



May 4, 2012

Mr. Mark Meunier
Madison MKC Corporation
201 Waubesa Street
Madison WI 53704

Subject: Polychlorinated Biphenyl (PCB) Contamination - Madison MKC Corporation (MKC)
201 Waubesa Street, Madison
BRRTS Activity Number: 02-13-558625

Dear Mr. Meunier:

This letter provides follow-up information to the letters from your attorney, Mr. David A. Crass, dated April 20 and 27, 2012. It is also intended to clarify the Department's position regarding questions raised during a meeting held on April 23, 2012, between state and local governmental officials and Madison MKC Corporation (MKC) representatives. Both the letter exchanges and the meeting were prompted by the discovery of PCB contamination at your 201 Waubesa Street, Madison, facility.

First, we would like to address the statements in your April 20th letter where you suggest that the State failed to reference any of MKC's responses to the State regarding the issue of the discovery of PCB contaminated soil. In response, the State would like to offer that it stands by its April 19th letter, which concluded that MKC has not been forthcoming in clearly articulating to us and the public a clear, comprehensive and timely path forward to resolve the environmental contamination issues on and off your property. Let us share with you an example of our continued concern with MKC's disclosure of and responsiveness to environmental issues.

The State first became aware of the existence of a Phase I environmental site assessment (ESA) report last fall, while in "scope of work" negotiations with MKC. DNR staff and DOJ made repeated requests – verbally and in writing - for copies of the Phase I ESAs upon learning that MKC had such documents. In a December 19th, 2011, email to MKC, Steve Tinker, at DOJ, concluded his email to you with the following: "In addition, the DNR is still waiting to receive the Phase I site assessment." In response our to April 19th letter, the DNR was finally provided with Phase I ESA reports, dated 2006 and 2010, on April 20th. Unbeknownst to the State, those reports discuss the historic use of spent oil, potentially contaminated with PCBs, as a dust suppressant at your property. The Phase I ESA information indicates MKC knew of the potential for PCB contamination on-site since 2006, and made no efforts to inform the State or the public.

Certainly you must have been aware that such information would have a significant impact on the type and exigencies of the on-going investigation and clean up at your site. Your consultant, RSV Engineering, Inc., in a March 16, 2006, letter to you noted the possible existence of PCBs due to the dust suppression activities. Further, you were aware that the PCBs were of concern from a regulatory standpoint, as your consultant states: "RSV understands that the reagent used for the soil remediation should remediate PCB contaminants, as well as target compounds. Consequently, MKC is essentially remediating PCB impacts along with the chlorinated volatile organic compounds, which are the subject of the ongoing investigation and remediation activities."

Therefore, no later than 10 days from the date of this letter, you shall provide the Department with COMPLETE Phase I ESA documentation. For example, while you gave us some documents, it appears the cover page and Appendix E for Exhibit E were not provided to the Department. Based upon the contents of Exhibit E, it appears to be a Phase I completed by RJN Environmental Services sometime in May 2010. We are also missing a table of contents for Exhibit F, if one exists. If any other Phase I ESA documents exist, that has not already been forwarded to the Department, please do so.

Because we now have two types of contaminants of concern at this site, volatile organic compounds (VOCs) and PCBs, and this contamination occurred due to separate discharges and at differing times, the Department is now tracking two separate discharge cases at the site. As the Department stated in its April 19, 2012, letter, we expected a spill notification form to have been submitted regarding the PCBs. In our April 19 letter, and at the April 23 meeting, despite your arguments to the contrary, we informed you that this was a reportable discharge, and a spill form was to be submitted by April 29, 2012, as is standard DNR procedure. To date, we have not received this spill notice form.

Further, given the concentrations of PCBs detected in soil, there remains an issue with regard to whether MKC is subject to regulation under State law and the Toxic Substance Control Act (TSCA). As you are aware, we do not accept your arguments that TSCA does not apply to you in this situation, without the EPA's official determination in this matter. As documented in the joint EPA and DNR One Cleanup Program Memorandum of Agreement (OCP MOA), the following applies to your site:

"It is the owner/operator's (this is usually the RP) responsibility to determine the timing and initial concentration of the PCB release for the purpose of determining TSCA applicability. This determination should include a thorough and good faith inquiry into the nature and origin of the PCB contamination. Where a facility owner or operator makes a good faith effort to determine the *date and concentration (emphasis added)* of the material at the time of the release, but cannot make a definitive determination because documentation regarding the date of the release and source of contamination is unavailable or inconclusive, then EPA may presume that PCBs are illegally disposed of at a site and require remediation under TSCA (See 59 FR 62788, 62799 (Dec. 6, 1994))."

Further, per the OCP MOA and 40CFR 761.50(b)(3)(i)(A), EPA can direct the owner and operator to remediate a release where TSCA is not otherwise applicable if EPA believes an "unreasonable risk" exists:

"(A) Sites containing these wastes are presumed not to present an unreasonable risk of injury to health or the environment from exposure to PCBs at the site. However, the EPA Regional Administrator may inform the owner or operator of the site that there is reason to believe that spills, leaks, or other uncontrolled releases or discharges, such as leaching, from the site constitute ongoing disposal that may present an unreasonable risk of injury to health or the environment from exposure to PCBs at the site, and may require the owner or operator to generate data necessary to characterize the risk. If after reviewing any such data, the EPA Regional Administrator makes a finding, that an unreasonable risk exists, then he or she may direct the owner or operator of the site to dispose of the PCB remediation waste in accordance with § 761.61 such that an unreasonable risk of injury no longer exists."

To date, MKC has not shared any information with the Department concerning the concentration of the PCBs at the time of release. This would be part of the TSCA applicability determination – and a key component of determining that TSCA is not applicable. We leave the applicability of TSCA to your site as an issue that you must affirmatively resolve with EPA in the very near future. As agreed to at the May 23 meeting, we will be setting up a call between EPA and MKC in the near future to resolve this issue; this has been delayed due to the schedule of the EPA TSCA staff.

During the April 23, 2012, meeting, you requested the Department consider allowing MKC to incorporate the PCB investigation into the broader site investigation anticipated in the future. The Department is not changing its position on this issue. Until you hear otherwise from the Department in writing, the PCB investigation is part of the immediate/interim actions you were directed to take in the April 19, 2012 letter, in accordance with ch. NR 708, Wis. Admin. Code. Specifically the Department's letter reads: "[w]ithin 90 days from the date of this letter, DNR expects that the complete PCB-related site investigation, clean-up activities and report will be completed as an immediate or interim action under ch. NR708, Wis. Admin. Code. The NR 700 reports and documentation shall be provided to the DNR within this 90-day timeframe." In fact, the Department is requiring all items listed under "Steps to Take" be completed in the timeframes outlined therein.

At the April 23, meeting, the one item we did agree with you on was that Item #4, of our April 19 letter, was no longer relevant; as the source of the PCB contamination was revealed to the DNR the day after we sent our letter. Since it is now assumed that the source of the PCBs was the used waste oil spread on the gravel parking lots, the May 1 sampling is no longer relevant. In its place and as discussed at the April 23 meeting, the Department is requiring the submittal of an immediate/interim action workplan that discusses MKC's proposal for completing the PCB site investigation and subsequent clean-up. The workplan shall meet the criteria set forth in s. NR 716.09, Wis. Admin. Code, and shall be accompanied by the appropriate review fee (see s. NR 749.04, Table 1, Wis. Admin. Code, for more information). Further, we are missing the schedule for completing the ch. NR 708, Wis. Admin. Code, actions as required in the April 19th letter ("Steps to Take" Item #3).

The PCB workplan must be submitted to the Department by May 21, and approved by Department personnel prior to implementation. The site investigation report will meet the criteria set forth in ch. NR 716, Wis. Admin. Code, and the remedial action report will meet the criteria set forth in ch. NR 724, Wis. Admin. Code. Both the site investigation and remedial action report(s) are due July 18, 2012. Section NR 700.11, Wis. Admin. Code, provides the Department the ability to require additional submittals for immediate and interim actions taken under ch. NR 708, Wis. Admin. Code. From this point forward, the Department is requiring MKC to provide 2 paper copies and one electronic copy of all submittals.

The investigation and immediate/interim actions shall not be limited to the northeast corner of the site. Information contained in the Phase I ESAs indicate the footprint of the MKC facility has changed over its lifetime. There is a distinct possibility that gravel parking lots existed in other locations on the property, as well. The sampling workplan shall include off-site and on-site sampling, and at a minimum, that corresponds to the storage location of the waste oil, and application areas and runoff areas.

MKC shall expand the suite of parameters for which soil samples are analyzed. Because we know very little about the nature of the oil used for dust suppression, through sampling MKC shall demonstrate the spent oil did not contain other contaminants with which the Department is concerned. The workplan shall include sampling for VOCs, heavy metals, polycyclic aromatic hydrocarbons (PAHs), and cyanides, in addition to PCBs. This will aid MKC to efficiently complete the overall site investigation work required by statute.

As noted above, there is very little known about the nature of the spent oil used for dust suppression. MKC shall provide the Department with all documentation and/or operations knowledge you have to address the following details regarding your operations and the spent oil. This documentation shall include, but not be limited to:

- What was the source of the spent oil?
- What years were the oils used and spread?
- Where was the product oil stored, what was the product?
- Where was the spent oil stored?
- How much oil was spread, how often, what time of year (winter)?
- Where was the oil spread?

- Who spread the oil and at whose direction?
- When did you first learn of this spent oil being used in this way?
- Are spent oils currently being generated at your facility? If so, provide details on oil use (purpose within the manufacturing process), product characteristics (material safety data sheets, for example, would be useful), spent oil generation, storage, and disposal and any spent oil waste characterization documentation you have.

MKC shall include the information regarding the nature and uses of the spent oil, both past and present, as part of the PCB work plan due May 21, 2012.

In closing, the Department wants to be very clear to MKC that when the Department sends you a letter or email, we expect compliance with it, particularly regarding the timeframes and manner in which you were directed to act. The fact that you disagree with the Department's direction does not provide you with a valid and defensible mechanism for non-compliance. Unless you hear back in writing from the Department on an objection you have raised, you are expected to comply with the law, and the Department's previous direction to you in the timeframes specified.

Respectfully,



Linda Hanefeld
Remediation and Redevelopment Team Supervisor
South Central Region
(608) 275-3310

Cc:

Steve Tinker, DOJ
David Crass, Michael Best
Mark Giesfeldt, DNR
Mike Schmoller, DNR