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City of Blackwell switches sides on smelter suit

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BLACKWELL – The City of Blackwell and the Blackwell Municipal Authority filed a lawsuit Oct. 15 in Kay County District Court against Freeport-McMoran Copper & Gold Inc. and its former subsidiaries for pollution the city contends is left over from the former Blackwell zinc smelter.

The smelter closed in 1974, and soil contaminated with elevated levels of lead, cadmium, arsenic and zinc have been identified on properties owned and maintained by the city, BMA and Blackwell residents. The properties are thought to be contaminated as a result of the smelter operations.

"Much of this contaminated soil has not been - and will not be - remediated as part of defendants' soil cleanup efforts," the lawsuit says.

The suit also claims the city will face significantly inflated costs in present and future maintenance as a result of the contamination.

Blackwell officials contend that Freeport-McMoRan (formerly Phelps Dodge) did not begin construction of a groundwater treatment system until this year, six years after adoption of a Groundwater Remediation Unit Record of Decision (ROD) by the Oklahoma Department of Environmental Quality, and 38 years after the companies knew or should have known that their operations contaminated groundwater.

The city is seeking damages, including punitive damages, due to the alleged pollution.

The complaint lists several causes of action, including public and private nuisance, trespass, negligence and unjust enrichment.

Members of the Blackwell City Council adopted a resolution earlier this month authorizing legal counsel to file a lawsuit against Freeport-McMoRan and its predecessors.

The lawsuit seeks abatement of the source of the nuisance and recovery of damages.

In September, a federal appeals court returned a class-action lawsuit to Kay County District Court, where the lawsuit was originally filed.



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