

**New York State Department of Environmental Conservation**

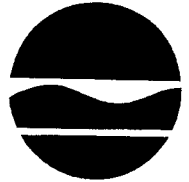
**Division of Environmental Enforcement**

Central Field Unit, Room 627

625 Broadway, Albany, New York 12233-5500

Phone: (518) 402-9510 • FAX: (518) 402-9019

Website: www.dec.state.ny.us



Erin M. Crotty  
Commissioner

APR 22 2002

April 19, 2002

Mr. Rudolph H. Trinks  
BASF Corporation  
3000 Continental Drive North  
Mount Olive, NJ 07828

Re: Voluntary Cleanup Program Application  
Volunteer: BASF Corporation  
Site #: V-00521-4

Dear Mr. Trinks:

The Voluntary Agreement for the above-referenced Site has been fully executed. Enclosed is your original fully executed copy.

The Voluntary Cleanup Program requires that the work plan for the Site be submitted to the Department for review and approval within thirty (30) days of notification of execution of the Agreement by the Department. To the extent that a proposed work plan has not been submitted to the Department to date, the work plan should be submitted no later than May 20, 2002.

The Voluntary Agreement requires that the Volunteer, within 30 days of the effective date of the Voluntary Agreement, cause to be filed a Department-approved Notice of Agreement to give all parties who may acquire an interest in the Site notice of this Agreement. Further, Volunteer is obligated to provide the Department with a certified copy of such instrument. Accordingly, the Notice is to be filed and a copy of same provided to me no later than May 20, 2002.

Contact me if you have any questions or comments.

Sincerely,



Anthony B. Quartararo

Enclosure

cc: N. Lake-Martin, Esq. (w/o enclosure)  
D. Lightsey (w/enclosure)  
G. Litwin (w/o enclosure)  
C. Costopoulos (w/o enclosure)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Implementation of a Remedial Response Program for 36 Riverside Avenue, Rensselaer, New York by:

VOLUNTARY CLEANUP AGREEMENT

Index No. A4-0457-0202

Site # V-00521-4

BASF Corporation,

“Volunteer”

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**WHEREAS**, the Department is responsible for the enforcement of the ECL and the NL and such laws provide the Department authority to enter into this Agreement;

**WHEREAS**, the Department has established a Voluntary Cleanup Program to address the environmental, legal, and financial barriers that hinder the redevelopment and reuse of contaminated properties;

**WHEREAS**, Volunteer represents, and the Department relied upon such representations in entering into this Agreement, that Volunteer’s involvement with the Site is limited to the following: Volunteer purchased the contaminated property in 1978, but is not otherwise responsible under law to remediate the Existing Contamination;

**WHEREAS**, the parties are entering into this Agreement in order to set forth a process through which the Department will approve and the Volunteer will implement activities designed to address in whole or in part environmental contamination at the Site; and

**WHEREAS**, the Department has determined that it is in the public interest to enter into this Agreement as a means to address environmental issues at the Site with private funds while ensuring the protection of human health and the environment;

**NOW, THEREFORE**, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Site Specific Definitions

For purposes of this Agreement, the terms set forth in the Glossary attached to, and made a part of, this Agreement shall have the meanings ascribed to them in that Glossary. In addition, for purposes of this Agreement, the following terms shall have the following meanings:

A. "Contemplated Use": restricted industrial use excluding day care, child care and medical care uses.

B. "Existing Contamination": Previous subsurface investigations conducted at the Site, including the *Hydrogeological Investigation of Industrial Waste Disposal Area, BASF Wyandotte Corporation* dated February 20, 1979 by Dames and Moore, indicated varying concentrations of sodium, calcium, chlorides, sulfates, copper and phenols contamination in the groundwater and concentrations of copper, nickel, iron, zinc, hexavalent chromium, mercury and arsenic in soil leachate. Benzene, chlorobenzene, and dichlorobenzene have also been identified during subsequent groundwater sampling events. The term also includes contamination identified during the implementation of this Agreement, the nature and extent of which were unknown or insufficiently characterized as of the effective date of this Agreement, but which shall have been fully characterized and addressed to the Department's satisfaction.

C. "Site": that portion of real property located at 36 Riverside Ave., Rensselaer, New York commonly known as the "Closed Landfill" parcel, as more particularly described in the metes and bounds description prepared by C.T. Male Associates dated May 18, 2001, and also described in the Deed dated March 31, 1978 as part of Parcel "D", which Deed is recorded in the Rensselaer County Clerk's Office in Liber 1300 Page 746. Exhibit "A" of this Agreement is a map showing the Site's general location, a copy of the recorded Deed, and a copy of the metes and bounds description.

D. "Volunteer": BASF Corporation, a Delaware Corporation with offices located at 3000 Continental Drive North, Mount Olive, NJ 07828.

## II. Development, Performance and Reporting of Work Plans

### A. Work Plan Labels

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be captioned as follows:

1. "Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination at the Site;
2. "IRM Work Plan" if the Work Plan provides for an interim remedial measure;
3. "Remediation Work Plan" if the Work Plan provides for the Site's remediation to cleanup levels sufficient to allow the Contemplated Use of the Site to proceed; or
4. "OM&M Work Plan" if the Work Plan provides for post-remedial construction operation, monitoring and maintenance.

### B. Submission/Implementation of Work Plans

1. Any proposed Work Plan shall be submitted for the Department's review

and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. A Professional Engineer must prepare, sign, and seal all Work Plans other than an Investigation Work Plan. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be incorporated into and become an enforceable part of this Agreement and shall be implemented in accordance with the schedule contained therein. If a proposed Work Plan is rejected by the Department, Volunteer shall elect in writing within 10 Days to: (i) modify or expand it; (ii) complete any other Department-approved Work Plan(s); (iii) invoke the dispute resolution provisions of this Agreement pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to the provisions set forth in Paragraph XII.

2. During all field activities, Volunteer shall have on-Site a representative who is qualified to supervise the activities undertaken and who may be an outside consultant retained by Volunteer to perform such supervision.

C. Revisions to Work Plans

If revisions to a Work Plan are required to satisfy the objectives of such Work Plan, the parties will negotiate revisions which shall be attached to and incorporated into the relevant Work Plan and enforceable under this Agreement. If the parties cannot agree upon revisions to the relevant Work Plan, then unless the Volunteer invokes the dispute resolution provisions of this Agreement pursuant to Paragraph XIII, either party may terminate this Agreement pursuant to Paragraph XII.

