

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

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DANE CO. CIRCUIT COURT

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

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

MADISON-KIPP CORPORATION,
a foreign business corporation
201 Waubesa Street
Madison, Wisconsin 53704,

Defendant.

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(b)
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ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

COMPLAINT

CARLO ESQUEDA
CLERK OF CIRCUIT COURT

The State of Wisconsin, by its attorneys, Attorney General J.B. Van Hollen, and Assistant Attorney General Steven E. Tinker, brings this complaint against Madison-Kipp Corporation, at the request of the Wisconsin Department of Natural Resources (DNR) and alleges as follows:

1. The plaintiff is a sovereign state of the United States with offices at the State Capitol in Madison, Wisconsin.

2. Defendant Madison-Kipp Corporation ("Madison-Kipp") is a foreign business corporation doing business at 201 Waubesa Street, Madison, Dane County, Wisconsin. Madison-Kipp's corporate offices and registered agent, Mark D. Daniel, are also located at 201 Waubesa Street, Madison, Dane County, Wisconsin.

3. Madison-Kipp has conducted business at 201 Waubesa Street since 1902, initially producing parts for farm tractors and power units. Through the years Madison-Kipp expanded into die casting. Currently the facility is used for aluminum die casting.

4. Madison-Kipp used tetrachloroethene (PCE) as a degreasing solvent from the late 1940s until 1987. During this time tetrachloroethene was released into the environment via venting, spills or leaks and has contaminated both soil and groundwater on and beyond the Madison-Kipp property.

5. In 1994, DNR became aware of the tetrachloroethene contamination and issued a formal notice that identified Madison-Kipp as the responsible party and informed it of its responsibilities under the state spill law. Since then, DNR has provided regulatory oversight of Madison-Kipp's efforts to assess and clean up the contamination.

6. There is tetrachloroethene soil contamination originating from the Madison-Kipp facility on at least 20 properties on South Marquette and Waubesa Streets in the City of Madison. The DNR has asked that Madison-Kipp take action to remediate these soils and required Madison-Kipp to conduct additional testing on nearby properties to determine the extent of the contamination.

7. There is the potential for contaminated soil vapor intrusion into private residences bordering the east and west sides of the plant. The results of soil vapor sampling performed by Madison-Kipp and the DNR found sub-slab and/or indoor PCE vapors in at least 39 homes. Madison-Kipp has installed vapor mitigation systems at five of these homes and the DNR has installed vapor mitigation systems at fourteen more.

Additional soil vapor sampling is still needed to determine the full extent of the contamination spread.

8. Remediation for the PCE contamination thus far by Madison-Kipp has included soil excavation, soil treatment, the installation of soil vapor extraction systems and ozone injection to remediate groundwater contamination. Groundwater monitoring wells have been installed to define the extent of groundwater contamination off-site.

9. Madison-Kipp used oil containing polychlorinated biphenyls (PCBs) at the facility from 1966 until at least 1971. During this time and beyond spent oil containing PCBs were spread on the facility's gravel parking lots as a dust suppressant. This continued until the lots were all paved on or about 1977. This spreading released PCBs into the environment and has contaminated soil on and beyond the Madison-Kipp property.

10. On March 16, 2006, Madison-Kipp was advised by its consultant that spent oil containing PCBs had been spread at the facility as a dust suppressant. This information was not shared with the DNR until April 20, 2012.

11. Madison-Kipp installed a soil vapor extraction system at the facility from February 23, 2012 to March 9, 2012 which resulted in residual soil being stockpiled on site. This soil was tested for proper disposal and PCBs were found in it.

12. Madison-Kipp provided the DNR notice of the PCBs findings on March 26, 2012.

13. On April 19, 2012, the DNR issued a formal notice that identified Madison-Kipp as the responsible party for the PCBs and informed it of its responsibilities under

the state spill law. Since then, DNR and the United States Environmental Protection Agency (EPA) have provided regulatory oversight of Madison-Kipp's efforts to assess and clean up the PCBs contamination.

14. The DNR ordered Madison-Kipp to conduct additional testing to determine the extent of the PCBs contamination. PCBs soil contamination has been found on the Madison-Kipp facility to the north, south, east and west of the building. Off site soil contamination, originating from the Madison-Kipp facility, has been detected to the north, east and west of the facility but the full extent of its spread has not been determined.

15. Wisconsin Stat. § 292.01(5) define a "hazardous substance" as:

any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the [DNR].

