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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
)
Barker-Hughesville Superfund Site)
Cascade and Judith Basin Counties)
Montana)
)
The Doe Run Resources Corporation)
Respondent.)

ADMINISTRATIVE
SETTLEMENT AGREEMENT
AND ORDER ON CONSENT
FOR REMOVAL ACTION

CERCLA Docket No. **CERCLA-08-2011-0010**

Proceeding Under Sections 104,
106(a), 107 and 122 of the
Comprehensive Environmental
Response, Compensation, and
Liability Act, as amended,
42 U.S.C. §§ 9604, 9606(a), 9607
and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement Agreement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and The Doe Run Resources Corporation (Respondent). This Settlement Agreement provides for the performance of a removal action by Respondent at or in connection with the Barker-Hughesville Superfund Site (the Site) generally located near the town of Monarch in Cascade and Judith Basin Counties, Montana.
2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (CERCLA).
3. EPA has notified the Montana Department of Environmental Quality Montana (the MDEQ) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.
6. Respondent is liable for carrying out all activities required by this Settlement Agreement.
7. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated

under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on August 19, 2010, by the Regional Administrator, EPA Region 8, or his/her delegate, and all attachments thereto. The "Action Memorandum" is attached as Appendix B.

b. "Barker-Hughesville Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and pursuant to the ASARCO bankruptcy settlement.

c. "Barker-Hughesville Block P Disbursement Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and Paragraph 54.

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

e. "Day" shall mean a calendar day. In computing any period of time under this Settlement 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.

f. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXIII.

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

h. "MDEQ" shall mean the Montana Department of Environmental Quality and any successor departments or agencies of the State.

i. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX. (Site Access - costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), and Section XIII. (emergency response), and Paragraph 80 (work takeover).

j. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually 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.

k. "Interest Earned" shall mean interest earned on amounts in the Barker-Hughesville Block P Disbursement Special Account, which shall be computed monthly at a rate based on the annual return on investments of the Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the interest accrues.

l. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

m. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with this Settlement Agreement beginning on April 1, 2010 through the Effective Date of this Settlement Agreement, plus Interest on all such costs through such date.

n. "Oversight Costs" shall mean that portion of Future Response Costs incurred by EPA in monitoring and supervising Respondent's performance of the removal actions agreed to in this Order to determine whether such performance is consistent with the requirements of this Order, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Order, as well as costs incurred in overseeing implementation of the removal action; however, Oversight Costs do not include, *inter alia*, (1) the cost of activities by EPA pursuant to Paragraph 47 of this Order; (2) the cost of enforcing the terms of this Order, including all costs incurred in connection with Dispute Resolution pursuant to Section XVII; and (3) the cost of securing access under Paragraph 32.

o. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXXIV.). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

p. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

q. "Parties" shall mean EPA and Respondent.

r. "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).

s. "Respondent" shall mean The Doe Run Resources Corporation.

t. "Season" shall mean that part of the calendar year in which Respondent shall perform Work at the Site and shall begin no later than June 1st of each year and end when adverse weather conditions prohibit Work to be conducted at the Site.

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

v. "Site" shall mean the shall mean the Barker-Hughesville Superfund Site, which encompasses approximately 15 square miles, located in the Little Belt Mountains near the town of Monarch in Cascade and Judith Basin Counties, Montana, depicted generally on the map attached as Appendix A.

w. "State" shall mean the State of Montana.

x. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the removal action, as set forth in Appendix C to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

y. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous waste" under State law.

z. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

9. The Barker-Hughesville Site (Site) is located in west-central Montana east of the town of Monarch, within the very western portion of Judith Basin County and adjacent Cascade County. The Site is located in the Little Belt Mountains mostly within the Dry Fork Belt Creek Watershed and encompasses approximately fifteen (15) square miles. The Site was listed on the National Priorities List (NPL) on September 13, 2001.

10. The Site is the location of historic mining operations with approximately 45 known abandoned mine sites and associated waste rock dumps and approximately 16 known discharging mine adits. The historic mining operations resulted in deposits of waste rock, mill tailings and uncontrolled acid mine drainage from mine workings in the Dry Fork Belt Creek watershed.

