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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:



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):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$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 [Signature]  
Its: President

It is so ORDERED and Agreed this 14<sup>th</sup> day of November, 2007.

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

MICHAEL T.  
RISATER

BY: [Signature] DATE: 11/13/07  
~~Matthew Cohn, Acting Deputy Director~~  
Legal Enforcement Program  
Region 8  
U.S. Environmental Protection Agency

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

EFFECTIVE DATE: 11/14/07

For Respondent PacificCorp

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