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Defendant Sharon Steel Corporation

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHARON STEEL CORPORATION, UV
INDUSTRIES, INC., UV INDUSTRIES,
LIQUIDATING TRUST, and ATLANTIC
RICHFIELD CO.,

Defendants.

SHARON STEEL CORPORATION, a
Pennsylvania Corporation,

Third-Party Plaintiff

vs.

THE STATE OF UTAH; NEWPARK
RESOURCES, INC., a corporation; PARK
CITY CONSOLIDATED MINING
COMPANY, a corporation, et al.

Third-Party Defendants

**STIPULATION AND JOINT MOTION FOR
MODIFICATION AND TERMINATION
OF PARTIAL CONSENT DECREE**

Civil No. 89-C-136 BSS

69

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHARON STEEL CORPORATION, UV
INDUSTRIES, INC., UV INDUSTRIES
LIQUIDATING TRUST, VALLEY
MATERIALS CORPORATION,
LITTLESON, INC., CENTURY
TERMINALS, INC., BLACKHAWK SLAG
PRODUCTS, INC.

Defendants

Pursuant to the terms of the Partial Consent Decree approved and entered by this Court on November 13, 1990 (the "PCD"), respective and independent legal counsel acting for and on behalf of (i) Jordan Bluffs, Inc. ("**Jordan Bluffs**"), successor in interest to Sharon Steel Corporation ("**SSC**"); (ii) Mining Remedial Recovery Company, successor in interest to SSC ("**MRRC**"); (iii) the State of Utah (the "**State**"), by and through its Department of Environmental Quality ("**UDEQ**"); and (iv) the United States of America, by and through the United States Environmental Protection Agency ("**EPA**") and the United States Department of Justice (collectively the "**United States**"), hereby stipulate and jointly move for an order to be issued by this Court as set forth below. The foregoing parties are sometimes referred to herein collectively as the ("**Parties**").

BACKGROUND

1. In order to resolve the Actions captioned above, SSC, the State, UDEQ, the United States and EPA entered into the Partial Consent Decree ("PCD"), attached as Exhibit A to this Motion, approved and entered by this Court on November 13, 1990. The Court retained jurisdiction pursuant to Section XVIII RETENTION OF JURISDICTION of the PCD.

2. Unless otherwise noted, all capitalized terms in this Motion have the definitions set forth in the PCD.

3. As provided in Section XVI and Section XII.B MODIFICATION of the PCD, the Parties have reached an agreement and hereby request that the Court modify and terminate the PCD as described below, subject to the survival clause set forth in the last sentence of Section XVI (C) ENTRY, EFFECTIVE AND TERMINATION DATES of the PCD (the "Survival Clause").

4. The PCD covered two parcels of property located in Midvale, Utah. One parcel is the Tailings Site comprising roughly 260 acres of land. The other parcel is the Slag Site comprising some 446 acres, including the roughly eleven-acre Silver Refinery Area. The two parcels are separated by 7800 South, with the Tailings Site located to the south and the Slag Site to the north. The Tailings Site and the Slag Site are described more particularly in Exhibit B to the PCD. The Tailings Site and the Slag Site are sometimes referenced below collectively as the "Sites."

5. Cleanup of the Sites has proceeded under very different schedules. EPA certified that Remedial Action at the Tailings Site was satisfactorily completed in 1999. The United States, and the defendants associated with the Slag Site who were not parties to the PCD, recently entered into a consent decree that provides for the remediation of the Slag Site. Final remediation of the Slag Site, however, remains years away.

6. SSC has satisfied all of its obligations under the PCD. Specifically, (a) the Trustee in the Bankruptcy Proceeding confirmed a Plan of Reorganization and allowed the United States' general unsecured claim against SSC, and (b) on or about January 13, 1992, SSC made its required payments to the United States pursuant to Section V PAYMENT TO THE UNITED STATES of the PCD. Accordingly, Sharon (as defined in Section I (Q) DEFINITIONS of the PCD) is entitled to the protections afforded by Section VI THE STATE [RELEASE] and Section VIII COVENANT NOT TO SUE of the PCD.

7. SSC's reorganization plan under Chapter XI of the United States Bankruptcy Code was consummated on December 28, 1990. Pursuant thereto, on that date SSC merged with and into its wholly-owned subsidiary Mueller Industries, Inc. ("**Mueller**") and title to certain SSC assets, including the Tailings Site and the Silver Refinery Area, was transferred to MRRC.

8. In February 2004, MRRC conveyed its interest in the Tailings Site to Jordan Bluffs and later granted Createrra, Inc. and its successors and assigns (collectively "**Createrra**") an option to purchase the Silver Refinery Area.

9. EPA and UDEQ completed an Explanation of Significant Differences ("**ESD**") addressing anticipated changes to the cleanup remedy completed under the ROD and the remedy subsequent to redevelopment of the Tailings Site. *See Exhibit B* to this Motion. EPA completed a 30-day public notice and comment period for the ESD. The ESD concludes that the remedy post-redevelopment will remain protective of human health and the environment.

10. The ESD incorporates (a) the Operation, Maintenance and Monitoring Manual for Sharon Steel Superfund Site, Operable Unit 1 ("**OM&M Manual**") completed for the Tailings Site in 2001; (b) a Site Modification Plan ("**SMP**") completed for the Tailings Site, (c) letters confirming that EPA, UDEQ and Midvale City accepted the SMP, and (d) an Institutional

Control Process Plan for the redevelopment of the Tailings Site prepared and adopted by Midvale City.

11. Redevelopment of the Tailings Site will occur in accordance with the ESD and is expected to provide many community benefits to Midvale City in the form of housing, shopping, services, recreation, open space, wetlands, trails, tax revenue, jobs, among other benefits.

12. Remediation of the Slag Site will occur in accordance with separate records of decision independent of the Tailings Site (collectively "Slag RODs"). Midvale City, Utah, has adopted an institutional control process plan for operable unit 2 of the Slag Site, of which the Silver Refinery Area is a part.

13. During and after redevelopment of both the Tailings Site and the Silver Refinery Area, the United States, State of Utah and Midvale City will require continued rights of access and rights to enforce institutional controls in order to assure ongoing protectiveness of the respective remedies. Further, the State will require continued rights of access for performance of operation, maintenance and monitoring activities as contemplated by the OM&M Manual. The Institutional Control Process Plan adopted for the Tailings Site is attached as **Exhibit C** to this Motion. A copy of the Institutional Control Process Plan for Midvale Slag OU2 that will affect the Silver Refinery Area is attached as **Exhibit D** to this Motion.

**REQUEST FOR MODIFICATION AND SUBSEQUENT
TERMINATION OF THE PCD**

14. Based on the foregoing, the Parties hereby stipulate and jointly move for an order of this Court modifying the PCD as to the Tailings Site and the Silver Refinery Area and terminating the PCD as to the Tailings Site and Slag Site, as set forth below.

15. Upon acceptance of this Stipulation and Joint Motion, the PCD will no longer apply to the Sites, subject to the Survival Clause contained in that last sentence of Section XVI (C) ENTRY EFFECTIVE AND TERMINATION DATES of the PCD providing that Sections I DEFINITIONS, III JURISDICTION, IV PARTIES BOUND, VI THE STATE [RELEASE], VII EFFECT OF SETTLEMENT, VIII COVENANT NOT TO SUE, IX IMPLEMENTATION OF PLAN OF REMEDIATION, X PRESERVATION OF OTHER CLAIMS, XI NOTICES, XIV GRANT OF ACCESS (as modified), XV WITNESSES AND DOCUMENTS, XVII COSTS, and XVIII RETENTION OF JURISDICTION of the PCD survive termination ("Survival Clause"). The Parties stipulate and agree that the Survival Clause will survive termination of the PCD.

16. The United States, EPA, the State, UDEQ, MRRC (and its predecessors in interest SSC and Mueller), and Jordan Bluffs further stipulate and agree that each of them and all future owners, operators, successors and assigns of the Sites should be released from all obligations and covenants under the PCD, except for those obligations and covenants affecting the Sites set forth in the Survival Clause.

17. Without in any way limiting the applicability or effectiveness of Section VI THE STATE [RELEASE] and Section VIII COVENANT NOT TO SUE of the PCD, the United States and the State further covenant not to assert any claims and hereby release and waive all claims or causes of action that they may have for all matters relating to the Sites against any bona fide prospective purchaser ("BFPP"), as set forth in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40) who acquires an ownership or other interest in any real property located within the Sites. Based on the letters set forth at **Exhibit E** to this Motion, the United States and the State further stipulate and agree that Jordan Bluffs qualifies and Createrra will qualify as a BFPP of the Sites under CERCLA § 101(40), 42 U.S.C. § 9601(40); provided, however,

that neither Jordan Bluffs, Createrra, nor any other person or entity will be considered a BFPP, if any of them:

- a. Is responsible for causing the release of any reportable quantity of hazardous substances at the Sites, or
- b. Fails to comply with Section XIV ACCESS AND INSTITUTIONAL CONTROLS (or any covenant or obligation created pursuant thereto) as proposed herein for modification subject to approval and entry of the modified PCD by the Court, or
- c. Fails to comply with any request for information or administrative subpoena relating to the Sites.

18. In response to Jordan Bluffs' request for confirmation that no windfall lien would be perfected against the Tailings Site pursuant to CERCLA § 107(r), EPA confirmed in a letter that EPA will not seek to assert liability against Jordan Bluffs under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607 because EPA and the State in the PCD covenanted not to sue "any person which comes to own or operate any or all of the Tailings Site [or the Silver Refinery Area, excluding the other named defendants in the Actions]" or "as to any matter alleged in either or both of the Actions, including any Future Liability with regard to the Tailings Site [or the Slag Site]." *See Exhibit F* to this Motion. Accordingly, the Parties stipulate and agree that no windfall lien will be asserted against the Sites as to Jordan Bluffs or MRRC or their successors or assigns.

19. Section XVI (C) ENTRY, EFFECTIVE AND TERMINATION DATES of the PCD provides that SSC may seek termination of the PCD only after "all Remedial Actions for the Tailings Site and the Slag Site have been completed...." At the time the parties entered into the PCD, it was generally believed that remediation of the Tailings Site and Slag Site would proceed according to somewhat similar timetables. In fact, as noted in paragraph 5 *supra*, while

remediation of the Tailings Site was completed more than four years ago, the remediation of the Slag Site remains years away but will be handled separately and independent of the PCD and the Tailings Site pursuant to the Slag RODs.

20. The Parties stipulate and agree that Jordan Bluffs as the present owner of the Tailings Site and MRRC as the past owner of the Tailings Site and present owner of the Silver Refinery Area, together with their successors and assigns, are entitled to all of the benefits and protections conferred by Section VI THE STATE [RELEASE] and Section VIII COVENANT NOT TO SUE of the PCD.

21. The Parties agree that the continued operation of the PCD as to the Tailings Site and the Slag Site could unreasonably impede the redevelopment of the Tailings Site and the remediation and redevelopment of the Silver Refinery Area within the Slag Site.

22. The Slag RODs will address the remediation of the Slag Site separate from and independent of the PCD. Accordingly, the Parties further stipulate and agree that Section XVI (C) ENTRY, EFFECTIVE AND TERMINATION DATES should be modified to allow for the immediate termination of the PCD, subject to the Survival Clause.

23. The parties agree that Section XVI (C) ENTRY, EFFECTIVE AND TERMINATION DATES should be modified and restated as follows:

C. After allowance of the United States' general unsecured claim (should the Trustee elect to provide for such a claim), and after Sharon Steel Corporation's payments to the United States have been made pursuant to Section V PAYMENT TO THE UNITED STATES of this Decree, and after the United States has certified that all Remedial Action for the Tailings Site has been completed, Sharon Steel Corporation, or any subsequent owner of the Tailings Site that is the subject of this Decree, shall petition

the United States for agreement to stipulate and jointly move for an order to be entered by the Court terminating this Decree (“**Termination Order**”). Termination shall not affect the provisions of Sections I DEFINITIONS, III JURISDICTION, IV PARTIES BOUND, VI THE STATE [RELEASE], VII EFFECT OF SETTLEMENT, VIII COVENANT NOT TO SUE, IX IMPLEMENTATION OF PLAN OF REMEDIATION, X PRESERVATION OF OTHER CLAIMS, XI NOTICES, XIV ACCESS AND INSTITUTIONAL CONTROLS (as modified), XV WITNESSES AND DOCUMENTS, XVII COSTS, and XVIII RETENTION OF JURISDICTION hereof.

24. The Parties further stipulate and agree that each of them and their successors and assigns as to the Sites should be released from all obligations under the PCD, except for those obligations and covenants set forth in the Survival Clause.

25. The Parties stipulate and agree that continued access to the Tailings Site and the Silver Refinery Area and enforcement of institutional controls by the United States, State of Utah and Midvale City and performance of operation, maintenance and monitoring are necessary to assure long term protectiveness of the remedial actions implemented at the Tailings Site and the Silver Refinery Area.

26. Accordingly, the parties agree that Section XIV GRANT OF ACCESS TO THE SITES of the PCD should be modified and restated as follows:

XIV.

ACCESS AND INSTITUTIONAL CONTROLS

A. The owners of the Tailings Site and Silver Refinery Area shall as of and

commencing on the date of entry of the Termination Order, subject to the requirements and limits of Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), provide the United States, including EPA, the State, Midvale City (collectively "Government") and their representatives and contractors with access at all reasonable times to the real property comprising the Tailings Site and the Silver Refinery Area for the purpose of conducting any activity related to this Decree including, but not limited to, the following activities:

1. Monitoring the Remedial Action selected in the Record of Decision, as amended, pursuant to the OM&M Manual, the Site Modification Plan and Explanation of Significant Differences as to the Tailings Site (collectively "Tailings SMP") and the records of decision, as amended, pertaining to the Silver Refinery Area ("Slag RODs");
2. Verifying any data or information submitted to the Government as required by the Tailings SMP or Slag RODs pertaining to the Silver Refinery Area;
3. Conducting investigations relating to a release of hazardous substances not covered by the Tailings SMP or the Slag RODs pertaining to the Silver Refinery Area;
4. Obtaining samples from the Tailings Site pursuant to the OM&M Manual and Tailings SMP or from the Silver Refinery Area pursuant to the Slag RODs;
5. Conducting operation and maintenance activities on the Tailings Site as provided in the OM&M Manual and Silver Refinery Area;
6. Assessing the need for, planning, or implementing additional

response actions at or near the Tailings Site or Silver Refinery Area;

7. Assessing compliance with the Institutional Control Process Plans for Sharon Steel, Operable Unit #1, pertaining to the Tailings Site and Midvale Slag Operable Unit #2 pertaining to the Silver Refinery Area (collectively "ICPPs").

B. The institutional controls applicable to the Tailings Site and Silver Refinery Area shall be developed as set forth in the respective ICPPs. The owners of the Tailings Site and the Silver Refinery Area shall comply with and follow the ICPPs and the institutional controls promulgated thereunder, as well as all requirements of the Midvale City Municipal Code that would otherwise be applicable to each of the respective Tailings Site or Silver Refinery Area.

C. The ICPPs, any institutional control promulgated under the ICPPs, the Tailings SMP or OM&M Manual may be amended, modified or terminated from time to time, as circumstances require, without amending this Decree, after the mutual written agreement of the Government and any owner of any portion of the Tailings Site or Silver Refinery Area directly affected by the ICPPs, institutional control, Tailings SMP or OM&M Manual at that time.

D. At the time of Subdivision, as defined by Midvale City Municipal Code, the owners of any portion of the Tailings Site or Silver Refinery Area shall execute and record in the Recorder's Office of Salt Lake County, Utah, restrictive covenants, running with the land, that:

1. require future owners of any portion of the Tailings Site or Silver

Refinery Area to comply with the applicable ICPPs and the Institutional Controls developed under the ICPPs, including, without limitation, maintenance and repair of covers and barriers; compliance with landscaping, excavation, irrigation, stormwater management and erosion controls; compliance with imported fill requirements; prohibitions against disturbance of existing groundwater wells or drilling new groundwater wells; and allowing replacement of lost or damaged monitoring wells;

2. grant to the United States a right to enforce applicable Institutional Controls promulgated under the ICPPs, should the United States determine that Midvale City has failed to do so effectively;

3. grant to the State a right to enforce Institutional Controls in the form of restrictive covenants under the Utah Environmental Institutional Control Act, Utah Code Ann. § 19-10-101 *et seq.*, only if Midvale City fails to enforce applicable Institutional Controls promulgated under the ICPPs. Nothing in this Consent Decree is intended or shall be construed to alter or expand the role of the State with respect to matters of municipal governance, zoning and land use.

E. Notwithstanding any provision of this Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under applicable provisions of CERCLA, 42 U.S.C. § 9601 *et seq.*; RCRA, 42 U.S.C. 6901 *et seq.* and regulations promulgated thereunder, and as to the State only, the Utah Environmental Institutional Control Act, Utah Code Ann. § 19-10-101 *et seq.*

(collectively "Environmental Laws").

F. To the extent a conflict arises over the application of this Section XIV ACCESS AND INSTITUTIONAL CONTROLS and Environmental Laws, the provisions of Environmental Laws will govern. The rights granted to the Government hereunder are not to be construed or considered broader than the authority granted to the Government by the Environmental Laws.

27. Each of the Parties agrees to bear its own costs and attorney fees incurred in connection with this Stipulation and Joint Motion.

28. This Court should retain jurisdiction over those portions of the PCD that survive termination of the PCD pursuant to the Survival Clause.

DATED this 30th day of August, 2004

Snell & Wilmer L.L.P.



Bradley R. Cahoon
Attorneys for Jordan Bluffs, Inc.

DATED this 30th day of August, 2004

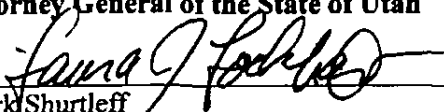
Pruitt Gushee



A. John Davis
Attorneys for Mining Remedial Recovery Company

DATED this 28th day of August, 2004

Attorney General of the State of Utah




Mark Shurtleff

Laura J. Lockhart

Attorneys for State of Utah and Utah Department of
Environmental Quality

DATED this 13th day of September, 2004.

