



NATURAL RESOURCES DEFENSE COUNCIL

April 13, 2009

VIA FEDERAL EXPRESS

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

Re: Comments on Partial Consent Judgment Concerning the PPG Sites  
Civil Action No. HUD-C-77-05

Dear Mr. Cozzi:

On behalf of the Natural Resources Defense Council, Inc. and its members ("NRDC"), I submit these comments on the Partial Consent Judgment Concerning the PPG Sites, Civil Action No. HUD-C-77-05 (hereafter "Consent Judgment"). Pursuant to my conversation with Deputy Attorney General Richard Engel on April 2, 2009, I understand that the Department of Environmental Protection ("DEP") will be filing all public comments with the Court, in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2). See Consent Judgment ¶¶ 36. NRDC opposes entry of the Consent Judgment because it does not sufficiently protect the public interest in a timely, permanent, environmentally sound cleanup of the PPG sites that fully protects the public's health.

NRDC is a national, non-profit, environmental advocacy group with more than 520 members residing in Hudson County, including over 180 in Jersey City. Founded in 1970, NRDC has long been active in working to reduce the threats to human health and the environment from toxic chemicals, specifically including chromium. NRDC and its co-plaintiff – Interfaith Community Organization, Inc. ("ICO") – filed a lawsuit in federal court on February 3, 2009, seeking to compel PPG to remedy all of its chromium contamination that "may present an imminent and substantial endangerment to health or the environment" under the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(B). NRDC attaches a copy of the federal complaint to these comments. The complaint details the well-known hazards of chromium contamination, PPG's decades-long failure to comply with legal mandates to clean up the worst of its contamination in Jersey City, and the State's equally long failure to enforce those obligations.

The Consent Judgment is insufficiently protective for at least the following reasons:

1. **It does not contain a remediation plan for any PPG site.** As was acknowledged by the parties at meetings with community representatives, the Consent Judgment does not set out a proposal for cleaning up the Garfield Avenue site, or any other site. Instead, it merely establishes a structure and a process for developing such plans in the future. As such, the Consent Judgment does not ensure that all contaminated soils will be removed and all contaminated groundwater will be treated – the only reliable, permanent remedy. Nor does it address off-site contamination (including chromium dust in residents' homes) or PPG's share of "orphan sites." The Consent Judgment also fails to provide for medical monitoring for those long exposed to contamination from PPG's activities.

The parties have represented to the public that the Consent Judgment's reference to "Applicable Remedial Provisions" will inevitably lead to the excavation down to 20 feet of any soil containing 20 ppm or more of hexavalent chromium. But that is not necessarily so, for at least three reasons. First, the Commissioner's Chromium Policy, as embodied in part by a memorandum of February 8, 2007, allows for in situ treatment of soils containing more than 20 ppm of hexavalent chromium. Parties to the Consent Judgment have acknowledged that in situ treatment is a possible remedy and that removal of all contaminated soils will not necessarily occur. Second, as has been demonstrated by the ups and down of chromium standards over the years,<sup>1</sup> there is no guarantee that whatever remediation occurs may not be governed by laxer standards adopted in the future for hexavalent chromium. Third, the Consent Judgment does not adequately account for off-site contamination beyond the boundaries of currently-delineated sites.

NRDC also does not believe that even the "20/20" standard the parties claim will control any cleanup is sufficiently protective of human health. The current guideline does not take into account recent studies showing increased hazards associated with exposure to chromium. For example, a study by the National Toxicology Program, part of the National Institutes of Health, concluded in 2007 that hexavalent chromium may cause cancer through ingestion, as well as through long-recognized inhalation pathways. State guidelines have not been adjusted to account for these new studies. Moreover, "imminent and substantial endangerment" may exist even if State standards are met. See *ICO v. Honeywell Int'l, Inc.*, 399 F.3d 248, 259-60, 261 n.6 (3d Cir. 2005) (holding that State standards do not define liability under RCRA; endangerment may be found at lower levels of contamination).

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<sup>1</sup> For example, between 1993 and 1998, DEP guidance for hexavalent chromium in soil was 10 ppm (for both residential and non-residential uses), as opposed to the guideline of 20 ppm currently in effect.

2. **It does not contain an enforceable schedule.** In contrast to the 1990 Administrative Consent Order (“ACO”) governing PPG chromium cleanups, the Consent Judgment does not contain any enforceable deadlines leading to cleanup. While stating a “goal” of five years to complete remediation of the Garfield Avenue site, the Consent Judgment sets no firm deadlines, and does not provide for enforcement of any schedules adopted under the Consent Judgment through stipulated penalties. In fact, the Consent Judgment, at ¶ 57, bars DEP from assessing stipulated penalties pursuant to the 1990 Administrative Consent Order.

3. **It relies on enforcement by unreliable parties.** PPG has exhibited noteworthy resistance to remediating the Garfield Avenue site since it first started acknowledging the contamination more than 25 years ago. And DEP has proved to be unwilling and/or unable to compel PPG to clean up its mess in Jersey City, despite decades of professed enforcement activities. While state agencies are normally presumed to be diligent and acting in the public interest, DEP long ago forfeited the benefit of such presumptions through its ineffectiveness. And, although it has threatened suit at various times, the City of Jersey City has never had the determination or wherewithal to follow through. It now surrenders any rights it might have had to do so for payments from PPG of \$1.25 million over the next five years. Even if well-intentioned, DEP may continue to succumb to pressure from PPG to compromise cleanup, since the agency remains the arbiter of regulatory decisions under the Consent Judgment; see ¶ 44.

The parties to the Consent Judgment are asking the residents of Jersey City to trust that they will act in their best interests. After 25 years of toxic exposures, there is little trust remaining. As such, a mere promise of a future cleanup plan is not sufficient to settle all of the State’s claims against PPG. Only a Consent Judgment guaranteeing prompt, complete, and permanent removal of all remaining hazards – both on and off the Garfield Avenue site – could justify giving up those claims.

Respectfully submitted



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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

INTERFAITH COMMUNITY )  
ORGANIZATION, INC., and )  
NATURAL RESOURCES DEFENSE )  
COUNCIL, INC. )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
PPG INDUSTRIES, INC., )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action

Docket No. \_\_\_\_\_

FILED ELECTRONICALLY

**COMPLAINT**

## INTRODUCTION

1. This is a citizen suit brought under section 7002(a)(1)(B) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(B), to require defendant PPG Industries, Inc. ("PPG") to take all actions necessary to eliminate the imminent and substantial endangerment to health and the environment caused by chromium-bearing waste material from PPG's historical chromate chemical production operations in Jersey City, Hudson County, New Jersey. Chromium from PPG's operations – remaining onsite, migrating off-site, and transported to other sites in Jersey City and nearby communities – poses risks of serious illness to residents of the area, including lung cancer and other severe ailments, and harms the surrounding environment. The State of New Jersey has failed to solve this decades-old problem.

The parties to this action are:

### Plaintiffs

Interfaith Community Organization, Inc.  
601 Jackson Street #2  
Hoboken, NJ 07030

Natural Resources Defense Council, Inc.  
40 West 20th Street  
New York, NY 10011

### Defendant

PPG Industries, Inc.  
One PPG Place  
Pittsburgh, PA 15272

2. From approximately 1924 to 1963, the predecessor companies of PPG (also collectively referred to herein as "PPG") processed chromite ore at a plant located at 880-900 Garfield Avenue in Jersey City ("the Garfield Avenue site" or "the site"),

producing hundreds of thousands of tons of chromite ore processing residue ("COPR"). The site is also sometimes identified by the State of New Jersey and others as Hudson County Chromate Site #114.

3. The Garfield Avenue site is located in the middle of a busy commercial and densely-populated residential area of Jersey City. The site is surrounded by homes and workplaces, and there is a Hudson-Bergen Light Rail stop adjacent to the site.

4. COPR contains a number of hazardous substances, most notably high levels of hexavalent chromium, a potent human carcinogen. Hexavalent chromium can also cause other human ailments when inhaled, ingested, or contacted, including dermatitis, chromium ulcers, and nasal septum perforations. Studies further implicate hexavalent chromium in reproductive and developmental disorders. It is also toxic to animals.

5. While less toxic than hexavalent chromium, trivalent chromium present in COPR may also cause significant harm to human health and the environment.

6. Massive amounts of COPR and other chromium-contaminated soils and materials remain at the Garfield Avenue site. The groundwater beneath the site is also severely contaminated with chromium. In both soils and groundwater, hexavalent chromium is present at levels that are tens of thousands of times more than those recognized as safe.