11. The Upper Galena Creek drainage is located in the center of the Site, downstream from the Green Creek and Daisy Creek drainages. It includes the area from the Block P Mine downstream through the Barker town site. The Upper Galena Creek drainage is

dominated by the Block P Mine. Galena Creek is one of the most heavily impacted tributaries to the Dry Fork Belt Creek within the Site.

12. Hazardous substances present in the mine waste rock and acid mine drainage at the Site include arsenic, copper, cadmium, lead and zinc, which are being released into the environment. Sampling showed concentrations of lead and arsenic at several times those levels considered safe for human exposure (i.e. Belt Patent Mine 3520 parts per million (ppm) arsenic, Edwards Mine 24,900 ppm lead). Water quality sampling in Galena Creek showed metals present at levels above aquatic life standards and/or maximum contaminant levels for drinking water.

13. In approximately March 1927, the St. Joseph Lead Company purchased the Barker (Block P) Mine, the Wright Mine, the Edwards Mine, the Grey Eagle Mine and the Belt Patent Mine (the "Block P Mine Complex") and operated those mines during several periods until 1944 when they were sold. These mines are all located in the Upper Galena Creek drainage portion of the Site.

14. The Respondent is a successor company to the St. Joseph Lead Company.

15. On August 7, 2008, EPA and Respondent entered into an "Administrative Settlement Agreement and Order on Consent For Engineering Evaluation/Cost Analysis (EE/CA)," (EE/CA AOC) (Docket Number CERCLA-08-2008-0007) that required Respondent to conduct an EE/CA at the Block P Mine Complex at the Site.

16. Respondent conducted Site investigations of surface water quality, ground water quality, waste rock dumps, underground workings and related discharges in support of the EE/CA.

17. Respondent completed and submitted the EE/CA to EPA in March, 2010.

18. EPA provided public notice of the EE/CA from March 22, 2010 through April 30, 2010 and conducted a public meeting in Monarch, Montana on March 31, 2010.

19. On September 9, 2010 EPA modified the SOW for the EE/CA AOC to allow Respondent to conduct additional work at Block P.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

20. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a successor to an "owner" and/or "operator" of the Block P Mine Complex portion of the facility at the time of disposal of hazardous substances at the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2) and is therefore a liable party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

21. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within thirty (30) days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least ten (10) working days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by the Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within ten (10) working days of EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

22. Within fourteen (14) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within ten (10) working days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

23. EPA has designated Steve Way of the Region 8, Site Assessment and Emergency Response Program, as its On-Scene Coordinator (OSC). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at U.S. Environmental Protection Agency, Region 8, MC 8EPR-SA, 1595 Wynkoop Street, Denver, CO 80202-1129. Submissions and notices to be given to MDEQ shall be directed to Keith Large, MDEQ Project Officer, P.O. Box 200901, Helena, MT 59620-0901 or, for overnight mail, to 1100 N. Last Chance Gulch, Helena, MT 59601.

24. EPA and Respondent shall have the right to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA ten (10) working days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

25. EPA and Respondent shall perform, at a minimum, all actions necessary to implement the Action Memorandum, attached hereto as Appendix B, and the Statement of Work, attached hereto as Appendix C. The actions to be implemented generally include, but are not limited to, the following:

- **Pre-Construction Planning Documents** (Task 1)
 - Work Plan - Including a project description and how Respondent will accomplish the selected removal action and related objectives
 - Mine Waste Repository Plan - Summarizing potential storage sites that are being evaluated prior to initiating design.
 - Construction Quality Assurance/Quality Control Plan (QA/QC Plan) – Shall be submitted with Repository Design and Specifications and shall include provisions for construction oversight by the Respondent and independent engineering inspection to ensure specifications are met.
 - Health and Safety Plan - Review and, as necessary, revise the Site specific project health and safety plan that Respondent prepared as part of the EE/CA AOC.

- Sampling and Analysis Plan (SAP) & Quality Assurance Project Plan (QAPP) - The existing SAP and QAPP for the Site established for the EE/CA AOC are applicable to any sampling activities required for the Work. EPA may require modifications to the SAP under this AOC.
- Removal Action Implementation (Task 2) - The approved Work described in the SOW and the approved Work Plan and Design Report shall be implemented by the Respondent to complete the Removal Action approved by EPA.
- Reporting Requirements (Task 3) - Respondent shall prepare and submit written progress reports to EPA, MDEQ and the Forest Service during the course of the work on-Site and at the completion of the on-Site work, submit a Final Report for review and approval by EPA.
- Post-Removal Site Controls (Task 4) - Monitoring and maintenance of the areas involved with this action.

