BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Conditional Approval of a Class 1.1 License Modification
SC Johnson & Son, Inc.
8311 16th Street
Sturtevant, Wisconsin 53177

FID # 252006370
EPA ID WID006091425

SPECIAL ORDER

The following is a summary of the Findings of Fact and Conclusions of Law upon which the Department of Natural Resources (department or DNR) bases this Special Order

FINDINGS OF FACT

The department finds that:

1. The S.C. Johnson and & Son, Inc. - Waxdale manufacturing facility (SC Johnson) is located in the Town of Mount Pleasant, Wisconsin at 8311 16th Street, Sturtevant, WI 53177-1964.
2. The SC Johnson facility has a series of storage containers and tanks at the facility, which were initially licensed to satisfy RCRA requirements in 1994.
3. Corrective action work that was not related to the storage containers and tanks was initiated through an Administrative Order of Consent (ACO), executed on May 4, 1988. Following satisfaction of the ACO in May 1995, Corrective action oversight was transferred to the department's Remediation and Redevelopment (R&R) program. These actions continue to be undertaken and managed under the R&R program's BRRTS case numbers 02-52-552979 and 02-52-038750. These corrective actions include, but are not limited to, groundwater gradient controls, soil vapor removal/treatment and groundwater monitoring. It is expected that corrective actions will be required to continue for an indefinite period.
4. The container storage area was licensed under DNR License #6018 for up to 22,000 gallons of hazardous waste storage, and two tanks were licensed under DNR License #6019 for a total of up to 40,000 gallons of hazardous waste storage.
5. A license application for continued operations (including a feasibility and plan of operation) was approved on January 31, 2006. Condition 2 addressed corrective action requirements.
6. On February 14, 2019, SC Johnson informed the department that it intended to pursue closure of its licensed storage units rather than continue to pursue approval of its license application for continued licensed storage operations.
7. On May 7, 2020, the department conditionally approved (as a Class **1.1** license modification) modifications to the closure plan for the container and tank units

covered by License #s 6018 and 6019. Section 3.b. of the "Determination and Conditions of Approval" of that conditional approval required SC Johnson to agree to an order "continuing corrective action and financial assurance requirements until they are no longer necessary."

8. On October 2, 2015, the department received a Feasibility and Plan of Operation Report entitled "Plan of Operation for the S.C. Johnson, Inc., Waxdale Facility, Revision 5" and dated September 25, 2015. SC Johnson revised this application several times through 2018, based on department comments and questions. In this course, the department communicated to SC Johnson that it intended to require financial assurance for corrective action.
9. In 2017, SC Johnson estimated the 10-year cost estimate for this corrective action to be $1,987,508. This amount represents the estimated costs (in 2017 dollars) for 10 years (from 2018 through 2027).
10. The purpose of this Special Order (Order) is to retain the financial assurance for corrective action requirements outside of Licenses #6018 and #6019.

CONCLUSIONS OF LAW

The department concludes that:

1. Section 291.37, Wis. Stats., authorizes the department to require the owner or operator of a facility with a release from a solid waste management unit to take corrective action.
2. "Release" is defined in s. 291.37(1)(b), Wis. Stats., as "any spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, dumping or disposal of a hazardous waste or hazardous constituent."
3. "Solid waste management units" are defined in s. 291.37(1)(c), Wis. Stats., to include "any unit designed or used for the storage, treatment or disposal of solid waste or hazardous waste or both, which is located in a hazardous waste facility required to have a license under s. 291.25."
4. SC Johnson is the "owner" of the facility as that term is defined in s. NR 660.10(88), Wis. Adm. Code.
5. Section NR 664.0101, Wis. Adm. Code, authorizes the department to establish corrective action requirements.
6. Section 291.37, Wis. Stats., authorizes the department to require corrective action either as a condition of a license or plan approval or as a special order.
7. Section 291.93, Wis. Stats., authorizes the department to issue orders "to effectuate the purposes" of ch. 291.
8. The department may pursue civil enforcement for violations of orders under s. 291.97(1), Wis. Stats.
9. The use of this Order to retain corrective action requirements is necessary and appropriate under the preceding authorities.

SPECIAL ORDER

Based on the above Findings of Fact and Conclusions of Law, the department orders, and in order to resolve this matter, SC Johnson agrees that it shall do, all of the following:

1. In lieu of requirements established in a license under ch. NR 670, Wis. Adm. Code, SC Johnson shall comply with this order and all requirements established in and pursuant to chs. NR 700 through NR 754, Wis. Adm. Code, and ch. 292, Wis. Stats., regarding investigation and remediation of environmental contamination, and other regulatory requirements established by the department's Remediation and Redevelopment (R&R) program.
2. SC Johnson shall provide electronic copies of all reports required by the department's R&R program to the department's hazardous waste program staff when they are submitted to the department's R&R program.

