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## Criminal Inquiry Focuses on EPA Email

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Federal prosecutors are conducting a criminal investigation into whether the Environmental Protection Agency misled the courts about a pollution case in Omaha, Neb., that led to a \$187 million settlement with the former owner of a lead refinery, according to court records and people involved in the matter.

A weekend court filing by lawyers for the company, Asarco LLC, says the firm recently learned of the probe into the conduct of Robert Feild, an EPA official who had overseen the agency's work on a cleanup project stemming from a shuttered Asarco smelter in Omaha.

The case is rooted in the larger national debate over the extent to which long-closed smelters are to blame for lead contamination in soil where children play.

Asarco, a Tucson, Ariz., unit of Mexican metals conglomerate Grupo Mexico SAB, alleges environmental regulators intentionally destroyed or withheld evidence that would have led to a lesser settlement amount. It has argued that much of the contamination was caused by peeling lead paint on older homes.

In court filings, Asarco cited emails from Mr. Feild urging co-workers to delete their emails because they might be subject to public-information requests. In 2004, he wrote, "I hope everyone is deleting these types of messages after they are received."

In the same email, Mr. Feild asked a colleague, "are you suggesting that all of the samples collected prior to August are biased high because of the possible presence of lead paint?"

The National Archives and Records Administration closed its inquiry into the matter last year. As part of that inquiry, EPA records officer John Ellis, in a 2010 letter contained in the court filing, called the Feild emails "anomalies," and he said the agency didn't have a pattern or practice of deleting emails to dodge Freedom of Information Act requests. Mr. Ellis said the agency had provided 1.1 million pages of documents in the Omaha lead case. Reached by phone on Monday, Mr. Feild declined to comment, saying, "I'd like to, but it's probably best that I don't."

Asarco said it is cooperating with the criminal investigation, according to the filing made in bankruptcy court in Corpus Christi, Texas. Asarco emerged from a Chapter 11 bankruptcy filing in 2009 and is trying to get the settlement reduced.

A law-enforcement official said a criminal investigation has been opened into conduct by people in EPA's Region 7 office, in Kansas City, Kan., which oversaw the Omaha case, but declined to say anything further.

A spokeswoman for the EPA referred questions to the agency's inspector general's office, which said it can't confirm or deny pending investigations.

Starting in the 1870s, Asarco operated a lead refinery in Omaha. The smelter closed in 1997. Asarco did some cleanup and donated the land to the city, which turned it into a park.

After the cleanup, officials found elevated levels of lead in the blood of some of the children living nearby and unsafe levels of lead in the soil. In 2003, the EPA designated an area with more than 15,000 homes as a cleanup site under the Superfund program. The EPA and local agencies have cleaned up soil at more than 10,000 properties.

In a settlement made final by a court in 2009, Asarco agreed to pay \$186.5 million, which grew with interest. Another company involved in the case, Union Pacific Corp., agreed to pay \$25 million. A Union Pacific spokeswoman said she wasn't aware of any criminal investigation involving EPA's handling of the case. Asarco also recently filed a lawsuit alleging Union Pacific didn't pay its fair share.

A Union Pacific spokeswoman said the company does not believe the suit has merit.

After Asarco settled in 2009 with the EPA, agency emails surfaced in a separate litigation between the EPA and Union Pacific Corp., indicating lead paint might have played a larger role in the contamination than the agency previously acknowledged. One 2007 memo from a contractor to the EPA said that at one property, the homeowner had pressure-washed his house and sprayed paint chips "all over [the] property and into his neighbors." Subsequent tests on the ground showed high lead levels, the memo said.

The government requires companies to pay for cleanup if they are deemed the primary source of the contamination, but if the primary source is peeling paint, companies aren't required to pay.

The company's court filing accuses EPA and Justice Department lawyers of going along with Mr. Feild's alleged misrepresentations to the court.

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