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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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November 15, 2007

Ref: ENF-L

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Dear Counsel:

Please find attached a fully executed copy of the Administrative Settlement Agreement And Order On Consent for Removal Action relating to the Vermiculite Intermountain Superfund Site. The Effective Date for the Agreement was yesterday, November 14, 2007. As you are aware, PacifiCorp and La Quinta must submit proposals for post-removal site controls within fifteen days of the Effective Date. PacifiCorp has already met this requirement. A public comment period on the cost recovery portion of the Agreement will commence upon publication of a notice of such period in the Federal Register. That publication is expected to occur next week. Pursuant to Paragraph 72, at the conclusion of the thirty-day public comment period, if no comments indicate that the agreement is not in the public interest, EPA will notify the appropriate parties of the effective date for commencement of the thirty-day payment period.

Printed on Recycled Paper

Thank you for your cooperation and work in this matter. If you have any questions, please feel free to call me at 303-312-6853.

Sincerely,

Matt Cohn

Matthew Cohn
Legal Enforcement Program

cc: Kelcey Land, ENF-RC
Joyce Ackerman, EPR-SA

2007 NOV 14 PM 2:43

EPA REGION VIII
HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:
Vermiculite Intermountain Site
Salt Lake City, Utah

PacifiCorp, La Quinta Properties, Inc., and Van Cott, Bagley, Cornwall & McCarthy 401(k) Profit Sharing Plan Supplemental Trust

Respondents

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

U.S. EPA Region 8
CERCLA Docket No. **CERCLA-08-2008-0001**

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 PacifiCorp, La Quinta Properties, Inc., ("La Quinta") and Van Cott, Bagley, Cornwall & McCarthy 401(k) Profit Sharing Plan Supplemental Trust ("Van Cott Trust")(formerly known as the Van Cott, Bagley, Cornwall & McCarthy Profit Sharing Trust), collectively referred to herein as Respondents ("Respondents"). This Settlement Agreement provides for the implementation of institutional controls by PacifiCorp, implementation of institutional controls and the reimbursement of certain response costs by La Quinta and the reimbursement of certain response costs by the Van Cott Trust and the resolution of specific contribution or cost recovery claims amongst the Respondents at or in connection with the property located at or near 333 West 100 South in Salt Lake City, Utah, the "Vermiculite Intermountain Site" or the "Site."

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"). Specifically with respect to the Van Cott Trust, this Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1), and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. EPA has notified the State of Utah (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the parties' entry into, and any actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain 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. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they 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 Respondents and their 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. Each Respondent shall be responsible for its noncompliance with this Settlement Agreement.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, 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 April 7, 2004 by the Regional Administrator, EPA Region 8, or his/her delegate, and all attachments thereto. The "Action Memorandum" is attached as Appendix A.

b. "Additional Released Parties" shall mean: 1) the Van Cott, Bagley, Cornwall & McCarthy 401(k) Profit Sharing Plan, its trustees, fiduciaries, administrators, participants, and beneficiaries and its related trust, the Van Cott, Bagley, Cornwall & McCarthy 401(k) Profit Sharing Plan Trust; and 2) Van Cott, Bagley, Cornwall & McCarthy P.C., and its shareholders, directors, officers and employees in their capacities as sponsors, trustors, and fiduciaries of the entities listed above and of the Van Cott Trust.

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

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

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

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

g. "Future Cleanup Costs" shall mean those response costs, including, but not limited to, direct and indirect costs, that may be incurred in the future for the cleanup of Amphibole Asbestos still present on the Site, other than those costs associated with the Work required under this Settlement Agreement.

h. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing items required 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, the costs incurred pursuant to Paragraph 15 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation) and Paragraph 50 (work takeover).

i. "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.

j. "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.

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

l. "Parties" shall mean EPA and Respondents.

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 the Site through the Effective Date.

n. "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).

o. "Respondents" shall mean PacifiCorp, La Quinta Properties, Inc., and the Van Cott, Bagley, Cornwall & McCarthy 401(k) Profit Sharing Plan Supplemental Trust (formerly known as the Van Cott, Bagley, Cornwall & McCarthy Profit Sharing Trust).

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

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

r. "Site" shall mean the Vermiculite Intermountain Superfund Site, located at and near 333 West 100 South in Salt Lake City, Utah and depicted generally on the map attached as Appendix B.

s. "State" shall mean the State of Utah.

t. "UDEQ" shall mean the Utah Department of Environmental Quality and any successor departments or agencies of the State.

u. "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); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

v. "Work" shall mean for PacifiCorp and La Quinta the implementation of post-removal site controls on their respective properties under this Settlement Agreement, as set forth in Section VIII (Work to be Performed).

IV. FINDINGS OF FACT

7. EPA makes the following findings of fact for purposes of this Settlement Agreement only:

a. The Site includes the location of the former Vermiculite Intermountain plant (the "plant") and areas contaminated by asbestos therefrom. Vermiculite Intermountain, the operator of the plant, is no longer in existence. W.R. Grace, the supplier of the concentrate used by the plant, will likely be resolving its potential liability in a separate settlement with the United States.

b. The plant, which operated between the early 1940s and 1984, performed various production operations with vermiculite concentrate from the Libby Vermiculite Mine, located in Libby, Montana. The Libby vermiculite concentrate contained amphibole asbestos, frequently above trace levels. EPA records show that the plant received at least 25,000 tons of vermiculite concentrate from the Libby Mine.

c. Historical records from the Libby Mine and data collected during investigations at the Libby Mine show that the handling and processing of Libby vermiculite during production processes releases high levels of respirable airborne asbestos fibers.

d. EPA's Libby investigations have shown that disturbance of dust or soils containing the amphibole asbestos from Libby vermiculite produces high levels of respirable airborne asbestos fibers.

e. EPA's investigations at the Libby Mine have shown that human exposure to the amphibole asbestos found in the Libby vermiculite concentrate may cause asbestos-related diseases, including lung cancer, mesothelioma and asbestosis.

f. PacifiCorp owned the property on which the plant operated from 1944 until 1954, leasing the property during that time to the operator of the exfoliation plant. The Van Cott Trust owned the property on which the plant operated from 1979 until 1984. During these times, emissions containing amphibole asbestos left the plant and contaminated surrounding properties, which are now part of the Site. PacifiCorp reacquired this property interest in 1984.

g. La Quinta purchased the Frank Edwards Building and an adjacent piece of undeveloped property (the Ampco Parking Lot) within the Site boundaries in 1998 and is the current owner of those parcels.

h. EPA's sampling at the Site has found elevated levels of amphibole asbestos in soils, as well as in dust found in several buildings on the Site. A summary of the data reflecting these findings can be found in the Action Memorandum. EPA previously determined that response actions were necessary on/in the former plant property; the Artistic Printing building, the Frank Edwards Building (and potentially its related Ampco Parking Lot) and the property owned by PacifiCorp. PacifiCorp has performed a removal action on its portion of the Site, pursuant to an Administrative Order on Consent dated August 24, 2004. All areas have been addressed through EPA response actions, other than some areas that are currently capped but which require the implementation of institutional controls.

8. The Van Cott Trust purchased property on the Site in 1979 and leased a portion of that property to Vermiculite Intermountain for its operations. The Van Cott Trust assets are retirement funds which currently are regulated pursuant to the Employee Retirement Income Security Act.

9. In 2004 PacifiCorp agreed to perform cleanup of the amphibole asbestos on the majority of its property at the Site. It has successfully completed that work and has indicated to EPA that the cost was approximately $3.5 million.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined, and solely for the purposes of this Settlement Agreement Respondents do not object to such determination, 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 a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

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

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.

i. Respondents PacifiCorp and La Quinta are the "owners" and/or "operators" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

ii. Respondents PacifiCorp and Van Cott Trust were the "owners" and/or "operators" of the facility at the time of disposal of hazardous substances at the facility, 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).

iii. Respondents PacifiCorp and Van Cott Trust arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

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 considered 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 each Respondent shall comply with all provisions of this Settlement Agreement for which it has responsibility, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF ON-SCENE COORDINATOR

11. EPA has designated Joyce Ackerman of the Office of Preparedness, Assessment and Emergency Response, Region 8, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC at U.S. EPA, EPR-ER, 1595 Wynkoop, Denver, CO 80202-1129.

VIII. WORK TO BE PERFORMED

12. Post-Removal Site Control. Within fifteen days of the Effective Date of this Settlement Agreement, PacifiCorp (for the former plant location and substation area (as depicted in Appendix B) and the area immediately adjacent to the Ampco Parking Lot) and La Quinta (for the Ampco Parking Lot and portions of open land surrounding the Frank Edwards Building) shall submit a proposal for post-removal site controls consistent with Section 300.415(*l*) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, PacifiCorp and La Quinta shall record an EPA-approved Environmental Covenant (a copy of which is in Appendix C) against their respective properties on the Site. Both PacifiCorp and La Quinta shall provide copies of the recorded Environmental Covenants to EPA within fourteen days of recordation. Those copies shall be sent to Regional Institutional Control Coordinator EPR-SR, U.S. EPA, 1595 Wynkoop Street, Denver, CO, 80202.

13. Respondents who own or control property at the Site shall, at least 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 the State of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

IX. SITE ACCESS

14. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide EPA, the State, 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. Access to the electrical substation property owned by PacifiCorp shall be provided under the same terms and conditions as provided in Section IX, Site Access, in the Administrative Order on Consent for Removal Action between EPA and PacifiCorp, dated August 24 2004.

15. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 30 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their 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. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents 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).

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

X. ACCESS TO INFORMATION

17. Respondents shall provide to EPA and the State, 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. Respondents shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

18. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and the State 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 the State, or if EPA has notified Respondents 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 Respondents.

19. Respondents 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 Respondents assert such a privilege in lieu of providing documents, they shall provide EPA and the State 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 Respondents. 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.

20. 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

21. Until 10 years after the Effective Date of this Settlement Agreement 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 Respondents' receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

22. At the conclusion of this document retention period, each Respondent shall notify EPA and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or the State, each Respondent shall deliver any such records or documents to EPA or the State. Respondents 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 Respondents assert such a privilege, they shall provide EPA or the State 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 Respondents. 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.

23. Each Respondent hereby certifies individually 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 the State 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

24. La Quinta and PacifiCorp shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, 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.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

25. In the event of any release of a hazardous substance from the Site, La Quinta and PacifiCorp shall immediately notify the OSC at (303) 293-1788 and the National Response Center at (800) 424-8802. La Quinta and PacifiCorp shall submit a written report to EPA within 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

26. The OSC shall be responsible for overseeing Respondents' 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

27. Payments for Past Response Costs

a. Within 30 days after the Effective Date of this Agreement, La Quinta shall pay to EPA $441,000 and the Van Cott Trust shall pay to EPA $100,000 for Past Response Costs. This Payment shall be made by Electronic Funds Transfer ("EFT") to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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 "

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
ABA = 051036706
Environmental Protection Agency
Account 310006

Transaction Code 22 - checking
808 17th Street NW
Washington DC 20074

CTX Format Contact = Jesse White 301-887-6548

b. At the time of payment, La Quinta and the Van Cott Trust shall send notice that payment has been made to:

Dana Anderson
U.S. EPA
26 W. Martin Luther King Drive
Attention: FINANCE
MS: NWD
Cincinnati, Ohio 45268
E-mail (to both): anderson.dana@epa.gov and AcctsReceivable.CINWD@epa.gov

and

Cost Recovery Program Manager, ENF-RC
Superfund Enforcement Program
U.S. EPA, Region 8
1595 Wynkoop
Denver, CO 80202-1129

c. The total amount to be paid by La Quinta and the Van Cott Trust pursuant to Paragraph 27 shall be deposited in the Vermiculite Intermountain 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.

28. Payments for Future Response Costs.

a. PacifiCorp and La Quinta shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send PacifiCorp and La Quinta a bill requiring payment that includes a Regionally prepared cost summary (currently known as a SCOPRIOS Summary) which includes direct and indirect costs incurred by EPA and its contractors. PacifiCorp and La Quinta shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 30 of this Order.

b. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT below and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name (Vermiculite Insulation), EPA Region 8 and Site/Spill ID Number 08-GA, and the EPA docket number for this action. PacifiCorp shall make such payments by wire transfer to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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 "

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
ABA = 051036706
Environmental Protection Agency
Account 310006
CTX Format

Transaction Code 22 - checking
808 17th Street NW
Washington DC 20074
Contact = Jesse White 301-887-6548

c. At the time of payment, PacifiCorp and La Quinta shall send notice that payment has been made to:

Dana Anderson
U.S. EPA
26 W. Martin Luther King Drive
Attention: FINANCE
MS: NWD
Cincinnati, Ohio 45268
E-mail (to both): anderson.dana@epa.gov and AcctsReceivable.CINWD@epa.gov

and

Cost Recovery Program Manager, ENF-RC
Superfund Enforcement Program
U.S. EPA, Region 8
1595 Wynkoop
Denver, CO 80202-1129

d. The total amount to be paid by PacifiCorp and La Quinta pursuant to Paragraph 28(a) shall be deposited in the Vermiculite Insulation 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.

