



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

30 October 2009

Lisa A. Runyon, Senior Counsel
Sunoco, Inc.
1735 Market Street. Ste. LL
Philadelphia PA 19103-7583

RESPONSE TO DIVISIBILITY PAPER, MOUNT DIABLO MERCURY MINE, CONTRA COSTA COUNTY

Staff of the Central Valley Regional Water Quality Control Board (Board) have reviewed the "*Divisibility Position Paper, Mt. Diablo Mercury Mine, Sunoco, Inc. as Related to Cordero Mining Company*" (Divisibility Paper) submitted on Sunoco/Cordero's behalf by The Source Group, Inc. The Divisibility Paper contends that there is a reasonable technical basis for the Board to apportion liability for the investigation and/or cleanup of the Mount Diablo Mercury Mine (Site). The Divisibility Paper concludes that, because there is a reasonable basis to apportion liability, the Board should limit Sunoco/Cordero's liability to the area near the Defense Minerals Exploration Administration (DMEA) shaft, where most of Cordero Mining Company's work was done.

Board staff disagree that there is a reasonable basis for apportioning liability. The contamination present at the Site is not susceptible to any rational means of division. The discharge of polluted water from the Site occurs after water interacts with mine waste, some of which was generated by Cordero, and some of which was generated by other responsible parties. The 790 feet of underground tunnels constructed by Cordero connect with, and thus contribute contaminated water to, the earlier underground tunnels via the Main Winze. The 165-foot level portal, a part of the earlier tunnels that connects to the Main Winze, is believed to be a major contributor of acid mine drainage. It is impossible for the Board to determine the proportion of pollutants that the water picks up through its interactions with the mine features that Cordero constructed, relative to the proportion that it picks up through its interactions with mine features constructed by other responsible parties. Indeed, even if such proportion could be calculated, it may have little to no relation to the ultimate cost of investigation and/or remediation.

The Divisibility Paper contends that the waste rock generated by Cordero was either placed back in the shaft or discharged in the My Creek drainage, but this fact is not borne out by the evidence in the Board's files. No evidence in the files indicates where the waste rock was discharged. The 790 feet of tunnels would generate too much waste to fit back into the shaft, and the descriptions of waste rock in the My Creek drainage are consistent with waste rock from a surface mine, not from underground mine tunnels.

California Environmental Protection Agency

Board staff maintain that there is no reasonable basis to apportion liability, and therefore, pursuant to State Board water quality decisions regarding apportionability, Cordero/Sunoco's liability for the site remains joint and several.

If you have any questions concerning this matter, please contact Ross Atkinson at (916) 464-4614 or via email at ratkinson@waterboards.ca.gov.



VICTOR IZZO

Senior Engineering Geologist
Title 27 Permitting and Mines Unit

cc: Patrick Palupa, Office of the Chief Counsel, SWRCB, Sacramento
California Dept of Parks and Recreation, Bay Area Dist., San Francisco
Jerelean Johnson, Site Assessment, Superfund Div. USEPA Region 9, San Francisco
Larry Bradfish, Asst. Regional Counsel, USEPA Region 9, San Francisco
Janet Yocum, On-Scene Coordinator, USEPA Region 9, San Francisco
R. Mitch Avalon, Contra Costa County Flood Control, Martinez
William R. Morse, Sunoco, Inc. Philadelphia, PA
David Chapman, Edgcomb Law Group, San Francisco.
Paul Horton, The Source Group, Inc. Pleasant Hill

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