

**KAY CO. GRAND JURY
SUBMISSION OF QUESTION**

I, Greg DePue, formally request the Kay Co. Grand Jury to consider the following question for review.

Who is responsible for the illegal dumping of the contaminated dirt from the new consolidated elementary school to the Chickasia River basin?

Approximately 12 inches of dirt was removed from the elementary new school located on Ferguson and 23rd street, a site location of approximately 5 acres.

Phelps-Dodge tested the land located on this New School site, and sent a letter to the School Board that the land was clean and only had 14 ppm arsenic, about the same for cadmium, and less than 400 ppm of lead. Yet, 12 inches of dirt were nonetheless removed from the school.

Pursuant to the agreed-to Institutional Controls, at page 17, "Contaminated Soil with arsenic, cadmium and lead contaminants at levels at or below the Commercial/Industrial Soil Remediation Levels shall be placed at the BIP at a location selected by the Blackwell Industrial Authority." (See attached Institutional Controls document.)

Submitted this day December 1st, 2008.

Greg DePue
Requesting Party



Blackwell Community Outreach

A PHELPS DODGE ENVIRONMENTAL PROGRAM



123 East Blackwell Ave. • Blackwell, OK 74631-2907 • Phone: 580-363-1202 • Fax: 580-363-1278 • Toll-free: 866-466-8924 • www.blackwellcommunityoutreach.com

August 22, 2007

Ms. Lesa Ward
Superintendent, Blackwell Independent School District
201 E. Blackwell Ave.
Blackwell, OK 74631


RE: Proposed School Site on Furguson Road, Residential Property below Cleanup Criteria
A twenty-acre tract of land located in the Northeast Quarter (NE/4) of Section Twenty-eight (28), Township Twenty-seven North (27/N), Range One West (1) of the I.M., Kay County, Oklahoma, more particularly described as follows: Beginning at the NW quarter (NW/4) of said Northeast Quarter (NE/4), thence South a distance of 1,089 Feet; thence East a distance of 800 Feet; thence North a distance of 1,089 Feet; thence West a distance of 800 Feet to the Point of the Beginning.

Dear Ms. Ward:


As you may know, Blackwell Zinc Company operated a smelter in Blackwell from 1916 to 1974. In 1996, the Oklahoma Department of Environmental Quality (ODEQ) adopted and Blackwell Zinc Company began implementing a plan for sampling and cleaning up soils that may have been affected by historic smelter operations. In 1999, Phelps Dodge acquired the parent company of Blackwell Zinc and continued the previous sampling and cleanup program. In 2001, ODEQ determined that the Blackwell soil sampling and cleanup program was complete.

Since 2001, Phelps Dodge has continued to work with ODEQ and the City of Blackwell, on behalf of Blackwell Zinc, to address ongoing environmental issues in Blackwell. Through these efforts, Phelps Dodge has become aware that some residents in the area where smelter waste may have been used as fill did not participate in the original soil sampling program or do not know if their properties were sampled. In response, Phelps Dodge implemented a voluntary, supplemental soil sampling program in July 2007 that provides residents an opportunity to have soils on their residential or commercial properties sampled and analyzed.

ODEQ determined that the 1996 program should include analysis of soil samples for arsenic, cadmium and lead. These metals occur naturally in most soils. However, ODEQ believed that air emissions or use of smelter waste material by residents as fill may have increased the concentrations of these metals in yard soils. As part of the program, ODEQ, in coordination with the federal Environmental Protection Agency, established cleanup standards for arsenic, cadmium and lead found in soil located on residential properties. ODEQ concluded that yard soil in Blackwell with concentrations of these metals below the cleanup standards did not present a health concern and need not be removed.



Blackwell Community Outreach

A PHILIPS HODGE ENVIRONMENTAL PROGRAM 

123 East Blackwell Ave • Eastwell, Ok. 74531-2907 • Phone: 580-363-1202 • Fax: 580-363-1278 • Toll free: 866-466-8924 • www.blackwellcommunityoutreach.com

The soils on your property were sampled and tested following the procedures specified in a sampling and analysis plan approved in June 2007 by ODEQ. A copy of the Property Sampling Report is included. These results show that the average concentrations of soil arsenic, cadmium, and lead are below the ODEQ cleanup standards and -- in accordance with requirements specified by ODEQ -- do not require cleanup.

In addition to analyzing soil samples for arsenic, cadmium, and lead, twenty percent of the samples collected were analyzed for herbicides and pesticides because the property has historically been used for agriculture. The analytical results also show that the average concentrations of pesticides and herbicides were non-detectable.

If you have questions about the enclosed test results, the supplemental soil program or any other related issues, please contact the Blackwell Community Outreach Office at 123 East Blackwell Avenue by either stopping by or calling 580-363-1202 (toll free 866-466-8924 outside the local calling area).

If you believe that this letter has reached you in error, please notify the Blackwell Community Outreach Office so that we may contact the correct owner.

Sincerely,



Catherine Castaneda, Ph.D.
Shaw Environmental, Inc.
Blackwell Community Outreach Project Director

Attachment Enclosed: Figure 1 -- School Sampling Points for Furguson Road School Site

Blackwell Community Outreach

A PHILIPPIAN ENVIRONMENTAL FIRM **phelps**
dodge

121 East Walker Ave • Bartlesville, OK 74603 • Phone: 580-363-1202 • Fax: 580-363-1278 • Mobile: 800-456-8472 • www.blackwellcommunityoutreach.com

Property Sampling Report

Soil Sample Results Obtained by Blackwell Zinc Company in Accordance With the Sampling and Analysis Plan Dated June 2007

A twenty-acre tract of land located in the Northeast Quarter (NE/4) of Section Twenty-eight (28), Township Twenty-seven North (27/N), Range One West (1) of the I.M., Kay County, Oklahoma, more particularly described as follows: Beginning at the NW quarter (NW/4) of said Northeast Quarter (NE/4), thence South a distance of 1,089 Feet; thence East a distance of 800 Feet; thence North a distance of 1,089 Feet; thence West a distance of 800 Feet to the Point of the Beginning

Property type based on Kay County tax records: Agricultural sampled as Residential per request of Blackwell Public Schools

Sample Location	Sample Depth (inches)	Arsenic (ppm)	Cadmium (ppm)	Lead (ppm)	Date
ODEQ Cleanup Standard		50	75	750	
673-A02	0-3	9.51	8.91	73.2	Jul-07
673-A02	6-12	6.66	5.62	36.8	Jul-07
673-A04	0-3	11.8	12.1	108	Jul-07
673-A04	6-12	12.1	13.7	109	Jul-07
673-A06	0-3	8.11	10.5	80.6	Jul-07
673-A06	6-12	7.96	8.86	65.5	Jul-07
673-B09	0-3	9.89	8.37	66.9	Jul-07
673-B09	6-12	5.74	4.61	21.8	Jul-07
673-B12	0-3	12.2	11.9	91.5	Jul-07
673-B12	6-12	10.4	10.2	66.8	Jul-07
673-B14	0-3	13.5	13.3	113	Jul-07
673-B14	0-3	13.4	13.5	108	Jul-07
673-B14C	0-3	13.3	12.3	98.7	Jul-07
673-B14	6-12	9.67	9.65	61.4	Jul-07
673-C03	0-3	11.0	11.1	76.9	Jul-07
673-C03	6-12	7.88	8.66	53.8	Jul-07
673-C05	0-3	10.5	10.4	71.4	Jul-07
673-C05	6-12	9.00	8.70	52.2	Jul-07
673-D08	0-3	10.1	8.69	62.7	Jul-07
673-D08	6-12	10.1	9.47	67.6	Jul-07
673-D10	0-3	9.32	8.11	63.5	Jul-07
673-D10	6-12	8.10	6.06	46.8	Jul-07
673-D13	0-3	12.2	12.4	92.0	Jul-07
673-D13	0-3	12.8	12.8	98.9	Jul-07
673-D13	6-12	11.3	11.1	75.3	Jul-07
673-D13C	6-12	13.9	14.3	102	Jul-07
673-E02	0-3	9.54	8.24	63.2	Jul-07
673-E02	6-12	5.20	3.82	22.9	Jul-07
673-E04	0-3	10.0	9.37	72.0	Jul-07
673-E04	6-12	8.49	7.50	55.2	Jul-07
673-E04	6-12	10.3	9.7	70	Jul-07
673-E06	0-3	10.2	9.13	71.0	Jul-07
673-E06	6-12	7.10	6.44	34.2	Jul-07
673-G03	0-3	9.59	9.28	66.9	Jul-07
673-G03	6-12	5.24	2.44	18.4	Jul-07

