

US EPA ARCHIVE DOCUMENT

APPENDIX G FINANCIAL ASSURANCE FOR MINE/MILL FACILITIES

I. Introduction

1. This Appendix sets forth the obligations of The Doe Run Resources Corporation and The Doe Run Resources Corporation d/b/a The Doe Run Company (“Doe Run”) to secure and maintain Financial Assurance as required under Paragraph 133 of the Consent Decree, including schedules and notice requirements. Submittals requiring EPA and State approval shall be submitted pursuant to Section XXIII (Notices) of the Consent Decree. “EPA and State approval” or “determination” as used in this Appendix shall not be subject to judicial review but shall be subject to Dispute Resolution (other than judicial review) pursuant to Section XIX (Dispute Resolution) of the Consent Decree, unless specified otherwise in this Appendix. Any time period specified by this Appendix may be changed by written agreement of the Parties. Any proposed material modification to this Appendix will be agreed to in writing by the Parties pursuant to Section XXVI (Modification) of the Consent Decree.
2. Doe Run currently owns and/or operates the Brushy Creek Mine/Mill, Buick Mine/Mill, Fletcher Mine/Mill, Sweetwater Mine/Mill, Viburnum Mine/Mill (Mine # 28 and 29), and West Fork Mine/Mill (collectively “Mine/Mill Facilities”). These facilities contain tailings and tailings ponds, produced during the milling process, which contain lead and other heavy metals. Doe Run shall, according to the schedule provided in Section IV of this Appendix, provide Financial Assurance for Remedial Actions for these Mine/Mill Facilities after Doe Run permanently ceases its ore and mine water production, ore milling, and tailings disposal at these Mine/Mill Facilities.

II. Definitions

3. Whenever the terms set forth below are used in this Appendix, the definitions set forth below shall apply. However, the definitions below only apply to matters relating to Financial Assurance for the Mine/Mill Facilities under this Consent Decree.

“Estimated Cost of Work” shall mean the EPA- and State-approved cost estimates for Remedial Actions at each individual Mine/Mill Facility, as necessary to allow for the future use of the properties as determined by Doe Run and comply with legal obligations including closure under the Metallic Minerals Waste Management Act.

“Current Dollars” shall mean U.S. dollars in the year actually received or paid, unadjusted for price changes or inflation.

“Doe Run” shall mean The Doe Run Resources Corporation and The Doe Run Resources Corporation d/b/a The Doe Run Company.

“Financial Assurance” shall mean a written demonstration of financial capability, in compliance with the terms of this Appendix, to implement the Remedial Actions to address all contamination at each individual Mine/Mill Facility in an amount at least equal to the approved Estimated Cost of Work.

“Financial Mechanism” shall mean the mechanism or instrument specified in this Appendix used to secure funding for the Financial Assurance obligation under the Consent Decree.

“GAAP” shall mean U.S. Generally Accepted Accounting Principles.

“Mine/Mill Facility” or collectively “Mine/Mill Facilities” shall mean Doe Run’s six mine and mill facility complexes at Brushy Creek, Buick, Fletcher, Sweetwater, Viburnum and West Fork. The six Mine/Mill Facilities are located in Southeast, Missouri and include hundreds of acres of property associated with the operation of each mine/mill facility.

“Remedial Actions” shall mean those actions required to comply with legal obligations to remediate each of the Mine/Mill Facilities as necessary to allow for the future use of the property as determined by Doe Run and to comply with legal obligations including closure under the Missouri Metallic Minerals Waste Management Act, regulations, and applicable Metallic Minerals Waste Management Permits which include the remediation of tailings ponds, including draining if required, rock cover if required on tailings dams, remediation of mine water ponds, including draining if required, remediation of tailings, including grading to ensure positive drainage, and provision of soil, vegetative, and other cover as required and watering of vegetative cover as appropriate, sealing of service, production and ventilation shafts, removal of asbestos, PCBs and other regulated substances, environmental covenants established pursuant to the Missouri Environmental Covenants Act if required, and all actions necessary to comply with State, local and Federal requirements.

III. Cost Estimates

4. Doe Run shall provide to the United States and the State for approval by December 31, 2010, a written estimate, in current dollars, of the cost of hiring a third party to perform all of the Remedial Actions at each of the individual Mine/Mill Facilities (hereafter “Estimated Cost of Work”). A third party is a party who (i) is neither a parent nor a subsidiary of Doe Run and (ii) does not share a common parent or subsidiary with Doe Run. A disapproval of the Estimated Cost of Work is subject to Dispute Resolution pursuant to Section XIX (Dispute Resolution) of the Consent Decree, including judicial review.
5. Contemporaneous with the submittal of the Estimated Cost of Work, Doe Run shall provide an estimate of the operating life of the individual Mine/Mill Facility.
6. The Estimated Cost of Work shall be calculated based on the point in time when the extent and manner of the operation of the individual Mine/Mill Facility would make the Mine/Mill Facility Remedial Action and the associated activities the most expensive, and based on what it would cost to hire a Third Party to complete the Remedial Action. The Estimated Cost of Work pertaining to acquisition of soil and rock used for remediation shall be the third party cost to extract the soil and rock from property owned by Doe Run.
7. Doe Run shall not include in the Estimated Cost of Work any credit for salvage value that may be realized with the sale of hazardous wastes or non-hazardous wastes, facility structures or equipment, land or other assets associated with the Mine/Mill Facilities at the time the Mine/Mill Facilities close. Nor shall Doe Run incorporate a zero cost for handling hazardous waste with potential future value.
8. Doe Run shall submit annually to EPA and the State for approval, a revised written Estimated Cost of Work, together with supporting documentation, reflecting inflationary adjustments, significant cost adjustments and/or changes to the Remedial Action for each Mine/Mill Facility. The submissions shall be due sixty (60) days before the anniversary of the establishment of the Financial Mechanism. In preparing the revised Estimated Cost of Work Doe Run shall use the most recently published Implicit Price Deflator for the Gross Domestic Product.
9. Notwithstanding any provisions of the Consent Decree, Doe Run shall maintain the latest approved Estimated Cost of Work prepared in accordance with this Appendix at each Mine/Mill Facility for the duration of this Consent Decree.

IV. Financial Assurance for Mine/Mill Facility

10. Within thirty (30) days of the approval of the Estimated Cost of Work and the draft trust agreement for each Mine/Mill Facility Doe Run shall provide to EPA and the State an originally signed certification by Doe Run's Chief Financial Officer ("CFO"), together with supporting documentation, including a complete executed trust fund agreement, confirming that it has secured Financial Assurance for the Estimated Cost of Work. The required amount of the Financial Assurance for each mine/mill facility shall be based on the following formula $[(1+n)/TOLM] \times ECW$, where n is the total number of years since the first Estimated Cost of Work was approved, TOLM is the total remaining operating life of the Mine/Mill Facility and ECW is the Estimated Cost of Work.¹ Doe Run shall provide documentation of Financial Assurance each year until Doe Run has provided documentation of Financial Assurance for 100% of the Estimated Cost of Work for each Mine/Mill Facility.
11. Doe Run shall establish separate Financial Assurance for each Mine/Mill Facility. The Financial Assurance shall be in the form of an interest bearing trust fund established for the benefit of EPA and the State, administered by a trustee who has the authority to act as a trustee under federal or State law, whose trust operations are regulated and examined by a federal or State agency, and that is acceptable in all respects to the EPA and the State.
12. Doe Run shall fund each trust fund, as specified in Paragraph 12 of this Appendix. The trust fund agreement shall provide that the trustee shall make payments from the fund as directed by the EPA Superfund Special Emphasis and Remedial Branch Chief, after consultation with the State, in writing (1) to reimburse Doe Run from the fund for expenditures made by Doe Run for Remedial Actions performed in accordance with the Consent Decree and this Appendix, or (2) to pay any other person whom the EPA Superfund Special Emphasis and Remedial Branch Chief, after consultation with the State, determines has performed or will perform the Remedial Actions in accordance with the Consent Decree and this Appendix. The trust fund agreement shall further provide that if after completion of the Remedial Actions at the Mine/Mill Facility, money remains in the trust fund for that facility, the trustee shall not refund to Doe Run any amounts from the trust fund unless and until EPA, after consultation with the State, has advised the trustee that the Remedial Actions at the Mine/Mill Facility have been successfully completed.
13. Doe Run shall initially fund the trust established pursuant to Paragraph 10 of this Appendix within thirty (30) days of the approval of the Estimated Cost of Work and draft trust fund agreement for each Mine/Mill Facility, and shall continue to fund the trust with the amount required pursuant to Paragraph 9 of this Appendix each year until the trust is fully funded at the completion of the operating life of each Mine/Mill Facility. Doe Run

¹ For example, for a Mine/Mill Facility with a 20 year remaining operating life, Doe Run' first certification of Financial Assurance shall amount to 1/20 the total Estimated Cost of Work; Doe Run second certification of Financial Assurance shall amount to 2/20 of the Estimated Cost of Work; for year three, 3/20, on so on, until in year 20, the full amount of the Financial Assurance will be provided.

shall ensure that the amount of funds in the trust cover any increases in the Estimated Cost of Work, including inflationary adjustments, but may reduce the annual funding amount to reflect interest earned on monies in the trust.

14. After beginning implementation of the Remedial Actions, Doe Run or other person authorized to implement the Remedial Actions may request reimbursements for Remedial Action expenditures by submitting itemized bills to the trustee, the EPA Superfund Special Emphasis and Remedial Branch Chief and the State. Doe Run may request reimbursement for Remedial Actions only if sufficient funds are remaining in the trust fund to cover the maximum costs of the remaining Remedial Actions. Within thirty (30) days after receiving bills for Remedial Actions the EPA Superfund Special Emphasis and Remedial Branch Chief, after consultation with the State, will instruct the trustee to make reimbursements in those amounts as the EPA Superfund Special Emphasis and Remedial Branch Chief specifies in writing and/or shall file an Objection Notice pursuant to the trust agreement.
15. Doe Run shall use the exact wording specified in Appendix L for the trust agreement, except for changes necessary to identify the specific Mine/Mill Facility. The trust fund agreement must be accompanied by a formal certification of acknowledgment². Doe Run shall update the trust fund amount within sixty (60) days after a change in the amount of the Estimated Cost of Work. Doe Run shall ensure that the trustee provides to EPA and the State an annual accounting of the monies in the trust fund.
16. Doe Run shall pay all expenses incurred by the trustee in connection with the administration of the trust fund, including fees for legal services rendered to the trustee and compensation of the trustee.
17. For the Financial Assurance provided under this Section, Doe Run shall submit a draft trust fund agreement and related documents to the EPA and the State for review and approval at the same time it submits the initial Estimated Cost of Work. Within thirty (30) days of approval of the initial Estimated Cost of Work and draft trust fund agreement, Doe Run shall execute or otherwise finalize the trust fund agreement in order to make the Financial Assurance legally binding in a form substantially identical to the trust fund agreement reviewed and approved by EPA and the State. Doe Run shall submit the executed and/or otherwise finalized trust fund agreement to EPA and the State within thirty (30) days after EPA's and the State's approval of the draft trust fund agreement and initial Estimated Cost of Work.
18. Doe Run shall submit all trust fund and related required documents by mail to the EPA Region 7 Financial Management Officer and the Director of the Hazardous Waste Program for the Missouri Department of Natural Resources at the addresses listed below. Copies shall also be sent to the EPA and State Project Officers.

For the EPA:

² For an example see 40 CFR § 264.151(a)(2).

Region 7 Financial Management Officer
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

For the State:

Director
Hazardous Waste Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102

19. Doe Run shall provide adequate Financial Assurance, in the form of a trust fund that conforms to the requirements of this Appendix. Doe Run shall make changes to the Financial Assurance if the following occurs:
- a. If at any time EPA or the State determine that the trust fund provided pursuant to this Section is inadequate, or no longer satisfies the requirements set forth or incorporated by reference in this Appendix, whether due to an increase in the Estimated Cost of Work or for any other reason, EPA or the State shall so notify Doe Run in writing. Within thirty (30) days of receipt of notice of EPA's or the State's determination, Doe Run shall obtain and present to EPA and the State for approval an alternate or updated trust fund that satisfies all requirements set forth or incorporated by reference in this Appendix. If Doe Run needs additional time to provide the alternate or updated trust fund, Doe Run shall request an extension, in writing, within ten (10) days of EPA's or the State's determination. Doe Run's request shall include an explanation for the additional time and specify when the alternate or updated trust fund will be in place. Doe Run shall not rely upon the alternate or updated trust fund, nor shall Doe Run terminate the original trust fund, until EPA and the State, have approved the alternate or updated trust fund.
 - b. If at any time Doe Run becomes aware of information indicating that the trust fund provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Appendix, whether due to an increase in the Estimated Cost of Work or for any other reason, then Doe Run shall notify EPA and the State in writing of such information within ten (10) days. Within thirty (30) days of Doe Run's becoming aware of such information, Doe Run shall obtain and present to EPA and the State for approval an alternate or updated trust fund that satisfies all requirements set forth or incorporated by reference in this Appendix. If Doe Run needs additional time to provide the alternate or updated trust fund, Defendant shall request an extension, in writing, within ten (10) days of Doe Run's becoming aware of such information. Doe Run's request shall include an explanation for the additional time and specify when the alternate or updated trust fund will be in place. Doe Run shall not rely upon the alternate or updated trust fund, nor shall Doe Run terminate the original

trust fund, until EPA and the State, have approved the alternate or updated trust fund.

20. Doe Run's inability or failure to establish or maintain financial assurance for completion of the Remedial Actions at each Mine/Mill Facility shall in no way excuse performance of any other requirements of this Consent Decree.

21. Modification of Amount, Schedule, and Form of Financial Assurance.

- a. Reduction of Amount and Schedule of Financial Assurance. If Doe Run believes that the Estimated Cost to complete the remaining Remedial Actions has diminished below the amount covered by the existing Financial Assurance provided under this Consent Decree or if the operating life of the Mine/Mill Facilities is more than previously provided, Doe Run may, at the same time that Doe Run submits the annual revised Estimated Cost of Work and updated Mine/Mill Facilities operating life estimate, pursuant to Paragraph 7 of this Appendix, or at any other time agreed to by EPA and the State, submit a written proposal to EPA and the State to reduce the amount of the Financial Assurance provided so that the amount of the Financial Assurance is equal to the estimated cost for the remaining Remedial Actions to be performed and/or the revised operating life of the Mine/Mill Facilities. The written proposal shall specify, at a minimum, the cost of the remaining Remedial Actions to be performed, the basis upon which such cost was calculated, and the basis for the revision in the estimated operating life of the Mine/Mill Facilities. In seeking approval of a revised Financial Assurance amount, Doe Run shall follow the procedures set forth in Paragraph 20.b of this Section. If EPA and the State, decide to accept such a proposal, EPA, after consultation with the State, shall notify Doe Run of the decision in writing. After receiving EPA's written decision, Doe Run may reduce the amount of the Financial Assurance only in accordance with and to the extent permitted by such written decision. In the event of a dispute, Doe Run may reduce the amount of the Financial Assurance and schedule required hereunder only in accordance with the final EPA and State Dispute Decision resolving such dispute pursuant to Paragraph 1 of this Appendix and Section XIX (Dispute Resolution) of the Consent Decree. No change to the form or terms of any Financial Assurance provided under this Appendix, other than a reduction in amount or schedule for providing Financial Assurance, is authorized.
- b. Release of Financial Assurance. Doe Run may submit a written request to the EPA Superfund Special Emphasis and Remedial Branch Chief and the State that EPA and the State release Doe Run from the requirement to maintain Financial Assurance under this Appendix at such time as EPA and the State agree that all Remedial Actions at that particular Mine/Mill Facility are complete pursuant to Section XXVII (Termination) of the Consent Decree. The EPA Superfund Special Emphasis and Remedial Branch Chief, after consultation with the State, shall notify both Doe Run and the provider(s) of the Financial Assurance that

Doe Run is released from the Financial Assurance obligations associated with that particular Mine/Mill Facility under this Consent Decree. In the event of a dispute, Doe Run may release, cancel, or terminate the Financial Assurance required hereunder only in accordance with the final EPA and State dispute decision.

c. Change of Form of Financial Assurance.

- i. If Doe Run desires to change the form or terms of Financial Assurance, Doe Run may, at the same time that Doe Run submits the annual revised Estimated Cost of Work, pursuant to Paragraph 7 of this Appendix, or at any other time agreed to by EPA and the State, submit a written proposal to EPA and the State to change the form of Financial Assurance. The submission of such proposed revised or alternative form of Financial Assurance shall be as provided in Paragraph 20.c(ii) below. The decision whether to approve a proposal submitted under this Paragraph 20.c shall be made in EPA's and the State's, sole and unreviewable discretion and such decision shall not be subject to challenge by Doe Run pursuant to the dispute resolution provisions of this Consent Decree or in any other form.
- ii. A written proposal for a revised or alternative form of Financial Assurance shall specify, at a minimum, the cost of the remaining Remedial Actions for the Mine/Mill Facilities, the basis upon which such cost was calculated and the proposed revised form of Financial Assurance, including all proposed instruments or other documents required in order to make the proposed Financial Assurance legally binding. The proposed revised or alternative form of Financial Assurance shall satisfy all requirements of this Consent Decree. Any proposed alternative Financial Assurance other than a trust fund shall comply with the requirements set forth in 40 C.F.R. Section 264.143. EPA, after consultation with the State, shall notify Doe Run in writing of the decision to accept or reject a revised or alternative form of Financial Assurance submitted pursuant to this paragraph. Within ten (10) days after receiving a written decision approving the proposed revised or alternative Financial Assurance, Doe Run shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Financial Assurance legally binding in a form substantially identical to the documents submitted to EPA and the State as part of the proposal, and such Financial Assurance, shall be fully effective. Doe Run shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Financial Assurance legally binding to EPA Region 7 Financial Management Officer within thirty (30) days of receiving a written decision approving the proposed revised or alternative Financial Assurance, with a copy to the EPA Project Officer and the State. EPA and the State shall release, cancel, or terminate the prior existing Financial Assurance instruments only after Doe Run has submitted all executed and/or otherwise finalized

new Financial Assurance instruments or other required documents to EPA and the State.

22. Incapacity of Owners or Operators, or Financial Institutions. Doe Run shall notify the EPA Superfund Special Emphasis and Remedial Branch Chief and the State by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming Doe Run as debtor, within ten (10) days after commencement of the proceeding, in accordance with 40 C.F.R. § 264.148, incorporated by reference in 10 CSR 25-7.164(1). Doe Run will be deemed to be without the required Financial Assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee. Doe Run must establish other Financial Assurance within sixty (60) days after such an event.