Atlantic Richfield Company

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November 17, 2015

VIA EMAIL AND U.S. MAIL

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Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Charles Coleman
Project Manager
U.S. EPA Region 8, Montana Office
10 West 15th Street, Suite 3200
Helena, MT 59626

Re: Notice of Intent to Comply with Administrative Order for Remedial Action for the Anaconda Smelter Superfund Site; Community Soils Operable Unit
EPA Docket No. CERCLA 08-2015-0011

Gentlemen:

Respondent Atlantic Richfield Company ("Atlantic Richfield") provides this letter as notice that it will comply with the lawful requirements of the above-referenced Unilateral Administrative Order ("UAO") for Community Soils operable unit ("CSOU") remedial action within the Anaconda Smelter Site.

This letter also provides notice of a potential impediment to compliance that may arise in the future in the *Christian* litigation (*Christian et al. v. Atlantic Richfield Co.*, No. DV-08-173 (Dist. Ct. Silver Bow Cty.)) As EPA is aware, the Montana Supreme Court has reversed the Montana Second Judicial District Court's grant of summary judgment in favor of Atlantic Richfield in the *Christian* litigation. The Montana Supreme Court held that under state law, a group of approximately 100 plaintiffs in the Opportunity area can bring claims against Atlantic Richfield to "restore" residential property impacted by the former Anaconda Smelter operations. Plaintiffs' seek a type of restoration that would require Atlantic Richfield to fund plaintiffs' performance, under state law, of a different remedy which conflicts with the remedial actions selected by EPA for the CSOU and the Anaconda Regional Water Waste and Soils operable unit. Specifically, plaintiffs' seek to compel Atlantic Richfield to fund the construction of multiple underground passive reactive barrier walls to intercept and divert regional groundwater, in conflict with EPA's

groundwater remedy, and to fund an area-wide removal of soil from residential properties in conflict with EPA's CSOU remedy and the RAWP/FDR.

Atlantic Richfield is raising defenses to these claims in the *Christian* litigation, including the defense that the relief sought by the plaintiffs is barred by CERCLA. However, Atlantic Richfield faces a potentially irreconcilable conflict if it must comply with EPA's UAO and implement EPA's Work requirements, while also directed to fund "restoration" activities by the *Christian* plaintiffs that will interfere with the implementation, effectiveness and integrity of the Work.

For these reasons, Atlantic Richfield objects to Paragraph 40 of the UAO and EPA's demand that Atlantic Richfield's provide written notice of its "irrevocable intent to comply" with the UAO. At this time, Atlantic Richfield will move forward with funding and implementation of the Work required under the UAO. Because the Work requirements conflict with the restoration concepts at issue in the state court litigation, Atlantic Richfield reserves its right to reassess compliance with EPA's UAO pending further developments in the State court litigation.

In addition to advising you of the matters set forth above, we thank you for meeting with us on behalf of EPA in the UAO conference conducted on November 12, 2015. Atlantic Richfield's comments and requests for clarification concerning the UAO follow below in Section I. Section II contains Atlantic Richfield's objections to the UAO.

I. COMMENTS AND REQUESTS FOR CLARIFICATION

Following are comments and requests for clarification concerning the UAO.

A. Scope of the UAO

The UAO scope of work implements the remedial action selected in the Record of Decision for the CSOU signed on September 30, 2013, and EPA's ROD Amendment signed on September 30, 2013. The scope of work is detailed in the Remedial Action Work Plan/Final Design Report ("RAWP/FDR") dated August 2015, Document ID Number 1549208, Reference C. As referenced in Paragraph 28 of the UAO, EPA approved the RAWP/FDR on August 31, 2015, Document ID Number 1567335, Reference D.

With issuance of a new UAO to implement the RAWP/FDR and remaining elements of EPA's ROD, as amended, Atlantic Richfield requests that EPA terminate Administrative Order for Remedial Action, Docket No. CERCLA-08-2002-08 under which Respondent has performed CSOU RD/RA to date.

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B. Schedule and Delay in Performance

Paragraph 45 of the UAO requires Atlantic Richfield to implement and perform Remedial Action ("RA") and other Work in accordance with the RAWP/FDR. The UAO does not include a projected construction schedule for Work. As further described in the RAWP/FDR, project construction will likely take approximately five (5) years to complete, with sampling to begin in 2015. Atlantic Richfield has prepared, and attaches as Exhibit A hereto, a projected RD/RA schedule for work to be performed pursuant to the UAO by Atlantic Richfield going forward through projected construction completion in 2020. This schedule is an estimate only, and Atlantic Richfield reserves the right to propose revisions to the project schedule based upon the progress of Work, including efforts to obtain access to Affected Property and completion of project sampling required for RA. Subject to those caveats, Atlantic Richfield requests EPA's confirmation that the proposed project schedule (Exhibit A) is acceptable both with respect to the scope of work to be performed and the timing thereof.

While the UAO contains no schedule for Work, EPA requires that Respondent notify EPA of "any delay or anticipated delay in performing any requirement of this Order" within 48 hours after Respondent "knew or should have known that a delay might occur." Section XIV, Paragraph 62. These requirements are not enforceable as the Order does not provide sufficient information to identify the matters for which notice must be provided to EPA if a delay is encountered in performing the Work. Further, notwithstanding the ambiguity as to the specific requirements subject to notice under Paragraph 63, EPA asserts that any delay in performance that is not properly justified shall be considered a violation of the Order. *See* Paragraph 63. Atlantic Richfield objects to these requirements.

Should EPA approve the projected schedule included as Exhibit A hereto, Atlantic Richfield will keep EPA apprised of Work progress and advise EPA of any adjustments to the project schedule that are appropriate.

Additionally, Paragraph 6 of the UAO requires Atlantic Richfield to provide copies of the UAO to each contractor representing Atlantic Richfield with respect to the Site or the Work. The UAO will be provided to contractors and other representatives who perform Work, as Atlantic Richfield completes its contractor selection and award process, and after selected contractors are formally retained.

