

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA

Plaintiff

v.

ASARCO INCORPORATED; SALS
INVESTORS PARTNERSHIP; UTAH
TRANSIT AUTHORITY; MONROC
INCORPORATED; MURRAY CITY
CORPORATION; TB WAREHOUSE,
L.L.C.; TIMOTHY F. BUEHNER;
PAUL W. BUEHNER; ALMA UTAH
COMPANY; OTTO BUEHNER AND
COMPANY; BUEHNER SALT LAKE
PROPERTIES, L.C.; HI-UTE
INVESTMENT COMPANY; MURRAY
LAND TRUST L.C.; BUEHNER
CORPORATION; W.R. WHITE
COMPANY; ASH GROVE CEMENT; and
PARAGON PROPERTIES;

Defendants.

CIVIL ACTION NO.

CONSENT DECREE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

53 AUG 15 AM 8:31

REGION VIII

IN THE MATTER OF:
MURRAY SMELTER SITE

Docket Number
CERCLA-VIII-98-17

EPA REGION VIII
RECORDS CLERK

UNDER THE AUTHORITY OF THE	)	AGREEMENT AND COVENANT
COMPREHENSIVE ENVIRONMENTAL	)	NOT TO SUE
RESPONSE, COMPENSATION, AND	)	Chimney Ridge L.C. &
LIABILITY ACT OF 1980, 42 U.S.C.	)	IHC Health Services, Inc.
§ 9601, <u>et seq.</u> , as amended.	)	

I. INTRODUCTION

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States, on behalf of the Environmental Protection Agency ("EPA") and the Department of Interior ("DOI"); Chimney Ridge, L.C.; and IHC Health Services, Inc., (collectively the "Parties").

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq., and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

The Murray Smelter Superfund Site (the "Site"), which is comprised of two areas, respectively titled the "on-facility" and "off-facility" areas, is located in Murray, Salt Lake County, Utah. The on-facility area, which encompasses the approximately 142 acres that will be redeveloped by Chimney Ridge, L.C., and IHC Health Services, Inc., (collectively, the "Settling Respondents"), is bounded by 5300 South Street to the south, State Street to the east, Little Cottonwood Creek to the north,

and the west set of the Southern Pacific Railroad tracks to the west. The off-facility area, situated to the south and west of the on-facility area, comprises about 140 acres.

The on-facility portion of the Site encompasses the area most directly impacted by the operations of two smelters, the Germania and Murray Smelters. Germania, which closed in 1902, operated on the northern fringe of the on-facility portion of the Site, while Murray, which continued operations through 1949, occupied the majority of the on-facility portion of the Site. After the smelters were closed, most of the plant buildings were demolished. However, the two tall smoke stacks of the Murray Smelter were left intact. These smelter operations left large amounts of arsenic and lead in various areas of the surface and subsurface soils and contaminated the shallow aquifer with high concentrations of arsenic.

The on-facility portion of the Site is currently occupied by a mix of uses, including residential, commercial and industrial activities. EPA's risk assessment indicates that uses entailing long-term direct contact with the contaminated soil and/or ingestion of the contaminated ground water could present an imminent and substantial endangerment to public health and the environment.

EPA's Record of Decision, which was issued on April 2, 1998, selects the following remedy for the on-facility portion of the Site: the excavation of soils contaminated with high levels of arsenic and the disposal of such material, depending on the

severity of the contamination, in either an off-site facility or in two repositories located on the Site; placement and maintenance of barriers over soils that are contaminated with low levels of arsenic and lead, if any remain after excavation and disposal of the more highly contaminated soils; implementation and maintenance of public and private institutional controls, which among other things, limit use of the on-facility portion of the Site to non-contact intensive activities and prohibit the development or use of ground water wells; and the continued monitoring of ground water and surface water. In addition, the smoke stacks, which have been found to lack stability, will have to be demolished or stabilized.

ASARCO Incorporated, a New Jersey corporation, and others have negotiated a consent decree with the United States under which Asarco will perform the excavation and disposal of the contaminated materials and will fund the public institutional controls, and under which other parties will perform other response actions.

