

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No. 96-0571-CB-M

v.

BASF CORPORATION,
f/k/a Ciba-Geigy Corporation,

Defendant.

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**AMENDMENT TO REMEDIAL DESIGN/REMEDIAL ACTION
CONSENT DECREE
FOR OPERABLE UNIT THREE OF THE
CIBA-GEIGY SUPERFUND SITE**

WHEREAS, the Ciba-Geigy Superfund Site (“Site”) is located on the east side of U.S. Hwy 43 at 1379 Ciba Road northeast of McIntosh, in Washington County, Alabama. The Site encompasses approximately 1,130 acres of developed plant site facilities and 170 acres of undeveloped swamp and bottomland in the Tombigbee River floodplain. Operable Unit 3 (“OU3”) of the Site addresses contamination within the floodplain area of the Site and effluent ditch (now referred to as the “drainage ditch”) more particularly described below and as modified by this Amendment to Remedial Design/Remedial Action Consent Decree (“Amended Decree”).

WHEREAS, on October 16, 1996, this Court entered a Consent Decree (“1996 OU3 Decree”), the terms of which had been agreed to between the United States on behalf of the U.S. Environmental Protection Agency (“EPA”) and Ciba-Geigy Corporation (“Defendant”), pursuant to which the Defendant, its agents, successors and assigns agreed to, among other things, implement an environmental cleanup at the Site which had been selected by the EPA in a remedy selection Decision Document for OU3 known as a “Record of Decision” dated July 25, 1995 (“1995 OU3 ROD”). BASF Corporation, hereinafter the “Defendant”, is the successor to Ciba Specialty Chemicals, Inc., which is the successor to certain portions of the former Ciba-Geigy Corporation (“Ciba-Geigy”), currently owns and operates the Site, and is the party responsible for conducting cleanup at the Site under the EPA’s oversight pursuant to three consent decrees between Ciba-Geigy and the United States and the EPA addressing multiple operable units, including OU3 pursuant to the 1996 OU3 Decree as amended herein.

WHEREAS, the EPA subsequently issued an Explanation of Significant Differences (“ESD”) on October 6, 2008 (“2008 ESD”), selecting a sand cover remedy for a portion of the OU3 floodplain identified in the 2008 ESD as the “focus area.” On June 5, 2019, the EPA issued a second ESD that specified new soil and sediment cleanup levels and performance standards for environmental media and ecological receptors (“2019 ESD”).

WHEREAS, since 2019, in response to the new cleanup levels and performance standards established in the 2019 ESD, Defendant has conducted ongoing environmental sampling pursuant to the 1996 OU3 Decree to determine whether the sand cover installed in 2008 is performing as designed to be protective of human health and the environment, to identify potential ongoing sources of Dichlorodiphenyltrichloroethane (“DDT”) along with its metabolites dichlorodiphenyldichloroethylene (“DDE”) and dichlorodiphenyldichloroethane

(“DDD”), collectively referred to as “DDTR,” to surface water, sediment and soil in the floodplain drainage ditch and Cypress Swamp, and to determine current concentrations of DDTR in fish in Cypress Swamp.

WHEREAS, in accordance with Section 117 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9617 and 40 C.F.R § 300.430(f) and § 300.435(c)(2)(ii) of the National Oil and Hazardous Substance Pollution Contingency Plan (“NCP”), the EPA, on March 26, 2024, issued a proposed plan to the public for the amendment of the OU3 remedy to address upgradient DDTR sources and to improve and repair existing OU3 remedy components (“Proposed Plan”). A 30-day public comment period ran from March 26 through April 25, 2024. The EPA held a public meeting on March 26, 2024, at the McIntosh High School in McIntosh, Alabama, to discuss the Proposed Plan and to record public comments on the proposed remedy. A summary of the comments received, and the EPA’s responses to those comments, is contained as an appendix in the Amended Record of Decision (“Amended ROD”) for OU3 signed by the EPA on August 6, 2024. The State of Alabama, through its Department of Environmental Management, concurred with the draft Amended ROD dated June 12, 2024. The Amended ROD documents the basis for a fundamental change to the remedy.

WHEREAS, in the Amended ROD, the EPA selected additional remedial actions to be implemented within OU3 to address contaminated soils, sediments, surface water, and DDTR sources located in the operational plant area catch basins, upstream conveyance ditch and upstream drainage ditch, and improvement and repair of the existing OU3 remedy in the floodplain area including the floodplain drainage ditch, floodplain deposition areas north and south of the floodplain drainage ditch, and Cypress Swamp and Cypress Swamp swale.

WHEREAS, the response actions selected in the Amended ROD are necessary to protect public health or welfare or the environment from actual or threatened releases of hazardous substances into the environment. Specifically, the EPA's August 2021 Fifth Five-Year Review concluded that established cleanup levels for DDTR in sediment, surface water and fish tissue are not being met. Environmental sampling performed in 2019, 2021 and 2022 demonstrated that ongoing transport of DDTR in the operational plant area catch basins, the upstream conveyance ditch, the upstream drainage ditch, the floodplain drainage ditch, and floodplain deposition areas is occurring and represents a continuing release of DDTR into the environment and thus the OU3 remedy implemented in 1998, as modified by the 2008 ESD, is not protective of human health and the environment. The remedial actions selected in the Amended ROD are in addition to, and will be integrated with, the remedial actions selected in the 1995 OU3 ROD, as previously modified by the 2008 and 2019 ESDs.

WHEREAS, the remedy selected by the EPA in the Amended ROD includes the following components more particularly described therein: (1) placement of an engineered cap over affected areas in the upstream conveyance and upstream drainage ditches with removal and disposal of sediment and vegetation/debris as necessary to facilitate engineered cap placement; (2) implementation of best management practices with removal/disposal to the maximum extent practicable of all sediment accumulation in the operational plant area catch basins; (3) partial rerouting of the floodplain drainage ditch to an identified alternative channel, placement of an engineered cap over original ditch segments conveying water and placement of a 2 foot sand cover over parts of the ditch no longer conveying water; (4) placement of an engineered cap over the affected areas (soils and sediments above cleanup levels) in portions of the floodplain deposition areas, including portions of Cypress Swamp

and Cypress Swamp swale, consistently inundated by surface water, and enhanced natural recovery in remaining affected areas; (5) habitat restoration of existing wetland resources located at the Site or in-kind mitigation when adverse impacts to aquatic resources such as wetlands caused by OU3 remedial activities are subject to compensatory mitigation under Clean Water Act Section 404(b)(1); and (6) implementation of institutional controls to prevent disturbance of the engineering components of the completed remedy.

WHEREAS, it is necessary to modify the 1996 OU3 Decree to provide for changes to the Decree's definition of OU3 and to modify the Statement of Work ("SOW") attached thereto due to the change in scope of the remedy, and the addition of deliverables and schedule adjustments needed to integrate the Amended ROD remedy with the existing remedy.

WHEREAS, the 1996 OU3 Decree, paragraph 108, requires that no material modification to the SOW shall be made without written notification to and written approval of the United States, Defendant and the Court.

WHEREAS, pursuant to paragraph 108, the United States has provided the State with a reasonable opportunity to review and comment on the proposed modification and the State gave its concurrence with the Amended ROD by letter to the EPA dated June 25, 2024.

WHEREAS, the Parties recognize, and the Court by entering this Amended Decree finds, that this Amended Decree has been negotiated by the Parties in good faith, that implementation of this Amended Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Amended Decree is fair, reasonable, in the public interest, and consistent with CERCLA.

NOW THEREFORE, it is hereby **ORDERED** and **DECREED** as follows:

1. Paragraph 4 (Definitions) of the 1996 OU3 Decree is amended as follows:

“Defendant” shall mean BASF Corporation, successor to Ciba-Geigy Corporation.

“Consent Decree” or “CD” or “Decree” shall mean the 1996 Consent Decree, and all appendices attached thereto, as amended by this 2024 Amendment to Remedial Design/Remedial Action Consent Decree and the respective appendices attached herein. In the event of conflict between this CD and any appendix, this CD shall control.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the RA; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“Operable Unit Three” or “OU3” shall mean that Operable Unit at the Site which addresses contamination within the floodplain area of the Site and effluent ditch (now referred to as the “drainage ditch”) identified in the ROD as modified by the Amended ROD signed on August 6, 2024 (“Amended ROD”) to include and address contamination in the operational plant area catch basins, upstream conveyance ditch,

upstream drainage ditch, floodplain drainage ditch, and floodplain deposition areas identified in the Amended ROD.

“Performance Standards” shall mean the cleanup levels and other measures of achievement of the remedial action objectives set forth in the ROD, and any subsequent modification thereto.

“Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Operable Unit Three at the Site signed on July 25, 1995, by the Regional Administrator, EPA Region IV, or his/her delegate, and all attachments thereto (“1995 OU3 ROD”), as modified by the October 6, 2008 and June 5, 2019 ESDs and the Amended ROD signed on August 6, 2024, and any subsequent modification thereto developed by the EPA in accordance with the National Contingency Plan.

“Statement of Work” or “SOW” shall mean the “Amended and Restated Statement of Work for Remedial Design/Remedial Action,” attached as Appendix B to this 2025 Amendment to Remedial Design/Remedial Action Consent Decree, describing the activities Defendant must perform to implement the Remedial Design, Remedial

Action, and Operation and Maintenance for Operable Unit Three, and any modifications made in accordance with the Consent Decree.

2. The Statement of Work that was attached as Appendix B to the 1996 OU3 Decree is hereby amended by the Amended and Restated Statement of Work for Remedial Design/Remedial Action, which is attached hereto as Appendix B.

