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2005594

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FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
AUG 27 2002
JAMES R. MANSPEAKER
BY RK CLERK
DEP. CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 01-D-2404 (OES)

UNITED STATES OF AMERICA, and
THE STATE OF COLORADO,

Plaintiffs,

vs.

THE S.W. SHATTUCK CHEMICAL COMPANY, INC.,

Defendant.

RECEIVED
AUG 28 2002
Office of Enforcement
Compliance & Environmental

[redacted] ORDER APPROVING STIPULATION AND CONSENT DECREE

THIS MATTER having come before the Court upon the Motion of the United States of America, appearing for and on behalf of the U.S. Environmental Protection Agency and the U.S. Department of the Interior, for the approval of a Stipulation and the Consent Decree lodged with the Court on December 12, 2001 (the "Decree"), and a separate concurrence in the United States' motion having been filed by the State of Colorado, and

THIS COURT having been duly informed in this matter, the Court hereby FINDS AND ORDERS THAT :

1. The United States, the State of Colorado, and The S.W. Shattuck Chemical Company, Inc., being all the parties to the Decree, submitted a Stipulation for the purpose of correcting an

unintended omission in the Decree, and to clarify two other provisions of the Decree, so that the language of these three provisions of the Decree conforms with the Parties' original intent. The Stipulation is hereby APPROVED, and has been separately signed by the Court. The Stipulation shall be ATTACHED TO AND MADE A PART OF DECREE.

2. The Decree is fair, reasonable, and in the public interest. Accordingly, and together with the parties' Stipulation, the Decree is hereby APPROVED. The Court has also separately signed the DECREE, which shall be entered as a judgment of this Court.

Dated: August 26, 2002

BY THE COURT:

Riley B. Daniels

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 01-D-2404 (OES)

Certificate of Mailing

I hereby certify that a true and correct copy of the **Order** was served on August 27, 2002 by:

(X) delivery to:

Magistrate Judge O. Edward Schlatter

Robert J. Eber
Assistant Attorney General
Hazardous and Solid Waste Unit
DC BOX NO. 20

Ken Salazar
Attorney General and Trustee for Natural Resources
Colorado Department of Law
DC BOX NO. 20

(X) depositing the same in the United States Mail, postage prepaid, addressed to:

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Denver, CO 80206

JAMES R. MANSPEAKER, CLERK

By: _____
Deputy Clerk

REC'D DEC 12 2001

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

AUG 27 2002

JAMES R. MANSPEAKER
CLERK
BY _____
DEP. CLERK

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FOR THE DISTRICT OF COLORADO

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UNITED STATES OF AMERICA, and
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Compliance & Environmental
Justice

CONSENT DECREE

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I. BACKGROUND

A. Contemporaneous with the lodging of this Consent Decree, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA") and the United States Department of Interior ("DOI"), and the State of Colorado, on behalf of the Colorado Department of Public Health and Environment ("CDPHE") and the Colorado Trustees for Natural Resources ("Trustees"), filed a Complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking recovery of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Denver Radium Superfund Site, Operable Unit VIII, in the City and County of Denver, Colorado (the "Site"), and damages for injury to or destruction of, or loss of natural resources resulting from the release of hazardous substances from the Site, from The S.W. Shattuck Chemical Company, Inc. ("Settling Defendant" or "Shattuck").

B. EPA issued a remedial decision for the Site, concurred in by the State, by a Record of Decision (ROD) on January 28, 1992. The principal components of the remedial decision were the (i) demolition and off-site disposal of existing buildings at the 5.9 acre parcel owned by The S.W. Shattuck Chemical Company at 1805 South Bannock Street in Denver, Colorado (the "Shattuck Property"); (ii) the excavation, consolidation, stabilization, and containment of contaminated soils from the Site in a soil, flyash, and cement monolith capped at the Shattuck

Property; (iii) the use of institutional controls; and (iv) the remediation of groundwater contamination through source control using stabilization to immobilize contaminants and monitoring of natural attenuation of groundwater contamination.

C. On January 22, 1996, a Consent Decree was entered between the United States and Shattuck. Under that decree Shattuck paid $2,402,278 to the United States for its response costs incurred at the Site before March 31, 1995.

D. On September 17, 1998, Shattuck submitted to EPA its Construction Pre-Certification Notice stating that it had substantially completed construction of the remedy as set out in the January 28, 1992 ROD. Shattuck performed this work pursuant to a unilateral administrative order issued by EPA in 1992, and subsequently amended, under the authority of Section 106 of CERCLA, 42 U.S.C. § 9606. Shattuck incurred costs of more than $26 million in performing such work. By entering into this Consent Decree, Shattuck waives any claim it may have under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), for reimbursement of such costs from EPA's Hazardous Substance Superfund.

E. Following EPA's completion of the second statutory Five-Year Review for the Site in the Fall of 1999, the EPA Assistant Administrator for the Office of Solid Waste and Emergency Response determined that the contaminated soil portion of the first ROD should be reconsidered.

F. On June 16, 2000, EPA amended its original remedial decision for the Site in a second ROD, concurred in by the State, which provided for: (a) removal of the cap and demolition of

the stabilized soil, flyash, and cement monolith; and (b) the disposal of the monolith materials and any additional contaminated soils at an off-site licensed disposal facility.

G. EPA has begun the remedial design for the remedy selected in the June 16, 2000 ROD and is preparing to implement the remedial action at the Site. This Consent Decree addresses the liability, if any, of Shattuck and its corporate affiliates with regard to the original remedial action at the Site, and the June 16, 2000 amended remedy. In addition to reimbursing the United States for a portion of EPA's response costs at the Site, a trust, to be known as the Redevelopment Trust, shall be established and Settling Defendant shall transfer title to the Shattuck Property to the trust, to be marketed and sold by the trustee for redevelopment, with the net proceeds of the sale being paid to EPA to offset future clean-up costs at the Site.

H. By entering into this Consent Decree, Settling Defendant does not admit any liability to the United States or State of Colorado arising out of the transactions or occurrences alleged in the complaint.

I. The United States, the State, and the Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607, and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and the State, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.

b. "CDPHE" shall mean the Colorado Department of Public Health and Environment, and any successor departments, agencies or instrumentalities of the State.

c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

d. "Corporate Affiliates" shall mean Phibro Resources Corporation, Inc., Salomon Smith Barney Holdings Inc., and Citigroup Inc.

e. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

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

g. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

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

i. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants at the Site as of the effective date of this Consent Decree.

j. "Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. Section 9507.

k. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund compounded annually on October 1 of each year in accordance with 42 U.S.C. Section 9607(a).

l. "Natural Resource" and "Natural Resources" shall mean those natural resources that belong to, are managed by, are held in trust by, appertain to, or are otherwise controlled by the United States, and/or the State. Such resources include, but are not limited to, surface and ground water, drinking water, fisheries resources, sediment resources, habitat, vegetation, biota, wildlife, federally listed, threatened, or endangered species, or migratory birds.

m. "Natural Resource Damages" means any relief or remedy under CERCLA recoverable by Plaintiffs for injury to, destruction of, or loss of any or all Natural Resources or services provided to humans and the environment by these resources, including, but not limited to, compensation to the public for the loss of such Natural Resources and services, and damage assessment costs.

n. "Net Sale Proceeds" shall mean the proceeds of the sale of the Shattuck Property that the Redevelopment Trust receives from the sale of the Shattuck Property, net of any fees and expenses as set forth in the Redevelopment Trust Agreement.

o. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

p. "Parties" shall mean the United States, the State, and the Settling Defendant.

q. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States and the State have incurred at or in connection with the Site through December 31, 2000, plus accrued Interest on all such costs through such date.

r. "Plaintiffs" shall mean the United States and the State.

s. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

t. "Settling Defendant" or "Shattuck" shall mean The S.W. Shattuck Chemical Company, Inc.

u. "Shattuck Property" shall mean the 5.9 acre parcel owned by Shattuck located at 1805 South Bannock Street, Denver, Colorado, having the following legal description: Blocks A and B, Overland Park Subdivision, City and County of Denver, Colorado.

v. The "Redevelopment Trust" shall mean the trust that is to be created pursuant to Section VI of this Consent Decree.

w. "Site" shall mean the Denver Radium Superfund site, Operable Unit VIII located in southwest Denver, northeast of the intersection of Evans Avenue and Santa Fe Drive, including: (i) the Shattuck Property; (ii) that portion of Bannock Street immediately adjacent to the Shattuck Property; (iii) the railroad rights-of-way comprising approximately 4.3 acres and located immediately to the west of the Shattuck Property; (iv) properties located within the immediate vicinity of the Shattuck Property and within the area bounded by South Broadway,

South Santa Fe Drive (U.S. Highway 85), Evans Avenue, and Iowa Avenue in Denver, Colorado.

x. "State" shall mean the State of Colorado, including its departments, agencies, and instrumentalities.

y. "Successor(s) in Property Interest" shall mean a purchaser of the Shattuck Property from the Redevelopment Trust and its subsequent assignees, lessees, or transferees of the Shattuck Property.

