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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)	AGREEMENT
)	
Middlebrook Railhead Operable Unit)	U.S. EPA, Region 7
Viburnum Trend Haul Roads Site)	CERCLA Docket No. CERCLA-07-2010-0008
Middlebrook, Missouri)	
)	
)	
DOE RUN RESOURCES CORP.)	PROCEEDING UNDER SECTION
SETTLING PARTY)	122(h)(1) OF CERCLA
_____)	42 U.S.C. §9622(h)(1)

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and delegated from the Region 7 Regional Administrator to the Region 7 Superfund Division Director. This Agreement is entered into pursuant to the authority of the EPA to settle claims without compromise when total response costs exceed \$500,000.

2. This Agreement is made and entered into by EPA and the Doe Run Resources Corporation ("Doe Run" or "Settling Party"). The Settling Party consents to and will not contest the authority of the United States to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Middlebrook Railhead Operable Unit of the Viburnum Trend Hauls Roads Site ("Site") located in Middlebrook, Missouri. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future.

5. In performing response action at the Site, EPA has incurred response costs and may incur additional response costs in the future.

6. The EPA alleges that the Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

7. The EPA and the Settling Party recognize that this Agreement has been negotiated in good faith and this Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by the Settling Party in accordance with this Agreement do not constitute an admission of any liability by the Settling Party. The Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

8. This Agreement shall be binding upon EPA and upon the Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of the Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter the Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

9. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing the Settling Party to make a cash payment to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and, with regard to the Middlebrook Railhead Operable Unit of the Site as provided in the Covenant Not to Sue by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Additional Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA incurs and pays at or in connection with the Site.

b. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

d. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.¹

g. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

e. "Parties" shall mean EPA and the Settling Party.

f. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

h. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

i. "Settling Party" shall mean the Doe Run Resources Corporation.

j. "Site" shall mean the Viburnum Trend Haul Roads Site, Middlebrook Railhead Operable Unit 01, located at and adjacent to the Spitzmiller Trailer Court in Middlebrook, Missouri. The definition of "Site" shall have the same meaning as "facility" in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and for purposes of this Agreement shall reference the locations where hazardous substances have come to be located as a result of former mining, milling, and lead ore/concentrate hauling operations.

¹ The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/budget/finstatement/superfund/int_rate.htm.

k. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

VI. PAYMENT OF RESPONSE COSTS

11. Within 30 days after the effective date of this Agreement as defined by Paragraph 39, the Settling Party shall pay to the EPA Hazardous Substance Superfund \$225,429.11, plus an additional sum for interest on that amount calculated from the date that the Settling Party received demand for payment of response costs from EPA through the date of payment.

12. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Settling Parties by EPA, Region 7, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID # A75JPS01, and the EPA docket number for this action. At the time of payment, the Settling Party shall also send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID # A75JPS01 and the EPA docket number for this action.

13. The total amount to be paid by the Settling Party pursuant to Paragraph 11 shall be deposited by EPA in the Viburnum Trend Haul Roads Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Viburnum Trend Haul Roads Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

14. Payment of Additional Response Costs.

a. Settling Parties shall pay to the EPA Hazardous Substance Superfund Additional Response Costs associated with Post Removal Site Control not inconsistent with the National Contingency Plan. If Additional Response Costs are incurred, EPA will send the Settling Party one or more bills requiring, which includes an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA and its contractors. The Settling Party shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 15 (Resolution of Disputes Concerning Payment of Additional Response Costs). Payment shall be made by certified check or checks or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment, the EPA Region and Site Spill ID # A75JPS01, and the EPA docket number for this action. The Settling Party shall send the check[s] to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, Missouri 63197-9000

b. At the time of payment, the Settling Party shall also send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID # A75JPS01 and the EPA docket number for this action.

c. The total amount to be paid by Settling Parties pursuant to Paragraph 14(a) (Payment of Additional Response Costs) shall be deposited by EPA in the Viburnum Trend Haul Roads Site Special Account within the EPA Hazardous Substance Superfund 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 EPA Hazardous Substance Superfund.

