

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

INTERFAITH COMMUNITY ORGANIZATION, <i>et al.</i> , <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> HONEYWELL INTERNATIONAL INC., <i>et al.</i> , <p style="text-align: right;">Defendants</p>	Civil Action No. 95-2097 (DMC)  <i>In re: Consolidated Special Master Proceedings</i>
JERSEY CITY MUNICIPAL UTILITIES AUTHORITY, <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> HONEYWELL INTERNATIONAL INC., <p style="text-align: right;">Defendant</p>	Civil Action No. 05-5955 (DMC)
JERSEY CITY INCINERATOR AUTHORITY, <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> HONEYWELL INTERNATIONAL INC., <p style="text-align: right;">Defendant</p>	Civil Action No. 05-5993 (DMC)
HACKENSACK RIVERKEEPER, INC., <i>et al.</i> , <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> HONEYWELL INTERNATIONAL INC., <i>et al.</i> , <p style="text-align: right;">Defendants.</p>	Civil Action No. 06-0022 (DMC)  <i>Document Electronically Filed.</i>

**CONSENT ORDER REGARDING FINANCIAL ASSURANCES**

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**WHEREAS,** Honeywell is conducting remediation of hexavalent chromium contamination at Study Areas 7, 6 North, and 6 South pursuant to court orders in *Interfaith Community Organization v. Honeywell*, D.N.J., Civ. No. 95-2097 (DMC)(hereafter “*ICO v. Honeywell*”) and *Hackensack Riverkeeper v. Honeywell International Inc.*, D.N.J., Civ. No. 06-cv-0022, consolidated with *Jersey City Municipal Utilities Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-cv-5955, and *Jersey City Incinerator Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-cv-5993 (hereafter “the Consolidated Litigation”); and

**WHEREAS,** Honeywell is required to provide financial assurances for its remedial obligations pursuant to the Consent Decrees; and

**WHEREAS,** the Court has appointed a Special Master to oversee implementation of the remedies provided in the Final Judgment and the Consent Decrees; and

**WHEREAS**, in the course of the Study Area 7 remediation, Honeywell secured an automatically-renewable, irrevocable \$200 million letter of credit from Citibank, N.A. (hereafter the "Citibank Letter of Credit") to satisfy its financial assurance obligations pursuant to the 2003 Financial Assurances Order; and

**WHEREAS**, Honeywell has proposed to use the existing Citibank Letter of Credit to satisfy certain of its financial assurance obligations under the Consent Decrees instead of obtaining separate letters of credit under each consent decree; and

**WHEREAS**, plaintiffs and the Jersey City Entities have agreed to Honeywell's proposal, provided that the value required to satisfy each financial assurance obligation is determined in order to ascertain whether the value of the Citibank Letter of Credit is sufficient to satisfy all the financial assurance obligations that Honeywell seeks to have satisfied by the Citibank Letter of Credit; and

**WHEREAS**, the parties have agreed that in the event of Honeywell's default under one or more Consent Decrees, the Special Master may draw on the Citibank Letter of Credit in an amount necessary to cure those obligations on which Honeywell has defaulted without regard to any underlying allocation of credit between Consent Decrees. If the total amount of money in the letter of credit proves insufficient to address all defaulted obligations, the Special Master is authorized, with the Court's approval, to prioritize those defaulted obligations presenting the greatest threat to human health and the environment; and

**WHEREAS**, the parties have conferred regarding the amount of certain financial assurances required under the Consent Decrees; and

**WHEREAS**, the parties are continuing to discuss certain financial assurances and have submitted their dispute regarding the inflation rate and the discount rate to be used to the Special

Master, pursuant to paragraph 69 of the Sediment Consent Order and paragraph 78 of the Study Area 6 North Consent Decree; and

**WHEREAS**, after hearing arguments from counsel for both parties, the Special Master recommended that the parties continue to address their disagreement on the selection of an inflation rate and discount rate in an attempt to effectuate an economical and efficient resolution, before the Special Master ruled on this issue; and

**WHEREAS**, if there is any issue as to whether the 2003 Financial Assurances Order and the 2005 Insurance Order provided financial assurances for the Special Master's fees and expenses, those provisions are clarified herein to remove any doubt that the Special Master's fees and expenses shall be assured financially as set forth herein;

**NOW, THEREFORE**, it is **ORDERED** and **DECREED** as follows:

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

1. **Definitions.** The following terms shall have the following meanings:

(a) **"2003 Financial Assurances Order"** shall mean the September 15, 2003 Order Setting Financial Assurance for Honeywell International, Inc, entered by the Court in *ICO v. Honeywell* (Doc. No. 409).

