



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
**OCT - 3 2014**

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Marc R. Bitzer  
President  
Whirlpool Corporation  
2000 North M-63  
Benton Harbor, Michigan 49022-2692

Re: Whirlpool Corporation, Clyde, Ohio, Consent Agreement and Final Order  
Docket No. EPCRA-05-2015-0001

Dear Mr. Bitzer:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on October 3, 2014.

Please pay the Emergency Planning and Community Right-to Know Act civil penalty in the amount of \$23,607 in the manner prescribed in paragraph 67, and reference your check with the docket number EPCRA-05-2015-0001.

Your payment is due on November 4, 2014.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Sherry L. Estes, Associate Regional Counsel, at (312) 886-7164. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket No. EPCRA-05-2015-0001  
)  
Whirlpool Corporation ) Proceeding to Assess a Civil Penalty Under  
Clyde, Ohio, ) Sections 325(c)(1) and (c)(2) of the Emergency  
) Planning and Community Right-to-Know Act  
Respondent. ) of 1986

Consent Agreement and Final Order  
Preliminary Statement

1. This is an administrative action commenced and concluded under Sections 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(c)(1) and (c)(2), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Whirlpool Corporation, a Delaware corporation doing business in the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and legal conclusions in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

**Statutory and Regulatory Background**

9. Section 311 of EPCRA, 42 U.S.C. § 11021, and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC) and the fire department with jurisdiction over the facility an MSDS for each such hazardous chemical present at the facility at any one time in an amount equal to or greater than 10,000 pounds, and for each extremely hazardous chemical present at the facility in an amount equal to or greater than 500 pounds, or the threshold planning quantity (TPQ), whichever is lower, or to submit a list of such chemicals. The owner or operator must submit the required MSDS or list within three months after the owner or operator is first required to have the MSDS available or after the hazardous chemical requiring an MSDS first becomes present at the facility in an amount exceeding the threshold level.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the OSHA

to prepare or have available an MSDS for a hazardous chemical, to submit to the SERC, community coordinator for the LEPC and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the TPQ designated by EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

11. Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a), assist state and local committees in planning for emergencies and make information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

12. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, an MSDS.

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R.

Part 19 increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

15. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes EPA to assess a civil penalty of up to \$10,000 for each EPCRA Section 311 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$11,000 per day of violation for EPCRA 311 violations that occurred after March 15, 2004 through January 12, 2009 and to \$16,000 per day of violation for violations that occurred after January 12, 2009.

#### **Factual Allegations and Alleged Violations**

16. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

17. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 119 Birdseye Street, Clyde, Ohio (facility).

18. At all times relevant to this CAFO, Respondent was an employer at the facility.

19. Respondent’s facility consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

20. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

21. On June 29, 2012, EPA inspectors inspected Respondent’s facility and made various observations regarding Respondent’s compliance with EPCRA, and obtained documents regarding Respondent’s use of hazardous chemicals at the facility.

22. Liquid argon is a “gases under pressure” and a simple asphyxiant under OSHA regulations at 29 C.F.R. Part 1910.

23. Liquid argon (CAS #7440-37-1) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

24. Liquid argon (CAS #7440-37-1) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

25. Liquid nitrogen is a “gases under pressure” and a simple asphyxiant under OSHA regulations at 29 C.F.R. Part 1910.

26. Liquid nitrogen (CAS #7727-37-9) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

27. Liquid nitrogen (CAS #7727-37-9) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

28. The MSDS for Wococut 14 RNC, Manufactured by Wallover Oil Company, is Whirlpool Corporation Product Number RM 59680 (cutting oil). Cutting oil causes eye irritation, and respiratory or skin sensitization and is thus a health hazard. Cutting oil is classified as a hazardous chemical under OSHA regulations at 29 C.F.R. Part 1910.

29. Cutting oil is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

30. Cutting oil has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

31. On March 5, 2014, James Entzminger, of Region 5’s Superfund Division, sent an electronic message to Mr. Robin Young, Master Environmental Technician, of Whirlpool Corporation’s offices in Clyde, Ohio. The electronic message contained several questions

regarding the quantities and dates that Whirlpool Corporation had stored cutting oil, Whirlpool Corporation Product Number RM 59680, and reconditioned hydraulic oil, Whirlpool Corporation Product Number RM 59655, at the Clyde, Ohio facility.

32. Jared Everitt, Whirlpool Corporation Environmental Engineer, responded to Mr. Entzminger's questions in a letter dated March 17, 2014. The letter stated that Whirlpool Corporation began using cutting oil, Whirlpool Corporation Product Number RM 59680, in December 1995.

33. The March 17, 2014 letter further stated that the maximum quantity of cutting oil that Whirlpool Corporation was storing at the Clyde, Ohio facility for each year from 2009 through 2012 was approximately 51,150 pounds.

34. The MSDS for WOCO AW 46 Ultra Clean, manufactured by Wallover Oil Company, which is Whirlpool Corporation Product Number RM 59655, reconditioned hydraulic oil, lists skin irritation, eye irritation and respiratory tract irritation.

35. Reconditioned hydraulic oil is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

36. Reconditioned hydraulic oil has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

37. The March 17, 2014 letter stated that each year from 2009 through 2012, Whirlpool Corporation was storing 51,150 pounds of reconditioned hydraulic oil, Whirlpool Corporation Product Number RM 59655, at the Clyde, Ohio facility.

38. The March 17, 2014 letter stated that Whirlpool Corporation began using reconditioned hydraulic oil at the Clyde, Ohio facility in December 1995.

39. As of December 31, 2008, based on Whirlpool Corporation's belated Tier II reporting, liquid argon was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

40. As of December 31, 2011, based on Whirlpool Corporation's belated Tier II reporting, liquid nitrogen was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

41. As of December 31, 2009, based upon the information set forth in the March 17, 2014 letter from Jared Everitt, cutting oil and reconditioned hydraulic oil were present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

42. During at least one period of time in each of calendar year 2009 through calendar year 2011, liquid argon, cutting oil, and reconditioned hydraulic oil were present at the facility in an amount equal to or greater than the minimum threshold level.

43. OSHA requires Respondent to prepare, or have available, an MSDS for liquid argon, liquid nitrogen, cutting oil, and reconditioned hydraulic oil.

44. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility an MSDS or a list including the particular hazardous chemical within three months of storing 10,000 pounds or more of the hazardous chemical: (1) cutting oil, the triggering date believed to have been soon after December 1995; (2) reconditioned hydraulic oil, the initial date believed to have been soon after December 1995; and, (3) liquid argon, within three months of December 31, 2008.

45. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 31, 2012, an MSDS for liquid nitrogen or a list including liquid nitrogen.



46. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including liquid argon, cutting oil, and reconditioned hydraulic oil on or before March 1, 2010, for calendar year 2009.

47. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including liquid argon, cutting oil, and reconditioned hydraulic oil on or before March 1, 2011, for calendar year 2010.

48. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including liquid argon, liquid nitrogen, cutting oil, and reconditioned hydraulic oil on or before March 1, 2012, for calendar year 2011.

49. At all times relevant to this CAFO, the Ohio Environmental Protection Agency was the SERC for Ohio under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

50. At all times relevant to this CAFO, the Sandusky County Emergency Management Agency was the LEPC for Sandusky County, Ohio under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

51. At all times relevant to this CAFO, the Clyde Fire Department was the fire department with jurisdiction over the facility.

52. Respondent submitted to the SERC, the LEPC, and the Clyde Fire Department an MSDS for liquid argon or a list showing liquid argon on October 5, 2012.

53. Each day Respondent failed to submit to the SERC, to the LEPC, and to the Clyde Fire Department an MSDS or a list for liquid argon by March 31, 2010, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

54. Respondent submitted to the SERC, the LEPC, and the Clyde Fire Department an MSDS for liquid nitrogen or a list showing liquid nitrogen on October 5, 2012.

55. Each day Respondent failed to submit to the SERC, to the LEPC, and to the Clyde Fire Department an MSDS or a list for liquid nitrogen by March 31, 2012, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

56. Respondent submitted to the SERC, the LEPC and the Clyde Fire Department an MSDS for cutting oil a list showing cutting oil on February 25, 2013.

57. Each day Respondent failed to submit to the SERC, to the LEPC, and to the Clyde Fire Department an MSDS or a list for cutting oil by March 31, 2010, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

58. Respondent submitted to the SERC, the LEPC, and the Clyde Fire Department an MSDS for reconditioned hydraulic oil a list showing reconditioned hydraulic oil on February 25, 2013.

59. Each day Respondent failed to submit to the SERC, to the LEPC, and to the Clyde Fire Department an MSDS or a list for reconditioned hydraulic oil by March 31, 2010, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

60. Respondent submitted to the SERC, the LEPC, and the Clyde Fire Department a revised Emergency and Hazardous Chemical Inventory Form including liquid argon on October 5, 2012, for calendar year 2009.

61. Each day Respondent failed to submit to the SERC, the LEPC, and the Clyde Fire Department a completed Emergency and Hazardous Chemical Inventory Form including liquid argon, cutting oil, and reconditioned hydraulic oil by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

62. Respondent submitted to the SERC, the LEPC, and the Clyde Fire Department a completed Emergency and Hazardous Chemical Inventory Form including liquid argon on October 5, 2012, for calendar year 2010.

63. Each day Respondent failed to submit to the SERC, the LEPC, and the Clyde Fire Department a completed Emergency and Hazardous Chemical Inventory Form including liquid argon, cutting oil, and reconditioned hydraulic oil by March 1, 2011, for calendar year 2010 constitutes a separate violation of Section 312.

64. Respondent submitted to the SERC, the LEPC, and the Clyde Fire Department a completed Emergency and Hazardous Chemical Inventory Form including liquid argon and liquid nitrogen on October 5, 2012, for calendar year 2011.

65. Each day Respondent failed to submit to the SERC, LEPC, and the Clyde Fire Department a completed Emergency and Hazardous Chemical Inventory Form including liquid argon, liquid nitrogen, cutting oil, and reconditioned hydraulic oil by March 1, 2012, for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

#### **Civil Penalty**

66. Complainant has determined that an appropriate civil penalty to settle this action is \$23,607 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, Respondent's agreement to perform a supplemental environmental project, and with respect to Respondent, its ability to pay,

prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

67. Within 30 days after the effective date of this CAFO, Respondent must pay a \$23,607 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

for checks sent by express mail, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The check must note the following: Whirlpool Corporation and the docket number of this CAFO.

68. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, and the case docket number, must accompany the payment. Respondent must send a copy of the check and transmittal letter or other payment method to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

James Entzminger (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Sherry L. Estes (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

69. This civil penalty is not deductible for federal tax purposes.

70. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 81, below, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

71. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

**Supplemental Environmental Project**

72. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by purchasing and donating to the Clyde Fire

department 21 Self-Contained Breathing Apparatuses (21 SCBA Units - Scott Air Pack 75 - 4500 PSI w/ Integrated PASS Device) ("21 SCBA Units").

73. Within 4 weeks of the effective date of the CAFO, Respondent must spend at least \$81,900 to purchase and within 16 weeks of the effective date of the CAFO, Respondent must cause to be delivered to the Clyde Fire Department, 21 SCBA Units.

74. Respondent certifies as follows:

- a. I certify that Whirlpool Corporation is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Whirlpool Corporation has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.
- b. I further certify that Whirlpool is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in paragraph 72; and
- c. Whirlpool has inquired of the Clyde Fire Department and the City of Clyde, Ohio whether the Clyde Fire Department or the City of Clyde, Ohio is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Clyde Fire Department or the City of Clyde, Ohio that neither is a party to such a transaction.

75. Respondent must maintain copies of the underlying data for all reports submitted to EPA according to this CAFO. Respondent must provide the documentation of any underlying data to EPA within seven days of EPA's request for the information.

76. Within 20 weeks of the effective date of the CAFO, Respondent must submit a SEP completion report to EPA. This report must contain the following information:

- a. Detailed description of the SEP as completed, including a letter from the Clyde Fire Chief describing the equipment received and the date of receipt;
- b. Description of any operating problems and the actions taken to correct the problems;

- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

77. Respondent must submit all notices and reports required by this CAFO by first class mail to James Entzminger of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 68, above.

78. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

79. Following receipt of the SEP completion report described in paragraph 76, above, EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S EPA will give Respondent 30 days to correct the deficiencies; or
- c. Respondent has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 81.

80. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an

agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 81, below.

81. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 73, Respondent must pay a penalty of \$81,900.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 73, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 73, Respondent must pay a penalty of \$20,475.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$ 500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

82. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

83. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in



paragraph 67, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

84. Any public statement that Respondent makes referring to the SEP must include the following language, "Whirlpool funded this project as part of the settlement of the United States Environmental Protection Agency's enforcement action against Whirlpool for violations of Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act."

85. Nothing in this CAFO is intended to nor will be construed to constitute EPA approval of the equipment or technology provided by Respondent to the Clyde Fire Department in connection with the SEP under the terms of this CAFO.

86. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

#### **General Provisions**

87. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

88. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

89. Respondent certifies that the Whirlpool Corporation, Clyde, Ohio facility is currently complying with Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a).

90. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state and local laws and regulations.

91. This CAFO is a "final order" for purposes of EPA's EPCRA/CERCLA Enforcement Response Policy.

92. The terms of this CAFO bind Respondent and its successors and assigns.

93. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

94. Each party agrees to bear its own costs and attorney's fees in this action.

95. This CAFO constitutes the entire agreement between the parties.

**Whirlpool Corporation, Respondent**

9-26-14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jeff Durham  
Vice President, NAR Manufacturing  
Whirlpool Corporation

U.S. Environmental Protection Agency, Complainant

9-29-14

Date

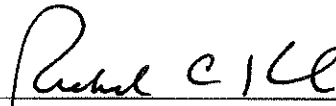


Sharon Jaffess, Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

MICHAEL E. HANS  
ACTING CHIEF

9-29-14

Date




Richard C. Karl, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Whirlpool Corporation, Clyde, Ohio**  
Docket No. EPCRA-05-2015-0001

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10-1-2014  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Whirlpool Corporation, Clyde, Ohio**  
**Docket No. EPCRA-05-2015-0001**

**Certificate of Service**

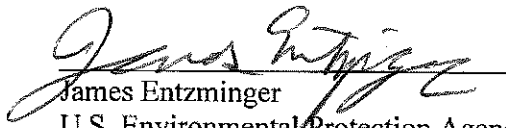
I, James Entzminger, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Marc R. Bitzer  
President  
Whirlpool Corporation  
2000 North M-63  
Benton Harbor, Michigan 49022-2692

Michael D. Daneker, Attorney  
Arnold & Porter, LLP  
555 Twelfth Street, NW  
Washington, DC 20004-1206

Kristen J. Hewitt  
Attorney-in-Fact  
Whirlpool Corporation  
2000 North M-63  
Benton Harbor, Michigan 49022-2692

on the 3 day of October, 2014

  
James Entzminger  
U.S. Environmental Protection Agency  
Region 5