

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO.: 3:15-cv-00009-WHR
DAVE YOST	:	
OHIO ATTORNEY GENERAL	:	JUDGE WALTER H. RICE
	:	
Plaintiff.	:	
	:	
v.	:	
	:	CONSENT DECREE
	:	
HONEYWELL INTERNATIONAL, INC.:	:	
	:	
Defendant.	:	

CONSENT DECREE AND FINAL JUDGMENT ENTRY

WHEREAS, Plaintiff, State of Ohio (“Plaintiff”/“State”), by and through Ohio Attorney General Dave Yost, at the written request of the Director of the Ohio Environmental Protection Agency (“Ohio EPA”), filed a Complaint in this action on January 9, 2015 against Defendant, Honeywell International, Inc. (“Honeywell”), seeking reimbursement of certain Response Costs pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601, *et seq.*, and to enforce Ohio’s hazardous waste, solid waste, water pollution, and nuisance laws found in R.C. Chapters 3734, 6111, and 3767 and rules adopted thereunder. Defendant has consented to the entry of this Consent Decree.

WHEREAS, Defendant, Honeywell, does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, a Plume Delineation/Characterization and Focused Feasibility Study was conducted pursuant to the Consent Decree filed with this Court on March 5, 2015; and has been approved by Ohio EPA. Ohio EPA published the final Honeywell Decision Document on August 29, 2019.

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree (“CD”) finds, that this CD has been negotiated by the Parties in good faith and implementation of this CD will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this CD is fair, reasonable, and in the public interest.

THEREFORE, without trial or admission of any issue of law or fact, and upon the consent of the undersigned parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

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I. STATEMENT OF PURPOSE AND GENERAL PROVISIONS

1. In entering into this Consent Decree, the mutual objectives of the State of Ohio and the Defendant include (i) completion of a Remedial Design/Remedial Action ("RD/RA") to implement the remedy set forth in the Decision Document; (ii) the reimbursement of certain Response Costs incurred and to be incurred by the State of Ohio; and (iii) that this document represents a final Consent Decree.

II. DEFINITIONS

2. The following definitions shall apply in this Consent Decree:

A. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended 42 U.S.C. § 9601 *et seq.*

B. "Complaint" means the Complaint filed by the State of Ohio on January 9, 2015 against Defendant, Honeywell.

C. "Consent Decree" or "Decree" means this Consent Decree and Final Judgment Entry and all appendices hereto.

D. "Decision Document" means the document issued by the Director of Ohio EPA on August 29, 2019, after the public notice and comment period for the Preferred Plan giving the Director's selected remedy for the Site and reasons for its selection.

E. "Defendant" means Honeywell International, Inc.

F. "Director" means Ohio's Director of Environmental Protection.

G. "Effective Date" means the date the clerk of the U.S. District Court for the Southern District of Ohio, Western Division, enters this Consent Decree.

H. "Environmental Covenant" means a servitude arising under an environmental response project that imposes activity and use limitations and that meets the requirements established in section 5301.80-5301.02 of the Revised Code.

I. "Facility" means the former Grimes Aerospace Company facility, located at 515 North Russell Street, Urbana, Champaign County, Ohio.

J. "Focused Feasibility Study" means the document submitted pursuant to the

March 5, 2015 Consent Decree, and as further described in Appendix A to this Consent Decree, which presents the methodology and results of the feasibility analysis of potential actions for remediation of any VOC ground water contamination which originated at the North Russell Street facility or which originated at and has emanated from the North Russell Street facility.

K. “Guidance Documents” mean those documents identified in Appendix C to this Consent Decree.

L. “Honeywell’s Response Costs” means all costs related or pertaining to the Facility that are necessary, that are consistent with the NCP, and have been previously incurred at the Facility or will be incurred by Honeywell through the performance of the Work required by this Consent Decree.

M. “National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

N. “Ohio EPA” means the Ohio Environmental Protection Agency and its designated representatives.

O. “Ohio Response Costs” means the State of Ohio’s costs of “response” as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), that are not inconsistent with the National Contingency Plan, and that have been incurred, or will be incurred, by the State related to the investigation and remediation of the Site including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, overhead costs, administrative costs, legal and enforcement related costs, oversight costs, laboratory costs, the costs of reviewing and developing plans, reports, and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing or enforcing this Consent Decree. For purposes of this Consent Decree, “Past Ohio Response Costs” are those costs incurred on and before the Effective Date. “Future Ohio Response Costs” are those costs incurred after the Effective Date in connection with the RD/RA required by this Consent Decree.

P. “Paragraph” means a portion of this Consent Decree identified by an Arabic numeral or an uppercase or lowercase letter.

Q. “Parties” means collectively the State of Ohio and Honeywell.

R. “Plaintiff” or “State” means the Ohio EPA by and through the Ohio Attorney General.

S. “Plume Delineation” means the definition, based on the groundwater

remediation goals, of the horizontal and vertical extent of any VOC groundwater contamination that originated at the North Russell Street facility or that originated at and has emanated from the North Russell Street facility.

T. “RD/RA” means the Remedial Design and Remedial Action, including operation and maintenance of the Site, to be performed under this Consent Decree.

U. “RD/RA Statement of Work” or “RD/RA SOW” means the describing the activities Defendant must perform to implement the RD and the RA for the Site statement of work for the implementation of the RD/RA, which is attached as Appendix B of this Consent Decree.

V. “RD/RA Work Plan” means the documents detailing the requirements necessary to implement the RD/RA, as more fully described in the appendices to this Consent Decree.

W. “Remedial Action” or “RA” means the remedial action selected in the Decision Document, any action, or part thereof, selected by Ohio EPA that abates or reduces the threat posed by a placement or disposal or threatened disposal of hazardous substances to prevent present or future harm to the public health or welfare or to the environment, including operation and maintenance of the Remedial Action, and is consistent with the applicable local, state and federal laws and regulations, the NCP, and this Consent Decree.

X. “Remedial Design” or “RD” means the detailed engineering plans, specifications and construction drawings, which are in compliance with the NCP and sufficient to implement the selected Remedial Action.

Y. “Section” means a portion of this Consent Decree identified by a Roman numeral.

Z. “Site” means the North Russell Street facility, any locations where VOC contamination that originated at or resulted from activities conducted at the North Russell Street facility is present, including any such contamination that has emanated from the North Russell Street facility.

AA. “State” means the State of Ohio by and through its Attorney General on behalf of the Ohio Environmental Protection Agency.

BB. “Transferee” means any future owner of any interest in the Site, including but not limited to, owners of an interest in fee simple, mortgagors, easement holders, and lessees.

CC. “Volatile Organic Compounds” or “VOCs” means those compounds listed in U.S. EPA’s publication SW 846, Test Methods for Evaluated Solid Waste,

Method 8260, Target Compound List.

DD. “Work” means all activities Defendant is required to perform under this Consent Decree.

III. JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the claims in the Complaint, pursuant to 28 U.S.C. § 1331 (Federal Question), 42 U.S.C. §§ 9607 and 9613(b) (CERCLA), and 28 U.S.C. § 1367 (Supplemental Jurisdiction). This Court has personal jurisdiction over the Parties. Venue is proper in this Court. For the purposes of this Consent Decree, the Defendant agrees that the State’s Complaint, Case No. 3:15-cv-00009, states one or more claims upon which relief can be granted.

IV. PARTIES BOUND

4. The provisions of this Consent Decree shall apply to and be binding upon the State, Defendant, and Defendant’s agents, officers, employees, assigns, and successors in interest. Defendant is ordered and enjoined to provide a copy of this Consent Decree to each contractor it employs to perform Work itemized herein. Defendant shall ensure that its contractors perform the Work contemplated herein in accordance with this Consent Decree. No change in corporate ownership or status of Defendant, including, without limitation, any transfer of assets or real or personal property, shall in any way alter Defendant’s obligations under this Consent Decree.

5. Defendant’s obligations to pay the amounts owed to the State under this Consent Decree are set forth in Section XXI of this Consent Decree.

V. CALCULATION OF TIME

6. Unless otherwise stated in this Consent Decree, where this Consent Decree requires actions to be taken within a specified period of time (e.g., “within thirty (30) days”), this time

period shall begin the day after the Effective Date of this Consent Decree unless the time is otherwise stated to start at another point in time. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or State of Ohio or federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday or legal holiday.

VI. SATISFACTION OF LAWSUIT; NO ADMISSION

7. Except as provided in Section XXII, Agreements Not to Sue and Reservation of Rights, compliance with the terms of this Consent Decree shall constitute full satisfaction of any civil liability of Defendant to the State for all claims alleged in the Complaint. Nothing in this Section shall apply to new conditions at or new information about the Site, or to any violations arising out of acts or omissions first occurring after the Effective Date. This Consent Decree is not to be interpreted as an admission on the part of any Party of any liability or wrongdoing, and it is expressly understood that no Party admits liability of any sort. This Consent Decree supersedes the previous March 5, 2015 Consent Decree which is hereby terminated pursuant to the requirements of that Consent Decree.

VII. REMEDIAL ACTION AND OTHER INJUNCTIVE RELIEF

8. Defendant is ordered and enjoined to comply with all applicable provisions of Ohio's hazardous waste, solid waste, water pollution, and nuisance laws found in R.C. Chapters 3734, 6111, and 3767 and rules adopted thereunder.

9. Defendant is ordered and enjoined to comply with and implement the requirements set forth in this Consent Decree and the appendices hereto, including to: (a) develop the RD; (b) perform the RA; and (c) operate, maintain, and monitor the effectiveness of the RA; in accordance

with the requirements of all applicable federal, state, and local laws and regulations, and in a manner consistent with the NCP.

VIII. IMPLEMENTATION OF THE REMEDY

10. All Work to be performed by Defendant pursuant to this Section shall be under the direction and supervision of a qualified engineer or geologist with expertise in hazardous waste site investigation and remediation. Defendant shall conduct all RD/RA activities at the Site in accordance with the following provisions:

- A. Within sixty (60) days of the Effective Date, unless otherwise specified in writing by Ohio EPA, Defendant shall submit to Ohio EPA a RD/RA Work Plan, and schedule for implementation of the Work, for the design and implementation of the selected remedy identified in the Decision Document issued by Ohio EPA for remediation of the Site. The RD/RA Work Plan shall be developed in conformance with this Consent Decree, the RD/RA SOW, applicable state and federal law, and the most current versions of the RD/RA Guidance Documents listed in Appendix C to this Consent Decree. If, during RD/RA Work Plan development, Ohio EPA determines that any guidance documents in addition to those specified in the list of RD/RA Guidance Documents attached to this Consent Decree, affect the Work to be performed, Ohio EPA shall notify Defendant and any affected work plan shall be modified accordingly.
- B. Upon approval of the RD/RA Work Plan by Ohio EPA, Defendant shall implement the Work detailed therein in accordance with the schedule contained in the approved RD/RA Work Plan and any subsequent Ohio

EPA approved schedule amendments under this Consent Decree.

IX. ASSURANCE OF ABILITY TO COMPLETE WORK

11. Cost Estimates.

- A. Within sixty (60) days after Defendant's receipt of Ohio EPA's approval of the RD/RA Work Plan required under Section VIII, Implementation of the Remedy, of this Consent Decree, Defendant shall submit to Ohio EPA a final detailed written estimate of the cost of the work associated with the remedy implementation and long-term operation, maintenance, and monitoring ("O&M") of the selected remedy identified in the Decision Document, in current dollars ("Initial Cost Estimate") (estimated in the Decision Document to be \$250,800), including any adjustments for inflation based upon the Gross Domestic Product Implicit Price Deflator ("GDP/IPD") and any adjustments for discount rates based upon the Federal Reserve Bank's 30-year Treasury Bill rate for the most recent month for which data is available.
- B. Beginning one (1) year after the Effective Date, and annually thereafter, Defendant must submit to Ohio EPA an estimated cost of the remaining remedy implementation and O&M to be performed ("Current Revised Cost Estimate") based upon the procedures described in the preceding paragraph. Information relied upon in support of the Current Revised Cost Estimate must be provided with any request for reduction. If an adjustment is made to any such Current Revised Cost Estimate for inflation and/or discount rates, an explanation shall be provided.

- C. The Current Revised Cost Estimate shall reflect any adjustments caused by the Defendant's agreement to perform any additional remedy implementation and/or O&M requested by Ohio EPA pursuant to Section X, Additional Work, or by any other conditions that have increased the cost of the O&M and Work to be performed under this Consent Decree (e.g., change in contractor).
- D. The Defendant shall submit the Initial Cost Estimate and all Current Revised Cost Estimates to Ohio EPA for review and approval, which approval shall not be unreasonably withheld. Ohio EPA will review each cost estimate and notify Defendant in writing of Ohio EPA's approval, disapproval, or combination thereof in accordance with Section XVI, Review of Submittals.

12. Performance Guarantee.

- A. In order to secure the full and final completion of the remedy implementation and O&M Work in accordance with this Consent Decree, within sixty (60) days following the Effective Date or within sixty (60) days following Ohio EPA's approval of the Initial Cost Estimate, whichever date is later, Defendant shall establish financial security for the benefit of Ohio EPA in an amount at least equal to the Initial Cost Estimate. Thereafter, Defendant shall maintain financial security in an amount at least equal to the Current Revised Cost Estimate ("Financial Assurance"). Defendant may use one or more of the Financial Assurance mechanisms described in subparagraphs (i) through (iv) below. Defendant shall submit draft

~~Financial Assurance~~ instruments and related documents to Ohio EPA, concurrently with Defendant's submission of the Initial Cost Estimate, for Ohio EPA's review and approval in accordance with Section XVI, Review of Submittals.

