From:	CC Grisham
To:	Tzhone, Stephen
Cc:	CC Grisham; Moran, Gloria; Starfield, Lawrence; Peycke, Mark; Mccarthy, Gina; Sanchez, Carlos; Curry, Ron; Faultry, Charles; Edlund, Carl; DeLeon, Rafael
Subject:	Re: Friday, September 20, 2013: Memo of conversation
Date:	Friday, September 27, 2013 2:43:53 PM
Attachments:	97-8086 copy.pdf ATT00001.htm EPA"s Ghose - delete after reading 9302044-2 copy.pdf ATT00002.htm ROD of year - r0703125 copy.pdf ATT00003.htm 3R - reuse doc key - er3-faqs-05 copy 2.pdf ATT00004.htm Quick Action - Scientific Integrity - 20130828-13-P-0364 copy.pdf ATT00005.htm plan-ej-2011-09.pdf ATT00006.htm

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Mr. Tzhone,

EPA's inaction, wrong action, misinformation, lack of transparency, lack of scientific integrity and lack of adherence to the rule of law or its own policies and guidance documents have cumulatively and persistently harmed my family, the Arkwood site lands, the State of Arkansas and the citizenry, and I will seek restitution for those harms from the EPA and the US Government.

Here is one notable example of EPA wrong action, previously brought to the attention of EPA Region 6 management: then-RPM Shawn Ghose wrote to lead PRP McKesson Corporation's Jean Mescher — whom Ghose allowed for years to perform substantially all of his EPA duties and work for him with little or no agency scrutiny — "**Jean : Please delete this after reading.**" (attached)

I was informed by Carlos Sanchez that, beginning sometime subsequent to my relating the above to Mr. Sanchez as Ghose's supervisor, Shawn Ghose is no longer employed at EPA.

That does however not mitigate the damage that Ghose, over the years of his EPA employment, has caused to my family, the site and the local economy, which damage has yet to be redressed by EPA.

Others at EPA are also responsible for substantial harm caused to my family, the site, the State of Arkansas and the public.

Arkwood was not properly scored or assessed initially, at the time Arkwood was added to the NPL. Arkwood should never have been added to the NPL. I will be pursuing redress for this circumstance, hopefully now with assistance from the United States Congress and the Governor of the State of Arkansas.

Now to the substance of your below email:

As I have said before, I have been all over epa.gov — including the page you patronizingly refer me to below — many time before, procuring both useful and accurate information as well as misleading and erroneous information from that site, as I have proven in my previous complaints about the publicly-misleading bad information still maintained throughout the labyrinthine epa.gov.

My relying on the accuracy of information housed publicly on epa.gov has harmed me in the past, and in researching today for this response, I am confronted by more broken links, error pages and patently erroneous information published by the US Government on epa.gov.

Have you yourself read the page found at the link you sent me below, including its forward links to documents both current and superseded? Because it doesn't seem to me that you have.

The page found at the link you sent me cites the Federal Register Notice **Section 300.425(e) of the National Contingency Plan (55 FR 8845, March 8, 1990**).

I don't think you are any more qualified than I am to interpret law, unless you are also an attorney working for EPA in that capacity.

I would expect EPA ***attorneys*** (such as Gloria Moran, Mark Peycke or someone from Raphael DeLeon office or the Office of the Inspector General) to make the determinations regarding provisions under this and other Federal, State, local or tribal law, not a Remedial Project Manager or Toxicologist, unless she or he is also an admitted attorney acting in that capacity for EPA.

That is why I objected strongly to the last-moment absence of the attorney resource assigned to our 5 September 2013 meeting by EPA Office of Superfund

Here is a link to the text of that Federal Register Notice, in case you have not read the source of authority for the page you forwarded to me:

http://www.epa.gov/superfund/sites/npl/f910925.htm

This page states identifies itself as "**48438 - 48442 Federal Register / Vol. 56, No. 186 / Wednesday, September 25, 1991 / Rules and Regulations**"

I do not believe that this page on epa.gov is up-to-date, however, since it contains the statement:

"Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepares a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of 40 CFR part 300, is the NPL. An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on February 11, 1991 (56 FR 5598). The Agency also has proposed adding new sites to the NPL, most recently on July 29, 1991 (56 FR 35840)."

Please see the following page (attached) on the United States Government Printing Office ("GPO" "Keeping America Informed"):

http://www.gpo.gov/fdsys/granule/CFR-2011-title40-vol28/CFR-2011-title40-vol28-part300-appB/content-detail.html

The attached document states:

"This rule adds 5 new sites to the NPL, 3 to the General Superfund section and 2 to the Federal Facilities section. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA- financed remedial action(s), if any, may be appropriate.

"EFFECTIVE DATE: The effective date for this amendment to the NCP shall be May 1, 1997."

The attached document presents a newer version of "**appendix B of 40 CFR part 300, (which) is the NPL**," contrary to the statement quoted above ("**The NPL has been expanded since then, most recently on February 11, 1991 (56 FR 5598)**").

This is yet another example of bad information being supplied to the public by EPA through epa.gov, a matter I have complained of with evidence in previous communications with EPA management.

The link you sent me refers to 40 CFR Part 300 [FRL-4012-2] which states in part:

"EPA may delete a final NPL site if it determines that no further response is required to protect human health or the environment. Under Section 300.425(e) of the National Contingency Plan (55 FR 8845, March 8, 1990), a site may be deleted where no further response is appropriate if EPA determines that one of the following criteria has been met:

"• EPA, in conjunction with the State, has determined that responsible or other parties have implemented all appropriate response action required.

"• EPA, in consultation with the State, has determined that all appropriate Superfund-financed responses under CERCLA have been implemented and that no further response by responsible parties is appropriate.

