

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** February 19, 2009

**Thru:** David C. Schanbacher, P.E., Chief Engineer *MBB Jan 2-18-09*  
Chief Engineer's Office

**From:** Susana M. Hildebrand, P.E., Director *SH 2.17.09*  
Air Quality Division

**Docket No.:** 2007-1539-SIP

**Subject:** Changes Since February 6, 2009, Back-up  
Regional Haze State Implementation Plan (SIP) Revision  
Regional Haze SIP Submission  
Project No. 2007-016-SIP-NR

In response to two actions, correspondence with ASARCO El Paso and a *Federal Register* notice by the United States Environmental Protection Agency (EPA) regarding the adoption version of the Regional Haze State Implementation Plan (SIP), the following updates have been made to this SIP package since filing back-up on February 6, 2009. Original changes from proposal are in highlight/strikeout format. The changes that have been made to the SIP documents since commissioner pre-filing are shown in highlight/single strikeout format.

## Executive Summary

Page 2, section on "Potentially controversial matters" - This section has been revised to identify changes recommended in response to a notice of finding of failure to submit by the EPA. The first paragraph has been revised to read: "In anticipation of publishing a notice of finding of failure to submit a required SIP, in mid-December 2008 EPA Region 6 staff recommended that Texas submit its SIP revision incorporating CAIR or CAIR replacement. The notice was eventually published January 15, 2009, in the *Federal Register*, starting a 24-month Federal Implementation Plan (FIP) clock and possible subsequent sanctions. This FIP clock can only be stopped by submittal to and full approval by the EPA."

Page 3, section on "Potentially controversial matters" - This section has been revised to identify changes recommended in response to correspondence between ASARCO and the TCEQ. The third paragraph has been deleted and changed to read: "On February 13, 2008, the TCEQ approved the renewal of Air Quality Permit Number 20345 for the American Smelting and Refining Company (ASARCO) El Paso copper smelter. On February 6, 2009, the TCEQ received confirmation from ASARCO LLC that it intends to close the smelter and requests that TCEQ void all air permits and pending applications for the plant. The TCEQ voided these permits and applications on February 9, 2009 (See Appendix 11-4: *ASARCO El Paso*)."

Page 4, under "Agency contacts" - This section was revised by adding current staff and deleting former staff.

## Regional Haze SIP revision:

Page xi, List of Appendices - Appendix 11-4 was added to the list of appendices to include the ASARCO El Paso letter and the TCEQ response to void requested permits.

Page 11-8, Section 11.2.3.1 on "New Mexico" - The following statement was changed in the second paragraph to read: "On February 13, 2008, the TCEQ approved the renewal of Air Quality Permit Number 20345 for the

Re: Docket No. 2007-1539-SIP

American Smelting and Refining Company (ASARCO) El Paso copper smelter. On February 6, 2009, the TCEQ received confirmation from ASARCO LLC that it intends to close the smelter and requests that TCEQ void all air permits and pending applications for the plant. The TCEQ voided these permits and applications on February 9, 2009 (See Appendix 11-4: *ASARCO El Paso*.)”

Appendix 2-2: Public Comments and Responses to SIP

Page 34, section on “Chapter 11: Long-Term Strategy” - The fifth paragraph and response to the EPA comment on ASARCO should be deleted and revised to read: “On February 13, 2008, the TCEQ approved the renewal of Air Quality Permit Number 20345 for the American Smelting and Refining Company (ASARCO) El Paso copper smelter. On February 6, 2009, the TCEQ received confirmation from ASARCO LLC that it intends to close the smelter and requests that TCEQ void all air permits and pending applications for the plant. The TCEQ voided these permits and applications on February 9, 2009 (See Appendix 11-4: *ASARCO El Paso*). The TCEQ will continue to consult with affected states and Federal Land Managers for the next Regional Haze SIP revision.”

Appendix 11-4: ASARCO El Paso

Appendix 11-4 has been added to include:

- 1) The ASARCO February 6, 2009, letter to the TCEQ requesting the agency void two Air Quality Permits, numbers 20345 and 4151, and voidance of two pending applications, renewal of 4151 and Federal Operating Permit 2871.
- 2) The TCEQ’s letter of response on February 9, 2009, voided the two current permits, 20345 and 4151, and the two pending permits, renewal of 4151 and Federal Operating Permit 2871.

cc: Executive Director’s Office  
David C. Schanbacher, P.E.  
Betsy Bird  
Daniel Womack  
Kevin Patteson  
Office of General Counsel  
Margaret Earnest  
John Minter

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** February 6, 2009

**Thru:** LaDonna Castañuela, Chief Clerk  
Mark R. Vickery, P.G., Executive Director

**From:** David C. Schanbacher, P.E., Chief Engineer  
Chief Engineer's Office

**Docket No.:** 2007-1539-SIP

**Subject:** Regional Haze State Implementation Plan (SIP) Revision  
Regional Haze SIP Submission  
Project No. 2007-016-SIP-NR

**Scope of the SIP revision:**

The 1990 Federal Clean Air Act (FCAA) Amendments together with the United States Environmental Protection Agency's (EPA) Regional Haze Rule set the goal of reducing "man-made" impacts on visibility in Class I areas to zero (i.e., to "natural" conditions) by 2064 for the worst 20 percent visibility days and preventing any degradation for the best 20 percent visibility days.

The Central Regional Air Planning Association (CENRAP) and other Regional Air Planning Organizations have cooperated to calculate the base period (2000-2004) worst 20 percent and best 20 percent visibility for each Class I area. CENRAP has developed projections of visibility impairment in 2018, the initial year for which each state's long-term strategy is to be evaluated. The state must reduce its visibility impairment impact at all Class I areas it impacts by as much as is reasonable. The format of this SIP revision follows a prescribed template developed by the CENRAP states.

The TCEQ used a refined estimate of natural conditions for Class I areas in Texas and other states as permitted by EPA guidance. These refined estimates account for natural dust storms, which explain a significant number of impaired days at the Texas Class I areas.

The Clean Air Interstate Rule (CAIR) program was designed to reduce interstate transport of emissions that affect fine particulate matter and ozone. Because these precursor emissions also affect visibility, the CAIR program is also an integral part of reducing regional haze. Following the legislature's statutory direction, the TCEQ adopted CAIR requirements applicable to electric generating units in Texas. Upon several challenges to CAIR, the rule has been remanded back to EPA by a federal appeals court in order for EPA to promulgate a new rule that is consistent with the court's decision, CAIR is still in effect until such time as the new rule is adopted. The TCEQ expects that a replacement program will be in place that makes comparable reductions in pollutants causing regional haze prior to 2018.

The commission has also adopted the requirements of the BART program, which requires certain older sources with a visibility impairment impact on any Class I area to apply BART to the source to reduce its impact on those Class I areas. This SIP revision contains a list of BART-eligible sources and a summary of the results of the BART modeling analyses. The appendix contains reports documenting the modeling results for sources that were potentially BART eligible; the modeling results showed that the visibility impacts of those sources were below the threshold established by EPA and adopted by the TCEQ.

Each state must evaluate and determine if additional emissions reductions are necessary. The statute and EPA rules and guidance set criteria for determining whether additional reductions are reasonable. These criteria are based on the cost of control and other related factors.

Re: Docket No. 2007-1539-SIP

**Reasons for the SIP revision:**

The FCAA and the EPA regulations require states to submit a SIP to make “reasonable progress” in reducing visibility impairment at Federal Class I areas resulting from anthropogenic pollution. FCAA, §169A(a)(1), “declares as a national goal the prevention of any future, and the remedying of any existing impairment of visibility in mandatory Federal Class I areas which impairment results from man-made air pollution.” Class I areas are national parks over 6,000 acres and wilderness areas over 5,000 acres that Congress has recognized as significant sites. These SIPs must “contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal” including requiring installation, operation, and maintenance of Best Available Retrofit Technology (BART), “as determined by the State” on certain existing stationary sources.

