



April 22, 2020

Marinette County

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

Subject: **NOTICE OF VIOLATION / ENFORCEMENT TELECONFERENCE**

Dear Mr. Mielke:

This letter is to advise you that the Department of Natural Resources (department) has reason to believe that ChemDesign Products Inc. (ChemDesign) is in violation of the state hazardous substance spill law, Ch 292, and water pollution discharge laws, Ch 283 Wisconsin Statutes (Wis. Stats.), at its facility located at 2 Stanton Street, Marinette, Marinette County, Wisconsin (the Site). The violation was documented during a March 30, 2020 spill notification. The department realizes the COVID-19 public health emergency is affecting daily operations for many businesses and municipalities. What the department is hoping to accomplish through this notice and teleconference is to begin discussions of possible actions and timelines for achieving compliance.

In accordance with s. NR 700.03 (51), Wis. Adm. Code, ChemDesign has been identified as the "Responsible Party" for the hazardous substance discharge to the environment at the site.

The department alleges the following violations:

1. **Section 292.11(2)(a), Wis. Stats. Notice of Discharge.** A person who possesses or controls a hazardous substance or who causes the discharge of a hazardous substance shall notify the department immediately of any discharge not exempted under sub. (9).

Section 706.05(1)(a) Wisconsin Administrative Code Notification. Unless the discharge is specifically exempted under s. NR 706.07, 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 the department of the discharge. Discharges to the environment may include recent discharges, historic discharges, and discharges caused by the long-term application of a substance. A hazardous substance that is "discharged" into a secondary containment structure, that is completely contained and can be recovered with no discharge to the environment, is not subject to the discharge notification requirements in s. 292.11(2), Stats.

Section 283.31(1), Wis. Stats. Water pollution discharge elimination system (WPDES); permits, terms and conditions. The discharge of any pollutant into any waters of the state by any person is unlawful unless such discharge or disposal is done under a permit issued by the department under this section.

On Friday, March 27, 2020 a ChemDesign supervisor observed wastewater discharging from a hose on top of a frac tank being used to contain per- and polyfluoroalkyl substances (PFAS) and arsenic contaminated wastewater being pumped from a construction excavation on site. On Monday, March 30, 2020, ChemDesign reported to the state of Wisconsin spill hotline that an estimated 3,750 gallons of arsenic contaminated wastewater was discharged from the hose and some of the wastewater was discharged to the Menominee River through a storm sewer. A sample of the wastewater from the frac tank, collected on March 12, 2020, had a concentration of 2600 parts per billion arsenic, 2900 parts per trillion perfluorooctanoic acid (PFOA), and 640 parts per trillion perfluorooctanesulfonic acid (PFOS). Chemdesign did not have a WPDES permit for this discharge to waters of the state.

The department believes, ChemDesign failed to immediately notify the department of the release and obtain a WPDES permit, as required.

- 2. Section 292.11(3), Wis. Stats. Responsibility. A person who possess 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.**

On March 30, 2020 ChemDesign stated that no action was taken to clean up the release.

The department believes, ChemDesign failed to take actions to restore the environment, as required.

We have scheduled a Teleconference to discuss this matter in more detail:

Teleconference Date and Time:	Tuesday, May 5, 2020 at 1:00 p.m.
Teleconference Call Number:	toll-free number (866) 715-6499, conference ID 8590115558#

At 1:00 p.m. please call the toll-free number listed above and enter the conference ID plus the “#” sign. This will connect you to the teleconference. With the changing circumstances surrounding the COVID-19 public health emergency, the department realizes this date and time may not work or that circumstances may change prior to the scheduled date. Please contact me at the number below and I will work with you to find a mutually acceptable date and time.

We request you join the teleconference, as it is an important opportunity to discuss the circumstances surrounding the alleged violations and to learn your perspective on this matter. Please note that to encourage a candid and productive conversation, attendance is limited to you, your legal counsel and others with the technical expertise necessary to understand, evaluate and correct the violations. A fact sheet describing an enforcement conference is enclosed.

Please email me a map identifying the location of the excavation where the wastewater was being pumped from, the location impacted storm sewers, the discharge point to the river and a few photos of the spill release area prior to the teleconference.

