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Informational Brochure for Property Owners, Lenders, Brokers, Realtors, and Appraisers

The Ruston/North Tacoma Residential Study Area

This brochure was developed to respond to concerns expressed by residents, businesses, and financial institutions relating to the issue of liability for the cost of cleaning up contaminated soil. **In general, EPA's policy is not to hold owners of residential property liable for the cost of cleaning up contamination on their property.** (See p. 3.)

This edition updates the U.S. Environmental Protection Agency's (EPA) June 1992 brochure providing information about EPA's activities in the residential areas surrounding the Asarco Smelter in Tacoma, Washington. The Ruston/North Tacoma Residential Study Area (Study Area) is part of the Commencement Bay Nearshore/Tideflats Superfund site. (See Figure 1 for a map showing the location of the Study Area.)

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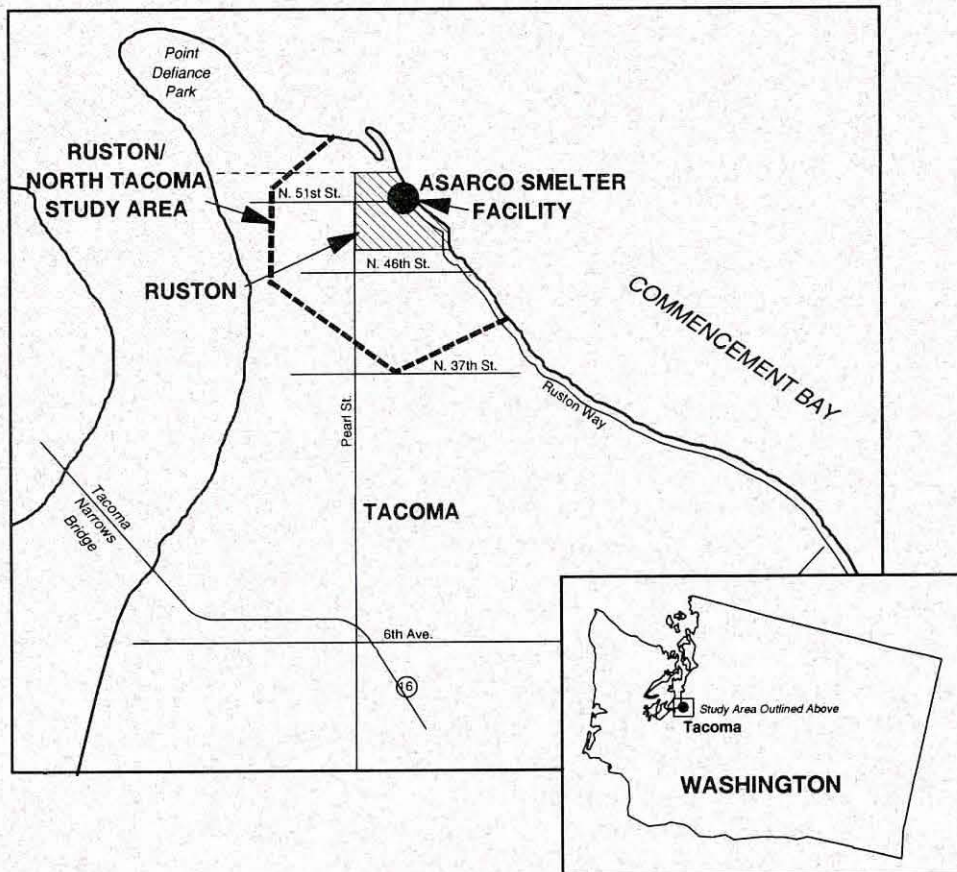


Figure 1: Site Location Map

The Ruston/North Tacoma Residential Study Area: A Brief History

In 1983 the area now known as the Commencement Bay Nearshore/Tideflats site was added to EPA's list of Superfund sites. The Residential Study Area is one of three projects associated with contamination problems resulting from operations at the former Asarco Smelter facility, which are being addressed as part of the overall Superfund site.

Arsenic, lead, and other metals related to the smelter's past operations are present in the soil and slag found in Ruston and north Tacoma. EPA is concerned about potential health effects from exposure to this contaminated soil and slag. It is unlikely that natural processes such as weathering or rain will reduce the amount of contamination in the soil. Therefore, EPA conducted an investigation and developed a plan for addressing the contaminated soil.

