

FILED
03-14-2022
Clerk of Court
Marinette County
2022CX000001
Honorable James A.
Morrison
Branch 2

STATE OF WISCONSIN CIRCUIT COURT MARINETTE COUNTY
BRANCH ____

STATE OF WISCONSIN,
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 22-CX-_____
Complex Forfeiture: 30109

TYCO FIRE PRODUCTS,
LIMITED PARTNERSHIP,
2700 Industrial Parkway South
Marinette, Wisconsin 54143,
a foreign limited partnership,

and

JOHNSON CONTROLS, INC,
5757 North Green Bay Avenue
Milwaukee, Wisconsin 53209,
a Wisconsin corporation,

Defendants.

THE AMOUNT CLAIMED IS
GREATER THAN THE AMOUNT
CLAIMED UNDER WIS. STAT.
§ 799.01(1)(d).

CIVIL COMPLAINT

The State of Wisconsin by its attorneys, Attorney General Joshua L. Kaul and Assistant Attorneys General Bradley J. Motl and Sarah C. Geers, brings this Civil Complaint against the Defendants, Tyco Fire Products,

Limited Partnership and Johnson Controls, Inc., after referral from the Wisconsin Department of Natural Resources (DNR), pursuant to Wis. Stat. ch. 292, and alleges as follows:

PARTIES

1. The Plaintiff State of Wisconsin is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin.

2. The State of Wisconsin has enacted, in Wis. Stat. ch. 292, statutes requiring notice, investigation, and remediation of discharges of hazardous substances and environmental pollution. DNR administers regulations and issues orders authorized by these statutes.

3. Defendant Tyco Fire Products, Limited Partnership (Tyco) is a foreign limited partnership with its principal office at One Tyco Park, Exeter, New Hampshire 03833. Its registered agent is C T Corporation System, 301 South Bedford Street, Suite 1, Madison, Wisconsin 53703.

4. Defendant Johnson Controls, Inc. (Johnson Controls) is a domestic business with its principal office at 5757 North Green Bay Avenue, Milwaukee, Wisconsin 53209. Its registered agent is C T Corporation System, 301 South Bedford Street, Suite 1, Madison, Wisconsin 53703.

5. On or around September 25, 2009, Tyco merged with The Ansul Company's successor, Ansul, LLC. Tyco was the surviving entity.

6. Tyco is responsible for all the liabilities of Ansul, LLC and its predecessors.

7. On or around September 2, 2016, Johnson Controls merged with a subsidiary of Tyco's parent company, Tyco International plc, named Jagara Merger Sub LLC. Johnson Controls was the surviving corporation. After the merger, Tyco International plc changed its name to Johnson Controls International plc. Johnson Controls is neither a parent nor subsidiary of Tyco.

8. Upon information and belief, since on or around September 2, 2016, Tyco and Johnson Controls have had a services agreement in which Johnson Controls provides certain services, including environmental consulting and management, to Tyco.

9. Since on or around September 2, 2016, Johnson Controls has authorized, supervised, directed, performed, or failed to perform the acts that constitute the violations alleged in this Complaint.

THE PROPERTY

10. Tyco is the deeded owner of approximately 380 acres of property located at 2700 Industrial Parkway South, Marinette, Marinette County, Wisconsin (Property).

11. At all times relevant to the violations alleged in this Complaint, Tyco owned the Property.

12. At the Property, Tyco owns and operates the Ansul Fire Technology Center (FTC).

13. Tyco conducts fire suppressant research, development, testing, and training at the FTC.

14. The FTC contains an outdoor testing and training area that is approximately nine acres in size where fire suppressant testing, demonstrating, and training occur.

15. Fire suppressants, such as firefighting foam, used for research, development, testing, and training at the FTC contain perfluorinated compounds, which are also called per- and polyfluoroalkyl substances (PFAS).

16. The Ansul Company began testing PFAS-containing firefighting foams at the FTC in or around 1962.

17. PFAS-containing firefighting foams have been used regularly at the FTC from 1962 through the present.

18. In the course of conducting fire suppressant research, development, testing, and training at the FTC, PFAS-containing firefighting foams are discharged into the environment, which causes the discharge of PFAS into the soil, sediment, groundwater, surface water, stormwater, and air at and around the Property.

