arco: Cleanup almost skirted - Attorneys: Grupo - Amarillo Globe-News (TX) - December 30, 2009

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WASHINGTON - A 562-foot smokestack that spewed a plume of arsenic, lead and other heavy metals across 1,000 square miles of Washington state's Puget Sound for about a century remains a fitting symbol of the largest environmental bankruptcy in U.S. history.

$52 million to Texas to clean up sites

Asarco is providing Texas with about $52 million that will be placed in a trust to oversee cleanup at the former **Asarco** smelter in El Paso. A small portion of the state's settlement, about $80,000, will be used the maintain the former Amarillo smelter site, at Smelter Road and Northwest 20th Avenue.

Several years ago, **Asarco** finished a voluntary cleanup at the 100-acre site, which was covered with a layer of soil and seeded with native grasses. In 1992, **Asarco** reached an out-of-court settlement in a federal lawsuit regarding emissions from the Amarillo smelter. Several Amarillo plaintiffs, including residents from Amarillo's North Heights, alleged they suffered health effects from smelter emissions, but **Asarco** denied that emissions caused the plaintiffs' health problems. The former smelter closed in 1975 and later was razed.

But it also tells a cautionary tale of how a company that is intent on shedding its environmental liabilities could manipulate the nation's bankruptcy system.

In this instance, Grupo Mexico, S.A. de C.V., tried and failed, according to lawyers and regulators who are close to the case. It took a federal judge, though, to block what some bankruptcy attorneys call a "candy heist" that could have left taxpayers responsible for cleaning up 80 polluted sites in 19 states, a job that initially was estimated to cost $6.5 billion.

The smokestack in Ruston, Wash., once the world's biggest, has been demolished, as has the copper smelter that fed it. The smelter was owned by **Asarco**, a century-old mining, smelting and refining company based in Tucson, Ariz., that once was listed on the Fortune 500. Grupo Mexico bought **Asarco** in 1999.

In court documents, Grupo Mexico has denied that it maneuvered **Asarco** into bankruptcy in an attempt to evade its environmental responsibilities. Grupo Mexico refused to comment for this story.

"Grupo Mexico tried to use a bankruptcy court to avoid **Asarco**'s cleanup responsibilities, and they almost got away with it," charged Sen. Maria Cantwell, D-Wash.

Asarco officially emerged from bankruptcy earlier this month, and Grupo Mexico has paid $1.8

billion in cleanup costs. In addition to claims filed by the federal Environmental Protection Agency, 15 states, including Texas, Washington, Oklahoma, Missouri, Colorado, Arizona and New Mexico, and various Indian tribes and private parties had filed environmental claims against Asarco.

State and federal regulators say they're more than satisfied.

But unless the laws are changed, Cantwell and others said that another company almost certainly will try to manipulate the bankruptcy system the way they charge that Grupo Mexico did.

"This is not what the bankruptcy laws were intended for," said John Iani, a Seattle attorney who as a regional head of the Environmental Protection Agency during the George W. Bush administration convinced reluctant Justice Department lawyers that Grupo Mexico was trying to pull a fast one.

Asarco had seen better years when Grupo Mexico bought it for more than $2 billion in a highly leveraged buyout. Owned by one of Mexico's richest families, Grupo Mexico had its eyes on Asarco's "crown jewels," a majority interest in two of the world's richest copper mines, in a Peruvian desert where it hadn't rained since the time of the Spanish conquistadors.

From the get-go, Iani and other regulators smelled trouble. They were convinced that Grupo Mexico's sole goal was to gain control of the Peruvian mines and then nudge Asarco into bankruptcy to avoid billions of dollars in environmental cleanup costs.

"We watched as their lawyers sought to move things offshore," Iani said. "They were leaving the country, and these sites would have gone orphan."

Federal attorneys were able to block the transfer of the Peruvian mines to another of Group Mexico's subsidiaries temporarily. In 2003, though, Grupo Mexico officially bought the mines from Asarco. Less than two years later, Asarco filed for bankruptcy protection.

During the past four years, the case has unfolded in a bankruptcy court in Corpus Christi. Early on, Judge Richard Schmidt effectively stripped Grupo Mexico of its control of Asarco and installed an independent board of directors.

Grupo Mexico continued to play a role in the bankruptcy proceedings, but it was unclear how serious it was about reassuming control of Asarco in a reorganization.

While the case was proceeding in Corpus Christi, a separate case was filed in a federal court in Brownsville. In that case, Asarco alleged that Grupo Mexico fraudulently had stripped it of its interest in the Peruvian mines and taken steps to force it into bankruptcy.

In a stern decision, U.S. District Judge Andrew Hanen agreed and found that Grupo Mexico owed Asarco $8.8 billion for the mines.

Grupo Mexico either would owe $8.8 billion to a new owner of Asarco under a reorganization plan, or it could fight to regain control of Asarco for far less.

"In a status conference just weeks before Hanen's ruling, Grupo Mexico said it wasn't interested in buying **Asarco**," said Elliott Furst, who handled the case as a senior counsel in the Washington State Office of the Attorney General.

But within weeks of Hanen's ruling, Grupo Mexico was in a bidding war for control of **Asarco**.