

1 interrogatories submitted in United States District Court in *County of Santa Clara v. Myers*
2 *Industries, Inc. et al.*, Case No. C-92 20246 JW (PVT). (Interrogatories)¹

3 The relevant Responses in the Interrogatories are 1 and 2, which provide:

4 RESPONSE TO INTERROGATORY NO. 1:

5 Sun Company, Inc. admits that it is the successor in interest to Cordero Mining Company.

6 RESPONSE TO INTERROGATORY NO. 2:

7 Cordero Mining Company, a Nevada corporation, was dissolved on November 18, 1975.

8 At the time of dissolution, a subsidiary of Sun Company, Inc. was the sole shareholder of
9 Cordero Mining Company. This subsidiary was subsequently spun-off to the shareholders
10 of Sun Company, Inc. on November 1, 1988 as part of a corporate restructuring, although
11 Sun Company, Inc. retained responsibility for the liabilities of Cordero Mining Company.

12 Sun Company, Inc. admits that it is the successor in interest to Cordero Mining Company.

13 In prior briefing, Sunoco has indicated that Sun Company, Inc. changed its name to Sunoco, Inc. in
14 1998 (*Sunoco, Inc.'s Petition for Review and Rescission of Cleanup and Abatement Order No. R5-*
15 *2013-0701* at 6:4-5).

16 The party responding to the Interrogatories is Sun Company, Inc. The Interrogatories
17 provide information about Cordero's mining activities at the New Almaden Mine from 1951-1953,
18 only shortly before Cordero's mining activities at the Mt. Diablo site from 1954-1956. The
19 Interrogatories identify people with knowledge of Cordero's mining activity, equipment, and the
20 production of mercury, including the former General Manager and President of Cordero and two
21 former Cordero geologists.

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24 ¹ On or about August 15, 2014, the Prosecution Team served a subpoena for records on counsel for Sunoco, which is
25 attached hereto as Exhibit A. The subpoena requested documents mentioned during the August 7, 2014 hearing by
26 Sunoco's counsel, as well as all documents that would otherwise tend to show Sunoco has expressly or impliedly
27 assumed liability for Cordero's activities. Such requests were not limited to exculpatory documents that may be
28 presented with Sunoco's rebuttal briefing. As explained in the cover letter to the subpoena, the briefing schedule
established in the Supplemental Hearing Procedures and agreed to by all parties permits the Prosecution Team to
submit the Interrogatories in support of this brief, and additional evidence, if any, that is produced pursuant to the
subpoena with its rebuttal brief. Notwithstanding Mr. Baas' comments on August 7, 2014, no documents regarding the
Interrogatories have been provided to date.

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II. Weight that Should be Given to the Interrogatories

Sunoco must be bound by its admissions made in the Interrogatories. “[W]hen discovery has produced an admission or concession on the part of the party opposing summary judgment which demonstrates there is no factual issue to be tried...,” self-serving affidavits that Sunoco may now seek to submit may be disregarded. *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21. This rule, set forth by the California Supreme Court, prevents a party opposing summary judgment from filing a declaration that purports to impeach his or her own prior sworn testimony. As stated by the California Supreme Court:

The reasons for this attitude [reliance on discovery admissions] toward the legitimate products of discovery are clear. As the law recognizes in other contexts (see Evidence Code sections 1220-1230) admissions against interest have a very high credibility value. This is especially true when, as in this case, the admission is obtained not in the normal course of human activities and affairs but in the context of an established pretrial procedure whose purpose is to elicit facts.

Id., at 22. See also *Union Bank v. Superior Court (Demetry) et al.* (1995) 31 Cal.App.4th 573.

The Interrogatories are signed by Sun Company, Inc.’s counsel, and are additionally verified by an “officer/agent of a party” to the lawsuit, signed under penalty of perjury. There are no legal objections or qualifications to Response Nos. 1 and 2; they have been reprinted here in their entirety. The Interrogatories are entitled to great weight, as “[t]here is a vast difference between written discovery admissions, which are a studied response, made under sanctions against easy denials, that occur under the division and supervision of counsel, who has full professional realization of their significance and glib, easily misunderstood answers given by a lay opponent in a deposition.” *Scalf v. D.B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1522 (internal quotations and citations omitted). The *D’Amico* rule, when properly applied, would prevent a party (Sunoco) from filing a declaration that attempts to impeach its prior testimony or admissions without additional evidence. *Scalf* at 1521-22.