- i. A trust fund administered by a trustee which is an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency, that is acceptable to Ohio EPA. The trust agreement shall provide that the trustee shall make payments from the fund, (1) as Defendant shall direct in writing to pay invoices submitted by Defendant from the fund for Work expenditures made by approved contractors engaged by Defendant; Defendant must only direct payment of invoices for which Defendant has submitted a notification to Ohio EPA's Site Coordinator, in accordance with Section XVI, Review of Submittals, of this Consent Decree or (2) in the event of a failure of performance as described in Paragraph 13, to pay any other person whom Ohio EPA determines has performed or will perform the Work required by this Consent Decree at the direction of Ohio EPA.
- ii. One or more irrevocable letter(s) of credit, payable at the direction of Ohio EPA, into a standby trust fund that meets the requirements of the trust fund described in subparagraph (i) above. The letter(s) of credit must be issued by one or more financial institution(s) (1) that has the authority to issue letters of credit and (2) whose letter-

of-credit operations are regulated and examined by a federal or state agency. The letter(s) of credit must be irrevocable and issued for a period of at least one (1) year. The letter(s) of credit must provide that upon its expiration date, the letter(s) of credit will be automatically extended for a period of at least one (1) year unless, at least one hundred and twenty (120) days before the current expiration date, the issuing institution notifies the Defendant and Ohio EPA by certified mail of a decision not to extend the expiration date. Under the terms of the letter(s) of credit, the one hundred and twenty (120) days will begin on the date when the Defendant and Ohio EPA have received the notice, as evidenced by the return receipts.

- iii. A policy of insurance that (1) provides Ohio EPA with rights as a beneficiary, which is acceptable to Ohio EPA and (2) is issued by an insurance carrier that has the authority to issue insurance policies in Ohio and whose insurance operations are regulated and examined by a federal or state agency. The insurance policy shall be issued for a face amount at least equal to the Initial Cost Estimate or Current Revised Cost Estimate, whichever is the most current estimate, except for those costs covered by another Financial Assurance instrument, as permitted in subparagraphs (i), (ii) and (iv) herein. The policy shall provide that the insurer shall make payments as the Defendant shall direct in writing to (1) reimburse

Defendant for expenditures made by Defendant for Work performed in accordance with this Consent Decree or (2) pay any other person whom Ohio EPA determines has performed or will perform the Work in accordance with this Consent Decree, up to an amount equal to the face amount of the policy. The policy shall also provide that it may not be canceled, terminated or non-renewed and that it shall remain in full force and effect in the event that (1) the Defendant is named as a debtor in a voluntary or involuntary proceeding under Title 11 Bankruptcy of the U.S. Code or (2) Ohio EPA issues a Performance Failure Notice under this Section of this Consent Decree.

- iv. An escrow agreement administered by an escrow agent which is an entity that has the authority to act as an escrow agent and whose escrow banking operations are regulated and examined by a federal or state agency, that is acceptable to Ohio EPA. The escrow account shall be an interest-bearing account in an amount agreed upon by the Parties and shall be dedicated solely for the payment of costs associated with the remedy implementation and O&M at the Site. The escrow agreement shall provide that the escrow agent make payments from the escrow account at a rate of one dollar (\$1.00) per one dollar (\$1.00) spent, (1) as Defendant shall direct in writing to pay invoices submitted by Defendant from the escrow account for Work expenditures made by approved contractors engaged by

Defendant; Defendant must only direct payment of invoices for which Defendant has submitted a notification to Ohio EPA's Site Coordinator, in accordance with Section XVI, Review of Submittals of this Consent Decree or (2) in the event of a failure of performance as described in this Section, to pay any other person whom Ohio EPA determines has performed or will perform the Work required by this Consent Decree at the direction of Ohio EPA.

- B. Within thirty (30) days of notification of Ohio EPA's approval, the executed Financial Assurance instrument(s) provided pursuant to this Section (including, without limitation, the original versions of letters of credit and other negotiable instruments issued for Ohio EPA's benefit) shall be submitted by Defendant to the Ohio EPA Site Coordinator in accordance with Section XVI, Review of Submittals of this Consent Decree.
- C. Whenever the Current Revised Cost Estimate exceeds the amount of Financial Assurance already provided pursuant to this Section by more than five percent (5%), the Defendant shall, within sixty (60) days thereafter, obtain and present to Ohio EPA, for review and approval a revised form of Financial Assurance (and otherwise acceptable under this Section) that reflects such cost increase.
- D. In the event that an institution involved in the management of funds provided to guarantee performance under this Section, or responsible for providing such performance guarantee, becomes unable to perform its obligations, or to provide the funds or financial resources for the Work as

required by this Consent Decree, Ohio EPA shall issue a written notification to Defendant of such incapacity. Thereafter, within sixty (60) days of receipt of such notification, Defendant shall either secure proper performance of the guarantee from the institution to satisfy Ohio EPA, or submit to Ohio EPA for approval an alternative form of Financial Assurance that meets the requirements of this Section. Defendant's inability to post Financial Assurance shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the Defendant's obligation to complete the remedy implementation and O&M Work in accordance with the terms hereof.

13. Performance Failure.

- A. Financial Assurance instruments provided pursuant to this Section shall provide Ohio EPA with immediate access to resources, whether in cash or in kind services, to continue and complete the remedy implementation and O&M Work in the event Ohio EPA determines that Defendant (1) has ceased implementation of any portion of the remedy implementation and O&M Work, (2) is significantly or repeatedly deficient or late in their performance of the remedy implementation and O&M Work, or (3) is implementing the remedy and O&M Work in a manner that may cause a substantial threat to public health or safety or the environment. Upon making such determination, Ohio EPA may issue a written notice ("Performance Failure Notice") to the Defendant and the Financial Assurance provider of Defendant's failure to perform. The Performance

- Failure Notice will specify the grounds upon which such a notice was issued and will provide the Defendant with a period of fourteen (14) days within which to remedy the circumstances giving rise to the issuance of such notice. Upon the expiration of the fourteen-day notice period, Defendant may invoke the procedures set forth in Section XVII, Dispute Resolution, to dispute Ohio EPA's determination that any of the circumstances described in clauses (1), (2), or (3) of this paragraph has occurred.
- B. Failure by Defendant to remedy the relevant Performance Failure to Ohio EPA's satisfaction before the expiration of the fourteen-day notice period specified in paragraph 13.A shall trigger Ohio EPA's right to have immediate access to and benefit of the Financial Assurance provided pursuant to this Section, and Ohio EPA may, at any time after the expiration of the fourteen-day notice period, order Defendant to cease performance of the Work and direct the Financial Assurance provider to immediately (1) deposit into a newly created trust fund approved by Ohio EPA, the remaining funds obligated under the Financial Assurance instrument or (2) arrange for performance of the remedy implementation and O&M Work in accordance with this Consent Decree.
- C. If Ohio EPA has issued a Performance Failure Notice but is nevertheless unable after reasonable efforts to secure the resources (whether in cash or in-kind services) necessary to continue and complete the remedy implementation and O&M Work from the Financial Assurance instrument(s) posted by Defendant pursuant to this Section, then, upon

receiving written notice from Ohio EPA, Defendant shall (in the event Defendant does not prevail in Dispute Resolution, if any, as set forth in Section XVII, Dispute Resolution, of this Consent Decree), secure the resources available under the Financial Assurance mechanism, or deposit into an account specified by Ohio EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the Current Revised Cost Estimate.

