

1 **TERRY GODDARD**
2 **ATTORNEY GENERAL**
3 Firm Bar No. 14000

4 **TAMARA HUDDLESTON**
5 Assistant Attorney General
6 State Bar No. 006890

7 **JEFFREY CANTRELL**
8 Arizona Bar No. 017957
9 1275 West Washington Street
10 Phoenix, Arizona 85007-2926
11 Telephone: (602) 542-8500
12 Environmental@azag.gov
13 Attorneys for Plaintiff State of Arizona

14 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
15 **FOR MARICOPA COUNTY**

16 **STATE OF ARIZONA, EX REL,**
17 **STEPHEN A. OWENS, DIRECTOR,**
18 **ARIZONA DEPARTMENT OF**
19 **ENVIRONMENTAL QUALITY,**

20 **Plaintiff,**

21 **v.**

22 **HONEYWELL INTERNATIONAL INC., a**
23 **Delaware Corporation,**

24 **Defendant.**

Civil Action No. CV2008-018396

CONSENT JUDGMENT

(Non-classified Civil)

25 RECITALS

26 A. Plaintiff State of Arizona *ex rel.* Stephen A. Owens, Director, Arizona Department of Environmental Quality, (“the State”) has filed Complaints alleging that the Defendant Honeywell International Inc., a Delaware corporation, (“Honeywell”) violated Arizona Revised Statutes (“A.R.S.”) Title 49, Chapter 2, Article 5, and rules promulgated thereunder; A.R.S.

1 Title 49, Chapter 5, and rules promulgated thereunder; and A.R.S. Title 49, Chapter 6, and rules
2 promulgated thereunder (the "Complaints"). The State brought claims pursuant to A.R.S. §§ 49-
3 287, 49-924, and 49-1013 seeking injunctive relief and civil penalties. The State and Honeywell
4 are collectively referred to in this Consent Judgment as the "Parties."

5 B. Stephen A. Owens is the Director of the Arizona Department of Environmental
6 Quality ("ADEQ") and has been duly authorized by the State to enter into this Consent
7 Judgment for and on behalf of the State.

8 C. At all times mentioned herein, Honeywell operated its 34th Street Engines facility
9 at 111 South 34th Street in Phoenix, Arizona ("the 34th Street Facility").

10 D. On July 9, 2004, the State filed civil complaint no. CV2004-013146 in the
11 Superior Court of Arizona, County of Maricopa against Honeywell ("First Complaint"). The
12 State amended the First Complaint on July 15, 2005. That amended complaint is referred to as
13 the "First Amended Complaint" throughout this Consent Judgment.

14 E. Some of the State's claims in the First Complaint and the First Amended
15 Complaint were dismissed with prejudice on the basis of motions brought by Honeywell. The
16 remaining claims were dismissed without prejudice by stipulation of the Parties. Final judgment
17 was entered in Civil action no CV2004-013146 on February 27, 2007 (the "Judgment"). The
18 State timely appealed the Judgment on March 22, 2007 (the "Appeal") and the Appeal is
19 pending in the Arizona Court of Appeals.

20 F. On or about August 1, 2008, the State filed a complaint in Maricopa County
21 Superior Court, Civil Action No. CV2008-018396 (the "Second Complaint"). Honeywell,
22 which is named as a defendant in the Second Complaint, acknowledges that it has been provided
23 with a copy of the Second Complaint and waives service of process. Honeywell further
24 acknowledges that it has been fully advised of its right to a trial in the matter and waives the
25 same.
26

1 G. Honeywell denies the allegations in the First Complaint, the First Amended
2 Complaint, and the Second Complaint (collectively referred to as the "Complaints"), and
3 further denies any liability for any part of the violations, allegations, or claims in the
4 Complaints.

5 H. The Parties agree that settlement of the violations alleged in the Complaints is in
6 their respective best interests and in the best interest of the public, and that entry of this Consent
7 Judgment without further litigation is the most appropriate means of resolving the allegations in
8 the Complaints.

9 I. Honeywell admits the jurisdiction of this Court and that venue is proper in
10 Maricopa County.

11 J. Honeywell acknowledges that the State has made no promise of any kind or nature
12 other than what is set forth in this Consent Judgment, and that Honeywell has entered into this
13 Consent Judgment voluntarily and after due consideration.

