Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

Individually and on behalf of all

Plaintiffs,

Defendants.

MADISON-KIPP CORPORATION, Cross-Claimant,

INSURANCE COMPANIES 1 - 20,

person similarly situated,

and

v. Case No. 11-CV-724
MADISON-KIPP CORPORATION, CONTINENTAL
CASUALTY COMPANY, UNITED STATES FIRE INSURANCE

COMPANY and ABC INSURANCE COMPANIES 1 - 50,

CONTINENTAL CASUALTY COMPANY, COLUMBIA

CASUALTY COMPANY, and UNITED STATES FIRE INSURANCE COMPANY.

Cross-Claim Defendants.

CONTINENTAL CASUALTY COMPANY and COLUMBIA CASUALTY COMPANY,

Cross-Claim Defendants,

Third-Party Defendants

DEPOSITION OF

JAMES B. LENZ

Madison, Wisconsin

September 28, 2012. 10:00 a.m. to 4:45 p.m

Kim M. Peterson

Registered Professional Reporter

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WISCONSIN

KATHLEEN McHUGH AND DEANNA SCHNEIDER,

Deposition of James B. Lenz

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APPEARANCES

2 THE COLLINS LAW FIRM, P.C., 1770 North

3 Park Street, Suite 200, Naperville, Illinois, 69563,

4 smc@collinslaw.com, by MR. SHAWN COLLINS, appeared on

behalf of the Plaintiffs.

6 VARGA, BERGER, LEDSKY, HAYES & CASEY,

125 South Wacher Drive, Suite 1250, Chicago, Illinois,

8 60606-4473, nberger@vblhc.com, by MR. NORMAN B. BERGER,

appeared on behalf of the Plaintiffs.

10 MICHAEL, BEST & FRIEDRICH, LLP, 100

11 East Wisconsin Avenue, Milwaukee, Wisconsin, 53202,

12 jabusch@michaelbest.com, by MR. JOHN A. BUSCH, appeared

13 on behalf of the Madison-Kipp Corporation.

MICHAEL, BEST & FRIEDRICH, LLP, 100 14

15 South Pinckney Street, Suite 700, P.O. Box 1806, Madison,

16 Wisconsin, 53701-1806, lhziemba@michaelbest.com, by MS.

17 LEAH H. ZIEMBA, appeared on behalf of the Madison-Kipp

18 Corporation.

19 TROUTMAN SANDERS, LLP, 55 West Monroe

20 Street, Suite 3000, Chicago, Illinois, 60603-5758,

 $21 \quad christopher.white@troutmansanders.com, by MR. CHRISTOPHER$

22 WHITE, appeared on behalf of the Continental Casualty

23 Company.

24 MEISSNER, TIERNEY, FISHER & NICHOLS,

25 S.C., 111 East Kilbourn Avenue, 19th Flor, Milwaukee,

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LUMBERMANS MUTUAL CASUALTY COMPANY, AMERICAN MOTORISTS INSURANCE COMPANY, and JOHN DOE

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Page 3 1 Wisconsin, 53202-6622, jbk@mtfn.com, by MS. JENNIFER A.B. 2 KREIL, appeared on behalf of the United States Fire 3 Insurance Company. 4 INDEX 6 WITNESS EXAMINATION PAGE JAMES B. LENZ By Mr. Collins EXHIBITS 8 MARKED ID'D EXHIBIT NO.: 10 1 - Subpoena 5 6 11 2 - Consulting agreement 82 82 12 3 - Memo dated April 7, 1994118 119 4 - Dames & Moore 2/1/96 meeting Power Point 14 15 5 - Memo dated March 19, 1996 - MK006682159 160 16 6 - Memo dated March 25, 1996 - MK006681178 179 17 7 - Draft dated July 12, 1996 - MK006463 198 198 18 8 - Letter dated March 21 1996 -19 MK006460-6462216 220 20 9 - Memo dated July 24, 2002 - MK006775223 223 21 10 - Memo dated August 31, 2006 - MKDNR001892 .229 230 22 11 - Email string - MK005710234 234 23 (The original exhibits were attached to the original 24 transcript.) (The original transcript was sent to Mr. Collins.)

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Len Page 4 PROCEEDINGS 2 JAMES B. LENZ, called as a witness 3 herein by the Plaintiffs, after having been first 4 duly sworn, was examined and testified as follows: 5 EXAMINATION 6 BY MR. COLLINS: 7 Q Would you state your name and spell it for the 8 record, please. 9 James B. Lenz. James, you know how to spell 10 James L-E-N-Z 11 Q Mr. Lenz, we met just a couple minutes ago. I'm 12 Shawn Collins, a lawyer for the -- a lawyer for 13 the plaintiff class in a case against Madison-Kipp 14 Corporation. You understand that, right? 15 Α 16 Q Okay. And to my right here is Norm Berger. Norm 17 and I are co-counsel in the case. You met Norm 18 just a couple minutes ago as well. So that's who 19 we are. Have you ever been deposed before? 20 A Yes. About, I don't know, 15 years ago. 21 Q Okay. All right. Have you had somebody explain 22 the rules to you of a deposition? 23 24 Ω Okay. The main one I'd ask you to observe is if 25 you don't understand my question, tell me that,

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Deposition of James B. Lenz Page 5 and I'll do my best to ask a more understandable 2 question, okay? 3 A Okay. 4 Q All right. One other rule is answer audibly, 5 please 6 A Yep. I just remembered that. 7 Q No, that's all right. 8 I was nodding my head and then oh, yeah, I got to 9 answer verbally. 10 Q You understand why, right? She can't record a nod of the head. Well, she's pretty good, she 11 12 probably can, but -- Anyway, answer audibly if you 13 would, please. 14 Okay. So you're here pursuant to a 15 subpoena, right? 16 A Correct. 17 Q You've seen the subpoena, right? 18 A 19 Q And you know that it asked you to bring certain 20 documents with you, right? Do you know about 21 that? 22 No, I didn't bring any documents. 23 Okay. Let's -- Let's mark this then, okay. 24 (Exhibit No. 1 was marked for 25 identification)

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Deposition of James B. Lenz

1 BY MR. COLLINS: 2 Q Okay. So Mr. Lenz, so this is a document we're 3 calling Lenz No. 1. Nothing personal about the name of the exhibit. That's just so we know the 5 deposition we used it in, okay. So this is 6 Lenz 1. 7 My question to you, sir, is whether you have seen that before this moment? 9 A This particular document I -- no. 10 O You've not seen this before. 11 A (Witness nods.) 12 Q Okay. What -- What brings you here today? How 13 did you know to come here today? 14 A Counsel told me I had to come. 15 Q Are you represented regarding this deposition? Do 16 you have a lawyer? 17 A Yes, I do. 18 Who is it? Ω 19 A Ringhand (sic). 20 Q Okay. And he's not here, right? 21 A He's not here, no. 22 Q Okay 23 MR. BUSCH: I will tell you that in 24 his role as a former employee -- I'm here for the 25 company, but I think as a former employee we have

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Page 7 certain rights with respect to him, but go ahead 2 and answer the questions. 3 BY MR. COLLINS: 4 Q Okay. There isn't one now, but here goes the next one. So -- So is this -- I gather then this is 6 the first time you are seeing or you're learning 7 that the subpoena asked you to bring documents, 8 and I'm quoting now, "all documents concerning any 9 environmental matters at the Madison-Kipp Corporation site located at 201 Waubesa Street, 10 11 Madison, Wisconsin, 53704." 12 All right. You saw what I just read 13 from on the subpoena here? 14 A 15 Okay. Did you know before this moment that the 16 subpoena that brings you to this deposition asked 17 you to bring those documents? 18 A No. 19 Q All right. Do you have documents like that in 20 your possession? 21 No. Everything was left at Madison-Kipp when I Α 22 23 Q Okay. How about anything on a personal computer 24 at home, anything like that? 25 A I don't believe I have any documents on my

Page 8 personal computer. 2 Q Okay. Do you have any -- any files at home in 3 which you might keep even employment-related 4 records from Madison-Kipp? 5 A I think I have a file that has different reviews that I've had and different --6 7 Q I'm not interested in those. Here's what I'd like 8 you to do. I'd like you to -- to think about, 9 since you really haven't had any time to think about, whether you have in your possession 10 11 documents matching the description on the 12 subpoena. 13 And what I'm going to do after this 14 deposition is I'll contact your lawyer and I'll 15 ask him to work with you on that. 16 A Okay. 17 Q Okay? All right. So, you used to work at 18 Madison-Kipp Corporation, correct? 19 A Correct. 20 Q From when until when, please. 21 A From late June of 1980 to June 15th of 2011. Is 22 that right? Yep, that's correct. 23 Q Thirty-one years? 2.4 А Yes, correct. 25 Q Why did you leave?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 9 A I was laid off. 2 Q Were you told why? 3 A Cost cutting reasons. 4 Q Okay. Were others laid off at the same time? 5 A 6 Q When you were laid off from Madison-Kipp 7 Corporation on or about June 15 of 2011, what was your position there? 9 A I was a manufacturing engineer. 10 Q Was that your title? 11 A I think my title was senior manufacturing 12 engineer. 13 Q Okay. Let's -- I'm sorry. 14 A And -- Yeah, that's correct. 15 Q Okay. So let's -- let's -- you must have started 16 there when you were a pretty young man, I would 17 imagine, right? 18 A Yes. 19 Q How old were you when you started at Madison-Kipp? 20 A I'd have to do the math, but roughly 22, somewhere 21 in there 22 Q Did you go to college? 23 A I went to UW-Madison.

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Q Were you right out of college, basically?

25 A Yes. I've graduated in May and started there in

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1 2 Q Okay. So you graduated with what degree, please. 3 A Engineering mechanics. 4 Q Okay. You said from UW-Madison? 5 A UW-Madison. 6 Okay. So when you started at Madison-Kipp 7 Corporation what -- what was your job? 8 A I was a project engineer. 9 Q Um-hum. That was your title? 10 A 11 Q Okay. And how long did you hold that title? 12 A For roughly eight years. 13 Q So from '80 to roughly '88? 14 A 15 Q Yeah? Okay. And so what did you do as a project 16 engineer? I'm just asking generally right now. 17 A Rebuilt equipment, installed new equipment, 18 updated electrical controls on equipment. 19 Q Okay. What kind of equipment? 20 A Mostly die casting and machining equipment. 21 Q Only. Was all of your 31 years at the 22 Madison-Kipp Corporation location on Waubesa in 23 Madison? 24 A Well, as they got other plants I -- I would do 25 work at other plants. So it wasn't totally at (414) 271-4466 Halma-Jilek Reporting, Inc. Experience Quality Service!

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Lenz Page 11 Madison -- at the --2 Q Fair to say that the Waubesa plant was your base? 3 Α Was my base, yes. 4 Q Okay. And you lived in Madison? 5 A I live near Madison. 6 Q Near Madison, okay. All right. So in approximately '88, 1988, then you changed 8 positions at Madison-Kipp? 9 A I became the facility engineer. 10 Q And was that for one facility, or more than one 11 facility? 12 A All facilities. 13 Q For all Madison-Kipp facilities. How many were 14 there in 1988? 15 A Oh, boy. I'm trying to remember the timing back that far because there was a Johnson City plant in 16 17 Johnson City, Tennessee, and I don't remember -- I 18 don't believe that plant was still in existence at 19 that time 20 Q If you would, please, tell me what you know for 21 sure. And then as to anything else if you're not 22 sure, tell me that you're not sure.

23 A It would have been just the Atwood Avenue facility

Okay. So I -- I -- I referred to Madison -- the

and the Fair Oaks facility.

24

25 Q

Page 12 Madison-Kipp facility on Waubesa, but that's not 2 how you refer to it, right? 3 A Yeah. My -- My office was on the Atwood Avenue 4 facility entrance. 5 Q Okay. All right. How long were you the facility 6 engineer? 7 I kept that position the entire time I was there 8 the rest -- along with other duties until about five years ago when -- when Kim Eggers started. 10 At that point I became a manufacturing engineer. 11 Q Okay. So you were the facility engineer until 12 approximately 2006? 13 A 14 Q Okay. And then who did you say started? 15 A Kim Eggers. 16 Q Spell last name, please. 17 A Oh, boy. I'm bad at spelling. 18 Q Do your best, please. 19 A E-G-G-E-R-S. 20 Q Okay. Man or woman? 21 A 22 Q And Eggers took the facility engineer job? 23 Α Well, the facility engineer went to some 24 maintenance personnel and I was also given

environmental at that time, and Kim Eggers took

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 13 over all environmental. 2 Q You said you were given environmental at that 3 A I was -- In between your earlier question and that 5 question I -- I was also given environmental. 6 Q Okay. Because I don't remember my last couple of 7 questions, let me ask you when were you given 8 environmental? 9 A Let me figure this out. It would be somewhere 10 around '96 I was given environmental and facility 11 12 Q And facility engineering, okay. You -- Prior to 13 '96 you already had facility engineering, right? 14 A 15 Q Okay. So what was added to it in about 1996 was 16 environmental; is that right? 17 A Okay. So did something happen in 1996, some 18 19 event, some development, that -- that caught --20 A 21 Q Let me -- I'm sorry. Let me finish. And then --22 So another rule is if you'd let me finish my 23 question, and then my job is to let you finish

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your answer before I step on it with a question,

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1 So, here's the question. Did 2 something happen in the environmental arena in 3 approximately 1996 that caused environmental to be added to your job duties? 5 The environmental engineer left the company. Α 6 Q Who was that? 7 Α Sam Sutopo. 8 Q You know what I'm going to ask. 9 Α 10 Q Would you do your best? 11 A Oh, boy. S-U-T-O-P-O. 12 Q So Sam Sutopo left? 13 A Um-hum. 14 Q Okay. That mean yes? 15 A Yes. 16 Q Okay. Is Sam still around, do you know? 17 A I have no idea. I haven't seen him since he left. 18 All right. So Sam Sutopo was the environmental 19 engineer and left Madison-Kipp in about 1996. 20 A Correct. 21 Q Yes? And that's when environmental, basically 22 Sam's job, was added to yours? 23 A Correct. 24 Q 25 Α Except for safety. Someone else carried safety.

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Page 15 All right. Why did Sam leave, do you know? 2 A Different opportunity. Okay. Did he get fired? 3 Q 4 A No. Okay. These personnel moves in 1996, Sam leaving 5 Q and your taking on environmental, have anything to 6 do with the discovery in the 1990's of VOC's in the soil and groundwater at Madison-Kipp? 8 9 A No. 10 Q You sure? 11 A 12 Q Okay. So let me roll back a little bit now. So 13 when you're the project engineer in 1980 to 1988, 14 to whom did you report? 15 A Boy, this is going to be a mess because the 16 turnover there was rather high, and I had so many 17 bosses that -- I typically only had a boss for a 18 year at a time. 19 Q Let me try to make it a little bit easier. All 20 right. So then what I want to know is the --21 from -- in that '80 to '88 timeframe when you were 22 the project engineer, who was the last person to 23 whom you reported? 24 A Okay. From '80 to '88 was your question? 25 Q Yeah. Within that timeframe.

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp That was Steve Busse 2 Q All right. B-U-S-S --3 Α E. 4 Okay. That's -- That's the -- That's the guy you were reporting to in '88 when you changed jobs? 6 That's the person I reported to from '80 to '88. Α 7 Q The entire time. 8 A Yes. 9 Q Okay. Steve Busse. And what was his job? He was the facilities -- He was facility engineer 10 A 11 and engineering manager 12 Q Okay. When you became facility engineer in 13 approximately 1988, to whom did you report? 14 A I can't remember for sure. 15 Q Okay. Well, let's talk about approximately eight 16 years into your tenure as facility engineer when 17 you took on the environmental responsibilities, 18 okay? 19 A Okay 20 Q With regard to those responsibilities, 21 environmental responsibilities, to whom did you 22 report? 23 Α I think it was Don Nelson, I think. Not positive 24 on that 25 Q Okay. Did you have responsibility for

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 17 environmental matters at Madison-Kipp until the 2 time you left in 2011? 3 A They would come and consult with me occasionally, but I didn't have any environmental 5 responsibility. 6 Q 7 A That's from that '90 -- or 2006 till I left. 8 Q Okay. When Eggers came in. 9 A As soon as Kim Eggers came in. 10 Q Okay. So it sounds like then we're talking about a -- a 10-year period, 1996 to 2006, where you had 11 12 environmental responsibility. 13 A Correct. 14 Q Fair to say? 15 A Yes. 16 O Okay. Did you have a title at the company as 17 regarding environmental matters? 18 Α 19 Q What was your title? 20 A That changed a lot, too. Most of the time it was 21 environmental manager. It was plant engineering 22 and environmental manager. Can I just get a drink 23 of water quick? 24 0 Yes. Of course you can.

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1 BY MR. COLLINS: 2 Okay. So from 1996 to 2006 you -- your title is 3 plant engineering and environmental manager? 4 Α 5 Q Okay. So during that period of time as 6 environmental manager for Madison-Kipp, what --7 what did you do? What kind of things did you work 8 9 Α I worked on air issues, air permitting, stormwater 10 permitting. Somewhere in that timeframe the SPCC 11 permitting came out. The permitting with the city 12 for sewer discharges, and because of my facility 13 engineering responsibilities I was consulted on 14 the groundwater contamination issues. 15 Q Okay. The groundwater contamination issues that 16 you say you were consulted about, what was the 17 contamination? What were the chemicals 18 contaminating the groundwater? 19 A 20 Q Anything else during that 10-year period? 21 A No, not that I can recall. 22 Okay. Now, there was PCE also in the soil at the 23 plant, right? 24 Α 25 0 So were you involved in -- in that contamination

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as well?

2 A Yes.

3 Okay. During that period of time there was also

(Discussion off the record.)

some testing for PCE in -- in vapors, too, 4

5 correct? And by the way, the period of time I'm

6 talking about is 1996 to 2006.

7 And just so the question is clear,

8 during that period of time PCE was also found in

9 vapor testing in or around the plant, true?

10 A I can't recall any -- I wasn't that close to that

11 project. I -- The only vapor testing I remember

12 them doing was they put some sand points in the

13 ground to monitor vapor pressure during injection

14 of the BiOx.

15 Q Okay. All right. So while you were the

environmental manager for 1996 to 2006, was there 16

17 anyone at the company who outranked you in the

18 environmental arena regarding environmental

19 matters?

20 A The environmental portion of my job reported to --

21 and it's probably going to be two different people

22 over that timeframe. First it was Bud Hauser.

23 Q H-A-U-S-E-R?

24 A I believe so, yeah.

25 Q Okav. Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

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A And then it's -- then there was a slight gap after

2 he left and then Mark Meunier started.

3 Q Okay. I want to run some names by you, and tell

4 me if you had any professional interaction with

them while you were at Madison-Kipp. Lyle Crouse.

Lyle is L-Y-L-E, Crouse is C-R-O-U-S-E.

7 Yes. He was my boss for a period of time.

8 Q When?

9 A Boy. I'd like to say almost the entire time he

10 was there for my facility engineering portion of

11

12 Q Okay. Did you work with Mr. Crouse on any

13 environmental matters?

14 A Air permitting, you know. He signed a lot of the

15 documents that you had to have signed by a company

16 executive.

17 Q Did you work with Mr. Crouse on any of the

18 contamination issues; soil, vapor or groundwater?

19 A I was consulted on about when they wanted to do 20

the BiOx treatment doing excavation next to the

21 plant. And I said that they couldn't dig to that

22 depth right next to the plant.

23 Q Spell BiOx again for me, please.

24 A I don't know if I have that spelled right.

25 B-I-O-X. I think that's right.

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 21 1 Q And what was it, to your understanding? 2 A It was some kind of -- It was a proprietary thing 3 that a company came and injected into the soil. It was a hydrogen peroxide with some kind of other 5 chemical in there to make it not react as fast as 6 hydrogen peroxide itself would. 7 Q What was the point of the injections? 8 A To oxidize the PCE that was in the soil. 9 O And so what does that mean? What does that mean 10 to oxidize PCE? 11 A Basically, burn it up so that it was not PCE and 12 it would break it down into a nonhazardous 13 14 Q Okay. Was that done? Was that possess done? 15 A Yes. 16 Q Did it work? 17 A For the soil, yes, I believe it did. Why do you believe it did? 19 A They did -- They came back and did more soil 20 borings and determined that it had got the level 21 in the soil below 22 Q Okay. When -- When you were at Madison -- excuse 23 me, University of Wisconsin at Madison, your

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Correct.

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degree, did you say, was in engineering mechanics?

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Page 22 1 Q Okay. Was it in anything else? 2 A 3 O And that was a bachelor's degree? 4 A 5 Do you have any degrees beyond the bachelor's 0 6 degree? 7 A No. 8 Q Graduate degrees, doctor, anything like that? 9 A Nothing at all. 10 Q Okay. The -- Let's talk about any -- Let's talk 11 about any education you've had in the 12 environmental field while you were in college. 13 Did you have any course in environmental studies? 14 A 15 Q Do you hold any licenses in the State of 16 Wisconsin? 17 A Driver's license. 18 I'm sorry. Beyond a driver's license. Do you 19 hold any professional licenses, engineering or 20 otherwise, in the State of Wisconsin? 21 A No. 22 Q Do you hold any -- any professional licenses in 23 any other state? 24 Α 25 0 Okay. Did you ever seek to become licensed

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professionally in the State of Wisconsin?

2 A No.

24

25 A

3 Q Okay. So you're not a licensed engineer.

4 A Correct.

5 Q Why not?

6 A Just never did it.

7 Q Okay. All right. So you took no environmental

8 courses in college; is that correct?

9 A Correct.

10 Q All right. Prior to 1996 did you take any classes

or courses or training in the environmental field?

12 A I don't believe so.

13~~Q~~Okay. I don't mean for this to be a rude

14 question, so forgive me, but given what you've

15 already told me in this deposition would you tell

16 me what you believe qualified you to be

17 environmental manager for Madison-Kipp in 1996?

18 Other than the fact that you -- you

had been at the company to that point for 16

20 years, what qualified you specifically as of 1996

21 to be the environmental manager?

22 A I believe what happened was is I did it in the

23 interim while they were looking for someone, and

24 they never found anybody else and just ended up

25 leaving me have that position.

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1 Q Okay. What qualified you to do it in the interim?

2 A Engineering is engineering, you know. Back then

3 there wasn't a whole lot of environmental

4 engineering out there. Environmental engineering

5 was very new back then.

6 Q Okay. Prior to 1996 had you ever had any

7 experience with groundwater contamination?

8 A I mean, I knew in '94 because they asked me all

9 kinds of questions about the facility because I

10 had been there a long time, but -- they asked me

11 about groundwater contamination.

 $12\ \ Q$. Let me ask you a better -- Thank you. Let me ask

13 you a better question. Had you ever been trained

in how to investigate or remedy a groundwater

15 contamination problem?

16 A No.

17 Q Had you ever been trained to investigate or remedy

any soil contamination problem?

19 A No.

20 Q How about a vapor contamination problem?

21 A No

22 Q Okay. Do you have any special training in the

23 chemical properties of perchloroethylene, or PCE?

24 A No.

25 Q Were you ever given any training to help you

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 25 understand whether PCE is dangerous when it comes 2 in contact with human beings?

3 A Beyond reading the MSDS and reading the

environmental codes that say that it's the -- at

5 some particular level it becomes a hazard.

6 Q That would be the extent of the information that

you had about the dangers of PCE?

8 A Um-hum

9 Q Yes?

10 A Correct

11 Q Okay. Do you know who it was that decided that

12 you should be the environmental manager for

13 Madison-Kipp starting in 1996?

14 A I don't recall

15 Q Okay. Well, did you -- did you ask for that job?

16 A I don't believe so.

17 Q Did someone come to you and say this is now part

18 of your job?

19 A Yep.

20 Q Who was that someone, please.

21 A I can't remember.

22 Q

23 A Okay. Long time ago.

24 All right. When it happened, did it seem like a 0

25 significant event to you?

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1 A

2 Q Did you get more money because that was added to

3 your job responsibilities?

4 A I don't recall for sure, but I would guess so.

5 Q I'm not asking you to guess. Someone's probably

6 told you that, but I'm looking for what you know.

7 A I don't know that for a fact, no.

8 Okay. All right. So did you ever work with a guy

9 named Tom Caldwell?

10 A

11 Q Who was -- What was Caldwell's job at

12 Madison-Kipp?

13 A He was the -- He had various titles, but

14 president, CEO

15 Q Of the company?

16 A Of the company.

17 Q Okay. And did you work with Caldwell on

18 environmental matters?

19 A He asked me questions about environmental things,

20 yes, and he would sign some of my documents that

21 needed signing by an executive.

22 Q Did you work with Caldwell on the groundwater or

23 soil or vapor contamination problem?

24 He brought me in to meetings when they were

25 discussing it with the consultants.

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1 Q Okay. You said a couple times in -- during this

2 deposition that you were consulted about aspects

3 of the contamination problem, did I hear you

4 correctly?

5 A Yes

6 O What do you mean by that? Especially the word

7 consulted, what does that mean?

8 A I wasn't officially in charge of that project and

9 wasn't -- I didn't do the day-to-day things on

10 that project.

11 Any time they had to do something that

12 related to the facility, whether it was punching

13 holes in the ground, because I knew where all the

14 underground utilities were, I knew where -- how

15 big all the footings were, where you could go next 16 to a building, where you couldn't, where there

17 were storm sewers. So anything that had to do

18 with drilling in the ground I got involved with so

19 that I could say you can poke a hole here, but you

20 can't go there.

21 Q Okay. You say you were not officially in charge

22 of the contamination project.

23 Α

Right? Who was? 24 O

25 A It was -- At first it was Bud Hauser, and then

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that was rolled over to Mark Meunier after Bud

2

3 And how did you know that Hauser and later Menuier

4 were in charge?

5 A They were the ones meeting with the consultant.

6 Okay. Let's get an official pronunciation of

7 Mark's last name, please.

8 MR. COLLINS: Could you -- John, could

9 you help me with that?

10 MR. BUSCH: I call him Meunier.

11 MR. COLLINS: Meunier?

12 MR. BUSCH: Yeah.

13 MR. COLLINS: So if I'm screwing that

14 up I can blame you for that, right?

15 MR. BUSCH: Absolutely.

16 MR. COLLINS: Tell him Busch told

17 me to -- Okay. Meunier.

18 MR. BUSCH: It's not Meunier.

19 MR. COLLINS: Okay. Meunier.

20 Q Okay. Did you work with a Jack Schroeder, or

21 Schroeder?

22 Α Yes.

23 Q How do we pronounce it?

24 Α Schroeder

25 Q Schroeder? Okay. Did you work with Schroeder at

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 29 Madison-Kipp on any aspect of the contamination 2 problem? 3 Α Again, on the facility end of it. 4 O Okay. All right. Let's talk about the facility 5 end of it since you keep bring that up, and I 6 appreciate it. Let's get more specific about it 7 now, okay 8 So with regard to the environmental 9 contamination at Madison-Kipp, and I'm talking 10 about PCE, at least, in soil and groundwater, at 11 least, okay. That's what I'm talking about. 12 A Um-hum 13 O All right. So with regard to that contamination 14 problem, and with regard to facilities and how 15 questions about the facilities may bear on the 16 contamination problem, what did -- how did you get 17 involved? 18 A They asked me, because I had been there a while, 19 history of where I knew PCE had been used. 20 O Let's just cover that -- hit the topics generally 21 now, and I may back up and ask you some more. So 22 you -- you discussed with some folks at 23 Madison-Kipp where at the facility PCE had been 24 used, right?

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Um-hum

25 A

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1 Q That was one topic, correct? 2 A Um-hum. 3 Q Correct? 4 A Yes 5 Q Okay. Are there other topics? 6 Which way storm sewers went. As far as if there 7 was a spill, what would happen to it. 8 Q Other topics? 9 Α Location of utilities. 10 Q Do you know why? Why somebody was asking you 11 about the location of utilities? 12 A Due to wanting to do -- finding the extent of the 13 contamination so they wanted to do soil borings in 14 some pattern. 15 Q What utilities? 16 A There are storm sewers, electrical lines, sanitary 17 sewer, natural gas. 18 Q Okay. Any others? 19 A Off the top of my head that's pretty much all 20 that's in the back parking lot. 21 Q Okay. Did you have an understanding -- Did you 22 just say that's in the back parking lot? 23 A Correct, where they -- You were talking in 24 relation to PCE 25 Q Lwas

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1 A So I'm assuming that's where you wanted to know.

2 Q Okay. So when you say the back parking lot, what

3 do you mean?

4 A The parking lot to the north of the facility.

5 Q Okay. Did -- Did anybody tell you or did you have

6 an understanding as to why the location of

7 utilities might be important in connection with

9 A They told me they wanted to drill holes, and I --

the contamination problem?

10 I had to tell them where they could and could not

11 drill holes.

8

12 Q Okay. So it was important to know the location of

13 utilities so nobody drilled a hole through any of

the utility lines; is that right?

15 A Correct.

16 Q Okay. Was there any other reason, do you know

17 about, why -- why people wanted to know the

location of utilities?

19 A Not that I can recall.

20 Q Okay. Well, you said in connection with an

21 earlier topic you said storm sewers, people wanted

22 to know where the storm sewers were.

23 A Right.

24 Q And you said that that was important because if

25 there was a spill that got into the storm sewer

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Deposition of James B. Len

you guys wanted to know where it would go, right? 2 A Correct. 3 Did you -- Did you have the same concern with 4 regard to electrical lines and natural gas lines? 5 A No. 6 Q Okay. All right. So what other topics related to 7 facilities and the contamination did you get 8 involved in? 9 A Off the top of my head I can't think of any 10 11 Q Okay. If you think of any others through the 12 course of the deposition let me know, please,

14 A Okay.
15 MR. COLLINS: Okay. I need to take a

16 break. It will be less than five minutes. I do

17 apologize.

okay?

13

18 MR. BUSCH: Not a problem.

19 (Recess taken.)

20 BY MR. COLLINS:

21 Q Okay. So --

22 A I thought of two more things relating to that.

 $\,$ 23 $\,$ Q $\,$ I knew we could put the break to good use. Two

24 more things about what, Mr. Lenz?

 $25~\ A~\ Well,$ one was any time they wanted to do any I

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 33 1 would recommend contractors, as far as if they 2 were going to dig in the ground or do anything 3 or -- I would go out and get quotes from different people. 5 And then the next thing is I ran the 6 filing system for the environmental, so I filed 7 everything that had to do with anything 8 environmental 9 0 Okay. Let's talk about that filing for a second. 10 Did -- Did the filing at Madison-Kipp include 11 filing for any records relating to PCE; the 12 purchase of PCE, the storage of PCE, the disposal 13 of PCE? 14 A Not my filing. 15 Q All right. 16 A And that was -- I know -- There were two divisions 17 to Madison-Kipp, and the division that I worked 18 for only used PCE, as far as I can remember, until 19 like '83 or '4, somewhere in there. 20 O Okay. What were the two divisions of 21 Madison-Kipp, please? 22 One was the Lubricator Division, which I think was 23 called Lubriquip at that time. I don't know. 24 They changed their name several times, too. 25 Q The Lubricator Division?

