NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE JERSEY SPILL COMPENSATION FUND, Plaintiffs, v. HONEYWELL INTERNATIONAL INC., OCCIDENTAL CHEMICAL CORPORATION, and PPG INDUSTRIES INC., Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION-HUDSON COUNTY DOCKET NO. C-77-05 CONSENT JUDGMENT

This matter having been opened to the Court by Paula T. Dow, Attorney General (Deputy Attorneys General Anna M. Lascurain and Richard F. Engel appearing), attorney for plaintiffs New Jersey Department of Environmental Protection ("DEP"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively "the Plaintiffs"), Michael Daneker, appearing as attorney for Honeywell International Inc. ("Honeywell"), William Warren and Lori A. Mills, appearing as attorney for Occidental Chemical Corporation ("Occidental"), and George McGrann, appearing as attorney for PPG Industries, Inc. ("PPG") ("the Settling Defendants," collectively), and the Parties having amicably resolved their dispute, have agreed to the following terms.

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to the New Jersey Spill Act, N.J.S.A. 58:10-23.11 a to z. This Court also has personal jurisdiction over the parties to this Consent Judgment, solely for the purposes of implementing this Consent Judgment and resolving the underlying litigation.

2. The Parties to this Consent Judgment waive all objections and defenses they may have to jurisdiction of this Court, or to venue in this County. The Parties shall not challenge the Court's jurisdiction to enforce this Consent Judgment.

II. PARTIES BOUND

3. This Consent Judgment applies to, and is binding upon, the Plaintiffs and the Settling Defendants.

III. DEFINITIONS

4. Unless otherwise expressly provided, terms used in this Consent Judgment that are defined in the Spill Act or in the regulations promulgated under the Spill Act, including the Administrative Requirements for the Remediation of Contaminated Sites, shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Consent Judgment, the following definitions shall apply:

"ACO Site" shall mean a Known CCPW Site that is as of the Effective Date or thereafter designated for investigation or Remediation pursuant to an Existing ACO or that has been or will be Remediated pursuant to an Existing ACO between DEP and a Settling Defendant, including the Honeywell ACO, the PPG ACO or the Occidental ACO.

"Administrative Requirements for the Remediation of Contaminated Sites" shall mean the New Jersey Department of Environmental Protection regulations codified at N.J.A.C. 7:26C.

"Administrator" shall mean the Administrator of the New Jersey Spill Compensation Fund.

"Alternative Remediation Standard" or "ARS" shall mean a residential use or non-residential use soil remediation standard that is established as set out in N.J.S.A. 58:10B-12f(1).

"Chromate Chemical Production Waste" or "CCPW" shall mean the residual solid material produced by the processing of raw chromite bearing ore at a facility in Hudson County formerly owned or operated by one of the Companies or their predecessors. CCPW shall include COPR (chromite ore processing residue), and/or hexavalent chromium associated with COPR, and/or other metals associated with COPR and/or other material containing COPR.

"Chrome Policy" shall mean the standards and procedures for the Remediation of chromium-contaminated sites contained in the Memorandum from Lisa P. Jackson, then-Commissioner of the Department of Environmental Protection, to Irene Kropp, then-Assistant Commissioner for Site Remediation and Waste Management, dated February 8, 2007, a copy of which is attached to this Consent Judgment as Appendix E.

"Colony Diner" shall mean Site 70.

"Company," "Companies," or "Settling Defendant" shall mean Honeywell, Occidental, and PPG, individually or collectively, as the context requires.

"Consent Judgment" shall mean this Consent Judgment and the appendices identified in Section XXI.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or State holiday. In computing time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State holiday, time shall run until the close of business of the next Working Day.

"DEP" or "Department" shall mean the New Jersey Department of Environmental Protection.

"Execution Date" shall mean the date this Consent Judgment is executed by the Department and the Companies or, if the Department and/or one or more of the Companies do not

execute this Consent Judgment simultaneously, the date on which the last of said Parties to execute this Consent Judgment executes this Consent Judgment.

"Existing ACO" shall mean the Honeywell ACO, the Occidental ACO, or the PPG ACO, individually or collectively, as the context requires.

"Final Remediation Document" shall mean an NFA Letter or a Response Action Outcome (RAO) issued by a licensed site remediation professional pursuant to section 14 of P.L.2009, c. 60 (C.58:10C-14) .

"Future Cleanup and Removal Costs" shall mean all Cleanup and Removal costs, as defined at N.J.S.A. 58:10-23.11b, including direct and indirect costs, the Plaintiffs incur after the Effective Date for the Cleanup and Removal of CCPW.

"Future Oversight Costs" shall mean all Cleanup and Removal costs, as defined at N.J.S.A. 58:10-23.11b, including direct and indirect costs, that the Plaintiffs incur after the Effective Date, for plaintiff DEP to oversee the remediation of CCPW at the Orphan Sites. Future Oversight Costs shall be those costs allowed by N.J.A.C. 7:26C, and shall be calculated in accordance with the formula codified at N.J.A.C. 7:26C-4.5.

"Grace Period Rule" shall mean the Department's regulations codified at N.J.A.C. 7:26C-9.

"Honeywell" shall mean Honeywell International Inc., a corporation organized under the laws of the State of Delaware, with its principal place of business at 101 Columbia Road, Morristown, New Jersey, and its successors and assigns.

"Honeywell ACO" shall mean the Administrative Consent Order I between the Department and Honeywell's predecessor AlliedSignal Inc. regarding the Hudson County Chromate Chemical Production Waste Sites, dated June 17, 1993, as amended by the Supplemental Administrative Consent Order between the Department and Honeywell's predecessor AlliedSignal Inc., dated November 8, 1993.

"Honeywell Sites" shall mean those sites Honeywell has agreed to Remediate pursuant to this Consent Judgment, which are identified on Appendix A to this Consent Judgment as denoted by placement of an "X" next to the Site under the Column Heading for Honeywell and each of the Honeywell ACO Sites.

"Including" shall mean including but not limited to.

"Interest" shall mean interest at the rate established by R. 4:42 of the then current edition of the New Jersey Court Rules.

"Known CCPW Sites" shall mean all sites identified by the Department as of the Execution Date at which the Department has determined that CCPW is or may be present, as set forth on the Department's list of CCPW sites attached as Appendix D to

this Consent Judgment, which the Department represents is a complete listing of all such sites known to the Department as of the Execution Date.

"Liberty State Park" shall mean Site 15.

"Multi-contaminant Sites" shall mean Sites 139, 150, 152, 162, 177, 180b, 211 and 212.

"Newly Discovered Site" shall mean any site, other than a Known CCPW Site, at which the Department determines on or after the Execution Date, that the presence of CCPW requires investigation and, if necessary, Remediation.

"NFA Letter" shall mean a written determination by the Department that no further remedial action is necessary because: (i) there is no CCPW present at the Site, at the area of concern or areas of concern, and at any other site to which a discharge of CCPW originating at the Site has migrated; or (ii) any CCPW present at the Site or that has migrated from the Site has been remediated in accordance with applicable statutes and regulations. An NFA Letter may be issued for soils or groundwater for all or a portion of a Site.

"Occidental" shall mean Occidental Chemical Corporation, a corporation organized under the laws of the State of New York, with its principal place of business at 5005 LBJ Freeway, Dallas, Texas, and its successors and assigns.

"Occidental ACO" shall mean the Administrative Consent Order between the Department and Occidental and Chemical Land Holdings, Inc. (predecessor of Tierra Solutions, Inc.) regarding the Hudson County Chromate Chemical Production Waste Sites, dated April 17, 1990.

"Occidental Sites" shall mean those sites Occidental has agreed to Remediate pursuant to this Consent Judgment, which are identified on Appendix A to this Consent Judgment as denoted by placement of an "X" next to the Site under the Column Heading for Occidental and each of the Occidental ACO Sites.

"Orphan Site Directives" shall mean the following directives issued by the Department related to Known CCPW Sites: (i) Directive to AlliedSignal Inc. dated July 2, 1993; (ii) Directive to AlliedSignal Inc., Maxus Energy Corp., Occidental Chemical Corp., and PPG Industries, Inc. dated February 28, 1994; (iii) Directive to AlliedSignal Inc. dated March 2, 1994; (iv) Directive to Allied Signal Inc., Occidental Chemical Corp., Maxus Energy Corp., and PPG Industries, Inc. dated August 3, 1995; (v) Directive to AlliedSignal Inc. dated January 8, 1998; (vi) Directive to AlliedSignal Inc., Occidental Chemical Corp., and PPG Industries, Inc. dated January 8, 1998; and (vii) Directive to Honeywell International Inc., Occidental Chemical Corp., and PPG Industries, Inc. dated May 3, 2005.

"Orphan Sites" shall mean collectively those sites that the Companies have agreed to Remediate pursuant to this Consent Judgment, which are identified on Appendix A to this Consent Judgment.

"Paragraph" shall mean a portion of this Consent Judgment identified by an Arabic numeral or an upper case letter.

"Party" or "Parties" shall mean plaintiff DEP, plaintiff Administrator, and the Settling Defendants.

"Past Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, the State incurred or resulting from work or activities taking place by or on behalf of the State, on or before the Effective Date, related in any way to the Known CCPW Sites or in taking any administrative or other action of any description related to CCPW, Known CCPW Sites, chromium contaminated sites, or their Remediation, including without limitation all "Cleanup and Removal Costs," and/or "oversight costs" and "remediation costs," as those terms are defined in N.J.A.C. 7:26C-1.3, and including any costs recoverable by the New Jersey Spill Compensation Fund, including all costs related to the remediation the Department has conducted at Liberty State Park (Site 15), the Former Morris Canal Site No. 2 (Site 175), and Tempesta & Sons (Site 165) or

otherwise incurred in connection with the Orphan Site Directives.

"Plaintiffs" shall mean DEP and the Administrator.

"PPG" shall mean PPG Industries, Inc., a corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business at One PPG Place, Pittsburgh, Pennsylvania, and its successors and assigns.

"PPG ACO" shall mean the Administrative Consent Order between the Department and PPG regarding the Hudson County Chromate Chemical Production Waste Sites, dated July 19, 1990.

"PPG Consent Judgment" shall mean the Partial Consent Judgment entered by the Court on June 26, 2009, with respect to the PPG ACO Sites and the Orphan Sites designated in Appendix B of the PPG Consent Judgment and set forth in paragraph 25 hereof.

"PPG Sites" shall mean those sites PPG has agreed to Remediate pursuant to this Consent Judgment, which are identified on Appendix A to this Consent Judgment as denoted by placement of an "X" next to the Site under the Column Heading for PPG and each of the PPG ACO Sites.

"Related Parties" shall mean, as provided in Section IX, Paragraph 32, the Companies' indemnitors and indemnitees, and the direct, indirect and ultimate parents, subsidiaries and affiliates of any of them to the extent that the alleged

liability of the Related Party with respect to a Site is based on its capacity as a Related Party of one of the Companies, and not to the extent that the alleged liability of the Related Party arose independently of its status and capacity as the Related Party of one of the Companies.

"Releasees" shall mean the Companies and the Related Parties and their past, present and future direct or ultimate parents, subsidiaries, affiliates, predecessors, successors, and the officers, directors, shareholders, agents, representatives, employees, and assigns of any of them, to the extent that the alleged liability of the Releasee with respect to a Site is based on its relationship to a Company or Related Party and not to the extent that the alleged liability of the Releasee arose independently of such relationship.

"Remediation" or "Remediate" shall have the definition in N.J.S.A. 58:10-23.11b, except as specified in Section IV, Paragraph 6 below,; provided, however, that "Remediation" or "Remediate" shall not include the payment of compensation for damage to, or loss of, natural resources.

"Section" shall mean a portion of this Consent Judgment identified by a Roman numeral.

"Sewer Protocol" shall mean the procedures to be used for the Remediation of Sewer Sites, as set forth in Appendix B to this Consent Judgment.

"Sewer Site" shall mean a Site or a portion of a Site at which CCPW was used for the bedding, fill, or otherwise used in the construction of municipal or public sewers, water mains or lines, sumps, pumps, transfer stations, other related components of a sewer or water distribution system or other utility lines. A complete list of Known CCPW sites that are Sewer Sites is attached to this Consent Judgment at Appendix F. Notwithstanding the list at Appendix F, any other Site or portion of a Site that qualifies under the first sentence of this definition may utilize the Sewer Protocol for the remediation of such Site or portion thereof, as applicable.