Blackwell Community Outreach

A PHILIPPS ENVIRONMENTAL PROGRAM *phelps*
blackwell

177 East Boulevard Ave. • Newark, DE 19801 • Phone: 302-383-1201 • Fax: 302-383-1278 • Toll-free: 866-966-9925 • www.blackwellcommunityoutreach.org

Property Sample Report – Metals (Continued)

Grid Associated Sample Location	Sample Depth (inches)	Arsenic (ppm)	Cadmium (ppm)	Lead (ppm)	Date
ODEQ Cleanup Standard		50	75	750	
673-G05	0-3	7.28	5.11	40.4	Jul-07
673-G05	6-12	5.72	2.63	28.0	Jul-07
673-G05C	6-12	5.32	2.96	25.6	Jul-07
673-G09	0-3	9.89	8.46	61.4	Jul-07
673-G09	6-12	4.51	0.490	14.1	Jul-07
673-G12	0-3	8.00	6.49	49.9	Jul-07
673-G12	0-3	9.45	7.43	58.7	Jul-07
673-G12	6-12	5.00	2.27	22.6	Jul-07
673-G14	0-3	11.4	11.2	80.0	Jul-07
673-G14	6-12	6.20	5.91	33.7	Jul-07
673-I02	0-3	9.81	10.2	70.5	Jul-07
673-I02	6-12	10.4	10.3	75.6	Jul-07
673-I02	6-12	9.79	9.77	68	Jul-07
673-I04	0-3	9.71	8.11	65.6	Jul-07
673-I04	6-12	8.06	7.01	45.6	Jul-07
673-I04C	6-12	9.62	8.3	48.6	Jul-07
673-I06	0-3	7.70	5.77	44.6	Jul-07
673-I06	6-12	3.99	0.775	14.4	Jul-07
673-I08	0-3	9.65	8.65	60.8	Jul-07
673-I08	6-12	4.10	1.60	17.9	Jul-07
673-I10	0-3	9.00	7.66	59.6	Jul-07
673-I10	6-12	3.57	3.76	14.5	Jul-07
673-I12	0-3	8.42	7.12	57.1	Jul-07
673-I12	6-12	4.92	2.44	14.3	Jul-07
673-I12	6-12	4.3	1.61	18	Jul-07
673-J09	0-3	9.59	8.74	64.6	Jul-07
673-J09	6-12	6.99	4.91	39.3	Jul-07
673-J11	0-3	8.32	7.32	53.2	Jul-07
673-J11	6-12	8.02	6.43	48.6	Jul-07
673-J13	0-3	9.47	8.66	64.3	Jul-07
673-J13	6-12	7.61	3.99	35.9	Jul-07
673-K02	0-3	9.98	10.9	75.3	Jul-07
673-K02	6-12	10.1	9.79	68.9	Jul-07
673-K05	0-3	9.66	8.72	64.6	Jul-07
673-K05	0-3	10	9.03	69.7	Jul-07
673-K05	6-12	6.42	6.06	31.1	Jul-07
673-K07	0-3	8.76	7.85	59.3	Jul-07
673-K07	6-12	9.76	8.66	65.2	Jul-07
673-L10	0-3	9.29	9.30	66.3	Jul-07
673-L10	6-12	7.78	7.30	45.8	Jul-07
673-L10	6-12	7.5	7.24	43.5	Jul-07
673-L12	0-3	7.96	5.81	46.6	Jul-07
673-L12	6-12	5.75	1.13	15.6	Jul-07
673-M01	0-3	10.9	11.0	88.1	Jul-07
673-M01	6-12	11.1	11.7	87.8	Jul-07



