



THE PONCA CITY NEWS

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Attorneys Dispute Recent Phelps Dodge Advertisement

DAINGERFIELD, Texas — Attorneys from Nix, Patterson & Roach, LLP, a law firm representing many Blackwell residents strongly dispute a two-page advertisement run by Phelps Dodge Corporation in recent editions of area newspapers.

The attorneys have accused Phelps Dodge and Freeport McMoRan, its parent company, of failing to properly address lead and arsenic contamination in the Blackwell area.

"Phelps Dodge's ad is titled 'The Facts,' but it should be called 'The Spin,'" said Nelson Roach, a senior partner with Nix, Patterson & Roach.

"The company makes numerous misleading, inaccurate and unfounded statements in its ad, and the people of Blackwell should be asking themselves the following questions: Why would Phelps Dodge want to confuse and mislead them about such a serious problem? If Blackwell's lead and arsenic contamination doesn't create dangerous health concerns, why would Phelps Dodge feel the need to run a slick, two- page advertisement that attempts to explain the company's official position on the matter? Phelps Dodge's ad raises these and a host of other new questions that the company must answer immediately."

The law firm takes issue with Phelps Dodge's claim that the Oklahoma State Department of Health (OSDH) "has concluded that 1 in 30 Blackwell children has an elevated blood lead level, which is consistent with the national average."

Roach says that Blackwell residents need to know that Phelps Dodge is relying upon dangerously outdated scientific information published by the U.S. Centers for Disease Control (CDC) and that at least three recent medical studies show that the CDC's 16-year-old

guideline for lead toxicity in children (10 micrograms per deciliter) is no longer adequate to protect children from the effects of lead, which include brain damage and a lowering of IQ. The CDC has been publicly warned about this hazard. According to blood samples kept on file by the OSDH, one out of every three Blackwell children has a blood lead level greater than five micrograms per deciliter. According to the recent medical studies, a large part of lead-related brain damage in children occurs at this level.

"Blackwell residents should ask Phelps Dodge why the company is using outdated scientific information," said Roach.

"Don't Blackwell families deserve to know what scientists are saying about the dangers of lead now, as opposed to what they were saying 16 years ago? Why would a company that claims to care about Blackwell gamble with the health of its children?"

The attorneys also take issue with Phelps Dodge's claim that "deteriorated lead paint is the most likely source of elevated blood lead levels in Blackwell."

"Neither Phelps Dodge nor any of its predecessors has ever manufactured lead paint," said Roach.

"Yet the company paid top dollar for its recent advertisement, it purchased a building in downtown Blackwell and converted it into a "community outreach office," and it has spent an unknown amount of money on its flawed soil-sampling program and other public relations efforts. Additionally, lead-to-arsenic ratio testing performed by Nix, Patterson & Roach clearly shows that the lead in Blackwell homes and soil came from the smelter and not from lead-based paint. Phelps Dodge has never refuted the results of this testing. Blackwell's citizens need to ask Phelps Dodge one simple question about this lead paint claim," said Roach.

"Just why is the company involved in the cleanup efforts if it believes that lead paint is the real cause of the contamination," asked Roach.

Nix, Patterson & Roach attorneys also dispute the advertisement's claim that "Phelps Dodge is offering to clean the interior of any residence whose yard soils are found to have elevated concentrations of lead due to the presence of smelter materials." What about Blackwell residents who have contaminated homes but no "elevated concentrations" of lead in their yards," asks Roach.

The firms also believe that a majority of the homes in Blackwell actually fall into this category. More than 77 percent of the Blackwell homes tested by the law firm are contaminated with lead but have yards that would be considered "uncontaminated" according to the company's self-serving rules. In other words, most of the town's residents are not eligible for cleanup under Phelps Dodge's program. Phelps Dodge needs to explain how its proposed cleanup will help Blackwell if it doesn't apply to the majority of the residents with contaminated homes," said Roach.

Another issue the attorneys are concerned with is that Phelps Dodge's claims that the Oklahoma Department of Environmental Quality (ODEQ) "set the cleanup levels based on the Department's own independent review," that the U.S. Environmental Protection Agency (EPA) "has reviewed and concurred with these cleanup levels", and that "ODEQ and EPA are interested in only protecting human health and the environment."

Roach believes that ODEQ set minimum cleanup levels for Blackwell only after close consultation with Phelps Dodge. Under EPA standards, any soil lead concentration greater than 400 parts per million (ppm) in areas where children play is considered a hazard. Phelps Dodge's protocol does nothing to determine whether the areas it is sampling are play areas that children under the age of six are likely to frequent. Phelps Dodge negotiated with ODEQ and the EPA a cleanup level of 750 ppm for all areas, regardless of whether such areas are frequented by small children.

"A state health agency shouldn't set safety standards based on the desires of a large corporation accused of pollution," says Roach.

"Is this in Blackwell's best interest? How did Phelps Dodge gain access to these government agencies? Does it have anything to do with the fact that the company spent roughly \$900,000 over the past decade lobbying the government, or that its political action committee contributed nearly \$650,000 to candidates over the same period of time? Why weren't Blackwell taxpayers consulted on the minimum cleanup levels? Most important, why were cleanup levels established that do not take into account the presence of young children?"

Attorneys with Nix, Patterson & Roach also dispute Phelps Dodge's claim that "the Blackwell soil sampling program has always sampled the top three inches of soil at residential properties."

According to a brochure handed out by Phelps Dodge at its Community Open House on April 10, the company

proposed conducting soil sampling at depths of zero-to-six inches. After Nix, Patterson & Roach attorneys announced that this soil-sampling method was designed to dilute the samples and hide evidence of lead contamination, Phelps Dodge quickly changed its sampling practices without making any announcement.

"Blackwell residents need to ask Phelps Dodge why the company would make these sudden changes to its soil-sampling program," said Roach. "Why would Phelps Dodge make these changes without notifying Blackwell residents? And why is the company now denying that it ever made these changes?"

Finally, the attorneys strongly dispute Phelps Dodge's claim that Shaw Environmental, the corporation Phelps Dodge has hired to conduct the sampling program, is "one of the leading environmental cleanup companies in the country."

Roach claims that Shaw has been investigated by the U.S. Government for fraud associated with its role in the Hurricane Katrina cleanup. After the hurricane hit the Gulf Coast, Shaw won no-bid contracts from the Army Corps of Engineers and the Federal Emergency Management Authority (FEMA) to provide temporary housing for displaced families.

Roach says that according to CorpWatch, an organization that investigates environmental crimes, many of the housing trailers provided were contaminated with formaldehyde, which causes cancer. CorpWatch also reported that the Army Corps found that Shaw's "failure to maintain adequate inspection and quality control procedures" harmed the government, and that each of the seven areas visited by inspectors were deemed entirely inadequate and scheduled for "rework."

"How can Blackwell residents trust a company with this sort of record?" asks Roach.

"At the end of the day, what does the hiring of a company like Shaw say about Phelps Dodge?"

Roach asks that residents with further questions about the Blackwell contamination or the Phelps Dodge advertisement, contact Nix, Patterson & Roach toll-free at 1-800-853-5310 or through the firm's Web site, www.nixlawfirm.com.

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