UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	:	
	:	
versus	:	CRIMINAL NO. 07-31-RET-SCR
	:	
HONEYWELL INTERNATIONAL INC.	:	

PLEA AGREEMENT

1.

The Office of the United States Attorney for the Middle District of Louisiana, through undersigned counsel, and the above-named defendant agree that the defendant will enter a plea of guilty to an Bill of Information charging illegal air emissions, in violation of Title 42, United States Code, Section 7413(c)(4).

2.

The United States Attorney and the defendant agree that, if the Court accepts the guilty plea, no additional criminal charges related to the conduct that resulted in the violation contained in the Bill of Information will be brought against the defendant in this district.

3.

The defendant agrees to provide the United States and the Court with a notarized resolution issued by the defendant's Board of Directors authorizing Katherine L. Adams, Vice President and General Counsel of the defendant's Specialty Materials division, to act on the defendant's behalf in this matter, including entering into this agreement and entering a plea of guilty to the Bill of Information. Such resolution shall be provided to the United States and the Court at least three days prior to the defendant's arraignment.

4.

The defendant agrees to provide full and complete cooperation to the United States in its continuing investigation of the incident at issue in the Bill of Information. As part of such cooperation, the defendant agrees specifically to do the following:

a) provide complete and truthful nonprivileged information, including documents, to any law enforcement agent or attorney of the United States when requested;

b) make all reasonable efforts to withdraw from any joint defense agreements (except with current or former employees of defendant) and refuse to enter into any such agreements; and

c) make all reasonable efforts to ensure that the defendant's current and former employees cooperate with the investigation and disclose all relevant information to the United States. Such reasonable efforts should include encouraging cooperation, continuing to reimburse reasonable legal fees and expenses for cooperating former employees, and paying reasonable transportation expenses related to such cooperation.

5.

The defendant agrees to provide the United States with any nonprivileged information or documentation in its possession regarding its financial affairs when requested and agrees to submit to a debtor's examination, if necessary. The defendant may designate confidential business information as such. The defendant agrees to provide this information whenever requested until such time as any judgment or claim against it, including principal, interest, and penalties is discharged or satisfied in full. This information will be utilized to evaluate its capacity to pay the government's claim or judgment against it, whatever that claim or judgment

may be. If the defendant refuses to comply with this paragraph or provides false or misleading information, it may, after a judicial finding of such, be prosecuted for any offense covered by the agreement, and all statements and information provided by the defendant may be used against it. The defendant's plea of guilty may not be withdrawn. except as otherwise provided herein.

6.

The defendant hereby expressly waives the right to appeal its conviction and sentence, including any appeal right conferred by Title 18, United States Code, Section 3742, and to challenge the conviction and sentence in any post-conviction proceeding, including a proceeding under Title 28, United States Code, Section 2255. The defendant, however, reserves the right to appeal any punishment imposed which is both above the amount agreed herein and in excess of the statutory maximum. Nothing in this paragraph shall act as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel.

7.

Pursuant to Rule 11(c)(1)(C), Federal Rules of Criminal Procedure, the defendant and the United States agree that the following is the appropriate sentence to be imposed in this matter:

A. Probation: The United States and the defendant agree that the defendant shall receive a term of probation of two years.

B. Fine: The United States and the defendant agree that the defendant shall pay a fine of eight million dollars ($8,000,000) and that such a fine can be imposed pursuant to the Alternative Fines Act, Title 18, United States Code, Section 3571(d).

C. Restitution to Delvin Henry's Estate: The United States and the defendant agree that the defendant shall pay restitution to the estate of Delvin Henry in the amount of two million dollars ($2,000,000). The United States and the defendant agree that this amount will be paid in trust for the benefit of Delvin Henry's minor children pursuant to the terms of the trust agreements attached hereto as Exhibits A, B, and C. The parties agree that this restitution amount reflects only the defendant's level of contribution under Title 18, United States Code, Section 3664(h), and that it does not reflect the total loss resulting from the offense or from other offenses. The parties also agree that the defendant will not seek to reduce this restitution amount for any reason, including based on payments made by others sources.

D. Community Restitution: The United States and the defendant agree that the defendant shall make community restitution as follows (i) to the Louisiana Hazardous Material Response Unit ("Unit") by spending seven hundred and fifty thousand dollars ($750,000) to purchase designated equipment for the Unit as provided in Exhibit D; (ii) to the Louisiana State Police Emergency Operations Center ("the Center") by spending five hundred thousand dollars ($500,000) to purchase designated equipment for the Center as provided in Exhibit D; and (iii) to the Louisiana Department of Environmental Quality "Hazardous Waste Site Cleanup Fund" in the amount of seven hundred and fifty thousand dollars ($750,000).

E. Special Assessment: The United States and the defendant agree that the defendant shall pay a special assessment of one hundred twenty-five dollars ($125).

F. Timing of Monetary Payments: Except as provided in Exhibit D, the United States and the defendant agree that defendant shall pay the special assessment, the fine, and the restitution on the day of sentencing.

8.

Pursuant to Rule 11(c)(3)(A) and 11(c)(5), Federal Rules of Criminal Procedure, the Court may accept or reject this Plea Agreement or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the Presentence Report. The Parties will make reasonable efforts to schedule a single hearing on the entry of a plea and sentencing and to have the Presentence Report available to the Court before that date. If the Court rejects the Plea Agreement, the Court, on the record, will so inform the defendant and advise the defendant that the Court is not bound by the Plea Agreement. The Court will give the defendant an opportunity to withdraw the plea and will advise the defendant that, if the plea is not withdrawn, the disposition of the case may be less favorable to the defendant than contemplated by the Plea Agreement. If the Court accepts the Plea Agreement, the Court will inform the defendant that it will embody in the judgment and sentence the disposition provided for in the Plea Agreement.

9.

The defendant understands that the maximum sentence which could be imposed if the Court rejects this Plea Agreement, and the defendant chooses to maintain its plea of guilty, is a fine the greater of five hundred thousand dollars ($500,000), twice the gross gain from the offense, or twice the gross loss from the offense as provided in the Alternative Fines Act,

restitution according to law, a term of probation of five (5) years, and a special assessment of one hundred twenty-five dollars ($125).

10.

The United States and the defendant stipulate, for purposes of Rule 11(b)(3) of the Federal Rules of Criminal Procedure, and pursuant to Section 6B1.4 of the United States Sentencing Guidelines, to the following factual basis:

A. The Baton Rouge Plant

At all relevant times, defendant (formerly AlliedSignal) manufactured fluorocarbon-based refrigerants at its facility in Baton Rouge, Louisiana ("Baton Rouge Plant"). One of the products produced at the Baton Rouge Plant was chlorodifluoromethane (also known as "HCFC-22" or "R-22") refrigerant, which defendant marketed under the trade name "Genetron 22" or "G-22." G-22 is a gas at ambient temperatures and a colorless liquid when compressed and stored in cylinders or other containers. It is non-toxic and non-flammable.

The Baton Rouge Plant used antimony pentachloride as a catalyst in the G-22 manufacturing process. Antimony pentachloride is a highly corrosive liquid. On contact with water vapor in the air, it forms hydrochloric acid. Antimony pentachloride is considered an "antimony compound" under the federal Clean Air Act. Antimony compounds are classified by the U.S. Environmental Protection Agency as hazardous air pollutants under the federal Clean Air Act when emitted into the air.

As antimony pentachloride catalyst is used in the G-22 refrigerant manufacturing process, it typically becomes contaminated with a small amount of refrigerant product and various hazardous materials from the manufacturing process, which may include arsenic trichloride, carbon tetrochloride, chloroform, tetrachloroephenol, chromium, fluoride, and nickel depending on the refrigerant being manufactured. The resulting mixture of material is referred to as "spent catalyst" or "spent antimony pentachloride." Spent catalyst is a highly toxic and corrosive material known to appear, depending on the refrigerant being manufactured, dark in color and in both solid and liquid form.

Defendant packaged G-22 and spent catalyst in one-ton cylinders ("ton cylinders"). Ton cylinders are also used by vendors to package fresh antimony pentachloride. Each ton cylinder has a unique serial number. Ton cylinders are reused and can have a life span of many decades. They can also be used to store chemicals others than those chemicals constituting G-22, antimony pentachloride, and spent catalyst. Prior to shipment in commerce, ton cylinders are usually labeled to reflect their contents.

Ton cylinders containing G-22 are typically painted green and white and they are typically fitted with at least one pressure relief valve. Ton cylinders containing fresh antimony pentachloride or spent catalyst are typically painted gray, and instead of relief valves, are fitted with fusible plugs which are designed to melt and slowly relieve pressure if the cylinder is exposed to fire.

The Baton Rouge Plant periodically collected spent catalyst in ton cylinders and shipped the cylinders to a chemical manufacturing company located near Denver, Colorado ("the Colorado company"). The Colorado company is the only company in North America that specializes in the manufacture and recycling of antimony catalysts. At the Colorado company, the spent catalyst is recycled, then returned to defendant, for a processing fee. The Colorado company also cleans and hydrotests ton cylinders for reuse, for an additional fee.

B. The El Segundo Plant

Until December 2002, defendant produced refrigerants at a facility in El Segundo, California ("El Segundo Plant") (the El Segundo Plant was subsequently decommissioned). One of the products formerly produced at the El Segundo Plant was G-22, which was packaged and stored in ton cylinders, among other types of cylinders. The El Segundo Plant also used antimony pentachloride as a catalyst in the G-22 manufacturing process. The El Segundo Plant also used ton cylinders to store fresh antimony pentachloride and spent catalyst.

C. Cylinder 83-3410 at the El Segundo Plant

In approximately 1992, the El Segundo Plant permanently stopped producing G-22. When production ceased, the plant no longer had any use for any antimony pentachloride that remained onsite. In connection with the shutdown of the plant's G-22 process units, several ton cylinders believed to contain antimony pentachloride or antimony pentachloride residue were stored together onsite. With those cylinders, defendant also stored a ton cylinder with serial number 83-4310 ("cylinder 83-3410"). Defendant had filled cylinder 83-3410 with over 3300 pounds of spent catalyst. Ton cylinders normally were not filled beyond approximately 2100 pounds of spent catalyst. Cylinder 83-3410 was labeled, painted, and had a valve configuration consistent with a cylinder containing spent catalyst.

D. Cylinder 83-3410 at the Colorado Company

On October 23, 1998, the El Segundo Plant shipped cylinder 83-3410 and ten other ton cylinders to the Colorado company. Each of the eleven cylinders were stenciled by defendant with "antimony pentachloride" labels prior to shipment. The shipment was accompanied by three shipping documents created by defendant: a bill of lading, a hazardous waste manifest, and a California Land Disposal Restriction Notice and Certification ("the Certification"). The bill of lading states that all of the cylinders contained only residue of antimony pentachloride and arsenic trichloride, when, in fact,

cylinder 83-3410 contained over 3300 pounds of spent catalyst. The hazardous waste manifest describes the contents of all of the cylinders as follows: "RQ Poisonous Liquid Corrosive. n.o.s., 6.1, UN2927, PG II." The Certification, which the El Segundo Plant's environmental manger prepared and signed, certified that each of the cylinders contained the following hazardous materials: carbon tetrachloride, chloroform, tetrachloroephenol, arsenic, antimony, chromium, fluoride, and nickel.

On October 26, 1998, the Colorado company received the shipment from the El Segundo Plant and weighed each cylinder. Cylinder 83-3410 was found to have a gross weight of 4,328 pounds. The Colorado company also took samples from the cylinders soon after their arrival. The sample material taken from cylinder 83-3410 was found to consist of liquid that soon evaporated, a tar-like solid, and a small amount of liquid.

In approximately November, 1998, the Colorado company's Business Relations Manager ("the Colorado Manager") telephoned the El Segundo Plant's Production Manager ("the El Segundo Manager"). The Colorado Manager informed the El Segundo Manager that cylinder 83-3410 and three other cylinders contained in the shipment received from the El Segundo Plant on October 26 were being rejected by the Colorado company and would be returned to defendant. The Colorado Manager explained that, based on an analysis of the samples, the cylinders contained refrigerant, instead of antimony pentachloride. The Colorado Manager specifically described the sample material from cylinder 83-3410 as consisting of gases and dark solids.

The El Segundo Manager and the Colorado Manager agreed to have cylinder 83-3410 re-labeled as containing G-22. In reaching this agreement, the El Segundo Manager made no further efforts to identify the contents of cylinder 83-3410. He did not review any documents or speak with any El Segundo personnel who may have had first-hand information about the cylinder's contents. The El Segundo Manager did not ask the Colorado company any questions regarding the sampling or examination procedure or ask for copies of any analysis to confirm the contents of the cylinder.

Sometime after the telephone conversation described above, defendant sent the Colorado company a stencil for G-22. The Colorado company used this stencil to change the label on cylinder 83-3410 from antimony pentachloride to the scientific term for G-22.

On December 10, 1998, the Colorado company sent a fax to the office of defendant's Raw Materials Inventory Coordinator at the Baton Rouge Plant ("the Baton Rouge Coordinator") indicating that it had shipped eight cylinders of antimony pentachloride and four cylinders of refrigerant that day to the Baton Rouge Plant. Attached to the fax were a bill of lading and a packing list. The packing list described the gross, tare, and net weights of each cylinder in the shipment, including cylinder 83-3410, which it listed as having a gross weight of 4,328 pounds and a net weight of 3,328 pounds. Separate paperwork sent to El Segundo also stated that the Colorado company had sampled, analyzed, and tested the four cylinders, including cylinder 83-3410, that were reported to contain refrigerant.

E. Cylinder 83-3410 at the Baton Rouge Plant

On approximately December 12, 1998, the shipment from the Colorado company containing twelve ton cylinders, including cylinder 83-3410, along with copies of the faxed message, bill of lading and packing list described in the previous paragraph, arrived at defendant's Baton Rouge Plant.

The United States avers but the defendant does not admit that the Baton Rouge Coordinator recalls the following. The Baton Rouge Coordinator reviewed the packing list. The Coordinator became concerned when he observed that the net weight for cylinder 83-3410 was listed as 3,328 pounds. The Coordinator believed that, if the listed weight was correct, such a high weight indicated that the cylinder probably contained something other than refrigerant, such as spent catalyst. Based, in part, on this concern, the Baton Rouge Coordinator directed another employee to analyze cylinder 83-3410 upon arrival at the Baton Rouge Plant.

Defendant never analyzed, tested, or sampled the contents of cylinder 83-3410 once it arrived in Baton Rouge despite having the ability to do so. Nor did defendant weigh cylinder 83-3410 to confirm that it weighed too much to contain only refrigerant.

In addition to failing to analyze, test, or sample the contents of cylinder 83-3410, defendant also failed to note that its valves were configured for catalyst, not refrigerant.

After arriving in Baton Rouge, defendant placed cylinder 83-3410 in an outside storage area where it remained for approximately four years during which it was exposed to the elements. During this entire period, defendant again failed to make any effort to verify the contents of the cylinder.

F. The Death of Delvin Henry

On July 29, 2003, Delvin Henry, an employee of defendant's Baton Rouge Plant, was performing his assigned task for the day: preparing ton cylinders to be sent to an outside contractor for hydrostatic testing. Mr. Henry used a forklift to place ten ton cylinders, including cylinder 83-3410, on a preparation rack. Cylinder 83-3410 was still labeled as G-22 and was otherwise in the same condition, except weathering, as it was when it arrived from the Colorado company in 1998. Mr. Henry connected nine of the ten cylinders to a purge system with the prescribed hoses and opened the valves on these cylinders for venting. The tenth cylinder was cylinder 83-3410, whose valves were frozen. After unsuccessfully attempting to open the valve on cylinder 83-3410, Mr. Henry used a pneumatic wrench to remove a fusible plug on the end of the cylinder opposite its valves without first verifying that there was no pressure in the cylinder.

Once cylinder 83-3410's fusible plug was removed, approximately 1800 pounds of material, almost half of which was spent catalyst, was violently released from the cylinder into the ambient air. The released spent catalyst consisted of various hazardous materials, including antimony compounds. Mr. Henry was struck by the highly toxic and

corrosive spent catalyst and suffered third degree burns throughout his body. Defendant's emergency responders decontaminated Mr. Henry and administered first aid treatment, while other employees mitigated a cloud that had formed and stopped any further release from the cylinder. Mr. Henry was transported to the burn unit at Baton Rouge General Hospital where he died of his injuries the following day, July 30, 2003.

Ambient air monitors at the Baton Rouge Plant indicated that no elevated levels of hydrochloric acid reached the plant's fence line monitors during the incident or its aftermath.

The defendant understands that the Court is not bound by this stipulation.

11.

The defendant acknowledges that there is no agreement with the United States as to the actual sentence that will be imposed by the Court as a result of this Plea Agreement, except as provided in Paragraph 7, and acknowledges that no promises or assurances have been made as to whether the Court will accept the plea. The defendant acknowledges that the terms herein constitute the entire agreement and that no other promises or inducements have been made. The defendant acknowledges that it has not been threatened, intimidated, or coerced in any manner.

12.

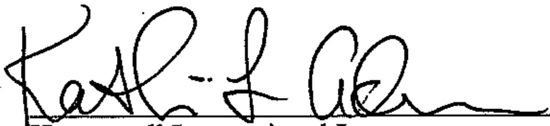
The defendant understands that nothing contained in this agreement is meant to limit the rights and authority of the United States or the State of Louisiana to take further civil or administrative action against the defendant or any affiliated or related corporations, including but not limited to, any listing and debarment proceedings to restrict rights and opportunities of the defendant to contract with or receive assistance, loans, and benefits from United States agencies.

13.

The defendant acknowledges that this Plea Agreement has been entered into knowingly, voluntarily, and with the advice of counsel, and that it fully understands the agreement. The defendant has no objection to the legal representation it has received.

This Plea Agreement is entered into this 20th day of February, 2007, at Baton Rouge, Louisiana.

UNITED STATES OF AMERICA, by



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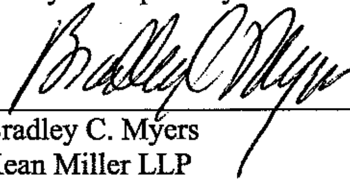

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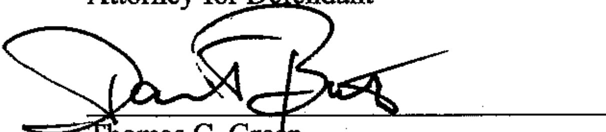

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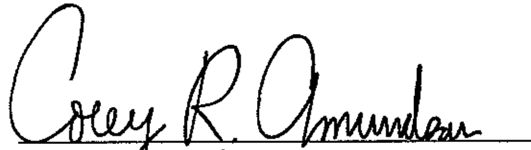

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