Concerns of Charles Curtis Grisham, Jr. Regarding the Draft "Third Five-Year Review Report for Arkwood Inc. Site, Boone County, Omaha, Arkansas, March 2011, Prepared By Region 6, United States Environmental Protection Agency, Dallas, Texas" ("Review Report") prepared by EPA with data and reports provided by McKesson Corporation

I. **Concern:** Arkansas Water Quality Standards for Aquatic Life as defined by Arkansas Department of Environmental Quality (ADEQ) for the Site are not in full compliance with Section 303(c) and Section 304(a) of the Clean Water Act, or with United States Environmental Protection Agency (EPA) National Recommended Water Quality Criteria: 2002.

A. The Arkansas standards are inappropriately stringent with regard to "designated uses" of New Cricket Spring, which uses have not been defined by ADEQ for New Cricket Spring (NCS).

1. Arkansas Water Quality Standards for the purposes of the "remedial goal" for pentachlorophenol (PCP) in New Cricket Spring, as determined in a letter of January 30, 1998 from Masoud Arjmandi of ADEQ and "based on pH of 7.38 for the nearest station to the New Cricket Spring" are:

a) Monthly Average: 9.3 µg/L

b) Daily Maximum: 18.7 µg/L

2. According to Sarah Clem, ADEQ Branch Manager, Water Quality Planning Branch, Water Division, as recorded in a meeting on April 12, 2011 at ADEQ headquarters:

9297327

a) APC&EC Regulation 2 is the law in Arkansas for water quality standards.

b) Regulation 2 mirrors EPA National Recommended Water Quality Criteria.

c) Standards for PCP in surface water are addressed specifically by Reg. 2.508, the sole reference to PCP in the entirety of Regulation 2.

d) In determining the water quality standards for New Cricket Spring, near the Arkwood Site, "certain factors that are used in calculating those limitations" besides the pH-dependent formula stated in Regulation 2.508 were used to derive the numeric values stated by Mr. Arjmandi in the above-referenced letter of 1998, which numeric values have become the *de facto* Arkansas water quality standards and remedial goal for New Cricket Spring according to the draft Third Five-Year Review of the Site.

e) Those "other factors" were not precisely known by Ms. Clem at the time of our meeting, except that:

(1) The absolute values expressed in Mr. Arjmandi's letter, which set the remedial goal for NCS, were arrived at by a "permit engineer" in the Water Division of ADEQ using a "permitting-type process," even though no permit was applied for or issued for NCS or the Site.

f) ADEQ has the responsibility for re-evaluation of the remedial goal for New Cricket Spring during the drafting of the Third Five-Year Review.

II. **Concern**: ADEQ should re-evaluate and revise the "water quality standards" currently governing the groundwater remediation requirements at NCS near the

Arkwood Site. ADEQ should relax the stringency of those standards based upon the "designated uses" of New Cricket Spring (none) and considering the following material (***emphasis added***):

A. See following quoted from QUALITY CRITERIA for WATER 1986 by United States Environmental Protection Agency, Office of Water Regulations and Standards, Washington, DC 20460 May 1, 1986 (EPA 440/5-86-001)

1. "TO INTERESTED PARTIES: Section 304(a)(l) of the Clean Water Act (33 U.S.C. 1314(a) (1) requires the Environmental Protection Agency (EPA) to publish and periodically update ambient water quality criteria. These criteria are to accurately reflect the latest scientific knowledge (a) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish shellfish, wildlife, plant life, shorelines, beaches, aesthetics, and recreation which may be expected from the presence of pollutants in any body of water including ground water; (b) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (c) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and organic and inorganic sedimentation for varying types of receiving waters. ***These criteria are not rules and they do not have regulatory impact. Rather, these criteria present scientific data and guidance of the environmental effects of pollutants which can be useful to derive***

regulatory requirements based on considerations of water quality impacts."

