

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

JERSEY CITY MUNICIPAL UTILITIES  
AUTHORITY,

Plaintiff,

v.

HONEYWELL INTERNATIONAL INC.,

Defendant.

Consolidated under Docket  
No. 05-5955 (DMC-PS)

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JERSEY CITY INCINERATOR AUTHORITY

Plaintiff,

v.

HONEYWELL INTERNATIONAL INC.,

Defendant.

Civil Action No. 05-5993  
Consolidated under Docket  
No. 05-5955 (DMC-PS)

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HACKENSACK RIVERKEEPER, INC.,  
*et al.*

Plaintiffs,

v.

HONEYWELL INTERNATIONAL INC.,  
*et al.*

Defendants.

Civil Action No. 06-22  
Consolidated under Docket  
No. 05-5955 (DMC-PS)

**CONSENT DECREE REGARDING SITES 79 AND 153 SOUTH**

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## RECITALS

**Whereas**, on June 30, 2003, the district court for the District of New Jersey (hereafter “the Court”) issued a Final Judgment in *Interfaith Community Organization v. Honeywell International Inc.*, Civ. No. 95-2097 (DMC) (“*ICO v. Honeywell*”), ordering the remediation of an area designated by the New Jersey Department of Environmental Protection (“NJDEP”) as Study Area 7 of the Chromium Chemical Production Waste Sites;

**Whereas**, on or about December 23, 2005, the Jersey City Municipal Utilities Authority (“JCMUA”) filed litigation styled *Jersey City Municipal Utilities Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5955 (DMC), bringing claims against Honeywell International Inc. (“Honeywell”) under, among other grounds, Section 7002 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972, seeking remediation of chromium contamination on property then owned by JCMUA and other relief;

**Whereas**, on or about December 28, 2005, the Jersey City Incinerator Authority (“JCIA”) filed litigation styled *Jersey City Incinerator Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5993 (DMC), bringing claims against Honeywell under, among other grounds, Section 7002 of RCRA seeking remediation of chromium contamination on property then owned by JCIA and other relief;

**Whereas**, on or about January 4, 2006, Hackensack Riverkeeper, Inc., William Sheehan, Winston Clarke, and Lawrence Baker (collectively, “Riverkeeper”) filed litigation styled *Hackensack Riverkeeper, Inc. v. Honeywell International Inc.*, D.N.J., Civ. No. 06-0022 (DMC), bringing a claim against Honeywell under Section 7002 of RCRA seeking remediation of chromium contamination in soils, groundwater, surface waters, and sediments associated with various properties collectively designated by NJDEP as Study Area 5, Study Area 6 North,

which includes the properties formerly owned by the City of Jersey City, JCMUA, and JCIA (collectively “the Jersey City Entities”), and Study Area 6 South, as well as a parcel adjacent to Study Area 5 owned by Regnal Reality, Inc.;

**Whereas**, Riverkeeper also named as defendants in *Riverkeeper v. Honeywell* owners of the properties comprising Study Areas 5, 6 North, and 6 South, including New Jersey City University, Bayonne Municipal Utilities Authority (“BMUA”), Jersey City Fields LLC (“Jersey City Fields”), Bob Ciasulli, Elisabeth and Rafael Rosario, Michael Vo, and Regnal Realty, as necessary party defendants pursuant to Rule 19 of the Federal Rules of Civil Procedure;

**Whereas**, *JCMUA v. Honeywell*, *JCIA v. Honeywell*, and *Riverkeeper v. Honeywell* were consolidated by the Court under the caption *Jersey City Municipal Utilities Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5955 (DMC) (“Consolidated Litigation”);

**Whereas**, in the Consolidated Litigation, Riverkeeper has alleged that Honeywell bears responsibility for the presence and remediation of chromite ore processing residue (“COPR”) and chromium contaminated soils and groundwater on the Study Area 5 properties;

**Whereas**, Study Area 5 is comprised of five sites designated by NJDEP as Sites 079, 090, 117, 153, and 184;

**Whereas**, Honeywell owns the property that comprises Site 153 and such property is subject to an easement held by BMUA for purposes of its operation and maintenance of the pipeline that runs the length of Site 153 and carries sewage from the City of Bayonne to the regional wastewater treatment plant operated by the Passaic Valley Sewerage Commission;

**Whereas**, based on a recent survey of Honeywell’s Site 153 property, there is a question as to the property line between Honeywell’s property and the Regnal Realty Property. Langer Transport operates a trucking operation on the Regnal Realty Property. Langer Transport and

Regnal Realty, Inc. are owned by the same entity. Based on the survey, Honeywell believes that Langer Transport's operations encroach upon Honeywell's property;

**Whereas**, Bob Ciasulli, Elisabeth and Rafael Rosario, and Michael Vo own the properties that comprise Site 79. The Rosario and Vo properties are residential. The Ciasulli property is currently used as an auto dealership with sales and service operations;

**Whereas**, Bob Ciasulli and Honeywell asserted cross-claims against each other in the Consolidated Litigation, and Honeywell has asserted cross-claims against Michael Vo and Elisabeth and Rafael Rosario;

**Whereas**, BMUA and Honeywell asserted cross-claims against each other in the Consolidated Litigation, which have been settled and dismissed pursuant to an Order of the Court dated January 7, 2008;

**Whereas**, on April 21, 2008, the Court entered the Consent Decree Regarding Remediation and Redevelopment of Study Area 6 North ("Study Area 6 North Consent Decree"), resolving issues between Honeywell, Riverkeeper, and the Jersey City Entities related to chromium contamination at Study Area 6 North;

**Whereas**, on May 28, 2008, the Court entered the Consent Order on Sediment Remediation and Financial Assurances ("Sediment Consent Order"), resolving issues related to the remediation of chromium contaminated sediments in the Hackensack River in the vicinity of Study Areas 5, 6, and 7;

**Whereas**, on September 3, 2008, the Court entered the Deep Overburden and Bedrock Groundwater Remedies Consent Order ("Deep Groundwater Consent Order"), resolving all issues related to the remediation of deep overburden and bedrock groundwater in both *ICO v.*

*Honeywell* and the Consolidated Litigation, with the exception of any issues that might be related to the Regnal Realty Property;

**Whereas**, on December 29, 2008, the Court entered the Consent Decree and Order Regarding Remediation and Redevelopment of Study Area 6 South ("Study Area 6 South Consent Decree"), resolving issues between Honeywell and Riverkeeper related to chromium contamination at Study Area 6 South;

**Whereas**, the Parties to this Consent Decree believe that it is in their mutual interest to resolve their differences so that Honeywell can remediate environmental conditions at the Site 079 Ciasulli Property and Site 153 South in order to ensure the continued protection of human health and the environment; and

**Whereas**, each of the actions to implement this Consent Decree have been fully considered by Honeywell, Riverkeeper, Ciasulli, and BMUA, as a means to accomplish the aforesaid purposes of this settlement and each of the Parties consents be bound by the provision set forth herein;

**NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:**

#### **ARTICLE I: DEFINITIONS**

For purposes of this Consent Decree, the following terms shall have the meanings set forth in this Article:

1. **BMUA** shall mean the Bayonne Municipal Utilities Authority or its successors in interest with regard to the easement and sewer pipeline that runs the length of Site 153 South.
2. **COPR** shall mean Chromite Ore Processing Residue.

3. **Chromium Remedy or Chromium Remediation** shall mean the remedy set forth in Article III for the particular site and collectively, they are referred to herein as the **Chromium Remedies**. **Initial Chromium Remedy or Remedies** shall mean the remedies set for in Article III, except for paragraphs 61 and 71. **Final Chromium Remedy or Remedies** shall mean the further remedial activities set for in paragraph 61 and/or paragraph 71.

4. **Ciasulli** shall mean Bob Ciasulli, whose legal name is Robert G. Ciasulli, the current owner of the Site 79 Ciasulli Property and his successors in interest to the Site 79 Ciasulli Property.

5. **Consolidated Litigation** shall mean *Jersey City Municipal Utility Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5955 (DMC), *Jersey City Incinerator Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5993 (DMC), and *Hackensack Riverkeeper, Inc. v. Honeywell International Inc.*, D.N.J., Civ. No. 06-022 (DMC).

6. **Court** shall mean the United States District Court of the District of New Jersey, which has jurisdiction over the Consolidated Litigation.

7. **Deep Groundwater Consent Order** shall mean the Deep Overburden and Bedrock Groundwater Remedies Consent Order entered by the Court on September 3, 2008, in both *ICO v. Honeywell* and the Consolidated Litigation.

8. **Final Chromium Remedy or Remedies** shall have the meaning set forth in paragraph 3.

9. **Greater than 20 Soils** shall mean those soils in which the hexavalent chromium concentration in the top 20 feet of soil below ground surface is greater than 20 mg/kg.

10. **Honeywell** shall mean Honeywell International Inc. and its subsidiary 425-445 Route 440 Property LLC.

11. **ICO v. Honeywell** shall mean *Interfaith Community Organization v. Honeywell International Inc.*, D.N.J., Civ. No. 95-2097 (DMC).

12. **Including** shall mean including, but not limited to.

13. **Initial Chromium Remedy or Remedies** shall have the meaning set forth in paragraph 3.

14. **NJDEP** shall mean the New Jersey Department of Environmental Protection.

15. **NJDEP Chromium Policy** shall mean the chromium remediation policy set forth in the memorandum from Lisa P. Jackson to Irene Kropp on February 8, 2007, and attached as Exhibit A. The NJDEP Chromium Policy is also known as the NJDEP Chromium Directive.

16. **Non-Honeywell Parties** shall mean Riverkeeper, BMUA, and Ciasulli, except that the term shall exclude BMUA or Ciasulli, wherever BMUA or Ciasulli would not be a Non-Honeywell Defendant with an Interest.

17. **Non-Honeywell Defendant with an Interest** shall mean any Non-Honeywell Defendant who has an ownership or other real property interest in property that will be affected by an action or decision under this Consent Decree.

18. **Party or Parties** shall mean any or all of Riverkeeper, Honeywell, BMUA, or Ciasulli.

19. **RCRA** shall mean the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, as amended.

20. **Regnal Realty Property** shall mean the property owned by Regnal Realty, consisting of Block 1288.2, Lot 1, located at 420 Route 440, Jersey City, New Jersey.

21. **Riverkeeper** shall mean Hackensack Riverkeeper, Inc., William Sheehan, Reverend Winston Clarke, and Lawrence Baker.

22. **Route 440** shall mean New Jersey state highway Route 440, a portion of which is part of Site 153 South.

23. **Sediment Consent Order** shall mean the Consent Order on Sediment Remediation and Financial Assurances, entered by the Court in *ICO v. Honeywell* and the Consolidated Litigation on May 28, 2008.

24. **Shallow Groundwater or Shallow Level of Groundwater** shall mean groundwater (i) above the meadow mat, (ii) groundwater at stratigraphically equivalent depths in locations where there is no meadow mat, and (iii) groundwater that is contaminated by recent contact with COPR or other chromium contaminated soil above the meadow mat and subsequently flows downward through or past the meadow mat into the upper portion of the lacustrine sediments. This does not include groundwater found in the bedrock, the deep zone, or any plume of contamination that is in both the intermediate and deep zones, as those zones are defined in the Final Groundwater Investigation Report, prepared in *ICO v. Honeywell*, dated February 2007.

25. **Site 79** shall mean all property in Study Area 5 owned by Ciasulli, Elisabeth and Rafael Rosario, and Michael Vo.

26. **Site 79 Ciasulli Property** shall mean the property within Site 79 owned by Ciasulli, consisting of Block 1291, Lot 76, and Block 1292, Lots 1F, 47, 48, 53, and 54PL, located at 540 Route 440, Jersey City, New Jersey.

27. **Site 79 Residential Properties** shall mean the properties within Site 79 owned by Elisabeth and Rafael Rosario and Michael Vo, consisting of Block 1292, Lot 49, and Block 1292, Lot 50, located at 93 and 95 Fisk Street, Jersey City, New Jersey, respectively.

28. **Site 153** shall mean Site 153 North and Site 153 South.

29. **Site 153 North** shall mean that portion of Site 153 that abuts Sites 184 and 90 and is bounded to the north by Carbon Place and to the south by the southern property line of Site 90.

30. **Site 153 South** shall mean that portion of Site 153 that abuts Site 117, the Garfield Home Furnishing Center, and the Regnal Realty Property, and is bounded to the north by the southern property line of Site 90 and to the south by Danforth Avenue. Site 153 South is comprised of the Site 153 South Lower Segment and Site 153 South Upper Segment.

31. **Site 153 South Lower Segment** shall mean that portion of Site 153 South that is bounded to the north by the southern property line of Site 117 and to the south by Danforth Avenue.

32. **Site 153 South Upper Segment** shall mean that portion of Site 153 South that abuts Site 117.

33. **Soil** shall mean soils, historic fill, COPR, or any combination thereof.

34. **Study Area 5** shall mean that property designated by NJDEP as Sites 79, 90, 117, 153, and 184 of the Chromate Chemical Production Waste Sites including (a) all such property owned by Bob Ciasulli, consisting of Block 1291, Lot 76, and Block 1292, Lots 1F, 47, 48, 53, and 54PL, located at 540 Route 440, Jersey City, New Jersey, (b) all such property owned by Elisabeth and Rafael Rosario, consisting of Block 1292, Lot 49, located at 93 Fisk Street, Jersey City, New Jersey, (c) all such property owned by Michael Vo, consisting of Block 1292, Lot 50, located at 95 Fisk Street, Jersey City, New Jersey, (d) all such property owned by Jersey City Fields LLC, consisting of Block 1285.5, Lot 1, located at 440 Route 440, Jersey City, New Jersey, (e) all such property owned by 425/445 Route 440 Property LLC, consisting of Block 1289.5, Lot E, Jersey City, New Jersey, and (f) all such property owned by NJCU, consisting of Block 1286, Lots 5 and 6D, and Block 1286.5, Lots 1 and 2, Jersey City, New Jersey.

35. **Study Area 6** shall mean Study Area 6 North and Study Area 6 South, collectively.

36. **Study Area 6 North** shall mean the property comprising Sites 87 and 88 of the Chromate Chemical Production Waste Sites designated by NJDEP, which is subject to the Study Area 6 North Consent Decree.

37. **Study Area 6 North Consent Decree** shall mean the Consent Decree and Order Regarding Remediation and Redevelopment of Study Area 6 North, entered by the Court on April 21, 2008, in the Consolidated Litigation.

38. **Study Area 6 South** shall mean the property comprising Sites 73, 124, 125, 134, 140, and 163 of the Chromate Chemical Production Waste Sites designated by NJDEP, which is subject to the Study Area 6 South Consent Decree.

39. **Study Area 6 South Consent Decree** shall mean the Consent Decree and Order Regarding Remediation and Redevelopment of Study Area 6 South, entered by the Court on December 29, 2008, in the Consolidated Litigation.

40. **Study Area 7** shall mean (a) that property currently owned by Bayfront Redevelopment LLC, located at 425 and 445 Route 440, Jersey City, Hudson County, New Jersey, and (b) that property currently owned by Bayfront Redevelopment LLC, located at 465 Route 440, Jersey City, Hudson County, New Jersey.

41. **Subject to Review and Comment by the Non-Honeywell Parties** shall mean that Honeywell shall submit an investigation, plan, report, or other document to the Non-Honeywell Parties. Non-Honeywell Parties shall have the right to make comments, to which Honeywell shall respond. In the event that the Parties are not able to reach agreement, any Party

may seek resolution of the dispute by motion to the Court, but the Parties are not required to seek a ruling by the Court.

42. **Technical Requirements for Site Remediation or Tech Regs** shall mean the NJDEP Technical Requirements for Site Remediation, N.J.A.C. Chapter 26E, as amended.

43. **Unrestricted Use No Further Action Determination** shall mean a No Further Action Letter issued by NJDEP pursuant to N.J.A.C. § 7:26C-2.6(c)(1)(i) or a Remedial Action Outcome issued by a New Jersey Licensed Site Remediation Professional in accordance with regulations then in effect stating that the site meets the requirements for Unrestricted Use.

44. **Unrestricted Use** shall mean that the contaminated medium is restored to a condition or quality suitable for all uses.

## **ARTICLE II: SCOPE OF THE CONSENT DECREE, JURISDICTION, AND CLAIMS RESOLVED**

45. This Court has jurisdiction over the Parties and subject matter of the Consolidated Litigation pursuant to Section 7002 of RCRA, 42 U.S.C. § 6972, and 28 U.S.C. § 1331.

46. For purposes of this Consent Decree, the Riverkeeper Complaint in the Consolidated Litigation states claims upon which relief may be granted against Honeywell with regard to the Site 79 Ciasulli Property and Site 153 South.

47. In the event that this Decree is not terminated by one or more Parties pursuant to paragraph 89, this Consent Decree resolves, settles, and satisfies all claims by Riverkeeper against Honeywell with respect to (i) soils and shallow groundwater at the Site 79 Ciasulli Property and (ii) soils at Site 153 South, except any such soils that might be inside of the current Langer Transport fence line. This Consent Decree does not resolve any claims regarding the Site 79 Residential Properties or Site 153 North. This Consent Decree does not resolve any claims regarding any soils at Site 153 South that might be inside of the current Langer Transport fence

line. The Consent Decree does not resolve any claims regarding shallow groundwater contamination at Site 153 South. Honeywell and Riverkeeper reserve their respective rights and defenses regarding these unresolved claims. In the event that this Decree is not terminated by one or more Parties pursuant to paragraph 89, this Consent Decree resolves, settles, and satisfies all claims by Honeywell against Ciasulli in this Litigation and by Ciasulli against Honeywell in this Litigation.

48. Nothing in this Consent Decree shall be construed or interpreted to waive any claim or defense any Party has asserted or may assert against any of the parties to the Consolidated Litigation or any third party, except as explicitly stated herein.

49. This Consent Decree does not constitute an admission of liability on the part of any Party with respect to any claims, cross-claims, or counter-claims in the Consolidated Litigation or with respect to any claims by any third party.

### **ARTICLE III: CHROMIUM REMEDIATION**

#### **A. General Terms and Requirements**

50. **Responsibility for Implementation of Chromium Remediation.** As between the Parties, Honeywell shall be responsible for and shall undertake remediation of COPR and chromium present at the Site 79 Ciasulli Property and Site 153 South at Honeywell's sole cost and expense. Honeywell shall perform the remediation of COPR and chromium present at the Site 79 Ciasulli Property and Site 153 South in accordance with the terms of this Consent Decree as set forth below.

51. **Consistency of the Chromium Remedy with NJDEP Guidance and Remedial Action Work Plans.** The Initial Chromium Remedies shall be consistent with the Technical Requirements for Site Remediation, the NJDEP Chromium Policy, and any Remedial Action

Work Plan or other work plan approved by NJDEP for the Site 79 Ciasulli Property or Site 153 South, including any modifications or addenda thereto approved by NJDEP. Prior to submitting any Remedial Action Work Plan or other work plan for the Site 79 Ciasulli Property or Site 153 South to NJDEP, Honeywell shall take all reasonable steps to ensure that the plan is consistent with the Chromium Remedies set forth herein. In the event of any conflict or inconsistency between this Consent Decree and any Remedial Action Work Plan approved by NJDEP, the provisions of this Consent Decree shall control. However, nothing in this Consent Decree shall limit NJDEP's authority to require Honeywell, other Parties, or third-parties from undertaking remedial activities at the Site 79 Ciasulli Property or Site 153 South in addition to those required by this Consent Decree.

52. **General Scope of the Chromium Remedies.** Due to the current uses of the Site 79 Ciasulli Property and Site 153 South and NJDEP's anticipated establishment of formal soil remediation standards for hexavalent chromium, remediation of the chromium contamination of the soils will take place in two phases, an initial phase and a final phase. The Initial Chromium Remedies shall address soil containing hexavalent chromium concentrations greater than 20 mg/kg within the top 20 feet of soil below ground surface as set forth herein and shall be consistent with the requirements set forth in this Article. The Final Chromium Remedies shall address the remediation of hexavalent chromium in soils as necessary to meet NJDEP's requirements in effect at the time further remedial activities are required under this Consent Decree. The Parties understand and agree that Honeywell is agreeing to use soil with a hexavalent chromium concentration of less than 1 mg/kg as backfill solely as a partial condition of settlement and that the requirement to use soil with a hexavalent chromium concentration of less than 1 mg/kg as backfill is applicable only to Site 153 South and shall not be used as a

precedent for any other site. The Parties also understand and agree that Riverkeeper is agreeing to use the requirements set forth in the NJDEP Chromium Policy related to Greater than 20 Soils for purposes of the Initial Chromium Remedies as a partial condition of this settlement and that such agreement shall not be used in any way to prejudice its advocacy for final remediation herein or at any other site at a different level. The only groundwater aquifer addressed by this Consent Decree is the shallow aquifer. The remediation of deep overburden and bedrock groundwater, including source control, is addressed in the Deep Groundwater Consent Order.

53. **Development of a Schedule for the Chromium Remedies.** Within 90 days of entry of this Consent Decree, Honeywell shall propose a Master Schedule, subject to review and comment by the Non-Honeywell Parties, for the implementation of the Initial Chromium Remedies. The Master Schedule shall incorporate the following dates:

- (a) A date for the submission of an amended Remedial Action Work Plan for the Site 79 Ciasulli Property to NJDEP based on the Initial Chromium Remedy for the Site 79 Ciasulli Property set forth in this Consent Decree;
- (b) Dates for the submission of workplan/design documents for the Upper Segment and Lower Segment of Site 153 South to NJDEP based on the Initial Chromium Remedy for Site 153 South set forth in this Consent Decree;
- (c) Dates for the initiation and completion of the Initial Chromium Remedy for the Site 79 Ciasulli Property; and
- (d) Dates for the initiation and completion of the Initial Chromium Remedy for Site 153 South.

As such time as it becomes appropriate, Honeywell shall propose amendments to the Master Schedule, subject to review and comment by the Non-Honeywell Parties, for implementation of the Final Chromium Remedies.

54. **Demolition and Grading Activities.** During demolition and grading activities for the Chromium Remedies, adequate measures shall be taken to protect site workers and the community from airborne dusts and exposure to contaminated soils in accordance with applicable laws, regulations, and health and safety standards.

55. **Permits and Authorizations.** Honeywell shall obtain all necessary federal, state, and local permits and authorizations to carry out the Chromium Remedies as set forth in this Article. Ciasulli and BMUA agree to cooperate with Honeywell in the applications for any such permits, authorizations, or approvals. Such cooperation shall include providing information or data with respect to permit applications, co-signing permit applications, and allowing access to the Site to obtain information necessary for the permits.

#### **B. Chromium Remedy for the Site 79 Ciasulli Property**

56. **Hotspot Excavation.** Honeywell shall excavate Greater than 20 Soils in the vicinity of soil borings 79-SB-004 and 79-SB-D005 in the approximate area set forth on the figure attached as Exhibit B. Based on existing data, it is anticipated that such excavation shall remove soils in the top two to four feet below ground surface. Honeywell shall dispose of excavated Greater than 20 Soils off-site at a waste disposal facility licensed to accept such waste.

57. ***In Situ* Treatment.** Honeywell shall conduct *in situ* treatment of Greater than 20 Soils with a chemical reductant in the approximate area shown on Exhibit B in accordance with the treatment protocol set forth in Exhibit C. Honeywell's treatment obligations under this Consent Decree shall not be subject to confirmation sampling and Honeywell shall have no

obligation under this Consent Decree to treat soils at the Site 79 Ciasulli Property beyond the requirements set forth in the treatment protocol.

58. **Asphalt Cap Remedy.** Until such time as further remedial action may be required pursuant to paragraph 61, Honeywell shall inspect and maintain the asphalt cover at the Site 79 Ciasulli Property over all Greater than 20 Soils in approximately the area shown on Exhibit B and hereinafter referred to as the "Site 79 Capped Area."

59. **Deed Notice.** Within 90 days of entry of this Consent Decree, a deed notice, substantially in the form attached as Exhibit D and including the following provisions, shall be recorded by Ciasulli for the Site 79 Ciasulli Property pursuant to paragraph 60:

- (a) Notice that the asphalt cover for the Site 79 Capped Area, also referred to as the Restricted Area in the deed notice (Exhibit D), constitutes an engineering control that must be maintained in accordance with the Tech Regs;
- (b) An easement providing access to Honeywell for the purposes of inspecting, repairing, and maintaining the asphalt cover; and
- (c) A restriction limiting the future uses of the Site 79 Capped Area to commercial, retail, or open space, including continued use as an auto dealership.

The deed notice shall encumber the Site 79 Ciasulli Property until such time as further remedial activities are undertaken pursuant to paragraph 61 and an Unrestricted Use No Further Action Determination is issued for the Site 79 Ciasulli Property. During the period in which the Site 79 Ciasulli Property is encumbered by the deed notice, Ciasulli and Honeywell shall comply with the requirements of the deed notice. At the time the biennial reports required by the deed notice

are submitted to NJDEP, Ciasulli and Honeywell shall provide copies of the reports to Riverkeeper. The deed notice shall be enforceable against Ciasulli and Honeywell in the Consolidated Litigation.

60. **Recording of the Deed Notice.** The deed notice and this Consent Decree shall be recorded pursuant to N.J.S.A. §§ 46:15-1.I, 46:16-1.1, 46:16-2, and 58:10B-13 in the office of the Hudson County Register and a conspicuous reference to the Consent Decree and Deed Notice shall be included in all instruments concerning title to the Site 79 Ciasulli Property as long as the property is required to be encumbered by the deed notice pursuant to paragraph 59.

61. **Further Remedial Activities.** Within 90 days of receiving written notice from Ciasulli that he wants to have the opportunity to use, offer, or market the Site 79 Ciasulli Property for residential purposes, Honeywell shall propose further remedial action at the Site 79 Ciasulli Property as necessary to meet NJDEP's requirements for Unrestricted Use of the property in effect at that time and a schedule for undertaking such further remedial action. Such proposal and schedule shall be presented by Honeywell in a document that is subject to review and comment by the Non-Honeywell Parties. Following such review and comment by the Non-Honeywell Parties, Honeywell shall undertake the further remedial action pursuant to the schedule. To the extent that Honeywell wants to rely on treatment conducted pursuant to paragraph 57 as having reduced the hexavalent chromium concentration in the soils to the level that would make further remediation unnecessary under this paragraph, Honeywell shall conduct post-treatment sampling to demonstrate that the treatment has resulted in permanent hexavalent chromium concentrations of less than that required to meet NJDEP's requirement for Unrestricted Use of the property in effect at the time. Honeywell shall propose a program of post-treatment monitoring in a document that is subject to review and comment by the Non-

Honeywell Parties. In the event that Honeywell fails to make the demonstration required by this paragraph with respect to treatment, Honeywell shall undertake further remedial actions as required herein. The Parties shall use all reasonable efforts to ensure that the property is remediated pursuant to this paragraph in a timely manner in coordination with, and so as not to unreasonably delay, planned redevelopment.

**62. Shallow Groundwater.** The parties agree that chromium levels in shallow groundwater at Site 79 do not exceed the current New Jersey Ground Water Quality Standards and that, as part of the Initial Chromium Remedy, no shallow groundwater remediation is required for the Site 79 Ciasulli Property. Shallow groundwater remediation may be required in conjunction with further remedial activities pursuant to paragraph 61. At the time that it makes its proposal pursuant to paragraph 61, Honeywell shall address whether shallow groundwater remediation is required to meet NJDEP's requirements for Unrestricted Use of the property in effect at the time and, if necessary, incorporate such groundwater remediation into its proposal. In the meantime, Honeywell shall conduct water level monitoring pursuant to paragraph 80(a)(vi) to ensure that chromium contaminated shallow groundwater is not migrating from Route 440 to the Site 79 Ciasulli Property.

**63. Disturbance of the Cap.** In the event of any planned actions in the Site 79 Capped Area that will involve disturbance of the cap, Ciasulli shall notify the Parties reasonably in advance of the planned action(s) and the date(s) of the planned action. In the event of any emergency actions in the Site 79 Capped Area that will involve disturbance of the cap, Ciasulli shall notify the Parties in a timely manner of the emergency action and the date on which it was undertaken. Honeywell shall provide notice of such disturbance to adjacent property owners in the manner described in paragraph 81.

**64. Inspection by Riverkeeper.** After providing the Parties with seven days advance written notice, Riverkeeper shall have the right to enter the Site 79 Ciasulli Property annually for purposes of inspecting the cap provided that the time for such inspection shall be coordinated with Ciasulli so as not to unreasonably disrupt Ciasulli's business.

**65. Annual Certification to Court.** Annually, beginning on the anniversary date of the entry of this Consent Decree and continuing until such time as the Site 79 Ciasulli Property is no longer encumbered by the deed notice pursuant to paragraph 59, Ciasulli shall submit a certification to the Court regarding his compliance with the Consent Decree and the deed notice. Such certification shall identify all uses of the property since the date of the last annual certification. Honeywell and Riverkeeper will remind Ciasulli of this annual obligation.

**66. Conveyance of the Site 79 Ciasulli Property.** Within 30 days of conveyance of all or any part of the property, Ciasulli shall provide notice of such conveyance to the Court and the Parties. Such notice shall be accompanied by appropriate papers adding the new owner as a party to the Consent Decree with respect to only that portion of the property acquired. The Parties agree to cooperate in the addition or substitution of the new owner as a party to the Consent Decree. Once added or substituted, the new owner shall have all of the rights and responsibilities of this Consent Decree applicable to Ciasulli.

### **C. Chromium Remedy for Site 153 South**

**67. Site 153 South Lower Segment Remedial Action.** Honeywell shall remediate soils within the Site 153 South Lower Segment as follows:

- (a) Except as limited by the provisions of paragraph 67(a)(i)-(iv), and subject to Honeywell's ability to obtain all necessary permits and approvals, Honeywell shall excavate all soils to a depth of three feet below ground

surface and shall dispose of or recycle all excavated soils at a facility licensed to accept such material.

- (i) The excavation adjacent to Route 440 shall be conducted at a sufficient slope to prevent subsidence of soil beneath Route 440. The top of the slope shall be as close as practicable to Route 440. The slope shall descend at approximately a 1:2 ratio (i.e., the slope will descend one foot vertically for every two feet of lateral extent) until it reaches a depth of three feet below ground surface. Honeywell shall install a geotextile liner over the slope back that is designed to prevent exposure to the chromium contaminated soils and to prevent contamination of the clean soil fill installed pursuant to subparagraph (b). The geotextile liner and the final dimensions of the slope shall be subject to the approval of the New Jersey Department of Transportation and all other necessary governmental authorities.
- (ii) In order to maintain sufficient support for existing utility poles, excavation to three feet below ground surface will not be conducted within approximately a four-foot radius of the center of existing utility poles. In the four-foot support radius, Honeywell shall excavate to approximately six inches below ground surface and shall back fill the excavated area with clean soil, as set forth in subparagraph(b), except that no demarcation layer shall be required. Over the four-foot support radius, Honeywell shall

install a geotextile liner that is designed to prevent exposure to the chromium contaminated soils left in place and to prevent contamination of the clean soil fill installed pursuant to subparagraph (b). The liner and final specifications for excavation around existing utility poles shall be subject to the approval of all necessary government authorities and utilities.

(iii) In the segment that is adjacent to the Regnal Realty Property, the excavation shall extend from the western property line of Site 153 to the current Langer Transport fence line with the exception that the Langer Transport fence support posts, sign and building foundations shall be treated either like the Route 440 slope back, consistent with (i) above or like utility poles, consistent with (ii) above, and no excavation is required under the paved entrance between Langer Transport and Route 440.

(iv) No excavation shall be required of the soils under Route 440.

(b) Honeywell shall place an orange demarcation layer (orange snow fence, geotextile liner, or similar material) at the bottom of the excavation and shall backfill the excavation with clean soil having hexavalent chromium concentrations of less than 1 mg/kg. After backfilling, where appropriate, Honeywell shall plant appropriate grass or other vegetation to minimize erosion of the clean fill.

**68. Site 153 South Upper Segment Remedial Action.** Within 90 days of the entry of this Consent Decree, Honeywell shall propose a remedy for the remediation of the soils in the

Site 153 Upper Segment that is subject to review and comment by the Non-Honeywell Parties. In the event that such proposed remedy employs excavation to a depth of three feet below ground surface, in whole or in part, the requirements of paragraph 67 shall apply in the areas to be excavated. Honeywell shall remediate the soils as agreed by the Parties subject to Honeywell's ability to obtain all necessary permits and approvals.

**69. Site 153 South Access Point Warnings.** Honeywell shall provide distinctive warnings in English and Spanish at sewer access points within Site 153 South, including manhole covers, that inform the reader of the presence of chromium at Site 153 South.

**70. Site 153 South Utility Map.** Honeywell shall create a map of the utilities present at Site 153 South, to the extent such information is available through utility suppliers, and provide copies of the map to BMUA and all entities with authority over utilities present at Site 153 South. Honeywell shall revise such map each time chromium contaminated soils are removed pursuant to paragraph 71.

**71. Further Remediation upon Sewer Repair or Replacement.** Further remediation of the chromium contaminated soils in Site 153 South shall be undertaken by Honeywell as follows:

- (a) Whenever any section of the sewer in Site 153 South is being replaced, Honeywell shall remove or treat all soils necessary to meet NJDEP's requirements for non-residential use in effect at the time, dispose of such removed material at a facility licensed to accept such materials, replace such materials with materials deemed appropriate by BMUA and having a hexavalent chromium concentration less than the more stringent of (i) the remediation standard for Unrestricted Use adopted by the Court after trial in

the Consolidated Litigation or (ii) a New Jersey soil standard for Unrestricted Use duly adopted after the date of this Consent Decree or, (iii) if no decision has been rendered in the Consolidated Litigation or no standard has been adopted, 1 mg/kg, and document the locations of the removed material pursuant to paragraph 70.

- (b) Whenever any normal operating repairs on any section of the sewer in Site 153 South result in the removal of chromium contaminated soils, Honeywell or the appropriate sewer authority shall remove all such soils necessary to effectuate the repair and that exceed NJDEP's requirements for non-residential use in effect at the time, and Honeywell shall arrange for the transportation and disposal of such removed material at a facility licensed to accept such materials, replace such materials with materials deemed appropriate by BMUA and having a hexavalent chromium concentration of less than the more stringent of (i) the remediation standard for Unrestricted Use adopted by the Court after trial in the Consolidated Litigation or (ii) a New Jersey soil standard for Unrestricted Use duly adopted after the date of this Consent Decree or, (iii) if no decision has been rendered in the Consolidated Litigation or no standard has been adopted, 1 mg/kg, and document the locations of the removed material pursuant to paragraph 70.
- (c) Whenever any contaminated materials are removed from Site 153 South pursuant to this paragraph, Honeywell shall, to the extent allowed by the sewer authority, also take appropriate steps, such as the placement of a geofabric, to ensure that new fill material does not become contaminated by

any contaminated soil remaining in Site 153 South. Honeywell shall also update the map pursuant to paragraph 70.

72. **Worker Training Plan.** Honeywell shall develop a plan for training all individuals who might be exposed to COPR, chromium-contaminated soils, or chromium-contaminated groundwater in conjunction with any utility or other work performed at Site 153 South ("Worker Training Plan") in conformance with Occupational Safety and Health Administration ("OSHA") rules and guidance. The Worker Training Plan shall detail all appropriate steps such individuals should take to protect themselves from exposure to chromium and shall provide procedures (i) to identify when areas or sections of the pipeline surrounded by COPR or chromium-contaminated soil are scheduled for repair and/or replacement, (ii) to identify and implement appropriate actions to protect workers, and (iii) to coordinate with Honeywell regarding the removal of COPR or chromium-contaminated soils pursuant to paragraph 71. BMUA shall implement such plan pursuant to paragraph 77.

73. **Site 153 South Deed Notice.** Within 90 days of the completion of the remedial measures required by paragraphs 67 and 68, a deed notice, substantially in the form attached as Exhibit E and including the following provisions, shall be recorded by Honeywell pursuant to paragraph 74:

- (a) Notice of the presence of chromium contamination at Site 153 South;
- (b) Notice that clean fill, caps, and asphalt cover each constitute an engineering control that must be maintained in accordance with the Tech Regs;

- (c) A restriction limiting the future uses of Site 153 South to open space, utility corridor, transportation, roadway, crossing, or access to adjacent properties.

Such deed notice shall encumber Site 153 South until such time as an Unrestricted Use No Further Action Determination is issued for Site 153 South. During the period in which Site 153 South is encumbered by the deed notice, Honeywell shall comply with the requirements of the deed notice. At the time the biennial reports required by the deed notice are submitted to NJDEP, Honeywell shall provide copies of the reports to Riverkeeper. The deed notice shall be enforceable against Honeywell in the Consolidated Litigation.

**74. Recording of the Deed Notice.** The deed notice for Site 153 South and this Consent Decree shall be recorded pursuant to N.J.S.A. §§ 46:15-1.1, 46:16-1.1, 46:16-2, and 58:10B-13, in the office of the Hudson County Register and a conspicuous reference to the Consent Decree and Deed Notice shall be included in all instruments concerning title to Site 153 South as long as the property is required to be encumbered by the deed notice pursuant to paragraph 73.

**75. Inspection by Riverkeeper.** Riverkeeper shall have the right to enter Site 153 South annually for purposes of inspecting the Initial Chromium Remedy.

**76. Ownership of and Access to Site 153 South.** Honeywell shall not voluntarily convey fee simple title to Site 153 South to any other person or entity, unless Site 153 South has been remediated such that no hexavalent or total chromium contamination remains at Site 153 South, whether in soils or in groundwater, in excess of the levels and at depths specified by NJDEP for Unrestricted Use in place at the time of the proposed sale or lease. Nothing in this paragraph shall prohibit Honeywell from granting easements or leases on Site 153 South to third

parties without remediating to Unrestricted Use, provided that such easements or leases are for the purposes identified in paragraph 73(c). In the event that a future easement holder or lessee uses Site 153 South for purposes other than those identified in paragraph 73(c), the particular easement or lease shall terminate and Honeywell shall so provide in each future easement and lease instrument. Honeywell shall provide notice to Riverkeeper of each future easement and lease granted, other than the existing easement on Site 153 South.

77. **BMUA Obligations.** BMUA shall develop a permanent plan to implement health and safety measures for its workers at Site 153 South in accordance with OSHA rules related to hazardous materials and shall utilize the plan prepared by Honeywell pursuant to paragraph 72 setting forth the procedures and protections that BMUA shall employ when it conducts activities at Site 153 South. In the event of any planned maintenance or emergency repair of any of its pipelines located under Site 153 South that will involve any disturbance of the remedial measures required by paragraphs 67 and 68, BMUA shall notify Honeywell and Riverkeeper of the planned action(s) and the date(s) for the planned action. Notice to adjacent property owners, in the event of any planned or emergency repair or maintenance of pipelines located under Site 153 South, shall be provided by Honeywell in the manner described in paragraph 81.

#### **D. Long-Term Maintenance and Monitoring**

78. **Honeywell's Ongoing Responsibility.** Honeywell shall be responsible for implementing, monitoring, maintaining, repairing, and replacing the Site 79 Ciasulli Property and Site 153 South Chromium Remedies until an Unrestricted Use No Further Action Determination is issued for the respective site pursuant to the terms of this Consent Decree. Honeywell shall satisfy this responsibility through establishment and implementation of a Long-Term Monitoring Plan.

79. **Long-Term Monitoring Plan.** Subject to review and comment by the Non-Honeywell Parties and approval by NJDEP, Honeywell shall develop a Long-Term Monitoring Plan to ensure the ongoing effectiveness of the Site 79 Ciasulli Property and Site 153 South Chromium Remedies to meet the objectives set forth in Sections B and C of this Article. The Long-Term Monitoring Plan shall be consistent with applicable EPA and NJDEP policies and guidance, including EPA's Comprehensive Five Year Review Guidance (2001) (or any subsequent revision) and the Tech Regs. Honeywell shall design the Long-Term Monitoring Plan to satisfy each of the following objectives:

- (a) Provide monitoring to ensure that the integrity and effectiveness of the Chromium Remedies are maintained; and
- (b) Provide monitoring to ensure that the restrictions of the institutional controls are being satisfied, including the deed notices for the sites.

80. **Monitoring and Remediation under the Long-Term Monitoring Plan.** The Long-Term Monitoring Plan shall include the monitoring and remediation activities set forth in this paragraph and other monitoring and remediation activities, if necessary, to meet the objectives of paragraph 79. Honeywell shall provide the Non-Honeywell Parties and NJDEP with annual reports on activities conducted under the Long-Term Monitoring Plan.

- (a) **Monitoring Activities in the Long-Term Monitoring Plan.** Honeywell shall undertake the following monitoring activities, which shall be described in more detail in the Long-Term Monitoring Plan, at intervals no less frequent than set forth below. If the results of Honeywell's monitoring show that the Chromium Remedy for Site 79 Ciasulli Property

or Site 153 South are compromised or threaten to become compromised, Honeywell shall also undertake remediation activities, as set forth below:

- (i) Annual inspections of the Site 79 Capped Area and Site 153 South to ensure that all pavement is in good condition and does not have potholes or cracks that penetrate the pavement. The inspection shall take place in April or May of each year. Any potholes or cracks that do not penetrate the pavement shall be repaired as part of regular maintenance that takes place at least annually. Potholes or cracks that penetrate the pavement shall be repaired immediately and, if 10% or greater of a localized area or 25% or greater of the entire paved area suffers from such disturbances, Honeywell shall repave such portion(s) as are necessary to maintain the pavement in good condition.
- (ii) Annual inspection monitoring of the vegetative cover at Site 153 South to ensure that any vegetative cover is in conformance with paragraph 67(b);
- (iii) Annual inspection of the caps installed in Site 153 South to isolate the chromium contaminated soils left in place for the slope back and around utility poles pursuant to paragraph 67;
- (iv) Annual inspection, and repair and/or replacement, as necessary, of all warning signs at Site 153 South;

- (v) Annual review, updated as necessary based on changes to field conditions and/or regulatory requirements, of the Worker Training Plan for Site 153 South; and
- (vi) To evaluate the gradient from the portions of the Site 79 Ciasulli Property that adjoin Route 440, water level measurements in the groundwater shall occur at the intervals specified for measurement of water levels in shallow groundwater in the Long-Term Monitoring Plan for the Deep Overburden and Bedrock Groundwater Remedy for Study Area 7. In the event that such monitoring indicates that contaminated shallow groundwater is migrating from Route 440 toward the Site 79 Ciasulli Property, Honeywell shall either undertake water quality monitoring to determine whether the groundwater moving towards the Site 79 Ciasulli Property is contaminated, or undertake action to reverse the flow direction. If contaminated groundwater is migrating into the Site 79 Ciasulli Property, Honeywell shall undertake remedial action to prevent such migration.

