

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

5 Attorneys for Designated Party
SUNOCO, INC.

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

10 In the Matter of:

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

**SUNOCO, INC.'S EVIDENCE
LIST AND EXHIBITS**

Hearing Date: March 27/28, 2014

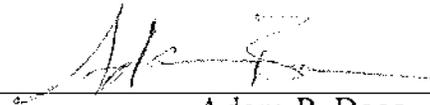
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18 Pursuant to the Hearing Procedure for Reconsideration of Cleanup and
19 Abatement Order R5-2013-0701 (“**CAO**”), Designated Party Sunoco, Inc.
20 (“**Sunoco**”) hereby submits Sunoco’s Evidence List and Exhibits.
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Respectfully submitted,

DATED: March 14, 2014

EDGCOMB LAW GROUP

By: 

Adam P. Baas
abaas@edgcomb-law.com
Attorneys for Petitioner
SUNOCO, INC.

SUNOCO, INC.'S EVIDENCE LIST AND EXHIBITS

Exh. No.	Date	Description
1	12/8/2008	U.S. EPA Docket No. 9-2009-02 Unilateral Administrative Order for the Performance of a Removal Action
2	12/15/2008	Letter from Sunoco counsel, Lisa Runyon, to EPA counsel, Larry Bradfish
3	4/8/2009	Letter from Sunoco consultant, The Source Group, Inc. to EPA coordinator, Janet Yocum.
4	1/20/2012	Letter from Sunoco outside counsel, John Edgcomb, to State Board counsel, Julie Macedo.
5	8/8/2013	Letter from Regional Board Advisory Attorney, David Coupe, to Sunoco outside counsel, Adam Baas, and Kennametal outside counsel, Christopher Sanders.
6		Hearing Procedure for Reconsideration of Cleanup and Abatement Order R5-2013-0701
7	3/3/2014	Electronic mail from Prosecution Team counsel, Anna Kathryn Benedict, to Sunoco outside counsel, Adam Baas.
8		Cordero Mining Company formation documents and articles of organization
9		Cordero Mining Company Adoption of Bi-laws and Bi-laws
10		Cordero Mining Company First Meeting Minutes
11		Cordero Mining Company Meeting Minutes
12		Cordero Mining Company Unanimous Consent of Directors and Liquidation Agreement
13	11/18/1975	Cordero Mining Company Certificate of Dissolution
14	5/21/2009	Sun Company Corporate Chart
15	12/31/1975	Cordero Mining Company Final Tax Return
16		Cordero Mining Company Dissolution Documents to the IRS
17	11/1/1954	Lease Agreement between Mt. Diablo Quicksilver Company, LTD. And Cordero Mining Company, a Nevada Corporation.
18	7/22/1993	WQ 93-9, In the Matter of the Petitions of Aluminum Company of America, 1993 Cal. ENV LEXIS 17
19	5/15/2013	Sunoco, Inc.'s Petition for Review and Rescission of Cleanup and Abatement Order No. R5-2013-0701 (see Sunoco, Inc.'s Comments Regarding the CAO produced herewith)

SUNOCO EXHIBIT

1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)

Sunoco, Inc.)

) U.S. EPA Docket No. 9-2009-02
) UNILATERAL ADMINISTRATIVE
) ORDER FOR THE PERFORMANCE
) OF A REMOVAL ACTION

Proceeding Under Section 106(a)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980,
42 U.S.C. § 9606(a).)

This Order pertains to mining property located on Morgan Territory Road in the city of Clayton, California. The Property consists of the Mt. Diablo Mercury workings including tailings, ore piles and waste rock. This Order requires Sunoco, Inc. ("Respondent") to conduct Removal Actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Property.

I. AUTHORITY

1. This Unilateral Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Small Business Liability Relief and Brownfields Revitalization Act of 2002 ("CERCLA"). The

President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority has been duly redelegated to the Branch Chief, Superfund Division, EPA Region 9 ("Branch Chief"), by delegations dated September 29, 1997, and November 16, 2001.

II. PARTIES BOUND

2. This Order shall apply to and be binding on Respondent. Respondent is jointly and severally responsible for carrying out all activities required by this Order. This Order shall be binding on Respondent and any agents, officers, employees, successors and assigns. Notwithstanding the terms of any contract or agreement, Respondent is responsible for compliance with this Order and for ensuring that their employees, contractors, and agents comply with this Order. Respondent is jointly and severally liable for carrying out all activities required by this Order.

3. No change in ownership or operational status will alter Respondent's obligations under this Order.

4. Notwithstanding the terms of any contract or agreement, Respondent is responsible for compliance with this Order and for ensuring that all employees, contractors, and agents comply with this Order. Respondent shall provide a copy of this Order to all contractors, subcontractors, and consultants that are retained by them to perform the work required by this Order within 2 working days after the Effective Date of this Order or within 2 working days of retaining their services, whichever is later.

5. Respondent may not convey any title, easement, or other interest that they may

have in any property comprising the Site, as the term "Site" is defined below, without a provision permitting the continuous implementation of the provisions of this Order. If Respondent wishes to transfer any title, easement, or other interest that they may have in any property comprising the Site, Respondent shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. In such case, Respondent shall advise EPA no less than thirty (30) days prior to any anticipated transfer of interest.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, the terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in the exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

"Days" shall mean consecutive calendar days unless expressly stated otherwise.

"Working days" shall mean consecutive calendar days other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 and by the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

"Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

"Property" shall mean the area in and around what is known as the Mt. Diablo Mercury Mine, Contra Costa County, California.

"Removal Action Memorandum" or "Action Memorandum" shall mean the EPA Region 9 Superfund decision document, dated December 2, 2008 and signed by Daniel A. Meer, which selected CERCLA response actions for the Property. The Removal Action Memorandum is included in this Order as Appendix A.

"Response Action" or "Removal Action" shall be those specific work items Respondent is required to perform at the Site pursuant to this Order, as set forth in Section IX of this Order.

"Section" shall mean a portion of this Order identified by a Roman numeral, unless otherwise stated.

"Site" shall mean the Mt. Diablo Mercury Mine, Contra Costa County, California, in addition to any associated personal property, such as motor vehicles, trailers, containers, and other real property at which hazardous substances exist from the operation of the mines.

"State" shall mean the state of California, and all of its political subdivisions, including the Central Valley Regional Water Quality Control Board.

"Unilateral Order" or "Order" shall mean this Unilateral Administrative Order, EPA docket number 9-2009-02, and any exhibits attached hereto. In the event of a conflict between this Order and any exhibit, this Order shall control.

"United States" shall mean the United States of America.

IV. FINDINGS OF FACT

7. Site description

The Mt. Diablo Mercury Mine, also known as the Mt. Diablo Quicksilver Mine, is located in the town of Clayton, Contra Costa County, California. It is an abandoned mercury mine site that has not operated since the 1970s. The mine is located on the northeast slope of Mount Diablo at the upper end of the Marsh Creek watershed. The mine is located between two tributaries to Marsh Creek, Dunn Creek and Horse Creek. The mine also includes underground workings. In addition, tailings, mine waste piles, abandoned structures and an impoundment pond are located on the surface. Elevated mercury levels are present in mine wastes and tailings at the Site. Analyses of tissue from fish obtained by U.C. Davis researchers from the Marsh Creek Reservoir located downstream of the Site revealed mercury levels in excess of human health standards for consumption of fish. Contaminated mine drainage flows as surface water into Marsh Creek, then down to Marsh Creek reservoir, and flows may reach the San Francisco Bay Estuary.

8. Site ownership and operation

The Mt. Diablo mercury deposit was located in approximately 1863, although native Americans knew of the deposit before that time and used materials from the site for ceremonial purposes. Underground mining began in 1875 and continued for a short period until 1877. After that, the mine lay idle until 1930 when the Mt. Diablo Quicksilver Company acquired the property and began producing some limited volumes of mercury. The largest production occurred between 1936 and 1946 when Bradley Mining Company leased the mine and operated it. After World War II, the price of mercury fell and the mine was idle again until 1951 when the Korean War

generated an increase in the price of mercury. The mine was leased to Ronnie B. Smith who produced mercury from 1951 to 1953. In 1955, Cordero Mining Company, a predecessor company of Sunoco, Inc., reopened the lower level of the mine workings, expanded the lower mine level and found a small volume of ore. In 1956, the Nevada Scheelite Company leased the mine and began to dewater the workings. However, the company was forced to cease operations after acid mine water discharged into Dunn Creek adversely affected ranching operations downstream. The company did produce a small volume of ore from an open pit on the site. The mine was idle from 1956 to 1958. In 1958, John E. Johnson operated the mine until his death in 1958. The last known production from the mine was from 1965 to 1970 when Welty and Randall operated the mine and reworked the mine tailings. In 1974 John (Jack) and Carolyn Wessman purchased the mine property from the previous owner, Guadalupe Mining Co. In 2005, parcel APN 078-060-034 was transferred to the Wessman Family Trust. During the same year, title to parcel APN 078-070-036 was transferred to the Mt. Diablo Springs Improvement Society. Title to the adjacent parcel directly to the south of the impoundment pond, APN 078-070-034, is with the State of California (Mt. Diablo State Park).

9. Release Characteristics

On October 14, 2008, U.S. EPA and START conducted a walkthrough of the Site to identify mine features for screening sampling and analysis. A total of 21 water and sediment samples were collected and submitted for mercury analysis. The range of data reported from 0.35 to 41.8 mg/kg concentration of total mercury. Water samples taken from seeps and the impoundment pond ranged from nondetect in streams above the mine to 130 micrograms per liter in one of the seeps in the mine area.

Mercury is a naturally occurring element, and can be detected in background

concentrations. The mercury analytical values found at the site are many times higher than background. Analytical results indicate that concentrations of heavy metals identified in these media, exceed background and regulatory levels including U.S. EPA's Preliminary Remediation Goals (PRGs). Mercury is a hazardous substance as defined by Section 101(14) of CERCLA. Mercury exposure occurs from breathing air contaminated with mercury, ingesting contaminated water and food. Mercury, at high levels of exposure, may cause damage to the brain, kidneys and developing fetus. Effects on brain functioning may result in irritability, tremors, changes in vision or hearing, and memory problems. The nervous system is very sensitive to all forms of mercury. Short-term exposure to high levels of mercury vapors can cause lung damage, nausea, vomiting, diarrhea, increased blood pressure or heart rate, skin rashes and eye irritation. Young children are more sensitive to mercury than adults (ATSDR 1999.)

The toe of the berm forming the impoundment pond is being actively undercut by Dunn Creek and threatens to release mercury bearing mining waste rock and sediments into the stream. This could result in catastrophic failure of the impoundment berm and cause extensive contamination of mercury contaminated sediments from the impoundment pond downstream to Marsh Creek and to the Marsh Creek Reservoir.

Mine tailings at the Site are readily accessible to persons that utilize the area for recreational purposes. The Site is situated along a well traveled road, Morgan Territory Road. The owner and his family reside on the same parcel where part of the mine is located. Recreational activities in the vicinity of the Site include hiking, biking, and use of all-terrain vehicles. The Site may be considered an attractive nuisance because of its unique appearance and proximity to the public road. Mercury can also be released with dust generated at the site. These air-borne particulates can be deposited into the waterways as well as pose an

inhalation/ingestion risk to human health. Physical characteristics of the Site, such as the possibility of settling pond failure, also pose significant hazards to casual users of the Site.

High concentrations of mercury in sediments has likely manifested in toxic impacts on aquatic life further downstream, particularly in the Contra Costa Flood Control District flood control reservoir, Marsh Creek Reservoir, located downstream on Marsh Creek. A mercury advisory has been issued to the public warning about consumption of fish taken from this reservoir because fish tissue has exceeded the 0.5 ppm health standard. Wildlife may also be exposed to hazardous substances in fine-grained tailings and waste rock via the ingestion and inhalation pathways. Dunn and Horse Creeks empty into Marsh Creek which flows to the San Joaquin River, then to the Sacramento-San Joaquin Bay-Delta, and ultimately to San Francisco Bay.

The administrative record supporting this action will be available for review at the EPA, Region 9 offices located at 75 Hawthorne Street, San Francisco, California.

V. CONCLUSIONS OF LAW

10. The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

11. Sunoco, Inc. is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

12. The Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site. Respondent's company, Cordero Mining Company operated the Site from approximately 1954 to 1956 and was responsible for mining activities carried out at the Mt. Diablo Mine. Respondent is "liable" within the meaning of

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(2), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

13. The toxic materials identified in the Action Memorandum are "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and by meeting requirements set forth in 40 C.F.R. § 261.24. Hazardous substances disposed or dumped at or around the Property constitute a "release," as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

14. The actual or threatened release of hazardous substances from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment, within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VI. DETERMINATIONS

Based on the Findings of Fact and the Conclusions of Law stated herein, the Branch Chief has made the following determinations:

15. That an actual or threatened release of hazardous substances from the Site presents an imminent and substantial endangerment to the public health or welfare or the environment.

16. That conditions at the Site constitute a threat to public health or welfare or the environment based on consideration of the factors stated in the NCP at 40 C.F.R. § 300.415(b), and that the actions required by this Order are necessary to protect the public health or welfare or the environment.

17. That the removal action required by this Order, if properly performed, will be consistent with the NCP and CERCLA, and is appropriate to protect the public health or welfare or the environment.

VII. NOTICE TO THE STATE

18. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA has notified the State of the issuance of this Order by providing a copy of this Order.

VIII. EFFECTIVE DATE

19. This Order is deemed effective on receipt (the "Effective Date"), unless a conference is requested as provided herein. If such a conference is requested, this Order shall be effective the second day following the day of such conference unless modified in writing by EPA.

IX. ORDER

20. Based on the Findings of Fact, Conclusions of Law, and Determinations, EPA hereby orders Respondent to perform the specific work set forth below under the direction of the EPA On Scene Coordinator ("OSC"), as designated in Section XIV, and to comply with all requirements of this Order until EPA provides notice that the Response Action is complete.

A. Work to be Performed

21. Respondent shall work with the property owner(s) to restrict access to all work areas of the Property for the duration of the response action required by this Order. Respondent shall not allow any soil or waste material to be removed from or brought into the Property at the Site without prior EPA approval.

22. Within 2 working days after the Effective Date of this Order, Respondent shall submit to EPA for approval, a Work Plan for the removal activities to be performed as set forth in this Order. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order, and shall include a proposed schedule for implementing and completing such activities. The Work Plan, which will be subject to EPA

approval, shall comply with the requirements provided in Paragraphs 24-27 below, and at a minimum, shall require the Respondent to perform and complete the following removal activities beginning within 5 working days of EPA approval of the Work Plan:

- A) Respondent shall obtain an access agreement with the current landowner(s) and work with the landowner to restrict unauthorized access to the work area of the Property for the duration of the response action required by this Order. Respondent shall not allow any soil or waste material to be removed from or brought into the Property at the Site without prior EPA approval.
- B) Investigate/assess stability of impoundment dam to determine failure potential. Design/build/install appropriate engineered controls to ensure integrity of the impoundment dam during the 2008-2009 winter/spring rainy season

23. Within 3 days of the Effective Date of this Order, the Respondent shall provide EPA with documentation that adequately demonstrates its financial ability to complete the work to be performed pursuant to this Order. Examples of adequate financial documentation that EPA may accept include, but are not limited to, a signed contract or guarantee on the part of the Respondent's contractor that it will complete the work to be performed (including payment terms, such as whether the contract is prepaid), an irrevocable letter of credit payable to EPA from a financial institution, a policy of insurance covering site Response Actions and contingent claims that provides EPA with acceptable rights as a beneficiary thereof, an escrow account for the value of the work to be performed; or a demonstration by the Respondent that they have adequate net worth and /or cash flow to pay for the work to be performed (which may include most recent financial statements, auditors' reports, annual reports, SEC filings and the like).

24. The Work Plan required in Paragraph 22 shall be reviewed by EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Respondent shall prepare the Work Plan elements described below as separate documents for approval by EPA. Once approved, each element of the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order. The Respondent shall implement the Work Plan as finally approved by the EPA. In addition to the requirements listed in Paragraph 22, the Work Plan shall include:

- A) A Health & Safety Plan, prepared in accordance with EPA's Superfund Standard Operating Safety Guide, dated June 1992, which complies with all current OSHA regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. Part 1910. Respondent shall incorporate all changes to the Health & Safety Plan recommended by EPA and implement the Health & Safety Plan throughout the performance of the removal action; and
- B) In the event that the Work Plan includes taking of contaminant samples for analysis, a Quality Assurance Project Plan ("QAPP") that is consistent with EPA Guidance for Quality Assurance Project Plans (EPA QA/G-5); Preparation of a U.S. EPA Region 9 Field Sample Plan for EPA-Lead Superfund Projects (Document Control No.: 9QA-05-93); and Guidance for the Data Quality Objectives Process (EPA QA/G-4). Soil sampling activities shall utilize proper soil assessment techniques as defined in EPA Document SW-846, Chapter 9 (EPA Environmental Response Team Standard Operating Procedures) or appropriate ASTM standards.

25. Respondent shall provide EPA with a written report on completion of any transportation of hazardous substances or wastes for disposal or recycling. This report should

contain a summary of the activities to comply with this Order. Within forty-five (45) days after completing the Response Action, Respondent shall provide EPA with this final summary report, which also shall include all invoices submitted by contractors (which shall identify specific work performed), and copies of all analytical data generated during the response action.

26. All documents, including technical reports, and other correspondence to be submitted by the Respondent pursuant to this Order, shall be sent by over-night mail to the following addressees or to such other addressees as EPA hereafter may designate in writing, and shall be deemed submitted on the date received by EPA.

Janet Yocum, Federal On-Scene Coordinator
US Environmental Protection Agency
EPA, Region 9, SFD-9-2
75 Hawthorne Street
San Francisco, CA 94105

Respondent shall submit two (2) copies of each document to EPA.

27. EPA will review, comment, and approve or disapprove each plan, report, or other deliverable submitted by Respondent. All EPA comments on draft deliverables shall be incorporated by the Respondent. EPA will notify the Respondent in writing of EPA's approval or disapproval of a final deliverable. In the event of any disapproval, EPA will specify the reasons for such disapproval, EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by EPA, EPA first shall notify the Respondent of its disapproval of the resubmitted report, document, or deliverable, and then may draft its own report, document or deliverable and incorporate it as part of this Order, may seek penalties from the Respondent for failing to comply with this Order, and may conduct the remaining work required by this Order and seek to recover costs from Respondent.

28. For purposes of this Order, EPA's authorized representatives will include, but not be limited to, consultants and contractors hired by EPA to oversee the activities required by this Order.

B. Selection of Contractor(s) and Subcontractor(s)

29. All work performed by or on behalf of Respondent pursuant to this Order shall be performed by qualified individuals or contractors with expertise in hazardous waste site investigation or remediation, unless agreed otherwise by EPA. Respondent shall, within 3 days after the Effective Date of this Order, notify EPA in writing of the name, title and qualifications of the individual(s) who will be responsible for carrying out the terms of this Order, and the name(s) of any contractor(s) or subcontractor(s). The qualifications of the persons, contractors, and subcontractors undertaking the work for Respondent shall be subject to EPA review and approval.

30. If EPA disapproves of any person's or contractor's technical or work-experience qualifications, EPA will notify the Respondent in writing. Respondent shall, within three (3) working days of Respondent's receipt of EPA's written notice, notify EPA of the identity and qualifications of the replacement(s). Should EPA disapprove of the proposed replacement(s), Respondent shall be deemed to have failed to comply with the Order.

31. Respondent may propose to change the individual(s), contractor(s), or subcontractor(s) retained to direct and supervise the work required by this Order. If Respondent wishes to propose such a change, Respondent shall notify EPA in writing of the name, title, and qualifications of the proposed individual(s), proposed contractor(s), or proposed subcontractor(s), and such individual(s), contractor(s) or subcontractor(s) shall be subject to approval by EPA in accordance with the terms of Paragraphs 29 and 30, above. The naming of

any replacement(s) by Respondent shall not extend any deadlines required by this Order nor relieve the Respondent of any of their obligations to perform the work required by this Order.

32. Respondent will notify EPA of the respective field activities at least seventy-two (72) hours before initiating them so that EPA may adequately schedule oversight tasks.

33. Respondent shall submit to EPA a certification that Respondent or its contractor(s) and subcontractor(s) have adequate insurance coverage or other ability, subject to approval of EPA, to compensate for liabilities for injuries or damages to persons or property that may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Adequate insurance shall include comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. If the Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondent needs to provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor. Respondent shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order. Respondent shall ensure that the United States is named as an additional insured on any such insurance policies.

C. General Provisions:

34. All work required by this Order shall be conducted in accordance with: CERCLA; the NCP; EPA Region 9 "Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects" (EPA, November 1992); any final amended or superseding versions of such documents provided by EPA; other applicable EPA guidance documents; any Work Plan or individual components approved pursuant to Paragraph 24 of this Order; and any report,

document or deliverable prepared by EPA because Respondent failed to comply with this Order.

35. All plans, schedules, and other reports that require EPA's approval and are required to be submitted by the Respondent pursuant to this Order shall, after approval by EPA, be incorporated into and enforceable under this Order.

36. EPA will oversee Respondent's activities as specified in Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1). Respondent will support EPA's initiation and implementation of activities needed to carry out its oversight responsibilities. Respondent also shall cooperate and coordinate the performance of all work required to be performed under this Order with all other work being performed at the Site, including work performed by EPA, the State, or any other party performing work at the Site with the approval of EPA.

37. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations, including, but not limited to those set forth in the attached December 2, 2008 Action Memorandum, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

X. NOTICE OF INTENT TO COMPLY

38. Respondent shall, within three (3) working days of the Effective Date of this Order, provide written notice to EPA of Respondent's irrevocable intent to comply with this Order. Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to comply with this Order. Such written notice shall be sent to:

Larry Bradfish
Office of Regional Counsel
United States Environmental Protection Agency
75 Hawthorne Street, Mailcode ORC-3
San Francisco, CA 94105
Telephone: 415-972-3934
Fax: 415-947-3571

XI. OPPORTUNITY TO CONFER

39. Respondent may, within two (2) working days of receipt of this Order, request a conference with the Section Chief of the Emergency Response Section in the Response, Planning and Assessment Branch in the EPA Region 9 Superfund Division, or whomever the Section Chief may designate. If requested, the conference shall occur within three (3) days of the request, unless extended by mutual agreement of the Parties, at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

40. At any conference held pursuant to Respondent's request, the Respondent may appear in person, or be represented by an attorney or other representative. If Respondent desires such a conference, Respondent shall contact Larry Bradfish, Assistant Regional Counsel, at (415) 972-3934.

41. The purpose and scope of any such conference held pursuant to this Order shall be limited to issues involving the implementation of the Response Action required by this Order and the extent to which Respondent intends to comply with this Order. If such a conference is held, the Respondent may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations on which the Order is based, the appropriateness of any action that the Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does

not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) days following the Effective Date of this Order. Any such writing should be directed to the following address:

Larry Bradfish
Office of Regional Counsel
Environmental Protection Agency
75 Hawthorne Street, ORC-3
San Francisco, CA 94105

42. Respondent is hereby placed on notice that EPA will take any action that may be necessary in the opinion of EPA for the protection of public health and welfare and the environment, and Respondent may be liable for the costs of those actions under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

XII. ENDANGERMENT AND EMERGENCY RESPONSE

43. In the event of any action or occurrence during the performance of the work that causes or threatens to cause a release of a hazardous substance or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify EPA's primary OSC, or, if the primary OSC is unavailable, EPA's alternate OSC, as designated below in Paragraph 49. If neither of these persons is available, Respondent shall notify the EPA Emergency Response Unit, Region 9, by calling (800) 300-2193. Respondent shall take such action(s) in consultation with EPA's OSC and in accordance with all applicable provisions of this Order, including but not limited to the approved Health & Safety Plan.

44. Nothing in the preceding Paragraph shall be deemed to limit any authority of the

United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site.

XIII. MODIFICATION OF WORK REQUIRED

45. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA OSC by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. This verbal notification shall be followed by written notification postmarked no later than within three (3) days of discovery of the unanticipated or changed circumstances.

46. The Branch Chief may determine that in addition to tasks addressed herein, additional work may be required to address the unanticipated or changed circumstances referred to in Paragraphs 43 and 45. Where consistent with Section 106(a) of CERCLA, the Branch Chief may direct, as an amendment to this Order, that Respondent perform these tasks in addition to those required herein. Respondent shall implement the additional tasks that the Branch Chief identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by the Branch Chief in any modifications to this Order.

XIV. DESIGNATED PROJECT MANAGERS

47. EPA designates Janet Yocum, an employee of EPA Region 9, as its primary OSC and designated representative at the Site, who shall have the authorities, duties, and responsibilities vested in the OSC by the NCP. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order or undertake the Response Action (or portions of the Response Action) when conditions at the Site present or may present a threat to public health or welfare or the environment as set forth in the NCP. Within three (3)

days of the Effective Date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for overseeing Respondent's implementation of this Order. To the maximum extent possible, all oral communications between Respondent and EPA concerning the activities performed pursuant to this Order shall be directed through EPA's OSC and Respondent's Project Coordinator. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Paragraph 26, above.

48. EPA and Respondent may change their respective OSC and Project Coordinator. Notification of such a change shall be made by notifying the other party in writing at least five (5) days prior to the change, except in the case of an emergency, in which case notification shall be made orally followed by written notification as soon as possible.

49. Consistent with the provisions of this Order, the EPA designates Steven Calanog as an alternate OSC, in the event Janet Yocum is not present at the Site or is otherwise unavailable. During such times, Steve Calanog shall have the authority vested in the OSC by the NCP, as set forth in Paragraph 47 above.

50. The absence of the EPA OSC from the Site shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the EPA OSC under federal law.

XV. SITE ACCESS

51. Respondent shall permit EPA and its authorized representatives, including its contractors and the State, to have access at all times to the Site to monitor any activity conducted pursuant to this Order and to conduct such tests or investigations as EPA deems necessary. Nothing in this Order shall be deemed a limit on EPA's authority under federal law to gain access to the Site.

52. To the extent that Respondent requires access to property other than Property that they own to carry out the terms of this Order and to the extent that EPA has not already secured access from the property owner(s), Respondent shall, within a reasonable time to implement the requirements of this Order, obtain access for: EPA, its contractors, oversight officials, or other authorized representatives; state oversight officials or contractors; and Respondent and its authorized representatives. If Respondent fails to gain access within the time period necessary to implement the requirements of this Order, Respondent shall continue to use best efforts to obtain access until access is granted. For purposes of this Paragraph, "best efforts" include, but are not limited to, the payment of money as consideration for access. Respondent shall cooperate and use best efforts to coordinate the performance of all work required under this Order with any reasonable access requirements of the landowners. If access is not provided within the time referenced above, EPA may obtain access under Sections 104(e) or 106(a) of CERCLA and recover any costs incurred pursuant to Section XVI of this Order.

XVI. REIMBURSEMENT OF OVERSIGHT COSTS

53. Respondent shall reimburse EPA, on written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order, unless otherwise exempted from this requirement by federal law. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondent shall, within thirty (30) days of receipt of the bill, remit by cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Region 9 Superfund
P.O. Box 371099M
Pittsburgh, PA 15251

Respondent shall send a cover letter with any check and the letter shall identify the Mt. Diablo Mine Site by name and make reference to this Order, including the EPA docket number stated above. Respondent shall send notification of any amount paid, including a photocopy of the check, simultaneously to the EPA OSC.

54. Interest at the rate established under Section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the due date of the original demand notwithstanding any dispute or objection to any portion of the costs.

XVII. DELAY IN PERFORMANCE

55. Any delay in the performance of any requirement of this Order that, in the EPA's sole judgment and discretion, is not properly justified by Respondent under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondent under the terms and conditions of this Order.

56. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's primary OSC within twenty-four (24) hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this

Order are not justifications for any delay in performance.

57. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondent's obligations under this Order.

58. If EPA determines that good cause exists for an extension of time, it may grant a request made by Respondent pursuant to Paragraph 57 above, and specify in writing to the Respondent the new schedule for completion of the activity or submission of the document for which the extension was requested.

XVIII. RECORD PRESERVATION

59. Respondent shall maintain, during the pendency of this Order, and for a minimum of five (5) years after EPA provides notice to Respondent that the work has been completed, a depository of the records and documents required to be prepared under this Order. In addition, Respondent shall retain copies of the most recent version of all documents that relate to hazardous substances at the Site and that are in their possession or in the possession of their employees, agents, contractors, or attorneys. After this five-year period, Respondent shall notify EPA at least thirty (30) days before the documents are scheduled to be destroyed. If EPA so requests, Respondent shall provide these documents to EPA.

XIX. ENFORCEMENT AND RESERVATIONS

60. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or otherwise incurred at the Site and not reimbursed by Respondent. This

reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, and the costs of compiling the cost documentation to support oversight costs, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

61. Notwithstanding any other provision of this Order, at any time during the Response Action, EPA may perform its own studies, complete the Response Action (or any portion of the Response Action) and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

62. Nothing in this Order shall preclude EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9607(a), et seq., or any other applicable law. Respondent may be liable under CERCLA Section 107(a) for the costs of any such additional actions.

63. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.

64. Notwithstanding compliance with the terms of this Order, including the completion of the EPA-approved Response Action, Respondent is not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by EPA.

65. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.

66. EPA expressly reserves all rights and defenses that it may have, including the

EPA's right both to disapprove of work performed by Respondent and to request the Respondent to perform tasks in addition to those detailed in Section IX of this Order.

67. This Order does not release Respondent from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of action, or demand that lawfully may be asserted by representatives of the United States or the State.

68. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain such formal approval as may be required by this Order.

XX. SEVERABILITY

69. If any provision or authority of this Order or the application of this Order to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

XXI. DISCLAIMER

70. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or its employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States shall be held as a party to any contract entered into by Respondent, or its employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

XXII. PENALTIES FOR NONCOMPLIANCE

71. Respondent is advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), that violation of this Order or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondent to a civil penalty of up to \$32,500 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, also may subject Respondent to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondent to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

XXIII. TERMINATION AND SATISFACTION

72. The provisions of this Order shall be deemed satisfied on Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that all of the terms of this Order, including any additional tasks that EPA has determined to be necessary, have been completed.

Unilateral Administrative Order 9-2009-02

IT IS SO ORDERED:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By: 

Daniel A. Meer
Branch Chief, Response, Planning and Assessment Branch
EPA, Region 9

Date: 9 December 2008

EPA Region 9 Contacts:

Janet Yocum, Federal On-Scene Coordinator
Superfund Division
EPA, Region 9, SFD-9-2
75 Hawthorne Street
San Francisco, CA 94105
(414) 972-3053

Larry Bradfish, Assistant Regional Counsel
Office of Regional Counsel
EPA, Region 9, ORC-3
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3934

APPENDIX A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105

MEMORANDUM

DATE: DEC 2 2008

SUBJECT: Request for a Time-Critical Removal Action at Mount Diablo Mercury Mine (Marsh Creek Road Abandoned Dump Site), Clayton, Contra Costa County, California

FROM: Janet Yocum, On-Scene Coordinator
Emergency Response Section (SFD-9-2)

THROUGH: Steve Calanog, Chief
Emergency Response Section (SFD-9-2)

TO: Daniel Meer, Chief
Response, Planning & Assessment Branch (SFD-9)

I. PURPOSE

The purpose of this Action Memorandum is to obtain approval to spend up to \$205,625 to mitigate threats to human health and the environment posed by mercury mine waste-impacted water, sediments and soil at 2430 Morgan Territory Road ("Site"). The Site is a 109-acre residential parcel that was formerly the Mount Diablo Mercury Mine, in Clayton, Contra Costa County, California. The Site is located on the northeast slope of Mount Diablo, within the Marsh Creek watershed, approximately 10 miles south of the San Joaquin Delta, California. The proposed action is to stabilize the impoundment pond holding hazardous substances and would be taken pursuant to Section 104(a)(1) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9604(a)(1), and Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR § 300.415.

II. SITE CONDITIONS AND BACKGROUND

Site Status: Non-NPL
Category of Removal: Time-Critical
CERCLIS ID: CAD980736060
SITE ID: TBD

A. Site Description

1. Physical Location

The Site is situated immediately west of Morgan Territory Road, just south of its juncture with Marsh Creek Road, Clayton, Contra Costa County, California. The geographic coordinates of the Site are 37°54'0.99" North latitude and 121°52'27.37" West longitude. See Appendix A, "Figure 1, Site Location Map".

The Site consists of 109 acres on the northeast slope of Mount Diablo. The Site is bordered on the east side by Morgan Territory Road. To the west and south, the Site is bordered by the State of California's Mount Diablo State Park. On the east of the property, between Morgan Territory Road and the Mine Site, is Dunn Creek, a seasonal tributary of Marsh Creek. Horse Creek, another tributary of Marsh Creek, is located on the south side of the property and originates on State Parks land. A number of springs and seeps also exist at the Site. A number of residential structures have been placed at the site by the current owner.

2. Site characteristics

The former Mount Diablo Mercury Mine is located approximately 4 miles southeast of the town of Clayton, Contra Costa County, California. The ore processed at this Site included metacinnabar and cinnabar. The first account of mercury recovery from the ore was approximately 1863, where an individual intersected ore at approximately 30 feet deep and through panning of the soil found at that depth, recovered the mercury. The mine may have produced 1,000 flasks between the period of 1875 and 1877. The mine lay inactive until 1930, when a commercial enterprise reopened the mine. In 1936, Bradley Mining Company took over production at the mine under a lease and operated it until 1946. Additional exploration and small operations continued thereafter, including the Cordero Mining Company until 1956. The mine was operated intermittently thereafter until 1970 or 1971. It was purchased by Jack Wessman, the current property owner in 1974, who uses it as a residential property. In 2005, Wessman created two entities, Mt. Diablo Springs Improvement Society and the Wessman Family Trust and transferred his interest in the property to these entities.

The underground workings of the mine extended 500 feet below surface and filled with water at that time. In 1956, a commercial enterprise attempted to pump the water out of the underground workings using a deep-well pump capable of 550 gallons per minute. This water being pumped out was being directly discharged to the creek on the property and adjacent landowners objected to the discharge of acid mine drainage directly into the creek and the practice was terminated. (Journal of California Mines and Geology, 1958).

There are a number of springs of indeterminate origin on the Site that contribute to surface flow into a series of settling ponds that were constructed on site, the largest of which is located on the southeastern corner of the former mine property and is the subject of this removal action. The Site is fenced and access is controlled from the highway.

There is one large building currently utilized by the property owner that may be associated with former Mine operations, but no other process-related structures or equipment appear in place at the Mill Site.

Calcined tailings and waste rock (overburden) were observed at the Site. In areas around the Site, tailings and overburden may have been covered by the current property owner who imported and placed fill. Some drainage control work has also been completed by the current property owner.

3. Removal site evaluation

Mining waste (inorganic mercury) may become an environmental problem when it contacts water and mercury bound sediments are transported from the site, deposited in waterways where methylation can occur. Mercury can also be transported by air, dissolved in water, bound to sediments and accumulates in tissue of aquatic organisms. Mercury bioaccumulates as it moves up the aquatic food chain, resulting in highest tissue concentrations in high order consumers (predatory fish, humans).

In 1995, University of California, Davis researchers, Darryl G. Slotton et.al were contracted by Contra Costa County Department of Public Works to study the impact of mercury in the Marsh Creek watershed. One study objective was to determine on a mass balance basis, whether the former mine site was the largest contributor to mercury loads in the watershed. The watershed is primarily fed by seasonal tributaries to Marsh Creek located along the eastern flank of Mt. Diablo. Prior to the study, the Regional Water Quality Control Board (RWQCB) had collected samples around the mine site that indicated the mine was contributing to the mercury loading of Marsh Creek and its reservoir. The study collected samples and determined flow levels to calculate mass balance from a number of locations within the watershed. In the course of collecting this data, the researchers determined that Marsh Creek flows at an estimated rate of hundreds of cubic feet per second through winter storm runoff events. This data appears below as Table 1, "Slotton Watershed Flow; Aqueous Mercury and Suspended Solids Concentration Data". (Slotton, et.al, 1995). A figure showing sample locations appears in Appendix A, "Figure 2, Slotton 1995 Sample Locations".

Table 1. Slotten Watershed Flow; Aqueous Mercury and Suspended Solids Concentration Data

Site	Flow (cfs)	Aqueous Total Mercury		Suspended Solids	
		Raw (ng/L)	Filtered (ng/L)	All (TSS) (mg/L)	Solids Hg (dry ppm)
Upper Marsh Creek	28.30	3.24	1.29	16.10	0.10
Curry Creek	33.70	5.18	1.49	32.00	0.12
Marsh Ck above Perkins Ck	65.60	4.69	1.34	32.10	0.10
Perkins Creek	13.90	8.89	4.11	3.00	1.59
Upper Dunn Creek	5.20	3.60	2.73	1.50	0.60
Upper Horse Creek	0.08	25.50	16.00	1.10	8.64
"My" Creek	2.10	381.00	28.40	10.90	32.41
OreHouse Spring	0.01	1,940.00	71.00	11.40	164.00
Trickle coming from tailings	0.03	58,400.00	54,100.00	77.20	56.37
South Pond outlet	0.05	59,100.00	59,100.00	26.10	0.00
Horse Creek @ tailings	0.32	25,000.00	21,900.00	104.00	29.8
Dunn Ck below mine confluence	7.80	949.00	226.00	13.50	53.60
Marsh Ck below Dunn Ck conf.	83.60	79.30	21.40	19.40	2.99
Mid Marsh Ck @ rd. crossing	101.00	52.80	10.10	24.60	1.74
Marsh Ck above Reservoir	111.00	37.67	8.80	23.10	1.25
Briones Ck @ Deer Valley Rd.	4.10	5.84	2.03	61.20	0.06
Marsh Ck below Reservoir	116.00	43.70	7.47	34.60	1.05
Marsh Ck @ Delta Rd.	107.00	37.80	6.44	53.80	0.58
		Aqueous Methyl Mercury			
		Raw	Filtered		
		(ng/L)			
Marsh Ck above Reservoir		0.204	0.112		

The researchers concluded the Site, through transport of water and sediment in Dunn Creek was a significant contributor to the mercury loads into Marsh Creek, representing 94.5% of the total mercury loads to Marsh Creek. These results are presented in Table 2, "Slotten Calculated Relative Mercury Mass Balance Contributions of Upper Watershed Sources".

Table 2, Slotten Calculated Relative Mercury Mass Balance Contributions of Upper Watershed Sources

Site	Aqueous Total Hg		Suspended Solids (TSS) (kilograms/day)
	Raw (grams/day)	Filtered (grams/day)	
Upper Marsh Creek	0.224	0.089	1,110.0
Curry Creek	0.427	0.123	2,640.0
Marsh Ck above Perkins Ck	0.753	0.215	5,160.0
Perkins Creek	0.302	0.140	102.0
Upper Dunn Creek	0.046	0.035	18.4
Upper Horse Creek*	0.005	0.003	0.2
"My" Creek	1.960	0.146	55.9
OreHouse Spring	0.048	0.002	0.3
Trickle coming from tailings	4.290	3.970	5.7
South Pond outlet	7.230	7.230	3.2
Horse Creek @ tailings	19.600	17.100	81.2
Dunn Ck below mine confluence	18.100	4.310	257.0
Marsh Ck below Dunn Ck conf.	16.200	4.380	3,960.0
Mid Marsh Ck @ rd. crossing	13.100	2.500	6,070.0
Marsh Ck above Reservoir	10.200	2.380	6,250.0
Briones Ck @ Deer Valley Rd.	0.059	0.020	614.0
Marsh Ck below Reservoir	12.390	2.120	9,800.0
Marsh Ck @ Delta Rd.	9.880	1.680	14,100.0
	<i>Aqueous Methyl Hg</i>		
	<u>Raw</u>	<u>Filtered</u>	
	<i>(grams/day)</i>		
Marsh Ck above Reservoir	0.055	0.030	

Based on these data, input from the current owners and interest of stakeholders represented by the Technical Planning Panel (TPP) identified by the US Corps of Engineers under their Restoration of Abandoned Mine Sites (RAMS) program, US EPA participated in a site visit August 2008. During this site visit, it was visibly apparent that the south settling pond dam was being compromised by the flows of Dunn Creek and possibly Horse Creek. There are no current estimates of the quantities of water or sediment being held in the impoundment. No records have been provided for review that suggests the pond has ever been dredged. Photos appear in Appendix B, "Photographic Log".

On October 14, 2008, U.S. EPA and Superfund Technical Assistance Response Team ("START") conducted a site visit to collect various samples at the south settling pond and various seeps that are inflow sources to the pond. The data is presented below in Table 3, USEPA Removal Site Evaluation Data. A map showing the locations of these samples appears in Appendix A, "Figure 3, US EPA Sampling Locations".

Sample ID	Sample Location	Mercury Result (µg/L)	MCL (µg/L)	USEPA CMC (µg/L)	SF BAY RWQCB Surface Water Screening Levels (µg/L)	SF Bay RWQCB Surface Water Gross Contamination Ceiling Levels (µg/L)
MD-SW-1	Southeast corner of surface impoundment	40.4	2	1.4	0.025	50,000
MD-SW-2	Seep #1	20.6	2	1.4	0.025	50,000
MD-SW-4	Seep #3	130	2	1.4	0.025	50,000
MD-SW-6	Upgradient (Horse Creek)	ND	2	1.4	0.025	50,000
MD-SW-8	Outflow to State Park	0.393 J	2	1.4	0.025	50,000
MD-SW-9	Seep # 1 midpoint	13.8	2	1.4	0.025	50,000
MD-SW-10	Convergence of Seep #1 and impoundment	19.6	2	1.4	0.025	50,000

- 1: National Primary Drinking Water Standards Maximum Concentration Level
- 2: USEPA Criterion for Maximum Concentration
- 3: San Francisco Bay Regional Water Quality Control Board Environmental Screening Levels (May 2008), Surface Water Screening Levels Fresh Water Habitats
- 4: San Francisco Bay Regional Water Quality Control Board Environmental Screening Levels (May 2008), Surface Water Gross Contamination Ceiling Levels (surface water is not a current or potential source of drinking water)

On November 20, 2008, US EPA Emergency Response Section received a request from the Regional Water Quality Control Board for federal action to mitigate the threat of release of hazardous substances (mercury) associated with mining activities at the Site posed by the imminent failure of the south settling pond dam, located at the

confluence of Horse and Dunn Creeks and the shared State Parks and Site property line. Failure of this impoundment would result in a release of mercury impacted water, sediments and soil as well as acid mine drainage to Marsh Creek and then the San Joaquin Delta, reaching San Francisco Bay and the Pacific Ocean.

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

Mercury is a hazardous substance as defined by Section 101(14) of CERCLA. Mercury exposure occurs from breathing air contaminated with mercury, ingesting contaminated water and food. Mercury, at high levels of exposure, may cause damage to the brain, kidneys and developing fetus. Effects on brain functioning may result in irritability, tremors, changes in vision or hearing, and memory problems. The nervous system is very sensitive to all forms of mercury. Short-term exposure to high levels of mercury vapors can cause lung damage, nausea, vomiting, diarrhea, increased blood pressure or heart rate, skin rashes and eye irritation. Young children are more sensitive to mercury than adults (ATSDR 1999.)

The southeastern toe of the south settling pond dam is being actively undercut by Horse Creek and Dunn Creek drainages. The south settling pond is the final structure on the Site that retains water from the site, including seeps, contact water (tailings) and non contact water (runoff), including acidic mine drainage. The series of ponds were installed to allow sediment to "drop out," capturing and retaining potentially mercury bound fines that would otherwise be transported into downstream water bodies like Marsh Creek and the San Joaquin Delta. With a broad surface area, the waters held in these ponds can evaporate, reducing the amount of acid mine drainage or mercury impacted waters released to the adjacent creeks (Dunn and Horse). Failure of the south settling pond dam would result in catastrophic release of hazardous substances in the form of mercury bound sediment and mercury impacted waters from the site to Marsh Creek.

Mercury bound sediments can also be released with dust generated at the site. These air borne particulates can be deposited into the waterways as well as pose an inhalation/ingestion risk to human health.

5. NPL status

This Site is not on the National Priorities List (NPL).

B. Other Actions to Date

In 2006, the State Resources Water Control Board, Central Valley Region, proposed Dunn and Marsh Creeks to the 303(d) List as impaired for mercury.

The Regional Water Control Board has prepared a Draft Cleanup and

Abatement Order for the current property owners to compel cleanup at this Site. See Enforcement Addendum.

C. State and Local Authorities Roles

1. State and local actions to date

On November 20, 2008, a formal request for federal action was received by US EPA from the State of California, Regional Water Quality Control Board, Central Valley Region ("RWQCB") for this Site.

2. Potential for Continued State/Local Response

The state has issued Cleanup and Abatement Orders in the past to the current property owner. While Contra Costa County has indicated it has interest in undertaking a cleanup of the site, there are legal and financial constraints that would require resolution before the County would undertake any work on the site. Although those constraints have been identified, no resolution has been developed.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

Current Site conditions pose the threat of potential future releases of hazardous substances. These substances include mercury present within mine tailings and waste rock, contaminated soils and sediments. The likelihood of direct human exposure, via ingestion and/or inhalation of hazardous substances, and the threat of potential future releases and migration of those substances, pose an imminent and substantial endangerment to public health, and/or welfare, or the environment based on the factors set forth in the NCP, 40 CFR § 300.415(b)(2). These factors include:

1. Actual or potential exposure to hazardous substances or pollutants or contaminants by nearby populations or the food chain

As described in Section II.A.4, high concentrations of mercury, a heavy metal, has been detected in samples at the south settling pond sediments and at various seeps on the site. If the dam should fail there is a potential for release of large quantities of mercury impacted water and sediments to Marsh Creek. Additionally, hazardous substances may be entrained in naturally and mechanically generated dust from the tailings or waste rock at the Site and be transported during high wind or rain events into the adjacent properties.

Analytical results indicate that concentrations of heavy metals identified in these media, exceed regulatory levels including U.S. EPA's Criterion for Maximum

Concentration, a ceiling value set at the point toxic effects to wildlife from contaminants in surface waters. Mercury is a hazardous substance as defined by Section 101(14) of CERCLA. Mercury exposure occurs from breathing air contaminated with mercury, or from ingesting contaminated water and food. Mercury, at high levels of exposure, may cause damage to the brain, kidneys and developing fetus. Effects on brain functioning may result in irritability, tremors, changes in vision or hearing, and memory problems. The nervous system is very sensitive to all forms of mercury. Short-term exposure to high levels of mercury vapors can cause lung damage, nausea, vomiting, diarrhea, increased blood pressure or heart rate, skin rashes and eye irritation. Young children are more sensitive to mercury than adults (ATSDR 1999.)

High concentrations of metals in sediments have already been identified in the downstream Marsh Creek Reservoir, resulting in a fish advisory and closure of the reservoir to public use. Wildlife may also be exposed to hazardous substances in impacted waters, fine-grained tailings and waste rock via the ingestion and inhalation pathways.

2. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released

Visual observation suggests that the south settling pond dam is being scoured by Dunn Creek at the southeastern corner where Dunn Creek and Horse Creek meet. This scour feature has already resulted in undercutting the dam toe. During a high flow storm event, it is anticipated the scour feature will be worsened.

Additionally, there were seeps observed in the exterior dam face. A full engineering study should be undertaken to better manage the flows from the site and its adjacent water bodies, including a study on whether the settling ponds in their current configuration and locations are best to manage the effluent from the site. However, in light of the upcoming rainy season, it is imperative to stabilize the pond dam's face to prevent catastrophic failure and subsequent release of mercury-contaminated sediments and water.

Overall Site drainage controls should also be assessed and addressed as necessary to reduce inflow to the settling ponds, or to minimize contact with tailings and/or waste rock.

3. Availability of other appropriate Federal or State response mechanisms to respond to the release

The State Regional Water Quality Control Board has stated it is unable to perform removal actions necessary at this Site and has requested federal assistance as described in a Federal Request for Action Letter, dated November 20, 2008.

IV. ENDANGERMENT DETERMINATION

Actual and threatened releases of hazardous substances from this site, if not addressed by implementing a Time-Critical Removal Action may continue to present an imminent and substantial endangerment to public health, or welfare, or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed action description

U.S. EPA proposes to mitigate imminent and substantial threats to human health, welfare, or the environment by taking steps to prevent the release of hazardous substances in contaminated soil, sediments and acid mine drainage to the surface waters of Marsh Creek and to the surrounding environment where there is a high likelihood of direct human contact. The removal action will include the following objectives:

- Stabilize the south and southeastern corner of the south settling pond dam to mitigate the threat of catastrophic failure by placing rip rap or using other stabilization methods; and
- Undertake limited channel improvements and mitigate scour features.

2. Contribution to remedial performance

Long term remedial actions may include treatment or disposal of contaminated soils, sediments, debris, and surface waters in and around the Site.

The long-term cleanup plan for the site:

It is expected that this removal action will mitigate the threat of release a catastrophic failure of the settling pond dam. Additional engineering studies should be conducted to determine whether the current configuration and or locations of the

settling ponds are the most effective and efficient effluent management practice to minimize impacted waters containing sediments from leaving the Site. It is unknown what the subsurface conditions are and how that effluent could be managed.

Threats that will require attention prior to the start of a long-term cleanup:

The immediate threats that have been identified in this memorandum will be addressed by the proposed removal action.

The extent to which the removal will ensure that threats are adequately abated:

The stabilization of the south settling pond dam face will abate this one current threat posed at the Site. Additional threats may require additional actions not anticipated as part of this removal.

Consistency with the long-term remedy:

U.S. EPA asserts that the Time-Critical Removal proposed for the Site is consistent with addressing mine waste issues within the Marsh Creek Watershed.

3. Description of alternative technologies

Alternative technologies have not been considered.

4. Applicable or relevant and appropriate requirements (ARARs)

Section 300.415(j) of the NCP provides that removal actions must attain ARARs to the extent practicable, considering the exigencies of the situation. Section 300.5 of the NCP defines applicable requirements as cleanup standards, standards of control, and other substantive environmental protection requirements, criteria or limitations promulgated under Federal environmental or State environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location or other circumstances at a CERCLA site.

Section 300.5 of the NCP defines relevant and appropriate requirements as cleanup standards, standards of control and other substantive requirements, criteria, or limitations promulgated under Federal environmental or State environmental or facility siting laws that, while not "applicable" to a hazardous substance, pollutant, or contaminant, remedial action, location, or other circumstances at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site and are well-suited to the particular site.

Because CERCLA on-site response actions do not require permitting, only substantive requirements are considered as possible ARARs. Administrative requirements such as approval of, or consultation with administrative bodies, issuance

of permits, documentation, reporting, record keeping, and enforcement are not ARARs for the CERCLA sections confined to the site.

The following ARARs have been identified for the proposed response action. All can be attained.

Federal ARARs: The Clean Water Act, 33 U.S.C. Sections 1251, et. seq. and 40 CFR Parts 122, 123 and 124. CERCLA Off-Site Disposal Rule, 42 U.S.C. Section 9621(d)(3) and OSWER Directive 9347.3-8FS; RCRA Land Disposal Restrictions (LDRs) 40 CFR 268.40 ; and the U.S. Department of Transportation of Hazardous Materials Regulations 49 CFR Part 171, 172 and 173.

State ARARs: California Streambed Alteration, Cal. Fish & Game Code § 1602 (potentially applicable).

5. **Project schedule**

It is estimated that removal activities will take approximately 5 working days to complete.

B. **Estimated Costs**

Regional Removal Allowance Costs

Cleanup Contractor \$ 75,000

Extramural Costs Not Funded from the Regional Allowance

START Contractor 35,000

Extramural Subtotal \$ 110,000

Extramural Contingency (20%) \$ 22,000

TOTAL, Removal Action Project Ceiling \$ 132,000

VI. **EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN**

Given the site conditions, the nature of the hazardous substances documented on site, and the potential exposure pathways to nearby populations described in Sections III and IV above, actual or threatened releases of hazardous substances from the Site, if not addressed by implementing the response actions selected in this Action

Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.

VII. OUTSTANDING POLICY ISSUES

There are no outstanding policy issues with the Site identified at this time.

