

U.S. Environmental Protection Agency
&
Oklahoma Department of Environmental Quality

MEMORANDUM OF UNDERSTANDING

Blackwell Zinc Site
Blackwell, Oklahoma



989484

MEMORANDUM of UNDERSTANDING
for the Blackwell Zinc Site
Blackwell, Oklahoma

I. BACKGROUND

A. This is a Memorandum of Understanding (MOU) between the U.S. Environmental Protection Agency (EPA) and the Oklahoma Department of Environmental Quality (ODEQ) (hereinafter EPA and ODEQ are collectively referred to as the parties) regarding remedial action which shall be taken in response to the release of hazardous substances at the Blackwell Zinc Site (the Site) which is described in the attached Map (Attachment 2).

B. EPA has received information which indicates that there may be a release of hazardous substances, or that there may be a substantial threat of such a release, into the environment at and from the Site. As of the effective date of this MOU, EPA has made no determination as to whether there may be a release or a threatened release. EPA recognizes that, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), if EPA should determine that there has been such a release, EPA is authorized to act, consistent with the National Contingency Plan (NCP), 40 CFR Part 300, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance at any time, or take any other response measure consistent with the NCP which EPA deems necessary to protect public health, welfare or the environment. Nonetheless, EPA simultaneously recognizes the limitations of EPA's resources and the potential need for a prompt Remedial Action (RA) at the Site. Due to the limitations of EPA's resources and due to the existence of other Superfund Sites of more immediate priority, which will dominate the use of those resources, EPA recognizes that EPA would not be able to take remedial action at the Site promptly. EPA also believes that ODEQ is currently developing, under the State's own authority, a plan that should result in a prompt CERCLA-Quality Cleanup, which is not inconsistent with the NCP, at the Site. Consequently, EPA has decided to defer making any determination regarding the Site, and to defer taking further steps toward listing the Site on the National Priority List, until this MOU is terminated. EPA's decision is not an abdication of EPA's statutory responsibilities under CERCLA, but a simultaneous recognition of the potential need for prompt action in a situation in which EPA's resources are limited.

C. EPA recognizes that ODEQ has entered into an agreement with persons who may be liable, under CERCLA, for the costs of the response action taken at the Site (hereinafter those persons are referred to as potentially responsible parties or PRPs). EPA recognizes that the intent of the agreement between ODEQ and the PRPs is that the PRPs shall conduct the response action at the Site, with ODEQ oversight. The PRPs are not parties to this MOU and have no rights hereunder.

II. PURPOSES

The parties agree that the purposes of this MOU are to ensure prompt CERCLA-Quality Cleanup of the Site (CERCLA-Quality Cleanup is defined at 55 Fed. Reg. 8666, 8793 (March 8, 1990)), to conserve EPA resources by reducing the level of EPA involvement necessary to ensure adequate remediation of the Site, and to ensure that EPA does not have to perform further response actions at the Site once ODEQ and the PRPs have finished. Consequently, ODEQ shall ensure that the remediation is prompt, consistent with CERCLA and the NCP, and that it provides for a CERCLA-Quality Cleanup. EPA will review submissions, and provide input to ODEQ as described in this MOU.

The parties agree that nothing in this MOU shall be construed as, or construed to support, a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

III. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this MOU shall have the meaning assigned to them in CERCLA, regulations promulgated under CERCLA, or in EPA guidance (including the preamble to the NCP, 55 Fed. Reg. 8666 to 8812). If any of those documents do not define a term, the term shall have its ordinary meaning.

"Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this MOU, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations to be set forth in the ODEQ Decision Document (DD) or the Statement of Work for the Remedial Design/Remedial Action (RD/RA).

"Schedule" means the schedule described in Section XVI of this MOU.

"Work" shall mean all activities ODEQ is to perform or to have performed for it under this MOU.

