Climax Molybdenum
A Freeport-McMoRan Company

Climax Molybdenum Company
P.O. Box 220
Fort Madison, Iowa 52627
(319) 463-7151

AWMD / WEMM
OCT 14 2010
RECEIVED

October 11, 2010

10ENV-037

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OCT 12 2010
BY: EFCB

Mr. David N. Whiting
U.S. Environmental Protection Agency
Region 7
922 Walnut Street
Iowa City, IA 52240

Subject: Climax Molybdenum Company EPA RCRA ID# IAD000222653
Initial Response to RCRA Audit Performed on 09/28/2010 and 9/29/2010

Dear Mr. Whiting:

This letter contains our initial written responses to the findings from your site inspection conducted on September 28 and 29, 2010 at our facility in Fort Madison, Iowa. In accord with the request set forth in the Notice of Violation that we received at the conclusion of the inspection (on September 29th), we are sending this letter within 14 days of our receipt of the Notice. Our responses follow below:

Alleged Violation No. 1: 40 C.F.R. § 279.22(c) Used oil fill pipe is not marked "Used Oil"

During the inspection, it was postulated by Fort Madison environmental staff that the source of non-hazardous waste water listed on used oil manifests that were reviewed by EPA originated in the motor pool. As a result, EPA inspected the motor pool and asserted that a vertical pipe in a motor pool sump needed to be labeled "Used Oil." Upon consultation with the driver for Future Environmental, the entity that pumps out our used oil and processes it, it was determined that this stream originates in the Molysulfide® production building. The Molysulfide® process generates an oily water mixture that is separated in a decant tank with the waste water component being stored in a smaller tank adjacent to the current used oil storage tank that was viewed during the inspection and appropriately labeled "Used Oil" (see Attachment 1). The non-hazardous waste water component is pumped out by Future Environmental and they take it along with our used oil to their facility for processing.

Regarding the motor pool sump inspected by EPA, the sump contains a vertical pipe with a wire mesh over the top of the pipe to filter debris. EPA asserts that the pipe needs to be labeled "Used Oil" in accord with 40 C.F.R. § 279.22(c)(2).

At the time of EPA's inspection, no one was present in the motor pool that could answer questions about the vertical pipe. We have since ascertained that the pipe flows to an oil interceptor where oil is separated from wastewater and from there flows to our on-site

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wastewater treatment plant. The wastewater treatment plant effluent flows to our utilities pit, from there to the utilities pond, and the effluent from the utilities pond flows to our permitted NPDES outfall.

Fort Madison does not dump, pour, or drain oil into either the sump or the vertical pipe contained therein. Rather, the sump and pipe receive wash waters from the washing of on-site vehicles. The wash waters may contain *de minimis* amounts of oil present on the vehicles being washed or from minor oil drippage from the vehicles.

We believe that the wash water that may contain *de minimis* amounts of oil is subject to the "wastewater exception" from the used oil regulations set forth at 40 C.F.R. § 279.10(f). Under this exemption:

> Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act . . . contaminated with *de minimis* quantities of used oil are not subject to regulation under this part. For purposes of this paragraph, "*de minimis*" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

40 C.F.R. § 279.10(f). EPA has elaborated on this exemption, noting that it "is intended to cover losses from drippage, minor spillage, etc., that cannot reasonably be avoided." Letter from David Bussard, EPA, to Pamela Savage, Ogletree, Deakins, Nash, Smoak & Stewart (July 22, 1994, RO 11858) (Attachment 2).

Any oil present in the wash water is not the result of "abnormal manufacturing operations resulting in substantial leaks, spills, or other releases." *See* 40 C.F.R. § 279.10(f). Rather, any oil in the wash water is the direct result of minor drippage of oil from vehicles or the transfer of minor oil traces from the vehicles to the wash water during washing operation. These *de minimis* amounts of oil cannot be avoided. *See* RO 11858. The wash water flows to an on-site wastewater treatment plant, with the effluent eventually being discharged to a NPDES outfall subject to regulation under Clean Water Act Section 402.