7. Chromium and other hazardous pollutants have been, are being, and will continue to be transported off the Garfield Avenue site in the air and water, where those pollutants will continue to threaten human health and harm the environment.

8. PPG also arranged for the transport and disposal of COPR from the Garfield Avenue site for use as fill at other sites throughout Jersey City and other locations in Hudson County, where much of it still remains. Chromium contamination from that fill similarly threatens human health and harms the environment.

9. Chromium contamination from PPG's operations at the Garfield Avenue site has been identified on the walls and floors of buildings, on the surfaces of driveways and parking lots, and on unpaved areas. These locations include residences, schools, active work sites, public lands, and commercial establishments. Chromium wastes at these locations pose serious risks to the health of those exposed to them, and harm the environment.

10. Plaintiffs are citizen groups whose members – residing, working, and visiting in areas where they risk exposure to chromium originating at the Garfield Avenue site – are harmed by PPG's failure to abate the endangerment related to its generation of COPR. To redress this harm, plaintiffs seek injunctive relief, as provided by section 7002 of RCRA, 42 U.S.C. § 6972, to insure a prompt, complete, permanent, and environmentally sound cleanup of chromium contamination at the site and in the surrounding community.

#### JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of this action pursuant to section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), and the federal question statute, 28 U.S.C. § 1331. Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), authorizes citizens to bring suit "against any person . . . who has contributed or is contributing to the past or present handling, storage, treatment, transportation, or

disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment." Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), empowers the Court to compel any person referred to in paragraph (1)(B) "to take such . . . action as may be necessary" to eliminate the endangerment. This Court may award plaintiffs all necessary injunctive relief pursuant to RCRA, 42 U.S.C. § 6972(a), and may award declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

12. By letter of February 21, 2006, plaintiffs gave notice of the endangerment as required by section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A), to the Administrator of the United States Environmental Protection Agency ("USEPA"), the New Jersey Department of Environmental Protection ("NJDEP"), and PPG.

13. In accordance with section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A), more than ninety (90) days have passed since notice was served on USEPA, NJDEP, and PPG. USEPA has not taken any of the actions described in section 7002(b)(2)(B)(i)-(iv) of RCRA, 42 U.S.C. § 6972(b)(2)(B)(i)-(iv). NJDEP has not taken any of the actions described in section 7002(b)(2)(C)(i)-(iii) of RCRA, 42 U.S.C. § 6972(b)(2)(C)(i)-(iii).

14. Venue is proper in this judicial district pursuant to section 7002(a) of RCRA, 42 U.S.C. § 6972(a), because it is the "district in which . . . the alleged endangerment may occur."

## PARTIES

### Plaintiffs

15. Plaintiff Interfaith Community Organization, Inc. ("ICO") was founded in 1987 as a vehicle through which diverse residents of Hudson County could identify common concerns and interests, and act on those concerns in order to improve the lives of people in their communities. Its members are institutions – religious congregations in Jersey City and Hoboken – and individual residents of the County. Since 1989, ICO has worked to fully understand and responsibly address the legacy of chromate chemical pollution in Hudson County. It has advocated cleanups, health studies, and other measures needed to protect residents and workers from harm and to safely redevelop contaminated areas of the County. In 1995, ICO brought a RCRA citizen suit against AlliedSignal (now Honeywell International) to compel cleanup of a 34-acre site that, like the Garfield Avenue site, had been the primary location for the deposition of chromate chemical waste from an adjacent chromate plant. In 2003, the District Court ordered a complete excavation and removal of approximately one million tons of chromium-contaminated soil from the site; this cleanup (upheld by the Court of Appeals) is currently underway. ICO is an affiliate of the Industrial Areas Foundation, a network of congregation-based citizens' organizations throughout the United States. ICO is a non-profit corporation organized under the laws of the State of New Jersey; its office is located at 601 Jackson Street #2, Hoboken, NJ 07030.

16. Plaintiff Natural Resources Defense Council, Inc. ("NRDC") is a national, not-for-profit corporation organized under the laws of the State of New York and headquartered at 40 West 20th Street, New York, New York 10011. Founded in 1970,

NRDC has more than 429,000 members nationwide, including nearly 14,000 members who live in New Jersey. Over 520 NRDC members reside in Hudson County, including over 180 in Jersey City. NRDC's staff of scientists, lawyers, and environmental specialists is dedicated to protecting public health and the environment through litigation, lobbying, and public education. NRDC has long been active in working to reduce the harmful threats to human health and the environment from toxic chemicals, specifically including chromium.

