



East Newark Riverfront Park Crediting Agreement: Request for Public Comment

Image credit: BASF.

What's Happening?

The U.S. Department of Justice and the Federal Natural Resource Trustees – the U.S. Department of the Interior and the National Oceanic and Atmospheric Administration – are announcing an opportunity for public comment on a proposed Interim Settlement and Crediting Agreement with BASF Corporation. Under the proposed Agreement, BASF will fund the design and construction, and arrange for long-term stewardship and maintenance (for a period of 30 years) of a five-acre natural resources Park on its riverfront property located at 1 West Central Avenue in East Newark, New Jersey.

Park designs include extensive tree plantings, gardens, public walkways and riverfront access. A rendering of the Park is included below. In return, BASF will receive a credit towards its liability for natural resource damages related to the Diamond Alkali Superfund Site, as well as the nearby Berry's Creek Study Area Site, or BCSA.

The proposed Park presents a unique opportunity to restore natural resources in the heart of an urban area long impacted by pollution. If the proposed Agreement is approved, it is anticipated that the Park would be open to the public in late 2023 or the Spring of 2024. The Borough of East Newark has been a long-standing supporter of the Park.

If the proposed Agreement is not approved after public comment has been received, it is unlikely that a park will be built at this location. And it is not clear when, or if, the Trustees will have a similar near-term opportunity to undertake riverfront restoration like this near the center of contamination at the Diamond Alkali Site, or to provide this type of restoration in a way that benefits both Sites.

You May Have Heard About this Park Before

In December 2020, the Trustees released to the public for comment an overview of this Park concept, including its potential benefits and general design. The Trustees considered and responded to comments in July 2021. The Park was highlighted in newspaper articles and additional information was provided by the Trustees in discussions with community groups.

The Trustees are empowered to collect damages for injuries to natural resources to compensate the public for losses caused by specific types of pollution – with the goal of restoring the injured resources. The terms for providing BASF with credit towards offsetting liability for damages at the two Sites are laid out in the Agreement. The two Sites are part of a larger watershed and tidal system that share significant resources and will benefit from the naturalized habitat created by the Park.

To obtain the credit, BASF must meet specified performance standards, including obtaining required permits and cooperating with the U.S. Environmental Protection Agency's Passaic River cleanup plans.



Image credit: NOAA.

Benefits Expected from the Proposed Park

If the proposed Agreement is approved, the Park will:

- Transform a former private industrial lot along the Passaic River into much-needed public greenspace with riverfront access in a highly-urbanized area.
- Add, through its greenspace, appealing aesthetic value to those living and working in the area.
- Include a variety of native trees and plants, pollinator gardens, a wetland area, public walkways and viewing areas, ample seating, and an elevated walkway along the Passaic River.
- Provide important foraging, nesting, and resting areas for a variety of migratory birds and other urban wildlife that use both the Diamond Alkali and BCSA Sites for habitat.
- Offer previously unavailable riverfront access and recreational benefits to communities that have been burdened by past pollution.
- Represent a unique restoration opportunity, providing ecological benefits many years before the completion of the cleanup of the Passaic River.

Additional Key Terms of the Proposed Agreement

Other terms of the proposed Agreement will require BASF to:

- Meet all of the performance standards outlined in a Scope of Work for designing and constructing the Park.
- Record a conservation easement that will permanently preserve the Park property as undeveloped park land.
- Pay the Trustees' costs concerning the project up to the amount of \$763,000.

New Opportunity for Public Comment

For a period of thirty (30) days, the U.S. Department of Justice invites the public to provide comments on the proposed Agreement. The United States reserves the right to withdraw from the proposed Agreement if, upon consideration of public comments, the United States concludes that the proposed Agreement is not in the best interests of the public.

You may find more information on the proposed Agreement, the Park, any upcoming public meetings, and the due date for submitting public comments, by going to: <https://darrp.noaa.gov/PassaicRiverfrontPark>.

Public comments should be sent:

- By email to: publiccommenttees.enrd@usdoj.gov
- Or by regular mail to: Assistant Attorney General
U.S. DOJ—ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

When submitting a public comment, please be sure to include the title of the document ("BASF Crediting Agreement") and the DJ number: DJ# 90-11-3-07683/14

Brief Explanation of the Credit in the Proposed Agreement

The Park is intended to partially compensate for natural resource damages at the two Sites. The Trustees are not providing BASF a release from liability. Instead, BASF will receive a base credit in the amount of \$73.5 million towards its liability for natural resource damages at the Sites.

The amount of the credit is based on the Trustees' estimate to purchase the property, and design, build and operate the Park for a period of 30 years. This method of estimating the credit is consistent with the governing law, which requires that money recovered for injury to natural resources be used to restore, replace, or acquire the equivalent of the injured resource.

Because BASF's liability for the natural resource damages at the Sites is uncertain, the Agreement allows BASF to transfer its credit to other potentially responsible parties to apply towards offsetting their liability at the Diamond Alkali Site. However, BASF's ability to use the credit at the BCSA is more limited since the Park is located within and provides more wide-ranging benefits to the Diamond Alkali Site.



Image credit: USFWS.

