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## COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
PIEDMONT REGIONAL OFFICE

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Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

Michael P. Murphy  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
HONEYWELL RESINS & CHEMICALS LLC  
FOR  
HONEYWELL RESINS & CHEMICALS LLC, HOPEWELL SITE  
VPDES Permit No. VA0005291**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Honeywell Resins & Chemicals LLC regarding the Honeywell Resins & Chemicals LLC, Hopewell Site for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" means Honeywell Resins & Chemicals LLC's Hopewell Plant located at 905 E. Randolph Road, Hopewell, Virginia that discharges effluent from Honeywell's business operations. The Facility has multiple outfalls including Outfall 001, Outfall 002 and Outfall 003. Outfall 001 at the Facility discharges mostly non-treated water, mainly composed of non-contact cooling water into Gravelly Run. Outfall 002 at the Facility discharges non-treated water, composed of mostly non-contact cooling water into an unnamed tributary ("UT") to Gravelly Run. Outfall 003 at the Facility discharges mostly non-treated water, the majority of which is non-contact cooling water into Poythress Run. Discharges from these outfalls are permitted under VPDES Permit No. VA0005291.
10. "Honeywell" means Honeywell Resins & Chemicals LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Honeywell is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "O&M" means operations and maintenance.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES Permit No. VA0005291, which was reissued under the State Water Control Law and the Regulation to Honeywell on September 30, 2008 and was administratively continued on June 13, 2013.
15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials,

radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "TMDL" means total maximum daily load.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VDH" means the Virginia Department of Health.
25. "VPDES" means Virginia Pollutant Discharge Elimination System.
26. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Honeywell owns and operates the Facility. The Facility has multiple outfalls including Outfall 001, Outfall 002 and Outfall 003. Outfall 001 at the Facility discharges mostly non treated water, mainly composed of non-contact cooling water into Gravelly Run. Outfall 002 at the Facility discharges non treated water, composed of mostly non-contact cooling water into Gravelly Run UT. Outfall 003 at the Facility discharges mostly non treated water, the majority of which is non-contact cooling water into Poythress Run. VPDES Permit No. VA0005291 allows Honeywell to discharge via Outfalls 001, 002 and 003, in strict compliance with the terms and conditions of the Permit.
2. Gravelly Run, UT to Gravelly Run, and Poythress Run are the receiving bodies (James River Basin (“Lower James”)). During the 2010 305(b)/303(d) Integrated Water Quality Assessment, the receiving streams were considered fully supporting of the Aquatic Life Use and fully supporting with observed effects for the Fish Consumption Use due to a VDH advisory for kepone. The Recreation and Wildlife Uses were not assessed.

Honeywell was included in the Chesapeake Bay TMDL, which was approved by the Environmental Protection Agency (“EPA”) on December 29, 2010. The TMDL addresses dissolved oxygen and submerged aquatic vegetation impairments in the Chesapeake Bay and its tidal tributaries by allocating total nitrogen, total phosphorus, and total suspended solids to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. The Facility is included in the aggregated wasteload allocations for significant nutrient dischargers in the lower tidal freshwater James River estuary (“JMSTF1”).

The Facility was also addressed in the James River and Tributaries – Hopewell to Westover Bacterial TMDL, which was approved by the EPA on July 10, 2008, and by the State Water Control Board on April 28, 2009, and was subsequently modified on July 7, 2009. The discharge does not have an assigned E. coli wasteload allocation.

The receiving waters are considered Tier 1 and antidegradation has not been applied.

3. In submitting its DMRs, as required by the Permit, Honeywell indicated that it exceeded discharge limitations contained in Part I.A of the Permit, for TSS, at Outfall 101, during the month of January 2013. Honeywell indicated that it had done a thorough investigation and did not believe Facility operations were responsible for the high TSS, and speculated that high solids in the river water cooling system, or sample contamination could have caused the high TSS.
4. On February 14, 2013, Honeywell submitted the toxicity test report which was due under Part I.B of the Permit on January 10, 2013.
5. In submitting its DMRs, as required by the Permit, Honeywell indicated that it exceeded discharge limitations contained in Part I.A of the Permit, for BOD<sub>5</sub>, at Outfall 101, during the month of March, 2013. Honeywell indicated a process upset during the shutdown procedure of the cyclohexanone/ammonium sulfate stripper (“TW-20”) caused the exceedance, and that multiple actions to resolve the issues with TW-20 were taken.

