

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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KATHLEEN McHUGH and  
DEANNA SCHNEIDER, individually  
and on behalf of all persons  
similarly situated,

Plaintiffs,

-v-

Case No. 11-cv-724-bbc

MADISON-KIPP CORPORATION,  
CONTINENTAL CASUALTY  
COMPANY, COLUMBIA CASUALTY  
COMPANY, UNITED STATES FIRE  
INSURANCE COMPANY and ABC  
INSURANCE COMPANIES 1 – 50,

Defendants.

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**DECLARATION OF MICHAEL D. HAYES**

Michael D. Hayes, having been duly sworn, on oath deposes and states as follows:

1. My name is Michael D. Hayes. I am an attorney licensed to practice in Illinois and in various federal courts. I am a shareholder in the Chicago law firm Varga Berger Ledsky Hayes & Casey. I am one of the attorneys who represent the Plaintiffs in the above captioned case, and have been admitted pro hac vice by this Court to act as their counsel in this matter.
2. I am submitting this Declaration in connection with the Reply Memorandum in Support of Plaintiffs' Motion for Class Certification (Doc. 44), to authenticate documents and supporting information referenced therein.
3. In connection with this lawsuit, Plaintiffs' counsel issued a Freedom of Information Act (FOIA) request to the Wisconsin Department of Natural Resources ("WDNR") seeking DNR's documents re Madison-Kipp Corporation ("MKC") environmental issues. One

such document produced to Plaintiffs' counsel by DNR pursuant to this FOIA request is the document authored by DNR entitled "Madison Kipp Referral - Speaking Points," a true and accurate copy of which is attached to this Declaration as Exhibit 1.

4. Plaintiffs have served written discovery requests in this case on MKC. In response to Plaintiffs' Rule 34 requests for production of documents, MKC produced to Plaintiffs a certain July 18, 1994 letter from DNR to MKC, a true and accurate copy of which is attached to this Declaration as Exhibit 2.

5. Plaintiffs served a subpoena in this case on RJN Environmental Services LLC ("RJN"), an environmental consultant hired by MKC, seeking RJN's documents related to the MKC Facility. In response to that subpoena, RJN produced to Plaintiffs a September 29, 2003 Wisconsin Department of Health and Family Services memorandum entitled "Chlorinated Solvents at Madison Kipp Corporation," a true and accurate copy of which is attached to this Declaration as Exhibit 3.

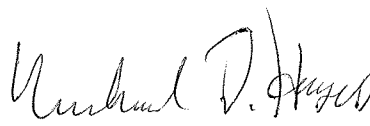
6. On December 21, 2011, a media report was posted on the Madison Channel 3000 website which quoted DNR official Eileen Pierce. A true and accurate copy of this news article quoting this DNR official is attached to this Declaration as Exhibit 4.

7. In response to the above referenced FOAI request, DNR produced to Plaintiffs a certain December 15, 2011 email from DNR official Michael Schmoller to various Wisconsin state and local governmental officials. A true and accurate copy of this December 15, 2011 email is attached to this Declaration as Exhibit 5.

8. In response to the above referenced FOAI request, DNR produced to Plaintiffs a certain December 20, 2011 email authored by John Hausbeck, an official with the Madison and Dane County Public Health Department. A true and accurate copy of this December 20, 2011 email is attached to this Declaration as Exhibit 6.

9. I make the attestations in this Declaration under penalty of perjury under the laws of the United States.

Dated: February 21, 2012

  
Michael D. Hayes

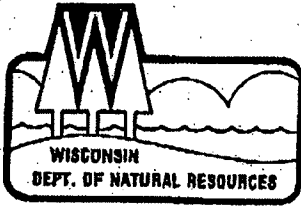
**EXHIBIT 1**  
**(HAYES DECLARATION)**

Madison Kipp Referral  
Speaking Points

- Madison Kipp Corporation (Kipp) produces precision machined components and sub-assemblies for transportation and industrial markets, operating at their 201 Waubesa Street, Madison location since 1902.
- Kipp used tetrachloroethene as a degreasing solvent until sometime in the 1980's. This substance has contaminated both soil and groundwater on and beyond the Kipp property.
- In 1994, DNR became aware of contamination on the Kipp property and issued a "Responsible Party" letter which informed Kipp of their legal responsibilities to investigate and clean up the contamination.
- Kipp has performed some work to assess and clean up the contamination. However, more recent test results have shown that vapors have migrated off-site.
- Elevated concentrations of tetrachloroethene have been measured beneath three homes, prompting DNR to require installation of sub-slab depressurization systems in five homes along Marquette Street to prevent vapor intrusion into the homes. These systems are similar to those used to control radon in homes.
- Henry Nehls-Lowe, Department of Health Services 266-3479 and John Hausbeck, Madison and Dane County Public Health 243-0331 can answer health related questions. Linda Hanefeld, R&R Supervisor 275-3310 can answer investigation and remediation questions.
- On June 23, 2011, the DNR sent Kipp a letter requesting the completion of additional work.
- Clean up thus far has included soil treatment, ongoing ozone injection to remediate groundwater contamination, and the installation of the 5 sub-slab depressurization systems.
- Additional groundwater monitoring wells have been installed to better define the extent of groundwater contamination off-site and over the past several months, additional groundwater, soil-vapor, and soil sampling has been conducted. The results have guided the development of an updated scope of work to address the contamination.
- A public meeting on the proposed scope of work is scheduled for 10-15-11.
- On July 19, 2011, a group of citizens filed notice of their intent to file a claim under the Resource Conservation & Recovery Act (RCRA) against Kipp.
- While Kipp has worked to investigate and remediate some contamination;
  - a considerable period of time has lapsed since DNR issued the responsible party letter,
  - the degree and extent of contamination is not fully defined and
  - recent data about the effects of off-site contamination on neighboring property owners has elevated the need to ensure that Kipp completes investigation and remediation activities in a more timely manner.
- Given these circumstances, Department staff believes that Kipp has not fulfilled their obligation to restore the environment and this matter was referred to the Department of Justice on October 10, 2011 to obtain a court ordered schedule and other appropriate relief.

