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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

US EPA REGION IX  
HEARING CLERK

U.S. EPA Region 9  
Docket No. CERCLA (103)-09-~~2013~~-xx 01 <sup>2014</sup>

IN THE MATTER OF:

**Barrick Goldstrike Mines Inc.**

Respondent

**CONSENT AGREEMENT AND  
FINAL ORDER PURSUANT TO  
40 CFR §§ 22.13 and 22.18**

Proceeding under Sections 103 and 109 of  
the Comprehensive Environmental  
Response, Compensation, and Liability Act,  
as amended, 42 U.S.C. §§ 9603 and 9609

**CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is a civil administrative enforcement action initiated pursuant to Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent, Barrick Goldstrike Mines Inc. (hereinafter "Respondent"), is a corporation organized under the laws of the State of Colorado.

2. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 CFR §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and its implementing regulations.

**B. STATUTORY AND REGULATORY FRAMEWORK**

3. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 302.6 require any person in charge of a vessel or an offshore or onshore facility to immediately notify the National Response Center ("NRC") as soon as he or she has knowledge of a release of a hazardous substance that exceeds the reportable quantity ("RQ") during a 24-hour period.

### **C. GENERAL ALLEGATIONS**

4. Section 109 of CERCLA, 42 U.S.C. § 9609, authorizes EPA to assess civil penalties for any violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
5. The Administrator of EPA delegated enforcement authority under Section 109 of CERCLA, 42 U.S.C. § 9609, to the Regional Administrators with EPA delegation 14-31, dated May 11, 1994. The Regional Administrator, EPA Region IX, in turn, redelegate that authority to the Director of the Superfund Division, Region IX, with delegation R9 1290.16.
6. Respondent operates a gold mine known as the Goldstrike Mine in Eureka County, Nevada (the "Facility").
7. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
8. The Facility is an "onshore facility" as defined by Sections 101(18) and 101(9) of CERCLA, 42 U.S.C. §§ 9601(18) and 9601(9).
9. At all times relevant to this CA/FO, Respondent has been in charge of the Facility.
10. Anhydrous ammonia, Chemical Abstract Service No. 7664-41-7, is designated as a "hazardous substance" under Sections 101(14) and 102(a) of CERCLA, 42 U.S.C. §§ 9601(14) and 9602(a), and 40 CFR § 302.4, Table 302.4 and Appendix A to Section 302.4. The RQ for ammonia is 100 pounds.
11. At all times relevant to this CA/FO, Respondent has been the owner or operator of the Facility.

### **D. ALLEGED VIOLATION: Failure to Immediately Notify the NRC**

12. Paragraphs 1 through 11 above are incorporated herein by this reference as if they were set forth here in their entirety.
13. On June 22, 2011, approximately 3,200 pounds (lbs) of anhydrous ammonia leaked or was emitted into the environment from the Facility.
14. The leaking or emitting of anhydrous ammonia from the Facility was a "release" as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
15. Respondent had actual or constructive knowledge that the release exceeded the RQ at approximately 1:30 p.m. Pacific Daylight Time ("PDT") on June 22, 2011.
16. Respondent notified the NRC of the ammonia release at approximately 2:09 p.m. PDT on June 22, 2011.

17. Respondent's failure to immediately notify the NRC of the June 22, 2011 release from the Facility is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 302.6.

#### **E. CIVIL PENALTY**

18. Section 109(a)(1)(A) of CERCLA, 42 U.S.C. § 9609(a)(1)(A), as adjusted by the Debt Collection Improvement Act of 1996, see 40 CFR Part 19, authorizes a civil penalty of up to THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500) per day for each day a violation of CERCLA Section 103, 42 U.S.C. § 9603, occurs on or after March 14, 2004. For violations that occur after January 12, 2009, a penalty of up to THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) per day for each day is authorized. See Table 1 of 40 CFR § 19.4, 73 Fed. Reg. 75340, 75346 (Dec. 11, 2008).

19. Based on the facts alleged herein and upon all the factors that EPA considers pursuant to the Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act ("EPCRA/CERCLA ERP") including the nature, extent, and gravity of the violations, Respondent's ability to pay, its prior history of violations, its degree of culpability, and any economic benefit; and such other matters as justice may require, EPA proposes that Respondent be assessed a civil penalty of **Two Thousand Eight Hundred Eighty Dollars (\$2,880)** for the violations alleged herein.

#### **F. ADMISSIONS AND WAIVERS**

20. For purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 CFR §§ 22.4 and 22.39. Further, for the purposes of this proceeding, Respondent admits to the general allegations of facts and law set forth in Sections B and C of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO or to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

21. Respondent neither admits nor denies any allegations of fact or law set forth in Section D of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

## **G. PARTIES BOUND**

22. This CA/FO shall apply to and be binding upon Respondent and its agents, successors, and assigns and upon all persons acting under or for Respondent until such time as the civil penalty required under Section E has been paid in accordance with Section I, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute a release and full settlement of the civil penalty claims for the violations and facts alleged herein.
23. No change in ownership or corporate, partnership, or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
24. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.
25. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO and to execute and legally bind Respondent to it.

## **H. CERTIFICATION OF COMPLIANCE**

26. Upon signing this CA/FO, Respondent certifies to EPA that, to the best of its knowledge, with the exception of the violations alleged herein, Respondent has fully complied with the requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that formed the basis for the violation alleged in Section D above.
27. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

## **I. PAYMENT OF CIVIL PENALTY**

28. Respondent hereby consents to the assessment of and agrees to pay a civil penalty of **Two Thousand Eight Hundred Eighty Dollars (\$2,880)** in settlement of the civil penalty claims for the facts and violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), alleged in Section D of this CA/FO.
29. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

30. Payment shall be made by sending a certified or cashier's check in the amount of **Two Thousand Eight Hundred Eighty (\$2,880)**, payable to "EPA Hazardous Substance Superfund." All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. Payments shall be sent as follows:

**Regular Mail:**

US Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

**Overnight Mail:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101  
Contact: Natalie Pearson (314-418-4087)

Alternatively, payment may be made by electronic transfer as provided below:

**Wire Transfers:**

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

**ACH (also known as REX or remittance express):**

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact – Jesse White (301-887-6548)  
ABA = 051036706

Transaction Code 22 – checking  
Environmental Protection Agency  
Account 31006  
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)

Enter “sfol.1” in the search field

Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent’s name, the case title, and docket number, to both:

Jeremy Johnstone  
Emergency Prevention & Preparedness Section (SFD-9-3)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

and

Bryan K. Goodwin  
Regional Hearing Clerk (ORC-1)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

31. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the effective date of this CA/FO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the effective date of this CA/FO at the current rate published by the United States Treasury as described at 40 CFR §13.11(a). Additionally, administrative costs for collecting the overdue debt will be assessed monthly and a monthly penalty charge will be assessed at a rate of 6% per annum on any principal amount not paid within ninety (90) calendar days of the due date. See 40 CFR §13.11(b), (c). Furthermore, Respondent will be liable for stipulated penalties as set forth below for any payment not received by its due date.

32. The civil penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

## **J. DELAY IN PERFORMANCE / STIPULATED PENALTIES**

33. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

34. In addition to the interest and per annum penalties described in Paragraph 31, in the event that Respondent fails to pay the full amount of the penalty within the time specified in Section I, Respondent agrees to pay EPA a stipulated penalty in the amount of up to ONE THOUSAND DOLLARS (\$1,000) for each day the default continues.

35. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Paragraph 30 of this CA/FO.

36. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 CFR §13.11. EPA reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with CERCLA and its implementing regulations.

37. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

38. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

## **K. RESERVATION OF RIGHTS**

39. Except as provided in this CA/FO, EPA expressly reserves all rights and defenses that it may have.

40. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform legally required tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

41. This CA/FO shall not be construed as a covenant not to sue, a release, waiver or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under CERCLA, EPCRA, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.

42. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, tribal, state, or local law. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state, or local permit.

43. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted, except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section D of this CA/FO. Full payment of the penalty shall resolve Respondent's liability for the violations and facts alleged herein.

#### **L. OTHER CLAIMS**

44. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

#### **M. MISCELLANEOUS**

45. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

46. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

47. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

#### **N. EFFECTIVE DATE**

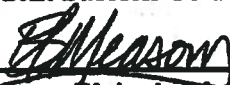
48. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.



**IT IS SO AGREED.**

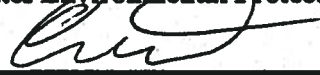
25 Sept., 2013.

**Respondent Barrick Goldstrike Mines Inc.**

BY:   
(Name) **Blake L. Measom**  
(Title) **CFO**

Sept 30, 2013.

**United States Environmental Protection Agency, Region 9**

BY:   
**Enrique Manzanilla**  
**Director, Superfund Division**

**FINAL ORDER**

**IT IS HEREBY ORDERED** that this Consent Agreement and Final Order (EPA Docket No. CERCLA(103)-09-2013-~~500~~<sup>14</sup>) be entered, and that Respondent pay a civil penalty in the amount of **Two Thousand Eight Hundred Eighty (\$2,880)**.

10/31/, 2013

  
Steven Jawgiel

Regional Judicial Officer

United States Environmental Protection Agency, Region 9

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of Barrick Goldstrike Mines Inc., CERCLA(103)-09-2014-0001, signed by the Regional Judicial Officer (dated October 31, 2013), has been filed with the Regional Hearing Clerk (file date February 7, 2014), and was served on Respondent, and Counsel for EPA, as indicated below:

**BY FIRST CLASS MAIL:**  
(Certified w/Return Receipt)

Respondent -

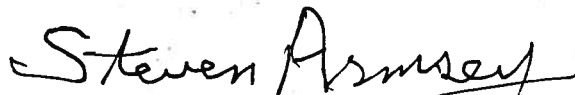
Andrew Cole, Gen. Manager  
BARRICK GOLDSTRIKE MINES INC.  
3380 West Idaho Street  
Elko, NV 89801

**HAND DELIVERED:**

Complainant -

Marie Rongone, Esq.  
Office of Regional Counsel  
ENVIRONMENTAL PROTECTION AGENCY  
75 Hawthorne Street  
San Francisco, CA 94105

Dated at San Francisco, Calif., this 7th day of February, 2014.



Steven Armsey  
Acting Regional Hearing Clerk  
EPA, Region 9