



EL PASO'S ORIGINAL NEWS SOURCE

City Seeks to Enforce 1999 Asarco Penalty

by Sito Negron

Asarco allegedly burned illegal hazardous waste from Corpus Christi in the 1990s. As a result, it agreed to spend almost \$2 million to pave El Paso streets. The city has yet to receive the bulk of the money.

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Asarco faces questions about its multi-million-dollar responsibility to clean up soil in Central El Paso that the EPA contends was contaminated from years of emissions from the smelter, and is battling for a state emissions permit that would allow the plant to reopen.

And, in a lesser-known battle, it is negotiating with the city of El Paso over more than a million dollars it owes under a 1999 agreement to pave roads in the city. Asarco agreed to spend \$1.8 million to settle allegations by the state of Texas that the El Paso plant illegally accepted and burned hazardous waste from a facility in Corpus Christi.



"We have a contract with them that says they pay 'x' per year, and they haven't paid it in three years and now they owe me a million stinking dollars," said Assistant City Attorney James Martinez about the agreement.

The agreement, known as a consent decree, allows Asarco to escape a conclusion of wrongdoing, meaning the charges officially never went beyond allegations. In return, the agreement obligates the company to take a number of steps involving audits and environmental projects.

One of the projects was dubbed by the city as the Paving Contract, and was meant to reduce particulate air pollution -- dust and other microscopic particles -- by paving roads and alleys.

Asarco paid for two years of the project, at \$370,000 per year, before suspending payments in 2002.

"Asarco suffered some tough financial times when the price of copper went very low," said Thomas Aldrich, vice president for environmental affairs at Asarco. "We were not able to continue with that project."

In addition, Aldrich said, the company began negotiating with the U.S. Department of Justice for permission to sell its stock in the Southern Peru Copper Corporation to Asarco's parent company, American Mining Corporation. That sale, which the DOJ announced in a 2003 press release as \$765 million, created a \$100 million-plus environmental trust fund to clean up Asarco sites across the country.

In the press release, EPA Assistant Administrator for Enforcement and Compliance Assurance John Peter Suarez said "the settlement is fair to all concerned, provides the resources needed to protect the public's health and the environment, and is of significant value to Asarco. This settlement will ensure that important environmental cleanup will occur."

The settlement, however, did not include the El Paso paving project. In fact, it put that project on hold.

"The subsequent 2003 decree superseded the first and essentially gave Asarco three years of standby as we decided with the government which projects should get funded in 2003, 2004 and 2005," Aldrich said. "In the meantime we've had several discussions with the city of El Paso and they were anxious to see this thing continue but we have not finalized any discussions on how that could continue."

The city considered suing Asarco to get the money. A Jan. 11 City Council executive agenda item on the matter, however, was postponed.

The paving contract is separate from, but in the context of, at least two issues involving Asarco that have created community-wide controversy. One issue is Asarco's liability to clean up arsenic and lead contamination found in hundreds of Central El Paso yards. The cost, as outlined by El Paso Mayor Joe Wardy in city documents, is estimated at between \$7 million and \$10 million. Another issue is the Asarco request to renew its emissions permit, a move that would allow the plant to reopen but has been resisted by the community and the City Council.

The paving contract is unrelated to those issues, but has come up in the discussion. Documents requested under the Public Information Act by Newspaper Tree from the city of El Paso indicate a back and forth with Asarco regarding the paving project.

On May 28, 2004, Wardy sent a letter to the Texas Commission on Environmental Quality opposing the Asarco air permit renewal. Wardy wrote that although independent of the deliberations regarding the permit, TCEQ ought to know that "Asarco has reneged on its responsibilities (to complete the paving project). ... On March 11, 2000, the City of El Paso made a final demand for payment. We have yet to receive a responsible reply from Asarco."

Aldrich sent a reply to Wardy June 2.

"We believe that these obligations have been deferred under our subsequent (2003) national consent decree ... from a purely practical standpoint, as we explained at our April 19, 2004 meeting, the historic low copper prices experienced in the 2002-2004 period left Asarco unable (not "unwilling") to meet all of our obligations," wrote Aldrich.

He also noted that at the April 19 meeting, "the City committed to taking the lead in drafting a revised contract. To date, we have not seen anything from the City."

On Aug. 24, Aldrich wrote to the city offering a payment schedule of \$30,000 a month for 37 months, beginning in September 2004. Assistant City Attorney Martinez wrote back Nov. 4, 2004.

"In the light of the prior contractual agreement and Asarco's inability to comply with it, please be aware we will require that any future agreement be reduced to judgment," Martinez wrote.

On Jan. 11, the council considered but did not act upon suing to enforce the paving contract.

The next letter in the series released to Newspaper Tree is in draft form, dated Feb. 21, which Martinez said was not sent. The letter, addressed to Bracewell & Patterson lawyer Eric Groton, mentions an attached contract for the paving. The law firm also has received payment from the city for lobbying services, but Martinez flatly said that paying the firm for lobbying while it was representing Asarco "is not a conflict, they're completely unrelated."

Martinez said the contract mentioned in the draft Feb. 21 never was drawn up. He said that paragraph 138 of the 1999 agreement calls for all parties, including Asarco, to consent to modifications of the contract with the city.

"That's for the voluntary agreement. If they don't consent they can be sued; if they want to do it voluntarily we can agree to do it with them," Martinez said. "There's a time where eventually we'll say we're not going to wait any more but for right now I need to give the other parties to the consent decree an opportunity to respond, to see if they'll object to any modification."

Aldrich said that Asarco was "waiting to hear back from the city."

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Sito Negrón has fifteen years experience reporting on politics and culture in El Paso and Las Vegas.

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