D. Submission of Final Reports

In accordance with the schedule contained in a Work Plan, Volunteer shall submit a final report containing on the cover page the caption of that Work Plan as set forth in Subparagraph II.A of this Agreement. The final report pertaining to that Work Plan's implementation shall include but not be limited to: all data generated relative to the Site and all other information obtained as part of the implementation of the subject Work Plan; all of the assessments and evaluations required by the subject Work Plan; a statement of any additional data that must be collected; "as-built" drawings, to the extent necessary, showing all changes made during construction. Additionally, the final report relative to the Investigation Work Plan shall contain a certification by the person with primary responsibility for the day to day performance of the activities under this Agreement that those activities were performed in full accordance with the Investigation Work Plan and all other final reports must contain such certification made by a professional engineer with primary responsibility for the day to day performance of the activities under this Agreement. An OM&M Work Plan, if necessary, shall be submitted with the final report relative to an IRM Work Plan or a Remediation Work Plan.

E. Review of Submittals

1. The Department shall timely notify Volunteer in writing of its approval or disapproval of each submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal, it shall specify the reasons for its disapproval and may request Volunteer to modify or expand the submittal. Within 30 Days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall either make a revised submittal that corrects the stated deficiencies or elect to terminate the Agreement pursuant to Paragraph XII. If the Volunteer submits a revised submittal and it is disapproved, the Department and Volunteer may pursue whatever remedies may be available under this Agreement or under law.

3. Within 30 Days of the Department's approval of a final report, such report must be submitted to the Department in an electronic format acceptable to the Department.

F. Department's Determination of Need for Remediation

In addition to the Department's approval of the final report, the Department will determine upon its approval of each final report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed to allow the Site to be used for the Contemplated Use.

1. If the Department determines that remediation, or additional remediation, is not needed to allow the Site to be used for the Contemplated Use, the Department shall provide Volunteer with the Release described in Subparagraph II.H.

2. If the Department determines that remediation, or additional remediation, is needed to allow the Site to be used for the Contemplated Use, Volunteer may, at its sole discretion, submit for review and approval a proposed Work Plan (or a revision to an existing Remediation Work Plan for the Site) which addresses the remediation of Existing Contamination. Such proposed Work Plan shall include, among other requirements, an evaluation of the proposed remedy considering the factors set forth in 6 NYCRR 375-1.10(c). At a minimum, the remedial activities contemplated by the proposed Work Plan must eliminate or mitigate all significant threats to the public health or environment and must be protective for the safe implementation of the Site's Contemplated Use. The Department will notice a proposed Work Plan addressing the Site's remediation for public comment in accordance with Subparagraph II.G of this Agreement. If Volunteer elects not to develop a Work Plan under this Subparagraph or either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Agreement shall terminate in accordance with Paragraph XII.

G. Notice of Proposed Work Plan for the Site's Remediation

Whenever a Work Plan for the Site's remediation (other than IRM Work Plan) is proposed, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the opportunity to submit comments on the proposed Work Plan within 30 Days after the date of the issue in which the notice appears. The Department shall mail an equivalent notice to the Clerks of the City of Rensselaer and Rensselaer County. The Department will notify Volunteer following the close of the public comment period whether the proposed Work Plan needs to be revised. If the Department determines that revisions are necessary to protect human health or the environment for

the Contemplated Use, Volunteer agrees to negotiate revisions to the proposed Work Plan in accordance with Paragraph II.C. If the Department determines that no revisions are required, then the Work Plan shall be attached hereto as Exhibit "B."

#### H. Release and Covenant Not To Sue

Upon the Department's determination that i) it is satisfied with the implementation of the Agreement; ii) no remedial activities other than those conducted at the Site, if any, are necessary for the Contemplated Use to proceed with protection of human health and the environment; and iii) Volunteer has complied, if required, with Paragraph X, the Department shall provide Volunteer with a Release and Covenant Not to Sue which is substantially similar to the one attached hereto as Exhibit "C," subject to the terms and conditions stated therein.

#### III. Progress Reports

Volunteer shall submit written monthly progress reports to the parties identified in Subparagraph XI.A.1. by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date. Such reports shall, at a minimum, include: all actions taken pursuant to this Agreement during the previous month and those anticipated for the next month; all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents, whether under this Agreement or otherwise, in the previous month, including quality assurance/quality control information; and information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, and efforts made to mitigate such delays.

#### IV. Enforcement

This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Volunteer shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event provided it notifies the Department in writing within 10 business days of when it obtains knowledge of any such event. Volunteer shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event qualifies as a defense to compliance pursuant to this Paragraph.

#### V. Entry upon Site

Volunteer hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer, by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the matters addressed in a Department-approved Work Plan, and any agent,

consultant, contractor or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site. Upon request, Volunteer shall permit the Department full access to all non-privileged records relating to matters addressed by this Agreement and to job meetings. Raw data is not considered privileged and that portion of any privileged document containing raw data must still be provided to the Department.

#### VI. Payment of State Costs

Within 30 Days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses for negotiating this Agreement and all costs associated with this Agreement, but not including any expenses incurred by the State after the Termination Date. Each such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to: Bureau of Program Management, Division of Environmental Remediation, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12233-7010.

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Non-personal service costs shall be summarized by category of expense (*e.g.*, supplies, materials, travel, contractual) and shall be documented by expenditure reports.

#### VII. Reservation of Rights

A. Except as provided in the Release and Covenant Not to Sue (Exhibit "C") after its issuance, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or the Trustee's rights including, but not limited to, the right to recover natural resource damages, the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any party, including Volunteer.

B. Except as otherwise provided in this Agreement, Volunteer specifically reserves all defenses under applicable law respecting any Departmental assertion of remedial liability against Volunteer, and further reserves all rights respecting the enforcement of this Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Agreement or Volunteer's compliance with it shall not be construed as an admission of liability, fault or wrongdoing by Volunteer, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

C. Except as provided in Subparagraph XIV.M, Volunteer reserves such rights as it may have to seek and obtain contribution and/or indemnification from its insurers and from other potentially responsible parties or their insurers for past or future response/cleanup costs or such other



costs or damages arising from the contamination at the Site as provided under applicable State and federal law.

