

LIEBERMAN & BLECHER

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March 27, 2009

VIA FACSIMILE & REGULAR MAIL

Thomas Cozzi
Assistant Director, Site Remediation Program
NJ Department of Environmental Protection
401 East State Street, PO Box 028
Trenton, NJ 08625
Fax: 609-777-1914

**FOR SETTLEMENT PURPOSES ONLY
SUBJECT TO RULE 408 AND ALL
APPLICABLE PRIVILEGES**

RE: *Jersey City Chromium Contamination Consent Judgment Concerning the PPG Sites*

Dear Mr. Cozzi:

Please be aware that I am legal counsel to GRACO Community Organization, a New Jersey Non-Profit Organization, as well as individuals living within the vicinity of the 900 block of Garfield Avenue in Jersey City, New Jersey. Below please find my clients' comments to the above referenced Consent Judgment.

- 1. Appointment of a Special Master.** My clients want to be treated as favorably as the clients in the Interfaith Community Organization in the Honeywell litigation. In our view that means the appointment of a Special Master that has all of the authority awarded by the District Court of New Jersey in the Honeywell case. The Court should retain jurisdiction over the entire remediation with the Special Master acting as a liaison between the Court and the remediation process. While we understand that there are already certain actions and appointments that are proposed in the current settlement, GRACO respectfully submits that someone is needed that can make final dispositive decisions during the remediation process as it is ongoing so this project is not get delayed while parties are fighting over issues that could be readily decided by a Special Master. This is extremely important to GRACO because the 900 Garfield Avenue site has remained virtually untouched without a sufficient explanation for approximately 19 years since the signing of the Administrative Consent Order. While PPG has cited access issues as the major factor, this is not legitimate. Site accesses issues should not have been a real problem because I personally have gotten site access in many cases in approximately one month pursuant to a state statute designed for specifically that purpose. Furthermore, alleged NJDEP review delays were not a real problem because very little has been submitted to the agency concerning 900 Garfield Avenue. In sum, a Special Master in necessary so that this process will commence and continue to completion without undue delays.
- 2. Complete and thorough medical monitoring must be provided for anybody who resides in communities that host any of the current or past PPG chromium sites.**

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This is not simply medical screening. A protocol will have to be established jointly by a physician and a toxicologist to be paid for by PPG. As is the case with other medical monitoring cases in New Jersey, these professionals will determine the proper parameters for the medical monitoring program. Hexavalent chromium is without question one of the most dangerous environmental contaminants that exists. I have been practicing environmental law since 1987 and hexavalent chromium is the most dangerous substance that I have run into. There is hexavalent chromium in the dust surrounding the contaminated sites. There is hexavalent chromium leaching through the soil and streets in Jersey City. Furthermore, if you reside within 300 feet of one of these sites and you are a male, you are 7 to 17% more likely to get lung cancer. PPG simply needs to spend whatever is required to provide the affected residents with early detection procedures for lung cancer and other illnesses and provide medical relief where necessary.

3. **Remediation of the chromium contaminated sites.**

- a. **Excavation and removal of all contaminated soil at the 900 Garfield Avenue site and all surrounding sites that were part of the PPG chromate plant complex and stockpile area.** After removal, wastes could either be safely transported off-site for disposal at a RCRA-licensed hazardous waste landfill, or could be transported to a treatment facility to be detoxified using a validated thermal treatment process. "In situ" treatment -- treatment on site -- is not a safe option at the Garfield sites. Innovative technologies used to remediate the site are unacceptable. As chromium is an extremely dangerous substance, my clients have no interest in conducting experiments. Rather, the contaminated soil should be removed from the site and transported to an approved facility. The removal should be to the entire depth of the chromium contamination, which could be approximately 80 feet. Remediating the contaminated sites to only 20 feet in depth does not rid the community of this dangerous contaminant. Of course, arguments can be made that containment is often safer than removal, but with proper measures removal can be safely undertaken. After 19 years since the ACO and decades since these areas were contaminated, my clients are not interested in years of experimental treatment only to find out that the treatment does not work and that removal is necessary. The community simply wants this material removed and will not accept anything less. Along those lines, we respectfully suggest that Jersey City tap into the stimulus money that is available to help accomplish this task as there is nothing more important in Jersey City than accomplishing this remediation. The cleanup standard is critically important at this site. A standard of 10 parts per million ("ppm") hexavalent chromium and 75 ppm total chromium was previously in effect at NJDEP. The recent findings by the National Toxicology Program should be incorporated into the soil standard used at the Garfield Avenue site, which would likely tighten the applicable standard far below 20 ppm for hexavalent chromium. NJDEP has unnecessarily delayed the process of revising its standards in light of the NTP findings.
- b. **Treatment of chromium-contaminated groundwater.** Contaminated groundwater is a threat to public health because it migrates laterally and vertically, resulting in the well-documented phenomenon where chromium-

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bearing fine particles concentrate on soil and other surfaces where they can become airborne. PPG must establish a pump-and-treat system to remediate the groundwater emanating from the Garfield sites for as long as necessary.

- c. **The same remedial measures outlined above must be taken at all sites for which PPG is responsible.** There are two categories of sites aside from the main Garfield Avenue chromate plant and stockpile area: the dump sites where COPR was used as fill (both known and unknown by NJDEP), and the places that have been contaminated with airborne and water-borne chromium emanating from PPG's chromium sites. A full program of sampling and analysis surrounding PPG's chromium sites must be undertaken to find the scope of contamination, using the most protective standard available.
 - d. **Households, businesses and other structures in the vicinity of the Garfield sites that are contaminated with ANY measurable hexavalent chromium must be completely remediated.** This will require a comprehensive effort to sample and analyze dust from area homes and businesses. The recent dust sampling program funded by the state used the unreasonable premise that dust found in homes with concentrations less than 20 ppm hexavalent chromium was not a problem. My clients feel that any measurable level of chromium in households, businesses, and other structures that is attributable to PPG needs to be remediated.
 - e. **PPG should bear all costs.** Any settlement must involve up-front financial assurance. This is required in other NJDEP clean-ups and this effort should not be an exception.
4. **The five year "goal" needs to be replaced with a reasonable time period for executing the remedy.** The NJDEP has taken the position that any time table is disfavored because presumably the time table will end up being infeasible. GRACO responds that this is a non sequitor and that the way to cure this defect is to have every party agree to a reasonable time table. For well over a decade, the NJDEP has employed administrative consent orders with very specific time tables and stipulated penalties for non performance. The GRACO community is entitled to this kind of commitment. A goal that ultimately will not be meant means very little and after 19 years my clients cannot accept anything less than a reasonable and stringent time table with stipulated penalties.
5. **The \$1,000,000.00 monetary settlement amount needs to be significantly increased.** The proceeds need to be spent in the affected communities; specifically the GRACO community and the other areas surrounding the PPG chromium sites in Jersey City. The money needs to be invested in the communities that have been affected by these chromium deposits. Examples of how the money can be spent were contained in the letter we previously sent to William Matsikoudis, Esq., Jersey City counsel. This letter is enclosed for your review. Moreover, PPG must pay natural resource damages by funding ecology programs in Hudson County. Furthermore, some reasonable measure of compensation should be paid to family members that own property in the affected areas.

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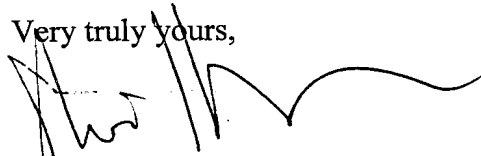
6. **GRACO must be a full participant in the remediation.** This means that GRACO must have an opportunity to review environmental submissions and when necessary, petition the Special Master and the NJDEP for relief. GRACO consists of the individuals and residents that are the most affected by the chromium contamination that PPG is legally responsible for in Jersey City. It is the GRACO members that are most likely to become sick by the chromium contamination. It is the GRACO members that have suffered reduced quality of lives and nuisance damages relating to the chromium discharge. No one has a greater interest in the remediation than my clients. Therefore, any remedial activity must include active review by my clients. PPG must pay for legal representation and technical representation for GRACO so that the group can be a full participant. GRACO's attorneys' fees, past and present, must be paid for by PPG. But for PPG, GRACO would not have had to incur any of these expenses and therefore as part of a settlement GRACO's past and future legal fees should be addressed.

* * *

This public notice period represents an important opportunity for all of the matters relating to the chromium discharges to be amicably resolved by all the parties. The benefit of accomplishing this now is that the clean-up will go forward with the full support of the GRACO community, which will go a long way to restoring harmony in the community and bringing about an overall extremely positive impact for Jersey City. As GRACO has publicly stated, we are appreciative of your hard work and indeed we are appreciative that the NJDEP, PPG, and Jersey City had a meeting of the minds. Our position is that settlement discussions did not go far enough and that what is discussed above needs to be added to what has been already agreed upon by getting the parties in order to bring this to a more global and lasting resolution.

Should you have any questions please do not hesitate to contact my office. Thank you for your courtesies.

Very truly yours,



STUART J. LIEBERMAN, ESQ.
Lieberman & Blecher, P.C.

SJL/mgs

Enclosure

cc: *(via facsimile and regular mail)*

William Matsikoudis, Esq.

Joseph F. Lagrotteria, Esq.

John B. Frohling, Esq.

(via regular mail)

Richard F. Engel, Chief Deputy Attorney General

GRACO

EXHIBIT A

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March 13, 2009

VIA FACSIMILE & REGULAR MAIL

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280 Grove Street
Jersey City, NJ 07302
Fax: 201-547-5100

RE: *Jersey City Chromium Contamination Consent Judgment Concerning the PPG Sites*

THIS LETTER IS CONFIDENTIAL AND NOT ADMISSIBLE IN COURT

Dear Mr. Matsikoudis:

My clients and I have reviewed the Partial Consent Judgment with regard to the chromium contamination at the former chrome production facility at 880 Garfield Avenue and surrounding sites. We generally agree with the objectives set forth in the Consent Judgment, and are pleased to see that the State, the City, and PPG are committed to moving forward with the necessary remediation. That being said, my clients and I have serious concerns with particular aspects of the proposed Consent Judgment as it pertains to the remediation and redevelopment of the subject site. Specifically, my clients perceive the following issues to be of concern with the Consent Judgment:

- 1) The potential for conflict of interest issues is great if the involved parties are to make recommendations for the overseeing Site Administrator and Technical Consultant. These positions should be appointed by the Court, and the involved parties should not be participants in the recommendation process.
- 2) The one million dollar proposed settlement is woefully inadequate. The contaminated sites remained in this community for many years, destroying not only the community but the people's lives within it. Greater assistance is needed in revitalizing this community back to what was prior to the contamination.
- 3) My clients are dismayed that there is no explanation as to why the State and the City have not taken any action to remediate the 900 block of Garfield Avenue since the 1990 ACO Agreement. They would like an explanation as to why remediation has been delayed, and a condition to hold all the involved parties accountable to expedited remediation in the future.
- 4) Money from the settlement with PPG should be allocated to fund ongoing research on the effects of chromium exposure. The local community should be included and made aware of the results of this research. Educational outreach sessions are necessary to make residents aware of the chromium contamination and its health

"Attachment A"

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- effects. Further, the Court should select how funding is allocated towards research and outreach projects, rather than the involved parties.
- 5) As outlined, funds from PPG will be deposited in the Environmental Trust Fund of Jersey City. There are no provisions to ensure that the money deposited in the Trust Fund is used in the affected community and for individuals living within close proximity to the 900 block of Garfield Avenue that have been directly affected by the chromium contamination. This money should be earmarked to the affected community. Here are some of the projects in which this money could be used:
 - a. Middle School participating in science studies
 - b. Solar panel installation for homes within 300 feet of contaminated sites
 - c. Fully sponsor the first Food Co-Op in the Ward F section of Jersey City.
 - d. Scholarship fund for children pursuing a career in environmental science
 - e. State-of-the-art library
 - f. Fully funded "green" building with sufficient office space for the Food Co-Op and an outreach area for youth programs (e.g. Big Brother/Big Sister Organization).
 - g. Construction apprenticeship leading to an awaiting union job.
 - h. Indoor Sports Facility for local youths.
 - 6) There are no provisions to ensure that the health of those people living within close proximity to the subject area is monitored and not further threatened. My clients would like soil, groundwater, and air testing to be done at all residences within four blocks of the 900 block of Garfield Avenue. They would also like all residents living within this area to be tested for levels of chromium exposure and that a medical monitoring program be implemented. Further, the Court should oversee how funding is allocated for testing.
 - 7) All chromium should be excavated as we do not favor any unproven methods for remediation. The chromium levels should be excavated to 20 parts-per-million.
 - 8) There are no provisions that outline time frames for cleanup. There needs to be a stipulated penalty, absent any force majeure, for any failure to comply or provide deliverables within a discreet time period. All amounts paid for noncompliance and/or nonperformance should be split between Jersey City and the community. Further, any settlement shall vest the Court with continual jurisdiction. We, as an equal party in the case, will have standing to go before the Court and enforce any noncompliance or nonperformance that may result.

Should you have any questions please do not hesitate to contact my office.

Very truly yours,

S
STUART J. LIEBERMAN, ESQ.
Lieberman & Blecher, P.C.

SJL/aw

cc: Joseph F. Lagrotteria, Esq.
John B. Frohling, Esq.
Richard F. Engel, Chief Deputy Attorney General
GRACO (via regular mail)