United States Department of Justice



Robert R. Homiak

Senior Attorney

Environment and Natural Resources Division

Attorneys for the United States and United States

Environmental Protection Agency

I hereby certify that the annexed document is a true
and correct copy of the original on file in this office.

ATTEST: MARIUS B. ZIMMER

Clerk, U.S. District Court

District of Utah

By: 

Date: 11-22-04

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed a true and accurate copy of the foregoing **STIPULATION AND JOINT MOTION FOR MODIFICATION AND TERMINATION OF PARTIAL CONSENT DECREE**, postage prepaid, on the 15th day of September, 2004:

A. John Davis III, Esq.
PRUITT GUSHEE
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Salt Lake City, UT 84111

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Salt Lake City, UT 84114

Robert R. Homiak, Esq.
U.S. Department of Justice
999 18th Street
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Denver, CO 80202

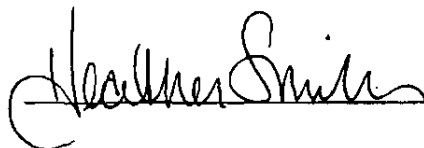
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EXHIBIT A

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHARON STEEL CORPORATION,
UV INDUSTRIES, INC.,
UV INDUSTRIES, INC. LIQUIDATING
TRUST, and ATLANTIC RICHFIELD
CO.,

Defendants.

SHARON STEEL CORPORATION,
a Pennsylvania corporation,

Third-Party
Plaintiff,

v.

THE STATE OF UTAH; NEWPARK
RESOURCES, INC., a corporation;
PARK CITY CONSOLIDATED MINES,
a corporation; CHIEF CONSOLIDATED
MINING COMPANY, a corporation,
et al.

Third-Party
Defendants.

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHARON STEEL CORPORATION,
UV INDUSTRIES, INC.,
UV INDUSTRIES, INC. LIQUIDATING
TRUST, VALLEY MATERIALS
CORPORATION, LITTLESON, INC.,
CENTURY TERMINALS, INC.,
BLACKHAWK SLAG PRODUCTS, INC.,

Defendants.

FILED
UNITED STATES
DISTRICT COURT
RECEIVED

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BARBARA E. PRUITT, GUSNEE & BACHTTELL
BY mw
DEPUTY CLERK

Civil Action No. 86-C-924J

RECEIVED CLERK
AUG 20 1990
U.S. DISTRICT COURT

Civil Action No. 89-C-136

BK 6369762546

PARTIAL CONSENT DECREE

This Partial Consent Decree ("Decree") is made and entered into by and among the Plaintiff, United States of America (hereinafter "United States" or "Plaintiff"), on behalf of the United States Environmental Protection Agency ("EPA"), the Defendant Sharon Steel Corporation, by and through its Trustee (as hereinafter defined) and the State of Utah (as hereinafter defined), pursuant to the applicable provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9101 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA").

WHEREAS, the United States, on behalf of the Administrator of EPA, filed complaints in the above captioned actions pursuant to Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607, for injunctive relief to address imminent and substantial endangerments to public health, public welfare and the environment at two facilities located in Midvale, Utah, and for reimbursement of costs incurred by the United States in response to the release or threatened release of hazardous substances from these facilities, which have been named by EPA as the "Sharon Steel/Midvale Tailings Site" ("Tailings Site") and the Midvale Slag Site ("Slag Site") (collectively, the "Sites");

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WHEREAS, Sharon Steel Corporation filed a counterclaim against the United States and a third party complaint against the State of Utah in Civil Action No. 86-C-924J;

WHEREAS, the Tailings Site and the Slag Site both have been nominated for inclusion, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on the National Priorities List ("NPL");

WHEREAS, Sharon Steel Corporation has been since November 5, 1981 the owner of the Tailings Site and a portion of the Slag Site of approximately eleven acres, each of which is a "facility," as defined in Sections 101(9) and 101(20) of CERCLA, 42 U.S.C. §§ 9601(9) and 9601(20), at or from which hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), allegedly have been released;

WHEREAS, Sharon Steel Corporation is a person, as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and is subject to liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a);

WHEREAS, the United States alleges that hazardous substances from the Sites have been, are currently being and have the continued potential to be released, as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), into the environment through, inter alia, ground water flow, surface water flow, direct deposition into soils and wind dispersion into the air;

WHEREAS, EPA has responded and will continue to respond to the release and threatened releases of hazardous substances

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at the Sites and thereby has incurred and will continue to incur response costs within the meaning of Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a);

WHEREAS, the United States alleges that Sharon Steel Corporation is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and thereby liable under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for releases of hazardous substances at or from the Sites into the surface water, ground water, land surface, subsurface strata and the ambient air in the vicinity of the Sites;

WHEREAS, Sharon Steel Corporation agrees to undertake all activities and complete all actions required by this Decree;

WHEREAS, Sharon Steel Corporation filed, on April 17, 1987, a voluntary petition for relief under Chapter 11 of the Federal Bankruptcy Code in the United States Bankruptcy Court for the Western District of Pennsylvania, Erie Division, which has been assigned Case No. 87-00207E ("Bankruptcy Proceeding");

WHEREAS, Sharon Steel Corporation desires to settle the claims made against it by the United States;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, and intending to be legally bound hereby, Sharon Steel Corporation, the United States and the State, by their authorized representatives, have agreed to entry of this Decree;

WHEREAS, settlement of these matters governed by this Decree is in the public interest and an appropriate means of resolving these matters;

THEREFORE, without adjudication of any issue of law or fact and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED, as follows:

I.

DEFINITIONS

In this Decree, the following terms shall have the following meanings:

A. "Actions" means Civil Action Nos. 86-C-924J and 89-C-136, presently pending in this Court.

B. "Bankruptcy Code" means Title 11 of the United States Code as now in effect or hereafter amended.

C. "Bankruptcy Court" means the United States Bankruptcy Court for the Western District of Pennsylvania, Erie Division, or any other court having jurisdiction over the Bankruptcy Proceeding.

D. "Cash" means United States dollars in immediately available funds.

E. "Court" means the United States District Court for the District of Utah, Central Division.

F. "Future Liability" means liability arising from the Tailings Site or the Slag Site after the United States has certified that all Remedial Action(s) have been completed at that Site.

G. "Tailings Site" means the former mill site (including tailings and mill buildings), and soils and ground

water beneath and down gradient of the mill site as well as the impacted area adjacent to and in the vicinity of the mill site.¹

H. "Slag Site" means the former smelting and refinery site (including smelting and refining waste piles, buildings and other structures) including the Silver Refinery Area, and soils and ground water beneath and down gradient of the smelting and refinery site as well as the impacted areas adjacent to and in the vicinity of the smelting and refinery site.²

I. "Non-Settling Defendants" means UV Industries, Inc. ("UV"), UV Industries, Inc. Liquidating Trust ("UV Trust"), Atlantic Richfield Co., Valley Materials Corporation, Littleton, Inc., Century Terminals, Inc. and Blackhawk Slag Products, Inc.

J. "Non-Settling Third Party Defendants" means Newpark Resources, Inc., Park City Consolidated Mines and Chief Consolidated Mining Company.

K. "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States, the State, municipality, commission, political subdivision of a state or any interstate body.

¹The vertical and lateral extent of the Tailings Site and the impacted area of the Tailings Site will be determined in one or more Records of Decision for the Tailings Site, to be issued in the future.

²The vertical and lateral extent of the Slag Site and the impacted area of the Slag Site will be determined in one or more Records of Decision or Action Memoranda for the Slag Site, to be issued in the future.

L. "Proof of Claim", depending on the context, means either the proof of claim (Claim No. 1197) filed by the United States on behalf of EPA in the Bankruptcy Proceeding covering, inter alia, alleged pre-petition and post-petition Response Costs at the Tailings Site and the Slag Site, or the proof of claim (Claim No. 1306), as amended, filed by the State.

M. "Quantum Fund Plan of Reorganization" means the Plan of Reorganization filed by Quantum Fund, N.V. and the Castle Harlan Group on or about March 16, 1990, or as thereafter amended.

N. "Remedial Action" shall have the meaning set forth in Section 101(24) of CERCLA, 42 U.S.C. § 9601(24) on October 17, 1986.

O. "Response" shall have the meaning set forth in Sections 101(23) and (25) of CERCLA, 42 U.S.C. §§ 9601(23) and (25) on October 17, 1986.

P. "Response Costs" means any costs which the United States has sought or could seek in the Actions.

Q. "Sharon" means:

1. Sharon Steel Corporation, a Pennsylvania corporation, as debtor and as debtor in possession, and its present and former Trustees, officers, directors, employees, agents and any trustee appointed or elected under any Chapter 7 proceeding;

2. Any Person succeeding, pursuant to a confirmed plan of reorganization, to any or all of

Sharon Steel Corporation's obligations under this Decree relating to the Sites, excluding the other named defendants in the Actions;

3. Any Person which comes to own or operate any or all of the Tailings Site or the Silver Refinery Area, excluding the other named defendants in the Actions; and

4. Any affiliate of Sharon Steel Corporation, as such term is defined in the Bankruptcy Code.

R. "Sharon Steel Corporation" means Sharon Steel Corporation as debtor, debtor-in-possession or in a reorganized form as a result of the Bankruptcy Proceeding.

S. "State" means the State of Utah and its agencies.

II.

HISTORY OF THE SITES AND THE BANKRUPTCY PROCEEDING

A. The Tailings Site

The Tailings Site is located approximately twelve miles southwest of Salt Lake City, Utah. It covers approximately 260 acres and contains an estimated fourteen million tons of tailings generated from milling operations and processing conducted on the Tailings Site between 1900 and 1971. The tailings from the operations remain in the form of piles, ponds and impoundments, which measure up to forty or fifty feet in height and allegedly contain elevated levels of such hazardous substances as arsenic, cadmium, chromium, lead and zinc.

Pursuant to an agreement dated November 26, 1979, Sharon Steel Corporation agreed to purchase from UV all of its assets, including the approximately 260 acres of property which are part of the Tailings Site. A metes and bounds description of this property is attached hereto as Exhibit "A." Sharon Steel Corporation obtained title to the Tailings Site pursuant to a deed dated November 5, 1981. Although Sharon Steel Corporation continues to own the Tailings Site, it contends that it has never conducted any milling operations thereon.

On October 10, 1984, EPA proposed that the Tailings Site be placed on the NPL as a result of EPA's finding that hazardous substances were being released and that there was a threat of a release of hazardous substances into the environment from the Tailings Site.

On August 25, 1985, EPA, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, notified Sharon Steel Corporation that it had determined that Sharon Steel Corporation was potentially responsible for cleaning up the Tailings Site.

On October 10, 1985, the United States filed a complaint with respect to the Tailings Site with the Court against Sharon Steel Corporation and other potentially responsible parties,³ in which the United States has contended

³United States v. Sharon Steel Corporation, et al., C.A. No. 86-C-924J (D. Utah).

that Sharon Steel Corporation is an owner and operator of the Tailings Site, as those terms are defined in CERCLA. Amended complaints subsequently have been filed.

Answers to the United States' complaint and amended complaints, as well as counterclaims and cross claims, have been filed by certain defendants, including Sharon Steel Corporation. A Third Party Complaint has been filed by Sharon Steel Corporation in which the State has been named as one of the Third Party Defendants. The initial phases of the trial of this matter are now scheduled to begin on October 8, 1990.

B. The Slag Site

The Slag Site is located to the north of the Tailings Site and is comprised of approximately 319 acres formerly owned by UV. The area was used for smelting operations and for the disposal of slag and other waste products of ore smelting operations. The United States Smelting, Refining, and Mining Company ("USSRM") originally purchased the Slag Site in 1905. USSRM and its successor, UV, operated a metal smelter which, until 1958, refined tons of copper, gold, lead and silver. Wastes from this smelter were disposed of on the Slag Site.

Pursuant to an agreement dated November 26, 1979, Sharon Steel Corporation agreed to purchase from UV all of its assets, including approximately eleven acres of property within the southeast corner of the Slag Site, on which were located various structures ("Silver Refinery Area"). Sharon Steel

Corporation obtained title to the Silver Refinery Area pursuant to a deed dated November 5, 1981. A metes and bounds description of the Silver Refinery Area is attached as Exhibit "B." Sharon Steel Corporation contends that it has never operated the silver refinery or conducted any other operations on the Silver Refinery Area and that it was not responsible for depositing the smelting and refining wastes anywhere on the Sites.

On February 10, 1989, the United States filed a complaint with respect to the Slag Site with the Court against Sharon Steel Corporation and other potentially responsible parties,⁴ in which the United States contended that Sharon Steel Corporation was and is presently an owner and operator, as those terms are defined in CERCLA, of the Silver Refinery Area.

By agreement with the United States, no response to the United States' complaint has been filed by Sharon Steel Corporation.

C. The Bankruptcy Proceeding

As stated above, Sharon Steel Corporation has sought protection from its creditors under Chapter 11 of the Bankruptcy Code. On January 11, 1988, the Bankruptcy Court entered an order directing the appointment of a trustee for Sharon Steel Corporation ("Trustee"). On January 15, 1988, the Bankruptcy

⁴United States v. Sharon Steel Corporation, et al.,
C.A. No. 89-C-136 (D. Utah).

Court approved the selection by the United States Trustee's Office of James W. Toren as the Trustee. On November 7, 1988, Mr. Toren announced his intention to resign as Trustee. On January 26, 1989, Franklin E. Agnew III was appointed Trustee, replacing Mr. Toren.

On or about September 30, 1988, the United States filed, on behalf of EPA, a Proof of Claim in the Bankruptcy Proceeding. The Proof of Claim covers, inter alia, alleged pre-petition and post-petition Response Costs at the Tailings Site and the Slag Site (Creditor No. 23538, Claim No. 1197). The United States asserts in the Proof of Claim that the pre-petition Response Costs are general unsecured claims and that the post-petition Response Costs are administrative priority claims.

Sharon Steel Corporation disputes the United States' contention that any of the Response Costs are post-petition claims or, if they are, that they constitute administrative priority claims. Sharon Steel Corporation contends that the United States has unliquidated, contingent claims with respect to both the Tailings Site and the Slag Site, and that such claims are dischargeable through its Bankruptcy Proceeding.

Prior to April 17, 1987, EPA had incurred Response Costs at both the Tailings Site and the Slag Site. Sharon Steel Corporation and the United States recognize that substantial Response Costs will or may be incurred in the future in connection with each of the Sites, but the ultimate nature,

scope and cost thereof at each of the Sites is presently unliquidated, unknown and noncalculable.

On or about September 30, 1988, the State filed a Proof of Claim (Creditor No. 15991, Claim No. 1306) in the Bankruptcy Proceeding asserting that it was entitled to an unliquidated amount for contribution and indemnity at the "Midvale Site" in Midvale, Utah. The State characterized its claim as being a general unsecured claim. Sharon Steel Corporation disputes the State's claim and contends that the State's claim is dischargeable through the Bankruptcy Proceeding.

Sharon Steel Corporation, by and through its Trustee, is in the process of developing a Plan of Reorganization, but has asserted that in order to confirm such a plan and demonstrate its feasibility, Sharon Steel Corporation must resolve the disputes with the United States and the State respecting the Tailings Site and the Slag Site.

Notwithstanding the uncertainties and unknowns briefly described in the preceding paragraphs, the United States, the State and Sharon Steel Corporation (including its Trustee) desire to compromise and settle their disputes over Sharon Steel Corporation's potential liability for any and all costs, liabilities and damages arising out of or relating to the Sites and thereby avoid the risks, delays, costs and expenses inherent in litigation with respect to determining the extent, validity and enforceability of the United States' and the States' claims as to each of the Sites.

III.

JURISDICTION

This Court has jurisdiction over the subject matter herein, and over the parties consenting hereto, pursuant to Sections 104, 106, 107 and 113 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607 and 9613, and 28 U.S.C. §§ 1331 and 1345, and the Stipulation and Order of the Bankruptcy Court dated August 19, 1987, a copy of which is annexed hereto as Exhibit "C."

IV.

PARTIES BOUND

This Decree applies to and is binding upon Sharon, the State and the United States on behalf of EPA. Sharon Steel Corporation, by its Trustee, and the State do not contest and agree not to contest the jurisdiction of the United States to maintain the Actions.

V.

PAYMENT TO THE UNITED STATES

In full and complete satisfaction of all of Sharon's liabilities, duties and responsibilities arising out of or relating to the Actions and the Sites (except as limited by Paragraphs VIII.B. and C. hereof), and in consideration of the Covenant not to Sue set forth in Section VIII. hereof, the United States shall receive the following consideration:

A. In the event that an Order is entered and becomes final (unless finality as a condition is waived by the Castle Harlan Group and Quantum Fund N.V.) confirming the Quantum Fund Plan of Reorganization in the Bankruptcy Proceeding on or before November 29, 1990, Sharon Steel Corporation shall pay to the United States, on the first date distributions are authorized to be made by the Bankruptcy Court pursuant to this Decree and such Plan, the sum of \$22 million in Cash.

B. In the event that an Order is not entered or does not become final confirming the Quantum Fund Plan of Reorganization on or before November 29, 1990, the Trustee shall give notice to the United States on or before November 30, 1990 as to whether Sharon Steel Corporation will provide to the United States the consideration specified in Paragraph V.B.1. or Paragraph V.8.2. hereof as follows:

1. (a) Sharon Steel Corporation shall pay to the United States, as an allowed administrative priority claim pursuant to Sections 503(b) and 507(a)(1) of the Bankruptcy Code, the sum of \$3 million in Cash on November 30, 1990,

(b) Sharon Steel Corporation shall pay to the United States, as an allowed administrative priority claim pursuant to Sections 503(b) and 507(a)(1) of the Bankruptcy Code, the sum of \$9 million as follows:

³The payments specified in Paragraph V.B.1.(b) hereof shall be evidenced by a series of notes, substantially in the form annexed hereto as Exhibit "D" ("Notes").

