



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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FEB 25 2011

Ms. Veronica Carbajal
Texas RioGrande Legal Aid, Inc.
1331 Texas Avenue
El Paso, Texas 79901

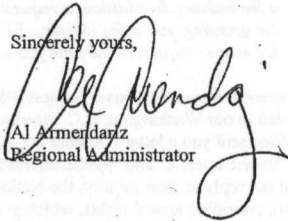
Dear Ms. Carbajal:

Thank you for your letters dated November 5, 2010, and January 27, 2011, to the U.S. Environmental Protection Agency (EPA) regarding efforts to protect the health of the residents, workers and the environment of the communities surrounding the ASARCO-El Paso Plant.

EPA appreciates and shares your desire for clean and healthy communities. My staff has assembled a response to each of your requests and I have enclosed the document for your review. We have also compiled related documents and reports and made them available on the Internet at www.epa.gov/region6/asarco_documents/asarco_documents.html.

I hope this letter addresses all of your requests. If you have any further questions, please contact me at (214) 665-2100.

Sincerely yours,


AJ Armerdanz
Regional Administrator

Enclosure

U.S. Environmental Protection Agency (EPA) response to November 5, 2010, and letter of January 27, 2011, handed to Administrator Lisa P. Jackson from Texas RioGrande Legal Aid, Inc.

1. **Please support our request for Superfund designation. (This request was made again during a conference call with EPA Regional Administrator Armerdanz on November 18, 2010, in letter to EPA Administrator Jackson dated December 10, 2010, and at an Environmental Justice Forum in El Paso on January 27, 2011.)**

As stated in our letter to Mr. Carlos Rodriguez of the Ex-ASARCO Workers Group dated March 14, 2010, EPA believes that the ASARCO facility is being properly addressed by the state (Texas Commission on Environmental Quality - TCEQ) using authorities not related to the Superfund program. EPA is satisfied with the Remediation Plan for the on-site work and believes the outcome with TCEQ in the lead will be similar to what would be achieved by EPA, providing the same benefits to the community and environment.

However, as noted in the November 18, 2010, conference call with community members and the letter to EPA Administrator Jackson dated December 10, 2010, the Ex-ASARCO Workers Group has tentatively identified six unlined landfills at the ASARCO property that may not have been investigated. EPA is considering this letter as a petition to start the Superfund Site Assessment process. EPA will maintain contact with the Ex-ASARCO Workers Group to obtain the necessary information regarding the location of these landfills and keep you informed about EPA's activities related to the ASARCO site. EPA plans to complete the assessment within one year of receipt of the petition. Based on this assessment, EPA may consider the site for the National Priorities List (NPL).

EPA will also continue to monitor activities involving the ASARCO facility, using its authority for oversight of the remediation activities, and will take full advantage of opportunities for EPA's engagement to ensure that pollution related to the ASARCO facility is appropriately addressed. In order to make EPA's activities more transparent to concerned citizens, EPA has drafted a written oversight plan for the remediation activities at the ASARCO facility and will make the final oversight plan available for public review in the next 4 - 6 weeks.

2. **Please support our October 12, 2010, request for the Technical Assistance Services for Communities (TASC) contract.**

EPA has a TASC contract in place to provide third party review and comment on the ASARCO El Paso Trustee's Draft Remedial Action Work Plan. The EPA Work Assignment Manager (WAM) in EPA headquarters and EPA Region 6 held a TASC kick-off call with the TASC contractor, E² Inc., on December 15, 2010. The TASC contractor spoke with Veronica Carbajal on December 16, 2010, to discuss the community's needs in relation to the

TASC contract. The TASC contractor delivered a draft work plan on January 18, 2011, and shortly afterwards began review of documents and development of technical comments on the Trustee's Draft Remedial Action Work Plan. A draft report was provided February 2, 2011, to Ms. Carbajal and EPA. It is our understanding that the work performed under the TASC contract was acceptable.

3. Please support our request for an extension on the Trustee's public comment deadlines for the Draft Community Relations Plan (CRP), Draft Community Assurance Plan (CAP), Demolition Health and Safety Plan (HASP), Final Draft Site Health and Safety Plan, Draft Remedial Action Work Plan (RAWP), all of which have a deadline of November 26, 2010. We would like an extension so that our comments can be informed by the TASC contract results.

EPA believes that it is important to expeditiously clean up the site, and that the Trustee should continue with the remedial activities outlined in the Remedial Action Work Plan (RAWP). However, EPA will work with the Trustee if there are areas identified through the TASC effort that require further investigation or remediation not currently addressed in the RAWP, and will continuously monitor the situation. If EPA becomes aware of scientific data or other evidence that there are legally sufficient reasons to request a halt to the clean-up activities, EPA will act appropriately at that time.

4. Please support our request for a federally funded health study of the Ex-ASARCO Workers.

The Region 6 Office of Environmental Justice & Tribal Affairs (OEJTA) has hosted conference calls with Ms. Carbajal discussing worker's exposure and health concerns, health studies and her request to discuss these issues with the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH).

On December 8, 2010, the OEJTA held a conference call with Ms. Carbajal, the Ex-ASARCO Workers, the Agency for Toxic Substances and Disease Registry (ATSDR), the Texas Department of State Health Services (TDSHS), OSHA and NIOSH. During the call, Ms. Carbajal directed her request to these agencies for assistance with a health study of former ASARCO workers. None of these agencies were able to provide such health studies.

Some of the primary activities of the NIOSH Division of Surveillance, Hazard Evaluations and Field Studies include performing epidemiologic research to learn more about the cause of acute and chronic disease in workers and performing health hazard evaluations of work sites to identify new and existing hazards and recommending ways to reduce those hazards. The NIOSH health hazard evaluation program would help to understand potential health hazards arising from ongoing work activities.

More recently, Region 6 participated by conference call in a meeting that EPA Headquarters held with Ms. Carbajal and ASARCO ex-workers. EPA Headquarters Office of Environmental Justice and Region 6 OEJTA are continuing to explore potential assistance that may be available to the citizens through other federal health agencies.

OEJTA's staff researched funding opportunities via the Texas Environment Health Institute (TEHI) and it is not possible to get funding because the TEHI only considers projects in areas that have been listed as sites under federal or state superfund. ATSDR does not work with the occupational workforce. The OEJTA will continue assisting Ms. Carbajal with any future requests.

5. Please support our request for FOIA fee-waivers, which the EPA has consistently denied.

Regarding your request for fee waivers for FOIA requests, we are not unsympathetic to your request(s), but as a federal agency we are constrained by the "user charge" standards in the applicable federal law, 5 U.S.C. Sect. 552, and our EPA regulations at 40 C.F.R. Part 2. As noted at the national EPA website, at <http://www.epa.gov/foia/guide.html>:

You may request in writing to have fees waived if the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. The mere fact that you are a non-profit organization or a member of the media does not in and of itself qualify for a fee waiver. In addition, a requester's inability to pay is not a legal basis for granting you a fee waiver. EPA regulations require you to make the fee waiver request at the time you submit the request.

For your most recent fee waiver request (06-FOI-00036-11), the request was promptly forwarded to our Washington, D.C. Headquarters (which grants or denies these requests). That office sent you a letter (October 20, 2010) seeking further information within one week on the "public interest" and "public understanding" of your request. Two weeks later, when you did not reply to their inquiry, the National FOIA Officer denied the request (November 2, 2010), providing appeal rights, which you did not exercise, and has closed their file.

All requests are handled case-by-case, and there is no provision for 'blanket' fee waiver(s) for any requestor. All receive an inquiry letter to clarify how the present request fits the "six factors" used to review requests, as clarified in "Requesting Fee Waivers" (April 2009) at <http://www.epa.gov/foia/waivers.html>. In addition, please note that the sorts of requests for which fee waivers have been granted, as publicly reported at http://www.epa.gov/foia/fee_waivers.html, seem to suggest that the more focused requests which do actively respond to the inquiry from the National FOIA Officer are more likely to be granted. There is also helpful information at the website of the U.S. Department of

Justice, which had provided those "six factors" used for evaluation by all federal agencies. See www.justice.gov and other sources.

Regardless of the status of any fee waiver request, Region 6 has already taken steps to make many previously archived documents available on-line, and we are continuing to look for ways to make more of these documents available. Bill Luthans (Senior Advisor to the Regional Administrator on U.S./Mexico Border and Emerging Issues) is exploring options for making more documents available to the public, including a possible "repository" in El Paso, getting more archived information from sources outside of the control of EPA Region 6 into our system, and having additional documents made available on-line.

6. Please support our continued efforts to identify the military hazardous wastes that were processed at the ASARCO-El Paso site.

EPA will continue to evaluate any new information regarding military hazardous wastes that were processed at the ASARCO-El Paso site.

With respect to hazardous military waste that originated at the Rocky Mountain Arsenal (RMA) in Colorado, EPA reaffirms the characterization of that waste in EPA's May 14, 2010, response to citizens as cited in your letter. In its November 2007 report, "HAZARDOUS WASTE: Information on How DOD and Federal and State Regulators Oversee the Off-Site Disposal of Waste from DOD Installations" Figure 1, the Government Accountability Office reported the following finding from its review:

"The Army evaluated numerous cleanup methods to treat and dispose of the wastewaters in Basin F. They decided, with involvement from both the public and EPA, to treat the wastewater by using a liquid incinerator. In its decision document, the Army and Shell stated that burning the liquid at high temperature would destroy the organic compounds in the liquid.

After burning the liquid in the incinerator, the process would result in a liquid which contained dissolved salts and residual metals."

