

# Resolution of the City of Jersey City, N.J.

City Clerk File No. Res. 17-929  
Agenda No. 10.N  
Approved: DEC 13 2017  
TITLE:



## RESOLUTION AUTHORIZING A SETTLEMENT AGREEMENT WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, PPG INDUSTRIES INC. AND THE JERSEY CITY MUNICIPAL UTILITIES AUTHORITY FOR THE AREA KNOWN AS HUDSON COUNTY CHROME SITE 65

**COUNCIL**  
resolution:

offered and moved adoption of the following

**WHEREAS**, the City of Jersey City ("City"), the New Jersey Department of Environmental Protection ("NJDEP") and PPG Industries, Inc. ("PPG") are parties to that certain Partial Consent Judgment Concerning the PPG Sites filed June 26, 2009, Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. HUD C-77-05, as amended (the "JCO");

**WHEREAS**, pursuant to the JCO, PPG is obligated to remediate chromate chemical production waste, as defined in the JCO ("CCPW"), located at the Hudson County Chrome ("HCC") Sites and Site 65, identified and defined as a narrow sliver on the west side of Burma Road near Caven Point Road, Jersey City, Block 1497 (the "Former Site 65 Boundaries") is one of the HCC Sites;

**WHEREAS**, there has been a dispute amongst the parties over the past several years regarding chromium and non-chromium contaminants identified in portions of Burma Road and Morris Pesin Drive;

**WHEREAS**, further complicating the aforementioned disputes, is an existing Jersey City Municipal Utilities Authority ("MUA") -owned sixteen inch water line located within the Burma Road and Morris Pesin Drive rights of way (the "Water Line");

**WHEREAS**, Weston Solutions, Inc. ("Weston"), the independent Technical Consultant under the JCO, has provided oversight of PPG's investigation of soils and groundwater within the Former Site 65 Boundaries and in nearby areas;

**WHEREAS**, Weston has provided a technical memorandum describing their investigations and findings as to the extents of the contamination, which results were utilized by the City for determining appropriate boundaries of the contamination;

**WHEREAS**, the MUA was brought into the matter and made a Party to this Agreement in light of, among other reasons, the interests it has in assuring the proper remediation of contaminated materials in proximity to the Water Line and because its cooperation is needed in connection with remediation activities in proximity to the Water Line during future repairs and/or replacement of the Water Line;

**WHEREAS**, the Parties have decided to settle their disputes relating to these matters in a Settlement Agreement, attached in substantially final form as **Exhibit A** (the Agreement");

**WHEREAS**, PPG has agreed to take on cost responsibility for chromium and non-chromium contamination within the Water Line area and certain areas adjacent to it, as further set forth in the Agreement;

**WHEREAS**, PPG has agreed to reimburse the City/MUA for any contamination related costs in those areas, as further set forth in the Agreement;

**WHEREAS**, PPG has agreed to utilize the sewer protocols and related documents for any future water line/utility work as per the Exhibits attached to the Agreement;

TITLE:

**RESOLUTION AUTHORIZING A SETTLEMENT AGREEMENT WITH THE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION, PPG INDUSTRIES INC. AND  
THE JERSEY CITY MUNICIPAL UTILITIES AUTHORITY FOR THE AREA KNOWN  
AS HUDSON COUNTY CHROME SITE 65**

**WHEREAS**, the NJDEP has agreed to permit the MUA to utilize the Linear Construction Guidance for any future repair and/or replacement work in these areas;

**WHEREAS**, the City and the MUA have agreed to release PPG in certain areas as further depicted in the Agreement;

**WHEREAS**, the City/MUA releases are restricted to only those area set forth in the Agreement and do not extend to any other areas of Burma Road, Morris Pesin Drive or other parts of the City;

**WHEREAS**, the City desires to execute the Agreement in order to ensure that any future contamination found near the Water Line will continue to be PPG's responsibility.

**NOW, THEREFORE, BE IT RESOLVED** by the Municipal Council of the City of Jersey City that:

1. The Mayor or Business Administrator is hereby authorized to execute a settlement agreement in substantially the form attached subject to such modification as the Corporation Counsel deems appropriate or necessary.
2. The Business Administrator and the Purchasing Agent are hereby authorized to take such other actions or execute any other documents that are necessary to effectuate the purposes of this resolution.

BD  
12/05/17

APPROVED: \_\_\_\_\_

APPROVED: \_\_\_\_\_

Business Administrator

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Corporation CounselCertification Required ☐Not Required ☐

APPROVED 9-0

RECORD OF COUNCIL VOTE ON FINAL PASSAGE 12.13.17											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	✓			RIVERA	✓		
GADSDEN	✓			OSBORNE	✓			WATTERMANN	✓		
BOGGIANO	✓			ROBINSON	✓			LAVARRO, PRES	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted at a meeting of the Municipal Council of the City of Jersey City N.J.

\_\_\_\_\_  
Rolando R. Lavarro, Jr., President of Council

\_\_\_\_\_  
Robert Byrne, City Clerk

729

**RESOLUTION FACT SHEET – NON-CONTRACTUAL**

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

**Full Title of Ordinance/Resolution**

**RESOLUTION AUTHORIZING A SETTLEMENT AGREEMENT WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, PPG INDUSTRIES INC. AND THE JERSEY CITY MUNICIPAL UTILITIES AUTHORITY FOR THE AREA KNOWN AS HUDSON COUNTY CHROME SITE 65**

**Initiator**

Department/Division	Law Department	
Name/Title	Bhavini A. Doshi	Assistant Corporation Counsel
Phone/email	(201) 547-5178	<a href="mailto:Bdoshi@icnj.org">Bdoshi@icnj.org</a>

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

**Resolution Purpose**

The City desires to settle a matter which has been in negotiation for several years regarding a chrome site known as Site 65. The settlement requires PPG to reimburse the City/MUA for any costs related to contamination and removal/disposal found near the water line in that area, in return for releases in certain other areas of the roadway. The NJDEP and the Jersey City MUA are also parties to the agreement.

**I certify that all the facts presented herein are accurate.**

\_\_\_\_\_  
**Signature of Department Director**

\_\_\_\_\_  
**Date**

## **SETTLEMENT AGREEMENT**

### **(SITE 65 – BURMA ROAD AND MORRIS PESIN DRIVE)**

This **SETTLEMENT AGREEMENT** (the “Agreement”) is made this \_\_\_\_ day of December 2017 (the “Effective Date”) by and among the **NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION (“NJDEP”)**, **PPG INDUSTRIES, INC. (“PPG”)**, the **CITY OF JERSEY CITY, NEW JERSEY (“City”)** and the **JERSEY CITY MUNICIPAL UTILITIES AUTHORITY (the “MUA”)**. Each of the foregoing may sometimes be referred to herein as a “Party” or collectively as the “Parties”.