- (i) \$1 million on December 1, 1991;
- (ii) \$2 million on December 1, 1992;
- (iii) \$2 million on December 1, 1993;
- (iv) \$2 million on December 1, 1994; and
- (v) \$2 million on December 1, 1995; and

(c) the United States shall be allowed a general unsecured claim in the Bankruptcy Proceeding in the aggregate amount of \$70 million. At any time, the United States reserves the right to the extent permitted by law to transfer any or all of the Notes and to transfer all or a portion of the \$70 million general unsecured claim referred to herein. The allowed claim of the United States, regardless of the holder, shall be treated as a general unsecured claim in the Bankruptcy Proceeding with all attendant rights provided by the Bankruptcy Code and other applicable law and shall not be subordinated pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for equitable subordination of allowed claims, including, without limitation, Bankruptcy Code §§ 105, 510 and 726(a)(4); or

2. (a) Sharon Steel Corporation shall pay to the United States, as an allowed administrative priority claim pursuant to Sections 503(b) and 507(a)(1) of the Bankruptcy Code, the sum of \$22 million in Cash on or before February 28, 1991

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(plus interest thereon as calculated pursuant to Paragraph V.F. hereof from November 30, 1990) if an Order is entered and becomes final (unless finality as a condition is waived by Sharon Steel Corporation) confirming a Plan of Reorganization on or before February 28, 1991;

(b) If the Trustee gives notice to provide the consideration specified in Paragraph V.B.2. hereof and the \$22 million payment specified in Paragraph V.B.2.(a) hereof is not made to the United States on or before February 28, 1991, then

(i) Sharon Steel Corporation shall pay to the United States, as an allowed administrative priority claim pursuant to Sections 503(b) and 507(a)(1) of the Bankruptcy Code, the sum of \$3 million (plus interest thereon as calculated pursuant to Paragraph V.F. hereof from December 1, 1990) in Cash on or before March 10, 1991;

(ii) Sharon Steel Corporation shall pay to the United States, as an allowed administrative priority claim pursuant to Sections 503(b) and

507(a)(1) of the Bankruptcy Code,
the sum of \$9 million as follows:⁴

- (v) \$1 million on December 1, 1991;
- (w) \$2 million on December 1, 1992;
- (x) \$2 million on December 1, 1993;
- (y) \$2 million on December 1, 1994;
- (z) \$2 million on December 1, 1995;

and

- (iii) the United States shall be allowed
the general unsecured claim
specified in Paragraph V.B.1.(c)
hereof pursuant to the terms and
conditions set forth therein.

(c) If the Trustee gives notice that he will
provide the consideration specified in Paragraph V.B.2.
hereof, he simultaneously shall deliver to the Clerk of
Bankruptcy Court the Notes, Mortgage (as hereinafter
defined) and the title insurance policy specified in
Paragraph V.I.1. hereof in fully executed form. If the
\$22 million specified in Paragraph V.B.2.(a) hereof has
not been paid, the Notes, Mortgage and the title
insurance policy specified in Paragraph V.I.1. hereof
shall be delivered to the United States on or after

⁴The payments specified in Paragraph V.B.2.(b)(ii)
hereof shall be evidenced by the Notes.

March 1, 1991 upon demand therefor by the United States with notice to Sharon Steel Corporation.

C. In the event the Trustee fails to give the notice to the United States specified in Paragraph V.B. above, on or before December 10, 1990, the United States may give notice to the Trustee on or before December 20, 1990, which notice shall require Sharon Steel Corporation to provide the consideration specified in Paragraph V.B.1. hereof.

D. In the event that Sharon Steel Corporation fails to timely make any payment required to be made pursuant to Paragraph V.A. or V.B. hereof, then the United States may give notice of such failure to Sharon Steel Corporation, and Sharon Steel Corporation shall have sixty (60) days from receipt of such notice to make the payment. In the event that Sharon Steel Corporation fails to make the payment plus interest thereon as calculated pursuant to Paragraph V.F. hereof from the due date to the payment date within such sixty (60) day period, then all amounts due or to become due pursuant to Paragraph V.A. or V.B. hereof, as the case may be, shall become due and payable immediately, without necessity of any further act by the United States (hereinafter referred to as the "Acceleration Date").

E. From and after the Acceleration Date, Sharon Steel Corporation shall pay interest on the entire unpaid amount specified in Paragraph V.A. or V.B. hereof, as the case may be, at a rate equal to the Prime Rate of United States money center commercial banks as reported in The Wall Street Journal plus

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3 1/2% per annum, commencing on the Acceleration Date and continuing until the amounts due pursuant to Paragraph V.E. hereof are paid in full, and additionally shall pay to the United States its reasonable costs (including attorneys' fees) incurred in collection thereof.

F. In the event that Sharon Steel Corporation fails to timely pay to the United States any sum required to be paid pursuant to Paragraph V.A. or V.B. hereof and has received notice from the United States instructing it to make such payment within sixty (60) days, then during such sixty (60) day period interest shall accrue on the outstanding principal balance, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the accepted auction price for the last auction of 52 week United States Treasury Bills settled immediately prior to the date when interest begins to accrue. Interest shall be computed daily to the date of payment and shall be compounded annually.

1. If the \$22 million payment set forth in Paragraph V.A. hereof is required to be made and is not made on or before November 29, 1990, interest shall accrue daily, beginning November 29, 1990;

2. If the \$3 million payment set forth in Paragraph V.B.1.(a) hereof is required to be made and is not made on or before November 30, 1990, interest shall accrue daily, beginning November 30, 1990;

3. If the \$1 million payment set forth in Paragraph V.B.1.(b)(i) or Paragraph V.B.2.(b)(ii)(v) hereof is required to be made and is not made on or before December 1, 1991, interest shall accrue daily, beginning December 1, 1991;

4. If the \$2 million payment set forth in Paragraph V.B.1.(b)(ii) or Paragraph V.B.2.(b)(ii)(w) hereof is required to be made and is not made on or before December 1, 1992, interest shall accrue daily, beginning December 1, 1992;

5. If the \$2 million payment set forth in Paragraph V.B.1.(b)(iii) or Paragraph V.B.2.(b)(ii)(x) hereof is required to be made and is not made on or before December 1, 1993, interest shall accrue daily, beginning December 1, 1993;

6. If the \$2 million payment set forth in Paragraph V.B.1.(b)(iv) or Paragraph V.B.2.(b)(ii)(y) hereof is required to be made and is not made on or before December 1, 1994, interest shall accrue daily, beginning December 1, 1994;

7. If the \$2 million payment set forth in Paragraph V.B.1.(b)(v) or Paragraph V.B.2.(b)(ii)(z) hereof is required to be made and is not made on or before December 1, 1995, interest shall accrue daily, beginning December 1, 1995; and

8. If the \$22 million payment plus interest set forth in Paragraph V.B.2.(a) hereof is required to be

made and is not made on or before February 28, 1991, interest shall accrue daily, beginning February 28, 1991.

G. In the event that the Bankruptcy Proceeding is converted into a case under Chapter 7 of the Bankruptcy Code at a time when the United States is owed any money (except pursuant to a general unsecured claim) pursuant to Section V. hereof:

1. The full unpaid amounts specified in Paragraph V.B.1. hereof shall be deemed to be an allowed administrative priority claim pursuant to Sections 503(b) and 507(a)(1) of the Bankruptcy Code;

2. The United States shall have the right to:
(a) retain its \$70 million general unsecured claim, as specified in Paragraph V.B.1.(c). hereof; or (b) give notice to the Chapter 7 trustee within ninety (90) days of the conversion:

(i) that it does not agree to have its general unsecured claims fixed at \$70 million as specified in Paragraph V.B.1.(c) hereof; and

(ii) of the amount of its general unsecured claim then claimed.

3. In the event that the United States exercises its right pursuant to Paragraph V.G.2.(b) hereof, any party in interest may object to the amount of the United States' general unsecured claim on any basis other than the timeliness of the filing thereof. In determining the amount of any general unsecured claim

to which the United States may be entitled, the Bankruptcy Court shall consider any amounts paid pursuant to this Decree.

H. All payments made pursuant to this Decree shall be delivered by certified check(s) to "Hazardous Substance Superfund." The checks shall reference the name Sharon Steel Corporation and the Sites, and shall be sent by certified mail, return receipt requested, to the following address:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
P.O. Box 360859M
Pittsburgh, Pennsylvania 15251

Sharon Steel Corporation shall simultaneously send or deliver a copy of the check(s) to the Assistant Regional Counsel for the Sharon Steel/Midvale Tailings Site, at:

USEPA Region VIII (8RC)
999 18th Street, Suite 500
Denver, CO 80202-2405

and

Remedial Cost Recovery Coordinator (8HWM-SR)
999 18th Street, Suite 500
Denver, CO 80202-2405

I. In the event the Trustee elects to provide or is required to provide compensation pursuant to Paragraph V.B.1. or Paragraph V.B.2.(b) hereof, then the following shall apply:

1. In order to secure, at least in part, the \$9 million in aggregate payments provided for in Paragraph V.B.1(b) and the Notes specified therein, Sharon Steel Corporation shall cause its wholly owned

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subsidiary, Sharon Building and Land Corporation, to grant a mortgage to the United States, substantially in the form annexed hereto as Exhibit "E" ("Mortgage"), and to furnish the United States with a title insurance policy on the premises covered by the Mortgage (the cost of which is to be borne by the United States), insuring the Mortgage to be a first lien upon said premises in the amount of \$4.5 million and subject only to such exceptions as are reasonably acceptable to the United States.

2. To the extent that Sharon Steel Corporation recovers funds in excess of its costs of defense relating to the Actions from any insurance policy which is the subject matter of (a) Sharon Steel Corporation v. Aetna Casualty and Surety Company, et al., Civil Action No. C87-2306, presently pending in the Third Judicial District Court in and for Salt Lake County, State of Utah ("Sharon I"); (b) Sharon Steel Corporation v. Aetna Casualty and Surety Company, et al., Civil Action No. C88-4792, presently pending in the Third Judicial District Court in and for Salt Lake County, State of Utah ("Sharon II"); or (c) Sharon Steel Corporation v. National Union Fire Insurance Company of Pittsburgh, PA, et al., Civil Action No. 89-0901666-CN, presently pending in the Third Judicial District Court in and for Salt Lake County, State of Utah ("Sharon III"), such funds shall be paid over by

Sharon Steel Corporation to the United States to pre-pay the Notes in the order that they become due and payable; provided, however, that nothing contained herein shall prevent Sharon Steel Corporation from assigning, releasing or relinquishing any or all of its right in, to or arising out of any or all of the policies or proceeds from such policies as they relate to the Actions in consideration for, inter alia, a resolution in whole or in part of any dispute with any of its insurers, UV, UV Trust, the Non-Settling Defendants or the Non-Settling Third Party Defendants.

VI.

THE STATE

In full and complete satisfaction of all of Sharon's liabilities, duties and responsibilities arising out of or relating to the Actions and the Sites, the State hereby releases and agrees to hold Sharon harmless for any claim relating to the Tailings Site or the Slag Site, including, but not limited to, any claim for Response Costs incurred by the State, any claim or costs incurred by the State pursuant to any contract or cooperative agreement with the United States pursuant to Section 104(e)(3) of CERCLA, any claim for damage to natural resources belonging to, managed by, appertaining to, or otherwise controlled by the State or under its trusteeship pursuant to Section 107(f)(2) of CERCLA, any claim for contribution or

indemnity contained in the State's Proof of Claim, which shall be withdrawn in the Bankruptcy Proceeding upon this Decree becoming effective, and any other claim existing at the effective date of this Decree or which thereafter comes into existence.

VII.

EFFECT OF SETTLEMENT

A. The compromise and settlement contained in this Decree was reached after extensive negotiations among the parties. This Decree represents a compromise between the parties with respect to Sharon Steel Corporation's liability arising out of or relating to the Actions, in light of the exigencies of the Bankruptcy Proceeding, in which some or all of Sharon Steel Corporation's existing assets and businesses may be sold and some or all of the net proceeds derived from sales may be distributed through the Plan of Reorganization to Sharon Steel Corporation's creditors, thereby substantially reducing the amount of funds that might otherwise be available in the future to pay for Response Costs. Subject to the terms and conditions of this Decree, and upon this Decree becoming final and effective: (i) the complaint against Sharon Steel Corporation, the counterclaim asserted by Sharon Steel Corporation against the United States and the third party claim asserted by Sharon Steel Corporation against the State in Civil Action No. 86-C-924J shall be dismissed and (ii) the complaint of the United States against Sharon Steel Corporation in Civil Action No. 89-C-136 shall be dismissed.

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B. By virtue of its payment of the settlement amount identified in Section V. of this Decree, Sharon Steel Corporation shall have resolved Sharon's liability to the United States for the matters covered by the Covenant Not to Sue in Paragraph VIII.A. hereof. With regard to claims for contribution against Sharon Steel Corporation by the Non-Settling Defendants and Non-Settling Third Party Defendants in the Actions, and any other Person entitled to bring a claim against Sharon under Section 107(a) of CERCLA relating to either or both of the Sites, the parties hereto agree, and this Court hereby finds and concludes, that the statutory provisions of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), shall govern. If Sharon Steel Corporation fails to make any payment required by this Decree pursuant to (i) Paragraph V.A. hereof, (ii) Paragraph V.B.1.(a), V.B.2.(a) or V.B.2.(b)(i) hereof, (iii) Paragraph V.E. hereof or (iv) Paragraph V.F. hereof, as the case may be, it shall lose the benefit of this Paragraph VII.B.

C. Nothing herein shall be deemed to affect Sharon's rights against any Non-Settling Defendants or any other Person other than the United States or the State.

D. The United States and the State expressly reserve the right to bring actions, or continue to proceed with the present actions, against any Person other than Sharon who has not resolved its liability to the United States or the State respecting the Tailings Site or the Slag Site.

E. Sharon Steel Corporation agrees that with respect to any suit or claim for contribution brought against it for

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matters covered by this Decree, it will timely notify the United States, in conformance with Section VIII. hereof of the institution of such suit or claim. It is also agreed that the United States shall be under no obligation to assist Sharon Steel Corporation in responding to such suit or claim for contribution.

F. This Decree shall have no effect on any claims of the United States except those brought by the United States on behalf of EPA as they relate to the Sites.

VIII.

COVENANT NOT TO SUE

A. Except as specifically provided hereafter in Paragraph VIII.B. and VIII.C. hereof, the United States and the State hereby covenant not to sue Sharon as to any matter alleged in either or both of the Actions, including any Future Liability with regard to the Tailings Site or the Slag Site and any liability which might arise as a result of the redisposal of any hazardous substances as required by any Response action conducted at either of the Sites. This Paragraph shall not be construed as a Covenant not to Sue any other Person, other than Sharon. This Covenant not to Sue applies only to Sharon, the United States and the State. This Covenant not to Sue shall take effect upon payment by or on behalf of Sharon Steel Corporation to the United States of the sum of \$22 million in Cash pursuant to Section V.A. hereof or V.B.2(a) hereof, as the

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case may be, or payment by or on behalf of Sharon Steel Corporation of the sum of \$3 million in Cash and the delivery of the Notes pursuant to Paragraph V.B.1(a), Paragraph V.B.1(b), Paragraph V.B.2(b)(i), Paragraph V.B.2(b)(ii) or Paragraph V.B.2(c) hereof, as the case may be.

B. This Covenant not to Sue shall not apply to the following:

1. Claims based on criminal liability;
2. Claims based on the failure to comply with this Decree;
3. Claims for damage to natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States;
4. Claims against Sharon Steel Corporation arising from any actions of Sharon Steel Corporation after the effective date of this Decree, with respect to any of its future activities which exacerbate the release or threatened release of hazardous substances at the Sites, or cause further or additional endangerment to human health or the environment at the Sites; or
5. Claims based upon liability for hazardous substances removed from the Sites on or after the effective date of this Decree as provided in Section XVI. hereof, unless such removal is required or.

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authorize, by an EPA-issued Record of Decision or an authorized EPA representative during an emergency.

C. Notwithstanding any other provisions of this Decree, including, without limitation, Paragraph VIII.B. hereof, the United States and the State reserve the right to institute proceedings in either of the Actions or in a new action seeking relief from Sharon Steel Corporation in connection with the Tailings Site or the Slag Site, but only if

1. Conditions at the Tailings Site or the Slag Site which were previously unknown to or undetected by the United States are discovered after the United States has certified that all Remedial Action has been completed at each Site and these conditions indicate that a hazardous substance has been or is being released into the environment or that there is a substantial threat of such a release into the environment; or

2. The United States determines, based on information received in whole or in part after Remedial Action has been completed, that the Remedial Action taken at the Tailings Site or the Slag Site is not protective of human health and the environment.

In the event the State institutes proceedings against Sharon pursuant to this Paragraph VIII.C. then, notwithstanding any other provision of this Decree, Sharon shall have the right to assert any claims it had, has or may have in the future against the State.

D. Notwithstanding any other provision in this Decree, this Covenant not to Sue shall not relieve Sharon Steel Corporation of its obligation to meet the requirements set forth in the Decree.

E. Nothing in this Decree shall affect any claim which the United States may, subsequent to execution hereof, obtain arising from the claims against Sharon Steel Corporation by Non-Settling Defendants or Non-Settling Third Party Defendants; provided, however, that the United States may not assert any claim for indemnification or contribution against Sharon with respect to any such claims against Sharon Steel Corporation by Non-Settling Defendants or Non-Settling Third Party Defendants.

F. For and in consideration of the covenants and promises made herein, Sharon Steel Corporation and the Trustee covenant not to sue or otherwise assert any cause of action, claim or demand against the United States or the State, including, without limitation, any claims pursuant to Sections 107 and 112 of CERCLA, 42 U.S.C. §§ 9607 and 9612, or any other provision of law, directly or indirectly, or against the Hazardous Substance Superfund established by 26 U.S.C. § 9507, or any other claims against the United States or the State for expenses related to the Actions and this Decree.

G. Nothing in this Decree shall constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.700(d).

IX.

IMPLEMENTATION OF PLAN OF REMEDIAL ACTION

A. Sharon shall not be responsible for conducting any studies, implementing any Remedial Action or taking any Response action with respect to the Tailings Site or the Slag Site.

