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Smelter company 5539 facing legal woes

TACOMA (AP) — Two recent court rulings may force Asarco to dig deeper into its pockets to pay for cleanup of contamination from its closed smelter at Ruston.

U.S. District Judge William Dwyer has ruled that up to 18,500 residents of Ruston and North Tacoma with yards contaminated by the smelter can be part of a class action against the company.

And a federal appeals court has upheld a multimillion-dollar judgment against Asarco over cleanup of slag-contaminated log yards in Tacoma.

The Ninth Circuit Court of Appeals ruling means Asarco must pay the ~~bulk of the bill for cleaning up a landfill and six log yards that were leaching toxic metals into Commencement Bay.~~

That bill will total about \$20 million for the four sites owned by the Port of Tacoma alone, port attorney Jeffrey Leppo said Monday.

"It means those costs are ultimately going to be borne by Asarco, instead of by the port or the public," he said.

Asarco probably will appeal the decision to the U.S. Supreme Court, company site manager Tom Aldrich said Monday.

"Right now, our company attorneys are studying the decision," he said. "It's a highly complex matter."

The ruling by Dwyer means people living within a 2-mile radius of the smelter may be able to share in

any money or benefits awarded in the case, scheduled for trial in January 1995.

Residents living near Asarco's Denver smelter won a \$28 million judgment in April in a similar suit over neighborhood pollution.

"I think it bodes well for us, because I think the jury is going to reach the same conclusion in this case," said Seattle attorney Tom Burt, who represents the entire class as well as 18 residents who filed the original suit in March. "The only difference ... is that the contamination here is worse and more widespread."

Aldrich has characterized the ~~class action as an opportunistic grab for money.~~

He noted the Environmental Protection Agency has approved a \$60 million cleanup plan for about 550 yards contaminated with arsenic and lead fallout from the smelter. That project is sufficient to protect residents and the environment, Aldrich said.

The class action argues EPA's cleanup will remove only the worst of the contamination and doesn't compensate residents for past and ongoing damage to their health and property values.

In addition to damages, members of the class are seeking an expanded cleanup that will cover more than 5,500 residences and remove all contaminated dirt, Burt said. They also want a long-term program to monitor residents' health.