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1 Α Yeah. 2 Q Okay. What was the other division? 3 Α The Die Casting Division. 4 Q Okay. 5 Α Which changed its name several times, too. 6 Now, did both of these divisions operate out of 7 the facility on -- I call it Waubesa. Did they operate out of that facility? 9 A Right. The -- The Lubricating Division operated 10 out of the Waubesa end of the building, and the 11 Die Casting Division operated out of the Atwood 12 end of the building. 13 Q We're talking about the building here in Madison, 14 right? 15 A Correct. 16 Q Same building; just different ends of it, right? 17 A Right. 18 Okay. Okay. And both -- for a period of time 19 both divisions, Lubricator and Die Casting, used 20 PCE for a period of time, right? 21 A Correct. 22 Q So tell me about that. Let's start with 23 Lubricator. When did Lubricator Division use PCE, 24 25 Α In approximately '83 or '4 the Die Casting

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Deposition of James B. Len

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Lenz Page 35 Division gave the Lubricator Division a vapor 2 degreaser. And then they had it, and I'm not 3 certain when they got rid of it because the two 4 divisions didn't talk to each other, so -- I didn't communicate with them. So I have no idea 6 how long it was there after that. 7 Okay. So in 1983 or 1984 the Die Casting Division 8 gave the Lubricator Division a vapor degreaser. 9 Α 10 O What do you mean gave? Did they kind of walk it 11 down the length of the building and hand it to --12 A It got moved from one position to another 13 position. 14 Q Physically moved. 15 Physically moved, yes. 16 Q Okay. All right. Here's what I'm trying to get 17 at. You're trying to be helpful, and I appreciate 18 that, let me say that. What I'm trying to get at 19 is, if we can do it this way, let's -- Lubricator 20 Division, they used PCE from what year to what 21 year and -- and for what? Can you help me with 22 that? 23 A I believe -- I can't say what the Lubricator 24 Division used it for. I know they used it in 25 their vapor degreaser from approximately 1983, '84

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Len Page 36 to -- I'm not certain when they got rid of it, but 2 I know it was gone in -- Whenever they sold the 3 Lubricator Division, it was definitely gone by then. The Lubricator Division moved out of the 4 6 Q And when was the Lubricator Division sold? 7 Α Oh, boy. 8 Q Approximate, please. 9 Α '91 or '2. 10 O Okay. Do you know if the Lubricator Division used 11 PCE before 1983 or 1984? 12 A Not that I know of. 13 Q Okay. You believe that the Lubricator Division 14 started using PCE in 1983 or 1984 because that's 15 when the Die Casting Division gave the Lubricator 16 Division the vapor degreaser; is that right? 17 A 18 O And the vapor degreaser is where, at least in the 19 Lubricating Division, the PCE was used, correct? 20 A As far as I know, yes. 21 Q Okay. All right. So tell me what you know about 22 the Lubricator Division's use of PCE in the vapor 23 degreaser. Let's start with what was done in that 24 vapor degreaser that used PCE? I'm talking about 25 in the Lubricator Division now.

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 37 1 A It was used to clean parts post-manufacturing. 2 Q Okay. So after a part had been manufactured they 3 would dip it into the vapor degreaser? Α It would be placed in the vapor degreaser, yes. 5 Q Placed in how? Mechanically? 6 Α There were baskets that the parts were put in, 7 approximately three-foot by three-foot. 8 Q 9 Α And they would be picked up with a -- a small 10 hoist and set above the fluid and the -- the PCE was heated. And so the vapors would come up, and 11 12 because the parts were cold the vapors would 13 condense on the parts and drip off and clean the 14 parts. So the parts never touched the PCE. They 15 touched the vapors of the PCE. 16 Q Understand. Okay. So the -- again, staying with 17 the Lubricator Division now, and staying with 18 this -- this degreasing operation that you're 19 telling us about now, was the vapor degreaser 20 above the floor? Sunk into the floor? Describe 21 that for us, please. 22 A Sat on the floor 23 O Sat on the floor, okay. So it was not in a pit?

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24 A

25 Q

19 A

20 O

22

23

25

24 O

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Just pour it in.

Pour it into what?

that four-foot by six-foot pan.

21 A The vapor degreaser was just a big, deep pan. And

there was like a foot, or something, of PCE in

Okay. So would they -- would these personnel with

the buckets full of PCE climb up a ladder and pour

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No. It was a tank that just sat on the floor.

Okay. And the vapor degreasing tank that you just

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1 made reference to, is this what was brought to the 2 Lubricator Division by the Die Casting Division? 3 A Correct. 4 Ο Okay. So describe the tank. Let's talk about the 5 size of it first. 6 A That was a long time ago. It's approximately 7 six-foot by four-foot. 8 Q Okay. 9 Α And it was maybe eight-foot high with a hood on 10 the top that had a duct and a fan that blew 11 12 Q All right. And what was it made of, its walls? 13 Α Steel. It was just plain steel. 14 0 Plain steel? 15 A It wasn't painted or anything, as far as I 16 remember. It was a big black box, is what I 17 18 All right. Did -- Did PCE escape in any fashion 19 the vapor degreaser in the Lubricator Division? 20 A The vent went out the window 21 Q Okay. When the -- When -- You described parts 22 were lowered in a basket into the degreaser. You 23 described that operation, all right. The PCE was 24 already in the vapor degreaser prior to that time, 25 right? Halma-Jilek Reporting, Inc. (414) 271-4466 Experience Quality Service!

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Lenz Page 39 1 A All right. So how did it get into the vapor 2 0 3 degreaser? 4 A They carried it in buckets. Okay. Who's they? 5 Q 6 A The personnel that worked in that area. Q Okay. Sometimes you? 8 A I never carried any, no. I lifted a bucket once because I found out how heavy that stuff is, 10 but --11 Q Okay. So personnel at the plant would carry PCE 12 into the vapor degreaser, right? 13 A Correct. 14 Q And the PCE was in buckets, right? 15 A Yep. 16 Q Okay. So when the personnel brought the --17 brought the PCE to the vapor degreaser, what 18 would -- would they pour it into something?

Page 40 it in over the top, or how would it get in? 2 A No. It was just right there. There were doors on 3 the front that they opened up to put the baskets 4 in. They just had the doors open and they just poured it in. Be like pouring it into a bathtub. 6 Q Well, I understand, except bathtubs don't have 7 doors. So, I'm trying to figure out, did the 8 doors go all the way down to the very base? 9 When the doors were closed the -- the doors went 10 down in the tank, and so it was completely 11 enclosed in when -- They weren't sealed at all, 12 but it was just doors that would close. 13 Q Okay. All right. So personnel would take buckets 14 of PCE and pour it right onto the floor of the 15 vapor degreaser, is that right? 16 A Into the tank of the vapor degreaser. 17 Q Into the tank. 18 A Yes 19 Okay. Basically, the bottom of the vapor 20 degreaser, right? 21 A Um-hum 22 Q Yes? 23 Α 24 Ο Okay. And how much PCE would be poured into the

vapor degreaser before someone would start

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25

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 41 operating the degreaser? 2 A Without taking my calculator and calculating it, I'm guessing 75 to a hundred gallons. 4 Q Okay. And this is pure PCE, right? 5 A Pure PCE, yep. 6 Q Okay. And so however many buckets it took to get you 75 to a hundred gallons, that's what it took, right? 9 Yep. Α 10 Q How big were the buckets? How many gallons were the buckets? 11 12 A Five or six-gallon buckets. 13 Q Okay. All right. And -- And where -- where did 14 these personnel get the PCE from? In other words, where did they get their buckets filled with PCE? 15 16 A There was a storage tank. Where? Outside or inside? 17 O 18 A It was outside. 19 Q Where, please? 20 A I need a map to point. I mean, it's kind of hard 21 to describe that position, but it was in the back 22 parking lot in a little cove or cut-out in the 23 notch in the building next to the stairwell.

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24 Q

25

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Okay. All right. So was the -- the tank with the

PCE in it that the guys would take their buckets

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1 to to fill it up, was it always in the same place 2 at the facility during your tenure there, or did 3 it ever move? 4 A It moved. When the vapor degreaser moved from Die 5 Cast to the Lubricator Division, the tank moved 6 7 To be closer to the vapor degreaser, I assume. Am I right about that? 9 Α Yes 10 Q Was it ever in any other location other than the 11 two that you've just described? 12 A It was located in the -- what's known as the oil 13 shed 14 Q Okay 15 A When the Die Cast Division had it. 16 Q Okay. So that's three different places? 17 A Two. 18 Okay. So Die Cast Division it's in the oil shed, О 19 right? 20 A Correct. $21 \quad Q$ And then when the vapor degreaser moves from Die 22 Cast down to Lubricator the PCE tank goes with it, 23 right? 24 25 0 Okay. How -- How big was that PCE tank? What was (414) 271-4466 Halma-Jilek Reporting, Inc. Experience Quality Service!

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its capacity, do you know?

2 A I believe it was a 250-gallon tank.

3 Q Okay. Did it sit on the ground, or did it sit on

something else?

5 A If you know what a fuel oil tank looks like --

6 Q I do.

7 A -- it looks just like a fuel oil tank.

8 Q Okay. And how would it come to be filled with

 $10~\ A~\$ It was delivered by a company that -- just like a

11 fuel oil tank would be.

12 Q Hook a hose up to it or something?

13 A Just fill nozzle, basically, just like when a fuel

14 oil company delivers fuel oil. They just

15 delivered PCE into the tank.

16 Q Okay. And how often would that happen?

17 A I don't -- As often as they needed it. I don't

18 know. I didn't order it. I didn't do any of

19

20 Q Who -- Who would be the most knowledgeable person,

21 in your view, to have worked at Madison-Kipp and

22 to know about PCE purchases, storage, et cetera?

23 Is it you?

24 A I never purchased PCE.

25 Q Okay. Who would be the most knowledgeable person Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Page 44 about the purchase and storage of PCE? 2 A The only person that I remember that was a 3 purchasing agent being back that far was Jan 4 Adler A-D-L-E-R? Ο 6 A Yes 7 Q Man or woman? 8 A 9 Okay. So periodically someone would come with 10 a -- with a PCE truck, connect the truck by hose 11 to the PCE tank at Madison-Kipp and fill the tank 12 up, correct? 13 A Correct. 14 Q Okay. Did you see this happen? 15 A I don't recall it happening, no. 16 Q You don't recall seeing it happen? 17 A I don't recall seeing it happen. 18 Q Do you recall ever learning that -- that in those 19 operations where the PCE tank at Madison-Kipp 20 would be filled that some PCE would spill out onto 21 the ground? 22 A I never saw any.

Did you ever hear about that happening?

You did? Who did you hear that from?

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23 Q

25 Q

24 Α

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 45 A Maintenance personnel. 2 Q Okay. You got any names for me, please? 3 A Guys that old. George Schler. 4 Q 5 A Schler. 6 Q You didn't know this was going to be a spelling 7 quiz, did you? 8 A No, I didn't. 9 Q Do your best with that last name, will you. 10 A S-C-H-L-E-R. 11 Q S-C-H-L-E-R? 12 A I believe so. 13 Q Is there a T in there somewhere or a D? I don't think -- I don't think there is. 15 Q So George was a maintenance guy? 16 A He was a maintenance guy. 17 Q You think he's retired now, or --18 Α Oh. veah. 19 Q Yeah? Any other maintenance guys who told you 20 about PCE spilling when the -- when the PCE tank 21 at Madison-Kipp was being filled? 22 A I don't -- I don't remember any other direct 23 conversations. 24 O Okay. Well, what were you told about how

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25

24 A

25 Q

Correct

Out onto the ground, correct?

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frequently these kinds of spills would occur,

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1 spills when the PCE tank had Madison-Kipp was 2 being filled? How often did that happen, 3 according to what you were told? A I don't know if any ever happened when the tank 5 was being filled. 6 All right. I thought that's what you were telling 7 me. What did George --8 A I thought you asked the question were there ever 9 any spills of PCE that I heard about. 10 Q All right. Well, that wasn't what I meant to ask, 11 but let's make that the question, okay. So my 12 question is were there ever any PCE spills of any 13 kind that you heard about? 14 A That I heard about? 15 O Yeah 16 A 17 Q How about that you witnessed? 18 I never witnessed a spill. 19 Q Okay. So what PCE spills of any kind at 20 Madison-Kipp did you hear about? 21 A Back before the parking lot was paved they would 22 just throw buckets of it out the parking lot to 23 get rid of it. 24 Q Who -- Who threw the buckets of PCE out onto 25 the -- the area which became the parking lot? (414) 271-4466 Halma-Jilek Reporting, Inc. Experience Quality Service!

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Lenz Page 47 People that were cleaning the machine. 2 Q What machine? 3 Α The vapor degreaser. 4 Q Okay. And now this was spent PCE? 5 A Yeah. Dirty. 6 Q In other words, PCE after the degreasing operation had taken place. 8 A Correct. So this is PCE laying, if you will, at the bottom 0 10 of the degreaser? 11 A 12 $\,$ Q $\,$ So what you were told was that -- that people at 13 the plant would scoop buckets of spent PCE out of 14 the bottom of the vapor degreaser and pour it 15 outside, right? 16 A Correct. 17 Q All right. Describe for me as best you can the 18 area where these buckets of spent PCE were poured. 19 A I don't know that. 20 Q What were you told about where they were poured? 21 A Right out the door next to the vapor degreaser. 22 Q All right. We're talking about outside the 23 building, right?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Page 48 Α Correct 2 Q And it's now a parking lot? 3 It's a driveway more than a parking lot there. 4 Okay. Now, who -- who told you that that had gone 5 6 A It was general knowledge. 7 Okay. And -- Well, how did you learn about it? 8 By observation, by people talking at the plant? 9 How did you learn that this was going on? 10 A When the whole PCE contamination thing came up 11 people were talking, you know. 12 Q In your presence? 13 A Yeah. 14 Q Okay. That's a dumb way to ask a question, but 15 that's the way lawyers ask questions like that, so 16 I'm sorry about that. So this is something you 17 heard about in general conversation around the 18 plant after the -- the PCE contamination problem 19 arose; is that right? 20 A Correct 21 Q Okay. And it arose sometime in the 1990's? 22 A I believe it was '94 when they found it over at 23 the Brass Works. 24 Ο Okay. So in approximately 1994 am I correct that 25 that's when the discussion around the plant

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 49 started that you heard or you overheard where you 2 learned that -- that buckets of spent PCE had been 3 scooped out of the vapor degreaser and poured outside; is that right? 5 A Um-hum. 6 Q Yes? 7 A Yes. 8 Q Okay. And what was your understanding about --9 about for how long that kind of thing had been 10 going on? 11 A I had no idea how long it had been going on. 12 Q Did you ever ask? 13 A No, I don't believe so. 14 O Again, I mean no disrespect, but I want to ask you 15 why did you never ask? If you were the 16 environmental manager at Madison-Kipp and one of 17 the things you --18 A I wasn't in 1994. 19 Q Okay. But you became in 1996, correct? 20 A 21 Q All right. And you were interim before 1996, 22 23 A Before 1996?

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became the --

24

25

0

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Yeah. Didn't you tell me earlier that before you

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1 A I said I was interim between Bud Hauser and Mark 2 Meunier. 3 Q Okay. You were environmental manager at Madison-Kipp Corporation for 10 years. 5 Α Correct. 6 Q Approximately, correct? 7 Α (Witness nods.) 8 Q Yes? 9 Α Yes 10 Q At any time did you ever ask anybody at the plant 11 how long people had been dumping buckets of spent 12 PCE scooped out of the degreaser outside? 13 A I don't recall ever asking that question. 14 You didn't? Did you ever make any effort to find 15 out how long that had been going on? 16 A No. 17 Q Did you ever try to find out who was involved in 18 doing that? In other words, who was doing it, who 19 was doing the dumping? 20 A I asked that question, yes. 21 Q You did? 22 Α 23 Q Okay. What did you learn? 24 Α I never --25 0 What kind of employees were doing it?

Deposition of James B. Len

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Lenz Page 51 It was operators. 2 Q Operators. Operators of the vapor degreaser? 3 Α 4 Okay. And how many such personnel are we talking about? One, two, five, 10? 6 A Ten. 20. Well, there's a big difference between 10 and 20.

8 How many operators of the vapor degreaser were

10 A I have no clue

11 Q Even while you were the environmental manager you

12 have no clue? You had no clue how many operators

13 of the vapor degreaser there were?

14 A The vapor degreaser was gone long before I was

15 environmental manager

16 Q Well, I understand, but isn't it true that while

17 you were environmental manager the company that

18 you worked for was trying to find out how PCE got

19 into the soil and groundwater? Isn't that true?

20 A Yes.

21 Q Were you part of that process, that effort to find

22

23 No, not a lot. I was asked.

24 O You were asked?

25 A They asked me because I had been there long

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp enough. 2 Q Okay. Who asked you? 3 Mark Meunier. Well, back then it was Bud Hauser. Okay. 4 Q Bob Nauta. 5 Α 6 O He was an environmental consultant, right --8 Q -- for the company? What did they ask you? 9 They asked me what I knew about how the stuff was 10 disposed of and where it was disposed of. 11 Q And what did you tell them? 12 A I -- I knew no direct knowledge of it, and from 13 what I heard it was dumped outside. 14 Q Did you tell them what -- essentially what you're 15 telling me now? 16 A Yes. 17 Q All right. All right. See, I'm -- I'm -- I am

18 trying to find out what you know, including, you 19 know, what you heard around the plant, okay 20 That's -- My clients, who are homeowners in the 21 immediate vicinity of the plant, are trying to 22 find out as well how the PCE got outside the 23 plant. That's why I'm asking these questions. I know you appreciate that, right? 24 25 A Um-hum.

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 53 1 0 You know that's why I'm asking you these 2 questions. Yes? 3 A 4 Q Okay. All right. So the general knowledge around 5 the plant was that operators of the vapor 6 degreaser would scoop the spent PCE out of the 7 bottom of the vapor degreaser and walk it outside a door and dump it on the ground outside the 9 building, correct? 10 A Correct 11 MR. BUSCH: I object to the form. Go 12 ahead and answer. 13 BY MR. COLLINS: 14 Q All right. And this was, according to the general understanding around the plant, this was multiple 15 16 operators of the vapor degreaser; perhaps 10 or 17 20, correct? 18 A Correct. 19 Q All right. And it was general understanding 20 around the plant that this had gone on for some 21 number of years, correct? 22 A 23 Q Was there ever any effort undertaken by you or

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25

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anybody else that you know of to determine how

much spent PCE was dumped out onto the ground by

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that manner that you've been describing for me? 2 A I know of no such effort to gather a quantity. 3 Q Okay. Was there any effort made that you were aware of, by use of records concerning the 5 purchase of PCE, for example, to determine how 6 much PCE made its way onto the -- onto the ground 7 outside the plant in that fashion? 8 A I know of -- I know they were looking for records 9 for how much was purchased, and I don't know if 10 they ever found any or not. 11 Q So someone was looking for records concerning how 12 much PCE had been purchased at the plant, correct? 13 A Correct. 14 Q Who was that someone, please? 15 A It was Bud Hauser --16 Q 17 Α -- was looking for those records. 18 Anybody else? 19 Α Not that I recall. 20 Q Okay. Do you know if Mr. Hauser ever found those 21 records? 22 A I don't know. 23 Have you ever seen records regarding the company's 24 purchase of PCE? 25 Α No (414) 271-4466

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Lenz Page 55 1 Q Did you ever hear anyone estimate how much PCE got 2 dumped out onto the ground in the fashion you've described for me? 3 4 A Not that I recall. 5 Q The -- The ground -- The -- The ground on which the PCE was dumped in the fashion you've been 6 describing for me was later paved over; is that 8 right? Sometime before I started. Before you started. 10 Q 11 A 12 Q So is it your understanding that this PCE dumping 13 occurred before you started at the plant? 14 A Correct. 15 Q Okay. Do you know when the PCE dumping that 16 you've been describing for me ended? 17 A All -- I can't -- All I can say is what they were 18 doing when I started. 19 Q What were they doing when you started, which was 20 about 1988 you said, right? 21 A Yes, mid 1980. 22 Q Where were they doing with spent PCE in mid 1980? 23 Α There was a tank in the -- in the plant that they 24 dumped the waste in, and there was a guy that --25 called Max Ashline that would come and pump it

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Page 56 $2 \quad Q \quad \text{All right. So when you got there by mid } 1980$ 3 there was a -- a -- a tank inside the plant. 4 A Inside the plant, yes. 5 Q Correct? And this was a tank where spent PCE 6 would be placed, right? 7 Α 8 Q How did the spent PCE get from the vapor degreaser 9 to the tank? 10 A I never saw it happen. 11 Q Okay. Well, did you ever, by any other means, 12 learn? Discussion around the plant, anything like 13 14 A I was told in buckets. 15 Q Okay. Scooped out in -- in buckets like it had 16 been previously? 17 A Correct 18 O And then walked over to the tank? 19 A 20 Q All right. How close was this tank to the vapor 21 degreaser? 22 A Fifty feet. 23 Q Okay. Do you know why the change was made from 24 dumping the PCE out the -- out the door onto the 25 ground to putting it in this tank inside the

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Deposition of James B. Lenz Page 57 building? 2 A Not for certain. 3 Q What have you heard about why the change was made? 4 A I'm guessing it's because they paved the parking 5 lot and they had nowhere else to dump it. 6 Q Okay. And so then when it got into this tank Max would come by and do what? 8 A 9 Q And was Max an employee at the plant? 10 A 11 Q Outside contractor? 12 A He was a septic tank person. 13 Q All right. And so Max would come with a truck? 14 A 15 Q And what would Max do? 16 A Suck the tank out. 17 Q How -- How -- By means of a hose? 18 A Correct. 19 Q Okay. He'd suction it out of this tank and into 20 his truck. 21 A Correct 22 Q Okay. Did you ever see that going on? 23 A Yes.

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24 Q

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Okay. How far away was Max's truck from the tank

that he was sucking spent PCE out?

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1 A Just on the other side of the wall. 2 Q Five, 10, 20 feet? 3 A Twenty feet. 4 Q Twenty feet? Okay. Was PCE ever spilled? Did it 5 ever make its way onto the ground in that 6 operation? 7 A I have no firsthand knowledge. 8 Q Okay. Do you have any second or third-hand 9 knowledge? What were you told? 10 A Back then there were spills all the time and they 11 weren't worried about. 12 Q When you say back then, when do you mean? 13 A Early '80's. 14 Q Okay. So your understanding is that in the early 15 1980's there were PCE spills all the time, right? 16 A That's what I heard from other people. 17 Q Okay. Other employees at the plant? 18 A Other employees, um-hum. 19 Q Can you name any of them for me, please? 20 A The same George Schler. 21 Q Okay. George was a maintenance guy, right? 22 A He was a maintenance guy, correct. 23 Q Okay. Who else? 24 Wally Largen. Α 25 Q You know what I'm going to ask you, right? How do

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

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you spell it?

2 A L-A-R-G-E-N

3 O G what?

4 A G-E-N.

5 Q Wally?

6 A Correct.

Also a maintenance guy?

8 A Walter is his real --

9 Q Okay. Walter. Was Walter a maintenance guy?

10 A Correct

11 Q Is he still working at the company, do you know?

12 A No.

13 Q Is he still alive, do you know?

14 A Yes, I think he is.

15 Q Retired?

16 A Yes.

17 Q In the area, do you know?

18 A I believe he's in Madison.

19 Q Okay. Okay. So we got -- we got George and we

20 got Walter who were maintenance guys who told you

21 things. And then who else told you -- told you

22 about how PCE was -- was dumped in the early

23

24 A Mary Jelings. I know you're going to ask me how

25 to spell it. Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

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The first name is?

2 A I imagine it's Marvin. I just knew him as Marv.

3 Q Okay.

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4 A And J-E-L-I-N-G-S, I think. I don't know. I'm

the world's worst speller.

6 Q That's all right. Also a maintenance guy?

7 Α

8 Q Okay. Anybody else who told you these things?

9 A Not that I recall.

10 Q Okay. As these maintenance people, George and

11 Walter and Marvin, were relating things to you,

12 were they telling you things they had either done

13 or seen done?

14 A Correct.

15 Q All right. And they told you that in the early

16 1980's PCE was -- was dumped regularly; is that

17 right?

18 A Um-hum.

19 Q Yes?

20 A It wasn't dumped.

21 Q Spilled?

22 A It was spilled, yes.

23 Q Okay. And they told you that it had been spilled

24 regularly at the company; is that right?

25 A Yes.

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 61 1 Q Okay. Now, what -- what kind of spills did they 2 describe for you? What PCE spills, the regular PCE spills that these three maintenance workers 3 described for you, tell me more specifically --5 A You're carrying a bucket and it sloshes and spills 6 some on the floor. 7 Q Okay. Any other kind of spills? 8 A That's basically what they told me. 9 Q Okay. Was PCE used for a time at the plant to --10 to clean parts or tools, you know, that had gotten 11 dirty that had grime or grease on them? I'm not 12 talking about the vapor degreaser now. I mean was 13 PCE used as a -- as a common cleaning agent --14 A Yes. 15 Q -- at the plant? Okay. Tell me about that. 16 A Die cast operators would go and get a bucket with a few inches of PCE in the bottom and take a brush 17 18 and clean their machines. 19 Q All right. Where did the PCE go after it had been 20 used to clean the machines? 21 A It would drip off and go into the sumps underneath 22

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23 Q

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Page 62 1 Some machines it was just soaked up by Floor Dry. 2 Other machines had actual little trenches around 3 them that would get collected. 4 Q Where did the trenches lead? 5 A They would just lead to a collection area where 6 they'd come with a vacuum sucker and suck it up 7 and put it in that same tank that Max Ashline hauled away. 9 Q Did it ever go into floor drains, the PCE that had 10 been used by die cast operators to clean their 11 machines? 12 A There were not any floor drains in the die casting 13 area, and I'm not certain if they ever used the 14 PCE in the areas where there are floor drains to 15 clean those machines. 16 Q Okav 17 A Because they weren't very dirty machines. 18 What else have you heard, besides what you've told 19 me so far in this deposition, about how PCE came 20 to be spilled or dumped inside the facility or on 21 the grounds outside the building? 22 A I don't recall any other types of spills or uses. 23 Okay. So we've got the -- the -- the dumping 24 outside the door that you've described, correct? 25 Α Um-hum, yes. (414) 271-4466 Halma-Jilek Reporting, Inc. Experience Quality Service!

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1 Q Yes? All right. We've also got some spills that

By means of a drain or some sort of hole in the

It varied a lot based on what machine it was.

 $2\,$ $\,$ $\,$ occurred later when -- when Max showed up and

- 3 sucked the spent PCE out of the tank into his
- 4 truck, correct?
- 5 A Correct.
- $6\quad Q \quad \ \, \text{And these were spills} -- \ \, \text{Where would the PCE that}$
- 7 you observed to be spilling during that operation,
- 8 where did that PCE go?
- 9 A Typically spilled on the floor next to the tank,
- 10 and it would just evaporate.
- $11\ \ Q$ Okay. We've also got spills from folks carrying
- the PCE in buckets, right?
- 13 A Correct.
- 14 Q To or from the vapor degreaser, right?
- 15 A Correct.
- 16 Q It would be spilled when they would -- when they
- 17 would bring PCE to the vapor degreaser or en route
- $18\,$ to the vapor degreaser and PCE would be spilled
- 19 out of the buckets -- spent PCE would be spilled
- 20 out of the buckets when it was being taken from
- 21 the vapor degreaser, correct?
- 22 A I can't say that for sure. All I can say is that
- 23 I was told that they would spill PCE out of
- 24 buckets.
- 25 Q Okay. So you've described two -- Well, the -- the

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- l plant had a vapor degreaser at one time or another
- 2 in two different locations, right?
- 3 A Correct.
- 4 Q Once Die Cast, later Lubricator, right?
- 5 A Correct
- $6\quad Q\quad \ \ \, Okay.\,\,And it was the -- it was the same tank,$
- 7 physically the same tank; just brought from one
- 8 location to another at a certain time, right?
- 9 A Correct.
- 10 Q 1983 or '84.
- 11 A Somewhere in there.
- 12 Q Somewhere in there, right? Okay. Let's talk
- 13 about when the tank was in Die Cast. I want to
- 14 ask you now about the area immediately underneath
- 15 and around the vapor degreaser when it was in Die
- 16 Cast, okay?
- 17 A Okay.
- $18\ \ Q$ Were there any drains in the floor underneath
- 19 where the vapor degreaser was in Die Cast or in
- 20 the area surrounding where the vapor degreaser was
- 21 in Die Cast?
- 22 A I think the closest drain was about 50, 60 feet
- 23 away.
- 24 Q In Die Cast?
- 25 A In the -- where it was in the Die Cast area.

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 65 There was one drain over in the corner of the 2 3 Q Okay. And where did that -- that drain go to, the one in Die Cast you just told me about? Where did 5 that lead to? 6 A That lead to the sanitary sewer. 7 Q Okay. And how about Lubricator now. Were there any drains underneath or in the -- in close 9 proximity to the vapor degreaser? 10 A I don't recall any floor -- I don't have really good knowledge of what was there when the vapor 11 12 degreaser was moved there. Only after I took over 13 responsibility for that portion of the building 14 there weren't any floor drains there. 15 Q Okay. Did PCE ever make its way into the floor 16 drains at the plant by any means? Spill, dump, 17 you know, pushed there with a broom, anything like 18 19 A I have no direct knowledge of it. 20 Q Well, do you have any indirect knowledge of that 21 happening? 22 A 23 Q You described one location where vapor degreaser 24 operators would -- would pour spent PCE onto the

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1 me? Yes? 2 A Yes. 3 Q Okay. Were there any other locations, other than that one you've described for me in this 5 deposition, where someone told you or you somehow 6 learned that PCE, spent or virgin PCE, had been 7 dumped onto the ground? 8 A I learned through this whole discovery process 9 after 1994 that there was apparently a leak on the 10 tank that they had over from the Lubricator 11 Division from the storage tank. 12 Q Okay. Now, this is a 250-gallon tank? 13 A Correct. 14 Q Okay. This is the one where from time to time it 15 would get filled up with PCE? 16 A Well, both tanks did, yes. 17 Q So there was one in Lubricator and one in Die 18 19 A Yes 20 Q About the same size? 21 A 22 So each was about 250 gallons and each was used 23 for the storage of PCE, correct? 24 25 0 And in each maintenance workers would come there

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ground. You described that location, right, for

and fill up their buckets with PCE, right?

2 A Correct.

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3 Q All right. Tell me -- Describe for me how that

4 worked. Was there some sort of a spigot or -- or

valve or something? How did that work?