19. From around 1962 to the present, Tyco and its predecessors released and/or discharged PFAS-containing firefighting foams from the FTC.

20. In the past, Tyco discharged PFAS-containing firefighting foams to the City of Marinette sanitary sewer system. The violations alleged in this Complaint do not pertain to those discharges that were received by the Marinette wastewater treatment facility.

21. Tyco's discharge of PFAS-containing firefighting foams at the FTC has caused the environment—including the soil, sediment, groundwater, surface water, stormwater, and air—at and around the Property to be contaminated with PFAS.

22. Tyco's discharge of PFAS-containing firefighting foams at the FTC has caused environmental pollution, as that term is defined in Wis. Stat. §§ 291.01(4) and 292.01(4) and Wis. Admin. Code § NR 700.03(19), at and around the Property.

INITIAL IMPACTS OF THE PFAS CONTAMINATION

23. Tyco's discharge of PFAS at the Property has caused a plume of PFAS groundwater contamination at and around the Property. Because of Tyco and Johnson Controls' failure to completely investigate and define the extent of the PFAS contamination, the extent of this plume is not accurately known at this time.

24. From December 1, 2017 through January 11, 2022, Tyco and Johnson Controls sampled up to 172 private drinking water wells in the area of the PFAS contamination groundwater plume.

25. Of the private drinking water wells sampled, 22 contained perfluorooctanoic acid (PFOA) or perfluorooctane sulfonate (PFOS), both PFAS, in excess of the United States Environmental Protection Agency's (EPA's) health advisory for drinking water.

26. Of the private drinking water wells sampled, 38 contained PFOA, PFOS, or a combination of the two in excess of the Wisconsin Department of Health Services' (DHS) proposed health-based groundwater enforcement standards.

27. Surface waters—including ponds, streams, and ditches—surrounding the Property have been sampled and the results have shown elevated levels of PFAS.

28. Sampling of surface waters surrounding the Property has detected PFOA and PFOS in concentrations greater than DNR's proposed surface water standards for PFOA and PFOS.

PFAS BACKGROUND

General information about PFAS

29. PFAS is the term used to describe a family of over 3,000 human-made chemicals.

30. In addition to firefighting foam, PFAS chemicals are used in many consumer products, such as non-stick cookware, food packaging, stain resistant carpet and furniture, water resistant clothing, and personal care products.

31. PFOA and PFOS are two well-known and extensively studied PFAS.

Water quality and soil standards for PFAS

32. On January 8, 2009, EPA issued provisional health advisories for PFOA and PFOS in drinking water (2009 Health Advisory).

33. The 2009 Health Advisory states that “Provisional Health Advisory values are developed to provide information in response to an urgent or rapidly developing situation. They reflect reasonable, health-based hazard concentrations above which action should be taken to reduce exposure to unregulated contaminants in drinking water.”

34. The 2009 Health Advisory set the provisional health advisory for PFOA at 0.4 micrograms per liter ($\mu\text{g/L}$), which is equivalent to 400 nanograms per liter (ng/L).

35. The 2009 Health Advisory set the provisional health advisory for PFOS at 0.2 $\mu\text{g/L}$, which is equivalent to 200 ng/L .

36. In May 2016, EPA issued drinking water health advisories for PFOA (2016 PFOA Health Advisory) and PFOS (2016 PFOS Health Advisory).

37. The 2016 PFOA Health Advisory and 2016 PFOS Health Advisory “identify the concentration of a contaminant in drinking water at which adverse health effects are not anticipated to occur over specific exposure durations (e.g., 1 day, 10 days, a lifetime).”

38. The 2016 PFOA Health Advisory set the lifetime drinking water health advisory for PFOA at 0.07 µg/L, which is equivalent to 70 ng/L.

39. The 2016 PFOS Health Advisory set the lifetime drinking water health advisory for PFOS at 0.07 µg/L, which is equivalent to 70 ng/L.

40. When both PFOA and PFOS are found in drinking water, the 2016 PFOA Health Advisory and 2016 PFOS Health Advisory state that the combined concentrations of PFOA and PFOS should be compared to the 70 ng/L health advisory.