- (b) **Procedures for Proposing Changes to the Long-Term Monitoring Plan.** Any Party may, from time to time, propose changes to the scope of the monitoring activities under the Long-Term Monitoring Plan. If the Parties agree, the Long-Term Monitoring Plan shall be so changed subject to approval by NJDEP or a New Jersey Licensed Site Remediation Professional. If the Parties are unable to reach agreement over alterations

to the Long-Term Monitoring Plan, the Party proposing the change may submit the dispute to the Court for resolution.

- (c) **Contingency Plan.** As part of the Long-Term Monitoring Plan, Honeywell shall develop a contingency plan to ensure the integrity of the Chromium Remedies in the event of (i) any planned penetration of the Site 79 Capped Area or the clean fill or other remedial measures at Site 153 South or (ii) any unplanned event or accident that penetrates the Site 79 Capped Area or otherwise compromises the integrity of the Initial Chromium Remedies at the Site 79 Ciasulli Property or Site 153 South. The contingency plan shall include, at a minimum, an annually updated plan to notify the relevant persons, including NJDEP and the Non-Honeywell Parties, of (i) the event penetrating the cap, compromising the cap, or compromising the integrity of the Initial Chromium Remedy; (ii) the general steps to be taken to identify the extent of the problem; and (iii) the standards for remedying the problem.
- (d) **Recordkeeping.** Honeywell shall maintain written logs or other records of those monitoring and remediation activities undertaken pursuant to the Long-Term Monitoring Plan. Such logs shall be provided to the Parties on an annual basis.

81. **Notice to Stakeholders.** All owners, residents, or tenants of the Site 79 Ciasulli Property and Site 153 South and properties adjacent thereto on the eastern side of Route 440, and any entity that holds a utility easement on the Site 79 Ciasulli Property or Site 153 South are deemed to be stakeholders for purposes of this paragraph. Honeywell shall ensure that all

stakeholders are provided notice of conditions in and activities affecting the Site 79 Ciasulli Property and Site 153 South in the following manner:

- (a) Notice, updated annually, to New Jersey One Call and any other underground alert hotlines existing in New Jersey now or in the future, identifying the location and type of contamination at or near pipelines or other utilities within the Site 79 Ciasulli Property and Site 153 South;
- (b) In the event of any planned or emergency excavation within the Site 79 Capped Area or Site 153 South, notice of any actions undertaken or planned and the safety measures implemented to protect individuals near the Site 79 Ciasulli Property and/or Site 153 South from exposure; and
- (c) An annually updated summary notice of the Chromium Remedy that is made available on any website developed to inform the public of contamination at Study Area 6 North, Study Area 6 South, and any future website related, in whole or in part, to Study Area 5. Such notice shall include a description of the remedial actions undertaken and the contamination remaining at the Site 79 Ciasulli Property and Site 153 South. Once the long-term monitoring requirements set forth in paragraph 80 become effective, such annual update shall occur upon completion of the annual long-term monitoring required by paragraph 80(a).

Each year beginning one year after the issuance of the first notice pursuant to paragraph 81(a), Honeywell shall provide a letter to Riverkeeper documenting its compliance with this paragraph.

**82. Stakeholder Enforcement.** Any stakeholder shall have the right to enforce the remedial obligations of this Consent Decree in the Court, including post-implementation monitoring and maintenance obligations, and the terms of any deed notice or use restriction.

### **C. Oversight and Enforcement**

**83. Federal Court Jurisdiction.** The Court shall retain jurisdiction over the matters addressed in this Consent Decree for purposes of enabling the Parties to apply to the Court for any further order as may be necessary to construe, carry out, or enforce the terms of this Consent Decree and the terms of the deed notices required by paragraphs 59 and 73.

**84. Oversight of the Chromium Remedies.**

- (a) **NJDEP Authority.** Nothing in this Consent Decree shall limit NJDEP's full statutory and regulatory authority with respect to Site 79 or Site 153 South, including (i) permitting authority; (ii) authority to review and approve all submissions required by the Tech Regs for the Chromium Remedies; or (iii) authority to issue or allow no further action letters.
- (b) **Special Master.** The Parties dispute the need for a Special Master to oversee implementation of the injunctive relief set forth in this Consent Decree. Riverkeeper therefore reserves the right to seek appointment of a Special Master to oversee the injunctive provisions of this Consent Decree, including referral of supervision of this Consent Decree to the Special Master who has been appointed to oversee implementation of the Study Area 6 North and Study Area 6 South Consent Decrees, and Honeywell and Ciasulli reserve the right to oppose any such appointment or to seek limitations on the powers or authority of any Special Master

appointed. Riverkeeper agrees to defer seeking the appointment of a Special Master until the conclusion of trial in the Consolidated Litigation, except that such right shall not be deferred in the event that a consent decree is entered that resolves Riverkeeper's remaining claims in the Consolidated Litigation. In the event that Riverkeeper's request for appointment of a Special Master to oversee the implementation of this Consent Decree is denied, Honeywell shall undertake the obligations assigned to it in this Consent Decree without further order of the Court and Riverkeeper shall retain the right to enforce this Consent Decree through any means permitted under federal law, including a successive or renewed motion for appointment of a Special Master.

- (c) **Submission of Documents by Honeywell.** The following documents shall be subject to review and comment by the Non-Honeywell Parties. Honeywell shall submit the following documents to Riverkeeper, any Non-Honeywell Defendant with an Interest, and NJDEP. Document submittal shall be satisfied by making available electronic files of such documents on an accessible file transfer or other web site provided that notice is provided of the availability of such document and the time period for review runs from the provision of such notice. All documents shall be submitted to Riverkeeper and any Non-Honeywell Defendant with an Interest for review and comment at least 30 days before the document is submitted to NJDEP, to the extent such documents are required to be submitted to NJDEP. Honeywell may submit a document to NJDEP at

any time after the 30-day review and comment period has elapsed, even if Honeywell, Riverkeeper, and any Non-Honeywell Defendant with an Interest have not reached agreement on the contents of the document.

- (i) The Master Schedule required by paragraph 53;
- (ii) An amended Remedial Action Work Plan for the Site 79 Ciasulli Property, as required by paragraph 53(a);
- (iii) A work plan/design document for Site 153 South, as required by paragraph 53(b);
- (iv) A map of the utilities at Site 153 South, to the extent such information is available through utility suppliers, that indicates the areas where COPR and/or chromium contaminated soils are present;
- (v) Design drawings and specifications at the 100% level (after selection of the contractor) (hereafter "100% Design") for Initial Chromium Remedies;
- (vi) Site-wide master health and safety plan for implementation of the Initial Chromium Remedies;
- (vii) Long-Term Monitoring Plan for the Initial Chromium Remedies;
- (viii) Final Remedial Action Reports or final construction reports (including as-built drawings and such other reports as may be prepared of the remedy as implemented) for the Initial Chromium Remedies;

- (ix) All post-implementation monitoring reports as required by the Long-Term Monitoring Plan; and
  - (x) All documents required by the Tech Regs for the Final Chromium Remedies.
- (d) **Review of Documents.**
- (i) **Dispute Resolution for Honeywell Submittals.** With regard to each document identified in paragraph 83(c), Riverkeeper, Honeywell, and each Non-Honeywell Defendant with an Interest shall engage in a good-faith efforts to reach an agreement on the contents of the document and the activities to be undertaken pursuant thereto. Such effort may include the submission of comments to Honeywell or NJDEP, informal negotiations, or, with the consent of all concerned Parties, mediation. In the event that Riverkeeper, Honeywell, and each Non-Honeywell Defendant with an Interest reach agreement on the contents of a document, Honeywell shall finalize the document as agreed and shall proceed with the activity as set forth therein. In the event that Riverkeeper, Honeywell, and each Non-Honeywell Defendant with an Interest are unable to reach agreement, any one of them may make a motion to have the Court resolve the dispute. No motion may be made to the Court pursuant to this paragraph until NJDEP has had at least 90 days to review the document or such longer time as may be agreed upon by the concerned Parties.

