

DECLARATION OF COVENANTS

THIS DECLARATION OF COVENANTS, dated as of February 2, 1996, is made by SHELL OIL COMPANY, a Delaware corporation ("Shell"), for the benefit of the UNITED STATES OF AMERICA (the "United States") and the STATE OF COLORADO (the "State").

Recitals

A. Shell owns the land in Adams County, Colorado described in Exhibit A attached hereto and forming a part hereof (the "Land").

B. A portion of the Land is subject to Revised License dated effective December 3, 1991 (the "License"), from Shell to the United States Department of the Army (the "Army"), notice of which was given by Memorandum of License dated effective as of December 3, 1991, between Shell and the Army, filed for recording June 25, 1992 at 8 a.m., and recorded under Reception No. 1074181 in Book 3920 at page 351 of the real property records of Adams County, Colorado.

C. The Army, Shell, the State, the United States Environmental Protection Agency ("EPA"), and the United States Fish and Wildlife Service ("USFWS") entered into Agreement for a Conceptual Remedy for the Cleanup of the Rocky Mountain Arsenal dated June 13, 1995 (the "Conceptual Remedy Agreement").

D. Paragraph 23 of the Conceptual Remedy Agreement requires Shell to execute and record covenants to preclude use of groundwater underlying the Land until certain conditions are satisfied.

E. The Land is included within the Offpost Operable Unit (the "Offpost OU") of Rocky Mountain Arsenal, a National Priorities List site under the Comprehensive Environmental Response, Compensation, and Liability Act.

F. A Record of Decision for the Offpost OU (the "Offpost ROD") was signed on December 19, 1995.

G. Page A1-1 of Appendix B to the Offpost ROD also requires Shell to execute and record covenants to preclude use of groundwater underlying the Land until certain conditions are satisfied.

H. Shell desires to grant the covenants set forth below in full satisfaction of its obligations under paragraph 23 of the Conceptual Remedy Agreement and under page A1-1 of Appendix B to the Offpost ROD. These covenants will protect, preserve and enhance the value of the adjacent land owned by the United States and known as Rocky Mountain Arsenal (the "Onpost OU"), as well as contribute to the overall remedy for Rocky Mountain Arsenal.

6. Release. When the conditions to allow construction of groundwater wells for future use on the Land that are screened in the UFS, as described in paragraph 3 of this Agreement, have been satisfied, Shell shall so notify the Army, the State, and EPA. If the Army, the State, and EPA agree, (a) the Army, the State, and EPA shall acknowledge that the conditions have been satisfied and (b) the United States, through the Army, and the State, in

5. Covenants Run With Land; Enforcement. Paragraphs 3 and 4 above govern the implementation of the covenants in paragraphs 1 and 2, respectively, of the Declaration, which touch and concern, run with, and burden the Land, and benefit the Onpost OU. The covenants of paragraphs 1 and 2 of the Declaration are granted for the benefit of the United States and the State to protect, preserve and enhance the property values of the Onpost OU, as well as contribute to the overall remedy of RMA, and are enforceable by the United States, through the Army and EPA, and by the State. If there is a violation of either of those covenants that remains uncured after 30 days prior written notice of the violation to Shell (or other owner of the Land or portion thereof whose action constitutes the violation), the United States and the State, or either of them, may institute a suit against the person violating the covenants to enjoin the violation by temporary or permanent injunction; provided, however, that for an irreparable ongoing or imminent violation the 30-day notice is not required. No failure by the United States or the State to institute such a suit shall be deemed to be a waiver or a forfeiture of the right to enforce any covenant in this instrument.

4. Prohibition Against Use of Deeper Groundwater. No groundwater may be used from any well on the Land that is screened in any aquifer beneath the UFS so long as that well contains any of the analytes listed in Schedule 1 in excess of the appropriate standards listed in Schedule 1. In addition, any well screened in any aquifer beneath the UFS may be closed pursuant to the Offpost ROD if the criteria for well closure set forth in Appendix C to the Offpost ROD are satisfied.

3. Prohibition Against Alluvial Wells. No groundwater well for future use may be constructed on the Land if it is screened in the unconfined flow system (the "UFS"), which is defined as the alluvial aquifer and the weathered upper portion of the Denver Formation, until no analyte listed in Schedule 1 is present in excess of the appropriate standard listed in Schedule 1 in any well listed in Schedule 2 attached hereto (or replacements for those wells) during a 5-year period that includes the following sampling events: 5 consecutive annual samples analyzed for all analytes listed in Schedule 2; 3 quarterly samples analyzed only for DIMP and dielein between the third and fourth annual samples; and 3 quarterly samples analyzed only for DIMP and dielein between the fourth and fifth annual samples. This prohibition does not apply to wells for groundwater sampling, wells for groundwater level measurements, wells for extraction for treatment of contaminated groundwater, and wells for reinjection of treated groundwater.

2. Satisfaction of Obligations. The Army, the State, EPA, and USFWS acknowledge that recordation of the Declaration and the signing of this Agreement fully satisfy Shell's obligations under paragraph 23 of the Conceptual Remedy Agreement and under page A1-1 of Appendix B to the Offpost ROD.

1. Consent. The Army consents to the restrictive covenants set forth in the Declaration and this Agreement. In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which all the parties acknowledge, they hereby agree as follows:

Agreement

consultation with EPA, shall execute, acknowledge, and deliver to Shell a Release of Restrictive Covenants in the form of Exhibit C attached hereto to evidence of record that the covenant in paragraph 1 of the Declaration, as implemented by paragraph 3 above, no longer burdens the Land.

7. Notices. All notices given under this Agreement shall be in writing, shall be given by certified mail, return receipt requested, overnight courier service, telecopy, or hand delivery, and, (a) if mailed, shall be deemed received three business days after mailing with postage prepaid, (b) if delivered by overnight courier service shall be deemed received one business day after having been deposited with the courier service, with delivery fees paid by the sender, and (c) if delivered by facsimile or hand delivery, shall be deemed received on the day the notice is sent if the sender makes reasonable efforts to confirm the receipt thereof; in each case addressed as follows:

If to the Army:

Program Manager
Office of the Program Manager
Building 111
Rocky Mountain Arsenal
ATTN: AMXRM-PM
Commerce City, Colorado 80022-1748

If to EPA:

EPA Coordinator for RMA
(8EPR-F)
U. S. Environmental Protection Agency
Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202-2466

If to USFWS:

Regional Director
U.S. Fish and Wildlife Service
Region 6
P.O. Box 25486
Denver, Colorado 80225

If to the State:

Rocky Mountain Arsenal Project Manager
Hazardous Materials & Waste Management Division
Colorado Department of Public
Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80222-1530

with a copy to:

Colorado Department of Law
CERCLA Litigation Unit
1525 Sherman Street
Denver, Colorado 80203

and if to Shell:

Manager of Denver Site Project
Shell Denver Site Project
c/o Holme Roberts & Owen LLC
1700 Lincoln, Suite 4100
Denver, Colorado 80203

Any party may, by written notice so delivered to the others, change the address or facsimile number to which delivery shall thereafter be made.

8. Further Assurances. The parties shall execute and deliver or cause to be executed and delivered such other instruments, and take such other actions, as may be reasonably necessary or advisable to carry out the purposes of this Agreement.

9. Integration. This Agreement and the Declaration constitute the entire understanding among the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and prior agreements or understandings with respect to the subject matter.

10. Parties in Interest. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any other person or entity any benefit, right, or remedy.

11. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument for all purposes.

EXECUTED as of the date first above written.

UNITED STATES DEPARTMENT OF THE ARMY

By

Title:

SHELL OIL COMPANY

By

Title:

FOR THE STATE OF COLORADO

By

Title:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By

Title:

UNITED STATES FISH AND WILDLIFE SERVICE

By

Title:

EXECUTED as of the date first above written.

SHELL OIL COMPANY

By

Vice President H&E
Shell Chemical Company

STATE OF _____)
) ss.)
)

The foregoing instrument was acknowledged before me this day of June, 1996, by R.N Shulman, as Vice President H&E, Shell Chemical Company, a subsidiary of Shell Oil Company, a Delaware corporation, on behalf of the corporation.

Witness my hand and official seal.

Notary Public

My commission expires:

4. **Covenants Run With Land; Enforcement.** The covenants in paragraphs 1 and 2 touch and concern, run with, and burden the Land, and benefit the Onpost OU. They are granted for the benefit of the United States and the state to preserve the property values of the Onpost OU, and are enforceable by the United States, through the Army and EPA, and by the state. If there is a violation of either of those covenants that remains uncured after 30 day's prior written notice of the violation to Shell (or other owner of the Land or portion thereof whose action constitutes the violation), the United States and the state, or either of them, may institute a suit against the person violating

3. **Exceptions.** Notwithstanding the foregoing, no such approval shall be required for wells for groundwater sampling, wells for groundwater level measurements, wells for extraction for treatment of contaminated groundwater, and wells for reinjection of treated groundwater.

2. **Use of Deeper Groundwater.** No groundwater may be used from any well on the Land that is screened in any aquifer beneath the UFS except as set forth in paragraph 4 of Appendix B, Attachment 3 of the Offpost ROD.

