

May 11, 2018

Mr. Jose G. Cisneros, Chief
Remediation and Reuse Branch
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

Re: Request for Information for Tyco Fire Products, LP Facility at 1 Stanton Street,
Marinette, WI, EPA ID# WID 006 125 215

Dear Mr. Cisneros:

We received the U.S. Environmental Protection Agency's (EPA) letter dated April 19, 2018, which requested certain information relating to past and present production, usage, management, transportation, or disposal of perfluorinated chemicals (PFCs) at the above-captioned facility (Facility). The stated purpose of EPA's letter is to obtain information to evaluate potential releases of PFCs at or from the Facility and Tyco Fire Products' ability to perform corrective action. We set forth below a few requests for clarification relating to EPA's request.

At the outset, we note that Tyco Fire Products, L.P. (Tyco) has agreed on a cooperative basis to undertake groundwater sampling at the Stanton Street facility to check for the possible presence of PFCs and to share the resultant data with EPA. That sampling occurred April 30 - May 1, 2018, and we expect to receive validated data by the end of May. In addition, EPA collected its own split samples during that sampling event, and we understand that EPA should receive the data from its laboratory in early July. The data will indicate whether or to what extent PFCs may be present in groundwater at the Facility. If there are no concentrations identified that may warrant further discussion, we believe that the requests in the April 19 letter will be moot. If there are such concentrations, the data will help inform what further information is necessary, and a number of the questions in the April 19 letter would not be pertinent with respect to next steps.

We also note that that the April 19 information request was issued under Section 3007 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. § 6927. However, RCRA Section 3007(a) authorizes EPA to require persons who manage "hazardous wastes" to "furnish information relating to such wastes." Moreover, EPA's longstanding guidance confirms that the specific information to be gathered "must relate to hazardous waste." See Blake, F., *Inspection Authority Under Section 3007 of RCRA* (April 17, 1986), at 2. Tyco is unaware of any listing of PFCs as "hazardous waste" or identification of PFCs as a characteristic of "hazardous waste" in 40 C.F.R. Part 261, and is similarly unaware of any designation of PFCs as a "hazardous waste constituent" in Part 261 Appendix VIII. Tyco requests that EPA clarify its basis for pursuing this approach under RCRA.


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We also note that even for those situations where RCRA applies, the scope of the request is to be limited to information "relating to" "hazardous waste." A number of the information requests in the April 19 letter appear to concern items, materials, or processes that are not related to wastes or disposal. Therefore, even if RCRA applied, Tyco would need to discuss with EPA the scope of the requests in the April 19 letter to make them consistent with EPA's statutory authority and not otherwise unduly burdensome.

As an administrative matter, to enable EPA to respond to the above request regarding its statutory authority (and enable Tyco to consider EPA's response), and to enable the parties to consider the groundwater data that Tyco and EPA will be receiving soon, Tyco requests that the deadline for responding further to the April 19 letter be extended to August 10, which represents 30 days after the expected timeframe for EPA to receive its data from the sampling event. We believe that having the sampling data will be helpful to EPA and Tyco in discussing how to proceed.

We look forward to your clarification of these issues and your response to the request for extension. In the meantime, Tyco looks forward to continuing to work cooperatively with EPA on these matters, including by conducting the sampling referenced above and discussing the results with EPA and potential next steps after they are received.

Sincerely,



on behalf of:
Joseph Janeczek

cc: Mia Lombardi, Johnson Controls
Richard Clarizio, USEPA
Tammy Moore, USEPA
Conor Neal, USEPA
Angela Cary, WDNR