III. The Interrogatories are Evidence that Sunoco Expressly Assumed Liability for Cordero’s Mining Activities

In this matter, the record does not contain a written agreement between Cordero and its

1 successor, Sun Oil Company regarding the transfer of Cordero's liabilities. Instead, Sunoco's
2 argument is that Cordero dissolved and the general rule, that companies are free to take assets
3 without taking liabilities, should apply. However, there is sufficient evidence that Sunoco
4 expressly or impliedly assumed Cordero's liabilities, and admitted that it is the successor in interest
5 in federal litigation. The language in the Interrogatories is "Sun Company, Inc. retained
6 responsibility for the liabilities of Cordero Mining Company." (Interrogatories, 2:20-21) This
7 language is broad enough to transfer all liability, including all known and unknown environmental
8 liabilities at the time of Cordero's dissolution. This position is supported by the date of Sunoco's
9 admission (1994, 18 years after Cordero's dissolution) and the context in which it was made (a
10 federal lawsuit for cleanup costs at another mine site).

11 Cases which have analyzed the language of assumption of liability agreements support this
12 conclusion. In *U.S. v. Iron Mountain Mines, Inc.* (1997) 987 F. Supp.1233, 1236, the Assignment
13 Agreement stated that Mountain Copper (the predecessor company) transferred all of its assets to
14 Stauffer (the successor company). In return, Stauffer agreed to "assume all of the liabilities and
15 contractual obligations of [Mountain Copper]." A successor to Stauffer argued that the
16 assignments only passed existing liabilities, but not unknown liabilities, such as liabilities under
17 CERCLA, which was not even enacted until 12 years after the assignments were signed. *Id.* at
18 1240. The Court disagreed, and found that courts "universally have held that language transferring
19 'all liabilities' is sufficiently broad to include known and unknown environmental liabilities. *Id.* at
20 1241. This includes the Ninth Circuit, in *Jones-Hamilton Co. v. Beazer Materials & Services, Inc.*
21 (1992) 973 F.2d 688, 693.

22 The only exception to the transfer of all liabilities when an agreement states that all
23 liabilities were transferred is where other clauses or attachments to the assumption agreement make
24 it clear that the parties did not intend to include environmental liabilities. Such examples would
25 include when transferring liabilities are explicitly enumerated in an attachment to the assumption
26 agreement (for example, when "all liabilities" is modified by a clause stating all liabilities were
27 identified on an attachment to the assignment agreement, or a balance sheet). However, courts are
28 reluctant to consider self-serving statements that the liabilities are limited when the language does
not appear in the assumption agreement itself. A clause that provided indemnification "for all

1 applicable Federal, State and local laws, ordinances, codes, rules and regulations” was not
2 ambiguous, and the party could not admit extrinsic evidence to allege that the indemnification
3 covered only with industrial health and safety laws, but not environmental laws. A declaration by
4 the company chairman seeking to limit the liability was thus properly excluded because the contract
5 was unambiguous, and not reasonably susceptible to the chairman’s interpretation. *Jones-*
6 *Hamilton*, 973 F.2d at 692-93; *see also Lee-Thomas, Inc. v. Hallmark Cards, Inc.* (2002) 275 F.3d
7 702, 705 (finding that an agreement for buyer to assume “all the liabilities of the seller existing on
8 the date of closing” and “liabilities arising solely out of the business conducted by seller prior to the
9 closing” was unambiguous and not reasonably susceptible to an argument that products liabilities
10 were not transferred).

11 Nothing in the record indicates that Sunoco limited its assumption of liabilities to any
12 particular kind of liability, such as environmental, at the time of Cordero’s dissolution or at the
13 time Sun Company Inc. admitted it was Cordero’s successor in interest. At the time of Cordero’s
14 dissolution and of Sunoco’s admission, there were liabilities to assume because of Cordero’s
15 mining activities in 1954 through 1956, even if the Water Board had not yet issued a cleanup and
16 abatement order.²

17 **IV. In the Event that the Interrogatories are Ambiguous, Sunoco’s Actions Have Been**
18 **Consistent with an Implied Agreement to Assume Liability for Cordero’s**
19 **Discharges**

