

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

THE COMMISSIONER OF)	
THE GEORGIA)	
DEPARTMENT OF)	
NATURAL RESOURCES,)	
IN HIS OFFICIAL)	Civil Action No.
CAPACITY AS TRUSTEE,)	
STATE OF GEORGIA)	
)	
Plaintiff,)	
v.)	
)	
HONEYWELL)	
INTERNATIONAL INC.,)	
)	
Defendant.)	

CONSENT DECREE:

**PARTIAL SETTLEMENT OF CLAIMS FOR
NATURAL RESOURCE DAMAGES**

I. BACKGROUND

A. The Commissioner of the Georgia Department of Natural Resources, in his official capacity as Trustee, filed a complaint on behalf of the State of Georgia in this action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9607. The State is acting in its capacity as a Trustee for Natural Resources¹ which it

¹ In connection with the designation of the Site as a Superfund Site under CERCLA, National Oceanic and Atmospheric Administration, United States Department of

asserts have been affected by the releases of hazardous substances. 40 C.F.R. § 300.605. The State of Georgia's complaint alleges that Honeywell International Inc. (Honeywell) is liable under CERCLA for damages due to injury to, destruction of, or loss of natural resources resulting from releases of hazardous substances at the LCP Chemicals Superfund Site in Brunswick, Glynn County, Georgia (the "Site").

B. A certain entity (as identified in Appendix B) has made payments to Honeywell for natural resource damages at the LCP Chemicals Georgia Superfund Site in Brunswick, Glynn County, Georgia, under prior settlement with Honeywell; in exchange, Honeywell indemnified such party for those NRD claims.

C. The Parties agree that Honeywell, by entering into this Consent Decree, does not admit to any liability arising out of the transactions or occurrences alleged in the Complaint, nor does Honeywell admit or endorse any fact and/or conclusion in the Complaint, the Trustee's Natural Resource Damages Assessment, or any restoration plan for the Site.

D. Except for damages from Unknown Conditions or New Information (as these terms are defined in Paragraphs 13 and 16 below), the State agrees that all claims for Lost Recreational Uses have been satisfied and addressed by the payments set forth below

E. The Parties, as defined, by signing this Consent Decree recognize, and the Court by entering this Consent Decree finds, that this Consent Decree: (i) has been negotiated by the Parties in good faith; (ii) will avoid prolonged and complicated litigation among the Parties; (iii) will expedite natural resource restoration actions to be performed by the State; and (iv) is fair, reasonable, and in the public interest.

Interior, United States Fish and Wildlife, and the Commissioner have been appointed Trustees to protect the public's interests in Natural Resources Damages. References to Trustees are made in Section VII of this Consent Decree.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367, and 42 U.S.C. §§ 9607 and 9613(b). Solely for the purposes of this Consent Decree and the underlying complaint, Honeywell waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Honeywell shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. Parties Bound:

a. This Consent Decree applies to and is binding upon the State, and upon Honeywell and its successors and assigns. Any change in ownership or corporate status of Honeywell including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Honeywell's or its successors' and assigns' rights or responsibilities under this Consent Decree.

b. The United States is not a party to this Consent Decree; the covenants not to sue set forth in Paragraphs 11 and 14 are covenants by the State and do not apply or extend to the United States.

c. Notwithstanding Paragraph 2(b) above, Honeywell reserves its right to assert that this Consent Decree resolves all or part of any future claim by the United States for natural resource damages at the Site.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA, 43 C.F.R. Part 11, shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendix attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

b. "Consent Decree" means this Consent Decree, and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

c. "Date of Lodging" means the day that this Consent Decree, having been signed by all Parties, is lodged with the Court pursuant to Paragraph 31.

d. "Day" means a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday, Federal and State holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, Federal or State holiday, the period shall run until the close of business of the next working day.

e. "Effective Date" means the effective date of this Consent Decree as provided by Section XIII of this Consent Decree (Effective Date and Retention of Jurisdiction and Modification).

f. "Honeywell" shall mean Honeywell International, Inc.