C. Property Requirements

Paragraph 49 of the UAO notes that access to complete the Work must be secured from Non-Respondent Owner's for Work on Affected Property, as those terms are defined by the UAO. And the UAO requires that Respondent shall use best efforts to secure such access agreements. The EPA-approved RAWP/FDR describes the actions required to secure access, which include reasonable efforts to contact owners of Affected Property by mail and by phone to obtain the property owners consent and signature upon

an access agreement for the Work. As approved be EPA, the RAWP/FDR does not require "payment of reasonable sums of money to secure access and/or use restriction agreements". Atlantic Richfield requests that the UAO text reference to "best efforts" in Paragraph 50 be revised for consistency with the RAWP/FDR and to delete any reference to payment of money for access to complete RA on residential and other properties. Non-Respondent Owners of Affected Property are benefited by RA, and compensation for access to complete the Work is not appropriate, nor should it be described as a contingency under the terms of the UAO.

In the event Respondent is unable to negotiate an access agreement with a Non-Respondent Owner following the approved RAWP/FDR protocols, we will notify EPA and request EPA's support in securing access for Work on such Affected Property. EPA's demand that Respondent notify EPA "within 30 days of the Effective Date" whether Respondent has successfully been able to secure access to all properties for all purposes under the UAO, and to "accomplish what is required through "best efforts," is both unreasonable and impractical for the CSOU. The Work on Affected Properties will be conducted on lands owned by many different people at different times over a period of several years. Access will be secured as needed as the RA progresses across the Site, and efforts to secure access to Affected Properties will occur over time. Thus, Respondent requests that EPA revise Paragraph 50 to delete the requirement that Respondent notify EPA within thirty (30) days of the Effective Date of Respondent's efforts to secure access to all Affected Property.

Atlantic Richfield's form access agreements for: (a) RD/RA sampling, and (b) RA construction, if necessary for a given property, are included together as Exhibit B to this response. These form access agreements have been and are presently being utilized to secure access for response actions on residential and other property at the Site. Atlantic Richfield's access agreements do not require that a Non-Respondent Owner of Affected Property "refrain from using such Affected Property in any manner that the EPA determines will pose an unacceptable risk to human health or the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action." *See* UAO, Para. 49(ii).

Paragraph 51 directs that Respondent cooperate with EPA's and the State's efforts to ensure compliance with Institutional Controls, including the Community Protective Measures Program. Atlantic Richfield has and will continue to cooperate with EPA and the State to finalize Institutional Controls for the Anaconda Smelter Site, including the CSOU. Atlantic Richfield supports the goal of reaching agreement upon the content of a comprehensive Institutional Controls program. A number of key elements of a comprehensive ICs program remain to be finalized, including the Community Protective Measures Program ("CPMP"). Atlantic Richfield has reviewed the most recent draft CPMP prepared by Anaconda Deer Lodge County ("ADLC") (June 2015) and provided comments under separate cover on the CPMP, the recently adopted Development Permit System superfund-related chapters, and the draft Institutional Controls Implementation and Assurance Plan ("ICIAP"). Atlantic Richfield's comments on the described documents were submitted to the Agencies and ADLC via email on October 26, 2015.

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See email transmittal with attachments from John Davis, Poore Roth & Robinson, P.C. on behalf of Atlantic Richfield to Charlie Coleman, EPA and others (October 26, 2015@ 5:25 pm).

Atlantic Richfield requests that EPA confirm the two form access agreements attached as Exhibit B are acceptable to secure access for Work, and that the Para. 49(ii) text noted above is not required text for access agreements with Non-Respondent Owners of Affected Property. Further, in the event EPA is unwilling to revise the text of ¶¶ 49, 50, 62 and 63 as requested in Sections I.B and I.C of this Notice of Intent to Comply submittal, Atlantic Richfield requests that EPA confirm in writing that the approach described above in Sections I.B and I.C is acceptable, meets the intent of and is deemed compliant with the terms of the UAO.

D. Designation and Qualifications of Project Coordinator

As required by Paragraph 44.c, Atlantic Richfield designates Luke Pokorny to serve as the Project Coordinator. Mr. Pokorny's contact information is as follows:

317 Anaconda Road
Butte, Montana 59701
Direct: (406) 723-1832
Cell: (406) 498-4565
Email: Luke.Pokorny@bp.com

Mr. Pokorny has provided project management for other CSOU response activities and similar work at other sites. Atlantic Richfield requests confirmation that it will not be necessary to provide EPA with a separate submittal describing Mr. Pokorny's technical qualifications.

Atlantic Richfield's Supervising Contractor for completion of the Work is Pioneer Technical Services ("PTS"). PTS has supported other response actions at the Site and is well known to EPA. Atlantic Richfield requests confirmation that it will not be necessary to provide EPA with a separate submittal describing PTS' technical qualifications.

Paragraph 44.a(3) notes that Respondent's and EPA's Project Coordinators will meet at least monthly. This is the current practice, and Atlantic Richfield concurs with planning meetings at least monthly. In addition to these monthly meetings, weekly meetings with EPA's oversight representative, Ken Brockman, are regularly held to discuss and resolve issues related to field work. In conflict with this practice, Paragraph 48.c suggests that all modifications to the activities described in the RAWP/FDR must be confirmed in writing and by amendment to the RAWP/FDR to bind EPA. Thus, Atlantic Richfield requests EPA's written confirmation that the present practice of weekly meetings and documentation of work modifications by RFC's and notations in the daily log is acceptable and binding upon EPA, meets the intent of and is deemed compliant with the terms of the UAO.

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E. Access to Information

Paragraph 66 of the UAO directs that Respondent shall provide information and Records to EPA upon request. Upon request, Atlantic Richfield will provide non-privileged documents requested by EPA and access to Company employees and representatives as described in Paragraph 66 to provide information not protected from disclosure by an applicable privilege. However, in providing information and Records to EPA, the Respondent may assert business confidentiality protections are applicable to Records such as contracts, as provided at 40 C.F.R. 2.201 *et seq*.

