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Court: CEMEX liable for some Rio Grande arsenic pollution

Judge rules company must pay \$1.1 million for arsenic cleanup

By Diana Washington Valdez / El Paso Times

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CEMEX Inc. is responsible for part of the arsenic contamination of the Rio Grande in the vicinity of the International Boundary and Water Commission in West El Paso, according to a federal court judgment in a lawsuit that Asarco, LLC filed against CEMEX.

U.S. District Judge Phil Martinez issued his final judgment on March 31, and ordered CEMEX Inc. to pay Asarco \$1.1 million as its part of the cleanup costs.

The former cement plant on property owned by CEMEX, at West Paisano Drive and Executive Center Boulevard, contributed to a release of arsenic that led to partial contamination of a section of the river, according to the judge's 71-page opinion.

There is "overwhelming evidence that materials containing arsenic ... were present on the (CEMEX) plant property," the court opinion stated. "Further, Asarco provided evidence that CEMEX failed to manage and properly dispose of the (arsenic-containing cement kiln waste) generated at the plant ... and that CEMEX never installed any controls to contain runoff from the plant property."

A spokesperson for CEMEX was unavailable for comment on Monday. Previously, CEMEX lawyers denied all the allegations in the complaint that Asarco initially filed in April 2012.

Asarco, which formerly operated a copper and lead smelter in West El Paso, had agreed to pay \$22 million for the contamination cleanup at the IBWC site. Investigators for the IBWC blamed Asarco's smelting operations for lead and arsenic contamination in soil and groundwater, court documents stated.

The court found that Asarco was not the only source of the arsenic that seeped into the Rio Grande.

"This is a very important judgment for Asarco and the El Paso community," said Gregory Evans, a Los Angeles lawyer who represented Asarco. "It's important to Asarco because the judgment lays the groundwork for cost-recovery in similar cases brought by Asarco around the United States. Asarco stepped up, paid for all environmental damages and, in the case of El Paso, paid for damages caused by CEMEX. The judgment shows that if a company decides to pay the government to address environmental impacts, those that also caused environmental harm but chose not to contribute can be made to pay later."

Among other things, the hearings in the case featured testimony by El Paso businessman Stanley Jobe, who had commissioned an environmental study of the CEMEX site that was not made public until the lawsuit.

"The judgment is equally important for the El Paso community because it holds CEMEX accountable for irresponsible and environmentally harmful waste disposal practices that it denied," Evans said. "CEMEX and Stanley Jobe denied harmful industrial practices. They denied that their arsenic kiln waste washed into the Rio Grande while leaving Asarco to pay the entire cleanup bill. We had to take CEMEX to trial and prove that it polluted and we did, by overwhelming evidence."

IBWC spokeswoman Sally Spener said Monday that the cleanup of contaminated soil at the IBWC site "is underway and is due to be finished over this summer." She said the IBWC contracted with Prudent Technologies to remediate the contaminated soil.

The IBWC Site at 2616 W. Paisano Drive stretches over 5.8 acres and includes the area surrounding the American Dam and American Canal as well as the American Dam Field Office property.

The CEMEX site, which contained a cement plant and limestone quarry, is about a quarter-mile from the northern boundary of the IBWC Site, to the east of the Rio Grande and immediately north of Asarco's property.

Key facts

- Court documents stated that in 2002, the U.S. section of the IBWC discovered unhealthy levels of heavy metals in the groundwater and soil around the canal. Arsenic in the soil around the canal was detected at concentrations up to 597 milligrams per kilogram (mg/kg), above the Environmental Protection Agency's industrial screening level of 2 mg/kg, according to the court's findings.

Although high levels of lead were also detected at the IBWC site, the court judgment narrowed its finding of liability to arsenic.

- In 2005, Asarco filed for bankruptcy under Chapter 11, and the government filed a claim against Asarco on behalf of the IBWC. Asarco paid the government more than \$22 million for the IBWC cleanup costs.

- The lawsuit against CEMEX Inc. also helped to unravel the convoluted record of the CEMEX site's historical owners and operators in West El Paso.

According to court documents, CEMEX, Inc., succeeded the Southwestern Portland Cement Company (SWPCC), which built and operated a cement plant at the site from 1910 to 1985, and which owned the property until 1991, when it merged into Southdown, Inc.

Southdown later sold the plant to Industrial Trading, Inc. in 1998. Three years later, in 2001, Southdown changed its name to CEMEX, Inc.

SWPCC also owned and operated the Toro limestone quarry until 1986, which was later purchased by Jobe Concrete Products, Inc.. Jobe mined sand and gravel and operated ready-mix concrete batch operations on the property. Jobe also leased a portion of the plant property from 1994 to 1996.

CEMEX Construction, which is not the same entity as CEMEX Inc., is a successor to Jobe Concrete Products, court records stated.