



January 15, 2021

Marinette County
BRRTS# 02-38-583852

EMAILED

David Mielke, President/CEO
ChemDesign Products Inc.
2 Stanton Street
Marinette, WI 54143

ChemDesign Products Inc.
C/O Corporation Service Company
8040 Excelsior Drive, Suite 400
Madison, WI 53717

Amy Wachs
Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St Louis, MO 63105

Subject: **ENFORCEMENT TELECONFERENCE SUMMARY**

Dear Mr. Mielke and Ms. Wachs:

Thank you for attending the enforcement conference held on Wednesday December 9, 2020 at 1:00 pm by teleconference to discuss the alleged violations of state hazardous substance spill law at the ChemDesign Products Inc. (ChemDesign) property located at 2 Stanton Street, Marinette, Marinette County, Wisconsin (the Site) as alleged in the November 24, 2020 notice of violation (NOV).

Mr. Mielke of ChemDesign provided background on the company. ChemDesign was founded in 1983 when assets were purchased from Ansul. ChemDesign has operated on the 2 Stanton Street property since 1983 and was historically called Specialty Chem Products. In 2006, they took on the name ChemDesign, although Specialty Chem still exists as a separate company at the Site. ChemDesign was formed in 2006 from a bankruptcy of two other companies. ChemDesign has gone through several owners/acquisitions and is currently owned by Lubar & Company as of November 2012. ChemDesign estimates approximately \$30 million dollars in sales annually. They lease the property at 2 Stanton Street from Johnson Controls International (JCI). They do not own or operate at any other locations.

ChemDesign is a chemical toll manufacturer; where raw materials/chemicals are brought into the Site, then mixed in reactors with other chemicals and a final product is sent back to the customer. Prior to 2005 ChemDesign did not manufacture anything with per – and polyfluoroalkyl substances (PFAS). Specialty Chem did not produce PFAS products. In 2003/2005, ChemGuard, in Mansfield, Texas, had approached ChemDesign to start blending PFAS intermediates for ChemGuard who would then take the PFAS intermediates and make aqueous film-forming foam (AFFF). ChemDesign historically shipped the PFAS intermediate products to ChemGuard in Mansfield, Texas. Other items that were shipped back to Mansfield, Texas were waste products from the process, including: empty raw product totes, rinse water and an iodine waste that contained PFAS compounds. Tyco Fire Products Inc., (Tyco) bought ChemGuard in 2011 and the transfer of the raw chemicals and PFAS intermediate products were then sent from/to Tyco at the 1 Stanton Street Site. ChemDesign no longer sends any PFAS products or PFAS waste

to Texas. The raw PFAS chemicals are owned by Tyco and are transported to ChemDesign by either Tyco or ChemDesign employees. ChemDesign then adds other chemicals to produce PFAS intermediates, which are returned to Tyco. Tyco then manufactures AFFF from the PFAS intermediates in Building 18 at the 1 Stanton St facility. (NOTE: Johnson Controls Inc (JCI) purchased Tyco in 2016)

ChemDesign only made the PFAS intermediate products for ChemGuard and now Tyco. PFAS intermediate products are mixed in two reactors in Building 2 at the site; the reactor vents are connected to condensers and then air scrubbers. Previously, the air scrubber water and rinse water were sent back to ChemGuard in Mansfield, TX. Currently rinse waste from reactor C-6 is disposed of through Clean Harbors who incinerates the waste due to a 2010/2011 Toxic Substances Control Act (TSCA) requirement as part of a pre-manufacturing notice. The reactor condensate is mixed with caustic water, then goes to a knockout pot and then to the air scrubber which also uses water. The spent scrubber/condensate water is then ultimately stored in hazardous waste tank STS-6 on-site; this waste is then shipped off-site for hazardous waste incineration.

ChemDesign identified that there is a foam fire suppression system in Building 69 that was installed in the 1990s. The system was first tested in 2016 and the waste foam was blown out onto the pavement. ChemDesign also identified that PFAS was manufactured by Tyco on the Stanton Street property as early as the 1960s, and that there could have been spillage while transporting the PFAS materials/products around the Site. The 1 and 2 Stanton Street properties were historically gravel-covered until the early 1990s when the site was paved.

Discussions then centered on the circumstances that gave rise to the NOV and actions taken to date to resolve the alleged violations. Forfeitures and orders were discussed as was referral to the Wisconsin Department of Justice. ChemDesign was issued a responsible party letter on July 2, 2019 and hired a consultant (Terracon) to prepare a site investigation workplan (SIWP). The department received a response letter which stated that because of ChemDesign's 1983 lease agreement, that JCI/Tyco would be investigating the PFAS release at the Site; therefore, ChemDesign would not be submitting a SIWP. The department explained that JCI/Tyco has not taken action for any releases related to the ChemDesign Site. The most recent JCI/Tyco SIWP dated September 2020 does not mention ChemDesign operations related to releases to the air, groundwater or soils. Chapter NR 716, Wisconsin Administrative Code, specifically identifies that responsible parties are to look at all of the historical land uses at the site and scope the investigation accordingly. The department has no obligation to enforce the lease agreement between ChemDesign and JCI/Tyco; and if the terms of the lease agreement are not held, then the identified responsible party is still responsible for moving forward with the required restoration of the environment.

The department discussed that ChemDesign should submit a SIWP that will investigate all environmental media (air, groundwater, soils, etc.) related to the PFAS release at the site per the ch. NR 716, Wis. Adm. Code. In the NOV letter the department requested a copy of the 1983 lease agreement and any other agreements on environmental responsibilities at the Site. Your legal counsel identified that these documents were recently submitted to the department for a different program and would like the department to use that confidential business information (CBI) request for this request. The department confirms that a second CBI submittal is not necessary. The department will evaluate the adequacy of this information and make a single determination rather than request a second submittal and second CBI determination.

By no later than January 29, 2021, please provide to me your written commitment to returning to and remaining in compliance for each of the alleged violations. Please provide copies of all PFAS containing safety data sheets which were manufactured since 2005. In addition, it was agreed upon that ChemDesign would submit a SIWP to the department by February 15, 2021.

If you have any technical questions, please contact Alyssa Sellwood at (608) 622-8606. If you have questions regarding this letter or the department's stepped enforcement process, please contact me at (920) 808-0045.

Sincerely,



Jennifer Pelczar
Environmental Enforcement Specialist

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Meeting attendees:

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