g. "Honeywell Indemnified Party" shall mean the entity listed on Appendix B that has made payments to Honeywell for, inter alia, claims for natural resource damages at the LCP Chemicals Georgia Superfund Site under prior settlement with Honeywell, and in exchange, Honeywell indemnified such party for those NRD claims. If additional parties are agreed upon by Honeywell and the State pursuant to Paragraph 34 below, such additional party or parties shall also be a Honeywell Indemnified Party.

h. "Lost Recreational Use" or "Lost Recreational Uses" means injury to, destruction of, loss of, or loss of use of, any natural resources and/or services used for recreational purposes, resulting from a release of hazardous substances at or from the Site including, but not limited to, recreational fishing, hunting, boating, swimming, birdwatching and/or hiking.

i. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. "Lost Recreational Use Natural Resource Damages" shall mean any damages recoverable by the State pursuant to Sections 107(a) and 107(f) of CERCLA, 42 U.S.C. §§ 9607(a) and 9607(f), and/or any other federal law, state law, local law, common law, or regulation for Lost Recreational Use or Lost Recreational Uses. Lost Recreational Use Natural Resource Damages include, without limitation: (i) the costs of assessing Lost Recreational Use or Lost Recreational Uses; (ii) the costs of restoration, rehabilitation, replacement, or acquisition of the equivalent of Lost Recreational Uses; (iii) the costs of planning such restoration activities; (iv) compensation for Lost Recreational Uses including past Lost Recreational Uses; and (v) each of the categories of

recoverable damages described in 43 C.F.R. § 11.15 and applicable state law, to the extent such damages are for Lost Recreational Uses.

k. "Non Lost Recreational Use Natural Resource Damages" means all damages potentially recoverable by the State for injury to, destruction of, loss of, or loss of use of any natural resources resulting from releases at or from the Site, other than Lost Recreational Use Natural Resource Damages. Non Lost Recreational Use Natural Resource Damages include damages resulting from injuries to land, wildlife, biota (including fish, marine mammals, birds and other wildlife) air, water, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State, but excludes recreational services or recreational uses of such natural resources.

l. "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

m. "Parties" means the State and Honeywell.

n. "Plaintiff" means the State of Georgia.

o. "Section" means a portion of this Consent Decree identified by a Roman numeral.

p. "Site" means the LCP Chemicals Georgia Superfund Site in Brunswick, Glynn County, Georgia, generally depicted in the map attached as Appendix A.

q. "State" means State of Georgia and all its agencies, departments, subdivisions and instrumentalities.

r. "Subparagraph" means a portion of this Consent Decree identified by a lower case letter or an Arabic numeral in parentheses.

V. STATEMENT OF PURPOSE

4. The mutual objectives of the Parties in entering into this Consent Decree are:

a. to contribute to the restoration, replacement, or acquisition of the equivalent of the natural resources allegedly injured, destroyed, or lost as a result of hazardous substance releases at or from the Site;

b. to resolve Honeywell's liability for Lost Recreational Use Natural Resource Damages, as provided herein;

c. to preserve the State of Georgia's potential claims for other types of damages related to the Site, including claims for Non-Lost Recreational Use Natural Resource Damages; and

d. to avoid potentially costly and time-consuming injury assessment and litigation.

VI. PAYMENTS BY HONEYWELL

5. Within 30 days after the Effective Date, Honeywell shall pay a total of four million dollars (\$4,000,000) to the State of Georgia, together with Interest on that amount accruing from the Date of Lodging. Payment shall be made by Electronic Funds Transfer ("EFT") to the State of Georgia into a separate account in the State Treasury (Fund and method to be identified). The total amount to be paid by Honeywell pursuant to this Paragraph shall be deposited and managed by the State for the benefit and use of the State to pay for Natural Resource Restoration Projects proposed by a Project Team and selected by the Commissioner of DNR in accordance with Section VII.

6. Notice of Payment. Upon making any payment under Paragraph 5, Honeywell shall send written notice that payment has been made to the State, in accordance with Section XI.

