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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

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US EPA - REGION IX
HEARING CLERK

CAA(112R)-09-2014-0001

U.S. EPA Region 9

Docket No. ~~CAA(112R)-09-2014-0001~~

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 112 and 113 of
the Clean Air Act, as amended, 42 U.S.C.
§§ 7412 and 7413

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). 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 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and the regulations adopted pursuant thereto.

B. GENERAL ALLEGATIONS

3. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

4. The real property and improvements thereto located at the Goldstrike Mine in Eureka County, Nevada (the "Facility") are a "stationary source" as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

5. At all times relevant to this CA/FO, Respondent has been the owner and operator of the Facility.

6. Under Section 112(r) (3) of the CAA and 40 CFR Part 355, Appendix A, anhydrous ammonia is an "extremely hazardous substance."

7. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as provided by 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

8. At all times relevant to this CA/FO, the Facility produced, processed, handled or stored anhydrous ammonia.

9. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.

10. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes the assessment of a civil penalty for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

11. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA. Delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority with respect to enforcement of Section 112(r)(1) and (7) of the CAA to the Director of the Superfund Division as well as the Director of the Air Division. Regional Order 1265.05A, dated August 14, 2003.

12. In a letter dated July 22, 2013, the Department of Justice granted EPA authority to commence this administrative enforcement action pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

C. ALLEGED VIOLATION: Failure to Design and Maintain a Safe Facility and Failure to Minimize Consequences of an Accidental Release

13. Paragraphs 1 through 12 above are incorporated herein by this reference as if they were set forth here in their entirety.

14. On June 22, 2011, approximately 3,200 pounds (lbs) of anhydrous ammonia leaked or was emitted into the environment from the Facility, resulting in the evacuation and transport of thirteen workers to local hospitals for evaluation.

15. The leaking or emitting of anhydrous ammonia from the Facility was an "accidental release" as defined by Section 112(r)(2) of the CAA, 42 U.S.C. § 7412(r)(2).

16. Prior to June 22, 2011, the Facility had identified, but not corrected, the absence of an automatic start-up condition for the back-up pump in its ammonia refrigeration system when the primary pump tripped off due to a high amp condition. Respondent's failure to correct this identified condition constitutes failure to design and maintain a safe facility where an extremely hazardous substance is used, in violation of Section 112(r)(1) of the CAA, as amended, 42 U.S.C. §7412(r)(1).

17. On June 22, 2011, an ammonia refrigeration system pressure relief valve at the Facility was directed toward the ground in a location less than 15 feet from a work area that was adjacent to, but not directly below, the pressure relief valve. This condition constitutes failure to minimize the consequences of the accidental release of an extremely hazardous substance on or about June 22, 2011, in violation of Section 112(r)(1) of the CAA, as amended, 42 U.S.C. §7412(r)(1).

18. Therefore, EPA alleges that Respondent failed to design and maintain a safe facility where an extremely hazardous substance is used and failed to minimize the consequences of the accidental release of an extremely hazardous substance, in violation of the "general duty" clause of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

D. CIVIL PENALTY

19. Section 113(d) of the CAA, as adjusted by the Debt Collection Improvement Act of 1996, see 40 CFR Part 19, authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) for violations that occur after January 12, 2009. 69 Fed. Reg. 75340, 75346 (Dec. 11, 2008).

20. Based on the facts alleged herein and upon all the factors which the Complainant considers pursuant to the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 ("CEP"), dated June, 2012, including the nature, extent, and gravity of the violations, the Respondent's ability to pay, prior history of violations, degree of culpability, any economic benefit, and such other matters as justice may require, the Complainant proposes that the Respondent be assessed, and Respondent agrees to pay **One Hundred Thousand Eight Hundred Dollars (\$100,800)** as the civil penalty for the violations alleged herein. The proposed penalty was calculated in accordance with the CEP.

E. ADMISSIONS AND WAIVERS OF RIGHTS

21. 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 113 of the CAA, 42 U.S.C. § 7413, and 40 CFR Part 22. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and 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.

22. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to a hearing or an appeal on any issue relating to the factual allegations or legal conclusions set forth in the CA/FO, including without limitation a hearing pursuant to Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2), or judicial review pursuant to Section 113(d)(4) of the CAA, 42 U.S.C. § 7413(4). Respondent hereby consents to the terms of this CA/FO and the issuance of this CA/FO without adjudication.

23. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

F. PARTIES BOUND

24. 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 D has been paid in accordance with Section H, 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.

25. 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.

26. 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.

27. 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.

G. CERTIFICATION OF COMPLIANCE

28. 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 112(r) of the CAA that formed the basis for the violations alleged in the CA/FO, and the Facility is now in compliance with Section 112(r) of the CAA with respect to the equipment and systems involved in the release of anhydrous ammonia on June 22, 2011.

29. 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.

H. PAYMENT OF CIVIL PENALTY

30. Respondent hereby consents to the assessment of and agrees to pay a civil penalty of **One Hundred Thousand Eight Hundred Dollars (\$100,800)** in settlement of the civil penalty claims for the facts and violations alleged in this CA/FO.

31. 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 with the Regional Hearing Clerk.

32. 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. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" 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

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 17th 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

Enter "sf01.1" 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:

Bryan K. Goodwin
Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Jeremy Johnstone (SFD-9-3)
Superfund Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

33. 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.

34. 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.

I. DELAY IN PERFORMANCE / STIPULATED PENALTIES

35. 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.

36. In addition to the interest and per annum penalties described in Paragraph 33, in the event that Respondent fails to pay the full amount of the penalty within the time specified in Section H, 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.

37. 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 Section H of this CA/FO.

38. 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 the CAA and its implementing regulations.

39. 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.

40. 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.

J. RESERVATION OF RIGHTS

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

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

43. 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.

44. 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 C of this CA/FO. Full payment of the penalty and certification by Respondent that it is compliance with the requirements of Section 112(r) of the CAA that formed the basis for the violations alleged in the CA/FO shall resolve Respondent's liability for the violations and facts alleged herein.

45. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA.

K. MISCELLANEOUS

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

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

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

49. EPA and Respondent consent to entry of this CA/FO without further notice.


L. EFFECTIVE DATE

50. 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**

30 Sept, 2013.

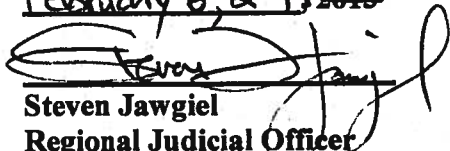
United States Environmental Protection Agency, Region 9

BY: 
Enrique Manzanilla
Director, Superfund Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. CAA(112r)-09-2013-~~3009~~³⁰¹¹) be entered, and that Respondent pay a civil penalty in the amount of **One Hundred Thousand Eight Hundred Dollars (\$100,800)**.

February 6, 2014³⁰¹¹~~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. (CAA-112R-09-2014-0001), signed by the Regional Judicial Officer (dated February 6, 2014), 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 -

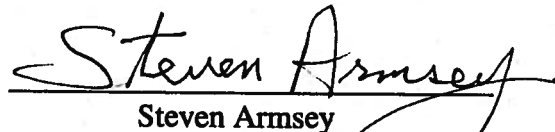
Andrew Cole, Gen. Manager
BARRICK GOLDSTRIKE MINES INC.
3380 West Idaho Street
Elko, NV 89801

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