**EXHIBIT 2**  
**(HAYES DECLARATION)**

Received Time Jul 20 1:21PM



George E. Meyer  
Secretary

State of Wisconsin | DEPARTMENT OF NATURAL RESOURCES

Southern District Headquarters  
3911 Fish Hatchery Road  
Fitchburg, Wisconsin 53711  
TELEPHONE 608-275-3288  
TELEFAX 608-275-3338

July 18, 1994

File Ref: SPILLS  
Dane County

Mr Jack Schroeder  
Madison Kipp  
P O Box 3037  
Madison WI 53704

Subject: Madison Kipp, 201 Waubesa St, Madison

Dear Mr. Schroeder:

On April 7, 1994, you discussed with Department staff the contamination that was discovered on an adjacent property - Madison Brass Works. Additional groundwater data was submitted and the case was presented to the Southern District Closure Committee.

As you are aware, groundwater monitoring well MW-3 contains concentrations of tetrachloroethene (PCE) which exceed the enforcement standard as listed in Wisconsin Administrative Code. An investigation conducted by Madison Brass Works has confirmed that this contamination is originating from an upgradient location. The groundwater flow direction and absence of PCE elsewhere on the Madison Brass Works property has led the Department to conclude that the contamination is emanating from Madison Kipp property.

The spill law authorizes the Department of Natural Resources to enforce cleanup of contaminated sites, under s. 144.76 of the Wisconsin Statutes. As the owner of the property where a hazardous substance discharge has occurred, you are required to determine the horizontal and vertical extent of contamination and clean-up/properly dispose of the contaminants.

Your legal responsibilities are defined both in statute and in administrative rules. The hazardous substance spill law, s. 144.76 (3) Wisconsin Statutes, states:

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

Wisconsin Administrative Code NR 700 through NR 728 establishes requirements for interim actions, public information, site investigation, design and operation of remedial action systems, and case closure. Wisconsin Administrative Code NR 140 establishes groundwater standards.

It is important that an investigation begins at your site as soon as possible. The longer contamination is left in the environment, the farther it can spread and the more difficult and costly it becomes to cleanup. Since this cleanup must comply with Wisconsin laws and rules, professional engineering and hydrogeologic experience is necessary. Therefore, you should hire a professional environmental consultant who can assure you that Department policies and guidelines are being followed.



Received Time Jul 20 1:21PM

Mr Jack Schroeder - July 18, 1994

2.

Your consultant will help you in providing the Department with the following:

- Submit written verification (such as a letter from the consultant) that you have hired an environmental consultant. Please submit this information within 30 days of the date of this letter.
- Submit an investigation workplan explaining what work will be performed to identify the extent of contamination. This workplan should include a time schedule. Also, please provide documentation of any previous work performed related to this release.
- Submit the investigation report defining the degree and extent of any soil and/or groundwater contamination.
- Provide a remedial action plan outlining the remedy selected.
- Provide a remedial action report with data supporting your consultant's conclusions and recommendations for future work or site closure.

In addition, you will be required to keep the Department informed on site progress by submitting 30, 60 or 90 day updates. You will be notified when to provide the status reports at the time you submit your investigation workplan. Also, you will receive an annual site status form every February. It will be necessary for you to complete this form and return it promptly to the address provided.

There are times when staffing levels do not allow us to keep current with workload demands. However, to maintain your compliance with the spill law and chs. NR 700 through NR 728, investigation and cleanup actions should not be unnecessarily delayed waiting for DNR responses. In the event that you experience delays, please refer to NR 716.09(3) regarding Department review of sites.

Your correspondence and reports regarding this site should be sent to Marilyn Jahnke, Department of Natural Resources, 3911 Fish Hatchery Road, Fitchburg WI 53711. Unless otherwise requested, please send only one copy of all plans and reports. Correspondence should be identified with the site name and address which is listed in the subject of this letter.

I have enclosed a list of environmental consultants and some important tips on selecting one. If you are eligible for Wisconsin's PECFA program (see end of letter), you will need to compare at least three consultant's proposals before making your selection. Also enclosed are materials on controlling costs, understanding the cleanup process, and choosing a site cleanup method. Please read this information carefully.

Reimbursement from the Petroleum Environmental Cleanup Fund (PECFA) is available for the costs of cleaning up the contamination from eligible petroleum storage tanks. The fund is administered by the Department of Industry, Labor and Human Relations (DILHR). Please contact DILHR at (608) 267-3753 for more information on eligibility and regulations for this program.