WHEREAS, NJDEP and PPG entered into that certain Administrative Consent Order entitled “In the Matter of Hudson County Chromate Chemical Production Waste Sites” dated July 19, 1990 (the “1990 ACO”);

WHEREAS, NJDEP, PPG and the City are parties to that certain Partial Consent Judgment Concerning the PPG Sites filed June 26, 2009, Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. HUD C-77-05, as amended (the “JCO”);

WHEREAS, NJDEP, PPG and the City are parties to that certain Consent Judgment filed September 7, 2011, Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. HUD-C-77-05, as amended (the “2011 JCO”);

WHEREAS, pursuant to the JCO, PPG is obligated to remediate chromate chemical production waste, as defined in the JCO (“CCPW”), located at the Hudson County Chrome (“HCC”) Sites identified in the JCO or in the 1990 ACO;

WHEREAS, Site 65 is one of the HCC Sites identified in the 1990 ACO and defined in Attachment One thereto as the west side of Burma Road near Caven Point Road, Jersey City, Block 1497 (the “Former Site 65 Boundaries”);

WHEREAS, there exist disputes amongst the Parties concerning, among other things, the boundaries of Site 65 and whether or not chromium and other contaminants identified in portions of Burma Road and Morris Pesin Drive are the responsibility of PPG pursuant to the 1990 ACO or the JCO;

WHEREAS, further complicating the aforementioned disputes, is an existing MUA-owned sixteen inch water line located within the Burma Road and Morris Pesin Drive rights of way as further depicted on **Figure 1** attached hereto (the “Water Line”);

WHEREAS, the NJDEP and Weston Solutions, Inc. (“Weston”), the Technical Consultant under the JCO, selected by the Site Administrator and tasked with providing technical support to the NJDEP, provided oversight of PPG’s investigation of soils and groundwater within the Former Site 65 Boundaries and in nearby areas;

WHEREAS, the MUA was made a Party to this Agreement in light of, among other reasons, the interests it has in assuring the proper remediation of contaminated materials in proximity to the Water Line and because its cooperation is needed in connection with remediation

activities that may be necessary in proximity to the Water Line during future repairs and/or replacement of the Water Line by the MUA or otherwise;

WHEREAS, the Parties have decided to settle their disputes relating to the matters set forth above and herein and to memorialize that settlement in this Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **New Boundaries of Site 65.** The Parties agree that for the purposes of this Agreement the boundaries of Site 65 shall consist of the area depicted on **Figure 1** attached hereto and as described in the legal description attached hereto as **Exhibit A**. The Site 65 boundaries depicted on **Figure 1** and as described on **Exhibit A** shall replace and supplant any prior figures or other descriptions of the Site 65 area, whether as set forth in the 1990 ACO, the JCO, any amendments thereto or otherwise. All references below to "Site 65" shall mean the area depicted on **Figure 1** and as described on **Exhibit A**.

2. **Reporting/Permitting Requirements.**

(i) Within ninety (90) days of the Effective Date of this Agreement, PPG shall submit to NJDEP (with copies to the Parties to this Agreement and any other pertinent parties as required pursuant to the JCO) a Remedial Action Report ("RAR"). The RAR will memorialize the soils remedy for Site 65 and will include a Remedial Investigation summary as required per the NJDEP Technical Requirements for Site Remediation (N.J.A.C. 7:26E, *et seq.*), including all data collected by PPG in Burma Road and Morris Pesin Drive to date. The Parties agree that the soils remedy to be implemented by PPG for Site 65 will be a restricted use remedy consisting, essentially, of the following: (A) the asphalt road surface covering Site 65 shall function as an engineering control to prevent direct contact exposure, (B) a notice in lieu of deed notice will be filed because contaminants will be left in place in Site 65 soils that exceed NJDEP soil remediation criteria and/or standards, (C) at the time the MUA undertakes Water Line Work (as defined below) such work activities will be managed by the MUA as a linear construction project governed by the LC Guidance (as defined below) and pursuant to the terms and conditions of this Agreement, and (D) PPG shall be obligated for the cost to excavate visible CCPW and any other contaminants under the LC Guidance that is identified in the Trench Area (as defined below) pursuant to the terms and conditions of this Agreement.

(ii) Subject to PPG satisfying applicable NJDEP requirements, a Soils Remedial Action Permit ("SRAP") will be issued by NJDEP as part of the remedy referenced in Section 2(i) above. PPG shall be the permittee and responsible party and the City, as the owner of Site 65, shall be a co-permittee. The Parties agree that PPG shall be responsible, at its sole cost and expense, to comply with the terms of the SRAP, including, without limitation, inspections of the asphalt cap and preparation and filing of biennial certifications, provided, however, the City agrees that the City shall be responsible, at its sole cost and expense, to maintain the asphalt capping surface on Site 65, including any repair or maintenance required as a result of the cap inspections performed by PPG.

(iii) PPG shall be responsible to satisfy NJDEP financial assurance requirements for the engineering control that will be used at Site 65, although all Parties acknowledge and agree that the financial assurance established by PPG pursuant to Section 9 of the 2011 JCO shall apply to Site 65 and shall satisfy PPG's financial assurance obligation as of the issuance of the SRAP.

3. **Water Line Work.**

(i) The Parties agree that, in the event the MUA shall undertake to conduct in whole or in part, repairs, alterations and/or replacement to the Water Line within the Site 65 boundaries, excavation of a trench will be required. The scope of the aforementioned trench will be dependent upon the extent of MUA's work on the Water Line located within the Site 65 boundaries, but for purposes of this Agreement, PPG will be responsible for the PPG Trench Reimbursable Expenses (as defined below) within a trench extending three feet laterally from every point along the outside diameter of the Water Line, as measured on the center axis perpendicular to the direction of Water Line and up to 6 feet deep, regardless of the actual depth required of the trench to conduct the Water Line Work (the "Trench Area").

(ii) The Parties agree that, with the exception of specific procedures for the identification of CCPW which shall be subject to Section 5 and **Exhibit D** of this Agreement, any and all utility work to be performed under this Agreement shall be performed in accordance with the following three documents:

- (a) "Procedure for Coordinating Utility Work Within Chromium Soil Areas, Honeywell Sites, Jersey City, New Jersey," prepared by Amec Foster Wheeler Environment and Infrastructure, Inc., and dated December 2014, updated January 2017, attached to this Agreement as **Exhibit B**; and
- (b) "Worker Training Manual for Managing Contaminated Soils and Groundwater," prepared by Amec Foster Wheeler Environment and Infrastructure, Inc., and dated December 2014, updated January 2017, attached to this Agreement as **Exhibit C**.
- (c) NJDEP's Linear Construction Technical Guidance dated January 2012, as amended (the "LC Guidance").

(iii) Subject to reimbursement by PPG for the PPG Reimbursable Trench Expenses (as defined below), MUA shall be responsible to perform and pay for, at its sole cost and expense, all work related to the repair, alteration and/or replacement of the Water Line, including, without limitation: (A) installation of a bypass water line; (B) repairs/alterations to the Water Line; (C) excavation and dewatering of the Trench Area; (D) stockpiling of soils; (E) removal of the existing Water Line; (F) installation of a new Water Line; (G) backfilling of the Trench Area; (H) placing new asphalt on top of the Trench Area following backfilling; and (I) any other activities or work related to the aforementioned tasks (all such work activities being collectively referred to hereinafter as the "Water Line Work"). The new asphalt placed on top of the Trench Area shall be placed at the surface so as to serve as the engineering control referenced in Section 2 above.

