

Edgcomb Law Group
JOHN D. EDGCOMB (SBN 112275)
DAVID T. CHAPMAN (SBN 207900)
115 Sansome Street, Suite 700
San Francisco, California 94104
Telephone: (415) 399-1555
Facsimile: (415) 399-1885
jedgcomb@edgcomb-law.com

Attorneys for Petitioner
SUNOCO, INC.

STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA

In the Matter of

SUNOCO, INC.,

Petitioner,

For Review of Order To Submit
Investigative Reports Pursuant To Water
Code Section 13267, Mount Diablo
Mercury Mine, Contra Costa County,
dated December 30, 2009

PETITION NO.

**DECLARATION OF PAUL D.
HORTON IN SUPPORT OF
SUNOCO, INC.'S PETITION FOR
REVIEW AND RESCISSION OF
REVISED TECHNICAL
REPORTING ORDER NO. R5-
2009-0869 AND SUNOCO, INC.'S
PETITION FOR STAY OF
REVISED TECHNICAL
REPORTING ORDER NO. R5-
2009-0869**

I, the undersigned Paul D. Horton, declare as follows:

1. I am a professional geologist registered with the State of California. I am the Secretary & Vice President of The Source Group, Inc., ("SGI") an environmental consulting firm that has been retained by Sunoco, Inc. ("Sunoco") to provide technical consulting services related to the historical mining operations of Cordero Mining Company ("Cordero") at the Mount Diablo Mercury Mine Site ("Site"). I have over 23 years of professional experience in both the technical and management aspects of environmental projects. As an expert hydrogeologist, I have over 20 years of experience in the application of numerical and analytical groundwater flow and contaminant transport model, the design, implementation, and analysis of aquifer tests, and the general evaluation of site-specific

hydrogeologic conditions. I frequently provide evaluations of complex hydrogeologic systems, and the effectiveness and efficacy of remedial action programs. I have personal knowledge of the facts set forth herein or am familiar with such facts from my visits to the Site and review of historical records related to the Site. Attached as **Exhibit A** is a true and correct copy of my current curriculum vitae.

2. This declaration is in support of Sunoco, Inc.'s Petition for Review and Rescission of the Revised Technical Reporting Order R5-2009-0869, ("Rev. Order"), adopted by the California Regional Water Quality Control Board, Central Valley Region ("CVRWQCB") on December 30, 2009, which is directed, in part, to Sunoco. This declaration is also being filed in support of Sunoco, Inc.'s Petition for Stay of Revised Technical Reporting Order R5-2009-0869, being filed concurrently by Sunoco, Inc. "

3. Based on my review of Site records and my Site visits, Cordero had limited involvement at the Site in terms of time, geographical extent of operations, and environmental impact.

4. SGI, in conjunction with Sunoco's outside counsel Edgcomb Law Group ("ELG"), prepared and submitted to the CVRWQCB on July 31, 2009, a Divisibility Position Paper ("Divisibility Report") which outlined the history and technical data, along with legal analysis prepared by ELG, supporting the divisibility of Cordero's operations from those of other Potentially Responsible Parties ("PRPs") at the Mount Diablo Mercury Mine Site. Attached hereto as **Exhibit B** is a true and correct copy of the Divisibility Report. Based on the evidence set forth in the Divisibility Report, in my opinion the historical record indicates that Bradley Mining Company ("Bradley") and Cordero had geographically distinct mercury mining operations at the Mount Diablo Mercury Mine Site, both in terms of underground workings as well as above-ground waste

rock and tailings piles. In particular, the large tailings piles on the eastern slope of the Site resulted from Bradley's operations, with possible smaller contributions from other former operators, but not Cordero. Those tailings piles are indicated in blue coloring on Exhibit 4-1 to the Divisibility Report.

I am aware of no evidence indicating that Cordero processed any of the ore it mined on the Site. Nor is there any evidence that Cordero contributed any tailings to the onsite tailings piles. My review of site documents indicates that Cordero did not contribute any waste to the pre-existing Bradley tailings piles during Cordero's approximately one-year of mining activity at the Site.

5. On November 1, 1954, Cordero acquired a lease for a portion of the Site from Mt. Diablo Quicksilver. Thereafter, Cordero conducted exploratory tunneling. Cordero is reported to have extracted approximately 1,228 cubic yards of waste rock from underground workings (Pampeyan and Sheahan, 1957), which accounts for approximately 1.2% of the total volume of waste rock historically mined from the entire Site. Cordero's waste rock, which consisted mainly of shale and sandstone with some low-grade unprocessed ore, would not likely make any significant contribution to the acid mine drainage from the Site. I am aware of no evidence indicating that any Cordero waste rock was discharged to the onsite tailings piles highlighted in blue on Exhibit 4-1 to the Divisibility Report.

6. Based on my review of historical documents concerning Cordero's operations at the Site, the area Cordero used for water disposal was located 1,500 to the north of the DMEA shaft and water pumped there either evaporated or would have drained into the My Creek drainage in the manner reflected in Fig. 4-1 to the Divisibility Report.

7. In 2008, I inspected the Site and observed that the waste rock pile originally depicted by Pampeyan adjacent to the DMEA shaft was no longer present. Mr. Jack Wessman, who was present, told me that he used the waste rock formerly

adjacent to the DMEA shaft to re-fill that shaft. Mr. Wessman's representation is consistent with my observation that the DMEA shaft has been filled.

8. Additional rock extracted from the DMEA Shaft, if any, was likely dumped on the north facing slope ("Northern Dump") in the Dunn Creek watershed, using the dump tracks that Mr. Ronnie B. Smith constructed from the DMEA shaft, according to historical records that I have reviewed and that are cited in the Divisibility Report. During a 2009 Site visit, I observed waste material on the Northern Dump typical of the mining waste that could have been transported from the DMEA shaft via Mr. Smith's short rail line.

9. I am aware of no evidence that Cordero's connection to the Main Winze in 1955 exists today, or that it existed for any duration post-1955, since such mine shafts are prone to collapse without periodic rehabilitation. Similarly, I am aware of no evidence that water in the 360 foot level Cordero tunnels was contaminated with significant amounts of mercury, or that it has ever traveled 200 feet upwards through the Main Winze and then several hundred feet horizontally out of the drainage portal adit at 165 foot level adit. Records I have reviewed, however, do indicate that water emanated from the 165 foot level adit before Cordero operated on the Site.

10. The Rev. Order states that the Site is comprised of approximately 109 acres, but based on conservative estimates I have made, Cordero appears to have operated on less than 10% of that area.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 28th day of January, 2010 in Concord, California.

By: _____