29. In the event that the payment for Past Response Costs is not made within 30 days of the Effective Date, or the payments for Future Response Costs are not made within 30 days of PacifiCorp's and La Quinta's receipt of a bill, each Respondent shall pay Interest on its respective 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 PacifiCorp's or La Quinta's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

30. PacifiCorp and/or La Quinta may dispute all or part of a bill for Future Response Costs submitted under this Order, if PacifiCorp and/or La Quinta allege that EPA has made an accounting error, or if PacifiCorp and/or La Quinta allege that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, the Respondent owing the payment shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 31 on or before the due date. Within the same time period, that Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. That Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 28(c) above. That Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within fifteen (15) days after the dispute is resolved. Notification of disputes regarding all or part of a bill for Future Response Costs shall be sent to:

Cost Recovery Program Manager
EPA Region 8, ENF-RC
1595 Wynkoop
Denver, CO 80202-1129

31. PacifiCorp and/or La Quinta shall notify EPA's Cost Recovery Program Manager in writing of their objections within fifteen (15) days of receipt of the bill that it is disputing. PacifiCorp's or La Quinta's written objections shall define the dispute, state the basis of the objections, and be sent certified U.S. mail, return receipt requested or by other mail delivery service with a delivery tracking and verification system. Thereafter, the provisions of Section XVI (Dispute Resolution) shall apply to the dispute.

XVI. DISPUTE RESOLUTION

32. 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.

33. If one or more Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in

writing of their objection(s) within 5 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents to such dispute shall have 15 days from EPA's receipt of Respondents' 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.

34. Any agreement reached by the parties to the dispute pursuant to this Section shall be in writing and shall, upon signature by such parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the parties to the dispute are unable to reach an agreement within the Negotiation Period, an EPA management official at the Assistant Regional Administrator level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' 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, the Respondents to the dispute shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

35. Respondents agree to perform all requirements of this Settlement Agreement for which they are, respectively, responsible 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 Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

36. 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(s) responsible for such obligation shall notify EPA orally within 24 hours of when Respondent(s) first knew that the event might cause a delay. Within 3 days thereafter, the responsible Respondent(s) 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; the rationale for attributing such delay to a *force majeure* event if such a claim is asserted; and a statement as to whether, in the opinion of the responsible Respondent(s), 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 the responsible Respondent(s) 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.

37. 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 Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

38. Each Respondent shall be liable, respectively, to EPA for stipulated penalties in the amounts set forth in Paragraphs 39 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by each Respondent shall include completion of the activities required of that Respondent 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 Work Plan, 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.

39. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 39(b):

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$5,000	15th through 30th day
$32,500	31st day and beyond

b. Compliance Milestones

- Development and Implementation of Pre and Post-Removal Site Control
- Payment of Past Response Costs and Future Response Costs pursuant to this Settlement Agreement

40. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 50 of Section XX, PacifiCorp and/or La Quinta, each with respect to its own Work requirements, shall be liable for a stipulated penalty in the amount of $10,000.

41. All stipulated 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 a Respondent of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Assistant Regional Administrator level or higher, under Paragraph 34 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

42. Following EPA's determination that a Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give that Respondent written notification of the failure and describe the noncompliance. EPA may send that 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 that Respondent of a violation.

43. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of a Respondent's receipt from EPA of a demand for payment of the penalties, unless that Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid, and notices and copies provided, as described in Paragraph 28.

44. The payment of penalties shall not alter in any way each Respondents' respective obligation to complete performance of the Work required of it under this Settlement Agreement.

45. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

46. If any Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest, from that Respondent. The Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 47. 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 herein, 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 XX, Paragraph 50. 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.

XIX. COVENANT NOT TO SUE BY EPA

47. In consideration of the actions that will be performed and the payments that will be made by each 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 Respondents or the Additional Released Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work, for recovery of Past Response Costs, Future Response Costs, and Future Cleanup Costs. This covenant not to sue shall take effect for each Respondent upon receipt by EPA of the payments due for that Respondent under Paragraphs 27 or 28 of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by each Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondents and the Additional Released Parties and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

48. Except as specifically provided in this Settlement Agreement, nothing herein 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 herein 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 Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

49. The covenant not to sue set forth in Section XIX 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 Respondents with respect to all other matters, including, but not limited to:

a. claims based on a failure by a Respondent to meet a requirement, applicable to that Respondent, under this Settlement Agreement;

b. liability for costs not included within the definitions of Past Response Costs, Future Response Costs and Future Cleanup Costs;

c. liability for performance of response action other than the Work and other than the response actions covered by Future Cleanup Costs;

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.

50. Work Takeover. In the event EPA determines that PacifiCorp and/or La Quinta has ceased implementation of any portion of the Work for which it is responsible, 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. PacifiCorp and/or La Quinta may, with respect to the Work for which it is responsible, invoke the procedures set forth in Section XVI (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 for each Respondent pursuant to this Paragraph shall be considered Future Response Costs which 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.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

51. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, 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 Utah 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 the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraphs 53 and 54 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 49 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

52. 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).

53. La Quinta and PacifiCorp agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution against Artistic Imaging (or its owners) and the Frank Edwards Trust (or its Trustees, Grantors, or Beneficiaries). This waiver shall not apply with respect to any defense, claim, or cause of action that La Quinta and PacifiCorp may have against any person if such person asserts a claim or cause of action relating to the Site against La Quinta or PacifiCorp.

54. La Quinta and PacifiCorp agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person that has entered into a final *de minimis* settlement under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that La Quinta and PacifiCorp may have against any person if such person asserts a claim or cause of action relating to the Site against La Quinta or PacifiCorp .

55. The Van Cott Trust agrees not to assert any claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, counterclaim, crossclaim or cause of action that the Van Cott Trust may have against any person if such person asserts a claim or cause of action relating to the Site against the Van Cott Trust.

56. Respondents and Additional Released Parties, for themselves and their respective successors and assigns, expressly waive any right of contribution or cost recovery under all federal, state, and common law theories, including Section 107(a) of CERCLA, 42 U.S.C. §9607(a), against each other for any costs they may incur in the future, or may have incurred with respect to the investigation or cleanup of amphibole asbestos contamination at the Site or pursuant to this Settlement Agreement.

XXII. OTHER CLAIMS

57. 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 Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

58. Except as expressly provided in Section XXI, and Section XIX, nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents 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.

59. 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).

XXIII. CONTRIBUTION PROTECTION

60. 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 Respondents and the Additional Released Parties are 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, Past Response Costs, Future Response Costs and Future Cleanup 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 Respondents have, as of the Effective Date, resolved their liability and any potential liability of the Additional Released Parties to the United States for the Work, Past Response Costs, Future Response Costs and Future Cleanup Costs.

c. Except as provided in Section XXI, nothing in this Settlement Agreement precludes the United States, La Quinta or PacifiCorp 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 herein diminishes the right of the United States, pursuant to Sections 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).

XXIV. INDEMNIFICATION

61. Each 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 that Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, each 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 that 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 any Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

63. Respondents waive 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 Respondents 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, PacifiCorp 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 PacifiCorp and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. MODIFICATIONS

64. The OSC may make modifications to any plan or schedule in writing or by oral direction. 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.

65. If PacifiCorp seeks permission to deviate from any schedule relating to the movement or replacement of the barrier fence, PacifiCorp's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. PacifiCorp may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 64.

66. 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 Respondents shall relieve Respondents of their 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.

XXVI. NOTICE OF COMPLETION OF WORK

67. When EPA determines that all of the Work required of a Respondent has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including post-removal site controls, payment of Future Response Costs, or record retention, EPA will provide written notice to that Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify that Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies. Each Respondent shall implement the necessary Work for which it is responsible. Failure by a Respondent to implement the necessary Work shall be a violation by that Respondent of this Settlement Agreement.

XXVII. PUBLIC COMMENT

68. Final acceptance by EPA of Section XV (Payment of Response Costs) of this Settlement Agreement shall be subject to Section 122(i) of CERCLA, 42 U.S.C.§ 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section XV of this Settlement Agreement if comments received disclose facts or considerations that indicate that Section XV of this Settlement Agreement is inappropriate, improper or inadequate. Otherwise, Section XV shall become effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Settlement Agreement.

XXVIII. ATTORNEY GENERAL APPROVAL

69. The Attorney General or his designee has approved the response cost settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

70. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondents shall remain bound to comply with all provisions of this

Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

71. 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 is the Action Memorandum, dated April 7, 2004.

Appendix B is the Site Map.

Appendix C is the Environmental Easement.

XXXII. EFFECTIVE DATE

72. This Settlement Agreement shall be effective when the Settlement Agreement is signed by the Regional Administrator or his delegatee, with the exception of Section XV, which shall be effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Settlement Agreement.

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party they represent to this document.

Agreed this 14 day of November, 2007.

For Respondent PacifiCorp

By _____

Title _____

For Respondent La Quinta

By _____

Title _____

For Respondent Van Cott Trust

By _____
Title: Co-Trustee

By _____
Title: Co-Trustee

By _____
Title: Co-Trustee

For Additional Released Parties:

For the Van Cott, Bagley, Cornwall & McCarthy 401(k) Profit Sharing Plan

By _____
President of Van Cott, Bagley, Cornwall & McCarthy, P.C., the Plan Administrator

For the Van Cott, Bagley, Cornwall & McCarthy 401(k) Profit Sharing Plan Trust

By _____
Title: Co-Trustee

By _____
Title: Co-Trustee

For Van Cott, Bagley, Cornwall & McCarthy, P.C. as sponsor, trustor, and fiduciary of the Van Cott Trust and of other Additional Released Parties

By _____
Its: President

It is so ORDERED and Agreed this 14th day of November, 2007.

BY: _____ DATE: 11/14/07
David Ostrander, Director
Preparedness, Assessment and
Emergency Response Branch
Region 8
U.S. Environmental Protection Agency

BY: Michael T. Risker DATE: 11/13/07
MICHAEL T. RISKER
~~Matthew Cohn, Acting Deputy~~ Director
Legal Enforcement Program
Region 8
U.S. Environmental Protection Agency

BY: Sharon L Kercher DATE: 11-13-2007
Sharon Kercher, Director
Technical Enforcement Program
Region 8
U.S. Environmental Protection Agency

EFFECTIVE DATE: 11/14/07

For Respondent PacifiCorp

By Paul Radakovich

Title VP, OPERATIONS

For Respondent La Quinta

By _____

Title _____

For Respondent Van Cott Trust

By _____
Title: Co-Trustee

By _____
Title: Co-Trustee

By _____
Title: Co-Trustee

For Additional Released Parties:

For the Van Cott, Bagley, Cornwall & McCarthy 401(k) Profit Sharing Plan

By _____
President of Van Cott, Bagley, Cornwall & McCarthy, P.C., the Plan Administrator

For the Van Cott, Bagley, Cornwall & McCarthy 401(k) Profit Sharing Plan Trust

By _____
Title: Co-Trustee

By _____
Title: Co-Trustee

By _____
Title: Co-Trustee

For Respondent PacifiCorp

By _____

Title _____

For Respondent La Quinta

By _____

Title Vice President

For Respondent Van Cott Trust

By _____
Title: Co-Trustee

By _____
Title: Co-Trustee

By _____
Title: Co-Trustee

For Additional Released Parties:

For the Van Cott, Bagley, Cornwall & McCarthy 401(k) Profit Sharing Plan

By _____
President of Van Cott, Bagley, Cornwall & McCarthy, P.C., the Plan Administrator

For the Van Cott, Bagley, Cornwall & McCarthy 401(k) Profit Sharing Plan Trust

By _____
Title: Co-Trustee

By _____
Title: Co-Trustee

By _____
Title: Co-Trustee

APPENDIX A

SDMS Document ID
1005113

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466

Ref: 8EPR-ER

APR 07 2004

ADMINISTRATIVE RECORD

ACTION MEMORANDUM

SUBJECT: Request for a Time Critical Removal Action Approval at the Vermiculite Intermountain Site, Salt Lake City/County, Utah 84104

FROM: Floyd D. Nichols, On-Scene Coordinator For Floyd Nichols
Emergency Response Team

THROUGH: Steve D. Hawthorn, Supervisor
Emergency Response Unit

Douglas M. Skie, Director
Preparedness, Assessment & Emergency Response Programs

TO: Max H. Dodson, Assistant Regional Administrator
Office of Ecosystems Protection & Remediation

Site ID#: 08GA

Category of Removal: Fund-Lead, Time Critical

I. PURPOSE

The purpose of this ACTION MEMORANDUM is to request and document approval of a combined initial Time-Critical Removal Action and a 12-month & $2 million exemption from the statutory limits for the Removal Action described herein at the Vermiculite Intermountain site (Site), located in Salt Lake City, Utah.

This Removal Action addresses the need to mitigate the threats to the local population and the environment posed by a fibrous form of amphibole asbestos at the Site, including properties adjacent to the former facility. The asbestos was co-mingled with vermiculite ore shipped to the Vermiculite Intermountain facility from a mine near Libby, Montana. In Salt Lake City, the vermiculite ore was "exfoliated" (expanded in a dry furnace) to produce insulation products for the Salt Lake City commercial, wholesale, and retail markets. The exfoliation plant operated at the Site for over four decades. In addition, a variety of vermiculite products were formulated and distributed from the facility.

Conditions existing at the Site present a threat to public health or welfare or the environment and meet the criteria for initiating a Removal Action under 40 CFR, Section 300.415(b)(2) of the National Contingency Plan (NCP). Conditions at the Site meet the emergency criteria for exemption from 12-month and $2 million statutory limits for a Removal Action.

II. SITE CONDITIONS AND BACKGROUND

The plant was one of many facilities that received vermiculite from a mine near Libby, Montana. The Libby mine produced about 80% of the world's supply of vermiculite at one time and shipped vermiculite concentrate to various locations throughout the United States. The Libby vermiculite was co-mingled with amphibole asbestos of the tremolite-actinolite-richterite-winchite solution series and, as a result, there is asbestos contamination at many of the facilities which received vermiculite concentrate from the Libby mine.

The Vermiculite Intermountain plant, which is located at or near 333 West 100 South, Salt Lake City, Utah, began operation in 1940. According to a 1984 business newspaper article, Lee Irvine was the president of Vermiculite Intermountain, a company licensed by the W. R. Grace company to manufacture insulation products. The 1984 news article also stated that the manufacturing operations were to be moved to a new Salt Lake City location at 733 West 800 South and continue in operation, dba Intermountain Products. At that new location, the plant operated until the business declared bankruptcy in 1987. Invoices obtained from W. R. Grace, which purchased the Libby mine in 1963, show that over 25,000 tons of vermiculite concentrate were shipped to the 333 West 100 South address prior to 1980. EPA has no information at this time whether this is a comprehensive total of Libby vermiculite shipped to this facility.

A. Site Description

1. Physical location

The Site is located at or near 333 West 100 South, Salt Lake City, Utah.

2. Removal Site Evaluation and Site Characteristics

The Vermiculite Intermountain facility received vermiculite concentrate from a mine near Libby, Montana, in rail cars. The ore was dumped at the Site and exfoliated in a dry furnace. The exfoliated vermiculite was subsequently distributed to the Salt Lake City-area wholesale and retail markets, with some quantities being sold as insulation material or as a constituent in various products including "Zonolite". The facility also produced other products which involved mixing the concentrate or expanded vermiculite into plaster-like compounds, such as "Monokote".

The former Vermiculite Intermountain (VI) facility (Attachment 1- Facility Area Map), including the furnace and 'smoke stack', was demolished in the 1986 and the servicing rail road bed removed. The Site is now a vacant, graveled, rectangular lot located immediately east of the Utah Power and Light (UPL) 3rd West Electrical Substation, and just south of the Salt Lake City's Delta Center (sports) complex. Portions of the VI building foundation are still visible just to the east of the substation's above-ground equipment. The Site is currently owned by the Utah Power and Light Co., a subsidiary of PacifiCorp. Reportedly, PacifiCorp is currently owned by Scottish Power, based in Glasgow, Scotland.

The Site, located generally in the middle of a downtown city block, is currently surrounded on three sides by active commercial establishments and on the 4th side by the UPL substation. Precipitation falling on the Site generally infiltrates directly into the ground, through the gravel cap. Any sheet-runoff would be directed to the west, onto the sidewalk and gutter bordering 400 West Street. Surrounding the Site are:

- The Utah Power and Light Substation parcel currently encompasses the Site. The Site is denoted by the old VI building foundation, visible just east of the substation's above-ground hardware. The electrical substation, immediately west of the Site, consists of a 8,800 square foot, 2-story cinder-block storage/switch building surrounded and overtopped by an array of above-ground and elevated transformers, capacitors, breakers, wires, etc. The substation is underlain by a grounding plane at a depth of approximately 18 inches. Power is routed to and from the substation via underground conduits. The entire UPL parcel surface is capped by crushed gravel to an approximate depth of 0-6 inches.

  The storage/switch building interior consists primarily of two long rooms. The substation is visited frequently by a limited number of UPL employees as they go about their routine activities. Anecdotal information suggests that a portion of the property is occasionally used for parking by UPL personnel when they attend events at the Delta Center directly across the street.

  The Utah Transit Authority has a long-term lease on the northwest corner of the substation parcel for one of its Tractor Power Substation (TPS) units which supports the Salt Lake City Light Rail system. The substation is separated, on the west, from 400 West Street by a block wall.

  Vermiculite is visible on the exposed ground surface across the Site - most notably in areas within the VI building footprint. Vermiculite is also visible on the ground surface in other areas of the UPL substation when the overlying gravel cap is scraped away. Analysis of samples collected from on and around the substation parcel (discussed further below) shows presence of

varying amounts of Libby Amphibole (LA) fibers. Analysis of dust samples collected inside the storage/switch building showed very significant amounts of LA fibers.

- The Artistic Printing Company, a small custom print shop, is a few feet to the northwest of the Site and currently separated from the Site by a chain-link fence. The 18,000 sq ft, slab-on-grade building was constructed prior to 1940. The building is currently in daily use by 24 employees working two shifts, 5-days per week.

  The building was constructed with block walls and a high, mostly-flat roof. A small, central roof section is pitched so as to accommodate a row of windows above the building's center line. Additional windows, providing light and ventilation, are on all sides of the building.

  A company representative stated that, before the installation of evaporative coolers, routine practice was for the building occupants to open all the available windows in the summertime for ventilation and cooling. The representative also provided anecdotal information about periodic fumigation of the building by emissions from the Site smokestack, resulting in deposition of stack particulate matter on the roof and other outside horizontal surfaces and, through the open windows, onto interior horizontal surfaces.

  The building interior is subdivided into several large and small work and/or storage rooms. Typically, the large printing and binding units are situated in the middle of the larger rooms, with the ancillary equipment surrounding the units or in adjacent rooms, and the in/out inventory and other supplies kept in areas further removed from the units. The building also encloses an office area (with a low, false ceiling) and an open employee break area near the southeast corner.

  Analysis of dust samples collected inside the Artistic Printing facility in 2003 showed significant amounts of LA fibers.

- The LaQuinta Parcel, including the AMPCO (leased) Parking Lot and the Frank Edwards Building, immediately borders the Site on the north and northeast sides and is separated from the Site by a chain link fence. The parking lot, consisting of an asphalt cap on 20 - 36 inches of fill material, is used daily, primarily by individuals visiting or working in downtown Salt Lake City or the (across-the-street) Delta Center. The Frank Edwards Building, a one-story 23,000 square feet structure, is on the northeast corner of the block, approximately 300 feet northeast of and across the parking lot from the Site. Reportedly, the building was last occupied by crew(s) supporting the 2002 Winter Olympics. The building is currently unoccupied, and the building and lot are being marketed by the owner.

Subsurface soil samples were collected below the parking lot surface in late summer 2003, along a line parallel to the Site's eastern fence, offset from the fence by approximately 20 feet. Analysis of those samples showed trace amounts of LA fibers at a depth of 20 - 30 inches below grade at the assumed original ground surface/fill material interface.

Analysis of dust samples collected inside the Frank Edwards Building in December 2003 showed a moderate amount of LA fibers in an office area. Due to a data transcription error, more samples may be performed in the near future.

- The Utah Paper Box Company immediately borders the Site on the south, and is separated from the Site by a chain link fence sitting atop a low retaining wall. Portions of the 57,000 sq. ft., slab-on-grade, elongated building were constructed before 1940. The building is currently in daily use by 60 employees working multi-shifts, 7-days per week.

  The building interior is subdivided into several large and small work and/or storage rooms. Typically, the large printing and box-assembly units are situated near the middle of the larger rooms, with the ancillary equipment surrounding the units or in adjacent rooms, and the in/out inventory and other supplies kept in areas further removed from the printing and assembly units. The building also encompasses numerous corporate and business offices as well as planning, drafting, and other, related work stations. Most of the interior office spaces have false ceilings and are individually walled-off from the large work rooms. Currently, there are no windows on the building's north face, the wall facing the Site.

  A Company representative offered anecdotal information concerning prior litigation between Utah Paper Box and Vermiculite Intermountain because of repeated VI fumigation of UPB.

  Analysis of dust samples collected in various areas inside the Utah Paper Box facility in 2003 failed to detect any LA fibers. Analysis of those samples did show, however, presence of minor amounts of chrysolite.

EPA has conducted several sampling events at the Site and inside the buildings surrounding the Site. Analysis of the samples collected shows the presence of LA fibers in significant concentrations in on- and off-facillity soils and in dust collected from within work spaces in businesses adjacent to the Site.

3. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

Amphibole asbestos is of concern because chronic inhalation of excessive levels of fibers suspended in breathing air can result in lung diseases such as asbestosis,

mesothelioma, and cancer. Subacute exposures to elevated levels for even a few days have been shown to cause mesothelioma.

Amphibole asbestos is a hazardous substance as defined by 40 CFR Section 302.4 (the National Contingency Plan (NCP)). The solid-solution series of tremolite-actinolite-richterite- winchite (referred to in this document as amphibole asbestos) was present in the vermiculite ore shipped from the Libby Mine. Sampling events at the Site have confirmed the presence of amphibole asbestos in concentrate residues, soils, and dust at concentrations of concern. Accordingly, this concentration represents an unacceptable current and on-going future risk to workers at and visitors to the Site and to the general population occupying nearby businesses and/or downtown venues.

Visible vermiculite is present on the ground surface at the Site, and has been identified through scientific analysis at varying depths in Site soils and at various surface and subsurface horizons on adjacent parcels. LA fibers have also been found at varying concentrations inside buildings on adjacent properties. From any of these contaminant sources, LA fibers are likely to become airborne when disturbed by such activities as wind gusts, surface erosion, foot traffic, automobile traffic, and routine business-related and/or maintenance activities. A tornado struck the Site directly about a decade ago. In soil-raking scenarios demonstrated at the VI-successor site, asbestos fibers became airborne into the breathing zone when lightly disturbed: the chain link fence surrounding this Site is not sufficient to prevent offsite dispersion of any suspended fibers. Significant concentrations of LA-contaminated dust are present inside the buildings adjacent to the Site. Renovation to and/or routine maintenance activities conducted in those buildings could result in unacceptable exposures to building workers or visitors during such activities and could also result in a release of LA fibers outside the buildings and into the environment. Accordingly, there is the potential for direct exposure of people to the LA inside those adjacent businesses, as well as a secondary exposure risk to other people, if fibers are tracked out of the buildings and subsequently become airborne.

The Libby NPL Site Administrative Record contains many academic papers discussing the hazards associated with asbestos in general, and Libby-amphibole asbestos in particular. The documents in the Libby NPL Site Administrative Record are incorporated herein by reference.

4. NPL status

This Site is not being considered for inclusion on the National Priorities List (NPL).

B. Other Actions to Date

1. Previous actions

There have been no previous CERCLA Removal Actions at this Site. Reportedly, UPL performed limited asbestos abatement on a portion of the Site in 2003.

Results from the EPA 2003 sampling activities showed residual amounts of Libby LA on the Site surface subsequent to the UPL abatement activity.

2. Current actions

There are no other pending Federal or State actions at this Site.

C. State and Local Authorities' Roles

EPA has repeatedly briefed representatives of the Utah Department of Environmental Quality (UDEQ) and other local agencies about the investigation and the sampling events and has consulted with them about the investigation findings and analytical results received to date. In addition, UDEQ representatives have participated in numerous planning meetings and have worked closely with EPA in developing associated Site work, ARARs, and community outreach plans. Neither the State nor local agencies have the resources necessary to independently conduct the needed Site investigations or clean-up.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

A. Threats to Public Health or Welfare

The adverse health effects from exposure to Libby amphibole asbestos have been documented among W.R. Grace workers in Libby, those who have received secondary exposures in Libby (i.e., non-occupational), and others around the country. With respect to the secondary exposures in Libby, the Agency for Toxic Substances and Disease Registry (ATSDR) conducted medical screening of several thousand citizens in Libby and documented the occurrence of significant lung abnormalities among family members of former Grace employees. The ATSDR screening also found significant rates of lung abnormalities among people with "recreational" contact with various vermiculite materials that contain amphibole asbestos. Outside of Libby, there is evidence that Grace workers suffered high rates of asbestos-related disease at various Grace processing plants across the country.

A memorandum from Dr. Aubrey Miller, Senior Region 8 Medical Officer and Toxicologist, regarding the Libby vermiculite and amphibole asbestos, is attached to this Action Memorandum (Attachment 2). Generally, Dr. Miller concludes that the amphibole asbestos found in Libby vermiculite can yield significant amounts of respirable amphibole asbestos fibers. He further concludes that exposure to these fibers has been shown to have pronounced adverse medical consequences, and can present an unacceptable risk to those who may be exposed to LA in even minute quantities.

This information along with the host of other information found in the Libby NPL Site Administrative Record has led the EPA to make the following general conclusions: (1) *whenever materials associated with Libby vermiculite can be found there will most likely* be associated with it high concentrations of amphibole asbestos; (2) the amphibole asbestos found in the Libby vermiculite is highly toxic; (3) the amphibole asbestos associated with the Libby vermiculite readily produces respirable fibers when disturbed; and, (4) any time when there exists a condition such that there will be people in or around the amphibole asbestos there is a high probability for exposure, and this probability presents an unacceptable risk to public health.

The threat of exposure to workers and visitors to the Vermiculite Intermountain Site, nearby residents, and employees at local businesses exists through the potential inhalation of LA fibers. Therefore, conditions at the Site present an imminent and substantial endangerment to human health and the environment and meet the criteria for initiating a Removal Action under Section 300.415(b)(2) of the NCP. All of the factors from §300.415(b)(2) of the NCP have been considered and the following form the basis for EPA's determination of the threat presented, and the appropriate action to be taken:

- (i) *Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances;* The presence of amphibole asbestos found at and around the Site in the soil and dust are a threat to human health. In addition, any disturbance of the ground surface or dust patina can cause LA fibers to become airborne at unacceptable concentrations. Persons routinely occupy or visit potentially contaminated areas for personal or occupational uses. Also, maintenance activities in areas with high concentrations of LA fibers could result in a release to the breathing zone of unacceptable concentrations of amphibole asbestos.