VIII. Indemnification

Volunteer shall indemnify and hold the Department, the Trustee, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement prior to the Termination Date except for liability arising from willful, wanton or malicious acts or acts constituting gross negligence by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement.

IX. Notice of Sale or Conveyance

A. Within 30 Days after the effective date of this Agreement, Volunteer shall cause to be filed the Notice of Agreement, which is attached to this Agreement as Exhibit "D," with the Rensselaer County Clerk and provide evidence of such filing to the Department. Volunteer may terminate such Notice on or after the Termination Date.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, Volunteer shall, not fewer than 60 Days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement. However, such obligation shall not extend to the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease or any other right accruing to a person to secure the repayment of money or the performance of a duty or obligation by a person not affiliated with Volunteer.

X. Deed Restriction

Within 60 Days of the Department's approval of a Remediation Work Plan which relies upon institutional controls, Volunteer shall, unless otherwise authorized by the Department in writing, cause to be recorded a Department-approved instrument to run with the land with the Rensselaer County Clerk which is substantially similar to Exhibit "E" attached to this Agreement, and shall provide the Department with a copy of such instrument certified by such County Clerk to be a true and faithful copy. The Volunteer may petition the Department to terminate the deed restriction filed pursuant to this Paragraph when the Site is protective of human health and the environment for residential uses without reliance upon the restrictions set forth in such instrument. The Department will not unreasonably withhold its approval of such petition.

XI. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from Volunteer shall be sent to:

Eric Hamilton, P.E.  
New York State Department of Environmental Conservation  
1150 Westcott Road  
Schenectady, NY 12306-2014  
Note: four copies (one unbound) of work plans are required to be sent.

Michael Komoroske, P.E.  
New York State Department of Environmental Conservation  
625 Broadway, 12<sup>th</sup> Floor  
Albany, NY 12233-7010

Gary Litwin  
Director, Bureau of Environmental Exposure Investigation  
New York State Department of Health  
Flanigan Square  
547 River Street  
Troy, New York 12180-2216  
Note: two copies of work plans are required to be sent, and

Anthony Quartararo, Esq.  
New York State Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, NY 12233-5500

2. Communication from the Department to Volunteer shall be sent to:

Mr. Rudolph H. Trinks  
BASF Corporation  
3000 Continental Drive North  
Mount Olive, NJ 07828

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication on written notice to the other.

XII. Termination of Agreement

Either party may elect to terminate this Agreement, in which event this Agreement shall terminate effective the 5th Day after the written notification terminating this Agreement, except that such termination shall not affect the provisions contained in Paragraphs IV, VI and VIII and in Subparagraph XIV.M, nor Volunteer's obligation to ensure that it does not leave the Site in a

condition, from the perspective of human health and environmental protection, worse than that which prevailed before any activities were commenced under this Agreement, which provisions and obligation shall survive the termination of this Agreement.

### XIII. Dispute Resolution

Volunteer may commence dispute resolution within 20 Days of Volunteer's receipt of the Department's notice of disapproval of a submittal or proposed Work Plan, disapproval of a final report, or termination of this Agreement pursuant to Subparagraph XIV.A.2. Disputes regarding Work Plan development and revision shall be heard by the Bureau Director of the Division of Environmental Remediation's remedial bureau within which the Site is located. All other disputes subject to dispute resolution shall be heard by the Assistant Division Director of the Division of Environmental Remediation. Volunteer shall serve upon the Department a request for dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis or opinion supporting its position, and all supporting documentation upon which Volunteer relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position no later than 20 Days after receipt of Volunteer's Statement of Position. Volunteer shall have the burden of proving that the Department's position should not prevail. A meeting or telephone conference can be scheduled if it will promote a resolution of the issues. A final decision resolving the dispute will be issued timely. The final decision shall constitute a final agency action and Volunteer shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR if Volunteer commences such proceeding no later than 30 Days after receipt of a copy of the decision. The invocation of dispute resolution shall not extend, postpone or modify Volunteer's obligations under this Agreement with respect to any item not in dispute unless or until the Department agrees or a court determines otherwise. The Department shall keep an administrative record which shall be available consistent with Article 6 of the Public Officers Law.

### XIV. Miscellaneous

A. 1. Volunteer hereby certifies that all information known to Volunteer and all information in the possession or control of Volunteer and its agents which relates in any way to the contamination existing at the Site on the effective date of this Agreement, and to any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Site, and to its application for this Agreement, has been fully and accurately disclosed to the Department.

2. If the information provided and certifications made by Volunteer are not materially accurate and complete, this Agreement, except with respect to the provisions of Paragraphs IV, VI and VIII and Subparagraph XIV.M, at the sole discretion of the Department, shall be null and void *ab initio* 15 Days after the Department's notification of such inaccuracy or incompleteness and the Department shall reserve all rights that it may have, unless, however, Volunteer submits information within that 15 Day time period indicating that the information provided and the certifications made were materially accurate and complete.

B. Each party shall have the right to take samples and to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the other party.

C. Volunteer shall allow the Department to attend and shall notify the Department at least 5 business days in advance of any field activities to be conducted pursuant to this Agreement as well as any prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

D. Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteer's obligations under this Agreement, except that the Department may exempt Volunteer from the requirement to obtain any permit issued by the Department for any activity that is conducted on the Site and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

E. Volunteer shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

F. Volunteer shall provide a copy of this Agreement to each contractor and subcontractor hired to perform work required by this Agreement and to each person representing Volunteer with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement.

G. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

H. 1. The terms of this Agreement shall constitute the complete and entire Agreement between the Department and Volunteer concerning the implementation of the work plan(s) attached to this Agreement. No term, condition, understanding or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s) attached as Exhibit "B." Volunteer consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. If Volunteer desires that any provision of this Agreement be changed, Volunteer shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A and the Commissioner or his designee shall timely respond. This Subparagraph shall not extend to revisions to any Work Plan.

I. If there are multiple parties, the term "Volunteer" shall be read in the plural where required to give meaning to this Agreement. Further, the obligations of Volunteers under this Agreement are joint and several and the "bankruptcy" or inability to continue by any Volunteer shall not affect the obligations of the remaining Volunteer(s) to carry out the obligations under this Agreement.

