

**ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71,
TITLE 36 OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION
LAW**

THIS INDENTURE made this 31st day of ~~December~~ ^{January}, 2008, between **BASF Corporation** (the "Grantor Fee Owner") having an office at 100 Campus Drive, Florham Park, NJ 07932, and **Empire Generating Co, LLC** (formerly known as Besicorp-Empire Power Company, LLC), (the "Grantor Leasehold Owner"), a New York limited liability company having an office at 51 JFK Parkway, Suite 200, Short Hills, NJ 07078 (collectively the "Grantors"), and **The People of the State of New York** (the "Grantee"), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233.

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of environmental easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and of ensuring the potential restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that environmental easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor Fee Owner, is the owner of the following parcels of real property located in the City of Rensselaer in Rensselaer County, New York:

1. Parcel known and designated on the tax map of the City of Rensselaer as tax map parcel number Section 154, Block 5, Lot 2.11, being the same as that property conveyed to Grantor Fee Owner by deed on March 31, 1978, and recorded in the Land Records of the County Clerk at page 746, liber 1300 of Deeds, comprised of approximately 25.07 acres, (hereinafter referred to as the "Main Parcel")

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2. Parcel known and designated on the tax map of the City of Rensselaer as tax map parcel number Section 154, Block 5, Lot 2.11, being the same as that property conveyed to Grantor Fee Owner by deed on March 31, 1978, and recorded in the Land Records of the County Clerk at page 746, liber 1300 of Deeds, comprised of approximately 8.81 acres, (hereinafter referred to as the "Ancillary Parcel")
3. A portion of the parcel known and designated on the tax map of the City of Rensselaer as tax map parcel number Section 154, Block 5, Lot 2.13, being the same as the property conveyed to Grantor Fee Owner by deed on March 31, 1978, and recorded in the Land Records of the County Clerk at page 746, liber 1300 of Deeds, comprised of approximately 1.11 acres (hereinafter referred to as the "Retained Parcel")

WHEREAS, the Main Parcel, the Ancillary Parcel and the Retained Parcel are collectively referred to as the "Controlled Property" and are more fully described in Schedule A attached hereto and made a part hereof; and

WHEREAS, the Main Parcel and the Ancillary Parcel are collectively referred to as the "Leased Parcel"; and

WHEREAS, Grantor Leasehold Owner is a co-applicant with Grantor Fee Owner under the Brownfield Site Cleanup Agreement Number A4-0507-0604 (the "Brownfield Cleanup Agreement") pursuant to which this Environmental Easement is being granted; and

WHEREAS, Grantor Leasehold Owner is the ground lessee of the Leased Parcel and holds possession subject to Grantor Fee Owner's reversionary interests, and has authority and capacity for itself and its successors and assigns to perform all conditions, covenants, and terms herein as if it were Grantor Fee Owner; and

WHEREAS, Grantor Leasehold Owner joins this grant as the party in interest who as the owner of a leasehold interest in the Leased Parcel has authority and capacity to perform the covenants, conditions and obligations of this Environmental Easement; and

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36.

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of the Brownfield Site Cleanup Agreement Number A4-0507-0604, Grantors grant, convey and release to Grantee a permanent environmental easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein (the "Environmental Easement").

1. Purposes. Grantors and Grantee acknowledge that the purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls apply to the use of the Controlled Property, run with the land, are binding on the Grantors and the Grantors' successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. The Controlled Property may be used for industrial recycling and power generation uses as long as the following long-term engineering controls are employed:

- First, the Grantors will limit the use of the Controlled Property to only industrial recycling and power generation uses without specific approval from the New York State Departments of Environmental Conservation and Health.
- Second, a Soil Management Plan (SMP) will set forth procedures to be followed by the Grantors, Grantors' successors, assigns, any lessees and any persons using the Controlled Property for activity involving excavation, the management and disposal of excavated material, or the use of imported soil/fill for purposes such as backfill, grading or landscaping. An action-specific SMP will be required for all future excavation activities.
- Third, the use of groundwater underlying the Controlled Property will be prohibited except for use associated with the Soil Management Plan.
- Fourth, the Grantors will monitor groundwater quality at down gradient locations at the Controlled Property perimeter until data indicate that groundwater standards have been achieved. This will be conducted annually for a minimum of 5 years and will be terminated once concentrations of parameters in all samples have met NYSDEC groundwater standards at 6 NYCRR Part 703 for two consecutive years.
- Fifth, access to the site will be restricted by the existing fence on the Controlled Property.