7. Non-Compliance with Payment Obligations.

a. Interest. In the event any payment required by Paragraph 5 is not made when due, Honeywell shall pay Interest on the unpaid balance commencing on the payment due date and accruing through the date of full payment.

b. Stipulated Damages. In addition to the Interest required to be paid under the preceding Subparagraph, if any payment required by Paragraph 5 is not made when due, Honeywell shall also pay stipulated damages of \$5,000 per day through the date of full payment.

c. Payment of Interest and Stipulated Damages. Any Interest payments under Subparagraph 7.a shall be paid in the same manner as the overdue principal amount, and shall be directed to the same fund or account as the overdue principle amount. All stipulated damages payments under Subparagraph 7.b shall be paid to the State in accordance with payment instructions provided by the Attorney General's Office.

d. The State of Georgia shall be entitled to collect the costs, including attorneys' fees, incurred in any action necessary to collect any portion of the sums due under Paragraphs 5 or 7. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the State to seek any other remedies or sanctions available by virtue of Honeywell's violation of this Consent Decree or of the statutes and regulations upon which it is based.

VII. NATURAL RESOURCE RESTORATION PROJECTS

8. Management and Application of Funds.

a. All funds deposited in the State of Georgia account shall be managed by the Georgia Department of Natural Resources (DNR) for the benefit and use to pay for natural resource restoration efforts, in accordance with this Consent Decree. All such funds shall be

applied toward the costs of restoration, rehabilitation, or replacement of injured natural resources, and/or acquisition of equivalent resources, related to Lost Recreational Uses.

b. DNR shall, in accordance with law, manage and invest the funds deposited in the account pursuant to Paragraphs 5 and 7(c). All such funds, including any interest and return on investment, shall be held in the account solely for use by the State as provided in Paragraph 8(a). DNR shall not make any charge against this account for investment, management or any other service provided with respect to operation of the account.

9. Restoration Planning. The State intends to prepare a restoration plan describing how the funds dedicated for natural resource restoration efforts under this Section will be used to restore Lost Recreational Uses. The Plan will identify how funds will be used for restoration, rehabilitation, replacement, or acquisition of equivalent resources. The Plan may also identify how funds will be used to address services lost to the public until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is completed.

10. Project Review Team. A Project Team will be formed and will be comprised of one individual from each of the following entities or groups: 1) the Georgia Coastal Resource Division; 2) Honeywell; 2) the City of Brunswick, Georgia; 4) Glynn County, Georgia; and 5) Finfish. The Project Team will develop a reasonable number of possible alternative projects for restoration, and will submit the proposed alternative projects to restore, replace, or acquire the equivalent of such natural resources by Georgia to the Commissioner of DNR who will review and select those projects most appropriate based upon the guidance set forth under CERCLA. The Trustees, as referenced in footnote 1, have identified and vetted a number of alternative projects with the required nexus and location to the affected area for the Project Review team's consideration. Other projects may only be considered if

the required nexus and location is established. Honeywell shall not be entitled to dispute, in any forum or proceeding, any decision relating to use of funds or restoration efforts under this Section once projects are selected by the Commissioner. If the funds deposited in a DNR account under this Settlement are not sufficient to complete the activities in the Restoration Plan, neither Honeywell nor the State shall be required to expend additional funds to complete the activities in the Restoration Plan.

VIII. COVENANTS AND RESERVATIONS OF RIGHTS BY THE STATE OF GEORGIA

11. Covenant as to Honeywell. Except as specifically provided by Paragraph 12 (General Reservations Against Honeywell) and Paragraph 13 (Special Reservations Against Honeywell), the State covenants not to sue Honeywell for Lost Recreational Use Natural Resource Damages. This covenant not to sue shall take effect upon receipt of Honeywell's payment pursuant to Paragraph 5 of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by Honeywell of its obligations under this Consent Decree.

