

Asarco wants to join legal fight over EPA records

By JOSH FUNK
October 19, 2010

OMAHA, Neb.

The Asarco mining company wants to join Union Pacific's legal fight over Environmental Protection Agency records about lead contamination in Omaha, because Asarco hopes to recover millions from companies involved in the contamination.

The information Union Pacific and Asarco want relates to 5,600 lead-contaminated properties in Omaha. The EPA and Union Pacific have been trying for years to settle who should pay several hundred million dollars to clean up the lead.

The Omaha-based railroad sued in June after obtaining e-mails in which EPA officials discussed deleting records.

Asarco paid \$200 million as part of a settlement with the EPA because it ran a lead smelter in Omaha for more than 50 years before the smelter closed in 1997. Asarco did not admit fault in the settlement.

Attorney Greg Evans said the EPA documents might help Asarco recover compensation from companies that contributed to the contamination.

"We need to make sure we have a clear understanding of the cause of the contamination," Evans said.

EPA officials did not immediately respond to messages Tuesday.

Union Pacific is also trying to learn what caused the lead contamination because the railroad argues that lead house paint is the real problem. The EPA blames industrial sources of lead, especially Asarco's smelter, for the contamination, and Asarco's smelter operated on land leased from UP for several years before Asarco bought the land in 1946.

Railroad officials hope the records they are requesting will prove that Union Pacific isn't responsible for the contamination.

Union Pacific spokesman Tom Lange said the railroad supports Asarco's petition to become a plaintiff in the lawsuit.

But a federal judge will determine whether Tucson, Ariz.-based Asarco is allowed to join the case.

Before Asarco's motion was filed Monday, mediation talks between Union Pacific and the EPA were scheduled to begin Nov. 12. A computer expert has also been assigned to review the EPA's data and its plan to protect information.

Union Pacific said in its lawsuit that the document destruction may date back to at least 2004. The company quoted several e-mails in which an EPA supervisor encourages employees to delete messages so the railroad won't be able to obtain the information under the Freedom of Information Act.

Union Pacific said the EPA responded slowly to the records requests it submitted in 2002, 2003, 2004 and 2009. The railroad said it found the e-mails about destroying documents buried in more than 1.1 million pages of records the EPA did provide, but is not sure whether the agency provided everything requested.

Asarco has asked for some of the same information Union Pacific is seeking, and Evans said Asarco filed its own lawsuit in 2008 over the EPA's response to its requests.

Much of eastern Omaha has been designated a superfund site by the EPA because of the extent of lead contamination, which can endanger children's health, causing decreased intelligence, slow growth and behavior problems. The EPA has been working to clean up the site for several years.

The EPA has already removed and replaced the soil at nearly 6,000 properties in Omaha. The total cost of the EPA cleanup is likely to exceed \$400 million, according to agency estimates.

Also reported in Bloomberg BusinessWeek, Law360, Forbes.com, & U.S. News & World Report

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