IV. PERFORMANCE OF THE WORK BY OR FOR ODEQ

A. HRS Package Completion. ODEQ shall provide to EPA in writing, according to the Schedule, the information and data needed to complete the Hazardous Ranking System (HRS) scoring package for the Site. EPA will complete HRS scoring package preparation and hold the package without proceeding to the subsequent administrative steps required to list the Site on the NPL, unless this MOU is terminated. The HRS package will not be used to propose the Site for the NPL, unless this MOU is terminated.

B. Administrative Record. ODEQ shall make an Administrative Record File and an Administrative Record File Index available to the public at Information Repositories (including, but not limited to, an Information Repository near the Site) according to the Schedule. The Administrative Record File shall contain documents that may form a basis for the selection of the response action at the Site. The final remedy selection decision for the Site shall be made by ODEQ and documented in the DD. The DD is analogous to a Record of Decision at a Superfund Site.

C. Health and Safety. ODEQ shall ensure that work at the Site shall follow a Health and Safety Plan for field activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

D. RI/FS.

1. RI/FS Presentation ODEQ may consult with EPA regarding the Remedial Investigation and Feasibility Study (RI/FS) at intervals indicated in the Schedule (Attachment 1). If ODEQ decides to consult with EPA regarding part of the RI/FS process, ODEQ shall do so by making an oral presentation. The presentation made by ODEQ regarding the RI/FS should describe the procedures to be used by ODEQ to ensure that all RI/FS work shall be conducted in accordance with EPA Guidance, CERCLA and the NCP. The presentation should include, but need not be limited to: (a) a Site history; (b) a summary of existing information regarding the Site; (c) a detailed description of the tasks to be conducted during the RI/FS; and (d) a description of the methodology to be used during the RI/FS for: (i) field sampling, (ii) quality assurance, (iii) development of a Baseline Risk Assessment, (iv) treatability studies, (v) identification of candidate technologies, (vi) development of RA objectives, (vii) development and preliminary screening of alternatives and final screening. ODEQ may make additional presentations, other than those listed in the Schedule, if EPA agrees. These presentations are intended to facilitate a mutual exchange of information.

2. RI/FS Report. ODEQ shall submit to EPA in writing, in accordance with the Schedule, the final RI/FS Report and a list of Applicable and Relevant and Appropriate Requirements (ARARs), for EPA review. EPA will review the RI/FS report and the ARARs list and submit comments to ODEQ within 30 days of receipt.

C. Proposed Plan, Administrative Record File, and Administrative Record File Index. According to the Schedule, ODEQ shall submit to EPA in writing, a draft Proposed Plan, the up-to-date Administrative Record File, and the up-to-date Administrative Record File Index, for EPA review. The Proposed Plan shall meet the requirements of EPA Guidance, CERCLA and the NCP. This final Proposed Plan, the up-to-date Administrative Record File, and the up-to-date Administrative Record File Index shall be presented to the public by ODEQ, in a manner meeting the requirements of CERCLA and the NCP.

D. Final Remedy Selection, the Decision Document, the Administrative Record File and Index. Within 30 days after the closing of the public comment period regarding the Proposed Plan, ODEQ shall submit to EPA in writing, a draft final ODEQ DD, the draft final Administrative Record, and the draft final Administrative Record Index, for EPA review. EPA will review the draft final DD, the draft final Administrative Record, and the draft final Administrative Record Index and submit written comments to ODEQ within 60 days of receipt. Once ODEQ has had an opportunity to review EPA's comments and to make changes to the draft final DD, the draft final Administrative Record, and the draft final Administrative Record Index, ODEQ shall prepare final versions of those documents and submit the final versions to EPA within 30 days of the receipt of comments from EPA. ODEQ shall send copies of the final DD, the final Administrative Record, and the final Administrative Record Index to the Information Repositories according to the Schedule. The parties agree that the DD is an ODEQ document. EPA will review the DD in order to advise ODEQ as to whether the DD provides for a CERCLA quality cleanup. EPA will also review the DD for consistency with EPA Guidance, the NCP and CERCLA. EPA will provide comments to ODEQ regarding the DD, but EPA will not approve or disapprove the DD.

G. Remedial Design.

1. Presentations. Within 30 days after ODEQ issues the final DD, ODEQ shall make a presentation to EPA describing the procedures to be used by ODEQ to complete the RD/RA. The presentation shall include descriptions of: (a) methodologies and procedures for the design of the RA at the Site; (b) the procedures to be used by ODEQ to ensure that the design of the remedy will meet the DD; (c) any design sampling and analysis with a discussion of the level of QA/QC; (d) plans for a treatability study, if any; (e) the contents of the final design submission; (f) the Construction Quality Assurance Plan; and (g) the contents of a Site Health and Safety Plan. ODEQ may make additional presentations regarding the RD/RA, if EPA agrees.

2. RD Submission. ODEQ shall submit the final Remedial Design (RD) to EPA in writing, for EPA's review, at the time indicated in the Schedule. ODEQ's final submission of the RD should include, at a minimum, the following: (a) final plans and specifications; (b) Operation and Maintenance Plan; (c) Construction Quality Assurance Project Plan (CQAPP); (d) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (e) Contingency Plan.

H. Remedial Action. ODEQ shall complete the Remedial Action (RA) according to the Schedule. The presentation made by ODEQ regarding the RA, prior to the beginning of the RA, should describe the procedures to be used by ODEQ to ensure that all RA work shall be conducted in accordance with EPA Guidance, CERCLA and the NCP.

ODEQ's presentation should include a description of the following: (a) methodology for implementation of the Construction Quality Assurance Plan; (b) a Groundwater Monitoring Plan, if appropriate; (c) methods for satisfying permitting requirements; (d) methodology for implementation of the Operation and Maintenance Plan; (e) the Contingency Plan; (f) Construction Quality Control Plan; and (g) procedures for implementation of the RA.

I. Work shall achieve Performance Standards. ODEQ shall ensure that the Work performed by ODEQ, or by the PRPs, shall achieve the Performance Standards stipulated in the DD.

J. Off-site shipment of Waste Material. ODEQ shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to EPA of such shipment of Waste Material, or ODEQ shall have the PRPs provide such notification. This notification shall be in accordance with the EPA policy regarding such notification.

K. Compliance with other Laws and Permit Requirements. ODEQ shall ensure that all State and Federal permits which are specifically required for the Work are obtained. ODEQ shall ensure that the Work is in compliance with all State and Federal law.

V. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

ODEQ shall use, and ODEQ shall require the PRPs to use, quality assurance, quality control, and chain of custody procedures, according to accepted EPA methods as described in EPA Guidance, for all samples. ODEQ shall ensure that the laboratories it or the PRPs utilize for the analysis of samples taken, perform all analyses according to accepted EPA methods, as described in EPA Guidance. Accepted EPA methods consist of those methods which are documented in the Contract Lab Program Statement of Work for Inorganic Analysis and the "Contract Lab

Program Statement of Work for Organic Analysis, dated February 1988, and in any amendments to those guidance documents, or in any superseding EPA Guidance documents.

VI. ACCESS

E. To the extent access to the property is controlled by ODEQ or the PRPs who are conducting the response action under agreement with ODEQ, ODEQ agrees to provide to EPA and to EPA's authorized representatives, access, at all reasonable times, to the Site and to any other property to which access is required for the implementation of the response action at the Site.

F. To the extent that the Site or any other property to which access is required is owned or controlled by persons other than ODEQ or the PRPs, ODEQ shall use best efforts, and have the PRPs use best efforts, to secure from such persons access for ODEQ, EPA and EPA's authorized representatives.

