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U.S. EPA. REGION IX
REGIONAL HEARING CLERK

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Region IX
75 Hawthorne Street
San Francisco, CA 94105
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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:)	Docket No. EPCRA-09-2012-0004
)	
Round Mountain Gold Corporation,)	CONSENT AGREEMENT
)	AND FINAL ORDER
)	PURSUANT to 40 C.F.R. §§ 22.13(b) and
Respondent.)	22.18(b)
)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA"), and Round Mountain Gold Corporation ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously initiates and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This is a civil administrative penalty action brought against Respondent under Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 et seq., also known as the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), for violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and its implementing regulations set forth at 40 C.F.R. Part 372.

2. Complainant is the Director of the Communities and Ecosystems Division in EPA, Region IX ("Complainant"). Pursuant to EPA Delegation Order Number 22-3-A dated May 11, 1994, the Administrator of EPA has delegated the authority to file this action and sign a consent agreement settling this action under EPCRA to the Regional Administrator of EPA, Region IX, and pursuant to EPA Regional Order Number R1260.14B dated May 19, 2005, the Regional Administrator re-delegated that authority to Complainant.

3. Respondent is a Delaware corporation located at 1 Smokey Valley Mine Road in Round Mountain, Nevada.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, which is codified at 40 C.F.R. Part 372.

5. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), as implemented by 40 C.F.R. § 372.30, provides that the owner or operator of a facility that meets the criteria set forth in EPCRA Section 313(b), 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 must submit annually to EPA and the State in which the facility is located, a toxic chemical release inventory reporting form published under Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), (hereinafter "Form R") for each toxic chemical listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65 that it manufactured, processed, or otherwise used during the preceding calendar year in a quantity that exceeds the threshold quantities established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25 and 372.28.

6. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 apply to an owner or operator of a facility that (i) has 10 or more full-time employees; (ii) is in North American Industry Classification System ("NAICS") Code 212221; and (iii) manufactures, processes, or otherwise uses one or more toxic chemical listed under Section 313(c), 42 U.S.C.

§ 11023(c), and 40 C.F.R. § 372.65 in quantities that exceed the applicable thresholds established under EPCRA Section 313(f), 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25 and 372.28.

7. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30(d) provide that each Form R for activities involving a listed toxic chemical that occurred during a calendar year must be submitted on or before July 1 of the next year.

8. Section 313(g)(1)(B) of EPCRA, 42 U.S.C. § 11023(g)(1)(B), provides that Form Rs must include a certification regarding the accuracy and completeness of the information provided therein.

9. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19 authorize EPA to assess of a penalty of up to \$37,500 per day for each violation of Section 313 that occurs after January 12, 2009.

C. ALLEGED VIOLATIONS

10. Respondent is a corporation and therefore a “person,” as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

11. At all times relevant to this matter, Respondent was an owner and operator of a “facility” (the “Facility”) located at 1 Smoky Valley Mine Road in Round Mountain, Nevada that fits within the definition of a “facility,” as provided in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

12. At all times relevant to this matter, the Facility had 10 or more “full-time employees,” as that term is defined at 40 C.F.R. § 372.3.

13. At all times relevant to this matter, the Facility was classified in NAICS Code 212221 under the category “Gold Ore Mining.”

14. During the calendar year 2009, Respondent “manufactured,” and “otherwise used,” as those terms are defined in 40 C.F.R. § 372.3, nitrate compounds (water dissociable), a toxic chemical listed under 40 C.F.R. § 372.65, in a quantity that exceeds the 25,000 pound

threshold for reporting “manufacturing” and the 10,000 pound threshold for reporting “otherwise use” of that chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

15. During the calendar year 2009, Respondent “processed,” “manufactured,” and “otherwise used,” as those terms are defined in 40 C.F.R. § 372.3, lead compounds, CAS # 7439-92-1, a toxic chemical listed under 40 C.F.R. § 372.65, in a quantity that exceeds the 100 pound threshold for reporting “processing,” “manufacturing,” and “otherwise use” of that chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

16. Accordingly, Respondent was required to submit a timely, complete, and accurate Form R for nitrate compounds and lead compounds that it processed, manufactured, and otherwise used at the Facility to EPA and the State of Nevada for calendar year 2009 on or before July 1, 2010.

17. Respondent filed the Form Rs on or before July 1, 2010 but subsequently disclosed to EPA that it underreported the quantity of nitrate compounds and lead compounds that it processed in the Form Rs submitted by 4233% and 2746% respectively.

18. These inaccuracies constitute significant data quality errors and Respondent’s failure to submit accurate Form Rs for nitrate compounds and lead compounds processed during calendar year 2009 constitute two (2) violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

19. Respondent previously disclosed EPCRA Section 313 violations at the Facility for calendar years 2003, 2004, and 2005 to EPA, which were resolved in a CAFO filed on September 2, 2009.

20. Under the Enforcement Response Policy for Section 313 of EPCRA, as amended April 12, 2001, and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, the two violations cited above would merit a gravity-based civil penalty of TEN THOUSAND, SIX HUNDRED AND TWENTY-FIVE DOLLARS (\$10,625).

D. RESPONDENT'S ADMISSIONS

21. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) admits the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

22. In settlement of the violations specifically alleged in Section I.C of this CAFO, Respondent shall pay a civil administrative penalty of SEVEN THOUSAND, FOUR HUNDRED AND THIRTY-EIGHT DOLLARS (\$7,438). Respondent shall pay this civil penalty within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

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"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving U.S. currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
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
Enter "sfol.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

A copy of the 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 the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Russell Frazer
Communities and Ecosystems Division (CED-4)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Carol Bussey
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

23. Respondent shall not use payment of any penalty under this CAFO as a tax deduction from Respondent's federal, state, or local taxes nor shall Respondent allow any other person to use such payment as a tax deduction.