6. On May 4, 2013, Honeywell verbally reported that on that same day Honeywell staff observed dead fish in Gravelly run. DEQ staff inspected the Facility that same day and observed dead fish in Gravelly run.
7. On May 6, 2013, Honeywell verbally reported there was an unpermitted discharge of phenol on May 3-4, 2013, through Outfall 002 during start up activities of a phenol purification column.
8. On May 6, 2013, DEQ staff inspected the Facility and found 663 dead fish in Gravelly Run.
9. On May 10, 2013, Honeywell submitted a five day written report confirming a discharge of phenol to Outfall 002 from the Phenol Purification Area in Plant Area 6. Honeywell stated the discharge was a release of 610 pounds of phenol from a containment area during start up activities of a phenol purification column ("CL-46"). The phenol entered a clear water sewer resulting in the discharge from Outfall 002 to Gravelly Run starting May 3, 2013. The written report also confirmed the observed dead fish in Gravelly Run on May 4, 2013.
10. In submitting its DMRs, as required by the Permit, Honeywell failed to timely submit data for parameter 859 (Dissolved Oxygen minimum concentration; February through May), parameter 861 (Dissolved Oxygen monthly average minimum concentration; February through May) and parameter 863 (Dissolved Oxygen weekly average minimum concentration; February through May) during the month of May, 2013.
11. On June 20, 2013, PRO issued NOV No. W2013-06-P-0002 to Honeywell for the violations listed above.
12. On June 28, 2013, Honeywell submitted revised DMRs to correct the data entry errors for the month of May, 2013.
13. On July 16, 2013, Department staff met with representatives of Honeywell to discuss the violations, including Honeywell's written responses. Honeywell indicated corrective measures had been implemented at the Facility to prevent the violations in the future.
14. On July 30, 2013, Honeywell submitted a written list of the corrective measures that had been taken to date at the Facility to prevent similar violations to those listed above. These measures included revising the CL-46 pre-startup check sheet, conducting a process hazard analysis ("PHA") on CL-46, installing new interlocks on level and pressure on CL-46, adding new alarms on the equipment for CL-46 and requiring peer review of completed DMR forms before submission to the plant manager. Honeywell has revised the startup procedures for CL-46, and is upgrading containment around CL-46.

15. Va. Code § 62.1-44.5 states that except in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
16. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
17. The Regulation, at 9 VAC 25-260-20(A) states “[s]tate waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”
18. Va. Code § 62.1-44.5(B), 9 VAC 25-31-50(B), and VPDES Permit No. VA005291 Part II.G require a written report of the unauthorized discharge to be submitted by the owner, to the department, within five days of discovery of the discharge.
19. VPDES Permit No. VA005291 Part I.A states that discharges shall be limited and monitored by the permittee as specified in the permit and includes the required frequency of analysis as once per day via grab sample for parameters 859, 861 and 863 at permitted outfalls 001, 002 and 003.
20. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
21. The Department has issued no other VPDES individual permits or certificates to Honeywell for discharges from the Facility other than VPDES Permit No. VA005291.
22. Gravelly Run, Gravelly Run UT, and Poythress Run, and the James River are surface waters located wholly within the Commonwealth and are “state waters” under State Water Control Law.
23. Based on the documentation submitted by Honeywell the Board concludes that Honeywell has violated the Permit and Va. Code § 62.1-44.5, 9 VAC 25-31-50, and 9 VAC 25-260-20(A) by discharging wastes from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(10), above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Honeywell and Honeywell agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of \$27,302 within 30 days of the effective date of the Order in settlement of the violations cited in this Order; and
3. Pay the fish replacement cost of \$2,387.44 within 30 days of the effective date of the Order in settlement of the violations cited in this Order; and
4. Pay investigative costs of \$1,573.86 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

5. Honeywell shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Honeywell shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Honeywell for good cause shown by Honeywell or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Honeywell admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Honeywell consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Honeywell declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other

administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Honeywell to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Honeywell shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Honeywell shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Honeywell shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Honeywell. Nevertheless, Honeywell agrees to be bound by any compliance date which precedes the effective date of this Order.

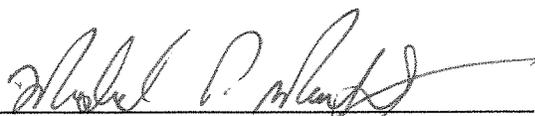
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Honeywell has completed all of the requirements of the Order;
- b. Honeywell petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Honeywell.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Honeywell from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Honeywell and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Honeywell certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Honeywell to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of Honeywell.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Honeywell voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28<sup>th</sup> day of JANUARY, 2014.

  
\_\_\_\_\_  
Michael P. Murphy, Regional Director  
Department of Environmental Quality

**APPENDIX A  
SCHEDULE OF COMPLIANCE**

Honeywell agrees to the following:

1. Within 60 days of the effective date of this Order, Honeywell shall submit to DEQ plans and specifications for the upgrade of the containment around phenol purification column CL-46, to include modifications done to date.
2. Honeywell shall complete the upgrade to containment around phenol purification column CL-46 by April 1, 2014. If Honeywell believes additional time is reasonably necessary to complete the upgrade, Honeywell may request additional time to complete the upgrade, and if DEQ approves such request, the approval shall be incorporated into this order pursuant to paragraph E (12).

**DEQ Contact**

Unless otherwise specified in this Order, Honeywell shall submit all requirements of Appendix A of this Order to:

Gina Pisoni  
Enforcement Specialist  
VA DEQ – Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060  
804-527-5156  
804-527-5106 (fax)  
[Gina.Pisoni@deq.virginia.gov](mailto:Gina.Pisoni@deq.virginia.gov)

Honeywell Resins & Chemicals LLC voluntarily agrees to the issuance of this Order.

Date: Nov 7, 2013 By: Kevin Keller, Site Manager  
(Person) (Title)  
Honeywell Resins & Chemicals LLC

Commonwealth of Virginia

City/County of Hopewell

The foregoing document was signed and acknowledged before me this 7th day of Nov, 2013, by Kevin Keller, who is Site Manager of Honeywell Resins & Chemicals LLC, on behalf of the limited liability corporation.

Mary H. Ellwood  
Notary Public

155199  
Registration No.

My commission expires: 12-31-2015

Notary seal: