

Draft of 9.14.2020

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

JERSEY CITY MUNICIPAL UTILITIES)
AUTHORITY,)

Plaintiff,)

v.)

HONEYWELL INTERNATIONAL INC.,)

Defendant.)

Civil Action No. 05-5955
Consolidated under Docket
No. 95-2097 (BRM)

JERSEY CITY INCINERATOR AUTHORITY)

Plaintiff,)

v.)

HONEYWELL INTERNATIONAL INC.,)

Defendant.)

Civil Action No. 05-5993
Consolidated under Docket
No. 05-5955 (BRM) under
Docket No. 95-2097 (BRM)

HACKENSACK RIVERKEEPER, INC.,)
et al.)

Plaintiffs,)

v.)

HONEYWELL INTERNATIONAL INC.,)
et al.)

Defendants.)

Civil Action No. 06-22
Consolidated under Docket
No. 05-5955 (BRM) under
Docket No. 95-2097 (BRM)

**CONSENT ORDER AMENDING SECOND AMENDED CONSENT ORDER
REGARDING FINANCIAL ASSURANCES (ECF NO. 1128) and FIRST
AMENDED CONSENT ORDER REGARDING THE AMOUNT OF
FINANCIAL ASSURANCES (ECF NO. 1301)**

WHEREAS, Honeywell is conducting or has completed remediation of hexavalent chromium contamination at Study Area 5, Study Area 6 North, Study Area 6 South, and Study Area 7 pursuant to the Final Judgment, court orders and decrees in *Interfaith Community Organization v. Honeywell*, D.N.J., Civ. No. 95-2097 (DMC) 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.*, Civ. No. 05-cv-5993, which have all been consolidated under Civ. No. 95-2097 (hereafter "the Consolidated Litigation"); and

WHEREAS, Honeywell is required to provide financial assurances for its remedial obligations pursuant to the court orders which are collectively defined in the Second Amended Consent Order Regarding Financial Assurances (ECF No. 1128) as the Consent Decrees; and

WHEREAS, the Court has appointed a Special Master to oversee implementation of the remedies provided in the Final Judgment and certain Consent Decrees as well as the implementation of financial assurances under the Consent Decrees; and

WHEREAS, on September 15, 2003, the Court entered an Order Setting Financial Assurance for Honeywell International, Inc. (ECF No. 409) ("2003 Financial Assurances Order") which, among other provisions, established an Escrow Account for the Special Master ("Special Master Escrow Account") to provide for payment for the fees and expenses of the Special Master and his Court-appointed professionals; and

WHEREAS, on November 15, 2005, the Court entered the Stipulation and Order Regarding Special Master's Application to Procure Insurance Coverage (ECF No. 669) ("2005 Insurance Order") requiring Honeywell to provide insurance for the Special Master and requiring

that payments for premiums, taxes, deductibles, and other charges in connection with that policy be made through the Escrow Account; and

WHEREAS, on December 23, 2009, the Court entered the Global Financial Assurances Consent Order (ECF No. 962) that modified the 2003 Financial Assurances Order (ECF No. 409) funding requirements and replenishment amounts for the Special Master Escrow Account and updated the terms of the 2005 Insurance Order (ECF No. 669); and

WHEREAS, on September 21, 2010, the Court entered the First Amended Consent Order Regarding Financial Assurances (ECF No. 996) which vacated and superseded the Global Financial Assurances Consent Order (ECF No. 962); and

WHEREAS, on May 24, 2012, the Court entered the Second Amended Consent Order Regarding Financial Assurances (ECF No. 1128) which vacated and superseded the First Amended Consent Order Regarding Financial Assurances (ECF No. 996); and

WHEREAS, the Second Amended Consent Order Regarding Financial Assurances modified the minimum funding and replenishment amounts for the Special Master Escrow Account; and

WHEREAS, the Parties and Special Master have conferred and agree that since the entry of the Second Amended Consent Order Regarding Financial Assurances, the Special Master's expenses to be paid from the Special Master Escrow Account have gradually decreased and therefore the minimum funding and replenishment amounts for the Special Master Escrow Account can be reduced; and

WHEREAS, the Parties have conferred, and agree that the expenses related to the Special Master's insurance shall be paid directly by Honeywell but, should Honeywell fail to pay

the insurance expenses, such expenses shall be paid by the Special Master from the Special Master Escrow Account ;

WHEREAS, on December 28, 2015, the Court entered the First Amended Consent Order Regarding the Amount of Financial Assurances (ECF No. 1301) which vacated and superseded the Consent Order Regarding the Amount of Financial Assurances (ECF No. 995); and