6 A There was some sort of spigot or valve on the

bottom of the tank, yes, that they would set a

8 bucket underneath it and fill it up.

9 Q Was it like a faucet or something?

10 A I believe so, yes.

12 was spilled sometimes in the filling of the

13 buckets?

14 A I was told there were spills that happened there,

15 but I don't have any direct --

16 Q Okay.

17 A -- knowledge of a particular spill or anything.

18 It was just hearsay that I was told.

19 Q I understand, but were you told, for example, by

20 these three gentlemen who were maintenance workers

21 whom you've identified for me, George and Walter

22 and Marvin, that -- that PCE sometimes spilled

23 when the buckets were being filled up at the PCE

24 storage tank?

25 A Yes.

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1 Q Yes? Okay. Were there any drains underneath or

2 in the vicinity of either of the PCE storage

3 tanks, either in Die Cast or Lubricator?

4 A The -- By -- What do you mean by drain?

5 Q Floor drains.

 $\begin{tabular}{ll} 6 & A & Floor drains that went to the sanitary sewer? \end{tabular}$

7 Q Floor drains that went anywhere. If you would

8 answer that question, then my next one's going to

9 be where did they go.

10 A Okay. No, there's no floor drains by the -- where

11 the tank was for Die Cast.

12 Q Okay.

13 A And the one where it was for the Lubricator

14 Division drained out into a grassy area and

15 eventually would hit a storm sewer or a storm

16 pipe

17 Q The Lubricator Division drain, was that a drain --

18 A The tank was outside.

19 Q Um-hum.

20 A And there was a concrete area, and then it was

21 grass for 75 feet before it would hit a storm

22 drain.

 $\,$ 23 $\,$ Q $\,$ $\,$ So the Lubricator Division PCE storage tank was

24 outside.

25 A Correct

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Deposition of James B. Lenz Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

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1 Q Is that right?

2 A Yeah.

3 Q All right. And it was -- And the Die Cast one was

in the oil shed.

5 A Correct.

6 Q And that's also outside, right?

7 A The oil shed's outside, correct.

8 Q Now, did -- did both PCE storage tanks, the one in

9 Lubricator and the one in Die Cast, sit on gravel?

10 Sit on grass? Sit on concrete?

11 A They were both on concrete.

12 Q Okay. Like a concrete pad or something?

13 A It's -- The oil shed has a concrete floor, and

14 where it was for the Lubricator Division it's on a

15 concrete pad, if you will.

16 Q All right. So the Lubricator Division concrete

17 pad had a -- had some sort of a drain in it?

18 A It sloped down to a grassy area.

19 Q Okay. So if anything were spilled on that

20 concrete pad and allowed to roll or to wash off,

21 it would -- and it rolled or washed off in the

22 direction of the slope, it would go to the grass?

23 A Correct.

24 Q Okay. That's Lubricator Division, right?

25 A That's correct.

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1 Okay. So for these -- this PCE dumping and -- and 2 spilling that you've described for me, what is 3 your understanding of the -- the -- the attitude at these times, the times of the spilling and 5 dumping, the attitude of the workers at the plant 6 regarding PCE and how it could be handled? 7 MR. BUSCH: Object to the form of the question without time period, but go ahead and 9 answer 10 BY MR. COLLINS: 11 Q Well, the time when -- when you were told that 12 this spilling and dumping went on. I mean, is it 13 fair to say that the attitude was is that this was 14 a common practice at Madison-Kipp, spilling and 15 dumping of PCE? 16 MR. BUSCH: Same objection. Go ahead 17 and answer 18 THE WITNESS: At the time PCE was not 19 known as a hazardous chemical, and it was like 20 anything else at the time. You just -- You 21 spilled it, you dumped it. 22 BY MR. COLLINS: $\,$ 23 $\,$ Q $\,$ Was PCE spilling and dumping at the times that 24 you've described it for me a common practice, 25 according to what you've been told and what you've (414) 271-4466 Halma-Jilek Reporting, Inc. Experience Quality Service!

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learned?

2 MR. BUSCH: Same objection. Go ahead

3 and answer.

4 THE WITNESS: Yes.

5 BY MR. COLLINS:

6 Q Okay. We've -- We've learned recently, in the

last few months, that for a time at the plant PCBs

8 were mixed with other oils and chemicals at the

9 company and then spread on -- onto the grounds at

the company to settle the dust down. Have you

11 ever heard of such a practice?

12 A Through hearsay, yes.

13 Q Okay. So you -- you have heard through others who

14 worked at the plant that that kind of thing went

15 on?

16 A Correct.

17~~Q~~ All right. Tell me what you've heard in that

18 regard. In other words, let's start with what

19 chemicals were mixed with PCBs in order to do this

20 spreading?

21 A I can't know for certain because that was before

22 my time.

23 Q What were you told? What chemicals were involved?

24 A Hydraulic oils, release agents from die casting,

25 which is -- I'm not even real certain what they

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Deposition of James B. Lena

Deposition of James B. Len

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1 were using back then.

2 Q Okay. PCBs?

3 A The PCBs were all in the hydraulic oil.

4 Q Okay. What other chemicals, if any others,

besides the ones you've already told me about?

6 Cutting oils, for example?

7 A Possibly, yes.

8 Q Okay. So any other kinds of oils or chemicals?

9 A (Witness nods.)

10 Q Well, how about PCE, spent or virgin?

11 A I don't have a direct knowledge that it went

12 there, but it's possible.

13 Q Okay. Well, all right. I mean, lots of things

14 are possible. I'm wondering about what you were

15 told. Were you told that -- that PCE, spent or

virgin, was included with the oils that were mixed

17 with PCBs for purposes of spreading and settling

18 dust down?

19 A I was never told that, no.

20 Q Okay. Do you believe that that happened?

21 A It's possible.

22 Q Why do you believe it's possible?

 $23~\ A~\ The attitude of the time. You just throw it$

24 wherever the closest place to throw it is.

25 Q Throw what?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 73 1 A Whatever you want to get rid of. 2 Q Including PCE? 3 Α 4 Q That was the attitude at the time? Α 6 Q Is throw it wherever? Α Yes. 8 Q Yes? 9 Α Yes 10 Q Okay. And you know that from discussions you've had at the plant and what you learned in working 11 12 at the plant; is that right? 13 A By the time I worked at the plant that didn't 14 happen anymore. 15 Q I know, but you understood that it had happened --16 A 17 Q -- based on your conversations with people who had 18 done it or witnessed it, right? 19 A Correct. 20 Q Okay. So tell me where, according to what you 21 have learned and what you've heard and what you 22 may have otherwise learned, where were these PCBs 23 and other chemicals and oils mixed? Was there a 24 place physically where you learned that they were

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mixed in order so they could be later spread? Is

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there some sort of a mixing area or location? 2 None of that was there when I was there, and I 3 never asked that -- I never really asked that 5 Okay. Well, tell me everything you can about what 6 you heard about that process where PCBs were mixed 7 with other, you know, oils, agents, et cetera, so that they could be spread onto company property to 9 keep the dust down. Tell me everything that you 10 heard about that process. 11 A My understanding was that they just had a tank 12 that they would dump everything in to, and they 13 would go out and spread it on the gravel in the 14 parking lot to keep the dust down. After it was 15 paved, that's when Max Ashline started taking it 16 17 Q Okay. So is it your understanding then that the 18 tank where these PCBs and these other oils were 19 mixed was the tank that later Max came and sucked 20 chemicals out? 21 A I don't know if it was the same tank. 22 Okay. But your understanding is there was a tank 23 at the plant where oils and other chemicals were 24 dumped, right? 25 Α Correct.

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Lenz Page 75 And then it was out of that tank that the 2 chemicals were taken and spread on to the 3 gravel -- what was at the time a gravel parking 4 lot, right? 5 A Correct. 6 O Okay. Don't you believe it's likely that among the chemicals that were spread in that fashion was 8 spent PCE? 9 A It's likely. 10 O Yeah. And so what I had heard, just in the work 11 that Norm and I have done so far in the case, is 12 that the spreading was done to settle the dust 13 down, to keep the dust down. You had heard that, 14 15 A That's what I was told, yes. 16 O Now, wasn't there another reason, though, to do 17 it? In other words, to -- the other reason being 18 to -- to get rid of these oils? 19 A True. 20 Q All right. So it was another mechanism by which 21 they were dumped or disposed of, right? 22 A Correct. 23 Q And according to what you learned about this 24 process of spreading PCBs and other chemicals on

to the gravel parking lot, over how -- how big an

Page 76 area did this spreading go on, according to what 2 vou heard? 3 I never really asked how big an area. Okay. How -- How large was the gravel parking 4 5 6 As far as I know, it's the same size as it is now Α 7 payed. 8 Q Okay. Okay. 9 MR. COLLINS: I need to take five 10 minutes. Can we do that, please? 11 MR. BUSCH: Yeah. 12 MR. COLLINS: Are you doing okay, 13 Mr. Lenz? 14 THE WITNESS: Yes. 15 (Recess taken.) 16 BY MR. COLLINS: 17 Okay. So Mr. Lenz, are you okay to keep going? 18 A 19 Okay. So now if there was PCE in what was spread 20 on to the gravel parking lot, that's another way 21 PCE got outside the plant, right? 22 A That's possible, yes, true. 23 Okay. So beyond what you have told me so far in 24 the deposition, can you think of any other way 25 that PCE got spilled or dumped inside or outside

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 77 the plant at Madison-Kipp? 2 No. Those are the only uses I can remember way 3 back then. 4 O Okay. Let's go back to the vapor degreaser a 5 little bit because there's one part of it I didn't 6 ask you about. I want to ask you about it now. 7 All right. So the vapor, some of it 8 moves upward from the parts. Because it's vapor 9 it's moving up, right? 10 A Right, correct. 11 Q Okay. And then what does it hit? Some of the 12 degreasers I'm familiar with it hits a -- a 13 condenser or hits something before it keeps going 14 up. Tell me how this one worked. There was no condenser in it. 15 A 16 O 17 A 18 O So there --19 A Not that I remember. 20 O You -- You said that there was a -- a vent? 21 A There was a vent that went outside. 22 Before we get to the vent, okay, are you telling 23 me there was nothing in between the -- the basket 24 of parts that were being cleaned and the vent?

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25

Α True.

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1 Okay. All right. So the vapor then moves upward 2 from the basket of parts, whatever vapor there is 3 left, and according to your description of this vapor degreaser and how it worked it went to a 5 vent in the ceiling; is that right? 6 A It went to a vent out a window. 7 Q A vent out a window, okay. How high above the -the basket of parts that were being cleaned was 9 this vent that you say went out the window? 10 A Above the floor? 11 Q Okay. Let's -- Above the floor, yeah. 12 A Ten feet, 12 feet. 13 Q Above the floor. And you said the wall of the 14 vapor degreaser was about -- the outside wall was 15 about eight feet off the floor? 16 A Yep. 17 Q So this vent is just a couple feet above the top 18 of the vapor degreaser; is that right? 19 A The whole thing was hooded and it just went to 20 one -- it was kind of a triangular hood that came 21 to just an elbow and went --22 Q So the point of the hood was to collect and direct 23 the vapor? 24 And to hold the vapor in so you didn't lose it. Α 25 Ο Okay. So the -- the vapor that is sort of

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Lenz Page 75 collected and gathered by the hood then goes out 2 this vent; is that right? 3 Α 4 O The hood is connected to a vent and it's directed out the window? 6 A And then what happens to it? Goes out the window. 8 Does it just disperse to the atmosphere, or is it piped somewhere? 10 A Just goes right out into the atmosphere. 11 Q Okay. Okay. The -- Do you know what happened to 12 the PCE vapor once it went out that vent? 13 A As an engineer, I can tell you probably in the 14 wintertime it condensed and fell. 15 Q 16 A Summertime, a lot of it would evaporate and go up 17 18 O All right. So as an engineer you know that the --19 that the hot vapor hits the cold air and 20 liquifies, right? 21 A Correct 22 Q Turns into a liquid and it's going to drop. 23 Α 24 O It's going to hit the ground below it, right? 25 A Correct.

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Len Okay. And -- And what would the -- what would the 2 temperature, the outside air temperature have to 3 be approximately for that liquefaction to occur? 4 MR. BUSCH: Object to the form. Lack 5 of foundation. Go ahead and answer if you can. 6 THE WITNESS: I'd have to look at the 7 MSDS to get the vapor pressure and look at the 8 vapor pressure curves and figure that all out. 9 BY MR. COLLINS: 10 O Okay. You can't just do that off the top of your 11 head for me right now? 12 A Well, I can guess since it's a liquid sitting at 13 atmospheric pressure it's probably around room 14 temperature. 15 Q All right. So anything below room temperature 16 would cause the PCE to liquefy? 17 A 18 Q And then hit the ground, go to the ground, right? 19 A percentage of it, correct. Α 20 Q Okay. So in Madison, Wisconsin, that's pretty 21 substantial chunk of the year where the outside 22 air temperature is less than room temperature, 23 right? 24 Α Correct 25 Q Room temperature, you mean 72?

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Page 81 1 A Yeah. 2 Q Thereabouts? 3 A Yeah. 4 Q Okay. Are you doing any consulting or any other 5 kind of work currently for Madison-Kipp or for 6 Madison-Kipp's lawyers in this litigation? 7 A Just this. That's all I'm doing. 8 Q Okay. Do you have any kind of consulting arrangement with any of the lawyers here in this 10 room? 11 A Yes. 12 Q Okay. Which lawyers? 13 A Michael, Best & Friedrich. I don't know if it's 14 the -- tied to one person. 15 Q Okay. 16 MR. BUSCH: There it is. 17 BY MR. COLLINS: Okay. So, I'm being handed a document here. 19 Here, let's -- How about that. Can we --20 MR. BUSCH: Mark it. 21 MR. COLLINS: -- mark it and ask him

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MR. BERGER: You want copies?

MR. BUSCH: I just brought one copy.

MR. COLLINS: I appreciate it. If I

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Page 82 1 can get quick copies, I'll do it. Otherwise, we 2 can just look over his shoulder and we can do it 3 after lunch (Exhibit No. 2 was marked for 5 identification.) 6 BY MR. COLLINS: 7 Q Okay. Mr. Lenz, let's -- since I'm just seeing this now for the first time, let's you and I both 9 take a minute, or let me, at least, take a minute 10 and read this. Give me a second, if you would. 11 Okay. Okay. And Mr. Lenz, let me 12 know when I can ask you questions. 13 A Yeah, go ahead. 14 Q All right. So Lenz No. 2 is a one-page consulting 15 agreement. You have that in front of you, right? 16 A Right, correct. 17~~Q~~ Is that your signature at the bottom of it? 18 Α Yes, it is. 19 Q Okay. How did this consulting agreement come 20 about? Did you approach somebody? Did somebody 21 approach you? 22 A I -- I initially told Mark Meunier that -- he 23 asked me about doing some work to find all the 24 records involved in this case. 25 O Um-hum

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1 A And I said I didn't want to be involved, and he

 $2 \hspace{1cm} \text{said we really needed me. So I negotiated this} \\$

3 contract. Or my lawyer did.

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

4 Q What lawyer?

 $5\quad A\qquad My\ lawyer\ is\ Ring\ \text{--}\ Ringhand.$

6 Q Okay. Same guy you mentioned before?

7 A Right.

8 Q Okay. And how long have you known that lawyer,

9 Mark Ringsmuth?

10 A Yeah. Hold on a minute.

11 Q Okay. When did you first meet Ringsmuth?

12 R-I-N-G-S-M-U-T-H.

 $13\quad A\qquad Let \ me \ get \ the \ right \ spelling \ of \ that.$

14 Q That's the right spelling.

15 A Oh, it is? Okay. Good.

16 Q Unless he misspells his own name.

 $17\quad A\qquad Okay.\ \ I\ met\ him\ about,\ I\ don't\ know,\ a\ month\ or$

so before this.

 $19\ \ Q$ Okay. I don't want to ask you about any

20 conversations you had with Mr. Ringsmuth, but what

I want to know is did you meet him because of this

22 contamination issue? Did it have anything to do

23 with this contamination issue? Can you just say

yes or no?

25 A Yes

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Q Did someone introduce you to Mr. Ringsmuth?

2 A He was recommended by a friend.

3 Q May I ask who, what friend?

4 A It was just a friend on the fire department.

5~ Q $\,$ Okay. Fair enough. So is it fair to say that

6 this -- that sort of the beginning of this

7 consulting agreement that you have with Michael

8 Best is Mr. Meunier --

9 A Meunier.

10 Q -- Meunier approaches you.

11 A Yep

 $12\ \ Q$ Okay. This agreement is dated December 5 of last

13 year, 2011.

14 A Right.

15 Q Did Mr. Meunier approach you before that date? I

16 assume he did.

17 A Yes

18 Q Okay. How much before that date, approximately?

19 A month? A week?

20 A A month or two.

21 Q And what did he say to you specifically, please,

22 as best you can remember.

23 A He wanted me to come into Madison-Kipp and find

24 all the records for this whole PCE issue.

25 Q Okay. Did he say why?

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1 A Yeah. He told me that the neighbors had started a

2 lawsuit.

3 Q Okay. Did you say you shouldn't have laid me off

six months earlier? I'm not -- I don't mean for

5 that to be a joke. I mean, it's not a joke to get

6 laid off, but --

7 A I was trying to be cordial and a nice person,

8

9 Q Okay. So your initial reaction was negative,

10 right?

(Witness nods.) 11 A

12 Q

13 A I didn't want to be involved because I knew it

14 would take a lot of my time because my name's

15 scattered all over all kinds of documents.

16 Q Okay. You're being paid under this consulting

17 agreement?

18 A Correct.

19 Q And it says \$50 an hour?

20 A

21 Q Is that what you have been paid for your time?

22 A I haven't put an invoice in yet.

23 Q Okay. Approximately how much time have you spent

24 under this consulting agreement so far?

25 A I got to add it up. Twelve to 15 hours.

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Okay. And -- And what have you been doing during that 12 to 15 hours? A Part of it was at Madison-Kipp finding all the

3 records, hundreds of documents. And then part of

5 it was in preposition -- or preparizing (sic) for

6 this deposition.

1

2

7 Q For this deposition, okay. And let's talk about

8 your work at Madison-Kipp to look for records.

9 What records were you looking for?

10 A Anything related to the PCE.

11 Q And who -- who told you to do that?

12 A Who told me to do that?

13 Q Well, I assume you didn't just wander over there

14 on your own. I assume someone asked you to do

15 that, right?

16 A They asked me, I got this agreement, and then they

17 set up a meeting and I came in and --

18 Q Who was the meeting with? Set up what meeting?

19 A It was with Mark Meunier, there was Leah, and you

20

21 O You mean Mr. Busch?

22 Mr. Busch.

23 To your immediate left here? Ο

24 I'm terrible with names.

25 MR_BUSCH: I was there

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1 BY MR. COLLINS:

2 Q That's all right. Who else?

Jack Schroeder was there. Kim Eggers was there. 3

I always keep calling him Jack. Wasn't Kim Eggers 4

6 Q So you're the witness. I don't get to ask him the

questions. I got to know what you know, okay. So

8 who was at this meeting?

9 A That was a year ago.

 $10~~{\rm Q}~~{\rm I}$ know you're doing your best to tell me. Take a

11 minute, please, and tell me who was there. So far

12 we got Meunier --

13 A Yep.

14 O -- we've got Mr. Busch, Ms., is it Ziemba?

15 MS. ZIEMBA: Ziemba.

16 BY MR. COLLINS:

17 Q Sorry. Okay. Miss Ziemba and yourself. Who

18

19 A Kim Eggers. I know he was there for part of it, I

20 thought. And the new president of Madison-Kipp,

21 which I can't even remember his name right now.

22 He popped in for five minutes to meet him. I met

23 him while I was there.

24 Q How recent of a president is he?

25 A Since I left. So, I don't know the exact day he Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

2 Q Okay. You've met a gentleman named Reed Coleman,

3 right?

4 A Correct.

Q Was Mr. Coleman at this meeting?

6 A I don't recall him being there.

Okay. Where was the meeting?

8 At the conference room at 201 Waubesa Street.

9 At Madison-Kipp?

10 A Correct.

16

11 Okay. And that was before or after you signed the

12 Lenz No. 2, the consulting agreement?

13 A That was after.

14 0 Okay. So who said what at that meeting?

15 MR. BUSCH: I'm going to object as to

conversations had in our presence. And I'm doing

17 it because -- I'm going to claim the

18 attorney/client privilege under the auspices of

19 Sandra T.E. versus South Berwyn School District.

20 And Shawn, you may want to challenge it at some

21 point in time, but I don't want to --

22 MR. COLLINS: Yeah. We're not going

23 to resolve it here. Let's just make a record --

24 MR. BUSCH: We'll make a record and

25 we'll go forward.

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Page 89 1 MR. COLLINS: All right. So as to my 2 question as to who said what at this meeting 3 you're claiming privilege under the authority you've just identified, right? 5 MR. BUSCH: Yes, I am. 6 BY MR. COLLINS: 7 Q Okay. Now, I want to ask him some more questions. 8 We're going to go real slow here, Mr. Lenz, and 9 give Mr. Busch a chance to -- to jump in. 10 MR. COLLINS: So are you instructing 11 him not to answer? 12 MR. BUSCH: Yes. I'm instructing him 13 not to answer, yeah 14 MR. COLLINS: Okay. I'm not sure you 15 can even do that, but we'll -- we can fight about 16 17 MR. BUSCH: Yeah. That's what I 18 thought we would do. 19 BY MR. COLLINS: 20 O Okay. So as a result of this meeting, what did 21 you do next under the consulting agreement? 22 MR. BUSCH: Go ahead and answer it. 23 THE WITNESS: Leah called me and asked 24 me questions about where more documents were and 25 what -- it was just all document gathering related

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Deposition of James B. Lenz

Deposition of James B. Len questions. 2 BY MR. COLLINS: 3 Q Okay. I want you to tell me now as specifically as you can what Leah said to you in that 5 conversation that you're telling me about. What 6 did she say to you? 7 MR. BUSCH: Hold on for one second. 8 BY MR. COLLINS: 9 Q Hang on, Mr. Lenz. Let Mr. Busch finish his 10 thinking before you answer. 11 MR. BUSCH: I'm going -- I'm going to 12 instruct him not to answer on that question 13 because I think it -- it does go to the 14 attorney/client privilege. I mean, we talked 15 about what the topic was of the conversation, 16 which I think is appropriate, but as far as 17 specifics of it, I'm going to instruct him not to 18 answer. 19 MR. COLLINS: Okay. 20 MR. BUSCH: That's kind of where I'm 21 going to draw the line, Shawn. 22 MR. COLLINS: That's fine. We're just 23 making our record here. Then I'll move on to the 24 next question. 25 MR. BUSCH: Right.

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1 BY MR. COLLINS:

2 Q So there came a time, after your discussion with Leah, that you went to the company and looked for 3

records, correct?

5 A Correct.

6 Q Okay. And what records specifically at the

company were you looking for?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

8 A Anything related to the PCE contamination.

Okay. All right. And -- And where at the company

did you look for those records? Where physically 10

11 did vou look?

12 A In the environmental paper files, and also there

13 was a computer on the network, an area that was

14 designated for computer files.

15 Q And how did you know to look in those two areas?

16 A Because I was the one that set up the filing

17

18 Q Okay. And you've told me a little bit about that

19 previously, right?

20 A Correct.

21 Q While you were the environmental manager you set

22 that up system, right?

23 Α

24 O Okay. And so you're looking specifically for PCE

25 records, correct? Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

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Correct

2 Q What kind of PCE records?

3 MR. BERGER: You can answer.

4 BY MR. COLLINS:

Q Yeah. Specifically, unless Mr. Busch has

6 something to say about it, specifically what kind

of PCE records were you looking for?

8 A Basically, it's everything post-1994 that had to

9 do with the -- looking at the -- what the

consultants were doing and any -- any document 10

11 that had related to PCE.

12 Q When did the company stop using PCE?

13 A I don't know that because that was the other

14

15 Q Okay. Well, by -- by 1994 it had stopped, hadn't

16

17 A

21

18 O All right. So I guess maybe I'm misunderstanding

19 your testimony, but let me just tell you where I

20 think we're at so far and then you help me.

I understand that when you're looking

22 for PCE records you're looking for post-1994 PCE

23 records; is that right?

24 A That's what I kept in my environmental file, yes.

25 Q Okay. But if the company stopped using PCE before

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 928/12 Deposition of James B. Lenz Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 928/12

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1 1994, what kind of records did you expect would be

2 available in your search?

3 A I wasn't -- I was looking for all records related

4 to DNR, consultants, any notes internally,

5 everything relating to the PCE.

6 Q Documents created after the discovery of PCE

7 contamination on the property.

8 A Correct.

9 Q Is that right? Did you ever look for documents

10 describing the purchase by the company of PCE? In

11 what quantities and when and how it may have been

12 disposed of?

13 A I never did.

14 Q You never did.

15 A No

19

16 Q Do you know if anybody else ever did?

17 A Not -- I don't have knowledge of that, no.

18 Q Okay. Now, you said you were looking --

MR. BUSCH: Shawn, you said you wanted

20 five minutes before I --

21 MR. COLLINS: Right. Is it five

22 minutes you got to go?

23 MR. BUSCH: Five minutes.

24 MR. COLLINS: That will work fine,

25 John.

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1 So you looked in environmental files, paper files, 2 as well as on the computer, right? 3 Α Correct. These were files that you had set up; is that 5 right? 6 Correct. Α 7 Did you look in any places or in any files that you had not set up? 9 A Me? No. 10 Q Okay. Well, did anybody? 11 A Not to my knowledge. 12 Q Okay. One of the folks in -- in the room at 13 this -- this meeting to kind of kick off this 14 consulting agreement was Eggers, did you say? 15 A I believe he was there, yes. 16 Q All right. Is Eggers a current employee? 17 A Yes, he is. 18 Okay. Do you know -- Do you happen to know if 19 there's anybody -- any other former Madison-Kipp 20 employee who has been similarly engaged with a 21 consulting agreement like this? 22 A Not to my knowledge, no. 23 Q Okay. All right. So let's stay with then work 24 you did under the consulting agreement. So for 25 these 12 to 15 hours that you've done and for (414) 271-4466 Halma-Jilek Reporting, Inc. Experience Quality Service!

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which you believe the -- you're going to get paid

2 by Michael Best, right?

3 A Correct.

4 Q Yeah. Why haven't you sent a bill?

5 A Haven't gotten around to it. I was going to wait

6 until it got big enough to --

7 Q Okay. Did anybody tell you not to?

8 A No

9 Q So when did you do -- Other than your deposition

10 preparation, when did you do the work that you say

11 you've done under this consulting agreement? Was

12 it January, February of this year?

13 A I did the initial look, and then Leah called me

14 asking about more -- location of documents and

15 asking me questions about documents in relation of

 $\,$ 16 $\,$ each other. And then -- then they set up a -- I

17 had a deposition scheduled for last year. We met

18 like a week before that.

19 Q For last year?

20 A For last year's deposition prep. We met a week

21 before that for like four hours.

22 Q Who did you meet with?

 $23~{\rm A}~{\rm It}$ was Leah and another attorney from Michael

24 Best. I don't recall his name.

25 MR. COLLINS: Okay. Okay. John, this

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

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l is a good spot to break.

MR. BUSCH: Thanks.

3 (Lunch recess taken.)

4 BY MR. COLLINS:

2

5 Q Okay. Okay. All right. So Mr. Lenz, is it

6 correct that during your 31 years at Madison-Kipp

7 Corporation, including the 10 years where you were

8 the environmental manager, you never looked for

9 documents concerning how much PCE was used or

10 stored by the company?

11 A That's correct.

 $12\ \ Q$ Okay. And is it also correct that you are aware

of no one else at the company who ever looked for

14 those records?

15 A That's correct.

16 Q Did you ever talk with anyone about looking for

17 those records at any time, either before or after

18 you left the company?

 $19\ \ A$. Nobody ever asked me to look for those records.

20~ Q ~ All right. If -- If someone did ask you to look

21 for those records, where would you look?

22 A I'd go talk to the Purchasing Department and find

23 out where they are. They had their own records

24 storage area.

 $\,$ 25 $\,$ Q $\,$ Okay. Do you think the records would still exist?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 97 1 A I have no idea. I doubt it. 2 Q Why? Why do you doubt it? 3 A There were several floods in that room. 4 Q In the purchasing records room? 5 A Yeah 6 Q You mean literally water got in there? 7 A 201 Waubesa is down in a valley, and when it rains 8 really heavy in the fall the leaves plug up the 9 storm sewers and it floods right into the building 10 and floods that whole entire area where the 11 records are stored 12 Q Did anyone ever tell you that the records of how much PCE had been purchased or stored by the 13 14 company had been destroyed? 15 A No. 16 Q By flood or otherwise? 17 A All I knew is a whole bunch of boxes got 18 destroyed. 19 Q When? 20 A That was about seven, eight years ago. It really 21 flooded bad down there. 22 Q Seven, eight years ago. So 2003, '4, '5?

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

Somewhere in there.

23 A

0

24

25

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Okay. So it was the -- the -- whatever got

destroyed got destroyed well after Madison-Kipp

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1 learned that it had a PCE contamination problem, 2 3 Α Yes Q Because that was --5 A That was after '94. 6 Yeah. I mean, your understanding of when 7 Madison-Kipp learned of that problem was no later than 1994, right? 9 A I don't know the exact date, but it's somewhere around 1994. 10 11 Q Hmm? 12 A I don't know the exact date, but it's around '94. 13 Q Okay. That's when WDNR sent its letter to 14 Madison-Kipp. 15 A Correct. 16 O All right. Who is the person that you would talk 17 to who you would expect to have the most reliable 18 information about how much PCE the company bought 19 and stored and used? Who would you talk to about 20 21 A That -- That might be multiple people, as far 22 as -- Purchasing would know how much they bought. 23 Q Okay. So who would you talk to there? 24 Jan Adler that I mentioned before 25 Ο Yeah, okay. Used, stored, disposed of, who would

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

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Page 99 you talk to about those issues? 2 A You'd have to talk to whoever was the supervisor of that particular machine back then. I have no 3 4 idea how often they cleaned it, how often they --5 the supervisor did all that. I'm not certain who 6 it was back then 7 In all of your years at Madison-Kipp, 31 years, 8 including 10 years where you were the 9 environmental manager, did anyone ever say to you 10 it's important for us to know how much PCE got 11 dumped onto the ground by one means or another? 12 A No. 13 Q Did you ever think it was important to -- for the 14 company to figure that out? 15 A I -- No. 16 Q Did you ever think it was important for the 17 company to investigate and to learn all of the 18 different places where PCE had been spread or 19 spilled or dumped? 20 A 21 Q Okay. When did you conclude that it was important 22 for the company to do that? 23 A There were two phases; one was in 1994 when the 24 DNR sent the letter, and then the second was some 25 period of time when they figured out that there

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Page 100 must be a second source. 2 Q And when was that, approximately? 3 A It was when they drilled that well. I can't 4 remember the date. It was when they drilled that 5 well over on the east side of the building to find 6 out if the extent of the contamination had gone --7 how far easterly the extent had gone. 8 Can you ballpark it for me? Was it in the '90's? 0 9 10 A It was probably around the end of the '90's, 11 beginning of the 2000's, somewhere in there. 12 Q Okay. So are you -- are you telling me then that 13 there were two times, 1994 and approximately the 14 end of the 1990's, where you concluded that it was 15 important for the company to investigate and try 16 to determine where PCE had been dumped or spilled 17 or spread, right? Is that right? 18 A No. I didn't conclude that. 19 Q Okay. Well, did anybody, to your knowledge, at 20 the company conclude that it was important for the 21 company to investigate and try to figure that out? 22 A I believe Dames & Moore came back and said there 23 has to be a second source. I don't know if it 24 was even -- Bob Nauta, because I know he switched 25 companies so many times I can't remember which one

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 101 is where, but Bob Nauta came back and said that 2 there has to be a second source, we need to do an 3 investigation. 4 O I'm going to give you a document that was 5 marked -- You know Mike Schmoller, don't you? 6 Α 7 Q Okay. Well, he works for WDNR. We started his 8 deposition here a few weeks ago and marked some 9 exhibits with his name on it just like we're doing 10 here with yours, okay. 11 So I'm going to show you one of them 12 now. It's Schmoller 4, okay. So we don't need to 13 remark it here. It's already been marked. Okay. 14 And I want to ask you some questions about this 15 document, and you let me know when you're ready 16 for me to ask the questions. 17 A Okay. So Schmoller No. 4 is a letter from DNR to 18 0 19 Madison-Kipp dated July 18, 1994, correct? 20 A 21 Q And you've seen this letter before today, right? 22 A 23 Q You saw it back in 1994, didn't you?