The EPA Regional Haze Rule strongly encourages states to work together in regional partnerships to reduce haze. There are five regional planning organizations in the United States. Texas is a member of CENRAP, which includes nine states; Texas, Louisiana, Oklahoma, Arkansas, Kansas, Missouri, Nebraska, Iowa, and Minnesota. The deadline for Texas and states participating in a regional air planning organization to submit their Regional Haze SIP was December 17, 2007. CENRAP provides analysis, modeling results, and informational exchange among states, but each state will submit its own regional haze SIP.

**Statutory Authority:**

Texas Health and Safety Code (THSC), §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.012, State Air Control Plan; FCAA, §110(a)(2)(D)(i)(II), 169A and 169B (42 U.S.C., §§7410(a)(2)(D)(i)(II); 7491 and 7492).

**Potentially controversial matters:**

On July 11, 2008, the Clean Air Interstate Rule (CAIR) was vacated by the DC Circuit Court of Appeals (*State of North Carolina v. U.S. EPA*). CAIR was a major federal rule to reduce emissions from electric generating units and is a significant element of Texas’s planned reductions of both sulfur dioxide and nitrogen oxides from these sources. Upon a motion for rehearing, the appeals court issued a decision December 23, 2008, remanding CAIR to EPA to initiate rulemaking consistent with its opinion, but the court did not vacate CAIR, allowing it to remain in effect until replaced by EPA rule. EPA has also been sued for failing to act on the December 17, 2007, due date for Regional Haze plans. In anticipation of publishing a notice of finding of failure to submit a required SIP, in mid-December 2008 EPA Region 6 staff recommended that Texas submit its SIP revision incorporating CAIR or CAIR replacement. The notice was eventually published January 15, 2009, in the *Federal Register*, starting a 24-month Federal Implementation Plan (FIP) clock and possible subsequent sanctions. This FIP clock can only be stopped by submittal to and full approval by the EPA. If EPA finalizes a new rule to meet the appeals court directive, Texas will need to consider new state rulemaking or implementation of the federal CAIR replacement. ~~An EPA notice of finding of failure to submit is anticipated in January 2009, starting a 24-month Federal Implementation Plan (FIP) clock, and possible subsequent sanctions. In December 2008, the EPA recommended that Texas submit its SIP assuming CAIR or CAIR replacement.~~

~~If EPA issues a finding of failure to submit notice in the *Federal Register* before Texas submits the Regional Haze SIP revision, the FIP clock can only be stopped by full approval by EPA. If the plan revision is submitted prior to EPA’s finding of failure to submit the TCEQ can avoid start of the FIP clock until EPA acts on the Texas submittal.~~

National parks in surrounding states of Oklahoma, Arkansas, Louisiana, and New Mexico may want more input on permit applications for major new sources as covered in the Prevention of Significant Deterioration

Re: Docket No. 2007-1539-SIP

(PSD) program if these proposed sites are in proximity to their Class I areas. Presently, the rules and EPA guidance allow these states and Federal Land Managers (FLMs) to review new sources within 100 kilometers. Oklahoma has requested the opportunity to examine and comment on some new source applications within 300 kilometers of Oklahoma's Wichita Mountains Class I area. FLMs for the Forest Service (FS), Fish and Wildlife Service (FWS), and the National Park Service (NPS) have also requested a change in our PSD procedures so that more permit applications undergo a visibility impact review. The agency plans to work directly with the FLMs and the states to try to resolve their concerns.

On February 13, 2008, the TCEQ approved the renewal of Air Quality Permit Number 20345 for the American Smelting and Refining Company (ASARCO) El Paso copper smelter. On February 6, 2009, the TCEQ received confirmation from ASARCO LLC that it intends to close the smelter and requests that TCEQ void all air permits and pending applications for the plant. The TCEQ voided these permits and applications on February 9, 2009 (See Appendix 11-4: *ASARCO El Paso*). The TCEQ will continue to consult with affected states and Federal Land Managers for the next Regional Haze SIP revision.

