

This document was modified by the Board's Advisory Team on Jan 13, 2017 and Jan 25, 2017

REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER R5-2017-XXXX
AMENDING CLEANUP AND ABATEMENT ORDER R5-2014-0124

ISSUED TO
JACK AND CAROLYN WESSMAN, BRADLEY MINING CO., U.S. DEPT. OF INTERIOR,
SUNOCO, INC., MT. DIABLO QUICKSILVER CO., LTD., AND THE CALIFORNIA DEPT. OF
PARKS AND RECREATION

FOR
THE MOUNT DIABLO MERCURY MINE
CONTRA COSTA COUNTY

On 10 October 2014, the Central Valley Water Board issued Cleanup and Abatement Order (CAO) R5-2014-0124 to Jack and Carolyn Wessman, the Bradley Mining Co., the U.S. Department of Interior, Sunoco, Inc. (Sunoco), Mt. Diablo Quicksilver Co., Ltd., and the California Department of Parks and Recreation pursuant to Water Code sections 13304 and 13267.

Sunoco was named liable for the cleanup by virtue of its relationship with Cordero Mining Company of Nevada (Cordero), which once engaged in work at the Mt. Diablo Mercury Mine. Sunoco was the sole shareholder of Cordero. In 1972, Cordero agreed to voluntarily dissolve. As part of the dissolution, Sunoco assumed certain liabilities of Cordero.

At a 10 October 2014 hearing, the Central Valley Water Board found Sunoco liable for the cleanup of the Mt. Diablo Mercury Mine because the Board found that, "Sunoco, Inc. expressly or impliedly assumed the liabilities of Cordero Mining Company," including whatever liability Cordero may have had for the cleanup of the Mt. Diablo Mercury Mine. (Finding No. 17 of CAO R5-2014-0124.) Sunoco disputed this finding before the Board at the 10 October 2014 hearing and in written submittals, arguing that Sunoco's assumption of liability was limited and did not include Cordero's environmental liability at the Mt. Diablo Mercury Mine.

Following the issuance of CAO R5-2014-0124, Sunoco submitted a water quality petition to the State Water Resources Control Board consistent with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. On 1 January 2016, Sunoco's water quality petition was dismissed by operation of law in accordance with California Code of Regulations, title 23, section 2050.5. Sunoco subsequently filed a petition for writ of mandate with the Sacramento County Superior Court. (*Sunoco, Inc. v. Central Valley Regional Water Quality Control Board* (Sacramento County Sup. Ct., Case No. 34-2016-80002282).)

On 22 September 2016, the Sacramento County Superior Court issued a ruling remanding CAO R5-2014-0124 to the Central Valley Water Board for further hearing regarding Sunoco's liability (Remand Order). The Remand Order stated that the Board could *not* rely on either admissions made by Sunoco in a 1994 federal court case involving the New Almaden Mine in Santa Clara County or on Sunoco's cooperation with government directives to find Sunoco liable for the cleanup.

The Remand Order directed the Central Valley Water Board to consider whether other evidence supported the conclusion that Sunoco voluntarily assumed **all known debts and liabilities of Cordero, including** Cordero's liability for the cleanup of the Mt. Diablo Mercury Mine, during Cordero's corporate dissolution. Specifically, the Remand Order directed the Board to consider whether language in a recital to a Unanimous Written Consent of Cordero's former directors to Sunoco's assumption of

liability for Cordero's Retirement and Stock Purchase Plans provides sufficient evidence that Sunoco voluntarily assumed **all known debts and liabilities of Cordero to facilitate Cordero's dissolution in 1975, and that such known debts and liabilities included** Cordero's cleanup liability at the Mt. Diablo Mercury Mine **at issue in the CAO.**

Should the Central Valley Water Board find that the weight of the evidence supports holding Sunoco responsible for the cleanup of the Mt. Diablo Mercury Mine, the Remand Order directs the Board to consider whether such liability is reasonably apportionable consistent with existing law.

SUNOCO'S LIABILITY

If, after further hearing, the Central Valley Water Board does *not* find sufficient evidence to support holding Sunoco liable for the cleanup of the Mt. Diablo Mercury Mine:

Should the Central Valley Water Board find that the weight of the evidence does *not* support a finding that Sunoco, as Cordero's former parent and sole shareholder, voluntarily assumed Cordero's liability for the cleanup of the Mt. Diablo Mercury Mine, the following changes shall be made to CAO R5-2014-0124.

The CAO's heading shall be amended to remove reference to Sunoco:

ISSUED TO
JACK AND CAROLYN WESSMAN, BRADLEY MINING CO., U.S. DEPT. OF INTERIOR,
SUNOGO, INC., MT. DIABLO QUICKSILVER CO., LTD., AND THE CALIFORNIA DEPT. OF
PARKS AND RECREATION

The paragraph beneath the CAO's heading shall be amended to remove Sunoco from the list of named dischargers responsible for complying with the terms of the CAO:

This Order is issued to Jack and Carolyn Wessman; the Bradley Mining Co.; the U.S. Department of Interior; ~~Sunoco, Inc.~~; Mt. Diablo Quicksilver Co., Ltd., and the California Department of Parks and Recreation (hereafter collectively referred to as Dischargers) pursuant to California Water Code section 13304 which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) to issue a Cleanup and Abatement Order (Order) and Water Code section 13267, which authorizes the Executive Officer to issue Orders requiring the submittal of technical or monitoring program reports.

Finding 17 shall be amended as follows:

17. The Cordero Mining Company **of Nevada** operated the Mine Site from approximately 1954 to 1956, and was responsible for sinking a shaft, driving underground tunnels that connected new areas to pre-existing mine workings, and discharging mine waste. There is no record of mercury production for this time period and the amount of mercury production, if any, from this time period is unknown. ~~The United States Environmental Protection Agency (USEPA), Region IX, named Sunoco Inc. a responsible party for Mount Diablo Mercury Mine in the Unilateral Administrative Order for the Performance of a Removal Action, USEPA Docket No. 9-2009-02, due to its corporate relationship to the Cordero Mining Company. Based on the evidence submitted, including but not limited to verified interrogatories submitted in federal court in an action for cleanup at another mine site, Sunoco, Inc. expressly or impliedly assumed the liabilities of Cordero Mining Company. Sunoco, Inc. is a named Discharger in this Order, as a party legally responsible for Cordero's discharges at the Mine Site. Drainage~~

from Cordero Mining Company's mine workings creates, or threatens to create, a condition of pollution or nuisance.

If, after further hearing, the Central Valley Water Board finds that the weight of the evidence supports holding Sunoco liable for the cleanup of the Mt. Diablo Mercury Mine

Should the Central Valley Water Board find that the weight of the evidence supports a finding that Sunoco, as Cordero's former parent and sole shareholder, voluntarily assumed Cordero's liability for the cleanup of the Mt. Diablo Mercury Mine, Finding 17 of CAO R5-2014-0124 shall be amended as follows:

17. The Cordero Mining Company **of Nevada** operated the Mine Site from approximately 1954 to 1956, and was responsible for sinking a shaft, driving underground tunnels that connected new areas to pre-existing mine workings, and discharging mine waste. There is no record of mercury production for this time period and the amount of mercury production, if any, from this time period is unknown. The United States Environmental Protection Agency (USEPA), Region IX, named Sunoco Inc. a responsible party for Mount Diablo Mercury Mine in the Unilateral Administrative Order for the Performance of a Removal Action, USEPA Docket No. 9-2009-02, due to its corporate relationship to the Cordero Mining Company. **Based on language in a recital to a Unanimous Written Consent of Cordero's former directors to Sunoco's assumption of liability for Cordero's Retirement and Stock Purchase Plans the Board concludes that** ~~the evidence submitted, including but not limited to verified-interrogatories submitted in federal court in an action for cleanup at another mine site,~~ Sunoco, Inc. expressly or impliedly assumed the liabilities of Cordero Mining Company **during Cordero's corporate dissolution**. Sunoco, Inc. is a named Discharger in this Order, as a party legally responsible for Cordero's discharges at the Mine Site. Drainage from Cordero Mining Company's mine workings creates, or threatens to create, a condition of pollution or nuisance.

APPORTIONMENT OF SUNOCO'S LIABILITY

If, after further hearing, the Central Valley Water Board finds that the weight of the evidence supports holding Sunoco liable for the cleanup of the Mt. Diablo Mercury Mine, but does *not* find a reasonable basis to apportion Sunoco's cleanup liability

Based on a consideration of whether there is a reasonable basis for apportioning Sunoco's liability at the Mt. Diablo Mercury Mine, the following finding shall be added to CAO R5-2014-0124:

41. **The environmental harm at the Mt. Diablo Mercury Mine is indivisible, and there is no reasonable basis for apportioning liability based on the respective contributions of the Dischargers named in this Order.**

If, after further hearing, the Central Valley Water Board finds that the weight of the evidence supports holding Sunoco liable for the cleanup of the Mt. Diablo Mercury Mine, but finds a reasonable basis to apportion Sunoco's cleanup liability

Based on a consideration of whether there is a reasonable basis for apportioning Sunoco's liability at the Mt. Diablo Mercury Mine, the following finding shall be added to CAO R5-2014-0124:

41. **The Board finds that there is a reasonable basis for apportioning cleanup liability based on the respective contributions of the Dischargers named in this Order to the environmental harm at the Mine Site. The Board will apportion cleanup liability at the**

Mt. Diablo Mercury Mine based on [matter to be briefed by Sunoco and the Board's Prosecution Team as per the Hearing Notice and Procedure]. Sunoco's respective share of overall cleanup liability shall be limited to [x] percent of the total cost to clean up and abate the impact of mining wastes discharged at Mine Site on water quality.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date the Central Valley Water Board issues the Order Revising Cleanup and Abatement Order R5-2014-0124, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

I, Adam Laputz, Assistant Executive Officer, do hereby certify that this Order is a full, true, and correct copy of the Order issued by the California Regional Water Quality Control Board, Central Valley Region, on 23/24 February 2017.

ADAM LAPUTZ, Assistant Executive Officer