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April 8, 2008

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BY HAND DELIVERY

Ms. LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
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CHIEF CLERKS OFFICE

2008 APR - 8 PM 3: 35

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: ASARCO L.L.C.'s Response to Petition by the City of El Paso and the State of New Mexico Environment Department For Revocation of Air Quality Permit No. 20345

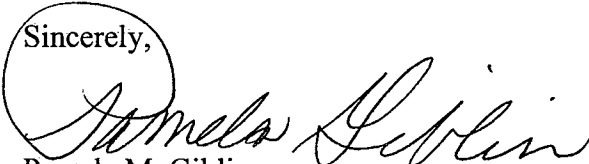
Dear Ms. Castañuela:

Enclosed for filing in the above-referenced and numbered proceeding please find an original and twelve (12) copies of ASARCO L.L.C.'s Response to Petition by the City of El Paso and the State of New Mexico Environment Department for Revocation of Air Quality Permit No. 20345.

Please file the original and 11 copies of this document and return one file-stamped copy to the messenger. A copy of the above referenced document is being served on the persons in the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions concerning this filing, please do not hesitate to contact me at the number above.

Sincerely,


Pamela M. Giblin

Enclosures

cc: Attached Service List

TCEQ DOCKET NO. _____

2008 APR -8 PM 3:35

PETITION BY THE CITY OF EL PASO §
AND THE STATE OF NEW MEXICO §
ENVIRONMENT DEPARTMENT §
TO REVOKE AIR QUALITY §
PERMIT NO. 20345 §

BEFORE THE TEXAS
CHIEF CLERKS OFFICE
COMMISSION ON
ENVIRONMENTAL QUALITY

**ASARCO L.L.C.'S RESPONSE TO PETITION BY THE CITY OF EL PASO
AND THE STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT
FOR REVOCATION OF AIR QUALITY PERMIT NO. 20345**

TO THE HONORABLE COMMISSIONERS AND GENERAL COUNSEL OF THE TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY:

ASARCO, L.L.C. ("Asarco") hereby files its response to the Petition of the City of El Paso ("the City") and the State of New Mexico Environment Department ("NMED") for revocation of Air Quality Permit No. 20345, ("the Petition") and would respectfully show the following:

I. Introduction

With much media fanfare but no legal authority, the City and NMED have petitioned the Commission to revoke the very same permit that the Commission just voted unanimously to renew: Air Quality Permit No. 20345. The Petition lacks any convincing explanation for such an extraordinary request. The Petitioners assert the very same arguments that have been rejected by the Commission time and time again. The Petition adds nothing of substance to the Commission's very thorough consideration of Air Quality Permit No. 20345, and its filing — immediately following the renewal of the permit and before the Petitioners have exhausted their procedural rights to seek review of that sound decision — simply borders on an abuse of the administrative process.

The Petitioners argue unconvincingly that recasting their past arguments into a new filing "provides the Commission a legal process whereby it can fully evaluate the potential negative impacts of the Asarco El Paso Plants [sic], outside of the possible legal constraints associated with Section 382.055."¹ Stated plainly, this means that the Petitioners would like to change the outcome produced by the legal process for evaluating the renewal of Air Quality Permit No. 20345 that is defined in the Texas Clean Air Act ("TCAA"). They would like the Commission to start over, but not with the TCAA's rules that govern renewal and the accompanying procedural rules that provide the City with an opportunity to move for rehearing and possibly seek judicial review. The Petitioners would rather petition the Commission in an effort to "provide" their own "legal process," apparently one that is free from the "legal constraints" that led to renewal of the permit just weeks ago.

Any process for the Commission to act upon the Petition will need to be "provided" by some source other than the Commission's rules, because no TCEQ rule provides for a petition such as the one that the City and NMED have filed. The Petitioners have not pointed to any example of the Commission ever granting or even considering such a petition. What is the basis that the Petitioners provide in this desperate plea for the Commission to take such unprecedented action? Nothing but the same information that the Petitioners have already given to the Commission, copied directly from multiple filings over the course of the lengthy renewal proceeding that just concluded. Accordingly, for the reasons set forth below, the Commission should reject the Petition.

¹ Petition at 4.