

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:

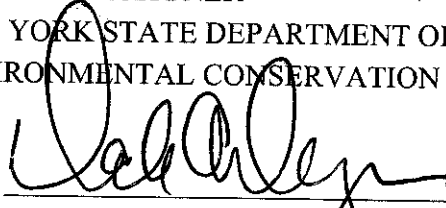
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~~ALEXANDER B. GRANNIS~~

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

**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.



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,

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)