VIII. ENFORCEMENT

Please see the attached Confidential Enforcement Addendum for a discussion regarding potentially responsible parties. In addition to the extramural costs estimated for the proposed action, a cost recovery enforcement action also may recover the following intramural costs:

Intramural Costs ¹	
U.S. EPA Direct Costs	\$ 20,000
U.S. EPA Indirect Costs (35.28%)	\$ <u>53,625</u>
TOTAL Intramural Costs	\$ 73,625

The total U.S. EPA extramural and intramural costs for this removal action, based on full-cost accounting practices, that will be eligible for cost recovery are estimated to be \$205,625.

IX. U.S. EPA RECOMMENDATION

This decision document represents the selected removal action for the Mt. Diablo Mercury Mine Site, Clayton, Contra Costa County, California developed in accordance with CERCLA as amended, and not inconsistent with the NCP. This decision is based on the Administrative Record for the Site.

1. Direct costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual costs from this estimate will affect the United States' right to cost recovery.

Because conditions at the site meet the NCP criteria for a Time-Critical Removal Action, U.S. EPA enforcement staff recommend the approval of the removal action proposed in this Action Memorandum. The total project ceiling if approved will be \$205,625, of which an estimated \$132,000 comes from the Regional Removal Allowance. Approval may be indicated by signing below.

Approve:  2 December 2008
Daniel Meer, Chief Date
Response, Planning and Assessment Branch

Disapprove: _____ Date
Daniel Meer, Chief
Response, Planning and Assessment Branch

Enforcement Addendum
Appendix A, Figures
Appendix B, Photographic Log

Attachments:

1. Index to the Administrative Record

cc: Sherry Fielding, OEM, HQ
Pat Port, U.S. Department of Interior
Pamela C. Creedon, Central Valley Regional Water Quality Control Board

Mount Diablo Mercury Mine Site
November 2008

APPENDIX A
FIGURES

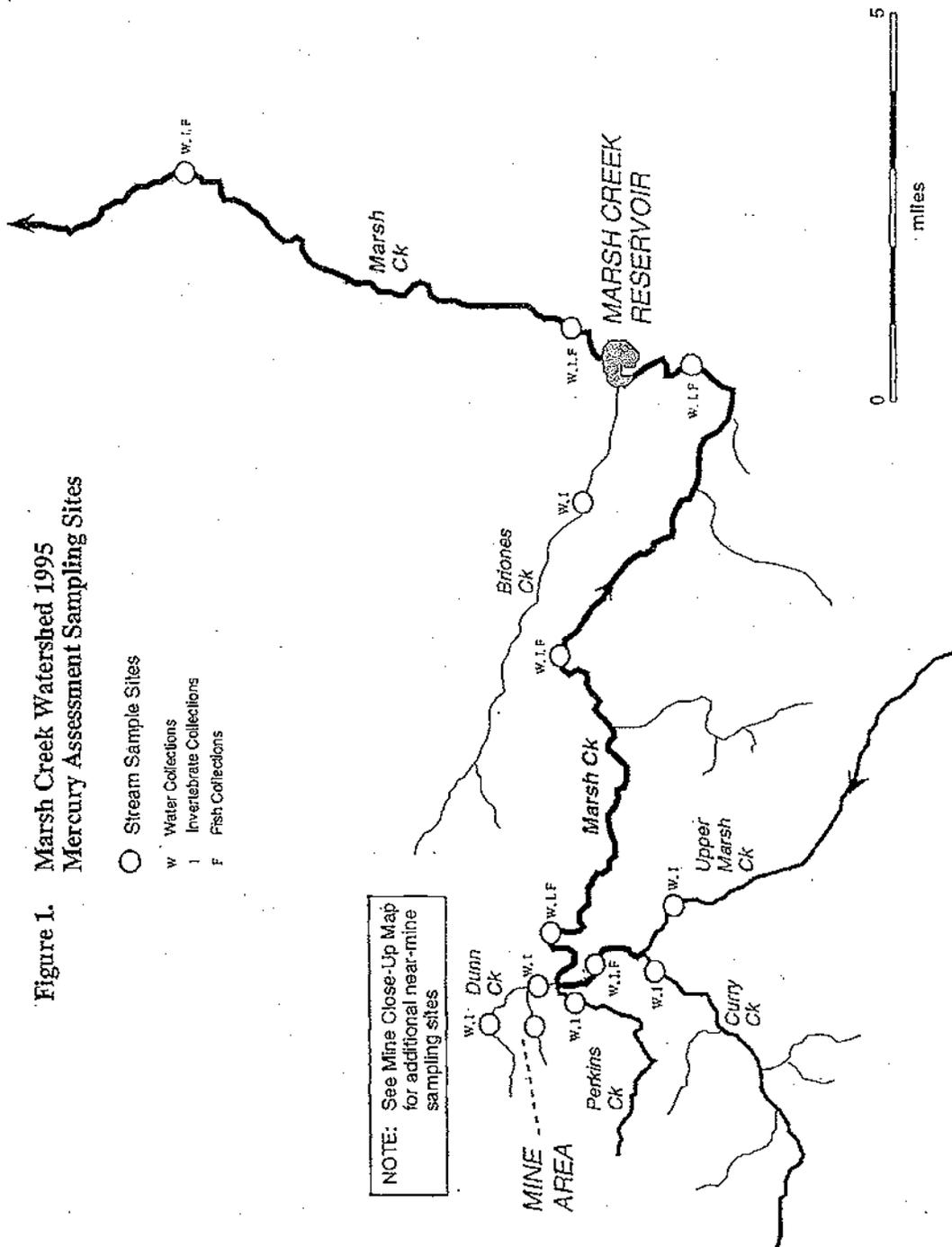
**Mount Diablo Mercury Mine Site
November 2008**

**Figure 1
Site Location Map**



**Mount Diablo Mercury Mine Site
November 2008**

**Figure 2
Slotten 1995 Sample Locations**



**Mount Diablo Mercury Mine Site
November 2008**

**Figure 3
US EPA Sampling Locations**

**Mount Diablo Mercury Mine Site
November 2008**

**APPENDIX B
PHOTOGRAPHIC LOG**



10.14.2008

Mount Diablo Mercury Mine Site
November 2008

Index to the Administrative Record

1. Agency for Toxic Substances and Disease Registry (ATSDR). 1999. Toxicological profile for mercury. Atlanta, GA.
2. Central Valley Regional Water Quality Control Board (RWQCB). 2008. Request for Federal Action.
3. State of California, Division of Mines. 1958. California Journal of Mines and Geology, Vol. 54, No. 4.
4. Darryl G. Slotten, et.al. Marsh Creek Watershed 1995 Mercury Assessment Project. (1996)
5. Central Valley Regional Water Quality Control Board. 2006. Proposed 2006 CWA Section 303(d) List of Water Quality Limited Segments.

bcc: J. Yocum, SFD-9-2
L. Bradfish, ORC-3
J. Witul, SFD-9-4
C. Temple, SFD-9-4
B. Lee, SFD 9-4
Site File

SUNOCO EXHIBIT

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Law Department



Sunoco, Inc.
1735 Market Street Ste LL
Philadelphia PA 19103-7583

Via Electronic Mail

December 15, 2008

Larry Bradfish, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Bradfish.Larry@epa.gov

Re: Notice of Intent to Comply with Unilateral Administrative Order
Mt. Diablo Mercury Mine Site

Dear Mr. Bradfish:

On behalf of Sunoco, Inc. ("Sunoco"), this letter serves as the Notice of Intent to Comply ("Notice") with the Unilateral Administrative Order for the Performance of Removal Action, USEPA Docket No. 9-2009-02 ("Order"), which was issued by the United States Environmental Protection Agency ("EPA") for the Mt. Diablo Mercury Mine Site in Clayton, California ("Site") on December 9, 2008 and received by Sunoco on December 10, 2008. A copy of the Order is included as Appendix A. In accordance with the requirements of paragraph 38 of the Order, Sunoco confirms that it intends to comply with the Order, including the scope of the field work requested in paragraph 22 of the Order and any additional work that may be requested pursuant to paragraph 46 of the Order, so long as it is reasonably required to address the unanticipated or changed circumstances referred therein.

This Notice reflects Sunoco's continued cooperation with EPA in addressing environmental conditions at the Site. We think it is fair to point out that Sunoco did not receive notice of potential responsibility for the Site until October 22, 2008. Moreover, Sunoco was not notified that "emergency conditions" required immediate action until a telephone conversation with representatives of EPA on November 7, just slightly over a month before the Order was issued. At that time, no scope of work had been developed for the field activities requested, and Sunoco did not have a proposed scope of work for those activities until December 4, 2008, when we received EPA's Request for Action Memo, dated December 2, 2008. During this four-week period, Sunoco actively participated in meetings with legal and technical representatives of EPA and arranged for

its consultant to review site conditions and potential interim remedial measures. Through this course of cooperation, Sunoco has been able to take all reasonable measures, many in advance of the issuance of the Order, to be prepared to respond in a timely manner. In fact, even before this timely Notice was issued, EPA has already received and approved Sunoco's work plan for the Site.

Sunoco's agreement to comply with this Order should not be construed to constitute a waiver of Sunoco's right to object to such unauthorized demands in any future orders or in connection with any expanded demands for work under this Order. Additionally, to the extent that Sunoco has not commented on any of the factual (or legal) assertions made by EPA in the Order, its silence should not be taken as assent to or an admission of their accuracy or justification.

Please feel free to contact me at 856-853-3903 if you have any questions related to this Notice.

Sincerely,



Lisa A. Runyon
Senior Counsel

cc: Janet Yocum, USEPA (Yocum.Janet@epamail.epa.gov)

Michael Bourque
Steve Coladonato
William R. Morse

SUNOCO EXHIBIT

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April 8, 2009

Ms. Janet Yocum
EPA On-Scene Coordinator
USEPA Region 9
75 Hawthorne Street, SFD-92
San Francisco, CA 94105

**Subject: Summary Report for Removal Action to Stabilize the Impoundment Berm
Mount Diablo Mercury Mine
Clayton, California**

Dear Ms. Yocum:

At the request of the U.S. Environmental Protection Agency ("EPA"), on behalf of Respondent Sunoco Inc. ("Sunoco"), The Source Group, Inc. ("SGI") is pleased to present this letter describing the removal action performed to stabilize the impoundment berm for the Mount Diablo Mercury Mine in Clayton, California ("Site"). SGI performed this removal action under the Unilateral Administrative Order for the Performance of a Removal Action, USEPA Docket No. 9-2009-02 ("Order" or "UAO") that EPA issued to Sunoco on December 9, 2008.

Pursuant to the UAO, SGI initiated the removal action in December 2008 and submitted a Final Summary Report for Removal Action to Stabilize the Impoundment Berm dated January 28, 2009. During January and February 2009, heavy rainfall and high flow rates in Dunn Creek caused damage to the removal action, causing additional work to be performed on the berm to address the unanticipated or changed circumstances pursuant to Article XIII, Paragraph 46, of the UAO. On March 10, 2009, SGI, USEPA, and Mr. Jack Wessman met at the Site to evaluate the condition of the removal action and EPA determined that additional work was required under the UAO.

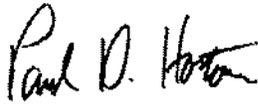
As a result, on March 24, 2009, SGI mobilized personnel, equipment, and materials to the Site to temporarily excavate and stockpile some of the existing three to five-inch crushed rock within the portion of Dunn Creek adjacent to the northwest corner of the impoundment berm. Then the existing shotcrete embankment was scored and chipped at the bottom, back to native slope material to relieve the undermined edge. Stabilization fabric was installed along the low flowline of Dunn Creek and up the sides of the creek embankment. Subsequent to laying the stabilization fabric, the repair area was recontoured using the three to five-inch crushed rock, and two loads (approximately 40 tons) of rip-rap/rock (6 to 18-inch) were placed above the crushed rock and under vertical wall of shotcrete for structural stability. Upon reestablishing the

Ms. Janet Yocum
April 8, 2009
Page 2 of 2

Dunn Creek flow line within the embankments and locally downstream, the Site was returned to conditions prior to project initiation and equipment and materials were demobilized. The work was completed in one day. EPA On-Scene Coordinator, Chris Reiner, was onsite during the completion of the removal action repair work performed by SGI under the UAO. Photos showing the project area before and after repairs were completed are attached for reference.

If you have any questions or need additional information, please do not hesitate to contact me at (925) 944-2856 ext. 302.

Sincerely,
The Source Group, Inc.



Paul D. Horton, P.G., C.HG.
Project Manager

Attachment – Photographs from before and after repair work

cc: Mr. Bret Moxley, EPA
Ms. Jerelean Johnson, EPA
Mr. Bill Morse, Sunoco, Inc.
Ms. Lisa Runyon, Sunoco, Inc.
Mr. John D. Edgcomb, Edgcomb Law Group
Mr. Jack Wessman, Mount Diablo Springs Improvement Society

Client Name: Sunoco, Inc.

Photo Date: March 24, 2009

Project: Sunoco Mt. Diablo



Photograph 1: Before Repair Work



Photograph 2: After Repair Work

SUNOCO EXHIBIT

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EDGCOMB LAW GROUP

115 Sansome Street, Suite 700
San Francisco, California 94104
415.399.1555 direct
415.399.1885 fax
jedgcomb@edgcomb-law.com

January 20, 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

Dear Ms. Macedo:

In advance of the January 24, 2012 meeting between Sunoco, Inc. (R&M) ("Sunoco") and the Central Valley Regional Water Quality Control Board ("Regional Board") concerning the December 7, 2011 *Additional Characterization Report, Mount Diablo Mercury Mine* ("Site") prepared by Sunoco's consultant SGI, we are bringing to your attention another issue we would like to discuss at that meeting.

Specifically, our ongoing investigation into the corporate relationship between Cordero Mining Company ("Cordero") and Sunoco has determined there is no legal basis for the Regional Board to pursue Site related claims against Cordero, or to attribute Cordero liability at the Site, if any, to Sunoco.

The relevant background facts may be summarized as follows. Cordero was organized under Nevada law on March 4, 1941. Cordero briefly leased the Site and conducted limited operations there between late 1954 and early 1956. Effective as of November 18, 1975, long after Cordero operations at the Site were completed, Cordero was dissolved as a corporate entity, as acknowledged by the Nevada Secretary of State. It is our understanding that Cordero was a wholly-owned subsidiary of Sun Oil Company (Delaware) when Cordero dissolved in 1975.

Nevada law governs the capacity of Cordero, and its former shareholder, to be pursued for Cordero's Site actions. The California Corporations Code does not apply to foreign entities such as Cordero (a dissolved Nevada corporation). *See Cal. Corp. Code § 162* ("Corporation," unless otherwise expressly provided, refers only to a corporation organized under this division or a corporation subject to this division under the provisions of subdivision (a) of Section 102.")

Julie Macedo, Esq.
State Water Resources Control Board
Re: Sunoco Non-Liability
January 20, 2012

Nevada's corporate capacity statute provides that claims against a dissolved corporation relating to pre-dissolution acts survive only for a period of two years following the date of dissolution. NRS 78.595 ("The dissolution of a corporation does not impair any remedy or cause of action available to or against it or its directors, officers or shareholders arising before its dissolution and commenced within two years after the date of the dissolution.") Further, effective June 16, 2011, Section 15 of Nevada Senate Bill 405 enacted a provision reaffirming the limited liability of stockholders of a dissolved corporation:

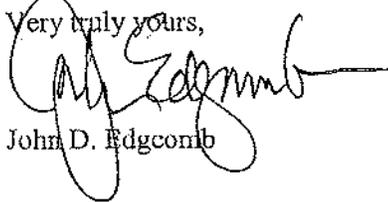
"2. A stockholder of a corporation dissolved pursuant to an NRS 78.580 or whose period of corporate existence has expired, the assets of which were distributed pursuant to an NRS 78.590, is not liable for any claim against the corporation on which an action, suit or proceeding is not begun before the expiration of the period described in NRS 78.585."

As noted above, Cordero was dissolved as of November 18, 1975 and lacked the capacity to be sued two years later (November 18, 1977). Therefore, Cordero cannot be a liable party in regards to the Site. For the same reason, and also pursuant to Section 15 of Nevada Senate Bill 405, a former shareholder of Cordero cannot be held liable for Cordero's Site actions either.

A recent decision by the United States District Court for the District of Nevada, *Assurance Co. of Am. v. Campbell Concrete of Nev., Inc.*, 2011 U.S. Dist. LEXIS 145845 (D. Nev. Dec. 19, 2011), supports the non-liability under Nevada law of Cordero's former shareholder with respect to claims arising post-dissolution as well. *See Assurance, supra* (applying Nevada law, grants motion to dismiss filed by defendant shareholder of a dissolved Nevada corporation against which post-dissolution claims had been filed).

We look forward to discussing with you the technical and legal issues related to the Site on January 24, 2012. Please let us know if you have any questions regarding the above in advance of the meeting.

Very truly yours,



John D. Edgcomb

cc (via email only):
V. Izzo
J. Freudenberg
S. Cullinan
B. Morse

SUNOCO EXHIBIT

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EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

August 8, 2013

Christopher M. Sanders, Esq.
Ellison, Schneider & Harris, LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
cms@eslawfirm.com

John D. Edgcomb, Esq.
Adam P. Baas, Esq.
Edgcomb Law Group, LLP
One Post Street, Suite 2100
San Francisco, CA 94104
jedgcomb@edgcomb-law.com
abaas@edgcomb-law.com

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

Cc: [via US mail and email]
Robert W. Thomson, Esq.
Babst Calland Clements and Zomnir, PC
Two Gateway Center
603 Stanwix Street, 6th Floor
Pittsburgh, PA 15222
rthomson@babstcalland.com

[via US mail only]
Kevin Dunleavy, Esq.
Mr. William Morse
Lisa A. Runyon, Esq., Senior Counsel
Sunoco, Inc.
1735 Market Street, Suite LL
Philadelphia, PA 19103-7583

[via US mail only]
Kennemetal Inc.
1600 Technology Way
Latrobe, PA 15650-4647

[via US mail only]
Mr. John and Ms. Carolyn Wessman
P.O. Box 949
Clayton, CA 94517

[via US mail and email]
Jon K. Wactor, Esq.
(Counsel for Bradley Mining Company)
Wactor and Wick, LLP
180 Grand Avenue, Suite 950
Oakland, CA 95612
jonwactor@ww-envlaw.com

Environmental Office **[via US mail only]**
US Department of Interior
Regional Office
Jackson Center One
1111 Jackson Street, Suite 520
Oakland, CA 94607

cc: (Continued)

[via US mail only]

US Dept. of Interior DMEA
1849 C Street, NW
Washington, DC 20240

[via US mail only]

California Department of
Parks and Recreation
Bay Area District
96 Mitchell Canyon Road
Clayton, CA 94517

[via email only]

Lori T. Okun, Esq.
Office of Chief Counsel
State Water Resources
Control Board
1001 I Street, 22nd Floor
P.O. Box 100
Sacramento, CA 95812-0100
lokun@waterboards.ca.gov

[via US mail only]

Mr. Roy Stearns, Deputy Director
California Department of Parks
and Recreation
1416 9th Street
Sacramento, CA 95814

[via email only]

Ms. Pamela C. Creedon
Executive Officer
Central Valley Regional Water Quality
Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114
pcreedon@waterboards.ca.gov

Mr. Kenneth D. Landau [via email only]

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

Mr. Ross Atkinson [via email only]

Associate Engineering Geologist
Central Valley Regional Water
Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114
ratkinson@waterboards.ca.gov

[via email only]

David P. Coupe, Esq.
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
dcoupe@waterboards.ca.gov

[via US mail and email]

Kathryn J. Tobias, Esq.
Senior Staff Counsel
California Department of Parks
and Recreation
1416 9th Street, 14th Floor
P.O. Box 942869
Sacramento, CA 94269-0001
ktobias@parks.ca.gov

[via email only]

Mr. Clay Rodgers
Assistant Executive Officer
Central Valley Regional Water
Quality Control Board, Fresno Office
1685 E Street
Fresno, CA 93706-2020
crodgers@waterboards.ca.gov

cc: (Continued)

[via email only]

Patrick E. Pulupa, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
P.O. Box 100
Sacramento, CA 95812-0100
ppulupa@waterboards.ca.gov

[via email only]

Philip G. Wyels, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
P.O. Box 100
Sacramento, CA 95812
pwuels@waterboards.ca.gov

[via email only]

Alex P. Mayer, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
P.O. Box 100
Sacramento, CA 95812-0100
amayer@waterboards.ca.gov

SUNOCO EXHIBIT

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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.



SUNOCO EXHIBIT

7

From: [Benedict, AnnaKathryn@Waterboards](mailto:Benedict,AnnaKathryn@Waterboards)
To: Adam Baas; cms@eslawfirm.com;
cc: jonwactor@ww-envlaw.com; pton@ww-envlaw.com;
Tobias, Kathryn@Parks; Coupe, David@Waterboards;
Landau, Ken@Waterboards; Hartzell, Marty@Waterboards;
Creedon, Pamela@Waterboards; Atkinson, Ross@Waterboards;
rthomson@babstcalland.com;
Subject: RE: Mt. Diablo Mercury Mine Prosecution Team-Evidence Submission
Date: Monday, March 03, 2014 11:27:23 AM

Adam: I was out of the office all of last week.

The Order, which was provided in our evidentiary submission, details the Prosecution Team's legal and factual argument, supplemented by additional evidence included in the exhibits provided. The Order also includes our factual arguments / reasons for naming your client.

Anna Kathryn Benedict

From: Adam Baas [<mailto:abaas@edgcomb-law.com>]
Sent: Monday, March 03, 2014 10:15 AM
To: Adam Baas; Benedict, AnnaKathryn@Waterboards; cms@eslawfirm.com
Cc: jonwactor@ww-envlaw.com; pton@ww-envlaw.com; Tobias, Kathryn@Parks; Coupe, David@Waterboards; Landau, Ken@Waterboards; Hartzell, Marty@Waterboards; Creedon, Pamela@Waterboards; Atkinson, Ross@Waterboards; rthomson@babstcalland.com
Subject: RE: Mt. Diablo Mercury Mine Prosecution Team-Evidence Submission

Anna Kathryn: We have not received a response to our email below. Can you please let us know whether the Prosecution Team submitted a detailed description of its legal and factual arguments? As of right now, all we've received are a list of witnesses and exhibits.

Thank you.

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: Adam Baas

Sent: Monday, February 24, 2014 10:28 AM

To: 'Benedict, AnnaKathryn@Waterboards'; cms@eslawfirm.com

Cc: jonwactor@ww-envlaw.com; pton@ww-envlaw.com; Tobias, Kathryn@Parks; Coupe, David@Waterboards; Landau, Ken@Waterboards; Hartzell, Marty@Waterboards; Creedon, Pamela@Waterboards; Atkinson, Ross@Waterboards; rthomson@babstcalland.com

Subject: RE: Mt. Diablo Mercury Mine Prosecution Team-Evidence Submission

Anna Kathryn: I'm reviewing the emails that you sent on Friday now. Because of their size and the multiple emails that have been sent, I want to make sure that Sunoco received all of the Prosecution Team's "Submission of Evidence and Policy Statements" required by the Hearing Procedure. We've received the following:

1. Prosecution Team's list of witnesses;
2. Prosecution Team's evidence list; and
3. Hearing Exhibits 1-44

We have not, however, received the Prosecution Team's legal and factual basis for its claims against Sunoco, Inc. The Hearing Procedure requires the Prosecution Team to submit "[a]ll legal and technical arguments or analysis" in advance of the hearing. Specifically, the order provides that "[t]he Prosecution Team's information must include the legal and factual basis for its claims against Sunoco, Inc." Was a detailed description of the Prosecution Team's legal and factual arguments against Sunoco, Inc. sent on Friday?

Thank you.

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: Benedict, AnnaKathryn@Waterboards [<mailto:AnnaKathryn.Benedict@waterboards.ca.gov>]

Sent: Friday, February 21, 2014 9:54 AM

To: cms@eslawfirm.com; Adam Baas

Cc: jonwactor@ww-envlaw.com; pton@ww-envlaw.com; Tobias, Kathryn@Parks; Coupe, David@Waterboards; Landau, Ken@Waterboards; Hartzell, Marty@Waterboards; Creedon, Pamela@Waterboards; Atkinson, Ross@Waterboards; rthomson@babstcalland.com

Subject: Mt. Diablo Mercury Mine Prosecution Team-Evidence Submission

Chris and Adam: Pursuant to the hearing procedures, attached please find the Prosecution Team's evidence submission. Due to its size, it will be sent in multiple emails.

If you have any questions or do not receive the entire submission please do not hesitate to contact me.

Thanks.

Anna Kathryn Benedict

SUNOCO EXHIBIT

8

State of Nevada



Department of State

J. MALCOLM McEACHIN, Secretary of State of Nevada, do hereby

COHERO MINING CO. PAPER

certify that

and on the FOURTH

day of

MARCH

1941, file in this office

the original articles of Incorporation that said articles are now on file and a copy of the same is in the office of the Secretary of State of Nevada and further, that said articles contain all the statements of facts required by the law of said State of Nevada

In Witness Whereof, I have hereunto set my hand and seal of the State of Nevada, at my office in Carson City, Nevada, on

FOURTH

day of

MARCH

1941

Malcolm McEachin

1941

Malcolm McEachin

ARTICLE I OF THE CHARTERS

FOR THE FORMATION OF A CORPORATION

WE, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the provisions and subject to the requirements of the General Corporation Law of the State of Nevada, and hereby certify:

ARTICLE I

The name of this corporation shall be **TORBERS MINING COMPANY**.

ARTICLE II

The principal office and place of business of this corporation in Nevada shall be McDermitt in the County of Humboldt, State of Nevada.

ARTICLE III

The nature of the business and the objects and purposes proposed to be transacted, promoted and carried on by this corporation are:

To engage in the business of mining generally and in any or all of the various activities necessary or convenient for the prosecution thereof;

To purchase, hire, lease or otherwise acquire lands containing or believed to contain, diamonds, gold, silver, lead, zinc, copper, iron, coal, manganese, oil, and other minerals, mineral ores or deposits of every kind and description;

To purchase, hire, lease, or otherwise acquire lands, mines, mineral lands, water, water rights, franchises, rights of way, easements, mill sites, and other and any and all rights and properties necessary or convenient in connection with the prosecution of the mining business;

To acquire mining, mineral or production rights;

To engage in searching for, prospecting and exploring for ores, deposits and minerals and to locate claim claims, lodes, fields, or holes, and to record same pursuant to the mining laws of Nevada, the United States, the several other states thereof and of other countries;

To crush, concentrate, smelt, roast, distill, manipulate and otherwise treat mineral ores or deposits of every kind and description;

To contract for, build, sell, hire, buy, operate, lease or otherwise acquire furnaces, crushers, stamp mills, smelters, refiners, buildings, machinery, dredges, stores, dwellings, office buildings and warehouses in connection with the operation and prosecution of said mining business;

To buy, sell, offer for sale, transport, store or otherwise deal in ores, minerals, metals, equipment, machinery and merchandise generally;

To enter into contracts of every kind and lawful nature whatsoever with any person, firm or corporation, public or private in furtherance of the objects and purposes of this corporation in the prosecution of the mining business.

ARTICLE IV

The amount of the total authorized capital stock of this corporation shall be One Hundred Thousand Dollars (\$100,000), divided into One Thousand (1000) shares of common stock of the par value of One Hundred Dollars (\$100) each.

ARTICLE V

The members of the governing board of this corporation shall be styled directors and the number thereof shall be not less than three (3), nor more than six (6) as may from time to time be determined by the By-Laws of this corporation. The number of directors of the first Board of Directors shall be three (3) and their names and post office addresses are as follows:

<u>NAME</u>	<u>RESIDENCE</u>
J. Edgar Pew	Mt. Moro Road, Villanova, Pa.
John Blair Moffett	Fishers Avenue, Bryn Mawr, Pa.
Frank E. Gummey, II.	Youngsford Road, Gladwyne, Pa.

ARTICLE VI

The capital stock of this company, after the amount of the par value has been paid in, shall not be subject to assessment to pay debts of the corporation.

ARTICLE VII

The name and post office address of each of the Incorporators signing these Articles of Incorporation is:

<u>NAME</u>	<u>ADDRESS</u>
John Blair Moffett	1608 Walnut Street, Phila., Pa.
Claude L. Roth	1608 Walnut Street, Phila., Pa.
Frank E. Gummey, II.	1608 Walnut Street, Phila., Pa.

ARTICLE VIII

This corporation shall have perpetual existence.

ARTICLE IX

The power to regulate the business of this corporation shall be vested in the Board of Directors and the power of the officers to conduct the affairs of this corporation shall be that entrusted to them from time to time by order of the Board of Directors.

IN WITNESS WHEREOF we have hereunto set our hands and seals this 28th day of February, A. D. 1941.

In the presence of:

Mary M. Kelly

Claude L. Roth (SEAL)

Catherine J. Neiger

John H. Neiger (SEAL)

Virginia F. Smith

Paul R. Neiger (SEAL)

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA :

ON THIS 28th day of February, A. D. 1941,
personally appeared before me, a Notary Public in and for the
County and State aforesaid, JOHN PAUL MORRETT, CLARENCE L. BRYAN,
and FRANK L. BOWEN, II, known to me to be the persons described
in and who executed the foregoing Articles of Incorporation; who
acknowledged to me that they executed the same freely and volun-
tarily and for the uses and purposes therein mentioned.

WITNESS my hand and seal this 28th day of
February, A. D. 1941.

Henry M. Kelly
NOTARY PUBLIC

My Commission expires:

May 14, 1943

STATE OF NEVADA (STATE SEAL) DEPARTMENT OF STATE

I, MALCOLM McEACHIN, Secretary of State of the State of NEVADA, do hereby certify that CORDERO MINING COMPANY, did on the FOURTH day of MARCH, 1941, file in this office the original Articles of Incorporation; that said Articles are now on file and of record in the office of the Secretary of State of the State of Nevada, and further, that said Articles contain all the statements of facts required by the law of said State of Nevada.

(SEAL OF THE STATE)
(OF NEVADA)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office in Carson City, Nevada, this FOURTH day of MARCH, A. D. 1941.

Sgd. Malcolm McEachin
Secretary of State

By _____, Deputy

CORDERO 0001

ARTICLES OF INCORPORATION

of

CORDERO MINING COMPANY

WE, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the provisions and subject to the requirements of the General Corporation Law of the State of Nevada, and hereby certify:

ARTICLE I

The name of this corporation shall be CORDERO MINING COMPANY.

ARTICLE II

The principal office and place of business of this corporation in Nevada shall be McDermitt in the County of Humboldt, State of ^{Las Vegas} Nevada, State of ^{Resolution} 3-11-41 Nevada.

ARTICLE III

The nature of the business and the objects and purposes proposed to be transacted, promoted and carried on by this corporation are:

To engage in the business of mining generally and in any or all of the various activities necessary or convenient for the prosecution thereof;

To purchase, hire, lease or otherwise acquire lands containing or believed to contain, cinnabar, gold, silver, lead,

zinc, copper, iron, coal, manganese, oil, and other minerals, mineral ores or deposits of every kind and description;

To purchase, hire, lease, or otherwise acquire lands, mines, mineral lands, water, water rights, franchises, rights of way, easements, mill sites, dredges and any and all rights and properties necessary or convenient in connection with the prosecution of the mining business;

To acquire mining, mineral or production rights;

To engage in searching for, prospecting and exploring for ores, deposits and minerals and to locate mining claims, grounds, fields, or lodes, and to record same pursuant to the mining laws of Nevada, the United States, the several other states thereof and of other countries;

To crush, concentrate, smelt, roast, distill, manipulate and otherwise treat mineral ores or deposits of every kind and description;

To contract for, build, sell, hire, buy, operate, lease or otherwise acquire furnaces, crushers, stamp mills, smelters, refiners, buildings, machinery, dredges, stores, dwellings, office buildings and warehouses in connection with the operation and prosecution of said mining business;

To buy, sell, offer for sale, transport, store or otherwise deal in ores, minerals, metals, equipment, machinery and merchandise generally;

To enter into contracts of every kind and lawful nature whatsoever with any person, firm or corporation, public or private in furtherance of the objects and purposes of this corporation in the prosecution of the mining business.

ARTICLE IV

The amount of the total authorized capital stock of this corporation shall be One Hundred Thousand Dollars (\$100,000), divided into One Thousand (1000) shares of common stock of the par value of One Hundred Dollars (\$100) each.

ARTICLE V

The members of the governing board of this corporation shall be styled directors and the number thereof shall be not less than three (3), nor more than six (6) as may from time to time be determined by the By-Laws of this corporation. The number of directors of the first Board of Directors shall be three (3) and their names and post office addresses are as follows:

<u>NAME</u>	<u>RESIDENCE</u>
J. Edgar Pew	Mt. Moro Road, Villanova, Pa.
John Blair Moffett	Fishers Avenue, Bryn Mawr, Pa.
Frank B. Gummey, II.	Youngsford Road, Gladwyne, Pa.

ARTICLE VI

The capital stock of this company, after the amount of the par value has been paid in, shall not be subject to assessment to pay debts of the corporation.

ARTICLE VII

The name and post office address of each of the Incorporators signing these Articles of Incorporation is:

<u>NAME</u>	<u>ADDRESS</u>
John Blair Moffett	1608 Walnut Street, Phila., Pa.
Claude L. Roth	1608 Walnut Street, Phila., Pa.
Frank B. Gummey, II	1608 Walnut Street, Phila., Pa.

ARTICLE VIII

This corporation shall have perpetual existence.

ARTICLE IX

The power to regulate the business of this corporation shall be vested in the Board of Directors and the power of the officers to conduct the affairs of this corporation shall be that entrusted to them from time to time by order of the Board of Directors.

IN WITNESS WHEREOF we have hereunto set our hands and seals
this 28th day of February, A. D. 1941.

In the presence of:

Mary M. Willy

Claude L. Roth (SEAL)

Catherine V. Geiger

John Blair Moffett (SEAL)

Virginia F. Smith

Frank B. Gummey, II (SEAL)

COMMONWEALTH OF PENNSYLVANIA:

SS:

COUNTY OF PHILADELPHIA :

On this 28th day of February, A. D. 1941, personally appeared before me, a Notary Public in and for the County and State aforesaid,

JOHN BLAIR MOFFETT, CLAUDE L. ROTH, and FRANK B. GUMMEY, II, known to me to be the persons described in and who executed the foregoing Articles of Incorporation; who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and seal this 28th day of February, A. D. 1941.

Mary M. Willy
Notary Public

My Commission expires:

May 14, 1943

(SEAL)

Notary Public
My Commission expires
May 14th, 1943

IN THE COURTS OF COMMON PLEAS OF PHILADELPHIA COUNTY:

I, John M. Scott, Prothonotary of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, acting by my Principal Deputy, Meridith Hanna, or my second Deputy, John J. Hoerr, do Certify, That MARY M. WILLY, Esquire, whose name is subscribed to the certificate of the acknowledgement of the annexed instrument and thereon written, was at the time of such acknowledgement, a NOTARY PUBLIC for the Commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgements and proofs of Deeds of Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such

full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said NOTARY PUBLIC and verily believe the signature thereto is genuine, and I further certify that the said Instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

The impression of the seal of the NOTARY PUBLIC is not required by law to be filed in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 28th day of February in the year of our Lord One thousand nine hundred forty-one (1941).

By John J. Hoerr, Second Deputy
Prothonotary

JOHN M. SCOTT, Prothonotary,
Durante Absentia, Secundum Legem

(SEAL)

SUNOCO EXHIBIT

9

WAIVER OF NOTICE OF THE FIRST MEETING
OF INCORPORATORS OF CORDERO MINING COM-
PANY, a NEVADA CORPORATION.

We, the undersigned, the incorporators of Cordero Mining Company, a Nevada Corporation, named in the Articles of Incorporation filed in the office of the Secretary of State of Nevada March 4, 1941, do hereby waive any and all further notice of the time, place and purpose of the first meeting of the Incorporators to be held at 1608 Walnut Street in the City and County of Philadelphia, Commonwealth of Pennsylvania on March 10, 1941 at 4 o'clock, P. M.

The undersigned do further consent to the transaction of any business requisite to complete the incorporation and organization of the Company and for the purpose of adopting by-laws and electing Directors named in the Articles of Incorporation.

Claude L Roth

[Signature]

[Signature]

Dated; March 10, 1941.



fol 19

CORDERO MINING COMPANY

MINUTES OF THE FIRST MEETING OF THE
INCORPORATORS

The first meeting of the incorporators of Cordero Mining Company was held at 1608 Walnut Street in the City and County of Philadelphia, Commonwealth of Pennsylvania, at 4 o'clock, P. M., on the 10th day of March, A. D. 1941, pursuant to a written Waiver of Notice signed by all the Directors fixing the time and place for said meeting.

All the Incorporators executing the Articles of Incorporation were present in person, to wit:

John Blair Moffett

Claude L. Roth

Frank B. Gummey, II.

On motion unanimously carried, Mr. John Blair Moffett was elected Chairman and Mr. Frank B. Gummey, II, Secretary of the meeting.

The Waiver of Notice signed by all the Incorporators was delivered to the Secretary to be filed with the minutes of this meeting.

The Chairman then reported that the Secretary of State of the State of Nevada, had filed the Articles of Incorporation on March 4th, 1941 and had issued his certificate thereof. The Chairman further stated that a certified copy of the Articles of Incorporation had been delivered to the Clerk of Humboldt County, State of Nevada to be filed and indexed in accordance with the provisions of the General Corporation Law of Nevada. The receipt of the Clerk of Humboldt County for payment of the fee for filing and indexing the Articles of Incorporation was delivered to the Secretary, together with the receipt of the State of Nevada for filing the Articles of Incorporation.

The Secretary was instructed to insert a copy of the Articles of Incorporation with the Certificate of the Secretary of State of Nevada in the Minute Book of the Company preceding the records of this meeting.

On motion duly made, seconded and unanimously carried, it was:

"RESOLVED, that the Articles of Incorporation of Cordero Mining Company as filed in the Office of the Secretary of State of Nevada, be and they hereby are accepted and that this Company proceed to do business thereunder".

The Chairman then presented a set of by-laws for the regulation and management of the affairs of the Company which he proceeded to read to the meeting article by article. Following a discussion of the proposed by-laws they were, upon motion duly made, unanimously adopted as the By-Laws of the Cordero Mining Company and the Secretary was then directed to include said by-laws as a part of the permanent record of the minutes of this meeting in the Minute Book of the Company.

The Chairman called for the nomination of directors of the company to hold office until the next annual meeting of stockholders and until their successors are duly elected and qualified. The by-laws of the Company, as adopted by the incorporators, having provided for a board of three (3) directors, the following persons named in the Articles of Incorporation were duly nominated:

J. Edgar Pew

John Blair Moffett

Frank B. Gumme, II.

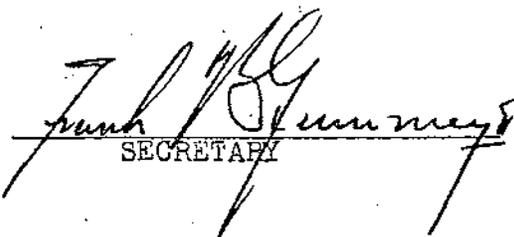
No further nominations having been made, the nominations, upon motion duly made, seconded and carried, were closed. The incorporators thereupon delivered their ballots to the Secretary of the meeting who,

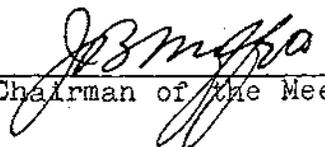
having canvassed same, reported that the above named persons were elected Directors of the Company by the unanimous vote of all the incorporators. The Chairman thereupon declared the nominees elected as directors of the Company to hold office until the next annual meeting of stockholders of the Company and until their successors are duly elected and qualified.

On motion duly made and seconded, the following resolution was unanimously adopted:

"RESOLVED, That the Board of Directors be and it is hereby authorized to issue all or any part of the capital stock of this Company authorized by the Articles of Incorporation, in such amounts and for such considerations as from time to time shall be determined by the Board of Directors and as may be permitted by law."

On motion duly made, seconded and carried, the meeting adjourned.


SECRETARY


Chairman of the Meeting.

CORDERO MINING COMPANY

BY-LAWS

ARTICLE I

OFFICES

1. The principal office of the Company, as stated in the Certificate of Incorporation filed with the Secretary of State of Nevada, March 4, 1941, is at ^{Reno, Washoe} ~~McDermitt~~, Humboldt County, Nevada. *See Minutes 3-11-41*

2. The Company may, from time to time, change the location of its principal office within the State of Nevada.

3. The Company may also maintain offices at other places within and without the State of Nevada as the Board of Directors may, from time to time, appoint or as the business of the Company may require.

ARTICLE II

STOCKHOLDERS MEETINGS.

1. Meetings of the stockholders of the Company may be held at any place within or without the State of Nevada.

2. The annual meeting of stockholders of the Company for the election of Directors to succeed the directors named in the Certificate of Incorporation and those chosen annually thereafter, shall be held each year on the 3rd Tuesday of January, if not a legal holiday, and if a legal holiday, the day following at 10:30 A. M.

3. Special meetings of the stockholders may be called at any time by the President, the Secretary, a majority of the Board of Directors,

or upon the request in writing of the owners of a majority of all the issued and outstanding shares of the authorized capital stock entitled to vote upon the matters presented at such special meetings. Such request shall be delivered to the President or Secretary or any Directors, whereupon it shall be the duty of the President or Secretary or Director, to issue a call for such meeting to all the stockholders within three (3) days after receipt of the written request of the owner of a majority of the issued and outstanding authorized capital stock of the Company.

4. Written notice stating the purpose or purposes for which meetings of the stockholders are called and the time when and the place where they are to be held, shall be served either personally or by mail upon each stockholder entitled to vote at such meeting, not less than ten (10) nor more than sixty (60) days, before such meetings. If such notice be mailed, it shall be directed to each stockholder at the several addresses of the stockholders appearing upon the records of the Company.

5. Any stockholder may waive notice of any meeting by writing, signed by him, or by his duly authorized attorney, either before or after the meeting.

6. A quorum at any annual or special meeting of the stockholders of the Company shall consist of stockholders representing, either in person or by proxy, a majority of the issued and outstanding shares of the authorized capital stock of the Company entitled to vote at such meeting, and except as otherwise provided by law, a majority of the votes cast shall be sufficient to elect directors or pass any measure presented at any duly constituted meeting.

7. Voting at all stockholders meetings shall be viva voce unless any qualified voter shall demand a vote by ballot or the law specifically requires the question presented to the stockholders shall be determined by a ballot of the stockholders, in which event, each ballot shall be signed by the stockholder casting same or by his proxy and shall state the number of shares voted.

8. The Secretary of the Company shall have available for each meeting of the stockholders, either the stock ledger of the Company or a complete alphabetical list of the stockholders of the Company entitled to vote thereat. Whenever, at any meeting of the stockholders, the voting is to be by ballot, the presiding officer at the meeting shall appoint two Inspectors of Election, who shall examine all proxies and take charge of all ballots, with the power to decide upon the qualification of voters, the validity of proxies and the acceptance or rejection of votes.

ARTICLE III

STOCK

1. Certificates of shares of the authorized capital stock of this Company shall be issued in numerical order and each stockholder shall be entitled to a certificate issued in his name for the number of shares owned which shall be signed by the President and Secretary of the Company and sealed with the corporate seal.

2. Transfers of stock shall be made only on the transfer books of the Company and before a new certificate is issued for stock transferred, the old certificate thereof shall be surrendered for cancellation.

3. In case of loss or destruction of any certificate of stock, another may be issued in its place by order of the Board of Directors who may also, according to their judgment, require the owner or his legal representatives to give the Company a bond in such amount as they may direct as indemnity against any claim arising against the Company by reason thereof.

4. Stockholders shall be entitled to one (1) vote for each share of stock standing in his name on the books of the Company, provided however, the Directors may prescribe a period not exceeding forty (40) days prior to any meeting of stockholders during which no transfer on the books of the Company may be made, or may fix a day not more than forty (40) days prior to the holding of any such meeting, as the day, as of which stockholders entitled to notice of and to vote at such meeting shall be determined, and in such event, stockholders of record on such day shall be entitled to notice and to vote at such meeting.

5. The stockholders registered on the books of the Company, shall be entitled to be treated by the Company as the holders in fact of the stock standing in their respective names, and the Company shall not be bound to recognize any equitable claim to, or interest in any share on the part of any other person, whether or not it shall have express or other notice thereof.

ARTICLE IV

BOARD OF DIRECTORS

1. The business of the Company shall be managed by a Board of Directors composed of not less than three ⁵(3) directors, nor more than

*Amended
1-19-60*

*Amended
1-16-73*

six (6), in accordance with Article V of the Certificate of Incorporation. Directors shall be of full age and at least one (1) director shall be a citizen of the United States. Directors need not be stockholders.

2. The number of directors of this Company shall be three (3), until the number thereof is increased to six (6) by amendment of this clause of the By-Laws in the manner hereinafter provided.

*Amended
1-19-60
5 (3)
Amended
1-16-73*

3. All the directors shall be elected annually at the annual meeting of stockholders of the Company by a plurality of the votes cast at such meeting. If not elected at the annual meeting of the stockholders, they may be elected thereafter at any special meeting of the stockholders called and held for such purpose. Any director may be removed from office by the vote or written consent of stockholders representing not less than two-thirds of the issued and outstanding stock entitled to vote thereon.

4. All vacancies in the Board of Directors, including those caused by an increase in the Board of Directors, may be filled by a majority of the remaining directors, though less than a quorum. Directors may give notice of their resignation to the Board effective at a future date and the Board shall have power to fill such vacancy to take effect when such resignation shall become effective. All vacancies filled by a majority of the remaining members of the Board shall hold office during the remainder of the term of the vacated office.

5. Meetings of the Board of Directors may be held within or outside the State of Nevada. A majority of the Board shall constitute a quorum.

6. A regular meeting of the Board of Directors for the election of officers shall be held following the election of Directors at the annual meeting of the stockholders. Such regular meeting may be held without notice whenever a quorum of such Board shall assemble either at the place where the annual meeting of stockholders is held, or at any other place within or without the State of Nevada.

7. Special meetings of the Board of Directors may be called at any time by the President, Secretary, or a majority of the Board of Directors. Special meetings may be held at the principal office of the Company or at such other place or places within or without the State of Nevada designated in the notice calling such special meeting, which may be given to each Director personally, by mail or telegraph, twenty-four (24) hours in advance.

8. No stated salary shall be paid Directors as such for their services, but nothing herein contained shall be construed to preclude any Director from serving the Company in any other capacity and receiving compensation therefor.

ARTICLE V

OFFICERS.

1. The officers of the Company shall be a President, ^{two} Secretary, ^{two} Treasurer, ^{two} Assistant Secretaries, ^{two} Assistant Treasurers, ^{and a Comptroller}. The Board of Directors may create additional offices from time to time. All officers shall be elected by the Board of Directors, and except in the case of the President, no officer need be a Director of the Company. Two or more offices may be held by the same person, but no instrument required by law or by these by-laws to be executed, acknowledged or verified by two or more officers, shall be executed, acknow-

*Amended
Jan. 18, 1944
amended
Jan. 21, 1947
X
Vice- Amended
1-20-48
Amended
1-19-60
Amended
9/10/65*

ledged or verified by the same person in more than one capacity. The Officers of the Company shall be elected by the Board of Directors for one (1) year and hold office until their successors are duly elected and qualify. Any Officer may be removed by a majority of the Board of Directors and any such vacancy may be likewise filled.

2. The President of the Company shall be the chief executive officer and shall have general supervision of the affairs of the Company. He shall preside at all meetings of the stockholders and directors which he attends and shall sign or counter-sign stock certificates, contracts or other documents and instruments on behalf of the Company.

3. The Vice President shall sign or counter-sign all contracts, documents or other instruments on behalf of the Company as the President or the Board of Directors may by direction or resolution, authorize or qualify him to do.

The Vice President shall preside at meetings of the stockholders or directors in the absence of the President and if both be absent, the stockholders or directors shall appoint a Chairman pro tem for any meeting.

4. The Secretary shall issue notices of all meetings of stockholders and directors, unless otherwise specifically provided in these by-laws or in the General Corporation Laws of the State of Nevada. The Secretary shall keep the minutes of all meetings of Directors and Stockholders and have charge of the corporate seal, books, records and accounts of the Company. He shall perform such duties as shall be required of him by the Board of Directors and as are incident to his office.

5. The Treasurer shall have custody of all funds of the Company and shall keep an account thereof. He shall direct the disbursement of funds of the Company in payment of its debts or obligations or as he may be ordered by the Board of Directors, taking proper vouchers for such

disbursements and shall render to the Board of Directors an account of such transactions. He shall perform all other duties incident to his office or as required by him by the Board of Directors. The Board of Directors may, from time to time, authorize other officers of the Company to draw upon the funds of the Company and perform any other duties of the Treasurer as the Board shall specifically direct.

6. The Assistant Treasurer shall perform such duties as the Treasurer shall direct and other services authorized by the Board of Directors.

7. The Assistant Secretary shall perform such duties as the Secretary shall direct.

8. The Board of Directors may delegate additional powers to the officers of this Company from time to time, but unless so delegated the officers shall not have any power in addition to that provided in these By-Laws.

ARTICLE VI

DIVIDENDS AND FINANCE

1. Dividends may be paid to stockholders from the Company's net earnings or from the surplus of its assets over its liabilities, including capital in the manner provided by the General Corporation Law of Nevada.

2. The funds of the Company shall be deposited in the name of the Company in such bank or banks or trust company or trust companies as the Board of Directors shall designate and shall be drawn upon only by check or checks signed by the officers designated by Resolution of the Board of Directors.

ARTICLE VII

BOOKS AND RECORDS.

1. Books, accounts and records of the Company may be kept within or without the State of Nevada, provided nevertheless, a certified copy of the Certificate of Incorporation, a certified copy of the By-Laws and a duplicate stock ledger to be revised annually containing an alphabetical list of all persons who are stockholders showing their places or residence and the number of shares held, shall be kept at the principal office of the Company within the State of Nevada for the purposes and in the manner provided by the General Corporation Law of Nevada.

ARTICLE VIII

WAIVER OF NOTICE

1. A Waiver of Notice in writing signed by a stockholder, director, or officer, whether it be signed before or after the time stated in said waiver for the holding of any meeting or the transaction of any other business or purpose shall be deemed equivalent to any notice required to be given to any such stockholder, director or officer under the provisions of these By-Laws or the Laws of the State of Nevada, unless such waiver in any case be invalid to accomplish the purpose desired.

ARTICLE IX

AMENDMENTS, ALTERATIONS
AND REPEALS.

1. Upon the issuance of capital stock by this Company, the stockholders thereof shall have the power to amend, alter and repeal these By-Laws.

2. A majority of the whole Board of Directors at any regular or special meeting may make additional or supplementary By-Laws, and alter or repeal any by-laws in any manner not inconsistent with any by-law which has been adopted by the stockholders. Any by-law or additional or supplementary provisions to any by-law which are adopted by the Board of Directors may be altered, or repealed at any subsequent or special meeting of the stockholders.

SUNOCO EXHIBIT

10

FIRST MEETING OF THE BOARD OF
DIRECTORS NAMED IN THE ARTICLES
OF INCORPORATION OF CORDERO MIN-
ING COMPANY, A NEVADA CORPORATION.

The directors named in the Articles of Incorporation of Cordero Mining Company, held their first meeting at 1608 Walnut Street, in the City and County of Philadelphia, Commonwealth of Pennsylvania on March 11th, 1941 at 3:30 o'clock, P. M.

All of the Directors named in the Articles of Incorporation which were filed in the Office of the Secretary of State of Nevada on March 4th, 1941, were elected by the Incorporators of the Company at a meeting held March 10th, 1941. All Directors of the Company were present, to wit:

J. Edgar Pew

John Blair Moffett

Frank B. Gumme, II

Mr. J. Edgar Pew was appointed to act as Chairman of the meeting and Mr. F. S. Reitzel, present by invitation, was appointed to act as Secretary of the meeting.

A Waiver of Notice signed by all the Directors of the Company was handed to the Secretary of the meeting to be placed on file with the minutes.

The Minute Book of the Company with the minutes of the first meeting of the Incorporators therein, including a copy of the Articles of Incorporation and the By-Laws of the Company as adopted by the Incorporators, was delivered to the Secretary of the meeting.