26. Work Plan and Implementation.

a. Pursuant to the schedule set forth in the SOW, Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 25 above and in the SOW. The draft Work Plan shall provide a description of, and a schedule for, the actions required by this Settlement Agreement. If EPA requires modifications to the QAPP, the modified QAPP should be prepared in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998).

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part provided that any revisions or modifications are consistent with achieving the objectives set forth in the SOW. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within fourteen (14) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 26.b.

27. Health and Safety Plan. Pursuant to the schedule set forth in the SOW, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration

(OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

28. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or MDEQ or their authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than five (5) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA and MDEQ shall have the right to take any additional samples that they deem necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

29. Reporting.

a. Respondent shall submit a written progress report to EPA and MDEQ concerning actions undertaken pursuant to this Settlement Agreement according to the schedule set forth in Sections V. and VI. of the Statement of Work until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the

reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit four (4) copies to EPA, two (2) copies to MDEQ, and two (2) copies to Forest Service, of all plans, reports or other submissions required by this Settlement Agreement and the Statement of Work, or any approved work plan. Respondent shall also submit such documents in electronic form to EPA, MDEQ and the Forest Service.

c. Respondent shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and MDEQ of the proposed conveyance, including the name and address of the transferee. Respondent also agrees to require that its successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

30. **Final Report.** Within ninety (90) days following completion of the Work at the Site, Respondent shall submit for EPA review and approval and MDEQ review, a final report as described in Section V.C. of the SOW and summarizing the actions taken to comply with this Settlement Agreement, SOW and Work Plans. The final reports shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final reports shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

IX. SITE ACCESS

31. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by the Respondent, such Respondent shall, commencing on the Effective Date, provide EPA, MDEQ and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

32. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within ninety (90) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

33. If the Site, or any other real property where access or land/water use restrictions are needed, is owned or controlled by Respondent:

a. Respondent shall, commencing on the Effective Date, provide EPA and MDEQ, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity regarding the Settlement Agreement including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA and MDEQ;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved plans;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 80 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with the Section X. (Access to Information);
- (9) Assessing Respondent's compliance with the Settlement Agreement;
- (10) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

b. Commencing on the Effective Date, Respondent shall not use the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to

human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the Work; and

c. Respondent shall:

- (1) execute and record in the appropriate land records office Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Settlement Agreement including, but not limited to, those activities listed in Paragraph a, and (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph b., including, but not limited to, the specific restrictions listed therein, as further specified in Paragraph 33.c.(2)-(4).
- (2) The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (i) EPA and its representatives, (ii) MDEQ and its representatives, and/or (iii) other appropriate grantees. The Proprietary Controls, other than those granted to EPA, shall include a designation that EPA, as appropriate, is a "third-party beneficiary," allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property. If any Proprietary Controls are granted to Respondent pursuant to this Paragraph c.(2)(iii), then such Respondent shall monitor, maintain, report on, and enforce such Proprietary Controls.
- (3) Within thirty (30) days of the Effective Date, submit to EPA for review and approval regarding such real property: (i) a draft Proprietary Control that is enforceable under state law; and (ii) a current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Respondent is unable to obtain release or subordination of such prior liens or encumbrances).
- (4) Within fifteen (15) days of EPA's approval and acceptance of the Proprietary Control and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, record the Proprietary Control with the appropriate land records office. Within thirty (30) days of recording the Proprietary Control, Respondent shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be

conveyed to EPA, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

34. If the Site, or any other real property where access and/or land/water use restrictions are needed, is owned or controlled by persons other than Respondent, Respondent shall use best efforts to secure from such persons:

a. An agreement to provide access thereto for EPA, MDEQ, Respondent, and their representatives, contractors and subcontractors, to conduct any activity regarding this Settlement Agreement including, but not limited to, the activities listed in Paragraph 33.a. above;

b. An agreement, enforceable by Respondent and EPA, to refrain from using the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the Work. The agreement shall include, but not be limited to, the land/water use restrictions listed in Paragraph 33.b; and

c. (1) the execution and recordation in the appropriate land records office of Proprietary Controls, that (i) grants a right of access to conduct any activity regarding this Settlement Agreement including, but not limited to, those activities listed in Paragraph a., and (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph b., including, but not limited to, the specific restrictions listed therein.

