

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

Filed July 30, 2020 @ 12:15pm

USEPA – Region II

Regional Hearing Clerk

In the Matter of:

**Honeywell International Inc. -
Buffalo Research Laboratory**

Respondent,

Proceeding Under Section 3008 of the
Resource Conservation and Recovery
Act as amended.

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No. RCRA-02-2020-7101

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6901 *et seq.* (referred to collectively as the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at Title 40 of the Code of Federal Regulations ("C.F.R.") Parts 260-273 and 279.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York has been authorized by EPA to conduct hazardous waste programs ("authorized state program"). Pursuant to 40 C.F.R. § 22.13(b), where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions.

EPA has given notice of this action to the State of New York.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent

1. Respondent is Honeywell International, Inc. ("Honeywell"), a for profit corporation incorporated in Delaware.
2. Respondent's Headquarters are located on 300 S. Tryon St., Suite 500, Charlotte, NC 28202.
3. Respondent is a "person" as that term is defined in Section 1004 (15) of the Act, 42 U.S.C. § 6903(15), and 6 New York Code of Rules and Regulations ("6 NYCRR") § 370.2(b).
4. Respondent has been conducting operations at its Honeywell Buffalo Research Laboratory (hereinafter "BRL") located at 20 Peabody Street in Buffalo, New York (the "Facility") since 1955.
5. Respondent conducts bench-scale research, as well as product development and pilot-scale testing of new refrigerants, foams and propellants, at its BRL Facility.
6. Respondent is and has been the "owner" and/or "operator" of the BRL Facility within the meaning of 6 NYCRR § 370.2(b).

Respondent's Generation and Management of Hazardous Waste

7. Respondent, in the course of carrying out bench-scale research, product development and pilot-scale testing, generates "solid waste" and "hazardous waste" at its BRL Facility, as those terms are defined in of 6 NYCRR § 371.1(c).
8. Respondent is and has been a "generator" of hazardous waste at its BRL Facility, as that term is defined in in 6 NYCRR § 370.2(b).
9. During at least July 2018, Respondent generated more than 1,000 kilograms ("kgs") of hazardous waste in a calendar month at its BRL Facility.

EPA Investigative and Enforcement Activities Related to Settlement

10. On July 11 and 12, 2018, duly designated representatives of EPA inspected Respondent's Facility pursuant to Section 3007 of the Act, 42 U.S.C. § 6927 to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations, including New York State's federally authorized hazardous waste regulations (the "Inspection").
11. On or about September 1, 2018, EPA sent Respondent a copy of its Inspection Report, which included a summary of EPA's findings ("EPA's Inspection Findings") and requested that Respondent submit a response to EPA's Inspection Findings.

12. On or about October 12, 2018, Respondent submitted a response to EPA's Inspection Findings.
13. In response to the EPA's Inspection Findings, Respondent informed EPA that it took the following measures to address the findings:
 - a. Respondent corrected each finding at the time of the Inspection to the extent practicable, and corrected the remainder promptly thereafter;
 - b. Respondent communicated the findings to its leadership team and facility employees on multiple occasions;
 - c. Respondent revised its inspection checklists to ensure that they expressly included the findings; and
 - d. Respondent implemented a regime of weekly inspections of their laboratories designed to promote continuous compliance with applicable requirements.
14. Based on the Inspection and Respondent's response to EPA's Inspection Findings, EPA determined that Respondent, during July 2018 at its BRL Facility, failed to:
 - a. make hazardous waste determinations as required by 6 NYCRR § 372.2(a)(2);
 - b. minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents as required by 6 NYCRR 373-3.3(b); and
 - c. meet all of the conditions that would have allowed the storage of hazardous waste for a limited duration of time without a permit and stored hazardous waste without interim status or a permit in violation of 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2(a).
15. On October 24, 2019, EPA sent a letter to Respondent to determine its interest in pre-filing discussions regarding the violations EPA identified.
16. On December 5, 2019, EPA and Respondent had an informal settlement conference and agreed to settle this matter as provided herein.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional basis for EPA prosecuting this case; (b) neither admits nor denies EPA's Findings of Fact and Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the

provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order ("CA/FO") shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the "effective date").

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18, Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter comply with RCRA and all applicable New York State federally authorized hazardous waste regulations relating to the generation and storage of hazardous waste at its BRL Facility, including:
 - a. making hazardous waste determinations for solid waste generated at its Facility as required by 6 NYCRR § 372.2(a)(2);
 - b. minimizing the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents as required by 6 NYCRR 373-3.3(b); and
 - c. meeting all conditions that allow for the storage of hazardous waste for a limited duration without a permit or applying for and obtaining a hazardous waste permit from the State of New York.
2. Respondent hereby certifies that, as of the date of its signature to this Agreement, to the best of its knowledge and belief, it is in compliance with all the RCRA requirements referenced in Paragraph 14 of EPA's Findings of Facts and Conclusions of Law of this CA/FO.
3. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local laws and regulations relating to any generation, management, treatment, storage, transport or offering for transport, or disposal of hazardous waste by the Respondent.
4. Respondent shall pay a civil penalty to EPA in the total amount of **fifty thousand dollars (\$50,000)** in one installment. Such payment shall be made by cashier's or certified check or by electronic fund transfer (EFT).