Soil Investigation Results. In 1990, EPA collected 222 soil samples to define the distribution of arsenic, lead, and other metals in the Study Area. **Arsenic and lead** are present in concentrations above naturally occurring levels and, because of their toxicity, are of most concern to EPA. Most urban soil typically does not exceed 20 parts per million (ppm) of arsenic and 250 ppm of lead. **EPA's test results show that the amount of arsenic ranges from 2 ppm to 3,000 ppm in the Study Area's surface soil, and the amount of lead ranges from 7 ppm to 2,700 ppm.**

Cleanup Goals. In order to be protective of human health, EPA identified cleanup levels (called

"action levels") of 230 ppm for arsenic and 500 ppm for lead for the Study Area. EPA estimates that removal of (or barriers against) soil contaminated with arsenic above 230 ppm should reduce the potential skin cancer risk from exposure to arsenic within the Study Area to no more than 5 in 10,000. This is within the range that EPA considers to be acceptable for Superfund cleanups of cancer-causing contaminants. EPA identified a 500 ppm action level for lead to reduce exposure and be consistent with national standards for reducing levels of lead in blood.

Cleanup Selection. The final cleanup plan is described in the

Record of Decision (ROD) which was signed by the acting regional administrator for EPA on June 16, 1993. The plan focuses on removing and replacing contaminated residential soil and small particles of slag (such as slag in driveways) in the Study Area. The ROD calls for additional soil sampling including samples from each property that EPA anticipates has arsenic and lead concentrations above the agency's action levels. Where samples show that soil contamination exceeds EPA action levels, the soil will be removed and replaced with clean soil.

Cleanup activities will be coordinated with homeowners to define

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Message from the EPA Deputy Regional Administrator

EPA believes that the cleanup actions conducted under the Superfund law will protect the residents of Ruston and North Tacoma from exposure to arsenic and lead in their soil. EPA, consistent with national policy, does not intend to hold residential homeowners responsible for the costs of cleanup.

EPA has been working with the affected community, including representatives of the real estate and lending/financial community who conduct business in the Study Area. Information has been provided on environmental conditions in the Study Area and on EPA's policies and regulations that may affect homeowners. I believe that these efforts have had a positive effect, and I hope that education and outreach continues to promote more informed decisions regarding real estate transactions within the Study Area.

Gerald A. Emison

History

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the extent of work to be performed on individual properties. Vegetation removal and replacement plans will be determined on a property-by-property basis. All possible precautions will be taken during cleanup to avoid damage to property such as underground utilities, sprinkler systems, fences, foundations, yard lighting, roads, sidewalks, etc. Efforts will be made to anticipate and minimize these possible problems by working with the homeowners, municipalities, and utilities to prepare sketches of each property to identify all known underground items.

Contaminated areas that are too steeply sloped to be excavated will be fenced. These areas will also be planted with low lying shrubs. A Community Protection Measures (CPMs) program will address areas where complete removal of soil above the action levels is not practicable (areas where contamination exceeding action levels extends below 18 inches). The CPMs will also address educational efforts for areas that do not exceed the action levels and therefore do not require cleanup, but do have arsenic above "background" concentrations.

Sampling began in October 1993, and is expected to take approximately three years to complete. A factual description of the sampling results and/or the cleanup that has been completed for each property will be provided to the individual homeowner upon request. Owners may want to use this information for the purpose of a deed notice to show that the property did not require cleanup actions, or that cleanup actions were completed on the property.

EPA and State Policies Regarding Residential Property Owners and Lenders at Superfund Sites

EPA's Policy: EPA has established a national policy (July 1991) declaring that residential property owners who cooperate with EPA during its cleanup action will not be held liable for the costs of cleaning up contaminated soil in residential areas. Cooperation generally means (1) providing EPA or its representatives access to property in order to conduct cleanup activities, (2) not interfering with cleanup activities, and (3) complying with conditions on the property that may be necessary for the cleanup to be protective over the long-term.

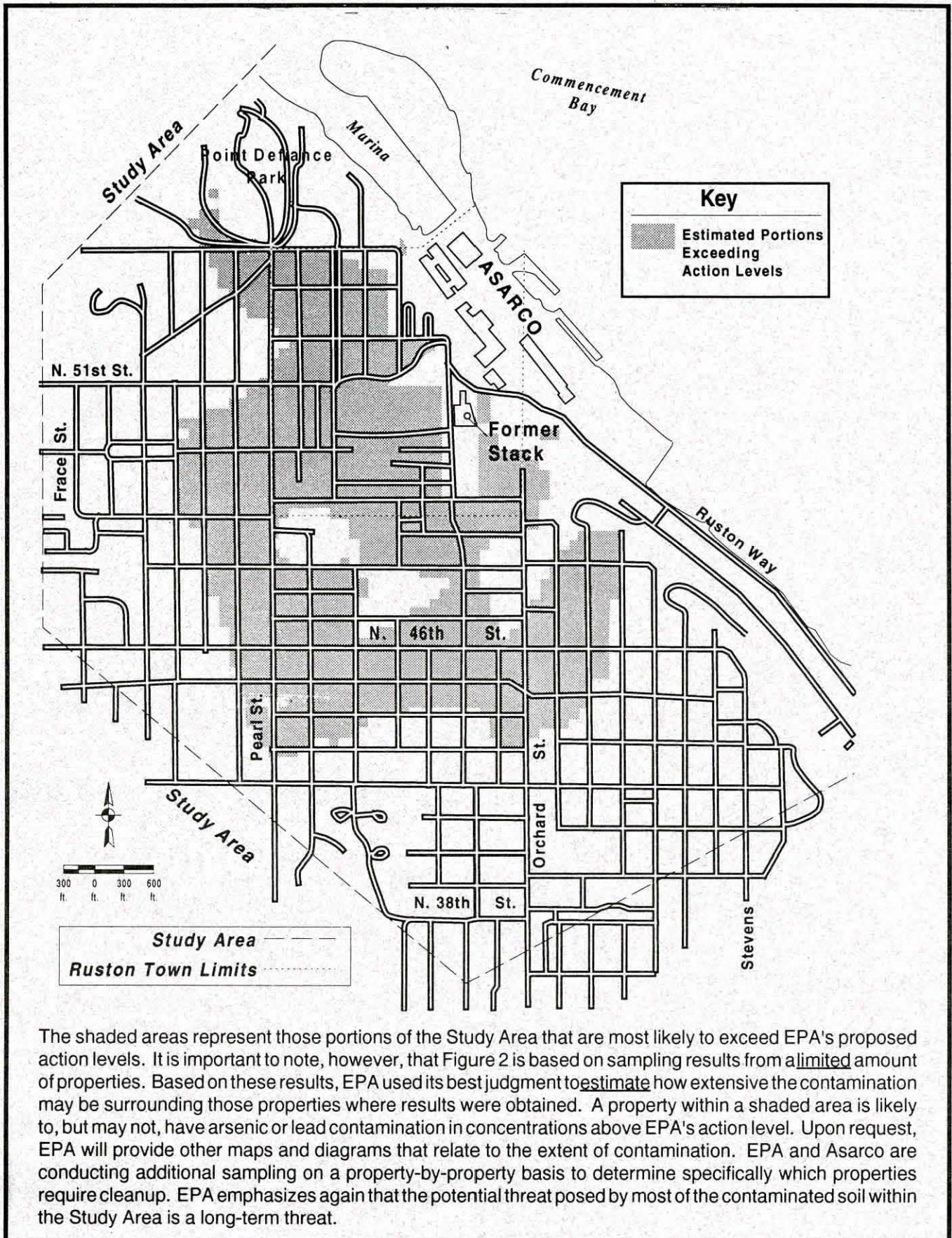
EPA's policy applies to future owners of residential properties as well, including those who obtain the property through purchase, foreclosure, gift, inheritance, or other form of acquisition. This policy does not apply, however, to owners who have conducted activities that have resulted in a release of hazardous substances that requires cleanup. EPA's policy is designed to alleviate concerns about cleanup liability for property owners, as well as for parties involved in real estate transactions, such as lenders and title insurers.