~~On February 13, 2008, the TCEQ approved the renewal of Air Quality Permit Number 20345 for the American Smelting and Refining Company (ASARCO) El Paso smelter. As of the date this SIP revision was finalized, the TCEQ has not yet made a final determination regarding the BART status of ASARCO's facilities. Due to this and other permitting and operational readiness issues raised by ASARCO in their status report required by TCEQ order, there is uncertainty about the amount of allowable emissions the ASARCO El Paso facility would have should it begin operation. Because of this uncertainty in addition to time limitations, it is not possible for the TCEQ to account for possible future ASARCO El Paso emissions in this Regional Haze SIP revision. When the TCEQ has determined the allowable emissions from the ASARCO El Paso facility, the TCEQ will model the visibility impacts of these emissions at affected Class I areas. The TCEQ plans to consult with affected states and Federal Land Managers and include ASARCO's emissions and impacts in its next Regional Haze SIP revision.~~

Pollution transport from Mexico and Central America is a major factor in visibility impairment at Texas' Class I areas. The goal of natural visibility will not be met unless international transport is addressed by the federal government.

The public may express concern that this SIP does not make sufficient progress toward natural visibility. The national goal is to reach natural visibility by 2064. At the rate of improvement proposed in this SIP, natural visibility levels would not be reached until 2081 at the Guadalupe Mountains and 2155 at Big Bend.

**Public comment:**

Comments were received from the USEPA, FS, FWS, NPS, Sierra Club, Citizens League for Environmental Action Now, and citizens. Additional information was provided in the SIP to address the comments.

**Significant changes from proposal:**

Two significant additions were made to the adopted SIP after public comments:

- Additional consultations along with area of influence maps and formal letters were sent to adjacent states to discuss the Texas impact on Class I areas outside of Texas (see Chapter 4 and Appendix 4-3).
- All Class I areas in adjacent states were added in tables, including worst and best 20 percent of visibility days, and the pollutant breakdown of Texas' apportioned contribution at each area (see Chapter 11).

Commissioners  
Page 4  
February 6, 2009

Re: Docket No. 2007-1539-SIP

**Key points in adoption SIP revision schedule:**

<b>Proposal date:</b>	December 5, 2007
<b>Public hearing date:</b>	February 19, 2008
<b>Public comment period:</b>	December 21, 2007 through February 22, 2008 (includes mandated 60-day review by FLMs)
<b>Anticipated adoption date:</b>	February 25, 2009

**Agency contacts:**

**Kim Herndon, SIP Team Lead, Air Quality Planning, 239-1421**  
~~Greg Nudd, P.E., Technical Specialist, 239-1247, Air Quality Planning~~  
Margaret Earnest, SIP Project Manager, Air Quality Planning, 239-4581,  
John Minter, Staff Attorney, 239-0663

Attachments

cc: Chief Clerk, 5 copies  
Executive Director's Office  
David C. Schanbacher, P.E.  
Daniel Womack  
Kevin Patteson  
Betsy Bird  
Office of General Counsel  
Margaret Earnest

