

ITEM: 15

SUBJECT: Atlantic Richfield Company, United States Department of Agriculture, United States Forest Service, Walker Mine Tailings and Walker Mine, Plumas County

BOARD ACTION: *Consideration of Cleanup and Abatement Order No. R5-2014-XXXX (Walker Mine Tailings) and R5-2014-YYYY (Walker Mine)*

Two cleanup and abatement orders (CAOs) are proposed regarding the Walker Mine and Walker Mine Tailings sites in Plumas County. Although the Mine and Tailings were operated as one site, the Mine and Tailings require separate CAOs because the Mine is privately-owned while the Tailings are on United States Forest Service land. Atlantic Richfield Company (Atlantic Richfield or ARCO) is named to both CAOs as successor to the former mine operators. The Forest Service is named to the Tailings CAO only, as owner and as discharger under the current waste discharge requirements for the Tailings.

BACKGROUND: Walker Mine and Tailings is an abandoned underground copper mine complex in Plumas County with 13 miles of underground workings and approximately 100 acres of tailings. The Mine site is located on approximately 800 acres of privately-owned land, about one mile upstream along Dolly Creek from the approximately 100-acre Tailings site on Plumas National Forest land. Acid mine drainage and other pollutants (notably copper) from the Walker Mine and Tailings sites discharge or threaten to discharge to Dolly Creek, then to Little Grizzly Creek and other waters of the State and of the United States.

The Walker Mine facility (including both the present-day Mine and Tailings sites) operated from approximately 1915 until 1941, when mining ceased and the dewatering pumps were removed. The surface equipment and structures were removed shortly thereafter, and the private property was sold in 1945. The Mine and Tailings sites likely began discharging waste immediately to Dolly Creek and Little Grizzly Creek through surface runoff over the abandoned mining waste and tailings. The Mine site likely began discharging Acid Mine Drainage (AMD) to surface waters shortly after the mine shut down, when groundwater flooding the underground mine workings reached the unsealed 700 level mine portal and flowed into Dolly Creek and then Little Grizzly Creek. By 1947, the Department of Fish and Game documented that waste discharges of toxics and silt from the mine and tailings had destroyed all fishing and recreation uses on Little Grizzly Creek for a distance of about 10 miles.

By 1986, the Central Valley Water Board decided to seal the 700 level mine portal under authority of Water Code section 13305 (Resolution R5-86-057). This stopped the discharge of AMD and copper from the underground workings into Dolly Creek and downstream. However, the surface of the Mine and Tailings sites contain mining waste, which is the source of ongoing unlawful discharges of copper and other waste into Dolly Creek and Little Grizzly Creek. The mine seal impounds significant amounts of highly acidic, copper-laden groundwater, which remains a threat to surface waters requiring ongoing monitoring and maintenance of the seal. Finally, the Mine site contains adits and other mine related surface disturbances which pose safety hazards and potential sources of discharge.

Central Valley Water Board issued Order R5-00-028, dated 28 January 2000, to the Forest Service for the Walker Mine Tailings site. The Tailings CAO directs the Forest Service to achieve “full compliance with Receiving Water Limitations,” which Order R5-00-028 required by 1 October 2008. As the Tailings CAO explains, the Forest Service did not meet that deadline and discharges from the Tailings continue to violate Basin Plan Receiving Water Limitations. The Board has previously entered settlement agreements in litigation with the current and former landowners at the Mine.

ISSUES:

The Forest Service contends that Central Valley Water Board Order R5-00-028 lacks Clean Water Act authority to issue the Tailings CAO, and that the Tailings CAO is a challenge to the Forest Service’s CERCLA actions at the Tailings site, which commenced in 1994. Staff contends that the Board does have regulatory authority over the Forest Service, that Forest Service was well aware of Order R5-00-028 when it was adopted, and that the Tailings CAO is not a challenge to the CERCLA action because CERCLA allows state agencies to enforce state laws against federal agencies operating CERCLA actions on federal property. The Forest Service was named discharger for WDRs pertaining to the Tailings in 1986 (Order R5-86-073) and again in 1991 (Order R5-01-017). The Forest Service submitted comments on the tentative order that became Order R5-00-028 and these 18 December 1999 comments make no CERCLA-based objections, and instead state that provisions of the order “will become a part of the amended [CERCLA] Record of Decision (ROD) for treatment of the site.”

Atlantic Richfield contends that it cannot be a discharger in the Tailings CAO because it entered into a Consent Decree with the Forest Service on 13 June 2005, which contains contribution protection language subject to CERCLA section 113(f)(2). Staff contends that the Consent Decree does not shield Atlantic Richfield from administrative enforcement actions brought under the Water Code.

Atlantic Richfield disagrees with the Mining CAO on a number of bases. First, it disagrees with the Prosecution Team’s evidence and witnesses, who conclude that ARCO’s predecessors, Anaconda Copper Company (Anaconda) and International Smelting and Refining Company (International) operated pollution-causing activities at the facility. Staff contends that the evidence in support of such findings is substantial and persuasive. ARCO also contends that the Board must be responsible for the mine seal in perpetuity. Staff contends that it is appropriate for the Board to now assign that responsibility to ARCO.

RECOMMENDATION

Adopt the two proposed Cleanup and Abatement Orders as written naming the Atlantic Richfield Company and the USDA Forest Service for the Walker Mine Tailings, and naming the Atlantic Richfield Company for the Walker Mine.

Mgmt. Review RDB
Legal Review APT