

Responsiveness Summary For CERCLA Section 112(h) Agreement Leadwood Mine Tailings Superfund Site, St. Francois County, Missouri

Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. § 9622(i), requires the U.S. Environmental Protection Agency (EPA) to publish, in the Federal Register, notice of proposed administrative settlements entered under Section 122(h) of CERCLA, 42 U.S.C. § 9622(h), and for a 30-day period beginning on the date of publication, to provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement. Section 122(i) further requires EPA to consider any comments filed during the 30-day period and permits EPA to withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations that show that the proposed settlement is inappropriate, improper or inadequate.

In accordance with Section 122(i) of CERCLA, EPA published notice of a proposed administrative settlement, EPA Docket No. CERCLA-07-2013-0002, concerning the Leadwood Mine Tailings Superfund Site, St. Francois County, Missouri, in the Federal Register on April 29, 2013.

Summary of Comments

EPA received one comment on the proposed settlement from Thomas L. Aldrich, Vice President of Environmental Affairs, Asarco Grupo Mexico. Mr. Aldrich asserts that under a bankruptcy settlement agreement between Asarco LLC, the United States, the state of Missouri, The Doe Run Company, and DR Land Holdings, LLC, regarding the Southeast Missouri (SEMO) Sites, which was entered on May 12, 2008 in the United States Bankruptcy Court Southern District of Texas, Corpus Christi Division, Case No. 05-21207 (SEMO Settlement Agreement), Asarco LLC paid “more than \$53.8 million for the Big River Mine Tailings Superfund Site including more than \$17 million for past and future Big River Response Costs.” Mr. Aldrich also asserts that Asarco reserved its rights to seek contribution from other responsible parties under the SEMO Settlement Agreement. Further he asserts that the proposed settlement with The Doe Run Resources Corporation (Doe Run) was “grossly disproportionate” to the liability of Doe Run at the Leadwood Mine Tailings Superfund Site. In addition, Mr. Aldrich commented that the settlement should “exclude contribution claims by Asarco LLC” because of the SEMO Settlement Agreement.

EPA Response to Comments

EPA disagrees with the assertion from the commenter, that the proposed settlement is “grossly disproportionate” to the liability of Doe Run at the Leadwood Mine Tailings Superfund Site.¹ Instead, the proposed settlement only addresses specifically defined past costs incurred by EPA at the Leadwood Mine Tailings Superfund Site, which is part of the Big River Mine Tailings Superfund Site. Past costs under the proposed settlement are defined as follows:

‘Past Response Costs’ shall mean all costs, including but not limited to, direct and indirect costs, that EPA or the Department of Justice on behalf of EPA has paid at or in connection with the Site for removal actions pursuant to the Unilateral Administrative Order, Docket No. CERCLA-07-2006-0272, entered on September 29, 2006; as amended by the First Modification, entered on April 17, 2008; and as amended by the Second Modification, entered on July 31, 2009.

Thus, contrary to the comment above, the proposed settlement only resolves Doe Run’s liability to the United States for past costs incurred by EPA (or DOJ on behalf of EPA) associated with the removal action at the Leadwood Mine Tailings pile under the 2006 Unilateral Order. Such costs total \$198,302.80. In sum, the proposed settlement of \$175,000, is an adequate and reasonable settlement of EPA’s past cost because it represents a recovery of nearly 90 percent of EPA’s past costs under the 2006 Unilateral Order.

Further, to the extent that the comment suggests that the proposed settlement affords Doe Run contribution protection inconsistent with the SEMO Settlement, that position has no merit. As set forth above, The United States on behalf of EPA, and Doe Run were parties to the SEMO Settlement with Asarco LLC. And as part of the SEMO Settlement, Asarco already “covenant[ed] not to sue and agree[d] not to assert any claims or causes of action against... Doe Run with respect to the SEMO Sites, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law; any claims against ... Doe Run, including ... under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613; and any claims arising out of the response or NRD restoration activities at the SEMO Sites.” SEMO Settlement, Paragraph 20.

Moreover, pursuant to the SEMO Settlement, “the United States, Doe Run Missouri and ASARCO expressly reserve[d] all claims, demands, and causes of action either judicial or administrative, past, present or future, in law or equity, which the United States, Doe Run, Missouri or ASARCO may have against all other persons, firms, corporations, or other entity for

¹ Moreover, the commenter asserts that “Asarco LLC paid more than \$53.8 million for the Big River Mine Tailings Superfund Site including more than \$17 million for past and future Big River Response Costs.” EPA clarifies that the SEMO Settlement Agreement provided for a general unsecured claim for \$17,072,427, for the Big River Mine Tailings Superfund Site, of which, the Leadwood Mine Tailings Superfund Site is only one of eight sub-sites within the Big River Mine Tailings Superfund Site.

any matter arising at or relating in any manner to the SEMO Sites and/or claims addressed [in the SEMO Settlement.]” Clearly the parties reserved their claims against “all ... persons...” other than each other.

Conclusion

The comment received on this proposed settlement did not disclose to EPA facts or considerations that show that the proposed settlement is inappropriate, improper or inadequate. The proposed settlement is, therefore, final and effective upon the date of the signature of this written notice that the public comment period has closed and that the comment received does not require modification of or EPA withdrawal from the proposed settlement.

In accordance with Paragraph 10, Payment of Response Costs, of the proposed settlement, payment is due within 30 days of the signature of this Responsiveness Summary.

6/20/13
Date _____



Cecilia Tapia
Director
Superfund Division

IN THE MATTER OF Leadwood Mine Tailings Site, St. Francois County, Missouri, The Doe Run Resources Corporation, Settling Party
Docket No. CERCLA-07-2013-0002

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Responsiveness Summary was sent this day in the following manner to the addressees:

Copy to Attorney for Complainant:

Julie M. Van Horn
Senior Assistant Regional Counsel
US Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

Copy by email and First Class Mail to Respondent:

Matthew D. Wohl
Vice President Law
The Doe Run Company
Suite 300
1801 Park 270 Drive
St. Louis, Missouri 63146

and

Thomas L. Aldrich
Vice President Environmental Affairs
Asarco Grupo Mexico
5285 East Williams Circle, Suite 2000
Tucson, Arizona 85711

Dated: 06/24/13



Kathy Robinson
Hearing Clerk, Region 7