In response to recent inquiries, EPA has re-examined the various documentation supporting that finding, and reiterates that conclusion. Sampling results from waste analyses performed as part of the Superfund Treatability Study for waste shipped from RMA to Encycle are posted on EPA's website for ASARCO related materials. These findings are also consistent with EPA's findings related to the RMA waste as part of document review, including hazardous waste manifests, related to the 1998 enforcement action and consent decree.

In summation, the military hazardous waste sent from RMA to Encycle was a by-product following incineration that met 99.9999 percent destruction and removal efficiency. Thus, it no longer contained organics associated with the original RMA Basin F waste listings including chemical weapons agents.

Another military facility known to have sent waste to Encycle (and therefore potentially to ASARCO) was the Toole Chemical Weapons Decommissioning Facility in Utah (TOCDF - as operated by EGG&G). Our records indicate that the material shipped from TOCDF to ENCYCLE was, like RMA's waste, post-incineration brine product. The incinerator was designed to destroy organic chemicals by 99.9999 percent.

In both the cases of RMA and TOCDF, the records known to EPA indicate that material shipped to ENCYCLE was non-radioactive and lacking organic chemicals, as it was the post-incineration by-product of treatment. Any characterizations of those post-incineration wastes shipped to Encycle as "chemical weapons" or other organic wastes are regulatory descriptions and not chemical constituent descriptions. Completely separate from worker protection issues, the waste constituents (chemicals) in the RMA and TOCDF are those which have been and are currently being included in the site conceptual model for investigation and clean-up; that is, metals and inorganic chemicals with risk being driven primarily by lead and arsenic. This conclusion is reached by cross-checking a variety of information sources such as the manifests for waste shipment, chemical analyses performed as part of treatability and risk assessment studies at both RMA and TOCDF. Each of these two military sites operated under intense local scrutiny and each has been subject to intensive investigation and risk assessment at the sites.

EPA will support further efforts to characterize military hazardous waste potentially shipped to ASARCO directly or indirectly through Encycle, based on new information received or otherwise brought to our attention. The best information we have to date points to such waste being non-radioactive and containing metals and other inorganic salts consistent with pollutants already being considered in site remediation activities.

U.S. Environmental Protection Agency Response to Questions Raised during a Meeting with Headquarters

Q: What information is needed for EPA to determine "endangerment?"

A: After a site has been identified, a detailed site assessment is performed to determine the list of materials and whether they are hazardous substances as defined by Section 101(14) of CERCLA or pollutants or contaminants as defined by Section 101(33) of CERCLA. The next step is to detail the threat to public health or welfare or the environment and refer to or incorporate any human health and/or ecological risk assessment. Based on this information an endangerment determination can be made.

Q: Where is the information and what did EPA use to determine nerve gas finding?

A: Please refer to Response #6 above.

Q: Split sampling possibilities?

A: Allowing the ex-ASARCO Workers to collect split samples is being considered and discussed with TCEQ, the lead agency for oversight activities and the Trustee.

Q: Trustee meets every three months with TCEQ - Is EPA meeting with them? Can the ex-ASARCO workers be a part of that meeting?

A: EPA participates in those meetings which are typically held by conference calls and are conducted on a monthly basis. EPA will discuss your request to participate with the Trustee and TCEQ.

Q: What about the military hazardous waste... were the workers exposed to this? Can we connect them with folks at VA to see if they can assist with symptoms/health issues?

A: EPA will communicate with the Veterans Administration to determine if this is a possibility.

Q: How to get the 28 boxes of documents on ASARCO to the community from long-term storage in Colorado?

A: EPA is currently working to make these documents accessible. EPA will notify you as soon as these documents are available.

Q: What happened to the 256 rail cars?

A: We are researching the situation and will follow up at a later date.

Q: If they provide the information where they know/think they know has hazardous waste, will we test?

A: Please refer to Response # 1 above.

Q: How far can we push/work with the trustee to address these issues?

A: EPA will work with the Trustee and TCEQ to address the Ex-ASARCO workers issues. The Trustee has been cooperative in addressing site issues and we believe that he will continue to address site issues.

Q: What are our public engagement responsibilities?

A: EPA will ensure that the Trustee is conducting public participation activities that include: citizen and community meetings; meaningful opportunities for public comments; participation in the City of El Paso planning process; stakeholder identification; and establishment of a website.

Below are questions raised that will be addressed in a separate response letter from the Office of Regional Counsel.

Are the Trustee's cost-recovery actions exempt from RCRA rules and municipal solid waste regulations? These cost-recovery actions include the dismantling of buildings and the removal of the railroad tracks and ties.

Is the Trustee authorized to remove plant components, disturb the soil, and generate air emissions, etc., prior to the approval by the EPA and TCEQ of the remediation plans?

The Trustee will extract gold and silver located hundreds of feet below the furnace building. Which permit allows him to conduct this excavation of precious metals?

What type of information does the EPA need to apply RCRA's imminent and substantial endangerment provision to halt the remediation?

Does the fact that this site is a RCRA site and not on the NPL affect how stringently the EPA will apply the applicable environmental standards under the CAA, CWA, NAAQS, etc.?