"Site" shall mean a Known CCPW Site or Newly Discovered Site, as the context indicates or requires. The term "Site" followed by a number shall refer to the corresponding numbered site appearing on the numbered list of CCPW Sites maintained by the Department, the most recent version of which is attached to this Consent Judgment as Appendix D.

"State" shall mean the State of New Jersey.

"Technical Requirements for Site Remediation" shall mean the New Jersey Department of Environmental Protection regulations codified at N.J.A.C. 7:26E.

"Turnpike Sites" shall mean Sites 20, 21 and 192.

IV. SETTLING DEFENDANTS' SITE REMEDIATION

5. **Remedial Responsibility.** Subject to the specific provisions set forth elsewhere in this Consent Judgment, the Settling Defendants accept responsibility for the remediation of CCPW on the Known CCPW Sites other than the three Turnpike Sites.

A. Each Settling Defendant shall only be liable to Remediate those Orphan Sites it accepts as specified in the allocation in Appendix A, and shall provide financial assurances to DEP (subject to Paragraph 9 below) for those Orphan Sites for which it has accepted responsibility.

B. To the extent an Orphan Site is identified on Exhibit A as a Site assigned to both Honeywell and PPG, Honeywell and PPG may elect to retain contractors jointly to implement the Remediation or otherwise comply with the terms of this Consent Judgment or alternatively may elect to identify one Company that will serve as lead Company for implementing the Remediation and otherwise complying with the terms of this Consent Judgment. Honeywell and PPG shall proceed jointly to perform their Remediation at Sites for which they share responsibility unless and until the two Companies notify the Department in writing of an alternative arrangement, which may include a reallocation of responsibility for Sites between Honeywell and PPG as long as each Site has an assigned Settling Defendant. As between them,

Honeywell and PPG shall each bear 50% of the costs of Remediation under this Consent Judgment associated with any Site assigned to both Honeywell and PPG. As provided in Section X, each Settling Defendant shall receive a covenant not to sue from DEP as set out in Appendix C, and a covenant not to sue from DEP and a release from the other Settling Defendants, as to those Orphan Sites accepted by the other Settling Defendants, within 30 days of the entry of this Consent Judgment.

C. Upon completion of Remediation of CCPW at any Known CCPW Site or Area of Concern at such Site by a given Settling Defendant, subject to any required post-Remediation monitoring and maintenance, the Settling Defendant(s) that conduct(s) the satisfactory Remediation of such Site(s) shall receive a Final Remediation Document and a covenant not to sue pursuant to N.J.S.A. 58:10-13B.1 ("Statutory Covenant"), and, if applicable, proof of completion as provided in paragraph 23.G. below.

6. **Remediation Limited to CCPW.** At any Site for which a Settling Defendant has accepted remedial responsibility, that Settling Defendant's remedial responsibility shall be limited to CCPW, and shall not extend to other hazardous substances, solid or hazardous wastes, chemicals, pollutants, or historic fill, unless DEP can demonstrate that the Settling Defendant was an owner, operator or in any other way responsible for the hazardous substances other than CCPW on the Site. Prior to the

Execution Date, the Department has not identified any Orphan Site it believes falls into the owner/operator/any other way responsible category and represents hereby that to the best of its knowledge, information or belief as of the Execution Date, no such Orphan Site exists. To the extent that the remediation of CCPW at a Site requires the remediation of other hazardous substances that are commingled with the CCPW, the Settling Defendant accepting responsibility for the Site shall also remediate the hazardous substances commingled with the CCPW, but only as necessary to remediate the CCPW, and the Settling Defendants expressly reserve all rights they may have against any third parties with respect to such commingled substances.

7. **Geographic Scope of Responsibility at Sites.** At any Site for which a Settling Defendant accepts remedial responsibility, the responsibility to Remediate such Site shall be limited to the property boundaries of the Site itself, and shall not extend onto neighboring properties unless: (a) CCPW has been placed on or migrated from the Site in such a manner as to extend beyond a property boundary; (b) groundwater contaminated with chromium associated with CCPW placed on the Site is migrating from the Site; or (c) surface water or other erosion caused the CCPW to migrate onto a neighboring site. Discovery of CCPW on a neighboring property or area beyond a property boundary shall not be presumed to be part of the original Site unless one or

more of the circumstances enumerated in (a), (b) or (c) above are shown to exist. In the absence of such circumstances, such area shall be deemed a Newly Discovered Site.

A. **Sewer Sites.** A Settling Defendant accepting responsibility for a Sewer Site shall be responsible for the remediation of CCPW used as bedding or fill for the sewer line (and any groundwater contamination associated with such use of CCPW as bedding or fill), but shall not be responsible for other areas of contamination that may be present on the properties across which the sewer line runs.

B. **Migration to Water Bodies.** A Settling Defendant accepting or that has accepted responsibility for a Site from which releases of CCPW or chromium contaminated groundwater has or may have occurred from the Site to the Hackensack River, the Newark Bay, or the Passaic River shall investigate any such releases and shall have remedial responsibility to prevent continued releases to the water body. Remediation of sediments in the main stems of the Hackensack River, Newark Bay, or the Passaic River shall not be the subject of this Consent Judgment or any Existing ACO, and DEP reserves all of its rights to take any action it deems appropriate with respect to such Remediation and the Settling Defendants reserve any and all rights and defenses to such action. Notwithstanding the above, swales, tributaries or drainage ditches on the Site leading into the

main stems of the water bodies named above shall be considered within the scope of the required Remediation. Each Existing ACO is deemed modified to reflect the foregoing provision.

C. **Newly Discovered Sites.** Newly Discovered Sites are beyond the scope of this Consent Judgment, and DEP agrees that the Settling Defendants shall not be required to Remediate Newly Discovered Sites pursuant to this Consent Judgment. DEP and the Settling Defendants reserve all rights and defenses each might have regarding responsibility for such sites, provided however, that in the event DEP and one or more of the Settling Defendants subsequently reach agreement by which such Settling Defendant(s)accept remedial responsibility for any Newly Discovered Site, such Site can be incorporated into and governed by the terms of this Consent Judgment upon the written agreement of the Settling Defendant(s) with which subsequent agreement has been reached.

8. **Sewer Protocol Governs Sewer Site Remediation.** Sites or portions of Sites that constitute a Sewer Site shall be remediated in accordance with the Sewer Protocol attached as Appendix B. The Sewer Protocol has been approved by Jersey City authorities.

9. **Financial Assurances.** The Companies shall provide evidence of Remediation funding sources to assure Remediation of the Sites as follows:

A. **Occidental Remediation Funding Sources.** The financial assurance provisions in the Occidental ACO (Section V., Paragraphs A.57 through 61) shall apply as the Remediation funding source for the Occidental Sites. The Department agrees that the type and amount of such financial assurance complies with and is sufficient under the Administrative Requirements for the Remediation of Contaminated Sites and the Technical Requirements for Site Remediation as a Remediation funding source for the Occidental Sites. The Department further agrees that the annual cost review procedures required by the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-5.10 and 5.11 shall be deemed satisfied by compliance with paragraphs 62 and 63 of the OCC ACO regarding "Project Cost Review".

B. **PPG Remediation Funding Source.** The financial assurance provisions in the PPG ACO (Section VIII, Paragraphs 84 through 88) shall apply as the Remediation funding source for the PPG Sites and for 50% of the estimated remedial costs for those Sites that are shared jointly between Honeywell and PPG. The Department agrees that the type and amount of such financial assurance complies with and is sufficient under the Administrative Requirements for the Remediation of Contaminated Sites and the Technical Requirements for Site Remediation as a Remediation funding source for the PPG Sites.

C. **Honeywell Remediation Funding Sources.** Within ninety (90) calendar days after a remedy has been selected for a Honeywell Site, Honeywell shall establish a Remediation funding source equal to the estimated cost of the selected remedy. The Remediation funding source established by Honeywell under this Paragraph shall be in accordance with the Department's regulations codified at N.J.A.C. 7:26C-5, or, alternatively, in accordance with any federal court order governing the performance of any remedial action at any Honeywell Site that is subject to both Departmental and federal court oversight of remedial actions. For those sites for which Honeywell and PPG jointly share responsibility, any such Remediation funding source established by Honeywell shall be equal to 50% of the estimated cost of the selected remedy.

(i) **Modification of Paragraph 35 of the Honeywell ACO.** Paragraph 35 of the Honeywell ACO shall be deleted and replaced, in its entirety, with the following language: "Upon receipt of the Department's written approval of remedial action plans for the Sites, Allied (Honeywell) shall implement the Department-approved remedial actions for the Sites."

(ii) **Deletion of Other Paragraphs of the Honeywell ACO.** The terms of Paragraph 9.C. of this Consent Judgment shall govern Honeywell's obligation to provide a Remediation funding

source for Honeywell Sites and Paragraphs 36, 37 and 53 through 58 of the Honeywell ACO shall be of no further force and effect.

D. **Remediation Funding Source for Sewer Sites.** The estimated costs of the implementation of those remedial actions set forth in Paragraphs B.1, B.2, or B.3 of the Sewer Protocol, as applicable, shall provide the basis for the establishment or calculation of the amount of any Remediation Funding Source to be established for any Sewer Site pursuant to Paragraph 9.C. of this Consent Judgment.

E. **Surcharge Exemption.** DEP acknowledges and agrees that the exemption at N.J.S.A. 58:10B-11.a.(3) applies to the financial assurance obligations at any and all Sites that the Settling Defendants, or any of them, agrees or has agreed to Remediate.

V. OTHER PARTIES' RESPONSIBILITY FOR CERTAIN SITES

10. **Completed Remediation.** The Department represents that it has determined Remediation related to chromium or CCPW is complete at Known CCPW Sites 138, 150, 152, 162, 175 and 177 to the least restrictive cleanup standards or criteria as governed by the Technical Requirements for Site Remediation and that no further remedial action is required. DEP shall provide releases and covenants not to sue (in the form set out at Appendix C) to the Settling Defendants with respect to these Sites within 30

days of the entry of this Consent Judgment as provided in Section X below. At such time as said covenants not to sue are issued, Settling Defendants and Related Parties shall further be entitled to statutory and contractual contribution protection as set forth in Section XV below.

11. **Turnpike to Accept Turnpike Sites.** DEP shall require the New Jersey Turnpike Authority to Remediate Sites 20, 21, and 192 in accordance with all applicable laws and regulations, including the Technical Requirements for Site Remediation, to the extent that such Remediation is required, and shall provide releases and covenants not to sue (in the form set out at Appendix C) to the Settling Defendants with respect to these three sites within thirty (30) days of the entry of this Consent Judgment as provided in Section X below. The Settling Defendants and Related Parties shall be entitled to statutory and contractual contribution protection as set forth in Section XV below.

12. **Multi-contaminant Sites to be Remediated by Owner.** The Department agrees that the Companies shall not be required to Remediate the Multi-contaminant Sites pursuant to this Consent Judgment. To the extent that any further Remediation of CCPW, other material containing CCPW, chromium, or chromic acid is deemed necessary by the Department under applicable laws at any Multi-contaminant Site, at any time now or in the future, the

Department will require such Remediation from the site owners or other persons or entities who may be responsible under the Spill Act ("Responsible Parties") and will not proceed against the Companies, or any of them and actions against Honeywell, Occidental and PPG shall be limited to suits by such Responsible Parties. Notwithstanding the foregoing, nothing in this Paragraph shall affect the rights, if any, of such Responsible Parties to proceed against the Companies for contribution, and the Multi-contaminant Sites are excluded from the scope of contribution protection provided in Section XV. Also notwithstanding the above, if no viable responsible party exists that voluntarily or by court order will Remediate or pay for the Remediation of a Multi-contaminant Site, the Plaintiffs reserve the right to seek Remediation of CCPW at that Multi-contaminant Site by one or more of the Companies. The Companies reserve all rights to contest the Plaintiffs' attempt to secure such Remediation.