(2) The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (i) EPA and its representatives, (ii) MDEQ and its representatives, (iii) Respondent and its representatives, and/or (iv) other appropriate grantees. The Proprietary Controls, other than those granted to EPA, shall include a designation that EPA and/or MDEQ is a "third party beneficiary," allowing EPA and/or MDEQ to maintain the right to enforce the Proprietary Control without acquiring an interest in real property. If any Proprietary Controls are granted to Respondent pursuant to this Paragraph, then Respondent shall monitor, maintain, report on, and enforce such Proprietary Controls.

(3) Within thirty (30) days of the Effective Date, Respondent shall submit to EPA for review and approval regarding such property: (i) a draft Proprietary Control that is enforceable under state law; and (ii) a current title insurance commitment, or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA waives

the release or subordination of such prior liens or encumbrances or when, despite best efforts, Respondent is unable to obtain release or subordination of such prior liens or encumbrances.

(4) Within fifteen (15) days of EPA's approval and acceptance of the Proprietary Control and the title evidence, Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, the Proprietary Control shall be recorded with the appropriate land records office. Within thirty (30) days of the recording of the Proprietary Control, Respondent shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

35. For purposes of Paragraphs 33. and 34., "best efforts" includes the payment of reasonable sums of money to obtain access, an agreement to restrict land/water use, a Proprietary Control, and/or an agreement to release or subordinate a prior lien or encumbrance. If, within thirty (30) days of EPA's request for Proprietary Controls, Respondent has not: (a) obtained agreements to provide access, restrict land/water use or record Proprietary Controls, as required by Paragraph a., b. or c.; or (b) obtained, pursuant to Paragraph 33.c.(1) or 34.c.(1), agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Respondent shall promptly notify EPA in writing, and shall include in that notification a summary of the steps that Respondent has taken to attempt to comply with Paragraph 33. or 34. EPA and MDEQ may, as they deem appropriate, assist Respondent in obtaining access, agreements to restrict land/water use, Proprietary Controls, or the release or subordination of a prior lien or encumbrance.

36. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed, Respondent shall cooperate with EPA's and MDEQ's efforts to secure and ensure compliance with such governmental controls.

37. Notwithstanding any provision of this Settlement Agreement, EPA and MDEQ retain all of its their access authorities and rights including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

38. Respondent shall provide to EPA and MDEQ, upon request, copies of all documents and information within their possession or control or that of their contractors

or agents relating to activities at the Site or to the implementation of this Settlement Agreement, 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 Work. Respondent shall also make available to EPA and MDEQ, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

39. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and MDEQ under this Settlement 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). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and MDEQ, or if EPA has notified Respondent that the documents or information 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 Respondent.

40. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent assert such a privilege in lieu of providing documents, they shall provide EPA and MDEQ with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

41. 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.

XI. RECORD RETENTION

42. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXXII (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent's receipt of EPA's notification pursuant to XXX. (Notice of Completion of Work), Respondent shall also instruct its

contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

43. Upon EPA request, Respondent shall provide an index of all documents retained by Respondent. The inventory for the index shall contain for each document (1) the document date; (2) the author(s) including title and affiliation; (3) the recipient(s) including title and affiliation; (4) the document title or subject; (5) a summary of its contents; and (6) the number of pages.

44. At the conclusion of this document retention period, Respondent shall notify EPA and MDEQ at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA or MDEQ, Respondent shall deliver any such records or documents to EPA and MDEQ. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent assert such a privilege, they shall provide EPA or MDEQ with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

45. The Respondent 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, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or MDEQ or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information 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.

XII. COMPLIANCE WITH OTHER LAWS

46. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Respondent and EPA identified ARARs in the EE/CA and EPA identified and approved ARARs in the Action Memorandum.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

47. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer Region 8, Emergency Response Unit, at (303) 293-1788 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

48. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC, at (303) 312-6723 or the Regional Spill Report Hotline and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

49. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

50. Past Response Costs EPA agrees not to seek payment of Past Response Costs from Respondent, in consideration of this Settlement Agreement, wherein Respondent has agreed to perform the work and pay Future Response Costs, as set forth in paragraph 51.