State Policy. Generally, the Washington State Department of Ecology's (Ecology) enforcement policy under the State Model Toxics Control Act regarding owners of residential property at Superfund sites is modeled after EPA's policy. **The State's policy includes the same protection from liability for homeowners and lenders that EPA's policy offers.**

Security Interest Exemption

There is a security interest exemption under the Superfund law. A secured lender, such as a bank or other creditor that holds a mortgage, deed of trust, or lien in a property or company, but does not participate in the management of the property or company, is not liable for cleanup costs under Superfund.

In 1992, EPA issued a lender liability rule that clarified which parties are generally covered under this exemption. The rule was struck down in February 1994 by the Court of Appeals for the District of Columbia on the basis that it is the role of the courts, not EPA, to decide whether a company or individual is liable under Superfund in actions between private parties. Although the rule was struck down, the security interest exemption remains unchanged.



The shaded areas represent those portions of the Study Area that are most likely to exceed EPA's proposed action levels. It is important to note, however, that Figure 2 is based on sampling results from a limited amount of properties. Based on these results, EPA used its best judgment to estimate how extensive the contamination may be surrounding those properties where results were obtained. A property within a shaded area is likely to, but may not, have arsenic or lead contamination in concentrations above EPA's action level. Upon request, EPA will provide other maps and diagrams that relate to the extent of contamination. EPA and Asarco are conducting additional sampling on a property-by-property basis to determine specifically which properties require cleanup. EPA emphasizes again that the potential threat posed by most of the contaminated soil within the Study Area is a long-term threat.

Figure 2: Study Area and Estimated Portions Exceeding Action Levels



United States
Environmental Protection
Agency
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Studies Leading to Final Cleanup Decision Ruston/North Tacoma Study Area

Since the 1970's, EPA and state and local health agencies have been addressing health concerns related to operation of the Asarco smelter. Early studies focused on respiratory ailments caused by air emissions from ongoing smelter operations. When the smelter operations ceased in 1985, EPA and other agencies began investigating other potential health problems. The following lists publicly available studies conducted by various health agencies on health effects and on soil contamination.

- (i) The "Ruston/Vashon Arsenic Exposure Pathways Study," dated March 31, 1987 (Polissar, L. et al), documented elevated levels of arsenic in soil, air, household dust and resuspended dust in the vicinity of the Asarco smelter. This study also reported the presence of elevated levels of urinary arsenic in children exposed to house dust and soil contaminated with arsenic.
- (ii) The "Final Endangerment Assessment, Ruston/Vashon Island Area," dated September 1988 (Black & Veatch, Inc. for Ecology), evaluated current and future exposures and human health risks from residual arsenic in the community surrounding the Asarco Tacoma smelter.
- (iii) The "Urinary Arsenic Survey, North Tacoma, Washington," dated December 1988 (Tacoma-Pierce County Health Department), concluded that a relationship existed between elevated urinary arsenic in some children living within one-half mile of the Asarco smelter and their exposure to soil. The study also documented that urinary arsenic levels in children in this area have been declining since the completion of the Ruston-Vashon Exposure Pathway Study in 1987 and implementation of site stabilization activities at the Asarco facility.

- (iv) The "Final Field Investigation Report, Ruston/Vashon Island Area," dated September 1988 (Black & Veatch, Inc., for Ecology), described results from the Department of Ecology's soil sampling in Ruston in April 1988 that verified elevated levels of arsenic in soil within one-half mile of the Asarco smelter. Levels of arsenic in soil in Ruston within one mile of the smelter facility were as high as 7,000 ppm. Based on the results of soil sampling and discussions with EPA and Ecology, Asarco agreed to remove contaminated topsoil from 11 publicly accessible properties including playgrounds, fields, and vacant lots where children were likely to play. Clean soil was placed over the excavated areas.
- (v) EPA's Remedial Investigation, Baseline Risk Assessment, Decision Memorandum, and Feasibility Study, dated February 1992, describe the extent of contamination within the Study Area, the risk posed to human health and the environment by such contamination, proposed "action" levels for the removal of arsenic and lead, and an analysis of the cleanup alternatives.

In addition, EPA publishes fact sheets on a regular basis that describe its plans and activities with respect to Commencement Bay, the Asarco smelter, and the Study Area. Fact sheets and other documents developed by EPA specifically relating to EPA's remedial investigation and plans for cleanup in the Study Area have been made available to the public since 1989. If you would like your name added to EPA's mailing list to receive our fact sheets, please call Michelle Pirzadeh at 1 (800) 424-4EPA.

