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## Copper Plant Illegally Burned Hazardous Waste, E.P.A. Says

By [RALPH BLUMENTHAL](#)

HOUSTON, Oct. 10 — A bankrupt copper giant facing billions of dollars in pollution claims across the nation pretended for years to recycle metals while illegally burning hazardous waste in a notorious El Paso smelter, according to a newly released [Environmental Protection Agency](#) document.

The agency, in a 1998 internal memorandum, said the company, Asarco, and its Corpus Christi subsidiary, Encycle, had a permit to extract metals from hazardous waste products but used that as a cover to burn the waste until the late 1990's, saving the high costs of proper disposal.

Among the more than 5,000 tons the company was accused of misrepresenting as containing metals for reclamation were more than 300 tons of nonmetallic residues from the former Army chemical warfare depot at the Rocky Mountain Arsenal outside Denver. (It is not clear what the arsenal's material contained.)

"This activity, plain and simple, was illegal treatment and disposal of hazardous waste," the environmental agency said in the memorandum, long held confidential but recently obtained by two El Paso environmental groups opposed to the smelter. "Encycle's own business records provide compelling evidence of sham recycling."

There was no response to messages left for an Asarco spokeswoman at corporate offices in Tucson and for the El Paso plant manager. But a company history states, "Asarco is committed to responsible management of our natural resources."

Asarco was founded as the American Smelting and Refining Company in 1899 and was bought by Mexican interests in 1999. It has long faced complaints of contaminating broad swaths of downtown El Paso and borderland areas of Mexico with lead and other dangerous metals, and it has been the target of federal, state and local complaints involving at least 94 sites in 21 states.

But although the environmental agency reached a landmark national \$20 million cleanup and penalty settlement with Asarco in 1999, the details of the violations had never been disclosed. The El Paso plant was shut down in 1999, but the company is now seeking permission to reopen it.

The long-confidential records were obtained from the Texas Commission on Environmental Quality through public information requests by the two citizens groups, the Get the Lead Out Coalition and the Sunland Park Grassroots Environmental Group, which provided copies to The New York Times.

"They were supposed to recycle reusable residues," said Heather McMurray, a teacher who requested the records. "They just burned them."

Ms. McMurray said the disclosure came as news to her and other activists who had been opposing Asarco

for years with claims that pollutants released by the plant caused untold sickness.

“How could this not have been made public before?” said State Senator Eliot Shapleigh, Democrat of El Paso, who has long campaigned against the company and tracks developments on his Web site. “I was not aware of it.”

Mr. Shapleigh added: “In the American West, the modern trail of tears is the lead and arsenic left behind from Asarco.”

Michael D. Goodstein, who as a Justice Department environmental lawyer helped negotiate the 1999 settlement with Asarco, said the E.P.A. memorandum detailing Asarco’s violations was for internal use and was not meant to become public.

“This was the E.P.A. position, and it was addressed in the enforcement actions and the settlement approved by the judge,” Mr. Goodstein, who is out of the government, said in an interview. Although the 122-page settlement does not spell out misdeeds, it commits Asarco to lengthy remedies, including the proper recycling of hazardous waste.

Terry Clawson, a spokesman for the Texas Commission on Environmental Quality, also said, “You can’t say this was unknown.”

Mr. Clawson pointed to an E.P.A. news release in 1999 that announced the settlement of federal and state claims against Asarco. But the release, while citing the company for “failing to properly manage hazardous waste and otherwise engaging in unlawful recycling practices” and accepting “shipments of unmanifested hazardous waste,” does not say specifically that the company burned the waste under a subterfuge.

Although the company has filed for Chapter 11 bankruptcy protection, it is also awaiting action from the Texas commission on an application to renew smelting in El Paso, and it still faces a mountain of litigation and enforcement actions. As recently as August, the Justice Department filed a claim under the bankruptcy proceedings to assure Asarco’s compliance with terms of the agreed-upon cleanup at Encycle.

At the same time, Mr. Shapleigh said a tabulation showed that legal claims filed against Asarco amounted to more than \$21 billion.

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