

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.

THE STATE OF COLORADO, through the TRUSTEES FOR NATURAL  
RESOURCES DAMAGES FOR THE STATE OF COLORADO and ATTORNEY  
GENERAL, JOHN SUTHERS,

Plaintiff,

v.

THE CITY AND COUNTY OF DENVER;  
WASTE MANAGEMENT OF COLORADO, INC.;  
CHEMICAL WASTE MANAGEMENT, INC.;  
MOLSON COORS BREWING COMPANY;  
ROCHE COLORADO CORPORATION;  
THE S.W. SHATTUCK CHEMICAL COMPANY, INC.;  
CONOCOPHILLIPS COMPANY;  
THE GATES CORPORATION;  
ALUMET PARTNERSHIP;  
SHELL OIL COMPANY;  
HAZEN RESEARCH, INC.;  
CYPRUS AMAX MINERALS COMPANY;  
METRO WASTEWATER RECLAMATION DISTRICT, COLORADO;  
CITY OF LITTLETON, COLORADO;  
CITY OF ENGLEWOOD, COLORADO; AND  
CITY OF LAKEWOOD, COLORADO.

Defendants.

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**COMPLAINT**

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Plaintiff, the State of Colorado (“State”), through the trustees for natural  
resource damages for the State (“Trustees”), on behalf of the public of the State

and through the Attorney General of Colorado, makes the following complaint against Defendants:

## **INTRODUCTION**

1. The Trustees come before the Court in an action against parties responsible for the release of hazardous substances at the Lowry Landfill Superfund Site (the “Site”). As a result of the release of these hazardous substances, groundwater, a natural resource of the State, has been and continues to be injured. This action is brought pursuant to CERCLA § 107(F), 42 U.S.C. § 9607(f).

2. Unless otherwise defined, the terms used herein are as defined within section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*, (“CERCLA”) and regulations for Natural Resource Damage Assessment, 43 C.F.R. Part II, § 11.10, *et seq.* (“the Regulations”)

## **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the claims set forth herein pursuant to 28 U.S.C. § 1331 and section 113(b) of CERCLA, 42 U.S.C. § 9613(b). Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c), and 113(b) of CERCLA, 42 U.S.C. § 9613(b)

## **PARTIES**

4. The Trustees, as the authorized representative of the State to act on behalf of the public to collect damages for injury to natural resources within the State under section 107(f) of CERCLA, 42 U.S.C. § 9607(f), and as designated by the Governor of Colorado.

5. The Performing Parties Defendants:

a. The City and County of Denver is a political subdivision of the State of Colorado,

b. Waste Management of Colorado, Inc., is a Colorado corporation with its principal address in Houston, Texas, and

c. Chemical Waste Management, Inc. is a Delaware corporation, and otherwise doing business in Colorado.

6. The Generator Defendants:

a. Molson Coors Brewing Company, formerly known as Adolph Coors Company, is a Delaware Corporation with its principal address in Denver, Colorado;

b. Roche Colorado Corporation, successor to Syntex Chemicals, is a Delaware Corporation with its principal address in Boulder, Colorado;

c. S.W. Shattuck Chemical Company is a Colorado corporation with its principal address in New York, New York, and a wholly-owned subsidiary of Citigroup Global Markets Holdings, Inc. a New York corporation with a principal address in New York, New York;

d. ConocoPhillips Company, formerly known as Conoco Inc., is a Delaware corporation with its principal address in Houston, Texas, and otherwise doing business in Colorado;

e. The Gates Corporation, formerly known as Gates Rubber Company, is a Delaware corporation with its principal address in Denver, Colorado;

f. Alumet Partnership is a Colorado partnership with its principal place of business in Carrolton, Georgia;

g. Shell Oil Company is a Delaware corporation with its principal address in Houston, Texas, and otherwise doing business in Colorado;

h. Hazen Research Inc. is a Colorado corporation with its principal address in Golden, Colorado;

i. Cyprus Amax Minerals Company, otherwise known as Amax, is a Delaware corporation with its principal address in Phoenix, Arizona, and otherwise doing business in Colorado;

j. Metro Wastewater Reclamation District, formerly known as Metro Denver Sewage Disposal District #1, is a special district formed under the laws of and located in Colorado;

k. City of Littleton, contributor through Littleton-Englewood Bi-city Wastewater Treatment Plant, is a political subdivision of the State of Colorado;

l. City of Englewood, contributor through Littleton-Englewood Bi-city Wastewater Treatment Plant, is a political subdivision of the State of Colorado;

m. City of Lakewood, a political subdivision of the State of Colorado.

## **BACKGROUND AND GENERAL ALLEGATIONS**

### **A. The Facility**

8. The Site is an area encompassing approximately five hundred eight (508) acres, located in an unincorporated area of Arapahoe County, Colorado, near the intersection of East Hampden Avenue and Gun Club Road, which consists of the western three-quarters of Section 6, Township 5 South, Range 65 West, and extending northward into the extreme southern portion of Section 31, Township 4 South, Range 65 West. The street address for the Site is 3500 South Gun Club Road, Denver, Colorado.

9. The Site served as the principal municipal and industrial landfill for the

Front Range of Colorado from 1965 through 1980, receiving liquid and solid waste. Subsequent to 1980 and until 1990, the Site operated only as a solid waste disposal site.

10. The Site was placed on the National Priorities List in 1984, as provided for in CERCLA, at which time the U.S. Environmental Protection Agency (“EPA”) began a Remedial Investigation and established that hazardous substances from the landfill had contaminated groundwater, surface water, soils and sediments.

11. The Site is a facility within the meaning of section 101(9) of CERCLA, 42 U.S.C. 9601(9).

## **B. Releases and Injuries**

12. EPA designated operable Units (“OUs”) for the Site, which included OU1 for shallow groundwater and subsurface liquids under the landmass of the Site, and OU6 for deep groundwater under the landmass of the Site.

13. EPA selected a remedy and issued a Record of Decision (“ROD”) for the Site in 1994 that focused, as regards to groundwater, on containment of contamination. Elements of the remedy include:

- a. the Groundwater Barrier Wall on the west, south and east sides of the main landfill in the southern part of the Site;

b. a landfill cover to provide a minimum cover thickness of 4 feet over the entire closed landfill area;

c. the North Toe Extraction System to collect groundwater at the northern limit of the landfill and pump the water to the water treatment plant at the northern boundary;

d. the Northern Boundary Barrier Wall, a 1,000-foot-long and 30-foot-deep clay wall that provides a barrier to groundwater flow to the north;

14. The purpose of the remedy selected for this Site is to protect human health and the environment. Evaluation of the remedy's effectiveness is based upon whether this purpose is met.

15. The specific goal of the remedy, as to groundwater, is to contain the contamination within the boundaries of the landfill.

16. The groundwater under the landfill continues to contain hazardous substances as defined in CERCLA § 101(14), 42 U.S.C. § 9601(14), including known and probable carcinogens Benzene; 1,1,2,2-Tetrachloroethane; Carbon tetrachloride; Tetrachloroethene (PCE); Trichloroethene (TCE); and Vinyl Chloride, in concentrations that exceed drinking water standards established for Colorado.

17. Hazardous substances, within the meaning of section 101(14) of

CERCLA 42 U.S.C. § 9601(14), have been released from the Site into the groundwater beneath the landfill mass and to the north of the groundwater containment components of the Site.

18. Groundwater in OU1 and OU6 has been, and continues to be, injured as a result of the hazardous substances released at the Site.

19. As a response to the hazardous substances in the groundwater on the Site, and to further the remedy's goal of protecting human health and the environment, Denver placed restrictions on the landfill site and surrounding areas to restrict the use of groundwater.

20. Groundwater adjacent to the Site has been, and continues to be, injured as a result of the institutional controls placed on the ground water because of the hazardous substances released at the Site.

21. In 2007, EPA detected 1,4-dioxane at levels above state water quality standards in shallow groundwater to the north of the groundwater containment components of the Site. 1,4-dioxane is a hazardous substances, as defined in CERCLA § 101(14), 42 U.S.C. § 101(14).

22. In response to the discovery of 1,4-dioxane, additional wells were installed to capture and remove 1,4-dioxane from the groundwater.

23. Groundwater north of the Site has been, and continues to be, injured as a

result of the migration of 1,4-dioxane from the hazardous substances released at the Site.

### **C. Damages and Response Costs**

24. Releases of hazardous substances at the Site have injured groundwater, a natural resource. As a result, the State of Colorado has incurred and is continuing to incur costs for assessing the injury, and the citizens of Colorado have been deprived of the enjoyment and services of natural resources. Attached hereto are Exhibits 1 and 2, as further explanation of the assessment process.

### **D. Responsible Parties**

25. The EPA, within the Remedial Investigation, identified responsible parties (“RPs”) for the Site, including the Defendants named in this Complaint.

26. The Performing Parties Defendants owned or operated, as defined in CERCLA § 101(20) (42 § 9607(20)) and as liable under CERCLA § 107(a), (42 § 9607(a)), the Site during the time that hazardous substances were released to ground water below and north of the Site, or transported, as defined in CERCLA § 101(20), (42 § 9607(20)) and as liable under CERCLA § 107(a), (42 § 9607(a)), hazardous substances that were subsequently released to ground water below and north of the Site.

27. The Generator Defendants arranged for transport and disposal, as liable

under CERCLA § 107(a), (42 § 9607(a)), of hazardous substances that were subsequently released to ground water below and north of the Site.

28. Each individual party composing the Performing parties Defendants and Generator Defendants is a “person,” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

### **E. Settlement by Parties**

29. The Parties have agreed to the terms set out in their respective documents titled, “Final Generator Consent Decree — Colorado Natural Resources Related to Lowry Landfill” and “Final Performing Parties Consent Decree — Colorado Natural Resources at Lowry Landfill” (collectively, *Lowry Landfill Consent Decrees*), as lodged and filed as appendices to this Complaint.

### **CLAIM FOR RELIEF**

**(Damages for injury to natural resources, 42 U.S.C. § 9607 (a)(4)(C))**

30. The allegations of the above paragraphs are incorporated herein by reference.

31. The State is trustee for the Natural Resources within, belonging to, managed by, controlled by, or appertaining to the State pursuant to 42 U.S.C. 9607(f) and 9611(h) and section 300.73 of the National Oil and Hazardous Substances Contingency Plan, 47 Fed. Reg. 31180, 31296 (July 16, 1982)

(“National Contingency Plan”).

32. The owner or operator of a facility at which hazardous substances were disposed of; or any person who at the time of disposal of any hazardous substance owned or operated a facility at which hazardous substances were disposed of; or any person who by contract, agreement, or otherwise arranged for disposal or treatment of hazardous substances at a facility containing such hazardous substances; or any person who accepted any hazardous substance for transport to disposal or treatment facilities;

and from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance;

is liable for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, resulting from a release of hazardous substances. CERCLA § 107(a), 42 U.S.C. § 9607(a).

33. Liability for damages for injury to, destruction of, or loss of natural resources may be to any state with natural resources within the state, or belonging to, managed by, controlled by, or appertaining to such state. 42 U.S.C. § 9607(f).

34. Groundwater is a natural resource within the State or belonging to, managed by, controlled by, or appertaining to the State.

35. Releases of hazardous substances from the Lowry Landfill have injured groundwater beneath and in the vicinity of Lowry Landfill.

36. The injuries alleged in this Complaint were caused by the hazardous substances released on the Site by Performing Parties Defendants, and Generator Defendants.

### **RELIEF SOUGHT**

WHEREFORE, the Trustees request that this Court:

1. FIND that it is fully advised concerning issues raised in this case and the settlements reached by the parties.

2. FIND the settlement of the State's natural resource damage claims has been negotiated by the parties in good faith and is entered into without an admission or adjudication of any issues of fact or law.

3. FIND the *Lowry Landfill Consent Decrees* submitted by the parties in settlement of this case will expedite the restoration or replacement of natural resources; are fair, reasonable, and consistent with CERCLA; are in the public interest; and will avoid prolonged, complicated and expensive litigation.

4. ORDER that the agreements embodied within the *Lowry Landfill Consent Decrees* submitted by the parties constitute the Court's final judgment.

Submitted this 4<sup>th</sup> day of June 2010.

JOHN W. SUTHERS  
Attorney General

s/Heidi L. Jason

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