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

aa. "Unilateral Administrative Orders" shall mean the order and amended orders issued by EPA to Shattuck in EPA Docket No. CERCLA-VIII-92-26 regarding the Denver Radium Superfund Site, Operable Unit VIII, including the Unilateral Administrative Order dated August 21, 1992 , and the Second Amendment to the 1992 Unilateral Administrative Order dated February 16, 1994.

V. PAYMENTS

4. Payments to EPA.

a. Within thirty (30) Days after the effective date of this Consent Decree, Settling Defendant shall pay the sum of $5,450,000.00 plus an additional sum for Interest on that amount calculated from the date of lodging of this Consent Decree through the date of payment. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department

of Justice account in accordance with current EFT procedures, referencing USAO File Number 2001V00466, EPA Site/Spill ID Number 08-01 OU VIII, and DOJ Case Number 90-11-2-741/1. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of Colorado following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment of the amount due under Paragraph 4.a., Settling Defendant shall send notice that payment or conveyance has been made to EPA, DOJ, and the State in accordance with Section XIV (Notices and Submissions) and to:

Cost Recovery Program Manager
EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202

c. The amount to be paid by Settling Defendant pursuant to Paragraph 4.a. shall be deposited in the Denver Radium/OU VIII-Shattuck Special Account within the Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the Hazardous Substance Superfund.

5. Payments to DOI.

a. Within thirty (30) Days of the effective date of this Consent Decree, Settling Defendant shall pay to DOI the sum of $250,000.00. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the DOI Restoration Fund ALC 14010001 at the Federal Reserve Bank, New York, NY referencing ABA No. 021030004, DOJ Case Number 90-11-2-

741/1, and the Shattuck Superfund Site. Denver. CO. Payment shall be made in accordance with additional specific instructions provided to the Settling Defendant by Robert White, NRDAR Fund Accountant, DOI, telephone (303) 969-7170, following lodging of the Consent Decree. Any payments received by DOI after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment, Settling Defendant shall send notice that payment has been made to DOI, DOJ, and the State in accordance with Section XIV (Notices and Submissions) and to:

Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C Street, NW
Mailstop 4449
Washington, D.C. 20240

The notice shall reference DOJ Case Number 90-11-2-741/1, the Shattuck Superfund Site, Denver, CO, and the name of the paying responsible party.

6. Payments to the State.

a. Within thirty (30) Days after the effective date of this Consent Decree, Settling Defendant shall pay to the State the sum of $1,500,000.00 as follows: (i) $250,000.00 in the form of a certified check or cashiers check made payable to the "Colorado Hazardous Substances Response Fund;" and (ii) $1,250,000.00, in the form of a certified check or cashiers check made payable to the State of Colorado "Natural Resource Damage Restoration Fund." Payments shall be sent to:

Colorado Dept. of Public Health and Environment
HMWMD
Remedial Programs Section
4300 Cherry Creek Dr. South
Denver, CO 80222-1530

The notice shall reference Case Number 90-11-2-741/1, the Shattuck Superfund Site, Denver, CO, and the name of the paying responsible party.

b. At the time of payment Settling Defendant shall send notice that payment or conveyance has been made to the State, EPA, and DOJ in accordance with Section XIV (Notices and Submissions).

VI. REDEVELOPMENT TRUST

7. The Redevelopment Trust shall be established in accordance with this Section VI. The purpose of the Redevelopment Trust is to act for the benefit of the United States by: (i) receiving and holding title to the Shattuck Property until it is sold in accordance with the requirements of this Consent Decree; (ii) cooperating fully with EPA in the implementation of response actions at the Shattuck Property and not interfering with such response actions, and providing access to the Shattuck Property as set forth in Section XI of the Consent Decree; (iii) marketing the Shattuck Property for sale and redevelopment; (iv) maximizing the proceeds of the sale of the Shattuck Property; (v) disbursing the Net Sale Proceeds from the sale of Shattuck Property and assets of the Redevelopment Trust in accordance with applicable provisions of this Consent Decree and the Redevelopment Trust Agreement; and (vi) providing annual accounting

to EPA until the Shattuck Property is sold and thereafter providing a final accounting to EPA of all earnings, income, and disbursements from the estate of the Redevelopment Trust. Settling Defendant shall cooperate fully in the establishment of the Redevelopment Trust. and provide such information as the Trustee may reasonably require, such as for tax accounting, to carry out the obligations of the Redevelopment Trust.

8. Within fifteen (15) Days after the effective date of this Consent Decree, Settling Defendant shall submit to EPA a fully executed Redevelopment Trust Agreement, which shall be in the form attached to this Consent Decree as Appendix A. The Redevelopment Trust Agreement may be amended as necessary to conform to the requirements of this Consent Decree, or as may be desirable to EPA to effectuate the purposes of the trust.

9. Within twenty (20) Days after the effective date of this Consent Decree, Settling Defendant shall submit a current commercially acceptable title assurance commitment or report to the Redevelopment Trust and EPA for the Shattuck Property.

10. Within thirty (30) Days after the effective date of this Consent Decree, Settling Defendant shall: (i) convey the Shattuck Property free and clear of any encumbrances to the Redevelopment Trust, except that Settling Defendant shall not be responsible for any mechanics liens or demands against the Shattuck Property attributable to response actions performed at the Site by contractors of EPA or CDPHE or any notices or deed restrictions required pursuant to the Unilateral Administrative Orders or this Consent Decree; and (ii) contribute $50,000.00 to the Redevelopment Trust for the payment of expenses associated with the ownership, marketing, and

sale of the Shattuck Property. Settling Defendant shall have no further obligation to pay expenses of the Redevelopment Trust. The money paid into the Redevelopment Trust, and all earnings thereon, shall be used solely for the purposes provided in this Consent Decree including, without limitation, paying the expenses of administering the trust and maximizing the net proceeds of the sale of the Shattuck Property, with any unused funds, less the Trustee's fees, returned to Settling Defendant following the sale and conveyance of the Shattuck Property.

11. The Redevelopment Trust shall have the following obligations:

a. To receive, hold, manage, and maintain the Shattuck Property until it is sold and conveyed for value in accordance with the requirements of this Consent Decree;

b. To exercise due care at the Shattuck Property with respect to Existing Contamination and comply with all applicable local, State, and federal law and regulations, and to cooperate fully with EPA in the implementation of response actions at the Site and not interfere with such response actions, and provide access to the Shattuck Property as set forth in Section XI;

c. To deposit, manage, and invest the funds paid into the Redevelopment Trust, and to disburse funds from such account(s) for the purposes set forth in this Consent Decree;

d. To pay applicable real estate taxes and file applicable federal and state tax returns associated with the Redevelopment Trust and the sale of the Shattuck Property;

e. To locate purchasers who will provide maximum value for, and will substantially reuse the Shattuck Property, consistent with applicable zoning and other valid land

use ordinance and regulations and in consideration of the results of the redevelopment study conducted by the City and County of Denver and funded by a grant from EPA, to negotiate the terms of the sale and transfer of the Shattuck Property, and to sell and convey the Shattuck Property;

f. Subject to approval of EPA, to retain a commercial real estate broker on customary and reasonable terms to assist in the marketing and sale of Trust Property;

g. Consistent with the fundamental purposes of the Trust as set forth above and other applicable requirements of the Consent Decree, and subject to the approval of EPA, to take whatever actions at whatever times are commercially reasonable to maximize the net proceeds of the sale of the Shattuck Property;

h. To distribute the assets of the Shattuck Redevelopment Trust following the sale of the Shattuck Property in accordance with Paragraph 12;

i. To provide EPA an accounting on an annual basis, and a final accounting within thirty (30) days after the sale or conveyance of the Trust Property, of all Trust Fund assets, earnings, and disbursements;

j. Following the completion of the work implementing the remedial action for the Shattuck Property as set forth in EPA's June 16, 2000 ROD, to employ all reasonable measures to prevent unauthorized entry upon or use of the Trust Property in its possession or control and to provide for site maintenance and utilities, if any;

k. To insure the Trust Property against loss due to casualty or third party liability; and

l. To comply with all relevant Sections of the Consent Decree, and EPA and the State shall have the right and power to compel the Trust to so comply.

12. In accordance with the provisions of the Redevelopment Trust Agreement, within fifteen (15) Days after the closing upon the sale of the Shattuck Property the Redevelopment Trust shall distribute: (a) the Net Sale Proceeds from the sale of the Shattuck Property to EPA's Denver Radium/OU VIII-Shattuck Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the Hazardous Substance Superfund; and (b) the balance, if any, of the money paid by Settling Defendant into the Redevelopment Trust, and all earnings thereon, less the fee of the Trustee of the Redevelopment Trust and any other expenses of administering the Redevelopment Trust, to the Settling Defendant.

