

June 1, 2020

Darsi Foss
Administrator, Environmental Management Division
Wisconsin Department of Natural Resources
101 S. Webster St., P.O. Box 7921
Madison, Wisconsin 53707-7921

Re: *Notice of Noncompliance, DNR BRRTS Activity #02-38-580694*

Dear Ms. Foss:

This letter responds to the WDNR's May 27, 2020 Notice of Noncompliance ("Notice") directed to Tyco Fire Products LP.¹ Tyco's number one priority is and has been from the outset to ensure that residents of the affected area in the Town of Peshtigo have access to clean, safe, and reliable drinking water. To that end, Tyco has been diligent, responsible, and collaborative in addressing issues connected by the data and science to the Fire Technology Center in Marinette.

Unfortunately, however, your demands go well beyond what multiple lines of science and data support. Indeed, you are demanding that Tyco accept responsibility for PFAS-contaminated groundwater that is completely isolated from groundwater associated with our facility; PFAS from our facility could not have spread to groundwater in that location. Further, the unconfirmed PFAS detections below the southern boundary are distinct from the chemical signature of detections found in areas known to be impacted from the FTC. And it is particularly disappointing that you have seemingly made no effort to identify the parties that are actually responsible for this contamination, despite the fact that there are clearly other parties who have contributed to the problem.

Nevertheless, because we value the relationship we have established with the WDNR and remain committed to our community, we outline below several actions that Tyco will take in response to the Notice. However, because the Notice relies on numerous incorrect factual premises regarding PFAS contamination that is *not* connected by the data or the science to the FTC, it is inappropriate to designate Tyco as the responsible party for this expanded area.

¹ The WDNR continues to mis-address its correspondence to both Tyco and Johnson Controls, Inc. notwithstanding the fact that Tyco is the owner and operator of the facilities at issue, not Johnson Controls. Therefore, I am deeming your letter to have been directed to the correct party, Tyco, and respond on Tyco's behalf.

1. *Tyco has addressed or is in the process of addressing all PFAS transport mechanisms.*

The Notice fails to acknowledge the Site Investigation Report (“SIR”) Tyco submitted on May 15, 2020 and the Conceptual Site Model Tyco submitted on May 26, 2020. These reports—which stretch over more than 1,000 pages with figures and data included—detail precisely what the WDNR alleges Tyco has not provided: our robust investigation of transport pathways that has proceeded according to three different work plans that the WDNR itself approved. These reports explain the chemical makeup and extent of PFAS in multiple pathways, as required by NR 700, including groundwater, soil, surface water, sediment, and storm water.

As noted in the SIR and discussed with the WDNR on multiple occasions, there is one pathway not addressed: air deposition. We will provide a detailed report on this issue to the WDNR by no later than June 8, 2020. Thus, Tyco has addressed or will soon address all potential PFAS transport mechanisms associated with the FTC.

2. *Tyco has adequately outlined why it is not a responsible party for areas south and west of the existing FTC Study Area.*

On March 20, 2020, Tyco also submitted a report to the WDNR outlining the multiple lines of evidence demonstrating that Tyco is not responsible for PFAS found in the area south and west of the existing FTC Study Area. The WDNR has already issued a letter addressing the conclusions of this report, with a different and conflicting response deadline from the Notice.

Although Tyco will respond to that letter when appropriate, I want to briefly reiterate those multiple lines of evidence here: (1) the absence of PFAS detections in groundwater upgradient of the Heath Lane and Edwards Avenue area; (2) that Ditch A is not now transporting and has not in the past transported PFAS to the groundwater beyond the FTC Study Area; (3) the shallow depth and limited vertical extent of the PFAS detections in the extended area demonstrate that those detections stem from local point sources or other sources; and (4) the mixtures of PFAS samples detected in this extended area are distinctly different from the mixtures of PFAS substances in areas affected by the FTC. Individually and together, this evidence proves that the PFAS found outside of the existing FTC Study Area is not associated with Tyco’s facility and, therefore, Tyco is not the responsible party.

3. *Tyco has consistently met the deadlines the WDNR agreed to.*

Following the January 23, 2020 summit meeting between the WDNR and Tyco, Tyco provided schedules to the WDNR on March 2 and March 12, 2020 and several regular updates regarding reports, field activities, and related work. Tyco has asked for a brief extension of approximately one week for just *three* of these scheduled reports. On the other hand, we have submitted approximately *twenty* other reports, documents, and field activities on the schedule we agreed to with the WDNR.

In addition, not noted in your letter is that over the past several months, Tyco has responded on short notice to several unplanned and unscheduled WDNR information requests. Much of this has related to the biosolids well sampling that Tyco has voluntarily agreed to undertake. These requests often required significant effort to prepare and deliver responses to the WDNR, even as we worked in parallel on planned and scheduled work with the WDNR.

4. *Tyco is willing to install additional sentry wells and take further measures around Ditch A to provide additional data supporting that the proposed extended study area is not connected to the FTC.*

Because we value our relationship with the WDNR and are committed to continuing to assist it in developing data, Tyco agrees to take the following actions in response to your letter.

First, Tyco will conduct further field sampling to provide additional data related to Ditch A. Specifically, although the existing data establishes that Ditch A is and has been a “gaining” stream in this area (and, therefore, does not contribute to PFAS in groundwater there), Tyco is willing to install additional vertical aquifer profiling (VAP) and/or monitoring wells for groundwater quality assessment. We will also install additional surface water/groundwater paired piezometers for further assessment of the “gaining/losing” segments of Ditch A.

Second, Tyco will evaluate the robust system of sentry wells we have installed around the existing Study Area and install additional wells as necessary to further monitor the Southern Boundary area over the long term.

Third, in a separate letter, we outline the measures we are willing to take in response to your letter regarding natural foam observed in surface water ditches.

Tyco will take these actions in the spirit of collaboration with the WDNR, a spirit that we have tried to maintain throughout this process, and in order to assist the WDNR by providing further data demonstrating Tyco’s lack of connection to PFAS found in this area. Tyco will not, however, engage in the requested potable well testing for an area covering more than 500 homes, none of which fall in an area connected to Tyco by the science or data.

5. *In addition to the measures outlined above, Tyco will also investigate other sources of PFAS in this area.*

As the WDNR is well aware (as shown by the WDNR’s own statements on this issue), PFAS are ubiquitous in our environment because they have been ubiquitous in American life for decades. That includes not just firefighting foam, but numerous industrial applications such as paper mills, metal finishing, textiles, and even dry cleaning and other common industries, many of which are found right here in the Marinette area. But it goes beyond just industrial uses: PFAS have also been used widely in such common household products as carpeting, upholstery, waterproof clothing, dental floss, and food packaging, such as microwave popcorn bags. Thus,

nearly any house—particularly those that have a septic system—and nearly any landfill is also a potential contributor of PFAS to the environment. This is important because every home south and southwest of the existing Study Area has a septic system, which are the most likely point sources of the PFAS observed in unconfirmed testing to date.

Because Tyco is not responsible for this area south and west of the FTC Study Area, it is not responsible for investigating and finding other sources of PFAS in that area. Nevertheless, again in the interest of continued collaboration with the WDNR and to help advance public safety, Tyco will engage in activities designed to identify other potential sources of PFAS affecting this area. But it is important to note that Tyco does not have the regulatory authority that the WDNR does. If the WDNR is interested in finding a comprehensive solution that addresses all sources of PFAS in the community, it will need to assist Tyco in identifying these sources.

6. *The Notice is inaccurate and ignores the reality of Tyco's extensive work to address PFAS issues associated with the FTC and beyond.*

I would be remiss if I closed without addressing the overall tone of the WDNR's Notice, which acknowledges "the complexity" of these issues and then requires Tyco to respond to numerous factual and technical statements within three working days. Your repeated references to "noncompliance issues," "compliance concerns," or being "out of compliance" are untrue and fail to recognize Tyco's major voluntary efforts to address PFAS issues in our community.

To name just a few, as soon as Tyco became aware that PFAS had affected drinking water in the existing FTC Study Area, Tyco offered bottled water to every household and, soon thereafter, offered a POET system to any household with a detection of PFAS in its drinking water—even if the level detected was below any existing or proposed regulatory standard. Tyco has also installed advanced filtration systems at Ditches A and B. Although we have termed these systems "interim" measures given that we know further work remains, these systems are, in fact, critical to capturing and filtering PFAS from surface and groundwater around the FTC. Tyco has also spent more than \$3 million assisting the City of Marinette with disposing of its biosolids. And Tyco spent another \$1 million rehabilitating and maintaining sewer systems connecting its properties to the Marinette POTW.

More recently, notwithstanding—again—that Tyco disagrees it is a responsible party, Tyco agreed to conduct potable well testing at more than 170 residences around fields where biosolids were spread. As the WDNR is aware, thus far, 91 of those 98 wells have had either no PFAS detected or have levels below the Wisconsin advisory groundwater standard.

And most important, Tyco has committed to installing a municipal water line in the Town of Peshtigo to provide a permanent source of clean, safe drinking water in the existing FTC Study Area. We have done so without the WDNR taking part in moving this critical measure forward, even as the WDNR has acknowledged more than once that it is the right way forward.

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In short, Tyco has not just responded to these issues—we have led the way. In some cases, Tyco has taken remedial actions that, to our knowledge, are the first of their kind. We have willingly done so at great expense because we take our responsibility to our community seriously. We go where the science and data lead us, take responsibility when reliable science and data show we are responsible, and have demonstrated that we put access to safe drinking water first above all. Although we are willing to collaborate in the ways outlined above, the science and data do not support the WDNR's demands for extensive additional private well testing.

We remain, as always, open to further discussions and collaboration. Please contact me at your earliest convenience to discuss the next steps forward.

Sincerely,



John Perkins

Vice President of Global Environmental, Health and
Safety, *on behalf of* Tyco Fire Products LP

Copy to: Linda Benfield, Esq., Christine Haag; William Nelson, Esq.; Dave Neste;
Roxanne Chronert; Jennie Pelzcar