STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 9

FILED
NOV 27 2017
DANE COUNTY CIRCUIT COURT

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 12-CX-46
Complex Forfeiture: 30109

MADISON-KIPP CORPORATION,

Defendant.

STIPULATION AND ORDER FOR JUDGMENT

The State of Wisconsin (State) brought this civil action against Madison-Kipp Corporation (Madison-Kipp) to address hazardous substance discharges at Madison-Kipp's facility located at 201 Waubesa Street, City of Madison, Dane County, Wisconsin 53704 ("Facility"). The State and Madison-Kipp wish to settle this matter by agreement and avoid further litigation.

It is therefore stipulated and agreed by the State and Madison-Kipp that this case be settled on its merits, with prejudice, on the following terms and conditions:

1. The parties to this Stipulation are the State and Madison-Kipp.

2. The Circuit Court for Dane County, Wisconsin (Court) has jurisdiction over the parties and the subject matter of this action.

3. This Stipulation and Order for Judgment as approved by the Court shall apply to and be binding on the parties and on their successors and assignees. No change in ownership or corporate status of Madison-Kipp shall in any way alter the responsibilities of Madison-Kipp under this Stipulation and Order for Judgment.

4. Judgment shall be entered in favor of the State and against Madison-Kipp in the amount of $350,000. This sum is comprised of forfeitures, statutory surcharges and costs as follows:

a. Forfeitures of $118,960.88 under Wis. Stat. § 292.99(1), a 26% penalty surcharge of $30,929.83 under Wis. Stat. § 814.75(18), a 20% environmental surcharge of $23,792.18 under Wis. Stat. § 814.75(12), $25.00 in court costs under Wis. Stat. § 814.63(1), a $13.00 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a $68.00 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of $1,189.61 under Wis. Stat. § 814.75(14), and a $21.50 justice information system surcharge under Wis. Stat. § 814.75(15).

b. Payment of $150,000 to the Wisconsin Department of Natural Resources (DNR) for its costs incurred to review, comment and approve of submittals; coordinate investigation activities; attend meetings with Facility representatives and federal, state and local government officials; prepare for and participate in public informational meetings; develop outreach materials;

maintain an informational website; and its expenses for certain sub-slab testing and in-home mitigation systems.

c. Payment of $25,000 to the Wisconsin Department of Justice for its costs of prosecution pursuant to Wis. Stat. § 292.99(2).

5. Madison-Kipp will pay $175,000 by check payable to the Dane County Circuit Court and delivered to the Clerk of Court, along with a cover letter to the Court identifying the case by name and number. A copy of the check and cover letter shall be simultaneously mailed as proof of payment to the Director of the Environmental Protection Unit at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. Payment shall be made according to the following schedule:

a. $25,000 due December 31, 2023;

b. $50,000 due December 31, 2024;

c. $50,000 due December 31, 2025; and

d. $50,000 due December 31, 2026.

6. Madison-Kipp will pay $150,000 by check payable to the Wisconsin Department of Natural Resources and delivered to the Director of the Environmental Protection Unit at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. Payment shall be made according to the following schedule:

a. $50,000 due December 31, 2024;

b. $50,000 due December 31, 2025; and

c. $50,000 due December 31, 2026.

7. Madison-Kipp will pay $25,000 by check payable to the Wisconsin Department of Justice and delivered to the Director of the Environmental Protection Unit at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. Payment shall be due December 31, 2023.

8. Madison-Kipp will implement the environmental response activities required by this Stipulation and Order for Judgment, including, at a minimum, the following:

a. The operation, monitoring, maintenance and shutdown of the soil vapor extraction system currently operating at the Facility identified as Bureau of Remediation and Redevelopment Tracking System (BRRTS) No. 02-13-578015.

b. The investigation, remediation and long-term monitoring through case closure of groundwater contamination originating from Facility discharges, whether such discharges are detected on or off Facility property. Long-term groundwater monitoring shall include at least volatile organic chemicals and the monitoring program for PCBs as described in Paragraph 9.

c. The investigation and remediation to case closure of BRRTS No. 02-13-562649 regarding the parcel of land commonly called the "rain garden."

d. Pursuant to Wis. Stat. § 292.94, payment to DNR for the fees identified in Wis. Admin. Code § NR 749.04 & Tbl. 1 associated with the agency's review of documents Madison-Kipp or its contractors are required to or voluntarily submit to DNR for review.