Please be advised that the department is authorized to seek injunctive or other appropriate relief for violations of spill pollution laws, including forfeitures of not more than \$5,000 per day of violation pursuant to Chapter 292, Wisconsin Statutes. The department is also authorized to seek injunctive relief or other appropriate relief for violations of wastewater laws, including forfeitures of not more than \$10,000 per day of violation pursuant to Chapter 283, Wisconsin Statutes. Each day of violation is considered a separate offense.

If you have any questions or need to reschedule the conference, please contact me at (920) 808-0045.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Pelczar".

Jennifer Pelczar
Environmental Enforcement Specialist

Enclosure: Enforcement Conference Fact Sheet

- c: David Neste – David.neste@wisconsin.gov,
Maize Reif – maize.reif@wisconsin.gov
Roxanne Chronert – Roxanne.chronert@wisconsin.gov
Alexis Heim Peter – alexis.peter@wisconsin.gov
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August 10, 2020

Marinette County

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

Subject: **NOTICE OF VIOLATION and Information request**

Dear Messrs. Mielke, Willis, Salzman and Smiley:

Thank you for your May 27, 2020 commitment letter in response to the enforcement conference held on May 5, 2020 for the ChemDesign Products Inc (ChemDesign) property located at 2 Stanton Street, Marinette, Wisconsin. The department has reviewed your submittal and additional information is needed and is identified further below in this letter.

The department recently learned that pretreatment of the wastewater had moved to full scale treatment and the wastewater was being transported to ERC Midwest LLC in Butler, Wisconsin without the Department of Natural Resources (department) approval. This letter is to advise you that ChemDesign is in violation of the state water pollution discharge laws, ch. 281 Wisconsin Statutes (Wis. Stats.) at its facility located at 2 Stanton Street, Marinette, WI.

Under s. NR 108.02(13)(f) Wisconsin Administrative Code (Wis. Adm. Code) a "Reviewable Project" means any construction or installation project for which department approval is required.

(f) Any new industrial pretreatment facility or any modification or alteration of an existing industrial pretreatment facility which may affect the quality or quantity of the discharge to a sewerage system.

The department alleges the following additional violation:

Section NR 108.03(1), Wisconsin Administrative Code. Construction of reviewable projects. No person may commence, or cause to be commenced, construction of any reviewable project until final plans and specifications for such project have been reviewed and approved by the department.

On June 4, 2020 the department received an email from ChemDesign which described wastewater (contaminated excavation water from building 52) was undergoing pretreatment for per- and polyfluoroalkyl substances (PFAS) and arsenic and transported to ERC Midwest LLC for disposal. The full-scale wastewater treatment commenced on May 13, 2020 and ended on June 23, 2020. ERC Midwest LLC does not have adequate treatment to sufficiently remove these pollutants onsite, so the effective treatment is occurring from the pre-treatment system installed and used by ChemDesign.

The department believes ChemDesign failed to receive department approval prior to commencing the pretreatment plan, as required.

If you would like to have a teleconference on the above violation please let me know by August 17, 2020 and we can determine the date to have this teleconference.

May 5, 2020 Enforcement Conference – Additional Information request

Your May 27, 2020 enforcement conference response letter included additional documentation requested by the department. After reviewing your submittal, not all of the information requested was provided as communicated in the May 13, 2020 Enforcement Conference Summary letter. A review of the documents/lab reports raised some additional questions. The additional documents/questions follow the 8 requested items listed in the enforcement conference summary letter:

