From:	Grish
To:	Gloria-Small Moran/R6/USEPA/US@EPA
Cc:	Carlos Sanchez/R6/USEPA/US@EPA; Casey Luckett/R6/USEPA/US@EPA; Donald Williams/R6/USEPA/US@EPA; Joseph Compton/R6/USEPA/US@EPA
Subject:	Re: Arkwood Revitalization: Grisham Jr. Comments on McKesson Communications & Grisham Jr. Request for Clarification - REPLY
Date:	11/18/2011 07:58 PM

Ms. Moran,

I understand. Sorry if I over-reacted. I'll keep working with Ms. Luckett-Snyder. She has been wonderfully helpful and available, as in fact have you and everyone else there.

Curt Grisham

On Nov 18, 2011, at 15:24, Moran.Gloria-Small@epamail.epa.gov wrote:

> Mr. Grisham:
>
> My email was not intended to discourage you. Please carefully read the handouts that Casey Luckett-Snyder gave you at the meeting. And yes, Barbara Nann, did indicate that there were no obstacles to reuse that could not be overcome. I concur with her statement. It does not mean, however, that there are no hurdles. Any of the hurdles that have been identified can be overcome. Because there is an on-going remedy relating to the groundwater, a request for a partial deletion for the soils is the only appropriate next step toward deletion of the site from the NPL. Please understand that the treatment of the groundwater must continue unfettered without any interference from an outside source until such time as it is determined by EPA that termination of the groundwater remedial activity is appropriate.
>
> Finally, yes, you can begin to discuss the site with prospective BFPPs, but each prospective BFPP, as part of the AAI requirements, must understand that full use of the surface soils with an industrial purpose cannot occur without a partial deletion of the soils remedy, which is not guaranteed without a full evaluation of the technical facts and data, but is probably a likely result here. Also, the prospective BFPP must .understand that the on-going groundwater remedy will modify or nullify any industrial purpose that would interfere with or affect this remedy.
>
> Again, I strongly suggest that you work with Casey Luckett-Snyder concerning these issues.
>
> Gloria Moran
> Assistant Regional Counsel
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> 214-665-3193
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From: Grish <curt@grish.org>

To: Gloria-Small Moran/R6/USEPA/US@EPA
Cc: Carlos Sanchez/R6/USEPA/US@EPA, Casey Luckett/R6/USEPA/US@EPA, Donald Williams/R6/USEPA/US@EPA, Joseph Compton/R6/USEPA/US@EPA

Date: 11/18/2011 04:32 PM
Subject: Re: Arkwood Revitalization: Grisham Jr. Comments on McKesson Communications & Grisham Jr. Request for Clarification - REPLY

Ms. Moran:

Now I am truly confused. In our meeting last week, I understood Casey Luckett-Snyder as saying the owner could start searching for BFPP's immediately. Ms. Nann said she discerned no obstacle to reuse at Arkwood that couldn't be overcome.

Your reply today, however, paints a different picture, and from what you say here, any discussion with BFPPs prior to partial deletion of soils (which process hasn't even been initiated by EPA, although the soils remedy construction was completed many years ago) would be inappropriately premature.

If I understand you correctly, a BFPP could fulfill All Available Inquiries, proceed under the assumption it has Brownfield Amendments release from liability, and execute on a construction plan approved by EPA and ADEQ with McKesson participation, but if in the course of following that approved plan for construction on the site McKesson claims the new owner's activities affected the groundwater remediation, or if in any other way the new owner inadvertently caused a release or change in the completed or ongoing remedies, then all Brownfield Amendment protections could instantly evaporate and the new owner could find itself added to the liability chain as an additional PRP.

Did I get that right? If so, I'm afraid any further effort to find a BFPP for Arkwood or to find any productive use for the Arkwood site will be an exercise in futility. Who would ever consider becoming a BFPP under such conditions? I am discouraged in the extreme by this latest development.

Curt Grisham

On Nov 18, 2011, at 13:35, Moran.Gloria-Small@epamail.epa.gov wrote:

Mr. Grisham:

With regard to the two issues that you raise in your email: 2) Institutional Control - The Region will begin reviewing the documents in full consultation with ADEQ, and with input from McKesson as well. As your father's apparent representative, you will have the opportunity, of course, to review the comments by the Region, ADEQ and McKesson in all drafts of the Deed Restriction. As appropriate, EPA will be available to discuss its comments with you. 2) BFPP status and Future Use at the site - Casey Luckett provided you with several written hand-outs concerning the BFPP status at a Superfund site.

