Atlantic Richfield Company

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Via Hand Delivery

Kelcey Land, Director
RCRA/CERCLA Technical Enforcement Program
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Andrea Madigan, Acting Director
Legal Enforcement Program
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

RE: Anaconda Aluminum Co. Columbia Falls Reduction Plant Site, Flathead County, MT
Atlantic Richfield Company Response to General Notice Letter and Payment Demand

Dear Ms. Land and Ms. Madigan:

Atlantic Richfield Company ("Atlantic Richfield") is submitting this letter in response to EPA's June 9, 2015 General Notice Letter and Demand for Payment of Response Costs pertaining to the Columbia Falls Aluminum Company facility in Columbia Falls, Montana (the "Site"). The Notice Letter included a draft Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study ("AOC"), draft Statement of Work for the RI/FS, and cost summary package documenting EPA response costs through January 1, 2015 in the amount of $743,133.86. EPA's letter was addressed to Ms. Vilia Drazdys as counsel for Atlantic Richfield. Please direct any future correspondence relating to the Site to me—Cord Harris—at the address noted above, with a copy to our outside counsel, Adam Cohen.

The Notice Letter invites Atlantic Richfield to negotiate a consent order for the performance of a RI/FS under EPA's oversight. It is our understanding that EPA sent a similar notice letter and invitation to the current owner/operator of the Site, Columbia Falls Aluminum Company, LLC ("CFAC"), and that CFAC has publicly acknowledged its intent to enter an AOC and perform the RI/FS. CFAC's participation and commitment to fund and complete the RI/FS satisfies EPA's request for site investigations. As a result, there is no need to involve Atlantic

Richfield in the AOC process. To the extent Atlantic Richfield and CFAC may have obligations to one another for the associated costs of that work, the parties can resolve them resolve separately. Accordingly, and for the other reasons stated in this letter, Atlantic Richfield does not intend to negotiate an AOC with EPA and CFAC for performance of the RI/FS.

As to EPA's demand for reimbursement of costs, Atlantic Richfield is deferring any decision on payment until after EPA provides additional supporting documentation for its costs, as requested below.

Invitation to Commence RI/FS Negotiations

Atlantic Richfield is declining EPA's invitation to negotiate and enter an AOC for performance of the RI/FS for multiple reasons. First, Atlantic Richfield's participation is unnecessary because CFAC has already publicly stated its intent to perform the RI/FS and acknowledged its willingness to enter an AOC with EPA. Even prior to EPA's invitation, CFAC's consultant, Roux Associates Inc. ("Roux"), developed a draft RI/FS Work Plan for the Site, which it has published for public review.[1] The stated objectives in CFAC's RI/FS Work Plan are virtually identical to those set forth in Paragraph 9 of the draft AOC and Section 3 of the Statement of Work. While CFAC's RI/FS Work Plan does not currently provide for EPA oversight and review of the RI/FS, CFAC acknowledges that such requirements will be added once it enters an AOC. As stated in the draft Work Plan (page ix):

> It is CFAC's intent to discuss entering into an Administrative Order on Consent (AOC) with the United States Environmental Protection Agency (USEPA). If and when CFAC enters into such an AOC, appropriate provisions regarding regulatory authority review and approval will be added to the Draft RI/FS Work Plan.

Given CFAC's stated commitment to fund and perform the RI/FS work required under the draft AOC, and to do so in accordance with EPA requirements, there is no need for Atlantic Richfield's redundant participation, which would simply slow the work down.

Second, CFAC is best situated to perform the RI/FS properly and promptly. As stated in CERCLA Section 104(a)(1), 42 U.S.C. § 9604(a)(1):

> When [EPA] determines that [a response action] will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, [EPA] may allow such <u>person</u> [not plural] to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 9622 of this title.

[1] See http://www.rouxinc.com/CFAC-Draft-RI-FS-Work-Plan-Available-for-Public-Comment/

CFAC currently controls access to the Site, and it has operated the Site for the past 30 years. CFAC has a fully developed plan for completing the RI/FS, and it best understands the conditions that may be affecting the fate and transport of chemicals of potential concern in environmental media at the Site. And again, CFAC has publicly stated its intent to enter into an AOC with EPA. Adding another PRP into the AOC negotiations and the RI/FS process would unnecessarily complicate negotiations, potentially leading to delays in the entry of the AOC, delays in the performance of the work, and other related problems. These are precisely the types of problems and delays that CERCLA's joint-and-several liability scheme is intended to avoid.

Third, Atlantic Richfield's participation is not necessary to ensure that adequate financial security is available to complete the RI/FS. As noted, CFAC has already engaged Roux to prepare the RI/FS Work Plan and complete the RI/FS. Presumably, CFAC would only have done so after first committing the necessary financial resources to the project. Further, the draft AOC requires (in Section XXVI) financial assurance in the amount of $4 million to secure the full and final completion of the RI/FS work; and it includes a substantial work takeover stipulated penalty. These provisions incentivize CFAC to complete the RI/FS, and they make it extremely unlikely that EPA will need to secure financial resources for completion of the RI/FS from other sources. Also, CFAC is a wholly owned subsidiary of Glencore AG, which identifies itself as one of the world's largest diversified natural resource companies. Glencore's ownership of CFAC should allay any concerns EPA may have about CFAC's ability to complete the RI/FS.

Fourth, CFAC is uniquely positioned, as the Site owner, to benefit financially from any future response actions required as a result of the RI/FS. CFAC has already initiated decommissioning, demolition, and removal of structures, machinery, equipment, and waste materials at the Site. Presumably, this work is proceeding at the current pace to facilitate CFAC's reuse, redevelopment, and/or disposition of the property. Completing the RI/FS and any required CERCLA response actions will improve the condition of the Site, its economic value, and its suitability for other uses or sale. In contrast to CFAC, Atlantic Richfield will receive no economic benefit from the cleanup of the Site or from a determination, as a result of the RI/FS, that certain portions of the Site may require no response actions at all.

Demand for Reimbursement of Costs

For some of the same reasons stated above, among others, Atlantic Richfield does not believe it should be required to fully fund EPA's CERCLA response costs for the Site. However, before Atlantic Richfield can make a decision as to whether or how much of EPA's payment demand it is willing to pay, additional documentation supporting EPA's stated costs must be provided. The cost summaries included with the General Notice Letter, while listing specific employees, contractors, and line-item costs, do not contain the details needed for Atlantic Richfield to thoroughly evaluate the basis for the costs charged or determine which costs may

be disputed because of inconsistency with the National Contingency Plan or for other possible reasons.

Because contractor costs and the associated indirect costs make up a significant portion of the total cost demand, Atlantic Richfield is particularly interested in receiving documentation detailing the specific tasks assigned to and performed by each EPA contractor, contractor-generated deliverables and reports, and information explaining how contractor allocation rates were determined and how contractor voucher amounts were specifically allocated to the Site. For Regional and Headquarters Payroll Hours and Payroll Costs, we request that EPA provide time sheets (including work descriptions), compiled in the same order as Payroll Costs are listed in the cost summaries.

EPA is required under 40 C.F.R. § 300.160(a)(1) to "complete and maintain documentation to support all actions taken under the NCP and to form the basis for cost recovery," including "accurate accounting of federal, state, or private party costs incurred for response actions." Please let us know if EPA is willing to provide the supporting cost documentation in response to this request, or if a more formal document request under FOIA will be required.

Closing

This letter sets forth Atlantic Richfield's response to EPA's invitation to negotiate an RI/FS AOC and its demand for reimbursement of costs based on current circumstances and known information. We have discussed most of the points raised here with EPA before, and our position has not changed. Atlantic Richfield's direct participation in the RI/FS is unnecessary, given CFAC's stated commitments, the financial assurances otherwise available to EPA, and CFAC's unique status as the current owner and operator of the Site. Atlantic Richfield is not rejecting EPA's payment demand at this time, but we do not believe Atlantic Richfield should be held fully responsible for EPA's response costs. The Company is unable to make a decision as to whether or how much of EPA's payment demand it is willing to pay until EPA provides the additional requested supporting documentation.

Atlantic Richfield does not intend by this letter to foreclose further discussions with EPA or CFAC relating to the Site. EPA should feel free to contact either me or our outside counsel, Adam Cohen (303.892-7321; adam.cohen@dgslaw.com) with any related questions or if additional information is needed.

Sincerely,

Cord Harris
Attorney-in-Fact, Atlantic Richfield Company

cc: Mark Chalfant, EPA Region 8
Patricia Gallery, AR
Rebecca Raftery, Esq.