VII. PROGRESS REPORTING REQUIREMENTS

In addition to any other requirement of this MOU, ODEQ shall submit to EPA, written quarterly progress reports which include the following: (a) descriptions of actions which have been taken toward implementing the response action at the Site, and toward compliance with this MOU during the previous quarter, including results of sampling and other tests; (b) information which indicates the percentage of the RA which has been completed; (c) descriptions of any delays encountered or anticipated in the completion of the response action for the Site, and a description of efforts made to mitigate those delays or anticipated delays; (d) descriptions of any work which was completed in a manner which differs from that manner which was described in any documents submitted to EPA; (e) descriptions of activities undertaken in support of the Community Relations Plan during the previous quarter, and descriptions of those Community Relations activities to be undertaken in the next two months. Quarters are as follows: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. ODEQ shall submit quarterly progress reports to EPA for each quarter, on the first day of the second month of the following quarter, until the RA has been completed. If the effective date of this MOU is in the middle of a quarter, the first progress report shall concern the partial quarter following the effective date, and it shall be due on the first day of the second month of the first complete quarter following the effective date.

In addition, ODEQ shall, during the Operation and Maintenance (O&M) phase, submit on October 1 of each year, yearly progress reports until O&M is completed.

VIII. REVISIONS OF SUBMISSIONS

Upon receipt of EPA's comments regarding a submission, ODEQ shall, within 30 days, notify EPA of any changes to the document and provide EPA with the final version of the document.

IX. NOTICES AND SUBMISSIONS

Whenever under the terms of this MOU written notice is required to be given or a report or other document is required to be sent or submitted by one party to another, it shall be directed to the project coordinators at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided herein.

ODEQ shall submit to EPA, two copies of all submissions required under this MOU, in accordance with the Schedule.

EPA Project Coordinator

Ky Nichols (6H-EO)
Remedial Project Manager
Oklahoma/New Mexico Section
Superfund Enforcement Branch
Hazardous Waste Management
1445 Ross Avenue
Dallas, Texas 75202-2733

Alternate Coordinator

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Alternate Coordinator

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Dept. of Environmental Quality
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Oklahoma City, OK 73117-1212

X. CERTIFICATION OF COMPLETION

ODEQ shall complete, or have the PRPs complete, the RA at the Site according to the Schedule. The RA is complete when the RA is fully performed and the Performance Standards have been attained. Within 30 days after ODEQ concludes that the Remedial Action has been fully performed and the Performance Standards have been attained, ODEQ shall notify EPA that the RA has been completed in full satisfaction of the requirements of the MOU, including, but not limited to, the Performance Standards.

XI. DISPUTE RESOLUTION

A. Any dispute which arises shall be the subject of informal negotiations between EPA's and ODEQ's respective project coordinators. The period for informal negotiations shall not exceed 20 days from the time the dispute arises. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute.

B. In the event that informal dispute resolution does not resolve the dispute, the Branch Chief for the EPA Superfund Enforcement Branch (or an equivalent EPA management official) and an appropriate ODEQ official will negotiate to attempt to resolve the dispute within 30 days from the time that the dispute arises. If the Branch Chief for the EPA Superfund Enforcement Branch (or equivalent manager) and the ODEQ official do not resolve the dispute within the 30 days from the time that the dispute arises, then the EPA Hazardous Waste Management Division Director will issue a final decision resolving the dispute, based on any written materials submitted by the parties during the 30-day period which began at the time that the dispute arose. The Hazardous Waste Management Division Director's decision shall be binding, under this MOU, upon the parties.

XII. EFFECTIVE DATE

The effective date of this MOU shall be the date upon which this MOU is signed by both the Director of Hazardous Waste Management Division, EPA Region 6, and by the Executive Director of ODEQ.

XIII. COMMUNITY RELATIONS

According to the Schedule, ODEQ shall follow a Community Relations Plan which meets the requirements of the NCP. ODEQ shall ensure that the PRPs make available, to a local citizens group, the equivalent of a Technical Assistance Grant (TAG) in the amount requested by the citizens up to a maximum of \$50,000.

XIV. MODIFICATION

This MOU may be modified by agreement of EPA and ODEQ. All such modifications shall be made in writing and signed by the Executive Director of ODEQ and the Director of the Hazardous Waste Management Division, EPA Region 6, or their authorized representatives.

