

## Asarco Wants EPA To Return \$1.2M Cleanup Trust

By Jocelyn Allison

*Law360, New York (March 19, 2010)* -- Asarco Inc. has objected to the U.S. Environmental Protection Agency's decision to keep about \$1.2 million in financial assurance funds the company claims it should get back as a result of a massive environmental settlement in Montana.

The copper miner asked the U.S. District Court for the District of Montana on March 5 to terminate the Corrective Action Management Unit Trust and return the remaining funds to Asarco, which put up the money as a financial guarantee for certain cleanup work at its former smelting site in East Helena, Mont.

Asarco created the trust in October 2007 to ensure that funds would be available for corrective measures at the site required under a 1998 consent decree with the EPA. The agency required the trust while Asarco was in bankruptcy.

In June, Asarco reached a \$100 million settlement with the EPA resolving its environmental liabilities at the East Helena site. The company claims in its March 5 motion that the trust is no longer required since it has fully funded the settlement.

"The [trust] was created not to fund Asarco's obligations under the 1998 consent decree but as a guarantee to the EPA that Asarco would fully discharge these obligations upon emergence from bankruptcy," Asarco said. "Now that purpose has been accomplished."

Gregory Evans, an attorney with Milbank Tweed Hadley & McCloy LLP representing Asarco, said it made no sense for the government to retain a performance guarantee for work that Asarco is no longer obligated to perform.

"It seems very unfair, and it's out of sync with what this administration is asking our government and its environmental regulators to do in this new era of transparency and accountability," Evans said Friday.

The trust was created to provide a guarantee for the operation of corrective action management units, special areas within a facility used to treat, store and dispose of hazardous waste under the Resource Conservation and Recovery Act.

Julie Dalsoglio, office director for the Montana office of EPA Region 8, said Friday that the agency did not include the cost of those units in last year's settlement with Asarco.

"We felt that that fund was already set up to assure the long-term security of those hazardous waste closure units, and we did not include the cost of that in this other \$100 million settlement," Dalsoglio said.

“That is why we were quite surprised that the reorganized debtor came back to have the \$1.2 million returned,” she added.

Asarco claims that the Montana settlement is intentionally broad and that the EPA should have carved out an exception for the CAMU Trust if it sought to preserve it, as it did with another environmental trust set up before the bankruptcy.

It also notes that Asarco's total payment for East Helena would rise to \$101.2 million if the EPA is allowed to keep the trust funds, and the settlement agreement specifically caps the company's contribution at \$100 million.

“The absence of any indication in the Montana settlement agreement that the East Helena CAMU Trust would remain in existence after the consummation of the Montana settlement agreement, considered together with the cap placed on Asarco's total obligations in connection with the East Helena site, proves that Asarco and EPA intended for the East Helena CAMU Trust to terminate,” Asarco said.

Asarco is represented by Crowley Fleck PLLP and Milbank Tweed Hadley & McCloy LLP.

The case is United States v. Asarco Inc., case number 98-cv-00003, in the U.S. District Court for the District of Montana.

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