"• A Remedial Investigation/Feasibility Study has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate."

Therefore, the burning question to EPA that has been pending for too long is:

What, if any, **"further response is required to protect human health or the environment"** at Arkwood?

If the answer is "none," as I believe is has been for the past eighteen years since Arkwood achieved the "Construction Completion" milestone, then the only criterion remaining to be met before Arkwood can be considered for full deletion if **ONE** (not all) of the previously-quoted additional criteria is met.

The link you sent me directs to a page with has the following sub-parts:

"PA/SI

"NPL Listing
"RI/FS (Scoping, Site Characterization, Development and Screening of Alternatives, Treatability Investigations, Detailed Analysis)
"ROD
"RD/RA
"Construction Completion
"Post Construction Completion
"NPL Delete
"Reuse"

By clicking on "Construction Completion" from the page you sent me, I find a page that states in part:

"EPA has developed the construction completion milestone to better communicate the successful completion of cleanup activities. Sites qualify when:

"• any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; or

"• EPA has determined that the response action should be limited to measures that do not involve construction; or

"• the site qualifies for Deletion from the NPL.

"Guidance on achieving the construction completion milestone is available in the "Close Out Procedures for National Priorities List Sites" guidance."

The **"Close Out Procedures for National Priorities List Sites" (OSWER Directive 9320.2-22 May 2011,)** which is linked from the site you directed me to and which I had previously cited and provided to you and others at EPA several times, including as part of the Agenda for the meeting of 5 September 2013, states in part:

"3.0 Construction Completion

"3.1 Introduction

"In the first ten years of the Superfund program, outside audiences often measured Superfund's progress in cleaning up sites by the number of sites deleted from the NPL. This measure, however, did not and still does not fully recognize the substantial construction work and reduction of risk to human health and the environment that has occurred at NPL sites not yet eligible for deletion.

"In response, the NCP Preamble Federal Register notice (55 FR 8699, March 8, 1990) established a 'construction completion' category of NPL sites to more clearly communicate to the public the status of cleanup progress among sites on the NPL. In a subsequent Federal Register notice (58 FR 12142, March 2, 1993) EPA formally introduced construction completions '. . . to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities.'

"For purposes of this guidance, a construction completion site is a CERCLA site where physical construction of all cleanup actions is complete, including actions to address all immediate threats and to bring all long-term threats under control. Only sites that are final on the NPL or deleted from the NPL may qualify for construction completion."

"3.2 Construction Completion Process

"Construction completion is a site-wide measure; therefore completion of the last response action at a site generally determines when a site becomes eligible. This section discusses the typical construction completion process for sites addressed under CERCLA remedial authority, which is the most common approach to cleanup of sites on the NPL. At these sites, the milestone is normally achieved when a pre-final inspection for the last RA has been conducted and a Preliminary Close Out Report (PCOR) has been signed."

Arkwood achieved the "Construction Completion" milestone on December 13, 1995, nearly eighteen (18) years ago.

Given the above, please confirm the following with regard to Arkwood Superfund Site:

1) **"successful completion of cleanup activities"**
2) **"completion of the last response action (which) at a site generally determines when a site becomes eligible"**
3) **"a pre-final inspection for the last RA has been conducted"**
4) **"and a Preliminary Close Out Report (PCOR) has been signed"**

If elements 1-4 above are not in place, ***why not***, given the clear guidance provided by "Close Out Procedures for National Priorities List Sites" (OSWER Directive 9320.2-22 May 2011?

I do not believe EPA Region 6 has diligently or even minimally followed this guidance in any part of the Arkwood debacle, from before Preliminary Assessment phase through and including the Construction Completion milestone and continuing with the neglect of the Preliminary Close Out Report (PCOR).

The following is quoted from the EPA "THIRD FIVE-YEAR REVIEW Arkwood, Inc. ARD084930148 Boone County, Arkansas" dated July 2011.

"EXECUTIVE SUMMARY

"This is the third Five-Year Review for the Arkwood, Inc., site located in Boone County in Omaha, Arkansas. The results of this Five-Year Review indicate that the remedy is protective of human health and the environment. Soil remediation was completed in 1995 followed by placement of a topsoil cap and seeding. The vegetation is in good condition. The ground water treatment system, located immediately downgradient of the mouth of New Cricket Spring, is functioning as designed and is meeting treatment goals. Therefore, the remedy that was implemented for soil and ground water at the site continues to be protective of human health and the environment."

"X. Protectiveness Statements

"The remedies that were implemented for soil and ground water at the Arkwood, Inc. Site continue to be protective of human health and the environment. Since the remedies for soil and ground water are protective of human health and the environment, the remedy for the Site is protective of human health and the environment."

Please note the following ***recent*** EPA documents also attached for your reference:

1) 2003 EPA "ROD of the Year" (found at http://www.epa.gov/superfund/accomp/awards/rods/index.htm; link on this page to 2004 winner leads to "Region 6 404 Error Page" page on epa.gov; use 2003 winner to compare with the poor quality of Arkwood's ROD);
2) "Environmentally Responsible, Redevelopment & Reuse ("ER3") Frequently Asked Questions and Answers" (Office of Enforcement and Compliance Assurance Office of Site Remediation Enforcement, December 20050
3) "Quick Reaction Report: EPA Must Take Steps to Implement Requirements of Its Scientific Integrity Policy" (USEPA Office of Inspector General, Report No. 13-P-0364, August 28, 2013)
4) "Plan EJ 2014" (September 2011, Office of Environmental Justice U.S. Environmental Protection Agency)

I ask that you, Region 6, and every person on the CC list of this email be responsible for and implement these documents.

Charles Curtis Grisham, Jr.