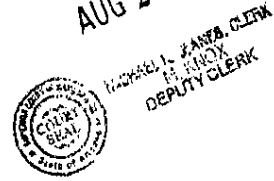


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AUG 21 2008



8 SUPERIOR COURT OF ARIZONA  
9 MARICOPA COUNTY

10 ARIZONA DEPARTMENT OF  
11 ENVIRONMENTAL QUALITY, et al.

12 Plaintiff,

13 v.

14 Honeywell International, Inc.

15 Defendant.  
16  
17

Nos. CV2008-018396 & CV2004-013146

Reverend Jarrett B. Maupin II's Motion to Intervene

(Assigned to the Honorable Douglas Rayes)

18 Reverend Jarrett B. Maupin II ("Reverend Maupin") respectfully moves to  
19 intervene pursuant to Rule 24(a)(2) and Rule 24(b)(1), ARIZ. R. CIV. P. In the alternative,  
20 Reverend Maupin asks the Court to require the parties to (1) seek public comment on the  
21 supplemental environmental project (SEP) proposed in the consent judgment, and (2)  
22 brief the Court regarding the Arizona Department of Environmental Quality's (ADEQ)  
23 authority to agree to the SEP proposed in the consent judgment. This motion is  
24 supported by the following memorandum of points and authorities.  
25  
26

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 ADEQ does not have authority to agree to the SEP that is proposed in the consent  
4 judgment. The SEP is highly inappropriate and unlawful for many respects, including (1)  
5 lack of nexus to the violations at issue, (2) it does not fall within an authorized category  
6 of SEPs, (3) it potentially results in an improper funneling of funds to ADEQ contractors  
7 (4) lack of oversight concerning how the SEP funds will be used by the Western  
8 Governor's Association.

9  
10 **II. LACK OF NEXUS TO THE VIOLATIONS AT ISSUE.**

11 There is no nexus between the violations that Honeywell allegedly committed  
12 (unlawfully contaminating groundwater in South Phoenix) and the SEP proposed in the  
13 consent judgment (a \$1 million payment to the Western Governor's Association for the  
14 development of the Western Climate Initiative (WCI)). On April 10, 2008, the U.S.  
15 Environmental Protection Agency published a document titled, *EPA Supplemental*  
16 *Environmental Projects Policy*, in which it established strict criteria for the use of SEPs  
17 in enforcement actions. 63 F.R. 24796; also available at  
18 <http://www.epa.gov/compliance/resources/policies/civil/seps/fnl-sup-hermn-mem.pdf>.  
19 One key criterion is the existence of a nexus between the SEP and the underlying  
20 violation(s) at issue. For instance, a company that violates the Clean Air Act may be  
21 asked to hold an asthma screening day for the community that was impacted by the  
22 company's failure to comply. Whereas, a company that violates the Emergency Planning  
23 and Community Right-to-Know Act may be asked to operate a reverse 911 system for the  
24 community that would be affected by a release of hazardous pollutants from the violating  
25 facility.

1           The same nexus principle for SEPs is repeated in the *ADEQ Compliance and*  
2 *Enforcement Handbook* which provides that a nexus only exists if all of the following are  
3 true, Version 12/1/03 at Page 8-4:

- 4           • The project is designed to reduce the likelihood that similar  
5           violations will occur in the future; or
- 6           • The project reduces the adverse impact to public health or the  
7           environment to which the violation at issue contributes; or
- 8           • The project reduces the overall risk to public health or the  
9           environment potentially affected by the violation at issue.

10       These three factors all require the SEP to relate to the violation at issue.

11           The lack of nexus between the alleged violations and the SEP proposed in the  
12 consent judgment violates the principle of environmental justice. As EPA explains in its  
13 final policy, the nexus requirement is an important criterion because it prevents  
14 companies from committing environmental violations in one area of a community that  
15 impact one demographic of the population and then agreeing to fund environmental  
16 projects in an entirely different area of the community that benefits an entirely different  
17 demographic of the population. The SEP should more closely tailor the benefits to the  
18 residents of South Phoenix, an economically disadvantaged area that experiences an  
19 inordinate amount of environmental contamination.

20           Reverend Maupin lives in South Phoenix, the area that was impacted by the  
21 alleged violations. Reverend Maupin is also an elected board member of the Phoenix  
22 Union High School District. By selecting a project that has no nexus to the alleged  
23 violations or to the community impacted by those alleged violations, the parties have  
24 harmed Reverend Maupin's interests as a property owner in the community.

