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9/25/2025

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**U.S. EPA REGION 8
HEARING CLERK**



REGION 8

DENVER, CO 80202

IN THE MATTER OF:

Kennecott Utah Copper LLC

Respondent.

Docket No. CAA-08-2025-0004

CONSENT AGREEMENT

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, as codified at 40 C.F.R. part 22.
2. Kennecott Utah Copper LLC (Respondent) owns or operates the Kennecott Utah Copper LLC, Smelter and Refinery, located at 11600 West SR201, Magna, Utah 84044 (Facility).
3. The EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this Consent Agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.
4. This Agreement alleges that Respondent has violated the chemical accident prevention provisions in 40 C.F.R. part 68, promulgated pursuant to section 112(r)(7) of the Clean Air Act (CAA), 42 U.S.C. § 7412(r)(7), and that Respondent is therefore in violation of section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This Agreement also serves as notice pursuant to section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. 22.34, of the EPA's intent to issue an order assessing penalties for these alleged CAA section 112(r)(7) violations.

II. JURISDICTION

5. This Agreement is issued under the authority vested in the Administrator of the EPA by section 113(d) of the CAA, 42 U.S.C. § 7413(d). The undersigned EPA official has been duly authorized to institute this action.

6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for administrative penalty assessment. 42 U.S.C. § 7413(d), 40 C.F.R. § 19.4.
7. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
8. The Final Order approving this Agreement simultaneously commences and concludes this proceeding for the assessment of monetary penalties, pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d). 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

9. The Administrator is authorized to promulgate regulations regarding the prevention and detection of accidental releases of certain regulated substances under section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). The Administrator is required to promulgate regulations requiring the owners of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan (RMP) to prevent or minimize risks of accidental releases of those regulated substances under section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B). The regulations, promulgated by the EPA pursuant to section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), are set forth in 40 C.F.R. part 68.
10. The term “owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).
11. The term “person” is defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e), as including an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.
12. The term “regulated substance” is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to section 112(r)(3) of the CAA as amended, in § 68.130.
13. The term “stationary source” is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations, or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

IV. STIPULATED FACTS

14. Respondent is a limited liability company authorized to do business in the state Utah and is therefore a “person” and subject to regulation under section 302(e) of the CAA, 42 U.S.C. § 7602(e).

15. Respondent is the "owner or operator" of the Facility, within the meaning of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).
16. The Facility is a "stationary source" pursuant to section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3.
17. Respondent submitted an RMP for the Facility that states the Facility uses, handles, and/or stores as much as 7,810 pounds of sulfur dioxide (anhydrous), which is a regulated substance with a threshold quantity of 5,000 pounds, as specified at 40 C.F.R. §§ 68.115 and 68.130.
18. Each process in which a regulated substance is present in more than a threshold quantity, is a covered process subject to one of three risk management programs. Program 1 is the least comprehensive, and Program 3 is the most comprehensive.
19. Pursuant to 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 requirements if the process does not meet the eligibility requirements of Program 1, as described in 40 C.F.R. § 68.10(b) and it either falls under a specified North American Industry Classification System code or is subject to the Occupational Safety and Health Administration process safety management standard, 29 C.F.R. § 1910.119.
20. Respondent's RMP describes a covered process, furnace off gas handling, that is subject to Program 3 requirements.
21. Pursuant to section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), Respondent is required to prepare and implement a risk management program to detect and prevent or minimize accidental release of the substances identified in Respondent's RMP submittal as described in paragraph 17, above.
22. Respondent submitted the initial RMP for the Facility on or about June 24, 1999.
23. Pursuant to 40 C.F.R. § 68.150, Respondent submitted a revised and updated RMP for the Facility on or about August 7, 2014.
24. Pursuant to 40 C.F.R. § 68.150, Respondent submitted a revised and updated RMP for the Facility on or about October 29, 2020.
25. On July 25, 2022, and July 26, 2022, authorized representatives of the EPA conducted an inspection of the Facility to assess compliance with section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. part 68 (Inspection).
26. During the Inspection, the EPA representatives observed alleged violations of section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. part 68. The alleged violations identified by authorized representatives of the EPA during the Inspection are described in Section V of this Agreement, below.