- (ii) **Flexibility in 100% Design Documents.** The Parties recognize that work conducted to implement the Chromium Remedies may be conducted by Honeywell contractors and that Honeywell may establish performance-based criteria or specifications for its contractors. As a result, the Parties recognize that the 100% Design documents for the Chromium Remedies may include performance-based standards, criteria, and specifications. These documents shall be sufficiently prescriptive to enable the Non-Honeywell Parties to evaluate their conformance with the Remedial Action Work Plan and this Consent Decree.
- (iii) **Changes to the Schedule.** The Parties recognize that changes to individual line items in the Master Schedule may occur. To the extent that (i) the Parties agree that such changes do not have a material impact on satisfaction of the Schedule milestones established for items set forth in paragraph 53, and (ii) such changes do not require modifications to any necessary permits or authorizations for the affected Chromium Remedy, such changes may be made upon agreement of the Parties without further order of the Court.
- (e) **Appointment of Special Master.** In the event that Riverkeeper seeks appointment of a Special Master pursuant to paragraph 84(b) and the Court appoints a Special Master, the provisions of paragraph 84(d) shall be of no further force or effect and the provisions of the Order appointing

the Special Master shall govern the procedures for the approval of documents Honeywell is required to submit pursuant to this Consent Decree.

#### **D. Financial Assurances**

85. **No Financial Assurances Required.** Honeywell shall not be required to provide any financial assurances pursuant to this Consent Decree to secure performance of its obligations under this Consent Decree.

86. **Right to Seek Financial Assurances.** Riverkeeper reserves the right to seek an order requiring Honeywell to provide financial assurances to secure performance of its obligations under this Consent Decree, including the long-term protectiveness of the remedies set forth herein, and Honeywell reserves all rights to oppose any such order. Riverkeeper agrees to defer seeking any order requiring Honeywell to provide financial assurances until the conclusion of trial in this Consolidated Litigation, except that such right shall not be deferred in the event that a consent decree is entered that resolves Riverkeeper's remaining claims in the Consolidated Litigation.

87. **No Limitation on Financial Assurances Required by Regulatory Authorities.** Nothing in this Consent Decree shall be construed as limiting the right of NJDEP or any other administrative agency to require Honeywell to provide financial assurances related to any of the remedial actions Honeywell is undertaking pursuant to this Consent Decree.

#### **ARTICLE IV: TERMINATION**

88. **Termination of This Consent Decree upon Full Remediation.** Honeywell's obligations under this Consent Decree with respect to the Site 79 Ciasulli Property shall terminate completely and this Consent Decree shall be of no further force and effect with regard

thereto upon Honeywell's completion of further remedial activities pursuant to paragraph 61 and its receipt of an Unrestricted Use No Further Action Determination for hexavalent chromium for the Site 79 Ciasulli Property. Honeywell's obligations under this Consent Decree with respect to Site 153 South shall terminate completely and this Consent Decree shall be of no further force and effect with regard thereto upon Honeywell's completion of the further remedial activities pursuant to paragraph 71 and its receipt of an Unrestricted Use No Further Action Determination for hexavalent chromium for Site 153 South.

89. **Termination for Other Reasons.** Except as set forth in paragraph 88, this Consent Decree shall terminate, in whole or in part, only upon the withdrawal of any Party as provided for in this paragraph. Any Party may elect to withdraw from this Consent Decree, with respect to one or both Sites, due to the occurrence of one or more of the following events, provided that such Party provides written notice of withdrawal to the other Parties pursuant to paragraph 90:

- (a) Any Party may elect to withdraw from the Consent Decree in its entirety if the Court fails to enter this Consent Decree or this Consent Decree is determined to be invalid by the Court or any other court of competent jurisdiction, in which case the entire Consent Decree shall terminate;
- (b) Any Party may elect to withdraw from those portions of the Decree related to the Site 79 Ciasulli Property and such portions of the Consent Decree shall terminate if NJDEP takes one of the following actions with respect to the Amended Remedial Action Work Plan for the Initial Chromium Remedy at the Site 79 Ciasulli Property:

- (i) Rejects or fails to approve such plan within 180 days of submission of the plan; or
  - (ii) Approves such plan, but conditions such approval on changes in the plan that result in a substantial reduction of the protection of human health and/or the environment.
- (c) In the event NJDEP approves the Amended Remedial Action Work Plan for the Initial Chromium Remedy for the Site 79 Ciasulli Property, but conditions such approval on changes in the plan that result in more than a 50% increase in the estimated costs of the Initial Chromium Remedy, as set forth in Article III, Honeywell only may withdraw from those portions of this Consent Decree related to the Site 79 Ciasulli Property and such portions of the Consent Decree shall terminate.
- (d) Any Party may elect to withdraw from those portions of the Consent Decree related to Site 153 South, and such portions of the Consent Decree shall terminate if NJDEP takes one of the following actions with respect to the Remedial Action Work Plan or other work plan for Initial Chromium Remedy for Site 153 South:
  - (i) Rejects or fails to approve such plan or other work plan within 180 days of submission of the plan; or
  - (ii) Approves such plan, but conditions such approval on changes in the plan that result in a substantial reduction of the protection of human health and/or the environment.

- (e) In the event NJDEP approves the Remedial Action Work Plan or other work plan for the Initial Chromium Remedy for Site 153 South, but conditions such approval on changes in the plan that result in more than a 50% increase in the estimated costs of the Initial Chromium Remedy, as set forth in Article III, Honeywell only may withdraw from those portions of this Consent Decree related to Site 153 South and such portions of the Consent Decree shall terminate.

90. **Procedures for Withdrawal and Termination.** Any Party electing to withdraw pursuant to paragraph 89 and thereby terminate all or a portion of this Consent Decree shall provide written notice of such withdrawal and termination to all other Parties within 30 days of the occurrence giving rise to the decision to withdraw. If any Party objects to termination of all or a portion of the Consent Decree or believes that the conditions set forth in paragraph 89 have not been met, such objecting Party may move the Court for an expedited hearing on the issue of whether the conditions for termination have been met and the Party seeking termination shall bear the burden of proof that the conditions for termination have been met.

91. **Good-Faith Obligation to Avoid Termination.** The Parties agree that they will each endeavor to fulfill the terms of this Consent Decree, that they will work diligently and in good faith to meet their obligations hereunder, and that they will promptly and timely take all reasonable steps to give effect to this Consent Decree and to avoid termination under paragraph 89.

92. **Effect of Termination.** If this Consent Decree is terminated in whole or in part pursuant to paragraph 89, the terminated terms of the Consent Decree shall no longer be binding on the Parties and shall be of no further effect. In the event that this Consent Decree is

terminated in whole or in part by one or more Parties pursuant to paragraph 89, each Party to this Consent Decree reserves all of its rights, claims, and defenses (both legal and factual) against the other Parties with respect to the matters at issue in the Consolidated Litigation previously addressed by the terminated terms and each Party remains free to pursue such rights, claims, and defenses.

#### **ARTICLE V: NOTICE**

93. **Notice.** Any and all notices given in connection with this Consent Decree shall be deemed adequately given only if in writing and addressed to the Party for whom such notices are intended at the addresses set forth in this paragraph. All notices shall be sent by FedEx or other nationally recognized overnight messenger service or by first-class registered or certified mail, postage prepaid, return receipt requested. A written notice shall be deemed to have been given to the recipient party on the earliest of (a) the date it shall be delivered to the address set forth in this paragraph; (b) the date delivery shall have been refused at the address set forth in this paragraph; or (c) with respect to notices sent by mail, the date as of which the postal service shall have indicated such notice to be undeliverable at the address set forth in this paragraph. Any notices referred to in this Consent Decree or which any Party desires to give to another shall be addressed as follows:

If to Honeywell:

Thomas Byrne, Esq.  
Chief Environmental Counsel  
Honeywell International Inc.  
101 Columbia Road  
Morristown, NJ 07962  
(973) 455-2775

With copies to:

Michael D. Daneker, Esq.  
Arnold & Porter LLP  
555 Twelfth Street, NW  
Washington, DC 20004  
(202) 942-5177

and

John Morris  
Remediation Portfolio Director  
Honeywell International Inc.  
101 Columbia Road  
Morristown, NJ 07962  
(973) 455-4003

If to Riverkeeper:

Bruce J. Terris, Esq.  
Carolyn Smith Pravlik, Esq.  
Kathleen L. Millian, Esq.  
Terris, Pravlik & Millian LLP  
1121 Twelfth Street, NW  
Washington, DC 20005  
(202) 682-2100

If to Bayonne Municipal Utilities Authority:

Donna M. Russo, Esq.  
General Counsel  
Law Department, BMUA  
630 Avenue C  
Bayonne, NJ 07002  
(201) 858-6095

If to Bob Ciasulli:

Robert G. Ciasulli  
Bob Ciasulli Auto Group  
1485 Route 46 East  
Little Falls, NJ 07424  
973-785-8413

With a copy to:

Robert J. Woehling, Esq.  
Woehling & Freeman LLP  
50 Elmer Street  
Westfield, NJ 07090  
908-232-3700

94. **Changes to Notice.** Any party may change its designated recipients or addresses for notice in paragraph 93 by providing written notice of such change to all other Parties.