1 **II. THE SEP DOES NOT FALL WITHIN AN AUTHORIZED CATEGORY OF**  
2 **SEPs.**

3 The EPA and ADEQ have identified seven authorized categories of SEPs. *See*  
4 *EPA Supplemental Environmental Projects Policy* at 7, available at  
5 <http://www.epa.gov/compliance/resources/policies/civil/seps/fnl-sup-hermn-mem.pdf>;  
6 *ADEQ Compliance and Enforcement Handbook* at 56 – 59, available at  
7 <http://www.azdeq.gov/function/forms/download/handbook/fullhandbookw.pdf>. The  
8 seven categories are: public health, pollution prevention, pollution reduction,  
9 environmental restoration and protection, assessments and audits, environmental  
10 compliance promotion, and emergency planning and preparedness. *Id.* The SEP  
11 proposed in the settlement agreement does not fall within any of the seven categories of  
12 authorized projects. SEPs are supposed to further the purpose of the statutes that were  
13 violated. *Id.* Establishing a cap-and-trade system for carbon emissions and other  
14 greenhouse gases, as the WCI intends to do, does not further the purposes of the statutes  
15 Honeywell allegedly violated. There are no federal or Arizona statutes or regulations  
16 limiting carbon emissions. Accordingly, the SEP proposed in the consent judgment is for  
17 the development of future policy, not the furtherance of existing policy. If ADEQ wants  
18 to regulate carbon emissions, it should obtain statutory authority and/or adopt rules to do  
19 so. In the meantime, it is in excess of ADEQ's authority to agree to a SEP in which the  
20 sole purpose is to reduce carbon emissions.

21 **III. THE SEP POTENTIALLY RESULTS IN AN IMPROPER FUNNELING OF**  
22 **FUNDS TO ADEQ CONTRACTORS.**

23 The *ADEQ Compliance and Enforcement Handbook* specifically prohibits projects  
24 from providing additional resources to ADEQ employees or ADEQ contractors. *Id.* at 8-  
25 5. Director Owens is co-chair of the WCI. Moreover, the SEP proposed in the consent  
26 judgment potentially funnels money to ADEQ contractors. ADEQ has announced plans  
to adopt rules establishing reporting requirements for carbon emissions. ADEQ plans to

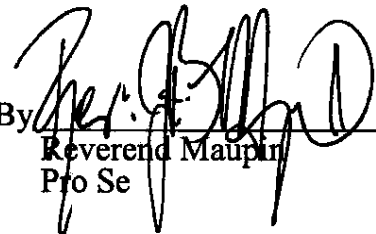
1 use the recommended rules proposed by the WCI. If the money donated by Honeywell is  
2 used to fund the WCI's carbon emission reporting rules, then the money will go to  
3 ADEQ contractors. ADEQ should be required to explain why the consent judgment will  
4 not result in an improper augmentation of its budget.

5 **IV. THE SEP DOES NOT CONTAIN APPROPRIATE OVERSIGHT OVER**  
6 **HOW THE MONEY WILL BE SPENT BY THE WESTERN**  
7 **GOVERNOR'S ASSOCIATION.**

8 The SEP proposed in the consent judgment is unlawful because it results in a  
9 direct cash payment to a third party, which EPA specifically prohibits. *See Guidance*  
10 *Concerning the use of Third Parties in the Performance of Supplemental Projects* at 4,  
11 available at [http://www.epa.gov/compliance/resources/policies/civil/seps/seps-](http://www.epa.gov/compliance/resources/policies/civil/seps/seps-thirdparties.pdf)  
12 [thirdparties.pdf](http://www.epa.gov/compliance/resources/policies/civil/seps/seps-thirdparties.pdf)

13 Moreover, there is inadequate oversight over how the money will be spent by the  
14 Western Governor's Association. While paragraph B of Section VII of the consent  
15 judgment requires Honeywell to "inform the Western Governors Association that the  
16 money must be used for the [WCI]," there is no mechanism for assuring that the money  
17 will be actually spent in that manner. In fact, paragraph C of Section VII specifically  
18 states that "Honeywell shall have no rights, responsibilities, or obligations regarding the  
19 manner in which the SEP money is used by the Western Governors Association or  
20 [WCI]." Thus, because oversight is lacking—indeed, explicitly prohibited—the SEP  
21 proposed in the consent judgment is fraught with the potential for misuse.

22 DATED this 21<sup>th</sup> day of August 2008.

23 By   
24 Reverend Maupin  
25 Pro Se  
26

1 ORIGINAL filed this 21<sup>th</sup> day  
2 of August 2008, with:

3 Clerk of Superior Court  
4 201 W. Jefferson Street  
5 Phoenix, AZ 85003

6 COPY hand-delivered this  
7 21<sup>th</sup> day of August, 2008, to:

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