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For Immediate Release

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Environment Secretary Issues Statement on EPA's New Lead Standard Related to Reopening of Asarco Copper Smelter in El Paso

(Santa Fe, NM) – New Mexico Environment Department Secretary Ron Curry issued the following statement today on the U.S. Environmental Protection Agency's new lead standard and its bearing on future lead emissions from the Asarco Inc. copper smelter in El Paso:

"EPA's new lead standard is yet another reason that Texas and federal regulators must take a harder look at the plans to reopen the Asarco smelter in El Paso," said New Mexico Environment Secretary Ron Curry. "This tough new lead standard should trigger a far more intensive look at potential lead emissions from this facility. Lead is especially dangerous to children and has been a clean up issue in the surrounding Texas and New Mexico communities in the past. I will request that environmental regulators complete the needed reviews and modeling so that we know the proper controls will be in place before the Asarco smelter ever reopens."

Asarco's lead modeling for its air quality permit renewal application shows the company will exceed the new standard.

Secretary Curry previously sent a letter to the U.S. Environmental Protection Agency Administrator requesting his assistance with the State of Texas' failure to properly implement a program that protects air quality and has a direct impact on New Mexico.

Secretary Curry sent the letter (see below) to Administrator Stephen L. Johnson in support of the recently submitted petition by Environmental Defense Fund and Sierra Club requesting that EPA take action in addressing Texas' failure to properly implement the Prevention of Significant Deterioration (PSD) program under the Clean Air Act. The department recently voiced concerns about the Texas Commission on Environmental Quality's failure to address PSD requirements for the air quality permit for the Asarco Inc. Copper Smelter in El Paso.

TCEQ in February held a hearing and granted an air quality permit for the Asarco smelter. Secretary Curry voiced New Mexico's opposition for the permit at the hearing. The department's interest in Texas's PSD

program originated with the state's concern over the proposed restart of the Asarco smelter, a facility that historically has caused severe environmental degradation in the Sunland Park, N.M. area.

The state has long objected to TCEQ's failure to analyze whether PSD requirements are applicable due to the extended shut-down of the facility, the letter states. "In that regard, we greatly appreciate the letter of April 9, 2008, from EPA Region 6 raising this issue to TCEQ. However, as the information presented in the Petition clearly indicates, even if the TCEQ determines a PSD permit is required, there is little basis for confidence that the federal requirements of the PSD program will actually be met."

PSD is designed to prevent relatively clean air from deteriorating.

Secretary Curry, who learned of the petition from Texas Sen. Elliot Shapleigh, has said the department will do everything possible to ensure the smelter does not negatively impact air quality in New Mexico.

For more information, call NMED Communications Director Marissa Stone at (505) 827-0314 or (505) 231-0475.

Secretary Curry's Letter to Administrator Johnson:

May 23, 2008

Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

The New Mexico Environment Department (NMED) has recently learned of a petition submitted by Environmental Defense Fund and the Sierra Club, requesting that EPA take certain actions to address the State of Texas's failure to properly implement a Prevention of Significant Deterioration (PSD) program under the Clean Air Act.^[1] NMED has long been concerned with the potential for adverse effects in New Mexico from inadequately regulated air pollution sources across our border with Texas. Therefore, I write today to urge the EPA to grant the petition and provide the relief requested.

Our interest in Texas's PSD program originated with our concern over the proposed re-start of the Asarco smelter in El Paso, a facility that historically has caused severe environmental degradation in the Sunland Park, New Mexico area. We have long objected to the Texas Commission of Environmental Quality's (TCEQ) failure to analyze whether PSD requirements are applicable due to the extended shut-down of the facility. In that regard, we appreciate the letter of April 9, 2008, from EPA Region 6 raising this issue to TCEQ.^[2] However, as the information presented in the Petition clearly indicates, even if the TCEQ

determines a PSD permit is required, there is little basis for confidence that the federal requirements of the PSD program will actually be met.

Specifically, the definition of Best Available Control Technology used by TCEQ (without federal approval and in violation of the Clean Air Act) does not provide adequate definition. Its use of the nebulous concept of “economic reasonableness,” without the additional parameters and minimum requirements contained in the federal definition, significantly compromises one of the most important requirements of the PSD program. Moreover, as explained well in the Petition, TCEQ’s use of a “Three Tiered” policy for BACT determinations eliminates the technology-forcing element of the BACT requirement that Congress intended.

NMED is equally concerned with TCEQ’s apparent practice, as described in the petition, of simply eliminating permit conditions (such as heat input limitations) that prove difficult for the permittee to meet. In light of TCEQ’s lax definition of BACT and its unwillingness to enforce permit conditions, we have no confidence that TCEQ’s PSD program will protect human health and the environment in New Mexico when sources subject to PSD are located in Texas near our border. This concern is not limited to the proposed Asarco re-start, but applies equally to future development of new sources and modification to existing sources. For example, the TCEQ draft of a PSD permit for El Paso Electric Company’s El Paso County plant failed to document BACT determinations for the emissions of NO_x, SO₂, PM and CO. The draft permit contained no BACT emission rates for VOC, PM and SO₂. Several key PSD permit analyses appear to be missing from the permit documentation, including a BACT analysis for startup, shutdown and maintenance emissions, an ozone analysis and a visibility analysis. All are required elements of a PSD permit analysis.

Finally, by failing to meet federal requirements for PSD permits, TCEQ also fails to maintain a level economic playing field with neighboring states. One of the critical features of the system of cooperative federalism embodied in the Clean Air Act is that it prevents a “race to the bottom” among states in regulatory stringency, in order to attract economic development. New Mexico industries should not be put at an economic disadvantage as a result of TCEQ’s actions in this matter.

Therefore, for the foregoing reasons as well as the other reasons elaborated in the Petition, I urge you to use your authority under Clean Air Act § 113(a)(5) to prohibit construction or modification of major sources in Texas until the deficiencies are corrected, and your authority under § 179(b) to impose sanctions upon the State in order to bring about that reform.

Sincerely,

Ron Curry
New Mexico Environment Department Secretary

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