

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA
and STATE OF MISSOURI,

Plaintiffs,

v.

THE DOE RUN RESOURCES CORPORATION,
In its own capacity and on behalf of
THE DOE RUN COMPANY (A FORMER
MISSOURI GENERAL PARTNERSHIP),
ST. JOE MINERALS CORPORATION, and
ST. JOSEPH LEAD COMPANY,

and

The Buick Resource Recycling Facility, LLC

and

HOMESTAKE LEAD COMPANY OF MISSOURI,
In its own capacity and on behalf of
THE DOE RUN COMPANY (A FORMER
MISSOURI GENERAL PARTNERSHIP)

Defendants.

JOINT COMPLAINT

Case No. 20-234

The United States of America, on behalf of the United States Department of the Interior (“DOI”) and the United States Department of Agriculture (“USDA”), and the State of Missouri, by the authority of the Missouri Attorney General acting on behalf of the Missouri Department of Natural Resources (“State” or “State of Missouri”), file this complaint and allege as follows:

NATURE OF ACTION

This is a civil action brought against The Doe Run Resources Corporation (“Doe Run”), the Buick Resource Recycling Facility, LLC, and Homestake Lead Company of Missouri

(“Homestake”) (collectively, “Defendants”) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9607, and MO. REV. STAT. § 644.096 of the Missouri Clean Water Law, for the recovery of damages for injury to, destruction of, loss of, and loss of use of natural resources and their services resulting from the release and threat of a release of hazardous substances at and from the following lead-mining facilities in Southeast Missouri: the Viburnum Mine and Central Mill complex (consisting of Viburnum #27 Mine, the Viburnum #28 Mine and Central Mill, and Viburnum #29 Mine), Casteel Mine, Buick Mine and Mill, Brushy Creek Mine and Mill, Fletcher Mine and Mill, Sweetwater Mine and Mill, West Fork Mine and Mill, the Magmont Mine and Mill, the Buick Smelter, Buick Resource Recycling Facility (formerly the Buick Smelter), Glover Smelter, and the Herculaneum Smelter (collectively, the “Facilities”).

JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this claim pursuant to 28 U.S.C. §§ 1331, 1345, 1362 and 2201 and 42 U.S.C. §§ 9607(a) and 9613(b).
2. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b).

PARTIES

3. The DOI, Fish and Wildlife Service, and the USDA, Forest Service, are, pursuant to Section 107(f)(2)(A) of CERCLA, 42 U.S.C. § 9607(f)(2)(A), trustees for natural resources injured as a result of releases of hazardous substances at or from facilities owned and/or operated by Defendants.
4. The State is, pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), 40 C.F.R. § 300.605, and Mo. Rev. Stat. § 644.096 of the Missouri Clean Water Law, a trustee for

natural resources injured as a result of releases of hazardous substances in Missouri.

5. Doe Run is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and is incorporated in New York and licensed to do business in the State of Missouri, with its corporate office located at 1801 Park 270 Drive, Suite 300 in St. Louis, Missouri.

6. Doe Run is the successor to St. Joseph Lead Company, St. Joe Minerals Corporation, and the Doe Run Lead Company (a former Missouri partnership).

7. Homestake is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), is incorporated in California and has its principal place of business in Salt Lake City, Utah.

8. The Buick Resource Recycling Facility, LLC is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and is a wholly-owned subsidiary of Doe Run that operates that Buick Resource Recycling Facility (formerly the Buick Smelter) in Boss, Missouri.

GENERAL ALLEGATIONS

9. The Southeast Missouri (“SEMO”) Lead Mining District is a rural region in Southeast Missouri that contains the highest concentrations of lead sulfide in the world. For the past half century, the area has provided approximately 70% of the primary lead supply in the United States.

10. The Viburnum Trend is one of several geographically distinct mining regions within the SEMO Lead Mining District. The Viburnum Trend lies approximately 50 miles to the south and west of St. Louis, and covers approximately 450 square miles across Washington, Crawford, Dent, Iron, and Reynolds counties. Western portions of the Viburnum Trend are

located within the Mark Twain National Forest.

11. The Viburnum Mine and Central Mill complex (consisting of Viburnum #27 Mine, the Viburnum #28 Mine and Central Mill, and Viburnum #29 Mine), Casteel Mine, Buick Mine and Mill, Brushy Creek Mine and Mill, Fletcher Mine and Mill, Sweetwater Mine and Mill, West Fork Mine and Mill, the Magmont Mine and Mill, the Buick Smelter, Buick Resource Recycling Facility (formerly the Buick Smelter) and Glover Smelter are facilities for the mining, milling, and/or smelting of lead in the Viburnum Trend.

12. The Herculaneum Smelter is a lead smelting facility located in Jefferson County, Missouri, within the SEMO Lead Mining District but outside the Viburnum Trend.

13. Doe Run currently owns the Viburnum Mine and Central Mill complex (consisting of Viburnum #27 Mine, the Viburnum #28 Mine and Central Mill, and Viburnum #29 Mine), Casteel Mine, Buick Mine and Mill, Brushy Creek Mine and Mill, Fletcher Mine and Mill, Sweetwater Mine and Mill, West Fork Mine and Mill, the Magmont Mine and Mill, the Glover Smelter, and the Herculaneum Smelter. Doe Run currently operates the Brushy Creek Mine and Mill, Buick Mine and Mill, Fletcher Mine and Mill, Sweetwater Mine and Mill, West Fork Mine and Mill, and the Buick Resource Recycling Facility (formerly the Buick Smelter).

14. The Buick Resource Recycling Facility, LLC, currently owns the Buick Resource Recycling Facility (formerly the Buick Smelter).

15. From 1965 to 1986, Homestake jointly owned and operated the Buick Mine and Mill and the Buick Smelter (now known as the Buick Resource Recycling Facility) with American Metals Climax, Inc. and its wholly-owned subsidiary Amax Lead Company of Missouri. During this time, mill tailings and other wastes from mining and milling operations were disposed of on-site, including into on-site tailings impoundments that drained into Strother

Creek.

16. From 1986 to 1991, Homestake and Doe Run were each general partners in The Doe Run Company, a former Missouri partnership. During that time, the Doe Run Company owned and operated the Buick Mine and Mill, the Viburnum Mine and Central Mill complex, the Brushy Creek Mine and Mill, the Fletcher Mine and Mill, and the Buick Smelter (now known as the Buick Resource Recycling Facility).

17. During the periods in which Homestake and Doe Run owned and/or operated the Buick Mine and Mill, the Viburnum Mine and Central Mill complex, the Brushy Creek Mine and Mill, the Fletcher Mine and Mill, and the Buick Smelter (now known as the Buick Resource Recycling Facility), hazardous substances including lead were released into the environment at and from these facilities as a result of their mining, milling, and smelting operations.

18. Hazardous substances including lead have been released to the environment at and from each of the Facilities and have come to be located in the soils, groundwater, surface water, and sediments in the surrounding areas, including within the Mark Twain National Forest, and including but not limited to the following waters: Indian Creek, Crooked Creek, West Fork of Crooked Creek, Strother Creek, Lick Hollow Creek, Bills Creek, Bee Fork, Adair Creek, Logan Creek, Sweetwater Creek, West Fork of Black River, Scroggins (a/k/a Scoggins) Branch, Big Creek, and Joachim Creek (“the Affected Waters”).

19. Releases of hazardous substances, including lead, at and from the Facilities have resulted in injuries to, destruction of, and/or loss of natural resources, including but not limited to groundwater and aquatic and terrestrial habitat, which are supporting ecosystems for species under the trusteeship or joint trusteeship of the United States and/or the State.

20. Such hazardous substances releases have also resulted in injuries to species under

the trusteeship or joint trusteeship of the United States and the State, including injuries to migratory birds and songbirds, as well as to macrobenthic communities in the Affected Waters.

21. Studies conducted in the Viburnum Trend have shown that approximately 26 miles of sediment in the Affected Waters are contaminated with hazardous substances, including lead, at concentrations above thresholds of concern for wildlife, including macrobenthic organisms. In addition, approximately 2,000 acres of soils at the mine/mill Facilities are covered by tailings impoundments containing hazardous substances including lead, and hundreds of acres of soil around these piles contain hazardous substances, including lead, at concentrations above thresholds of concern for plants and wildlife, including migratory birds. Finally, thousands of acres of soil in the deposition area of the Buick Resource Recycling Facility (formerly the Buick Smelter) contain hazardous substances, including lead, at concentrations above thresholds of concern for plants and wildlife, including migratory birds. Wild bird studies in the Viburnum Trend have demonstrated that some migratory songbirds exhibit delta-aminolaevulinic acid dehydratase (ALAD) inhibition resulting from exposure to lead.

22. The United States has incurred \$2,389,093, and the State has incurred \$742,739, in unreimbursed reasonable costs to assess the injury to, loss of, and/or destruction of natural resources resulting from releases of hazardous substances at and from the Facilities, and continue to incur such costs.

23. Under Section 107 of CERCLA, 42 U.S.C. § 9607, and 43 C.F.R. Part 11, the Plaintiffs, as natural resource trustees, are entitled to recover damages for injury to natural resources, including (1) the cost to restore, replace, or acquire the equivalent of such natural resources; (2) the compensable value of lost services resulting from the injury to such natural resources; and (3) the reasonable cost of assessing injuries to such natural resources and resulting

damages.

24. Under Mo. Rev. Stat. § 644.096, the State is entitled to recover damages for injuries to natural resources, including the costs of restoring or replacing natural resources damaged or destroyed.

FIRST CLAIM FOR RELIEF
Natural Resource Damages under CERCLA

25. The allegations set forth in paragraphs 1 through 24 are re-alleged and incorporated herein by reference.

26. Defendants are “persons” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

27. The Facilities, are each and every one a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

28. Hazardous substances have been released at and from each of the Facilities into the environment within the meaning of Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. § 9601(22) and (8).

29. Releases of hazardous substances at and from each of the Facilities have resulted in injury to, destruction of, and/or loss of natural resources under the trusteeship or joint trusteeship of the United States and the State within the meaning of Section 107(a)(4)(C) of CERCLA, 42 U.S.C. §9607(a)(4)(C).

30. Doe Run is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) as the current owner and/or operator of each of the Facilities.

31. The Buick Resource Recycling Facility, LLC is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) as the current owner of the Buick Resource Recycling Facility.

32. Homestake is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2), as the past owner and/or operator of the Buick Mine and Mill, the Viburnum Mine and Central Mill complex, the Brushy Creek Mine and Mill, the Fletcher Mine and Mill, and the Buick Smelter (now known as the Buick Resource Recycling Facility) at the time of disposal of hazardous substances at those facilities.

33. The costs to assess the injury to, destruction of, and/or loss of natural resources resulting from the release of hazardous substances at and from the Facilities incurred and to be incurred by the United States and the State are reasonable.

34. Defendants are jointly and severally liable under CERCLA Section 107(a)(4)(C), 42 U.S.C. 9607(a)(4)(C), for damages for injury to, destruction of, and/or loss of natural resources that have, as set forth above, resulted from the releases of hazardous substances at and from the Buick Mine and Mill, the Viburnum Mine and Central Mill complex, the Brushy Creek Mine and Mill, the Fletcher Mine and Mill, and the Buick Resource Recycling Facility (formerly the Buick Smelter), as well as for the reasonable costs of assessing such injury, damage, and/or loss of natural resources.

35. Doe Run is additionally liable under CERCLA Section 107(a)(4)(C), 42 U.S.C. 9607(a)(4)(C), for damages for injury to, destruction of, and/or loss of natural resources that have, as set forth above, resulted from the releases of hazardous substances at and from the Casteel Mine, Sweetwater Mine and Mill, West Fork Mine and Mill, the Magmont Mine and Mill, the Glover Smelter, and the Herculaneum Smelter, as well as for the reasonable costs of assessing such injury, damage, and/or loss of natural resources.

SECOND CLAIM FOR RELIEF
Natural Resource Damages Under State Law

36. The allegations set forth in paragraphs 1 through 35 are re-alleged and incorporated herein by reference.

37. Under Mo. Rev. Stat. § 644.096 of the Missouri Clean Water Law, the State may recover actual damages sustained by it because of a violation of the Missouri Clean Water Law, including all costs and expenses necessary to establish or collect any sums under MO. REV. STAT. §§ 644.006 to 644.141 and the costs and expenses of restoring any waters of the State to their condition as they existed before a violation occurred.

38. There have been discharges of hazardous substances in harmful quantities into the waters of the State in the vicinity of the Facilities, including into the Affected Waters, in violation of the Missouri Clean Water Law.

39. Defendants are therefore liable to the State for natural resource damages resulting from these discharges pursuant Mo. Rev. Stat. § 644.096 of the Missouri Clean Water Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Enter a judgment in favor of Plaintiffs against Defendants, for liability (jointly and severally as to the Buick Mine and Mill, the Viburnum Mine and Central Mill complex, the Brushy Creek Mine and Mill, the Fletcher Mine and Mill, and the Buick Resource Recycling Facility (formerly the Buick Smelter)) pursuant to CERCLA Section 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C), for all damages for injury to, destruction of, and loss of natural resources within the trusteeship of the United States and the State resulting from the releases of hazardous substances described herein, including the unreimbursed past, present, and future costs of assessing such damages, the cost of restoring, replacing, and/or acquiring the equivalent of those

injured resources, and the past, present, and future diminution in value of those resources pending restoration or replacement, in an amount to be proven at trial;

(2) Enter a judgment in favor of State against Defendants, pursuant to Mo. Rev. Stat. § 644.096 of the Missouri Clean Water Law, for liability (jointly and severally as to the Buick Mine and Mill, the Viburnum Mine and Central Mill complex, the Brushy Creek Mine and Mill, the Fletcher Mine and Mill, and the Buick Smelter (now known as the Buick Resource Recycling Facility)) for all costs of restoring, replacing, and/or acquiring the equivalent of natural resources damaged or destroyed as a result of the releases of hazardous substances described herein, and including the costs of assessing such damages and the diminution in value of those resources pending restoration or replacement, in an amount to be proven at trial.

(3) Enter a judgment in favor of Plaintiffs against Defendants for joint and several liability for all costs of this action, including attorneys' fees; and

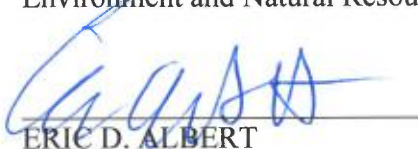
- (4) Award Plaintiffs such other and further relief as this Court may deem appropriate.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

Dated 2/11/2020

JEFFREY BOSSERT CLARK
Assistant Attorney General
Environment and Natural Resources Division



ERIC D. ALBERT
Trial Attorney
SEAN CARMAN
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044
(202) 514-2800 (direct)
eric.albert@usdoj.gov

OF COUNSEL

AMY HORNER HANLEY
Office of the Solicitor
United States Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

STEVE HIRSCH
Office of the General Counsel
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, D.C. 20250-1400

FOR THE STATE OF MISSOURI:

/s/ Timothy P. Duggan
TIMOTHY P. DUGGAN
Assistant Attorney General
P.O. Box 899
Jefferson City, MO 65102
(573) 751-9802 (direct)
Tim.Duggan@ago.mo.gov