13. The Trustee of the Redevelopment Trust shall be compensated in accordance with the schedule attached to the Shattuck Redevelopment Agreement.

VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

14. Interest on Late Payments. In the event that any payments required by Section V (Payments) are not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

15. Stipulated Penalties.

a. If any amount(s) due to EPA is not paid by the date payment is due, Settling Defendant shall pay to EPA, as a stipulated penalty and in addition to the Interest required by Paragraph 14, $1,000.00 per violation per day that such payment is late. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "Hazardous Substance Superfund" and shall be sent to:

Mellon Bank
EPA Region VIII
Attention: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251

Copies of the check and any accompanying transmittal letter shall indicate that the payment is for stipulated penalties and shall reference EPA Region and Site Spill ID Number 08-01 VIII, USAO File Number 2001V00466, and DOJ Case Number 90-11-2-741/1.

b. If any amount(s) due to the State is not paid by the date payment is due, Settling Defendant shall pay to the State, as a stipulated penalty and in addition to the Interest required by Paragraph 14, $1,000.00 per violation per day that such payment is late. All payments to CDPHE under this Paragraph shall be made by certified or cashier's check made payable to "The State of Colorado General Fund" and shall be sent to:

Colorado Dept. of Public Health and Environment
HMWMD
Remedial Programs Section
4300 Cherry Creek Dr. South
Denver, CO 80222-1530
Attn: Shattuck Superfund Site Project Manager

All payments shall indicate that the payment is made for stipulated penalties and shall reference the name and address of the party making payment and the Shattuck Superfund Site. Copies of the check[s], and any accompanying transmittal letter[s], shall be sent to EPA. and DOJ.

c. If Settling Defendant fails to timely comply with any of the requirements of Paragraphs 8, 9, or 10, Settling Defendant shall pay to both EPA and the State, as a stipulated penalty, $1,000.00 per violation per day until corrected. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "Hazardous Substance Superfund" and shall be sent to:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251

All payments to CDPHE under this Paragraph shall be made by certified or cashier's check made payable to "The State of Colorado General Fund" and shall be sent to:

Colorado Dept. of Public Health and Environment
HMWMD
Remedial Programs Section
4300 Cherry Creek Dr. South
Denver, CO 80222-1530
Attn: Shattuck Superfund Site Project Manager

Copies of the checks and any accompanying transmittal letters shall indicate that the payment is for stipulated penalties and shall reference EPA Region and Site Spill ID Number 08-01 VIII, USAO File Number 2001V00466, DOJ Case Number 90-11-2-741/1, the name and address of the party making payment, and the Shattuck Superfund Site.

d. Stipulated penalties are due and payable within thirty (30) Days of the date of the demand for payment of the penalties by EPA or the State.

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the State has notified Shattuck that a payment required under this Consent Decree is overdue or whether EPA or the State has made a demand for payment of penalties, but penalties need only be paid upon demand. All penalties shall begin to accrue on the day after the date that Settling Defendant is obligated to pay any amount due to EPA, or as applicable the State, under this Consent Decree and shall continue to accrue until Settling Defendant pays the amount(s) due. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

f. Penalties shall continue to accrue as provided in this Paragraph during any dispute resolution period, but need not be paid until the following:

i. If the dispute is resolved by agreement or by a decision of EPA or the State that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA, or as applicable the State, within fifteen (15) Days of the agreement or the receipt of EPA's or the State's decision or order;

ii. If the dispute is appealed to this Court and the United States or the State prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA or the State within sixty (60) Days of receipt of the Court's decision or order, except as provided in Subparagraph iii. below;

iii. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States or the State into an interest-bearing escrow account within sixty (60) Days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within fifteen (15) Days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA, the State, or to Settling Defendant to the extent that it prevails.

16. If the United States or the State brings an action to enforce this Consent Decree, Settling Defendant shall as applicable reimburse the United States or the State for all their costs of such action, including but not limited to costs of attorney time.

17. Payments made under Paragraphs 14 and 15 shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to comply with its obligations to pay the United States or the State any amounts due under this Consent Decree.

18. The United States or the State, in each of its respective unreviewable discretion, may waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFFS

19. Covenant Not to Sue as to Settling Defendant.

a. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant, and except as provided in Paragraphs 19.c. and 22, the United States covenants not to sue or take administrative action against Shattuck or its Corporate Affiliates pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. § 9606 and 9607(a) with respect to: (1) the Site, (2) Past Response Costs, (3) the Unilateral Administrative Orders, (4) response actions taken or to be taken, and associated response costs associated with such actions, related to the Site, (5) Natural Resource Damages and costs of assessing Natural Resource Damages, if any, resulting from the release of hazardous substances from the Site; and (6) the demolition, excavation, and transportation of contaminated soils and the monolith and cap materials, and the disposal or recycling of such soils and materials at an off-Site facility pursuant to the June 16, 2000 ROD. This covenant not to sue shall take effect upon receipt by EPA and DOI of the payments required by Paragraphs 4 and 5 and is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree.

b. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant, and except as provided in Paragraphs 19.c. and 22, the State covenants not to sue or take administrative action against Shattuck or its Corporate Affiliates pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), C.R.S. 25-11-101, et seq., C.R.S. 25-7-101 et seq., C.R.S. 30-20-101 et seq., C.R.S. 25-8-101 et seq., and C.R.S. 25-

15-101 et seq., with respect to: (1) the Site, (2) Past Response Costs, (3) the Unilateral Administrative Orders, (4) response actions taken or to be taken, and associated response costs associated with such actions, related to the Site, (5) Natural Resource Damages and costs of assessing Natural Resource Damages, if any, resulting from the release of hazardous substances from the Site; and (6) the demolition, excavation, and transportation of contaminated soils and the monolith and cap materials, and the disposal or recycling of such soils and materials at an off-Site facility pursuant to the June 16, 2000 ROD. This covenant not to sue shall take effect upon receipt by EPA of the payments required by Paragraph 4 and the receipt by the State of payments required by Paragraph 6, and is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree.

c. Notwithstanding the preceding Paragraphs 19.a. or 19.b. or any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant or any of its Corporate Affiliates: (1) to perform further response actions relating to the Site, or (2) to reimburse the United States or the State for additional costs of response if, subsequent to the entry of this Consent Decree:

(i)(a) conditions at the Site, previously unknown to EPA are discovered, or (b) information, previously unknown to EPA, is received, in whole or in part, and EPA, after consultation with the State, determines that these previously unknown conditions or information together with any other relevant information

indicate that the remedy selected in EPA's June 16, 2000 ROD is not protective of human health or the environment; or

(ii) EPA amends its January 28, 1992 ROD to select any form of treatment of contaminated groundwater beneath or emanating from the Site, provided that this reopener only applies to claims associated with the treatment of groundwater beneath or emanating from the Site.

d. In addition to the reservation set forth in Paragraph 19.c., the State also reserves, and this Consent Decree is without prejudice to, the right to assert in this action or in a new action, any claim the State may have against Settling Defendant or any of its Corporate Affiliates if, subsequent to the entry of this Consent Decree, information previously unknown to the State is received, in whole or in part, that indicates that hazardous substances at the Site, previously unknown to the State, resulted from the possession or processing of radioactive materials for which a radioactive materials license was required but for which such a license was not issued, and such information together with any other relevant information indicates that the remedy selected in EPA's June 16, 2000 ROD is not protective of human health or the environment or requires a material change in the selection of a disposal site.

e. For purposes of the Paragraph 19.c.(i), the information and the conditions known to EPA, or as applicable the information and the conditions known to the State, shall include only that information and those conditions known to EPA, or as applicable the State, as of August 31, 2001 as set forth in (i) the administrative record for the Site supporting the January

28, 1992 ROD or the June 16, 2000 ROD, (ii) the Five-Year Review Report dated November 12, 1999 and all documents referenced in that report, or (iii) documents contained in EPA Region 8's Superfund Records Center Records Management System for the Site or EPA Region 8's RCRA Records Center Records Management System for the Shattuck Chemical Company Bannock Street Property. For purposes of Paragraph 19.d., information known to the State shall also include all documents in the custody or control of CDPHE relating to radioactive materials license number SMB-479 or any other radioactive materials license issued for the Shattuck Property.

f. Settling Defendant and its Corporate Affiliates reserve all rights and defenses they may have with regard to actions or claims the United States or the State may assert pursuant to Paragraphs 19.c. or 19.d.

g. Upon EPA's receipt of the payment required by Paragraph 4.a., the following two financial instruments shall be of no further force or effect, and the United States covenants not to sue the issuers of: (a) Corporate Guaranty of Salomon Inc. dated September 1, 1993; (b) Corporate Guaranty of Salomon Smith Barney Holdings, Inc., dated June 30, 2000.