J. Except as provided in Subparagraph XIV.K., and to the extent authorized under 42 U.S.C. Section 9613 and any other applicable law, Volunteer shall not be liable for any claim, now or in the future, in the nature of contribution by potentially responsible parties concerning the alleged contamination which is the subject matter of this Agreement. In any future action brought by Volunteer against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the provisions of 42 U.S.C. Section 9613(f)(3) shall apply.

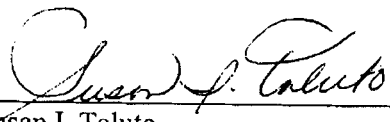
K. Volunteer and its employees, servants, agents, lessees, sublessees, successors, and assigns hereby waive any right to pursue reimbursement of monies expended by Volunteer prior to the Termination Date as against the State or the Spill Fund, and agree to indemnify and hold harmless the Spill Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that any of same has or may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement with respect to the Site.

L. Volunteer, Volunteer's lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Volunteer including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Volunteer's responsibilities under this Agreement. Volunteer's successors and assigns shall provide to the Department a certification that they agree to be bound by this Agreement within 30 Days of becoming a successor or assign.

M. The effective date of this Agreement shall be the date it is signed by the Commissioner or the Commissioner's designee.

DATED: Albany, New York  
~~March~~, 2002  
April 19,

ERIN M. CROTTY, COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION  
AND TRUSTEE OF THE STATE'S  
NATURAL RESOURCES

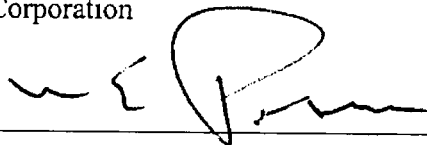
By:   
Susan I. Taluto  
Deputy Commissioner  
Water Quality and Environmental Remediation

CONSENT BY VOLUNTEER

Volunteer hereby consents to the issuing and entering of this Agreement, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

BASF Corporation

By: \_\_\_\_\_



Title: \_\_\_\_\_

Director, Real Estate

Date: \_\_\_\_\_

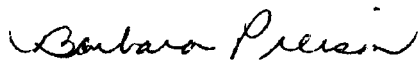
March 15, 2002

STATE OF NEW JERSEY )

) ss:

COUNTY OF MORRIS )

On the 15<sup>th</sup> day of March, in the year 2002, before me, the undersigned, personally appeared William E. Pearson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Signature and Office of individual  
taking acknowledgment

**BARBARA PIERSON**  
**A NOTARY PUBLIC OF NEW JERSEY**  
**MY COMMISSION EXPIRES MAY 2, 2005**

**ENVIRONMENTAL SIGNATURE AUTHORIZATION**

**WHEREAS** certain federal and state environmental laws require certain permit applications, reports or related documents to be executed on behalf of a Corporation by a Principal Corporate Officer or by an official having significant policy or decision-making responsibility.

And, **WHEREAS** the Director Real Estate in responsible charge of all Corporate Inactive Sites is an official having significant policy and decision-making responsibilities within the company.

Now, therefore I, Kurt W. Bock, Executive Vice President and Chief Financial Officer of the Finance Division of BASF Corporation on the 30<sup>th</sup> day of April, 1998 do hereby authorize the Director Real Estate to execute any such permit applications, reports and related documents on behalf of BASF Corporation.



Kurt W. Bock  
Kurt W. Bock  
Executive Vice President  
Chief Financial Officer  
BASF Corporation

Deborah Carter  
Notary/Witness

**DEBORAH CARTER**  
**NOTARY PUBLIC OF NEW JERSEY**  
My Commission Expires August 27, 2001

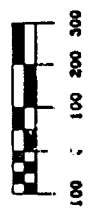
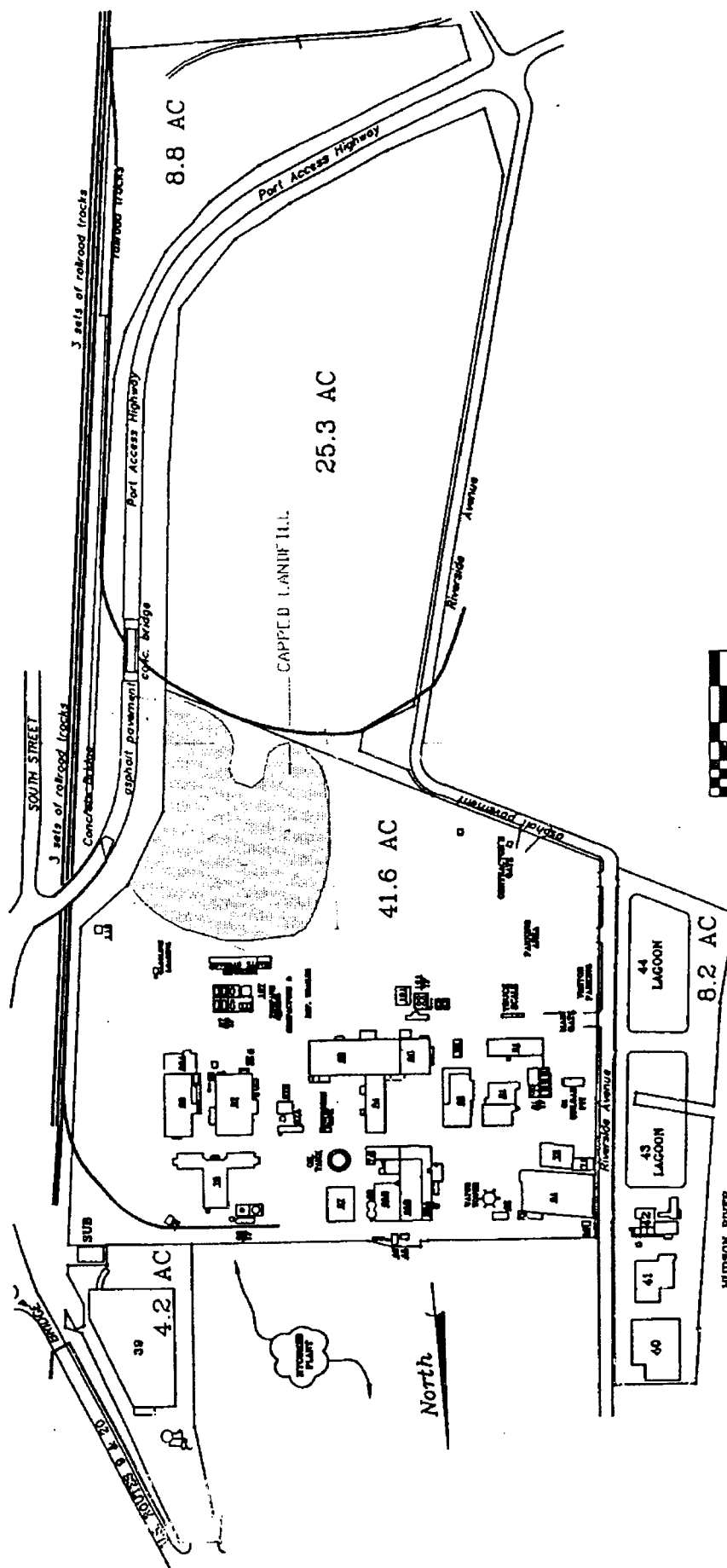


