



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

APR 14 2010

The Honorable Eliot Shapleigh
Texas Senator
Post Office Box 12068
Austin, TX 78711

Dear Mr. Shapleigh:

Thank you for your letter of March 11, 2010. I appreciate your congratulations on my recent appointment as the U.S. Environmental Protection Agency (EPA) Region 6 Administrator. I'm proud to be selected to work with the dedicated EPA team in finding effective and sustainable solutions to the environmental, energy and public health challenges in this region, particularly in my hometown.

In your letter, you requested the chemical composition of the wastes burned at the ASARCO plant in El Paso. You also questioned why EPA and the Texas Commission on Environmental Quality (TCEQ) did not prosecute ASARCO and its subsidiary Encycle Texas, Inc., for violating hazardous waste statutes. Additionally, you requested that EPA investigate TCEQ's handling of this matter.

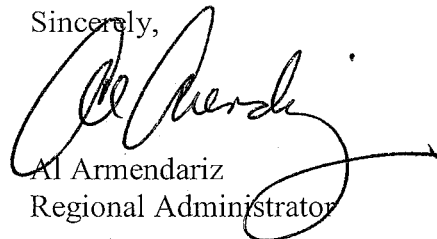
In 1999, EPA filed a lawsuit against ASARCO and its subsidiary Encycle Texas, Inc., for, among other things, the illegal treatment, storage and disposal of hazardous waste, and the companies paid a \$5.5 million penalty. Encycle claimed to have produced a concentrated metals product derived from secondary materials, including hazardous wastes containing spent carbon material. Encycle sent this "product" to the ASARCO El Paso smelter for metals recovery. Because the Encycle "product" was a mixture of materials from various generators, and because Encycle failed to maintain records of the materials mixed in each shipment, there is no way at this date to determine the chemical composition of those wastes. EPA has some information about the Encycle product based on generator records obtained from Encycle during our enforcement action, as well as sampling that was performed on Basin F waste from the Rocky Mountain Arsenal (sent to Encycle and subsequently to ASARCO). On February 16, 2010, EPA received a letter on behalf of multiple organizations that requested, among other items, that EPA provide information about chemical waste streams processed at ASARCO. While our response to that request will include the same conclusion - that is, there is no way to determine the exact chemical composition - the letter will include information known by EPA about the Encycle product. We will complete the response soon and will send a copy to you.

Originally, TCEQ reviewed Encycle's process and agreed that portions of its operation and its "product" were exempt from hazardous waste regulation. In its oversight capacity, EPA disagreed with the State's conclusion. Texas later joined EPA in the lawsuit against Encycle and ASARCO which was settled in 1999. While EPA and the State at first reached differing conclusions regarding the legality of the companies' actions, TCEQ worked with EPA to develop the successful case against Encycle and ASARCO.

Proof of intentional violation of the law is required to pursue criminal charges under the Resource Conservation and Recovery Act (RCRA). Texas had originally told ASARCO that its operation was exempt from regulation, so the operators had no reason to believe that they were violating RCRA requirements. I encourage you to contact me if you know of any evidence that Encycle, ASARCO, or individual employees knowingly violated RCRA rules. We would be interested in pursuing any evidence you may obtain.

We share the same goals and I am committed to continuing to work with you and the Texas Legislature as we strive to protect public health and the environment. If I may be of further assistance, please call me at (214) 665-2100, or your staff may contact Ms. Cynthia Fanning of my staff at (214) 665-2142.

Sincerely,

A handwritten signature in black ink, appearing to read "Al Armendariz", with a long horizontal flourish extending to the right.

Al Armendariz
Regional Administrator