If the payment is made by check, then the check shall be made payable to the **Treasurer, United States of America**, and shall be mailed to:

**U.S. Environmental Protection Agency
Fines and Penalties Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000**

The check shall be identified with a notation thereon listing the following: ***In the Matter of Honeywell International Inc. - Buffalo Research Laboratory*** and shall bear thereon the **Docket No. RCRA-02-2020-7101**.

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment - **\$50,000**.
 - b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045**.
 - c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**.
 - d. Federal Reserve Bank of New York ABA routing number: **021030004**.
 - e. Field Tag 4200 of the Fedwire message should read: **D 8010727 Environmental Protection Agency**.
 - f. Name of Respondent and Matter: **Honeywell International Inc. — Buffalo Research Laboratory**.
 - g. Docket Number: **RCRA 02-2020-7101**.
5. The payment of \$50,000 must be received at the above address (or account of EPA) on or before thirty (30) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO.
- a. Failure to pay the requisite civil penalty amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
 - b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date any payment was to have been made, in which payment of the amount remains in arrears.
 - c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for any payment. Any such non-payment penalty charge on the debt will accrue from the date any penalty payment becomes due and is not paid.
 - d. The civil penalty provided for herein constitutes a "penalty" within the meaning of 26 U.S.C. § 162(f) and is not a deductible expenditure for purposes of federal or state law.

6. Complainant shall email to Respondent (to the representative designated in Paragraph 7 of this Consent Agreement, *infra*) a copy of the fully executed CA/FO. Respondent consents to service of the CA/FO by email and consents to service upon it by an employee of EPA other than the Regional Hearing Clerk.
7. Except as the parties may agree otherwise in writing, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent both by email and hardcopy to:

James Sullivan, Enforcement Officer
Enforcement & Compliance Assurance Division
US Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866
Sullivan.James@epa.gov

a n d

Jeannie M. Yu, Assistant Regional Counsel
Office of Regional Counsel
US Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
Yu.Jeannie@epa.gov

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall send any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent either by email or United States mail to the following address:

Nelson Johnson, PhD
Senior Counsel
Arnold & Porter
250 West 55th Street
New York, New York 10019-9710
Nelson.Johnson@ArnoldPorter.com

8. Full payment of the penalty described in Paragraphs 4 and 5 of the Consent Agreement, shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts described in Paragraph 14 of EPA's Findings of Fact and Conclusions of Law. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

9. The provisions of this Consent Agreement shall be binding upon Respondent, and its successors or assigns.
10. Respondent waives its right to request or to seek any hearing in this matter including one on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or EPA's Findings of Fact and Conclusions of Law, above.
11. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted during this proceeding.
12. Each party hereto agrees to bear its own costs and attorney's fees in this matter.
13. The undersigned signatory for Respondent certifies that he\she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
14. EPA and Respondent agree that the parties may use electronic signatures for this matter.

In the Matter of Honeywell International Inc. - Buffalo Research Laboratory
Docket Number: RCRA 02-2020-7101

RESPONDENT:

BY: 
2DCBDDC88FB941A

NAME: George S Koutsaftes
(PLEASE PRINT)

TITLE: President, Advanced Materials

COMPLAINANT:

Dore LaPosta, Director
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866



**In the Matter of Honeywell International Inc. - Buffalo Research Laboratory Docket
Number: RCRA 02-2020-7101**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

By email:

Office of the Regional Hearing Clerk
Regional Hearing Clerk
U.S. Environmental Protection Agency,
Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
maples.karen@epa.gov

Copy by email:

Nelson Johnson, PhD
Senior Counsel
Arnold & Porter
250 West 55th Street
New York, New York 10019-9710
nelson.johnson@arnoldporter.com

Yolanda Majette, 7/30/2020

Yolanda Majette, WTS Branch Secretary

In the Matter of Honeywell International Inc. - Buffalo Research Laboratory
Docket Number: RCRA 02-2020-7101

COMPLAINANT:

**KATHLEEN
ANDERSON**

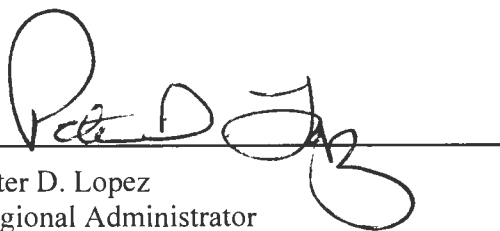
Digitally signed by KATHLEEN
ANDERSON
Date: 2020.07.15 09:03:40 -04'00'

Dore LaPosta, Director
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

In the Matter of Honeywell International Inc. - Buffalo Research Laboratory
Docket Number: RCRA 02-2020-7101

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Honeywell International Inc. - Buffalo Research Laboratory*, bearing Docket No. RCRA-02-2020-7101. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

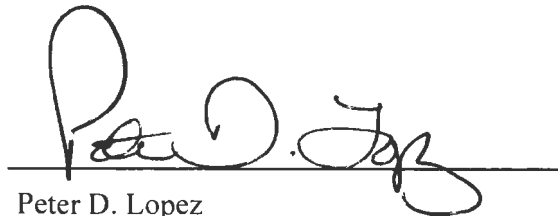
A handwritten signature in black ink, appearing to read "Peter D. Lopez", is written over a horizontal line. The signature is stylized and cursive.

Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

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Peter D. Lopez
Regional Administrator
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Yolanda Majette, 7/30/2020

Yolanda Majette, WTS Branch Secretary