Records Center
 Hazardous Materials & Waste Management Division
 Colorado Department of Public Health and Environment
 4300 Cherry Creek Drive South
 Denver, Colorado 80222-1530

EPA Region VIII Superfund Records Center
 999 18th Street
 Denver, Colorado 80202-2466

Rocky Mountain Arsenal
 ("JARDF")
 Joint Administrative Record Document Facility

1. **Use of Alluvial Groundwater Underlying the Land.** No groundwater well for future use may be constructed on the Land if it is screened in the unconfined flow system ("UFS"), which is defined as the alluvial aquifer and the weathered upper portion of the Denver Formation, without the express written consent of the state and the United States for such period as this covenant remains in effect. Review and approval of any request for the construction of any such groundwater well shall be governed by the provisions of Appendix B, Attachment 3 of the Offpost ROD. Copies of the Offpost ROD are available at the following locations:

In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which Shell acknowledges, Shell hereby covenants for itself and its successors and assigns as follows:

Declaration

the covenants to enjoy the violation by temporary or permanent injunction; provided, however, that for an irreparable ongoing or imminent violation the 30-day notice is not required. No failure by the United States or the State to institute such a suit shall be deemed to be a waiver or a forfeiture of the right to enforce any covenant in this instrument.

5. **Notice.** In every instrument conveying any interest in any portion of the land, including without limitation deeds, leases, and mortgages, Shell shall include a notice in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO DECLARATION OF COVENANTS DATED AS
OF FEBRUARY 2, 1996, RECORDED UNDER RECEPTION
NO. _____ IN BOOK _____ AT PAGE _____ OF THE
REAL PROPERTY RECORDS OF ADAMS COUNTY,
COLORADO, IN FAVOR OF AND ENFORCEABLE BY THE
UNITED STATES OF AMERICA AND THE STATE OF
COLORADO.

6. **Title.** Shell represents to the United States and the State that Shell's title to the land is free and clear of all liens, encumbrances, and burdens arising by, through, or under Shell, but not otherwise, except for the lien for taxes not yet due and except for the license; and Shell will forever warrant and defend title to the land against all persons claiming an interest therein by, through, or under Shell, but not otherwise, except for the interest created by the license.

7. **Release.** The covenants contained herein shall be released in accordance with the procedures outlined in paragraph 6 of Appendix B, Attachment 3 of the Offpost ROD.

8. **Miscellaneous.**

(a) **No Admission of Liability.** The execution and delivery of this instrument and Appendix B, Attachment 3 of the Offpost ROD by Shell shall not be construed as an admission of any liability on its part. Neither this instrument nor Appendix B, Attachment 3 of the Offpost ROD may be offered in evidence in any administrative or judicial proceeding, except for a proceeding to enforce its provisions.

(b) **No Warranty.** Except as specifically set forth in paragraph 6, this instrument is executed without any representation or warranty, express or implied.

(c) **Headings.** The headings in this instrument are for guidance and convenience of reference only and do not limit or otherwise affect the meanings of any of its provisions.

(d) **Further Assurances.** Shell, EPA, the State, the Army, and USFWS shall execute and deliver or cause to be executed and delivered such other instruments, and take such other actions, as may be reasonably necessary or advisable to carry out the purposes of this instrument.

- (e) **Entire Agreement.** This instrument and Appendix B, Attachment 3 of the Offpost ROD constitute the entire understanding among Shell, EPA, the State, the Army, and USFWS with respect to the subject matter hereof, superseding all negotiations, prior discussions, and prior agreements or understandings with respect to the subject matter.
- (g) **No Assignment.** Neither the United States nor the State may assign any of their respective rights under this instrument without the prior written consent of Shell.
- (h) **Parties in Interest.** This instrument shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this instrument, express or implied, is intended to confer upon any other person or entity any benefit, right, or remedy.

Notary Public

Witness my hand and official seal.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____ of the United States Department of the Army, on behalf of the United States of America.

STATE OF _____)
(ss. _____)
COUNTY OF _____)

By _____
Title: _____

FOR THE STATE OF COLORADO
By the Colorado Department of Public
Health and Environment

By _____
Title: _____

FOR THE UNITED STATES
OF AMERICA
By the Department of the Army

EXECUTED this _____ day of _____, 20____.

The covenant granted under paragraph 2 of the Declaration is in full force and effect and is not affected by this instrument.

IN CONSIDERATION of the foregoing and of other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the United States of America, through the United States Department of the Army, and the State hereby release and quitclaim to Shell and its successors and assigns all their right, title, and interest, if any, in and to the Land insofar as they relate to paragraph 1 of the Declaration.

The Army, the State, and EPA have all acknowledged that the conditions specified in paragraph 6 of Appendix B, Attachment 3 of the Offpost Record of Decision for release of the covenant in paragraph 1 of the Declaration have been satisfied.

Neither the United States of America nor the State have assigned any of their rights under the Declaration.

By paragraph 1 of Declaration of Restrictive Covenants dated as of February 2, 1996 (the "Declaration"), filed for recording _____, 1996, and recorded under Reception No. _____ in Book _____ at page _____ of the real property records of Adams County, Colorado, Shell Oil Company, a Delaware corporation ("Shell"), granted a restrictive covenant for the benefit of the United States of America and the State of Colorado (the "State"), prohibiting the construction of groundwater wells on the land in Adams County, Colorado described in Exhibit A attached to the Declaration (the "Land") and screened in the unconfined flow system, all as more fully described therein.

RELEASE OF RESTRICTIVE COVENANTS

EXHIBIT C

My commission expires:

Notary Public

Witness my hand and official seal.

The foregoing instrument was acknowledged before me this
_____ day of _____, 20____, by _____, as
of the Colorado Department of Public Health and
Environment, on behalf of the State of Colorado.

STATE OF _____)
) ss.
COUNTY OF _____)

My commission expires:

SCHEDULE 1

Analyte	CSRG (ppb)	PQL (ppb)
Aldrin	0.002	0.05
Arsenic	2.35	
Atrazine	3	
Benzene	3	
Carbon tetrachloride	0.3	0.99
Chlordane	0.03	0.095
Chloride	250,000	
Chlorobenzene	25	
Chloroform	6	
CPMS	30	
CPMSO	36	
CPMSO ₂	36	
DBCP	0.2	
DCCP	46	
DDE	0.1	
DDT	0.1	
1,2-Dichloroethane	0.4	1.0
1,3-Dichlorobenzene	6.5	
Dieldrin	0.002	0.05
DIMP	8	
Dithiane	18	
Endrin	0.2	
Ethylbenzene	200	
Fluoride	2,000	
Hexachlorocyclopentadiene	0.23	
Isodrin	0.06	
Malathion	100	
NDMA	0.007	0.033
1,4-Oxathiane	160	
Sulfate	540,000	
Tetrachloroethylene	5	
Toluene	1,000	
Trichloroethylene	3	
Xylenes	1,000	

CSRG - Containment System Remediation Goals for the Offpost Groundwater Intercept and Treatment System

PQL - Practical Quantitation Limit (presented only when the PQL is greater than the CSRG)

For purposes of the covenants in paragraphs 1 and 2 of the Declaration of Restrictive Covenants, the appropriate standard for a given analyte is its CSRG or its PQL if the PQL is greater than the CSRG.

SCHEDULE 2

WELLS

37062
37065
37071
37076
37081
37083
37085-Den
37106
37116
37319
37338
37369
37370
37377
37378
37390-Den
37391
37392

APPENDIX B ATTACHMENT 3

THE AGREEMENT CONTAINED WITHIN THIS ATTACHMENT, dated as of February 2, 1996, is among the UNITED STATES DEPARTMENT OF THE ARMY (the "Army"), SHELL OIL COMPANY ("Shell"), the STATE OF COLORADO (the "State"), the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ("EPA"), and the UNITED STATES FISH AND WILDLIFE SERVICE ("USFWS").

Recitals

A. Shell owns the land in Adams County, Colorado described in Exhibit A attached hereto and forming a part hereof (the "Land").

B. A portion of the Land is subject to Revised License dated effective December 3, 1991 (the "License"), from Shell to the Army, notice of which was given by Memorandum of License dated effective as of December 3, 1991, between Shell and the Army, filed for recording June 25, 1992 at 8 a.m., and recorded under Reception No. 1074181 in Book 3920 at page 351 of the real property records of Adams County, Colorado.

C. The Army, Shell, the State, EPA, and USFWS entered into Agreement for a Conceptual Remedy for the Cleanup of the Rocky Mountain Arsenal dated June 13, 1995 (the "Conceptual Remedy Agreement").

D. Paragraph 23 of the Conceptual Remedy Agreement requires Shell to execute and record covenants to eliminate potential exposure to contaminated groundwater underlying the Land.

E. The Land is included within the Offpost Operable Unit (the "Offpost OU") of Rocky Mountain Arsenal, a National Priorities List site under the Comprehensive Environmental Response, Compensation, and Liability Act.

F. A Record of Decision for the Offpost OU (the "Offpost ROD") was signed on December 19, 1995.

G. Page A1-1 of Appendix B to the Offpost ROD also requires Shell to execute and record covenants to eliminate potential exposure to contaminated groundwater underlying the Land.

H. By Declaration of Covenants dated as of February 2, 1996 (the "Declaration"), filed for recording _____, 1996, and recorded under Reception No. _____ in Book _____ at page _____ of the real property records of Adams County, Colorado, Shell declared covenants for the benefit of the United States of America (the "United States") and the state to satisfy its obligations under paragraph 23 of the Conceptual Remedy Agreement and under page A1-1 of Appendix B to the Offpost ROD. A copy of the Declaration is attached hereto as Exhibit B.

I. The restrictive covenants set forth in the Declaration are enforceable by the United States, through the Army and EPA, and by the State.