*Ecological Uplift in doubt*

The fundamental premise for NRD restoration projects is that they must provide some measurable and permanent ecological uplift for the environment, such as benefits to groundwater, surface water and wetlands; and benefits for wildlife, such as birds, snakes, and turtles; all for the betterment of people.

To be successful, NRD projects must also recognize and account for past human activity that has already ruined the ecological conditions in the area, and NRD projects must recognize and account for how planned future human activity in the area may prevent planned ecological improvements.

If these negative offsets are not recognized and accounted for, then the advertised ecologic uplift in the NRD projects may be unrealistic and unsupported by science.

This room is filled with people who have common sense. In addition, we have spoken to experts in the field of NRD restoration.

The NRD restoration projects proposed in the BASF settlement agreement do not make sense and they do not appear to be supported by science.

Let me get into some specifics for why we think that may be true:

1. This site was a huge chemical company that ruined much of the natural ecology and wildlife that once existed there.
2. This site has been and continues to be a polluted Superfund site that has been undergoing soil and groundwater remediation for almost 28 years.
3. Remediation work continues to this day, and that remediation work requires groundwater treatment equipment, piping and people walking about.
4. The remediation plan here is to leave the polluted landfill along with other areas with contaminated soil where previous wastewater treatment occurred onsite (next to the lined lagoon); to leave polluted

groundwater onsite, and to use engineering and institutional controls to protect the public from that pollution.

5. You have not stated what engineering controls will be used to protect the invited public from the pollution at the site.

6. The PLAN A NRD restoration plan in the settlement agreement calls for the following elements: Area 1 is 535 acres of preexisting forest that will be kept as a forest; Area 2 is 255 acres where an environmental center with trials will be constructed; and Area 3 is 210 acres of preexisting solar panels that will be kept as a solar field. All these acres will be restricted by conservation easements.

7. Sprinkled among these areas are supposed to be various natural resource restoration projects intended to enhance grasslands, wetlands, rainwater infiltration, endangered species habitats, and to provide a public conservation center, walking trails and observation areas.

8. You are concerned that the construction of all these restoration elements on an existing superfund site may not be feasible or work out as they are envisioned. As such, you have built into the settlement agreement a PLAN B restoration plan. Plan B provides that, if PLAN A is not feasible, BASF must provide DEP with other onsite or offsite NRD restoration projects. However, the public has no idea what those "new projects" might be, or if the public will even be told about them or have an opportunity to comments on them.

9. You are also concerned that there may be no other reasonable PLAN B NRD restoration projects for the site itself or the surrounding area. As such, you have built a PLAN C into the settlement agreement. If onsite and offsite NRD restoration projects are not feasible, then BASF must write a check to DEP.

10. It seems likely that PLAN A and PLAN B may not be feasible because Toms River has prohibited conservation easements on industrial property, like the BASF site, which appears to prevent BASF from

executing PLAN A or PLAN B. That means the NRD settlement here may default to PLAN C – write a check. The problem with PLAN C is that DEP has not told the public how much that check would be, where or how those funds would be used by DEP, or how DEP will calculate the amount.

11. DEP has also not provided the public with a calculation or estimation of the natural resource damages here. As such, we have no idea how much damage we are talking about.

12. DEP has also not provided the public with a valuation of the PLAN A NRD restoration plan or a description of or valuation of the PLAN B restoration plan. So, we have no idea if the value of restoration from either of these plans come close the value of the natural resource damages.

13. The conservation easements included as part of the Settlement Agreement were supposed to include a *Present Conditions Report*. This report was supposed to describe the "natural resource values and existing conditions of" PLAN A, and it was supposed to include various reports, maps, photographs, and other documents that would explain and support the NRD valuation and NRD project restoration values. However, you failed to include that attachment to the Settlement Agreement, and you have refused to provide us with this information despite repeated requests.

14. Putting aside these failings and omission, and just looking at the restoration projects proposed in PLAN A, the NRD restoration projects are unrealistic from a legal or scientific point of view. For example:

    - Calling a preexisting 200-acre solar field a protected conservation zone does not work because, according to the conservation easement law at NJSA 13:8B-2, a conservation zone cannot have any surface construction on it. Even if it could, there is no evidence to support the claim that these solar panels will promote local species. For example, claiming the

northern pine snake will benefit from the grass around solar panels does not work because these snakes live in the forest; that is why they are called the “pine” snake.

- Using a lined lagoon with a deteriorating plastic liner does not work as a wetland habitat because, once the liner fully deteriorates and needs replacement, the wetlands upon which any uplift credit will be ruined.
- The watercourse element originating from the extraction, treatment and discharge of contaminated groundwater is not permanent because it will dry up when the discharged wastewater stops flowing and the purported habitat uplift will simply go away.
- Building an education center with trails that will cut off the movement of animals and spook them does not promote wildlife habitat uplift purported.
- Claiming the projects will enhance stormwater infiltration does not work because most areas with impervious cover, like solar panel footings, groundwater remediation equipment, monitoring wells, and piping are not being removed; and most other areas do not have impervious surfaces to begin with that need to be removed. So, there is no stormwater infiltration enhancement.
- Claiming existing forested areas are ecological enhancements does not work because the forest already exists, and they are not being enhanced.
- Claiming the area that is super saturated by decades of groundwater discharge of up to a million gallons per day of treated wastewater will somehow dry out enough to revert the area to a forest by doing nothing to encourage that transformation is not realistic.
- Building NRD restoration projects on top of a superfund site where pollution will be left behind exposes animals to pollution,

which is another debit to the claimed NRD restoration benefits identified here.

- Proposing habitat restoration projects do not address the real injury here, which is the ongoing and perpetual groundwater injury.
- Posting an operation and maintenance fund for only 10-years is unrealistic because the restoration elements in PLAN A must be maintained for much longer to actually realize the uplift purported, presuming they were legal and scientifically practical to begin with, which they are not.

15. Even if the PLAN A restoration projects were feasible, which they are not, and even if they could be preserved in perpetuity using a conservation easement, which is not possible given the recent Toms River zoning amendment, the conservation easements do not advance the goals claimed by the DEP.

    First, BASF can remove the conservation easements whenever they want. That is because the conservation easement law at NJSA 13:8B-5 permits DEP to remove the easement if BASF asks to have it removed and DEP holds a public hearing. DEP has not waived its rights under this removal clause in the Settlement Agreement. As such, BASF retains the opportunity to request to have the conservation easements removed.

    Second, the Settlement Agreement and conservation easements allow BASF to sell these parcels to whomever BASF wants to sell them to, subject to a right of first refusal by DEP. If DEP does not want to buy the parcels, BASF can sell them to a third party after the conservation easements are removed.

16. It appears to us that the restoration project concepts proposed in the Settlement Agreement were prepared by BASF and presented to

DEP for review and approval. The concepts lack sufficient detail for DEP and/or the Public to understand the amount of new habitat disturbance that would need to occur for their construction, the extent of the intervention proposed to convert areas that are undergoing succession toward forest to meadow, the cost of facilitating and maintaining those concepts, etc.

17. The bottom line is that the Settlement Agreement and the conservation easements do not provide the natural resource uplifts they purport to convey because most of the ecologist uplift is an unsupported illusion. In addition, whatever these ecological benefits are, if any, they can be rescinded at any time.