Exhibit A



**EXHIBIT "A"**

**Map of Site / Copy of Deed / Metes and Bounds Description**



North

BASF

amps: \$2,580.60 THIS INDENTURE, made the 31<sup>st</sup> day of March, nineteen hundred and seventy eight between GAP CORPORATION, a Delaware corporation, having an office at 140 West 51 Street, New York, New York, "party of the first part", and BASF WYANDOTTE CORPORATION, a Michigan corporation, having an office at 100 Cherry Hill Road, P. O. Box 181, Parsippany, New Jersey 07054, "party of the second part",

WITNESSETH, that the party of the first part, in consideration of Ten (\$10.00) dollars, lawful money of the United States, paid by the party of the second part, does hereby: a) grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever, ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Rensselaer, County of Rensselaer, and State of New York, bounded and described as Parcels A, B, and D as shown on Exhibit A attached hereto and made a part hereof, and b) remise, release and quit claim unto the party of the second part, the heirs or successors and assigns of the party of the second part forever ALL that certain plot, piece or parcel of land with the buildings and improvements thereon situate, lying and being in the City of Rensselaer, County of Rensselaer, State of New York, bounded and described as Parcel C on Exhibit A attached hereto.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TOGETHER with all right, title and interest of the party of the first part of, in and to any strips or gores of land adjacent to, abutting or adjoining the said premises on all sides thereof.

RECEIVED  
\$ 2,580.60  
REAL ESTATE  
APR - 4 1978  
TRANSFER TAX  
RENSSELAER  
COUNTY

2768  
2768  
BOOK 1300 PAGE 746

TOGETHER with and subject to all right, title and interest of the party of the first part under that certain agreement dated December 29, 1960 between Albany Port District Commission and General Aniline & Film Corporation.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs and successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises described as Parcels A, B and D of Exhibit A have been incumbered in any way whatever, except as shown on Exhibit B attached hereto and made a part hereof.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

This conveyance does not require the approval of the shareholders of the Grantor and does not constitute a conveyance of all or substantially all of the assets of the Grantor.

This conveyance is intended to be a quitclaim deed with respect to Parcel C and a bargain and sale deed with covenant against Grantor's acts with respect to Parcels A, B, and D.

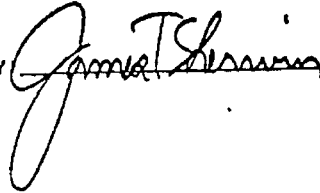
The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part  
has duly executed this deed the day and year first above  
written.

In presence of:

GAF CORPORATION, a Delaware  
Corporation



By 



Note: The address to which tax bills are to be sent is:

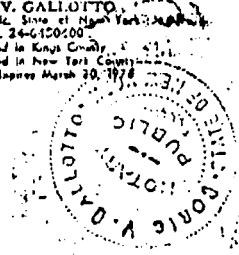
100 Cherry Hill Road  
P. O. Box 181  
Parsippany, New Jersey 07054

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the 31<sup>st</sup> day of March 1978, before me personally came James T. Sherwin to me known, who, being by me duly sworn, did depose and say that he resides at No. 271 Central Park West, New York, N.Y., that he is the Executive Vice President of RAF Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Doris V. Gallotta

DORIS V. GALLOTTO,  
Notary Public, State of New York,  
No. 24-6150200  
Qualified in Kings County,  
Certificate Issued in New York County,  
Commission Expires March 30, 1978



over

(17)

MIANDOTTE CORPORATION

ALL that parcel of land situate in the City of Rensselaer, County of Rensselaer, State of New York bounded and described as follows

Parcel A

BEGINNING at a point in the west line of Riverside Avenue said point being more particularly described as follows:

BEGINNING at a point in the west line of Riverside Avenue at its intersection with the north line of the lands now or formerly of the Albany Port District Commission; thence N.6°-38'E. along the west line of Riverside Avenue 974.19 feet; thence N.-5°-18'E. along the west line of Riverside Avenue 231.2 feet to the point of beginning of the parcel herein described; thence N.73°-08'W. 57.5 feet; thence N.84°-14'W. 179.52 feet to a point in the U.S. Government Bulkhead Line as established by the U.S. Army Corps. of Engineers on May 10, 1934; thence N.9°-31'-50.7"E. along the U.S. Government Bulkhead Line 210.20 feet; thence S.84°-42'E. 220.36 feet to a point in the west line of Riverside Avenue; thence S.5°-18'W. along the west line of Riverside Avenue 222.58 feet to the point and place of beginning; containing 1.1099 acres of land more or less.

Together with any right, title and interest which the party of the first part may have in and to that portion of Riverside Avenue lying between the east line of the parcel herein described and the center line of Riverside Avenue.

Parcel B

BEGINNING at a point in the west line of Riverside Avenue said point being more particularly described as follows:

BEGINNING at a point in the west line of Riverside Avenue at its intersection with the north line of the lands of the Albany Port District Commission; thence N.6°-38'E. along the west line of Riverside Avenue 974.19 feet; thence N.5°-18'E. along the west line of Riverside Avenue 1103.00 feet to the point of beginning of the parcel herein described; thence N.85°-06'W. 172.43 feet to a point in the U.S. Government Bulkhead Line as established by the U.S. Army Corps. of Engineers on May 10, 1934; thence N.9°-31'-50.7"E. along the U.S. Government Bulkhead Line 25.08 feet; thence S.85°-06'E. 170.58 feet to a point in the west line of Riverside Avenue; thence S.5°-18'W. 25.00 feet to the point and place of beginning; containing 0.098 of an acre of land, more or less.

Together with any right, title or interest which the party of the first part may have in and to that portion of Riverside Avenue lying between the east line of the parcel herein described and the center line of Riverside Avenue.

Parcel C

BEGINNING at a point in the west line of Riverside Avenue at its intersection with the north line of the lands of the Albany Port District Commission; thence N.62°-08'W. along the north line of the lands of the Albany Port District Commission 344.79 feet to a point in the United States Government Bulkhead Line established by the United States Army Corps. of Engineers May 10, 1934; thence N.15°-18'-21.5"E. along the U.S. Government Bulkhead Line 246.06 feet; thence N.9°-31'-50.7"E. 845.75 feet; thence S.84°-14'E. 179.52 feet; thence S.73°-08'E. 57.5 feet to a point in the west line of Riverside Avenue; thence S.5°-18'W. along the west line of Riverside Avenue 231.2 feet; thence S.6°-38'W. and continuing along the west line of Riverside Avenue 974.19 feet to the point and place of beginning; containing 7.071 Acres of Land, more or less.

Excepting therefrom a parcel of land more particularly described as follows:

BEGINNING at a point in the U.S. Government Bulkhead Line said point being more particularly described as follows:

BEGINNING at a point in the west line of Riverside Avenue at its intersection with the north line of the lands of the Albany Port District Commission; thence N.62°-08'W. along the north line of the lands of the Albany Port District Commission 344.79 feet to a point in the U.S. Government Bulkhead Line as established by the U.S. Army Corps. of Engineers on May 10, 1934; thence N.15°-18'-21.5"E. along the U.S. Government Bulkhead Line 246.06 feet; thence N.9°-31'-50.7"E. about 292 feet to the southwest corner of the parcel herein described; thence N.9°-31'-50.7"E. along the U.S. Government Bulkhead Line 33.54 feet; thence S.73°-36'E. 218 feet more or less; thence S.16°-24'W. 33.33 feet; thence N.73°-36'W. 215 feet more or less to the point and place of beginning.

Together with any right, title or interest which the party of the first part may have in and to that portion of Riverside Avenue lying between the east line of the parcel herein described and the center line of Riverside Avenue.

Excepting and reserving from said Parcel C the percentage interest of Sterling Drug, Inc. in the fee simple estate in the premises.

Parcel D.

BEGINNING at a point in the east line of Riverside Avenue at its intersection with the south line of the lands conveyed to Sterling Drug, Inc. by Synthetic Patents Co., Inc. by deed dated December 31, 1942 and recorded in the Office of the Clerk of Rensselaer County on January 11, 1943 in Book 671 of Deeds at Page 439; thence S.84°-35'-00"E. along the south line of said lands conveyed to Sterling Drug, Inc. 457.05 feet to the southwest corner of a parcel of land conveyed by Sterling Drug, Inc. to GAF Corporation by deed dated April 26, 1976 and recorded in the Office of the Clerk of Rensselaer County in Book 1283 of Deeds at Page 752; thence N.05°-25'-00"E. 2.60 feet; thence S.84°-35'-00"E. 20.28 feet; thence N.05°-25'-00"E. 15.45 feet; thence S.84°-35'-00"E. 77.60 feet; thence S.69°-36'-09"E. 69.85 feet to a point in the south line of the lands conveyed to Sterling Drug, Inc. by aforementioned deed; thence S.84°-35'-00"E. 819.97 feet to a point in the west right-of-way line of the Penn Central Transportation Company; thence S.8°-24'W. along the west right-of-way line of the lands of the Penn Central Transportation Company 2561.48 feet; thence S.81°-36"E. 16.50 feet; thence S.8°-24'W. along the west right-of-way line of the Penn Central Transportation Company 732.0 feet to the southeast corner of the lands conveyed by Albany Port District Commission to General Aniline and Film Corporation by deed dated August 6, 1954 and recorded on August 20, 1954 in the Office of the Clerk of Rensselaer County in Book 963 of Deeds at Page 211; thence N.87°-35'W. along the south line of said lands conveyed to General Aniline and Film Corporation 941.09 feet; thence N.10°-20'W. 430.50 feet to a point in the east line of Riverside Avenue; thence along the east line of Riverside Avenue N.15°-18'-21.5"E. 1472.29 feet; thence N.69°-50'-21.5"E. 153.46 feet; thence N.15°-18'-21.5"E. 51.73 feet; thence N.62°-08'W. 141.98



feet to a point in the arc of a circular curve forming the northeast line of Riverside Avenue; thence northwesterly curving to the left along the arc of said circular curve having a radius of 115 feet for an arc distance of 98.94 feet to the point of tangency of said arc; thence N.62°-08'W. along the north line of Riverside Avenue 491.03 feet to a point in the east line of Riverside Avenue; thence N.6°-38'-00"E. along the east line of Riverside Avenue 907.10 feet; thence N.5°-18'E. along the east line of Riverside Avenue 137.32 feet to the point and place of beginning; containing 85.289 acres of land, more or less.

Excepting and reserving railroad tracks situated on said Parcel D.

Together with any right, title or interest which the party of the first part may have in and to that portion of Riverside Avenue lying between the west line of the parcel herein described and the center line of Riverside Avenue.

Excepting and reserving as to all said parcels any land lying west of the westerly line as fixed in Letters Patent to General Aniline Works, Inc. dated September 27, 1933 recorded in Book of Patents No. 67 page 311 and in Letters Patent to John J. Van Rensselaer dated July 12, 1810 and any land lying presently under water. (X)

As to all said parcels, subject to all easements, restrictions, and rights of way of record.