51. Payments for Future Response Costs.

a. On a periodic basis, EPA shall submit to Respondent a bill for Future Response Costs, excluding the first \$1,512,500 in Oversight Costs, which bill shall

include the cost summary, including direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 53. of this Settlement Agreement.

b. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment and EPA Site ID number 08-5N. Respondent shall send the check(s) to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

For US checks sent by Fed Ex and other non-US Postal Service express
mail:

U.S. Bank
Government Lockbox 979076
US EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1029

For wire transfers:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33

33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

c. At the time of payment, Respondent shall send notice that payment has been made to by email to acctsreceivable.cinwd@epa.gov, and to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

and

David Sturn
EPA Montana Operations Office
Federal Building
10 West 15th Street, Suite 3200
Helena, MT 59626
406-457-5027
sturn.david@epa.gov

Martha Walker
United States Environmental Protection Agency
Region 8
1595 Wynkoop Street (TMS-FMP)
Denver, Colorado 80202-1129

d. The total amount to be paid by Respondent pursuant to Paragraph 51.a. shall be deposited by EPA in the Barker-Hughesville 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.

52. In the event that the payment for Future Response Costs are not made within thirty (30) days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XIX.

53. Respondent may contest payment of any Future Response Costs billed under Paragraph 51. if it determines that EPA has made a mathematical error, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection,

Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 51. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVII (Dispute Resolution). If EPA prevails in the dispute, within five (5) days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 51. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it they did not prevail to EPA in the manner described in Paragraph 51. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XVI. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

54. Creation of Barker-Hughesville Block P Disbursement Special Account and Agreement to Disburse Funds to Respondent. Within thirty (30) days after the Effective Date, EPA shall establish the Barker-Hughesville Block P Disbursement Special Account and shall transfer \$242,000 from the Barker-Hughesville Special Account to the Barker-Hughesville Block P Disbursement Special Account. Subject to the terms and conditions set forth in this Section, EPA agrees to make the funds in the Barker-Hughesville Block P Disbursement Special Account, including Interest Earned on the funds in the Barker-Hughesville Block P Disbursement Special Account, available for disbursement to Respondent as partial reimbursement for performance of the Work under this Settlement Agreement. EPA shall disburse funds from the Barker-Hughesville Block P Disbursement Special Account to Respondent in accordance with the procedures and milestones for phased disbursement set forth in this Section.

55. Timing, Amount, and Method of Disbursing Funds From the Barker-Hughesville Block P Disbursement Special Account. Within thirty (30) days of EPA's receipt of a Cost Summary and Certification, as defined by Paragraph 56.b., or if EPA has requested additional information under Paragraph 56.b. or a revised Cost Summary and Certification under Paragraph 56.c, within thirty (30) days of receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section, EPA shall disburse the funds from the Barker-Hughesville Block P Disbursement Special Account at the completion of the following milestones, and in the amounts set forth below:

Milestone	Disbursement of Funds
1. Site Preparation (clearing vegetation, prepare staging areas)	\$40,000 (estimate) from the Barker-Hughesville Block P Disbursement Special Account
2. Excavate and stage waste rock at Block P in the 2011 Season	Remainder of funds in the Barker-Hughesville Block P Disbursement Special Account (project estimate is no less than \$235,000)

EPA shall disburse the funds from the Barker-Hughesville Block P Disbursement Special Account to Respondent in the following manner:

Automated Clearing House (“ACH”) funds transfer to:

Bank Name: Wells Fargo, Wachovia

ABA No. : 053000219

Bank Address: Attn: Funds Transfer Security NC0803

1525 W WT Harris Blvd.

Charlotte, NC 28288-0803

For Credit to: The Doe Run Resources Corporation or

The Doe Run Company

Account No.: 2000035275905

56. Requests for Disbursement of Special Account Funds.

a. Within fifteen (15) days of issuance of EPA’s written confirmation that a milestone of the Work, as defined in Paragraph 55, has been satisfactorily completed, Respondent shall submit to EPA a Cost Summary and Certification, as defined in Paragraph 56.b., covering the Work performed pursuant to this Settlement Agreement up to the date of completion of that milestone. Respondent shall not include in any submission costs included in a previous Cost Summary and Certification following completion of an earlier milestone of the Work if those costs have been previously sought or reimbursed pursuant to Paragraph 55.

b. Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by Respondent for the Work covered by the particular submission, excluding costs not eligible for disbursement under Paragraph 57. Each Cost Summary and Certification shall contain the following statement signed by the Treasurer of Respondent:

To the best of my knowledge, after thorough investigation and review of Respondent’s documentation of costs incurred and paid for Work performed pursuant to this Settlement Agreement [insert, as appropriate: “up to the date of

completion of milestone 1," "between the date of completion of milestone 1 and the date of completion of milestone 2] I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.

The Treasurer of Respondent shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, Respondent shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

c. If EPA finds that a Cost Summary and Certification includes a mathematical error, costs excluded under Paragraph 57, costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification, it will notify Respondent and provide it an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Respondent fails to cure the deficiency within fifteen (15) days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Respondent's costs eligible for disbursement for that submission and disburse the corrected amount to the Respondent in accordance with the procedures in Paragraph 55 of this Section. Respondent may dispute EPA's recalculation under this Paragraph pursuant to Section XVII (Dispute Resolution). In no event shall Respondent be disbursed funds from the Barker-Hughesville Block P Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

57. Costs Excluded from Disbursement. The following costs are excluded from, and shall not be sought by Respondent for, disbursement from the Barker-Hughesville Block P Disbursement Special Account: (a) response costs paid pursuant to Section XV (Payment of Response Costs); (b) any other payments made by Respondent to the United States pursuant to this Settlement Agreement, including, but not limited to, any interest or stipulated penalties paid pursuant to Section XIX (Stipulated Penalties); (c) attorneys' fees and costs, except for reasonable attorneys' and costs necessarily related to obtaining access or institutional controls, as required by Section IX (Site Access); (d) costs of any response activities Respondent performs that are not required under, or approved by EPA pursuant to, this Settlement Agreement; (e) costs related to Respondent's litigation, settlement, development of potential contribution claims, or identification of respondents; (f) internal costs of Respondent, including but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of Respondent directly performing the Work; (g) any costs incurred by Respondent prior to the Effective Date except for approved Work completed pursuant to this Settlement Agreement; or (h) any costs incurred by Respondent pursuant to Section XVII (Dispute Resolution).

58. Termination of Disbursements from the Special Account. EPA's obligation to disburse funds from the Barker-Hughesville Block P Disbursement Special Account under this Settlement Agreement shall terminate upon EPA's determination that Respondent: (a) has knowingly submitted a materially false or misleading Cost Summary and Certification; (b) has submitted a materially inaccurate or incomplete Cost

Summary and Certification, and has failed to correct the materially inaccurate or incomplete Cost Summary and Certification within fifteen (15) days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by Paragraph 56 within fifteen (15) days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section because of Respondent's failure to submit the Cost Summary and Certification as required by Paragraph 56. EPA's obligation to disburse funds from the Barker-Hughesville Block P Disbursement Special Account shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to Paragraph 80, when such assumption of performance of the Work is not challenged by Respondent or, if challenged, is upheld under Section XVII (Dispute Resolution). Respondent may dispute EPA's termination of special account disbursements under Section XVII (Dispute Resolution).

59. Recapture of Special Account Disbursements. Upon termination of disbursements from the Barker-Hughesville Block P Disbursement Special Account under Paragraph 58, if EPA has previously disbursed funds from the Barker-Hughesville Block P Disbursement Special Account for activities specifically related to the reason for termination, e.g., discovery of a materially false or misleading submission after disbursement of funds based on that submission, EPA shall submit a bill to Respondent for those amounts already disbursed from the Barker-Hughesville Block P Disbursement Special Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by Respondent. Within thirty (30) days of receipt of EPA's bill, Respondent shall reimburse the Hazardous Substance Superfund for the total amount billed. Payment shall be made in accordance with Paragraphs 51.b. and 51.c. Upon receipt of payment, EPA may deposit all or any portion thereof in the Barker-Hughesville Special Account, the Barker-Hughesville Block P Disbursement Special Account, or the Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement Agreement or in any other forum. Respondent may dispute EPA's determination as to recapture of funds pursuant to Section XVII (Dispute Resolution).

60. Balance of Special Account Funds. After EPA issues its written Notice of Completion of Work pursuant to this Settlement Agreement, and after EPA completes all disbursement to Respondent in accordance with this Section, if any funds remain in the Barker-Hughesville Block P Disbursement Special Account, EPA may transfer such funds to the Barker-Hughesville Special Account or to the Hazardous Substance Superfund. Any transfer of funds to the Barker-Hughesville Special Account or the Hazardous Substance Superfund shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement Agreement or in any other forum.