24. If Respondent fails to pay the assessed civil administrative penalty of SEVEN THOUSAND, FOUR HUNDRED AND THIRTY-EIGHT DOLLARS (\$7,438), as identified in Paragraph 22, by the deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA upon EPA's written request. The amount of the stipulated penalty will be THREE THOUSAND, ONE HUNDRED AND EIGHTY-SEVEN DOLLARS (\$3,187), and will be immediately due and payable upon EPA's written request on the day following the deadline specified in Paragraph 22, together with the initially assessed civil administrative penalty of SEVEN THOUSAND, FOUR HUNDRED AND THIRTY-EIGHT DOLLARS (\$7,438), resulting in a total penalty due of TEN THOUSAND, SIX HUNDRED AND TWENTY-FIVE DOLLARS (\$10,625). Failure to pay the civil administrative penalty specified in Paragraph 22 by the deadline specified in that Paragraph may also lead to any or all of the following actions:

(1) EPA may refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and appropriateness of the assessed penalty or of this CAFO is not subject to review in any such collection proceeding.

(2) The U.S. Government may collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the U.S. Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. §§ 13(C) and 13(H).

(3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or

revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds.

(4) Pursuant to 31 U.S.C. § 3701 et seq. and 40 C.F.R. Part 13, the U.S. Government may assess interest, administrative handling charges, and nonpayment penalties against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty specified in Paragraph 22 by the deadline specified in that Paragraph.

(a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of this CAFO.

(b) Administrative Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on either actual or average cost incurred (including both direct and indirect costs), for every month in which any portion of the assessed penalty is more than thirty (30) days past due.

(c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2) and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually, may be assessed on all debts more than ninety (90) days delinquent.

F. CERTIFICATION OF COMPLIANCE

In executing this CAFO, Respondent certifies that (1) it has now fully completed and submitted to EPA all of the required Form Rs in compliance with Section 313 of EPCRA, 42 U.S.C. § 11023, and its promulgating regulations; and (2) it is in compliance with all other EPCRA requirements at all facilities under its control.

G. RETENTION OF RIGHTS

25. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's

liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

26. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEYS' FEES AND COSTS

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

I. EFFECTIVE DATE

28. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the Final Order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

29. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

30. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

///

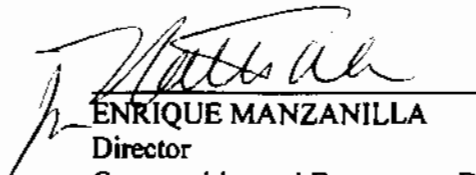
FOR RESPONDENT, ROUND MOUNTAIN GOLD CORPORATION:

9-27-12
DATE


RANDY BURGORAFF
Vice President & General Manager
Round Mountain Gold Corporation

FOR COMPLAINANT, EPA REGION IX:

9-28-12
DATE

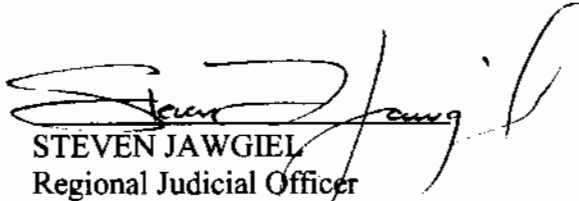

ENRIQUE MANZANILLA
Director
Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

EPA and Round Mountain Gold Corporation having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-09-2012-0004) be entered, and Respondent shall pay a civil administrative penalty in the amount of SEVEN THOUSAND, FOUR HUNDRED AND THIRTY-EIGHT DOLLARS (\$7,438), and comply with the terms and conditions set forth in the Consent Agreement.

09/28/12
DATE


STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Consent Agreement and Final Order, Docket Number EPCRA-09-2012- 0004 , was filed on 9/28/12 , with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Randy Burggraff
Vice President & General Manager
Round Mountain Gold Corporation
1 Smokey Valley Mine Road
Round Mountain, Nevada 89045
Certified Return Receipt Article No: 7010 2780 0000 8389 2201

Nathan M. Longenecker, Esq.
Kinross Gold USA, Inc.
1888 Sherman Street, Suite 780
Denver, Colorado 80220
Certified Return Receipt Article No: 7010 2780 0000 8389 2218

Dated: 

Bryan K. Goodwin
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region IX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

Certified Mail No. 7010 2780 0000 8389 2201
Return Receipt Requested

SEP 28 2012

Re: EPCRA-09-2012- 10004

Randy Burggraff
Vice President & General Manager
Round Mountain Gold Corporation
1 Smokey Valley Mine Road
Round Mountain, NV 89045

Dear Mr. Burggraff:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order, pursuant to 40 C.F.R. Sections 22.13 and 22.18, which contains the terms of the settlement reached with the EPA Region IX Toxic Chemical Release Inventory Program. Your completion of all actions enumerated in the Consent Agreement and Final Order will close this case.

If you have any questions, please contact Russ Frazer at (415) 947-4220 or have your attorney contact Carol Bussey at (415) 972-3950.

Sincerely,

A handwritten signature in cursive script, appearing to read "Enrique Manzanilla".

Enrique Manzanilla, Director
Communities and Ecosystems Division

cc: Nathan M. Longenecker, Esq., Kinross Gold USA, Inc.

Enclosure