

**INTERFAITH COMMUNITY
ORGANIZATION, et al.,
Plaintiff(s),**

v.

**HONEYWELL INTERNATIONAL,
INC., et al, Defendant(s).**

Civil Action No. 95-2097(DMC).

United States District Court,
D. New Jersey.

May 21, 2003.

Non-profit community organization and its members brought action against successor-in-interest to chemical manufacturer and current owners and lessees of contaminated chromium production site under Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and state law, seeking declaratory and injunctive relief. Lessee of building on site brought cross-claims against successor. The District Court, Cavanaugh, J., held that: (1) successor's activities involving chromium waste presented imminent and substantial endangerment to health and environment; (2) disposal of and failure to remove waste constituted abnormally dangerous activity; (3) successor was "covered person" under CERCLA; (4) lessee qualified for third party defense to CERCLA liability; (5) lessee's cross-claim for negligence was time-barred; and (6) successor was not entitled to contribution from lessee.

Judgment for plaintiffs.

1. Environmental Law ⇌438

Liability under Resource Conservation and Recovery Act (RCRA) requires showing that defendant has contributed to,

or is contributing to, past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste that may present imminent and substantial endangerment to health or environment. Solid Waste Disposal Act, § 7002(a)(1)(b), as amended, 42 U.S.C.A. § 6972(a)(1)(b).

2. Environmental Law ⇌445(1)

Successor-in-interest to chromium manufacturer contributed to past or present handling, storage, treatment, transportation, or disposal of solid or hazardous waste that presented imminent and substantial endangerment to health and environment, as required to hold successor liable under Resource Conservation and Recovery Act (RCRA); manufacturer used site to dispose of approximately one million tons of chromium waste, waste was cause of extensive contamination of soil, groundwater, surface water and sediments at and near site, and successor's non-compliance with environmental standards governing cleanup presented strong possibility of endangerment. Solid Waste Disposal Act, § 7002(a)(1)(b), as amended, 42 U.S.C.A. § 6972(a)(1)(b).

3. Environmental Law ⇌442

"Imminent and substantial endangerment" to environment exists, as required to establish liability under Resource Conservation and Recovery Act (RCRA), if there is reasonable cause for concern that someone or something may be exposed to risk of harm if remedial action is not taken. Solid Waste Disposal Act, § 1002 et seq., as amended, 42 U.S.C.A. § 6901 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

4. Environmental Law ⇌442

To establish liability under Resource Conservation and Recovery Act (RCRA), plaintiff need not show actual harm to

health or environment; rather, it is enough to show that such endangerment may exist. Solid Waste Disposal Act, § 1002 et seq., as amended, 42 U.S.C.A. § 6901 et seq.

5. Environmental Law ⇔442

“Endangerment” to health or environment, as required to establish liability under Resource Conservation and Recovery Act (RCRA), is present if there is merely threatened or potential harm; thus, only risk of harm, rather than actual harm, must be imminent. Solid Waste Disposal Act, § 1002 et seq., as amended, 42 U.S.C.A. § 6901 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

6. Environmental Law ⇔442

Disposal site for chromium waste presented risk of imminent danger to public health and safety and imminent and severe damage to the environment, as required to hold successor-in-interest to chromium manufacturer liable under Resource Conservation and Recovery Act (RCRA); chromium levels at waste disposal site substantially exceeded acceptable standards under New Jersey law, chromium was hazardous to humans and environment through current and future pathways, and successor’s interim remedial measures were not sufficient to abate imminent endangerment. Solid Waste Disposal Act, § 1002 et seq., as amended, 42 U.S.C.A. § 6901 et seq.; N.J.S.A. 58:10B-1 et seq.

7. Environmental Law ⇔442

To prevail on claim of “imminent and substantial endangerment” under Resource Conservation and Recovery Act (RCRA), plaintiff need not establish incontrovertible harm to health and environment; rather, plaintiff need only demonstrate that defendant’s activities *may* present such endangerment. Solid Waste

Disposal Act, § 7002(a)(1)(B), as amended, 42 U.S.C.A. § 6972(a)(1)(B).

8. Environmental Law ⇔442

“Imminent and substantial endangerment” to health or environment, for purpose of claim brought under Resource Conservation and Recovery Act (RCRA), exists when buried hazardous waste poses constant danger to groundwater. Solid Waste Disposal Act, § 7002(a)(1)(B), as amended, 42 U.S.C.A. § 6972(a)(1)(B).

9. Environmental Law ⇔445(1)

Lessee of building on property subdivided from chromium waste disposal site did not engage in disposal or other relevant activity related to waste, and thus could not be held liable under Resource Conservation and Recovery Act (RCRA); lessee did not actively manage solid or hazardous waste, passive migration of contaminants from lessee’s site did not constitute “disposal” of waste, and lessee’s removal of abandoned drums and handling and disposal of petroleum from property were unrelated to chromium waste at issue. Solid Waste Disposal Act, § 7002(a)(1)(B), as amended, 42 U.S.C.A. § 6972(a)(1)(B).

10. Negligence ⇔305

To prevail on strict liability claim under New Jersey law for disposal of hazardous waste, plaintiff must demonstrate that: (1) defendant’s disposal constituted abnormally dangerous activity, and (2) such activity has harmed plaintiff.

11. Negligence ⇔305

To determine whether defendant’s actions constitute “abnormally dangerous activity,” as may subject defendant to strict liability under New Jersey law, court must consider: (1) existence of high degree of risk of some harm to person, land or chattels of others; (2) likelihood that harm that results from it will be great; (3) inability to

eliminate risk by exercise of reasonable care; (4) extent to which activity is not matter of common usage; (5) inappropriateness of activity to place where it is carried on; and (6) extent to which its value to community is outweighed by its dangerous attributes.

12. Negligence ⇔305

Court's determination whether defendant's activity is "abnormally dangerous," as may subject defendant to strict liability under New Jersey law, must be made on case-by-case basis, taking all relevant circumstances into consideration.

13. Negligence ⇔305

Manufacturer's on-site disposal of hazardous chromium waste constituted "abnormally dangerous activity," as required to hold manufacturer's successor-in-interest strictly liable to lessee of building on site under New Jersey law; waste disposal posed high risk of harm to lessee, there was strong likelihood that degree of harm from site's contamination would be great, risks posed by disposal could not be eliminated by exercise of reasonable care, disposal was neither matter of common usage nor appropriate to place where it was carried on, and waste disposed of at site had no redeeming qualities.

14. Negligence ⇔462

Lessee of building on site contaminated by chromium waste demonstrated that it was harmed by chromium manufacturer's abnormally dangerous activity of waste disposal, as required to hold manufacturer's successor-in-interest strictly liable to lessee under New Jersey law; lessee was required to demolish building and dispose of chromium-contaminated soil, and sustained legal fees, lost rents, and loss of ability to sell or develop property.

15. Negligence ⇔554(1)

Plaintiff's "assumption of risk," as may obviate defendant's alleged negligence, requires that plaintiff knowingly and voluntarily encounter risk.

See publication Words and Phrases for other judicial constructions and definitions.

16. Negligence ⇔554(1)

For plaintiff's assumption of risk to be "voluntary and knowing," as may obviate defendant's alleged negligence, plaintiff must be shown to understand and appreciate risk.

See publication Words and Phrases for other judicial constructions and definitions.

17. Negligence ⇔554(1)

In determining whether plaintiff's assumption of risk was "voluntary and knowing," as may obviate defendant's alleged negligence, court must apply subjective test, examining what particular plaintiff in fact sees, knows, understands and appreciates.

18. Negligence ⇔1314

Lessee of building on site contaminated by chromium waste did not assume risk of contamination when it acquired property, as required to absolve strict liability of chromium manufacturer's successor-in-interest under New Jersey law for waste disposal, since lessee did not knowingly and voluntarily encounter such risk; lessee did not have actual knowledge of chromium contamination at time of lease, did not learn of contamination until subsequent year, and then fully cooperated with state agency by fencing property, conducting environmental investigation, and taking steps to identify party actually responsible for contamination.

19. Limitation of Actions ⇔55(6)

Abnormally dangerous activities attributable to manufacturer's successor-in-

interest, pertaining to on-site chromium waste contamination, constituted "continuing torts," and thus New Jersey statute of limitations pertaining to strict liability claim by lessee of building on site did not begin to accrue; presence of waste on lessee's property would have continued to cause harm until its removal or legal abatement. N.J.S.A. 2A:14-1.

