

Petition For A Contested Case Hearing Pursuant To Sections 227.42, et seq., and 285.81 of the Wisconsin Statutes.

P. Scott Hassett
Wisconsin Department of Natural Resources
101 S. Webster Street
P. O. Box 7921
Madison, WI 53707

To the Department of Natural Resources:

The undersigned hereby request that a hearing be conducted and treated as a contested case under Wis. Stat. §§ 227.42 and 285.81.

The agency action or inaction which is the basis for the request for a hearing is:

The Department's determination to issue Air Pollution Control Construction Permit 03-POY-328 and operation permit 03-POY-328-OP and/or 113014220-02 to Madison-Kipp Corporation, 201 Waubesa St., Madison, Wisconsin, 53704, to construct new and modified processes with an impact on air emissions, including modifications to two reverberatory aluminum melt furnaces (RCI-1 and RCI-2) at the company's facility at 2824 Atwood Avenue and 201 Waubesa Street in Madison, Wisconsin.

The substantial interest injured or threatened with injury by agency action or inaction is:

Health, welfare and enjoyment and use of property, as explained further in the description of interests provided below:

Clean Air Madison, Ltd. ("Clean Air Madison"), is a Wisconsin non-stock corporation organized under Chapter 181 of the Wisconsin Statutes. Vicky Hestad, 2726 Center Avenue, Madison, Wisconsin, 53704, is the registered agent for Clean Air Madison. Clean Air Madison is organized to protect a health environment in Madison, Wisconsin, including preserving and improve the air

quality in Madison. Clean Air Madison's members joined Clean Air Madison specifically for these purposes and authorize Clean Air Madison to advocate in their interest towards these goals. Named Petitioners are members of Clean Air Madison.

Petitioner Jen Voichick, who resides at 208 Cottage Grove Road, Madison, Wisconsin, 53704, lives approximately one mile from the property line of the Madison-Kipp on Atwood Avenue and Waubesa Street in the City of Madison. Petitioner Voichick spends considerable time even nearer Madison-Kipp when outside on daily walks, traveling to work, and in her garden located on St. Paul Avenue. Petitioner Voichick is concerned about, and is adversely affected by, the environmental effects of the air pollution emissions from the Madison-Kipp. In recent years Petitioner Voichick has suffered health problems that she attributes to the air pollution emissions from Madison-Kipp. Petitioner Voichick has been and will continue to be adversely affected by the DNR's decisions pertaining to Air Pollution Control Construction Permit 03-POY-328 and operation permit 03-POY-328-OP and/or 113014220-02, specifically those specified above.

Petitioner Kimberlee S. Wright, resides at 514 Elmside Boulevard, Madison, Wisconsin, 53704. Petitioner Wright lives within a quarter-mile of the Madison-Kipp facility. Petitioner Wright spends a great deal of time outdoors in the area, experiences metallic taste and odors when the wind blows from the direction of Madison-Kipp and has seen black plumes of smoke from Madison-Kipp in the early evening hours. Petitioner Wright suffers from breathing particulate matter and hazardous air pollutant, and by the noxious odor emissions from the Facility. Specifically Petitioner Wright attributes aggravated asthma and other recurring health problems as well as decreased use and enjoyment of her property to the air pollution emissions from the facility. Petitioner Wright has been and will continue to be adversely affected by the DNR's issuance of Permit 03-POY-328, 03-POY-328-OP and/or 113014220-P02 to Madison-Kipp Corporation.

Petitioner Rachel Roang, who resides at 2709 Willard Avenue, Madison, Wisconsin, 53704, lives within a quarter-mile of the Facility, spends a great deal of time outdoors in the area and is affected by breathing particulate matter and hazardous air pollutants and by the noxious odor emissions from the Madison-Kipp Facility. Specifically Petitioner Roang attributes recurring headaches, sore throat, cough and nausea and decreased use and enjoyment of her property to the air pollution emissions from the facility. Petitioner Roang has been and will continue to be adversely affected by the DNR's issuance of Permit 03-POY-328,

03-POY-328-OP and/or 113014220-P02 to Madison-Kipp Corporation.

Petitioner Anne Chacon, who resides at 138 S Marquette Street, Madison, Wisconsin, 53704, lives adjacent to the Madison-Kipp facility. Petitioner Chacon is adversely affected by air pollutant emissions from Madison-Kipp by breathing particulate matter and hazardous air pollutants and by the noxious odor emissions from the facility. Petitioner Chacon suffers numerous negative health effects that she attributes to Madison-Kipp's emissions. Additionally, Petitioner Chacon suffers decreased use and enjoyment of her property due to the emissions from Madison-Kipp. Petitioner Chacon has been and will continue to be adversely affected by the DNR's issuance of Permit 03-POY-328, 03-POY-328-OP and/or 113014220-P02 to Madison-Kipp Corporation.

The evidence of legislative intent that the interest is to be protected is as follows:

Chapter 285, Stats., directs the department of natural resources to organize a comprehensive program to enhance the quality, management and protection of the state's air resources. Chapters NR 400 to 499 are the central part of that program.

The objectives of Chapter NR 400 to 499 are to maintain standards of air quality at a level which will provide adequate protection to public health and welfare, and prevent detrimental effects on property and our environment.

Wisconsin Statutes section 285.81(2) specifically recognizes the right of members of the affected public to seek a contested case hearing for review of "any permit, part of a permit, order, decision or determination by the department under ss. 285.39, 285.60 to 285.69 or 285.75." Further, members of the public who do not meet the requirements of Wis. Stat. § 227.42, but who submitted public comments regarding the proposed air pollution control permit, may request and obtain a contested case hearing on the permit.

The injury to the person requesting the hearing is different in kind or degree from injury to the general public caused by agency action or inaction because:

The Persons seeking a contested case proceeding are situated so as to be subjected to greater impacts than members of the general

public because of proximity to Madison-Kipp Corporation's facilities.

There is a dispute of material fact, and the disputed facts are:

- 1) Whether the department complied with the procedures set forth in Wis. Stat. § 285.61; and
- 2) Whether Madison-Kipp Corporation meets all of the applicable criteria in s. 285.63, thus allowing the department to issue air pollution control permits.

The statute or administrative rule other than Wis. Stat. § 227.42, which accords a right to a hearing is Wis. Stat. § 285.81(2).

Dated: _____

Attorneys for Identified Petitioners and Clean Air
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