



April 27, 2021

Marinette County  
BRRTS# 02-38-583852

**EMAILED**

David Mielke, President/CEO  
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Subject: **SITE INVESTIGATION WORKPLAN EXTENSION REQUEST**

Dear Mr. Mielke and Ms. Wachs:

Thank you for your enforcement conference responses on January 29, 2021, and February 12, 2021, related to the notice of violation (NOV) that the Wisconsin Department of Natural Resources (department) issued on November 24, 2020 to ChemDesign Products Inc. (ChemDesign) for property located at 2 Stanton Street, Marinette, Marinette County, Wisconsin (the Site).

You identified that ChemDesign leases its facility from Tyco Fire Products, LP (Tyco) and Johnson Controls, Inc. (herein JCI/Tyco). You also noted that JCI/Tyco is currently performing site investigation (SI) activities related to the per – and polyfluoroalkyl substances (PFAS) at the Site. In the December 9, 2020 enforcement teleconference, you explained that ChemDesign has blended PFAS chemicals at the Site since 2003/2005; therefore, ChemDesign has responsibility to investigate any releases from that activity at the Site. In correspondence related to the NOV, you explained that you would not be conducting any site investigation activities independently of JCI/Tyco's site investigation work.

The department is unable to resolve this notice of violation based on the information ChemDesign and JCI/Tyco have shared.

First, on August 11, 2020, the department received a Conceptual Site Model and Aerial Deposition Evaluation Reports from JCI/Tyco that discuss ChemDesign's operations. Most recently, on March 22, 2021, the department received a site investigation workplan (SIWP) from JCI/Tyco and is currently under review by the department. A cursory review of JCI/Tyco's SIWP does not appear to include any additional information related to the ChemDesign Site or activities that ChemDesign performed at the Site. These submittals have not adequately addressed ChemDesign's role in contributing to the environmental conditions at the remedial action site and have not mentioned the ChemDesign BRRTS case or that these investigation activities would be conducted in order to satisfy both the JCI/Tyco and BRRTS cases at the Stanton Street Campus.

Second, while the department understands ChemDesign is a tenant of a commercial lease agreement with JCI/Tyco, the department has no authority to enforce third party commercial lease agreements between private entities. The department understands the lease agreement points to JCI/Tyco as responsible for environmental conditions at the site; however, the department is not party to that agreement. An identified responsible party

is responsible for ensuring the required investigation and restoration of the environment is completed, whether by enforcing its own agreement with another party or by completing the actions itself. The greatest deficiency in the site investigation efforts at this site is the lack of an explanation of PFAS fate and transport air to soil, groundwater, and surface water pathway. Therefore, ChemDesign remains responsible for moving forward with the requirements identified in the July 2, 2019, responsible party letter.

For the reasons stated above, your February 12, 2021 request to extend the submittal date for the SIWP is denied and ChemDesign should move forward with the work required as soon as practicable, including evaluating the air pathway as a mechanism to discharge PFAS to the soil, groundwater and/or surface water. To address this non-compliance with s. 292.11(3), Wisconsin Statutes, the department is requesting the items identified to be submitted by the following identified dates:

- 1. By May 28, 2021, the SIWP should be submitted to the department.**
- 2. By May 28, 2021, provide the previously requested PFAS-containing safety data sheet(s) addressed in the January 15, 2021 Enforcement Conference Summary Letter.**

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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