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5 Attorneys for Designated Party
6 SUNOCO, INC.

7
8 CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12
13 RECONSIDERATION OF CLEANUP
AND ABATEMENT ORDER R5-2013-
14 0701, MOUNT DIABLO MINE,
15 CONTRA COSTA COUNTY, DATED
16 APRIL 16, 2013

**DECLARATION OF ADAM P.
BAAS IN SUPPORT OF SUNOCO,
INC.'S OPPOSITION TO THE
PROSECUTION TEAM'S
MOTION IN LIMINE**

17
18 Hearing Date: June 4/5, 2014

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20
21 I, the undersigned Adam P. Baas, declare as follows:

22 1. I am an attorney admitted to practice law in the State of
23 California and am Senior Counsel with the Edgcomb Law Group LLP ("ELG").
24 ELG is counsel for Designated Party Sunoco, Inc. ("Sunoco") in connection with
25 the Central Valley Regional Water Quality Control Board's ("Regional Board")
26 reconsideration of Cleanup and Abatement Order No. R5-2013-0701, Mount Diablo
27 Mine, Contra Costa County, issued on April 16, 2013 ("CAO").
28

1 2. I have personal knowledge of the facts set forth herein or am
2 familiar with such facts from: 1) my personal involvement in this matter; or 2) my
3 review of the files and records obtained from public agencies and other public
4 sources of information.

5 3. On or about January 20, 2012, representatives from the Regional
6 Board and the State Water Resources Control Board (“State Board”), Office of
7 Enforcement (“Office of Enforcement”), were put on notice of Sunoco’s corporate
8 law argument that there is no legal basis for the Regional Board to attribute the
9 Cordero Mining Company’s (“Cordero”) liability at the Mount Diablo Mercury
10 Mine site (“Site”), if any, to Sunoco because a former shareholder or parent
11 company cannot be held liable for the acts of its subsidiary (“Sunoco’s Corporate
12 Law Argument”). *See* Exhibit 1 to the Declaration of John D. Edgcomb being
13 submitted simultaneously herewith.

14 4. Upon information and belief, it is my understanding that on or
15 about January 24, 2012, State Board enforcement attorney, Julie Macedo, Esq.
16 rejected Sunoco’s Corporate Law Argument. *See* ¶¶ 5 and 6 of the Declaration of
17 John D. Edgcomb being submitted simultaneously herewith.

18 5. On or about June 15, 2012, I participated in a telephone
19 conversation with Ms. Macedo during which we discussed, among other things,
20 Sunoco’s Corporate Law Argument. Ms. Macedo informed me that Sunoco’s
21 Corporate Law Argument had been discussed with the Office of Enforcement and
22 Regional Board back in January 2012 and that the Office of Enforcement’s position
23 had not changed – the argument was rejected and there was nothing Sunoco could
24 do to prevent Sunoco from being named in the yet to be issued CAO.

25 6. On or about July 26, 2012, I participated in a telephone
26 conversation with State Board enforcement attorney, Anna Kathryn Benedict, Esq.
27 during which we discussed, among other things, Sunoco’s Corporate Law
28 Argument. My understanding after this telephone conversation was that the Office

1 of Enforcement's position regarding Sunoco's Corporate Law Argument had not
2 changed, but that Ms. Benedict would like to give Sunoco a "draft" of the CAO in
3 order to foster "creative" solutions between the potentially responsible parties
4 ("PRPs"), as well as to see if additional PRPs could be added to the CAO.

5 7. In August 2012, I participated in multiple telephone
6 conversations with Ms. Benedict. My understanding throughout this time was that:
7 the Regional Board and Office of Enforcement was fully aware of Sunoco's
8 Corporate Law Argument; the Office of Enforcement's position was that the
9 Sunoco's Corporate Law Argument was futile; and, despite the Office of
10 Enforcement's position, Sunoco would be provided a "draft" of the CAO as a
11 "courtesy" in order to reveal the new list of PRPs and foster a PRP agreement
12 without protracted litigation. Further, because the Office of Enforcement and
13 Regional Board members were already aware of Sunoco's various non-liability
14 arguments (including Sunoco's Corporate Law Argument) the expectation was that
15 Sunoco's comments to the draft CAO would be limited to technical inaccuracies.

16 8. On or about September 12, 2012, Ms. Benedict sent a copy of
17 the draft CAO *via* letter to the named PRPs. Attached hereto as **Exhibit 1** is a true
18 and correct copy of Ms. Benedict's September 12, 2012, letter. To my knowledge,
19 a copy of the draft CAO was not posted to the Regional Board or State Board
20 websites, nor was the draft CAO otherwise presented to the general public for
21 comment.

22 9. On or about October 8, 2012, I participated in a telephone
23 conversation with Ms. Benedict and Ms. Macedo during which we discussed
24 Sunoco's comments to the draft CAO. I reiterated that: Sunoco has multiple
25 arguments in support of removing it completely from the CAO, including Sunoco's
26 Corporate Law Argument; the Regional Board was aware of these arguments and
27 had rejected them; Sunoco intended to petition the State Board for review and
28 rescission of the CAO; and, notwithstanding these facts, Sunoco would be willing

1 to participate in a PRP meeting if scheduled. It was further discussed and agreed
2 that Sunoco would not be briefing its non-liability arguments in response to the
3 draft CAO, but that Sunoco would focus its comments on technical inaccuracies
4 within the draft CAO.

5 10. On or about October 12, 2012, I sent a letter to Ms. Macedo on
6 behalf of Sunoco, setting forth three technical comments to the draft CAO.
7 Attached hereto as Exhibit 2 is a true and correct copy of my October 12, 2012,
8 letter. Within this letter, I memorialized the October 8th telephone conversation
9 between myself, Ms. Benedict, and Ms. Macedo:

10 This letter follows my telephone conversation with you
11 and Anna Kathryn Benedict, Esq., on October 8, 2012
12 regarding Sunoco's comments to the Draft Cleanup and
13 Abatement Order ("Draft Order") for the Mount Diablo
14 Mercury Mine ("Site"). . . . This submission is made
15 solely to correct what we believe to be inaccuracies in
16 certain statements in the Draft Order and is not intended
17 to cover the substance or merits of the Order. As you are
18 aware, Sunoco intends to contest its liability as an alleged
19 PRP at the Site. Therefore, we make this submission
20 without admission or prejudice to, or waiver of, Sunoco's
21 rights and defenses.

22 11. The Regional Board and Office of Enforcement issued the final
23 CAO on April 16, 2013.

24 12. On or about May 15, 2013, Sunoco filed a Petition for Review
25 and Rescission of the CAO with the State Board ("Sunoco's Petition"). A true and
26 correct copy of Sunoco's Petition is attached to Sunoco's Comments Regarding the
27 CAO submitted with Sunoco's Submission of Evidence and Policy Statement in
28 relation to the above captioned matter. Page 4 of Sunoco's Petition summarizes
Sunoco's Corporate Law Argument as follows:

The CAO lists Sunoco as a Discharger based solely on its
relationship to Sun Oil Company, the former shareholder

1 of Cordero. There is no legal support, however, for
2 finding Sunoco liable for Cordero's historical activities.
3 First, Sun Oil Company is a former shareholder of, not a
4 successor-in-interest to, Cordero; second, there is no
5 statutory liability for pre- or post-dissolution claims
6 against a shareholder such as Sunoco unless that
7 shareholder acted as the *alter ego* of the corporation; and,
8 third, there is no evidence that Sun Oil Company acted as
9 the *alter ego* of Cordero. As such, Sunoco cannot be
10 held liable for the actions of Cordero as a matter of law,
11 regardless of whether Cordero is deemed to be capable of
12 being held responsible today.

13 13. Sunoco's Petition attaches multiple documents in support of
14 Sunoco's Corporate Law Argument, copies of which were provided to the Regional
15 Board and Office of Enforcement on or about May 15, 2013.

16 14. On or about May 23, 2013, I participated in a telephone
17 conversation with Ms. Benedict regarding scheduling an in-person PRP meeting
18 with the Regional Board. During this conversation, Ms. Benedict was again put on
19 notice that Sunoco's position was one of non-liability for the reasons set forth in
20 Sunoco's Petition, but that nevertheless, Sunoco was willing to participate in a PRP
21 meeting.

22 15. On or about August 8, 2013, I received a letter from Advisory
23 Team member David P. Coupe stating that the Regional Board had agreed to
24 reconsider the CAO and that a hearing would be held on the arguments raised in
25 Sunoco's Petition. The letter expressly stated that, "the Central Valley Water Board
26 will hold a hearing at a subsequent date to reconsider CAO No. R5-2013-
27 0701 within the scope of issues presented in [Sunoco's Petition]." Attached hereto
28 as **Exhibit 3** is a true and correct copy of Mr. Coupe's August 8, 2013, letter.

16. On August 9, 2013, I forward a copy of Mr. Coupe's letter to
Ms. Benedict *via* email. Attached hereto as **Exhibit 4** is a true and correct copy of
My August 9, 2013, email.

1 17. On or about August 15, 2013, I participated in an in-person PRP
2 meeting with representatives from the Office of Enforcement, the Regional Board,
3 Sunoco and the other PRPs, at the Regional Board's offices in Rancho Cordero,
4 California (the "PRP Meeting"). Present at the PRP Meeting were, among others,
5 Ms. Benedict and Regional Board representatives, Victor Izzo and Ross Atkinson.
6 During the PRP Meeting, Ms. Benedict represented that the Prosecution Team
7 would need more time to prepare for the upcoming hearing. At that time, the
8 understanding was that the Regional Board hearing was to take place in December
9 2013.

10 18. On or about August 21, 2013, Ms. Benedict emailed the PRPs,
11 stating that the Prosecution Team would "be requesting a later hearing date to allow
12 for discovery and briefing in the above-referenced matter. If you are willing to
13 stipulate to a briefing schedule and later hearing date, we are willing to move the
14 deadlines in the CAO." Attached hereto as Exhibit 5 is a true and correct copy of
15 Ms. Benedict's August 21, 2013, email.

16 19. Thereafter, the PRPs and the Prosecution Team reached an
17 agreement and the hearing date was re-scheduled to March 27, 2014, in order to
18 provide the Prosecution Team with its requested time for discovery and briefing.

19 20. On or about December 16, 2013, Ms. Benedict provided a draft
20 Hearing Procedure document to Sunoco, *et al.* via email, which set forth the
21 Prosecution Team's desired timeline for the March hearing. Attached hereto as
22 Exhibit 6 is a true and correct copy of Ms. Benedict's December 16, 2013, email.

23 21. I responded *via* email on December 18, 2013, stating that the
24 lack of any correspondence from the Prosecution Team regarding the Hearing
25 Procedure document had left the parties in a tough position before the holidays.
26 Attached hereto as Exhibit 7 is a true and correct copy of my December 18, 2013,
27 email.

1 22. On or about January 6, 2014, the parties reached an agreement
2 on the Hearing Procedure document and a final draft was submitted to the Advisory
3 Team by Ms. Benedict *via* email. Attached hereto as **Exhibit 8** is a true and correct
4 copy of Ms. Benedict's January 6, 2014, email.

5 23. The final Hearing Procedure document was later approved by
6 the Advisory Team and required, among other things, that the Prosecution Team
7 submit its Submission of Evidence and Policy Statement by February 21, 2014, and
8 that Sunoco must submit its Rebuttal Submission by March 14, 2014. Attached
9 hereto as **Exhibit 9** is a true and correct copy of the final Hearing Procedure
10 document.

11 24. On or about February 11, 2014, the Office of Enforcement
12 issued its first Subpoena for Document and Records to Sunoco ("Subpoena") with
13 one (1) request: Sunoco was to "[p]rovide all documents that refer or relate to
14 Cordero Mining Company, including any contact with or connection to Sunoco,
15 Inc." to the attention of Ms. Benedict by March 14, 2014. Attached hereto as
16 **Exhibit 10** is a true and correct copy of the Subpoena.

17 25. On March 14, 2014, Sunoco timely provided Ms. Benedict with
18 its Objections and Response to the Subpoena, and timely submitted its Submission
19 of Evidence and Policy Statement to the Prosecution Team pursuant to the Hearing
20 Procedure. Attached hereto as **Exhibit 11** is a true and correct copy of the
21 Sunoco's Objections and Response to the Subpoena. Attached hereto as **Exhibit 12**
22 is a true and correct copy of Sunoco's transmittal letter attaching its Hearing
23 Submissions.

24 26. To date, Sunoco has complied with the deadlines set forth in the
25 Hearing Procedure document and the hearing date has been re-scheduled to June
26 4/5, 2014.

27 27. To date, despite being on written and verbal notice of Sunoco's
28 Corporate Law Argument since at least January of 2012, the only discovery request

1 propounded on Sunoco by either the Regional Board or the Office of Enforcement
2 is the February 11th Subpoena.

3
4 I declare under penalty of perjury under the laws of the State of California
5 and the United States of America that the foregoing is true and correct.

6
7 Executed this 24th day of March, 2014 in San Francisco, California.

8
9 By:  _____
10 Adam P. Baas

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Exhibit 1



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

September 12, 2012

(Via Email & Certified Mail)

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(Via Certified Mail Only)

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Mr. Jack Wessman
Ms. Carolyn Wessman
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Ms. Emily T. Lewis
Counsel for Kennametal, Inc.
BCCZ Corporation
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**RE: DRAFT CLEANUP AND ABATEMENT ORDER FOR THE MOUNT DIABLO
MERCURY MINE LOCATED IN CONTRA COSTA COUNTY**

To All Responsible Parties:

Attached please find the DRAFT Cleanup and Abatement Order for the Mount Diablo Mercury Mine located in Contra Costa County. Please let me know by October 12, 2012, if you have any comments or concerns with respect to the parties named in the order.¹

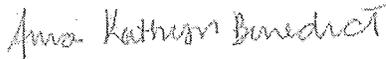
¹ Mt. Diablo Quicksilver, Co., Ltd. is a dissolved entity and, after an exhaustive search, no office, directors, or person having charge of its assets or any agent of process, was identified. Our office will also be providing Mt. Diablo Quicksilver, Co., Ltd. with a copy of the order pursuant to California Corporations Code section 2011, and in accordance with the California Water Code and all other applicable laws and regulations.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

If you have any questions, please do not hesitate to contact me by telephone at (916) 323-6848, or by email at abenedict@waterboards.ca.gov, or Senior Staff Counsel Julie Macedo by telephone at (916) 323-6847 or by email at jmacedo@waterboards.ca.gov.

Sincerely,



Anna Kathryn Benedict
Senior Staff Counsel
Office of Enforcement

Attachments

cc: *(with attachment)*

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(Via U.S. Mail)

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(Via U.S. Mail)

Kennametal Inc.
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(Via U.S. Mail)

California Department of Parks and Recreation
Bay Area District
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(Via U.S. Mail)

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Washington D.C. 20240

(Via U.S. Mail)

Central Valley Region Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

(Via email only)

Pamela Creedon
Executive Officer

Rick Moss
Assistant Executive Officer

Clean up and Compliance Branch
Ross Atkinson
Victor Izzo
Robert Busby

cc: *(continued, without attachment)*

State Water Resources Control Board
Office of the Chief Counsel
Michael Lauffer
Chief Counsel

(Via email only)

Patrick Pulupa
Staff Counsel

Office of Enforcement
Julie Macedo
Senior Staff Counsel

Exhibit 2

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October 12, 2012

BY EMAIL & U.S. MAIL

Julie Macedo, Esq.
State Water Resources Control Board
Senior Staff Counsel, Office of Enforcement
1001 "I" Street, 16th Floor
P.O. Box 100
Sacramento, CA 95814

Re: **Comments by Sunoco, Inc. to the Draft Cleanup and Abatement Order for the Mount Diablo Mercury Mine Located in Contra Costa County**

Dear Ms. Macedo:

We represent Sunoco, Inc. ("Sunoco"). This letter follows my telephone conversation with you and Anna Kathryn Benedict, Esq., on October 8, 2012 regarding Sunoco's comments to the Draft Cleanup and Abatement Order ("Draft Order") for the Mount Diablo Mercury Mine ("Site"). The Draft Order was sent to us along with other entities on September 12th by Ms. Benedict, requesting comments to the State Water Resource Control Board ("State Board") by October 12, 2012. On behalf of Sunoco, we appreciate the opportunity to review the Draft Order and respectfully request that the State Board, in conjunction with the Regional Water Quality Control Board Central Valley Region ("Regional Board"), consider the following three (3) comments when drafting the final Cleanup and Abatement Order.

First, the statement in Paragraph No. 16 of the Draft Order, which states "[t]he amount of mercury production from this time period is unknown," is inaccurate. It is our understanding that there was no mercury production during Cordero's 14 months of operations at the Site; and that Cordero was prospecting only and never actually mined mercury from the ground. We also believe that the Regional Board agrees with our understanding. In view of this, we request that the statement be changed to accurately reflect that Cordero did not produce mercury at the Site.

Second, as we discussed over the telephone this week, there are two issues with the table in Paragraph No. 25 of the Draft Order that we request be corrected.

1. the "Background" levels of mercury, chromium, and nickel depicted in the table as 0.20, 5, and 5, respectively, are the detection limits set for the lab equipment and, for each of these chemical elements, the actual sampling results came back as non-detect.

Julie Macedo, Esq.
Re: Comments to Draft CAO
October 12, 2012

Thus, the levels for these elements are actually below what is reported in the table, if they exist at all. Please change these results to non-detect, or "ND."

2. The "Water Quality Goal" numbers within the table are municipal supply standards generally used for assessing the potable quality of groundwater. By comparison, the numbers depicted throughout the rest of the table all came from surface water samples, not ground water samples. As a result, the table depicts data results for surface water sampling and compares these results to municipal, or potable, standards. Please change the numbers within the Water Quality Goal column to reflect the State Water Board's surface water standards.

Third, the last sentence of Paragraph No. 26 is confusing because the term "earlier reports" is not defined. It appears that the intent of the paragraph is to focus on the 1997 Slotton study, but the reference to "earlier reports" could be interpreted to mean all earlier reports referenced in the Draft Order, which would be an inaccurate statement. To eliminate this confusion, we suggest changing the term "earlier reports" to "the Slotton study."

Thank you again for the opportunity to comment on the Draft Order. This submission is made solely to correct what we believe to be inaccuracies in certain statements in the Draft Order and is not intended to cover the substance or merits of the Order. As you are aware, Sunoco intends to contest its liability as an alleged PRP at the Site. Therefore, we make this submission without admission or prejudice to, or waiver of, Sunoco's rights and defenses.

Please let us know if you have any question or would like to set up a time to discuss.

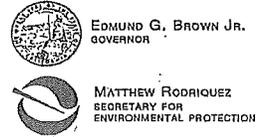
Very truly yours,



Adam P. Baas

cc (via email only):
Anna Kathryn Benedict, Esq.
Rick Moss
Ross Atkinson

Exhibit 3



Central Valley Regional Water Quality Control Board

August 8, 2013

Christopher M. Sanders, Esq.
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Dear Mr. Sanders, Mr. Edgcomb, and Mr. Baas:

REQUEST FOR RECONSIDERATION OF CLEANUP AND ABATEMENT ORDER NO.
R5-2013-0701 FOR MOUNT DIABLO MERCURY MINE, CONTRA COSTA COUNTY

As you know, Kennemetal, Inc. and Sunoco, Inc. have filed petitions with the State Water Resources Control Board to review Cleanup and Abatement Order (CAO) No. R5-2013-0701 issued by the Central Valley Regional Water Quality Control Board's (Central Valley Water Board) Executive Officer, Pamela Creedon. These two petitions have been assigned numbers A-2249(a) and A-2249(b) as noted in the State Water Board's Acknowledgement of Petition Received letter dated May 23, 2013.

At the July 25/26 Central Valley Water Board's Board meeting, during the Public Forum session, Mr. Sanders spoke to the Central Valley Water Board as legal counsel for Kennemetal, Inc. and requested that the Central Valley Water Board reconsider CAO No. R5-2013-0701. Dr. Karl Longley, Chair of the Central Valley Water Board, noted that he would consult with me as Board Counsel on the request.

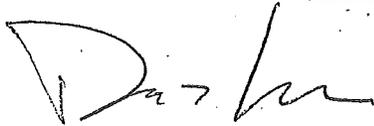
This letter serves to inform all interested persons concerning this request and the Board's Chair's ruling.

The Board Chair notes that reconsideration of a Cleanup and Abatement Order by the Central Valley Water Board is strictly discretionary and the State Water Board's Enforcement Policy notes in pertinent part, that "significant enforcement actions by a Regional Water Board Executive Officer may, in some circumstances, be reviewed by the Regional Water Board at the request of the discharger, though such review does not extend the time to petition the State Water Board."

In this particular case, the Board Chair has ruled to **GRANT** Kennemetal's request to reconsider CAO No. R5-2013-0701. As a result, the Central Valley Water Board will hold a hearing at a subsequent date to reconsider CAO No. R5-2013-0701 within the scope of issues presented in Petition Nos. A-2249(a) and A-2249(b). Although no hearing date has been firmly established at this time, it is anticipated that this matter will be heard during the December 2013 Board Meeting. At the present time, the designated parties have been identified as the Central Valley Water Board's Prosecution Team, Kennemetal, Inc. and Sunoco, Inc.

Given the pending nature of this adjudicatory proceeding, the Central Valley Water Board has split functions between the Prosecution Team who is responsible for prosecuting this matter in front of the Central Valley Water Board and an Advisory Team that provides neutral legal and technical advice to the Board members. Mr. Ken Landau and I serve as members of the Advisory Team for this matter. Additional information concerning the hearing will be provided when a Hearing Procedure is issued, most likely in September or October.

Additional questions of strictly a procedural nature may be addressed to me or Mr. Landau via email at dcoupe@waterboards.ca.gov or klandau@waterboards.ca.gov.



David P. Coupe
Attorney III and Member of the Advisory Team

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cc: (Continued)

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[via email only]

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Exhibit 4

Adam Baas

From: Adam Baas
Sent: Friday, August 09, 2013 9:47 AM
To: 'Benedict, AnnaKathryn@Waterboards'
Subject: FW: Reconsideration of Cleanup and Abatement Order R5-2013-0701
Attachments: CAO R5-2013-0701.pdf

Hi, Anna Kathryn. I hope you are doing well. Do you have time today or early next week to discuss the attached correspondence. It appears that Sunoco will be going before the Regional Board in December. Thanks.

Adam P. Baas, Esq.
Edgcomb Law Group, LLP
One Post Street, Suite 2100
San Francisco, California 94104
T 415.692.8144 | F 415.399.1885
www.edgcomb-law.com

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From: Coupe, David@Waterboards [<mailto:David.Coupe@waterboards.ca.gov>]
Sent: Thursday, August 08, 2013 11:26 AM
To: Christopher Sanders (cms@eslawfirm.com); Adam Baas; John Edgcomb
Cc: rthomson@babstcalland.com; jonwactor@ww-envlaw.com; Okun, Lori@Waterboards; Creedon, Pamela@Waterboards; Landau, Ken@Waterboards; Atkinson, Ross@Waterboards; Tobias, Kathryn@Parks; Rodgers, Clay@Waterboards; Pulupa, Patrick@Waterboards; Wyels, Philip@Waterboards; Mayer, Alex@Waterboards
Subject: Reconsideration of Cleanup and Abatement Order R5-2013-0701

All:

Please see the attached letter concerning Kennemetal's Request for Reconsideration of Cleanup and Abatement Order No. R5-2013-0701.

David P. Coupe
Attorney III and Member of the Advisory Team
c/o San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Phone: (510) 622-2306
Fax: (510) 622-2460
E-mail: dcoupe@waterboards.ca.gov

Exhibit 5

Adam Baas

From: Benedict, AnnaKathryn@Waterboards [AnnaKathryn.Benedict@waterboards.ca.gov]
Sent: Wednesday, August 21, 2013 11:19 PM
To: Tobias, Kathryn@Parks; Christopher Sanders (cms@eslawfirm.com); Adam Baas; Jon Wactor; Izzo, Victor@Waterboards; Atkinson, Ross@Waterboards; Altevogt, Andrew@Waterboards; Busby, Robert@Waterboards
Cc: Rob Campbell
Subject: Mt. Diablo Mercury Mine

Kathryn, Chris, Adam and Jon: I spoke with the Prosecution Team and we will be requesting a later hearing date to allow for discovery and briefing in the above-referenced matter. If you are willing to stipulate to a briefing schedule and later hearing date, we are willing to move the deadlines in the CAO.

I'm out of the office for the next few days, but upon my return I can send out a draft schedule and corresponding hearing dates. Once we have agreement, I will let the Regional Board's Advisory Team know of our proposal.

Thanks.

Anna Kathryn Benedict

Exhibit 6

Adam Baas

From: Benedict, AnnaKathryn@Waterboards [AnnaKathryn.Benedict@waterboards.ca.gov]
Sent: Monday, December 16, 2013 10:28 AM
To: Adam Baas; Christopher Sanders (cms@eslawfirm.com)
Subject: Mt. Diablo Hearing Procedures
Attachments: MtDiablo_HearingProcedures_March2014.docx

Adam and Chris: Attached please find the draft hearing procedures in the above-referenced matter. As I wasn't on the conference call and wasn't included in the follow-up emails from David Coupe I'm not sure if these were to be sent to all the Dischargers or just Sunoco and Kennametal. Please let me know. Also, in the future, if you wouldn't mind including me in any conference call/correspondence that involves due dates I would appreciate it.

Thanks.

Anna Kathryn Benedict
Senior Counsel-Office of Enforcement

Exhibit 7

Adam Baas

From: Adam Baas
Sent: Wednesday, December 18, 2013 4:20 PM
To: 'Benedict, AnnaKathryn@Waterboards'
Cc: Christopher Sanders (cms@eslawfirm.com)
Subject: Mt. Diablo CAO Hearing: March 27/28, 2014
Attachments: MtDiablo_HearingProcedures_March2014.docx

Anna Kathryn,

David Coupe's email below references an October 10th teleconference involving myself, Chris Sanders, and Cris Carrigan. During this teleconference, it was agreed that: the Prosecution Team would put together the first draft of the hearing procedures document for the March 2014 Regional Board hearing; the Prosecution Team would circulate that draft to the alleged Dischargers (Sunoco and Kennametal); and the parties would collectively provide a final draft to the Advisory Board in a timely manner (or "foreseeable future"). During that same call, Mr. Carrigan represented that the Prosecution Team would do its best to get Sunoco and Kennametal the first draft as soon as possible. On October 28th, you sent Mr. Sanders an email stating that Mr. Carrigan had relayed the details of our meeting to you and that you would be working on the draft hearing procedures during the first week of November. When we did not hear from you, I sent you an email on November 25th asking for a status report. You responded to my email on December 3rd, stating that you had been tied up on other matters and did not have an update at that time. We did not hear from you again until you provided us with the attached draft hearing procedures on December 16th.

With Christmas next week, the parties are now in a difficult position. The members of the Advisory Board are likely going to be unavailable during the upcoming holidays (and potentially not available until Monday, January 6th). Nevertheless, I am willing to do my best to red-line your draft before I leave the office this Friday – with the goal being to come to an agreement on a final draft before the first of the new year. Please be prepared to be flexible with the dates that you've proposed, however, so that the parties can accomplish this goal and maintain the March hearing date. For instance, your first proposed deadline for the parties to object to the hearing procedures and/or request Designated Party status is January 7th. This date will not work. Once the Advisory Board receives the document, it will have to review, approve, and circulate the final draft to the other RPs. The other RPs will then need time to object and/or request status. This notice and response period needs to be more than just a few days. In addition, your Evidence and Policy Statements schedule has each party producing only one week apart, which I do not believe either party had in mind when we agreed to extend the hearing date into March 2014. And, you have the Prosecution Team's first submittal on February 27th, when the parties discussed this submittal being at least 6-weeks in advance of the hearing. These are just a few comments after my cursory review. I'll provide our final comments in red-line form as soon as possible.

This being said, hopefully we can work cooperatively to come to an agreement in the next couple of weeks. Please let us know your availability to review our comments/edits. If you are able to review/approve our comments next week, we can schedule a call for the week of New Year's Eve and try to agree on a final document to give to the Advisory Board by January 2nd. This is an aggressive timeline, but given the circumstances we are willing to make the effort so long as it does not prejudice our client.

Regards,

Adam P. Baas, Esq.
Edgcomb Law Group, LLP
One Post Street, Suite 2100
San Francisco, California 94104
T 415.692.8144 | F 415.399.1885
www.edgcomb-law.com

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From: Coupe, David@Waterboards [mailto:David.Coupe@waterboards.ca.gov]
Sent: Monday, December 16, 2013 11:24 AM
To: Benedict, AnnaKathryn@Waterboards
Cc: Christopher Sanders (cms@eslawfirm.com); Adam Baas; Carrigan, Cris@Waterboards; Landau, Ken@Waterboards
Subject: FW: Today's Conference Call

Anna Kathryn:

In response to your inquiry earlier today, I am forwarding my latest email to the Parties concerning the Mt. Diablo matter back in October. As always, additional questions of strictly a procedural nature may be addressed to me and Mr. Landau and with a copy to all parties. With that said, please note that I will be out of the office from December 23 until January 6th.

David P. Coupe
Attorney III and Member of the Advisory Team
c/o San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Phone: (510) 622-2306
Fax: (510) 622-2460
E-mail: dcoupe@waterboards.ca.gov

From: Coupe, David@Waterboards
Sent: Thursday, October 10, 2013 11:32 AM
To: Christopher Sanders (cms@eslawfirm.com); abaas@edgcomb-law.com; Carrigan, Cris@Waterboards
Cc: Landau, Ken@Waterboards
Subject: Today's Conference Call

Mr. Sanders, Mr. Baas, and Mr. Carrigan:

This email memorializes an agreement among the parties reached on today's conference call that the hearing to reconsider CAO No. R5-2013-0701 will be scheduled for the March 27/28, 2014 Board Meeting. This email also memorializes an agreement among the parties reached on today's conference call that a hearing procedure will be drafted by the parties and submitted to the Advisory Team for its review and approval in consultation with the Board Chair. Although no firm date has been established to provide a draft hearing procedure, it is my understanding that a draft hearing procedure will be provided by the parties to the Advisory Team in the foreseeable future.

As always, questions of strictly a procedural nature may be sent to me and Mr. Landau via email with a copy to all parties.

David P. Coupe
Attorney III and Member of the Advisory Team
c/o San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Phone: (510) 622-2306
Fax: (510) 622-2460
E-mail: dcoupe@waterboards.ca.gov

Exhibit 8

Adam Baas

From: Benedict, AnnaKathryn@Waterboards [AnnaKathryn.Benedict@waterboards.ca.gov]
Sent: Monday, January 06, 2014 5:05 PM
To: Coupe, David@Waterboards; Landau, Ken@Waterboards
Cc: Adam Baas; Christopher Sanders (cms@eslawfirm.com); Busby, Robert@Waterboards; Atkinson, Ross@Waterboards; Huggins, Jeff@Waterboards; Altevogt, Andrew@Waterboards
Subject: Mt Diablo Mine Draft Hearing Procedures
Attachments: MtDiablo_HearingProcedures_V2_010614_March 2014.docx

David and Ken: Attached please find the draft hearing procedures for the above-referenced matter. The Parties have reached an agreement on all but one aspect, Sunoco, Inc.'s and Kennametal, Inc.'s time limit for presenting evidence to the Board (page 4 of the Order). The Regional Board recommends each party be provided 20 minutes to present, which we believe will keep the parties focused on the issue at hand. Sunoco, Inc. and Kennametal, Inc. have requested 30 minutes.

In addition, per my email, once we know the procedure for dealing with the 2013 Order, the section title "Overview" can be revised to reflect your decision.

Thanks.

Anna Kathryn Benedict

Exhibit 9

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE
FOR RECONSIDERATION OF CLEANUP AND ABATEMENT ORDER
R5-2013-0701

ISSUED TO
SUNOCO, INC., KENNAMETAL INC., et al.
Mt. Diablo Mercury Mine

Contra Costa County

SCHEDULED FOR March 27/28, 2014

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Overview

On March 27/28, 2014, the Central Valley Regional Water Quality Control Board ("Board") will conduct a hearing to reconsider Cleanup and Abatement Order R5-2013-0701 ("CAO"). The Prosecution Team proposes that the Board affirm the CAO in its entirety, which requires the dischargers named in the CAO to investigate and clean up the Mount Diablo Mercury Mine site ("Site") in accordance with the guidelines and tasks set forth in the order. Sunoco, Inc. and Kennametal, Inc. have separately requested that they be removed from the CAO, arguing they have been erroneously named as dischargers. The hearing is currently scheduled to be conducted before the Board during its March 27/28, 2014 meeting.

The purpose of the hearing is to consider relevant evidence and testimony regarding the CAO. This CAO was previously issued by the Executive Officer on April 16, 2013. At a Board meeting on July 25, 2013, counsel for Kennametal requested the Board to hold a hearing on the issuance of this CAO. The Board by letter dated August 8, 2013 granted the request for the Board to reconsider the CAO. At this hearing, the Board will consider whether to affirm adoption of the CAO, whether to modify the CAO or remand the CAO to the Executive Officer, or whether to rescind the CAO. The public hearing will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Board's meeting agenda. The meeting will be held at:

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure, which has been approved by the Board Chair for the adjudication of such matters, and the California Code of Regulations, title 23. The procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at

<http://www.waterboards.ca.gov>

Copies will be provided upon request. Except as provided in Section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

The parties shall attempt to resolve objections to this Hearing Procedure BEFORE submitting objections to the Advisory Team.

Separation of Prosecutorial and Advisory Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Board (the "Prosecution Team") have been separated from those who will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Advisory Team are: Ken Landau, Assistant Executive Officer, Alex MacDonald, Senior Water Resource Control Engineer, and David Coupe, Senior Staff Counsel, Office of Chief Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer, Robert Busby, Supervising Engineering Geologist, Andrew Altevogt, Assistant Executive Officer, Ross Atkinson, Associate Engineering Geologist, and Anna Kathryn Benedict, Senior Legal Counsel, Office of Enforcement.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Pamela Creedon regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Hearing Participants

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. Interested Persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff, or others, at the discretion of the Board Chair.

The following participants are hereby designated as **Designated Parties** in this proceeding:

1. **Central Valley Water Board Prosecution Team**
2. **Sunoco, Inc. and**
3. **Kennametal, Inc.**

Requesting Designated Party Status

Persons who wish to participate in the hearing as a Designated Party, and have not already been named as a Designated Party by this Hearing Procedure, must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

Primary Contacts

Advisory Team:

Ken Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4726; fax: (916) 464-4758
Ken.Landau@waterboards.ca.gov

David Coupe, Senior Staff Counsel
c/o San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2306; (510) 622-2460
David.Coupe@waterboards.ca.gov

Prosecution Team:

Andrew Altevogt, Assistant Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4656; fax: (916) 464-4645
Andrew.Altevogt@waterboards.ca.gov

Ross Atkinson, Associate Engineering Geologist
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4614; fax: (916) 464-4645
Ross.Atkinson@waterboards.ca.gov

Anna Kathryn Benedict, Senior Staff Counsel
State Water Resources Control Board, Office of Enforcement
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 323-6848; fax: (916) 341-5284
abenedict@waterboards.ca.gov

Designated Parties:

Sunoco, Inc.
Represented by Edgcomb Law Group LLP
John D. Edgcomb
Adam P. Baas
One Post Street, Suite 2100
San Francisco, California 94104
abaas@edgcomb-law.com

Kennemetal Inc.
Represented by Ellison Schnieder & Harris, L.L.P.
Christopher M. Sanders
2600 Capital Avenue, Suite 400
Sacramento, California 95816

cms@eslawfirm.com

Ex Parte Communications

Designated Parties and Interested Persons are forbidden from engaging in ex parte communications with a Board Member or a member of the Board's Advisory Team regarding this matter. An ex parte communication is a written or verbal communication related to the investigation, preparation, or adoption of the Cleanup and Abatement Order between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team (see Gov. Code, § 11430.10 et seq.). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Communications regarding non-controversial procedural matters are also not considered ex parte communications and are not restricted.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: Sunoco, Inc. and Kennametal, Inc. will each have **30 minutes** to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide a closing statement. The Prosecution shall have **1 hour** to present evidence (including evidence presented by witnesses called by the Designated Parties), to cross-examine witnesses (if warranted), and to provide a closing statement. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence and Policy Statements

The Prosecution Team and all other Designated Parties must submit the following information in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the parties would like the Board to consider. Evidence and exhibits already in the public files of the Board may be submitted by reference, as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will not generally receive copies of materials incorporated by reference unless copies are provided, and the referenced materials are generally not posted on the Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the parties intend to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against Sunoco, Inc. and Kennametal, Inc. (and any additional Designated Party); a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the CAO, Staff Report, or other material submitted by the Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Board staff, no later than the deadline listed under "Important Deadlines" below.

Designated Parties: All Designated Parties shall submit comments regarding the CAO, along with any additional supporting evidence not cited by the Prosecution Team, no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded. Rebuttal information that is untimely may be excluded.

Copies: Board members will receive copies of all submitted materials. The Board Members' hard copies will be printed in black and white on 8.5"x11" paper from the Designated Parties' electronic copies. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra nine paper copies for the Board Members. For voluminous submissions, Board Members may receive copies in electronic format only. Electronic copies will also be posted on the Board's website. Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

Other Matters: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) and will respond to all significant comments. The Summary Sheet and the responses shall clearly state that they were prepared by the Prosecution Team. The Summary Sheet and the responses will be posted online, as will revisions to the proposed Order.

Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will *not* be considered by the Board and will not be included in the administrative record for this proceeding.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A Designated Party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Request must contain a description of the issues Proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Objections

Any Designated Party objecting to written evidence or exhibits submitted by another Designated Party must submit a written objection to the Advisory Team and all other designated parties so that it is received by 5 p.m. on March 14. Any party responding to the objection must submit a written response to the Advisory Team and all other designated parties so that it is received by 5 p.m. on March 24, 2014. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The CAO and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Rancho Cordova, CA 95670. The CAO is hereby incorporated by reference into the administrative record for this Matter. "Related evidentiary documents" and comments received shall be considered part of the official administrative record for this hearing to the extent a designated party or interested person (as applicable) submit the document(s) or comments or incorporates them by reference, in accordance with "Submission of Evidence and Policy Statements," above. This file shall be considered part of the official administrative record for this hearing. All timely submittals received for this proceeding will be added to this file and will become a part of the administrative record, absent a contrary ruling by the Board's Chair. Many of these documents are also posted on-line at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml

Although the web page is updated regularly, to assure access to the latest information, you may contact Ross Atkinson (contact information above) for assistance obtaining copies.

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

All required submissions must be received by 5:00 p.m. on the respective due date.

January 24, 2014	<ul style="list-style-type: none"> ▪ Objections due on Hearing Procedure. ▪ Deadline to request "Designated Party" status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
January 28, 2014	<ul style="list-style-type: none"> ▪ Deadline to submit opposition to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
February 4, 2014	<ul style="list-style-type: none"> ▪ Advisory Team issues decision on requests for designated party status. ▪ Advisory Team issues decision on Hearing Procedure objections.
February 21, 2014	<ul style="list-style-type: none"> ▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements," above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
March 14, 2014	<ul style="list-style-type: none"> ▪ Designated Parties' (other than Prosecution Team) deadline to submit all information required under "Submission of Evidence and Policy Statements" above. This includes all written comments regarding the CAO. ▪ Interested Persons' comments are due. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
March 20, 2014	<ul style="list-style-type: none"> ▪ Prosecution Team shall submit its rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Deadline to submit requests for additional time. ▪ If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
March 24, 2014	<ul style="list-style-type: none"> ▪ All Designated Parties' deadline for responding to evidentiary objections.
March 25, 2014 [†]	<ul style="list-style-type: none"> ▪ Prosecution Team submits Summary Sheet and responses to comments. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
March 27/28	<ul style="list-style-type: none"> ▪ Hearing

[†] This deadline is set based on the date that the Board compiles the Board Members' agenda packages. Any material received after this deadline will not be included in the Board Members' agenda packages.

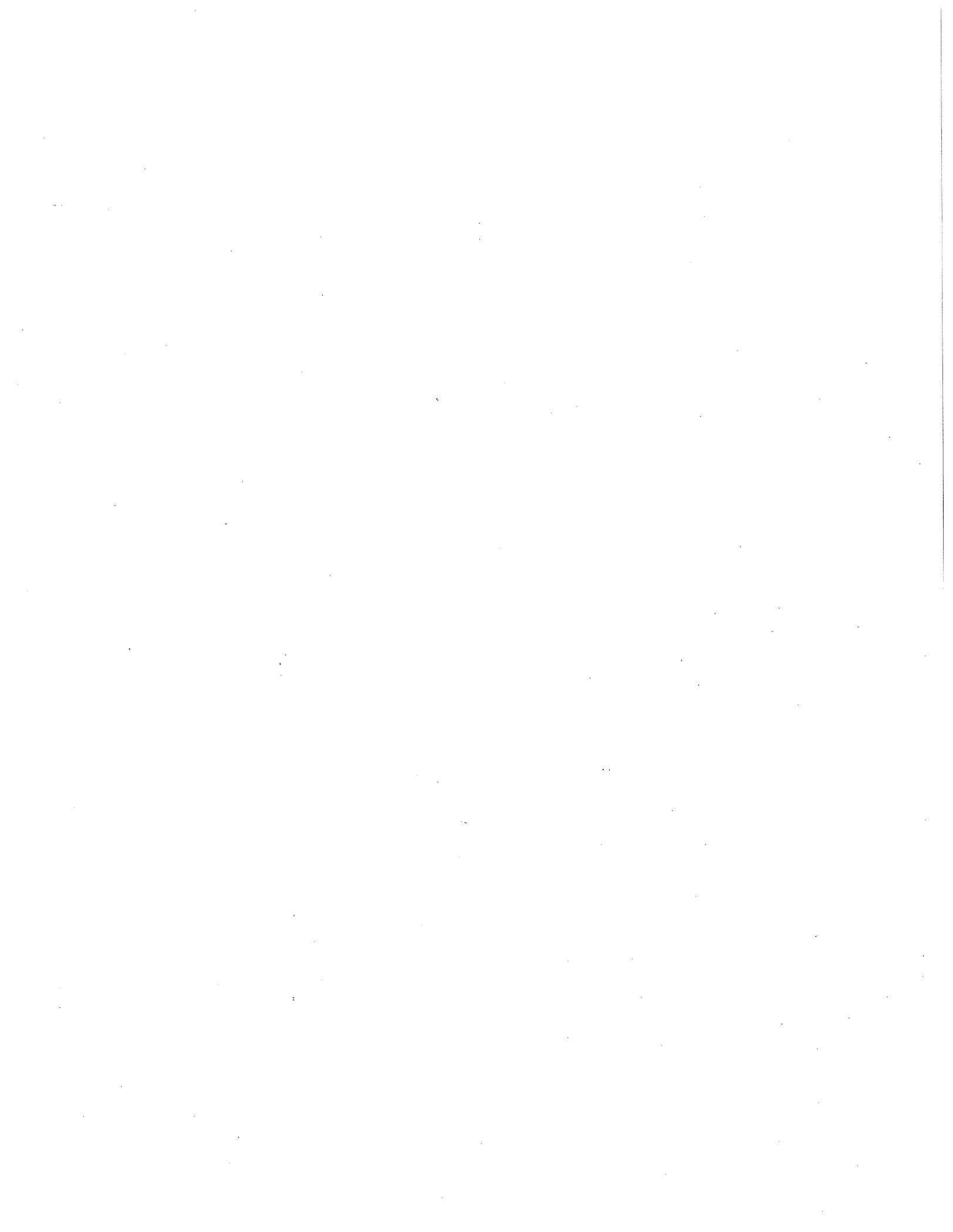


Exhibit 10

1 CRIS CARRIGAN (SBN 197045)
2 ANNA KATHRYN BENEDICT (SBN 221238)
3 OFFICE OF ENFORCEMENT
4 STATE WATER RESOURCES CONTROL BOARD
5 P.O. Box 100
6 Sacramento, California 95812-0100
7 Telephone: (916) 341-5272

8 BEFORE THE STATE WATER RESOURCES CONTROL BOARD
9 STATE OF CALIFORNIA

10 In the Matter of the Investigation of:
11 Mt. Diablo Mercury Mines

12 } SUBPOENA FOR RECORDS AND
13 } DOCUMENTS
14 } (California Water Code § 183,
15 } California Government Code §
16 } 11181)

17 TO: **VIA OVERNIGHT MAIL**
18 Adam Bass, Esq.
19 John D. Edgcomb, Esq.
20 Edgcomb Law Group
21 One Post Street
22 Suite 2100
23 San Francisco, CA 94104

VIA CERTIFIED MAIL NO.
7013 0600 0001 4936 7436
Lisa A. Runyon, Esq., Sr. Counsel
Sunoco, Inc.
1735 Market Street, Suite LL
Philadelphia, PA 19103-7583

24 **NOTICE:**

- 25 () You are served as an individual.
26 () You are served as (or on behalf of) the person
27 doing business under the fictitious name
28 of
(x) You are served on behalf of: **Sunoco, Inc.**

Pursuant to the powers conferred by California Water Code Section 183 and
Government Code Sections 11180 et seq.:

SUNOCO, INC. IS COMMANDED to produce the papers, books, records and
documents in your possession or under your control described below in connection with

1 the above-titled proceeding by no later than **March 14, 2014**. Documents must be sent
2 to: Anna Kathryn Benedict, Office of Enforcement, State Water Resources Control Board,
3 P.O. Box 100, Sacramento, CA 95812-0100.

4 You may seek the advice of an attorney in any matter connected with this
5 subpoena. You should consult your attorney promptly so that any problems concerning
6 your production of documents may be resolved within the time required by this subpoena.

7 **FAILURE TO COMPLY WITH THE COMMANDS OF THIS SUBPOENA WILL**
8 **SUBJECT YOU TO THE PROCEEDINGS AND PENALTIES PROVIDED BY LAW.**

9 **DEFINITIONS**

10 Definitions for industry or trade terms contained herein are to be construed
11 broadly. Where the industry or trade definition set forth herein does not coincide
12 precisely with your definition, the question, inquiry or production request should be
13 responded to or answered by using the definition which you apply and/or recognize in
14 your usage of the term, further documenting your definition in the response. Non-industry
15 or non-trade definitions should be applied as defined herein.

16 1. The term "COMMUNICATION" or "COMMUNICATIONS" means every
17 disclosure, transfer, exchange or transmission of information, whether oral or written and
18 whether face to face or by telecommunications, computer, mail, telecopier or otherwise.

19 2. The terms "RELATING TO" or "RELATE TO" includes referring to, alluding
20 to, responding to, concerning, connected with, commenting on, in respect of, about,
21 regarding, discussing, showing, describing, mentioning, reflecting, analyzing, constituting,
22 evidencing, or pertaining to.

23 3. a. The term "DOCUMENT" means a document whose existence is
24 known to you, your employees, superiors, representatives or assigns, regardless of its
25 location or origin, including the original and all non-identical copies, whether written,
26 printed or recorded, including, with limitations, contracts, agreements, leases, receipts,
27 invoices, payment vouchers, purchase orders, books, booklets, brochures, reports,
28 notices, announcements, minutes and other communications, including inter and intra-

1 office communications, studies, analyses, maps, charts, tables, questionnaires, indices,
2 telegrams, messages (including reports of telephone conversations and conferences),
3 tapes, letters, electronic mail, notes, records, drafts, proposals, authorizations,
4 negotiations, canceled checks, financial statements, deposit slips, bank drafts, books of
5 account, summaries, reports, tests, projections, studies, charts, notebooks, worksheets,
6 recordings, calendars, or other materials which are written, recorded, printed, typed, or
7 transcribed. "DOCUMENT" also means data sheets or data processing cards, tapes,
8 films or graphic matter or materials on computer magnetic diskettes or tapes,
9 electronically or magnetically-stored data (including data stored on "hard," "floppy" or
10 "micro-floppy" disks or data stored in data base systems), photographs, videotapes or any
11 other matter of any kind or nature however produced or reproduced and each copy of any
12 of the foregoing which is not identical because of margin notations or otherwise. If any
13 such documents were, but no longer are, in your possession or control, state what
14 disposition was made of them and when.

15 b. The term "DOCUMENT" shall also include all documents necessary
16 to interpret, translate, decode or understand any other document requested or produced.
17 If a form of document (i.e., magnetic tape) cannot be read, such form must be converted
18 to a paper document that can be read.

19 c. You are required to produce not only the original or an exact copy of
20 the original of all writings responsive to any of the following numbered requests, but also
21 all copies of such writings which bear any notes or markings not found on the originals
22 and all preliminary, intermediate, final and revised drafts of such writings.

23 4. The term "SUNOCO, INC." means SUNOCO, INC., its officers, employees,
24 agents, and representatives of the foregoing.

25 5. The term the "STATE OF CALIFORNIA" means all land within the
26 geopolitical boundaries of the State of California.

27 6. The terms "AND" and "OR" have both conjunctive and disjunctive meanings.

28 7. The terms "YOU" or "YOUR" refer to SUNOCO, INC. and any of its
predecessors, successors, assigns, agents, employees, officers, former employees,

1 former officers, directors, affiliates, partners, subsidiaries, parent corporations, attorneys,
2 or any other persons or entities acting on its behalf.

3 8. The term "Cordero Mining Company" refers to Cordero Mining Company
4 and any of its predecessors, successors, assigns, agents, employees, officers, former
5 employees, former officers, directors, affiliates, partners, subsidiaries, parent
6 corporations, attorneys, or any other person or entities acting on its behalf.

7 INSTRUCTIONS

8 1. YOUR response to the subpoena should include a declaration or affidavit. It
9 should state that a diligent search for all requested DOCUMENTS has been conducted
10 and that the affiant or declarant was in charge of the search or otherwise monitored and
11 reviewed the search sufficiently to be able to represent under oath that such a search was
12 conducted. It should be signed under oath by the person most knowledgeable about the
13 DOCUMENTS and YOUR efforts to comply with the subpoena. If different people are the
14 most knowledgeable about portions of the search (e.g., one person is most
15 knowledgeable about DOCUMENTS contained in computer media and a different person
16 is most knowledge about DOCUMENTS contained on paper) each should sign an
17 affidavit or declaration identifying the category in the request for DOCUMENTS for which
18 that person is the most knowledgeable.

19 2. YOUR response to the subpoena should meet the requirements of
20 California Code of Civil Procedure section 2031.210.

21 3. Unless otherwise indicated, for any DOCUMENT stored in a computer,
22 including all electronic mail messages, YOU should produce the DOCUMENT in the
23 original electronic file format in which it was created (e.g., Microsoft email should be
24 provided in its original format, which would have the .pst suffix, not in a tif file;
25 spreadsheets should be in their original file form, such as an Excel file and
26 word-processed DOCUMENTS should be in their original file format, such as a Word or
27 WordPerfect file), together with instructions and all other materials necessary to use or
28 interpret the data. Electronic mail messages should be provided, even if only available on
backup or archive tapes or disks. Computer media should be accompanied by (a) an

1 identification of the generally available software needed to open and view the
2 DOCUMENTS or (b) a copy of the software needed to open and view the DOCUMENT.
3 Note, however, that if a print-out from a computer DOCUMENT is a non-identical copy of
4 the electronic form in which it was created (non-identical as described in the definition of
5 "DOCUMENT," by way of example, but not limitation, because it has a signature,
6 handwritten notation, or other mark or attachment not included in the computer
7 DOCUMENT), both the electronic form in which the DOCUMENT was created and the
8 original print-out should be produced.

9 4. For each DOCUMENT contained in an audio or video medium, YOU should
10 provide both the tape, disk or other device from which the audio or video can be played
11 and the transcript of the DOCUMENT.

12 5. For all DOCUMENTS YOU do not produce in the original, as defined in
13 Evidence Code section 255, YOU may submit copies (black and white copies if the
14 original was in black and white, color copies if the original was in color, and, if the original
15 was in electronic format, in the same electronic medium as the original) in lieu of original
16 DOCUMENTS provided that such copies are accompanied by an affidavit of an officer of
17 THE COMPANY stating that the copies of all three types of DOCUMENTS are true,
18 correct, and complete copies of the original DOCUMENTS. If there is in YOUR
19 possession, custody or control no original, but only a copy or photographic record thereof,
20 then YOU should produce a true and legible copy of each such DOCUMENT. The
21 accompanying affidavit should state that the DOCUMENT is only a copy or photographic
22 record and not the original.

23 6. If a DOCUMENT is responsive to this subpoena and is in YOUR control, but
24 is not in YOUR possession or custody, in addition to obtaining and producing the
25 DOCUMENT, identify the person who had possession or custody of the DOCUMENT,
26 their telephone number and current business and residence addresses.

27 7. If any DOCUMENT subpoenaed is no longer in YOUR possession,
28 custody, control or care, YOU should provide a written statement identifying the
DOCUMENT with specificity, stating whether it is lost or missing, has been destroyed, has

1 been transferred to others, or has otherwise been disposed of. The written statement
2 should also identify the person who disposed of the DOCUMENT, explain the
3 circumstances and authorization for the disposition and the approximate date of the
4 disposition of the DOCUMENT. If there are no DOCUMENTS responsive to a document
5 request, as to each such document request, YOU should include a statement to that
6 effect in the accompanying declaration or affidavit.

7 8. DOCUMENTS provided in response to this subpoena should be complete
8 and, unless privileged, un-redacted, submitted as found in YOUR files (e.g.,
9 DOCUMENTS that in their original condition were stapled, clipped, attached as a "post-it,"
10 or otherwise fastened together shall be produced in the same form).

11 9. Each DOCUMENT produced pursuant to this subpoena should be identified
12 according to the category in the subpoena to which it is responsive. In lieu of indicating
13 on each DOCUMENT the category to which it is responsive, on the date set for
14 production, YOU may instead provide an index if YOU provide it in both paper and in
15 electronic form (such as a computerized spread sheet in Excel or a Word or WordPerfect
16 DOCUMENT set up in a table format) of all DOCUMENTS YOU produce, as long as this
17 index shows by document control number the request(s) to which each DOCUMENT or
18 group of DOCUMENTS is responsive. Responsive DOCUMENTS from each person's
19 files should be produced together, in one box or in consecutive boxes, or on one disk or
20 consecutive disks. Mark each page of a paper DOCUMENT and each tangible thing
21 containing audio, video, computer or other electronic DOCUMENTS (e.g. cassette, disk,
22 tape or CD) with corporate identification and consecutive document control numbers (e.g.,
23 S.I., 00001, S.I. CD 001, S.I. audio tape 001). Number each box of DOCUMENTS
24 produced and mark each with the name(s) of the person(s) whose files are contained
25 therein, the requests(s) to which they are responsive, and the document control numbers
26 contained therein.

27 10. For data produced in spreadsheets or tables, include in the declaration or
28 affidavit the identification of the fields and codes and a description of the information
contained in each coded field.

1 11. The document requests contained in this subpoena should be deemed to
2 include a request for all relevant DOCUMENTS in the personal files, including but not
3 limited to files contained on laptops, palm devices, home computers and home files of all
4 YOUR officers, employees, accountants, agents and representatives, including sales
5 agents who are independent contractors, and unless privileged, attorneys.

6 12. If any DOCUMENTS are withheld from production based on a claim of
7 privilege, provide a log under oath by the affiant or declarant, which includes each
8 DOCUMENT'S authors, addressees, date, a description of each DOCUMENT, all
9 recipients of the original, and any copies, and the request(s) of this subpoena to which
10 the DOCUMENT is responsive. Attachments to a DOCUMENT should be identified as
11 such and entered separately on the log. For each author, addressee, and recipient, state
12 the person's full name, title, and employer or firm, and denote all attorneys with an
13 asterisk. To the extent the claim of privilege relates to any employee, agent,
14 representative, or outside attorney, identify the person's name, division, and organization.
15 Include the number of pages of each DOCUMENT and in the description of the
16 DOCUMENT, provide sufficient information to identify its general subject matter without
17 revealing information over which a privilege is claimed. For each DOCUMENT withheld
18 under a claim that it constitutes or contains attorney work product, also state whether
19 YOU assert that the DOCUMENT was prepared in anticipation of litigation or for trial and,
20 if so, identify the anticipated litigation or trial on which the assertion is based. Submit all
21 non-privileged portions of any responsive DOCUMENT (including non-privileged or
22 redactable attachments) for which a claim of privilege is asserted (except where the only
23 non-privileged information has already been produced in response to this instruction),
24 noting where redactions in the DOCUMENT have been made. DOCUMENTS authored
25 by outside lawyers representing YOU that were not directly or indirectly furnished to YOU
26 or any third-party, such as internal law firm memoranda, may be omitted from the log.

26 13. Whenever necessary to bring within the scope of this subpoena
27 DOCUMENTS that might otherwise be construed as outside its scope:
28

1 a. the use of the verb in any tense shall be construed as the use of that
2 verb in all other tenses;

3 b. the use of a word in its singular form shall be deemed to include
4 within its use the plural form as well; and

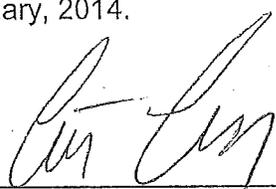
5 c. the use of the word in its plural form shall be deemed to include
6 within its use the singular form as well.

7 **DOCUMENTS TO BE PRODUCED**

8 This subpoena commands production of the original of each and every
9 DOCUMENT now or at any time in the possession, custody or control of you or SUNOCO,
10 INC. without regard to the person(s) by whom or for whom said DOCUMENTS were
11 prepared, including, but not limited to, all DOCUMENTS in the personal, business, or
12 other files of all present or former officers, directors, trustees, agents, employees,
13 attorneys, and accountants of SUNOCO, INC., which refers or relates to the following
14 subject:

15 1. Provide all DOCUMENTS that refer or RELATE TO Cordero Mining
16 Company, including any contact with or connection to SUNOCO, INC.

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18 Given under my hand this 11th day of February, 2014.

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21 _____
22 Cris Carrigan
23 Director, Office of Enforcement
24 State Water Resources Control Board
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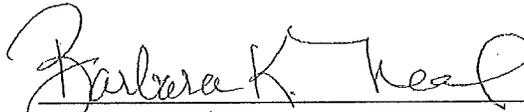
PROOF OF SERVICE

I, Barbara K. Neal, declare that I am over 18 years of age. I am employed in Sacramento County at 1001 I Street, Sacramento, CA 95814. My mailing address is P.O. Box 100, Sacramento, California 95812-0100. On this date, I served the within documents:

SUBPOENA FOR RECORDS AND DOCUMENTS

X	BY FEDERAL EXPRESS: I caused the original of the above-referenced document to be sent via Federal Express Overnight Delivery (Tracking No. 8037 8693 3790) on February 11, 2014 to Adam Bass, Esq., Edgcomb Law Group, One Post Street, Suite 2100, San Francisco, California 94104.
X	BY CERTIFIED MAIL: I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice, I caused an envelope addressed to Lisa A. Runyon, Esq., Senior Counsel, Sunoco, Inc. 1735 Market Street, Suite LL, Philadelphia, PA 19103-7583, which contained a copy of the above-referenced document to be deposited with the U.S. Postal Service, with first class postage thereon fully prepaid, and Domestic Return Receipt No. 7013 0600 0001 4936 7436 attached, in the ordinary course of business.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on February 11, 2014 at Sacramento, California.



Barbara K. Neal

Exhibit 11

March 14, 2014

VIA FEDEX AND ELECTRONIC MAIL

Anna Kathryn Benedict, Esq.
Senior Staff Counsel
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814-2828

**RE: February 11, 2014, State Board Subpoena for Documents and Records
Mount Diablo Mercury Mine, Contra Costa County, CA**

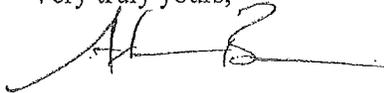
Dear Ms. Benedict:

On behalf of Sunoco, Inc. ("Sunoco"), please find enclosed:

1. Sunoco's Objections and Response to the State Water Resources Control Board's Subpoena for Documents and Records dated February 11, 2014;
2. A Privilege Log; and
3. A CD ROM containing Sunoco's production of documents (bates range SUN_MD0000001 to 0001584). The CD ROM is being sent *via* Federal Express only.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



Adam Baas
Encls.

1 Edgcomb Law Group
2 JOHN D. EDGCOMB (SBN 112275)
3 ADAM P. BAAS (SBN 220464)
4 One Post Street, Suite 2100
5 San Francisco, California 94104
6 Telephone: (415) 399-1555
7 Facsimile: (415) 399-1885
8 jedgcomb@edgcomb-law.com

9 Attorneys for Designated Party
10 SUNOCO, INC.

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BEFORE THE STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

In the Matter of:

MOUNT DIABLO MERCURY MINE

**SUNOCO, INC.'S OBJECTIONS
AND RESPONSES TO THE STATE
BOARD'S SUBPOENA FOR
RECORDS AND DOCUMENTS**

SUNOCO, INC. (hereinafter "Sunoco") herein provides its Objections and Response to the STATE WATER RESOURCES CONTROL BOARD'S (hereinafter "State Board") February 11, 2014, Subpoena for Records and Documents directed at Sunoco in relation to the Mount Diablo Mercury Mine, Contra Costa County, California.

OBJECTIONS

1
2
3 1. Sunoco objects to the Subpoena to the extent that it calls for
4 documents protected by the attorney-client privilege, the joint defense privilege,
5 the investigative privilege, the work product doctrine or any other discovery
6 exemption. In particular, Sunoco objects to the Subpoena seeking "all documents"
7 as potentially subject to the attorney-client privilege and/or work product doctrine.
8 Sunoco will not produce documents that fall within any of these categories.
9 Inadvertent disclosure of such a document shall not waive the applicable protection
10 or privilege.

11 2. Sunoco objects to the Subpoena on the grounds that it is overly broad,
12 unduly burdensome, and does not reasonably particularize each category of item
13 sought pursuant to California Code of Civil Procedure. In particular, the Subpoena
14 does not: limit the scope of the documents sought to transactions related to the
15 State of California; limit the subject matter of the documents sought to those which
16 reasonably relate to the above captioned action (namely the Mt. Diablo Mercury
17 Mine site, Contra Costa County, California); and limit the date range of the
18 documents sought.

19 3. Sunoco objects to the Subpoena to the extent that it seeks
20 Electronically Stored Information (ESI). The Subpoena is overly broad, making
21 any search for, review, and production of accessible ESI (if it exists, which it likely
22 does not) unduly burdensome.

23 4. Sunoco objects to the Subpoena on the grounds that it calls for
24 documents that are not presently in Sunoco's possession, custody, or control.

25 5. Sunoco objects to the Subpoena to the extent that it seeks documents
26 that would disclose trade secrets or other proprietary or other competitively
27 sensitive business information, or that may be protected by a right of privacy under
28

1 the United States Constitution, Article I of the Constitution of the State of
2 California, or any other applicable law. Sunoco reserves the right to condition
3 production of trade secret or proprietary documents on the issuance of a Protective
4 Order.

5 6. Sunoco objects to the Subpoena to the extent that it could be
6 interpreted as calling for documents that were not generated, maintained or
7 received in the ordinary course of Sunoco's business. Sunoco will construe the
8 Subpoena as not seeking any such documents.

9 7. Sunoco objects to the Subpoena as unduly burdensome to the extent it
10 seeks production of documents that are already in the State Board's possession.

11 8. Sunoco objects to the Subpoena as unduly burdensome to the extent it
12 seeks production of documents equally available to Sunoco and the State Board.

13 9. Sunoco objects to the Subpoena to the extent that it seeks information
14 or documents beyond the scope of or in violation of the California Code of Civil
15 Procedure, California Water Code, or the California Government Code, or
16 otherwise purports to require Sunoco to do any act not required of it under these
17 Codes.

18 10. Sunoco objects to the Subpoena to the extent that it seeks documents
19 that are not relevant to the subject matter of the above captioned matter, and are
20 not reasonably calculated to lead to the discovery of admissible evidence.

21 11. The production of any documents does not constitute an admission
22 that any of those documents were in Sunoco's possession, custody, or control at
23 any particular point in time other than on the date of production.
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RESPONSE

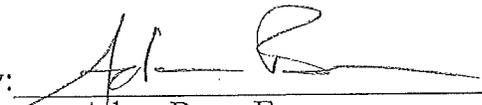
Subject to the Objections set forth above and incorporated herein as if set forth in full in this response, and without waiving any rights related to same, Sunoco directs Plaintiff to the CD ROM enclosed herein, containing documents with a bates range of SUN_MD0000001 to 0001584.

Within this production set are historical tax records from the Nevada Corporation, Cordero Mining Company, as well as internal correspondence from the Delaware Corporation, Sun Oil Company. Sunoco believes that this set of material may be proprietary and asks that the State Board refrain from making this set of documents available for public review without first contacting Sunoco's Outside Counsel Adam P. Baas (contact information above).

This Response is given without prejudice to Sunoco's right to produce any subsequently discovered documents. Sunoco reserves its right to supplement and/or amend its response as additional documents are discovered, analyses are made, and investigation and research are completed. Pursuant to the Subpoena Instructions, a privilege log is attached hereto.

DATED: March 14, 2014

EDGCOMB LAW GROUP LLP

By: 

Adam Baas, Esq.
Attorneys for SUNOCO

Exhibit 12

March 14, 2014

VIA HAND-DELIVERY

Anna Kathryn Benedict, Esq.
Senior Staff Counsel
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814-2828

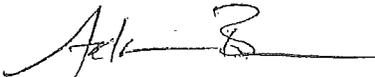
Ken Landau
Assistant Executive Officer
Central Valley Regional Water Quality Control Bd.
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

**RE: Mount Diablo Mercury Mine, Contra Costa County, CA
Reconsideration of Cleanup and Abatement Order No. R5-2013-0701**

Dear Ms. Benedict and Mr. Landau:

Pursuant to the Hearing Procedure for Reconsideration of Cleanup and Abatement Order R5-2013-0701 ("CAO"), Designated Party Sunoco, Inc. ("Sunoco") hereby submits Sunoco's Submission of Evidence and Policy Statement to the Central Valley Regional Water Quality Control Board ("Regional Board") in support of removing Sunoco from the list of Dischargers named in the CAO. Enclosed herein are: 1) Sunoco's Hearing Brief; 2) Sunoco's Evidence List and Exhibits; and 3) Sunoco's Written Comments Regarding the CAO. The hearing in this matter is scheduled for March 27/28, 2014.

Very truly yours,



Adam Baas

Encls.

cc: All Designated Parties and Interested Parties
(via electronic mail only)