20 Notwithstanding the plain language of the Interrogatories and existing doctrine that any
21 parol evidence should be excluded if the Advisory Team finds that the Interrogatories are
22 unambiguous, Sunoco’s conduct since the time of its admissions in the Interrogatories indicates an

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24 ² Sunoco’s argument that “there were no known existing liabilities for which Cordero could be held responsible related
25 to the Site prior to its dissolution in 1975” (*Sunoco, Inc.’s Petition for Review and Rescission of Cleanup and*
26 *Abatement Order No. R5-2013-0701* at 11:28-12:2) is simply false. Section 13304 was enacted in 1969, and effective
27 January 1, 1970, prior to the dissolution of Sunoco. Notwithstanding Porter-Cologné and the liability under the Water
28 Code, the 1949 Dickey Act (California Water Code Section 13000), the 1907 Public Health Act (Public Health Code,
1906 Cal.Stat. 893-94) and common law nuisance claims (*see Lind v. City of San Luis Obispo* (1895) 109 Cal. 340,
341-42; *People v. Truckee Lumber Co.* (1897) 116 Cal. 397, 400-02; and *City of Turlock v. Bristow* (1930) 103
Cal.App.750, 753-55) exposed Cordero to liability for its discharges of wastes that could potentially contaminate
waters of the State of California.

1 implied agreement to assume responsibility for Cordero's liabilities. Sunoco argues that "[d]espite
2 its non-liability as a successor to Cordero's shareholder, Sun Oil, Sunoco has been the only party to
3 cooperate in good faith with both federal and state administrative orders which have been issued
4 historically to investigate the Site." (*Sunoco, Inc.'s Petition for Review and Rescission of Cleanup
5 and Abatement Order No. R5-2013-0701* at 12:15-18). Sunoco made no objection to the EPA's
6 Unilateral Administrative Order issued in December 2008. Sunoco also complied, despite filing a
7 petition which was **later voluntarily withdrawn**, with the Regional Board's 13267 Order issued in
8 March 2009. When the Regional Board issued a revised Order to Sunoco in June 2009, it
9 responded with a petition to divide the liability among responsible parties, including Bradley
10 Mining, but it did not allege that Sunoco was not the corporate successor to Cordero. This conduct
11 is additional evidence that Sunoco at all times, until 2013 when Kennametal began to assert
12 arguments related to corporate succession, believed it was responsible for Cordero's discharges.
13 This conduct is also consistent with the only interpretation of the Interrogatories that is logical: that
14 all Cordero's liabilities were transferred to Sun Oil Company, including environmental liabilities
15 for mining activities.

16 V. Conclusion

17 The Prosecution Team's previous briefing has alleged that Sun Oil Company, and
18 eventually Sunoco, are the proper successors to Cordero, including its environmental liabilities,
19 through either a de facto merger or because it is necessary to pierce the corporate veil. Once the
20 Interrogatories were submitted into evidence, it appeared that another exception to the general rule
21 applies in this instance. To comport with the Board's Order to continue this hearing and brief the
22 matter of express or implied assumption, the Prosecution Team has articulated why the
23 Interrogatories are unambiguous and statements made by Sunoco in 1994, almost 40 years after
24 Cordero's mining activities giving rise to liability and approximately 20 years after Cordero's
25 dissolution, Sunoco should be bound by these admissions and named in the Proposed Cleanup and
26 Abatement Order.

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August 22, 2014



Julie Macedo,
Senior Staff Counsel, Office of Enforcement
State Water Resources Control Board

