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Residents of Oklahoma town launch class-action lawsuit against Phelps Dodge

Kaylee Jernigan and her mother Kim live less than half a mile from the site of a smelter that refined zinc and cadmium ore concentrates for 58 years before it was closed down in 1974.

The smelter produced high volumes of zinc, particularly during the Second World War, when zinc was needed for many wartime products. By the mid-1960s, the smelter occupied 80 acres, employed 1,000 people, and was the largest horizontal retort furnace in the United States.

In 2006 when Kaylee was five years old, medical tests indicated she had 34.7 micrograms of lead per deciliter of blood in her bloodstream. A measurement above 10 micrograms of lead per deciliter of blood is the level at which the Centers for Disease Control and Prevention recommend public health action.

More recent blood tests show levels of lead in Kaylee's bloodstream are around 8.5 micrograms per deciliter -- below the CDC's danger level. But that hardly puts Jernigan's mind at ease. Children under the age of six are especially vulnerable to lead as their brains and central nervous systems are still developing.

Lead poisoning can cause learning disabilities, behavioral problems, and at very high levels, seizures, coma and even death, according to the Atlanta-based public health agency.

The 35-year-old mother of two says they won't know for some time whether her daughter will suffer any long-term health or cognitive problems as a result of her exposure to lead and notes that lead travels from the bloodstream into the bones and organs quite quickly.

"Her organs have already been exposed to high levels of lead," Jernigan says. "The damage could have already been done."

Now Jernigan and other residents of Blackwell, a small town of 7,200 people in Oklahoma state, are banding together in a class-action environmental clean-up suit against the owners of the Blackwell Zinc Company--**Phelps Dodge** and its parent company **Freeport-McMoRan Copper & Gold** (FCX-N), among other defendants, including **Cyprus Amax Minerals**, and the Blackwell Industrial Authority.

After the smelter was closed and torn down, Blackwell Zinc Company deeded the smelter site to the Blackwell Industrial Authority, a public trust of the state of Oklahoma whose sole beneficiary was the city of Blackwell. The Blackwell Industrial Authority then was given the responsibility of financing, operating, constructing and administering any public works, improvements or facilities on the property.

Between 1974 and 1992, the BIA developed the site as an industrial park, selling and leasing various portions of the property. According to the plaintiffs, commercial construction took place without controls, spreading contaminated soil, dust and other material further throughout the city.

In 1992, the Oklahoma Department of Health ordered Blackwell Zinc Company and the BIA to remediate the environmental contamination of the old smelter site and city property. But the order did

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not include any remediation of private property in the town, the suit claims.

Phelps Dodge acquired Blackwell Zinc Company when it bought its parent company, Cyprus Amax Minerals, another defendant in the lawsuit, in 1999. And when Freeport-McMoRan snapped up Phelps Dodge in 2007, it also inherited legal liability for the contamination, attorneys in the case argue.

Steve Lewis, a spokesman for Phelps Dodge in Oklahoma City, says the company "has been doing the right thing for the people of Blackwell" and has over the last ten years tried to find contaminated soil "and clean it up for free."

"Phelps Dodge did not create the soil issue but they are fixing it anyway under the standards set by the state of Oklahoma," Lewis says, calling the lawsuit "unfortunate."

Lewis says 2,700 properties have signed up to have soil tested. In the last year, Phelps Dodge has tested soil at 1,400 properties. But he says they will not test interiors because it is a step that is not required under state law.

Phelps Dodge has plans to build a US\$5 million facility to treat contaminated ground water and dispose of it safely but Lewis did not have a timeline on its construction. He also said that the Oklahoma State Department of Health has been testing children in Blackwell for the past 14 years and they have found the blood levels in Blackwell are consistent with the national average.

The class-action suit filed on April 14 charges the defendants with contaminating the plaintiffs' properties with "millions of pounds of toxic, damaging and hazardous waste material released as a result of the defendants' wrongful conduct at the former zinc production facility."

Specifically, the smelter's owners are charged with contaminating the town with 58 million pounds of toxic waste including lead, arsenic, cadmium, and zinc left behind by the smelting activities.

The lawsuit calls on the defendants to remediate all contaminated property and reimburse the town's residents for damage to property values. It also asks the defendants to provide for a medical-monitoring program open to all Blackwell residents.

Keith Langston, an attorney representing the plaintiffs in the Daingerfield, Texas offices of the law firm Nix, Patterson & Roach, said the smelter not only exposed Blackwell residents to toxic contamination "that could lead to long-term and chronic health effects," but also caused "significant damage to people's property."

"There are approximately 3,000 homes in that town as well as businesses and schools," Langston said in an interview. "They all need to be tested and remediated properly... They did do some stuff, but it's our belief that what they did was inadequate. They didn't clean the entire town. It needs to be a uniform, total clean-up."

Under Oklahoma state law, the defendants are not required to test for contamination inside the homes of residents and that worries lawyers on the case. Says Langston: "Our test results show that you can have a home highly contaminated inside and not contaminated outside."

According to a backgrounder prepared by Langston's law firm, more than 76% of the homes in Blackwell that were tested in 2006 contained interior dust with lead levels exceeding the Environmental Protection Agency's safety standards and more than 90% of the homes tested contained levels of arsenic exceeding the EPA's safety standards. Blackwell's groundwater is also polluted with cadmium at a level 4,200 times higher than the EPA's allowable amount, lawyers for the plaintiffs allege.

"The soil in their yards is contaminated with lead, arsenic or both," Langston adds. "The dust in their homes is contaminated with lead, arsenic or both. Their water table is contaminated with cadmium, also a byproduct of a smelting facility. They have all been asked if they have a well into the aquifer not to use it and to cap it and not use ground water for any purposes."

Clean-up levels set for the companies by the Oklahoma Department of Environmental Quality were insufficient to protect the town's residents, lawyers for the plaintiffs argue. When the EPA recommended the site be placed on the National Priorities List or the Superfund site in the early 1990s, it was instead designated for commercial redevelopment. As a result, for decades after the smelter's closure, contaminated sand from the smelter was used by the community for road paving, landfill, and

other public and private uses.

For her part, Jernigan is convinced her current home and the home she grew up in two blocks away are contaminated and is angry that nothing has been done to clean up the town. "This could have been prevented in my lifetime, why does it have to be carried into my daughter's lifetime? Nothing was ever done. I just hope something gets done now."

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