20. Federal Courts ⇨415

Awards of prejudgment interest are governed by law of forum state.

21. Interest ⇨39(2.6)

Under New Jersey law, prejudgment interest begins to accrue from date on which damaged party loses use of its funds. N.J.R. 4:42-11.

22. Environmental Law ⇨438

To prevail on cost recovery claim under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), plaintiff must show that: (1) property at issue is CERCLA "facility"; (2) there has been "release" of "hazardous substance"; (3) defendant falls within at least one category of "covered persons" defined in CERCLA; (4) costs sought by plaintiff constitute recoverable "costs of response"; and (5) plaintiff is not itself liable party under CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a), 42 U.S.C.A. § 9607(a).

23. Environmental Law ⇨445(1)

Successor-in-interest to chromium manufacturer was "covered person" under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as required to hold successor liable in CERCLA cost recovery action for activities pertaining to on-site chromium waste contamination; manufacturer owned disposal site during time that it was actively disposing of waste, arranged for waste dis-

posal, and transported waste to site through above-ground conveyor. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a), 42 U.S.C.A. § 9607(a).

24. Environmental Law ⇨445(1)

Any party who owned facility at time hazardous substances were being "disposed" on property is strictly liable for response costs under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(2), 42 U.S.C.A. § 9607(a)(2).

25. Environmental Law ⇨445(1)

Section of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) imposing strict liability on "any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities" encompasses any person who has caused hazardous substance to be transported to disposal site. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(4), 42 U.S.C.A. § 9607(a)(4).

26. Environmental Law ⇨446

Lessee of building on site contaminated by chromium waste incurred recoverable costs of response under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as required to hold successor-in-interest to chromium manufacturer liable in CERCLA cost recovery action for activities attributable to contamination; lessee fenced site and took other security measures to protect unsuspecting members of public, and paid portion of cost for interim remedial measures. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 101(23, 25), 107(a), 42 U.S.C.A. §§ 9601(23, 25), 9607(a).

27. Environmental Law ⇨444, 445(1)

Lessee of building on site contaminated by chromium waste qualified for "third party" defense to liability under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and thus was entitled to bring cost recovery action against successor-in-interest to chromium manufacturer, since manufacturer was solely responsible for dumping of waste at site, and lessee exercised requisite due care with regard to waste by cooperating with state environmental agency in its attempts to compel successor to conduct investigation and remediation of property. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(b)(3), 42 U.S.C.A. § 9607(b)(3).

28. Environmental Law ⇨446

Lessee of building on site contaminated by chromium waste demonstrated that successor-in-interest to chromium manufacturer was liable in cost recovery action brought under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and thus also was entitled to recover future response costs under CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107(a), 113(g)(2), 42 U.S.C.A. §§ 9607(a), 9613(g)(2).

29. Environmental Law ⇨445(1), 446

Lessee of building on site contaminated by chromium waste demonstrated that successor-in-interest to manufacturer was responsible for hazardous substances discharged at site, as required to hold successor liable for lessee's present and future cleanup and removal costs under New Jersey Spill Act; there was undisputed evidence that manufacturer had dumped approximately one million tons of chromium waste at site, and that lessee incurred recoverable costs by installing security

fencing around site, paying for disposal of chromium-contaminated soil, and paying portion of cost for interim remedial measures. N.J.S.A. 58:10-23.11.

30. Environmental Law ⇨444, 445(1)

Lessee of building on site contaminated by chromium waste qualified for "innocent purchaser" defense to liability under New Jersey Spill Act, and thus was entitled to bring action against successor-in-interest to chromium manufacturer for present and future cleanup and removal costs, since lessee did not know and had no reason to know that any hazardous substance had been discharged at property, did not discharge chromium waste, was not in any way responsible for waste, was not corporate successor to discharger, and fully cooperated with state environmental agency upon discovery of waste. N.J.S.A. 58:10-23.11.

31. Environmental Law ⇨445(1), 447

Lessee of building on site contaminated by chromium waste qualified for "innocent purchaser" defense to liability under New Jersey Spill Act (NJSA), and thus would not be liable for contribution to successor-in-interest of chromium manufacturer that discharged waste, stemming from claims brought under NJSA against successor by other parties; lessee did not discharge waste at issue, did not know and had no reason to know of discharge prior to acquiring site, and provided timely notice to state environmental agency upon learning of discharge. N.J.S.A. 58:10-23.11g.d.(5).

