

NANCY MARVEL
Regional Counsel
United States Environmental Protection Agency, Region IX

DAVID H. KIM
Assistant Regional Counsel
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3882

Attorneys for Complainant

STEVEN G. BARRINGER
JOHN F. SHEPHERD
M. BENJAMIN MACHLIS
Holland & Hart LLP
975 F Street NW, Suite 900
Washington, D.C. 20004
(202) 393-6500

Attorneys for Respondent

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:)
)
Barrick Cortez, Inc.,)
)
)
)
Respondent)
_____)

Docket No. EPCRA-09-2011-0004

FIFTH JOINT MOTION
FOR STAY

INTRODUCTION

This is a civil administrative action brought pursuant to Section 325(c) of the Emergency Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for the assessment of a civil administrative penalty against Barrick Cortez, Inc. ("BCI") for 34 alleged violations of Section 313 of EPCRA, 42 U.S.C. § 11023.

MOTION

U.S. Environmental Protection Agency ("EPA"), Region IX, filed a complaint in the above-captioned matter on September 29, 2011. EPA filed the first amended complaint in the above-captioned matter on January 4, 2012. Respondent BCI filed its Answer and Request for Hearing on January 27, 2012. By order dated February 16, 2012, Administrative Law Judge M. Lisa Buschmann was assigned to this matter. On February 29, 2012, Judge Buschmann issued a pre-hearing order that established dates for the parties to submit a status report and prehearing exchange information.

On March 12, 2012, the parties filed a Joint Motion for Stay, requesting that this matter be stayed so that the parties may engage in third-party mediation; this motion was granted on March 12, 2012, and this proceeding was stayed until May 11, 2012. On May 10, 2012, the parties filed a Second Joint Motion for Stay, requesting that the stay be extended for another 60 days so that the parties could continue mediation and fully resolve this matter; Judge Buschmann granted this motion on May 10, 2012, extending the stay until July 10, 2012. On July 6, 2012, the parties filed a Third Joint Motion for Stay, requesting that the stay be extended for another 60 days on the basis that the parties have reached an agreement in principle on civil penalty and several key issues but need additional time to resolve remaining issues and finalize a settlement. Judge Buschmann granted this motion on July 13, 2012, extending the stay until September 10,

2012. Finally, on September 10, 2012, the parties filed a Fourth Join Motion for Stay, requesting another 60 days on the basis that the parties have broadened the scope of the agreement in principle to address potential claims at other facilities owned by Respondent and its related entities; Judge Buschmann granted this motion on September 14, 2012, extending the stay until November 9, 2012.

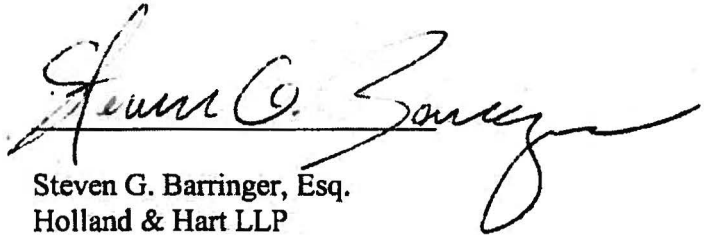
Since the Fourth Join Motion for Stay was granted, the parties have had additional settlement discussions to draft the settlement documents. The parties have finalized several such documents but need additional time to finalize others. The parties will also need additional time to receive and evaluate cost information from potential vendors for the performance of tasks required to be performed as part of the settlement.

Pursuant to 40 C.F.R. § 22.16(a), the parties hereby request that this matter be stayed for another 45 days to December 24, 2012 to allow the parties to finalize the settlement. A letter from the mediator that provides more details on the progress of settlement is also attached to this motion.

Dated at San Francisco, California on this 7th day of November, 2012.



David H. Kim, Esq.
Attorney for Complainant
USEPA, Region IX



Steven G. Barringer, Esq.
Holland & Hart LLP
975 F Street NW, Suite 900
Washington, D.C. 20004
(202) 393-6500
sgbarringer@hollandhart.com
Attorney for Respondent
Barrick Cortez, Inc.

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Fifth Joint Motion for Stay was delivered by
pouch mail to:

Sybil Anderson
Headquarters Hearing Clerk
Office of Administrative Law Judges (Mail Code 1900L)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

and that a true and correct copy of the Fifth Joint Motion for Stay was sent by pouch mail or the
United States Mail addressed to the following:

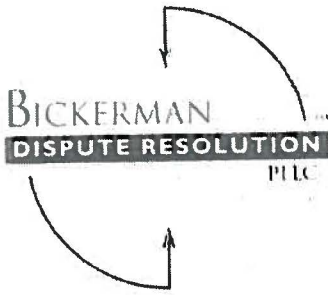
The Honorable M. Lisa Buschmann
Administrative Law Judge
Office of Administrative Law Judges (Mail Code 1900L)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

Steven G. Barringer, Esquire
Holland & Hart, LLP
975 F Street, N.W., Suite 900
Washington, D.C. 20004

Dated: 11-7-2012

By: 

Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX



1201 NEW YORK AVENUE, N.W. SUITE 625
WASHINGTON, DC 20005
TEL: 202-289-0400 FAX: 202-289-3020

November 7, 2012

The Honorable M. Lisa Buschmann
Administrative Law Judge
Office of Administrative Law Judges (Mail Code 1900L)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

Re: In the Matter of Barrick Cortez, Inc., Docket #09-2011-0004

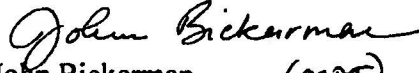
Dear Judge Buschmann:

On April 2, 2012, the United States Environmental Protection Agency ("EPA") and Barrick Cortez, Inc./Barrick Gold Corporation ("Barrick") retained me to mediate an enforcement action brought by the EPA against Barrick. On April 18, 2012, the parties submitted confidential statements. An initial mediation session with the parties was held in San Francisco on May 2, 2012. A second meeting was held with the parties' experts in Denver on May 9, 2012. Two additional meetings were held on May 31st (by conference call) and on June 29th in Salt Lake City. The parties and I spoke frequently after the June 29th meeting and all participants met again this past Wednesday, September 5th, in Washington, DC for the purpose of finalizing several key terms in the agreement. I have had numerous conference calls with the parties since my last letter to you on September 9, 2012.

As I indicated to you last time, what initially began as an enforcement action at one mine has now evolved into a global settlement of all mines operated by the Barrick Gold Corporation in the United States. Since my last communication, the parties ratified their agreement in principle with respect to all material terms, although the details of some of these terms still need to be finalized. The mediation participants have been working diligently to finalize their agreement. I believe it is in the interest of the Court to allow the parties the time they need to finish papering their agreement.

I would be pleased to provide the Court with additional non-substantive information about the mediation.

Very truly yours,


John Bickerman (ms)