B. Sharon shall be relieved of any and all responsibility for the control of fugitive dust from the Tailings Site, inspecting the tailings, reporting on the condition of the polymer coating and from complying with the Administrative Order of the Utah Bureau of Air Quality dated May 5, 1988.

C. Sharon shall continue to maintain the existing fence (hereinafter in this Paragraph C only, the "Fence") and security at the portion of the Tailings Site it owns as follows:

1. Until December 31, 1990, Sharon shall maintain 24-hour security and shall inspect for and repair any damage to the Fence.

2. From January 1, 1991 until Remedial Action is initiated by the United States at the Tailings Site, Sharon shall inspect the Fence on the following schedule: (a) once a month between October 1 and March 31 and (b) twice a month between April 1 and September 30. Sharon shall give notice to the United States as to the result of each inspection within ten working days of the receipt by Sharon of the report of each inspection.

3. From the time Remedial Action is initiated on the portion of the Tailings Site Sharon owns until all Remedial Action is complete, the United States shall be solely responsible for inspecting, maintaining and repairing the Fence and Sharon shall have no duties or responsibilities respecting the Fence.

4. After notice by the United States to Sharon that all Remedial Action at the Tailings Site has been completed, and, to the extent that any Record of Decision for the Tailings Site requires any restriction on access to the portion of Tailings Site Sharon owns which is to be implemented by use of the Fence, Sharon shall resume inspecting the Fence on the following schedule: (a) once a month between October 1 and March 31 and (b) twice a month between April 1 and September 30. Sharon shall give notice to the United States as to the result of each inspection within ten working days of the receipt by Sharon of the report of each inspection.

5. Before, during and following the completion of the Remedial Action at the Tailings Site, Sharon shall abide by any restriction on the use of the Tailings Site set forth in any Record of Decision for the Tailings Site.

6. After December 31, 1990, Sharon shall be relieved of all responsibility for maintaining the security at the portion of Tailings Site it owns and

maintaining and repairing the Fence. Upon this Decree becoming final and effective, Sharon shall be relieved of all responsibility for complying with the Administrative Order of the United States dated December 28, 1988 concerning fence and berm construction at the Tailings Site.

D. Sharon shall continue to maintain the existing fence (hereinafter in this Paragraph D only, the "Fence") at the Silver Refinery Area as follows:

1. Until December 31, 1990, Sharon shall inspect for and repair any damage to the Fence.

2. From January 1, 1991 until Remedial Action is initiated by the United States at the Slag Site, Sharon shall inspect the Fence around the Silver Refinery Area on the following schedule: (a) once a month between October 1 and March 31 and (b) twice a month between April 1 and September 30. Sharon shall give notice to the United States as to the result of each inspection within ten working days of the receipt by Sharon of the report of each inspection.

3. After Remedial Action is initiated on the Silver Refinery Area, the United States shall be solely responsible for inspecting, maintaining and repairing the Fence and Sharon shall have no duties or responsibilities respecting the Fence.

4. Sharon shall not be required to construct a fence around the Slag Site or any portion of it.

5. Before, during and following the completion of Remedial Action at the Slag Site, Sharon shall abide by any restriction on the use of the Slag Site set forth in any Record of Decision.

6. If at any time after December 30, 1990, the United States decides not to conduct any Remedial Action at the Silver Refinery Area, the United States shall so notify Sharon and Sharon shall be relieved of the responsibility of complying with the provisions of this Paragraph D.2 from the date of such notice.

E. After December 31, 1990, the United States shall assume responsibility for site security of the portion of the Tailings Site which Sharon Steel Corporation currently owns and the Silver Refinery Area; provided, however, that nothing contained in this Paragraph IX.E. or Paragraph IX.C.6. shall modify Sharon's duties and obligations pursuant to Paragraphs IX.C. and D. hereof.

X.

PRESERVATION OF OTHER CLAIMS

A. Nothing in this Decree shall be deemed to impair any claims identified in the United States' Proof of Claim, or any other claims of the United States on behalf of EPA, other than the United States' claims with respect to the Tailings Site and the Slag Site. Unless otherwise compromised or settled, and, except as provided in Paragraph X.B. below, all other such claims ("Other Claims") shall not be affected by the

confirmation of the Plan of Reorganization and shall not be discharged pursuant to Bankruptcy Code § 1141 or otherwise. The amount of any Other Claims and the United States' rights, if any, to payment in respect thereof shall be determined in the manner and by the administrative or judicial tribunals in which the amount of each of the Other Claims and the United States' rights would have been resolved or adjudicated if the Bankruptcy Proceeding had not been commenced.

B. Notwithstanding anything contained in this Decree to the contrary, in the event a claim for damages to Natural Resources belonging to, managed by, held in trust by or otherwise controlled by the United States is asserted against Sharon arising out of or relating to either or both of the Sites, the issue as to whether such claim has been discharged or otherwise rendered nonassertable by virtue of the Bankruptcy Proceeding shall be determined if and when any such claim is asserted.

XI.

NOTICES

Unless otherwise stated in this Decree, whenever the terms of this Decree require that notice be given, it shall be directed in writing, by certified or registered mail, return receipt requested, to the following individuals at the addresses specified below, or to such other individual or address as such individual may from time to time designate by notice:

A. If to the United States:

1. United States Department of Justice
Chief, Environmental Enforcement Section
Environment and Natural Resources
Division
Room 1541 (EES DOCKETS)
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20044
2. Assistant Regional Counsel for the
Sharon Steel Site 8RC
United States Environmental Protection Agency
999 18th Street, Suite 500
Denver, Colorado 80202-2405
3. Remedial Cost Recovery Coordinator (8HWM-SR)
United States Environmental Protection Agency
999 18th Street, Suite 500
Denver, Colorado 80202-2405
4. EPA Regional Project Manager -- 8HWM-SR
Sharon Steel/Midvale Tailings Site
United States Environmental Protection Agency
999 18th Street, Suite 500
Denver, Colorado 80202-2405
5. EPA Regional Project Manager -- 8HWM-SR
Midvale Slag Site
United States Environmental Protection Agency
999 18th Street, Suite 500
Denver, Colorado 80202-2405

B. If to the State:

1. Fred G Nelson, Esq.
Assistant Attorney General
State of Utah
124 State Capital
Salt Lake City, Utah 84114
2. Kris D. Bicknell, Esq.
400 South Colorado Boulevard
Suite 700
Denver, Colorado 80222

C. If to Sharon Steel Corporation:

1. Franklin E. Agnew, III, Trustee
c/o Peacock Williams
2120 One Mellon Bank Centre
Pittsburgh, Pennsylvania 15219

2. Chief Operating Officer
Sharon Steel Corporation
P.O. Box 291
Sharon, Pennsylvania 16146

XII.

MODIFICATION, COUNTERPARTS, PARAGRAPH HEALINGS

A. Without seeking approval of this Court, the parties hereto may stipulate to extensions of up to and including ninety (90) days of any of the dates set forth in Section V. hereof.

B. Except as specifically provided in this Decree or by the Federal Rules of Civil Procedure, no modifications shall be made to this Decree without notice to and prior written approval of the United States, Sharon Steel Corporation by its Trustee or his successor, the State and the Court.

C. All Section and Paragraph headings herein are for convenience only and are in no way to be construed as a part of this Decree or a limitation on the scope of the provisions to which they may refer.

XIII.

RESPONSE AUTHORITY

Nothing in this Decree shall be deemed to limit the response authority of the United States under Section 104 of CERCLA, 42 U.S.C. § 9604 or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to that authority.

XIV.

GRANT OF ACCESS TO THE SITES

A. To the extent that the Tailings Site or the Slag Site are owned and/or controlled by Sharon, access shall be granted to the Sites at all reasonable times to EPA, the State and any Persons who have agreed, been ordered to or have, pursuant to an administrative or judicial order or an administratively or judicially enforceable agreement, to perform any Response actions at the Sites, and their representatives, for purposes of conducting, supervising, supporting and monitoring all Response actions authorized by CERCLA, including, but not limited to, conducting Remedial Actions, conducting operation or maintenance activities, as that term is defined in Section 104(c)(6) of CERCLA, 42 U.S.C. § 9604(c)(6), conducting five-year reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9612(c), and implementing all Response actions, as relating to a release or threat of release of hazardous substances at or off the Sites.

B. Sharon shall not interfere with, obstruct or disturb the performance, support or supervision of any Remedial Action or Response taken or to be taken at the Tailings Site or the Slag Site (whether pursuant to this Decree or any other judicial or administrative action of EPA or the State), including any operation or maintenance activities, and shall not take any action which may affect the integrity or effectiveness

of the Remedial Action, except with the concurrence of EPA, the State and this Court.

C. Any deed, title, easement or other instrument of conveyance for the portion of Tailings Site owned by Sharon Steel Corporation or the Silver Refinery Area shall contain a notice that such property, or any portion thereof, is the subject of this Decree, setting forth the style of the case, case number and Court having jurisdiction herein. Such deed, title, easement or other instrument shall include a covenant (i) granting EPA and its representatives access at all reasonable times to such property or portion thereof for purposes of conducting, supervising, supporting and monitoring all Response actions authorized by CERCLA, including operation or maintenance; (ii) not to interfere with, obstruct or disturb the performance, support or supervision of any Response taken or to be taken at such property, including any operation or maintenance activities; (iii) not to take any action which may affect the integrity or effectiveness of the remedy, except with the concurrence of EPA, the State and this Court; and (iv) containing an agreement to inform any Person that subsequently acquires any title, easement or other interest in the property, or any portion thereof from Sharon, of the requirements, conditions and operative effect of this Section XIV.

D. At least 30 days prior to any conveyance of the part of the Tailings Site Sharon Steel Corporation owns or the Silver Refinery Area or any portion thereof by Sharon, and with respect to those conveyances to take place subsequent to the

entry of this Decree, Sharon shall give notice to the United States and the State of the intent to convey title or any other interest in such property, or any portion thereof, and the name and address of the proposed transferee and the proposed wording of the covenant required under this Section XIV.

E. Within 30 days of the effective date of this Decree, Sharon Steel Corporation shall record a copy of this Decree together with all Exhibits hereto (or some other document in recordable form referring to this Decree) with the Recorder's Office, Salt Lake County, Utah, as notice of the contents and requirements of this Decree.

F. To the extent that the Tailing Site or the Slag Site is owned or controlled by Sharon on the date that this Decree is executed, the restrictions and obligations set forth in this Section XIV. shall run with the land and shall be binding upon any and all Persons that acquire any title to or any other interest in such property, or any portion thereof.

XV.

WITNESSES AND DOCUMENTS

Notwithstanding any other provision of this Decree, Sharon Steel Corporation agrees to maintain all records relevant to the Actions and to cooperate fully with requests from the United States to provide access to such nonprivileged documents and to provide testimony by its employees and to cooperate with the United States in obtaining testimony of its agents and contractors, that is relevant to the Actions until both Actions

have been fully resolved through the entries of final judgments and the resolution of any and all appeals therefrom.

XVI.

ENTRY, EFFECTIVE AND TERMINATION DATES

A. The United States shall complete its review of public comments with respect to this Decree no later than 30 days after the expiration of the public notice and comment period provided for in 28 C.F.R. § 50.7. If, after review of the public comments, the United States elects to seek entry of this Decree, it shall do so within 15 days of its completion of its review of public comments.

B. This Decree shall not become final or effective until:

1. it has been entered by this Court; and
2. an Order is entered by the Bankruptcy Court (i) confirming a Plan of Reorganization for Sharon Steel Corporation; or (ii) authorizing the Trustee to enter into and render performance in accordance with the terms and conditions of this Decree, whichever comes first.

C. After allowance of the United States' general unsecured claim (should the Trustee elect to provide for such a claim), and after Sharon Steel Corporation's payments to the United States have been made pursuant to Section V. hereof, and after the United States has certified that all Remedial Actions for the Tailings Site and the Slag Site have been completed,

BK 6369 PG 2587

Sharon Steel Corporation shall petition the United States for agreement to terminate this Decree. If the United States accepts the petition, the United States and Sharon Steel Corporation shall jointly petition the Court for termination of the Decree. If the United States rejects the petition, it shall explain its reasons therefor in writing to Sharon Steel Corporation within thirty (30) days of receipt of Sharon Steel Corporation's petition. Should the United States reject the petition, Sharon Steel Corporation will have the right to petition the Court unilaterally for termination. Termination shall not affect the provisions of Sections I, III, IV, VI, VII, VIII, IX, X, XI, XIV, XV, XVII and XVIII hereof.

XVII.

COSTS

Each party hereto shall bear its own costs and attorney's fees except as otherwise provided herein.

XVIII.

RETENTION OF JURISDICTION

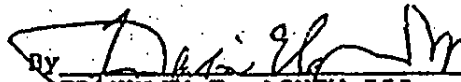
A. This Court shall retain jurisdiction of this Decree as it relates to the Actions for purposes of ensuring compliance with its terms and conditions.

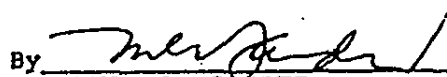
B. The United States, the State and Sharon each retains the right to seek enforcement of the terms of this Decree and to take any action authorized by Federal Law not


inconsistent with the terms of this Decree to achieve compliance with the terms and conditions of this Decree.

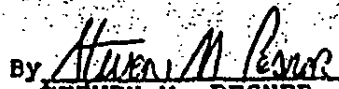
THE PARTIES ENTER INTO THIS PARTIAL CONSENT DECREE AND SUBMIT IT TO THE COURT, THAT IT MAY BE APPROVED AND ENTERED.


FOR SHARON STEEL CORPORATION

By 
FRANKLIN E. AGNEW III
Trustee of Sharon Steel
Corporation
c/o Peacock Williams
2120 One Mellon Bank Center
Pittsburgh, Pennsylvania 15219

By 
MALVIN G. SANDER
Senior Vice President, General
Counsel and Secretary
Sharon Steel Corporation
P. O. Box 291
Sharon, Pennsylvania 16146

By 
LAWRENCE A. DEMASE
Rose, Schmidt, Hasley & DiSalle
900 Oliver Building
Pittsburgh, Pennsylvania 15222

By 
STEVEN M. PESNER
Anderson, Kill, Olick &
Oshinsky, P.C.
666 Third Avenue
New York, New York 10017

By 
F. ALAN FLETCHER
Fruitt, Gushen & Fletcher
Suite 1850
Beneficial Life Tower
Salt Lake City, Utah 04111

FOR THE STATE OF UTAH *

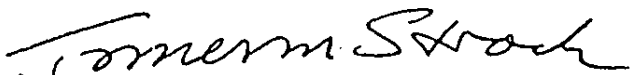
By Fred G. Nelson
Fred G Nelson
Attorney General
State of Utah
236 State Capitol
Salt Lake City, Utah 84114

By Kris D. Bicknell
Kris D. Bicknell
Greengard & Senter
400 S. Colorado Boulevard
Suite 700
Denver, Colorado 80222

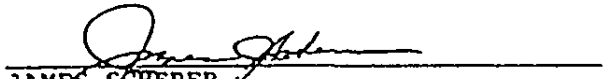
By Kenneth L. Alkema
Kenneth L. Alkema, Director
Department of Health
Division of Health
288 North, 1460 West
P.O. Box 16690
Salt Lake City, Utah 84116-0690

* The State of Utah's agreement is conditioned upon the U.S. Environmental Protection Agency's execution of an Administrative Order on Consent, the unexecuted version of which is dated August 20, 1990, that has been negotiated between the U.S. Environmental Protection Agency and the State of Utah.

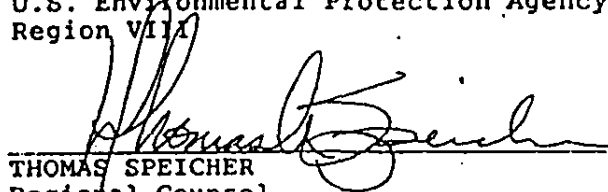
FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY



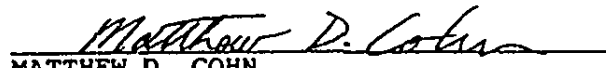
JAMES M. STROCK
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for Enforcement and Compliance
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Washington, D.C. 20460



JAMES SCHERER
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BK 9065 PG 8383
2591

FOR THE UNITED STATES:



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Assistant Attorney General
Environment and Natural Resources
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U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530



W. BENJAMIN FISHEROW
JOEL M. GROSS
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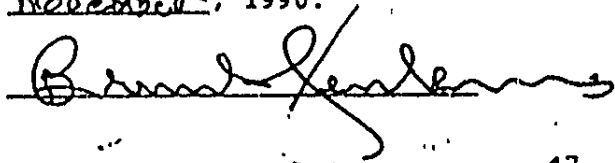


DEE V. BENSON
United States Attorney
District of Utah
U.S. Courthouse
350 South Main Street
Salt Lake City, Utah 84101



DANIEL PRICE
Assistant United States Attorney
District of Utah
U.S. Courthouse
350 South Main Street
Salt Lake City, Utah 84101

Approved and Entered by the
Court this 13 day of
November, 1990.



United States District Court
for the
District of Utah
November 14, 1990

mw

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:86-cv-00924

True and correct copies of the attached were mailed by the clerk to the following:

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Salt Lake City, UT 84101

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Environmental Defense Section
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Washington, DC 20026-3986

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LAND & NATURAL RESOURCES DIVISION
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Salt Lake City,, UT 84151

Dwight L King, Esq.
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Salt Lake City,, UT 84115

Merlin O. Baker, Esq.
RAY, QUINNEY & NEBEKER
400 Deseret Building
79 South Main Street
P.O. Box 45335
Salt Lake City, UT 84145-0385

BK 9065 PG 8387

BK 6369 PG 2595

EXHIBIT "B"

This Exhibit "B" is attached to and made a part of that certain Affidavit dated October _____, 1991 executed by A. John Davis and pertaining to the partial Consent Decree between the United States of America, the State of Utah and Sharon Steel Corporation, approved and entered by the United States District Court for the District of Utah on November 13, 1990 covering and concerning the following described parcels of land situated in the County of Salt Lake, State of Utah:

(a) A parcel of land situated in Sections 26 and 35, Township 2 South, Range 1 West, SIM, Salt Lake County, Utah:

Beginning at a point which is North 0°29'40" West along the Section line 335.21 feet from the Southeast Corner of Section 35, Township 2 South, Range 1 West, Salt Lake Base & Meridian; and running thence North 0°29'40" West along the Section line 1827.63 feet to the Northerly bank of the Galena Canal; thence along said Northerly bank North 57°02'40" West 225.02 feet and North 53°43'11" West 31.64 feet and North 25°22'17" West 32.10 feet and North 2°49'37" West 128.00 feet and North 10°20'11" West 58.51 feet and North 15°15'43" West 179.04 feet and North 4°42'56" East 149.86 feet and North 2°12'38" East 37.23 feet and North 10°21'25" West 41.22 feet and North 38°42'20" West 147.53 feet; thence North 79°25'50" East along the North line of the Midvale Packing Company property 383.63 feet to the Section line; thence North 0°12'40" East along the Section line 635.30 feet; thence North 89°39'38" West along an existing fence line 628.13 feet; thence North 44°57'24" West along an existing fence 294.72 feet; thence North 1°34'34" West along an existing fence 118.60 feet; thence North 87°09'51" East along an existing fence 61.15 feet to an existing fence line marking the West line of Holden Street; thence North 0°22'30" West along said fence 562.48 feet; thence South 89°40'06" West along an existing fence 234.95 feet; thence North 0°39'00" West along an existing fence 178.80 feet to the Centerline of Lennox Street; thence South 89°51'10" West along said Centerline 13.37 feet; thence North 0°22'30" West 145.00 feet; thence North 89°51'10" East 67.00 feet to an existing fence; thence North 0°22'38" West along said fence 153.75 feet; thence South 89°51'10" West 152.07 feet to an existing fence line; thence North 0°17'44" West along said fence 412.38 feet to the South right-of-way line of Center Street, as deeded to the State Road Commission of Utah; thence following said South right-of-way line South 85°04'00" West 327.00 feet and South 77°28'00" West 151.33 feet and South 85°04'00" West 150.00 feet and North 81°30'00" West 102.66 feet and Westerly 494.91 feet along the arc of a 4861.15 foot radius curve to the Left (Note: Tangent to said curve at its point of beginning bears South 84°04'00" West) and South 59°40'00" West 103.72 feet and Westerly 195.97 feet along the arc of a 4829.15 foot radius curve to the Left (Note: Tangent

to said curve at its point of beginning South 77°04'00" West) and South 74°44'00" West 146.50 feet and South 81°38'00" West 249.51 feet and South 74°44'00" West 64.19 feet; thence South 27°12'00" West 287.68 feet; thence South 22°06'00" East 16.24 feet; thence South 43°20'00" East 99.00 feet; thence South 4°58'00" West 192.00 feet; thence South 5°00'00" West 150.50 feet; thence South 68°58'00" West 63.70 feet; thence South 26°50'00" West 166.00 feet; thence South 89°19'00" East 318.50 feet; thence North 78°07'00" East 114.70 feet; thence South 47°59'09" East 30.66 feet; thence along the Jordan River SOUTH 124.58 feet and South 3°53'59" West 154.63 feet and South 07°17'20" West 282.82 feet and South 4°59'00" East 1111.50 feet and Southeasterly along a 4000.00 foot radius curve to the Left (Chord bears South 14°58'50" East) 1395.88 feet and South 24°58'40" East 838.81 feet and South 88°37'38" East 1286.49 feet to the North bank of the Jordan River; thence following said North bank South 80°30'01" East 105.53 feet and South 20°33'59" East 64.11 feet and South 18°07'28" East 98.62 feet and South 35°42'23" East 85.29 feet and South 75°55'41" East 171.55 feet and North 38°00'44" East 59.69 feet and North 23°47'27" East 47.77 feet and South 59°54'19" East 55.73 feet; thence North 24°04'44" East 75.08 feet to an existing fence line marking the North Boundary of Fur Breeders Agricultural Cooperative property; thence South 65°55'16" East along said fence 317.16 feet to the point of beginning, and containing 267.86 acres, more or less.

(b) A parcel of land situated in the SW¼SE¼ of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian, County of Salt Lake, State of Utah, described as follows:

A strip of land lying 25 feet on each side of the center line of the main railroad track to the Midvale Hill and extending Northeasterly approximately 110 feet from the North end of the highway overpass to the first switch on said railroad track; the center line of the North end of said overpass being situated approximately 330 feet North and 1517 feet West from the Southeast corner of said Section 26, containing 0.13 acres, more or less.

(c) A parcel of land situated in the E¼SE¼, Section 26, Township 2 South, Range 1 West, SLB&M, County of Salt Lake, State of Utah, described as follows:

Beginning at a Point on the NORTH Line of Center Street, said Point being NORTH 389.00 feet and WEST 865.00 feet from the Southeast Corner of said Section 26, and running thence SOUTHWESTERLY along the ARC of an 11,519.20 foot radius curve to the LEFT 231.80 feet, (Chord bears SOUTH 86°03'23" WEST 231.80 feet; thence SOUTH 83°31'20" WEST 70.62 feet; thence NORTH 89°41'20" WEST 61.91 feet; thence due NORTH 985.94 feet; thence due EAST 526.00 feet; thence SOUTH 1°15'00" WEST 30.40 feet; thence WEST 30.00 feet; thence SOUTH 0°22'00" WEST 300.00 feet; thence WEST 110.00 feet; thence SOUTH 0°22'00" WEST 125.00 feet; thence SOUTH 9°26'17" WEST 30.61 feet; thence SOUTH 0°22'00" WEST 71.60 feet; thence SOUTH 33°23'00" WEST 23.10 feet; thence SOUTH 0°22'00" WEST 24.70 feet; thence EAST 72.146 feet to a Point on a Curve of the WEST Line of Holden Street; thence SOUTHWESTERLY along the ARC of a 573.87 foot radius curve to the LEFT 210.599 feet, (Chord bears SOUTH 10°52'48" WEST 209.419 feet) to a Point of Tangency; thence SOUTH 0°22'00" WEST along said WEST Line 120.85 feet to a Point of Curve, thence SOUTHWESTERLY along the ARC of said Curve 52.534 feet (Chord bears SOUTH 43°22'00" WEST 47.74 feet) to the Point of Beginning, containing 9.583 acres, more or less.

EXHIBIT B

SHARON STEEL SUPERFUND SITE OPERABLE UNIT I EXPLANATION OF SIGNIFICANT DIFFERENCES July 2004

INTRODUCTION

The purpose of this Explanation of Significant Differences (ESD) is to explain the significant differences between the remedy selected in the December 9, 1993 Record of Decision (ROD) for OU1 and the remedy subsequent to redevelopment of the Site. Changes to the remedy, as described in the OU1 ROD, will be required due to the redevelopment of the Site as set forth in the *Site Modification Plan for Redevelopment* (ERM, February 2004) prepared by the Development Group and accepted by the City of Midvale, Utah Department of Environmental Quality (UDEQ) and the U.S. Environmental Protection Agency (EPA). The Development Group is an investment group currently consisting of three members who have contracted with Jordan Bluffs, Inc., who recently purchased OU1 to redevelop the Site. These changes will not fundamentally alter the remedy for OU1. The remedy will remain protective of human health and the environment.

This ESD is prepared in fulfillment of EPA's public participation responsibilities under Section 117(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601, *et seq.* (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), and Section 300.435(c)(2)(i) of the National Contingency Plan (NCP), 40 C.F.R. Part 300. These laws and regulations require an ESD when a remedy, described in a ROD, is significantly modified.

This ESD provides a brief history of the Site, describes the current remedy and explains the significant differences in the remedy as addressed by the *Site Modification Plan for Redevelopment* (SMP) for the Site. It also encourages public review and comment on the administrative record that includes this ESD and the supporting documentation such as the SMP.

SUMMARY OF SITE HISTORY AND CURRENT REMEDY

Summary of Site History

The Sharon Steel Superfund Site is located in Midvale, Utah, approximately 12 miles south of Salt Lake City and consists of two operable units. Operable Unit 1 (OU1) consists of approximately 260 undeveloped acres and is a primary source of contamination. OU1 included a mill, processing plants, outbuildings and the 10 million cubic yard waste tailings pile. OU1 underwent a cleanup remedy that capped the large contaminated soil and tailings pile and construction was declared complete in 1999. OU2 consists of approximately 200 acres offormerly contaminated residential and commercial properties adjacent to OU1. OU2's cleanup of almost 600 properties was completed in 1998. This ESD relates only to OU1.

The area is drained by the Jordan River that is used primarily for agricultural irrigation. The subsurface beneath Salt Lake Valley includes substantial groundwater resources, consisting of shallow unconfined, confined, and deep confined aquifers some of which are used for domestic, agricultural, and industrial applications. Approximately 44,000 people live within a 2-mile radius of the Site.

The Site was previously the location of various ore processing operations. Various companies

processed huge quantities of ore that had high concentrations of heavy metals from 1906 to 1971. Byproducts, with high levels of arsenic and lead from milling operations, were transported from the processing plant to a large waste tailings pile west of the mill, as well as to a small 2.3-acre area on the west side of the Jordan River. Sharon Steel Corporation signed an agreement to purchase the Site in 1979 and took ownership in November of 1981.

In 1982, UDEQ and EPA determined that there was a serious threat to public health and the environment in Midvale associated with the Sharon Steel Site. Investigations conducted by local, State, and Federal agencies from 1982 to 1990 determined that soils on the Sharon Steel property, as well as on nearby residential and commercial properties, had arsenic and lead concentrations at levels that posed unacceptable risks to residents. The Site was proposed for the National Priorities List (NPL) in 1984 and listed on the NPL on February 14, 1991.

The Remedial Investigation for the Site was completed in June of 1988. A more extensive groundwater investigation was also conducted from 1988 to 1990. The investigations determined that tailings from the Site were blowing into the surrounding communities and citizens were using the tailings as yard/garden fill. It was determined that a significant endangerment existed due to exposure to the tailings either from on-site direct contact, wind deposition and/or use as yard fill. In addition, arsenic and lead contamination in residential and commercial soils from historical smelting and milling presented a significant risk to human health. Several heavy metals were found in the shallow groundwater under the tailings, but arsenic was the primary metal of concern as it was the most mobile.

In June of 1988, a State Administrative Order directed the Potentially Responsible Parties (PRP's) to implement dust suppression by spraying the tailings with a polymer coating. In 1990 a Removal Action was performed to fence the Site and prohibit access.

Pursuant to Partial Consent Decrees (PCDs) entered by the United States District Court for the District of Utah in 1990, EPA settled with the three main Potentially Responsible Parties (Atlantic Richfield Company, UV Industries, Inc., UV Industries, Inc. Liquidating Trust, and Sharon Steel Corporation) in exchange for approximately \$64 million to assist with remedial action activities for both the Sharon Steel and the adjacent Midvale Slag Superfund Sites.

From May through June of 1991, EPA's Emergency Response Branch (ERB) removed dangerous chemicals and bottled gases from the remaining mill buildings on the Site. From September of 1992 through December of 1993, EPA's ERB demolished the remaining mill buildings. Building debris was placed on the tailings pile and eventually covered when the remedy for OU1 was completed in January 1999. The remedy for OU2 was completed in November 1998.

The RA for OU2 met all RA objectives as defined in the OU2 ROD and OU2 ESDs dated June 23, 1994 and December 1998. The RA eliminated the exposure to contaminated soil in residential and commercial properties by removing soil with contaminant concentrations exceeding health-based action levels for lead (500 mg/kg) and arsenic (70 mg/kg) and replacement of the soil with clean fill.

Institutional Controls for OU2 were originally implemented to provide special provisions for future excavation of contaminated soils due to construction and gardening. These controls were subsequently reevaluated in 1994 and were lifted because the remedy was deemed to be protective without the controls. This determination was documented in the first OU2 ESD (June 1994). A

second ESD was issued for OU2 in December of 1998 (later confirmed in July 2003). EPA and UDEQ decided to (1) limit the scope and cost of the RA by not remediating selected city properties and transportation right-of-ways (this responsibility being delegated to Midvale City by EPA at the City's request) and (2) removing ICs associated with future residential construction.

Summary of Current Remedy for OU1

Remedial Action. The Remedial Action (RA) for OU1 was completed in accordance with the OU1 ROD dated December 9, 1993. The following remedial activities were conducted from May 1995 to January 1999:

- Tailings within 150 feet of the centerline of the Jordan River were excavated and distributed on top of the existing tailings pile. The tailings pile contained an estimated 10 million cubic yards of material and was up to 60 feet thick in places;
- The top two feet of soil in the mill building area was excavated and distributed on top of the existing tailings pile. Clean fill was brought in to replace the soil which was removed and the area was re-vegetated;
- Wetlands along the Jordan River were dredged to remove contaminated sediments. The dredged material was distributed on top of the existing tailings pile and the wetlands were returned to their natural state;
- Tailings on an area of 2.3 acres on the west bank of the Jordan River were excavated and distributed on top of the existing tailings pile;
- A RCRA-equivalent composite cap was installed over the entire tailings pile. The cap includes a geo-composite drain underlain by a flexible membrane liner that, in turn, is underlain by a geo-synthetic clay liner (GCL) that reduces the potential for water infiltration through the tailings pile. The cap is overlain by 18 inches of earth fill and 6 inches of top-soil and re-vegetation throughout. In case of slope failure, the cap is designed to contain tailings within a buffer zone to protect the Jordan River. The cap was also designed to allow access to pedestrian traffic;
- An interceptor trench was installed along the eastern edge of the tailings pile to control lateral shallow groundwater flow;
- The OU1 ROD called for the Galena Canal to be cleaned up and filled in. When the ROD was signed, information was missing that showed the flow in the Galena Canal had been discontinued and the canal decommissioned. According to the Remedial Action Report, the canal was removed and not rehabilitated. This was the only change in the remedy.
- Fifteen groundwater monitoring wells were installed on OU1;
- The OU2 ROD called for the placement of contaminated soils from the cleanup of 600 properties on the OU1 tailings pile. Contaminated soil from the Midvale Slag OU1 cleanup was also placed on the OU1 tailings pile.

Land Use. OU1 is defined by the former Sharon Steel property boundaries and is currently zoned by the City of Midvale as a specialized zone which recognizes its environmental status and provides opportunities for a wide range of uses as long as the protectiveness of the remedy is maintained. OU2 is comprised of residential, commercial and high use public areas adjacent to the former Sharon Steel property and encompasses part of the City of Midvale and surrounding areas. The land south and west of Midvale is primarily used for agricultural and commercial activities; the land north and east of Midvale is mostly urban.

Institutional Controls. The 1990 Partial Consent Decree (PCD) (Civil Action No. 86-C-924J, U.S. District Court of Utah) contained several institutional controls in the form of restrictive covenants, including the following:

- A grant of access to EPA and UDEQ at all reasonable times for purposes of conducting, supervising, supporting and monitoring the remedy, including operation or maintenance;
- A requirement that the property owners not interfere with, obstruct or disturb performance of the remedy, including any operation or maintenance activities, and not take any action which may affect the integrity or effectiveness of the remedy; and,
- A requirement that the property owner provide notice to later purchasers of the conditions of the PCD.

The OU1 ROD includes the following ICs:

- Only structures determined to be suitable for placement on the cap will be permitted in order to prevent breaches in the integrity of the cap and to ensure that erosion is prevented. The determination of the type and number of structures will be finalized by EPA during remedial design; and,
- No domestic wells will be permitted onsite through deed restrictions to prevent any ingestion of contaminated groundwater. This is a restriction which is regulated by the State of Utah. Utah will retain final authority to restrict or appropriate groundwater use at this site.

Additional Institutional Controls will be applied through the Institutional Control Process Plan, described below, and corresponding modifications to the 1990 PCD.

Operation and Maintenance. Operation and Maintenance (O&M) activities are required to maintain and monitor the performance and protectiveness of the implemented remedy. The objectives of O&M for OU1 are to: 1) maintain the engineered cover and vegetation; 2) maintain the drainage systems and erosion protection features; 3) monitor the groundwater on an annual basis, and, if needed, institute a pump and treat program; 4) prevent the Jordan River from invading the Site and eroding the cap and/or tailings; 5) control future development and groundwater use at the Site; 6) provide reports to document conditions at the Site including problems, repairs and development activities.

The O&M activities are currently being conducted by UDEQ pursuant to a cooperative agreement with EPA and in accordance with the *Operation, Maintenance, and Monitoring Manual for Sharon Steel Superfund Site, Operable Unit 1* (USBR, October 2001). The groundwater is being monitored

annually, and no pump and treatment is currently needed at the site. Quarterly site inspections are currently performed to monitor the remedy and detect maintenance needs. There are currently no structures over the composite cap and the remedy is functioning as intended.

DESCRIPTION OF SIGNIFICANT DIFFERENCES

The OU1 Remedial Design (1994) did not designate the type or number of structures that were allowed on the cap. Failing this, Jordan Bluffs, Inc., the recent purchaser of OU1 commissioned an Environmental Site Assessment in 2003 and developed the SMP that the EPA, UDEQ and City of Midvale have accepted. The SMP also establishes certain technical requirements for redevelopment activities on the Site, in order to assure remedy integrity and long term protectiveness. The author of the SMP, Environmental Resources Management (ERM), stated in the document that, "Based on the types of structures proposed for the Site and the available geotechnical data for the tailings and soil materials beneath the cap, ERM believes that the proposed redevelopment can be performed from a geotechnical perspective." The proposed redevelopment is a mixed land use community. The EPA, UDEQ, and City of Midvale concur in this assessment. The SMP for the Site and the letters confirming governmental acceptance of the SMP and this ESD are contained in the administrative record.

Land Use. The SMP incorporates a wide range of uses including residential, office/commercial and business park/ clean industrial. Geotechnical and structural design studies will be conducted in support of the development by the Development Group and submitted to Midvale City. All studies will be shared with the Agencies. The development is expected to incorporate mixed uses, including numerous parks and open spaces and a neighborhood town center.

Institutional Controls. The *Institutional Control Process Plan* (Midvale City, May 2004) (ICPP) is contained in Appendix A to this ESD. The ICPP establishes legal requirements to maintain protectiveness after redevelopment is completed. With redevelopment the Site will require the use of more diverse and complex ICs than originally planned in the OU1 ROD. Public and private ICs will be integrated to effectively address the various aspects of the proposed changes. The following IC responsibilities for three different entities were included in the Plan:

Midvale City responsibilities:

- Periodic inspection of covers and final barriers on the Site.
- Prohibition of water wells.
- Repair of covers and final barriers, if the Property Owners Association (POA) is unresponsive. City will enforce repair and collection of costs through Title 7 – Administrative Code Enforcement Program of the Midvale City Municipal Code.
- Review of site plan applications and issuance of final site plan approval.
- Review of road-cut permit applications and issuance of permits.
- Periodic inspections during initial site development and post-development construction to ensure compliance with construction permit including air quality monitoring plans.
- Oversight of landscaping activities of POA (or similar entity).
- Verification that private covenants and deed restrictions for developments include the requirements of the ICPP relating to landscaping and excavation.

EPA and UDEQ Responsibilities:

- Continue coordinating O&M activities as outlined in the O&M Manual to the extent practical.
- Review and approve promptly amendments to existing O&M Plan (if proposed).
- Review construction plans and documents as required by the SMP for compliance with SMP and provide any relevant comments promptly. Following receipt and incorporation of comments the plans and documents will be considered final.
- Provide oversight to monitor conformance with SMP for any activities which penetrate the Cap's synthetic membrane.

Landowner/POA Responsibilities:

- Control Site access as required by the PCD.
- Enforce compliance with the ICPP.
- Enforce compliance with provisions of construction permit, including air quality monitoring requirements, if any.
- Enforce compliance with the approved SMP.
- Ensure that imported fill conforms with Midvale City Standards and Construction Specifications and the SMP.
- Establish private covenants and deed restrictions requiring that future landowners comply with applicable requirements set forth in the ICPP.
- Maintain and repair covers and barriers within their respective jurisdictional areas.
- Prohibit disturbances of monitoring wells.
- Oversee and enforce excavation and landscaping controls as required by the ICPP.
- Oversee maintenance of landscaped areas as required by the ICPP.

Operation and Maintenance. Although the objectives for O&M essentially remain the same, the scope of the O&M Manual will be modified by the redevelopment. Some responsibilities will be assumed by the POA, others by the City and still others by the State. Additional O&M activities may include monitoring of the composite cap for settlement, monitoring/maintenance of the cap barriers (new buildings, roads, sidewalks, parking lots and landscaping) and monitoring/maintenance of the storm water drainage system. Specifics for the additional and/or modified O&M activities will be defined in changes to the *Operation, Maintenance, and Monitoring Manual*. Roles and responsibilities for the various O&M activities would also be redefined in the O&M Manual.

PUBLIC PARTICIPATION

The administrative record, which contains this ESD and the documentation supporting it, is available for public review and comment at the following locations:

EPA Superfund Records Center
 999 18th Street, 5th floor North Terrace
 Denver, Colorado 80202
 (303) 312-6473
 Hours: Monday through Friday, 8:00 AM to 4:30 PM

Utah Department of Environmental Quality
 Division of Environmental Response and Remediation
 168 North 1950 West

Salt Lake City, Utah 84116
Hours: Monday through Friday, 8:00 AM to 5:00 PM

A notice of availability and brief description of the ESD will be published in the Salt Lake Tribune and Deseret Morning News on July 9, 2004 as required by CERCLA Section 117(c). EPA and UDEQ will accept public comment on the proposed modifications to the OU1 remedy for a period of thirty days. The comment period will be from July 9, 2004 to August 8, 2004. Written comments should be submitted to:

Armando Saenz
Project Manager
Environmental Protection Agency – Region 8
Mail Code: 8EPR-SR
999 18th Street, Suite 300
Denver, Colorado 80202

Significant comments received during the public comment period will be addressed and made part of this ESD as Appendix B, Responsiveness Summary.

FIVE YEAR REVIEWS

Pursuant to CERCLA section 121(c), 42 U.S.C. 9621(c), five-year reviews are required at sites with remaining hazardous substances, pollutants, or contaminants above levels that allow for unlimited use and unrestricted exposure. Hazardous substances above health-based levels were left on-site and, therefore, five-year reviews are required at this Site. The second five-year review is due in August of 2004.

AFFIRMATION OF STATUTORY DETERMINATIONS

Considering the changes that would need to be made to the current remedy due to the redevelopment of the Site, EPA, UDEQ and Midvale believe that the modified remedy would remain protective of human health and the environment, would continue to comply with all pertinent local, state and federal requirements that are applicable or relevant and appropriate to the current remedy and would be cost-effective for the public at large.

Max H. Dodson
Assistant Regional Administrator
Office of Ecosystems Protection and Remediation
U.S. Environmental Protection Agency, Region 8

Date _____

Significant comments received during the public comment period will be addressed and made part of this ESD as Appendix B, Responsiveness Summary.

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Max H. Dodson
Assistant Regional Administrator
Office of Ecosystems Protection and Remediation
U.S. Environmental Protection Agency, Region 8

July 2, 2004
Date

LIST OF ACRONYMS

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
ERB	Emergency Response Branch
ESD	Explanation of Significant Differences
GCL	Geo-synthetic Clay Liner
IC	Institutional Control
MCL	Safe Drinking Water Act Maximum Contaminant Level
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
NPL	National Priorities List
OU	Operable Unit
O&M	Operation and Maintenance
PCD	Partial Consent Decree
RA	Remedial Action
RD	Remedial Design
RI	Remedial Investigation
ROD	Record of Decision
SARA	Superfund Amendments and Reauthorization Act of 1986
SMP	Site Modification Plan for Redevelopment
UDEQ	Utah Department of Environmental Quality

APPENDICES

- Appendix A Institutional Control Process Plan, Operable Unit 1, Sharon Steel, Midvale, Utah (Midvale City, May 3, 2004)
- Appendix B Responsiveness Summary (if necessary)



Appendix A

Institutional Control Process Plan



Appendix B

**Responsiveness Summary
(if necessary)**

EXHIBIT C

ADOPTED
May 4, 2004

INSTITUTIONAL CONTROL PROCESS PLAN

Operable Unit No. 1
Sharon Steel
Midvale, Utah

I. INTRODUCTION

This Institutional Control Process Plan ("Plan") has been prepared to document the requirements and procedures for the Institutional Controls ("ICs") for the capped portion of Operable Unit No. 1 ("OU1") and areas where monitoring wells are present in the Sharon Steel Superfund Site (the "Site") as illustrated in Figure 1. This Plan does not supercede any federal, state, or local statutes, regulations, or ordinances pertaining to the environment and current and future holders of interests of property within the Site will remain obligated to comply with the same. This document will be used to facilitate the redevelopment of the Site in compliance with the Explanation of Significant Differences ("ESD") (Exhibit A) and the accepted Site Modification Plan ("SMP") (Exhibit B) which has been prepared to outline general construction practices for redevelopment of the Site and future management thereof. The primary purposes of these controls are (i) to limit or prohibit exposure of people and the environment to subsurface contaminants remaining at the Site by ensuring the protection and maintenance of the three piece membrane remedy which was constructed per the Record of Decision ("ROD") for the Site (the "Cap"); (ii) to prevent or limit activities in certain areas of the Site that may increase the risk of damage to the Cap; and (iii) to manage stormwater and irrigation water to prevent unacceptable impact to the cap and underlying groundwater. Public controls may be imposed, for example, through building permits, subdivision regulations, excavation permits, or zoning ordinances. Private controls are typically imposed through covenants, deed restrictions on the land, or contractual agreements between the property owner or lessee and regulatory agencies. This plan is not intended to impose or require private controls.

This Plan has been prepared as a mechanism to assure that consistent and effective inspection and maintenance and enforcement activities are occurring and will occur in the future throughout the Site. These objectives and those detailed below will be achieved primarily through the implementation of ICs defined in this Plan. Future owners of any portion of the Site will be bound by the provisions of this Plan that are relevant to the portion of the property they own or control on the Site.

The specific objectives of this Plan are as follows:

- To describe the process through which binding and enforceable ICs will be developed and implemented that will facilitate future construction activities on the Site while at the same time maintaining

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the short-term and long-term effectiveness of the remedy established in the ROD.

- To establish controls on future and post construction-related activities (deep excavations, borings, or foundations) to prevent damage to the Cap within the defined area of the Site.
- To establish controls on groundwater use.
- To establish the requirements through which development including single family residential uses will be allowed.
- To identify the specific mechanisms (such as City of Midvale ("City") ordinance(s), building permit and inspection requirements, deed restrictions, etc.) that will be used to establish and enforce the ICs established in this Plan.
- To identify the roles and responsibilities that private parties and federal, state, local, and municipal entities will perform and undertake in order to implement this Plan, including oversight and enforcement.

II. COVERS AND MATERIALS MANAGEMENT

To reduce the risk of exposure to contaminants through the redevelopment process at the Site, the SMP has been prepared by the developers and reviewed and accepted by the Utah Department of Environmental Quality ("DEQ") and US Environmental Protection Agency ("EPA"). The SMP establishes the requirements for handling of materials and soil covers during redevelopment and will be referenced when related issues arise during the redevelopment process. A summary of the objectives of the SMP relating to soil covers and solid media left at the site are as follows:

- To minimize human exposure, during and after construction to wastes remaining in place.
- To maintain the integrity of the Cap.
- To effectively manage excavated material, including wastes, during construction and ensure appropriate handling of all wastes.
- To ensure that appropriate final covers are installed, inspected and maintained during and after Site redevelopment.

A. Description of Specific Institutional Controls:

1. Site plan approval as required by chapter 17-7-3 and regulated by 17-7-10 of the Midvale City Zoning Ordinance and Title 16, Subdivisions shall be obtained before initial Site development,

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future redevelopment or change in land use. Applications shall be made available through the City Community and Economic Development Department. In conjunction with the submittal of the preliminary site plan application, the applicant shall submit documentation that shall include an attestation that the applicant is aware of the current Site condition and will comply with all Institutional Controls. Applicant submittals and requirements under the site plan approval process are summarized below which are in addition to and in conjunction with the requirements identified in 17-7-3 and 17-7-10 of the Midvale City Zoning Ordinance:

- (a) Applicant shall submit a plan illustrating the proposed construction and development. Preliminary and final site plans for development shall be submitted for review and approval. Preliminary and final development plans shall specify the amount of existing and proposed soil cover over the Cap as well as any proposed penetrations or alterations of the Cap. Any proposal which includes penetrations or alterations of the Cap must include detailed plans for repairing the Cap in accordance with the SMP.
 - (b) Grading and drainage plans are required and shall specifically assure the protection of soil covers from erosion over the Cap membranes and provide adequate drainage to prevent accumulation of water on the Cap.
 - (c) Alterations to the existing Operations and Maintenance plan may be proposed by the applicant, the City or other party. EPA and DEQ shall consider alterations to assure the proposed development site will be maintained in a manner which shall preserve the effectiveness of the Cap.
 - (d) An air quality monitoring and dust suppression plan shall be provided. The plan must ensure that National Ambient Air Quality Standards and state and local air quality requirements are met for site contaminants at the boundary between the construction area and the developed areas. Applicant may request a waiver of the air monitoring requirements by submitting relevant data demonstrating compliance with all air quality standards under similar circumstances (similar weather conditions, construction operations, site materials, etc.).
2. If any intrusive exploratory activities (such as excavations, borings, CPT soundings) or foundations (including piles or drilled shafts) are proposed for the Cap Area (as defined in Exhibit C) at depths that penetrate the Cap, approval must first be obtained from the City of

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Midvale. The request for approval must include a detailed description of the proposed exploration or construction activity as well as the mechanism(s) that will be used to prevent contamination of the aquifer and release of contaminated material. In addition, the plan shall be in conformance with the accepted SMP. The request must be approved by the City of Midvale prior to implementation of the work.

3. A road cut permit shall be required for any work in the public right-of-way, per ordinance 12.12.150 of the Midvale City Municipal Code.
4. All property within the Site will be included within one or more Property Owner's Association(s) ("POA"). The POA will be established by the owner or authorized representative prior to subdivision plat approval for the Site. Membership in any and all POAs is a condition of development on the Site. The POA shall be responsible for maintenance and repair of the Cap (including soil covers) beneath property within its boundaries. The City shall make necessary repairs to covers and barriers if the landowner or POA fails to do so in a timely or appropriate manner. In that event, the City shall have the right to recover its costs from the landowner or POA. The City shall also have the right, in its sole discretion, to charge the landowner a surcharge for the costs of the City's work related to the property, in an amount established by ordinance.
5. Reasonable efforts must be used to minimize penetration of the Cap. Excess soil or tailings generated from underneath the Cap either during development or after development will be managed in accordance with the accepted SMP.

B. Mechanism of Implementation:

1. Sections 17-7-3 and 17-7-10 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Sections II.A.1 and 4 of this Plan.
2. Section 12.12.150 of the Midvale City Municipal Code will be amended by Ordinance of the City Council to include the Site within the control area currently identified as Sharon Steel OU2 in accordance with Section II.A.3 of this Plan. 3. Section 12.12.150 of the Midvale City Municipal Code will be amended by Ordinance of the City Council to provide that all construction and redevelopment activities within the Site shall be in accordance with the accepted SMP including all notification requirements in accordance with Section II.A.2 of this Plan.

ADOPTED
May 4, 2004

III. WATER MANAGEMENT

The shallow aquifer beneath the Site is contaminated with some heavy metals, primarily arsenic. Water management on the Site will focus on preventing new sources of water from infiltrating the Cap and tailings and eroding soil covers over the Cap.

The objectives of the ICs relating to water management are as follows:

- To minimize human and environmental exposure to contaminated groundwater.
- To minimize the possibility of damage to the Cap that could introduce water which travels through contaminated tailings and introduces new contaminants to the shallow ground water aquifer.
- To effectively manage storm water.

A. Description of Specific Institutional Controls:

1. Prohibit all water wells on the Site (excluding groundwater monitoring wells).
2. Prohibit the disturbance of existing groundwater monitoring wells without prior approval by UDEQ. A rehabilitation or well replacement plan must accompany any request to disturb a monitoring well. Access to monitoring wells, the interceptor drain, and the interceptor trench outfall by the regulatory agencies shall be maintained.
3. Prohibit utilities underneath the Cap
4. Insure effectiveness of the Cap as per section II of this Plan.
5. Have all future construction including storm water management comply with the SMP.

B. Mechanism of Implementation:

1. Sections 17-7-3 and 17-7-10 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section III.A. 1 of this Plan. This provision will also include a requirement that private covenants and deed restrictions will acknowledge this Plan and require compliance therewith.
2. The Midvale City Standard Construction Specifications will be amended by Ordinance of the City Council to include the provisions of Section III.A.2-5 of this Plan.

ADOPTED
May 4, 2004

IV. MEASURES TO ALLOW DEVELOPMENT

The ROD and ESD prepared by EPA and DEQ do not prohibit development including residential development. Such development may require the placement of additional soils above the existing Cap as outlined in the SMP. The following controls have been developed to permit development on the Site.

With respect to any and all structures that will be constructed on the Site the POA shall oversee all landscaped areas. A range of controls may be included within the responsibilities of the POA.

Property improvements after initial construction involving excavations deeper than 24-inches shall be controlled by a POA (or similar entity). Any excavations which penetrate the Cap (membrane) shall require a permit from Midvale City, and be performed in compliance with the SMP.

All landscaping shall be completed and maintained by the POA in accordance with the SMP. A list of approved plants has been included as part of the SMP.

A. Specific Institutional Controls:

1. With respect to any and all development that will be constructed on the Site, the POA shall oversee all landscaped areas. A range of controls may be included within the responsibilities of the POA. At a minimum the controls shall include: For areas with less than three (3) feet of cover soil over the cap, the POA shall take responsibility for any and all landscape installation and maintenance. For areas with greater than three (3) feet thickness of soil covers, the POA may allow individual property owners to install and maintain landscaping insofar as regrading of the property does not occur. All landscape plans on individual properties shall be reviewed and approved by the POA to ensure adequate soil covers, appropriate irrigation, and approved planting plans.
2. All plants must be on the approved list contained in the SMP.

B. Mechanism of Implementation:

1. Section 17-7-10 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section IV A, 1 of this Plan. This amendment will include a provision limiting development only where POAs (or similar entities) are created to oversee all landscaped areas and prohibiting excavation over 24" deep except by the association. The POA may have a range of controls in place. In addition, the amendment will include language to require the use of landscaping per the approved plant list in the SMP.

V. OVERSIGHT AND ENFORCEMENT ROLES AND RESPONSIBILITIES

Midvale City (the City) Department of Community and Economic Development will be the primary enforcement and oversight agency. Compliance with the ICs is the responsibility of the landowner, contractors and subcontractors working within the Site. This IC Process Plan may be revised to reflect requirements that may change over time. The landowner(s), Midvale City, DEQ, or EPA may propose changes to this plan. All proposed changes will be reviewed by the landowner(s), Midvale City, DEQ and EPA prior to finalization. Revised pages will be sent to all entities with oversight and enforcement roles and responsibilities listed below. The type and frequency of inspections and required maintenance of remedy components, including an on-site repository (if established) and related Site security will be detailed in amendments to the existing O&M Manual (if necessary).

A. Midvale City responsibilities:

- Periodic inspection of covers and final barriers on the Site.
- Prohibition of water wells.
- Repair of covers and final barriers, if the POA is unresponsive. City will enforce repair and collection of costs through Title 7 – Administrative Code Enforcement Program of the Midvale City Municipal Code.
- Review of site plan applications and issuance of final site plan approval.
- Review of road cut permit applications and issuance of permits.
- Periodic inspections during initial site development and post-development construction to ensure compliance with construction permit including air quality monitoring plans.
- Oversight of landscaping activities of POA (or similar entity).
- Verification of private covenants and deed restrictions for developments include the requirements of this Plan relating to landscaping and excavation.

A. EPA and UDEQ Responsibilities:

- Continue coordinating O&M activities as outlined in the O&M Manual to the extent practical.
- Review and approval promptly of amendments to existing O&M Plan (if proposed).
- Review construction plans and documents, as required by the SMP, for compliance with SMP and provide any relevant comments promptly. Following receipt and incorporation of comments the plans and documents will be considered final.
- Provide oversight to monitor conformance with SMP for any activities which penetrate the Cap's synthetic membrane.

A. Landowner/POA Responsibilities:

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- Control Site access.
- Enforce compliance with the Plan.
- Enforce compliance with provisions of construction permit, including air quality monitoring requirements.
- Enforce compliance with the approved SMP.
- Ensure that imported fill conforms with Midvale City Standards and Construction Specifications and the SMP.
- Establish private covenants and deed restrictions requiring that future landowners comply with applicable requirements set forth in this Plan.
- Maintain and repair covers and barriers (within their respective jurisdictional areas).
- Prohibit disturbances of monitoring wells.
- Oversee and enforce excavation and landscaping controls.
- Oversee maintenance of landscaped areas.

EXHIBIT D

INSTITUTIONAL CONTROL PROCESS PLAN

Operable Unit No. 2
Midvale Slag Site
Midvale, Utah

I. INTRODUCTION

This Institutional Control Process Plan ("Plan") has been prepared to document the requirements and procedures for the public Institutional Controls ("ICs") for the Operable Unit No. 2 ("OU2") portion of the Midvale Slag Site (the "Site") as illustrated in Figure 1. This Plan does not supersede any federal, state, or local statutes, regulations, or ordinances pertaining to the environment and current and future holders of interests of property within the Site will remain obligated to comply with the same. The primary purposes of these controls are (i) to prevent unacceptable human exposure to contaminants that will remain within OU2 after completion of remedial action by ensuring the protection, maintenance, and improvement of physical barriers that have been or will be placed on the Site; and (ii) to prevent or limit activities in certain areas of OU2 that may increase or exacerbate groundwater contamination. Public controls may be imposed, for example, through building permits, subdivision regulations, excavation permits, or zoning ordinances. Private controls are typically imposed through covenants, deed restrictions on the land, or contractual agreements between property owner or lessee. This Plan is not intended to impose or require private controls, except as pertaining to certain aspects of residential uses, as described below. The public controls outlined in this Plan will not apply until after the completion of the initial cover system selected as the remedy for OU2 in the Record of Decision (October 29, 2002) ("OU2 ROD"). All construction and development activities must be performed in accordance with this Plan.

This Plan has been prepared as a mechanism to assure that consistent and effective inspection and maintenance and enforcement activities are occurring and will occur in the future throughout OU2. These objectives and those detailed below will be achieved primarily through the implementation of institutional controls defined in this Plan. Future owners of any portion of the Site will be bound by the provisions of this Plan that are relevant to property they own or control.

Implementation of this Plan will be through the City of Midvale's development review, excavation permit, and construction specifications processes. Midvale City will add the criteria referenced in this Plan to each of the governing ordinances for the process in question. Staff will review the application in question to verify that it meets the provisions of all applicable City Ordinances, including the requirements set forth in this Plan and added to the Midvale City Code. In addition to adding the requirements of this Plan to Midvale

Ordinances, an information packet will be developed for potential land and business owners. The information provided will include an history of the site, the remedy implemented and any restrictions or additional requirements of the land owner related to a location on a former Superfund site.

This Plan has been prepared as a mechanism to assure that consistent and effective inspection and maintenance and enforcement activities are occurring and will occur in the future throughout OU2. These objectives and those detailed below will be achieved primarily through the implementation of institutional controls defined in this Plan. Future owners of any portion of the Site will be bound by the provisions of this Plan that are relevant to property they own or control.

The specific objectives of this Plan are as follows:

- To describe the process through which binding and enforceable public ICs will be developed and implemented that will facilitate future construction activities on the Site while at the same time maintaining the short-term and long-term effectiveness of the remedy established in the OU2 ROD.
- To establish controls relating to the management and disposal of OU2 soils and wastes during and after Site development.
- To establish controls on the replacement of the vegetated soil cover system with other types of development-oriented covers and barriers.
- To provide for the long-term operation and maintenance of development-oriented covers and barriers that are installed in lieu of the vegetated soil cover system.
- To establish water management controls to minimize adverse effects on the groundwater remedy selected in the OU2 ROD. These water management ICs will apply to storm water, irrigation, and wet utilities within certain defined areas of OU2 (and a portion of OU1).
- To establish controls on future construction-related activities (deep excavations, borings, or foundations) to prevent cross-contamination between aquifers within a defined area of OU2.
- To establish controls on groundwater use.
- To establish the requirements through which single family residential uses will be allowed.
- To establish vapor mitigation controls relating to buildings within defined areas of OU2 (and a portion of OU1).

- To identify the specific mechanisms (such as City ordinance(s), building permit and inspection requirements, etc.) that will be used to establish and enforce the institutional controls established in this Plan.
- To identify the roles and responsibilities that private parties and federal, state, local, and municipal entities will perform and undertake in order to implement this Plan, including oversight and enforcement.

II. COVERS AND MATERIALS MANAGEMENT

To reduce the risk of exposure to contaminants present at OU2, a vegetated soil cover system designed to achieve positive surface water drainage will be constructed over existing smelter wastes, native soils, and slag located on OU2. Operation and maintenance activities associated with this soil cover system will be provided for in a separate Operation and Maintenance Plan. If and when redevelopment occurs within the boundaries of OU2, it is anticipated that in certain redeveloped areas, the cover system will be replaced with other forms of development-oriented covers, such as structures (*i.e.*, building footprints), hardscape (*i.e.*, sidewalks, parking lots, roads, etc.), and vegetated landscaped areas. This Plan establishes the process through which the final vegetated soil cover system will be replaced and modified as necessary for redevelopment and describes how long-term operation and maintenance will be accomplished on redeveloped parcels of land within the Site.

In order to facilitate materials management in relation to any future excavation activities, a demarcation layer, consisting of a minimum of 24-inches of slag or other bright, geotextile fabric, will be installed beneath all barriers and covers. This demarcation layer marks the interface between the barriers and covers and materials that is potentially impacted from historic smelter operations. In any future excavation operations, excavated materials must be managed appropriately and any disturbed demarcation materials must be replaced at the appropriate level to ensure that all potentially impacted materials remain beneath a permanent demarcation layer.

The objectives of the institutional controls relating to cover systems and solid media left at the site are as follows:

- To minimize human exposure during and after construction to wastes remaining in place.
- To effectively manage excavated material, including wastes, during construction.
- To ensure that appropriate final covers are installed, inspected and maintained during and after Site development (except that the vegetated soil cover is not required to be installed within the Union Pacific or UTA Property).

- To prevent cross-contamination from the shallow perched aquifer to the upper sand and gravel and deep principal aquifers through future construction or investigation activities (such as deep excavations, borings, or foundations) within the Source Area defined on Exhibit A.
- To prevent cross-contamination from the upper sand and gravel aquifer to the deep principal aquifer within the Plume Area defined on Exhibit A.

A. Description of Specific Institutional Controls:

1. **Cover Maintenance.** The individual landowners will be responsible for maintenance and repair of covers and barriers upon their property. The City shall have the right to make necessary repairs to covers and barriers if the landowner fails to do so in a timely or appropriate manner. In that event, the City shall have the right to recover its costs from the landowner. The City shall also have the right, in its sole discretion, to charge the landowner a surcharge for the costs of the City's work related to the property, in an amount established by ordinance. This requirement does not apply to the Union Pacific or UTA Property.
2. **Storage of Excavated Materials.** Materials excavated from beneath final covers or other barriers must be segregated from clean cover and barrier materials. Slag materials must also be segregated from materials underlying the slag. Materials excavated from below the demarcation layer may be stored on plastic and covered with plastic or cloth tarp for a single 8-hour work shift. Storage for up to 24 hours adjacent to the work area is permitted if the storage area is secured by temporary fencing. Storage beyond 24 hours must be in roll off bins with secured tops or equivalent. Storage of slag materials must limit or prevent human and environmental exposure (e.g. limited access, dust suppression, etc.). Storage and management of excavated materials must be described in reasonable detail and performed in accordance with the Materials Management Plan discussed below.
3. **Replacement of Excavated Materials.** Reasonable efforts should be used to return excavated materials to the original excavation. If excavated materials are returned to the excavation, any materials beneath the demarcation layer must be placed first, with the demarcation layer being replaced to the excavation and compacted as appropriate, followed by restoration of an appropriate final barrier or cover. To the extent practicable, any new demarcation layers must tie into existing demarcation layers prior to the placement of covers or barriers. If the demarcation layer consists of slag, the minimum thickness must be 24-inches; otherwise a

brightly-colored geotextile fabric must be used. Worn or damaged geotextile demarcation material in an excavated area must be replaced with new material. Any left over waste material must be managed in accordance with this Plan.

4. Relocation of Excavated Materials. Reasonable efforts should be used to appropriately re-distribute excess excavation materials within the impacted property, in accordance with the requirements of this Plan. However, except for calcine wastes (described below), excess excavation materials may also be relocated to any area within OU2. In connection with any material relocation activities, a demarcation layer consisting of a minimum 24-inch layer of slag or other appropriate demarcation material shall be placed on top of any potentially impacted materials, followed by an appropriate cover consistent with the OU2 ROD. Worn or damaged geotextile demarcation material must be replaced with new material. Any new demarcation layers shall tie into existing demarcation layers prior to placement of final covers and barriers. Compaction requirements from the City of Midvale must be satisfied. If the final barrier consists of a vegetated soil cover, the minimum depth must be 18-inches (24-inches for residential use) and the area must be re-seeded and vegetation re-established. Relocation of materials to undeveloped areas of OU2 must not result in slopes exceeding the maximum slope established in the Remedial Design for OU2 or otherwise adversely affect storm water management systems.
 - (a) Calcine Material. Calcine waste materials consist of dense, fine-grained, purple-colored material. Calcine wastes will generally be consolidated in areas to the immediate north and west of the Pioneer Cemetery and will be covered with a minimum 24-inch layer of slag or other demarcation material. Calcine waste materials may not be relocated within OU-2 without the approval of EPA and DEQ, except that calcine waste materials may be relocated, subject to the requirements of this Plan, within the original Calcine Waste Area designated in the OU2 ROD and the Remedial Design without further approval.
5. Off-Site Disposal. Any soils or smelter waste that must be disposed off-site must be disposed in a permitted landfill. Wastes must be characterized in accordance with the requirements of the permitted disposal facility. Off-site disposal of Waste Material in excess of 10 cubic yards must also comply with Paragraph 13 of the Consent Decree. "Waste Material," as defined under the Consent Decree, includes any hazardous substances, any pollutant or contaminant, or any solid waste.

6. **Plans and Approvals.** Site plan approval as defined and required by chapter 17-7-3 and regulated by 17-7-9 of the Midvale City Zoning Ordinance shall be obtained before initial site development, future redevelopment or change in land use. Applications shall be made available through the City Community and Economic Development Department. The application shall disclose the presence of hazardous substances on the Site and identify the type and location of reports pertaining to the location and type of hazardous substances on the Site. In conjunction with the submittal of the preliminary site plan application, the applicant shall submit documentation that shall include an attestation that the applicant is aware of the current Site condition and will comply with all Institutional Controls. Applicant submittals and requirements under the site plan approval process are summarized below which are in addition to and in conjunction with the requirements identified in 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance:
- (a) Applicant shall submit a plan illustrating the proposed construction and development. Preliminary and final site plans of development shall be submitted for review and approval. Preliminary and final development plans must designate the type and location of final barriers.
 - (b) A materials management plan must be provided with respect to any construction activities that involve the management of potentially contaminated materials (e.g., slag or underlying materials). The materials management plan must demonstrate that all such construction activities will be in compliance with this Plan.
 - (c) An air quality monitoring and dust suppression plan shall be provided with respect to any construction activities that involve the management of potentially contaminated materials (e.g., slag or underlying materials). The plan will ensure that National Ambient Air Quality Standards are met for site contaminants at the boundary between the construction area and the developed areas in addition to State or local air quality requirements. Applicant may request a waiver of the air monitoring requirements by submitting relevant data demonstrating compliance with all air quality standards under similar circumstances (similar weather conditions, construction operations, site materials).
 - (d) Grading and drainage plans will be required and shall specifically demonstrate the protection of final barriers from erosion and ensure that drainage patterns are appropriate

and consistent with the groundwater remedy adopted by EPA.

- (e) A proposed monitoring and maintenance plan must be provided by applicant to ensure that all barriers on the proposed development site will be maintained in accordance with this Plan.
- (f) A road cut permit shall be required for any work in the public right-of-way that breaches final site covers, per ordinance 12.12.150 of the Midvale City Municipal Code.

7. **Intrusive Activities.** If any intrusive exploratory activities (such as excavations, borings, CPT soundings) or foundations (such as piles or drilled shafts) are proposed for the Source or Plume Areas (as defined on Exhibit A) at depths greater than 20 feet, approval must first be obtained from the City of Midvale. The request for approval must include a detailed description of the proposed exploration or construction activity as well as the mechanism(s) that will be used to prevent cross contamination between the two aquifers. The request must be approved by the City of Midvale prior to implementation of the work. An application process will be established to enforce these restrictions.

B. Mechanism of implementation:

- 1. Sections 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section II.A.1 and 6 of this Plan.
- 2. Section 12.12.150 of the Midvale City Municipal Code, which addresses excavations within the public right of way, will be amended by Ordinance of the City Council to include Midvale Slag OU2 within the control area currently identified as Sharon Steel OU2.
- 3. Midvale City's Construction Specifications will be amended to include the provisions of Section II.A.2-5 and 7 of this Plan.

III. WATER MANAGEMENT

The shallow aquifer beneath a portion of the OU2 and OU1 areas of the Site is contaminated, primarily with arsenic, as well as other substances. Significant arsenic source areas are located in certain areas of OU2. Water management on a portion of OU2 will focus on preventing new sources of water from infiltrating water over and near the Source Areas depicted in Exhibit A. Water management on portions of OU2 and OU1 will also focus on preventing new sources of water from affecting the extent, direction, and flow of the arsenic

plume within the Source and Plume Areas depicted on Exhibit A. The Source and Plume Areas depicted on Exhibit A are merely illustrative.¹ At the time that Subdivision (as defined by the Midvale City Code) occurs on any property within a Source or Plume Area, the boundaries of these areas will be further defined, surveyed, and demarcated on the small scale master plan, subdivision plat, and/or other permanent record maintained by Midvale City for purposes of enforcement. These institutional controls are in part based upon the conclusions reached in a document prepared for EPA entitled: Technical Memorandum Evaluation of Impact of Residential Irrigation on Arsenic Plume, Midvale Slag Superfund Site, Operable Unit 2 (CDM 2004).

The objectives of the institutional controls relating to water management are as follows:

- To minimize human exposure to contaminated groundwater.
- To effectively manage contaminated construction wastewater (pumped groundwater).
- To minimize adverse impacts to the groundwater remedy selected in the OU2 ROD by minimizing potential infiltration of water through Source and Plume Areas.

A. Description of Specific Institutional Controls:

1. Prohibit all water wells on OU2 (excluding groundwater monitoring wells).
2. Prohibit the disturbance of any groundwater monitoring wells without prior approval by EPA and UDEQ. A rehabilitation or well replacement plan must accompany any request to disturb a monitoring well.
3. Prohibit unlined storm water detention basins within the boundaries of or within 100 feet of a Source or Plume Area (Exhibit A). Liners of detention basins must be impervious (detention basins will be shown on construction plans relative to source area boundaries and will be included in site plan applications).

¹A more specific description of the "Source Area" is the point beginning at the north east corner of the intersection of 7800 South and Bingham Junction Boulevard (to be constructed), thence north along the eastern edge of the right-of-way for the Bingham Junction Boulevard to the Union Pacific right-of-way, thence east along the Union Pacific right-of-way to the western edge of the right-of-way for Holden Street, thence south along such right-of-way to the southern edge of the public railroad dock property, thence west to the eastern edge of the right-of-way for Bingham Junction Boulevard; and also including the Calcine Waste Area as defined in the Remedial Design. A more specific description of the "Plume Area" will be developed through the subdivision process.

4. Prohibit the bedding of wet utilities in slag.
5. Require that all wet utilities traversing Source and Plume Areas be bedded in flowable concrete (flowfil). (Wet utility locations will be shown on construction plans relative to source area boundaries and will be included in site plan applications.)
6. Require low-permeability collars for all wet utilities within 100-feet of the Source Area or Plume Area and that traverse a Source Area or Plume Area somewhere along the utility alignment. Collars will be installed at 50-foot intervals. Collar designs will be submitted with the construction permit and site plan application discussed in Section II.
7. Require a mechanism to limit infiltration of irrigation water within Source Areas. Minimum measures for Source Areas may include installing a buried impermeable barrier with drain system beneath irrigated areas (or alternative with equivalent performance); large trees or shrubs may be placed in sealed planter boxes (*the location of irrigated areas and piping will be shown on construction plans relative to source areas and will be included in site plan applications*).
8. For non-residential development within Source Areas, all building permit applicants will be required to submit to the City an irrigation plan in compliance with the provisions of this Plan. The City will have the responsibility of approving and overseeing the implementation of the irrigation plan. For residential development within Source Areas, Property Owners' Associations will have the responsibility of reviewing, approving, and overseeing the implementation of irrigation plans, as described more fully in Section IV, below.
9. Prohibit the use of concrete rubble as fill material below the historic high water table within 100-feet of a Source or Plume Area (except as may be done during remedial action).
10. Require disposal of contaminated construction wastewater in accordance with applicable environmental regulations (*to be included in site plan application*).

B. Mechanism of implementation:

1. Sections 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section III.A. 1, 7, and 8 of this Plan. This provision will also include a requirement that private covenants and deed

restrictions will acknowledge this Plan and require compliance therewith.

2. The Midvale City Standard Construction Specifications will be amended by Ordinance of the City Council to include the provisions of Section III.A.2-6, 9 and 10 of this Plan.
3. All subdivision plats and site plans for development within the Source and Plume areas identified on Exhibit A shall be created and managed in accordance with the Midvale City Zoning Ordinance and enforced through existing laws.

IV. MEASURES TO ALLOW SINGLE FAMILY RESIDENTIAL USES

The OU2 ROD permits residential development in the form of multi-family dwellings. Such development requires the placement of two-feet of clean soils as a final cover. Although the OU2 ROD does not anticipate single-family residential homes, it does not prohibit this type of development. The following controls have been developed to permit single-family residential development on OU2. This Section IV does not apply to the Union Pacific or UTA Property.

With respect to any and all single-family housing that will be constructed on OU2 (including traditional detached units, twin homes, duplexes, triplexes, and townhouses), developers will be required to comply with this Plan in connection with any such development, including specifically the materials management requirements described above. The clean fill barrier portion of the materials must be at least 24 inches for single-family residential use. The City will also impose restrictions on permissible landscaping within OU2, which will be designed to minimize the potential breaching of final barriers and to minimize contact with underlying smelter wastes. These ICs will generally be enforced through the City's building permit process.

Midvale City's building permit process will function as the primary enforcement mechanism for excavation and materials management controls after initial home construction. In addition, excavation and grading activities not otherwise requiring a City building permit performed after initial home construction will be managed through Property Owners' Associations ("POAs") and private Covenants, Conditions, and Restrictions ("CC&Rs"). Midvale City will require, through the planned development review process, that new residential developments within OU2 provide CC & Rs governing maintenance of common areas, private roads, and other amenities. CC&Rs are implemented and enforced through POAs. As an added requirement to residential developments within OU2, the City will require that CC&Rs will include information concerning the property's status as a former Superfund site and the restrictions concerning excavations identified in Section II of this Plan are disclosed to and followed by the POA. All landscape plans as to all residential properties within OU2 shall be reviewed and approved by the POA to ensure that applicable landscaping

limitations are met as well as that covers and barriers are maintained and that excavated materials are managed in accordance with the requirements of Section II of this Plan.

In addition to materials management issues, the presence of chlorinated organic contaminants including perchloroethylene in the Upper Sand & Gravel Aquifer creates the potential for migration of contaminant vapors into future structures. Mitigation measures to address potential vapor intrusion will be required only for buildings within the area designated on Exhibit B, unless risks are demonstrated to be below a level of concern to the satisfaction of Region 8 EPA. Mitigation measures may include vapor barriers or other engineering methods commonly employed to reduce risks from radon. The areas of OU2 (and part of OU1) subject to this requirement are illustrated on Exhibit B.

A. Specific Institutional Controls:

1. New Residential Developments

- (a) As part of the City's Small Area Master Plan process, residential developments which are required to comply with this Plan will be required to submit the following information:
- (b) Grading plans which indicate the depth of clean fill on residential and recreational lots. The OU2 ROD requires a minimum two-foot depth but developers may install additional cover. At the time that the Conditional Use Permit for the Small Scale Master Plan is granted, the City will identify the depth of clean fill for the specific development ("CUP Approved Depth"). The CUP Approved Depth will be a uniform depth of fill number equal to the most shallow fill area located within the relevant development area.
- (c) Conditions, Covenants and Restrictions to be filed with the Subdivision Plat which include the creation of a Property Owners Association and non-building permit excavation and grading restrictions as identified below.
- (d) The City will develop limitations on permissible landscaping within OU2, which will be designed to minimize the potential breaching of final barriers and to minimize contact with underlying smelter wastes.
- (e) Unless risks are demonstrated to be below a level of concern to the satisfaction of Region 8 EPA, for all buildings within the area depicted in Exhibit B, appropriate vapor mitigation measures will be implemented, including vapor barriers or other engineering methods, such as venting systems, commonly employed to reduce risks from radon.

2. Activities Subject to Building Permit

- (a) For all activities after initial home construction that require a building permit which involve excavations exceeding the CUP Approved Depth, a materials management plan will be required as part of the Midvale City Building Permit and Inspection process. The City will oversee implementation of the materials management plan. Prior to issuance of a Certificate of Occupancy by the Midvale City Building Official, the owner or developer will submit a certification that final depth of clean fill meets or exceeds the CUP Approved Depth.
- (b) All materials from excavations deeper than the CUP Approved Depth will be segregated to prevent mixing with the clean barrier soils and will be managed, and demarcation materials and covers replaced, in accordance with Section II of this Plan.

3. Activities Not Subject to Building Permits

- (a) All property owners must submit a landscape and excavation plan to the POA prior to beginning any excavation or grading activities.
- (b) All property owners within any Source Area as depicted on Exhibit A will be required to submit to the POA an irrigation plan in compliance with the provisions of Section III of this Plan. The POA will have the responsibility of approving and overseeing the implementation of the irrigation plan.
- (c) All grading activities which result in a final area with less than the CUP Approved Depth are prohibited. Importation of clean fill will be required to achieve desired landscaping elevations.
- (d) All excavations deeper than the cover soil layer (minimum 24-inches) will be prohibited except through the POA. All such excavation activities must be performed in compliance with the requirements of Section II of this Plan.

B. Mechanism of Implementation:

- 1. Section 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section IV A of this Plan.

**V. OVERSIGHT AND ENFORCEMENT ROLES AND RESPONSIBILITIES:
MODIFICATION OF PLAN**

Midvale City (the City) Department of Community and Economic Development will be the primary enforcement and oversight agency. Compliance with the ICs is the responsibility of the landowner, property owners associations, contractors and subcontractors working within the Site. The type and frequency of inspections and required maintenance of remedy components and related Site security, will be detailed in an O&M Plan to be developed in connection with the remedial action.

This Plan and the rules, regulations, ordinances, and covenants adopted hereunder may be revised from time to time as may be necessary or desirable to clarify its provisions or to incorporate new or modified requirements, as follows. The affected landowner(s), Midvale City, DEQ, or EPA may propose changes to this Plan. All proposed changes will be reviewed by the affected landowner(s), Midvale City, DEQ, and EPA prior to adoption by the Midvale City Council. Copies of revised documents will be delivered to all entities with oversight and enforcement roles and responsibilities listed below.

A. Midvale City responsibilities:

- Develop and process required ordinance changes to implement the provisions of this Plan.
- Undertake appropriate enforcement action to include repair of covers and barriers, if the landowner is unresponsive. City will enforce repair and collection of costs through Title 7 – Administrative Code Enforcement Program of the Midvale City Municipal Code.
- Review of site plan applications and issuance of final site plan approval.
- Review of road cut permit applications and issuance of permits.
- Initial site development and post-development inspections to ensure compliance with construction permit will include assessment of compliance with this plan.
- Verify compliance with requirements to allow single family residential uses in accordance with this plan will occur as part of the City's standard conditional use permit process.
- Verify that private covenants and deed restrictions are in place and contain applicable ICs for single family residential developments including the requirements of this Plan relating to homeowners association (or similar entity) responsibilities concerning landscaping, irrigation and excavation.

B. EPA and UDEQ Responsibilities:

- Review proposed provisions of Midvale City Code implementing this plan.
- Review groundwater pumping and discharge plan if construction pumping is necessary.

- Perform monitoring of groundwater quality to assess performance of remedial action.

C. Landowner/POA Responsibilities:

- Control Site access.
- Implement the operation and maintenance plan for OU2.
- Repair covers and barriers as necessary.
- Comply with provisions of construction permit, including air quality monitoring requirements.
- Comply with disposal facility requirements for off-Site waste disposal.
- Comply with appropriate regulations for disposition of construction wastewater.
- Establish private covenants and deed restrictions requiring that future land owners comply with applicable requirements set forth in this Plan.
- Prohibit disturbances of monitoring wells.
- Oversee and enforce excavation, irrigation, and landscaping controls.
- Oversee maintenance of landscaped areas.
- Provide access to EPA, UDEQ, Midvale City relating to environmental issues, including institutional controls and groundwater monitoring.

A summary of the oversight and enforcement roles and responsibilities may be prepared to facilitate the implementation of this Plan.

EXHIBIT E



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

SEP 8 2003

Ref: ENF-L
Bradley R. Cahoon
Snell & Willmer, LLP
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101

RE: Sharon Steel Purchase & Redevelopment, Reasonable Steps Letter

Dear Brad,

We are writing in response to your letter of August 8, 2003 regarding the steps your clients have and will be taking to maintain their status as bona fide prospective purchasers (BFPP) of the Sharon Steel Superfund Site in Midvale, Utah. We (representatives of EPA and UDEQ) met with you, your clients, and a representative of ERM in Salt Lake City on July 9, 2003 to discuss your clients' plans for redevelopment of the site. This response is based upon representations made at that meeting as well as information provided in your letter of August 8. In discussing your client's status, we will be referencing EPA's "Common Elements" Guidance (March 6, 2003) which summarizes the statute's requirements to qualify and maintain BFPP status.

All Appropriate Inquiry: We understand that ERM is undertaking a Phase I Environmental Assessment for the site. This assessment includes a thorough review of the Sharon Steel Site administrative record, in addition to the ASTM standard requirements. We believe that this inquiry meets the standard of "all appropriate inquiry."

Affiliation: You represent that your clients, referred to collectively as the "Development Group," have no past or present familial, contractual, corporate or financial relationships with Mining Remedial Recovery Company or its predecessor, the Sharon Steel Corporation, the potentially responsible parties at this Site. This representation satisfies the statutory threshold of no affiliation.

Compliance with Land Use Restrictions and Institutional Controls: The Development Group has agreed to maintain compliance with existing restrictions and controls. Based on our understanding of the Group's site modification plan and the land uses contemplated by redevelopment, the existing land use restrictions and institutional controls will likely need to be

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changed in future. We understand that your clients will work with EPA and UDEQ (sometimes "the agencies") and the City of Midvale to revise restrictions and controls as necessary, and will abide by any changed requirements once they are finalized.

Reasonable Steps: The Development Group has agreed to take necessary steps to stop continuing releases, prevent future releases and prevent or limit exposure. We agree with your assertion that "reasonable steps" does not include removal of contaminated soils (except for excavation necessary to effectuate redevelopment) or extraction and treatment of groundwater. If excavation for redevelopment involves extraction of contaminated materials, there must be proper disposal of those materials.

Continuing Obligations: In your August 8 letter, you outlined activities that we identified at our July 9 meeting as likely ongoing obligations. We agree, in the main, with your outline. We would, however, offer the following clarifications from our perspective:

- Any structures located on the cap must be designed and constructed in a manner that will not affect the integrity of the cap.
- Continued access will need to be provided to UDEQ and EPA and their designees, including the City of Midvale, for inspections and ongoing operations and maintenance as outlined in your August 8 letter.
- Restoration or reconstruction of the cap will not be required except as necessary to maintain the integrity of the remedy during or after site modification construction activities approved by the City of Midvale and the agencies.
- The Development Group and its successors will not be required to perform operation and maintenance of the cap except as related to site modification. This is an area we need to discuss in more detail after site modification plans (and associated engineering), become more fully developed.
- As discussed above, once the site modification plan is developed and approved, and once the redevelopment plan is in the City of Midvale's approval process, the agencies will need to work with you and the City to develop a package of land use restrictions and institutional controls to ensure protectiveness and remedy integrity after redevelopment.

Based on our understanding of the nature of the redevelopment your client is proposing, we anticipate that EPA and UDEQ may need to modify the remedy described and selected in the Sharon Steel Record of Decision. Following is an outline of how we anticipate the process may unfold from here:

- ERM submits the site modification plan to EPA, UDEQ and Midvale for review and approval. The agencies' review will focus on remedy integrity and long term protectiveness.
- Development Group proceeds through Midvale's planning review process and obtains approval of its redevelopment plans.
- Based on the approved plans, EPA and UDEQ prepare an Explanation of Significant Differences (ESD) or ROD Modification (ROD Mod) outlining changes to the remedy

and making necessary findings regarding remedy protectiveness. (This is a notice-and-comment rulemaking process constituting "final agency action" within the meaning of the Administrative Procedures Act.)

- After the ESD/ROD Mod is completed, the parties petition for termination of the Partial Consent Decree.

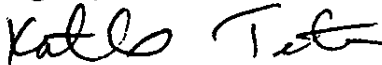
The State of Utah has no statutes, regulations or guidelines which are comparable to EPA's "reasonable steps" authorities. However, UDEQ joins in this letter based upon its contractual relationship with EPA and upon the Utah Hazardous Substances Mitigation Act, Utah Code §§ 19-6-301 et seq.; it is believed that compliance with the EPA "reasonable steps" will result in compliance with the Utah Act.

This letter is based upon the representations made by and on behalf of the Development Group and assumed performance by the Development Groups, or its successors, of the future obligations mentioned herein. If it later appears that the representations were materially untrue or the Development Group, or its successors, fails to perform the future obligations, this letter may, in the discretion of EPA and/or UDEQ, be rescinded.

We hope this letter answers your questions and addresses your client's needs. Please don't hesitate to contact Joni Teter or Rebecca Thomas (EPA) or Liz Yeomans or Alan Fletcher (UDEQ) if you have further questions (contact information below). We look forward to working with you on this exciting project.

Joni Teter	303/312-6553	teter.joni@epa.gov
Rebecca Thomas	303/312-6552	thomas.Rebecca@epa.gov
Liz Yeomans	801/536-4092	eyeomans@utah.gov
Alan Fletcher	801/536-4118	afletcher@utah.gov

Best regards,



Katharine J. Teter
Senior Enforcement Attorney
U.S. EPA Region 8



Dianne R. Nielson
Executive Director
Utah Department of Environmental Quality

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August 13, 2004

SALT LAKE CITY, UTAH

PHOENIX, ARIZONA

TUCSON, ARIZONA

IRVINE, CALIFORNIA

DENVER, COLORADO

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Utah Department of Environmental Quality
Division of Environmental Remediation & Reclamation
168 North 1950 West, 1st Floor
Salt Lake City, UT 84116

Re: Silver Refinery Area Purchase and Redevelopment

Dear Joni, Karen and Alan:

I am writing on behalf of my client, Createrra, Inc. who has obtained an option to purchase the approximately 11 acre parcel of real property known as the Silver Refinery Area in Midvale, Salt Lake County, Utah from the current owner Mining Remedial Recovery Company. Createrra plans to exercise the option, take title to and redevelop the Silver Refinery Area in working with the City of Midvale.

As agreed in our phone conference with Joni Teter and Bob Homiak of U.S. EPA on August 10, 2004, the purpose of this letter is to support paragraph 9 of the Stipulation and Joint Motion for Modification and Termination of Partial Consent Decree to be filed in the United States District Court for the District of Utah, Civil No. 89-C-136 ("Action") confirming the status of Createrra as a bona fide prospective purchaser ("BFPP") of the Silver Refinery Area under CERCLA § 101(40), 42 U.S.C. § 9601(40).

Createrra has retained or will retain a qualified environmental consultant to complete all appropriate inquiry by preparing a Phase I environmental site assessment for the Silver Refinery Area. The Phase I will satisfy the all appropriate inquiry requirement of the BFPP defense.

Createrra is not potentially liable or affiliated with any other person or entity who is potentially liable for response costs associated with the Silver Refinery Area. As such, Createrra

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does not and will not have any affiliation with the current owner, Mining Remedial Recovery Company, or its predecessors or operators in interest of the Silver Refinery Area.

Concerning land use restrictions and institutional controls, Createrra understands that the Silver Refinery Area redevelopment and future use will be subject to land use restrictions and institutional controls required by the Partial Consent Decree, as modified, and the Institutional Control Process Plan pertaining to the Silver Refinery Area. Createrra understands that it must comply with any land use restrictions, and must not impede the effectiveness or integrity of any institutional control, for the Silver Refinery Area. Further, Createrra understands that it will need to take reasonable steps to stop continuing releases, prevent threatened future releases and prevent or limit human, environmental or natural resources exposure to earlier hazardous substance releases on the Silver Refinery Area. However, EPA has recognized that satisfaction of these reasonable steps does not include removal of contaminated soil or extraction and treatment of contaminated ground water. See EPA Common Elements Guidance Memorandum (March 6, 2003).

Createrra also understands that it will need to satisfy the cooperation, assistance and access requirements by complying with Section XIV ACCESS AND INSTITUTIONAL CONTROLS of the modified Partial Consent Decree. To the extent the Agencies issue CERCLA information requests or administrative subpoenas, Createrra simply will need to comply with the same. To the extent a release of hazardous substances occurs after purchase, Createrra would need to comply with applicable legal notification requirements.

Should you have any questions or need additional information please contact me any time.

Very truly yours,

SNELL & WILMER L.L.P.


Bradley R. Calhoun

BRC:hks

cc via email: Benjamin R. Magelsen

310455.1

EXHIBIT F



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

Ref: ENF-L

January 21, 2004

Bradley Cahoon, Esq.
Snell & Wilmer, L.L.P.
Gateway Tower West
15 West South Temple, Ste 1200
Salt Lake City, Utah 84101

Dear Mr. Cahoon:

Pursuant to your request, the U.S. Environmental Protection Agency ("EPA") has analyzed the applicability of the covenant in the Partial Consent Decree captioned United States of America v. Sharon Steel Corporation et al. (Civ. No. 86-C-924J) to your client who wishes to purchase the Sharon Steel/Midvale Tailings property. The Partial Consent Decree indicates that the U.S. covenants not to sue "any person which comes to own or operate any or all of the Tailings Site ..." "as to any matter alleged in either or both of the Actions, including any Future Liability with regard to the Tailings Site...."

Thus, EPA will not seek to assert liability against the prospective purchaser of the property under Sections 106 or 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9606 or 9607, subject to the reservations, reopeners and all other applicable requirements of the Partial Consent Decree and to the prospective purchaser's continued compliance with the terms of Section 101(40) of CERCLA, 42 U.S.C. §9601(40) (such terms arising from the new Brownfields amendments of 2002).

Please feel free to call me at (303) 312-6853 if you have any further questions.

Sincerely,

A handwritten signature in black ink that reads "Matt Cohn".

Matthew Cohn
Legal Enforcement Program



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