1. Please provide photos of the outside and inside of the wastewater basin.
2. Lab data
 - a. After the enforcement conference, I had a discussion with Mr. Willis that identified how the March 28, 2020 wastewater samples were collected first in ChemDesign lab bottles and then transferred to the Eurofins Test America lab supplied bottles – please fully explain how these samples were collected, types of bottles initially used, by who, and include the date discrepancy on the chain of custody form. This samples lab report also identified the sample was not iced, the sample was in glass jars instead of poly bottles among a few other comments on the report. There are specific per- and polyfluoroalkyl substances (PFAS) sampling protocols that did not appear to be followed and likely altered the reliability of the data of this sample.
 - b. The sample collected on 3-17-20 identified in the narrative that the sample was red, foamy, and cloudy. Can you explain if there was other contamination identified here or any other analysis performed due to these notes made in the narrative of the report?
 - c. In relation to the soils transported to the Columbia Ridge Waste Management landfill in Arlington, Oregon, please provide the lab data and WM Profile #132703OR.
 - d. A copy of some of the sample analytical reports for groundwater and soils were provided to David Neste in a separate email dated May 8, 2020. According to the chain of custody there appears to be some missing sample analyses for samples collected on the following dates:
 - i. 3-12-20 Sample 52-GW, missing results for volatile organic compounds (VOCs) and Semi-volatile organic compounds (SVOCs); Sample 52-SOIL, missing VOCs, SVOCs and resource conservation and recovery act (RCRA) metals.
 - ii. 1-30-20 Sample CDPI – Bld. 1, missing toxicity characteristic leaching procedure (TCLP) RCRA VOCs, TCLP RCRA SVOC, TCLP RCRA metals.
3. A map of the excavation area and where the soil samples were collected for the Building 52 expansion.
4. Please provide the signed final destination facility copies of the groundwater and soil disposal receipts (manifests) that are legible – many of the scanned copies provided were unsigned and too light to read. Also provide the Vickery Environmental Profile # 133146WI.
5. Complete.
6. Complete.
7. Please provide any plans/specs historic or current for the wastewater basin or identify if there are none.
8. Ongoing.
9. NEW ITEM – Please provide a summary pretreatment report. The report should include details of the pre-treatment and any process modifications. Include all documentation including the manifests in item 4 above, what happened to the treatment media/filters used in the pretreatment on-site and any documentation from Clean Harbors for their work on-site. Include a photo of the inside of the wastewater basin after the wastewater was removed.

The department is authorized to seek injunctive relief or other appropriate relief for violations of wastewater laws, including forfeitures of not more than \$10,000 per day of violation pursuant to Chapter 283, Wisconsin Statutes. Each day of violation is considered a separate offense.

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

cc: David Neste – david.neste@wisconsin.gov,
Maizie Reif – maizie.reif@wisconsin.gov
Alexis Heim Peter – alexis.peter@wisconsin.gov
Heidi Schmitt Marquez – heidi.schmittmarquez@wisconsin.gov
Tom Willis – twillis@ChemDesign.com
Joel Salzman – jsalzman@chemdesign.com
Matt Smiley – msmiley@chemdesign.com



November 24, 2020

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

Subject: **NOTICE OF VIOLATION / ENFORCEMENT TELECONFERENCE DECEMBER 9, 2020 1:00PM**

Dear Mr. Mielke:

This letter is to advise you that the Department of Natural Resources (department) has reason to believe that ChemDesign Products Inc. (ChemDesign) is in violation of the state hazardous substance spill law, Ch. 292, Wisconsin Statutes (Wis. Stats.), at its facility located at 2 Stanton Street, Marinette, Marinette County, Wisconsin (the Site). The department realizes the COVID-19 public health emergency is affecting daily operations for many businesses and municipalities. What the department is hoping to accomplish through this notice and teleconference is to begin discussions of possible actions and timelines for achieving compliance.

ChemDesign is a "responsible party" under s. NR 700.03(51), Wisconsin Administrative Code, and is required to take a response action under ch. 292, Wis. Stats., as identified in the responsible party letter sent to you on July 2, 2019. (BRRTS# 02-38-583852, FID #438008340)

The department alleges the following violations:

- 1. Section 292.11(3), Wis. Stats. Responsibility. A person who possess 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.**

The department issued a responsible party letter on July 2, 2019, requiring ChemDesign to address per- and polyfluoroalkyl substances (PFAS) contamination discovered in the soil and groundwater at the site. ChemDesign manufactures products containing PFAS at the site. ChemDesign submitted a response dated September 13, 2019 identifying that Johnson Controls Inc. and Tyco Fire Products, LP were responsible for the PFAS cleanup actions at the site. ChemDesign has not moved forward with the required investigation.

The department believes, ChemDesign has failed to take actions to restore the environment, as required.

We have scheduled a Teleconference to discuss this matter in more detail:

Teleconference Date and Time: Wednesday, December 9, 2020 at 1:00 p.m.
Teleconference Call Number: toll-free number (866) 715-6499,
conference ID 8590115558#

At 1:00 p.m. please call the toll-free number listed above and enter the conference ID plus the “#” sign. This will connect you to the teleconference.

