

WESTERN MINING ACTION PROJECT

*Roger Flynn, Esq.,
Jeffrey C. Parsons, Esq.*
Mail Delivery: P.O. Box 349
Overnight/Personal Delivery: 412 High Street, #B
Lyons, CO 80540
(303) 823-5738
Fax (303) 823-5732
wmap@igc.org

Nicole U. Rinke, Esq.
505 South Arlington Ave., Suite 110
Reno, NV 89509
(775)-337-2977
Fax (775) 337-2980
nevadamining@sbcglobal.net

Via Fax -- Hardcopy to Follow by First Class Mail

April 28, 2005

Mr. Rod A. Moore
Division of Environmental Protection
Nevada Bureau of Air Pollution Control
333 West Nye Lane
Carson City, Nevada 89706-0851
(775) 687-9338
FAX: 687-6396

Mr. Wayne Nastri, EPA Region IX Administrator
ORA-1
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105

Re: Barrick Goldstrike Class I Renewal, Draft Permit No. AP1041-0739.01

Dear Mr. Moore & Mr. Nastri:

Thank you for the opportunity to comment on Draft Permit No. AP1041-0739.01. This letter is submitted on behalf of Great Basin Mine Watch and Earthworks (hereinafter, "Citizens") by and through their undersigned attorneys, and constitutes comments on Barrick's request to renew the above-noted permit. Citizens are non-profit citizens groups that are concerned about the air quality impacts of Barrick's massive Goldstrike Mine Project (or Project) operations.

Overall, the draft permit violates the Nevada and federal air quality laws and regulations and cannot be issued as proposed. Our specific comments follow. Citizens reserve the right to submit additional comments as new information is submitted or developed by Barrick and/or the Nevada Division of Environmental Protection (NDEP).

Further, and by this letter, Citizens hereby petition EPA Administrator Nastri to request that he object to this Class I operating permit as provided in 40 C.F.R. § 70.8(d). See also, NAC 445B.3395(14).¹

I. The Draft Permit Fails to Aggregate Emissions From Modifications Over the Past Five Years

NDEP fails to properly aggregate emissions from previous modifications to the Project from the last five years (i.e. prior to Barrick's submission of its Operating Permit renewal in November 2001) to determine whether the physical changes to the operation are a major modification to the Project for PSD purposes. In order to determine if a modification to the Project is major and therefore triggers the PSD permitting requirements for CO, NO_x, PM-10 or SO₂, NDEP must aggregate emissions over the last five years. In so doing, NDEP must determine whether the significance thresholds for CO, NO_x, SO₂, and, PM are exceeded by Barrick's modifications over the last five years.

In addition to submitting an application for a permit to emit more than 250 tpy of regulated pollutants that would make it a "major stationary source" of air pollution,² the Barrick mine in 2001 also sought permit revisions that constitute a "major modification" of the mine's operations. "Modifications to major emitting facilities that increase nitrogen oxide [NO_x] emissions in excess of 40 tons per year require a PSD permit. 40 C.F.R. 51.166(b)(23)(i)." Alaska Dept. of Environmental Conservation v. E.P.A., 540 U.S. 461, 472 (2004)(emphasis supplied).

In 2001, a "major modification" meant "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 C.F.R. §52.21(b)(2)(i). "Significant" meant, "in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates: *** Nitrogen oxides: 40 tpy [tons per year]." 40 C.F.R. §52.21(b)(23)(i). A "net emissions increase" is defined as:

with respect to any regulated NSR pollutant [e.g. NO_x] emitted by a major stationary source [such as Barrick], the amount by which the sum of the following exceeds zero:

- (a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source ...;
- (b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change ...

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change

¹ Over 45 days have lapsed since the issuance of the Barrick's Draft Permit on February 17, 2005. Upon information and belief, EPA has not, during time, objected to the permit.

² Barrick's potential to emit (PTE) for PM, CO, and NO_x exceed 250 tpy. See, Barrick's Permit Renewal Application (November 16, 2001), Appendix 2, Table 2.

commences; and

(b) The date that the increase from the particular change occurs.

40 CFR 52.21(b)(3)(i) & (ii) (emphasis added). Thus, emissions increases are “contemporaneous” and should be “netted” or combined together if they occur between “[t]he date five years before construction on the particular change commences...” 40 C.F.R. §52.21(b)(3)(ii).

The net emissions increase from the three Barrick permit modifications submitted in April, August, and October of 2001 are well within the five-year window set out by the regulations for aggregating their impact.

According to the cover letter of the Barrick mine’s November 16, 2001 permit renewal application, Barrick’s air quality permit renewal “incorporate[s] the three minor modifications that are currently pending NDEP review.” November 16, 2001, Letter from Lang, Stephen, Vice President and General Manager, Barrick Goldstrike Mines Inc., to Greg Remer, NDEP. (emphasis supplied). Further, the three pending permit modifications were submitted by the Barrick mine to NDEP in April, August, and October 2001 respectively. *Id.*

According to Barrick’s April 2001 proposed permit modification application, which requests conversion of 12 emergency generators to full-time operation, NOx emissions increases are calculated at 39.78 tpy. *See* May 3, 2001, Letter from Elges, Michael, Supervisor, NDEP to Gerardo Rios, Chief, New Source Section, EPA Region IX, transmitting a copy of Barrick’s application for a permit revision, at Appendix 6, Table 6.1. Additionally, Barrick estimated the mine’s potential to emit NOx, facility-wide, as of April 2001 to be 374.6 tpy. *Id.*, at Appendix 3, Table 2.

Soon after, and while Barrick’s April 2001 proposed permit modification application was still pending, Barrick submitted two more permit modification applications in August and October 2001. Barrick’s August 2001 proposed permit modification application estimated the mine’s potential to emit NOx facility-wide to be 423.4 tpy (or 48.8 tpy above Barrick’s April, 2001 estimated potential to emit). *See* September 14, 2001, Letter from Moghimi, Mehrdad, Supervisor, NDEP, to Gerardo Rios, Chief, New Source Section, Air & Toxics Division, EPA Region IX, transmitting copy of Barrick’s August 23, 2001 application for permit revision, at Appendix 3, Table 2.

In its October 2001 proposed permit modification application Barrick estimated increases in the mine’s potential to emit NOx emission facility-wide to be 426.0 tpy (or 51.4 tpy above Barrick’s April 2001 estimated potential to emit). *See* November 6, 2001, Letter from Moghimi, Mehrdad, Supervisor, NDEP, to Gerardo Rios, Chief, New Source Section, Air & Toxics Division, EPA Region IX, transmitting a copy of Barrick’s October 2001 permit revision, Appendix 3, Table 2.

In sum, as of November 2001 when Barrick incorporated its three pending permit modifications into its permit renewal application (including Barrick’s proposed 51.4 tpy in emissions increases for NOx), Barrick physically changed its mining operation in such a manner

that resulted in a significant net emissions increase of NO_x emission of 51.4 tpy. See, Barrick's Permit Renewal Application (November 16, 2001) at Appendix 2, Table 2. Because Barrick exceeded the 250 tpy threshold for a "major stationary source" and the significance threshold for NO_x is 40 tpy, 40 C.F.R. §52.21(b)(23)(i), Barrick sought a permit renewal in November 2001 that constitutes a "major modification" of the mine's operations.³

EPA regulatory policy requires that so-called minor modifications may not be used to avoid complying with PSD provisions under Title I of the CAA. See 57 Fed. Reg. 32,250, 32,284. (July 21, 1992). EPA states:

[T]he minor permit modification provisions in the final rule explicitly prohibit changes that would (1) constitute title I [PSD major] modifications The minor permit modification procedure cannot be used to exceed any of these [PSD] limits. It should be pointed out in this regard that the Act implicitly prohibits "stacking" of emissions increases under the minor permit modification procedures. The EPA has long held that stacking is unlawful where it is done for the purpose of improperly evading full permit modification procedures under title I [PSD provisions].

...

[I]n attainment [clean air] areas, certain increases above prescribed "significance levels" would also be aggregated with all other net increases in emissions at the source within a five-year contemporaneous period. See, e.g., 40 CFR § 52.21(b)(2) and (3).

Id. (emphasis added).

Lastly, and as NDEP is likely aware, EPA in December, 2002, revised its definition of "major modification" to mean "any physical change...that would result in: a significant emissions increase [of NO_x]; and a significant net emission increase of that pollutant from the major stationary source." 40 C.F.R. §52.21(b)(2)(I)(2005); 67 Fed. Reg. 80186 (Dec. 31, 2002). However, this rule change was instituted after Barrick submitted its permit modifications and after Barrick was required to submit its permit renewal application (which incorporated such modifications). The provisions of the 2002 rule therefore do not govern the 2001 activities in question. As stated by EPA:

With regard to the concern that industry may try to apply the new requirements retroactively to undo current restrictions on existing sources, we want to reiterate that the new procedures do not apply retroactively to existing NSR permits or changes that sources have made in the past. Prior applicability determinations on major modifications and the control requirements that currently apply to sources remain valid and enforceable and have to be adjusted for in the calculation of baseline actual emissions.

67 Fed. Reg. at 80200 (emphasis supplied). See, Landsgraph v. U.S. Film Products, 511 U.S. 224, 280 (1994)("If the statute would operate retroactively, our traditional presumption teaches

³ Even assuming *arguendo*, that Barrick's potential to emit NO_x in its April 2001 modification was 383.3, Barrick's net emissions increase in NO_x between April 2001 and November 2001 would be **42.7 tpy** (426 – 383.3 = 42.7).

that it does not govern absent clear congressional intent favoring such a result.”)(emphasis supplied); accord, Utah Env'tl. Congress v. Bosworth, 372 Fed. 3d. 1219, 1221 nt. 1 (10th Cir. 2004)(“In 2000, the regulations at issue in this case were changed...The regulations in effect at the time of the disputed [agency] decisions in this case were the regulations first adopted in 1979, and amended in 1982 and 1983 (known as the 1982 rule)...As a result, we will apply the 1982 rule and all references to the C.F.R. are to the 1999 version, the last published edition before the 2000 revisions.”)

Additionally, and worth note, EPA’s new regulations are currently being challenged in the D.C. Circuit and it is not clear whether the regulations will be upheld.

In this case, NDEP has not properly aggregated emissions from previous modifications to the Project from the last five years to determine whether the physical changes to the operation have caused a major modification to the Project. NDEP’s failure to do so is unlawful. Further, because Barrick has proposed significant modification of an existing source, NDEP and Barrick are in violation of NAC 445B.295.3 regarding compliance with the prevention of significant deterioration requirements.

II. NDEP Fails To Consider Or Calculate Emissions From On-Site Mining Equipment

NDEP fails to consider or calculate emissions (including providing an emissions summary) from tail-pipe emissions from on-site mining equipment in issuance of a renewal permit to Barrick.⁴ This is in error. Such emissions, at a minimum, must be calculated as part of the facilities PTE and thereafter regulated (especially if such inclusion of such emissions demonstrates NAAQS violations). See, NAC445B.295(3)(which states that a permit application must include “An identification and a description of any equipment for the control of air pollution and any devices or activities for monitoring compliance with emission limitations.”) Additionally, such emissions must be evaluated when determining whether the source is major stationary source or major modification for NSR and PSD purposes.

According to incomplete information contained in Barrick’s permit application currently has a fleet of haul trucks and heavy machinery that operate *on-site* 24 hours per day seven days a week. These trucks and equipment never leave the project area. It is not clear whether emissions from the fleet will be modified by Barrick’s Permit Renewal Application.

“Motor vehicle” means:

every self-propelled vehicle which is designed for use upon a highway, including: 1. Trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, tractor cranes, power shovels and well drillers; and 2. Every vehicle which is propelled by electric power obtained from overhead wires but not

⁴ Barrick’s Permit Renewal Application, Appendix 5 & 6, treats emissions from this equipment as insignificant or trivial.

operated upon rails. The term does not include electric personal assistive mobility devices as defined in NRS 482.029.”

NAC 445B.104 (emphasis supplied). Here, the majority of Barrick’s mine equipment does not leave the Project and does not travel on or over the public highways. Therefore, such equipment cannot be considered motor vehicles. Further, emissions from on-site mining equipment are not excluded from the definition of “stationary source.” NAC 445B.094 .

Additionally, such equipment is not subject to regulation under Title II of the federal Clean Air Act, 42 U.S.C. §§ 7521 to 7590. Title II of the Federal CAA provides that states are prohibited from setting standards and other requirements for “motor vehicles.” 42 U.S.C. 7543(a). Barrick’s equipment are not “motor vehicles,” which is defined as “any self propelled vehicle designed for transporting persons or property on a street or highway.” 42 U.S.C. §7550 (emphasis supplied). “[T]he cornerstone of Title II is Congress’ continued express preemption of state **regulation of automobile emissions.**” Motor Vehicle Mfrs. Ass’n v. N.Y. State Dep’t of Env’tl. Conservation, 17 F.3d 521, 526 (2d Cir. 1994) (emphasis added). As one Court stated:

although the Subchapter [Title] II preemptions provide for federal regulation of much ‘moving source’ pollution, **regulation of the remainder of such pollution, as well as general regulation of ‘stationary source’ pollution, resides with the states under Subchapter I.**

State of California ex rel State Air Resource Board v. Department of Navy, 431 F.Supp. 1271, 1275 (D. Cal. 1977)(emphasis added). Thus, Title II of the CAA clearly does not preempt consideration of Barrick’s on-site mining equipment.

Lastly, Barrick’s on-site mining equipment cannot be considered a nonroad vehicle or to have a nonroad engines. Emissions from Barrick’s mining equipment are not from nonroad engines or nonroad vehicles. Because Barrick’s mining equipment remains at a single location within the Project for more than 12 consecutive months, it falls outside of the scope of EPA’s definition of nonroad vehicle/engine. *See* 40 C.F.R. §89.2. As stated by EPA:

An internal combustion engine can be stationary without being “affixed” to the ground or other structures. To require otherwise could result in the improper classification of internal combustion engines. ... Therefore, the Agency has decided that the fact that an engine is not “affixed” to the ground or other structure does not necessarily identify the internal combustion engine as a nonroad engine. The Agency also believes that 12 months is the appropriate time limit for determining whether an internal combustion engine which is either portable or transportable is to be classified as a stationary engine. Generally, engines that remain at one site for more than 12 months will stay at that site either permanently or for an extended period of time. In such cases, local or state air quality agencies should be able to regulate the applicable engines as stationary sources, since the emissions impact is occurring over a period of time which is likely to have a measurable impact on an area’s air quality. ...

The revised nonroad engine definition excluded from nonroad regulation those engines that are used for normal annual source operations at fixed stationary sources that only operate on a seasonal basis, such as canneries. This provision is designed to ensure that

engines that operate as integral parts of these stationary sources are considered stationary.

59 Fed. Reg. 31306, 31312 (June 17, 1994). Thus, EPA recognized that an engine should not be considered “nonroad” just because it moves. Rather, the test is whether an engine “will stay at that site either permanently or for an extended period of time.” *Id.*

This interpretation makes sense from a practical standpoint as well. The proper focus is on the air quality impacts occurring over an “extended period of time,” not on whether the engine happens to be moved by the operator within that location site. 59 Fed. Reg. 31306, 31312. If an engine was truly “nonroad,” it would leave the site and thus would not have a concentrated air quality impact. In contrast, engines such as those on Barrick’s mine equipment never leave their respective sites (i.e., the mine pit, leach pad, or haul road) and thus concentrate their harmful emissions in one place. As demonstrated by the preamble language quoted above, EPA properly considers such emissions to be part of the “stationary source.”

Thus, EPA’s regulation governing nonroad engines was not intended to apply to Barrick’s on-site mining equipment that will operate for over multiple years, 24 hours per day, 7 days per week, at specific, identifiable, and fixed locations within the facility. This equipment is an “integral part” of Barrick’s operation. *Id.* Further, these engines **do not** move to different sites within a stationary source. Much of this equipment is expressly dedicated to remain at one location for the entire period of active mining.

For example, the ore loading equipment will only be used in the mine pit for one purpose – to lode blasted rock into the haul trucks that then stay along the haul road to the mine dump or heap leach pad/crusher area. Similarly, the leach pad trucks will stay at the leach pad for one purpose – to haul and stack crushed ore on the active level of the leach pad. This equipment will never leave its location at the Project. Therefore, emissions from these point sources should be considered part of the “stationary source” and cannot be excluded from the determination of whether or not Barrick is a “major source.”

In this case, it is unlawful for NDEP to not regulate Barrick’s emission of pollutants from on-site mining equipment. Additionally, in failing to calculate and/or perform an emissions estimate for on-site mining equipment, NDEP cannot adequately determine whether the Project is a major stationary source or has undergone a major modification for NSR and PSD purposes. NDEP must calculate emissions from all of Barrick’s on-site mining equipment. NDEP’s failure to do so here is unlawful.

III. APCD Fails To Demonstrate Compliance With The PSD Provisions

Here, and even assuming *arguendo* Barrick is not considered by NDEP a major stationary source or major modification for which a PSD permit is necessary, Barrick must still be required to demonstrate compliance with PSD standards or increments for NO_x, PM-10, and SO₂.

EPA’s PSD regulation 40 C.F.R. 52.21(k) require proposed sources to, among other things:

[D]emonstrate that allowable emission increase from the proposed **source**...in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of: (2) Any applicable maximum allowable increase over the baseline concentration in any area.

40 C.F.R. §52.21(k)(emphasis added); *accord*, EPA's New Source Review Workshop Manual: Prevention of Significant Deterioration and Nonattainment Area Permitting (Draft October 1990) at C.35 (hereinafter "NSR Manual")(commanding that all new stationary sources consume available increment after the minor source baseline date has been triggered).

NDEP regulations require that Class I operating permit must include all applicable requirements and "include emissions limitations and standards, including those operation requirements and limitations that ensure compliance with all applicable requirements at the time of the issuance of the operating permit." NAC 445B.316

Thus, even if Barrick is not considered a "major source," the NDEP is still required to ensure that the entire facility, including pollution emissions from on-site equipment, does not violate applicable maximum allowable increases (i.e. PSD standards/increments).

The [PSD major source] permit process alone does not ensure that maximum concentrations or allowable increments will not be exceeded. Significant deterioration may occur due to increased emissions from unregulated minor sources

Alabama Power v. Costle, 636 F.2d 323, 362 (D.C. Cir. 1980). In another case, the D.C. Circuit held that these minor sources were still required to comply with PSD increments. The court held that even if sources were not considered "major":

[That] hardly means that their operators are free to pollute at will. **As EPA noted, they remain subject to other Clean Air Act limitations (e.g., national ambient air quality standards and, in areas in which the PSD baseline has been triggered, PSD increment limitations)...**

Natural Resources Defense Council v. EPA, 937 F.2d 641, 646 (D.C. Cir. 1991)(emphasis added). The Court went on to hold:

Although the PSD rules are triggered only by a *major* source, **they require control—to keep the affected area within permissible PSD "increments"--of any source.** Thus, even with surface coal mines not listed [as major sources], **states will be under an obligation to control them**

Id., at 647 (internal citations omitted) (*italics* emphasis in original)(bold emphasis added). Finally, the D.C. Circuit held, "In the allocation of responsibilities made by Congress, maximum [PSD increment] limitations have been set. **These must be observed by the states**" Id., at 364 (emphasis added).

