

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S RESPONSE TO PUBLIC
COMMENTS REGARDING THE NATURAL RESOURCE DAMAGES SETTLEMENT WITH BASF
CORPORATION IN THE MATTER OF THE CIBA GEIGY SITE, TOMS RIVER, NJ

On December 5, 2022, the Department posted for public comment a proposed agreement with BASF Corporation to compensate the State for natural resources damages ("NRD") related to the Ciba-Geigy Superfund site in Toms River, New Jersey (hereinafter "Settlement Agreement"). The original 30-day public comment period was extended an additional 90 days upon requests of the public. A public comment period totaling 120 days closed on April 5, 2023. Further, the Department held a 5-hour public meeting on March 13, 2023, where additional information to the public was provided including a description of the mission of the Office of Natural Resource Restoration, background of the Settlement Agreement, natural resources injury calculation methodology, and measures taken to ensure public health and safety is maintained at the site. The public meeting concluded with an extensive session of questions and answers, with an additional 23 days after the meeting for written public comments to be submitted to the Department. As stated during the March 13th meeting, the Department planned to respond in writing to public comments received as part of its determination of whether the settlement is fair, reasonable and in the public interest. Below is that response.

The Department acknowledges and thanks all commenters for their submissions and confirms that all comments received were read and considered. The Department received many comments that shared similar content and common topics. Comments that could be grouped and addressed under these common topics are summarized and answered below in Section I. Comments relevant to the Settlement Agreement that could not be addressed as part of the common topic responses are answered individually in Section II. Please note that the comments in Section II are not paraphrased and include language taken directly from certain public comment submissions. Comments that shared general thoughts or opinions, comments not directly related to the proposed natural resource damages Settlement Agreement, or comments that were otherwise not related to the proposed settlement at issue were not addressed in the response to comments.

This settlement will be signed and considered a final settlement of BASF's liability for damages to natural resource damages in accordance with the terms set forth therein. Shortly after becoming effective and in accordance with paragraph 18 of the Settlement Agreement, BASF will submit the \$500,000 to the Department to cover the past and future cost of Office of Natural Resource Restoration staff time to oversee and manage the agreement. BASF will also begin technical surveys/investigations to inform the conceptual design of the proposed projects and engage directly with the interested public on elements of their design and progress of the implementation. At the same time, BASF will survey and record the condition of the future Deed of Conservation Restriction 1 ("DCR 1") easement (Forested Parcel) that will include building/structures, property features, land use and management, and other items necessary to complete the Present Conditions Report (Appendix H of the Settlement Agreement), which is an attachment to the Deed of Conservation Restriction package BASF will submit to the Department for its review for the DCR 1 in the coming months.

The Department extends its appreciation to the community of Toms River and all others who participated and showed interest in the potential settlement.

Section I

1. COMMENT: The Department received letters/comments of general support for the proposed settlement between BASF and the Department.

RESPONSE: The Department acknowledges and thanks the commenters for their support.

2. COMMENT: The Department received numerous comments inquiring why the public and/or the Township of Toms River was not involved in these settlement discussions prior to the opening of the public comment period.

RESPONSE: As the State's Natural Resource Trustee, the Department is responsible for assessing the extent of and restoration necessary to address natural resource injuries. This duty includes efforts to hold responsible parties accountable which may require engaging in negotiation in contemplation of future litigation and with counsel from the Office of the Attorney General. In such instances, the nature of these discussions requires confidentiality. Notwithstanding, the Department recognizes the need for public input and engagement before finalization of any proposed settlement and has provided ample opportunity for public review, comment, and engagement. While not legally mandated where, as here, the settling party is not seeking contribution protection under N.J.S.A. 58:10-23.11e2, the Department provided a 120-day public comment period and held a robust, well attended, public engagement session. Finally, the Department twice briefed the Township about the proposed settlement on October 7, 2020 and November 29, 2022, respectively.

3. COMMENT: The Department received numerous comments requesting an extension to the public comment period and for the opportunity to have an open forum to interact with the Department.

RESPONSE: Recognizing the need and value of public feedback about a proposed NRD settlement of this magnitude, and while not legally mandated where the settling party is not seeking contribution protection under the Spill Act, the Department posted the proposed Settlement Agreement for public comment on December 5, 2022. During the original 30-day public comment period, the Department received several comments requesting an extension of time for the public to provide comments. The Department determined it would extend the comment period, resulting in an additional 90-days of open public comment from January 4, 2023 to April 5, 2023. During this timeframe, the Department provided an additional opportunity for the public to directly engage with members of the Department at a public information session held on March 13, 2023, in the auditorium of Toms River North High School.

As stated at the March 13th public session, the Department plans to hold future public engagement sessions with BASFs participation to discuss elements of design as part of the Department's approval for the final design of the projects. All settlement and site related updates including dates of said public engagement sessions will be posted to the NJDEP "Natural Resource Restoration at Former Ciba-Geigy Site" website located at: <https://dep.nj.gov/cgrestitution/>.

4. COMMENT: Several comments were received concerning the operation and maintenance of projects and long-term funding for the improvements made to the site. Concerns regarding long-term property ownership and fees for use were also raised.

RESPONSE: The settlement as first proposed called for BASF to ensure funding of the operation and maintenance of the restoration projects for a period of 10 years after the acceptance of the completion of the projects. After considering public feedback received, the Department requested, and BASF agreed, to extend both its maintenance and funding obligations by an additional 10 years for a total maintenance period of no less than 20 years. This revision is captured within Paragraph 60 of the revised Settlement Agreement.

With respect to long-term property ownership, the Department must approve any transfer of the conservation area with eligible recipients limited to the federal government, the State, a local government unit or a qualifying tax exempt, nonprofit organization, or other similar entity approved by the Department. In the event of a transfer, BASF remains responsible for maintenance obligations, as outlined in Paragraph 60 of the Settlement Agreement, and any other remaining obligations under the Settlement Agreement. Additionally, if any subsequent owner of the property fails to comply with any obligations imposed by the Settlement Agreement, the Department may take title upon a failure of BASF or any subsequent property owner to maintain the property in accordance with the conditions of the Settlement Agreement may affect BASF's release of liability.

5. COMMENT: Commenters raised questions and concerns regarding the amount of oversight costs to be paid by BASF to the Department.

RESPONSE: Oversight costs in this matter compensate the Office of Natural Resource Restoration's personnel time pertaining to the development of the proposed Settlement Agreement, management of future design and construction, and all other administrative tasks related to the completion of all obligations put forth under the Settlement Agreement leading to the NRD release. In light of extensive work already required and still to be incurred, the Department has, after consultation with BASF, raised the amount of Office of Natural Resource Restoration staff oversight costs to be paid by BASF under the Settlement Agreement from \$100,000.00 to \$500,000.00 to account for both past and future costs incurred.

6. COMMENT: The Department received multiple comments requesting the natural resource damage assessment-calculation that was used to determine natural resource damages and compensation for the Ciba-Geigy site. Additional comments suggested that the remaining approximately 255 acres outside of the proposed NRD settlement should either be deeded over to the Township of Toms River or be included as preserved land as part of this proposed settlement.

RESPONSE: The Department provided the key inputs (including the start date of injury, extent of injury, and anticipated duration of injury) for the Resource Equivalency Analysis (REA) methodology that was used to calculate the natural resource damages and compensation for the Ciba-Geigy site. This information was provided as part of the DEP's slide presentation at the Department's public meeting and is placed below for viewing convenience:

Groundwater Injury: Resource Equivalency Analysis (REA)



Injury Duration (Past and Future) 90 Years (1955-2045)	<ul style="list-style-type: none">• Total estimated time of groundwater injury expressed in years• Injury start date based on site operational history since no analytical data exists.• Future injury end date based on approved ground water model.
Inflation Rate 3%	<ul style="list-style-type: none">• 3% inflation rate adjustment.• In natural resource economics, the inflation rate accounts for the time value of a natural resource unit (i.e., a dollar in the past is worth more than a dollar today, which is worth more than a dollar in the future).
Quantity of Injured Groundwater Maximum plume ~522 acres	<ul style="list-style-type: none">• Expressed as gallons based on maximum spatial extent of the plume in acres, geologic formation porosity, annual rainfall and duration (past, present and future) of groundwater plume.
Equivalency ~1,200 acres	<ul style="list-style-type: none">• Recharge an equivalent volume of clean ground water to offset volume of impacted ground water.
Restoration 1,000 acres permanently preserved (532,504,086 gals)	<ul style="list-style-type: none">• Amount of land in acres needed based on annual rainfall for replacement of impacted groundwater volume. Other appropriate aquifer recharge projects or monetary compensation can be substituted for land preservation.

The full PowerPoint remains available for viewing and can be found through the “Natural Resource Restoration at Former Ciba-Geigy Site” website, <https://dep.nj.gov/cgrestoration/>. Based on the result of the assessment, the Department determined that the acreage required to be preserved to fully compensate for the groundwater injuries attributable to the site was approximately 1,200 acres. Accounting for what could be a time consuming and costly litigation process with an uncertain restoration/compensation result, the Department determined that the voluntary preservation of 1,000 acres by BASF, with the implementation of nine environmental projects all occurring at the injury site, provides sufficient and reasonable compensation to the people of New Jersey to offset natural resource injuries. Accordingly, the preservation of the remaining 255 acres is not necessary to resolve potential NRD liability. However, in an effort to address comments seeking preservation of the entire site and generally seek to enhance open space preservation in an area incurring development pressure, the Department has obtained an agreement from BASF to preserve from future development no less than 50 acres of this 255-acre parcel. That agreed-upon preservation is separate and beyond the 1,000 acres that provide compensation to offset groundwater injuries at the site. BASF’s commitment is reflected in paragraph 23(e) of the revised final Settlement Agreement.

7. COMMENT: Several comments were made suggesting additional and specific recreational opportunities be made available (i.e., fishing, kayak launch, primitive camp sites, biking, improved running surface, connection to Albocondo Campground) that were not part of the draft Scope of Work.

RESPONSE: The Department thanks the commenters for their interest and suggestions toward the recreational components of the restoration projects. Although not originally captured in the draft conceptual design, the features mentioned above can be discussed during the public engagement sessions to be conducted by BASF for consideration of inclusion in the final

conceptual designs for the restoration projects. The Department looks forward to these discussions.

8. COMMENT: Many comments were made expressing interest in the design and potential content of the proposed educational center, the creation of the ecological aspects in the passive recreational portions of the park, and a request for there to be a memorial dedicated to those negatively affected by the history of the site.

RESPONSE: The Department acknowledges the comments and encourages these items to be brought forth for discussion during future public engagement sessions regarding the ecological aspects found within the passive recreational parts of the property. In regard to the educational center, BASF expressed in its comment letter dated February 27, 2023 that the company is open to incorporating a recognition of the site's environmental history as part of the educational center. Members of the public will have an opportunity to provide input about the educational center as part of the public engagement conducted by BASF in elements of the design and progress of the implementation of the restoration projects.

9. COMMENT: Commenters raised questions about the remediation of the contamination of the Ciba-Geigy site and the protectiveness of the remedial actions taken.

RESPONSE: The Ciba-Geigy site was listed on the National Priorities List, making it a Superfund Site, in 1983. The investigation and remediation of the Superfund cleanup, except for the landfill, are overseen by the United States Environmental Protection Agency (EPA).

An overall summary, documents detailing the investigation and remediation, recent ground water monitoring reports, investigation of the discharge pipe and other information related to the property can be found here: CIBA-GEIGY CORP. | Superfund Site Profile | Superfund Site Information | US EPA (<https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0200078&msspp=med>).

In June 2022, BASF collected 70 soil samples across the 1,000-acre preservation area, which is the area proposed to be accessible by the public, in the top two feet of soil. All samples except for one sample met New Jersey residential soil remediation standards for the site-specific contaminants of concern. The one sample that did not meet the residential soil remediation standards will be remediated as part of the restoration efforts. Residential soil remediation standards are scientifically determined to be protective to a level that exceeds what would otherwise be considered protective for the intended future use of the property for passive recreation.

If you are interested in obtaining the analytical data for the 2022 soil samples, please fill out an OPRA request. The online OPRA record request form is available at the following link: <https://www.nj.gov/dep/opra/opraform.html>.

In October 2022, the Department established soil remediation standards for four PFAS compounds. While BASF did not analyze the soil samples collected in June 2022 for PFAS due to the lack of standards, BASF will be required to collect soil samples and analyze those samples for

PFAS as it is their pre-existing obligation and captured within paragraph 23(a) through (c) in the Settlement Agreement.

BASF has committed to address any areas that may require further remediation, including any areas impacted by PFAS if PFAS are in fact detected, to the applicable, interim, or final standards.

10. COMMENT: The Department received comments asking why the Department seemed to be in a rush to settle. Those comments stated that it might be more prudent to let the clean-up process continue so the “true extent” of the impacts may inform the current or any additional future remediation.

RESPONSE: First, the characterization that the Department rushed to settle BASF’s liability for impacts to natural resource damages is not supported, as remedial work at the site has been ongoing now for 40 years including the full delineation of impacts, providing the Department with the information necessary to conduct an assessment of natural resource impacts and evaluate appropriate compensation to the public for these impacts.

By entering into the Settlement Agreement with BASF at this place and time guarantees that the public is compensated for natural resource injuries in the area where the natural resources have been injured in the most immediate fashion feasible. In assessing natural resource impacts and potential compensation, the Department places significant value on ensuring the delivery of compensation to the public as soon as feasible to allow for a more immediate restoration of the natural functions of the impacted resources and, as provided for in the Settlement Agreement, less delay in the ability of the public to access the conservation areas. Accordingly, waiting until completion of remediation to assess BASF’s liability and propose settlement would serve only to delay and lessen the value of compensation to the public.

Finally, the preservation of the 1,000 acres and the addition of the restoration projects do not impact or release BASF from their remedial obligations under EPA’s lead oversight under the Superfund program or BASF’s obligations to maintain the closed landfills on the site. All public health and safety standards for the type of recreational opportunities presented will be upheld.

11. COMMENT: Commenters questioned how the proposed Settlement Agreement addresses the different types of natural resource injuries, such as but not limited to groundwater, surface water, and offsite ecological injuries, that are a result of the site and its operational history.

RESPONSE: The Settlement Agreement addresses natural resource damages in two ways: (1) through the preservation of 1,000 acres to directly offset the injury to groundwater by permanently preserving land for groundwater aquifer recharge; and (2) through the implementation of nine (9) proposed restoration projects that would significantly improve ecological and terrestrial habitats, surface water quality, habitat connectivity, and increase on-site flood storage to address additional potential injuries to ecological habitats where due to data gaps and the absence of analytical data throughout the history of the Ciba-Geigy site operations resulted in discharges to the Toms River and Atlantic Ocean. Per the New Jersey Constitution, natural resource damages recoveries shall be prioritized as close to the injury as possible. In the case of the Ciba-Geigy site, natural resource damage compensation will take place at the location of injury in accordance with the Constitutional mandate.

12. COMMENT: Several commenters inquired about the monetary value of the preserved lands and restoration projects.

RESPONSE: Because the Department assesses the compensation necessary to address injuries to natural resources by considering restoration need, rather than monetary value, it did not conduct an appraisal of the preservation areas of the property that will be preserved under conservation restrictions. Additionally, the monetary valuations for individual restoration projects will not be fully understood until project designs and specifications are complete. Still, while such values are not part of NRD assessment of injuries and proposed compensation to offset those injuries, i.e., whether an NRD settlement is fair, reasonable and in the public interest, the Department recognizes that such values help to establish a more common understanding of the magnitude of the settlement and provides the following additional information.

There is a scarcity of larger parcels of forested land and transactions of such parcels in and around Toms River. The Department, as a way of placing some monetary value to the BASF property, found a recent transaction of a 31.8-acre forested piece of land approximately 7 miles from the site that sold for \$8.55 million. Translating the price of the sale (approximately \$271,000/acre) and applying it to the 710 acres that make up the project area and forested piece at the BASF site, it would equate to nearly \$192 million in lost real estate value after the Superfund designation was lifted. In addition to that and according to public statements made by BASF, the company and its predecessors have spent over \$300 million to remediate the site and will continue to incur costs as the company continues to operate the groundwater remediation system.

13. COMMENT: Commenters had questions and requests regarding the Present Conditions Report(s) that would accompany the conservation restrictions for the property.

RESPONSE: A model Present Conditions Report was provided within the draft Settlement Agreement as an example of the criteria that will be included in the final draft of the Present Conditions Report(s) for each Deed of Conservation Restriction. The Present Conditions Report, which will memorialize the conservation values of the property, will be submitted by BASF and approved by the Department in accordance with and after the signing of the Settlement Agreement.

14. COMMENT: Concerns were raised regarding the potential for BASF and the Department to remove the conservation restrictions and/or to sell the preserved parcels.

RESPONSE: As stated in paragraph 54 of the Settlement Agreement, any change in ownership including transfer of property encumbered by the Deed of Conservation Restrictions is limited to the federal government, the State, a local government unit or a qualifying tax exempt, nonprofit organization, or other similar entity approved by the Department for continued conservation. Additionally, under the NJ Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1, a potential release would require a public hearing and can only be lifted if the Commissioner determines the release is in the public's interest. The Department does not expect a hypothetical release to be granted as it would be contrary to the goals of the settlement to ensure the onsite protection of groundwater resources in compensation for historic injuries at the site. Furthermore, if those future deed restrictions on the BASF property were to be lifted, it

would undo any NRD release obtained by BASF and thereby they would be again required to compensate for the natural resource injuries.

15. COMMENT: Several requests were received to centrally store publicly accessible documents relating to state permits issued, monitoring reports, and information regarding remedial actions taken at the Ciba-Geigy site.

RESPONSE: ONRR has made public information available at the following website: <https://dep.nj.gov/cgrestoration/>. All records involving the remediation under the EPA Superfund lead cleanup can be accessible at the following location: <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0200078&msspp=med>.

To the extent additional information is required, Open Public Records Act (OPRA) requests can be made for all publicly available documents/records that pertain to the Department's involvement at the site. The online OPRA record request form is available at the following link: <https://www.nj.gov/dep/opra/opraform.html>.

16. COMMENT: The Department received letters/comments regarding personal injury and/or other individual claims seeking compensation and/or for future monies to be set aside for such claims.

RESPONSE: The Department understands the citizens of Toms River and surrounding areas have endured much pain and suffering as a result of the contamination released into the environment from this site. With this recognition, the Department must also be transparent regarding the limitations of its authority to address these concerns within the proposed Settlement Agreement, which is limited to seeking compensation to the public for damages to natural resources held in trust by the Department. As such, while the settlement cannot address personal injuries or other individual property damages, nor can it compensate for the tragic losses experienced by the community, it does not preclude individuals or other entities from otherwise pursuing any individual claims to which they may be entitled.

17. COMMENT: Several commenters suggested that the site be allowed to regenerate naturally without restoration or public access components.

RESPONSE: The proposed ecological uplift projects will enhance the property in areas where scars of remediation were left as well as improve existing wetland, forested, and riparian systems to boost ecosystem regeneration. Ecological uplift will be achieved much more rapidly with the construction techniques envisioned than would otherwise occur through natural wilding. Rapid ecological uplift is more beneficial to the environment than a slower more natural progression.

18. COMMENT: Comments were received regarding the remaining rail track systems present on the property and the possibility of preserving an opportunity for future rail use as part of a larger regional connectivity project.

RESPONSE: The Department thanks the commenters for their interest. The settlement requires that all structures that are not related to the proposed ecological projects in the Scope of Work or remedial operations may be documented in the Present Conditions Report and removed for safety purposes before the property is open for public use.

19. COMMENT: Public comments were received questioning why the landfill areas on the site have been permitted to remain on-site, instead of being fully excavated with off-site removal of the contents of the pits. Further, comments were raised whether the technology utilized in the landfill areas, including plastic liners, are effective against the contamination present in the landfills, including against certain kinds of chemicals such as petroleum-based substances. Comments were also raised questioning why all specific contaminants in these contained areas have not yet been identified, and also questioning if technologies could be utilized to identify unidentified specific contaminants.

RESPONSE: The Department-regulated BASF Sanitary Landfill (“Landfill”) was permitted to construct four (4) cells (Cells 1 through 4). For clarification and as described further below, two of the cells, Cell 1 and Cell 3, contain waste, while Cells 2 and 4, do not contain waste.

Cells 1 and 2, which operated between 1977-1982 and 1982-1984 respectively, were permitted to accept dry wastewater treatment sludge from the on-site wastewater treatment plant and dry non-hazardous chemical wastes (epoxy resin residues, clarification residues, distillation residues) which were produced from on-site operations. When the facility was still in operations, inspections of Cell 2 in 1984 discovered the presence of unauthorized wastes (liquids and hazardous waste). The discovery resulted in the discontinuation of disposal into Cell 2 and removal of all material from Cell 2. Unauthorized wastes were sent off-site, while non-hazardous sludge and liner materials from Cell 2 were transferred into Cell 3.

Cell 3, which operated between 1988-2006, was permitted to accept on-site wastewater treatment sludge in addition to non-hazardous materials from Cell 2. Cell 3 was prohibited from accepting any other waste, including liquids or hazardous materials.

Cell 4, while planned historically, ultimately was never constructed at the site. Because of that and because of the transfer of waste from Cell 2 into Cell 3, only Cells 1 and 3 contain waste.

The technology utilized and oversight of the safety of the Landfill is performed to meet current regulatory standards. The Landfill’s containment system is routinely assessed to ensure the Landfill does not pose a threat to the environment and human health. The following controls are implemented to manage the waste material currently contained in the Landfill:

1. The tops of both Cells 1 and 3 are covered with composite caps that include geosynthetic clay liners and geomembranes to contain in-place waste, eliminate exposure risks, and reduce rainwater infiltration.

2. The bottoms of both Cells 1 and 3 contain double liner systems to prevent the migration of Landfill leachate to groundwater. Cell 1 contains two (2) Polyvinyl Chloride (PVC) liners. Cell 3 contains two (2) composite High-Density Polyethylene (HDPE) and clay liners. The primary (upper) liner of each cell is designed to prevent leachate from reaching the groundwater, while the secondary (lower) liner provides an added safety measure to contain any leakage through the primary liner. Leachate from both the primary and secondary liners is collected, pumped, and treated at the on-site water treatment plant.
3. The Landfill is required under its New Jersey Pollution Discharge Elimination System Permit (NJPDES) to conduct semiannual groundwater monitoring. Three (3) chemicals are utilized as waste parameters (2-butanone; 4-methyl-2-pentanone; toluene) and have been detected in landfill leachate, and accordingly collected and treated as noted above. These waste parameters, however, have not been detected in downgradient groundwater monitoring wells, indicating the Landfill and its cells do not result in groundwater contamination.

Through the above noted environmental controls, the Landfill continues to be monitored and maintained, which allows the Department to intervene in a timely manner and have the Department require any necessary action by BASF to address an identified threat to the environment or human health. Post-closure care for the landfill includes operating, maintaining, and monitoring the landfill's cap, stormwater controls, gas vents, and security measures. Security measures include fencing and gates to prevent public access to areas of the Landfill. Additionally, landfill leachate is collected and treated at the on-site water treatment plant and groundwater monitoring is conducted semiannually to ensure that there is no groundwater impact from the Landfill.

Section II

20. COMMENT: "Is this the entire Ciba/BASF owned lands? I was under the impression that this area consisted of about 2,000 acres. If it does not include the entirety, what land uses will be permitted on the remaining?"

RESPONSE: The Ciba-Geigy property consists of approximately 1,255 acres. Of the 1,255 acres, approximately 1,000 acres will be preserved under the Settlement Agreement with uses limited to those addressed in the Deeds of Conservation Restriction. The remaining acreage will stay under Ciba-Geigy ownership. Future use of the remainder of the property will be dictated by local zoning and other applicable state regulations.

21. COMMENT: "PLEASE build a public road through the property that connects Oak Ridge Pkwy with Rt 37 west. It would be a much needed east west road that would bypass the highly congested Mule Rd area of Rt 37."

RESPONSE: BASF's proposal to record Conservation Restrictions to preserve the majority of the site would be incompatible with the construction of a paved public thruway across the property.

22. COMMENT: “Will there be bridges across the Winding River to provide access to the new proposed park reserve area from the existing trails?”

RESPONSE: The Scope of Work includes a conceptual design for a pedestrian foot bridge to connect the eastern most parcel of the Ciba-Geigy property (located across Oak Ridge Parkway) to provide access across the Toms River to Winding River Park.

23. COMMENT: “To ensure the longevity of the firehouse and the service it provides to the community we would like to have BASF deed the current acreage plus an additional 200 feet on the sides and rear of the existing lot to the fire company as part of this settlement.”

RESPONSE: The Department appreciates this comment, but it cannot require BASF to transfer property to individuals or entities as part of an NRD settlement. Additionally, the requested 200ft outward extension from the current firehouse property boundary would result in a loss of almost 5 acres of forested land that is part of the overall preservation thereby reducing the total acreage received in compensation for injuries to natural resources.

24. COMMENT: “Will BASF be making chemicals on the property of the old Ciba-Geigy site? Will they be using the drainage line that runs from the site to the Atlantic Ocean from Ortleby Beach?”

RESPONSE: Industrial operations at the Ciba-Geigy property ceased in 1996. Discharge from the property to the Atlantic Ocean via the ten-mile pipeline ceased in 1991 followed by the closure of the pipeline. As a result of this settlement, the vast majority of the property will be permanently preserved for open space and no longer be the site of industrial use.

25. COMMENT: “The public does not know the level of funding for the construction, operation and maintenance of the proposal for the next 10 years (paragraph 60 of the proposed NRD settlement). Why?”

RESPONSE: The Department does not take into consideration the private parties’ cost to develop restoration projects. Through the natural resource injury assessment and restoration process, the Department-quantifies the amount of injured resource(s) and the amount of restoration needed to offset those injured resources, which are distinct from costs incurred by the party implementing/constructing the projects. Further, the proposed restoration projects included in the Scope of Work are conceptual and lack the detail to provide a detailed cost estimate at this time. Notwithstanding, the Department’s consideration centers around sufficiency of compensation for natural resource injuries. All construction, operation, and maintenance costs will be determined once all project designs and specifications have been finalized and may or may not be shared by the implementing party.

26. COMMENT: “The public has the right to know the amount of funding source for the settlement (Spill Compensation and Control Act NJSA 58:10-23.11e2). When will the public get that information?”

RESPONSE: Under the settlement, BASF is committing to directly funding and performing all activities needed to meet the requirements of the Settlement Agreement. No existing public funding sources (such as the Spill Fund) will be utilized to meet the requirements of this Settlement Agreement.

27. COMMENT: “The restoration plan should not be on the damaged site; if they want to restore their site, let them do it as part of the clean up to the highest level. Why are you letting them off the hook to do the full clean up?”

RESPONSE: BASF retains responsibility to conduct all necessary cleanup under EPA and State regulations with that obligation unaffected by the Settlement. With respect to the location of the restoration/enhancements, the 2017 constitutional amendment approved by New Jersey voters established a priority system for the location of restoration/compensation. The first priority requires NJDEP to implement restoration as close to the injured natural resources as possible. The proposed natural resource restoration projects are primarily proposed to occur on areas of the site no longer requiring active remediation, thereby achieving first priority restoration under the constitutional amendment.

28. COMMENT: “Why did NJDEP agree to permitting the solar panels on top of land that is still not clean?”

RESPONSE: The land on which the solar panels are now located has undergone remediation under the EPA Superfund program. Appropriate engineering and institutional controls are in place to protect and ensure safety for human health, including maintenance workers who will be accessing this area and the environment. The solar array structures do not interfere with the engineering controls in place.

29. COMMENT: “Many of the proposed projects target the creation of early successional habitats (grasslands, emergent wetlands, shrub habitats) for the benefit of rare species. Is it the intent of BASF and NJDEP to maintain these habitats in these successional stages? It is unclear in the project descriptions if the projects will be maintained in their design state or allowed to mature along some trajectory.”

RESPONSE: Preliminary investigations and design will inform the restoration projects and maintenance requirements. It is the intention of the design to allow the majority of the restoration and enhancements of the property to mature as described in the future design specifications.

30. COMMENT: “[T]he Scope of Work frequently mentions restoring portions of the site to those consistent with natural Pinelands’ communities. This particularly applies to the forest restoration project, with its goal to reestablish forested and shrub habitat on five acres of the site. Is the intended community a pine-dominated forest or an oak-pine community? If a pine-dominated forest, will it be maintained by fire?”

RESPONSE: The intent of the reforestation is to restore the specified areas to a similar forested habitat that exists throughout the site. Specific tree species, numbers, and maintenance will be determined during the final design of the restoration projects which will be informed by BASF’s public engagement event(s). A future forestry management plan will likely be used to select proper forestry management techniques.

31. COMMENT: “It is unclear who will be responsible for providing educational programming or maintaining the center once complete. Programming and maintenance activities will require a steady funding stream and an entity willing to take on both tasks. If not already complete, identifying a potential entity should be a high priority.”

RESPONSE: BASF will remain responsible for project and property maintenance and funding for a 20-year term. However, the intent of the educational center is to provide space and resources available to area schools and organizations for research and educational purposes.

32. COMMENT: “Has any entity done studies on the prior Ciba Geigy employees and their families as well as residents in Toms River and surrounding areas to see the rates of cancers and disease and comparing them to national standards (controlling for other superfund populations)? What about any studies of past/current residents, business owners and employees who have lived/worked over the area of the pipeline to see if there are higher than normal rates of cancer/disease (morbidity) & younger rates of mortality?”

RESPONSE: The Department understands the citizens of Toms River and surrounding areas have endured much pain and suffering as a result of the contamination released into the environment from this site. With this recognition, the Department must also be transparent regarding the limitations of its authority to address these concerns within the proposed Settlement Agreement which is limited only to addressing compensation to the public for damages to natural resources held in trust by the Department. As such, while the settlement cannot address personal injuries or other individual property damages, nor can it compensate for the tragic losses experienced by the community, it does not preclude individuals or other entities from otherwise pursuing any individual claims to which they may be entitled.

33. COMMENT: “The panelists kept stating how much extra time litigating for remediations would take....how much money/damages/repairs for injuries/etc. do settlements vs litigation cases receive?”

RESPONSE: Each case whether it be for NRD, Department cost recovery, or enforcement of remediation obligation, or a combination thereof, is unique. The time and cost involved in an individual litigation matter will vary. Our experience has been that litigation of NRD cases can take

more than ten years and costs many millions of dollars that ultimately reduces the compensation received by the public for natural resource injuries.

34. COMMENT: “Why are these questions not submitted and posted via a public website, like any other comment section on any other website? Why do my questions have to be submitted via email 1st? That doesn’t make me feel confident that my questions will be seen by the public or answered by the NJ DEP.”

RESPONSE: Comments have been accepted by regular mail and via email. All comments have been read, considered with general responses to comments set forth herein, and posted on the NJDEP “Natural Resource Restoration at Former Ciba-Geigy Site” website located at: <https://dep.nj.gov/cgrestitution/>.

35. COMMENT: “What is the timeframe of this project's implementation?”

RESPONSE: Please see the estimated timelines for the proposed project broken up into three categories and posted on “Natural Resource Restoration at Former Ciba-Geigy Site” website located at: <https://dep.nj.gov/cgrestitution/>.

36. COMMENT: “What is the current size of the groundwater plume that remains contaminated? Does this plume still extend over the "unrestricted use" areas of the property that will be slated for park use? Neighboring properties?”

RESPONSE: The current Classification Exception Area (CEA) for the groundwater plume was approved by the Department in 2019 and is approximately 347 acres. The CEA is currently located under portions of the Ciba-Geigy Superfund site as well as adjacent properties as shown on maps during the public information session held on March 13, 2023.

37. COMMENT: “The New Jersey Conservation Restriction and Historic Preservation Restriction Act prohibits structures on a conservation easement, yet the proposal allows a 210-acre solar field to remain on the conservation easement.”

RESPONSE: The New Jersey Conservation Restriction and Historic Preservation Restriction Act, authorizes the placement of conservation restrictions on real property and sets forth the standards under which a recorded restriction may be modified or otherwise released. The Act does not prescribe specific allowable uses or exceptions in areas subject to the conservation restriction. The conditions of the restriction are determined by the executing parties – if the restriction meets the definition of conservation restriction under N.J.S.A. 13:8B-2, then the restriction is subject to the Act’s requirements for release. Here, DEP is executing the conservation restrictions subject to the pre-existing solar development, ensuring that the fee remains conserved in perpetuity to satisfy groundwater NRD claims for historic injuries arising from site operations.