  Investigations focused on the Libby vermiculite have shown that exposures to the Libby amphibole may result in asbestos-related diseases and death. Studies by NIOSH researchers at other expansion (exfoliation) plants and at the Libby mine, as well as those sponsored by W. R. Grace, clearly show the deleterious health effects to people who were exposed to the LA fibers. In addition, the Public Health Service and ATSDR are conducting an epidemiological evaluation of certain facilities that processed Libby vermiculite ore, both in Libby and around the country. So far, they have discovered documented medical cases where the primary source of exposure to the LA fibers appears to be in non-occupational settings.

  As a result of EPA investigations in Libby, it has now become apparent that direct contact with the Libby ore tends to generate significant airborne fiber concentrations. For example, EPA saw evidence that aggressive sampling of bulk materials, conducted in two Libby homes in December 1999, generated excessive amounts of airborne fibers. Also, given the number of cases of asbestos-related disease and death associated with handling ore from the Libby mine, it is reasonable to conclude that any human exposure to the Libby amphibole asbestos may be an imminent and substantial endangerment to public health and welfare.

- (iv) *High levels of hazardous substances in soils largely at or near the surface that may migrate*; Contaminated vermiculite is visible on the ground surface at the Site. Through laboratory analysis, Libby amphibole asbestos has been identified in Site surface and near-surface soils, and in dust accumulations inside buildings immediately adjacent to the site. These asbestos fibers can become entrained in the air, possibly resulting in inhalation exposures. In addition, contaminated soils or dust can be released from the Site by automobile or foot traffic, on equipment moved from or around inside businesses located adjacent to the Site, through sheet runoff, or via high winds. In particular, Utah central valley winds, particularly in dry summer months, can lead to the release of fine asbestos fibers from the Site.

  Currently EPA has not established under any of its regulatory programs an asbestos level in soil below which an exposure does not pose a risk. The 1% cut-off level for regulation under the Toxic Substances Control Act abatement program was established on the basis of analytical capability at the time, and was not established based on the level of risk represented. To the contrary, at Superfund sites in California, EPA Region 9 found in certain settings that concentrations of asbestos less than 1% posed unacceptable inhalation risks when subjected to disturbance by traffic. EPA's "dust-raising" scenarios at the Vermiculite Intermountain sister site in Salt Lake City demonstrated that airborne fibers easily exceeded the OSHA limits even though bulk samples of soil and vermiculite on the ground surface were well-below the 1% TSCA threshold.

- (vii) *The (lack of) availability of other appropriate federal or state mechanisms to respond to the release*; No other Local, State, or Federal agency is in the position or has the resources to independently implement an effective response action to address the on-going threats presented at this Site.

B. Threats to the Environment

To date, the Site investigation has not considered if the asbestos contamination is a threat to animals, water, and other parts of the environment. Asbestos is primarily a human health threat via an inhalation exposure pathway.

IV. ENDANGERMENT DETERMINATION

Asbestos is a generic term for a group of six naturally-occurring fibrous silicate minerals. The predominant fibrous habit of minerals found at the Site are of the tremolite-actinolite solid solution series (referred to in this Action Memorandum as amphibole asbestos). Asbestos can cause asbestosis and is a recognized human carcinogen, causing lung cancer and mesothelioma, a lethal neoplasm of the lining of the chest and abdominal cavities. Cancer of the larynx and esophageal lining has also been associated with exposure to asbestos. Commercial forms of asbestos have been found to be carcinogenic in experimental animals.

There are documented asbestos-related illnesses and deaths in Libby and near those exfoliation facilities around the country which processed Libby vermiculite ore. A number of the Libby victims did not work at any of the vermiculite processing areas, but received their exposures in other, non-work-related ways i. e., workers at the Libby vermiculite plants wore their dusty clothes home, thereby exposing family members. Also, Libby residents reported playing in piles of vermiculite ore and/or exfoliation products as children. The Vermiculite Intermountain facility in Salt Lake City received and processed Libby vermiculite ore for over four decades, and EPA's sampling shows the lingering presence of substantial amounts of Libby amphibole asbestos at and adjacent to the Site.

Actual or threatened releases of asbestos from this Site, as well as current, ongoing human exposure to contaminated dust by people who may come into contact with the material in their normal workplace, if not addressed by implementing the response action selected in this Action Memorandum, present an imminent and substantial endangerment to public health, welfare, and the environment.

V. EXEMPTION FROM STATUTORY LIMITS

A. Emergency Exemption:

Site conditions meet the criteria set forth in CERCLA §104(c)(1)(A) [40 CFR 300.415 (b)(5)(i) of the NCP].

1. There is an immediate threat to the local population posed by the amphibole asbestos released to the environment. Visible vermiculite is present on the ground surface at the Site, and has been identified through scientific analysis at varying depths in Site soils and at various surface and subsurface horizons on adjacent parcels. LA fibers have also been found at varying concentrations inside buildings on adjacent properties. From any of these contaminant sources, LA fibers are likely to become airborne when disturbed by such activities as wind gusts, surface erosion, foot traffic, automobile traffic, and routine business-related and/or maintenance activities. Renovation to and/or routine maintenance activities conducted in the buildings could result in unacceptable exposures to building workers or visitors during such activities and could also result in a release of LA fibers outside the buildings and into the environment. Accordingly, there is the potential for direct exposure of people to the LA inside the adjacent businesses, as well as a secondary exposure risk to other people, if fibers are tracked out of the buildings and subsequently become airborne.

2. Continued response actions are required to prevent, limit, or mitigate an emergency. If the request for a 12-month and $2 million statutory exemption is not granted, the Removal Action will not be able to proceed to completion. Total costs of the Removal Action are anticipated to exceed $2 million due to the size of the properties and the extensive amount of soil contamination; and the large amount of excavation and monitoring of landscape restoration may cause the Removal to extend past 12 months.

3. Assistance from other government agencies is not anticipated on a timely basis for these Removal Actions. Neither the State nor the County has the response capabilities or resources to take any actions independently at the Site. No other mitigation actions are expected to occur to abate the threats described in this action memorandum. Consequently, the timely completion of this Removal Action can only be accomplished if this combined Time-Critical Removal Action and 12-month & $2 million exemption request is approved.

VI. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed action description

To mitigate the threat to the public health and welfare or the environment posed by the asbestos present at the Site, this Removal will involve the following:

a. Excavation and/or removal of approximately 3,900 cubic yards of LA-contaminated soils, dust, and miscellaneous debris from the Site and the surrounding properties, including the storage/switch building, the electrical substation parcel, the Artistic Printing Company facility, and the Frank Edwards Building.

b. Removal action for the LaQuinta Parking Lot: The LaQuinta-leased parking lot between the Frank Edwards Building and the 3rd West Electrical Substation covers approximately 100,000 square feet. As part of this action, additional investigation to characterize probable contamination under the AMPCO parking lot (owned by La Quinta Inns) will be performed. Any contamination found to be a concern will be addressed in a revised action memo; therefore, the cost estimate contained in this memorandum covers only the actions prescribed herein. Currently, direct human contact with an unknown quantity of LA residues on the lot is prevented by the existing asphalt cap and the intervening soil layer. Direct human contact with the LA is prevented as long as the integrity of this cap/soil overburden layer remains intact. However, if this cap/soil overburden layer is disturbed to the extent that LA becomes exposed on the surface, direct human exposure to LA becomes likely. Accordingly, controls (i.e., Institutional Controls, deed restrictions, zoning restrictions, etc.) should be placed such that continuing integrity of the cap/soil overburden layer can be assured. If the current lot owner, or any future owner, contemplates development of this lot (i.e., excavation for new construction), LA removal and disposal, followed by aggressive site clearance, shall be accomplished concurrent with the new site redevelopment actions.

As there are no current known plans for lot excavation, redevelopment, etc., EPA's current Removal Action for this Site does not include cleanup actions on this parking lot. However, if or when such plans become known, EPA will prioritize and schedule the appropriate action(s) to address any remaining LA contamination under the parking lot.

d. Except as noted in §(V)(A)(1)(b) [above] comprehensive clearance sampling, followed by disposal of the dust and miscellaneous debris removed from the Site and from buildings immediately adjacent to the Site.

e. Decontamination, transportation, and/or disposal of related waste material.

f. Property restoration, including placement of backfill, topsoil, and compaction.

2. Contribution to remedial performance

This Removal Action will be a final cleanup. No additional action will be required unless new contaminated areas are discovered in the future. All contaminated areas will be excavated as a cost-effective and efficient means to avoid any future investigations or re-mobilizing for cleanup.

3. Description of alternative technologies

No alternative technologies were found to be appropriate given the nature of the asbestos contamination, the physical location and scope of the project, and its time critical nature. If in the course of this or any subsequent removal actions at the Site, any alternative remediation technologies are identified that will enhance response actions, they will be considered, as appropriate.

4. EE/CA

This is a Time-Critical Removal Action; thus, an EE/CA is not required.

5. Applicable or relevant and appropriate requirements

As this Action is being conducted as a Time Critical Removal Action, all Federal and State ARARs may not have been identified at this time. The ARARs identified to date are provided as Attachment 3. In accordance with the NCP, all ARARs for the Site will be attained to the extent practicable, given the scope of the project and the urgency of the situation as they are identified.

Many of the ARARS identified for these Removal Actions come from the Clean Air Act National Emission Standards for Hazardous Pollutants (NESHAPS) for asbestos. These regulations were designed specifically for renovation and

demolition of buildings with asbestos containing material (ACM) such as floor tile, ceiling tile and pipe wrapping. The regulations were not designed for loose fill vermiculite insulation, piles of unexpanded vermiculite, contaminated soils or heavily contaminated dust. As such, it is anticipated that it may not be practicable to achieve all ARARS during this Removal Action because the regulations contemplate removing all asbestos prior to renovation or other activities.

6. Project Schedule

It is anticipated that the Removal Action will commence in early Spring 2004 and monitoring of landscape restoration can be completed by Summer of 2005.

B. Estimated Costs

EXTRAMURAL COSTS:

ERRS Personnel & Equipment	$ 664,000
Transportation & Disposal	15,000
Volpe IAG (including Sampling Contractor)	689,000
20% Contingency	273,600
TOTAL EXTRAMURAL COSTS	$1,641,600
INTRAMURAL COSTS:	
Intramural Direct Costs (10%)	$ 164,160
TOTAL EXTRAMURAL + INTRAMURAL	$1,805,760
Indirect Costs (35%)	$ 632,016

TOTAL ESTIMATED EPA COSTS FOR REMOVAL ACTION $2,437,776

The total EPA costs for this removal action, to be based on full-cost accounting practices, that will be eligible for cost recovery are estimated to be $2,437,776. Direct Costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of the removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of total costs estimates nor deviation of actual costs from this estimate will affect the United States' right to cost recovery.

VII. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

Delayed action will increase public health risks to the local population/environment posed by airborne asbestos fibers.

VIII. OUTSTANDING POLICY ISSUES

The Removal Action described in this Action Memorandum does not raise any fundamental response issues, nor does it set any broader policy precedent or constitute a nationally significant issue relating to vermiculite insulation. Asbestos removals have been completed in Region 8, and around the country at numerous removal sites which were initiated under Section 300.415 of the NCP and in compliance with NESHAPS regulation under 40 CFR Section 61.150. This removal does not set a precedent or constitute a nationally significant issue.

IX. ENFORCEMENT

A separate addendum will provide a confidential summary of current and potential future *enforcement actions.*

X. RECOMMENDATION

This decision document represents the selected Removal Action for the Vermiculite Intermountain site, Salt Lake City, Utah, developed in accordance with CERCLA as amended, and not inconsistent with the NCP. This decision is based on the Administrative Record for the Site.

Conditions at the Site meet the NCP Section 300.415(b)(2) criteria for a Removal, and I recommend your approval of the proposed removal action. The total project ceiling will be $2,437,776. Of this, an estimated $1,805,760 comes from the Regional removal allowance.

Approve: Max H. Dodson Date: April 7, 2004

Max H. Dodson
Assistant Regional Administrator
Office of Ecosystems Protection
and Remediation

Disapprove:_____ Date:_____

Max H. Dodson
Assistant Regional Administrator
Office of Ecosystems Protection
and Remediation

Attachments:

Attachment 1 -	Facility Area Map
Attachment 2 -	Toxicologist Memorandum
Attachment 3 -	Applicable or Relevant & Appropriate Requirements

SUPPLEMENTAL DOCUMENTS

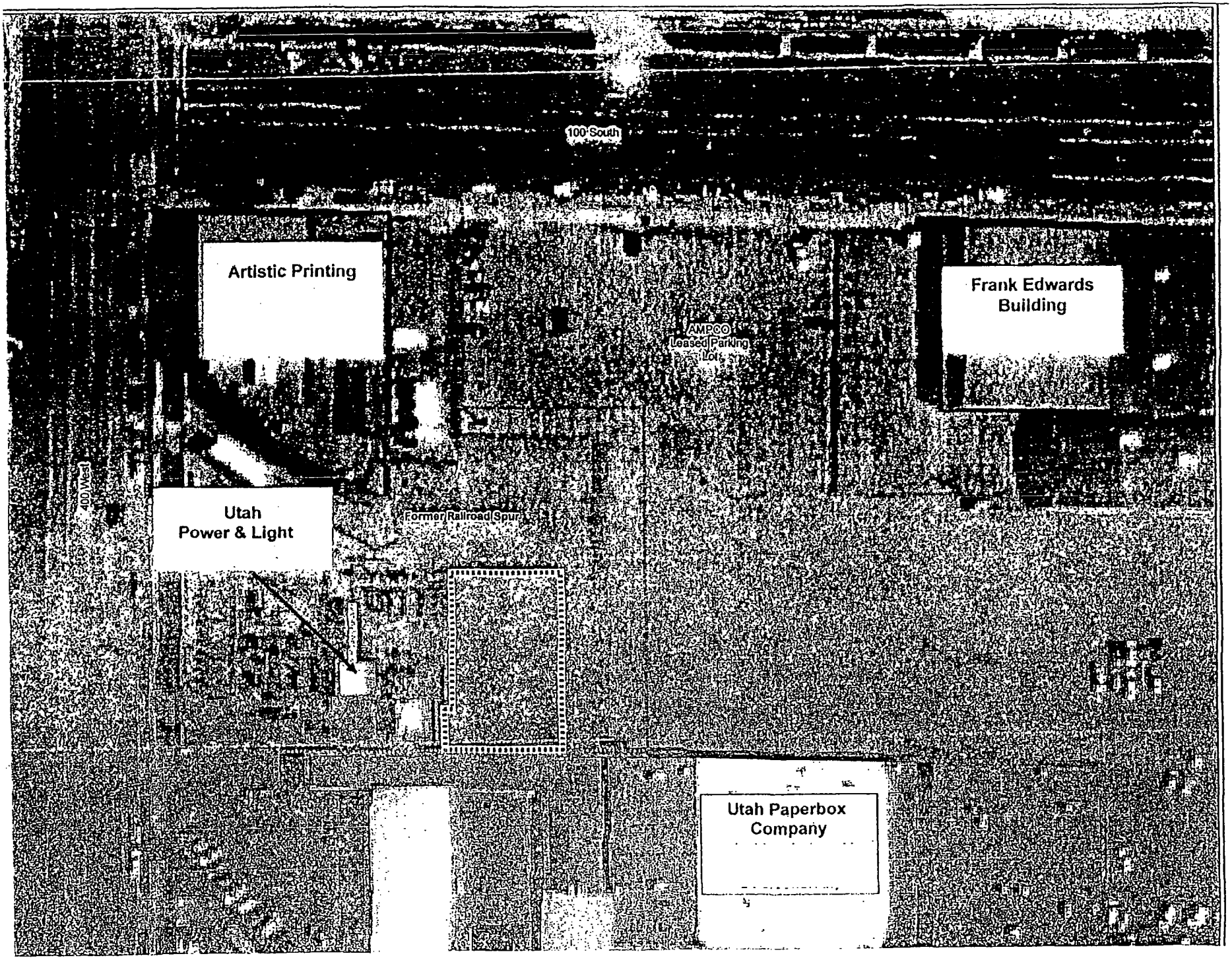
Support/reference documents which may be helpful to the reader and/or have been cited in the report may be found in the Administrative Record Files for the Vermiculite Intermountain site at the Superfund Records Center for Region VIII EPA, 999 18th Street, Denver, Colorado 80202.

Poor Quality Source Document

The following document images have been scanned from the best available source copy.

To view the actual hard copy, contact the Region VIII Records Center at (303) 312-6473.

Attachment 1 - Facility Area Map



Attachment 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466

March 18, 2004

Ref: 8EPR-PS

MEMORANDUM

SUBJECT: Endangerment Memo: Health Risks Secondary to Exposure to Asbestos at the Former Vermiculite Intermountain Site at 100 South 333 West (SLC2), Salt Lake City, Utah.

FROM: Aubrey K. Miller, MD, MPH
Senior Medical Officer & Regional Toxicologist
Program Support Group

TO: Floyd Nichols
On-Scene Coordinator
Emergency Response Team

I. PURPOSE

This memorandum presents the rationale for determination of imminent and substantial endangerment to public health from current asbestos contamination associated with the historical processing of vermiculite from Libby, Montana at the Former Vermiculite Intermountain Insulation Facility at 100 South 333 West (SLC2), Salt Lake City, Utah.

II. SUMMARY OF FINDINGS

1) Asbestos material is present in dust and soil at the SLC2 site. This asbestos material is consistent with asbestiform amphiboles from Libby, Montana containing a series of closely related minerals including actinolite, tremolite, winchite and richterite. Asbestos fibers of this type are known to be hazardous to humans when inhaled.

2) Mechanical disturbance of asbestos-contaminated soil or dust by activities similar to those that are likely to be performed by area workers results in elevated levels of respirable asbestos fibers in air.

3) On this basis, it is concluded that: a) soil and dust at this site contain elevated

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levels of friable asbestos minerals from Libby, Montana, b) contaminated soil and dust will result in a complete pathway for human exposure and will serve as a source of on-going release of hazardous fibers to air, and c) it is necessary to reduce or eliminate pathways of exposure of this material to workers and others who may frequent the area.

III. BACKGROUND

A. Libby, Montana Vermiculite Mining

Vermiculite was discovered in the Rainy Creek Mining District of Lincoln County, Montana, in 1916 by E.N. Alley. Alley formed the Zonolite Company and began commercial production of vermiculite in 1921. Another company, the Vermiculite and Asbestos Company (later known as the Universal Insulation Company), operated on the same deposits (BOM, 1953). W.R. Grace purchased the mining operations in 1963 and greatly increased production of vermiculite until 1990 when mining and milling of vermiculite ceased.

Vermiculite ore bodies on Zonolite Mountain contain amphibole asbestos at concentrations ranging up to nearly 100% in selected areas (Grace; per Libby Administrative Record). Although early exploration mining efforts by the Zonolite Company focused upon the commercial viability of fibrous amphibole deposits found on Zonolite and Mountain (DOI, 1928), no commercial production of asbestos from the Libby mine is reported.

Residual fiber contamination at the Libby site and former offsite processing facilities continues to present a potential for hazardous exposure to workers, residents, and visitors at these facilities. Contamination at these sites is presently being addressed under removal authorities provided in the Comprehensive Environmental Response Compensation and Liability Act Section 104 (CERCLA or Superfund). These actions by the U.S. Environmental Protection Agency Region 8 office in Denver, CO, began on November 22, 1999, and continue today.

B. Salt Lake City (SLC2) Vermiculite Processing Site

The Salt Lake City vermiculite business was originally named Vermiculite Intermountain and was started in 1940. The exfoliation plant was originally located in downtown Salt Lake City at 100 South 333 West (SLC2 site). According to a 1984 business newspaper article, Lee Irvine was the president of Vermiculite Intermountain, a company licensed by the W. R. Grace company to manufacture insulation products. The 1984 news article also stated that the manufacturing operations were to be moved to a new Salt Lake City location at 800 South 733 West (SLC1 Site) and continue operations of Intermountain Products. Shortly thereafter operations were moved to the the new location and the exfoliation plant continued to operate until closure in 1987. Invoices obtained from W. R. Grace, which purchased the Libby mine in 1963, show that over 25,000 tons of vermiculite ore were shipped to the 100 South 333 West address prior to 1980. EPA has no information at this time concerning the total amounts of Libby vermiculite shipped to Vermiculite Intermountain at this (SLC2) site.

The Site is located in the middle of a downtown city block and is currently surrounded on three

sides by active commercial establishments, Artistic Printing Company, La Quinta, and Utah Paper Box. The 4th side of the site is bordered by the Utah Power and Light (UPL) substation. The Artistic Printing Company, a small custom print shop, is a few feet to the northwest of the Site. The 18,000 sq ft, slab-on-grade building was constructed prior to 1940. The building is currently in daily use by 24 employees working two shifts, 5-days per week. The LaQuinta Parcel, which includes an asphalt AMPCO Parking Lot and the Frank Edwards Building, is situated on the north and northeast sides of the site. The parking lot is used daily by individuals working or visiting downtown establishments or the Delta Center which is located across the street. The Frank Edwards Building is a one-story, 23,000 square feet structure which is located on the northeast corner of the block and is unoccupied. The Utah Paper Box Company is a 57,000 square foot building which was constructed before 1940 and borders the site on the south. The building is currently in daily use by 60 employees working multi-shifts, 7-days per week. On a larger scale, the Utah Power and Light Substation parcel currently encompasses the site. The UPL Substation is located immediately to the west of the Site and consists of an 8,800 square foot, 2-story cinder-block building. The entire UPL parcel surface is capped by crushed gravel to an approximate depth of 0-6 inches. The substation is visited frequently by a limited number of UPL employees and it is reported that a portion of the property is occasionally used for parking by UPL personnel.

C. Asbestos-related Disease:

Asbestos-related diseases include (1) pleural disease (plaques, diffuse thickening, calcifications, and pleural effusions), (2) interstitial disease (fibrosis of pulmonary tissue), (3) lung cancer, and (4) mesothelioma (a rare cancer of mesothelial cells in the pleura or peritoneum) (Albeda, 1982; Anderson, 1976; Kilburn, 1985; McDonald, 1997; MaGee, 1986; Selikoff, 1965). The risk of developing an asbestos-related disease depends on fiber characteristics, the level and duration of exposure, the time since first exposure, the individual's smoking history, and the individual response to the presence of asbestos fibers in pulmonary tissue. Researchers have not determined a safe level of asbestos exposure, but in general the longer a person is exposed to asbestos and the greater the intensity of the exposure, the greater the likelihood for asbestos-related health problems. While some forms of disease, especially cancers, may take as long as forty years to develop, there is concern that even short term exposures may have significant adverse health impacts. This is particularly true for children, where fibers lodged in the lungs may be able to exert their toxic effects for many more years as compared to exposures during adulthood.

IV. ENDANGERMENT RATIONALE

A. Disease from Exposure to Libby Vermiculite Contaminated with Asbestos

Airborne exposure to asbestiform minerals originating from Zonolite Mountain in Libby, Montana is hazardous to human health.

Previous studies in the early 1980's by researchers from McGill University (McDonald 1986a-b) and the National Institute for Occupational Safety and Health (NIOSH) (Amandus 1987a-c) found that former employees of the Libby vermiculite mine had substantial asbestos exposure, as

well as significantly increased pulmonary morbidity and mortality from asbestosis and lung cancer. Researchers at NIOSH who studied the annual chest x-rays of mine and mill workers with at least 5 years tenure (between 1975 and 1982) found an increased prevalence of the radiographic abnormalities associated with asbestos-related disease. A recent followup mortality study of Libby vermiculite workers found that "they have suffered severely from both malignant and non-malignant respiratory disease." The overall proportionate mortality among the group for mesothelioma was extremely high, being similar to that seen for crocidolite miners in South Africa and Australia (McDonald, 2002).

More recent studies conducted in association with the ongoing investigations in Libby have identified markedly elevated mortality rates of asbestosis, lung cancer, and mesothelioma for the Libby population, as well as, significantly increased rates of asbestos-related radiologic abnormalities among non-occupationally exposed individuals who worked or lived in Libby for at least six months prior to 1990 (ATSDR 2000, ATSDR 2002a, ATSDR 2002b, Peipins 2003, EHP 2004).

In addition to the Libby site, contaminated vermiculite ore was shipped and processed at numerous facilities throughout the United States also resulting in elevated asbestos-related disease among workers (Lockey, 1984). In one recently reported case, a man died of progressive asbestos disease 50 years after being exposed to contaminated Libby vermiculite after only 2 months of exposure at an offsite processing plant at age 17 (Wright, 2002). Fatal asbestos disease has also been reported among non-occupationally exposed individuals who directly contacted contaminated vermiculite waste materials around a former processing facility (Srebro, 1994) and contaminated vermiculite attic insulation used in homes throughout the United States (Harashe v. Flintkote, 1993).

B. Asbestos Exposures Resulting From Contaminated Bulk Materials

Disturbance of soils, dusts, insulation, garden products, and other bulk materials contaminated with asbestiform minerals from Libby, Montana results in a complete pathway for airborne human exposure and such exposures may easily approach and exceed available human health guidance.

1. Soils & Dust:

Asbestos fibers in soil or dust are not inherently hazardous to humans if left undisturbed. However, most soils and dusts are subject to disturbance, either now or in the future, by many different types of activities that are common for residents or workers. Ongoing EPA investigations at the Libby site have demonstrated that mechanical disturbance of asbestos-contaminated soil or dust by activities similar to those that are likely to be performed by area residents or workers results in elevated levels of respirable asbestos fibers in air. EPA Region 8 evaluated several scenarios involving disturbance of contaminated soils and dusts such as vehicular traffic on Rainy Creek Road, active cleaning of households, sweeping of dust, and rototilling of soil. These scenarios clearly demonstrated that asbestos fibers may be released into the air by a variety of common activities and that a complete pathway exists by which asbestos-contaminated source materials may cause inhalation exposure of area residents and workers. Additionally, EPA found that the concentrations of fibers in air generated by disturbance of

source materials may exceed OSHA standards for acceptable occupational exposure, as well as, exceeding EPA's typical excess cancer risk range (1E-04 to 1E-06) by an order of magnitude or more. (Weis, 2001a, Weis, 2001b).

In addition to the Libby site, investigations by researchers in EPA Regions 9 and 10 have also found that soils contaminated with very low concentrations of asbestos can easily result in high airborne fiber exposures when disturbed. This is consistent with published research performed by Addison et. al. (Addison, 1988) which showed that even soils containing asbestos concentrations as low as 0.001% can generate potentially hazardous airborne concentrations when disturbed.

Currently EPA has not established an asbestos level in soil or dust below which an exposure does not pose a risk, under any of its regulatory programs. The 1% asbestos concentration levels commonly cited and used for regulatory purposes under the EPA Toxic Substances Control Act (TSCA) abatement program, was established on the basis of analytical capability at the time and does not have any relationship to the actual health risks associated with the handling or disturbance of the contaminated material in question. California EPA is currently in the process of adopting new guidance for asbestos contaminated soils at schools which recommends that soils containing asbestos concentrations greater than or equal to 0.001% asbestos by weight (transmission electron microscopy (TEM) analysis) may need to be remediated, especially in high use areas such as playing fields and dirt roads (Cal/EPA, 2004).

Of note, findings of "trace" asbestos concentrations by the commonly used polarized light microscopy (PLM) methods for bulk material analysis, typically soil, indicates that the asbestos concentration of the bulk material is at the very least about 0.2% (the analytical limits of the method); which is well above soil concentrations of 0.001 % identified (TEM methods) as being potentially hazardous. Additionally, "non-detectable" concentrations of asbestos in solid media as reported by PLM may still contain hazardous concentrations of asbestos which will become airborne if disturbed. Such was the case observed by EPA investigators (Versar, 2002) in which vermiculite insulation found to be non-detectable for asbestos by PLM techniques, released hazardous concentrations of airborne asbestos fibers, exceeding the OSHA PEL, when disturbed. Depending on the circumstances, higher resolution techniques, such as TEM, may be more useful to ensure accurate identification of low, yet still potentially hazardous, concentrations of asbestos in solid matrices.

2. Libby Vermiculite Products

Disturbance of vermiculite products (e.g., vermiculite insulation, vermiculite garden products) originating from the Libby mine can result in elevated levels of respirable asbestos fibers in the air. Activities similar to those likely to be performed by homeowners and workers that disturb vermiculite products containing even trace amounts or non-detectable concentrations of asbestos by PLM methods, have been demonstrated to release concentrations of fibers which may well exceed OSHA and EPA guidelines (Versar, 2002; EPA Region 10, 2000). Recognition of this finding has resulted in national warnings by EPA, ATSDR, and NIOSH concerning the dangerous nature of vermiculite insulation used in residences and businesses throughout the United States (EPA & ATSDR, 2003; NIOSH Fact Sheet 2003)

C. Occupational Exposure Guidance & Acceptable Risks

While airborne asbestos exposures resulting from disturbance of contaminated bulk materials may approach and exceed occupational limits, the use of occupational methods and guidance for uninformed workers and residential populations is problematic and is not adequately protective of human health.

Comparisons of non-occupational airborne asbestos measurements to the OSHA PEL are somewhat problematic in that the OSHA method (typically NIOSH 7400) specifies the use of a phase contrast microscope (PCM). The Agency's experience with analyzing materials for Libby amphibole asbestos is that the PCM will undercount asbestos fibers thinner that 0.25 um, while counting non-asbestos materials with a fibrous appearance such as grass or leaf fibers (Libby Action Memorandum, May 2002; Weis, December 2001). The end result is that a TEM analysis of an outdoor or even an interior residential sample would report a lower value than a PCM analysis if potentially interfering materials (e.g.-leaves, carpet fibers, sawdust) are present.

Additionally, it should be noted that OSHA limits for asbestos exposure are established for presumably healthy, informed workers who: a) are trained about the hazards of the occupational environment, b) have specific asbestos training and access to appropriate personal protective equipment, and c) actively participate in an appropriate medical surveillance program. The occupational guidelines are not intended to be protective of the myriad members of an unsuspecting population, including children or those with sensitized or compromised pulmonary conditions. OSHA when it established its "permissible exposure limit" (PEL) of 0.1 fiber/cc for workers stated that its "risk assessment . . . showed that reducing exposure to 0.1 f/cc would further reduce, but not eliminate, significant risk. The excess cancer risk at that level would be reduced to a lifetime risk of 3.4 per 1,000 workers and a 20 year exposure risk of 2.3 per 1,000 workers" (59 FR 40964, 40978). OSHA also noted that the agency "has always considered that a working lifetime risk of over 1 per 1000 from occupational causes is significant" (59 FR at 40966). Notably, OSHA found that the 0.1 f/cc exposure level would present an even greater risk except for the fact that "the exposure limit is accompanied by mandated work practice controls and requirements for hazard communication, training and other provisions" (59 FR at 40981). In other words, the 0.1 f/cc exposure level is appropriate only for those trained workers who receive protective gear and work under mandated conditions, and even then, the significant risk is not eliminated (Preamble to OSHA's rules setting occupational asbestos limits published in the Federal Register on August 10, 1994).

V. SLC2 SITE ENVIRONMENTAL DATA EVALUATION

A. Exterior Areas

In October 2002, EPA investigators performed exterior inspection and soil sampling in a rectangular area around the former vermiculite processing facility (of note: the facility is no longer present). During this evaluation, the area was divided into 37 grids with about three samples collected per grid at soil surface and subsurface locations. Of the 100 samples collected, vermiculite was visibly present about 30% of the time. Sampling analysis by PLM found the

presence of Libby Amphibole (LA) in 92% (92/100) of all samples, with LA concentrations ranging from non-detectable to 18%. Fifteen percent of the samples revealed LA concentrations equal to or in excess of 1%.

In September 2003, EPA investigators performed additional site sampling and characterization. During this investigation soil sampling was extended to perimeter areas of the overall site, as well as, areas outside of other facilities located on the site that were not assessed previously. The presence of LA was found in 58% of the 72 soil samples evaluated by PLM. Samples with non-detectable concentrations of LA were most commonly found in area grids located along the outside perimeter of the site.

B. Interior Areas

1. Dust Sampling results:

During the September 2003 site visit, EPA investigators collected five interior dust samples within Artistic Printing and three dust samples within the Utah Power and Light Blockhouse. In December 2003, EPA investigators performed additional interior dust sampling of several facilities, including Artistic Printing (6 samples), La Quinta (3 samples), and Utah Paper Box (6 samples). The following summarizes the results of these dust samples:

* Artistic Printing. Dust sample results for Artistic Printing showed the presence of LA fibers in 73% (8/11) of the samples, with LA concentrations in positive samples ranging from 122 to 14,600 S/cm^2.

* Utah Power & Light. Dust sample results taken in the Blockhouse revealed the presence of LA fibers in all three samples, with LA concentrations ranging from 2,400 to 292,000 S/cm^2.

* La Quinta. Two of the three dust sample taken in differing areas of the La Quita facility revealed the presence of LA fibers, with LA concentrations ranging from 353 to 1,160 S/cm^2.

* Utah Paperbox . The six dust samples taken in Utah Paperbox did not reveal the presence of any LA fibers. Chrysotile asbestos, not related to Libby vermiculite processing, was detected in one dust sample. This facility was reported to have a very rigorous housekeeping program which entailed thorough and regular cleaning of the work areas, especially during installation of new high-end equipment.

2. Air Sampling results:

In December 2003, in addition to dust samples, EPA investigators collected several air samples within Artistic Printing and Utah Paperbox facilities. At Artistic Printing, the results of the two personal and five stationary air samples revealed the presence of airborne LA fibers (0.003 S/cm^2) in one stationary air sample collected in the Administrative Office area. At Utah Paperbox, the results of the one personal and six stationary air samples did not reveal the presence of airborne LA fibers in any of the samples.

VI. SUMMARY

A. Visible vermiculite was widely seen in surface and subsurface soil evaluations throughout the SLC2 site. Furthermore, detectable concentrations of LA, in one instance as high as 18%, was found in over 92% of the surface and subsurface soil samples taken in close proximity to the area of the former vermiculite facility and 52% of the soil samples taken at more distant locations around other facilities and the perimeter of the site. LA contaminated surface soils contain asbestos fibers which are likely to become airborne when disturbed by foot traffic, automobile traffic, and a variety of other routine activities.

B. Interior dust samples taken inside Artistic Printing, La Quinta, and the Utah Power & Light Blockhouse showed detectable concentrations of LA fibers. Results of limited air sampling in the Artistic Printing facility during routine work conditions found the presence of airborne LA fibers in an administrative office area.

C. The presence of LA contaminated exterior soils and interior dusts poses an exposure hazard for individuals, such as workers, who may frequent and disturb such materials on a routine basis. Asbestos contaminated source materials, such as surface soils, may also serve as an ongoing reservoir for fiber emission and contamination into co-located indoor environments or vehicles, through air currents or transport via human activity (i.e., soil adherence to shoes). Once contaminated, such areas or vehicles can then in-turn serve as secondary sources of ongoing human exposure.

D. Findings of airborne LA fibers in an office area of Artistic Printing demonstrates the propensity of contaminated environments to release fibers into the air and form a completed pathway for human exposure. Outdoor activities (e.g., raking and leaf blowing) performed at the newer Vermiculite Intermountain site located at 800 South 733 West (SLC1 Site) demonstrated that even soils containing less than 1% LA can generate airborne exposures which easily approach, and even exceed, the occupational limits when disturbed. These findings are consistent with the results of EPA investigations at other sites, as well as, evaluations performed by other government agencies and researchers. For example, disturbance of an outdoor high school playing field containing 0.01% asbestos concentrations resulted in hazardous airborne asbestos concentrations when disturbed (communication per A. Den, EPA Region 9).

E. Chronic, and even higher dose short-term, exposures to airborne LA fibers pose an increased risk for lung diseases such as pleural fibrosis, asbestosis, mesothelioma, and lung cancer. Sampling events at the Intermountain Insulation Site have confirmed the presence of amphibole asbestos in soils, dust, and visible vermiculite at concentrations of concern and indicate an on-going risk to workers and visitors who may routinely frequent the site. Given the known toxicity of LA for causing asbestos-related disease and mortality, it is reasonable to conclude that any human exposure, especially those more frequent and of higher concentration, to the LA asbestos may pose an imminent and

substantial threat to public health and welfare

VII. CONCLUSION

Libby amphibole asbestos contamination exists in outdoor soil throughout the SLC2 site, as well as, indoor dust in the Artistic Printing, La Quinta, and Utah Power & Light facilities. If these contaminated sources are disturbed by human activities, fibers are likely to be released to air. The levels of fibers released to the air depends upon the concentration of fibers in the source material(s) and on the nature of the disturbance(s). The risks of human disease are proportional to the concentration of fibers in air and the frequency and duration of exposures. While data are not yet sufficient to perform reliable human-health risk evaluations for all sources and all types of disturbances; it is apparent that airborne fiber concentrations demonstrated to occur with disturbance of contaminated soil and dust, similar to that observed at the SLC2 site, can exceed acceptable health risks for both residents and workers. This is especially true for naive work populations that are not aware of ongoing exposures, nor trained to handle asbestos, nor enrolled in appropriate worker protection and medical surveillance programs. On this basis, I recommend that steps be taken to reduce or eliminate pathways of human exposure to LA from contaminated source materials, such as soil and dust, at the Vermiculite Intermountain Site at 100 South 333 West (SLC2), Salt Lake City, Utah, in order to protect naive work populations or other individuals who may regularly utilize this site.

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Statute	Implementing Regulation	Status	Requirements	Comments
Clean Air Act	40 CFR 61.145(c) & (d)	A R	Standard for Demolition and Renovation. Provides detailed procedures for controlling asbestos releases during demolition of a building containing " regulated-asbestos containing material" (RACM) as defined in the regulations.	Applicable to building demolitions that will occur as part of the removal if certain threshold volumes of RACM are disturbed. The dust control portions of the regulations are relevant and appropriate for soil disturbance activities and for asbestos contaminated material that does not meet the strict definition of RACM.
Clean Air Act	40 CFR 61.149 Note: Section 61.149(c)(2) is not delegated to the State	R	Standard for Waste Disposal at Asbestos Mills. Provides detailed procedures for handling and disposal of asbestos containing waste material generated by an asbestos mill as defined by 40 CFR 61.142.	This regulation is considered relevant and appropriate to the soils disposal. It is not applicable because the facilities do not meet the regulatory definition of an asbestos mill.
Clean Air Act	40 CFR 61.150 Note: Section 61.150(a)(4) is not delegated to the State	A R	Standard for waste disposal for manufacturing, fabricating, demolition, renovation and spraying operations. Similar to 40 CFR 61.149, this section provided detailed procedures for processing, handling and transporting asbestos containing waste material generated during building demolition and renovation (among other sources).	Applicable to RACM generated if building demolitions occur as part of the removal. Relevant and appropriate for soil disturbance activities and for asbestos contaminated material that does not meet the strict definition of RACM.
Clean Air Act	40 CFR 61.151 Note: Section 61.151(c) is not delegated to the State	R	Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations. Provides requirements for covering, revegatation and signage at facilities where RACM will be left in place.	These requirements would be relevant and appropriate to asbestos containing soils/ and or debris left in place.

A: Applicable
R: Relevant & Appropriate
N: Scope of the action does not trigger this requirement
X: Not an ARAR

Statute	Implementing Regulation	Status	Requirements	Comments
Clean Air Act	40 CFR 61.152 Note: Section 61.152(b)(3) is not delegated to the State	A R	Air-cleaning. Provides detailed specifications if air cleaning is used as part of a system to control asbestos emissions control system.	These requirements would be applicable if air cleaning is part of the building demolitions. It would be relevant and appropriate to other air cleaning operations.
Clean Air Act	40 CFR 61.154 Note: Section 61.154(d) is not delegated to the State	X	Standard for active waste disposal sites. Provides requirements for off-site disposal sites receiving asbestos-containing waste material from building demolitions and other specific sources.	Does not meet the definition of an ARAR which applies only to on-site actions. Regulations are applicable to off-site disposal of ACM from the building demolitions.
Clean Air Act	40 CFR 61.155	N	Standard for operations that convert asbestos containing waste material into nonasbestos (asbestos-free) material	It is not anticipated that the removal action will include any such treatment of asbestos containing materials. This section will be applicable if treatment occurs.
TSCA	40 CFR Part 763, Subpart G (implemented by the State under the Montana Asbestos Control Act)	X	Asbestos Abatement Projects	The State requires that work be performed in accordance with 40 CFR 763.120 and 763.121 (asbestos abatement projects) and 29 CFR 1926.58 (asbestos standard for the construction industry). These requirements will be incorporated into the health & safety plan but do not meet the definition of an ARAR.

A: Applicable
R: Relevant & Appropriate
N: Scope of the action does not trigger this requirement
X: Not an ARAR

Statute	Implementing Regulation	Status	Requirements	Comments
National Historic Preservation Act	36 CFR 800 40 CFR 6.301 (b) 43 CFR 7	A	Establishes procedures to take into account the effect of actions on any historical properties included on or eligible for inclusion on the National Register of Historic Places. If the activity will have an adverse effect, and this effect can not be reasonably avoided, measures need to be taken to minimize or mitigate the effects.	If cultural resources on or eligible for the national register are present, it will be necessary to determine if there will be an adverse effect and if so how the effect may be minimized or mitigated.
Archeological and Historic Preservation Act		A	Provides for the preservation of historical and archeological data that might be lost as part of a federal action. It differs from NHPA in that it encompasses a broader range of resources than those listed on the National Register and mandates only the preservation of data (including analysis and publication).	

A: Applicable
R: Relevant & Appropriate
N: Scope of the action does not trigger this requirement
X: Not an ARAR

Attachment 3

Vermiculite Insulation

STATE ARARs				UDEQ comments regarding ARAR's prepared for the Intermountain Insulation Site.
Statute	**Implementing Regulation**	**Status**	**Requirements**	**Comments**
Clean Air Act Utah Air Quality Rules	40 CFR 61.145(a) UAQR R307-214-1	A	Requires for owner or operator of a demolition or renovation activity to thoroughly inspect the affected facility or part of the facility where the demolition or renovation will occur for the presence of asbestos.	The facility was thoroughly inspected during sampling activities conducted in 2001, October 14-16, 2002, and August 4-6, 2003 during which the presence of ACM was detected.
Clean Air Act Utah Air Quality Rules	40 CFR 61.145(b) UAQR R307-801-11	X	Provides requirement for notification to the Utah Division of Air Quality prior to demolition and/or renovation activities.	The UDAQ requests notification at least 1 day before the removal action activity begins.
Utah Air Quality Rules	UAQR R307-801-2	R	Describes the the general applicibility of the UAQR Asbestos Regulations.	While certification issued by the State of Utah is not applicable to the removal action activity, contracted asbestos abatement companies and their employees should obtain relevant and applicable training/certification if they are involved in the work as described in the regulation.
Utah Air Quality Rules	UAQR R307-801-5	R	Requirement for proper Company Certification to perform asbestos	While certification issued by the State of Utah is not applicable to the removal action activity, the contracted asbestos company will
Utah Air Quality Rules	UAQR R307-801-6	R	Requirement for proper Individual Certification to perform asbestos abatement activities in the State of Utah.	While certification issued by the State of Utah and training courses approved by the State of Utah are not applicable to the removal action activity, employees of the contracted asbestos company will have completed a relevant and appropriate asbestos abatement training course prior to performing any work asbestos related work on-site.
Utah Air Quality Rules	UAQR R307-801-13	A	This section requires that every person who handles and disposes of asbestos waste shall be certified in compliance with R307-801	While certification issued by the State of Utah is not applicable to the removal action activity, the contracted asbestos company and their employees will possess relevant and appropriate asbestos abatement certification prior to performing any work on-site.
Utah Air Quality Rules	UAQR R307-309-3	A	Opacity for PM10 fugitive dust shall not exceed (a) 10% at property boundary; and (b) 20% on-site.	While the fugitive dust regulations are applicable to the removal action activity for the soils, fugitive dust issues are adequately addressed under the 40 CFR 61.14(c) regulation cited.
Utah Water Quality Rules	UWQR R317-8-3.9(1)(h)1.b.	N	Defines UPDES permit requirements for Storm Water Discharges associated with a small construction activity.	While the removal activity is not subject to UPDES permitting requirements, and under the provisions defined in R317-8-3.9(6)(e) the removal action activity will not result in land disturbance greater than one acre, land disturbance activity and on-site waste management should be addressed with best mangement practices to prevent adverse impacts to water quality.

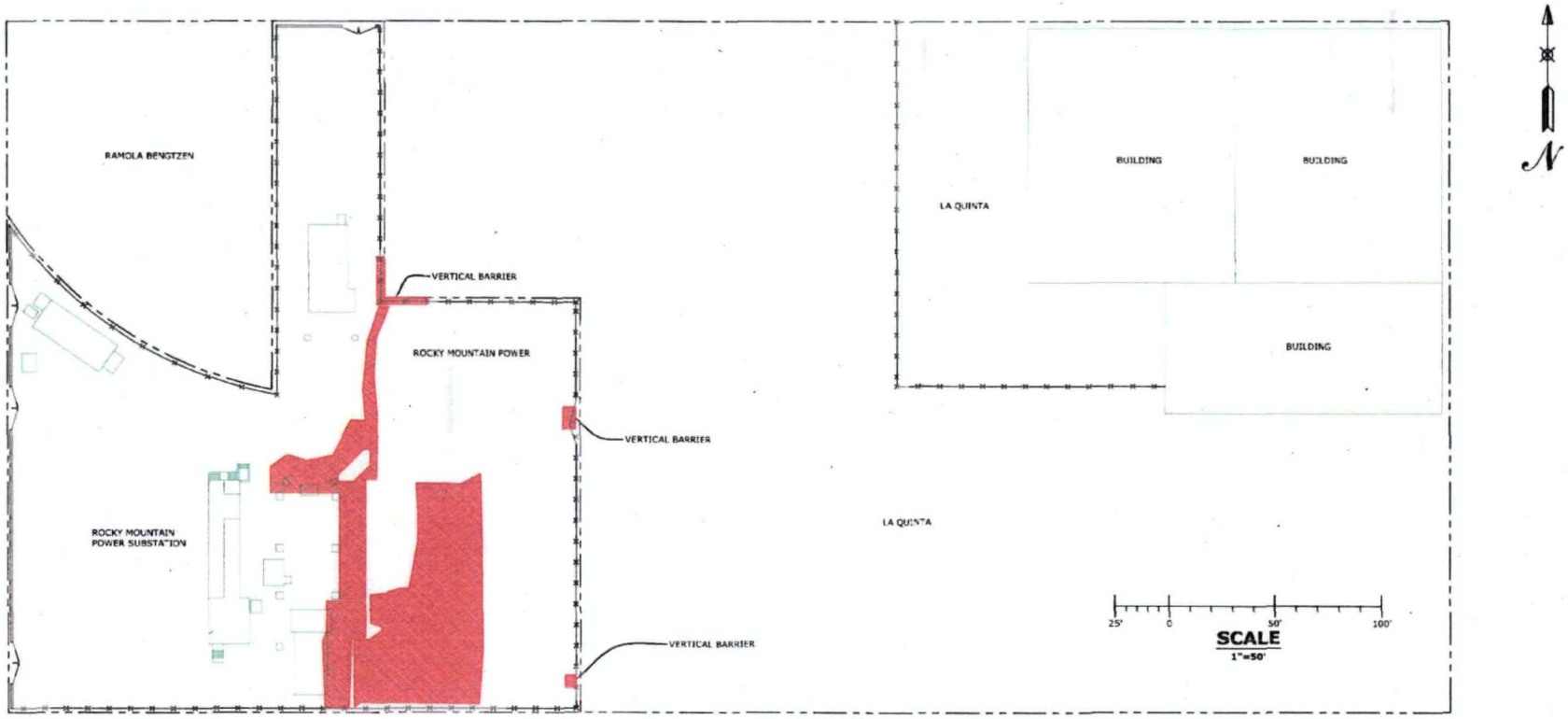
A - Applicable

R - Relevant and Appropriate

N - Scope of Action does not trigger this requirement

X - Not an ARAR

APPENDIX B



LEGEND

PROPERTY BOUNDARY

AREA COVERED WITH BARRIER

REV: 0	DATE: 06/21/07	FNG: M. EMETT	3RD WEST SUBSTATION SALT LAKE CITY, UT REMEDIATION PROJECT LOCATION DRAWING	
PROJECT# 7010		DR: M. EMETT		
PREPARED FOR: PACIFICORP		CH: T. HENRIE		
EEC		SCALE: 1"=50'	DWG NAME: 701001.DWG	SHEET: 1 OF 1

APPENDIX C

To be recorded with County Recorder – Utah Code Ann § 57-25-108

After recording, return to:

_____
_____
_____

With copy to:

_____
_____
_____

and

Division Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
168 North 1950 West
P. O. Box 144840
Salt Lake City, UT 84114-4840

and

Regional Institutional Control Coordinator, EPR-SR
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by _____, the United States Environmental Protection Agency ("EPA") and the Utah Department of Environmental Quality ("DEQ") pursuant to Utah Code Ann. §§ 57-25-101 et seq. for the purpose of subjecting the Property described in paragraph 2 below to the activity and use limitations set forth herein.

The Property includes the location of the former Vermiculite Intermountain plant (the "Site"). The Vermiculite Intermountain plant operations included the exfoliation of vermiculite concentrate from the Libby Vermiculite Mine, located in Libby, Montana. The vermiculite concentrate contained amphibole asbestos. EPA has determined that the exfoliation process and handling of the vermiculite concentrate resulted in the

release of elevated levels of amphibole asbestos into soils and air on the Property. This resulted in both exterior surface contamination and contamination inside specific buildings. Additional information is available in the Site files at DEQ and in the administrative record on file with EPA in Denver, Colorado.

In 2004-2005, PacifiCorp successfully undertook and performed an environmental response action, as defined in Utah Code Ann. § 57-25-102(5), at this or an adjacent property pursuant to a certain Administrative Order on Consent for Removal Action between EPA and PacifiCorp dated July, 2004. This resulted in the removal of all known surface contamination from the properties known to have amphibole asbestos contamination. However, because some potentially contaminated subsurface soils, which exist at various depths as depicted on the accompanying plat map (Exhibit A), were left in place, DEQ, in conjunction with the EPA, has determined that the following Institutional Controls are necessary with respect to the Property.

Now therefore, Owner, EPA and DEQ agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann. §§ 57-25-101 *et seq.*

2. Property. This Environmental Covenant concerns property located at approximately _____, in Salt Lake City, Salt Lake County, Utah, comprising parcel numbers _____, more particularly described in Exhibit B attached hereto and hereby incorporated by reference herein ("Property").

3. Owner. _____ is the owner of the Property. Consistent with numbered paragraph 6 herein, the obligations of the Owner are imposed on assigns and successors in interest, including any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees ("Transferee").

4. Holders. Owner, whose address is listed above is the "Holder" of this Environmental Covenant, as defined in Utah Code Ann. § 57-25-102(6).

5. Activity and Use Limitations. As part of the removal action described in the administrative record, Owner hereby imposes and agrees to comply with the following activity and use limitations:

> Owner shall prevent the release of amphibole asbestos from underneath soil caps and impermeable surfaces at the site. The Property is currently covered with a mixture of asphalt paved surface, cement surfaces and soil covers that is preventing emissions of amphibole asbestos from the Property. In areas where cleanup work has already been performed, there are both vertical

and horizontal orange plastic barriers below the soil cap indicating potential areas of contamination. In other areas, there are no such warning devices. These covers, surfaces (the "cap") and warning devices must be maintained in good condition. If the cap or warning devices deteriorate in such a manner that amphibole asbestos might be released, then Owner must repair the warning devices and the cap.

If the cap is to be disturbed for any reason, Owner must protect workers, protect nearby receptors, and protect the removal action remedy by not introducing amphibole asbestos contamination into clean areas. The Owner must comply with the following:

a. Notification and Written Workplan - The Owner must notify DEQ and EPA in advance regarding any project which will disturb the cap. The Owner must submit a written workplan to DEQ and EPA describing the nature of the project and the work practices and engineering controls to be used to prevent emissions of amphibole asbestos. EPA and DEQ will coordinate to determine the appropriate level of government oversight and will notify the Owner which agency will be conducting oversight of the project. The Owner must receive written approval of the workplan from DEQ and EPA prior to beginning a project that will disturb the cap. In the event of any action or occurrence on or relating to the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment prevents Owner from complying with the requirements of this paragraph, Owner shall notify EPA and DEQ of the situation and any responsive actions simultaneously with the identification of the emergency and determination of need for immediate action.

b. Existing Asbestos Regulations – The federal government and the State of Utah have regulations regarding asbestos worker certification and asbestos work practices. These rules generally apply to "asbestos containing material" (ACM) which means any material containing more than one percent asbestos, according to the definition set forth in the regulations. Owner must address all releases of amphibole asbestos, even those below a 1% concentration. Any activity at the Property which disturbs the cap should be conducted, at a minimum, in compliance with the regulations. The Owner shall notify the Utah Division of Air Quality Asbestos Program of any asbestos-related work practices.

c. Worker Health and Safety – The U.S. Occupational Safety and Health Administration (OSHA) has regulations for workers exposed to asbestos, including permissible exposure limits (PELs), employee

notification, monitoring methods, etc. The OSHA regulations state that the employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.1 fibers per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) as determined by the method prescribed in the regulations. Any activity at the Site which triggers the OSHA regulations should be conducted in compliance with the regulations. Soils at the Site which contain detectable amphibole asbestos at trace levels less than 0.2 percent could generate airborne concentrations of amphibole asbestos that are potentially hazardous when disturbed. Owner is required to keep worker exposures to amphibole asbestos at the Site to an absolute minimum, even if the OSHA regulations are not triggered. This includes requiring respiratory protection, employee training, engineering controls (e.g., wetting or containment), air monitoring, etc., if soils below a cap are to be disturbed, unless Owner can show, using EPA-approved amphibole asbestos analytical methods, that the soils are non-detect for such asbestos.

d. Receptors near the Site – Owner must take steps at the Site to prevent human exposure to amphibole asbestos during any activity that disturbs the cap. Any workplan for a proposed project should describe how this will be accomplished with activities including, but not limited to, engineering controls, EPA-approved amphibole asbestos analytical methods, air monitoring, and restricting access to the Site.

e. Decontamination – The workplan should describe decontamination procedures and adequately delineate workzones and decontamination zones for any proposed project. Decontamination must be considered for workers, equipment, vehicles, or any other thing that enters into the work zone. The workplan should also address the collection and disposal of decontamination water.

f. Handling, Transport, and Disposal – Any activity that may possibly disturb the amphibole asbestos that remains underneath the cap must not re-contaminate the ground surface or nearby buildings, unless specifically approved in the workplan. Procedures must be established and described in the workplan for preventing emissions from any amphibole asbestos-contaminated soils as they are excavated and transported for disposal. Contaminated soils, clothing, and other amphibole asbestos-contaminated waste should be containerized and treated as ACM. The materials should be transported to, and disposed of, as ACM at a landfill permitted to receive ACM.

McDonald, J.C., McDonald, A.D., Armstrong, B., and Sebastien, P. 1986a. *Cohort study of mortality of vermiculite miners exposed to tremolite.* Brit. J. of Ind. Med 43:436-444.

McDonald, J.C., Sebastien, P, and Armstrong, B. 1986b. *Radiological survey of past and present vermiculite miners exposed to tremolite.* Brit. J. of Ind. Med 43:445-449.

McDonald JC, McDonald AD. Chrysotile, tremolite and carcinogenicity. Ann Occup Hyg 1997;41:699–705.

McDonald JC, Harris J, Armstrong B. Cohort Mortality Study of Vermiculite Miners Exposed to Fibrous Tremolite: an Update. Ann. occup. Hyg., Vol. 46, Supplement 1, pp..93–94, 2002.

NIOSH Fact Sheet, 2003. NIOSH Recommendations for Limiting Potential Exposures of Workers to Asbestos Associated with Vermiculite from Libby, Montana. DHHS (NIOSH) Publication Number 2003-141.

Selikoff IJ, Churg J, Hammond EC. The occurrence of asbestosis among insulation workers in the United States. Ann N Y Acad Sci 1965;132:139–55.

Srebro SH, Roggli VL: Asbestos-related disease associated with exposure to asbestiform tremolite. Am J Ind Med 1994; 26: 809-819.

Versar, 2002. Asbestos Exposure Assessment For Vermiculite Attic Insulation: Cumulative Study Covering Research Conducted in 2001 and 2002. US EPA, Fibers and Organics Branch National Program Chemicals Division, Office of Pollution Prevention and Toxics. June 28, 2002.

Weis, 2001a. Libby Site Endangerment Memo from Chris Weis to Paul Peronard; July 9, 2001. US EPA, Region 8.

Weis, 2001b. Libby Site Endangerment Memo from Chris Weis to Paul Peronard; December 20, 2001. US EPA, Region 8.

Wright RS, Abraham JL, Harber P, Burnett BR, Morris P, West P. Fatal Asbestosis 50 Years after brief high intensity exposure in a vermiculite expansion plant. Am J Respir Crit Care Med. 2002;165(8):1145-9.

ATTACHMENT 3

Applicable or Relevant and Appropriate Requirements (ARARs) for the Removal Actions
Vermiculite Intermountain Site, Salt Lake City/County, Utah

In accordance with Section 300.415(j) of the NCP, all ARARs for the Site will be attained, to the extent practicable, given the scope of the project and the urgency of the situation.

Statute	Implementing Regulation	Status	Requirements	Comments
FEDERAL ARARS				
Endangered Species Act	50 CFR 200 50 CFR 402	N	Protects threatened or endangered (T&E) species and their habitat. Requires coordination with federal agencies to mitigate impacts.	If T&E species are identified within the removal areas, activities must be designed to conserve the T&E species and their habitat. To date no T&E species have been identified.
Fish & Wildlife Coordination Act	33 CFR 320-330 40 CFR 6.302(h) 50 CFR 83	A	Requires coordination with federal and state agencies for activities that have a negative impact on wildlife and/or non-game fish.	If the removal action involves activities that affect wildlife and/or non-game fish, conservation of habitats must be undertaken.
Clean Air Act	40 CFR Part 61, Subpart M (delegated to the state and incorporated by reference at ARM 17.8.341)	See below for specific regulations	National Emission Standards for Hazardous Air Pollutants (NESHAPS) for Asbestos	

A: Applicable
R: Relevant & Appropriate
N: Scope of the action does not trigger this requirement
X: Not an ARAR

g. Experienced Workers – Any activity that will disturb the cap must be conducted by workers experienced with outdoor asbestos cleanups, preferably workers experienced in cleaning up amphibole asbestos contamination. Depending on the scope of the proposed project, utilizing inexperienced workers may be a cause for rejecting the workplan.

h. Owner shall pay DEQ for oversight and review in accordance with DEQ's fee schedule.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to Utah Code Ann. § 57-25-105, subject to amendment or termination as set forth herein.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to Utah Code Ann. § 57-25-111. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the DEQ or EPA from exercising any authority under applicable law. This Environmental Covenant may also be enforced by EPA pursuant the Administrative Order on Consent for Removal Action between EPA and Owner dated July, 2004 and pursuant to 42 U.S.C. Section 101 et seq.

8. Rights of Access. Owner hereby grants to the DEQ and EPA, their respective agents, contractors, and employees, a right of access to the Property for implementation or enforcement of this Environmental Covenant. As to the PacifiCorp portion of the property, DEQ and EPA recognize that that property contains very high voltage equipment and other hazards, including an electrical substation or other electrical infrastructure. DEQ and EPA shall coordinate with Owner before entering any buildings or other restricted areas containing such electrical equipment on the Property, unless there is an emergency requiring immediate action by DEQ or EPA. Owner shall provide health and safety assistance to DEQ and EPA without charge.

9. Compliance Reporting. Upon request, Owner shall submit to the DEQ and EPA written verification of compliance with the activity and use limitations contained herein. In addition, Owner shall submit a status report on the condition of the cap to DEQ and EPA annually. If the Owner fails to do so, the DEQ and/or EPA may inspect and prepare a status report and recover its costs from the Owner.

10. Notice upon Conveyance. Each instrument hereafter conveying any

interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED_____, 200_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____COUNTY RECORDER ON _____, 200_, IN [DOCUMENT ____, *or* BOOK___, PAGE ____,]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

Owner shall prevent the release of amphibole asbestos from underneath soil caps and impermeable surfaces at the site. The property is currently covered with a mixture of asphalt paved surface, cement surfaces and soil covers that is preventing emissions of amphibole asbestos from the Site. In areas where cleanup work has already been performed, there are both vertical and horizontal orange plastic barriers below the soil cap indicating potential areas of contamination. In other areas, there are no such warning devices. These covers, surfaces (the "cap") and warning devices must be maintained in good condition. If the cap deteriorates in such a manner that amphibole asbestos might be released, then Owner must repair the warning devices and the cap.

If the cap must be disturbed for any reason, Owner must protect workers, protect nearby receptors, and protect the removal action remedy by not introducing amphibole asbestos contamination into clean areas. The Owner must comply with the following:

a. *Notification and Written Workplan - The Owner must notify DEQ and EPA in advance regarding any project which will disturb the cap. The Owner must submit a written workplan to DEQ and EPA describing the nature of the project and the work practices and engineering controls to be used to prevent emissions of amphibole asbestos. EPA and DEQ will coordinate to determine the appropriate level of government oversight and will notify the Owner which agency will be conducting oversight of the project. The Owner must receive written approval from DEQ and EPA prior to beginning a project that will disturb the cap. In the event of any action or occurrence on or relating to the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment prevents Owner from complying with the requirements of this paragraph, Owner shall notify EPA and DEQ of the situation and any responsive actions simultaneously with the identification of the emergency and*

determination of need for immediate action.

b. *Existing Asbestos Regulations – The federal government and the State of Utah have regulations regarding asbestos worker certification and asbestos work practices. These rules generally apply to "asbestos containing material" (ACM) which means any material containing more than one percent asbestos, according to the definition set forth in the regulations. Owner must address all releases of amphibole asbestos, even those below a 1% concentration. Any activity at the Property which impacts the cap should be conducted, at a minimum, in compliance with the regulations. The Owner shall notify the Utah Division of Air Quality Asbestos Program of any asbestos-related work practices.*

c. *Worker Health and Safety – The U.S. Occupational Safety and Health Administration (OSHA) has regulations for workers exposed to asbestos, including permissible exposure limits (PELs), employee notification, monitoring methods, etc. The OSHA regulations state that the employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.1 fibers per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) as determined by the method prescribed in the regulations. Any activity at the Site which triggers the OSHA regulations should be conducted in compliance with the regulations. Soils at the Site which contain detectable amphibole asbestos at trace levels less than 0.2 percent could generate airborne concentrations of amphibole asbestos that are potentially hazardous when disturbed. Owner is required to keep worker exposures to amphibole asbestos at the Site to an absolute minimum, even if the OSHA regulations are not triggered. This includes requiring respiratory protection, employee training, engineering controls (e.g., wetting or containment), air monitoring, etc., if soils below a cap are to be disturbed, unless Owner can show, using EPA-approved amphibole asbestos analytical methods, that the soils are non-detect for such asbestos.*

d. *Receptors near the Site – Owner must take steps at the Site to prevent human exposure to amphibole asbestos during any activity that disturbs the cap. Any workplan for a proposed project should describe how this will be accomplished with activities including, but not limited to, engineering controls, EPA-approved amphibole asbestos analytical methods, air monitoring, and restricting access to the Site.*

e. *Decontamination – The workplan should describe decontamination procedures and adequately delineate workzones and decontamination zones for any proposed project. Decontamination must be considered for workers, equipment, vehicles, or any other thing that enters into the work zone. The workplan should also address the collection and disposal of decontamination water.*

f. *Handling, Transport, and Disposal – Any activity that may possibly disturb the amphibole asbestos that remains underneath the cap must not re-contaminate the ground surface or nearby buildings. Procedures must be established and described in the workplan for preventing emissions from any amphibole asbestos-contaminated soils as they are excavated and transported for disposal. Contaminated soils, clothing, and other amphibole asbestos-contaminated waste should be containerized and treated as ACM. The materials should be transported to, and disposed of, as ACM at a landfill permitted to receive ACM.*

g. *Experienced Workers – Any activity that will disturb the cap must be conducted by workers experienced with outdoor asbestos cleanups, preferably workers experienced in cleaning up amphibole asbestos contamination. Depending on the scope of the proposed project, utilizing inexperienced workers may be a cause for rejecting the workplan.*

h. *Owner shall pay DEQ for oversight and review in accordance with DEQ's fee schedule.*

Owner shall notify the DEQ and EPA within 20 days after any conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and an un-surveyed plat that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

A. that the Owner is the sole owner of the Property;

B. that the Owner holds title to the Property;

C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided

and to carry out all obligations hereunder;

D. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and

E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected;

12. Amendment or Termination. This Environmental Covenant may be amended or terminated only by a written instrument duly executed by all of the following: the Owner or Transferree, EPA and DEQ, pursuant to Utah Code Ann. § 57-25-110 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner shall file such instrument for recording with the Salt Lake County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to DEQ.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

15. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner[s] shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Salt Lake County Recorder.

17. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to DEQ, EPA and the

Salt Lake City Mayor's Office.

18. Notice. Unless otherwise notified in writing by or on behalf of the current owner, EPA or DEQ, any document or communication required by this Environmental Covenant shall be submitted to:

DEQ

Project Manager, Vermiculite Intermountain Site
Division of Environmental Response and Remediation
DEQ
P.O. Box 144840
Salt Lake City, Utah 84114-4840

EPA

Regional Institutional Control Coordinator, EPR-SR
U.S. EPA
1595 Wynkoop Street
Denver, CO 80202

Owner

With copy to:

The undersigned representative of Owner represents and certifies that s(he) is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

_____
Signature of Owner[*s*]

_____ _____
Printed Name and Title Date

State of _____)
) ss:
County of _____)

Before me, a notary public, in and for said county and state, personally appeared _____, a duly authorized representative of _____, who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of _____.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____day of _____, 20__.

_____
Notary Public

United States Environmental Protection Agency

_____	_____
Matthew Cohn, Acting Deputy Director Legal Enforcement Program	Date
_____	_____
Sharon Kercher, Director Technical Enforcement Program	Date

State of Colorado)
) ss:
County of Denver)

Before me, a notary public, in and for said county and state, personally appeared David Janik and Sharon Kercher, Directors respectively of Legal Enforcement and Technical Enforcement at the United States Environmental Protection Agency, who acknowledged to me that they did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____day of _____, 20__.

_____
Notary Public

Utah Department of Environmental Quality

_____ _____

Utah Department of Environmental Quality Date

_____

By_____

State of Utah)
) ss:
County of Salt Lake)

Before me, a notary public, in and for said county and state, personally appeared _____, an authorized representative of the Department of Environmental Quality, who acknowledged to me that s/he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____day of _____, 20__.

_____

Notary Public

This instrument prepared by: