

October 15, 2007

Ms. Pamela Giblin
Baker Botts LLP
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4078

VIA FAX

Re: Response to Asarco Letter Regarding Video

Dear Ms. Giblin:

This firm represents the City of El Paso in its opposition to Asarco Permit No. 20345, and this letter is in response to your letter to Mr. Charlie McNabb, El Paso City Attorney, dated October 4, 2007. The letter arrived by facsimile on Friday afternoon and the City Attorney was very surprised to find your letter printed in its entirety in the weekend newspaper before he had an opportunity to review or prepare a reply. Your letter “demands” that the City remove from its website the video outlining the City’s ongoing opposition to ASARCO LLC’s pending application to renew the air quality permit. Be advised that the City stands by the video and will not remove it from its website.

The video is accurate and is supported by records maintained by the U.S. Environmental Protection Agency (“EPA”) and Texas Commission on Environmental Quality (“TCEQ”), testimony of Asarco’s own representatives during the July 2005 Hearing on the Merits regarding the air quality permit, and other sources. The City did not exaggerate or distort information with regard to the probable impacts of the operation of Asarco’s smelter. The City presented factual information to allow the citizens of El Paso to better understand the health and environmental threats posed by future operation of the copper smelter.

Your characterization of the video regarding lead emissions is inaccurate. You imply that the City stated that Asarco is permitting a lead smelter. The City made no such statement. The City accurately states that the Asarco copper smelter will emit lead, and that the emission of lead, as well as arsenic, will add to the historical contamination that exists as a result of years of Asarco operations.

As Asarco is well aware, the amount of smoke in the air is measured by opacity. The Asarco permit would allow up to 15% opacity from the acid stacks, and even higher levels of opacity when upsets occur at the plant. Clearly these levels of opacity will result in visible emissions, *i.e.*, smoke. Even more concerning is the 20% opacity authorized for slag pouring operations and the 30% opacity authorized for “matte pouring” operations. Asarco’s operation requires the pouring of molten material containing iron, lead, arsenic, and a host of other materials, onto the ground. This waste material hardens into the black slag that Asarco has discarded over the past hundred years and is especially visible on the entire western portion of the Asarco site. Since the slag and matte pouring operations occur at ground level, the Mayor’s statement regarding smoke over the freeway is an all too likely probability. Further, since opacity compliance is typically measured in six-minute averages, some of the opacity—or smoke—from the pouring operations could be much worse for short durations, as long as the “average” stays in compliance with the permit. Obviously this assumes Asarco actually operates

in compliance with its permit. In addition, exceeding this permit limitation will only be a violation if TCEQ happens to witness the violation and decides to enforce.

You also mischaracterize the statements in the video regarding EPA's enforcement action involving the Encycle waste and state that TCEQ's predecessor agencies agreed that the Encycle "recycling" program was consistent with applicable rules. This is again misleading since the agency later reversed its position. As stated in a June 10, 1998 letter from the agency: "it is now apparent that much of the information supplied by Encycle as a basis for the previous TNRCC letters was incomplete and inaccurate"

You also attempt to discredit the City's video with regard to sulfur dioxide emissions, the report of TCEQ's Toxicology Section, and Asarco's most recent attempt at comprehensive air dispersion modeling. Your comments are an incorrect portrayal of the video and a mischaracterization of these issues. The City has solid information in support of its position on all of these issues, and has continued to raise them with TCEQ through the City's Comments on the Executive Director's Report.

Finally, you suggest that the City is somehow damaging Asarco's reputation. Asarco's own bankruptcy filings identify that over \$21 billion in claims have been filed against Asarco, including over \$12 billion in environmental claims, across the United States. Asarco has been identified as a potentially responsible party and contributor at many Superfund cleanups at smelters, mines, and other facilities around the country. As recently as October 5, 2007, the U.S. Department of Justice stated that Asarco cannot use its bankruptcy filing to shed itself from enormous environmental liabilities related to the Coeur d'Alene Basin site in Idaho, a waste site the size of Rhode Island. El Pasoans are very familiar with "Smelertown" and the high lead levels in children discovered during the 1970s, as well as the current on-going cleanup of El Paso yards contaminated with lead and arsenic, which EPA has determined is due to emissions from Asarco. EPA recently stated that it believes there may be ongoing or threats in the future of releases of contaminants from Asarco's property in El Paso. The City will continue to address the facts regarding Asarco, its copper smelter, and its impacts on the El Paso community. If Asarco's reputation is damaged, it is only by Asarco's own actions, which are already in the public record and domain.

Your letter demonstrates once again that Asarco is willing to distort its past practices as well as current information regarding the true past and future potential impacts of its operations. The City is a strong supporter of its business community and believes that the citizens of El Paso expect more of their corporate citizens.

Sincerely,



Erich M. Birch

cc: Mayor John Cook and City Council
Ms. Joyce Wilson, City Manager
Mr. Charlie McNabb, City Attorney
Ms. Laura Prendergast Gordon, Deputy City Attorney