

ORIGINAL

IN THE DISTRICT COURT OF KAY COUNTY  
STATE OF OKLAHOMA

CITY OF BLACKWELL, OKLAHOMA, and )  
BLACKWELL MUNICIPAL AUTHORITY; )  
 )  
Plaintiffs, )

v. )

Case No. CJ-2009-15B

FREEMPORT-MCMORAN COPPER & GOLD )  
INC.; FREEMPORT-MCMORAN )  
CORPORATION f/k/a PHELPS DODGE )  
CORPORATION; CYPRUS AMAX )  
MINERALS COMPANY; )  
and BLACKWELL ZINC )  
COMPANY, INC.; )  
Defendants. )

Filed in the DISTRICT COURT  
Kay County, Oklahoma  
BLACKWELL DIV.

OCT 23 2009

BY  MARY REMY, Court Clerk  
DEPUTY

**CITY OF BLACKWELL'S FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS**

The City of Blackwell, Oklahoma ("City"), in accordance with 12 Okla. Stat. § 3234, hereby requests Defendants respond to each of the following Requests for Production of Documents, in writing and under oath, and to serve said responses and copies of the requested documents on counsel for the City at the offices of Ryan Whaley Coldiron Shandy PC, 119 North Robinson, 900 Robinson Renaissance, Oklahoma City, Oklahoma 73102, within 30 days of service of the First Request for Production of Documents.

**DEFINITIONS**

1. As used in these Requests for Production, the terms "Defendants," "you," "your," or "your companies" all mean the Defendants Freeport-McMoRan Copper & Gold, Inc., Freeport-McMoran Corporation f/k/a Phelps Dodge Corporation, Cyprus Amax Minerals Company, and Blackwell Zinc Company, Inc., collectively or individually, or any of the Affiliated Entities (as defined below) of any such Defendant and/or the Defendant separately answering these Requests for Production, and any of its merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries, foreign subsidiaries of predecessors, and/or affiliates. This definition includes present and former officers, directors, agents,

employees, and all other persons acting or purporting to act on behalf of the corporate Defendants or their predecessors, subsidiaries, and/or affiliates. "Predecessors" further means any business firm, whether or not incorporated, which had all or some of its assets purchased by you or came to be acquired by you whether by merger, consolidation, or otherwise. "Subsidiaries" further means any business firm, whether or not incorporated, which is or was in any way owned or controlled, in whole or in part, by Defendants or their Affiliated Entities.

2. The "City" means the City of Blackwell, Kay County, Oklahoma.

3. The "Smelter" and/or the "Blackwell Zinc Smelter" means the facility that formerly existed and operated in the City of Blackwell, Kay County, Oklahoma, which was owned and operated by Blackwell Zinc Company from approximately 1916 to 1974.

4. The "Smelter property" means the approximately 160 acres of land located near the intersection of 13th Street and State Highway 11 in Blackwell where the Smelter was located and which was owned by Blackwell Zinc Company during the time the Smelter operated.

5. The term "Affiliated Entities" means Defendants (as defined above) and all predecessors (merged, acquired, or otherwise), subsidiaries, parents and joint ventures, and all directors, officers, agents, employees, attorneys and other persons acting or purporting to act on their behalf.

6. "Contaminants" means the substances zinc, lead, cadmium, and arsenic.

7. "Contamination" means the existence and/or presence of the contaminants zinc, lead, cadmium, and/or arsenic in the air, soil, or water, including groundwater, resulting from the operation of the Smelter, whether found on or beneath the Smelter property or elsewhere in and around the City.

8. The "plume" means the area of groundwater beneath the City that has become contaminated with cadmium and zinc resulting from the operation of the Smelter.

9. As used in these requests, the term "person" shall mean natural persons, corporations, firms, partnerships, proprietorships, associations and other organizations and entities.

10. The words "document" or "documents" means and includes each and every written, recorded or graphic material of any kind, type, nature, or description that is or has been in a person or entity's possession, custody or control or of which that person or entity has knowledge, including but not limited to the following: correspondence; memoranda; invoices; purchase orders; stenographic or handwritten notes; written forms of any kind; charts; blueprints; drawings; sketches; graphs; plans; articles; specifications; diaries; letters; telegrams; minutes; contracts; agreements; reports; surveys; computer printouts; data compilations of any kind; electronic mail messages; facsimiles; teletypes; telexes; order forms; audits; checks; bank drafts; statements; credit memos; summaries; books; ledgers; notebooks; schedules; transparencies; recordings; catalogs; advertisements; promotional materials; films; photographs or negatives; video tapes; audio tapes; brochures; pamphlets; or any other materials of any other kind, however stored, recorded, produced, or reproduced. "Document" or "documents" also mean and

include drafts, copies, or versions of any of the foregoing that contain any notes, comments or markings of any kind not found on the original documents or that are otherwise not identical to the original documents.

11. The words "communication" or "communications" refer to, but are not limited to, every discussion, conversation, conference, meeting, interview, telephone call, electronic mail message, memorandum, letter, and voice mail message.

12. The words "relate to" or "regarding" shall mean in reference to, concerning, responding to, reflecting, indicating, commenting on, discussing, showing, evidencing, describing, implying, analyzing, or constituting.

13. The words "and" and "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of these requests any information which might otherwise be construed to be outside their scope.

14. The use of the singular form of any word includes the plural and *vice versa*. The past tense of any verb includes the present tense and *vice versa*.

### **INSTRUCTIONS**

1. Each paragraph herein shall be construed independently and not by reference to any other paragraph for the purpose of limitation.

2. Answer each Request for Production separately by listing the documents and by describing them. If documents produced in response to these requests are numbered for production, in each response provide both the information that identifies the document and the document's number.

3. Pursuant to 12 Okla. Stat. § 3234, you are to produce all information responsive to these Requests for Production that is not privileged and that is in your possession, custody or control or that is otherwise available to you, regardless of whether such information is possessed directly by you, your agents, employees, representatives or investigators or by your attorneys or their agents, employees, representatives or investigators.

4. Each Request for Production shall be answered separately and fully unless it is objected to, in which event, you must state the reasons for the objection, including any applicable authority, and you must answer to the extent the Request for Production is not objectionable.

5. With respect to any claims of privilege, provide a privilege log identifying: (1) the privilege being asserted and (2) a general description of the information being withheld, sufficient to justify the asserted privilege.

6. As to the production of electronic data, any and all information which is in electronic or magnetic form should be produced in the following form: (a) in written or printed form, and (b) in a finished useable form, which would include all necessary glossaries, keys and indices for use and interpretation of the material. To the extent such information is not available in written or printed form, such information is requested to be produced on a CD-ROM or DVD

in the original form that such data or application file was created, either as a .tif or .pdf image. Documents which contain formulas or other information that can only be reviewed fully in their electronic form are requested to be produced in the original, native form that such data or application file was created. If any such data file cannot be opened and used in a Microsoft Office application or Adobe Acrobat, then please also provide a copy of the application that is required to view and print the data.

7. Documents such as photographs, maps, charts, figures, and the like which are originally in color or oversized are requested to be produced in the same format (color, size, etc.) as the original document.

8. If you are aware of any document described in any of the following requests that was in your possession, custody or control but is no longer in your possession, custody or control, please state in addition to all the above information of which you have knowledge whether the document is:

- a) missing or lost;
- b) destroyed;
- c) transferred to others; or
- d) otherwise disposed of, and for any such instance, set forth the surrounding circumstances of any authorization for such disposition and state the approximate date of any such disposition, and, if known, the present location and custodian of such document.

9. These Requests shall be deemed continuing in nature, to the extent provided for in 12 Okla. Stat. § 3226(E). Upon the discovery of any additional information after the initial written response is made, which demonstrates that the response was incorrect when made, or although correct when made, is no longer true, an amended or supplemental response shall be served seasonably, but not later than thirty (30) days before trial.

#### **FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** Produce copies of all correspondence, and any drafts of any such correspondence, between Defendants and the Oklahoma Department of Environmental Quality, and/or its predecessor the Oklahoma Department of Health, related to the Smelter, contamination resulting from or related to the Smelter, and/or all environmental testing and/or remediation related to the Smelter that has been or is currently being conducted in the City.

**REQUEST FOR PRODUCTION NO. 2:** Produce copies of all correspondence, and any drafts of any such correspondence, between Defendants and the United States Environmental Protection Agency related to the Smelter, contamination resulting from or related to the Smelter, and/or all environmental testing and/or remediation related to the Smelter that has been or is currently being conducted in the City.

**REQUEST FOR PRODUCTION NO. 3:** Produce any reports, memos, correspondence, e-mails, or other documents relating to any suspected, actual, or alleged emissions, discharges, leaks, or other emissions, of any type, of contaminants associated with the Smelter.

**REQUEST FOR PRODUCTION NO. 4:** Produce all reports, memos, correspondence, e-mails, or other documents relating in any way to any notices of violation, administrative orders, inspections or fines issued by any regulatory agency, State or Federal, related to the Smelter.

**REQUEST FOR PRODUCTION NO. 5:** Produce all internal memos, reports, correspondence, e-mails, or other documents relating in any way to the Smelter's compliance or noncompliance with any governmental permits or emission standards.

**REQUEST FOR PRODUCTION NO. 6:** Produce copies of any and all documents that relate to the health effects of exposure to Smelter contaminants, either to employees or the public at large.