These hand-outs can be shared with a prospective purchaser of the Arkwood Superfund Site. In general,, if a BFPP is able to achieve this designation, its activities on the site cannot interfere with the on-going remedial work at the site, in any way. Thus, it will be important to commence the partial deletion process for the soils, which will be evaluated by EPA for deletion. While a partial deletion of the soils is not guaranteed, this process must conclude with a partial deletion of the soils, in order for a BFPP, with a prospective industrial purpose, to take affirmative steps toward an industrial use at the site. Again, such prospective industrial use by a BFPP cannot, in any way, interfere with the on-going remedial work involving groundwater at the site. A BFPP can quickly become a PRP if it interferes with on-going remedial work, creating, for example, a release on the site.
Please continue to work with Casey Luckett concerning the reuse of the site.

Gloria Moran
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From: "grish.org" <curt@grish.org>
To: Gloria-Small Moran/R6/USEPA/US@EPA
Cc: "grish.org" <curt@grish.org>, Carlos Sanchez/R6/USEPA/US@EPA, Casey Luckett/R6/USEPA/US@EPA, Donald Williams/R6/USEPA/US@EPA, Joseph Compton/R6/USEPA/US@EPA
Date: 11/18/2011 01:54 PM
Subject: Re: Arkwood Revitalization: Grisham Jr. Comments on McKesson Communications & Grisham Jr. Request for Clarification - REPLY

Ms. Moran,

Thank you for confirming that. I attach here the corrected metes and bounds for the description as currently recorded in the existing IC/ Deed Restriction for the Arkwood site plus my working document that tracks my changes before I integrated them. I triple-checked these corrections as I made them against the description on the survey map, also attached.

These are presumably the corrections needed and referred to in the "Actions Needed" and "Deficiencies" section of the Third Five-Year Review. My father Bud Grisham, executor for the estate of Mary Grisham, which estate owns Arkwood, will record these corrections whenever you send them back with your authorization to do so.

[N.B. The "Actions Needed" section of the Third Five-Year Review states that the Deed Restriction needs "to add the notice that the site is zoned for industrial use only within 12 months of this review." The

"Deficiencies" section of the Third Five-Year Review states: "In addition, a notice that the site is zoned for industrial use only must be added to the Deed Restriction." As I pointed out to Mr. Ghose before finalization of the Third Five-Year Review, there is no zoning at the Arkwood site, which lies outside of the municipality of Omaha, Arkansas.]

My concerns below had more to do with the predictable questions and concerns that a Bona Fide Prospective Purchaser (BFPP) will have when considering the purchase of Arkwood for industrial use, such as:

- What will be the nature of the BFPP's relationship with McKesson Corporation, which the BFPP would be taking on with the property purchase?
- If the BFPP follows through on the purchase of Arkwood, what will be the new owner's responsibilities toward McKesson, if any?
- How will the BFPP's proposed project affect McKesson's responsibilities for the site?
- What will be McKesson's reaction to a BFPP with an viable proposal for industrial use of Arkwood?
- How should McKesson's legitimate concerns be addressed in the BFPP's planning phase?
- Will McKesson Corporation be cooperative with a BFPP's effort to create site use project plans?

Basically, this is about trying to put oneself in the position of a BFPP and to anticipate all the questions and concerns the BFPP will have when first being approached with the opportunity.

By anticipating and attempting to answer all those questions and concerns in advance, the owner will have a better chance of securing and maintaining the interest of a BFPP for the future use of the site.

Thank you,

Curt Grisham[attachment "recorded description changes tracked.pdf" deleted by Gloria-Small Moran/R6/USEPA/US] [attachment "ARKWOOD MAP1.pdf" deleted by Gloria-Small Moran/R6/USEPA/US]

On Nov 18, 2011, at 10:21 AM, Moran.Gloria-Small@epamail.epa.gov wrote:

Mr. Grisham:

Thank you for your email below concerning the Institutional Control that is required for the Arkwood Superfund Site. As the Region indicated during the meeting with you in our Dalllas office on November 9, 2011, we will work cooperatively with you, the ADEQ, and with input from McKesson, to revise the current Deed Notice that was filed by the owner PRP (your father) to ensure that it reflects the metes and bounds and the uses that are legally appropriate for the site.

Thank you,

Gloria Moran

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From: "grish.org" <curt@grish.org>
To: Gloria-Small Moran/R6/USEPA/US@EPA
Cc: Casey Luckett/R6/USEPA/US@EPA, Carlos Sanchez/R6/USEPA/US@EPA, Donald Williams/R6/USEPA/US@EPA, "grish.org" <curt@grish.org>
Date: 11/16/2011 02:42 PM
Subject: Arkwood Revitalization: Grisham Jr. Comments on McKesson Communications & Grisham Jr. Request for Clarification

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Dear Ms. Moran,

I write regarding McKesson Corporation attorney Don A. Smith's letter dated October 26, 2011 and certain of its attachments as sent to Region 6 Superfund Chief Carlos A. Sanchez (attached).

I wish to provide you with the "Site Agreement" (attached) referred to as "Exhibit '2'" in the "Settlement Agreement" Mr. Smith attached in his letter to Mr. Sanchez (not to be confused with the hand-numbered "Exhibit" stamps Mr. Smith stuck to some attachments.)

Mr. Smith failed to include the "Site Agreement", which is an integral part of the "Settlement Agreement."

Mr. Smith also attached to his letter to Mr. Sanchez an altered version of the "Deed Notice" instrument prepared by McKesson Corporation employee Jean Mescher and sent to the Arkwood owner for signature and recording.

The version attached to Mr. Smith's letter omits the words "Signature" and "Jean A. Mescher" under "Prepared by" on page one of six, which words appeared in the version originally presented to the Arkwood owner by Ms. Mescher.

I attach here a scan of the original version of that "Deed Notice" instrument prepared by Jean Mescher and presented to the Arkwood owner, including the March 26, 2010 cover letter in which Ms. Mescher asserts:

"Pursuant to the Record of Decision (ROD) for the Arkwood Site, the USEPA is requesting that a Deed Notice be completed for the Site. The purpose of the deed notice is to ensure that the site remains protective of human health and the environment.

The Deed Notice is enclosed for your completion."

In my opinion, Ms. Mescher appears to represent by the above statement that her version of the "Deed Notice" was an instrument originating with or approved by "USEPA."

In Ms. Mescher's version of the "Deed Notice" – which notably does not address the exclusion of residential use at Arkwood – there are onerous new requirements placed upon the Arkwood owner which are not, to my understanding, required by either EPA or the Record of Decision.

These new requirements would have made it much more burdensome for the Arkwood owner to continue as owner.

For example, if the Arkwood owner had executed on the Mescher "Deed Notice," the owner (and subsequent owners) presumably would have been bound to the following provisions:

"...providing routine inspection and maintenance for at least 30 years following the completion of remediation."

"...maintain all engineering controls at the Property and certify to the USEPA on an annual basis that the remedial action of which each engineering control is part remains protective of the human health and safety and of the environment."

"Implement any actions that are necessary to correct, mitigate, or abate each problem related to the protectiveness of the remedial action for the Site;"

It is my understanding that these provisions are part of McKesson Corporation's legal duties for "Long-Term Stewardship" as Responsible Party at Arkwood and that these duties cannot legally be shifted to any other entity.

In light of the above, as part of the effort to return Arkwood and adjacent lands to appropriate productive use, and within the context of CERCLA and the "Brownfield Amendments" as addressed in EPA's "Revitalization Handbook" (May 2008), I request assistance from EPA in clarifying the duties, responsibilities and obligations of:

1) the current owner of the Arkwood site;
2) current and future Contiguous Property Owners of lands adjacent to the Arkwood site;
3) any future owner of the Arkwood site who has come through EPA's revitalization program as a Bona Fide Prospective Purchaser, performed All Appropriate Inquiries and thereby obtained protection from liability under the "Brownfield Amendments"; and
4) McKesson Corporation as Responsible Party, with particular regard to "Long-Term Stewardship" as discussed in Part III Section A of the "Revitalization Handbook."

Thank you.

Sincerely,

Curt Grisham
[attachment "doc20111027102833.pdf" deleted by Gloria-Small Moran/R6/USEPA/US] [attachment "Arkwood Site Agreement.pdf" deleted by Gloria-Small Moran/R6/USEPA/US] [attachment "100326MescherDeedRestrct.pdf" deleted by Gloria-Small Moran/R6/USEPA/US]