V. ALLEGED VIOLATIONS OF LAW

27. The owner or operator shall list in the RMP environmental receptors within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in § 68.22(a) of this part. 40 C.F.R. § 68.33(a). The term “environmental receptor” is defined as natural areas such as national or state parks, forests, or monuments; officially designated wildlife sanctuaries, preserves, refuges, or areas; and Federal wilderness areas, that could be exposed at any time to toxic concentrations, radiant heat, or overpressure greater than or equal to the endpoints provided in § 68.22(a), as a result of an accidental release and that can be identified on local U.S. Geological Survey maps. 40 C.F.R. § 68.3. The Great Salt Lake State Park is located within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in 40 C.F.R. § 68.22(a). EPA alleges Respondent’s failure to include the Great Salt Lake State Park in the October 29, 2020 RMP, is a violation of 40 CFR 68.33(a).
28. The owner or operator of a stationary source shall revise and update the RMP submitted under 40 C.F.R. § 68.150 as follows: (1) At least once every five years from the date of its initial submission or most recent update required by paragraphs (b)(2) through (b)(7) of this section, whichever is later. 40 CFR § 68.190(b)(1). Following Respondent’s August 7, 2014 RMP submission, described in paragraph 23 above, Respondent’s revision and update of the RMP was due on or before August 7, 2019. Respondent did not submit an RMP revision and update until October 29, 2020. EPA alleges Respondent’s failure to update the Facility’s RMP on or before August 7, 2019, is in violation of 40 CFR § 68.190(b)(1).
29. The owner or operator shall provide in the RMP an executive summary that includes a brief description of the five-year accident history. 40 C.F.R. § 68.155(d). On October 29, 2020, Respondent submitted an RMP revision and update, but failed to include the October 8, 2017, sulfur dioxide gas incident in both the five-year accident history and executive summary. EPA alleges Respondent’s failure to include this gas incident in both the five-year accident history and executive summary of the October 29, 2020 RMP is a violation of 40 C.F.R. § 68.155(d).
30. The owner or operator shall perform an initial process hazard analysis on processes covered by part 68, which shall be updated and revalidated by its process hazard analysis team, to assure that the process hazard analysis is consistent with the current process. 40 C.F.R. § 68.67(f). The owner or operator shall establish a system to promptly address the process hazard analysis team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions. 40 C.F.R. § 68.67(e). In 2020, Respondent’s process hazard analysis team conducted the 2020 acid plant

process hazard analysis. At the time of the Inspection, Respondent failed to document the resolution of the following recommendations: 823616 (level switches to the mass flow interlocks of both furnaces), 824135 (equipment labeling in the acid plant), and 824136 (mock drill in the acid plant). EPA alleges Respondent's failure to document the resolution of these recommendations from the 2020 acid plant process hazard analysis, is in violation of 40 C.F.R. § 68.67(e).

31. The owner or operator shall review operating procedures as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. EPA alleges Respondent's failure to certify the hot metals and byproducts operating procedures and the acid plant operating procedures in 2020 is in violation of 40 CFR § 68.69(c).
32. The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience. 40 CFR §68.73(d)(3). EPA alleges Respondent's failure to conduct 33 inspections and tests on temperature and pressure transmitters on or before July 22, 2022, is in violation of 40 CFR §68.73(d)(3).
33. The owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test. 40 CFR § 68.73(d)(4). EPA alleges Respondent's failure to include the dates of each inspection or test, the name of the person who performed each inspection or test, the serial number or other identifier of the equipment on which each inspection or test was performed, a description of each inspection or test performed, and the results of each inspection or test for the acid plant drying tower inspection is in violation of 40 CFR § 68.73(d)(4).
34. The owner or operator shall develop and implement an emergency response program that includes procedures for the use of emergency response equipment and for its inspection, testing and maintenance. 40 CFR § 68.95(a). In 2021, Respondent failed to inspect and test its self-contained breathing apparatus equipment in accordance with the National Fire Protection Association 1852 section 7.5.1. standard. EPA alleges Respondent's failure to implement procedures for the annual inspection and testing of emergency response self-contained breathing apparatus equipment is in violation of 40 CFR § 68.95(a).

VI. TERMS OF CONSENT AGREEMENT

35. For the purpose of this Agreement, Respondent:
- a. admits the jurisdictional allegations in section II of this Agreement;
 - b. neither admits nor denies the factual stipulations and allegations stated in sections IV and V of this Agreement;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the conditions specified in this Agreement;
 - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - f. waives any right to contest any Final Order approving this Agreement; and
 - g. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.
36. The Administrator may issue an administrative order under section 113(d) of the CAA, 42 U.S.C. § 7413(d) against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations, limited to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Such a determination was made as stated in paragraph 6, above.
37. Pursuant to section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and as adjusted by the transmittal of the Civil Monetary Penalty Inflation Adjustment, 88 Federal Register 1375 (January 8, 2025), and 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$59,114 per violation per day of violation occurring after November 2, 2015, where penalties are assessed on or after January 8, 2025.
38. Pursuant to section 113(e) of the CAA, 42 U.S.C. § 7413(e), the EPA is required to consider, in addition to such other factors as justice may require, to the extent known, the size of Respondent's business, the economic impact of the penalty on the business, the Respondent's full compliance history and good faith efforts to comply,

the duration of the violations as established by any credible evidence, payment by the Respondent of penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violations.