Grantors hereby acknowledge receipt of a copy of the NYSDEC-approved Site Management Plan, dated October 2007 ("SiteMP"). The SiteMP describes obligations that Grantors assume on behalf of Grantors, their successors and assigns. The Grantors' assumption of the obligations contained in the SiteMP which may include sampling, monitoring, and/or operating a treatment system on the Controlled Property, and providing certified reports to the NYSDEC, is and remains a fundamental element of the

Department's determination that the Controlled Property is safe for a specific use, but not all uses. The Department may unilaterally revise the SiteMP for the Controlled Property from time to time on the basis of any of the following: request made by Grantors, their successors or assigns; information about the Controlled Property's residual contamination, use, or long-term engineering controls; or applicable statutes, regulations, or guidance. Grantors and all successors and assigns, assume the burden of complying with the SiteMP and obtaining an up-to-date version of the SiteMP from:

Regional Remediation Engineer
Region 4
NYS Department of Environmental Conservation
1130 North Westcott Road
Schenectady (Rotterdam), NY 12306

or:

Site Control Section
Division of Environmental Remediation
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233

- B. The Controlled Property may not be used for a higher level of use such as residential / commercial use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.
- C. Grantors covenant and agree that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant of Title 36 to Article 71 of the Environmental Conservation Law.

- D. Grantors covenant and agree that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

E. Grantors covenant and agree that they shall annually, or at such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any site management plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.
4. Reserved Grantors' Rights. Grantor Fee Owner reserves for itself, its assigns, representatives and successors in interest with respect to the Property, all rights as fee owner of the Controlled Property, including:
 1. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement; and
 2. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement.
5. Enforcement.
 - A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantors, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Controlled Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.
 - B. If any person intentionally violates this Environmental Easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, or Article 56, Title 5 with respect to the Controlled Property.

C. Grantee shall notify Grantors of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantors can cure such breach or suspected breach and give Grantors a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantors of any failure to adequately cure the breach or suspected breach. Grantors shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental Easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information: County, Brownfield Site Cleanup Agreement Number, and the County tax map number or the Liber and Page or computerized system tracking/ identification number.

Parties shall address correspondence to: Environmental Easement Attorney
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantors shall record this instrument within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Controlled Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Controlled Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner and filed with the office of the recording officer for the county or counties where the Controlled Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantors have caused this instrument to be signed in their respective names.

Grantor Fee Owner's Name: BASF Corporation

By: [Signature]

Philip E. Kaplan

Title: Sr. Vice President + Treasurer

Date: Dec. 20, 2007



Grantor Fee Owner's Acknowledgment

STATE OF New Jersey)

ss: COUNTY OF Morris)

On the 20th day of December, in the year 2007, before me, the undersigned, personally appeared Philip E. Kaplan, personally known to me who, being duly sworn, did depose and say that he/she/they reside at 100 Campos Drive, Floham Park, NJ 07832 (full mailing address) and that he/she/they is (are) the Sr. Vice President + Treasurer (President or other officer or director or attorney in fact duly appointed of the BASF Corporation (full legal name of corporation) the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation

Annette DiPaolo
Notary Public - State of _____

Annette DiPaolo
Notary Public of New Jersey
My Commission Exp. Mar. 8, 2011

Grantor Leasehold Owner's Name: Empire
Generating Co, LLC (formerly known as Besicorp-
Empire Power Company, LLC)

By: AS
Andrew Singer
Title: member
Date: 12/20/07

Grantor Leasehold Owner's Acknowledgement

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On the 20 day of December in the year 2007, before me, Michelle Cowell, Notary Public, personally appeared Andrew Singer, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Michelle Cowell