32. Environmental Law ⇨439

Successor-in-interest to chromium manufacturer failed to conduct cleanup of chromium contamination at leased property to mandatory New Jersey "residential" level, and thus breached contractual obligation to lessee of building on site under license agreement requiring successor to

fully and completely comply with all applicable state laws, rules and regulations in exercise of property remediation effort and cleanup of chromium contamination. N.J.S.A. 58:10B-12, 58:10B-13.

33. Limitation of Actions ⇨95(7)

Negligence claim brought by lessee of building on site contaminated by chromium waste against successor-in-interest to chromium manufacturer, stemming from successor's alleged failure to warn lessee of contamination, began to accrue at time lessee learned of contamination, more than fifteen years prior to date claim was filed, and thus was time-barred under New Jersey statute of limitations. N.J.S.A. 2A:14-1.

34. Environmental Law ⇨447

Successor-in-interest to chromium manufacturer who sought contribution from lessee of building on site contaminated by chromium waste failed to establish substantive cross-claims against lessee under Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and New Jersey Spill Act, and thus could not maintain contribution cross-claim under New Jersey Joint Tortfeasors Contribution Law. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 107(a), 42 U.S.C.A. § 9607(a); Solid Waste Disposal Act, § 7002(a)(1)(b), 42 U.S.C.A. § 6972(a)(1)(b); N.J.S.A. 2A:53A-3, 58:10-23.11.

35. Contribution ⇨9(5)

Contribution claimant under New Jersey Joint Tortfeasors Contribution Law must allege and prove that party against whom he makes claim is "joint tortfeasor" within meaning of statute. N.J.S.A. 2A:53A-3.

36. Indemnity ⇨61

Under New Jersey law, party is entitled to common law indemnification where its liability is entirely constructive, vicarious, and not based on any fault of its own.

37. Indemnity ⇨68

In action brought under Resource Conservation and Recovery Act (RCRA) by non-profit community organization, stemming from chromium contamination on former manufacturing site, any liability on part of lessee of building on site was entirely constructive, vicarious, and not based on any fault of its own, and thus lessee was entitled to indemnification under New Jersey law from organization's claims. Solid Waste Disposal Act, § 7002(a)(1)(b), 42 U.S.C.A. § 6972(a)(1)(b).

38. Contribution ⇨5(6.1)

Successor-in-interest to chromium manufacturer against whom action was brought, stemming from contamination on former manufacturing site, was sole tortfeasor in action, and thus lessee of building on site, also named as defendant in action, could not maintain contribution cross-claim against successor under New Jersey Joint Tortfeasors Contribution Law. N.J.S.A. 2A:53A-3.

39. Injunction ⇨9

When determining whether permanent injunction should issue, court must consider: (1) success on merits; (2) possibility of irreparable harm to movant if injunction is denied; (3) potential harm to non-moving party; and (4) public interest.

40. Environmental Law ⇨700

Non-profit community organization that brought action under Resource Conservation and Recovery Act (RCRA) against successor-in-interest to chromium manufacturer, stemming from contamination on former manufacturing site, suc-

ceeded on merits of claims against successor, demonstrated that irreparable harm to public and environment would ensue if injunction were not granted, and showed that economic harm to successor from requirement that it fund permanent remedy for site did not outweigh interests of public in prompt cleanup of site, and thus permanent injunctive relief against successor, mandating remediation and cleanup of site and reimbursement of previously incurred costs, would be properly granted. Solid Waste Disposal Act, § 7002(a), 42 U.S.C.A. § 6972(a).

Robert G. Torricelli, Rosemont, NJ, Rosemont Associates, LLC, pro se.

Bruce J. Terris, Kathleen L. Millian, Steven J. German, Terris, Pravlik, and Millian, LLP, Washington, DC, Edward Lloyd, South Orange, NJ, for plaintiff.

Jeffrey Bruce Gracer, David W. Field, Lowenstein, Sandler, PC, Roseland, NJ, Timothy S. Haley, Montclair, NJ, William F. Mueller, Clemente, Mueller & Tobia, P.A., Morristown, NJ, for defendant/cross-claimant/cross-defendant.

