

**Clean Air Madison Ltd.
2726 Center Avenue
Madison, WI 53704**

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

April 22, 2004

Michael O. Leavitt, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Thomas V. Skinner, Administrator
U.S. Environmental Protection Agency Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

P. Scott Hassett, Secretary
Wisconsin Department of Natural Resources
101 S. Webster St.
Madison, WI 53703

Joe Wodjak, President
Madison Kipp Corporation
P.O. Box 3037
Madison, WI 53704

Thomas W. Caldwell, Registered Agent
P.O. Box 3037
Madison, WI 53704

**RE: Notice of Violation and Intent to File Suit Under the
Clean Air Act (“CAA”) 42 U.S.C. §§ 7401, et seq.**

To Whom It May Concern:

Clean Air Madison, and its individual members puts you on notice with this letter that Madison Kipp Corporation (“MKC”) has violated the Clean Air Act (“CAA”) 42 U.S.C. §§ 7401, et seq.

Residents of the City of Madison, including the members of Clean Air Madison Ltd. (“Clean Air Madison”) and their families, have suffered from air emissions from MKC’s facility (“Facility”) on Atwood Avenue in the City of Madison. MKC emits hazardous air pollutants as well as other dangerous pollutants such as particulates. MKC has a history of CAA violations. According to documents in the public domain, the Wisconsin Department of Natural Resources (“WDNR”) issued notices of violation to MKC on numerous occasions. For example, in 1990 the facility was modified by adding Chlorine gas to its process and increasing emissions of fine particulate matter, Chlorine, Hydrogen Chloride, and other hazardous air pollutants. MKC failed to obtain the required Clean Air Act construction permits for this modification. Although the WDNR issued a Notice of Violation, it ultimately issued an after-the-fact permit to cover the emissions and no enforcement action was taken.

More recently, MKC violated emission limits set in construction permit 00-BSP-944. Again the WDNR proposes to correct these violations by issuing another permit increasing MKC’s emission limits. It is unlikely that WDNR will take any enforcement action for these recent violations. Therefore, Clean Air Madison intends to use the citizen suit provision in the Clean Air Act to enforce the Clean Air Act against MKC.

Clean Air Madison is an unincorporated nonprofit organization organized under the laws of Wisconsin. Clean Air Madison is located at 2726 Center Ave., Madison, Wisconsin 53704, (608) 246-0697. Clean Air Madison’s members reasonably fear that they have been and will continue to be harmed by emissions from MKC, including particulate matter emissions. Clean Air Madison’s members and their families live, work, attend school, and recreate in the immediate vicinity of the Facility and reasonably fear that MKC’s violations of the Clean Air Act result in greater emissions of air pollution and increased health risk to those in the area.

Clean Air Madison and its members intend to sue you, pursuant to section 304(b) of the Clean Air Act, 42 U.S.C. § 7604(b), for MKC’s recent and repeated violations. The Clean Air Act requires that potential citizen plaintiffs notify violators, the Wisconsin Department of Natural Resources, and the federal Environmental Protection Agency 60 days before filing suit to enforce some provisions of the Clean Air Act. 42 U.S.C. § 7604(b).

This notice is provided in accordance with 42 U.S.C. §7604(b)(1)(A) and 40 C.F.R. §§54.2-3 (2003). At the end of the 60 day period, Clean Air Madison intends to file a lawsuit in the United States District Court for the Western District of Wisconsin to address the violations described below.

MKC’s Violations of the Clean Air Act

MKC has violated the CAA on numerous occasions. MKC’s air violations have resulted in elevated particulate matter concentrations in the ambient air around the

Facility. The United States EPA and the Wisconsin DNR have determined that particulate matter is harmful to human health, is associated with increased hospital admissions and emergency room visits for people with heart and lung disease, is associated with work and school absences by people exposed to it, and settles into the soil and water changing the nutrient and chemical balance of both. Specifically, scientific studies have linked breathing particulate matter to a series of significant health problems, including asthma, increases in coughing and difficult or painful breathing, chronic bronchitis, decreased lung function, and premature death.

MKC has repeatedly violated air quality regulations contained in Wisconsin's SIP and state construction and operating permits. These permit conditions and SIP provisions constitute "an emission standard or limitation", as defined in 42 U.S.C. § 7604(f), which includes any "standard, limitation, or schedule established under any permit issued pursuant to [Title V] or under any applicable State implementation plan approved by the Administrator" in effect under the Clean Air Act.

