IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

SCOTT DAY and GLENDA V. WILSON, individually and behalf of all others similarly situated,

Civil Action No. 2:13-cv-02164-PKH

Plaintiffs,

vs.

WHIRLPOOL CORPORATION,

Defendant.

JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Defendant Whirlpool Corporation ("Whirlpool" or "Defendant") and Plaintiffs Scott Day ("Day" or "Plaintiff") and Glenda V. Wilson ("Wilson" or "Plaintiff") (collectively, "Class Representatives"), by and through their undersigned counsel, hereby submit this Joint Motion for Preliminary Approval of the Class Action Settlement they have reached in this case. For the reasons set forth in the accompanying Memorandum in Support, Plaintiffs and Defendants hereby move the Court to:

1. Certify the settlement class pursuant to Federal Rule of Civil Procedure 23(b)(3);
2. Order preliminary approval of the Class Action Settlement Agreement between Plaintiffs and Defendant;
3. Approve the Notices of Proposed Class Settlement and order notice of the Settlement to Class Members;
4. Set a hearing on the final approval of the Agreement; and
5. Grant such other relief and orders as the Court deems necessary and appropriate.

Respectfully submitted,

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July 3rd, 2014

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MEMORANDUM IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Defendant Whirlpool Corporation ("Whirlpool" or "Defendant") and Plaintiffs Scott Day ("Day" or "Plaintiff") and Glenda V. Wilson ("Wilson" or "Plaintiff")(collectively "Class Representatives"), by and through undersigned counsel, hereby submit this Memorandum in Support of their Joint Motion for Preliminary Approval of the Class Action Settlement they have reached in this case.

BACKGROUND

This case involves the contamination of land resulting from the migration of the chemical trichloroethylene ("TCE") from an appliance manufacturing facility owned and formerly operated by Whirlpool located at 6400 Jenny Lind Road on the south side of Fort Smith, Arkansas. The facility operated for 45 years and ceased operations in June of 2012. *See* Remedial Action Decision Document at 1("RADD") (Exhibit 1).

Prior to the mid-1980s, the facility utilized TCE in the degreaser building located near the northeastern corner of the main building. The use of TCE was discontinued in the mid-

1980s. *Id.* It is believed that constituents in the soil and groundwater identified in the facility investigations resulted from historical work practices by Whirlpool prior to 1981. *Id.* There are no historical records documenting any specific TCE spills or other release incidents from the degreaser building. *Id.*

On February 7, 1983, Whirlpool submitted a notification of Hazardous Waste Activity to the Arkansas Department of Pollution Control and Ecology (APC&EC), now known as Arkansas Department of Environmental Quality (ADEQ), reporting TCE contamination on the facility property. *Id.* The facility is located adjacent to a residential area to the north and industrial and commercial areas to the south, west, and east. (RADD at 2) (Exhibit 1). "A tract of undeveloped land is also present on the east side of the facility. Residential properties to the north include single-family homes and multi-family units." *Id.*

The presence of TCE in the shallow groundwater on the facility grounds was discovered in the late 1980s when Whirlpool conducted a series of groundwater and soil studies at the facility as part of a project to remove an underground storage tank (UST). *Id.* "The UST was recovered intact, however soil samples taken the time of the tank removal revealed the presence of elevated TCE concentrations in the soil." *Id.*

Subsequent investigations to assess the potential TCE source area have been conducted to delineate the affected soil and groundwater. Ground water monitoring wells were installed both inside and outside facility. These wells have detected groundwater with concentrations of TCE above US EPA maximum contaminant levels (MCLs) extending into the residential neighborhood north of the facility. *Id.*

The ADEQ and Whirlpool have extensively studied the nature and extent of the TCE contamination, and have determined its present location to a reasonable degree of certainty (hereinafter the "Known Area of Impact"). The Known Area of Impact is depicted in Figures 5 and 6 of the RADD (Exhibit 1), and extends into a residential neighborhood located to the North of the Facility. The properties at issue in this litigation are divided into two subcategories. "Well Ban" properties are those properties where TCE or other contaminants emanating from the Facility are present in groundwater and those properties near the Facility that do not themselves have TCE or other contaminants in groundwater, but that are close enough to the TCE plume that it would be prudent to forbid groundwater wells. "Fringe" properties that abut or are the closest to the Well Ban properties.

Plaintiff Wilson's property at 1904 Jacobs Ave. is within the Well Ban area which in turn is within the Known Area of Impact. Wilson alleges that based upon the TCE contamination, the value of her property has declined.

Plaintiff Day's property is located at 5920 Ferguson Road, just outside the Known Area of Impact and for purposes of this litigation is identified as a "fringe" property. Day alleges that based upon the stigma of nearby TCE contamination his property has been economically impacted.

Due to the presence of TCE or other contaminants in groundwater, in May of 2013 the Sebastian County Assessor reduced the tax value of certain properties near the Facility. (See May 10, 2013 newspaper report) (Exhibit 2). The tax value reductions varied from 25-75%. *Id.* For purposes of settlement only, the Parties agree that the property value reductions as determined by the Assessor are reasonable estimations of the reduced value of the properties that are on the TCE contamination Plume, properties immediately adjacent to the Plume and

those properties within the proposed well ban boundaries. However, the Parties also believe the tax valuation reductions made by the Assessor for some of the Fringe properties grossly overstates any economic impact on the value of those properties.

On May 20, 2013, Plaintiff Day filed this lawsuit on behalf of himself and as the representative of a class of similarly situated persons whose properties had been contaminated by the TCE originating from Whirlpool's Fort Smith facility. The Complaint was amended on July 3, 2014 to add Plaintiff Wilson as an additional class representative. Plaintiffs allege causes of action for trespass, nuisance, negligence, violation of the Arkansas Deceptive Trade Practice Act, Violation of the Arkansas Solid Waste Management Act and fraudulent concealment. The proposed class alleged in the Complaint is defined as:

> All property owners in Sebastian County, Arkansas whose property has been impacted by the leakage of the chemical trichloroethylene into the groundwater beneath the surface of the contaminated area which emanated from the manufacturing plant owned and formerly utilized by Whirlpool Corporation. Excluded from the class is Whirlpool Corporation and its officers, directors, management, employees, subsidiaries, or affiliates.

Amended Complaint at ¶ 11.

For many months, counsel for Whirlpool and counsel for the Plaintiffs have been involved in arms length settlement negotiations in an effort to resolve this matter. These efforts have borne fruit, and the Parties have reached a settlement agreement that recognizes the uncertainty of litigation, but is fair to all concerned. The Parties respectfully request that the Court preliminarily approve the proposed settlement and authorize that notice of the settlement be provided to the class members.

THE PROPOSED SETTLEMENT

The proposed settlement was negotiated in good faith, by experienced counsel who vigorously advocated for their respective clients. It provides a very high percentage of the potential damages plaintiff and the putative class could expect to recover at trial without the uncertainties of litigation given Whirlpool's defenses. The detailed Class Action Settlement Agreement is attached as Exhibit 3. A summary of the proposed settlement is set forth below, however, in the event of any conflict between the summary and the detailed Settlement Agreement, the Settlement Agreement controls.

Solely for purposes of settlement, the Parties agree to certification of the following Class under Fed. R. Civ. P. 23(b)(3):

> All property owners in Sebastian County, Arkansas who either (a) own property on which TCE or other contaminants emanating from the manufacturing plant owned and formerly utilized by Whirlpool Corporation are present in groundwater, or (b) whose property value has been or may be diminished by the presence of the plume of TCE and other contaminants in the groundwater. Excluded from the class is Whirlpool Corporation and its officers, directors, management, employees, subsidiaries, or affiliates.

The Parties believe they have identified the Class Members to which this settlement applies, and this settlement is limited to those property owners of the properties listed in Exhibits A and B to the Settlement Agreement. The Parties agree to amend the current Amended Complaint to adopt the settlement class definition set forth above.

For settlement the class is divided into two subclasses the "Well Ban Subclass" and the "Fringe Subclass" which are defined as follows:

> “Well Ban Subclass” means those property owners of record on the Effective Date of real property located within the area bounded by Brazil Avenue, Jenny Lind Road, Jacobs Avenue, and Ferguson Street in Fort Smith, Arkansas. This includes an

> imaginary line that would extend Ferguson Street to Ingersoll Avenue. The persons included in this subclass are identified in Exhibit A to the Settlement Agreement.
>
> "Fringe Subclass" means all those property owners that on the Effective Date own the properties identified as fringe in Exhibit B to the Settlement Agreement.

Settlement Agreement at ¶ II(1)(c) (Exhibit 3).

In exchange for a releasing Whirlpool from all property related claims (but not personal injury claims), dismissal of this action with prejudice, providing an Access Agreement permitting access to the property for environmental testing and remediation, and providing proof of the application of a Declaration of Covenants, Conditions and Restrictions to the property as defined in the Settlement Agreement, the Well Ban Subclass will receive their choice of:

1. Compensation equal to the difference between the Sebastian County Tax Assessors Original Assessed Value and the Current Assessed Value as set forth in Exhibit E to the Settlement Agreement.

OR

2. Alternatively, members of the Well Ban Subclass may elect to have their compensation determined by an agreed-upon professional appraiser ("Independent Appraisal Option"). If the Independent Appraisal Option is chosen, the compensation for a Class Member will be equal to the difference between the Original Assessed Value and the current value of the property as determined by an independent appraiser selected as set forth in the Settlement Agreement.

The persons in the Fringe Subclass are identified in Exhibit B to the Settlement Agreement. Each property owner in the Fringe Subclass will receive $5,000.00 in exchange for (1) a Release and dismissal of all property related claims, and (2) an executed Mutual Option for Future Consideration (Exhibit H to Settlement Agreement). The Mutual Option for Future Consideration entitles Whirlpool to receive a Declaration of Covenants, Conditions and

Restrictions and Access Agreement as set forth in the Settlement Agreement from any current or future Fringe Owner if, at any time before January 1, 2029, Whirlpool or the ADEQ verifies the detection of TCE in the groundwater beneath the given property at levels or concentrations that require monitoring or remedial action. To exercise the Option, Whirlpool will pay Additional Consideration equal to the difference between $5,000 and the amount indicated on Exhibit E to the Settlement Agreement as the Tax Assessor's devaluation of the Fringe property. If the Fringe member does not have a devaluation by the Tax Assessor, the Additional Consideration will be determined by the same Independent Appraisal process as set forth in the Settlement Agreement. This Mutual Option for Future Consideration will expire on January 1, 2029, unless extended by mutual agreement of the parties.

ARGUMENT

I. THE COURT SHOULD ORDER PRELIMINARY APPROVAL OF THE SETTLEMENT

A. Overview of the Class Settlement Approval Process in the Eighth Circuit

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation. *See Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 921 F.2d 1371,1383 (8th Cir. 1990) ("The law strongly favors settlements. Courts should hospitably receive them … As a practical matter, a remedy that everyone agrees to is a lot more likely to succeed than one to which the defendants must be dragged kicking and screaming."); *In re Charter Communications Sec. Litig.*, No. 4:02-cv-1186-CAS, 2005 U.S. Dist. LEXIS 14772, *14-15 (E.D. Mo. June 30, 2005) ("In the class action context in particular, there is an overriding public interest in favor of settlement . . . Settlement of the

complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.") (*quoting Armstrong v. Bd. of Sch. Directors*, 616 F.2d 305, 313 (7th Cir. 1980) (internal quotation marks omitted)).

Where, as here, the parties propose to resolve class action litigation through a class-wide settlement, they must obtain the court's approval. *See* Fed. R. Civ. P. 23(e). Approval of a class action settlement involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. *See* Manual for Complex Litigation § 21.632 (4th ed. 2004) (hereafter "Manual"); see also 4 Alba Conte & Herbert Newberg, Newberg on Class Actions § 11:25, at 38-39 (4th ed. 2002) (hereafter, "Newberg on Class Actions") (endorsing two-step process). If the preliminary evaluation of the settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, and appears to fall within the range of possible approval, the court should direct that notice under Rule 23(e) be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement. *See* Manual § 21.633. The notice should tell class members how to make their views on the settlement known to the court. *Id.*

The parties now respectfully request that this Court take the first step in the settlement approval process and grant preliminary approval of the settlement.

B. The Settlement Negotiated by the Parties is Entitled to an Initial Presumption of Fairness

In assessing whether preliminary approval should be granted, the Settlement is

entitled to a presumption of fairness. Courts usually adopt "an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval." Newberg on Class Actions § 11:41. As the Eighth Circuit observed, class action settlement agreements "are presumptively valid" and a "strong public policy favors agreements, and courts should approach them with a presumption in their favor." *Little Rock Sch. Dist.*, 921 F.2d at 1388, 1391; *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148-49 (8th Cir. 1999) (after the parties' arm's-length negotiations, "judges should not substitute their own judgment as to optimal settlement terms for the judgments of the litigants and their counsel") (internal quotation marks omitted); *see also In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 934 (8th Cir. 2005) ("We have recognized that a class action settlement is a private contract negotiated between the parties … Rule 23(e) requires the court to intrude on that private consensual agreement merely to ensure that the agreement is not the product of fraud or collusion and that, taken as a whole, it is fair, adequate, and reasonable to all concerned."). Indeed, "a proposed settlement is presumptively reasonable at the preliminary approval stage, and there is an accordingly heavy burden of demonstrating otherwise." *Schoenbaum v. E.I Dupont De Nemours & Co.*, No. 4:05-CV-01108-ERW, 2009 U.S. Dist. LEXIS 114080, *14 (E.D. Mo. Dec. 8, 2009).

C. A Review of the Factors Favors Approval of the Settlement

At the preliminary approval stage, the Court should "make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms …. " Manual § 21.632. The ultimate question for the Court is whether the settlement is "within the range of possible final approval," such that the class should be notified and a formal fairness hearing scheduled. *Schoenbaum*, 2009 U.S. Dist. LEXIS 114080, at *13, 42; *see also Gautreaux v. Pierce*, 690

F.2d 616, 621 n.3 (7th Cir. 1982) (the purpose of preliminary approval "is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing"). "If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice under Rule 23(e) be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement." Newberg on Class Actions, § 11.25; *see also First Nat'l Bank v. Am. Lenders Facilities, Inc.*, 2002 WL 1835646, at *1 (D. Minn. 2002) ("The proposed settlement between the Plaintiff Class and the Defendants appears, upon preliminary review, to be within the range of reasonableness and accordingly, the Notice … shall be submitted to the class members for their consideration and for hearing under Fed. R. Civ. P. 23(e).").

Applying the same considerations here shows that the Settlement exceeds the preliminary threshold for reasonableness. The Settlement provides each Well Ban Subclass Class Member with the opportunity to recover the full amount of the alleged diminution in value to their property due to TCE contamination or potential contamination as determined independently by the tax assessor. The settlement is also fair to the Fringe Subclass Members whose property is not contaminated with TCE, and is not likely to be, yet still receive $5000 upfront, with the option for receiving compensation consistent with the Well Ban subclass in the unlikely event that the TCE contamination spreads to their property. The Parties agree that these terms are extremely fair and therefore, the settlement should proceed to a final

approval hearing, at which time Class Members will have an opportunity to make their views known.

II. THE PROPOSED CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

A. The Proposed Class Meets the Requirements for Certification of a Settlement Class

Before granting preliminary approval of a settlement in a case where a class has not yet been certified, the court should determine whether the class proposed for settlement purposes is appropriate under Rule 23. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); Manual § 21.632. "To proceed as a class action, the litigation must satisfy the four prerequisites of Rule 23(a) as well as at least one of the three requirements of Rule 23(b) … These prerequisites are otherwise known as (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation." *In re Aquila ERISA Litig.*, 237 F.R.D. 202, 207 (W.D. Mo. 2006). In certifying a settlement class, however, the court is not required to determine whether the action, if tried, would present intractable management problems, "for the proposal is that there be no trial." *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); *see also* Fed. R. Civ. P. 23 (b)(3)(D).

B. The Numerosity, Commonality, Typicality and Adequacy Requirements Are Met

1. Numerosity

Federal Rule of Civil Procedure 23(a)(1) requires that the class sought to be certified be "so numerous that joinder of all members is impracticable." No specific number is needed to maintain a class action. Rather, an "application of the rule is to be considered in

light of the particular circumstances of the case."[1] Here, 104 properties have been identified as being impacted by the TCE contamination. *See* Settlement Agreement Exhibits A and B (Exhibit 3). The Eighth Circuit has permitted class actions with as few as 20 members – less than a fifth of the size of the class proposed here.[2] Because of the common effect of the TCE contamination and the relative efficiency that can be achieved by handling the claims of the proposed class in a unified manner, the joinder of these claims is comparatively impracticable.

2. Commonality

The proposed class also meets the commonality requirement of Rule 23(a)(2), Which requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23 (a)(2). As the U.S. Supreme Court recently explained, "[c]ommonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury,"' and that the claims arising from that injury depend on a "common contention . . . of such a nature that it is capable of classwide resolution." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). In other words, it is not enough to posit common questions of any variety; there must be at least one common question such that "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. That test is easily met here. All Class Members have in common the fact that their properties were impacted by TCE emanating from the Whirlpool facility. In other words, this case involves a discrete type of contaminant arising from a single source. The common question of diminution in value of the properties of the Well Ban Subclass has been recognized by reduced tax values assessments. The Fringe Subclass has in common a concern about future contamination of their

[1] *Arkansas Educ. Ass'n v. Board of Education*, 446 F.2d 763, 765 (8th Cir. 1971).

[2] *Id.*

property. Accordingly, the Court should find that Rule 23(a)(2)'s commonality requirement has been met.

3. Typicality

The typicality requirement of Rule 23(a)(3) requires that "the claims … of the representative parties are typical of the claims … of the class …. " Fed. R. Civ. P. 23 (a)(3). "'Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought.'" 1 Newberg, supra at § 3:13 at 326. Here, it is alleged that value of Plaintiff Day and Wilson's property was negatively impacted by the presence of TCE contamination emanating from the Whirlpool facility. The TCE migration from the Whirlpool facility has resulted in a common injury to all Class Members, either as a result of direct contamination of property or close proximity to contaminated property. Thus, the facts and legal theories upon which Ms. Wilson for the Well Ban Subclass and Mr. Day for the Fringe Subclass ground their claims, are not only typical of the entire Class, but they are virtually identical.

4. Adequacy

The fourth and final requirement of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23 (a)(4). "The focus of the adequacy inquiry is whether '(1) the class representatives have common interests with the members of the class, and (2) whether the class representatives will vigorously prosecute the interests of the class through qualified counsel."' *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 562-63 (8th Cir. 1982).

The adequacy element requires a two-step analysis. First, the court must determine whether the named class representatives "are free from conflicts of interest with the class they

seek to represent."[3] Second, the court must find that the class would be represented by qualified counsel. Adequacy of representation is usually presumed in the absence of evidence to the contrary.[4]

Here, in view of the fact that Ms. Wilson and Mr. Day both allege that their property has been negatively impacted by the TCE contamination from the Whirlpool site, and seek damages measured in the same way as the Subclasses they represent, it is hard to see how there could be any conflict between Mr. Day, Ms. Wilson, and the Class. In addition, there are no allegations that Wilson or Day acted in any manner that would compromise their own claims, thereby jeopardizing the claims of the other Class Members. As to the second prong of the inquiry, Wilson and Day have retained counsel who is qualified and experienced in the prosecution of complex litigation.

In sum, each Rule 23(a) prerequisite to class certification has been met.

C. Under Rule 23(b)(3), Common Questions Predominate, and a Class Action is the Superior Method is to Adjudicate Class Members' Claims

Finally, the proposed class meets the requirements of Rule 23(b)(3). Rule 23(b)(3) "provides that a class action may be maintained if the court finds the questions of law or fact common to members of the class predominate over the questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of the dispute." *In re St. Jude Med., Inc.*, 425 F.3d 1116, 1119 (8th Cir. 2005).

"The requirement of Rule 23(b)(3) that common questions predominate over individual Questions 'tests whether proposed classes are sufficiently cohesive to warrant adjudication by

[3] *Amchem Prods v. Windsor*, 521 U.S. 591, 625 (1997).
[4] *Californians for Disability Rights, Inc. v. Cal. Dep't of Transp.,* 249 F.R.D. 334, 349 (N.D. Cal. 2008); *Access Now Inc. v. AHM CGH Inc.*, 197 F.R.D. 522 (S.D. Fla. 2000) (*citing* 2 Newberg § 7.24 at 7-80 to 81).

representation."' *Blades v. Monsanto Co.,* 400 F .3d 562, 566 (8th Cir. 2005) (*quoting*, 521 U.S. at 623). Here, nearly all of the questions concerning Whirlpool's alleged liability are common. They all derive from the migration of TCE off the Whirlpool site. The Parties and the ADEQ agree on the boundaries of the contamination and the addresses of the affected properties. In addition, the issues of law that will determine Whirlpool's liability are nearly all common, as each Class Member has the same causes of action as the others. Furthermore, the Settlement Agreement provides for the damages to be determined by a common method for each subclass. In short, the proof set forth above is sufficient to demonstrate that common issues predominate over individual issues.

III. THE COURT SHOULD APPROVE THE PROPOSED FORM AND METHOD OF CLASS NOTICE

A. The Proposed Notice Provides for the Best Notice Practicable

In a Rule 23(b)(3) class action such as this one, the Court must direct that class members be given "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Notice should be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Petrovic*, 200 F.3d at 1153 (*quoting Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). That is exactly what the parties have provided for in this case. Notice will be mailed (certified mail, return receipt requested) directly to each property owner at his or her mailing address as reflected in county tax records.

Notices for each Subclass will also be run in the Southwest Times Record, which is a newspaper of general circulation in Fort Smith, Arkansas. The notice will run once a week for

four consecutive weeks commencing on the Notice Date announcing the settlement. The notices (Exhibits D3 and D4 to the Settlement Agreement) briefly describe the litigation, identify the proposed settlement listing the property addresses in each Subclass, and provide contact information for the Claims Administrator to request formal notice and a claim form. The Court finds the proposed notice plan to be acceptable.

B. The Proposed Form of Class Notice Adequately Informs Class members of Their Rights in This Lawsuit

Rule 23(b)(3) also requires that the notice provided to Class Members must "clearly and concisely state in plain, easily understood language" the nature of the action; the class definition; the class claims, issues, or defenses; that the class member may appear through counsel; that the court will exclude from the class any member who requests exclusion; the time and manner for requesting exclusion; and the binding effect of a class judgment on Class Members. *See* Fed. R. Civ. P. 23 (c)(2). The proposed class notices, attached as Exhibits D1-D4 of the Settlement Agreement (Exhibit 3), comply with those requirements.

IV. PROPOSED SCHEDULE OF EVENTS

If the Court grants preliminary approval, the Parties propose the following schedule, which is incorporated into the proposed Order Granting Preliminary Settlement Approval attached hereto as Exhibit 4.

- Deadline for completing mailing Class Notice. (Preliminary Approval date + 14 days)
- Deadline for filing attorneys' fee petition, and posting it on Plaintiff counsel's website. (Preliminary Approval date +5 days).
- Deadline for opting out, objecting or requesting appraisal option). (Preliminary Approval date + 60 days).

- Deadline for completing any appraisals that may be requested (Preliminary Approval date + 120 Days.

- Deadline for reply regarding fee petition, if any. (Preliminary Approval date+ 70 days).

- Final settlement approval and fairness hearing at any time 120 days after Preliminary Approval. The proposed Final Approval Order is attached as Exhibit C to the Settlement Agreement (Exhibit 3).

- Deadline for filing Final Approval papers. (Final settlement approval date – 21 days).

CONCLUSION

For the reasons stated above, the Parties jointly request that the Court preliminarily approve the Parties' proposed class action settlement, certify a Rule 23(b)(3) class for settlement purposes only, approve the proposed class notice and order notice of the Settlement to Class Members, and grant such other relief and orders as the Court deems necessary and appropriate.

SIGNATURES ON FOLLOWING PAGE

Respectfully submitted this 3rd day of July, 2014,

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EXHIBIT 1

STATE OF ARKANSAS

DEPARTMENT OF ENVIRONMENTAL QUALITY

REMEDIAL ACTION DECISION DOCUMENT (RADD) FOR CORRECTIVE ACTION

Whirlpool Corporation
Sebastian County, Arkansas

Arkansas Facility Identification Number: 66-00048

December 2013

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REMEDIAL ACTION DECISION DOCUMENT (RADD)
WHIRLPOOL CORPORATION

1. INTRODUCTION

The former Whirlpool facility is located at 6400 Jenny Lind Road on the south side of Fort Smith, Arkansas (Figures 1 and 2). The facility is approximately 153 acres and includes the main manufacturing building (approximately 1.3 million square feet), adjoining warehouse and administrative offices, and approximately 21 acres of undeveloped land. The facility had been operated by Whirlpool for over 45 years and ceased operation in June 2012.

Prior to the mid-1980s, the facility utilized trichloroethene (TCE) in the former degreaser building located near the northeastern corner of the main building. The use of TCE was discontinued in the mid 1980's. It is believed that constituents in the soil and groundwater identified in the facility investigations were the result of historical work practices by Whirlpool prior to 1981. On February 7, 1983, Whirlpool Corporation (Whirlpool) submitted a notification of Hazardous Waste Activity to the Arkansas Department of Pollution Control and Ecology (APC&EC), now known as Arkansas Department of Environmental Quality (ADEQ), which identified the facility engaging in hazardous waste activities. There are no historical records that document any specific spills or other release incidents from the degreaser building.

Whirlpool entered into a Letter of Agreement (LOA) with the ADEQ on July 10, 2002 to investigate and remediate impacted groundwater at the northern portion of the facility in accordance with the United States Environmental Protection Agency (USEPA) Corrective Action Strategy (CAS). Whirlpool has conducted extensive investigations for the remedial action at the facility. The Revised Risk Management Plan (RRMP) submitted by Whirlpool Corporation on May 21, 2013 recommends remedial alternatives for the corrective action at the facility. No action, containment, removal, in-situ treatment, and institutional controls are among the corrective measure remedies considered for the facility.

This Remedial Action Decision Document (RADD) describes the possible remedies, documents ADEQ's decision for the remedial actions at the facility, and affords the public the opportunity to participate in decisions regarding the hazardous substance remediation within their community. Interested individuals at the Fort Smith area may submit written comments to ADEQ on the RADD. Procedures regarding public comment are included in Section 13 of the RADD.

2. SITE BACKGROUND

The facility is located adjacent to a residential area to the north and industrial/commercial areas to the south, west, and east. A tract of undeveloped land is also present on the east side. Residential properties to the north include single-family homes and multi-family units. A recreational facility (Boys and Girls Club) that includes three buildings, two basketball courts and three baseball fields is located northeast of the facility adjacent to the residential area. No agricultural properties are located in the vicinity of the facility.

The presence of TCE in the shallow groundwater was discovered in the late 1980's when Whirlpool conducted a series of groundwater and soil studies at the facility as part of a project to remove one underground storage tank (UST). The UST was recovered intact, however soil samples taken at the time of the tank removal revealed the presence of elevated TCE concentrations in the soil. Subsequent investigations to assess the potential TCE source area have been conducted to delineate the affected soil and groundwater. Based on the historical process, the primary constituent of concern (COC) is TCE. However, tetrachloroethene (PCE) and TCE daughter products, including cis-1,2-dichloroethene (cis-1,2-DCE), trans-1,2-dichloroethene (trans-1,2-DCE), 1,1-dichloroethene (1,1-DCE), and vinyl chloride (VC) resulting from the natural degradation of PCE and TCE have also been detected in the groundwater monitoring wells.

On August 13, 2002, a scoping meeting was held between ADEQ and Whirlpool which resulted in Whirlpool initiating the off-site delineation of groundwater north of the facility. The delineation included installation and sampling of new monitoring wells. Whirlpool submitted the CAS Work Plan on June 6, 2003. The CAS Work Plan contained information on the status of off-site investigations and provided information to help define the Conceptual Site Model (CSM) for the facility.

The Interim Status Report was submitted on June 25, 2004 providing details regarding the status of off-site investigations. The off-site investigations included off-site delineations in five phases: Phase A, Phase B, Phase C, Phase D and Phase E. Additional monitoring wells were installed from November 2004 through April 2006 during each phase of delineation. The facility met with ADEQ staff in June 2006 to review the status of the off-site delineation and clarify the path forward. Following the meeting, a CAS Work Plan Addendum was submitted on September 1, 2006 and approved on January 25, 2007.

In addition to the above reports, a series of Annual Groundwater Monitoring Reports (AGWM) have been submitted since March 2000. The data from the AGWM reports were evaluated and summarized in the Risk Evaluation

Report (RER) submitted on June 14, 2007. The RER was approved on January 30, 2008. The RER contained information regarding the elements necessary in guiding risk management decisions at the facility. Whirlpool submitted the Risk Management Plan (RMP) on March 27, 2008. The RMP introduced the several alternatives for remedial activities at the facility.

In March 2008, implementation of an interim measure was proposed by the facility to provide a quick response in the core of the plume where the potential for risk to residential areas existed. Whirlpool Corporation utilized the interim measure task as a pilot study to obtain information pertaining to in-situ chemical oxidation and groundwater recovery. These processes were aimed at reducing the concentration of TCE in the groundwater. The facility submitted the Interim Measure Work Plan (IMWP) on March 17, 2008. The IMWP aimed to reduce any potential risk to human health and proposed to target the core of the off-site plume via groundwater pump-and-treat and in-situ chemical oxidation. The IMWP was approved on April 10, 2008.

Due to the generation of wastewater, the facility was offered options to obtain a permit from the Hazardous Waste Division or Water Division of ADEQ depending on the characteristics of the groundwater (hazardous or non-hazardous). Upon the evaluation of the wastewater characteristics, Whirlpool contacted the Water Division regarding an Underground Injection Control (UIC) permit. The permission was granted by the Water Division on April 17, 2009 allowing the facility to initiate the permanganate injection for the remediation of groundwater at the facility based on APC&EC Regulation No. 17.

Whirlpool submitted an Interim Measure Status Report on January 12, 2010. The report provided information regarding the activities conducted at the facility in accordance with the approved Interim Measure Work Plan dated March 17, 2008. The data obtained from the monitoring points adjacent to In-Situ Chemical Oxidation (ISCO) Treatment Wells exhibited progress in the areas where treatment had been applied. ADEQ required the facility to proceed with the groundwater pilot test at monitoring well RW-69 to induce a hydraulic gradient at the facility.

Whirlpool continued to submit progress reports regarding the status of groundwater pilot test at the facility. The progress reports (July 2010 – March 2011) indicated that the in situ permanganate treatments continued to reduce the concentrations of TCE in the immediate vicinity of treatment wells. The interim measure data obtained suggested treating the affected groundwater in the off-site plume using permanganate could be a viable method for remediating the groundwater.

However, the continuation of in-situ remediation (November 2010, March 2011, October 2011 and April 2012) showed the ability to influence the

movement of permanganate across the treatment area was limited by the low transmissivity of the aquifer and the continued monitoring suggested portions of the core of the off-site plume have not been adequately treated. Ultimately, the facility submitted a RRMP on May 21, 2013 to implement a risk strategy for the protection of human health and the environment, which includes monitoring of the groundwater. The RRMP evaluated each potential corrective measure for its relative suitability to meet the goal of protecting human health and the environment.

Figure 3 shows the location of the monitoring wells on-site and off-site. The highest impact of TCE in groundwater on-site has been identified at MW-25 near the northwestern corner of the building. TCE concentration at MW-25 in 2012 was measured at 56,000 micrograms per liter (ug/l). Additional areas of impact (greater than 10,000 ug/l of TCE) have been identified at ITMW-19 with 15,000 ug/l. Together these two points currently constitute the heart of the source area on-site. The groundwater plume extends approximately 1,000 feet to the south from this source area. The southern boundary of affected groundwater remains on-site in this direction. There are no known off-site groundwater impacts to the east, south or west of the Whirlpool property boundaries.

Groundwater with detected concentrations of TCE above USEPA maximum contaminant levels (MCLs) extends to the residential neighborhood north of the facility. North of the main source area, TCE concentrations greater than 1000 ug/l were detected at wells MW-33 and IW-77. The depth to groundwater is routinely observed during the construction of monitoring wells to be 15 to 25 feet below ground surface (bgs). The measured depth to water in the monitoring wells ranges from more than 10 feet bgs to almost zero in the northeast direction from the site. These measurements give a false impression that groundwater is at a much shallower depth than the confined aquifer.

3. SUMMARY OF SITE RISKS

A. HUMAN HEALTH RISKS

A Human Health Risk Assessment (HHRA) was submitted as an appendix to the May 21, 2013 RRMP. The HHRA was conducted to determine potential risks related to current and future human exposure to constituents detected in groundwater, soil, and soil gas at and around the Whirlpool facility. The primary COC is TCE. However, PCE and TCE daughter products including cis-1,2-DCE, trans-1,2-DCE, 1,1-DCE, VC, and several other volatile organic compounds (VOCs) were also retained for evaluation in these media.

On-Site Receptors and Exposure Routes

On-site receptors evaluated for potential exposure to these COCs include 1) routine workers, 2) maintenance workers, and 3) construction workers.

Exposure routes for on-site routine workers from COCs in surface soil include ingestion, dermal contact, inhalation of soil-derived vapors and airborne particulates in outdoor air, and inhalation of soil-derived vapors that migrate through building foundations to indoor air. Exposure routes for on-site routine workers from COCs in subsurface soil include inhalation of soil-derived vapors in outdoor air and inhalation of soil-derived vapors that migrate through building foundations to indoor air. Exposure routes for on-site routine workers from COCs in groundwater include inhalation of groundwater-derived vapors in outdoor air and inhalation of groundwater-derived vapors that migrate through building foundations to indoor air.

Exposure routes for on-site maintenance workers and construction workers from COCs in surface and subsurface soil include ingestion, dermal contact, and inhalation of soil-derived vapors and airborne particulates in work-space air. Exposure routes for on-site maintenance workers and construction workers from COCs in groundwater include ingestion, dermal contact, and inhalation of vapors from exposed groundwater during excavation activities.

Off-Site Receptors and Exposure Routes

Off-site receptors evaluated for potential exposure to these COCs include 1) residents, 2) routine community workers, and 3) community maintenance workers.

Exposure routes for off-site residents from COCs in surface and subsurface soil include inhalation of soil-derived vapors and airborne particulates in outdoor air. Exposure routes for off-site residents from COCs in groundwater include inhalation of groundwater-derived vapors in outdoor air and inhalation of groundwater-derived vapors that migrate through building foundations to indoor air.

Exposure routes for off-site routine community workers from COCs in surface and subsurface soil include inhalation of soil-derived vapors and airborne particulates in outdoor air. Exposure routes for routine community workers from COCs in groundwater include inhalation of groundwater-derived vapors in outdoor air and inhalation of groundwater-derived vapors that migrate through building foundations to indoor air.

Exposure routes for off-site community maintenance workers from COCs in groundwater include incidental ingestion and dermal contact with exposed groundwater, and inhalation of vapors from exposed groundwater in work-space air.

Current Potential Carcinogenic and Non-Carcinogenic Risks

The potential carcinogenic and non-carcinogenic risks to human receptors were estimated by first calculating individual potential risks for each COC. These potential risks were then summed to arrive at a cumulative potential carcinogenic risk and non-carcinogenic risk for each completed exposure pathway.

On-Site Potential Carcinogenic and Non-Carcinogenic Risks

As shown in the following table, none of the summed potential carcinogenic risk estimates exceed USEPA acceptable cancer risk range of 1E-06 to 1E-04 and none of the summed potential non-carcinogenic risks exceed a Hazard Index (HI) of 1 for receptors potentially exposed to chemicals in on-site soils.

Potential vapor intrusion was also assessed for on-site routine workers that could be potentially exposed to chemicals in soil via vapor intrusion using occupational inhalation limits. This approach is consistent with Occupational Safety and Health Administration (OSHA) regulations. In applying this approach, the potential exposure from vapor intrusion should be less than 1. As shown in the table below, the vapor intrusion pathway from chemicals in soil does not result in an unacceptable exposure in the workplace for on-site routine workers.

Summed Potential Risk Estimates for On-Site Soil

On-Site Receptor	Exposure Type	Carcinogenic Risk	Non-Carcinogenic Risk (HI)	Occupational
Routine Worker	Direct Contact Vapor Intrusion	1E-08 3E-07	0.004 0.1	NA 2E-06
Maintenance Worker	Direct Contact	1E-09	0.001	NA
Construction Worker	Direct Contact	4E-09	0.0009	NA

HI – Hazard Index
NA – Not applicable. Occupational air standards are only applicable for routine worker vapor intrusion exposures

As shown in the following table, none of the summed potential carcinogenic cancer risk estimates exceed the USEPA acceptable cancer risk range of 1E-06 to 1E-04 for receptors potentially exposed to chemicals in on-site groundwater. However, the summed potential non-carcinogenic risk does exceed an HI of 1 for on-site routine workers via the vapor intrusion pathway, maintenance workers via direct contact, and construction workers via direct

contact which could be potentially exposed to chemicals in on-site groundwater.