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24

25 Q

Α

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Okay. What was Mr. Schroeder's position with the

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Page 102 1 company at that time? I'm asking you about 2 Schroeder because he's the guy the DNR sent this 3 to. What was his position at the time? 4 A He was the environmental manager. 5 Okay. So he was the environmental manager before 6 you, right? 7 A Correct. 8 Q Okay. Do you know -- I asked you earlier in this 9 deposition about your training or education in the 10 environmental field. Do you know if Schroeder had 11 any training or education in the environmental 12 13 A I don't know what his education was. 14 Okay. Do you know of any training or education 15 that -- that Schroeder had had in the 16 environmental field? 17 A 18 0 Okay. Is Schroeder still around, do you know? 19 A I have no idea. 20 Q Okay. When's the last time you spoke to him? 21 Long time ago? 22 Yeah. He quit like -- It wasn't too long after 23 this letter I think he quit. 24 0 Why did he quit? 25 Α Better opportunity. I don't know. (414) 271-4466 Halma-Jilek Reporting, Inc.

Deposition of James B. Len

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1 Q Was it because of this letter, do you know? 2

Α No, not that I know of. 3 Okay. All right. So you can see that the -- the

4 letter from the DNR tells Madison-Kipp that PCE

contamination has been found in a well, MW-3, and

6 that it exceeds the enforcement standard under

Wisconsin law. You see that?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

8 A Correct.

All right. And you see the state's conclusion 9 0

10 there that the -- that groundwater

11 contamination -- that PCE groundwater

12 contamination is coming from Madison-Kipp's

13 property. Do you see that?

14 A Yes.

15 Q And the state tells Madison-Kipp that its job

under the law is to determine the horizontal and 16

17 vertical extent of the groundwater contamination

18 and clean it up, right?

19 MR. BUSCH: Object to the form.

20 Letter speaks for itself, but go ahead and answer.

21 BY MR. COLLINS:

22 Isn't that your understanding of what the state's

23 telling Madison-Kipp its obligation under the law

24 is?

25 MR. BUSCH: Same objection. Go ahead

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Page 104 1 and answer 2 THE WITNESS: It says that 3 Madison-Kipp shall -- is responsible for any 4 hazardous substances and discharges that have 5 occurred 6 BY MR. COLLINS: 7 And it further says you are required to determine 8 the horizontal and vertical extent of 9 contamination and clean up/properly dispose of the 10 contaminants. Do you see that? 11 A 12 Q Okay. And it says further, this is down now at 13 the bottom of page 1, it is important that an 14 investigation begins at your site as soon as 15 possible. The longer contamination is left in the 16 environment, the farther it can spread and the 17 more difficult and costly it becomes to clean up. 18 Do you see that? 19 A Yes. 20 Q Okay. By the time you left the company in the 21 middle of 2011, which is 17 years after this

letter was written, the company had not determined

the horizontal and vertical extent of the

groundwater contamination had it? Isn't that

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1 MR. BUSCH: Object to form. Lack of

2 foundation. Go ahead and answer.

3 THE WITNESS: I can't say that.

4 BY MR. COLLINS:

5 Q Do you think it had?

6 A I wasn't involved with this project at that point.

7 $\,$ Q $\,$ Okay. Well, let me ask you then for the 10 years

8 that you were the environmental manager at

9 Madison-Kipp. Do you believe that at any point

10 during that 10 years, 1996 to 2006, that

11 Madison-Kipp had determined the horizontal and

12 vertical extent of PCE contamination in the

13 groundwater?

14 A Even during my 10 years as environmental manager I

15 was not in charge of this project.

16 Q All right. So is the answer that you don't know?

17 A That's my answer. I don't know.

18 Q Okay. So just so I'm clear, to this day you do

19 not know whether Madison-Kipp ever determined the

20 horizontal and vertical extent of groundwater

21 contamination; is that right?

22 A That's true

23 Q Is it also true that to this day you don't know

24 whether Madison-Kipp ever cleaned up or properly

25 disposed of the contaminants in the groundwater?

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A It was -- It was first Bud Hauser, and then after

2 he left Mark Meunier took it over.

3 Q Was Bud and then later Mark Meunier the employee

4 within the company responsible for addressing the

5 PCE problem altogether? In other words, not just

6 groundwater, but all aspects of the PCE

7 contamination problem?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

8 A Correct.

9 Q Okay. It was not you.

10 A It wasn't me.

11 Q Were Hauser and Meunier senior to you at the

12 company?

13 A I believe they're both vice presidential level.

14 Q Okay.

15 A Did I work for them? Not directly.

16 Q Well, I'd like you to give me, because I don't

17 completely understand the organization, but how

18 far up the chain from you were they, if they were

19 up the chain from you?

20 A They -- They were part of the executive staff.

21 And typically, environmental reported to human

22 resources. And so there was this dotted line

23 where I really worked for someone else, but I only

24 did environmental part time because we didn't have

25 enough environmental to be full time. So they

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

cleaned up.

been cleaned up.

cleaned up. I don't know that.

I can't say that a hundred percent has been

Well, I'm just asking you if -- if you know

8 Q Okay. Okay. But I hear you telling me a couple

different times, and I'm getting it, that you were

not the person in charge of the, let's call it the

groundwater contamination investigation and

All right. And I know that, and we'll talk about

it a little bit more later, but I know that the

company hired an outside consultant, right?

Whether it's -- It's Bob Nauta. Basically,

whatever company he happened to be working at,

Okay. But what I want to know is since it wasn't

you, who within the company, employed by the

company, was responsible for addressing the

groundwater contamination?

cleanup. Is that fair to say?

whether to this day the groundwater has been

The groundwater? I know the groundwater has not

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22 Q

14 Q

13 A True.

17 A Correct.

21 A That's true.

1 would pull my resource when they needed me. Or

2 else I was doing plant engineering and other

3 things.

4 Q So when you did environmental who were you

5 reporting to?

6 A Bud Hauser and Mark Meunier.

7 Q Or Mark Meunier. Okay. Now, you said they were

8 on the executive staff; is that right?

9 A Yes. They were both vice presidents of human

10 resources.

11 Q Okay. Who else was on the executive staff?

12 A It varied a lot. There was typically a --

13 Q Let me give you timeframe so maybe it's easier,

14 okay.

15 A Okay

16 Q So this letter here, Schmoller No. 4, arrives in

17 July of 1994, all right. So from -- from 1994 on,

let's talk about the next eight, 10, 12 years

or so, who was on the executive staff?

20 A It changed all the time.

21 Q Okay.

22 A I mean, you had mentioned Lyle Crouse. Lyle

23 Crouse was VP of operations.

24~ Q ~ Is the executive staff people who are VPs?

 $25~{\rm A}~{\rm VPs}$ reporting to the president, which during this

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

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timeframe would have been Tom Caldwell.

- 2 Q Okay. So was Tom Caldwell on the executive staff?
- 3 Α Well, he ran the executive staff.
- 4 Q Okay. Because he was the president?
- 5 A President.
- 6 Q Okay. So Caldwell ran the executive staff, and --
- and who else was on it? Lyle Crouse you said,
- right?
- 9 Α Yes.
- 10 Q Who else? Jack Schroeder?
- 11 A
- 12 Q Okay. Bud Hauser?
- 13 A Bud Hauser, yes.
- 14 Q Okay. Who else?
- 15 A During that timeframe? The rest of them were all
- 16 in charge of tooling and die casting and things.
- 17 There wasn't anybody that dealt with
- 18 environmental.
- 19 Q Well, I'm --
- 20 A If you want more names I can throw more names out
- 21 there, but --
- 22 Q Well, I don't -- I'm asking you who was on the
- 23 executive staff, to the best of your recollection.
- 24 Whether they worked directly on environmental
- 25 issues or didn't, who was on the executive staff

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Deposition of James B. Len

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in 1994 and for the several years after that?

- 2 Doug Humes was VP of operations after Lyle left. Α
- 3 Q
- 4 Α '94. That's all the names I remember from back
- 5 then
- 6 Q Okay. Here's what I'm trying to get at, all
- 7 right, is after the company gets this letter,
- Schmoller No. 4 in July of 1994, okay, who is
- 9 making the decisions at the company about what
- 10 should be done about the PCE contamination
- 11 problem?
- 12 A It was the executive staff.
- 13 Q Okay. Is the executive staff, is it -- Is it fair
- 14 to say the executive staff at Madison-Kipp at this
- 15 time is upper management at the company?
- 16 A
- 17 Q Okay. So upper management is making the decisions
- 18 about the PCE contamination problem; is that
- 19 right?
- 20 A
- 21 O All right. Has that been true at all times in
- 22 your -- in your tenure at Madison-Kipp
- 23 Corporation?
- 24 For the most part. There was -- In the brief gap
- 25 between Mark Meunier and Bud Hauser I -- I -- I

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- took -- I read all the documents from -- that came
- 2 from Bob Nauta, and if there was -- I mean, a
- 3 lot of it was just reports that would be quarterly
- 4 reports, but anything that wasn't -- that had
- 5 something to be done I would go to the staff with.
- 6 Q Okay. But other than that, it was upper
- 7 management making the decisions about how to
- 8 handle the PCE contamination problem?
- 9 A
- 10 Q All right. Now -- So is it -- is it -- is it
- 11 upper management then making decisions about the
- 12 PCE contamination problem including, you know,
- 13 what the company is going to spend money on or not
- 14 spend money on to try to address the problem?
- 15 Were they making the money decisions?
- 16 A
- 17 Q Okay. If the company wanted to spend money on
- something to address the PCE contamination 18
- 19 problem, did that have to be approved by the upper
- 20 management folks?
- 21 A
- 22 Q Okay. Was there any one person in particular
- 23 that, you know, had -- had more control of the
- 24 purse strings than anybody else? You know, the
- 25 man or the woman that had to give final say on

6 right? 7 Α 8 Who was the -- And Caldwell was the president when 9 10 A Correct.

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

presidential level.

Okay. And Caldwell was president for a while,

whether we were going to spend money to address

this letter hits in July of 1994, right?

this contamination problem?

A It was typically always brought to the

- 11 And who was the president after him?
- 12 A Oh, what was his name? I don't recall, because
- 13 there was like three presidents right in a row
- 14 there for a while that were only there for short
- 15 periods of time.
- 16 Q All right. But it was the president that had the
- 17 final say in whether money was going to be spent
- 18 to address the PCE contamination problem, right?
- 19 A Correct.
- 20 Q Okay. So I've -- in -- in some of these
- 21 documents, we'll get to some of them here, I see
- 22 Reed Coleman's name. Where does he fit in in all
- 23
- 24 Α Reed Coleman is an owner and director of the
- 25

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Deposition of James B. Lenz

Kathleen	McHu	Deposition of James B. Lenz	
			Page 113
1	Q	Okay. So he's he's not on the executive staff,	
2		right? He's above the executive staff?	
3	Α	Yes.	
4	Q	Okay. Now, he was involved, wasn't he, in in	
5		how the company was going to address the PCE	
6		contamination problem?	
7		MR. BUSCH: Object to form. Lack of	
8		foundation. Go ahead and answer.	
9	ВҮ	MR. COLLINS:	
10	Q	Is that right?	
11	Α	I wasn't privy to any of those meetings. I'd	
12		guess so if I had to guess, but	
13	Q	Well, were you ever in a meeting about the PCE	
14		contamination problem that Mr. Coleman was in?	
15	A	I don't recall one.	
16	Q	Did you ever talk to Reed Coleman about the PCE	
17		contamination problem, any aspect of it? How	
18		facilities related to it, anything like that?	
19	Α	I can't remember a specific incident, but I would	
20		probably have to say yes, I did.	
21	Q	All right. Why do you say that?	
22	Α	Just because people talk, you know.	
23	Q	Wasn't Mr. Coleman an active owner and director o	f
24		the company? Did he have an office at the	
25		facility?	

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Page 114 1 A 2 Q Okay. Would you see him around the facility from 3 time to time? Α Not very often. 5 Okay. Did Mr. Coleman, to your knowledge, get 6 involved with how people at Madison-Kipp should talk to outsiders, WDNR, the neighbors, the media, about the PCE contamination problem? 9 A Not that I know of. 10 Q Okay. So if the -- if the president is the guy 11 who has to finally approve whether or not to spend 12 money on the PCE contamination problem, do you 13 know if the president had to talk to Mr. Coleman 14 about that first before he could give final 15 approval? 16 MR. BUSCH: Object. Lack of 17 foundation. Go ahead and answer. 18 THE WITNESS: I don't know the answer 19 to that. 20 BY MR. COLLINS: 21 Okay. Okay. Is -- Is Tom Coldwell still with the 22 company, do you know? 23 A No. 24 Q Do you know where he is? 25 A No. I don't recall. Somebody told me about two

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Page 115 months ago, but I don't remember where it is $2\ \ Q$. Okay. Do you remember when the last time was you called to Caldwell? 3 $4 \quad A \quad \ \, \text{It was probably } 10 \text{ years ago I saw him at a trade}$ show. He -- He was working for a different die caster at the time. Okay. So he was, even at that time, was no longer with Madison-Kipp. 8 9 A 10 Q Correct? 11 A (Witness nods.) 12 Q Okay. 13 I think he left in like 2001. Α 14 Q Okay. I can -- I can tell you -- I told you we 15 took Mike Schmoller's deposition, the DNR guy 16 currently responsible for the Madison-Kipp site. 17 Schmoller told me in the deposition that the --18 the horizontal and vertical extent of the 19 contamination has still not been determined. He

told me that a couple weeks ago. So that's 2012.

If you assume for a second that what

So that's 18-plus years after the DNR's letter,

Schmoller told me was true, that the horizontal

and vertical extent of contamination still hasn't

which is Schmoller No. 4.

Page 116 been defined 18 years after this letter, do you 1 2 have any explanation for why? 3 MR. BUSCH: Object to the form. 4 Commenting on someone else's testimony, but go 5 ahead and answer. 6 THE WITNESS: I have no idea. We were 7 following what the consultant and the DNR said to 8 do 9 BY MR. COLLINS: 10 O Are you aware of any instances where the DNR said 11 to Madison-Kipp you're not doing what you're 12 supposed to do, you're moving too slowly, you're 13 not spending enough money, you haven't done what 14 you're supposed to do under the law? Are you 15 aware of any instances where DNR ever said that to Madison-Kipp? 16 17 MR. BUSCH: Object to form. Multiple. 18 Go ahead 19 THE WITNESS: I don't recall any. 20 BY MR. COLLINS: 21 Q Okay. Did you ever deal directly with anybody at 22 23 Α I need you to be more specific. I dealt with 24 people at DNR all the time. 25 Q Did you deal with anybody at WDNR over the PCE

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

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contamination problem?

- 2 A I was at a few meetings with Dino Tsoris when they
- 3 were talking about remediation and what they were
- going to do.
- 5 Q Um-hum.

11

- 6 A That's it. Dino was about the only guy that I
- 7 knew that worked on it.
- 8 Q Okay. Did you ever hear that Dino or anybody at
- 9 DNR was complaining that Madison-Kipp wasn't
- 10 moving quickly enough to investigate and remediate
 - the PCE contamination?
- 12 MR. BUSCH: Object to form, hearsay.
- 13 Go ahead and answer.
- 14 THE WITNESS: I never heard that.
- 15 BY MR. COLLINS:
- 16 Q Never heard that, okay. So did you ever have
- 17 conversations with Dino Tsoris about the PCE
- 18 contamination problem?
- 19 A Not without Bob Nauta being there.
- 20 O Okay. Did you ever tell Dino or anybody at WDNR
- 21 what you told me here in this deposition today
- 22 about how PCE had come to be spilled and dumped
- 23 and spread both inside the building and on the
- 24 ground outside the building? Did you ever tell
- 25 anybody at DNR that?

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1 A 2 Q Do you know if anybody at Madison-Kipp ever told 3 that to the folks at DNR? 4 A 5 Okay. Were you ever involved in any discussions 6 where someone was expressing a concern about how 7 far the PCE contamination might spread? 8 I remember conversations about it getting into the 9 city well. 10 Q So that concern was expressed, right? 11 A And there was --12 Q Is that right? 13 A Yes. 14 Q Okay 15 A And there was -- when they were trying to get the 16 southernmost distance that it had gone they were 17 talking about where it had crossed Atwood Avenue 18 and we couldn't find a place to drill a well. 19 Q We're talking about groundwater contamination, 20 21 A That's groundwater, true. 22 And how far it had gone? 23 A Yes. 24 Okay. Okay. Okay. 0 25 (Exhibit No. 3 was marked for (414) 271-4466 Halma-Jilek Reporting, Inc. Experience Quality Service!

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identification.)

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- 2 BY MR. COLLINS:
- Okay. So Lenz No. 3 is an April 7, 1994 3
- 4 single-page memo. Do you see that?
- 5 A Yes.
- 6 Q And it's from Jack Schroeder to Lyle Crouse, copy
- to Tom Caldwell, correct?
- 8 A Correct.
- 9 0 All right. Now, based on your earlier testimony
- 10 my understanding is all three of those folks,
- 11 Schroeder, Crouse, Caldwell, were all in upper
- 12 management at the time of this memo, right?
- 13 A No. Jack Schroeder was --
- 14 O Was not?
- 15 A
- 16 Q Okay. He was the environmental manager?
- 17 A Environmental manager.
- 18 Q Right. But Crouse was upper management, right?
- 19 A
- And -- And Caldwell was the president, right? 20 Q
- 21 A
- 22 Q Okay. All right. So if we look at the first
- 23 paragraph of -- of the letter, there's reference
- 24 to a Mike Halsted of WDNR. Do you see that?
- 25 A

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Did you ever have any contact with Halsted?

- 2 Not that I recall. Α
- 3 Okay. The last sentence of that paragraph says
- 4 the Madison Brass Works site investigation has
- been conducted thus -- excuse me. Let me start
- 6 again. The Madison Brass Works site investigation
- that has been conducted thus far indicates
- 8 contamination originates off site. Do you see
- 9
- 10 A

16

- 11 Q Okay. There is in the -- in the documents, in
- 12 history of this problem, some discussion about
- 13 an -- initially about where the PCE contamination
- 14 came from and whether it came from on
- 15 Madison-Kipp's property or someplace else.
 - Do you recall any discussion at the
- 17 company about the company believing that the
- 18 contamination had originated on someone else's
- 19 property and not on Madison-Kipp's property?
- 20 A Can you say that over again?
- 21 Q Sure. Were there discussions at the company,
- 22 Madison-Kipp, where people at the company were
- 23 blaming some other company or somebody else's
- 24 property, at least initially, for the PCE
- 25 contamination saying it came from someplace else?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 121 1 A Yes. I remember conversations about that because the way the water flow direction that I was told 3 about, it was coming from the Kupfer Iron Works direction. 5 Q Who told you that? 6 A I think I heard that from Jack Schroeder. 7 Q Okay. The environmental manager, right? 8 A 9 Q Okay. Did you have any ability to study documents 10 or scientific facts and make your own 11 determination about where the contamination was 12 coming from? 13 A No. 14 Q Okay. Did anybody at the company ever say that 15 our objective is to prove that the contamination 16 is coming from someplace other than Madison-Kipp, 17 that that's what we're out to try to prove? 18 A Not that I know of. 19 Q Okay. Here's another document. This is Schmoller 20 27. Already marked. And Schmoller 27 is an --21 excuse me, is a memo dated October 18, 1994 to Tom 22 Caldwell and Lyle Crouse from Jack Schroeder. Do 23 you see that?

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

24 A

25 Q

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All right. So here we see the environmental

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1 manager writing a memo to two members of upper 2 management, right? 3 Α Correct. 4 Q About the PCE contamination problem, right? 5 Α 6 All right. Did -- Did you do that when you became 7 environmental manager? Did you author documents 8 and send them to the -- to upper management about 9 the PCE contamination problem? 10 A I don't recall any, but I may have in that gap 11 between Bud Hauser and -- and Mark Meunier. 12 Q Okay. Were you ever told while you were 13 environmental manager that you needed to keep 14 upper management informed about various aspects of 15 the PCE contamination problem? 16 A That was part of my job. 17 Q To communicate with upper management? 18 If they weren't copied on it. 19 Q Okay. But what I'm wondering is is how is it that 20 you knew that you were supposed to report to upper 21 management about the PCE contamination problem? 22 Did someone tell you you were supposed to keep 23 upper management informed about the PCE 24 contamination problem? 25 It's a small company. We all talk. Α (414) 271-4466 Halma-Jilek Reporting, Inc. **Experience Quality Service!**

Deposition of James B. Len

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

Page 123 Well, I understand that, but there were a number 2 of issues you were working on that you didn't keep 3 upper management informed of, correct? 4 A Correct. 5 Q Okay. So why is it that -- how is it that you knew you were supposed to keep upper management 6 informed of the PCE contamination problem that you 8 were working on? 9 A Part of my job. 10 Q Well, how did you know it was part of your job, is 11 what I'm trying to get at? Someone tell you that? 12 A I don't recall anyone saying that. 13 Q Is that just what you understood from what you 14 observed about the way this PCE contamination 15 problem was being handled? That it was a concern 16 of upper management so you better keep them 17 informed? 18 A 19 Q Okay. So let's look at Schmoller 27, please. All 20 right. So in the middle of the first paragraph 21 there's a couple sentences. One says no obvious 22 source was found, and the recommendation by D&M 23 was to have a few soil samples gathered around the 24 area by hand auger. This would be tested by PID

detector in their office and would not be

Page 124 reportable to DNR. Do you see that? 2 Α 3 Do you know why these guys are talking about tests 4 that wouldn't be reportable to DNR? Why was 5 reportable to DNR an issue? 6 MR. BUSCH: Object to form. Lack of 7 foundation. Go ahead and answer if you can. 8 THE WITNESS: I wasn't involved with 9 this. I don't know. 10 BY MR COLLINS: 11 You weren't involved in this? 12 Α Not in this letter. 13 Well, do you see your name on it? 14 A Well, I'm on here because they asked me about 15 where to drill them. 16 Q Okay. Well, I don't understand why you're telling 17 me you weren't involved if your name's on the 18 letter and --19 A I'm not involved in any --20 Q -- you're being consulted about -- Okay. Let's 21 start with a fresh question, okay? 22 A Okay 23 Q Let's get to the part where your name is mentioned 24 here, okay. Second paragraph it says it should be 25 noted that according to Lenz our property line

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

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Kathleer	n McHu	gh and Deanna Schneider vs. Madison-Kipp 9/28/12	Deposition of James B. Len
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1		ends about one to two feet from the northern wall	
2		of engineering offices. Do you see that?	
3	Α	Yes.	
4	Q	Okay. Did someone ask you for that information	
5		about where the property line ends?	
6	Α	Yes.	
7	Q	Why was that important, to know where the property	ý
8		line ends?	
9	Α	Because you can't drill holes on property that's	
10		not yours.	
11	Q	Okay. Well, but why were why was the company	
12		even looking in an area that was close to its	
13		property line so that that question became	
14		important?	
15		MR. BUSCH: Object to form. Lack of	
16		foundation. Go ahead and answer.	
17		THE WITNESS: They were looking to see	
18		where the contamination source was.	
19	ВУ	MR. COLLINS:	
20	Q	Okay. Well, do you know what made them think th	at
21		it might be near the property line?	
22	Α	This was downhill from the storage tank that was	
23		located next to the building back previous years.	
24	Q	Okay. Well, why why was that relevant? Did	
25		someone conclude that the contamination in that	
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Page 126 1 area was from the leaking or spilling at the 2 storage tank? 3 MR. BUSCH: Object to form. Lack of 4 foundation. Go ahead and answer. 5 THE WITNESS: Because of the 6 groundwater flow direction that they believe existed in that area, this would have been uphill from that area, which is where they suspected the source to be. 10 BY MR. COLLINS: 11 Q Okay. You see there's a -- there's a couple of 12 handwritten notes at the bottom of this Schmoller 27. The -- The last of them says -- I believe 13 14 says concentrate from under building via floor 15 drain. Do you see that? 16 A 17 Q Okay. Do you know why anyone was concerned about 18 whether there was concentrate under the building 19 via the floor drain? 20 A No. 21 O Okay. Was there ever talk about testing the soil 22 immediately underneath the building for TCE 23 contamination? Excuse me. I meant to say PCE 24 contamination. 25 A I don't recall any. (414) 271-4466

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Kathleer	a McHu	gh and Deanna Schneider vs. Madison-Kipp 9/28/12	Deposition of James E
			Page 1
1	Q	Did you think there should have been some testing	
2		of the soil immediately underneath the building,	
3		at any location under the building, for PCE	
4		contamination?	
5		MR. BUSCH: Object to form. Lack of	
6		foundation. Go ahead and answer.	
7		THE WITNESS: It's an impervious	
8		surface. You wouldn't think that there would be	
9		contamination there.	
10	ВУ	MR. COLLINS:	
11	Q	Okay. So your understanding what was the	
12		what was the what was the surface	
13	Α	Concrete.	
14	Q	that's impervious? Okay. Is it your	
15		understanding that that PCE spilled or dumped	
16		on a concrete floor can't bleed through the	
17		concrete floor? Is that your understanding?	
18		MR. BUSCH: Object to the form. Lack	
19		of foundation. Go ahead and answer.	
20		MR. COLLINS: Well, that's what I'm	
21		trying to get at is the foundation.	
22		MR. BUSCH: Right, yeah.	
23		THE WITNESS: You can have some that	
24		could go through a crack in a floor, but to the	

extent that it's going to get all the way across a

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Deposition of James B. Len

2 BY MR. COLLINS: 3 Q I'm not talking about across the road now, but --

4 So you -- you were not concerned about the possibility that PCE may have gotten through the

6 concrete floor, into the soil underneath the

concrete floor at Madison-Kipp; is that right?

8 A That wasn't my decision in this.

9 Okay. Well, whose decision was it at the company

10 to not test underneath the concrete floor for the

11 presence of PCE contamination in the soil?

12 A I don't believe Dames & Moore ever recommended

13 going under the floor.

14 Q Okay. Okay. So let's keep looking at this

15 Schmoller No. 27. The last paragraph says I

16 reminded D&M that our goal is to conduct just

17 enough investigation to support the theory to the 18

DNR that the source of contamination is from off 19

site so that our cost for investigation is held to 20 a minimum. Do you see that?

21 A Yes.

22 Q What do you know about that goal?

23 Α Costs have always been a concern in the whole

24 project.

25 Q Okay. Well, Schroeder's your immediate

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road to a second source, that's highly unlikely.

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Deposition of James B. Len

- predecessor, right?
- 2 A No.
- 3 Q Who was your immediate predecessor?
- 4 A Sam Sutopo.
- 5 Q Okay. So it went from Schroeder to Sutopo?
- 6 A
- 7 0 Schroeder was the environmental manager in October
- 8 of '94, right?
- 9 Α Yes
- 10 Q Who was the next environmental manager?
- Some guy that wasn't there very long. I don't 11 A
- 12 recall his name. He was only there about nine
- 13 months, a year, and then Sam Sutopo started and he
- 14 was only there nine months, a year.
- 15 Q And then it was you?
- 16 A Then it was me.
- $17~\ Q~\ Okay.~So let me just make sure I got the -- I got$
- 18 the lineup here. So in -- in July of 1994
- 19 Schroeder is the company's environmental manager,
- 20
- 21 A Correct.
- 22 Q Okay. And then shortly after the company gets the
- 23 letter from DNR Schroeder leaves the company; is
- that right? 24
- 25 Α Some point in time, yes.

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Page 130 1 So he's not the environmental manager anymore, 2 right? 3 Α Correct Ο And he is succeeded as environmental manager by 5 some guy whose name you can't recall. 6 Right. Α 7 0 Right? But who was only on the job for a few 8 months before he left, right? 9 A About nine months to a year, I believe, right. 10 Q And then he left the company, too, right? 11 A Right. 12 Q Okay. And so then the guy whose name we can't 13 remember who was there for only nine months as 14 environmental manager, he is succeeded by Sam --15 A Sutopo. 16 Q -- Sutopo. Okay. And so Sam Sutopo becomes the 17 environmental manager next, right? 18 Α Right. 19 Q All right. He was only there for a few months as 20 21 A Nine months, a year, something like that. 22 Q Nine months or a year, right? 23 Α Yep. 24 And then it's you. Q 25 Α And then it's me

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- 1 Q You become the environmental manager, right?
- 2 A
- So in the span of two years there's four 3
- environmental managers at the company, right?
- 5 Α How many years did you say?
- 6 Q Well, I'm talking about 1990 -- mid '94 to mid
- 8 A
- Right? There's Schroeder, some guy's name you 9 0
- can't remember, Sutopo, and then you. 10
- 11 A
- 12 Q Why is that, do you know? Why so many
- 13 environmental managers in two years?
- 14 A I don't know.
- 15 Q Okay. Is it -- Is it fair to say that -- that at
- this time, in the 1990's, the company is not 16
- 17 taking environmental issues very seriously?
- 18 MR. BUSCH: Object to the form. 19 BY MR. COLLINS
- 20 That's true, isn't it?
- 21 A They took all environmental things seriously.
- 22 Q Well, they didn't think dumping and spilling PCE
- 23 all over the place regularly was an environmental
- issue? Because you told me that happened. So did 24
- 25 they not think that was an environmental issue?

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question. I think the timing is off, but go ahead

MR. BUSCH: Object to the form of the

- 2
- 3 and answer

1

17

- 4 BY MR. COLLINS:
- Q Well, okay. Well, then explain it to me. I mean,
- 6 if that happened, how could that happen at a
- 7 company that was taking environmental issues
- 8 seriously?
- 9 That was at least 10 years prior.
- 10 O Okay. So when did the company become a company
- 11 that took environmental issues seriously?
- 12 It was around 1990 when Tom Caldwell started.
- 13 So let's go back to this sentence I read you at
- 14 the bottom of Schmoller 27.
- 15 So we have the environmental manager
- 16 at the company reminding the consultant hired to
 - deal with the PCE contamination problem that the
- 18 company's goal is to conduct just enough
- 19 investigation to be able to tell DNR that the real
- 20 source of the contamination is somebody else and
- 21 not the company, right? That's what the
- 22 environmental manager is saying to the company
- 23 president, right?
- 24 MR. BUSCH: Object to the form. Go
- 25 ahead and answer.

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1 BY MR. COLLINS: Isn't that what he's saying? 2 0

3 A That's what the letter says, yes.

And the environmental manager is saying that the reason we're doing that is so that our costs for

6 investigation is held to a minimum, right? Yes?

7 A That's what the letter says.

8 Q And he's saying that to the president of the

9 company and the guy who decides how much gets

10 spent or not spent to address the TCE (sic)

11 problem, right?

12 A

5

14

18

20

21

22

13 O Okay. Now, are you -- are you still telling me

that this is a company that took environmental

15 matters seriously, a company where the

16 environmental manager is writing that to the

17 president of the company. Are you still telling

me that that's a company that took environmental

19 issues seriously?

MR. BUSCH: Object. Asked and

answered. Argumentative. Go ahead.

THE WITNESS: At the time this letter

23 was written we did not know that the contamination

24 was from us. So they were trying to not spend any 25

more money than they had to because we didn't know

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Page 134 we were the source of contamination 2 BY MR. COLLINS: 3 Q Well, but that's not what this letter says, right? Shouldn't the goal of the investigation be to 5 learn the truth about where the contamination is 6 coming from? 7 MR. BUSCH: Object to the form of the 8 question. Letter speaks for itself. 9 BY MR. COLLINS: 10 Isn't that what the goal should be, to find out 11 what the truth is about where it's coming from and 12 not to reach some prearranged goal about where 13 it's coming from? 14 MR. BUSCH: Object to the form. 15 Argumentative. Go ahead and answer. 16 THE WITNESS: In an ideal world, yes. 17 BY MR. COLLINS: Q Okay. This wasn't an ideal world, was it? 19 A (Witness nods.) 20 Q Do you think that what Schroeder is saying here to 21 the president of the company and another member of 22 upper management, vice president of the company, 23 is acceptable? 24 MR. BUSCH: Object. Immaterial. Go 25 ahead and answer.

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through it first, please do, and then just let me

2 know when you're ready to go.

3 A Okay

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4 Q Okay. This refers to a Dames & Moore meeting on

February 1 of 1996. You've had a chance now to

6 flip through the document. You were at that

meeting, weren't you?

8 A I don't know. I don't believe so.

9 Okay. On the first page there's reference to an

10 HS and E manager. Do you see that?

11 A

12 Q What's that a reference to, do you know?

13 A Health, safety and environmental manager.

14 Q Okay. Who was the health, safety and

15 environmental manager at Madison-Kipp Corporation

16 in February of '96?

17 A I would guess it was Sam Sutopo, but --

18 Q Okay. It could have been you, right?

19 A No.

20 Q Didn't you say in 1996 --

21 A I was never the health and safety manager.

22 Q You were the environmental manager.

23 Α I was the environmental and facility engineer,

Page 135 THE WITNESS: Today's standard, no. 2 BY MR. COLLINS: 3 Q Okay. Was it acceptable in October of 1994? 4 A I don't know. I wasn't environmental manager 6 Q Well, would it have been acceptable when you were environmental manager? Because you were less than 8 two years later. 9 A Not if I'm signing my name to it, no. 10 Q You wouldn't sign your name to that, would you? 11 A 12 Q Okay. Why wouldn't you? That's not right, is it? 13 That's not right to -- to be doing that, is it? 14 MR. BUSCH: Object to the form. Lack 15 of foundation. Go ahead. THE WITNESS: I agree it's not right. 16 17 BY MR. COLLINS: 18 Q Okay. Thanks. 19 (Exhibit No. 4 was marked for 20 identification.) 21 BY MR. COLLINS: 22 Q Lenz No. 4 is a multi-page document. The first 23 page is entitled Environmental, Dames & Moore 24 meeting February 1, 1996. I want to ask you some 25 questions about it, but if you want to flip

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24 facility manager. 25 Q Okay. All right. So let's flip to the second Halma-Jilek Reporting, Inc. Experience Quality Service! (414) 271-4466

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 137 1 page then, please, of this document. It says --2 Do you see it says today's situation. References 3 scattered environmental problems, and the second bullet point says DNR is asking what is MKC doing. 5 Do you see that? 6 A 7 Q Okay. So this document is about a meeting that is to occur some 19 months after the DNR's letter in July of 1994, correct? And the letter was in July 10 of 1994, correct, from DNR? 11 A 12 Q I don't want to get hung up on math. I'm not 13 great at it either, but it's -- it's at least a 14 year-and-a-half --15 A Correct -- after that letter, correct? 17 A Correct 18 All right. And -- And if you're not the 19 environmental manager at that time you're just a 20 couple months away from being the environmental 21 manager, right, in February of '96? 22 A To the best of my recollection, yes. 23 Q Okay. Isn't it true that in 1996 WDNR was not 24 pleased with Madison-Kipp's performance in

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25

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addressing the PCE contamination problem that it

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Page 138 1 had told the company a year-and-a-half earlier to 2 investigate and clean up? 3 MR. BUSCH: Object to the form. Lack of foundation. 5 BY MR. COLLINS: 6 Isn't that true? 7 I don't know that from what this says. 8 I'm not -- I'm not -- I'm not trying to tie it 9 specifically to this. I mean, this says DNR is 10 asking what is MKC doing, okay. And what I'm 11 asking you is, whether it's from this document or 12 otherwise, whether your knowledge comes from the 13 document or otherwise, isn't it true that in 1996 14 you learned that WDNR was not happy with 15 Madison-Kipp's progress in dealing with the PCE 16 contamination problem? 17 A I don't know that 18 You never learned that? 19 A I never spoke to the DNR. 20 Q Okay. Well, you don't have to speak directly to 21 the DNR to learn that, do you? I mean, did you 22 ever talk to anybody else at the company about 23 what DNR wanted or expected or was saying to the 24 company? 25 Α Yes.

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Lenz Page 139 Okay. Well, did you ever learn by any of those means that DNR was dissatisfied with Madison-Kipp's progress in addressing the PCE

2

- 3
- 4 contamination problem?
- 5 A I can't say I know that, no.
- 6 Q Who at the company while you were environmental
- manager would have been most knowledgeable about
- 8 whether DNR was dissatisfied with Madison-Kipp's
- progress in addressing the PCE contamination?
- 10 Would it have been upper management?
- 11 A
- 12 Q Okay. And who specifically at upper management
- 13 would you talk to if you wanted to know the answer
- 14 to that?
- 15 At what timeframe?
- Well, the mid and late 1990's. 16 O
- 17 A I would say Bud Hauser.
- 18 Q Okay. Who was a vice president, right?
- 19 A Correct.
- 20 O Okay. How about Caldwell?
- 21 I don't know if he was kept up to date for
- 22 day-to-day or not. I don't know.
- 23 Q Okay. All right. Let's flip to the next page,
- 24 please, which starts with a question. It says how
- 25 did we get here. Do you see that?

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Α

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2 Q By the way, have you ever seen this document

3 before today? I should tell you that this was

4 produced by us by Madison-Kipp. I didn't, you

know, make this up or find this on the Internet

6 somewhere. This was produced to us by

Madison-Kipp.

8 A I don't recall seeing this before.

9 All right. So the question is how did we get

10 here. And the first bullet point says no solid

11 leads on what happened to contaminate the

12 property. Do you see that?

13 A

14 O All right. That's a false statement, isn't it?

15 MR. BUSCH: Object to the form of the

16 question. Go ahead and answer.

BY MR. COLLINS:

18 O If you want to know why -- I'll tell you why I'm

19 asking that is you told me it was common knowledge

20 all of the different ways that PCE was allowed to

21 be spilled, dumped and spread, and you told me

22 that was common knowledge.

23 So if that's common knowledge, how

24 could that statement possibly be true that they

25 have no solid leads on how the property got

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Cathleer	n McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12	Deposition of James B. Le
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1	contaminated? I mean, you just told me about five	
2	or six of them.	
3	I mean, do you do you have reason	
4	to believe that the folks in upper management	
5	didn't know what you knew about how the property	
6	came to be contaminated?	
7	$\boldsymbol{A} = \boldsymbol{I}$ don't know what the upper management knew and	
8	didn't know.	
9	Q Well, you don't believe that that was a true	
10	statement in February of '96, do you, that they	
11	had no solid leads on what happened to contaminate	
12	the property? You don't believe that was true in	
13	February of '96, do you?	
14	MR. BUSCH: Object to the form.	
15	Definition of property.	
16	BY MR. COLLINS:	
17	Q You can answer.	
18	MR. BUSCH: Go ahead.	
19	THE WITNESS: Okay. Well, you didn't	
20	say so, so	
21	MR. BUSCH: I'm sorry. Unless I tell	
22	you not to	
23	BY MR. COLLINS:	
24	Q Fair enough. You don't believe that was a true	
25	statement in February of '96, do you?	

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Page 142 1 If they would have asked me I would have said no. 2 You would have said it's not a true statement, 3 correct? 4 A True. 5 Okay. Well, then the next question is is in 1996, 6 and now, again, we're 18 months after the state 7 said it's your legal obligation to investigate and clean up, did -- did anybody have the job to 9 develop these solid leads? 10 I mean, if somebody still believed 11 that there were no solid leads, did anybody have 12 that job? How did our property get contaminated? 13 Did anybody have the job of running that question 14 down? 15 MR. BUSCH: Object to the form. The 16 document doesn't say our property. 17 THE WITNESS: I don't know the answer 18 to that question. 19 BY MR. COLLINS: You certainly didn't have that job, right? 21 A 22 In fact, you never had that job even when you were 23 environmental manager, right? 24 Α 25 0 Of -- Of generating solid leads to determine how

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Page 143 the property came to be contaminated, right? You 2 never had that job, correct? 3 MR. BUSCH: Same objection. Go ahead

4 and answer 5

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

THE WITNESS: I was asked to talk to

6 some hourly employees to find out what they knew.

BY MR. COLLINS:

Q Okay. Who asked you to do that?

I was asked by -- I don't know. It was somebody

10 in upper management.

12

11 Q All right. I'd like you to tell me who, if you

can determine that either by memory or process of

13 elimination or who you were dealing with at the

14 time or -- Who do you think was the most likely

15 the person who asked you to determine that?

16 A I'd say most likely it was Bud Hauser.

17 Q Okay. So what do you believe Hauser asked or

18 directed you to do in that regard?

19 A Go find out where the source of this contamination

20 could have come from.

21 Q And did he say then get back to me, or what else

22 did he say?

23 A Let me know what you find out.

24 Q Okay. When did Hauser ask you this?

25 A I don't know for sure.

Deposition of James B. Len

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1 Q Well, were you environmental manager when he asked

2 you that?

3 I was asked about, because I had been there a long

4 time, where I knew contamination was

Are you talking about the same Hauser direction

6 now?

7 Α Yes. Yes.

 $8 \quad Q \quad \mbox{Okay. Well, I understand that, but can you -- can}$

you estimate for me when that was? I'm not asking

10 you for a date necessarily, unless have you one,

11 but how about a year when Hauser asked you to do

12

13 A Well, I think it would have been in 1994 when we

14 started getting these letters.

15 Q Okay. So even before you were environmental

16 manager, right?

17 A

18 O Okay. Okay. And did he tell you why he was

19 asking you to do that, as opposed to somebody else

20 at the company?

21 A I had a good rapport with the maintenance guys.

Okay. And Hauser knew that? 22 Q

23 Α

24 Okay. So did Hauser tell you why it was important

25 that you do this?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 145 1 A They were looking for the source of contamination. Okay. Was it all prompted by DNR's letter in July 2 0 3 of '94? 4 A Yes. 5 Q Okay. So then you did what you were told to do, 6 right? You went and talked to some maintenance people, right? 8 A 9 0 Okay. And who did you talk to? I mean, earlier 10 in this deposition you mentioned three guys' 11 12 A Yes. 13 Q Okay. Was it those guys? 14 A 15 Q Okay. Did you talk to anybody else? 16 A Not that I remember. 17 Q Okay. And the guys whose names I have are --George, Wally and Marv. 18 Α 19 Q George, Wally and Marv, okay. They had been long 20 time maintenance guys? 21 - A They were there at least -- they started at least 22 in 1970, if not prior. 23 Q All right. Why did you -- Were you the guy that

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25

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decided to -- that those were the three you'd talk

to, or did somebody tell you you needed to talk to

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1 those guys? 2 A I decided who to talk to. 3 Q Why did you pick those guys? 4 A Because I knew they were maintenance guys that got 5 around. Weren't necessarily in one spot all the 6 7 Q And they had been around awhile? 8 A 9 Q Okay. So you talked to each of them, right? 10 A 11 Q Separately? Together? 12 A I don't recall. 13 Q Okay. And then after you talked to them did 14 you -- did you write up any sort of a report or 15 memorandum about what they told you? 16 A No. 17 Q Why not? 18 I'm not big on writing reports. Α 19 Q Well, this is pretty important stuff, wasn't it? 20 A I just went to Bud Hauser and told him what I 21 know 22 Q Okay. Did Hauser tell you don't write anything 23 down? 24 Α 25 0 Okay. Did you talk to anybody else other than

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Lenz Page 147 those three maintenance guys about -- Well, 2 first -- Let me back up. I'm sorry. So what was

3 the basic question you asked each one of them, the 4 maintenance guys?

A The basic question was we found contamination in

this area, where do you think that came from

Q How did it get there, huh?

8 A

Okay. And is what they told you basically what

10 you told me this morning?

11 A

12 O I mean, did they tell you something more that

13 maybe we didn't talk about yet today?

14 A Not that I recall.

15 Q Okay. So they told you about the -- dumping the

spent PCE out the back door, right? 16

17 A That was later.

18 Q Okay. Well, what did -- So -- Well, then I

19 apologize, but let me -- what did these guys tell

20 you? Hauser told you to go talk to maintenance

21 guys. You went and selected those three guys.

22 What did they tell you?

23 A The question was where did the contamination come

24 from that the water direction says is leading to

25 Brass Works.

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1 Q Okay.

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2 A And that led it to that narrow strip along the

3 building there. And I asked the guys where

4 contamination would come from in that area there.

5 Q Okay. What did they tell you?

6 A That's when they -- they actually reminded me that

that tank was moved over there in the building,

8 and that -- that if they spilled some there it

12 Q Okay. And this was the one for which division?

13 A The -- The Lubricator Division.

14 Q Lubricator Division, okay. So did each of them

15 tell you the same thing?

16 A Basically, yeah.

17 Q Okay. That PCE over on that narrow strip likely

18 came from this PCE tank in the Lubricator

19 Division, right?

20 A Right.

21 Q Did they tell you how it -- the PCE got out of the

22 tank in the Lubricator Division?

23 A No. Nobody could remember.

24 Q I'm sorry?

25 A Nobody could remember an actual spill.

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would drain that way.

10 Q The PCE tank.

11 A

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 149 1 O Okay. 2 MR. BUSCH: Shawn, whenever it's 3 convenient, if I could have a three-minute break.

MR. COLLINS: Of course. Let me just

5 ask a couple more and then let's take a break,

6

7 Q So you went back and reported to Mr. Hauser?

8 Α That's what I recall, yes.

9 What these guys told you, right?

10 A Um-hum.

11 Q Yes?

12 A (Witness nods.)

Okay. What did -- What did Hauser do with the 13 O

14 information, do you know?

15 A No.

16 Q Did you ever hear about that information that you

17 had conveyed to Hauser being used in any fashion?

18 Did you ever see it in a document anywhere? Did

19 you ever hear any discussion about it around the

20

21 A No.

22 Q Okay. Did you ever ask Hauser subsequently what

23 did we do with that information that I learned

from the maintenance guys? 24

25 A

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

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Page 150 1 0 Okay. Did Hauser ever ask you at any later time 2 to investigate, to talk to maintenance people or 3 investigate by any means how contamination got on any other area of company property? 5 A After they suspected a second source I was asked 6 to find out information over there. 7 Q Okay. Let's pause it right there, okay. Let's 8 take a little break. 9 MR. BUSCH: Thanks. 10 (Recess taken.) 11 BY MR. COLLINS: 12 Q All right. Are you ready to keep going? 13 A

14 All right. Okay. So when we broke here you were

15 telling me that there was concern about a possible

16 second source for the contamination which led to

17 some additional work by you, right?

18 Α (Witness nods.)

19 Q Yes?

20 A

21 Q Okay. Second source for what?

22 Α They hadn't found the extent of the contamination

23 and the groundwater directions and stuff didn't

24 make sense, so they decided to drill a second --

25 another -- I can't say second, another well over

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on the east side of the building, and they found

2 higher numbers than they were finding in other

3 spots. So at that point they said there has to be

a second source.

5 Q Okay. And so how does that involve you then?

6 A So then I was asked -- Well, I was environmental

manager at the time.

8 Q Okay.

And they said, you know, go investigate and find

10 out where this could have possibly come from.

11 Q Okay. So when was this request made of you? It's

12 while you were environmental manager, right?

13 A

14 Q So can you ballpark the year? Did you say --

15 Earlier in this deposition did you say late

16

17 A It was whenever that well nest on the east side of

18 the property in that alley was drilled.

19 Q Okay. So --

20 A I can't give you a date.

21 Q -- someone came to you and said what?

22 A Instead of finding lower numbers in that well they

23 found higher numbers, which meant there had to be

24 a second source that we hadn't located yet.

25 Q Who said that to you? Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

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It was probably Dames & Moore.

2 Okay. Did somebody then ask you to conduct some

3 sort of investigation?

4 A Yeah. Go out and talk to different employees,

5 older employees, and find out what happened over

6 in that area

7 Q Who said to do that?

8 A I don't know. At that -- It was either Mark

Meunier or Bud Hauser. It's all based on the

10 timing. I don't remember.

11 Q Okay. So what did you do?

12 A I again went out and talked to -- I talked to a

13 bunch of people, but at least the same three.

14 Q Okay. Can you think of anybody else in addition

15 to those three that you spoke to?

16 A Bob Keenan, who was maintenance supervisor.

17 Q Okay. Can you think of anybody else?

18 A No.

19 Q Okay

20 A I have a hard time remembering people's names from

21 back that far.

22 Q Okay. Well, what did you learn this time?

23 That's when I found out that they were throwing --

24 they would clean that -- that vapor degreaser and

25 throw the stuff out the door.

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Deposition of James B. Lenz Page 153 1 0 Okay. And did -- did Keenan tell you that as 2 well? 3 A 4 Q Okay. So at least four people told you that? 5 A Yes. 6 Q Okay. All right. I think I -- what I'm about to ask you I think I asked you before this morning, and I apologize. George --9 A George, Wally and Marv. 10 Q Yeah. Tell me the best you can about where these 11 guys are. If I wanted to talk to any one of them, 12 how would I go about doing that? Are all of them 13 still alive, do you know? 14 A Best of my recollection they're all alive. 15 Q How about Bob Keenan? 16 A He's really old now. 17 Q Okay 18 Α He retired right about this time, so --19 Q Okay. And would you look in the Madison area for 20 21 A George Schler, I think, lives in Waterloo, Wally's 22 in Madison, and I don't know where Marv lives. 23 Q How do you know Wally's in Madison? You know that

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I think so. He lived just three, four blocks from

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Page 154 Madison-Kipp. 2 Q How do you know he's still there? 3 I think he's still there. Okay. Do you know what street he lived on? 5 A No. 6 Q Okay. And Marv? 7 A I don't have a clue where he lived. 8 Q Okay. So you talked to at least those four guys 9 and they told you about PCE, spent PCE being 10 dumped out the door, right? 11 A Yeah. 12 Q Okay. Did they tell you about anything else? 13 A 14 Q Okay. With that information, what did you do? 15 A That's when we -- I don't know if I told that or 16 Bud or whoever it was either Mark Meunier or Bud 17 told that to Dames & Moore, and then they started 18 doing more geoprobes looking for more. 19 Q When you went and talked to at least those four 20 guys, Keenan and the three maintenance guys, did 21 somebody from the company go with you? Hauser --22 A Not that I remember. 23 -- Meunier? Okay. So did you report back to 24 Hauser or Meunier what these guys had told you? 25 Α

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

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Yes?

1 Q

2 A Yes.

Did you put anything in writing to them about it? 3 0

4 A Not that I recall

5 Q Okay. Just verbal?

6 A

Q Okay. And do you know what those guys did with

8 that information, Hauser or Meunier?

They must have told Dames & Moore because 9

10 Dames & Moore acted on it.

11 Q Okay. Was Meunier a member of the upper

12 management as well?

13 A Yes. He was vice president of human resources.

14 O Executive staff?

15 A Yes. And he still is, yeah.

16 O Okay. How often do you talk to Meunier these

17

19

18 A I saw him last week because he had some questions

on this latest issue that they have going now with

20 the DNR and was looking for more records.

21 Q What's the latest issue with the DNR that he told

22 you about?

23 A He got some letter from the EPA that's looking for

24 records that our air permit requires us to keep.

25 Q Okay. Was Meunier the guy who -- who told you

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last year that you were being let go?

2 A

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3 Okay. And then is he the guy who first contacted

you and asked you to help the company? 4

5 Α

6 Q Okay. Let's leave it at that.

7 Α

8 Q I don't know that anything needs to be said.

9 A I don't want to say that on the record anyways.

10 Q I'm not going to ask you either. So -- But I want

11 to ask you about this much of the conversation.

12 So he contacts you, and why does he say the

13 company wants your help? Because what?

14 A He couldn't find all the records.

15 Q Well, did he tell you why the company's looking

16 for records?

17 A He told me that -- Well, I heard it on the news,

18 first of all, that the neighbors were suing

19 Madison-Kipp and --

20 Q No, I understand, but I'm wondering what Meunier

21 said to you in this conversation about why the

22 company needed your help.

23 A They said soon the opposing lawyers are going to

24 ask for a records request and I got to start

25 gathering it all because I know there's a lot of

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 157 them. 2 Q Okay. Did he characterize the lawsuit at all? 3 Α 4 O Okay. Now, between that conversation and the one 5 you had with him recently about the air permitting 6 issue, how many -- approximately how many other 7 conversations have you had with him about the -you know, that in some fashion touched on the PCE 9 contamination problem? 10 A There were just some conversations about setting 11 up dates, like setting up a date for the first 12 initial meeting and --13 Q Okay. Anything else? 14 A Not that I recall. 15 Q Since this lawsuit was filed have you talked to 16 any other Madison-Kipp employees or former 17 employees about any aspect of this PCE 18 contamination problem? 19 A Can you define any aspect? 20 Q Well, I'm -- I mean for it to be real broad. I'm 21 wondering if you've ever talked to anybody at 22 Madison-Kipp about whether the company behaved 23 responsibly concerning the contamination. 24 A

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

25 Q

25

ready, so tell me.

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Have you ever talked to anybody about how all the

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Deposition of James B. Lenz

Page 158 1 PCE got in the soil and the groundwater and the 2 vapor? 3 A Between the two? No. 4 Q Okay. Okay. Well, what -- what have you talked 5 to Madison-Kipp employees or former Madison-Kipp 6 employees about relating to the contamination 7 since the lawsuit was filed? 8 A Stephanie Lauth, the executive secretary, asked me 9 some questions about records. 10 Q What's the last name? 11 A Lauth. L-A-U-T-H. 12 Q You said she's the executive secretary? 13 A 14 Q So whose secretary does that make her? 15 A The president's. Really, she's secretary for the 16 whole executive staff. She's going to yell at me. 17 Executive assistant. She's not a secretary. 18 Slaps me every time I --19 Q And what did -- She contacted you? 20 A She was looking for some of the computer records. 21 Q Okay. Computer records of what? 22 A Of PCE stuff. 23 Q Can you be more specific? 24 Anything related to PCE. Α 25 0 Anything. (414) 271-4466 Halma-Jilek Reporting, Inc. **Experience Quality Service!**

Deposition of James B. Len

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

Page 159 1 A Yes. My record system was in a -- in a Access 2 2000 database, which nobody had anymore. So she 3 asked me how she can retrieve those 4 Q Okay. When was that conversation? After the lawsuit was filed? 6 A Yeah Q This year? Last year? 8 A Last year. Okay. So she's a secretary for the president of 0 10 the company? 11 A 12 O Is she the secretary for anybody else? Vice 13 presidents? 14 A Yes. 15 Q Coleman? 16 A No. 17 Q Does he have his own secretary? 18 A Yes 19 Q Who's that? 20 A Mental block. I'll think of it in a minute. 21 (Exhibit No. 5 was marked for 22 identification.) 23 BY MR. COLLINS: 24 Q Okay. I want to ask you about it when you're

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Page 160 1 A Okay. Okay. 2 Q All right. Lenz No. 5 is a one-page memo from 3 Reed Coleman to Thomas Caldwell and Richard Riesen or Riesen. 4 5 A Riesen. 6 Q Riesen? All right. Concerning -- The subject is the environmental situation, and its date is 8 March 19, 1996. Do you see this? 9 10 Q Have you seen this before today? 11 A I don't believe so, no. 12 Q All right. Do you -- You have read it now, 13 though, right? 14 A Yes. 15 Q Quickly, but you've read it, right? 16 A 17 Q All right. Do -- Does any of the subject matter 18 sound familiar to you in terms of what Mr. Coleman 19 is -- how he's characterizing the environmental 20 problem? Does that sound familiar to you in terms 21 of things that were going around the company at 22 this time? 23 A Can you say it one more time? 24 Q Yeah. Let me ask a couple of different questions 25 first. Okay. So Thomas Coldwell is the president

Deposition of James B. Lenz

Page 161 of the company at the time of this memo, right? 2 A Correct.

3 O All right. Who is Richard Riesen in March of

5 A He was the vice president of finance. 6 Okay. And so he's -- he's upper management. He's

7 on the executive staff, right?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

8 A He was actually parallel with Tom Caldwell and

9 reported directly to Reed Coleman and was on the

10 board of directors.

11 Q Okay. So even though he's a vice president he's

12 on the same level of the corporate hierarchy as

13 the president, is that right?

14 A I don't know if it's -- Maybe I have his title

wrong. He was the same level as Caldwell, but he 15

16 might have been CFO. I don't know.

17 Q Okay. He's an important guy.

Important guy, yeah. We'll go with that.

19 Q All right. And your understanding at this time is

20 that both of these guys, Caldwell and Riesen,

21 report to Coleman, correct?

22 A

23 Q Okay. The very first line of the memo mentions a

24 Dave Hanson. Do you see that?

25 Α

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2 A He works -- He worked -- either works or did work for Michael Best. Q He's a lawyer? 5 Α Yes. 6 Q Okay. All right. So what is -- I mean, to your 7 understanding, what's -- what's Mr. Coleman doing 8 here with this memo? 9 MR. BUSCH: Object to the form. Lack 10 of foundation. Document speaks for itself. Go ahead and answer. 11 12 THE WITNESS: I have no idea. It's 13 whatever it says here. 14 BY MR. COLLINS: 15 Q All right. Did -- You know, while you were at the 16 company at any time, environmental manager or 17 otherwise, did you know that Mr. Coleman was 18 involved in advising others at the company about 19 how to talk about this environmental situation? 20 A The company was always trying to be hush-hush 21 about the environmental situation because of the 22 scrutiny that we got from the neighborhood and the

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

Who's Dave Hanson?

1 Q

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media. So --

Could be. He's posturing.

23

24

25

Α

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You think that's why Mr. Coleman is writing this?

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Deposition of James B. Lenz Page 163 1 Q Okav 2 MR. COLLINS: Could you read the

witness's answer back, please, Kim? 3

4 (The record was read as follows:)

Answer. "The company was always 6 trying to be hush-hush about the environmental

situation because of the scrutiny that we got from

8 the neighborhood and the media."

9 BY MR. COLLINS:

5

10 O Why was the company trying to be hush-hush?

11 A Because anything that we did ended up on the news,

12 and it gave the company a bad image

13 Q Okay. Well, how did you know what you just told

14 me? That is, that the -- the company wanted to

15 keep things hush-hush. Who told you that?

16 A I was told that by Mark Meunier.

17 Q Okay. Were you told it by anybody else?

18 A I may have been.

19 Q Can you think of anybody else who told you that,

20 gave you that message?

21 A It was just kind of common knowledge not to talk

22 about it.

23 Q Yeah, okay. But how -- I'm sorry. I'm -- You

24 finish up. Then I'll ask the next question.

25 A We were just told not to talk about environmental

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

stuff out in public. 2 Q Who besides Meunier -- I'm still butchering his 3 name. What is it again, please? 4 MR BERGER Meunier 5 THE WITNESS: It's Meunier. It's like 6 a mean guy. Meunier. BY MR. COLLINS: 8 O Meunier? 9 Meunier. Yeah, kind of. Α 10 O Okav 11 MR. BERGER: Meunier.

12 THE WITNESS: There's a U in there.

13 BY MR. COLLINS:

14 Q All right. So who besides Mr. Meunier told you

15 that -- that the company was not supposed to be

16 talking about the environmental problem?

17 MR. BUSCH: Object to the form. I

18 don't think he said the company wasn't supposed to

19

20 BY MR. COLLINS:

21 Q What did Meunier tell you?

22 A Me, being a -- I wasn't supposed to talk about

23 environmental issues outside the company.

24 O Meunier said that, right?

25 A

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

1 Q Okay. Did he -- Did Meunier tell you who

- specifically he didn't want you talking to?
- 3 A I wasn't supposed to talk to the media.
- 4 Q
- 5 A Or any neighbors.
- 6 Q How about DNR?
- 7 A I -- I can talk to DNR.
- 8 Q Okay. Were there any neighbors in particular that
- 9 you were told were, you know, particularly nosy or
- 10 problematic or people that you really didn't want
- 11 to be talking to? Were any of them identified?
- 12 A Ann Chiconne.
- 13 Q Yeah. You remember that name, huh?
- 14 A Oh, yeah.
- 15 Q How come?
- 16 A 138 South Marquette.
- All right. What -- What was her birthdate? 17 Q
- 18 Anybody else besides Miss Chiconne?
- 19 A No. That's the only one I really remember.
- 20 O So who told you that -- So what was told to you
- 21 about Chiconne?
- 22 A Well, she called all the time.
- 23 Q Yeah.
- And if Mark wasn't there, I was the second in 24 Α
- 25 command to take the complaint.

