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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: Madison-Kipp Corporation Site, 201 Waubesa Street, Madison, WI

Dear Ms. Hanefeld:

On behalf of Madison-Kipp Corporation (MKC) and as promised at our meeting on Monday, April 23, 2012, this serves to supplement our April 20, 2012 letter responding to yours of April 19, 2012. Together, our April 20 and April 27, 2012 letters constitute MKC's response.

Discovery of PCBs On-Site

As summarized in our April 20th letter and as explained at our April 23rd meeting, as a result of the disposal characterization of residual soils during installation of the on-site soil vapor extraction (SVE) system in the northeastern corner of the paved parking lot on the MKC site, it was discovered that the on-site stockpile of soil from the trenching activities contained PCBs. At that time, MKC undertook a diligent and good faith effort to locate information that could be used to inform the company concerning potential sources, if any, and upon which the company could rely to make the necessary generator certification. Historic Phase I ESAs were reviewed and, during the course of these efforts, MKC identified the possible historic use of potentially PCB-containing spent oils that may have been used as a dust suppressant prior to the paving of the parking area/loading dock area in the northeast area of the site. These historic Phase I ESAs also suggest that on-site transformers are not the source of PCB containing oils.

MKC then interviewed long-term employees and determined that the parking lot was paved sometime between August 12, 1976 and November 21, 1977 -- these dates representing the dates that two different employees began working at MKC with the parking lot being unpaved when the first employee was hired but paved by the time the second employee was hired. It was with this information that MKC determined that any release of PCBs predated the Toxic Substances Control Act (TSCA) effective date of April 18, 1978 and completed the generator certification and hazardous waste manifests associated with the soil disposal efforts.

Notification to WDNR

Your letter suggests that some form of immediate "spill" or release reporting was required under Wisconsin law. We disagree. As the 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 Substances Spill Law nor to the U.S. Environmental Protection Agency (USEPA) under the TSCA. Immediate notice to the USEPA was not required because the site does not meet the threshold requirements of TSCA § 8(e), 15 U.S.C. § 2607(e), including the "substantial risk" threshold; the areas of concern are paved and PCBs are generally immobile.[1] Be that as it may, MKC promptly requested a meeting with WDNR and requested on April 11, 2012 that such meeting be scheduled "as soon as possible" to fully inform WDNR of the facts and circumstances known to MKC. See, Exhibit D, April 20, 2012 letter.

PCB Investigation

Your April 19th letter requested that a certain amount of on-site investigation be completed by May 1st. During the April 23rd meeting, MKC suggested that the scope of the requested work misses the mark based upon the information discovered by MKC. Rather, MKC suggested that it include PCBs as an additional analyte in its upcoming off-site soil sampling at nine (9) properties that border the MKC site on Marquette Street (the area closest to where the SVE system was installed). This is to document that WDNR agreed to this suggestion and the off-site soil sampling will be conducted on April 27th and April 30th. As requested by the WDNR, these samples will be spread north to south along the common property line between MKC and the neighboring properties and the samples will be taken within approximately 10 feet of the property line. MKC has sought expedited laboratory analyses.

As an additional follow-up to the demands in your letter and as discussed at the April 23rd meeting, this is to confirm that MKC will be preparing a proposed scope of work for on-site investigation activities, including of PCBs, by May 23rd. As noted above, although your April 19th letter requested a certain amount of on-site work be completed by May 1st, the WDNR's requested investigation focused on an area near the transformers. Given the site history,

[1] Even if the site met the threshold requirements of TSCA § 8(e) (it does not), and it was determined the soil presented a "substantial risk" (it does not), the PCB findings were reported to WDNR, the agency with extensive regulatory oversight at the site, and such reporting would fulfill MKC's reporting requirement for non-emergency situations involving environmental contamination (see EPA's 2003 Reporting Guidance, 68 Fed. Reg. 33139 (June 3, 2003)). Further, although the PCB release reporting requirements under TSCA require reporting of certain spills occurring after May 4, 1987, these requirements do not apply to the current situation because MKC has already determined that, even if there was a "release," it would have occurred well before May 4, 1987. See 40 C.F.R. § 761.120 (EPA's PCB Spill Cleanup Policy "applies to spills which occur after May 4, 1987").

WDNR agreed to consider a more comprehensive site investigation that included an on-site PCB investigation as one component. Therefore, this documents that WDNR agreed that the May 1st deadline was no longer applicable, and, instead, MKC would be submitting a comprehensive site investigation proposal by May 23rd. MKC understands that if PCBs from MKC are detected in off-site soils, WDNR may require an expedited timeline or revised investigation approach to respond to those potential detections.

Lastly, your letter asked that MKC notify "the DNR within 10 days of the date of this letter as to which path you have elected to comply with" (sic) with respect to the PCBs.

To address any necessary PCB remediation, MKC would like to work collaboratively with WDNR as a continuation of the project already underway as a Type B site pursuant to Wisconsin's One Cleanup Program MOA with USEPA.

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

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

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