EXHIBIT B TO DEED FROM GAF CORPORATION TO BASF WYANDOTTE CORPORATION

1. Easement dated January 15, 1976 between GAF Corporation and the City of Rensselaer.
2. Easement dated August 28, 1974 between GAF Corporation and Rensselaer County Sewer District #1.
3. Easement dated February 26, 1935 between General Aniline Works, Inc. and the City of Rensselaer.
4. Articles of Agreement dated June 7, 1929 between John Craven and General Aniline Works, Inc.
5. Rights granted under indenture between General Aniline Works, Inc. and Synthetic Patents, Co., Inc. dated November 17, 1931.
- MF 6. Permit dated September 14, 1966 between Department of the Army and General Aniline and Film Corporation as shown on plan dated May 27, 1966.
- MF 7. Private Side Track Agreement between The New York Central Railroad Company and General Aniline and Film Corporation, General Aniline Works Division dated May 8, 1952.
- MF 8. Installation of utility lines for water mains in the City of Rensselaer as described in letter from J. Kenneth Fraser and Associates to General Aniline & Film Corporation dated December 7, 1967.
9. Grant of Easement for sewer construction dated January 1, 1975 between GAF Corporation and Niagara Mohawk Power Corporation.
10. Limitations on right to construct sewers or drains contained in agreement dated December 29, 1960 between Albany Port District Commission and General Aniline & Film Corporation.
- MF 11. Corrected Deed from GAF Corporation to GAF Corporation and Sterling Drug, Inc. dated December 20, 1977.
12. Deed from GAF Corporation to GAF Corporation and Sterling Drug, Inc. dated December 16, 1977.
13. Waste Water Pretreatment Contract dated March 22, 1974 between GAF Corporation and Sterling Drug, Inc.
14. Waste water Interception and Treatment Contract between Rensselaer County Sewer District No. 1, The Administrative Executive of Rensselaer County Sewer District No. 1 and GAF Corporation dated August 30, 1971.
15. Indenture dated April 26, 1976 between Sterling Drug, Inc. and GAF Corporation recorded in Liber 1283 of Deeds page 752.
16. Grant of Easement dated February 23, 1978 between GAF Corporation and the Town of East Greenbush.
17. Grant of Easement dated February 23, 1978 between GAF Corporation and the Town of East Greenbush.

18. Reservations and exceptions contained in Indenture from Synthetic Patents Co., Inc. to The Grasselli Chemical Company of Ohio dated February 4, 1919.
19. Exceptions and Reservations contained in Indenture dated September 30, 1927 from Grasselli Chemical Company of Ohio to Albany Port District.
20. Restrictions contained in Deed from Grasselli Chemical Co. to Grasselli Dyestuff Corp. dated October 20, 1928 recorded in Liber 459, page 326.
21. Exceptions contained in Deed from John Craven to General Aniline Works, Inc. dated June 12, 1929 recorded in Liber 462, page 141.
22. Exceptions contained in Indenture from General Aniline & Film Corp. to General Aniline & Film Corp. recorded in Liber 616, page 1.
23. Restrictions contained in letters patent from Secretary of State to General Aniline Works, Inc. dated September 27, 1933 and recorded in Liber 67, page 311.
24. Deed recorded in Liber 963, page 211.
25. Indenture between Murling and Hudson River Aniline Color Works dated March 10, 1904 and recorded in Book 293, page 303.
26. Rights of Niagara Mohawk Power Corporation under easements recorded in Liber 1271 cp. 86 and cp. 102.
27. Easement rights contained in instruments recorded in Liber 379 cp. 402, Liber 388 cp. 223, Liber 545 cp. 448 and Liber 587 cp. 226.
28. Rights reserved in Liber 462, cp. 425 as amended by Liber 500 cp. 230.
29. Lease memorandum of which is recorded in Liber 1263 cp. 676.
30. Deed from General Aniline and Film Corporation to General Aniline and Film Corporation, dated October 31, 1939, and recorded in Book 615 of Deed page 466.
31. Deed from General Aniline and Film Corporation to General Aniline and Film Corporation dated October 31, 1939, recorded in Book 615 of Deeds page 472.
32. Indenture between Synthetic Patents Co., Inc. and Grasselli Chemical Company dated November 28, 1919.
33. Indenture between Synthetic Patents Company, Inc. and Grasselli Chemical Company dated April 29, 1920.
34. Deed from Carl and Martha Burgdorf to Grasselli Dyestuff Corp. dated December 7, 1927 in Book 451, page 374.
35. Indenture dated August 10, 1939 between Raymond and Edna Wald and General Aniline Works, Inc. recorded in Liber 612 page 180.
36. Bargain and Sale Deed from GAF Corporation to GAF Corporation and Sterling Drug, Inc. dated July 17, 1974 recorded in Book 1288, page 917.

Recorded *July 4* 1978 9 42 A N.

*John Wright*  
Acting County Clerk

BOOK 1300 PAGE 754

C.T. Male Associates, P.C.

**LEGAL DESCRIPTION  
PORTION OF LANDS NOW OR FORMERLY OF  
BASF WYANDOTTE CORP.  
PREPARED FOR BESICORP-EMPIRE DEVELOPMENT, LLC  
CITY OF RENSSELAER, COUNTY OF RENSSELAER, STATE OF NEW YORK  
8.94± ACRE PARCEL**

**(Lot 5)  
(Landfill 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 Northwesterly of and adjacent to 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. on the West and the lands now or formerly of CSX Rail Corporation on the East with the Northwesterly boundary of Port Access Highway (1989) and runs thence from said point of beginning along the Northwesterly and Westerly boundary of said Port Access Highway the following three (3) courses: 1) South 53 deg. 50 min. 47 sec. West 174.42 feet to a point; 2) thence South 32 deg. 18 min. 38 sec. West 224.72 feet to a point; and 3) thence South 06 deg. 47 min. 58 sec. West 332.51 feet to a point; thence North 62 deg. 31 min. 02 sec. West through the lands now or formerly of BASF Wyandotte Corp. along the proposed Northeasterly boundary of Lot 1, a distance of 591.77 feet to a point; thence continuing through the lands now or formerly of BASF Wyandotte Corp. along the Easterly and Southerly boundary of proposed Lot 3 the following two (2) courses: 1) North 06 deg. 23 min. 52 sec. East 505.70 feet to a point; and 2) thence South 84 deg. 45 min. 59 sec. East 783.73 feet to a point on the above first mentioned division line between the lands now

C.T. Male Associates, P.C.

*Legal Description*  
*8.94± acre Parcel*  
*Page - 2*

or formerly of BASF Wyandotte Corp. on the West and the lands now or formerly of CSX Rail Corporation on the East; thence South 08 deg. 04 min 16 sec. West along the said above first mentioned division line 81.96 feet to the point or place of beginning and containing 8.94 acres of land, more or less.

