UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

September 30, 2013

MEMORANDUM

SUBJECT: Office of Inspector General Hotline Complaint 2013-262

BY: CMB

FROM: Douglas Zmorzenski
Special Agent in Charge
Headquarters, Office of Inspector General

TO: Stephen L. Tzhone
Superfund Remedial Project Manager
US EPA Region 6

On September 30, 2013, the Environmental Protection Agency (EPA), Office of Inspector General (OIG), Hotline received an electronic message from Mr. Charles Grisham, Jr., PO Box 31526, San Francisco, CA, 94131, (415) 264-7480. The message is request for the OIG to initiate a full investigation into the questionable circumstances around EPA's enforcement, remedial, and other activities at the Arkwood Inc. Superfund Site,

We established EPA OIG Hotline Number 2013-262, to document the complaint; however, the information provided does not fall within the scope of complaints the OIG investigates. However, we are referring this matter to your office for whatever action you determine necessary. Please inform the Hotline at brown.clay@epa.gov within the next 5 calendar days that this referral was received. Please do not hesitate calling Special Agent Clay M. Brown at (202) 566-2576 if there are any questions.

Attachment:

9469925

Brown, Clay

From: Tzhone, Stephen
Sent: Monday, September 30, 2013 3:23 PM
To: Brown, Clay
Cc: Sanchez, Carlos
Subject: RE: Do you have a physical address for Mr. Grahham?

Here's the address we have on file:

Charles (Curt) Grisham, Jr.
P.O. Box 31526
San Francisco, California 94131

My section chief on cc also requested if we can get a copy of the OIG letter.

From: Brown, Clay
Sent: Monday, September 30, 2013 12:31 PM
To: Tzhone, Stephen
Subject: Do you have a physical address for Mr. Grahham?

Special Agent Clay M. Brown
Desk Officer for the OIG Hotline
US EPA, OIG, Office of Investigations HQ
1200 Pennsylvania Ave NW Mailcode 2431T
Washington, DC 20460
Voice - 202/566-2576 Cell 708/275-8126

Hotline - 202/566-2476 or 888/546-8740
Hotline Fax 202/566-2599

Hotline records are protected under the Privacy Act 5 U.S.C. § 552a. All EPA employees handling protected information have a legal and ethical obligation to hold that information in confidence and to actively protect it from improper uses. Except as specifically authorized, EPA employees shall not disclose, directly or indirectly the contents of any record about another individual to any person or organization. EPA employees who willfully release protected information, without authority, may be guilty of a misdemeanor and fined up to $5,000. In addition, any employee violating the Privacy Act or EPA regulations is subject to disciplinary action, which may result in dismissal.

Brown, Clay

From: Clay Brown [Brown.Clay@epamail.epa.gov] on behalf of OIG-HOTLINE@epamail.epa.gov
Sent: Monday, September 30, 2013 11:31 AM
To: Brown, Clay
Subject: Fw: Fwd: Friday, September 20, 2013: Memo of conversation
Attachments: 97-8086 copy.pdf; EPA's Ghose - delete after reading; ROD of year - r0703125 copy.pdf; 3R - reuse doc key - er3-faqs-05 copy 2.pdf; Quick Action - Scientific Integrity - 20130828-13-P-0364 copy.pdf; plan-ej-2011-09.pdf

-----Forwarded by Clay Brown/OIG/USEPA/US on 09/30/2013 11:30AM -----
To: OIG Hotline@EPA
From: CC Grisham <grish@me.com>
Date: 09/27/2013 07:43PM
Cc: CC Grisham <grish@me.com>, Gloria-Small Moran/R6/USEPA/US@MSO365, Lawrence Starfield/DC/USEPA/US@MSO365, Mark Peycke/R6/USEPA/US@MSO365, Gina McCarthy/DC/USEPA/US@MSO365, Carlos Sanchez/R6/USEPA/US@MSO365, Ron Curry/R6/USEPA/US@MSO365, Charles Faultry/R6/USEPA/US@MSO365, Carl Edlund/R6/USEPA/US@MSO365, Rafael Deleon/DC/USEPA/US@MSO365, Kyle Weaver <Kyle.Weaver@mail.house.gov>
Subject: Fwd: Friday, September 20, 2013: Memo of conversation