- D. If Defendant disputes an Ohio EPA determination under this paragraph that identifies a substantial threat to public health or safety or the environment that warrants immediate action, Ohio EPA may direct the Trustee of the trust account newly-created by Ohio EPA following the Performance Failure Notice to make any appropriate payments from such trust fund to address such threat. Otherwise, Ohio EPA may direct the Trustee to not make any payments from the newly-created trust fund, pending resolution of a dispute. If Defendant prevails in dispute resolution, all funds in the newly-created trust fund, including any interest that accrued on the funds, shall be returned to a Financial Assurance provider who has agreed to continue providing Financial Assurance to the Defendant.

14. Reduction of Amount of Financial Assurance. Concurrent with the submission of the Current Revised Cost Estimate, if the Defendant believes that the estimated cost to complete the remaining remedy implementation and O&M Work has decreased below the aggregate amount of the Financial Assurance mechanism or mechanisms selected by Defendant, the Defendant may, at the time of submittal of the Current Revised Cost Estimate, submit a written request to Ohio

EPA to reduce the current amount of Financial Assurance to an amount no less than the Current Revised Cost Estimate. If Ohio EPA decides to accept such a proposal, Ohio EPA shall issue a notification to the Defendant of such decision in writing. After receiving Ohio EPA's written acceptance, which shall not be unreasonably withheld, Defendant may reduce the amount of the Financial Assurance in accordance with and to the extent permitted by such written acceptance.

15. Release of Financial Assurance. Defendant may petition Ohio EPA to allow the release or discontinuance of the Financial Assurance required hereunder. Defendant shall submit a written proposal for such release to Ohio EPA which shall specify the basis for the requested release (e.g., full and final completion of the remedy implementation and O&M Work). If Ohio EPA decides to accept such a proposal, Ohio EPA shall notify the Defendant and the provider of the Financial Assurance of such decision in writing. The provider of the Financial Assurance may be released from its obligations under the instrument only upon a written release from Ohio EPA.

X. ADDITIONAL WORK

16. If Ohio EPA determines that additional Work is necessary to achieve the purposes of this Consent Decree, as set forth in Section I, Ohio EPA may notify Defendant in writing of the need for such additional Work. Within thirty (30) days of receiving such notification from Ohio EPA, Defendant shall prepare and submit to Ohio EPA for review and approval a work plan for the performance of the additional Work ("Additional Work Work Plan"). Any required work plan that includes sampling as an element shall include a sampling plan together with a rationale for the sampling activities, locations, quantity and frequency of sampling, constituents for analysis, and quality control/quality assurance procedures.

17. Defendant shall submit the Additional Work Work Plan for review and approval pursuant to Section XVI, Review of Submittals, and Section XXVII, Mailing and Delivery of

Documents. Upon approval of the Additional Work Work Plan by Ohio EPA, Defendant shall implement the Additional Work Work Plan in accordance with the schedules contained therein. Document submittals made by Defendant shall be deemed approved by OEPA if no action is taken by OEPA within sixty (60) days of receipt.

18. If Defendant determines that additional Work is necessary to achieve the purposes of this Consent Decree as set forth in Section I, Defendant shall submit a written request for approval to Ohio EPA explaining the need for and detailing the nature of the additional Work prior to performing the additional Work. Upon agreement by Ohio EPA with Defendant's request, Defendant shall develop and implement an Additional Work Work Plan, with adjustments, if necessary, to any OEPA approved schedule, as set forth in this Section of this Consent Decree.

19. In the event that additional Work is necessary for any task described in this Consent Decree, the deadline for completing such task(s) shall be adjusted by the amount of time required to perform the additional Work required, including the period of time required to plan and/or obtain approval from the Ohio EPA for the performance of such Work.

XI. DEED NOTICE, LAND USE, ENVIRONMENTAL COVENANT, AND CONVEYANCE OF TITLE

20. Deed Notice. If Defendant conveys any interest in the property included in the Site, each deed, title, or other instrument shall contain a notice stating that: (i) the property is subject to this Consent Decree; (ii) referencing any monitoring, treatment, or containment devices present on the property as a result of this Consent Decree; and (iii) including a requirement that any subsequent owner shall not in any way compromise said monitoring, treatment, or containment devices. In addition, Defendant shall review the notice on an annual basis and revise the notice if

new monitoring, treatment, or containment devices have been added to the property as a result of this Consent Decree.

21. Land Use. Defendant, its successors and assigns shall ensure that no portion of the Site shall be used in any manner that would adversely affect the integrity of any containment, treatment, or monitoring systems at the Site, or violate any use restrictions applicable to the Site under this Consent Decree.

22. Environmental Covenant. Within sixty (60) days after the Effective Date of this Consent Decree, Defendant shall record with the Champaign County Recorder's Office an Environmental Covenant for the parcels that make up the Site. The environmental covenant shall be consistent with the language attached as Appendix D. A copy of the recorded environmental covenant shall be submitted to Ohio EPA within thirty (30) days of recording the environmental covenant. Thereafter, if Defendant conveys any interest in the property included in the Site, each deed, title, or other instrument shall contain a notice stating that the property is subject to this Consent Decree and shall reference any monitoring, treatment, or containment systems present on the property as a result of this Consent Decree.

23. Proof of Filing Environmental Covenant. Within thirty (30) days after filing with the Champaign County Recorder the executed Environmental Covenant, Defendant shall certify to Ohio EPA that the Environmental Covenant has been filed for recording, and include with the certification a file and date-stamped copy of the recorded Environmental Covenant. If Defendant breaches or violates the Environmental Covenant, the Defendant shall be in violation of this Consent Decree.

24. Notice of Transfer of Property. If Defendant executes an instrument conveying any interest in any portion of the Site, including but not limited to easements, deeds, leases and

mortgages, Defendant shall first notify the party purchasing the property of the existence of any containment, treatment, and monitoring systems on the Site, and shall provide a copy of this Consent Decree to the party purchasing the property. Defendant shall notify Ohio EPA at least sixty (60) days in advance of each conveyance of an interest in any portion of the property that is known to comprise the Site. The notice shall include: (i) a copy of the deed transfer document; (ii) the name and address of the party purchasing the property; and (iii) a description of the provisions made for the continued access to and maintenance of the containment, treatment, and monitoring systems. Within thirty (30) days after conveyance of any interest in any portion of the property, Defendant shall submit to Ohio EPA, via certified mail, two copies of the following information:

- A. A copy of the deed or other documentation evidencing the conveyance.
- B. The name, address, and telephone number of the new property owner and the name, address, and telephone number of the contact person for the new property owner.
- C. A legal description of the property, or the portion of the property, being transferred.
- D. A copy of the survey map, if any, of the property, or the portion of the property, being transferred.
- E. The closing date of the transfer of ownership of the property, or portion of the property.