16. Tetrachloroethene, and its related compounds, trichloroethene, cis- and trans-1,2- dichloroethene, vinyl chloride and PCBs, are hazardous substances within the meaning of Wis. Stat. § 292.01(5).

17. Wisconsin Stat. § 292.01(3) defines a "discharge" as "spilling, leaking, pumping, pouring, emitting, emptying or dumping." The term "discharge" also has been construed to include any ongoing seepage of a hazardous substance into soils and

groundwater beyond the location of the initial spill or leakage. *State v. Mauthe*, 123 Wis. 2d 288, 366 N.W.2d 871 (1985).

18. At all times relevant to this proceeding, Wis. Stat. § 292.11(3) has provided:

RESPONSIBILITY. A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state.

19. From at least 1994 and continuing to the present, the defendant has "possess[ed] or control [led] a hazardous substance which [had been] discharged" within the meaning of Wis. Stat. § 292.11(3), namely tetrachloroethene and its related compounds which was released into the environment via venting, spills or leaks into the Madison-Kipp property.

20. From at least 1966 and continuing to the present, the defendant has "possess[ed] or control[led] a hazardous substance which [had been] discharged" within the meaning of Wis. Stat. § 292.11(3), namely PCBs which was released into the environment onto the Madison-Kipp property.

21. Madison-Kipp has conducted investigative activities and implemented remedial measures described above to address and remove any immediate threats to human health and the environment but its efforts have not been sufficient to define the full extent of the above-described contamination.

22. From on or before 1994 to present, Madison-Kipp failed to take those actions necessary to restore the environment or to minimize the harmful effects to lands

or waters of this state caused by the discharge of tetrachloroethene and PCBs, contrary to Wis. Stat. § 292.11(3).

23. From March 16, 2006 to March 26, 2012, Madison-Kipp failed to notify the DNR of the unauthorized discharged of hazardous substance, to-wit PCBs contrary to Wis. Stat. § 292.11(2)(a).

24. Pursuant to Wis. Stat. § 299.95, the attorney general is authorized to enforce Wis. Stat. ch. 292 and the Court is granted injunctive authority.

25. Wisconsin Stat. § 292.99(1) provides that any person who violates Wis. Stat. ch. 292 "shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense."

26. Wisconsin Stat. § 292.99(2) provides that, in addition to the penalties provided under Wis. Stat. § 292.99(1), the Court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney's fees.

WHEREFORE, plaintiff asks for judgment as follows:

1. The forfeitures provided for in Wis. Stat. § 292.99(1), the reasonable and necessary expenses of the prosecution, including attorney's fees, provided for in Wis. Stat. § 292.99(2), plus the 26% penalty surcharge provided for in Wis. Stat. § 814.75(18), the 10% environmental surcharge (for violations committed before July 1, 2009) and the 20% environmental surcharge (for violations committed on or after July 1, 2009) provided for in Wis. Stat. § 814.75(12), the \$25.00 court costs pursuant to Wis. Stat.

§ 814.63(1), the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68.00 court support services surcharge pursuant to Wis. Stat. § 814.75(2), the 1% jail surcharge pursuant to Wis. Stat. § 814.75(14), and the \$21.50 justice information system surcharge pursuant to Wis. Stat. § 814.75(15);

2. The costs and disbursements of this action;
3. Injunctive relief under Wis. Stat. § 299.95 requiring the defendant to promptly take appropriate steps necessary to investigate and restore the environment and to otherwise minimize the environmental damage the defendant has caused; and
4. Such other relief as the Court deems appropriate.

Dated this 28th day of September, 2012.

J.B. VAN HOLLEN
Attorney General



STEVEN E. TINKER
Assistant Attorney General
State Bar #1013319

Attorneys for Plaintiff State of Wisconsin

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Madison, Wisconsin 53707-7857
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RICHARD G. NIESS
CIRCUIT COURT, BR. 9

STATE OF WISCONSIN

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DANE COUNTY

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SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Dane County

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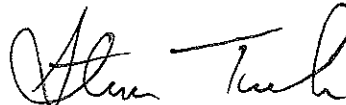
CARLO ESCHEDA
CLERK OF CIRCUIT COURT

Courthouse, 215 South Hamilton Street, Room 1000, Madison, Wisconsin 53703, and to Plaintiff's attorney, Steven E. Tinker, Assistant Attorney General, whose address is Wisconsin Department of Justice, 17 West Main Street, Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 28th day of September, 2012.

J.B. VAN HOLLEN
Attorney General



STEVEN E. TINKER
Assistant Attorney General
State Bar #1013319

Attorneys for Plaintiff State of Wisconsin

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