14 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as
15 follows:

16 I. DEFINITIONS

17 Throughout this Consent Judgment, terms used shall have the same meanings and
18 definitions given to them in Title 49 of the A.R.S., and rules promulgated thereunder
19 (collectively "Title 49"). In addition, the definitions set forth above in the section titled
20 "Recitals" shall apply throughout this Consent Judgment, as well as the following definitions:

21 "AOC" shall mean the Administrative Order on Consent dated September 19, 1999,
22 entered into between the Arizona Department of Environmental Quality and Honeywell, as more
23 particularly described in the Complaints.

24 "Day" shall mean a calendar day. In computing any period under this Consent
25 Judgment, where the last day would fall on a Saturday, Sunday, or a State or Federal holiday,
26 the period shall run until the close of business of the next working day.

1 E. Honeywell certifies that its undersigned representative is fully authorized to enter
2 into the terms and conditions of this Consent Judgment, to execute it on behalf of Honeywell
3 and to legally bind Honeywell to its terms.

4 IV. RESOLUTION OF OUTSTANDING LITIGATION

5 A. Within three (3) days after the Execution Date, the Parties shall file a stipulation to
6 dismiss the appeal in the Arizona Court of Appeals, which shall also provide that each Party
7 shall bear its own attorneys fees and costs.

8 B. Within fourteen (14) days after the Arizona Court of Appeals issues a mandate to
9 remand the matter that is the subject of the Appeal to the Superior Court, the Parties shall file a
10 joint motion requesting the Superior Court vacate the Judgment and consolidate the remanded
11 matter with the Second Complaint. The failure of the Superior Court to vacate the Judgment or
12 consolidate these matters shall not in any way affect the validity of this Consent Judgment.

13 C. The Parties agree that this Consent Judgment may be entered immediately upon
14 signing by the Court.

15 V. CIVIL PENALTY

16 A. Honeywell shall pay the State the amount of five million United States dollars
17 (\$5,000,000.00) as a civil penalty pursuant to A.R.S. §§ 49-287, 49-924 and 49-1013 within 30
18 days from the Effective Date.

19 B. The civil penalty imposed by the State and agreed to by Honeywell constitutes a
20 debt for a fine, penalty or forfeiture payable to and for the benefit of a governmental unit, is not
21 compensation for actual loss, and is specifically non-dischargeable under 11 U.S.C. § 523(a)(7).
22 Upon entry of this Consent Judgment, the State shall be deemed a judgment creditor for
23 purposes of collecting the civil penalty.

24 C. The State shall have the right to record this Consent Judgment in every Arizona
25 county.

1 VI. MANNER OF PAYMENT OF CIVIL PENALTY

2 A. Payment of the Civil Penalty under this Consent Judgment shall be by cashier's
3 check or money order made payable to the "State of Arizona" and shall be delivered or mailed
4 to:

5 Chief Financial Officer
6 Arizona Department of Environmental Quality
7 Attention: Accounts Receivable
8 1110 W. Washington Street
9 Phoenix, Arizona 85007

10 together with a letter tendering the payment. In the alternative, upon prior written notification to
11 the Chief Financial Officer at the above address, payment may be made by wire transfer to
12 "Arizona Department of Environmental Quality", routing #026009593, account #252844527, or
13 by ACH, routing #122101706, account #252844527.

14 B. ADEQ will forward payment made to the State under this Consent Judgment to
15 the state general fund pursuant to A.R.S. §§ 49-287(I), 49-924(D), and 49-1013(G).

16 C. All letters regarding payment shall identify this case by the Parties and the court
17 docket numbers. Copies of the letters shall be sent to the Office of the Attorney General at:

18 Tamara Huddleston
19 Chief Counsel
20 Environmental Enforcement Section
21 Office of the Attorney General
22 1275 W. Washington
23 Phoenix, Arizona, 85007

24 and to ADEQ at:

25 Michael Clark
26 Chief Financial Officer
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, Arizona 85007

1 Henry Darwin
2 Administrative Counsel
3 Arizona Department of Environmental Quality
4 1110 W. Washington Street
5 Phoenix, Arizona 85007

6 D. Honeywell shall pay interest on any amount not paid by the due date at the rate
7 established pursuant to A.R.S. § 44-1201 in the same manner permitted under Section VI (A) for
8 the payment of the Civil Penalty. If Honeywell fails to pay the full amount of the Consent
9 Judgment as required, at the election of the State, this Consent Judgment shall become null and
10 void, and the State may take action to seek penalties for any and all violations covered by this
11 Consent Judgment.

