

Clean Machine Car Wash.

2. Defendant Honeywell is liable to ECARG, Inc. ("ECARG") for injunctive relief under Count 1 of ECARG's Third Amended Cross-Claims, pursuant to Section 7002 (a)(1)(B) of RCRA, with respect to the property designated as Lot 14H and Lot 14J in Tax Block 1290A, Jersey City, Hudson County, New Jersey (hereinafter, "the ECARG Property"). W.R. Grace & Co.'s claim under Count I is dismissed.

3. Having found that the approximately one million tons of chrome ore processing residue ("COPR") that Honeywell's predecessor, Mutual Chemical Company ("Mutual"), disposed of at the Site "may present an imminent and substantial endangerment to health or the environment" within the meaning of 42 U.S.C. § 6972(a)(1)(B), Honeywell shall, in accordance with the procedures set forth herein: (a) excavate, remove, treat and dispose off-site all COPR, soil and other materials at the Site containing greater than 240 parts per million ("ppm") hexavalent chromium; (b) promptly and completely replace all removed COPR, soil and other materials which are excavated and removed with clean fill; (c) in connection with the excavation and replacement of all COPR, soil and other materials containing greater than 240 ppm hexavalent chromium, promptly implement such hydraulic controls in the vicinity of the eastern border of the Site as may be necessary to prevent re-contamination of the Site by ground water flow from the area known as "Study Area 5" located to the east of the Site; and (d) remedy all chromium contaminated sediments in the Hackensack River in the vicinity of the Site containing chromium at levels at or exceeding NJDEP's ERM toxicity screening level of 370 ppm.

4. Having found that the contaminated deep groundwater at the Site "may present an imminent and substantial endangerment to health or the environment" within the meaning of 42

U.S.C. § 6972(a)(1)(B), Honeywell shall, test and fully delineate the extent of chromium contamination in deep groundwater at the Site in order to ensure that this contaminated water does not discharge to the Hackensack River, or flow to any fresh water aquifer that is used as a water supply, or to the bedrock. If it is found that chromium contaminated deep groundwater beneath the Site is discharging or threatening to discharge, into the Hackensack River or any other surface water body, or is migrating, or threatening to migrate into the bedrock or an area of a freshwater aquifer that is used as a drinking water supply, Honeywell must take appropriate remedial actions necessary to prevent such discharge or migration. Depending on these test results, the Court will enter a further injunctive order setting forth the appropriate relief. The Court will rely upon the tests and the recommendation of the Special Master in determining appropriate relief.

5. The Court finds that the complexity of this case and the technical nature of the remedial relief ordered herein warrant the appointment of a Special Master under Rule 53 of the Federal Rules of Civil Procedure. The Special Master shall have total oversight responsibility for all aspects of Honeywell's timely, prompt, efficient and complete compliance with the injunctive relief issued against Honeywell pursuant to 42 U.S.C. §6972(a)(1)(B) as set forth herein, and as is consistent with this Court's Amended Opinion, and shall report to the Court on the compliance of Honeywell at least every sixty days. The Special Master and those retained by him shall receive reasonable compensation for their time and expenses from Honeywell as determined by the Court.

6. Within thirty days of the date of entry of the Court's Order of May 20, 2003 appointing the Special Master, the parties shall meet with the Special Master to formulate a work plan ("Work Plan") including a detailed time schedule with benchmark dates for (a) the excavation, removal, treatment and off-site disposal of all COPR, soil and other materials at the Site containing greater

than 240 parts per million (“ppm”) hexavalent chromium; (b) the backfilling of the Site with clean fill; (c) the installation of hydraulic controls in the vicinity of the eastern portion of the Site as may be necessary to prevent re-contamination of the Site by ground water flow from Study Area 5; (d) the further testing and full delineation of the extent of chromium contamination in deep groundwater at the Site; and (e) the remediation of the chromium contaminated sediments in the Hackensack River in the vicinity of the Site containing chromium contamination at levels exceeding 370 ppm. The Work Plan shall specifically set forth the means by which human health and the environment shall be fully protected during the remediation process that is being ordered hereunder.

7. The Special Master shall, within thirty days of completion of the Work Plan, submit a report to the Court and the parties as to the details of the Work Plan and time schedules contained herein.

8. Upon consideration of the Special Master’s report referenced in paragraph 7, the Court will enter an order specifying the manner and time in which Honeywell shall perform (a) the excavation, removal, treatment and off-site disposal of all COPR, soil and other materials at the Site containing greater than 240 parts per million (“ppm”) hexavalent chromium; (b) the backfilling of the Site with clean fill; (c) the installation of hydraulic controls in the vicinity of the eastern portion of the Site as may be necessary to prevent re-contamination of the Site by ground water flow from Study Area 5; (d) the further testing and full delineation of the extent of chromium contamination in deep groundwater at the Site; and (e) the remediation of the chromium contaminated sediments in the Hackensack River in the vicinity of the Site containing chromium contamination at levels exceeding 370 ppm.

9. During Honeywell's performance of the work required under the provisions of this Judgment, Honeywell shall submit monthly progress reports to the Special Master and the parties no later than the 15th day of each month.

10. Within sixty days of the date of the entry of this Court's Order of May 15, 2003 (the "May 15 Order"), Honeywell shall provide financial assurances in an amount to be determined by the Special Master, as approved by this Court, in order to assure that the remedy and deep ground water study ordered hereunder will be performed.

11. Having prevailed on their RCRA claims, Plaintiffs and ECARG are entitled to an award against Honeywell for all attorneys' fees, costs and expenses they have incurred in furtherance of their RCRA claims in this action. The time for submission of their petition for such fees and costs, in accordance with Rule 54(d) of the Federal Rules of Civil Procedure and Local Rule 54.2 of this Court, is extended to and including sixty days from the date of entry of the May 15 Order.

12. Having found that W.R. Grace & Co., W.R. Grace, Ltd., and ECARG, Inc. ("Grace Defendants") and Roned of Jersey City, Inc. ("Roned") did not dispose of any COPR at the Site, the RCRA claim asserted by Plaintiffs against the Grace Defendants and Roned and the RCRA claim asserted by Honeywell against W.R. Grace & Co. and ECARG be and are hereby dismissed with prejudice.

ECARG'S AND W.R. GRACE & CO.'S STRICT LIABILITY CLAIMS

13. W. R. Grace & Co.'s claim under Count V of Grace Defendants' Third Amended Cross-Claims is dismissed. Honeywell is strictly liable to ECARG under Count V of Grace Defendants' Third Amended Cross-Claims for all harm ECARG has incurred or may incur as a result

of Mutual's disposal and failure to remove the COPR which exists at the ECARG Property. The Court hereby awards ECARG the following relief under Count V of Grace Defendants' Third Amended Cross-Claims:

A. Damages

- (1) Demolition Costs - \$630,500.00 for the costs ECARG incurred in connection with the demolition of the Goodrich (Valley Fair) Building, which was necessitated due to severe structural damage caused by heaving COPR;
- (2) Site Security - \$132,000.00 for the costs ECARG incurred in providing security at the Site (consisting of \$32,000.00 for fence work, \$87,500.00 for guard dogs and \$12,300.00 for property caretaker);
- (3) Chromium Contaminated Soil - Incremental Cost - \$126,000.00 for the incremental cost increase incurred by ECARG in the disposal of chromium contaminated soil at an off-site licensed hazardous waste disposal facility;
- (4) Certain IRMs - \$89,750.00 for the costs incurred by ECARG for certain interim remedial measures that were installed at the Site to address the chromium contamination;
- (5) Real Estate Taxes - \$229,900 for real estate taxes paid with respect to the ECARG Property;
- (6) Lost Rents - 5/90 through 12/97 - \$2,810,955.39 for ECARG's lost rents during the period from May 1990 to December 1997;
- (7) Prejudgment Interest - 5/90 to 12/97 Lost Rents - ECARG is entitled to an award of prejudgment interest on its (5/90 through 12/97) lost rent claim in the amount of \$1,438,556.75 through April 30, 2003, with *per diem* interest of \$222.75/day through the date of entry

of Judgment in this matter;

(8) The amount of ECARG's lost rents for the period 5/90 through 12/97 and prejudgment interest thereon through April 30, 2003 (totaling \$4,249,512.14) should be reduced by a sum not to exceed \$97,730.70. The actual amount of the credit to Honeywell shall equal the amount ECARG actually collects as a result of the back rent award in the *Weja* decision.

(9) Lost Rents 1/98 through 4/03 - \$2,412,000 for ECARG's lost rents during the period from January 1998 to April 2003;

(10) Prejudgment Interest - 1/98 through 4/03 Lost Rents - ECARG is entitled to an award of prejudgment interest on its (1/98 through 4/03) lost rent claim in the amount of \$344,156.83 through April 2003 with *per diem* interest of \$198.25/day through the date of entry of Judgment in this matter;

(11) Future Rents - Honeywell is to pay ECARG the amount of \$37,687.50 per month for lost future rents, from May 1, 2003 forward, to be paid monthly by Honeywell on the first of each month from the date Judgment in this matter is entered until the date that the excavation, removal and back filling of the ECARG Property is complete. Completion is to be determined by the Special Master and approved by the Court.

(12) Future Real Estate Taxes - Honeywell is to pay ECARG an amount equal to all future real estate taxes on the ECARG Property as they become due from the date Judgment in this matter is entered until the date that the excavation, removal and back filling of the ECARG Property is complete. Completion is to be determined by the Special Master and approved by the Court.

B. Injunction

Honeywell is required to:

- (1) Excavate, remove, treat and dispose off-site all COPR at the ECARG Property and backfill the ECARG Property with clean soil such that the 240 ppm hexavalent chromium residential soil cleanup level is attained throughout all of the ECARG Property; and
- (2) Establish hydraulic controls in the vicinity of the eastern boundary of the Site such that contaminated groundwater from Study Area 5 does not re-contaminate the ECARG Property; and
- (3) Test and fully delineate the extent of chromium contamination in deep groundwater at the ECARG Property in order to ensure that this contaminated water does not discharge to the Hackensack River, or flow to any fresh water aquifer that is used as a water supply, or to the bedrock. If it is found that chromium contaminated deep groundwater beneath the ECARG Property is discharging or threatening to discharge, into the Hackensack River or any other surface water body, or is migrating, or threatening to migrate into the bedrock or an area of a freshwater aquifer that is used as a drinking water supply, Honeywell shall take appropriate remedial actions necessary to prevent such discharge or migration. Depending on these test results, the Court will enter a further injunctive order setting forth the appropriate relief. The Court will rely upon the tests and the recommendation of the Special Master in determining appropriate relief; and
- (4) Remediate chromium contaminated sediments in the Hackensack River in the vicinity of the Site such that the ERM of 370 ppm is attained for such sediments.

C. Special Master

The Court will appoint a Special Master under the terms as set forth above.

D. Financial Assurances

The Court will require financial assurances from Honeywell as set forth above.

E. Indemnification

The Court awards W.R. Grace & Co. and ECARG a declaratory judgment under Count V and Count XII of Grace Defendants' Third Amended Cross-Claims, pursuant to 28 U.S.C. §§ 2201 and 2202 and the Uniform Declaratory Judgments Law, N.J.S.A. 2A:16-50 *et seq.*, awarding W.R. Grace & Co. and ECARG full, total and complete indemnification from Honeywell for any and all future costs and/or liabilities that W.R. Grace & Co. and ECARG may incur in connection with or arising out of the COPR or other chromium contamination at the Site, including, but not limited to, any and all liabilities and/or costs (including defense costs) that may be incurred by ECARG in connection with or as a result of any third-party claim relating to any COPR or other chromium contamination at, near or from the ECARG Property.

GRACE DEFENDANTS' CERCLA §107 CLAIM

14. Honeywell is liable to ECARG and W.R. Grace & Co., under Count II of Grace Defendants' Third Amended Cross-Claims, pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), for all "costs of response" ECARG and W.R. Grace & Co. have incurred at the Site. The "costs of response" for which Honeywell is liable to ECARG and W.R. Grace & Co. Under CERCLA are:

- (a) \$132,000.00 for costs incurred in providing security at the Site (consisting of \$32,200.00 for fence work, \$87,500.00 for guard dogs, and \$12,300 for a property caretaker);
- (b) \$126,000.00 which is the incremental cost increase incurred in the

disposal of chromium contaminated soil at an off-site hazardous waste disposal facility in connection with the cleanup of the gas station/car wash property; and

(c) \$89,750.00 which represents a portion of the cost of certain interim remedial measures that were installed at the Site to address the chromium contamination.

15. Having found that all elements of Honeywell's liability under CERCLA § 107(a) have been established, the Court enters a declaratory judgment under County XII, pursuant to 28 U.S.C. §§ 2201 and 2202 and CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2), declaring that Honeywell is strictly and jointly and severally liable for any and all future "costs of response" that W.R. Grace & Co. and/or ECARG may incur at the ECARG Property consistent with the NCP.

CERCLA §113 CLAIMS

16. Having found in favor of W.R. Grace & Co. and ECARG on Count II of Grace Defendants' Third Amended Cross-Claims (CERCLA §107), Count III of Grace Defendants' Third Amended Cross-Claims (CERCLA §113) be and is hereby dismissed as moot.

17. Having found that Honeywell is strictly liable to W.R. Grace & Co. and ECARG on Grace Defendants' CERCLA §107 claim, Honeywell's CERCLA §113 claim against the Grace Defendants in Count I of its Second Amended Cross-Claims be and is hereby dismissed with prejudice.

NEW JERSEY SPILL ACT CLAIMS

18. Honeywell is strictly liable to W.R. Grace & Co. and ECARG under Count IV of Grace Defendants' Third Amended Cross-Claims, pursuant to N.J.S.A. 58:10-23.11.g.c.1 and/or 58:10-23.11.f.2, for all "cleanup and removal costs" they have incurred at the ECARG Property.

These costs are:

(a) \$132,000.00 for costs incurred in providing security at the Site (consisting of \$32,200.00 for fence work, \$87,500.00 for guard dogs and \$12,300.00 for property caretaker);

(b) \$126,000.00 which is the incremental cost increase incurred in the disposal of chromium contaminated soil at an off-site hazardous waste disposal facility in connection with the cleanup of the gas station/car wash property; and

(c) \$89,750.00, which represents a portion of the cost of certain interim remedial measures that were installed at the Site to address the chromium contamination.

19. To avoid the necessity of re-litigating the issue of Honeywell's liability under the Spill Act for any future costs that may be incurred at the Site, the Court enters a declaratory judgment under Count XII, pursuant to 28 U.S.C. §§ 2201 and 2202 and the Uniform Declaratory Judgment Law, N.J.S.A. 2A:16-50 *et seq.*, declaring Honeywell strictly liable to W.R. Grace & Co. and ECARG for any and all future "cleanup and removal costs" they may incur in connection with COPR or other chromium contamination at the Site.

20. Honeywell's Spill Act claim against ECARG in Count II of Honeywell's Second Amended Cross-Claims be and is hereby dismissed with prejudice.

ECARG'S LICENSE AGREEMENT CLAIM

21. The Court enters a declaratory judgment under Counts VIII, IX and XII of Grace Defendants' Third Amended Cross-Claims, pursuant to paragraph 4.7 of the License Agreement, declaring that Honeywell must conduct a remediation of all hexavalent chromium contamination at the ECARG Property to the New Jersey 240 ppm residential cleanup level and thereafter promptly and completely backfill the ECARG Property with clean fill.

ECARG'S AND W.R. GRACE & CO.'S NEGLIGENCE CLAIMS

22. ECARG's and W.R. Grace & Co.'s negligence claims against Honeywell, as set forth in Count VII of Grace Defendants' Third Amended Cross-Claims, having been found by the Court to be time barred, be and are hereby dismissed with prejudice.

ECARG'S CLAIMS FOR INDEMNITY AND CONTRIBUTION

23. Under Count X of Grace Defendants' Third Amended Cross-Claims, pursuant to New Jersey common law, Honeywell shall fully, totally and completely indemnify W.R. Grace & Co. and ECARG for any and all costs, including attorneys fees, that W.R. Grace & Co. and ECARG may incur as a result of or in connection with any relief granted to Plaintiffs against W.R. Grace & Co. and ECARG.

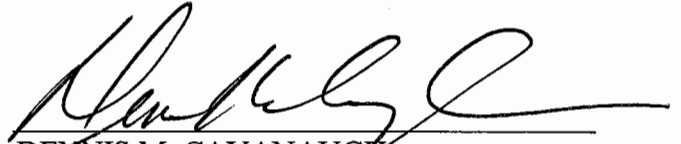
24. Under Count XI of Grace Defendants' Third Amended Cross-Claims, pursuant to the New Jersey Joint Tortfeasors Contribution Law, N.J.S.A. 2A:53A-1, et seq., Honeywell shall contribute and pay to W.R. Grace & Co. and ECARG 100% of any and all costs, including attorney fees, that W.R. Grace & Co. and ECARG may incur as a result of or in connection with any relief granted to Plaintiffs against W.R. Grace & Co. and ECARG.

**HONEYWELL'S CLAIMS FOR CONTRIBUTION
AND DECLARATORY JUDGMENT**

25. Counts III and IV of Honeywell's Second Amended Cross-Claims against W.R. Grace & Co. and ECARG for contribution and declaratory judgment be and are hereby dismissed with prejudice.

CONTINUING JURISDICTION

26. The Court will retain jurisdiction in this matter until such time as the Court shall, by separate order, relinquish jurisdiction.



DENNIS M. CAVANAUGH
United States District Judge