Questions and Responses on Property Transactions and Liability Issues in the Ruston/North Tacoma Study Area

EPA has received numerous questions on how the existence of contamination may impact the ability to sell property; liability for contaminated property; the ability to obtain loans or refinancing on individual property; and property values. EPA believes these are important questions and the following is a listing of the most frequently asked questions and EPA's responses.

- 1. Is a bank or lender liable for contamination if it acquires property through foreclosure?**

Response: No, because banks that acquire residential property through foreclosure are covered by EPA's residential homeowner policy.
- 2. Who will pay for cleanup costs?**

Response: Homeowners are not responsible for paying for cleanup measures. On August 9, 1993, EPA issued a Unilateral Administrative Order (Order) to Asarco, which directs Asarco to implement the final cleanup plan for contaminated residential soil. If Asarco fails to carry out that Order, EPA has the authority to conduct and pay for the cleanup efforts and recover the costs from Asarco.
- 3. Should banks require homeowners in contaminated areas to take soil samples?**

Response: EPA generally does not advise banks or other lending institutions on whether soil samples should be taken in order to facilitate property transfers. Sampling is being conducted in the Study Area to determine which properties or areas exceed EPA's action levels and require cleanup, as part of the final cleanup plan.
- 4. What is happening to property values?**

Response: Representatives of the real estate community are more qualified to respond to this question. EPA does not have the expertise to reliably assess information on property values within the Study Area. This information can be provided by real estate agents, lenders, appraisers, and assessors who are directly involved with real estate transactions within the Study Area. EPA and Asarco have initiated and will continue to provide community outreach activities to explain its cleanup plans and to try to address the concerns of those associated with property transactions.
- 5. Do I have to disclose the contamination on my property to potential buyers?**

Response: Disclosure requirements are determined in state law. An individual seeking information on disclosure requirements should consult an attorney or other agent familiar with such requirements. EPA provides information about its investigation results, assessment of risk, and current cleanup plans to members of the public upon request.
- 6. What information can EPA provide to potential buyers?**

Response: EPA provides information about its investigation results, assessment of risk, and the status of current cleanup activities to members of the public upon request.

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Questions and Responses (continued from page 5)

7. **Will EPA release specific addresses at which samples have been taken?**
Response: In the past, EPA has identified sample locations on maps without specifically identifying the property owner or address. EPA provides the sample results for each property directly to the individual homeowner. If you have recently purchased property in the area and would like to find out if it has been sampled, please contact an EPA representative toll-free at 1(800)424-4EPA. You may also consult the sample results maps contained in EPA's January 1992 Remedial Investigation Report, which is available at the information repositories listed in this brochure. In addition, EPA's Record of Decision requires the development of a public database for all sampling and cleanup activities performed on a particular property. This information will be available to the public for review.
8. **Is the groundwater in the Study Area contaminated? Is the groundwater safe to drink?**
Response: A field investigation of groundwater conditions in the Study Area was not included as part of EPA's investigation. However, based on the type of soil, the characteristics of the contaminants of concern, and the presumed depth to groundwater, it is unlikely that contamination from Asarco airborne emissions has migrated to the groundwater or substantially affected groundwater quality in the Study Area. Groundwater in the Study Area is not currently used as a source for drinking water.
9. **Can EPA explain to me how to conduct an "environmental audit," if required by my lender?**
Response: There is no EPA-certified environmental audit because audits may be required for different purposes. If your lender requires an audit, you should ask them what they want included in the audit. Companies that perform this work are listed in the yellow pages under "environmental and ecological services."
10. **What if my loan is denied because of concerns about contamination? Can EPA call my banker or appraiser? What can EPA do to help me?**
Response: EPA provides information on its investigation and cleanup activities in the Study Area to anyone requesting assistance. Although EPA usually does not intervene in individual transactions, EPA is committed to conducting education and outreach activities that will provide information on EPA's cleanup plans, addressing the concerns of the real estate and lending/financial community. For example, EPA has met with representatives of the real estate and lending/financial community to explain its cleanup plans and respond to the concerns of this community. Please feel free to have your banker contact EPA personnel listed on the back of this brochure. EPA is also willing to speak to interested groups regarding any concerns.