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

report back.

status as Chiconne?

environmental situation?

16 A Not that I remember.

company, right?

Um-hum

Yes. Sorry

Lenz No. 5, please.

Yes?

Okay.

specifically not to talk to her?

Okay. And so -- I mean, were you directed

A No. I was to talk to her and take her complaint

and report it back to Mark and Mark was going to

would say, whatever the complaint was, I was going

deal with anybody. I wasn't to -- You know, I

to investigate it and -- and have the company

residents you can think of that had the same

Okay. Did anyone else in addition to Meunier tell

Q Okay. Were there any other of the -- of the

12 A I can't even remember any of the other names.

you don't talk to outsiders about the

17 Q Okay. And you say that that direction was -- that

directive was generally understood around the

All right. Okay. So -- All right. Let's look at

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20 A

21 Q

22 Α

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Α

13 Q

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

Deposition of James B. Lenz

Page 167

Okay. Do you remember ever seeing a revised set

- 2 of common points that -- that Hanson had faxed
- 3 over?
- 4 A No.
- Were you ever given in writing or otherwise a 5 Q
- script or anything that -- that you should say if 6
- you had to talk to somebody outside the company
- 8 about the PCE contamination?
- 9 A No.
- 10 Q All right. Now, the first bullet point says, all
- 11 right, we should make clear that these substances
- 12 were in common use in industry for many, many
- 13 years, that any manufacturing site producing the
- 14 kinds of products produced by Madison-Kipp over a
- 15 hundred-year period would be expected to have used
- 16 the substances and to have used them in such a way
- 17 that minor amounts by volume would have found
- 18 their way into the soil. Do you see that?
- 19 A
- 20 Q All right. I want to focus you on the words that
- 21 say minor amounts by volume. You see those words?
- 22 A
- 23 Q All right. That's not true, is it, that what was
- 24 in the soil was minor amounts by volume?
- 25 A I believe back on that date that wasn't known.

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Len

Well, if -- wouldn't you agree with me then if it

wasn't known what the -- what the volume was,

- 3 that -- that people at the company shouldn't be
- 4 directed to say that the volume is minor? Do you
- 5 see what I'm asking you?
- 6 Α
- 7 All right. I mean, isn't it true that if the
- 8 company didn't know yet what the amounts were it
- 9 shouldn't be saying they're minor, correct?
- 10 MR. BUSCH: Object to the form, having
- 11 him comment on this in the first place, but go
- 12 ahead and answer.
- 13 THE WITNESS: I can't comment on
- 14 someone else's thoughts at the time.
- 15 BY MR. COLLINS:
- 16 Q I'm not asking you to. Was it -- Was it honest to
- 17 say that the contamination was minor in amount?
- 18 MR. BUSCH: Object to the form.
- 19 Characterization. Go ahead and answer.
- 20 THE WITNESS: I have no idea what
- 21 minor is. Minor's a --
- 22 BY MR. COLLINS:
- 23 Q All right. Would you have used that word to
- 24 describe the amounts of contamination in the soil?
- 25 Would you have used the word minor to describe the

Deposition of James B. Lenz

Cathleer	McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12	Deposition of James B. Len
		Page 169
1	amount of contamination that found its way into	
2	the soil?	
3	A Again, minor is not a specific term. Compared to	
4	the Valdez breaking out, you know, it is minor.	
5	Q So are we to believe then that so long as the	
6	contamination is less than the Valdez, the	
7	environmental manager at Madison-Kipp for 10 years	;
8	believes it's not that big a deal.	
9	MR. BUSCH: Object to the form.	
10	Argumentative.	
11	BY MR. COLLINS:	
12	Q I'm I'm going with what you just told me.	
13	MR. BUSCH: I'm just making my	
14	objection, Shawn.	
15	BY MR. COLLINS:	
16	Q Look, I appreciate you're trying hard to answer	
17	my questions, and I'm very grateful to you for it,	
18	okay. I just I bristle a little bit on behalf	
19	of my clients when somebody gives me an answer	
20	like you just did, which I think is not your basic	
21	nature, which is to suggest this wasn't that big a	
22	deal. That's a comment. You don't need to	
23	respond to it. I'm explaining my reaction to your	
24	answer, okay.	
25	So here's the here's the question.	

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Page 170 1 Would you have used, you, Jim Lenz, have used the 2 word minor to describe the amount of soil 3 contamination, PCE soil contamination, in March of 1996 at Madison-Kipp? 5 A Without reading all the rest of the documents and 6 the chronological history of what went on and 7 where we were with sampling and everything at that point in time, I can't say I would use the word minor or major or any other word. 10 Q You didn't know enough to characterize the amount, 11 is that what you're saying? 12 A I don't know where in history I am at this point 13 in March of 1996. I can't remember that. I don't 14 know if it was just -- because we -- we had just 15 gone through a document that we were just testing 16 a small ditch. I don't know where we are in 17 history at this point. 18 Q Is there ever a time on up through today where you 19 would have described the amount of PCE 20 contamination in the soil as minor? 21 A I don't -- No. 22 Q Okay. The third bullet point down on this memo 23 says we should make sure that the right people say 24 that Madison-Kipp has not in any way either in the 25 past or in the present acted illegally in the use Halma-Jilek Reporting, Inc.

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Lenz Page 171 or control of these substances. Do you see that? 2 A 3 Q Do you know who the right people are? 4 A No. 5 Q Okay. Do you believe that that's a true statement, that Madison-Kipp has not in any way 6 7 either in the past or in the present acted 8 illegally in the use or control of PCE? MR. BUSCH: Object to form. Lack of 10

11 BY MR. COLLINS:

foundation

12 Q Do you believe that's a true statement?

13 MR. BUSCH: Calls for a legal 14 conclusion. Go ahead and answer.

15 THE WITNESS: I would say that's a

16 true statement.

17 BY MR. COLLINS:

18 Q That -- That you don't think anyone has ever acted

19 illegally?

20 A Not with the PCE that's referenced in this.

21 Q Okay. Well, how about with any other chemical?

22 A Not that I know of. I don't know of every

23 chemical that was ever used.

24 Q Okay. You believe that the -- the spilling and

25 the dumping and the spreading of the PCE as you've Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

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testified to in this deposition was within the

2 law?

3 Α Yes.

4 Q Why do you believe that? Who told you that?

A At the time that that spilling and dumping and all

that occurred there was not a law that said you 6

couldn't do that.

Q How do you know? Who told you that? 8

9 A I would say I know that based on the fact of when

10 PCE was determined to be a substance that caused

11

12 Q When was that?

13 A I don't -- can't remember. It was obviously prior

14

15 Q The -- The law, the spill law that's referenced in

16 Schmoller 4, that's the July 1994 letter from the

17 DNR, do you know when that was enacted?

18 A No.

19 Q Okay. Well, I'm trying to understand how you know

20 what it is that you're telling me. You're saying

21 none of this spilling or dumping or spreading was

22 illegal. Are you saying that at no time when it

23 was spilled or dumped or spread was there any law

24 in the State of Wisconsin that forbid such

25 conduct?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 173 1 MR. BUSCH: Object to the form. Once 2 again we're getting into legal conclusions, but go 3 ahead and answer if you can. If you know. THE WITNESS: I don't believe it was 5 illegal at the time. 6 BY MR. COLLINS: 7 Q Okay. Okay. The last bullet point says, this is 8 on Lenz No. 5, finally, we should indicate that 9 levels of these substances in their current 10 locations do not present a public health risk at 11 the present time, and that we plan to use the most 12 effective means to neutralize the substance 13 concentrations in such a way that there will be no 14 future public health risk. Do you see that? 15 A Yes. 16 O Well, you know based on the letter that DNR sent 17 in July of 1994 that that's not true, right? 18 MR. BUSCH: Object to the form. 19 BY MR. COLLINS: Didn't the DNR say that the concentrations of PCE 21 in the groundwater exceed the enforcement 22 standards in Wisconsin law? 23 A Yes. 24 Q Okay. Do you have an understanding of what the 25 enforcement standard is or what it's designed to

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

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Deposition of James B. Lenz

Page 174 do? 2 A Protect public health. 3 Q Okay. So the DNR was saying in July of 1994 that contamination on your property exceeds the level 5 determined by the State of Wisconsin to protect 6 public health, right? 7 A Correct. 8 All right. So given that, isn't it true that 9 what's in that last bullet point is false? Do not 10 present a public health risk at the present time. 11 MR. BUSCH: Object to the form. Calls 12 for a legal conclusion. Go ahead and answer. 13 THE WITNESS: I think at the time this 14 letter was written that the extent of the 15 contamination was not known and there was no --16 nothing at this time that the public was going to 17 be at risk from. 18 BY MR. COLLINS: 19 Q Well, this doesn't say based on what we know right 20 now, does it? It isn't qualified in that way, is 21 22 MR. BUSCH: He didn't answer it that 23 way 24 BY MR. COLLINS: 25 Q Mr. Lenz, you wouldn't have written --

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

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Deposition of James B. Len

Page 175 1 A It says at this present time. 2 Q It states as a fact that the levels of the 3 substances existing at that time don't present a 4 public health risk. They don't say based on what 5 we know at this time. They say they don't present 6 a public health risk at this time, right? And yet 7 you have the State of Wisconsin saying yes, they 8 do and you need to clean it up. Isn't that right? MR. BUSCH: Object to form. The 10 letter speaks for itself. 11 BY MR. COLLINS: 12 Q Well, it does, which -- which -- Is there -- Is 13 there any confusion in your mind about what the 14 July 18, 1994 letter is telling Madison-Kipp? 15 A 16 Q Okay. Well, would you agree that some of these 17 statements in here that Mr. Coleman is directing 18 to Caldwell and Riesen are either ill informed or 19 misleading under the circumstances? 20 MR. BUSCH: Object to form. Lack of 21 foundation. Go ahead and answer. 22 THE WITNESS: I can't come to that 23 conclusion 24 BY MR. COLLINS: 25 Q Well, isn't it -- isn't it -- wasn't it years

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Page 176 after Mr. Coleman is writing this, years after 2 this that you learned from maintenance workers 3 that PCE contamination had been dumped out the 4 door for many years? Isn't that true? 5 That's after this letter. 6 Q It is after the letter. 7 8 Q Right. So given that, the company -- would you 9 say that by the time of this letter, March of 1996, the company had fully investigated the PCE 10 11 contamination on its own property? 12 A No. 13 Q Okay. So given what you just told me to be true, 14 that it hadn't fully investigated, do you believe 15 that a letter like this assuring people that 16 there's no risk to the public health is proper? 17 MR. BUSCH: Object to the form. This isn't a letter to the public. Go ahead and answer 18 19 if you can. 20 BY MR. COLLINS: 21 Q Well, do you think a memo like this to anybody 22 containing the kind of assurances that Lenz No. 5 23 does is proper given that, as you just told me, by 24 the date of this memo the company had not fully 25 investigated the extent of PCE contamination on

Deposition of James B. J. av

Kathleer	McHu	gh and Deanna Schneider vs. Madison-Kipp 9/28/12	Deposition of James B. Lenz
			Page 177
1		its own property?	
2	Α	Yes.	
3	Q	You think this is proper.	
4	А	No.	
5	Q	Okay. You think it's improper.	
6	Α	I think for the time this is setting a goal to say	
7		we're going to clean up this to the best way we	
8		can to protect future health.	
9	Q	Well, it doesn't just say that, does it? Doesn't	
10		it say there's no problem here, there's no risk to	
11		the public here?	
12	Α	The last sentence says we're going to use this in	
13		the most effective way to neutralize the substance	
14		in concentration in such a way that there's no	
15		future public health risk. That's the conclusion	
16		of the whole letter.	
17	Q	What's that?	
18	Α	That they're going to clean it up in a way that	
19		there's no future public health risk.	
20	Q	Okay. Is that what happened? That's not what	
21		happened, is it?	
22	Α	I don't know that.	I
23	Q	You don't? Do you know that vapor contamination	

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has been found in and underneath homes in the

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Page 178 1 A I've heard that. 2 Q Okay. Do you believe it to be true? 3 A That they found vapors? I have no idea what the concentrations are. 5 Okay. You said the groundwater hasn't been 6 cleaned up, right? 7 A Correct. 8 Q Okay. Okay. If there are PCE vapors in people's homes right next to the plant and those vapors are 10 from Madison-Kipp, then that goal wasn't achieved, 11 was it? 12 A Correct. 13 Q The PCE vapors that you have heard about being 14 detected in people's homes, you wouldn't want 15 those in your home, would you? 16 A No. 17 Q Yeah. Okay. All right. 18 (Exhibit No. 6 was marked for 19 identification.) 20 BY MR. COLLINS: 21 Q Let me know when you're ready with 6, please. 22 A 23 Q You've had a chance to read it? 24 Α 25 Q All right. Can you tell me, do you -- Can you

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

neighborhood?

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1		give me any information about why Mr. Coleman is
2		writing a memo to upper management people about
3		how to deal with newspaper and television
4		inquiries about the PCE contamination?
5		MR. BUSCH: Object to form. Lack of
6		foundation. Go ahead and answer.
7		THE WITNESS: I suspect he wanted to
8		tell them how to present this to the media.
9	ВҮ	MR. COLLINS:
10	Q	Well, I understand that. I think that's a fair
11		reading of this here, but you can see that the
12		upper management people on this, it's written to
13		Crouse, but then it's also copied to Riesen,
14		Hauser and Caldwell, right?
15	Α	Right.
16	Q	And they're all upper management guys, right?

Is that the entire upper management group as of

characterization of what -- of what Coleman seems

to be doing here. What I'm wondering is is can

you shed any light on why it's Coleman that's

this point in time, March of '96?

22 Q Okay. So, I mean, I agree with your

tooling side, but --

20 A Yeah. I think they had one more guy on the

2 company? Why is he writing this kind of a memo? 3 Can you enlighten me on that? 5 company. 6 Q Okay. Isn't it fair to say that on this PCE 7 8

4 A Because he's concerned about the reputation of the contamination problem that Mr. Coleman, according to what you knew and heard and understood, was the ultimate decision maker? MR. BUSCH: Object to the form. Lack THE WITNESS: I have no idea. this time, discussed with Mr. Coleman how the PCE contamination problem and the company's addressing MR. BUSCH: Same objection. Did you ever hear that that kind of thing

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doing it, the owner -- one of the owners of the

9

10

11 of foundation.

12

13 BY MR. COLLINS:

14 Q Do you believe that Mr. Caldwell, the president at

15

16

17 it was proceeding?

18

19 BY MR. COLLINS:

20

21 happened?

22 A Not directly, no.

23 Well, indirectly did you hear that that kind of

24 thing --

25 A Well, it's obvious by these letters that he must

2

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9728/12 Deposition of James B. Lenz Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9728/12

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be keeping him informed.

- 2 Q Okay. But apart from this letter -- I'm assuming
- 3 you would tell me you did not see this memo before
- 4 today, right?
- 5 A I never saw this before.
- 6 Q So apart from this memo, wasn't it your
- 7 understanding that -- that the upper management
- 8 folks were keeping Mr. Coleman posted?
- 9 A Yes
- 10 Q All right. What's that understanding based on?
- $11\ \ A$ $\ \ He's$ the owner of the company. He -- He's the one
- 12 writing the check.
- 13 Q Okay. Now, was that -- that's -- that's not just
- 14 based on the fact that he happened to be an owner
- 15 and has that right, but isn't it based on your
- 16 understanding based on what you knew and heard and
- 17 experienced in working for 31 years at the
- 18 company?
- 19 MR. BUSCH: Same objection. Lack of
- 20 foundation. Go ahead and answer.
- 21 THE WITNESS: Reed Coleman was always
- 22 very concerned about the image of the company in
- 23 the public eye.
- 24 BY MR. COLLINS:
- 25 Q Okay. How do you know that?

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3 wanted to present it in a positive way. Q And I'm not -- I'm not doubting you on that. I'm 5 just wondering how you know what you just told me. 6 Did you hear Coleman say it? Did he write memos to employees? Did that filter down through the corporate chain? How did you know that? 9 A Just a sense I got by being with the man and 10 listening to him in various meetings and --11 Q Okay. What's the sense you got about how tight he 12 was with the dollar? 13 MR. BUSCH: Object to the -- Go ahead. 14 I object to the form of that question. It's 15 improper, but go ahead. 16 BY MR. COLLINS: 17~~Q~~ There's a lot of different ways to say it, but you 18 said you got a sense of the man and his position 19 on the company's image, right? 20 A 21 Q All right. Now I'm asking if you have a sense of 22 the man and how he felt about financial matters 23 and particularly spending money. What's your 24 sense of that? 25 A Spending money on what?

He would just express that all the time, that he

wanted -- he was very proud of Madison-Kipp and he

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Q Well, things like an environmental cleanup and

2 investigation.

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

- 3 A They were always watching the dollars, and they
- 4 would want to do it in the most cost effective way
- 5 possible.
- $6\quad Q \quad \ \ Okay. \ \, And you heard that that was Mr. Coleman's$
- 7 view; is that right?
- 8 A Yes.
- 9 Q Who told you that?
- 10 A That was -- The whole company view was everything
- was to be done in the most cost effective manner.
- 12 I was required to get three quotes on everything
- 13 to make sure it was done in the most cost
- 14 effective manner.
- 15 Q Okay. Did you having any role in -- in the
- 16 company hiring Dames & Moore?
- 17 A No
- 18 Q Did you get any quotes for that?
- 19 A No
- 20 Q How come? That's environmental, right?
- 21 A I wasn't in charge of environmental at that time.
- 22 Q Okay. But isn't it true that throughout your
- 23 10-year stint as environmental manager the company
- 24 hired Dames & Moore or Bob Nauta, wherever he
- 25 happened to be, for a large variety of

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Deposition of James B. L

1 environmental projects?

- 2 A I believe this is the only project that Bob Nauta
- 3 worked on.
- 4 Q The PCE contamination project?
- 5 A Yes.

14

- 6 Q Yeah? How did the company come to hire him, do
- you know? How was he selected? By what process,
- 8 do you know?
- 9 A I have no idea.
- 10 Q Okay. Let's talk about politics for a little bit
- and what role that may have played in all of this.
- 12 Did you ever hear that the company was --
- 13 Madison-Kipp was politically well connected?
 - MR. BUSCH: Object to the form. Calls
- 15 for hearsay. Go ahead and answer.
- 16 THE WITNESS: Yes.
- 17 BY MR. COLLINS:
- $18\ \ Q$ Okay. Tell me what you heard about that.
- 19 A I knew that Reed Coleman was a Republican and that
- 20 he had ties to the Republican party and used to be
- 21 well connected years ago.
- 22 Q Okay. Can you give me anything else you might
- 23 have heard about the company's being politically
- 24 well connected?
- $25~~\mathrm{A}~~\mathrm{That's}$ about all I know. I couldn't even give you

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Deposition of James B. Lenz Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 185 2 Q All right. So the political connections you heard 3 about were Mr. Coleman's, right? 4 A Yes. 5 Q Former Chairman of the Republican party in 6 Wisconsin? 7 A Well, okay. 8 Q No, I'm not asking you to agree with me. Formerly 9 involved with the Republican party in the State of 10 Wisconsin? 11 A Could be. I didn't know that. 12 Q What was the nature of his political connections 13 as you heard about them? 14 MR. BUSCH: Object to form. Calls for 15 hearsay. Go ahead and answer. 16 THE WITNESS: I really don't know 17 anything more than what I just told you. 18 BY MR. COLLINS: 19 Q Okay. Well, who -- who told you what you just 20 21 MR. BUSCH: Same objection. Go ahead 22 and answer 23 THE WITNESS: I don't remember. 24 BY MR. COLLINS:

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25 Q Okay. But it's something you learned, right?

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Page 186 1 A Yes. 2 Q While working at the company? 3 A 4 0 Okay. And did you ever learn or hear, come to 5 believe, that Mr. Coleman's political connections were playing any role in how the PCE contamination 6 7 problem was being addressed? 8 MR. BUSCH: Object to form. 9 THE WITNESS: No. 10 MR. BUSCH: Calls for hearsay. Go 11 ahead and answer. 12 THE WITNESS: No. 13 BY MR. COLLINS: 14 Q Did you ever hear that anyone at Madison-Kipp had 15 gone to the governor's office to explain the 16 company's position or to complain about the things 17 the DNR was asking the company to do to address 18 the PCE contamination problem? 19 MR. BUSCH: Object. Calls for 20 hearsay. Go ahead. 21 THE WITNESS: No. 22 BY MR. COLLINS: Q You never heard that anybody had gone to the 23 24 governor's office; is that right? 25 Α Correct.

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Page 187 1 Q All right. Did you ever hear that any lawyer 2 engaged by the company had gone to the governor's 3 office to address any aspect of the PCE 4 contamination? 5 MR. BUSCH: Object. Calls for 6 hearsay. Go ahead and answer. 7 THE WITNESS: No. 8 BY MR. COLLINS: Q Did you ever hear that the -- how the Wisconsin 10 DNR was treating Madison-Kipp, in terms of what it 11 was requiring Madison-Kipp to clean up or not 12 clean up, was influenced by anybody's political 13 connections? 14 MR. BUSCH: Object to form. Calls for 15 hearsay. Go ahead and answer. THE WITNESS: I didn't hear anything. 16 17 BY MR. COLLINS: 18 Q Never heard anything about that. 19 A 20 Q Okay. Did you ever come to believe that the DNR 21 was not requiring Madison-Kipp to do PCE 22 investigation or cleanup that DNR had the right to 23 insist that Madison-Kipp do? 24 A 25 Q Did you ever wonder about why DNR wasn't being

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Page 188 1 more forceful with Madison-Kipp in requiring 2 investigation or cleanup of the contamination 3 problem? 4 MR. BUSCH: Object to form. Assumes 5 facts not in evidence. Go ahead. THE WITNESS: No. 6 7 BY MR. COLLINS: 8 Q Okay. All right. Let's go back to Lenz No. 4, please, which is this Dames & Moore environmental 10 February 1, 1996. 11 MR. BUSCH: You want to take a break? 12 THE WITNESS: I'm good. 13 BY MR. COLLINS: 14 Q Anytime you want. You say so and you can have a 15 break, okay. All right. So you got this document 16 in front of you then? 17 A Yes. 18 Q Okay. You see on the fourth page of this it's 19 titled Available Options. Do you see that? 20 A Yes. 21 Q And you see one of the options is option 2, tell 22 DNR results and ask for a meeting. Do you see 23 24 A Yes 25 Q Okay. If you could go deeper into the document

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then, two pages, to one that's discusses

- 2 advantages and disadvantages of option number 2.
- 3 Α
- 4 Q Do you see that?
- 5 A Correct.
- 6 Q Okay. And under one of the advantages is the
- second -- rather the first bullet point is do not
- commit to anything. Do you see that listed as an
- advantage?
- 10 A
- 11 O All right. Do you recall learning or hearing
- 12 within the company that one of the company's goals
- 13 was to not commit to anything by way of
- 14 investigation or cleanup of the PCE problem?
- 15 MR. BUSCH: Object to the form of the
- 16 question. Are you referencing off of this, or are
- 17 you just asking that question in general?
- 18 BY MR. COLLINS:
- 19 Q I'm asking the question. Do you recall the
- 20
- 21 A No. Yeah, can we --
- 22 Q Yeah. Let me --
- 23 A I was going back to read what option 2 was again,
- 24
- 25 Q All right. So did you ever hear or learn that one

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Page 190 1 of the goals of Madison-Kipp in addressing this 2 PCE contamination problem was to do as little as 3 possible? 4 A No. 5 Did you ever hear that one of the company's goals 6 was to spend as little money as possible? 7 A Yes. 8 Q Okay. Who did you hear that from, please? 9 Tom Caldwell. I probably heard it from several 10 people. 11 Q Who besides Caldwell? 12 A I -- I know I heard it from Tom. The rest would 13 be a guess. 14 Q Okay. Well, tell me what you heard from Tom 15 Caldwell on that subject, please. 16 A There were numerous conversations, and when they 17 were going through alternatives they would always 18 say well, we want to do this in the most cost 19 effective way possible. 20 Q Caldwell told you that? 21 A 22 All right. And he told you that when he was 23 president of the company. 24 Α 25 0 So why is the president of the company telling you

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- that on -- on -- in numerous conversations, as you
- 2 were telling me?
- 3 Α To make sure I was spending the money wisely.
- Q And these numerous conversations you're telling me 4
- 5 about where Caldwell told you to spend the money
- in that fashion, these were conversations about 6
- the PCE contamination problem, right?
- 8 A
- 9 0 So give me a for instance about -- about -- give
- 10 me a context about when he would tell you to --
- 11 the money should be spent in a cost effective way.
- 12 Was there a particular --
- 13 A Well, when they did the first remediation using
- 14 the BiOx, which is what these letters are all
- 15 referencing, there were several options. One,
- 16 they wanted to dig all the soil out and remove it.
- 17 I don't remember what the -- The other option's
- 18 the BiOx, and I thought there was a third one. I
- 19 think that was vapor extraction or something. And
- 20 the -- they wanted to do that -- I remember him
- 21 saying well, let's do this in the most cost
- 22 effective way possible to clean it up.
- 23 Q Okay. Do you recall during your tenure that there
- 24 was a concern over PCE contamination of vapor off
- 25 site, off of the company's property?

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MR. BUSCH: Object. Asked and

- 2 answered. Go ahead.
- 3 THE WITNESS: It was shortly before I
- 4 left, maybe somewhere around -- around beginning
- 5 of 2011, I heard about the vapors, that they were
- 6 finding them in neighbors' basements. And that
- was the first time I ever heard of it, and I no
- 8 longer was in charge of environmental stuff, so --
- 9 BY MR. COLLINS:
- 10 O The first you heard of PCE vapor contamination
- 11 associated with Madison-Kipp was in 2011?
- 12 A PCE vapors in neighbors' basements.
- 13 Okay. How about PCE vapors on the company's
- 14 property? Did you ever hear about those?
- 15 Α
- 16 Q Did Mr. Caldwell ever tell you we're not spending
- 17 money on this or that?
- 18 A No. It was always spend money wisely and give me
- 19 all my options.
- 20 Q Okay. Did Mr. Caldwell ever -- and he made the
- 21 final decision about what option would be chosen?
- 22 A Normally, because some of them had up-front costs
- 23 versus long-term costs.
- 24 O Okay. Do you know if Mr. Caldwell had any
- 25 environmental background?

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 193 1 A 2 Q Do you know if he had ever dealt with a serious 3 environmental contamination problem before this 5 Α Not that I know of. 6 Q Okay. Did you think that he was qualified by any 7 reason, other than the fact that he held the 8 checkbook, to be making these decisions about what 9 the company would and wouldn't spend money on to 10 address a serious environmental contamination 11 problem? 12 A He's the boss. You do what the boss says. 13 O I got that. And he's got his hands on the 14 checkbook, I got all that, but apart from him 15 being the boss and apart from him having his hand 16 on the checkbook, did he have any other 17 qualifications that you can think of to be the guy 18 deciding whether to spend money or not spend money 19 on environmental remediation or cleanup? 20 A Other qualifications? No. 21 O Did he ever tell you he dealt with anything like 22 this before? 23 A Not that I recall.

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Okay. Did he ever tell you that he had to report

to anybody else about the options you were

24

25

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Page 195 to hear that this PCE contamination problem 2 threatened the company's financial health? I never heard it phrased that way. 3 Α 4 Q Okay. 5 Α But the company has never been in a very good financial situation, leading to my layoff. 6 7 Okay. And I'm not -- I'm not smiling about that. Q I don't think that's funny for anybody, but -- I 8 9 mean, did you ever hear or learn or come to 10 believe that spending money on this PCE 11 contamination problem could cause serious 12 financial jeopardy for the company? 13 A I never heard it mentioned that way, no. 14 Q Well, did you ever hear it mentioned in any other 15 way that this PCE contamination problem, you know, 16 might be a -- a financial threat or a financial 17 drain or a financial problem for the company? 18 A I knew that it was -- they expressed that 19 financially there were times of the year that --20 just -- just the way the company cycled there were 21 times of the year they could spend money and there 22 were times of the year they couldn't. And I know 23 there were times when we tried to postpone things 24 for several months so we could get to a better 25 financial time of the year, but --

Page 194 presenting him for how to spend money? 2 Not that I recall. Α 3 Did he ever tell you that he was talking to Coleman about any of this? 5 He must have because I knew Coleman knew about it 6 because I'd, in passing, see him in the hall and 7 he'd ask me questions about how things were going. 8 Who would ask you questions in the hall about how 9 things were going? 10 A Both Coleman and -- and Tom Caldwell. 11 Q Caldwell? And they'd ask you questions about some 12 aspect of the PCE contamination problem? 13 A 14 And when they asked you these questions they would 15 seem to be knowledgeable about what was going on, 16 right? 17 A 18 So you got the clear impression that -- that 19 Coleman and Caldwell were paying close attention, 20 21 A Yes. 22 Q Okay. And you would expect so because of the 23 seriousness of the problem; is that right? 24 Α 25 0 Did the -- Did you ever come to believe or -- or (414) 271-4466 Halma-Jilek Reporting, Inc. Experience Quality Service!

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Len Page 196 Because of the seasonal nature of the business? 2 Seasonal nature of the business. Α 3 Okay. Do you know if the company budgeted for, 4 you know, what it -- what it was willing to spend on dealing with the PCE contamination problem? 6 I never saw the budget. 7 Q Did the company do budgeting? 8 A 9 Did you contribute to that process at all when you 10 were environmental manager? 11 Capital budget, I mean, asking what I thought we 12 were going to spend in equipment and whatever, 13 cleanup, or everything for a year. 14 Q Okay. So you were -- you were asked while you 15 were environmental manager what you thought the 16 company would have to spend to address the PCE 17 contamination problem for a certain budget period? 18 A I don't know if I ever filled it in on PCE, but 19 any other environmental issues. 20 Q Well, who filled it in for PCE if it wasn't you? 21 I think Mark Meunier, Bud Hauser did that because 22 they were more direct talking to Dames & Moore or 23 24 Okay. So let's go back to the -- Lenz No. 4. You 25 have it right in front of you. That's the page

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 197 I'd like you to look at. The next bullet point 2 down below the do not commit to anything says try 3 to direct the DNR to MKC goals. Do you see that? 4 A 5 Q Do you know what -- Did MKC have goals that were 6 articulated to you for this PCE contamination 7 problem? 8 A I don't understand what directed to me means. You 9 mean goals -- that they had a goal that they 10 directed me to, or what -- Rephrase that how 11 12 Q All right. Did anybody ever tell you that the 13 company had goals relating to the PCE 14 contamination problem? 15 A Well, beyond goals of -- I mean, sure there were 16 goals. Goals to not spend any more money than we 17 had to, goals to get it cleaned up so we don't --18 you know, goals to have good public image on this. 19 Q Okay. Who told you what the goals were? I mean, 20 these goals you just mentioned to me, how do you 21 know they were the company's goals? 22 A They were just general knowledge. I mean, they

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23

24 Q

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did a pretty good job of communicating goals.

