

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

INTERFAITH COMMUNITY
ORGANIZATION, *et al.*,

Plaintiffs,

vs.

HONEYWELL INTERNATIONAL INC., *et
al.*,

Defendants.

Civil Action No. 95-2097 (DMC)

HACKENSACK RIVERKEEPER, INC., *et
al.*,

Plaintiffs,

vs.

HONEYWELL INTERNATIONAL INC., *et
al.*,

Defendants.

Civil Action No. 06-0022 (DMC),
Consolidated with Civ. No. 05-5955 (DMC)

Document Electronically Filed.

**DEEP OVERBURDEN AND BEDROCK GROUNDWATER
REMEDIES CONSENT ORDER**

Whereas, this Court entered a Final Judgment in *Interfaith Community Organization v. Honeywell International Inc.*, Case No. 95-2097 (“*ICO v. Honeywell*”), on June 30, 2003; and

Whereas, paragraph 4 of the Final Judgment requires Honeywell International Inc. (“Honeywell”) to “test and fully delineate the extent of chromium contamination in deep groundwater at the Site in order to ensure that this contaminated water does not discharge to the

Hackensack River, or flow to any fresh water aquifer that is used as water supply or to the bedrock. If it is found that chromium contaminated deep groundwater beneath the Site is discharging or threatening to discharge, into the Hackensack River or any other surface water body, or is migrating, or threatening to migrate into the bedrock or an area of a freshwater aquifer that is used as a drinking water supply, Honeywell must take appropriate remedial actions necessary to prevent such discharge or migration. Depending on these test results, the Court will enter a further injunctive order setting forth the appropriate relief”; and

Whereas, under the oversight and supervision of the Special Master in *ICO v. Honeywell*, Honeywell conducted an investigation of the fate and transport of chromium contamination in the deep overburden and bedrock groundwater in the vicinity of Study Areas 5, 6, and 7; and

Whereas, as a result of that investigation, Honeywell’s Amended Deep Overburden Remedial Alternatives Analysis recommended a remedy for the deep overburden groundwater consisting of the installation of an interception well on the DiFeo property to the north of Study Area 7 to collect contaminated deep overburden groundwater and an underground pipe system to transport that water to Honeywell’s Treatment Plant for treatment to Honeywell’s permitted discharge standards, and Honeywell’s Deep Overburden and Bedrock Groundwater Extraction and Treatment Engineering Report provided for the installation of a second interception well on the DiFeo property (the “Deep Overburden Remedy”); and

Whereas, with the agreement of the Parties in *ICO v. Honeywell*, on September 28, 2006, the Special Master issued a recommendation that the Deep Overburden Remedy be implemented, with certain conditions, and on October 6, 2006, the Court issued an order approving the Special Master’s recommendation; and

Whereas, on or about May 7, 2007, Honeywell also submitted to the Parties and the Special Master a Bedrock Groundwater Remedial Alternatives Analysis (“Bedrock RAA”) proposing the installation of a bedrock well near the southwestern corner of Study Area 7 to capture contaminated bedrock groundwater and an underground pipe to transport that water to Honeywell’s Treatment Plant for treatment to Honeywell’s permitted discharge standards (the “Bedrock Groundwater Remedy”); and

Whereas, with the concurrence of the Parties in *ICO v. Honeywell*, the Special Master submitted to the Court the Parties’ proposed Stipulation on Consent Regarding the Schedule for Implementation of Deep Groundwater Remedial Actions, approving the implementation of the Bedrock Groundwater Remedy and setting a schedule for implementation of the Deep Overburden and Bedrock Groundwater Remedies; and

Whereas, Hackensack Riverkeeper, Inc., Lawrence Baker, Winston Clarke, and William Sheehan (collectively the “Riverkeeper Plaintiffs”) have sued Honeywell in litigation captioned *Hackensack Riverkeeper, Inc. 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) seeking relief, among other things, for chromium contamination in the deep overburden and bedrock groundwater in the vicinity of Study Area 5 and Study Area 6; and

Whereas, Honeywell and the Riverkeeper Plaintiffs agree that this Groundwater Consent Order shall resolve the Riverkeeper Plaintiffs’ claims against Honeywell in the *Hackensack Riverkeeper* Litigation as well as any disputes between the Parties regarding the scope of the Court’s Final Judgment with respect to Deep Overburden and Bedrock Groundwater, and

NOW, THEREFORE, it is ORDERED and DECREED AS FOLLOWS:

ARTICLE I: DEFINITIONS

1. The following terms shall have the following definitions:

(a) **“Bedrock Groundwater”** shall mean groundwater found in the top 30 feet of bedrock in the vicinity of Study Areas 5, 6, and 7 as further described in Section 1 of the February 2007 Final Groundwater Investigation Report.

(b) **“Bedrock Groundwater Remedy”** shall mean the installation of a bedrock well near the southwestern corner of Study Area 7 to capture contaminated bedrock groundwater and an underground pipe to transport that water to Honeywell’s Treatment Plant for treatment to Honeywell’s permitted discharge standards. The Bedrock Groundwater Remedy is described further in the May 7, 2007 Bedrock Groundwater Remedial Alternatives Analysis, the September 27, 2007 Deep Overburden and Bedrock Groundwater Extraction and Treatment Engineering Report, and the submissions to and by the Special Master regarding these documents.

(c) **“The Court”** shall mean the Court in both *ICO v. Honeywell* and *Riverkeeper v. Honeywell*, unless otherwise specified.

(d) **“Deep Overburden and Bedrock Groundwater Remedies”** shall mean the Bedrock Groundwater Remedy and the Deep Overburden Groundwater Remedy, collectively.

(e) **“Deep Overburden Groundwater”** shall mean groundwater found in the lower S-2 or S-3 Lacustrine Sand in the vicinity of Study Areas 5, 6, and 7 as further described in Section 1 of the February 2007 Final Groundwater Investigation Report.

