



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

FEB 03 2009

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

Dear Mr. Vickery:

As a follow-up to our April 9, 2008, letter concerning restart of the El Paso ASARCO Copper Plant, we have reviewed the Report, ASARCO El Paso Copper Plant Air Quality Control Equipment Assessment Report and Maintenance Plan, dated July 1, 2008. The Report outlines the extensive repairs, restoration, cleaning, calibration, and replacement of existing equipment necessary for the restart of the plant. Our review of the Report confirms our initial conclusion that, after the lengthy shutdown of over nine years, the plant has been "permanently shutdown" according to the U.S. Environmental Protection Agency (EPA) interpretation of the Clean Air Act (CAA) and is a new source for purposes of Prevention of Signification Deterioration (PSD) review, subject to the PSD requirements of the federally-approved Texas State Implementation Plan (Texas SIP).¹

The Report submitted by ASARCO further reinforces the concerns raised in our letter of April 9, 2008, regarding the renewal of ASARCO's Permit Number 20345 on March 27, 2008, and its future incorporation into the proposed Federal Operating Program Permit Number O-02871. Relevant findings in the July 1, 2008, Report include the following:

- The majority of equipment in the #1 acid plant and #2 acid plant cannot be used - the equipment is only good for scrap value. ASARCO is considering replacing both units with a new acid plant.
- The electrostatic precipitators and supporting equipment require significant repair or replacement.
- The gas handling system needs replacement.
- The baghouses need replacement and the shaking mechanisms need repair.
- The oxygen plant equipment, including rotating and process equipment, valves and instrumentation, piping, insulation and control systems need repair or replacement.

¹ EPA's Reactivation Policy is discussed in: Memo from Edward E. Reich (Sept. 6, 1978), Memo from Edward Reich (Aug. 8, 1980), Memo from John S. Seitz (May 27, 1987), Letter from David P. Howekamp, Supplemental PSD Applicability Determination Cyprus Casa Grande Corporation Copper Mining and Processing Facilities (Nov. 6, 1987), Memo from John B. Rasnic (Nov. 9, 1991) and Title V petition order Number 6-99-2, In the matter of Monroe Electric Generating Plant, Entergy Louisiana, Inc. (June 11, 1999), http://www.epa.gov/Region7/programs/artd/air/title5/petitiondb/petitions/entergy_decision1999.pdf

- The electric and electronic equipment require maintenance. Frayed and loose wiring, nonfunctioning meters, disconnected hoses and air lines, and insulation need replacement and/or repair.
- An assessment of other large and complex equipment including boilers, power generation equipment, compressors, transformers, fans, and pumps was not made in this Report. ASARCO anticipates this equipment may also need repair and replacement.

In concluding whether restart of the ASARCO plant is a new source subject to PSD review, we rely upon EPA's Reactivation Policy that states that shutdowns of more than two years are presumed to be permanent, after some factors are considered.² After reviewing a description of the state of equipment disrepair and degradation at the plant, if ASARCO has to spend the amount of time and resources outlined in the Report in order to restart the facility, we conclude that the facility was not maintained in a good working order that would allow startup in a timely manner with a minimum amount of work. Therefore the ASARCO plant was "permanently shutdown" under EPA's interpretation of the CAA.

In addition, our April 9, 2008, letter raised questions about whether rehabilitation work necessary for restart of the idle facility would trigger PSD as a major modification. While we have concluded that restart of operation of the ASARCO facility must undergo PSD review as a new source, we remain concerned that the rebuilding activities that ASARCO may undertake prior to operation of the facility would constitute a major modification subject to the PSD requirements of the Texas SIP.³ Although there is no specific requirement in the permit or the March 27, 2008 Order, an assessment to determine PSD applicability is necessary before ASARCO begins rebuilding activities. Furthermore, prior to commencing operations at the El Paso Plant, Provision 4 of the Order requires a written certification by the TCEQ Executive Director (ED) that ASARCO has satisfactorily completed all the applicable requirements in the ED's Report. We also recommend that TCEQ take no final action on ASARCO's Title V permit until such time that these matters are addressed, thus ensuring that all applicable requirements of the CAA are included in the Title V permit.

In addition to the points outlined above, operation of the ASARCO plant may be subject to additional applicable requirements under the CAA. There have been three recent important

² Id.

³ In order to determine whether repair and maintenance necessary for restart of the facility constitutes a major modification, important considerations include EPA's 1999 interpretation that the term "change in the method of operation," as it applies to an increase in hours of operation under the PSD regulations, includes a change from a lengthy "non-operational" condition to one that is fully operational. Note also that in several similar determinations, EPA has concluded that in calculating the net emissions increase for reactivation of long-dormant sources potentially subject to PSD, the source is considered to have zero emissions as its baseline actual emissions. See discussion in the November 6, 1987 David P. Howekamp letter and Title V petition order No 6-99-2, In the matter of Monroe Electric Generating Plant, Entergy Louisiana, inc. (June 11, 1999) referenced above. In addition, plant restoration that is required for start up does not meet the exclusion criteria allowed for New Source Review routine maintenance, repair and replacement. See http://www.epa.gov/ttn/oarpg/t1/fr_notices/psdnansr_fr.pdf and <http://www.epa.gov/NSR/documents/fs20050606.pdf>

rule changes translating to more stringent National Ambient Air Quality Standards (NAAQS). All of these revisions have occurred since the plant ceased operations. It is imperative that potential emissions from the plant be analyzed to determine potential violations of these updated standards prior to commencement of construction activities related to a restart of plant operations. The requirements for Texas to demonstrate compliance with these new standards further reinforces our point that much has changed since 1999 when the plant was shut down. Considering the following data, we believe ASARCO should consider impacts of the plant on attainment of these new standards as a new source subject to the PSD requirements.

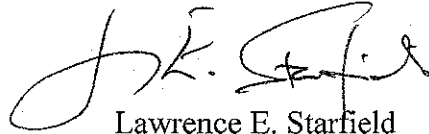
- 8-Hour Ozone NAAQS Standard - EPA finalized a stronger air quality standard for ozone on March 12, 2008. The new 2008 8-hour ozone standard is 0.075 parts per million (ppm). The most recent 2005-2007 8-hour ozone design value for El Paso is 0.078 ppm.
- Lead NAAQS Standard - EPA finalized a stronger air quality standard for lead on October 15, 2008. The revised standards are ten times tighter than previous standards. The level was revised from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 0.15 $\mu\text{g}/\text{m}^3$. ASARCO should be required to analyze their potential emissions to ensure that the tighter lead NAAQS standard will not be exceeded. The EPA notes that the memorandum, Modeling Audit-ASARCO, dated April 13, 2007, and prepared by TCEQ following its review of the modeling report submitted by Zephyr Environmental Corporation on behalf of ASARCO, indicates the Total Lead concentration (background plus ground level contaminant (maximum)) was modeled and projected to be 0.27 $\mu\text{g}/\text{m}^3$, which exceeds the new standard.
- Particulate Matter (PM) 2.5 NAAQS Standard - On March 29, 2007, the EPA issued a rule specifying implementation requirements for the 2006 $\text{PM}_{2.5}$ standards and defining requirements for state plans to clean the air in areas with levels of fine particle pollution that do not meet national air quality standards. The 2006 standards tightened the 24-hour $\text{PM}_{2.5}$ standard from 65 $\mu\text{g}/\text{m}^3$ to 35 $\mu\text{g}/\text{m}^3$, and retained the current annual fine particle standard at 15 $\mu\text{g}/\text{m}^3$. States must meet the $\text{PM}_{2.5}$ standard by 2010. The EPA notes that the Modeling Audit-ASARCO, dated April 13, 2007, and prepared by TCEQ following its review of the modeling report submitted by Zephyr Environmental Corporation on behalf of ASARCO, indicates the 24-hour $\text{PM}_{2.5}$ concentrations (background + ground level contaminant (maximum)) was modeled and projected to be 35 $\mu\text{g}/\text{m}^3$, which is at the new standard.

We look forward to entering into discussions with you in order to avoid a potential objection to the Title V permit, a stop work order to the facility under Section 167 of the Act, and/or an enforcement action under Section 113 of the Act. This response has been coordinated

Subject: Mark Vickery, TCEQ - ASARCO
Page: 4

with the appropriate offices within EPA. If you have any questions or would like to discuss further, please call me at (214) 665-2100 or Jeff Robinson of my staff at (214) 665-6435. Thank you for your assistance in this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "L. E. Starfield". The signature is fluid and cursive, with a large initial "L" and "E".

Lawrence E. Starfield
Acting Regional Administrator