SCHEDULE A
(To Environmental Easement)

Parcel 1 (Main Parcel)

All that certain tract, piece or parcel of land situate, lying and being in the City of Rensselaer, County of Rensselaer, State of New York, lying Easterly of Riverside Avenue and Westerly of the Port Access, and being more particularly bounded and described as follows:

BEGINNING at a point at the intersection of the Northerly boundary of Port Access Highway (1989) with the Easterly boundary of Riverside Avenue and runs thence from said point of beginning along the Easterly boundary of Riverside Avenue the following two (2) courses: 1) North 11 deg. 18 min. 50 sec. West 191.38 feet to a point; and 2) thence North 14 deg. 55 min. 18 sec. East 1,410.81 feet to a point; thence through the lands now or formerly of BASF Wyandotte Corp. along the proposed Southerly and Southwesterly boundary of Lot 3 the following six (6) courses: 1) in a generally Easterly direction along a curve to the right having a radius of 345.11 feet, a chord bearing of North 71 deg. 13 min. 01 sec. East and a chord distance of 279.18 feet, an arc length of 287.42 feet to a point; 2) thence South 59 deg. 29 min. 04 sec. East 221.56 feet to a point; 3) thence North 53 deg. 41 min. 02 sec. East 40.63 feet to a point; 4) thence South 62 deg. 37 min. 15 sec. East 122.43 feet to a point; 5) thence South 60 deg. 13 min. 58 sec. East 60.02 feet to a point; and 6) thence South 55 deg. 15 min. 35 sec. East 28.52 feet to a point on the Westerly boundary of Port Access Highway; thence along the generally Westerly and above mentioned Northerly boundary of Port Access Highway (1989) the following seven (7) courses: 1) South 06 deg. 47 min. 58 sec. West 49.25 feet to a point; 2) thence South 06 deg. 24 min. 01 sec. West 505.10 feet to a point; 3) thence South 09 deg. 35 min. 04 sec. West 440.09 feet to a point; 4) thence South 43 deg. 52 min. 45 sec. West 245.41 feet to a point; 5) thence South 60 deg. 43 min. 42 sec. West 177.75 feet to a point; 6) thence South 68 deg. 13 min. 59 sec. West 290.80 feet to a point; and 7) thence South 70 deg. 42 min. 27 sec. West 283.18 feet to the point or place of beginning and containing 25.07 acres of land, more or less.

Parcel 2 (Ancillary Parcel)

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate, lying and being in the City of Rensselaer, County of Rensselaer, State of New York, lying Easterly and Southeasterly of the Port Access Highway, and being more particularly bounded and described as follows:

BEGINNING at a point at the intersection of the division line between the lands now or formerly of BASF Wyandotte Corp. as described in Book 1300 of Deeds at Page 746 on the West and the lands now or formerly of CSX Rail Corporation on the East with the division line between the lands now or formerly of BASF Wyandotte Corp. on the North and the lands now or formerly of Polsinello Fuels, Inc. on the South and runs thence from

said point of beginning along the above last mentioned division line North 87 deg. 56 min. 01 sec. West 935.13 feet to its intersection with the division line between the lands now or formerly of BASF Wyandotte Corp. on the East and the lands now or formerly of the Albany Port District Commission on the West; thence North 11 deg. 18 min. 50 sec. West along the above last mentioned division line 98.23 feet to its intersection with the Southeasterly boundary of the Port Access Highway (1989); thence along the Southeasterly and Easterly boundary of the Port Access Highway (1989) the following eight (8) courses: 1) North 68 deg. 09 min. 35 sec. East 627.49 feet to a point; 2) thence North 59 deg. 40 min. 45 sec. East 162.25 feet to a point; 3) thence North 46 deg. 20 min. 46 sec. East 185.31 feet to a point; 4) thence North 33 deg. 28 min. 12 sec. East 246.84 feet to a point; 5) thence North 18 deg. 51 min. 56 sec. East 136.30 feet to a point; 6) thence North 09 deg. 15 min. 26 sec. East 586.58 feet to a point; 7) thence North 08 deg. 09 min. 06 sec. East 573.73 feet to a point; and 8) thence North 40 deg. 22 min. 50 sec. East 29.73 feet to a point on the above first mentioned division line between the lands now or formerly of BASF Wyandotte Corp. on the West and the lands now or formerly of CSX Rail Corporation on the East; thence along the said above first mentioned division line the following three (3) courses: 1) South 08 deg. 04 min. 16 sec. West 1,360.13 feet to a point; 2) thence South 81 deg. 55 min. 44 sec. East 16.50 feet to a point; and 3) thence South 08 deg. 04 min. 16 sec. West 736.05 feet to the point or place of beginning and containing 8.81 acres of land, more or less.