As with the on-site soil, potential vapor intrusion was also assessed for on-site routine workers potentially exposed to chemicals in on-site groundwater using occupational inhalation limits. As shown in the following table, the vapor intrusion pathway from chemicals in on-site groundwater does not result in an unacceptable exposure in the workplace for on-site routine workers.

Summed Potential Risk Estimates for On-Site Groundwater

On-Site Receptor	Exposure Type	Carcinogenic Risk	Non-Carcinogenic Risk (HI)	Occupational
Routine Worker	Vapor Intrusion	1E-05	**3**	8E-04
	Inhalation of Outdoor Air	4E-07	0.1	NA
Maintenance Worker	Direct Contact	5E-05	**30**	NA
Construction Worker	Direct Contact	5E-06	**6**	NA

HI – Hazard Index
NA – Not applicable. Occupational air standards are only applicable for routine worker vapor intrusion exposures.
Bold values exceed an HI of 1.

Off-Site Potential Carcinogenic and Non-Carcinogenic Risks

As shown in the following table, none of the summed potential carcinogenic risk estimates exceed USEPA acceptable cancer risk range of 1E-06 to 1E-04 and none of the summed potential non-carcinogenic risks exceed a Hazard Index (HI) of 1 for receptors potentially exposed to chemicals in off-site soils.

Summed Potential Risk Estimates for Off-Site Soil

Off-Site Receptor	Exposure Type	Carcinogenic Risk	Non-Carcinogenic Risk (HI)
Resident	Inhalation of Outdoor Air	6E-08	0.01
Routine Community Worker	Inhalation of Outdoor Air	1E-08	0.004

As shown in the following table, none of the summed potential carcinogenic risk estimates exceed USEPA acceptable cancer risk range of 1E-06 to 1E-04 and none of the summed potential non-carcinogenic risks exceed a Hazard Index (HI) of 1 for receptors potentially exposed to chemicals in off-site groundwater.

Summed Potential Risk Estimates for Off-Site Groundwater

Off-Site Receptor	Exposure Type	Carcinogenic Risk	Non-Carcinogenic Risk (HI)
Resident	Vapor Intrusion Inhalation of Outdoor Air	6E-06 5E-08	1 0.01
Routine Community Worker	Vapor Intrusion Inhalation of Outdoor Air	2E-07 7E-09	0.06 0.002
Community Maintenance Worker	Direct Contact	9E-07	0.5

On-site and off-site potable water is provided by the Fort Smith municipal water system. Currently, groundwater is not known to be used as a potable source for drinking water. However, if drinking water wells are installed on-site or off-site, significant potential risks could result from the use of groundwater.

B. ECOLOGICAL RISKS

The facility operated for over 45 years. The surrounding area is developed with little to no viable ecological habitats. No ecological impacts have been identified for the facility and the surrounding area. Additionally, no sensitive ecological receptors have been identified in the vicinity of the facility. As a result, the contaminants attributed to the historical facility operations do not present an ecological threat to the surrounding area.

4. SUMMARY OF REMEDIAL APPROACH

The ADEQ determines whether a release of hazardous substances must be addressed through remedial action(s) and whether the actions taken to address said release are protective of human health and the environment. The two performance standards of the source control are; applicable statutory and regulatory requirements, and final risk goal. The final risk goal must ensure that no potential unacceptable risks to human health or the environment remain at the conclusion of remedial activities. A remedy's cleanup standards can fall within the range of $1x10^{-4}$ to $1x10^{-6}$ excess lifetime risk from exposure to a carcinogenic hazardous constituent, and a hazard quotient of 1.0 for non-carcinogens. The final risk goal performance standard developed will generally fall within that range as well. The source control and statutory and regulatory requirement performance standards will determine the need for and the degree of any necessary remedial actions.

Based on the data collected from the investigations conducted at the Whirlpool facility in Fort Smith, Arkansas over a period from 1980 to 2013, the areas of concern are the soil and groundwater impacted by the historical usage of TCE as a degreaser. The "Source Area" is understood to be a localized area near and immediately to the west of the former degreaser building where elevated concentrations of TCE were detected in soil and groundwater (See Figure 4). The impacted soil and groundwater are present within the fenced boundary of the Whirlpool facility (on-site) and impacted groundwater with detected concentrations of TCE above drinking water criteria extends beneath a portion of the off-site residential area north of the facility. The area of impacted soil is an approximately 50 by 250-foot area west of the former degreaser building and the on-site groundwater plume extends approximately 1,000 feet to the south from the source area. The remedial action includes alternatives to reduce concentrations of TCE in the groundwater at the source and eliminate the source to the off-site groundwater plume which will ultimately reduce the concentrations in off-site groundwater.

North, geologically down-slope of the source area, elevated TCE concentrations (greater than 1,000 ug/l) extend approximately 400 feet to a marked depression present in the surface of the weathered shale comprising the lower confining unit near the location of well IW-77. The northern plume extends approximately 1000 feet northeastward past well IW-77. Remedial action to reduce TCE levels in the areas of elevated concentrations near well IW-77 will ultimately reduce the concentrations down-gradient in the northern plume which extends beneath the off-site residential area.

5. SUMMARY OF ALTERNATIVES CONSIDERED IN REVISED RISK MANAGEMENT PLAN

The concentration of COCs in the subsurface soil (impacted area) and groundwater (on-site and off-site) are the main focus of remedial alternatives at the facility. The elected alternative(s) should assure protection of human health and the environment and should eliminate the exposure pathway to the COCs.

A. SUBSURFACE SOILS

The alternatives considered for the impacted subsurface soils are as follows:

No Action – The No Action measure represents a baseline against which other alternatives are compared. This measure does not include remedial activities to address the affected soil on-site and would not limit risk posed by the COCs.

Containment – Containment involves placing a physical barrier which prevents the movement of COCs and therefore provides a means to reduce or eliminate an exposure pathway. Containment technologies like a concrete cover or asphalt cover can effectively isolate soils. The cover prevents contact between impacted soil COC migrations via infiltration into groundwater. The cover could also be engineered to limit vapor intrusion.

Removal – Removal of the impacted soils involves excavation and proper disposal of the soils. Excavation is a proven technology for direct mass removal and is technically feasible for small to moderate soil volumes. Excavation will reduce or eliminate the amount of COC mass.

In-Situ Treatments - The treatment methods are designed to reduce the COCs in the subsurface soils without removing the impacted media. The in-situ treatment technologies for the soils include Biological and Physical/Chemical treatments as follows:

Biological Treatment:

Natural Attenuation – This alternative relies on naturally occurring subsurface biological processes under favorable conditions to achieve site specific remediation objectives over time by reducing the concentration of COCs in the soils.

Enhanced Aerobic/Anaerobic Biodegradation – In-situ biological treatment includes the addition of nutrients, oxygen, and/or acclimated microbes to enhance the natural degradation processes. Biodegradation in the saturated zone can be used for the remediation of impacted soils. The correct site geologic and hydrogeological conditions are very important when considering the use of biodegradation technologies.

Physical/Chemical Treatment:

Vapor Extraction – Vapor extraction includes the addition of a vacuum on the subsurface soils to induce volatilization of organic constituents. Volatilization allows for the COCs to be removed from the subsurface soils in the gas phase.

Chemical Oxidation – In-situ chemical oxidation (ISCO) involves decomposition and in-situ destruction of COCs in the soils using chemical oxidation technologies. Soil reactivity with chemical oxidants or reducing agents is important when considering chemical oxidation. Successful chemical oxidation requires the oxidant to come into direct contact with the contaminant.

Soil Flushing – Soil flushing involves the use of a co-solvent or surfactant using an injection or infiltration process to move the co-solvent or surfactant through the impacted soils with the intent of removing COCs from the soils.

Institutional Controls – Applying institutional controls as a remedial measure involves the implementation of legally enforceable restrictions on land use to prevent exposure to impacted media. By preventing exposure, institutional controls can protect human health.

B. GROUNDWATER

The alternatives considered for the impacted groundwater, both on-site and off-site are as follows:

No Action – The No Action measure represents a baseline against which other alternatives are compared. This measure does not include remedial activities to address the affected groundwater on-site or off-site and would not limit risk posed by the COCs. The No Action measure would effectively amount to unmonitored natural attenuation.

Containment – Containment involves placing a physical barrier which prevents the lateral movement of COCs and therefore provides a means to reduce or eliminate an exposure pathway. Containment technologies like vertical impermeable barriers keyed into an impermeable zone below the contaminated groundwater aquifer would effectively block or redirect groundwater flow.

Removal – Removal involves the actual removal and treatment of the groundwater to remove COCs. The direct removal of COCs from groundwater can be accomplished by air stripping. Air stripping involves the removal of groundwater by pumping. The groundwater is then aerated to remove (volatilize) the COCs which are then trapped in activated carbon filters. The treated groundwater can be returned to the groundwater aquifer by injection or discharged through an ADEQ permitted discharge point.

In-Situ Treatments – These treatment methods are designed to reduce the COCs in the groundwater without removing the impacted groundwater. The in-situ treatment technologies for groundwater include Biological and Physical/Chemical treatments as follows:

Biological Treatment:

Monitored Natural Attenuation (MNA) – This alternative relies on naturally occurring subsurface processes under favorable conditions to

achieve site specific remediation objectives over time to reduce the concentration of COCs in the groundwater. Abiotic degradation changes the chemical composition of TCE through naturally occurring chemical reactions. However, this process is thought to be too slow to be considered a viable alternative for MNA. Aerobic and anaerobic biodegradation reduce TCE concentrations through biological processes carried out by bacteria in the subsurface.

Enhanced Aerobic/Anaerobic Biodegradation –With anaerobic biodegradation, nutrients are added to enhance the natural degradation of COCs through reductive de-chlorination. For reductive de-chlorination to occur, bacteria (i.e. Dehalococcoides) capable of de-chlorination must be present in sufficient quantity. If laboratory analysis indicates bacteria are not present or deficient in quantity, bacteria may be introduced to the groundwater along with the addition of nutrients. Reductive de-chlorination of TCE to DCE can occur under mildly reducing conditions utilizing NO_3^- or Fe^{3+}-reduction; however, the dechlorination of DCE to VC, and VC to ethene requires the stronger reducing conditions of SO_4^{2-}-reduction or methanogensis.

Both enhanced aerobic and anaerobic biodegradation require a thorough understanding of site geologic, hydrologic and groundwater geochemical conditions to be utilized successfully.

Physical/Chemical Treatment:

Vapor Extraction or Sparging – Vapor extraction includes the addition of a vacuum on the subsurface soil to induce volatilization of organic constituents. Sparging is the process of pumping air into the groundwater to assist in volatilization of the COCs. Volatilization allows for the COCs to be transferred from the groundwater to the subsurface soils in the gas phase. The COCs are then removed from the subsurface soils in the gas phase. Extracted vapors must then be processed through an activated carbon filter to remove the COCs.

Chemical Oxidation/Reduction – ISCO involves the decomposition and in-situ destruction of COCs in the groundwater using chemical treatment technologies. Saturated soil reactivity with chemical oxidants or reducing agents is important when considering the use of chemical oxidation or reduction. Successful chemical treatment requires the chemical agent to come into direct contact with the contaminant. ISCO involves the introduction of an oxidizing agent such as potassium permanganate or persulfate. In situ chemical reduction (ISCR) involves the introduction of a reducing agent, such as Zero Valent Iron, which can be used to destroy COCs in the groundwater. As with anaerobic bio-remediation, the correct

site geologic, hydrogeological, and geochemical conditions are critically important when considering the use of this technology.

Permeable Treatment Beds – Permeable treatment beds include the construction of a down-gradient trench filled with a material designed to either adsorb or chemically react with constituents in groundwater. As groundwater passes through the permeable bed, COCs would be treated or removed. Treatment beds include media (e.g. granular zero valent iron, mulch or other proven materials) that create a strong reducing or oxidizing environment to change chlorinated solvents to nontoxic end products.

Institutional Controls – Applying institutional controls as a remedial measure involves the implementation of legally enforceable restrictions on land use to prevent exposure to impacted media. By preventing exposure, institutional controls can protect human health.

6. PROPOSED/RECOMMENDED REMEDIES

A. SUBSURFACE SOILS

TCE impacted soils are not present off-site. Much of the on-site area where impacted soils are present is covered by asphalt and concrete which can be an effective horizontal barrier. The areas where impacted on-site soils are not currently paved should be paved to increase the surface area of the cover. The cover should be designed to provide run-off of surface storm water and to include an impermeable coating. The entire cover should extend past the impacted soil area in order to reduce the horizontal leaching through the soil column. In addition, institutional controls (restrictive covenants) should be applied to prevent excavation of the on-site impacted soils.

B. GROUNDWATER

Impacted groundwater is present both on-site and off-site. Figure 3 shows the location of the monitoring wells on-site and off-site. The highest impact of TCE in groundwater on-site has been identified at MW-25 near the northwestern corner of the building. TCE concentration at MW-25 in 2012 was measured at 56,000 micrograms per liter (ug/l). Additional areas of impact (greater than 10,000 ug/l of TCE) have been identified at ITMW-19 with 15,000 ug/l. Together these two points currently constitute the heart of the source area on-site. The groundwater plume extends approximately 1,000 feet to the south from this source area. The southern boundary of affected groundwater remains on-site in this direction. There are no known off-site groundwater impacts to the east, south or west of the Whirlpool property boundaries. Natural attenuation will not have a significant effect until these

two areas have undergone significant reduction in TCE concentrations and related "daughter" constituents (See Tables 2 and 3).

In situ chemical treatment (either oxidation or reduction) has been chosen by the ADEQ as a remedy to reduce the elevated TCE concentrations in the on-site and off-site groundwater. Prior to in situ chemical treatments, aquifer material samples will be obtained from both areas and bench tests will be conducted to determine the type and quantity of in situ chemical treatment material required to effectively treat the on-site and off-site groundwater. Aquifer material samples will also be tested for hydrologic and geochemical properties. Application of the chemical treatment will be of sufficient lateral and vertical density to ensure contact between the treatment material and groundwater contaminants. Based on subsequent monitoring results, it may be necessary to expand the treatment areas and/or re-treat the areas until measurable elimination trends in TCE concentrations and other COCs are achieved.

In addition to the chemical treatment remedy, MNA will be conducted for the contaminant plume. Aquifer material and groundwater samples representative of the horizons with impacted groundwater will be obtained for laboratory evaluation. Samples will be collected quarterly for the first two years. Sampling frequency after two years will be evaluated and determined based on groundwater data. These samples should be of sufficient lateral and vertical distribution to adequately define the hydrologic and geochemical makeup of the impacted groundwater flow system. The samples will be tested for hydrologic (hydraulic conductivity, porosity, etc.) and geochemical (dissolved oxygen (DO), Nitrate, Iron (Fe^{+2}), Sulfide, total organic carbon (TOC), etc.) properties, and will be evaluated for the presence of anaerobic bacteria (i.e. Dehalococcoides), as well as the capability of supporting abiotic, aerobic and/or anaerobic degradation of chloroethenes at a sufficient level to remediate the facility within a two year period (see section 11).

7. EVALUATION OF THE PROPOSED REMEDY & ALTERNATIVES

Each remedial alternative was evaluated on the following criteria: Overall protection of human health and the environment, short term effectiveness, long term effectiveness, implementability and cost. Please see Table 1 for alternative comparisons.

8. REMEDIAL ACTION LEVELS

A. SURFACE SOILS

The surface soils at the facility do not contain contaminants above acceptable direct contact risk-based screening levels. Therefore, no Remedial Action Levels (RALs) are required to be established for surface soils.

B. SUBSOILS

The subsurface soils at the facility were evaluated using acceptable direct contact risk-based screening levels for site workers and constructions workers. Subsurface soils at the facility were also evaluated using site-specific risk-based groundwater protection screening levels. No contaminants in subsurface soils exceeded the acceptable direct contact risk-based screening levels for site workers or construction workers. However, TCE did exceed the site-specific risk-based groundwater protection screening level. No other contaminants in subsurface soils exceeded the respective site-specific risk-based groundwater protection screening levels. Therefore, TCE is the only COC for subsurface soil. The Remedial Action Level for TCE in subsurface soils is presented in the following table:

Remedial Action Level for On-Site Subsurface Soils

Chemical	Subsurface Soil Remedial Action Level (mg/kg)[1]
Trichloroethylene (TCE)	0.129

(1) Site-Specific Risk-Based Protection of Groundwater Soil Screening Level – DAF 43.3 (Risk Evaluation Report June 2007)

C. GROUNDWATER

Remedial Action Levels for groundwater are presented in the following table:

Remedial Action Levels for On-Site and Off-Site Groundwater

Chemical	Remedial Action Level (ug/L)[1]
Acetone	12,000[2]
Benzene	5.0
Bromodichloromethane	80
Bromoform	80
Bromomethane	7.0[2]
2-Butanone	4,900[2]
Carbon Disulfide	720[2]
Carbon Tetrachloride	5.0
Chlorobenzene	100
Chloroethane	21,000[2]
Chloroform	80
Chloromethane	190[2]
Dibromochloromethane	80
1,1-Dichloroethane	2.4[2]
1,2-Dichloroethane	5.0
1,1-Dichloroethene	7.0
cis-1,2-Dichloroethene	70
trans-1,2-Dichloroethene	100
1,2-Dichloropropane	5.0
1,3 Dichloropropene	0.41[2]
Ethylbenzene	700
2-Hexanone	34[2]
4-methyl-2-pentanone	1,000[2]
Methylene chloride	5.0
Styrene	100
1,1,2,2-Tetrachloroethane	0.066[2]
Tetrachloroethene (PCE)	5.0
Toluene	1,000
1,1,1-Trichloroethane	200
1,1,2-Trichloroethane	5.0
Trichloroethene (TCE)	5.0
Vinyl chloride	2.0
Xylenes (total)	10,000

(1) Maximum Contaminant Level (USEPA May 2013)
(2) USEPA Tapwater Screening Level (MCL and Maximum Contaminant Level Goal Unavailable)

9. JUSTIFICATIONS FOR SELECTIONS

ADEQ has determined containment of the soils and In-Situ Chemical Oxidation/Reduction coupled with Monitored Natural Attenuation for the groundwater are the most effective remedial approaches at the Whirlpool facility.

A. SUBSURFACE SOILS

A containment based corrective measure would provide protection of human health and the environment since it reduces the exposure to the impacted soils. In addition, containment would reduce and prevent the downward migration of water through the contaminated soils; thus reduces the concentration of TCE transferred from soil to groundwater. This reduction mobility of TCE bound in soil will assist the groundwater remedy in meeting the RALs. This remedy will be coupled with an institutional control to prevent unauthorized excavation of the on-site impacted soils.

B. GROUNDWATER

In-Situ Chemical Oxidation/Reduction to reduce areas of elevated TCE concentrations coupled with Monitored Natural Attenuation would be effective in lowering the concentration of TCE in the groundwater both off-site and on-site to the RALs provided laboratory tests deem these to be viable remedies. These remedies will also be coupled with an institutional control to ensure that there is no on-site use of the contaminated groundwater.

10. SELECTED REMEDY/SITE PLAN

A. SURFACE AND SUBSURFACE SOILS

The entire impacted soil surface area will be covered with asphalt and an impermeable coating. The cover will be designed to prevent the water from migrating through the contaminated soils. The cover will be coupled with an institutional control to prevent unauthorized excavation of the on-site impacted soils. In addition, Whirlpool will implement a soil gas monitoring program to be sampled on a quarterly basis. Pending results, sampling frequency will be evaluated to determine if semiannual sampling for the remainder of a five year period is appropriate to ensure that vapor intrusion continues to be an incomplete pathway. Soil gas samples will be collected at approved monitoring points where groundwater concentrations exceed the MCL at or near the soil gas sampling point. The cost for this remedial action is estimated to be $600,000.00.

B. GROUNDWATER

Three treatment areas of groundwater with elevated TCE concentrations, both off-site and on-site will be constructed. These areas will be treated with an in situ chemical treatment (Figures 4 and 5). The type and quantity of oxidant or reducing agent will be determined by bench testing of impacted aquifer materials. The aquifer materials will also be tested to determine the nature of natural attenuation occurring at the facility. The aquifer will be evaluated for the following abiotic, aerobic and anaerobic conditions. The aquifer will also be evaluated for the presence of anaerobic bacteria (i.e. Dehalococcoides) and the capability of supporting chloroethene reductive reactions at a sufficient level to remediate the facility within a reasonable amount of time. Figures 4 and 5 show the planned locations where soil profiles and soil samples will be obtained as well as locations where a conductivity/hydraulic profiling tool will be used and aquifer slug testing conducted.

In-situ chemical treatments will be completed using GeoProbe® temporary points. Area 1 (the on-site source area) is currently estimated to be 320 feet by 80 feet, and as such would require approximately 256 injection points. Area 2 (north of Ingersoll Avenue) is estimated to be 210 feet by 20 feet and as such would require approximately 42 injection points. Area 3 (near IW-77) is estimated to be 90 feet by 30 feet, and as such would require approximately 27 injection points. Injection points may be added or removed depending upon the hydraulic conductivity and lithology identified during the pre-design phase of work and resulting design. Based on subsequent monitoring results it may be necessary to expand the treatment areas and/or re-treat these areas until a satisfactory reduction trend in TCE concentrations is achieved. It is important to note that Area 2 will additionally act as a permeable treatment wall intercepting possible groundwater flow from the source area to north of the facility boundary.

In addition to the chemical treatment remedy, MNA will be conducted for the on-site and off-site plume. The monitoring wells to be sampled include:

Plume Boundary Wells				
MW-50	MW-60	MW-61	MW-67	MW-66
MW-63	MW-62	MW-36	MW-27	MW-28
ITMW-16	ITMW-2	MW-22	ITMW-4	ITMW-6
MW-29	ITMW-20	MW-26	MW-31	MW-39
MW-40	IW-72	MW-68		

On-Site Wells				
MW-25	ITMW-19	ITMW-17	ITMW-11	ITMW-12
ITMW-18	ITMW-15	MW-38	MW-33	MW-65
MW-35R	IW-80	MW-34	MW-32	ITMW-21
ITMW-7	ITMW-10	ITMW-9	ITMW-1	ITMW-13
ITMW-14				

Off-Site Wells				
IW-73	IW-74	MW-41	IW-76	IW-77
MW-71	MW-46R	RW-69	MW-55	MW-56
MW-57	MW-58			

Plume boundary wells will be analyzed for MNA indicator parameters to determine background values against which plume well parameters can be compared. The monitoring well samples will be tested for COCs (see Table 2) and geochemical properties (see Table 3).

The cost for these remedial actions is estimated to be $5,400,000.00.

C. Placement of an Institutional Control

In order to further protect human health and prevent future groundwater use from the aquifer, institutional controls (ICs) should be implemented at the facility. A deed notification will be filed with the appropriate land records office. The deed notification would identify the kinds of contaminants present, and describe activities that should not be conducted at the facility and grant site access to ADEQ. During the performance of routine groundwater monitoring at the facility, a facility evaluation will be conducted to ensure that there is no on-site use of the contaminated groundwater.

Within sixty (60) days of the effective date of this RADD, the Facility must provide documentation of a deed restriction for the Facility.

11. EFFECTIVENESS MONITORING PROGRAM

A Quarterly Progress Report summarizing all remediation activities undertaken during the preceding calendar quarter should be submitted to ADEQ. The quarterly report shall include the following information:

- Soil Gas Monitoring Report – To monitor the soil gas concentration to confirm the groundwater-derived vapors are not migrating and that vapor intrusion continues to be an incomplete pathway. Please see Figure 6 for proposed sampling locations.

- Groundwater Monitoring Report – To monitor the concentration of COCs in the groundwater including TCE and daughter products (Table 2), and the geochemical parameters (Table 3) necessary to verify the effectiveness of the natural attenuation.

An Annual Progress Report summarizing the results of the groundwater remedial activities shall be submitted annually on January 15 for the previous years' activities to the citizens residing in the neighborhoods north of the Facility, city council, and ADEQ.

The condition of the soil cover should be assessed annually. This assessment should be included in the fourth quarterly report of each year.

Two years after initiating the remediation outlined in this RADD, Whirlpool is required to submit a technical review of the remedial activities and status of the remediation at the Whirlpool facility. This technical review shall assess the need for necessary further action beyond continued MNA. If after two years, there is not a significant reduction in COCs, Whirlpool will be required to submit plans for a separate remedial alternative to address the subsurface soils and on and off-site groundwater. The alternative remedial plan must be submitted within thirty (30) days of written notice by ADEQ that MNA has not been effective in greatly reducing the COCs.

12. SCHEDULE

A Final Remedy Work Plan containing the design specifications was submitted on July 16, 2013.

- All work plans submitted by the facility shall be updated to include the requirements of this RADD within 30 days of the effective date of the RADD.
- Whirlpool shall begin remediation of the TCE plume within 60 days after the effective date RADD.
- Within sixty (60) days of the effective date of this RADD, the Facility must provide documentation of deed restrictions or other legally binding restrictive mechanism for the facility which is impacted by the groundwater contamination.
- Quarterly reports will be due on February 15, May 15, August 15, and November 15 for the previous quarter's activities.
- Annual Progress Reports are due on January 15 for the previous years' groundwater remediation activities.
- The technical review of the remedial activities will be due December 31, 2015.

13. COMMUNITY PARTICIPATION

The notice of the RADD will be published in the Times Record by ADEQ to receive public comment. The public comment period for this RADD is thirty (30) calendar days. Due to public interest, ADEQ will hold a public meeting (public hearing). The day and time of the meeting will be included in the public notice.

Documents that aided in the development of this RADD are included in the administrative record. The administrative record for Whirlpool may be reviewed at the following locations:

Arkansas Department of Environmental Quality
Public Outreach and Assistance Division
5301 Northshore Drive
North Little Rock, AR 72218-5317

or

Fort Smith Public Library
3201 Rogers Ave
Fort Smith, AR 72903

14. COORDINATION WITH OTHER DIVISIONS/AGENCIES

It is important to involve/inform other divisions of ADEQ and other agencies as applicable, in the development of a RADD. To keep the USEPA informed of all remedial action work, the USEPA Region 6 will be provided a copy of the Public Notice and RADD for review and comment.

INTERNAL COORDINATION

ADEQ Divisions	Sent Notice of Decision
Water	Yes
NPDES	Yes
Air	Yes
Solid Waste	Yes
Regulated Storage Tanks	Yes
Environmental Preservation And Technical Services	Yes
Mining	Yes

EXTERNAL COORDINATION

Other State and Federal Organizations	Sent Notice of Decision
U.S. EPA, Region 6	Yes
AR Office of Emergency Services	No
AR Dept. of Health	Yes
AR State Clearinghouse	Yes
AR State Historic Preservation	Yes
AR Natural Heritage Commission	Yes
AR Game & Fish Commission	Yes
U.S. Army Corps of Engineers	Yes

The RADD was also sent to all applicable branches/sections of the Hazardous Waste Division, and to all division and agencies listed above.

TABLES

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Table 1- Comparison of Remedial Alternatives

Remedial Alternative	**Overall protection of human health and the environment**	**Compliance with ARAR**	**Long term effectiveness**	**Reduction of toxicity, mobility, or volume through treatment**	**Short term effectiveness**	**Implementability**	**cost**	**Community Acceptance**
No Action	No	No	No	No	No	No	N/A	No
Containment – Horizontal Barriers (Asphalt Cover)	Yes, protective on-site	Yes	Yes, regular maintenance is required	No, only reduces mobility of water through source area	Yes	Yes	$600,000	Acceptable if coupled with restrictive covenant
Containment – Vertical Barriers (Slurry Wall)	Yes	Yes	Yes	No, only reduces mobility of on-site impacts to off-site	Yes	Yes, however due to electric substation next to facility, difficult to implement.	$2,100,000	Potentially Acceptable
Removal – Soil (Excavation and Disposal)	Yes	Yes	Yes	Yes, reduces volume of contaminated soil	Yes, minimal effect due to high level of COCs in the groundwater comparing to soil	No, due to physical constraints like depth of contamination, surrounding structures & subsurface utilities	$9,500,000	Acceptance not likely due to limited benefit to the concentration of COCs in the groundwater
Removal - Groundwater – Extraction Wells and Extraction Trench (Pump & Treat)	Yes	Yes	Yes, reduces toxicity	Yes, reduces mobility of on-site impacts to off-site and reduces toxicity	Yes, effective in transmissive portions of aquifer	Potentially however difficult due to physical constraints like the presence of utilities and structures in addition to variation in the flow of groundwater	$3,200,000	Potentially Acceptable

Table 1- Comparison of Remedial Alternatives

Remedial Alternative	**Overall protection of human health and the environment**	**Compliance with ARAR**	**Long term effectiveness**	**Reduction of toxicity, mobility, or volume through treatment**	**Short term effectiveness**	**Implementability**	**cost**	**Community Acceptance**
In-Situ Treatment-Chemical Oxidation/ Reduction	Yes	Yes	Yes, reduces source COCs which in turn reduces the plume	Yes, reduces toxicity	Yes, reduces toxicity in a short period of time	Yes, it is effective in areas of elevated TCE concentrations but not favored site wide due to large number of wells required.	$4,500,000	Acceptable since it reduces the COCs
In-Situ Treatment – Permeable Treatment Beds	Yes	Yes	Yes, reduces COCs	Yes, reduces mobility and toxicity	Yes, minimally effective due to the need for groundwater to pass through the media	Potentially, however difficult due to physical constraints like the presence of structures and utilities and low groundwater flow	$4,800,000	Potentially Acceptable
In-Situ Treatment – Enhanced Biodegradation	Yes	Yes	Yes, reduces source COCs	Yes, reduces volume, mobility and toxicity	Yes, time is required to reduce the concentration of COCs	No, use may be limited due to high COC concentration	$2,300,000	Potentially Acceptable
Monitored Natural Attenuation	Yes	Yes	Yes, COCs decrease over time	Yes, reduces volume, mobility and toxicity	No, minimally effective due to time required	Yes	$900,000	Potentially acceptable when combined with on-site remedy
Institutional Controls – On-site	Yes	Yes	Yes	No Reduction	Yes	Yes	TBD	Potentially acceptable when combined with additional remedial option

Table 2. Constituents of Concern

Acetone
Benzene
Bromodichloromethane
Bromoform
Bromomethane
2-Butanone
Carbon Disulfide
Carbon Tetrachloride
Chlorobenzene
Chloroethane
Chloroform
Chloromethane
Dibromochloromethane
1,1-Dichloroethane
1,2-Dichloroethane
1,1-Dichloroethene
cis-1,2-Dichloroethene
trans-1,2-Dichloroethene
1,2-Dichloropropane
1,3 Dichloropropene
Ethylbenzene
2-Hexanone
4-methyl-2-pentanone
Methylene chloride
Styrene
1,1,2,2-Tetrachloroethane
Tetrachloroethene (PCE)
Toluene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethene (TCE)
Vinyl chloride
Xylenes (total)

Table 3. MNA Evaluation Constituents

Analysis
Ethene/Ethane
Methane
Manganese
Dissolved Oxygen
Nitrate/Nitrite
$Iron^{+3}$
Sulfate
$Iron^{+2}$
Sulfide
Oxidation Reduction Potential (ORP)
pH
Total Organic Carbon
Temperature
Specific Conductance
Carbon Dioxide
Acetylene
Chloroethanol
Alkalinity
Chloride
Hydrogen
Volatile Fatty Acids (Acetic Acid)
Phosphate
Ammonia
Dehalococcoides
Vinyl Chloride Reductase

FIGURES

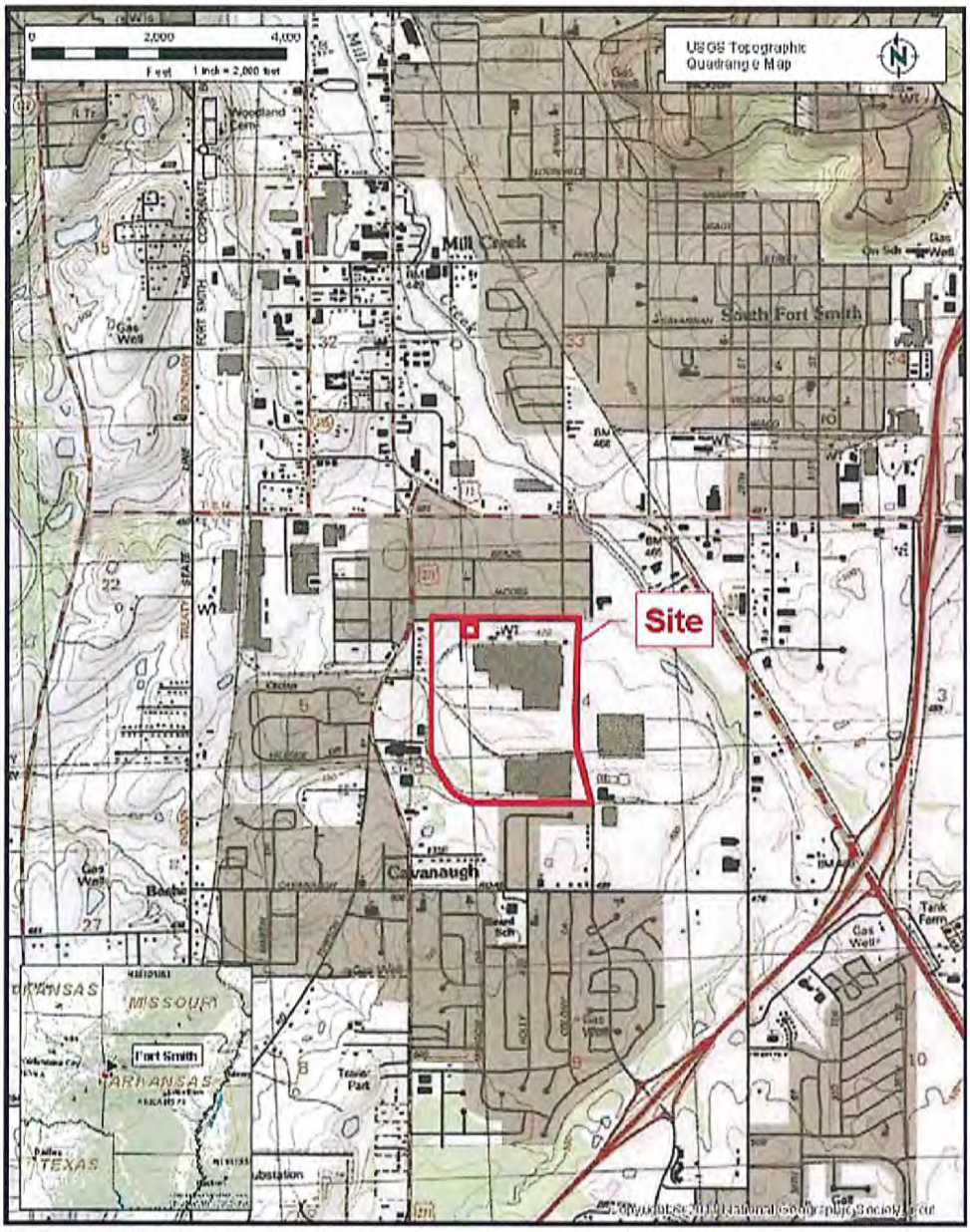


Figure 1. Portion of USGS 7.5 minute quadrangle showing topography at Whirlpool facility and approximate location of property boundary.