John Michael Agnello, Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein, Roseland, NJ, Christopher H. Marraro, William F. Hughes, Wallace, King, Marraro & Branson, PLLC, Washington, DC, for defendant/cross-claimant/cross-defendant/third-party plaintiff.

AMENDED OPINION

CAVANAUGH, District Judge.

This is an action brought by Plaintiffs, Interfaith Community Organization (ICO), Lawrence Baker, Martha Webb Herring, Martha Webb, Reverend Winston Clark and Margarita Navis against Defendants,

Honeywell International, Inc. (Honeywell), Roned Realty of Jersey City, Inc. (Roned) and W.R. Grace & Co., ECARG, Inc. and W.R. Grace, Ltd. (the Grace Defendants or Grace), seeking declaratory and injunctive relief mandating the cleanup of environmental contamination at Study Area No. 7 (the Site), located in Jersey City, New Jersey. There are also various cross claims by and between Defendants.

The parties tried this matter before me without the benefit of a jury on January 14, 15, 16, 21, 22, 23, 27, 28, 29, and 30, and February 3, 4, 5, 6, and 11 of 2003. This Court is asked to decide several issues. First, does the Site in question present an imminent and substantial endangerment to health or the environment under 42 U.S.C. 6972(a)(1)(B); if so, what steps must be taken to remediate this danger; and, perhaps most importantly, which party is responsible for the remediation.

I find that the Site in question does present an imminent and substantial endangerment to health or the environment; the appropriate remediation or cleanup entails the excavation, removal, and treatment of the hazardous waste and then restoration of the Site with clean fill; and the party responsible for the remediation and associated costs of same is Honeywell International, Inc.

These and other issues will be dealt with in greater detail below, as it is now incumbent upon me to make Findings of Fact and Conclusions of Law pursuant to Fed. R.Civ.P.52(a).

FACTUAL FINDINGS REGARDING THE SITE (STUDY AREA 7)

The Site, known by the New Jersey Department of Environmental Protection (NJDEP) as Study Area 7 of the Hudson County Chromium sites, consists of three contiguous properties: Site 115 (the Roosevelt Drive-In Site), Site 120 (the

Furniture Depot, formerly Trader Horn) and Site 157 (formerly the Clean Machine Car Wash). The Site is located on Route 440 in Jersey City, Hudson County, New Jersey, adjacent to the Hackensack River (Block 1290.A, Lots 14D, 14H and 14J). The three properties consist of approximately thirty-four acres with Site 115 making up approximately thirty-one of those acres. The area surrounding the Site consists of commercial and industrial facilities and a residential development. Presently, the Roosevelt Drive-in and Clean Machine Car Wash sites are owned by ECARG, Inc., and the Trader Horn Site is owned by Roned Realty of Jersey City, Inc.

The parties have stipulated that the Site is a "facility" as that term is defined in CERCLA § 101(9), 42 U.S.C. § 9601(9) and N.J.A.C. § 7:1E-1.6.

From approximately 1895 to 1954, Mutual Chemical Company of America owned and operated a chromate production facility located across Route 440 (formerly the Morris Canal) from the Site. Until its close in 1954, this facility extracted chromium from chromium ores to produce chromate chemicals. This process generated chromium bearing waste or chromium ore processing residue which will hereinafter be referred to as COPR. Mutual acquired the property across Route 440 from its Jersey City facility for the purpose of disposing large amounts of COPR. This disposal of COPR by Mutual through a pipeline created a land mass from what was tidal wetlands. During this processing time period, Mutual generated and transported approximately one million tons of chromium contaminated COPR to the Site. The COPR is approximately fifteen to twenty feet deep, covers the entire Site and still remains at the Site today.

Approximately twenty-five percent (25%) to thirty-three per cent (33%) of the

chromium in the COPR is in the form of highly toxic hexavalent chromium. As will be discussed in great detail below and as was testified to by numerous medical and scientific experts, hexavalent chromium is a known carcinogen, and depending on one's exposure, will cause a number of health related maladies, as well as environmental problems.

THE PARTIES

Interfaith is a not for profit corporation incorporated under the laws of the State of New Jersey. The remaining individual Plaintiffs, Baker, Herring, Webb, Clarke and Navis, are concerned citizens living near the Site.

Honeywell is incorporated under the laws of the State of Delaware. Honeywell is the corporate successor to Mutual Chemical Company of America and Allied Signal, Inc., Allied Chemical & Dye Corporation, Allied Chemical Corporation, Allied Corporation, and is therefore liable for any and all acts, omissions, debts and liabilities of Mutual and Allied related to or arising out of the chromium contamination at the Site. The Allied Corporation and Honeywell International, Inc. will be referred to herein as Honeywell.

Defendant Roned Realty of Jersey City, Inc. owns the portion of the Roosevelt Drive-In Site No. 120 and designated as Lot 14D in Tax Block 1290A, Jersey City, Hudson County, New Jersey. In August, 1960, Amy Joy Realty transferred Site 120 to Hestor Realty Corporation. After a series of real estate transfers over the years, Site 120 came to be owned by Roned Realty in November, 1977. Roned is a corporation formed under the laws of the State of New Jersey and is the present owner of the Trader Horn property, alternatively known as Site 120 which comprises approximately three acres of the Study Area 7 Site.

Mutual, a subsidiary of Allied Signal, which ultimately merged with and became Honeywell, owned and operated the chromium chemical production facility across from the Site from 1895 to 1954. In or about 1954, Allied Chemical & Dye Corporation (later Allied Signal) acquired Mutual and sold the Site to Amy Joy Realty Corporation for the construction of a drive-in movie theater. The drive-in was completed in 1955.

In 1965, Amy Joy Realty Corporation subdivided the Site and leased a portion to Goodrich Associates for the construction of a commercial building. Diana Stores Corporation later joined this lease. Diana Stores Corporation merged into Daylin, Inc. in 1969. Daylin in turn was acquired in 1979 by W.R. Grace & Co. and W.R. Grace, Ltd. W.R. Grace, Inc. is a corporation formed under the laws of the State of Connecticut and W.R. Grace, Ltd. is a direct subsidiary of W.R. Grace, Inc. with a registered office in London, England.

In 1981, Daylin acquired two parcels of land constituting the largest portion of Study Area 7 (the Site). At that time, W.R. Grace & Co. and W.R. Grace, Ltd. were the sole stockholders of Daylin. In 1982, Daylin changed its name to the Grace Retail Corporation. In November, 1986 the Channel Acquisition Company (Channel) acquired Grace Retail/Daylin and pursuant to a letter agreement, Grace Retail was to distribute some of its assets, including its portion of the Site, to ECARG, Inc., a New Jersey corporation and a subsidiary of W.R. Grace & Co. formed in 1975. ECARG presently holds formal title to the Roosevelt Drive-In and Clean Machine Car Wash Sites, Lots 14H and 14J, which comprise approximately thirty-one acres at the Site.

I find Honeywell is the successor to the company (Mutual) which actually deposited the contaminated material at the Site, and

Grace and Roned are the present owners of properties which comprise the Site.

THE COMPLAINT AND CROSSCLAIMS

Plaintiffs filed their Complaint on May 3, 1995. The Complaint was amended on August 2, 1995. In Count One of the Amended Complaint Plaintiffs allege Defendants violated § 7002(a)(1)(B) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6972(a)(1)(B), due to the fact that the chromium bearing waste at the Site may present an imminent and substantial endangerment to health or the environment. The remaining counts of Plaintiffs' Amended Complaint have been dismissed.

On or about May 17, 1996, Roned filed an Answer to the Amended Complaint along with various crossclaims. On January 3, 1997, Roned amended its crossclaims.

The Grace Defendants filed their Third Amended Crossclaims on October 4, 2000, seeking relief against Honeywell under RCRA, CERCLA, the New Jersey Spill Compensation and Control Act and Common Law and other declaratory relief. Honeywell has also asserted crossclaims against Roned and Grace seeking relief under RCRA, contribution under CERCLA, the New Jersey Spill Act and the New Jersey Joint Tortfeasors Contribution Law and other declaratory relief.

Shortly before trial, the Court was informed that Roned had settled its claims with Honeywell. As a result, Roned chose not to appear and took no part in the trial. Plaintiffs' claims against Roned however, remain viable.

While the form of Order pertaining to Honeywell's and Roned's settlement remains unsigned, the Court holds that the settlement has occurred and therefore will

treat Roned as a settling party as to its Co-Defendant Honeywell only.

Appropriate and timely pre-suit notice of claims under RCRA and the Clean Water Act were served and filed by the parties.

