I urge EPA Region 6 to use all available authority under the Clean Air Act to either assist in the revocation of Asarco's air quality permit or to ensure that TCEQ gives proper consideration to all state and federal requirements, including PSD requirements. Such authority includes but is not limited to the authority given to the EPA by CAA §113(a) (5) to prohibit construction or modification of sources in violation of new source review requirements.

I look forward to working with EPA Region 6 to protect and improve air quality and the environment in the Paso del Norte airshed. If you have any questions regarding NMED's efforts with respect to the renewal of Asarco's air quality permit, please feel free to contact Mary Uhl of my staff at (505) 476-4301 or by e-mail at mary.uhl@state.nm.us.

Sincerely,

Ron Curry, Secretary
New Mexico Environment Department

Enclosures