

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
APR - 4 2003
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Whirlpool Corporation
2000 North M-63,
Benton Harbor, MI 49022

Respondent

Director's Final
Findings and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Whirlpool Corporation (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 3734.13 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the Clyde Facility, Marion Facility, or Findlay Facility shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734. and the rules promulgated thereunder.

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.13 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The

Director of Ohio EPA has determined the following findings:

1. Respondent is a "person" as defined in ORC §3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).
2. Respondent operates three facilities in Ohio. Respondent operates a washing machine manufacturing facility located at 119 Birdseye Street, Clyde, Ohio (Clyde Facility). Respondent operates a clothes dryer manufacturing facility located at 1300 Marion-Agosta Street, Marion, Ohio (Marion Facility). Respondent operates a third facility located at 4901 North Main Street, Findlay, Ohio, where it manufactures dishwashers (Findlay Facility).
3. Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification numbers OHD 005048335 for the Clyde Facility, OHD 004302220 for the Marion Facility and OHD 041349929 for the Findlay Facility.
4. At the Clyde, Marion, and Findlay Facilities, Respondent generates "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. At the Clyde, Marion, and Findlay Facilities, Respondent is a large quantity generator of hazardous waste. The hazardous waste generated by Respondent at the Clyde Facility includes waste paint and solvent (F003), and fluorescent bulbs (D009). Hazardous waste generated by Respondent at the Marion Facility includes waste lactic acid (D002), waste paint still bottoms (D001/F003), waste adhesive residue (D001), xylene cleaning wipes (F003), corrosive barrel waste (D001/D002/D007/F003), waste liquid mercury (D009), and various lab packs (D001/D002/D007/U188/U228/P106). The hazardous waste generated by Respondent at the Findlay Facility includes waste xylene (D001/F003), waste paint sludge (F003), waste methyl-ethyl ketone (D001/D035), and sandblasting fines (D007/D008).

Findings for the Clyde Facility

5. On January 4, 2001, Ohio EPA conducted an inspection of the Clyde Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*,:
 - a. Failed to mark three hazardous waste containers with the words, "Hazardous Waste" or other words identifying the contents, in violation of OAC rule 3745-52-34(C);
 - b. Failed to adequately document that an annual review of the initial hazardous waste management training was provided to certain

employees at the Clyde Facility, in violation of OAC rule 3745-65-16;
and

- c. Failed to adequately document that training had been provided to certain employees managing and/or handling hazardous waste at the Clyde Facility, in violation of OAC rule 3745-65-16(D).
6. By letter dated January 31, 2001, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 5a. through 5.c. of these Orders.
 7. In correspondence dated February 28, 2001, Respondent provided responses to Ohio EPA's January 31, 2001 letter.
 8. On April 11, 2001, Ohio EPA conducted an inspection at the Clyde Facility. As a result of this inspection, Ohio EPA determined that Respondent had failed to mark a hazardous waste container holding an excess of 55 gallons with the date that excess began accumulating, in violation of OAC rule 3745-52-34(C).
 9. On April 17 and May 2, 2001, Ohio EPA met with Respondent to discuss the violations referenced in Finding No. 5. of these Orders.
 10. By letter dated May 3, 2001, Ohio EPA notified Respondent of the violation referenced in Finding No. 8. of these Orders. Also in this letter, Ohio EPA notified Respondent that Respondent had abated the violation referenced in Finding No. 8. of these Orders.
 11. In correspondence dated May 18, July 13, and October 2, 2001, and May 1, May 29 and May 31, 2002, Respondent provided responses to Ohio EPA addressing the violations referenced in Finding No. 5. of these Orders.
 12. By letters dated May 3, June 4, and August 1, 2001, and June 12, 2002, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding No. 5. of these Orders.

Findings for the Marion Facility

13. On February 17 and 18, 1999, Ohio EPA conducted an inspection of the Marion Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Failed to mark a hazardous waste container with the date the accumulation of the waste began, in violation of OAC rule 3745-52-34(A)(2);

- b. Failed to provide initial hazardous waste training for certain employees handling and/or managing hazardous waste at the Marion Facility, in violation of OAC rules 3745-65-16(A) and (B);
 - c. Failed to adequately document that an annual review of the initial training was provided to certain employees at the Marion Facility, in violation of OAC rule 3745-65-16(C);
 - d. Conducted periodic inspections of emergency equipment but failed to conduct and document weekly inspections of emergency equipment, in violation of former OAC rule 3745-65-33;
 - e. Failed to close one container holding hazardous waste when not adding or removing waste, in violation of OAC rule 3745-66-73(A); and
 - f. Failed on two occasions to conduct weekly inspections of areas where containers of hazardous waste are stored, in violation of OAC rule 3745-66-74.
14. By letter dated March 23, 1999, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 13.a. through 13.f. of these Orders. Also in this letter, Ohio EPA notified Respondent that a tank associated with a xylene recovery system at the Marion Facility was subject to the requirements in OAC rules 3745-66-91 through 3745-66-92.
15. In correspondence dated February 19, March 4, March 23, April 7, May 3, May 14, June 7, July 29, August 20, and October 6, 1999, Respondent provided responses to Ohio EPA addressing the violations referenced in Finding Nos. 13.a. through 13.f. of these Orders.
16. By letters dated March 23 and July 20, 1999, and during a November 2 and 3, 2000 compliance inspection, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding Nos. 13.a. through 13.f. of these Orders.
17. On November 2 and 3, 2000, Ohio EPA conducted an inspection of the Marion Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*,
- a. Conducted a review of the initial hazardous waste management training to certain employees at the Marion Facility in the year 2000, but failed to provide the annual review training within 365 days of the initial hazardous waste management training, in violation of OAC rule 3745-65-16;

- b. Failed to adequately document that training was provided to certain employees managing and/or handling hazardous waste at the Marion Facility, in violation of OAC rule 3745-65-16(D);
 - c. Conducted periodic inspections of emergency equipment but failed to conduct and document weekly inspections of emergency equipment, in violation of former OAC rule 3745-65-33;
 - d. Failed to close a container holding hazardous waste when not adding or removing waste, in violation of OAC rule 3745-66-73(A); and
 - e. Operated a solvent reclamation system which did not meet the requirements for "closed-loop recycling" found in OAC rule 3745-51-04(A)(8) and therefore, failed to meet the design, installation, operation and inspection requirements for new tank systems that store hazardous waste, in violation of OAC rules 3745-66-91 through 3745-66-992.
18. By letter dated January 24, 2001, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 17.a. through 17.e. of these Orders.
19. In correspondence dated November 2, 2000, January 10, February 5, February 23, March 22, April 20, June 1, July 18, July 19, July 30, and September 12, 2001, and January 17, February 1, February 21, February 27 and March 1, 2002, Respondent provided responses addressing the violations referenced in Finding Nos. 17.a. through 17.e. of these Orders.
20. By letters dated July 13 and August 30, 2001, and March 8, 2002, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding Nos. 17.a. through 17.e. of these Orders.

Findings for the Findlay Facility

21. On February 6 and 7, 2001, Ohio EPA conducted an inspection of the Findlay Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:
- a. Failed to provide initial hazardous waste training for certain employees handling and/or managing hazardous waste at the Findlay Facility, in violation of OAC rule 3745-65-16(A);
 - b. Conducted a review of the initial hazardous waste management training for employees at the Findlay Facility in the year 2000, but failed to provide the annual review training within 365 days of the

- initial hazardous waste management training, in violation of OAC rule 3745-65-16;
- c. Failed to mark a hazardous waste container holding an excess of 55 gallons with the date that excess began accumulating, in violation of OAC rule 3745-52-34(C);
 - d. Failed to close a hazardous waste container when not adding or removing waste, in violation of OAC rule 3745-66-73(A);
 - e. Conducted periodic inspections of hazardous waste container storage areas but failed to conduct and document weekly inspections of container storage areas within seven days of the previous inspection, in violation of OAC rule 3745-66-74; and
 - f. Conducted periodic inspections of emergency equipment but failed to conduct and document weekly inspections of emergency equipment within seven days of the previous inspection, in violation of former OAC rule 3745-65-33.
22. By letter dated February 26, 2001, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 21.a. through 21.f. of these Orders.
23. In correspondence dated March 7, April 11, June 14, June 18, and August 22, 2001, Respondent provided responses addressing the violations referenced in Finding Nos. 21.a. through 21.f. of these Orders.
24. By letters dated May 23 and August 23, 2001, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding Nos. 21.a. through 21.f. of these Orders.

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Within 30 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$38,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and which will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$38,000.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying

the Respondent and the Facility. A copy of this check shall be submitted in accordance with Section X. of these Orders.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official check required by Section V. of these Orders.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's Clyde Facility, Marion Facility and Findlay Facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Hazardous Waste Management
347 N. Dunbridge Road
Bowling Green, Ohio 43402
Attn: DHWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Christopher Jones, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Manager, Compliance Assurance Section

For deliveries to the building:

Christopher Jones, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
122 South Front Street
Columbus, Ohio 43215
Attn: Manager, Compliance Assurance Section

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding

such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

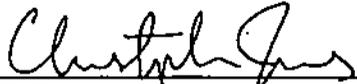
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



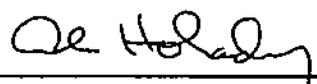
Christopher Jones
Director

♂
APR 4 2003

Date

IT IS SO AGREED:

Whirlpool Corporation



Signature

3/21/03

Date

Al Holaday

Printed or Typed Name

V.P., NAR Manufacturing

Title