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From: Jane Foreman [mailto:Jane.Foreman@kinross.com]

Sent: Wednesday, October 29, 2008 12:32 PM

To: zzMSHA-Standards - Comments to Fed Reg Group

Cc: Bob Taylor; Greg Etter; Jack Cottrell; Rick Baker; Ty Metcalf;
bwatzman@nma.org

Subject: Alcohol - and Drug-Free Mines

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AB41-COMM-110

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27 October 2008

Mine Safety and Health Administration
Office of Standards, Regulations and Variances
1100 Wilson Boulevard
Room 2350
Arlington, Virginia
22209-3939

Via email: zzMSHA-comments@dol.gov

Re: RIN 1219-AB41

Dear Sirs and Madams:

Please accept these comments of Kinross Gold U.S.A., Inc. ("Kinross") upon the proposed rule regarding Alcohol- and Drug-Free Mines published in the Federal Register 8 September 2008 (the "Proposed Rule"). Kinross is a gold mining company that operates three mines in the United States which together employ over one thousand (1,000) employees. Kinross operates its mines based upon the Kinross Values of: 1) Putting People First; 2) Outstanding Corporate Citizenship; 3) High Performance Culture; and 4) Rigorous Financial Discipline. These Values drive Kinross' commitment to safety. Kinross' commitment to safety has resulted in a superior safety record and the receipt of multiple safety awards, including four recent MSHA Sentinel of Safety Awards. As part of its Safety Program, Kinross has in place a comprehensive Drug and Alcohol Policy. This Drug and Alcohol Policy is part of the foundation upon which Kinross' superior safety record is built.

Kinross firmly supports MSHA's prohibition on drugs and alcohol at mine sites. We are, however, very concerned that the Proposed Rule would undermine our existing Drug and Alcohol Policy, and endanger our workforce. Our biggest concerns are: 1) the prohibition on terminating first-time drug and alcohol violators; 2) the limitation of the drug and alcohol prohibitions to "safety-sensitive" job duties; and 3) the imposition of a detailed regulatory scheme rather than requiring mine operators to develop company specific policies designed to ensure the enforcement of the prohibition on drugs and alcohol. Kinross' Drug and Alcohol Policy is applicable to all employees and testing positive is grounds for termination. We do not believe that any lesser standard would be consistent with our Values and our commitment to protecting the safety of our workforce. We urge that MSHA prohibit drugs and alcohol at mine sites and mandate that mine operators have in place policies to enforce this prohibition, but leave the development of the policies to the mine operators, who are in the best position to develop and enforce effective policies tailored to their individual sites and workforces. In any event, we strongly urge MSHA to allow mine operators to enforce workplace policies and rules that are more protective of worker safety than any minimum standards that may be required by regulation.

As set forth above, our primary concern with the Proposed Rule is that it would not allow mine operators to enforce policies and rules that are more protective of worker safety than the standards dictated by the Proposed Rule. This concern is shared by the National Mining Association and the Nevada Mining Association. We are also generally supportive of the additional points made in the comments of these Associations.

Sincerely,



Rick Baker

cc: Bob Taylor
Greg Etter
Ty Metcalf
Jack Cottrell
Bruce Watzman (NMA)

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, and 66

[1219-AB41]

Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance

AGENCY: Mine Safety and Health Administration (MSHA), Labor

ACTION: Proposed rule.

SUMMARY: The proposed rule would replace the existing metal and nonmetal standards for the possession and use of intoxicating beverages and narcotics and establish a standard for all mines. The proposed rule would designate the substances that cannot be possessed on mine property or used while performing safety-sensitive job duties, except when used according to a valid prescription. Mine operators would be required to establish an alcohol- and drug-free mine program, which includes a written policy, employee education, supervisory training, alcohol- and drug-testing for miners that perform safety-sensitive job duties and their supervisors, and referrals to assistance for miners who violate the policy. The proposed rule would also require those who violate the prohibitions to be removed from the performance of safety-sensitive job duties until they complete the recommended treatment and their alcohol- and drug-free status is confirmed by a return-to-duty test.