12. General Reservations Against Honeywell. The State reserves and this Consent Decree is without prejudice to, all rights against Honeywell with respect to all matters not expressly included within Paragraph 11 (Covenant Not to Sue by the State of Georgia). Notwithstanding any other provisions of this Consent Decree, the State reserves all rights against Honeywell with respect to:

a. claims based on a failure by Honeywell to meet a requirement of this Consent Decree;

b. liability for any other costs incurred or to be incurred by the State that are not within the definition of Lost Recreational Use Natural Resource Damages, including liability for response costs,

including liability under CERCLA Section 107(a)(1-4)(A), 42 U.S.C. § 9607(a)(1-4)(A), for costs of removal or remedial action incurred by the State;

c. liability for injunctive relief or administrative order enforcement under CERCLA Section 106, 42 U.S.C. § 9606;

d. claims for Non Lost Recreational Use Natural Resource Damages;

e. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances that are not at or from the Site;

f. liability arising from any disposal of hazardous substances at the Site by Honeywell after the lodging of this Consent Decree except where such disposal arises from Settling Honeywell's performance of work required by any federal or state consent decree, any federal or state administrative order, or a federal or state permit regarding the Site, assuming such work is performed in conformity with the requirements of any such decree, order or permit; and

g. criminal liability.

13. Special Reservations Against Honeywell Regarding Lost Recreational Use Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the State reserves the right to institute proceedings against Honeywell in this action or in a new action seeking recovery of Lost Recreational Use Natural Resource Damages based on:

a. conditions with respect to the Site, unknown to the State as of the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of any recreational use of natural resources and/or services ("Unknown Conditions"); or

b. information received by the State after the date of lodging of this Consent Decree which indicates that releases of hazardous substances at or from the Site have resulted in injury to, destruction of, or loss of any recreational use of natural resources and/or services of a type or future persistence that was unknown to the State or of a magnitude significantly greater than was known to the State as of the date of lodging of this Consent Decree ("New Information").

For purposes of this paragraph, the following shall not be considered Unknown Conditions or New Information:

a. an increase solely in the State's assessment of the magnitude of a known Lost Recreational Use Natural Resource Damages; and

b. any Lost Recreational Use Natural Resource Damages resulting from the release of mercury, PCBs (polychlorinated biphenyls), lead and/or PAHs (polycyclic aromatic hydrocarbons) from or at the Site where such release occurred prior to the date of lodging of this Consent Decree.

c. any Lost Recreational Use Natural Resource Damages arising from the re-exposure, resuspension, or migration by natural causes or entities other than Settling Defendant or Honeywell Indemnified Party of hazardous substances released at or from the Site and known to be present in the environment as of the date of lodging of the Consent Decree.

For purposes of this Paragraph, the conditions and information known to the State on the date of lodging of this Consent Decree shall consist of the conditions and information set forth in any sampling data and other data and information in the possession or control of the State at any time prior to the date of lodging of this Consent Decree; and/or all analyses, diagrams, maps, reports, and surveys performed at the Site by or on behalf of the State.

14. Covenant as to Honeywell Indemnified Party. Except as specifically provided by Paragraph 15 (General Reservations Against Honeywell Indemnified Party) and Paragraph 16 (Special Reservations Against Honeywell Indemnified Party), the State covenants not to sue the Honeywell Indemnified Party for LCP Chemicals Georgia Superfund Site for Lost Recreational Use Natural Resource Damages. This covenant not to sue shall take effect upon receipt of Honeywell's payment pursuant to Paragraph 5 of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by Honeywell of its obligations under this Consent Decree.

15. General Reservations Against Honeywell Indemnified Party. The State reserves and this Consent Decree is without prejudice to, all rights against Honeywell Indemnified Party with respect to all matters not expressly included within Paragraph 14 (Covenant Not to Sue by the State of Georgia). Notwithstanding any other provision of this Consent Decree, the State reserves all rights against Honeywell Indemnified Party, with respect to:

- a. claims based on a failure by Honeywell to meet a requirement of this Consent Decree;
- b. liability for injunctive relief or administrative order enforcement under CERCLA Section 106, 42 U.S.C. § 9606;
- c. liability for any other costs incurred or to be incurred by the State that are not within the definition of Lost Recreational Use Natural Resource Damages, including liability for response costs, including liability under CERCLA Section 107(a)(1-4)(A), 42 U.S.C. § 9607(a)(1-4)(A), for costs of removal or remedial action incurred by the State;
- d. claims for Non Lost Recreational Use Natural Resource Damages,

e. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances that are not at or from the Site;

f. liability based on the release of hazardous substances from a facility at the Site owned or operated by a Honeywell Indemnified Party when such ownership and/or operation commences after the date of lodging of this Consent Decree by a Honeywell Indemnified Party;

g. liability arising from a Honeywell Indemnified Party's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of hazardous substances at or in connection with the Site that commences after the date of lodging of this Consent Decree; and

h. criminal liability.

