

# US Pays Asarco \$15M To End Neb. Superfund Cleanup Dispute

By **Juan Carlos Rodriguez**

Law360, New York (December 12, 2012, 2:05 PM EST) -- The federal government on Tuesday reached a settlement with Asarco LLC in Texas bankruptcy court, agreeing to pay the mining company \$15 million to resolve allegations that the U.S. Environmental Protection Agency and the Department of Justice destroyed documents related to the \$219.5 million cleanup of a Nebraska Superfund site.

Asarco, a unit of Grupo Mexico SAB, had accused Robert Feild, the EPA's project manager at the Omaha Lead Superfund site, of concealing and destroying documents related to an EPA study of recontamination at the site. The two sides reached the \$219.5 million settlement over the site during Asarco's bankruptcy proceedings in 2009.

Under the agreement, Asarco and the government said they resolve all their disputes about the Omaha Lead site, the site settlement, and all the court actions related to Asarco's Freedom of Information Act claims.

"The Asarco entities contend that, due to the U.S.'s alleged fraud, misrepresentations and improprieties in document production and other allegations, Asarco, through the [bankruptcy] plan administrator, paid to the U.S. on account of the allowed claim an amount far in excess of its actual liabilities at the Omaha Lead site," the proposed settlement agreement said.

The proposed agreement also said the federal government disputes the allegations regarding fraud, overpayment of liabilities, misrepresentations, and improper nondisclosure and other allegations made by Asarco in its motions and lawsuits.

The government contends that the Omaha Lead Site Settlement was fair and reasonable, that Asarco's motions and lawsuits are untimely under applicable rules and without factual or legal basis and contrary to the Omaha Lead Site

Settlement, and that the plan administrator lacks standing.

Asarco had claimed in a June motion to reconsider the settlement amount that the documents it sought from the EPA would have established that lead contamination at the Superfund site was caused by lead-based paint peeling off aged residential houses, not by a lead smelter that Asarco operated that had been closed and fully remediated in an award-winning environmental cleanup.

It alleged that information related to recontamination was critical to Asarco's challenges to the Omaha Lead Superfund site claim because if there was evidence that contamination there was attributable to lead-based paint and dust in Omaha's housing stock rather than to Asarco's smelter, then the company would have had no, or minimal, environmental liability at the site.

Asarco said the \$219.5 million settlement — paid in December 2009 under the company's Chapter 11 reorganization plan — exceeded its liability at the Superfund site and demanded a refund of its overpayment from the EPA.

According to Asarco, the U.S. Department of Housing and Urban Development, not the EPA, had responsibility for the lead contamination at the Superfund site.

In the motion, Asarco quoted emails in which Feild allegedly instructed his co-workers to delete emails related to the source of contamination at the site because they would likely be subject to the Freedom of Information Act and discovery requests later.

Asarco's plan administrator is represented by Dion W. Hayes and Patrick L. Hayden of McGuireWoods LLP. Reorganized Asarco is represented by Gregory Evans of Integer Law Corp. and by Rhonda D. Orin of Anderson Kill & Olick LLP.

The case is In re: Asarco LLC, case number 2:05-bk-21207, in the U.S. Bankruptcy Court for the Southern District of Texas.

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