(f) **“Deep Overburden Groundwater Remedy”** shall mean the installation of interception wells on the DiFeo property to the north of Study Area 7 to collect contaminated

deep overburden groundwater and an underground pipe system to transport that water to Honeywell's Treatment Plant for treatment to Honeywell's permitted discharge standards. The Deep Overburden Groundwater Remedy is described further in the June 30, 2006 Deep Overburden Groundwater Remedial Alternatives Analysis Report, the March 1, 2007 Deep Overburden Groundwater Remedial Alternatives Analysis Report Amendment, the September 27, 2007 Deep Overburden and Bedrock Groundwater Extraction and Treatment Engineering Report, and the submissions to and by the Special Master regarding these document. The Special Master recommended the implementation of the Deep Overburden Groundwater Remedy with certain conditions on September 28, 2006, and the Court approved the Special Master's recommendation on October 6, 2006.

(g) **"Honeywell"** shall mean Honeywell International Inc. and its affiliates, including, but not limited to, Kellogg Street 80 Property LLC, Kellogg Street 60 Property LLC, and Kellogg Street/440 Property LLC.

(h) **"Honeywell's Treatment Plant"** shall mean the treatment plant currently located at 80 Kellogg Street that is used to treat, *inter alia*, chromium contaminated groundwater.

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

(j) **"L-Well Groundwater"** shall mean the groundwater found at the depth of the "L" wells on and near the former bowling alley property, NJDEP Site 124, located at 427 Route 440.

(k) **"Non-Honeywell Defendants"** shall mean all defendants in *Riverkeeper v. Honeywell International Inc.* other than Honeywell.

(l) “**Notice to the Non-Honeywell Defendants**” shall mean that Honeywell shall provide the Non-Honeywell Defendants with advance notice of any proposed activity under this Consent Order that will affect their specific properties including, but not limited to, any investigatory measures or remedial measures proposed to be taken by Honeywell. A Non-Honeywell Defendant shall receive notice only if its particular property is affected. Notice of investigatory measures shall specify the measures proposed to be taken on the Non-Honeywell Defendant’s property, their extent, and their duration, and shall map out the number and location of any proposed groundwater monitoring wells and soil borings on the affected property. For proposed remedial measures, such notice shall specify the measures to be taken on the affected property, their specific location on the property, and their scheduling and expected duration. Notice of any other proposed activity under this Consent Order shall describe the proposed activity with sufficient specificity to enable the Non-Honeywell Defendant receiving such notice to assess the impact upon its property and/or business operations. At the time Honeywell transmits any Notice to Non-Honeywell Defendants, Honeywell shall also provide a complete copy of the proposal submitted to Plaintiffs and the Special Master.

(m) “**Party**” shall mean any signatory to this Consent Order.

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

(o) “**Riverkeeper v. Honeywell**” shall mean *Hackensack Riverkeeper, Inc. v. Honeywell International Inc.*, D.N.J., Civ. No. 06-cv-0022 (DMC), filed in the United States District Court for the District of New Jersey, and consolidated with *Jersey City Municipal Utilities Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-cv-5955 (DMC), and

Jersey City Incinerator Authority v. Honeywell International Inc., D.N.J., Civ. No. 05-cv-5993 (DMC).

(p) **“Sediment Consent Order”** shall mean the Consent Order on Sediment Remediation and Financial Assurances, entered by the Court in *ICO v. Honeywell* and *Riverkeeper v. Honeywell* on May 29, 2008.

(q) **“Sediment Consent Order Letter of Credit”** shall mean the letter of credit provided as financial assurance pursuant to paragraphs 68 to 78 of the Sediment Consent Order.

(r) **“Sediment Consent Order Maintenance and Monitoring Letter of Credit”** shall mean the letter of credit or alternative mechanism provided as financial assurance pursuant to paragraphs 79 to 86 of the Sediment Consent Order.

(s) **“Shallow Groundwater”** shall mean groundwater above the meadow mat, groundwater at stratigraphically equivalent depths in locations where there is no meadow mat, and groundwater that is contaminated by recent contact with COPR or other chromium soil contamination 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, dated February 2007, p. 1-2.

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

(u) **“Study Area 5”** shall mean Sites 79, 90, 117, 153, and 184 of the Hudson County Chromium Sites as designated by NJDEP.

(v) **“Study Area 6”** shall mean Sites 73, 87, 88, 124, 125, 134, 140, and 163 of the Hudson County Chromium Sites as designated by NJDEP.

(w) **“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 *Riverkeeper v. Honeywell* on April 22, 2008.

(x) **“Study Area 7”** shall mean Sites 115, 120, and 157 of the Hudson County Chromium Sites as designated by NJDEP.

(y) **“Subject to comment by Honeywell and approval by the Special Master”** shall mean that, if Plaintiffs make a proposal to the Special Master, Honeywell and the Special Master shall have the right to make comments, to which Plaintiffs 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.

(z) **“Subject to comment by the Non-Honeywell Defendants”** shall mean that any Non-Honeywell Defendant receiving Notice to Non-Honeywell Defendants of a proposed activity under this Consent Order shall have the right to participate in the Special Master process as to this activity and to make comments or objections, to which Honeywell and Plaintiffs shall respond. Unless there is a consensus, the Special Master shall issue a recommendation. The Parties or Non-Honeywell Defendants may, but are not required to, challenge this recommendation by motion to the Court.

(aa) **“Subject to comment by Plaintiffs and approval by the Special Master”** shall mean that Honeywell shall submit an investigation, plan, report, or other document to Plaintiffs and the Special Master. Plaintiffs 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.

ARTICLE II: SCOPE AND EFFECT

2. **Entry of Order in Both Cases.** This Consent Order shall be entered in both *ICO v. Honeywell* and *Riverkeeper v. Honeywell*.

3. **Application of the Court's Final Judgment in *ICO v. Honeywell*.** Paragraph 4 of the Court's Final Judgment in *ICO v. Honeywell* shall apply to Deep Overburden and Bedrock Groundwater contaminated with chromium in the vicinity of Study Areas 5, 6, and 7.

4. **Jurisdiction of the Special Master.** The Deep Overburden and Bedrock Groundwater Remedies provided for in this Consent Order are hereby referred to the Special Master pursuant to Rule 53 of the Federal Rules of Civil Procedure. The Special Master's jurisdiction to oversee and supervise the Court's Final Judgment in *ICO v. Honeywell* shall extend to Deep Overburden and Bedrock Groundwater contaminated with chromium in the vicinity of Study Areas 5, 6, and 7.

