

ITEM: 23

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

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

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

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

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

1. Cordero Mining Co. was 100% owned by Sunoco Inc. Cordero leased the mine; constructed tunnels and raises (vertical tunnels) connecting to the existing system of underground mine structures; discharged ore, waste rock and waste water; and rehabilitated an existing mercury processing facility. Staff contends that Sunoco Inc. is responsible for Cordero's discharges as Cordero's successor, through assumption of Cordero's liabilities, either through (a) express or implied assumption or (b) de facto merger upon Cordero's dissolution.
2. Sunoco contends that Cordero's activities were limited to a small part of the mine area and therefore Sunoco's liability should be limited under the principal of Divisibility. Staff contends that discharges from the Cordero workings exit the mine through structures from previous operators where they mix with discharges generated within those structures and cannot be separated. Also, under California Law the principal of Joint and Several Liability applies in environmental liability cases.
3. Sunoco also contends that because Cordero was incorporated under Nevada Law and dissolved in 1971 it is not liable. Staff contends because Cordero did business in California and Sunoco capitalized Cordero as the sole shareholder, California Law applies and allows the Board to name a party that falls within the scope of CWC section 13304 in this order. Therefore, Sunoco is properly named in the order.
4. Nevada Scheelite Corp. was 100% owned by Kennametal Inc. Nevada Scheelite leased the mine, attempted to dewater the mine workings and did some exploration drilling near the open pit. Although there is sufficient information to name Nevada Scheelite, at this time, there is insufficient evidence to establish that Kennametal Inc. is the corporate successor to Nevada Scheelite Corp. Therefore, staff recommends that Kennametal Inc. be removed from the Order.

5. The other named parties, Jack & Carolyn Wessman, Bradley Mining Co., US Dept. of Interior, Mt. Diablo Quicksilver Co., and California Dept. of Parks and Recreation are not contesting the Order.

RECOMMENDATION Adopt the proposed Cleanup and Abatement Order as written naming Jack & Carolyn Wessman, Bradley Mining Co., US Dept. of Interior, Sunoco Inc., Mt. Diablo Quicksilver Co., and California Dept. of Parks and Recreation.

Mgmt. Review RDB
Legal Review JEM

Board Meeting 9/10 Oct 2014
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