XV. TERMS AND CONDITIONS

A. ODEQ and EPA shall each appoint a representative to cooperatively draft proposed amendments to existing state statutes to insure that the ODEQ has State Superfund legislation which is at least as stringent as CERCLA and which provides the ODEQ, either directly or by way of delegation, with authority which is at least the equivalent of the President's CERCLA civil and criminal enforcement authority. Such proposed legislation should be prepared by November of 1994, in order to be presented to the State Legislature for consideration in the following legislative session.

B. The parties agree that ODEQ shall not borrow employees from other EPA-funded or EPA-delegated Oklahoma environmental programs in order to staff its program dealing with hazardous substance, pollutant or contaminant release at the Site. Therefore, ODEQ agrees to submit to EPA, according to the Schedule, a written report which describes the personnel assigned to the Site. The staff assigned shall include, but shall not be limited to, a site manager experienced in hazardous waste management, and technical support personnel experienced in risk assessment, laboratory quality assurance, geology, hydrogeology, biology, and environmental science. Unless EPA determines, that, within 60 days of the effective date, ODEQ has in position adequate staff whose duties include administration of the ODEQ's program at the Site, this MOU shall terminate. ODEQ shall provide to EPA documentation regarding the staff assigned to this project and their duties.

C. The time period for the completion of certain Work under this MOU is expressed as a number of days, or is described in the Schedule. The parties agree that, if ODEQ completes the Work within the time periods set forth in this MOU including the approved Schedule (and including adjustments to these time periods, as provided under the modification provisions of the MOU), then ODEQ has completed the Work in a prompt manner. If, at any time, ODEQ has not completed some Work within the time period established under the MOU, then EPA may terminate the MOU.

D. If, at any time, EPA determines that ODEQ is overseeing or conducting remedial action, at the Site, which is inconsistent with CERCLA, or the NCP, or which is not a CERCLA-Quality Cleanup, this MOU shall terminate.

E. ODEQ shall support EPA in the development of an agreement between EPA and the PRPs (hereinafter referred to as the agreement) regarding reimbursement to EPA of expenses incurred by EPA regarding the Site. Under this agreement, the request for reimbursement shall be based upon an unreconciled SCORE\$ report. SCORE\$ is the cost tracking system used by EPA Region 6. Payments to EPA would be sent to the following address:

EPA Hazardous Substance Superfund
Blackwell Zinc Site (R6), Region 6
P.O. Box 360582M
Pittsburgh, Pennsylvania 15251
ATTN: Superfund Collections Officer

Respondents shall simultaneously transmit a copy of the check to EPA Region 6, to the attention of the designated project coordinator.

If for any reason EPA and the PRPs do not enter into such an agreement, this MOU shall terminate.

XVI. SCHEDULE

Refer to Attachment 1.

THE UNDERSIGNED PARTIES enter into this MOU regarding the Blackwell Zinc Site:

By: Mark S. Coleman Date 4-8-94
Mark S. Coleman, Executive Director
Oklahoma Department of Environmental Quality

Allyn M. Davis Date 4/19/94
Allyn M. Davis, Director
Hazardous Waste Management Division
Environmental Protection Agency, Region 6

ATTACHMENT 1

SCHEDULE

**Blackwell Zinc Site Schedule
of Submittals and
Remedial Action Start Date**

The Oklahoma Department of Environmental Quality shall submit to the U.S. Environmental Protection Agency documents that are the equivalent of the following documents, by the specified dates:

August 1, 1994 - Community Relations Plan

March 1, 1995 - Draft Remedial Investigation/Feasibility Study Report

May 1, 1995 - Final Remedial Investigation/Feasibility Study Report

June 1, 1995 - Proposed Plan

September 1, 1995 - Draft ODEQ Decision Document

October 17, 1995 - Final ODEQ Decision Document

March 1, 1996 - Draft Remedial Design

May 1, 1996 - Final Remedial Design

June 1, 1996 - Remedial Action Start

Any removal activities planned for the site will be coordinated with Region 6 EPA, prior to initiating such activities.