(iv) The Parties agree that, for the purpose of this Agreement, the Water Line Work referenced in Section 3(iii) above shall be deemed to be a linear construction project and shall be governed by the LC Guidance and the terms of this Agreement. In the event of any conflict between the LC Guidance and the terms of this Agreement, the terms of this Agreement shall prevail. The LC Guidance shall be used pursuant to the terms of this Agreement to address contamination that is identified during the Water Line Work and to ensure that contamination encountered during the Water Line Work is handled in a manner that is protective of human health, safety and the environment.

(v) The MUA shall retain a Licensed Site Remediation Professional (the "MUA LSRP") to oversee (A) all aspects of the Water Line Work pursuant to the LC Guidance; (B) removal and disposal of visible CCPW in the Trench Area; and (C) any other work activities described herein.

(vi) The following reasonable fees and expenses incurred by the MUA in connection with the Water Line Work shall be subject to reimbursement by PPG, including, without limitation, (A) the incremental cost related to retaining OSHA 40-hour trained personnel as compared to hiring non-trained personnel; (B) sampling and laboratory analytical costs and expenses; (C) fees and expenses of the MUA LSRP; (D) removal and transportation of contaminated soils that cannot be re-used for backfill; (E) clean backfill required to replace contaminated soils that cannot be re-used as backfill; (F) the incremental cost increase related to the treatment, transportation and/or disposal of contaminated fluids as compared to handling non-contaminated fluids from dewatering; (G) costs incurred related to the removal and disposal of visible CCPW in the Trench Area; (H) costs incurred related to addressing the contamination in the Trench Area; and (I) all other costs and expenses reasonably related to the implementation of the LC Guidance in the Trench Area ("PPG Trench Reimbursable Expenses"). Within fourteen (14) days prior to commencement of Water Line Work within the Site 65 boundaries, the MUA shall notify PPG of its intent to conduct Water Line Work, and shall reasonably cooperate with PPG with regard to any requests for information pertaining thereto.

(vii) The MUA LSRP shall develop a materials management plan listing the actions required to manage visible CCPW, contaminated dewatering fluids and contaminated soils resulting from the Water Line Work in the Trench Area. The costs and expenses related to dewatering fluids, soils, and replacement of backfill material shall be allocated between the MUA and PPG as follows:

(1) **Contaminated Dewatering Fluids.** The MUA will arrange to manage all dewatering fluids, provided that PPG shall be responsible to reimburse the MUA for the incremental cost increase related to the treatment, transportation and/or disposal of contaminated fluids as compared to handling non-contaminated fluids from dewatering. If such water is determined to be hazardous waste in accordance with applicable federal, state and local requirements, PPG shall execute a Uniform Hazardous Waste Manifest as required by the Federal Resource Conservation and Recovery Act (40 CFR Subpart B Parts 262.20 to 262.23) and N.J.A.C 7:26G, obtain an EPA Identification Number and otherwise comply, at its sole cost and expense, with all applicable requirements, including recordkeeping requirements, with respect to the transportation and disposal of hazardous waste materials.

(2) **Contaminated Soils.** The MUA LSRP shall determine whether pursuant to the LC Guidance soils removed from the Trench Area can be used as backfill in the Trench Area or whether such soils must be disposed off-site. For avoidance of doubt, and whether or not permissible under the LC Guidance, the MUA LSRP must ensure, and the Parties acknowledge and agree, that visible CCPW cannot be replaced in the Trench Area and must be disposed off-site. In the event the MUA LSRP determines that soils must be disposed off-site based upon the presence of any contaminant, substance or characteristic and based upon such LSRP's application of the LC Guidance and/or presence of visible CCPW, PPG shall be responsible to pay, at its sole cost and expense, all transportation, disposal, replacement of backfill materials and other costs and expenses in connection with the off-site disposal of such soils. If any such soils are determined to be hazardous waste in accordance with applicable federal, state and local requirements, PPG shall execute a Uniform Hazardous Waste Manifest as required by the Federal Resource Conservation and Recovery Act (40 CFR Subpart B Parts 262.20 to 262.23) and N.J.A.C. 7:26G, obtain an EPA Identification Number and otherwise comply, at its sole cost and expense, with all applicable requirements, including recordkeeping requirements, with respect to the transportation and disposal of hazardous waste materials.

(3) **Waiver/Indemnification.** PPG agrees to waive any claims against the City and MUA for contribution and/or incremental handling, transportation or disposal costs that may be incurred by PPG resulting from the presence of non-CCPW contaminants in the soils and/or water PPG is required to manage in accordance with this Section 3, including but not limited to, mercury, petroleum, lead and coal ash, that may be commingled with the CCPW. PPG further agrees to indemnify, defend and hold the City and the MUA harmless from and against any and all losses, damages, liabilities, deficiencies, actions, judgments, interest, penalties, fines and any other costs or expenses of any kind in connection with any third party claims for personal injury, death or property damage arising from the actions of PPG or its agents, servants, employees and/or contractors resulting from or relating to the transportation, disposal or other handling of the soils and/or water that PPG is required to manage pursuant to this Section 3.

(4) **Dispute Resolution.** To the extent that there is a dispute between the MUA LSRP and the PPG LSRP (as defined in Section 5) as to the determination made by the MUA LSRP that material must be disposed of off-site or as to the incremental costs under this Section 3, PPG and the MUA agree that such dispute will be resolved by a determination by a third LSRP (the "Third LSRP") and the decision of the Third LSRP shall be binding upon PPG and the MUA. Such LSRP shall be selected and approved by PPG and the MUA. PPG shall be solely responsible for the costs and expenses of the Third LSRP.

(viii) **Backfilling.** PPG shall be required to reimburse the MUA for the cost of clean backfill materials needed to replace the volume of soils from the Trench Area that were required to be disposed off-site pursuant to Section 3(vii)(2).

4. **Weston Technical Memorandum.** In a Technical Memorandum dated October 20, 2017 (attached hereto as **Exhibit D**), Weston has provided a rationale for the maximum horizontal remediation distance of 10 ft. from the Water Line for both Burma Road and Morris Pesin Drive. Soil delineation investigations of Burma Road and Morris Pesin Drive were



performed by PPG in June and October of 2015. During these investigations, a total of 59 soil borings were advanced to a depth of 10 ft. and 281 soil samples were collected and analyzed. Upon a review of the soil investigations, Weston finds that it is reasonable to conclude that the extent of visible CCPW or visible CCPW impacts in Burma Road and Morris Pesin Drive is limited to a maximum of 10 ft. from the Water Line.

