

SENATE COMMITTEE ON INTERNATIONAL RELATIONS AND TRADE

78TH LEGISLATURE

SENATOR EDDIE LUCIO, JR.
Chair

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OPINION COMMITTEE



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July 12, 2004

The Honorable Greg Abbott
Attorney General of Texas
Attention: Nancy Fuller, Opinion Committee
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # Mh-43808-04
I.D. # 43808

RQ-D245-GA

Re: Human Health Protection Concentration Levels under Rule §350.76, TAC

Dear General Abbott:

It has come to my attention that the U.S. Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality (TCEQ) are currently taking public comment on the Administrative Record File for the ASARCO/ El Paso Metals site in El Paso County. According to Public Notice posted by the EPA in the El Paso Times on June 30, 2004:

The U.S. Environmental Protection Agency (EPA), in cooperation with the Texas Commission on Environmental Quality (TCEQ),.....This action is a proposal to change the cleanup level for soils lead contamination from the current 500 parts per million (ppm) to 640 ppm based on recent site studies and information.

Current rules under Title 30 of the Texas Administrative Code (Rule §350.76, TAC), set the human health residential soil protective concentration level at 500 ppm. As it appears that TCEQ is considering changing current rules, I would respectfully request an opinion from the Attorney General to clarify the following issues:

Given the concentration levels under Rule §350.76, TAC, does TCEQ have the authority to raise the cleanup level at the El Paso County Metals site from 500 ppm to 640 ppm? Can TCEQ grant a variance such that it changes the cleanup level at a specific site, while the level at other sites remains the same? If TCEQ has the authority to change these levels, what process or guidelines must the agency follow, if any? If a federal agency raises the concentration levels for remediation, would the state agency have to make confirming changes to their rules?

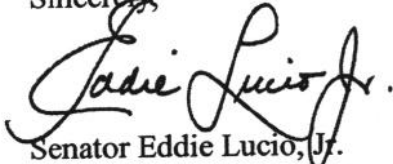
As this issue is of great importance to the public health of the citizens of El Paso County and as the EPA plans to close their comment period on July 30, 2004, I would greatly appreciate your expediting this process.



The Hon. Greg Abbott
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Thank you in advance for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Eddie Lucio, Jr." The signature is written in black ink and is positioned above the printed name and title.

Senator Eddie Lucio, Jr.
Chair, Senate Committee on International Relations and Trade

CC: The Hon. Eliot Shapleigh, Senate District 29

Enclosures: Public Notice from El Paso Times, June 30, 2004

EL/ir



**U.S. EPA REGION 6 PUBLIC NOTICE
EL PASO COUNTY METALS SITE
EL PASO, TEXAS**

June 2004



The U.S. Environmental Protection Agency (EPA), in cooperation with the Texas Commission on Environmental Quality (TCEQ), invites public comment during a 30-day public comment period on the current Administrative Record File for the El Paso County Metals site. This File contains new information on the investigation for the El Paso County Metals site.

EPA and its partner agencies are considering new information that will impact the cleanup of soils contaminants in the affected site area. Background documents pertaining to these changes can be viewed at the Information Repository located at the El Paso Public Library Armijo Branch, 620 East 7th Avenue, and EPA Region 6 Information Repository, Seventh Floor Reception Area, 1445 Ross Avenue,

Ste. 12D13, Dallas, Texas 75202. This information can also be accessed on the EPA web site for the El Paso County Metals site located at:
www.epa.gov/earth/r6/6sf/el_paso_index.htm.

This action is a proposal to change the cleanup level for soils lead contamination from the current 500 parts per million (ppm) to 640 ppm based on recent site studies and information.

The public may submit written comments during the Public Comment period from June 30, 2004 to July 30, 2004 on this proposed action. Address all comments to Removal Administrative Record Coordinator (6SF-RR), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, or at this e-mail address: doty.marie@epa.gov.

For publication in the El Paso Times June 30 and July 1, 2004
CH2M HILL/Bernard Hodes 972-980-2188. Ext. 234