XII. DESIGNATION OF SITE COORDINATORS

25. Within ten (10) days of the Effective Date of this Consent Decree, Defendant shall designate, in writing or by electronic mail, a Site Coordinator to oversee and implement the Work

required by this Consent Decree and to coordinate with the Ohio EPA Site Coordinator. Defendant may also designate an alternate Site Coordinator. To the maximum extent practicable, communication between Defendant and Ohio EPA concerning the activities performed under this Consent Decree shall be through the Site Coordinators. Each Party's Site Coordinator shall be responsible for ensuring that communications from the other Party are appropriately disseminated and processed. For the duration of this Consent Decree, Defendant's designated Site Coordinator or alternate shall be on-site or on-call during all hours of Work to be performed pursuant to this Consent Decree. The absence of the Ohio EPA Site Coordinator from the Site shall not be cause for stoppage of Work unless otherwise provided.

26. Defendant or Ohio EPA may change their Site Coordinator or alternate by notifying the other Party at least five (5) days prior to the change, unless impractical, but in no event later than the actual day the change is made.

27. Without limiting any authority conferred by law on Ohio EPA, the authority of the Ohio EPA Site Coordinator includes, but is not limited to:

- A. Taking samples and directing the type, quantity and location of samples to be taken by Defendant pursuant to an approved work plan.
- B. Observing, taking photographs, or otherwise recording information related to the implementation of this Consent Decree, including the use of any mechanical or photographic device.
- C. Directing that Work stop whenever the Ohio EPA Site Coordinator determines that the activities at the Site may create or exacerbate a threat to public health or safety or threaten to cause or contribute to air or water pollution or soil contamination.

- D. Conducting investigations and tests related to the implementation of this Consent Decree.
- E. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of this Consent Decree.
- F. Assessing compliance with this Consent Decree by Defendant and its agents and/or contractors.

XIII. SAMPLING AND DATA AVAILABILITY

28. Defendant shall notify Ohio EPA not less than ten (10) days in advance of all sample collection activity. Upon request, Defendant shall allow split and/or duplicate samples to be taken by Ohio EPA. Ohio EPA shall also have the right to take any additional samples it deems necessary.

29. As part of the monthly progress reports required in Section XV, Progress Reports and Notice, Defendant shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including validated raw data and original laboratory reports, generated by or on behalf of Defendant with respect to the Site and any Work related to this Consent Decree.

30. Defendant shall submit to Ohio EPA two (2) copies of all interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Defendant subsequently discover an error in any report or raw data, Defendant shall promptly notify Ohio EPA of such discovery and provide the correct information, in writing.

XIV. SITE ACCESS

31. As of the Effective Date of this Consent Decree, Plaintiff and its representatives and contractors shall have access at all times to the Site and any other property controlled by or

available to Defendant to which access is necessary to effectuate the actions required by this Consent Decree. Access shall be allowed for the purposes of conducting activities related to this Consent Decree including but not limited to:

- A. Monitoring the Work or any other activities taking place at the Site.
- B. Verifying any data or information submitted to Plaintiff.
- C. Conducting investigations relating to contamination at or near the Site
- D. Obtaining samples.
- E. Assessing the need for, planning, or implementing additional response actions at or near the Site.
- F. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendant or its agents, consistent with this Consent Decree and applicable law.
- G. Using a camera, video recording, sound recording, or other documentary production equipment.
- H. Assessing compliance with this Consent Decree by Defendant and their agents and/or contractors.

32. To the extent that any property of the Site, to which access is necessary to effectuate the actions required by this Consent Decree, is owned or controlled by persons other than Defendant, Defendant shall use its best efforts to secure access from such persons for Defendant and Ohio EPA as necessary to effectuate this Consent Decree. Copies of all access agreements obtained by Defendant shall be provided promptly to Ohio EPA. If any access required to effectuate this Consent Decree is not obtained within thirty (30) days of the Effective Date of this Consent Decree, or within thirty (30) days of the date Ohio EPA notifies Defendant in writing that

additional access beyond that previously secured is necessary, Defendant shall promptly notify Ohio EPA in writing of the steps Defendant has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Defendant in obtaining access.

33. Nothing in this Consent Decree shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon any private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapters 3734, 6111, and/or 3767.

XV. PROGRESS REPORTS AND NOTICE

34. Beginning with the first full month following the Effective Date of this Consent Decree and throughout the period that this Consent Decree is effective, unless otherwise directed by Ohio EPA, Defendant shall submit, by mail or electronic mail, one (1) copy of written progress reports to Ohio EPA by the tenth day of every month. At a minimum, the progress reports shall:

- A. Describe the status of the Work and actions taken toward achieving compliance with the Consent Decree during the reporting period.
- B. Describe the difficulties encountered during the reporting period and actions taken to rectify any difficulties.
- C. Describe activities planned for the next month.
- D. Identify changes in key personnel.
- E. List targets and actual completion dates for each element of activity, including project completion.
- F. Provide an explanation for any deviation from any applicable schedule.
- G. Indicate what analytical data was received during the period and provide copies of all data required under Section XIII, Sampling and Data

Availability.

- H. Indicate the quantity of the contaminated soil and waste that was treated and/or removed and the contaminated ground water and surface water that was treated and indicate where such contaminated media were disposed.

XVI. REVIEW OF SUBMITTALS

35. This Section applies to all documents Defendant must submit to Ohio EPA for review and approval in accordance with the requirements of this Consent Decree.

36. All RD/RA documents submitted to Ohio EPA shall be developed in accordance with the attached RD/RA SOW and Guidance Document List (Appendices B and C). Every document, including the O&M Plan and risk mitigation plan, that Defendant is required to submit to Ohio EPA under this Consent Decree is subject to the review and approval of Ohio EPA in accordance with this Consent Decree and applicable state and federal laws. Upon review, Ohio EPA may, within sixty (60) days of submittal of all RD/RA documents, at its sole discretion: (i) approve the submission in whole or in part; (ii) approve the submission upon specified conditions or modifications; (iii) modify the submission; (iv) disapprove the submission in whole or in part; (v) notify Defendant of deficiencies; or (vi) undertake any combination of the above.