5. **Remediation of Visible CCPW.**

(i) During the excavation of the Trench Area, and prior to backfilling of the Trench Area, the MUA LSRP and an LSRP designated by PPG (the "PPG LSRP") shall conduct inspections of the Trench Area to determine the presence of visible CCPW within the Trench Area. A procedure for identifying visible CCPW is attached hereto as **Exhibit E**. If the MUA LSRP and the PPG LSRP agree that no visible CCPW is identified within the Trench Area, the Trench Area can be backfilled pursuant to the procedures set forth in Section 3 of this Agreement. In the event the MUA LSRP and the PPG LSRP agree that visible CCPW is identified in the Trench Area, then the MUA will perform the excavation, transportation, and disposal of all visible CCPW and PPG shall be responsible for the costs of excavation, transportation, and disposal of all such visible CCPW ("PPG CCPW Reimbursable Expenses") identified in both the 7 foot area beyond the Site 65 boundary (hereinafter referred to as the "Supplemental Remediation Area," which such area is depicted on **Figure 1** attached hereto) and in the area between the Water Line and the Site 63 boundary. PPG shall not be responsible for excavation of visible CCPW in any of the aforementioned areas deeper than 6 feet, which will be treated, as necessary, as groundwater by PPG pursuant to Section 6 of this Agreement. PPG will not be responsible to conduct post-excavation samples in connection with any of the aforementioned excavation activities. Rather, excavation shall be conducted solely for the purpose of removing visible CCPW.

(ii) In the event there is a dispute between the MUA LSRP and the PPG LSRP as to the presence or absence of visible CCPW, the extent of excavation required to remove same or other related matters, PPG and the MUA agree that such dispute will be resolved by a determination made by the Third LSRP and the decision of the Third LSRP shall be binding upon PPG and the MUA. Such LSRP will be selected and approved by PPG and the MUA. PPG shall be solely responsible for the costs and expenses of the Third LSRP.

6. **Groundwater.** Groundwater that exceeds the NJDEP Groundwater Quality Standards, N.J.A.C. 7:9C, for total chromium within Site 65, the Supplemental Remediation Area, the Released Area (as defined in Section 7 herein) or another location adjacent to Site 63, shall remain PPG's responsibility under the JCO as emanating from Site 63.

7. **Release by City.** The MUA, the City, and all instrumentalities of the City, hereby waive, release, and fully and forever discharge any and all complaints, claims, charges, liabilities, claims for relief, demands, suits, actions or causes of action, whether in law or in equity, whether known or unknown, which it actually asserts or could assert, at common law or under any statute, rule, regulation, order or law, whether federal, state or local, or on any grounds whatsoever against PPG with respect to any contaminants of any kind whatsoever, whether known or unknown, that exist in soils on or under the portions of Burma Road and Morris Pesin Drive that are adjacent to the boundaries of Site 65, as set forth in **Exhibit A and Figure 1**, attached hereto (the "Released Area"). This release shall not apply to the boundaries of Site 65 or the Supplemental Remediation

Area that are the subject of this Agreement, to portions of Burma Road or Morris Pesin not within the Released Area, or to any other location within the City of Jersey City.

8. **Reservation of Rights.** Each of the Parties agrees that the recitals, statements, covenants and agreements set forth herein and the exhibits attached hereto were arrived at after extensive negotiation and compromise and shall be without prejudice to the Parties' taking different positions with respect to other HCC Sites identified in the JCO, the 1990 ACO, or otherwise. All of the Parties to this Agreement were represented by counsel in connection with the negotiation of the terms and conditions of this Agreement.

9. **Soils in Areas Outside of Site 65 and the Supplemental Remediation Area** Notwithstanding anything contained herein to the contrary, NJDEP, the MUA and the City acknowledge that PPG has not accepted responsibility for any contaminants of any kind whatsoever, whether known or unknown, that exist in soils on or under any portions of Burma Road and Morris Pesin Drive that are within the Released Area. If CCPW is identified in the Released Area, this CCPW will be addressed as a "Newly Discovered Site" as defined in Article IV, Section 7.C. of the September 7, 2011 Consent Judgment.

10. **Miscellaneous.**

(i) **Cooperation.** Each of the Parties hereby agree to cooperate with each other in taking all steps necessary in complying with the reasonable requests of the other Party to fully effectuate the terms, covenants and conditions of this Agreement.

(ii) **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of New Jersey. The parties acknowledge that this Agreement has been executed and delivered in the State of New Jersey and that the Parties hereto submit to the jurisdiction of the Superior Court, Chancery Division, Hudson County, New Jersey in the event of any dispute under this Agreement.

(iii) **Binding Nature/Successors.** This Agreement shall be binding on the Parties and their successors and assigns.

(iv) **Authority of Signatories.** Each person executing this Agreement on behalf of each Party hereto hereby acknowledges and represents that he or she has full authority to execute this Agreement and bind the party on whose behalf the person executes this Agreement and that the execution of this Agreement has been approved by appropriate Resolution or other action of the Party on whose behalf the person is executing this Agreement.

(v) **Entire Agreement/Amendments to be in Writing.** This Agreement contains the entire agreement among the Parties hereto. This Agreement may only be amended or modified by a writing fully executed by all Parties hereto. This provision cannot be orally waived.

(vi) **Severability.** In case any provision in or obligation under this Agreement shall be held to be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations under this Agreement shall not in any way be affected or impaired thereby.

(vii) **Notices.** All notices, requests or other communications which may be or are required to be given, served or sent by any Party hereto to the other shall be deemed to have been

properly given, if in writing and addressed, in each case, as set forth in this section below, and shall be deemed to have been delivered, (a) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the United States Postal Office and sent by registered or certified mail, postage paid, return receipt requested, (b) one (1) business day after having been deposited for overnight delivery by a nationally recognized courier service which obtains delivery receipts (e.g., FedEx or UPS), or (c) as otherwise mutually agreed to by the Parties.

**To PPG:**

Jody Overmyer, PE, PMP  
Remediation Project Engineer  
Corporate EHS Environmental Affairs  
PPG  
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Monroeville, PA 15146  
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**With copies to:**

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**To the City of Jersey City:**

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City of Jersey City  
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**With copies to:**

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Chasan Lamparello Mallon & Cappuzzo, P.C.  
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Email: mwitt@chasanlaw.com

**To the Jersey City Municipal Utilities Authority:**

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Jersey City Municipal Utilities Authority  
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Jersey City, NJ 07305

Email: [j.farrell@jcmua.org](mailto:j.farrell@jcmua.org)

With copies to:

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**To NJDEP:**

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Assistant Director  
Office of the Assistant Commissioner  
NJDEP  
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Email: [Tom.Cozzi@dep.nj.gov](mailto:Tom.Cozzi@dep.nj.gov)

With copies to:

Richard Engel  
Deputy Attorney General  
Office of the Attorney General  
Richard J. Hughes Justice Complex  
25 Market Street  
P.O. Box 093  
Trenton, NJ 08625-0093  
Email: [Richard.Engel@law.njoag.gov](mailto:Richard.Engel@law.njoag.gov)

(iv) Counterpart Signatures. This Agreement may be executed in any number of counterparts, and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart to this Agreement by facsimile or e-mail shall be as effective as delivery of a manually executed counterpart of this Agreement, and each party hereto shall be entitled to rely on a facsimile or e-mail signature of each other party hereto as if it were an original.

