



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUL 16 2002

NOTICE OF POTENTIAL LIABILITY
URGENT LEGAL MATTER - PROMPT REPLY NECESSARY
CERTIFIED MAIL RETURN RECEIPT REQUESTED NO.

ASARCO Incorporated
c/o Registered Agent
C T Corporation System
111 Eighth Avenue
New York, NY 10011

Re: El Paso County Metals Survey Superfund Site
El Paso, El Paso County, Texas

Dear Sir or Madam:

The purpose of this letter is to notify you of your potential liability at the El Paso County Metal Survey Superfund Site (hereinafter the "Site"). The Site is located in El Paso, Texas, and includes contaminated soils in residential yards located throughout the city of El Paso.

The U.S. Environmental Protection Agency (EPA) has determined that ASARCO Incorporated (ASARCO) is a Potentially Responsible Party (PRP) at the Site. In the rest of this letter and its enclosures, ASARCO is referred to as "you," "your," or "respondent." As a PRP, you may be responsible for conducting and/or funding a removal action at the Site, in accordance with the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, CERCLA or "Superfund."

The EPA has determined that decades of emissions of arsenic and lead from the ASARCO copper and lead smelters into the El Paso community ambient air have resulted in contamination of the soil in residential areas in the city of El Paso. The EPA began its investigation to determine the extent of the contamination during the week of July 9, 2001. The Agency conducted an initial soil screening investigation of El Paso schools and parks. Based on the results of soil screening and air sampling, EPA determined that several areas warranted further investigation.

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On February 25, 2002, EPA began area wide soil sampling throughout the City. The results showed that the soil in some residential yards contained arsenic and lead levels as high as 81 parts per million (ppm) arsenic and 1700 ppm lead. Lead and arsenic are hazardous substances that pose a risk to human health and the environment. Region 6 has established residential soil action based benchmarks of 24 ppm for arsenic and 500 ppm for lead and has determined that a removal action must be performed to remove contaminated soil on residential properties in the city of El Paso. The work will be conducted in accordance with the enclosed Action Memorandum. I have enclosed a "General Notice" which explains ASARCO's responsibility as a PRP more clearly.

On behalf of the EPA, I offer you the opportunity to enter into negotiations concerning cleaning up the Site. We recognize that ASARCO is currently discussing a global resolution of its national environmental obligations for the current year with EPA and the Department of Justice. Due to the substantial impact of the environmental contamination at the Site on human health, however, EPA is preparing to perform the removal action at the Site if ASARCO is unwilling or unable to do so. Therefore, if ASARCO does not respond within ten (10) calendar days of receipt of this letter indicating its willingness to conduct this cleanup EPA will assume that the company has declined the offer to clean up the site and will initiate a Fund-lead removal action and seek cost recovery. I urge you to read the enclosed notice carefully, if you have any questions please call Carl Bolden at 214-665-6713; any legal questions should be directed to Amy McGee at (214) 665-8063.

Sincerely yours,



Myron O. Knudson, P.E.
Director
Superfund Division

Enclosures (2)

07/19/2002 FRI 00:41 FAX 214 665 7330 SF DIRECTOR OFFICE 004/017

ENCLOSURE 1

**GENERAL NOTICE
REMOVAL ACTION
EL PASO COUNTY METALS SURVEY SITE
EL PASO, EL PASO COUNTY, TEXAS**

This Notice is from the U.S. Environmental Protection Agency (EPA). This notice is directed to ASARCO Incorporated (ASARCO). Throughout the rest of this notice when we say "you" or "your" we mean ASARCO. This notice does three things:

1. First, this notice tells you that you may be responsible for the presence of hazardous substances found at the Site. The EPA is requesting that ASARCO perform a removal action to abate the release or threat of release at the Site. When we say "Site" in this notice, we mean residential properties located throughout the city of El Paso, Texas that contain levels of arsenic and lead above 24 and 500 ppm, respectively. From initial soil sampling result it appears that the number of yards that might require cleanup range from approximately 45 to 2000. The range is based on projections from initial sampling results. Additional sampling will be needed to determine the exact number of yards requiring cleanup. This notice is issued under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
2. Second, this notice provides background information leading up to EPA's sampling at the Site and EPA's activities to determine the source of the soil contamination.
3. Third, this notice invites you to enter into negotiations to conduct a removal action at the Site.

These three things are explained in more detail in the following sections marked with Roman numerals I, II, and III.

I. NOTICE THAT YOU MAY BE LIABLE

Under Section 107 of CERCLA, 42 U.S.C. § 9607, responsible parties are those who are current owners or operators of a facility, past owners or operators who owned or operated a facility at the time hazardous substances were disposed of at the facility, persons who arranged for disposal or treatment at the facility (usually the person(s) who generated the hazardous substance), or persons who selected that facility and transported the hazardous substances to the facility. Section 107 of CERCLA, 42 U.S.C. § 9607, states that responsible parties are liable to the United States for the costs it has incurred or will incur conducting a response action such as that proposed in the El Paso Metal Survey Superfund Site Action Memorandum for cleanup of residential yards throughout the city of El Paso.

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The EPA has determined that decades of emissions of arsenic and lead from the ASARCO copper and lead smelters into the El Paso community ambient air have resulted in contamination of the soil in residential yards throughout the city of El Paso, Texas. There are considerable data and studies that show releases of arsenic and lead from the El Paso Copper smelter. For example, there is EPA's 1983 and 1985 studies entitled "Inorganic Arsenic Emissions From Primary Copper Smelters." In addition, ASARCO submitted data to the Texas Air Control Board in support of its request for a permit for the ConTop project that showed releases of arsenic and lead from the facility.

ASARCO indicated that implementing the ConTop project would reduce lead emissions by 32 percent and arsenic emissions by about 90 percent. EPA has in its possession a letter from ASARCO dated December 2, 1991 to the Texas Air Control Board that indicates prior to 1990 as much as 27.8 tons of arsenic per year was emitted from the ASARCO plant into the El Paso community ambient air.

Arsenic and lead are hazardous substances and the levels of 81 ppm and 1700 ppm respectively, found in yards in El Paso present a threat to human health and the environment. Region 6 has established residential soil action based benchmarks of 24 ppm for arsenic and 500 ppm for lead and has determined that a removal action must be performed to remove contaminated soil on residential properties in the city of El Paso, Texas.

II.

BACKGROUND

A January 23, 2001, article in the El Paso Times stated that heavy metals contamination had been identified in soil samples taken near the Sun Bowl Stadium. The paper stated that cadmium, arsenic, and lead were hundreds of times time higher than background. A local state senator, Eliot Shapleigh, requested advice from a group made up of representatives from the Texas Department of Health, the Texas Natural Resource Conservation Commission (TNRCC), the El Paso City/County Health and Environment Department, the University of Texas at El Paso (UTEP), and EPA.

The group requested EPA's technical assistance and provided information so that EPA could evaluate the potential risk. The EPA conducted an initial soil screening investigation of El Paso schools and parks in early July 2001 to determine if the data from UTEP were reproducible. Based on the results of the soil screening and air sampling, EPA determined that several areas including San Marcos Drive warranted further investigation. San Marcos Drive soils were sampled on August 3, 2001.

The results indicated that lead and arsenic levels in residential yards along San Marcos Drive were elevated as high as 62 ppm arsenic and 850 ppm lead. ASARCO performed chemical speciation analysis of the soil taken from 35 locations in the residential yards along San Marcos Drive to determine the degree to which different metals in different sample classes associated with

each other. The results showed in most cases arsenic and lead were found to be the highest in soils with high iron content. The soil contained average iron content of 1.98 percent with a minimum content of 0.88 and a maximum of 5.3 percent. This correlation matched the ratio of arsenic, lead, and iron found in surface slag sampled on the ASARCO plant property which indicated wind blown slag as a likely contributor to the soil contamination. The EPA determined that slag fines produced by Oglebay Norton Minerals Inc.'s slag crushing operations contributed to the soil contamination. Oglebay Norton Minerals Inc., has entered into a consent agreement to remediate the yards on San Marcos Drive.

On February 25, 2002, EPA began area wide soil sampling throughout the City. The results showed that the soil in some of the yards contained elevated levels of arsenic and lead, some of which were as high as 81 parts per million (ppm) arsenic and 1700 ppm lead. The EPA performed chemical speciation analysis of soils taken from 35 locations in the residential yards throughout the city and found they contained an average iron content of 0.84, a minimum of 0.32 and a maximum of 1.60 percent. Based on speciation sampling these soils do not appear to have been significantly contaminated by slag dust and fines. Therefore, EPA is not considering Oglebay Norton Minerals to be a PRP at this site.

America Eagle Brick and Jobe Concrete Products Inc., are two companies operating in El Paso that have been purported to be contributor of lead and arsenic into the El Paso community ambient air. The EPA sampled the raw materials (andorsite, limestone, shale, and silica) that American Eagle Brick Company uses to produce brick and found that they contain low levels of arsenic and lead (2-13 and 1.9-23 ppm, respectively). The EPA was not able to sample raw materials at Jobe Concrete Products, but soil samples taken from the facility property did not show significant (maximum arsenic 29 ppm, maximum lead 490) levels of lead and arsenic. Both companies will be sent information request to obtain information concerning their production processes.

III. NEGOTIATIONS

The EPA invites you to enter into negotiations towards a settlement. Settling with EPA may be in your best interest, because it may protect you from suits against you by other responsible parties seeking to recover cost that they incur in resolving their liability at the Site. Also, if you choose not to settle with EPA and you are found to be a responsible party, EPA may take civil administrative action and, ultimately, EPA may request civil judicial action.

If you agree to negotiations, EPA will meet with you to discuss the Site cleanup and resolution of your liability by entering into an AOC under sections 107 and 122 of CERCLA, 42 U.S.C. § § 9607 and 9622.

IV. OPPORTUNITY TO MEET

The EPA will provide you an opportunity to meet with EPA representatives to discuss the

performance of a removal action to clean up the site. Any cleanup performed by you must begin within 60 days. If you wish to participate in such a meeting, you must inform Mr. Carl Bolden in writing within the time frame stated below.

V.

YOUR RESPONSE TO EPA

Please notify Mr. Bolden in writing at the address indicated below, within (ten) 10 calendar days of the date of receipt of this letter to indicate your willingness to negotiate a PRP-lead removal action. If EPA does not receive your response within (ten) 10 calendar days, EPA will assume that you do not wish to clean up the site and EPA will initiate a Fund-lead removal action and seek cost recovery.

Your response to this letter and questions regarding the matters in this letter should be directed to:

Mr. Carl Bolden
Enforcement Officer (6SF-A)
United States Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Telephone: (214) 665-6713
Telefacsimile: (214) 665-6660

If you or your attorney have legal questions pertaining to this matter, please direct them to:

Ms. Amy McGee
Attorney (6RC-S)
United States Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Telephone: (214) 665-8063
Telefacsimile: (214) 665-6460

The discussions of fact or law in this notice are meant to help you understand CERCLA and EPA's actions at the Site. The discussions of fact and law are not final positions on any matter discussed in this notice.

ENCLOSURE 2
ACTION MEMORANDUM



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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

MEMORANDUM

SUBJECT: Request for Removal Action at the El Paso County Metals Survey site, El Paso, El Paso County, Texas

FROM: Charles Fisher, Federal On-Scene Coordinator
Response and Prevention Branch (6SF-R1) *CF*

THRU: Charles A. Gazda, Chief *Ch Gazda*
Response & Prevention Branch (6SF-R)

TO: Myron O. Knudson, P.E., Director
Superfund Division (6SF)

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval of the proposed removal action to be undertaken pursuant to Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9604, described herein for the El Paso County Metals Survey (Site) area located in the City El Paso, El Paso County, Texas. The removal action proposes to remove contaminated arsenic and lead soils found on residential properties. A previous action memorandum entitled "Request for Removal Action at the El Paso County Metals Survey Site" signed on October 29, 2001, is another site located in El Paso that is now known as the San Marcos Street Site.

This removal action is anticipated to require less than twelve months and less than \$2 million for completion. No actions have been initiated under the On-Scene Coordinator's \$50,000 authority.