5. **Special Master Professionals, Insurance, and Payment.** Paragraphs 57 to 59 of the Sediment Consent Order are incorporated by reference into this Consent Order and shall apply to the Special Master's activities under this Consent Order.

6. **Implementation of the Deep Overburden and Bedrock Groundwater Remedies.** The Deep Overburden Groundwater Remedy and the Bedrock Groundwater Remedy shall be implemented under the oversight and supervision of the Special Master pursuant to the Final Judgment in *ICO v. Honeywell* and the Court's subsequent Order implementing that Final Judgment.

7. **Further Remediation of the Deep Overburden and Bedrock Groundwater.** Under the Special Master's Recommendation of September 28, 2006 and the Court's Order of

October 6, 2006, regarding the Deep Overburden Groundwater Remedy, the Special Master and the Court identified the possibility that additional investigative and/or remedial actions might be required to address the Deep Overburden Groundwater. In the Special Master oversight process in *ICO v. Honeywell* concerning the Bedrock Groundwater Remedy, Honeywell agreed to investigate and report on the need for possible remedial action to add a deep overburden well to prevent further contamination of the bedrock from the deep overburden groundwater. Any Party may seek such additional actions pursuant to the Special Master oversight process in *ICO v. Honeywell*, and any issues concerning such additional investigative or remedial actions shall be Subject to Comment by Plaintiffs and Approval by the Special Master or Subject to Comment by Honeywell and Approval by the Special Master.

8. **Honeywell's Responsibility.** Honeywell shall implement, monitor, maintain, operate, repair, and replace the Deep Overburden and Bedrock Groundwater Remedies until such time as the conditions of paragraph 10 are met. Honeywell's Treatment Plant is integral to the implementation of the Deep Overburden and Bedrock Groundwater Remedies, and Honeywell shall therefore also operate, monitor, maintain, repair, and replace Honeywell's Treatment Plant until such time as the conditions of paragraph 10 are met. In the event that Honeywell proposes a substitute or modification to all or part of the Deep Overburden Groundwater Remedy, the Bedrock Groundwater Remedy, or the Honeywell Treatment Plant pursuant to paragraph 9, the provisions of this paragraph shall apply to the substitute or modification as if it were an original part of the Deep Overburden Groundwater Remedy, the Bedrock Groundwater Remedy, or the Honeywell Treatment Plant. In the event that Honeywell ceases to exist without a successor-in-interest or its obligations under this Consent Order are stayed or limited due to a bankruptcy petition, the Court shall appoint an independent third-party fiduciary who shall be responsible for implementing, monitoring, maintaining, operating, repairing, and replacing the Deep Overburden

and Bedrock Groundwater Remedies, pursuant to the requirements of this Consent Order and the Long-Term Monitoring Plan, until such time as the conditions of paragraph 10 are met.

9. **Substitution of Remedies.** Honeywell may propose a substitute or modification to all or part of the Deep Overburden Groundwater Remedy, the Bedrock Groundwater Remedy, or the Honeywell Treatment Plant. Such proposal shall be Subject to Comment by Plaintiffs and Approval by the Special Master if the Special Master's term has not expired, or subject to review and comment by Plaintiffs if the Special Master's term has expired. The proposed substitute or modification must be approved by the New Jersey Department of Environmental Protection and by the Court. If a substitute or modification is approved, Honeywell shall be responsible for its implementation, monitoring, maintenance, operation, repair, and replacement pursuant to paragraph 8, as if such substitute or modification were an original part of the Deep Overburden Groundwater Remedy, the Bedrock Groundwater Remedy, or the Honeywell Treatment Plant.

10. **Termination of this Consent Order.** Honeywell's obligations under this Consent Order may be terminated upon the Court's finding, pursuant to a motion by Honeywell in which Honeywell shall bear the burden of proof, that the conditions of both paragraph 10(a) and 10(b) are met:

(a) One of the following conditions is met:

(i) Neither the deep overburden groundwater nor the bedrock groundwater in the vicinity of Study Areas 5, 6, and 7 remains contaminated by hexavalent and total chromium contamination in excess of the most restrictive applicable state or federal standards for hexavalent and/or total chromium in groundwater in place at the time, provided however that if such standards have been made less stringent since the date of entry of this Consent Order, the terms of paragraph 11 shall also be met by Honeywell; or

(ii) Any source control measures have been completed, any other investigative or remedial actions taken by Honeywell under this Consent Order pursuant to paragraph 7, have been constructed, are in operation and are functioning as designed, and continued operation of the Deep Overburden and Bedrock Groundwater Remedies would not achieve any significant further reduction in hexavalent and total chromium contamination in the deep overburden groundwater and the bedrock groundwater.

(b) Continued operation of the Deep Overburden and Bedrock Groundwater Remedies is no longer necessary to prevent the following from occurring or threatening to occur:

(i) The discharge into the Hackensack River or any other surface water body of deep overburden groundwater and/or bedrock groundwater containing chromium in excess of the ambient water quality criteria for hexavalent and/or total chromium;

(ii) The migration into any portion of a freshwater aquifer that is used as a drinking water supply of deep overburden groundwater and/or bedrock groundwater that contains chromium in excess of the applicable drinking water standard; and

(iii) The migration into the bedrock of deep overburden groundwater that causes in the bedrock groundwater either an expansion of the area contaminated above drinking water standards or a significant increase in the concentration of hexavalent and/or total chromium.

11. **Limitations on Right to Seek Change in Designation.** If at any time Honeywell seeks a designation for the deep overburden or bedrock groundwater that would permit more hexavalent and/or total chromium contamination than is allowed under the state and federal standards that are applicable to these groundwaters as of the entry of this Consent Order, it shall notify the Plaintiffs, in writing, prior to submitting to NJDEP, EPA, or any other government agency any written material pertaining to the appropriate groundwater standard or any

application for a change in designation. Before any changed designation shall be applied to allow termination of this Consent Order pursuant to paragraph 10, regardless of whether Honeywell sought the change, Honeywell shall seek an Order from the Court that the new designation applies for purposes of paragraph 10(a)(i) of this Consent Order. Honeywell shall bear the burden of proof for any such application. Plaintiffs reserve all rights and legal arguments with respect to such application, including, but not limited to, the argument that compliance with a less stringent standard than the most restrictive applicable state or federal standards for hexavalent and/or total chromium in groundwater in place at the time this Consent Order is entered will result in the continued existence of an imminent and substantial endangerment and that proof that contamination is lower than the applicable state or federal standards is not, alone, sufficient to show a lack of imminent and substantial endangerment. Honeywell reserves all rights and legal arguments with respect to such application, including, but not limited to, arguments that the Plaintiffs' arguments are incorrect as a matter of law.