DATES: All comments must be received by midnight eastern standard time on October 9, 2008.

ADDRESSES: Comments must be clearly identified with "RIN 1219-AB41" and may be sent by any of the following methods:

- (1) **Federal e-Rulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- (2) **Electronic mail:** zmsaha-comments@dol.gov. Include "RIN 1219-AB41" in the subject line of the message.
- (3) **Facsimile:** 202-693-9441. Include "RIN 1219-AB41" in the subject line of the message.
- (4) **Regular Mail:** MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939.
- (5) **Hand Delivery or Courier:** MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

Comments can be accessed electronically at <http://www.msha.gov> under the *Rules and Regs* link. MSHA will post all comments on the Internet without change, including any personal information provided. Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when rulemaking documents are published in the *Federal Register*. To subscribe, go to <http://www.msha.gov/subscriptions/subscribe.aspx>.

Information Collection Requirements: Comments concerning the information collection requirements of this proposed rule must be clearly identified with "RIN 1219-AB41" and sent to both the Office of Management and Budget (OMB) and MSHA. Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503. Attn: Desk Officer for MSHA. Comments to MSHA may be transmitted either electronically to zmsaha-comments@dol.gov, by facsimile to (202) 693-9441, or by regular mail, hand delivery, or courier to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209-3939.

FOR FURTHER INFORMATION CONTACT: Elena Carr at carr.elena@dol.gov (E-mail), 202-693-5950 (Voice).

SUPPLEMENTARY INFORMATION: The outline of this proposal is as follows:

- I. Introduction
- II. Background
- III. Discussion of the Proposed Rule
 - A. Nature, Extent, and Impact of the Problem
 - B. Effective Strategies for Addressing Alcohol and Drug Problems in Mining
 - C. Basis of Proposal
- IV. Section-by-Section Discussion
- V. Executive Order 12866
 - A. Population at Risk
 - B. Benefits
 - C. Compliance Costs
 - D. Feasibility
- VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act
 - A. Definition of a Small Mine
 - B. Factual Basis for Certification
- VII. Paperwork Reduction Act
- VIII. Other Regulatory Considerations
 - A. The Unfunded Mandates Reform Act of 1995
 - B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

- C. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights
- D. Executive Order 12988: Civil Justice Reform
- E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- F. Executive Order 13132: Federalism
- G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking
- IX. Proposed Rule

I. Introduction

The Mine Safety and Health Administration's (MSHA) mission is to administer and enforce the provisions of the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended by the Mine Improvement and New Emergency Response Act of 2006 (MINER Act), and includes promoting improved safety and health conditions in the nation's mines. Under the Mine Act, MSHA is required to develop improved mandatory safety and health standards for coal and metal/nonmetal mines. The misuse of alcohol and/or drugs is a risk to miner safety. Because mining is inherently dangerous, MSHA is proposing a standard to address this risk.

Currently, MSHA's mine accident investigations do not routinely include inquiries into the use of alcohol or drugs as contributing factors. Consequently, there may have been accidents in which alcohol or drugs were involved but were not reported to inspectors or identified during MSHA investigations. A preliminary review of fatal and non-fatal mine accident records revealed a number of instances in which alcohol or drugs or drug paraphernalia were found or reported, or where the post-accident toxicology screen revealed the presence of alcohol or drugs.

The U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration's (SAMHSA) 2006 National Survey on Drug Use and Health¹ reports that in 2006, of the 17.9 million illicit drug² users age 18 and

¹ The 2006 National Survey on Drug Use and Health (NSDUH) is the annual survey and primary source of information on the use of illicit drugs, alcohol, and tobacco in the civilian, non-institutionalized population of the United States aged 12 years or older.

² The survey defined current illicit drug use as the non-medical use of marijuana/hashish, cocaine (including crack), heroin, hallucinogens, inhalants,