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Questions and Responses (continued from page 6)

11. Can a homeowner perform a "cleanup" to ensure that he or she will be able to sell their property?

Response: First, EPA believes that the threat posed by most of the contaminated soil within the Study Area is a long-term threat (i.e., a threat to an individual that is continuously exposed to contaminated soil over several decades). Therefore, EPA recommends that homeowners wait until EPA and Asarco can conduct the cleanup in a systematic manner. Soil sampling began in October 1993, and is expected to take about three years to complete. To find out when your property is scheduled for soil sampling, call the Asarco Information Center Coordinator, Karen Pickett, at (206) 756-5436.

Second, EPA continues to work with representatives of the appropriate political, real estate, and financial institutions to ensure that property transactions are not unnecessarily complicated due to environmental concerns. In the meantime, if residents conduct activities that involve disturbing or excavating soil, EPA recommends that the homeowner follow recommended safeguards for managing contaminated soil described in a brochure prepared by the Tacoma/Pierce County Health Department. The brochure can be obtained by contacting an EPA representative listed on page 8 of this brochure.

12. I believe that my property values have been reduced because of the stigma of being included within a Superfund site. Can EPA compensate me for the reduction of the value of my property?

Response: EPA is very concerned about the indirect impacts that may result when a community is within a Superfund site, for example, potential adverse effects on property values. The Superfund law, however, does not authorize EPA to compensate individual homeowners for losses of property values or other alleged damages associated with designating an area as a Superfund site. EPA's primary mission under Superfund is to identify sites with existing contamination and to perform necessary cleanup actions. EPA's experience is that the performance of a Superfund cleanup has an overall beneficial impact on the affected community.

13. Where can I dispose of soil that I generate from routine homeowner activities, for example, gardening?

Response: EPA's cleanup plan calls for Asarco to provide a disposal service for residential soil in the Study Area. The service will be available to all residents of the Study Area until the soil on their property is tested. For those properties which show soil test results above EPA's action levels and will need remediation, the service will continue to be available until remediation of that property is complete. This service will not continue for those properties where soil tests below the action levels. To find out how you can participate and arrange for pick up and disposal, call Karen Pickett at the Asarco Information Center at (206) 756-5436.

For More Information

EPA Contacts

Use the telephone numbers and addresses listed below to contact EPA staff, or call toll-free on weekdays from 8:00 a.m. to 4:30 p.m. at 1 (800) 424-4EPA.

U.S. Environmental Protection Agency
1200 Sixth Avenue, Seattle, Washington 98101

EPA Project Manager
Mary Kay Voytilla: (206) 553-2712

EPA Community Relations Coordinator
Michelle Pirzadeh: (206) 553-1272

EPA Information Repositories

You can find information about all of EPA's Tacoma Superfund projects related to Asarco at EPA's Seattle office and Ecology's Olympia office, or any of the following locations:

In Tacoma:

Tacoma Public Library, Main Branch
1102 Tacoma Avenue South, Northwest Room

McCormick Regional Branch Library
3722 North 26th Street

City of Tacoma Environmental Commission
747 Market Street, Suite 900

Tacoma-Pierce County Health Department
3629 South D Street

Pacific Lutheran University Library
121st and South Park Avenue

Citizens for a Healthy Bay
771 Broadway

In Ruston:

Ruston Town Hall
5117 North Winnifred Street

Asarco Information Center
5311 North Commercial

Other Contacts

Washington State Department of Ecology
Bruce Cochran: (206) 407-7227

Asarco Information Center
Karen Pickett: (206) 756-5436

Detailed Background Information

EPA regularly writes and distributes fact sheets for community members. The fact sheets offer up-to-date information about the Asarco cleanup activities and investigations. Contact EPA if you would like back issues of these fact sheets, or if you want your name added to EPA's Fact Sheet mailing list.

What is Superfund?

- Superfund is a program established by Congress in 1980 under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and amended in 1986, to respond directly to the nation's hazardous waste sites.



- CERCLA established a fund (the "Superfund") to finance the investigation and cleanup of sites where the responsible parties are unknown, unwilling, or incapable of resolving the environmental problems.



- CERCLA authorizes EPA to take legal action to ensure that the parties responsible for polluting the environment either clean up those areas under EPA oversight or reimburse EPA for the cost of the cleanup.