

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,

Plaintiffs,

v.

HONEYWELL INTERNATIONAL, INC.,
OCCIDENTAL CHEMICAL CORPORATION
AND PPG INDUSTRIES, INC.,

Defendants,

v.

CITY OF JERSEY CITY, JERSEY CITY
MUNICIPAL UTILITIES AUTHORITY,
JERSEY CITY INCINERATOR AUTHORITY,
and NEW JERSEY TURNPIKE AUTHORITY,

Third Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY

CIVIL ACTION NO.: HUD-C-77-05

**PARTIAL CONSENT JUDGMENT
CONCERNING THE PPG SITES**

This matter was opened to the Court by Anne Milgram, Attorney General of New Jersey, Anna Lascurain, Deputy Attorney General appearing, attorney for plaintiffs New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund, and Third Party Defendant City of Jersey City (“Jersey City”), through its attorney Corporation Counsel William C. Matsikoudis, and Defendant PPG Industries, Inc. (“PPG”), through its attorney Joseph Lagrotteria appearing. These Parties having amicably resolved certain elements of their dispute before trial without any admission of liability, agree as follows:

I. PARTIES BOUND

1. This Consent Judgment applies to, and is binding upon, Plaintiffs New Jersey Department of Environmental Protection (“DEP”, as defined below), and the Administrator of the New Jersey Spill Compensation Fund (“Administrator”, as defined

below) (collectively, “the Plaintiffs”), PPG Industries, Inc. (“PPG” or the “Settling Defendant”, as defined below), and the Third Party Defendant City of Jersey City. Any change in ownership or corporate or legal status of PPG, as well as any change in, or transfer of, the authority or responsibility of DEP, the Administrator, or Jersey City, shall in no way enhance or abridge their respective rights and obligations under this Consent Judgment.

II. DEFINITIONS

2. Unless otherwise expressly provided, terms used in this Consent Judgment that are defined in the Spill Compensation and Control Act, N.J.S.A. §§ 58:10-23.11 to -23.24 (“the Spill Act”) or in the regulations promulgated under the Spill Act, shall have their statutory or regulatory meaning. To the extent not defined, and unless otherwise expressly provided, terms used in this Consent Judgment that are defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 to 9675 (“CERCLA”) or in any regulations promulgated pursuant thereto, shall have the meaning given therein.

Whenever the terms listed below are used in this Consent Judgment, the following definitions shall apply:

- a. “1990 ACO” shall mean the Administrative Consent Order entered on July 19, 1990 between the DEP, as defined below, and PPG, as defined below (attached hereto as Appendix A), and the letter agreements of August 2, 1990, September 5, 1990, and November 29, 1990, adding additional sites to the 1990 ACO (attached hereto as Appendix B).
- b. “Administrator” shall mean the Administrator of the New Jersey Spill Compensation Fund, who is appointed pursuant to N.J.S.A. § 58:10-23.11j., and any successor.
- c. “And” and “or” shall mean and/or such that “and” and “or” are interchangeable.

- d. "Appendix" shall mean an appendix to this Consent Judgment.
- e. "Applicable Remedial Provisions" shall mean all applicable statutes, regulations and laws including the DEP Commissioner's Chromium Policy as it now exists or may be adopted in the future.
- f. "Assistant Commissioner" shall mean the DEP Assistant Commissioner of Site Remediation, and/or her successor, or such person holding a similar position in the future if that position no longer exists.
- g. "Assistant Director" shall mean the DEP Assistant Director of Site Remediation, or such person holding a similar position in the future if that position no longer exists.
- h. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675.
- i. "CCPW" shall mean chromate chemical production waste, a by-product generated from the production of sodium bichromate, including, but not limited to, chromium ore processing residue.
- j. "Consent Judgment" shall mean this Partial Consent Judgment.
- k. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or State or federal holiday. In computing time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State or federal holiday, time shall run until the close of business of the next working day.
- l. "DEP" shall mean the New Jersey Department of Environmental Protection and any successor department or agency of the State.

m. “Effective Date” shall mean the effective date of this Consent Judgment provided for in Paragraph 65.

n. “First Amended Complaint” shall mean the First Amended Complaint filed in this lawsuit by Plaintiffs on May 9, 2005, in the Superior Court of New Jersey, Law Division, Hudson County, Civil Action No. HUD-C-77-05.

o. “Grace Period Rule” shall mean those regulations defined by §§ N.J.A.C. 7:26C-10.1 to -10.9.

p. “Hazardous Substances” shall mean all substances identified in the definitions of “hazardous substances” set forth in the Spill Act, N.J.S.A. § 58:10-23.11b. or CERCLA, 42 U.S.C. § 9601(14).

q. “Jersey City” shall mean the City of Jersey City.

r. “Master Schedule” shall be the schedule, established and updated by the Site Administrator taking into consideration Applicable Remedial Provisions, at the time, for the accomplishment of the remediation of the PPG Sites.