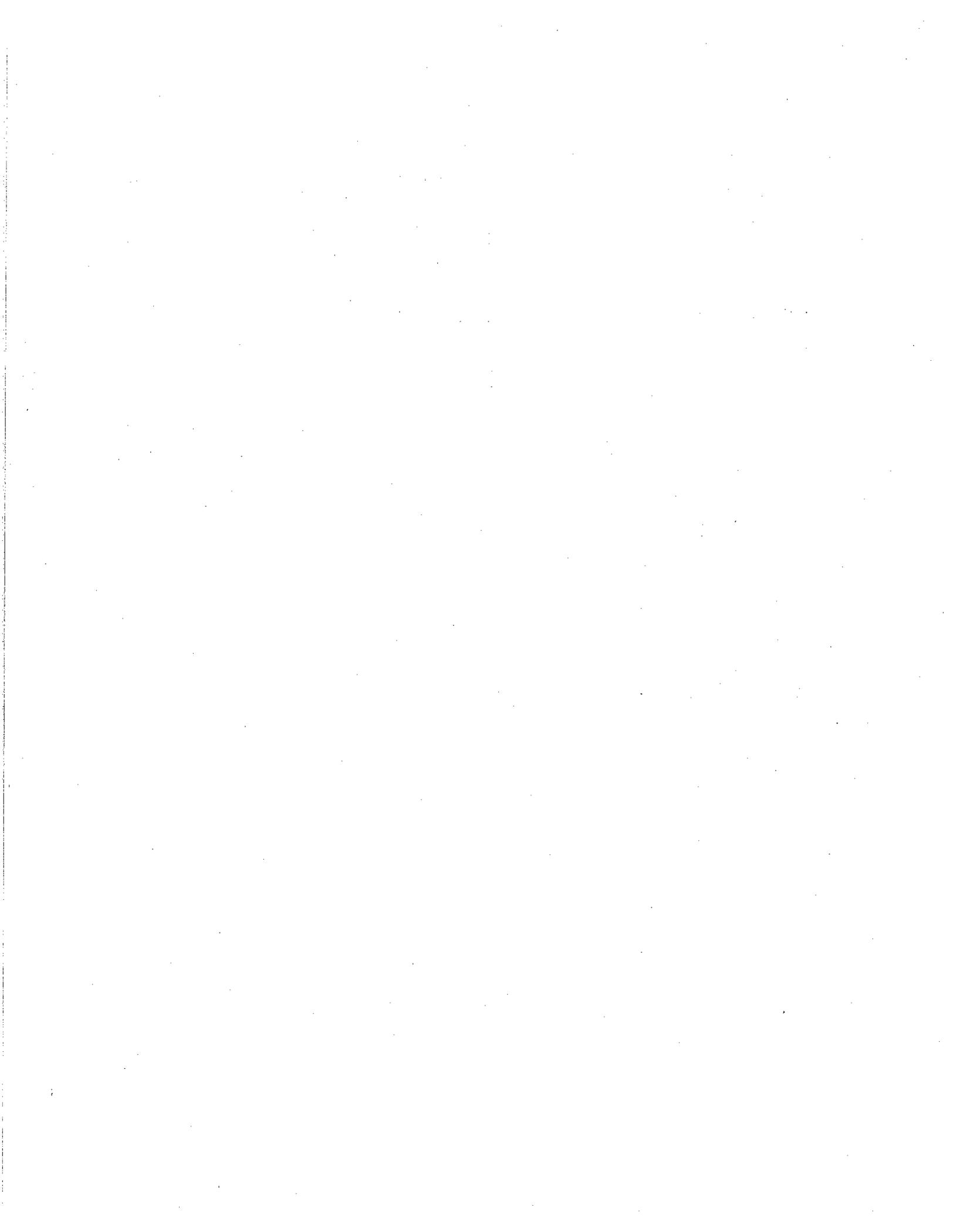


EXHIBIT A





EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

August 13, 2014

VIA PERSONAL SERVICE

Adam Baas
Edgcomb Law Group
One Post Street, Suite 2100
San Francisco, CA 94104

**RE: SUBPOENA FOR DOCUMENTS IN THE MATTER OF CLEANUP AND ABATEMENT
ORDER R5-2013-0701**

Dear Mr. Baas:

Please find enclosed a subpoena for documents and records directed to Sunoco, Inc. in the matter of Cleanup and Abatement Order (CAO) R5-2013-0701. This subpoena follows your comments at the August 7, 2014 hearing on this matter that you or Sunoco, Inc. has documents related to the "express or implied assumption" exception argument raised by the Prosecution Team of the Central Valley Regional Water Quality Control Board, but has not yet produced them, either in Sunoco's opposition to the Prosecution Team's motion to admit "Responses to First Set of Interrogatories to All Parties" submitted in *County of Santa Clara v. Myers Industries, Inc. et al.*, Case No. C92-20246 (Interrogatories) submitted on July 30, 2014, or in response to David Coupe's email ruling on July 31, 2014.

