

November, 4, 2008

Mr. Mark Vickery
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Dear Mr. Vickery:

As you know, on several occasions over the past three years, the New Mexico Environment Department (NMED) has expressed opposition to the proposed re-start of the Asarco Smelter in El Paso, immediately adjacent to the community of Sunland Park, New Mexico. We have raised concerns regarding the Texas Commission on Environmental Quality's (TCEQ) failure to properly consider the applicability of requirements under the Prevention of Significant Deterioration provisions of the Clean Air Act; TCEQ's refusal to accept the decision of Texas Administrative Law Judges that Asarco's poor compliance history did not warrant permit renewal, and numerous other shortcomings in the permitting process. At the heart of all of our comments is the desire to prevent further adverse impacts in the Sunland Park community, which has already suffered from extensive and well documented deposition of lead and other heavy metals from the Asarco smelter.

The Department continues to believe that the issues we have raised have not been satisfactorily addressed by TCEQ. In addition, I write today to urge TCEQ to take appropriate measures to ensure compliance with the newly revised National Ambient Air Quality Standard (NAAQS) for lead, promulgated by the U.S. Environmental Protection Agency (EPA) on October 15, 2008.

Specifically, the EPA has strengthened the standard by a factor of 10, from $1.5 \mu\text{g}/\text{m}^3$ to $0.15 \mu\text{g}/\text{m}^3$. In explaining this revision, the EPA states:

Scientific evidence about lead and health has expanded dramatically since EPA issued the initial standard of $1.5 \mu\text{g}/\text{m}^3$ in 1978. More than 6,000 new studies on lead health effects, environmental effects and lead in the air have been published since 1990. Evidence from health studies shows that adverse effects occur at much lower levels of lead in blood than previously thought.

In light of this revised standard, NMED is deeply concerned by the fact that the air quality dispersion modeling conducted in the course of the Asarco permit renewal application predicts a maximum impact of $0.20 \mu\text{g}/\text{m}^3$ – exceeding the new standard by 33%. Therefore we urge TCEQ to re-evaluate the permit application for compliance with the new standard.

Such consideration is provided for under TCEQ's rules. Paragraph (b) of TCAA § 116.311 provides that “if the commission determines it necessary to avoid a condition of air pollution¹ . . . the applicant may be required to submit additional information regarding the emissions from the facility and their impacts on the surrounding area.”

Moreover, Permit 20345 issued to the Asarco facility on March 27, 2008 provides at condition 14: “Emissions from this facility must not cause or contribute to a condition of ‘air pollution’ as defined in TCAA § 382.003(3) or violate TCAA § 382.085, as codified in the Texas Health and Safety Code. If the executive director determines that such a condition or violation occurs, the holder shall implement additional abatement measures as necessary to control or prevent the condition or violation.”

Thus, irrespective of where things stand in the permitting process, TCEQ has the authority and responsibility to ensure that the new lead NAAQS will not be violated. I urge TCEQ to take an assertive stance on this issue, in order to prevent any additional harm to our respective communities.

The effects of lead pollution are especially pernicious. Children are particularly vulnerable because lead affects the development of the nervous system including the brain. As EPA explains, this “can lead to loss of IQ, poor academic achievement, permanent learning disabilities, and delinquent behavior. The effects can generally persist into early adulthood and *can affect lifetime education and achievement.*” (Fact Sheet, Final Revisions to the National Ambient Air Quality Standards for Lead) (emphasis added). Thus lead pollution can prevent individuals from reaching their full human potential and cause destructive behavior with additional impacts that ripple through society. NMED is determined to protect New Mexicans from this needless tragedy and will continue to explore every means to do so.

Sincerely,

Ron Curry
NMED Secretary

¹ TCAA § 382.003(3) defines “air pollution as “the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that: (A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property.” Under this definition, a violation of a National Ambient Air Quality Standard is clearly a condition of air pollution.

CC: Thomas Diggs
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