In light of the above, we respectfully request that this alleged violation be rescinded.

Alleged Violation No. 2: 40 C.F.R. § 262.11 Potential inadequate hazardous waste determination on motor pool sludge.

A conditionally exempt small quantity generator of hazardous waste such as Fort Madison is required to perform a waste determination on solid waste that it generates in accord with 40 C.F.R. § 262.11 to determine if the solid waste is a hazardous waste. 40 C.F.R. § 261.5(g)(1). Under § 262.11, the generator first evaluates whether the solid waste is excluded from regulation pursuant to an exemption/exclusion set forth in 40 C.F.R. § 261.4. 40 C.F.R. § 262.11(a). If not exempt/excluded, the generator next determines whether the solid waste is listed hazardous waste. 40 C.F.R. § 262.11(b). Finally, if neither subject to an exemption/exclusion nor listed hazardous waste, the generator must either test its solid waste to determine whether it exhibits a hazardous waste characteristic, or rely on process knowledge (*i.e.,* "[a]pplying knowledge of the hazardous characteristic of the waste in light of the materials or the processes used") to determine if the solid waste exhibits a hazardous waste characteristic. 40 C.F.R. § 261.11(c).

Based on knowledge of the process generating this waste stream, we have no reason to believe that the stream would constitute a "hazardous" waste. This knowledge is based on process knowledge and TCLP analyses of floor sweepings from plant operations. Both the floor sweepings and motor pool sludge consist of two constituents – small amounts of our products that settled on vehicles stored inside and soil picked up on the tires as they moved outside. Neither of these materials, when discarded, are listed hazardous waste. Further, because the sludge results from vehicle washing, it is reasonable to conclude that the sludge would not exhibit a hazardous waste characteristic because the floor sweepings are not hazardous. We have attached the TCLP results for the floor sweepings (Attachment 3).

In light of the above, we respectfully request that this alleged violation be rescinded.

Conclusion

Based on the foregoing, we respectfully request that the Notice of Violation be rescinded.

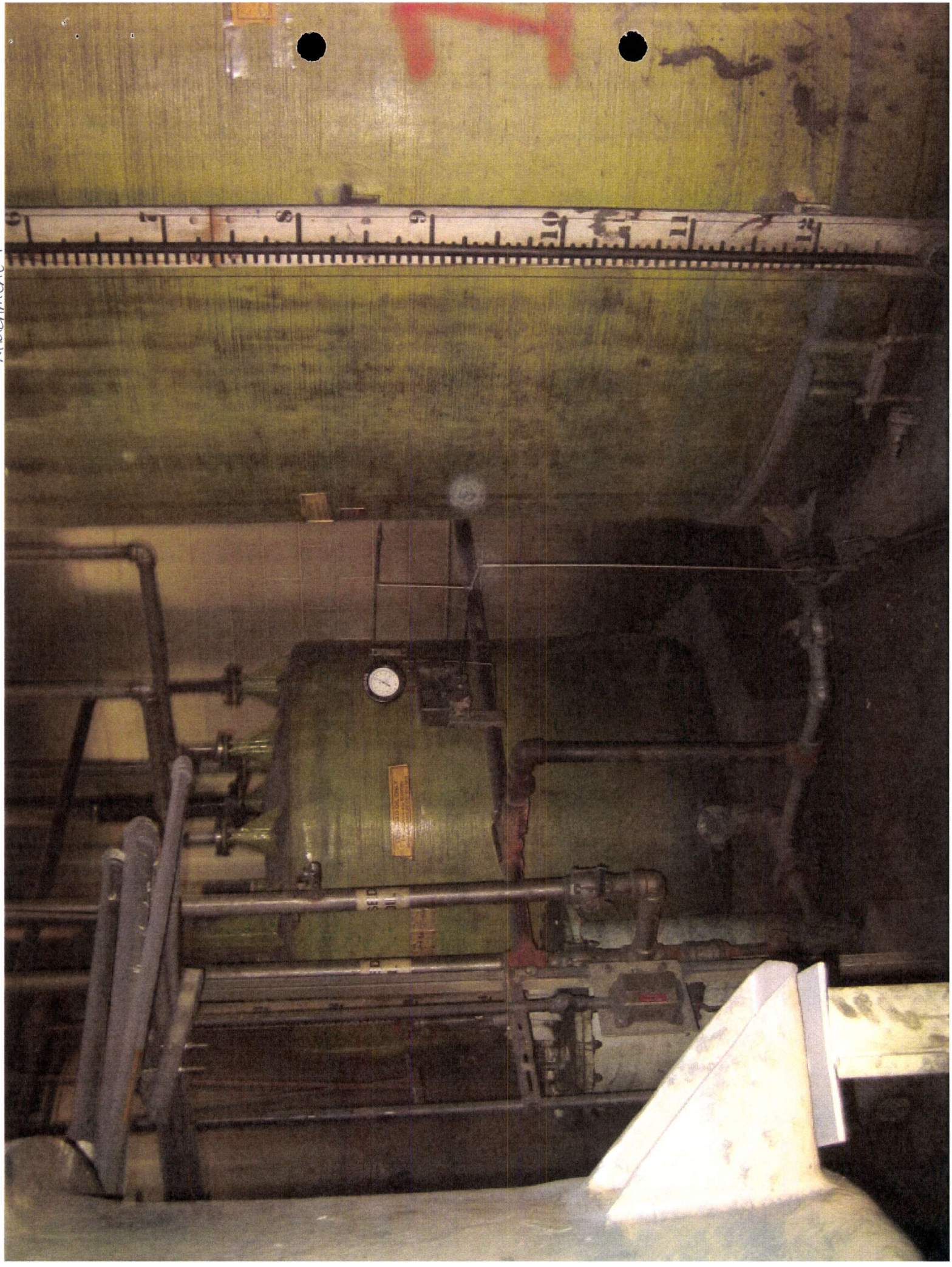
If you have any questions, please contact me at (319) 463-2224.

Sincerely,

Scott Ickes
Manager of QA and Environmental Affairs
Climax Molybdenum Co.

Attachment 1 – Photograph of Non-Hazardous Waste Water Tank
Attachment 2 – EPA RO 11858
Attachment 3 – TCLP Results for Floor Sweepings

Attachment 1



Attachment 2

9592.1994(07)

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

July 22, 1994

Ms. Pamela E. Savage, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart
3800 One Atlantic Center
1201 West Peachtree Street. N.W.
Atlanta, Georgia 30309

Dear Ms. Savage:

Thank you for your letter dated October 13, 1993, to Mike Petruska regarding regulation of surface impoundments under the September 10, 1992, Recycled Used Oil Management Standards. The purpose of your letter was to follow up on a November 20, 1992 meeting with Environmental Protection Agency staff in which you discussed Ravenswood Aluminum Corporation's (RAC) concerns regarding the impact of the used oil management standards on the use of surface impoundments to manage non-hazardous waste water/oil mixtures. Thank you for the detailed information you provided in response to issues discussed at the November, 1992 meeting.

According to your letter, Ravenswood operates two surface impoundments as part of the facility's waste water treatment/used oil recovery system. Your concern is that, once the used oil regulations become effective, continued use of the surface impoundments may be disallowed under the §279.12 prohibition against management of used oil in surface impoundments that are not subject to RCRA minimum technology standards for permitted (or interim status) hazardous waste surface impoundments (40 CFR Parts 264 and 265).