The subpoena seeks all documents regarding Sunoco's assumption of Cordero's liabilities, not just exculpatory documents that you may choose to produce. Such documents are exclusively in Sunoco, Inc.'s possession and control and as they go to a fundamental matter at issue in the hearing, we seek all relevant documents for the Board's consideration. In the draft hearing procedures, consistent with statements by the Board members, we have narrowed the items upon which additional evidence and argument may be submitted to two:

- (1) The express/implied assumption of liabilities argument; and
- (2) Evidence related to Kennametal's liability for Nevada Scheelite's discharges at the Mt. Diablo site.

The Prosecution Team will use the Interrogatories already in evidence to support its argument on the briefing schedule established for your review. The date selected for subpoena production will allow the Prosecution Team to have any relevant documents available for rebuttal.

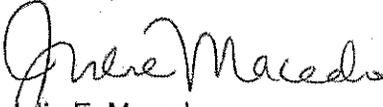
Mr. Adam Baas

- 3 -

August 13, 2014

Please let me know if you have any questions.

Sincerely,



Julie E. Macedo
Senior Staff Counsel
Office of Enforcement

cc: *(via email only)*

Christopher Sanders, Counsel for Kennametal
cms@eslawfirm.com

1 CRIS CARRIGAN (SBN 197045), DIRECTOR
2 DAVID BOYERS (SBN 199934), ASST. CHIEF COUNSEL
3 JULIE MACEDO (SBN 211375), SENIOR STAFF COUNSEL
4 OFFICE OF ENFORCEMENT
5 STATE WATER RESOURCES CONTROL BOARD
6 P.O. Box 100
7 Sacramento, California 95812-0100
8 Telephone: (916) 323-6847
9 Facsimile: (916) 341-5896

10 BEFORE THE STATE WATER RESOURCES CONTROL BOARD
11 STATE OF CALIFORNIA

12 In the Matter of:

13 MOUNT DIABLO MERCURY MINE,
14 CONTRA COSTA COUNTY,
15 CLEANUP AND ABATEMENT ORDER R5-
16 2013-0701

17) SUBPOENA FOR RECORDS AND
18) DOCUMENTS
19) (California Water Code § 183,
20) California Government Code § 11181)

21 TO: SUNOCO, INC.

22 NOTICE:

- 23 () You are served as an individual.
24 () You are served as (or on behalf of) the person
25 doing business under the fictitious name
26 of
27 (X) You are served on behalf of: SUNOCO, INC.

28 Pursuant to the powers conferred by California Water Code Section 183 and Government
Code Sections 11180 et seq.:

SUNOCO, INC. IS COMMANDED to produce the papers, books, records and documents
in your possession or under your control described below in connection with the above-titled

1 proceeding by September 5, 2014. Documents must be sent to: Julie Macedo, Office of
2 Enforcement, State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95812-0100.

3 You may seek the advice of an attorney in any matter connected with this subpoena. You
4 should consult your attorney promptly so that any problems concerning your production of
5 documents may be resolved within the time required by this subpoena.

6 **FAILURE TO COMPLY WITH THE COMMANDS OF THIS SUBPOENA WILL**
7 **SUBJECT YOU TO THE PROCEEDINGS AND PENALTIES PROVIDED BY LAW.**

8 **DEFINITIONS**

9 Definitions for industry or trade terms contained herein are to be construed broadly. Where
10 the industry or trade definition set forth herein does not coincide precisely with your definition, the
11 question, inquiry or production request should be responded to or answered by using the definition
12 which you apply and/or recognize in your usage of the term, further documenting your definition in
13 the response. Non-industry or non-trade definitions should be applied as defined herein.

14 (1) The term "COMMUNICATION" or "COMMUNICATIONS" means every disclosure,
15 transfer, exchange or transmission of information, whether oral or written and whether face to face
16 or by telecommunications, computer, mail, telecopier or otherwise.

17 (2) The terms "RELATING TO" or "RELATE TO" includes referring to, alluding to,
18 responding to, concerning, connected with, commenting on, in respect of, about, regarding,
19 discussing, showing, describing, mentioning, reflecting, analyzing, constituting, evidencing, or
20 pertaining to.

