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Kay County

City files suit against Freeport

An anticipated lawsuit by the City of Blackwell and Blackwell Municipal Authority against Freeport-McMoRan was filed late Thursday morning.

The suit is charging Freeport with creating a public and private nuisance, trespass, negligence and unjust enrichment stemming from contamination of soil, surface and groundwater from the smelter operations during much of the 20th Century.

Filed in Kay County District Court, the 26-page lawsuit is seeking actual, consequential and compensatory damages in excess of \$10,000 and exemplary and punitive damages over \$10,000. A jury trial was requested. No date has been set for any hearings.

It was filed by Don Shandy through the Menzer Law Offices in Blackwell.

The suit claims the smelter operations resulted in "pollutants to be deposited on, beyond, and beneath the smelter property." It also claims Blackwell Zinc "failed to properly monitor and maintain" process ponds, and those ponds leached heavy metals into the soil and groundwater even after the smelter closed in 1974.

It was also claimed that smelter materials such as conne sand, slag, broken retorts and dirt were provided to the public and city crews "without any warning as to their heavy metal content."

Freeport has been testing then cleaning up a number of yards throughout the community in the past year in an effort to remove polluted dirt and material.

That cleanup, according to the lawsuit, has "not been, and will not be remediated as part of defendants' soil cleanup efforts."

It is claimed city and BMA workers are being exposed to contaminated hazardous materials and operations and maintenance of public works projects cost more due to hazardous waste handling requirements.

It is that contamination of soil and water that resulted in the public nuisance claim. The city says the private nuisance charge comes from interference with the city use of electric lines, storm water and sanitary sewer lines, water lines and groundwater.

The trespass charge stems from a claim that Freeport continues to release hazardous substances that affect the water and sewer lines. Through the release of those hazardous substances, Freeport is allegedly guilty of negligence, says the lawsuit.

The fifth charge, unjust enrichment, charges Freeport with receiving money from removing metals and other materials from the soil, ground and surface water without compensating the city and BMA.

This is the second lawsuit filed against Freeport. A class-action suit was filed in 2008 accusing Phelps and Freeport-McMoRan of, "failing to properly address lead, arsenic, and cadmium contamination in the Blackwell area."

That lawsuit wants judgment compensatory and punitive damages, "to be determined at trial," as well as "proper and permanent abatement and/or remediation of all contaminated properties in Blackwell." Also sought is payment for "ongoing medical treatment and monitoring."

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