



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUN 26 2018

REPLY TO THE ATTENTION OF:

LU-16J

CERTIFIED MAIL 7017 1450 0001 3747 9677
RETURN RECEIPT REQUESTED

Mr. Joseph Janeczek
Director, Global EHS
Johnson Controls
9 Roszel Road
Princeton, New Jersey 08540

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

Dear Mr. Janeczek:

The United States Environmental Protection Agency (EPA) is in receipt of Tyco's letter dated May 11, 2018. In that letter, Tyco requested clarification on EPA's basis for requesting information on perfluorinated compounds (PFCs) at the above referenced facility (Facility) using Section 3007 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §6927. Tyco also asked to discuss the scope of the requests, and consideration of their request for extension to August 10, 2018. August 10 originally represented 30 days after EPA expected to receive its data from the groundwater sampling event measuring PFCs in groundwater.

Based on discussions between EPA and Tyco in a meeting on May 16, 2018, a phone call on May 17, 2018, and an email sent to Tyco on May 22, 2018, EPA agreed to extend the deadline for Tyco's response to the information request to July 6, 2018. This represents approximately two weeks after the date EPA shared preliminary analytical data with Tyco. Additionally, during a conference call between EPA, the Wisconsin Department of Natural Resources (WDNR), and Tyco on May 23, 2018, it was agreed that answers to questions 5 and 11 from the information request will be submitted 60 days after submittal of the July 6, 2018 response, since they may take longer for Tyco to collect all the applicable information. Answers to questions 5 and 11 will be due September 4, 2018. Tyco will not be relieved of answering these questions.

In response to Tyco's request for clarification on EPA's basis for pursuing information on PFCs at the Facility using Section 3007 of RCRA, as amended, 42 U.S.C. § 6927, EPA believes that it has the authority to request this information. Tyco's May 11, 2018 letter states that "RCRA Section 3007(a) authorizes EPA to require persons who manage 'hazardous wastes' to 'furnish information

relating to such wastes.” The letter references EPA guidance that states “specific information to be gathered ‘must relate to hazardous waste.’” Tyco is correct in stating the PFCs are not listed as a “hazardous waste” or having a characteristic of “hazardous waste” in 40 CFR Part 261, and PFCs are not designated as a “hazardous waste constituent” in Part 261 Appendix VIII.

However, the scope of EPA’s authority under Section 3007 is the statutory definition of hazardous waste found in section 1004(5) of RCRA, 42 U.S.C 6903(5) and not the regulatory definition contained in 40 CFR Part 261. See, *Inspection Authority Under Section 3007 of RCRA*, Francis S. Blake, General Counsel (Blake Memo), April 17, 1986. Congress affirmed EPA’s interpretation when it enacted the 1984 Hazardous and Solid Waste Amendments stating:

“EPA’s authority under these provisions [sections 3007 and 7003] is not limited to waste that are ‘identified or listed’ as hazardous, but rather includes all wastes that meet the statutory definition of hazardous waste.” H.R. Rep. No. 198, 98th Cong., 1st Sess. 47 (1983).

In summation, the Agency has consistently interpreted its authority under Section 3007 of RCRA to extend to solid waste that the Agency reasonably believes may meet the statutory definition of hazardous waste, (i.e., may pose a hazard when improperly managed) and not limited to only “listed or characteristic” hazardous waste. Questions related to the generation or handling of solid wastes at the Facility containing PFCs are within the statutory definition of hazardous waste since PFCs are a class of chemicals which have been found to negatively impact human health and the environment. For example, studies indicate exposure to PFCs can cause adverse reproductive and developmental, liver and kidney, and immunological effects.

EPA appreciates Tyco’s cooperation on these issues. Please feel free to contact Conor Neal of my staff at (312) 886-7193 or neal.conor@epa.gov if you have any questions or comments.

Sincerely,



Jose G. Cisneros, Chief
Remediation and Reuse Branch
Land and Chemicals Division

ecc: Tammy Moore, EPA
Richard Clarizio, EPA
Angela Carey, WDNR