

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

CHEMTURA CORPORATION, *et al.*,¹

Reorganized Debtors.

)
) Chapter 11
)
) Case No. 09-11233 (REG)
)
) Jointly Administered
)

**ORDER AUTHORIZING CHEMTURA CORPORATION TO ENTER INTO, AND
APPROVING, A SETTLEMENT AGREEMENT WITH THE UNITED STATES
RELATING TO THE GOWANUS CANAL SUPERFUND SITE**

Upon the motion (the “**Motion**”)² of Chemtura Corporation (“**Chemtura**”) and certain of its affiliates in the above-captioned chapter 11 cases (collectively, the “**Reorganized Debtors**” and before the effective date of the chapter 11 plan confirmed by the Court, the “**Debtors**”) for entry of an order pursuant to section 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), and Rule 9019 of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”) authorizing Chemtura to enter into, and approving, a Settlement Agreement (the “**Settlement Agreement**”) with the United States relating to the Gowanus Site; and it appearing that the Settlement Agreement is fair and equitable and that the relief requested is in the best interests of the Debtors’ estates, their creditors, stakeholders, and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer identification number, were: Chemtura Corporation (3153); A&M Cleaning Products, LLC (4712); Aqua Clear Industries, LLC (1394); ASCK, Inc. (4489); ASEPSIS, Inc. (6270); BioLab Company Store, LLC (0131); BioLab Franchise Company, LLC (6709); Bio-Lab, Inc. (8754); BioLab Textile Additives, LLC (4348); Chemtura Canada Co./Cie (5047); CNK Chemical Realty Corporation (5340); Crompton Colors Incorporated (3341); Crompton Holding Corporation (3342); Crompton Monochem, Inc. (3574); GLCC Laurel, LLC (5687); Great Lakes Chemical Corporation (5035); Great Lakes Chemical Global, Inc. (4486); GT Seed Treatment, Inc. (5292); HomeCare Labs, Inc. (5038); ISCI, Inc. (7696); Kem Manufacturing Corporation (0603); Laurel Industries Holdings, Inc. (3635); Monochem, Inc. (5612); Naugatuck Treatment Company (2035); Recreational Water Products, Inc. (8754); Uniroyal Chemical Company Limited (Delaware) (9910); Weber City Road LLC (4381); and WRL of Indiana, Inc. (9136).

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and notice of the Settlement Agreement having been published in the *Federal Register* for public comment, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion and the United States' memorandum of law in support of the Motion responding to public comments submitted to the United States concerning the Settlement Agreement; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing; it is therefore, ORDERED that:

1. The Motion is granted.
2. The Settlement Agreement is approved as fair, reasonable and consistent with environmental law.
3. Pursuant to section 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019, the Debtors' entry into the Settlement Agreement is hereby approved, and the Reorganized Debtors may take such steps as may be necessary to implement and effectuate the terms of this Order, the Settlement Agreement and any related transactions.
4. The Reorganized Debtors are authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate, to implement and effectuate the transactions contemplated by this Order.

5. Subject to the conditions set forth in the Settlement Agreement, proof of claim number 11672 filed by the United States is hereby deemed to be satisfied in full with respect to the Gowanus Site.

6. Notwithstanding the possible applicability of Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. The Court shall retain jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to the implementation of this Order.

New York, New York
Dated: **December 7, 2010**

s/ Robert E. Gerber

Honorable Robert E. Gerber
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	X	
In re	:	Chapter 11
	:	
CHEMTURA CORPORATION, <i>et al.</i> ,	:	Case No. 09-11233 (REG)
	:	
Debtors.	:	Jointly Administered
	:	
	:	
	:	
-----	X	

**UNITED STATES' MEMORANDUM IN SUPPORT OF DEBTORS' MOTION
TO APPROVE SETTLEMENT AGREEMENT BETWEEN THE DEBTORS AND
THE UNITED STATES RELATING TO THE GOWANUS CANAL SUPERFUND SITE**

PREET BHARARA
United States Attorney for the
Southern District of New York
LAWRENCE H. FOGELMAN
SARAH E. LIGHT
BRIAN K. MORGAN
NATALIE N. KUEHLER
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel. No.: (212) 637-2800
Fax No.: (212) 637-2686

I. PRELIMINARY STATEMENT

The United States, on behalf of the United States Environmental Protection Agency (“EPA”), respectfully submits this memorandum of law in support of Debtors’ Motion for an Order Authorizing Certain Debtors to Enter Into, and Approving, a Settlement Agreement with the United States (“Debtors’ Motion”). For the reasons set forth below, the United States requests that this Court approve as a final judgment the Settlement Agreement between the Debtors and the United States Relating to the Gowanus Canal Superfund Site (the “Settlement Agreement”) lodged with the Court on September 30, 2010.¹

The Settlement Agreement resolves the proof of claim regarding the Gowanus Canal Superfund Site (the “Gowanus Site” or “Site”) filed by the United States, on behalf of the EPA, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9601 - 9675, against Chemtura Corporation (“Chemtura”) for environmental liabilities for past and future response costs at the Site. Under the Settlement Agreement, the United States will receive \$3.9 million in Allowed Environmental Claims in connection with the Site. The Settlement Agreement is also conditioned upon the effectiveness of a separate settlement agreement between Chemtura and the State of New York Department of Environmental Conservation (“NYSDEC”) (the “New York Settlement”), which requires Chemtura to comply with two NYSDEC orders on consent (the “NYSDEC Orders”) to remediate two facilities that are continuing sources of contamination to the Gowanus Canal.² On

¹ Any capitalized terms used in this memorandum shall have the meanings as defined in the Settlement Agreement. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit 1.

² A true and correct copy of the New York Settlement and NYSDEC Orders is attached hereto as Exhibit 2.

October 12, 2010, the Bankruptcy Court entered an order approving the New York Settlement and NYSDEC Orders, and authorizing Chemtura to enter into the New York Settlement and NYSDEC Orders, and on November 8, 2010, the District Court likewise approved the New York Settlement. On December 1, 2010, NYSDEC formally issued the NYSDEC Orders, which Chemtura signed.

The Settlement Agreement requires the Court's approval under two different sets of laws. First, pursuant to bankruptcy law, the Court must approve the Settlement Agreement as in the best interest of the bankruptcy estate. On November 9, 2010, Chemtura and its affiliated debtors (collectively, the "Debtors") filed a motion for approval of the Settlement Agreement under applicable bankruptcy law.

Second, the Court must approve the Settlement Agreement as fair, reasonable, and consistent with environmental law. This memorandum of law seeks such approval of the Settlement Agreement by the Court.

Approvals of settlements under environmental law include a procedure for obtaining public comment. Notice of the settlement was published in the Federal Register on October 13, 2010, see 75 Fed. Reg. 62857-02. The United States accepted public comments on the Settlement Agreement through November 12, 2010.

After reviewing the one comment received, the United States respectfully submits that the Settlement Agreement is fair, reasonable, and consistent with environmental law. The settlement memorialized in the Settlement Agreement was reached after lengthy arms-length negotiation of its terms among sophisticated counsel. In addition, the parties weighed the merits, costs, risks, and delays that litigation would entail, against the value of settlement.

Accordingly, for the reasons set forth herein, the United States respectfully requests that this Court approve and enter as a final judgment the Settlement Agreement. The function of the Court in reviewing such motions is not to substitute its judgment for that of the parties to the Settlement Agreement, but to confirm that the terms of the Settlement Agreement are fair and adequate and are not unlawful, unreasonable, or against public policy. See United States v. Hooker Chem. & Plastics Corp., 540 F. Supp. 1067, 1072 (W.D.N.Y. 1982), aff'd, 749 F.2d 968 (2d Cir. 1984). If the Court finds that these standards have been met, then the settlement should be approved. See United States v. Akzo Coatings of Am., Inc., 949 F.2d 1409, 1426 (6th Cir. 1991).

II. GENERAL STATUTORY/FACTUAL BACKGROUND

A. Statutory Background

CERCLA was enacted to provide a framework for cleanup of the nation's worst hazardous waste sites. The primary goal of CERCLA is to protect and preserve public health and the environment from the effects of releases or threatened releases of hazardous substances to the environment. See Voluntary Purchasing Groups, Inc. v. Reilly, 889 F.2d 1380, 1386 (5th Cir. 1989); Dedham Water Co. v. Cumberland Farms Dairy, Inc., 805 F.2d 1074, 1081 (1st Cir. 1986); New York v. Shore Realty Corp., 759 F.2d 1032, 1040, n.7 (2d Cir. 1985); O'Neil v. Picillo, 682 F. Supp. 706, 726 (D.R.I. 1988), aff'd, 883 F.2d 176 (1st Cir. 1989).

CERCLA also created a Hazardous Substance Superfund, known simply as the Superfund, to finance federal response actions undertaken pursuant to Section 104(a) of CERCLA. The Superfund was established under 26 U.S.C. § 9507. Although CERCLA authorizes cleanup of hazardous waste sites using money provided by the Superfund, the

Superfund is a limited source and cannot finance cleanup of all of the many hazardous waste sites nationwide. See S. Rep. No. 96-842, 848, 96th Cong., 2d Sess. at 17-18 (1980), reprinted in 1 Sen. Comm. on Env't & Pub. Works, Legislative History of CERCLA 305, 324-25 (1983). Thus, the United States is tasked with seeking to ensure that potentially responsible parties ("PRPs") pay for or perform site cleanups, or that the limited Superfund monies expended by the federal government in response to a release or threatened release of hazardous substances are recovered from PRPs wherever possible. See B.F. Goodrich Co. v. Murtha, 958 F.2d 1192, 1198 (2d Cir. 1992) (one statutory purpose of CERCLA is to hold responsible parties liable for the costs of the cleanup).

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), permits the United States to recover its costs of responding to releases of hazardous substances from PRPs. Pursuant to Section 107(a), PRPs include the owners and operators of Superfund sites at the time of the disposal of hazardous substances at the sites, the current owners and operators of Superfund sites, as well as the generators and transporters of hazardous substances sent to Superfund sites. See United States v. Alcan Aluminum Corp., 990 F.2d 711, 722 (2d Cir. 1993); O'Neil, 883 F.2d at 178; United States v. Monsanto, 858 F.2d 160, 168-171 (4th Cir. 1988). Section 107(a) creates strict, joint and several liability where environmental harm is indivisible. See Alcan Aluminum Corp., 990 F.2d at 722.

Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and (b), authorize EPA to use Superfund monies to investigate the nature and extent of hazardous substance releases from contaminated sites and to clean up those sites. Moreover, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, EPA may issue unilateral administrative orders to PRPs requiring them to

clean up sites, may seek injunctive relief through a civil action to secure such relief, or may seek to reach agreements with PRPs through which they agree to perform the necessary cleanup of sites. See 42 U.S.C. §§ 9604, 9606, and 9622.

Having created the liability system and enforcement tools to allow EPA to pursue responsible parties for Superfund cleanups, Congress expressed a strong preference that the United States settle with responsible parties in order to avoid spending resources on litigation rather than on cleanup. See 42 U.S.C. § 9622(a).³ CERCLA encourages settlements, inter alia, by providing parties who settle with the United States protection from contribution claims for matters addressed in the settlement. See 42 U.S.C. § 9613(f)(2). This provision provides settling parties with a measure of finality in return for their willingness to settle.⁴

B. Procedural Background

On March 18, 2009, Chemtura and 26 affiliated entities filed Chapter 11 petitions in this Court. On or about October 30, 2009, the United States filed proofs of claim against Chemtura and other Debtors seeking past and future response costs, natural resource damages, and

³ See also United States v. Alcan Aluminum, Inc., 25 F.3d 1174, 1184 (3d Cir. 1994); Akzo Coatings, 949 F.2d at 1436; In re Cuyahoga Equipment Corporation, 980 F.2d 110 (2d Cir. 1992) (citing City of New York v. Exxon Corp., 697 F. Supp. 677, 693 (S.D.N.Y. 1988)); United States v. Cannons Engineering Corp., 899 F.2d 79, 92 (1st Cir. 1990); United States v. DiBiase, 45 F.3d 541, 545-46 (1st Cir. 1995); H.R. Rep. No. 253, pt. 1, 99th Cong., 1st Sess. 80 (1985), reprinted in 1986 U.S. Code Cong. & Ad. News 2862.

⁴ See Cannons Engineering, 899 F.2d at 92; O’Neil v. Picillo, 883 F.2d 176, 178-79 (1st Cir. 1989); United Technologies Corp. v. Browning-Ferris Industries, Inc., 33 F.3d 96 (1st Cir. 1994); H.R. Rep. No. 253, pt. 1, 99th Cong., 1st Sess. 80 (1985), reprinted in 1986 U.S. Code Cong. & Ad. News 2862.

penalties in connection with 21 sites.⁵ The Gowanus Site was among the 21 sites addressed in the United States' proofs of claim. Specifically, the proof of claim filed against Chemtura alleged that Chemtura is jointly and severally liable to the United States, along with other parties, for future response costs in excess of \$1 billion in connection with the Gowanus Site, as well as past costs of approximately \$138,000.

The Government's proof of claim alleged that Chemtura is liable at the Gowanus Site as a successor-in-interest to both Witco Corp. ("Witco") and Argus Chemical Co. ("Argus"), which operated two related facilities at 633 Court Street and 688-700 Court Street, Brooklyn, New York (the "Court Street Facilities" or the "Facilities") from approximately 1958 through 1999. The Facilities are adjacent to or near the Gowanus Canal. Significant contamination has been detected in soil and groundwater at the Facilities, including coal tar, polychlorinated biphenyls ("PCBs"), and volatile organic compounds ("VOCs"). Such contaminants have also been detected in sediment samples in the Gowanus Canal adjacent to or near the Facilities. The proof of claim alleged that EPA has reason to believe that the Facilities have released and may continue to release hazardous substances into the Gowanus Canal. Accordingly, the proof of claim asserted that Chemtura is liable pursuant to Section 107(a)(2) of CERCLA because its predecessors Witco and Argus were owners and operators at a time of disposal. Based on the Canal's threat to public health and the environment, EPA added the Gowanus Site to the National Priorities List ("NPL") on March 2, 2010.

⁵ On September 17, 2010, the Bankruptcy Court entered an order approving a separate Settlement Agreement Among the Debtors, the United States and the Connecticut Commissioner of Environmental Protection, resolving the proofs of claim of the United States with respect to all sites except the Gowanus Site.

On January 22, 2010, the Debtors filed an Omnibus Objection to the United States' proofs of claim, in which the Debtors contended, inter alia, that Chemtura should not be held jointly and severally liable in connection with the Gowanus Site.

The New York State Department of Conservation ("NYSDEC") was involved with both of the Court Street Facilities before it referred the Gowanus Site to EPA in 2009 for listing on the NPL. See generally New York State Department of Environmental Conservation Notice of Administrative Expense Claim ("NYSDEC Admin. Claim") [Claims Nos. 11495 and 10880], at ¶¶ 6-14. Specifically, with respect to 688-700 Court Street, Chemtura's predecessor entered into a consent order with NYSDEC in May 2002 to remediate the property; however, upon filing its petition for bankruptcy, Chemtura ceased performing under the consent order. NYSDEC Admin. Claim at ¶¶ 6-9. NYSDEC likewise alleged that Chemtura was the party responsible for cleanup at 633 Court Street. NYSDEC Claim at ¶¶ 13-14. On October 12, 2010, the Bankruptcy Court approved, and on November 8, 2010, the District Court approved, the New York Settlement and NYSDEC Orders, thus resolving Chemtura's environmental liabilities to NYSDEC in connection with the Court Street Facilities.

C. The Settlement Agreement⁶

1. Allowed Environmental Claim for the Gowanus Site

Pursuant to Section V of the Settlement Agreement, the Debtors have agreed to an Allowed Environmental Claim for the Gowanus Site in the amount of \$3.9 million. Under the Debtors' Plan, Allowed Environmental Claims comprise a separate class of general unsecured claims, which may be paid in cash pursuant to a settlement agreement. See Exhibit 1. The amount of the Allowed Environmental Claim was determined on a site-specific basis, taking into account: (1) total past and estimated total future response costs for the site; (2) the Debtors' estimated percentage allocation or fair share of liability for the site; and (3) litigation considerations. Under the Settlement Agreement, only the amount that the United States receives from the Debtors, not the total amount of the allowed claim, will be credited by EPA to its account for the Site, which credit will reduce the liability of non-settling PRPs for the particular site by the amount of the credit. See Settlement Agreement ¶ 6; CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2). The Debtors presently estimate that Allowed Environmental Claims will be paid in full. See August 4, 2010, Disclosure Statement for the Joint Chapter 11 Plan of Chemtura Corporation, et al. at 27.

2. Contribution Protection and Covenants Not to Sue

Under the Settlement Agreement, the Debtors will receive contribution protection (Section IX) and a covenant not to sue (Section VIII) with respect to the Gowanus Site,

⁶ The memorandum of law contains an abbreviated summary of the terms and provisions of the Settlement Agreement. If there is any conflict between the description of the settlement contained in this memorandum and the terms and provisions of the Settlement Agreement, the terms and provision of the Settlement Agreement are controlling.

including the Court Street Facilities. In addition to being subject to reservations for criminal liability, conduct occurring after the date of lodging, and failure to comply with the Settlement Agreement, the covenant is conditioned, in Paragraph 11 of the Settlement Agreement, upon Chemtura's compliance with the New York Settlement and the NYSDEC Orders for the Court Street Facilities.⁷ If NYSDEC issues a notice of non-compliance or notice of violation with respect to the New York Settlement and NYSDEC Orders which is not cured or withdrawn, and the United States determines that there may be an imminent and substantial endangerment to public health or welfare or the environment because of an actual or threatened release of hazardous substances at one or more of the Court Street Facilities, the covenant not to sue will be null and void with respect to the relevant Court Street Facility or Facilities. Settlement Agreement ¶ 11. The Debtors will not receive contribution protection for pre-petition response costs incurred by PRPs who have filed proofs of claim in the bankruptcy. See id. at ¶18.

D. Public Comment

The United States received only one public comment regarding the Settlement Agreement – a comment submitted jointly on November 12, 2010, by the City of New York (the “City”) and the Brooklyn Union Gas Company, d/b/a National Grid NY (“National Grid”). That comment is attached hereto as Exhibit 3 and is summarized below.

⁷ We also note that under Paragraph 1.m of the Settlement Agreement, the Settlement Agreement will not become effective unless the New York Settlement becomes effective in accordance with its terms. The New York Settlement became effective in accordance with its terms on November 10, 2010.

III. ARGUMENT

A. The Court Should Approve the Settlement Agreement Because It is Fair, Reasonable, and Consistent With Environmental Law

Approval of a settlement agreement is a judicial act committed to the informed discretion of the Court. See In re Cuyahoga Equipment Corp., 908 F.2d 110, 118 (2d Cir. 1992); United States v. Hooker Chem. & Plastics Corp., 540 F. Supp. 1067, 1072 (W.D.N.Y. 1982), aff'd, 749 F.2d 968 (2d Cir. 1984); United States v. Cannons Eng'g Corp., 720 F. Supp. 1027, 1035 (D. Mass 1989), aff'd 899 F.2d 79 (1st Cir. 1990). Judicial review of a settlement negotiated by the United States is subject to special deference; the Court should not engage in “second-guessing the Executive Branch.” Cannons Eng'g Corp., 899 F.2d at 84; In re Cuyahoga, 980 F.2d at 118 (noting the “usual deference given the EPA”); New York v. Solvent Chemical Corp., 984 F. Supp. 160, 165 (W.D.N.Y. 1997) (“This Court recognizes that its function in reviewing consent decrees apportioning CERCLA liability is not to substitute its judgment for that of the parties to the decree but to assure itself that the terms of the decree are fair and adequate and are not unlawful, unreasonable, or against public policy.” (internal quotation marks omitted)). For the reasons discussed below, the Court should approve the Settlement Agreement because it is fair, reasonable, and furthers the goals of CERCLA. See Charles George Trucking Co., 34 F.3d 1081, 1084 (1st Cir. 1994); Cannons, 899 F.2d at 85. This “limited standard of review reflects a clear policy in favor of settlements.” Solvent Chem. Corp., 984 F. Supp. at 165.

1. The Settlement is Fair

The fairness of a CERCLA settlement involves both procedural fairness and substantive fairness. See Cannons, 899 F.2d at 86-88. To measure procedural fairness, the Court “should

look to the negotiation process and gauge its candor, openness, and bargaining balance.” Id. at 86. The negotiation of the Settlement Agreement was procedurally fair because it was conducted at arm’s length over a period of more than eight months and the parties were represented by experienced counsel and aided, on both sides, by technical experts who assisted on matters such as estimating future costs.

To measure “substantive” fairness, the Court should consider whether the settlement is “based upon, and roughly correlated with, some acceptable measure of comparative fault, apportioning liability . . . according to rational (if necessarily imprecise) estimates of how much harm each PRP has done.” Id. at 87; see also United States v. Davis, 261 F.3d 1, 24 (1st Cir. 2001); Charles George Trucking, Inc., 34 F.3d at 1087; United States v. DiBiase, 45 F.3d 541, 544-45 (1st Cir. 1995).

Here, the Settlement Agreement is “substantively” fair. The Settlement Agreement is the product of a complex analysis of the Debtors’ environmental liabilities at the Site, as well as litigation risks, the existence of other PRPs, the Debtors’ equitable share of liability, the circumstances under which contamination occurred, and multiple other factors. These issues formed the backdrop for lengthy negotiations between the parties. The resulting terms of the settlement, which permit the United States to recover past and estimated future response costs for the Gowanus Site, are substantively fair.

2. The Settlement is Reasonable

Courts evaluating the reasonableness of CERCLA settlements have considered three factors: technical adequacy of the cleanup work to be performed; satisfactory compensation to the public for response costs; and the risks, costs, and delays inherent in litigation. See Charles

George, 34 F.3d at 1087; Cannons, 899 F.2d at 89-90.

The reasonableness inquiry is satisfied as to the Gowanus Site because the Settlement Agreement is conditioned upon Chemtura's performance of cleanup work at the Court Street Facilities – the two facilities that Chemtura's predecessors formerly owned and operated that are sources of pollution to the Canal – under the separate Court-approved New York Settlement and the two NYSDEC Orders. The New York Settlement and NYSDEC Orders have already been reviewed and approved by both the Bankruptcy Court and the District Court. Likewise, the Settlement Agreement satisfies the other, necessarily intertwined, considerations relevant to reasonableness. As discussed above, the United States will receive an Allowed Environmental Claim of \$3.9 million in connection with the Site for past and future response costs. The settlement terms thus satisfactorily compensate the public, and reasonably balance myriad competing factors, including the strength of the United States' case against the Debtors; the Debtors' bankruptcy; the Debtors' objection to the United States' proofs of claims; and the need to recover funds for cleanup and minimize the expense and potential delay of protracted litigation. Accordingly, the Settlement Agreement is reasonable.

3. The Settlement is Consistent with the Goals of CERCLA

The primary goals of CERCLA are to “encourage prompt and effective responses to hazardous waste releases and to impose liability on responsible parties,” and to “encourage settlements that would reduce the inefficient expenditure of public funds on lengthy litigation.” In re Cuyahoga, 980 F.2d at 119. This settlement furthers these statutory goals. As discussed above, the Settlement Agreement is conditioned on Chemtura's cleanup, pursuant to the already-approved New York Settlement and NYSDEC Orders, of two facilities that are continuing

sources of contamination to the Gowanus Canal, and the Settlement Agreement further requires Chemtura to pay the United States for a portion of past and estimated future response costs at the Site. The Settlement Agreement also meets CERCLA's statutory goal of providing final resolution of liability for settling parties. Moreover, the Settlement Agreement serves CERCLA's goal of reducing, where possible, the litigation and transaction costs associated with response actions, as well as the public policy favoring settlement to reduce costs to litigants and burdens on the courts. See Winberger v. Kendrick, 698 F.2d 61, 73 (2d Cir. 1982).

Here, there would be high costs in proceeding to litigation, rather than resolving this matter through a negotiated agreement. In the Debtors' Omnibus Objection to the United States' proofs of claim, the Debtors contended, inter alia, that Chemtura should not be held jointly and severally liable in connection with the Gowanus Site. Specifically, the Debtors contended that "a reasonable basis for apportionment of harm exists" under Burlington Northern & Santa Fe Railway Co. v. United States, 129 S. Ct. 1870 (2009). As grounds for such apportionment, the Debtors cited the following: (a) Chemtura's predecessors operated two sites spanning only six acres, a fraction of the total land area contributing to contamination in the Canal, whose watershed is roughly six square miles; (b) contamination exists at upstream locations and locations remote from the Court Street Facilities, which arguably did not originate from those Facilities; (c) EPA failed to consider that coal tar, a substance which Chemtura's predecessors did not manufacture or otherwise process at the Facilities, is the "driving force" behind the likely remedy at the Site; and (d) Chemtura's predecessors operated for only a short period of time relative to the total number of years that industries were discharging contaminants into the Canal. The Omnibus Objection was adjourned pending settlement negotiations. While the

United States does not concede any of these issues, each would require costly, fact-intensive litigation in the absence of settlement. Accordingly, the United States took its litigation risks into account.

B. The One Public Comment Does Not Indicate that the Settlement Agreement Is Inappropriate, Inadequate, or Improper

The lone public comment received by the United States concerning the Settlement Agreement: (1) challenges the amount of money that the United States will receive as insufficient; (2) challenges the settlement as premature in light of the early stage of investigation and site characterization; (3) challenges the terms of contribution protection; and (4) seeks to require the United States to place all money received in a site-specific special account to finance response actions at the Gowanus Site. Exh. 3 at US1-10. The United States has considered this comment and, as set forth below, has determined that it does not indicate that the Settlement Agreement is inappropriate, inadequate, or improper.

1. Amount of the Settlement Award and Timing of Settlement

The comment expresses concern that the amount of money to be received by the United States under the Settlement Agreement is insufficient to satisfy Chemtura's share of the cost of investigation, site characterization, and remediation at the Site. Exh. 3 at US2.

Contrary to the assertions in the comment, the settlement amount set forth in the Settlement Agreement is fair, reasonable, and consistent with environmental law. The purpose of CERCLA is to "promote the timely cleanup of hazardous waste sites and to ensure that the costs of such cleanup efforts are borne by those responsible for the contamination." Burlington Northern & Santa Fe Ry. Co. v. United States, 129 S. Ct. 1870, 1874 (2009); Consol. Edison Co.

of N.Y. v. UGI Util., Inc., 423 F.3d 90, 94 (2d Cir. 2005). In addition, CERCLA aims to “encourage settlements that would reduce the inefficient expenditure of public funds on lengthy litigation.” In re Cuyahoga, 980 F.2d at 119. To facilitate settlement, CERCLA allows for settlement amounts that are based not on joint and several liability, but rather “some acceptable measure of comparative fault, apportioning liability . . . according to rational (if necessarily imprecise) estimates of how much harm each PRP has done.” Cannons, 899 F.2d at 86-88.

The United States has negotiated a settlement that seeks to further CERCLA’s goals by securing a substantial settlement award that reflects the Debtors’ proportionate share of liability at the Gowanus Site and efficiently and expeditiously resolves the United States’ proof of claim regarding the Site. In so doing, the United States took into account the Debtors’ bankruptcy; the nature of the United States’ claim in the bankruptcy; the Debtors’ equitable share or allocation of fault or liability at the Site; the existence of other PRPs who can perform cleanup and/or reimburse the United States’ response costs; litigation risk; and considerations of preserving resources through settlement without protracted litigation.

To assist the Government in calculating both the total cost for the future remedy and estimating Chemtura’s equitable share, the Government hired the Brattle Group (“Brattle”). Brattle assisted the Government in its determination that total future costs for the most likely remedy at the Site, which will involve dredging, would exceed \$450 million. We calculated Chemtura’s share of these costs after taking into account, among other things: Chemtura’s relatively small share of liability at the site, the fact that Chemtura will be cleaning up the two Court Street Facilities that are the source of its liability at the Canal under New York State oversight; and litigation risk based on issues raised in the Debtors’ objection.

National Grid and the City fail to acknowledge the importance of the fact that the Settlement Agreement is conditioned upon Chemtura's entry into the New York Settlement, and its performance under the NYSDEC Orders, which require investigation and remediation at the two Court Street Facilities that form the basis of Chemtura's liability at the Site. Indeed, the comment acknowledges that these two Facilities form the basis of Chemtura's liability at the Site; thus any evaluation of the Settlement Agreement must recognize the importance of the New York Settlement and Chemtura's independent obligations thereunder.

The suggestion in the comment that the United States may simply be wrong about the settlement amount for the Gowanus Site because further investigation may reveal that the Debtors' equitable share is greater than currently known, see US7, does not warrant withdrawal from the Settlement Agreement. In light of the Chapter 11 proceeding, it is not possible to delay resolution of the settlement amount until after investigative work at the Site is complete. The United States utilized the best information available at the time, as well as the assistance of experts, to arrive at a settlement amount that is fair, reasonable, and consistent with environmental law.

2. Contribution Protection and Use of Settlement Proceeds

National Grid and the City contend that the Settlement Agreement should not provide the Debtors with contribution protection. Exh. 3 at US8. However, as discussed above, contribution protection is conferred upon a settling party by operation of law. Section 113(f) of CERCLA affords contribution protection upon a settling party in order to encourage settlements by providing settling parties finality. See Section II.A, supra. Also, while the City and National Grid contend that contribution protection may make it impossible for them to recover response

costs from Chemtura in the future, neither of them filed a claim against Chemtura in this chapter 11 proceeding for such costs, and neither of them discusses the effect that the discharge provided by confirmation of the Debtors' plan might have on a response costs claim by them, irrespective of any contribution protection.

The commenters finally contend that the Settlement Agreement should be revised to bind the United States to "using all money received under the Proposed Agreement to conduct or finance response actions at or in connection with the Gowanus Site." Exh. 3 at US10. No such revision is warranted. EPA intends to place the proceeds from the Settlement Agreement into a Site-specific special account to finance investigation and response actions at the Gowanus Site. EPA's intended use of the proceeds is consistent with Paragraph 7 of the Settlement Agreement, which provides that such funds may be deposited into a site-specific special account.

In any event, the City, National Grid and other non-settling PRPs will receive the credit to which they are legally entitled under CERCLA, regardless of where or how EPA ultimately uses the proceeds it receives pursuant to the settlement. While CERCLA does not dictate how the proceeds received by EPA in settlement of a claim for response costs brought pursuant to Section 107(a) of CERCLA must be expended, CERCLA Section 113(f)(2) does provide that the potential liability of non-settling PRPs is reduced by the amount of the settlement. 42 U.S.C. § 9613(f)(2). Specifically, Section 113(f)(2) states that a settlement with one party "does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement." *Id.* (emphasis added). Accordingly, Paragraph 6 of the Settlement Agreement states that non-settling PRPs shall receive a credit for the amount of the claim proceeds that the United States recovers for the

Site.

III. CONCLUSION

For the reasons stated above, the Court should approve and enter the Settlement Agreement.

Dated: New York, New York
December 3, 2010

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States of America

By: /s/ Sarah E. Light
LAWRENCE H. FOGELMAN
SARAH E. LIGHT
BRIAN K. MORGAN
NATALIE N. KUEHLER
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2800
Facsimile: (212) 637-2730
Email: sarah.light@usdoj.gov

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	X	
In re:	:	Chapter 11
	:	
CHEMTURA CORPORATION, <i>et al.</i> ,	:	Case No. 09-11233 (REG)
	:	
Debtors.	:	Jointly Administered
-----	X	

CERTIFICATE OF SERVICE

I, Sarah E. Light, an Assistant United States Attorney for the Southern District of New York, hereby certify that on December 3, 2010, I caused a copy of the United States' Memorandum In Support of Debtors' Motion to Approve Settlement Agreement Between the Debtors and the United States Relating to the Gowanus Canal Superfund Site, to be served by Federal Express to the following addresses:

M. Natasha Labovitz
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Counsel for the Debtors

Susan D. Golden
Office of United States Trustee SDNY
33 Whitehall Street
New York, NY 10004
Counsel for the United States Trustee

Jay M. Goffman
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
Counsel for the Equity Committee

Daniel H. Golden
Akin, Gump, Strauss, Hauer & Feld, LLP
One Bryant Park
New York, NY 10036
Counsel for the Committee of Unsecured Creditors

Richard L. Wynne
Jones Day
222 East 41st Street
New York, New York 10017
Attorneys for the Ad Hoc Committee of Bondholders

On December 3, 2010, I further caused the foregoing United States' Memorandum In Support of Debtors' Motion to Approve Settlement Agreement Between the Debtors and the United States Relating to the Gowanus Canal Superfund Site to be served on the remaining parties to these proceedings electronically, through the ECF system.

Dated: New York, New York
December 3, 2010

/s/ _____
SARAH E. LIGHT
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2774

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

CHEMTURA CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 09-11233 (REG)

Jointly Administered

**SETTLEMENT AGREEMENT BETWEEN
THE DEBTORS AND THE UNITED STATES
RELATING TO THE GOWANUS CANAL SUPERFUND SITE**

I. RECITALS

WHEREAS, Chemtura Corporation (“**Chemtura**”) and those of its affiliates listed in Exhibit A (collectively, as debtors, debtors-in-possession, or in any new or reorganized form as a result of the above-captioned bankruptcy proceeding, “**Debtors**”) filed with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**” or “**Court**”) voluntary petitions for relief under Title 11 of the United States Code (the “**Bankruptcy Code**”) on March 18, 2009 (the “**Petition Date**”), which have been consolidated for procedural purposes and are being administered jointly as Case No. 09-11233 (REG) (the “**Bankruptcy Cases**”);

WHEREAS, the United States, on behalf of the United States Environmental Protection Agency (along with any legal successor thereto, “**EPA**”), has filed a proof of claim (Claim No. 11672) (the “**U.S. Proof of Claim**”) against Chemtura, contending, *inter alia*, that Chemtura is liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”), 42 U.S.C. § 9601 *et seq.*, for costs incurred and to be incurred by the United

States in response to releases and threats of releases of hazardous substances at or in connection with the Gowanus Canal Superfund Site in New York (the “**Gowanus Site**”);

WHEREAS, on January 22, 2010, the Debtors filed an Omnibus Objection to the U.S. Proof of Claim (the “**Omnibus Objection**”), in which the Debtors contended, *inter alia*, that they are not liable for certain response costs at or in connection with the Gowanus Site;

WHEREAS, the Omnibus Objection has been adjourned to facilitate settlement discussions;

WHEREAS, the United States disagrees with the Debtors’ contentions in the Omnibus Objection, and the Debtors disagree with the United States’ contentions in its proof of claim, and, but for this Settlement Agreement, the Parties would litigate their disputes in court;

WHEREAS, the Parties wish to resolve their differences with respect to the Gowanus Site as provided herein, without adjudication of the Omnibus Objection;

WHEREAS, Chemtura and the State of New York have entered into a separate settlement agreement (the “**New York Settlement Agreement**”) resolving disputes between them regarding Chemtura’s performance of work at a portion of the Gowanus Site known as the Court Street Facilities, which settlement agreement was filed with the Bankruptcy Court on September 17, 2010, and remains subject to approval by the Bankruptcy Court and the United States District Court for the Southern District of New York (“**District Court**”);

WHEREAS, pursuant to the New York Settlement Agreement, Chemtura has agreed to perform remediation at the Court Street Facilities pursuant to the terms of orders on consent with the State of New York (the “**Consent Orders**”);

WHEREAS, the Debtors and the United States, along with the Connecticut Commissioner of Environmental Protection, have entered into a separate settlement agreement,

which addresses matters in dispute between the Parties in the Bankruptcy Cases other than the Gowanus Site and is not modified hereby;

WHEREAS, the treatment of liabilities provided for herein represents a compromise of the contested positions of the Parties that is entered into solely for purposes of this settlement, and the Parties reserve their arguments, and recognize that this settlement is without prejudice to the rights and arguments of non-parties, including but not limited to the official committees in the Bankruptcy Cases, as to any other issues that are presently, or may in the future be, involved in the Bankruptcy Cases;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, including, without limitation, the covenants not to sue set forth in Paragraphs 11 and 17, and subject to the provisions of Paragraphs 24 through 27, intending to be legally bound hereby, the Parties hereby agree to the terms and provisions of this Settlement Agreement;

WHEREAS, settlement of the matters governed by this Settlement Agreement is in the public interest, is in the best interests of the Debtors and their estates, and is an appropriate means of resolving these matters;

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the Parties by their attorneys and authorized officials, it is hereby agreed as follows:

II. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or its regulations or in the Bankruptcy Code shall have the meaning assigned to them in CERCLA, its regulations, or the Bankruptcy Code. Whenever terms listed below are used in this Settlement Agreement, the following definitions shall apply:

- a. **“Allowed Environmental Claim”** has the meaning set forth in the Plan of Reorganization.
- b. **“Allowed General Unsecured Claim”** has the meaning set forth in the Plan of Reorganization.
- c. **“Bankruptcy Cases”** has the meaning set forth in the recitals.
- d. **“Bankruptcy Code”** has the meaning set forth in the recitals.
- e. **“Bankruptcy Court”** or the **“Court”** has the meaning set forth in the recitals.
- f. **“CERCLA”** means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, as now in effect or hereafter amended.
- g. **“Chemtura”** has the meaning set forth in the recitals.
- h. **“Claim”** has the meaning provided in Section 101(5) of the Bankruptcy Code.
- i. **“Consent Orders”** has the meaning set forth in the recitals.
- j. **“Court Street Facilities”** means the facilities located at 633 and 688-700 Court Street, Brooklyn, Kings County, New York, and areas upland of the Gowanus Canal to which hazardous substances have migrated and/or are continuing to migrate from 633 and 688-700 Court Street, Brooklyn, Kings County, New York.
- k. **“Debtors”** has the meaning set forth in the recitals.
- l. **“District Court”** has the meaning set forth in the recitals.
- m. **“Effective Date”** means the later of (i) the date an order is entered by the Bankruptcy Court approving this Settlement Agreement, (ii) the date the New York Settlement Agreement becomes effective in accordance with its terms, or (iii) the date the Plan of Reorganization becomes effective in accordance with its terms.