XVII. DISPUTE RESOLUTION

61. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

62. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within ten (10) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's 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.

63. 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 Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice or the Assistant Regional Administrator of Office of Ecosystems, Protection, and Remediation, in EPA's sole discretion, will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVIII. FORCE MAJEURE

64. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

65. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within three (3) days of when Respondent first knew that the event might cause a delay. Within five (5) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the

delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

66. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XIX. STIPULATED PENALTIES

67. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 68. and 69. for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVIII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

68. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 68.b.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$37,500	31st day and beyond

b. Compliance Milestones

Pre-Construction Planning Documents (Task 1 of the SOW)

- Submission of draft and final Work Plan
- Submission of draft and final Mine Waste Repository Plan
- Submission of draft and final Construction Quality Assurance/Quality Control Plan (QA/QC Plan)
- Submission of draft and final modified Health and Safety Plan (only if required under this Settlement Agreement)
- Submission of draft and final modified Sampling and Analysis Plan (SAP) & Quality Assurance Project Plan (QAPP) (only if required under Settlement Agreement)

Removal Action Implementation (Task 2 of the SOW)

Post-Removal Monitoring (Task 4 of the SOW)

Payment of Future Response Costs

69. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports, including, but not limited to, the reports set forth below, or other written documents as required by this Settlement Agreement, SOW or Work Plan:

Pre-Construction Planning Documents (Task 1 of the SOW)

- Submission of draft and final Work Plan
- Submission of draft and final Mine Waste Repository Plan
- Submission of draft and final Construction Quality Assurance/Quality Control Plan (QA/QC Plan)
- Submission of draft and final modified Health and Safety Plan (only if required under this Settlement Agreement)
- Submission of draft and final modified Sampling and Analysis Plan (SAP) & Quality Assurance Project Plan (QAPP) (only if required under Settlement Agreement)

Reporting (Task 3 of the SOW)

Post-Removal Monitoring (Task 4 of the SOW)

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$2000	31st day and beyond

70. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 80. of Section XXI, Respondent shall be liable for a stipulated penalty in the amount of \$500,000.

71. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated

penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the Assistant Regional Administrator level or higher, under Section XVII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement. If the EPA management official makes a final decision pursuant to Section XVII (Dispute Resolution) that there has been no violation, there shall not be a penalty associated with this alleged violation.

72. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

73. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invoke the dispute resolution procedures under Section XVII (Dispute Resolution). All payments to EPA under this Section shall be made in accordance with the payment instructions set forth in Paragraph 51. above.

74. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

75. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision under Section XVIII (Dispute Resolution).

76. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 72. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XXI, Paragraph 80.

Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XX. COVENANT NOT TO SUE BY EPA

77. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Past and Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XXI. RESERVATIONS OF RIGHTS BY EPA

78. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

79. The covenant not to sue set forth in Section XX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

80. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANT NOT TO SUE BY RESPONDENT

81. Respondent covenants not to sue and agrees not to assert any claims or causes of action against EPA, or its contractors or employees, with respect to the Work, Past Response Costs or Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the 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 claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State of Montana 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; or

c. any claim against EPA pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work, or Future Response Costs.

d. any direct or indirect claim for (1) disbursement from the Barker-Hughesville Special Account or Barker-Hughesville Block P Disbursement Special Account, except as provided in Section XVI (Disbursement of Special Account Funds).

82. 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).

83. Respondent agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed Site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XXIII. OTHER CLAIMS

84. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

85. Except as expressly provided in Section XX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

86. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIV. CONTRIBUTION

87. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, 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 Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work and Future Response Costs.

c. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXV. INDEMNIFICATION

88. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

89. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

90. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVI. INSURANCE

91. At least five (5) days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one (1) million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVII. FINANCIAL ASSURANCE

92. On or before June 30, 2011, Respondent shall establish and maintain financial security for the benefit of EPA for the Work to be conducted during the 2011 Season pursuant to this Settlement Agreement in the amount of \$2,000,000 in one or more of the following forms, in order to secure the completion of Work by Respondent:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA; and/or
- c. a trust fund administered by a trustee acceptable in all respects to EPA.