You ask whether continued operation could be allowed either under the 279.10(f) exemption for waste waters that contain de minimis amounts of used oil, or because Ravenswood's surface impoundments were "designed and constructed to meet RCRA minimum technology requirements." In response to your question, the following provides clarification of both the de minimis exemption (279.10(f)) and the conditional prohibition against management of used oil in surface

impoundments (279.12(a)) and explains how these provisions may apply in your situation. However, regulatory determinations such as the one you seek (i.e., specific to you client's process or products) must be made on a case-by-case basis by the appropriate State regulatory agency or EPA regional office.

Section 279.10(f) Wastewater Exemption

Under the wastewater exemption, wastewaters containing de minimis quantities of used oil are exempted from the used oil management standards (40 CFR Part 279). The de minimis exemption covers "small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or when small amounts of oil are lost to the wastewater treatment system during washing or draining operations." The exemption is intended to cover losses from drippage, minor spillage, etc., that cannot reasonably be avoided. It does not cover used oil that is intentionally introduced into the wastewater treatment system (e.g., pouring collected used oil into any part of the system).

It is difficult to determine from your letter whether the de minimis exemption would apply in your case. At a minimum, in order to qualify for the exemption, you would have to discontinue any practice of pouring used oil that is collected in tanks into your surface impoundments (as you have suggested). In addition, your letter seems to indicate that the surface impoundments are used to hold large quantities of spent coolants and lubricants. It appears from your letter that the oil/water emulsification that you spray on the aluminum ingots and rolling equipment for cooling and lubrication, is collected and recycled until spent, after which it is released to the surface impoundments. If this is the case, the spent mixture would be intentionally rather than incidentally introduced into the waste water treatment system and would therefore not be exempt under the de minimis provision. It is important to note, however, that a specific determination regarding the applicability of the de minimis exemption would have to be made on a site-specific basis by the appropriate State or Regional authority.

Section 279.12(a) Surface Impoundment Prohibition

The regulatory prohibition against management of used oil in surface impoundments states that, "used oil shall not be managed in surface impoundments or waste piles unless the units are subject to

regulation under parts 264 or 265 of this chapter." In other words, under 279.12(a), used oil may be managed in surface impoundments that have either been permitted or are authorized under interim status to manage hazardous waste in compliance with RCRA regulations. Conversely, used oil may not be managed in surface impoundments that are not permitted or are not under interim status -- even if they technically meet the minimum technology standards. (Permitted units are subject to the requirements of 40 CFR part 264 subpart K. Interim status units are subject to 40 CFR part 265 subpart K.)

Therefore, assuming the de minimis provision does not apply, Ravenswood cannot legally store or manage used oil in its surface impoundments unless those surface impoundments are operating under a RCRA permit or under interim status. You should contact John Humphries, EPA Region III, at (215) 597-7370 regarding the existing status of the surface impoundments in question at the Ravenswood site and to obtain information on obtaining a RCRA permit, if necessary.

Also, please note that EPA Regional offices and States authorized to implement the hazardous waste program make determinations regarding the requirements that apply to specific materials and facilities. Some States have programs more stringent than the Federal hazardous waste program. You may contact the appropriate Region or State with future facility-specific questions.

I hope this letter has addressed your concerns. If you have any further questions regarding the used oil management standards, please contact Eydie Pines of my staff at (202) 260-8551.

Sincerely,

David Bussard, Director
Characterization and Assessment Division

cc: John Humphries, Region III; Susan O'Keefe, Office of Regulatory Enforcement; Susan Bromm, Office of Compliance; John Rosnic, Office of Compliance

Attachment 3

SW 940815

TCLP Analysis

Date: 8-25-94

Technician: J. Bartholomew

IV. Final Test Results

Parameter (mg/l)	Test Results	Hazardous Limits
Arsenic	4.1	5.0
Barium	<1	100.0
Cadmium	.35	1.0
Chromium	2.9	5.0
Lead	<1.0	5.0
Mercury	<.1	0.2
Selenium	.93	1.0
Silver	<1	5.0

Classification

Hazardous

Nonhazardous