



# Senator Eliot Shapleigh

District 29

Press Release

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**For Immediate Release**

April 7, 2009

## **SENATOR SHAPLEIGH SENDS COMMENT TO TEXAS ATTORNEY GENERAL EXPRESSING CONCERNS WITH PROPOSED \$52 MILLION ASARCO**

### **REMEDICATION PLAN**

#### **ATTORNEY GENERAL, DEPARTMENT OF JUSTICE**

#### **ACCEPTING PUBLIC COMMENTS ON REMEDIATION EFFORTS**

*"The century-old polluter is attempting to shed \$250 million of cleanup costs with a remediation plan developed by a Bush-era EPA, the Texas Commission on Environmental Quality, and ASARCO itself. What happens in this case matters across the country, as it will set a precedent for polluters regarding their ability to shed environmental liabilities through the bankruptcy process."*

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**EL PASO** - Today, Senator Eliot Shapleigh (D-El Paso) sent a letter to the Texas attorney general's office asking that office to work with the Environmental Protection Agency (EPA) and the Department of Justice (DOJ) to reassess the true cost of cleanup of the ASARCO copper smelter.

Last week, ASARCO LLC [won \\$6 billion in damages in U.S. district court](#) — money that will now go to bankruptcy court. [The current \\$52 million remediation plan](#) for the El Paso copper smelter was drafted before money was available from this ruling. The current remediation plan does the bare minimum in rehabilitating the site and severely limits its future use. The plan also does not include 250 acres of contiguous property owned by ASARCO but not located on the principal 100 acre smelter site.

The smelter site's remediation plan needs a post-Bush-era review by the Attorney General's office, the DOJ and the EPA that fully addresses contamination of El Paso soil and groundwater attributed to the smelter.

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The Attorney General's office is accepting public comments on the ASARCO site remediation until May 3, 2009. Comments should be sent to Hal Morris and Ashley Bartram, Assistant Attorneys General, Bankruptcy & Collections Division, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. Comments may also be faxed to (512) 482-8341.

The U.S. Department of Justice is accepting public comments until April 25. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *In re Asarco LLC*, DJ Ref. No. 90-11-3-08633. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The text of Senator Shapleigh's letter to the Attorney General's office is included below.

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April 7, 2009

Mr. Hal Morris  
Assistant Attorney General  
Bankruptcy & Collections Division  
Office of the Texas Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

Ms. Ashley Bartram  
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VIA UNITED STATES MAIL, RETURN RECEIPT REQUESTED, CERTIFIED MAIL  
NUMBER 7000 1530 0001 8427 9140, AND HAND DELIVERY ON APRIL 7, 2009

Re: Comments on Proposed Settlement of Environmental Claims - ASARCO LLC

Dear Mr. Morris and Ms. Bartram:

I write to comment on the proposed settlement of environmental claims resulting from a century of pollution from ASARCO LLC.

In short, I am asking that you work with your counterparts in the Environmental Protection Agency (EPA) and the Department of Justice (DOJ) to reassess the true cost of cleanup of ASARCO's onsite property in El Paso. The century-old polluter is attempting to shed \$250 million of cleanup costs with a remediation plan developed by a Bush-era EPA, the Texas Commission on Environmental Quality (TCEQ), and ASARCO itself. What happens in this case matters across the country, as it will set a precedent for polluters regarding their ability to shed environmental liabilities through the bankruptcy process.

Here are our specific concerns with the proposed settlement:

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1. ***The El Paso settlement was negotiated prior to the addition of approximately \$6 billion from the Americas Mining Corporation/ASARCO LLC litigation.*** On April 1, 2009 in Brownsville, Texas, U.S. District Judge Andrew Hanen ruled that Grupo Mexico must pay ASARCO LLC about \$6 billion in damages. The damages ruling stems from an August decision by Judge Hanen that Grupo Mexico's Americas Mining Corporation unit harmed ASARCO creditors by stripping the company's stake in a valuable Peruvian copper mine. In August, Hanen found Americas Mining Corporation liable for fraudulent transfer, aiding and abetting a breach of fiduciary duty, and civil conspiracy. In terms of damages, Hanen specifically ruled that Grupo Mexico must return ASARCO's 30 percent stake in Peruvian copper miner Southern Copper Corporation and pay \$1.9 billion in related dividends and interest. When the bankruptcy estate more than triples, it merits reexamining and renegotiating settlements previously reached when the estate was significantly smaller. This enormous difference can have a large impact on communities such as El Paso. For example, the current settlement calls for \$52 million to remediate onsite environmental liabilities. In previous conversations with EPA officials, however, I was told that the cost is likely—at a minimum—\$250 million. Ample funds now exist in the debtor's estate to pay for a full cleanup.
2. ***The cleanup standard is the minimum standard and will severely restrict any future use.*** Under the cost estimate agreed upon by EPA, TCEQ, and ASARCO, 100 acres of the ASARCO facility would be remediated to an industrial standard based on present use. Such a standard will bar future uses such as a park, residential use, and perhaps even research facilities for the University of Texas at El Paso. Why should our community have to settle for 100 acres of capped asphalt that is sitting on top of millions of gallons of arsenic-laden water and tons of lead, ringed by monitoring wells, and containing a permanent 500' x 500' x 33' crypt for toxic waste? Why should El Paso be left with 75 feet of slag towering over the Rio Grande—a monument to a century of pollution and disregard for our community's health? We ask that the cleanup standard be reevaluated and raised to allow for a broader set of potential future uses.
3. ***The ASARCO cleanup plan fails to address 250 acres of contiguous property owned by ASARCO but not located on the principal 100 acre smelter site.*** Despite the fact that this land is owned by ASARCO, is contiguous to the smelter site, and has served as a dumping ground for ASARCO's slag runoff, TCEQ failed to include this acreage in their cleanup cost estimates. To make matters worse, this land is upstream from the smelter site in terms of groundwater flow, thus negatively impacting any groundwater cleanup efforts at the 100 acre smelter site. All of the lead, arsenic, and other heavy metals on the eastern acreage will flow to the smelter site, over 100 acres of impervious coverage, and down toward the Rio Grande and American Canal. Contamination on this additional property must be fully examined, and the cost of cleanup needs to be included in any settlement considered by the bankruptcy court.
4. ***Amarillo and El Paso.*** The cleanups for the El Paso and Amarillo sites and their respective allocations under the settlement should be listed separately and placed in separate, segregated accounts.

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5. ***The Bush administration's DOJ negotiated this settlement, and we fear that the El Paso's interests were less of a priority than ASARCO's.*** We are concerned that any settlements negotiated under the Bush administration's DOJ may be tainted by values that polluting companies should win, not communities; that profits be maximized, not the public good. As such, we ask that the current administration's DOJ reexamine the conclusions reached by its predecessor.
  
6. ***For years, ASARCO's slag was used as a fertilizer and now contaminates properties across El Paso.*** Ionate, an El Paso-based fertilizer company, sold a fertilizer that contained slag from the Oglebay Norton slag-crushing company in west El Paso. Oglebay Norton obtained the slag, a byproduct of the smelting process, from ASARCO. The settlement does not address this contamination. What do we tell those homeowners when they have to spend \$30,000 to clean lead and arsenic from Mom's home before they sell it?
  
7. ***Over a century of ASARCO's pollution has created a 233 million cubic foot contaminated groundwater plume around the smelter.*** We have concerns as to whether the cleanup plan will adequately address the groundwater issues. The remediation plan calls for monitoring and extraction wells, as well as a slurry wall, to be placed around the ASARCO facility in an attempt to prevent contaminants from migrating into our community's drinking water. El Paso residents must be completely assured that their drinking water will not be polluted by ASARCO's arsenic and lead.

Again, I ask that the proposed settlement of environmental claims against ASARCO LLC be reexamined and renegotiated to the benefit of El Paso.

Very truly yours,

Eliot Shapleigh

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