



United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-272235

June 10, 1996

The Honorable Ben Nighthorse Campbell
United States Senate

The Honorable Dan Schaefer
House of Representatives

The Honorable John D. Dingell
House of Representatives

In response to your request, we are providing interim information from our ongoing review of the arrangement between the Shell Oil Company and U.S. Army to study and clean up contamination at the Rocky Mountain Arsenal. The objectives of our ongoing review are to identify (1) actions by the Army and Shell to comply with settlement agreement requirements, (2) cleanup costs that have been shared between the Army and Shell, and (3) cleanup costs that will not be shared--Army- or Shell-only costs. This letter provides information you requested on cost-sharing arrangements between the parties, updated from our March 1996 report.¹ It also provides preliminary cost data for Shell's lease of Army facilities for commercial operations from inception to 1987.

BACKGROUND

The Army's Rocky Mountain Arsenal occupies 17,000 acres northeast of Denver, Colorado. Established in 1942, its activities included manufacture of munitions until the 1960s and destruction of munitions through the early 1980s. From 1947 until 1987, Shell Oil Company and a predecessor leased a portion of the Arsenal to produce herbicides and pesticides.

Waste disposal practices used by the Army and Shell in the past have resulted in extensive soil and groundwater contamination. In July 1987, the Arsenal was placed on the

¹Environmental Cleanup: Progress in Resolving Long-standing Issues at the Rocky Mountain Arsenal (GAO/NSIAD-96-32, Mar. 29, 1996).

Environmental Protection Agency's (EPA) National Priorities List, the list of the nation's most heavily contaminated sites. Contaminants include nerve agent breakdown products, pesticides, such heavy metals as arsenic and mercury, and such volatile organic compounds as benzene and toluene.

The Army is in charge of the cleanup under a Federal Facility Agreement, signed by most key parties in 1989. Although the state of Colorado did not sign that agreement because of litigation with the Army and Shell, in June 1995 the state and five other parties signed an agreement in concept to address the lawsuits and disputes.

Army officials said that they expect to sign a record of decision on June 11, 1996, that details specific actions and milestones for cleaning up the Arsenal. The Department of Defense's (DOD) most recent total cost estimate is about \$2.6 billion.²

COST-SHARING ARRANGEMENTS

The Army and Shell formalized their agreements regarding activities and costs for cleanup at the Arsenal in three documents: the Federal Facility Agreement, a Financial Manual, and a Settlement Agreement.

Federal Facility Agreement

The Federal Facility Agreement addresses the need to comply with environmental legislation by stipulating specific terms and conditions that the parties must agree to. The agreement establishes a procedure to allow the various participants to cooperate in cleanup at the Arsenal, and provides the process for planning, selecting, designing, and implementing response actions, as well as the public participation process. The signatories to the agreement are the Army; Shell Oil Company; EPA; and the Departments of Justice, the Interior, and Health and Human Services.

Financial Manual

The Shell/Army Rocky Mountain Arsenal Financial Manual sets forth financial, accounting, and auditing procedures. The manual describes primary and secondary documentation for allocable costs and includes examples of some documentation. It also provides procedures for settling cost-related disputes between the Army and Shell. The

²Defense Environmental Restoration Program Annual Report to Congress for Fiscal Year 1995 (May 15, 1996).

manual stipulates that all procedures are to be conducted in accordance with generally accepted accounting principles.

Settlement Agreement

The Settlement Agreement apportions cleanup responsibilities and costs between Army and Shell, and establishes a process for such matters as payments and resolution of disputes. Costs to correct damages attributable solely to either the Army or Shell are to be financed by the responsible party, and the agreement includes lists of Shell-only and Army-only actions. Most contamination was commingled, and these cleanup costs will be shared under a formula requiring each party to pay 50 percent of the first \$500 million in cleanup costs, with Shell's share decreasing as total costs increase. As of December 1995,

-- Army-only costs totaled \$308 million, and Shell-only costs totaled \$95 million and

-- commingled costs to be shared totaled \$656 million.

The Settlement Agreement provides that the Army will pay 65 percent of costs over \$500 million and up to \$700 million, and Shell will pay 35 percent. The Army must pay 80 percent of costs exceeding \$700 million. According to the Army, total commingled costs had not exceeded the \$700-million level as of June 3, 1996.

According to Army officials, the agreement is unique. Army, EPA, and the Department of Justice officials said that the cost-sharing formula was based on the best available knowledge of risk and damages at the time of the 1989 agreement. The cost estimates at that time were lower than now.

LEASE COSTS FOR USE OF ARMY FACILITIES

We have been able to develop only very preliminary information on the lease agreements as of this date. With that limitation, the information we have thus far shows a lease that began in February 1947 with periodic amendments. The lease was to Julius Hyman & Company, and covered land, buildings, and equipment. As of December 1954, the company was owned by and merged into Shell. We have not yet determined the exact length of the lease, by company, however, lease documents made available to us by the Army indicate that the lease ended on December 31, 1987.

The initial annual base payment amount in the 1947 lease was \$36,000, payable in monthly installments of \$3,000. Subsequent amendments increased the annual amount, for example, to about \$142,000 by 1951 and \$238,000 by 1965. By 1987, the lease amount had decreased to \$146,000. These amounts are base rates, subject to increases or decreases for such reasons as production volume, or improvements and repairs done by Shell. The original lease amount we identified was based on real estate taxes and a depreciated value for buildings and equipment. We found no amounts payable to the Army specifically for the value of the land.

SCOPE AND METHODOLOGY

The information presented in this letter is drawn from our ongoing review of the arrangements between Shell Oil Company and the Army to study and clean up contamination at the Rocky Mountain Arsenal. Under that review we are examining environmental laws and regulations, agreements and financial documents, and other pertinent information related to Army and Shell compliance and costs. We are performing our work primarily at the Program Manager's Office at Rocky Mountain Arsenal, Denver, Colorado; and Shell Oil Company at Denver, Colorado, and Houston, Texas. Documentation of the lease was provided by the Program Manager at the Arsenal; the Corps of Engineers, Omaha, Nebraska; and Shell Oil Company, Houston, Texas. We also interviewed Army and Shell officials. We conducted our work in accordance with generally accepted government auditing standards.

AGENCY COMMENTS AND OUR EVALUATION

In providing official oral comments on this letter, DOD and Army officials concurred with the facts, noting that the detailed data are subject to update or correction as additional data become available.

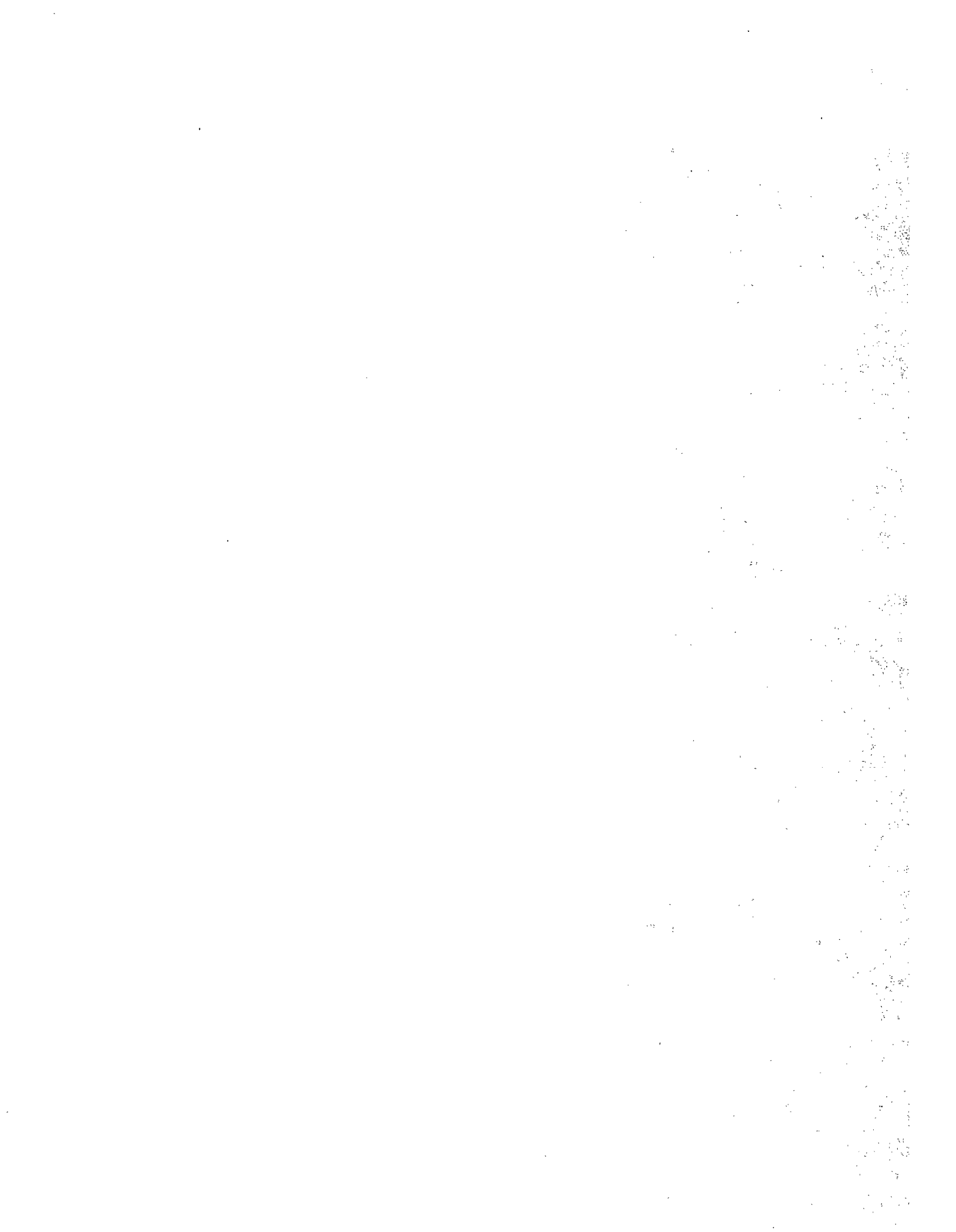
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As we arranged with your offices, unless you publicly announce this letter's contents earlier, we plan no further distribution of the letter until 15 days from its date. We will then send copies to the Secretaries of Defense and the Army, the Administrator of the Environmental Protection Agency, and other interested parties.

Major contributors to this letter were Uldis Adamsons, Suzanne Macfarlane, Wendy Matthews, and Elizabeth Mead. Please contact me at (202) 512-8412 if you or your staff have any questions.


David R. Warren, Director
Defense Management Issues

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