16. Special Reservations Against Honeywell Indemnified Party Regarding Lost Recreational Use Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the State reserves the right to institute proceedings against a Honeywell Indemnified Party in this action or in a new action seeking recovery of Lost Recreational Use Natural Resource Damages based on:

a. conditions with respect to the Site, unknown to the State as of the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of any recreational use of natural resources and/or services ("Unknown Conditions"); or

b. information received by the State after the date of lodging of this Consent Decree which indicates that releases of hazardous substances at or from the Site have resulted in injury to, destruction of, or loss of any recreational use of natural resources and/or services of a type or future persistence that was unknown to the State

or of a magnitude significantly greater than was known to the State as of the date of lodging of this Consent Decree ("New Information").

For purposes of this paragraph, the following shall not be considered Unknown Conditions or New Information:

a. an increase solely in the State's assessment of the magnitude of a known Lost Recreational Use Natural Resource Damages; and

b. any Lost Recreational Use Natural Resource Damages resulting from the release of mercury, PCBs (polychlorinated biphenyls), lead and/or PAHs (polycyclic aromatic hydrocarbons) from or at the Site where such release occurred prior to the date of lodging of this Consent Decree.

c. any Lost Recreational Use Natural Resource Damages arising from the re-exposure, resuspension, or migration by natural causes or entities other than Settling Defendant or Honeywell Indemnified Party of hazardous substances released at or from the Site and known to be present in the environment as of the date of lodging of the Consent Decree.

For purposes of this Paragraph, the conditions or information known to the State on the date of lodging of this Consent Decree shall consist of the conditions and information set forth in any sampling data and other data and information in the possession or control of the State at any time prior to the date of lodging of this Consent Decree; and/or all analyses, diagrams, maps, reports, and surveys performed at the Site by or on behalf of the State.

IX. COVENANTS BY HONEYWELL

17. Covenants by Honeywell. Honeywell covenants not to sue and agrees not to assert any claims, defenses, or causes of action against the State, or their contractors or employees, with respect to Lost

Recreational Use Natural Resource Damages, or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim against the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT, CONTRIBUTION PROTECTION, AND PROCEDURES

19. Except as provided in Paragraph 14 (Covenant as to Honeywell Indemnified Party), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

20. The Parties agree, and by entering this Consent Decree this Court finds, that Honeywell is entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Lost Recreational Use Natural Resource Damages.

21. Honeywell also agrees that, with respect to any suit or claim for contribution brought against Honeywell for matters related to this Consent Decree, Honeywell will notify the persons identified in Section XI (Notices and Submissions) in writing within 10 days of service of the complaint or claim upon it. In addition, Honeywell shall notify the persons identified in Section XI (Notices and Submissions) within 5 days of service or receipt of any Motion for Summary Judgment, and within 5 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

22. In any subsequent administrative or judicial proceeding initiated by the State for injunctive relief, recovery of response costs or damages, or other relief relating to the Site, Honeywell shall not assert, and may not maintain, any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not To Sue by the State set forth in Section VIII or by Honeywell in Section IX. In addition, in any subsequent administrative or judicial proceeding initiated by the United States or the State for Lost Recreational Use Natural Resource Damages under Paragraph 13 of this Consent Decree, Honeywell shall not assert, and may not maintain, any defense or claim based upon any potentially applicable statute of limitations.

23. Honeywell consents to the filing of the Complaint and Consent Decree prior to selection of final remedial actions for the Site by the Georgia DNR and expressly waives any objections it may have under CERCLA section 113(g)(1), 42 U.S.C. § 9613(g)(1), regarding the timing of the filing of the Complaint.

24. Honeywell has previously funded a Blythe Island project for \$150,000, under the "Blythe Island MOU." Honeywell shall not seek

any credit regarding the Blythe Island project against either Lost Recreational Use Natural Resource Damages or Non Lost Recreational Use Natural Resource Damages. Remediation is concurrently taking place under an existing Record of Decision relating to a portion of the Site and is not subject to paragraph 11 of this settlement. Accordingly, any money spent in connection with that Record of Decision as well as any costs incurred or to be incurred in connection therewith are not to be credited to Honeywell under this paragraph, such costs being excluded pursuant to paragraph 12 (b) of this settlement.

25. Each party shall bear its own costs of this action, including attorneys' fees, except as provided in paragraphs 7(d) or 22.

XI. NOTICES

26. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses set forth below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the State, and Honeywell, respectively.

As to the State of Georgia:

Timothy J. Ritzka
Senior Assistant Attorney General
Office of Attorney General
Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia 30334
Tel: 404-657-3976
tritzka@law.ga.gov

As to Honeywell:

Brian D. Israel
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave., NW
Washington, DC 20001
Tel: 202-942-6546
brian.israel@arnoldporter.com

XII. APPENDICES

27. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A," a map of the Site;

"Appendix B" is the List identifying the Honeywell Indemnified Party.

XIII. EFFECTIVE DATE AND RETENTION OF JURISDICTION AND MODIFICATION

28. This Consent Decree shall take effect upon entry by the Court.

29. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

30. Any material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect until filed with the Court. Nothing in this Consent

Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

31. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

32. Economic hardship or changed financial circumstances of Honeywell shall not serve as a basis for modifications of this Consent Decree.

33. Honeywell and the State may agree to add additional Honeywell Indemnified Parties to Appendix B of this Consent Decree in which case, within 30 days after Honeywell's receipt of any Lost Recreational Natural Resource Damages recovered from any future settlor with respect to the Site, Honeywell shall pay five percent of such proceeds to the State to be used by the State in accordance with Section VII. If Honeywell and the State agree to add additional Honeywell Indemnified Parties to this Decree, Honeywell and the State shall follow the procedures for non-material modifications of this Decree set forth in Paragraph 31 above.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

34. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The State reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such approval and entry, this agreement is voidable at the sole discretion of any Party and the terms

of the agreement may not be used as evidence in any litigation between the Parties.

35. Honeywell hereby consents to entry of this Consent Decree by this Court without further notice and agrees not to challenge any provision of this Consent Decree unless the State have notified Honeywell in writing that it no longer supports entry of the Consent Decree.

XV. SIGNATORIES/SERVICE

36. The undersigned representatives of Honeywell, and the State each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document. This Consent Decree may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument.

37. Honeywell shall identify, on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service by e-mail on behalf of Honeywell with respect to all matters arising under or relating to this Consent Decree. Honeywell hereby agrees to accept service of process by e-mail, waives the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons. The parties agree that Honeywell need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XVI. FINAL JUDGMENT

38. This Consent Decree and its appendices constitute the final, complete, and exclusive understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or

understandings relating to the settlement other than those expressly contained in this Consent Decree.

39. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the State and Honeywell **only for** Lost Recreational Use Natural Resource Damages settled herein. The Court finds that there is no reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED.

Dated: _____

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in *The Commissioner of the Georgia Department of Natural Resources, In His Official Capacity as Trustee, State of Georgia v. Honeywell International Inc.*, related to a partial settlement at the LCP Site.

FOR THE STATE:

CHRISTOPHER M. CARR 112505
Attorney General

ISAAC BYRD 101150
Deputy Attorney General

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s/ Timothy J. Ritzka
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THE UNDERSIGNED PARTY enters into this Consent Decree in
The Commissioner of the Georgia Department of Natural Resources,
In His Official Capacity as Trustee, State of Georgia v. Honeywell
International Inc., related to a partial settlement at the LOP Site.

FOR HONEYWELL:



DEVAN VAN HOOK

Corporate V.P.

Health, Safety, Environment,
Product Stewardship and Sustainability
Honeywell International Inc.

115 Tabor Road

Morris Plains, NJ 07950

(973) 455-4132

/s/ Brian D. Israel

BRIAN D. ISRAEL

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601 Massachusetts Ave., NW

Washington, DC 20001

Person designated to accept service of process on behalf of Settling
Defendant:

Tom Byrne

Associate General Counsel/Chief Environmental Counsel

Honeywell International Inc.

