



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:
Barrick Cortez, Inc.
Respondent
Docket No. EPCRA-09-2011-0004
Dated: January 25, 2013

ORDER GRANTING MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

The Complaint in this matter, issued on September 29, 2011, alleged 37 violations of Section 313 of the Emergency Planning and Community Right-To-Know Act ("EPCRA"). 42 U.S.C. § 11045(c) in connection with Respondent's operation of its gold mining facility near Crescent Valley, Nevada. Complainant, United States Environmental Protection Agency Region IX, filed a "First Amended Complaint" on January 4, 2012, to withdraw three alleged violations of EPCRA. Respondent filed an Answer, and thereafter the parties were granted a stay of this proceeding to engage in mediation with a private mediator. Thereafter, the parties requested and were granted further stays of this proceeding, during which the parties reached an agreement in principle, then broadened the scope of the agreement to constitute a global settlement of other mines operated by Respondent and related entities, and began finalizing settlement documents.

On January 24, 2013, Complainant submitted a Motion For Leave to File Second Amended Complaint ("Motion"), along with the proposed Second Amended Complaint. In the Motion, Complainant seeks to: (1) provide the complete citation for the SIC codes subject to EPCRA § 313 requirements, in paragraphs 10 and 15 of the Second Amended Complaint ; (2) delete the violation alleged in Count 21 of the First Amended Complaint; and (3) incorporate violations in 2007-2008 at two other gold mining facilities, one owned and/or operated by Barrick Gold U.S., Inc. ("BGI") and the other by Homestake Mining Company of California ("Homestake"). Specifically, the Second Amended Complaint alleges ten violations of EPCRA § 313 against BGI regarding a gold mining facility near Elko, Nevada and fifteen violations of EPCRA § 313 against Homestake regarding a gold mining facility near Eureka, Nevada. The Motion states that BGI and Homestake are closely affiliated with Respondent, that all three corporations are subsidiaries of Barrick Gold Corporation of Canada, and that the parties have reached an agreement in principle to settle the claims against the three corporations. The Motion states further that Complainant will file a Consent Agreement and Final Order ("CAFO") that resolves all of the violations alleged in the Second Amended Complaint when an order is issued

allowing the filing of the Second Amended Complaint. The Motion asserts that Respondent will not be prejudiced if it is permitted to amend the First Amended Complaint at this time, and states that Respondent does not oppose the Motion.

The applicable procedural rules, 40 C.F.R. Part 22 ("Rules") provide that once an answer has been filed, "the complainant may amend the complaint only upon motion granted by the Presiding Officer." 40 C.F.R. § 22.14(c). The Rules do not provide any standard for granting leave to amend a complaint, but the Federal Rules of Civil Procedure ("FRCP") and federal court decisions interpreting the FRCP provide guidance. FRCP 15(a) provides that "[t]he court "should freely give leave" to amend a complaint "when justice so requires." In *Foman v. Davis*, 371 U.S. 178, 182 (1962), the Supreme Court stated:

In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be "freely given."

There is no undue delay, bad faith, dilatory motive, futility of amendment, or repeated failure to cure deficiencies apparent in this case. Further, because the parties have the parties have agreed to settle the claims against the three corporations, the proposed amendments would not result in undue prejudice.

Therefore, the Motion For Leave to File Second Amended Complaint is **GRANTED**. Complainant shall file and serve the Second Amended Complaint **on or before February 1, 2013.**

SO ORDERED.



M. Lisa Buschmann
Administrative Law Judge

In the Matter of *Barrick Cortez, Inc.*, Respondent.
Docket No. EPCRA-09-2011-0004

CERTIFICATE OF SERVICE

I hereby certify that true copies of this **Order Granting Motion for Leave to File Second Amended Complaint**, issued by M. Lisa Buschmann, Administrative Law Judge, in Docket No. EPCRA-09-2011-0004, were sent to the following parties on this 25th day of January 2013, in the manner indicated:



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Dated: January 25, 2013
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