

Asarco to exit Montana today

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By EVE BYRON Independent Record | Posted: Wednesday, December 9, 2009 12:00 am | (1)

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Lisa Kunkel Independent Record This aerial photo, taken in August, shows much of the property owned by Asarco in East Helena.

Asarco is expected to hand over its Montana properties to a custodial trust today — along with \$138 million for cleanup work, plus another \$39.5 million directly to the state of Montana for natural resource damages — as part of a nationwide \$3.5 billion bankruptcy court agreement that slams shut the door on the company's century of mining, smelting and land ownership in the Treasure State.

Asarco will relinquish title to about 3,980 acres at four sites in Montana and deposit \$138 million into the Montana Environmental Trust, with the money being used to clean up the lands formerly owned by the company. Those sites eventually will be sold and developed for commercial, industrial, residential or other purposes. Money from the sales will revert to the trust to be used for additional cleanup work.

The company already has paid more than \$13 million to replace lead-contaminated soils on private property in East Helena alone.

The former mining and smelting giant, now based in Arizona, operated in Montana since 1888, a year before Montana became a state. Its largest and most contaminated site in Montana is the defunct East

Helena lead smelter, which was “temporarily mothballed” in 2001. Since then, most of the buildings on site, including the towering smoke stacks, have been demolished.

Anne Hedges with the Montana Environmental Information Center is openly skeptical of the settlement, saying it lets Asarco and its corporate owner, Grupo Mexico, off the hook for more than a century of environmental degradation.

“I think the public got screwed in the bankruptcy. I don’t think there’s enough money to go around,” Hedges said. “It makes me fear for the future. You know there will be cost overruns, and who will pick up those tabs?”

“There are no good solutions out there,” she added. “This should provide us with serious pause when we move forward with these types of activities in the future.”

Company holdings

About \$100 million from the Montana Environmental Trust is earmarked for trying to treat underground arsenic and selenium plumes migrating off the plant site toward the Helena Valley, and for removing lead and arsenic contaminated soils on 1,500 acres in and around Asarco’s East Helena lead smelter.

Those lands also include ranches the company purchased that were too tainted for cattle grazing and form a semi-circle around the community, effectively strangling East Helena’s growth.

Other former Asarco-owned properties in Montana that are part of the custodial trust include:

- 1,100 acres at the Upper Blackfoot Mining Complex, also known as the Mike Horse Mine, with \$10 million slated for long-term water treatment there;
- 1,300 acres at the Black Pine site near Philipsburg, with \$17.5 million to be used for cleanup efforts there; and
- 80 acres near Superior, known as the Iron Mountain Mine and Mill, where \$1.9 million will be used for cleanup work.

About \$8.9 million has been set aside for administrative costs, including legal fees, hiring an investment adviser, title work and other trust management expenses.

The other \$39.5 million from Asarco that goes directly to the state of Montana is to be used for wetlands enhancement, open space or parks, or other environmental purposes.

Of that amount, the Upper Blackfoot Mining Complex will get \$23 million; East Helena will get \$5.8 million; the Barker Hughesville mining site in Cascade County will get \$8.3 million; and the Iron Mountain Mine near Superior will get \$2 million.

In addition to the funding, the state will also be given 232 acres of Asarco’s land once it’s cleaned up, including wetlands along Prickly Pear Creek near the smelter site and in the Helena Valley.

The transfer of property and the creation of the \$138 million trust fund in Montana, along with the \$39.5 million in natural resource compensation, is part of a larger bankruptcy court-approved settlement. The settlement also includes a \$52 million custodial trust in Texas and a \$70 million multi-state custodial trust.

Other major parts of the multibillion-dollar bankruptcy settlement include almost \$1.4 billion for various environmental claims; \$665 million for asbestos claims and expenses; \$447 million for bonds; \$50 million for areas where Asarco is a potentially liable party; \$44 million in employee claims; and \$41 million in professional and administrative fees.

“This is a huge closing, worth \$3.5 billion, across the United States,” said Robert Collins, the state’s supervising assistant attorney general.