15. Resolution of Disputes with the Settling Party Concerning Payment of Additional Response Costs.

a. Use of Dispute Resolution. The dispute resolution procedures set forth in this Paragraph shall be the exclusive mechanism for resolving disputes regarding the Settling Party's obligation to reimburse EPA for Additional Response Costs. The dispute resolution procedures in this Paragraph are limited to disputes regarding recovery of Additional Response Costs. Nothing in this Paragraph shall be deemed to create a right to pre-enforcement review of response actions taken by EPA.

b. The Settling Party may dispute all or part of a bill for Additional Response Costs submitted under this Agreement if the Settling Party alleges that EPA has made an accounting error, or if the Settling Party alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, the Settling Party shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 14 on or before the due date. Within the same time period, the Settling Party shall pay the full amount of the contested costs into an interest-bearing escrow account. The Settling Party shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 36 (below). Should EPA prevail in the dispute, the Settling Party shall ensure that the amount upon which the EPA prevailed shall be distributed from the escrow funds plus interest within 30 days after the dispute is resolved.

c. If the Settling Party objects to any billing for Additional Response Costs, they shall notify EPA in writing of their objection(s) within 14 days of such action, unless the

objection(s) has/have been resolved informally. EPA and the Settling Party shall have 14 days from EPA's receipt of Settling Parties' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

d. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Region 7 Judicial Officer will issue a written decision on the dispute to the Settling Party, which shall not constitute final agency action for purposes of judicial review. The EPA's decision shall be incorporated into and become an enforceable part of this Agreement. Following resolution of the dispute, as provided by this Section, the Settling Party shall make payment in accordance with the agreement reached or with EPA's decision, whichever occurs, and Paragraph 14(b) above.

VII. FAILURE TO COMPLY WITH AGREEMENT

16. Interest on Late Payments. If the Settling Party fails to make any payment required by Paragraphs 11 and/or 14 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

17. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 11 are not paid by the required date, Settling Parties shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 16, \$2,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall identify the name and address of the Site name, the EPA Region and Site/Spill ID # A75JPS01, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, Missouri 63197-9000.

c. At the time of each payment, the Settling Party shall also send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such

notice shall identify the EPA Region and Site-Spill ID # A75JPS01 and the EPA docket number for this action.

d. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

18. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of the Settling Party's failure to comply with the requirements of this Agreement, Settling Party's failure or refusal to comply with any term or condition of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Agreement, the Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

19. The obligation of the Settling Party to pay amounts owed to EPA under this Agreement is joint and several.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. The Settling Party's payment of stipulated penalties shall not excuse the Settling Party from payment as required by Section VI or from performance of any other requirements of this Agreement.

VIII. COVENANT NOT TO SUE BY EPA

21. Covenant Not to Sue by EPA. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Middlebrook Railhead Operable Unit of the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of all amounts required by Paragraph 11 of Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Party of its obligations under this Agreement. This covenant not to sue extends only to the Settling Party and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

22. The EPA reserves, and this Agreement is without prejudice to, all rights against the Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by

EPA in Paragraph 21. Notwithstanding any other provision of this Agreement, EPA reserves all rights against the Settling Party with respect to:

- a. liability for failure of the Settling Party to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon the Settling Party's ownership or operation of the Site, or upon Settling Party's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Agreement by the Settling Party; and
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

23. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTY

24. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Middlebrook Railhead Operable Unit of the Site or this Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of response actions at or in connection with the Middlebrook Railhead Operable Unit of the Site, including any claim under the United States Constitution, the Missouri Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Middlebrook Railhead Operable Unit of the Site.

Except as provided in Paragraph 26 (Waiver of Claims) and Paragraph 29 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 20(c) - (f), but only to the extent that the Settling Party's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

25. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

26. The Settling Party agrees not to assert any claims or causes of action that they may have for all matters relating to the Middlebrook Railhead Operable Unit of the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that the Settling Party may have against any person if such person asserts a claim or cause of action relating to the Middlebrook Railhead Operable Unit of the Site against the Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

27. Except as provided in Paragraph 26, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. The EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

28. The Parties agree that the Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Middlebrook Railhead Operable Unit of the Site, by the United States or by any other person. The "matters addressed" in this Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Agreement (except for claims for failure to comply with this Agreement), in the event that EPA asserts rights against the Settling Party coming within the scope of such reservations.