20. Covenant Not to Sue as to Redevelopment Trust. In consideration of the actions that will be performed by the Redevelopment Trust, and except as provided in Paragraph 22, the United States and the State covenant not to sue or take any other civil or administrative action against the Redevelopment Trust for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C.

§§ 9606 or 9607(a), with respect to all Existing Contamination at the Site. With respect to any claim or cause of action asserted by the United States or the State, the Redevelopment Trust shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination. This covenant not to sue shall take effect upon the effective date of this Consent Decree.

21. Covenant Not to Sue as to Successor in Property Interest.

The United States and the State covenant not to sue or take any other civil or administrative action against a Successor in Property Interest for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. § 9606 and 9607(a), with respect to Existing Contamination at the Site, provided that all the conditions set forth in Paragraph 21.a. are satisfied prior to or simultaneously with the sale or conveyance of the Shattuck Property and except as provided in Paragraph 22.

a. The Successor in Property Interest shall, prior to or simultaneously with the sale and conveyance of the Shattuck Property: (i) certify to EPA and CDPHE that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at or from the Site; (ii) agree to exercise due care at the Shattuck Property with respect to the Existing Contamination and comply with all applicable local, state, and federal laws and regulations; (iii) acknowledge that it recognizes that the implementation of response actions at the Shattuck Property may interfere with its use of the

Shattuck Property, and may require closure of its operations or a part thereof; (iv) agree to cooperate fully with EPA in the implementation of response actions at the Site and not to interfere with such response actions, provided that EPA will, consistent with its responsibilities under applicable law, use reasonable efforts to minimize any interference with the Successor in Property Interest's operations by such entry and response; (v) agree that in the event the Successor in Property Interest becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Shattuck Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, to 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 and CDPHE (24-hour Spill Report line: 866-518-5608) of such release or threatened release; (vi) agree to the terms and conditions of this Consent Decree as set forth in this Paragraph 21 and Sections X, XI, XIV, and XVI.

b. With respect to a Successor in Property Interest which purchases all or any portion of the Shattuck Property from the Redevelopment Trust, this covenant not to sue shall take effect upon: (i) the payment of the Net Sales Proceeds of such sale to EPA as set forth in Paragraph 12; and (ii) the receipt by EPA and the State of a Certification and Consent Agreement setting forth the foregoing certifications, representations, and agreements, in the form attached as Appendix B, which has been fully executed and certified by the Successor in Property Interest or

its authorized corporate official or other representative. For subsequent Successors in Property Interest, which purchase all or any portion of the Shattuck Property from a prior Successor in Property Interest. this covenant not to sue shall take effect upon the receipt by EPA and the State of a Certification and Consent Agreement setting forth the foregoing certifications. representations, and agreements, in the form attached as Appendix B, which has been fully executed and certified by the Successor in Property Interest or its authorized corporate official or other representative.

c. In the event any information or representation in the Certification and Consent Agreement submitted by the Successor in Property Interest is materially inaccurate or incomplete, the covenant not so sue in this Paragraph 21 shall be null and void with respect to such Successor in Property Interest, and the United States and the State reserve all rights they may have against such Successor in Property Interest.

d. With respect to any claim or cause of action asserted by the United States or the State, the Successor in Property Interest shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

22. General Reservation of Rights by the United States and the State. The covenants not to sue set forth in Paragraphs 19, 20. and 21 do not pertain to any matters other than those expressly specified therein. The United States and the State each reserve, and this Consent Decree is without prejudice to, all rights against, as applicable, Settling Defendant. the

Redevelopment Trust, or a Successor in Property Interest with respect to all other matters, including but not limited to:

a. liability by Settling Defendant, the Redevelopment Trust, or a Successor in Property Interest for failure to meet a requirement of this Consent Decree;

b. any liability for the exacerbation of Existing Contamination by the Redevelopment Trust or a Successor in Property Interest; and

c. criminal liability, if any.

IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT

23. Covenant Not to Sue as to Plaintiffs. Settling Defendant and its Corporate Affiliates covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site, Past Response Costs, this Consent Decree, or any work Settling Defendant performed at the Site in response to the Unilateral Administrative Orders, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of federal or State law;

b. any claim arising out of response actions at the Site for which the Past Response Costs were incurred;

c. any claim against the United States or the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs; and

d. any direct or indirect claim for disbursement from the Denver Radium/OU 8-Shattuck Special Account established pursuant to this Consent Decree.

24. No Preauthorization of Claims. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d), or waiving the State's governmental immunity provided in §§ 24-10-101 to 120, C.R.S.

25. Covenant Not to Sue As to the Redevelopment Trust and Successors in Property Interest. In consideration of the actions that will be performed by the Redevelopment Trust and a Successor in Property Interest, Settling Defendant and its Corporate Affiliates covenant not to sue and agree not to assert any claims or causes of action against the Redevelopment Trust or a Successor in Property Interest with respect to any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, relating to the Site. Settling Defendant and its Corporate Affiliates reserve, and this Consent Decree is without prejudice to, all rights they may have against the Shattuck Redevelopment Trust or a Successor in Property Interest for failure to comply with a requirement of this Consent Decree.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, anyone other than the Parties to this Consent Decree, Shattuck's Corporate Affiliates, the Redevelopment Trust, and Successors in Property Interest. Except as to Shattuck's Corporate Affiliates, the Redevelopment Trust, and Successors in Property Interest,

each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

27. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant and its Corporate Affiliates are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. Section 9613(f)(2), for "matters addressed" in this Consent Decree. The Parties further agree, and this Court finds, that upon the creation of the Redevelopment Trust or as applicable the submission to EPA and the State of an executed Certification and Consent Agreement by a Successor in Property Interest pursuant to Paragraph 21 of this Consent Decree, that the Redevelopment Trust or as applicable a Successor in Property Interest shall be entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. Section 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are: (1) the liability, if any, of Settling Defendant and its Corporate Affiliates under Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Site, (2) the Unilateral Administrative Orders, (3) response actions taken or to be taken, and response costs related to such actions, at the Site, (4) Natural Resource Damages and costs of assessing Natural Resource Damages, if any, resulting from the release of hazardous substances from the Site; and (5) the demolition, excavation, and transportation of contaminated

soils and the monolith and cap materials and the disposal or recycling of such soils and materials at an off-Site facility pursuant to the June 16, 2000 ROD. The "matters addressed" in this Consent Decree do not include response costs or response actions with respect to which the United States or the State has affirmatively reserved their rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), and with respect to which the United States or the State asserts a claim against Settling Defendant or its Corporate Affiliates, the Redevelopment Trust, or a Successor in Property Interest within the scope of such reservation of rights.

28. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it or its Corporate Affiliates for matters related to this Consent Decree, it will notify EPA, DOJ, and the State in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it or its Corporate Affiliates for matters related to this Consent Decree, it will notify EPA, DOJ, and the State in writing within ten (10) Days of service of the complaint or claim upon it or its Corporate Affiliates. In addition, Settling Defendant shall notify EPA, DOJ, and the State within ten (10) Days of service or receipt of any Motion for Summary Judgment, and within ten (10) Days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

29. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site,

Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiffs set forth in Section VIII.

XI. ACCESS TO SHATTUCK PROPERTY

30. Commencing upon the date of lodging of this Consent Decree, and until Settling Defendant conveys the Shattuck Property to the Redevelopment Trust pursuant to Paragraph 10 of this Consent Decree, Settling Defendant agrees to provide the United States, the State, and their representatives, including EPA and its contractors, access at all reasonable times to the Shattuck Property for the implementation of the June 16, 2000 ROD or for the purpose of conducting any response activity related to the Site, including but not limited to:

a. Monitoring of investigation, removal, remedial or other activities at the Site;

b. Verifying any data or information submitted to the United States or the State;

c. Conducting investigations relating to contamination at or near the Site;

d. Obtaining samples at the Shattuck Property;

e. Assessing the need for, planning, or implementing response actions at or near the Site; and

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XI (Access to Information).

31. Within fifteen (15) Days after entry of this Consent Decree, Settling Defendant shall record a notice of obligation to provide access under Section XI together with a certified copy of this Consent Decree with the Clerk and Recorder's Office for the City and County of Denver, State of Colorado. Thereafter, each deed, title, or other instrument conveying an interest in the Shattuck Property by the Redevelopment Trust and Successors in Property Interest shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of notice of obligation and Consent Decree and any restrictions applicable to the property under this Consent Decree.

32. Commencing upon the date of lodging of this Consent Decree and until EPA issues a construction completion report, EPA, the State, or their respective contractors shall be solely responsible for security and access control measures and all utilities including electrical, telephone, water, and waste management at the Shattuck Property. During the implementation of the remedial action set forth in the June 16, 2000 ROD, EPA will also require the response action contractors with whom EPA contracts to have Settling Defendant and, following the effective date of this Consent Decree, the Redevelopment Trust, listed as a named insured on the general liability insurance policy(ies) which EPA requires such contractors to have in place prior to undertaking work at the Site.

33. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6927, and any other applicable statutes or regulations.

XII. ACCESS TO INFORMATION

34. Settling Defendant shall provide to EPA and the State, upon request, copies of all documents and information within its possession or control or that of its Corporate Affiliates, contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

35. Confidential Business Information and Privileged Documents.

a. Settling Defendant or its Corporate Affiliates may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b) (with respect to EPA), and § 24-72-201 et seq., C.R.S. (with respect to the State). Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. Documents or information determined to be confidential by the State will be accorded protection specified in § 24-72-201 et seq., C.R.S. If no claim of confidentiality accompanies documents or information when they are submitted to EPA or the State, or if EPA or the State has notified

Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or as applicable § 24-72-201 et seq., C.R.S., the public may be given access to such documents or information without further notice to Settling Defendant.

b. Settling Defendant or its Corporate Affiliates may assert that certain documents, records or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant or its Corporate Affiliates assert such a privilege in lieu of providing documents, they shall provide Plaintiffs with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiffs in redacted form to mask the privileged information only. Settling Defendant or its Corporate Affiliates shall retain all records and documents that they claim to be privileged until the United States or the State has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in favor of the Settling Defendant or its Corporate Affiliates.

36. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or

engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

37. Until 10 years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records and documents now in its possession or control, which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Records or documents in the possession or control, or which come into the possession or control, of Shattuck's Corporate Affiliates which are otherwise covered by this Paragraph 37 shall be deemed to be within Shattuck's possession or control.

38. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ and the State at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ or the State, Settling Defendant shall deliver any such records or documents to EPA or the State. Settling Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or

information; and (6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States or the State shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiffs in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that they claim to be privileged until the United States, or as applicable the State, has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

39. By signing this Consent Decree, Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of the suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. § 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. NOTICES AND SUBMISSIONS

40. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, DOI, the State, and Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ #90-11-2-741/1)
P.O. Box 7611
Washington, D.C. 20044-7611

and

EPA Denver Radium OU 8 Site Attorney (8ENF-L)
U.S. Environmental Protection Agency
Region 8
999 18th St., Suite 300
Denver, CO 80202

As to DOI:

Regional Solicitor
Office of the Regional Solicitor
U.S. Department of the Interior
755 Parfet Street, Suite 151
Lakewood, CO 80215

As to EPA:

EPA Denver Radium OU 8 Site Attorney (8ENF-L)
U.S. Environmental Protection Agency
Region 8
999 18th St., Suite 300
Denver, CO 80202

As to the State:

Colorado Department of Public Health and the Environment
Hazardous Materials and Waste Management Division
Remedial Programs Section
4300 Cherry Creek Drive South
Denver, CO 80246-1530
Attn: State Project Officer, Shattuck Superfund Site

Colorado Department of Law
Natural Resources and Environment Section
Hazardous and Solid Waste Unit
1525 Sherman Street, 5th Floor
Denver, CO 80203
Attn: Shattuck Superfund Site Attorney

Jane Norton
Executive Director and Trustee for Natural Resource Damages
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Ken Salazar
Attorney General and Trustee for Natural Resources
Colorado Dept. of Law
1525 Sherman Street, 5th Floor
Denver, CO 80203

Ron Cattany
Deputy Director and Trustee for Natural Resource Damages
Colorado Dept. of Natural Resources
1313 Sherman Street
Denver, CO 80203

As to Settling Defendant:

The S.W. Shattuck Chemical Company, Inc.
c/o John Faught & Associates, P.C.
379 Detroit Street
Denver, CO 80206

XV. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

42. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) Days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written notice of dispute.

43. Statements of Position.

a. In the event that the parties to the dispute cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, provided after consultation with the State, shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States and the State a written statement of position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant.

b. Within 30 Days after receipt of Settling Defendant's statement of position, EPA, after consultation with the State, will serve on Settling Defendant its statement of position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. Within twenty (20) Days after receipt of EPA's statement of position, Settling Defendant may submit a reply. Where appropriate, EPA may allow the submission of supplemental statements of position by the parties to the dispute.

44. Following receipt of Settling Defendant's statement of position submitted pursuant to Paragraph 43, the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, EPA Region 8, after consultation with the State, will issue a final decision resolving the dispute. The Assistant Regional Administrator's decision shall be binding on the Settling Defendant unless, within ten (10) Days of receipt of the decision, the Settling

Defendant files with the court and serves on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States or the State may file a response to Settling Defendant's motion.

45. Judicial review of any dispute governed by this Section shall be governed by applicable principles of law.

46. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree, not directly in dispute, unless EPA, the State, or the court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 15.e. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph 15.

XVI. RETENTION OF JURISDICTION

47. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVII. APPENDICES

48. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the unexecuted Redevelopment Trust Agreement.

"Appendix B" is the form Certification and Consent Agreement to be used by a Successor in Property Interest.

"Appendix C" is comprised of covenants from each of Settling Defendant's Corporate Affiliates regarding the matters set forth in Paragraphs 23 and 25.

XVIII. INTEGRATION

49. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

50. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment. The United States and the State each reserve the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

51. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XX. EFFECTIVE DATE

52. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XXI. SIGNATORIES/SERVICE

53. Each undersigned representatives of Settling Defendant, the Assistant Attorney General for the Environment and Natural Resources Division, the Attorney General for the State of Colorado, the Executive Director of the CDPHE, and the Deputy Director for the Colorado Department of Natural Resources, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

54. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States or the State has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

55. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal

Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

SO ORDERED THIS 26th DAY OF August, ~~2001.~~ 2002.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and the State of Colorado v. The S.W. Shattuck Chemical Company, Inc., relating to the Denver Radium Superfund Site, Operable Unit VIII.

FOR THE UNITED STATES OF AMERICA:

Date: 11.14.01

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 10/29/01

JEREL L. ELLINGTON
Senior Counsel
Environmental Enforcement Section
U.S. Department of Justice
999 18th Street, Suite 945N
Denver, CO 80202
Telephone: (303) 312-7321

Date: 10/17/01

BARRY BREEN
Director, Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Date: 10/10/2001

CAROL RUSHIN
Assisant Regional Administrator
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Date: 9/25/2001

RICHARD L. SISK
Attorney, Legal Enforcement Program
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

FOR THE STATE OF COLORADO:

FOR THE TRUSTEES FOR NATURAL RESOURCES:

Date: 11-23-2001

KEN SALAZAR
Attorney General and Trustee for Natural Resources
Colorado Dept. of Law
1525 Sherman Street, 5th Floor
Denver, CO 80203

Date: 11-26-01

JANE NORTON
Executive Director and Trustee for Natural Resources
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Date: 11-19-01

RON CATTANY
Deputy Director and Trustee for Natural Resources
Colorado Department of Natural Resources
1313 Sherman Street
Denver, CO 80203

Consent decree, U.S and State of Colorado v. S.W Shattuck Chemical Company, Inc. re: OU#8 Denver Radium Superfund Site.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

Date: 11/24/01

JANE NORTON
Executive Director
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

FOR THE COLORADO DEPARTMENT OF LAW:

KEN SALAZAR
Attorney General

Date: 11/26/01

ROBERT J. EBER, 16840*
Assistant Attorney General
Hazardous and Solid Waste Unit
Natural Resources and Environment Section
Attorneys for Colorado Department of Public Health and Environment and Colorado Natural Resource Damage Trustees
1525 Sherman Street, 5th Floor
Denver, CO 80203
Telephone: (303) 866-5034
*Counsel of Record

Consent decree: U.S and State of Colorado v. S.W. Shattuck Chemical Company, Inc, re: OU #8 Denver Radium Superfund Site.

FOR THE S.W. SHATTUCK CHEMICAL COMPANY, INC.

Date: 10/2/2001

Robert H. Oliver

ROBERT H. OLIVER
Executive Vice President
The S.W. Shattuck Chemical Company, Inc.
1805 South Bannock Street
Denver, CO 80223

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Name: John D. Faught, Esq.
Title: Attorney At Law
Address: 379 Detroit Street, Denver, CO 80206

United States of America and the State of Colorado v.
The S.W. Shattuck Chemical Company, Inc.,
CONSENT DECREE

APPENDIX A
Redevelopment Trust Agreement

The following form of agreement comprises the Redevelopment Trust Agreement.

THE REDEVELOPMENT TRUST AGREEMENT

The S.W. Shattuck Chemical Company, Inc. ("Grantor"), pursuant to the terms of the Consent Decree in United States of America and the State of Colorado v. The S.W. Shattuck Chemical Company, Inc., Civil Action No. 01-2404, (D. Colorado)(the "Consent Decree"), as of this ___ day of _____, 2001, hereby declares Tom Connolly to be Trustee (the "Trustee"), and Tom Connolly agrees to act as Trustee and to hold and dispose of property transferred to the Trustee pursuant to the terms of the Consent Decree and all additions thereto in accordance with the terms of this Trust Agreement.

ARTICLE I
DEFINITIONS

1.01 Capitalized Terms. For all purposes of this Trust, the following terms shall have the meanings set forth below:

"Authorized Representatives" shall mean those individuals or their designated successors who have the authority for all purposes of this Trust Agreement to take any action or give any approval required herein for any party or entity.

"Consent Decree" shall mean the Consent Decree in United States of America and the State of Colorado v. The S.W. Shattuck Chemical Company, Inc., Civil Action No. _____ (D. Colorado).

"Net Sales Proceeds" shall mean the proceeds of the sale of the Shattuck Property that the Redevelopment Trust receives from the sale of the Shattuck Property, net of any fees and expenses as set forth in Paragraphs 3.01(f) and (g) of this Redevelopment Trust Agreement.

"Trust Estate" shall mean all right, title and interest of the Trustee in and to the Trust Fund and the Trust Property as hereinafter defined, including without limitation any income or profits derived therefrom.

"Trust Fund" shall mean any and all personal property of this Trust, including without limitation funds and other liquid assets contributed by the Grantor, or any other person or entity and any interest or other income earned thereon, but shall not include any Trust Property as hereinafter defined.

"Trust Property" shall mean any and all real property contributed to this Trust, but does not include the proceeds of any sale or other disposition of such real property or any other personal property held by the Trustee.

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

"CDPHE" shall mean the Colorado Department of Public Health and Environment, and any successor departments, agencies, or instrumentalities of the State.

"Trustee" shall mean Tom Connolly or his successor, as the then serving trustee of the Trust.

1.02 Incorporation of Certain Definitions. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Consent Decree.

ARTICLE II
NAME AND PURPOSE OF TRUST

2.01 Name. This Trust shall be known as the Redevelopment Trust" (hereinafter sometimes referred to as the "Trust").

2.02 Trust Purpose. The purpose of this Trust is to act for the benefit of the United States by: (i) receiving and holding title to the Shattuck Property until it is sold in accordance with the requirements of the Consent Decree; (ii) cooperating fully with EPA in the implementation of response actions at the Shattuck Property and not interfering with such response actions, and providing access to the Shattuck Property as set forth in Section XI of the Consent Decree; (iii) marketing the Shattuck Property for sale and redevelopment; (iv) maximizing the proceeds of the sale of the Shattuck Property; (v) transferring the Net Sale Proceeds from the sale of Shattuck Property and any residual corpus of the Redevelopment Trust following the sale of the Shattuck Property to the Denver Radium/OU VIII-Shattuck Special Account within the Hazardous Substance Superfund; and (vi) providing annual

accounting to EPA until the Shattuck Property is sold and thereafter providing a final accounting to the United States of all earnings, income, and disbursements from the Trust Estate.

ARTICLE III
DUTIES OF THE TRUSTEE

3.01 Trust Property. The Trustee shall:

(a) Receive, hold, manage, and maintain Trust Property until it is sold and conveyed for value in accordance with the requirements of the Consent Decree;

(b) Exercise due care at the Trust Property with respect to Existing Contamination and comply with all applicable local, State, and federal law and regulations, and to cooperate fully with EPA in the implementation of response actions at the Shattuck Property and not interfere with such response actions, and provide access to the Shattuck Property as set forth in Section XI of the Consent Decree;

(c) Deposit, manage, and invest the funds paid into the Trust Fund, and disburse funds from such account(s) for the purposes set forth in the Consent Decree;

(d) Pay applicable real estate taxes and file applicable federal and state tax returns associated with the Trust and the sale of the Trust Property;

(e) To locate purchasers who will provide maximum value for, and will substantially reuse the Trust Property, consistent with applicable zoning and other valid land use ordinance and regulations and in consideration of the results of the redevelopment study conducted by the City and County of Denver and funded by a grant from EPA, and in consultation with EPA to negotiate the terms of the sale and transfer of the Trust Property and to sell and convey the Trust Property;

(f) Subject to approval of EPA, to retain a commercial real estate broker on customary and reasonable terms to assist in the marketing and sale of Trust Property;

(g) Consistent with the fundamental purposes of the Trust as set forth above and other applicable requirements of the Consent Decree, and subject to the approval of EPA, to take whatever actions at whatever times are commercially reasonable to maximize the net proceeds of the sale of the Shattuck Property;

(h) To distribute the Trust Estate following the sale of the Shattuck Property in accordance with Sections 4.01 and 4.02;

(i) To provide EPA an accounting on an annual basis, and a final accounting within thirty (30) days after the sale or conveyance of the Trust Property, of all Trust Fund assets, earnings, and disbursements;

(j) Following the completion of the work implementing the remedial action for the Shattuck Property as set forth in EPA's June 16, 2000 ROD, to employ all reasonable measures to prevent unauthorized entry upon or use of the Trust Property in its possession or control and to provide for site maintenance and utilities, if any;

(k) To insure the Trust Property against loss due to casualty or third party liability; and

(l) To comply with all relevant Sections of the Consent Decree, and EPA shall have the right and power to compel the Trust to so comply.

3.02 Trust Fund. The Trustee shall apply all of the Trust Fund toward the duties prescribed by Section 3.01 for as long as the Trust Property remains in its possession.

3.03 Application for Tax Abatements. The Trustee shall make all necessary applications for abatements from property taxation and provide such additional information to the City and County of Denver ("Assessor") or other appropriate local or state taxing authorities as is necessary to assure that the assessed valuation of the Trust Property is fair and reasonable.

ARTICLE IV
SALE OF TRUST PROPERTY, DISTRIBUTION OF NET SALES PROCEEDS AND TRUST FUND, AND TERMINATION OF TRUST

4.01 Sale and Convevance of Trust Property. The Trustee is authorized to sell and convey Shattuck Property to any person or entity (a "Successor in Property Interest") which, prior to or simultaneous with the sale and conveyance of the Shattuck Property: (i) certifies to EPA and CDPHE that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at or from the Shattuck Property; (ii) agrees to exercise due care at the Shattuck Property with respect to the Existing Contamination and comply with all applicable local, State, and federal laws and regulations; (iii) acknowledges that it recognizes that the implementation of response actions at the Shattuck Property may interfere with its use of the Shattuck Property, and may require closure of its operations or a part thereof; (iv) agrees to cooperate fully with EPA in the implementation of response actions at the Site and not to interfere with such response actions, provided that EPA, consistent with its responsibilities under applicable law, use reasonable efforts to minimize any interference with the Successor in Property Interest's operations by

such entry and response; (v) agrees that in the event the Successor in Property Interest becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Shattuck Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, to 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 and CDPHE of such release or threatened release; and (vi) agrees to the terms and conditions of the Consent Decree as set forth in Paragraph 21 and Sections X, XI, XIV, and XVI. To effect these certifications, representations, and agreements, the Trustee will require the Successor in Property Interest or its authorized corporate official or other representative to execute the Certification and Consent Agreement in the form attached to the Consent Decree as Appendix D and submit it to EPA.

4.02 Distribution of Trust Assets. Within fifteen (15) Days after the closing upon the sale of the Shattuck Property the Redevelopment Trust shall disburse: (a) to EPA's Denver Radium/OU VIII-Shattuck Special Account, the Net Sale Proceeds from the sale of the Shattuck Property to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the Hazardous Substance Superfund; and (b) to Grantor, the balance, if any, of the money paid by Grantor into the Redevelopment Trust, and all earnings thereon, less the fee of the Trustee of the Redevelopment Trust as set forth in Section 8.04 and any expenses of administering the Redevelopment Trust or maximizing the net proceeds of the sale of the Shattuck Property as authorized pursuant to the terms of this Redevelopment Trust Agreement or the Consent Decree.

4.03 Termination. At such time as all of the Trust Property has been sold and conveyed as provided in Section 4.01, the Trust Assets have been distributed in accordance with Section 4.02, a final accounting has been provided pursuant to Section 7.02, and the Trustee has complied with all of the relevant provisions of this Redevelopment Trust Agreement and the Consent Decree, this Trust shall terminate.

ARTICLE V
RETENTION OF PROFESSIONAL AND OTHER SERVICES

5.01 Accountants. The Trustee may employ an independent certified public accounting firm or individual to complete federal or state tax returns for this Trust (the "Accountants").

5.02 Retention and Removal of Other Professional and Employee Services. Subject to the approval of EPA, the Trustee may employ such attorneys, accountants, custodians, consultants, engineers, surveyors, contractors, clerks, investment counsel and agents or employees, and make such

payments therefor as the Trustee may deem necessary and commercially reasonable for the implementation of the purposes of this Trust.

ARTICLE VI
TRUSTEE'S POWERS

The Trustee shall have, in addition to those powers specified elsewhere herein and the general powers of the office, the following powers, which powers shall be exercised in a fiduciary capacity, in the best interest of this Trust and in the sole discretion of the Trustee unless otherwise specified:

6.01 Payment of Expenses of Administration. To incur and pay any and all customary and commercially reasonable charges, taxes and expenses upon or connected with this Trust in the discharge of its fiduciary obligations.

6.02 Retention of Property. To hold and retain all or any part of the Trust Property and the Trust Fund in the form in which the same may be at the time of the receipt by the Trustee, as long as it shall deem advisable, notwithstanding that the same may not be authorized by the laws of any state or rules of any court for the investment of trust funds, and without any liability for any loss of principal or income by reason of such retention.

6.03 Preservation of Principal. Notwithstanding any other provision in this Trust, to at all times hold, manage and invest the assets of the Trust Fund in a manner designed to preserve the principal of the Trust Fund and, consistent with preservation of the principal of the Trust Fund, to maximize the principal and income derived therefrom, for the purposes of this Trust.

6.04 Investment of Trust Fund. To invest and reinvest all or any part of the Trust Fund (including any undistributed income therefrom) as the Trustee deems advisable, except that such investments shall be limited to investments in United States direct obligations, obligations guaranteed by agencies of the United States government, common trust funds or mutual funds that invest in United States direct or guaranteed obligations, or bank accounts or certificates of deposit to the extent such are insured by the federal government. In all cases, however, the total investments must be sufficiently liquid to enable the Trustee to fulfill the purposes of this Trust and to satisfy obligations as they become due. Nothing in this Section 6.04 shall be construed as authorizing the Trustee to carry on any business or to divide the gains therefrom. The sole purpose of this Section 6.04 is to authorize the investment of the Trust Fund or any part thereof as may be reasonably prudent pending use of the Trust Fund for the purposes of this Trust.

6.05 Management of Trust Estate. Without any business objective, and as may be incidental or advisable in connection with the purposes of this Trust as set forth in Section 2.02, to sell, exchange,

partition or otherwise dispose of all or any part of the Trust Fund at public or private sale, without prior application to or approval by or order of any court, upon such terms and in such manner and at such prices as it shall determine.

6.06 Extension of Obligations and Negotiation of Claims. To renew or extend the time of payment of any obligations, secured or unsecured, payable to or by this Trust, for as long a period or periods of time and on such terms as the Trustee shall determine; and to adjust, settle, compromise, abandon, contest and arbitrate claims or demands in favor of or against this Trust, including claims for taxes, upon such terms as it deems advisable.

6.07 Location of Assets. To hold any property belonging to the Trust at any place in the United States.

6.08 Authority to Represent Trust Before Agencies. To represent this Trust with regard to any matter concerning this Trust or its purpose before any federal, state or local agency or authority that has authority or attempts to exercise authority over any matter that concerns this Trust, and to invoke the dispute resolution procedure pursuant to Section XV of the Consent Decree.

6.09 Powers Regarding Real Estate. Subject to the provisions of the Consent Decree and other provisions of this Trust, including without limitation any required approvals, the Trustee may retain all or any part of any real estate (or interest therein) that becomes part of the Trust Property (the "real estate") for such period as the Trustee deems advisable and shall pay all taxes and assessments on the real estate, maintain it and insure it against risks in such amounts as the Trustee deems advisable and in such amounts as are approved by the EPA (which approval shall not be unreasonably withheld). In addition to all other powers conferred by law or other provisions of this Trust, and also subject to the provisions of the Consent Decree and the other provisions of this Trust, the Trustee shall have the following powers, which may be exercised without court approval:

(a) To grant options and make other contracts concerning the real estate (whether or not extending beyond the term of any trust);

(b) To subdivide the real estate and dedicate streets or other ways for public use;

(c) To impose easements or other restrictions;

(d) To establish reserves for depreciation, taxes, insurance or other purposes as the Trustee deems advisable;

(e) To execute and deliver all appropriate instruments;

(f) To record in the Clerk and Records's Office for the City and County of Denver, Colorado, any instrument, including any certificate acknowledged by the Trustee as to any fact concerning the real estate; and any person without actual knowledge to the contrary may rely conclusively on the genuineness of any such instrument and on the correctness of any such certificate.

No person dealing with the real estate shall be required to see to the application of any money or property delivered to the Trustee, or to see that the terms and conditions of this Trust have been complied with. Every instrument executed or action taken by the person or entity appearing to be the Trustee shall be conclusive evidence that this Trust was in full force and effect when the instrument was delivered or the action was taken; that such person or entity was the Trustee; and that such instrument or action was valid and legally binding.

6.10 Powers of Trustee to Continue Until Final Distribution. To exercise any of such powers until such time as the entire principal of, and income from, the Trust Fund has been actually distributed by the Trustee and all Trust Property has been sold or otherwise disposed of.

6.11 Reliance of Purchasers and Others. No license of court shall be requisite to the validity of any transaction entered into by the Trustee. No purchaser, transferee, or lender shall be under any obligation to see to the application of the purchase money or of any money or property loaned or delivered to any Trustee or to see that the terms and conditions of this Trust have been complied with. Every agreement, deed, or other instrument or document executed or action taken by the Trustee or any successor or additional Trustee, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof or of the taking of such action this Trust was in full force and effect and that such instrument or document or action is valid, binding and legally enforceable. Any person dealing with the Trust Estate or the Trustee may always rely without inquiry on a certificate signed as aforesaid as to who is the Trustee or Trustees or the beneficiaries hereunder, or as to the authority of the Trustee to act, or as to the existence or nonexistence of any fact or facts that constitute conditions precedent to acts by the Trustee or that are in any other manner germane to the affairs of the Trust.

ARTICLE VII
ACCOUNTS

7.01 Annual Accounting. Trustee shall provide an accounting of all assets, income, earnings, and disbursements of assets of Trust Fund assets or Trust Property to EPA on an annual basis within forty-five (45) days after the end the calendar year.

7.02. Final Accounting. Trustee shall provide a final accounting, with copies of a closing binder including all documents pertaining to the sale or conveyance of all Trust Property, withing thirty (30) days after the closing upon such sale or conveyance.

ARTICLE VIII
CONDITIONS OF TRUSTEE'S OBLIGATIONS

The Trustee accepts the Trust imposed upon it but only upon and subject to the following express terms and conditions:

8.01 Limitation of Liability. In no event shall the Trustee be liable except for its negligence, gross negligence or willful acts or omissions in relation to its duties hereunder.

8.02 Reliance on Documentation. The Trustee shall be protected in acting in accordance with the provisions of this Trust upon any notice, requisition, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

8.03 Right to Demand Documentation. Notwithstanding anything else in this Trust, in the administration of the Trust Fund, the Trustee shall have the right, but shall not be required, to demand before the disbursement of any cash or in respect of any action whatsoever within the purview of this Trust, any showings, certificates, opinions, appraisals, or other information, or action or evidence thereof, in addition to that required by the terms hereof that the Trustee reasonably believes to be necessary or desirable.

8.04 Trustee's Compensation. The Trustee shall be compensated for its services hereunder in accordance with Exhibit A attached hereto.

8.05 Limitation on Financial Liability. No provision of this Trust shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties as Trustee hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it, nor to take any action pursuant to this Trust, which in the judgment of the Trustee may reasonably conflict with any rule of law or with the terms of this Trust.

ARTICLE XX
SUCCESSOR TRUSTEES

9.01 Resignation of Trustee. Any Trustee may resign by giving not less than sixty (60) days written notice to EPA, and such resignation shall take effect upon the day specified in such notice, unless a successor Trustee shall have been sooner appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment by a successor Trustee. If any individual Trustee becomes mentally or physically unable to serve, a certificate so stating from such Trustee's then attending physician shall constitute such Trustee's resignation. If any Trustee shall be dissolved or in the course of dissolution or liquidation, or otherwise unable to continue to act as Trustee, as finally determined by the EPA, a certificate so stating from the EPA shall constitute such Trustee's resignation. The Trustee's resignation shall be recorded as provided in this Trust Agreement immediately prior to the recording of the successor Trustee's acceptance or upon the effective date of resignation, whichever is earlier.

9.02 Removal of Trustee. The Trustee may be removed by written request of EPA only for good cause, such as the failure to faithfully perform any of the duties and responsibilities required under this Trust Agreement or to comply with any of the terms or conditions of the Consent Decree. Disputes shall be resolved by the United States to the United States District Court for the District of Colorado.