Financial Assurance

3. Financial assurance for corrective action shall conform to the proof mechanism and inflation adjustment provisions described in Paragraph 5 and established no later than 30 days after execution of the special order for corrective action.
4. By March 1 of each year, SC Johnson shall provide the department with an annual corrective action report (report). The report may be combined with the semi-annual or annual reports provided to the department's R&R program. All information should reflect conditions known as of December 1 of the previous year, unless stated otherwise (for the purposes of this approval, the "Effective Date"); however, the Effective Date shall fall between October 1 and December 31 of the previous year. This report, or the combined report, shall be submitted to the department's hazardous waste program staff. At a minimum, the report shall include all the following:
    a. A description of corrective action activities and results, and monitoring activities and results, for the reporting period (the time between the previous two Effective Dates), including but not limited to methods, data, data analysis, and conclusions.
    b. A description of the estimated remaining work and schedule to achieve case closure, as defined in s. 292.12 (1) (b), Wis. Stats (for the purposes of this approval, the "Remaining Work") as of the Effective Date. Remaining Work shall include but not be limited to all corrective action and remediation design and implementation, monitoring, data analysis, and reporting. The Remaining Work shall also include any reasonably anticipated work required to be accomplished after case closure.
    c. The estimated costs for Remaining Work, separated by year and by task, and including unit costs, quantities, and extended costs ("Cost Estimate"). These costs shall:
        i. estimate the costs for the following 10 years of Remaining Work;
        ii. be estimated as of the Effective Date;

iii. be based on utilizing a third party to complete the estimated Remaining Work, including costs to manage and administer the work;
iv. not consider cost efficiencies for work that might otherwise be performed or facilitated by SC Johnson; and
v. include a minimum 10% contingency for unforeseen activities.

d. The reasons for any changes in the Cost Estimate from the previous Cost Estimate shall be explained in detail.
e. Costs by year and by category of activity shall be provided electronically in a spreadsheet format.

5. By April 30 of each year, SC Johnson shall update the Cost Estimate, considering any review comments provided by the department on the corrective action report, and be adjusted as appropriate for inflation using the inflation factor specified in s. NR 664.0142(2), Wis. Adm. Code (FA Report). By June 30 of each year, after consideration of any review comments provided by the department on the FA Report, SC Johnson shall establish and submit to the department the owner financial proof mechanism. This proof mechanism shall conform to the requirements of s. 289.41, Wis. Stats., and the long-term care-related requirements in subch. H of ch. NR 664, Wis. Adm. Code. The updated financial proof mechanism shall be submitted to the department's Owner Financial Responsibility Specialist, Business Support & IT Section, Waste and Materials Management Program, with a copy sent to department's designated plan reviewer.
6. The corrective action Cost Estimate shall also be updated whenever SC Johnson becomes aware of changes that increase the corrective action Cost Estimate. A financial proof mechanism reflecting the new Cost Estimate shall be established within 30 days of any such change. Any adjustment to the Cost Estimate (other than inflation) must be approved by the department in writing.
7. All reports and cost estimates shall be certified by a professional engineer and certified in accordance with ch. NR 712, Wis. Adm. Code.
8. This Order may be amended in writing or terminated in full upon agreement of the parties.

WAIVER AND STIPULATION

By agreeing to undertake the actions specified in this Order, SC Johnson does not waive any rights it has except: SC Johnson hereby waives further notice or hearing before the Department of Natural Resources regarding the above Findings of Fact, Conclusions of Law, and Special Order under s. 227.42, Wis. Stats., or any other provision of law. SC Johnson likewise waives its rights, if any, to challenge this Order in circuit court under ss. 227.52 and 227.53, Wis. Stats., or any other provision of law. This reservation of rights does not affect SC Johnson's obligation to fully comply with its obligations as set forth in the Order. SC Johnson further agrees that this Order is effective and enforceable after being signed by both parties and that it may be enforced in accordance with ss. 299.95 and 299.97, Wis. Stats. The undersigned certify that they are authorized to execute this Order, Waiver and Stipulation on behalf of SC Johnson and the Department of Natural Resources, respectively.

SC JOHNSON & SON, INC.

BY:



Date: 3/30/21

Sara Gilbert
Sr. Director, Manufacturing Operations
S.C. Johnson & Son, Inc.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY:



Date: 4/21/21

George B. Wolbert
Director, Waste and Materials Management Program