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## Hazardous or Recyclable, EPA Says Asarco Burned It

by Sito Negron

*Asarco accepted hazardous waste from a subsidiary metal-recycling company in Corpus Christi and illegally burned the material over an undetermined number of years, according to the EPA, which outlined the charges in a letter seeking prosecutive assistance from the Department of Justice in 1998.*

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Asarco accepted hazardous waste from a subsidiary metal-recycling company in Corpus Christi and illegally burned the material over an undetermined number of years, according to the EPA, which outlined the charges in a letter seeking prosecutive assistance from the Department of Justice in 1998. The charges were folded into a larger case against Asarco, which resulted in what is called a consent decree -- basically a settlement, in which the company does not admit wrongdoing but agrees to pay fines or other penalties. In El Paso, the decree resulted in an order to spend about \$1.5 million paving roads, a contract that still has not been fulfilled [[previous Newspaper Tree article](#)].



The 1998 letter sheds more light on the charges that led to the El Paso portion of the larger 1999 settlement.

According to the document the EPA conducted an inspection at Asarco in March 1998 after a meeting with Corpus Christi-based Encycle and Asarco officials. The meeting revealed that Asarco was accepting materials from Encycle that EPA determined were hazardous waste, according to the document. The March inspection confirmed that Asarco was storing and smelting the material, and that it was producing slag from the waste, the document states. [[document](#)]

The charges specified in the document are: failure to notify the EPA or state regulators of the hazardous waste activity; operating a hazardous waste storage facility without a license; operating an industrial furnace without a license; and operating waste piles without a permit.

Asarco claims that the material was never considered hazardous waste, and points to a letter from the state backing that assertion. [[letter](#)]

"All we can say is that EPA Region 6 did not agree with the State's determination that the material that had been shipped from Encycle to El Paso did not qualify as hazardous waste," Asarco wrote in a response to Newspaper Tree's question about why the EPA asked for prosecutive assistance from the DOJ.

The written response states that when Asarco learned of the EPA objection it "acted in good faith" and stopped the shipments from Encycle, and notes the allegations were disposed of as part of the greater consent decree that took effect in 1999. [[asarco web site](#)] [[encycle web site](#)]

Opponents of Asarco's request to renew its air permit so it could resume operations tried to get the case introduced as part of the hearings several weeks ago, but the administrative law judges who will make a recommendation on the issue refused to allow the information.

Asarco is in the midst of a controversial bid to reopen the plant, mostly idle since 1999. It faces opposition from community activists concerned about its past impact on public health and the environment; supporters cite jobs and tax money for the city if it is allowed to reopen.

The plant has operated for more than 100 years in its present location, and has been the subject of complaints since at least the late 1960s.

It also has been accused by the EPA of causing high levels of lead and arsenic found in yards in the neighborhoods closest to Asarco, and the city of El Paso has retained a legal team to sue the company for cleanup costs.

Terry Sykes, the attorney for the EPA who wrote the 1998 memo, said she didn't know exactly what materials were at issue. She said she was confident it was material similar to that already smelted at the refinery, and did not think that the Encycle waste was a major cause of pollutants beyond what Asarco already produced.

"I would think the biggest health issue is well known by the community and that is the lead and arsenic issues there now," Sykes said. "I don't believe the materials sent out there were any worse than what El Paso burns all the time, it's just that they weren't permitted to take those materials. They were taking secondary materials and they are not allowed to do that.

"What you're looking at now came from emissions from years and years and years of burning mining products, ores, and that had nothing to do with the waste coming from Encycle," Sykes said.

TCEQ Corpus Christi Regional Director Susan Clewis, who was an investigator at the time, said Encycle generally accepts waste that contains heavy metals. The waste is treated to extract the metals.

"They would end up with what looked like ore, raw material a smelter would take. So they would, say, end up with piles of what looked like dirt that were high in nickel and they would ship that to a smelter where they would put it in with other ore and make their nickel or I guess in the El Paso case a copper smelter," Clewis said.

"If you meet all the definitions of recycling that was an ok thing to do but there were some cases EPA determined what they were doing didn't meet the definition of recycling so the waste remained a hazardous waste instead of being considered a recycled material and a product they could ship to El Paso as an ore," Clewis said. "If it is unprocessed, it's not considered recycling; if it's simply repackaged or forwarded on it never escaped the hazardous waste arena and therefore (one is) shipping a hazardous waste to an unauthorized facility."

Sykes said it's difficult to tell exactly what material was sent to El Paso.

"They took these materials in and then they lost their identity at Encycle because they were mixed with (other) waste they accepted ... and then shipped to various places so you just couldn't determine what they sent to El Paso," Sykes said.

She did not remember how long this went on.

"We settled the case so we never had to prepare for trial so we never had to assemble all the evidence necessary to answer your question," Sykes said.

Asked why the investigation stopped short of answering the questions of what had been sent to Asarco, and over what period of time, she said, "because the materials that went there went for metals recovery and the materials were smelted, those would be the type of material you would expect to be smelted over time. You wouldn't have solvents, for example."

Also, Sykes said, "most of these materials were shipped by rail in big cars so primarily you're talking dry material that had supposedly some metal content."

Sykes said that "there's no way you can match up some period of time with what is being burned in the smelter and what is coming out of the stack, unless you see it, or unless they kept such meticulous records you could tell from their records."

"Often times companies get away with things, and I'm not saying Asarco did, often times the lack of record is a problem when you're trying to match up a particular thing," Sykes said.

El Paso TCEQ water and waste section manager Terry McMillan said EPA "saw the waste being generated in Corpus at Encycle (and) they made a bunch of assumptions based on the manifest that it came here. ... It was all an EPA thing, we went along."

McMillan called the allegations "a paperwork violation, it's on paper that it came out here but whether it did or not nobody is really sure. We never could prove it was here. ... We made an attempt to identify something from the written description. We did a regular investigation, we looked everywhere for that material based on the written description. They may have burned it, I don't know. It wasn't there."

He said he did not remember how long it took between the time EPA claimed the violations and when his team reviewed Asarco.

"It wasn't immediately. We didn't know it had happened until all of a sudden we read this order. They didn't communicate it to us very well, as I recall it was months before we got out there," McMillan said.

"I wish it was handled differently but that's the way it is. We don't want too much duplicate work. EPA gets extremely upset when we start repeating what they're doing. They fund a lot of our work and they don't want us repeating what they're doing, just like the FBI doesn't want the sheriff's department duplicating what they are doing.

"I wish I would have known about it sooner so I could have gone out there sooner," McMillan said.

He said Asarco knew about the charge before his team went to the site.

"There was a lag time between when Asarco found out and we went. It's not like we waited, I think we got out there within the week," McMillan said.

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