With the changing circumstances surrounding the COVID-19 public health emergency, the department realizes this date and time may not work or that circumstances may change prior to the scheduled date. Please contact me at the number below and I will work with you to find a mutually acceptable date and time.

We request you join the teleconference, as it is an important opportunity to discuss the circumstances surrounding the alleged violations and to learn your perspective on this matter. Please note that to encourage a candid and productive conversation, attendance is limited to you, your legal counsel and others with the technical expertise necessary to understand, evaluate and correct the violations. A fact sheet describing an enforcement conference is enclosed.

Please supply the following to the department:

- 1. A full signed copy of all lease agreements with the current and historic property owners at the Stanton Street property.**
- 2. Any legal agreements between ChemDesign and with Johnson Controls, Inc and/or Tyco Fire Products, LP regarding environmental responsibilities.**

Please be advised that the department is authorized to seek injunctive or other appropriate relief for violations of spill pollution laws, including forfeitures of not more than \$5,000 per day of violation pursuant to Chapter 292, Wisconsin Statutes. Each day of violation is considered a separate offense.

If you have any questions or need to reschedule the conference, please contact me at (920) 808-0045.

Sincerely,



Jennifer Pelczar
Environmental Enforcement Specialist

Enclosure: Enforcement Conference Fact Sheet

cc: David Neste – David.neste@wisconsin.gov
Alyssa Sellwood – Alyssa.sellwood@wisconsin.gov
Roxanne Chronert – Roxanne.chronert@wisconsin.gov
Jodie Peotter – Jodie.peotter@wisconsin.gov



Environmental Enforcement Conference

An Enforcement Conference (EC) is a meeting between Department of Natural Resources (Department) staff and representatives of a person or business that the Department believes has violated an environmental law. The Department issues a Notice of Violation (NOV) when it has reason to believe that a violation of a permit condition, administrative rule or statutory requirement has occurred. The NOV either offers or schedules an EC.

Why Should I Attend?

The EC is an important opportunity to discuss the Department's basis for the alleged violation(s) and learn more about what happened, why it may have happened, and any factors you believe the Department should consider, such as steps that have been or will be taken to stop the violation, correct any effects of the violation, and prevent violations from occurring in the future. It is also your opportunity to explain why you might disagree with the factual and legal conclusions underlying the NOV.

Historic data shows that most violations are resolved at the EC level, without the need for court ordered compliance and/or penalties. In situations where the significance of the violation warrants further enforcement action, your cooperative efforts to resolve the violation and prevent future violations will help minimize your legal and financial liability.

Who Should Attend the EC?

Department staff involved in the EC typically consists of an Environmental Enforcement Specialist and regulatory staff that are familiar with the issues identified in the NOV.

While not required, you may seek representation by legal counsel or the assistance of an environmental consultant to prepare for and/or attend the EC. The EC is most productive when all involved are well-prepared to discuss the allegations and any corrective actions that may be necessary.

To ensure a productive candid discussion, participation in the EC is limited to the person or business involved and others with the legal or technical expertise necessary to understand, evaluate, mitigate and correct the violation. The EC is not an open meeting under state law and the Department will limit participation to those directly involved in the resolution of the matter.

What Happens if I don't Attend the EC?

If a party is unable to attend the EC, they should immediately contact the Environmental Enforcement Specialist at the phone number in the NOV to reschedule. When a party refuses to attend the EC and provides no further information to the Department, the Department's enforcement decision will be based upon available information.

What Happens Following the EC?

The EC is part of the Department's stepped enforcement process. At the EC, Department staff will explain the process and options available to address the alleged violation. Generally, the options range from closing the matter with no further action to referral to the Wisconsin Department of Justice (DOJ) or to U.S. EPA, for further enforcement action. In limited circumstances, the Department can issue citations, which are handled in local court similar to traffic offenses. If a case is referred to DOJ, the DOJ may initiate an action in court on behalf of the State. The State typically asks the Court to impose financial penalties and order completion of any necessary corrective actions. In most of the Department's cases, a cooperative return to compliance with any necessary restoration results in close out of the case. At close out, the Department will send a letter advising of no further enforcement action.