9. Madison-Kipp's subsurface investigation of the Facility found the presence of PCBs under the Facility. Based on this investigation, the parties agree that the PCBs underneath the Facility, identified as BRRTS No. 02-13-578014, shall be managed as part of this settlement according to the following protocol:

a. *Monitoring.*

i. To ensure a reliable and comprehensive monitoring well network for the Facility, within 90 days after the Court signs the Stipulation and Order for Judgment, and consistent with the requirements of Wis. Admin. Code ch. NR 141, Madison-Kipp shall abandon the existing monitoring wells identified as MW-22 (including sampling points MW-22S and MW-22D) and MW-23 (including sampling points MW-23S and MW-23D), and shall install a new well to be identified as MW-29 (including sampling points MW-29S and MW-29D) to be located outside of the existing Facility footprint and between the existing monitoring wells identified as MW-4 and MW-6.

ii. Madison-Kipp shall conduct semi-annual sampling of the following eight well sampling locations utilizing low-flow sampling techniques and laboratory analysis for PCBs using EPA SW-846 Method 8082:

WELL NUMBER	SCREEN INTERVAL	FORMATION	SAMPLING AND REPORTING FREQUENCY
MW-11S	24-34 ft bgs	Unconsolidated	Semi-annual
MW-28	28-38 ft bgs	Unconsolidated	Semi-annual
MW-4S	35-50 ft bgs	Lone Rock	Semi-annual
MW-4D	65-70 ft bgs	Lone Rock	Semi-annual
MW-6S	31-41 ft bgs	Lone Rock	Semi-annual
MW-24	30-40 ft bgs	Lone Rock	Semi-annual
MW-29S	Est. 25-35 ft bgs	Unconsolidated	Semi-annual
MW-29D	Est. 45-50 ft bgs	Lone Rock	Semi-annual

iii. Samples collected pursuant to this subparagraph 9.a shall be unfiltered. Total Suspended Solids (TSS) and Total Dissolved Solids (TDS) data shall be collected and used to evaluate the in-situ conditions present during the time of sample collection to determine whether conditions at the time of sampling may be inadvertently causing re-suspension and collection of PCB-impacted residual solids in the screened zone, potentially biasing the reported PCB concentration.

iv. Madison-Kipp shall provide DNR with the results of the semi-annual sampling required by this subparagraph 9.a within 60 days of the sampling event.

v. After five years of semi-annual monitoring, the parties shall review the sampling program and determine if the frequency of sampling can be reduced or discontinued at certain well locations.

b. *Remedial Actions Options Analysis.* If two successive monitoring results obtained during the sampling events conducted pursuant to subparagraph 9.a identify detections of PCBs dissolved in groundwater (and not re-suspension and collection of PCB-impacted residual solids in the screened zone) in excess of the enforcement standard for PCBs in Wis. Admin. Code ch. NR 140 at any of the downgradient well locations identified as MW-4S, MW-4D, MW-24, MW-6S, MW-29S or MW-29D, Madison-Kipp shall prepare a remedial action options analysis pursuant to Wis. Admin. Code ch. NR 722 that evaluates remedial action alternatives, including excavation and removal of the PCBs under the Facility, and shall transmit that analysis to DNR within 120 days of the sampling event that triggered the need for performance of the analysis. The parties will discuss the need for and timing of the performance of additional monitoring requirements (e.g., additional monitoring wells, more frequent monitoring, or currently unknown future analyses with lower laboratory detection limits) to confirm or further assess the presence of any PCBs dissolved in groundwater as part of the evaluation of the remedial action options analysis.