If you have any questions about this letter or your responsibilities, please call me at (608) 275-3212.

Sincerely,



Marilyn Jahnke, Program Assistant  
Emergency & Remedial Response Program  
Telephone: (608) 275-3212



**EXHIBIT 3**  
**(HAYES DECLARATION)**

**CORRESPONDENCE / MEMORANDUM**

STATE OF WISCONSIN

Department of Health & Family Services

Division of Public Health

Bureau of Environmental Health

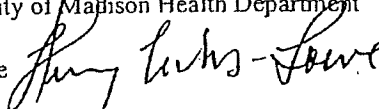
nehls1@dhs.state.wi.us

608-266-3479

Date: September 29, 2003

To: Dino Tisoris, DNR South Central Regional Office  
John Hausbeck, City of Madison Health Department

From: Henry Nehls-Lowe



Subject: Chlorinated Solvents at Madison Kipp Corporation

**Summary**

Groundwater and soils at certain locations at the Madison Kipp Corporation (MKC) are contaminated with high levels of chlorinated solvents. Investigations have determined the extent of soil and groundwater contamination both on and off of the MKC property. Contamination along the eastern side of MKC property is next to private, residential property, with some homes as close as 50 feet. Investigations of soils on nearby private property has only found low levels of solvent contamination in shallow soils at locations closest to the MKC property, which does not pose a public health concern. For off-site groundwater, solvent contamination was found at low levels in shallow groundwater, which does not pose a potential vapor migration concern. An in-situ soil treatment has been proposed as the remedy to cleanup chlorinated contaminated soil on the MKC property.

There is sufficient chlorinated solvent contamination in subsurface soils at the source on the eastern side of the MKC property to release solvent vapors into soils. In order to evaluate the potential for soil vapor migration, and in consideration of the selected in-situ soil treatment remedy, the Division of Public Health recommends a soil gas investigation to determine whether vapors of chlorinated solvents are migrating away from the MKC property and towards the nearby homes. In order to rule out the potential for vapor migration and intrusion into nearby buildings, soil gas should be tested in between the known sources of chlorinated solvents and nearby homes. The soil gas testing can be conducted in conjunction with the implementation of the soil in-situ treatment remedy. At this time, DPH does not recommend the indoor air sampling of homes.

**Background and Issues**

The Wisconsin Division of Public Health (DPH), in coordination with the Madison Department of Public Health, is evaluating the public health implications of chlorinated volatile organic compounds (VOC) or solvents off-gassing from contaminated groundwater and sub-surface soils

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on the Madison-Kipp Corporation (MKC) and the potential for soil gas vapors to migrate onto neighboring residential properties. The MKC facility is located at 201 Waubesa Street, Madison, Wisconsin.

Groundwater investigations at the MKC property have found elevated levels of solvents, some at levels above the Wisconsin Groundwater Quality Public Health Enforcement Standards for drinking water (NR140). Table 1 summarizes the concentration range of chlorinated solvents found in groundwater at the MKC property that were above Wisconsin groundwater standards.<sup>1</sup> Petroleum-related solvents have also been found in groundwater around the MKC property. Benzene was found in three monitoring wells, above the Wisconsin Groundwater Enforcement Standard of 5.0 µg/L (micrograms per liter), with the highest level detected at 23 µg/L (in monitoring well MW-4S). All other petroleum related solvents detected in these wells were less than their respective groundwater standards. Area households and businesses obtain drinking water from municipal water, which is not affected by contamination from the MKC property.

**Table 1: Chlorinated Solvents in Groundwater**  
Madison-Kipp Corporation  
August 1995 to May 1999

All concentrations in micrograms per liter (µg/L)

Chemical	Highest Level Detected	Lowest Level Detected	Frequency of Detection in Groundwater Monitoring Wells	Wisconsin Groundwater Enforcement Standard <sup>a</sup>
chloromethane	4.9*	0.1	3/6	3.0
cis-1,2-dichloroethylene	120.0*	0.1	4/6	70.0
cis-1,3-dichloropropene	19.0*	3.6*	2/6	0.2
methylene chloride	50.0*	0.1	3/6	5.0
tetrachloroethylene	2,800.0*	0.1	6/6	5.0
trichloroethylene	140.0*	0.32	4/6	5.0
vinyl chloride	11.0*	0.9*	2/6	0.2

a-Wisconsin NR140 Groundwater Quality Public Health Enforcement Standard

\*- Exceeds NR140 Groundwater Enforcement Standard

<sup>1</sup> Dames and Moore Group Company. Project Status Report, Madison-Kipp Corporation, Madison, WI. Correspondence to L. Lester, Wisconsin Department of Natural Resources. Madison, WI: Dames & Moore. June 17, 1999.

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The investigations at the MKC property included follow-up rounds of groundwater sampling of existing monitoring wells, studies of local hydrogeology, and the installation of five additional groundwater monitoring wells. Between August 1999 and May 2002, ten additional rounds of groundwater samples were collected from seven older monitoring wells, as well as four sampling rounds from four newer groundwater monitoring wells (Table 2).