9.03 Appointment of Successor Trustee. If Tom Connolly or any successor Trustee ceases to serve as Trustee, a successor trustee may be appointed by the EPA by an instrument in writing, signed by their Authorized Representatives, and delivered to the successor Trustee. In the event that no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within 60 days after vacancy shall have occurred, any interested person (including the United States or EPA) and/or any retiring Trustee may apply to the court with continuing jurisdiction as provided in Section 10.03 hereof for the appointment of a successor Trustee, and such court may thereupon, after such notice, if any, as it shall deem proper, prescribe or appoint a successor Trustee. Each successor Trustee shall qualify upon written acceptance attached hereto and recorded as provided in this Trust Agreement and thereafter shall have the same powers, immunities and discretions as the original Trustee.

9.04 Transfer to Successor Trustee. Upon any successor Trustee's qualification, as provided in Section 9.02, such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all the estates, rights, powers, trusts, duties and other obligations hereunder of its predecessor; but such predecessor shall nevertheless, upon written request of the successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, rights, powers, and trusts of such predecessor; and every predecessor Trustee shall deliver all securities and money held by it to its successor; provided, however, that before any such delivery is required or made, all

reasonable, customary and legally accrued fees, advances and expenses of any such predecessor Trustee shall be paid in full.

ARTICLE X
MISCELLANEOUS

10.01 Particular Words. Any word contained in the text of this Trust shall be read as a singular or plural and a masculine, feminine or neuter as may be applicable or permissible in the particular context. Unless otherwise specifically stated the word "person" shall be taken to mean and include an individual, partnership, association, company or corporation.

10.02 Severability of Provisions. If any provision of this Trust or its application to any person or entity or in any circumstances shall be held to be invalid and unenforceable, the application of such provision to persons or entities and in circumstances other than those as to which it is invalid or unenforceable, and the other provisions of this Trust shall not be affected by such invalidity or unenforceability.

10.03 Governing Jurisdiction. This Trust shall be enforceable in the United States District Court for the District of Colorado, which has continuing jurisdiction of the Consent Decree. The validity, interpretation and performance of this Trust shall be governed by the laws of the State of Colorado.

10.04 Modification. This Trust may be modified only by the consent of EPA and by order of the United States District Court for the District of Colorado, and only to the extent that such modification does not change or inhibit the purpose of this Trust as set forth in Section 2.02 or allow for distributions to any entity that is not a qualified organization as defined in Section 4.02.

10.05 Construction of Terms. In the event of any ambiguity or contradiction in the terms of this Trust, such terms shall be construed so as to conform to the provisions of the Consent Decree, where applicable, and so as to fulfill the purposes of this Trust.

10.06 Authorized Representatives. The following are the Authorized Representatives of the Trustee and EPA:.

Trustee:

Name
Address
(phone and fax numbers)

EPA:

Name
Address
(phone and fax numbers)

IN WITNESS WHEREOF, _____, by its duly authorized officer, hereby sets its hand and seal as Grantor and _____, hereby sets its hand and seal as Trustee as of this _____ day of _____, 20____.

[ADD SIGNATURE BLOCKS FOR GRANTOR AND TRUSTEE]

United States of America and the State of Colorado v.
The S.W. Shattuck Chemical Company, Inc.,
CONSENT DECREE

APPENDIX B
Certification and Consent Agreement

The following form of agreement comprises the Certification and Consent Agreement.

CERTIFICATION AND CONSENT AGREEMENT

The undersigned, as a Successor in Property Interest as defined in the Consent Decree entered by the United States District Court in United States and the State of Colorado v. The S.W. Shattuck Chemical Company, Inc. (D. Colo.) (the "Decree"), represents that it has read and is familiar with the Decree and its requirements pertaining to the sale or conveyance of the Shattuck Property in order for a covenant not to sue by the United States and the State of Colorado to transfer to and benefit it as a Successor in Property Interest, and in consideration of the rights, benefits, duties, and responsibilities under the Consent Decree the undersigned Successor in Property Interest hereby certifies, represents, and agrees as follows.

1. To the best of its knowledge and belief, the Successor in Property Interest has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at of from the Site, as defined in the Decree;

2. The Successor in Property Interest will exercise due care at the Shattuck Property with respect to the Existing Contamination, as defined in the Consent Decree, and comply with all applicable local, State, and federal laws and regulations;

3. The Successor in Property Interest recognizes that the implementation of response actions at the Shattuck Property may interfere with its use of the Shattuck Property, and may require closure of its operations or a part thereof;

4. The Successor in Property Interest will cooperate fully with EPA in the implementation of response actions at the Site and not interfere with such response actions, provided that EPA, consistent with its responsibilities under applicable law, uses reasonable efforts to minimize any interference with the Successor in Property Interest's operations by such entry and response;

5. In the event the Successor in Property Interest becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the

Shattuck Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Successor in Property Interest will 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 and CDPHE of such release or threatened release;

6. The Successor in Property Interest agrees to the terms and conditions of Paragraph 21 and Sections X, XI, XIV, and XVI of the Consent Decree; and

7. The undersigned certifies that he or she is authorized to enter into the terms and conditions of this Certification And Consent Agreement and to execute and bind legally such party to this document.

FOR THE SUCCESSOR IN PROPERTY INTEREST:

Date: _____ _____

[NAME/TITLE/ADDRESS]

Agent Authorized to Accept Service on Behalf of the Above-signed Party:

Name: _____

Title: _____

Address: _____

APPENDIX C

COVENANT NOT TO SUE

In consideration for the covenants by the United States and the State of Colorado for the benefit of Phibro Resources Corporation, Inc. contained in the Consent Decree to be lodged in the United States of America and the State of Colorado v. The S.W. Shattuck Chemical Company, Inc., Civil Action No. 01-2405 United States District Court for the District of Colorado, Phibro Resources Corporation, Inc. covenants not to sue and agrees not to assert any claims or causes of action against the United States, the State of Colorado, the Redevelopment Trust or a Successor in Property Interest as provided in paragraphs 23 and 25 of the Consent Decree. This covenant and agreement by Phibro Resources Corporation, Inc. shall be effective and is conditioned upon the entering of the lodged Consent Decree by the Court.

The undersigned certifies that he is authorized to execute and legally bind Phibro Resources Corporation, Inc. to this document.

Dated: 10/5/2001

By Robert H. Oliver

Robert H. Oliver
Vice President

APPENDIX C

COVENANT NOT TO SUE

In consideration for the covenants by the United States and the State of Colorado for the benefit of Salomon Smith Barney Holdings Inc. contained in the Consent Decree to be lodged in the United States of America and the State of Colorado v. The S. W. Shattuck Chemical Company, Inc., Civil Action No. 01-2404, United States District Court for the District of Colorado, Salomon Smith Barney Holdings Inc. covenants not to sue and agrees not to assert any claims or causes of action against the United States, the State of Colorado, the Redevelopment Trust or a Successor in Property Interest as provided in paragraphs 23 and 25 of the Consent Decree. This covenant and agreement by Salomon Smith Barney Holdings Inc. shall be effective and is conditioned upon the entering of the lodged Consent Decree by the Court.

The undersigned certifies that he is authorized to execute and legally bind Salomon Smith Barney Holdings Inc. to this document.

Dated: 10/5/01

By: _____
Ed Turan
Title: DEPUTY GENERAL COUNSEL

APPENDIX C

COVENANT NOT TO SUE

In consideration for the covenants by the United States and the State of Colorado for the benefit of Citigroup Inc. contained in the Consent Decree to be lodged in the United States of America and the State of Colorado v. The S. W. Shattuck Chemical Company, Inc., Civil Action No. 01-2404, United States District Court for the District of Colorado, Citigroup Inc. covenants not to sue and agrees not to assert any claims or causes of action against the United States, the State of Colorado, the Redevelopment Trust or a Successor in Property Interest as provided in paragraphs 23 and 25 of the Consent Decree. This covenant and agreement by Citigroup Inc. shall be effective and is conditioned upon the entering of the lodged Consent Decree by the Court.

The undersigned certifies that she is authorized to execute and legally bind Citigroup Inc. to this document.

Dated: October 11, 2001

By: Ellen T. O'Brien
Ellen T. O'Brien
Assistant Secretary

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 01-D-2404 (OES)

Certificate of Mailing

I hereby certify that a true and correct copy of the **Consent Decree** was served on August 27, 2002 by:

(X) delivery to:

Magistrate Judge O. Edward Schlatter

Robert J. Eber
Assistant Attorney General
Hazardous and Solid Waste Unit
DC BOX NO. 20

Ken Salazar
Attorney General and Trustee for Natural Resources
Colorado Department of Law
DC BOX NO. 20

(X) depositing the same in the United States Mail, postage prepaid, addressed to:

John C. Cruden
Acting Assistant Attorney General
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Washington, D.C. 20530

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1805 South Bannock Street
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John D. Faught
John Faught & Associates, P.C.
379 Detroit Street
Denver, CO 80206

JAMES R. MANSPEAKER, CLERK

By: _____
Deputy Clerk