

SILVESTRE REYES
16TH DISTRICT, TEXAS

PERMANENT SELECT COMMITTEE
ON INTELLIGENCE
CHAIRMAN

COMMITTEE ON ARMED SERVICES
SUBCOMMITTEE ON STRATEGIC FORCES
SUBCOMMITTEE ON READINESS
SUBCOMMITTEE ON AIR AND LAND FORCES



Congress of the United States
House of Representatives
Washington, DC 20515
June 18, 2007

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H.S. Buddy Garcia
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Texas Commission on Environmental Quality
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Dear Chairman White and Commissioners Soward and Garcia:

I am writing to urge you to follow the recommendations of the Administrative Law Judges presiding over the proceedings of the contested-case hearing concerning the renewal of Air Quality Permit No. 20345 and deny the application by Asarco for renewal of its permit to operate its copper smelter located in my Congressional district of El Paso, Texas.

On April 28, 2004, the Texas Commission on Environmental Quality (TCEQ) referred the question of Asarco's permit renewal to the State Office of Administrative Hearings for a public hearing. The purpose of the hearing was to inform the ultimate decision of TCEQ Commissioners, principally by answering two questions:

1. Would the operation of the facility cause or contribute to a condition of air pollution? and
2. Does the applicant's compliance history for the last five years of the facility's operation warrant renewal of the permit?

From July 11 to July 22, 2005, the Administrative Law Judges met in El Paso to hear evidence on the question of permit renewal. They made two findings:

1. Asarco has not proven that its emissions will not cause or contribute to air pollution, and

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Commissioners' Office

2. Asarco has not proven that its compliance history during the last five years of operation warrants renewal of its permit.

The smelting plant has been part of the El Paso community and economy since 1887; Asarco itself took over operations in 1899. For over a century, the company has provided thousands of good jobs to El Pasoans and pumped millions of dollars into the city.

However, we as a community have examined with great scrutiny the proceedings of the 2005 contested-case hearing, which have shed additional light on Asarco's environmental compliance record. The hearing revealed that the plant emitted many times the amount of certain pollutants than originally permitted. I do not believe that a company that has demonstrated its inability to comply with the rules of its permit should be granted the confidence of the government that it will comply in the future.

In addition, Environmental Protection Agency (EPA) documents recently surfaced revealing that an Asarco subsidiary, Encycle of Corpus Christi, had incorporated over 5000 tons of hazardous waste with virtually no metals value into "products" that were incinerated at Asarco's El Paso and East Helena smelters. Disturbingly, 300 tons of those hazardous materials originated from the former Army chemical warfare depot at the Rocky Mountain Arsenal outside Denver. Encycle had been licensed by the military to dispose of the materials, but the company secretly shipped the materials to Asarco smelters to burn them, avoiding the high-cost of proper disposal. The EPA wrote, "This activity, plain and simple, was illegal treatment and disposal of hazardous waste." Asarco never made an attempt to inform area residents that Encycle practices had led to "unpermitted storage and disposal of RCRA (Resource Conservation and Recovery Act) hazardous waste at the smelters." It is not known specifically what the hazardous waste shipments from Rocky Mountain Arsenal contained.

This failure has prompted an investigation by the Government Accountability Office (GAO), which is ongoing. Once the GAO report is complete, I plan to make it the subject of a hearing in the U.S. House of Representatives Committee on Armed Services. The hearing will examine, in part, Asarco's role in improperly disposing of the military hazardous waste.

El Paso has grown many times over since Asarco opened, and a plant that was originally located on the outskirts of town is now surrounded by communities in Texas, New Mexico, and Mexico. Tens of thousands of people currently live, go to school, shop, and worship just a few miles from the plant's stacks. As you know, the city is now required to follow federal air quality standards, and in the years since Asarco ceased operation, we have achieved attainment of those standards. After the disintegration of the city's manufacturing and apparel sector, El Paso is looking forward to a next-generation economy focusing on high-technology business, military contracting, and clean industry. One central component of achieving such economic growth is making El Paso an attractive place to invest and create jobs. If Asarco were to resume smelting operations, it could imperil our attainment status, a potentially disastrous development for a city seeking to attract new

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business and residents.

Another important consideration to be taken into account is the effect Asarco's operations have had and the potential affect of permit renewal on our neighbors in Mexico. In El Paso, we share our skies with Ciudad Juárez, and just as we work with Mexico to limit their contributions to air pollution, we ought to be cognizant of the effects of our pollution on them. At a recent meeting of the U.S.-Mexico Interparliamentary Group, I was approached by members of the Mexican legislature voicing their opposition to Asarco renewing its smelting operations in El Paso. In addition, as you may know, the city council of Juárez recently joined El Paso's city council in signing a proclamation opposing the permit renewal.

Two separate and distinct mayoral administrations and the current City Council have expressed strong opposition to the permit renewal. Thousands of my constituents have contacted me to express their frustration with the potential of Asarco reopening and urging me to do whatever I could to prevent permit renewal. As you may know, to date I have declined to interject myself in the process governing the renewal of Asarco's El Paso smelting permit. I have felt it important to respect TCEQ's official process for the consideration of permit renewal, anticipating that – given the El Paso smelter's poor compliance history and the broad opposition to renewal – the permit would be denied. However, following the release of report of the TCEQ Executive Director filed on May 1, 2007, I became concerned that the permit would in fact be renewed. At this point, I feel compelled to comment.

El Pasoans broadly oppose the Asarco permit renewal. Our city is poised for progress. Anchored by military base expansion, growth in the health care industry, and the desirability of our environment and quality of life, city leaders have laid the groundwork for the most ambitious campaign for economic expansion and wealth creation El Paso has seen. In my view, the re-opening of a century old copper smelter within our city limits would jeopardize our potential for a new level of prosperity and render hundreds of thousands of El Pasoans cynical about the ability of government to respond to those they represent and serve.

Thank you for your consideration of this most critical issue to the El Paso community. Again, I urge you to consider the widespread opposition to Asarco expressed by El Paso and its residents and reject the smelter's permit renewal application.

Sincerely,


Silvestre Reyes
Member of Congress

CC: Glenn Shankle, Executive Director, TCEQ
Derek Seal, General Counsel, TCEQ