3. Paragraph 11.g. is added to the 1996 OU3 Decree as follows:

Paragraphs 11.a.-11. f. refer to remedial design to implement the 1995 OU3 ROD which has been completed with long-term monitoring ongoing. Defendant shall implement the remedial design described in the Amended ROD in accordance with the SOW.

4. Paragraph 12.d. is added to the 1996 OU3 Decree as follows:

Paragraphs 12.a.-c. refer to remedial action to implement the 1995 OU3 ROD which has been completed with long-term monitoring ongoing. Defendant shall implement the remedial action described in the Amended ROD in accordance with the SOW.

5. Paragraph 14.b. of the 1996 OU3 Decree is amended to include, as within the scope of the remedy selected in the ROD, all of the selected remedy components described in Section 6 (Selected Amended Remedy) of the Amended ROD attached hereto as Appendix C.

6. Paragraph 45.b. of the 1996 OU3 Decree is stricken and amended to read as follows:

The total estimated cost of the Work to implement the Amended ROD is \$24,720,000. Defendant has selected, and EPA has found satisfactory, an irrevocable letter of credit as an initial form of financial assurance. Within 14 days after entry of this Amended Decree by the Court, Defendant shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall

submit such mechanisms and documents to the Regional Program Analyst, to DOJ, to EPA, and to the State.

7. Paragraph 45.c. is added to the 1996 OU3 Decree as follows:

Access to Financial Assurance. If EPA issues a notice of a Work Takeover under Paragraph 86, then, in accordance with any applicable financial assurance mechanism, any amounts required to be paid under this Paragraph 45.c. must be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the Fund or into the Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Fund.

8. Paragraph 45.d. is added to the 1996 OU3 Decree as follows:

If EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and Defendant fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 45.c.

9. Paragraph 45.e. is added to the 1996 OU3 Decree as follows:

If, upon issuance of a notice of a Work Takeover under Paragraph 86, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism including any related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial

assurance is a demonstration or guarantee under Paragraph 44(d) or 44(e), then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Defendant shall, within 30 days after such demand, pay the amount demanded as directed by EPA.

10. Paragraph 102, Section XXVI (Notice and Submissions) of the 1996 OU3 Decree, is amended as follows to reflect current Notice recipients for the parties:

As to the United States:

Re: DJ# 90-11-2-781B

EES Case Management Unit

U.S. Department of Justice

Environment and Natural Resources Division

P.O. Box 7611

Washington, D.C. 20044-7611

eesdcopy.enrd@usdoj.gov

and

Hunter Johnson

Acting Director, Superfund and Emergency Management Division

U.S. EPA Region 4

61 Forsyth St. S.W.

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As to EPA (Project Coordinator):

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As to EPA (Financial Assurance):

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As to the State:

Ben King
State Superfund Project Coordinator
Alabama Department of Environmental Management
1400 Coliseum Boulevard
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Ben.king@adem.alabama.gov

As to the Defendant:

Stephen Havlik, Project Coordinator

Senior Remediation Specialist

BASF Corporation

227 Oak Ridge Parkway

Toms River, NJ 08755

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and

BASF Corporation Attn: Legal Department

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Linda.brenneman@basf.com

11. To the extent that there is a conflict between the Remedial Design and/or Remedial Action deliverable deadlines in the 1996 OU3 Decree and in Table 2 of the Amended and Restated SOW, the deliverable deadlines in Table 2 of the Amended and Restated SOW, or in any subsequent EPA-approved revised deliverable deadline schedule, shall control.

12. All other paragraphs of the 1996 OU3 Decree remain in effect without modification.

13. The following appendices are attached to and incorporated into this Amended Decree:

a. Appendix A is the 1996 OU3 RD/RA Consent Decree.

b. Appendix B is the Amended and Restated Statement of Work for Remedial Design/Remedial Action at OU3.

c. Appendix C is the 2024 Amended ROD.

14. The undersigned representatives of the United States and Defendant each certify that he or she is fully authorized to enter into the terms and conditions of this Amended Decree and to execute and legally bind such Party to this document.

15. This Amended Decree will be lodged with the Court for at least 30 days for public notice and comment in accordance with section 122(d)(2) of CERCLA and 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the comments regarding the Amended Decree disclose facts or considerations that indicate that the Amended Decree is inappropriate, improper, or inadequate.

16. Defendant agrees not to oppose or appeal the entry of this Amended Decree.

17. Upon entry of this Amended Decree by the Court, this Amended Decree constitutes a final judgment under Fed. R. Civ. P. 54 and 58 among the Parties.

SO ORDERED this _____ day of _____, 2025.

Signature page to Amended Consent Decree in
U.S. v. BASF Corporation, f/k/a Ciba-Geigy Corp. (S.D. Alabama)

FOR THE UNITED STATES:

ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

DATE: 3/13/2026



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**FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:**

**HUNTER
JOHNSON**

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DATE

HUNTER JOHNSON

Acting Director
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**MEREDITH
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FOR BASF CORPORATION:

7/18/2025
DATE



CATHERINE A. TRINKLE

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