**Table 2: Chlorinated Solvents in Groundwater**  
Madison-Kipp Corporation  
August 1999 to May 2002

All concentrations in micrograms per liter ( $\mu\text{g/L}$ )

Chemical	Highest Level Detected	Lowest Level Detected	Frequency of Detection in Groundwater Monitoring Wells	Wisconsin Groundwater Enforcement Standard <sup>a</sup>	EPA Generic Screening Levels <sup>b</sup>
chloromethane	88.0*	0.5	8/11	3.0	6.7
<i>cis</i> -1,2-dichloroethylene	300.0*	1.4	6/11	70.0	210.0
<i>cis</i> -1,3-dichloropropene	nd	nd	0/11	0.2	n/a
methylene chloride	160.0**	0.3	11/11	5.0	0.58
tetrachloroethylene	8,800.0**	0.1	11/11	5.0	5.0
trichloroethylene	280.0**	0.9	5/11	5.0	5.0
vinyl chloride	13.0*	1.7*	3/11	0.2	2.0

a - Wisconsin NR140 Groundwater Quality Public Health Enforcement Standard

b - For  $1 \times 10^{-6}$  Risk. Source: Table 2c, US Environmental Protection Agency. Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance). <http://www.epa.gov/epaoswer/hazwaste/ca/cis/vapor.htm> November 29, 2002.

\* - Exceeds NR140 Groundwater Enforcement Standard

&amp; - Exceeds by 20 times the EPA Target Level for groundwater

nd - Not Detected

n/a - Not Available

In early 2001, a pair of monitoring wells were installed along the eastern side of the MKC property (MW-5S and MW-5D). Four rounds of groundwater sampling from this pair of monitoring wells found the highest levels of chlorinated solvents on the MKC property. In shallow groundwater from this area (MW-5S), tetrachloroethylene and *cis*-1,2-dichloroethylene were detected at 680 and 21  $\mu\text{g/L}$ , respectively, and trichloroethylene was 100  $\mu\text{g/L}$ . In deeper groundwater (MW-5D), tetrachloroethylene and *cis*-1,2-dichloroethylene were detected at 8,800

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and 300 µg/L, respectively. The elevated concentrations in deeper groundwater are indicative that contaminants are migrating downwards into deeper portions of the aquifer. Solvents in deeper groundwater are less likely to affect the levels of solvent vapors in shallow, unsaturated soils.

In follow-up to the discover of contaminated groundwater in the MW-5 well cluster, a soil investigation was conducted in January 2002, along the eastern side of the MKC building, to identify a source of the chlorinated solvents in groundwater. Soil samples were collected from fifteen geoprobe borings. Laboratory analysis found elevated concentrations of chlorinated solvents from four sample locations at depths between 1 and 4 feet below the ground surface (BGS). This is on the eastern side of the MKC building where there was previously an exhaust vent that discharged solvent vapors.

The subsurface soil samples with the highest solvent levels were directly beneath this source and at shallow depths of 1 to 4 ft BGS. Concentrations in these sub-surface soils ranged from 5,960 to 782,000 µg/kg (micrograms per kilogram) for tetrachloroethylene, 236 to 49,900 µg/kg for *cis*-1,2-dichloroethylene, and 5,590 to 8,470 µg/kg for trichloroethylene.

Soil sampling data indicated that the source of contaminants lies within the Madison-Kipp property boundary and is not on neighboring residential properties. However, during the winter of 2002, MKC conducted an off-site soil investigation on residential properties adjacent to the MKC property. The investigation identified off-site soil contamination near the surface at a few locations on several nearby properties. These sample locations were 5 to 10 feet from the MKC property boundary and at shallow depth of 2 to 4 feet BGS. Tetrachlorethylene was found in these soils were at relatively low levels, which were between of 31.0 and 1,430 µg/kg. These concentrations in shallow surface soils are not a direct contact health concern.

MKC has proposed an in-situ treatment for contaminated soil impacted with chlorinated solvent compounds. The treatment will involve a fluid drilling process which will inject a reagent into the soil to oxidize and breakdown the in-situ organic contaminants and establish an oxygen and nutrient enriched environment for proliferation of biodegraders. The in-situ process is a non-violent controlled reaction producing no heat. If approved by DNR as the remedy, soil gas monitoring should be implemented to evaluate the remediation process and any potential for vapor migration.

#### *Vapor Migration & Intrusion Issues*

When large sources of chlorinated solvents are found in sub-surface soils and shallow groundwater, vapors can be released and migrate upwards through soils. Vapors that move upwards through soils can reach the open surface of the ground, be released to outdoor air, quickly disperse into the atmosphere, and not pose a health concern.

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When vapors from groundwater contaminated with solvents enters a home or office and becomes a concern, it often moves through dirt floors or cracks in the foundation, becomes part of the air inside of the structure, and then be breathed by a resident or worker. Under certain circumstances, the levels of chlorinated solvents entering indoor air can accumulate and be at high enough levels to pose a long-term, unacceptable inhalation health risk to people who live or work in the structure. This concept is referred to as "vapor migration and intrusion to indoor air".

When solvents are at very high levels in soils located above the water table and if a building is very close, vapors can move directly from the source, through the soils, and enter the indoor air this building. Such conditions are very unusual.