21 (3) (a) The term "DOCUMENT" means a document whose existence is known to
22 you, your employees, superiors, representatives or assigns, regardless of its location or origin,
23 including the original and all non-identical copies, whether written, printed or recorded, including,
24 with limitations, contracts, agreements, leases, receipts, invoices, payment vouchers, purchase
25 orders, books, booklets, brochures, reports, notices, announcements, minutes and other
26 communications, including inter and intra-office communications, studies, analyses, maps, charts,
27 tables, questionnaires, indices, telegrams, messages (including reports of telephone conversations
28 and conferences), tapes, letters, electronic mail, notes, records, drafts, proposals, authorizations,

1 negotiations, canceled checks, financial statements, deposit slips, bank drafts, books of account,
2 summaries, reports, tests, projections, studies, charts, notebooks, worksheets, recordings, calendars,
3 or other materials which are written, recorded, printed, typed, or transcribed. "DOCUMENT" also
4 means data sheets or data processing cards, tapes, films or graphic matter or materials on computer
5 magnetic diskettes or tapes, electronically or magnetically-stored data (including data stored on
6 "hard," "floppy" or "micro-floppy" disks or data stored in data base systems), photographs,
7 videotapes or any other matter of any kind or nature however produced or reproduced and each
8 copy of any of the foregoing which is not identical because of margin notations or otherwise. If any
9 such documents were, but no longer are, in your possession or control, state what disposition was
10 made of them and when.

11 (b) The term "DOCUMENT" shall also include all documents necessary to
12 interpret, translate, decode or understand any other document requested or produced. If a form of
13 document (i.e., magnetic tape) cannot be read, such form must be converted to a paper document
14 that can be read.

15 (4) The term "SUNOCO" means Sunoco, Inc., Sun Company, Inc., Sun Oil Company,
16 its officers, employees, agents, and representatives of the foregoing.

17 (5) The term "CORDERO" means Cordero Mining Company, a Nevada corporation,
18 which was dissolved on November 18, 1975.

19 (6) The terms "AND" and "OR" have both conjunctive and disjunctive meanings.

20 (7) All references to a "YEAR" refer to a calendar year.

21 (8) The terms "YOU" or "YOUR" refer to SUNOCO, as defined herein.

22 (9) The term "CAO HEARING" means the administrative hearing for Cleanup and
23 Abatement Order R5-2013-0701, currently scheduled for October 10, 2014, and any related or
24 preceding petitions, correspondence, or evidence submitted to the Regional Water Quality Control
25 Board, Central Valley Region or State Water Resources Control Board. It includes the evidentiary
26 hearing that commenced on August 7, 2014.

27 (10) The term "EPA" shall mean the United States Environmental Protection Agency.

28 (11) The term "PROSECUTION TEAM" shall mean Regional Water Quality Control
Board, Central Valley Region staff and counsel representing them in the CAO HEARING.

INSTRUCTIONS

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2 i. **Unless otherwise indicated, the time period covered by this subpoena is from**
3 **November 1, 1975 to up to five days before YOUR full compliance with this subpoena. Any**
4 **documents relating to this time period are to be produced, regardless of whether the**
5 **documents came into existence before or during this period.**

6 ii. YOUR response to the subpoena should include a declaration or affidavit. It should
7 state that a diligent search for all requested DOCUMENTS has been conducted and that the affiant
8 or declarant was in charge of the search or otherwise monitored and reviewed the search
9 sufficiently to be able to represent under oath that such a search was conducted. It should be signed
10 under oath by the person most knowledgeable about the DOCUMENTS and YOUR efforts to
11 comply with the subpoena. If different people are the most knowledgeable about portions of the
12 search (e.g., one person is most knowledgeable about DOCUMENTS contained in computer media
13 and a different person is most knowledge about DOCUMENTS contained on paper) each should
14 sign an affidavit or declaration identifying the category in the request for DOCUMENTS for which
15 that person is the most knowledgeable.

16 iii. Unless otherwise indicated, for any DOCUMENT stored in a computer, including
17 all electronic mail messages, YOU should produce the DOCUMENT in the original electronic file
18 format in which it was created (e.g., Microsoft email should be provided in its original format,
19 which would have the .pst suffix, not in a tif file; spreadsheets should be in their original file form,
20 such as an Excel file and word-processed DOCUMENTS should be in their original file format,
21 such as a Word or WordPerfect file), together with instructions and all other materials necessary to
22 use or interpret the data. Electronic mail messages should be provided, even if only available on
23 backup or archive tapes or disks. Computer media should be accompanied by (a) an identification
24 of the generally available software needed to open and view the DOCUMENTS or (b) a copy of the
25 software needed to open and view the DOCUMENT. Note, however, that if a print-out from a
26 computer DOCUMENT is a non-identical copy of the electronic form in which it was created
27 (non-identical as described in the definition of "DOCUMENT," by way of example, but not
28 limitation, because it has a signature, handwritten notation, or other mark or attachment not

1 included in the computer DOCUMENT), both the electronic form in which the DOCUMENT was
2 created and the original print-out should be produced.