Chimney Ridge, L.C., is a Utah limited liability company constituted to accomplish the purchase and redevelopment of the majority of the property encompassed in the on-facility portion of the Site. IHC Health Services, Inc. ("IHC"), is a Utah nonprofit corporation specializing in the development and management of health care facilities.

Settling Respondents have entered into agreements to purchase the majority of the on-facility portion of the Site.

Settling Respondents intend to change the use of the Site to activities that are in accordance with the public and private institutional controls. The development of the on-facility portion of the Site will include movie theatres, retail establishments, a medical health care campus, and a mix of other commercial uses. No residential or heavy industrial uses will continue at the on-facility area, except as specifically allowed and then only pursuant to appropriate safeguards.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling Respondents for the Existing Contamination at the Property which would otherwise result from Settling Respondents becoming the owners of the property.

The Parties agree that the Settling Respondents' entry into this Agreement, and the actions undertaken by the Settling Respondents in accordance with this Agreement, do not constitute an admission of any liability by the Settling Respondents.

The resolution of this potential liability, in exchange for provision by the Settling Respondents of a substantial benefit to EPA and DOI, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them

in CERCLA or in such regulations, including any amendments thereto.

1. "DOI" shall mean the United States Department of Interior, and any successor departments or agencies of the United States.

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

3. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants, present or existing on or under the Property as of the effective date of this Agreement.

4. "Parties" shall mean the United States, the EPA and the Settling Respondents.

5. "Property" shall mean the portions of the Site, approximately 130 acres, which are described in Exhibit 1 of this Agreement. Any parcel or portion of the Site for which Settling Respondents have not obtained fee simple title by June 1, 1999 shall not be part of the Property for purposes of this Agreement.

6. "Settling Respondents" shall mean Chimney Ridge, L.C., and IHC Health Services, Inc.

7. "Site" shall mean the Murray Smelter Superfund Site, encompassing approximately 282 acres, located in Murray, Salt Lake County, and Utah, and is depicted generally on the map attached as Exhibit 2.

8. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

9. Settling Respondents have participated in land use discussions with the City of Murray, EPA, the State of Utah and current owners of property on the Site over the last year. Subject to obtaining appropriate option agreements and other legal reassurances, Settling Respondents have participated with the intention of developing the on-facility portion of the Site in a manner consistent with the City of Murray's ("City") vision of future land use and compatible with EPA's need to eliminate contact-intensive uses. Settling Respondents' development of the on-facility portion of the Site, performed in coordination with Asarco's cleanup work and certain work performed by Hi-Ute Investment and Buehner Salt Lake Properties, will ensure an expedited, consistent and comprehensive change of land use on the Site, as well as a major enhancement of the community through creation of jobs, beneficial services (e.g., the medical health care campus), increased tax revenues and beautification of urban blight. Settling Respondents have also: 1) facilitated the development of a Utah Transit Authority light-rail station on the Site; 2) provided some of the financial incentives necessary to hasten the departure of a major incompatible use on the Site, the Buehner Corporation; and 3) provided \$116,000 towards dedication of properties for use as a roadway-repository on the Site. As indicated below, Settling Respondents will contribute financially

towards remediation at the Site as well as reimbursing EPA and DOJ for costs incurred in negotiating this Agreement. Settling Respondents' actions at the Site will provide a substantial benefit to EPA in achieving cleanup of the Site, as well as to the community in assuring appropriate development of this under-utilized portion of the City of Murray.

10. The Settling Respondents represent, and for the purposes of this Agreement EPA relies on those representations, that Settling Respondents' involvement with the Property and the Site as of May 29, 1998, has been limited to the following: 1) negotiating and entering into agreements for purchase with current landowners; 2) participating in planning with the City of Murray and current landowners for future uses of the on-facility portion of the Site; 3) financially assisting a current landowner in a buy-out agreement of an incompatible leasehold interest; and 4) purchase of two small parcels, that although within the Site, are not subject to remediation other than institutional controls.