Blackwell Community Outreach

PHILIPPS INLAND ENVIRONMENTAL PROGRAM 

123 East Main Street • Blackwell, OK 74601-2947 • Phone: 580-364-1202 • Fax: 580-363-1278 • Website: 806-866-8924 • www.blackwellcommunityoutreach.org

Property Sample Report - Metals (Continued)					
Grid Associated Sample Location	Sample Depth (inches)	Arsenic (ppm)	Cadmium (ppm)	Lead (ppm)	Date
ODEQ Cleanup Standard		50	75	750	
673-M03	0-3	9.70	9.22	65.8	Jul-07
673-M03	6-12	9.17	8.17	59.0	Jul-07
673-M06	0-3	0.805	0.713	5.31	Jul-07
673-M06	6-12	9.04	8.47	60.8	Jul-07
673-N09	0-3	9.33	8.28	67.6	Jul-07
673-N09	6-12	6.95	7.02	36.2	Jul-07
673-N09	6-12	5.79	5.64	33.9	Jul-07
673-N11	0-3	10.4	9.23	76.3	Jul-07
673-N11	6-12	7.95	6.36	41.6	Jul-07
673-N13	0-3	7.20	4.82	37.5	Jul-07
673-N13	6-12	4.44	1.63	18.2	Jul-07
673-P02	0-3	9.95	9.66	70.6	Jul-07
673-P02	6-12	8.65	7.45	56.1	Jul-07
673-P05	0-3	8.90	8.14	61.5	Jul-07
673-P05C	0-3	9.1	7.3	64.2	Jul-07
673-P05	6-12	7.36	6.01	35.8	Jul-07
673-P07	0-3	8.03	5.76	45.8	Jul-07
673-P07	0-3	7.94	5.97	46.8	Jul-07
673-P07	6-12	7.17	4.73	37.9	Jul-07
673-P10	0-3	9.21	8.05	67.0	Jul-07
673-P10	6-12	6.18	3.21	24.9	Jul-07
673-P12	0-3	11.2	10.5	87.2	Jul-07
673-P12	6-12	6.97	5.15	31.8	Jul-07
673-R01	0-3	9.87	9.74	77.7	Jul-07
673-R01	6-12	9.90	10.3	76.7	Jul-07
673-R03	0-3	9.87	9.28	65.0	Jul-07
673-R03	6-12	8.82	7.07	51.0	Jul-07
673-R03C	6-12	9.46	8.36	60.6	Jul-07
673-R05	0-3	8.38	7.70	54.4	Jul-07
673-R05	6-12	6.71	3.43	29.7	Jul-07
673-R05	6-12	8.42	6.41	50.3	Jul-07
673-R09	0-3	9.26	8.50	66.4	Jul-07
673-R09	6-12	7.70	6.46	42.6	Jul-07
673-R11	0-3	9.05	8.42	67.2	Jul-07
673-R11	6-12	6.22	3.41	24.0	Jul-07
673-R13	0-3	7.77	6.39	45.0	Jul-07
673-R13C	0-3	7.08	5.09	37.4	Jul-07
673-R13	6-12	4.23	1.54	19.1	Jul-07
ODEQ Remediation (Cleanup) Levels for Residential Properties		50 ppm	75 ppm	750 ppm	
A bold result indicates concentrations above ODEQ cleanup levels.					
Remedial Action:					
Sample Results Below Action Levels - Remediation Not Necessary					



07/16/2008









ORDINANCE NO. _____

An ordinance of the City of Blackwell, Oklahoma adding provisions for additional use and management regulations under the authority of Title 11, O. S. §§ 14-101 *et seq* establishing environmental protection areas, regulating the uses and management of certain land, and requiring permits for certain types of excavation and construction in environmental protection areas, and declaring certain activities to be nuisances.

Be it ordained by the Commissioners of the City of Blackwell, Oklahoma that:

WHEREAS, pursuant to a certain Record of Decision, Soil Remediation Unit, dated April 4, 1996, ("Soil ROD") the Oklahoma Department of Environmental Quality ("DEQ") approved a soil remediation and management plan for soil contamination attributable to the historic operations of the former Blackwell Zinc Smelter facility;

WHEREAS, the soil remediation and management plan approved by the DEQ in the Soil ROD calls for the adoption and implementation of certain land use controls or other limitations on certain uses of land that contain soil contaminants attributable to the

~~the boundary of the Groundwater Protection Area and amend Figure 3 to this Ordinance~~
to designate the new boundary. The newly designated boundary of the Groundwater Protection Area shall be the area of land within the City that has been reasonably determined by the City and the DEQ to encompass the Cadmium Plume, plus an additional area which extends three hundred (300) feet beyond the outer edge of the Cadmium Plume.

(2) In making its evaluation as to whether the boundary of the Groundwater Protection Area should be modified, the City, with the assistance of the DEQ, shall reasonably determine the geographical scope and extent of the Cadmium Plume. ~~The geographical scope and extent of the Cadmium Plume shall be determined by the City, and the DEQ using the groundwater data collected pursuant to the groundwater monitoring required by the Groundwater ROD and its remedial design as well as the groundwater modeling and analysis methods described in Appendix A to this Ordinance.~~

ARTICLE V. SOIL AND GROUNDWATER HANDLING REQUIREMENTS

A. Management of Soil and Groundwater Lying Outside the Soil Protection Area and the Groundwater Protection Area. ~~Soil and groundwater lying outside of the Soil Protection Area and the Groundwater Protection Area are exempt from these regulations; provided, however, that any Contaminated Soil shall be managed as set forth in Article V.~~

(B).

B. Management of Contaminated Soil Lying Outside the Soil Protection Area, But Within City Limits. Any soil located outside of the Soil Protection Area, but within the City limits, which is reasonably believed to have been contaminated by waste from

the former Blackwell Zinc Smelter shall be reported to the City. Upon receipt of such report, the City shall determine if such materials are Contaminated Soils. Any soil that is determined by the City to be Contaminated Soil may remain in place (or be returned to the area from which it was excavated) as long as there is a minimum of two feet of Clean Soil covering such soil. ~~If such soil is not to be left in place (or returned to the area from which it was excavated)~~ with a minimum of two feet of Clean Soil cap, then the City shall cause such soil to be removed and placed at the BIP. Contaminated Soil with arsenic, cadmium and lead contaminants at levels at or below the Commercial/Industrial Soil Remediation Levels shall be placed at the BIP at a location selected by the Blackwell Industrial Authority. Contaminated Soil with lead, arsenic or cadmium contamination at levels exceeding the Commercial/Industrial Soil Remediation Levels that fail the Toxicity Characteristic Leachate Procedure (TCLP) shall be treated and placed at the BIP at the New Soil Consolidation Area and covered by at least an eighteen (18) inch soil cap consisting of soil complying with the Commercial/Industrial Soil Remediation Levels. The area from which such Contaminated Soil was removed shall be backfilled with Clean Soil. If such soil is left in place (or returned to its original location) because it is covered with two feet of Clean Soil, then this location shall be added to the Soil Protection Area and its Clean Soil cap shall be designated as an Approved Engineering Control subject to the requirements of this Ordinance. The City shall amend Figures 1 and 2B of this Ordinance to identify the location of the new area to be included in the Soil Protection Area, the location of the Approved Engineering Control, and the key attributes of the new Approved Engineering Control.

at owners expense?
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