The Chairman stated that the first order of business would be for the Board of Directors to adopt a corporate seal for the Company

and a form of Stock Certificate for shares of the authorized capital stock to be issued by the Company.

The following resolution was, upon motion duly made and seconded, unanimously adopted:

RESOLVED, That the corporate seal of Cordero Mining Company shall consist of two concentric circles between which shall be inscribed the name of the Company "Cordero Mining Company" and within the inner circle "Incorporated, March 4, 1941, Nevada", and

BE IT FURTHER RESOLVED, That the impression of the seal shall be made upon the margin of the minutes of this meeting wherein this resolution is inscribed.

A form of stock certificate was presented to the Directors and the following resolution was thereupon moved, seconded, and unanimously adopted:

RESOLVED, That the form of stock certificate this day presented to the Board of Directors of Cordero Mining Company, to be attached to and made part of the minutes of this meeting, is hereby adopted as the form of the Certificate to be signed by the President and Secretary of the Company for certifying the number of shares of the authorized capital stock of this Company owned by the stockholder in whose name such Certificate is issued.

The Chairman then declared the meeting open for the election of officers. Mr. Gummev thereupon nominated Mr. J. Edgar Pew for President, Mr. S. H. Williston for Vice-President, Mr. F. S. Reitzel for Secretary, Mr. Robert G. Dunlop for Assistant Secretary, Mr. Frank Cross for Treasurer and Mr. S. H. Williston for Assistant Treasurer. The nominations having been duly seconded by



Mr. Moffett and there being no further nominations, the nominations were upon motion duly made, seconded and carried, closed.

The Chairman thereupon polled the Directors for the election of the several nominees for their respective offices and declared that as a result the aforesaid nominees had been duly elected to their respective offices by the unanimous vote of the Board, to serve as the officers of the Company until the next annual meeting of the stockholders and until their successors are duly elected and qualify.

Mr. John Blair Moffett thereupon tendered his resignation as a Director of the Company which was accepted by the Chairman. Mr. Gummey thereupon proposed the election of Mr. F. S. Reitzel as a Director of the Company to fill the vacancy caused by the resignation of Mr. Moffett. There being no other nominations, Mr. F. S. Reitzel was, by resolution, moved, seconded and carried, unanimously elected a Director of the Company.

Mr. Gummey stated to the Chairman that it was necessary for the Company to maintain a resident agent within the State of Nevada and that as Mr. S. H. Williston, Vice-President of the Company directing the operations of the Company within the State of Nevada, was not a resident of that State, he was not qualified to act as resident agent. It was thereupon proposed that the Company appoint The Corporation Trust Company of Nevada, the resident agent of this Company for the State of Nevada.

Mr. Gummey then stated to the Chairman that the appointment of The Corporation Trust Company of Nevada would necessitate a



change of the location of the principal office of the Company from McDermitt in the County of Humboldt as named in the Articles of Incorporation to the Town of Reno, County of Washoe. To accomplish this change, it is necessary for the Board of Directors to adopt a resolution reciting the change in the location of the principal office within the State of Nevada and to file a copy of the Resolution, certified by the President and Secretary, in the Office of the Secretary of State at Carson City and in the Office of the County Clerk of Washoe County. Accordingly, the following resolution was offered, moved, seconded, and unanimously adopted:

RESOLVED, That the principal office and place of business of Cordero Mining Company within the State of Nevada, be changed from McDermitt, Humboldt County, as set forth in the Articles of Incorporation, to Room 211, No. 206 North Virginia Street, Town of Reno, County of Washoe.

The Chairman then discussed the question of opening bank accounts for the funds of the Company. Following a discussion, the First National Bank of Reno, Nevada, was selected for depositing the funds of the Company needed to carry on the operations of the Company in the State of Nevada and the Central-Penn National Bank was selected for the main depository for funds of the Company in Philadelphia. The following resolutions were thereupon duly moved, seconded and unanimously carried:

RESOLVED, That the officers of the Cordero Mining Company, a Nevada corporation, be and they hereby are authorized and directed to open a bank account



in the name of this Company with the First National Bank of Reno, Nevada, which bank be and is hereby authorized to honor from the deposits of this Company, checks drawn against such deposits signed either by Frank Cross, Treasurer, or S. H. Williston, Assistant Treasurer, so long as there be a balance in favor of this Company.

BE IT RESOLVED, That the officers of the Cordero Mining Company, a Nevada corporation, be and they hereby are authorized and directed to open a bank account in the name of this company with the Central-Penn National Bank in the City of Philadelphia, Pennsylvania, which bank be and is hereby authorized to honor from the deposits of this company checks drawn against such deposits signed either by Frank Cross, Treasurer, or J. Edgar Pew, President, so long as there be a balance in favor of this company.

The Chairman stated that the Sun Oil Company of Philadelphia, Pennsylvania, desired to subscribe for Seven hundred fifty (750) shares of stock, totalling Seventy-five thousand dollars (\$75,000.), of the authorized capital stock of the Company. Accordingly the following resolution was, upon motion duly made and seconded, unanimously adopted:

RESOLVED, That the proper officers of this Company be and they hereby are authorized to issue 750 shares having a par value of \$100 each of the authorized capital stock of this Company in the name of Sun Oil Company, said shares to be fully paid and non-assessable and to deliver same to the officers of Sun Oil Company upon the payment of \$75,000.00 therefor. The issuance of said shares shall be made from time to time as the needs of the Company for capital require.

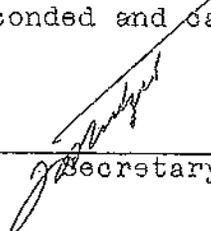
Mr. Frank B. Gumme, II, thereupon tendered his resignation as a Director of the Company which was accepted by the

Chairman. Mr. Reitzel thereupon proposed the election of Mr. S. H. Williston as a Director of the Company to fill the vacancy caused by the resignation of Mr. Gumme. There being no other nominations, Mr. S. H. Williston was, by resolution moved, seconded and carried, unanimously elected a Director of the Company.

Mr. Reitzel stated that it would be necessary for convenience at the mines to open a branch bank account with the First National Bank of Nevada at Winnemucco, Nevada, where it would be necessary to carry an average balance of approximately \$500.00. The following resolution was thereupon duly made, seconded and unanimously carried:

RESOLVED, That the Officers of the Cordero Mining Company, a Nevada corporation, be and they hereby are authorized and directed to open a bank account in the name of this Company with the First National Bank of Nevada at Winnemucco, Nevada, which bank be and is hereby authorized to honor from the deposits of this Company, checks drawn against such deposits, signed either by Frank Cross, Treasurer, S. H. Williston, Assistant Treasurer, or E. G. Lee, Chief Clerk, so long as there be a balance in favor of this Company.

There being no further business to come before the meeting, it was upon motion duly made, seconded and carried, adjourned.


Secretary of the meeting.

MINUTES OF SPECIAL MEETING OF
BOARD OF DIRECTORS OF CORDERO
MINING COMPANY HELD
AUGUST 21, 1941 at 2 P.M.

At the call of the Secretary a special meeting of the Board of Directors of Cordero Mining Company was held in the Philadelphia office of said company, 1608 Walnut Street, Philadelphia, Pa. at 2 P.M. on August 21, 1941. The following Directors were present, constituting a majority of the Board and a quorum

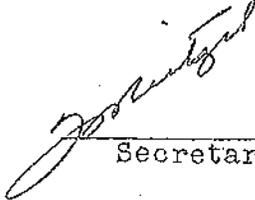
J. Edgar Pew
F. S. Reitzel

Director absent
S. H. Williston

On motion duly made and seconded, it was

RESOLVED, That the authority of Mr. E. G. Lee, Chief Clerk, to sign company checks against the company's account in the First National Bank of Nevada at Winnemucca, Nevada be discontinued as of August 21st and that starting with August 22nd Mr. D. Ford McCormick, General Superintendent, be authorized to sign checks of said account and said bank be notified accordingly.

There being no further business, the meeting adjourned.



Secretary

SUNOCO EXHIBIT

11

ANNUAL MEETING OF BOARD OF DIRECTORS
OF CORDERO MINING COMPANY HELD
TUESDAY, JANUARY 18, 1944.

The Directors of Cordero Mining Company met for organization at the office of the Company, 1608 Walnut Street, Philadelphia, Pennsylvania, at 10:45 A.M. on Tuesday, January 18, 1944.

Directors present -

J. Edgar Pew
Robert G. Dunlop

Directors absent -

S. H. Williston

The first order of business was the election of a Chairman. Upon motion duly made, seconded and carried, J. Edgar Pew was elected Chairman of the meeting.

Upon motion duly made, seconded and carried, Robert G. Dunlop was named Secretary of the meeting.

The Chairman stated that he thought it advisable that the Company have two Assistant-Secretaries and he thought it necessary to amend paragraph 1 of Article V of the By-Laws to provide for an additional Assistant-Secretary.

After a discussion, upon motion duly made, seconded and carried, it was

RESOLVED, That paragraph 1 of Article V of the By-Laws of the Company, be amended to read as follows:

"The officers of the Company shall be a President, a Vice-President, Secretary, Treasurer, two Assistant-Secretaries and Assistant-Treasurer. The Board of Directors may create additional offices from time to time. All officers shall be elected by the Board of Directors and, except in the case of the President, no officer need be a director of the Company. Two or more offices may be held by the same person, but no instrument required by law or by these By-Laws to be executed, acknowledged or verified by two or more officers shall be executed, acknowledged or verified by the same person in more than one capacity. The officers of the Company shall be elected by the Board of Directors for one (1) year and hold office until their successors are duly elected and qualify. Any officer may be removed by a majority of the Board of Directors and any such vacancy may be likewise filled."

The Chairman of the meeting stated that it was now in order to proceed with the election of the corporate officers.

Nominations were now in order for the office of President, and upon motion duly made, seconded and carried, the nomination of J. Edgar Pew was presented. There being no further nominations for the office of President, the Secretary of the meeting was instructed to cast a unanimous ballot for said nomination.

Upon the report of the Secretary of the meeting that such ballot was so cast, J. Edgar Pew was duly elected President of the corporation.

Nominations were now in order for the office of Vice President, and upon motion duly made, seconded and carried, the nomination of S. H. Williston was presented. There being no further nominations for the office of Vice President, the Secretary of the meeting was instructed to cast a unanimous ballot for said nomination.

Upon the report of the Secretary of the meeting that such ballot was so cast, S. H. Williston was duly elected Vice President of the corporation.

Nominations were now in order for the office of Secretary, and upon motion duly made, seconded and carried, the nomination of Frank Cross was presented. There being no further nominations for the office of Secretary, the Secretary of the meeting was instructed to cast a unanimous ballot for said nomination.

Upon the report of the Secretary of the meeting that such ballot was so cast, Frank Cross was duly elected Secretary of the corporation.

Nominations were now in order for the two Assistant Secretaries, and upon motion duly made, seconded and carried the nominations of Mrs. E. A. Williston and Robert G. Dunlop were presented. There being no further nominations for the office of Assistant Secretary, Frank Cross was instructed to cast a unanimous ballot for said nominations.

Upon the report of the Secretary of the Meeting that such ballot was so cast, Mrs. E. A. Williston and Robert G. Dunlop each was duly elected Assistant Secretary of the corporation.

Nominations were now in order for the office of Treasurer, and upon motion duly made, seconded and carried, the nomination of Frank Cross was presented. There being no further nominations for the office of Treasurer, the Secretary of the meeting was instructed to cast a unanimous ballot for said nomination.

Upon the report of the Secretary of the meeting that such ballot was so cast, Frank Cross was duly elected Treasurer of the corporation.

Nominations were now in order for the office of Assistant Treasurer, and upon motion duly made, seconded and carried, the nomination of S. H. Williston was presented. There being no further nominations for the office of Assistant Treasurer, the Secretary of the meeting was instructed to cast a unanimous ballot for said nomination.

Upon the report of the Secretary of the meeting that such ballot was so cast, S. H. Williston was duly elected Assistant Treasurer of the corporation.

The minutes of the special meeting of the Board of Directors held October 1, 1943, were read and approved.

There being no further business, the meeting adjourned.


Secretary of the Meeting

ANNUAL MEETING OF BOARD OF DIRECTORS OF CORDERO
MINING COMPANY HELD TUESDAY, JANUARY 21, 1947.

The Directors of Cordero Mining Company met for organization at the office of the Company, 1608 Walnut Street, Philadelphia, Pennsylvania, at 10:45 A. M. on Tuesday, January 21, 1947.

Directors present -

J. N. Pew, Jr. and Robert G. Dunlop

Director absent -

S. H. Williston

The first order of business was the election of a Chairman. Upon motion duly made, seconded and carried, J. N. Pew, Jr. was elected Chairman of the meeting.

Upon motion duly made, seconded and carried, Robert G. Dunlop was named Secretary of the meeting.

The Chairman stated that it was deemed advisable to have two Assistant-Treasurers and upon motion duly made, seconded and carried, it was

RESOLVED, That paragraph 1 of Article V of the By-Laws of the Company be amended to read as follows:

"The officers of the Company shall be a President, a Vice-President, Secretary, Treasurer, two Assistant-Secretaries and two Assistant-Treasurers. The Board of Directors may create additional offices from time to time. All officers shall be elected by the Board of Directors and, except in the case of the President, no officer need be a director of the Company. Two or more offices may be held by the same person, but no instrument required by law or by these By-Laws to be executed, acknowledged or verified by two or more officers shall be executed, acknowledged or verified by the same person in more than one capacity. The officers of the Company shall be elected by the Board of Directors for one (1) year and hold office until their successors are duly elected and qualify. Any officer may be removed by a majority of the Board of Directors and any such vacancy may be likewise filled."

The Chairman of the meeting stated that it was now in order to proceed with the election of the corporate officers.

Nominations were now in order for the office of President, and

January 21, 1947

upon motion duly made, seconded and carried, the nomination of J. N. Pew, Jr. was presented. There being no further nominations for the office of President, the Secretary of the meeting was instructed to cast a unanimous ballot for said nomination.

Upon the report of the Secretary of the meeting that such ballot was so cast, J. N. Pew, Jr. was duly elected President of the corporation.

Nominations were now in order for the office of Vice President, and upon motion duly made, seconded and carried, the nomination of S. H. Williston was presented. There being no further nominations for the office of Vice President, the Secretary of the meeting was instructed to cast a unanimous ballot for said nomination.

Upon the report of the Secretary of the meeting that such ballot was so cast, S. H. Williston was duly elected Vice President of the corporation.

Nominations were now in order for the office of Secretary, and upon motion duly made, seconded and carried, the nomination of F. S. McIlhenny, Jr. was presented. There being no further nominations for the office of Secretary, Robert G. Dunlop was instructed to cast a unanimous ballot for said nomination.

Upon the report of the Secretary of the meeting that such ballot was so cast, F. S. McIlhenny, Jr. was duly elected Secretary of the corporation.

Nominations were now in order for the two Assistant Secretaries, and upon motion duly made, seconded and carried, the nominations of Mrs. E. A. Williston and Robert G. Dunlop were presented. There being no further nominations for the office of Assistant Secretary, the Secretary of the meeting was instructed to cast a unanimous ballot for said nominations.

Upon the report of the Secretary of the Meeting that such ballot was so cast, Mrs. E. A. Williston and Robert G. Dunlop each was duly elected Assistant Secretary of the corporation.

Nominations were now in order for the office of Treasurer, and upon motion duly made, seconded and carried, the nomination of F. S. McIlhenny, Jr. was presented. There being no further nominations for the office of Treasurer, the Secretary of the meeting was instructed to cast a unanimous ballot for said nomination.

Upon the report of the Secretary of the meeting that such ballot was so cast, F. S. McIlhenny, Jr. was duly elected Treasurer of the corporation.

Nominations were now in order for the two Assistant Treasurers, and upon motion duly made, seconded and carried, the nominations of S. H. Williston and H. W. Unruh were presented. There being no further nominations for the office of Assistant Treasurer, the Secretary of the meeting was instructed to cast a unanimous ballot for said nominations.

January 21, 1947

Upon the report of the Secretary of the Meeting that such ballot was so cast, S. H. Williston and H. W. Unruh each was duly elected Assistant Treasurer of the corporation.

The Chairman stated that after July 1, 1947 the Company would have several men employed in the State of Oregon doing assessment work in connection with the company's mining claims, and that it was deemed advisable to register the company to do business in the State of Oregon.

Upon motion duly made, seconded and carried it was

RESOLVED, That the Company register to do business in Oregon and incidental thereto appoint Andrew Koerner, Frank C. McColloch and James C. Dezendorf, of Portland, Oregon, attorneys-in-fact and authorized agents for the Company to accept service of writs, processes and summonses in any action, suit or proceeding in any of the courts of the State of Oregon or United States courts therein, etc., and

BE IT FURTHER RESOLVED, That the proper officers be and they hereby are authorized, empowered and directed to execute and/or file in the State of Oregon all required documents, including a Declaration of Purpose to Engage in Business in Oregon, Information Return, the Power of Attorney mentioned in the preceding resolution and a Certified Copy of the Articles of Incorporation, and to do any and all acts necessary to effect the registration of the Company to engage in business in Oregon.

Upon motion duly made, seconded and carried, it was

RESOLVED, That the Treasurer of the Company be and he is hereby authorized to open an account on behalf of the Company in such banks or trust companies as may be designated;

BE IT FURTHER RESOLVED, That the funds of this Corporation on deposit be subject to withdrawal by check signed by any one of the following officers:

ANNUAL MEETING OF THE BOARD OF DIRECTORS OF
CORDERO MINING COMPANY HELD JANUARY 16, 1951

The Directors of Cordero Mining Company met for organization at the office of the Company, 1608 Walnut Street, Philadelphia, Pennsylvania, at 11:00 o'clock A. M., on Tuesday, January 16, 1951.

Directors present: S. H. Williston
Donald P. Jones

Absent: J. N. Pew, Jr.

The first order of business was the election of a Chairman. Upon motion duly made, seconded and carried, S. H. Williston was elected Chairman of the meeting.

Upon motion duly made, seconded and carried, J. C. Agnew was named Secretary of the meeting.

The Chairman of the meeting stated it was now in order to proceed with the election of the corporate officers, and called for nominations.

The following officers were nominated, and the nominations duly seconded:

J. N. Pew, Jr.	President
S. H. Williston	Vice President
J. C. Agnew	Secretary and Treasurer
Mrs. E. A. Williston	Assistant Secretary
Donald P. Jones	Assistant Secretary
S. H. Williston	Assistant Treasurer
H. W. Unruh	Assistant Treasurer
Donald P. Jones	Comptroller

There being no further nominations, the Secretary of the meeting was instructed to cast a unanimous ballot for the respective nominees.

The minutes of the meeting of the Board of Directors held February 23, 1950, were read and approved.

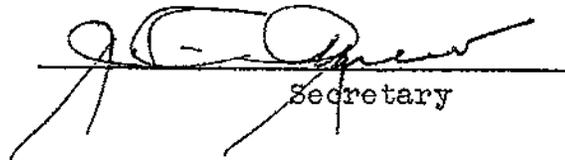
The following resolution was presented, which, upon motion duly made, seconded and carried, was unanimously adopted:

RESOLVED, That the Treasurer of the Company be and he is hereby authorized to maintain a bank account in the First National Bank of Nevada, Reno, Nevada;

AND BE IT FURTHER RESOLVED, That the funds of the Company on deposit in said bank be subject to withdrawal by check signed by any one of the following persons:

Samuel H. Williston, Vice President
J. C. Agnew, Treasurer
J. Eldon Gilbert, Manager
E. B. Nicholson, Administrative Assistant

There being no further business, the meeting was, upon motion duly made and seconded, adjourned.


Secretary

ANNUAL MEETING OF THE BOARD OF DIRECTORS
OF CORDERO MINING COMPANY, HELD FRIDAY,
FEBRUARY 12, 1954, AT 3:00 O'CLOCK P.M.

The Directors of Cordero Mining Company met for organization at the office of the Company, 1608 Walnut Street, Philadelphia, Pennsylvania, at 3:00 o'clock P.M., on Friday, February 12, 1954.

Present: S. H. Williston
D. P. Jones

Absent: J. N. Pew, Jr.

The first order of business was the election of a Chairman. Upon motion duly made, seconded and carried, S. H. Williston was elected Chairman of the meeting.

Upon motion duly made, seconded and carried, D. P. Jones was named Secretary of the meeting.

The Chairman of the meeting stated it was now in order to proceed with the election of the corporate officers, and called for nominations.

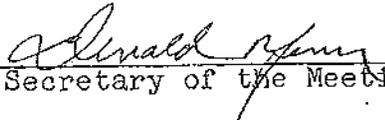
The following officers were nominated, and the nominations duly seconded:

J. N. Pew, Jr.	President
S. H. Williston	Vice President
J. C. Agnew	Secretary & Treasurer
Mrs. E. A. Williston	Assistant Secretary
Donald P. Jones	Assistant Secretary
S. H. Williston	Assistant Treasurer
H. W. Unruh	Assistant Treasurer
Donald P. Jones	Comptroller

There being no further nominations, the Secretary of the meeting was instructed to cast a unanimous ballot for the respective nominees.

The minutes of the meeting of the Board of Directors held January 20, 1953, were read and approved.

There being no further business, the meeting was, upon motion duly made and seconded, adjourned.


Secretary of the Meeting

MINUTES OF SPECIAL MEETING OF
BOARD OF DIRECTORS OF CORDERO
MINING COMPANY HELD OCTOBER 22,
1954, AT 3:00 O'CLOCK P. M.

A Special Meeting of the Board of Directors of Cordero Mining Company was held at the office of the Company, 1608 Walnut Street, Philadelphia, Pennsylvania, on Friday, October 22, 1954, at 3:00 o'clock P. M.

The following members of the Board were present, constituting a majority of the Board:

J. N. Pew, Jr.
D. P. Jones

Mr. J. N. Pew, Jr. acted as Chairman of the meeting, and J. C. Agnew, Secretary of the Company, acted as Secretary of the meeting.

The following resolution was presented and, upon motion duly made and seconded, unanimously adopted:

x
RESOLVED, That the Treasurer of the Company be and he is hereby authorized to maintain a bank account in the Wells Fargo Bank and Union Trust Company, San Francisco, California;

AND BE IT FURTHER RESOLVED, That the funds of the Company on deposit in said bank be subject to withdrawal by checks signed as follows:

Checks amounting to \$1000.00 or more signed by any one of the following:

J. C. Agnew, Treasurer
H. W. Unruh, Assistant Treasurer
J. Eldon Gilbert, Manager

Checks amounting to less than \$1000.00 signed by the following:

Bert Mitchell, Superintendent x

The following resolution was presented and, upon motion duly made and seconded, unanimously adopted:

x
RESOLVED, That the Treasurer of the Company be and he is hereby authorized to maintain a bank account in the United States National Bank of Portland, Madras, Oregon;

AND BE IT FURTHER RESOLVED, That the funds of the Company on deposit in said bank be subject to withdrawal by checks signed as follows:

Checks amounting to \$1000.00 or more signed by any one of the following:

J. C. Agnew, Treasurer
H. W. Unruh, Assistant Treasurer
J. Eldon Gilbert, Manager

Checks amounting to less than \$1000.00 signed by the following:

F. E. Lewis, Superintendent

There being no further business, the meeting was, upon motion duly made and seconded, adjourned.


Secretary

MINUTES OF SPECIAL MEETING
OF THE BOARD OF DIRECTORS OF
CORDERO MINING COMPANY

A Special Meeting of the Board of Directors of Cordero Mining Company was held at 1608 Walnut Street, Philadelphia, Pennsylvania, on April 19, 1963 at 2:00 o'clock P. M.

The following Directors, constituting a quorum of the Board, were present:

Donald P. Jones
Jno. G. Pew
Jos. T. Wilson, Jr.

Absent:

Samuel H. Williston

Mr. Jno. G. Pew, Vice President of the Company, acted as Chairman of the meeting, and Jos. T. Wilson, Jr., Secretary of the Company, acted as Secretary of the meeting.

The Secretary presented and read a Waiver of Notice of the meeting, signed by all the Directors, which was ordered filed with the minutes of this meeting.

The minutes of the meeting of the Board of Directors held on March 12, 1963 were read and approved.

The Chairman advised that it would be appropriate to fill a vacancy on the Board of Directors resulting from the death of Mr. Joseph N. Pew, Jr. Upon motion duly made and seconded, Mr. Kingsley V. Schroeder was nominated as Director of the corporation to hold office until his successor is elected and qualified. There being no further nominations, the nominations were declared closed and the Secretary of the meeting was instructed to cast a unanimous ballot for the nominee. The Chairman thereupon declared Mr. Schroeder elected a Director of the Company to serve until his successor is elected and qualified.

The Chairman stated that it was now in order to elect certain officers of the Company to serve until their successors are elected and qualified. Upon motion duly made, seconded and carried, Mr. Jno. G. Pew was nominated for the office of President, and Mr. Kingsley V. Schroeder was nominated for the office of Vice-President. There being no further nominations, the nominations were declared closed and the Secretary of the meeting was instructed to cast a unanimous ballot for the respective nominees. The Chairman thereupon announced the election of the nominees to the offices for which they were nominated.

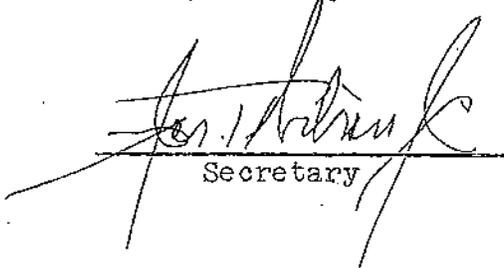
The Treasurer stated that it would now be appropriate to change bank signing authorities. Upon motion duly made, seconded and carried, the following resolutions were unanimously adopted:

RESOLVED, That the Treasurer of the Company be and he is hereby authorized to open an account on behalf of the Company in such banks or trust companies as may be designated;

BE IT FURTHER RESOLVED, That the funds of this corporation on deposit be subject to withdrawal by check signed by any one of the following officers:

Jno. G. Pew, President
Samuel H. Williston, Vice President
Jos. T. Wilson, Jr., Treasurer
W. S. Woods, Jr., Assistant Treasurer

There being no further business, the meeting, upon motion duly made, seconded and carried, was adjourned.


Secretary

MINUTES OF THE ANNUAL MEETING
OF THE BOARD OF DIRECTORS OF
CORDERO MINING COMPANY

The Directors of Cordero Mining Company met for organization at 1608 Walnut Street, Philadelphia, Pennsylvania on January 21, 1969 at 11:00 o'clock A.M.

The following directors, constituting a quorum of the Board, were present:

Richard R. Anderson
Joseph R. Layton
Kingsley V. Schroeder
Jos. T. Wilson Jr.

Absent:

J. Eldon Gilbert

Mr. Kingsley V. Schroeder, Chairman, acted as Chairman of the meeting and Jos. T. Wilson, Jr., Secretary, acted as Secretary of the meeting.

Mr. Kingsley V. Schroeder announced that at the Annual Meeting of Stockholders the following persons had been elected Directors of Cordero Mining Company for the ensuing year and until their successors are elected and qualify:

Richard R. Anderson
J. Eldon Gilbert
Joseph R. Layton
Kingsley V. Schroeder
Jos. T. Wilson, Jr.

Copies of the minutes of the meeting of the Board of Directors held on September 10, 1968 having been given to each Director, the Directors present agreed to dispense with the reading of the minutes and approved and adopted them as they appeared in copies received by them.

The Chairman stated that it was now in order to elect officers of the Company to serve for one year and until their successors are elected and qualify.

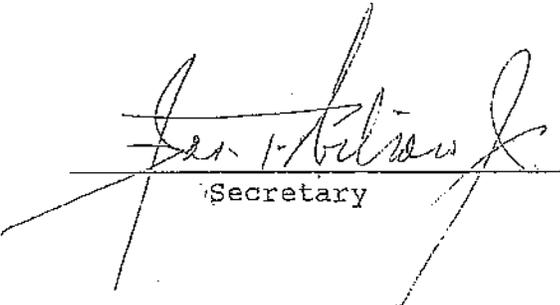
Upon motion duly made, seconded and carried, the following persons were nominated for the offices set opposite their respective names:

Kingsley V. Schroeder	Chairman of the Board
J. Eldon Gilbert	President
Verne P. Haas	Vice President
Richard R. Anderson	Vice President
Jos. T. Wilson, Jr.	Secretary & Treasurer
Joseph R. Layton	Comptroller
William S. Woods, Jr.	Ass't. Secretary & Ass't. Treasurer
Mrs. Patricia F. Gilbert	Ass't. Secretary

There being no further nominations, the nominations were declared closed and the Secretary of the meeting was instructed to cast a unanimous ballot for the respective nominees.

The Chairman thereupon announced the election of the nominees to the offices for which they were nominated.

There being no further business, the meeting, upon motion duly made, seconded and carried, was adjourned.


Secretary

SUNOCO EXHIBIT

12

CORDERO MINING COMPANY
UNANIMOUS CONSENT OF DIRECTORS

All members of the Board of Directors of CORDERO MINING COMPANY hereby consent to and adopt the following resolutions:

RESOLVED, that in the judgment of the Board of Directors of the Corporation it is hereby deemed advisable and for the benefit of the Corporation that it should be voluntarily liquidated out of court, in accordance with the Business Corporation Act of the State of Nevada; (NRS 78.420 et al)

RESOLVED, that the Plan of Liquidation, attached hereto and identified as Exhibit 1 be, and it hereby is, approved and adopted to effect such complete liquidation in accordance with the following resolutions;

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized to sell or otherwise liquidate any or all of the tangible assets of the Corporation, which in their judgment should be so sold or liquidated to facilitate the liquidation of the Corporation;

RESOLVED, that after providing for all the proper debts of the Corporation, the remaining assets of the Corporation, including cash and furniture and fixtures, be distributed to the sole stockholder of the Corporation;

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed, to file all requisite instruments necessary to accomplish the subject liquidation of the Corporation with the Secretary of State of the State of Nevada;

RESOLVED, that the actions provided for in the foregoing resolutions providing for the complete liquidation of the Corporation and the distribution of all its assets be commenced immediately, and that such subsequent distribution of all its assets be completed as soon as practicable, but in no event later than December 31, 1973; and

RESOLVED, that the Board of Directors hereby recommends to the Shareholder that in the interest of the Corporation, the Corporation be completely liquidated, that it be withdrawn

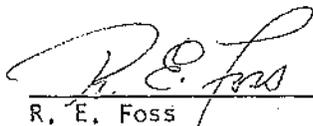
from qualification in all states and other jurisdictions in which it is qualified to do business, but that corporate existence be maintained in the State of Nevada.

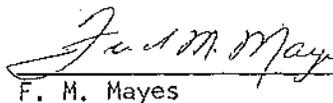
RESOLVED, that the Shareholder be approached by the Corporation and asked to give its consent to the voluntary liquidation of the Corporation, the Plan of Liquidation, and such other matters as are necessary to effectuate the liquidation of assets;

RESOLVED, that if the Shareholder consents to the voluntary complete liquidation of the Corporation and to the Plan of Liquidation then the President or any Vice President of the Corporation is hereby authorized and directed, in the name and on behalf of the Corporation, to execute the Plan of Liquidation, and the Secretary or any Assistant Secretary is hereby authorized and directed, in the name and on behalf of the Corporation to affix thereto the seal of the Corporation and to attest the same; and

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed to pay all such fees and taxes and to do or cause to be done such further acts and things as they may deem necessary or proper in order to carry out the liquidation of the Corporation and fully to effectuate the purposes of the foregoing resolutions.

All members of the Board of Directors of CORDERO MINING COMPANY hereby execute this consent as of the 31st day of December, 1972.


R. E. Foss RAE


F. M. Mayes


W. C. Keith

EXHIBIT I

AGREEMENT AND PLAN OF LIQUIDATION

Agreement and Plan of Liquidation, made this 31st day of December, 1972, between SUN OIL COMPANY (DELAWARE), a Delaware corporation, (herein called "Shareholder"), and CORDERO MINING COMPANY, a Nevada corporation (herein called the "Corporation").

WHEREAS, the Shareholder owns 750 shares of capital stock of the Corporation, which shares constitute all of the issued and outstanding capital stock of the Corporation; and,

WHEREAS, the Shareholder wishes to approve, authorize and consent to the complete liquidation of the Corporation under the provisions of NRS 78.420 et al of the Business Corporation Act of the State of Nevada and of Section 332 of the Internal Revenue Code of 1954, as amended;

NOW, THEREFORE, the parties hereto hereby agree as follows:

- (1) Shareholder approves, authorizes and consents to the voluntary and complete liquidation of the Corporation, such liquidation to be completed as promptly as possible, and in no event later than December 31, 1973, in accordance with the Plan of Liquidation set forth in this Agreement.
- (2) The Shareholder hereby authorizes and directs the officers of the Corporation to file all requisite instruments necessary to accomplish the subject liquidation with the Secretary of State of the State of Nevada.
- (3) The Shareholder hereby directs that after proper provision has been made for the payment of the Corporation's debts and taxes, the

officers of the Corporation shall distribute all of the remaining property of the Corporation in complete cancellation or redemption of all of its issued and outstanding capital stock, such distribution to be made as promptly as practicable and in any event not later than December 31, 1973.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Liquidation to be executed by their respective duly authorized officers as of the day and year first above written.

SUN OIL COMPANY (DELAWARE)

By: *A.C. Keith*
Vice President RAE



Robert W. ...
Secretary

CORDERO MINING COMPANY

By: *Fred M. Mays*
Vice President



Robert W. ...
Secretary

CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF SHAREHOLDERS

The undersigned, being the sole shareholder of Cordero Mining Company, does hereby consent to the following actions, to have the same force and effect as if these actions were duly taken at the Annual Meeting of Shareholders of the Company held on January 16, 1973:

RESOLVED, That Section 2 of Article IV of the By-Laws, entitled "Board of Directors," which reads as follows:

"2. The number of directors of this Company shall be five (5) until the number thereof is increased to six (6) by amendment of this clause of the By-Laws in the manner hereinafter provided."

be amended to read as follows:

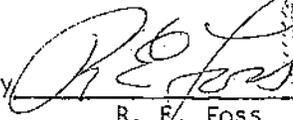
"2. The number of directors of this Company shall be three (3) until the number thereof is increased to six (6) by amendment of this clause of the By-Laws in the manner hereinafter provided."

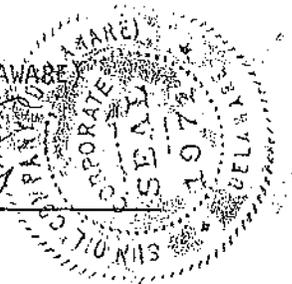
RESOLVED, That the following individuals be elected Directors of the Company, to serve until their successors are elected and qualify:

R. E. Foss
W. C. Keith
F. M. Mayes

IN WITNESS WHEREOF, the undersigned has set his hand and seal this 16th day of January 1973.

SUN OIL COMPANY (DELAWARE)

By 
R. E. Foss



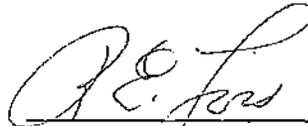
CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned, being all of the directors of Cordero Mining Company, do hereby consent to the following action to have the same force and effect as if said action were taken at the Annual Meeting of Directors of the Company held on January 16, 1973:

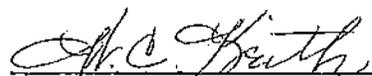
RESOLVED, That the following individuals be elected to the offices set opposite their names, to serve until their successors are elected and qualify:

Chairman of the Board and President	R. E. Foss
Vice President	F. M. Mayes
Secretary	P. F. Waitneight
Assistant Secretary	E. S. McLaughlin
Treasurer	W. C. Keith
Controller	E. C. Ladymon

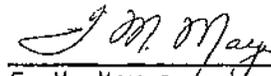
IN WITNESS WHEREOF the undersigned have executed this action as of the date first above written.



R. E. Foss



W. C. Keith



F. M. Mayes

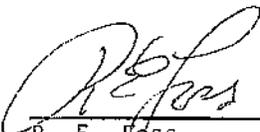
CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned being all the directors of Cordero Mining Company do hereby adopt, approve and consent to the following action to have the same force and effect as if said resolution was duly adopted at a special meeting of the Directors held this 6th day of March, 1973.

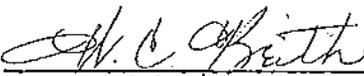
WHEREAS, This Company was liquidated into Sun Oil Company (Delaware) effective December 31, 1972, pursuant to an Agreement and Plan of Liquidation between the Companies, dated December 31, 1972, and

WHEREAS, Sun Oil Company (Delaware) pursuant to said Agreement assumed all existing liabilities of this Company, now therefore, be it

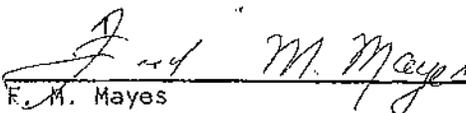
RESOLVED, That all responsibility for the administration of this Company's qualified Retirement and Stock Purchase Plans are transferred to Sun Oil Company (Delaware) together with all assets and liabilities relating to such Plans.



R. E. Foss



W. C. Keith



F. M. Mayes

CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned being all the directors of Cordero Mining Company do hereby adopt, approve and consent to the following action to have the same force and effect as if said resolution was duly adopted at a special meeting of the Directors held this 26th day of November, 1973.

RESOLVED, That W. C. Keith be elected to the office of Vice President of Cordero Mining Company to serve until his successor is elected and shall qualify.



R. E. Foss



W. C. Keith



F. M. Mayes

CORDERO MINING COMPANY

UNANIMOUS WRITTEN CONSENT OF SHAREHOLDERS

The undersigned, being the sole shareholder of Cordero Mining Company, does hereby consent to the election of the following as directors of the corporation:

R. E. Foss

W. C. Keith

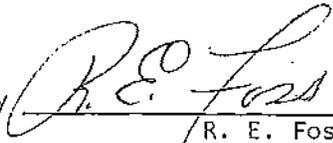
F. M. Mayes

to have the same force and effect as if said persons were duly elected at the annual meeting of the shareholders of the corporation held on January 15, 1974.

IN WITNESS WHEREOF, the undersigned has set its hand and seal this 15th day of January, 1974.

SUN OIL COMPANY (DELAWARE)

BY



R. E. Foss

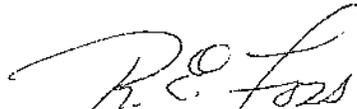
CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned, being all of the directors of Cordero Mining Company, do hereby consent to the following action to have the same force and effect as if said action were taken at the Annual Meeting of Directors of the Company held on January 15, 1974:

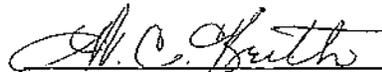
RESOLVED, That the following individuals be elected to the offices set opposite their names, to serve until their successors are elected and qualify:

Chairman of the Board and President	R. E. Foss
Vice President	F. M. Mayes
Vice President and Treasurer	W. C. Keith
Secretary	J. K. Amsbaugh
Assistant Secretary	E. S. McLaughlin, Jr.
Controller	P. F. Waltneight

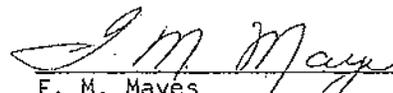
IN WITNESS WHEREOF the undersigned have executed this action as of the date first above written.



R. E. Foss



W. C. Keith



F. M. Mayes

CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned, being all of the Directors of Cordero Mining Company, a Nevada Corporation, do hereby adopt, approve and consent to the following resolutions:

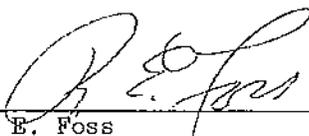
RESOLVED, That the resignation of R. E. Foss as a Director, President, and Chairman of the Board of the Company be accepted and that his letter of resignation be placed on file by the Corporate Secretary, and

FURTHER RESOLVED, That Robert McClements, Jr. be elected as a Director of the Company to have the same force and effect as if said person was duly elected at the annual meeting of the shareholders of the Corporation, and

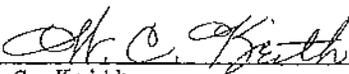
FURTHER RESOLVED, That Robert McClements, Jr. be elected Chairman of the Board of the Company to have the same force and effect as if said person was duly elected at the annual meeting of the shareholders of the Corporation, and

FURTHER RESOLVED, That Robert McClements, Jr. be elected President of the Company to serve at the pleasure of the Board to have the same force and effect as if said resolutions were duly adopted at a special meeting of the Directors held this 21st day of November, 1974.

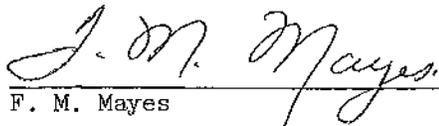
IN WITNESS WHEREOF the undersigned have executed this consent as of the 21st day of November, 1974.



R. E. Foss



W. C. Keith



F. M. Mayes

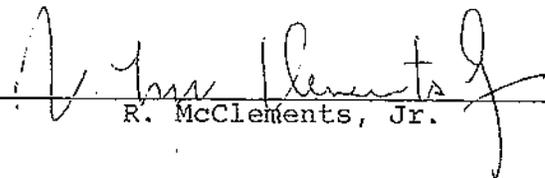
CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned, being all of the directors of Cordero Mining Company, do hereby consent to the following action to have the same force and effect as if said action were taken at the Annual Meeting of Directors of the Company held on January 21, 1975:

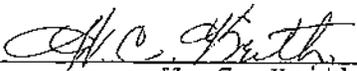
RESOLVED, That the following individuals be elected to the offices set opposite their names, to serve until their successors are elected and qualify:

Chairman of the Board and President	R. McClements, Jr.
Vice President	F. M. Mayes
Vice President	W. C. Keith
Secretary and Treasurer	J. K. Amsbaugh
Assistant Secretary and Assistant Treasurer	E. S. McLaughlin, Jr.
Controller	P. F. Waitneight

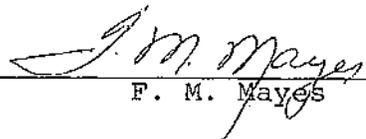
IN WITNESS WHEREOF the undersigned have executed this action as of the date first above written.



R. McClements, Jr.



W. C. Keith



F. M. Mayes

CORDERO MINING COMPANY

UNANIMOUS WRITTEN CONSENT OF SHAREHOLDERS

The undersigned, being the sole shareholder of Cordero Mining Company, does hereby consent to the election of the following as directors of the corporation:

R. McClements, Jr.

W. C. Keith

F. M. Mayes

to have the same force and effect as if said persons were duly elected at the annual meeting of the shareholders of the corporation held on January 21, 1975.

IN WITNESS WHEREOF, the undersigned has set its hand and seal this 21st day of January, 1975.

SUN OIL COMPANY (DELAWARE)

BY


G. Burroughs

CORDERO MINING COMPANY

UNANIMOUS WRITTEN CONSENT OF DIRECTORS

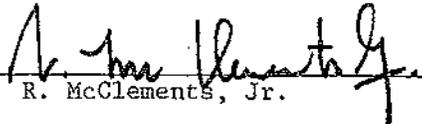
The undersigned, being all of the directors of Cordero Mining Company, a Nevada corporation, do hereby adopt, approve and consent to the following resolutions:

WHEREAS, In the judgment of this Board of Directors, it is deemed advisable and for the benefit of the Company that said Corporation be dissolved in the State of Nevada;

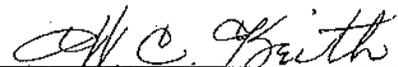
NOW, THEREFORE, BE IT RESOLVED, That the Cordero Mining Company abandon its corporate authority, surrender its charter, and dissolve; and

FURTHER RESOLVED, That R. McClements, Jr., President, and J. K. Amsbaugh, Secretary, are hereby authorized to file with the Secretary of the State of Nevada any and all documents necessary or desirable to carry into effect the foregoing resolution, said actions subject to the approval of the shareholders of the corporation; and

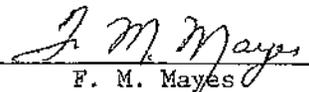
FURTHER RESOLVED, That this recommendation and plan for the dissolution of the Corporation be submitted to the sole shareholder of the Corporation for his action thereon.



R. McClements, Jr.



W. C. Keith



F. M. Mayes

September 30, 1975

CS32

CORDERO MINING COMPANY

WRITTEN CONSENT OF SHAREHOLDER

The undersigned, being the sole shareholder of Cordero Mining Company, a Nevada corporation, does hereby adopt, approve and consent to the following resolutions:

WHEREAS, The Board of Directors of this Corporation has recommended its dissolution in the State of Nevada;

NOW, THEREFORE, BE IT RESOLVED, That Cordero Mining Company surrender its charter to the State of Nevada and that it cease to be and exist as a corporation; and

FURTHER RESOLVED, That the Board of Directors of this Corporation is hereby authorized, empowered and directed to do all things necessary and requisite to settle the affairs of the Corporation and carry into effect the foregoing resolution.

SUN OIL COMPANY (DELAWARE)

By W. C. Keith

October 7, 1975
LE/los CS34

SUNOCO EXHIBIT

13

70-41

STATE OF NEVADA
DEPARTMENT OF STATE

CERTIFICATE OF DISSOLUTION

I, WM. D. SWACKHAMER, the duly qualified and acting Secretary of State of the State of Nevada, do hereby certify that I am, by the laws of said State, the custodian of the records relating to corporations incorporated under the laws of the State of Nevada, and that I am the proper officer to execute this certificate.

I further certify that CORDERO MINING COMPANY

a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, did, on the 18TH day of NOVEMBER, 19 75, file in the office of Secretary of State a

CERTIFICATE OF DISSOLUTION

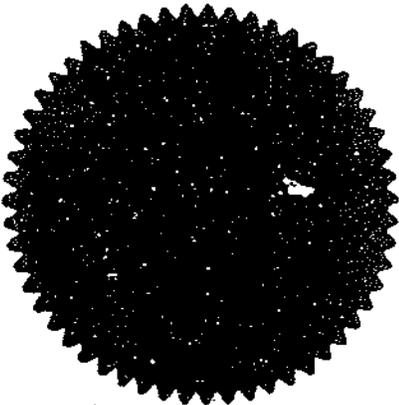
dissolving said corporation pursuant to the provisions of Nevada Revised Statutes, 78.580 as amended; that said action has been endorsed on all records of the same, and that said corporation is hereby dissolved.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the Great Seal of State, at my office, in
Carson City, Nevada, this 18TH day of
NOVEMBER, A. D. 19 75


Secretary of State

By

Deputy



FILED

We, R. McClements, Jr., President; J. K. Amsbaugh, Secretary; and E. S. McLaughlin, Jr., Assistant Treasurer of Gordero Mining Company, a Nevada corporation, do hereby certify that by Written Consent of Shareholder dated October 7, 1975 the following resolutions were duly adopted:

WHEREAS, The Board of Directors of this Corporation has recommended its dissolution in the State of Nevada;

NOW, THEREFORE, BE IT RESOLVED, That Gordero Mining Company surrender its charter to the State of Nevada and that it cease to be and exist as a corporation; and

FURTHER RESOLVED, That the Board of Directors of this Corporation is hereby authorized, empowered and directed to do all things necessary and requisite to settle the affairs of the Corporation and carry into effect the foregoing resolution.

We further certify that the following is a true and correct list of names and residences of the Directors and officers of said corporation:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Robert McClements, Jr.	Director Chairman of the Board President	7148 Roundrock Dallas, TX 75240
Wilbur C. Keith	Director Vice President	3854 Caruth Dallas, TX 75225
Fred H. Mayes	Director Vice President	518 Pittman Richardson, TX 75080
Jeffrey K. Amsbaugh	Secretary and Treasurer	6849 Vineridge Drive Dallas, TX 75240
Edward S. McLaughlin, Jr.	Assistant Secretary Assistant Treasurer	3548 Villasova Dallas, TX 75225
Peter F. Waitneight	Controller	7011 Cornelia Lane Dallas, TX 75214

R. McClements, Jr.
R. McClements, Jr., President

J. K. Amsbaugh
J. K. Amsbaugh, Secretary

E. S. McLaughlin, Jr.
E. S. McLaughlin, Jr.,
Assistant Treasurer

Dallas, Texas
October 10, 1975
CS36 kl

CERTIFICATE OF DISSOLUTION

OF

CORDERO MINING COMPANY

FILED AT THE REQUEST OF

Mrs. J. K. Ewers
240 Radnor - Chester Road
St. Davids, Pennsylvania 19087

NOVEMBER 18, 1975
(DATE)

Wm D Swackhamer

WM. D. SWACKHAMER, SECRETARY OF STATE

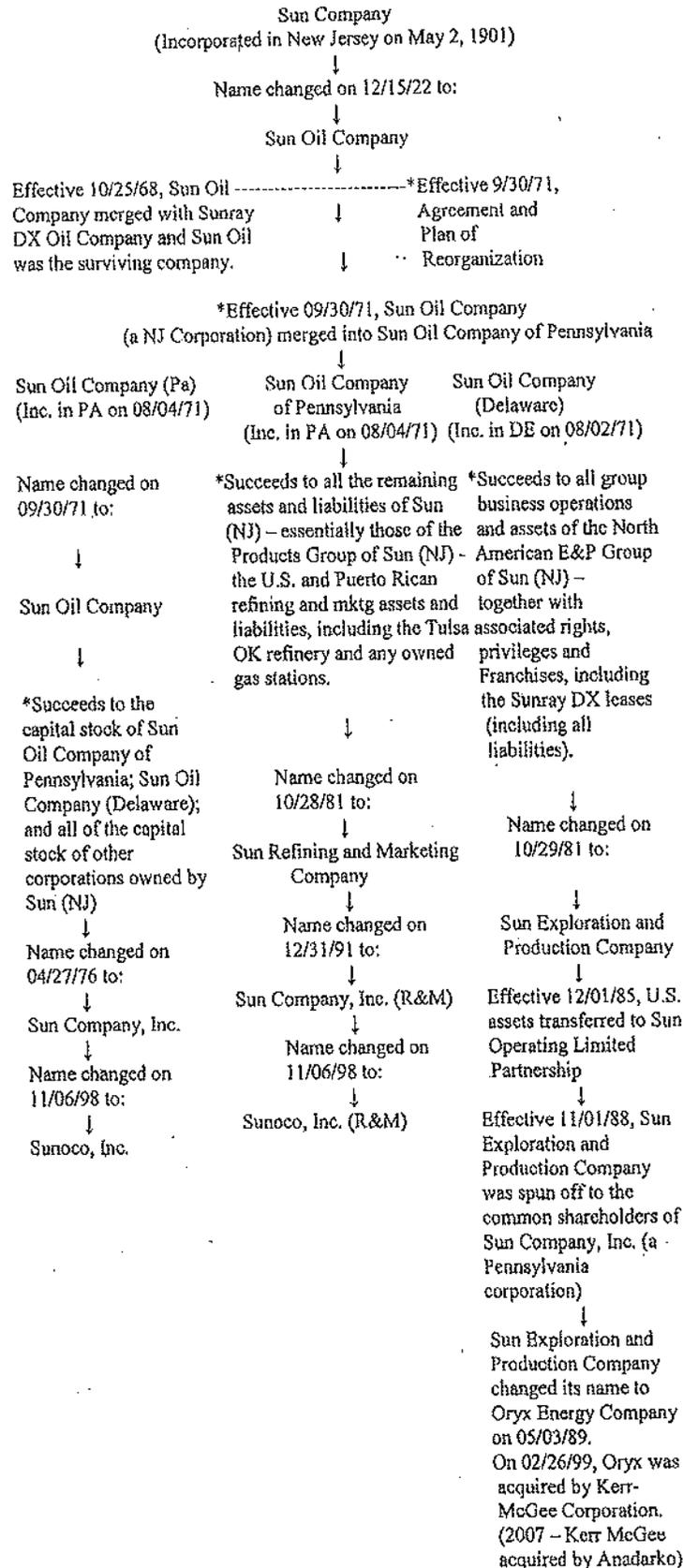
(BY) DEPUTY SECRETARY OF STATE

No. 70-41

FILED FEE \$ 20.00

SUNOCO EXHIBIT

14



SUNOCO EXHIBIT

15

FINAL RETURN

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 1975 or other taxable year beginning
....., 1975, ending 19.....
(PLEASE TYPE OR PRINT)

1975

Check if a— A Consolidated return <input type="checkbox"/> B Personal Holding Co. <input type="checkbox"/> C Business Code No. (See page 7 of instructions) 1098	Name CORDERO MINING COMPANY Number and street P.O. Box 2880 - Tax Department City or town, State, and ZIP code Dallas, Texas 75221	D Employer identification number 23-0494067 E Date incorporated March 4, 1941 F Enter total assets from line 14, column (D), Schedule L (See instruction R) \$ -0-
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IMPORTANT—Fill in all applicable lines and schedules. If the lines on the schedules are not sufficient, see Instruction N.

GROSS INCOME	1 Gross receipts or gross sales..... Less: Returns and allowances.....	1	
	2 Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	2	
	3 Gross profit	3	
	4 Dividends (Schedule C)	4	
	5 Interest on obligations of the United States and U.S. instrumentalities	5	
	6 Other interest	6	
	7 Gross rents	7	
	8 Gross royalties	8	
	9 (a) Net capital gains (attach separate Schedule D)	9(a)	
	(b) Ordinary gain or (loss) from Part II, Form 4797 (attach Form 4797)	9(b)	
	10 Other income (see instructions—attach schedule)	10	
11 TOTAL income—Add lines 3 through 10	11	-0-	
DEDUCTIONS	12 Compensation of officers (Schedule E)	12	
	13 Salaries and wages (not deducted elsewhere)	13	
	14 Repairs (see instructions)	14	
	15 Bad debts (Schedule F if reserve method is used)	15	
	16 Rents	16	
	17 Taxes (attach schedule)	17	
	18 Interest	18	
	19 Contributions (not over 5% of line 30 adjusted per instructions—attach schedule)	19	
	20 Amortization (attach schedule)	20	
	21 Depreciation (Schedule G)	21	
	22 Depletion	22	
	23 Advertising	23	
	24 Pension, profit-sharing, etc. plans (see instructions) (enter number of plans ▶)	24	
	25 Employee benefit programs (see instructions)	25	
	26 Other deductions (attach schedule)	26	
	27 TOTAL deductions—Add lines 12 through 26	27	
	28 Taxable income before net operating loss deduction and special deductions (line 11 less line 27)	28	
	29 Less: (a) Net operating loss deduction (see instructions—attach schedule)	29(a)	
(b) Special deductions (Schedule I)	29(b)		
30 Taxable income (line 28 less line 29)	30	-0-	
TAX	31 TOTAL TAX (Schedule J)	31	-0-
	32 Credits: (a) Overpayment from 1974 allowed as a credit		
	(b) 1975 estimated tax payments		
	(c) Less refund of 1975 estimated tax applied for on Form 4466		
	(d) Tax deposited with Form 7004 (attach copy)		
	(e) Tax deposited with Form 7005 (attach copy)		
	(f) Credit from regulated investment companies (attach Form 2439)		
	(g) U.S. tax on special fuels, nonhighway gas and lubricating oil (attach Form 4136)		
33 TAX DUE (line 31 less line 32). See instruction G for depository method of payment	33		
34 OVERPAYMENT (line 32 less line 31)	34		
35 Enter amount of line 34 you want: Credited to 1976 estimated tax ▶ Refunded ▶	35		

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

The Internal Revenue Service does not require a seal on this form, but if one is used, please place it here.	Date _____	Signature of officer _____	Title _____
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CORDERO MINING COMPANY

Schedule L
Comparative Balance Sheet

January 1, 1975 and December 31, 1975

	<u>Beginning of Year</u>	<u>End of Year</u>
ASSETS	<u>-0-</u>	<u>-0-</u>
LIABILITIES	-0-	-0-
STOCKHOLDERS EQUITY	<u>-0-</u>	<u>-0-</u>

CORDERO MINING COMPANY

Schedule M-1
Reconciliation of Income Per Books With Income Per Return

1. Net income per books	\$ -0-
4. Additional to taxable income	-0-
7. Deductions from Taxable income	<u>-0-</u>
10. Income	<u><u>\$ -0-</u></u>

CORDERO MINING COMPANY

Schedule M-1
Analysis of Unappropriated Retained Earnings Per Books

1. Balance at beginning of year	\$ -0-
2. Net income per books	-0-
5. Distributions	-0-
	<hr/>
8. Balance at end of year	<u>\$ -0-</u>

CORDERO MINING COMPANY
YEAR ENDED DECEMBER 31, 1975
ADDITIONAL INFORMATION REQUIRED

Check if a --

- A. Consolidated Return Yes ___ No ___
- B. Personal Holding Company Yes ___ No ___
- C. Business Code No. (See Instructions) 1098
- D. Employer Identification Number 23-0494067
- E. Date Incorporated March 4, 1941
- F. Enter Total Assets From Line 14, Column D, Schedule L,
(See Instruction R) -0-
- G. Did you claim a deduction for expenses connected with:
- | | | |
|---|---------|-------------|
| (1) Entertainment facility (boat, resort, ranch, etc.)? | Yes ___ | No <u>X</u> |
| (2) Living accommodations (except for employees on business)? | ___ | <u>X</u> |
| (3) Employees' families at conventions or meetings? | ___ | <u>X</u> |
| (4) Employee or family vacations not reported on Form W-2? | ___ | <u>X</u> |
- H. (1) Did you at the end of the taxable year own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see Sec. 267(c).) Yes ___ No X
If "Yes," attach a schedule showing:
- (a) name, address, and identifying number;
 - (b) percentage owned; and
 - (c) taxable income or (loss) (e.g., if a Form 1120, from Line 30, Page 1) of such corporation for the taxable year ending with or within your taxable year.
- (2) Did any individual, partnership, corporation, estate or trust at the end of the taxable year own, directly or indirectly, 50% or more of your voting stock? (For rules of attribution, see Sec. 267(c).) Yes X No ___
If "Yes;":
- (a) Attach a schedule showing name, address, and identifying number. SUN OIL COMPANY/St. Davids, PA/ID# 23-1743282
 - (b) Enter percentage owned 100%
 - (c) Was the owner of such voting stock a person other than a U.S. person? Yes ___ No X
If "Yes," enter owner's country _____
(See Instruction T.)
- I. Did you ever declare a stock dividend? Yes ___ No X
- J. Did you exclude income under Sec. 931? Yes ___ No X

K. Net taxable income or (loss) from line 30, Part 1, Form 1120 for your taxable year beginning in:

1972 (1,670,280) 1973 0 1974 0

L. Were you a member of a controlled group subject to the provisions of Sec. 1561? Yes ___ No X

If "Yes," check the type of relationship:

- (1) parent-subidiary _____
- (2) brother-sister _____
- (3) combination of (1) and (2) (See Sec. 1563) _____

M. Refer to Page 7 of Instructions and state the principal:

Business activity Mining of Mercury

Product or service Mineral Products

N. Did you file all required Forms 1087, 1096 and 1099? Yes X No ___

O. Were you a U.S. shareholder of any controlled foreign corporation? (See Secs. 951 and 957.) Yes ___ No X
If "Yes," attach Form 3646 for each such corporation.

P. If you are a farmer's cooperative, check type:

- Purchasing _____
- Marketing _____
- Service _____
- Other (explain) _____

Q. During this taxable year, did you pay dividends (other than stock dividends and distributions in exchange for stock) in excess of your current and accumulated earnings and profits? (See Sections 301 and 316.) Yes ___ No X
If "Yes," file Schedule A, Form 1096. If this is a consolidated return, answer here for parent corporation and on Form 851, Affiliations Schedule, for each subsidiary.

SUNOCO EXHIBIT

16

Corporate Dissolution or Liquidation
 (Required under Section 6043(a) of the Internal Revenue Code)

Name of corporation CORDERO MINING COMPANY		Employer identification number 23-0494067
Address (Number and street) P.O. Box 2880 - Tax Dept.		Check type of return <input checked="" type="checkbox"/> 1120 <input type="checkbox"/> 1120DISC <input type="checkbox"/> 1120L <input type="checkbox"/> 1120M <input type="checkbox"/> 1120S
City or town, State and ZIP code Dallas, Texas 75221		
1 Date incorporated March 4, 1941	2 Place incorporated Nevada	8 Type of liquidation <input checked="" type="checkbox"/> Complete <input type="checkbox"/> Partial
4 Internal Revenue Service Center where last income tax return was filed and taxable year covered thereby Service Center ▶ Philadelphia, PA Taxable year ▶ 12-31-1972		
3 Date of adoption of resolution or plan of dissolution, or complete or partial liquidation 11-18-1975	6 Taxable year of final return 12-31-1975	7 Total number of shares outstanding at time of adoption of plan or liquidation Common 1 Preferred 0
5 Dates of any amendments to plan of dissolution None	9 Section of the Code under which the corporation is to be dissolved or liquidated 332	10 If this return is in respect of an amendment of or supplement to a resolution or plan previously adopted and return has previously been filed in respect of such resolution or plan, give the date such return was filed

11. Liquidation Within One Calendar Month.—If the corporation is a domestic corporation, and the plan of liquidation provides for a distribution in complete cancellation or redemption of all the capital stock of the corporation and for the transfer of all the property of the corporation under the liquidation entirely within one calendar month pursuant to section 333, and any shareholder claims the benefit of such section, then the corporation must also submit:

(a) A description of the voting power of each class of stock;
 (b) A list of all the shareholders owning stock at the time of the adoption of the plan of liquidation, together with the number of shares of each class of stock owned by each shareholder, the certificate numbers thereof, and the total number of votes to which entitled on the adoption of the plan of liquidation;
 (c) A list of all corporate shareholders as of January 1, 1954, together with the number of shares of each class of stock owned by each such shareholder, the certificate numbers thereof, the total number of votes to which entitled on the adoption of the plan of liquidation, and a statement of all changes in ownership of stock by corporate shareholders between January 1, 1954, and the date of the adoption of the plan of liquidation, both dates inclusive; and
 (d) A computation as described in section 1.6043-2(b) (following the format in Revenue Procedure 65-10, C.B. 1955-1,738 and Revenue Procedure 67-12, C.B. 1967, 589) of accumulated earnings and profits including all items of income and expense accrued up to the date on which the transfer of all property is completed.

Attach a certified copy of the resolution or plan, together with all amendments or supplements not previously filed.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Internal Revenue rules does not require you to sign this form, but if you do, please sign it here.


3-15-1976 **E. S. McLaughlin**
 Date Signature of officer
Asst. Secretary & Asst. Treasurer
 Title

Instructions

- 1. Who must file.**—This form must be filed by every corporation that is to be dissolved or whose stock is to be liquidated in whole or in part. Shareholders electing to be covered under section 333 of the Code must also file Form 964 within 30 days after the date of adoption of the plan of liquidation.
- 2. When to file.**—This form must be filed within 30 days after the adoption of the resolution or plan for or in respect of the dissolution of a corporation or the liquidation in whole or in part of its capital stock. If after the filing of a Form 966 there is an amendment or supplement to the resolution or plan, an additional Form 966 based on the resolution or plan as amended or supplemented must be filed within 30 days after the adoption of such amendment or supplement. A return in respect of an amendment or supplement will be deemed sufficient if it gives the date the prior return was filed and contains a certified copy of such amendment or supplement and all other information required by this form which was not given in such prior return.
- 3. Where to file.**—This form must be filed with the Internal Revenue Service Center with which the corporation is required to file its income tax return.
- 4. Signature.**—The return must be signed either by the president, vice president, treasurer, assistant treasurer or chief accounting officer, or by any other corporate officer (such as tax officer) who is authorized to sign. A receiver, trustee, or assignee must sign any return which he is required to file on behalf of a corporation.

FEDERAL INCOME TAX RETURN
U.S. Corporation or Trust
 For calendar year 1972 or other taxable year beginning on 12/31/71

Name **CORDERO MINING COMPANY** 27-0000-7
 Number of shares **P.O. Box 2880**
 City or town, State, and ZIP code **Dallas, Texas 75221**
 Enter the number of shares from the 12 column (b), Schedule I, 1972 instructions **100**

IMPORTANT—Fill in all applicable lines and schedules. If the lines on the schedules are not sufficient, see instruction N.

GROSS INCOME	1 Gross receipts or gross sales Less: Returns and allowances	1	-0-
	2 Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	2	1,204,450
	3 Gross profit	3	(1,204,450)
	4 Dividends (Schedule C)	4	
	5 Interest on obligations of the United States and U.S. instrumentalities	5	
	6 Other interest	6	44
	7 Gross rents	7	
	8 Gross royalties	8	
	9 (a) Net capital gains—(separate Schedule D)	9(a)	
	(b) Ordinary gain or (loss) from Part II, Form 4797 (attach Form 4797)	9(b)	(170,607)
	10 Other income (see instructions—attach schedule)	10	21,654
11 TOTAL income—Add lines 3 through 10	11	(1,353,359)	

DEDUCTIONS	12 Compensation of officers (Schedule E)	12	
	13 Salaries and wages (not deducted elsewhere)	13	
	14 Repairs (see instructions)	14	
	15 Bad debts (Schedule F if reserve method is used)	15	
	16 Rents	16	145,804
	17 Taxes (attach schedule)	17	13,356
	18 Interest	18	
	19 Contributions (not over 5% of line 28 adjusted per instructions—attach schedule)	19	
	20 Amortization (attach schedule)	20	
	21 Depreciation (Schedule G)	21	13,924
	22 Depletion	22	4,400
	23 Advertising	23	
	24 Pension, profit-sharing, etc. plans (see instructions)	24	31,958
	25 Employee benefit programs (see instructions)	25	7,479
	26 Other deductions (attach schedule)	26	
	27 TOTAL deductions—Add lines 12 through 26	27	216,921
	28 Taxable income before net operating loss deduction and special deductions (line 11 less line 27)	28	(1,570,280)
	29 Loss: (a) Net operating loss deduction (see instructions—attach schedule) 29(a)		
(b) Special deductions (Schedule I) 29(b)			
30 Taxable income (line 28 less line 29)	30	(1,570,280)	

TAX	31 TOTAL TAX (Schedule J)	31	-0-
	32 Credit's: (a) Overpayment from 1971 allowed as a credit		
	(b) 1972 estimated tax payments		
	(c) Less refund of 1972 estimated tax applied for on Form 4466		
	(d) Tax deposited with Form 7004 (attach copy)		
	(e) Tax deposited with Form 7005 (attach copy)		
	(f) Credit from regulated investment companies (attach Form 2439)		
	(g) U.S. tax on special fuels, nonhighway gas and lubricating oil (attach Form 4136)		
	33 TAX DUE (line 31 less line 32). See instruction G for depository method of payment	33	
	34 OVERPAYMENT (line 32 less line 31)	34	
35 Enter amount of line 34 you want credited to 1973 estimated tax Refunded by	35		

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than the taxpayer, his declaration is based on all information of which he has any knowledge.

The Federal Reserve System does not require a seal on this form, but if one is used, please place it here.

Date _____ Signature of officer _____ Title _____
 Date _____ Signature of individual or firm preparing the return _____ Preparer's address _____ Emp. Ident. or S. S. No. _____

CORDERO MINING COMPANY

SCHEDULE L

Comparative Balance Sheets

January 1, 1972 and December 31, 1972

	<u>Beginning of Year</u>	<u>End of Year</u>
<u>ASSETS</u>		
Cash	\$ 92,426	
Accounts Receivable		\$ 100
Loans to Stockholders	446,527	
Property, Plant & Equipment	\$373,148	
Less: Accumulated Depreciation	<u>113,979</u>	<u>259,169</u>
Total Assets	<u>\$ 798,122</u>	<u>100</u>
<u>LIABILITIES & STOCKHOLDERS EQUITY</u>		
Accounts Payable	\$ 46,338	
Capital Stock:		\$ 100
Common Stock	75,000	
Retained Earnings	<u>676,784</u>	
Total Liabilities & Stockholders Equity	<u>\$ 798,122</u>	<u>\$ 100</u>

CORDERO MINING COMPANY

Schedule M-1

Reconciliation of Income Per Books With Income Per Return

For the Year Ended December 31, 1972

NET LOSS PER BOOKS:	\$ (1,402,473)
Add:	
Pension costs booked but not paid	6,500
Subtotal	<u>\$ (1,395,973)</u>
Deduct:	
Depletion	4,400
Loss on disposition of Power River	
Properties not recognized for Financial Book Purposes	<u>169,907</u>
Net loss per tax return	<u>\$ (1,570,280)</u>

Schedule M-2

Analysis of Unappropriated Retained Earnings Per Books

Balance at beginning of year	\$ 676,784
Add:	
Liabilities Assumed by Sun Oil Co. (Delaware)	\$ 5,141,714
Reduction of Capital Stock	74,900
Deferred Credits transferred to Sun Oil Co. (Del.)	<u>11,824</u>
SUBTOTAL	<u>\$ 5,228,438</u>
Deduct:	
Net loss per books	\$ 1,402,473
Distributions: Cash	\$ 1,000
Stock & other investments	354,138
Property	<u>4,129,361</u>
Other decreases:	
Prepaid pension costs transferred to Sun Oil Company (Delaware)	<u>18,250</u>
	<u>5,905,222</u>
Balance at end of year	<u>\$ -0-</u>

*Revised
1972*

CORDERO MINING COMPANY

SCHEDULE L

Comparative Balance Sheets

January 1, 1972 and December 31, 1972

	<u>Beginning of Year</u>	<u>End of Year</u>
<u>ASSETS</u>		
Cash	\$ 92,426	
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Total Assets	<u>\$ 798,122</u>	<u>100</u>
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Accounts Payable	\$ 46,338	
Capital Stock:		
Common Stock	75,000	\$ 100
Retained Earnings	<u>676,784</u>	
Total Liabilities & Stockholders Equity	<u>\$ 798,122</u>	<u>\$ 100</u>

December 1972

SIXTH: The aggregate number of shares AUTHORIZED, itemized by classes, par value of shares, shares without par value or series, if any, within a class is: (State as of December 31, 1972).

NUMBER OF shares AUTHORIZED	Class	Series	Par Value Per Share or statement that Shares are without Par Value
1,000	Common		\$100.00

SEVENTH: The aggregate number of ISSUED shares, itemized by classes, par value of shares, shares without par value and series, if any, within a class is: (State as of December 31, 1972).

NUMBER OF shares ISSUED	Class	Series	Par Value Per Share or statement that Shares are without Par Value
1	Common		\$100.00

EIGHTH: A statement showing with reasonable detail the assets and liabilities as of December 31, 1972 or the fiscal year ending 1972, is as follows: A balance sheet is preferred and may be attached if this space is not sufficient. General statements declaring the corporation is "solvent" — "assets exceed liabilities" — etc., do not comply with the statute and will not be accepted.

CORDERO MINING COMPANY
Statement of Financial Position
December 31, 1972

<u>ASSETS:</u>	
Notes Receivable	\$100.00
TOTAL ASSETS	<u>\$100.00</u>
<u>STOCKHOLDERS' EQUITY:</u>	
Capital Stock	\$100.00
TOTAL STOCKHOLDERS' EQUITY	<u>\$100.00</u>

Cordero Mining Company was liquidated 12/31/72.

SUNOCO EXHIBIT

17

THIS AGREEMENT, entered into this 13th day of November, 1954, between MT. DIABLO QUICKSILVER COMPANY, LTD., a Nevada corporation, hereinafter referred to as "Lessor", and CORDERO MINING COMPANY, a Nevada corporation, hereinafter referred to as "Lessee",

W I T N E S S E T H:

WHEREAS, Lessor is the owner of the following described mine and mining property, together with all appurtenances:

DESCRIPTION:

The northeast quarter of the southeast quarter of Section 29 and the south half of the southwest quarter of the northeast quarter of Section 29, Township 1 North, Range 1 East, Mount Diablo Base and Meridian, containing 20 acres, more or less;

EXCEPTING THEREFROM: "That certain syphon pipe leading therefrom to a water trough on the northeast quarter of the southeast quarter of said Section Twenty-nine (29), which said water spring, trough, and pipe are excepted from this deed," as provided for in the deed from Edward A. Howard and Daisy B. Howard, his wife, to Mount Diablo Quicksilver Company, Ltd., a corporation, dated December 29, 1933, and recorded Feb. 1, 1934 (File No. 1060);

And

The northwest quarter (N.W.1/4) of the southeast quarter (S.E.1/4) of Section 29, in Township 1 North of Range 1 East, Mount Diablo Base and Meridian. Said property shall not include the following described property, to wit: that land beginning at the northwest corner of the northwest quarter of the southeast quarter of Section 29, Township 1 North, Range 1 East, Mount Diablo Base and Meridian; thence running southerly along the dividing line between the northeast quarter of the southwest quarter and the northwest quarter of the southeast quarter of said Section 29, a distance of 20 chains to the southwest corner of the northwest quarter of the southeast quarter of Section 29; thence running along the southerly line of the northwest quarter of the southeast quarter of Section 29, a distance of 2.924 chains; thence leaving said line, and running in a northerly direction, a distance of 20.23 chains to the point of beginning.

EXCEPTING from the demised premises the house known as the Blomberg house together with the right to use such water as is necessary for domestic purposes. In the event the option to purchase is exercised then this exception will be without effect and title to the Blomberg house shall pass with the other property.

IN ADDITION Lessee shall have the right to any access road over which Lessor has control.

And

WHEREAS, the Lessee desires to lease and to acquire an option to purchase the whole of said mining property above described, which the Lessor is willing to grant upon the terms and subject to the conditions hereinafter set forth,

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1) paid by the Lessee to the Lessor, receipt of which is hereby acknowledged, the Lessor hereby grants and leases to Lessee the above-described property for the purpose of investigating, exploring, prospecting, drilling, mining, producing, milling, and removing ores, metals, minerals, and values of every kind, and for the purpose of erecting thereon mills, plants and other structures in connection with said purposes, for the term of Ten (10) years from the date hereof with right to renew, upon a sixty (60) day prior written notice to Lessor, for an additional Ten (10) years on the same terms, including the right to apply payments made during the first Ten (10) years on the purchase price if said option to purchase is exercised during the second ten (10) years. These rights shall remain in effect during the period of the lease unless sooner terminated as hereinafter provided.

In consideration of said lease, IT IS HEREBY MUTUALLY

AGREED AS FOLLOWS:

1. RENTAL AND ROYALTY: The Lessee shall pay to the Lessor monthly, as rental for said property, a percentage of the proceeds resulting from the operation of said property by Lessee. This percentage shall be ten per cent (10%) of the money received for ores, metals, minerals, and values mined, saved and sold less freight, insurance, and brokerage, or Two Hundred Dollars (\$200) per month, whichever is greater.

Unless notified as hereafter set forth, Lessee shall sell all flasks of quicksilver produced from the premises; provided, however, that Lessor shall have the option to receive its percentage royalties in kind, i.e. in flasks of quicksilver -- upon Lessor's giving Lessee a ninety (90) day prior written notice of exercise of such option. Similarly Lessor shall have the option by such a 90-day notice to have Lessee resume the sales of all production. Delivery in kind to Lessor shall be f.o.b. the mining property. Lessee agrees to store for Lessor's account any production taken by Lessor as royalty in kind without charge -- title, however, to such flasks of quicksilver for delivery in kind shall be deemed to pass to Lessor at the time Lessor receives royalty statements therefor from Lessee (for insurance and other purposes). Lessee shall supply Lessor with full and complete supporting data with regard to deliveries in kind.

2. OPTION: The Lessor shall and does hereby give and grant unto the Lessee the sole, exclusive and irrevocable right and option to purchase and acquire the whole of the said mining

property above described, upon the payment of the option price, on or before the termination of this lease, and any renewal, and in the manner and upon the due performance of the covenants to be kept and performed by the Lessee, all as herein provided.

3. PURCHASE PRICE: The Lessee, upon the exercise of said option, shall pay the Lessor as a total purchase price for the above-described property, the sum of One Hundred Seventy Thousand Dollars (\$170,000) lawful money of the United States of America. All rental and royalty payments made to Lessor hereunder shall be credited on the purchase price. The balance of the purchase price shall be paid in full upon the exercise of said option and delivery of a good and sufficient deed as herein provided.

For the purpose of crediting royalty payments on the purchase price, in connection with deliveries in kind, the credits shall be based upon the average proceeds per flask sold by Lessee in the particular month involved; provided, however, that if no sales are made by Lessee during any such month, royalty payments as well as credits on the purchase price shall be determined by taking the average of the weekly low quotations for the particular month as set forth in the E. & M. J. Metal and Mineral Markets Magazine (less freight, insurance and brokerage); provided further, that such method shall be applied for the purpose of computing royalties or for any other purpose applicable to the provisions of this agreement.

4. MANNER OF PAYMENT: The royalty payable to Lessor hereunder, shall be payable in monthly installments commencing

on the 15th day of December, 1954, and continuing on the 15th day of each and every month thereafter until the expiration of the term hereof or the earlier termination of this lease. Royalty payments shall be based on receipts from sales of the previous month, on the basis provided for in Paragraph 1 above. Notwithstanding anything to the contrary contained herein, it is agreed that each monthly installment shall be not less than Two Hundred Dollars (\$200). The Lessee shall transmit with the royalty check a full and true statement of the production and sales receipts of the previous month. A representative of the Lessor shall at all times have the right during regular business hours to examine the underground operations and the furnace plant.

5. MINING METHODS AND CONDITIONS: Lessee shall be sole judge as to methods of mining and milling, what constitutes ore, when and if ore is extracted or milled and all other phases of operating the property. All operations conducted by the Lessee upon the property shall be performed in accordance with the laws and regulations of the United States and the State of California and in accordance with good practices in workmanship, mining and milling, particularly with regard to the safety and welfare of workers. The Lessee shall at all times during the existence of this lease maintain a watchman on the premises.

6. POSSESSION: Lessee, its agents, representatives or employees may enter in and upon and take possession of the whole or any part of the property above described, at once; and, may then and there commence any work to explore or mine the property,

in keeping with the tenor of this agreement, that it may deem advisable, and for that purpose, may use any buildings, equipment or mining facilities which may now be situated on the premises, and owned by Mt. Diablo Quicksilver Company, Ltd., with the exception of that certain house noted in the above description of the premises.

The Lessee may use, in working on the demised premises, all supplies now on the demised premises, but, in the event he should remove or dispose of said supplies otherwise than in developing the demised premises, he shall pay the Lessor the reasonable value thereof. During the term of this lease the Lessee may use all tools, machinery and equipment of the Lessor now on the demised premises for the purpose of developing the same and operating and maintaining the same, and shall have the privilege of replacing or remodeling the same, and any structures on the demised premises. An inventory enumerating such tools, machinery or equipment and structures, is attached hereto, marked Exhibit "A" and made a part hereof. Lessee shall maintain the same and replace any that are broken, damaged or worn out, normal wear and tear excepted. Such replacements shall become the property of the Lessor. At the expiration of this lease or in the event of the Lessee vacating the demised premises for any reason, Lessee may remove, as provided in Paragraph 14, any portable tools, machinery, or equipment which Lessee has placed upon the property, or any portable structures which Lessee may have placed upon the property, but Lessee may not remove any permanent structures or any repairs on

replacements to units of equipment or machinery now on the property.

7. INDUSTRIAL INSURANCE: Lessee shall comply with the laws of the State of California for the protection of employees against injury and disease and, in that connection, shall save harmless the Lessor against any damage by reason of such claims. Lessee shall provide and maintain at Lessee's expense fire insurance and other appropriate casualty insurance on all of the structures, machinery, equipment and tools covering the full appraised insurable value thereof for the maximum protection of both Lessor and Lessee, as their interests may appear, and Lessee shall furnish to Lessor certificates of such insurance if required, and the same shall be subject to the approval of Lessor for adequacy of protection.

8. PUBLIC LIABILITY: Lessee shall save Lessor harmless from any liability for property damage, personal injury or death arising from the work, mining or acts performed by Lessee and its employees in connection with the lease and option.

9. LIENS: Lessee shall save Lessor harmless from all liens upon the property made or suffered by Lessee, and in that connection shall post the property in accordance with law, noticing owner's (Lessor's) non-responsibility, before commencing any work.

10. TAXES: Lessee agrees to pay, prior to delinquency, all taxes and assessments, including personal property taxes and

net proceeds of mine taxes, to State, County or School District, or any other government subdivision, with the exception of taxes on royalties paid to Lessor. Taxes shall be prorated as of the date hereof.

11. DEFAULT: Time shall be of the essence of this agreement. In the event of default of any of the payments or covenants herein contained, by Lessee, this lease shall terminate, at the option of the Lessor. If Lessor elects to terminate this agreement by reason of Lessee's default, Lessor shall serve notice of his intention by registered mail, or personal service upon Lessee or its duly authorized agent for service of process. Upon service of notice, Lessee shall have sixty (60) days in which to cure said default. If within said sixty (60) day period the default has not been cured, Lessor may terminate this agreement by giving Lessee notice of such termination, and at that time this agreement and all of the rights of Lessee hereunder shall terminate.

12. PURPOSE: This agreement is a lease and option only, and the Lessee shall have the right to surrender this contract and to discontinue any and all work and payments hereunder at any time, without liability therefor, upon giving Lessor thirty (30) days' prior written notice of intention to so terminate, except that Lessee shall be liable for royalties and amounts due and payable at the date of such termination. Upon demand after surrender, Lessee shall execute and deliver to Lessor a good and sufficient surrender and release of all rights hereunder.

Lessee shall control the discharge of water from the

mine properties in such manner as not to pollute any of the wells on any of the adjoining property or the waters of Marsh Creek or Dunn Creek. Lessee is advised of that certain decision and order of the Water Pollution Control Board of the State of California, dated December 14, 1953, and Lessee agrees to comply in all respects with said order, as the same may be modified, amended or altered from time to time, and with any and all other orders, rules and regulations of any governmental authority in respect of discharge of water from the mine properties.

13. INSPECTION: The owner (Lessor) or his duly authorized agents or representatives shall have the right at all reasonable times to enter upon the said property and inspect the work conducted by the Lessee thereon, or records of the production of the mine.

14. REMOVAL OF EQUIPMENT: In the event of termination of this contract, by surrender or default as provided, the Lessee may, within a period of ninety (90) days thereafter, remove any and all machinery, power plant, equipment, building, track, tools, and supplies placed thereon by Lessee except as provided in Paragraph 6 above. In the event of termination Lessee shall provide Lessor with copies of any mine maps of this property which it may have.

15. ASSIGNMENT: Lessee shall not assign this lease or any interest therein and shall not sublease or underlet the premises, or any part thereof, or any right or privilege appurtenant thereto without the written consent of the Lessor -- and such consent shall not be unreasonably withheld. Notices required

hereunder shall be deemed to be completed when made in writing, deposited in the United States mail, registered, postpaid, addressed to

Lessor: MT. DIABLO QUICKSILVER COMPANY, LTD.
Clayton, California

Lessee: CORDERO MINING COMPANY
131 University Avenue
Palo Alto, California

16. On the exercise of the option herein granted to Lessee to purchase certain property, and the payment of the further purchase price therefor, as hereinabove provided, Lessor shall convey said property to Lessee by grant deed. There has been exhibited to Lessee, and Lessee is fully advised of, that certain preliminary title report of California Pacific Title Insurance Company on said property dated October 28, 1954 (Order No. 190821). It is understood and agreed that at any time after the expiration of three (3) years from the date hereof, or upon payment by Lessee to Lessor of one-half (1/2) of the said purchase price -- whichever event is earlier -- on demand by Lessee to Lessor, Lessor shall take such steps and commence such legal proceedings as it may be advised necessary to clear the title of said land of the exceptions appearing on said title report, and Lessor shall thereafter prosecute said proceedings with all reasonable diligence.

IN WITNESS WHEREOF, Lessor and Lessee have caused these presents to be executed by their officers thereunto

duly authorized, the day and year first above written.

MT. DIABLO QUICKSILVER COMPANY, LTD.

By Vic Blomberg
Vic Blomberg
President

By Harold Blomberg
Harold Blomberg
Secretary

(Corporate Seal)

LESSOR

CORDERO MINING COMPANY

By S. H. Williston
S. H. Williston
Vice President

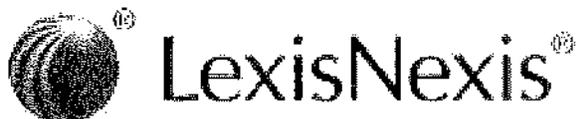
(Corporate Seal)

J. A. Williston
Asst. Secretary

LESSEE

SUNOCO EXHIBIT

18



1 of 3 DOCUMENTS

In the Matter of the Petitions of ALUMINUM COMPANY OF AMERICA; ALCOA CONSTRUCTION SYSTEMS, INC.; and CHALLENGE DEVELOPMENTS, INC., For Review of Waste Discharge Requirements Order No. 92-105 of the California Regional Water Quality Control Board, San Francisco Bay Region. Our File Nos. A-792, A-815 and A-815(a)

Order No. WQ 93-9

State of California
State Water Resources Control Board

1993 Cal. ENV LEXIS 17

July 22, 1993

BEFORE: [*1] John Caffrey, Marc Del Piero, James M. Stubchacr, Mary Jane Forster, John W. Brown

OPINIONBY: BY THE BOARD

OPINION:

On March 18, 1992, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), adopted waste discharge requirements in Order No. 92-028. The Order established cleanup and closure requirements for an inactive sulfur mining site located in the Oakland Hills. The Order was issued to Ridgemont Development Company and Ridgemont Development Company dba Watt Homes of Northern California, as the current owners of the site, and to Alcoa Aluminum Company of America (Alcoa), as a former owner. Alcoa subsequently filed a petition for review of Order No. 92-028 with the State Water Resources Control Board (State Water Board or Board), alleging that Alcoa was improperly named as a discharger.

On August 19, 1992, the Regional Water Board adopted a new order, No. 92-105, superseding Order No. 92-028. Order No. 92-105 differed from Order No. 92-028 by the addition of several new responsible parties. n1 These included two corporations, Alcoa Construction Systems, Inc. (ACS) and Challenge Developments, Inc. (CDI), which were subsidiaries of a subsidiary of Alcoa. [*2] After adoption of Order No. 92-105, the two subsidiaries filed petitions for review with the Board, contending that they were not liable for cleanup of the site. Alcoa also renewed its petition for review.

n1 Order No. 92-105 lists Ridgemont Development, Inc. and Watt Residential, Inc. and Watt Industries/Oakland, Inc. dba Ridgemont Development, Inc. as the current property owners. The following parties were also named as dischargers: Watt Industries/Oakland, Inc.; Watt Residential, Inc.; Watt Housing Corporation; CDI; ACS; AP Construction Systems, Inc.; F. M. Smith and Evelyn Ellis Smith; Realty Syndicate; and Alcoa.

The three petitions are factually and legally related. They have, therefore, been consolidated for purposes of review by the Board. See 23 C.C.R. Sec. 2054.

I. BACKGROUND

The Leona Heights Sulfur Mine was apparently operated from the early 1900s to about 1930 by the Leona Chemical Company. n2 The site, which comprises about two acres, is located in a steep ravine in the hills of Oakland. [*3] Sulfur-bearing ore was mined at the site for the manufacture of sulfuric acid. The site is currently inactive.

n2 According to technical reports submitted to the Regional Water Board by consultants for Ridgemont Development Company, historical documents identify Leona Chemical Company as the operator. However, other evidence in the record indicates that the operator may have been either Oakland Chemical Company and Leona Chemical Company or Stauffer Mining Company.

Remnants of previous mining activity consist of mine adits, or horizontal mine tunnels, extending into the hillside; iron rails; residual crushed ore, or mine tailings; and waste rock. The site contains three tailings piles, which produce drainage when they come in contact with water. The drainage is highly acidic and contains elevated concentrations of dissolved metals. n3 A spring-fed perennial stream emerges from a mine adit buried in one of the tailings piles. Ephemeral streams also pass through the site. Runoff flows from the site enter a storm [*4] drain, which discharges to Lake Aliso on the Mills College Campus and ultimately discharges to San Leandro Bay via another storm drain system.

n3 The results of surface water samples of drainage from the mine showed pH values ranging from 2.9 to 4.4 units. The applicable water quality objective for pH in that watershed is 6.5 to 8.5. Copper concentrations measured during wet weather were as high as 32,000 micrograms per liter (ug/l). The water quality objective for copper is 40 ug/l. Similarly, zinc levels were high, ranging up to 13,000 ug/l, as compared to the objective of 327 ug/l.

On July 22, 1991, Ridgemont Development Company submitted a report of waste discharge, consisting of a mine closure and post-closure maintenance plan, for the site. On March 18, 1992, the Regional Water Board adopted waste discharge requirements in Order No. 92-028 for cleanup and closure of the site. These requirements were superseded by requirements adopted on August 19, 1992 in Order No. 92-105.

II. CONTENTIONS AND FINDINGS [*5]

1. Contention: Alcoa contends that it cannot be considered a discharger under Order No. 92-105 because it was never an owner or operator of the Leona Heights Sulfur Mine. Alcoa further contends that it cannot be considered liable as either the successor or alter ego of CDI or ACS.

Findings: Alcoa was neither an owner nor an operator of the Leona Heights site. CDI and ACS both held an ownership interest in the mining site at one time. CDI has been dissolved, and ACS was sold to another company. Ridgemont Development Company urges the Board, therefore, to hold Alcoa liable as the alter ego of CDI and ACS.

In 1964 CDI, a California corporation, became a wholly owned subsidiary of Alcoa Properties, Inc., a Delaware corporation, which is a subsidiary of Alcoa. From 1972 to 1980, CDI held a 50 percent interest in a partnership which owned the mining site. In April of 1990 CDI was dissolved.

ACS was also a wholly owned subsidiary of Alcoa Properties, Inc. From 1980 through 1986 ACS held a 50

percent interest in a partnership, known as Caballo Hills Development Company, which became Ridgemont Development Company. In October of 1986 Alcoa Properties, Inc. sold all of the [*6] stock of ACS to AP Ventures, Inc. AP Ventures, Inc. changed the name of ACS to AP Construction Systems, Inc. and, two months later, conveyed all of AP Construction Systems, Inc.'s partnership interest in Ridgemont Development Company to Watt Housing Corporation. AP Ventures, Inc. is still apparently in existence as a real estate investment trust.

There is no evidence in the record indicating that Alcoa was in fact the successor of CDI or ACS. Further, we conclude that there is insufficient evidence in the record to hold Alcoa liable as the alter ego of CDI or ACS.

In certain circumstances, a parent corporation will be held liable for the actions of its subsidiary. In those cases, the parent corporation is said to have acted as the alter ego of the subsidiary. n4

n4 Generally, the shareholders of a corporation are not liable for the actions of the corporation. The shareholders are said to be protected by the corporate veil. However, in certain circumstances the courts have disregarded the corporate entity and held the individual shareholders liable as the alter ego of the corporation. See 9 Witkin, Summary of California Law (9th ed. 1989), Corporations, Sec. 12, pp. 524-526. The alter ego doctrine is based on equitable considerations. Thus, the corporate form will be disregarded only in narrowly defined circumstances and only when the ends of justice so require. *Mesler v. Bragg Management Co.*, 39 Cal.3d 290, 301, 216 Cal.Rptr. 443, 702 P.2d 601 (1985).

Whether it is appropriate to pierce the corporate veil in a given case will depend on the particular circumstances of that case. *Id.* at 300. In general, two factors must be present. These are: "(1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow." *Id.*, citing *Automotriz del Golfo de Cal. v. Resnick*, 47 Cal.2d 792, 796, 306 P.2d 1 (1957). The same principles apply where the shareholder sought to be held liable is another corporation instead of an individual. *Las Palmas Associates v. Las Palmas Center Associates*, 235 Cal.App.3d 1220, 1249, 1 Cal.Rptr.2d 301 (1991).

[*7]

More is required, however, than solely a parent-subsidiary corporate relationship to create liability of a parent for the actions of its subsidiary. *Walker v. Signal Companies, Inc.*, 84 Cal.App.3d 982, 1001, 149 Cal.Rptr. 119 (1978). Rather, where, in addition to stock ownership, there is relatively complete management and control by the parent so "as to make [the subsidiary] merely an instrumentality, agency, conduit, or adjunct of" the parent, the alter ego doctrine will be applied. *McLoughlin v. L. Bloom Sons Co., Inc.*, 206 Cal.App.2d 848, 851-852, 24 Cal.Rptr. 311 (1962).

In this case, circumstantial evidence suggests some degree of involvement by Alcoa in the affairs of CDI and ACS. The evidence indicates, for example, that: (1) Alcoa, CDI, and ACS have been jointly represented by the same counsel throughout the proceedings before the Regional Water Board and this Board; (2) correspondence from Alcoa to the Regional Water Board indicated that Alcoa at one time held an interest in the mining site; n5 (3) the principal executive office and the business address of all of the officers and directors of CDI was the Alcoa headquarters in Pittsburgh; (4) Robert [*8] D. Buchanan, a senior financial officer for Alcoa, also served as a director and vice president of CDI and a director of ACS; and (5) three of the four directors and four of the officers of ACS had their business address at the Alcoa's Pittsburgh office.

n5 See, e.g., letter dated January 23, 1992, from Alcoa to the Regional Water Board ("As you know, Alcoa has not had an interest in this site for several years. Moreover, for the period of time that Alcoa did have an interest in the property, it had no involvement in the day-to-day operations."), and letter dated March 9, 1992, from Alcoa to the Regional Water Board ("Alcoa, which owned the property at issue [the Leona Heights site]

from 1975-1986, was named as a 'discharger' . . ."). Alcoa contends that this correspondence was written before all of the relevant records on the site were retrieved from archives.

On the other hand, Alcoa has introduced evidence into the record indicating that Alcoa was not the alter ego of CDI and ACS. According to the affidavit [*9] of Buchanan, both CDI and ACS were fully capitalized, independently operating companies, with their own boards of directors, assets, and bank accounts. See Exhibit D to petition of Alcoa. Further, the Board notes that Alcoa was one step removed from the two subsidiaries through an intermediary corporation, Alcoa Properties, Inc. On balance, the Board concludes that the evidence in the record is insufficient to support the conclusion that Alcoa exercised the type of pervasive management and control over CDI and ACS which would render Alcoa liable as the alter ego of the two subsidiaries. n6

n6 The Board notes that CDI, a California corporation, was dissolved in 1990. Under California law, if any assets of a dissolved corporation have been distributed to the shareholders, in this case, Alcoa Properties, Inc., an action may be brought against the shareholders. See Corps Code Sec. 2011(a)(1)(B). The Regional Water Board may, therefore, wish to consider whether it would be appropriate to add Alcoa Properties, Inc. to Order No. 92-105.

[*10]

In reaching this conclusion, the Board is aware of the difficulties the Regional Water Boards face when asked to determine whether a particular entity should be considered a discharger. This is particularly true when the determination involves resolution of fairly complex legal issues. And, as the Board noted in Order No. WQ 84-6, "[f]ewer parties named in the order may well mean no one is able to clean up a demonstrated water quality problem". P. 11. Nevertheless, "[t]here must be substantial evidence to support a finding of responsibility for each party named". *Id.* at pp. 10-11.

2. Contentions: CDI contends that it cannot be considered a discharger under Order No. 92-105 because CDI's ownership interest in the mining site predated this Board's regulations on mining wastes.

Finding: CDI held an ownership interest in the Laurel Heights Sulfur Mine from 1972 to 1980. The Board adopted regulations governing the land disposal of mining wastes in 1984. See 23 C.C.R. Sec. 2570-2574.

The mining regulations address both active and inactive mining waste management units. See *id.* Sec. 2570. They specify siting, construction, monitoring, closure and post-closure maintenance [*11] criteria for these land disposal units. See *id.* Secs. 2572-2574. Order No. 92-105 implements relevant portions of the mining regulations. See, e.g., Order No. 92-105, Discharge Spec. B.1 (monitoring), Prov. C.2 (financial responsibility).

CDI cites California case law holding that regulations affecting substantive rights may only be applied prospectively to support its position that CDI cannot be held liable. CDI assumes that its liability for cleanup is predicated on the mining regulations. This assumption is erroneous.

Generally, the same rules of construction and interpretation which apply to statutes govern the construction and interpretation of administrative regulations. *Union of American Physicians and Dentists v. Kizer*, 223 Cal.App.3d 490, 505, 272 Cal.Rptr. 886 (1990). As a general rule, statutes are not to be given a retroactive interpretation unless that is clearly the legislative intent. *Evangelatos v. Superior Court*, 44 Cal.3d 1188, 1207, 246 Cal.Rptr. 629, 753 P. 2d 585 (1988). However, as the court stated in *Union of American Physicians and Dentists v. Kizer*, *supra*:

" . . . a statute is not retroactive unless 'it substantially changes [*12] the legal effect of past events.' [Citations omitted.] 'A statute does not operate retroactively merely because some of the facts or conditions upon which its application depends came into existence prior to its enactment.' [Citations omitted.]" 223 Cal.App.3d at 505.

The adoption of this Board's mining regulations did not change the legal effect of past events. CDI was unquestionably a waste discharger under the law in effect when CDI held an ownership interest in the mining site. Since 1949 when the Dickey Water Pollution Act, the predecessor of the Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., was enacted, drainage from inactive or abandoned mines has been considered a discharge of waste which is subject to regulation by the Regional Water Boards. See *26 Ops. Cal. Atty. Gen. 88, 90 (1955)*; *27 Ops. Cal. Atty. Gen. 182, 183-185 (1956)*. See also *People v. New Penn Mines, Inc.*, *212 Cal. App. 2d 667, 673-674, 28 Cal. Rptr. 337 (1963)* (drainage from mines subject to Regional Water Board regulation).ⁿ⁷ The dischargers are those with legal control over the property. *Id.*

ⁿ⁷ The legislative history of the Porter-Cologne Water Quality Control Act indicates that the prior Attorney General opinions on mine tailing runoff and liability of the landowner were intended to be incorporated into the definition of "waste" under the act. *63 Ops. Cal. Atty. Gen. 51, 56 (1980)*.

[*13]

Further, even though CDI ceased being an owner in October 1980, CDI could legally be required to clean up the site. Water Code Section 13304 authorizes the Regional Water Board to mandate cleanup by both past and present dischargers. Dischargers who stopped discharging prior to January 1, 1981, are liable under Section 13304 if their acts were in violation of existing laws or regulations at the time they were discharging. Water Code Section 13304(f).

CDI's acts or failure to act were in violation of at least two laws in effect during CDI's land ownership. Since 1872, California law has prohibited the creation or continuation of a public nuisance. See Civ. Code Sec. 3490. Water pollution can constitute a public nuisance. See *People v. Truckee Lumber Co.*, *116 Cal. 397, 48 P. 374 (1897)*. A successor property owner, such as CDI, who fails to abate a continuing nuisance created by a prior owner is liable in the same manner as the prior owner. See *City of Turlock v. Bristow*, *103 Cal. App. 750, 284 P. 962 (1930)*. Additionally, since 1949 California law has prohibited the discharge of waste in any manner which will result in a pollution, contamination, or nuisance. [*14] Health & Safety Code Sec. 5411. For these reasons, the Board finds that the Regional Water Board acted properly in including CDI in Order No. 92-105 as a discharger.

3. Contention: ACS contends that it cannot be held liable because all liability for the site has vested in the current property owner. Alternatively, ACS requests that, if ACS is not removed from Order No. 92-105, the current landowner be held primarily liable and other parties secondarily liable.

Finding: In 1986 AP Ventures, Inc. purchased all of the stock of ACS and changed the name of ACS to AP Construction Systems, Inc. Shortly thereafter, AP Ventures, Inc. contracted with Watt Housing Corporation to convey all of AP Construction Systems, Inc.'s interest in the partnership, Ridgemont Development Company, to Watt Housing Corporation. ACS contends that, by virtue of this agreement, Watt Housing Corporation has acquired all liability for the site.

ACS' contention is without merit. The private contractual arrangements between successive owners of a site are not binding on the Regional Water Boards or this Board and are not determinative of an entity's status as a discharger. Cf. State Water Board Order [*15] No. WQ 86-2, pp. 9-10.

ACS also apparently argues that because a partnership can own property in its own name, liability incurred by the partnership flowing from its land ownership is retained by the partnership, rather than the individual partners. Whether the property in question, in this case, was held in the name of the partnership or the individual partners is not clear from the record. In any event, ACS' contention is inconsistent with California law. Contrary to ACS' assertion, a partnership is not an entity like a corporation, but rather is an association of individuals. See Corps. Code Sec. 15006(1); 9 Witkin, *Summary of California Law* (9th ed. 1989), *Partnerships*, Sec. 15, pp. 412-413. In general, the individual partners are jointly and severally liable for the obligations of the partnership. See Corps. Code Sec. 15015. This liability is not

discharged simply because one leaves the partnership. *Alioto v. United States*, 593 F.Supp. 1402, 1413 (1984), citing California Corporations Code Secs. 15013, 15015, 15036.

Having concluded that ACS was properly named in Order No. 92-105, the Board now turns to ACS' request that it be considered secondarily liable for [*16] compliance. The Board concludes that application of this concept is not appropriate here. The current landowners, like ACS and CDI, are considered waste dischargers primarily due to their land ownership. None of these parties actually engaged in the mining activities which resulted in the ongoing discharge. The mine operators, the entity which created the problem, are no longer in existence. Therefore, all of the parties to Order No. 92-105 stand on essentially the same footing and should be treated alike. n8

n8 All of this Board's orders addressing primary versus secondary liability have made a distinction between those parties who were considered responsible parties due solely to their land ownership (or, in one case, their possession of a long-term lease) and those parties who actually operated the facility or otherwise caused the discharge in question. See Order Nos. WQ 86-11 (landowner and operator named in waste discharge requirements; operator primarily responsible for compliance); 86-18 (landowner and manufacturer of semiconductors named in site cleanup requirements; manufacturer primarily responsible); 87-5 (mine operator and landowner named in waste discharge requirements; operator primarily responsible); 87-6 (landowner and lessees/manufacturers of semiconductors named in site cleanup requirements; lessees primarily responsible); 89-1 (landowners and operator of crop dusting business named in cleanup and abatement order; operator primarily responsible); 89-8 (possessor of long-term lease included in cleanup and abatement order together with the parties who caused the release of pollutants; lessee considered secondarily liable along with the landowners); 92-13 (landowners held secondarily liable in cleanup and abatement order; operators considered primarily liable). This distinction has been made primarily for equitable reasons. The Board has concluded that the initial responsibility for cleanup should be with the operator or the party who created the discharge. See e.g., Order No. WQ 89-1, p. 4. The Board has cited several factors which are appropriate for the Regional Water Boards to consider in determining whether a party should be held secondarily liable. These include: (1) whether or not the party initiated or contributed to the discharge; and (2) whether those parties who created or contributed to the discharge are proceeding with cleanup. See Order Nos. WQ 87-6 and 89-8.

[*17]

4. Contention: CDI and ACS contend that additional parties who held an ownership interest in the site since the creation of the mine should be included in Order No. 92-105.

Finding: For the reasons explained previously, those parties who held an ownership interest in the mining site since the creation of the mine drainage can be considered waste dischargers. To the extent that any of these parties, in addition to those already named in Order No. 92-105, can be identified and located by petitioners, the Regional Water Board may consider including them in Order No. 92-105. We note that the Regional Water Board has demonstrated a willingness to consider inclusion of additional responsible parties in the waste discharge requirements in question here. n9

n9 All other contentions raised by petitioners, which are not discussed in this order, are denied for failure to raise substantial issues appropriate for review. 23 C.C.R. Sec. 2052(a)(1). See *People v. Barry*, 194 Cal.App.3d 158, 139 Cal.Rptr. 349 (1987).

[*18]

III. CONCLUSIONS

1. There is insufficient evidence in the record to hold Alcoa liable as a discharger under Order No. 92-105.

2. Both CDI and ACS were properly named in Order No. 92-105 as dischargers.
3. All parties to Order No. 92-105 should be considered primarily liable for compliance with the order.

IV. ORDER

IT IS HEREBY ORDERED that Regional Water Board Order No. 92-105 is hereby amended to remove references to Alcoa as a discharger on pages 1 and 5 of the Order.

IT IS FURTHER ORDERED that the petitions of Alcoa, ACS, and CDI are otherwise dismissed.

Legal Topics:

For related research and practice materials, see the following legal topics:

Energy & Utilities Law Mining Industry Underground Mining Control & Closure Real Property
Law Mining Regulation Real Property Law Torts General Overview

SUNOCO EXHIBIT

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**SEE SUNOCO, INC.'S
COMMENTS REGARDING CAO**