

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 83-C-2379

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHELL OIL COMPANY,

Defendants.

**NOTICE OF LODGING OF PROPOSED AMENDMENT TO CONSENT DECREE
BETWEEN UNITED STATES OF AMERICA AND SHELL OIL COMPANY**

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 83-C-2379

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHELL OIL COMPANY,

Defendant.

FIRST AMENDMENT TO THE CONSENT DECREE

INTRODUCTION

Pursuant to Paragraph 5.1 of the Consent Decree in this case signed by Judge James R. Carrigan on February 12, 1993, the United States of America and Shell Oil Company (the “Parties”), stipulate and agree to the following First Amendment to the Consent Decree.

BACKGROUND

This case involves the Rocky Mountain Arsenal Superfund Site (“RMA Site”), located near Denver, Colorado. The United States of America on behalf of the U.S. Environmental Protection Agency (“EPA”), the U.S. Army (“Army”), the U.S. Department of the Interior (“DOI”), and the Agency for Toxic Substances and Disease Registry (“ATSDR”), together with Shell Oil Company (“Shell Oil”) entered into the Consent Decree to resolve various claims and counterclaims under, among other things, the Comprehensive Environmental Response,

Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq. The Consent Decree incorporated a February 12, 1989, Settlement Agreement (“Settlement Agreement”) between the United States and Shell Oil, which Settlement Agreement referenced a Federal Facility Agreement (“FFA”) of the same date between EPA, the Army, DOI, ATSDR and Shell Oil entered pursuant to section 120 of CERCLA, 42 U.S.C. § 9620, regarding response actions at the RMA Site.¹

Among other things the incorporated Settlement Agreement requires reimbursement of “EPA Costs” (a defined phrase) at the RMA Site. EPA Costs have not been reimbursed in full. There is an outstanding dispute regarding the reimbursement of EPA Costs at the RMA Site for costs incurred since 2015. This First Amendment to the Consent Decree fully and finally resolves that dispute. The First Amendment to the Consent Decree replaces the provisions in the Consent Decree relating to the payment of EPA Costs with a new provision which calls for a single “cash out” payment that fully and finally resolves EPA Costs at the RMA Site, including amounts previously incurred in the past and amounts that may be incurred in the future.

Paragraphs 4.1 and 4.2 of the Consent Decree require lodging modifications of the Consent Decree with the Court, and publication of public notice and solicitation of public comment. The Parties lodged the proposed First Amendment to the Consent Decree with the Court, published notice of the proposed First Amendment to the Consent Decree and solicited public comment, and separately moved the Court to enter the First Amendment to the Consent Decree.

¹ The Settlement Agreement is adopted and incorporated into the Consent Decree by reference. See Consent Decree Paragraph 3.1. Consequently, we refer to the Consent Decree and Settlement Agreement interchangeably.

CONSENT DECREE AMENDMENTS

The Consent Decree is hereby amended in the following respects:

1. Settlement Agreement, Section III, Paragraph 3.29 –

“EPA Costs” means all costs incurred by EPA or its Contractors on or after October 1, 1987, in carrying out its responsibilities in providing technical assistance for any activity in connection with this Settlement Agreement or the Federal Facility Agreement. ~~The term does not include any costs incurred by EPA solely to pursue an enforcement action or to defend against litigation brought by Shell [Oil].~~

2. Settlement Agreement, Section III, Paragraph 3.2 –

“Allocable Costs” means (1) all Response Costs, including Data Management Costs, but excluding all Army-only Response Costs and all Shell-Only Response Costs; (2) all Off-Site Response Costs; (3) all ~~EPA Costs~~, ATSDR Costs and DOI Costs; (4) all Natural Resource Damages; (6) the salary and benefits, if any, of the Custodian of the JARDF; (7), if the Central Repository is located off the Arsenal, all costs associated with the Central Repository and the JARDF (if the JARDF is also located off the Arsenal), including without limitation costs for office space and utilities, but excluding: (a) all Army-Only Response Costs and Shell-Only Response Costs associated with the Central Repository and the JARDF; (b) all salaries and any benefits of the clerk or clerks of the Central Repository and the JARDF; and (c) all office supplies used by them in the performance of their official duties; and (8) all other costs that the Army and Shell may agree in writing constitute Allocable Costs.

3. **Settlement Agreement, Section VI, Paragraph 6.1(b)-**

All payments pursuant to paragraph 6.1(a) shall be due and owing only for costs that have actually been incurred and shall be made in accordance with Section VII. ~~EPA Costs~~, ATSDR Costs, and DOI Costs shall be deemed to have been actually incurred for purposes of this paragraph when the Army pays ~~EPA~~, ATSDR, or DOI in accordance with Sections XII, XIII and XIV respectively.

4. **Settlement Agreement, Section XII, Paragraphs 12.1 through 12.6 –**

Strike Section XII, Paragraph 12.1 through 12.6, in its entirety, and replace it with the following --

XII. EPA COSTS

12.1 As soon as reasonably practicable after this First Amendment to the Consent Decree becomes effective, the United States on behalf of the Army shall pay to EPA \$10,208,767.60, in full satisfaction of EPA Costs.

12.2 In the event that the payment in Paragraph 12.1 is not made within 120 days after this First Amendment to the Consent Decree becomes effective, Interest shall be paid on the unpaid balance, with such Interest beginning to accrue on the 121st day following this First Amendment to the Consent Decree becoming effective, and accruing through the date of the payment.

12.3 The Parties to this First Amendment to the Consent Decree recognize and acknowledge that the payments in this Section can be paid only from appropriated funds legally available for such purpose. Nothing in this First Amendment to the Consent Decree will be interpreted or construed as a commitment or requirement that the United

States on behalf of the Army obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

12.4 The total amount to be paid to EPA pursuant to this Section shall be deposited by EPA in the RMA Special Account to be retained and used to conduct or finance response actions at or in connection with the RMA Site, including carrying out EPA's responsibilities in connection with the Settlement Agreement or the Federal Facility Agreement, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

12.5 Except as specifically provided in Paragraph 12.6, EPA covenants not to take administrative action against the Army, and EPA covenants not to sue or take administrative action against Shell Oil, pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for EPA Costs. These covenants shall take effect upon the date that this First Amendment to the Consent Decree becomes effective. These covenants are conditioned upon the satisfactory performance by the Army of its obligations under this First Amendment to the Consent Decree. These covenants extend only to the Army and Shell Oil, and do not extend to any other person. EPA further covenants to seek withdrawal as moot In the Matter of United States Department of the Army, Docket Number CERCLA-08-2020-001 (EPA Region 8). Upon dismissal of Docket No. CERCLA-080-2020-001 (EPA Region 8), the Administrative Law Judge's July 14, 2021, orders regarding the parties' motions for accelerated decision and EPA's motion in limine are moot and shall have no precedential value.

12.6 Notwithstanding any other provision of this First Amendment to the Consent Decree, EPA reserves, and this First Amendment to the Consent Decree is without prejudice to, all rights against the Army with respect to liability for the Army's failure to meet a requirement of this First Amendment to the Consent Decree.

12.7 The Army agrees not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through sections 106(b)(2), 107, 111, 112, 113 of CERCLA, or any other provision of law with respect to this First Amendment to the Consent Decree.

5. **Integration** –

Except as provided in this First Amendment to the Consent Decree, the Consent Decree remains unchanged.

6. **Effective Date** –

This First Amendment to the Consent Decree shall be effective on the date that it is signed by the Court and entered upon the docket of the Court.

IT IS SO ORDERED THIS _____ DAY OF _____ 2023.

HONORABLE _____
United States District Court Judge

BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: July 18, 2023

Acting For [Signature]

BEN BIELENBERG
Acting Division Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop St.
Denver, CO 80202

[Signature]

KENNETH C. SCHEFSKI
Regional Counsel
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop St.
Denver, CO 80202

BY THE UNITED STATES DEPARTMENT OF THE ARMY:

Date:

17 July 2023



AMY L. BORMAN
Deputy Assistant Secretary of the Army
Environment, Safety and Occupational Health

BY THE UNITED STATES DEPARTMENT OF THE INTERIOR:



8-02-2023

SHANNON A. ESTENOZ
Assistant Secretary for Fish and Wildlife and Parks
U.S. Department of the Interior

BY THE AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES:

Aaron S Bernstein

Date: 7-18-23

AARON BERNSTEIN, MD, MPH

Director

Center for Disease Control National Center for
Environmental Health

Agency for Toxic Substances and Disease Registry

Deborah Tress

7.14.23

DEBORAH TRESS

Deputy Associate General Counsel

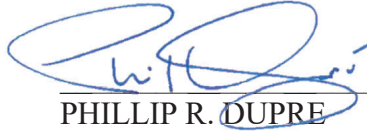
U.S. Department of Health and Human Services Office

Center for Disease Control

Agency for Toxic Substances and Disease Registry

BY THE UNITED STATE DEPARTMENT OF JUSTICE:

Date: Sept. 27, 2023



PHILLIP R. DUPRE
Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Division

BY SHELL USA, INC., fka SHELL OIL COMPANY:

Date: 7-11-23



WILLIAM E. PLATT
Portfolio Manager, PCRO
Shell USA, Inc.