Who? Upper management?

Upper management.

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1 0 Okay. Communicating them to you and others, 2 right? 3 Right. They had -- They had quarterly meetings with all the employees. 5 Q And the first goal that you mentioned in your 6 testimony was don't spend any more money than you 7 have to, right? 8 A Right. 9 Q Okay. Did you mention that first because that was 10 the -- the one most emphasized at the company? 11 A No, because we were just talking about money. 12 Q Okay. Okay. Okay. 13 (Exhibit No. 7 was marked for 14 identification.) 15 THE WITNESS: Okav. 16 BY MR. COLLINS: 17 Q Okay. So Lenz No. 7, this is a -- it's indicated 18 to be a draft of a Dear Neighbors letter. You see 19 that? 20 A 21 Q Okay. Have you seen this document before today? 22 Not that I recall, but I may have. I saw most of 23 the mailings that went out to the neighbors. 24 Q Okay. 25 Α But I don't know if I saw the draft. (414) 271-4466 Halma-Jilek Reporting, Inc. **Experience Quality Service!**

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Lenz Page 199 1 Q Did a letter like this go out to the neighbors? 2 A I believe one did around that timeframe when we were doing remediation in the back parking lot. 3 4 Q Okay. So, you see the fax line up top? 5 A Үер.

6 Q It says Wood C-O-M-M. Do you see that? 7 Α 8 Q And then you see there's kind of some -- up in the upper right-hand corner there's some handwritten scribble that says from something Woods. Do you 10 11 see that?

12 A Yes.

13 Q Okay. What's -- What's the reference to Wood

14 there, do you know?

15 A That's -- That says from Jim Wood --

16 Q

17 A -- in the corner. And that's Woods Communication,

18 which is a public relations company.

19 Q Okay. So this is an outside vendor, right?

20 A Outside vendor that would help with our public

21 relations, correct.

22 Q Okay. And did you play any role in hiring Woods

23 Communication or Wood Communication?

24 A

25 Q Somebody else did that? Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

Deposition of James B. Len

Okay. Now, did -- did Wood do work for the

3 company on the PCE contamination problem?

5 Q Okay. Well, do you know of anything that Wood

6 Communication did work for the company on?

7 They did several public relations-type things, and

8 for a while I thought they were involved in the

9 editing process of all the stuff that went out to

the neighbors.

Okay. Including things that went out to the

12 neighbors on the PCE contamination?

13 A I believe so, yes.

14 Q Okay. All right. So the second paragraph of this

15 document, Lenz No. 7, says first let me assure you

16 there is no threat to your health and safety as a

17 result of our operations. Environmental, health

and safety regulatory agencies have visited our

20 actually do better than state and federal

25 Q Now, if that sentence was communicated to anybody

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Usually it was Tom Caldwell directly.

2

4 A I'm not certain.

10

11 Q

18

19 facilities and certified that we are meeting and

21 regulations which are designed to protect public

22 health and safety, as well as air and water

23 quality. Do you see that?

24 Α Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 201 1 in July of 1996 it would be false, isn't that 2 correct? 3 MR. BUSCH: Object to form. Lack of foundation. Go ahead. 5 THE WITNESS: At the time I don't 6 think there was any knowledge that would have made that false. 8 BY MR. COLLINS: 9 Q Well, in July of 1994 the company got its letter 10 from the state about exceedances of enforcement standards, right? 11 12 A Correct 13 O Okay. So given that letter, isn't it false to 14 say -- to say to anybody that regulatory agencies 15 have visited our facilities and certified that 16 we're actually doing better than state 17 regulations. That would be a false statement 18 considering what the state said to Madison-Kipp in 19 July of 1994, wouldn't it? 20 MR. BUSCH: Object to form. Lack of 21 foundation Go ahead and answer 22 BY MR. COLLINS:

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Q Schmoller No. 4, which is the letter from the

state to Madison-Kipp --

Yeah, I know.

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Page 202 1 Okay. Says groundwater monitoring at Well MW-3 2 contains concentrations of PCE which exceed the 3 enforcement standard as listed in Wisconsin Administrative Code. 5 So given that the state said that to 6 Madison-Kipp in July of 1994, this statement, if 7 it was communicated to anybody, that regulatory 8 agencies have certified that Madison-Kipp is 9 actually doing better than state regulations on 10 water quality, that is false, isn't it? 11 MR. BUSCH: Object to form. Lack of 12 foundation. Go ahead and answer. 13 THE WITNESS: Well, first of all, 14 from -- Jim Wood is not a environmental expert. 15 So being a draft, I don't think he -- you can say 16 that this is a letter that's going to go to 17 anybody and say anything and has been word-smithed 18 19 BY MR. COLLINS: 20 Q Mr. Lenz, that's why I asked the question the way 21 I did. I said if that statement was communicated 22 to anybody, particularly to neighbors --23 A Since there are no wells --24 0 -- it would be false, right? 25 -- that anybody's drinking out of -- but I would Α

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Page 203 agree, yes, they can't say that it was certified. 2 Q Well, especially as to water quality, right? No one's drinking that water. 3 Α 4 Q Well, but the groundwater -- I mean, do you --5 A Fifty years from now there might be a problem. 6 O Okay. Let me just ask you this. If that statement were communicated to neighbors in July 8 of 1996, would that have been acceptable to you? 9 As written, no. MR. COLLINS: Okay. Let's take a 10 11 break, please, okay 12 (Recess taken.) 13 BY MR. COLLINS: All right. New exhibit, Schmoller 9. It's 14 O 15 already been marked, so -- Okay. Do you know what 16 a groundwater plume is? Have you ever heard the 17 term? 18 A 19 Q Okay. So Schmoller 9 is a -- a -- is taken from 20 the DNR's website, and it is a depiction prepared 21 by the City of Madison engineering folks about 22 nine -- excuse me, eight months ago -- excuse me, 23 seven months, to describe the -- the PCE 24 concentrations and the plume in the deep 25 groundwater. Do you see that?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Page 204 1 A 3 were at Madison-Kipp did anyone attempt to draw a 4 groundwater plume to reflect the contours or the estimated contours of the PCE contamination in the 6 groundwater? 7 Did someone at Madison-Kipp? Α 8 Q Yeah 9 Α 10 Q Did anybody anywhere, to your knowledge, inside 11 Madison-Kipp or outside? 12 I mean, there was all kinds of things Bob Nauta Α 13 drew, but I never saw anything like this. 14 Q Did you ever see Nauta or anybody at any of his 15 companies, did you ever learn that any of them 16 had -- had drawn a groundwater plume? 17 A 18 O Okay. If what is depicted on Schmoller 9 is 19 anywhere near accurate, then wouldn't you agree 20 that Madison-Kipp has failed in its responsibility 21 to clean up the PCE contamination in groundwater? 22 MR. BUSCH: Object to the form. 23 Assumes this is correct and -- one, and number 24 two, calls for a legal conclusion, but go ahead 25 and answer.

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Deposition of James B. Lenz Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

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 $1 \hspace{1.5cm} \textbf{THE WITNESS: From what I remember of} \\$

- 2 meetings with Nauta that groundwater is very, very
- 3 difficult to clean up.
- 4 BY MR. COLLINS:
- 5 Q Okay. I'm asking you a different question. We
- 6 can go back to the July 1994 letter, but don't you
- 7 recall that said clean up the contamination in the
- 8 groundwater?
- 9 A Yes.
- 10 Q And that that's your legal obligation DNR's
- 11 telling Madison-Kipp, right?
- 12 A Yes.
- 13 Q All right. So if, what we're looking at on
- 14 Schmoller 9, if this is accurate, then
- 15 Madison-Kipp has failed in the obligation that DNR
- 16 told it it had in July of 1994.
- 17 MR. BUSCH: Object to form. Calls for
- 18 a legal conclusion. Go ahead and answer.
- 19 BY MR. COLLINS:
- 20 Q True?
- 21 A No.
- 22 Q No. So you think you could have a plume of
- 23 groundwater contamination like that depicted on
- 24 Schmoller 9 and the company could have complied
- 25 with its obligation to clean up groundwater

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Page 206 1 contamination? 2 A It's not uncommon at all for the DNR to let 3 natural attenuation clean up a site and close it. Okay. When did DNR tell Madison-Kipp that it was 5 okay to use natural attenuation to clean up the 6 groundwater? 7 A I don't know that they ever said that. 8 Q Okay. So you're saying what's on Schmoller 9 9 is -- is, in your mind, acceptable 18 years after 10 DNR's letter saying clean up the groundwater. I 11 just want to know if it's acceptable to you. 12 MR. BUSCH: Object to form. Lack of 13 foundation, but go ahead and answer. 14 THE WITNESS: I don't think I have the 15 technical knowledge to say that it's possible to 16 clean that up. 17 BY MR. COLLINS: 18 Okay. Do you think you were qualified to be 19 Madison-Kipp's environmental manager for 10 years? 20 A 21 Q You do? 22 A (Witness nods.) 23 Q But you don't believe you're qualified to know how 24 to clean up the plume of contaminated groundwater

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1 A Yes.

- 2 Q You don't know how to clean up soil either, PCE
- 3 contamination in soil, true?

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- 4 A That I do know. Soil's easier to clean up.
- 5 Q Okay. Well, is the soil cleaned up at
- 6 Madison-Kipp?
- 7 A I haven't been involved with this for the last
- 8 five years, so I don't know what they've found in
- 9 the last five years, but --
- 10 Q Okay. Well, when you -- either -- either five
- 11 years ago when you stopped being environmental
- 12 manager or one year ago when you left the company,
- 13 at either of those junctures had the soil been
- 14 cleaned up of PCE contamination?
- 15 A I don't know for sure.
- 16 Q Okay. Okay. Okay. Let me get some basic
- 17 background from you. We already have your name.
- 18 Where do you live, please?
- 19 A Deerfield, Wisconsin. You want an address?
- 20 Q Address, please.
- 21 A 3759 Hommen, H-O-M-M-E-N, Lane, Deerfield.
- 22 Q Okay.
- 23 A 53531.
- 24 Q And so you know, I'm asking this in case we need
- 25 to communicate with you later in this litigation.

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coming from Madison-Kipp, is that also true?

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- 1 Not for any other purpose, okay. And where is,
- 2 forgive me for asking, but where is Deerfield,
- 3 Wisconsin? How far from here?
- 4 A It's about 15 miles east of Madison.
- 5 Q Okay. How long have you lived there?
- 6 A Twenty-three years.
- 7 Q Okay. Where do you work currently?
- 8 A Didion Ethanol.
- 9 Q D-I-D-I-O-N?
- 10 A Correct. It's actually Didion Milling.
- 11 Q Okay. And when did you start working at Didion
- 12 Milling?
- 13 A June 28th of 2011.
- 14 Q 2011. So pretty quickly after you left
- 15 Madison-Kipp?
- 16 A Like 10 days, yeah.
- 17 Q Congratulations. Not a lot of people can say
- $18\,$ that. That's wonderful. Okay. So what do you do
- 19 for Didion Milling?
- 20 A Environmental and safety manager.
- 21 Q Yeah. That's the title you've held all along?
- 22 A No. I just got safety about a month-and-a-half
- 23 ago
- 24~ Q $\,$ Okay. Okay. Do you have any -- Beyond this
- 25 consulting agreement, which is Lenz No. 2 and

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work, so --

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1 which we've talked about, do you have any other

- 2 relationship with Madison-Kipp? Pension,
- 3 retirement, anything like that you got going on
- 4 over there?
- 5 A There's a 401K, but I've rolled that over into --
- 6 out of Madison-Kipp.
- 7 Q Okay.
- 8 A So -- And Madison-Kipp has an ancient pension plan
- 9 that's like a whopping \$9 a month or something.
- 10 Q Are you getting paid under that?
- 11 A No
- 12 Q Okay. When will that kick in?
- 13 A When I turn 60 something. Sixty -- I don't know.
- 14 Q Okay. Nine bucks a month?
- 15 A Yeah, for every year of service.
- 16 Q Well --
- 17 A But that was discontinued at some point, so I
- 18 think it's going to be like 90 bucks or something.
- 19 Q Okay. So what did you do to prepare for this
- 20 deposition today?
- 21 A I met with these two legal staff for about
- 22 four-and-a-half hours, five hours, somewhere in
- 23 that neighborhood.
- 24 Q When was that?
- 25 A It was on last week Tuesday night and Thursday

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3 Q Four-and-a-half hours?4 A Yeah, approximately.

5 Q And you expect to be paid for that under the terms

night and Tuesday night this week. All after

6 of the consulting agreement?

7 A Correct.

8 Q Okay. So this -- Now, do you consider these

9 lawyers from Michael Best to be your lawyer?

10 A No.

1

2

11 Q Okay. Your lawyer's Ringsmuth, right?

12 A Right

13 Q Has he been involved in any of the four-and-a-half

14 hours of deposition preparation?

15 A He was involved in the last 45 minutes.

16 Q Okay. In person, or over the phone?

17 A In person.

18 Q Okay. And so who was in the -- who -- who was in

19 the room when you were preparing for the

20 depositions? Yourself, the two Michael Best

21 lawyers. Anybody else?

22 A No

23 Q Then Ringsmuth shows up later?

24 A He showed up on the last day, this Tuesday. It

25 was just a very short meeting.

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- 1 Q Okay. In any of these preparation sessions was
- 2 anybody from the company involved --
- 3 A No
- 4 Q -- either in person or over the phone.
- 5 A No.
- 6 Q Okay. In your -- In your preparation did you
- 7 review any documents?
- 8 A They showed me one map.
- 9 Q Okay. Were there any other documents you
- 10 reviewed?
- 11 A Not in the preparation for this, no.
- 12 Q Well, did you --
- 13 A We talked about things, but --
- 14 Q Okay. Okay. I want to go back and talk about
- 15 your -- some other work you did under the
- 16 consulting agreement when you started looking at
- 17 company documents, all right.
- 18 A Yeah.
- 19 Q All right. And you were looking for PCE documents
- 20 that were created after the letter from DNR in
- 21 July of '94?
- 22 A I was looking for any document that had PCE.
- 23 Q Okay. But -- And you were looking in the network
- 24 that you yourself had created, right?
- 25 A Yes.

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1 Q So when you did that looking you didn't expect to

- 2 find documents concerning how much PCE had been
- 3 purchased and when and --
- 4 A Correct.
- 5 Q -- that sort of thing because they were stored
- 6 elsewhere
- 7 A Elsewhere.
- 8 Q If they're, indeed, still around, right?
- 9 A Right
- 10 Q Okay. All right. So the PCE-related documents
- 11 that you did -- I assume you found some
- 12 PCE-related documents, right?
- 13 A Yeah.
- 14 Q Okay. Can you describe the volume of them?
- 15 A I provided a computer printout that had a list of,
- 16 I don't know, probably a couple hundred of them or
- 17 a hundred of them. I don't know.
- 18 Q And how did you determine that these were
- 19 documents that satisfied the search criteria you
- 20 had been given? It said PCE somewhere?
- 21 A Yeah. Well, the filing system has a category that 22 says air, water, sewer, and there's a PCE
- 23 category.
- 24 Q Okay. And -- Because you created that category?
- 25 A Yes, I created that category.

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1 Q So you went to the PCE category?

2 A (Witness nods.)

3 Q And did you just identify all those documents, or

4 did you --

5 A I identified those documents, and then it's my

6 understanding that counsel went through the rest

7 of the whole entire environmental file, which is,

8 I don't know, 1300 or 1400 documents.

9 Q Okay.

10 A And just paged through them to see if anything

11 said PCE on it.

12 Q So the result of your search was a list of

13 documents; is that right?

14 A Yep.

15 Q Some hundreds of documents.

16 A Right

17 Q Okay. But before you put a document on the list

18 you -- you read it?

19 A Sometimes I read it. Sometimes we had people that

20 were on light duty that were injured that just sat

21 there and read them and gave a three-sentence

22 brief on what it was and that's what they typed

23 in.

24 Q Somebody on light duty?

25 A Yeah.

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Page 214 1 0 I'm sorry. There was somebody helping you do 2 3 An hourly employee that gets injured, they can't do their normal job, it's more economical for 5 Madison-Kipp to come into work and do something. 6 MR. BUSCH: Was your question when he 7 originally inputted, or when he exported it? 8 Because I think we're getting mixed up, and I 9 apologize. 10 MR. COLLINS: It is entirely your 11 fault, I will agree to that. Okay. We can 12 stipulate --13 MR. BUSCH: Most things in life are. 14 MR. COLLINS: I understand you have 15 daughters. 16 MR. BUSCH: Yes, I do. 17 MR. COLLINS: I have three daughters, 18 too. So I'm learning. 19 Q All right. Here's what I'm -- what I want to know 20 about is the selection of PCE documents under the 21 consulting agreement. So I'm talking about the 22 work you did, I'm imagining, in -- in very late 23 2011 or early 2012. 24 Α 25 0 That's the work I'm talking about.

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1 A Okay.

2 Q Now, are there injured guys helping you do that?3 A There were injured people entering the data. You

4 asked me if I read it all, and I haven't read

5 every document in there.

 $6~~{
m Q}~~{
m Okay}.~{
m So}$ you were making the selections of the

7 PCE documents to forward on; is that right?

8 A I selected the PCE category and it gave me the

printout. And then I believe Leah went through

10 every document --

11 Q I'm not asking you what Leah did.

12 A -- to verify that my list was correct.

13 Q Okay. So what did you do to identify the -- Did

14 you do anything other than --

15 A I gave them the number of the document.

16 Q Okay.

 $17 \quad A \quad You see the document number that's on the top$

of -- like that one there? That's document 725.

20 on your list?

21 A Because somewhere in there it said PCE, and that

22 was --

23 Q That's all it took?

24 A -- the category it was filed under.

25 Q Okay. All right. Who put the number on the

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Deposition of James B. I

l document?

2 A It was either me or whoever filed it.

3 Q Originally.

4 A Originally.

5 Q Okay. Because your filing system required a

6 number, every document be given a number?

7 A Right.

8 Q Okay.

9 A Because it's not in any order. It's just

10 basically random number.

11 Q All right. So when you were done with this effort

12 what you turned over was a -- a list of documents;

13 not the documents themselves, right?

14 A Yes.

15 (Exhibit No. 8 was marked for

16 identification.)

17 BY MR. COLLINS:

 $18\ \ Q$ What's the matter? I'm sorry.

19 A I'm just chronologically trying to get this in my

20 head.

21 Q Okay. All right. Before you look at that, let me

22 ask you some -- a couple questions that don't have

23 anything to do with the document.

24 Okay. So your work with the Michael

25 Best lawyers in preparing for this deposition,

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Deposition of James B. Lenz Page 217 that was not your first involvement with Michael 2 Best lawyers at Madison-Kipp, correct? 3 A You mean just in general? 4 Q 5 A Yes. I've met with them before. 6 Q Okay. And you've met with Michael Best lawyers 7 while you were employed at Madison-Kipp in connection with the PCE contamination, right? 9 A Prior to this agreement, or after? 10 Q Yeah 11 A Prior? 12 Q There was reference, for example, to a guy named 13 14 A 15 Q Dave Hanson, and you said that was a Michael Best 16 17 A Well, how did you know that? 18 O 19 A How did I know that? I recognized his name because I've dealt with him on other issues. 21 Q You have dealt with him on other issues. 22 A 23 Q Did you ever deal with him on the PCE

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contamination issue?

I don't believe so, no.

24

25

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Page 218 1 0 Okay. You know a lawyer, Michael Best lawyer 2 named Crass? 3 Α Dave Crass? Yes. Okay. And did you deal with him on the PCE 5 contamination issue? 6 I want to say yes. Α 7 0 Okay. Concerning what topics? 8 Α I don't recall. 9 Okay. Have you dealt with any other Michael Best 10 lawyers besides possibly Hanson, Crass and these 11 two folks in the room here today, about the PCE 12 contamination issue? 13 A What was the name of the -- the -- the first 14 deposition prep that I went through about 10 15 months ago when we were going to have a 16 deposition? 17 Q Okay. 18 There was another Michael Best lawyer there, and I Α 19 can't remember his name. 20 Q Okay. All right. So what was your -- setting 21 aside deposition preparation, let's go back to 22 when you were at Madison-Kipp and -- and -- and 23 working on PCE contamination-related issues. What 24 was your understanding of the role that Michael 25 Best was playing regarding the PCE contamination? Halma-Jilek Reporting, Inc. (414) 271-4466 Experience Quality Service!

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1 A I don't -- I don't recall a big role at all. As

2 far as I know, I don't know. I don't remember

- 3 any -- It's been too long. I don't remember any
- 4 of the conversations that happened way back when.
- 5 Q Do you know who the Michael Best lawyers were
- 6 dealing with at the company concerning the PCE
- 7 contamination? I gather it wasn't you, or it
- 8 wasn't you very much, right?
- 9 A It wasn't me very much.
- 10 Q All right. Who were they dealing with, if you
- 11
- 12 A I don't really know. They had their favorite
- 13 group of lawyers, which was Dave Crass.
- 14 Q Who had their favorite group of lawyers?
- 15 Madison-Kipp did. The people they normally --Α
- 16 O And when you say they, what people are you --
- 17 A Well, upper management.
- 18 Q Same guys we've been talking about?
- 19 A Yeah.
- 20 Q Okay. Okay. All right. Let's look at, please,
- 21 at Lenz No. 8. And just let me know when you're
- 22 ready to go, please.
- 23 (Discussion off the record.)
- 24 THE WITNESS: Okav.
- 25 BY MR. COLLINS:

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1 Q Okay. Can I ask you questions?

2 Α

Okay. You recall seeing this letter before today? 3

- 4 A I must have. It's my handwriting doing the 731,
- 5
- 6 Q All right. So in the first paragraph, in the
- 7 first paragraph one of the sentences says the
- 8 modification to the table, which is Table 1
- 9 attached to the letter, relate to the elimination
- 10 of soil sampling previously proposed along the
- 11 storm sewer, and then it goes on. Do you see that
- 12 passage?
- 13 A
- 14 O Do you recall elimination of soil sampling along
- 15 the storm sewer line?
- 16 A No.
- 17 Q Do you recall a time when soil sampling along the
- 18 storm sewer line was going to be done?
- 19 A
- 20 Q All right. Do you recall a time when someone said
- 21 we're not going to do soil sampling along the
- 22 sewer line, along the storm sewer?
- 23 Α
- 24 Do you recall anyone asking you for the location
- 25 of the -- of various utilities, including the

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 221 storm sewer line? 2 Α 3 0 For purposes of possible environmental testing. Yes? 5 Α Yep. 6 Q Who asked you for that stuff? That would have been Bob Nauta. 8 Q Did you give it to him? 9 Α 10 Q To your knowledge, was there ever any environmental testing along these utility lines, 11 12 storm sewer lines and others? 13 A I believe there was, yes. 14 O You believe there was? 15 A (Witness nods.) 16 Q Why do you believe that? Did somebody tell you 17 that? Did you see something? 18 Because I remember they wanted -- You know, you 19 need to clarify which storm sewer line because 20 there's storm sewers all over the entire facility. $21\ \ Q$ $\ \ Okay.$ So there were for some -- there was some 22 testing along some storm sewer lines? 23 A Yeah. 24 Okay. Second paragraph of the letter, middle of 0

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that paragraph says nor do the costs include those

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Page 222 1 associated with a comprehensive site-wide 2 monitoring program. Do you see that? 3 Α 4 Q All right. Do you recall a site-wide --5 comprehensive site-wide monitoring program being 6 discussed or considered? 7 A No. 8 Do you know if there ever was a comprehensive 9 site-wide monitoring program undertaken? 10 A Define site-wide monitoring program. 11 Q Well, any way that you'd define it. 12 A There are monitoring wells all around the entire 13 property, both deep and shallow. So, I mean --14 Q Today you mean? 15 A Yeah. They're still doing that today. 16 Okay. When did that start? Under your 17 definition, when did the site-wide monitoring 18 19 Α As soon as a well was put in it was monitored. 20 Started out quarterly and switched to --21 Q I'm focusing on the site-wide part. I mean, I 22 know there were some wells, but -- Okay. Okay. 23 Let's look at --24 I don't think this was ever done. 25 Ο The -- What's that?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

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Deposition of James B. Len

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Deposition of James B. Lenz Page 223 The whole document was never done 2 Q Okay. Why not? Because it was determined that we couldn't dig as 3 4 close to the building as they wanted to dig. Q So nothing in the document was ever done, according to your understanding? 6 7 Yeah. That there was a proposal after this that 8 was actually completed.

11 identification.)

9

0 10

12 BY MR. COLLINS:

13 Q 9's pretty short. Lenz No. 9 is a short

14 one-pager. It's a -- an e-mail, or memo, if you

15 will, from Tom Caldwell to you, copy to Meunier.

(Exhibit No. 9 was marked for

16 A Yeah.

17 Q Tell me what this is about, please.

18 A I don't recall this.

19 Q Caldwell is asking if you can extend a certain

20 regression line; is that right?

21 A

22 Q Do you know what he's talking about there?

23 Α Regression lines are the lines on Bob Nauta's

24 drawings saying the concentrations at different

25

Q And how they change over distance?

2 Α

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3 Okay. Now, is that -- is that something that you

4 were competent to do in 2002, extending regression

6 It's just math. I would say --

7 It's just math knowing how chemical concentrations

8 in soil or water diminish over distance? Is that

9 what we're talking about here?

10 A I believe he's extrapolating data points to run a

11 line that says if the concentration is here, then

12 you can extrapolate that one -- the next

13 concentration's going to be here. I'm just

14 guessing. I don't remember this document.

15 Q All right. Do you understand the references to

16 the property line and references to whose

17 properties we're talking about? Why is

18 Mr. Caldwell referencing those things here?

19 A I have no idea.

20 Q Okay. Do you recall whether Mr. Caldwell was

21 hoping that the result of your extending the

22 regression line would be that the off-site

23 properties, the nearby neighbors' properties, were

24 not implicated?

25 MR. BUSCH: Object to the form. Calls

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1 for speculation. Go ahead and answer.

- 2 THE WITNESS: I can't answer that
- 3 question. I don't remember.
- 4 BY MR. COLLINS:
- 5 Q You don't remember?
- 6 A I don't remember this document. I don't remember
- 7 doing the regression.
- 8 Q Do you recall any discussion at the company about
- 9 how the -- the company's hoping that the
- 10 environmental problem did not go off site and
- 11 affect the neighbors?
- 12 A Yes
- 13 Q All right. Do you recall any concern at the
- 14 company about what problems might result if any of
- 15 this PCE contamination did go off site and affect
- 16 the neighbors?
- 17 A Yes.
- 18 Q Okay. What do you recall along those lines?
- 19 A That the problem was going to be a lot worse
- 20 because then -- It was easy to do remediation on
- 21 our property, but it's very difficult to do it on
- 22 neighbors' properties.
- 23 Q You said the problem was going to be a lot worse
- 24 if the contamination went off site to the
- 25 neighbors' property, right?

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Page 226 1 Α Yes. 2 Q What do you mean by a lot worse? 3 MR. BUSCH: He just answered. MR. COLLINS: Well, I don't know that 5 he did 6 MR. BUSCH: Okay. 7 BY MR. COLLINS: 8 Q So what do you mean by a lot worse? 9 A Because now we need to do remediation on the 10 neighbor's property, which is going to disturb 11 other people's property, lives, and we're not --12 it's much more difficult to do that. 13 Q Was part of the concern that it would be more 14 expensive to deal with an environmental problem on 15 neighbors' properties? 16 MR. BUSCH: Object. Lack of 17 foundation. Go ahead and answer. 18 BY MR. COLLINS: 19 Q Was that a concern expressed? That this is going 20 to be a lot more expensive to deal with if the 21 contamination has gone on to the neighbors' 22 properties? 23 A Yes, it was a concern. 24 Sure. Expressed by whom? 25 Tom Caldwell. Α

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- $1\ \ Q$ Okay. And isn't it true that that concern delayed
- 2 some environmental testing off site, the cost of
- 3 contamination going off site?
- 4 A I don't recall it delaying anything for that.
- 5 Q Okay. Well, how did the concern over what this
- 6 all would cost if the contamination has gone off
- 7 site on to neighbors' properties reflect itself in
- 8 the company's decision making about how to deal
- 9 with the PCE contamination problem?
- 10 A They were committed to cleaning it up if it went
- 11 off site.
- 12 Q How do you know that?
- 13 A Because they did remediate some of it off site.
- 14 Q Tell me about that.
- 15 A They did that BiOx injection in the backyard of
- 16 one of the neighbors.
- 17 Q Okay. Anything else besides the BiOx injection?
- 18 A If I recall, they scraped some topsoil off, too.
- 19 Q Okay. Were you involved in the decision about
- 20 whether or not to remove contaminated topsoil from
- 21 neighbors' properties?
- 22 A No.
- 23 Q Who made that decision?
- 24 A Probably Mark Meunier and Tom Caldwell.
- 25 Q Well, who were the deciders about whether to test

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp

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- 1 in the neighborhood adjacent to Madison-Kipp for
- 2 PCE contamination? Who made those decisions?
- 3 A I'm not absolutely certain.
- 4 Q Well, who do you believe made those decisions?
- 5 A Dames & Moore and Mark Meunier.
- ${\small 6\quad Q\qquad Well,\,Dames\,\&\,Moore\,made\,a\,recommendation,\,right?}\\$
- 7 A Right
- 8 Q So who at the company decided whether or not money
- 9 was going to be spent to test in the neighborhood?
- 10 MR. BUSCH: Wait until he's done.
- 11 THE WITNESS: Yeah. Sorry. I believe
- 12 that would be Tom Caldwell.
- 13 BY MR. COLLINS:
- 14 Q Okay. Because he made those kind of financial
- 15 decisions?
- 16 A Yes
- 17 Q Was Coleman involved in that decision?
- 18 A I don't know.
- 19 Q Okay. Would you have expected that he would have
- 20 been?
- 21 A I would expect he'd be informed.
- 22 Q Okay. And who at the company decided whether the
- 23 neighbors should be told about any aspect of the
- 24 contamination and if so, what they should be told?
- Who within the company made those decisions?

