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May 9, 2012

VIA E-MAIL: linda.hanefeld@wisconsin.gov
AND U.S. MAIL

Ms. Linda Hanefeld
SCR Remediation and Redevelopment Program
Wisconsin Department of Natural Resources
3911 Fish Hatchery Road
Fitchburg, WI 53711-5397

Re: Polychlorinated Biphenyl (PCB) Contamination – Madison-Kipp Corporation (MKC)
201 Waubesa Street, Madison, WI
BRRTS Activity Number: 02-13-558625

Dear Ms. Hanefeld:

On behalf of Madison-Kipp Corporation (MKC), this is in response to your letter of May 4, 2012 and the May 4, 2012 Notice of Violation (NOV) from Ms. Buss regarding the recent detection of polychlorinated biphenyls (PCBs) at 201 Waubesa Street, Madison, WI, Casetrack ID # 2011-SCEE-023.

As an initial matter, the Notice of Violation requests that by today, MKC submit to the Wisconsin Department of Natural Resources (WDNR): 1) a formal spill notification form; 2) a schedule for completing the investigation and immediate or interim actions under ch. NR 708, Wis. Admin. Code; and 3) a bimonthly progress report. These three items are attached hereto and are being submitted to WDNR subject to MKC's full and complete reservation of rights and defenses, as articulated further below.

Madison-Kipp's Communications with the Department

Your May 4, 2012 letter asserts that MKC "has not been forthcoming in clearly articulating to [the Department] and the public a clear, comprehensive and timely path forward to resolve the environmental contamination issues on and off [the MKC] property." MKC strongly disagrees with this assertion.

Since MKC's recent detection of PCBs in on-site soil beneath a paved parking lot, MKC has responded quickly in informing the Department of its findings and in testing off-site properties to address the concern of off-site PCB contamination. The bimonthly report demonstrates MKC's responsiveness to the Department, immediate attention to addressing the possibility of environmental contamination issues at off-site properties, and MKC's plans to investigate and

delineate the presence of PCBs at the site. I am sorry you hold that view, but what is relevant here are MKC's actions which transcends your opinions.

For example, MKC responded to your April 19th letter within a single day and provided to the Department an extensive set of Phase I ESA-related information. Thereafter, on April 23rd (just two business days after your April 19th letter) MKC met with the Department (at MKC's previous request made on April 11th) to discuss, among other things, MKC's desire to sample off-site properties to determine, as soon as possible, whether off-site properties had been impacted by PCBs. As you know, MKC's soil sampling efforts occurred during the last week of April. MKC requested expedited laboratory analyses and provided the results of the off-site soil sampling efforts to the Department on Monday, May 7th. The soil sampling results are incorporated within the bimonthly progress report attached hereto.

Thus, within two weeks of the April 23, 2012 meeting with the Department,[1] wherein the interested parties agreed to MKC's off-site sampling plan, MKC sampled the soil of nine (9) residences in the area closest to where the PCB-contaminated soil was discovered on-site and provided the results to the Department and the homeowners. The results of the off-site soil sampling efforts should not be lost – notably, PCBs were not detected at any of the sampled off-site properties.

Also, contrary to your suggestions, MKC has not withheld portions of the Phase I ESA information submitted to the Department on April 20, 2012. Two of the three Phase I ESA reports (the 2010 report and the 2002 report) were never finalized. Therefore, the copies that MKC submitted to the Department represent a complete copy of the draft reports as they were provided by MKC's consultant(s) to MKC. There is nothing further to submit to you in this regard.

Spill Notification

As we have previously stated, we have a legal disagreement with respect to the Department's assertion that some form of immediate "spill" or release reporting was required under Wisconsin's Hazardous Substance Spills Law. It is important to note that the law is not always what the Department says it is, acting as judge, jury and executioner. As my April 20th letter indicated, after MKC received the soil characterization test results, the results were promptly reported to WDNR as part of MKC's ongoing site investigation and remediation efforts. There was no new "spill," "release," or "unauthorized disposal" of PCBs to report to the WDNR under the Wisconsin's Hazardous Substance Spills Law nor to the U.S. Environmental Protection Agency (USEPA) under the TSCA. Indeed, based on MKC's internal investigations previously described to you, the release of PCBs to the environment predated both the enactment of TSCA

[1] Again, MKC requested this meeting on April 11th and it was the Department's schedules that got in the way of a more promptly schedule meeting.

and § 292.11, Stats. PCBs are generally immobile. Simply put, MKC disagrees with the Department's legal conclusions and reserves its Constitutional rights to due process regarding same.

Be that as it may, MKC has completed the requested formal spill notification form and provides it to the Department subject to its complete reservation of rights and defenses and without conceding any of MKC's legal positions in the context of this or future enforcement, solely in an effort to work with the Department collaboratively toward resolution of the matters referenced in your May 7, 2012 letter.

EPA, WDNR and the One Cleanup Program

MKC understands that USEPA will be involved in the One Cleanup Program with WDNR and MKC will participate in the proposed joint call with WDNR and USEPA when it is scheduled. As you note, TSCA applicability will be discussed further with USEPA staff when the joint call is scheduled. As such, we find no value here in belaboring our prior points on this issue.

Be that as it may, we do note MKC's disagreement with those portions of your letter and the NOV which attempt to characterize the level of MKC's knowledge of PCB contamination. Your letter and the NOV assert that MKC was aware of "PCB contamination" since 2006. This is factually inaccurate. MKC's first confirmed knowledge of the presence of PCB contamination in the soils at its site was receipt of the laboratory data that was immediately reported to the Department. The information contained in the historic Phase I ESAs does not constitute what you assert it does and I would suggest the Department consider matters carefully prior to leveling such accusations.

Schedule for Investigation and Immediate or Interim Actions

As requested, a schedule for investigation and immediate or interim actions is provided in the attached. This schedule meets the demands of your April 19th letter, as revised by your May 7th letter. Although my prior letter to you indicated that MKC would be proposing a scope of work for on-site investigation activities, including PCBs, by May 23rd, your May 7th letter has requested that a PCB work plan be submitted a whole two days sooner, by May 21st. MKC will certainly meet your request.

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Please let me know if you have any questions regarding the above.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

David A. Crass

Enclosures

cc: Steven E. Tinker, Wisconsin DOJ
Mark Meunier, Madison-Kipp Corporation
Bradley Grams, USEPA, Region V
Peter Ramanauskas, USEPA, Region V
Mark Giesfeldt, WDNR
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