IV. PAYMENT

11. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein, Settling Respondents agree to pay:

a. To EPA the sum of \$15,000, within thirty (30) days of the effective date of this Agreement. The Settling Respondents shall make all payments required by this Agreement in the form of a certified or cashier's check or by wire transfer. Certified or cashier's checks shall be made payable to "EPA

Hazardous Substance Superfund" referencing the EPA Region and Site/Spill ID #08Q9, the DOJ case number 90-11-3-1729/1, and Settling Respondents' name and address. Settling Respondents shall send the check(s) by regular mail to:

Mellon Bank
EPA Region VIII
Attention: Superfund Accounting
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other express mailings of the check(s) should be addressed to:

Mellon Bank
3 Mellon Bank Center
Room #153-2713
Pittsburgh, PA 15259

Ref: Lockbox 360859

Wire transfers must be sent to the Federal Reserve Bank in New York to:

ABA= 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Copies of the check(s) and wire transfers and any accompanying transmittal letter(s) shall be sent to the United States as specified in Section XV (Notices and Submissions).

b. To DOI the sum of \$33,000 within thirty (30) days of the effective date of this Agreement. Of this sum, DOI agrees that \$30,000 will be used to assist the City of Murray, Utah with the restoration, rehabilitation or replacement of natural resources within the jurisdiction of the City of Murray. DOI further agrees to use its best efforts to develop a cooperative agreement with the City of Murray for the disposition of the

\$30,000. This cooperative agreement will incorporate criteria for the identification of projects acceptable to both DOI and the City of Murray, as well as performance standards for the restoration, rehabilitation or replacement of natural resources for which DOI is trustee under CERCLA. In the event such an agreement cannot be developed, the \$30,000 may be used by DOI in its sole discretion. Payments to DOI required under this Agreement shall be made payable to the Department of Interior, with an accompanying transmittal letter to:

Chief, Division of Finance
United States Fish & Wildlife Service
Room 480
4401 North Fairfax Drive
Arlington, Virginia 22203

The Settling Respondent's certified check and transmittal letter shall refer to Natural Resource Damage Assessment and Restoration Fund Number 14X5198; identify the Site as the "Murray Smelter Site, Murray, Utah"; and shall identify the funds as payment due to DOI under this Agreement. A copy of the transmittal letter shall be sent simultaneously to:

Regional Environmental Officer
Office of Environmental Policy and Compliance
United States Department of Interior
Denver Federal Center
P.O. Box 25007(D-108)
Denver, Colorado 80225

12. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

13. Settling Respondents agree to pay to Asarco, Hi-Ute Investment and Buehner Salt Lake Properties a total of one-third the cost of demolition of the smoke stacks, if such demolition occurs, (excluding those costs specifically associated with the special handling or disposal of contaminated materials), not to exceed \$100,000. Settling Respondents shall make such payment within thirty (30) days of EPA's notice of approval of Certification of Completion of Work related to the demolition of the smoke stacks. Such notice shall be sent to Settling Respondents.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

14. Commencing upon the date that it acquires title to the Property, or any portion thereof, Settling Respondents agree to provide to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondents, for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to the Settling Respondents of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under

CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto. In addition, Settling Respondents agree to provide to DOI, its authorized officers, employees, representatives, and agents, access to the Property at reasonable times for the purpose of conducting periodic monitoring of migratory birds and their habitat.

15. Within thirty (30) days after the effective date of this Agreement, the Settling Respondents shall record a certified copy of this Agreement with the Salt Lake County's Recorder's Office. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XV (Notices and Submissions).

16. The Settling Respondents shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation. The Settling Respondents shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of this Agreement.

17. Settling Respondents agree to abide by all access requirements and institutional controls implemented by virtue of Section IX (Access and Institutional Controls) of the Consent Decree entitled U.S. v. Asarco et al., Civil Docket # 2:98CV0415B. If Settling Respondents close on any parcel of the Property after the effective date of this Agreement, but before the prior owner can accomplish the execution and recording of the access easements and restrictive covenants required under Section IX (Access and Institutional Controls) of that Consent Decree entitled U.S. v. Asarco et al., Civil Docket # 2:98CV0415B, Settling Respondents shall execute and record the required access easements and restrictive covenants within thirty (30) days of closing on the parcel in question.

VI. DUE CARE/COOPERATION

18. The Settling Respondents shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondents shall coordinate their development activities on the Site with Asarco to ensure that such activities do not materially interfere with the timely performance of the remedial action. The Settling Respondents shall also coordinate their development activities on the Site with Hi-Ute Investment and Buehner Salt Lake Properties to ensure that such activities do not materially interfere with the timely performance of the smoke stack response activities. If Settling Respondents disagree with Asarco or Hi-Ute Investment and Buehner

Salt Lake Properties on any coordination issue, the dispute shall be brought to EPA. EPA will make a final, nonreviewable decision on the dispute and the Settling Respondents shall comply with that decision. The Settling Respondents recognize that the implementation of response actions at the Site may interfere with the Settling Respondents' use of the Property, and may require closure of its operations or a part thereof. The Settling Respondents agree to cooperate fully with EPA in the implementation of response actions at the Site and further agree not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondents' operations by such entry and response. In the event the Settling Respondents become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

VII. CERTIFICATION

19. By entering into this Agreement, the Settling Respondents certify that to the best of their knowledge and belief they have fully and accurately disclosed to EPA and DOI all information known to Settling Respondents and all information in the possession or control of their officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondents also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Settling Respondents is not materially accurate and complete, this Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

20. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment) of this Agreement and upon execution and recordation of the access easements and restrictive covenants as required under Section V (Access/Notice to Successors in Interest), the United States covenants not to sue or take any other civil or administrative action against Settling Respondents for any and

all civil liability for injunctive relief or reimbursement of response costs, or for natural resource damages, pursuant to Sections 106 or 107(a) and (f) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) and (f) with respect to the Existing Contamination.

IX. RESERVATION OF RIGHTS

21. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and this Agreement is without prejudice to all rights against Settling Respondents with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondents to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), Section XIV (Payment of Costs);

(b) any liability resulting from past releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondents, or their successors or assigns;

(c) any liability resulting from future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondents, their successors, assigns, lessees or sublessees;

(d) any liability resulting from exacerbation by Settling Respondents, their successors, assignees, lessees or sublessees, of Existing Contamination;

(e) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(f) criminal liability; and

(g) liability for violations of local, State or federal law or regulations.

22. With respect to any claim or cause of action asserted by the United States, the Settling Respondents shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

23. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

24. Nothing in this Agreement is intended to limit the right of EPA or DOI to undertake future response actions or restoration actions at the Site or to seek to compel parties other than the Settling Respondents to perform or pay for response actions or restoration actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or

scope of response actions or restoration actions which may be taken or be required by EPA or DOI in exercising their authority under federal law. Settling Respondents acknowledge that they are purchasing property where response actions may be required. Furthermore, nothing in this Agreement is intended to limit the right of DOI to seek to compel parties other than the Settling Respondents to pay damages for injuries to natural resources at the Site associated with the Existing Contamination, nor does this Agreement restrict or limit the scope of those damages.

X. SETTLING RESPONDENTS' COVENANT NOT TO SUE

25. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondents hereby covenant not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities, or DOI's performance of restoration actions, if any, at the Site. Nothing herein shall

be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

26. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding on the Settling Respondents, their officers, directors, employees, and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

27. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondents under this Agreement may be assigned or transferred to any person with the consent of EPA in its sole discretion. No transfer of the benefits conferred under this Agreement shall be valid as to any person who would be subject to liability for Existing Contamination at the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Not less than sixty days prior to the transfer of the interest in the Property, Settling Respondents shall provide EPA written notice of their desire to transfer the benefits and obligations conferred under this Agreement. EPA may, in its sole discretion, reject, in writing, the transfer of the benefits and obligations conferred under this Agreement, within the sixty-day period. Such

rejection shall not be arbitrary and capricious. If such written rejection is provided in a timely manner, any such transfer shall be void.

28. The Settling Respondents agree to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.

29. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement if EPA rejects the transfer pursuant to Paragraph 26. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue in Section VIII to be available to that party. Such written consent shall be provided to EPA (at the address listed in Section XV (Notices & Submissions) within thirty days of the transfer of the Property or interest therein. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

XII. DISCLAIMER

30. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

31. The Settling Respondents agree to retain and make available to EPA all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondents shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIV. PAYMENT OF COSTS

32. If a Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

33. Settling Respondents shall send copies of notices and other documents required by this Agreement to EPA as specified below.

Enforcement Specialist - Murray Smelter Site, 8ENF-T
U.S. EPA
999 18th Street, Suite 500
Denver, CO 80202

EPA will send all correspondence to Settling Respondents at the addresses listed below.

John R. Thackeray
Chimney Ridge, L.C.
c/o Johansen Thackeray
2157 Highland Drive, Suite 200
Salt Lake City, Utah 84106-2806

Lewis Swain
The Boyer Company
127 South, 500 East - Suite 100
Salt Lake City, Utah 84102

Everett N. Goodwin, Jr.
IHC Health Services, Inc.
36 South State Street, 21st Floor
Salt Lake City, Utah 84111

Thomas Uriona
IHC Health Services, Inc.
36 South State Street, 21st Floor
Salt Lake City, Utah 84111

XVI. EFFECTIVE DATE

34. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondents that EPA has fully executed the Agreement after review of and response to any public comments received. EPA will not issue such notice prior to lodging of the Consent Decree entitled U.S. v. Asarco et al., Civil Docket # 2:98CV0415B before the U.S.

District Court, District of Utah. Settling Respondents may postpone the effective date of this Agreement with appropriate notice to EPA, for any period of time up to, but no later than, entry of the Consent Decree by the court. Settling Respondents will not close on any of the Property prior to their execution of this Agreement.

XVII. TERMINATION

35. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

36. With regard to claims for contribution against Settling Respondents, the Parties hereto agree that the Settling Respondents are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

37. The Settling Respondents agree that with respect to any suit or claim for contribution brought by them for matters related to this Agreement they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

38. The Settling Respondents also agree that with respect to any suit or claim for contribution brought against them for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

XIX. EXHIBITS

39. Exhibit 1 shall mean the description of the Property which is the subject of this Agreement.

40. Exhibit 2 shall mean the map depicting the Site.

41. Exhibit 3 shall mean the Consent Decree entitled U.S. v. Asarco et al., Civil Docket # 2:98CV0415B.

XX. PUBLIC COMMENT

42. This Agreement shall be subject to a thirty-day public comment period, after which EPA or DOI may modify or withdraw consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BY:

Max Dodson Acting ARA 8/17/98
Max Dodson
Assistant Regional Administrator
Office of Ecosystem Protection and Remediation

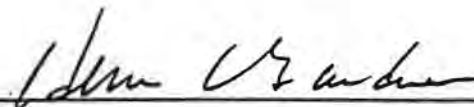
UNITED STATES DEPARTMENT OF JUSTICE
BY:

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date

CHIMNEY RIDGE, L.C., a Utah Limited Liability Company
BY:

Boyer Chimney Ridge, L.C., a Utah Limited Liability Company,
as Manager of Chimney Ridge, L.C.
BY:


Its: Manager
Kim C. Gardner

Date 5-28-98

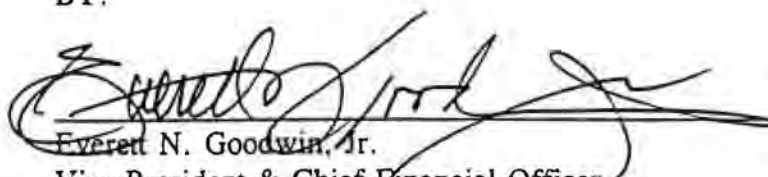
and

JT Chimney Associates, L.C., a Utah Limited Liability Company,
as Manager of Chimney Ridge, L.C.
BY:


Its: Manager
John R. Thackeray

Date 5/28/98

IHC Health Services, Inc.
BY:


Everett N. Goodwin, Jr.
Vice President & Chief Financial Officer

Date 5/29/98

SOUTH OF CREEK PARCEL BOUNDARY DESCRIPTION

Beginning at a point in the intersection of the West right of way line of State Street and the Northerly right of way line of 5300 South Street which point is North 1140.746 feet and East 759.402 feet from the Southwest corner of Section 7, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence Southerly and Westerly 31.43 feet along the arc of a 20.00-foot radius curve to the right to a point 70.00 feet perpendicularly distant northerly from the centerline of 5300 South Street (Note: Chord for said curve bears S 45°13'07"W for a distance of 28.35 feet.); thence N 89°52'45"W 236.65 feet to a point on the arc of a 5799.60-foot radius curve to the left which point is 70.00 feet radially distant northerly from the centerline of said 5300 South Street; thence Westerly 94.14 feet along the arc of said 5799.60-foot curve to a point 70.00 feet radially distant northerly from said centerline (Note: Chord for said 5799.60-foot radius curve bears S 89°39'21"W for a distance of 94.14 feet.); thence N 68°28'45"W 38.18 feet to a point 85.00 feet radially distant northerly from said centerline which point is on the arc of a 5814.60-foot radius curve to the left; thence Westerly 375.64 feet along the arc of said 5814.60-foot radius curve to a point on the arc of a 35.00-foot radius curve to the right which point is 85.00 feet radially distant northerly from said centerline (Note: Chord for said 5814.60-foot radius curve bears S 86°58'59"W for a distance of 375.58 feet); thence Southerly and Westerly 44.72 feet along the arc of last said 35.00-foot radius curve to a point 60.00 feet radially distant northerly from said centerline which point is also the point of reverse curve with the arc of a 5789.60-foot radius curve to the left (Note: Chord for said 35.00-foot radius curve bears S 48°11'07"W for a distance of 41.75 feet.); thence Westerly 259.15 feet along the arc of said 5789.60-foot radius curve to a point 60.00 feet perpendicularly northerly from said centerline (Note: Chord for said 5789.60-foot radius curve bears S 83°31'11"W for a distance of 259.13 feet.); thence S 82°14'15"W 909.20 feet parallel to said centerline to a point 60.00 feet perpendicularly distant northerly from said centerline approximately at Engineers Station 131+00.00; thence S 84°20'50"W 570.85 feet to a point on the arc of a 2814.93-foot radius curve to the right which point is on the east line of the Railroad right of way which point is also 100.00 feet radially distant northerly from the centerline of 5300 South Street; thence Northeasterly 227.23 feet along the arc of said 2814.93-foot radius curve (Note: Chord for said 2814.93-foot curve bears N 17°08'46"E for a distance of 227.17 feet.); thence N 79°40'12"E 243.54 feet to a point on the arc of a 2160.00-foot radius curve to the right which point is on the east line of the Proposed North-South Corridor; thence Northerly 126.18 feet along said east line which is along the arc of said 2160.00-foot radius curve (Note: Chord for said 2160.00-foot radius curve bears N 39°54'21"E for a distance of 126.16 feet.); thence N 41°34'45"E 162.50 feet along said east line to a point on the arc of a 2640.00-foot radius curve to the left; thence Northerly 326.83 feet along said east line which is along the arc of said 2640.00-foot radius curve (Note: Chord for said 2640.00-foot radius curve bears N 38°01'57"E for a distance of 326.62 feet.); thence N 31°30'00"W 413.26 feet; thence N 66°50'00"W 34.69 feet; thence N 23°48'30"E 953.30 feet to a point on the arc of a 2914.73-foot radius curve to the left; thence Northeasterly 296.25 feet along the arc of said 2914.73-foot radius curve (Note: Chord for said 2914.73-foot radius curve bears N 20°53'48"E for a distance of 296.12 feet.); thence N 73°51'24"E 19.61 feet to a point on the arc of a 449.26-foot radius curve to the left; thence Northeasterly 303.37 feet along the arc of said 449.26-foot radius curve (Note: Chord for said 449.26-foot radius curve bears N 54°28'06"E for a distance of 297.64 feet); thence N 35°09'26"E 452.61 feet; thence S 54°50'34"E 157.96 feet

to a point on the arc of a 190.00-foot radius curve to the left; thence Southeasterly 196.56 feet along the arc of said 190.00-foot radius curve (Note: Chord for said 190.00-foot radius curve bears S 84°28'45"E for a distance of 187.91 feet.) to a point on the arc of a 140.00-foot radius curve to the right; thence Southeasterly 145.67 feet along the arc of said 140.00-foot radius curve (Note: Chord for said 140.00-foot radius curve bears S 84°18'30"E for a distance of 139.19 feet.); thence S 54°30'00"E 105.64 feet to a point on the arc of a 315.00-foot radius curve to the right; thence Southeasterly 104.36 feet along the arc of said 315.00-foot radius curve (Note: Chord for said 315.00-foot radius curve bears S 45°00'51"E for a distance of 103.88 feet.); thence S35°18'39"E 169.98 feet; thence N 00°05'06"E 30.84 feet; S35°31'00"E 145.60 feet; thence East 20.00 feet; thence South 5.73 feet; West 42.16 feet; thence S 29°12'00"E 234.00 feet; thence S 44°03'00"E 140.59 feet; thence N 80°57'46"W 4.35 feet; thence S 42°21'54"E 117.27 feet to said West right of way line of State Street; thence S 00°05'15"W 1656.98 feet along said West right of way line of State Street to the point of beginning.
Contains 100.94 acres, more or less.

LESS:

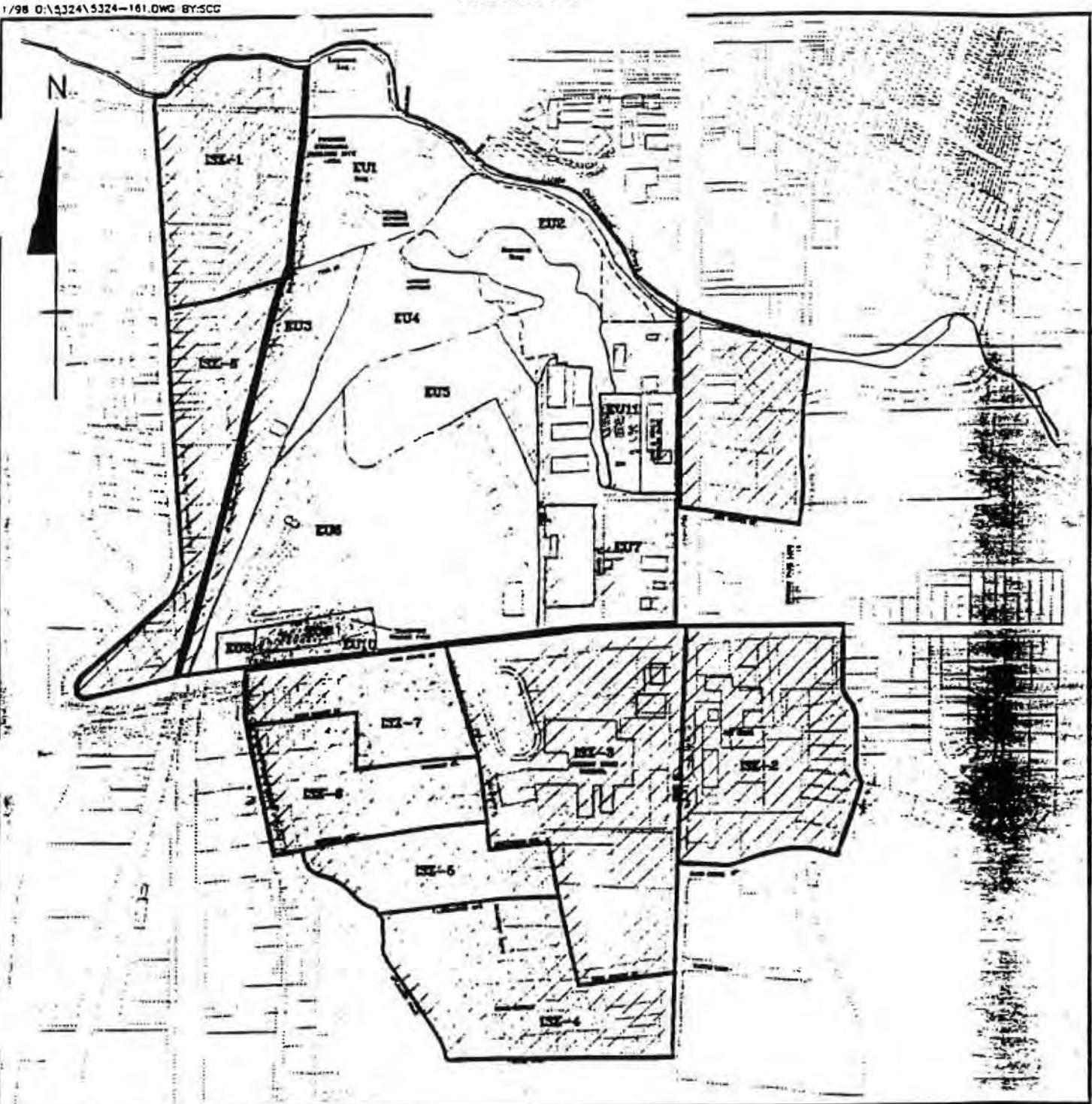
Beginning at a point on the West right of way line of State Street 1672.693 feet N 00°05'15"E and 66.000 feet N 89°54'45"W from a monument in the intersection of 5300 South Street and State Street which is also 2737.70 feet (Record) North and 764.15 feet East (Record) from the Southwest corner of Section 7, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence N 89°54'45"W 348.09 feet; thence N 00°19'17"W 581.82 feet; thence S 35°31'00"E 149.70 feet; thence East 20.00 feet; thence South 5.73 feet; thence West 42.16 feet; thence S 29°12'00"W 234.00 feet; thence S 44°03'00"E 140.59 feet; thence N 80°57'46"W 4.35 feet; thence S 42°21'54"E 117.27 feet; thence S 00°05'15"W 63.49 feet to the point of beginning.
Contains 2.340 acres, more or less.

LESS:

Beginning at a point on the West right of way line of State Street which point is 1044.18 feet N 00°05'15"E and 66.00 feet N 89°54'45"W from a monument in the intersection of 5300 South Street and State Street in Section 12, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence N 89°54'45"W 184.00 feet; thence N 00°05'15"E 298.46 feet; thence N 89°54'45"W 163.49 feet; thence N 00°01'00"W 330.05 feet; thence S 89°54'45"E 348.09 feet to said west right of way line; thence S 00°05'15"W 628.51 feet along said West right of way line to the point of beginning. Contains 3.90 acres, more or less.

NOTE:

The westerly boundary line is along the easterly right of way line of a proposed road dedication plat (Bearings rotated 0°14'17" counter clockwise). The basis of bearing is the monument line of State Street between 5300 South Street and Vine Street.

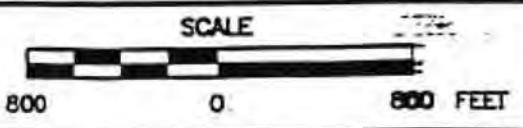


LEGEND:

-  ON-FACILITY AREA
-  OFF-FACILITY AREA
- ISZ INITIAL STUDY ZONE
- EU Exposure Unit

NOTE:

1. SHADED AREAS ARE INSIDE THE PROPOSED SITE BOUNDARIES FOR GROUNDWATER MONITORING.



FORMER MURRAY SMELTER SITE

SITE BOUNDARIES

PROJECT: 5324.2	DATE: JANUARY, 1998
REV:	BY: KT CHECKED: AK
McCULLEY, FRICK & GILMAN, INC. providing environmental consulting and engineering services	