

SOAH DOCKET NO. 582-05-0593
TCEQ DOCKET NO. 2004-0049-AIR

APPLICATION OF ASARCO
INCORPORATED TO RENEW AIR
QUALITY PERMIT NO. 20345

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

EXECUTIVE DIRECTOR INTERIM REPORT AND REQUEST FOR EXTENSION

TO THE HONORABLE GENERAL COUNSEL OF THE COMMISSION:

COMES NOW, the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission), by and through a representative of the Environmental Law Division, and files this his Interim Report and Request for Extension in the above-referenced matter. In support thereof, the Executive Director would show the following:

1. By Interim Order dated March 10, 2006 (Order), the Commission ordered ASARCO (Applicant) to "submit additional information regarding all emissions from and related to the El Paso Plant and their impacts on surrounding areas, including current modeling results...." March 10, 2006 Interim Order, Ordering Provision No. 2.
2. Ordering Provision No. 3 of the March 10, 2006 Interim Order also directed the Executive Director to conduct a vigorous investigation of all air quality control equipment at the El Paso Plant, including related practices, and based on that investigation and the results of the information submitted in accordance with Paragraph No. 1 above, prepare his recommended Report and any related Schedule as required by TEX. HEALTH & SAFETY CODE § 382.055(f), which shall include his written assessment of the sufficiency of existing plant control equipment and practices (Report). This Ordering Provision also directed the ED to assess the appropriateness of a permit amendment application rather than a renewal application for equipment that has not been previously authorized or that requires repair or replacement.
3. In his May 5, 2006 correspondence to the Applicant, the ED announced his determinations with respect to the following:

- a. The investigation required to comply with the Order exceeds the scope of the normal permit renewal process;
 - b. The investigation required to comply with the Order will require resources beyond those appropriated to the Agency for the permit renewal process; and
 - c. The ED must require additional information from ASARCO to complete the Report required by the Order.
4. For these reasons, the Executive Director required ASARCO to retain by contract one or more qualified independent third parties to perform the following tasks:
- a. Perform an audit of all modeling performed by ASARCO pursuant to the modeling protocol;
 - b. Determine the condition and effectiveness of all air quality control equipment and related practices pursuant to Ordering Provision 3 of the Order;
 - c. Review all air quality control equipment in comparison with ASARCO's existing air quality permit No. 20345; and
 - d. Review and determine whether the Copper Smelter will operate within industry standards and practices.
5. By correspondence dated May 5, 2006, the Executive Director provided ASARCO the option of either reimbursing the TCEQ for expenditures on such contract described in Paragraph 4 or contracting with third parties. In the latter event, the May 5, 2006 letter required that all direction to the contractors and all communication with the contractors be done jointly by the ED's staff and ASARCO or that ASARCO directs its contractors to follow the direction of the ED and authorize the ED to provide specific direction and handle communications between ASARCO and its contractors. If ASARCO decided to directly procure contractor services, the ED required ASARCO to obtain ED approval of the contractor as well as the contract itself. The ED also provided ASARCO with a modeling protocol. ASARCO subsequently informed the ED of its decision to contract directly with third parties subject to ED direction and oversight.
6. Pursuant to Ordering Provision No. 3, the ED's staff conducted an investigation for those items for which they had resources and expertise. More specifically, the staff conducted site investigations on April 11 and 20, 2006, of all the air quality control equipment and related practices, and assessed the appropriateness of a permit amendment application rather than a

renewal application. That investigation has concluded and a report documenting staff's findings related to the requirements of the Order has been drafted and will be reviewed and provided in the ED's final Report required by Ordering Provision No. 3.

7. Regarding the modeling requirements found in Ordering Provision No. 2, ASARCO advised by letter dated July 18, 2006, they would submit interim modeling during the week of July 24, 2006, and requested a meeting with TCEQ to discuss a variety of issues regarding the modeling. On July 25, 2006, ASARCO submitted an impacts analysis progress report and then met with the ED's staff on August 1, 2006. This report and discussion explained ASARCO's approach to the modeling. Subsequently, ED staff has reviewed ASARCO's modeling submissions and where appropriate required ASARCO to address noted deficiencies in those submissions. ED staff is currently awaiting ASARCO's response to the most recent notice of deficiency.
8. A third party has been selected by ASARCO and approved by the ED to audit the ASARCO modeling, however, the contract authorizing the audit is still under review by ED staff. The third party audit will proceed concurrently with the TCEQ audit.
9. On October 18, 2006, ASARCO submitted to the ED the resume of a consultant ASARCO recommends to conduct the smelter inspection and review. The ED has approved ASARCO's proposed Process Engineer. However, the scope of work for the Process Engineer has not yet been submitted for ED review.
10. As of November 10, 2006, the Executive Director is unable to complete the ED's Final Report required by Ordering Provision No. 3 without the Applicant's submission of the following information required by the Order: acceptable air dispersion modeling; a modeling audit conducted by a third-party and associated report; and the agreed upon scope of work for the Process Engineer.
11. More specifically, as advised in his August 10, 2006 correspondence to ASARCO, the ED found it necessary and advisable in administering the March 10, 2006 Interim Order for ASARCO to acquire the services of a process engineer to determine the effectiveness of existing, out-of-operation control equipment, and the services of a modeler to audit the modeling results, and without that additional information, the ED will not be able to recommend that the Commission move forward with the renewal of ASARCO's permit.
12. While the Order contemplated that the Executive Director would complete his Report, as required by TEX. HEALTH & SAFETY CODE § 382.055(f), on or about November 10, 2006, the considerations and requirements outlined in paragraphs 3 through 10 above to ensure objectivity (specifically, identifying independent third-party experts, securing contracts for

services, the performance of those services, and the completion of any reports) have extended the amount of time necessary for the Executive Director to complete his Report, as required by TEX. HEALTH & SAFETY CODE § 382.055(f).

13. For these reasons, the Executive Director requests an extension to submit his final report required by TEX. HEALTH & SAFETY CODE § 382.055(f) to May 1, 2007.

Respectfully submitted,

Texas Commission on Environmental Quality

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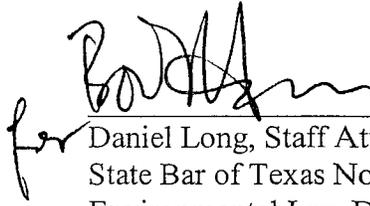
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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2006, a true and correct copy the Executive Director's Interim Report and Request for Extension was sent by first-class mail, agency mail, electronic transmission, or facsimile to all persons on the attached mailing list.


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