s. “Co-Owner/Developer” shall mean 900 Garfield Avenue, LLC, its successors and assigns, the current co-owner of a portion of Site 114, the Garfield Avenue Site, and the developer of the Garfield Avenue Site. Any reference to Co-Owner/Developer in this Consent Judgment shall be limited to the Garfield Avenue Site.

t. “Paragraph” shall mean a portion of this Consent Judgment identified by an Arabic numeral.

u. “Parties” shall mean DEP, Jersey City, and PPG.

v. “Party” shall mean DEP, Jersey City, or PPG.

w. “Plaintiffs” shall mean the two plaintiffs in this lawsuit: DEP and the Administrator.

x. “PPG” shall mean PPG Industries, Inc., a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and having a principal place of business at One PPG Place, Pittsburgh, Pennsylvania 15222, and any successors or assigns.

y. PPG Sites shall mean the sixty-one (61) residential and non-residential sites listed in Attachment One of the 1990 ACO, Attachment Two of the 1990 ACO, and Appendix B to this Consent Judgment: Additional Sites Added to the 1990 ACO By Agreement with DEP, including the so-called Orphan Sites set forth in Appendix B.

z. “RCRA” shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 to 6992k.

aa. “Section” shall mean a portion of this Consent Judgment identified by a Roman numeral.

bb. “Settling Defendant” shall mean defendant PPG.

cc. “Site Administrator” shall mean the person appointed as Site Administrator pursuant to Section XVI and charged with the duties set forth therein.

dd. “Spill Fund” shall mean the New Jersey Spill Compensation Fund established pursuant to N.J.S.A. § 58:10-23.11i.

ee. “Submittal” shall mean any document submitted by PPG to DEP, the Technical Consultant, Jersey City, the Co-Owner/Developer, and the Site Administrator regarding the work performed or to be performed at any PPG Site.

ff. “Technical Consultant” shall mean the person(s) appointed as Technical Consultant(s) pursuant to Section XVII.

III. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to the Spill Act and the common law of the State of New Jersey. This Court also has personal jurisdiction over the Parties, solely for the purposes of the First Amended Complaint and this Consent Judgment. The Parties waive all objections and defenses they may have to jurisdiction of the Court, or to venue in this County.

IV. BACKGROUND

2. Beginning as early as 1924, a chrome production facility was operated at and/or near 880 Garfield Avenue, Jersey City, Hudson County, New Jersey (“Garfield Avenue Site”). In August 1954, PPG acquired this chrome production facility and operated it through September 1963. Prior to and during PPG’s ownership and operation of this chrome production facility, CCPW was generated as a by-product of the production of sodium bichromate. Predecessors of PSE&G owned and operated a coal gasification facility/ manufactured gas facility at Garfield Avenue that discharged hazardous substances on Garfield Avenue, and PSE&G is therefore allegedly responsible for remediation of the property.

3. On July 19, 1990, DEP, and PPG entered into the 1990 ACO.

4. Pursuant to the 1990 ACO, PPG has remediated forty-seven (47) sites in the 1990 ACO, and has performed some remediation at ten (10) of the fourteen (14) remaining sites listed in the 1990 ACO and in the amendments to the 1990 ACO (Appendix B). As of the Effective Date, PPG has received No Further Action determination letters from DEP on forty-seven (47) sites in the 1990 ACO.

5. On May 9, 2005, Plaintiffs filed the First Amended Complaint against PPG and others asserting Spill Act statutory claims and common law strict liability, nuisance, and negligence claims, arising out of the generation and disposal of CCPW at sites in Hudson and Essex counties, New Jersey, including the PPG Sites.

6. PPG subsequently filed responsive pleadings in which it denies liability, and asserts various defenses to the allegations contained in the First Amended Complaint.

7. The Parties recognize, and the Court by entering this Consent Judgment finds, that the Parties have negotiated this Consent Judgment in good faith, that the implementation of this Consent Judgment will expedite the remediation of the PPG Sites and avoid continued, prolonged and complicated litigation among the Parties, and that this Consent Judgment is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties, it is hereby:

ORDERED and ADJUDGED:

V. REMEDIATION GOAL

8. It is the goal of the Parties entering into this Consent Judgment, based upon current Applicable Remedial Provisions, to remediate the soils and sources of contamination at the PPG Sites as expeditiously as possible with a five (5)-year goal for completion in accordance with the Master Schedule. The PPG Sites shall be remediated in a manner that permits redevelopment consistent with the redevelopment plan adopted by Jersey City. ~~Groundwater will be addressed~~ PPG shall remediate groundwater in accordance with Applicable Remedial Provisions.

9. A judicially enforceable Master Schedule for all PPG sites will be established by the Site Administrator based upon input from Jersey City (for Jersey City sites), DEP and PPG

with priority given to existing residential locations where CCPW is found pursuant to this Consent Judgment. Prioritization for non-residential sites will be established by the Site Administrator with input from Jersey City, DEP and PPG for sites located in Jersey City.

VI. EFFECT ON 1990 ACO

10. To the extent not explicitly superseded or nullified in this Consent Judgment, the provisions of the 1990 ACO shall remain in effect. If a conflict arises between the terms of the Consent Judgment and terms of the 1990 ACO, the terms of this Consent Judgment shall govern.

VII. SETTLING DEFENDANT'S COMMITMENTS

11. PPG shall continue to remediate the PPG Sites under the terms of the 1990 ACO, this Consent Judgment, and the Applicable Remedial Provisions. If a conflict arises with respect to remedial standards between the provisions of the Applicable Remedial Provisions and the provisions of the 1990 ACO, the Applicable Remedial Provisions shall govern.

12. PPG shall make payments as follows into the Site Administrator's Fund established pursuant to Paragraph 51.

- a. PPG shall make an Initial Payment of two hundred thousand dollars (\$200,000) into the Site Administrator's Fund within thirty (30) days after the Effective Date.
- b. From that date forward, whenever the amount of the Site Administrator's Fund drops below seventy-five thousand dollars (\$75,000), the Site Administrator shall notify PPG pursuant to the process set forth in Paragraph 49. Within thirty (30) days of receipt of such notification, PPG shall pay one hundred twenty-five thousand dollars (\$125,000) into the Site Administrator's Fund.
- c. This notification and payment practice will continue for two (2) years from the Effective Date. After this two (2)-year period, PPG shall replenish the Site Administrator's Fund only upon a written amendment to this Consent Judgment, as set forth in Section XXVII.

VIII. JERSEY CITY ENVIRONMENTAL TRUST FUND

13. PPG shall pay to Jersey City, according to the terms set forth below, the amount of one million one hundred fifty thousand dollars (\$1,150,000) to fund an environmentally beneficial project such as the acquisition of property for open space or the development and/or improvement of a public park (with preference given to the Bergen-Lafayette and Greenville sections of Jersey City) by submitting via wire transfer made payable to the Environmental Trust Fund of Jersey City. This payment shall be made in the following installments which may be tied to certain events in the remedial process as determined by Jersey City and PPG, but payment shall nonetheless be made no later than the dates set forth as follows:

- a. Two hundred eighty- seven thousand five hundred dollars (\$287,500) on August 1, 2009;
- b. Two hundred eighty- seven thousand five hundred dollars (\$287,500) on August 1, 2010;
- c. Two hundred eighty- seven thousand five hundred dollars (\$287,500) on August 1, 2011; and
- d. Two hundred eighty- seven thousand five hundred dollars (\$287,500) on August 1, 2012.

14. PPG shall also pay to Jersey City, according to the terms set forth below, the amount of three hundred fifty thousand dollars (\$350,000) to fund costs related to Jersey City's oversight of this Consent Judgment, by submitting via wire transfer made payable to the Environmental Trust Fund of Jersey City. This payment shall be made in the following installments:

- a. Seventy thousand dollars (\$70,000) on January 1, 2010;
- b. Seventy thousand dollars (\$70,000) on January 1, 2011;
- c. Seventy thousand dollars (\$70,000) on January 1, 2012;

- d. Seventy thousand dollars (\$70,000) on January 1, 2013; and
- e. Seventy thousand dollars (\$70,000) on January 1, 2014.

15. By signing this Consent Judgment, PPG certifies that it is not required and has no liability under any federal, state or local law or regulation, or pursuant to any agreements or orders of any court to perform, fund, or develop the projects identified in Paragraph 13.

16. In consideration for these payments, Jersey City hereby releases PPG from any and all claims it has or could have against PPG for any chrome site, including any claims for reparations or lost tax revenue.

IX. DEP, JERSEY CITY, AND THE ADMINISTRATOR'S COVENANTS

17. In consideration of the remediation PPG has completed, the remediation PPG shall perform and the payments to be made and other obligations incurred by PPG under this Consent Judgment, and subject to the reservations in Section X, Plaintiffs and Jersey City covenant not to sue and agree not to assert any claim against PPG or to take any further administrative, legal or equitable action available to Plaintiffs and Jersey City regarding any discharge or release of Hazardous Substances prior to the Effective Date at or from the PPG Sites, or any imminent and substantial endangerment posed by any discharge or release of Hazardous Substances at or from the PPG Sites prior to the Effective Date, under the Spill Act, CERCLA, RCRA, common law, and any other local law or state or federal statute, regulation, or other authority. To the extent this Paragraph supersedes portions of Paragraph 106 of the 1990 ACO, those portions are superseded and nullified. The remaining portions of Paragraph 106 of the 1990 ACO shall remain in effect.

18. The covenant contained in Paragraph 17, above, is conditioned upon the Settling Defendant's satisfactory performance of its other obligations under this Consent Judgment, and extends only to the Settling Defendant, and not to any other person.

X. DEP, JERSEY CITY, AND ADMINISTRATOR'S RESERVATIONS

19. Nothing in this Consent Judgment is intended to bar or release any claims, causes of action or demands in law or equity by Plaintiffs and Jersey City against any person not a signatory to this Consent Judgment for any liability such other person may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, disposal, discharge or release of any Hazardous Substances at, to, or from the PPG Sites.

20. The covenant contained in Paragraph 17 above does not pertain to any matters other than those expressly stated. Plaintiffs and Jersey City reserve, and this Consent Judgment is without prejudice to, all rights against the Settling Defendant concerning all other matters, including the following:

- a. Claims based on the Settling Defendant's failure to satisfy any term or provision of this Consent Judgment;
- b. Claims based on new or unknown conditions at the PPG Sites that indicate that the remediation is not protective of human health or the environment;
- c. Liability arising from the Settling Defendant's past, present, or future discharge or unsatisfactory storage or containment of any Hazardous Substances at locations other than the PPG Sites;
- d. Liability for any future unsatisfactory storage or containment of any Hazardous Substance at the PPG Sites, other than approved or ordered by plaintiff DEP;
- e. Criminal liability;

- f. Liability for any violation of federal or state law that occurs during or after the remediation of the PPG Sites;
- g. Liability for any claim by a third party pending or filed on or after the effective date of this Consent Judgment against the Spill Fund or the Sanitary Landfill Fund concerning the PPG Sites.

21. Notwithstanding the covenant contained in Paragraph 17 above, DEP reserves the right to direct PPG to take or arrange for the taking of any and all additional measures at the PPG Sites should DEP determine, in its sole discretion, that a condition of immediate environmental concern (“IEC”), as that term is defined in N.J.A.C. § 7:26E-1.8, exists at or as a result of the PPG Sites, or that it is necessary to conduct an “emergency response action,” as defined by N.J.A.C. § 7:1J-1.4, at the PPG Sites. PPG shall, pursuant to N.J.A.C. § 7:26C-4.2, retain the right to respond to a directive issued by DEP under this paragraph, and has the right to request that the Site Administrator address the issue with the Parties.

XI. SETTLING DEFENDANT’S COVENANTS

22. PPG covenants not to oppose entry of this Consent Judgment by this Court, or to challenge any provision of this Consent Judgment, to the extent this Consent Judgment remains unmodified.

23. PPG further covenants, subject to Section XII, not to sue or assert any claim or cause of action against Jersey City or the State of New Jersey, including any department, agency or instrumentality of the State, concerning the PPG Sites.

XII. SETTLING DEFENDANT’S RESERVATIONS

24. Nothing in this Consent Judgment is intended to bar or release any claims, causes of action or demands in law or equity by PPG against any Person not a signatory to this Consent Judgment.

25. PPG reserves, and this Consent Judgment is without prejudice to:

(i) claims challenging actions of Jersey City or DEP otherwise available under New Jersey law, including but not limited to actions or decisions brought pursuant to R. 2:2-3(a)(2); and (ii) future claims against Jersey City or the State of New Jersey, subject to the New Jersey Tort Claims Act, N.J.S.A. §§ 59:1-1 to -12-3; the New Jersey Contractual Liability Act, N.J.S.A. §§ 59:13-1 to 13-10; the New Jersey Constitution, N.J. Const. art. VIII, §2, ¶2; or any other applicable provision of law, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any Jersey City or State of New Jersey employee while acting within the scope of his/her office or employment under circumstances where Jersey City or the State of New Jersey, if a private person, would be liable to the claimant. Any such claim, however, shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a Jersey City or State of New Jersey employee as that term is defined in N.J.S.A. § 59:1-3; nor shall any such claim include a claim based on DEP's selection of the remediation or DEP's oversight or approval of the Settling Defendant's plans or activities relating to the remediation. The foregoing applies only to claims that the Settling Defendant may bring pursuant to any statute other than the Spill Act, and for which the waiver of sovereign immunity is found in a statute other than the Spill Act.

26. Nothing in this Consent Judgment shall be deemed to constitute preauthorization of a claim against the Spill Fund within the meaning of N.J.S.A. § 58:10-23.11k. or N.J.A.C. § 7:1J.

XIII. FINDINGS AND ADMISSIONS OF LIABILITY

27. By entering into this Consent Judgment, PPG does not admit any liability arising out of the transactions or occurrences alleged in the First Amended Complaint and 1990 ACO. Nothing contained in this Consent Judgment shall be considered: (i) an admission of any liability arising out of the transactions or occurrences alleged in the First Amended Complaint and 1990 ACO; and/or (ii) an admission of any issue of fact or law by PPG, or a finding by Plaintiffs, Jersey City, or any person not a signatory to this Consent Judgment of any fault or liability of PPG under any applicable laws or regulations.

XIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

28. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any Person not a party to this Consent Judgment.

29. PPG expressly reserves all rights, including any rights to contribution, defenses, claims, demands, and causes of action that PPG may have concerning any matter, transaction, or occurrence concerning the PPG Sites against any person not a party to this Consent Judgment.

30. It is further the intent of the Parties that by entering into this Consent Judgment, PPG shall be protected to the greatest extent possible from any contribution claim a person not a party to this Consent Judgment may assert relating to the PPG Sites, including the full protection of the Spill Act, N.J.S.A. § 58:10-23.11f.(2)(b).

31. The Parties agree that this Consent Judgment resolves any liability of PPG to the Plaintiffs and Jersey City under CERCLA for all response actions and costs of such actions with respect to the PPG Sites, and further that this Consent Judgment, upon approval by the Court, embodies a “judicially approved settlement” as those terms are used

in Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), as amended, and that PPG is entitled to contribution from any Person not a party to this Consent Judgment to the extent provided thereby.

32. Plaintiffs and Jersey City agree that they will not oppose any motion or application by PPG in any subsequent action in which PPG seeks the contribution protection that this Consent Judgment is intended to provide.

33. The Parties agree, and by entering this Consent Judgment this Court finds, PPG is entitled, as of the Effective Date, to protection from contribution actions or claims for all matters addressed in this Consent Judgment.

34. PPG also agrees that with respect to any suit or claim for contribution brought against it for matters addressed in this Consent Judgment, it will notify Plaintiffs, in writing, within 20 working days of service of a complaint on it seeking contribution.

35. Plaintiffs enter into this Consent Judgment pursuant to the police powers of the State of New Jersey for the enforcement of the laws of the State of New Jersey and the protection of the public health and safety and the environment.

36. By entering into this Consent Judgment, the Plaintiffs are restraining and abating acts or conditions that the Plaintiffs allege contributed to or were contributing to activities that present an imminent and substantial endangerment at the PPG Sites, and Plaintiffs and Settling Defendant agree that this Consent Judgment is, *inter alia*, the result of diligent prosecution of the Plaintiffs' claims associated with this alleged imminent and substantial endangerment at the PPG Sites.

37. This Consent Judgment shall be filed with the Court, and has already been subject to a thirty (30) day public notice and comment period in accordance with N.J.S.A. § 58:10-23.11e2 and Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2).

38. Settling Defendant has published legal notices in three newspapers of general circulation for Hudson and Essex Counties for a period of not less than three days that shall contain the following information:

- a. The name and location of the PPG Sites, including the PI number, the street address, the municipality, and the county;
- b. The Parties to the settlement; including PPG's full corporate name and mailing address; and
- c. A summary of the terms of the settlement.

Public notice was also published in the New Jersey Register.

XV. SUBMITTAL, REVIEW, AND DECISION-MAKING

39. The process for remediating the PPG Sites set forth in this Section shall be the method for conducting remediation of the PPG Sites pursuant to the submissions set forth in the 1990 ACO.

40. The Technical Consultant's review, the Site Administrator's review, and DEP's review, approval, and decision-making with regard to a Submittal shall be performed under the 1990 ACO and the Applicable Remedial Provisions.

41. PPG shall submit copies of any Submittal to the Site Administrator, DEP, Jersey City, and the Co-Owner/Developer. Jersey City and the Co-Owner/Developer shall review each Submittal and provide recommendations to DEP and the Technical Consultant, the Site Administrator, and PPG within thirty (30) days after receipt or such

other timeframe set forth in the Master Schedule. The Site Administrator shall provide a copy of the Submittal to the Technical Consultant and establish a timeframe for review of the Submittal and development of recommendations to the DEP.

42. In reviewing any PPG Submittal, the Technical Consultant shall work independently, but shall confer or meet with DEP whenever it has questions about the Applicable Remedial Provisions. The Technical Consultant may confer or meet with DEP and PPG together whenever he or she has questions about the Submittal. At the request of DEP and/or PPG, a joint meeting(s) shall be held with the Technical Consultant. If further requested by DEP and/or PPG, the Site Administrator will participate in the joint meeting(s). The Technical Consultant shall keep the Site Administrator informed of contacts with DEP and PPG. Once the Technical Consultant completes his or her review of the Submittal, the Technical Consultant shall present his or her findings to DEP.

43. If DEP and the Technical Consultant believe that additional work is needed on the Submittal, DEP and the Technical Consultant shall so inform PPG and the Site Administrator. If DEP, PPG and/or the Technical Consultant so request, a meeting(s) shall be held with the Site Administrator. At the end of this process, the Site Administrator shall either inform PPG that the Submittal is acceptable to DEP, or shall inform PPG of the deficiencies.

44. In the event that the Site Administrator informs PPG of deficiencies, the DEP and PPG shall attempt to resolve all disagreements expeditiously and informally in good faith negotiations. The Site Administrator shall participate in these discussions if requested by DEP or PPG. The period for informal negotiations shall not exceed twenty (20) days from the time PPG is informed of deficiencies by the Site Administrator.

45. DEP review of Submittals shall be carried out by the Assistant Director in order to assure expeditious DEP action. The Assistant Director shall consider the work of the Technical Consultant as if the Technical Consultant was a case manager at the DEP. Final decisions shall be made by the Assistant Commissioner. DEP shall retain the authority for all regulatory decisions.

46. PPG may either modify the Submittal as requested by the Site Administrator or seek review of the decision pursuant to R. 2:2-3.

XVI. SITE ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

47. As soon as reasonably possible after the Effective Date, the Parties shall provide recommendation(s) to the Court of a candidate or candidates to serve as Site Administrator. All candidate(s) for Site Administrator shall sign a confidentiality agreement, provide a Curriculum Vitae and Statement of Qualifications, and disclose any potential conflicts of interest they may have with the Parties. For any and all potential candidates submitted to the Court, the Parties shall provide information on any potential conflicts of interest and whether the Parties are willing to waive the conflict(s). The Court shall then appoint, a Site Administrator from the list of a candidate or candidates provided to the Court, considering the recommendations made by the Parties.

48. After appointment of the Site Administrator, a mutually acceptable retainer agreement shall be prepared by PPG and DEP and submitted to the Court for entry setting forth the terms of the Site Administrator's retention, including, but not limited to, reasonable fee and expense provisions.

49. The powers and purpose of the Site Administrator shall be to:

- a. Establish a judicially enforceable schedule for the filing of Submittals and the Technical Consultant's review of Submittals for the PPG Sites, to

establish the Master Schedule, and to hold regular meetings with PPG, Jersey City, the Co-Owner/Developer, and the DEP to ensure that good faith efforts are being made to meet the goals established in the Master Schedule;

- b. Hire experts and/or consultants to assist the Site Administrator in reviewing any Submittal and in resolving any issues raised to the Site Administrator by the Parties as permitted by this Consent Judgment. For any potential expert and consultant candidate, the candidate shall provide information to the Parties about any potential conflict of interest. After review of the potential conflict, the Parties shall inform the Site Administrator if they are willing to waive the conflict;
- c. Consult on the hiring of a Technical Consultant and hire the Technical Consultant in accordance with the procedures set forth in this Consent Judgment whose responsibilities shall be those set forth in Section XVII;
- d. Oversee and disburse reasonable fees and expenses from the Site Administrator's Fund for the purposes set forth in Paragraph 51;
- e. Notify PPG of the status of the amount in the Site Administrator's Fund when necessary, pursuant to Paragraph 12;
- f. Attend and participate in community or public meetings to discuss proposed remedial measures at the PPG Sites; and
- g. Review previous and ongoing health studies concerning the health impacts of chromium in Hudson County and consult with experts in the field and, if necessary, to recommend a protocol for a future medical study (health exposure study), that would monitor the people living within the vicinity of the Garfield Avenue Site to ascertain chromium exposure risks within (6) months of the entry of this Consent Judgment. All parties reserve the right to challenge any such protocol established pursuant to this paragraph (g) and/or whether any such medical study (health exposure study) is necessary and/or should be implemented. Such a challenge would be heard by the Court in a summary proceeding with the opportunity for all parties to present expert reports/testimony and to conduct discovery related to expert reports/testimony. The evidence of any such study and any results related thereto shall not be deemed as any type of admission nor be used against any party in any proceeding whatsoever.

50. The term of the Site Administrator shall be for two (2) years from the Effective Date of this Consent Judgment, with the option for renewal of the Site Administrator for subsequent two (2)-year terms thereafter. One hundred (100) days prior

to the expiration of the Site Administrator's initial two (2)-year term, and any subsequent terms, the Parties shall arrange for an in-person conference among the Parties to occur at least sixty (60) days prior to the expiration of the initial two (2)-year term. If the Parties agree at the meeting that the Site Administrator's retention should be extended for another two (2)-year term, the Parties shall draft a written agreement setting forth the two (2)-year term extension and terms thereof. At the conclusion of any two (2)-year term, the Site Administrator shall pay any remaining costs payable under Paragraph 51 that were incurred during that two (2)- year term as expeditiously as possible, and shall inform the Parties ninety (90) days after the conclusion of any two (2)-year term if the Site Administrator believes any costs remain outstanding. If the Parties agree not to extend the term of the current Site Administrator, they shall immediately proceed to interview and select an individual to recommend to the Court as the new Site Administrator for retention. On the date a new Site Administrator is approved by the Court that Site Administrator's term will begin to run for a two (2)-year period. Every Site Administrator will be reviewed at the end of the two (2)-year term and will either have his or her term extended or will not be selected for retention of another term.

51. The Site Administrator's Fund shall be an income bearing account set up pursuant to Court Order. Payments for reasonable fees and expenses shall be made from the Site Administrator's Fund upon approval of the Court, with the proviso that all reasonable fees and costs incurred within the two (2)-year period shall be paid from the Site Administrator's Fund pursuant to this Consent Judgment. The term of the Site Administrator's Fund shall be two (2) years from the Effective Date. If the Site Administrator's term is renewed, the term of the Site Administrator's Fund shall be two

(2) years from the Site Administrator's term renewal date. The funds in the Site Administrator's Fund shall be used to pay:

- a. The Site Administrator's reasonable fees and expenses incurred pursuant to Paragraph 49; and
- b. The reasonable fees and expenses of the Technical Consultant.

XVII. TECHNICAL CONSULTANT

52. As soon as reasonably possible after appointment of the Site Administrator, DEP, and PPG shall identify for the Site Administrator criteria for firms and/or individuals to serve as the Technical Consultant with regard to the PPG Sites. The Site Administrator shall select the Technical Consultant based upon those criteria. The Site Administrator shall present the rationale for his or her selection to DEP and PPG prior to retention of the Technical Consultant. All candidates for Technical Consultant shall sign a confidentiality agreement, provide a Curriculum Vitae and Statement of Qualifications specific to the position, and disclose any potential conflicts of interest they may have with the Parties. For any and all potential candidates submitted to the Site Administrator, the Parties shall provide information on any potential conflicts of interest and whether the Parties are willing to waive the conflict(s).

53. After appointment of the Technical Consultant, a retainer agreement shall be prepared by the Site Administrator and PPG that is acceptable to PPG and submitted to the Court for entry setting forth the terms of the Technical Consultant's retention, including, but not limited, to reasonable fee and expense provisions.

54. There will be no fixed term for any Technical Consultant. At any time after a Technical Consultant has been retained for six (6) months, PPG or DEP may unilaterally move for the Technical Consultant to be terminated. The motion shall be

confidential and shall be made only to DEP, PPG, and the Site Administrator. PPG, DEP, and the Site Administrator shall then hold a confidential meeting to discuss the motion to terminate the Technical Consultant. If DEP, PPG, and the Site Administrator cannot reach agreement on whether to terminate the Technical Consultant, PPG, DEP, and the Site Administrator will vote on the issue. The majority will determine whether to terminate the Technical Consultant. If a Technical Consultant is terminated, then PPG, DEP, and the Site Administrator shall immediately proceed with the process set forth in Paragraph 52 to recommend to the Court a new Technical Consultant for retention.

55. The purpose of the Technical Consultant shall be to:

- a. Provide technical support to DEP consisting of the review and evaluation of Submittals to ensure that they comply with all Applicable Remedial Provisions and to achieve the goals of the remediation, and to provide DEP with written comments on Submittals within a period of time established by the Site Administrator;
- b. Answer questions from, and to meet and confer with, PPG, DEP, and the Site Administrator regarding Submittals; and
- c. Attend and participate in community or public meetings to discuss proposed remedial measures at the PPG Sites.

56. The Technical Consultant shall send all invoices for fees and expenses to the Site Administrator, and PPG. The fees and expenses of the Technical Consultant shall be paid by the Site Administrator from the Site Administrator's Fund after approval by PPG and the Site Administrator.

XVIII. AUDITS OF SITE ADMINISTRATOR AND TECHNICAL CONSULTANT EXPENSES

57. DEP and PPG, individually or together, shall have the right, but not the obligation, on an annual basis to audit the fees and costs of: (i) the Site Administrator; (ii) the Technical Consultant, and; (iii) any expert and/or consultant hired by the Site Administrator to

assist the Site Administrator pursuant to Paragraph 49. DEP and/or PPG shall notify one another, the Site Administrator, the Technical Consultant, and any expert and/or consultant that an audit will be performed on the fees and costs of the Site Administrator, the Technical Consultant, and/or any expert and consultant.

XIX. JERSEY CITY EMPLOYMENT OPPORTUNITIES

58. In its contracting and subcontracting to remediate the PPG Sites, PPG will make all reasonable efforts to ensure that twenty percent (20%) of all contractors procured to undertake the remediation will be from Jersey City.

59. PPG will make all reasonable efforts to ensure that all contractors and subcontractors procured to remediate the PPG Sites will hire and employ twenty percent (20%) of its workforce from Jersey City. PPG will establish a program to provide OSHA Certification training for Jersey City residents (with preference given to residents of the Wards in which PPG Sites are located) in order that they may work in available positions on the remediation at the PPG Sites.

60. PPG shall submit a quarterly report to the Site Administrator detailing the efforts PPG has undertaken to meet the twenty percent (20%) goals set forth above.

XX. INVESTIGATION AND REMEDIATION OF RESIDENTIAL PROPERTIES WITHIN THE VICINITY OF PPG SITES

61. The Site Administrator shall establish a hot-line call number for residents within ~~200~~400 feet of the property lines or the edge of CCPW remediation (whichever is greater in distance) of a PPG Site (except the Garfield Avenue Site) to call if the resident suspects the presence of CCPW in or on his/her real property. Residents living in the area from the Garfield Avenue Site west to Ocean Avenue; south to Bayview Avenue and north to Bramhall Avenue may use the hot-line call number if the resident suspects the presence of CCPW in or on his/her

real property. The Site Administrator will direct that an inspection and, if needed, any testing, at the real property be undertaken by qualified professionals retained by PPG, and PPG shall undertake the appropriate remedial measures, in the event there exists elevated levels of CCPW on the real property. Any such real property inspection, testing and/or remediation shall be at the highest priority in the Site Administrator's scheduling of site work.

XXI. STIPULATED PENALTIES AND APPLICABILITY OF GRACE PERIOD RULE

62. DEP may assess stipulated penalties pursuant to Section E of the 1990 ACO. The Grace Period Rule shall not be applicable.

XXII. FORCE MAJEURE

63. The performance by PPG of any obligation under this Consent Judgment shall be excused by floods, riots, fires, strikes, wars, embargoes, acts, injunctions or restraints of government preventing such performance beyond PPG's reasonable control and which is not due to PPG's fault or negligence ("Force Majeure Event"), provided that: (i) PPG notifies DEP, Jersey City and the Site Administrator in writing within seven (7) days of the occurrence of the event or condition, describing the anticipated length of delay, any measures taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay and uses commercially reasonable efforts to mitigate adverse effects, if any, resulting from the Force Majeure Event as they relate to the performance of the obligation; and, (ii) PPG's obligation to perform shall be suspended only for the duration of the Force Majeure Event and a reasonable recovery time thereafter.

XXIII. NOTICES AND SUBMISSIONS

64. Whenever written notice or other documents are required to be submitted by DEP to PPG or by PPG to DEP, they shall be submitted by overnight mail, facsimile, hand delivery, or e-mail, and they shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. This Paragraph nullifies and supersedes Paragraphs 80 through 82 of the 1990 ACO.

As to Plaintiffs DEP & Administrator:

Thomas Cozzi
Assistant Director
Site Remediation Program
New Jersey Department of Environmental Protection
401 East State Street
P.O. Box 028
Trenton, NJ 08625

As to PPG:

Mark Terril
Director of Environmental Affairs
PPG Industries, Inc.
4325 Rosanna Drive
Building C
Allison Park PA 15101
Phone: (412) 492-5466 Fax: (412) 492-5377
E-mail: terril@ppg.com

Steven F. Faeth, Esq.
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Attorney for Defendant PPG

As to Jersey City
Corporation Counsel Bill Matsikoudis
280 Grove Street
Jersey City NJ, 07302
Phone: (201) 547-4667
E-mail: Matsikoudisw@jcnj.org

XXIV. EFFECTIVE DATE

65. The Effective Date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court.

XXV. RETENTION OF JURISDICTION

66. This Court retains jurisdiction over both the subject matter of this Consent Judgment, and the Parties for the duration of the performance of the terms and provisions of this Consent Judgment and to effectuate or enforce compliance with the terms of the Consent Judgment.

XXVI APPENDICES

67. The following appendices are attached to this Consent Judgment:

- a. Appendix A: 1990 ACO;
- b. Appendix B: Additional Sites Added to the 1990 ACO by Agreement with DEP.

XXVII MODIFICATION

68. This Consent Judgment, the 1990 ACO, and the 1990 Amendment to the ACO, represent the entire agreement between DEP, Administrator, and PPG concerning the PPG Sites, and supersede all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided.

69. Material modifications to the terms of this Consent Judgment may only be made with this Court's approval. Non-material modifications to the terms of this Consent Judgment may only be modified by agreement of the Parties. All such modifications shall be made in writing.

XXVII. SIGNATORIES/SERVICE

70. Each undersigned representative of a Party to this Consent Judgment certifies that he or she is authorized to enter into the terms and conditions of this Consent Judgment, and to execute and legally bind such party to this Consent Judgment.

71. This Consent Judgment may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Consent Judgment.

72. PPG shall identify on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent

Judgment. The Settling Defendant agrees to accept service in this manner, and to waive the formal service requirements set forth in R. 4:4-4, including service of a summons.

SO ORDERED this ____ day of _____, 2009.

J.S.C

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Dated: _____

By: _____
Assistant Commissioner, Site Remediation Program

NEW JERSEY SPILL COMPENSATION FUND

Dated: _____

By: _____
Administrator
New Jersey Spill Compensation Fund

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

Dated: _____

By: _____
Anna Lascurain
Deputy Attorney General

PPG INDUSTRIES, INC.

Dated: _____

By: _____
NAME
TITLE

CITY OF JERSEY CITY

Dated _____

By: _____
William C. Matsikoudis
Corporation Counsel

APPENDIX A:

1990 ACO

APPENDIX B: ADDITIONAL SITES
ADDED TO THE 1990 ACO BY AGREEMENT WITH DEP

The sites listed below are those added to the 1990 ACO by letter agreements between PPG and DEP dated August 2, 1990, September 5, 1990 and November 29, 1990. Also included below (sites 174, 186, 202, 203, 204 & 207) are the so-called “Orphan Sites” accepted by PPG:

<u>SITE #</u>	<u>SITE NAME</u>	<u>LOCATION</u>	<u>BLOCK</u>	<u>LOT</u>
16	Linden East (Levy & Sons)			
142	Pine Street 3			
151	Halladay Street 3			
156	Gregory Avenue Apartments			
159	Pacific Avenue 2			
160	Johnston Avenue 1			
161	Maple Street 1			
164	Value City Furniture			
174	Dennis T. Collins Park			
186	Garfield Avenue			
202	Caven Point Road			
203	Claremont Associates			
204	Conrail Edgewater Branch			
207	Garfield Avenue #2			

Document comparison by Workshare Professional on Tuesday, June 16, 2009 12:43:01 PM

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<u>Moved to</u>	
Style change	
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Moved deletion	
Inserted cell	
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Moved cell	
Split/Merged cell	
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