THE TRIAL

The following is a listing of the witnesses who testified at trial, a brief summary of the subject matter of their testimony and a brief description of their backgrounds or qualifications. In addition, I include my impression as to the credibility of each witness and the weight to be afforded their testimony.

Plaintiffs' Witnesses:

Benjamin I. Ross, Ph.D. was offered by Plaintiffs and qualified as an expert in the area of groundwater and soil contamination. Dr. Ross holds a Bachelor of Science Degree in Physics from Harvard University and a Ph.D. in Physics from Massachusetts Institute of Technology. In addition, he has over twenty-five years of consulting experience in hydro-geology, ground water and soil contamination. Dr. Ross was a knowledgeable witness who testified in a coherent and forthright manner. I found him to be credible.

Cheryl R. Montgomery, Ph.D. was qualified as an expert in the areas of human health and ecological risk assessment. Dr. Montgomery holds a Bachelor of Science Degree and an Advanced Bachelor of Science Degree in Chemistry from McMaster University in Canada and a Ph.D. in Physical Organic Chemistry from the University of Guelph, Ontario, Canada. She is a principal and owner of Montgomery & Associates which provides strategic planning, oversight management, coordination and scientific technical support for projects involving hazardous waste, site risk assessments and pesticide product registration.

Most of her work involves risk assessment at hazardous waste sites.

This witness visited the Site and while she did not test or autopsy any animals, she did come to the conclusion that the amount of chromium at the Site greatly exceeded appropriate NJDEP Standards. She felt the ecosystem at the Site was at risk, which included organisms, plants, animals and birds, as well as people. She testified that the COPR or COPR soil could not support life or growth due to the high content of chromium. I found this witness to be very credible and knowledgeable. I therefore gave significant weight to her testimony as forthright and honest.

Mr. William Sheehan was offered as the Riverkeeper for the Hackensack River and the Executive Director of Hackensack Riverkeeper, Inc. Hackensack Riverkeeper, Inc. is a non-profit public interest organization whose mission is to protect, preserve and restore the natural living and recreational resources of the Hackensack River. This gentleman was very knowledgeable and had a great deal of experience with wildlife and the river itself. While I found Mr. Sheehan to be an honest and credible witness, I do not believe his testimony added much to the trial or did much to assist the Court in reaching a determination.

Bruce Bell, Ph.D. was qualified as an expert in the field of environmental engineering. Dr. Bell holds a Bachelor of Science and Masters Degree in Civil Engineering and a Ph.D. in Environmental Engineering from New York University. He is a licensed professional engineer in New York and New Jersey and a Diplomat of the American Academy of Environmental Engineers. He has also taught and published numerous articles in the field. Dr. Bell's testimony dealt mainly with the ongoing source of hexavalent chrome in the

sediment of the Hackensack River and its effects.

I found this witness to be knowledgeable and credible and therefore gave his testimony due consideration.

Plaintiff, *Reverend Winston Clarke* was offered as a fact witness. Rev. Clarke has resided at a condominium in the Society Hill Residential Development which is approximately one-quarter mile south of the Site. Presently, there are approximately 1,200 condominium units in the first phase of the Society Hill Residential Development and an additional 400 residential units are approved and under construction. The Hackensack River is only a few hundred feet from his home and borders on the Society Hill Residential Development where he has lived for ten years. Rev. Clarke was a credible witness.

Witnesses called by the Grace Defendants:

Elizabeth Anderson, Ph.D. was offered by Defendant Grace as an expert in the areas of human health and ecological risk assessments. Dr. Anderson holds a Bachelor of Science Degree in Chemistry from William & Mary College, a Masters Degree in Organic Chemistry from the University of Virginia and a Ph.D. in Organic Chemistry from American University. Dr. Anderson is the founder of the EPA's Carcinogen Assessment Group and oversaw the EPA's internal committee that wrote the first risk assessment and risk management guidelines for the EPA which were adopted in 1976. Dr. Anderson also had overall responsibility for the EPA's first health risk assessment on chromium which was published in or about 1984. Dr. Anderson has served on numerous peer review committees for the federal government and various state and international organizations, including the National Academy of Sciences, the U.S. Department of Agriculture, the Los Alamos National Lab-

oratory and the Committee to Advise the New Jersey DEP Commissioner. Dr. Anderson testified that there is a clear link between hexavalent chromium in humans and cancer as well as a variety of other medical problems which produce adverse effects on the DNA, create reproduction problems and cause respiratory and lung problems, as well as contact dermatitis. It was this witness's opinion that there can be no viable future use for this Site in its present condition. Any use would expose people to unacceptable health risks.

