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April 13, 2009

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

Re: Proposed Consent Judgment
New Jersey Department of Environmental Protection, City of Jersey City and
PPG Industries, Inc.

Dear Mr. Cozzi:

This firm represents Greenville Colorants, Inc., the owner of Block 1505, Lot 1 in Jersey City, New Jersey, also known as Site 108 pursuant to the 1990 Administrative Consent Order by and between the New Jersey Department of Environmental Protection (“DEP”) and PPG Industries, Inc. (“PPG”) and who also holds an option to purchase Block 1505, Lot Z-1 and Z.2 in Jersey City, New Jersey, Site 107 under the 1990 Administrative Consent Order. The purpose of this letter is to provide the following comments and objections to the proposed Consent Judgment between the DEP, the City of Jersey City and PPG published in the New Jersey Register on March 16, 2009:

1. The proposed Consent Judgment focuses solely upon the remediation of the Garfield Avenue Site and does not adequately provide for the timely remediation of any sites;
2. While the proposed Consent Judgment purports to require the remediation of sites other than the Garfield Avenue Site under the 1990 Administrative Consent Order (“1990 ACO”), the Consent Judgment would eliminate any ability of DEP to enforce the 1990 ACO. Specifically, the Consent Judgment would amend the 1990 ACO to delete various enforcement rights and, in paragraph 15 of the Consent Judgment DEP grants a covenant not to sue or take enforcement actions in return for future performance of various obligations by PPG. In paragraph 57 of the Consent Judgment DEP agrees not to assess any stipulated penalties under the 1990 ACO. In

paragraph 30, DEP purports to grant to PPG contribution protection. It is beyond comprehension that the DEP could agree to waive remedies based upon the amorphous agreement to conduct future activities. The Consent Judgment does not contain any deadlines for site other than Garfield Avenue. Accordingly, the proposed Consent Judgment will lead PPG interpose additional delays in the investigation and remediation of other sites since there would be no applicable penalty for such delay;

3. The waiver in paragraph 57 of the right to assess stipulated penalties under the 1990 ACO is too broad and not appropriate. First of all, the years of inaction by PPG do not warrant the granting of such relief to it. Secondly, even if the DEP believed it appropriate to waive stipulated penalties for past actions, no such waiver should be granted with respect to future actions and requirements;
4. Similarly, the covenant not to sue is too broad and should be revised to be apply only with respect to PPG's past failures to fulfill its obligations under the 1990 ACO;
5. Given the passage of 19 years since the issuance of the 1990 ACO and the lack of any progress to date with respect to Sites 107 and 108, it is unconscionable that the DEP would grant such a covenant and effectively hamstring its ability to compel the investigation and cleanup of other known and unknown chromate sites;
6. The proposed Consent Judgment impermissibly delegates DEP's responsibility for oversight of these investigations and cleanups to a third party and purports to waive any conflict of interest. As a governmental agency, the DEP cannot waive any conflict of interest;
7. The inability of the DEP to effectively administer the cleanups required is not a valid reason to forego all enforcement authority or oversight of the investigation and cleanup efforts;
8. The Consent Judgment must contain rigorous deadlines for the performance of investigations, the commencement of remedial work and the completion of remedial work at all known sites including the Garfield Avenue Site;

9. PPG must be subject to substantial penalties in order to obtain its compliance with rigorous deadlines for the performance of investigations, the commencement of remedial work and the completion of remedial work at sites other than the Garfield Avenue Site;
10. The Grace Period Rule should apply to PPG and the Chromate sites; as it does to all other sites;
11. There has been no effective community stakeholder involvement in the negotiation of the Consent Judgment. A second community meeting should be held once any revised draft of the proposed Consent Judgment is prepared;
12. The Consent Judgment should contain provisions requiring PPG to undertake medical monitoring and community training for the areas affected by chrome waste for which it bears responsibility;
13. The Department has also determined that chromium contamination is present in the soils underneath the Jersey City sewer line that runs from Chapel Avenue to Linden Avenue and identified as Site 67 under the 1990 ACO (the "Sewer Line Site"). The Department has not yet determined which entity is responsible for remediating the Sewer Line Site and other chromium contaminated sites ("Orphan Sites"). It would be beneficial to PPG to undertake responsibility for Site 67 inasmuch as PPG could obtain economies of scale and efficiencies in remediating a site so close to Sites 107 and 108 for which it is responsible rather than some much more distant Orphan Site;
14. Paragraph 4 of the Consent Judgment should be amended to include the following language:

"Sites that have not yet been the subject of investigation and remediation include properties known and designated as 20 Linden Avenue, Block 1505, Lot 1 on the Tax Map of the City of Jersey City and identified as Site 108 under the 1990 ACO ("Linden Avenue Site") and 18 Chapel Avenue, Block 1505, Lot Z-1 and Z.2 on the Tax Map of the City of Jersey City and identified as Site 107 under the 1990 ACO ("Chapel Avenue Site") located in Jersey City, New Jersey along with the Recycling Yard GXR, Block 1505, Lots 3, 4 and 5 on the Tax Map of the City of Jersey City (the "Recycling Yard Site"). The Department

has not yet determined which entity is responsible for investigating and remediating the Recycling Yard Site. The Department has also determined that chromium contamination is present in the soils underneath the Jersey City sewer line that runs from Chapel Avenue to Linden Avenue and identified as Site 67 under the 1990 ACO (the "Sewer Line Site"). The Department has not yet determined which entity is responsible for remediating the Sewer Line Site and other chromium contaminated sites ("Orphan Sites")."

15. Paragraph 8 of the Consent Judgment should be revised to include the following language:

"It is also the goal of the Parties entering into this Consent Judgment to remediate the soils and sources of contamination at the Linden Avenue and Chapel Avenue Sites in a manner that permits redevelopment consistent with the Danforth Station Redevelopment Plan adopted by Jersey City. The Linden Avenue and Chapel Avenue Sites shall be given a priority equal to the Garfield Avenue Site, however, any delay of the investigation or remediation of the Garfield Avenue Site shall not delay the investigation and remediation of the Linden Avenue and Chapel Avenue Sites. PPG shall develop and submit a Remedial Investigation Workplan that includes soil sampling for the Linden Avenue and Chapel Avenue Sites not later than three months after this Consent Judgment is approved by the Court. The Department shall approve, reject or approve with conditions the Remedial Investigation Workplan for the Linden Avenue and Chapel Avenue Sites not later than three months after its submission by PPG. Not later than 12 months after this Consent Judgment is approved by the Court, PPG shall begin the remediation of the Linden Avenue and Chapel Avenue Sites and shall complete said remediation within 3 years after commencement of the remediation. In the event that PPG fails to comply with any deadline set forth above, this Consent Judgment shall be and become null and void and the 1990 ACO shall remain in full force and effect with respect to the Linden Avenue and Chapel Avenue Sites, including, without limitation, the provisions therein relating to stipulated penalties and enforcement.

In the event that the Department has not, at the time that remediation of the Linden Avenue and Chapel Avenue Sites is commenced, assigned responsibility for the Sewer Line Site and/or the Recycling Yard Site to

any of the PRPs, the Department and PPG agree that PPG shall assume responsibility for whichever of the Sewer Line and Recycling Yard Sites for which the Department has not then assigned responsibility and shall remediate such Site or Sites at the same time that the Linden Avenue and Chapel Avenue Sites are remediated and PPG shall receive credit for such remediation against its share of Orphan Sites as allocated by the Department.”

16. Paragraph 57 of the Consent Judgment should be revised to limit the waiver of stipulated penalties to read as follows:

“DEP shall not assess stipulated penalties pursuant to Section E of the 1990 ACO and the Grace Period Rule shall not be applicable with respect to any failure prior to the date of this Consent Judgment of PPG to act or comply with its obligations under the 1990 ACO. Stipulated penalties pursuant to Section E of the 1990 ACO and the Grace Period Rule shall be applicable to any action or inaction of PPG subsequent to the date of this Consent Judgment”

17. Paragraphs 16 and 20 should be deleted.

Very truly yours,

LINDABURY, MCCORMICK, ESTABROOK & COOPER, P.C.



David R. Pierce

DRP:pdp