## LIST OF APPENDICES

Appendix 1-1	EPA Regional Haze Rule 1999
Appendix 2-1	Public Participation Process
Appendix 2-2	Public Comments and Responses on SIP Draft
Appendix 4-1	Summary of Three Texas Consultation Calls
Appendix 4-2	Contact List for Consultation Calls
Appendix 4-3	Additional Consultation Letters to Adjacent States
Appendix 5-1	Discussion of the Original and Revised IMPROVE Algorithms
Appendix 5-2	Estimate of Natural Visibility Conditions
Appendix 5-2a	Natural Events: Dust Storms in West Texas
Appendix 5-2b	Estimating Natural Conditions Based on Revised IMPROVE Algorithm
Appendix 5-2c	Texas Natural Conditions SAS Program File and Data
Appendix 7-1	Texas Emissions Inventory Development: Base Year 2002 and Projected Year 2018
Appendix 7-2	Integrated Planning Model Projections of Electric Generating Unit Emissions for the Regional Haze State Implementation Plan
Appendix 8-1	Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze SIP
Appendix 8-2	Modeling Protocol for the CENRAP 2002 Annual Emissions and Air Quality Modeling
Appendix 8-3	Quality Assurance Project Plan for Central Regional Air Planning Association Emissions and Air Quality Modeling
Appendix 8-4	Big Bend Model Performance Analysis
Appendix 9-1	U.S. EPA BART Rule
Appendix 9-2	Texas BART Rule
Appendix 9-3	Texas Survey for BART-Eligibility
Appendix 9-4	CAMx Modeling Protocol, Screening Analysis of Potentially BART-Eligible Sources in Texas
Appendix 9-5	CAMx Modeling Report, Final Report, Screening Analysis of Potential BART-Eligible Sources in Texas
Appendix 9-6	CAMx Screening Modeling Report and Addendums 1 and 2
Appendix 9-7	Certification of Screening Modeling Data
Appendix 9-8	CALPUFF Modeling Guidelines
Appendix 9-9	CAMx Modeling Guidelines
Appendix 9-10	BART Engineering Guidance Documents and Forms
Appendix 9-11	Documentation of Emission Reductions
Appendix 9-12	County Abbreviations
Appendix 9-13	BART-Eligible List
Appendix 10-1	Analysis of Control Strategies RPG
Appendix 10-2	Estimating Visibility Impacts from Additional Point Source Controls
Appendix 10-3	Uniform Rate of Progress Curves Using Default Natural Conditions Estimates
Appendix 10-4	Detailed Calculations for Estimating Visibility Impacts
Appendix 11-1	Fire Management Plans
Appendix 11-2	Federal and Texas Programs Related to On-road and Non-road Mobile Sources
Appendix 11-3	Major Point Source NO <sub>x</sub> Rules and Reductions Promulgated in Texas Since 2000
Appendix 11-4	ASARCO El Paso

*Manager Consultation.* Information on base period emissions inventory development is in Chapter 7: *Emissions Inventory*, and information on modeling is in Chapter 8: *Modeling Assessment*.

### **11.2.1 Consultation on Class I Areas in Texas**

The TCEQ used CENRAP Particulate Matter Source Apportionment Technology (PSAT) modeling to determine that the states contributing to visibility impairment at Texas' Class I areas are Kansas, Louisiana, New Mexico, and Oklahoma. Each of these states has adopted or is in the process of adopting emissions reductions it has determined to be reasonable under the factors listed in 40 CFR §51.308(d)(1), Reasonable Progress Goals. Based on their plans and commitments elicited through the consultation process, the commission has determined that the emissions reductions these states are projecting are reasonable for contributing to progress in reducing their contributions to visibility impairment at the two Class I areas in Texas. Chapter 4 discusses consultations with these states in detail.

### **11.2.2 Consultation on Class I Areas Impacted by Emissions from Texas**

Arkansas, Missouri, and Oklahoma have each included Texas in consultations concerning regional haze impacts on the Class I areas in these states. The TCEQ reviewed CENRAP PSAT modeling to assess how Texas' emissions might affect other states' Class I areas. Pursuant to this review, Texas has written to Arkansas, Missouri, Oklahoma, New Mexico, Louisiana, and Colorado to ask whether emission reductions projected in Texas by 2018 are sufficient to meet Texas' apportionment of the impact reduction needed to meet the reasonable progress goal for each Class I area in each state. Texas has completed its consultation with Louisiana, Arkansas, Missouri, Oklahoma, and Colorado, and none of these states has asked Texas for further emission reductions to help the state meet its reasonable progress goals for its Class I area(s). Chapter 4 discusses these consultations in more detail. Appendix 4-3 contains the official communications from these states to Texas.