B. See following quoted from the EPA National Recommended Water Quality Criteria: 2002, (United States Environmental Protection Agency, Office of Water, Office of Science and Technology, November 2002, (EPA-822-R-02-047)

1. "As part of the water quality standards triennial review process defined in Section 303(c)(1) of the CWA, the states and authorized tribes are responsible for maintaining and revising water quality standards. ***Water quality standards consist of designated uses, water quality criteria to protect those uses, a policy for antidegradation, and general policies for application and implementation. Section 303(c)(1) requires States and Tribes to review, and modify if appropriate, their water quality standards at least once every three years.***"

2. "States and authorized tribes must adopt water quality criteria that protect designated uses. ***Protective criteria are based on a sound scientific rationale and contain sufficient parameters or constituents to protect the designated uses***. Criteria may be expressed in either narrative or numeric form. ***States and authorized tribes have four options when adopting water quality criteria for which EPA has published section 304(a) criteria***. They can: (1) establish numerical values based on recommended section 304(a) criteria; (2) adopt section 304(a) criteria modified to reflect site-specific conditions; (3) adopt criteria derived using

other scientifically defensible methods; or (4) establish narrative criteria where numeric criteria cannot be determined (40 CFR 131.11)."

III. **Concern**: Third Five-Year Review Report should include reference to steps already taken and further steps to be taken by the United States Environmental Protection Agency (EPA) to return the Arkwood, Inc. Site ("Site") to productive use in compliance with the EPA's Return to Use Initiative, Land Revitalization Initiative, the Fiscal Year 2011–2015 EPA Strategic Plan, and Superfund Redevelopment Initiative, which states in part:

A. "Reusing sites also plays an important role in long-term protectiveness because new users act as stewards for the land. Superfund Redevelopment has developed two specific measures to assess and report on a range of accomplishments and outcomes realized through cleaning up and redeveloping formerly contaminated sites."

1. Sitewide Ready for Anticipated Use
2. Cross Program Revitalization Measures

B. The references should include a statement that Site has received or will receive a determination of "Sitewide Ready for Anticipated Reuse" which EPA describes as follows:

1. "This SWRAU measure was developed to comply with EPA's responsibility to report long-term, outcome-based accomplishments under the Government Performance and Results Act. The introduction of this measure also reflects the high priority that EPA places on land reuse and revitalization as an integral part of the Agency's cleanup mission for the

Superfund program, as well as its attention to post-construction activities at NPL sites."

C. The references should include a statement that Site has been brought to the attention of the Superfund Reuse Coordinator for Region 6 to be considered for a Ready for Reuse (RfR) determination

IV. **Concern**: Third Five-Year Review Report should include a statement that Remedial Project Manager for Arkwood Site will comply with and conform to EPA "Guidance for Documenting and Reporting Performance in Achieving Land Revitalization" (OSWER 9200.1-74) (http://www.epa.gov/fedfac/sf_ff_final_cprm_guidance.pdf) which states:

A. "The purpose of this guidance is to provide technical direction to U.S. Environmental Protection Agency (EPA) managers and staff in fulfilling the Agency's responsibilities for documenting and reporting accomplishments in achieving revitalization of land at Superfund and Federal facility sites."

V. **Concern**: "Summary of Five-Year Review Findings" contains assumptions, conclusions and statements that are inaccurate, false or unsupported by the data contained within the Review Report.

A. Conclusions regarding the efficacy of the on-site injection of ozonated and ordinary water are NOT supported by the data.

1. Does not account for evidence of natural attenuation.
2. Vast majority of improvement of PCP concentrations at mouth of New Cricket Spring (NCS) took place long BEFORE injection wells were installed

a) See figure 2a: PCP down from ~1700 ppb to 134 ppb between 1989 and 2004

b) Since installation of injection wells (2005), PCP down from 132 ppb to 18 ppb, with intermittent reversals (rises) in PCP levels at NCS

B. Correct conclusion from Third Five-Year Review: injection wells slowed down and even reversed improvement i.e. are counter-productive to groundwater remediation effort and should be discontinued

C. Remove the following inaccurate statement: "The ozone injection system has reduced PCP concentration in New Cricket Spring by more than 95 percent."

1. This statement is patently false and unsupported by the data contained in the Third Five-Year Review. In fact, the opposite is true: PCP concentrations were falling steadily and rapidly until the injection system was installed, after which time the PCP concentrations stopped falling off so steeply, then leveled off and even sometimes increased, proving that the injection system is exacerbating the groundwater contamination, not facilitating groundwater remediation at NCS.

VI. **Concern**: The Deed Restriction recorded by the Arkwood Site owner on August 30, 2010 per EPA specification and in satisfaction of EPA requirement for Institution Control at the Site includes more than just the remediated area and needs to be modified (with EPA authorization) to apply to only the area that was actually the subject of remediation activities and operations.

A. Carlos Sanchez of EPA expressed his consent to authorize such modification of the Deed Restriction based upon a new legal description of just the

remediated area, releasing unaffected adjacent areas from the Deed Restriction as currently recorded.