17. As described in more detail in paragraphs 70-75 below, ICO and NRDC members have been and will continue to be injured by COPR contamination at and originating at the Garfield Avenue site until the endangerment is abated.

Defendant

18. Defendant PPG is a corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business at One PPG Place, Pittsburgh, Pennsylvania 15272. PPG is the successor corporation to Pittsburgh Plate Glass Company and Natural Products Refining Company, which operated the chromate chemical production facility at the Garfield Avenue site. The Garfield Avenue site was transferred between Pittsburgh Plate Glass Company and its subsidiary, Columbia Southern Chemical Corporation, during 1954 through 1961. In 1964, PPG conveyed the site to Clif Associates.

GENERAL ALLEGATIONS

The Hazards of Chromium

19. Chromium is most commonly found in two forms: hexavalent chromium and trivalent chromium. While hexavalent chromium has long been recognized as a

highly toxic chemical, recent studies suggest that trivalent chromium may also pose significant health risks.

20. Hexavalent chromium is readily absorbed into the body and cells, and it is highly reactive with tissue. Acute (relatively short-term, high concentration) exposures to hexavalent chromium through inhalation, ingestion, or skin contact may cause respiratory distress, abdominal pain, vomiting, hemorrhage, skin burns, kidney and liver damage, and even death.

21. Chronic (relatively long-term, lower concentration) exposures to hexavalent chromium may cause cancer, as well as a range of severe problems related to the respiratory tract, liver, kidneys, gastrointestinal tract, reproductive system, immune system, and skin.

22. Hexavalent chromium has long been associated with lung and nasal cancers in humans exposed to it through inhalation. Epidemiological studies of workers in chromate chemical plants over more than eighty years, in tandem with animal studies, have established that inhaled hexavalent chromium greatly increases the risk of such cancers. Both USEPA and NJDEP have determined that hexavalent chromium in air is a human carcinogen. The U.S. Department of Health and Human Services has also classified hexavalent chromium compounds as known human carcinogens, and the International Agency for Research on Cancer has determined that hexavalent chromium is carcinogenic to humans. Cancers may occur long after exposure to chromium has ended.

23. A study of Jersey City residents released by the U.S. Agency for Toxic Substances and Disease Registry in September 2008 found that those living in closer

proximity to historic COPR sites had a significantly higher incidence of lung cancer than those residents living farther away from such sites.

24. Chronic inhalation exposure to hexavalent chromium has been shown to result in holes and ulcers in the nasal septum, nosebleeds, bronchitis, decreased pulmonary function, pneumonia, and asthma.

25. Dermal exposures to hexavalent chromium are known to cause skin ulcers, rashes, and other allergic reactions.

26. When hexavalent chromium enters cells, it induces a wide range of DNA damage, leading to cell abnormalities and genetic mutations that increase cancer risks.

27. Both hexavalent and trivalent chromium have been found to cross the placental border in laboratory animals, causing birth defects such as cleft palate, skeletal defects, and neural tube defects. Pregnant women exposed to chromium have been found to suffer three times as many clinical and delivery complications.

28. Recent studies have established that ingestion of hexavalent chromium is a serious concern. Both human and animal studies show a statistically significant increase in cancers from exposures to hexavalent chromium in drinking water. Most notably, a two-year, peer-reviewed study completed in 2007 by the National Toxicology Program, part of the National Institutes of Health, concluded that hexavalent chromium absorbed from the gastrointestinal tract is taken up by the cells in many tissues and organs, causing malignant tumors in laboratory animals ("NTP Study").

29. Recent study results also indicate clearly for the first time that ingestion of trivalent chromium, as well as hexavalent chromium, causes large-scale, irreversible DNA damage that increases cancer risks.

30. A September 2008 draft report released by the California Environmental Protection Agency provides evidence of multiple studies linking exposure to hexavalent chromium with both developmental toxicity and adverse effects on female and male reproductive systems.

31. Within COPR, studies have shown ongoing interconversion of chromium between its hexavalent and trivalent states; under certain conditions, trivalent chromium can revert to hexavalent, and vice versa.