However, the \$177 million Asarco is paying for its environmental damage in Montana is far short of earlier estimates that it would cost \$330 million to clean up its sites. The company had argued that its highest estimate was only \$79 million.

Future land uses

Yet the removal of Asarco’s ownership means others now hold the cleanup purse strings, and more importantly, that the ring of Asarco-owned property — more than 1,500 acres that almost form a semi-circle around East Helena — can finally have much of the lead removed from their soils, or perhaps capped or deep-tilled, then be sold and developed.

The uses would vary since some of the lead levels may remain too high for residential development. But the old Dartman ranch north of East Helena could have homes built on it like adjacent properties, noted Terry Myhre, executive director of the Montana Business Assistance Connection.

Just east of the plant, Asarco owns what’s known as the East Fields near the historic Manlove cabin. This is where the tons of soil removed from East Helena yards during the past two decades was deposited, then deep-tilled and treated with lime to lessen the lead levels. This, Myhre says, could be a good industrial site, as could the actual smelter site, which has had almost all the buildings removed.

The Lamping Ranch, just west of Wylie Drive, already has been annexed into East Helena and is seen as prime commercial property. A small section of the land has lead at around 2,000 parts per million just off of Wylie and Highway 12 that needs remediation, but the rest of the parcel is below the 500 ppm cleanup level included in the final record of decision for the city, which has been part of a federal Superfund site since being listed in 1988.

“We’re working with planning groups and the city of East Helena to come together with something everyone agrees on, then go to the EPA and trustees to see if it’s something that could work,” Myhre said.

Cleaning experience

The Montana Environmental Trust will be managed by Cynthia Brooks and Marc Weinreich, president and vice president respectively of the Boston-based Greenfield Environmental Trust Group, which specializes in third-party independent trusts and the cleanup and redevelopment of hazardous waste sites.

In the company's 20-year history, they've worked on sites in Illinois, Indiana, Georgia, Connecticut, Michigan and West Virginia. One of their more high-profile sites is an industrial complex in Woburn, Mass., owned by W.R. Grace and immortalized in the book and film, "A Civil Action."

"A number of children died from leukemia that was attributed to contamination of the municipal drinking water supply," Brooks said. "It was listed as the fifth most contaminated site in the country, and we've completed 99 percent of our work there. It's being redeveloped for mixed use."

Her company was given an award from the EPA in 2000 for the cleanup and redevelopment of that 245-acre site, which now houses a shopping center, offices and a hotel.

Montana state and federal agencies, with input from the community, will direct the cleanup work, which Brooks and Weinreich will help coordinate.

Brooks said they're "delighted and honored" they were selected as the trust manager, and that the cleanup will address issues related to public health and the environment. She doesn't yet have a timeline for the work to be done, but expects they'll be moving much more quickly than Asarco did on cleanup activities.

"We'll work closely with the EPA, the state and the community on all aspects of the remediation, which will be a big part of the focus, including groundwater issues," Brooks said. "In the moment, we are just setting up the trust, but I imagine we'll talk in early to mid-January and I'll have a much better perspective on how quickly things will be moving."

While the lands no longer will be owned by Asarco, they remain under EPA cleanup scrutiny through the federal Superfund and Resource Conservation Act, and by the state under its own Superfund program.

And while the Montana Environmental Trust actually now owns Asarco's former parcels here, the state or federal government can step in at any time and take over ownership, Collins noted.

"The trustees are acting for the benefit of the beneficiaries, which are the state of Montana and the United States," Collins said.

Brooks added that theirs is not a perpetual trust, and the work will come to a conclusion, although she's not sure when.

"I think there will be short- and long-term disposition scenarios for the properties, and then we will go away," Brooks said. "We are not here for perpetual existence. We have to address issues for long-term stewardship for any properties not transferred for commercial development or recreational use or whatever."

“But we’re really looking forward to working with everybody in the community of East Helena and want to include and encourage everyone to be involved as a critical stakeholder.”

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