**ARTICLE VI: RIVERKEEPER'S ATTORNEYS' FEES**

95. **Payment of Past Fees and Expenses.** Within 30 days of the entry of this Consent Decree, Honeywell shall pay Terris, Pravlik & Millian, LLP the sum of \$489,957.36 which represents the following:

- (a) A compromise of the attorneys' fees incurred by Riverkeeper in the litigation of the Sites 79 and 153 South portion of the Consolidated Litigation through June 30, 2009; and
- (b) \$87,568.41 in out-of-pocket expenses representing a portion of the expenses incurred by Riverkeeper in the Consolidated Litigation from the inception of the litigation after deducting the expenses paid pursuant to the Sediment Consent Order, the Deep Groundwater Consent Order, the Study Area 6 North Consent Decree, and the Study Area 6 South Consent Decree.
- (c) Payment of the sum of \$489,957.36 shall be in full satisfaction of all obligations, duties, and responsibilities of Honeywell with respect to the \$511,135.73 in fees and expenses that Riverkeeper claimed with regard to the above described fees and expenses.

**96. Future Fees and Expenses.** Honeywell shall reimburse Riverkeeper's attorneys for reasonable fees and expenses incurred in negotiating this Consent Decree after June 30, 2009, and in the monitoring and enforcement of this Consent Decree. In the event that any dispute arises between the Parties under this Consent Decree that must be resolved by the Court, Riverkeeper shall be entitled to recover its attorneys' fees and expenses for litigation of the dispute to the extent allowed by federal law. Riverkeeper and Honeywell shall use the same informal procedure for attempting to settle fees issues as has been used for post-judgment monitoring fees in *ICO v. Honeywell*. In the event that Riverkeeper and Honeywell are unable to reach a settlement on fees, Riverkeeper shall apply to the Court for an award of attorneys' fees and expenses. If Honeywell objects to only a portion of the Riverkeeper's statement of attorneys' fees and expenses, Honeywell shall pay the undisputed portion within 60 days of Riverkeeper's submittal of the statement to Honeywell. The Court shall resolve any objections to Riverkeeper's statement of attorneys' fees and expenses and shall enter an appropriate Order. In the event of Honeywell's default, Riverkeeper may seek attorneys' fees from any funds established pursuant to any financial assurances required by further order of the Court.

#### **ARTICLE VII: MISCELLANEOUS PROVISIONS**

**97. Force Majeure.** Force majeure, for the purposes of this Consent Decree, is defined as an event arising from causes beyond the control of any Party or Parties (or their agents, contractors, subcontractors, representatives, or assigns) which could not have been overcome by reasonable diligence and which delays or prevents the performance of any obligation under this Consent Decree. Examples of events which may constitute force majeure include the refusal of any federal or state governmental authority to grant a permit or authorization necessary for the completion of actions required by this Consent Decree, floods,

hurricanes, tornadoes, and other extraordinary weather events, earthquakes and other natural disasters, terrorist attacks, war, and other national emergencies. Examples of events that are not force majeure events include normal inclement weather, increased costs or expense, the failure to timely and fully apply for a permit or authorization necessary for the completion of actions required by this Consent Decree, or financial difficulty of any Party. The Party claiming force majeure shall bear the burden of showing an event was a force majeure event.

98. **Successors and Assigns.** This Consent Decree shall be binding upon and shall inure to the benefit of the successors, assigns, heirs, corporate parents, subsidiaries, and affiliates of each Party. No assignment or delegation of the obligations hereunder shall release the assigning Party from its obligations under this Consent Decree.

99. **Successors to Hackensack Riverkeeper, Inc.** In the event that Hackensack Riverkeeper, Inc. disbands, is dissolved, or otherwise ceases operations, it shall assign its rights under this Consent Decree to another qualified nonprofit organization. A nonprofit organization shall be qualified for assignment under this Consent Decree if it is a charitable organization under Section 501(c)(3) of the Internal Revenue Code or its substantial equivalent and has an established record of working to enhance or preserve the ecology, natural habitat, or environment. Any such assignment shall be subject to approval by the Court and Honeywell and Ciasulli shall have the right to object to any proposed assignment. Any successor organization shall have the duty to assign its rights under this Consent Decree to another qualified nonprofit organization in the event that the successor disbands, is dissolved, or otherwise ceases operations. In the event that a successor is not appointed at any given time, the Court shall request that New Jersey Attorney General or equivalent officer appoint a successor subject to approval by the Court and objection by Honeywell and Ciasulli.

100. **Reservation of Rights and Claims.** Except as set forth expressly herein, this Consent Decree in no way affects any of the Parties' claims or defenses against third parties who have not signed the Consent Decree.

101. **Governing Law.** This Consent Decree shall be interpreted and enforced under the laws of the United States and the State of New Jersey by the United States District Court for the District of New Jersey.

102. **Construction.** Questions regarding the interpretation of this Consent Decree shall not be resolved against any Party on the ground that this Consent Decree has been drafted by that Party. This Consent Decree is the result of review, negotiation, and compromise by each Party.

103. **Authority to Enter into Agreement.** The undersigned representative for each Party represents, certifies, and warrants that he or she is duly authorized by the Party whom he or she represents to enter into the terms of this Consent Decree and bind such Party legally to this Consent Decree.

104. **Modifications.** This Consent Decree may be modified by mutual agreement of the Parties but such agreement must be in writing, duly and properly signed by all Parties, and shall be submitted to the Court for approval.

105. **Signatures.** This Consent Decree may be signed simultaneously or in counterparts by the respective signatories, which shall be as fully valid and binding as if a single document was signed by all of the signatories.

[SIGNATURES FOLLOW]

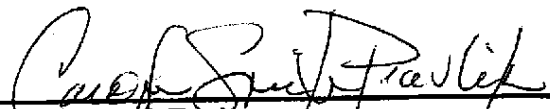
Consented to and approved for entry:



Michael D. Daneker  
Arnold & Porter LLP  
555 12th Street, NW  
Washington, DC 20004  
(202) 942-5000

David Sheehan  
Baker Hostetler  
45 Rockefeller Plaza  
11th Floor  
New York, NY 10111  
(212) 589-4200

*Counsel for Honeywell International Inc*



Bruce J. Terris  
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*Counsel for the Hackensack Riverkeeper,  
William Sheehan, Reverend Winston  
Clarke, and Lawrence Baker*

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Law Department  
630 Avenue C  
Bayonne, NJ 07002  
(201) 858-6095

*Counsel for Bayonne Municipal Utilities  
Authority*

---

Robert Woehling  
Resa Drasin  
Woehling & Freeman, LLP  
50 Elmer Street  
Westfield, NJ 07090  
(908) 232-3700

*Counsel for Bob Ciasulli*

APPROVED AND ENTERED as an Order of this Court this \_\_\_\_ day of \_\_\_\_\_, 2009.

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Hon. Dennis M. Cavanaugh  
United States District Judge

Consented to and approved for entry:

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*Counsel for Bob Ciasulli*

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Hon. Dennis M. Cavanaugh  
United States District Judge

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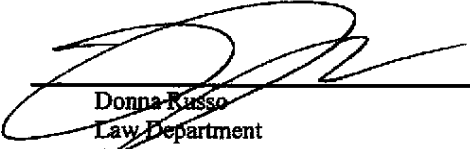
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**STEPHEN J. GALLO, BHUA**

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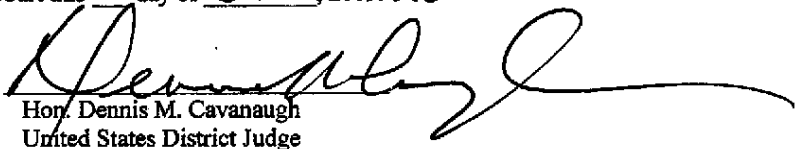
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Resa Drasin  
Woehling & Freeman, LLP  
50 Elmer Street  
Westfield, NJ 07090  
(908) 232-3700

*Counsel for Bob Ciasulli*

APPROVED AND ENTERED as an Order of this Court this 21 day of JAN, 2009. 2010



Hon. Dennis M. Cavanaugh  
United States District Judge