### **11.2.3 Texas' Impacts and 2018 Impact Reduction for Class I Areas Outside Texas**

The TCEQ's review of the CENRAP PSAT modeling results to assess how Texas' emissions might affect other states' Class I areas in 2002 indicated that Texas' emissions affect one or more Class I areas in New Mexico, Oklahoma, Colorado, Arkansas, Missouri, and Louisiana. This subsection presents the results of this review.

#### **11.2.3.1 New Mexico**

Emissions from the western portion of Texas account for most of Texas' impact on the Class I areas in New Mexico. The following graph in Figure 11-6 shows the impacts of the western portion of Texas on the Class I areas in New Mexico that are included in the CENRAP PSAT modeling. The graph provides the basis for choosing the New Mexico Class I areas for more detailed examination of Texas' impacts. Carlsbad Caverns National Park is not included in this graph since it has no regional haze monitor; instead, it uses data measured at Guadalupe Mountains National Park to assess the impact of regional haze on the park.

On February 13, 2008, the TCEQ approved the renewal of Air Quality Permit Number 20345 for the American Smelting and Refining Company (ASARCO) El Paso copper smelter. On February 6, 2009, the TCEQ received confirmation from ASARCO LLC that it intends to close the smelter and requests that TCEQ void all air permits and pending applications for the plant. The TCEQ voided these permits and applications on February 9, 2009 (See Appendix 11-4: *ASARCO El Paso*).

As the commenters acknowledge, each state may not have completed its reasonable progress goals. The consultation process in the federal Regional Haze rule is not proscriptive precisely because of the differences in each state's SIP development and regulatory programs. The proposed SIP revision indicated the state of consultations at the time it was published. The commission concurs that the adopted SIP revision include documentation that it meets the requirements of §51.308(d)(3)(i) – (iii). The commission has sent individual letters to Louisiana, Arkansas, Missouri, Oklahoma, Colorado, and New Mexico to ask each to confirm in writing that Texas' emissions reductions strategy is adequate to meet Texas' apportioned reductions in impact at the impacted Class I areas. The commission also requested that recipients of the letters confirm they are not expecting any additional emission reductions from Texas sources. Formal replies were requested of the adjoining states within 30 days for inclusion in this SIP revision. The states that responded have documented letters in Appendix 4-3.

The NPS and FWS agreed that Mexican emissions contained within the boundaries of the CENRAP modeling domain are important contributors to visibility impairment at Big Bend and Guadalupe Mountains. The NPS and FWS requested that Texas acknowledge the work contained in the final Big Bend Regional Aerosol and Visibility Observational (BRAVO) study. This extensive BRAVO study indicated sources in Mexico, Texas, and the eastern United States all play a role in sulfate conditions at Big Bend. The NPS and FWS look forward to working with Texas to solicit EPA action with its sister agencies to address the Mexican portion of sulfate impairment at Big Bend. The NPS and FWS also requested that the SIP discuss the Texas contribution to sulfate found in the BRAVO field study in the long term strategy and reasonable progress sections.

**The commission agrees with this comment that the BRAVO results and their relationship to the CENRAP PSAT results warrant more discussion. The added discussion is included in Chapter 11.**

The EPA is concerned about the potential of the American Smelting and Refining Company (ASARCO) El Paso to affect visibility in Texas and New Mexico Class I areas. On February 13, 2008, the commission approved the renewal of Air Quality Permit No. 20345 for ASARCO Incorporated. The EPA stated that with the Regional Haze SIP revision, the commission should ensure that ASARCO's impact assessment will be included in Texas' BART, reasonable progress goals, and long term strategy.