1. I provided Mr. Sanchez with the revised description and accompanying survey map on April 20, 2011 which encompasses the remediated area completely and solely.
2. Owner is awaiting Mr. Sanchez' written authorization to record a Correction Deed to effect modification of the Institutional Control.

B. EPA should provide a statement that only the remediated area is subject to EPA control and that Site owner is free to use and dispose of all adjacent and adjoining lands as owner sees fit.

C. Access, control and authority over all adjacent unaffected areas should be returned to the owner as soon as possible.

1. Owner should have a key to the gated fence which encloses unaffected areas as well as the remediated subject area.

VII. **Concern**: "Actions Needed" section contains should state that the major deficiency is that the flawed "injection pilot study," which is a failed experiment that should be immediately discontinued, dismantled and removed from the Site in order for accurate testing and measurement of NCS water quality under natural conditions can take place to see if it meets Arkansas Water Quality Standards without further treatment, disturbance or interference.

A. This section should delete the following inaccurate statement: "The Deed Restriction of August 2010 needs minor corrections in the metes and bound

description. It is anticipated that the corrections will be completed in the next twelve months."

1. This is not true. Deed Restriction was recorded to the specification of Donald Williams, Deputy Director, Superfund, Region 6.

VIII. Concern: Responsible Party McKesson Corporation appears to have incentive to prevent or delay the conclusion of remedial activities at the Arkwood Site and to block progress towards returning the Site to productive use.

A. McKesson employee Jean A. Mescher has repeatedly expressed her unwillingness to have Site returned to productive use and has attempted to block my efforts to overcome obstacles to the Site's full or partial deletion from the National Priorities list and its eventual return to productive use, in keeping with EPA stated policy and guidance.

B. Jean A. Mescher, representing McKesson Corporation, repeatedly makes offers to purchase Site and surrounding unencumbered property held by Site owner at a price the owner considers vastly under market value. At the same time Ms. Mescher has advanced McKesson's undervalued offers to purchase Site and surrounding property, she makes disparaging statements regarding not just the Site but also surrounding unencumbered property. For example:

1. "...I strongly believe that McKesson has the bad end of the deal. I was thinking more in the range of $50,000. It's hard to explain to my management that I recommend paying even this much to ensure the property is mothballed when we already have that ability with our existing contracts." (Jean Mescher, November 3, 2005)

2. “This is a nuisance thing for us and nothing more. We already have the contractual agreements in place to eliminate use of these properties pretty much forever...” (Jean Mescher, November 3, 2005)

3. “...McKesson’s incentive is to ensure that this property is ‘mothballed’ indefinitely...” (Jean Mescher, December 7, 2005)

4. “Therefore, I felt (and explained to my management) that this was more than fair for property that has NO POSSIBLE USE IN THE FORESEEABLE FUTURE. Considering the residual contaminants at the main site, it will be well beyond your and my lifetimes before the site could be considered for any use. Any use of the hillside acreage will cause erosion which would render our water treatment plant ineffective. Please reconsider our offer of $100,000. Jean.” (Jean Mescher, December 12, 2005)

5. “...McKesson views this property as a liability -- not an asset.” (Jean Mescher, April 9, 2010)

6. “Degradation of these contaminants to acceptable levels allowing for use of the Site is not estimated to occur for possibly hundreds of years.” (Jean Mescher, April 9, 2010)

7. “Our offer of $25,000 for the Site remains active through May 1, 2010 at which time this offer is withdrawn.” (Jean Mescher, April 9, 2010)

C. Jean Mescher has claimed that McKesson controls property adjacent to Site (“hillside acreage”) which is also held by Site owner; this property is unaffected by Site or Superfund activities; yet Ms. Mescher, representing McKesson,

asserts control of the adjacent lands and likewise makes offers to purchase for McKesson at a price far below fair market value.

D. Jean Mescher has engaged attorney Don A. Smith of Smith, Cohen & Horan, PLC, 1206 Garrison Avenue, Fort Smith, Arkansas to represent McKesson Corporation for the purpose of repeatedly making demands of and threatening legal action against both Site owner and me, Charles Curtis Grisham, Jr., as result of my contacts with EPA and ADEQ requesting information about the Site and remedial activities conducted by McKesson and its contractors.

1. My inquiries were for the sole purpose of facilitating the conclusion of remedial activities, deletion of the Arkwood Site from the National Priorities List, and the return of the Site to productive use within the Institutional Controls specified by EPA.