#### Chromium Contamination from the Garfield Avenue Site

##### (1) On-Site Chromium Contamination

32. The Garfield Avenue site occupies approximately 16.6 acres in a busy commercial and densely-populated residential area of Jersey City. On information and belief, the site is currently owned by the City of Jersey City and a private redevelopment corporation.

33. The western half of the site was the location of the former chromate production facility. PPG stored COPR and other chromium-contaminated wastes from the production processes throughout the manufacturing area, and stockpiled such wastes on the southeast quadrant of the site, as well as on lands adjacent to the site, until the 1960s. COPR was also used as fill on the site.

34. A manufactured gas plant ("MGP") facility operated from 1886 to the mid-1930s in the northeastern portion of the site. Public Service Enterprise Group Services Corporation is responsible for addressing contaminants at the site related to the historical MGP operations.

35. PPG has sampled soils and groundwater at the site and reported the results to NJDEP in a Remedial Investigation Report dated March 28, 2006 (the "RIR").

36. The RIR reveals dangerously elevated levels of hexavalent chromium and total chromium (which is comprised of both hexavalent and trivalent chromium) throughout the soils at the site and in the groundwater underlying the site. Based on sampling for a wide range of contaminants, PPG has concluded that hexavalent and total chromium are the primary constituents of concern at the site.

37. PPG measured hexavalent chromium in the soil at the site at levels as high as 46,400 parts per million ("ppm") in unsaturated soils and 54,300 ppm in water-saturated soils. By comparison, NJDEP's most stringent soil cleanup criterion for hexavalent chromium is 20 ppm, a standard that pre-dates the NTP Study and is likely insufficient to protect public health. PPG found hexavalent chromium at concentrations above 20 ppm across most of the site, with the highest levels generally in shallow soils and in the northwest quadrant of the site.

38. PPG measured total chromium at 350,000 ppm and 246,000 ppm, respectively, in two on-site soil samples. Trivalent chromium can be assumed to represent the remainder of the total chromium after hexavalent chromium is subtracted. By comparison, the current NJDEP soil cleanup criterion for trivalent chromium is 120,000 ppm. This criterion predates the recent studies indicating elevated cancer risks from exposures to trivalent chromium, and may be insufficient to protect public health.

39. PPG measured chromium in groundwater beneath the site at levels as high as 7,890,000 parts per billion ("ppb") in shallow zone groundwater, 4,440,000 ppb in intermediate zone groundwater, and 65,000 ppb in deep groundwater. By

comparison, the current NJDEP Groundwater Quality Criterion for total chromium is 70 ppb. Most of the groundwater samples on the site contained chromium at levels exceeding that criterion. In shallow zone groundwater, virtually all of the chromium is hexavalent chromium.

(2) Off-Site Migration of Chromium

40. Chromium from soils and groundwater on the Garfield Avenue site has migrated off the site to surrounding areas and will continue to do so if not permanently remediated. Migration pathways include air, surface water, and groundwater.

41. Soil and dirt samples taken by plaintiffs and others from commercial and residential areas surrounding the site, first in 2005 and again in January 2009, have consistently tested positive for hexavalent chromium. Soil and dirt samples taken from the sidewalk and street bordering the site, analyzed in 2005 by an EPA-certified laboratory, contained levels of hexavalent chromium ranging from 35.6 to 409 ppm, well above NJDEP's 20 ppm soil cleanup criterion.

42. Dust samples taken in early 2008 from surfaces inside residents' homes near the site contained hexavalent chromium at levels of concern (although generally below 20 ppm). A 1998 study in Hudson County found that the levels of chromium in household dust of homes near chromate production waste sites correlate with elevated levels of chromium in the urine of residents, especially children.

43. These indoor sampling results, as well as those described in the preceding paragraphs regarding hexavalent chromium levels measured in soils, may understate the actual levels of hexavalent chromium. Studies have found that the most commonly used analytical methods routinely underestimate the amount of hexavalent

chromium present in solids, because of the difficulty in extracting all of the hexavalent chromium from chemically complex solids.

44. In recent months, as in the past, water running in the streets surrounding the site has on occasion been observed to display the distinctive yellow and green colors associated with hexavalent chromium contamination.

45. COPR and other chromium-bearing soils and muds at the site continue to leach hexavalent chromium into the groundwater beneath the site. Once in the groundwater, the chromium is transported both horizontally and vertically along hydraulic gradients. As it is transported through groundwater, hexavalent chromium may be taken up and released many times by surrounding soils, providing a secondary source of chromium to the groundwater. Groundwater transports chromium off the site.