F. Appendix E, Index of Administrative Record

Section XXI (Administrative Record), Paragraph 78 of the UAO incorporates by reference (as Appendix E to the UAO) EPA's Index of Administrative Record. The UAO is not a decision document; thus, Atlantic Richfield does not agree that CERCLA and the NCP require development of an administrative record to support the issuance of a Section 106 Order. Without waiver of Atlantic Richfield's comments on the need and or appropriateness of designating an administrative record for the UAO, Atlantic Richfield provides the following comments on the content of EPA's Index of Administrative Record.

First, Atlantic Richfield requests that EPA include additional post-decision records that support implementation of the RAWP/FDR and future evaluation of the CSOU remedy. Atlantic Richfield's proposed additions to EPA's administrative record for the UAO are identified in Exhibit C to this Notice of Intent to Comply submittal.

Second, Atlantic Richfield offers the following comments on EPA's Index of records, including suggested deletions from the list of records identified by EPA.

(1) General Comments

- For ease of reference, Atlantic Richfield suggests reordering the Index to list the reports sequentially by date.
- Please correct the typo in the "Bornschein" references (Index, p.2).
- Please update the reference to Peccia and Associates. 1992 (Index, p. 4). The Anaconda Deer Lodge County Comprehensive Master Plan was revised in 2010. Please update the reference accordingly, as the "2010 Growth Policy, Anaconda Deer Lodge County".

(2) Requested Deletion / Clarification of Index References

The following records have been superseded or relate to geographic locations other than the Site and appear to have been included in error.

- "CH2MHill/Chen Northern, 1989. Public Health and Environmental Assessment Report, Rocker and Ramsey Areas, Silver Bow Creek CERCLA site, prepare for DEQ by CH2MHill and Chen Northern, April 28." Applicability to CSOU?
- "AGC 1996a. Community Soils Operable Unit Remedial Investigation/Feasibility Study, prepared for ARCO by Advanced GeoServices Corporation." This is a duplicate to Atlantic Richfield Company 1996 reference which is also included on EPA's Index.
- "Response to CERCLA Section 104(E) Request for Information regarding the Carpenter Snow Creek Site (SSI #08-9x) in Cascade County, Montana, April 23, 2010)." Applicability to CSOU?
- "Residential Soils/Dust RAWP/FDR EPA/DEQ, 2013." The reference should be deleted as the 2013 RAWP has been replaced by 2015 RAWP/FDR.

Please provide written confirmation that EPA will add the records Atlantic Richfield has designated for addition to EPA's administrative record for the UAO, and make the suggested corrections and deletions to the Index as described in this Section I.F of Atlantic Richfield's Notice of Intent to Comply submittal. If EPA is not willing to accept Atlantic Richfield's comments on EPA's administrative record, please provide a written explanation of EPA's reasons for rejecting the suggested revisions to EPA's Index.

II. OBJECTIONS TO THE UAO

A. Jurisdiction, Findings of Fact, Conclusions of Law and Determinations

Atlantic Richfield does not admit and reserves its right to contest the statements contained in the Jurisdiction and General Provisions, Findings of Fact, and Conclusions of Law and Determinations Sections (Sections I, IV and V) of the UAO. Atlantic Richfield's Notice of Intent to Comply shall not under any circumstances constitute an admission of the terms or conditions of the UAO, or of any liability associated with the Site, and Atlantic Richfield expressly reserves its right to contest the same.

B. The Unilateral Order to Pay Response Costs is Unlawful and Outside the Scope of the Agency's Authority

Section XV, paragraph 64 of the UAO, mandates that Respondent reimburse EPA for claimed Response Costs, as that term is defined by the UAO. The UAO was issued under the authority of Section 106(a) of CERCLA. EPA's authority under Section 106(a) of CERCLA is limited to the issuance of orders for abatement actions "as may be necessary to protect public health and welfare and the environment." Section 106(a), among other limitations, does not authorize EPA to order a potentially responsible party ("PRP") to reimburse the Agency for response costs. EPA has the right to pursue a separate civil action to recover response costs. Paragraph 73.e (Reservation of Rights) of the UAO includes a reservation of claims for response costs, but does not specifically

refer to the need to pursue them through a separate judicial action. Atlantic Richfield reserves the right to contest the amount of EPA's claimed costs of response in such an action.

Moreover, the United States has filed a complaint against Atlantic Richfield in the litigation styled *United States v. Atlantic Richfield Company, Inc.*, CV-89-39-BU (D. Mont.) alleging that Atlantic Richfield is liable for response costs. Thus, the administrative claim for the response costs set forth in the UAO is preempted by the claim for these same costs in the pending litigation. By ordering the Respondent to reimburse the Agency for response costs under a Section 106(a) UAO, EPA attempts to deprive Atlantic Richfield of its statutory right to challenge its liability for response costs under Section 107(a) of CERCLA.

Consistent with past practice, Atlantic Richfield will continue to work with EPA to resolve any claims for EPA response costs by mutual agreement, and to document such agreements through the consent decree process.

C. Notification of Personnel and Contractors

Section X, paragraph 44, requires that Atlantic Richfield notify EPA and provide qualifications for Atlantic Richfield's Project Coordinator and Supervising Coordinator. Further, the UAO seeks to impose qualifications for project personnel that are not found in CERCLA or the NCP. Pursuant to paragraph 44.c, EPA may disapprove such contractors or personnel. EPA has no authority under CERCLA to require notification or to approve or disapprove contractors and personnel selected by Atlantic Richfield. Notwithstanding this lack of authority, Atlantic Richfield has identified Luke Pokorny as Atlantic Richfield's Project Coordinator, and Pioneer Technical Services as Atlantic Richfield's Supervising Contractor to carry out the Work under the Order.

D. Insurance

Section XIII, paragraph 61 requires the Respondent to obtain and maintain certain insurance before initiating the Work required by the UAO. Atlantic Richfield will obtain and maintain insurance, and require that its contractors maintain insurance that satisfies the coverage limits described in the UAO. Atlantic Richfield objects, however, to "naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent." This requirement is outside the scope of EPA's authority. While Atlantic Richfield may agree to name the United States as an additional insured by contract (consent decree), EPA may not impose such obligation unilaterally under its administrative authority.

E. Enforcement / Work Takeover

Atlantic Richfield notes that the civil penalty provisions for failure to comply with the UAO set forth in Section XVIII, paragraph 72, do not apply if sufficient cause exists for failure or refusal to comply, or if the failure to comply was not willful. *See* Sections

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106(b)(1) and 107(c)(3) of CERCLA. In addition, such penalties may be recovered only through a separate judicial action, and may not be imposed unilaterally by EPA. Moreover, Atlantic Richfield objects to EPA's demand, set forth in Paragraph 41 of the UAO, that this notice of Atlantic Richfield's intent to comply with the lawful requirements of the UAO describe any sufficient cause defense that Atlantic Richfield may later assert to EPA's enforcement of the Order. Nothing in CERCLA authorizes EPA to demand that Atlantic Richfield "preview" any defense to future enforcement. As well, EPA's assertion that Atlantic Richfield's failure to set forth its sufficient cause defense in this letter "shall be treated as a violation of the Order" is without basis in the law, and tantamount to a denial of Respondent's right to due process.

F. Financial Assurance

Section XII, paragraphs 53 thru 60 require Atlantic Richfield to, among other things, secure and maintain financial assurances in an amount deemed necessary by EPA to demonstrate Respondent's ability to implement the Work required under the UAO, and to establish and maintain a standby trust to which future payments could be deposited at EPA's direction. Atlantic Richfield objects to these collective requirements because EPA lacks authority to require such assurances in a UAO. While Atlantic Richfield may agree to provide financial assurance and assume other obligations described in Section XII by contract (consent decree), EPA may not impose such obligation unilaterally under its administrative authority.

Atlantic Richfield represents to EPA that Atlantic Richfield has the financial capacity to fund and complete the Work under the UAO. Atlantic Richfield will provide EPA upon request with an unaudited financial report that summarizes Atlantic Richfield's financial condition. To receive the report, Atlantic Richfield requires that EPA acknowledge the financial report and its contents are business confidential, and agree to protect such report and its contents from disclosure under CERCLA and 40 C.F.R. Part 2, Subpart B.

G. Record Retention – Certification

Under Section XVII, Paragraph 71 of the UAO, EPA demands that Atlantic Richfield submit a written certification that no Records, as that term is broadly defined in Paragraph 66, to the best of its knowledge, have been altered, mutilated, discarded, destroyed or otherwise disposed of "relating to its potential liability regarding the Site." Given the breadth of EPA's demand, Atlantic Richfield is not able to provide the requested certification. In addition, EPA lacks authority to require such certification as a term of an administrative order.

As requested by Paragraph 71, Atlantic Richfield confirms, to the best of its knowledge, that it has complied with all EPA requests for information regarding the Site that have been directed to Atlantic Richfield pursuant to sections 104(e) and 122(e) of CERCLA. To Respondent's knowledge, no requests for information regarding the Site

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have been made upon Respondent for information under section 3007 of RCRA or state law.

Atlantic Richfield also objects to the requirement set forth in Paragraph 69 that purports to obligate the Respondent to retain "all Records that related to the liability of any other person under CERCLA with respect to the Site." No such requirement arises under CERCLA or the NCP, and is not enforceable.

Atlantic Richfield appreciates the Agency's consideration of these comments, and EPA's written response confirming Atlantic Richfield's understanding of the terms of the UAO. Please contact Mr. Pokorny or Atlantic Richfield's counsel, Jean Martin, with any questions related to the content of this Notice of Intent to Comply submittal. Mr. Pokorny's contact information is provided above; Ms. Martin may be contacted at Jean.Martin@BP.com or by phone at (832) 619-5239.

We look forward to continuing to work closely with EPA and MDEQ on completing remaining RD/RA Work for the Community Soils operable unit. Please include these comments upon the UAO in the administrative record and site file for the Anaconda Smelter Superfund Site.

Sincerely,

Patricia Gallery
Global Portfolio Manager, Remediation Management

cc: Martin Hestmark
Joe Vranka
Joel Chavez
Katherine Haque-Hausrath, Esq.
Jean Martin, Esq.
Ron Halsey
Luke Pokorny
Shannon Dunlap
Cord Harris
William Duffy, Esq.
John P. Davis, Esq.

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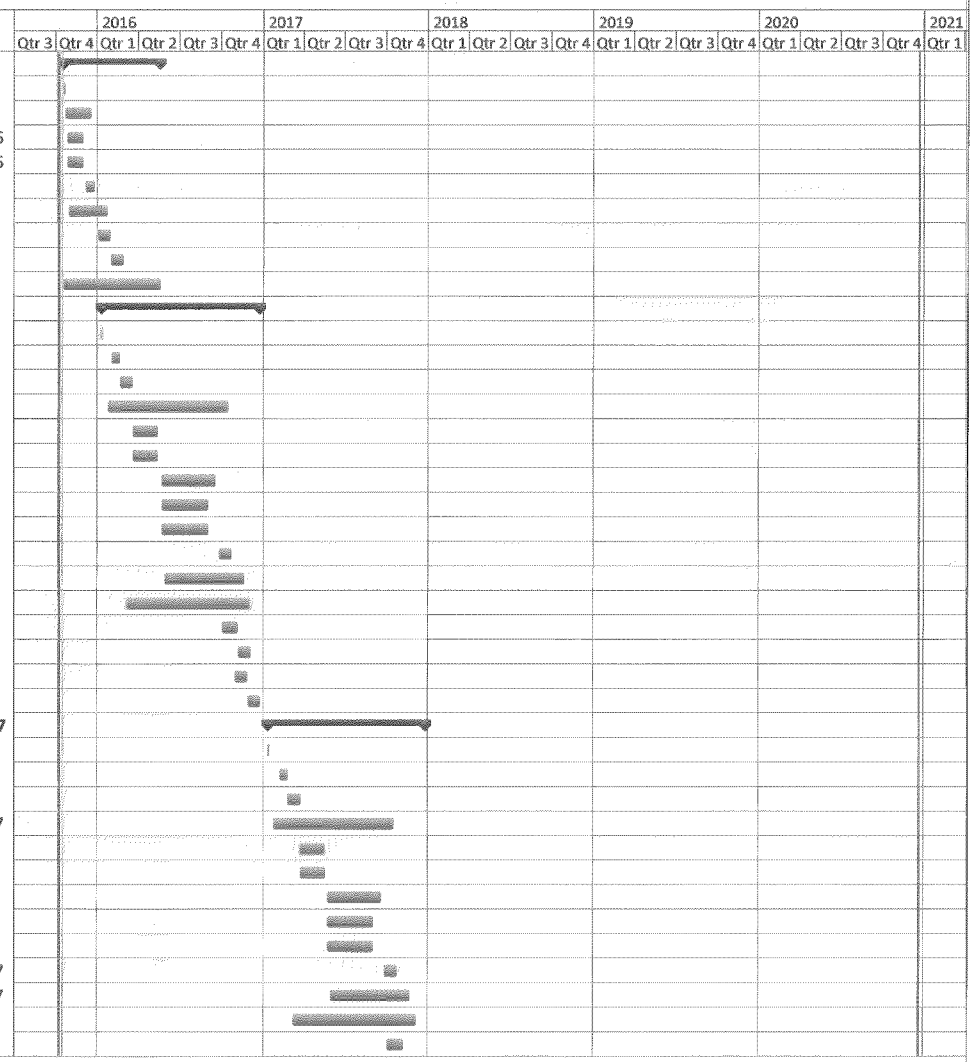
EXHIBIT A

RD/RA Schedule

Community Soils Operable Unit
Lead RA Schedule

ID	Task Name	Duration	Start	Finish
1	**2015 Soil and Attic Dust Sampling**	**153 days**	**Mon 10/19/15**	**Wed 5/18/16**
2	Distribute Access Agreements/Questionnaires	2 days	Mon 10/19/15	Tue 10/20/15
3	Review Questionnaires Prioritize Sampling Sequence	41 days	Fri 10/23/15	Fri 12/18/15
4	Perform Residential Soil Sampling (Weather Pending)	25 days	Tue 10/27/15	Mon 11/30/15
5	Coordinate Lead Paint Abatement with ADLC	25 days	Tue 10/27/15	Mon 11/30/15
6	Confirm Attic Dust Sampling Eligibility and Perform Attic Dust Sampling	15 days	Mon 12/7/15	Fri 12/25/15
7	Laboratory Analyses/Data Validation	61 days	Fri 10/30/15	Fri 1/22/16
8	Prepare 2015 Soil and Attic Dust DSR and Submit to the Agencies	20 days	Mon 1/4/16	Fri 1/29/16
9	Agency Review and Approval of DSR	20 days	Mon 2/1/16	Fri 2/26/16
10	Procure Borrow Soil	153 days	Mon 10/19/15	Wed 5/18/16
11	**2016 Soil and Attic Dust Sampling and RA**	**250 days**	**Mon 1/11/16**	**Fri 12/23/16**
12	Distribute Access Agreements/Questionnaires	2 days	Mon 1/11/16	Tue 1/12/16
13	Prepare Soil and Attic Dust ISWPs and Submit to the Agencies	13 days	Wed 2/3/16	Fri 2/19/16
14	Agency Review and Approval of ISWPs	20 days	Mon 2/22/16	Fri 3/18/16
15	Review Questionnaires Prioritize Sampling Sequence	190 days	Mon 1/25/16	Fri 10/14/16
16	Prepare RFP for Soil RA, Bid, Procurement Review, Award Contract	39 days	Mon 3/21/16	Thu 5/12/16
17	Prepare RFP for Attic Dust RA, Bid, Procurement Review, Award Contract	39 days	Mon 3/21/16	Thu 5/12/16
18	Soil (Opportunity and Anaconda) and Attic Dust RA Implementation	85 days	Mon 5/23/16	Fri 9/16/16
19	Perform Residential Soil Sampling	73 days	Mon 5/23/16	Wed 8/31/16
20	Coordinate Lead Paint Abatement with ADLC	73 days	Mon 5/23/16	Wed 8/31/16
21	Confirm Attic Dust Sampling Eligibility and Perform Attic Dust Sampling	20 days	Mon 9/26/16	Fri 10/21/16
22	Laboratory Analyses/Data Validation	125 days	Mon 5/30/16	Fri 11/18/16
23	Send Landowner Results Letters (No Action or Remedial Action)	195 days	Mon 3/7/16	Fri 12/2/16
24	Prepare 2016 Annual RA CCR and Submit to the Agencies	25 days	Mon 10/3/16	Fri 11/4/16
25	Agency Review and Approval of Annual RA CCR	20 days	Mon 11/7/16	Fri 12/2/16
26	Prepare 2016 Soil and Attic Dust DSR and Submit to the Agencies	20 days	Mon 10/31/16	Fri 11/25/16
27	Agency Review and Approval of DSR	20 days	Mon 11/28/16	Fri 12/23/16
28	**2017 Soil and Attic Dust Sampling and RA**	**249 days**	**Wed 1/11/17**	**Mon 12/25/17**
29	Distribute Access Agreements/Questionnaires	2 days	Wed 1/11/17	Thu 1/12/17
30	Prepare Soil and Attic Dust ISWPs and Submit to the Agencies	13 days	Mon 2/6/17	Wed 2/22/17
31	Agency Review and Approval of ISWPs	20 days	Thu 2/23/17	Wed 3/22/17
32	Review Questionnaires Prioritize Sampling Sequence	191 days	Mon 1/23/17	Mon 10/16/17
33	Prepare RFP for Soil RA, Bid, Procurement Review, Award Contract	39 days	Thu 3/23/17	Tue 5/16/17
34	Prepare RFP for Attic Dust RA, Bid, Procurement Review, Award Contract	39 days	Thu 3/23/17	Tue 5/16/17
35	Soil (Opportunity and Anaconda) and Attic Dust RA Implementation	85 days	Tue 5/23/17	Mon 9/18/17
36	Perform Residential Soil Sampling	73 days	Tue 5/23/17	Thu 8/31/17
37	Coordinate Lead Paint Abatement with ADLC	73 days	Tue 5/23/17	Thu 8/31/17
38	Confirm Attic Dust Sampling Eligibility and Perform Attic Dust Sampling	20 days	Tue 9/26/17	Mon 10/23/17
39	Laboratory Analyses/Data Validation	125 days	Tue 5/30/17	Mon 11/20/17
40	Send Landowner Results Letters (No Action or Remedial Action)	195 days	Tue 3/7/17	Mon 12/4/17
41	Prepare 2017 Annual RA CCR and Submit to the Agencies	25 days	Tue 10/3/17	Mon 11/6/17



Project: CSOU Lead RA Schedule
Date: Fri 10/16/15

Task | Milestone ◆ | Summary

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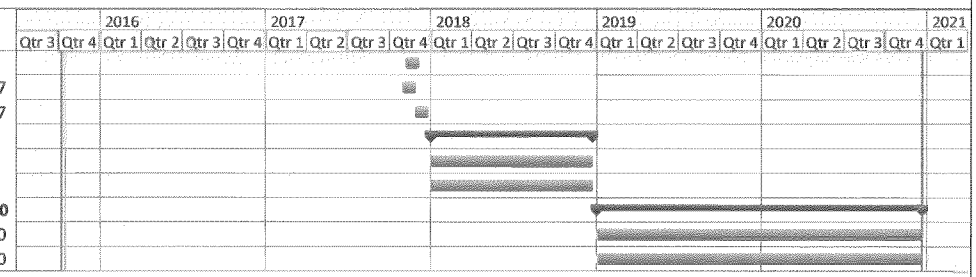
Community Soils Operable Unit
Lead RA Schedule

ID	Task Name	Duration	Start	Finish
42	Agency Review and Approval of Annual RA CCR	20 days	Tue 11/7/17	Mon 12/4/17
43	Prepare 2017 Soil and Attic Dust DSR and Submit to the Agencies	20 days	Tue 10/31/17	Mon 11/27/17
44	Agency Review and Approval of DSR	20 days	Tue 11/28/17	Mon 12/25/17
45	**2018 Soil and Attic Dust Sampling and RA**	**255 days**	**Mon 1/1/18**	**Fri 12/21/18**
46	Perform Residential Sampling. Reports and Documentation	255 days	Mon 1/1/18	Fri 12/21/18
47	Implement RA. Reports and Documentation	255 days	Mon 1/1/18	Fri 12/21/18
48	**2019 - 2020 Soil and Attic Dust Sampling and RA**	**515 days**	**Tue 1/1/19**	**Mon 12/21/20**
49	Perform Residential Sampling. Reports and Documentation	515 days	Tue 1/1/19	Mon 12/21/20
50	Implement RA. Reports and Documentation	515 days	Tue 1/1/19	Mon 12/21/20



Project: CSOU Lead RA Schedule
Date: Fri 10/16/15

Task Milestone Summary

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EXHIBIT B

Form Access Agreements

for RD/RA and RA Construction

ACCESS AGREEMENT

_____ ("OWNER"), whose mailing address is <<Street >>, <<City>>, <<State>> << Zip>>, and **Atlantic Richfield Company** ("Atlantic Richfield"), whose mailing address is 317 Anaconda Road, Butte, MT 59701, enter into this Access Agreement ("Agreement") this _____ day of _____, 200__ and agree as follows:

1. GRANT OF ACCESS. OWNER hereby grants to Atlantic Richfield, including its authorized representatives (and, as may be appropriate, to EPA and/or the State of Montana and the authorized representatives of each) the right to enter OWNER's real property, as described in Exhibit A, which is attached hereto and incorporated herein by reference (the "Property"), to conduct all activities related to sampling and monitoring of groundwater, interior/attic dust, surface water and/or soils (collectively referred to as "Sampling"). OWNER represents to Atlantic Richfield that, to the best of OWNER's knowledge, OWNER possesses ownership interests in the Property sufficient to grant access to Atlantic Richfield to conduct the Sampling. .

2. ATLANTIC RICHFIELD REPRESENTATIONS. Atlantic Richfield or its representative will notify OWNER, either in writing or verbally, at least 24 hours prior to first commencing Sampling on the Property. Atlantic Richfield will make every reasonable effort to minimize any inconvenience to OWNER during its Sampling on the Property, to return the Property to the condition it was in at the time Atlantic Richfield first entered the Property under this Agreement, and to consult with OWNER to address any concerns OWNER may have about the Sampling.

3. SPLIT SAMPLE. Atlantic Richfield agrees to use its best efforts to provide, upon OWNER's prior written request a portion of any sample taken on OWNER's Property, provided that a sufficient quantity of the materials to be sampled are available on the day of sampling, and provided further that the sampling requirements of Atlantic Richfield, EPA and the State are satisfied.

4. TERMINATION. This Access Agreement will terminate thirty (30) days following receipt of the written notice from Atlantic Richfield stating the sampling activities on your Property have been completed.

IN WITNESS WHEREOF, OWNER and Atlantic Richfield Company have executed this Agreement effective as of the date first written above.

OWNER:

By: _____

Title: _____

Telephone Contact No. _____

ATLANTIC RICHFIELD COMPANY

By: _____

Title: Project Manager

EXHIBIT A

For the purposes of this Access Agreement, the term Property refers to the following described real estate, situated in the County of Deer Lodge, State of Montana:

Residential ID # : A - _____

Property Address: _____

Property Geocode: 30-_ _ _ _ - _ _ - _ - _ _ - _ _ - _ _ _ _

Legal Description: Section _ _, Township _ _____, Range _ _ _____

_____

_____

_____

ACCESS AGREEMENT

_____ ("Owner") and **Atlantic Richfield Company** ("Atlantic Richfield") enter into this Access Agreement ("Agreement") this _____ day of _____, 2016.

1. In connection with the (***Customize to Appropriate Operable Unit***) Anaconda Regional Water, Waste, and Soils ("ARWW&S") Operable Unit response action, Atlantic Richfield will be conducting Remedial Action ("RA").

2. Access to Property owned by Owner as described in Exhibit A is needed to conduct certain work related to the ARWW&S Operable Unit, Remedial Design Unit ("RDU") No. 5, response action as described hereinafter.

3. Owner agrees to permit Atlantic Richfield to conduct such work on Owner's Property.

Therefore, in the mutual interest of Owner and Atlantic Richfield in furthering the protection of public health and the environment, including the benefits to Owner's Property.

Owner and Atlantic Richfield further agree as follows:

1. **GRANT OF ACCESS**. Owner hereby grants to Atlantic Richfield, State of Montana and EPA, including the authorized representatives of each, the right to enter Owner's real Property, as described in Exhibit A, which is attached hereto and incorporated herein by reference (the "Property"), to conduct activities related to the ARWW&S (***Customize to Appropriate OU***) Operable Unit response action, which may include without limitation; collection of soil samples, soil excavation and removal, clean soil placement, soil grading, ingress and egress from the Property, surveying and environmental data collection ***add detail if needed*** (collectively referred to as "Work"). Specific details of the Work are further defined on the attached Work Plan Exhibit B (***add Work Plan if needed***), which by reference is incorporated herein. Owner warrants and represents to Atlantic Richfield that, to the best of Owner's knowledge, Owner possesses ownership interests in the Property sufficient to grant access to Atlantic Richfield to conduct the Work. Atlantic Richfield will make every reasonable effort to minimize any inconvenience to Owner during its Work on the Property, and will work closely with Owner to address any concerns Owner may have about the Work.

2. **INDEMNIFICATION OF OWNER**. Atlantic Richfield agrees to indemnify and hold harmless Owner from any and all actions, claims, damages, losses, liabilities, or expenses, including damage to Property or for loss of use of Property, ("liabilities") which may be imposed on or incurred by Owner as a result of Atlantic Richfield's negligent, reckless or willful acts or omissions while on the Property, except to the extent that such liabilities result from the acts or omissions of Owner. Provided that the Work is conducted without negligence by Atlantic Richfield, Owner and Atlantic Richfield agree that the Work conducted pursuant to this Agreement shall not give rise to a claim for indemnification under this provision.

3. **NOTICE**. Atlantic Richfield shall provide Owner, either in writing or verbally with at least 24 hours notice prior to first commencing the Work on the Property.

All written notices pertaining to this Agreement shall be sent to Owner and Atlantic Richfield at the respective addresses below. Either Owner or Atlantic Richfield may designate a different address for receipt of notice by providing written notice of such change to the other.

TO Atlantic: Atlantic Richfield Company
Attention: ***add correct contact***
317 Anaconda Road
Butte, MT 59701

TO OWNER:
Attn:
Mailing Address

4. **RESTORATION OF PROPERTY**. Upon completion of the Work, Atlantic Richfield will use its best efforts to return the Property to the condition it was in at the time Atlantic Richfield first entered the Property under this Agreement, provided such restoration is not inconsistent with the Work conducted pursuant to this Agreement.

5. **CONDITION OF THE PROPERTY**. Atlantic Richfield may photograph the Property prior to and upon completion of the Work to document and obtain a fair and accurate representation of the present condition of the Property.

6. **MISCELLANEOUS**.

a. Effect of Agreement. This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of Owner and Atlantic Richfield and their respective assigns and successors in interest.

b. Negation of agency relationship. This Agreement shall not be construed to create, expressly by implication, the relationship of agency or partnership between Owner and Atlantic Richfield. Neither Owner nor Atlantic Richfield is authorized to act on behalf of the other in any manner relating to the subject matter of this Agreement.

c. Termination. Except with respect to paragraphs 2 and 6.a of this Agreement, this Agreement will terminate thirty (30) days following Atlantic Richfield's written notification to Owner that the Work is complete.

d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

e. Construction. The invalidating or unenforceability of any provision of this Agreement shall not affect the validity of enforceability of any other provision.

f. Entire Agreement. This Agreement embodies the entire agreement of Owner and Atlantic Richfield with respect to the subject matter hereof, and no prior oral or written representation shall serve to modify or amend this Agreement. This Agreement may be modified only by a written agreement signed by Owner and Atlantic Richfield.

IN WITNESS WHEREOF, Owner and Atlantic Richfield have executed this Agreement effective as of the date first written above.

OWNER

By:_____

Title:_____

Atlantic Richfield Company

By:_____

Title:_____

EXHIBIT A

For the purposes of this Access Agreement, the term Property refers to the following described real estate, situated in the County of Deer Lodge, State of Montana:

Residential ID # : A - _____

Property Address: _____

Property Geocode: 30-_ _ _ _ - _ _ - _ - _ _ - _ _ - _ _ _ _

Legal Description: Section _ _, Township _ _____, Range _ _ _____

_____

_____

_____

_____

EXHIBIT B

INDIVIDUAL SITE WORK PLAN (ISWP)

EXHIBIT C

Atlantic Richfield's Proposed List of Records for Inclusion in EPA's Administrative Record for the CSOU UAO

Proposed Additional Records for the CSOU Administrative Order

Appendix E (Index of Administrative Record)

1. "Anaconda Soil Investigation, Data Summary/Data Validation/Data Usability Report" (ARCO 1992).
2. "Anaconda Soil Investigation, Phase II Data Summary/Data Validation/Data Usability Report" (ARCO 1992).
3. AERL, 1999a. "Anaconda Smelter NPL Site Community Soils Operable Unit, Anaconda Residential Soils and Railroad Areas – Remedial Design Data Summary Report."
4. AERL, 1999b. "Anaconda Smelter NPL Site Community Soils Operable Unit, Anaconda Residential Soils, Regional Soils, and Railroad Areas, Data Interpretive Report"
5. Atlantic Richfield Company, 2003. "Anaconda Smelter NPL Site, Anaconda Regional Water, Waste and Soils Operable Unit Remedial Design Unit (RDU) 5 Anaconda Active Railroad Beds Remedial Action Work Plan/Final Design Report (RAWP/FDR)". September 2003.
6. Atlantic Richfield Company, 2007. "Memorandum: Analysis of Lead in Anaconda Community Soils" prepared for Atlantic Richfield Company by Integral Consulting. September 7, 2007.
7. CDM, 2007. "Community Soils OU Residential Subsurface Soil Characterization Data Summary Report, Anaconda Smelter Site, Community Soils Operable Unit". Prepared for EPA by CDM, September.
8. Atlantic Richfield Company, 2008. "Anaconda Smelter NPL Site, Community Soils Operable Unit Draft Final Community Soils Interior and Attic Dust Characterization Study Data Summary Report". January 4, 2008.
9. CDM, 2008. "Residential Soils Data Interpretation and Analysis Report, Anaconda Smelter Site, Community Soils Operable Unit". Prepared for EPA by CDM, October.
10. CDM, 2010. "Calculation of Preliminary Remedial Goals (PRGs) for Lead in Soils, Anaconda Smelter Site, Community Soils Operable Unit". Prepared for EPA by CDM, November 8, 2010.
11. Atlantic Richfield Company, 2011. "Comments on CDM's Lead PRG Memorandum", August 12, 2011.
12. EPA, 2012. "Final Focused Feasibility Study for Lead in Residential Soils and Lead and Arsenic in Residential Dust, Anaconda Smelter Site, Community Soils Operable Unit", February.
13. Atlantic Richfield Company, 2012a. "Comments on Final Focused Feasibility Study for Lead in Residential Soils and Lead and Arsenic in Residential Dust, Anaconda Smelter Site, Community Soils Operable Unit, February 24, 2012.
14. Atlantic Richfield Company, 2012b. "Additional Comments on Final Focused Feasibility Study for Lead in Residential Soils and Lead and Arsenic in Residential Dust, Anaconda Smelter Site, Community Soils Operable Unit, April 20, 2012.

15. Atlantic Richfield Company, 2012c. "Anaconda Smelter Community Soils Operable Unit: Lead and Arsenic Baseline Biomonitoring Work Plan" prepared for Atlantic Richfield Company by Environ. August 2012.
16. Atlantic Richfield Company, 2014. "Anaconda Smelter Community Soils Operable Unit: Lead and Arsenic Baseline Biomonitoring Study Report" prepared for Atlantic Richfield Company by Environ. June 2014.
17. Atlantic Richfield Company, 2013. "Anaconda Smelter NPL Site, Community Soils Operable Unit, Draft Final Data Summary Report (DSR) for Opportunity Community Residential Soils 2012 and 2013", July, 2013.
18. Atlantic Richfield Company, 2015. "Anaconda Smelter NPL Site, Community Soils Operable Unit, Opportunity Soils Individual Site Work Plans", August 28, 2015.
19. Atlantic Richfield Company, 2002. "Anaconda Smelter NPL Site, Community Soils Operable Unit, Notice of Intent to Comply with Unilateral Administrative Order CERCLA-08-2002-08. September 27, 2002.
20. Atlantic Richfield Company, 2014. "Anaconda Smelter NPL Site, Community Soils Operable Unit, Final Residential Soils Construction Completion Report (CCR)". May 9, 2014.
21. Atlantic Richfield Company, 2014. "Anaconda Smelter NPL Site, Community Soils Operable Unit, Final Historic Railroad Beds and Commercial/Industrial Areas Construction Completion Report (CCR)". July 25, 2014.
22. Atlantic Richfield Company, 2015. "Anaconda Smelter NPL Site, Community Soils Operable Unit, Final Residential Soils/Dust Remedial Action Work Plan/Final Design Report (RAWP/FDR)". August 7, 2015.
23. EPA, 2015. "Anaconda Smelter NPL Site, Community Soils Operable Unit, Residential Soils (Arsenic) Remedial Action Report". September 22, 2015.
24. EPA, 2015. "Anaconda Smelter NPL Site, Community Soils Operable Unit, Historic Railroad Beds and Commercial/Industrial Areas Remedial Action Report". September 22, 2015.
25. ARCO. 1992. Clark Fork River Superfund Site Investigations Standard Operating Procedures. September.
26. PTI. 1991. Smelter Hill Remedial Investigation/Feasibility Study Phase I and II Data Summary/Data Validation/ Data Usability Report. Prepared for Atlantic Richfield by PTI Environmental Services. September.
27. PTI. 1992. Anaconda Soils Investigation – Phase I Data Summary/Data Validation/Data Usability Report. Prepared for Atlantic Richfield by PTI Environmental Services. November.
28. PTI. 1993. Anaconda Soils Investigation – Phase II Data Summary/Data Validation/Data Useability Report. Prepared for Atlantic Richfield by PTI Environmental Services. January.