12. **Long-Term Monitoring.** Honeywell shall establish and implement a long-term monitoring plan for the Deep Overburden and Bedrock Groundwater Remedies, which shall be subject to comment by the Plaintiffs and approval by the Special Master, pursuant to the schedule established in the Stipulation on Consent Regarding the Schedule for Implementation of Deep Groundwater Remedial Actions.

13. **Notice and Comment by Non-Honeywell Defendants.** To the extent that further remedial or investigative actions to address the Deep Overburden or Bedrock Groundwater are planned or proposed to be taken on property owned by any Non-Honeywell Defendants, Honeywell shall provide Notice to the Non-Honeywell Defendants, and any planned or proposed action shall be Subject to comment by the Non-Honeywell Defendants.

14. **Expiration of the Special Master's Appointment.** The Special Master's appointment under this Consent Order shall expire after Honeywell has completed the first five years of long-term monitoring of the Deep Overburden and Bedrock Groundwater Remedies and any further activities undertaken pursuant to paragraph 7, including any source control measures, whichever is completed later. However, solely to the extent that the Special Master is still supervising other portions of *ICO v. Honeywell* or *Riverkeeper v. Honeywell* after Honeywell has completed the first five years of long-term monitoring of the Deep Overburden and Bedrock Groundwater Remedies and any further activities undertaken pursuant to paragraph 7, including any source control measures, the Special Master shall continue to have jurisdiction under this Consent Order until he has completed his specifically enumerated responsibilities under the Final Judgment in *ICO v. Honeywell*, the Sediment Consent Order, the Consent Decree Regarding Remediation and Redevelopment of Study Area 6 North in *Riverkeeper v. Honeywell*, and any other future orders, decrees, or judgments in *ICO v. Honeywell* or *Riverkeeper v. Honeywell*. Enumerated responsibilities under any order, decree, or judgment shall include only those tasks specifically assigned to the Special Master in the order, decree, or judgment. Enumerated responsibilities shall not include any continued jurisdiction exercised over long-term monitoring beyond the initial period specified in the order, decree, or judgment. For example, the Special Master has jurisdiction over the first five years of long-term monitoring under the Sediment Consent Order. Oversight during these five years shall be an enumerated responsibility, but any continued oversight of long-term monitoring, pursuant to the extension of the Special Master's jurisdiction beyond the first five years, as provided in paragraph 60 of the Sediment Consent Order, shall not be an enumerated responsibility. Such extensions of jurisdiction shall be effective only so long as specific enumerated responsibilities in any order, decree, or judgment have not been fulfilled.

15. **Financial Assurances.** Any further investigative or remedial actions taken by Honeywell under this Consent Order pursuant to paragraph 7, including any source control measures, and the implementation, operation, maintenance, and monitoring of the Deep Overburden and Bedrock Groundwater Remedies shall be subject to the financial assurance requirements set forth in Article VIII of the Sediment Consent Order, until such time as the financial assurance requirements of the Sediment Consent Order terminate. Honeywell may seek a reduction of the amount of financial assurances pursuant to paragraph 72 of the Sediment Consent Order, but the adjustment shall not result in reducing the Sediment Consent Order Letter of Credit to an amount less than \$15 million as expressed in 2008 dollars unless long-term groundwater financial assurances are in place pursuant to paragraphs 16 to 26 herein. In the event that the Special Master draws upon the Sediment Consent Order Letter of Credit due to an event of default, the Special Master shall place the proceeds of the Sediment Consent Order Letter of Credit which represent the remaining estimated costs under paragraph 68 of the Sediment Consent Order, plus a 10% contingency of the remaining estimated costs as provided in paragraph 68 of the Sediment Consent Order, in an account with the Court Registry Investment System as provided in paragraph 77 of the Sediment Consent Order. The Special Master shall place all additional proceeds of the Sediment Consent Order Letter of Credit in a trust fund pursuant to paragraph 18(b)(v) herein.

16. **Long-Term Groundwater Remedies Financial Assurances.** Honeywell shall fund long-term groundwater remedies financial assurances to ensure that the activities set forth in paragraph 17(a) are carried out regardless of whether Honeywell is financially able to carry out such activities. The long-term groundwater remedies financial assurances shall be established following the entry of this Consent Order, in accordance with paragraphs 18 and 19, in an amount adequate to ensure that funds are available for the activities set forth in paragraph

17(a) beginning at year 30 and one day of the required operation of the Deep Overburden and Bedrock Groundwater Remedies.

17. Costs Subject to Long-Term Groundwater Remedies Financial Assurances.

(a) Long-term groundwater remedies financial assurances shall provide enough funds to cover the costs of the following activities:

(i) Perpetual operation, maintenance, and monitoring of the Deep Overburden and Bedrock Groundwater Remedies, including perpetual operation, maintenance, and monitoring of Honeywell's Treatment Plant, beginning at year 30 and one day of the required operation of the Deep Overburden and Bedrock Groundwater Remedies;

(ii) Perpetual replacement of the infrastructure for the Deep Overburden and Bedrock Groundwater Remedies, including Honeywell's Treatment Plant, on replacement intervals of 20 years for mechanical, electrical, and instrumentation components (including, for example, treatment plant process equipment, well pumps, and supporting electrical and instrumentation components) and the wells, 75 years for the treatment plant building and structural components, and 75 years for the piping, unless experience shows the replacement intervals to be longer or shorter; and

(iii) The perpetual administration of the trust fund.

(b) The costs that shall be subject to financial assurances is an amount that will provide the full payment for each of the activities set forth in paragraphs 17(a)(i) through 17(a)(iii), plus a 10% contingency on the costs set forth in paragraph 17(a)(i) and a 20% contingency on costs set forth in paragraph 17(a)(ii), when the activities in paragraphs 17(a)(i) through 17(a)(iii) are expected to be performed. The costs subject to financial assurances are forward looking because they state an amount valued at the time the funds are needed. As such, they shall be stated in contemporary time as the present value (calculated on the basis of a

discount rate of 4.75%) of the estimated future costs of the activities specified in paragraphs 17(a)(i) through 17(a)(iii), plus a 10% contingency on the costs set forth in paragraph 17(a)(i) and a 20% contingency on costs set forth in paragraph 17(a)(ii).

18. Long-Term Groundwater Remedies Financial Assurance Mechanisms.

Honeywell shall provide long-term groundwater remedies financial assurances in the amount of the costs subject to long-term groundwater remedies financial assurances in the form of a trust fund, a letter of credit, or some combination of the two. The selected mechanism(s) shall satisfy the following requirements:

(a) **Trust Fund.** In the event that Honeywell selects a trust fund, Honeywell shall create a trust fund such that it can provide the full amount of the costs subject to long-term groundwater remedies financial assurances, as set forth in paragraph 17(b), at the time those funds are necessary.

(i) The trust fund shall be at arm's length from Honeywell and shall not be considered the property of Honeywell or property of the estate in the event of Honeywell's bankruptcy, dissolution, privatization, or sale. The trust fund agreement shall contain the language necessary to assure that neither the trust fund nor the earnings of the trust fund shall be affected or restricted in any way by operation of the automatic stay in 11 U.S.C. 362.

(ii) The trust fund shall be managed by a financial institution domiciled in the United States or by a United States subsidiary of a non-U.S. financial institution acceptable to Plaintiffs or approved by the Court. In the event that the financial institution managing the trust fund declares bankruptcy, the Court shall withdraw the funds and appoint another financial institution meeting the requirements of this paragraph to manage the trust.

(iii) In the event that such trust fund is combined with any trust fund established under the Study Area 6 North Consent Decree or any other consent order or decree entered by the Court in *ICO v. Honeywell* or *Riverkeeper v. Honeywell*, the funds required under paragraph 17 for such trust fund shall be accounted for separately and only such funds shall be available pursuant to paragraphs 18(a)(iv) and 24 and subject to adjustment pursuant to paragraph 20. Moreover, the funds in any such trust fund or account created under this Consent Order shall not be available to meet Honeywell's obligations under the Study Area 6 North Consent Decree or any other consent order or decree entered by the Court in *ICO v. Honeywell* or *Riverkeeper v. Honeywell*.

(iv) No more frequently than once per year, beginning one year after the termination of the Sediment Consent Order Maintenance and Monitoring Letter of Credit, Honeywell may apply to the Court for an order directing the trust manager to reimburse Honeywell for any costs that it has incurred to carry out the activities set forth in paragraphs 17(a)(i) through 17(a)(iii).

(b) **Long-Term Groundwater Remedies Letter of Credit.** In the event that Honeywell selects a letter of credit, Honeywell shall obtain a one-year irrevocable letter of credit (the "Long-Term Groundwater Remedies Letter of Credit") to be automatically renewed annually in an amount that provides sufficient funds such that a trust fund, separate from any trust fund created under paragraph 18(a) but satisfying the requirements of paragraph 18(a), could be created. The Long-Term Groundwater Remedies Letter of Credit-funded trust, plus any trust fund established under paragraph 18(a), shall provide the full amount of the costs subject to long-term groundwater remedies financial assurances, as set forth in paragraph 17(b), at the time those funds are necessary. The amount of any Long-Term Groundwater Remedies Letter of Credit shall therefore be adjusted periodically as the infrastructure replacement interval is

approached, ensuring, for example, that the money needed to provide for a complete replacement of Honeywell's Treatment Plant is available in the year Honeywell's Treatment Plant replacement is required. Such periodic adjustments shall be proposed and approved by the Court in conjunction with the adjustments under paragraph 20.

(i) Neither the Long-Term Groundwater Remedies Letter of Credit nor the proceeds of the Long-Term Groundwater Remedies Letter of Credit shall be considered the property of Honeywell or property of the estate in the event of Honeywell's bankruptcy, dissolution, privatization, or sale. The Long-Term Groundwater Remedies Letter of Credit shall contain the language necessary to assure that neither the Long-Term Groundwater Remedies Letter of Credit nor the proceeds of the Long-Term Groundwater Remedies Letter of Credit shall be affected or restricted in any way by operation of the automatic stay in 11 U.S.C. 362.

(ii) The Long-Term Groundwater Remedies Letter of Credit shall be issued by a financial institution domiciled in the United States or by a United States subsidiary of a non-U.S. financial institution acceptable to Plaintiffs or approved by the Court. In the event that the financial institution issuing the Long-Term Groundwater Remedies Letter of Credit declares bankruptcy, the Court shall authorize the drawing of funds from the Long-Term Groundwater Remedies Letter of Credit and shall deposit those funds in a trust fund, separate from any trust fund created under paragraph 18(a) but satisfying the requirements of paragraph 18(a).

(iii) The then-current provisions of the Uniform Customs and Practice ("UCP") for Documentary Credits as published by the International Chamber of Commerce or such successor organization and New York law shall apply to the Long-Term Groundwater Remedies Letter of Credit at the time that Honeywell obtains such letter of credit or any replacements therefore.

(iv) The Long-Term Groundwater Remedies Letter of Credit shall be automatically renewed annually, unless, no later than 120 days prior to the anniversary of the Long-Term Groundwater Remedies Letter of Credit issue date, the issuer provides notice of non-renewal. If the issuer provides notice of non-renewal, Honeywell shall obtain a replacement irrevocable Long-Term Groundwater Remedies Letter of Credit at least 95 days prior to the expiration date of the existing Long-Term Groundwater Remedies Letter of Credit. If Honeywell is not otherwise in default as provided in paragraph 22, the Court shall direct the cancellation of the prior Long-Term Groundwater Remedies Letter of Credit within 91 days after delivery to the Court of any replacement of a Long-Term Groundwater Remedies Letter of Credit. In the event that the Court is entitled to draw upon a Long-Term Groundwater Remedies Letter of Credit when there are two Letters of Credit currently in place, the Court shall not draw an aggregate amount in excess of the highest valued Long-Term Groundwater Remedies Letter of Credit.