c. *When Excavation is Required.* The parties agree that PCBs detected underneath the Facility can be managed through use of the concrete flooring at the Facility as an interim cap until excavation and removal of the PCBs is required pursuant to one of the following triggers:

i. Excavation is selected as the remedial action pursuant to Wis. Admin. Code ch. NR 722 as outlined in subparagraph 9.b; or,

ii. Production operations at the Facility cease or are altered such that the PCB-contaminated soils can be reasonably accessed; or,

iii. The Facility, the property on which the Facility is located, or Madison-Kipp is to be sold or transferred, except to the extent that the Facility is transferred as a going concern and the transferee continues the operation of the die casting machines. In such a circumstance, Madison-Kipp shall provide to DNR evidence that it has secured from the transferee the right of DNR to access the Facility in the event of default of any of Madison-Kipp's obligations set forth in this Stipulation and Order for Judgment.

d. Madison-Kipp shall notify DNR in writing within 60 days if any of the triggers identified in subparagraph 9.c occur.

e. *Remedial Standards if Excavation is Required.* Within 90 days of the occurrence of any of the triggers identified in subparagraph 9.c, Madison-Kipp shall consult with DNR concerning the implementation of the required response activities. Madison-Kipp shall conduct remedial actions necessary to

achieve a soil clean-up standard consistent with the requirements of Wis. Admin. Code ch. NR 720.

f. *BRRTS Database Submittals.*

i. Within 90 days of the Court's approval of this Stipulation and Order for Judgment, Madison-Kipp shall submit to DNR the information necessary to list the monitoring activities described in subparagraph 9.a on DNR's BRRTS database for BRRTS No. 02-13-578014. Madison-Kipp shall also submit information necessary to list the concrete flooring at the Facility and any related structures in the BRRTS database as an interim remedy.

ii. Within 60 days of any change to the monitoring activities required by subparagraph 9.a, including in response to subparagraph 9.a.v or subparagraph 9.b, Madison-Kipp shall submit to DNR the necessary documentation for posting the new information on DNR's BRRTS database.

iii. If DNR receives a remedial actions options analysis from Madison-Kipp pursuant to subparagraph 9.b, DNR shall post the analysis on the BRRTS database.

iv. Upon completion of any remedial actions at the Facility other than excavation required by subparagraph 9.c, Madison-Kipp shall submit a remedial action documentation report to DNR for posting on DNR's BRRTS database.

v. If excavation is required by subparagraph 9.c, Madison-Kipp shall submit all required remedial action documentation to DNR pursuant to Wis. Admin. Code ch. NR 724 and DNR will post such information on the BRRTS database.

g. *BRRTS Case Closure.* Following completion of remedial action(s) at the Facility to address the PCBs identified under BRRTS No. 02-13-578014, and the submission of all required reports pursuant to Wis. Admin. Code ch. NR 724, Madison-Kipp shall submit a request for case closure of BRRTS No. 02-13-578014 pursuant to Wis. Admin. Code chs. NR 725 and 726. The granting of case closure for BRRTS No. 02-13-578014 shall extinguish Madison-Kipp's obligation to maintain financial assurances for the Facility as required by Paragraph 10. The property owner of the Facility, whether it is Madison-Kipp or a successor, shall be responsible for maintaining the engineering control (i.e., cap) and any other continuing obligations in accordance with the applicable provisions of Wis. Admin. Code NR 700 rule series.

10. Financial Assurance

a. *Means of Establishing Financial Assurance.* Following the Court's approval of this Stipulation and Order for Judgment, Madison-Kipp shall produce acceptable forms of financial assurance for the performance of the obligations set forth in Paragraph 9 pursuant to the schedule set forth in

subparagraph 10.b. For purposes of this Stipulation and Order for Judgment, "acceptable forms of financial assurance" means any of the following, or combination of the following, made payable to the Wisconsin Department of Natural Resources, or otherwise pledged to, or established for, whether in whole or in part, the benefit of the Wisconsin Department of Natural Resources:

i. a payment or performance bond issued by an entity listed in Circular 570 of the US Department of Treasury;

ii. a surety agreement issued by an entity listed in Circular 570 of the US Department of Treasury;

iii. an escrow account or deposit account with a federally insured and examined financial institution consisting of deposits of cash, certificates of deposit, or any of the assets described in Wis. Stat. § 289.41(3)(a)-(d);

iv. an escrow or deposit account with a title insurance company or agency licensed by the Wisconsin Office of the Commissioner of Insurance;

v. a letter of credit issued by a federally insured and examined financial institution;

vi. a policy of insurance provided by an insurer licensed to provide insurance and rated with a rating of no less than A.M. Best "A"; and/or

vii. a trust agreement, including, but not limited to, pay-in-trusts, fully funded trusts, and standby trusts with a corporate trustee from a federally insured and examined financial institution.

b. *Amount and Schedule for Establishing Financial Assurance.* Madison-Kipp shall produce acceptable forms of financial assurance in an amount not to exceed $1,650,000 on the following schedule; provided, however, that nothing herein prevents Madison-Kipp from voluntarily producing acceptable forms of financial assurance on a schedule that is more accelerated than provided below:

- By no later than December 31, 2017: $150,000
- By no later than December 31, 2018: $150,000
- By no later than December 31, 2019: $150,000
- By no later than December 31, 2020: $400,000
- By no later than December 31, 2021: $400,000
- By no later than December 31, 2022: $400,000

c. Madison-Kipp shall provide notice to the Director of the Environmental Protection Unit at the Wisconsin Department of Justice at Post Office Box 7857, Madison, Wisconsin 53707-7857, following each establishment or production of acceptable forms of financial assurance required by subparagraph 10.b. Any interest or earnings on any acceptable form of financial assurance established pursuant to this Paragraph 10 is the

property of Madison-Kipp and shall be immediately released or paid to Madison-Kipp by DNR upon written request.

d. *Release/Return of Acceptable Forms of Financial Assurance.* Madison-Kipp may be released from its obligation to produce acceptable forms of financial assurance or otherwise may be entitled to the return of any acceptable forms of financial assurance it may have previously produced under this Paragraph 10, as follows:

i. Madison-Kipp shall be immediately released from its obligation to produce acceptable forms of financial assurance and all such assets shall be immediately unencumbered, released, or returned to Madison-Kipp upon closure of BRRTS No. 02-13-578014 pursuant to subparagraph 9.g.

ii. Madison-Kipp may request, in writing, the release of portions of the financial assurance obligations required by subparagraph 10.b upon completion of any major phase of excavation and removal of PCBs performed pursuant to the requirements of subparagraph 9.e, and DNR may grant that release if the agency determines that the excavation and removal of the PCBs has been accomplished consistent with all regulatory requirements and that the remaining performance obligations can be accurately estimated and supported by continuing financial assurances.

iii. On December 31, 2023, Madison-Kipp shall be released from the obligation to produce $100,000 in acceptable forms of financial assurance

and such assets shall be immediately released or returned to Madison-Kipp, if applicable, upon submission of a letter to DNR certifying that the monitoring performed pursuant to subparagraph 9.a has not resulted in the requirement to perform a remedial action options analysis pursuant to subparagraph 9.b. This $100,000 release may be repeated for four additional years (consecutive or nonconsecutive) beginning on December 31, 2024 for a total release not to exceed $500,000 in financial assurance obligations.

iv. At any point after January 1, 2021, Madison-Kipp may apply to DNR pursuant to Wis. Stat. § 289.41(4) to add the use of the net worth test identified in Wis. Admin. Code § 520.06(6) to the list of acceptable forms of financial assurances identified in subparagraph 10.a utilizing the value of $1,650,000 as provided in subparagraph 10.b for purposes of determining compliance with Wis. Stat. § 289.41(6)(b), unless that amount has been adjusted pursuant to subparagraph 10.d.ii and/or 10.d.iii at the time of application and subsequent annual establishment. If, following submission of the information by Madison-Kipp required by Wis. Stat. § 289.41(4), DNR determines, pursuant to Wis. Stat. § 289.41(5) and (6), that Madison-Kipp meets the net worth test identified in Wis. Admin. Code § 520.06(6), then (aa) subparagraph 10.a of this Stipulation and Order for Judgment is automatically modified to allow the use of that financial assurance mechanism to satisfy the obligations of this Paragraph 10 and (bb) all other forms of financial assurance

established hereunder shall be immediately released or returned to Madison-Kipp and (cc) Madison-Kipp shall immediately pay all payments due and owing at that time under Paragraphs 5-7 without regard to the payment schedules provided therein. Thereafter, Madison-Kipp shall annually establish its compliance with the net worth test identified in Wis. Admin. Code § 520.06(6) or shall reestablish alternate forms of financial assurances pursuant to Wis. Stat. § 289.41(5)(f) if the net worth test cannot be satisfied. Disputes, if any, arising under this Paragraph 10 shall be resolved pursuant to Paragraph 12.

11. The State retains the right to seek enforcement of the terms of this Stipulation and Order for Judgment with respect to any failure of Madison-Kipp to comply with any obligation herein. If the State alleges that Madison-Kipp has failed to comply with any obligation of this Stipulation and Order for Judgment, then prior to taking any other action, the State shall first set forth those allegations in a written notice to Madison-Kipp. Said notice shall describe the alleged failure(s) and the desired corrective action. Madison-Kipp shall be provided an opportunity to cure ("the cure period") the alleged failure(s) described in the notice. The cure period shall be 90 days from receipt of the written notice, or such longer period of time as agreed to in writing by the parties.

12. In the event of a dispute regarding the existence of a failure to perform an obligation or the failure to cure, either party may seek leave of the

Court to resolve that dispute. If the Court finds a failure to perform, the Court may order specific performance. The Court may also order mediation to resolve the dispute.

13. The State reserves the right to seek compliance with the Stipulation and Order for Judgment through contempt proceedings initiated pursuant to Wis. Stat. ch. 785, but only after attempting to resolve the dispute through the procedures established in Paragraphs 11 and 12.

14. In the event Madison-Kipp fails to cure or reasonably undertake measures to cure some or all of the alleged failures described in a notice issued pursuant to Paragraph 11, the State may undertake the work necessary to cure the breach of the Stipulation and Order for Judgment and seek to recover from Madison-Kipp the reasonable and necessary costs incurred by the State and/or its consultants and contractors to perform such work. DNR may use part or all of the financial assurance established pursuant to Paragraph 10 to carry out the response actions DNR considers necessary.

15. Subject to Paragraph 11 and 12, and offset by any amounts used by DNR pursuant to Paragraph 14, the State reserves the right to seek recovery from Madison-Kipp for any costs, expenses or injuries that the State incurs as a result of a breach by Madison-Kipp of any obligation in the Stipulation and Order for Judgment.

16. Nothing in this Stipulation and Order for Judgment prevents the State from taking immediate action to address an imminent threat to public health, welfare, safety or the environment at the Facility pursuant to Wis. Stat. § 292.11(7).

17. Nothing herein shall preclude the State from asking Madison-Kipp to undertake other or additional environmental response actions at the Facility that may otherwise be required pursuant to Wis. Stats. ch. 292 and the Wis. Admin. Code NR 700 administrative rule series.

18. Modifications to the deadlines and other requirements set forth in this Stipulation and Order for Judgment may be made only by written agreement signed by both parties.