ATTACHMENT 2

SITE MAP

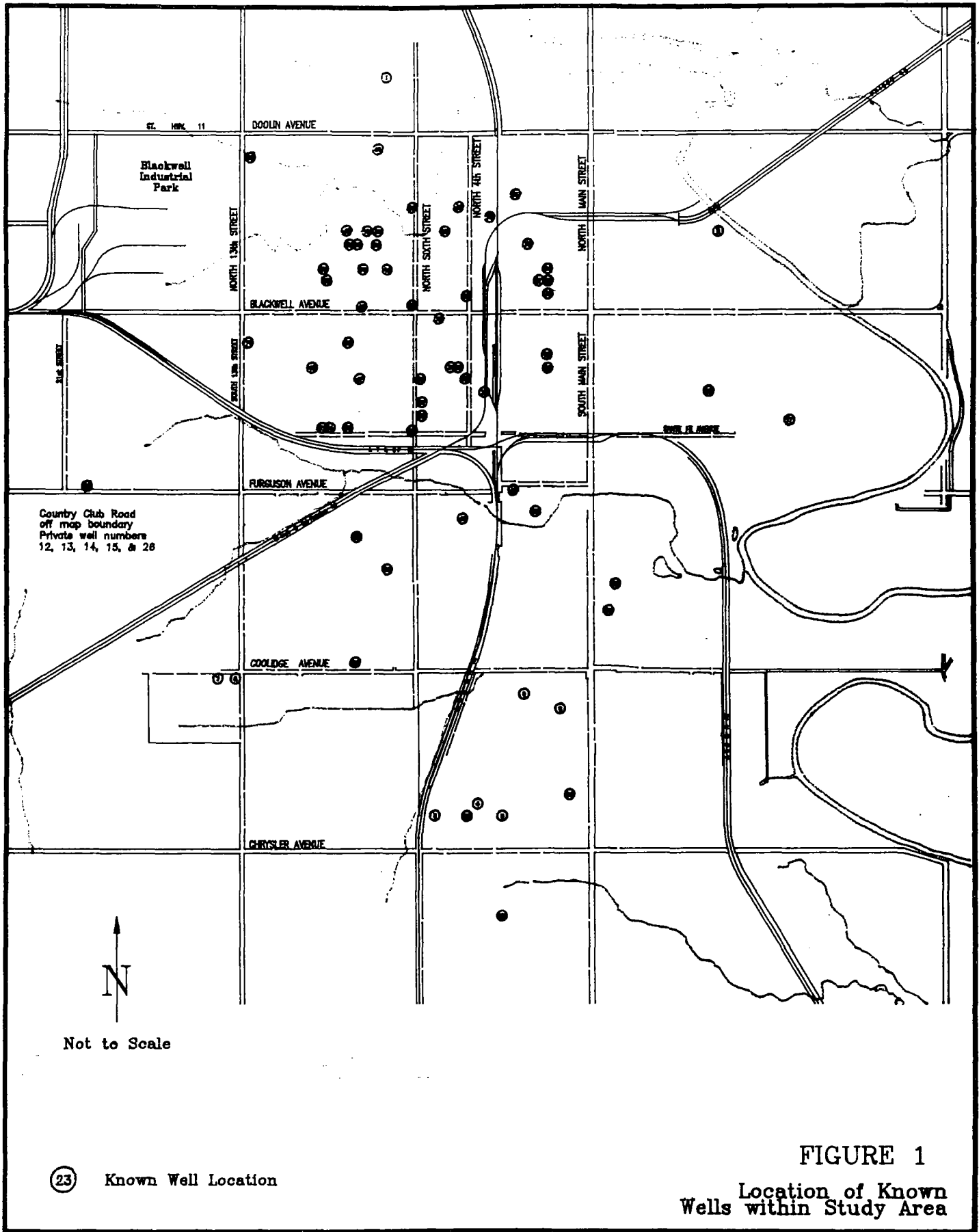


FIGURE 1
Location of Known
Wells within Study Area