(v) Prior to the expiration of the Special Master's appointment pursuant to paragraph 14, the Long-Term Groundwater Remedies Letter of Credit shall be payable to the Special Master.

(1) During the time the Long-Term Groundwater Remedies Letter of Credit is payable to the Special Master, the Special Master may, without further order or notice to this Court, draw upon the Long-Term Groundwater Remedies Letter of Credit upon the occurrence of default by Honeywell, which shall include:

(i) The failure of Honeywell, in the event that notice is given pursuant to paragraph 18(b)(iv) to deliver a replacement Long-Term Groundwater Remedies Letter of Credit at least 95 days prior to the expiration date of the existing Long-Term Groundwater Remedies Letter of Credit;

(ii) The material failure of Honeywell to proceed with diligence and in good faith to carry out the June 30, 2003 Final Judgment in *ICO v. Honeywell* or the terms of this Consent Order and the continuance of such a material breach for a period of 15 days after written notice to Honeywell thereof and either (a) Honeywell, in the opinion of the Special Master without further input from the Parties, shall have failed to cure the breach; (b) during the 15-day period, this Court has not entered an order to prevent the Special Master from drawing on the Letter of Credit or (c) this Court or the Special Master has not granted Honeywell additional time to cure the breach;

(iii) The filing by Honeywell of a petition seeking relief, or the granting of relief, under the Federal Bankruptcy Code or any similar federal or state statute; any assignment for the benefit of creditors made by Honeywell; or the involuntary filing of any of the foregoing against Honeywell if involuntary filing has not been dismissed within 60 days; the appointment of a custodian, receiver, liquidator, or trustee or other similar official for Honeywell or for a substantial part of Honeywell's property, or any action by Honeywell to effect any of the foregoing, or if Honeywell becomes insolvent as defined in Section 101(32) of the Federal Bankruptcy Code; or

(iv) The dissolution, liquidation, merger, consolidation, or reorganization of Honeywell or the institution of any proceeding to effect any of the foregoing, other than under subparagraph (iii) above, and the failure of Honeywell to provide assurance to the Special Master, within 15 days after written notice thereto, that such an event will not impair Honeywell's ability to carry out the June 30, 2003 Final Judgment in *ICO v. Honeywell* or the terms of this Consent Order.

(2) In the event that the Special Master draws upon the Long-Term Groundwater Remedies Letter of Credit due to an event of default, the Special Master shall

place the proceeds of the Long-Term Groundwater Remedies Letter of Credit into a trust fund, separate from any trust fund created under paragraph 18(a) but satisfying the requirements of paragraph 18(a).

(3) After the Special Master's appointment expires pursuant to paragraph 14, the Long-Term Groundwater Remedies Letter of Credit shall be payable to the Court and, in the event that the Court draws on the Long-Term Groundwater Remedies Letter of Credit, the Court shall place the proceeds of the Long-Term Groundwater Remedies Letter of Credit into a trust fund, separate from any trust fund created under paragraph 18(a) but satisfying the requirements of paragraph 18(a).

(vi) Whether the Long-Term Groundwater Remedies Letter of Credit is payable to the Special Master or the Court, it shall not, prior to its expiration date, be revoked or terminated by Honeywell except consistent with this Consent Order and with the approval of the Court. The ability of the Special Master or the Court to draw upon the Long-Term Groundwater Remedies Letter of Credit shall not be limited by any agreement between Honeywell and the issuer.

(vii) In the event that the Long-Term Groundwater Remedies Letter of Credit is drawn upon and invested pursuant to paragraph 18(b)(ii), 18(b)(v) or 23 and Honeywell has also selected a trust fund pursuant to paragraph 18(a), resulting in the existence of two trust funds, the two trust funds shall be managed so as to ensure that the combined amount of the trust funds is sufficient to provide the full amount of the costs subject to long-term groundwater remedies financial assurances, as set forth in paragraph 17(b), at the time those funds are necessary.

(c) **Combination.** Honeywell may use some combination of a trust fund and a letter of credit to achieve the requirements of this paragraph. However, if a combination is

used, Honeywell shall ensure that the combined amount of financial assurances is sufficient to provide the full amount of the costs subject to long-term groundwater remedies financial assurances, as set forth in paragraph 17(b), at the time those funds are necessary. The trust fund and the letter of credit shall otherwise satisfy all the requirements of paragraphs 18(a) and 18(b).

19. **Procedures for Review of the Proposed Long-Term Groundwater Remedies Financial Assurances.** No later than two years after the entry of this Consent Order, Honeywell shall submit to Plaintiffs and the Special Master for their review (a) the amount of the proposed long-term groundwater remedies financial assurances; (b) the form(s) of the proposed long-term groundwater remedies financial assurance mechanisms; and (c) the name(s) of the institution proposed to manage or issue the long-term groundwater remedies financial assurances. If Plaintiffs agree to the terms of the proposed long-term groundwater remedies financial assurances, within 60 days of such agreement, Honeywell shall create a trust fund and/or secure a Long-Term Groundwater Remedies Letter of Credit on those terms. If the Parties are unable to reach agreement over the terms of the long-term groundwater remedies financial assurances, the Parties shall submit the dispute to the Special Master, who shall recommend a resolution of the dispute. Any Party shall have the right to seek review by the Court of the Special Master's recommendation regarding the terms of the financial assurances. In any event, until the long-term groundwater remedies financial assurances have been put into place, Honeywell shall maintain the Sediment Consent Order Letter of Credit and the requirements of paragraphs 15 and 18(b)(v) shall apply to the Sediment Consent Order Letter of Credit.

20. **Adjustment of Amount Held in Long-Term Groundwater Remedies Financial Assurances.** Every five years as marked from the establishment of the first long-term groundwater remedies financial assurances pursuant to paragraph 18, the Parties shall report to the Court whether the long-term groundwater remedies financial assurances are adequately

funded to provide the full amount of the costs subject to long-term groundwater remedies financial assurances, as set forth in paragraph 17(b), at the time those funds are necessary. At such time as the Parties report to the Court, any Party may seek an adjustment in the amount of the long-term groundwater remedies financial assurances. The Party seeking an adjustment must demonstrate that the long-term groundwater remedies financial assurances are under-funded or over-funded to provide the full amount of the costs subject to long-term groundwater remedies financial assurances, as set forth in paragraph 17(b), at the time those funds are necessary. Such demonstration shall reflect the actual costs of implementing the remedies and/or any replacement of the remedies, once such actual costs are available. The demonstration shall also reflect the costs of work completed to date and the actual lifetime of the infrastructure, once the infrastructure has been replaced or has passed a replacement interval without requiring replacement. The demonstration shall further reflect the actual performance of the fund and its ability to provide the full amount of the costs subject to long-term groundwater remedies financial assurances, as set forth in paragraph 17(b), at the time those funds are necessary. Any demonstration shall be forward looking and shall be based upon estimates of what the activities in paragraphs 17(a)(i) through 17(a)(iii) are expected to cost at the time they must be performed and the amount of funding projected to be available to undertake such activities at the time they must be performed. If, after reviewing the submission(s) received from the Parties, the Court determines that the long-term groundwater remedies financial assurances are under-funded or over-funded to provide the full amount of the costs subject to long-term groundwater remedies financial assurances, as set forth in paragraph 17(b), at the time those funds are necessary, the Court shall order an adjustment in the amount held in the long-term groundwater remedies financial assurances to overcome the shortage or overage. In the event that the Court determines that the long-term groundwater remedies financial assurances are under-funded, it shall order

Honeywell to increase the amount held in the long-term groundwater remedies financial assurances. In the event that the Court determines that any trust fund established pursuant to paragraph 18(a) is over-funded, the Court shall issue an order directing the trust manager to pay the overage to Honeywell. In the event that the Court determines that the Long-Term Groundwater Remedies Letter of Credit is over-funded, the Court shall issue an order permitting Honeywell to reduce the amount covered during the next annual renewal of the Long-Term Groundwater Remedies Letter of Credit pursuant to paragraph 18(b)(iv). Any adjustment to the amount of the Long-Term Groundwater Remedies Letter of Credit pursuant to this paragraph shall be in addition to any adjustment of the amount of the Long-Term Groundwater Remedies Letter of Credit required pursuant to paragraph 18(b).

21. **Exclusive Court Jurisdiction.** The trust fund agreement and/or the Long-Term Groundwater Remedies Letter of Credit shall recite that the trust fund manager and/or issuer of the Long-Term Groundwater Remedies Letter of Credit submit to the exclusive jurisdiction of this Court for any and all disputes arising under the trust fund or the Long-Term Groundwater Remedies Letter of Credit. The requirements of this paragraph shall apply whether the trust fund is established pursuant to paragraph 18(a), 18(b)(ii), 18(b)(v), or 23.

22. **Procedures upon Honeywell's Material Default of Its Obligations after the Special Master's Appointment Has Expired.** Upon the occurrence of default by Honeywell, after the Special Master's appointment has expired, Plaintiffs may move the Court on an expedited basis for an order to withdraw funds from the trust fund or to draw on the Long-Term Groundwater Remedies Letter of Credit. Default shall include:

(a) The failure of Honeywell, in the event that notice is given pursuant to paragraph 18(b)(iv) to deliver a replacement Long-Term Groundwater Remedies Letter of Credit

at least 95 days prior to the expiration date of the existing Long-Term Groundwater Remedies Letter of Credit;

(b) The material failure of Honeywell to proceed with diligence and in good faith to carry out the terms of this Consent Order and the continuance of such a material breach for a period of 30 days after written notice by Plaintiffs to Honeywell of the alleged material failure, unless Honeywell cures the alleged breach within the 30-day notice period or such longer period as the Parties may agree to or the Court may order;

(c) The filing by Honeywell of a petition seeking relief, or the granting of relief, under the Federal Bankruptcy Code or any similar federal or state statute; any assignment for the benefit of creditors made by Honeywell; the involuntary filing of any of the foregoing against Honeywell if the involuntary filing is not dismissed within 60 days; the appointment of a custodian, receiver, liquidator, trustee, or other similar official for Honeywell or for a substantial part of Honeywell's property; any action by Honeywell to effect any of the foregoing; or if Honeywell becomes insolvent as defined in Section 101(32) of the Federal Bankruptcy Code; or

(d) The dissolution, liquidation, merger, consolidation, or reorganization of Honeywell or the institution of any proceeding to effect any of the foregoing, other than under paragraph 22(c), if Honeywell fails to provide assurance Plaintiffs and the Court, within 15 days after written notice, that such an event will not impair Honeywell's ability to carry out the terms of this Consent Order.

23. **Drawing on the Long-Term Groundwater Remedies Letter of Credit in the Event of Honeywell's Default.** If the Court grants any motion by Plaintiffs pursuant to paragraph 22 to draw on the Long-Term Groundwater Remedies Letter of Credit, the sum approved by the Court's order granting the motion shall be paid from the Long-Term

Groundwater Remedies Letter of Credit into a trust fund, separate from any trust fund created under paragraph 18(a) but satisfying the requirements of paragraph 18(a).

24. **Use of the Trust Fund in the Event of Honeywell's Default.** In the event of Honeywell's default as defined in paragraphs 22(a) through 22(d), the money in the trust fund established pursuant to paragraph 18(a) shall be available to meet the obligations of paragraph 17(a), as well as for the payment of future attorneys' fees and expenses pursuant to paragraph 30. Plaintiffs shall file motions with the Court seeking orders directing how the money in the trust fund shall be used. The Court shall consider motions on an expedited basis and shall enter appropriate orders. The Court may enter an order allowing for automatic withdrawal of regular expenses without separate motion to the Court by Plaintiffs.

25. **Use of a Trust Fund Established Pursuant to Paragraph 15, 18(b)(ii), 18(b)(v), or 23.** In the event that a trust fund is established pursuant to paragraph 15, 18(b)(ii), 18(b)(v), or 23, the money in the trust fund shall be available to meet the obligations of paragraph 17(a), as well as for the payment of future attorneys' fees and expenses pursuant to paragraph 30. Plaintiffs shall file motions with the Court seeking orders directing how the money in the trust fund shall be used. The Court shall consider motions on an expedited basis and shall enter appropriate orders. The Court may enter an order allowing for automatic withdrawal of regular expenses without separate motion to the Court by Plaintiffs.

26. **Termination of the Long-Term Groundwater Remedies Financial Assurances.** Honeywell's obligations under paragraphs 15 to 25 shall be terminated and the long-term groundwater remedies financial assurance mechanisms shall be terminated if the Court finds that Honeywell has satisfied the conditions set forth in paragraph 10. Upon determining that long-term groundwater remedies financial assurances may be terminated, the Court shall order that any Long-Term Groundwater Remedies Letter of Credit may be withdrawn in its

entirety and any trust fund may be terminated. In conjunction with its order terminating any trust fund, the Court in its discretion shall designate a recipient(s) of any remaining trust funds.

27. **Successors to Plaintiff Organizations.** In the event that Interfaith Community Organization and/or Hackensack Riverkeeper, Inc. disbands or otherwise ceases operations, it shall assign its rights under this Consent Order to another qualified nonprofit organization. A nonprofit organization shall be qualified for assignment under this Consent Order 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 shall have the right to object to any proposed assignment. Any successor organization shall have the duty to assign its rights under this Consent Order to another qualified nonprofit organization in the event that the successor disbands or otherwise ceases operations. In the event that a successor is not appointed at any given time, the New Jersey Attorney General or equivalent officer shall appoint a successor subject to approval by the Court and objection by Honeywell.

28. **Settlement of Claims.** Entry of this Consent Order resolves, settles, and satisfies all claims by and between the Parties in *Riverkeeper v. Honeywell* with respect to Deep Overburden and Bedrock Groundwater contaminated with chromium in the vicinity of Study Areas 5, 6, and 7. Entry of this Consent Order resolves, settles, and satisfies all disputes between the Parties with respect to the applicability of the Court's Final Judgment in *ICO v. Honeywell* to Deep Overburden and Bedrock Groundwater contamination with chromium in the vicinity of Study Areas 5 and 6. Nothing in this Consent Order shall be construed to resolve claims by and between the Parties in *Riverkeeper v. Honeywell* with respect to Shallow Groundwater or L-Well Groundwater contaminated with chromium in the vicinity of Study Areas 5, 6, and 7 or with

respect to the property owned by Regnal Realty adjacent to a portion of the former Morris Canal (Site 153).

29. **Payment of Past Fees.** Within 60 days of the entry of this Consent Order, Honeywell shall pay Terris, Pravlik & Millian, LLP the sum of One Hundred Ninety Thousand Dollars (\$190,000). Payment of this sum shall be in full satisfaction of all obligations, duties, and responsibilities of Honeywell with respect to the Two Hundred Thousand Dollars (\$200,000) in attorneys' fees and expenses incurred in the litigation of issues related to deep groundwater in *Riverkeeper v. Honeywell* from the initiation of the case through March 27, 2008. The attorneys' fees and expenses incurred in *ICO v. Honeywell* with regard to the Deep Overburden and Bedrock Groundwater Remedies are not included. Such attorneys' fees and expenses shall be addressed by the Parties as part of the semi-annual fees procedure in *ICO v. Honeywell*.

30. **Future Fees and Expenses.** To the extent allowed by federal law, Honeywell shall reimburse the Plaintiffs' attorneys for reasonable fees and expenses incurred in monitoring and enforcing this Consent Order and in participation in the Special Master process established pursuant to this Consent Order. Honeywell shall reimburse Plaintiffs, to the extent allowed by federal law, for reasonable attorneys' fees and expenses for Plaintiffs' review of, and participation in, the Long-Term Monitoring Plan established pursuant to this Consent Order or the Special Master process implementing this Consent Order. In the event that any dispute arises between the parties under this Consent Order that must be resolved by the Special Master or the Court, the Plaintiffs shall be entitled to recover their attorneys' fees and expenses for litigation of the dispute to the extent allowed by federal law. The Parties shall use the same informal procedure in attempting to settle fees issues as has been used for post-judgment monitoring fees for *ICO v. Honeywell*. In the event the Parties are unable to reach a settlement on fees, Plaintiffs will apply to the Court for an award of attorneys' fees and expenses. If Honeywell objects to

only a portion of the Plaintiffs' statement of attorneys' fees and expenses, Honeywell shall pay the undisputed portion within 60 days of Plaintiffs' submittal of the statement to Honeywell. The Court shall resolve any objections to Plaintiffs' statement of attorneys' fees and expenses and shall enter an appropriate Order. In the event of Honeywell's default, Plaintiffs may seek attorneys' fees from any trust fund established pursuant to the financial assurance provisions of this Consent Order.

31. **Force Majeure.** Force Majeure, for the purposes of this Consent Order, is defined as an event arising from causes beyond the control of any Party or Parties (or their contractors, subcontractors, representatives, or assigns) which could not have been overcome by reasonable diligence and which delays or prevents the performance of any obligations under this Consent Order. 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 or continuation of actions required by this Consent Order, 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 or continuation of actions required by this Consent Order, or financial difficulty of any Party. The Party claiming a force majeure shall bear the burden of showing an event was a force majeure event.

32. **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.

33. **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.

34. **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.

35. **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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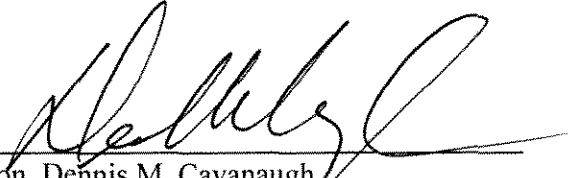
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Organization, the Hackensack Riverkeeper, Inc.,
William Sheehan, Reverend Winston Clarke,
Lawrence Baker, Martha Webb Herring,
Margarita Navas and Margaret Webb*

APPROVED AND ENTERED as an Order of this Court this 29 day of Aug, 2008.



Hon. Dennis M. Cavanaugh
United States District Judge