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Asarco Wants Others To Help Cover \$33M Calif. Cleanup

By Dietrich Knauth

Law360, New York (March 25, 2011) -- Asarco LLC sued four chemical and energy companies Wednesday, seeking contributions toward a \$33 million cleanup at a California Superfund site that Asarco took on in one of its bankruptcy settlements.

Asarco's complaint, filed in the U.S. District Court for the Northern District of California, says Asarco was not wholly responsible for environmental damage at the Selby Smelter Site in Contra Costa County, Calif., and that defendants [NuStar Energy LP](#), [Celanese Chemical Co.](#), Shore Terminals LLC and Kinder Morgan [Energy Partners LP](#) should pay their fair share.

The site, which includes 66 acres of upland and former tidelands located south of the San Pablo Bay, was the site of a silver and lead smelter, sulfuric acid plants, and petroleum transfer transport and storage facilities, according to the complaint. An Asarco predecessor gained control of the site in 1905 and operated the smelter through 1970, and Asarco says the companies who polluted the land after 1970 are liable for part of the damage.

"This settlement included costs to clean up and control contamination that cannot be associated with Asarco's historic smelting activities, but can only have come from the defendants' facilities," Asarco said.

Asarco has already spent the \$33 million to clean up the site and discovered contaminants including smelter-related pollution, including lead, arsenic, cadmium and zinc, as well as sulfur pollution and methyl tertiary butyl ether in the groundwater, the complaint said.

After Asarco ceased operations, Virginia Chemicals Inc., a predecessor to Celanese Chemical Co., leased part of the site for a sulfur dioxide facility from 1971 to 1976.

“This plant heavily used sulfuric acid throughout the process, and known spills of acid occurred, as well as escape of fugitive sulfuric dioxide gas, which would mix with Bay Area rain and mist to form sulfuric acid,” Asarco said.

The land was also the site of a petroleum transfer facility operated by the defunct Wickland Oil Co. The complaint said a 1989 environmental settlement among Asarco, Wickland and the California State Land Commission made each part responsible for one-third of the environmental damage.

Asarco filed for Chapter 11 protection in 2005, and its reorganization plan, which included \$1.79 billion in environmental claims, went into effect in December 2009.

“Asarco fully funded the Selby Site Settlement at 100 cents on the dollar as part of its reorganization,” Asarco said. “The Selby site settlement funds a cleanup at the Selby site that addresses fully all of the Asarco waste, as well as the MTBE, sulphuric acid and other harmful substances governed by CERCLA and released by defendants during their ownership or operation of facilities at the Selby site.”

The \$1.79 billion cleanup and restoration sum was allocated to state and federal agencies at more than 80 sites in 19 states that were contaminated by mining operations, according to the U.S. [Environmental Protection Agency](#).

Asarco is represented by Integer Law Corp. Counsel information for the defendants was not immediately available.

The case is Asarco LLC v. Nustar Energy LP et al., case number 3:11-cv-01384, in the U.S. District Court for the Northern District of California.

--Additional reporting by Samuel Howard. Editing by Lisa Uhlman.