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_

PPG

BY: \_\_\_\_\_

CITY OF JERSEY CITY

BY: \_\_\_\_\_

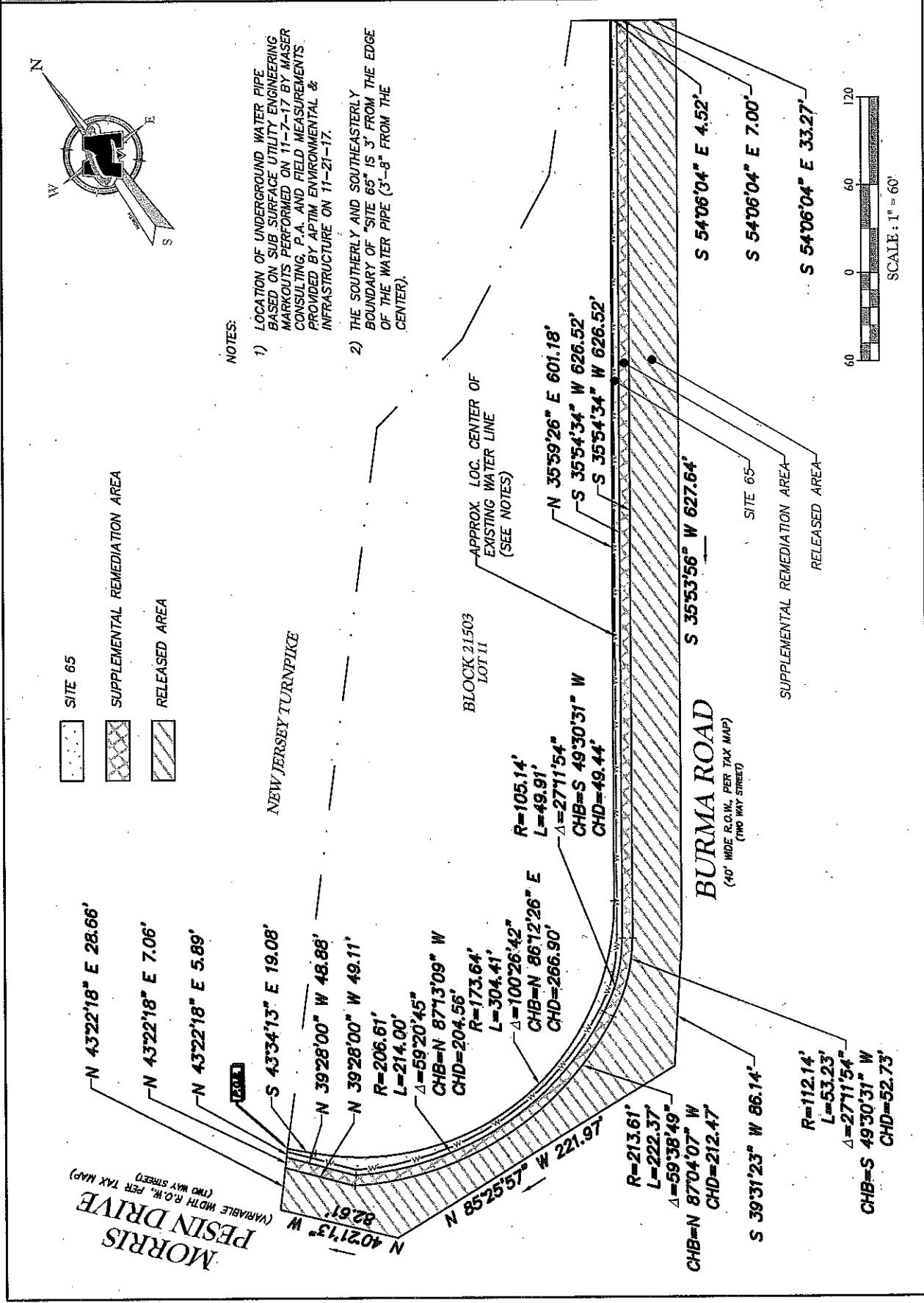
JERSEY CITY MUNICIPAL UTILITIES AUTHORITY

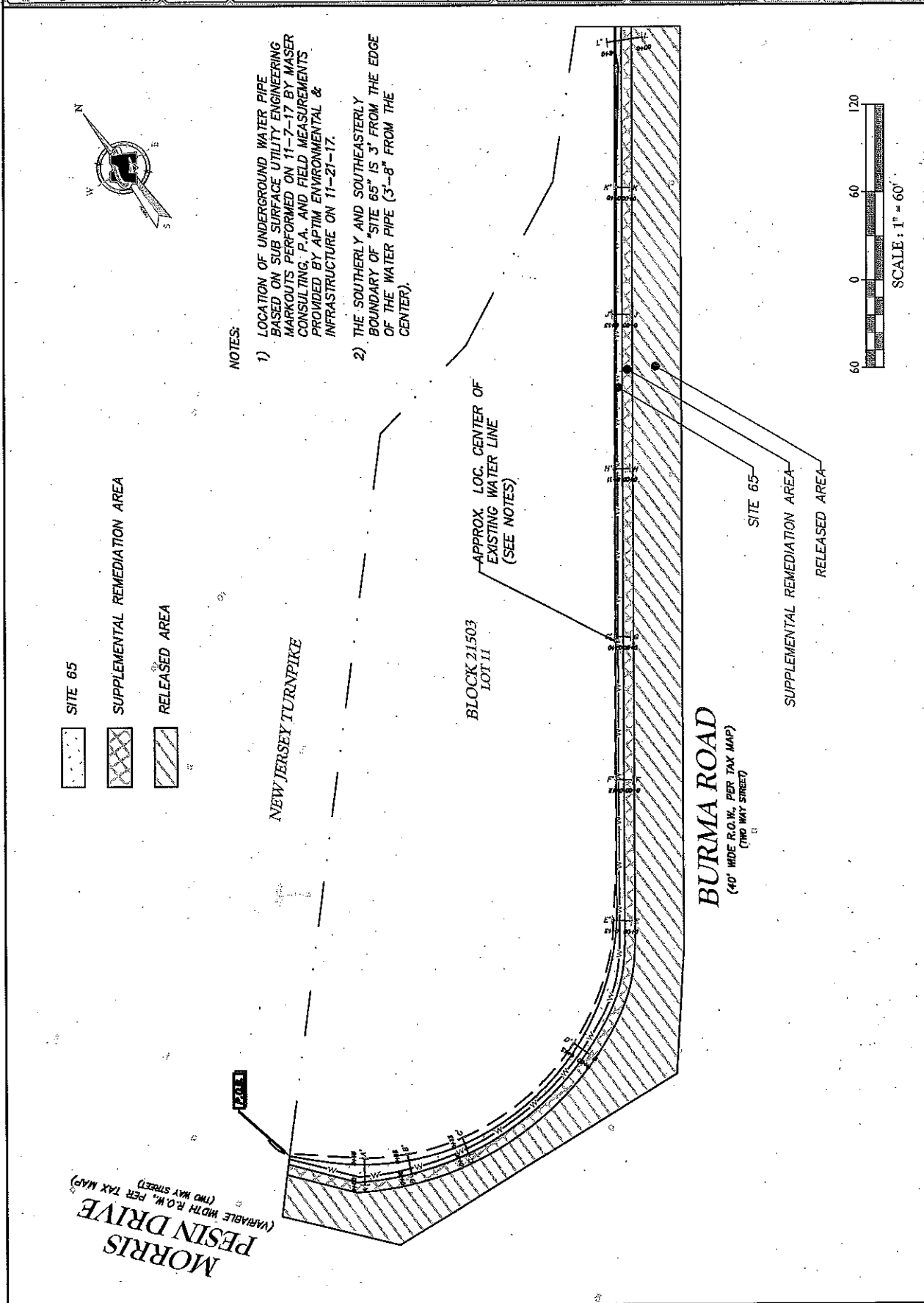
BY: \_\_\_\_\_

**[FIGURE 1 AND EXHIBITS ON FOLLOWING PAGES]**


**FIGURE 1**  
**(ATTACHED)**

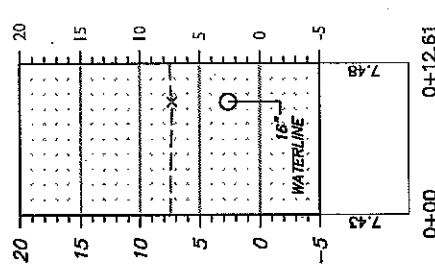
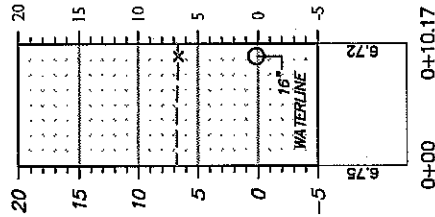
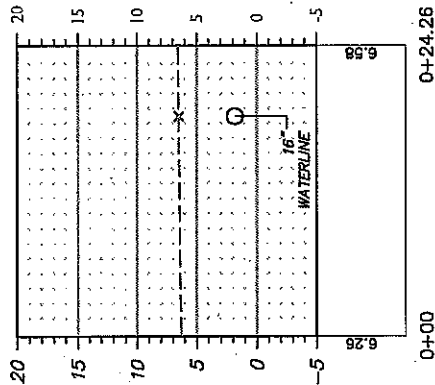
11







 <b>MASER</b> CONSULTING ENGINEERS 1000 ROUTE 100 SUITE 200 MORRIS PLAIN, NJ 07055 TEL: 908.521.1000 FAX: 908.521.1001 WWW.MASER-PA.COM		<b>PROJECT VOUCHER</b> PROJECT NO. 11-21-17 PROJECT NAME: WATER LINE CROSS SECTIONS DRAWN BY: J. J. JONES CHECKED BY: J. J. JONES DATE: 11/21/17		<b>EXHIBIT</b> FOR SITE 65 JERSEY CITY RIGHT-OF-WAY BURMA ROAD AND MORRIS PLAIN ROAD CITY OF JERSEY CITY HUNTS POINT NEW JERSEY		<b>DATE</b> 11/21/17 <b>BY</b> J. J. JONES <b>CHECKED</b> J. J. JONES <b>DATE</b> 11/21/17		<b>WATER LINE</b> CROSS SECTIONS SHEET NUMBER: 3 of 3	
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NOTE:  
 ACTUAL WATER LINE DEPTHS  
 MAY VARY FROM THOSE  
 SHOWN IN PROFILES. TOP  
 OF WATER LINE DEPTHS  
 ESTIMATED AS SHOWN [AT  
 APPROXIMATELY 5 FEET  
 BELOW GROUND SURFACE  
 (B.C.S.) BASED ON  
 SURFACE UTILITY  
 ENGINEERING DATA GATHERED  
 ON 11-7-17 BY MASER  
 CONSULTING P.A. TOP OF  
 WATER LINE DEPTHS AT  
 FOUR LOCATIONS ALONG ITS  
 LENGTH RANGED FROM  
 3.25-3.5 FEET B.C.S. BASED  
 ON FIELD MEASUREMENTS BY  
 APTIM ENVIRONMENTAL &  
 INFRASTRUCTURE ON  
 11-21-17.

**EXHIBIT A**  
**LEGAL DESCRIPTIONS**  
**(ATTACHED)**



Aptim  
200 Horizon Center Blvd.  
Trenton, NJ 08691  
Tel: +1 609 584 8900  
Fax: +1 609 588 6300  
www.aptim.com