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Deposition of James B. Lenz Page 229 1 A It must have been the executive staff because it 2 didn't come from me. 3 Q Wasn't you? 4 A No. 5 Q Okay. Were you ever involved in discussions about 6 well, should we tell the neighbors this, should we 7 not? 8 A No. 9 Q Was there ever any discussion at the company that 10 you were involved in or of which you were aware 11 expressing concern over possible ill health 12 effects to the neighbors because of contact with 13 PCE contamination? 14 A I don't recall any conversations. 15 Q Any conversations like that? 16 A Like that 17 Q 18 (Exhibit No. 10 was marked for 19 identification.) 20 BY MR. COLLINS: 21 Q Let me know when you're ready. Let me know when 22 you're ready. You got to deal with something? 23 A No. 24 Q Okay.

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I'm ready.

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Deposition of James B. Lenz

Page 230 1 Okay. All right. So this is a -- Lenz No. 10 is 2 an August 31, 2006 memorandum from Dino Tsoris at 3 WDNR to the file. Says on August 30, 2006 I met with Mark Meunier of Madison-Kipp and Bob Nauta, 5 RSV Engineering, environmental consultant for MKC. 6 Site investigation and remedial action activities in recent months have not been conducted. I had stated that the lack of progress was unacceptable. 9 You see that? 10 A 11 Q Okay. Now, 2006 was just about the end of your 12 tenure, your 10-year tenure as environmental 13 manager, right? 14 A Correct 15 Q Did you know at about this time that Dino Tsoris 16 of WDNR had -- was -- was concerned about 17 investigation, remedial activities not having been 18 conducted and finding the lack of progress by MKC 19 unacceptable? Did you know he felt that way? 20 A 21 Q Okay. He didn't say that to you? 22 A Dino? 23 Q Yeah. 24 I haven't talked to Dino in a long, long time. Α 25 Well, but, I mean, back in 2006 did he tell you 0 (414) 271-4466 Halma-Jilek Reporting, Inc. Experience Quality Service!

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Page 231 that? 2 A Dino? No. Was he dealing with you about those kinds of 3 4 issues? 5 A No 6 Q Who was he dealing with? Α Mark Meunier. 8 Q Okay. So Meunier never told you that DNR felt this way, right? 10 A No. 11 Q Okay. Second paragraph down near the bottom of it 12 says however, if the appropriate and necessary 13 actions for investigation and cleanup of the PCE 14 system do not proceed in a timely manner, 15 enforcement action, including the use of a consent order, would be initiated. Do you see that? 16 17 A 18 Q Did you know he felt that way about it? 19 A 20 Q Was there ever any discussion within the company 21 that if we don't make more progress or better 22 progress here, that WDNR could sue us? 23 Not that I heard of, no. 24 O All right. All right. The beginning of that 25 paragraph says Mark Meunier stated that MKC had to

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp Page 232 meet a production deadline under contract for the 2 start-up of their new facility in Sun Prairie. Do 3 you see that? 4 A Yes. 5 All right. Did -- Did you know that at some point 6 there was a new facility in Sun Prairie for MKC? 7 Α 8 Q To your knowledge, did that play any role in 9 whether MKC was able to do the investigation and 10 cleanup work on the PCE problem that it needed to 11 12 A I didn't know how it relates to PCE, no. 13 Q Well, did you ever hear from Meunier or anybody 14 that because we're starting up this new facility 15 in Sun Prairie we don't have the money necessary 16 to do the investigation and cleanup of the PCE 17 18 A No. Never heard that. 19 Q Never heard that? 20 Α (Witness nods.) 21 Q If that were true, was that something you would 22 have heard? 23 MR. BUSCH: Object to form. Go ahead 24 and answer 25 THE WITNESS: Maybe.

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Deposition of James B. Lenz Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12

Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Page 233 1 BY MR. COLLINS: 2 Q Okay. Do you think that's a -- I mean, that was 3 an explanation that was offered to DNR, according to that memo. Do you think that was a false 5 explanation? 6 A No. The -- Assuming the timing is all right here, 7 they were really financially strapped then. 8 Q Okay. It's -- It sounds to me like, just from 9 the -- your answers in this deposition, like the 10 communications that the company was having with 11 WDNR and disputes that the company may have been 12 having with WDNR were not things that you were 13 involved in; is that right? 14 A Correct. 15 Q All right. That was being dealt with at some 16 other level of the company, right? 17 A Correct 18 So even during the 10 years that you were the 19 environmental manager and the company was 20 addressing the PCE contamination problem and --21 and working with DNR on it, during that 10-year 22 period when you were environmental manager you 23 were not kept in the loop by upper management at 24 the company about disputes with DNR over what

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Page 234 1 Α Correct. 2 Q You were kept in the dark about that stuff? 3 MR. BUSCH: Object to the form. THE WITNESS: Yes. 5 BY MR. COLLINS: 6 Q All right. One more. 7 (Exhibit No. 11 was marked for identification.) BY MR. COLLINS: 9 10 Q Okay. Let me know when I can talk to you about 11 12 A Go ahead. 13 Q Okay. So there's a couple of e-mails on this --14 on this Lenz No. 11. This is after the redaction. 15 The top one I want to ask you about, which is from 16 Bob Nauta to Renee Exum, do you see that? 17 A 18 Do you know who Renee is? Is that a name familiar 19 to vou? 20 A The name was familiar, but I couldn't place her 21 until I read the bottom where it says Michael 22 23 Q Okay. Did you ever deal with Renee? 24 I remember seeing her name on some documents, but 25 that's about it. I don't think I've ever talked

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needed to be cleaned up and when, right?

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l to her.

 $2\ \ Q\ \ All$ right. So in this -- this e-mail is dated

- 3 April 9, 2008. And you're still at the company at
- 4 that time, right?
- 5 A Correct.
- 6 Q Okay. And it says -- Nauta says to Renee at
- 7 Michael Best Hi, Renee. Here's the sordid story.
- 8 We have almost all the results all tabulated and
- 9 ready to submit to the DNR in an annual report.
- 10 Problem is we don't have one round of soil vapor
- 11 analyses. Kipp is taking forever to pay their
- bills, and the lab that did the analysis won't
- 13 give us the results until we pay them. I'd be
- happy to give you all the other results. There
 will just be one round of soil vapor results that
- won't be included. Thanks, Bob. Do you see that?
- 17 A Yes.
- 18 Q Okay. This, at least as is being related here by
- 19 Nauta, there's some environmental bills that Kipp
- 20 is not paying, right?
- 21 A Looks that way.
- 22 Q All right. Did you ever hear about that kind of
- 23 problem occurring before this? Kipp not paying
- 24 its environmental bills.
- 25 A At that timeframe Kipp wasn't paying any bills and

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they were on cash with all kinds of people.

- 2 Q Well, being on cash means paying your bills in
- 3 cash, right?
- 4 A Yeah.

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- 5 Q Doesn't mean not paying bills, right?
- 6 A Some of them they were out two years on.
- 7 Q All right. So what was going on at this time?
- 8 A This was right after the 2008 crash, and order --
- 9 automotive orders fell to nothing and there was no
- 10 money anywhere.
- 11 Q Okay. So how did it -- how did it affect the
- 12 investigation and remediation of the PCE
- 13 contamination problem?
- 14 A I know nothing beyond what that says on this
- 15 letter because I wasn't involved at that time. I
- 16 was a manufacturing engineer.
- 17 Q Okay. But would it be your expectation that bills
- for environmental work were delayed, or payment of
- 19 those bills was delayed as other bills' payment
- 20 was delayed?
- 21 A I expect they were.
- 22 Q Okay. Do you believe that Madison-Kipp has
- 23 adequately addressed the PCE contamination
- 24 problem?
- 25 MR. BUSCH: Object to the form. Lack

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1	of foundation, time. Go ahead and answer.	
2	THE WITNESS: Can you repeat it?	
3	BY MR. COLLINS:	
4	Q Yeah. Let me ask it this way. Mr. Lenz, isn't it	
5	true to say that you don't believe Madison-Kipp	
6	has adequately addressed the PCE contamination	
7	problem?	
8	MR. BUSCH: Object to form. Lack of	
9	foundation. Go ahead and answer.	
10	THE WITNESS: I would say that that's	
11	probably true.	
12	MR. COLLINS: Thank you. I'm done.	
13	Thank you.	
14	MR. BUSCH: I'm not going to start	
15	anybody else with 15 minutes to go. So we'll	
16	If you need to reschedule, we'll reschedule.	
17	MR. WHITE: I think 15 minutes is	
18	probably going to be about sufficient.	
19	MR. BUSCH: Well, I'm not going to	
20	start with 15 minutes.	
21	MR. COLLINS: It's your call. So,	
22	what do you want to do?	
23	MR. BUSCH: I want to go.	
24	MR. COLLINS: Reschedule the next	
25	round? Well, we got lots of times when	

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Kathleen McHugh and Deanna Schneider vs. Madison-Kipp 9/28/12 Deposition of James B. Lenz Page 240 1 STATE OF WISCONSIN) 2 MILWAUKEE COUNTY) SS: 3 I, KIM M. PETERSON, CM, Registered 4 Professional Reporter and Notary Public in and for the 5 State of Wisconsin, do hereby certify that the deposition 6 of JAMES LENZ, was taken before me at the law offices of 7 Whyte Hirschboeck Dudek, 33 East Main Street, Madison, 8 Wisconsin, on the 28th day of September 28, 2012, 2012, 9 commencing at 9 o'clock in the 10:00 in the forenoon. 10 That it was taken at the instance of 11 the Plaintiffs upon verbal interrogatories. 12 That said deposition was taken to be 13 used in an action now pending in the United States 14 District Court, Western District of Wisconsin, Wisconsin, 15 in which KATHLEEN McHUGH AND DEANNA SCHNEIDER, et al., 16 are the Plaintiffs, MADISON-KIPP CORPORATION, CONTINENTAL 17 CASUALTY COMPANY, UNITED STATES FIRE INSURANCE COMPANY 18 and ABC INSURANCE COMPANIES 1-50, are the Defendants, 19 MADISON-KIPP CORPORATION, is the Cross-Claimant, 20 CONTINENTAL CASUALTY COMPANY, COLUMBIA CASUALTY COMPANY 21 and UNITED STATES FIRE INSURANCE COMPANY, are the 22 Cross-Claim Defendants, CONTINENTAL CASUALTY COMPANY and 23 COLUMBIA CASUALTY COMPANY, are the Cross-Claim 24 Defendants, and LUMBERMENS MUTUAL CASUALTY COMPANY, 25 AMERICAN MOTORISTS INSURANCE COMPANY and JOHN DOE

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1	INSURANCE COMPANIES 1-20, are the Third-Party Defendants.
2	APPEARANCES
3	THE COLLINS LAW FIRM, P.C., 1770 North
4	Park Street, Suite 200, Naperville, Illinois, 69563,
5	smc@collinslaw.com, by MR. SHAWN COLLINS, appeared on
6	behalf of the Plaintiffs.
7	VARGA, BERGER, LEDSKY, HAYES & CASEY,
8	125 South Wacher Drive, Suite 1250, Chicago, Illinois,
9	60606-4473, nberger@vblhc.com, by MR. NORMAN B. BERGER,
10	appeared on behalf of the Plaintiffs.
11	MICHAEL, BEST & FRIEDRICH, LLP, 100
12	East Wisconsin Avenue, Milwaukee, Wisconsin, 53202,
13	jabusch@michaelbest.com, by MR. JOHN A. BUSCH, appeared
14	on behalf of the Madison-Kipp Corporation.
15	MICHAEL, BEST & FRIEDRICH, LLP, 100
16	South Pinckney Street, Suite 700, P.O. Box 1806, Madison,
17	Wisconsin, 53701-1806, lhziemba@michaelbest.com, by MS.
18	LEAH H. ZIEMBA, appeared on behalf of the Madison-Kipp
19	Corporation.
20	TROUTMAN SANDERS, LLP, 55 West Monroe
21	Street, Suite 3000, Chicago, Illinois, 60603-5758,
22	$christopher.white @troutmans anders.com, by MR.\ CHRISTOPHER$
23	WHITE, appeared on behalf of the Continental Casualty
24	Company.
25	MEISSNER, TIERNEY, FISHER & NICHOLS,

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Page 242 1 S.C., 111 East Kilbourn Avenue, 19th Flor, Milwaukee, 2 Wisconsin, 53202-6622, jbk@mtfn.com, by MS. JENNIFER A.B. 3 KREIL, appeared on behalf of the United States Fire Insurance Company. 5 That said deponent, before examination, was sworn to testify the truth, the whole 6 truth, and nothing but the truth relative to said cause. That the foregoing is a full, true and 9 correct record of all the proceedings had in the matter 10 of the taking of said deposition, as reflected by my 11 original machine shorthand notes taken at said time and 12 13 14 15 16 17 18 19 Notary Public in and for 20 the State of Wisconsin 21 22 23 Dated this 8th day of October, 2012, Milwaukee, Wisconsin. My commission expires March 9, 2014.

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Halma-Jilek Reporting, Inc.

SEA, (Mey in albe Schroens to Testify as a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

Experience Quality Service!

for the Western District of Wisconson

Karhteen McHuch, et al.,

Plaindf

Civil Action No. 11-cv-724

Madison-Kipp Corporation, et al., Defendens

(If the action is pending in another district, state, where

(414) 271-4466

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Mr. Jernes Lenz, c/c Mr. Mark Ringsmuth, 10 E. Doly Street, Suite 600. Madison, WI 52703

√ Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this case, you most designation or or more officers, directors, or managing agents, or designate other persons who content to testify on your behalf about the following matters, or those set forth in an attachment:

Place Whyte Hirsenbookek, Dividek, S.C., 33 Main Street, Suito Date and Time: 300 Madison, W. 53703 09/28/2012 10:50 am

The deposition will be recorded by this method - court

Production. Yev, or your representatives, must also bring with you to the deposition the following documents electronically storal information, or objects, and penent their inspection, copying, testing, or sampling of the

All closureans concerning any environmental matters of the Madison-Kipa Corporation site totated of 201 Wauhesa Street, Madison, W. 55704

The provisions of red, R. Civ. P. 15(e), relating to their protection as a person subject to a subpocha, and Rule 15 (d) and (e) relating to your duty to respond to this subpocha and the instantial consequences of not do ing so, are

Date 08/16/2012

CLERK OF COURT

Signature of Cherk or Grandy Clerk.

The name, address, e-mail, and telephone number of the arresney representing home of parest

, who issues or requests this subjects flower J. Monzko, The Co" ns Law Firm, P.C. 1770 N. Park Street, Suite 200, Naperville, Tincis 60663; (630) 577 1565, epineozhe@cullicskitez.com

WIT: LAPATE

CONSULTING AGREEMENT

Experience Quality Service!

Madison-Kipp Corporation ("Madison-Kipp), by its undersigned attorneys, and James Lenz ("Mr. Lenz") hereby enter into the following Consulting Agreement.

As a former employee, Mr. Lenz may possess information relevant to the matter McIligh v. Madison-Kipp Corporation currently pending in the District Court for the Western District of Wisconsin ("Matter"). Madison-Kipp recognizes that Mr. Lenz can and should be compensated for any time he spends assisting Madison-Kipp in the Matter and hereby agrees to compensate Mr. Lenz So per hour which both parties agree is a reasonable amount. Before logging any time in the Matter, Mr. Lenz must receive prior authorization from someone of authority at Madison-Kipp or from one of Madison-Kipp's attorneys.

As a consultant, Mr. Lenz will be operating as an independent contractor, not as an employee. It is understood by both parties that in performing any work hereunder Mr. Lenz, consistent with his normal practice, will conduct himself in an honest and fortaright manner.

As additional consideration to the compensation referenced above, Madison-Kipp hereby agrees to indemnify and hold Mr. Lenz, and his attorney harmless from any potential liability he may incur as a result of acts or omissions resulting from or arising out of either his prior employment with Madison-Kipp or as a result of this consultancy. Madison-Kipp also agrees that the duty to indemnify and hold Mr. Lenz harmless referenced above also includes a duty to defend Mr. Lenz against claims allegedly arising from acts or omissions relating to or arising out of Mr. Lenz's past employment with Madison-Kipp or arising out of this consultancy agreement.

Madison-Kipp agrees that it will be responsible for the payment of reasonable fees incurred by Mr. Lenz's attorney in reviewing the provisions hereof.

Dated this 5 day of December 2011.

Michael

LLP

Attorney for Madison-Kipp Corporation

063628-0090/10486153.1



Date: April 7, 1994 j.yle Crouse

Tom Caldwell Сору

From Jack Schroeder

Subj: Madison Brass Works

Following up my voice mail, I received a call from Mike Halsted of the WDNR who was seeking information regarding ground water contamination of the Madison Brass Works site (across the street). The Madison Brass Works site investigation that has been conducted thus far indicates

I told Mike that I that we do not currently use Tetrachlorocthene (otherwise know as perchlorocthylene or perk). This is a chlorinated solvent commonly used by dry cleaners but was also used as a degressing solvent. I indicated that there was a past history at the Kupfer Iron Works (now called Dura-Line Scales) facility for soils contamination and underground storage tank removal. I also provided Mike the report number of the investigation that was done at the

Mike indicated that he had received a closure request from MBW but had requested MBW to conduct finither testing before he would present facts to a 3 member panel that reviews closure requests. The consulting representatives for MBW objected to inriher testing and worded their response to WDNR such that Mike must make his presentation to the review panel row. This is expected to occur 4/18/94. Because the level of ground water contamination is higher than the

REDACTED

Mike said he would provide me with blind copies of all correspondence on the issue. I will keep you posted on any new information I receiv



MK005381



Dames & Moor Meeting 2/1/96 Environmental

Madison-Kipp Corporation HS & E Manager

MK006604

How Did We Get Here?

- No solid leads on what happened to contaminate the property
- Various spills throughout the years

- Original assumption that is no longer valid
 - Surrounding companies did not cause the problem.

- Degreasing tank

Surrounding companies

MK006606

Need to submit the June and July Sampling

results.

DNR is asking "What is MKC Doing?"

■ levels could exceed state enforcement limits

■ Levels exceed state enforcement limits

Soil

Groundwater

Scattered Environmental Problems

Today's Situation

Available Options (cont.)

■ Advantages & Disadvantages Option 2

■ We must submit the June and July sampling

Available Options

- Option 1 - Tell DNR results and nothing else

■ Three options with this report

results to the state

Option 2 - Tell DNR results and ask for

meeting

Option 3 - Tell DNR results and describe

Proposed MKC actions

Advantages

- Do not commit to anything
- Try to direct the DNR to MKC Goals
- Disadvantages
- DNR is directly involved in directing remedial actions
- DNR could demand more stringent remedial actions

MK006607

Available Options (cont.)

■ Advantages & Disadvantages Option 1

- Advantages
- Do not commit to anything
- Disadvantages
- Gives the DNR opportunity to direct action
 - Could get into a RCRA Remedial Action

MK006608

Available Options (cont.)

■ Advantages & Disadvantages Option 3

- Advantages

■ Directs DNR to MKC goals

8

Ç

give 0

- Disadvantages

■ Sampling could lead to finding more contamination

■ DNR could reject remedial plan

Recommendation

- Option 3 should be the best for MKC
- DNR would view MKC as a proactive company
 - This would keep MKC in control of the remedial proposals
- Should see positive results from tests

VINUUUU

Cost

Option 1

- If DNR directs remedial actions could be more costly
- If DNR directs RCRA Remedial Action cost could likely double

■ Option 2

 Heavier involvement of the DNR in constructing action plan likely to increase costs

MK003611

Cost (cont.)

■ Option 3

■ Hydropunch at northeast corner of Atwood

Ave. and Waubesa St.

Elements of Option 3

- Expected outcome is to limit contamination

Monitoring Well #1 (Back Parking Lot).

■ Complete a dual phase pilot study, by

plume to present size.

- MKC's plan designed to provide compliance, cost efficiency (est. \$30K)
- Subject to DNR approval

MK006612

Expected outcome-remediation not feasible-

continue to monitor.

extraction and groundwater pump and treat

- (Test remediation options: soil vapor

MC

Madison-Kipp Corporation

MEMO

Thomas Caldwell and Richard E. Riesen

Reed Coleman From: Subject: Environmental situation Date March 19, 1996

Dave Hanson will be faxing to us this morning a revised set of common points to cover concerning the remedization at Madison-Kipp Corporation. I just want to add those 'ho: I think are pertinent at this point, in case they are not included in his material.

We should make clear that these substances were in common use in industry for many. many years and that any manufacturing site producing the kinds of products produced by Madison-Kipp over a 100 year period would be expected to have used the substances and to have used them in such a way that minor amounts by volume would have found their way into the soil.

We should make elear that these substances are not used now and have not been used for many years, their persistence however, makes it quite possible that levels such as have been identified could still be present in soils around the plant.

We should make sure that the right people say that Madison-Kipp has not in any way either in the past or in the present acted illegally in the use or central of these substances

We should make it understood that when these substances were used, they were used in a manner providing safeguards for those who used the substances and also that the way in which these substances were used did not present a health hazard to Madison-Kipp employees.

Finally, we should indicate that levels of these substances in their current locations on not present a public health risk in the present time and that we plan to use the most effective means to nontrelize the substance concentrations in such a way that there will be no force public health risk.



MK006682

Two or more soil samples east of the storm

Elements to Option 3 (cont.)

sewer

MK006615

MIC Madison-Kipp Corporation

Outcome could be negative but likely

get DNR to approve plan

9

concern. required

may be requird to completely describe area of

Facsimile 808-244-467-

Memo

CONFIDENTIAL

To: Lyic Crouse From: Reed Coleman

Subject: Inquiries concerning remediation

March 25, 1996 Date:

It is unlikely that we will have any inquiries in the next two or three days but since both Tom and I will be out of town and unreachable. I want to present what seems an appropriate response to news paper and television inquiries. There are four points we would make:

We would expect this condition to be present at any location where manufacturing has gone on for as long as it has at Madison Kipp.

This substance is very common and is still used in certain controlled applications in manufacturing, but Madison-Kipp has not used it for many years.

There is no immediate health hazard connected with this remediation process. We are not near any public water source, there are no wells in the area and the substance travels through the soil at no more than seven and a half or eight feet per year,

Our remediation program designed by a professional engineering concern will have the situation cleared up long before it could be of any harm.

The objective here is to put the problem in the proper prospective as a rather normal, rather wide spread occurrence which presents no health hazard and which Madison-Kipp plans to take care of in accordance with all the best recommendations, regulations and procedures

Richard E. Riesen Bud Hauser "Mjømer Caldwell



DRAFT - DRAFT - DRAFT

20082500828

DRAFT

July 12, 1996

CONFIDENTIAL

Dear Neighbors

Kipp Corporation has been a good neighbor to the Madison community for nearly 100 years Recordy a few misinformed citizens have expressed concerns about our company and our operations and have made allegations of possible negative health issues.

First, let me assure you there is no threat to your health and sufety as a result of our operations. Environmental, health and safety regulatory agencies have visited our facilities and certified that we are meeting, and actually do better than, state and federal regulations which are designed to protect public health and safety, as well as air and water quality. We are also well within city and state standards for noise levels

Second, we are continually analyzing and improving each of our facilities (Fair Oaks, Atwood Avenue and the Wanbesa Plant). Each improvement is thoroughly reviewed by independent agencies and permitted, as required by state and federal laws.

We hope the enclosed information will make it clear to everyone that Kipp's commitment to both the health and safety of our employees and our neighbors as well as in meeting all environmental protection standards is as strong as ever. As always, we are happy to answer any questions or

Sincerely

Madison Kipp Corporation



731 3-21-36 :10:26AN :

DAMES & MOORE-

S082444674;# 2/ 4

3-21-26 :10:16AM :

DAMES & MOORE ATTONAL LANE, SUITE 210, MADISON, WI 53764 (698) 244-1788 PAX: (698) 244-7827

March 21, 1996

Madison Kipp Corporation P.O. Pox 3037 Madison, WI 53704

Revised Estimated Cost Investigative Report Madison-Kipp Corporation Facility Madison, Wisconsin

Dear Mr. Hauser:

Pursuant to your request, we have re-evaluated the estimated costs for future site activities, presented in our letter to Madison-Kipp Corporation on February 5, 1996. The estimated costs for the work proposed in our letter to Pat McCutcheon of the WDDRs are presented below, in Table 1. The medifications to the table relate to the clinication of soil sampling, previously proposed along the storm sewer, and the installation of two monitor wells adjacent to Atwood

With respect to future costs, we can provide the following potential ranges of costs. Several assumptions are implicit in the ranges presented below. First, the costs do not include electrical or related costs for operation of remedial equipment. Nor do the costs include those associated with a comprehensive site-wide mentiloring program, as has been recerbly discussed. Finally, the costs are based upon the installation of a dual phase system, with no more than two extraction

System instellation:

\$25,000 to \$75,000.

This large range of values is due to the unknowns with respect to the number of areas at which we will need to apply remediation. The range is based upon the assumption that we can apply a remedial opins such as a dual phase system, rather than a more aggressive approach, such as soil vapor extraction in combination with groundwater pump and treatment.

First year sampling & operation: \$20,000 to \$25,000.

First year sampling & operation: \$20,000.10.352,000.

These estimates are based upon an assumption that quarterly sampling would be conducted at only the existing monitor wells, and the proposed monitor wells that will be sampled (i.e., these costs are irrespective of possible additional monitoring points required for a comprehensive monitoring network). It is also based upon the assumption that a more aggressive treatment system will not be used, as discussed in the item above.

DATE

MK006460

SENT BY:

3-21-96 :10:17AM :

DAMES & MOORE :

6082444674;# 4/ 4

TARLE 1 ESTIMATED COSTS FOR FUTURE FIELD TASKS

ITEM	UNITS	RATE	COST
Field Activities			
	Estimate Estimate 7 ea.	\$11,000 \$3,500 \$110	\$11,000 \$3,500 \$770
Labor:			
Project Director	6 hra.	\$155	\$930
Project Manager	16 hrs.	\$90	\$1,440
Project Hydrogeologist	48 hrs.	\$55	\$2,640
Clerical & Accounting	2 hrs.	\$45	\$90
Expenses	Lump	\$1,000	\$1,000
Report			
Labor:			
Project Director	6 hrs.	\$155	\$930
Project Manager	12 hrs.	\$ 90	\$1,080
Project Engineer	32 hrs.	\$ 95	\$3,040
Designer	16 hrs.	\$60	\$960
Clerical & Accounting	6 hrs.	\$45	\$270
Expenses	Lump	\$1,000	\$1,000
Total cost:			\$28,650

¹ Assumes that the four existing groundwater monitor wells and dual phase extraction well will also be sampled.

Report will include conceptual plans.

SENT BY

DAMES & MOORE+

6082444674;# 3/ 4

TAL DAMES & MOORE

Mr. Bud Hauser Madison-Kipp Corporation March 21, 1996 Page 2

Per annum after first year: \$15,000 to 20,000.

Assuming steady or declining concentrations in the first year's monitoring, a request would be made to the WDNR to reduce the monitoring to semi-annual. The \$15,000 estimate is based upon this plan.

It is not possible at this time to project the duration of the remediation system operation. This will It is not possible at this time to project the character of the remodiation system operation. This will be heated upon the effectiveness of the system (as determined in the pilot study), changing WDNR regulations, and other unknown considerations, such as the possibility of a source area or areas not yet identified. Groundwater will likely be remediated by an active process (e.g., a. dual-phase extraction system), in conjunction with natural hydrodynamic and biological degradation of contaminants. It is our loope to reduce the amount of active remediation by means of negotiating risk based eleanup levels, thereby only transclating the groundwater in the immediate area of the source. However, this determination will be based upon the results of the remediation system, and the response that we receive from the WDNR.

We hope that this assessment is sufficient for your current needs. If you need a further analysis of the potential costs, please call.

Sincerely,

DAMES & MOORE

Rober J. Pauta Robert J. Nanta, P.G

richler/houng/0320.ltr

MK008461

Caldwell Tom 2002/07/24 3:07:26 PM UTC Lenz Jim Meunier Mark Soil gradient

Ok, you can extend the regression line in Figure 3 to 20 feet at about .1 head space concentration. Even if you re-draw the fine to increase it's slope, as there are two data points at 18 feet, you still don't got to .1 in head space concentration until 18 feet, which is still over the property line, right?

So, now, whose properties are we talking about....names and addresses?



Page 1 of 2

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: August 31, 2006 THE REF. 02-13-001569

File

TROM: Danc Tsons

SUBJECT 8-30-06 Meeting with representatives of Medison Kipp, 201 Waubera Street, Madison, W1

On August 30, 2006, I met with Mark Meunier of Modison Kipp Corporation (MKC) and Bob Nivita, RSV Engineering, environmental consultant, lot MKC. She investigation and remedial action activities in recent months have not been conducted I have fasced that the lack of progress was manceeptable. MKC requisited in meeting to explain MKC's status and position regarding the site investigation and remedial as if on activities necessary to address the PCU release at the MKC facility.

Mark Mannier stated that Mk.C had to meet a pools from deadline under contract for the startup of their zew facility in Sun Prairie. This had startned both logistical traditional and framidal. The expectation is by the end of September 2006 sufficient ecources will be the expectation to certain the investigate and cruedate be size. I state needed to begin soon; the WDRN has been working ecoperatively with MKC to ensure the environmental work proceeds. However, if the appropriate and necessary echous for investigation and electron of the CCB system do not proceed in a timely manner, enforcement actions including the type of a consent order world be initiated.

It was verbally agreed that MXC would proceed and complete the proposed vapor sampling activities at the next 4 – 6 weeks. Also, MKC will matall a number of injection points for the proposed ocase procedwate teatment system this fall. The rejection points will be used to perform a future pilot test as part of the process to evaluate the effectiveness of the technology.

It was agreed to meet in early December 2006 to discuss process at the sile and proposals for future site

EXHIBIT



MKDNR001893

REDACTED

From: Bob Nauta [mailto:bnauta@rsv-jefferson.com] Sent: Wednesday, April 09, 2003 1:27 PM To: Exum, Rance V (2726f) Subject: RE: Madison Kipp

Hi Rence:

Here's the sontid story. We have almost all the results all fab is, we don't have one round of soil vapor analyses. Kipp is to give us the results until we pay them. If the happy to give you a results that won't be included.

ubmit to the DNR in an annual report. Problem e'r bills, and the tab that did the analyses won't there will just be one round of soil vapor.

Robert J. Nauta, P.G. Kobert J. Nauta, P.C Vice President RSV Engineering, Inc. Phone: 920.674.3441 Fax: 920.674.3481 Cell: 608.695.2597

From: Exum, Renee V (22250) [mailto:RVExum@michaelbest.com] Sent: Wednesday, April D9, 2008 11:31 AM To: Bob Naulia Subject: Madison Kipp

Hi Bob.

Transits for your call yesterday about the remadistion at the Madison Kipp facility. Twas wendering if you had information on what the groundwater and soil monitoring results were for 200? All we have are the results of the April 2007 ozone pilot test that was submitted to DNR in June 2007.

Rondo Etges Rence Chee MrcHall REST & HRT-DRICH LEF One South? nakney Street, Suite / P.O. Daw 2006 Addison, WT 08701-1800 Direct: 608-283-2260 Fex: 608-781-7275

4/9/2008



MK005710