Parcel 3 Retained Parcel

All that certain tract, piece or parcel of land situate, lying and being in the City of Rensselaer, County of Rensselaer, State of New York, lying Easterly of Riverside Avenue and Westerly of the Port Access Highway, and being more particularly bounded and described as follows:

COMMENCING at a point at the intersection of the Northerly boundary of Port Access Highway (1989) with the Easterly boundary of Riverside Avenue and runs thence from said point of commencement along the Easterly boundary of Riverside Avenue the following two (2) courses: 1) North 11 deg. 18 min. 50 sec. West 191.39 feet to a point; and 2) thence North 14 deg. 55 min. 18 sec. East 1,410.81 feet to the point of beginning of the hereinafter described parcel; and runs thence from said point of beginning, continuing along the above mentioned easterly boundary of Riverside Avenue North 14 deg. 55 min. 18 sec. East 65.68 feet to its intersection with the division line between the lands now or formerly of BASF Wyandotte Corp. (Lot 3) on the South and the lands now or formerly of Albany Port District Commission on the North; thence along the above last mentioned division line between the lands now or formerly of BASF Wyandotte Corp. (Lot 3) and the lands now or formerly of Albany Port District Commission the following three (3) courses: 1) thence North 69 deg. 27 min. 19 sec. East 153.46 feet to a point; 2) thence North 14 deg. 55 min. 19 sec. East 51.73 feet to a point; and 3) thence North 62 deg. 32 min. 25 sec. West 141.97 feet to its intersection with the Northeasterly boundary of Riverside Avenue; thence along the Northeasterly boundary of Riverside Avenue in a generally Northwesterly direction along a curve to the left having a radius of 115.01 feet, a chord bearing of North 37 deg. 52 min. 09 sec. West and a chord distance

of 95.92 feet, an arc length of 98.94 feet to a point of tangency; thence South 62 deg. 31 min. 02 sec. East through the lands now or formerly of BASF Wyandotte Corp. (Lot 3) in part along the division line between Lot 2 on the North and Lot 3 on the South 776.83 feet to its intersection with the Westerly boundary of Port Access Highway; thence along the said Westerly boundary of Port Access Highway (1989); South 06 deg. 47 min. 58 sec. West 51.26 feet to a point; thence through the lands now or formerly of BASF Wyandotte Corp. along the proposed division line between Lot 1 on the Southwest and South and Lot 3 on Northwest and North the following six (6) courses: 1) thence North 55 deg. 15 min. 35 sec West 28.52 feet to a point; 2) thence North 60 deg. 13 min. 58 sec. West 60.02 feet to a point; 3) thence North 62 deg. 37 min. 15 sec. West 122.43 feet to a point; 4) thence North 53 deg. 41 min. 02 sec. East 40.63 feet to a point; 5) thence North 59 deg. 29 min. 04 sec. West 221.56 feet to a point; and 6) in a generally Westerly direction along a curve to the left having a radius of 345.11 feet, a chord bearing of South 71 deg. 13 min. 01 sec. West and a chord distance of 279.18 feet, an arc length of 287.42 feet to a point or place of beginning and containing 1.11 acres of land, more or less. Subject to all legally enforceable covenants easements, restrictions, conditions and agreements of record.

See Survey attached as Exhibit A.

