

October 17, 2019

Roxanne N. Chronert
Team Supervisor, Northeast Region
Remediation and Redevelopment Program
Wisconsin Department of Natural Resources
101 S. Webster Street
P.O. Box 7921
Madison, WI 53707-7921

Re: Tyco Fire Products
DNR BRRTS Activity # 02-38-583856

Dear Ms. Chronert:

We received your letter dated October 16, 2019 and will review and respond appropriately. However, as an initial matter, we believe it is important to correct the record on a number of very important issues.

To start, in its initial July 3, 2019 correspondence (“DNR Letter”), the DNR did not direct either Tyco Fire Products LP (“Tyco”) or Johnson Controls, Inc. (“JCI”) to take any action. It was directed to a different corporate entity that the DNR has agreed is not relevant to these issues. Therefore, neither Tyco—the company that actually owns and operates the facility and has been working with DNR for years on addressing these issues—nor JCI is out of compliance, as your letter asserts. The agency’s repeated and willful disregard for identifying appropriate corporate entities undercuts any assertion by the DNR that Tyco (or JCI) has failed to respond to the agency. To claim that Tyco is “noncompliant” ignores both the facts and the DNR’s legal obligations.

At this point, the DNR does not know whether there is an issue with the biosolids application, and if there is, how significant that may be, or what the potential sources of the material may be. We believe it is imperative that the DNR first investigate and assess the extent and scope of any biosolids application to develop a reasoned work plan. As Tyco representatives have discussed with the DNR, we also believe the DNR must assess the potential sources of the materials. Importantly, DNR has a legal obligation to do so. Wis. Stats. § 292.31(1)(b)2. This has not been done.

Stated more clearly, DNR is required by law to identify sources of contamination. DNR has not complied with this obligation and, furthermore, has even rejected Tyco’s offer to pay for that work. Specifically, the City of Marinette tested lines from five wastewater zones that discharge into its WWTP; it found PFAS in all five lines. But Tyco potentially discharges into

only three of those lines. Moreover, there are multiple potential sources of PFAS in the environment because these chemicals, as the DNR has stated, have been used in industry and consumer products worldwide since the 1950's. As a result, it is a certainty that substantial sources of PFAS exist that are not associated with Tyco and DNR has not even attempted to investigate those sources. Importantly, those other sources do not include Tyco in the wastewater discharged to the City's WWTP, and in the biosolids the City has produced and distributed from the WWTP. As a result, the DNR cannot show that the City's landspreading activity was unauthorized, and in any event, the agency is required by law to "identify as many persons as possible responsible for [any contamination]." Wis. Stats. § 292.31(1)(b)2.

In this vein, Tyco proposed to the DNR in a meeting and subsequent discussions with DNR personnel to invest significant financial resources in collaborating with the DNR to develop a work plan that would detail the appropriate activities to assess and investigate fields within the City of Marinette where biosolids from the Marinette wastewater treatment plant were applied. We were very disappointed to learn from your letter that the DNR summarily rejected Tyco's proposal. More specifically, Tyco offered to have its consultant work with the DNR, and a third party consultant hired by the DNR, and Tyco offered to reimburse the DNR, or pay the DNR consultant's invoices, directly, in order to expedite this work. We do not understand why the DNR would be unwilling to work with Tyco in this manner.

Tyco's offer was intended to establish a cooperative process with the DNR on this important issue, and to avoid lengthy proceedings challenging the authority of the DNR to require this work from Tyco. The DNR's July 3, 2019 "responsible party" letter ("DNR Letter") which was not issued to Tyco, relies on the Spill Statute. However, this statute does not apply for several reasons. First, the DNR has not identified any "spill" that would potentially be subject to the statute. The biosolids application is not a process that Tyco "possessed" or "controlled," and DNR has not identified any hazardous substance from the Tyco facility that has been discharged on any of the fields, private wells, or surface waters referenced in the DNR Letter.

In addition, the Spill Statute does not impose joint and several liability. As the DNR knows, Tyco has discharged wastewater from its Marinette facility into the City of Marinette's sewer system pursuant to a valid permit. The wastewater flows to the City's WWTP, with the express permission of the City. The WWTP accepts wastewater from multiple sources, and as noted above, the City's wastewater lines that do not receive material from Tyco have tested positive for PFAS. The DNR, in turn, has issued permits to the City for the City to provide biosolids generated from its WWTP operations to landowners for use on their properties. The DNR has not identified contaminants, or the sources of those materials, and cannot show that the City's landspreading activities was unauthorized.

Tyco has voluntarily and collaboratively worked with the City of Marinette to evaluate methods to improve the City's WWTP processes, including safe disposal practices and reduction of total waste products. Tyco intends to continue to do so, and we look forward to further collaboration with the DNR in these efforts. We are disappointed that the DNR is not willing to engage in the proposed collaborative process, which would expedite the work, eliminate the DNR's staff and budget constraints, and allow all the parties to focus on producing and responding to credible data. The process Tyco outlined is consistent with the DNR's statutory

authority under Wis. Stats. § 292.31, and to the extent the DNR is not willing to engage in that process, we question the applicability of that statute as support for the October 16, 2019 letter.

Tyco remains willing to work with the DNR on this effort. We are also available to meet with DNR leadership to discuss.

Sincerely,

A handwritten signature in black ink, appearing to read "John Perkins". The signature is fluid and cursive, with a prominent loop at the end.

John Perkins

On behalf of Tyco Fire Products LP

cc: Cheryl Heilman, Esq.
William Nelson, Esq.