

East Newark Riverfront Park Project and Crediting Agreement: Frequently Asked Questions

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INFORMATION ON LEGAL BACKGROUND

1. What are natural resource damages and who is responsible for them?

The environmental law for this case is the Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as CERCLA or the Superfund law. The Superfund law provides that anyone who discharges oil or releases certain hazardous substances is responsible for the injury those substances cause to natural resources. The party who caused the injury is sometimes referred to as a potentially responsible party, or PRP. Responsible parties are required to compensate the public by either restoring or replacing the injured resource, or by paying the natural resource trustees to do that work. This relief – the restoration or replacement of the injured resource, or the payment of money for that work -- is known as natural resource damages. Relief may also include recovery of the costs of determining the amount of damages based on injuries to natural resources. Under the Superfund law, any money recovered as natural resource damages must be used to reimburse costs of determining the amount of damages and/or to restore the injured resource or its equivalent.

2. Who are the natural resource trustees?

Under the Superfund law, the President designates government officials to act on behalf of the public as trustees for certain natural resources. In this case, the federal natural resource Trustees are the Department of the Interior, acting through the Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration (NOAA).

3. What are natural resources under the Superfund law?

Natural resources include land, fish, wildlife, biota, air, water, ground water, and drinking water supplies. These natural resources have been categorized into the following five groups: surface water resources, ground water resources, air resources, geologic resources, and biological resources.

4. What is the work of the natural resource trustees?

Working with federal, state, and tribal authorities, the Trustees assess and restore injured natural resources. There are four basic steps to this process:

- *Assess the Injury*: Quantify injuries to the natural resources and the services they provide, including lost recreational uses, through scientific and economic studies
- *Plan the Restoration*: Develop a restoration plan that identifies projects and outlines the best methods to restore the impacted environment
- *Hold Polluters Accountable*: Ensure that responsible parties pay the costs of assessing injuries and restoring the environment
- *Restore the Environment*: Implement projects to make the public whole by restoring habitats and resources to the condition they would have been in had the pollution not occurred.



5. What is early restoration?

Early restoration is a general term referring to restoration projects that take place before remediation (cleanup) is completed or before litigation and/or settlement resolves the responsibilities of all parties concerning the site.

6. What are the benefits of early restoration?

The longer an ecosystem is polluted or unrestored, the greater the environmental impacts. Early restoration projects mark important first steps in making the public and natural resources whole after pollution. This Park project will create fish and wildlife habitats, and outdoor recreation opportunities, benefiting people and the environment alike.

7. Why is the Park project considered an “early restoration project”?

The project is considered “early restoration” work for at least two reasons. First, the clean-up is not complete at either of the sites affected by the proposed project -- the Diamond Alkali Superfund Site or the Berry’s Creek Study Area (BCSA), discussed below. Second, the United States has not filed a complaint against any potentially responsible party for the recovery of natural resource damages at either the Diamond Alkali Superfund Site or the BCSA, with the exception of claims the Trustees have made in various bankruptcy cases to recover billions of dollars, and there has been no settlement resolving the liability of all the parties at either site.

INFORMATION ON THE BACKGROUND AND CLEANUP OF THE DIAMOND ALKALI SITE AND BERRY’S CREEK STUDY AREA

The Diamond Alkali Site

8. What is the Diamond Alkali Site and its history?

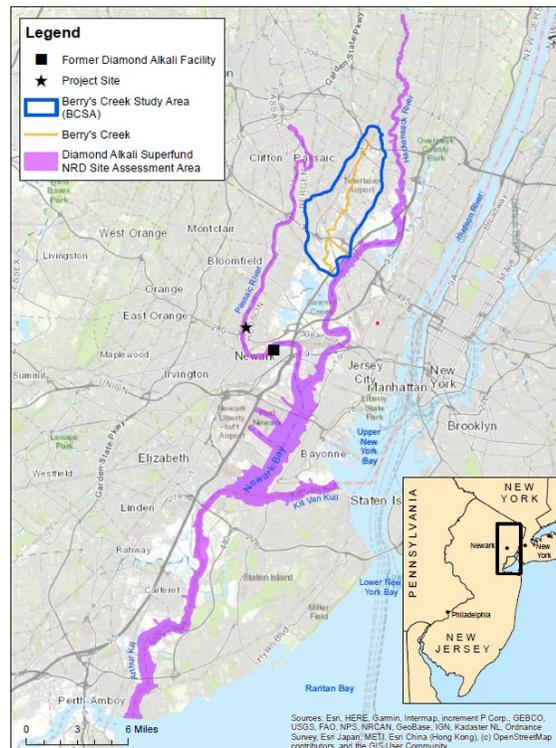
The lower 17-mile stretch of the Passaic River and greater Newark Bay area in New Jersey has a history of industrial contamination. This area, which is collectively known as the Diamond Alkali Site, also includes the former Diamond Alkali facility in Newark. Hundreds of facilities have released contaminants, including dioxins/furans, PAHs, PCBs, pesticides, and heavy metals into the River and environment. There are numerous potentially responsible parties involved with this Site.

9. Is the Diamond Alkali Superfund Site being cleaned up?

The United States Environmental Protection Agency (EPA) is overseeing the cleanup of the Diamond Alkali Superfund Site. The cleanup process is ongoing. For example, in 2016, EPA released a final plan to dredge and cap the entire lower eight miles of the Passaic River to isolate contaminated sediments from this unique and valuable ecosystem. The cleanup will include the permanent removal of up to 3.5 million cubic yards of toxic sediment from the aquatic environment. For more information on EPA’s cleanup, visit EPA’s website: www.epa.gov/superfund/diamond-alkali.

10. Is the Trustees' definition of the Diamond Alkali Site the same as EPA's definition of the Diamond Alkali Superfund Site?

For purposes of the Crediting Agreement, this FAQ document, and the accompanying fact sheet, EPA's definition of the Diamond Alkali Superfund Site is not the same as the Trustees' definition of the Diamond Alkali Superfund NRD Site Assessment Area, which is referred to in the Crediting Agreement, this FAQ document, and the accompanying fact sheet as the "Diamond Alkali Site". For purposes of the Crediting Agreement, this FAQ document and the accompanying fact sheet, the Trustees' definition of the Diamond Alkali Site includes areas that are currently being assessed to consider injuries to natural resources from hazardous substance releases. As a result, in these three documents, the Trustees' definition of the Diamond Alkali Site is more expansive than EPA's boundaries for the Diamond Alkali Superfund Site. For example, the "Diamond Alkali Site" as used in the Crediting Agreement, this FAQ document, and the accompanying fact sheet, includes the entire area depicted in purple on the map below. EPA's definition of the Diamond Alkali Superfund Site does not extend as far north up the Hackensack River as shown on the map below.



The Berry's Creek Study Area

11. What is the Berry's Creek Study Area and its history?

Berry's Creek is located in Bergen County, New Jersey, and, like the Passaic River, is part of the Hudson-Raritan Estuary. The Berry's Creek Study Area ("BCSA"), as defined by the Trustees, includes the water bodies known as Berry's Creek, including the Berry's Creek

Canal and the natural course of Berry's Creek; all tributaries to Berry's Creek from its headwaters to the Hackensack River; and wetlands that are hydrologically connected to Berry's Creek or its tributaries, all located in the Boroughs of Rutherford, East Rutherford, Carlstadt, Wood Ridge, Moonachie, and Teterboro in Bergen County, New Jersey, and any areas where contamination from the BCSA has come to be located. More than 100 potentially responsible parties have released contaminants at the Site, including mercury, PCBs, and lead. For purposes of the Crediting Agreement, this FAQ document, and the accompanying factsheet, the parties agree that the BCSA includes the area depicted in blue on the map above.

12. Is the Berry's Creek Study Area being cleaned up?

EPA is overseeing the cleanup of three Superfund Sites related to the BCSA, including the Ventron/Velsicol Site, the Scientific Chemical Processing Site, and the Universal Oil Products Site. Cleanup is ongoing at these EPA Sites. For more information on EPA's cleanup, visit EPA's websites for these respective Sites:

www.epa.gov/superfund/ventron-velsicol;

www.epa.gov/superfund/scp; and

www.epa.gov/superfund/universal-oil.

INFORMATION ON THE PROPOSED CREDITING AGREEMENT

13. What are the general terms of the proposed Crediting Agreement?

- a. Under the proposed Interim Settlement and Crediting Agreement (Crediting Agreement), BASF, a potentially responsible party at the Diamond Alkali Site and Berry's Creek Study Area, will fund, design, and build an approximately five-acre natural resources Park on its riverfront property in East Newark, New Jersey. BASF will also arrange for the stewardship and maintenance of the Park project for a period of 30 years. The Park project is intended to partially compensate for natural resource damages at the Berry's Creek Study Area and the Diamond Alkali Site. Under the terms of this Agreement, the Trustees are not releasing BASF 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 Diamond Alkali Site and BCSA. To receive this credit, BASF must meet all the performance standards outlined in the Crediting Agreement, which includes obtaining permits and ensuring BASF's park planning is coordinated with the U.S. Environmental Protection Agency's ongoing remedial or cleanup work.
- b. Because BASF's potential liability for the natural resource damages at the Diamond Alkali Site and BCSA 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 credit at the BCSA is more limited since the Park project is located within the Diamond Alkali site and provides more wide-ranging benefits to that Diamond Alkali Site.

- c. The Trustees support the Crediting Agreement and the project's anticipated benefits of improving water quality, creating habitat for birds and pollinators, and increasing public access to the river — including recreational opportunities for underserved communities disproportionately impacted by pollution.

14. Why is BASF receiving \$73.5 million in base credit?

The amount of the credit is based on the Trustees' evaluation of how much it would cost the government to purchase the land, design and build the Park project, and operate it for 30 years as a public park. This type of evaluation is how the Trustees usually evaluate the amount of damages a potentially responsible party is required to pay for injuries to natural resources. Before BASF gets the credit, it must meet the requirements of the Crediting Agreement, such as completing the design and construction of the Park, arranging funding for the maintenance of the project for 30 years, paying for the Trustees' oversight costs for the project up to \$763,000, and recording a conservation restriction on the property to permanently preserve the land in its undeveloped condition as a public park.

15. Can BASF receive more than \$73.5 million in credit for the Park project?

Yes. Under the Crediting Agreement, until there is an opportunity for the credit to be used, the credit increases from the date that all the performance standards have been met (such as the Park is open to the public) at a rate of 3% per annum, plus inflation, based upon inflation and the time-value of the ecological and recreational services provided by the Park project. This is consistent with the Trustees' economic valuations used in other cases.

16. Can BASF use all of its credit at either site? And why?

BASF may apply all or a portion of its credit at the Diamond Alkali Site. BASF may only apply up to 10% of the Trustees' initial assessment of the amount of natural resource damage at the Berry's Creek Study Area, because the Park project, due to its location along the Passaic River, is expected to provide fewer natural resource benefits at the Berry's Creek Study Area.

17. Can BASF transfer the credit to other potentially responsible parties at the Diamond Alkali Site and BCSA, and if so, why?

BASF can transfer some or all of the credit to other potentially responsible parties at the Diamond Alkali Site, but cannot transfer any credit to other potentially responsible parties at the Berry's Creek Study Area. The ability to transfer the credit, or a portion of it, at the

Diamond Alkali Site is included in the Crediting Agreement to protect BASF from overpayment if it is determined that BASF paid more than its share of natural resource damage liability for this early restoration project. BASF cannot transfer its credit to other potentially responsible parties at the Berry's Creek Study Area because the Park project, due to its location along the Passaic River, is expected to provide fewer benefits at the Berry's Creek Study Area.

18. Why isn't BASF paying more? Or less?

Under the proposed Crediting Agreement, BASF is only receiving a credit, not a release from liability. The amount of BASF's credit does not represent the final amount that BASF may have to pay for its responsibilities at the Diamond Alkali Site or BCSA. The final amount that BASF will pay to compensate for natural resource injuries at the Diamond Alkali Site and BCSA won't be set until a judge either makes a determination following a trial or approves a settlement. So BASF may wind up paying more in damages, if it is found that BASF has more responsibility for injuring natural resources than the credit can cover. However, it may also turn out that BASF has paid too much for injury to natural resources concerning the project, so the Agreement allows BASF to sell its credits to other potentially responsible parties at the Diamond Alkali Site. The actual amount of damages for which BASF may be responsible depends on how the case unfolds during future settlement discussions or litigation.

19. What happens if BASF doesn't finish the Park project?

If BASF doesn't finish the project, or meet all the requirements of the Crediting Agreement, BASF will not be entitled to any credit, with one potential exception. If BASF finishes a portion of the project, the Trustees may determine that BASF has restored some natural resources. If so, the Trustees may decide to give BASF a partial credit. But they are not required to do so under the Agreement. It is also possible that BASF may not complete any portion of the project, because it is a voluntary project. If any portion of the Park project is not completed, the Trustees may consider completing the project, or a similar project, if the property is still available and if funds are obtained from any other settlement(s) or litigation.

20. How will the Park project be maintained? And what happens if the project is destroyed after BASF gets its credit?

BASF and the eventual owner of the Park project will work together to develop a Maintenance Plan that must be approved by the Trustees and which will ensure that the Park is properly maintained for at least 30 years. BASF will contribute \$1 million toward maintenance and will work with the eventual new owner of the Park project to ensure that adequate funding for maintenance is available to maintain the Park for 30 years. In addition, BASF will arrange for insurance to cover repair of the Park project in the event of natural disaster or similar significant event beyond BASF's control.

21. What about other parties that are potentially responsible for contamination at the Diamond Alkali Site and BCSA?

The proposed Crediting Agreement does not impact the potential liability of other potentially responsible parties at any site or area. Other parties can still be sued for injuries to natural resources at any site or area.

22. Why aren't the trustees and the US Department of Justice entering into this type of arrangement with other potentially responsible parties? Or for other locations?

BASF was the first, and to date, only potentially responsible party, to come forward with a proposal to perform early restoration work in exchange for a credit against future liability at the Diamond Alkali Site and BCSA. No other similar projects or locations have been proposed at either Site or Area.

23. How is it that the public is not paying for this?

The Superfund law empowers Trustees 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 costs associated with this project will be funded by a potentially responsibility party who will receive a credit that can later be used to offset those damages.

24. Who will own the Park project?

Right now, BASF owns the land on which the Park project will be built. BASF at some point intends to transfer the Park-land to the Borough of East Newark. Before the property is transferred, the Crediting Agreement requires BASF to place a deed restriction on the property to permanently preserve it as a natural resource park open to the public.

25. Will the construction of the Park project interfere with EPA's clean-up of the Passaic River?

No. EPA generally supports the project and, under the Agreement, BASF must coordinate its work with EPA, to ensure the work will not interfere with or impair the cleanup of the Passaic River. BASF is also obligated to comply with all federal, state and local regulations and permit requirements in designing and building the project.

INFORMATION ABOUT THE PARK

26. What are the features of the proposed Park?

The proposed Park project would convert a paved-over 5-acre private industrial space into a public park with a variety of options for human recreational use and wildlife habitat that are rare in dense urban areas. Generally the Park project would transition from an open layout

with a recreation and open space design at the southern portion of the property, to a more forested natural space to the north. Natural features would include plans for meadow and wooded areas, pollinator gardens, native grasslands, and wetlands. Recreational options include pathways for the public, an elevated walkway over water along the Passaic River, as well as walkways and areas for picnicking or gathering, and a small amphitheater seating area within a natural setting. Plans also include provisions to ensure access by those with disabilities. Parking options are under consideration. Plans also include the option to allow for a kayak or hand-carried-boat launch in the future.

27. What are the anticipated project benefits?

The ecological benefits to both the Diamond Alkali Site and Berry's Creek Study Area include the creation of habitat that incorporates natural landscaping components to provide habitat for pollinators and other species (e.g., forest, pollinator gardens, native grasslands, and wetlands). These habitats offer nesting and resting opportunities for migratory birds and songbirds, as well as related species. Pollinator gardens offer habitat to bees and butterflies. Aquatic features (open-water, wetland, and riparian habitat) would provide additional habitat for local fish, fauna and plants that is currently lacking in the Passaic River area. The Park project also offers recreational benefits, as communities near the area where the proposed Park will be located currently have very limited access to greenspace and few options for walking or resting in a natural environment. For example, there are few opportunities to enjoy trees, birdwatching and picnicking – with access to the Passaic River. The proposed Park is expected to expand and enhance the recreational options for nearby citizens, while offering people views of the River.

28. Why is this project considered part of environmental justice?

The East Newark area is considered an overburdened and underserved community which has been impacted by past hazardous substance releases. Park plans include the arrangement for funding of park maintenance, ensuring that the benefits created by the Park project are maintained into the future. For more information, see: <https://www.nj.gov/dep/ej/communities.html>

29. How will the project specifically benefit the Berry's Creek Study Area?

The proposed Park project is expected to provide a variety of benefits to resources at or near both the Diamond Alkali Site and BCSA. The Park project is expected to provide important nesting, foraging, and resting habitat to migratory and song birds within the Berry's Creek watershed. The Berry's Creek watershed provides vital stopover or breeding habitat for a large percentage of the migratory bird species found in the eastern United States. Also, while the Diamond Alkali Site and Berry's Creek Study Area are in two different sub-watersheds, these waters meet and become part of the larger Newark Bay watershed. So, many environmental benefits are shared by the Diamond Alkali Site and BCSA. Finally, the Park project, once completed, would support public recreation within a short drive of the Berry's Creek Study Area.

30. When will the Park be open to the public, and will there be entrance fees, etc.?

If the Agreement is approved, it is anticipated that the project construction will begin immediately and take about two years to complete. At that point the Park would be open and available for public use. Park plans include the possibility of open areas where people can meet and walk along the river, and other amenities. There will be no entrance fees.

INFORMATION ON OTHER RELATED ISSUES

31. What is the status of the natural resource damage assessment at the Diamond Alkali Site and the Berry's Creek Study Area?

The natural resource damage assessment process is ongoing at the Diamond Alkali Site and BCSA. Please see NOAA's websites for more information:

<https://darrp.noaa.gov/hazardous-waste/lower-passaic-river-and-greater-newark-bay>;

<https://darrp.noaa.gov/hazardous-waste/berrys-creek-watershed>

32. Why is BASF a potentially responsible party for natural resource damages at the Diamond Alkali Site and BCSA?

We are not making a determination as to BASF's potential liability at this time. It is publicly known that BASF, or its predecessors or affiliates, owned or operated at least four manufacturing locations at or near the Site and BCSA. Hazardous substances may have been released from these locations into the environment, potentially causing injury to natural resources. Therefore, BASF is considered to be a potentially responsible party at both the Diamond Alkali Site and BCSA. The following provides additional details regarding these four manufacturing locations. First, concerning the Diamond Alkali Site, we believe that BASF is the successor to United Cork operations at 50 Central Avenue, South Kearny, and that dyestuff and chemical manufacturing operations were conducted there from the mid-1960s through the mid-1990s. Second, at the Park project location along the Passaic River at One West Central Ave, East Newark, we believe that BASF Catalysts LLC is the successor to Engelhard Corporation, and that precious metals processing operations were conducted from the 1950s through 2009. Third and Fourth, concerning the Berry's Creek Study Area, we believe that BASF is the successor to certain specialty chemicals operations conducted at facilities located at 651 12th Street, Carlstadt (the "Henkel" site) and at 511 13th Street, Carlstadt (the "Arsynco" site).

There are numerous additional potentially responsible parties at both the Diamond Alkali Site and BCSA.

LOOKING TO THE FUTURE OF THIS KIND OF AGREEMENT

33. Will this Agreement be a model for other settlements for natural resource damages?

The Trustees and the US Department of Justice hope that this type of early restoration interim settlement approach will be a model for future settlements to partially resolve natural resource damage claims before litigation. There are many opportunities to start restoration work now rather than waiting for the filing of a lawsuit, which under the Superfund law could take years and increase the likelihood that potential restoration opportunities will no longer be available. This type of agreement provides the potentially responsible party with the benefit of performing the work now in exchange for credit it can use to offset liability.

34. Why aren't we entering into more of these types of agreements?

The Trustees and the US Department of Justice hope to enter into more of these types of agreements moving forward, and encourage potentially responsible parties to think of creative projects and opportunities to restore natural resources in the near term -- rather than waiting for a lawsuit.

INFORMATION ON PUBLIC COMMENT OPPORTUNITIES

35. How can I get more information on the Park project and the proposed Crediting Agreement?

There will be a virtual public meeting in mid-June and an in-person open house in East Newark, N.J, in late-June where members of the public will be able to ask questions about the Agreement and the project. During these meetings, the public will also be able to submit informal comments on the development and functions of the Park. Please visit <https://darrp.noaa.gov/EastNewarkRiverfrontPark> for updates on these events.

36. How can I provide comments on the proposed Agreement?

The US Department of Justice is accepting comments from the public on the proposed Interim Settlement and Crediting Agreement through July 7, 2022. A copy of the Agreement and more information about the Park may be found at <https://darrp.noaa.gov/EastNewarkRiverfrontPark>. The Department of Justice and the Trustees will review and consider any written comments submitted on the Agreement. After reviewing and considering the written comments, the Department of Justice and the Trustees will determine if the proposed Agreement is in the public interest. If the United

States determines that the proposed Agreement is in the public interest, the United States will provide written notice to BASF and the public that the Agreement is final and effective.

Any comments on the proposed Agreement should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to In Re BASF and Trustees Interim Settlement Agreement, D.J. Ref. No. 90-11-3-07683/14. Comments may be submitted either by e-mail or by mail: pubcomment-ees.enrd@usdoj.gov or Assistant Attorney General, U.S. DOJ – ENRD, P.O. Box 7611, Washington, D.C. 20044-7611. Comments must be submitted by July 7, 2022.