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April 14, 2009

**Via Federal Express**

Mr. Thomas Cozzi,  
Assistant Director, Site Remediation Program  
New Jersey Department of Environmental Protection  
P.O. Box 442  
Trenton, NJ 08625-0442

**RE: New Jersey Department of Environmental Protection, et al. v. Honeywell International, et al.;**  
**Docket No. HUD-C-77-05;**  
***Comments on Proposed Partial Consent Judgment Concerning the PPG Sites***

Dear Mr. Cozzi:

This office represents Exxon Mobil Corporation (“ExxonMobil”). Pursuant to *N.J.S.A.* 58:10-23.11e2 and the public notice published at 41 *NJR* 1272(a), ExxonMobil hereby submits the following comments concerning the above-referenced consent judgment (the “Consent Judgment”) between the New Jersey Department of Environmental Protection (“NJDEP”), the Administrator of the New Jersey Spill Compensation Fund (collectively “Plaintiffs”), PPG Industries, Inc. (“PPG”) and the City of Jersey City (the “City”).

Specifically, ExxonMobil seeks clarification regarding the intended scope and effect of the Consent Judgment as it pertains to natural resource damages (“NRD”) at the PPG Sites. In this respect, the Consent Judgment appears to have been approved through the NJDEP’s Site Remediation Program without input from the NJDEP’s Office of Natural Resource Restoration (“ONRR”). Thus, the Consent Judgment does not appear to address NRD.

However, pursuant to Paragraphs 16 and 29 of the Consent Judgment, Plaintiffs covenant not to sue PPG and afford PPG contribution protection for all potential claims under the New Jersey Spill Compensation and Control Act (“Spill Act”), *N.J.S.A.* 58:10-23.11, et seq., including claims for NRD. Consequently, the Consent Judgment arguably may be interpreted to address claims for NRD as well as claims for the costs of remediation at the PPG Sites.

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In light of this ambiguity, ExxonMobil respectfully requests that Plaintiffs confirm that the Consent Judgment is not intended to alter or affect any of the rights or obligations set forth in the 2003 Restoration Administrative Consent Order ("2003 ACO") between the NJDEP and PPG (among others). Pursuant to the 2003 ACO, the State of New Jersey received \$17 million in settlement of its claim for natural resource damages resulting from discharges of COPR, other material containing COPR, chromium, or chromic acid at sites throughout Hudson and Essex Counties, including the PPG Sites. In exchange, the NJDEP acknowledged that it was being fully reimbursed for its "claim for natural resource damages resulting from the discharges of COPR, other material containing COPR, chromium, or chromic acid at the known chromium sites" in Hudson and Essex Counties and agreed that it would not seek natural resource damages associated with chromium contamination at any of those sites, including the PPG Sites, from any other potentially responsible parties. *See* Attachment A, at ¶ 13.

Indeed, based on this commitment, the NJDEP subsequently entered into a Consent Order with ExxonMobil in which it stipulated and agreed not to pursue claims for natural resource damages against ExxonMobil associated with chromium contamination at ExxonMobil's former refinery facility in Bayonne, New Jersey. *See* Attachment B. Please confirm that this is still the case and that the Consent Judgment is not intended to create any new rights or causes of action for NRD.

Alternatively, if the Consent Judgment is intended to address natural resource damages, it should explicitly state as much and should indicate what portions of PPG's payments under the Consent Judgment are intended to resolve PPG's alleged liability for natural resource damages at the PPG Sites. Likewise, the Consent Judgment should indicate how Plaintiffs have allocated those payments between the PPG Sites. Without such a description, there is no basis for the Court or any interested party to assess whether the Consent Judgment is fair and reasonable.

Thank you for your consideration of these comments. We look forward to your response.

Very truly yours,



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