41. Wisconsin Admin. Code ch. NR 140 contains the State of Wisconsin's health-based and public-welfare-based groundwater quality standards.

42. Pursuant to Wis. Stat. ch. 160, DNR is authorized to establish the groundwater standards contained in Wis. Admin. Code ch. NR 140 pursuant to recommendations from DHS.

43. On March 2, 2018, DNR asked DHS to recommend state health-based groundwater quality standards for PFOA and PFOS.

44. On June 21, 2019, DHS recommended a state health-based groundwater enforcement standard of 20 ng/L and a preventive action limit of 2 ng/L individually and for the sum of PFOA and PFOS.

45. On April 10, 2019, DNR asked DHS to recommend state health-based groundwater quality standards for 34 additional PFAS.

46. On November 6, 2020, DHS recommended state health-based groundwater enforcement standards for 16 additional PFAS.

47. A health-based enforcement standard specifies the regulatory limit for a substance in groundwater. If an enforcement standard is exceeded, a response action is required to achieve compliance with the enforcement standard. A preventive action limit is the level at which a regulatory agency may investigate the source of a substance in groundwater and require response actions to minimize the substance concentration and prevent an exceedance of an enforcement standard.

48. DNR is currently in the process of evaluating a rule revision to Wis. Admin. Code ch. NR 140 based on DHS's recommended state health-based groundwater quality standards for PFOA and PFOS.

49. Wisconsin Stat. § 15.34(1) establishes the Wisconsin Natural Resources Board (NRB) as part of DNR. Pursuant to Wis. Stat. § 15.05(1), the NRB has regulatory and policy-making powers and duties, including the approval of proposed rules.

50. On February 23, 2022, the NRB approved DNR rules setting drinking water standards for PFOA and PFOS, separately and combined, at 70 ng/L, and surface water standards for PFOS at 8 ng/L and PFOA at 20 ng/L in waters classified as public drinking water sources and 95 ng/L in other surface waters. On March 2, 2022, Wisconsin Governor Tony Evers approved

these rules. The rules have been submitted to the Legislature for review pursuant to Wis. Stat. § 227.19 and may become effective after legislative review is complete and the rules are published.

51. Pursuant to Wis. Admin. Code § NR 720.05(2), parties responsible for the discharge of a hazardous substance must “restore the contaminated soil to levels that, at a minimum, meet the residual contaminant levels or performance standards for the site or facility determined in accordance with this chapter.”

52. Wisconsin Admin. Code § NR 720.10 provides the procedures for determining residual contaminant levels (RCLs) based on the protection of groundwater.

53. In a May 26, 2020 report, Tyco’s environmental consultant calculated draft site-specific soil RCLs for PFOA and PFOS, protective of groundwater, using DHS’s recommended state health-based groundwater enforcement standard of 20 ng/L.

54. The draft site-specific RCLs for groundwater protection calculated by Tyco’s environmental consultant were 5,000 ng/kg for PFOA and 900 ng/kg for PFOS.

Health effects of PFAS

55. Over time, PFAS bioaccumulate in the blood of humans and animals and can negatively affect human and animal health.

56. As a result of a 2005 West Virginia class action settlement agreement between individuals and E.I. du Pont de Nemours & Company, a science panel was created to study the health effects of PFOA exposure on humans (C8 Science Panel).

57. In 2011 and 2012, the C8 Science Panel found that there was a probable link between exposure to PFOA and ulcerative colitis, high cholesterol, pregnancy-induced hypertension, testicular cancer, kidney cancer, and thyroid disease.

58. In the scientific support document for its recommended state health-based groundwater quality standards for PFOA and PFOS, DHS stated that

[s]tudies in workers and people living in areas with high levels of PFOA show that PFOA may increase cholesterol, damage the liver, cause pregnancy-induced hypertension, increase the risk for thyroid disease, decrease antibody response to vaccines, decrease fertility, and cause small decreases in birth weight. Studies in research animals have found that PFOA can cause damage to the liver and the immune system, birth defects, delayed development, and newborn deaths in lab animals (footnotes omitted).

59. In the scientific support document for its recommended state health-based groundwater quality standards for PFOA and PFOS, DHS stated that

[s]tudies in workers and people living in areas with high levels of PFOS in drinking water show that PFOS may increase cholesterol, damage the liver, cause pregnancy-induced hypertension, increase the risk for thyroid disease, decrease antibody response to

vaccines, decrease fertility, and cause small decreases in birth weight. Studies in research animals have found that PFOS can cause damage to the liver and the immune system. PFOS has also been shown to cause birth defects, delayed development, and newborn deaths in animals, indicating that PFOS can cause teratogenic effects (footnotes omitted).

GROUNDWATER AND SOIL SAMPLING FOR PFAS AT THE PROPERTY BETWEEN 2013 AND 2016

2013 Sampling

60. On October 23, 2013, Tyco sampled soil and groundwater at several locations throughout the outdoor testing and training area at the Property as part of an open investigation, since November 18, 1992, into petroleum and volatile organic compounds (VOCs) at the Property (2013 Sampling).

61. As part of the 2013 Sampling, Tyco sampled the soil and groundwater for several PFAS, including PFOA and PFOS.

62. Tyco sampled for PFAS during the 2013 Sampling because German regulators had recommended that Tyco sample for PFAS at its outdoor firefighting foam testing facility in Germany.

63. Tyco's environmental consultant received the results of the 2013 Sampling on or around November 19, 2013.

64. Results from the 2013 Sampling showed concentrations of over 400 ng/L of PFOA in 12 groundwater samples and over 5,000 ng/kg of PFOA in five soil samples.

65. The highest concentration of PFOA found in the 2013 Sampling in groundwater was 254,000 ng/L and in soil was 122,000 ng/kg.

66. Results from the 2013 Sampling showed concentrations of over 200 ng/L of PFOS in two groundwater samples and over 900 ng/kg of PFOS in four soil samples.

67. The highest concentration of PFOS found in the 2013 Sampling in groundwater was 22,000 ng/L and in soil was 580,000 ng/kg.

68. Results from the 2013 Sampling showed concentrations of PFAS, other than PFOA and PFOS, at levels similar to the PFOA and PFOS results.

2014 Sampling

69. On April 21, 2014, Tyco conducted soil and groundwater sampling at two locations adjacent to the outdoor testing and training area at the Property (2014 Sampling).

70. As part of the 2014 Sampling, Tyco sampled the soil and groundwater for several PFAS, including PFOA and PFOS.

71. Tyco's environmental consultant received the results of the 2014 Sampling on or around May 21, 2014.

72. Results from the 2014 Sampling showed concentrations of 22,300 and 336 ng/L of PFOA in the groundwater samples and 14,800 and 5,300 ng/kg of PFOA in the soil samples.

73. Results from the 2014 Sampling showed concentrations of 64,000 and 566 ng/L of PFOS in the groundwater samples and 234,000 ng/kg of PFOS in one of the soil samples.

74. Results from the 2014 Sampling showed concentrations of PFAS, other than PFOA and PFOS, at levels similar to the PFOA and PFOS results.

2016 Sampling

75. Between June 17, 2016 and September 1, 2016, Tyco conducted soil and groundwater sampling at several locations throughout and near the outdoor testing and training area and at the northern and eastern perimeters of the Property (2016 Sampling).

76. As part of the 2016 Sampling, Tyco sampled the soil and groundwater for several PFAS, including PFOA and PFOS.

77. Tyco's environmental consultant received the results of the 2016 Sampling between July 7 and September 26, 2016.

78. Results from the 2016 Sampling showed concentrations of over 70 ng/L of PFOA in 27 groundwater samples and over 5,000 ng/kg of PFOA in 12 soil samples.

79. The highest concentration of PFOA found in the 2016 Sampling in groundwater was 190,000 ng/L and in soil was 1,300,000 ng/kg.

80. Results from the 2016 Sampling showed concentrations of over 70 ng/L of PFOS in 20 groundwater samples and over 900 ng/kg of PFOS in 14 soil samples.

81. The highest concentration of PFOS found in the 2016 Sampling in groundwater was 12,000 ng/L and in soil was 380,000 ng/kg.

82. Results from the 2016 Sampling showed concentrations of PFAS, other than PFOA and PFOS, at levels similar to the PFOA and PFOS results.

83. Neither the 2013 Sampling, the 2014 Sampling, nor the 2016 Sampling tested for all known PFAS.

84. Other PFAS not tested for in the 2013 Sampling, 2014 Sampling, and 2016 Sampling may be present in the soil and groundwater at and around the Property.

VIOLATION ONE: FAILURE TO NOTIFY DNR OF A HAZARDOUS SUBSTANCE DISCHARGE

85. Wisconsin Stat. § 292.11(2)(a) states that “[a] person who possesses or controls a hazardous substance or who causes the discharge of a hazardous substance shall notify [DNR] immediately of any discharge not exempted under sub. (9).”

86. The exemptions to Wis. Stat. § 292.11(2)(a) listed in Wis. Stat. § 292.11(9) do not apply to the discharge alleged in this Complaint.

87. Wisconsin Stat. § 292.01(5) defines “[h]azardous substance” as:

any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by [DNR].

88. Wisconsin Stat. § 292.01(3) states that “[d]ischarge’ means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.” The term “discharge” also includes any ongoing seepage of a hazardous substance into soil and groundwater beyond the location of the initial spill or leakage. *State v. Mauthe*, 123 Wis. 2d 288, 366 N.W.2d 871 (1985).

89. Wisconsin Stat. § 292.01(13) states that “[p]erson’ means an individual, owner, operator, corporation, limited liability company, partnership, association.”

90. Wisconsin Admin. Code § NR 706.05(1)(a) states that “persons who cause the discharge to the environment of a hazardous substance or who possess or control a hazardous substance which is discharged to the environment shall immediately notify [DNR] of the discharge.”

91. Wisconsin Admin. Code § NR 706.05(1)(bm) states that “[h]azardous substance discharges discovered through soil, water or other

analyses may be reported by telefaxing a completed discharge notification form provided by [DNR], or by alternative notification procedures approved by [DNR].”

92. Between at least November 19, 2013 and November 21, 2016, Tyco did not provide DNR with the results of the 2013 Sampling, 2014 Sampling, or 2016 Sampling.

93. On November 13, 2017, Tyco and Johnson Controls met with DNR and the City of Marinette.

94. On November 13, 2017, Tyco and Johnson Controls verbally presented data to DNR showing significant PFAS contamination at the Property.

95. On January 16, 2018, Tyco and Johnson Controls submitted to DNR a Notification for Hazardous Substance Discharge form that notified DNR of a discharge of an unspecified hazardous substance at the FTC.

96. On January 16, 2018, DNR issued a responsible party letter to Tyco and Johnson Controls International plc stating that Tyco and Johnson Controls International plc are responsible for investigating and cleaning up the contamination caused by the release of PFAS at the Property.

97. PFAS are hazardous substances.

98. PFAS in the quantities and concentrations existing in the groundwater and soil at the Property pose a substantial present and potential hazard to human health and the environment.

99. PFAS in the quantities and concentrations existing in the groundwater and soil at the Property are hazardous substances.

100. At some time(s) prior to October 23, 2013, PFAS began discharging at the Property.

101. There is a continuing discharge of PFAS at the Property.

102. There is a continuing discharge of PFAS from the Property that is discharging beyond the Property boundary.

103. Tyco caused the discharge of PFAS at and around the Property.

104. Tyco possesses and controls a hazardous substance that was discharged, and that continues to discharge, at and around the Property.

105. Johnson Controls controls a hazardous substance that was discharged, and that continues to discharge, at and around the Property.

106. Between at least November 19, 2013 and January 16, 2018, Tyco did not notify DNR of the discharge of PFAS at the Property.

107. Between at least September 2, 2016 and January 16, 2018, Johnson Controls did not notify DNR of the discharge of PFAS at the Property.

108. At all times relevant to the violations alleged in this Complaint, neither Tyco nor Johnson Controls notified DNR of the discharge of PFAS at the Property by an alternative notification procedure approved by DNR.

109. Tyco had a duty, pursuant to Wis. Stat. § 292.11(2)(a) and Wis. Admin. Code § NR 706.05(1)(a), to notify DNR of the discharge of PFAS at the Property between at least November 19, 2013 and January 16, 2018.

110. Johnson Controls had a duty, pursuant to Wis. Stat. § 292.11(2)(a) and Wis. Admin. Code § NR 706.05(1)(a), to notify DNR of the discharge of PFAS at the Property between at least September 2, 2016 and January 16, 2018.

111. Tyco continuously violated Wis. Stat. § 292.11(2)(a) and Wis. Admin. Code § NR 706.05(1)(a) from at least November 19, 2013 to January 16, 2018, by failing to immediately notify DNR of a discharge of PFAS at the Property.

112. Johnson Controls continuously violated Wis. Stat. § 292.11(2)(a) and Wis. Admin. Code § NR 706.05(1)(a) from at least September 2, 2016 to January 16, 2018, by failing to immediately notify DNR of a discharge of PFAS at the Property.

**VIOLATION TWO: FAILURE TO TAKE THE ACTIONS NECESSARY
TO RESTORE THE ENVIRONMENT**

113. Wisconsin Stat. § 292.11(3) states that “[a] person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state.”

114. DNR promulgated Wis. Admin. Code chs. NR 700 *et seq.* for the purpose of “establish[ing] consistent, uniform standards and procedures that allow for site-specific flexibility, pertaining to the identification, investigation and remediation of sites and facilities which are subject to regulation under [Wis. Stat.] chs. 289 and 292.” Wis. Admin. Code § NR 700.01(2).

115. The actions necessary to restore the environment after a hazardous substance discharge include, but are not limited to, conducting a site investigation and proposing and implementing interim and final remedial actions.

116. Wisconsin Admin. Code § NR 708.05(1) states that “responsible parties shall immediately take action to halt a hazardous substance discharge or environmental pollution and to minimize the harmful effects of the discharge or environmental pollution to the air, lands or waters of the state.”

117. Wisconsin Admin. Code § NR 708.11(1)(a) states that “[i]nterim action shall be taken where it is necessary to contain or stabilize a discharge of a hazardous substance or environmental pollution, in order to minimize any threat to public health, safety, or welfare or the environment. When an interim action is warranted, responsible parties shall implement an interim action as soon as facility or site- related information makes it possible to do so.”

118. Pursuant to Wis. Admin. Code §§ NR 716.02(1)(b) and NR 716.05(1), responsible parties are required to conduct a site investigation in accordance with Wis. Admin. Code ch. NR 716.

119. Pursuant to Wis. Admin. Code § NR 716.11(3)(a), a site investigation is not complete unless it determines the “nature, degree and extent, both areal and vertical, of the hazardous substances or environmental pollution in all affected media.”

120. Pursuant to Wis. Admin. Code § NR 722.05(4)(a), a responsible party must select an appropriate remedial action or a combination of remedial actions after a site investigation is completed.

121. Tyco and Johnson Controls are responsible for cleaning up the PFAS contamination at and around the Property.

122. Upon information and belief, since at least September 2, 2016, Johnson Controls has managed, directed, and conducted operations at the

Property related to PFAS contamination and compliance with environmental regulations.

123. Since at least February 2019, a Johnson Controls employee, communicating on behalf of Tyco and Johnson Controls, has been DNR's primary point of contact regarding PFAS contamination at and around the Property and remediation of the contamination.

124. Although Tyco did not immediately notify DNR of the PFAS discharge at the Property, Tyco was required to, on or around November 19, 2013, start taking the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of the State of Wisconsin.

125. The 2013 Sampling, 2014 Sampling, and 2016 Sampling did not determine the nature, degree, and extent of the PFAS contamination at and around the Property.

126. Between at least November 19, 2013 and November 13, 2017, Tyco did not investigate the nature, degree, and extent of the PFAS contamination at and around the Property.

127. Between at least September 2, 2016 and November 13, 2017, Johnson Controls did not investigate the nature, degree, and extent of the PFAS contamination at and around the Property.

128. Between at least November 19, 2013 and November 13, 2017, Tyco did not restore the environment at and around the Property to the extent practicable or minimize the harmful effects from the PFAS discharge at the Property.

129. Between at least September 2, 2016 and November 13, 2017, Johnson Controls did not restore the environment at and around the Property to the extent practicable or minimize the harmful effects from the PFAS discharge at the Property.

130. Between November 13, 2017 and the present, Tyco and Johnson Controls conducted a limited investigation of the PFAS contamination at and around the Property (the “limited investigation”).

131. The limited investigation did not determine the nature, degree, and extent of the PFAS contamination at and around the Property and did not comply with the site investigation requirements of Wis. Admin. Code ch. NR 716.

132. Starting in February 2020, DNR, based on results from the limited investigation, has directed Tyco and Johnson Controls on several occasions to investigate if PFAS contamination—resulting from the discharge of PFAS at and around the Property—is in a defined geographical area beyond the area of the limited investigation (Expanded Site Investigation Area).

133. PFAS contamination has been found in private drinking water wells in the Expanded Site Investigation Area.

134. Upon information and belief, the PFAS contamination detected in the private drinking water wells in the Expanded Site Investigation Area is from PFAS discharged at and around the Property.

135. Tyco and Johnson Controls are required, pursuant to Wis. Admin. Code ch. NR 716, to investigate the nature, degree, and extent of the PFAS contamination—resulting from the discharge of PFAS at and around the Property—in the Expanded Site Investigation Area.

136. Tyco and Johnson Controls have not fully investigated the nature, degree, and extent of the PFAS contamination in the Expanded Site Investigation Area.

137. Since at least November 19, 2013, Tyco has not determined the nature, degree, and extent of the PFAS contamination at and around the Property.

138. Since at least September 2, 2016, Johnson Controls has not determined the nature, degree, and extent of the PFAS contamination at and around the Property.

139. Neither Tyco nor Johnson Controls has completed a site investigation in accordance with Wis. Admin. Code ch. NR 716.

140. Between November 13, 2017 and the present, Tyco and Johnson Controls have taken limited actions to remediate the PFAS contamination at and around the Property (the “limited actions”).

141. The limited actions did not restore the environment to the extent practicable or minimize the harmful effects from the PFAS discharge at and around the Property.

142. Tyco and Johnson Controls have not implemented or completed the appropriate remedial action(s) at and around the Property to clean up the PFAS contamination to the extent practicable.

143. Since at least November 19, 2013, Tyco has not taken the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the PFAS discharge at the Property.

144. Since at least September 2, 2016, Johnson Controls has not taken the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the PFAS discharge at the Property.

145. Neither Tyco nor Johnson Controls is in compliance with the requirements of Wis. Admin. Code chs. NR 700 to 758.

146. Tyco has continuously violated Wis. Stat. § 292.11(3) since at least November 19, 2013, by failing to take the actions necessary to restore the environment at and around the Property to the extent practicable and

minimize the harmful effects from the PFAS discharge at and around the Property.

147. Johnson Controls has continuously violated Wis. Stat. § 292.11(3) since at least September 2, 2016, by failing to take the actions necessary to restore the environment at and around the Property to the extent practicable and minimize the harmful effects from the PFAS discharge at and around the Property.

DNR EXPENSES RELATED TO THE DEFENDANTS' FAILURE TO INVESTIGATE AND REMEDIATE PFAS CONTAMINATION AT AND AROUND THE PROPERTY

148. On or around July 2019, DNR retained Wood Environment & Infrastructure Solutions, Inc. (Wood) to provide environmental consulting services and technical assistance to DNR for DNR's oversight of Tyco and Johnson Controls' PFAS investigation and remediation at and around the Property.

149. Due to Tyco and Johnson Controls' failure to investigate the degree and extent of PFAS contamination in the Expanded Site Investigation Area, DNR contracted with Wood to sample private drinking water wells in the Expanded Site Investigation Area.

150. From October 2020 through May 2021, Wood sampled at least 415 private drinking water wells in the Expanded Site Investigation Area. Four of the private drinking water wells sampled contained PFAS in excess of

the EPA's health advisory level and 31 private drinking water wells contained PFAS in excess of DHS's proposed health-based groundwater enforcement standards.

151. Since November 2020, DNR has been providing bottled drinking water to residents within the Expanded Site Investigation Area whose wells tested above DHS's proposed health-based groundwater enforcement standards for PFAS.

152. DNR has spent a significant amount of State resources retaining Wood to provide environmental consulting services and technical assistance to DNR for DNR's oversight of Tyco and Johnson Controls' PFAS investigation and remediation at and around the Property.

153. DNR has spent a significant amount of State resources having Wood sample private drinking water wells in the Expanded Site Investigation Area.

154. DNR has spent a significant amount of State resources providing bottled drinking water to residents within the Expanded Site Investigation Area whose wells tested above DHS's proposed health-based groundwater enforcement standards for PFAS.

155. DNR has spent a significant amount of State resources conducting public outreach regarding PFAS contamination at and around the Property.

PENALTY PROVISIONS

156. Wisconsin Stat. § 299.95 authorizes the Attorney General to enforce Wis. Stat. ch. 292 and all rules promulgated and orders issued under that chapter, subject to exceptions not applicable to this case. Under Wis. Stat. § 299.95, the circuit court for Dane County or the county where the violation occurred has jurisdiction to enforce Wis. Stat. ch. 292 and all rules promulgated and orders issued under that chapter “by injunctive and other relief appropriate for enforcement.”

157. Wisconsin Stat. § 292.99(1) states that “any person who violates this chapter or any rule promulgated or any plan approval, license or special order issued under this chapter shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense.”

158. Wisconsin Stat. § 292.99(2) states that “[i]n addition to the penalties provided under subs. (1) and (1m), the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney fees.”

159. Wisconsin Stat. § 292.94 states that DNR “may assess and collect fees from a person who is subject to an order or other enforcement action for a violation of s. 292.11 . . . to cover the costs incurred by [DNR] to review the planning and implementation of any environmental investigation or environmental cleanup that the person is required to conduct.”

160. Wisconsin Stat. § 292.11(7)(a) states that “in any case where action required under sub. (3) is not being adequately taken . . . [DNR] or its authorized representative may identify, locate, monitor, contain, remove or dispose of the hazardous substance or take any other emergency action which it deems appropriate under the circumstances.”

161. Wisconsin Stat. § 292.11(7)(b)1. states that “[t]he person who possessed or controlled a hazardous substance which was discharged or who caused the discharge of a hazardous substance shall reimburse [DNR] for actual and necessary expenses incurred in carrying out its duties under this subsection.”

RELIEF REQUESTED

WHEREFORE, Plaintiff asks the Court to enter judgment against the Defendants as follows:

1. Forfeitures as to each Defendant as provided for in Wis. Stat. § 292.99(1);
2. The 26 percent penalty surcharge pursuant to Wis. Stat. § 814.75(18), the 20 percent environmental surcharge pursuant to Wis. Stat. § 814.75(12), the 1 percent jail surcharge pursuant to Wis. Stat. § 814.75(14), \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68.00 court support services surcharge under Wis. Stat.

§ 814.75(2), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15);

3. An injunction, pursuant to Wis. Stat. § 299.95, requiring Tyco and Johnson Controls to complete a site investigation and cleanup of the PFAS contamination at and around the Property in accordance with Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700 to 758;

4. The reasonable and necessary expenses of the investigation and prosecution of this case, including attorney fees, under Wis. Stat. § 292.99(2);

5. DNR's costs incurred to review the planning and implementation of the investigation and cleanup of the PFAS contamination at and around the Property, under Wis. Stat. § 292.94;

6. DNR's costs incurred to identify, locate, monitor, contain, remove, or dispose of the PFAS contamination or take any other emergency action at and around the Property, under Wis. Stat. § 292.11(7)(b)1.; and

7. Any other relief the Court deems just and appropriate.

Dated this 11th day of March 2022.

JOSHUA L. KAUL
Attorney General of Wisconsin



BRADLEY J. MOTL
Assistant Attorney General
State Bar #1074743



SARAH C. GEERS
Assistant Attorney General
State Bar #1066948

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-0505 (Motl)
(608) 266-3067 (Geers)
(608) 267-2778 (Fax)
motlbj@doj.state.wi.us
geerssc@doj.state.wi.us