C.T. MALE ASSOCIATES, P.C.

C. Jeffrey Denison, P.L.S.

May 18, 2001  
CJD/tas  
C.T. Male Project No. 00.6678

**EXHIBIT "B"**

**Department-Approved Work Plan(s)**

## EXHIBIT "C"

### Release and Covenant Not to Sue

[date]

[address]

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Voluntary Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and BASF Corporation, ("Volunteer"), Index No.A4-0457-0202 (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Agreement's Work Plan(s) relative to the Site, located at 36 Riverside Avenue, Rensselaer, New York has been successfully implemented.

The Department and the Trustee of New York State's natural resources ("Trustee"), therefore, hereby release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer and Volunteer's lessees and sublessees, successors and assigns, and their respective secured creditors, for the further investigation and remediation of the Site, and for natural resource damages, based upon the release or threatened release of Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement continue to be or have been made to the Department, (b) appropriate deed restrictions remain recorded in accordance with Paragraph X of the Agreement, and (c) Volunteer and/or its' lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Work Plan providing for OM&M, if any. Nonetheless, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of petroleum;
- due to environmental conditions or information related to the Site which were unknown at the time this Release and Covenant not to Sue was issued and which indicate that the Contemplated Use cannot be implemented with sufficient protection of human health and the environment;
- due to Volunteer's failure to implement the Agreement to the Department's satisfaction; or
- due to fraud committed by Volunteer in entering into or implementing this Agreement.

Additionally, the Department and the Trustee hereby reserve all of their respective rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteer nor to any of Volunteer's lessees, sublessees, successors, or assigns who cause or allow a release or threat of release at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination; or cause or allow the use of the Site to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to any of Volunteer's lessees, sublessees, successors, or assigns who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same resulting solely from the Agreement's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department or the Trustee, the one seeking the benefit of this release, covenant not to sue, and forbearance shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

- if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this letter shall be construed or deemed to preclude the State of New York from recovering such claim.
- except as provided in this letter and in Agreement, nothing contained in the Agreement or in this letter shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Trustee's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Volunteer.
- nothing contained in this letter shall prejudice any rights of the Department or Trustee to take any investigatory or remedial action it deems necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination is encountered at the Site.
- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- nothing contained in this letter shall be construed to affect the Department's right to terminate the Agreement under the terms of the Agreement at any time during its implementation if Volunteer fails to comply substantially with the Agreement's terms and conditions.



In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION AND  
TRUSTEE OF NEW YORK STATE'S  
NATURAL RESOURCES

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Appendix "A"**

**(to Exhibit "C")**

**Map of the Site**

**Exhibit "D"**

**This Notice** is made as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by BASF Corporation regarding a parcel of real property located at 36 Riverside Avenue, Rensselaer, New York bearing Tax Map Number \_\_\_\_\_ (the "Property"); and

**WHEREAS**, BASF Corporation ("Volunteer"), entered into an agreement with the Department, Index # A4-0457-0202 ( the "Agreement"), concerning the remediation of contamination present on the Property, which Agreement was signed by the Commissioner of Environmental Conservation on \_\_\_\_\_; and

**WHEREAS**, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide Volunteer and its lessees and sublessees, successors and assigns, including their respective secured creditors, with a release, covenant not to sue, and forbearance from bringing any action, proceeding, or suit related to the Site's further investigation or remediation, subject to certain reservations set forth in the Agreement; and

**WHEREAS**, pursuant to the Agreement, Volunteer agreed to give notice of the Agreement to all parties who may acquire any interest in the Property by filing this Notice with the Rensselaer County Clerk,

**NOW, THEREFORE**, Volunteer, for itself and for its successors and assigns, declares that:

1. This Notice of the Agreement is hereby given to all parties who may acquire any interest in the Property; and
2. This Notice shall terminate upon the filing by Volunteer, or its successors and assigns, of a termination of notice of Agreement after having first received approval to do so from the New York State Department of Environmental Conservation or having terminated the Agreement pursuant to its Paragraph XII.



**Appendix "A"**

**(to Exhibit "D")**

**Map of the Property**

**Exhibit "E"**

**DEED RESTRICTION**

shall prohibit the Site from ever being used for purposes other than for the Contemplated Use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

shall prohibit the use of the groundwater underlying the Site without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

shall require Volunteer and Volunteer's successors and assigns to continue in full force and effect any institutional and engineering controls the Department requires Volunteer to put into place and maintain; and

shall provide that Volunteer, on behalf of itself and its successors and assigns, hereby consents to the enforcement by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph X requires to be recorded, and hereby covenants not to contest such enforcement.

## Glossary of Terms

The following terms shall have the following meanings:

**"ALJ"**: Administrative Law Judge

**"Covered Contamination"**: the concentrations of Existing Contamination remaining on the Site on the date that the Department issues the Release set forth in Exhibit "C."

**"ECL"**: the Environmental Conservation Law.

**"Force Majeure Event"**: an event which is brought on as a result of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Volunteer's reasonable control.

**"Day"**: a calendar day unless otherwise specified.

**"Department"**: the New York State Department of Environmental Conservation.

**"IRM"**: an interim remedial measure which is a discrete set of activities which can be undertaken without extensive investigation and evaluation to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to a Site.

**"NL"**: the Navigation Law

**"OM&M Plan"**: the Department-approved work plan detailing post-remedial operation, maintenance, and monitoring at the Site that Volunteer shall implement.

**"Professional engineer"**: an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

**"Spill Fund"**: the New York State Environmental Protection and Spill Compensation Fund

**"State Costs"**: all the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating, implementing, and administering this Agreement. Approved agency fringe benefit and indirect cost rates will be applied.

**"Termination Date"**: the date upon which (i) the Release (Exhibit "C") is issued or the Department approves the final report relative to the OM&M at the Site, whichever is later; or (ii) the Agreement terminates pursuant to Paragraph XII. or Subparagraph XIV.A.2.

**"Trustee"**: the Trustee of New York State's natural resources.

**"Work Plan"**: a Department-approved work plan, as may be modified, pertaining to the Site that Volunteer shall implement and that is attached to this Agreement.