Clean Air Madison reasonably believes that the MKC has violated Wis. Stat. § 285.60(7) (previously Wis. Stat. § 144.391(7) (1991-92)) and Wis. Admin. Code §§ NR 406.10 and 415.03 (formerly Wis. Admin. Code § NR 154.11(1)), contained in Wisconsin's SIP, 40 C.F.R. § 52.2570, 48 Fed. Reg. 9860 (March 9, 1983) and 60 Fed. Reg. 3543 (Dec. 1, 1993), in the following respects:

**Violations of Construction Permit No. 00-BSP-944, § I.A.1.a.(1)(c) and Title V
Operating Permit No. 113014220-P01 § B.1.a.(1)(c).**

On October 24, 2003, MKC ran a compliance stack test for multiple parameters. This test was conducted on only one of the two reverberatory aluminum melt furnaces at MKC. Apparently both WDNR and MKC consider these tests demonstrative of the Facility's emissions from both furnaces.¹ During the October 24, 2003, stack test MKC's particulate matter emissions during three test runs were 3.42, 2.41, and 3.17 pounds per hour. MKC's permits limit particulate matter emissions from each furnace to 1.51 pounds per hour. See Permit 00-BSP-944 § I.A.1.a.(1)(c) and Title V Permit No. 11301420-P01 § B.1.a.(1)(c). Therefore, MKC's average emission rate during the October 24, 2003 stack test (3.00 pounds per hour) is almost double its permit limit.

The October 2003 stack test demonstrates that MKC violated its particulate matter emissions at least every day that MKC used more than 35 pounds of Chlorine per hour in either of its reverberatory furnaces. Documents in the public domain indicate that MKC used more than 35 pounds of Chlorine per hour on at least five (5) days. Actual days of violation probably exceed this number. Clean Air Madison intends to enforce the Clean Air Act for all violations.

¹ To the extent that the October 2003 stack test does not demonstrate emissions from RCI2, MKC failed to comply with testing requirements for RCI2 contained in Construction Permit 00-BSP-944.

Violations of Wis. Admin. Code § NR 415.03, Title V Permit No. 113014220-P01 § II.C.1, and Construction Permit No. 00-BSP-944 § II.C.1.

MKC's particulate matter permit limits of 1.51 pounds per hour from each of the reverberatory furnaces were deemed necessary to protect ambient air quality standards by the WDNR. Therefore, MKC's violations of that limit, including emitting 3.00 pounds per hour, as indicated in the October 24, 2003 stack test, result in violations of the ambient air quality standards for particulate matter. MKC is prohibited from emitting particulate matter causing exceedances of an ambient air quality standard by Wisconsin's SIP as well as MKC's own permits. See Wis. Admin. Code § NR 415.03, Title V Permit No. 113014220-P01 § II.C.1, and Construction Permit No. 00-BSP-944 § II.C.1.

Notice of Intent to Sue for Additional Violations

Construction Permits 99-BSP-912 and 00-BSP-944, issued to the two aluminum furnaces, have expired. To the extent that MKC has continued to emit particulate matter or other pollutants not permitted by a valid construction or operating permit, Clean Air Madison intends to sue for those violations as well.

Conclusion

Clean Air Madison is authorized to sue, on behalf of its members, to sue to enforce MKC's violations of the Clean Air Act. 42 U.S.C. §§ 7604(a); 7604(f)(1), (4).

At the close of this 60 day notice period Clean Air Madison will file a citizen suit to enforce the terms of the federally-enforceable Title V permit and the State Implementation Plan. Pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413(b), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §19.4, you are liable for up to \$27,500 per day, per violation for all violations occurring before March 15, 2004 and \$32,500.00 per day, per violation, for violations occurring after that date. 69 Fed. Reg. 7121, 7124-26, Table 1 (Feb. 13, 2004). In addition to civil penalties, Clean Air Madison will seek injunctive relief preventing further violations of the Clean Air Act; declaratory relief; and such other relief as permitted by law. Further, Section 304(d) of the Clean Air Act, 42 U.S.C. 7604, permits prevailing parties to recover costs, including attorneys' and experts' fees.

Clean Air Madison is willing to discuss effective remedies for the violations noted in this letter during the 60-day notice period. If MKC wishes to pursue such discussions in the absence of litigation, we suggest that it initiate those discussions immediately. Clean Air Madison may consider postponing filing an action in federal court if good faith negotiations are being made at the close of the 60-day notice period. However, if such negotiations are not occurring Clean Air Madison and its individual members will move forward with litigation.

Clean Air Madison has retained Porter Jablonski and Associates as legal counsel regarding its intended lawsuit against MKC. If you wish to discuss the contents of this notice during or after the 60 day notice period, you must contact Attorney Frank Jablonski at (608) 258-8511.

Sincerely,

CLEAN AIR MADISON LTD.

Vicky Hestad, Registered Agent

Service List:

Honorable John Ashcroft
Attorney General
U.S. Department of Justice
Room B-103
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Thomas Dawson
Wisconsin DOJ- Environmental Protection
Unit
PO Box 7857
Madison, WI 53707-7857

Gov. James E. Doyle
Wisconsin Office of the Governor
115 East State Capitol
Madison, WI 53702

Peg Lautenschlager
Attorney General of Wisconsin
Wisconsin Department of Justice
PO Box 7857
Madison, WI 53707-7857

Lloyd Eagan, Director
Bureau of Air Management
Wisconsin Department of Natural Resources
101 S. Webster St.
Madison, WI 53703