

NJ says convert polluted Toms River site to open space

JON HURDLE, CONTRIBUTING WRITER | DECEMBER 9, 2022 | [ENERGY & ENVIRONMENT](#), [WATER](#)

But critics fault proposed lawsuit settlement



Photographs of the Ciba-Geigy Superfund site in Toms River at various stages of remediation

New Jersey is offering what it says is a settlement to deal with a contaminated 1,200-acre site in Toms River where a polluted water system was blamed for about 130 cases of childhood cancer, some of them fatal, in the 1990s.

The Department of Environmental Protection on Monday published a [draft agreement](#) with BASF, successor to the chemical manufacturer Ciba-Geigy, under which the company would preserve about 1,000 acres of the property in the town and restore about a third of the area through improvements that include groundwater recharge.

If the settlement is finalized, the company would also pay DEP \$100,000 to compensate for its expenses in investigating and assessing the site.

The draft settlement does not allege that contamination at the BASF site was linked with that in the town's public water system that was blamed for a "cluster" of childhood cancer cases at Toms River in the mid-1990s.

BASF, through its corporate acquisitions, has assumed liability for the ownership and operation of the site, where industrial dyes, pigments, epoxy resins and plastics were produced between 1952 and 1990. The site was placed on the National Priorities List of the Environmental Protection Agency's Superfund cleanup program in 1983, and BASF has been "remediating discharges" there since 1993 under a consent decree, the draft agreement said.

No admission of liability

But the company said its draft agreement with the DEP does not mean that it admits any of the department's findings, and it is not an admission of fault, liability, law or fact.

The DEP alleges that discharges at the site have damaged the state's natural resources, and it is seeking compensation for the contamination.

But it said that a public health assessment at the site determined in 2001 that groundwater contamination had been contained and that other public health exposure pathways had been "interrupted."

*'The devil is in the details, and everybody needs to look at it.' —
David Pringle, Clean Water Action*

The action is the latest Natural Resource Damages suit to be filed against polluters by the Murphy administration. These lawsuits, a mechanism established by the federal government, seek compensation from corporate polluters for the loss of natural resources such as groundwater.



Rendition of a pollinator meadow and bird-watching platform in a preserve proposed for former Ciba-Geigy polluted site in Toms River

Clean Water Action, an environmental nonprofit, said the agreement should not be finalized without a “rigorous review” that should include a public comment period and at least one public hearing.

“Given the dirty deeds of Ciba Geigy and past government failures, the people of Toms River and downstream communities deserve more both on and off site when it comes to cleanup, preservation and protection from future harm,” said Janet Tauro, New Jersey board chair of Clean Water Action, and an Ocean County resident. “A required first step is meaningful public engagement, more than just written comment, during the public comment period for this proposed settlement.”

Other criticism

The public needs time to evaluate the 140-page settlement that was released Monday, and then given a full opportunity to comment on it, said David Pringle, a spokesman for the group.

He said the document doesn't include details of the DEP's analysis of damage to groundwater at the site. "The devil is in the details, and everybody needs to look at it," he said.

Jeff Tittel, former director of the New Jersey Sierra Club, said the plan fails in part because the contaminated land would become open space, meaning that the company does not have to clean it up to the higher standard that would be required if it was being reused for housing, for example.

The contamination of public water in Toms River has generated a series of lawsuits over the years.

He argued that the settlement fails to fulfill the requirements of a Natural Resource Damages suit to compensate the public for loss of natural resources, and that BASF would be required to pay only \$100,000 for the DEP's expenses. "They are getting off without paying any real dollars," he said.

Given the size of the site, there is a potential NRD claim of hundreds of millions of dollars, but no such claim is in the draft settlement, Tittel said.

"They are not putting up any money at all to help the people around them or restore the environment in Ocean County," he said. Tittel called the draft a "sellout" that is unique in converting contaminated land into open space and fails to meet the usual standards of NRD suits.

The contamination of public water in Toms River has generated a series of lawsuits over the years, resulting in payments including some \$13 million in 2002 to 69 families who sued Ciba-Geigy, Union Carbide and United Water Toms River, alleging that tainted water caused their illnesses.