37. If Ohio EPA disapproves a submittal, in whole or in part, Ohio EPA will notify Defendant of the deficiencies in writing. Defendant shall, within forty-five (45) days of receipt of Ohio EPA's written notice, or if supplemental field, laboratory, or other investigatory work must be performed, within forty-five (45) days of completion of such work, or such longer period of time as specified in writing by Ohio EPA, correct the deficiencies and submit a revised submission to Ohio EPA for approval. Notwithstanding the notice of deficiency, Defendant shall proceed to take any action(s) required by the approved portion(s) of the submission.

38. If Ohio EPA does not approve a revised submission, in whole or in part, Ohio EPA may again require Defendant to correct the deficiencies and incorporate all changes, additions, and/or deletions within fourteen (14) days, or such time period as specified by Ohio EPA in writing. In the alternative, Ohio EPA may approve upon condition, modify, or disapprove the revised submission.

39. In the event of approval or approval upon conditions or modifications, Defendant shall proceed to take any action required by the submission as approved by Ohio EPA.

40. All work plans, reports, or other items required to be submitted to Ohio EPA under this Consent Decree shall, upon written approval by Ohio EPA, be deemed to be incorporated in and made an enforceable part of this Consent Decree. In the event that Ohio EPA approves a portion of a work plan, report, or other item, the approved portion, together with any modifications or conditions thereto, shall be deemed to be incorporated in and made an enforceable part of this Consent Decree.

41. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed in implementing the RD/RA, Ohio EPA will notify Defendant, and Defendant shall modify the work plan(s) and/or other affected documents according to Ohio EPA's comments.

XVII. DISPUTE RESOLUTION

42. This Section shall only be applicable to the following portions of this Consent Decree: Section VIII, Implementation of the Remedy; Section X, Additional Work; Section XVI, Review of Submittals; and Section XXI, Payments and Reimbursement of Costs by Honeywell to Ohio EPA and the Ohio Attorney General, to the extent that the dispute concerns the accuracy of the State's request for reimbursement and/or whether the costs are related to Work beyond the

objectives of this Consent Decree as set forth in Section I, Statement of Purpose. In the event of a dispute over Future Ohio Response Costs, Defendant shall not be required to pay the contested amount of the Future Ohio Response Costs until the dispute is resolved.

43. The Site Coordinators and/or the alternate Site Coordinators shall, whenever possible operate by consensus. In the event that a disagreement exists about either the adequacy or disapproval of any work plan, report, or other item required to be submitted by Defendant pursuant to this Consent Decree; or the need for additional Work; then the Site Coordinators shall have fifteen (15) days from the date the dispute arises to negotiate in good faith in an attempt to resolve the differences. The dispute arises when either the Ohio EPA Site Coordinator provides a brief written notice of dispute to the Defendant's Site Coordinator, or the Defendant's Site Coordinator provides a brief written notice of dispute to the Ohio EPA Site Coordinator. This fifteen (15) day period may be extended by mutual agreement of the Parties, up to an additional seven (7) days.

44. In the event that the Site Coordinators and/or the alternate Site Coordinators are unable to reach consensus on the dispute, then each Site Coordinator and/or the alternate Site Coordinator shall reduce his or her position to writing within thirty (30) days of the end of the good faith negotiations referenced in Paragraph 43. Those written positions shall be immediately exchanged by the Site Coordinators. Following the exchange of written positions, the Parties shall have an additional fourteen (14) days to resolve their dispute. If Ohio EPA concurs with the position of the Defendant, then the work plan, report or other item required to be submitted pursuant to this Consent Decree shall be modified as provided for by Ohio EPA. If necessary, either Party may petition this Court for modification of the Consent Decree to include any required extensions of time or variances of required Work.

45. If Ohio EPA does not concur with the position of Defendant, the Ohio EPA Site Coordinator will notify the Defendant in writing. Upon receipt of such written notice, the Parties shall have fourteen (14) days to forward a request for resolution of the dispute, along with a written statement of the dispute, to the Ohio EPA, Division of Environmental Response and Revitalization (“DERR”) Chief or his/her designee. The statement of dispute shall be limited to a concise presentation of the Parties’ position on the dispute. The DERR Chief, or his/her designee, will resolve the dispute based upon and consistent with this Consent Decree, state law, including R.C. Chapters 3734, 6111, and 3767 and the regulations promulgated thereunder, the NCP, and other applicable state and federal laws.

46. If Defendant and Ohio EPA do not agree on a resolution of the dispute within fourteen (14) days of the decision reached by the DERR Chief, or his/her designee, either Party may petition this Court to resolve the dispute under this Consent Decree. In this Court proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the decision by Ohio EPA is unlawful and/or unreasonable.

47. The pendency of dispute resolution set forth in this Section shall not affect the time period for completion of the Work to be performed under this Consent Decree, except that upon written mutual agreement of the Parties, any time may be extended as appropriate under the circumstances. Elements of Work not affected by the dispute will be completed in accordance with the schedules contained in the RD/RA Work Plan and other deliverables.

48. Within thirty (30) days of resolution of a dispute regarding disapproval or inadequacy of a submittal or the need for additional Work, Defendant shall incorporate the resolution and final determination into the work plan, report, or other item required to be submitted under this Consent Decree and proceed to implement this Consent Decree according to the

amended work plan, report, or other item required to be submitted under this Consent Decree.

49. In the event that a disagreement exists about the accuracy of the State's request for reimbursement of Future Ohio Response Costs, then within sixty (60) days from receipt of the invoice for payment of Future Ohio Response Costs, a Defendant shall submit to an Ohio EPA, DERR Chief, or his/her designee, a concise written presentation of the Defendant's position on the dispute. The DERR Chief, or his/her designee, will resolve the dispute based upon and consistent with this Consent Decree; state law, including R.C. Chapters 3734, 6111, and 3767 and the regulations promulgated thereunder; the NCP; and other appropriate state and federal laws.

50. If Defendant and Ohio EPA do not agree on a resolution of the Future Ohio Response Costs dispute within fourteen (14) days of the decision reached by the DERR Chief, or his/her designee, any Party may file a motion in this Court to resolve the dispute under this Consent Decree. In this Court proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the decision by Ohio EPA is unlawful and/or unreasonable.

51. Within sixty (60) days of resolution of a dispute regarding any inaccurate statement issued for reimbursement of Future Ohio Response Costs, Ohio EPA will make any necessary corrections to the statement and submit to Defendant a corrected statement. Defendant shall pay the corrected amount within thirty (30) days of receipt of the corrected amount.

52. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to those matters set forth in Paragraph 42 of this Consent Decree.

XVIII. ACCESS TO INFORMATION

53. Defendant shall provide to Ohio EPA, upon request, copies of all non-privileged documents and information within its possession or control or within possession or control of its

~~contractors or agents relating to events or conditions at the Site including, but not limited to manifests, reports, correspondence, or other documents or information related to the Work.~~

54. Defendant may assert a claim that documents or other information submitted to Ohio EPA pursuant to this Consent Decree are confidential under the provisions of Ohio Adm. Code 3745-49-03 or 3745-50-30(A) or R.C. 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to Ohio EPA, it may be made available to the public without notice to Defendant.

55. Defendant may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by applicable law. If Defendant asserts that certain documents or information are privileged or confidential under applicable law, it shall provide Ohio EPA with the confidentiality being asserted and the basis for the assertion.

56. No claim of confidentiality or privilege, including but not limited to, claims made pursuant to R.C. 3745.70 through 3745.73, shall be made with regard to any data gathered pursuant to this Consent Decree, including but not limited to, all sampling, analytical, monitoring, or laboratory reports.

57. Defendant shall preserve for the duration of this Consent Decree and for a minimum of ten (10) years after its termination, all documents and other information within its possession or control, or within the possession or control of its contractors or agents, which in any way relate to the Work notwithstanding any document retention policy to the contrary. Defendant may preserve such documents by microfiche, compact disc, or other electronic or photographic device. Defendant shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

XIX. INDEMNITY

58. Defendant agrees to indemnify, save, and hold harmless, but not defend, the State from any and all claims or causes of action arising from, or related to, events or conditions at the Site, except where the claims or causes of action result from negligent, reckless, or intentionally tortious conduct by the State occurring outside of the State's exercise of its discretionary functions. Discretionary functions of the State include, but are not limited to, the State's review, approval, or disapproval of Work performed pursuant to the Consent Decree. The State agrees to provide notice to Defendant within thirty (30) days of receipt of any claim that may be the subject of indemnity as provided in this Section, and to cooperate with Defendant in the defense of any such claim or action against the State. The State shall not be considered a party to and shall not be held liable under any contract entered into by Defendant in carrying out the activities pursuant to this Consent Decree.

XX. UNAVOIDABLE DELAYS

59. If any event occurs that causes or may cause a delay of any Work requirements of this Consent Decree, Defendant shall notify the Ohio EPA Site Coordinator in writing within ten (10) calendar days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize any such delay.

60. With the provision that the notification in Paragraph 59, above, does not necessarily terminate or delay any Work requirement in this Consent Decree, in any action by the State to enforce any of the provisions of this Consent Decree, Defendant may raise that it is entitled to a defense and that its conduct was caused by reasons entirely beyond its control such as, by way of

example and not limitation, weather, newly enacted regulations or laws, litigation instituted by third parties, acts of God, strikes, acts of war, civil disturbances, or vandalism. Although the State does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the State that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that a proceeding to enforce this Consent Decree, if any, is commenced by the State. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of the Defendant. Unanticipated or increased costs associated with the implementation of any Work required by this Consent Decree, shall not serve as a basis for an extension of time under this Consent Decree. Any extension of a date based on a particular incident does not mean that Defendant shall receive an extension of a subsequent date or dates. Defendant must make an individual showing of proof for each incremental step or other requirement for which an extension is sought.

**XXI. PAYMENTS AND REIMBURSEMENT OF COSTS BY HONEYWELL TO
OHIO EPA AND THE OHIO ATTORNEY GENERAL**

61. No later than one hundred twenty (120) days after the Effective Date of this Consent Decree, Defendant shall pay to Ohio EPA \$49,498.94 in settlement of its share of all unpaid Past Ohio Response Costs incurred by Ohio EPA through June 5, 2020. Payment shall be paid in the form of a certified check made payable to "Treasurer, State of Ohio" and forwarded to Sandra Finan, or her successor, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, OH 43215. Defendant shall send a copy of the transmittal letter and a copy of the check to the Ohio EPA Honeywell Site Coordinator.

62. Defendant shall reimburse Ohio EPA for the Future Ohio Response Costs. Ohio

EPA will submit an itemized statement of its Future Ohio Response Costs to Defendant on an annual basis. Defendant shall pay Future Ohio Response Costs for the previous year within one hundred and twenty (120) days of receipt of such itemized statement at the address set forth on the statement.

63. No later than one hundred twenty (120) days after the Effective Date of this Consent Decree, Defendant shall pay to the Ohio Attorney General \$500.00 in settlement of its share of all unpaid Ohio Response Costs incurred by the Ohio Attorney General through the Effective Date of this Consent Decree. Payment shall be paid in the form of a certified check made payable to "Treasurer, State of Ohio" and forwarded to Sandra Finan, or her successor, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, OH 43215.

64. Pursuant to R.C. 131.02(D), interest shall accrue on all Ohio Response Costs from the date that they become past due, at the rate per annum required by R.C. 5703.47, until payment is remitted. Defendant shall remit payment for any such interest due to Ohio EPA by a certified check made payable to "Treasurer, State of Ohio," at the address set forth in Paragraph 61 or on the itemized statement. Payment of interest on past due Ohio Attorney General's costs shall be by electronic funds transfer according to the payment instructions provided by the Ohio Attorney General's Office.

XXII. AGREEMENT NOT TO SUE AND RESERVATION OF RIGHTS

65. In consideration of the actions that will be performed by the Defendant and the payments to be made by Defendant under the terms of this Consent Decree, and except as otherwise specifically provided in this Consent Decree, the State agrees not to sue or to take administrative action against Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), R.C. Chapters 3734, 3745, 6111, and 3767 or other applicable State laws including

common law, for the Work required by this Consent Decree and for Past Ohio Response Costs and Future Ohio Response Costs through the completion of the Work required by this Consent Decree. These agreements are conditioned upon the complete and satisfactory performance by the Defendant of its obligations under this Consent Decree, including, but not limited to, completion of the Work and payment of Ohio's Response Costs. These agreements extend only to the Defendant and do not extend to any other person.

66. This Consent Decree shall not be construed to limit the authority of the State to seek relief for claims, conditions, or response actions not addressed by this Consent Decree, including without limitation injunctive relief, civil penalties, and cost recovery. Nothing in this Consent Decree is intended as a release or agreement not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State may have against any person, firm corporation or other entity not a Party to this Consent Decree.

67. Nothing in this Consent Decree shall be construed to limit the authority of the State to undertake any action against any entity to eliminate or mitigate conditions that may present an imminent threat to the public health, welfare or environment and to seek cost reimbursement for any such action, including if alleged liability is based on Defendant's actions after signature of this CD by Defendant. Nothing in this Consent Decree shall be construed to limit the authority of the State to seek relief for claims for damage to natural resources.

68. Nothing in this Consent Decree shall relieve Defendant of any obligation to comply with R.C. Chapters 3734, 6111, and 3767 including, without limitation, any regulation, license or order issued under these Chapters, and any other applicable federal, state or local statutes, regulations, or ordinances, including but not limited to permit requirements.

69. The State reserves the right to seek legal and/or equitable relief to enforce the requirements of this Consent Decree, including penalties against Defendant for noncompliance with this Consent Decree.

70. The State reserves the right to perform all or any portion of the Work or take any other measures it deems necessary to protect public health and the environment, including recovery of all Ohio Response Costs, in the event that the requirements of this Consent Decree are not wholly complied with within the time frames required by this Consent Decree.

71. By entering into this Consent Decree, Defendant does not waive any defenses that it may have in any future action identified in this Section, nor does Defendant waive any claim or defenses against any others not a Party to this action. However, in any subsequent administrative or judicial proceeding initiated by the State for injunctive relief, recovery of response costs, damages, or other relief relating to the Site, Defendant shall not assert, and may not maintain any defense or claim based upon statute of limitations or the principles of waiver, laches, res judicata, collateral estoppel, issue preclusion, claim splitting or other defenses based upon the contention that the claims brought by the State in a subsequent action were or should have been brought in the instant action.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

72. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Defendant is entitled, as of the Effective Date, to protection from actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for matters addressed in this Consent Decree. Matters addressed means the Work, Ohio's Response Costs, and Honeywell's Response Costs.

XXIV. OTHER CLAIMS

73. Nothing in this Consent Decree shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation, not subject to this Consent Decree for any liability arising from, or related to, events or conditions at the Site, and Defendant has not purported to or held itself out as representing another person, firm, partnership, or corporation. Defendant expressly denies that it is the agent for or represent or otherwise have the authority to represent or serve the interests of another person, firm, partnership, or corporation.

XXV. TERMINATION

74. This Consent Decree shall terminate upon joint motion of the Parties, and approval of the Court, following completion of all activities required under this Consent Decree. This Section, and the Sections of this Consent Decree on agreements not to sue and Reservation of Rights, Satisfaction of Lawsuit, No Admission, Deed Notice, Land Use, Environmental Covenant and Conveyance of Title, Access to Information, and Indemnity, shall survive this Termination Provision.

XXVI. MODIFICATION

75. Except as otherwise allowed by law or otherwise specifically permitted by the Consent Decree, non-substantive modifications, for example address changes, of this Consent Decree shall be by written approval by the Parties and notice of such modification(s) to the Court. Substantive modifications to this Consent Decree shall be by written agreement of the Parties and shall not take effect unless approved by the Court.

XXVII. MAILING AND DELIVERY OF DOCUMENTS

76. All documents requiring submittal pursuant to this Consent Decree or any plan developed in accordance with this Consent Decree shall be either distributed as otherwise agreed to by the parties or sent by certified mail return receipt requested, or equivalent, to:

Ohio EPA Southwest District Office
Division of Environmental Response and Revitalization
Attn. Honeywell / Grimes -Urbana Site Coordinator
401 East Fifth Street
Dayton, OH 45402-2911

All correspondence with the Defendant shall be sent to the following:

Honeywell International, Inc.
Attn. Chuck Anthony or his successor
300 South Tryon Street
Charlotte, NC 28202

XXVIII. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

77. All activities undertaken by Defendant pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable federal, state and local laws, rules, regulations and permits or other legal requirements, including the Consent Decree. Defendant shall submit timely applications and requests for any such permits and approvals. Defendant is ordered and enjoined to include in all contracts or subcontracts entered into for Work required under this Consent Decree, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with this Consent Decree and all applicable laws and rules. This Consent Decree is not a permit issued pursuant to any federal, state, or local law or rule.

78. Should Defendant identify any inconsistency between or among this Consent Decree, any applicable federal, state or local laws, rules, regulations or permits or other legal

requirements, or any of the guidance documents, work plans, reports, or other items required to be submitted to Ohio EPA under this Consent Decree, Defendant shall promptly notify Ohio EPA in writing of each inconsistency not later than thirty (30) days after identifying the inconsistency and the effect of the inconsistencies upon the Work to be performed. Defendant shall also recommend, along with a supportable rationale justifying each recommendation, the requirement Defendant believes should be followed. Defendant shall implement the affected Work as directed by Ohio EPA.

**XXIX. APPENDICES AND DOCUMENTS APPROVED PURSUANT TO THIS
CONSENT DECREE**

79. The Parties agree that the appendices attached to this Consent Decree and all documents approved by Ohio EPA pursuant to the requirements of this Consent Decree are incorporated by reference into and are an enforceable part of this Consent Decree.

XXX. COURT COSTS

80. Defendant shall pay any current and future court costs in this case.

XXXI. STIPULATED PENALTIES

81. In the event that any Ohio EPA approved deadline contained in the schedule of any approved submittal is not met, Defendant is ordered and enjoined to pay stipulated penalties that shall accrue in the amount of Fifty Dollars (\$50) per day for the first seven (7) days of non-compliance; One Hundred Twenty-Five Dollars (\$125) per day for the 8th day through the 14th day of noncompliance; Two Hundred Fifty Dollars (\$250) per day for the 15th day through the 30th day of non-compliance; and Five Hundred Dollars (\$500) per day, per violation for violations lasting beyond thirty (30) days and thereafter.

82. Any payment of stipulated penalties accrued under the provisions of Paragraph 81

shall be made by delivering to Sandra Finan, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215 a certified check(s) for the appropriate amounts(s), within fourteen (14) days from the date the default is cured, made payable to "Treasurer, State of Ohio" to be deposited into the Hazardous Waste Clean-up Account, created pursuant to R.C. Section 3734.28.

XXXII. AUTHORITY TO ENTER INTO THE CONSENT DECREE

83. Each signatory for a Party represents and warrants that he/she has been duly authorized to sign this document and so bind the Party to all terms and conditions thereof. This Consent Decree may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

XXXIII. EFFECTIVE DATE

84. This Consent Decree shall be effective upon the date of its entry by the Clerk.

XXXIV. ENTRY OF CONSENT DECREE AND JUDGMENT BY CLERK

85. Upon signing of this Consent Decree by the Court, the Clerk is directed to enter it.

XXXV. RETENTION OF JURISDICTION

86. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Decree.

XXXVI. PUBLIC NOTICE

87. The Parties agree and acknowledge that final approval by the State and Defendants and entry of this Order is subject to the requirements of 40 C.F.R. 123.27(d)(2)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. The State and Defendants reserve the right to withdraw

this Order based on comments received during the public comment period.

88. Defendants shall pay the costs incurred by Ohio EPA for the publication of the Order in Ohio EPA's Weekly Review and a newspaper of general circulation by delivering a certified check, payable to "Treasurer, State of Ohio" and with a notation indicating that the funds are going to "Fund 699" on it, in the amount of the costs to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days of receipt of notice of the costs from Ohio EPA.

Upon consideration of the foregoing, the Court finds that this Consent Decree is fair, reasonable, and consistent with applicable law.

IT IS SO ORDERED this ____ day of _____, 2020.


JUDGE WALTER H. RICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

The undersigned Parties hereby consent to the foregoing Consent Decree in *State v. Honeywell International, Inc.*

FOR THE STATE OF OHIO:


DAVE YOST
OHIO ATTORNEY GENERAL


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Date October 27, 2020

Attorneys for the State of Ohio

FOR HONEYWELL INTERNATIONAL, INC.

 Date October 19, 2020
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