(b) **"2005 Insurance Order"** shall mean the November 15, 2005 Stipulation and Order Regarding the Special Master's Application to Procure Insurance Coverage, entered by the Court in *ICO v. Honeywell* (Doc. No. 669).

(c) **"The Citibank Letter of Credit"** shall mean the existing, \$200 million, automatically renewable, irrevocable letter of credit that was procured by Honeywell pursuant to the 2003 Financial Assurances Order, originally issued on October 9, 2003, and amended on January 15, 2009, as well as any replacement letter of credit that Honeywell procures.

(d) **“Consent Decrees”** or **“Consent Decree(s)”** shall mean collectively, and, if applicable, individually, the 2003 Financial Assurances Order, the 2005 Insurance Order, the Sediment Consent Order, the Groundwater Consent Order, the Study Area 6 North Consent Decree, and the Study Area 6 South Consent Decree.

(e) **“The Court”** shall mean the Court in both *ICO v. Honeywell* and the Consolidated Litigation unless otherwise specified.

(f) **“Groundwater Consent Order”** shall mean the Deep Overburden and Bedrock Groundwater Remedies Consent Order, entered by the Court in *ICO v. Honeywell* and the Consolidated Litigation on September 3, 2008 (Doc. Nos. 898 and 222, respectively).

(g) **“Honeywell”** shall mean Honeywell International Inc. and its affiliates, including, but not limited to, 425-445 Route 440 Property LLC, Kellogg Street 80 Property LLC, Kellogg Street 60 Property LLC, Kellogg Street/440 Property LLC, and Bayfront Redevelopment LLC.

(h) **“ICO v. Honeywell”** shall mean *Interfaith Community Organization v. Honeywell International Inc.*, Civ. No. 95-cv-2097 (DMC), filed in the United States District Court for the District of New Jersey, together with all appeals.

(i) **“The Jersey City Entities”** shall mean the City of Jersey City, including the Department of Public Works and other agencies and branches thereof, the Jersey City Incinerator Authority, and the Jersey City Municipal Utilities Authority.

(j) **“The Maintenance and Monitoring Letter of Credit”** shall mean the Maintenance and Monitoring Letter of Credit provided as financial assurance pursuant to paragraphs 79 to 86 of the Sediment Consent Order.

(k) **“Parties”** shall mean plaintiffs, the Jersey City Entities, and Honeywell.

(l) **“Plaintiffs”** shall mean, collectively, Interfaith Community Organization, Hackensack Riverkeeper, Inc., Lawrence Baker, Winston Clarke, Margarita Navas, Martha Webb Herring, Margaret Webb, and William Sheehan.

(m) **“Sediment Consent Order”** shall mean the Consent Order on Sediment Remediation and Financial Assurances, entered by the Court in *ICO v. Honeywell* on May 29, 2008 (Doc. No. 882), and by the Court in the Consolidated Litigation on July 1, 2008 (Doc. No. 211).

(n) **“The Special Master”** shall mean Senator Robert G. Torricelli, appointed as the Special Master in *ICO v. Honeywell* and the Consolidated Litigation, and his successors or whomever the Court may appoint as Special Master.

(o) **“Special Master Escrow Account”** shall mean the single purpose interest-bearing escrow account, held by Connell Foley, LLP, and serving as security for the payment of the fees and expenses of the Special Master and his Court-appointed professionals, established in the 2003 Financial Assurances Order and further defined in the 2005 Insurance Order.

(p) **“Study Area 6 North”** shall mean the property which is the subject of the Study Area 6 North Consent Decree.

(q) **“Study Area 6 North Consent Decree”** shall mean the Consent Decree Regarding Remediation and Redevelopment of Study Area 6 North, entered by the Court in the Consolidated Litigation on April 21, 2008 (Doc. No. 202).

(r) **“Study Area 6 South”** shall mean the property which is the subject of the Study Area 6 South Consent Decree.

(s) **“Study Area 6 South Consent Decree”** shall mean the Consent Decree Regarding Remediation and Redevelopment of Study Area 6 South, entered by the Court in the Consolidated Litigation on December 29, 2008 (Doc. No. 234).

(t) **“Study Area 7”** shall mean Sites 115, 120, and 157 of the Chromate Chemical Production Waste Sites, as designated by the New Jersey Department of Environmental Protection.

(u) **“Subject to Comment by Plaintiffs and the Jersey City Entities and Approval by the Special Master”** shall mean that Honeywell shall submit a proposal to the plaintiffs, the Jersey City Entities, and the Special Master. Plaintiffs, the Jersey City Entities, and the Special Master shall have the right to make comments, to which Honeywell shall respond. Unless there is consensus, the Special Master shall issue a recommendation. Any party may challenge this recommendation by motion to the Court, but the parties are not required to seek a ruling by the Court. The term Subject to Comment by Plaintiffs, the Jersey City Entities, and Approval by the Special Master shall not provide any party with substantive or procedural rights with respect to matters covered by Consent Decrees to which it is not a party.

## **ARTICLE II: SCOPE AND EFFECT**

### **A. Setting Financial Assurances**

2. **Deferral of Present Value Calculation.** The parties agree to defer the setting of an inflation rate and a discount rate that would be used to determine the present value of the costs requiring financial assurance pursuant to the initial financial assurances provisions in the Sediment Consent Order (paragraphs 68 to 78), the Groundwater Consent Order (paragraph 15), and the Study Area 6 North Consent Decree (paragraphs 77 to 86). Initial financial assurances under the Sediment Consent Order, the Groundwater Consent Order, and the Study Area 6 North

Consent Decree shall, at present, be set equal to the cost estimates already agreed to by the parties for the work that must be completed without adjustment for inflation and discount rates. The parties agree that certain additional costs (*i.e.*, for the Northern Area remediation and sediment source control pursuant to the Sediment Consent Order (paragraphs 25-26 and 8-10, respectively) and for mass removal and the frequency of water quality monitoring under the Long-Term Monitoring Plan, pursuant to the Groundwater Consent Order (paragraphs 7 and 12, respectively)), which must be financially assured by Honeywell, have not been determined as of the date of this Order, but are encompassed in the Citibank Letter of Credit. The parties intend that, as soon as a decision is made with regard to the substantive issues underlying an outstanding item, they will seek to agree on a cost estimate for such item. A proposal has been made for initial financial assurances pursuant to the Study Area 6 South Consent Decree (paragraphs 91-100) and the parties are reviewing the proposal. Although no agreement has yet been reached on the cost estimates, the parties agree that initial financial assurances under the Study Area 6 South Consent Decree shall, once cost estimates are agreed upon by the parties or decided by the Special Master, be set equal to the cost estimates without adjustment for inflation and discount rates. The parties further agree that a decision regarding their dispute with regard to an interpretation of the discount rate provided in paragraph 89 of the Study Area 6 North Consent Decree is not deferred by this Order.

3. **Decision as to Outstanding Issues.** If Honeywell seeks to reduce the amount of the Citibank Letter of Credit pursuant to any Consent Decree, or if Honeywell seeks, pursuant to paragraph 5, to satisfy any financial assurance obligations under the Consent Decrees beyond those set forth in paragraph 4 through the Citibank Letter of Credit, the parties shall:



(a) Agree on the unadjusted cost estimates for initial financial assurances under the Study Area 6 South Consent Decree (paragraphs 91 to 100) and for long-term financial assurance obligations of the Study Area 6 North Consent Decree (paragraphs 87 to 98), or submit their disputes to the Special Master for resolution pursuant to the relevant Consent Decrees;

(b) Agree on the discount rate provided in paragraph 89 of the Study Area 6 North Consent Decree or submit their dispute to the Special Master for resolution; and

(c) Agree on an inflation rate and discount rate to resolve the dispute deferred pursuant to paragraph 2 and adjust the cost estimates accordingly; or, in the absence of agreement on an inflation rate and discount rate, agree to continue to apply the terms of paragraph 2 until Honeywell proposes any subsequent adjustment in the Citibank Letter of Credit; or in the absence of any agreement, make the inflation rate and discount rate issues Subject to Comment by Plaintiffs and the Jersey City Entities and Approval by the Special Master.