#### Discussion

Elevated levels of chlorinated solvents are in shallow soils at certain locations on the MKC property. It is possible that solvent vapors may also be migrating through soils and onto adjacent residential properties

Understanding the full degree and extent of shallow groundwater contamination is very important in assessing the potential for vapor intrusion into indoor air. The extent of groundwater contamination around the MKC has been largely determined and current data indicates shallow groundwater flow is primarily to the south-southwest. A groundwater monitoring well nest located to the southwest of the source, and in proximity to the closest residences of concern, indicate that beyond the source area only very low detection's of chlorinated solvents are in shallow groundwater.

Shallow groundwater contaminated with chlorinated solvents can be the source of vapor migration and intrusion when solvent vapors move upward and enter homes and buildings located directly above the contaminant plume. Investigations at other sites with high levels of chlorinated solvent contamination in shallow groundwater, have found solvent vapors in soil gas and unacceptable levels in the air of homes located directly above the plume. However, this situation does not appear to exist with the groundwater contaminant plume associated with the MKC property.

On the MKC property, only groundwater beneath the contaminant source has sufficient concentrations that can produce a measurable and substantial amount of chlorinated solvent vapors that are possibly being released into subsurface soils. However, the potential for elevated levels of soil gas vapors on the MKC property should not be automatically interpreted that vapor intrusion is occurring in nearby homes. Yet, since homes are as near as 50 feet to the source on the MKC property, this provides sufficient evidence and justification to pursue an investigation and evaluation of the vapor migration and intrusion pathway.

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The soil gas pathway must first be examined at the MKC property by measuring the levels of solvent vapors in soil gas from areas in between the sources and nearby buildings. Under the current EPA draft guidance, measuring the direct evidence of soil gas is the recommended first step and important in demonstrating whether the potential threat exists for vapor intrusion<sup>2</sup>. It has been found that indoor air sampling alone is problematic, unless many indoor air samples are collected simultaneously with many soil gas samples<sup>3</sup>.

Soil sampling data of only the contaminant source does not typically provide sufficient information to evaluate for soil vapor migration and intrusion. In this case the soil sampling data indicates that there is a contaminant source above and separate from the groundwater table. For this reason it is important to investigate the potential for vapor migration directly from the source in the unsaturated soils.

Solvent vapors may be in soil gas along the eastern side of the MKC property and may be migrating towards nearby homes. DPH recommends that soil gas samples be collected from sampling points in between the known soil and groundwater sources of chlorinated solvents and nearby homes in conjunction with the in-situ remedy. At this time, DPH does not recommend the sampling the indoor air of nearby homes. Once soil gas data is available DPH will evaluate the data and determine whether further soil gas data is needed or if the indoor air of nearby homes needs to be tested.

For additional information about the public health implications of solvent vapor intrusion into indoor air of buildings, please refer to the DPH guidance on vapor intrusion.<sup>4</sup> Also, I have attached the DPH fact sheet on vapor intrusion, which is also available at the DHFS web site (<http://www.dhfs.state.wi.us/eh/Air/fs/VI.htm>).

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<sup>2</sup> US Environmental Protection Agency. Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance). <http://www.epa.gov/epaoswer/hazwaste/ca/eis/vapor.htm> November 29, 2002.

<sup>3</sup> Johnson PC, Ettinger RA, Kurtz JP, Bryan R and Kester JE. Migration of Soil Gas Vapors to Indoor Air: An Empirical Assessment of Subsurface Vapor-to-Indoor Air Attenuation, Factors Using Data from the CDOT-MTL Denver, Colorado Site. Technical Bulletin. American Petroleum Institute. 2001.

<sup>4</sup> Wisconsin Department of Health & Family Services. Guidance for Professionals: Chemical Vapor Intrusion and Residential Indoor Air. Madison, WI: DPH. February 13, 2003.

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**Conclusions**

1. Investigations have determined the extent of soil and groundwater contamination on and off of the MKC property. Groundwater and soils at certain locations at the Madison Kipp Corporation (MKC) are contaminated with high levels of chlorinated solvents.
2. Contamination along the eastern side of MKC property is near private, residential property and homes are as close as 50 feet. On private property adjacent to MKC, investigations have only found low levels of solvent contamination in shallow soils at locations closest to the MKC property, which does not pose a direct contact health concern. For off-site shallow groundwater solvent contamination was found at low levels, which does not pose a potential vapor migration concern.
3. There are sufficient levels of chlorinated solvent contamination in subsurface soils and groundwater along the eastern side of the MKC property to release solvent vapors into subsurface soils. Solvent vapors in soil gas may be migrating towards nearby homes, but it is unclear whether these vapors are actually reaching and entering nearby homes.

**Recommendations**

1. Environmental investigations are needed to evaluate whether vapors of chlorinated solvents are migrating away from the MKC property and towards the nearby homes. Soil gas should be tested for chlorinated solvents in between the known sources of solvents and nearby homes. The soil gas testing can be conducted in conjunction with the implementation of the soil in-situ treatment remedy. DPH does not recommend the indoor air sampling of nearby homes at this time.

DPH will continue to work closely with the Madison Department of Public Health and the Wisconsin Department of Natural Resources to address the public health issues related to the Madison Kipp Corporation. Please contact me if you have any questions or comments regarding this memorandum.

cc: Tommye Schneider, City of Madison Department of Public Health  
Pat McCutcheon, South Central Region, Department of Natural Resources  
Tom Sieger, Bureau of Environmental Health, Division of Public Health

Attachment: DHFS fact sheet on Vapor Intrusion.



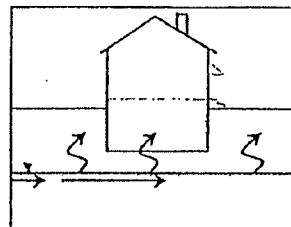
# Human Health Hazards

State of Wisconsin  
Department of Health and Family Services  
Division of Public Health

## Vapor Intrusion

### What is vapor intrusion?

Vapor intrusion is a way that chemicals in soil or groundwater can get into indoor air. (see figure at right) Sometimes, chemicals are spilled on the ground at a factory or leak from an underground storage tank. These chemicals can seep down into the soil and groundwater. Some chemicals can also travel through soil as vapors. These vapors may then move up through the soil and into nearby buildings, contaminating indoor air. Homes in the same neighborhood and right next to each other can be affected differently by vapor intrusion. Vapor intrusion is similar to how radon, a naturally occurring radioactive gas, can enter a home through cracks in the foundation. Vapor intrusion is uncommon, but should be considered whenever there is a known source of soil or groundwater contamination nearby.



### What chemicals might be entering my home, and where would they come from?

VOCs (volatile organic compounds) are one group of chemicals that easily become gases which can migrate through the soil and enter buildings. Some examples of VOCs are petroleum products such as gasoline or diesel fuel, and solvents for dry cleaning and industrial uses.

The most common vapor intrusion cases involve petroleum spilled or leaked from underground storage tanks at gas stations. These cases are usually accompanied by a petroleum odor. Solvents from other commercial sites and industrial sites are usually not accompanied by an odor. In many cases, chemical and petroleum releases are not immediately discovered. By the time they are discovered, the contamination has had time to migrate through the soil.

Some of these same solvents are also found in **household products** which may be stored in your home. Paints, paint strippers and thinners, cigarette smoke, aerosol sprays, moth balls, air fresheners, new carpeting or furniture, hobby supplies (glues and solvents), stored fuels, and dry-cleaned clothing all contain VOCs and are more likely to be a source of indoor air quality problems at your home than vapor intrusion from a contamination site. In some extreme cases, health symptoms can be experienced as a result of exposure to chemicals stored in the home.

### What are the health concerns with vapor intrusion?

The health effects from chemical exposures vary based on the individual exposed and the chemical involved. When chemicals build up in indoor air (at levels high enough to cause a strong petroleum odor, for example), some people will experience eye and respiratory irritation, headache, and/or nausea. These symptoms are temporary and should go away when the person is moved to fresh air. Usually, health officials are most concerned about low level chemical exposures over many years, as this may raise a person's lifetime risk for developing cancer.

The likelihood of indoor air contamination by vapor intrusion is low at most cleanup sites. When vapor intrusion does occur, the health risk will often be lower than that posed by radon or by chemicals owned and used by the resident. Even though the risk is quite low, the Wisconsin Department of Health and Family Services (DHFS) considers these risks to be unnecessary and avoidable.

### What should I expect if vapor intrusion is a concern near my home?

If you live near a site with VOC contamination, such as a gas station or dry cleaner where petroleum or chemicals have contaminated soil or groundwater, you should expect that the potential for vapor intrusion

is also being investigated. You may be contacted by the cleanup site owner or others working on the cleanup with information about the project. Your cooperation and consent would be requested before any testing/sampling would be done on your property. You may ask the person contacting you any questions about the work being done, or you can contact the DNR cleanup project manager, or a DHFS employee. Telephone numbers and internet addresses for DHFS and DNR are provided below.

#### **How is vapor intrusion investigated?**

In most cases, the potential for vapor intrusion can be ruled out by collecting soil gas or groundwater samples near the contamination site. In some cases, sampling closer to your property and/or home may be necessary. DHFS and DNR do not usually recommend indoor air sampling for vapor intrusion. Indoor air quality changes a lot from day to day. Therefore, sampling one day may not show a problem even though sampling a day later might show contamination. Since a variety of VOC sources are present in most homes, testing will not necessarily confirm that VOCs in the indoor air are from VOC contamination in soils nearby. Instead, soil vapor samples are taken from areas outside of the home to see if vapors are near the home. Samples may also be taken from beneath the home's foundation (called sub-slab samples), to see if vapors have reached the home. Sub-slab samples are more reliable than indoor air samples and are not as affected by other indoor chemical sources. If no odors are present at a petroleum cleanup site, additional testing may not be necessary as long as the site is being cleaned up effectively.

#### **What happens if a problem is found?**

If vapor intrusion is having an effect on the air in your home, the most common solution is to install a *radon mitigation system*. This prevents gases in the soil from entering the home. A low amount of suction is applied below the foundation and the vapors are vented to the outside. The system uses minimal electricity and should not noticeably affect heating and cooling efficiency. This mitigation system also prevents radon from entering the home, an added health benefit. Usually, the party responsible for cleaning up the contamination is also responsible for paying for the installation of this system. Once the contamination is cleaned up, the system should no longer be needed. In homes with radon problems, DHFS suggests that these systems remain in place permanently.

#### **What else can I do to improve my air quality?**

There are other sources of indoor air problems. Consider these tips to improve air quality:

- Do not buy more chemicals than you need at a time. Be aware of what products contain VOCs.
- Store unused chemicals in appropriate containers in a well-ventilated location.
- If you smell a chemical odor that does not seem to be from an indoor source, contact your local health department. For very strong odors, your local fire department can determine if there is a fire hazard.
- Don't make your home too air tight. Fresh air will help prevent both build up of chemicals in the air and mold growth.
- Fix all leaks promptly, as well as other moisture problems that encourage mold growth.
- Make sure all major appliances and fireplaces are in good condition. Have them checked annually by a professional.
- TEST YOUR HOME FOR RADON!

#### **For more information**

For health related questions, contact your local health department or DHFS at (608) 266-1120. More information on this and related topics is available on the DHFS website at:

<http://www.dhfs.state.wi.us/eh/Air>. For an on-line DNR database of sites with environmental contamination, click on the "BRRTS on the Web" button at <http://www.dnr.state.wi.us/org/aw/rr/>.



Prepared by the Wisconsin Department of Health and Family Services, Division of Public Health, with funds from the Agency for Toxic Substances and Disease Registry, Public Health Service, USDHHS. (PPH 45053 09/2003)

**EXHIBIT 4**  
**(HAYES DECLARATION)**

# New Soil Testing Shows Higher Contamination Near Kipp Corp.

## Neighborhood Residents Have Filed Suit Against Manufacturer

Updated: 9:26 am CST December 21, 2011

Text Size

AAA

**MADISON, Wis.** -- New soil testing around Madison-Kipp Corporation's facility on the city's East Side shows higher levels of contamination than previously thought.

The new findings confirm what neighbors along Marquette Street already believed.

The Wisconsin Department of Natural Resources said it's concerned after tests showed higher levels of two known carcinogens in the soil.

Eileen Pierce, of the DNR, said samples taken at three sites late last month show levels of tetrachloroethylene, also known as PCE, soil vapor contamination at levels between five and 50 times higher than discovered before.

"These results are very concerning. The data is very compelling," Pierce said.

Several residents, all of whom live on Marquette Street near the manufacturer's Waubesa Street facility, have filed a lawsuit against the Madison-Kipp Corp., accusing the company of being the source of a chemical contaminating their homes and then failing to clean it up.

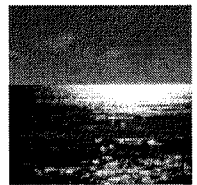
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The residents allege that Kipp released PCE and other toxins, which have contaminated the groundwater beneath the homes. They said they also believe vapor from the contamination has entered their homes or threatens to do so.

# Head

"There's more contamination. It's much more widespread than was previously known," said resident Prentice Berge.

[Assembly Bill](#)

"It's important for us to assess whether there is a public health threat, and if there is, to eliminate it through the installation of these vapor mitigation systems," Pierce said.

[After Hear About Fate Assembly](#)

Five homes on the street already have the equipment. The DNR now wants soil tests performed beneath the slabs of 11 more homes to see if they need vapor mitigation systems as well.

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## New Soil Testing Shows Higher C...

In a meeting this week, the DNR said it plans to ask Madison-Kipp to perform the tests immediately.

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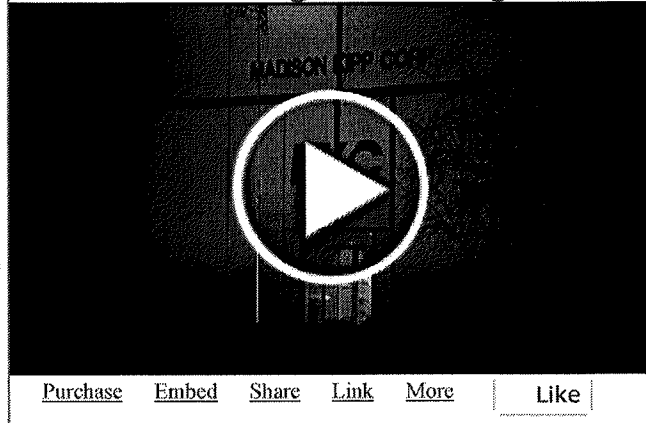
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"If Kipp is reluctant or unwilling, we will make arrangements to have contractors conduct that sampling ourselves. It is that important to us," Pierce said.

A Madison-Kipp representative said the new numbers come from just one data point and that more testing needs to be done. The representative said Madison-Kipp voluntarily conducted the tests.

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"(The tests) would have been required if we hadn't come to agreement on it," Pierce said.

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Neighbors said they believe more needs to be done for their safety.

"More testing and more mitigation needs to be done to keep families in our neighborhood safe," Berge said.

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Pierce said Madison-Kipp has agreed to install soil vapor extraction systems to begin mitigating the contamination on its property in January.

An attorney for the residents suing Madison-Kipp said he believes the lawsuit helped compel this new action. A trial date is set in federal court in January.

Madison-Kipp makes industrial components at the facility. Earlier this year, a company official said the company stopped using the chemical PCE, a solvent used for cleaning metalics, in 1987.

### Previous Story:

- November 10, 2011: [East Side Families File Suit Against Kipp Corp.](#)

To find out more on this, visit Channel 3000's [Search page](#).

