

12/19/2022

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EPA Region VIII  
Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

IN THE MATTER OF:

Anaconda Smelter Superfund Site, Old Works/East  
Anaconda Development Area Operable Unit

UNDER THE AUTHORITY OF THE  
COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND  
LIABILITY ACT OF 1980, 42 U.S.C.  
§ 9601, et seq., as amended.

CONSENT TO BE BOUND BY  
AGREEMENT AND COVENANT  
NOT TO SUE

EPA Docket No. CERCLA 94-12

1. The original Agreement and Covenant Not to Sue, EPA Docket No. CERCLA 94-12 ("Agreement" or "PPA"), definitions therein, and attachments thereto are incorporated by reference.
2. The United States Environmental Protection Agency ("EPA"), the State of Montana ("State"), Anaconda-Deer Lodge County ("ADL"), and the Old Works Golf Course Authority or the Old Works Golf Course, Inc. (the "Authority") (collectively the "Parties") are parties to the Agreement.
3. Vista Smelter City, LLC, is incorporated under the laws of the State of Montana.
4. Vista Smelter City, LLC wishes to purchase from ADL a portion of the Property described in the original Agreement, as set forth in Attachment A. Vista Smelter City, LLC wishes to receive the same assurances and covenants originally extended to ADL in the Agreement and is willing to bind itself to the obligations agreed to by ADL, except some of those described in Paragraph 32 (a) and (b).
5. Vista Smelter City, LLC represents, and for the purpose of the transfer of the benefits and obligations of this Agreement to Anaconda Local Development, EPA and the State rely on those representations, that Vista Smelter City, LLC has had no involvement with the Facility such that it is a "covered person" under CERCLA Section 107, 42 U.S.C. § 9607.
6. Vista Smelter City, LLC hereby Consents to be Bound by the PPA, including but not limited to, Section IV (Consideration), Section V (Access/Notice to Successors in Interest and Assigns), Section VI (Due Care), Section VII (Certification), Section VIII (Covenant Not to Sue Under CERCLA), Section X (Parties Bound/Transfer of Covenant) and any and all other obligations under the PPA.
7. Vista Smelter City, LLC shall not be responsible for enforcing the Development Permit System as provided for in Paragraph 32.(a) or for implementing, maintaining, and enforcing

O&M requirements as provided for in Paragraph 32.(b) but agrees to comply with any such requirements as enforced and/or implemented by ADL.

8. EPA and the State agree that subject to Section IX (Reservation of Rights), the covenants set forth in Section VIII (Covenants not to Sue) not to take any civil or administrative action against Vista Smelter City, LLC for any and all civil liability for

(a) injunctive relief or reimbursement of Response costs pursuant to CERCLA Section 106 or 107(a), 42 U.S.C. § 9606 or 9607(a); and Mont. Code Ann. 75-10-701, et seq. with respect to the Present Contamination at the Properties; and,

(b) any claims of the State for natural resources pursuant to Sections 107(a) and (f) of CERCLA, 42 U.S.C. §§ 9607(a) and (f), with regard to any Present Contamination of the Properties as of the effective date of this Agreement;

are hereby transferred to Vista Smelter City, LLC.

9. Vista Smelter City, LLC certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA and the State all information currently in its possession or control and in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any contamination or potential contamination at the Properties and to its qualification for this Agreement. Vista Smelter City, LLC also certifies that to the best of its knowledge and belief it has not caused or contributed to a release of hazardous substances at the Properties. If EPA and the State determine that information provided by Vista Smelter City, LLC is not materially accurate and complete, the Covenant Not to Sue in Section VIII shall be null and void and EPA and the State reserve all rights they may have.

10. This transfer of Agreement shall be effective upon the day executed by EPA and the State of Montana.

This Consent to be Bound executed this 29<sup>th</sup> day of August 2022.

Vista Smelter City, LLC



Rex Leipheimer.

Date

The State of Montana, by and through the Montana Department of Environmental Quality, hereby gives written consent to the transfer of the Agreement.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Chris Dorrington  
Director, Montana Department of Environmental Quality

Reviewed for legal content:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Jonathan Morgan  
Special Assistant Attorney General  
Montana Department of Environmental Quality

The U.S. Environmental Protection Agency hereby gives written consent to the transfer of the Agreement.

By:  \_\_\_\_\_ Date: 11/3/22

Betsy Smidinger  
Director, Superfund and Emergency Management Division

By:  \_\_\_\_\_ Date: 11/14/22

Chris Thompson  
Associate Regional Counsel for Enforcement  
Office of Regional Counsel

The State of Montana, by and through the Montana Department of Environmental Quality, hereby gives written consent to the transfer of the Agreement.

DocuSigned by:  
By:  \_\_\_\_\_ Date: 11/18/2022  
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Christopher Dorrington  
Director, Montana Department of Environmental Quality

Reviewed for legal content:

DocuSigned by:  
By:  \_\_\_\_\_ Date: 11/18/2022  
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Jonathan Morgan  
Counsel  
Montana Department of Environmental Quality

The U.S. Environmental Protection Agency hereby gives written consent to the transfer of the Agreement.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Betsy Smidinger  
Director, Superfund and Emergency Management Division

By: \_\_\_\_\_ Date: \_\_\_\_\_

Chris Thompson  
Associate Regional Counsel for Enforcement  
Office of Regional Counsel

Attachment A.

Legal Description of Land to be Transferred from Anaconda Deer Lodge County to Vista Smelter City, LLC

All of Lots 9, 10, 11, and 19, as shown in Certificate of Survey 491-B, on file with the Anaconda Deer Lodge County, Montana, Clerk & Recorder's Office.