

ACROSS FENCE LINES

Connecting Corporate America to Communities
through Urban and Community Forestry Programs



Funded by the U.S. Forest Service

CASE STUDY

The Beneficial Role of Voluntary UCF Efforts in the NRDA Settlement Process

Kearny, New Jersey

Introduction

International chemical company BASF, which once operated a facility in Kearny, NJ, holds partial Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability for the Lower Passaic River Superfund Site. The company has leveraged urban and community forestry to preemptively address its upcoming Natural Resource Damages (NRD) settlement. A proposal for a riverside, forested park in nearby East Newark was developed and submitted to the city government for approval as a component of BASF's broader commitment to remediation.

The Business Drivers

Business Driver 02 – Remediation Remedies —BASF is one of approximately 100 companies partially responsible for the release of over 100 pollutants released into the lower 8 miles of New Jersey's Passaic River starting in the 1950s. Today, these companies are required to collectively remove 3.5 million cubic yards of contaminants from the river. In addition to the cleanup, responsible parties are required, under the Natural Resources Damages Act (NRDA), to restore nature to its pre-contamination state.

While NRDA damages are still being negotiated with the parties, BASF proposed to NRD trustees to implement an urban forestry program on 13 acres in East Newark that would partially satisfy any future settlements. This urban forestry program would create a park in the city of East Newark and potentially create linkages between existing parks in neighboring towns and planned recreational paths.

Alignment with Ten-Year Urban Forestry Action Plan Goals

Goal 2 - Promote the Role of Urban and Community Forestry in Human Health and Wellness – While demonstrating a direct link between contamination control and BASF's UCF work is not possible, the use of urban forestry as part of an NRD settlement introduces human health and wellness as an ancillary benefit to the project. Educational efforts BASF

supports in tandem with the park design clarify and promote the role of trees as solution multipliers, communicating to community members the benefits of the plantings within the framework of the settlement and beyond to the accompanying air quality and health benefits of green space access.

Goal 6 - Diversify, Leverage and Increase Funding for UCF – BASF has leveraged funding into an urban and community forestry effort by using money dedicated to achieving NRD compliance. City officials have indicated that a project of this scope and scale would otherwise have encountered significant barriers to funding within the constraints of the existing city budget.

The Community

Municipal partners have expressed concern to East Newark leadership about the city's lack of accessible green space, but given the small footprint of the city, options for significant investment in green space creation are limited. The area is highly urbanized, and most existing trees are located within developments, so the proposed project would significantly increase residents' exposure to accessible natural spaces..

Challenges

Three challenges arose as BASF developed a plan for the park. The first was to reconcile the proposed project with the expectations of federal NRD trustees at the Department of Interior and NOAA. BASF elected to negotiate an appropriate level of credits for the project in advance of the NRD settlement finalization, despite the complexities of doing so. The company's plan to begin addressing the settlement terms voluntarily was a new, and in many ways, welcome development for the trustees but an administrative process was needed to capture the credits and properly assign roles and responsibilities. Establishing an administrative process was especially important given the effort's potential to be replicated along the Passaic River and within other NRD sites across the country.

The second challenge was in proposing a workable project to the city of East Newark that would be an asset for residents without burdening the community with long-term maintenance. BASF sought to present a UCF project that the mayor, council and community would all support.

Third, while urban forestry can mitigate quantified impacts of damage such as air pollution or migratory bird habitat loss, measuring and designing an equivalent benefit to the species affected by damage can prove difficult. Per NRDA guidance, the value of new habitats to wildlife must be assessed as equal or in balance to the damaged system. Migratory species or species that have lost nesting sites must have those specific habitat needs restored on an ecosystem scale, rendering many UCF applications (e.g., street trees,

small-scale neighborhood plantings) ineligible for credit as restoration activities given the differing species that utilize them.

In general, NRD settlements typically involve many corporations with shared liability. As entities responsible for past impacts may not understand the extent of their current liability, companies involved may not immediately see a business case for voluntary and preemptive engagement in the settlement. While early, proactive commitments may result in longer, more complex engagement with NRD trustees, they can also produce more predictability for potential liability and a more mutually beneficial outcome.

Opportunities

Increasing Access and Connectivity - The proposed park would be centrally located within East Newark, providing an ideal site for access by a variety of communities. As a linear strip along the river, the site also connects geographically to other planned recreational areas, supporting local goals to increase interconnectivity between small cities.

Leveraging Leadership Changes - The company's UCF efforts have benefited from a shift in East Newark political dynamics. Project initiation coincided with the election of a new mayor to a seat vacated for the first time in 32 years. BASF leadership was thus able to introduce the project at a time when city officials were more open to new ideas and activities than in the past.

Improving External Relationships - Achieving effective action while NRDA negotiations were still underway allowed BASF to build upon its established, positive relationship with agencies. Multiple partners interviewed also acknowledged how BASF's culture of collaboration has advanced mutually beneficial goals in a relatively short timeframe.

Partners

- Mayor and City Council of East Newark
- NRD Trustees, at the federal and state levels

Key Takeaways

- Inclusivity in design has made the project appealing to all partners, allowing BASF to present a holistic and aesthetically appealing park proposal to municipal officials and expedite buy-in from community members and other key stakeholders. In turn, city leadership was able to integrate the park into other social initiatives such as creating housing for veterans and providing educational opportunities to local youth. By including universal design in the project, BASF and partners were also able to garner the support of ADA advocates.

- BASF has a deep history developing education programs at their legacy sites and was able to build on these experiences as part of the project design, adding value beyond the planting of trees. The development of an educational element also serves to translate the value of the plantings beyond the scope of the remediation framework, raising local awareness of the value of trees to wildlife, air quality and mental well-being.
- Taking voluntary, proactive steps before settlement finalization has expedited the NRD process and will deliver restoration faster and less expensively. The ability to jumpstart restoration is highly desirable to the NRD trustees, as negotiations can take many years despite the need for immediate remediation. Openly communicating to, and soliciting feedback from, community, corporate and municipal stakeholders at multiple stages has produced a broadly beneficial UCF activation far in advance of any activity that will result from the finalized settlement.

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