39. Based on the Alleged Violations of Law, and after consideration of the statutory factors in paragraph 36 above, the EPA has determined a civil penalty of \$211,351 is appropriate to settle this matter.
40. Penalty Payment. Respondent agrees to pay a civil penalty in the amount of \$211,351 within 30 calendar days of the effective date of this Agreement.
41. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. However, for any payments made after September 30, 2025, and in accordance with the March 25, 2025 Executive Order on Modernizing Payments To and From America's Bank Account, Respondent shall pay using one of the electronic payments methods listed on EPA's How to Make a Payment website and will not pay with a paper check.
42. When making a payment, Respondent shall:
 - a. identify every payment with Respondent's name and the docket number of this Agreement, concurrently with any payment or within 24 hours of any payment, Respondent shall email proof of such payment to the following person(s):

Attn: Daniel Webster
U.S. Environmental Protection Agency, Region 8
via electronic mail to: webster.daniel@epa.gov

and

Attn: Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
via electronic mail to: R8_Hearing_Clerk@epa.gov
 - b. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the docket number that appears on the Final Order and Respondent's name.

43. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, the EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.
- a. Interest. Interest begins to accrue from the effective date. If the Assessed Penalty is paid in full within 30 days, interest accrued is waived. If the Assessed Penalty is not paid in full within 30 days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the Internal Revenue Service (IRS) standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
 - b. Handling Charges. Respondent will be assessed monthly a charge to cover the EPA's costs of processing and handling overdue debts including, but not limited to, attorneys' fees and costs of handling collection. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, the EPA will assess a charge to cover the costs of handling any unpaid amounts for the first 30-day period after the effective date. Additional handling charges will be assessed every 30 days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
 - c. Late Payment Penalty. A late payment penalty of six percent per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than 90 days. Any such amounts will accrue from the effective date.
44. Late Penalty Actions. In addition to the amounts described in the prior paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14;
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, subparts C and H;

- c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17; and
 - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.
45. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
46. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes. *See* Internal Revenue Code, 26 U.S.C. § 162(f).
47. Respondent agrees and certifies, by signing the Agreement, that the Facility is in full compliance with section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).
48. The EPA and Respondent consent to service of the Final Order by e-mail at the following valid e-mail addresses: Daniel Webster, Enforcement Officer at webster.daniel@epa.gov (for Complainant), and Nate Foster, Managing Director at nate.foster@riotinto.com (for Respondent) understands that these e-mail addresses may be made public when the Agreement and Certificate of Service are filed and uploaded to a searchable database.
49. Except as qualified by paragraph 43 (overdue penalty), each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
50. Respondent specifically waives any right to recover such costs from the EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.
51. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
52. By signing this Agreement, Respondent acknowledges that this Agreement will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.
53. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents.

54. By signing this Agreement, both the EPA and Respondent agree that each party's obligations under this Agreement and the EPA's compromise of statutory maximum penalties constitute sufficient consideration for the other party's obligations.
55. By signing this Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Agreement.
56. By signing this Agreement, Respondent certifies that the information they have supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

VII. ADDITIONAL PROVISIONS

57. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the IRS annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Respondent herein agrees, that:
 - a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
 - b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
 - c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at chalifoux.jessica@epa.gov, within 30 days after the effective date of the Final Order, and the EPA recommends encrypting IRS Form W-9 email correspondence; and

- d. If Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the effective date of the Final Order; and
 - ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five days of Respondent's issuance and receipt of the TIN.

VIII. EFFECT OF CONSENT AGREEMENT

- 58. Full payment of the penalty proposed in this Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein.
- 59. Any violation of this Agreement, and subsequently issued Final Order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of up to \$59,114 per day for each violation, as provided in section 113(b), 42 U.S.C. § 7413(b) and adjusted for inflation pursuant to 40 C.F.R. part 19. The EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
- 60. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
- 61. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
- 62. If and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, EPA reserves any and all of its legal and equitable rights.

IX. EFFECTIVE DATE

63. This Agreement shall become effective on the date the Final Order, approving the Agreement, is filed by the Regional Hearing Clerk.

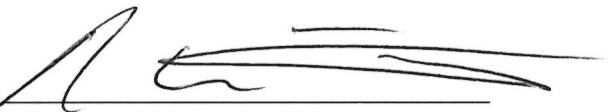
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.

Date: _____

By: _____
Scott Patefield, Branch Manager
Air and Toxics Enforcement Branch,
Enforcement and Compliance Assurance
Division

KENNECOTT UTAH COPPER LLC
Respondent.

Date: 9/24/25

By: 
Nate Foster, Managing Director