(See attached file: 97-8086 copy.pdf)
(See attached file: EPA's Ghose - delete after reading\)
(See attached file: ROD of year - r0703125 copy.pdf)
(See attached file: 3R - reuse doc key - er3-faqs-05 copy 2.pdf)
(See attached file: Quick Action - Scientific Integrity - 20130828-13-P-0364 copy.pdf)
(See attached file: plan-ej-2011-09.pdf)

Dear Inspector General of the United States Environmental Protection Agency,

I forward the below to you because I am concerned that fraud may have existed on the part of EPA employees at the time Arkwood Inc. was added to the National Priorities List and at the time during which Shawn Ghose was the Remedial Project Manager assigned by Region 6 Superfund to the Arkwood Inc. Superfund site (EPA ID# ARD084930148; Site ID: 0600124,) as I allege below.

I am concerned that fraud, as explained by the OIG website and quoted below, may still exist with regard to EPA Region 6 and EPA Headquarters handling of the Arkwood Inc. Superfund site, as I describe in my emails to Mr. Tzhone below.

I quote from the EPA Office of Inspector General (OIG) Hotline page found at http://www.epa.gov/oig/hotline.html#File_Now, adding my own emphasis (***bold, italicized***) to fraud and waste indicators evidence of which I believe I have in my documentation with regard to EPA's involvement with Arkwood Inc. Superfund site (EPA ID# ARD084930148; Site ID: 0600124.) I will provide my voluminous documentation upon request of the OIG.

—Begin quoted material —

"Recognizing Fraud, Waste, and Abuse

"Recognizing Fraud

"Fraud is a false representation about a material fact. It is any intentional deception designed to unlawfully deprive the United States or EPA of something of value or to secure for an individual a benefit,

privilege, allowance, or consideration to which he or she is not entitled. Following are key fraud indicators; this list is not all-inclusive:

- Unexplained entries of altered records
- Unusually large amounts of payments in cash
- ***Inadequate or missing documentation***
- ***Delays in producing requested documentation***
- Non-serial number transactions
- Unauthorized transactions
- Unusual patterns and trends in contracting and procurement
- Unrealistic contract prices
- Increase in claims for reimbursement
- Offers of gifts, money, or other gratuities from contractors, grantees, or other individuals dealing with the government
- Photocopies of documents where it is difficult to detect alteration
- ***False or misleading information***
- Missing approval signatures
- ***Lack of separation of duties***
- Discrepancies in handwriting
- ***Lack of or out-of-date written policies and procedures, including those safeguarding assets***
- ***Lack of communication and/or support for ethical standards by management***
- Uncharacteristic behavior, including a person living beyond his/her means
- Unaccountable funds
- Uncharacteristic willingness to settle claims
- Fictitious vendors
- Unauthorized personnel with access
- ***Overly complex organizational structure***
- High turnover rate
- ***Reassignment of personnel***
- ***Termination of key personnel***
- ***"Missing" files, reports, data, and invoices (both electronic and paper)***
- ***Missing, weak, or inadequate internal controls***
- ***Management override of key internal controls***
- ***Inadequate monitoring by management***
- ***A history of impropriety***

"Recognizing Waste

"***Waste involves the taxpayers not receiving a reasonable value for money in connection with any government-funded activities due to an inappropriate act or omission. Most waste does not involve a violation of law; rather, waste relates primarily to mismanagement, inappropriate actions, and inadequate oversight."*** (From: Office of Inspector General website at http://www.epa.gov/oig/hotline.html#File_Now)

—End quoted material—

I request that OIG initiate a full investigation into the questionable circumstances surrounding EPA's enforcement, remedial and other activities at Arkwood Inc. Superfund site (EPA ID# ARD084930148; Site ID: 0600124.)

Respectfully submitted,

Charles Curtis Grisham, Jr.

Begin forwarded message:

From: CC Grisham <grish@me.com>

Subject: **Re: Friday, September 20, 2013: Memo of conversation**
Date: September 27, 2013 12:42:52 PM PDT
To: "Tzhone, Stephen" <tzhone.stephen@epa.gov>
Cc: CC Grisham <grish@me.com>, Gloria Moran <moran.gloria-small@epa.gov>, starfield.lawrence@epa.gov, Mark Peycke <Peycke.Mark@epa.gov>, mccarthy.gina@epa.gov, Carlos Sanchez <sanchez.carlos@epa.gov>, curry.ron@epa.gov, Charles Faultry <Faultry.Charles@epamail.epa.gov>, Edlund.carl@Epa.gov, Rafael DeLeon <Deleon.Rafael@epa.gov>

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.