3 iv. For each DOCUMENT contained in an audio or video medium, YOU should
4 provide both the tape, disk or other device from which the audio or video can be played and the
5 transcript of the DOCUMENT.

6 v. For all DOCUMENTS YOU do not produce in the original, as defined in Evidence
7 Code section 255, YOU may submit copies (black and white copies if the original was in black and
8 white, color copies if the original was in color, and, if the original was in electronic format, in the
9 same electronic medium as the original) in lieu of original DOCUMENTS provided that such
10 copies are accompanied by an affidavit of an officer of SUNOCO stating that the copies of all three
11 types of DOCUMENTS are true, correct, and complete copies of the original DOCUMENTS. If
12 there is in YOUR possession, custody or control no original, but only a copy or photographic record
13 thereof, then YOU should produce a true and legible copy of each such DOCUMENT. The
14 accompanying affidavit should state that the DOCUMENT is only a copy or photographic record
15 and not the original.

16 vi. If a DOCUMENT is responsive to this subpoena and is in YOUR control, but is not
17 in YOUR possession or custody, in addition to obtaining and producing the DOCUMENT, identify
18 the person who had possession or custody of the DOCUMENT, their telephone number and current
19 business and residence addresses.

20 vii. If any DOCUMENT subpoenaed is no longer in YOUR possession, custody, control
21 or care, YOU should provide a written statement identifying the DOCUMENT with specificity,
22 stating whether it is lost or missing, has been destroyed, has been transferred to others, or has
23 otherwise been disposed of. The written statement should also identify the person who disposed of
24 the DOCUMENT, explain the circumstances and authorization for the disposition and the
25 approximate date of the disposition of the DOCUMENT. If there are no DOCUMENTS responsive
26 to a document request, as to each such document request, YOU should include a statement to that
27 effect in the accompanying declaration or affidavit.

28 viii. DOCUMENTS provided in response to this subpoena should be complete and,
unless privileged, unredacted, submitted as found in YOUR files (e.g., DOCUMENTS that in their

1 original condition were stapled, clipped, attached as a "post-it," or otherwise fastened together shall
2 be produced in the same form).

3 ix. Each DOCUMENT produced pursuant to this subpoena should be identified
4 according to the category in the subpoena to which it is responsive. In lieu of indicating on each
5 DOCUMENT the category to which it is responsive, on the date set for production, YOU may
6 instead provide an index if YOU provide it in both paper and in electronic form (such as a
7 computerized spread sheet in Excel or a Word or WordPerfect DOCUMENT set up in a table
8 format) of all DOCUMENTS YOU produce, as long as this index shows by document control
9 number the request(s) to which each DOCUMENT or group of DOCUMENTS is responsive.
10 Responsive DOCUMENTS from each person's files should be produced together, in one box or in
11 consecutive boxes, or on one disk or consecutive disks. Mark each page of a paper DOCUMENT
12 and each tangible thing containing audio, video, computer or other electronic DOCUMENTS (e.g.
13 cassette, disk, tape or CD) with corporate identification and consecutive document control numbers
14 (e.g., S.I. 00001, S.I. CD 001, S.I. audio tape 001). Number each box of DOCUMENTS produced
15 and mark each with the name(s) of the person(s) whose files are contained therein, the requests(s)
16 to which they are responsive, and the document control numbers contained therein.

17 x. For data produced in spreadsheets or tables, include in the declaration or affidavit
18 the identification of the fields and codes and a description of the information contained in each
19 coded field.

20 xi. The document requests contained in this subpoena should be deemed to include a
21 request for all relevant DOCUMENTS in the personal files, including but not limited to files
22 contained on laptops, palm devices, home computers and home files of all YOUR officers,
23 employees, accountants, agents and representatives, including sales agents who are independent
24 contractors, and unless privileged, attorneys.