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 Yes.  
 No.  
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**EXHIBIT 5**  
(HAYES DECLARATION)

**From:** Schmoller, Michael R - DNR  
**Sent:** Thursday, December 15, 2011 3:07 PM  
**To:** Tinker, Steve E - DOJ <tinkerse@DOJ.STATE.WI.US>; 'Crawley, Katie' <KCrawley@cityofmadison.com>; Rummel Marsha <marsha.rummel@gmail.com>; Nehls-Lowe, Henry L - DHS <Henry.NehlsLowe@dhs.wisconsin.gov>; Pierce, Eileen F - DNR <Eileen.Pierce@wisconsin.gov>; Stevens, Patrick K - DNR <Patrick.Stevens@wisconsin.gov>; Hanefeld, Linda S - DNR <Linda.Hanefeld@Wisconsin.gov>; Hausbeck, John <JHausbeck@publichealthmdc.com>; Evanson, Theresa A - DNR <Theresa.Evanson@Wisconsin.gov>; Ballas, Eric A - DNR <Eric.Ballas@wisconsin.gov>; Giesfeldt, Mark F - DNR <Mark.Giesfeldt@Wisconsin.gov>  
**Subject:** Most Recent Kipp Soil Vapor Results

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On December 13, 2011 I received from Bob Nauta the November soil vapor sample results from several locations along South Marquette and Waubesa Streets. Those tests showed elevated readings in almost all the sampled locations indicating a completed vapor migration pathway from the Kipp property to most every adjacent residential lot on Marquette and Waubesa Streets. In addition, today we received a letter from Norman Berger, the attorney in the citizen suit against Kipp, stating his serious concerns about these most recent findings.

In response to the sampling and Mr. Berger's letter I spoke with Katie Crawley, Marsha Rummel and Mr. Berger. In each of the conversations I stated the Department was concerned about these readings and that next week city and state staff will be hand delivering the results to each impacted homeowner. In addition to the sample data staff will inform each homeowner of what future investigation and/or response actions may be necessary. These actions may or may not be included in the current scope of work being discussed between Kipp and the state.

Tomorrow there is a planned conference call to work the details of next week's efforts.

If anyone has further questions or concerns please contact me.

Thanks  
Mike



**EXHIBIT 6**  
**(HAYES DECLARATION)**

**From:** Hausbeck, John <JHausbeck@publichealthmdc.com>  
**Sent:** Tuesday, December 20, 2011 10:56 AM  
**To:** Schmoller, Michael R - DNR <Michael.Schmoller@Wisconsin.gov>; Nehls-Lowe, Henry L - DHS <Henry.NehlsLowe@dhs.wisconsin.gov>  
**Subject:** RE: Madison-Kipp

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If I owned one of these homes, I would have a system in my house already. I disagree with what Berry (owner on north end of Marquette) said to Mike and I last night. I think having a system in your home is a positive. Assuming its done right. The SVE would be a better thing in theory but maybe the best situation is to have both systems working.

John

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**From:** Schmoller, Michael R - DNR [mailto:Michael.Schmoller@Wisconsin.gov]  
**Sent:** Tuesday, December 20, 2011 10:34 AM  
**To:** Nehls-Lowe, Henry L - DHS; Hausbeck, John  
**Subject:** RE: Madison-Kipp

Norm Berger just called me. He believes all the home along the west side of Marquette and the east side of Waubesa should be tested and receive mitigation systems regardless of the results. Because of the unpredictable nature of the soil vapor pathway and the large presence of vapor in the area he believes at some time or another everyone will be exposed or can be reasonably expected to be exposed. This seems to be not a bad idea. The success of the SVE pilot test will play some role in our decisions but what do you guys think?

Mike

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**From:** Nehls-Lowe, Henry L - DHS  
**Sent:** Tuesday, December 20, 2011 10:18 AM  
**To:** Hausbeck, John  
**Cc:** Schmoller, Michael R - DNR; Tinker, Steve E - DOJ; Hanefeld, Linda S - DNR; Giesfeldt, Mark F - DNR; Buss, Pamela E - DNR  
**Subject:** Re: Madison-Kipp

I completely agree. My Thursday calendar is wide open.

Henry Nehls-Lowe

On Dec 20, 2011, at 10:07 AM, "Hausbeck, John" <JHausbeck@publichealthmdc.com> wrote:

I agree. I think the neighbors deserve to know what is below their homes.

John

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**From:** Schmoller, Michael R - DNR [mailto:Michael.Schmoller@Wisconsin.gov]  
**Sent:** Tuesday, December 20, 2011 9:03 AM  
**To:** Tinker, Steve E - DOJ; Hanefeld, Linda S - DNR; Giesfeldt, Mark F - DNR; Nehls-Lowe, Henry L - DHS; Hausbeck, John  
**Cc:** Buss, Pamela E - DNR  
**Subject:** RE: Madison-Kipp

I can meet Thursday to discuss this. I would prefer not to wait until next week if everyone's schedule allows for Thursday. (Just in case we need to hire a contractor to do the work)

I do not like the idea of moving directly to mitigation systems without the sampling. Homeowners usually want to know what is beneath their homes and we do have some responsibility to provide that impact data. Also, with no sample results the homeowner is obligated to operate a system not knowing if it necessary. The homeowner is burdened with the financial hit of having a home with a mitigation system when they may not need one.

I think it is best to move in our proposed sequence of actions.