4. **Financial Assurances Obligations Satisfied by the Citibank Letter of Credit.**

The parties agree that the Citibank Letter of Credit is sufficient at this time to satisfy the following financial assurances obligations:

(a) The remaining financial assurance obligations of the 2003 Financial Assurances Order, as modified by the 2005 Insurance Order and the Sediment Consent Order, paragraph 67; and

(b) The initial financial assurance obligations of the Sediment Consent Order, paragraphs 68 to 78; and

(c) The initial financial assurance obligations of the Study Area 6 North Consent Decree, paragraphs 77 to 86; and

(d) The initial financial assurance obligations of the Study Area 6 South Consent Decree, paragraphs 91 to 100; and

(e) The long-term financial assurance obligations of the Study Area 6 North Consent Decree, paragraphs 87 to 98.

5. **Extension of Financial Assurances Obligations Satisfied by the Citibank Letter of Credit.** To the extent that financial assurance obligations for the remediations for Study Area 7, Study Area 6 North, and Study Area 6 South, other than those set forth in paragraph 4, can be satisfied by the Citibank Letter of Credit without exceeding its value, Honeywell may, in accordance with the applicable Consent Decree(s), propose that such additional financial assurance obligations be satisfied by the Citibank Letter of Credit.

6. **Drawing on the Citibank Letter of Credit in the Event of Honeywell's Default.** In the event of Honeywell default, as defined in the Consent Decrees, the Special Master is authorized to draw on the Citibank Letter of Credit to carry out all defaulted obligations. In the event of default, the Special Master may draw upon the Citibank Letter of Credit without further order or notice to the Court, as provided in the Consent Decrees.

7. **Use of the Proceeds in the Event of Default.** In the event of a default by Honeywell, the Special Master is authorized to apply to the Court for orders to expend the proceeds of the Citibank Letter of Credit to carry out those defaulted obligations of Honeywell that are secured by the Citibank Letter of Credit. The Special Master is authorized to use proceeds that exceed the amount needed to satisfy a defaulted obligation in order to satisfy any other defaulted obligations. If the proceeds are insufficient to implement all defaulted obligations under the Consent Decrees, the Special Master is authorized, with the Court's approval, to prioritize those defaulted obligations presenting the greatest threat to human health

and the environment and use the proceeds of the Citibank Letter of Credit for addressing such obligations.

8. **Placement of the Proceeds of the Citibank Letter of Credit.** The Special Master shall place those proceeds obtained by drawing on the Citibank Letter of Credit as necessary to cure the defaulted obligations with the Court Registry Investment System or in a trust fund, in accordance with the relevant Consent Decree(s).

#### **B. Special Master Fees and Expenses**

9. **Modification of 2003 Financial Assurances Order.** Upon Honeywell's provision of financial assurances for the Special Master's fees and expenses as provided in paragraph 11, the terms of the 2003 Financial Assurances Order that establish the requirements for the Special Master Escrow Account shall be modified as provided herein. Specifically, upon the provision of the financial assurances required by paragraph 11, Honeywell shall no longer be required to replenish the Special Master Escrow Account to the full \$3 million if the balance falls below \$2.5 million. Instead, Honeywell shall provide financial assurances for the Special Master's fees and expenses as set forth in paragraph 11 below and the Special Master Escrow Account shall be maintained at a balance of \$1.5 million and Honeywell shall be required to replenish the Special Master Escrow Account when the balance falls below \$1 million.

10. **Modification of 2005 Insurance Order.** Upon Honeywell's provision of financial assurances for the Special Master's fees and expenses as provided in paragraph 11, the terms of the 2005 Insurance Order shall be modified as provided in paragraph 9 above. The 2005 Insurance Order shall be modified only insofar as paragraph 3 of that order sets forth requirements for the amount of money to be held in the Escrow Account. All other provisions of the 2005 Insurance Order shall remain unchanged.

