

ASARCO

"1999 – 2010"



Senator Eliot Shapleigh
January 28, 2010



ASARCO: a Brief History

- 1999: ASARCO ceases operations
- 2002: Application for permit renewal
- 2004: TCEQ refers to SOAH
- 2005: Contested case hearing by ALJs
- 2005: \$11 billion of environmental claims in ASARCO's bankruptcy **Largest Environmental bankruptcy in US History**
- 2006: TCEQ refers permit to ED
- 2008: TCEQ approves permit
- 2009: EPA disallows grandfathered status
- 2009: ASARCO requests to void permits
- 2009: Custodial Trust funded \$52M to address contamination of the property
- 2010: Trustee selected for remediation

ASARCO's 7000 Ton Air Permit

Air Quality Permit No. 20345

Pollutants (tons per year)	Allowables
Lead	2.59
Oxides of Nitrogen	230.04
Carbon Monoxide	287.68
Volatile Organic Compounds	7.66
Sulfur Dioxide	6,673.15
Particulate Matter	352.60
Particulate Matter (equal to or less than 10)	349.63
Sulfuric Acid	16.21

Source: ICEQ¹⁷⁹

A Regional Community United

3 CITIES, 1 MESSAGE: DON'T REOPEN ASARCO



Administrative Law

Judges' Decision

"ASARCO failed to prove ...

- that its operation under Permit 20345, if renewed, would likely not cause or contribute to air pollution or ...
- that its compliance during its last five years of operation under that permit warrants renewal."

Asarco's air quality permit renewed over city objections

By Brandi Grissom / El Paso Times

The state environmental agency on Wednesday approved Asarco's controversial request to reopen its century-old smelter in El Paso.

The three-member Texas Commission on Environmental Quality unanimously granted the company's air quality permit, which would allow Asarco to resume copper smelting operations.

The commission's decision was a pivotal one, but not likely the final ruling in the matter. Mayor John Cook has said the city would sue if the permit was renewed.

"You'll see an appeal, and you'll see this city fight," said state Sen. Eliot Shapleigh, D-El Paso.

EPA Concerns



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

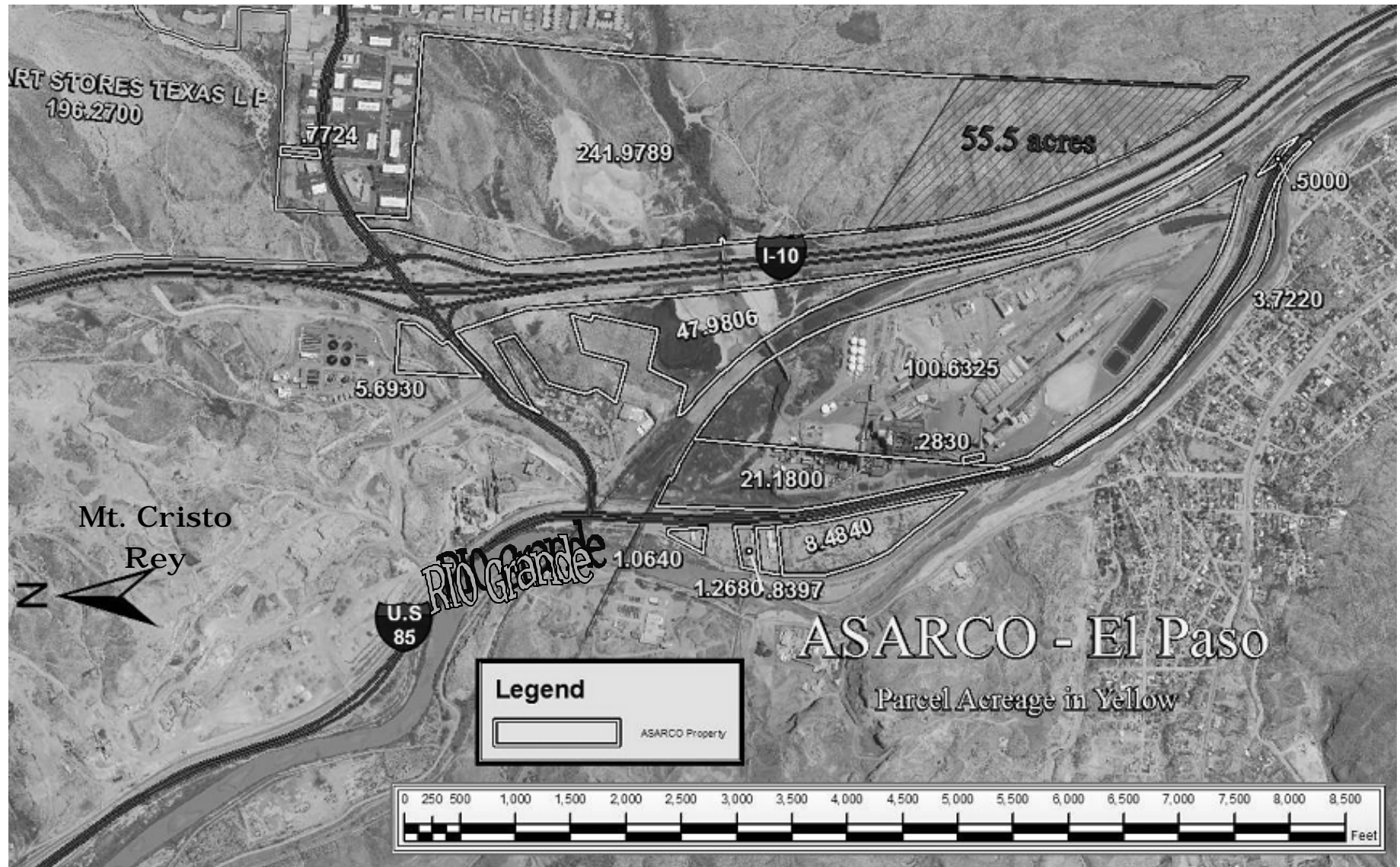
FEB 03 2009

Mr. Mark Vickery, P.G.
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087

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

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

"The True Pass of the North"



Cross Section of Onsite Slag



TCEQ

TCEQ's \$52 Million Plan

- 50 year groundwater treatment and hydraulic containment (233 million ft³ arsenic plume) - \$22 million

New Mexico • Demolition of structures - \$9 million

- Asphalt paving - \$10 million

- Engineering and construction of permanent lined cell - \$6 million

Chihuahua

- Long-term monitoring of engineering control and fencing - \$3 million

- Other expenses - \$2 million

Trustee Selected

ENVIRONMENTAL CUSTODIAL TRUST AGREEMENT

(Texas Custodial Trust)

20 years experience in management of

2.2 Objective and Purpose.

2.2.1 The exclusive purposes and functions of the Texas Custodial Trust are to own the Designated Properties, carry out administrative and property management functions related to the Designated Properties, conduct, manage, and/or fund implementation of future Environmental Actions with respect to the Designated Properties, and ultimately to sell, transfer or otherwise dispose of all or part of the Designated Properties, if possible, all as provided in the Settlement Agreement, with no objective or authority to engage in any trade or business. With respect to the El Paso Smelter Site, the purposes of this Texas Custodial Trust further include: 1) addressing contamination (including without limitation Hazardous Substances) on and in the structures, soils, surface water, and groundwater

Call to Action

- Our community vision regarding the "highest and best use" of the Pass of the North Site
- Guarantee clean-up for national standards of onsite contamination, 233 million ft³ of arsenic-laden water, and offsite contamination

"What is the Cost of Clean Up"

- \$52 Million¹?
- \$250 Million² ?
- \$500 Million³ ?

¹ Texas Custodial Trust

² EPA Region 6 quote to Senator Eliot Shapleigh per conversation

³ Ted Houghton," Rail yard move to ASARCO Site proposed," El Paso Inc ,January 19, 2010

“For centuries, the Pass of the North has defined us. Right there where three states meet is a unique site: the Rio Grande offers rare, useful, riverfront property; UTEP and the Sun Bowl are next door; Peace Park where Madero launched Mexico’s future is across the river; Downtown is within a mile; the Sunland Casino is just around the bend.

Nearly all rail, energy, broadband, and travelers pass through. With leadership, vision, and determination, our community has a historic opportunity to re-brand the region. If Omaha, Tacoma, and Monterrey did it—so can El Paso, Juarez, and Southern New Mexico.”

- Senator Eliot Shapleigh

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