WHEREAS, in or around 2017, Honeywell proposed and the Special Master and Parties approved an adjustment to the amount of financial assurances required to satisfy the financial assurances obligations described in paragraph 7 of the Second Amended Consent Order Regarding Financial Assurances (ECF No. 1128); and

WHEREAS, on March 8, 2017, Honeywell obtained for the benefit of the Special Master a letter of credit issued by MUFG Union Bank, N.A. in the amount of \$46,915,000; and

WHEREAS, although the amount of the financial assurances was reduced in 2017 by agreement of the parties and the Special Master, no amendment to the First Amended Consent Order Regarding the Amount of Financial Assurances (ECF No. 1301) was filed with the Court at that time; and

WHEREAS, the Parties and Special Master have conferred, and agree to amend the First Amended Consent Order Regarding the Amount of Financial Assurances (ECF No. 1301) to memorialize the 2017 adjustment to the amount of financial assurances; and

WHEREAS, the Special Master agrees with this Consent Order Amending Second Amended Consent Order Regarding Financial Assurances (ECF No. 1128) and First Amended

Consent Order Regarding the Amount of Financial Assurances (ECF No. 1301) and recommends its approval and entry by the Court;

NOW THEREFORE, IT IS ORDERED AND DECREED THAT:

1. The above recitals are incorporated herein as though fully set forth as operative provisions of this Consent Order.

2. Terms used in this Consent Order shall have the same definitions as those set forth in Article I of the Second Amended Consent Order Regarding Financial Assurances (ECF No. 1128).

3. Paragraph 16 of the Second Amended Consent Order Regarding Financial Assurances is vacated and amended to read as follows:

16. Special Master Escrow Account. In addition to Honeywell's obligations as provided in paragraph 18, to provide financial assurances for the Special Master's fees and expenses, including but not limited to any additional insurance premiums, 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 provision of the financial assurances required by paragraph 18, Honeywell shall no longer be required to replenish the Special Master Escrow Account to the full \$1.5 million if the balance falls below \$1 million. Instead, the Special Master Escrow Account shall be maintained at a balance of \$1 million; and Honeywell shall be required to replenish the Special Master Escrow Account to \$1 million when the balance falls below \$500,000.

4. Paragraph 17 of the Second Amended Consent Order Regarding Financial Assurances is vacated and amended to read as follows:

17. **2005 Insurance Order.** Upon Honeywell's provision of financial assurances for the Special Master's fees and expenses as provided in paragraph 18, the terms of the 2005 Insurance Order shall be modified (i) to revise the amounts required by paragraph 3 of the 2005 Insurance Order as provided in paragraph 16 above; and (ii) to revise paragraph 2 of the 2005 Insurance Order to require Honeywell to pay the premiums, taxes, deductibles and any other charges payable in connection with the insurance for the Special Master required under the 2005 Insurance Order. Provided however, should Honeywell fail to pay for any such insurance expense, the expense shall be paid by the Special Master from the Special Master Escrow Account. All other rights and obligations set forth in the 2005 Insurance Order shall remain in full force and effect, except for the reference to the \$200 million Letter of Credit in paragraph 4 of the 2005 Insurance Order. The amount of the Letter of Credit referenced in paragraph 4 of the 2005 Insurance Order is hereby modified to be consistent with the amount of financial assurances set forth in the Consent Order Regarding the Amount of Financial Assurances and any future orders addressing the amount of financial assurances, where such orders are approved by the parties, the Special Master, and the Court.

5. Paragraph 4 of the First Amended Consent Order Regarding the Amount of Financial Assurances is vacated and amended to read as follows:

4. **Amount of Financial Assurances.** To satisfy the financial assurance obligations set forth in paragraph 7 of the Second Amended Consent Order Regarding Financial Assurances, Honeywell shall obtain a Letter or Letters of Credit (hereafter "Letters of Credit") in the total amount of \$46,915,000. The Letters of Credit shall satisfy all requirements pertaining

to letters of credit set forth in the Second Amended Consent Order Regarding Financial Assurances and the Consent Decrees.

6. Unless explicitly stated otherwise herein, nothing in this Consent Order modifies the terms of the Second Amended Consent Order Regarding Financial Assurances, the 2003 Financial Assurances Order, the 2005 Insurance Order, the First Amended Consent Order Regarding the Amount of Financial Assurances, or any other order, and all terms of such orders not explicitly modified by this Consent Order remain in full force and effect.

7. 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:

s/Peter Baker

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Webb, and Reverend Winston Clarke*

APPROVED AND ENTERED as an Order of this Court this 28th day of January, 2021.



Hon. Brian R. Martinotti
United States District Judge