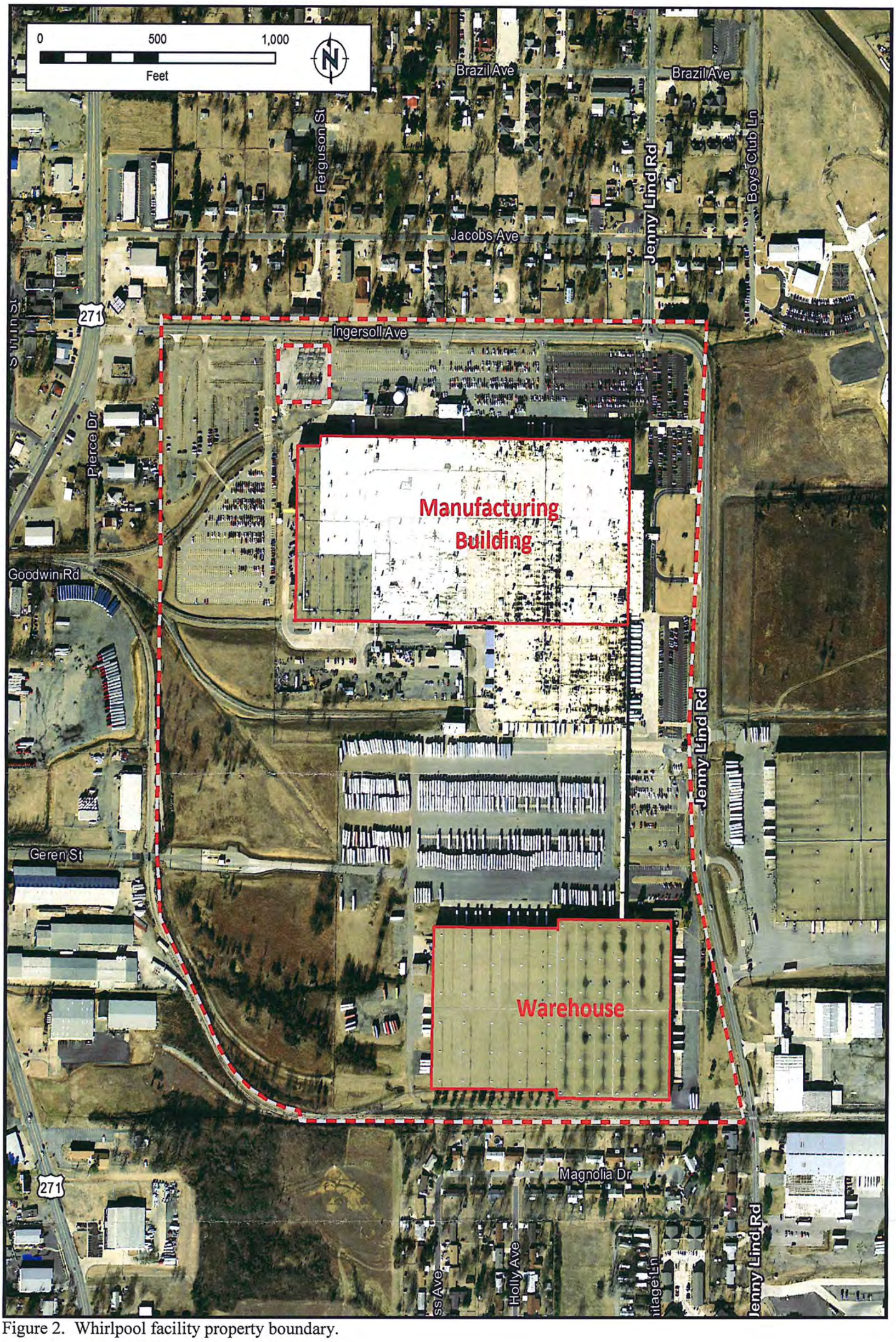


Figure 2. Whirlpool facility property boundary.

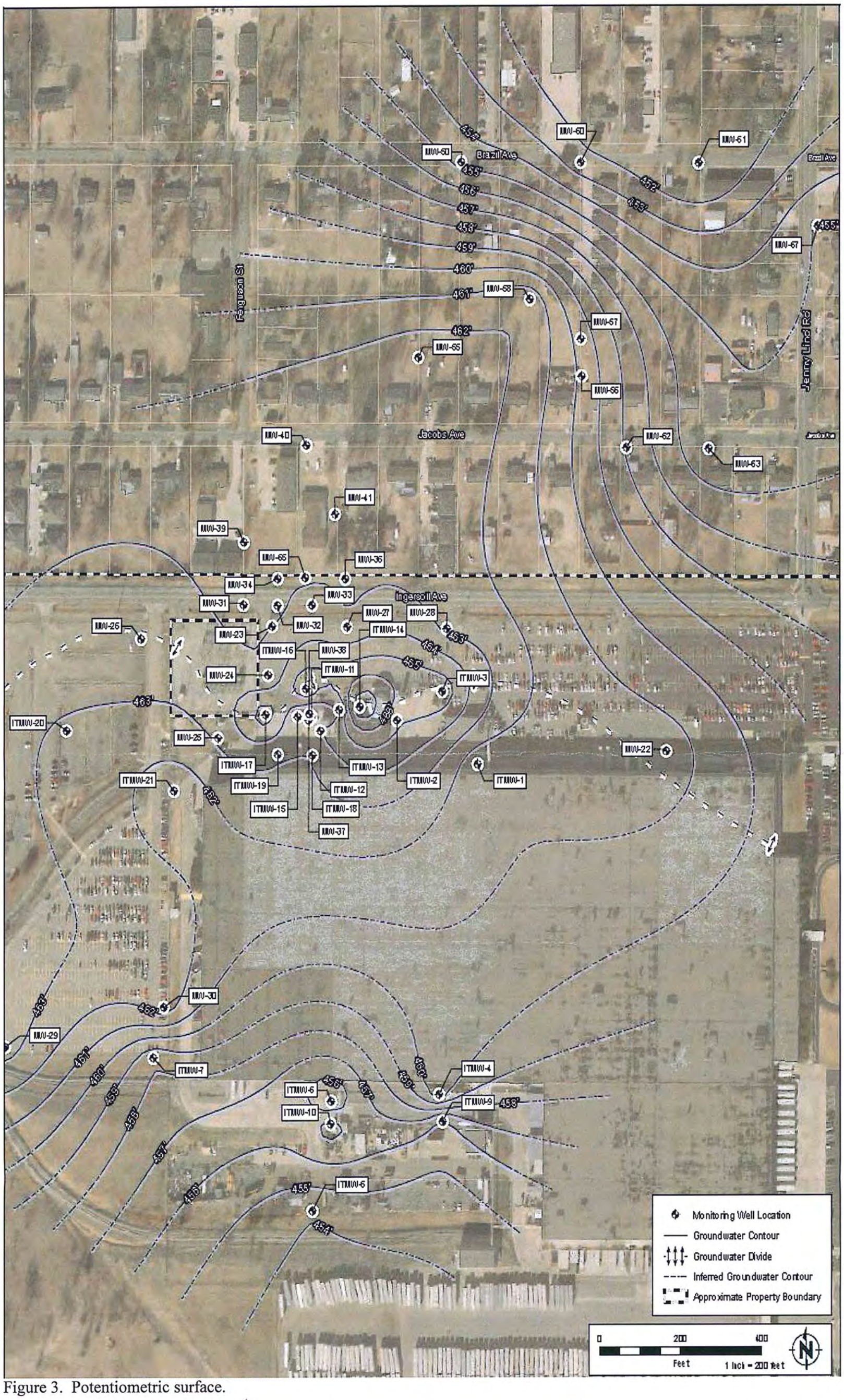


Figure 3. Potentiometric surface.

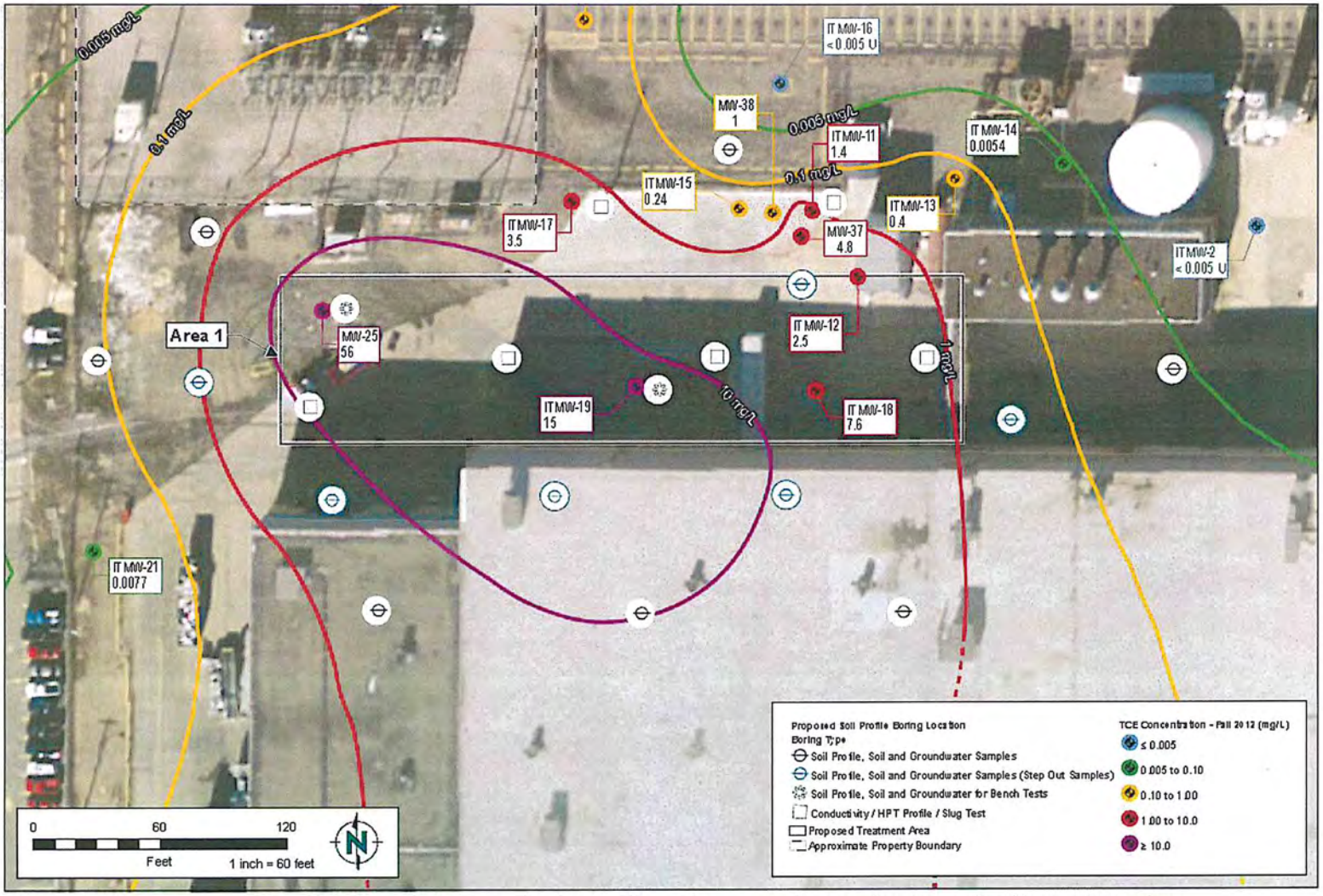


Figure 4. Source area (Area 1) with existing monitoring wells and proposed groundwater and soil sampling sites.

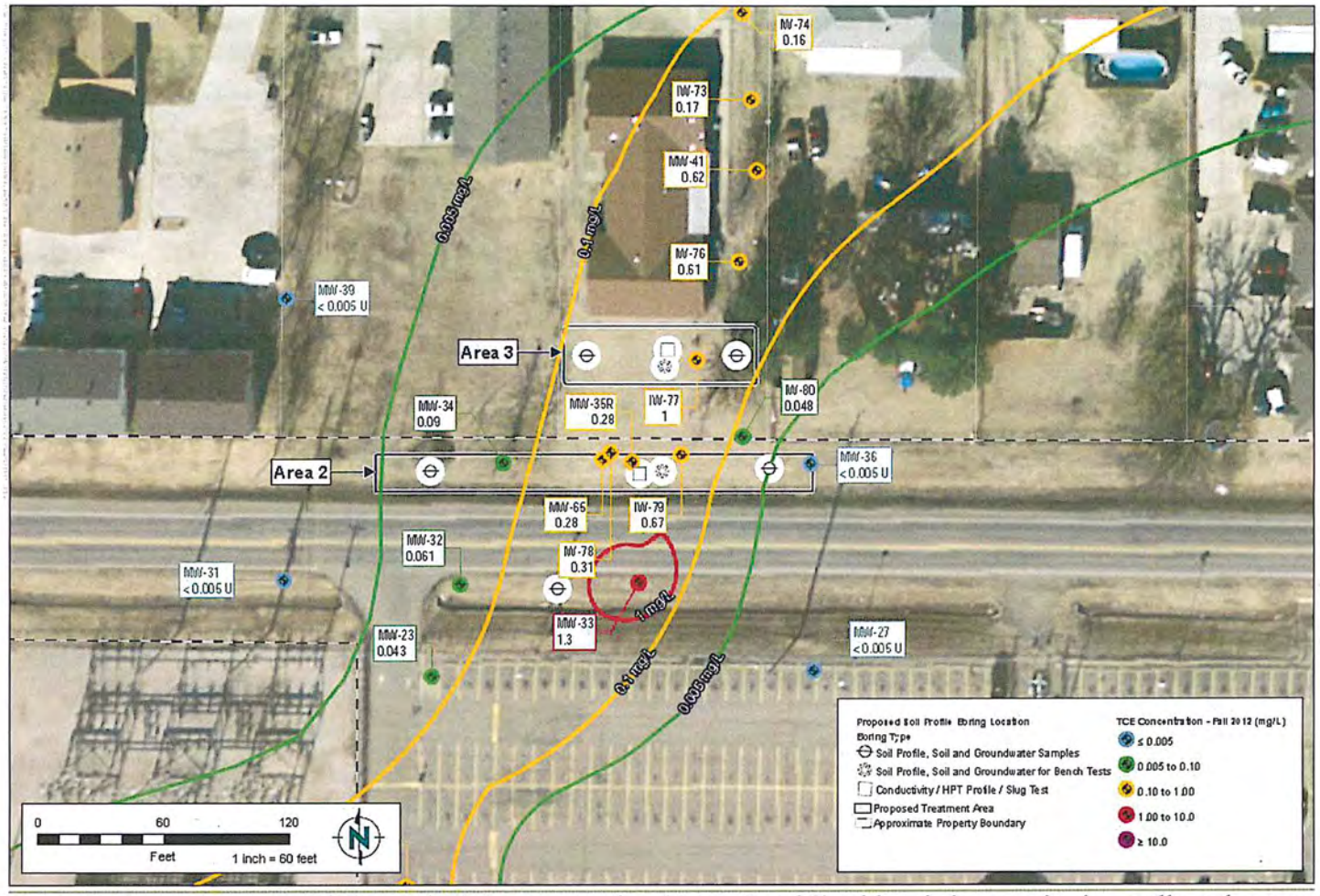


Figure 5. Secondary areas of elevated TCE concentration (Areas 2 and 3) with existing monitoring wells and proposed groundwater and soil sampling sites.

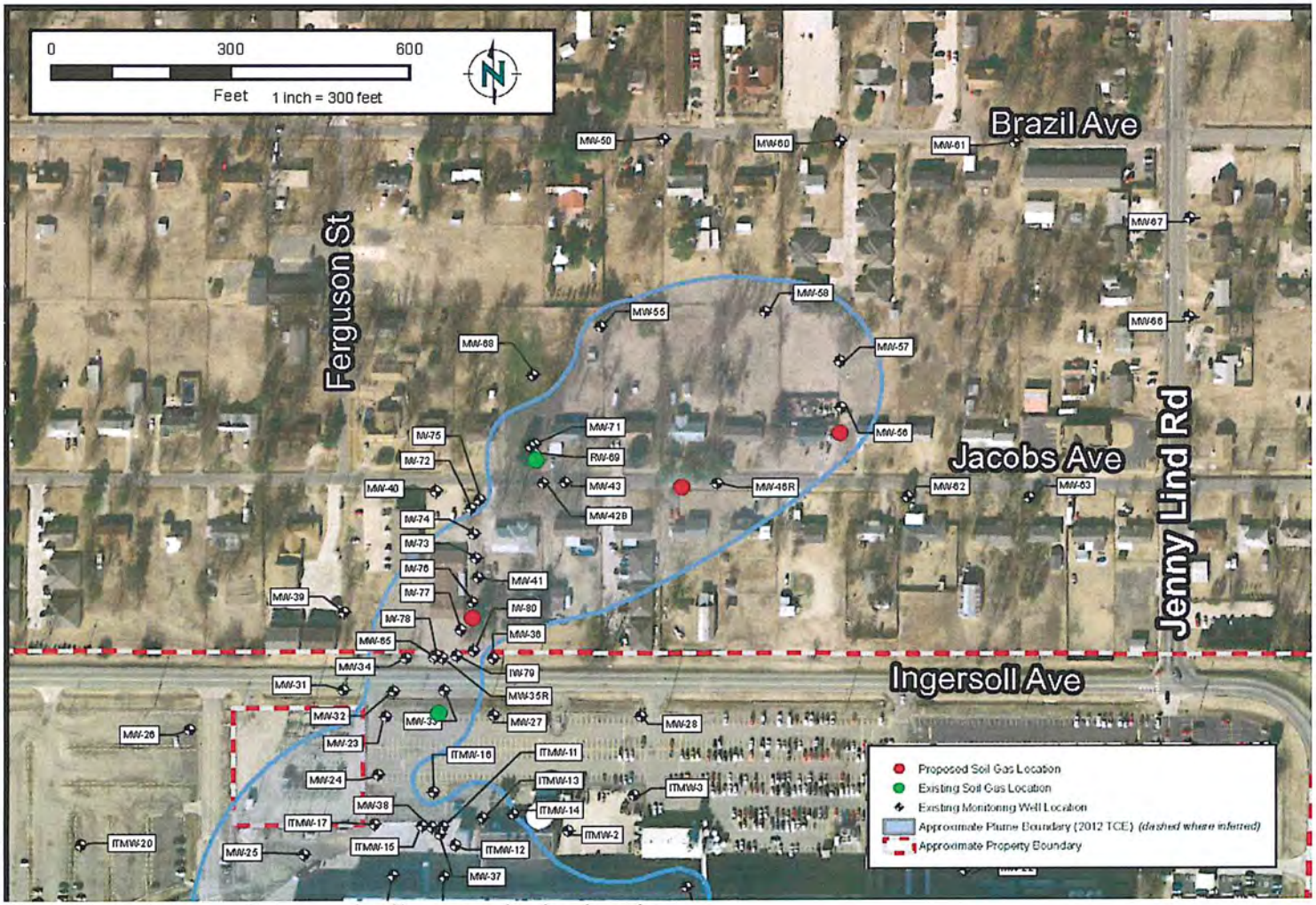


Figure 6. Existing and proposed soil gas monitoring locations.

RESPONSE TO COMMENTS
&
FINAL DECISION

on the

REMEDIAL ACTION DECISION DOCUMENT (RADD)

Whirlpool Corporation
6400 Jenny Lind Road
Fort Smith
Sebastian County
Arkansas

AFIN: 66-00048

A. INTRODUCTION

On October 14, 2013, the Arkansas Department of Environmental Quality – Hazardous Waste Division (ADEQ) proposed a Remedial Action Decision Document (RADD) for the Whirlpool Corporation site located at 6400 Jenny Lind Road, Fort Smith, Sebastian County, Arkansas. This RADD outlines the proposed remedy for the property.

This Response to Comments and Final Decision addresses and documents for the public record the comments and issues raised concerning the notice of the RADD, provides the Department's response to the issues raised during the public participation process; and sets forth the final decision and approval of the RADD attached herein.

B. SELECTED REMEDY

The selected remedy for the Whirlpool Corporation site is set forth in the attached final Remedial Action Decision Document (RADD).

Within thirty (30) days of completing all activities outlined in the RADD, the Whirlpool Corporation shall submit to ADEQ for review and approval a completion report. The completion report shall include information to document that no unacceptable risks, as described in A.C.A. § 8-7-502), remain on-site as a result of the release of hazardous substances, and the site has been remediated in accordance with the provisions set forth in the RADD. The completion report shall be reviewed by ADEQ and, upon written approval by ADEQ, a letter of No Further Action will be issued.

C. PUBLIC PARTICIPATION ACTIVITIES

The ADEQ issued a public notice of the RADD on October 14, 2013. Notice was published in the Times Record on October 14, 2013. The public comment period closed on November 18, 2013. A public hearing was held on November 12, 2013, and several written and oral comments were received prior to the end of the comment period.

D. PUBLIC COMMENTS AND THE DEPARTMENT'S RESPONSE

The following comments from Environ, on behalf of Whirlpool, were received on November 18, 2013:

Comment #1 (Technical Review Schedule):
Clarification of certain specific schedule requirements contained outside Section 12 which create inconsistencies with the schedule in Section 12 are beneficial to all parties. For example, on page 20, the RADD states that "Whirlpool shall begin remediation of the TCE plume within 60 days after the effective date RADD". How this requirement fits with the schedule in Section 12 or would be interpreted is unclear. Whirlpool is actively engaged in efforts necessary and required by ADEQ to assure a robust full scale remedy implementation that will include additional investigations, preliminary design, bench and pilot scale testing, and full scale design before implementation of the full scale remedy. Keeping the referenced statement in the Final RADD requires ADEQ to define "remediation" so Whirlpool can meet ADEQ RADD expectations. The statement could be misinterpreted by the public and create the unintended expectation that ISCO will begin as soon as 60 days, which is not the case, and which would be technically not feasible.

Response:
The selected remedy must commence within 60 days of the effective date of The RADD. If the selected remedy does not show significant reduction in the site related contaminant levels in 2 years, Whirlpool must submit an alternative plan for consideration. No change to the RADD is warranted.

Comment #2 (Start Dates and Performance Milestones):
The most significant schedule change proposed that will best address the progress being made on the site within the practical limitations that exist with the plan is related to the technical review of remedial activities proposed by ADEQ in the RADD by December 31, 2015. As outlined in the Work Plan requested by ADEQ and submitted by Whirlpool in July 2013, full scale implementation of the first phase of ISCO will not take place until 2015 resulting in insufficient time to determine the true effectiveness of the remedy. A submittal too early in the evaluation process will likely result in inconclusive data or data trends that have not been substantiated within an appropriate timeframe. Providing an additional year for this technical review will allow for the implementation of the Phase I injection program and sufficient monitoring after the implementation to provide data that will aid in assessing the effectiveness of the ISCO treatment and determinations as to

whether technical adjustments to the injection program need to be made as the remedy proceeds.

With the various phases of the proposed remedy implementation, Whirlpool requests all implementation dates and performance milestones except those specifically identified in Section 12 be developed, agreed to and enforced through ADEQ approved work plans, work plan updates or addendums. The work plans ADEQ requires in the RADD for review and approval before any work can commence at the site should be the detailed basis for moving forward including determining effectiveness in meeting all schedules and deliverables. A draft schedule was provided in the Work Plan submitted to ADEQ on July 16, 2013. While this schedule will be updated based on Final RADD requirements, it illustrates the framework Whirlpool is requesting ADEQ consider.

It should also be noted that delays in schedule outside of Whirlpool's control may affect the schedule outlined in the RADD. For example: local and State permitting delays, work plan approvals, off-site property access issues and adverse weather, etc. are not addressed nor are they afforded a framework for their potential impact to schedule in the RADD. Whirlpool pledges to work diligently in all aspects of implementation, but it is not uncommon for plans of this nature to reflect the realities of issues that might be outside the control of either Whirlpool or ADEQ. Thus, we propose the RADD should be revised to reflect that such delays may be presented to ADEQ and approved by ADEQ revising the schedule set forth administratively without formally reopening the RADD, which could actually result in further delay.

Response:
The selected remedy must commence within 60 days of the effective date of The RADD. If the selected remedy does not show significant reduction in the site related contaminant levels in 2 years, Whirlpool must submit an alternative plan for consideration. No change to the RADD is warranted.

Comment #3 (Constituents of Concern):
The Draft RADD states, "Based upon the historical process, the primary constituent of concern (COC) is TCE. However tetrachloroethene (PCE) and TCE daughter products, including cis-1,2-dichloroethene (cis-1,2-DCE), trans-1,2-dichloroethene (trans-1,2-DCE),1,1-dichloroethene (1,1-DCE) and vinyl chloride (VC) resulting from the natural degradation of PCE and TCE have also been detected in the groundwater monitoring wells". Other sections of the Draft RADD (listed below) include additional COCs not included in the COCs documented to be present at the site. Moreover, historical site activities do not warrant the inclusion of these additional COCs. Therefore Whirlpool requests ADEQ limit the Remedial Action Levels (RALs) table and COC Table 2 to TCE, PCE cis-1,2-DCE, trans-1,2-DCE, 1,1-DCE and VC as the COCs for the site.

To maintain consistency through the RADD, Table 2 titled Contaminants of Concern should be changed to Constituents of Concern.

Response:
The Human Health Risk Assessment mentions all concentrations of chemicals are assumed to be site-related and all detected chemicals are included in the risk assessment, regardless of their detection frequency. Therefore, all detected chemicals used in the Human Health Risk Assessment are included as Constituents of Concern and have Remedial Action Levels. To maintain consistency throughout the RADD, Table 2 has been re-titled as "Constituents of Concern" and includes all Constituents of Concern that require remedial action levels that are referenced in Section 8 of the RADD.

Comment #4 (Off-Site Soils):
Certain sections of the RADD do not clearly distinguish between on-site soils and off-site soils when discussing risk. With no known off-site impacts to soil there is no documented risk associated with off-site soil, so any discussion of risks associated with soil should clearly reference only on-site soil, and should make clear that there are no off-site impacted soils.

Response:
The text and tables in Section 3.A. and Section 8 mention there are no unacceptable risks due to direct contact with on-site and off-site soils. However, Section 8.B. does mention TCE is the only contaminant that exceeds the site-specific risk-based groundwater protection screening level for subsurface soils. This is shown on the table labeled "Remedial Action Level for On-Site Subsurface Soils". No contaminants in off-site soils exceeded direct contact risk-based screening levels or groundwater protection screening levels; therefore, no table was included for off-site soil. No change to the RADD is warranted.

Comment #5 (Groundwater Ingestion Pathway):
The RADD sets forth a summary of human health risks in Section 3. However it appears the risk associated with off-site groundwater ingestion has been omitted. All other exposure routes are clearly defined in the text with tables documenting the basis for the risk. There is no such discussion or presentation of data to substantiate the risk from off-site groundwater ingestion. There is only a single sentence statement at the very end of this section that states "However, if drinking water wells are installed on-site or off-site, significant potential risks could result from the use of groundwater."

Without the inclusion of the potential risk associated with off-site groundwater, there is no basis for incorporation of any future institutional control into the determination of future potential risk. Therefore, Whirlpool requests ADEQ acknowledge and include the current and future groundwater exposure risks and acknowledge that risk-based RALs can be applied to on-site and off-site groundwater until appropriate, enforceable institutional controls have been recorded to the satisfaction of ADEQ.

Finally, on page 4, the RADD accurately states that the depth to groundwater is routinely observed during the construction of monitoring wells to be 15 to 25 feet below ground surface but also notes that the measured depth in completed wells may be less in the

northeast portion of the off-site area. Because the measured depth in these particular wells may be related to confined aquifer conditions leading to artesian conditions impacting the measured depth to water within the monitoring well, this statement in the RADD does not impact the selected remedy and measured depth in the monitoring wells may not reflect actual groundwater depth. For these reasons, this statement should be deleted from the RADD.

Response:
The potential risks associated with the ingestion of off-site groundwater is discussed and presented in Section 3.A. The potential combined direct contact risk (ingestion, inhalation, and direct contact) for the community maintenance worker is 9E-07 (carcinogenic risk) and 0.5 (non-carcinogenic risk). The ingestion portion of this potential risk is 2E-08 (carcinogenic) and 0.006 (non-carcinogenic). The community maintenance worker was the only receptor that was quantitatively evaluated for the ingestion pathway in the Human Health Risk Assessment. Potable water is supplied by the Fort Smith municipal water system. However, since contaminants in groundwater exceed maximum contaminant levels (MCLs), potential risks to residents or community workers could result from the use of groundwater if drinking water wells are installed on-site or off-site.

Since most of the site contaminants that are found in groundwater off-site have MCLs, a risk-based RAL for off-site groundwater is inappropriate. No change to the RADD is warranted.

To more accurately reflect the groundwater condition off-site, the last sentence of Section 2 has been edited to state "The measured depth to water in the monitoring wells ranges from more than 10 feet bgs to almost zero in a northeast direction from the site. These measurements give a false impression that groundwater is at a much shallower depth than the confined aquifer."

Comment #6 (Effectiveness of Remedy):
Timely and appropriate determination of effectiveness of the remedy is critically important. The effectiveness determinations will be used to evaluate whether the selected remedial actions are achieving the desired goals and determining interim and final success or failure. Whirlpool is committed to implementing a successful project; therefore the methods and criteria used to evaluate the project should be clearly defined. Whirlpool requests ADEQ use the work plan document(s) to clearly define interim and final goals rather than the Final RADD.

Response:
The RADD is the document used to define the final remedial action levels that must be achieved by Whirlpool. No change to the RADD is warranted.

On-site, institutional controls in conjunction with an asphalt surface and impervious coating will be used to address surface soil impacts and mitigate risks associated with exposure to on-site soils. The effectiveness of a remedial measure off-site may also be

evaluated on a risk based method. As the remedy implementation process moves forward, circumstances may change resulting in changes to risks associated with off-site receptors, so it is important to allow flexibility in the path chosen to reach the site endpoint. Therefore the RADD should be amended to make clear that a no further action document may be obtained either through (a) the achievement of RALs for the relevant COCs by a combination of ISCO treatment, institutional controls and monitored natural attenuation or (b) a site specific analysis demonstrating that risk associated with all potential pathways has been reduced to acceptable regulatory levels based on a combination of ISCO treatment, institutional controls, and monitored natural attenuation.

Response:
Institutional controls as part of a remedy for off-site areas may be used as interim measures to prevent exposure to site contaminants. However, the ultimate goal of the remedial actions is to meet the RALs. No change to the RADD is warranted.

Comment #7 (Institutional Controls):
There are multiple points in the RADD requiring institutional controls that incorporate specific language concerning the control of future on-site exposures. An example is in Section 9 Justification for Selections, A. Subsurface Soils "This remedy will be coupled with an institutional control to prevent excavation of the on-site impacted soils." This sentence implies that excavation of on-site soil should never be allowed. The RADD should state that proposed remedies will be coupled with an institutional control to prevent unauthorized excavation of the on-site impacted soils. The intent of on-site institutional controls is not to prohibit the excavation of on-site soils, but to require that such activities be conducted in accordance with approved site specific risk management plans that will facilitate the full redevelopment of the site.

Response:
The RADD has been changed to incorporate "unauthorized excavation" of on-site impacted soil.

In Section 10 under "Selected Remedy/Site Plan, C. Placement of Institutional Control", it states in the second paragraph: "Within sixty (60) days of the effective date of this RADD, the Facility must provide documentation of a deed restriction for the Facility." This requirement should be revised to make clear that Whirlpool will submit a draft restrictive covenant prior to recording to allow for ADEQ comment.

Response:
ADEQ anticipates submittal of a draft institutional control allowing adequate time for review and filing to meet the 60 day deadline in the RADD. No change to the RADD is warranted.

The following comments were received by citizens living near the Whirlpool property:

Comment #8:
Ms. Carolyn Nichols, living at the residential property located at 1601 Jacobs, has expressed concern regarding the water accumulated at the surface of her yard. She stated the water accumulated at the yard could potentially be groundwater contaminated with TCE.

Response:
The same clayey silt that keeps contaminant vapors from entering buildings above the contaminated groundwater plume also keeps the contaminated water at a depth of 18-20 feet below the ground surface. Water at the surface is runoff from storm events and because of this same clayey silt, storm water takes longer to absorb into the ground. No change to the RADD is warranted.

Comment #9:
A number of citizens living in the area expressed concern regarding the health of their family due to TCE contamination. These individuals are requesting the cleanup of TCE at the site by Whirlpool Corporation. This inquiry is made by the following individuals on November 12, 2013: Waltrand Phillips, Joyce Mills, Raymond Nelms, Russ Grettum and Neal Morrison.

Response:
The remedy selected for the cleanup of TCE at the whirlpool site is protective of human health and the environment. The Final Remedy selected has been used at similar sites across the United States and meets the remedial action criteria acceptable to ADEQ. Whirlpool has conducted extensive investigations for the remedial action at this site and will continue the efforts toward remediation of TCE to the levels that will be protective of human health and the environment. The final remedy includes the treatment of contaminated groundwater on-site and off-site in order to eliminate or reduce the concentration of TCE in the groundwater plume. The on-site impacted soil will be covered with asphalt and an impermeable coating to prevent water migration through the impacted soil. In addition, a soil gas monitoring program will be implemented to insure that vapor intrusion continues to be an incomplete pathway. The remedial action will also include the placement of institutional controls to prevent future groundwater use from the aquifer. The Arkansas Department of Health has requested future monitoring data to allow completion of a Health Consultation for this area. This Health Consultation will evaluate health concerns. No change to the RADD is warranted.

Comment #10:
The following comments were made verbally at the public hearing conducted on November 12, 2013:

Mance Fowler
I think I basically said all I want to say about it. What type of remark are you wanting? What are you wanting to know how I feel about this. I think that just about everybody here believes that ADEQ hasn't really done what we expected them to do. We expected you to go in and make Whirlpool clean all of this up. To relieve our fears about what is

going to happen with this TCE and how it's going to affect our community. That's our main concern and my main concern is the health risk in our neighborhood and what's been happening in the last thirty years, and I would like to know for sure what's going to happen and how this is going to affect the city.

Response:
ADEQ is holding Whirlpool responsible for the clean-up. To most effectively reduce the concentration of contamination in groundwater the main source area on-site will be covered with asphalt and an impermeable coating. This will prevent any TCE remaining in the soil from being transferred to the groundwater. In Situ Chemical Oxidation (ISCO) will be used in the highest concentration areas in order to further reduce contaminant levels. This will prevent contamination from spreading into areas where MNA has degraded the TCE. The selected remedy will allow reuse of the building, which should bring jobs back to the community. No change to the RADD is warranted.

Marsha Brewer
Some of my concerns are the same as before. My biggest concern is my mother; she's lived in the same house on Jacobs Street since she was 29 years old which was 59 years ago. She's had some health issues, we lost my dad a few years ago to a rare neurological disorder that we can't prove or disprove the TCE did or did not cause that. My concern is my mom's health and all the health of the residents in the area. I just want a confirmation from ADEQ that this did not cause any of that.

Response:
ADEQ is not qualified to make medical assessments; however, ADEQ has shared citizen concerns with the Arkansas Department of Health. The Arkansas Department of Health has requested future monitoring data to allow completion of a Health Consultation for this area. This Health Consultation will evaluate health concerns. No change to the RADD is warranted.

Waldrand Phillips
My opinions are the same as what I said earlier. I still do not believe you people and you're just keeping us in a guessing game and you do not know how this is going to work. You're still wasting a lot of money and could compensate everybody for their property going down in value and cleaning the contaminated soil out and putting new soil in.

Response:
Whirlpool is financially responsible for the contamination. ADEQ cannot compensate individual homeowners. The only contaminated soil is located on the Whirlpool property. Cleaning the contaminated soil alone would not adequately address the contaminated groundwater. The remedial options that ADEQ has approved are technologies that have been proven to work across the country as well as here in Arkansas. No change to the RADD is warranted.

Kevin Settle

Kevin Settle, City Director of Ft. Smith – as I said earlier I'm a chemical engineer by trade. I disagree with putting asphalt all over it on the top of the existing area. I think that's the wrong method we should be using. An impermeable solution will eventually rot away and it has to be maintained. If someone forgets to maintain it then we're back in this problem five, ten, twenty years down the road instead of fixing the problem. In Mayflower there was an Exxon spill and yet Exxon stepped up purchased properties, remediating the site as quick as possible yet we're waiting thirty plus years. I think what they're trying to do is wait for the concentration levels to get as low as they can below accepted limits and then things are ok. That to me is the wrong way of doing it, they're just waiting. As I've said before mechanical extraction is the way to go, doesn't matter what the cost is or what it's going to take I think mechanical extraction is truly the way to go to resolve this problem as quick as possible instead of waiting five to ten years. I wish you had taken a trial marked up an area and tried this out. As you've said, hoped and as Whirlpool has said in the last meeting they hope this works. Hope to me is too long. Hydrogeological conditions must be right. We don't know when that is but hope is what's been said twice it works. What happens if this works there should be a plan B already set in place so that in a year or two years from now it's ready to go instead of going back through and trying to have another year or two years discussions. I understand what you can't do with for property values but you can do something about trying to do whatever you can to make the property values whole. You have the power to make this better it's not good at all. To me this is a cheap plan and we the citizens of Fort Smith deserve better. I have some major concerns about the Whirlpool remediation plan; the plan in my mind is weak and does not resolve the problem quickly. The plan does not address the chemical issue the homeowners have been living with for the past thirty years. The plan doesn't address the homeowner's whole with the major decline in property values. The plan doesn't focus on resolving the problem quickly so we can get the commercial property back in use hopefully we can get a new employer in our wonderful city. Whirlpool in my opinion has been focused on more of the low cost the long duration fix which they hope will work. In my opinion I think the city continued to be a problem in our city. ADEQ I know this is on the record. I think ya'll need to take a step back and really think about what you're hearing from the citizens tonight. It's been thirty plus years, the employer abandoned us. They left us said they're going to Mexico, when realistically they went to Mexico in Iowa. I think they left for other reasons; if you really want to you know listen to what they're saying; make sure this is the right decision because we cannot wait another five or ten years. And maybe hopefully this works. We need to get this done quickly the citizens of this area, the citizens of Fort Smith deserve better.

Response:

Maintenance of the asphalt and impermeable cover as well as the rest of the remedy is required by the RADD. The ADEQ required Whirlpool to investigate the potential contamination once we became aware of the problem. The investigation was conducted in phases. Once the data was available, ADEQ required Whirlpool to evaluate and propose a remedy. Mechanical extraction of the groundwater is not viable. Groundwater does not move quickly through the aquifer or along well defined pathways.

Mechanical extraction was attempted in a pilot study. The maximum sustainable pumping rate in the well was 0.5 gallons per minute. Mechanical extraction of the on-site contaminated soil would require removal of site structures which would prevent use of the buildings. The depth of the excavation could be below groundwater. Citizens near the site could be exposed to contamination due to the large volume of contaminated soil and water that would need to be removed. No change to the RADD is warranted.

The RADD does include a plan B. ADEQ is committed to a tight schedule for reaching the remedial goals. Should the evaluation of remedial activities not show significant reduction in contamination, another remedy must be proposed and implemented. The potential remedies are evaluated by specific criteria as noted in Table 1 of the RADD. ADEQ has selected the remedy which will be most effective and efficient and will allow for reuse of the property to benefit the community. Cost is considered, but only after the other criteria. No change to the RADD is warranted.

Pam Webber

Thank you for being here tonight. I wish you had come years ago. The tragic part of this to me and what I've hear tonight from the citizens is their lack of trust in Whirlpool and how this is being handled by you. I'm a city director; I'm not going to argue Science with you tonight. I just want to say on behalf of the citizens who've all sat here tonight, think about them. Have you really listened to them, have you listened to them as much as you have with Whirlpool or had conversations with them like you have with Whirlpool? These are not affluent citizens in this neighborhood, they've worked all of their lives they've saved their money. Probably their biggest investment was their home. What has happened to their home value, many of them are looking at illness and retirement and their future. They have inheritance for their children that has basically been destroyed. I'm also a realtor if you sell a property you're going to fill out a sellers disclosure asking if there's been a chemical problem near your property or on your property. Every one of these property owners is going to check yes. They are not going to be able to sell their property for anywhere near what it's worth or what they paid for it. You say you don't have the power to help with their property, of course you do. You have to do what's right for these property owners, and of the opinion of myself and most of these property owners you have chosen the cheapest route for Whirlpool. Whirlpool is a multimillion dollar corporation that this city was very good to. We need you to be good to our citizens and Whirlpool representatives we need you to do the right thing for our citizens. If they were really going to do the right thing they would go in and buy these properties and make it whole. You know that and I know that. Thank you for coming, you need to come more often and before you make a decision you really need to think about the people in this room who've spoken to you and are living this every day. Thank you

Response:

ADEQ has responded to all comments and concerns brought to our attention. Citizens are encouraged to contact ADEQ electronically, by phone or by mail. Please see response to Comment #9 regarding the health concerns at the site. The recommendation regarding the excavation of the contaminated soil at the site was evaluated in the RADD and it is not practical for the Whirlpool site (see Table 1). The greatest impact has been

identified within the gravelly sand portion approximately 20 to 35 feet below ground surface. The area at the site that would be targeted for removal is located between multiple buildings surrounded by subsurface utilities which limit the technical practicability of an active removal action. ADEQ is requiring Whirlpool to utilize the most efficient remedial option. Cost is the last item considered in any remedy chosen by ADEQ at any site. ADEQ cannot require Whirlpool to purchase properties. ADEQ has required Whirlpool to remediate the contamination for which Whirlpool is responsible. No change to the RADD is warranted.

Comment #11:
Ms. Debbie Keith, resident of Fort Smith near the Whirlpool site, had the following comment:

Can someone explain to me why Whirlpool/Environ uses micrograms per liter to measure the levels of TCE and not the standard EPA measurement of milligrams per liter? Please see page 13 of the proposed RADD. I noticed upon reviewing the different groundwater sampling reports that Environ uses both measurements, therefore confusing the reader. This conversion is not simple for the average person. A clean and honest report should be consistent with measurements and not jump back and forth requiring conversion. For example: Sep 2002 well 25 have a reading of 157.0 mg/l and now they use ug/l as you can see on the reading of 56,000 ug/l on well 25 for the latest groundwater reading.

Response:
The Environmental Protection Agency does not specify a standard unit exclusively for the measurement of liquids such as groundwater. ADEQ accepts the reported analysis for the groundwater in milligrams per liter (mg/l) as well as micrograms per liter (µg/l). These units can be converted from one to the other. No change to the RADD is warranted.

I was told by Mr. Noel that my groundwater was 10 ft below me. During the latest reading of levels conducted by Environ, I was observing the workers and one of them stated that groundwater was 4.8 ft. below me. We continue to be told that there is no vapor intrusion, co-mingling of surface and groundwater, safe to garden, etc. If the ditch in my yard is 2 1/2 feet deep (stands in water constantly) and the groundwater is only 2 feet below that water....how is it that the storm water runoff is safe to go into the city's water supply?

Response:
The clayey silt present from near the surface to approximately 20 feet below ground surface prevents vapor intrusion. This same clayey silt prevents water on the surface from soaking in and causes water on the surface to runoff into ditches. The groundwater monitoring well on your property extends through the clayey silt into the gravel and sand aquifer at approximately 20 feet below the ground surface. Penetrating into the aquifer causes the water to rise inside the well where it can be measured at 4.8 feet below the ground. The contaminated groundwater is only at this depth inside the well. Storm water in the ditch is separated from the groundwater by approximately 17.5 feet of clayey

silt. The city is responsible for monitoring water entering the storm water system. The public utility is responsible for the public water supply. No change to the RADD is warranted.

The levels have decreased four fold on average over the last two years....this information came from Tamara Knight at the meeting in January. I can't for the life of me imagine what the original levels were in the beginning.

Another point I would like to add is that Whirlpool burned waste from the plant at night in the 90's. I have a maintenance person that will testify to this and upon calling 911 that night, I was told it was a controlled burn. What kind of pollution was our neighborhood exposed to then?

Response:
ADEQ is not aware of these activities and is not able to make a determination based on limited information. No change to the RADD is warranted.

I am still not clear as to why the public was not notified appropriately and in a timely manner when there was discovery of groundwater contamination. For a minimum of ten years, Whirlpool and ADEQ were working on this contamination and Whirlpool waited to leave town to inform us.

Response:
ADEQ published the appropriate Public Notice for hazardous waste activities at the Whirlpool facility when we became aware of these activities. The ADEQ required Whirlpool to investigate the potential contamination once we became aware of the problem. The investigation was conducted in phases. Once the data was available, ADEQ required Whirlpool to evaluate and propose a remedy. No change to the RADD is warranted.

Every time I turn on the TV, computer, open a paper or magazine I get tons of advertisements for Whirlpool. This is obviously not an issue of money and would like our situation to be treated as if it were more important to protect and repair our community than constantly see advertisements. I believe that Dr. Phil or 20/20 would be interested in the length of time spent on cleaning this mess up.

Response:
This comment appears to be directed at Whirlpool. ADEQ can not answer for them. ADEQ will continue to hold Whirlpool responsible for clean up of the site. No change to the RADD is warranted.

My Great Grandfather built my home before Whirlpool came along. As I sit in my home with failing health and plummeting property values, I ask myself does anyone care?

Response:
ADEQ is concerned for the citizens of Arkansas. The Arkansas Department of Health has requested to receive future monitoring data to allow completion of a Health Consultation for this area. This Health Consultation will evaluate health concerns. No change to the RADD is warranted.

Comment #12:
Sarah Jones Winters made a written comment on November 12, 2013 and has stated, "I have a question about our living? Are we going to be safe and healthy? The water has got a smell to it and also the ice.

Response:
Please see response to Comment #9 regarding human health concerns. The smell from the drinking water is not related to the groundwater TCE plume at the Whirlpool site. The drinking water provided to the residences near Whirlpool is being treated by the City of Fort Smith. Any concern related to the drinking water and should be directed to the City of Fort Smith. No change to the RADD is warranted.

The Arkansas Department of Health had the following comments:

Comment #13:
Page 18, Section 10. B. Groundwater: Reference is made to 12 off-site wells being monitored for contaminants of concern (Table 2) and geochemical properties (Table 3). Figure 3 and Figure 5 of the document show these off-site well locations on commercial property (i.e., community housing) and private residential property north of the Whirlpool facility on Ingersol Avenue and Jacobs Avenue. Some of these groundwater monitoring wells have been previously documented as having trichloroethylene (TCE) concentrations detected above 1,000 micrograms per liter (page 4, Section 2). As part of a public health notification, ADH recommends that responsible parties regularly report to each off-site property owner the test results and/or monitoring data from groundwater monitoring wells located on their property.

Response:
ADEQ agrees. The RADD includes a reporting requirement in Section 11 for reporting to the ADEQ, the Fort Smith City Council, and the residents north of the facility. No change to the RADD is warranted.

Comment #14:
Page 19, Section 11. Effectiveness Monitoring Program: Reference is made to off-site soil gas monitoring sites being tested quarterly to monitor for potential vapor intrusion exposure. Figure 6 of the document shows these existing and proposed off-site well locations on commercial property (i.e., community housing) and private residential property north of the Whirlpool facility on Ingersol Avenue and Jacobs Avenue. As part of a public health notification, ADH recommends that responsible parties regularly report

to each off-site property owner the test results and/or monitoring data from soil gas monitoring sites located on their property.

Response:
ADEQ agrees. The RADD includes a reporting requirement in Section 11 for reporting to the ADEQ, the Fort Smith City Council, and the residents north of the facility. No change to the RADD is warranted.

Comment #15:
Page 22, Section 14. Coordination with Other Divisions/Agencies: An External Coordination table states that the Arkansas Department of Health and Human Services was sent a Notice of Decision. Please change this agency name to read "Arkansas Department of Health," as it is no longer merged with the Department of Human Services. In future correspondence of decision notices, please send a copy directly to the ADH Environmental Epidemiology office at the following address to ensure our personnel receive time-sensitive documents by the effective means necessary to conduct a timely review:

Response:
ADEQ agrees. The revision will be made to reflect the agency name change and time-sensitive documents will be forwarded to ADH Environmental Epidemiology office directly in the future.

E. FUTURE ACTIONS

Effective with this Decision, the final Remedial Action Decision Document is incorporated into and becomes a condition of the Consent Administrative Order between Whirlpool Corporation and the Department, as though set forth therein line for line and word for word.

F. DECLARATIONS

ADEQ believes that the remedy set forth in the RADD for the Whirlpool Corporation in Fort Smith, Arkansas is appropriate, technically feasible, reliable, and cost effective. With respect to risk management decisions made by ADEQ, this remedy is deemed acceptable, and to be protective of human health and the environment.

Tammie J. Hynum
Chief
Hazardous Waste Division
Arkansas Department of Environmental Quality

DEC. 27, 2013
(Date)

Enclosure:
Comments
Final RADD

ENVIRON

November 18, 2013

Via Hand Delivery

Ms. Tammie J. Hynum
Chief, Hazardous Waste Division
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

Re: Whirlpool Corporation, Fort Smith, Arkansas
Comments on September 2013, Draft Remedial Action Decision Document
EPA No. ARD042755389 AFIN No. 66-00048

Dear Ms. Hynum:

ENVIRON International Corporation (ENVIRON) on behalf of Whirlpool Corporation (Whirlpool) has prepared this document as a formal written response to the Draft Arkansas Department of Environmental Quality (ADEQ) Draft Remedial Action Decision Document (RADD) dated September 2013 (AFIN: 66-00048) as published in the News Release dated October 14, 2013.

Whirlpool overall supports the remedy set forth in the RADD with recommended changes that we believe strengthen the objectives of treating the site and doing so with appropriate and effective reporting. Whirlpool will be prepared to implement the remedy once the RADD has been finalized. In-Situ Chemical Oxidation (ISCO) treatment has been used to remediate groundwater contamination at sites around the United States and in Arkansas, and Whirlpool concurs that the combination of an asphalt impermeable cover for the on-site source area, ISCO treatment, institutional controls, and monitored natural attenuation will provide a protective remedy.

In keeping with the May 21, 2013 Revised Risk Management Plan (RRMP), June 14, 2013 Revised Risk Management Plan Addendum (hereinafter the Revised Risk Management Plan and Addendum will be collectively referred to as the RRMP), and the July 16, 2013 Draft Final Remedy Work Plan (Work Plan), ENVIRON requests ADEQ consider the following suggested minor modifications to the RADD. Incorporating these comments would clarify certain statements in the RADD. The modifications would also make clear that future required submittals (as approved by ADEQ) would further establish the schedule beyond the milestones set forth in the RADD and would allow for some flexibility on the specifics of remedial timing and implementation based on data and information gathered during design and during pilot implementation, and other considerations such as the possible adoption of institutional controls. This flexibility would allow for minor changes, improvements or modifications to the remedy as new data and information is obtained without having to modify or reissue the RADD.

Whirlpool remains committed to working with ADEQ, as well as the City of Fort Smith and the residents of the area, until this issue has been addressed. Whirlpool looks forward to the finalization of RADD

following ADEQ's review of the comments submitted during the comment period, and to initiating the remediation activities once approval has been given.

Site History

The Whirlpool Fort Smith site is located at 6400 Jenny Lind Road on the south side of Fort Smith, Arkansas. The site manufactured side-by-side household refrigerators and trash compactors. The property (approximately 153 acres) consists of the main manufacturing building (approximately 1.3 million square feet), separate warehouse and administrative offices, and undeveloped land (approximately 21 acres) Additional buildings located on the north side of the property include a water treatment plant and a boiler house. The majority of the property surrounding the buildings consists of concrete or asphalt service roads and parking areas. Some gravel parking areas are also present.

Whirlpool entered into a Letter of Agreement (LOA) with the Arkansas Department of Environmental Quality (ADEQ), dated July 19, 2002 (ADEQ 2002). Under the LOA, Whirlpool has been following ADEQ program requirements including the United States Environmental Protection Agency's (USEPA's) Corrective Action Strategy, which includes the development of a conceptual site model (CSM), describing environmental conditions at the site. To date, Whirlpool has met the LOA requirements including items required / requested by ADEQ by Items F and G, of the LOA.

All completed investigations, reports, and monitoring events have been used by Whirlpool to create a full understanding of the site background, delineate Constituents of Concern (COCs) in soil and groundwater, evaluate potential exposure pathways for the risk assessment, and propose a corrective measure, all of which are detailed in the RRMP and Work Plan.

The following sections provide Whirlpool's general and detailed comments on the RADD. Each section discusses the general issue along with solutions and corresponding references to specific sections of the RADD.

1 Schedule

Whirlpool agrees with the dates for quarterly, annual and five year reporting, and for recording of deed restriction documentation that are specifically addressed in the RADD. Whirlpool also agrees that the Work Plan will be updated to include the requirements of the RADD, and proposes it should be done within 30 days of the later of the effective date of the RADD or the effective date of an administrative consent order that will accompany or shortly follow the RADD. Further, we feel the schedule set forth in Section 12 of the RADD should be modified to strengthen the overarching objectives of treating the site while being transparent and providing reports on the progress being made.

The schedule in Section 12 of the RADD should contain a specific statement that acknowledges that the Work Plan and subsequent documents will develop a more detailed schedule with project milestones subject to ADEQ approval. Any remaining references throughout the RADD document to specific start

dates or deadlines based on the effective dates of the Final RADD should be deleted to eliminate the potential for inconsistent deadlines throughout the document and to place all schedule requirements in Section 12. This will allow future schedule modifications through modification and approvals to the Work Plan without reopening the RADD.

Second, the technical review of remedial activities should commence on or after December 31, 2016. As explained further below, providing additional time for this technical review will provide an opportunity for Whirlpool to implement and optimize operation of the ISCO treatment and will allow the oxidant to reach and react with the contaminants of concern (COCs) for a reasonable period of time prior to attempting to evaluate the effectiveness of the ISCO treatment. The work required for the deployment of a successful remedy including ISCO treatment, will begin in the timeframe discussed in the RADD whereby Section 12 of the RADD states that remediation will begin within 60 days after the effective date of the RADD.

Third, as is commonly recognized in such plans, the schedule should contain a specific recognition that events beyond Whirlpool's control may impact any ADEQ approved schedule and that, if such an event occurs, the schedule may be adjusted with ADEQ's consent.

Each of these comments is addressed further below.

1.1 Technical Review Schedule

Clarification of certain specific schedule requirements contained outside Section 12 which create inconsistencies with the schedule in Section 12 are beneficial to all parties. For example, on page 20, the RADD states that "Whirlpool shall begin remediation of the TCE plume within 60 days after the effective date RADD". How this requirement fits with the schedule in Section 12 or would be interpreted is unclear. Whirlpool is actively engaged in efforts necessary and required by ADEQ to assure a robust full scale remedy implementation that will include additional investigations, preliminary design, bench and pilot scale testing, and full scale design before implementation of the full scale remedy. Keeping the referenced statement in the Final RADD requires ADEQ to define "remediation" so Whirlpool can meet ADEQ RADD expectations. The statement could be misinterpreted by the public and create the unintended expectation that ISCO will begin as soon as 60 day, which is not the case, and which would be technically not feasible.

1.2 Start Dates and Performance Milestones

The most significant schedule change proposed that will best address the progress being made on the site within the practical limitations that exist with the plan is related to the technical review of remedial activities proposed by ADEQ in the RADD by December 31, 2015. As outlined in the Work Plan requested by ADEQ and submitted by Whirlpool in July 2013, full scale implementation of the first phase of ISCO will not take place until 2015 resulting in insufficient time to determine the true effectiveness of the remedy. A submittal too early in the evaluation process will likely result in inconclusive data or data trends that have not been substantiated within an appropriate timeframe. Providing an additional year for this technical review will allow for the implementation of the Phase I injection program and sufficient

monitoring after the implementation to provide data that will aid in assessing the effectiveness of the ISCO treatment and determinations as to whether technical adjustments to the injection program need to be made as the remedy proceeds.

With the various phases of the proposed remedy implementation, Whirlpool requests all implementation dates and performance milestones except those specifically identified in Section 12 be developed, agreed to and enforced through ADEQ approved work plans, work plan updates or addendums. The work plans ADEQ requires in the RADD for review and approval before any work can commence at the site should be the detailed basis for moving forward including determining effectiveness in meeting all schedules and deliverables. A draft schedule was provided in the Work Plan submitted to ADEQ on July 16, 2013. While this schedule will be updated based on Final RADD requirements, it illustrates the framework Whirlpool is requesting ADEQ consider.

Schedule Delays Outside Whirlpool's Control

It should also be noted that delays in schedule outside of Whirlpool's control may affect the schedule outlined in the RADD. For example: local and State permitting delays, work plan approvals, off-site property access issues and adverse weather, etc. are not addressed nor are they afforded a framework for their potential impact to schedule in the RADD. Whirlpool pledges to work diligently in all aspects of implementation, but it is not uncommon for plans of this nature to reflect the realities of issues that might be outside the control of either Whirlpool or ADEQ. Thus, we propose the RADD should be revised to reflect that such delays may be presented to ADEQ and approved by ADEQ, revising the schedule set forth administratively without formally reopening the RADD, which could actually result in further delay.

1.3 Locations to address within the RADD:

Section 10 – Selected Remedy/Site Plan; C. Placement of Institutional Control
Section 11 – Effectiveness Monitoring Program
Section 12 – Schedule

2 Constituents of Concern

The Draft RADD states, "Based upon the historical process, the primary constituent of concern (COC) is TCE. However tetrachloroethene (PCE) and TCE daughter products, including cis-1,2-dichloroethene (cis-1,2-DCE), trans-1,2-dichloroethene (trans-1,2-DCE), 1,1-dichloroethene (1,1-DCE) and vinyl chloride (VC) resulting from the natural degradation of PCE and TCE have also been detected in the groundwater monitoring wells". Other sections of the Draft RADD (listed below) include additional COCs not included in the COCs documented to be present at the site. Moreover, historical site activities do not warrant the inclusion of these additional COCs. Therefore Whirlpool requests ADEQ limit the Remedial Action Levels (RALs) table and COC Table 2 to TCE, PCE cis-1,2-DCE, trans-1,2-DCE, 1,1-DCE and VC as the COCs for the site.

To maintain consistency through the RADD, Table 2 titled Contaminants of Concern should be changed to Constituents of Concern.

2.1 Locations to address within the RADD:

Section 3 – Summary of Site Risks; A. Human Health Risks
Section 8 – Remedial Action levels; C. Groundwater
Table 2 - Contaminants of Concern

3 Off-Site Soils

Certain sections of the RADD do not clearly distinguish between on-site soils and off-site soils when discussing risk. With no known off-site impacts to soil there is no documented risk associated with off-site soil, so any discussion of risks associated with soil should clearly reference only on-site soil, and should make clear that there are no off-site impacted soils.

3.1 Locations to address within the RADD:

Section 3 – Summary of Site Risks; A. Human Health Risks, Off-site Receptors and Exposure Routes
Section 3 – Summary of Site Risks; A. Human Health Risks, Off-site Potential Carcinogenic and Non-Carcinogenic Risks
Section 5 – Summary of Alternatives Considered in Revised Risk Management Plan
Section 11 – Effectiveness Monitoring Program

4 Groundwater Ingestion Pathway

The RADD sets forth a summary of human health risks in Section 3. However it appears the risk associated with off-site groundwater ingestion has been omitted. All other exposure routes are clearly defined in the text with tables documenting the basis for the risk. There is no such discussion or presentation of data to substantiate the risk from off-site groundwater ingestion. There is only a single sentence statement at the very end of this section that states "However, if drinking water wells are installed on-site or off-site, significant potential risks could result from the use of groundwater."

Without the inclusion of the potential risk associated with off-site groundwater, there is no basis for incorporation of any future institutional control into the determination of future potential risk. Therefore, Whirlpool requests ADEQ acknowledge and include the current and future groundwater exposure risks and acknowledge that risk-based RALs can be applied to on-site and off-site groundwater until appropriate, enforceable institutional controls have been recorded to the satisfaction of ADEQ.

Finally, on page 4, the RADD accurately states that the depth to groundwater is routinely observed during the construction of monitoring wells to be 15 to 25 feet below ground surface but also notes that the measured depth in completed wells may be less in the northeast portion of the off-site area. Because the measured depth in these particular wells may be related to confined aquifer conditions leading to artesian conditions impacting the measured depth to water within the monitoring well, this

statement in the RADD does not impact the selected remedy and measured depth in the monitoring wells may not reflect actual groundwater depth. For these reasons, this statement should be deleted from the RADD.

4.1 Locations to address within the RADD:

Section 3 – Summary of Site Risks; A. Human Health Risks, Off-site Potential Carcinogenic and Non-Carcinogenic Risks
Section 3 – Summary of Site Risks; A. Human Health Risks, Off-site Receptors and Exposure Routes
Section 8 – Remedial Action Levels; C. Groundwater

5 Effectiveness of Remedy

Timely and appropriate determination of effectiveness of the remedy is critically important. The effectiveness determinations will be used to evaluate whether the selected remedial actions are achieving the desired goals and determining interim and final success or failure. Whirlpool is committed to implementing a successful project; therefore the methods and criteria used to evaluate the project should be clearly defined. Whirlpool requests ADEQ use the work plan document(s) to clearly define interim and final goals rather than the Final RADD.

On-site, institutional controls in conjunction with an asphalt surface and impervious coating will be used to address surface soil impacts and mitigate risks associated with exposure to on-site soils. The effectiveness of a remedial measure off-site may also be evaluated on a risk based method. As the remedy implementation process moves forward, circumstances may change resulting in changes to risks associated with off-site receptors, so it is important to allow flexibility in the path chosen to reach the site endpoint. Therefore the RADD should be amended to make clear that a no further action document may be obtained either through (a) the achievement of RALs for the relevant COCs by a combination of ISCO treatment, institutional controls and monitored natural attenuation or (b) a site specific analysis demonstrating that risk associated with all potential pathways has been reduced to acceptable regulatory levels based on a combination of ISCO treatment, institutional controls, and monitored natural attenuation.

5.1 Locations to address Effectiveness within the RADD:

Section 6 – Proposed/Recommended Remedies; B. Groundwater
Section 8 – Remedial Action Levels; C. Groundwater
Section 9 – Justifications for Selections; B. Groundwater
Section 10 – Selected Remedy/Site Plan; A. Surface and Subsurface Soils
Section 11 – Effectiveness Monitoring Program

6 Institutional Controls

There are multiple points in the RADD requiring institutional controls that incorporate specific language concerning the control of future on-site exposures. An example is in Section 9 Justification for Selections, A. Subsurface Soils "This remedy will be coupled with an institutional control to prevent excavation of the on-site impacted soils." This sentence implies that excavation of on-site soil should never be allowed. The RADD should state that proposed remedies will be coupled with an institutional control to prevent *unauthorized* excavation of the on-site impacted soils. The intent of on-site institutional controls is not to prohibit the excavation of on-site soils, but to require that such activities be conducted in accordance with approved site specific risk management plans that will facilitate the full redevelopment of the site.

In Section 10 under "Selected Remedy/Site Plan, C. Placement of Institutional Control", it states in the second paragraph: "Within sixty (60) days of the effective date of this RADD, the Facility must provide documentation of a deed restriction for the Facility." This requirement should be revised to make clear that Whirlpool will submit a draft restrictive covenant prior to recording to allow for ADEQ comment.

6.1 Locations to Institutional Controls within the RADD:

Section 6 – Proposed/Recommended Remedies, A. Subsurface Soils
Section 9 – Justification For Selections, A. Subsurface Soils
Section 9 – Justification For Selections, B. Groundwater
Section 10 - Selected Remedy Site Plan, C. Placement of Institutional Control.

As we have stated previously, overall Whirlpool is in agreement with the RADD, and remains committed to working with ADEQ, as well as the City of Fort Smith and the residents of the area, until this issue has been addressed. Whirlpool looks forward to initiating the remediation activities once approval has been given.

If ADEQ has any questions or requires clarification to the comments contained in this correspondence please contact me.

Sincerely,

Tamara R. House-Knight

Tamara House-Knight, PhD
Project Manager / Toxicologist

cc: Robert Karwowski – Whirlpool Corporation

ADEQ
ARKANSAS
Department of Environmental Quality

Hand Delivered Mail Receipt

Date	11/18/13
Division	HW
Sender	TAMARA HOUSE-KNIGHT
Received By	MOSTAFA MEHRAN

Carolyn Nichols

I have just lost my husband in July. The stress of the TCE situation hurt his health and mental and emotional health. My emotional and mental health has caused me to start using anti-depressants. We love our home and would like to know that our homes are not going to kill us because of Whirlpool's TCE.

1601 Jacobs
Ft. Smith, AR. 72908

1605 Acobs
1601 Acobs
Next door To
One Another
Spring 2013

Mehran, Mostafa

From: Debbie Keith <debbieand4@hotmail.com>
Sent: Monday, November 04, 2013 6:28 PM
To: Mehran, Mostafa
Cc: bbowcock@irmwater.com; Mike Lorenz; Pam Weber; wally bailey; Jeff Noel; gosack@fortsmithar.gov; Jesse Keith; Rich, Jay; David Hughes; erin@brockovich.com; Jerome Flusche; T David Potts; Neal Morrison; kevinsettle6@aol.com; mayor@fortsmithar.gov; good4ward2@gmail.com; keithlauward1@gmail.com; georgecatsavis@gmail.com; philip_merry@ajg.com
Subject: Whirlpool's Math

To Whom It May Concern:

Can someone explain to me why Whirlpool/Environ use micrograms per liter to measure the levels of TCE and not the standard EPA measurement of milligrams per liter? Please see page 13 of the proposed RADD. I noticed upon reviewing the different groundwater sampling reports that Environ uses both measurements, therefore confusing the reader. This conversion is not simple for the average person. A clean and honest report should be consistent with measurements and not jump back and forth requiring conversion. For example: Sep 2002 well 25 has a reading of 157.0 mg/l and now they use ug/l as you can see on the reading of 56,000 ug/l on well 25 for the latest groundwater reading.

I was told by Mr. Noel that my groundwater was 10 ft below me. During the latest reading of levels conducted by Environ, I was observing the workers and one of them stated that groundwater was 4.8 ft. below me. We continue to be told that there is no vapor intrusion, co-mingling of surface and groundwater, safe to garden, etc. If the ditch in my yard is 2 1/2 feet deep (stands in water constantly) and the groundwater is only 2 feet below that water....how is it that the storm water run off is safe to go into the city's water supply?

The levels have decreased four fold on average over the last two years....this information came from Tamara Knight at the meeting in January. I can't for the life of me imagine what the original levels were in the beginning.

Another point I would like to add is that Whirlpool burned waste from the plant at night in the 90's. I have a maintenance person that will testify to this and upon calling 911 that night, I was told it was a controlled burn. What kind of pollution was our neighborhood exposed to then?

I am still not clear as to why the public was not notified appropriately and in a timely manner when there was discovery of groundwater contamination. For a minimum of ten years, Whirlpool and ADEQ were working on this contamination and Whirlpool waited to leave town to inform us.

Every time I turn on the t.v., computer, open a paper or magazine I get tons of advertisements for Whirlpool. This is obviously not an issue of money and would like our situation to be treated as if it were more important to protect and repair our community than constantly see advertisements. I believe that Dr. Phil or 20/20 would be interested in the length of time spent on cleaning this mess up.

My Great Grandfather built my home before Whirlpool came along. As I sit in my home with failing health and plummeting property values, I ask myself does anyone care?

Sincerely,

Debra E. Keith

Mance Fowler

I think I basically said all I want to say about it. What type of remark are you wanting? What are you wanting to know how I feel about this. I think that just about everybody here believes that ADEQ hasn't really done what we expected them to do. We expected you to go in and make Whirlpool clean all of this up. To relieve our fears about what is going to happen with this TCE and how it's going to affect our community. That's our main concern and my main concern is the health risk in our neighborhood and what's been happening in the last thirty years, and I would like to know for sure what's going to happen and how this is going to affect the city.

Marsha Brewer

Some of my concerns are the same as before. My biggest concern is my mother; she's lived in the same house on Jacobs Street since she was 29 years old which was 59 years ago. She's had some health issues, we lost my dad a few years ago to a rare neurological disorder that we can't prove or disprove the TCE did or did not cause that. My concern is my mom's health and all the health of the residents in the area. I just want a confirmation from ADEQ that this did not cause any of that.

Waltrand Phillips

My opinions are the same as what I said earlier. I still do not believe you people and you're just keeping us in a guessing game and you do not know how this is going to work. You're still wasting a lot of money and could compensate everybody for their property going down in value and cleaning the contaminated soil out and putting new soil in.

Kevin Settle

Kevin Settle, City Director of Ft. Smith – as I said earlier I'm a chemical engineer by trade. I disagree with putting asphalt all over it on the top of the existing area. I think that's the wrong method we should be using. An imperbial solution will eventually rot away and it has to maintained. If someone forgets to maintain it then we're back in this problem five, ten, twenty years down the road instead of fixing the problem. In Mayflower there was an Exxon spill and yet Exxon stepped up purchased properties, remediating the site as quick as possible yet were waiting thirty plus years. I think what they're trying to do is wait for the concentration levels to get as low as they can below accepted limits and then things are ok. That to me is the wrong way of doing it, they're just waiting. As I've said before mechanical extraction is the way to go, doesn't matter what the cost is or what it's going to take I think mechanical extraction is truly the way to go to resolve this problem as quick as possible instead of waiting five to ten years. I wish you had taken a trial marked up an area and tried this out. As you've said, hoped and as Whirlpool has said in the last meeting they hope this works. Hope to me is too long. Hydrogeological

conditions must be right. We don't know when that is but hope is what's been said twice it works. What happens if this works there should be a plan B already set in place so that in a year or two years from now its ready to go instead of going back through and trying to have another year or two years discussions. I understand what you can't do with for property values but you can do something about trying to do whatever you can to make the property values whole. You have the power to make this better it's not good at all. To me this is a cheap plan and we the citizens of Fort Smith deserve better. I have some major concerns about the Whirlpool remediation plan; the plan in my mind is weak and does not resolve the problem quickly. The plan does not address the chemical issue the homeowners have been living with for the past thirty years. The plan doesn't address the homeowner's whole with the major decline in property values. The plan doesn't focus on resolving the problem quickly so we can get the commercial property back in use hopefully we can get a new employer in our wonderful city. Whirlpool in my opinion has been focused on more of the low cost the long duration fix which they hope will work. In my opinion I think the city continued to be a problem in our city. ADEQ I know this is on the record. I think ya'll need to take a step back and really think about what you're hearing from the citizens tonight. It's been thirty plus years, the employer abandoned us. They left us said they're going to Mexico, when realistically they went to Mexico in Iowa. I think they left for other reasons; if you really want to you know listen to what they're saying; make sure this is the right decision because we cannot wait another five or ten years. And maybe hopefully this works. We need to get this done quickly the citizens of this area, the citizens of Fort Smith deserve better.

Pam Webber

Thank you for being here tonight. I wish you had come years ago. The tragic part of this to me and what I've hear tonight from the citizens is their lack of trust in Whirlpool and how this is being handled by you. I'm a city director, I'm not going to argue Science with you tonight. I just want to say on behalf of the citizens who've all sat here tonight, think about them. Have you really listened to them, have you listened to them as much as you have with Whirlpool or had conversations with them like you have with Whirlpool? These are not affluent citizens in this neighborhood, they've worked all of their lives they've saved their money. Probably their biggest investment was their home. What has happened to their home value, many of them are looking at illness and retirement and their future. They have inheritance for their children that has basically been destroyed. I'm also a realtor if you sell a property you're going to fill out a sellers disclosure asking if there's been a chemical problem near your property or on your property. Every one of these property owners is going to check yes. They are not going to be able to sell their property for anywhere near what it's worth or what they paid for it. You say you don't have the power to help with their property, of course you do. You have to do what's right for these property owners, and of the opinion of myself and most of these property owners you have chosen the cheapest route for Whirlpool. Whirlpool is a multimillion dollar corporation that this city was very good to. We need you to be good to our citizens and Whirlpool representatives we need you to do the right thing for our citizens. If they were really going to do the right thing they would go in and buy these properties and make it whole. You know that and I know that. Thank you for coming, you need to come more often and

before you make a decision you really need to think about the people in this room who've spoken to you and are living this every day. Thank you

Neal Morrison 4000 Blue Hole Road Rudy, Arkansas 72952

November 18, 2013

Tammie Hynum
Hazardous Waste Division Chief
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

Re: ***Whirlpool Remedial Action Decision Document***
Fort Smith, Arkansas

Dear Ms. Hynum,

My sister and I own the house at 1409 Jacobs in Fort Smith. It belonged to our parents and is where we grew up. We inherited it from our mother who passed away in July of 2011.

We listed the house for sale in June of 2012, but we had to take it off the market last January after learning that the ground and groundwater is contaminated by a plume of TCE. In six months of listing it, we never got any legitimate interest due to a very slow market for this type of real estate. If and when we relist the house, we will now be obliged to answer "yes" to five of the questions on the Seller Property Disclosure due to the existence of a carcinogenic substance in the ground. The aforementioned slow market combined with contaminated soil will make it impossible to sell the house for anything near what it was worth.

Last February 4th, I e-mailed Whirlpool's attorney, Robert L. Jones, a request for Whirlpool to purchase our property for its 2012 appraised value of $73,000. I made this offer under the theory that Whirlpool could resell it and absorb the loss due to the contamination that they caused. That offer was rejected by Mr. Jones on February 8, 2013. The next logical step was to file suit against Whirlpool with the hope of being made whole.

The reason for this letter is not to complain that we have been thrust into a legal action as that will resolve itself in the judicial system. My complaint is related to the way Whirlpool has been handling this problem for the last 30 or so years. After the original spill, they did nothing to contain it and the TCE plume spread into our neighborhood. They continued to do nothing until 2002 when they finally reported to ADEQ. Over the next 10 years, they monitored the groundwater, continuing to do nothing to attenuate the spread of the plume. Curiously, they put off doing something until after they moved their operation to Mexico.

The existence of the contamination was not made public until a neighborhood meeting on January 10, 2013. Since that meeting, the property owners and others have all been placed in suspense by Whirlpool while they engage in an iterative process to find the absolute minimum amount of effort (money) it will take to get out of this mess. The original Remedial Action Plan set the bar extremely low and they have been inching it up with revised plans to find this absolute minimum.

- In the Revised Risk Management Plan (RRMP) dated November 30, 2012, the selected alternative was "onsite and offsite institutional controls". Instead of approaching the property owners to negotiate a deed restriction to obtain these controls, Whirlpool tried to get the City of Fort Smith to enact a blanket ordinance banning the drilling of drinking water wells (a practice that is nonexistent in this area). In other words, they tried to placate ADEQ by Tom Sawyering their responsibility onto the City to prohibit that which will never happen. Had the City not required them to notify the neighborhood in writing and conduct a public meeting, they might have gotten away with it.

- So, they had to raise the bar. In the next RRMP dated April 8, the selected alternative was institutional controls, on-site chemical oxidation and letting the offsite soils go through "monitored natural attenuation" (MNA). Under this plan, they again prohibit that which will never happen, take care of the problem on their property and let the neighborhood wait while the TCE goes away naturally over many decades (nevermind the even nastier by products of natural attenuation).

- Again, they had to raise the bar. The April 24 RRMP expanded the scope of the on-site chemical oxidation, and, again, the residents get to wait for MNA to happen.

- With the May 21 RRMP, Whirlpool finally raised the bar enough to satisfy ADEQ. This plan includes an impermeable cap on the source contamination area, onsite and offsite chemical oxidation and institutional controls in the form of deed restrictions. Now, they are required to deal with the property owners face-to-face instead of hiding behind the City.

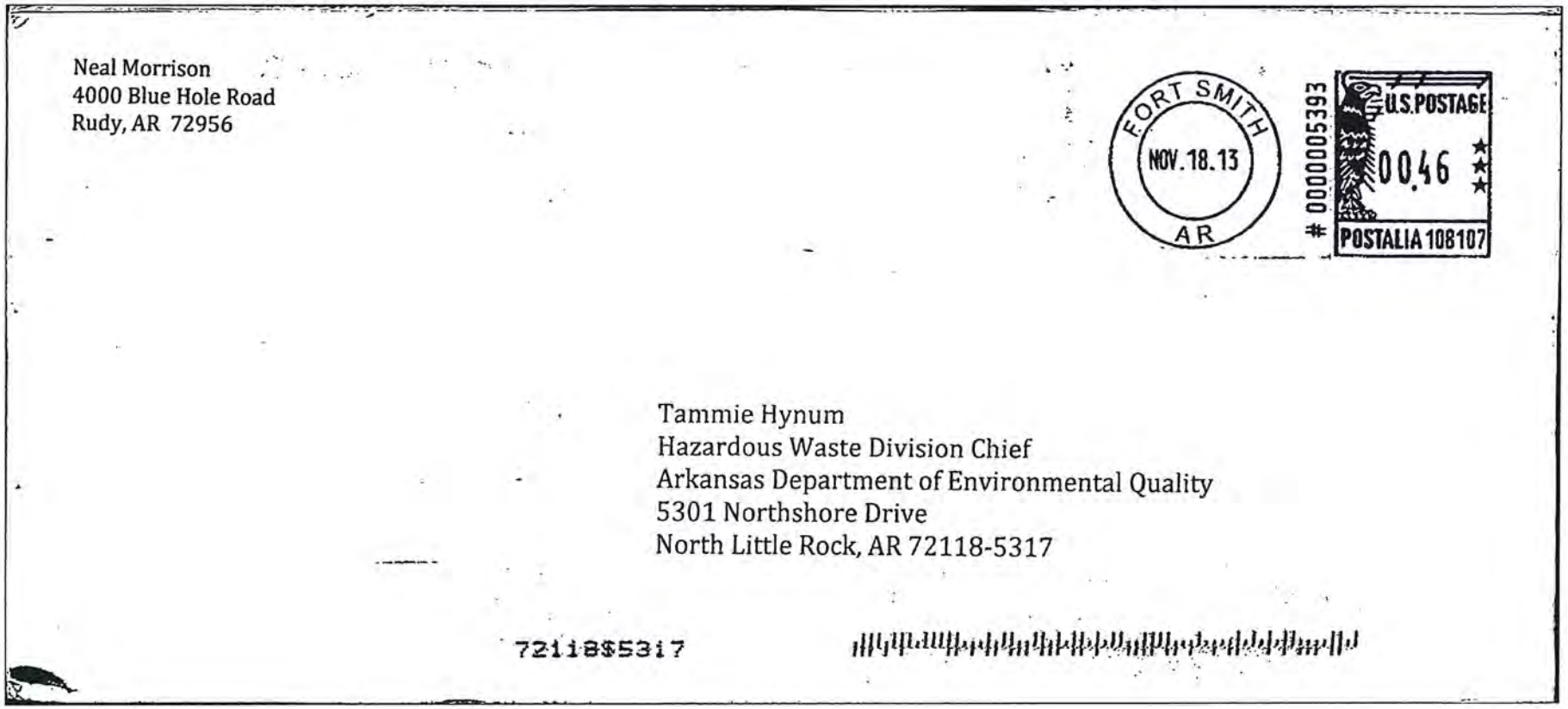
While the rest of the world waited, Whirlpool found that absolute minimum level of effort necessary to get out of town. During this time, the residents stressed out, ADEQ wasted valuable time and resources reviewing slipshod RRMP's and every week there is a new article in the paper about what a big mess this is. I don't know if the final plan will work, but it is much better than the original "do nothing" plan. The circuitous and time consuming route Whirlpool has dragged everyone through to get to this point is shameful, and it will continue on for many more years.

Jeff Noel, the vice president of communications and public affairs at Whirlpool, said in a meeting I attended that Whirlpool wants to be a "good neighbor" and a "good corporate citizen," which is not true. A good neighbor does not pollute the property next door and try to get away 30 years later without squaring up. A good citizen does not remove the livelihood of thousands of fellow citizens to a foreign country only to increase profit. Whirlpool is neither a neighbor of mine nor a citizen of my community. Unfortunately, they are a stereotypical big corporation that cares for nothing but their perceived image and their stock price.

Thank you for the opportunity to submit my comments.

Sincerely,

Neal Morrison



Neal Morrison
4000 Blue Hole Road
Rudy, AR 72956

FORT SMITH
NOV. 18. 13
AR

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U.S. POSTAGE
00.46
POSTALIA 108107

Tammie Hynum
Hazardous Waste Division Chief
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

72118$5317

To Whom It May Concern:

Whirlpool Corp. should erace all traces of any + all pollution to soil + water;

Responsibility is their duty at any cost.

Also they need to compensate any + all health problems to any + all residents + or workers.

Signed Russell Grettum

Russell Grettum

1605 Jacobs
1601 Jacobs

Next door
to one
another

Spring 2013

Public Comment Registration Card (8)

PLEASE PRINT LEGIBLY

Date 11/12/13 Verbal Comment ☒ Speaker # 4 Written Comment ☐ (Attached or back of card)

Hearing Location FORT SMITH

Name Kevin Settle

Address 10904 Cork Court

City Fort Smith State AR Zip Code 72908

E-mail Address Kevinsettle66@aol.com

ADEQ ARKANSAS Department of Environmental Quality www.adeq.state.ar.us

Public Comment Registration Card

PLEASE PRINT LEGIBLY

Date 11-12-2013 Verbal Comment ☐ Speaker # Written Comment ☑ (Attached or back of card)

Hearing Location COMMENT →

Name Sarah Jane winters

Address 1705 Jacobs Ave

City Ft Smith State ARK Zip Code 72908

E-mail Address

ADEQ ARKANSAS Department of Environmental Quality www.adeq.state.ar.us

Public Comment Registration Card

PLEASE PRINT LEGIBLY

Date 11-12-2013 Verbal Comment ☑ Speaker # 3 Written Comment ☑ (Attached or back of card)

Hearing Location

Name RUSS GRETTUM

Address 6515 So "R" STREET

City Ft Smith State AR Zip Code 72903

E-mail Address gymmybtrkr@hotmail.com

ADEQ ARKANSAS Department of Environmental Quality www.adeq.state.ar.us

Public Comment Registration Card (9)

PLEASE PRINT LEGIBLY

Date 11-12-13 Verbal Comment ☒ Speaker # 2 Written Comment ☐ (Attached or back of card)

Hearing Location

Name Pam Weber

Address 3001 Cliff Dr

City Ft Smith State AR Zip Code 72901

E-mail Address pweber5469@aol.com

ADEQ ARKANSAS Department of Environmental Quality www.adeq.state.ar.us

I have a ? about our living and are we going to be safe and health and also the water is got a smell to it and also the ice.

Public Comment Registration Card (2)

PLEASE PRINT LEGIBLY

Date 11-12-13 Verbal Comment ☑ Written Comment ☐
Speaker # (Attached or back of card)

Hearing Location SENIOR CITIZENS CENTER

Name MANCE W. FOWLER

Address 1504 JACOBS

City FT. SMITH State AR Zip Code 72908

E-mail Address

ADEQ ARKANSAS Department of Environmental Quality www.adeq.state.ar.us

Public Comment Registration Card

PLEASE PRINT LEGIBLY

Date 11-13-13 Verbal Comment ☐ Written Comment ☐
Speaker # (Attached or back of card)

Hearing Location (withdrew)

Name RAYMOND NEUNG

Address 2100 N. 31st

City Fort Smith State AR Zip Code 72904

E-mail Address baelms55@hotmail.com

ADEQ ARKANSAS Department of Environmental Quality www.adeq.state.ar.us

Public Comment Registration Card (3)

PLEASE PRINT LEGIBLY

Date 11-12-13. Verbal Comment ☑ Written Comment ☐
Speaker # (Attached or back of card)

Hearing Location

Name Rose M. Tole

Address 1801 S. 46 St

City Ft. Smith State AR. Zip Code 72903

E-mail Address Hperyrose@att.net.

NOT HERE

ADEQ ARKANSAS Department of Environmental Quality www.adeq.state.ar.us

Public Comment Registration Card (1)

PLEASE PRINT LEGIBLY

Date Verbal Comment ☐ Written Comment ☐
Speaker # (Attached or back of card)

Hearing Location

Name Joyce Mullins

Address 3905 Marshall Dr

City Ft Smith State AR Zip Code 72904

E-mail Address

NOT HERE

ADEQ ARKANSAS Department of Environmental Quality www.adeq.state.ar.us

Public Comment Registration Card (6)

PLEASE PRINT LEGIBLY

Date 11-12-13 Verbal Comment ☒ Written Comment ☐ (Attached or back of card)
Speaker #

Hearing Location

Name Clinton Basham

Address 19 College Rd

City Huntington State AR Zip Code 72940

E-mail Address c_bash@hotmail.com (not here)

ADEQ ARKANSAS Department of Environmental Quality www.adeq.state.ar.us

Public Comment Registration Card (4)

PLEASE PRINT LEGIBLY

Date 11/12-2013 Verbal Comment ☒ Written Comment ☐ (Attached or back of card)
Speaker #

Hearing Location FSM

Name RONN AGGERS President SAVE OUR STREAMS

Address 27501 Hwy 45 SO

City Midland State AR Zip Code 72945

E-mail Address NOT HERE

ADEQ ARKANSAS Department of Environmental Quality www.adeq.state.ar.us

Public Comment Registration Card (7)

PLEASE PRINT LEGIBLY

Date 11-12-13 Verbal Comment ☒ Written Comment ☐ (Attached or back of card)
Speaker #

Hearing Location

Name Walthaud Phillips

Address 2726 Tuba #4

City Fort Smith State AR Zip Code 72901

E-mail Address

ADEQ ARKANSAS Department of Environmental Quality www.adeq.state.ar.us

Public Comment Registration Card (5)

PLEASE PRINT LEGIBLY

Date 11-12-13 Verbal Comment ☐ Written Comment ☐ (Attached or back of card)
Speaker #

Hearing Location

Name Marsha Brewer

Address 1701 Villa Court

City Corinth State TX Zip Code 76210

E-mail Address mbrewer17@yahoo.com

ADEQ ARKANSAS Department of Environmental Quality www.adeq.state.ar.us

Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000
Governor Mike Beebe
Nathaniel Smith, MD, MPH, Director and State Health Officer

November 14, 2013

Ms. Tammie J. Hynum
Chief, Hazardous Waste Division
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

Dear Ms. Hynum:

The Arkansas Department of Health (ADH) Environmental Epidemiology Section has reviewed the Draft Remedial Action Decision Document (RADD) for Correction Action regarding the Whirlpool Corporation Facility in Fort Smith, Sebastian County, Arkansas (ID#: 66-00048). ADH submits the following comments to this draft document under the public comment period ending November 18, 2013.

1. Page 18, Section 10. B. Groundwater: Reference is made to 12 off-site wells being monitored for contaminants of concern (Table 2) and geochemical properties (Table 3). Figure 3 and Figure 5 of the document show these off-site well locations on commercial property (*i.e.*, community housing) and private residential property north of the Whirlpool facility on Ingersol Avenue and Jacobs Avenue. Some of these groundwater monitoring wells have been previously documented as having trichloroethylene (TCE) concentrations detected above 1,000 micrograms per liter (page 4, Section 2). As part of a public health notification, ADH recommends that responsible parties regularly report to each off-site property owner the test results and/or monitoring data from groundwater monitoring wells located on their property.

2. Page 19, Section 11. Effectiveness Monitoring Program: Reference is made to off-site soil gas monitoring sites being tested quarterly to monitor for potential vapor intrusion exposure. Figure 6 of the document shows these existing and proposed off-site well locations on commercial property (*i.e.*, community housing) and private residential property north of the Whirlpool facility on Ingersol Avenue and Jacobs Avenue. As part of a public health notification, ADH recommends that

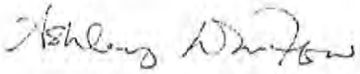
responsible parties regularly report to each off-site property owner the test results and/or monitoring data from soil gas monitoring sites located on their property.

3. Page 22, Section 14. Coordination with Other Divisions/Agencies: An External Coordination table states that the Arkansas Department of Health and Human Services was sent a Notice of Decision. Please change this agency name to read "Arkansas Department of Health," as it is no longer merged with the Department of Human Services. In future correspondence of decision notices, please send a copy directly to the ADH Environmental Epidemiology office at the following address to ensure our personnel receive time-sensitive documents by the effective means necessary to conduct a timely review:

   Arkansas Department of Health
   Environmental Epidemiology, Slot 32
   4815 West Markham Street
   Little Rock, AR 72205

Please do not hesitate to contact our office if there are any questions regarding these comments on the Whirlpool Draft RADD. I can be reached by phone at 501-280-4041 or by email at ashley.whitlow@arkansas.gov.

Sincerely,



Ashley Whitlow, M.S., CPM
Epidemiologist /ATSDR Cooperative Agreement Health Assessor

cc: Shirley Louie, M.S., CIH, Applied Epidemiology Branch Chief, ADH
Lori Simmons, M.S., Environmental Epidemiology Section Chief/ATSDR Program Coordinator, ADH
Carrie Poston, MPH, MCHES, Epidemiologist, ADH

ADEQ
ARKANSAS
Department of Environmental Quality

HAZARDOUS WASTE DIVISION ROUTING SLIP

12/10/13

Subject: Whirlpool Final RADD

From: Annette Cusher AC

Route in turn to:	Action Needed	Initials	Date
Dianna Kilburn	☑ Concurrence ☐ Review	DK	12/10/13
Doug Ritchie	☑ Concurrence ☑ Review	DR	12/11/2013
Jay Rich	☑ Concurrence ☑ Review	JR	12-11-13
Tammie Hynum	☑ Concurrence ☐ Review/Sign	TH	12/16/13 comment 12/13/13
Ryan Benefield	☐ Concurrence ☑ Review	RB	12/18/13

**Note: Marking the Concurrence box indicates the individual agrees with the applicable text as it relates to their individual discipline and Work Section (e.g., Engineer; Risk Assessor; Geology; Compliance; Policy/Management), as applicable. Marking the Review box indicates the individual has read the document.*

DISPOSITION:

Return to Annette Cusher

COMMENTS: [Insert a brief description of the contents being routed]

EXHIBIT 2

swtimes.com
http://swtimes.com/sections/news/sebastian-county-assessor-lowers-property-values-near-contaminated-whirlpool-site.html

Sebastian County Assessor Lowers Property Values Near Contaminated Whirlpool Site

By Chad Hunter Times Record • chunter@swtimes.com May 10, 2013 - 6:49am

Based on groundwater contamination that spread from the now-dormant Whirlpool plant, nearby properties have been reduced in value 25 percent to 75 percent by the Sebastian County Assessor's Office.

"We really hate to have to lower the properties for the people's sake," Sebastian County Assessor Becky Yandell said Thursday. "But we also feel like we need to give them a tax break."

Trichloroethylene, or TCE, now a known carcinogen, leaked into groundwater at the Whirlpool plant site between the late 1960s and early 1980s, according to the company.

Contamination later spread into a neighborhood to the north.

"The assessor does have the right to come in and change property values with a disaster," Yandell said. "It is a disaster. We do know that anything they sell, they'll have to give full disclosure. Who's going to buy that?"

The contaminated area includes a total of 55 parcels, Yandell said. Three are commercial properties, while 17 are homes in which the owners live. More than 30 are rental properties.

"The land value in the contaminated area, we're going to reduce that by 75 percent," she said. "We're going to reduce the homes by 50 percent."

Of the need for a reduction, homeowner Debbie Keith said, "That's a shame."

"There are homes for sale on this street, and they're not having any luck with it," she said.

Home values also are being lowered 25 percent just outside of the known contaminated area. Those land values are being lowered 75 percent.

"We know there is a well that is contaminated on one of the fringe properties," Yandell said. "There are 26 parcels in that fringe area. Two of them are exempt, seven are commercial and 17 are residential. The stigma attached to that area is almost as bad as the contaminated area."

Residents will soon be notified by mail of the reductions.

"We're lowering them right now in the computer system, and we'll be sending them an explanation letter and notice of value change," Yandell said. "We hope the people will appreciate us trying to help them out a little bit. We're not telling anybody what they can or can't sell their home for. That's up to them and what they can get for it.

"But we do feel like we need to give the taxpayers a break in that area."

Links to documents, a map and other information related to the TCE contamination have been packaged together on the city's website, fortsmithar.gov.

Whirlpool Corp., which has been working with the state regarding the contamination since 2001, submitted a revised cleanup plan to the Arkansas Department of Environmental Quality on April 8.

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

SCOTT DAY and GLENDA V. WILSON, individually and behalf of all others similarly situated, **Plaintiffs,** **vs.** **WHIRLPOOL CORPORATION,** **Defendant.**	**Civil Action No. 2:13-cv-02164-PKH**

CLASS ACTION SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by Plaintiff Scott Day ("Plaintiff" or "Class Representative"), Plaintiff Glenda V. Wilson ("Plaintiff" or "Class Representative") (together "Class Representatives), both individually and on behalf of the Settlement Class defined herein, and Whirlpool Corporation ("Whirlpool"). The Class Representatives and Whirlpool collectively are referred to herein as "the Parties." Subject to approval by the Court, the Parties hereby agree to the following terms in full settlement of the above captioned action (the "Action").

I. CASE HISTORY AND PREAMBLE

1. On May 20, 2013, Plaintiff Day filed this lawsuit on behalf of himself and other similarly situated persons who allege their properties have been and/or are being impacted by trichloroethylene ("TCE") and/or other chemical contaminants migrating from the former Whirlpool manufacturing facility located at 6400 Jenny Lind Avenue, in Fort Smith, Arkansas ("Fort Smith Facility"). Plaintiffs, on behalf of themselves and the putative class, allege

causes of action for trespass, nuisance, violation of the Arkansas Deceptive Trade Practice Act and fraudulent concealment.

2. The class as defined in the Amended Complaint consists of:

> All residents in Sebastian County, Arkansas whose property has been impacted by the leakage of the chemical trichloroethylene into the groundwater beneath the surface of the contaminated area which emanated from the manufacturing plant owned and formerly utilized by Whirlpool Corporation. Excluded from the class is Whirlpool Corporation and its officers, directors, management, employees, subsidiaries, or affiliates.

3. The Parties have engaged in protracted, arms length, and good faith settlement negotiations. The Parties now desire to implement their negotiated resolution and to enter into a Settlement Agreement that is final and binding without the expense and uncertainty of further litigation. If approved by the Court, after notice and a fairness hearing, this Settlement Agreement will result in a Judgment incorporating the terms of the Settlement Agreement resolving all the pending claims between the Parties.

4. The Court has not made a finding that Whirlpool is liable as alleged in the Complaint, and Whirlpool expressly denies any wrongdoing whatsoever. Accordingly, neither this Settlement Agreement nor the Judgment shall constitute, and shall not be used in this or any other case or action, as evidence of fraud, violation of the Arkansas Deceptive Trade Practices Act, or any other federal, state or local law, regulation, or order, or of any other form of actionable misconduct or omission by Whirlpool, except insofar as the Settlement Agreement establishes Class Counsel's right to petition for an award of attorneys' fees. If for any reason the Settlement Agreement is not effectuated, no evidence of this Settlement Agreement or the contemplated Judgment shall be admissible for any purpose in this or any other action. Moreover, the Settlement Agreement shall not constitute an admission by

Whirlpool as to the suitability for class action treatment of these and/or any other claims. Whirlpool consents to this Court's approval of the class as proposed herein solely for settlement purposes on the terms established herein.

II. DEFINITIONS

1. When used in this Settlement Agreement, the following terms shall have the following meanings:

a. "Access Agreement" means an agreement in form of Exhibit G allowing Whirlpool or its designee reasonable access for such future environmental monitoring and remediation as is required by or of Whirlpool. Such access will run with the land, and thus will not be terminated through sale or other disposition of the property. The Access Agreement may be amended by the written mutual consent of the Parties.

b. "Appraisal Option Deadline Date" means the date by which a Well Ban Subclass member desiring to elect the appraisal option must provide written notice to the Claims Administrator that they are requesting the appraisal option.

c. "Class" or "Class Members" means persons included in the Well Ban Subclass and Fringe Subclass, collectively.

i. "Well Ban Subclass" means all those property owners that on the Effective Date have TCE based tax assessment devaluation of record to their real property located within the area bounded by Brazil Avenue, Jenny Lind Road, Ingersoll Avenue, and Ferguson Street in Fort Smith, Arkansas. This includes an imaginary line that would extend Ferguson Street to Ingersoll Avenue. The properties and owners of record included in this subclass are listed in Exhibit A.

ii. "Fringe Subclass" means all those property owners that on the Effective Date own the properties identified as fringe in Exhibit B.

d. "Claims Administrator" means RG/2 Claims Administration LLC or such other claims administrator approved by the Court.

e. "Class Counsel" means Kenneth Shemin of the Shemin Law Firm LLC.

f. "Complaint" means the complaint filed by the Named Plaintiff on May 20, 2013 styled *Scott Day v. Whirlpool Corporation*, Civil No. 13-02164, and

which action currently is pending in the United States District Court for the Western District of Arkansas, Fort Smith Division.

g. "Current Assessed Value" means the assessed value of each Class Member's property as determined by the Sebastian County Tax Assessor ("Tax Assessor") on the most recent assessment after May 1, 2013 and prior to the entry of this Settlement Agreement and specified on Exhibit E.

h. "Court" means the United States District Court for the Western District of Arkansas, unless otherwise indicated.

i. "Declaration of Covenants, Conditions and Restrictions" means a Declaration of Covenants, Conditions and Restrictions applicable to a Well Ban Subclass member's property which must be substantially in the form of Exhibit F and must at a minimum: (a) provide notice that the property is or may become contaminated with TCE; (b) prohibit the drilling of wells for and the withdrawal of ground water for domestic, commercial, irrigation, agricultural or landscape or any other consumptive use from beneath that property; and (c) release all property damage and other claims related to the TCE contamination as specified in the Release and provided elsewhere herein.

j. "Defendant" or "Whirlpool" means and shall include for all purpose of the Settlement Agreement Defendant Whirlpool Corporation and its predecessors, successors, affiliates, assigns, and any related or affiliated companies or other entities, and the employees and agents of each of them.

k. "Effective Date" means the first date by which all of the following have occurred: (1) the Court has entered a Judgment incorporating the terms of this Settlement Agreement, in the form of a final and appealable judgment; (2) the time for appeal of the Judgment, including the period during which the time for appeal may be extended, has either run without an appeal having been filed or any appeal (including any requests for rehearing *en banc* or petitions for *certiorari* or other appellate review) has been finally resolved, and the time for filing any further appeal or request for review has expired; provided, however, that an appeal by Whirlpool of the expense and fee award shall not constitute an appeal for purposes of this paragraph II(1)(h)(2).

l. "Final Approval" means the date the Judgment is entered by the Court.

m. "Fort Smith Facility" means the former Whirlpool manufacturing facility located at 6400 Jenny Lind Avenue, in Fort Smith, Arkansas.

n. "Judgment" or "Final Approval and Judgment" means the judgment to be entered in this case. The parties will present the form of Judgment attached as Exhibit C to the Court for Final Approval.

o. "Named Plaintiffs" or "Plaintiffs" mean Scott Day and Glenda V. Wilson.

p. "Notice" means the forms of notice to the Class, in the form attached hereto as Exhibits D1 and D2 or such other form as the Court may order, to be sent via certified mail, return receipt requested. Notice will also be provided by publication in the Southwest Times Record, which is a newspaper of general circulation in Fort Smith, Arkansas, once a week for four consecutive weeks commencing on the Notice Date. That Notice will be in the form of Exhibits D3 and D4, or other such form as the Court may order. and "Notice Date" means the first date of publication for the Notice and the date on which Whirlpool first mails the Notice to the Class Members.

q. "Opt-Out and Objection Deadline" means the date 60 days after the Notice Date, by which opt-out notices and/or objections must be post-marked.

r. "Original Assessed Value" means assessed value of the property as determined by the Sebastian County Tax Assessor ("Tax Assessor") on the most recent assessment prior to May 1, 2013, as specified on Exhibit E.

s. "Party" or "Parties" means Whirlpool, the Named Plaintiffs and the Class Members.

t. "Plaintiffs" means the Named Plaintiffs and the Class Members as defined above.

u. "Preliminary Approval Date" or "Preliminary Approval" means the date upon which preliminary approval of this Settlement Agreement is granted by the Court. The Parties will submit an Order Granting Preliminary Approval of Proposed Settlement in the form attached hereto as Exhibit E along with their Joint Motion for Preliminary Approval.

v. "Release" means the release as specifically set forth in Paragraph VII of this Settlement Agreement.

w. "Termination Option" means Whirlpool's right to terminate the Settlement Agreement on the conditions set forth in Paragraph VIII.

x. "Termination Period" means the period from the signing of this Settlement Agreement up and until the Final Order approving the class action settlement has been issued, during which period Whirlpool may exercise its Termination Option.

III. CLASS CERTIFICATION

1. Solely for purposes of settlement, the Parties agree to certification of the following Class under Fed. R. Civ. P. 23(b)(3):

> All property owners in Sebastian County, Arkansas who either (a) own property on which TCE or other contaminants emanating from the manufacturing plant owned and formerly utilized by Whirlpool Corporation are present in groundwater, or (b) whose property value has been or may be diminished by the presence of the plume of TCE and other contaminants in the groundwater. Excluded from the class is Whirlpool Corporation and its officers, directors, management, employees, subsidiaries, or affiliates.

2. The Parties believe they have identified the Class Members to which this settlement applies, and this settlement is limited to those property owners listed in Exhibits A and B. The Parties agree to amend the current Amended Complaint to adopt the settlement class definition set forth above.

IV. SETTLEMENT SUBCLASSES

1. For purposes of the settlement, the class is divided into two subclasses -- the Well Ban Subclass and the Fringe Subclass, which subclasses are defined in II(1)(c)(i and ii):

a. Well Ban Subclass -- In exchange for making a proper claim and providing the Release, executed Access Agreement, and Declaration of Covenants, Conditions and Restrictions as defined above and set forth below, each Well Ban Subclass member not Opting Out of the Settlement will receive their choice of:

i. Compensation in cash equal to the difference between the Original Assessed Value and the Current Assessed Value of their property, both as set forth in Exhibit E.

OR

ii. Alternatively, members of the Well Ban Subclass may elect to have their cash compensation to be determined by an agreed-upon professional appraiser ("Independent Appraisal Option") in the manner set forth below.

1. If the Independent Appraisal Option is chosen, the compensation for a Class Member will be equal to the difference between the Original Assessed Value and the current appraised value of the property as determined by an

independent appraiser selected in accordance with the procedures set forth below.

2. **Independent Appraisal Selection Process.** Prior to the Appraiser Option Deadline date, Whirlpool will identify an appraiser and Plaintiffs' counsel will identify an appraiser. Then, these two appraisers will identify and agree upon a third appraiser (wholly unaffiliated with the first two appraisers) who will act as the sole appraiser approved by the Court under the settlement claims process ("Independent Appraiser"). Where an appraisal is requested the Independent Appraiser will prepare an opinion of the current market value of the property at issue. If the value of any Class Member property has been substantially affected by the addition or removal of any buildings, permanent fixtures, trees or other amenities since May 1, 2010, the Independent Appraiser will also adjust the current appraisal as necessary to ensure the current appraised value for purposes of the settlement claims process reflects only changes in value attributable to the contamination.

   a. All three of the above appraisers selected to carry out the above process for the appraisal option must meet the following criteria:

      A. Ten or more years of experience in the appraisal of residential property;

      B. Demonstrated experience in the valuation of environmental disamenities at a minimum of 5 locales;

      C. Certified knowledge of an familiarity with a broad range of literature addressing diminution of property values associated with or in proximity to Superfund or similar sites undergoing remediation of groundwater contamination.

   b. Well Ban Subclass members electing the Independent Appraisal Option will have to choose this option by the Appraisal Option Deadline Date and may not thereafter change that selection, nor reject, rebut, nor contest the amount determined by the Independent Appraiser.

iii. **Declaration of Covenants, Conditions and Restrictions.** As a precondition to receiving compensation, Well Ban Subclass plaintiffs shall provide the Claims Administrator with a properly executed Declaration of Covenants, Conditions and Restrictions, in the form of Exhibit F to be recorded with the deed to the property at issue. The Declaration of Covenants, Conditions and Restrictions must: (a) provide notice that the property is or may become contaminated with TCE and/or other contamination; prohibit the drilling of wells for and the withdrawal of water for domestic, commercial, irrigation, agricultural or landscape or any other consumptive use; and (c) release all claims related to the TCE or other contamination as provided in the Release. In the event a Well Ban Subclass Member that has not Opted Out of this settlement fails to provide the Claims Administrator with a Declaration of Covenants, Conditions, and Restrictions as set forth above, the Court will appoint the Claims Administrator as the Subclass member's attorney-in-fact for purposes of executing and recording the specified Declaration of Covenants, Conditions and Restrictions as set forth above.

iv. **Access.** As a precondition to receiving compensation, Well Ban Subclass Plaintiffs shall sign the Access Agreement (Exhibit G) allowing Whirlpool or its designee reasonable access for future environmental monitoring and remediation as required by or of Whirlpool. Such access will run with the land, and thus cannot be modified or terminated through sale or other disposition of the property. In the event a Well Ban Subclass Member, that has not Opted Out of this settlement fails to provide the Claims Administrator with a properly executed Access Agreement, the Court will appoint the Claims Administrator as the Well Ban Subclass member's attorney-in-fact for purposes of executing the Access Agreement.

b. Fringe Subclass-- The persons in the Fringe Subclass are identified in Exhibit B. Each property owner in the Fringe subclass will receive $5,000.00 in exchange for an executed (1) Release of all claims as specified in Section XII(2), and (2) Mutual Option for Future Consideration (Exhibit H). The Mutual Option for Future Consideration entitles Whirlpool to receive a Declaration of Covenants, Conditions and Restrictions as described in Paragraph 1(a)(iii) above and an Access Agreement as set forth in Paragraph 1(a)(iv) above from any current or future Fringe Owner if, at any time before January 1, 2029, Whirlpool or the ADEQ verifies the detection of TCE in the groundwater beneath the given property at levels or concentrations that require monitoring or remedial action. To exercise the Option, Whirlpool will pay Additional Consideration equal to the difference between $5,000 and the amount indicated on Exhibit E as the Tax Assessor's devaluation of the Fringe property. If the Fringe member does not have a

devaluation by the Tax Assessor, the Additional Consideration will be determined by the same Independent Appraisal process as set forth in Paragraph IV(1)(a)(ii) above. This Mutual Option for Future Consideration will expire on January 1, 2029, unless extended by mutual agreement of the parties.

V. SETTLEMENT PROCESS

1. **Preliminary Approval.** The Parties shall jointly move the Court to grant preliminary approval of this Settlement Agreement, to preliminarily certify the Class, to enter the Order Granting Preliminary Approval of Settlement, and to approve the Notice of Proposed Class Action Settlement and Your Rights ("Notice") attached hereto as Exhibit F, within fourteen (14) days of execution of this Agreement.

2. Well Ban Subclass. Within fourteen (14) days of the Court granting Preliminary Approval to the proposed settlement, the Notice of Class Action Settlement in the form of Exhibit D1, or as modified by the Court, will be sent by certified mail, return receipt requested, to the owners of record of those properties identified in Exhibit A.

a. The Notice will provide general information as to the settlement terms, the default diminished value award amount for the Subclass member, the appraisal option, and instructions on how to Opt Out of the proposed settlement. A URL address will be provided in the Notice to an online complete copy of this Settlement Agreement which will be maintained by the Claims Administrator through the Effective Date.

b. Notice will also be provided by publication in the Southwest Times Record, which is a newspaper of general circulation in Fort Smith, Arkansas, once a week for four consecutive weeks commencing on the Notice Date. That Notice will be in the form of Exhibit D3, or other such form as the Court may order. The Notice will direct those persons who believe they may be in the settlement class to contact the Claims Administrator to request a Claim and Appraisal Election form be sent to them.

c. If the class member does not Opt Out by the Opt Out deadline, they will be bound by the terms of the Settlement Agreement. If the Class Member does not desire to Opt Out, no action is required until the Claims Administrator sends them a Claim and Appraisal Election Form. A link will be provided to an

online copy of the complete settlement agreement, which will be maintained by the Claims Administrator through the Effective Date.

d. Within 30 days of the Effective Date, Well Ban Subclass Members not Opting Out will be sent a Claim Form in the Form of Exhibit I and an Appraisal Election document in the Form of Exhibit J, or as modified by the Court. To receive settlement benefits the class member must return the properly completed Claim Form with ownership documentation to the Claims Administrator within 60 days. If the Subclass Member does not want to request the appraisal option, they should not return the Appraisal Election Form. If the Subclass Member wants to request the appraisal option, the Subclass Member must return the properly completed Appraisal Election Form within 60 days. The Claims Administrator will arrange for the appraisal and will coordinate with the Subclass Member.

e. The Claims Administrator will review the completed forms to determine whether the proper information has been provided to establish an ownership interest in the subject property. If additional information is needed from the class member, claims administrator will attempt to contact the class member to obtain the information.

f. Within 90 days of the Claim and Appraisal Election Form Deadline, the Claims Administrator will send those Class Members who have properly made a claim for settlement benefits a Declaration of Covenants, Conditions and Restrictions, and the Access Agreement, attached hereto as Exhibits F and G respectively, or as modified by the Court. These documents must be returned, properly executed, to the claims administrator within 60 days to claim benefits. The Claims Administrator will properly record the executed Declaration of Covenants, Conditions and Restrictions. The Claims Administrator will disburse settlement proceeds to those class members meeting all of the settlement benefit requirements within 30 days of the requirements being met.

g. The Court will appoint the Claims Administrator as the attorney-in-fact for those Well Ban Subclass Members that did not Opt Out, and did not timely file a Claim and Appraisal Election form and/or did not timely provide the Claims Administrator with properly executed Declaration of Covenants, Conditions and Restrictions and/or Access Agreements. The Claims Administrator will complete and execute the Declaration of Covenants, Conditions and Restrictions and Access Agreement as attorney-in-fact for each of the respective Well Ban class members so situated. The Claims Administrator will properly record these Declarations of Covenants, Conditions and Restrictions.

3. The Fringe Subclass. Within fourteen (14) days of the Court granting Preliminary Approval to the proposed settlement, the Notice of Class Action Settlement in the

form of Exhibit D2, or as modified by the Court, will be sent by certified mail, return receipt requested, to the owners of record of those properties identified in Exhibit B. Notice will also be provided by publication in the Southwest Times Record, which is a newspaper of general circulation in Fort Smith, Arkansas, once a week for four consecutive weeks commencing on the Notice Date. That Notice will be in the form of Exhibit D3, or other such form as the Court may order. The Notice will direct those persons who believe they may be in the settlement class to contact the Claims Administrator to request a Claim and Appraisal Election form be sent to them.

a. The Notice will provide information as to the $5000 claim award, the Mutual Option for Future Consideration, the Release, the settlement terms, and provide instructions on how to Opt Out of the proposed settlement. An online address will be provided in the Notice to an complete copy of this Settlement Agreement which will be maintained by the Claims Administrator through the Effective Date**.** If the class member does not Opt Out by the Opt Out deadline, they will be bound by the terms of the Settlement Agreement. If the Class Member does not desire to Opt Out, no action is required until the Claims Administrator sends them a Claim and Appraisal Election Form.

b. Within 30 days of the Effective Date, Class Members not Opting Out will be sent a Claim Form in the form of Exhibit J, or as modified by the Court . To receive settlement benefits the class member must return the properly completed Claim Form to the Claims Administrator within 60 days. The Claims Administrator will review the completed forms to determine whether the proper information has been provided to establish an ownership interest in the subject property. If additional information is needed from the class member, claims administrator will attempt to contact the class member to obtain the information.

c. Within 90 days of the Claim Form Deadline, the Claims Administrator will send those Class Members who have properly made a claim for settlement benefits a Mutual Option for Future Consideration agreement attached as Exhibit H. This document must be returned, properly executed, to the claims administrator within 60 days to claim the $5000 settlement award. The Claims Administrator will disburse settlement proceeds to those class members meeting all of the settlement benefit requirements within 30 days of the requirements being met.

VI. SETTLEMENT ADMINISTRATOR

1. Subject to the approval of the Court, RG/2 Claims Administrator LLC has been selected by the Parties as the Claims Administrator for this Settlement Agreement. The Parties agree that Whirlpool will bear the cost of Notice and claims administration. As directed by the Court or Whirlpool, the Claims Administrator will:

a. Effectuate Notice a to the Class Members as in accordance with the Notice Plan attached as Exhibit L;

b. Provide and staff a toll-free phone number and website for the purpose of proving settlement information to class members and potential class members;

c. Receive Opt Out notices, Appraisal Option Requests, Access Agreements, and Mutual Option for Future Consideration forms from Class Members and any other submissions by persons claiming ownership interests in any of the properties in question;

d. Coordinate appraisals where requested;

e. Coordinate the process of obtaining and confirm that Well Ban Declaration of Covenants, Conditions and Restriction have been filed and are in effect for each Well Ban Subclass Property;

f. Distribute settlement proceeds as set forth in this Settlement Agreement;

g. Administer the class settlement as requested by the Parties and approved by the Court, including but not limited to evaluating and rendering equitable, informed decisions -- which decisions shall be final and unappealable -- to resolve any disputed property interests or to allocate pro rata the consideration owed on any property between and among multiple persons with valid legal claims to ownership interests therein;

h. In the case of the Well Ban Subclass, the Claims Administrator will assist the class members with the process of recording the Declaration of Covenants, Conditions and Restrictions to their deeds.

i. Provide weekly written status reports to all counsel as to the progress of the claims administration process until such time as the disbursement process concludes.

j. The Claims Administrator will be appointed by the Court as attorney-in-fact for those Well Ban Subclass members, not Opting Out of the settlement, who do not provide the Claims Administrator with an executed Declaration of Covenants, Conditions and Restrictions and/or Access Agreement. The Claims Administrator will execute these documents on the Subclass member's behalf and record the Declaration of Covenants, Conditions and Restrictions with the appropriate deed.

k. Otherwise administer the class settlement as requested by the Parties and approved by the Court.

VII. ATTORNEY'S FEES AND COSTS

1. **Class Counsel**. The Parties consent to the Court appointing Kenneth Shemin of the Shemin Law Firm LLC as class counsel. The Parties further consent to having attorneys previously retained on this matter for participating Class Members to join as Class Counsel and to receive fees appropriate to such representations.

2. **Expense and Fee Award**. Solely for purposes of effectuating this Settlement Agreement, the parties agree that Plaintiff is the prevailing party in the lawsuit, and that Class Counsel is entitled to an award of attorneys' fees and costs on that basis. The parties have not attempted to negotiate an expense and fee award to Class Counsel. Whirlpool will not oppose any fee petition by Class Counsel; however, Whirlpool reserves the right to appeal the amount of any awarded fees solely on the basis that such award substantially departs from settled law governing fee awards in comparable situations.

3. **Timing of Fee Award**. Within five days of Preliminary Approval, Class Counsel shall file a petition for fees and costs with the Court, and shall immediately post the petition on a publicly accessible website. The URL for the fee petition shall also be included in the Notice to the Class.

4. Whirlpool shall pay any award of costs, expenses, and attorneys' fees separately from awards to the Class Members, and no part of such an award shall reduce the amount of any Class Member's award payment. Payment of the costs, expenses, and attorneys' fees awarded by the Court shall be made within seven days of the Effective Date, unless appealed, and shall constitute full satisfaction of any obligation on the part of Whirlpool to pay any person, attorney, or law firm for costs, litigation expenses, attorneys' fees, or any other expense incurred on behalf of the Class.

5. **Incentive Payment**: The Parties intend to request that the Court award a reasonable incentive payment to each of the Class Representatives to compensate them for their efforts in representing the class. Whirlpool will pay the incentive award as determined by the Court and the award will not reduce the payments to other class members.

VIII. TERMINATION OF THE SETTLEMENT AGREEMENT

1. Whirlpool shall have the option to terminate the Settlement Agreement ("Termination Option") at any time before the Final Approval of the Class Settlement by the Court, if Whirlpool should determine in its sole discretion, that the objective of efficient resolution of claims is not being achieved. In the event that Whirlpool chooses to exercise the Termination Option, it must do so in writing to the Court and Class Counsel.

2. In the event that Whirlpool does timely exercise its Termination Option, then (a) this Settlement Agreement shall have no force and effect and shall be null and void; (b) the Parties shall return to the positions they occupied before entering into this Settlement Agreement, including retaining all rights, claims and defenses they had prior to entering the Settlement Agreement; and (c) the Settlement Agreement, any motions to approve the Settlement Agreement and the settlement negotiations shall be without prejudice to the rights of

any party, shall not be attempted to be used by any Party in this Action, and shall be inadmissible in the Action.

IX. OPT-OUTS AND OBJECTIONS

1. **Requirements for Opting Out**. Any Class Member who wishes to opt out of the Class and this Settlement Agreement must mail notice to the Claims Administrator, at the addresses listed in the Notice provisions set forth below, a written, signed, and dated statement that he or she is opting out of the Class and understands that he or she will receive no money from the settlement of this Action. An opt-out notice must contain the following identifying information: "*Day v. Whirlpool Corporation*, Case No. 13-02164." To be effective, this opt out statement must be postmarked no later than sixty (60) days after the Notice Date. The Class will not include any individuals who send timely and valid opt out statements, and individuals who opt out are not entitled to any monetary award under this Settlement Agreement.

2. **Requirements for Objecting.** Any Class Member who wishes to object to this Settlement Agreement, including the fee petition, must mail to the Court, Class Counsel, and counsel for Whirlpool, at the addresses listed in the Notice provisions set forth below, a written, signed, and dated objection, which must contain a detailed description of all bases for the objection and any supporting papers, briefs, evidence or arguments. If the person filing the objection wishes to present argument in support of the objection at the Final Approval Hearing, a request to that effect must be included in the objection. An objection must contain the following identifying information: "*Day v. Whirlpool Corporation*, Case No. 13-02164." To be effective, an objection must be received by the Court no later than sixty (60) days after the Notice Date. No one may present argument at the Final Approval Hearing for the purpose of

objecting to the Settlement Agreement or otherwise object to the Settlement Agreement without having properly served a timely objection in accordance with the terms of this paragraph. The Parties shall have the right to take discovery, including via subpoenas duces tecum and depositions, from any objector.

3. **Waiver of Objections**. Except for Class Members who opt out of the Class in compliance with the foregoing, all Class Members will be deemed to be members of the Class in the Action for all purposes under this Settlement Agreement, the final approval order, the Judgment, and the releases set forth in this Settlement Agreement and, unless they have timely asserted an objection to this Settlement Agreement, shall be deemed to have waived all objections and opposition to its fairness, reasonableness, and adequacy.

4. **No Encouragement of Objections.** Neither Class Counsel, Whirlpool, Whirlpool counsel, nor any person acting on their behalf, shall seek to solicit or otherwise encourage anyone to object to the Settlement Agreement or appeal from any order of the Court that is consistent with the terms of the Settlement Agreement.

X. FINAL APPROVAL AND DISMISSAL WITH PREJUDICE

1. The Parties shall, jointly or separately, move the Court for final approval of the Settlement Agreement no later than 21 days before the Final Approval Hearing set by the Court. The motion for final approval of this Settlement Agreement shall include a request by Plaintiff that the Court grant final approval of the Settlement Agreement, enter a final Judgment in the form attached as Exhibit C, incorporating the Settlement Agreement into the Judgment and, if the Court grants final approval of the Settlement Agreement and incorporates the Settlement Agreement into the final Judgment, that the Court dismiss this Action with prejudice, subject to the Court's continuing jurisdiction to reopen the action in order to enforce

the Settlement Agreement. In the event the Judgment is reversed or the Settlement Agreement does not become final and binding, the Parties agree that (1) the Court shall vacate any dismissal with prejudice and the Parties shall return to the positions they occupied before entering into this Settlement Agreement, including retaining all rights, claims and defenses they had prior to entering the Settlement Agreement; and (2) the Settlement Agreement, any motions to approve the Settlement Agreement and the settlement negotiations shall be without prejudice to the rights of any party, shall not be used by any Party in this Action for any purpose whatsoever and shall be inadmissible in this or any other Action for any purpose.

2. **Settlement Hearing**. The Court shall hold a hearing to consider final approval of this Settlement Agreement (the "Final Approval Hearing"), and to rule on Plaintiff's Petition for the Award of Attorneys' Fees, at any time 90 days or more after the Notice Date.

XI. GENERAL PROVISIONS

1. **No Admission of Liability, No Collateral Use.** The Parties acknowledge and agree that this Settlement Agreement is a voluntary and mutually acceptable resolution of the Action. By entering into this Settlement Agreement, Whirlpool does not admit wrongdoing or liability as to any matter whatsoever. Whirlpool denies the claims set forth in Plaintiffs' Complaint. This Settlement Agreement shall not be cited, offered, or construed as an admission or evidence (including but not limited to an admission or evidence of the propriety or feasibility of certifying a class) in this Action or any other action or proceeding except for purposes of seeking approval, fulfillment, or enforcement of this Settlement Agreement if finalized, effectuated and approved by this Court. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in the Court or in mediation or arbitration to enforce or implement any provision of this Settlement Agreement or implement

or enforce any orders or judgments of the Court entered into in connection with this Settlement Agreement.

2. **Release**.

a. Upon the Effective Date, each Class Member who has not timely opted out of the Class remises, releases, acquits, waives and forever discharges the Whirlpool Released Parties of and from any and all manner of actions, causes of action, suits, debts, judgments, rights, demands, damages, compensation, injuries to business, loss of service or enjoyment, expenses, attorneys' fees, litigation costs, other costs, rights or claims for reimbursement of attorneys fees, and claims of any kind or nature whatsoever, including without limitation punitive damages, in either law or equity, under any theory of common law or under any federal, state, or local law, statute, regulation, ordinance, or executive order that the Class Member ever had or may have in the future, whether directly or indirectly, that arose from the beginning of time through execution of this Agreement, WHETHER FORESEEN OR UNFORESEEN, OR WHETHER KNOWN OR UNKNOWN TO ALL OR ANY OF THE PARTIES, that arise out of the release, migration or impacts or effects of TCE or other chemical contamination originating from the Whirlpool facility at any time and into the future, including but not limited to property damage, remediation costs, or diminution of value to property as a result of the subject contamination (the "Released Claims"). Notwithstanding the foregoing, the sole and only

excluded claims from the Release are those for personal injury damages or wrongful death.

b. Upon the Effective Date, each of the Class Members who has not timely opted out of the Class fully, finally, and forever release and discharge, and shall be forever enjoined from prosecuting, all Released Claims against the Whirlpool Released Parties.

c. Each Class Member who does not timely opt out of the Class hereby stipulates and agrees, with respect to any and all Released Claims, that, on the Effective Date, the Class Member shall be conclusively deemed to, and by operation of the final judgment shall, waive and relinquish any and all rights or benefits they may now have, or in the future may have, under any law relating to the release of unknown claims.

d. Each Class Member who has not timely opted out of the Class shall have fully, finally, and forever settled, remised, released, relinquished, acquitted, waived and discharged any and all Released Claims. The Class Members who have not timely opted out of the Class acknowledge that the foregoing release of claims including but not limited to claims for punitive damages, was separately bargained for and a key element of this Settlement Agreement.

3. **Absence of Approval.** In the event that this Settlement Agreement does not become final and binding, no Party shall be deemed to have waived any claims, objections, rights or defenses, or legal arguments or positions, including but not limited to, claims or objections to class certification, or claims or defenses on the merits. Each party reserves the

right to prosecute or defend this Action in the event that the Settlement Agreement does not become final and binding.

4. **Cooperation.** The Parties agree that they will cooperate to effectuate and implement the terms and conditions of this Settlement Agreement.

5. **Effect of Prior Agreements.** This Settlement Agreement constitutes the entire agreement and understanding of the Parties with respect to the settlement of this Action, contains the final and complete terms of the settlement of the Action and supersedes all prior agreements between the Parties regarding settlement of the Action. The Parties agree that there are no representations, understandings, or agreements relating to the settlement of this Action other than as set forth in this Settlement Agreement.

6. **No Drafting Presumption**. All Parties hereto have participated, through their counsel, in the drafting of this Settlement Agreement, and this Settlement Agreement shall not be construed more strictly against any one party than the other parties. Whenever possible, each term of this Settlement Agreement shall be interpreted in such a manner as to be valid and enforceable. Headings are for the convenience of the Parties only and are not intended to create substantive rights or obligations.

7. **Notices**. All notices to the Parties or counsel required or desired to be given under this Settlement Agreement shall be in writing and sent by electronic mail and U.S. Mail as follows:

To Plaintiffs:

Kenneth Shemin, attorney for plaintiffs
Shemin Law Firm LLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, Arkansas 72758
Phone: 479.845.3305

Email: paralegal@sheminlaw.com
Fax: 479.845.2198

To Whirlpool:

Robert L. Jones III, Attorney for Whirlpool Corporation
Conner & Winters, LLP
4375 N. Vantage Drive, Suite 405
Fayetteville, AR 72703
Phone 479.582.5711
Email: bjones@cwlaw.com
Fax: 479.587.1426

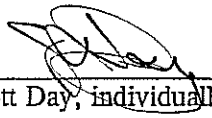
8. **Modifications**. No modifications to this Settlement Agreement may be made without written agreement of all Parties and Court approval.

9. **No Third Party Beneficiaries**. This Settlement Agreement shall not inure to the benefit of any third party.

10. **Execution in Counterparts**. This Settlement Agreement may be executed in counterparts. Each signed counterpart together with the others shall constitute the full Settlement Agreement. Each signatory warrants that the signer has authority to bind his party.

SIGNATURES ON FOLLOWING PAGE

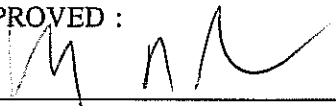
AGREED this 3rd day of July 2014:



Scott Day, individually and as class representative

Glenda V. Wilson, individually and as class representative

APPROVED :



Kenneth Shemin, attorney for plaintiffs
Shemin Law Firm LLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, Arkansas 72758
Phone: 479.845.3305
Email: paralegal@sheminlaw.com
Fax: 479.845.2198

AGREED: this ____ day of July 2014:

For Whirlpool Corporation,

Its:_____

APPROVED:

Robert L. Jones III, Attorney for Whirlpool Corporation
Conner & Winters, LLP
4375 N. Vantage Drive, Suite 405
Fayetteville, AR 72703
Phone 479.582.5711
Email: bjones@cwlaw.com
Fax: 479.587.1426

AGREED this ____ day of July 2014:

_____
Scott Day, individually and as class representative

Glenda V. Wilson
_____
Glenda V. Wilson, individually and as class representative

APPROVED :

_____
Kenneth Shemin, attorney for plaintiffs
Shemin Law Firm LLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, Arkansas 72758
Phone: 479.845.3305
Email: paralegal@sheminlaw.com
Fax: 479.845.2198

AGREED: this ____ day of July 2014:

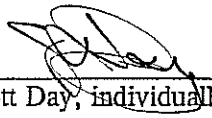
_____
For Whirlpool Corporation,

Its:_____

APPROVED:

_____
Robert L. Jones III, Attorney for Whirlpool Corporation
Conner & Winters, LLP
4375 N. Vantage Drive, Suite 405
Fayetteville, AR 72703
Phone 479.582.5711
Email: bjones@cwlaw.com
Fax: 479.587.1426

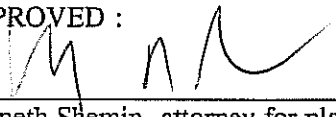
AGREED this 3rd day of July 2014:



Scott Day, individually and as class representative

Glenda V. Wilson, individually and as class representative

APPROVED :



Kenneth Shemin, attorney for plaintiffs
Shemin Law Firm LLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, Arkansas 72758
Phone: 479.845.3305
Email: paralegal@sheminlaw.com
Fax: 479.845.2198

AGREED: this ____ day of July 2014:

For Whirlpool Corporation,

Its:_____

APPROVED:

Robert L. Jones III, Attorney for Whirlpool Corporation
Conner & Winters, LLP
4375 N. Vantage Drive, Suite 405
Fayetteville, AR 72703
Phone 479.582.5711
Email: bjones@cwlaw.com
Fax: 479.587.1426

AGREED this ____ day of July 2014:

_____
Scott Day, individually and as class representative

_____
Linda Wilson, individually and as class representative

APPROVED :

_____
Kenneth Shemin, attorney for plaintiff
Shemin Law Firm LLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, Arkansas 72758
Phone: 479.845.3305
Email: paralegal@sheminlaw.com
Fax: 479.845.2198

AGREED: this 3 day of July 2014:

_____
For Whirlpool Corporation,

Its: V.P. Communications and Public Affairs

APPROVED:

_____
Robert L. Jones III, Attorney for Whirlpool Corporation
Conner & Winters, LLP
4375 N. Vantage Drive, Suite 405
Fayetteville, AR 72703
Phone 479.582.5711
Email: bjones@cwlaw.com
Fax: 479.587.1426

EXHIBIT A

EXHIBIT A
WELL BAN SUBCLASS

No.	Property Owner	Property Address
1.	Westpfahl	1400 Brazil Ave
2.	River of Life Church	1404 Brazil Ave
3.	River of Life Church	1500 Brazil Ave
4.	Marrs	1504 Brazil Ave
5.	Reith	1600 Brazil Ave
6.	Jamison	1604 Brazil Ave
7.	Swaim	1700 Brazil Ave
8.	Threet	1704 Brazil Ave
9.	Taylor	1710 Brazil Ave
10.	Taylor	1714 Brazil Ave
11.	Taylor	1718 Brazil Ave
12.	Taylor	1722 Brazil Ave
13.	Taylor	1726 Brazil Ave
14.	Taylor	1730 Brazil Ave
15.	Kralicek	1804 Brazil Ave
16.	Kralicek	1900 Brazil Ave
17.	Caddell	5921 Ferguson
18.	Rogers	5923 Ferguson
19.	Kralicek	1322 Jacobs Ave
20.	Denton	1400 Jacobs Ave
21.	Hamm	1401 Jacobs Ave
22.	Hamm	1405 Jacobs Ave
23.	Morrison	1409 Jacobs Ave
24.	Wilkinson	1500 Jacobs Ave
25.	Fowler	1504 Jacobs Ave
26.	Plunkett	1505 Jacobs Ave
27.	Reith	1600 Jacobs Ave
28.	Nichols	1601 Jacobs Ave
29.	Watts	1604 Jacobs Ave
30.	King	1605 Jacobs Ave
31.	Flowers	1700 Jacobs Ave
32.	Smith	1701 Jacobs Ave
33.	Winters	1704 Jacobs Ave
34.	Winters	1705 Jacobs Ave
35.	Linson	1800 Jacobs Ave
36.	Morgan	1801 Jacobs Ave
37.	Keith	1804 Jacobs Ave
38.	Kralicek	1805 Jacobs Ave
39.	Long	1808 Jacobs Ave

No.	Property Owner	Property Address
40.	Scroggins	1809 Jacobs Ave
41.	Long	1900 Jacobs Ave
42.	Wilson	1904 Jacobs Ave
43.	Love	1908 Jacobs Ave
44.	Reith	1600 Jacobs Ave, Units A & B
45.	Reith	1600 Jacobs Ave, Units C & D
46.	Reith	1600 Jacobs Ave, Units E & F
47.	Newbold	5800 Jenny Lind
48.	Jarrett	5812 Jenny Lind
49.	Nguyen	5814 Jenny Lind
50.	Kralicek	5816 Jenny Lind
51.	Maham	5818 Jenny Lind
52.	Maham	5904 Jenny Lind
53.	Potts	5908 Jenny Lind

EXHIBIT B

EXHIBIT B
FRINGE SUBCLASS

No.	Property Owner	Property Address
54.	White	1322 Brazil Ave
55.	Newell	1325 Brazil Ave
56.	Hartoon	1401 Brazil Ave
57.	Le	1431 Brazil Ave
58.	Le	1451 Brazil Ave
59.	Anderson	1501 Brazil Ave
60.	Clifft	1505 Brazil Ave
61.	Moore	1507 Brazil Ave
62.	Kaelin	1601 Brazil Ave
63.	Tran	1701 Brazil Ave
64.	Haskins	1705 Brazil Ave
65.	McGruder	1801 Brazil Ave (1820 S Zero)
66.	Lopez	1805 Brazil Ave
67.	Le	1851 Brazil Ave
68.	Lovett	1905 Brazil Ave
69.	Farmer Trust	2004 Brazil Ave
70.	Bost Human Development Services	2010 Brazil Ave
71.	Allied Ind Workers Local 370	2107 Brazil Ave
72.	Superior Properties Plus	1910 S Zero St
73.	Hodges	1910 S Zero St
74.	PH Properties LLC	1922 S Zero St
75.	First American Title Insurance Co.	1924 S Zero St
76.	Regions Bank	2000 S Zero St.
77.	Charleston Investment Prop	5701 Jenny Lind
78.	Johnson	5703 Jenny Lind
79.	Dreams to Wings, LLC	5707 Jenny Lind
80.	Allen Trust	5710 Jenny Lind
81.	Allen Trust	5712 Jenny Lind
82.	Allen Trust	5714 Jenny Lind
83.	Dreams to Wings, LLC	5719 Jenny Lind
84.	Allen Trust	5720 Jenny Lind
85.	Westphal	5801 Jenny Lind
86.	Przybysz	5815 Jenny Lind
87.	Maham, LLC	5817 Jenny Lind
88.	Przybysz	5901, 5903 Jenny Lind
89.	Przybysz	Lot C, Block D Jenny Lind

No.	**Property Owner**	**Property Address**
90.	Corley	5907 Jenny Lind
91.	Driscoll	6015 Jenny Lind
92.	City of Fort Smith	5816-5824 Boys Club Lane
93.	Kralicek	5904 Boys Club Lane
94.	Mathews	5908-5910 Boys Club Lane
95.	Mathews	5912-5914 Boys Club Lane
96.	Ruth	1320 Jacobs Ave
97.	Stinson	1323 Jacobs Ave
98.	Rieder	2002 Jacobs Ave
99.	Gamble	2004 Jacobs Ave
100.	City of Fort Smith	2006 Jacobs Ave
101.	City of Fort Smith	2008 Jacobs Ave
102.	City of Fort Smith	2010 Jacobs Ave
103.	Reith Properties	2011 Jacobs Ave
104.	River Rock	5920 Ferguson

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

SCOTT DAY and GLENDA V. WILSON, individually and behalf of all others similarly situated, **Plaintiffs,** **vs.** **WHIRLPOOL CORPORATION,** **Defendant.**	**Civil Action No. 2:13-cv-02164-PKH**

ORDER AND JUDGMENT APPROVING CLASS-ACTION SETTLEMENT AND DIRECTING NOTICE OF FINAL APPROVAL

WHEREAS, the parties to the above-captioned class action (the "Action") entered into a Class Settlement Agreement (the "Settlement Agreement"), as of July 3, 2014 (terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Settlement Agreement); and

WHEREAS, Defendant and the Plaintiff in the Action moved under Federal Rule of Civil Procedure 23(b) for an order certifying the class for settlement purposes, and under Rule 23(e) for an order preliminarily approving the proposed settlement of the Class Members' claims in accordance with the Settlement Agreement and approving the form and plan of notice as set forth in the Settlement Agreement;

WHEREAS, in its Order entered on _____, 2014 (the "Preliminary Approval Order"), the Court provisionally ordered that this Action may be settled as a class action on behalf of the following class:

A class (the "Settlement Class") defined as:

> All property owners in Sebastian County, Arkansas whose property has been impacted by the migration of the chemical trichloroethylene or other contaminants into the groundwater beneath the surface of the contaminated area which emanated from the manufacturing plant owned and formerly utilized by Whirlpool Corporation and the contaminant's migration offsite from the plant onto property owned by any party other than Whirlpool, limited to the properties identified in Exhibits A and B to this Settlement Agreement. Excluded from the class are Whirlpool Corporation and its officers, directors, management, employees, subsidiaries, or affiliates and any Person who files a valid and timely exclusion on or before the Opt-Out Deadline.

WHEREAS, the Preliminary Approval Order also approved the forms of notice of the Settlement to Class Members and directed that appropriate notice of the Settlement be given to Class Members;

WHEREAS, in accordance with the Settlement Agreement and the Preliminary Approval Order: (1) the Settlement Administrator caused to be mailed to Class Members the Notice of Class Action, Proposed Settlement, and Settlement Hearing ("Notice") on _____ __, 2014 and caused to be published the Summary Notice of Class Action, Proposed Settlement, and Settlement Hearing ("Summary Notice"); (2) an Affidavit of Mailing and Publication of the Notice and Publication of the Summary Notice was filed with the Court prior to this hearing; and (3) the Affidavit of Mailing and Publication filed with this Court demonstrates compliance with the Preliminary Approval Order with respect to the Notice and the Summary Notice and, further, that the best notice practicable under the circumstances was, in fact, given;

WHEREAS, on __, 2014 at __:__ __, this Court held a hearing on whether the Settlement Agreement is fair, reasonable, adequate and in the best interests of the Class (the "Fairness Hearing"); and

WHEREAS, based upon the foregoing, having heard the statements of counsel for the Parties and of such persons as chose to appear at the Fairness Hearing; having considered all of the files, records, and proceedings in the Action, the benefits to the Class under the Settlement Agreement, and the risks, complexity, expense, and probable duration of further litigation; and being fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Court has subject-matter jurisdiction over the subject matter of the Action, and personal jurisdiction over the Plaintiff, Class Members, and the Defendant.

2. The Class Representatives and their counsel fairly and adequately represent the interests of the Class Members in connection with the Settlement Agreement.

3. The Settlement Agreement is the product of good-faith, arm's-length negotiations by the Class Representative and its counsel, and Whirlpool and their counsel, and the representative of the Settlement Class and Whirlpool were represented by capable and experienced counsel.

4. The form, content, and method of dissemination of the notice given to Class Members, including both published notice and individual notice to all Class Members who could be identified through reasonable effort, were adequate and reasonable and constituted the best notice practicable under the circumstances.

5. The Settlement Agreement is fair, reasonable, adequate, and in the best interests

of Class Members, and is approved in all respects, and the parties are directed to perform and satisfy the terms and conditions of the Settlement Agreement.

6. Class Members shall be permitted to make claims for the benefits described in the Settlement Agreement, subject to the conditions and limitations stated herein.

7. The certification of the Settlement Class, under Rules 23(b)(3) and 23(e), solely for settlement purposes, is hereby confirmed.

8. The notice, as given, complied with the requirements of Rule 23, satisfied the requirements of due process, and constituted due and sufficient notice of the matters set forth therein.

9. After this Order and Judgment has become Final, an order awarding attorneys' fees to Settlement Class Counsel with respect to the Settlement Agreement becomes Final, and all periods during which any Party to the Settlement Agreement may exercise a right of withdrawal have expired (hereafter "the Effective Date"), the Settling Defendants and all other Released Parties shall be released from any and all Settlement Claims that any Class Member (and all successors in interest) had, has, or may have in the future, against the Settling Defendant or any other Released Party. This Release may be enforced by any Released Party.

10. All Settlement Claims of any Class Member (and the successors in interest of all members of the Settlement Class) are hereby dismissed. Upon the Effective Date, such dismissal shall be with prejudice.

11. Upon the Effective Date, the Class Members (and the successors in interest of all members of the Settlement Class) shall be barred and permanently enjoined from instituting, asserting, or prosecuting against a Whirlpool or any other Released Party any and all

Settlement Claims they have, had, or may have in the future, against Whirlpool or any other Released Party, except any claims for enforcement of a Settlement Agreement.

12. The Claim Forms, the form Declaration of Covenants, Conditions and Restrictions, the Access Agreement, and the Mutual Option for Future Consideration set forth as Exhibits I, K, F, G and H respectively, to the Settlement Agreement, are approved. In order to receive Benefits under the Settlement Agreement, all Class Members must comply with the requirements for making and documenting a Claim that are set forth in that Settlement Agreement.

13. All Well Ban Subclass Members, regardless of whether they file a Claim, are hereby ordered to execute and deliver, after the Effective Date, a Declaration of Covenants, Conditions and Restrictions, and Access Agreement to the Claims Administrator.

14. In order to receive Benefits, each Well Ban Subclass Member must execute and provide to the Claims Administrator a Declaration of Covenants, Conditions and Restrictions and Access Agreement applicable to their property.

15. In order to receive Benefits, each Fringe Subclass Member must execute and provide to the Claims Administrator a Mutual Option for Future Consideration applicable to their property.

16. Upon the Effective Date, the Claims Administrator shall be authorized under Federal Rule of Civil Procedure 70 to execute and deliver to Whirlpool a Declaration of Covenants, Conditions and Restrictions and Access Agreement, substantially in the form of Exhibits F and G to the Settlement Agreement, on behalf of all Class Members who are Well Ban Subclass Members and who do not personally execute and deliver a Declaration of Covenants, Conditions and Restrictions and Access Agreement. Any Well Ban Subclass Class

Member and who does not file a Claim may rely upon the Claims Administrator to execute and deliver to Whirlpool the Declaration of Covenants, Conditions and Restrictions and Access Agreement.

17. The Claims Administrator is hereby appointed as attorney in fact for each Class Member who is a Well Ban Subclass Member, with power and authority, upon the Effective Date, to execute and deliver a Declaration of Covenants, Conditions and Restrictions and Access Agreement, substantially in the form of Exhibits F and G to the Settlement Agreement, to Whirlpool and to authorize Whirlpool to record such Declaration of Covenants, Conditions and Restrictions and Access Agreement as provided in the Settlement Agreement. The Court retains jurisdiction, as provided pursuant to the Settlement Agreement, to enter supplemental orders and judgments to effectuate the recordation of any and all rights conveyed to the Whirlpool under the Settlement Agreement.

18. The expenses of administering the Settlement Agreement shall be paid by Whirlpool in the manner set forth in the Settlement Agreement.

19. Upon the Effective Date, the Released Parties shall be released by all Class Members from any and all claims, damages, costs, expenses, and other liabilities of every kind and nature whatsoever as a result of or in any way in connection with the impact to their property of TCE migration from the former Whirlpool facility in Fort Smith, Arkansas, except claims to enforce the Settlement Agreement and/or this Order.

20. It is hereby declared, adjudged, and decreed that, upon the Effective Date, the Settlement Agreement provides the exclusive remedy for any and all Settlement Claims of Settlement Class Members (and any successors in interest) against the Whirlpool and any and all other Released Parties.

21. Upon the Effective Date, all Class Members (and all successors in interest), whether or not they file a Claim, shall be permanently enjoined and barred from instituting, asserting or prosecuting, either directly or as a class representative, any Settlement Claims.

22. The form of the Notice of Final Approval of Settlement, set forth as Exhibit ____ to the Settlement Agreement, is approved. Upon this Order and Judgment becoming Final, the Claims Administrator shall within thirty (30) days thereafter cause the Notice of Final Approval Package to be sent by United States mail, first class postage prepaid, to all Class Members who have been identified, who requested copies, or who otherwise came to the Claims Administrator's attention.

23. Incentive awards to the Class Representatives in the following amount are reasonable and are approved:_____. These monies will be paid by Whirlpool separate and apart from the payment of class benefits.

24. The Court hereby reserves its exclusive, general, and continuing jurisdiction over the parties to the Settlement Agreement, including Defendant and all Class Members, as needed or appropriate in order to administer, supervise, implement, interpret, or enforce the Settlement Agreement in accordance with its terms, including the investment, conservation, protection of settlement funds prior to distribution, and distribution of settlement funds.

25. In the event that the Whirlpool withdraws from the Settlement Agreement, this Order and Judgment shall have no further force and effect.

26. If this Order and Judgment is not a final judgment as to all claims presented in the Action, the Court hereby determines, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason to delay the appeal of all claims as to which final judgment is entered.

AND IT IS SO ORDERED.

_____
Honorable P.K. Holmes
United States District Judge

_____, 2014.

EXHIBIT D1

United States District Court
for the Western District of Arkansas

Scott Day et al v. Whirlpool Corporation

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND YOUR RIGHTS

A federal court authorized this notice. This is not a solicitation from a lawyer.

- Your legal rights are affected whether you act or don't act. Read this notice carefully.
- A settlement has been reached in a class action involving the contamination of land resulting from the migration of the chemical trichloroethylene ("TCE") from an appliance manufacturing facility owned and formerly operated by Whirlpool Corporation ("Whirlpool") in Fort Smith, Arkansas. You may be entitled to receive money as a result of the proposed settlement.
- The settlement will pay certain landowner's claims in exchange for agreement to a well ban deed restriction on their property, an access agreement, and a release of real property claims against Whirlpool Corporation ("Whirlpool").

Your Legal Rights and Options in the Settlement

Submit a claim Form	The only way you can get a payment. Claims forms will be mailed after the Court grants final approval to the Settlement.
Exclude Yourself from the Settlement	Get no money from the settlement. This is the only option that allows you to ever to be part of any other lawsuit against Whirlpool about the legal claims in this case. **Current landowners avoid a well ban deed restriction and an Access Agreement applying to their property.**
Object	If you do not exclude yourself, you may write to the Court about why you don't like the Settlement.
Go to a Hearing	If you object, you may also ask to speak in Court about the fairness of the Settlement.
Do Nothing	Get no payment. Give up rights to ever sue Whirlpool about the legal claims in this case. **Current landowners will be subject to a well ban deed restriction and an Access Agreement to their property.**

- These rights and options— **and the deadlines to exercise them** --- are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. WHY IS THERE A NOTICE?

You have a right to know about a proposed Settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement. The Court in charge of the case is the United States District Court for the Western District of Arkansas, and the case is called *Scott Day and Glenda Wilson v. Whirlpool Corporation*, Civil Action No. 2:13-cv-02164-PKH. In this notice, the people who sued are called the Plaintiffs, and the company they sued, Whirlpool Corporation, is called Whirlpool.

2. WHAT IS THIS LAWSUIT ABOUT?

On May 20, 2013, Plaintiff Day filed this lawsuit on behalf of himself and as the representative of a class of similarly situated persons, asserting claims related to the contamination of land resulting from the migration of TCE from an appliance manufacturing facility owned and formerly operated by Whirlpool in Fort Smith, Arkansas.

3. WHY IS THIS A CLASS ACTION?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. A judge can determine that people who have similar claims are members of a class, except for those who exclude themselves from the class. U.S. District Judge P.K. Holmes in the United States District Court for the Western District of Arkansas is in charge of this class action.

4. WHY IS THERE A SETTLEMENT?

There has been no trial. Instead, the Plaintiffs and Whirlpool agreed to settle to avoid the costs and risks of trial. The Settlement provides the opportunity for payment to Class members. In exchange, under the Settlement, Class Members each give a release Whirlpool for all property claims related to TCE contamination. Personal injury claims are not released. In addition, plaintiffs must execute a deed restriction that will prohibit the drilling of wells on their property and agreed to allow Whirlpool or its designee's reasonable access to their property for environmental monitoring.

WHO IS IN THE SETTLEMENT

To see if you can get money from the Settlement, you first have to determine if you are a Class Member.

5. HOW DO I DETERMINE IF I'M IN THE CLASS?

If you received this notice in the mail without requesting it, land records show you may be affected by this case. You can go to www. .com to see the description of the rights of way that are included in the Settlement. If you are still not sure if you are in the Class, you can call 1-800- _____to see if your property is included in the Settlement.

6. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

The Settlement Class is divided into Subclasses. One Subclass is called the "Well Ban Subclass" and the other Subclass is the "Fringe Subclass." Government records indicate that you may be a member of the Well Ban subclass: the properties in this subclass are set forth below.

No.	Property Owner	Property Address
1.	Westpfahl	1400 Brazil Ave
2.	River of Life Church	1404 Brazil Ave
3.	River of Life Church	1500 Brazil Ave
4.	Marrs	1504 Brazil Ave
5.	Reith	1600 Brazil Ave
6.	Jamison	1604 Brazil Ave
7.	Swaim	1700 Brazil Ave
8.	Threet	1704 Brazil Ave
9.	Taylor	1710 Brazil Ave
10.	Taylor	1714 Brazil Ave
11.	Taylor	1718 Brazil Ave
12.	Taylor	1722 Brazil Ave
13.	Taylor	1726 Brazil Ave
14.	Taylor	1730 Brazil Ave
15.	Kralicek	1804 Brazil Ave
16.	Kralicek	1900 Brazil Ave
17.	Caddell	5921 Ferguson
18.	Rogers	5923 Ferguson
19.	Kralicek	1322 Jacobs Ave
20.	Denton	1400 Jacobs Ave
21.	Hamm	1401 Jacobs Ave
22.	Hamm	1405 Jacobs Ave
23.	Morrison	1409 Jacobs Ave
24.	Wilkinson	1500 Jacobs Ave
25.	Fowler	1504 Jacobs Ave
26.	Plunkett	1505 Jacobs Ave
27.	Reith	1600 Jacobs Ave
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29.	Watts	1604 Jacobs Ave
30.	King	1605 Jacobs Ave
31.	Flowers	1700 Jacobs Ave
32.	Smith	1701 Jacobs Ave
33.	Winters	1704 Jacobs Ave
34.	Winters	1705 Jacobs Ave
35.	Linson	1800 Jacobs Ave
36.	Morgan	1801 Jacobs Ave

No.	Property Owner	Property Address
37.	Keith	1804 Jacobs Ave
38.	Kralicek	1805 Jacobs Ave
39.	Long	1808 Jacobs Ave
40.	Scroggins	1809 Jacobs Ave
41.	Long	1900 Jacobs Ave
42.	Wilson	1904 Jacobs Ave
43.	Love	1908 Jacobs Ave
44.	Reith	1600 Jacobs Ave, Units A & B
45.	Reith	1600 Jacobs Ave, Units C & D
46.	Reith	1600 Jacobs Ave, Units E & F
47.	Newbold	5800 Jenny Lind
48.	Jarrett	5812 Jenny Lind
49.	Nguyen	5814 Jenny Lind
50.	Kralicek	5816 Jenny Lind
51.	Maham	5818 Jenny Lind
52.	Maham	5904 Jenny Lind
53.	Potts	5908 Jenny Lind

7. WHAT SHOULD I DO IF I MOVE OR SELL MY PROPERTY?

If you move after receiving this notice and before the Settlement is finalized, in order to receive additional important notices, you must call the Claims Administrator at 1-800-000-0000 and give your new address. If you sell your property after receiving this notice and before the Settlement is finalized, you should inform the new owner of your decision whether to remain in the Class or to opt out of it because the new owner will be bound by your decision. You should also call the Claims Administrator and give the name of the new owner.

THE SETTLEMENT

8. WHAT DOES THE SETTLEMENT PROVIDE?

The Settlement Agreement, available at the website, www. .com, describes the details about the Settlement.

In response to TCE contamination of certain properties near the former Whirlpool facility in Fort Smith, Arkansas, in May of 2010, the Sebastian County Assessor reduced the assessed tax value of certain properties based upon actual or threatened TCE contamination. Under the Settlement Agreement the "Well Ban Subclass" consists of the owners whose property is located within the proposed well-ban zone as determined by the environmental consulting firm Environ. Under the settlement agreement, owners of property in the Well Ban Subclass will be paid the difference between the last assessment by the Tax Assessor before the contamination value reduction and the Assessor's most recent assessed value of the property. For your property located at_____, the amount of

the award would be $_____. Alternatively, you may request that the current value of your property be determined by the court approved appraiser, and you will receive the difference between the pre-contamination assessment value and the current appraised value. If you chose the appraisal option, the difference in value for your award will be determined by that method regardless of whether it is higher or lower than using the tax assessor's current assessed value

BENEFITS

9. WHAT CAN I GET FROM THE SETTLEMENT?

The Settlement will provide cash payments to those who qualify. Your projected award is listed above in Paragraph 8 above.

The documents that must be submitted to qualify for benefits are described in the Claim and Appraisal Election Form that will be distributed to Class Members if the Court approves the Settlement.

10. WHAT IF I DID NOT OWN MY PROPERTY FOR THE ENTIRE TIME?

Only current property owners at the time of Final Approval hearing are eligible for payments.

11. WHAT IF I INHERITED MY PROPERTY?

Only current property owners at the time of Final Approval hearing are eligible for payments.

12. WHAT IF THERE ARE MULTIPLE OWNERS OF MY PROPERTY?

If you file a valid claim, the Claims Administrator will write a single check payable to all co-owners of the property. The check will be mailed in care of the person to whom this notice was mailed.

13. WHAT AM I GIVING UP TO STAY IN THE CLASS?

Unless you exclude yourself from the Settlement (see Question ___), you can't sue, continue to sue, or be part of any other lawsuit against Whirlpool to obtain any recovery for injury to property as a result of the migration of TCE from the Whirlpool facility. It also means that all of the Court's decisions will bind you. In addition, if you are a current landowner, as a condition of payment, you will be required to submit a signed Declaration of Covenants, Conditions and Restrictions applicable to a Well Ban Subclass member's property which must at a minimum: (a) provide notice that the property is contaminated with TCE; (b) prohibit the drilling of wells for and the withdrawal of water for domestic, commercial, irrigation, agricultural or landscape or any other consumptive use; and (c) release all property damage claims related to the TCE contamination. You must also provide a signed Access Agreement allowing Whirlpool or its designee reasonable access for such future environmental monitoring and remediation as is required by or of Whirlpool.

THE CLAIMS PROCESS

14. HOW CAN I GET A PAYMENT?

You don't have to do anything now. If the Settlement receives final approval, Class Members who received this notice in the mail will receive a Claim and Appraisal Election Form ("Claim Form") automatically. You can view the Claim Form at the website. Please note that you will not be able to submit a claim until after the Court grants final approval to the Settlement. When you receive your Claim Form, you will need to complete it and supply the Claims Administrator with proof of your ownership of each parcel of property. There may be additional required documents based on the benefits for which you are applying. Please carefully read the Claim Form. If you still have questions about documentation requirements, you can call 1-800-000-0000.

15. WHEN WILL I GET MY PAYMENT?

The Court will hold a hearing on **Month Day, Year** at **Time x.m.** to decide whether to give final approval to the Settlement (*see* Question ____). If the Court approves the Settlement, anyone in the Claims Administrator's database will be sent a Claim Form to complete and return to the Claims Administrator. After your claim is received, the Claims Administrator will determine if you qualify for payment. If you do, the Claims Administrator will send a Declaration of Covenants, Conditions and Restrictions and an Access Agreement to you, which must be executed by the property owner(s) of record and timely returned to the Claims Administrator.

Any appeal after the Court approves the Settlement may cause additional time delays. Claim Forms will not be distributed and payments will not be made while an appeal is pending. The amount of time an appeal takes is always uncertain, but can be more than a year. Please check the website periodically for updates on this case.

16. WHAT IF I DISAGREE WITH THE AMOUNT OF MY PAYMENT?

You have the right to ask the Claims Administrator to reconsider the decision on your claim. Please review the letter carefully when you receive it because there are specific time limitations regarding the reconsideration process. More details are available in the Settlement Agreement, which is available at www. .com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from the Settlement, and you want to keep the right to sue or continue to sue Whirlpool on your own about the issues in this case, then you must take steps to get out. This is called excluding yourself—also referred to as opting out of the Class. This is the only way to avoid giving a Whirlpool a Release, Declaration of Covenants, Conditions and Restrictions and Access Agreement to Whirlpool.

17. HOW DO I GET OUT OF THE SETTLEMENT?

To exclude yourself from the Settlement, you must send a letter to the Claims Administrator that includes the following:

- Your name and address.
- The names and current addresses of any co-owners of land you own or owned identified as being in the Settlement Class.
- A statement saying that you want to be excluded from the Class,
- The legal description contained in the deed to your land or other description and address of the land at issue.
- Your signature.
- You must mail your exclusion request, postmarked no later than **Month Day, Year**, to:

Insert Claims Administrator Address for this case

18. IF I DON'T EXCLUDE MYSELF, CAN I SUE WHIRLPOOL FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up the right to sue Whirlpool for the claims that the Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Class to continue your own lawsuit.

19. IF I EXCLUDE MYSELF FROM THE SETTLEMENT, CAN I STILL GET A PAYMENT?

No. You will not get any money if you exclude yourself from the Settlement. If you exclude yourself from the Settlement, do not send in a Claim Form asking for benefits.

THE LAWYERS REPRESENTING YOU

20. Do I have a lawyer in the case?

Yes. The Court has appointed the lawyers and firm listed below as "Class Counsel," meaning that they were appointed to represent you and all Class Members:

Kenneth Shemin, attorney for plaintiffs
Shemin Law Firm LLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, Arkansas 72758
Phone: 479.845.3305
Email: paralegal@sheminlaw.com
Fax: 479.845.2198

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

21. HOW WILL THE LAWYERS BE PAID?

The Court will decide how much Class Counsel and any other lawyers will be paid. Class Counsel will ask the Court for attorneys' fees, costs and expenses of $_____.

Other lawyers may make fee applications. Class Counsel will also request that $ _____ be paid to the Class Representative who helped the lawyers on behalf of the whole Class. Whirlpool will separately pay these fees and expenses and the payment will not reduce the benefits available for the Class.

OBJECTING TO THE SETTLEMENT

22. HOW DO I TELL THE COURT THAT I DON'T LIKE THE SETTLEMENT?

If you are a Class Member, you can object to the Settlement or to requests for fees and expenses by Class Counsel or any other lawyers. To object, you must send a letter to the Claims Administrator that includes the following:

- Your name and address,
- The title of the case, *Scott Day and Glenda Wilson v. Whirlpool Corporation*, Civil Action No. 2:13-cv-02164-PKH
- A statement saying that you object to the Settlement in *Scott Day and Glenda Wilson v. Whirlpool Corporation*
- The reasons you object, and
- Your signature.

Your objection, along with any supporting material you wish to submit, must be mailed and postmarked no later than **Month Day, Year**, to Claims Administrator at the following address:

Insert Claims Administrator Address

23. WHAT'S THE DIFFERENCE BETWEEN OBJECTING AND ASKING TO BE EXCLUDED?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don't want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement and any requests for fees and expenses. You may attend and, if you submit a written objection and a Notice of Intention to Appear, you may ask to speak, but you don't have to.

24. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a Fairness Hearing at **Time x.m.** on **Month Day, Year**, at the United States District Court for the Western District of Arkansas, Fort Smith Office, Judge Isaac C. Parker Federal Building, 30 South 6th Street, Fort Smith, Arkansas 72901-2437,in Courtroom ###. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www. .com. At this hearing, the

Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider how much to pay Class Counsel and the Class Representative. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

25. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions Judge Holmes may have. But, you may come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, to the proper address, the Court will consider it.

You may also pay your own lawyer to attend, but it's not necessary.

26. MAY I SPEAK AT THE HEARING?

If you submitted a written objection, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that you intend to appear and wish to be heard. Your Notice of Intention to Appear must include the following:

- Your name and address,
- The title of the case,
- A statement that this is your "Notice of Intention to Appear," and
- Your signature.
- You must mail your Notice of Intention to Appear, postmarked no later than **Month Day, Year**, to the Claims Administrator

IF YOU DO NOTHING

27. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you received this notice in the mail, a Claim Form will automatically be mailed to you after the Court grants final approval to the Settlement. If you did not receive this notice in the mail, but believe you should be included in a Settlement Class, call the claims administrator and request at a Claims Form be mailed to you. If you do not file a claim, or provide a properly executed Declaration of Covenants, Conditions and Restrictions and Access Agreement you will not get any money from the Settlement.

GETTING MORE INFORMATION

28. HOW DO I GET MORE INFORMATION?

You can visit the website at www. .com, where you will find answers to common questions about the Settlement and other information to help you determine whether you are a Class Member and whether you are eligible for a payment. If you still have questions, you can call 1-800-000-0000 toll-free or write to INSERT CLAIMS ADMINISTRATOR ADDRESS. Please do not contact the Court for further information.

EXHIBIT D2

United States District Court
for the Western District of Arkansas

Scott Day et al v. Whirlpool Corporation

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND YOUR RIGHTS

A federal court authorized this notice. This is not a solicitation from a lawyer.

- Your legal rights are affected whether you act or don't act. Read this notice carefully.
- A settlement has been reached in a class action involving the contamination of land resulting from the migration of the chemical trichloroethylene ("TCE") from an appliance manufacturing facility owned and formerly operated by Whirlpool Corporation ("Whirlpool") in Fort Smith, Arkansas. You may be entitled to receive money as a result of the proposed settlement.
- The settlement will pay certain landowner's compensation in the amount of $5000 for their claims in exchange for agreement to enter a Mutual Option for Future Consideration agreement and a release of real property claims against Whirlpool Corporation ("Whirlpool").

Your Legal Rights and Options in the Settlement

Submit a claim Form	The only way you can get a payment. Claims forms will be mailed after the Court grants final approval to the Settlement.
Exclude Yourself from the Settlement	Get no money from the settlement. This is the only option that allows you to ever to be part of any other lawsuit against Whirlpool about the legal claims in this case. Current landowners avoid releasing their claims.
Object	If you do not exclude yourself, you may write to the Court about why you don't like the Settlement.
Go to a Hearing	If you object, you may also ask to speak in Court about the fairness of the Settlement.
Do Nothing	Get no payment. Give up rights to ever sue Whirlpool about the legal claims in this case. Current landowners will be subject to a Mutual Option for Future Consideration.

- These rights and options— **and the deadlines to exercise them** --- are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. WHY IS THERE A NOTICE?

You have a right to know about a proposed Settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement. The Court in charge of the case is the United States District Court for the Western District of Arkansas, and the case is called *Scott Day and Glenda Wilson v. Whirlpool Corporation*, Civil Action No. 2:13-cv-02164-PKH. In this notice, the people who sued are called the Plaintiffs, and the company they sued, Whirlpool Corporation, is called Whirlpool.

2. WHAT IS THIS LAWSUIT ABOUT?

On May 20, 2013, Plaintiff Day filed this lawsuit on behalf of himself and as the representative of a class of similarly situated persons, asserting claims related to the contamination of land resulting from the migration of TCE from an appliance manufacturing facility owned and formerly operated by Whirlpool in Fort Smith, Arkansas.

3. WHY IS THIS A CLASS ACTION?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. A judge can determine that people who have similar claims are members of a class, except for those who exclude themselves from the class. U.S. District Judge P.K. Holmes in the United States District Court for the Western District of Arkansas is in charge of this class action.

4. WHY IS THERE A SETTLEMENT?

There has been no trial. Instead, the Plaintiffs and Whirlpool agreed to settle to avoid the costs and risks of trial. The Settlement provides the opportunity for payment to Class members. In exchange, under the Settlement, Class Members each give a release Whirlpool for all property claims related to TCE contamination. Personal injury claims are not released. In addition, plaintiffs must execute a deed restriction that will prohibit the drilling of wells on their property and agreed to allow Whirlpool or its designee's reasonable access to their property for environmental monitoring.

WHO IS IN THE SETTLEMENT

To see if you can get money from the Settlement, you first have to determine if you are a Class Member.

5. HOW DO I DETERMINE IF I'M IN THE CLASS?

If you received this notice in the mail without requesting it, land records show you may be affected by this case. You can go to www. .com to see the description of the rights of way that are included in the Settlement. If you are still not sure if you are in the

Class, you can call 1-800- _____to see if your property is included in the Settlement.

6. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

The Settlement Class is divided into Subclasses. One Subclass is called the "Well Ban Subclass" and the other Subclass is the "Fringe Subclass." Government records indicate you may be a member of the Fringe Subclass if you own or co-own the real property at the following addresses in Fort Smith, Arkansas:

No.	Property Owner	Property Address
1.	White	1322 Brazil Ave
2.	Newell	1325 Brazil Ave
3.	Hartoon	1401 Brazil Ave
4.	Le	1431 Brazil Ave
5.	Le	1451 Brazil Ave
6.	Anderson	1501 Brazil Ave
7.	Clifft	1505 Brazil Ave
8.	Moore	1507 Brazil Ave
9.	Kaelin	1601 Brazil Ave
10.	Tran	1701 Brazil Ave
11.	Haskins	1705 Brazil Ave
12.	McGruder	1801 Brazil Ave (1820 S Zero)
13.	Lopez	1805 Brazil Ave
14.	Le	1851 Brazil Ave
15.	Lovett	1905 Brazil Ave
16.	Farmer Trust	2004 Brazil Ave
17.	Bost Human Development Services	2010 Brazil Ave
18.	Allied Ind Workers Local 370	2107 Brazil Ave
19.	Superior Properties Plus	1910 S Zero St
20.	Hodges	1910 S Zero St
21.	PH Properties LLC	1922 S Zero St
22.	First American Title Insurance Co.	1924 S Zero St
23.	Regions Bank	2000 S Zero St.
24.	Charleston Investment Prop	5701 Jenny Lind
25.	Johnson	5703 Jenny Lind
26.	Dreams to Wings, LLC	5707 Jenny Lind
27.	Allen Trust	5710 Jenny Lind
28.	Allen Trust	5712 Jenny Lind
29.	Allen Trust	5714 Jenny Lind
30.	Dreams to Wings, LLC	5719 Jenny Lind
31.	Allen Trust	5720 Jenny Lind

No.	Property Owner	Property Address
32.	Westphal	5801 Jenny Lind
33.	Przybysz	5815 Jenny Lind
34.	Maham, LLC	5817 Jenny Lind
35.	Przybysz	5901, 5903 Jenny Lind
36.	Przybysz	Lot C, Block D Jenny Lind
37.	Corley	5907 Jenny Lind
38.	Driscoll	6015 Jenny Lind
39.	City of Fort Smith	5816-5824 Boys Club Lane
40.	Kralicek	5904 Boys Club Lane
41.	Mathews	5908-5910 Boys Club Lane
42.	Mathews	5912-5914 Boys Club Lane
43.	Ruth	1320 Jacobs Ave
44.	Stinson	1323 Jacobs Ave
45.	Rieder	2002 Jacobs Ave
46.	Gamble	2004 Jacobs Ave
47.	City of Fort Smith	2006 Jacobs Ave
48.	City of Fort Smith	2008 Jacobs Ave
49.	City of Fort Smith	2010 Jacobs Ave
50.	Reith Properties	2011 Jacobs Ave
51.	River Rock	5920 Ferguson

THE SETTLEMENT

7. WHAT DOES THE SETTLEMENT PROVIDE?

The Settlement Agreement, available at the website, www. .com, describes the details about the Settlement. In exchange for a release of property related claims and entry into a Mutual Option for Future Consideration, Whirlpool will pay those eligible property owners $5000.

BENEFITS

8. WHAT CAN I GET FROM THE SETTLEMENT?

The Settlement will provide cash payments to those who qualify. Your projected award is $5000. The documents that must be submitted to qualify for benefits are described in the Claim and Appraisal Election Form that will be distributed to Class Members if the Court approves the Settlement.

The Mutual Option for Future Consideration entitles Whirlpool to receive a Declaration of Covenants, Conditions and Restrictions as described in Paragraph 1(a)(iii) and an Access Agreement as set forth in Paragraph 1(a)(iv) of the Settlement Agreement from any current or future Fringe Owner if, at any time before January 1, 2029, Whirlpool

or the ADEQ verifies the detection of TCE in the groundwater beneath the given property at levels or concentrations that require monitoring or remedial action. To exercise the Option, Whirlpool will pay Additional Consideration equal to the difference between $5,000 and the amount indicated on Exhibit E as the Tax Assessor's devaluation of the Fringe property. If the Fringe member does not have a devaluation by the Tax Assessor, the Additional Consideration will be determined by the same Independent Appraisal process as set forth in Paragraph IV(1)(a)(ii) of the Class Action Settlement Agreement. This Mutual Option for Future Consideration will expire on January 1, 2029, unless extended by mutual agreement of the parties.

9. WHAT IF I DID NOT OWN MY PROPERTY FOR THE ENTIRE TIME?

Only current property owners of record at the time of Final Approval hearing are eligible for payments.

10. WHAT IF I INHERITED MY PROPERTY?

Only current property owners of record at the time of Final Approval hearing are eligible for payments.

11. WHAT IF THERE ARE MULTIPLE OWNERS OF MY PROPERTY?

If you file a valid claim, the Claims Administrator will write a single check payable to all co-owners of the property. The check will be mailed in care of the person to whom this notice was mailed.

12. WHAT AM I GIVING UP TO STAY IN THE CLASS?

Unless you exclude yourself from the Settlement, you can't sue, continue to sue, or be part of any other lawsuit against Whirlpool to obtain any recovery for injury to property as a result of the migration of TCE from the Whirlpool facility. It also means that all of the Court's decisions will bind you. In addition, if you are a current landowner, as a condition of payment, you will be required to submit a signed Mutual Option for Future Consideration.

THE CLAIMS PROCESS

13. HOW CAN I GET A PAYMENT?

You don't have to do anything now. If the Settlement receives final approval, Class Members who received this notice in the mail will receive a Claim Form ("Claim Form") automatically. You can view the Claim Form at the website. Please note that you will not be able to submit a claim until after the Court grants final approval to the Settlement. When you receive your Claim Form, you will need to complete it and supply the Claims Administrator with proof of your ownership of each parcel of property. There may be additional required documents based on the benefits for which

you are applying. Please carefully read the Claim Form. If you still have questions about documentation requirements, you can call 1-800-000-0000.

14. WHEN WILL I GET MY PAYMENT?

The Court will hold a hearing on **Month Day, Year** at **Time x.m.** to decide whether to give final approval to the Settlement (*see* Question ____). If the Court approves the Settlement, anyone in the Claims Administrator's database will be sent a Claim Form to complete and return to the Claims Administrator. After your claim is received, the Claims Administrator will determine if you qualify for payment. If you do, the Claims Administrator will send a Mutual Option for Future Consideration form, which must be executed by the property owner(s) of record and timely returned to the Claims Administrator.

Any appeal after the Court approves the Settlement may cause additional time delays. Claim Forms will not be distributed and payments will not be made while an appeal is pending. The amount of time an appeal takes is always uncertain, but can be more than a year. Please check the website periodically for updates on this case.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from the Settlement, and you want to keep the right to sue or continue to sue Whirlpool on your own about the issues in this case, then you must take steps to get out. This is called excluding yourself—also referred to as opting out of the Class. This is the only way to avoid giving a Whirlpool a Release and a Mutual Option for Future Consideration.

15. HOW DO I GET OUT OF THE SETTLEMENT?

To exclude yourself from the Settlement, you must send a letter to the Claims Administrator that includes the following:

- Your name and address.
- The names and current addresses of any co-owners of land you own or owned identified as being in the Settlement Class.
- A statement saying that you want to be excluded from the Class,
- The legal description contained in the deed to your land or other description and address of the land at issue.
- Your signature.
- You must mail your exclusion request, postmarked no later than **Month Day, Year**, to:

Insert Claims Administrator Address for this case

16. IF I DON'T EXCLUDE MYSELF, CAN I SUE WHIRLPOOL FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up the right to sue Whirlpool for the claims that the Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Class to continue your own lawsuit.

17. IF I EXCLUDE MYSELF FROM THE SETTLEMENT, CAN I STILL GET A PAYMENT?

No. You will not get any money if you exclude yourself from the Settlement. If you exclude yourself from the Settlement, do not send in a Claim Form asking for benefits.

THE LAWYERS REPRESENTING YOU

18. DO I HAVE A LAWYER IN THE CASE?

Yes. The Court has appointed the lawyers and firm listed below as "Class Counsel," meaning that they were appointed to represent you and all Class Members:

Kenneth Shemin, attorney for plaintiffs
Shemin Law Firm LLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, Arkansas 72758
Phone: 479.845.3305
Email: paralegal@sheminlaw.com
Fax: 479.845.2198

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

19. HOW WILL THE LAWYERS BE PAID?

The Court will decide how much Class Counsel and any other lawyers will be paid. Class Counsel will ask the Court for attorneys' fees, costs and expenses of $_____. Other lawyers may make fee applications. Class Counsel will also request that $ _____ be paid to the Class Representative who helped the lawyers on behalf of the whole Class. Whirlpool will separately pay these fees and expenses and the payment will not reduce the benefits available for the Class.

OBJECTING TO THE SETTLEMENT

20. HOW DO I TELL THE COURT THAT I DON'T LIKE THE SETTLEMENT?

If you are a Class Member, you can object to the Settlement or to requests for fees and expenses by Class Counsel or any other lawyers. To object, you must send a letter to the Claims Administrator that includes the following:

- Your name and address,

- The title of the case, *Scott Day and Glenda Wilson v. Whirlpool Corporation*, Civil Action No. 2:13-cv-02164-PKH
- A statement saying that you object to the Settlement in *Scott Day and Glenda Wilson v. Whirlpool Corporation*
- The reasons you object, and
- Your signature.

Your objection, along with any supporting material you wish to submit, must be mailed and postmarked no later than **Month Day, Year**, to Claims Administrator at the following address:

Insert Claims Administrator Address

21. WHAT'S THE DIFFERENCE BETWEEN OBJECTING AND ASKING TO BE EXCLUDED?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don't want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement and any requests for fees and expenses. You may attend and, if you submit a written objection and a Notice of Intention to Appear, you may ask to speak, but you don't have to.

22. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a Fairness Hearing at **Time x.m.** on **Month Day, Year**, at the United States District Court for the Western District of Arkansas, Fort Smith Office, Judge Isaac C. Parker Federal Building, 30 South 6th Street, Fort Smith, Arkansas 72901-2437,in Courtroom ###. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www. .com. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider how much to pay Class Counsel and the Class Representative. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

23. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions Judge Holmes may have. But, you may come at your own expense. If you send an objection, you don't have to come to Court to talk

about it. As long as you mailed your written objection on time, to the proper address, the Court will consider it.

You may also pay your own lawyer to attend, but it's not necessary.

24. MAY I SPEAK AT THE HEARING?

If you submitted a written objection, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that you intend to appear and wish to be heard. Your Notice of Intention to Appear must include the following:

- Your name and address,
- The title of the case,
- A statement that this is your "Notice of Intention to Appear," and
- Your signature.
- You must mail your Notice of Intention to Appear, postmarked no later than **Month Day, Year**, to the Claims Administrator

IF YOU DO NOTHING

25. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you received this notice in the mail, a Claim Form will automatically be mailed to you after the Court grants final approval to the Settlement. If you did not receive this notice in the mail, but believe you should be included in a Settlement Class, call the claims administrator and request at a Claims Form be mailed to you. If you do not file a claim, or provide a properly executed Declaration of Covenants, Conditions and Restrictions and Access Agreement you will not get any money from the Settlement.

GETTING MORE INFORMATION

26. HOW DO I GET MORE INFORMATION?

You can visit the website at www. .com, where you will find answers to common questions about the Settlement and other information to help you determine whether you are a Class Member and whether you are eligible for a payment. If you still have questions, you can call 1-800-000-0000 toll-free or write to INSERT CLAIMS ADMINISTRATOR ADDRESS. Please do not contact the Court for further information.

EXHIBIT D3

United States District Court for the Western District of Arkansas

If You Own Land Near the Former Whirlpool Manufacturing Facility at 6400 Jenny Lind Avenue, Fort Smith, Arkansas,

You Could Receive Money from a Class Action Settlement.

Notice Of Proposed Class Action Settlement And Your Rights

A federal court authorized this notice. This is not a solicitation from a lawyer.

- Your legal rights are affected whether you act or don't act. Read this notice carefully.
- A settlement has been reached in a class action involving the contamination of land resulting from the migration of the chemical trichloroethylene ("TCE") from an appliance manufacturing facility owned and formerly operated by Whirlpool Corporation ("Whirlpool") in Fort Smith, Arkansas. You may be entitled to receive money as a result of the proposed settlement.
- The settlement will pay certain landowner's property inmpact claims in exchange for agreement to a well ban deed restriction on their property, an access agreement, and a release of real property claims against Whirlpool Corporation ("Whirlpool").

Properties in the Settlement Class

INSERT LISTING OF WELL BAN SUBCLASS PROPERTIES IN SETTLEMENT CLASS

- If you own an interest in one of the above listed properties you may be eligible for a cash payment, THE DEADLINE FOR SUBMISSION OF CLAIM FORMS IS _____, 2014. If you believe you may be eligible contact the Claims Administrator at 1-800-000-0000 or go to www.xxx.Com to request a Class Notice and a Claim Form. **Do Not Delay.**

EXHIBIT D4

United States District Court for the Western District of Arkansas

If You Own Land Near the Former Whirlpool Manufacturing Facility at 6400 Jenny Lind Avenue, Fort Smith, Arkansas,

You Could Receive Money from a Class Action Settlement.

Notice Of Proposed Class Action Settlement And Your Rights

A federal court authorized this notice. This is not a solicitation from a lawyer.

- Your legal rights are affected whether you act or don't act. Read this notice carefully.
- A settlement has been reached in a class action involving the contamination of land resulting from the migration of the chemical trichloroethylene ("TCE") from an appliance manufacturing facility owned and formerly operated by Whirlpool Corporation ("Whirlpool") in Fort Smith, Arkansas. You may be entitled to receive money as a result of the proposed settlement.
- The settlement will pay certain landowner's property inmpact claims in exchange for agreement to a well ban deed restriction on their property, an access agreement, and a release of real property claims against Whirlpool Corporation ("Whirlpool").

Properties in the Settlement Class

INSERT LISTING OF FRINGE SUBCLASS PROPERTIES IN SETTLEMENT CLASS

- If you own an interest in one of the above listed properties you may be eligible for a cash payment, THE DEADLINE FOR SUBMISSION OF CLAIM FORMS IS _____, 2014. If you believe you may be eligible contact the Claims Administrator at 1-800-000-0000 or go to www.xxx.Com to request a Class Notice and a Claim Form. **Do Not Delay.**

EXHIBIT E

EXHIBIT E
WELL BAN SUBCLASS

No.	Property Owner	Property Address	Original Tax Assessment	Current Tax Assessment	Tax Assessement Reduction	Whirlpool Settlement Offer
1.	Westpfahl	1400 Brazil Ave	$51,100	$22,050	$29,050	$29,050
2.	River of Life Church	1404 Brazil Ave	$58,750	$26,250	$32,500	$32,500
3.	River of Life Church	1500 Brazil Ave	$51,150	$22,250	$28,900	$28,900
4.	Marrs	1504 Brazil Ave	$90,500	$42,700	$47,800	$47,800
5.	Reith	1600 Brazil Ave	$39,400	$16,500	$22,900	$22,900
6.	Jamison	1604 Brazil Ave	$79,800	$36,750	$43,050	$43,050
7.	Swaim	1700 Brazil Ave	$51,850	$22,950	$28,900	$28,900
8.	Threet	1704 Brazil Ave	$61,900	$27,900	$34,000	$34,000
9.	Taylor	1710 Brazil Ave	$98,250	$46,050	$52,200	$52,200
10.	Taylor	1714 Brazil Ave	$98,250	$46,050	$52,200	$52,200
11.	Taylor	1718 Brazil Ave	$89,500	$41,600	$47,900	$47,900
12.	Taylor	1722 Brazil Ave	$89,500	$41,600	$47,900	$47,900
13.	Taylor	1726 Brazil Ave	$89,500	$41,600	$47,900	$47,900
14.	Taylor	1730 Brazil Ave	$89,500	$41,600	$47,900	$47,900
15.	Kralicek	1804 Brazil Ave	$60,450	$27,075	$33,375	$33,375
16.	Kralicek	1900 Brazil Ave	$54,600	$24,150	$30,450	$30,450
17.	Caddell	5921 Ferguson	$39,400	$16,650	$22,750	$22,750
18.	Rogers	5923 Ferguson	$43,600	$18,700	$24,900	$24,900
19.	Kralicek	1322 Jacobs Ave	$688,200	$339,800	$348,400	$348,400
20.	Denton	1400 Jacobs Ave	$396,750	$184,525	$212,225	$212,225
21.	Hamm	1401 Jacobs Ave	$80,500	$37,275	$43,225	$43,225
22.	Hamm	1405 Jacobs Ave	$70,550	$32,200	$38,350	$38,350
23.	Morrison	1409 Jacobs Ave	$68,400	$30,000	$38,400	$38,400
24.	Wilkinson	1500 Jacobs Ave	$93,000	$42,850	$50,150	$50,150
25.	Fowler	1504 Jacobs Ave	$93,650	$43,675	$49,975	$49,975
26.	Plunkett	1505 Jacobs Ave	$64,650	$29,200	$35,450	$35,450
27.	Reith	1600 Jacobs Ave	$13,500	$3,200	$10,300	$10,300
28.	Nichols	1601 Jacobs Ave	$79,400	$36,550	$42,850	$42,850
29.	Watts	1604 Jacobs Ave	$57,800	$25,500	$32,300	$32,300
30.	King	1605 Jacobs Ave	$71,250	$32,475	$38,775	$38,775
31.	Flowers	1700 Jacobs Ave	$48,850	$21,475	$27,375	$27,375
32.	Smith	1701 Jacobs Ave	$54,800	$24,250	$30,550	$30,550
33.	Winters	1704 Jacobs Ave	$60,800	$27,250	$33,550	$33,550
34.	Winters	1705 Jacobs Ave	$57,150	$25,400	$31,750	$31,750
35.	Linson	1800 Jacobs Ave	$63,550	$28,550	$35,000	$35,000
36.	Morgan	1801 Jacobs Ave	$48,050	$20,900	$27,150	$27,150

No.	Property Owner	Property Address	Original Tax Assessment	Current Tax Assessment	Tax Assessement Reduction	Whirlpool Settlement Offer
37.	Keith	1804 Jacobs Ave	$86,850	$40,275	$46,575	$46,575
38.	Kralicek	1805 Jacobs Ave	$38,100	$27,075	$11,025	$11,025
39.	Long	1808 Jacobs Ave	$97,550	$45,625	$51,925	$51,925
40.	Scroggins	1809 Jacobs Ave	$59,050	$26,375	$32,675	$32,675
41.	Long	1900 Jacobs Ave	$48,250	$20,975	$27,275	$27,275
42.	Wilson	1904 Jacobs Ave	$69,700	$31,300	$38,400	$38,400
43.	Love	1908 Jacobs Ave	$55,150	$24,450	$30,700	$30,700
44.	Reith	1600 Jacobs Ave, Units A & B	$97,150	$44,800	$52,350	$52,350
45.	Reith	1600 Jacobs Ave, Units C & D	$97,150	$44,800	$52,350	$52,350
46.	Reith	1600 Jacobs Ave, Units E & F	$96,000	$44,800	$51,200	$51,200
47.	Newbold	5800 Jenny Lind	$307,350	$147,450	$159,900	$159,900
48.	Jarrett	5812 Jenny Lind	$79,850	$36,775	$43,075	$43,075
49.	Nguyen	5814 Jenny Lind	$64,300	$29,050	$35,250	$35,250
50.	Kralicek	5816 Jenny Lind	$54,350	$24,050	$30,300	$30,300
51.	Maham	5818 Jenny Lind	$46,200	$20,050	$26,150	$26,150
52.	Maham	5904 Jenny Lind	$59,050	$26,375	$32,675	$32,675
53.	Potts	5908 Jenny Lind	$276,825	$123,650	$153,175	$153,175
						$2,675,350

FRINGE SUBCLASS

No.	Property Owner	Property Address	Original Tax Assessment	Current Tax Assessment	Tax Assessement Reduction	Whirlpool Settlement Offer
1.	White	1322 Brazil Ave	$62,550	$40,600	$21,950	$5,000
2.	Newell	1325 Brazil Ave	$690,625	$690,625	$0	$5,000
3.	Hartoon	1401 Brazil Ave	$108,550	$75,100	$33,450	$5,000
4.	Le	1431 Brazil Ave	$632,000	$467,650	$164,350	$5,000
5.	Le	1451 Brazil Ave	$163,050	$163,050	$0	$5,000
6.	Anderson	1501 Brazil Ave	$58,450	$37,500	$20,950	$5,000
7.	Clifft	1505 Brazil Ave	$70,800	$58,500	$12,300	$5,000
8.	Moore	1507 Brazil Ave	$47,000	$44,500	$2,500	$5,000
9.	Kaelin	1601 Brazil Ave	$59,050	$37,950	$21,100	$5,000
10.	Tran	1701 Brazil Ave	$412,400	$282,650	$129,750	$5,000
11.	Haskins	1705 Brazil Ave	$126,300	$88,400	$37,900	$5,000
12.	McGruder	1801 Brazil Ave 1820 S Zero St	$1,711,500	$1,347,500	$364,000	$5,000
13.	Lopez	1805 Brazil Ave	$98,200	$67,325	$30,875	$5,000
14.	Le	1851 Brazil Ave	$462,000	$320,900	$141,100	$5,000
15.	Lovett	1905 Brazil Ave	$109,250	$57,800	$51,450	$5,000
16.	Farmer Trust	2004 Brazil Ave	$29,500	$29,500	$0	$5,000
17.	Bost Human Development Services	2010 Brazil Ave	$0	$0	$0	$5,000
18.	Allied Ind Workers Local 370	2107 Brazil Ave	$255,750	$255,750	$0	$5,000
19.	Superior Properties Plus	1910 S Zero St	$464,625	$464,625	$0	$5,000
20.	Hodges	1910 S Zero St	$138,900	$138,900	$0	$5,000
21.	PH Properties LLC	1922 S Zero St	$194,350	$194,350	$0	$5,000
22.	First American Title Insurance Co.	1924 S Zero St	$152,775	$152,775	$0	$5,000
23.	Regions Bank	2000 S Zero St	$544,150	$544,150	$0	$5,000
24.	Charleston Investment Prop	5701 Jenny Lind	$197,000	$197,000	$0	$5,000

No.	Property Owner	Property Address	Original Tax Assessment	Current Tax Assessment	Tax Assessement Reduction	Whirlpool Settlement Offer
25.	Johnson	5703 Jenny Lind	$126,400	$126,400	$0	$5,000
26.	Dreams to Wings, LLC	5707 Jenny Lind	$226,450	$226,450	$0	$5,000
27.	Allen Trust	5710 Jenny Lind	$78,000	$78,000	$0	$5,000
28.	Allen Trust	5712 Jenny Lind	$66,400	$30,000	$36,400	$5,000
29.	Allen Trust	5714 Jenny Lind	$65,600	$65,600	$0	$5,000
30.	Dreams to Wings, LLC	5719 Jenny Lind	$48,000	$48,000	$0	$5,000
31.	Allen Trust	5720 Jenny Lind	$111,350	$111,350	$0	$5,000
32.	Westphal	5801 Jenny Lind	$69,000	$32,975	$36,025	$5,000
33.	Przybysz	5815 Jenny Lind	$53,450	$33,800	$19,650	$5,000
34.	Maham, LLC	5817 Jenny Lind	$46,950	$46,950	$0	$5,000
35.	Przybysz	5901, 5903 Jenny Lind	$90,500	$61,550	$28,950	$5,000
36.	Przybysz	Lot C, Block D Jenny Lind	$3,500	$3,500	$0	$5,000
37.	Corley	5907 Jenny Lind	$52,900	$20,750	$32,150	$5,000
38.	Driscoll	6015 Jenny Lind	$294,100	$209,775	$84,325	$5,000
39.	City of Fort Smith	5816-5824 Boys Club Lane	$441,700	$441,700	$0	$5,000
40.	Kralicek	5904 Boys Club Lane	$51,800	$51,800	$0	$5,000
41.	Mathews	5908-5910 Boys Club Lane	$96,850	$96,850	$0	$5,000
42.	Mathews	5912-5914 Boys Club Lane	$96,850	$96,850	$0	$5,000
43.	Ruth	1320 Jacobs Ave	$85,500	$85,500	$0	$5,000
44.	Stinson	1323 Jacobs Ave	$65,150	$42,550	$22,600	$5,000
45.	Rieder	2002 Jacobs Ave	$75,450	$50,275	$25,175	$5,000
46.	Gamble	2004 Jacobs Ave	$52,550	$52,550	$0	$5,000
47.	City of Fort Smith	2006 Jacobs Ave	$0	$0	$0	$5,000
48.	City of Fort Smith	2008 Jacobs Ave	$0	$0	$0	$5,000
49.	City of Fort Smith	2010 Jacobs Ave	$0	$0	$0	$5,000
50.	Reith Properties	2011 Jacobs Ave	$176,900	$176,900	$0	$5,000
51.	River Rock	5920 Ferguson	$71,450	$47,250	$24,200	$5,000
						$255,000

EXHIBIT F

STATE OF ARKANSAS)
)
) **DECLARATION OF COVENANTS,**
) **CONDITIONS AND RESTRICTIONS**
COUNTY OF SEBASTIAN)

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made as of the date set forth on the signature page hereof by _____ (the "Declarant").

W I T N E S S E T H

WHEREAS, Declarant is the owner of the real property described on Exhibit A ("Property") and desires to restrict the Property as provided herein.

NOW THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the following restrictions, covenants, and conditions, which shall run with the title to the Property. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of the owner of the Property.

BY THE RECORDING OF A DEED OR THE ACCEPTANCE OF TITLE TO THE PROPERTY OR ANY INTEREST THEREIN, THE PERSON TO WHOM SUCH PARCEL OR INTEREST THEREIN IS CONVEYED AND SUCH PERSON'S HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS, LESSEES, GRANTEES, ASSIGNS AND BENEFICIARIES SHALL BE DEEMED TO HAVE AGREED TO BE BOUND BY THIS DECLARATION.

1. The Property has groundwater within or beneath it that has been determined by the Arkansas Department of Environmental Protection to be contaminated with trichloroethylene ("TCE"), unsafe for consumptive uses, must be subject to testing and monitoring and restricted from withdrawal for any use except remediation, testing and monitoring.

2. The drilling of wells for and the withdrawal of water for domestic, commercial, irrigation, agricultural or landscape or any other consumptive use is prohibited.

3. With the exception of personal injury claims, all claims for damages related TCE contamination of the property by Whirlpool Corporation have been released.

4. The covenants, conditions and restrictions set forth herein shall run with the title to the Property and shall be binding upon Declarant and her successors and assigns, shall include the following notice on all deeds, mortgages, plats, or any legal instruments used to convey any interest in the Property (failure to comply with this paragraph does not impair the validity or enforceability of this Declaration):

NOTICE: This Property is subject to Declaration of Covenants,

Conditions and Restrictions recorded at the Register of Deeds of Sebastian County in Book ____, Page ____.

5. Except as otherwise limited by Arkansas law, this Declaration shall have perpetual duration. If Arkansas law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 10 years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration, this _____ day of _____, 2014.

PROPERTY OWNER NAME

_____

STATE OF ARKANSAS)
)
COUNTY OF _____) ACKNOWLEDGMENT

I, _____ (Notary Public for the State of Arkansas), do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the ____ day of _____, 2014.

_____
Notary Public of _____
My Commission Expires:_____

[Notary Seal]

EXHIBIT A
Legal Description

EXHIBIT G

Property Access Agreement

Whereas, Whirlpool and the undersigned parties agree that it is in all parties' best interest to have Whirlpool address certain groundwater contamination believed to have emanated from the property occupied by its former Ft. Smith, Arkansas manufacturing facility, and which may require access to property owned by the undersigned parties, at Whirlpool's sole cost and expense and in keeping with agreed-upon terms set forth herein:

1. The undersigned property owner, _____, ("Property Owner"), does hereby give permission to Whirlpool Corporation and its environmental consultants, the employees and agents of both (collectively "Whirlpool") to enter the undersigned's property ("the property") located at _____, Ft. Smith, Arkansas, 72908 ("right of entry" or "access") to conduct certain soil and groundwater monitoring and remediation as set forth herein. The legal description of this property is: _____.

2. This right of entry shall be exercised solely for the purpose of undertaking the investigation and remediation of groundwater contamination, which is now (and which may be for some undetermined length of time into the future) required by the Arkansas Department of Environmental Quality ("ADEQ") pursuant to the July 11, 2002 Letter of Agreement ("LOA") between ADEQ and Whirlpool, and the December 27, 2013 Consent Administrative Order (“CAO”), both entered between ADEQ and Whirlpool, and as set forth in the attached Work Plan.

3. Whirlpool agrees to notify the Property Owner at least seven (7) days in advance of any activities to be conducted on the property requiring access, unless providing such notice is not feasible in which case Whirlpool shall provide as timely notice as is practicable. Upon such notice, Property Owner shall not deny access required for work conducted in accordance with this Agreement. Unless otherwise agreed to by the Property Owner, Whirlpool agrees that it will not initiate any activities under this Agreement before 8:00 am and will limit such access to weekdays only.

4. Whirlpool shall conduct all activities which are the subject of this Agreement in a safe, efficient, workmanlike and non-negligent manner; in compliance with all federal, state and municipal statutes and ordinances; and in accordance with all regulations, orders, and directives of appropriate governmental agencies, as such statutes, ordinances, regulations, orders and directives now exist or provide.

5. Whirlpool agrees to conduct its activities so as to minimize disruption of business or landowner activities located at the property and, where possible, to avoid disruption entirely. All areas in which activities are ongoing, all material storage areas, all installed equipment, and all wells shall be marked and secured, with clearly visible caution signs. Whirlpool's activities shall not endanger the property owner or her invitees or tenants.

6. During the term of this Agreement, Whirlpool shall, at its sole cost and expense, (a) cause any excavations to be returned, to the extent practicable, to the original surficial condition, (b) subject to requirements/approvals of ADEQ, remove all equipment placed on the Property, (c) subject to ADEQ requirements/approvals, fill and grout all monitoring wells and/or injection wells in accordance with good engineering practices, (d) remove all debris

from the property as soon as practical, and (e) restore any landscaping to substantially the original condition or to the condition of the surrounding property as soon as practical.

7. Whirlpool will indemnify and hold harmless the property owner and her invitees for any injury, damage, or loss on the property or to the property caused by the acts of Whirlpool or by the acts of the agents, employees or subcontractors of Whirlpool related to the activities conducted pursuant to this Agreement.

8. With respect to the work and/or other activities to be performed under this Agreement, any consultants or contractors entering the property hereunder shall maintain or require insurance as described below for itself and its employees, agents, invitees, or sub-contractors:

   (a) General liability insurance with a minimum combined single limit of $2,000,000 each occurrence and a general aggregate of $4,000,000 for bodily injury and property damage, including personal injury, and

   (b) Comprehensive automobile liability insurance covering all owned, hired, and otherwise operated non-owned vehicles with a minimum combined single limit of $1,000,000 for bodily injury and property damage, and

   (c) Workers' compensation insurance as required by Law.

   Upon request of Property Owner, Whirlpool shall supply copies of the policies of insurance.

9. Whirlpool, at no cost or expense to property owner, shall be responsible for obtaining any and all governmental permits and approvals which may be necessary for it to conduct any work or activities under this Agreement.

10. Shall Whirlpool undertake any action or fail to act hereunder in a manner that constitutes a material breach of the requirements set forth herein, the Property Owner may terminate this Agreement upon written notice and an opportunity to cure. Specifically, Property Owner shall notify Whirlpool in writing of any such material breach, upon receipt of which Whirlpool has ten (10) days to remedy the alleged breach. Should Whirlpool fail or refuse to remedy the breach, the Property Owner may provide written notification to Whirlpool that the Property Owner is terminating this Agreement, after which Whirlpool has twenty-one (21) days to restore the property as provided herein in Paragraph 7.

11. The Property Owner understands that the cost of the work performed under this Agreement on her property is to be paid by Whirlpool. All wells and other equipment, therefore, become the property of Whirlpool and will remain in the possession thereof for the duration of its existence. Whirlpool agrees to provide to the Property Owner copies of all reports, tests and sampling results conducted on and concerning the property as such documents are submitted ADEQ.

12. The Property Owner also agrees not to disturb, damage or destroy the wells or other equipment (or allow such to occur) and agrees to preserve the condition of that equipment when other maintenance and/or landscaping is performed on the property. Also, Property Owner agrees not to allow access to Whirlpool's wells or other Whirlpool materials or equipment by any third party other than Whirlpool and Property Owner shall immediately inform Whirlpool if any third party requests access to Whirlpool's wells and/or equipment, and will refer said third party to the Whirlpool contact below for such requests.

13. Any notice provided for herein or otherwise required to be given hereunder shall be deemed received when personally served, or three (3) days after mailing by certified or registered United States mail, return receipt requested, postage prepaid, or by facsimile machine, with transmission and receipt confirmed, or by nationally recognized overnight delivery service, addressed as follows:

To Property Owner:

Name: _____

Address: _____

_____

_____

Telephone: _____

Email: _____

To Whirlpool: Bob Karwowski
Whirlpool Corporation
600 West Main Street
Benton Harbor, MI 49022

The person and the place to which notices are to be mailed may be changed by either party by providing written notice of same to the other. However, notwithstanding the above notice provisions, it is agreed that for routine work to be conducted at routine intervals and/or any notifications for which time is of the essence, Property Owner and Whirlpool may arrange to provide such notification in a less formal, mutually agreeable manner, such as telephone or email contact.

14. This Agreement is intended to run with the land, so may be assigned to successors by either party in order to facilitate the purposes of the provisions herein and, in such event, shall be binding upon and inure to the benefit of the Parties' respective representatives, successors and assigns.

15. This Agreement represents the full, complete and entire agreement between the parties with respect to the investigation and remediation work that is the subject matter hereof, and the rights and remedies of the Parties shall be solely and exclusively those herein contained, and in lieu of any remedies otherwise available at law or in equity.

16. This Agreement may be amended and modified, in whole or in part, upon written agreement of the Property Owner and Whirlpool.

17. This Agreement shall be construed, interpreted, and governed by and in accordance with the local law of the State of Arkansas without reference to any choice of law, rules or policies which may refer the resolution of any dispute arising hereunder to the laws of any other jurisdiction.

18. Whirlpool acknowledges that all of the terms of this Agreement apply to its employees, agents, consultants, contractors and their subcontractors, and invitees.

19. The Property Owner has read this Agreement and understands that it grants permission to Whirlpool to enter onto the property for the purpose of performing investigation and remediation work pursuant to the LOA and CAO and as set forth in the attached Work Plan

and that this work will continue and this Agreement will remain in force and effect unless terminated by Whirlpool or by the Property Owner under Paragraph 10.

IT IS HEREBY AGREED:

Whirlpool Corporation	Property Owner
_____	_____
Signature	Signature
_____	_____
Print Title	Print Name
_____	_____
Date Signed	Date Signed

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

SCOTT DAY and GLENDA V. WILSON, individually and behalf of all others similarly situated,	
Plaintiffs,	**Civil Action No. 2:13-cv-02164-PKH**
vs.	
WHIRLPOOL CORPORATION,	
Defendant.	

MUTUAL OPTION FOR FUTURE CONSIDERATION

THIS **MUTUAL OPTION FOR FUTURE CONSIDERATION ("OPTION")** is entered into effective _____, 2014, by and between Whirlpool Corporation ("Whirlpool") and _____ ("Owners"), the owner(s) of real property located at _____ , in Fort Smith, Arkansas ("Property").

1. In consideration for Whirlpool paying owners $5000.00 in conjunction with the class action settlement in the above captioned matter, Owners agree to this OPTION whereby in the event that if before January 1, 2029, Whirlpool or the ADEQ verify the detection of TCE in the groundwater beneath Owners' Property at levels or concentrations that require monitoring or remedial action, then either Whirlpool, or the Owners may, by giving written notice to the other invoke the Option to require Whirlpool to pay the qualifying Owner(s) Additional Consideration equal to the difference between $5,000 and the amount indicated on

Exhibit E of the Class Settlement Agreement as the Tax Assessor's devaluation of the Fringe property as of the Effective Date of the Class Settlement. If the Fringe member property was not devalued by the Tax Assessor, the Additional Consideration will be determined by the same Independent Appraisal process as set forth in the Class Action Settlement Agreement for the Well Ban Subclass in the above captioned action.

2. In exchange for the Additional Consideration set forth above, Whirlpool, in addition to the release previously provided in the Class Settlement will be entitled to receive a Declaration of Covenants, Conditions and Restrictions and an Access Agreement as described in Paragraph 8(a) of the Class Action Settlement Agreement from Owners.

3. This Mutual Option for Future Consideration will expire on January 1, 2029, unless extended by mutual written agreement of the parties.

4. This Option may only be changed, altered, or modified by a writing signed by the Parties.

5. This Option may be executed in counterparts.

AGREED:

_____ _____

For Whirlpool Corporation, Owner

Its:_____ _____

Owner/Spouse

EXHIBIT I

Well Ban Subclass Claim Form

Owner Address:
<<Owner Name>>
<<Owner Address 1>>
<<Owner Address 2>>
<<City, State Zip>>

Covered Property Information:
<<County, State>>
<<Assessor Map ID>>
<<Assessor Parcel ID>>
<<Assessment Number>>

Write Any Name and Address Corrections Below:
Name:
Address:
City:
State and Zip Code:

Please print (or type) clearly in blue or black ink. If you meet the Settlement's eligibility requirements and wish to make a claim for a payment, you must complete this Claim Form and attach copies of the required supporting documentation as explained below. This Claim Form and any required documentation must be postmarked no later than **Month Day, Year**.

1. You must (a) provide all the information called for in Section II, (b) sign the Claim Form, and (c) submit with the completed Claim Form the documents described in Section III. Failure to answer all the questions and provide the required documents may result in denial of your claim.

2. You must file a separate Claim Form for each parcel that you own.

3. If you are married, your spouse must also sign the Claim Form, even if they do not have an ownership interest in the property.

4. Only one Claim Form should be submitted for all persons who are or were co-owners of a Covered Property. If you have co-owners, you should submit the Claim Form on behalf of all co-owners. Consult with your co-owners before submitting a Claim Form.

5. All co-owners and their spouses will have to sign a Declaration of Covenants, Conditions and Restrictions and an Access Agreement or no check for Benefits will be issued. Benefit checks will be issued in the names of all co-owners.

6. Your final payment will be based on the devaluation of your property related to TCE contamination based upon the tax assessor's assessment of pre- and post contamination values or if you elect, the pre-contamination assessed value and the appraised value as determined by the Court approved appraiser.

Please go to www. .com for more details on documentation that can support your claim. If you still have questions, you can call 1800-000-0000.

I. Settlement Payment. If you qualify you will the paid the amount of the reduction in value of your property determined as provided in the Class Action Settlement Agreement. However, to be paid you must provide all the documents listed in Section III below.

II. Class Member and Property Information:

1. Social Security No.: ___ ___ ___ - ___ ___ ___ - ___ ___ ___ ___ **~OR~**

   Tax ID No.: ___ ___ - ___ ___ ___ ___ ___ ___ ___

2. Telephone No.: ___ ___ ___ - ___ ___ ___ - ___ ___ ___ ___

3. Email Address: _____

4. If you are married, you must complete this Claim Form on behalf of you and your spouse, even if your spouse does not have an ownership interest in the property. Your spouse must sign the Claim Form.

   Are you currently married? ☐ Yes ☐ No

PERIOD OF OWNERSHIP

5. Date you acquired the Covered Property: ____ / ____ *(Month, Year)*

6. Do you currently own the Covered Property? ☐ Yes ☐ No

   If your answer to this question is "No", please answer question 7. If your answer to this question is "Yes", please skip to question 8.

7. If you currently do not own the Covered Property, the date you transferred your interest in the Covered Property: __ / __ *(Month, Year)*

8. **Did you inherit the covered property?** ☐ Yes ☐ No

9. Besides you and your current spouse, are/were any other persons or entities owners of the Covered Property? ☐ Yes ☐ No

   If yes, please list their names below:

   _____ _____

   _____ _____

III. Required Documentation.

1. Proof of Ownership – Please attach a Deed or Certificate of Title showing that you are or were the owner of the Covered Property identified above.

The Deed or Certificate of Title must contain a legal description of the Covered Property and show its ownership. The document must either be certified by the appropriate county official (such as a Register of Deeds or Titles or the County Clerk) **or** must show on the document the recording information, including:

- The date of recording,
- The government office where recorded, and
- The filing location in the land records (such as the conveyance book and page number or entry number).

IV. Sign and Date Your Claim Form.

You must sign the Claim Form under penalty of perjury. Thus, make sure it is truthful. Claims will be verified. False claims will not be paid and people who submit false claims will be subject to prosecution. You also agree to promptly notify the Claims Administrator of the transfer of any interest in the Covered Property between the time that you submit this form and the time that any payment is made to you.

I hereby certify under penalty of perjury that (1) the above and foregoing is true and correct; (2) I believe, in good faith, that I own fee title to the Covered Property listed above; and (3) I will promptly notify the Claims Administrator of the transfer of any interest in the Covered Property between the time that I submit this form and the time that any payment is made to me.

Class Member's Signature: Spouse's Signature:

_____ _____

Print Name: Print Name:

_____ _____

Date: _____ Date: _____

V. Mail Your Claim Form.

Mail this completed Claim Form, and required documentation, postmarked on or before **Month Day, Year**, to: Claims Administrator _____,

_____, _____

EXHIBIT J

WELL BAN SUBCLASS APPRAISAL OPTION REQUEST FORM

In exchange for making a proper claim and providing the Release, executed Access Agreement, and Declaration of Covenants, Conditions and Restrictions as defined in the Class Settlement Agreement above, each Well Ban Subclass member not Opting Out of the Settlement will receive their choice of Option 1 or Option 2 below:

OPTION 1

Compensation in cash equal to the difference between the Original Assessed Value and Current Assessed Value of the property, both as set forth in Exhibit E to the Settlement Agreement.

OPTION 2

Alternatively, members of the Well Ban Subclass may elect to have their cash compensation to be determined by a Court approved professional appraiser ("Independent Appraisal Option"). If the Independent Appraisal Option is chosen, the compensation for a Class Member will be equal to the difference between the Original Assessed Value and the current appraised value of the property as determined by an independent appraiser selected in accordance with the procedures set forth in the Settlement Agreement. This amount may be more, less or the same as the value of Option 1. If you select Option 2, you will be paid based upon the appraisal and cannot revert to Option 1 if it is more favorable.

Option 1 is the default. You do not need to complete or return this form if Option 1 is chosen. If you choose Option 2, complete the information below and return this form to the Claims Administrator in the postpaid addressed envelope that you have been provided. To be effective, the completed form must be postmarked by _____.

Property Owner(s) Name(s) _____

Property Address _____

I hereby affirm under penalty of perjury that I (we) are the owner(s), co-owner(s), or an authorized representative of the owner, of the above identified property and hereby elect to have my benefit calculated under Option 2. I understand that the compensation awarded under this option may be more, less or the same as that to be awarded under Option 1 and that my (our) choice is irrevocable.

_____ _____

Signature(s) Date

_____

Print name(s)

EXHIBIT K

Fringe Subclass Claim Form

Owner Address:
<<Owner Name>>
<<Owner Address 1>>
<<Owner Address 2>>
<<City, State Zip>>

Covered Property Information:
<<County, State>>
<<Assessor Map ID>>
<<Assessor Parcel ID>>
<<Assessment Number>>

Write Any Name and Address Corrections Below:
Name:
Address:
City:
State and Zip Code:

Please print (or type) clearly in blue or black ink. If you meet the Settlement's eligibility requirements and wish to make a claim for a payment, you must complete this Claim Form and attach copies of the required supporting documentation as explained below. This Claim Form and any required documentation must be postmarked no later than **Month Day, Year**.

1. You must (a) provide all the information called for in Section II, (b) sign the Claim Form, and (c) submit with the completed Claim Form the documents described in Section III. Failure to answer all the questions and provide the required documents may result in denial of your claim.

2. You must file a separate Claim Form for each parcel that you own.

3. If you are married, your spouse must also sign the Claim Form, even if they do not have an ownership interest in the property.

4. Only one Claim Form should be submitted for all persons who are or were co-owners of a Covered Property. If you have co-owners, you should submit the Claim Form on behalf of all co-owners. Consult with your co-owners before submitting a Claim Form.

5. All co-owners and their spouses will have to sign a Mutual Option for Future Consideration or no check for Benefits will be issued. Benefit checks will be issued in the names of all co-owners.

6. If all the requirements of the settlement were met, your payment will be $5000.

Please go to www. .com for more details on documentation that can support your claim. If you still have questions, you can call 1800-000-0000.

I. Settlement Payment. If you qualify you will the paid $5000. However, to be paid you must provide all the documents listed in Section III below.

II. Class Member and Property Information:

1. Social Security No.: ___ ___ ___ - ___ ___ ___ - ___ ___ ___ ___ **~OR~**

   Tax ID No.: ___ ___ - ___ ___ ___ ___ ___ ___ ___

2. Telephone No.: ___ ___ ___ - ___ ___ ___ - ___ ___ ___ ___

3. Email Address: _____

4. If you are married, you must complete this Claim Form on behalf of you and your spouse, even if your spouse does not have an ownership interest in the property. Your spouse must sign the Claim Form.

   Are you currently married? ☐ Yes ☐ No

PERIOD OF OWNERSHIP

5. Date you acquired the Covered Property: ____ / ____ *(Month, Year)*

6. Do you currently own the Covered Property? ☐ Yes ☐ No

   If your answer to this question is "No", please answer question 7. If your answer to this question is "Yes", please skip to question 8.

7. If you currently do not own the Covered Property, the date you transferred your interest in the Covered Property: __ / __ *(Month, Year)*

8. **Did you inherit the covered property?** ☐ Yes ☐ No

9. Besides you and your current spouse, are/were any other persons or entities owners of the Covered Property? ☐ Yes ☐ No

   If yes, please list their names below:

   _____ _____

   _____ _____

III. Required Documentation.

1. Proof of Ownership – Please attach a Deed or Certificate of Title showing that you are the owner of the Covered Property identified above.

The Deed or Certificate of Title must contain a legal description of the Covered Property and show its ownership. The document must either be certified by the appropriate county official (such as a Register of Deeds or Titles or the County Clerk) **or** must show on the document the recording information, including:

- The date of recording,
- The government office where recorded, and
- The filing location in the land records (such as the conveyance book and page number or entry number).

IV. Sign and Date Your Claim Form.

You must sign the Claim Form under penalty of perjury. Thus, make sure it is truthful. Claims will be verified. False claims will not be paid and people who submit false claims will be subject to prosecution. You also agree to promptly notify the Claims Administrator of the transfer of any interest in the Covered Property between the time that you submit this form and the time that any payment is made to you.

I hereby certify under penalty of perjury that (1) the above and foregoing is true and correct; (2) I believe, in good faith, that I own fee title to the Covered Property listed above; and (3) I will promptly notify the Claims Administrator of the transfer of any interest in the Covered Property between the time that I submit this form and the time that any payment is made to me.

Class Member's Signature: Spouse's Signature:

_____ _____

Print Name: Print Name:

_____ _____

Date: _____ Date: _____

V. Mail Your Claim Form.

Mail this completed Claim Form, and required documentation, postmarked on or before **Month Day, Year**, to: Claims Administrator _____, _____, _____

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

SCOTT DAY and LINDA WILSON, individually and behalf of all others similarly situated, **Plaintiffs,** **vs.** **WHIRLPOOL CORPORATION,** **Defendant.**	**Civil Action No. 2:13-cv-02164-PKH**

ORDER CERTIFYING SETTLEMENT CLASS, PRELIMINARILY APPROVING CLASS-ACTION SETTLEMENT, AND APPROVING FORM AND MANNER OF NOTICE

Counsel for Plaintiff and Defendant have moved under Federal Rules of Civil Procedure 23(b) and (e) for an order: (1) certifying a settlement class; (2) preliminarily approving a class settlement on the terms and conditions set forth in the Class Settlement Agreement (the "Settlement Agreement"); and (3) approving forms and a program for class notice. Terms capitalized herein and not defined shall have the meanings ascribed to them in the Settlement Agreement. The Court has reviewed and considered all papers filed in connection with the motion, including the Settlement Agreement, and all exhibits annexed thereto, and has heard the presentations of counsel appearing with respect thereto. On the basis thereof, and on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. This Court has jurisdiction over the subject matter of this Action and jurisdiction over the Parties.

2. For settlement purposes only, this action may be maintained as a class action under Federal Rule of Civil Procedure 23 on behalf of a class under the Settlement Agreement (the "Settlement Class"), defined as follows:

> All property owners in Sebastian County, Arkansas who either (a) own property on which TCE or other contaminants emanating from the manufacturing plant owned and formerly utilized by Whirlpool Corporation are present in groundwater, or (b) whose property value has been or may be diminished by the presence of the plume of TCE and other contaminants in the groundwater. Excluded from the class is Whirlpool Corporation and its officers, directors, management, employees, subsidiaries, or affiliates.

3. In light of the agreement to settle the Action and the resulting elimination of individual issues that may otherwise have precluded certification of a litigation class, the prerequisites to class certification under Rule 23(a) are satisfied, to-wit:

a. The Settlement Class is so numerous that joinder of all members is impracticable;

b. There are questions of law and fact common to members of the Settlement Class, including the central question of Plaintiffs' right to compensation;

c. The claims of the Class Representatives meet the numerosity, commonality, typicality and adequacy requirements of Rule 23(a).

d. The Class Representatives, represented by counsel experienced in complex litigation, will fairly and adequately protect the interests of the Settlement Class.

4. In light of the agreement to settle the Action and the resulting elimination of individual issues that Defendant contends preclude certification of a litigation class, the questions of law and fact common to all members of the Settlement Class predominate over questions affecting only individual members of that Class, and certification of the Settlement Class is superior to

other available methods for the fair and efficient resolution of this controversy, satisfying Rule 23(b)(3).

5. If the Settlement Agreement is not finally approved by the Court or for any reason does not become effective, the Settlement Class shall be decertified, all Parties' rights to litigate all class issues will be restored to the same extent as if the Settlement Agreement had never been entered into, and no Party shall assert that another Party is estopped to take any position relating to class certification.

6. Scott Day and Linda Wilson hereby designated as the Class Representatives for the Settlement Class.

7. The following counsel is designated and authorized to act as Settlement Class

Counsel: Kenneth Shemin, attorney for plaintiff
Shemin Law Firm LLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, Arkansas 72758
Phone: 479.845.3305
Email: paralegal@sheminlaw.com
Fax: 479.845.2198

8. The Settlement Agreement contains two Subclasses: the "Well Ban Subclass" and the "Fringe Subclass" which together comprise the Settlement Class.

a. In exchange for substantial cash payments, the Well Ban Subclass members agree to (1) release their property related claims against Whirlpool, (2) convey a Declaration of Covenants, Conditions and Restrictions on their deed that provides notice that the property is or may become contaminated with TCE; prohibits the drilling of wells for and the withdrawal of ground water for domestic, commercial, irrigation, agricultural or landscape or any other consumptive use from beneath that property; and reflects the release all property related claims from TCE contamination, and (3) provide an Access Agreement allowing Whirlpool or its designee reasonable access to the property for such future environmental monitoring and remediation as is required by or of Whirlpool.

b. In exchange for a $5000 cash payment, the Fringe Subclass members agree to (1) release their property related claims against Whirlpool, and (2) convey a Mutual Option for Future Consideration which is an agreement between Whirlpool and members of the Fringe Subclass which entitles Whirlpool or the Fringe Subclass members the Option to require the other to adopt the Well Ban Subclass settlement terms if, at any time before January 1, 2029, Whirlpool or the ADEQ verifies the detection of TCE in the groundwater beneath the given property at levels or concentrations that require monitoring or remedial action. If the Option is exercised by Whirlpool or the Fringe Subclass member Whirlpool will pay the qualifying Subclass Member Additional Consideration equal to the difference between $5,000 and the amount indicated on Exhibit E as the Tax Assessor's devaluation of the Fringe property. If the Fringe member does not have a devaluation by the Tax Assessor, the Additional Consideration will be determined by the same Independent Appraisal process as set forth in the Settlement Agreement. In exchange, Whirlpool, in addition to the release previously provided will be entitled to receive a Declaration of Covenants, Conditions and Restrictions and an Access Agreement as described in Paragraph 8(a) above from any current or future Fringe Owner. This Mutual Option for Future Consideration will expire on January 1, 2029, unless extended by mutual agreement of the parties.

c. The terms and conditions set forth in the Settlement Agreement place the Settlement Agreement within the range of fair and reasonable settlements, making appropriate further consideration at a hearing held pursuant to notice to the Settlement Class. The Court therefore preliminarily approves the Settlement Agreement and directs the parties to perform and satisfy the terms and conditions of the Settlement Agreement that are thereby triggered.

9. A hearing (the "Fairness Hearing") shall be held on _____, 2014, _____ _.m. before the undersigned in Courtroom No. ____, United States Courthouse, _____

10. The date of the Fairness Hearing will be included in the Notice and Summary Notice.

The purpose of the Fairness Hearing will be to (a) determine whether the proposed Settlement Agreement is fair, reasonable, and adequate, and should be finally approved; (b) determine whether an order and judgment should be entered dismissing the claims of the Settlement Class Members and bringing the litigation of those claims to a conclusion; and (c) consider other Settlement-related matters and appropriate attorneys' fees.

11. The Court may adjourn, continue, and reconvene the Fairness Hearing pursuant to oral

announcement without further notice to the Class Members, and the Court may consider and grant final approval of the Settlement Agreement, with or without minor modification, and without further notice to Class Members.

12. The Court appoints RG/2 Claims Administration LLC, to serve as Claims Administrator.

13. The Court has reviewed the Notice of Class Action, Proposed Settlement, and Settlement Hearing (the "Notice"), and the Summary Notice, attached to the Settlement Agreement, as Exhibits D1 and D2 respectively. The Court approves as to form the Summary Notice and the Notice. The Court also approves the method of directing notice to Class Members, as set forth in paragraphs 14 and 15 below.

14. As soon as practical following the receipt from _____of updated Class Member identification information, the Claims Administrator shall prepare and cause individual copies of the Notice to be sent by United States Mail, certified mail, return receipt requested, to members of the Settlement Class who currently own real property that is encompassed within the settlement class. The Claims Administrator also shall mail copies of the Notice to any other potential Class Members that request copies or that otherwise come to its attention. As soon as publication schedules practically permit, but no sooner than five (5) days after the initial mailing of the Notice, the Claims Administrator shall cause the Summary Notice, the content of which shall be substantially as set forth in Exhibit D to the Settlement Agreement, to be published, as set forth in the plan of publication contained in Exhibit L to the Settlement Agreement.

15. The Court finds that the foregoing plan for notice to Class Members will provide the

best notice practicable under the circumstances, and is in compliance with the requirements of Rule 23 and applicable standards of due process.

16. Prior to the Fairness Hearing, counsel for Defendant and Settlement Class Counsel shall jointly file with the Court an affidavit from a representative of the Claims Administrator confirming that the plan for disseminating the Notice and the Summary Notice has been accomplished in accordance with the provisions of paragraphs 12 and 13 above.

17. Members of the Settlement Class who wish to exclude themselves from the Class must request exclusion within sixty (60) days of the date of the initial mailing of Notice, and in accordance with the instructions set forth in the Notice. Class Members who do not submit timely and valid requests for exclusion will be bound by the terms of the Settlement Agreement in the event it is approved by the Court and becomes effective, and by any orders and judgments subsequently entered in the Action, whether favorable or unfavorable, regardless of whether they submit a Claim Form to the Claims Administrator. Class Members who submit timely and valid requests for exclusion will not be bound by the terms of the Settlement Agreement or by any orders or judgments subsequently entered in the Action, and they may not submit a Claim Form to the Claims Administrator. This Court finds that it has the authority under Federal Rule of Civil Procedure 70 and as provided in the Settlement Agreement to direct all Class Members who own a current interest in a Qualifying Parcel and who have not requested exclusion from a Settlement Class, regardless of whether they file a Claim Form for Benefits, to grant a Declaration of Covenants, Conditions and Restrictions and Access Agreement as described above to the Settling Defendants, as provided in the Settlement Agreement. Class Members shall be advised in the Notice and Summary Notice of the Court's delegation of authority to the Claims Administrator to convey Declaration of Covenants,

Conditions and Restrictions and Access Agreement as described above to the Settling Defendant, unless they exclude themselves from the Settlement Class.

18. Class Members who do not request exclusion may submit written comments on or objections to the Settlement Agreement or other Settlement-related matters (including attorneys' fees) within sixty (60) days of the date of the initial mailing of Notice. Any Class Member who has not requested exclusion may also attend the Fairness Hearing, in person or through counsel, and if the Class Member has submitted written objections, may pursue those objections. No Class Member, however, shall be entitled to contest the foregoing matter in writing and/or at the Fairness Hearing unless the Class Member has served and filed by first-class mail, postage prepaid and postmarked within sixty (60) days of the date of the initial mailing of Notice, copies of the statement of objection, together with any supporting brief and all other papers the Class Member wishes the Court to consider (which must include the name and number of this case), and a notice of appearance from any counsel for the Class Member who intends to appear at the Fairness Hearing, provided, however, that counsel is not necessary as the Class Member may appear and personally object. Any such objection, brief, notice of appearance, or other related document must be filed with the Court at the following address: United States Courthouse, at the United States District Court for the Western District of Arkansas, Fort Smith Office, Judge Isaac C. Parker Federal Building, 30 South 6th Street, Fort Smith, Arkansas 72901-2437, and served on the following representative of Settlement Class Counsel:

Kenneth Shemin, attorney for plaintiff
Shemin Law Firm LLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, Arkansas 72758
Phone: 479.845.3305
Email: paralegal@sheminlaw.com

Fax: 479.845.2198

and on the following representative of the Settling Defendants:

Robert L. Jones III, Attorney for Whirlpool Corporation
Conner & Winters, LLP
4375 N. Vantage Drive, Suite 405
Fayetteville, AR 72703
Phone 479.582.5711
Email: bjones@cwlaw.com
Fax: 479.587.1426

19. Each statement of objection must identify (a) the name and address of the Class Member, (b) the name and address of the Class Member's counsel, if any, and, (c) in order to confirm Settlement Class membership, the legal description of the Class Member's Qualifying Parcel. Unless otherwise directed by the Court, any Class Member who does not submit a statement of objection in the manner specified above will be deemed to have waived any such objection.

20. During the Court's consideration of the Settlement Agreement and pending further order of the Court, all proceedings in this Action, other than proceedings necessary to carry out the terms and provisions of the Settlement Agreement, or as otherwise directed by the Court, are hereby stayed and suspended.

21. If the proposed Settlement Agreement is not approved by the Court or for any reason does not become effective, the Settlement Agreement will be regarded as nullified, certification of the Settlement Classes for settlement purposes will be vacated, and the steps and actions taken in connection with the proposed Settlements (including this Order (except as to this paragraph) and any judgment entered herein) shall become void and have no further force or

effect. In such event, the parties and their counsel shall take such steps as may be appropriate to restore the pre-settlement status of the litigation.

22. Neither the Settlement Agreement nor the provisions contained therein, nor any negotiations, statements, or proceedings in connection therewith shall be construed, or deemed to be evidence of, an admission or concession on the part of any of the Class Representatives, Settlement Class Counsel, the Settling Defendants, any Class Member, or any other person, of any liability or wrongdoing by any of them, or of any lack of merit in their claims or defenses, or of any position on whether any claims may or may not be certified as part of a class action for litigation purposes.

23. The court retains jurisdiction over this action, the Parties, and all matters relating to the Settlement Agreement.

IT IS SO ORDERED:

Date: _____ _____
The Honorable P.K. Holmes, III
United States District Judge