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State of Oklahoma
DEPARTMENT OF ENVIRONMENTAL QUALITY

November 14, 1997

Mr. Louis Gose, Mayor
City of Blackwell
111 N. Main
Blackwell, Oklahoma 74631

Dear Mayor Gose,

This letter is intended to clarify some of the confusion that has been created regarding the cleanup levels for the Soil Remediation Unit of the Blackwell Zinc site and which has led to unnecessary delay of the soil cleanup. It is unfortunate that what was a cooperative effort between the Department of Environmental Quality (DEQ), the City of Blackwell, private citizens, and the potentially responsible parties (Cyprus-Amax and the Blackwell Industrial Authority) has been derailed. Over the last several years that we have been holding meetings with the potentially responsible parties (PRPs), the Steering Committee, and the citizens of Blackwell, we at DEQ have thoroughly enjoyed working on the project. For those years as virtually every aspect of the investigation and proposed remedy was discussed openly at the numerous Steering Committee and Public meetings the project seemed to be a model of how to allow anyone who was interested in a site to participate. It seems now though that we are not dealing with people from Blackwell anymore but rather with a few individuals from elsewhere who have chosen to pursue an adversarial approach and who have effectively ground the project to a halt. We hope that this current situation can be reversed and that we can get back to working with the City of Blackwell in a cooperative manner.

In regard to the cleanup levels for the site let me assure you that the levels are within the range that United States Environmental Protection Agency (EPA) has used at similar mining and smelting sites across the country. The overall remedy for the Soil Remediation Unit is similar to remedies for such sites as well. Mr. Noel Bennett of the EPA has informed me that EPA will be sending a letter to indicate their support of the remedy and the cleanup levels, since EPA's position on these issues has been brought into question.

We are quite surprised at the recent concerns raised about the cleanup levels. What transpired in setting the cleanup levels is that the PRPs put forth a risk assessment that postured for cleanup levels higher than EPA and DEQ (and most regulatory agencies) usually are willing to accept. Therefore DEQ made much more conservative assumptions

and put forth safe cleanup levels that would be acceptable to EPA, because under our deferral agreement EPA has veto power over such issues. **The PRPs agreed to the cleanup levels proposed by DEQ.** If the PRPs had chosen to continue to work on modifying their risk assessment they might have been able to demonstrate that even higher levels could have been acceptable to DEQ and EPA.

Much attention has been focused on why the residential cleanup level for arsenic is in the one in a hundred thousand range (commonly referred to as 10^{-5}) as opposed to the one in a million range (10^{-6}). This seems odd coming from someone who claims to be an expert on risk assessment since it is common knowledge in the risk assessment community that EPA has admitted that the risk from arsenic has been overestimated and EPA routinely uses the 10^{-5} cleanup range for residential cleanup levels. In fact, the normal 10^{-6} level is well below naturally occurring levels of arsenic in many areas, particularly in the western United States. **It is my understanding that at the most recent meeting in Blackwell Mr. Teaf, who along with Mr. Page has raised this issue repeatedly, was asked if he had ever actually advocated using the 10^{-6} level for arsenic and he would not answer the question.**

DEQ is not interested in providing any credibility to the idea that there is any need for the citizens of Blackwell to pay experts to explore every minute detail of risk assessment issues. Risk assessment is a very academic endeavor and two qualified risk assessors can calculate different numbers to represent the same level of risk. Assuming that they are both within the reasonable ranges of input parameters etc., **neither one can prove with absolute certainty that their number is right and the other is wrong.** Thus a debate over every little detail of setting risk based cleanup levels is essentially pointless since many issues boil down to a difference in professional judgment. **Such a debate could go on endlessly and could incur a great deal of cost to whomever is paying the bill.** Risk assessment is not an exact science, if it were risk assessors representing environmental, regulatory and industry groups would wind up calculating very similar numbers for a given level of risk. They seldom agree because a great deal of professional judgment goes into setting up exposure scenarios, choosing the most appropriate data to use for a given site, adding safety factors and making assumptions that go into calculating a cleanup level. **Risk assessors can manipulate the final result based on their personal bias and based on their client's desires.** In fact in many cases, cleanup levels are actually negotiated to a degree by agreements regarding the details of the various input parameters described above. **Regulatory agencies are only willing to negotiate such factors to the degree that the final cleanup levels fall within a reasonable and protective range.**

Risk assessment is a scientific method which is used to estimate the level of risk posed by a given level of a substance. Actually, the intent in risk assessment is to overestimate the risk so that there is at least a 95% degree of certainty that the actual risk is at or below the calculated risk. Critics of EPA's risk assessment methodologies often argue that the actual risk is far below that normally calculated by regulatory agencies. They may be correct but **regulatory agencies feel compelled to err on the side of safety,** however, we also realize that erring too far on the side of safety could have adverse economic impacts and could result in fewer sites being cleaned up. Environmental professionals in

regulatory agencies consider the setting of cleanup levels to be a risk management activity in which the information provided by risk assessment is considered along with other factors in setting the final cleanup levels. Risk assessment is a tool, not necessarily the final word in setting cleanup levels.