12 VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

13 A. Pursuant to A.R.S. §§ 49-923(D) and 49-1013(F), Honeywell shall conduct a
14 Supplemental Environmental Project (“SEP”) by paying one million United States dollars
15 (\$1,000,000.00) to the Western Governors Association to be earmarked for use in the Western
16 Regional Climate Action Initiative (now known as the Western Climate Initiative) to develop
17 regional strategies for addressing climate change through the identification, evaluation, and
18 implementation of collective and collaborative ways to reduce greenhouse gases in the western
19 region of North America.

20 B. Honeywell shall pay the SEP money to the Western Governors Association within
21 thirty (30) days after the Effective Date, and shall inform the Western Governors Association
22 that the money must be used for the Western Regional Climate Action Initiative.

23 C. Honeywell shall have no rights, responsibilities, or obligations regarding the
24 manner in which the SEP money is used by the Western Governors Association or Western
25 Regional Climate Action Initiative.

26 D. Honeywell shall provide the State proof of the payment of the SEP money within
thirty-five (35) days after the Effective Date. All submissions to the State shall be made in the

1 same manner as provided under Section VI(C).

2 E. Any written or oral public statements made by Honeywell in connection with the
3 SEP must state that the money was paid in connection with this Consent Judgment.

4 VIII. MATERIAL BREACH

5 A. Any failure by Honeywell to pay the monetary judgment within the time specified
6 by Section V, or pay for the SEP within the time specified by Section VII shall constitute a
7 material breach and violation of this Consent Judgment. The State, in its sole discretion, shall
8 have the option of either:

9 1. Enforcing this Consent Judgment through the Court, in which case
10 Honeywell shall be liable for interest and additional penalties pursuant to the provisions
11 of A.R.S. § 49-113(B) and the State's reasonable costs and attorneys' fees incurred in
12 enforcing this Consent Judgment; or

13 2. Declaring the Consent Judgment null and void, upon which event the State
14 may pursue the Complaints or refile these actions against Honeywell. In this event,
15 Honeywell shall be barred from alleging the affirmative defenses of estoppel, laches, or
16 the expiration of any statute of limitations. In any future actions for the violations
17 covered by this Consent Judgment, Honeywell shall receive credit for any civil penalties
18 paid to the State pursuant to this Consent Judgment.

19 IX. RELEASE

20 A. Upon payment of the full amount of the Civil Penalty set out in Section V and the
21 Supplemental Environmental Project set out in Section VII, Honeywell, its successors and
22 assigns, and all its past, present, and future directors, officers, and shareholders are released
23 from any and all civil liability to the State for violations arising from facts, events, acts,
24 omissions, conduct or other circumstances constituting a violation that occurred before the
25 Effective Date, regarding:

26 1) Any claims alleged or referenced in the Complaints;

1 2) Any claims that Honeywell violated Title 49, Chapter 5 of the A.R.S. or the
2 rules adopted thereunder, arising out of or associated with ADEQ's August 2-3, 2005
3 hazardous waste inspection of the 34th Street Facility or the resulting October 4, 2005
4 Notice of Violation (ADEQ Case # 36012);

5 3) Any claims that Honeywell violated Title 49, Chapter 5 of the A.R.S. or the
6 rules adopted thereunder, arising out of or associated with ADEQ's February 1, 2006
7 hazardous waste inspection of the 34th Street Facility or the resulting May 9, 2006 Notice
8 of Violation (ADEQ Case # 38813);

9 4) Any claims that Honeywell violated Title 49, Chapter 5 of the A.R.S. or the
10 rules adopted thereunder, arising out of or associated with ADEQ's November 20, 2006
11 and January 2, 2007 hazardous waste inspections of the 34th Street Facility or the
12 resulting March 8, 2007 Notice of Violation (ADEQ Case # 77583);

13 5) Any claims regarding the facts, events, acts, omissions, conduct, conditions
14 or other circumstances described in or arising out of or associated with the self-disclosed
15 environmental audit findings for the Facility that were submitted to ADEQ by Honeywell
16 on or around March 6, 2007 and amended on October 19, 2007 and March 13, 2008;

17 6) Any claims arising out of or associated with the following self-disclosed
18 environmental audit findings for other Arizona Honeywell facilities that Honeywell
19 submitted to ADEQ on or about the dates listed:

20 a) Sky Harbor – November 22, 2006, amended March 13, 2008

21 b) Union Hills – January 23, 2007, amended March 13, 2008

22 c) Kingman Wheel and Brake – March 6, 2007, amended March 13,
23 2008

24 d) Deer Valley Facility and Hangar – April 30, 2007, amended June 15,
25 2007

- 1 e) Tempe (Warner Road) – May 14, 2007, amended March 13, 2008
- 2 f) Tucson (Oracle Road) – July 31, 2007, amended March 13, 2008
- 3 g) Tucson (Drexel Road) – July 31, 2007, amended March 13, 2008
- 4 h) Glendale (59th Avenue) – July 31, 2007, amended March 13, 2008
- 5 i) Bell Road (Talavi) – September 5, 2007, amended March 13, 2008
- 6 j) Kingman Medical Products – September 27, 2007, amended March
- 7 13, 2008
- 8 k) MROC (27th Street) – December 3, 2007, amended March 13, 2008
- 9 l) Phoenix Service Center (12th Avenue) – December 10, 2007,
- 10 amended March 13, 2008
- 11 m) Chandler Electronic Chemicals – February 15, 2007, amended
- 12 March 13, 2008
- 13 7) Any claims that Honeywell violated the AOC, arising out of or associated
- 14 with:
- 15 a) The July 19, 2004 removal of Sump 4-M from former Building 401
- 16 at the Facility;
- 17 b) The Fall 2004 removal of a degreaser from Building 403 at the
- 18 Facility; and
- 19 c) ADEQ's December 9, 2004 Notice of Violation and Demand for
- 20 Stipulated Penalties;
- 21 8) Any claims that Honeywell violated Title 49, Chapter 5 of the A.R.S. or the
- 22 rules adopted thereunder or the AOC arising out of or associated with reported analytical
- 23 results for waste streams and subsurface structures at the 34th Street Facility that that were
- 24 disclosed to ADEQ by Honeywell in May 2007 and resubmitted to ADEQ on March 6,
- 25 2008;
- 26

1 9) Any claims that Honeywell violated Title 49, Chapter 6 of the A.R.S. or the
2 rules adopted thereunder, arising out of or associated with ADEQ's March 16, 2005 UST
3 inspection of the 34th Street Facility or any notice of violation resulting from that
4 inspection (ADEQ Case # 71100); and

5 10) Any claims that Honeywell violated the AOC or Title 49, Chapter 5 of the
6 A.R.S. and the rules adopted thereunder, arising out of or associated with the reported
7 results of the investigation, subsurface structure survey and soil sampling efforts
8 conducted by Honeywell at the 34th Street Facility between January 1, 2007 and the
9 Effective Date of this Consent Judgment and disclosed to ADEQ in writing prior to the
10 Effective Date of this Consent Judgment in Honeywell's report entitled *Subsurface*
11 *Structure Survey, Phase I & II Sampling Report, Honeywell 34th Street Facility,*
12 *Phoenix, Arizona.*

13 B. This release does not release Honeywell from any criminal liability under any
14 local, state or federal statute or regulation.

15 C. This Consent Judgment does not release Honeywell from its obligations to
16 characterize and clean up the soil and groundwater contamination at or emanating from the 34th
17 Street Facility. Therefore, except as expressly set forth in this Consent Judgment, Honeywell is
18 not released from any liability it may have for removal, response, remedial, or corrective
19 actions, under:

20 1) 42 USC § 9601 *et seq.*, (Comprehensive Environmental Response,
21 Compensation, and Liability Act or CERCLA);

22 2) Title 49, Chapter 2, Article 5 of the Arizona Revised Statutes (WQARF); or

23 3) Title 49, Chapter 6, of the Arizona Revised Statutes (UST).

24
25 D. Honeywell and all present or former parent, sister, or affiliate entities, and each of
26 their directors, officers, employees, agents, servants, attorneys, successors and assigns, release