**On February 13, 2008, the TCEQ approved the renewal of Air Quality Permit Number 20345 for the American Smelting and Refining Company (ASARCO) El Paso copper smelter. On February 6, 2009, the TCEQ received confirmation from ASARCO LLC that it intends to close the smelter and requests that TCEQ void all air permits and pending applications for the plant. The TCEQ voided these permits and applications on February 9, 2009 (See Appendix 11-4: ASARCO El Paso). The TCEQ will continue to consult with affected states and Federal Land Managers on surrounding Class I areas of concern.**

~~On February 13, 2008, the TCEQ approved the renewal of Air Quality Permit Number 20345 for the American Smelting and Refining Company (ASARCO) El Paso smelter. As of the date this SIP revision was finalized, the TCEQ has not yet made a final determination regarding the BART status of ASARCO's facilities. Due to this and other permitting and operational readiness issues raised by ASARCO in their status report required by TCEQ order, there is uncertainty about the amount of allowable emissions the ASARCO El Paso facility would have should it begin operation. Because of this uncertainty in addition to time limitations, it is not possible for the TCEQ to account for possible future ASARCO El Paso emissions in this Regional Haze SIP revision. When the TCEQ has determined the~~

~~allowable emissions from the ASARCO El Paso facility, the TCEQ will model the visibility impacts of these emissions at affected Class I areas. The TCEQ plans to consult with affected states and Federal Land Managers and include ASARCO's emissions and impacts in its next Regional Haze SIP revision.~~

The NPS and FWS commented on the uncertainty of CAIR implementation. The NPS and FWS requested that the commission be more proactive in response to the uncertainty associated with implementation of CAIR. Although Texas identifies clear conflicts with emission inventories developed by CENRAP, with the Integrated Planning Model predictions of large electric generating unit growth results, and with the unwillingness of participating CAIR sources to commit to particular emission levels, it is concerning that Texas has elected to wait and see how the uncertainty unfolds as part of the required five-year review. The federal Regional Haze Rule mandates that each state develop a plan to make progress toward visibility impairment at Class I areas. Although the commission concludes that the already planned controls between now and 2018 are reasonable, it fails to address how multiple issues that prevent Texas from accurately determining future emissions to address Texas' substantial contribution to visibility improvement at Class I areas inside and outside of its territory. The NPS and FWS requested that Texas develop areas of influence and associated major source lists within these zones as a precursor to a focused five-year review. The NPS and FWS requested Texas establish in the SIP a process for ongoing discussions and consultations with neighboring states and FLMs on the progress of CAIR.

**The commission recognizes that the electric generating units are contributors to visibility for the Class I areas and that these electric generating units are covered by the provisions of CAIR as well as other state requirements. There are uncertainties associated with prediction because of the cap and trade provisions of the program. The predicted levels used in the model were from the EPA's Integrated Planning Model, a tool widely used in regional planning. The predictions are based on assumptions applicable at the time the model is constructed, including fuel prices, fuel availability, and regulatory policies. The commission acknowledges the uncertainty in the emissions projections. The commission is not aware of a better emissions prediction tool for electric generating units and believes the predictions provide a valid planning tool. The difference in inventories between CENRAP's and the TCEQ's was in industrial and residential boilers, not in electrical generating units addressed by CAIR or its replacement.**

**In response to comments, Texas has developed a list of significant industrial sources, including the electric generating units, based on the area of influence analysis developed by CENRAP for each Class I area, which progress can be evaluated during the CAIR time frame or equivalent time. The list of sources can be found in Appendix 10-1, Tables 6 to 10, and the area of influence maps are in Appendix 4-3. The commission will continue to consult with FLMs and states through the SIP consultation process on the implementation of CAIR.**

The NPS, FWS, FS, and one individual commented that the TCEQ needed to elaborate on how the New Source Review (NSR) and Prevention of Significant Deterioration (PSD) permitting programs will be used by TCEQ as part of its long term strategy for meeting reasonable progress goals. One individual commented that the Environmental Defense and the Sierra Club have requested that until these deficiencies in the PSD permitting program are resolved that EPA should prohibit construction of new sources in Texas and/or impose sanctions. As part of these written comments, the individual attached a copy of the Environmental Defense and Sierra Club petition that documents the inadequacy of the TCEQ's PSD permitting program. The NPS and FWS requested Texas establish in the SIP a process for ongoing discussions and consultations with neighboring states and FLMs on the progress of PSD/NSR efforts.

**Appendix 11-4: ASARCO El Paso**



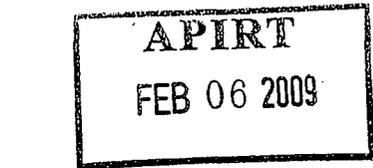
Thomas L. Aldrich  
Vice President  
Environmental Affairs

Direct Dial: (520) 798-7749  
taldrich@asarco.com

February 6, 2009

VIA HAND DELIVERY

Mr. Richard A. Hyde, P.E.  
Director, Air Permits Division (MC-163)  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Building C  
Austin TX 78753



AIR PERMITS DIVISION

FEB 06 2009

RECEIVED

Re: ASARCO LLC El Paso Copper Plant  
Regulated Entity No. RN100219021  
Air Programs Account No. EE0007G

Dear Mr. Hyde:

With this letter, I wish to confirm that ASARCO LLC ("Asarco") has suspended its efforts to restart the El Paso, Texas Copper Plant. Because of conditions resulting from the world-wide economic downturn, Asarco is not able to allocate the resources necessary to restart the Plant at this time. Accordingly, Asarco requests that the TCEQ Air Permits Division void the following air permits and pending applications:

- Air Quality Permit No. 20345
- Air Quality Permit No. 4151
- Pending Application to Renew Air Quality Permit No. 4151
- Pending Application for Federal Operating Permit No. 2871

For the immediate future, Asarco will continue to maintain personnel on-site to oversee remediation and plant closure activities. Asarco has been communicating regularly with TCEQ's Remediation Division about on-site remediation efforts, and the Company will continue to do so.

Please do not hesitate to contact me if you have any questions. Thank you for your attention to this matter.

Sincerely,

Thomas L. Aldrich

cc: Ms. Caroline Sweeney (*via hand delivery*)  
Senior Attorney, Litigation Division (MC-175)  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Building A  
Austin TX 78753

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
*Protecting Texas by Reducing and Preventing Pollution*

February 9, 2009

Mr. Thomas L. Aldrich  
Vice President Environmental Affairs  
ASARCO LLC  
5285 E. Williams Circle, Suite 2000  
Tuscon, Arizona 85711

Re: Air Permit Numbers: 4151, 20345, and Federal Operating Permit No. 2871  
Ore Handling and Storage Facility and Smelter  
El Paso, El Paso County  
Regulated Entity Number: RN100219021  
Customer Reference Number: CN602815524  
Account Number: EE-0007-G

Dear Mr. Aldrich:

As requested in your letter dated February 6, 2009 we are voiding active New Source Review permit numbers 4151 and 20345. Accordingly, the pending Permit No. 4151 renewal application, revision request, and notification of qualified change request are also voided.

Additionally, as requested the pending application for Federal Operating Permit (FOP) No. 2871 for the Asarco El Paso Plant site authorized under Title 30 Texas Administrative Code (30 TAC) Chapter 122 is voided.

Thank you for informing us of the status of your site. If you have any questions regarding this notice, please contact Mr. Javier Maldonado, P.E. at (512) 239-6047 or Dois Webb, P.E. at (512) 239-1575.

Mr. Thomas L. Aldrich

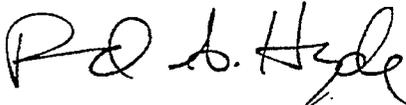
Page 2

February 9, 2009

Re: Air Permit Number 4151, 20345, and Federal Operating Permit No. 2871

This action is taken under authority delegated by the Executive Director of the Texas Commission on Environmental Quality.

Sincerely,

Handwritten signature of Richard A. Hyde in black ink.

Richard A. Hyde, P.E., Director  
Air Permits Division  
Office of Permitting and Registration

RAH/DW/

cc: David Cabe, P.E., Zephyr Environmental Corp, Austin  
Air Permits Section Chief, New Source Review, Section (6PD-R), Environmental  
Protection Agency, Region 6, Dallas  
Air Quality Manager, Environmental Services, City of El Paso, El Paso  
Air Section Manager, Region 6 - El Paso

Project Number: 120312, 121726, and 122846