The website that I wanted to share with you was the EPA website on NPL deletion: http://www.epa.gov/superfund/programs/npl_hrs/nploff.htm I wanted to let you know that my understanding for full NPL deletion is that the site: must have completed any reassessment and cleanup actions due to the dioxin toxicity change; groundwater must achieve Arkansas Water Quality Standards; and corrected institutional controls must be in place.

I also wanted to let you know that the Arkwood site can return to productive use at any time (even before full or partial deletion), as long as the remedy is not compromised. The remedy that cannot be compromised consists of addressing the soil and groundwater to numerical cleanup goals as specified in the 1990 Record of Decision (and to be updated with the dioxin reassessment) and institutional controls.

I apologize if I've offended you in any way. From our collegial and productive relationship, I know that site deletion and reuse were a source of frustration for you and your family. My hope is that having the same information on these parameters would enable us to focus on them so that site deletion and reuse can be realized.

Thanks,

Stephen L. Tzhone
Superfund Remedial Project Manager
214.665.8409
tzhone.stephen@epa.gov

From: CC Grisham [mailto:grish@me.com]
Sent: Friday, September 20, 2013 6:35 PM
To: Tzhone, Stephen
Cc: CC Grisham; Mccarthy, Gina; Peycke, Mark; Moran, Gloria; Faultry, Charles; Curry, Ron; Edlund, Carl; Sanchez, Carlos; Kyle Weaver
Subject: Friday, September 20, 2013: Memo of conversation

Mr. Tzhone,

This is to memorialize our telephone conversation of today, which contact you initiated by a message you left for me at 14:23 today asking me to call you on your cell phone.

I returned the call at 14:31, and we spoke about ten minutes.

I was shocked that you began the conversation by lecturing me about the arduous nature of accomplishing Superfund site deletion from the National Priorities List (NPL).

You asked me if I understood that all remedies had to be completed, the soil now to the new EPA dioxin standard, the water to Arkansas Department of Environmental Quality's standard, whatever that may be, et cetera.

It was as if you and I had never conversed before, and I found it offensive and insulting.

You suggested that I take down a web address on epa.gov where I could learn about such things as "Deletion," in case I minimized somehow the daunting accomplishment I sought for Arkwood or perhaps had been misled about the difficulty of such a thing.

I told you that I was working off of **OSWER Directive 9320.2-22 dated May 2011, "Close Out Procedures for National Priorities List Sites" Chapter 5.0 "Site Deletion and Partial**

Deletion," at which document I was looking, to which document I referred in my agenda and which document I had supplied on the DVD appendix that accompanied my agenda for the meeting of 5 September 2013 (Fedexed to you with delivery confirmation prior to that meeting, with your written assurance that the DVD and its contents would become part of the official record of those proceedings.)

I then asked you on the telephone today if **OSWER Directive 9320.2-22 dated May 2011** were the guiding and authoritative document, or if that document had been superseded. You said, "I think that's the right one."

I told you I thought you should know that information off the top of your head, as a Remedial Project Manager.

You had gone from lecturing me about the requirements for Deletion from NPL to displaying some uncertainty about those requirements or the source of their authority in a telephone contact you had initiated --- by your own admission --- at Carlos Sanchez' behest.

I am concerned that your aggressive telephone call to me seemed to be retaliation for my email to Carlos Sanchez sent less than two hours before you called me.

Moreover, I felt you were trying to intimidate me with your tone and with the nature and substance of your questioning, as if you were warning me of something I didn't comprehend.

I thought you and I had a collegial, productive relationship, and I bragged to Kyle Weaver about you.

As of now, I feel insufficient faith in anyone at EPA Region 6 to have such informal contacts as our last telephone conversation.

If you or anyone at EPA have anything to say to or ask of me, please do so in writing at this email address or the PO box you also have.

That way I think it will be less upsetting to me on a frequent and ongoing basis, as it was for my father and my grandfather before me.

Charles Curtis Grisham, Jr.

"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.

On Sep 23, 2013, at 6:40 AM, "Tzhone, Stephen" <tzhone.stephen@epa.gov> wrote:

Hi Curt,

I'm open to exploring any and all avenues to expedite NPL deletion and/or reuse of the Arkwood site and wanted to share the parameters as I understand them.