Here, NDEP and Barrick must demonstrate compliance with the applicable increments (and increment consumption) for NO_x, SO₂, and PM-10 in issuing this permit.⁵ The Project consumes available increment for NO_x, SO₂, and PM-10 and an air quality impact analysis and increment inventory must be provided.

Additionally, NDEP must assess, review, determine and/or model, the cumulative impacts of the Project in conjunction with all other emissions sources within a 50 kilometer impact area to determine the cumulative impacts to Nevada's Class I and II areas for NO_x, PM-10, and SO₂. NSR Manual at C.35.

Lastly, any increment inventory performed by NDEP to determine compliance with applicable PSD increments for NO_x, SO₂, and PM-10 should not be limited to stack emissions, but must include *all* emissions from the Project. NSR Manual at C.35-36.

In sum, NDEP's failure to demonstrate compliance with PSD standards or increments for NO_x, PM-10, and SO₂ during permitting is unlawful.

IV. Hazardous Air Pollutants

At the current time, the public cannot adequately comment upon Barrick's application because it lacks critical monitoring and reporting information. Further, and for this reason, it is impossible to discern whether the Project has surpassed the 10tpy threshold (and is therefore a major source) for cyanide. At a minimum, the following issues must be addressed prior to re-notice to the public:

- at least one year of ambient air monitoring data from the heap leach pad both on and off site) prior to permitting;
- an estimate of the types and quantities of hazardous emissions that may be emitted;
- an analysis of the dispersion of these emissions; and,
- the environmental and human health impacts from such emissions.

NDEP has had a substantial amount of time to collect such data prior to issuance of this draft permit. In fact, over three and half years have passed since Barrick's submission of its permit application to issuance of a draft permit application for public review.

Additionally, NDEP's draft permit fails to address Barrick's continued release of, among other air pollutants, ammonia, antimony compounds, arsenic compounds, cadmium compounds, chlorine, chromium compounds, cobalt compounds, copper compounds, cyanide compounds, ethylene glycol, dioxin and dioxin like-compounds, lead compounds, mercury compounds, nickel compounds, nitric acid, selenium compounds, silver compounds, sulfuric acid, thallium

⁵ The CAA itself sets the PSD increments for PM-10 and SO₂. 42 U.S.C. §7473(b). EPA has set PSD increments for NO_x. 40 C.F.R. §52.21(c).

compounds, vanadium compounds, zinc compounds. These emissions were self-reported (and therefore likely underestimated) by the company in EPA's 2002 TRI.⁶

Further, Barrick's TRI report directly contradicts Barrick's Permit Renewal Application (November 16, 2001), Appendix 2, Table 2 where Barrick fails to provide information on, list, or even calculate the facilities hazardous air pollutants. In particular, Barrick fails to provide any information whatsoever in its permit renewal application on the hazardous air pollutants: antimony compounds, arsenic compounds, cadmium compounds, cyanide compounds, ethylene glycol, lead compounds, mercury compounds, nickel compounds, selenium compounds. Additionally, Barrick fails to provide any information on its release of regulated toxic air pollutants. In so doing, Barrick stands in violation of NAC 445B.295.2(c) which requires that the company include emissions rates of all regulated air pollutants that are subject to an emissions limitation pursuant to an applicable requirement as well as NAC 445B.295.2(e) which requires Barrick to disclose its calculations for emissions estimates. Further, Barrick is required to submit supplementary facts or corrected information upon discovery of its absence. NAC 445B.297.1(b); see also, NAC 445B.22013 ("An owner or operator shall not cause or permit the discharge into the atmosphere from any stationary source of any hazardous air pollutant or toxic regulated air pollutant that threatens the health and safety of the general public, as determined by the Director.").

At a minimum, the NDEP must fully investigate the past, current, and maximum projected releases of these pollutants (and in particular cyanide, sulfuric acid, ammonia, chlorine, and mercury). The NDEP must conduct independent monitoring, analysis and verification of Barrick's self-reported hazardous emission estimates in order to adequately and objectively estimate the emissions of hazardous pollutants from the facility.

The lack of any actual emissions data on hazardous pollutants from the heap leach pad (and for cyanide and ammonia in particular), and the lack of any satisfactory monitoring of actual hazardous and toxic emissions from the Project by the NDEP, demands that the Barrick's renewal be sent back to Barrick with requirements for monitoring and review of all potential hazardous emissions.

V. NDEP Has Failed to Demonstrate Barrick's Compliance With the PM 2.5 NAAQS

Because of the level of fine particulate emissions, NDEP must demonstrate compliance with the NAAQS for PM 2.5. On December 17, 2004, EPA took final action to designate attainment and nonattainment areas under the more protective national air quality standards for fine particles (PM 2.5). 40 C.F.R. §81.300. NDEP has failed to demonstrate that Barrick will comply with the NAAQS for PM 2.5. See e.g., NAC 445B.316 (NDEP regulations require that

⁶ On April 7, 2005, Justin Hayes, Program Director from the Idaho Conservation League, was forwarded a technical review document dated February, 2005 which purposed to provide the "Potential HAP Emissions by Emissions Type and Pollutant." According to Matthew DeBurle of NDEP however, "we are unable to determine whether that was developed by or in conjunction with Barrick." Regardless, it is clear that Barrick's HAP emissions have not been appropriately estimated or monitored by the agency, and thereafter been provided for public review.

Class I operating permit must include all applicable requirements and “include emissions limitations and standards, including those operation requirements and limitations that ensure compliance with all applicable requirements at the time of the issuance of the operating permit.”).

VI. Failure to Provide Any Modeling or Emissions Distribution/Calculation Data To The Public

NDEP has failed to provide any modeling or emissions distribution data and/or demonstrate how its emissions calculations were arrived upon. According to the company, “Barrick does not believe that ambient air quality modeling is required or appropriate element of a Title V renewal application.” Barrick Renewal Application (November 16, 2001) at 2. Barrick’s rationale for not conducting modeling is that (1) the application “does not involve any modifications; and (2) if Barrick “‘failed’ a new modeling analysis in some respect” NDEP would not be in a position to deny Barrick’s permit renewal. Id. Here, Barrick’s assertion that its Application does not involve modifications is directly contradicted by page 1 of the Barrick’s Renewal Application where the company states that Barrick’s application “incorporate[s] the three minor modifications that are currently pending NDEP review.” Id. Further, Barrick has misstated the law in this regard. See, NAC 445B.308.

However, that said, Citizens do note that Appendix 8 to Barrick’s permit does contain “a modeling analysis to assess the ambient air impacts of criteria pollutant emissions from the facility.” Id. at Appendix 8, page 1. Unfortunately, no data was provided by the company sufficient to determine that validity of Barrick’s ISCST dispersion modeling results (in other words, no inputs were provided). Further, it is not clear if Barrick considered emissions from *on-site* mobile sources. Additionally, fugitive emissions are not excluded in determining whether a source complies with a NAAQS. See, NAC 445B.22097; NAC 445B.210.

Here, it is not clear whether Barrick “will prevent the attainment and maintenance of the state or national ambient air quality standards.” NAC 445B.308.2(a). For this reason, Citizens respectfully request that NDEP make such information available to the public prior to finalization of Barrick’s draft permit.

VII. Potential Compliance Issues

Barrick indicates in its Permit Renewal Application at 7 that Barrick, as of July 5, 2001, was subject to Compliance Order (2002-01). The Compliance Order was not provided as part of the permit application nor with the draft permit. It is not clear whether Barrick is still subject to this order and/or has substantially complied with this order. Given that over three years have passed since submission of Barrick’s Permit Renewal Application, NDEP should disclose and make public the status and Barrick’s compliance with this Order as part of the permit renewal process.

Further, neither Barrick’s application nor the draft permit discusses Barrick’s potential compliance issues. In a memorandum dated June 11, 2002 from Michael Yamada to Corey-Lynn Ken outlining “Barrick Goldstrike Potential Compliance Issues”, multiple permit

deviations were reported by Barrick on June 29, September 7, and November 6 of 2001. None of these compliance issues were disclosed by Barrick as part of its Permit Renewal Application (November 16, 2001). See, NAC 445B.295.2(h)(l)(which require a narrative description of the compliance status of the stationary source with respect to all applicable requirements). Barrick's failure to disclose and NDEP's failure to address these issues is unlawful. All compliance issues must be fully disclosed and addressed, and appropriate compliance plans required, prior to issuance of a final permit.

VIII. NDEP Failed To Act on Barrick's Class I Permit In A Timely Manner And Have Thereby Prejudiced The Public's Review

Barrick's Class I permit renewal was submitted to the agency in November of 2001. A draft permit was not made available for public review until March of 2004. This constitutes a three year time span. Obviously, NDEP does not have the wherewithal or capacity to process such permits in a timely manner. This is especially troubling where, as here, Citizens have raised substantial concerns with Barrick's compliance with Federal and state law in the context of renewal of an operating permit for the Project with modifications. Essentially, NDEP, by failing to process and make public Barrick's draft operating permit in a timely fashion, has allowed Barrick to continue to pollute unchecked pursuant to an expired permit over a three year period in the absence of public scrutiny. This is unacceptable from a public health standpoint.

State law requires that "within 180 days after the official date of submittal of an application for a Class I operating permit or for the revision of a Class I operating permit, the Director shall make a preliminary determination to issue or deny the Class I operating permit or the revision of the Class I operating permit. The Director shall give preliminary notice of his intent to issue or deny the Class I operating permit or the revision of the Class I operating permit within 180 days after the official date of submittal." NAC 445B.3395 Thereafter, "[t]he Director's review and preliminary intent to issue or deny a Class I operating permit or the revision of a Class I operating permit and the proposed conditions for the Class I operating permit must be made public and maintained on file with the Director during normal business hours at 333 West Nye Lane, Carson City, Nevada, and in the air quality region where the source is located for 30 days to enable public participation and comment and a review by any affected states." Id.

Here, NDEP has been, to say the least, extreme in its delinquency in facilitating open public review and participation in issuance of a operating permit renewal for Barrick. In so doing, NDEP has prejudiced the public and its ability to timely participate in agency decisionmaking. Further, because of NDEP's delinquency, Citizens' concerns are likely not to be addressed in any significant capacity for months or perhaps years—on top of the three years which has already lapsed. For this reason, Citizens recommend that NDEP relinquish or EPA withdraw NDEP's permitting authority and/or that EPA provide stronger and more meaningful supervisory oversight.

Conclusion

Barrick's Draft Renewal Permit and permit application fails to provide basic information to the public, provide adequate monitoring data for hazardous and toxic pollutants, and/or comply with Federal and state law. For the reasons outlined above, NDEP should withhold issuing a renewal permit to Barrick at this time until the above outlined legal requirements are achieved and other deficiencies outlined above overcome.

Respectfully submitted,

/s/ Brad A. Bartlett

Roger Flynn, Managing Attorney
Brad A. Bartlett, Of Counsel
Western Mining Action Project

**Counsel for Great Basin Mine Watch and
Earthworks**

Copy: Ms. Debbie Jordan, EPA Region IX Air Program Director