

ITEM: 7

NOTICE This Summary Sheet was prepared by and submitted on behalf of the Prosecution Team.

SUBJECT: Wessman, Bradley Mining Co., US Dept. of Interior, Sunoco Inc., Mt. Diablo Quicksilver Co., Kennametal Inc. and California Dept. of Parks and Recreation; Mount Diablo Mercury Mine, Contra Costa County

BOARD ACTION: *Consideration of Cleanup and Abatement Order No. R5-2013-0701*

BACKGROUND: Discharges from Mount Diablo Mercury Mine are the major source of mercury contamination in the Marsh Creek watershed. Site investigations and a plan to clean-up the site and prevent future discharges are complete. This order names current and previous owners and operators of the site and requires that they form a respondents group to manage and fund remedial actions, submit a work plan and time schedule to close mine tailings and waste rock piles, and complete remedial actions.

ISSUES: Two of the named parties contend that they are incorrectly named and are contesting the Order. A short summary of issues and Staff's responses follow:

1. Cordero Mining Co. was 100% owned by Sunoco Inc. Upon dissolution of Cordero Mining Co, Sunoco received all of the assets and some of the liabilities of Cordero Mining Co. As such, Sunoco steps into the shoes of Cordero Mining Co. for purposes of this Cleanup and Abatement Order. Cordero leased the mine; constructed tunnels and raises (vertical tunnels) connecting to the existing system of underground mine structures; discharged ore, waste rock and waste water; and rehabilitated an existing mercury processing facility. Staff contends that Sunoco Inc. as 100% owner of Cordero Mining Co. is a responsible party.
2. Sunoco contends that the Regional Board has not proven that Sun Oil acted as the alter ego of Cordero. Therefore, Sunoco Inc. is not liable for environmental damaged caused by Cordero Mining Company.
3. Staff contends that because Cordero did business in California and Sunoco capitalized Cordero as the sole shareholder, California Law applies and allows the Board to name a party that falls within the scope of CWC

section 13304 in this order. Therefore, Sunoco is properly named in the order.

4. Nevada Scheelite Corp. was 100% owned by Kennametal Inc. Upon dissolution all of Nevada Scheelite's assets, including its mine in Rawhide Nevada, were distributed to Kennametal, Inc. Nevada Scheelite leased the mine, attempted to dewater the mine workings and did some exploration drilling near the open pit. Staff contends that Kennametal Inc. as 100% owner of Nevada Scheelite is a responsible party pursuant to CWC section 13304.
5. Kennametal contends that Kennametal is not the alter ego of Nevada Scheelite and that the Regional Board is precluded from naming either Kennametal or Nevada Scheelite. It also contends that the Nevada statute of limitations for a dissolved company bars the Regional Board from naming Kennametal and/or holding Nevada Scheelite responsible for any actions at the site. Finally, Kennametal claims Nevada Scheelite was not present at and did not operate the mine.
6. Staff contends that Kennametal as 100% owner of Nevada Scheelite is liable for Nevada Scheelite's activities. As the beneficiary of Nevada Scheelite's assets, Kennametal became responsible for its liabilities, and in effect steps into its shoes for purposes of this cleanup and abatement order. Nevada Scheelite did business in California, which applies no statute of limitations to administrative proceedings. Nevada law places no statute of limitations on California Regional Boards with respect to cleanup and abatement orders. The Prosecution Team has substantial evidence that places Nevada Scheelite at the mine. These documents show that Nevada Scheelite was at the site and engaged in activities that resulted in the discharge of waste. Pursuant to CWC section 13304, Kennametal Inc. is properly named in the order.
7. The other named parties, Jack & Carolyn Wessman, Bradley Mining Co., US Dept. of Interior, Mt. Diablo Quicksilver Co., and California Dept. of Parks and Recreation are not contesting the Order.