115 Tabor Road

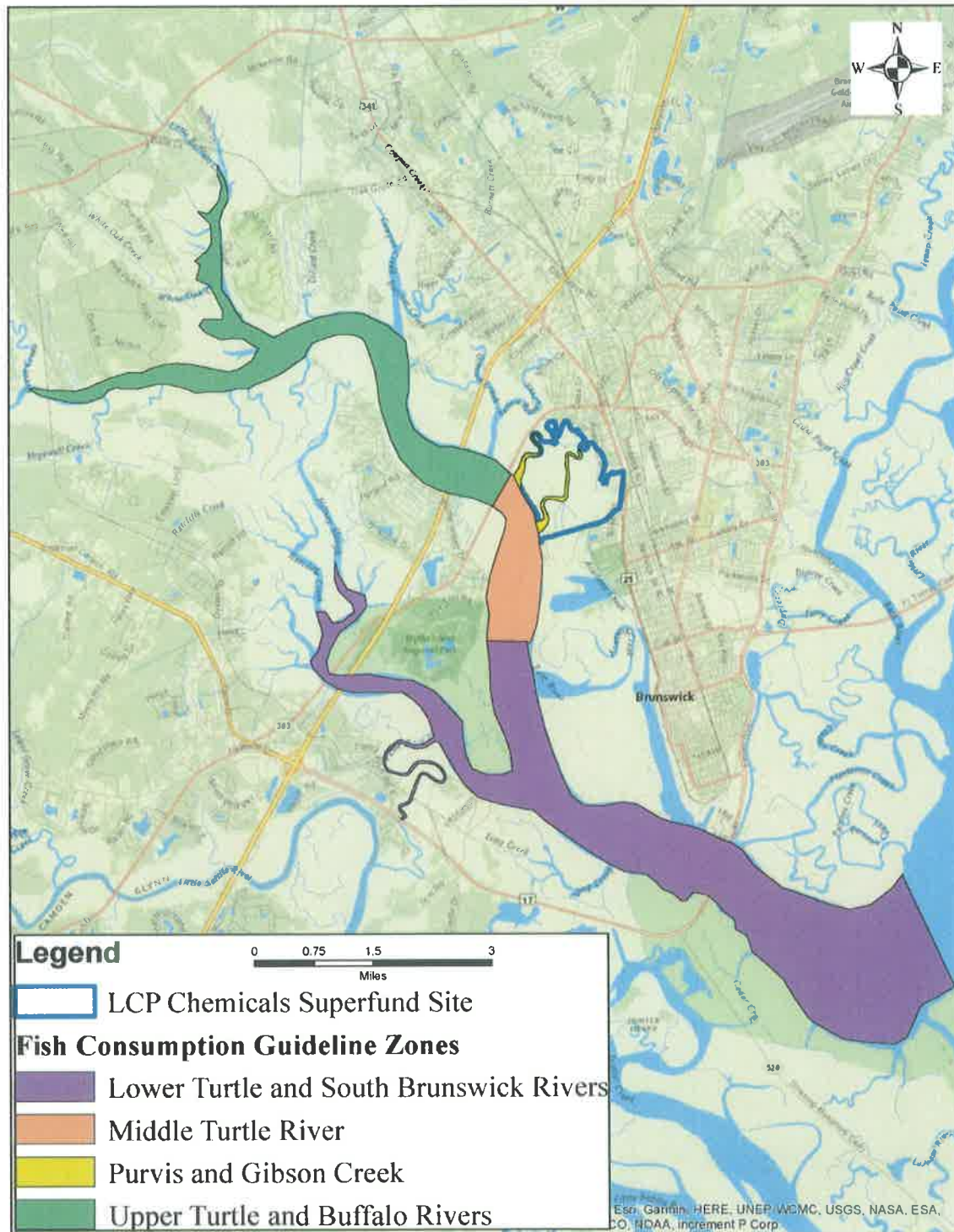
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APPENDIX A



APPENDIX B

Georgia Power Company, including its successors and assigns.