

'They came after me immediately': Madison man's property becomes a financial nightmare because of the land's dry-cleaning chemical legacy



MADISON - When Ken Koeppler bought a little building at 351 Russell St. in Madison in 1987, he thought it would make a great place for a musician to live and make music.

In the large open area in the front, Koeppler set up a recording studio and launched a business. In the back, he lived in the smaller living area of the remodeled building. Koeppler stayed at the home for 17 years, recording music and enjoying his location right off of Atwood Avenue, a short distance from Madison's downtown.

Eventually, his recording business required a little more space, and he moved down the road, and started renting his Russell Street house out. Teachers, artists, musicians have lived there over the years, he said.

In 2015, the Department of Natural Resources knocked on the door.

Did Mr. Koeppler know there were toxic chemicals in the soil in the neighborhood, believed to be linked to former dry cleaners? No, he said, he didn't. He didn't even know that the building he owned had once been a dry cleaning business.

The DNR asked if they could test the air in the basement of the building and eventually found tetrachloroethylene, also known as PCE, was making its way from the soil through the cement slab below the building and into the air in the house.

After the vapors were detected, Koeppler was named the responsible party for the contaminants below his home, and those that were leaching out through the soil in the neighborhood.

"They came after me immediately, as soon as the test results were announced," he said.

Since then, the knowledge of the contamination has been Koeppler's burden. He said he's afraid to move forward with the DNR's prescribed testing and remedial efforts, because of the thousands of dollars he's sure it will cost.

He placed a vapor mitigation system beneath the building to handle the toxic fumes rising through the concrete below it, but there is still more work to be done to find the extent of the contamination and remove it from the densely packed neighborhood on Madison's east side.

"I don't want to wake up and be 75 years old and they bring enforcement actions against me, or I don't want to die and drop this on my daughter," he said.

More: [Email reveals DNR has abandoned groundwater rulemaking for nitrates, citing strict timeline and difficult process set by Legislature](#)

More: [Hold the salt: Organization asks Wisconsin to cut down on use of rock salt this winter to keep state waters clean](#)

Chemicals were used across the Wisconsin

The chemicals beneath Koeppler's building aren't a new discovery.

Scientists have known about PCE and how toxic it is for years, but only within the last 10 or 15 years has research emerged showing just how toxic the vapors can be when they leach up through the soil, said Darsi Foss, administrator of the DNR's environmental management division.

"We were aware of these compounds. We just didn't understand this specific way that it moved through the environment and then could be harmful to people," she said.

According to the [DNR's environmental cleanup tracking system](#), more than 1,000 sites in Wisconsin have been impacted by the contaminant, with more than 120 of those sites in Dane County alone. No estimate exists for how many sites are like Koeppler's with toxins lurking beneath the surface.

PCE was used in industrial dry cleaners as a grease-remover, known for its ability to remove the worst stains. But what wasn't known in the 1950s and 1960s was that the solution dry cleaners were using — and dumping down the drain or out the back door at the end of the day — was also very harmful to human health.

[According to the Environmental Protection Agency](#), short-term exposure can cause irritation to the respiratory tract and eyes, impairment of coordination, dizziness, headaches, sleepiness and unconsciousness.

The results of chronic exposure are much worse. The chemical can cause neurological issues, as well as adverse effects in the liver, kidney and immune system, as well as an impact on reproduction. It is also likely to be carcinogenic, the EPA says.

Dry cleaners across the state used the chemicals, Foss said, and now the sites they once sat on require remediation. A fund was established to help current dry cleaners remediate their soil, but the fund is now in the red, Foss said, with more participants than money.

The fund was closed to new applicants before the discovery of Koeppler's site, so he couldn't apply, and likely would not have been considered eligible as the dry cleaner is no longer operating on the site.

Typically, the responsible party would be the person or entity that released the toxic substance into the environment, but in Koeppler's case, the building hasn't operated as a dry cleaner for nearly 60 years, and the owners of the business have since passed away.

Wisconsin's spills law states that someone has to be held responsible for the contamination, but with no previous owners available to take the responsibility, Koeppler is left with to deal with the remediation.

The DNR maintains that Koeppler can afford to do further testing at the site, based on independent software used to assess his assets, Foss said. But Koeppler maintains that the outcome of that software was wrong, and continuing expense would be devastating for him financially, especially because he and his wife are now retired. Koeppler said he can't afford to remediate an entire neighborhood, on top of all the testing the DNR is asking for.

"It's a huge financial burden," he said.

On top of the financial burden is the ongoing difficulty of coping with the situation he's in, Koeppler said.

"I've had two heart attacks," he said. "My doctor doesn't think I need the stress."

'We can't be shortsighted'

One avenue for aid that Koeppler is hoping to see is the passing of "innocent buyer" legislation. The bill was first introduced in 2017, by former Madison Democratic Rep. Chris Taylor. The legislation stalled before being taken up, but Koeppler has tried to keep it on legislators' radars.

Many states have legislation protecting unknowing land purchasers, such as Minnesota and Illinois, according to [a 2014 report from the American Bar Association](#).

Since it stalled, Koeppler has continued to reach out to his state representative, now Democrat Francesca Hong, but not much has come from his continued efforts, he said. In a statement, Hong said she has worked with the DNR to understand Koeppler's

situation, and because of "limited pathways to passing legislation," reached out to Republicans about reviving the bill.

"... should it come to the Assembly floor, I will give it my full consideration," she said.

Republican Sen. Andre Jacque of De Pere has revived the legislation and is hoping to see it signed into law to help people like Koeppler.

While Koeppler isn't within Jacque's district, the senator said he believes the legislation could be an overall benefit to the state, the environment and those who live near sites that need to be cleaned up.

"I think his situation is emblematic of the sort of thing that countless citizens across the state find themselves in all the time," Jacque said. "There are ways that government doesn't meet the common-sense test, and we have to try a little bit harder to troubleshoot and find a way to make situations work, where there just simply is no explanation for why they have to be the way that they are."

Jacque said he sees the bill as an opportunity to work with his colleagues across the aisle to accomplish something that will protect individuals who purchased property without the knowledge of previous activities that may have led to contamination.

Others worry that the legislation could impact the spills law, which holds polluters accountable for contamination or pollution and is regularly enforced to make sure sites are cleaned up and residents are kept safe from toxic substances.

"I don't think it puts the spills law in general at risk, but it certainly creates a new exception to imposing liability under the spills law that can be problematic in certain situations," said Rob Lee, a staff attorney with Midwest Environmental Advocates.

It can be incredibly costly to conduct an environmental cleanup, Lee said, and that can create quite a financial burden for someone who bought a property for full price, without any knowledge of the contamination. But the question of who should pay for remediation remains, he said.

"If the state isn't able to take charge or even a local government, then who is going to be liable?" he said. "If we're going to create an exception in this law, we can't be shortsighted and forget that we still need to address the contamination, and that requires the funding to do so."

Lee said relieving some of the financial burden could be the key to cleaning up not only sites like Koeppler's with TCE contamination, but others around the state impacted by other toxic contaminants.

"It's not just addressing the contamination. It's addressing the environmental and public health impacts that stem from it," he said. "The longer you delay in cleaning it up, often the more expensive it becomes."

'I can't do it'

Today, Koeppler is waiting to see if legislation is passed, or if the city of Madison can help get his property into some type of remediation program. And in the meantime, he's painted a giant mural along the side of the building, asking for help in raising awareness of his situation.

"\$50K later it could still cost me hundreds of thousands more," the mural reads in big, bold white letters against a black background. Koeppler is hoping the bold display will get the attention of Gov. Tony Evers and the DNR, he said, in an attempt to get them to support the innocent buyer legislation.

And in the meantime, other avenues have been explored, too.

In mid-November, a measure introduced by his alderman during the city's budget process to buy the property fell flat, eliminating hopes the city could remediate the property and then sell it for use as some type of community center.

That leaves Koeppler in limbo. He's gotten a letter of noncompliance from the DNR, but isn't sure that he can afford to take the next step, even though the agency maintains that he can.

"I can't do it if they can't give me an endpoint to this," Koeppler said. "It's not like I ignored anything, it was the first property I ever bought. I hired a lawyer, I had an inspection. The city had zoned it residential. I had no reason to think there was anything wrong."

Koeppler is now working with the city to have the site assessed for the [brownfields program](#), which is run by the EPA. The program provides grants and technical assistance to communities, counties, states and others to assess, clean up and reuse contaminated properties.

A brownfields grant will only help to fund more testing, and not the remediation or vapor mitigation systems needed inside homes, said Brynn Bemis, a hydrogeologist for the city of Madison. But, there is one more solution state lawmakers could consider: re-opening the fund for dry cleaner remediation, and make it so Koeppler and others who own former dry cleaning sites can apply and conduct the testing and clean-ups needed.

"That is so desperately needed," she said.

Because what this case comes down to is the need to test and remediate not just the property at 351 Russell. The whole neighborhood

needs to be looked at.

"The focus is on protecting human health," Bemis said. "It's a very challenging situation for the DNR, but they're charged with protecting human health and the environment."

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