- n. **“EPA”** has the meaning set forth in the recitals.
- o. **“Governmental Unit”** has the meaning provided in Section 101(27) of the Bankruptcy Code.
- p. **“Gowanus Canal”** means the approximately 100-foot-wide, 1.8-mile-long canal located in the New York City borough of Brooklyn, Kings County, New York, which is connected to Gowanus Bay in Upper New York Bay.
- q. **“Gowanus Canal Superfund Site”** or **“Gowanus Site”** means the Gowanus Canal, the Court Street Facilities, and any other areas which are sources of contamination to the Canal.
- r. **“Hazardous Substance Superfund”** means the Hazardous Substance Superfund established by 26 U.S.C. § 9507.
- s. **“NYSDEC”** means the New York State Department of Environmental Conservation
- t. **“New York Settlement Agreement”** has the meaning set forth in the recitals.
- u. **“NPL”** means the National Priorities List, 40 C.F.R. Part 300.
- v. **“Omnibus Objection”** has the meaning set forth in the recitals.
- w. **“Parties”** means the Debtors and the United States (any one of which, individually, shall be referred to herein as a **“Party”**).
- x. **“Petition Date”** has the meaning set forth in the recitals.
- y. **“Plan of Reorganization”** or **“Plan”** means the Joint Chapter 11 Plan of Chemtura Corporation, *et al.*, dated August 4, 2010 (as revised, amended, and supplemented from time to time).

z. “**Prepetition**” refers to the time period on or prior to the commencement of the Bankruptcy Cases.

aa. “**Postpetition**” refers to the time period from and after the commencement of the Bankruptcy Cases.

bb. “**RCRA**” means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, as now in effect or hereafter amended.

cc. “**United States**” means the United States of America and all of its agencies, departments, and instrumentalities, including EPA.

dd. “**U.S. Proof of Claim**” has the meaning set forth in the recitals.

III. JURISDICTION

2. The Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).

IV. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

3. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the United States, the Debtors, the Debtors’ legal successors and assigns, and any trustee, examiner, or receiver appointed in the Bankruptcy Cases.

V. ALLOWED CLAIM

4. In settlement and satisfaction of the U.S. Proof of Claim with respect to the Gowanus Site, the United States on behalf of EPA shall have an Allowed Environmental Claim of \$3,900,000 against Chemtura. The United States shall receive no distributions or other payments in the Bankruptcy Cases with respect to the Debtors’ liabilities and obligations asserted in the U.S. Proof of Claim with respect to the Gowanus Site other than as set forth in this Paragraph.

5. The Allowed Environmental Claim authorized by Paragraph 4 of this Settlement Agreement (i) shall be treated as provided under Section 3.3(k)(i)(A) of the Plan of Reorganization, specifically, payment in cash, and (ii) shall not be subordinated to any other Allowed Environmental Claims or any Allowed General Unsecured Claims pursuant to any provision of the Bankruptcy Code or other applicable law, including, without limitation, Sections 105, 510, and 726(a)(4) of the Bankruptcy Code.

6. Only the amount of cash received by EPA from the Debtors for the Allowed Environmental Claim authorized by Paragraph 4 of this Settlement Agreement, and not the total amount of the Allowed Environmental Claim, shall be credited by EPA to its account for the Gowanus Site, which credit shall reduce the liability of non-settling potentially responsible parties for the Gowanus Site by the amount of the credit.

7. EPA may deposit any funds received pursuant to Paragraph 4 of this Settlement Agreement into the Hazardous Substance Superfund or into an EPA special account established for the Gowanus Site within the Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Gowanus Site, or to be transferred to the Hazardous Substance Superfund.

VI. RESOLUTION OF PROOF OF CLAIM AND OMNIBUS OBJECTION

8. The U.S. Proof of Claim shall be deemed satisfied in full with respect to the Gowanus Site in accordance with the terms of this Settlement Agreement. Moreover, the approval of this Settlement Agreement by the Court, together with the proof of claim referenced in the preceding sentence, shall be deemed to satisfy any requirement for EPA to file in these Bankruptcy Cases any claim, request, or demand for the disbursement of funds as provided herein. No further proof of claim or other request or demand by EPA shall be required. Any and

all proofs of claim deemed to be filed pursuant to this Paragraph shall also be deemed satisfied in full in accordance with the terms of this Settlement Agreement.

9. With respect to matters pertaining to the Gowanus Site, the Omnibus Objection shall be deemed resolved in full by this Settlement Agreement, without costs or attorney's fees to any Party.

VII. PAYMENT INSTRUCTIONS

10. Payment to the United States pursuant to this Settlement Agreement shall be made by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice account in accordance with current EFT procedures. Payment shall be made in accordance with instructions provided to the Debtors by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York and shall reference Bankruptcy Case Number 09-11233 and DOJ File Number 90-11-3-09736. The Debtors shall transmit written confirmation of such payments to the United States at the addresses specified in Paragraph 23.

VIII. COVENANTS NOT TO SUE AND RESERVATION OF RIGHTS

11. In consideration of all of the foregoing, including, without limitation, the distributions that will be made on account of the Allowed Environmental Claim authorized pursuant to Paragraph 4, and except as specifically provided in this Paragraph and Paragraphs 14 through 16, EPA covenants not to file a civil action or to take any administrative or other civil action against the Debtors pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, with respect to the Gowanus Site. The covenant not to sue set forth in this Paragraph shall take effect on the Effective Date, provided, however, that if (a) the NYSDEC issues a notice of noncompliance or a notice of violation to Chemtura with respect to one or more of the Court Street Facilities addressed in the New York

Settlement Agreement and Consent Orders, and (b) the notice of noncompliance or notice of violation is not cured within the time specified in the notice, or determined by the NYSDEC to have been issued in error, or otherwise withdrawn, and (c) the United States determines that there may be an imminent and substantial endangerment to public health or welfare or the environment because of an actual or threatened release of hazardous substances at the Court Street Facility (or Facilities) which is (or are) the subject of the notice of noncompliance or notice of violation, then the covenant not to sue set forth in this Paragraph shall, only with respect to the Court Street Facility (or Facilities) which is (or are) the subject to the notice of noncompliance or notice of violation, be null and void and of no effect without further action by any Party.

12. This Settlement Agreement in no way impairs the scope and effect of the Debtors' discharge under Section 1141 of the Bankruptcy Code as to any third parties (including any Governmental Units other than EPA) or as to any Claims that are not addressed by this Settlement Agreement.

13. Without in any way limiting the covenant not to sue as set forth in Paragraph 11 (and the reservations thereto as set forth in Paragraphs 11, 14-16, and 22), and notwithstanding any other provision of this Settlement Agreement, such covenant not to sue shall also apply to the Debtors' successors and assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor or assign, officer, director, employee, or trustee of any Debtor is based solely on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of any Debtor.

14. The covenant not to sue contained in Paragraph 11 of this Settlement Agreement extends only to the Debtors and the persons described in Paragraph 13 above and does not

extend to any other person. Nothing in this Settlement Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than the Debtors, the United States, and the persons described in Paragraph 13. EPA and the Debtors expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, entities, or predecessors of the Debtors (excluding each of the Debtors as successor to any entity) for any matter arising at or relating in any manner to the sites or claims addressed herein.

15. The covenant not to sue set forth in Paragraph 11 does not pertain to any matters other than those expressly specified therein. The United States expressly reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtors and the persons described in Paragraph 13 with respect to all other matters other than those set forth in Paragraph 11. The United States also specifically reserves, and this Settlement Agreement is without prejudice to, any action based on (i) a failure to meet a requirement of this Settlement Agreement or (ii) criminal liability. In addition, the United States reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtors, their successors, assigns, officers, directors, employees, and trustees with respect to the Gowanus Site for liability under CERCLA, RCRA, or state law for acts by the Debtors, their successors, assigns, officers, directors, employees, or trustees that occur after the date of lodging of this Settlement Agreement and give rise to liability under CERCLA, RCRA, or state law. As used in the preceding sentence, the phrase “acts by the Debtors, their successors, assigns, officers, directors, employees, or trustees that occur after the date of lodging of this Settlement Agreement” does not include continuing releases related to conduct occurring before the date of lodging of this Settlement Agreement.

16. Subject to the covenant not to sue set forth in Paragraph 11 (and the reservations thereto set forth in Paragraphs 11, 14, 15, and 22), nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable federal or state law or regulation, or to excuse the Debtors from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable federal or state law or regulation.

17. The Debtors hereby covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States with respect to the Gowanus Site, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund through Sections 106(b)(2), 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or 9613, or any other provision of law; (ii) any claim against the United States, including any department, agency, or instrumentality of the United States, under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, related to the Gowanus Site; or (iii) any claims arising out of response activities at the Gowanus Site. The foregoing covenant not to sue shall also apply to the United States' employees, successors, and assigns. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

IX. CONTRIBUTION PROTECTION

18. The Parties agree, and by entering this Settlement Agreement the Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Debtors are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. Subject to the last sentence of this Paragraph, the “matters addressed” in this Settlement Agreement, as that phrase is used in Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), include, without limitation, claims by EPA or potentially responsible parties for response costs at or in connection with the Gowanus Site. The “matters addressed” in this Settlement Agreement do not include claims against any of the Debtors for liquidated past response costs incurred by potentially responsible parties prior to the Petition Date and included in proofs of claim filed in any of the Bankruptcy Cases by potentially responsible parties with respect to the Gowanus Site.

19. The Debtors each agree that, with respect to any suit for contribution brought against any of them after the Effective Date for matters related to this Settlement Agreement, they will notify the United States within fifteen business days of service of the complaint upon them. In addition, in connection with such suit, the Debtors shall notify the United States within fifteen business days of service or receipt of any Motion for Summary Judgment and within fifteen business days of receipt of any order from a court setting a case for trial (provided, however, that the failure to notify the United States pursuant to this Paragraph shall not in any way affect the protections afforded under Section VIII (Covenants Not to Sue and Reservation of Rights)).

X. RETENTION OF RECORDS AND CERTIFICATION

20. Until ten years after the Effective Date, each of the Debtors shall preserve and retain all non-identical copies of records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) now in its possession or control or which come into its possession or control that relate in any manner to (i) response actions taken at the Gowanus Site, or (ii) the liability of any person under CERCLA, RCRA, or state law with respect to the Gowanus Site. The above record retention requirement shall apply regardless of any corporate retention policy to the contrary.

21. At the conclusion of the record retention period provided for in the preceding Paragraph, the Debtors shall notify the United States at least ninety days prior to the destruction of any Records described in the preceding Paragraph, and, upon request by the United States, the Debtors shall deliver any such Records to the United States. The Debtors may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. The Debtors shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Debtors’ favor. However, no Records created or generated pursuant to the requirements of this or any other settlement or consent order with the United States or State of New York shall be withheld on the grounds that they are privileged or confidential.

22. The Debtors certify (i) that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to their potential liability regarding the Gowanus Site since the earlier of notification of potential liability by the United States regarding the

Gowanus Site or the filing of the U.S. Proof of Claim, and (ii) that they have fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XI. NOTICES AND SUBMISSIONS

23. Whenever, under the terms of this Settlement Agreement, written notice is required to be given, or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below via U.S. certified mail, return receipt requested, unless those individuals or their successors give notice of a change of address to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Except as otherwise provided in this Settlement Agreement, written notice as specified herein shall constitute complete satisfaction of any written notice requirement in the Settlement Agreement with respect to the United States and the Debtors, respectively.

As to the United States:

Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
Ref. DOJ File No. 90-11-3-09736

Lawrence H. Fogelman
Assistant United States Attorney
Office of the United States Attorney
for the Southern District of New York
86 Chambers Street, Third Floor
New York, NY 10007

Craig Kaufman
Attorney-Advisor
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

As to the Debtors:

Chemtura Corporation
199 Benson Road
Middlebury, CT 06762
ATTN: General Counsel

with copies to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
ATTN: M. Natasha Labovitz, Esq.

XII. JUDICIAL APPROVAL AND PUBLIC COMMENT

24. This Settlement Agreement shall be subject to approval of the Bankruptcy Court.

The Debtors shall promptly seek approval of this Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

25. This Settlement Agreement shall be lodged with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. The public comment period provided for in this Paragraph may run concurrently with any notice period required pursuant to Bankruptcy Rule 2002 or applicable local rule in connection with judicial approval of the Settlement Agreement pursuant to the preceding Paragraph.

26. After the period for public comment, the United States will file with the Bankruptcy Court any comments received, as well as the United States' responses to the comments. At that time, if appropriate, the United States will request approval of the Settlement

Agreement. The United States reserves the right to withdraw or withhold its consent to this Settlement Agreement if the public comments regarding it disclose facts or considerations which indicate that it is not in the public interest.

27. If for any reason (i) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 26, or (ii) the Settlement Agreement is not approved by the Bankruptcy Court, (iii) the New York Settlement Agreement is not approved by the Bankruptcy Court and/or District Court, (iv) the Plan of Reorganization is amended to provide for non-cash distributions to Governmental Units with allowed claims for Debtor liabilities under environmental law, or (v) the Bankruptcy Cases are dismissed or converted to cases under Chapter 7 of the Bankruptcy Code before the effective date of the Plan: (a) this Settlement Agreement shall be null and void and the Parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the Parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; and (c) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value, and it shall be as if they had never been executed.

XIII. PLAN OF REORGANIZATION

28. The Debtors shall not amend the Plan of Reorganization in a manner inconsistent with the terms and provisions of this Settlement Agreement, or take any other action in the Bankruptcy Cases that is inconsistent with the terms and provisions of this Settlement Agreement. The Debtors shall timely serve EPA with any motion to amend the Plan after its confirmation. EPA shall not oppose any term or provision of the Plan that is addressed by and consistent with this Settlement Agreement. The Parties reserve all other rights and defenses they may have with respect to the Plan.

XIV. INTEGRATION, AMENDMENTS, AND EXECUTION

29. This Settlement Agreement and any other documents to be executed in connection herewith and referred to herein shall constitute the sole and complete agreement of the Parties with respect to the matters addressed herein. This Settlement Agreement may not be amended except by a writing signed by all Parties.

30. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

XV. RETENTION OF JURISDICTION

31. The Court (or, upon withdrawal of the Court's reference, the District Court) shall retain jurisdiction over the subject matter of this Settlement Agreement and the Parties for the duration of the performance of the terms and provisions of this Settlement Agreement 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 interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT:

FOR THE UNITED STATES OF AMERICA:

Date:

9/28/10

By:

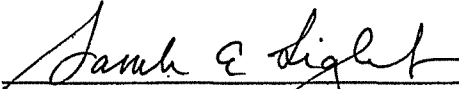


ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date:

9/30/10

By:

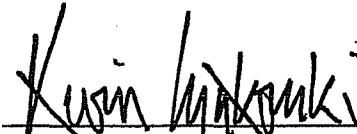


LAWRENCE H. FOGELMAN
SARAH E. LIGHT
BRIAN K. MORGAN
NATALIE N. KUEHLER
Assistant United States Attorneys
Office of the United States Attorney for the
Southern District of New York
86 Chambers Street, Third Floor
New York, NY 10007

Date:

9/30/10

By:



KEVIN LYSKOWSKI
Senior Bankruptcy Counsel
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 9/29/10

By: 
CYNTHIA GILES
Assistant Administrator for Enforcement and
Compliance Assurance
U.S. Environmental Protection Agency


Date: 9/23/10

By: 
CRAIG KAUFMAN
Attorney-Advisor
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

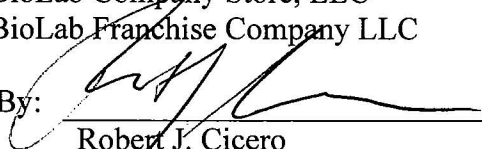
In re: Chemtura Corp. et al., Case No. 09-11233 (REG)

Dated: _____, 2010

Chemtura Corporation

By: 
Billie S. Flaherty
Senior Vice President, General
Counsel & Secretary

BioLab Company Store, LLC
BioLab Franchise Company LLC

By: 
Robert J. Cicero
Vice President and Secretary

A&M Cleaning Products, LLC
Aqua Clear Industries, LLC
ASCK, Inc.
ASEPSIS, Inc.
BioLab Textile Additives, LLC
Bio-Lab Inc.
CNK Chemical Realty Corp.
Crompton Colors Incorporated
Crompton Holding Corporation
Crompton Monochem, Inc.
GLCC Laurel, LLC
Great Lakes Chemical Corporation
Great Lakes Chemical Global, Inc.
GT Seed Treatment, Inc.
HomeCare Labs, Inc.
ISCI, Inc.
Kem Manufacturing Corporation
Laurel Industries Holdings, Inc.
Monochem, Inc.
Naugatuck Treatment Company
Recreational Water Products, Inc.
Uniroyal Chemical Company Limited
(Delaware)
Weber City Road LLC
WRL of Indiana, Inc.


By: 
Robert J. Cicero
Secretary

EXHIBIT A

Debtors

The Debtors, along with the last four digits of each Debtor's federal taxpayer identification number, are:

Chemtura Corporation (3153)
A&M Cleaning Products, LLC (4712)
Aqua Clear Industries, LLC (1394)
ASCK, Inc. (4489)
ASEPSIS, Inc. (6270)
BioLab Company Store, LLC (0131)
BioLab Franchise Company, LLC (6709)
Bio Lab, Inc. (8754)
BioLab Textile Additives, LLC (4348)
CNK Chemical Realty Corporation (5340)
Crompton Colors Incorporated (3341)
Crompton Holding Corporation (3342)
Crompton Monochem, Inc. (3574)
GLCC Laurel, LLC (5687)
Great Lakes Chemical Corporation (5035)
Great Lakes Chemical Global, Inc. (4486)
GT Seed Treatment, Inc. (5292)
HomeCare Labs, Inc. (5038)
ISCI, Inc. (7696)
Kem Manufacturing Corporation (0603)
Laurel Industries Holdings, Inc. (3635)
Monochem, Inc. (5612)
Naugatuck Treatment Company (2035)
Recreational Water Products, Inc. (8754)
Uniroyal Chemical Company Limited (Delaware) (9910)
Weber City Road LLC (4381)
WRL of Indiana, Inc. (9136)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

CHEMTURA CORPORATION, et al.,

Debtors.

Chapter 11

Case No. 09-11233 (REG)

Jointly Administered

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

CHEMTURA CORPORATION, *et al.*,

Debtors.

CHEMTURA CORPORATION, GREAT
LAKES CHEMICAL CORPORATION, ISCI,
INC., KEM MANUFACTURING
CORPORATION and NAUGATUCK
TREATMENT COMPANY,

Plaintiffs,

v.

UNITED STATES OF AMERICA, STATE OF
CONNECTICUT, STATE OF FLORIDA,
STATE OF NEW JERSEY, STATE OF NEW
YORK, STATE OF NORTH CAROLINA,
COMMONWEALTH OF PENNSYLVANIA,
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, SANTA ANA
REGIONAL WATER QUALITY CONTROL
BOARD, CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL,
CALIFORNIA STATE WATER RESOURCES
CONTROL BOARD, CONNECTICUT
COMMISSIONER OF ENVIRONMENTAL
PROTECTION, FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, NEW

Civil Action No. 10-cv-503 (RMB)

JERSEY DEPARTMENT OF)
 ENVIRONMENTAL PROTECTION,)
 ADMINISTRATOR OF NEW JERSEY SPILL)
 COMPENSATION FUND, NEW YORK)
 DEPARTMENT OF ENVIRONMENTAL)
 CONSERVATION, NORTH CAROLINA)
 DEPARTMENT OF ENVIRONMENT AND)
 NATURAL RESOURCES, NORTH CAROLINA)
 DIVISION OF WASTE MANAGEMENT and)
 PENNSYLVANIA DEPARTMENT OF)
 ENVIRONMENTAL PROTECTION,)
)
 Defendants.)
)

**SETTLEMENT AGREEMENT BETWEEN CHEMTURA
 CORPORATION AND THE STATE OF NEW YORK AND THE NEW YORK STATE
 DEPARTMENT OF ENVIRONMENTAL CONSERVATION WITH RESPECT TO THE
633 AND 688 COURT STREET SITES, BROOKLYN, NEW YORK**

WHEREAS, on March 18, 2009 (the “**Petition Date**”), Chemtura Corporation (“**Chemtura**”) and certain of its domestic affiliates (collectively the “**Debtors**”¹) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), (collectively, the “**Chapter 11 Cases**”). The Chapter 11 Cases are being jointly administered under Case Number 09-11233 (REG).

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: Chemtura Corporation (3153); A&M Cleaning Products, LLC (4712); Aqua Clear Industries, LLC (1394); ASCK, Inc. (4489); ASEPSIS, Inc. (6270); BioLab Company Store, LLC (0131); BioLab Franchise Company, LLC (6709); Bio-Lab, Inc. (8754); BioLab Textile Additives, LLC (4348); Chemtura Canada Co./Cie (5047); CNK Chemical Realty Corporation (5340); Crompton Colors Incorporated (3341); Crompton Holding Corporation (3342); Crompton Monochem, Inc. (3574); GLCC Laurel, LLC (5687); Great Lakes Chemical Corporation (5035); Great Lakes Chemical Global, Inc. (4486); GT Seed Treatment, Inc. (5292); HomeCare Labs, Inc. (5038); ISCI, Inc. (7696); Kem Manufacturing Corporation (0603); Laurel Industries Holdings, Inc. (3635); Monochem, Inc. (5612); Naugatuck Treatment Company (2035); Recreational Water Products, Inc. (8754); Uniroyal Chemical Company Limited (Delaware) (9910); Weber City Road LLC (4381); and WRL of Indiana, Inc. (9136). Chemtura Canada Co./Cie commenced its chapter 11 case on August 8, 2010.

WHEREAS, Chemtura's predecessors owned and/or operated manufacturing facilities at certain properties in the State of New York prior to the Petition Date, including facilities located at 633 Court Street ("**633 Court Street Site**") and 688-700 Court Street ("**688 Court Street Site**," collectively the "**Court Street Sites**") in Brooklyn, New York.

WHEREAS, Chemtura or its predecessors are among those who the State alleges disposed of, released, or discharged contamination, pollution, and hazardous waste and hazardous substances to the environment (hereinafter "environmental contamination") at the Court Street Sites so as to give rise to the obligation to remediate such contamination under New York Environmental Laws.²

WHEREAS, on or about May 22, 2002, the New York State Department of Environmental Conservation ("**NYSDEC**") issued an Order on Consent (the "**May 2002 Order**") to Chemtura's predecessor, Crompton Corporation ("**Crompton**"), which requires site investigation, assessment and remediation activities at the 688 Court Street Site.

WHEREAS, NYSDEC has not issued administrative orders to Crompton or Chemtura with respect to the 633 Court Street Site, but asserts that Chemtura is responsible for the remediation of environmental contamination there.

WHEREAS, in its Schedules and Statements of Financial Affairs, Chemtura listed NYSDEC as a creditor holding an unsecured contingent unliquidated claim under a "regulatory agreement," which referred to the May 2002 Order.

² "**New York Environmental Law(s)**" shall refer to the Environmental Conservation Law ("**ECL**"), including but not limited to Article 27, titles 9, 11 and 13 of the ECL and Title 6 of the New York Code of Rules and Regulations ("**NYCRR**") , including but not limited to Part 370 *et seq.*

WHEREAS, Chemtura performed certain investigative and remedial activities at the 688 Court Street Site under the May 2002 Order.

WHEREAS, after the commencement of its chapter 11 case, on June 18, 2009, Chemtura notified NYSDEC that it would suspend investigative and remedial activities at the 688 Court Street Site that were required under the May 2002 Order.

WHEREAS, on October 29, 2009, NYSDEC and the New York Attorney General's Office issued a Notice of Violation of the May 2002 Order and asserted the accrual of penalties for violations of the May 2002 Order.

WHEREAS, on October 29, 2009, NYSDEC filed a Proof of Claim (denominated by the Debtors' claims agent as Claim No. 11495) against Chemtura with respect to the 688 Court Street Site (the "**688 Court Street Claim**"), with a Notice of Administrative Claim to Chemtura's claims agent, which stated that the claim was filed in a "protective" manner and set forth NYSDEC's position that Chemtura's remediation obligations with respect to the 688 Court Street Site under the May 2002 Order and existing New York Environmental Laws did not constitute an unsecured contingent unliquidated "claim" within the meaning of 11 U.S.C. § 101(5) and therefore were not dischargeable.

WHEREAS, on October 29, 2009, NYSDEC also filed a Proof of Claim (denominated by the Debtors' claims agent as Claim No. 10880) against Chemtura with respect to the 633 Court Street Site (the "**633 Court Street Claim**" and, along with the 688 Court Street Claim, hereinafter the "**Court Street Claims**") with a Notice of Administrative Claim to Chemtura's claims agent, which stated that it was filed in a "protective" manner and set forth NYSDEC's position that Chemtura's remediation obligations with respect to the 633 Court Street Site under New York Environmental Laws did not constitute an unsecured contingent unliquidated "claim" within the meaning of 11 U.S.C. § 101(5) and therefore were not dischargeable.

WHEREAS, NYSDEC asserts that it is entitled to priority and administrative expense treatment for post-petition compliance with the May 2002 Order and any expenses related to the remediation of the Court Street Sites; for any expenses that NYSDEC incurs for response costs; and for any post- petition penalties assessed at the Court Street Sites after the Petition Date.

WHEREAS, on November 3, 2009, Chemtura and certain other Debtors commenced an adversary proceeding against the United States, New York, and certain other States by filing a complaint in the United States Bankruptcy Court which, as amended on January 19, 2010 (the “**Amended Complaint**”), seeks a declaration that Chemtura’s alleged injunctive and other obligations at environmentally contaminated sites the company did not, as of the Petition Date, own or operate constitute an unsecured claim dischargeable in bankruptcy (the “**Environmental Declaratory Action**”).

WHEREAS, the 688 Court Street Site is among the sites at issue in the Environmental Declaratory Action.

WHEREAS, on January 22, 2010, certain defendants in the Environmental Declaratory Action, including NYSDEC, filed a motion to withdraw the reference to the Bankruptcy Court with respect to the Environmental Declaratory Action, which was granted on March 26, 2010 by the United States District Court for the Southern District of New York, and the Environmental Declaratory Action is now pending in that Court.

WHEREAS, on February 12, 2010, Chemtura and the other plaintiffs in the Environmental Declaratory Action moved for summary judgment, and on April 21, 2010, the State and United States Defendants, including NYSDEC, cross-moved for summary judgment and also opposed Chemtura’s motion for summary judgment.

WHEREAS, on February 5, 2010, Chemtura filed an Objection to the Court Street Claims (“**Court Street Claims Objection**”), in which Chemtura contended, *inter alia*, that its alleged injunctive

and other obligations at certain sites it did not, as of the Petition Date, own or operate, are dischargeable in bankruptcy and that NYSDEC had failed to provide sufficient documentation for the Court Street Claims.

WHEREAS, Chemtura and NYSDEC agreed from time to time to adjourn the Court Street Claims Objection hearing before the Bankruptcy Court and the summary judgment briefing of the Environmental Declaratory Action before the District Court in order to pursue good faith settlement negotiations to resolve both.

WHEREAS, on or about June 18, 2010, Chemtura filed its Disclosure Statement and Plan of Reorganization with a motion seeking approval of the adequacy of the Disclosure Statement.

WHEREAS, Chemtura subsequently filed revised versions of the Disclosure Statement and Plan on July 9, 2010, July 20, 2010, and August 5, 2010.

WHEREAS, on August 5, 2010, the Bankruptcy Court entered an Order approving the Disclosure Statement.

WHEREAS, the Parties have engaged in extensive, arms-length negotiations in good faith and wish to resolve their differences with respect to the Court Street Claims Objection and the Environmental Declaratory Action and to address other matters as provided herein, without adjudication of the Court Street Claims Objection by the Bankruptcy Court or adjudication of the Environmental Declaratory Action by the District Court.

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein and as contained in the attached NYSDEC Administrative Orders on Consent for the 633 Court Street Site and the 688 Court Street Site (together hereinafter the “**Court Street Consent Orders**”), Chemtura, the State of New York, and NYSDEC hereby agree to the terms and provisions of this Settlement Agreement (the “**Agreement**”), and to the terms and provisions of the Court Street Consent Orders attached hereto.

NOW, THEREFORE, without any adjudication on any issue of fact or law, and upon the consent and agreement of the parties to this Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

DEFINITIONS

1. In this Agreement, the following terms shall have the meanings set forth below:
 - a. **“CERCLA”** refers to the Comprehensive Environmental, Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, as now in effect or hereafter amended.
 - b. **“Plan Effective Date”** means the date that a Plan that has been confirmed by the Bankruptcy Court becomes effective in accordance with its terms.
 - c. **“Settlement Effective Date”** means the later of (1) the date the Bankruptcy Court has entered an order approving this Agreement or (2) October 15, 2010, which is the outside date under Section 12.3 of the Plan for the Plan Effective Date to occur; provided, however, that NYSDEC shall consent to a reasonable extension of the October 15, 2010 date not to exceed sixty (60) days in the event that Section 12.3 of the Plan is amended or the Plan is not confirmed.
 - d. **“Plan of Reorganization”** or **“Plan”** means the Joint Chapter 11 Plan of Chemtura Corporation, *et al.*, dated August 4, 2010 (as amended, revised, modified, and supplemented from time to time).
 - e. **“RCRA”** refers to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* and to the federally-approved State RCRA program set forth in ECL Article 27, title 9 and title 6, Parts 370-375 of the New York Code of Rules and Regulations (**“NYCRR”**).

- f. **“Parties”** shall mean Chemtura Corporation, the State of New York and the New York State Department of Environmental Conservation.

JURISDICTION

2. The Bankruptcy Court and the United States District Court have jurisdiction over the settlement of these matters pursuant to 28 U.S.C. §§ 157 and 1334 subject to the provisions of Paragraph 39.

PARTIES BOUND, SUCCESSION, AND ASSIGNMENT

3. This Agreement applies to, is binding upon, and shall inure to the benefit of the State of New York, NYSDEC, and of Chemtura, reorganized Chemtura and their respective directors, officers, agents, representatives, employees, successors and assigns, and any trustee, examiner or receiver appointed in the Chapter 11 Cases.

TERMS OF RESOLUTION

4. Upon the Settlement Effective Date, Chemtura agrees to comply with its obligations under (a) as to the 688 Court Street Site, the May 2002 Order as amended and superseded by the 688 Court Street Site Consent Order; and (b) as to the 633 Court Street Site, the 633 Court Street Consent Order, as any of the foregoing are amended or superseded pursuant to New York Environmental Law, and such obligations shall not be impaired or affected in any way by these Chapter 11 Cases or the Plan of Reorganization. Nothing in this Agreement shall constitute a discharge under the Bankruptcy Code of any obligations of Chemtura at or in connection with the Court Street Sites.

688 COURT STREET SITE

5. As soon as practical after the Settlement Effective Date, the Parties shall execute and NYSDEC shall issue an amended consent order for the 688 Court Street Site, in the form set forth in Exhibit A, which will provide for investigation and remediation activities (the “**688 Court Street Consent Order**”).

6. Chemtura’s obligations with respect to the 688 Court Street Site shall be as provided in and required by the attached 688 Court Street Consent Order and shall be consistent with NYSDEC rules, regulations and guidance memorandum governing such activities. Chemtura’s liability for NYSDEC’s oversight costs at the 688 Court Street Site shall be capped at \$150,000, as stated in the 688 Court Street Consent Order.

7. As of the Settlement Effective Date, the May 2002 Order shall be superseded and Chemtura agrees to undertake investigation and remediation activities for the 688 Court Street Site, including off-site areas where contamination has migrated from the 688 Court Street Site, in compliance with the 688 Court Street Consent Order. Chemtura’s obligations with respect to the 688 Court Street Site shall be deemed satisfied upon the completion of approved investigation and remediation work and issuance of a No Further Action (or comparable) letter from NYSDEC.

8. Except with respect to the suspended civil penalty assessment set forth in, and to be governed by, the 688 Court Street Consent Order, NYSDEC agrees not to seek to recover civil penalties for any violation of the May 2002 Order or the New York Environmental Laws occurring prior to the Settlement Effective Date. NYSDEC reserves all rights to enforce the terms of the 688 Court Street Consent Order (including the assessment of penalties as set forth therein for violations occurring after the Settlement Effective Date or the recovery of the suspended penalty set forth therein).

9. NYSDEC shall receive no payments or distributions under the Plan in the Chapter 11 Cases with respect to any of Chemtura's liabilities and obligations for the 688 Court Street Site under the New York Environmental Laws or the May 2002 Order, provided, however, that this Agreement shall not affect penalties for any future violation of the 633 or 688 Court Street Consent Orders.

633 COURT STREET SITE

10. As soon as practical after the Settlement Effective Date, the Parties shall execute, and NYSDEC shall issue, the 633 Court Street Consent Order in the form set forth in Exhibit B (the "**633 Court Street Consent Order**").

11. On and after the Settlement Effective Date, Chemtura agrees to undertake investigation and remediation activities at the 633 Court Street Site in compliance with the 633 Court Street Consent Order subject to an aggregate cap on Chemtura's expenditures in the amount of \$3.596 million for such activities. All of Chemtura's obligations with respect to the 633 Court Street Site shall be deemed satisfied upon the earlier of (a) completion of remediation work and issuance of a No Further Action (or comparable) letter from NYSDEC; or (b) expenditure by or on behalf of Chemtura in the amount of \$3.596 million in the aggregate for investigation and remediation and NYSDEC oversight at the 633 Court Street Site, except to the extent of any contamination caused by the acts of Chemtura, its successors, assigns, officers, directors, employees, or trustees that occur after the Settlement Effective Date and give rise to liability under CERCLA, RCRA or State law. As used in the preceding sentence, the phrase "acts of Chemtura, its successors, assigns, officers, directors, employees, or trustees that occur after the Settlement Effective Date and give rise to liability under CERCLA, RCRA, or State law" does not include continuing releases related to conduct occurring before the Settlement Effective Date. Upon reaching either (a) or (b) above, NYSDEC covenants not to file a civil

action, not to take any administrative action, and not to seek any penalties against Debtors with respect to the 633 Court Street Site.

12. The 633 Court Street Consent Order shall govern the investigation and remediation activities at the 633 Court Street Site consistent with NYSDEC rules, regulations and guidance memoranda governing such activities. Chemtura will have control over the investigation and remediation activities at the 633 Court Street Site subject to NYSDEC oversight and approval as set forth in the 633 Court Street Consent Order and shall continue such activities until such time as (a) or (b) in Paragraph 11, above, occurs. NYSDEC retains the right (1) to review all invoices for work performed with respect to 633 Court Street, and (2) to conduct an audit of the costs associated with Chemtura's investigation and remediation activities.

13. At the request of Chemtura, upon Chemtura's inability, despite commercially reasonable efforts, to gain access to the 633 Court Street Site from the current owner for purposes of conducting investigation and remediation work, NYSDEC shall, pursuant to ECL Section 27-1309 or other applicable authority, obtain and authorize Chemtura's access to the 633 Court Street Site for the purpose of the conduct of investigation and remediation work, for purposes of which Chemtura shall constitute an "authorized person" within the meaning of ECL Section 27-1309. NYSDEC further agrees to facilitate the implementation of institutional controls.

14. NYSDEC's oversight costs at the 633 Court Street Site shall be capped as provided for in the 633 Court Street Consent Order at \$100,000. Consistent with this Agreement, costs incurred by Chemtura in the performance of investigation and remediation activities at the 633 Court Street Site, together with any amount of money attributed to NYSDEC's oversight costs, shall be included in and count toward satisfaction of Chemtura's \$3.596 million liability cap after the Settlement Effective Date. NYSDEC shall not seek any

penalties or other costs associated with any violations of New York Environmental Laws occurring prior to the Settlement Effective Date with respect to the 633 Court Street Site. NYSDEC reserves all rights to enforce the terms of the 633 Court Street Consent Order (including the assessment of penalties as set forth therein for violations occurring after the Settlement Effective Date).

15. NYSDEC shall receive no payments or distributions under the Plan in the Chapter 11 Cases with respect to any of Chemtura's liabilities and obligations under the New York Environmental Laws for the 633 Court Street Site, provided, however, that this Agreement shall not affect penalties for any future violation of the 633 or 688 Court Street Consent Orders.