## Letter of Transmittal

Date: December 4, 2017

To: Dorothy M. Laguzza, Esq.

LECLAIR RYAN

One Riverfront Plaza

1037 Raymond Boulevard,  
Sixteenth Floor

Newark, New Jersey 07102

☐ Next Day Air Priority Overnight (8 a.m. FedEx)

☒ Next Day Air Overnight (10 a.m. FedEx)

☐ Next Day Saver Overnight (3 p.m. FedEx)

☐ 2-Day Overnight (FedEx)

☐ Regular Mail (USPS)

☐ Other: \_\_\_\_\_

We are sending you the following items: ☒ Enclosed ☐ Under Separate Cover

No.	Description
1	Signed/Sealed Description of Property - Site 65 Boundary
2	Signed/Sealed Description of Property - Supplemental Remediation Area
3	Signed/Sealed Description of Property - Released Area

These are transmitted as checked below:

☐ For your information  
☐ As Requested

☒ For your use  
☐ For Approval/Signature

☐ Approved as noted  
☐ For Review

Project/WBS: 151136

Signed

Name (Print) Crystal L. Leavey

Copy to: Jody Overmyer, PPG, 440 College Park Drive, Monroeville, PA 15146  
File

☐ Transmittal Only

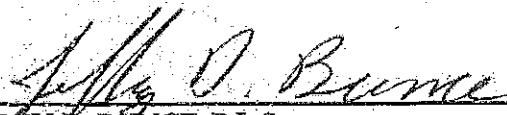
☒ Entire Package



DESCRIPTION OF PROPERTY  
CITY OF JERSEY CITY  
HUDSON COUNTY, NEW JERSEY

SITE 65 BOUNDARY  
NOVEMBER 27, 2017  
PROJECT NO. 14000664C

CONTAINING: 5,601 square feet or 0.129 acres of land, more or less.

  
\_\_\_\_\_  
JEFFREY D. BUNCE, P.L.S.  
NEW JERSEY PROFESSIONAL LAND SURVEYOR  
LICENSE NUMBER GS41045

11/27/17  
\_\_\_\_\_  
DATE SIGNED

R:\All Offices\MArlington\Projects\2014\14000664C\Survey\Description\revised 11-22-17\site 65 boundary.docx




DESCRIPTION OF PROPERTY  
CITY OF JERSEY CITY  
HUDSON COUNTY, NEW JERSEY

SUPPLEMENTAL REMEDIATION AREA  
NOVEMBER 27, 2017  
PROJECT NO. 14000664C

10) N 43°22'18" E, 7.06 feet to the Point and Place of BEGINNING.

CONTAINING 6,617 square feet or 0.152 acres of land, more or less.

  
\_\_\_\_\_  
JEFFREY D. BUNCE, P.L.S.  
NEW JERSEY PROFESSIONAL LAND SURVEYOR  
LICENSE NUMBER GS41045

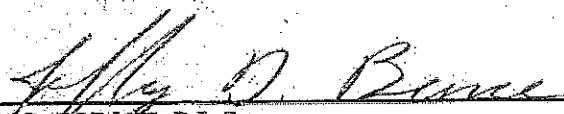
11/27/17  
\_\_\_\_\_  
DATE SIGNED

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DESCRIPTION OF PROPERTY  
CITY OF JERSEY CITY  
HUDSON COUNTY, NEW JERSEY

RELEASED AREA  
NOVEMBER 27, 2017  
PROJECT NO. 14000664C

  
\_\_\_\_\_  
JEFFREY D. BUNCE, P.L.S.  
NEW JERSEY PROFESSIONAL LAND SURVEYOR  
LICENSE NUMBER GS41045

11/27/17  
DATE SIGNED

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**EXHIBIT B**

**PROCEDURE FOR COORDINATING UTILITY WORK WITHIN CHROMIUM  
SOIL AREAS, HONEYWELL SITES, JERSEY CITY, NEW JERSEY**

**(INCORPORATED HEREIN BY REFERENCE)**

**EXHIBIT C**

**WORKER TRAINING MANUAL FOR MANAGING CONTAMINATED SOILS  
AND GROUNDWATER**

**(INCORPORATED HEREIN BY REFERENCE)**



**EXHIBIT D**  
**WESTON MEMORANDUM**  
**(ATTACHED)**



Ronald J. Riccio

DATE: December 5, 2017

**TO: Ronald J. Riccio (Site Administrator)**  
**FROM: Prabal N. Amin, P.E., LSRP (Weston)**  
**SUBJECT: Hudson County Chromate Site 65 Technical Memorandum**

DATE: December 5, 2017

As part of the negotiated settlement, the Parties to the Judicial Consent Order (JCO) defined the boundary and soil remediation limits of Hudson County Chromate (HCC) Site 65 (Burma Road and Morris Pesin Drive) which remains PPG's responsibility, as discussed below. HCC Site 65 constitutes the area from the property line of Site 63 into Burma Road and Morris Pesin Drive and extending to a point 3 feet (ft.) beyond the existing 16-inch water line within Burma Road and Morris Pesin Drive as shown on the survey drawing developed by Maser Consulting, P.A., dated 11/27/17 (See Figure 1 to the Settlement Agreement). The distance of 3 ft. beyond the existing water line represents the typical width on either side of the water line of an excavated trench, presumed to be a total of 6 ft. wide by 6 ft. deep, required to access, repair or remove/replace the water line.

During any future utility work within HCC Site 65, PPG would be responsible for remediating visible CCPW (e.g., COPR nodules) and visible CCPW impacts (e.g., crystalline chromium "blooms") to a maximum horizontal remediation distance of 10 ft. from the existing water line. Because the aforementioned excavation trench is expected to extend to a depth below the groundwater table, any CCPW impacts encountered at the bottom of the excavation (i.e., depth of 6 ft. below ground surface) would be the responsibility of PPG as part of the HCC Site 63 ongoing groundwater remediation.

The rationale for the maximum horizontal remediation distance of 10 ft. from the existing water line is provided below for both Burma Road and Morris Pesin Drive. It should be noted that soil delineation investigations of Burma Road and Morris Pesin Drive were performed by PPG in June and October of 2015. During these investigations, a total of 59 soil borings were advanced to a depth of 10 ft. and 281 soil samples were collected and analyzed. Of these soil borings, thirty-three were located within approximately 10 ft. of the existing water line.

### Burma Road

Historically, visible CCPW was observed under the western shoulder of Burma Road at multiple locations which was subsequently removed during the remedial excavation of HCC Site 63 conducted by PPG. The HCC Site 63 soil remedial excavation progressed into Burma Road in February 2015. Visible CCPW impacts in the form of chromium "blooms" were observed in soils beneath Burma Road during this excavation work. While CCPW impacts have been observed and documented in the western portion of Burma Road during these activities, it is reasonable to conclude that the extent of visible CCPW or visible CCPW impacts in Burma Road is limited to a maximum of 10 ft. from the existing water line based on the following:

1. Visible CCPW was not observed at the terminus of the excavation sidewall cut which, in some areas, extended beyond the water line in Burma Road as part of the HCC Site 63 remedial excavation work. The maximum extent of the excavation beyond the water line

was approximately 10 ft. near the northern end of HCC Site 63. Furthermore, post-excavation samples collected from the excavation sidewalls in this area at this distance indicated that hexavalent chromium concentrations were below the Department's soil criterion of 20 parts per million (ppm).

2. Visible CCPW or visible CCPW impacts were not identified in the series of Burma Road soil borings located approximately 10 ft. east of the existing water line.
3. The magnitude and trends of hexavalent chromium concentrations detected in Burma Road soils are indicative of the soil impacts east of the exiting water line being attributed to the emanation of CCPW from HCC Site 63 into Burma Road via groundwater rather than the presence of visible CCPW waste material.

#### Morris Pesin Drive

During the remedial excavation work conducted by PPG at HCC Site 63, visible CCPW (e.g., COPR nodules) was observed in the excavation sidewall at the boundary of HCC Site 63 along Morris Pesin Drive. The visible CCPW was observed in isolated areas and within approximately 2 ft. below the ground surface. The observed CCPW along Morris Pesin Drive was not removed by PPG during the remedial excavation work due to the proximity of the existing water line. In addition, during the aforementioned delineation investigations performed by PPG in Burma Road and Morris Pesin Drive, chromium "blooms" were observed in soil samples taken from borings drilled in Morris Pesin Drive. While CCPW impacts have been documented in Morris Pesin Drive, it is reasonable to conclude that the extent of visible CCPW in Morris Pesin Drive is limited to a maximum of 10 ft. from the existing water line based on the following:

1. Visible CCPW is present in three discontinuous isolated shallow areas within the excavation sidewall.
2. The absence of visible CCPW is supported by data collected from soil borings located approximately 10 ft. from the existing water line.
3. Soil borings located in Morris Pesin Drive indicated that hexavalent chromium concentrations in Morris Pesin Drive were below the Department's soil criterion of 20 ppm.

**EXHIBIT E**  
**CCPW IDENTIFICATION PROCEDURE**  
**(ATTACHED)**

## CCPW Field Identification Procedure for Site 65 Only

### Background

Hexavalent chromium (Cr+6) contamination from Chromate Chemical Production Waste (CCPW) can manifest itself in several forms, including green-gray mud (GGM), Chromite Ore Processing Residue (COPR), Cr+6 contaminated water, and a crystallized form referred to as chromium blooms. At Site 65, COPR is the most likely form of CCPW that may be encountered.

### Appearance

COPR is generally a reddish-brown coarse to fine gravel, with varying amounts of sand and silt particles. The gravel portion of the matrix is typically defined as nodules 1/8 to 3/4 to inch (in) in diameter, but have been detected at diameters greater than 1 in. COPR may be found either as individual nodules or as clusters of agglomerated nodules. A cluster may consist of various sized nodules cemented or fused together by a finer grained matrix. Some clusters of nodules can be disintegrated easily with minimal force (e.g. manually with a hammer). When cleaved, the interior cross-section of the nodule is reddish brown and typically displays concentric layers. Below are several photos of COPR identified at PPG sites.

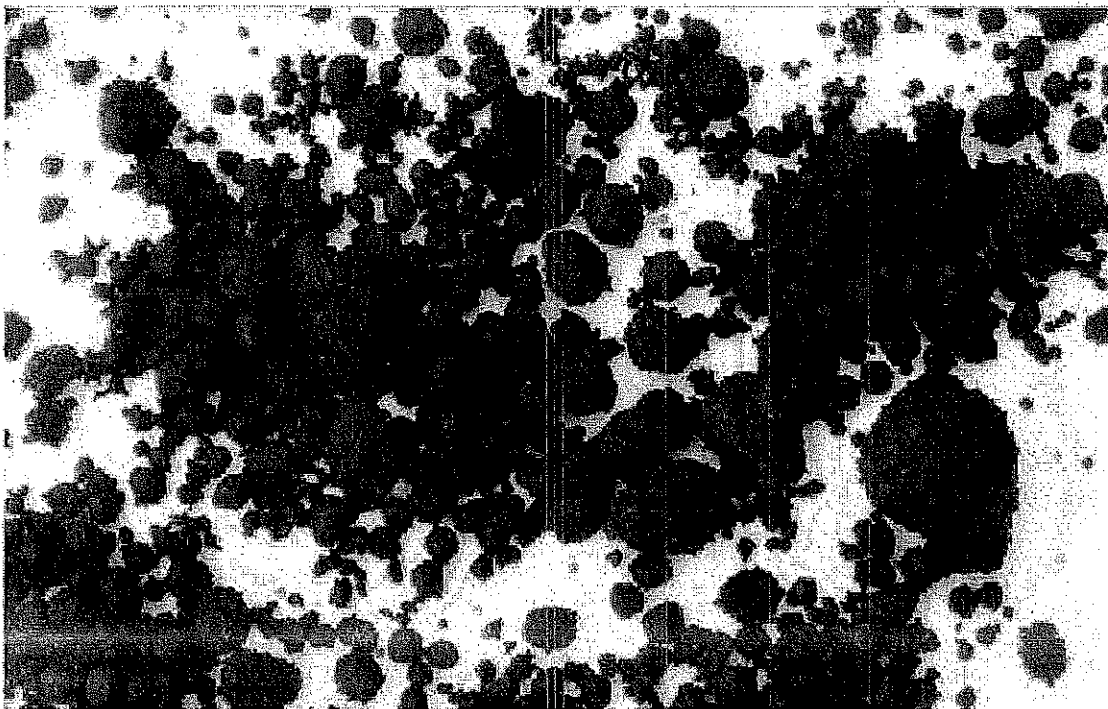


Photo #1 – COPR identified from PPG's Garfield Avenue (GA) site.

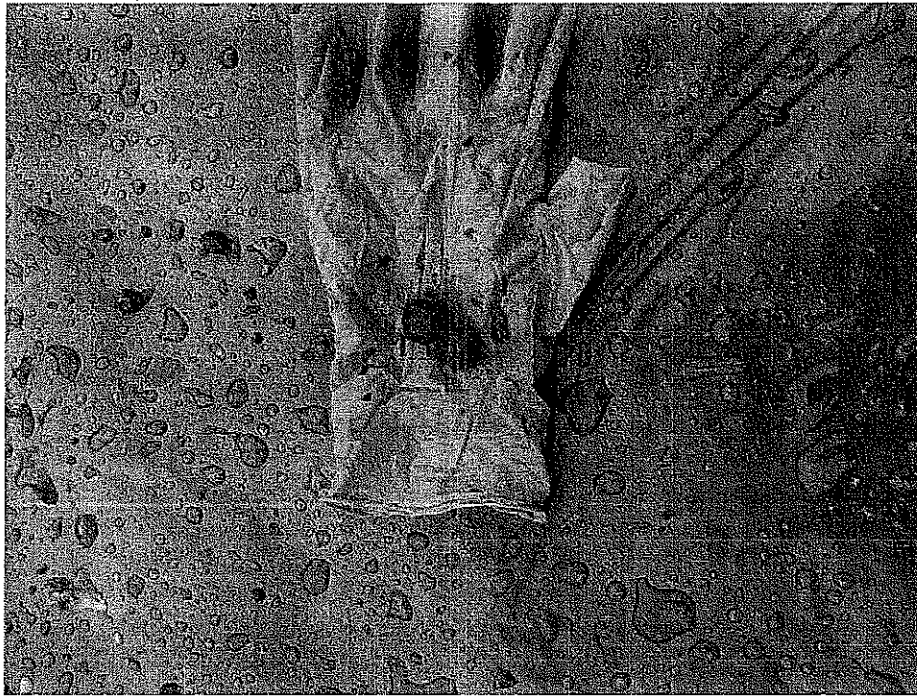


Photo #4 – COPR from PPG Site 63, adjacent to Site 65

#### Field Procedure

The MUA LSRP will meet with the PPG LSRP on site. The following lines of evidence will be evaluated by the two LSRPs to determine if the suspected CCPW is actual CCPW:

1. Physical appearance – The material will be evaluated and compared to the appearance description above and photos provided. If the LSRPs concur that the exterior, physical appearance matches the description and photos provided above, then the presence of CCPW is confirmed.
2. If the LSRPs do not concur on the exterior physical appearance, then the nodule(s) shall be lightly cleaved open to evaluate the interior of the nodule. If the interior, physical appearance matches the description and photos provided, then the presence of CCPW is confirmed.
3. If the LSRPs do not concur on the exterior and interior physical appearance of the nodules, then one or both of the following tests may be performed:
  - a) Acid test – high levels of calcium carbonate would be expected in GGM and possibly COPR. A drop, or drops, of diluted (10%) hydrochloric acid will be applied to the cleaved portions of the suspected material to assess the presence of carbonate. If the material is observed to effervesce after application of the acid, the material is likely to be CCPW. Additionally, this acid test procedure may produce a yellowish colored liquid when it effervesces and can be readily detected if tested on white paper. If there is a positive result using the acid test, then the presence of CCPW is confirmed.
  - b) Magnet response test – CCPW nodules are slightly magnetic to strongly magnetic. The cleaved portions of the nodule(s) will be tested for a response to a magnet. If there is a positive result using the magnet response test, then the presence of CCPW is confirmed.