19. Subject to a minimum advanced notice of 24 hours, Madison-Kipp grants DNR reasonable access to the Facility for any of the purposes identified within this Paragraph 19. DNR staff and contractors, as applicable, agree to abide by Madison-Kipp's safety measures, must check in with Madison-Kipp staff at the front desk, and be escorted/accompanied by Madison-Kipp representatives during the visit:

a. Investigation of environmental media and any waste or product materials, including, but not limited to, the installation of soil borings, wipe samples, waste or product sampling, test pits and/or groundwater monitoring wells, the use of geophysical equipment, the use of drilling equipment for

collection of soil and sediment samples, the logging, gauging and sampling of existing wells, videotaping, preparation of site sketches, taking photographs, any testing or sampling of groundwater, soil, surface water, sediments, air, soil vapor or other material deemed appropriate (to include handling, storing, characterizing and properly disposing of any investigation-derived waste), inspection of Facility areas including buildings, structures, basement, sub-basements, vaults, and other areas of environmental consequence; and

b. Inspection to determine that any waste materials on site are stored or disposed in compliance with solid and hazardous waste management laws in Wis. Admin. Code chs. NR 500 and NR 660-668; and

c. On-site observation and oversight of environmental investigation and other response activities and all activities under subparagraph 19.a; and

d. Other investigative, emergency, interim, remedial and all other Wis. Admin. Code ch. NR 700 response actions deemed necessary by DNR to respond to or observe the suspected or known hazardous substance discharges and environmental pollution at or originating from the Facility.

20. Compliance by Madison-Kipp with its obligations under this Stipulation and the Order for Judgment shall constitute full compromise, settlement, satisfaction, and release of Madison-Kipp, its owners, members, employees, predecessors, successors, parents, subsidiaries, affiliated companies, officers, directors, agents and assigns for any and all civil and/or

criminal liability for any and all violations described in, arising out of, or relating to the facts alleged in the Complaint, as well as any claims that could have been alleged against Madison-Kipp based on any violation concerning the release or discharge of hazardous substances at the Facility which were reported to or otherwise were identified for or by DNR prior to the date of this Stipulation.

21. The parties acknowledge that this Stipulation and Order for Judgment sets forth the entire understanding of the parties with respect to resolution of the violations covered by Paragraph 20.

22. Nothing contained in this Stipulation and Order for Judgment shall be construed as an admission of liability by Madison-Kipp in any proceeding now pending or hereafter commenced, or as a concession regarding the veracity of the State's allegations.

23. The Order for Judgment accompanying this Stipulation will be a final and appealable order. The parties, however, hereby waive their right to appeal that Order.

24. The Order for Judgment and Judgment may be entered incorporating the terms of this Stipulation without further notice, and the Judgment may be docketed, pursuant to Wis. Stat. § 806.10(1).

Dated: 11/22/17

WISCONSIN DEPARTMENT
OF JUSTICE
Attorneys for Plaintiff

DPross

DAVID P. ROSS
Assistant Attorney General
State Bar #1038401
JESSICA L. KRAMER
Assistant Attorney General
State Bar #1091226
P.O. Box 7857
Madison, WI 53707-7857
608/264-9442

Dated: 11/22/17

MICHAEL BEST &
FRIEDRICH LLP
Attorneys for Defendant

DAVID A. CRASS
State Bar #1000731
LEAH A. ZIEMBA
State Bar #1089372
One South Pinckney Street,
Suite 700
P.O. Box 1806
Madison, WI 53701-1806
608/257-3501

ORDER FOR JUDGMENT

The Court approves the terms of the foregoing settlement Stipulation in *State of Wisconsin v. Madison-Kipp Corporation*, Dane County Case No. 12-CX-46, pursuant to which defendant Madison-Kipp Corporation will pay $350,000 in forfeitures, surcharges, costs and reimbursements, establish acceptable forms of financial assurance, and implement additional environmental monitoring, investigation and related requirements. The Court therefore directs the clerk to enter and docket the Judgment accordingly.

This is a final order that disposes of the entire matter in litigation between the State of Wisconsin and Madison-Kipp Corporation, and is intended by the Court to be an appealable order within the meaning of Wis. Stat. § 808.03(1).

The Court will retain jurisdiction over this matter to ensure compliance with the terms and conditions of the Stipulation and this Order for Judgment.

Dated this 27 day of [illegible], 2017.

BY THE COURT:

The Honorable Richard G. Niess
DANE COUNTY CIRCUIT COURT