93. Within sixty (60) days before initiation of Work for the 2012 Season, pursuant to this Settlement Agreement, Respondent shall establish and maintain financial security for the benefit of EPA for the 2012 Season of Work in the amount of \$2,000,000 in one of the forms set forth in paragraph 92, in order to secure the completion of Work by Respondent.

94. Within sixty (60) days before initiation of Work for the 2013 Season, pursuant to this Settlement Agreement, Respondent shall establish and maintain financial security for the benefit of EPA for the 2013 Season of Work in the amount of \$2,000,000 in one of the forms set forth in paragraph 92, in order to secure the completion of Work by Respondent.

95. If Work is required beyond the 2013 Season, EPA will notify Respondent in writing in a timely manner and state the reasons for any Work beyond the 2013 Season. Within sixty (60) days before initiation of any additional Seasons, in accordance with the terms of this Settlement Agreement, Respondent shall establish and maintain financial security for the benefit of EPA for any additional Season of Work in the amount of \$2,000,000 (or in a lesser amount in the event such Work is less than \$2,000,000), in one of the forms set forth in paragraph 92, in order to secure the completion of Work by Respondent.

96. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 92, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work to be performed during one of the Seasons identified in Paragraph 95., 96., 97., and 98., above has increased by more than 25% (based on the minimal value of work per Season), then, within thirty (30) days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance for that Season (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

97. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work for the Season has diminished below the amount set forth in Paragraph 92., 93., 94., or 95. of this Section, Respondent may, one time during each Season and one time after each Season, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XVII (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

98. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVIII. MODIFICATIONS

99. The OSC may make modifications to any plan or schedule or Statement of Work in writing or by oral direction provided that any revisions or modifications are consistent with achieving the objectives set forth in the SOW. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

100. If Respondent seeks permission to deviate from any approved work plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 99.

101. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXIX. ADDITIONAL REMOVAL ACTIONS

102. If EPA determines, at any time, that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA may select further response actions for the Block P Mine Complex in accordance with the requirements of CERCLA and the NCP provided that any revisions or modifications are consistent with achieving the objectives set forth in the SOW, and will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the plan pursuant to Section VIII, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVIII. (Modifications).

XXX. REMEDY REVIEW

103. Periodic Review. Respondent shall conduct any studies and investigations that EPA requests in order to permit EPA to conduct reviews of whether the removal action is protective of human health and the environment at least every five years as required for remedial actions by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable

regulations. The five year reviews for this removal action will be incorporated into the five year reviews for the remedial action for the Site.

104. Opportunity To Comment. Respondent and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

105. Respondent's Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, EPA may require Respondent to perform such further response actions. Respondent may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions set forth in Section XXI (Reservation of Rights by EPA) are satisfied, (b) EPA's determination that the removal action is not protective of human health and the environment, or (c) EPA's selection of the further response actions.

106. Submission of Plans. If Respondent is required to perform further response actions pursuant to Paragraph 102., it shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VIII (Work To Be Performed). Respondent shall implement the approved plan in accordance with this Settlement Agreement.

XXXI. NOTICE OF COMPLETION OF WORK

107. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXXII. INTEGRATION/APPENDICES

108. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: Appendix A Site Map; Appendix B Action Memorandum; and Appendix C Statement of Work.

XXXIII. EFFECTIVE DATE

109. This Settlement Agreement shall be effective when it is signed by the Regional Administrator or his/her delegate.

The undersigned representative of Respondent certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party it represents to this document.

Agreed this _____ day of _____, 2011.

THE DOE RUN RESOURCES CORPORATION


By:  Date: 6 JUN 11

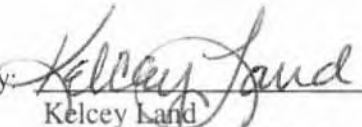
Name: LOUIS J. MARUCHEAN


Title: VICE PRESIDENT LAW

It is so ORDERED and Agreed this 15th day of June, 2011

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 8

By:  Date: 6/14/11
David Ostrander
Director, Preparedness, Assessment and
Emergency Response Program
Office of Ecosystems Protection
and Remediation

By:  Date: 6/15/11
Kelcey Lund
Director, Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

By:  Date: 6/15/11
Matthew Cohn
Supervisory Attorney, Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice