

LEARNING TO DEVELOP, INNOVATE, LIVE
AND WORK IN ANACONDA'S SUPERFUND.

Understanding the Institutional Controls Agreement

The draft Institutional Controls Agreement (ICA) between Anaconda-Deer Lodge County and Atlantic Richfield Company – the responsible party of the Anaconda Smelter NPL site – was presented to the public on 10 August 2016. The date of the second public hearing will be announced by the County.

This draft agreement is the result of over seven years of negotiations including local elected officials and County staff, Atlantic Richfield Company representatives, the Environmental Protection Agency (EPA), the Montana Department of Environmental Quality, and numerous others. The intent of the ICA is to protect the public and environment from future exposure to contaminants related to the smelting that took place in Anaconda, as well as to educate current and future residents of the Anaconda Smelter NPL site.

The draft agreement and exhibits are available for public review on the County website, and comments are being accepted by the Superfund Coordinator, Carl Nyman. Mr. Nyman can be reached at: (406) 563-7019, or email him at cnyman@qwestoffice.net. The intent of this insert is to breakdown the benefits and obligations that the County would be agreeing to, should the County Commission vote in favor of signing the proposed ICA.

Benefits:

Atlantic Richfield Company will, during the term of the ICA, accept – without charge – mine waste encountered by a permittee during development of property within the Anaconda Smelter NPL site at the Development Repository (Section 3.7, page 22).

Atlantic Richfield Company will provide Fill Material for the A-DLC Institutional Control's program to utilize (Section 3.8, page 22).

Atlantic Richfield Company will relinquish the water rights for the Old Works and Anaconda Country Club Golf Courses (Sections 6.6 and 6.7, page 33).

Atlantic Richfield Company will establish a Smelter Stack Viewing Area near the base of the Anaconda Smoke Stack. Atlantic Richfield will make an effort to complete the construction of the Smelter Stack Viewing Area during the 2017 calendar year; in time for the 100-year anniversary of the Anaconda Smoke Stack (Section 6.8, page 25-26).

Atlantic Richfield Company's affiliate, AERL, will convey their rights and title to the Historic Opportunity Cow and Hose Pastures to the State of Montana and eventually to the County for local grazing activities (Section 6.9, page 26).

Atlantic Richfield Company will annually deposit monies into Trust Accounts funding the Institutional Controls Program, ADLC Parcels Superfund Operations & Maintenance, the Old Works Golf Course, and the Community Enhancement Trust Account. The Community Enhancement funding will be available for the County for improvements associated with the Regional Historic Preservation Plan (i.e. restoration of buildings or historic structures within the Anaconda

Smelter NPL site), supporting community and economic development projects within the Site, and to fund the Old Works Golf Course should the Golf Course Trust Account funding be insufficient.

Obligations:

The County is prohibited from adopting amendments to the Development Permit System (CPS), Weed Ordinance, of the Golf Course Authority Ordinance without written approval from Atlantic Richfield Company (Sections 3.1 and 3.2, page 21; Section 5.3, page 24). The Agreement states that a response from Atlantic Richfield "shall not be unreasonably withheld" (page 21).

Within five days of receiving a development permit for proposed development within the Covenant Parcels, the County is required to provide Atlantic Richfield and the EPA with a copy of the permit (Section 3.5, page 22). Atlantic Richfield will respond to the provided development permit with a decision of whether or not the proposed development is allowed per the restrictive covenants associated with the parcel. If Atlantic Richfield Company finds that the proposed development is inconsistent with the restrictive covenants, the private company will be responsible for "compel[ing] compliance...through informal communications with the developer and, if necessary, through available enforcement actions" (page 22).

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A similar requirement is included in the agreement regarding excavation greater than five cubic yards within the Waste Management Areas. The County is required to provide written notice to Atlantic Richfield Company and the EPA within five days of receiving such a development permit. The Agreement states that, "ADLC shall not issue a development permit for a proposed development involving any excavation within the Waste Management Areas unless and until ADLC has secured EPA's approval of the proposed ICWP," (Section 3.6, page 22).

The County and Golf Course Authority Board will be responsible – during the term of the ICA – for completing all remedial actions



RDU 14 Smelter Hill Facilities, Anaconda Smoke Stack. Photo Credit: Doug Clark

required for the maintenance of the Old Works Golf Course in compliance with the Golf Course Superfund Operations & Maintenance (O&M) Plan, Golf Course Business Plan, the Golf Course Capital Improvement Plan, and the Golf Course Authority Ordinance (Sections 5.1 and 5.4, pages 30-31). Atlantic Richfield Company will annually provide monies in a Trust Account funding the necessary maintenance, with the opportunity for bonus funding for successful annual reviews.

In the situation that additional work is necessary to ensure the condition of the Golf Course Superfund O&M Plan or the Golf Course Amended Parcel Quitclaim Deed, Atlantic Richfield Company will complete the work at the company's expense if the required work was not a result of a failure of Anaconda-Deer Lodge County to perform the County's obligations as part of this agreement. If the additional remedial work is, in fact, a result of a County failure, ADLC will be required to fund the necessary corrective measures with funding other than those monies provided by Atlantic Richfield Company (Section 5.2, page 24).

Funded by the EPA, the Arrowhead Foundation is Anaconda's Technical Assistance Grant (TAG) group's mission is to disseminate information regarding issues and upcoming decisions relevant to the Anaconda Smelter NPL site to the residents of Anaconda-Deer Lodge County. If you have questions or comments regarding the draft Institutional Controls Agreement or other Superfund issues, you can contact our consultants at (406) 563 - 5538 ext. 14 or visit us at our office on the 3rd floor of the Community Service Center (118 East 7th Street) in Anaconda. Questions or comments regarding the Institutional Controls Agreement (ICA) should also be directed to the Superfund Coordinator, Carl Nyman. Mr. Nyman can be reached at: (406) 563-7019, or email him at cnyman@qwestoffice.net.

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