TREATMENT OF PROOFS OF CLAIMS

16. The 688 Court Street Claim shall be deemed resolved in accordance with the terms of this Agreement as of the Settlement Effective Date without any further action by the Court or the Parties. Chemtura's obligations under the May 2002 Order as amended and superseded by the 688 Court Street Consent Order shall not be impaired in any way by these Chapter 11 Cases, confirmation of the Plan of Reorganization, or this Agreement. Nor shall anything in this Agreement or the Plan constitute a discharge of any obligations of Chemtura at or in connection with the 688 Court Street Site.

17. The 633 Court Street Claim shall be deemed resolved in accordance with the terms of this Agreement as of the Settlement Effective Date without any further action by the Bankruptcy Court or the Parties.

18. Upon the Settlement Effective Date, Chemtura's Court Street Claims Objection shall be deemed withdrawn without any further action of the parties or the Bankruptcy Court.

DISMISSAL OF COMPLAINT

19. Upon the Settlement Effective Date, the Parties shall jointly seek approval of this Agreement by the District Court and dismissal of the Environmental Declaratory Action as to the State of New York and NYSDEC as soon as practical insofar as it addresses the 688 Court Street Site. Upon approval by the District Court, the Amended Complaint in the Environmental Declaratory Action shall be dismissed as to NYSDEC and the State of New York, and Chemtura shall seek no declaration that its obligations to remediate the Court Street Sites, either in the Environmental Declaratory Action or as part of any Plan or order confirming a Plan of Reorganization, are discharged.

20. Chemtura and NYSDEC agree not to seek recovery of any costs or fees related to the Environmental Declaratory Action.

COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

21. With respect to the 688 Court Street Site, in consideration of all of the foregoing and in exchange for Chemtura's agreement to comply with the 688 Court Street Order, NYSDEC agrees that it will not file a civil action or to take any administrative or other action against any of the Debtors pursuant to any New York Environmental Law, CERCLA, or RCRA with regard to contamination at the 688 Court Street Site above and beyond what is provided for in the 688 Court Street Site Consent Order (including without limitation the suspended and stipulated civil penalties set forth therein). With respect to the 633 Court Street Site, in consideration of all of the foregoing and in exchange for Chemtura's compliance with the 633 Court Street Consent Order, NYSDEC agrees not to file a civil action or to take any administrative or other action against any of the Debtors pursuant to any New York Environmental Law, CERCLA, or RCRA with regard to contamination at the 633 Court Street Site to the extent that such action asserts that the Debtors have any remaining liability at the 633 Court Street Site beyond the obligations

of Chemtura subject to the \$3.596 million cap, set forth herein and the 633 Court Street Consent Order. As set forth in paragraph 11, all of Chemtura's obligations with respect to the 633 Court Street Site shall be deemed satisfied upon the earlier of (a) completion of remediation work and issuance of a No Further Action (or comparable) letter by NYSDEC or (b) expenditure by or on behalf of Chemtura in the amount of \$3.596 million in the aggregate, except to the extent of any contamination caused by the acts of Chemtura, its successors, assigns, officers, directors, employees, or trustees after the Settlement Effective Date and give rise to liability under CERCLA, RCRA, or state law. As used in the preceding sentence, the phrase "acts by Chemtura, its successors, assigns, officers, directors, employees, or trustees that occur after the Settlement Effective Date and give rise to liability under CERCLA, RCRA, or state law" does not include continuing releases related to conduct occurring before the Settlement Effective Date.

22. With respect to both Court Street Sites, this Agreement is without prejudice to all rights against the Debtors, their successors, assigns, officers, directors, employees, or trustees with respect to the Court Street Sites for liability for response costs, natural resource damages (including natural resource damage assessment costs), and injunctive relief under CERCLA, RCRA, or state law for acts by Chemtura, its successors, assigns, officers, directors, employees, or trustees, that occur after the Settlement Effective Date and give rise to liability under CERCLA, RCRA, or state law. As used in the preceding sentence, the phrase "acts by Chemtura, its successors, assigns, officers, directors, employees, or trustees that occur after the Settlement Effective Date and give rise to liability under CERCLA, RCRA, or state law" does not include continuing releases related to conduct occurring before the Settlement Effective Date.

23. This Agreement in no way impairs the scope and effect of the Debtors' discharge under section 1141 of the Bankruptcy Code as to any third parties or as to any claims of such third parties that are not addressed by this Agreement.

24. Without in any way limiting the covenants not to sue (and the reservations thereto) set forth in Paragraphs 21 and 22 above, and notwithstanding any other provision of this Agreement, such covenant not to sue shall also apply to the Debtors' officers, directors, employees, and trustees, but only to the extent that the alleged liability of the officer, director, employee, or trustee of any Debtor (each of the foregoing, a "**Beneficiary**") is based on its status as and in its capacity as an officer, director, employee, or trustee of any Debtor. The covenants not to sue shall not apply to any non-Debtor precedent owner or transferee of the 633 Court Street Site.

25. The covenants not to sue (and the reservations thereto) contained in Paragraphs 21 and 22 above extend only to the Debtors (and their successors, including the reorganized Debtors), the Beneficiaries, the State of New York, and NYSDEC, and do not extend to any other person. Nothing in this Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than the Debtors (and their successors, including the reorganized Debtors) and the Beneficiaries. Chemtura, the State of New York, and NYSDEC expressly reserve all claims, demands and causes of action either judicial or administrative, past, present or future, in law or equity, which Chemtura, the State of New York, and NYSDEC may have against all other persons, firms, corporations, entities or predecessors (to the extent they are not the Debtors) of the Debtors for any matter arising at, or relating in any manner to, the Court Street Sites or claims addressed herein.

26. Notwithstanding the foregoing, the covenant not to sue contained in Paragraphs 21 and 22 of this Agreement shall not apply to nor affect any action based on (i) a failure to meet a requirement of this Agreement or the Court Street Consent Orders; or (ii) criminal liability.

27. Except with respect to the covenants and agreements contained herein, nothing in this Agreement shall be deemed to limit the State of New York's or NYSDEC's authority under applicable law, including but not limited to its authority to take response action under the New York Environmental Laws or any other applicable law or regulation, nor shall it alter the applicable legal principles governing judicial review of any action taken by NYSDEC pursuant to that authority. Nothing in this Agreement shall be deemed to limit NYSDEC's information gathering authority under the New York Environmental Laws or any other applicable law or regulation, or to excuse the Debtors from any disclosure or notification requirements imposed by the New York Environmental Laws or any other applicable law or regulation.

28. Chemtura hereby covenants not to sue the State of New York and NYSDEC with respect to the Court Street Sites and releases any claims or causes of action against the State of New York and/or NYSDEC with respect to the Court Street Sites, except for any claims or defenses relating to a breach or enforcement of this Agreement or the Consent Orders.

NOTICES AND SUBMISSIONS

29. Whenever, under the terms of this Agreement, written notice is required to be given, or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change of address to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Except as otherwise provided in this Agreement, written notice (together with email to the addresses

provided) shall constitute complete satisfaction of any written notice requirement in this Agreement with respect to Chemtura and NYSDEC.

As to NYSDEC:

Bureau of Hazardous Waste Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12224
ATTN: Paul Patel
appatel@gw.dec.state.ny.us

Office of the New York Attorney General
Environmental Protection Bureau
The Capitol
Albany, NY 12224-0341
ATTN: Maureen F. Leary
Maureen.Leary@ag.ny.gov

As to Chemtura:

Billie S. Flaherty, Senior Vice President, General Counsel and
Secretary
Chemtura Corporation
199 Benson Road
Middlebury, CT
ATTN: General Counsel
billie.flaherty@chemtura.com

with copies to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
ATTN: Natasha Labovitz
natasha.labovitz@kirkland.com
ATTN: Craig A. Bruens
craig.bruens@kirkland.com

RETENTION OF RECORDS

30. Until ten years after the Effective Date, Chemtura shall preserve and retain all non-identical copies of records, reports, documents, and other information (including records,

reports, documents, and other information in electronic form) (hereinafter referred to as “**Records**”) now in its possession or control or which come into its possession or control that relate in any manner to the activities undertaken pursuant to this Agreement or the Court Street Consent Orders. This record retention requirement shall apply regardless of any corporate retention policy to the contrary.

31. Upon conclusion of the record retention period set forth above, Chemtura shall notify NYSDEC and the State of the planned destruction of any Records at least ninety (90) days before such destruction and, upon request, shall deliver such Records to NYSDEC. To the extent that Chemtura asserts that any records are privileged, such records shall be maintained until the State of New York and NYSDEC have had a reasonable time to dispute such asserted privilege and that dispute has been resolved in Chemtura’s favor. No Records created or generated pursuant to this Agreement or the Court Street Consent Orders shall be withheld from submission to NYSDEC or the State on the grounds of privilege or confidentiality.

EXCLUDED MATTERS

32. This Agreement shall not affect any causes of action or defenses the Parties may have with respect to matters not expressly specified herein, including, but not limited to, the liability of the Debtors, if any, to NYSDEC with respect to any site that is not the 633 Court Street Site or the 688 Court Street Site. For all matters not expressly specified herein, NYSDEC shall have those causes of action against the Debtors that they would have had if this Agreement had never been made, and the Debtors shall have whatever defenses they would have had, including defenses based on the Bankruptcy Code or Chapter 11 Cases, if this Agreement had never been made. Notwithstanding the foregoing or any contrary provision set forth in this Agreement, except as provided in paragraph 22 with respect to conduct following approval of this Agreement, Chemtura shall only be required to address off-site contamination caused by past

operations of Chemtura to the extent such contamination is present upland of the Gowanus Canal Superfund Site (as that site is officially defined by the U.S. Environmental Protection Agency). Except as provided in paragraph 22 with respect to conduct following approval of this Agreement, the Debtors shall not be required by the NYSDEC to investigate or remediate any such contamination that has entered the Gowanus Canal or any areas that are being actively investigated or remediated as part of the investigation or remediation of the Gowanus Canal Superfund Site, and NYSDEC shall not seek recovery from Debtors of any monies, nor seek to compel Debtors to perform any actions with respect to the such investigation or remediation or restoration of the Gowanus Canal Superfund Site.

CONTRIBUTION PROTECTION

33. This Agreement resolves the obligation of the Debtors with respect to the Court Street Sites for any and all costs of “response,” as that term is defined by section 101(25) of CERCLA, incurred or to be incurred, at or in relation to the Court Street Sites, by NYSDEC (hereinafter “matters addressed in this Agreement”). Provided Chemtura complies with the terms of this Agreement, the Debtors shall be entitled to protection from contribution actions or claims as provided under section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) (to the extent applicable) for matters addressed in this Agreement. The “matters addressed” in this Agreement do not include claims against Chemtura for past costs incurred by a potentially responsible party prior to the Petition Date and included in a proof of claim filed in Chemtura’s Chapter 11 cases with respect to the Court Street Sites. However, no subsequent finding of inapplicability of such section shall affect the finality or enforceability of this Agreement. The State of New York and NYSDEC shall have no duty to appear, intervene, assist or defend Chemtura from claims in any action for contribution.

34. Chemtura agrees that, with respect to any suit for contribution brought against it after the Settlement Effective Date for matters related to this Agreement, it will notify NYSDEC within fifteen (15) business days of service of the complaint upon it (provided, however, that the failure to notify NYSDEC pursuant to this Paragraph shall not in any way affect the protections afforded under the Covenants Not to Sue and Reservation of Rights).

COURT APPROVAL

35. This Agreement shall be subject to approval of the District and Bankruptcy Courts (the “**Courts**”). Chemtura shall promptly seek approval of this Agreement from the Bankruptcy Court under Bankruptcy Rule 9019 and/or other applicable provisions of the Bankruptcy Code and upon such approval shall seek approval from the District Court of this Agreement and the Dismissal of the Environmental Declaratory Action with respect to NYSDEC and the State of New York.

36. If for any reason (i) either of the Courts issues an order denying approval of this Agreement, or (ii) the Chemtura’s Chapter 11 cases are dismissed or converted to cases under chapter 7 of the Bankruptcy Code: (a) this Agreement shall be null and void, and the Parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the Parties shall have no liability to one another arising out of or in connection with this Agreement or under any documents executed in connection herewith; (c) this Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value and it shall be as if they had never been executed; (d) this Agreement, any statements made in connection with settlement discussions, and any documents prepared in connection herewith may not be used as evidence in any litigation between or among the Parties; and (e) the May 2002 Order shall be in full force and effect and the parties reserve their respective rights regarding the enforcement of that Order.

AMENDMENTS/INTEGRATION, COUNTERPARTS AND CONFLICTS

37. This Agreement, the Court Street Consent Orders, and any other documents to be executed in connection herewith shall constitute the sole and complete agreement of the parties hereto with respect to the matters addressed herein. This Agreement may not be amended except in writing signed by all Parties to this Agreement and approved by the Bankruptcy Court. This Agreement may be executed in counterparts each of which shall constitute an original and all of which shall constitute one and the same Agreement. Facsimile and/or pdf signatures of this Agreement shall be deemed as binding as original signatures.

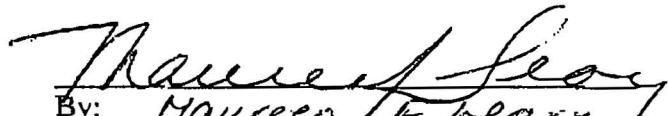
38. In the event of any conflict between the (i) Plan or Confirmation Order and (ii) this Agreement, including the Court Street Consent Orders, this Agreement and the Consent Orders shall govern.

RETENTION OF JURISDICTION

39. The Bankruptcy Court (or, upon withdrawal of the Bankruptcy Court's reference to the District Court, the District Court) shall retain jurisdiction over the subject matter of this Agreement; provided, however, that after the Settlement Effective Date, the New York Supreme Court and any other court of appropriate jurisdiction shall have jurisdiction over the enforcement of the Court Street Consent Orders.

40. AGREED to by the following duly authorized individuals on behalf of Chemtura and NYSDEC:

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK


By: Maureen F. Leahy
Title: Assistant Attorney General
Date: September 15, 2000

CHEMTURA CORPORATION

Billie S. Flaherty

By: Billie S. Flaherty

Title: Senior Vice President, Secretary and General Counsel

Dated: September 5, 2010

Exhibit A

688 Court Street Consent Order

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the Violations Article 27 of the New
York State Environmental Conservation Law ("ECL")
and Part 373 of Title 6 of the Official Compilation of
Codes, Rules and Regulations of the State of New
York ("6 NYCRR")

**AMENDED
ORDER ON CONSENT**

by

Case No.: D2-03811-10-08

Chemtura Corporation,
(with respect to 688-700 Court Street, Brooklyn, NY)

Respondent.

WHEREAS,

1. The New York State Department of Environmental Conservation ("Department") is responsible for enforcement of Article 27, Title 9 of the Environmental Conservation Law ("ECL") and the hazardous waste management rules and regulations promulgated thereunder in 6 NYCRR Part 370 et seq.
2. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.
3. Respondent Chemtura Corporation ("Chemtura") is a Delaware corporation having its principal place of business at 199 Benson Road, Middlebury, Connecticut, and is the successor corporation of Crompton Corporation ("Crompton").
4. Crompton was the former owner and operator of a facility, located at 688-700 Court Street, Brooklyn, New York, which generated and discharged hazardous waste (the "Site").
5. In May 2002, the Department and Crompton, entered into an Order on Consent to resolve certain violations at the Site and to investigate and remediate contamination at the Site and any impacted off-Site areas.
6. Since May 2002, Crompton, and then Chemtura as successor to Crompton, have conducted investigation and remediation of the Site under the May 2002 Order on Consent.

7. Following its bankruptcy filing, Chemtura advised the Department that it was unable to continue to comply with the May 2002 Order on Consent and subsequently failed to adhere to the Schedule of Compliance.

8. On or about October 29, 2009, the Department issued a Notice of Violation to Chemtura for alleged violations of the 2002 Order on Consent.

9. Chemtura waives its right to a hearing and consents to the issuance of this Order and agrees to be bound by its terms. Chemtura consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Chemtura pursuant to this Order.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Effect of Order

This Order on Consent amends the May 2002 Order on Consent. Chemtura shall carry out the activities required by this Order pursuant to the attached Schedule of Compliance.

II. Development, Performance, and Reporting of Work Plans

A. Work Plans

All activities that comprise any element of this Order and the Schedule of Compliance shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") to address on-Site contamination and off-Site contamination caused by the past operations of Chemtura. All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a Work Plan by the Department, Chemtura shall implement such Work Plan in accordance with the schedule contained in such Work Plan. Notwithstanding any contrary provision set forth in this Order on Consent, Chemtura shall only be required to address off-Site contamination caused by past operations of Chemtura to the extent such contamination is present upland of the Gowanus Canal Superfund Site (as that site is officially defined by the U.S. Environmental Protection Agency); Chemtura shall not be required to investigate or remediate any such contamination that has entered the Gowanus Canal or any areas that are being actively investigated or remediated as part of the investigation or remediation of the Gowanus Canal Superfund Site.

B. Submission/Implementation of Work Plans

1. (a) As required by the Schedule of Compliance, the RCRA Facility Investigation (RFI) Work Plan shall be submitted to the Department within 45 days of the effective date of this order..

(b) The Department may request that Chemtura submit additional or supplemental Work Plans for the Site. Within thirty (30) days after the Department's written request, Chemtura shall advise the Department in writing whether it will submit and implement the requested additional or supplemental Work Plan. If Chemtura elects to submit and

implement such Work Plan, Chemtura shall submit the requested Plan within sixty (60) days after such election.

(c) Chemtura may opt to propose one or more additional or supplemental Work Plans at any time, which the Department shall review for appropriateness and technical sufficiency.

2. A Professional Engineer must stamp and sign all Work Plans and engineering reports.

3. During all field activities conducted under this Order, Chemtura shall have on-Site a representative who is qualified to supervise the activities undertaken unless otherwise specified in the Work Plan.

C. Modifications to Work Plans

1. The Department shall notify Chemtura in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph II.A or to ensure that the Remedial Program otherwise protects human health and the environment.

2. Chemtura shall notify the Department in writing if Chemtura believes that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph II.A or to ensure that the remedial program otherwise protects human health and the environment and Chemtura shall submit a modified workplan to DEC pursuant to Subparagraph II.B.1.c.

III. Penalties

A. Chemtura is hereby assessed a penalty in the amount of Ninety-Nine Thousand Dollars (\$99,000), which shall be suspended and will be dismissed provided that Chemtura substantially complies with the terms and conditions set forth in this Order.

B. 1. Chemtura's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

2. Subject to Section VII.B., below, Chemtura shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Chemtura is in violation of the terms of this Order. All penalties begin to accrue on the first day Chemtura is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within fifteen (15) days after receipt of notification from the Department assessing the penalties. If such payment is not received within fifteen (15) days after Chemtura receives such notification from the Department, interest shall be payable at the annual rate of nine (9) per centum on the overdue amount from the day on which it was due through, and including, date of payment. Payment of penalties shall not in any way alter Chemtura's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$2500
16th through 30th day	\$5000
31st day and thereafter	\$7500

C. 1. Chemtura shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any event arising from causes beyond the reasonable control of Chemtura, of any entity controlled by Chemtura, and of Chemtura's contractors, that delays or prevents the performance of any obligation under this Order despite Chemtura's best efforts to fulfill the obligation ("Force Majeure Event"). The requirement that Chemtura exercise best efforts to fulfill the obligation includes using best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure Event" does not include Chemtura's economic inability to comply with any obligation, the failure of Chemtura to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Chemtura shall notify the Department in writing within seven (7) days after it obtains knowledge of any Force Majeure Event. Chemtura shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such seven-day period constitutes a waiver of any claim that a delay is not subject to penalties. Chemtura shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew

3. Chemtura shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Chemtura complied with the requirements of Subparagraph III.C.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for such time as is reasonably necessary to complete those obligations.

IV. Entry upon Site

A. Chemtura hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Chemtura) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to

ensure Chemtura's compliance with this Order. Upon request, Chemtura shall (i) provide the Department with suitable work space at the Site, including access to a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data are not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Chemtura is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Chemtura shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Chemtura.

V. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Chemtura shall pay to the Department a sum of money which shall represent reimbursement for the State's oversight costs, for work performed at or in connection with the Site. The total sum of State oversight costs that Chemtura shall pay to the Department under this Order shall not exceed One Hundred and Fifty Thousand Dollars (\$150,000).

B. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Such invoice shall be sent to Chemtura at the following address:

Chemtura Corporation
199 Benson Road
Middlebury, CT 06749
Attn: Raman Iyer, Director EH&S and Remediation

D. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7010

VI. Access

Chemtura shall use "best efforts" to obtain all Site access, permits, easements, right-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Chemtura's obligations under this Order. If Chemtura is unable to gain access to a location, which the Department has determined must be accessed for investigation and/or remediation required under this Order, or unable to obtain building, zoning or wetlands permits for the remediation work, solely at the request of Chemtura, the Department agrees, to the extent authorized by law, to assist Chemtura in gaining such access or permits. If, even with the Department's assistance, such access is still unavailable to the Chemtura, the Department will, to the extent that it deems necessary, legally obtain access for the Department's contractors to do such work, in which case the Department shall consider hiring Chemtura's contractors to do such work, provided that such consideration must be consistent with the Department's normal contractual procurement procedures. If the Department has to utilize its Contractors, Chemtura shall, within 45 days of receipt of the bills, reimburse the Department for all costs that the State incurs. Chemtura's inability to gain access to a location, which the Department has determined must be accessed pursuant to this Order, or to obtain any permits necessary for the remediation work, in a timely manner, despite good faith efforts, shall not be deemed non-compliance with this Order and appropriate adjustments shall be made to this Order to take into account time periods prior to access being provided.

VII. Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person other than Chemtura.

B. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities to exercise its summary abatement powers with respect to Chemtura, subject to the cap on State oversight costs set forth in Paragraph V.A.

C. Except as otherwise provided in this Order, Chemtura specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Chemtura, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Chemtura's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Chemtura, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Chemtura reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

VIII. Indemnification

Chemtura shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of Chemtura, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance after the date hereof with the provisions of this Order by Chemtura or its employees, servants, agents, successors or assigns.

IX. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. Communication from Chemtura shall be sent to:

Bureau of Hazardous Waste Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12224

With a copy to:

Benjamin Conlon, Esq.
Bureau Chief and Associate Attorney
Bureau of Remediation and Revitalization
Office of General Counsel
625 Broadway
Albany, New York 12224

Note: One (1) hard copy of plans is required, as well as one (1) electronic copy with copies to:

Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

2. Communication to be made from the Department shall be sent to:

Chemtura Corporation
199 Benson Road
Middlebury, CT 06749
Attn: Raman Iyer, Director EH&S and Remediation

With copies to:

Chemtura Corporation
199 Benson Road
Middlebury, CT 06749
Attn: General Counsel

B. The Department and Chemtura reserve the right to designate additional or different addressees for communication upon written notice to the other.

C. Each party shall notify the other within ninety (90) days after any change in the addresses in this Paragraph VIII.

X. Release

Upon satisfactory completion of the work required under the order by Chemtura, the Department shall issue a release to Chemtura in the form set forth in Attachment A.

XI. Miscellaneous

A. This Order shall take effect when it is signed by the Commissioner of Environmental Conservation, or his designee, and shall expire when Chemtura has fully complied with the requirements of this Order.

B. This Order shall constitute the entire agreement of the Department and Chemtura with respect to settlement of those violations specifically referenced herein.

C. The provisions, terms, and conditions of this Order shall be deemed to bind Chemtura and Chemtura's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

D. If Chemtura is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Chemtura's attorney by ordinary mail shall be deemed good and sufficient service.

DATED:

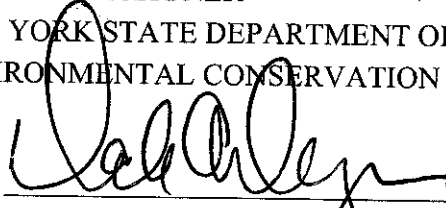
NOV 30 2010

~~ALEXANDER B. GRANNIS~~

COMMISSIONER

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Dale A. Desnoyers, Director

Division of Environmental Remediation

CONSENT BY RESPONDENT

Chemtura hereby consents to the issuing and entering of this Order, waives Chemtura's right to a hearing herein as provided by law, and agrees to be bound by this Order.

Chemtura Corporation

By: Bruce A. Flaherty

Title: Senior Vice President, General Counsel and Secretary

Date: NOVEMBER 24, 2010

CONNECTICUT
STATE OF ~~NEW YORK~~)

) ss: MIDDLEBURY
COUNTY OF NEW HAVEN)

On the 24th day of November, in the year 2010, before me, the undersigned, personally appeared Billie Flaherty, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Maria Thompson
Signature and Office of individual
taking acknowledgment

MARIA THOMPSON
NOTARY PUBLIC
MY COMMISSION EXPIRES JULY 31, 2014

CONSENT BY RESPONDENT

Chemtura hereby consents to the issuing and entering of this Order, waives Chemtura's right to a hearing herein as provided by law, and agrees to be bound by this Order.

Chemtura Corporation

By: Billie A. Flaherty

Title: Senior Vice President, General Counsel and Secretary

Date: NOVEMBER 24, 2010

CONNECTICUT
STATE OF ~~NEW YORK~~)

) ss: MIDDLEBURY
COUNTY OF NEW HAVEN)

On the 24th day of November, in the year 2010, before me, the undersigned, personally appeared Billie Flaherty, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Maria Thompson
Signature and Office of individual
taking acknowledgment

MARIA THOMPSON
NOTARY PUBLIC
MY COMMISSION EXPIRES JULY 31, 2014

**Compliance Schedule for the On-Site and Off-Site Remediation of 688-700 Court Street,
Brooklyn**

1) Chemtura will provide DEC a RCRA Facility Investigation (RFI) work plan ("Work Plan") for 688 Court Street by the later October 1, 2010 and 45 days after the effective date of this Order. This work plan will expand on the July 13, 2010 letter submitted to the Department for the off-site investigation of the 688-700 Court Street facility (the "Site"). The extent of Site derived groundwater contamination needs to be defined. Current groundwater data from all sides of the Site will need to be developed. Monitoring wells should be constructed such that the well screens extend from two feet above the water table through the fill material and end at the top of the clay and silt layer which will allow for sampling of both LNAPLs and DNAPLs. Any new wells installed should be flush mounted. This Work Plan must include enough Off-Site groundwater wells and soil borings to delineate the vertical and horizontal extent of contamination in the area around the former Chemtura facility. To the extent practicable, all wells and soil borings must be installed in the same mobilization as that of 633 Court Street to help contain the cost of the work.

In addition, soil vapor sampling must include samples through the sidewalk outside of building 688 on the northern, southern, eastern and western sides. Additional indoor and outdoor air and sub-slab vapor sampling may be required by the Department based on the results from the initial investigation. This sampling will meet the requirements of the Department of Health's Guidance for Evaluating Soil Vapor Intrusion in the State of New York, October 2006.

2) No later than thirty (30) calendar days after written notification by the Commissioner approving the RFI Work Plan, Chemtura shall begin field sampling to implement the Work Plan.

3) Within ninety (90) days of the start of field sampling, Chemtura shall submit the RFI report to the Commissioner for approval. The RFI Report must contain adequate information to support further corrective action decisions at the Site and/or off-Site, should such actions be necessary. If the data are insufficient to support a Corrective Measures Study ("CMS"), an additional phase of the RFI will need to be implemented. The Department will supply Chemtura with a scope of work for the Phase 2 RFI, and Chemtura will begin field sampling to implement the Scope of Work within thirty (30) days, and provide a Final Phase 2 RFI report to this office within ninety (90) days of completion of the Phase 2 RFI. If the data from the first RFI are sufficient for a CMS, the Phase 1 RFI report will be considered to be the Final RFI Report.

The Final RFI Report shall describe the procedures, methods, and results of all Site investigations of SWMUs and AOCs and their releases, including information on the type and extent of contamination at the Site and/or off-Site, sources and migration pathways, and actual or potential receptors. It shall present all information gathered under the approved RFI Work Plan and summarize past findings. It must also include a Report on Current Conditions for the inaccessible SWMU(s) and/or AOC(s).

4) If the Commissioner determines that a CMS is needed, the Commissioner shall notify Chemtura in writing within one-hundred and twenty (120) days after the Final RFI Report has been submitted. This notice shall identify the hazardous constituent(s) which have exceeded

target cleanup level(s) that are considered a threat to human health and the environment given Site specific exposure conditions. The notification shall specify the target cleanup levels for hazardous constituents detected in each medium of concern, and may also specify corrective measure alternatives to be evaluated by Chemtura during the CMS.

In accordance with the Department's letter, Chemtura shall submit to the Commissioner for approval a CMS. At a minimum, the CMS shall:

(i) Summarize the results of the investigations and, if applicable, of any bench-scale or pilot tests conducted;

(ii) Provide a detailed description of the corrective measures evaluated and include an evaluation of how each corrective measure alternative meets the standards for protection of human health and the environment, attaining media target cleanup levels selected by the Commissioner during the corrective measures selection process and controlling the source(s) of release(s) so as to reduce or eliminate, to the maximum extent practicable, further releases of hazardous waste, including hazardous constituents, that might pose a threat to human health and the environment, and detailed cost estimates for each alternative or combination of likely alternatives.

5) The Department will select a remedial alternative, or combination of alternatives, which best protect human health and the environment. The Department will identify the selected alternative(s) for Chemtura in writing.

6) Within sixty (60) days of the Department's letter identifying the preferred Corrective Measure, Chemtura will provide the Department with a Corrective Measures Implementation ("CMI") plan for approval by the Commissioner. The Plan must include details on the Design Approach; Citizen Participation Plan; Contingency Plans (including dust suppression problems, spills, injuries etc.); confirmation sampling; handling/staging of soil, groundwater and debris; worker safety protocols; Project Schedule, QA/QC, and any restoration work if needed.

7) Within thirty (30) days of the Commissioner's approval of the CMI Plan, Chemtura will implement the CMI. Until the Final Construction Complete Report is submitted to the Department, Chemtura will provide this office with a weekly status report which summarizes the work accomplished, problems encountered during the past week and the following week's schedule.

8) A final Construction Complete Report must be submitted to the commissioner within 60 days of cessation of the remedial work at 688 Court Street.

9) Note: All work plans that Chemtura submits to the Department must be signed and stamped by a Professional Engineer licensed in the State of New York.

Exhibit B

633 Court Street Consent Order

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the Violations of Article 27, Titles 9
and 13 of the New York State Environmental
Conservation Law ("ECL") and Parts 370-375 of Title 6
of the Official Compilation of Codes, Rules and
Regulations of the State of New York ("6 NYCRR")

ORDER ON CONSENT

by
Chemtura Corporation
(with respect to 633 Court Street, Brooklyn, NY)

Case
No.: D2-03811-10-08

Respondent.

WHEREAS,

1. The New York State Department of Environmental Conservation ("Department") is responsible for enforcement of Article 27, Titles 9 and 13 of the Environmental Conservation Law ("ECL") and the hazardous waste management and inactive hazardous waste site cleanup rules and regulations promulgated thereunder in 6 NYCRR Part 370 through 375 et seq.
2. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.
3. Respondent Chemtura Corporation ("Chemtura") is a Delaware corporation having its principal place of business at 199 Benson Road, Middlebury, Connecticut, and is the successor corporation of Crompton Corporation ("Crompton").
4. Crompton was the former owner and operator of a facility, located at 633 Court Street, Brooklyn, New York, which generated and discharged hazardous waste and hazardous substances (the "Site").
5. Chemtura, as successor to Crompton, is responsible for releases of hazardous wastes and hazardous substances at and from the Site, in violation of ECL Article 27, Titles 9 and 13 and the regulations promulgated thereunder.

6. Chemtura waives its right to a hearing and consents to the issuance of this Order and agrees to be bound by its terms. Chemtura consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Chemtura pursuant to this Order.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Effect of Order

Chemtura shall carry out the activities required by this Order pursuant to the attached Schedule of Compliance.

II. Development, Performance and Reporting of Work Plans

A. Work Plans

All activities that comprise any element of this Order and the Schedule of Compliance shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") to address on-Site contamination and off-Site contamination caused by the past operations of Chemtura. All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a Work Plan by the Department, Chemtura shall implement such Work Plan in accordance with the schedule contained in such Work Plan. Notwithstanding any contrary provision set forth in this Order on Consent, Chemtura shall only be required to address off-Site contamination caused by past operations of Chemtura to the extent such contamination is present upland of the Gowanus Canal Superfund Site (as that site is officially defined by the U.S. Environmental Protection Agency); Chemtura shall not be required to investigate or remediate any such contamination that has entered the Gowanus Canal or any areas that are being actively investigated or remediated as part of the investigation or remediation of the Gowanus Canal Superfund Site.

B. Submission/Implementation of Work Plans

1. (a) As required by the Schedule of Compliance, the RCRA Facility Investigation (RFI) Work Plan shall be submitted to the Department within 45 days of the effective date of this Order.

(b) The Department may request that Chemtura submit additional or supplemental Work Plans for the Site. Within thirty (30) days after the Department's written request, Chemtura shall advise the Department in writing whether it will submit and implement the requested additional or supplemental Work Plan. If Chemtura elects to submit and

implement such Work Plan, Chemtura shall submit the requested Plan within sixty (60) days after such election.

(c) Chemtura may opt to propose one or more additional or supplemental Work Plans at any time, which the Department shall review for appropriateness and technical sufficiency.

2. A Professional Engineer must stamp and sign all Work Plans and engineering reports.

3. During all field activities conducted under this Order, Chemtura shall have an on-Site a representative who is qualified to supervise the activities undertaken unless otherwise specified in the Work Plan.

C. Modifications to Work Plans

1. The Department shall notify Chemtura in writing if the Department determines than any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph II.A or to ensure that the Remedial Program otherwise protects human health and the environment.

2. Chemtura shall notify the Department in writing if Chemtura believes that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph II.A or to ensure that the remedial program otherwise protects human health and the environment, and Chemtura shall submit a modified workplan to DEC pursuant to Subparagraph II.B.1.c.

III. Penalties

A. 1. Chemtura's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

2. Subject to Section VIII.B., below, Chemtura shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Chemtura is in violation of the terms of this Order. All penalties begin to accrue on the first day Chemtura is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within fifteen (15) days after receipt of notification from the Department assessing the penalties. If such payment is not received within fifteen (15) days after Chemtura receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. Payment of penalties shall not in any way alter Chemtura's obligation to complete performance under the

terms of this Order. Stipulated penalties shall be due and payable pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$2500
16th through 30th day	\$5000
31st day and thereafter	\$7500

B. 1. Chemtura shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any event arising from causes beyond the reasonable control of Chemtura, of any entity controlled Chemtura by and of Chemtura's contractors, that delays or prevents the performance of any obligation under this Order despite Chemtura's best efforts to fulfill the obligation ("Force Majeure Event"). The requirement that Chemtura exercise best efforts to fulfill the obligation includes using best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure Event" does not include Chemtura's economic inability to comply with any obligation, the failure of Chemtura to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Chemtura shall notify the Department in writing within seven (7) days after it obtains knowledge of any Force Majeure Event. Chemtura shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such seven (7) day period constitutes a waiver of any claim that a delay is not subject to penalties. Chemtura shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew.

3. Chemtura shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Chemtura complied with the requirements of Subparagraph III.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for such time as is reasonably necessary

to complete those obligations.

IV. Entry upon Site

A. Chemtura hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Chemtura by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Chemtura's compliance with this Order. Upon request, Chemtura shall (i) provide the Department with suitable work space at the Site, including access to a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data are not considered privileged and that portion of any privileged document containing raw data must be provided to the Department.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Chemtura shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Chemtura.

V. Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Chemtura shall pay to the Department a sum of money which shall represent reimbursement for the State's oversight costs, for work performed at or in connection with the Site. The total sum of State oversight costs that Chemtura shall pay to the Department under this Order shall not exceed One Hundred Thousand dollars.

B. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

- C. Such invoice shall be sent to Chemtura at the following address:
Chemtura Corporation
199 Benson Road
Middlebury, CT 06749
Attn: Raman Iyer, Director EH&S and Remediation
- D. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7010

- E. Chemtura is responsible for payment of all costs incurred pursuant to its obligations under this Order, including reimbursements for the State's costs detailed in paragraph V.A.

VI. Cap on Costs

After the effective date of this Order, Chemtura will begin an accounting of all costs it incurs pursuant to the activities undertaken by this Order, and it shall continue such accounting until the earlier of (a) completion of remediation work and issuance of a No Further Action (or comparable) letter by the Department or (b) the total expenditure by or on behalf of Chemtura for investigation, remediation and State oversight costs in excess of a total of \$3.596 million. A detailed cost estimate for any costs that will be incurred over the sum of One Hundred Thousand dollars (\$100,000) shall be submitted to the Department for its review and approval prior to the commencement of that work. Upon the earlier of (a) issuance by the Department of a No Further Action (or comparable) letter or (b) Chemtura's accounting for \$3.596 million dollars in costs is submitted to and approved by the Department, this Order will terminate and Chemtura will receive a release of liability from the Department for the Site as set forth in attachment A or such other form as is appropriate.

VII. Access

Chemtura shall use "best efforts" to obtain all Site access, permits, easements, right-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Chemtura's obligations under this Order. If Chemtura is unable to gain access to a location, which the Department has determined must be accessed for investigation and/or remediation required under this Order, or unable to obtain building, zoning or wetlands permits for the remediation work, solely at the request of Chemtura, the Department agrees, to the extent

authorized by law, to assist Chemtura in gaining such access or permits. If, even with the Department's assistance, such access is still unavailable to the Chemtura, the Department will, to the extent that it deems necessary, legally obtain access for the Department's contractors to do such work, in which case the Department shall consider hiring Chemtura's contractors to do such work., provided that such consideration must be consistent with the Department's normal contractual procurement procedures. If the Department has to utilize its own contractors, Chemtura shall, within 45 days of receipt of the bills, reimburse the Department for all costs that the State incurs. Chemtura's inability to gain access to a location, which the Department has determined must be accessed pursuant to this Order, or to obtain any permits necessary for the remediation work, in a timely manner, despite good faith efforts, shall not be deemed non-compliance with this Order and appropriate adjustments shall be made to this Order to take into account time periods prior to access being provided.

VIII. Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person other than Chemtura.

B. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities to exercise its summary abatement powers with respect to Chemtura, subject to the cap on State oversight costs set forth in Paragraph V.A. and the cap on costs set forth in Paragraph VI

C. Except as otherwise provided in this Order, Chemtura specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Chemtura, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Chemtura's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Chemtura and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Chemtura reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

IX. Indemnification

Chemtura shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of Chemtura, intentional, negligent, or otherwise, of every nature and description, after the date hereof arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Chemtura or its employees, servants, agents, successors or assigns.

X. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. Communication from Chemtura shall be sent to:

Bureau of Hazardous Waste Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12224

With a copy to:

Benjamin Conlon, Esq.
Bureau Chief and Associate Attorney
Bureau of Remediation and Revitalization
Office of General Counsel
625 Broadway
Albany, New York 12224

Note: One (1) hard copy of plans is required, as well as one (1) electronic copy with copies to:

Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

2. Communication to be made from the Department shall be sent to:

Chemtura Corporation
199 Benson Road
Middlebury, CT 06749
Attn: Raman Iyer, Director EH&S and Remediation

With copies to:

Chemtura Corporation
199 Benson Road
Middlebury, CT 06749
Attn: General Counsel

B. The Department and Chemtura reserve the right to designate additional or different addressees for communication upon written notice to the other.

C. Each party shall notify the other within ninety (90) days after any change in the addresses in this Paragraph X.

XI. Release

Upon satisfactory completion of the work required under the order, or if prior to satisfactory completion of the work required under the order Chemtura meets the criteria set forth in paragraph VI above, the Department shall issue a release to Chemtura in the form set forth in Attachment A or in such other form as is appropriate.

XII. Miscellaneous

A. This Order shall take effect when it is signed by the Commissioner of Environmental Conservation, or his designee, and shall expire when Chemtura has fully complied with the requirements of this Order.

B. This Order shall constitute the entire agreement of the Department and Chemtura with respect to settlement of those violations specifically referenced herein.

C. The provisions, terms, and conditions of this Order shall be deemed to bind Chemtura and Chemtura's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

CONSENT BY RESPONDENT

Chemtura hereby consents to the issuing and entering of this Order, waives Chemtura's right to a hearing herein as provided by law, and agrees to be bound by this Order.

Chemtura Corporation

By: Brian A. Flaherty

Title: Senior Vice President, General Counsel and Secretary

Date: NOVEMBER 24, 2010

CONNECTICUT
STATE OF NEW YORK)

COUNTY OF NEW HAVEN)

ss: MIDDLEBURY

On the 24th day of November, in the year 2010, before me, the undersigned, personally appeared Billie Flaherty, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Maria Thompson
Signature and Office of individual
taking acknowledgment

MARIA THOMPSON
NOTARY PUBLIC
MY COMMISSION EXPIRES JULY 31, 2014

CONSENT BY RESPONDENT

Chemtura hereby consents to the issuing and entering of this Order, waives Chemtura's right to a hearing herein as provided by law, and agrees to be bound by this Order.

Chemtura Corporation

By: Billie A. Flaherty

Title: Senior Vice President, General Counsel and Secretary

Date: NOVEMBER 24, 2010

CONNECTICUT
STATE OF ~~NEW YORK~~)
COUNTY OF ~~NEW HAVEN~~)

ss: MIDDLEBURY

On the 24th day of November, in the year 2010, before me, the undersigned, personally appeared Billie Flaherty, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Maria Thompson
Signature and Office of individual
taking acknowledgment

MARIA THOMPSON
NOTARY PUBLIC
MY COMMISSION EXPIRES JULY 31, 2014

D. If Chemtura is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Chemtura's attorney by ordinary mail shall be deemed good and sufficient service.

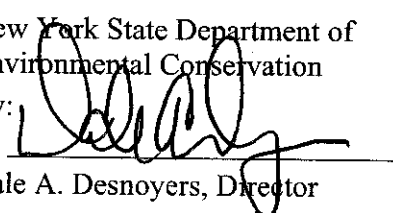
DATED:

NOV 30 2010

~~ALEXANDER B. GRANNIS~~
~~COMMISSIONER~~

New York State Department of
Environmental Conservation

By:

A handwritten signature in black ink, appearing to read "Dale A. Desnoyers", is written over a horizontal line.

Dale A. Desnoyers, Director
Division of Environmental Remediation

The Final RFI Report shall describe the procedures, methods, and results of all Site investigations of SWMUs and AOCs and their releases, including information on the type and extent of contamination at the Site and/or off-Site, sources and migration pathways, and actual or potential receptors. It shall present all information gathered under the approved RFI Work Plan and summarize past findings. It must also include a Report on Current Conditions for the inaccessible SWMU(s) and/or AOC(s).

4) If the Commissioner determines that a CMS is needed, the Commissioner shall notify Chemtura in writing within one-hundred and twenty (120) days after the Final RFI Report has been submitted. This notice shall identify the hazardous constituent(s) which have exceeded target cleanup level(s) that are considered a threat to human health and the environment given site specific exposure conditions or due to additive exposure risk. The notification shall specify the target cleanup levels for hazardous constituents detected in each medium of concern, and may also specify corrective measure alternatives to be evaluated by Chemtura during the CMS.

In accordance with the Department's letter, Chemtura shall submit to the Commissioner for approval a CMS. At a minimum, the CMS shall:

(i) Summarize the results of the investigations and, if applicable, of any bench-scale or pilot tests conducted;

(ii) Provide a detailed description of the corrective measures evaluated and include an evaluation of how each corrective measure alternative meets the standards for protecting human health and the environment, attaining media target cleanup levels selected by the Commissioner during the corrective measures selection process and controlling the source(s) of release(s) so as to reduce or eliminate, to the maximum extent practicable, further releases of hazardous waste, including hazardous constituents, that might pose a threat to human health and the environment, and detailed cost estimates for each alternative or combination of likely alternatives.

5) The Department will select a remedial alternative, or combination of alternatives, which best protect human health and the environment. The Department will identify the selected alternative(s) for Chemtura in writing.

6) Within sixty (60) days of the Department's letter from paragraph 5, above, Chemtura will provide the Department with a Corrective Measures Implementation (CMI) plan for approval by the Commissioner. The Plan must include details on the Design Approach; Citizen Participation Plan; Contingency Plans (including dust suppression problems, spills, injuries etc.); confirmation sampling; handling/staging of soil, groundwater and debris; worker safety protocols; Project Schedule, QA/QC, and any restoration work if needed.

7) Within thirty (30) days of the Commissioner's approval of the CMI Plan, Chemtura will implement the CMI. Until the Final Construction Complete Report is submitted to the

Department, Chemtura will provide this office with a weekly status report which summarizes the work accomplished, and problems encountered during the past week.

8) A final Construction Complete Report must be submitted to the commissioner within sixty (60) days of cessation of the remedial work at 633 Court Street.

9) Note: All work plans that Chemtura submits to the Department must be signed and stamped by a Professional Engineer licensed in the State of New York.

**Compliance Schedule for the On-Site and Off-Site Remediation of 633 Court Street,
Brooklyn**

1) Chemtura will provide DEC a RCRA Facility Investigation (RFI) work plan for 633 Court Street by the later of October 1, 2010 and 45 days after the effective date of this Order. The extent of Site derived groundwater contamination needs to be defined. Monitoring wells will need to be placed in the park. Monitoring wells should be constructed such that the well screens extend from two feet above the water table through the fill material and end at the top of the clay and silt layer which will allow for sampling of both LNAPLs and DNAPLs. Any new wells installed should be flush mounted so they don't impact normal park activities. This Work Plan must include enough on-Site and off-Site groundwater wells and soil borings to delineate the vertical and horizontal extent of contamination in the area around the former Chemtura facility. At least four (4) monitoring wells must be placed in the Red Hook Park. All wells and soil borings must be placed in only one mobilization.

The Work Plan shall also include indoor and outdoor air and sub-slab vapor sampling for building 633. This sampling will meet the requirements of the Department of Health's Guidance for Evaluating Soil Vapor Intrusion in the State of New York, October 2006. In addition, soil vapor sampling must include samples through the sidewalk outside of building 633 on the northern, southern and western sides. Additional indoor and outdoor air and sub-slab vapor sampling may be required by the Department based on the results from the initial investigation.

2) No later than thirty (30) calendar days after written notification by the Commissioner approving the RFI Work Plan, Chemtura shall begin field sampling to implement the Work Plan.

3) Within ninety (90) days of the start of field sampling, Chemtura shall submit the first RFI report to the Commissioner for approval. The RFI report must contain adequate information to support further corrective action decisions at the Site and/or off-Site, should such actions be necessary. If the data are insufficient to support a Corrective Measures Study ("CMS"), a Phase 2 RFI will need to be implemented. The Department will supply Chemtura with a scope of work for the Phase 2 RFI, and Chemtura will begin field sampling to implement the scope of work within (30) days, and provide the Final Phase 2 RFI Report to this office within ninety (90) days of completion of the Phase 2 RFI. If the data from the first RFI are sufficient for a CMS, the Phase 1 RFI Report will be considered to be the Final RFI Report.



Chemtura Corporation
199 Benson Road
Middlebury, CT 06749

Telephone: 203-573-2701
Facsimile: 203-573-3118

NYS OFFICE OF THE ATTORNEY GENERAL
RECEIVED

NOV 30 2010

ENVIRONMENTAL PROTECTION BUREAU
ALBANY

Maureen Leary
New York Attorney General Office
Environmental Protection Bureau
New York State Capitol
Albany, NY 12224

November 29, 2010

Re: **Court Street Sites (633, 688-700) Chemtura Corp Consent Orders**

Dear Ms. Leary,

Enclosed please find the signed Orders on Consent between The State of New York and Chemtura Corporation for the sites at 633 Court Street and 688-700 Court Street.

Please do not hesitate to contact me at 203.573.2701 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Hoyler", is written over a large, stylized, looped graphic element that resembles a signature or a large letter 'R'.

Ryan Hoyler

CC:

Michael Rettig, Chemtura Corp. (via email)
Billie Flaherty, Chemtura Corp. (via email)
Walter Lohmann, Kirkland & Ellis (via email)
Craig Bruens, Kirkland & Ellis (via email)
Brian Stansbury, Kirkland & Ellis (via email)

**JOINT COMMENT LETTER FROM THE CITY OF NEW YORK AND THE
BROOKLYN UNION GAS COMPANY d/b/a NATIONAL GRID NY
ON THE PROPOSED SETTLEMENT AGREEMENT BETWEEN CHEMTURA
CORPORATION AND THE UNITED STATES OF AMERICA**

Via Email

Ignacia S. Moreno
Assistant Attorney General
Environment and Natural Resources Division
P.O. Box 7611
U.S. Department of Justice
Washington, DC 20044-7611
pubcomment-ees.enrd@usdoj.gov

Re: *In re Chemtura Corp. et al.*, D.J. Ref. 90-11-3-09736

Dear Ms. Moreno:

We are writing on behalf of the City of New York (“City”) and The Brooklyn Union Gas Company d/b/a National Grid NY (“National Grid”) to provide comments on the proposed settlement agreement (“Proposed Agreement”) between Chemtura Corporation (“Chemtura”) and the United States, on behalf of the United States Environmental Protection Agency (“EPA”) in Chemtura’s Chapter 11 bankruptcy proceeding, *In re: Chemtura Corporation, et al.*, 09-11233 (REG), currently pending before the Honorable Judge Robert E. Gerber in the United States Bankruptcy Court for the Southern District of New York. The Proposed Agreement provides for a full settlement of the United States’ claim under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et seq.* against Chemtura for contamination of the Gowanus Canal in exchange for a \$3,900,000 payment to EPA by Chemtura. The United States lodged the Proposed Agreement with the Court on September 30, 2010, and the United States Justice Department published notice of the Proposed Agreement in the Federal Register on October 13, 2010.

The City and National Grid respectfully request that the United States withdraw from the Proposed Agreement because it is not in the public interest. *See* Proposed Agreement, ¶ 26. On October 30, 2009, EPA submitted a Proof of Claim against Chemtura in excess of one billion dollars in the bankruptcy proceeding. While the City and National Grid understand that this figure represented the estimated cost of the entire Gowanus remediation, the \$3.9 million settlement with Chemtura represents an entirely inadequate share of the overall estimated cost of the remedy especially in light of the history and severity of contamination at the two sites covered by the Proposed Agreement. Additionally, because the investigation into the environmental conditions of the Gowanus Canal is ongoing – including the identification of other potentially responsible parties (“PRPs”) – any settlement with a major PRP at this time is premature.

I. The United States Should Withdraw from the Proposed Agreement Because It Is Not In The Public Interest As It Is Unfair and Unreasonable

The City and National Grid request that the United States withdraw from the Proposed Agreement, and continue to pursue its claim against Chemtura. Paragraph 26 of the Proposed Agreement explicitly authorizes the United States “to withdraw or withhold its consent to this Proposed Agreement if the public comments regarding it disclose facts or considerations which indicate that it is not in the public interest.” *See* Proposed Agreement, ¶¶ 26 – 27.

The Proposed Agreement is not in the public interest because it violates the axiomatic principle that judicially approved settlements under CERCLA be “fair, reasonable, and consistent with the purpose” of the statute. *See New York v. City of Johnstown*, 1998 U.S. Dist. LEXIS 5037, * 21 (N.D.N.Y. Apr. 2, 1998).

The issue of “fairness” considers both the “procedural” and “substantive” fairness of the proposed settlement. *See United States v. Cannons Engineering Corp.*, 899 F.2d 79, 86 (1st Cir. 1990). Procedural fairness requires an inquiry into the negotiation process to determine whether the settlement process was conducted with candor, openness, and bargaining balance. *Id.* Substantive fairness, on the other hand, requires that the settlement terms have some rough correlation to the comparative fault and liability of the settling parties. *See id.*

In determining whether a consent decree is reasonable, the court can consider a number of factors including: (1) the relative costs and benefits of litigating the case under CERCLA, (2) the risks of establishing liability on the part of the settlers, (3) the good faith of the settlement negotiators, (4) the relationship between the settlor’s payment and its potential volumetric contribution, and (5) the ability of the settlers to withstand a greater judgment. *See City of Johnstown*, 1998 U.S. Dist. LEXIS 5037, * 19 – *20 (citing *United States v. Akzo Coatings of America*, 949 F.2d 1409, 1435 (6th Cir. 1991)).

Here, the Proposed Agreement does not come close to complying with these basic requirements. As explained in Section A below, given Chemtura’s history of pollution and the EPA’s estimate of the cost to remediate the Gowanus Canal, the proposed Settlement Agreement is premature at best. Although we recognize that \$3,900,000 on the surface appears to constitute a significant settlement, it comes nowhere near what is required to fully investigate, characterize, and remediate the environmental conditions believed to exist at the Gowanus Canal, and is thus unfair to the remaining parties. Indeed, at this time, there is simply no way to determine if the Proposed Agreement will provide enough money to pay Chemtura’s significant share of the liability caused by its operations on the Gowanus Canal. No determinations have been made, no quantification or qualification of the data for each potential user has occurred, and the estimated cost of the remedy is extremely high.

Furthermore, as explained in Section B below, the Proposed Agreement will directly affect a large number of parties, including National Grid and the City, who are not parties to the bankruptcy and who were not included in the negotiations between the United States and Chemtura. *See Cannons Engineering Corp.*, 899 F.2d at 86 (stating that procedural fairness requires an “inquiry into the negotiation process to determine whether the settlement process was

conducted with candor [and] openness”). The joint and several liability scheme of CERCLA makes all parties, including National Grid and the City and any future parties, liable for the entirety of Canal investigation and remediation costs. A party’s only recourse is to sue other responsible parties for their “share” of such costs. The Proposed Agreement, however, would completely shield Chemtura from additional liability. Before any settlement is reached with Chemtura, more must be learned about the overall cost of the claim and Chemtura’s share in that claim.

A. Chemtura is a major polluter of the Gowanus Canal

The Proposed Agreement is unreasonable and unfair because the low settlement figure is entirely disproportionate to Chemtura’s comparative fault and liability for the contamination in the Canal, especially given its documented contribution of high levels of volatile and semi-volatile organic compounds, metals, and polychlorinated biphenyls (PCBs) to the environs in and near the Canal. *See City of Johnstown*, 1998 U.S. Dist. LEXIS 5037, * 13 – *21.

(i) Corporate History

Chemtura is a chemical company that produces polymer and specialty chemical products which are used as additives, ingredients or intermediates in the company’s customers’ end products. Chemtura has more than 150 subsidiaries and operates facilities in 60 locations worldwide.¹

Chemtura’s history, as it pertains to the Gowanus Canal, dates to the late 1940s, when its predecessor, the Argus Chemical Laboratory, Inc. (“Argus”) began operations there.² Chemtura’s predecessors operated at two sites on Court Street, Brooklyn, New York: 633 Court Street (the “633 Site”) and 688-700 Court Street (the “688 Site”). The following briefly describes operations at these two sites.

633 Court Street: The 633 Site is located at the intersection of Court Street and Halleck Street and is approximately 0.5 acres in size. Between 1951 and 1954, Chemtura’s predecessors constructed two contiguous three-story brick buildings on the property.³ A boiler room with a hot oil system, which used polychlorinated biphenyls (“PCBs”) containing oils, was located in

¹ Chemtura Mergents Report, pp. 1-10.

² Argus changed its name to Argus Chemical Corporation in 1956. In February 1966, Witco Corporation (“Witco”) acquired Argus. Witco merged with Crompton & Knowles in 1999 and changed its name to CK Witco Corp. In April 2000, CK Witco Corp. changed its name to Crompton Corporation. The company adopted the name Chemtura Corporation on July 5, 2005. Chemtura Mergents Report, pp. 17-18. Delaware Secretary of State. Chemtura’s Request for Information, October 30, 2009. p. 3. WSP Engineering of New York, “PCB Investigation Final Report: Chemtura Corporation,” August 21, 2009. p. 2.

³ Enviro-Sciences, Results of Phase II Site Investigation: Witco Brooklyn Plant, May 1999. p. 3. See also, AOC Summaries, AOC 1C.

the central portion of the site.⁴ Between 1950 and 1958, Chemtura's predecessors produced aluminum pastes, metallic-organic soaps and salts, barium stearates, epoxy plasticizers, and phosphates at the 633 Site. In 1958, aluminum paste and barium stearates manufacturing operations ceased, and the majority of the production-related operations were moved to the 688 Site. Chemtura's predecessors kept a laboratory and administrative offices at the 633 Site until about 1990, at which time these functions were also transferred to the 688 Site. Thereafter, the 633 Site was used for storage until the property was sold in 1999.⁵

688-700 Court Street: Chemtura's predecessors acquired the 688 Site in 1958 and purchased the additional lot referred to as 700 Court Street in 1986. These areas, collectively referred to herein as the 688 Site, consisted of about five acres and were located at the southwest corner of Court and Halleck Streets.⁶ Between 1958 and 1999, Chemtura's predecessors produced metallic-organic soaps and salts, phosphites, epoxy plasticizers, and made specialty runs for items such as tin stabilizers and polypropylene at the 688 Site.⁷ While in operation, the facility at that site operated three shifts a day, seven days a week.⁸ By the time Chemtura's predecessors ceased operations at the 688 Site, they had facilities which included 19 buildings, four wells, five designated tank farms with a total of over 100 above-ground storage tanks, and a wastewater pretreatment system.⁹ The bulk of the buildings were built between 1959 and 1966 and the last one, Building 19, was completed in 1969.¹⁰ Production and treatment processes took place primarily in Buildings 7, 11, 12, 13, 14, 16, and 19. All of the production buildings had trenches in the floors that conveyed wastewaters to various pits. After 1991, when the wastewater treatment system was installed, the contents of the trenches were conveyed to the wastewater treatment system for treatment.¹¹ Chemtura ceased operations at the 688 Site in 1999 and sold the property in 2000.¹²

⁴ Fluor Daniel GTI, Phase 1 Environmental Site Assessment, March 1998, Table 9.

⁵ Fluor Daniel GTI, Phase 1 Environmental Site Assessment, March 1998, p. 4; Real Estate Sales Contract, January 29, 1999.

⁶ Fluor Daniel GTI, Phase 1 Environmental Site Assessment, March 1998, Table 9; See Fluor Daniel GTI, Phase 1 Environmental Site Assessment, March 1998. APP C-E pdf 18-25.

⁷ Enviro-Sciences, Inc., Results of Phase II Site Investigation: Witco Brooklyn Plant, May 1999. p. 5.

⁸ ESC Engineering of New York, Corrective Measures Implementation Plan Crompton Corporation 688-700 Court Street, Brooklyn New York 4-5 (2003).

⁹ Enviro-Sciences, Inc., Results of Phase II Site Investigation: Witco Brooklyn Plant, May 1999. p. 4; Fluor Daniel GTI, Phase 1 Environmental Site Assessment, March 1998, p. 27.

¹⁰ Fluor Daniel GTI, Phase 1 Environmental Site Assessment, March 1998, p. 11.

¹¹ See AOC Summaries.

¹² ESC Engineering of New York, "Corrective Measures Implementation Plan," April 4, 2003, p.4; Real Estate Sales Contract, November 30, 2000.

(ii) Environmental Contamination

Various environmental reports document extensive contamination of the soils and groundwater emanating from both Chemtura properties. The location of the sites (i.e., surrounded by water on three sides) and their proximity to Gowanus Canal strongly suggests that the groundwater at the site is affected by tidal fluctuations. As a result, it seems likely that contaminants from the sites have impacted the waterway.

Numerous Volatile Organic Compounds (“VOCs”),¹³ Semi-Volatile Organic Compounds (“SVOCs”),¹⁴ and metals¹⁵ have been discovered in soils and groundwater at levels exceeding New York State Department of Environmental Conservation (“NYSDEC”) standards at both Chemtura sites.¹⁶ In addition, separate phase hydrocarbons (“SPH”) were discovered in several monitoring wells at the 688 Site during sampling events. In 2003, Crompton submitted a Corrective Measures Implementation Plan for the 688 Site to NYSDEC, which called for the implementation of a Dual-Phase Extraction (“DPE”) with Steam Injection system to address contaminants of concern (benzene, toluene, xylenes, acetone, phenol and naphthalene) in the soil and groundwater.¹⁷ The DPE with steam injection system began operations in July 2004.¹⁸ In July 2007 PCBs were unexpectedly found during routine sampling of the light non-aqueous phase liquid (“LANPL”) which was recovered from the system’s oil-water separator. The DPE was shut down in July 2007 to investigate the source of PCBs. Between 2007 and 2009, three rounds of soil investigations were conducted to determine the location of the PCBs.¹⁹ The highest concentration and widest distribution of PCBs were found in the northern portion of the site and near Buildings 13, 14, and 15, the location of which coincides with the area where the former hot oil systems were located.²⁰ PCB concentrations (measured as recently as 2009) were

¹³ VOCs found at the two sites include toluene, ethylbenzene, xylene, and acetone, benzene, 2-butanone, methylene chloride, and trichloroethene.

¹⁴ SVOCs found at the two sites include benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene.

¹⁵ Metals found at the two sites include arsenic, barium, cadmium, chromium, lead, mercury, and selenium.

¹⁶ Enviro-Sciences, Inc., Results of Phase II Site Investigation: Witco Brooklyn Plant, May 1999, pp. vii, 20-25, 30-36, and 48.

¹⁷ ESC Engineering of New York, Corrective Measures Implementation Plan, April 4, 2003. p. 6 and 10.

¹⁸ Letter from ESC Engineering of New York to NYSDEC, March 14, 2005. pdf 2.

¹⁹ WSP Engineering of New York, PCB Investigation Final Report: Chemtura Corporation, August 21, 2009. p. 1.

high with offsite PCB concentrations in soil ranging from 75 ppm to 600,000 ppm and PCBs in groundwater at concentrations from 1,600 ppm to 450,000 ppm.²¹

(iii) Sewer Discharges

Chemtura's predecessors also may have discharged hazardous materials to City sewers before the development of the City's Industrial Pretreatment Program ("IPP"). While the documentation of the early years of operations is limited, City records prior to March 1983 show that Chemtura's predecessors discharged wastewaters from the 688 Site to the Court Street sewer after it passed through an American Petroleum Institute-type separator.²² The date when the separator was put into service is unknown; it is likely that earlier discharges from the plant received less treatment. It is conceivable that the discharges were untreated in the early years of predecessor operations. The City developed its EPA approved IPP program in 1986 and Chemtura's predecessor participated in this program since its inception. However, despite the City Department of Environmental Protection's ("NYCDEP") rigorous enforcement, Chemtura's predecessor had numerous violations of its discharge permit. Between 1986 and 1999, NYCDEP issued over 100 notices of violation to Chemtura's predecessors for discharges to the City sewer system. In 1988, NYCDEP's investigation revealed that Chemtura's predecessors had been discharging large amounts of acids to the sewer in violation of its permit. The discharges caused extensive damage and deterioration to the Court Street sewer, causing it to partially collapse. Based on this permit violation NYCDEP brought an enforcement action against Chemtura's predecessor.²³

The extent to which Chemtura's sewer discharges, either through public or private sewers, may have entered into and contaminated the Canal has not been fully evaluated at this time. This further underscores the prematurity of EPA entering into the Proposed Agreement.

(iv) Lax Compliance with Environmental Laws

Chemtura and its predecessors were slow to come into compliance with relevant environmental laws after violations were discovered. DEC first discovered violations of state

²⁰ WSP Engineering of New York, PCB Investigation Final Report: Chemtura Corporation, August 21, 2009. pp. 9 and 12.

²¹ WSP Engineering of New York, PCB Investigation Final Report: Chemtura Corporation, August 21, 2009. p. 1.

²² Water Balance Schematic and associated site plan, March 31, 1983 [DEP_P_Sewr_3485-3486].

²³ Letter from Larry A. Klein, P.E. Chief Industrial Waste Control Section NYCDEP to Carol Ash, Regional Director, New York State Department of Environmental Conservation November 1, 1988 [DEP_P_Sewr_00003254].

hazardous waste laws at the 688 Court Street site in 1993.²⁴ These violations included insufficient containment in various chemical bulk storage areas located on the site. Chemtura's predecessor corrected most of the violations in 1997 and others in 1999, but did not enter into a consent order for the remaining violations until 2002.²⁵ Remediation under the Consent Order is still ongoing. While a separate settlement requires Chemtura to continue to remediate under the Consent Order, this requirement does not cover liability for the hazardous materials that migrated off-site before effective controls are put in place. Simply put, Chemtura should not be awarded with a low settlement number for finally agreeing to fulfill its commitments under an order that it signed almost a decade ago.

B. The Early Stage of the Investigation of the Canal Mandates Against the Proposed Agreement

In addition to the Proposed Agreement being out of proportion with the amount of environmental damage caused by Chemtura's operations, the Proposed Agreement is also unfair and unreasonable because there is no data available at this time which would enable EPA to craft a rational estimate of Chemtura's total share of the estimated one billion dollar remedial cost. *See City of Johnstown*, 1998 U.S. Dist. LEXIS 5037, *20 (approving settlement at point after the actual remediation "is nearly complete, thus the total costs are relatively fixed, having already been expended").

Here, EPA is currently performing a Remedial Investigation and Feasibility Study ("RI/FS") in the Gowanus Canal. The purpose of the RI/FS is to determine the source and extent of contamination and design a plan to remedy the contamination. While EPA has taken samples from the Canal and certain upland properties, the data has not been fully analyzed and the Remedial Investigation is not complete. At this time, there is simply no way to determine if the Proposed Agreement provides enough money to pay Chemtura's share of the liability caused by its operations on the Gowanus Canal. No determinations have been made, no quantification or qualification of the data for each potential user has occurred, and the cost of the remedy is currently unknown. Thus, any settlement of liabilities related to Chemtura at this time is by definition premature.

Indeed, despite the investigations performed under its consent order with the State, Chemtura has not itself adequately investigated its sites' likely impacts on the Canal. In 2000, Chemtura's predecessor prepared a Baseline Human Health and Environmental Health Evaluation acknowledged the potential for contaminated groundwater to migrate into the Canal, however, the report evaluated potential exposure through recreational use at the Canal at a distance of 2,000 feet from the site.²⁶ The Canal, however, is less than 500 feet from the site and

²⁴ DEC Order On Consent Case No. R2-0346-9801 In the Matter of Violations of Article 27 of the New York State Environmental Conservation Law.

²⁵ DEC Order On Consent Case No. R2-0346-9801 In the Matter of Violations of Article 27 of the New York State Environmental Conservation Law.

²⁶ Closure Plan, Appendix B: Remedial Action Work Plan, Appendix: Baseline Human Health and Environmental Health Evaluation.

accordingly, the migration of contaminants from the site into the Canal remains unstudied. The current absence of a study of the migration of contaminants into the Canal, combined with the evidence suggesting that such migration was likely extensive over a period of over forty years, mitigates against such a low settlement of Chemtura's liability at this time.

What is known is that EPA has publicly declared that the remedy for the Gowanus Canal could exceed \$1 billion, and that EPA submitted a Proof of Claim on Chemtura for \$1 billion. Now, however, EPA is willing to settle for just 0.39% of that total without *any* analysis of Chemtura's actual responsibility for the contamination.²⁷

This Proposed Agreement directly effects a large number of parties, including the City and National Grid, who are not directly parties to the bankruptcy. As of today's date, EPA has sent general notices of liability ("GNLs") to thirteen parties in addition to Chemtura. These parties include: the City, National Grid, Beazer East, Inc., Brinks, Inc., Cibro Petroleum Products, Inc., Consolidated Edison Company of New York, Inc., Hess Corporation, Honeywell International, Inc., Kraft Foods Global, Inc., Rapid American Corporation, Stauffer Management Company, LLC, Mr. Daniel Tininney and the United States Navy. EPA has determined that, in its view, each of these fourteen parties are at least partially responsible for the contamination in the Gowanus Canal. EPA has further indicated an intent to send additional parties GNLs.

The affect of a settlement on non-settling parties should be evaluated as part of the fairness inquiry. *See City of Johnstown*, 1998 U.S. Dist. LEXIS 5037, *15. This consideration ordinarily centers on whether the non-settling parties are prejudiced because the settling parties are not paying their proportionate share of the liability and are immune from later contribution actions. *Id.*

Under CERCLA, liability in the Gowanus Canal is joint and several which means that each of these companies, as well as any future GNL recipient or other responsible party, could be held liable for the entirety of the investigation and remediation costs. A party's only recourse is to sue other responsible parties for their "share" of such costs. These proceedings lead to allocation exercises, either in court or in alternative-dispute-resolution setting.

By the terms of the Proposed Agreement, Chemtura would be granted contribution protection under Section 113(f)(2) of CERCLA. *See* 42 U.S.C. § 9613(f)(2). In other words, it may become impossible for the other responsible parties to recover any costs for investigation or remediation of the Gowanus Canal after this settlement is entered by the Court. Even if Chemtura's Proposed Agreement is woefully inadequate in light of its contribution to the contamination, the other responsible parties -- and any future responsible parties not yet named -- may have no recourse to recover Chemtura's "fair share" of the liability. Before settling for such a minute share of the overall claim against Chemtura, more should be known about the overall cost of the claim and Chemtura's share in that claim. Any settlement at this point is too premature to adequately protect the other potentially responsible parties.

²⁷ At other times, EPA has estimated the cost to be \$300-\$400 million. The proposed settlement of \$3.9 million is likewise a disproportionately small share of that estimate of costs.

EPA has made clear its intent to have the parties who received GNLs pay for the RI/FS, and possibly conduct the remediation. By releasing Chemtura from all liability, EPA is prejudging Chemtura's role in the Gowanus Canal and could potentially lead to other parties paying a larger share of the remedy than that warranted by the facts. Indeed, without express direction to do so, EPA is not even required to use the payout at the Gowanus, but is allowed, by the terms of the Proposed Agreement, to put the money in the Hazardous Waste Superfund. Such an action further promotes inequity and lack of fair treatment.

II. The Proposed Agreement Undercuts Remediation of the Gowanus Canal

Non-settling PRPs have a clear right to challenge settlement agreements between the EPA and a third party. Under Section 113(i) of CERCLA, “[i]n any action commenced under this chapter . . . In a court of the United States, any person may intervene as a matter of right when such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person’s ability to protect that interest, unless the President or the State shows that the person’s interest is adequately represented by existing parties.” *See* 42 U.S.C. § 9613(i).

The plain language of CERCLA provides non-settling potentially responsible parties (“PRPs”) a statutory right to contribution from other PRPs. Section 113(f)(1) of CERCLA provides that “[a]ny person may seek contribution from any other person who is liable or potentially liable under Section 9607(a) of this title” Courts are instructed to resolve contribution claims by allocating “response costs among liable parties using such equitable factors as the court determines are appropriate.” *Id.* Where parties enter into approved settlements with “the United States or a State,”

[a] person who has resolved its liability . . . in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

42 U.S.C. § 9613(f)(2).

On its face, the Proposed Agreement does not protect the interest of non-settling PRPs because it allows proceeds of the settlement to be directed or transferred into the Hazardous Substance Superfund, Specifically, Paragraph 7 of the Settlement provides:

EPA may deposit any funds received pursuant to Paragraph 4 of this Settlement Agreement into the Hazardous Substance Superfund or into an EPA special account established for the Gowanus Site within the Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in

connection with the Gowanus Site, or to be transferred into the Hazardous Substance Superfund.

At the very least, the funds should be required to be spent on Gowanus Canal-related investigation, characterization, or remediation, and not subsumed into the larger Hazardous Substance Superfund. As was set forth above, the operations of Chemtura's predecessors have been identified as a significant cause of contamination associated with the Gowanus Canal, as was recognized by the size of the Proof of Claim filed by the United States Government in the Chemtura Chapter 11 proceeding. All non-settling PRPs remain potentially liable for response costs under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Approval of the settlement agreement will effectively cut off non-settling PRPs' contribution rights under § 113(f)(1) against Chemtura. Accordingly, the non-settling PRPs have an obvious interest in the amount of any judicially-approved settlement. *See* 42 U.S.C. § 9607(a); 42 U.S.C. § 9622(h)(4). The larger the settlement amount, the smaller the remaining amount for which the non-settling PRPs may be liable.

To the extent the Proposed Agreement is finalized (which it should not be), the United States government should explicitly bind itself to using *all* money received under the Proposed Agreement to conduct or finance response actions at or in connection with the Gowanus Site. Because the costs of investigation and characterization – let alone remediation – at the Gowanus Canal will exceed the settlement proceeds, the caveat that the funds “be transferred into the Hazardous Substance Superfund” is unnecessary, and the Settlement Agreement should be revised accordingly prior to being lodged with the Bankruptcy Court. Language like this has been used in other Settlement Agreements under CERCLA. *See, e.g., In re: Asarco LLC*, S.D. Tex. Case No. 05-21207, Doc. No. 10541 at 14 (March 13, 2009); EPA, Proposed CERCLA Administrative Cost Recovery Settlement; the Shenandoah Road Groundwater Contamination Superfund Site, East Fishkill, NY [FRL-8176-2]. 71 Fed. Reg. 31,183 (June 1, 2006) (directing payment into a special account in the Hazardous Substance Superfund).

For the foregoing reasons, the City and National Grid request that the United States withdraw from the Proposed Agreement because it is inadequate and premature. To the extent the Proposed Agreement is to be finalized now, any funds collected by EPA from Chemtura for the contamination in the Gowanus Canal should be used at the Gowanus Canal and not deposited in the general Hazardous Waste Superfund and/or used elsewhere.

We thank you for your consideration.

Dated: November 12, 2010

CITY OF NEW YORK

By: 

Daniel Greene
New York City Law Department
100 Church Street
New York, NY 10007
Tel. 212.788.1568
Fax. 212.788.1619

THE BROOKLYN UNION GAS COMPANY
D/B/A NATIONAL GRID NY

By: 

Russell B. Selman
Schiff Hardin LLP
233 S. Wacker Dr., Suite 6600
Chicago, IL 60606
Tel. 312.258.5527
Fax: 312.258.5600