It is my assessment that Dr. Anderson was forthright and knowledgeable as well as credible and I therefore gave her testimony substantial weight.

Peter M. Chapman, Ph.D. was qualified as an expert in the fields of ecological risk assessments and sediment contamination. Dr. Chapman received a BSC in Marine Biology, a Masters Degree in Biological Oceanography and a Ph.D. in Benthic Ecology from the University of Victoria, British Columbia, Canada. He is employed by EVS Environmental Consultants as a Senior Scientist and has served as an Adjunct Professor at the University of Illinois. Dr. Chapman is presently retained by Environmental Canada (the Canadian equivalent of the EPA) to assist in determining the toxicity and characterization of all substances being used in commerce in Canada.

Dr. Chapman performed tests on samples at the Site and found chromium contamination of the sediment of the River. The tests revealed high toxicity which killed many of the amphipods. All stations tested closest to the Site showed toxicity and high mortality rates. He also felt certain samples taken from the swales located on the property and water coming off the swales were toxic to rainbow trout and other fish.

I found this witness to be knowledgeable and credible and therefore gave substantial weight to his testimony.

Ronald L. Schmiermund, Ph.D. was qualified as an expert in the areas of geo-chemistry and heaving (discussed in greater detail below). Dr. Schmiermund received his Bachelor of Science and Masters Degrees in Geo-Chemistry from Pennsylvania State University and a Ph.D. in Geo-Chemistry from the Colorado School of Mines. This witness discussed the heaving phenomena and opined that if the COPR remains on the property, heaving will continue to occur indefinitely. The Court found that Dr. Schmiermund was a knowledgeable and believable witness.

Julio Valera, Ph.D. was qualified as an expert in the field of geo-technical engineering and heaving. Dr. Valera received a Bachelor of Science Degree in Civil Engineering and a Masters Degree in Geo-Technical Engineering from the University of Notre Dame and a Ph.D. in Geo-Technical Engineering from the University of California at Berkeley. Dr. Valera is a licensed professional engineer in California and Colorado. He presently works for Valera Consultants performing geo-technical engineering and earthquake engineering consulting. Dr. Valera testified regarding the heaving phenomenon which is the movement and swelling of the ground upward and settling downward. Due to the instability of the ground caused by heaving, this witness is of the opinion that no buildings or structures can safely be built on this Site without remediation.

I was impressed with this witness and gave his testimony great weight.

Donald V. Belsito, M.D. qualified as an expert in the area of dermatology with specialized knowledge in the fields of allergic contact dermatitis and pathophysiology.

Dr. Belsito received a Bachelor of Science Degree in Biology and Chemistry from Georgetown University and a Medical Degree from Cornell Medical College. He also received a Masters Degree in Business Administration from the University of Canada. He completed a residency in Internal Medicine at Case Western Reserve University and a three-year dermatology residency and fellowship in Dermatologic Immunology at New York University. Dr. Belsito is Board Certified in Internal Medicine, Dermatology and Dermatologic Immunology. He is a professor at the University of Kansas Medical School and is presently on the staff at the University of Kansas Hospital and the Kansas VA Hospital. In addition, Dr. Belsito maintains a private medical practice in dermatology and sees approximately one hundred and fifty patients per week. He has treated approximately fifty patients for skin disorders as a result of exposure to chromium over the past eight years.

After reviewing the Site, it is Dr. Belsito's opinion that the Site is a present danger to residents, workers and trespassers due to the high chromium and pH levels present. As a result, those who come or come in contact with the Site would in all likelihood contract skin problems including dermatitis, chromium ulcers and possibly nasal septum perforations. The severity of the condition would depend upon the exposure.

I found Dr. Belsito to be both knowledgeable and credible and I therefore gave his testimony significant weight.

Andrew O. Davis, Ph.D. was qualified as an expert in the areas of geo-chemistry, hydro-geology and the fate and transport of contaminants in soil, groundwater and surface water. Dr. Davis holds a Bachelor of Science Degree in Aquatic Biology from Liverpool Polytechnic Institute, a Masters