11. **Financial Assurance of the Special Master's Fees and Expenses.** Honeywell shall provide financial assurances for the Special Master's fees and expenses, including the fees and expenses of the Special Master's Court-appointed professionals, sufficient for the Special Master to carry out his functions under the Consent Decrees and Final Judgment for the period from July 1, 2009, through November 30, 2016. However, this time period shall be subject to reevaluation if at any time Honeywell seeks to reduce the amount of the Citibank Letter of Credit pursuant to the Consent Decree(s), or if Honeywell seeks, pursuant to paragraph 5, to satisfy any financial assurance obligations under the Consent Decrees beyond those set forth in paragraph 4 through the Citibank Letter of Credit. The evaluation of the time period shall be based on estimates of the length of time that will be required for the completion of the Special Master's appointments pursuant to the Consent Decrees. In the event of default as set forth in the Consent Decrees, the Special Master may use the financial assurances to provide for his fees and expenses.

**C. Modification of Sediment Consent Order Maintenance and Monitoring Letter of Credit**

12. **Modification of Maintenance and Monitoring Letter of Credit.** The provisions of the Maintenance and Monitoring Letter of Credit, as set forth in paragraphs 79 to 86 of the Sediment Consent Order, are hereby modified as follows:

(a) Prior to the expiration of the Special Master's appointment pursuant to paragraph 60, the Maintenance and Monitoring Letter of Credit shall be payable to the Special Master.

(b) The Special Master may draw upon the Maintenance and Monitoring Letter of Credit pursuant to the default provisions of paragraph 76 of the Sediment Consent Order. The Special Master shall use the proceeds to complete the remedial obligations for which

Honeywell must provide financial assurance pursuant to paragraph 79 of the Sediment Consent Order.

(c) In the event that the Special Master draws upon the Maintenance and Monitoring Letter of Credit due to an event of default, the Special Master shall place the proceeds in an account with the Court Registry Investment System in accordance with Local Civil Rule 67.1 and not expend the proceeds of the Maintenance and Monitoring Letter of Credit without further order of this Court.

### **ARTICLE III: MISCELLANEOUS PROVISIONS**

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

14. **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 Order and bind such party legally to this Consent Order.

15. **Force and Effect of Financial Assurance Provisions in Consent Decrees.** This Consent Order addresses the topic of financial assurances for remediation. Financial assurances are further addressed in the Final Judgment (paragraph 10), the 2003 Financial Assurances Order, the 2005 Insurance Order (paragraphs 2 to 4), the Sediment Consent Order (paragraphs 67 to 86), the Groundwater Consent Order (paragraphs 15 to 26), the Study Area 6 North Consent Decree (paragraphs 77 to 98), and the Study Area 6 South Consent Decree (paragraphs 91 to 112). Those provisions remain in full force and effect except as modified herein.

16. **Parties' Substantive Rights and Obligations.** Nothing in this Order shall provide any Party with substantive rights or obligations under Consent Decrees to which it is not a Party.

17. **Modifications.** This Consent Order 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.

18. **Signatures.** This Consent Order 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.

Consented to and approved for entry:



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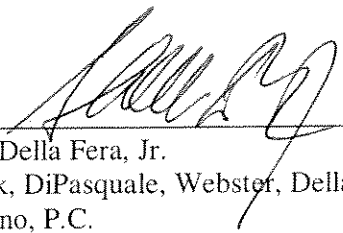
  
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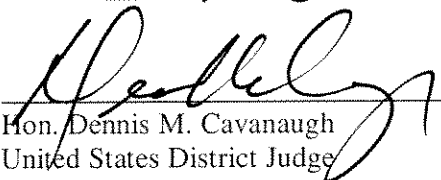
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**APPROVED** and **ENTERED** as an Order of this Court this 23 day of Dec, 2009.

\_\_\_\_\_  
  
Hon. Dennis M. Cavanaugh  
United States District Judge



  
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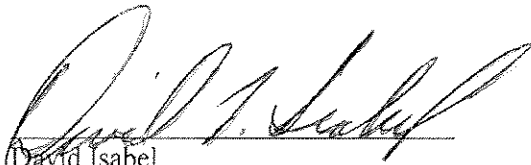
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Hon. Dennis M. Cavanaugh  
United States District Judge

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**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