**REQUEST FOR PRODUCTION NO. 7:** Produce copies of all documents regarding any settlements or complaints to or about the Smelter relating to Smelter contaminants and/or

exposure to or pollution associated with Smelter contaminants, including, but not limited to, those complaints made by employees, members of the public, or businesses.

**REQUEST FOR PRODUCTION NO. 8:** Produce copies of the results of all environmental testing performed by or at the direction of Defendants in and around the Smelter property, the cleanup site, and/or the City, including, but not limited to, summary reports and raw data associated with such environmental testing.

**REQUEST FOR PRODUCTION NO. 9:** Produce any reports, memos, correspondence, e-mails or other documents, including drafts of any such documents, relating to Defendants' investigation of the groundwater plume and/or any remediation of the groundwater plume considered or evaluated by Defendants, including documents related to the likelihood of success of any groundwater remedial actions considered or evaluated by Defendants.

**REQUEST FOR PRODUCTION NO. 10:** Produce copies of any employee training manual policies and/or handbooks that relate to maintenance of the Smelter or the detection, prevention, repair, or reporting of emissions or releases of contaminants from the Smelter.

**REQUEST FOR PRODUCTION NO. 11:** Produce copies of any and all documents relating to plans, strategies, or efforts of Defendants relating to public relations, advertising, community education or outreach regarding the remediation in the City, including any documents produced or maintained by the Blackwell Community Outreach Office opened by Defendants.

**REQUEST FOR PRODUCTION NO. 12:** Produce copies of any and all insurance policies or indemnity agreements which provide coverage to Defendants for any of the claims

made the basis of this lawsuit. Include the declaration pages showing the amounts of insurance provided.

**REQUEST FOR PRODUCTION NO. 13:** Produce copies of any and all documents regarding any and all mergers, reorganizations, combinations, acquisitions, or divestitures of any type or nature involving any of the Defendants and any and all agreements, documents, certificates, reports, and analysis of any type or nature whatsoever or certificates executed in connection with, arising from, or otherwise related to any such transaction including, but not limited to, merger agreements, certificates of merger, purchase and sale agreements, board, committee and/or shareholder minutes, resolutions and consents in lieu of meetings, due diligence checklists, risk assessment reports, and indemnification or assumption agreements.

**REQUEST FOR PRODUCTION NO. 14:** Produce copies of any and all organizational documents of, and documents involving the equity ownership of, Defendants including, but not limited to, certificates or articles of organization or incorporation and any amendments or restatements thereof, bylaws and operating agreements and any amendments or restatements thereof, foreign registrations or qualifications, stock certificates and stock ledger registers, voting trust agreements, buy/sell agreements, stockholder agreements, warrant agreements, proxies, rights of first refusal, registration rights, and pre-emptive rights agreements.

**REQUEST FOR PRODUCTION NO. 15:** Produce all due diligence documents obtained, considered, or reviewed as part of any mergers or acquisitions involving Defendants as such documents relate to environmental issues, risks and/or liabilities related to the Smelter, its historical operations, the Smelter property, Smelter contaminants and/or exposure to or pollution associated with Smelter contaminants, contamination or releases of any kind.

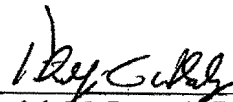
**REQUEST FOR PRODUCTION NO. 16:** Produce any and all reports, memos, correspondence, e-mails, or other documents you have received (whether in draft or final form) from any consultant concerning, pertaining to, or relating to the Smelter since 1970.

**REQUEST FOR PRODUCTION NO. 17:** Produce any and all reports, communications or correspondence with any risk manager or any insurance company concerning, pertaining to, or relating to your financial exposure or risk to the City of Blackwell or related to the Smelter, its historical operations, the Smelter property, Smelter contaminants and/or exposure to or pollution associated with Smelter contaminants, contamination or releases of any kind.

**REQUEST FOR PRODUCTION NO. 18:** Produce any statements in your possession that have been taken from any person concerning, pertaining to, or relating to the operations of, or the remediation related to, the Smelter. Please produce such statements regardless of whether they are in written, typed, video-taped, audio-taped, or any other format.

**REQUEST FOR PRODUCTION NO. 19:** Produce a map, plot plan, or diagram of the Smelter and all of its production systems/equipment and pollution or emission control systems or equipment.

Respectfully submitted,



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- and -

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**ATTORNEYS FOR PLAINTIFFS**

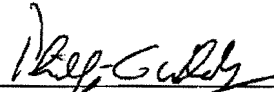
**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of October 2009, I hand-delivered a copy of the foregoing to:

David L. Wallis  
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Phoenix, Arizona 85016-9225

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**ATTORNEYS FOR DEFENDANTS**

  
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PHILLIP G. WHALEY