



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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DALLAS, TX 75202-2733

APR 09 2008

Mr. Richard A. Hyde, P.E.  
Director  
Air Permits Division  
Office of Permitting, Remediation, and Registration  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Dear Mr. Hyde:

We have identified several significant questions regarding the recent issuance of the ASARCO State New Source Review Permit Number 20345 renewal on February 13, 2008, and its future incorporation into the proposed Federal Operating Program Permit Number O-02871. Our questions are based on our review of the proposed and issued permits referenced above, associated documents, and the Executive Director's Report to the Commission. In general, the information available to U.S. Environmental Protection Agency (EPA) appears to point to ASARCO being potentially subject to Prevention of Significant Deterioration (PSD) requirements, which include provisions such as requiring compliance with best available control technologies. The Texas Commission on Environmental Quality (TCEQ) should clarify the record with respect to its conclusion that the renewal of Permit Number 20345 is not subject to Prevention of Significant Deterioration applicability requirements.

We look forward to entering into discussions with you concerning the items discussed in the Enclosure. If you have any questions or would like to discuss further, please call me or Mr. Jeff Robinson of my staff at (214) 665-6435. Thank you for your assistance in this matter.

Sincerely yours,

A handwritten signature in black ink that reads "Thomas H. Diggs".

Thomas H. Diggs  
Associate Director for Air

Enclosure

## Enclosure

1. It appears that TCEQ made a determination through its Temporary Shutdown Policy that the facility was not subject to PSD requirements through its renewal of Permit Number 20345. Reactivation of a facility that has been in an extended period of in-operation may trigger PSD requirements as a new major stationary source. The EPA's Reactivation Policy states that shutdowns of more than two years are presumed to be permanent, although some exceptions may be considered.<sup>1</sup>

The Executive Director's Report to the Commission concludes that an amendment application is not necessary for ASARCO to restart the plant at this time based upon available information, although it contains information that raises issues about PSD applicability. Observations made during the inspection of the facility draw into question whether the facility was maintained in a state of readiness to resume operations. The Report also indicated that the extended period of in-operation resulted in the need for repairs and refurbishments prior to startup and operation. For example, corrosion damage to the drying and absorption towers in Acid Plant Number 1 must be addressed prior to startup and operation. Other equipment needing attention at the facility includes baghouses, acid plants, electrostatic precipitators, and general housekeeping to repair corrosion damage on vessels, ducts, equipment and the repair and replacement of electrical wiring. Therefore, we request the State perform a PSD applicability determination for the permit authorizing restart of the ASARCO facility to ensure that all applicable requirements are included in the Federal Operating Permit (FOP) permit. If PSD is determined to be applicable, it will require the utilization of PSD modeling protocols and the implementation of best available control technology.

2. The TCEQ should determine whether restart of this idle facility triggers PSD as a major modification. An analysis of whether a physical change will occur should be documented. A detailed review of the rehabilitation work necessary to restart the ASARCO facility, including the nominal cost, and a determination as to whether the physical changes are within the "routine maintenance, repair and replacement" regulatory exception should be made, by considering the nature, extent, purpose, frequency and cost of the work as well as other relevant factors.<sup>2</sup> The TCEQ should also determine whether restart of this dormant facility will trigger PSD as a change in the method of operation as it applies to an increase in hours.<sup>3</sup> In several similar determinations, EPA has concluded

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<sup>1</sup> The EPA's Reactivation Policy is discussed in: Memo from Edward E. Reich (September 6, 1978), Memo from Edward Reich (August 8, 1980), Memo from John S. Seitz (May 27, 1987), Letter from David P. Howekamp, Supplemental PSD Applicability Determination Cyprus Casa Grande Corporation Copper Mining and Processing Facilities (November 6, 1987), Memo from John B. Rasnic (November 9, 1991).

<sup>2</sup> See discussion in the November 6, 1987, letter from David P. Howekamp, and Title V petition order Number 6-99-2, In the Matter of Monroe Electric Generating Plant, Entergy Louisiana, Inc. (June 11, 1999), [http://www.epa.gov/Region7/programs/artd/air/title5/petitiondb/petitions/entergy\\_decision1999.pdf](http://www.epa.gov/Region7/programs/artd/air/title5/petitiondb/petitions/entergy_decision1999.pdf).

<sup>3</sup> Id.

that in calculating the net emissions increase for reactivation of long-dormant sources potentially subject to PSD, the source is considered to have zero emissions as its baseline actual emissions.<sup>4</sup>

3. The EPA questions why the FOP public noticed on August 15, 2006, was subject to public notice and comment prior to Permit Number 20345 litigation being resolved and issued as a final permit. Please explain whether the FOP incorporates the renewed permit or its previous version, and whether TCEQ intends to re-notice the permit for public comment.
4. Currently, El Paso is designated as attainment for the 1997 8-hour ozone standard (0.08 parts per million (ppm)). However, based on data from the years of 2005 to 2007, the area would be designated as nonattainment for the new 2008 8-hour ozone standard (0.075 ppm). The current 2005-2007 8-hour ozone design value for El Paso is 0.079 ppm. The TCEQ should evaluate whether the start up of ASARCO will further contribute to ozone formation and a greater potential for a non-attainment designation of the area.
5. ASARCO's emissions may affect visibility for Texas and New Mexico Class I areas. The ASARCO facility may not have been included in either TCEQ's assessment for Best Available Retrofit Technology (BART) eligible facilities or the emissions inventory for the 2002 and 2018 modeling. To be BART-eligible, sources must (1) have the potential to emit 250 tons or more of a visibility-impairing air pollutant, (2) have begun operation after August 7, 1962, and were in existence on August 7, 1977, and (3) fall within one or more of 26 specifically listed source categories (copper smelters are covered). If an upgrade is deemed to be a reconstruction, then the upgrade takes on the date of the reconstruction for the purpose of determining whether it falls in the 1962-1977 date. We are aware that the CONTOP furnaces may have been replaced in 1992. If an upgrade is determined to be a modification, then it does not affect a BART determination. However, TCEQ should ensure that with the final submittal of the Regional Haze State Implementation Plan, it has (1) assessed BART for this facility; and (2) included this facility in its reasonable progress analysis and long term strategy, including 2018 projections.
6. We request that TCEQ make a determination regarding whether ASARCO is subject to the applicable requirements of 40 Code of Federal Regulations Part 63 Subparts EEEEEEE and FFFFFFFF, the area source standards for primary and secondary copper smelters. ASARCO must demonstrate compliance with all the applicable requirements at start up or be subject to EPA enforcement action.

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<sup>4</sup> Id.