

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

TECHNICAL REPORTING ORDER R5-2009-0871  
CALIFORNIA WATER CODE SECTION 13267  
FOR  
**MOUNT DIABLO MERCURY MINE**  
**CONTRA COSTA COUNTY**

This Order is issued to Kennametal Inc., (hereafter referred to as Discharger) pursuant to California Water Code (CWC) section 13267, which authorizes the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) to issue Orders requiring the submittal of technical reports, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer.

The Assistant Executive Officer finds:

**BACKGROUND**

1. The Mount Diablo Mercury Mine (Mine Site) is an inactive mercury mine, located on approximately 109 acres on the northeast slope of Mount Diablo in Contra Costa County. Acid mine drainage containing elevated levels of mercury and other metals is being discharged to a pond that periodically overflows into Horse and Dunn Creeks. Further investigation is required to assess the extent of pollution discharged from the Mine Site and to evaluate remedial options.
2. Presently, the Mine Site consists of an exposed open cut and various inaccessible underground shafts, adits, and drifts. Extensive waste rock piles and mine tailings cover the hill slope below the open cut, and several springs and seeps discharge from the tailings-covered area. Three surface impoundments at the base of the tailings capture most spring flow and surface runoff. However, during winter, the ponds routinely spill into Horse and Dunn Creeks, which drain to the Marsh Creek watershed.
3. Section 303(d) of the Federal Clean Water Act requires states to identify waters not attaining water quality standards (referred to as the 303(d) list). Marsh Creek has been identified by the Central Valley Water Board as an impaired water body because of high aqueous concentrations of mercury.

**OWNERSHIP AND OPERATOR HISTORY**

4. Jack and Carolyn Wessman have owned the Mine Site from 1974 to the present. The Wessmans have made some improvements to reduce surface water exposure to tailings and waste rock, including the construction of a cap over parts of the tailings/waste rock

piles. Although these improvements have been made without an engineering design or approved plan, these improvements may have reduced some of the impacts from the Mine Site. However, discharges that contain elevated mercury levels continue to impact the Mine Site and site vicinity.

5. Bradley Mining Company operated the Mine Site from 1936 to 1947, producing around 10,000 flasks of mercury. During operations Bradley Mining Company developed underground mine workings, discharged mine waste rock, and generated and discharged mercury ore tailings.
6. The U.S. Department of the Interior created the Defense Minerals Exploration Administration (DMEA) out of the Defense Minerals Agency in 1951. The DMEA was created to provide financial assistance to explore for certain strategic and critical minerals. The DMEA contracted with private parties to operate the Mine Site under cost-sharing agreements from 1953 to 1954. The initial cost sharing was with the Ronnie B. Smith Trust, which implemented a partnership formed by Jene Harper and James Dunnigan. Although it is unclear whether the mine was operated under the DMEA contract, the Smith partnership produced approximately 102 flasks of mercury. John L. Jonas and John E. Johnson assumed the DMEA contract in 1954, Jonas and Johnson produced 21 flasks of mercury.
7. The Cordero Mining Company 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. The amount of mercury production 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.
8. Nevada Scheelite Company, a subsidiary of Kennametal Inc., operated at the Mount Diablo Mercury Mine in 1956. The extent of operations and the amount of production for this period is unknown. However, discharges have occurred from runoff from the mine waste piles and likely springs associated with the mine working.
9. Victoria Resources Corp., now Victoria Gold Corp., owned the Mount Diablo site from 1960 to 1969. The extent of operations and the amount of production for this period is unknown. However, discharges have occurred from runoff from the mine waste piles and likely springs associated with the mine working.
10. The Guadalupe Mining Company owned the Mine Site from 1969 to 1974. The extent of operations and amount of production for this period is not known. However, discharges have occurred from runoff from the mine waste piles and likely springs associated with the mine working.

## LEGAL PROVISIONS

11. The Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4<sup>th</sup> Edition* (Basin Plan) designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs. The designated beneficial uses of Marsh Creek, which flows into Sacramento and San Joaquin Delta are domestic, municipal, industrial and agricultural supply.

12. CWC section 13267 states, in part:

(b)(1) In conducting an investigation, the regional board may require that any person who ... is suspected of having discharged ... waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

Evidence in the files of the Central Valley Water Board show that the Nevada Scheelte Company, a subsidiary of the Discharger, operated at the Mine Site, and likely discharged waste within the Central Valley Region. The Central Valley Water Board requires a technical report detailing the activities which the Nevada Scheelte Company engaged in at the Mine Site to determine whether the Discharger has liability for the cleanup of the Mine Site. Cleanup of the Mine Site will ensure protection of waters of the state, and will assist the Board in fulfilling its mission to protect public health and the environment.

13. CWC section 13268 states, in part:

(a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267 . . . or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

As described above, failure to submit the required reports to the Central Valley Water Board according to the schedule detailed herein may result in enforcement action(s) being taken against you, which may include the imposition of administrative civil liability pursuant to CWC section 13268. Administrative civil liability of up to \$1,000 per violation per day may be imposed for non-compliance with the directives contained herein. The

Board may also refer the matter to the California Attorney General for judicial enforcement.

**IT IS HEREBY ORDERED** that, pursuant to California Water Code section 13267, the Discharger shall submit, **by 1 February 2010**, a report describing the extent of the Discharger's and/or the Discharger's subsidiary's activities at the Mine Site. This must, at a minimum, include the following:

- a. Period of ownership of the Mine Site, with references to the deeds by which the Discharger and/or the Discharger's subsidiary acquired any property interest in the Mine Site and/or alienated any property interest the Mine Site. If the property was leased, or the Discharger or the Discharger's subsidiary only operated the Mine Site, please provide a summary of the relevant records.
- b. The legal relationship between the Discharger and the subsidiary, relative to environmental obligations at the Mine Site.
- c. All claims and mineral rights obtained.
- d. A summary of any above ground and underground mining. This shall include the placement of any overburden, raw ores, spent processed ores or any other solid material and liquid discharges/flow from the adit or any pumping from the mine shafts.
- e. A summary of any grading or earthwork done at the site, such as site preparation for mining, overburden removal, and stormwater runoff controls.
- f. Whether the Discharger and/or the Discharger's subsidiary operated the processing facilities. If either operated the processing facilities, provide information summarizing the time period under which the processing facilities operated and the amount and type of product produced.

The report shall be accompanied by a signature block with the following statement included above it:

*"I certify, under penalty of perjury of the laws of the State of California, that the contents of this report are true and complete."*

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 CWC 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 of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)  
or will be provided upon request.

This Order is effective upon the date of signature.

Order by:

Original signature on file

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KENNETH LANDAU, Assistant Executive Officer

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01 December 2009

(Date)