13. **Liberty State Park.** The Settling Defendants' payment of Past Cleanup and Removal Costs under Paragraph 17 below includes but is not limited to payment for Past Cleanup and Removal Costs at Liberty State Park. The Department represents that Liberty State Park has been Remediated by the Department in accordance with all applicable laws and regulations, including the Technical Requirements for Site Remediation. Notwithstanding

the above representation, DEP agrees to undertake at its own expense, if necessary, additional Remediation of: (i) the CCPW contamination at Liberty State Park known as of the Effective Date of this Consent Judgment based on DEP's work at the site or other information available; and (ii) the CCPW contamination that would have been identified to DEP based on a response action conducted pursuant to the Technical Requirements for Site Remediation prior to the Effective Date. DEP shall provide within 30 days of the entry of this Consent Judgment a covenant not to sue (in the form set out at Appendix C) for all Future Cleanup and Removal Costs arising out of CCPW at Liberty State Park to the Settling Defendants as provided in Section X and in accordance with this paragraph.

14. The Settling Defendants' payment of Past Cleanup and Removal Costs under Paragraph 17 below includes but is not limited to payment for Past Cleanup and Removal Costs at Site 165 (Tempesta Site). DEP agrees to undertake at its own expense, if necessary, additional Remediation of CCPW at the Tempesta Site. Honeywell shall reimburse Plaintiff's future cleanup and removal costs at the Tempesta Site in an amount of up to one million dollars. DEP shall provide within 30 days of the entry of this Consent Judgment a covenant not to sue (in the form set out at Appendix C) for all Future Cleanup and Removal Costs arising out of CCPW at the Tempesta Site to the Settling

Defendants as provided in Section X and in accordance with this paragraph.

15. **Colony Diner.** DEP agrees that it will allow Honeywell to take over Remediation of the Colony Diner Site that was previously initiated by DEP. Without limitation of the foregoing, DEP will allow Honeywell to: (a) review all existing data with respect to pilot treatment studies conducted on the Site; (b) evaluate the data in selection of a remedial action; (c) complete the remedial evaluation process initiated by DEP; and (d) forebear in selection of a remedial action until Honeywell has completed its work. The terms of this Paragraph shall also apply to Known CCPW Sites 68, 69, and 130.

16. **Completed Sites Requiring Additional Remediation.** Following issuance of a Final Remediation Document for any Known CCPW Site, any future or additional Remediation of such Site shall be governed as follows: A. With respect to the Orphan Sites and ACO Sites (or any portion thereof) that have received a Final Remediation Document, in the event that DEP is permitted by law to require the Settling Defendant(s) to which the Site has been allocated pursuant to this Consent Judgment to perform additional Remediation of the CCPW contamination at or emanating from the Site, such Settling Defendant(s) agrees to conduct such additional Remediation as the Department, subject to Paragraph 27.B., is authorized to require.

B. Any site other than the Orphan Sites and ACO Sites that has received a Final Remediation Document and at which the Department is permitted by law to require additional Remediation of CCPW contamination, shall be designated a Newly Discovered Site and addressed in accordance with paragraph 7.C.

VI. PAYMENT OF COSTS

17. **Payment of Past Costs.** Within sixty (60) calendar days after the Effective Date, Honeywell, Occidental, and PPG will each severally pay the DEP Five Million Dollars (US) ($5,000,000.00) for a total payment of $15,000,000 in settlement of the Plaintiffs' claims for all Past Cleanup and Removal Costs. If payment by a Settling Defendant is not made by that time, Interest shall begin to accrue on the unpaid amount owed by such Settling Defendant which shall be the further responsibility only of the Settling Defendant that failed to timely submit payment.

18. The Settling Defendants shall pay the amounts specified in Paragraph 16 above by certified check made payable to the "Treasurer, State of New Jersey". The Settling Defendants shall mail or otherwise deliver the payment and payment invoice to the Section Chief, Cost Recovery and Natural Resource Damages Section, Department of Law and Public Safety, Division of Law,

Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

19. The covenants and releases contained in this Consent Judgment shall take effect as to a Settling Defendant upon the Plaintiffs receiving the payment the Settling Defendant is required to make pursuant to Paragraph 17 above, in full, and in the prescribed time and manner.

20. Excluding the Statutory Covenant(s) to be provided, the covenants and releases contained in this Consent Judgment extend only to the Settling Defendants' and the Related Parties, and not to any other person.

21. **Payment of Future Costs.** Within the time period prescribed in its Existing ACO, from the date that each Company receives from the Department a summary of costs in connection with the Department's oversight of Remediation at the Orphan Sites for which that Company has accepted responsibility under this Consent Judgment for a fiscal year or any part thereof, and provided that such costs are consistent with the Spill Act and the Technical Requirements for Site Remediation, each Company shall pay to the Department its Future Oversight Costs applicable to that Company's Orphan Sites. Payments will be made in the manner specified by that Company's Existing ACO. A summary of costs prepared by the Department pursuant to this Paragraph shall include cost documentation that verifies that

the claimed costs were incurred and that the amount of the costs was properly calculated and further shall include the amount, date, and entity or person to whom the costs were paid or by whom the costs were incurred. For those Orphan Sites for which Honeywell and PPG have jointly accepted responsibility under this Consent Judgment, the Department shall severally seek 50% of its Future Oversight Costs from Honeywell and 50% from PPG.

VII. REMEDIATION PROCEDURES

22. **Effect of Settlement.** The remedial procedures set forth herein, including the remedial, financial assurance, schedule development, and other obligations of the Settling Defendants and the oversight and supervision requirements of DEP, are material terms of this settlement. Pursuant to N.J.S.A. 58:10C-27(e), the remedial procedures and other terms set forth herein shall govern the remediation conducted by Settling Defendants at the Orphan and ACO Sites.

23. **Remediation Schedule and Submittal Process.**

A. **DEP Data.** Within sixty (60) calendar days after the Effective Date, the DEP will make available to each Company, as applicable, any and all data, sample results and reports generated by or on behalf of the DEP in connection with Remediation of each Orphan Site accepted by such Company to aid in preparation of appropriate Remediation submittals and in

setting forth the schedule and manner of proceeding to Remediate such Sites. The Companies may incorporate and utilize data, sample results and reports generated by DEP at the Orphan Sites in preparation of their Remediation submittals.

B. **Schedule Development.** Provided DEP has complied with Paragraph 23.A. above, then within one hundred fifty (150) calendar days after the Effective Date, each Settling Defendant shall separately submit to DEP for approval a Master Schedule for the Orphan Sites and ACO Sites for which it has accepted responsibility. Each Settling Defendant's Master Schedule shall establish Remediation timeframes, as applicable and appropriate, for each of the following:

(a) Receptor evaluation;
(b) Control of ongoing sources of contamination;
(c) Establishment of interim remedial measures;
(d) Addressing immediate environmental concern conditions;
(e) The performance of each phase of the Remediation including preliminary assessment, site investigation, remedial investigation, and remedial action; and
(f) Completion of Remediation.

Any disputes between DEP and the Company concerning the schedule shall be resolved in accordance with Paragraph 28 or 29.

C. **Effect of Prior Data on Schedule or Work.** DEP and the Settling Defendants recognize that DEP's previous investigations and actions at certain Orphan Sites and/or the current status of remediation at certain ACO Sites may make the conduct of one or

more of the activities set forth in Paragraph 23.B. above unnecessary at one or more such Sites. As a result, the Settling Defendants shall incorporate site data and information obtained from DEP pursuant to Paragraph 23.A. and the status of remediation at any ACO Site into the development of each Settling Defendant's Master Schedule. In developing the Master Schedule, each Settling Defendant shall take into account the following factors with respect to each Site for which it has accepted responsibility and DEP shall take account of the following factors in evaluating the Master Schedule:

(a) the potential risk to the public health, safety, and the environment;
(b) the results of any receptor evaluation;
(c) the ongoing industrial or commercial operations at the Site and the need for coordination with same;
(d) whether, for ongoing industrial or commercial facilities there are releases of contamination to the groundwater or surface water from the Site;
(e) the complexity of the contaminated site;
(f) the results of sampling data or other environmental information regarding the Site provided by DEP pursuant to Paragraph 23.A.;
(g) the current remedial status of any ACO Site;
(h) the number of sites to be remediated and practical limitations on implementing multiple simultaneous site remedies; and
(i) schedules, requirements, or other obligations mandated by any federal court or agency judgment, order, or settlement.

D. **Schedule Extensions.**

(a) Each Settling Defendant may seek, and DEP shall grant, extensions to a Settling Defendant's Master Schedule as a result of:

(i) a delay by DEP in reviewing or granting a permit, provided that there was a timely filing of a technically and administratively complete permit application; or
(ii) a delay by DEP for an approval or permit required for long-term operation, maintenance, and monitoring of an engineering control at a Site provided the request for approval or permit application is technically and administratively complete;
(iii) a delay by any governmental agency in providing any required permit or approval under the jurisdiction of such agency relating to remedial activity provided that there was a timely filing of a technically and administratively complete permit or approval application;
(iv) other circumstances beyond the control of the Settling Defendant, such as fire, flood, riot, strike, or other force majeure circumstances as set forth in each Settling Defendant's Existing ACO; and
(v) Dispute resolution.

(b) Each Settling Defendant may seek, and DEP may grant, extensions to a Settling Defendant's Master Schedule as a result of:

(i) a delay in obtaining access to property, provided the Settling Defendant demonstrates that good faith efforts have undertaken to gain access, and access has not timely been granted by the property owner;
(ii) efforts to minimize interference with operations, development, construction or demolition at a Site;
(iii) efforts to cooperate with Site owners or other interested parties to coordinate remedial

activity with remediation or other Site work being implemented by such owners or interested parties;

(iv) unexpected site preparation activities to ready a site for Remediation including, by way of example, relocation of underground utilities;

(v) Site specific circumstances that may warrant an extension as determined by DEP, including any change recommended or approved by a federal court (or agent thereof) or agency for those Sites that are the subject of federal court or agency oversight or supervision.

(c) The length of any extension proposed by a Settling Defendant pursuant to paragraphs 23.D.(a) or (b) above shall be subject to consent by DEP, which consent shall not be unreasonably withheld.

E. **Site Remediation Documents.** In the development of a Master Schedule, each Settling Defendant shall, at a minimum, provide for the submission of the following documents to DEP for additional review and auditing pursuant to N.J.S.A. 58:10C-21.

(a) A Remedial Investigation Report for each CCPW Site for which the Settling Defendant has accepted responsibility unless the Settling Defendant has previously submitted a Remedial Investigation Report to DEP or the Settling Defendant determines that DEP's previous remedial investigation at an Orphan Site provides a sufficient basis to proceed with remedial action selection.

(b) A Remedial Action Selection Report and Remedial Action Work Plan for each CCPW Site for which the Settling Defendant has accepted responsibility unless such documents have previously been submitted to DEP.

(c) A Remedial Action Report.

Each such submittal shall be provided to DEP.

F. **Election of Review Procedures.** Upon submission of the Master Schedule each Settling Defendant shall elect for each Site a remediation review procedure from those set forth in paragraphs 24, 25 or 26 below to be applied to each such Site or Sites. Requests by a Settling Defendant to change the review procedure initially elected for a Site shall be submitted to DEP in writing and subject to the consent of DEP, which consent shall not be unreasonably withheld.

G. **Proof of Completion.** Upon completion of Remediation at a Site, DEP shall issue to the Settling Defendant(s) responsible for Remediating such Site as applicable to the review procedure elected for such Site: (a) an NFA Letter, provided the DEP determines that the completed remediation is protective of public health and the environment; or (b) a letter stating that the remediation requirements for the Site have been satisfied under this Consent Judgment, within ninety (90) days of Settling Defendant's submission of final documentation related to the complete remediation for the Site.

24. **Heightened DEP Review.** DEP Review of Submittals. In the development of a Master Schedule, each Settling Defendant shall provide a period of 90 days for the DEP to review each document submitted pursuant to the Master Schedule. In conducting its review, DEP shall advise whether or not the submittal complies with this Consent Judgment and the Technical Requirements for

Site Remediation, and if not, the reasons therefore. If DEP's review is within the 90-day review period included in the Master Schedule, no modifications to the Master Schedule will be made in the absence of another basis for extension as allowed in this Consent Judgment. If DEP's review is greater than the 90-day review period included in the Master Schedule, the Master Schedule will be modified to account for the time DEP required to complete the review beyond the 90 day allowance. With respect to any submittal that DEP finds does not comply with this Consent Judgment or the Technical Requirements for Site Remediation, the relevant Settling Defendant shall: (a) modify the document in conformance with DEP's comments and re-submit the document for further review in accordance with this paragraph; (b) invoke the provisions of Paragraph 28; or (c) invoke dispute resolution to resolve any issues in dispute. For Sites at which remediation activities are proceeding under the direction of a Licensed Site Remediation Professional ("LSRP"), the Settling Defendant shall proceed with the course of remediation unless DEP has determined that the actions being taken or proposed by the Settling Defendant do not comply with this Consent Judgment or the Technical Requirements for Site Remediation. With respect to any LSRP submittal that DEP finds does not comply with this Consent Judgment or the Technical Requirements for Site Remediation, the relevant Settling

Defendant shall: (a) modify the actions being taken or proposed to be taken in conformance with DEP's comments; (b) invoke the provisions of Paragraph 28; or (c) invoke dispute resolution to resolve any issues in dispute. DEP's review of written submissions under and in compliance with this Consent Judgment shall be governed by the terms of this Consent Judgment and shall not be subject to, or governed by, the Grace Period Rule or the deadlines, fines, and/or penalties set forth therein. Each existing ACO is deemed modified to reflect the foregoing provision.

25. **Election under Site Remediation Reform Act.** Any Settling Defendant may elect to apply the remediation procedures otherwise set forth in N.J.S.A. 58-10C-1 et seq. in lieu of the procedures set forth in Paragraph 24 above, to any Orphan Site or ACO Site for which it has accepted responsibility by providing written notice of such election to DEP and by complying with the remediation procedures set forth therein or in regulations adopted pursuant thereto. The remaining provisions of this Consent Judgment shall continue to apply to such Site(s) notwithstanding said election. Upon providing written notice of such election, a Settling Defendant shall promptly revise its Master Schedule to reflect any changes necessary to comply with the remediation procedures set forth in the Site Remediation Reform Act.

26. **Election under PPG Consent Judgment.** Any Settling Defendant may elect to apply the remediation procedures set forth in Articles XV to XVIII of the PPG Consent Judgment in lieu of the procedures set forth in Paragraph 24 above, to any Orphan Site or ACO Site for which it has accepted responsibility, by providing written notice of such election to DEP and by complying with the remediation procedures set forth therein. The remaining provisions of this Consent Judgment shall continue to apply to such Site(s) notwithstanding said election, but in the case of any inconsistency between this Consent Judgment and the PPG Consent Judgment, the PPG Consent Judgment shall govern. PPG has already made this election for the PPG ACO Sites and the following Orphan Sites: 174, 186, 202, 203, 204 and 207. Upon providing written notice of such election, a Settling Defendant shall promptly revise its Master Schedule to reflect any changes necessary to comply with the remediation procedures set forth in the PPG Consent Judgment.

27. **Remediation Standards.**

A. **February 2007 Chrome Policy.** For each CCPW Site at which it has accepted responsibility, a Settling Defendant shall conduct remediation of CCPW in accordance with the Technical Requirements for Site Remediation and with DEP's February 2007 Chrome Policy. To the extent that DEP determines that it is appropriate to change remediation guidance set forth in the

February 2007 Chrome Policy or to add or change soil or groundwater standards with respect to chromium, such changes shall apply to CCPW Sites only after formal rulemaking with an opportunity for notice and comment, and, in the case of any change in chromium soil or groundwater standards, such rulemaking shall consider the review of scientific studies and literature currently being conducted by the United States Environmental Protection Agency under its IRIS program as well as other scientific studies conducted in response to the National Toxicity Program's (NTP) study on hexavalent chromium. In the event that (i) DEP changes the February 2007 Chrome Policy without engaging in formal rulemaking or (ii) DEP changes soil or groundwater standards for chromium without engaging in formal rulemaking that considers the results of EPA's IRIS chromium review, a Settling Defendant may elect to perform such further remedial action as may be required under the Department's Order of Magnitude Guidance at any CCPW Site or terminate any remaining remedial obligations at any CCPW Site(s) for which it has not received a Final Remediation Document or implemented a final remedy. DEP and the Settling Defendant shall reserve all rights, claims, and defenses against each other with respect to any CCPW Site or Sites for which a Settling Defendant has terminated its obligations pursuant to this Paragraph.

B. **Order of Magnitude Guidance.** In the event that DEP changes soil or groundwater standards for chromium in accordance with the requirements of Paragraph 27.A., upon request by the DEP, the Department's Order of Magnitude Guidance shall be applied to the CCPW Sites to determine whether further remedial actions are necessary.

(a) In applying the Order of Magnitude Guidance to any CCPW Site with an existing Final Remediation Document or final remedy, a Settling Defendant shall compare all post-remediation analytical results for hexavalent chromium to the new standard.

(b) If the comparison in (a) above reveals an order of magnitude difference between any post remediation analytical results for hexavalent chromium and the new standard, a Settling Defendant will thereafter evaluate the continued effectiveness of the remedy against the new standard.

(c) If further remedial action is required at a CCPW Site pursuant to the results of such evaluation and the Order of Magnitude Guidance, a Settling Defendant shall proceed to Remediate in accordance with the procedures set forth in Paragraphs 23.A. through 23.G.

28. **Forum for Technical Discussion.** DEP shall make its senior staff, including but not limited to the Assistant Commissioner for Site Remediation, available to meet with the Settling Defendants no later than six weeks from the Effective Date of this Consent Judgment, and thereafter as warranted, to discuss technical issues that could include, but not be limited to: (i) use of compliance averaging for inhalation and ingestion endpoints; (ii) methods for approval and implementation of

Alternate Remedial Standards (ARSs) for CCPW in soils (including a soil ingestion ARS); (iii) methods for approval and implementation of ARSs for groundwater; (iv) analytical methods and data validation, including Method Comparison Study results; (v) groundwater classification and appropriate use of impact to groundwater standards; vi) NTP chromium study results; and (vii) development of or revision to any Master Schedule created pursuant to Paragraph 23.A.

VIII. DISPUTE RESOLUTION

29. **Adoption of Dispute Resolution Procedure.** Without limitation to use of the forum provided by Paragraph 28, above, in the event a dispute arises between the Settling Defendants and DEP on technical matters, the Settling Defendants may appeal any decision of DEP's initial decisionmaker through his or her supervisory chain of command to a panel of DEP assistant directors selected by the Assistant Commissioner for Site Remediation.

IX. TERMINATION OF LITIGATION

30. **Termination of Litigation.** The PPG Consent Judgment and this Consent Judgment resolve, settle, and satisfy all claims between the Plaintiffs and the three Settling Defendants in New Jersey Department of Environmental Protection, et al. v. Honeywell International Inc., et al., Docket No. C77-05, pending

in the Superior Court of New Jersey, Chancery Division, Hudson County (the "Litigation"), and shall result in a termination of the Litigation with prejudice. The Court shall retain jurisdiction to enforce the terms of this Consent Judgment, as further provided in Section XX below. DEP shall continue to enforce the terms of both the Consent Judgment and existing ACOs with the Settling Defendants.

31. **Existing ACOs.**

A. **Effect of Consent Judgment.** Each Company shall be individually and severally responsible for Remediation of the ACO Sites identified under its Existing ACO, which will continue to govern Remediation of such Sites. Except as expressly modified by the terms of this Consent Judgment, and subject to the right of election set forth in paragraphs 25 and 26, each Existing ACO shall remain in full force and effect and the terms of each are considered a part of this Consent Judgment as to such Sites. Subject to the right of election set forth in Paragraphs 25 and 26, Remediation of the Orphan Sites shall be governed exclusively by this Consent Judgment.

B. **Specific Modifications.** Without limitation of the foregoing and notwithstanding modifications to existing ACOs expressly made elsewhere in this Consent Judgment, the following additional modifications to Existing ACOs shall be deemed made hereby:

As to the Honeywell ACO: Paragraphs 1 through 18, 37 through 39, 42 through 52, 59 through 70, 72 through 92 and 94 through 110 shall continue in full force and effect. All remaining paragraphs are deemed null and void.

As to the OCC ACO: Paragraphs 1 through 24, 57 through 71, 75, 77, 79 through 84, 87, 90, 93, 99 through 106 and 108 through 110 shall continue in full force and effect. All remaining paragraphs are deemed null and void.

As to the PPG ACO Paragraphs 1 through 33, 84 through 88, 94 through 102, 106, 108, 110 through 115, 118, 121, 124, 131 through 132, and 134 through 137 shall continue in full force and effect. All remaining paragraphs are deemed null and void.

32. **Settlement Benefits.** This Consent Judgment inures to the benefit of the State and the Settling Defendants and to the benefit of the Settling Defendants' indemnitors and indemnitees, and the direct, indirect and ultimate parents, subsidiaries and affiliates of any of them (Related Parties) to the extent that the alleged liability of the Related Party with respect to a site is based on its capacity as a Related Party of one of the Settling Defendants, and not to the extent that the alleged liability of the Related Party arose independently of its status and capacity as the Related Party of one of the Settling Defendants. Nothing herein shall in any way change or modify

the November 7, 2003, Restoration Administrative Consent Order ("RACO").

X. RELEASE AND COVENANT NOT TO SUE

33. **Release by Plaintiffs.** For and in consideration of the payments and performance requirements set forth in this Consent Judgment, the Plaintiffs fully and forever release, surrender, acquit, discharge, covenant not to sue, or otherwise agree not to take administrative action against any of the Releasees for any and all of the Plaintiffs' claims and causes of actions as a result of alleged discharges of CCPW at each of the following Sites:

The Turnpike Sites;

Known CCPW Sites 150, 152, 162, 175 and 177;

Each Orphan Site, excluding as to each Company only those Orphan Sites for which such Company has accepted responsibility on Appendix A;

Liberty State Park, provided, however, that if the Department determines that it is necessary to implement Remediation after the Effective Date at Liberty State Park as a result of a discharge of CCPW, this Release applies only to costs arising out of such Remediation to the extent that such Remediation addresses :(i) the CCPW contamination at Liberty State

Park known as of the Effective Date based on the Department's work at the Liberty State Park or other information available; or (ii) the CCPW contamination that would have been identified to the Department based on Remediation conducted in accordance with the Technical Requirements for Site Remediation prior to the Effective Date.

Notwithstanding anything to the contrary in this Paragraph, the Plaintiffs do not release, surrender, acquit, discharge, covenant not to sue, or in any way waive or forego any claims or causes of action against a Company to enforce this Consent Judgment or to seek redress for any breach of this Consent Judgment.

34. **Covenant Not to Sue.** Within thirty (30) days after the Effective Date, the Department will provide to each Company a Covenant Not to Sue in the form set forth in Exhibit C ("Covenant Not to Sue") as to each of the following Known CCPW Sites:

The Turnpike Sites;

Known CCPW Sites 150, 152, 162, 175 and 177;

Each Orphan Site, excluding as to each Company only those Orphan Sites for which such Company has accepted responsibility on Appendix A;

Liberty State Park, provided, however, that if the Department determines that it is necessary to implement additional Remediation at Liberty State Park as a result of a discharge of CCPW, the Covenant Not to Sue applies only to all future costs arising out of CCPW for :(i) the CCPW contamination at Liberty State Park known as of the Effective Date based on the Department's work at the Liberty State Park or other information available; and (ii) the CCPW contamination that would have been identified to the Department based on a Remediation conducted in accordance with the Technical Requirements for Site Remediation. Notwithstanding anything to the contrary in this Paragraph, the Department does not covenant to forego the initiation of or continuance of litigation against any Company to enforce this Consent Judgment or to seek redress for a breach of this Consent Judgment

35. **Release Among the Companies.** For and in consideration of the allocation of payments and performance requirements set forth in this Consent Judgment, each Company (the "Releasing Company") on behalf of itself, and its Related Parties, fully and forever releases, surrenders, acquits, discharges, covenants not to sue, or otherwise take action against each other Releasee, for any and all claims and causes of action as a

result of alleged discharges of CCPW at each of the Releasing Company's Existing ACO Sites and Orphan Sites that it has agreed to remediate. Notwithstanding anything to the contrary in this Paragraph, each Company and its Related Parties do not release, surrender, acquit, discharge, covenant not to sue, or in any way waive or forego any claims or causes of action against any other Company or any other Releasee (a) to enforce this Consent Judgment or to seek redress for any breach of this Consent Judgment or (b) related to the presence, migration, investigation or remediation of any hazardous substance, pollutant or contaminant in the Passaic River, Newark Bay, the Hackensack River, or tributaries thereof (except as required in accordance with Paragraph 7) or natural resource damages arising there from. The releases among Settling Defendants provided in this Paragraph shall become effective when each Covenant Not to Sue and release from Plaintiffs become effective and not sooner.

XI. PLAINTIFFS' RESERVATIONS

36. Except as otherwise provided in this Consent Judgment, the Plaintiffs reserve, and this Consent Judgment is without prejudice to, the Plaintiffs' right to sue or take administrative action to compel the Settling Defendants to further remediate CCPW at any Orphan Site, or to reimburse the

Plaintiffs for any additional costs and damages, if, before a Final Remediation Document is issued to the Settling Defendants:

i. plaintiff DEP discovers conditions at the Site, previously unknown to plaintiff DEP; or

ii. plaintiff DEP receives information, previously unknown to plaintiff DEP, in whole or in part; and

these previously unknown conditions or information, together with any other relevant information, indicate that the Remediation for the Site is not protective of human health and safety, or the environment.

37. Except as otherwise provided in this Consent Judgment, the Plaintiffs reserve, and this Consent Judgment is without prejudice to, the Plaintiffs' right to sue or take administrative action to compel the Settling Defendants to further remediate CCPW at any Orphan Site, or to reimburse the Plaintiffs for any additional costs and damages, if, after a Final Remediation Document is issued to the Settling Defendants:

i. plaintiff DEP discovers conditions at the Site, previously unknown to plaintiff DEP; or

ii. plaintiff DEP receives information, previously unknown to plaintiff DEP, in whole or in part; and

these previously unknown conditions or information, together with any other relevant information, indicate that the

Remediation is not protective of human health and safety, or the environment.

38. For the purposes of Paragraph 36, the information and the conditions known to the Plaintiffs shall include only the information and conditions known to the Plaintiffs as of the date of the Final Remediation Document.

39. For the purposes of Paragraph 37, the information and the conditions known to the Plaintiffs shall include only the information and conditions known to the Plaintiffs as of the date of the Final Remediation Document, and any information received by plaintiff DEP pursuant to the requirements of this Consent Judgment and any administrative consent order before the date of the Final Remediation Document.

40. The covenants contained in the Consent Judgment above do not pertain to any matters other than those expressly stated. The Plaintiffs reserve, and this Consent Judgment is without prejudice to, all rights against the Settling Defendants concerning all other matters, except to the extent that such rights are settled or released independent of this Consent Judgment (such as pursuant to the RACO among the Parties of November 7, 2003), including the following:

a. claims based on the Settling Defendants' failure to satisfy any term or provision of this Consent Judgment;

b. liability arising from the Settling Defendants' past, present or future discharge or unsatisfactory storage or containment of any hazardous substance outside any Site;

c. liability for any future discharge or unsatisfactory storage or containment of any hazardous substance by the Settling Defendants at any Site, other than as provided for in any administrative consent order or as otherwise ordered or approved by plaintiff DEP;

d. criminal liability;

e. liability for any violation by the Settling Defendants of federal or state law that occurs during or after the remediation of any Site;

XII. SETTLING DEFENDANTS' COVENANTS

41. The Settling Defendants covenant not to oppose entry of this Consent Judgment by this Court, or to challenge any provision of this Consent Judgment, unless the Plaintiffs notify the Settling Defendants, in writing, that they no longer support entry of the Consent Judgment.

42. The Settling Defendants further covenant, subject to Paragraphs 44 and 45 below, not to sue or assert any claim or cause of action against the State, including any department,

agency or instrumentality of the State, excluding the New Jersey Turnpike Authority, concerning CCPW at any Orphan or ACO Site. This covenant shall include the following:

a. any direct or indirect claim for reimbursement from the Spill Compensation Fund ("Spill Fund") concerning any Site; and

b. any claim or cause of action concerning the remediation of any Orphan or ACO Site, including plaintiff DEP's selection, performance or oversight of the Remediation, or plaintiff DEP's approval of the plans for the Remediation so long as DEP's actions are in compliance with applicable law and the terms of this Consent Judgment.

43. The Settling Defendants' covenant not to sue or to assert any claim or cause of action against the State pursuant to Paragraph 42 above shall not be effective until Plaintiffs' covenants and releases are effective as to such Settling Defendant and further do not apply where the Plaintiffs, the State, or any department, agency or instrumentality of the State sues or takes administrative action against the Settling Defendants pursuant to Section XI above.

XIII. SETTLING DEFENDANTS' RESERVATIONS

44. The Settling Defendants reserve, and this Consent Judgment is without prejudice to, (a) claims against the State of New Jersey, subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to -12-3; the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 to 13-10; the New Jersey Constitution, N.J. Const. art. VIII, §2, 2; or any other applicable provision of law, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any State employee while acting within the scope of his office or employment under circumstances where the State, if a private person, would be liable to the claimant, (b) any claim to enforce this Consent Judgment; or (c) any claim challenging any legislative or administrative rule-making by the State. Any such claim, however, shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined in N.J.S.A. 59:1-3; nor shall any such claim concerning any Site include plaintiff DEP's selection and performance of the remediation, or plaintiff DEP's oversight or approval of the Settling Defendants' plans or activities relating to the remediation. The foregoing applies only to claims that the Settling Defendants may bring pursuant to any statute other than the Spill Act and for which the waiver

of sovereign immunity is found in a statute other than the Spill Act.

45. Nothing in this Consent Judgment shall be deemed to constitute preauthorization of a claim against the Spill Fund within the meaning of N.J.S.A. 58:10-23.11k or N.J.A.C. 7:1J.

XIV. VOLUNTARY NATURE OF SETTLEMENT; NO ADMISSIONS

46. (a) Nothing contained in this Consent Judgment shall be considered an admission by the Settling Defendants, or a finding by the Plaintiffs, of any fault, fact, wrongdoing or liability by any of the Parties.

(b) This Consent Judgment has been voluntarily entered by the Parties and constitutes a document evidencing settlement of litigated claims pursuant to state and federal rules of evidence.

XV. EFFECT OF SETTLEMENT & CONTRIBUTION PROTECTION

47. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Judgment other than Related Parties as provided in Paragraph 31 above. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Judgment may have under applicable law.

48. Each Settling Defendant expressly reserves all rights, including any right to contribution, defenses, claims, demands, and causes of action that each Settling Defendant may have concerning any matter, transaction, or occurrence concerning any Site against any person not a Party to this Consent Judgment.

49. Contribution Protection

A. **Statutory Contribution Protection.** When entered, this Consent Judgment will constitute a judicially approved settlement within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) and 42 U.S.C.A. § 9613(f)(2) for the purpose of providing protection to the Settling Defendants and Related Parties from contribution actions or claims for Cleanup and Removal Costs as a result of a discharge of CCPW, at the Known CCPW Sites (exclusive of the Multi-contaminant Sites). The Parties agree, and by entering this Consent Judgment this Court finds, that each Settling Defendant and each of their respective Related Parties is entitled, upon the Effective Date, subject to the Plaintiffs' receipt of payment from such Settling Defendant of the amount such Settling Defendant is required to make pursuant to Paragraph 17 above, to protection from contribution actions or claims for matters addressed in this Consent Judgment in accordance with N.J.S.A. 58:10-23.11f.a.(2)(b) and 42 U.S.C.A. § 9613(f)(2).

B. **Contractual Contribution Protection.** It is the further intent of the State and the Companies and is so ordered by the Court that by entering into this Consent Judgment the Releasees shall be protected to the greatest extent possible from any contribution claim a third party may assert to the extent the claim arises from any judgment entered in favor of the State in any civil or administrative action the State brings to recover for Cleanup and Removal Costs at the Known CCPW Sites, exclusive of the Multi-contaminant Sites. The State further agrees that the Past Cleanup and Removal Costs payments made and costs incurred for work performed pursuant to this Consent Judgment constitute the Releasees' full and fair share of any claim or cause of action possessed by the State for the matters addressed herein. The State further agrees that Past Cleanup and Removal Costs payments made and costs incurred for work performed pursuant to this Consent Judgment do not discharge any other potentially liable persons, but such payments and costs reduce the potential liability of the others by the amount of the Past Costs payments and other costs incurred. Further, the State agrees that it will not oppose any motion or application by the Releasees in any subsequent action in which the Releasees seek the contribution protection that this Settlement Agreement is intended to provide. The State agrees that it will require in any future settlement agreement

that it reaches with any other person or entity regarding cleanup and removal at the Known CCPW Sites, or any of them, (exclusive of the Multi-contaminant Sites) a provision that such person or entity will not seek and by such future settlement agreement thereby waives all rights of contribution from the Releasees for the payment made and/or costs incurred there under. As the Past Cleanup and Removal Costs payments being made and costs for work performed in accordance with this Consent Judgment fully reimburse and/or satisfy the State for its claim for all Past and Future Cleanup and Removal Costs resulting from the discharges of CCPW, at the Known CCPW Sites and subject to the State's rights under this Consent Judgment or any Existing ACO to Future Oversight Costs, the State further agrees that if the State commences litigation against any other person or entity for Future Cleanup and Removal Costs resulting from discharges at any of the Known CCPW Sites (exclusive of the Multi-contaminant Sites), and if, despite the contribution protection afforded in accordance with this Consent Judgment, the Releasees are joined in that action, the State will amend its complaint to exclude claims for CCPW, related Past and Future Cleanup and Removal Costs (except as to Future Cleanup and Removal Costs at the Multi-contaminant Sites). The State further agrees that with respect to any such suit it will notify

the Companies in writing no later than 60 days after the initiation of such suit.

50. In order for the Settling Defendants to obtain protection under N.J.S.A. 58:10-23.11.f.b. from contribution claims concerning the matters addressed in this Consent Judgment the Plaintiffs published notice of this Consent Judgment in the New Jersey Register and on plaintiff DEP's website on June 20, 2011, in accordance with N.J.S.A. 58:10-23.11e.2. Such notice included the following information:

a. the caption of this case;

b. a description of the sites being settled;

c. the names of the Settling Defendants; and

d. a summary of the terms of the Consent Judgment.

51. The Settling Defendants also published legal notices in three newspapers of general circulation in Hudson and Essex Counties for a period of three days, which notices contained the following information:

a. a description of the sites being settled;

b. the name of each Settling Defendant;

c. a summary of the terms of this Consent Judgment; and

d. the date public notice was published in the New Jersey Register.

52. The Plaintiffs, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Consent Judgment to all other potentially responsible parties of whom the Plaintiffs had notice as of the date the Plaintiffs published notice of the proposed settlement in this matter in the New Jersey Register in accordance with paragraph 50 above.

53. The Plaintiffs will submit this Consent Judgment to the Court for entry pursuant to Paragraph 69 below unless, as a result of the notice of this Consent Judgment pursuant to Paragraphs 50 and 51 above, the Plaintiffs receive information that discloses facts or considerations that indicate to them, in their sole discretion, that this Consent Judgment is inappropriate, improper or inadequate. In the event Plaintiffs so determine that this Consent Judgment is inappropriate, improper or inadequate prior to its entry by the Court, this Consent Judgment is voidable at the sole discretion of any Party and the terms of the agreement set forth in this Consent Judgment may not be used as evidence in any litigation between the Parties.

54. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief, recovery of costs and/or damages, or other appropriate relief concerning any Site, the Settling Defendants shall not assert, and may not maintain, any defense or claim as to Plaintiffs based upon the

principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine or other defenses based upon any contention that the claims the Plaintiffs raise in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of this Consent Judgment, or any provision hereof, by, between or among the Parties.

XVI. ACCESS TO INFORMATION

55. Upon receipt of a written request by one or more of the Plaintiffs, and subject to Paragraph 56 below, the Settling Defendants shall submit or make available to the Plaintiffs all non-privileged information the Settling Defendant has concerning the Site for which information is requested, including technical records and contractual documents.

56. The Settling Defendant may assert a claim of confidentiality or privilege for any information requested by the Plaintiffs pursuant to this Consent Judgment. The Settling Defendant, however, agrees not to assert any privilege or confidentiality claim concerning data related to site conditions, sampling, or monitoring.

XVII. RETENTION OF RECORDS

57. Each Settling Defendant shall preserve during the pendency of this Consent Judgment and for a minimum of 6 years after its Effective Date, all data and information, including technical records, potential evidentiary documentation and contractual documents, in the Settling Defendant's possession or in the possession of its divisions, employees, agents, accountants, contractors, or attorneys, which in any way relate to implementation of Work under this Consent Judgment, despite any document retention policy to the contrary.

58. After the 6-year period specified in Paragraph 57 above, a Settling Defendant may request of plaintiff DEP, in writing, that it be allowed to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receiving written approval from plaintiff DEP, the Settling Defendant may discard only those documents the Plaintiffs do not require the Settling Defendant to preserve for a longer period. In the event Plaintiffs require preservation of certain documents for a longer period, Settling Defendants may deliver to Plaintiffs for preservation documents required to be kept for more than 6 years.

XVIII. NOTICES, SUBMISSIONS AND MODIFICATIONS

59. Except as otherwise provided in this Consent Judgment, whenever written notice or other documents are required to be submitted by one Party to another, they shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing.

As to Plaintiffs DEP & Administrator:

Leonard Romino, Assistant Director
Site Remediation Program
New Jersey Department of Environmental Protection
401 E. State St.
P.O. Box 420, 401-05D
Trenton, NJ 08625-0420

As to Honeywell:

John Morris
Honeywell International Inc.
101 Columbia Road
Morristown, NJ 07962

and

Thomas Byrne, Esq.
Honeywell International Inc.
101 Columbia Road
Morristown, NJ 07962

As to Occidental:

David Rabbe, President
Tierra Solutions, Inc.
2 Tower Center Boulevard, Floor 10
East Brunswick, NJ 08816

and

Lori A. Mills, Esq.
Drinker Biddle & Reath
105 College Road East, Suite 300
Princeton, NJ 08540

As to PPG Industries Inc:

Steven F. Faeth, Senior Counsel - EHS
PPG Industries Inc.
One PPG Place, 39th Floor
Pittsburg, PA 15272

60. All submissions shall be considered effective upon receipt, unless otherwise provided in this Consent Judgment.

61. The Settling Defendants shall not construe any informal advice, guidance, suggestions, or comments by the Plaintiffs, or by persons acting for them, as relieving the Settling Defendants of their obligation to obtain written approvals or modifications as required by this Consent Judgment.

62. Any notices or other documents specified in this Consent Judgment may only be modified by agreement of the Parties. All such modifications shall be made in writing.

63. All notices or other documents the Settling Defendants are required to submit to the Plaintiffs under this Consent Judgment shall, upon approval or modification by the Plaintiffs in accordance with this Consent Judgment, be enforceable under this Consent Judgment. All such approvals or modifications shall be in writing.

64. In the event the Plaintiffs approve or modify a portion of a notice or other document the Settling Defendants are required to submit under this Consent Judgment in accordance with this Consent Judgment, the approved or modified portion shall be enforceable under this Consent Judgment.

65. Nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Judgment.

XIX. EFFECTIVE DATE

66. The Effective Date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court.

XX. RETENTION OF JURISDICTION

67. This Court retains jurisdiction over both the subject matter of this Consent Judgment and the Parties for the duration of the performance of the terms and provisions of this Consent Judgment for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Judgment, or to effectuate or enforce compliance with its terms.

XXI. APPENDICES

68. The following appendices are attached to and incorporated into this Consent Judgment:

a. "Appendix A" is the list of Orphan Sites.

b. "Appendix B" is the Sewer Protocol.

c. "Appendix C" is the Covenant Not to Sue form.

d. "Appendix D" is the Most Recent List of Known CCPW Sites.

e. "Appendix E" is the Chrome Policy.

f. "Appendix F" is a List of Known Sewer Sites.

XXII. ENTRY OF THIS CONSENT DECREE

69. The Settling Defendants consent to the entry of this Consent Judgment without further notice, provided, however, that Plaintiffs shall provide notice of submission of this Consent Judgment to the Court in compliance with Paragraph 70 below.

70. Upon conclusion of the public comment period the Plaintiffs shall promptly submit this Consent Judgment to the Court for entry.

71. If for any reason the Court should decline to approve this Consent Judgment in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

72. Liability of the Settling Defendants under this Consent Judgment is several only. Violation of this Consent Judgment or

any provision hereof by any Settling Defendant shall not be deemed a violation by any other Settling Defendant.

XXIII. SIGNATORIES/SERVICE

73. Each undersigned representative of a Party to this Consent Judgment certifies that he or she is authorized to enter into the terms and conditions of this Consent Judgment, and to execute and legally bind such party to this Consent Judgment.

74. This Consent Judgment may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Consent Judgment.

75. Each Settling Defendant and each Plaintiff shall identify on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Judgment. The Settling Defendants and Plaintiffs agree to accept service in this manner, and to waive the formal service requirements set forth in R. 4:4-4, including service of a summons.

SO ORDERED this 7th day of September 2011.

Thomas P. Olivieri

J.S.C.

THOMAS P. OLIVIERI, P.J.Ch

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
David Sweeney, Assistant Commissioner, Site Remediation

Dated: 8/31/11

NEW JERSEY SPILL COMPENSATION FUND

By: _____
Anthony J. Farro, Administrator, New Jersey Spill Compensation Fund

Dated: 8/30/2011

PAULA T. DOW, ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____
Deputy Attorney General

Dated: 8/25/2011

For Occidental Chemical Corporation

By: _____
Dennis F. Blake, Senior Vice President - Business Analysis

Dated: August 16, 2011

Person Authorized to Accept Service on Behalf of

Name: Scott A. King

Title: Vice President and General Counsel

Address: Occidental Chemical Corporation
5005 LBJ Freeway, Ste 1500, Dallas, TX 75244

Telephone No.: (972) 404-3800

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:_____
David Sweeney, Assistant Commissioner, Site Remediation

Dated:

NEW JERSEY SPILL COMPENSATION FUND

By:_____
Anthony J. Farro, Administrator, Jew Jersey Spill Compensation Fund

Dated:

PAULA T. DOW, ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By:_____

Deputy Attorney General

Dated:

For PPG Industries, Inc.

By: John C. Richter
John C. Richter, Vice President, EH&S

Dated: August 26, 2011

Person Authorized to Accept Service on Behalf of

Name: Steven F. Faeth

Title: Corporate Counsel EH&S

Address: One PPG Place
Pittsburgh, PA 15272

Telephone No.: (412) 434-3799

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
David Sweeney, Assistant Commissioner, Site Remediation

Dated:

NEW JERSEY SPILL COMPENSATION FUND

By: _____
Anthony J. Farro, Administrator, New Jersey Spill Compensation Fund

Dated:

PAULA T. DOW, ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____

Deputy Attorney General

Dated:

HONEYWELL INTERNATIONAL INC.

By: _____
Evan Van Hook
VP, Health, Safety, Environment & Remediation

Dated: August 25, 2011

Person Authorized to Accept Service on Behalf of

Name: Thomas Byrne

Title: Associate General Counsel/Chief Environmental Counsel

Address: 101 Columbia Road, Morristown, NJ 07962

Telephone No.: 973-455-2775

APPENDIX A

LIST OF ORPHAN SITES

ACCEPTED BY THE THREE COMPANIES

Site	Honeywell	PPG	Occidental
Site 7-NJ Turnpike at Communipaw	X		
Site 17 Newark Exxon			X
Site 19 Philip Street	X		
Site 67 Chapel Ave	X		
Site 68 Clendenny Outfall	X		
Site 69 Clendenny Ave	X		
Site 70 Colony Diner	X		
Site 77 8th Street No. 2			X
Site 86 Nicholas Trucking			X
Site 91 NE Interceptor 1	X		
Site 92 NE Interceptor 2	X		
Site 93 NE Interceptor 3	X		
Site 94 18th Street	X		
Site 97 NW Interceptor 1	X		
Site 98 NW Interceptor 2	X		
Site 99 Recycling Specialists	X		
Site 100 Richard St	X		
Site 101 Stockton Ave	X		
Site 119 Droyers' Point Groundwater	X		
Site 130 Communipaw 5	X		
Site 165 Tempesta & Sons	X		
Site 172 Warren St	X		
Site 174 Dennis T. Collins Park		X	
Site 178 Cabana Club	X		
Site 180a (Eastern Oil Sewer)	X	X	
Site 183 Sludge Line 1	X		
Site 185 Allied Stockpile	X		
Site 186 Garfield Ave		X	
Site 187 Route 440 Median Strip	X	X	
Site 188 Sussex Street	X	X	
Site 189 Henderson Street	X	X	
Site 196 POTW outfall Line 1	X	X	
Site 197 Grand Street Sewer	X	X	
Site 198 Hartz Mountain	X	X	
Site 199 Sludge Line 2	X	X	
Site 200 Sludge Line 3	X	X	
Site 202 Caven Point Road		X	

Site	Honeywell	PPG	Occidental
Site 203 Claremont Assoc.		X	
Site 204 Conrail Edgewater Branch		X	
Site 205 First Street	X	X	
Site 206 Polarome	X		
Site 207 Garfield Ave #2		X	

APPENDIX B

SEWER PROTOCOL

A. Investigation and Warning

1. The responsible party will investigate the sewer sites and delineate those areas of the Pipeline where Chromium Materials are present.

2. The responsible party will provide the utility with a map of those sections of sewer where Chromium Materials have been determined to be present and will fund training for utility employees on (a) recognition of Chromium Materials; (b) appropriate steps to be taken for worker protection; and (c) emergency utility repair procedures .

3. The responsible party and utility will develop administrative procedures to identify when Chromium Materials containing areas of the pipeline are scheduled for repair.

B. Remediation Protocols

1. Chromium Materials at the Surface. Whenever Chromium Materials or soils contaminated by Chromium Materials exceed the applicable standard for hexavalent chromium within the top 3 feet of soil, the presumptive remedy will consist of a capping system that includes, at a minimum, the following in vertical profile from top to bottom:

Asphalt or concrete cover,
Gravel subbase materials
Geocomposite drainage layer, e.g. geonet, as a capillary break
Linear Low Density Polyethylene (LLDP) liner
Geotextile Fabric.

2. **Chromium Materials Beneath the Surface.** Whenever Chromium Materials or soils contaminated by Chromium Materials exceed the applicable standard for hexavalent chromium at a depth of 3 feet or more below the surface, the presumptive remedy consists of a capping system that includes the top three feet of clean fill as an engineering control. In addition, an orange demarcation layer (orange snow fence) will be installed below the surface as a warning not to disturb the engineering control.

3. **Chromium Materials Beneath a Public Street or Highway.** Whenever Chromium Materials or soils contaminated by Chromium

Materials exceed the applicable standard for hexavalent chromium beneath a public street or highway, the presumptive remedy consists of a capping system that includes the street itself as an engineering control.

4. **Chromium Materials Excavation and Removal** It is understood that repair or replacement of sections of a pipeline may be required from time to time to maintain efficient operation over the years. Whenever such normal operating repairs or replacement requires the removal of Chromium Materials or soils contaminated by chromium exceeding the applicable standard for hexavalent chromium, the responsible party will remove the Chromium Materials and/or contaminated soil.

5. **Emergency Repairs** The responsible party and the utility will develop procedures to be followed in the event of an emergency repair to any utility in an area where Chromium Materials were placed as bedding or fill around the utility. Such procedures will include: (a) appropriate steps to be taken to ensure worker safety; (b) the provision of notice to DEP and the responsible party as soon as practicable after the repair is made; (c) provisions for handling and disposal of any COPR Materials or chromium contaminated soil removed during the repair; and (d) provisions for restoring any remedial measures taken pursuant to the Sewer Protocol.

APPENDIX C

COVENANT NOT TO SUE

COVENANT NOT TO SUE

The State of New Jersey covenants and agrees that it will not bring any judicial, administrative or other action against [Company Name] with respect to Chromate Chemical Production Waste at or emanating from any of the sites listed below except as it may otherwise specifically be authorized to do by the Consent Judgment among the Companies and the State of New Jersey dated _____. This Covenant Not to Sue shall inure to the benefit of the Companies, their indemnitors and indemnitees and the direct, indirect and ultimate parents, subsidiaries and affiliates of any of them.

APPENDIX D

MOST RECENT VERSION OF DEP CCPW LIST

Appendix D

Hudson County Chromium Sites

SITE #	*SITE NAME*	*STREET*	*TOWN*	*RP CATEGORY*
1	Bramhall Avenue	597 Bramhall Avenue	Jersey City	PPG
2	Caven Point 1	80 Caven Point	Jersey City	PPG
3	Caven Point 2	Rear of 80 Caven Point Road	Jersey City	PPG
4	Caven Point 3	90 Caven Point Road	Jersey City	PPG
5	Caven Point 4 (air dock system)	100 Caven Point Road	Jersey City	PPG
6	Communipaw 1	378 Communipaw Avenue	Jersey City	PPG
7	NJ Turnpike at Communipaw	Intersection of N.J. Turnpike and	Jersey City	Honeywell
8	DEP Green Acres Site	East of Ultramar, North of Port Lib	Jersey City	PPG
9	NJ Turnpike Exit 14A	New Jersey Turnpike Exit 14A	Jersey City	Not a Site
10	Grand Street 4	383 Grand Street	Jersey City	PPG
11	Grand Street 5	267,269,271 Grand Street	Jersey City	PPG
12	Grand Street 6	541-547 Grand Street	Jersey City	PPG
13	Halladay Street	215 Halladay Street	Jersey City	PPG
14	Kearny Avenue	30-32 Kearny Avenue	Jersey City	PPG
15	Liberty State Park	Libery State Park east of Environ	Jersey City	NJDEP-Completed
16	Linden East (Levy & Sons)	Linden Avenue East	Jersey City	PPG
17	Newark Avenue - Exxon Station	Newark Avenue and Howell Street	Jersey City	Occidental
18	Pacific 1	421-425 Pacific Avenue	Jersey City	PPG
19	Phillip Street	Phillip Street Junction	Jersey City	Honeywell
20	NJ Turnpike Bayview	Below Overpass 14B	Jersey City	NJ Turnpike Authority
21	NJ Turnpike Greenville	New Jersey Turnpike at Piers 20 &	Jersey City	NJ Turnpike Authority
22	Woodward Street	299-301 Woodward Street	Jersey City	PPG
23	Communipaw 2,3	499 - 501 Communipaw Avenue	Jersey City	PPG
24	Communipaw 4	639 Communipaw Avenue	Jersey City	PPG
25	Fulton Street	198 Fulton Street	Jersey City	Not a site

SITE #	SITE NAME	STREET	TOWN	RP CATEGORY
26	Dwight Street. #9	197-207 Dwight Street	Jersey City	Not a Site
27	Dwight Street. #1a	196 Dwight Street	Jersey City	Not a site
28	Dwight Street. #1b	194 Dwight Street	Jersey City	PPG
29	Dwight Street #1c	190 Dwight Street	Jersey City	PPG
30	Dwight Street. #2	180 Dwight Street	Jersey City	Not a Site
31	Dwight Street. #3	181-183 Dwight Street	Jersey City	Not a Site
32	Dwight Street. #4	179-177 Dwight Street	Jersey City	Not a Site
33	Dwight Street. #11	173-175 Dwight Street	Jersey City	Not a Site
34	Dwight Street. #5	145 Dwight Street	Jersey City	Not a Site
35	Dwight Street. #7	135 Dwight Street	Jersey City	Not a Site
36	Dwight Street. #8	129 Dwight Street	Jersey City	Not a Site
37	Martin Luther King Dr.	143-147 Martin Luther King Dr.	Jersey City	PPG
38	Cambridge Avenue	51 Cambridge Avenue	Jersey City	PPG
39	Pine Street	280 Pine Street	Jersey City	PPG
40	Pen Horn Creek - Secaucus	Pen Horn Avenue	Secaucus	Occidental Chemical
41	St Johnsbury Trucking	O'Brien and Sellers Streets	Kearny	Occidental Chemical
42	3rd & Adams Sts. - ECIS Trucking	90 - 94 and 98-102 Jacobus Av	Kearny	Occidental Chemical
43	Diamond Head Oil	Diamond Head Oil	Kearny	Not a Site
44	Disch Construction	Jacobus Avenue	Kearny	Not a Site
45	Emco (aka Dupont Tract #1)	49-57 O'Brien Road	Kearny	Occidental Chemical
46	Jenkins Enterprises	79-85 3rd Ave.	Kearny	Occidental Chemical
47	Goldies Auto Parts	1010 Belleville Tpk.	Kearny	Occidental Chemical
48	Clinton Cartage, (aka Clinton)	1000 Belleville Tpk.	Kearny	Occidental Chemical
49	Arden Chemical / aka American	100 Hackensack Avenue	Kearny	Occidental Chemical
50	Janatex Company	993 Belleville Turnpike	Kearny	Occidental Chemical
51	Kearny Township Site #1	Belleville Turnpike	Kearny	Occidental Chemical
52	Kenney Steel Treating Co.	100 Quincy Place	Kearny	Occidental Chemical
53	Kleerkast Inc.	450 Schuyler Avenue	Kearny	Occidental Chemical
54	Plaff Tool & Mfg.	McWhirter & Gross St.	Kearny	Occidental Chemical
55	New Rent Trucking (aka New Rent	520 Belleville Turnpike	Kearny	Occidental Chemical

SITE #	SITE NAME	STREET	TOWN	RP CATEGORY
56	NJ Turnpike Kearny #1	Belleville Turnpike & NJ Turnp	Kearny	Occidental Chemical
57	Riverbank Park	Riverbank Park	Kearny	Not a Site
58	Nicole's Warehouse N/F Ru Son	996 Belleville Tpk.	Kearny	Occidental Chemical
59	Trumbull Asphalt	Newark Turnpike	Kearny	Occidental Chemical
60	Tullo Exxon Station	61 Lincoln Highway	Kearny	Occidental Chemical
61	Turco Industrial Area	590 Belleville Turnpike	Kearny	Occidental Chemical
62	West Hudson Lumber Co.	60 Arlington Ave.	Kearny	Occidental Chemical
63	Baldwin Oils & Commodities, Inc.	Caven Point Road at Burma Road	Jersey City	PPG
64	Black Tom Creek	Between Pittston,and Port Libe	Jersey City	Not a Site
65	Burma Road	West side of Burma Road Near Ca	Jersey City	PPG
66	Caven Point 5	Government Road	Jersey City	PPG
67	Chapel Avenue	Between Chapel & Linden Ave.,	Jersey City	Honeywell
68	Clendenny Outfall	Foot of Clendenny Avenue	Jersey City	Honeywell
69	Clendenny Avenue	Rear of Bradleys Department Stor	Jersey City	Honeywell
70	Colony Restaurant & Diner	Communipaw Avenue	Jersey City	Honeywell
71	Communipaw Jug	Off Route 1&9	Jersey City	Honeywell
72	Cove Site	Upper NY Bay	Jersey City	Not a Site
73	Degan Oil	200 Kellogg Street	Jersey City	Honeywell
74	Dwight Street #10	188 Dwight Street	Jersey City	PPG
75	Dwight Street #12	121 Dwight Street	Jersey City	PPG
76	Eighth Street #1	379-381 Eighth Street	Jersey City	Developer/Owner
77	Eighth Street #2	383 Eighth Street	Jersey City	Occidental Chemical
78	Engler Site	Culver Avenue	Jersey City	Not a Site
79	Rt. 440 Vehicle Corp	10 Water Street	Jersey City	Honeywell
80	Grand Street #1	223-225 Grand Street	Jersey City	PPG
81	Grand Street #2	215-217 Grand Street	Jersey City	PPG
82	Grand Street #3	237 Grand Street	Jersey City	PPG
83	Grand Street #7	235 Grand Street	Jersey City	PPG
84	Grand Street #8	219 Grand Street	Jersey City	PPG
85	Grand Street #9	381 Grand Street	Jersey City	PPG

SITE #	SITE NAME	STREET	TOWN	RP CATEGORY
86	Nicholas/Hamilton Trucking	123 Duffield Ave	Jersey City	Occidental Chemical
87	JCIA Site	525 Route 440	Jersey City	Honeywell
88	JCIA Well	575 Route 440	Jersey City	Honeywell
89	Martin Luther King Drive #3	149 Martin Luther King Drive	Jersey City	PPG
90	Baldwin Steel	460 Route 440	Jersey City	Honeywell
91	NE Interceptor 1	Turnpike near Johnston Street	Jersey City	Honeywell
92	E Interceptor 2	Under Turnpike near Ash Street	Jersey City	Honeywell
93	NE Interceptor 3	East side plant yard	Jersey City	Honeywell
94	18th Street Sewer	18th & Jersey Avenue	Jersey City	Honeywell
95	Newport Site	Provost & Povonia	Jersey City	Developer/Owner
96	Ninth Street Firehouse	Ninth Street near Grove	Jersey City	PPG
97	NW Interceptor 1	Near Secaucus Road	Jersey City	Honeywell
98	NW Interceptor 2	Near County Road	Jersey City	Honeywell
99	Recycling Spec., N/I Paz Jersey	375 Rt. 1&9	Jersey City	Honeywell
100	Richard Street Interceptor	East of Richard Street	Jersey City	Honeywell
101	Stockton Ave	Stockton Ave & Route 1&9	Jersey City	Honeywell
102	Woodlawn Street	124A Woodlawn	Jersey City	PPG
103	Amtrak Access Road	Belleville Turnpike	Kearny	Occidental Chemical
104	Old Communipaw Avenue	Rt. 1&9 Truck Section 1R	Jersey City	Not A Site
105	Colony 2 Site	Communipaw Avenue 7 Rt. 1&9	Jersey City	Not a Site
106	Lincoln Park	Lincoln Park	Jersey City	Not a Site
107	Fashionland	18 Chapel Avenue	Jersey City	PPG
108	Albanil Dyestuff	20 E. Linden Avenue	Jersey City	PPG
109	Strickland Trucking AKA Seigle	Foot of Pennsylvania Avenue	Kearny	Not a Site
110	Frank's Auto Electric	200 Garfield Avenue	Kearny	Occidental Chemical
111	Vacuum Forming Equipment Servi	39 Rizzolo Road	Kearny	Not a Site
112	Ultramar Petroleum #1	Caven Point Road	Jersey City	PPG
113	Diamond Shamrock Corp.	1015 Belleville Turnpike	Kearny	Occidental Chemical
114	Garfield Avenue Site	880 Garfield Avenue	Jersey City	PPG
115	Roosevelt Drive-In	441 Route 440	Jersey City	Honeywell

SITE #	SITE NAME	STREET	TOWN	RP CATEGORY
116	Standard Chlorine Site	1035 Belleville Tpk.	Kearny	Occidental Chemical
117	Ryerson Steel / Mutual Site	Route 440	Jersey City	Honeywell
118	La Pointe Park	DeKalb Street and Styvusant Ave	Jersey City	PPG
119	Droyers Point	Kellogg Street	Jersey City	Honeywell
120	Trader Horn	485 Route 440	Jersey City	Honeywell
121	Garfield Auto Parts	960 Garfield Avenue	Jersey City	PPG
122	Whitney Young Jr. School	Stegman Street	Jersey City	Not a Site
123	Stegman Street	136 Stegman Street	Jersey City	PPG
124	Roosevelt Lanes	427 Route 440	Jersey City	Honeywell
125	Delphic Consolidation & Distributo	60 Kellogg Street	Jersey City	Honeywell
126	Kuehne Chemical	86 Hackensack Avenue	Kearny	Occidental Chemical
127	Pine Street 2	262-268 Pine Street	Jersey City	PPG
128	Monitor Street	65-71 Monitor Street	Jersey City	PPG
129	Dwight Street	184-186 Dwight Street	Jersey City	PPG
130	Communipaw 5 (aka site 104 & 10	Communipaw Avenue	Jersey City	Honeywell
131	Hackensack River Access Road	Belleville Turnpike	Kearny	Occidental Chemical
132	Town & Country Linen Warehouse	808 Garfield Avenue	Jersey City	PPG
133	Ross Wax	22 Halladay Street	Jersey City	PPG
134	Old Dominion (Unitrans)	100 Kellogg Street	Jersey City	Honeywell
135	Vitarroz	51-99 Pacific Avenue	Jersey City	PPG
136	Exxon Company, U.S.A.-Bayonne	Foot Of Twenty Second Street	Bayonne	Exxon
137	Rudolph Bass	45 Halladay St.	Jersey City	PPG
138	Bayonne Sewerage Treatment Pla	Foot of Oak Street	Bayonne	NFA
139	IMTT (Bayonne Industries)	Foot of East 22nd Street	Bayonne	Multi-contaminant site
140	ABF Trucking	80 Kellogg Street	Jersey City	Honeywell
141	Zeneca Inc. (aka: ICI Americas)	Foot of East 22nd Street	Bayonne	Exxon
142	Pine Street 3	222 & 224 Pine Street	Jersey City	PPG
143	F. Talarico Auto	848 Garfield Avenue	Jersey City	PPG
144	Bayonne Sewage Pipeline	19th-58th Street and Newark Bay	Bayonne	Honeywell
145	Bellezza Construction Co.	Fish House Road	Kearny	Occidental Chemical

SITE #	SITE NAME	STREET	TOWN	RP CATEGORY
146	Commerce Street Site	Foot of Commerce Street	Bayonne	PPG
147	Hartz Mountain (Douglas Holdings	999 Baldwin Avenue	Weehawken	PPG
148	British Petroleum Corp.	Building 350, Coastal Street	Newark	Occidental Chemical
149	Seton Leather Co.	349 Oraton Street	Newark	Occidental Chemical
150	Coastal Oil Co.(AKA: Belcher Tan	Foot of E. 5th Street	Bayonne	Multi-contaminant site
151	Halladay Street 3	409-411 Halladay Street	Jersey City	PPG
152	Kentich Chemical	140 East 22nd Street	Bayonne	Multi-contaminant site
153	Former Morris Canal Site 1	Route 440	Jersey City	Honeywell
154	College Tower Apartments	37 College Drive	Jersey City	Honeywell
155	Food Town	265 Ocean Avenue	Jersey City	Honeywell
156	Gregory Park Apartments	270 Henderson Street	Jersey City	PPG
157	The Clean Machine Car Wash	Route 440 State Hwy	Jersey City	Honeywell
158	Isabella Avenue Residences	36-40 & 76 Isabella Avenue	Bayonne	NJDEP
159	Pacific Avenue 2	404-410 Pacific Avenue	Jersey City	PPG
160	Johnston Avenue 1	345-351 Johnston Avenue	Jersey City	PPG
161	Maple Street 1	70 Maple Street	Jersey City	PPG
162	Conrail Rail Spur	Between Oak and 5th Street	Bayonne	Multi-contaminant site
163	Posnak & Turkish, Inc.	Foot of Kellogg Street	Jersey City	Honeywell
164	Value City Furniture	32 E. 52nd Street	Bayonne	PPG
165	Tempesta & Sons, Inc.	Foot of Jersey Avenue & Aetna Str	Jersey City	NJDEP
166	Route 440 Extension	End of Route 440	Bayonne	Honeywell
167	THIRD ST. R.O.W./J.F. LOMMA	THIRD ST. AND CENTRAL AVE.	Kearny	Occidental Chemical
168	THIRD ST. R.O.W. AND PSE&G	THIRD ST AND CENTRAL AVE.	Kearny	Occidental Chemical
169	CONRAIL	CENTRAL AVE.	Kearny	Occidental Chemical
170	BERGEN BARREL AND DRUM	43-45 O'BRIEN ROAD	Kearny	Occidental Chemical
171	Central Ave Between Pennsylvani	Central Ave.	Kearny	Occidental Chemical
172	Warren Street	Warren Street	Jersey City	Honeywell
173	Metro Field	West Side Avenue	Jersey City	Honeywell
174	Dennis P. Collins Park	1st Street	Bayonne	PPG
175	Former Morris Canal Site 2	Grand Street	Jersey City	NJDEP-Completed

SITE #	SITE NAME	STREET	TOWN	RP CATEGORY
176	Reed Minerals	339 Central Avenue	Kearny	Occidental Chemical
177	Bayonne Municipal Lot	Hook Road	Bayonne	Multi-contaminant site
178	Cabana Club	Burma Road and Theodore Conra	Jersey City	Honeywell
179	Twin City Auto	Broadway Street	Bayonne	Developer/Owner
180	Eastern Oil (180A)	Howell Street	Jersey City	Honeywell/PPG
180	Eastern Oil (180B)	Howell Street	Jersey City	Multi-contaminant site
181	Johnson Brothers Trucking	40A Hackensack Ave.	Kearny	Not a Site
182	Radial Casting/Electric Company	Pennsylvania/Jacobus Avenue	Kearny	Not a Site
183	Sludge Line 1	Sludge Line between Randolph Str	Jersey City	Honeywell
184	M.I. Holdings, Inc.	223 West Side Avenue	Jersey City	Honeywell
185	Allied Stockpile	Jersey Avenue	Jersey City	Honeywell
186	Garfield Avenue #1	947 Garfield Avenue	Jersey City	PPG
187	Route 440 Median Strip	Route 440 between Danforth and	Jersey City	Honeywell/PPG
188	Sussex Street #1	Sussex Street (West of Warren)	Jersey City	Honeywell/PPG
189	Henderson Street #1	Henderson and Second Street	Jersey City	Honeywell/PPG
190	Bayonne Durable Construction C	195 East 22nd Street	Bayonne	Not a Site
191	Port Imperial Marina	1 Pershing Road	Weehawken	Developer/Owner
192	NJ Turnpike Newark #1	Eastern Spur at Piers 10S and 11	Newark	NJ Turnpike Authority
193	McWhirter Road #1	McWhirter Road and Sellers Stree	Kearny	Occidental Chemical
194	DEMILLE CHEMICAL CORPORA	103-111 Fairmount Avenue	Jersey City	Not a Site
195	Belleville Turnpike #1	Belleville Turnpike and NJ Transit	Kearny	Occidental Chemical
196	POTW Outfall Line	Former CRRNJ Freight Yard at LS	Jersey City	Honeywell/PPG
197	Grand Street	Grand Street between Washington	Jersey City	Honeywell/PPG
198	Hartz Mountain #1	Land Behind Hartz Mountain Build	Jersey City	Honeywell/PPG
199	Sludge Line 2	Sludge Line Between Garfield Ave	Jersey City	Honeywell/PPG
200	Sludge Line 3	Sludge Line Between Arlington Av	Jersey City	Honeywell/PPG
201	NJ Turnpike Kearny #2	Belleville Turnpike & NJ Turnpike (	Kearny	Occidental Chemical
202	Caven Point Realty	Between Pacific Street and NJ	Jersey City	PPG
203	346 Claremont Associates	NJ Transit Light Rail, 200' East of	Jersey City	PPG
204	Conrail Edgewater Branch	West side of NJ Turnpike at the fo	Jersey City	PPG

SITE #	SITE NAME	STREET	TOWN	RP CATEGORY
205	Urban Redevelopment Partners	NW corner of 1st Street & Washin	Jersey City	Honeywell/PPG
206	Polarome International	200 Theodore Conrad Drive	Jersey City	Honeywell
207	Garfield Avenue #2	942, 944 & 946 Garfield Avenue	Jersey City	PPG
208	Ultramar Petroleum #2	Linden Avenue East	Jersey City	PPG
209	Joe's Welding	25 O'Brien Road	Kearny	Occidental Chemical
210	Ace Trucking	21 Hackensack Avenue	Kearny	Occidental Chemical
211	PSE&G West End Gas Plant	444 St. Pauls Avenue	Jersey City	Multi-contaminant site
212	Fairmount Chemical	117 Blanchard Street	Newark	Multi-contaminant site

APPENDIX E

FEBRUARY 2007 CHROME POLICY

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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JON S. CORZINE
Governor

LISA P. JACKSON
Commissioner

MEMORANDUM

TO: Irene Kropp, Assistant Commissioner
Site Remediation and Waste Management

FROM: Lisa P Jackson, Commissioner

DATE: February 8, 2007

SUBJECT: Chromium Moratorium

Please be advised that I am lifting the moratorium former Commissioner Bradley M. Campbell placed on the issuance of No Further Action letters (NFAs) and subsequently on Remedial Action Workplans (RAWPs) for sites or portions of sites presenting chromium contamination. I am making this decision based on the conclusions of the NJDEP Chromium Workgroup which found that the 1998 chromium cleanup criteria were based on sound science.

As a result of public health concerns raised by citizens at a November 2003 community meeting dealing with remediation of chromate ore sites in Jersey City and potential exposure to hexavalent chromium, former Commissioner Campbell, promised the community that the Department would review the science behind the existing standards. In March 2004, former Commissioner Campbell directed the Assistant Commissioner of the Site Remediation and Waste Management Program (Program) to suspend issuance of NFAs for sites or portions of sites presenting chromium contamination. This directive allowed the Program to seek a waiver from the Commissioner if protection of public health and the environment or other conditions militated a departure of that policy. This direction was made in conjunction with the establishment of a work group to evaluate the Department's existing guidance and, if necessary, develop new soil cleanup standards for hexavalent and trivalent chromium. The workgroup was charged with reviewing the technical basis for the current chromium cleanup criteria. Four subgroups were formed and directed to address issues associated with: 1) analytical chemistry; 2) environmental chemistry; 3) risk assessment and 4) air and dust transport.

In December 2004, a draft report was submitted to former Commissioner Campbell. The draft report was peer reviewed in January 2005, and was made available for public comment. Comments from peer reviewers and the public were reviewed and revisions to

the draft report were completed in May 2005. The report has been available on the Department's website in its draft form at www.state.nj.us/dep/dsr/chromium.

It is the conclusions/recommendations of this May 2005 draft that form the basis for my decision to modify the existing NFA moratorium. In addition to lifting the moratorium, I will be reinstating the risk assessment subgroup once the U.S. Department of Health and Human Services, National Toxicology Program's study of hexavalent chromium is completed. The risk assessment subgroup will evaluate any new information to see if it warrants the development of new chromium standards for soils. At the conclusion of their assessment, the May 2005 draft report will be updated as necessary and finalized.

Specifically, I am modifying the existing chromium policy to apply to sites or portions of sites, taking into account the intended future uses, as follows:

- An unconditional NFA approval relative to chromium can be issued for soils if 1) hexavalent chromium contamination in excess of 20 ppm is excavated and removed from the site and 2) any remaining chromium contamination that fails the SPLP test for impact to ground water is excavated and removed, from the site or treated and left on site provided the treated chromium will not fail the SPLP test in the future. An unconditional NFA approval relative to chromium can also be issued for soils if hexavalent chromium contamination in excess of 20ppm is treated and left on site provided the resulting concentration of hexavalent chromium in the soil remains below 20 ppm (i.e., no "rebound effect" for hexavalent chromium)

- An unconditional NFA approval relative to chromium can be issued for ground water when there is no ground water contamination above the ground water quality standard for chromium. In addition, as noted above, all existing on site and off-site sources of chromium contamination producing an exceedance of the ground water quality standard must be remediated.

- A conditional NFA (limited restricted use, restricted use) for soils and/or groundwater relative to chromium can be issued at a site or that portion of a site which have or will have residential, day care or educational uses when 1) hexavalent chromium soil contamination in excess of 20 ppm is excavated to a depth of 20 feet below grade or to the depth of the lowest point any underground structure made of porous material (whichever is greater), or if hexavalent chromium soil contamination is treated and left on site to a depth of 20 feet below grade or to a depth of the lowest point of any underground structure made of porous material (whichever is greater) provided the concentration of hexavalent chromium in such soil remains below 20 ppm (i.e., no "rebound effect" for hexavalent chromium), 2) a capillary break is put into place to prevent any crystallization of chromate on soil surfaces or subsurface building walls or floors, 3) any remaining chromium contamination left on site to a depth of 20 feet below grade or to a depth of the lowest point of any underground structure made of porous material (whichever is greater) must pass and continue to the SPLP test., and 4) ground water contamination and any on site sources of chromium ground

water contamination below a depth of 20 feet below grade or to a depth of the lowest point of any underground structure made of porous material (whichever is greater) are controlled, contained or treated, through the use of conventional or innovative technologies, and a Classification Exception Area is established. As contamination would be left on site in this situation, a deed notice would be required. As always, the property owner has to agree to a deed restriction. Financial assurance must be in place for the operation and maintenance of institutional and engineering controls for duration of the intended treatment, containment, or controls.

- A conditional NFA (limited restricted use, restricted use) for soils and/or groundwater can be issued at a site or that portion of a site which have or will have commercial/industrial/open space uses consistent with the technical regulations and oversight regulations.

Remedial action plans that result in unconditional NFAs may be prioritized over those plans that do not. Assistant Director approval is required for remedial action workplan approvals which will result in conditional NFAs. Assistant Commissioner approval is required for remedial action workplan approvals that request alternate remedial standards for soils or any other proposed remedial action not addressed in this policy.