



Senator Eliot Shapleigh

District 29

Press Briefing

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REMEDIATION NEXT STEP FOR ASARCO SMELTER

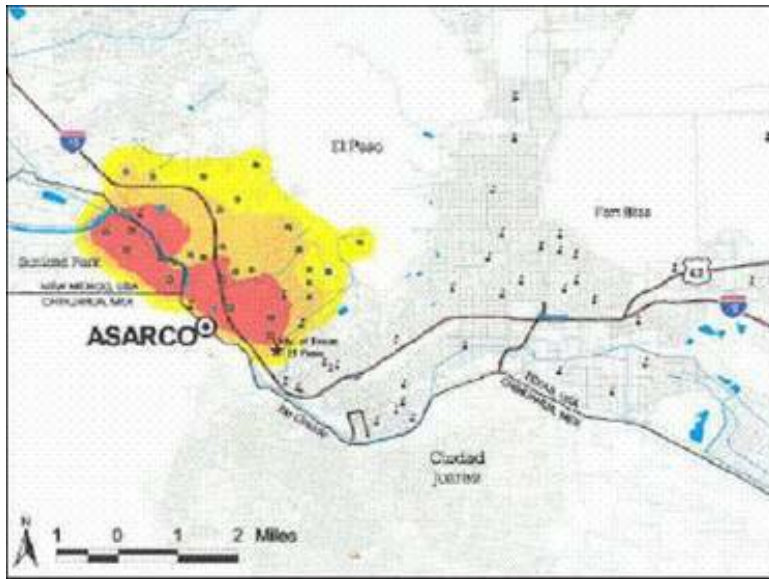
"Our job now is to guarantee clean up of onsite and offsite lead and arsenic. The TCEQ's claim in ASARCO's bankruptcy court will not nearly cover our cleanup costs."

EL PASO - Today, in this press briefing Senator Shapleigh outlines the next step for the ASARCO site.

Yesterday's announcement by ASARCO LLC that they will abandon their efforts to reopen their copper smelter in El Paso leaves the site's future in the in the hands of environmental regulators and the bankruptcy court overseeing the company's reorganization.

Now that the smelter is closed, the Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality (TCEQ) must ensure that lead and other contaminants are cleaned up both on the ASARCO site and in El Paso County neighborhoods.

"Our job now is to guarantee clean up of onsite and offsite lead and arsenic. The TCEQ's claim in ASARCO's bankruptcy court will not nearly cover our cleanup costs," Senator Shapleigh said.



EPA map illustrating the lead contamination in El Paso.

Our office offers here a brief update on the Environmental Protection Agency's (EPA) and Texas Commission on Environmental Quality's (TCEQ) positions on offsite and onsite cleanup of ASARCO's contamination. Please read correspondence between our office and the TCEQ [here](#), and correspondence between our office and the EPA [here](#) and [here](#).

EPA - Offsite Cleanup

EPA is the lead agency responsible for offsite cleanup of ASARCO contaminants. EPA believes that contaminated residential properties lie within a 1 to 1.5 mile radius of the ASARCO smelter. The chart below details the number of residential properties tested and remediated in El Paso as of July 2008:

Residential Properties Tested and Cleaned, El Paso

	Properties Tested	Properties Cleaned
2002	1944	7
2003	566	329
2004	1103	168
2005	0	200
2006	0	124
2007	41	127
2008	177	--

Source: EPA

According to the EPA, their policy is to "only seek voluntary access where the owner is willing to provide the access without conditions." The EPA has already sent their final letters to residents requesting access to sample the residents' yards.

Residential Properties Tested and Remediated at ASARCO-Impacted Sites

	Properties Tested	Properties Remediated
El Paso, Texas	3,683	970
Ruston, Washington	3,717	2,150
Omaha, Nebraska	32,669	3,815

Source: EPA

One of our office's main concerns was the use of fertilizer in the 1940s and 50s from the El Paso-based company Ionate. The company used slag from the ASARCO smelter and created a fertilizer that contained both lead and arsenic. EPA has taken the position that since the fertilizer was applied by homeowners for its intended use, "any elevated arsenic or lead in the soil would not be subject to the cleanup the EPA is conducting."

The EPA, however, refers all questions related to ASARCO's ongoing bankruptcy to the Department of Justice (DOJ). In turn, the DOJ declines to comment on ongoing litigation. Thus, we are left with only public information about the status of the bankruptcy and cleanup. The EPA and ASARCO reached a settlement agreement regarding past costs in June 2007. The agreement specifically concerns past costs incurred by the EPA for cleanup and soil sampling in the El Paso region. According to the EPA, these "funds will be placed in a special account for future sampling and residential soil cleanup in El Paso."

TCEQ - Onsite Cleanup

TCEQ is the lead agency responsible for onsite cleanup - the cleanup of contaminants on the smelter property. Exactly what happens to onsite cleanup of the smelter depends on the outcome of ASARCO's bankruptcy. In the past, two companies were permitted to submit reorganization plans and bids for ASARCO's assets: Sterlite, Inc. and ASARCO's parent company, Grupo Mexico. But, with the credit crisis, Sterlite has withdrawn from bidding.

Under various draft reorganization plans, the El Paso smelter site would be transferred into its own environmental custodial trust which will be funded to address onsite contamination. TCEQ estimates a cost of \$52 million for onsite remediation, which would include, amongst other actions:

- Demolition of onsite structures;
- Removal of contaminated soil; and
- Groundwater monitoring, recovery, and treatment.

Under Grupo Mexico's draft reorganization plan, there are less specifics. The plan does, however, call for the El Paso smelter and 31 other sites across the U.S. to be placed in a single environmental custodial trust. This trust would then be funded with \$10 million to initiate clean-up procedures at contaminated sites across the country.

Our concern is that El Paso's full clean up costs be guaranteed by the EPA in the Chapter 11 environmental trust fund. During early verbal discussions with the EPA, the Region 6 administrator estimated onsite cleanup may cost up to \$250 million and that offsite would run \$80 million. Cleanups in Tacoma, Omaha and other sites have run into millions and constantly exceeded early estimates. Further, the TCEQ has demonstrated willful

negligence in protecting El Paso's interests, as is evident on their handling of hazardous materials investigations and the Title V permit. Now we ask that the EPA guarantee full clean up costs and provide independent, accurate figures on what the true cost of remediation in El Paso will be today.

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