46. Once contaminated groundwater is transported off-site, the chromium may end up in surface soils, surface waters, wells, and the basements of buildings. When groundwater contaminated with hexavalent chromium seeps into basements, distinctive green and yellow "blooms" of chromate salts may accumulate on basement surfaces. These blooms pose hazards to building residents and visitors. Similar blooms, also hazardous to residents and passersby, may appear on chromium-contaminated soils.

47. Contamination of surface soils via groundwater transport may lead to additional sources of potential human exposure to airborne hexavalent chromium, as fine particles containing hexavalent chromium are dispersed by wind.

48. Even though PPG performed some limited interim remedial activities at the site in the 1980s and 1990s, those measures are not sufficient to prevent transport of contaminants to surrounding areas. A portion of the site is capped by a temporary

liner (consisting of a layer of plastic and gravel for dust control) and former building foundations. On information and belief, some water seepage on the site is collected in sumps and shipped off-site for treatment and disposal. These measures do not eliminate air and surface water pathways of chromium exposure to community residents, and become even less effective as more time passes without permanent remedial measures.

49. Most surface water runoff from the site is directed into storm sewers, some of which are tied into Jersey City's sanitary sewer system. Storm sewers on the site are known to be in poor condition, which may result in stormwater infiltration and exfiltration through the pipes. This, in turn, may allow chromium-contaminated groundwater to enter the sewers. On information and belief, during many storms, stormwater sewers drain directly into nearby waterways. At other times, stormwater discharges are directed to the Passaic Valley Sewerage Commission, whose treatment facility discharges into the lower Passaic River. The poor conditions of the sewers on and around the site facilitate additional pathways to and from soils, groundwater, and surface water for chromium-contaminated water.

50. According to PPG, during heavy rain storms, a backed-up storm sewer has been observed to cause several feet of flooding on Garfield Avenue in the vicinity of the site. As stated by PPG, when this happens, it may be assumed that the sewer line also backs up into the site via the on-site pipes. Stormwater sewers also back up into Jersey City residents' basements; these backups may contain chromium wastes from the site.

51. In 1994, a broken water main on the site caused an off-site release of water that showed evidence of having been in contact with COPR. The water flowed onto Garfield Avenue, where it froze into a sheet of ice whose yellow or green tint was presumed to indicate contamination with hexavalent chromium.

52. There are no interim remedial measures in place at the Garfield Avenue site sufficient to prevent the migration off-site of chromium-contaminated groundwater. Data in the RIR indicate that groundwater is moving off-site in several directions.

(3) Off-Site Hauling of Chromium Wastes

53. During its operation of the chromate processing facility at the Garfield Avenue site, PPG arranged with various contractors for the removal of chromium-contaminated wastes to be used as fill material in construction and development projects at residential, commercial, public works, and recreational sites throughout Jersey City and surrounding areas of Hudson and Essex Counties.

54. When PPG sold the site to Clif Associates in 1964, it was aware that Clif Associates and a related company, Lawrence Construction Company, would likely continue to distribute chromium-contaminated wastes from the site for use as fill, which did in fact occur.

55. Off-site chromium contamination from fill originating at the Garfield Avenue site has been identified at dozens of residential, commercial, industrial, and public properties in Jersey City and surrounding areas. The full extent of contamination from materials originating at the site is unknown.

56. Chromium-contaminated wastes from two other companies' chromate chemical production operations in Hudson County were also distributed as fill. In

addition to the sites where PPG is known to be the source of the contamination, NJDEP has identified over fifty so-called "orphan" sites, where the source of the contamination is known to be one of the three companies, but the specific source at each site is not known. Contaminated wastes from the Garfield Avenue site are presumed to be present at some of these sites, and may also be present at sites where contamination has yet to be identified.

PPG and Government Failures to Abate the Contamination

57. PPG started investigating chromium contamination at the Garfield Avenue site no later than 1982, when it found high levels of hexavalent chromium in soil and surface water samples.

58. PPG retained D'Appolonia Waste Management Services, Inc. ("D'Appolonia") to conduct a contaminant survey and hydrogeologic assessment for the purpose of evaluating the vertical and horizontal extent of chromium contamination at the Garfield Avenue site and its impact on groundwater. In October 1983, NJDEP confirmed its concurrence with D'Appolonia's proposed investigation plan.

59. In January 1984, D'Appolonia reported the results of its investigation, which found chromium in soils and groundwater at the site.

60. Between 1985 and 1990, NJDEP issued several orders and directives to PPG related to investigating and cleaning up chromium-contaminated sites in Hudson County, including the Garfield Avenue site. In July 1990, NJDEP and PPG entered into an Administrative Consent Order ("the 1990 ACO"). Pursuant to the 1990 ACO, PPG agreed to implement interim remedial measures, to conduct a remedial investigation and feasibility study, and to design and implement remedial action selected by NJDEP

to remedy problems associated with hazardous substances discharged at or emanating from the Garfield Avenue site.

61. The 1990 ACO states as follows: "[NJDEP] has determined that uncontrolled discharges of hazardous substances from the [COPR] at the . . . Garfield Avenue Site are within an area of high population density . . . and that the risk of human exposure to [COPR] at the . . . Garfield Avenue Site is ongoing. Chromium and its compounds contained in the [COPR] are potentially toxic to humans and may include demonstrated human carcinogens. [NJDEP] has determined that these conditions create a substantial risk of imminent danger to human health and the environment."

62. Following the 1990 ACO, NJDEP took no further enforcement action against PPG for nearly fifteen years, even though PPG had not even delineated the extent of the chromium contamination on the site, let alone remediated the chromium contamination, during all those years.

63. In 1992, PPG implemented interim remedial measures at the site. On information and belief, these measures consisted of the installation of a plastic liner, capped with rock, over a portion of the site. Other parts of the site are overlain by the foundations of former buildings. Liners, caps, and building foundations are known to be ineffective over time at containing chromium wastes such as those on the site. The characteristics of such wastes predictably lead to "heaving" that degrades and destroys such liners, caps, and foundations, allowing further escape of contaminants from the site.

64. More than ten years passed between PPG's performance of interim remedial measures at the Garfield Avenue site and PPG's submission to NJDEP in April 2003 of its work plan for undertaking a remedial investigation at the site.

65. In May 2005, the New Jersey Attorney General filed a civil action against PPG and the two other companies that operated chromate chemical production facilities in Hudson County – Honeywell International, Inc. and Occidental Petroleum Corporation. The lawsuit, brought under the New Jersey Spill Compensation and Control Act and common law theories, seeks to compel the three companies to clean up all remaining contaminated sites, including the orphan sites, and to recover from the companies the State's costs for its own remedial activities. On information and belief, the State's case is still pending.

66. In March 2006, PPG submitted its RIR to NJDEP. The primary objective of the RIR was to characterize on-site soil and groundwater contamination at the Garfield Avenue site. On information and belief, NJDEP has not yet approved a remediation plan for the site, and no permanent remediation has been carried out.

67. On or around August 1, 2006, PPG submitted an interim remedial measures ("IRM") work plan, including a proposal to excavate some soil with the highest chromium levels. In addition to removing some highly contaminated soils, another purpose of the activities proposed in the IRM work plan was to help decide how to conduct any larger scale remedial excavation of the site. According to NJDEP, it reviewed the IRM work plan in December 2006, but PPG withdrew the proposal in September 2007 because of issues related to monitoring and dust control.

68. NJDEP has stated that it is reviewing the NTP Study in preparation for developing soil remediation standards for hexavalent and trivalent chromium. Pending development of those standards, NJDEP is continuing to use as guidance soil and groundwater cleanup criteria that pre-date the NTP Study and other recent studies showing increased risks to human health from chromium exposure.

69. More than twenty-five years after PPG publicly identified hexavalent chromium contamination at the Garfield Avenue site, the site remains contaminated, and no permanent remedy has yet been proposed or ordered. Chromium in soils and groundwater continues to harm and endanger public health and the environment, and will continue to do so until an appropriate, permanent remedy is implemented. Significant off-site chromium contamination originating from the Garfield Avenue site also remains unremediated. In the meantime, the most recent scientific studies demonstrate that chromium poses greater risks than earlier understood.

Harm to Plaintiffs from the Chromium Contamination

70. Individual members of ICO and NRDC live, work, visit, attend school, and/or recreate in areas near the Garfield Avenue site and in other areas of Jersey City and Hudson and Essex Counties affected by chromium-contaminated materials originating at the site. These members are harmed and their health is threatened by continued exposure to chromium compounds.

71. These members may be exposed to chromium contamination originating at the Garfield Avenue site via inhalation of, ingestion of, and dermal contact with airborne particles, and via water-borne transmission. For example, these members walk along the streets bordering the site and use the Light Rail stop adjacent to the site.

Also, elevated levels of hexavalent chromium have been identified in dust and dirt in and around plaintiffs' members' homes in the vicinity of the site. Further, chromium-contaminated groundwater is known to seep into residential basements and onto soils, where it forms chromate deposits on surfaces to which residents are exposed, as described in paragraph 46 above. These and other exposures now harm and continue to pose a threat of harm to members' health, as described in paragraphs 19 through 31 above.

72. Chromium contamination of groundwater and surface waters from materials originating at the Garfield Avenue site also constitutes harm to the environment. This harm injures the interests of plaintiffs' members, some of whom use waterways for recreational and aesthetic purposes that are impaired by chromium contamination.

73. Plaintiffs' members have reasonable concerns about the adverse health effects of chromium exposure from the Garfield Avenue site and wastes at other locations that originated at the site. Those reasonable concerns about their health and that of their children and pets lead some members to alter their behavior to avoid chromium exposure. Plaintiffs' members' reasonable concerns about this chromium exposure, as well as any alterations in their behavior based on those concerns, also constitute injury to their interests.

74. Plaintiffs' members will continue to suffer injury to their health and other interests described immediately above until chromium contamination at and originating at the Garfield Avenue site is completely remediated. Proper, effective, and permanent remediation of the contamination will redress the harm to plaintiffs' members.

75. The interests at issue in this litigation are directly germane to the work and objectives of plaintiff organizations.

CLAIM FOR RELIEF

76. Plaintiffs incorporate by reference all preceding paragraphs.

77. Pursuant to 42 U.S.C. § 6903(15), PPG is a "person" subject to the citizen suit provisions of RCRA, 42 U.S.C. § 6972.

78. PPG has contributed and/or is contributing to the past and/or present handling and/or storage and/or treatment and/or transportation and/or disposal of solid and/or hazardous waste which may present an imminent and substantial endangerment to health and/or the environment within the meaning of section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B).

79. Plaintiffs' interests are being harmed and will continue to be harmed by the endangerment and by PPG's failure to abate the endangerment, unless the Court grants the relief sought herein.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court enter a judgment:

1. Declaring that there exists or may exist an imminent and substantial endangerment to public health and the environment caused by PPG's past and/or present handling, storage, treatment, transportation, and/or disposal of solid and/or hazardous waste with respect to chromium contamination at and originating at the Garfield Avenue site.

2. Ordering PPG to take all such actions as may be necessary to eliminate any such endangerment, including, without limitation:

(a) prompt, complete, and permanent removal of all chromium-contaminated soils at the Garfield Avenue site, pursuant to environmentally sound methods and appropriately protective standards;

(b) prompt, complete, and permanent remediation of all chromium-contaminated groundwater at the Garfield Avenue site, pursuant to environmentally sound methods and appropriately protective standards;

(c) prompt, complete investigation and delineation of all chromium contamination emanating from the Garfield Avenue site, via both natural migration directly from the site and human transport from the site to other locations;

(d) prompt, complete and permanent remediation of all chromium-contaminated soils, structures (both exterior and interior), groundwater, and surface water at those other sites determined to be contaminated by materials originating at the Garfield Avenue site, pursuant to environmentally sound methods and appropriately protective standards;

(e) prompt, complete, and permanent remediation of a share of the orphan sites proportional to PPG's historical share of chromate chemical waste production in Hudson County;

3. Ordering PPG to fund independent exposure assessments and health surveys designed to reveal risks and harm to community members who have been, are being, and will continue to be exposed to chromium contamination from the site until fully remediated;

4. Ordering PPG to pay plaintiffs' reasonable attorneys' fees, expert witness fees, and costs incurred in prosecuting this action, pursuant to 42 U.S.C. § 6972(e);

5. Ordering such other relief as the Court may deem just and proper.

Dated: February 3, 2009

Respectfully submitted,

s/Richard Webster

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CERTIFICATION PURSUANT TO LOCAL RULE 11.2

The matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

s/ Richard Webster  
Richard Webster