DEQ wishes to make it very clear that we can not allow the soil cleanup to continue to languish over supposed concerns regarding the cleanup levels. The cleanup levels and the remedy for the Soil Remediation Unit were selected by DEQ after conducting a lengthy evaluation of the site and holding a formal public meeting and soliciting formal public comments. Our process was very open and fair, we have long since passed the time to negotiate cleanup levels. The Blackwell Industrial Authority (BIA) was one of the original members of the Steering Committee and was invited to all of the committee and public meetings. From the beginning we have considered BIA and Cyprus-Amax to have been working together as a PRP "group" as parties to the consent order and that submittals of documents were from the PRPs collectively for the legal purposes of the consent order. This is the standard manner in which multiple parties under a consent order are considered to function. The DEQ does not meddle in the internal agreements or relationships of PRP groups; we expect that the parties are professional businessmen and should work out reasonable arrangements and look out for their own interests. The BIA officials could have involved themselves directly in the formulation and drafting of documents (including the risk assessment) prior to submittal to DEQ and should have done so. Apparently, BIA chose not to involve themselves in the development of the risk assessment and other documents for submittal or in the public review process.

In the beginning of the project Amax officials (prior to the merger with Cyprus Minerals) had indicated the possibility of working capitol improvements into the remedy for the site. They had reportedly built a large warehouse on a similar site in New Jersey. After Amax was merged with Cyprus and we began dealing with representatives of the new company Cyprus-Amax, the Cyprus-Amax officials began to move away from the ideas put forth by their predecessors. I personally tried to keep alive the concept of building a large building foundation or other such structures as part of the remedy for the site as I thought this would be beneficial to Blackwell and the BIA. My efforts were curtailed by the representative of the BIA, Mr. Long. Mr. Long told me very clearly, in the presence of Cyprus-Amax officials, that the BIA did not want permanent structures as part of the remedy. He indicated that BIA needed to have clear areas available so that structures could be built to the specifications of future tenants. That is essentially the only comment that we received from anyone connected with the BIA in regard to the remedy for the site. After that the DEQ proposed a remedy that was very practical, cost-effective, and which would allow for large areas of the BIA property to be available for future development.

The failure of the BIA to grant access to Cyprus-Amax has delayed the start of the residential and industrial soil cleanup through this year's construction season. In order not to lose yet another year, DEQ is going to require that the soil cleanup begin no later than next March 15, 1998. If BIA does not grant access to Cyprus-Amax they should be aware that under the consent order BIA can be held accountable for the entire remediation. Our

attorneys informed me some time ago that we could have already been assessing stipulated penalties against BIA for obstructing the remediation. At up to \$500 per day since last June when the remediation should have started, that could add up to a substantial sum of money. We did not enforce the stipulated penalty provisions of the consent order against BIA in hopes that the situation would be resolved in a reasonable and cooperative manner.

It is time for the soil remediation to move forward. Another year of exposure of children in Blackwell to this public health threat is not acceptable to any of us. A letter is being sent to the BIA and to their attorney Mr. Page and shall serve as notice that stipulated penalties will begin to accrue if BIA has not granted access to Cyprus-Amax to conduct the remedy for the Soil Remediation Unit by December 10, 1997. We want this issue resolved by that time in order to allow enough time for logistical and contractual issues to be worked out to insure that the soil remediation can proceed in March of 1998.

We are not going to require that the BIA agree to any other side issues or conditions with Cyprus-Amax other than to grant them access in order for the remediation to proceed. It does not matter to DEQ if a global agreement or specific issues such as long-term operation and maintenance of the remedy are worked out yet. Enough time has been spent evaluating the site and it is time to get the residential cleanup underway. There is no legitimate reason for further delay.

I hope that DEQ and the City of Blackwell can find a way to return this project to the cooperative atmosphere that previously prevailed. If you have any questions please feel free to contact me at (405)271-7213.

Sincerely,



Scott A. Thompson
Environmental Program Director

cc: Don Wood, BIA
Noel Bennett, EPA
Patrick Lee, Cyprus-Amax
Sally Norris, City Manager
Blackwell Environmental Steering Committee
David Page, Gardere & Wynne