

**FROHLING ASSOCIATES, LLC**  
**COUNSELLORS AT LAW**  
17 FULTON STREET  
Newark, NJ 07102  
(973) 622-2800  
(973) 622-2866 – FAX

April 15, 2009

**VIA FACSIMILE and REGULAR MAIL**

Thomas J. Cozzi  
Assistant Director  
Department of Environmental Protection  
Site Remediation Program  
401 E. State Street, 5<sup>th</sup> Floor  
P.O. Box 028  
Trenton, NJ 08625

Richard Engel, Esq.  
Chief, Deputy Attorney General  
Hughes Justice Complex  
P.O. Box 093  
Trenton, NJ 08625

**RE: Morris Canal Associates/ Proposed Settlement Agreement Between PPG and  
the City of Jersey City**

Dear Mr. Cozzi and Mr. Engel:

This letter is submitted on behalf of our Clients, the Morris Canal Associates, LLC, a group of over fifteen industrial/commercial property owners and its members, located in the Canal Crossing Redevelopment area of Jersey City. These businesses are listed on the attached Exhibit A, and many of their properties are contaminated by chromium and other toxic waste discharged by PPG Industries, Inc. (hereinafter "PPG") and Public Service Electric and Gas Company (hereinafter "PSE&G"). Also, many of the Members have owned their properties for many years and several of the properties are located on known chromium sites designated for clean up by the New Jersey Department of Environmental Protection (hereinafter "DEP") and PPG. However, we contend that all properties and their owners and employees have been and will continue to be adversely affected by the presence of toxic waste until fully and effectively remediated.

We are aware that several other groups of citizens and owners have presented comments concerning the technical aspects of the proposed Settlement Agreement and we join in their

observations and criticisms, but we do not intend to repeat these comments, except to state that we join in and support their positions as to the deficiencies of the proposed Settlement from a technical standpoint and particularly the need for medical monitoring and training.

Our concerns and criticism of the proposed Settlement are as follows:

1. We will be asserting damage claims, such as relocation costs, disruption of business, loss of property values etc. These elements of damage are not covered by the proposed Settlement Agreement, which perhaps they should not be, but there is language in the document whereby the City of Jersey City (hereinafter "City") releases PPG from past violations of the 1990 Administrative Consent Order. We do not believe there should be any release of PPG until the final clean up is signed off on by the DEP and other appropriate parties, including the citizens and including our Clients. However, if there must be any release of PPG now, it should be made clear that such would not effect any rights of property owners or citizens. While we do not know the rationale for agreeing to provide releases to PPG at this time, we do wish to point out that, we believe, the property values of our Clients have been decreased substantially for many years because of the contamination (and to the point where many could not sell or refinance their properties) and, consequently, the potential tax revenues to the City have been reduced accordingly. There does not seem to be any consideration in the proposed Settlement Agreement to compensate the City for this loss, which has been accruing for at least over 20 years. These City losses would appear to be enormous compared to the moneys proposed to be paid to the City and yet the Settlement gives no consideration to these losses

2. We believe that an important aspect of this Settlement relates to the provisions relating to the right of the City, the DEP (and, consequently, for the benefit of our Clients and

the citizens of the proximate neighborhoods) to enforce completion of the clean up in a timely and satisfactory manner are, at best, extremely limited and, at worst, completely ineffective. One must acknowledge that for at least twenty (20) years PPG has done virtually nothing to alleviate a very damaging and dangerous condition despite the existence of the comprehensive 1990 Administrative Consent Order. A comparison of the terms of the proposed Settlement Agreement to those of the Administrative Consent Order shows that the provisions of the proposed Settlement Agreement to be woefully inadequate. Since PPG did nothing during this long period before and after the 1990 Consent Order, so that one must presume that the strongest elements of force must be included in the Settlement Agreement to enable the Court and the Site Administrator, with the tools necessary to guarantee completion of the clean up in the quickest and best manner. To our group this protection is a proverbial deal-breaker and the Settlement Agreement must be renegotiated and rewritten to include much stronger enforcement provisions, which, in our judgment, would include stiff penalties and triple damages if PPG and/or PSE&G attempt to repeat their past non-performance and dereliction of responsibilities. While one can compliment the managers of PPG for wanting to maximize profits for PPG and its stockholders, it should not be at the expense of the health and financial backs of the neighbors/owners who live and/or work at this toxic mess. PPG's lack of self-motivation in regard to cleaning up this site prior to this time is shameful and, at all costs, no document should be executed by any public body that does not make absolutely certain that PPG's past disgraceful non-action could be repeated. As we stated this is a deal breaker and, without strong and legally binding provisions, PPG could, and probably would, delay or deflect its responsibilities again.

3. The level of reimbursement required of PPG, to the City, is almost financially meaningless and judging from PPG's past inaction, it would probably be a better business decision for PPG, as it has been in the past, to pay modest fees and penalties and postpone the clean up for another twenty years or more. As is noted elsewhere in this comment letter, the City's loss of potential tax revenues is enormous compared to the compensation provided for the City in this proposed Settlement Agreement.

4. The time period for completion of the clean up process is too long and too indefinite with no milestones for performance along the way. This problem has been studied and studied for years. Work should be started well prior to the end of 2009 and should be completed in a much shorter time frame than five (5) years. Too much time has been wasted in discussion and the terms of the proposed Settlement Agreement must have specific target dates with very stiff penalties for the polluters missing deadlines. These provisions are lacking and, although this process has scientific aspects, it took the United States and/or Russia less time to go to the Moon. Who is kidding whom? Let the work begin, be finished, as soon as possible, or face the penalties, the proceeds of which should go to the City, State and the owners and community.

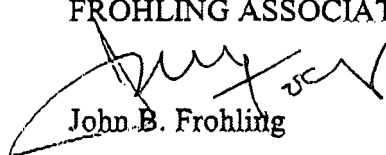
5. The Site Administrator, while a very good concept, should not have the power to act without the neighborhood having a say in the decision process. It is only human nature, in a situation where PPG is paying the Administrator's bills, to have a tendency to deal more favorably with PPG than if the administrative process is enhanced by direct participation from the owners and citizens groups and/or their representatives. As in any wholesome governance process, criticism is not to be feared but welcomed. Our Clients have lived with the toxic waste condition for many years and without regard to Mr. McCabe or anyone else

chosen, the property owners have the most direct interest in the proper solution and it would be bad government to repose power in an Administrator, without having active participation from the neighbors and owners who would serve as ombudsman for the adversely affected citizens and owners. Perhaps the Administrator, with input, could have the final say but the citizens should have the right to show him/her the way. This participation requirement is, also in our group's opinion, a deal breaker. The only way to keep informed is to participate in the decision making process at a grass roots level. And of course, the fees and expenses should be part of PPG and PSE&G's responsibilities on an ongoing basis.

It is our group's firm opinion that, while the City of Jersey City achieved a modicum of success in reaching a tentative agreement, the old slogan the devil is in the details applies to the form of proposed Settlement Agreement. As good as it is, the Agreement is not acceptable in its present form and time and effort must be applied to negotiating a much better deal which can only help reach the solution of a quick and satisfactory remediation. To achieve this greater protection is needed for the City and the affected owners/neighbors, in any revised Settlement Agreement, which, if not acceptable to all parties should return the case to the Court for expedited prosecution.

Our clients extend their sincere appreciation to the members of the City's staff and the DEP for brining the residents and owners to the point where we are able to provide input to your accomplishment of providing a framework for a possible settlement. Thank you.

Sincerely yours,  
FROHLING ASSOCIATES



John B. Frohling

cc: Clients  
William Matsikoudis, Esq.  
PPG Counsel