

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

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HEARINGS CLERK  
EPA -- REGION 10

In the matter of: )  
)  
)  
) DOCKET NO. CWA-10-2010-0005  
Kinross DeLamar Mining Company )  
DeLamar & Stone Cabin Mines )  
Jordan Valley, Oregon )  
)  
)  
) CONSENT AGREEMENT AND  
Respondent. )  
)  
\_\_\_\_\_ )

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegate this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B), 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and Kinross DeLamar Mining Company (“Respondent”) hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Part III of this CAFO contains a concise statement of the factual basis for the alleged violations of the CWA, together with specific provisions of the CWA that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. Kinross DeLamar Mining Company (“Kinross”) is a corporation registered under the laws of the State of Idaho and thus is a “person” as defined in Section 502 (5) of the CWA, 33 U.S.C. § 1362(5).

3.2. Respondent has day-to-day operational control of the activities at the DeLamar and Stone Cabin Mines (“Site”) necessary to ensure compliance with EPA’s Stormwater Multi-Sector General Permit (“MSGP”). As such, Respondent is an operator under the MSGP.

3.3. The Site consists of approximately 2,014 acres of real property. The Site is located on 1 DeLamar Rd, DeLamar, Idaho in Owyhee County.

3.4. Storm water discharges from the Site flow into tributaries to the Owyhee River including; Cabin Gulch, Louse Creek, and Jordan Creek, among others.

3.5. Cabin Gulch flows into Louse Creek, which flows into Jordan Creek which flows into the Owyhee River, which flows into the Snake River, which flows into the Columbia River, which flows into the Pacific Ocean.

3.6. Cabin Gulch, Louse Creek, Jordan Creek, the Owyhee River and the Snake River and the Columbia River are “navigable waters” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and “waters of the United States” as defined in 40 C.F.R. §§ 122.2.

3.7. As the operator of the industrial site that discharges storm water into waters of the United States, Respondent is required to obtain coverage under an NPDES permit before discharging storm water. Respondent renewed its permit coverage on June 3, 2009 under the reissued MSGP. Respondent was issued MSGP Tracking No. IDR05C177.

3.8. On June 8, 2009, EPA conducted an inspection of the Site. During the inspection, EPA documented a discharge of sediment from the clay borrow pit to Cabin Gulch and Louse Creek.

3.9. On June 8, 2009, and for at least two days prior, Respondent failed to stabilize exposed areas and contain runoff sedimentation and the resulting discharge of pollutants as required in Section 2.1.2.5 of the MSGP. Respondent discharged water containing sediment, among other pollutants, from the clay borrow pit at the Site via Cabin Gulch.

3.10. On June 8, 2009, and for at least two days prior, Respondent failed to manage runoff as required in Section 2.1.2.6 of the MSGP. Respondent discharged water containing sediment, among other pollutants, from the clay borrow pit at the Site via Cabin Gulch.

3.11. By discharging the water from the clay borrow pit into waters of the United States, Respondents engaged in the "discharge of pollutants" from a point source within the meaning of Sections 301(a) and 502(12) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(12).

3.12. The violations described in Paragraphs 3.9 and 3.10 above constitute violations of permit conditions or limitations in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and subject Respondent to penalties.

3.13. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, Respondent is liable for civil penalties not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum amount of \$177,500.

#### **IV. CONSENT AGREEMENT**

4.1. Respondent stipulates that for the purpose of this proceeding EPA has jurisdiction over the subject matter alleged herein.

4.2. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations and to appeal the Final Order set forth in Part V, below.

4.3. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.4. Respondent voluntarily enters into this CAFO to resolve the allegations made against it in this CAFO and to avoid the uncertainty and expense of contesting those allegations. The Parties agree that the factual allegations against Respondent and any legal conclusions in this CAFO shall not be deemed an admission in any future proceeding and that Respondent maintains the right to contest those allegations and conclusions in any future proceeding, except in any proceeding to enforce the terms of this CAFO.

4.5. As required under CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is in the amount of Thirty Five Thousand Dollars (\$35,000).

4.6. Respondent consents to issuance of the Final Order set forth in Part V, below, and agrees to pay the total civil penalty set forth in Paragraph 4.5, above, within thirty (30) days of the effective date of the Final Order.

4.7. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and delivered to the following address:

CONSENT AGREEMENT AND FINAL ORDER - 4  
DOCKET NO. CWA-10-2010-0005

**U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
(206) 553-1142**

U.S. Environmental Protection Agency  
Region 10  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Respondent shall note on the check the title and docket number of this action.

4.8. Respondent shall serve photocopies of the check described in Paragraph 4.7, above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and Enforcement at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Suite 900, ORC-158  
Seattle, WA 98101

U.S. Environmental Protection Agency  
Region 10 Idaho Office  
Attn: Maria Lopez  
1435 N. Orchard St.  
Boise, Idaho 83706

4.9. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.6, above, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If Respondent fails to pay the penalty assessed, Respondent may be subject to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

4.10. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.6, above, Respondent shall be responsible for payment of the amounts described below:

CONSENT AGREEMENT AND FINAL ORDER - 5  
DOCKET NO. CWA-10-2010-0005

**U.S. Environmental Protection Agency**  
**1200 Sixth Avenue, Suite 900**  
**Seattle, Washington 98101**  
**(206) 553-1142**

4.11.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, below, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.11.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the amount of the penalty set forth in Paragraph 4.5, above, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondents' penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

The penalty described in Paragraph 4.5, above, including any additional costs incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.12. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

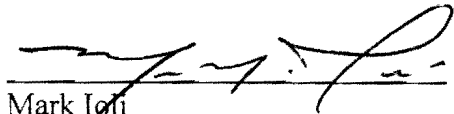
4.13. Except as described in Paragraph 4.11.2, above, each party shall bear its own costs and attorney fees in bringing or defending this action.

4.14. The provisions of this CAFO shall bind each Respondent and its agents, servants, employees, successors and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA.

STIPULATED AND AGREED:

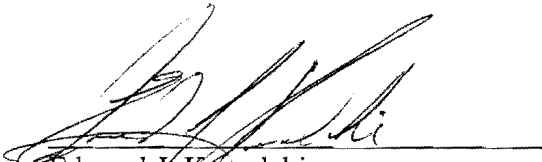
KINROSS DELAMAR MINING COMPANY



Mark Ioffi  
Vice President/General Manager  
Reclamation Operations  
Kinross Gold USA, Inc.

Dated: January 28, 2010

U.S. ENVIRONMENTAL PROTECTION AGENCY



Edward J. Kowalski  
Director, Office of Compliance and  
Enforcement

Dated: 2/5/10

#### V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the settlement.

5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III, above. In accordance with 40 C.F.R.

§ 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA, applicable CWA regulations, and/or any permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice of its intent to assess an administrative penalty against Respondent and to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days have elapsed since the issuance of this public notice, and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 25<sup>th</sup> day of March, 2010.



THOMAS M. JAHNKE  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10



CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Kinross DeLamar Mining Company, DOCKET NO.: CWA-10-2010-0005** was filed with the Regional Hearing Clerk on March 26, 2010.


On March 26, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:

Mark Ryan, Esquire  
Idaho Operations Office  
1435 North Orchard Street  
Boise, ID 83706

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on March 26, 2010, to:

Mark Ioli  
Vice President/General Manager  
Reclamation Operations  
Kinross Gold USA, Inc.  
670 Sierra Rose Drive  
Reno, NV 89511

DATED this 26<sup>th</sup> day of March 2010.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10