29. In any subsequent administrative or judicial proceeding initiated by EPA, or the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Middlebrook Railhead Operable Unit of the Site, the Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the

claims raised by EPA, or the United States on behalf of EPA, in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section VIII.

XII. ACCESS TO INFORMATION

30. The Settling Party shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Middlebrook Railhead Operable Unit of the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Middlebrook Railhead Operable Unit of the Site.

31. Confidential Business Information and Privileged Documents.

a. The Settling Party may assert business confidentiality claims covering part or all of the records submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified the Settling Party that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such documents or information without further notice to the Settling Party.

b. The Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Party asserts such a privilege in lieu of providing records, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged portion only. The Settling Party shall retain all records that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Middlebrook Railhead Operable Unit of the Site shall be withheld on the grounds that they are privileged.

32. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

33. Until 10 years after the effective date of this Agreement, the Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Middlebrook Railhead Operable Unit of the Site or to the liability of any person for response actions or response costs at or in connection with the Middlebrook Railhead Operable Unit of the Site, regardless of any corporate retention policy to the contrary.

34. After the conclusion of the document retention period in the preceding paragraph, the Settling Party shall notify EPA at least 90 days prior to the destruction of any such record, and, upon request by EPA, the Settling Party shall deliver such records to EPA. The Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged portion only. The Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Middlebrook Railhead Operable Unit of the Site shall be withheld on the grounds that they are privileged.

XIV. CERTIFICATION

35. The Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Middlebrook Railhead Operable Unit of the Site, since notification of potential liability by the United States or the State or the filing of a suit against it regarding the Middlebrook Railhead Operable Unit of the Site and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XV. NOTICES AND SUBMISSIONS

36. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete

satisfaction of any written notice requirement of this Agreement with respect to EPA and the Settling Party.

As to EPA:

J. Daniel Breedlove
Assistant Regional Counsel
Region 7
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

Jeffrey Weatherford
On-scene Coordinator
Region 7
U.S. Environmental Protection Agency
97 North Outer Road
Eureka, Missouri 63025

As to the Settling Party:

Louis J. Maruchau
Vice President Law
Doe Run Resources Corporation
1801 Park 270 Drive
St. Louis, Missouri 63146

XVI. INTEGRATION

37. This Agreement constitutes the final, complete and exclusive Agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement.

XVII. PUBLIC COMMENT

38. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

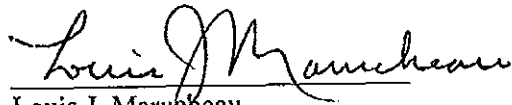
XVIII. EFFECTIVE DATE

39. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 38 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Agreement.

IT IS SO AGREED:

Settling Defendant

By:




Louis J. Maruchau
Vice President Law
Doe Run Resources Corporation

25 JUN 10

Date

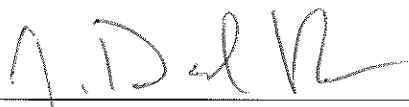
U.S. Environmental Protection Agency

By:



Cecilia Tapia
Director
Superfund Division

7/1/10
Date



J. Daniel Breedlove
Assistant Regional Counsel

7/1/10
Date

IN THE MATTER OF Middlebrook Railhead Operable Unit; Viburnum Trend Haul Roads Site;
Doe Run Resources Corp, Settling Party
Docket No. CERCLA-07-2010-0008

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

J. Daniel Breedlove
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Louis J. Maruchau
Vice President Law
Doe Run Resources Corporation
1801 Park 270 Drive
St. Louis, Missouri 63146

Dated: 8/9/10



Kathy Robinson
Hearing Clerk, Region 7