25 xii. If any DOCUMENTS are withheld from production based on a claim of privilege,
26 provide a log under oath by the affiant or declarant, which includes each DOCUMENT'S authors,
27 addressees, date, a description of each DOCUMENT, all recipients of the original, and any copies,
28 and the request(s) of this subpoena to which the DOCUMENT is responsive. Attachments to a
DOCUMENT should be identified as such and entered separately on the log. For each author,

1 addressee, and recipient, state the person's full name, title, and employer or firm, and denote all
2 attorneys with an asterisk. To the extent the claim of privilege relates to any employee, agent,
3 representative, or outside attorney, identify the person's name, division, and organization. Include
4 the number of pages of each DOCUMENT and in the description of the DOCUMENT, provide
5 sufficient information to identify its general subject matter without revealing information over
6 which a privilege is claimed. For each DOCUMENT withheld under a claim that it constitutes or
7 contains attorney work product, also state whether YOU assert that the DOCUMENT was prepared
8 in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial on which
9 the assertion is based. Submit all non-privileged portions of any responsive DOCUMENT
10 (including non-privileged or redactable attachments) for which a claim of privilege is asserted
11 (except where the only non-privileged information has already been produced in response to this
12 instruction), noting where redactions in the DOCUMENT have been made. DOCUMENTS
13 authored by outside lawyers representing YOU that were not directly or indirectly furnished to
14 YOU or any third-party, such as internal law firm memoranda, may be omitted from the log.

15 xiii. Whenever necessary to bring within the scope of this subpoena DOCUMENTS that
16 might otherwise be construed as outside its scope:

17 (a) the use of the verb in any tense shall be construed as the use of that verb in all
18 other tenses;

19 (b) the use of a word in its singular form shall be deemed to include within its use
20 the plural form as well; and

21 (c) the use of the word in its plural form shall be deemed to include within its use
22 the singular form as well.

23 xiv. Whenever responsive DOCUMENTS apply to more than one site, such
24 DOCUMENTS shall be organized by address of the site.

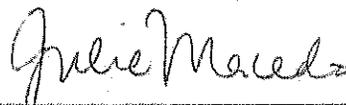
25 DOCUMENTS TO BE PRODUCED

26 This subpoena commands production of the original of each and every DOCUMENT now
27 or at any time in the possession, custody or control of YOU or SUNOCO without regard to the
28 person(s) by whom or for whom said DOCUMENTS were prepared, including, but not limited to,
all DOCUMENTS in the personal, business, or other files of all present or former officers,

1 directors, trustees, agents, employees, attorneys, and accountants of SUNOCO, which refers or
2 relates to any of the following subjects:

- 3
- 4 1. Provide all DOCUMENTS which refer or RELATE TO the "Responses to First Set of
5 Interrogatories to All Parties from *County of Santa Clara v. Myers Industries, Inc. et al.*,
6 Case No. C92-20246" submitted by the PROSECUTION TEAM in the CAO HEARING,
7 including documents identified in the Interrogatories (see for example, Response to
8 Interrogatory No. 7).
- 9 2. Provide all DOCUMENTS which refer or RELATE TO the "Responses to First Set of
10 Interrogatories to All Parties" submitted in *County of Santa Clara v. Myers Industries, Inc.*
11 *et al.*, Case No. C92-20246" submitted by the PROSECUTION TEAM in the CAO
12 HEARING that YOU mentioned were in YOUR possession during the consultation with
13 David Coupe on August 7, 2014.
- 14 3. Provide all DOCUMENTS which refer or RELATE TO "Requests for Admissions" and
15 "Responses to Requests for Admissions," propounded or served in *County of Santa Clara v.*
16 *Myers Industries, Inc. et al.*, Case No. C92-20246.
- 17 4. Provide all DOCUMENTS which refer or RELATE TO SUNOCO'S acceptance of
18 liabilities from CORDERO since 1975. This interrogatory is not limited to actions ordered
19 by the CAO Hearing, by EPA, or by the geographic boundaries of California.
- 20 5. Provide all DOCUMENTS which refer or RELATE TO SUNOCO'S payment of
21 CORDERO's liabilities since 1975. This interrogatory is not limited to actions ordered by
22 the CAO Hearing, by EPA, or by the geographic boundaries of California.
- 23
- 24

25 Given under my hand this 13th day of August 2014.

26 

27 _____
28 Julie Macedo,
Senior Staff Counsel, Office of Enforcement
State Water Resources Control Board