



ADMINISTRATIVE CENTER | BENTON HARBOR, MICHIGAN 49022

JEFFREY NOEL
CORPORATE VICE PRESIDENT
COMMUNICATIONS AND PUBLIC AFFAIRS

September 4, 2014

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

Dear Ms. Hynum,

Thank you for your letter of September 2, 2014 regarding soil vapor testing.

Whirlpool Corporation remains committed to doing the right thing in Fort Smith Arkansas, including conducting soil vapor testing requested by the community to provide further confirmation of the absence of health concerns from soil vapors. A scientifically-based approach to conducting this supplemental soil vapor testing that follows US Environmental Protection Agency guidance was developed with ADEQ's oversight and agreement, and we remain committed to executing that validated testing procedure.

In the many months of negotiations with property owners, nobody responded to a request for vapor testing by indicating a willingness to allow access for sub-slab testing instead of the vapor point testing currently being undertaken by Whirlpool. The property owners, either individually or through their legal counsel, who denied access for soil vapor testing did not make "counter-offers." We are heartened that some property owners have recently expressed to you a willingness to allow long-awaited access to their property, and we look forward to working with your office to engage with these property owners to reach an agreement that would enable us to move ahead quickly with the previously agreed-upon soil vapor testing plan.

As you are aware, Whirlpool recently agreed to a settlement with the class of property owners, which is represented by highly qualified class counsel. If approved by the federal court, this class settlement would allow Whirlpool access for vapor point testing on all properties other than those which may choose to "opt out" of the agreement.

After this class settlement agreement was achieved, the attorney for certain class members indicated his clients may oppose court approval of the settlement. This counsel, who is not the attorney for the class, represented that some of his clients would demand significantly more in compensation from Whirlpool, as well as other new terms of the agreement. One of the new terms was for Whirlpool to pay for independent, third party sub-slab vapor testing for all property owners. This demand, made in July 2014, had never been raised previously by any property owner in negotiations with Whirlpool.



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In fact, sub-slab testing was not mentioned in the settlement negotiations at all before July, and only after the class settlement had been achieved. Further, when sub-slab testing was first proposed, it was just one of many significant demands above and beyond the scope of the previously negotiated class settlement. Representations by litigants that a majority of property owners are willing to allow access for sub-slab testing is unfortunate and misleading because it ignores the timing and context of the complex and ongoing communications between the parties.

Whirlpool Corporation welcomes the opportunity to meet with you to better understand which residents and or property owners have contacted your office, and which are willing to meet and discuss how to move forward with conducting the appropriate type of testing.

Scientific data, including reports from USEPA, have raised questions regarding the integrity of sub-slab testing, which is not as accurate as is other forms of testing and computer modeling. This is often due to TCE in carpet, various types of cleaning agents, construction materials, and other items from the home that have nothing to do with the TCE plume. Use of sub-slab soil gas monitoring often leads to "false positives" caused by the presence of these common household items, not any TCE in the groundwater. For that reason, EPA materials on the subject highlight a process that involves first conducting the soil vapor monitoring before sub-slab testing.

As is always the case, we stand prepared to meet with ADEQ to discuss the rationale of the various approaches and determine how to best provide accurate scientific information and avoid unnecessary inconvenience and concern for the homeowners.

In summary, we continue to remain committed to working with ADEQ and property owners in the area to conduct the vapor monitoring in order to provide the additional assurance requested by the community that no health concerns exist due to vapor intrusion. We continue to appreciate your oversight and participation in achieving this goal.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Jeff Noel". The signature is written in a cursive, somewhat stylized font.

D. Jeff Noel