

Central Valley Regional Water Quality Control Board

**SUPPLEMENTAL 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

CONTINUED TO October 10, 2014

THIS HEARING PROCEDURE SUPPLEMENTS THE ORIGINAL HEARING PROCEDURE ISSUED IN THE ABOVE-REFERENCED MATTER.

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 August 7, 2014, the Central Valley Regional Water Quality Control Board (“Board”) continued the hearing to reconsider Cleanup and Abatement Order R5-2013-0701 (“CAO”). At the August 7th hearing, the Prosecution Team represented, in part, that it (1) was withdrawing its piercing the corporate veil argument against Sunoco, Inc. and Kennametal; (2) intended to remove Kennametal from the CAO; (3) was prepared to move forward with its *de facto* merger argument against Sunoco, Inc.; and (4) was prepared to move forward with its assumption of liability argument against Sunoco, Inc. The hearing was continued in order to allow supplemental evidence and/or briefing on the specific issue of whether Sunoco, Inc. (Sunoco) expressly or impliedly assumed liability for Cordero Mining Company (Cordero) and to allow the Designated Parties an opportunity to comment on the Prosecution Team’s proposed revisions to the CAO, since the Prosecution Team has requested the removal of Kennametal from the CAO. No additional evidence or argument(s) will be presented beyond this limited scope. The hearing has been continued to October 10, 2014 and 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

This Supplemental Hearing Procedure is limited in scope; submission deadlines that have already passed are not extended.

Hearing Procedure

The hearing will be conducted in accordance with the Original Hearing Procedure and this Supplemental Hearing Procedure. 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, Marty Hartzell, Environmental Geologist, Julie Macedo, Senior Legal Counsel, Office of Enforcement, and David Boyers, Assistant Chief 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.**

Primary Contacts

Advisory Team:

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Prosecution Team:

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Designated Parties:

Sunoco, Inc.
Represented by Edgcomb Law Group LLP
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Kennametal Inc.
Represented by Ellison Schnieder & Harris, L.L.P.
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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.

Submission of Additional Legal Briefing and Comments

The Prosecution Team must submit briefing on the issue of whether Sunoco expressly or impliedly assumed liability for Cordero. In addition, the Prosecution Team shall submit a revised proposed CAO removing Kennametal as a responsible party, clarifying the basis for removing Kennametal, and clarifying the basis for Sunoco's corporate successor liability.

Sunoco may submit a written response to the Prosecution Team's legal brief, including any legal argument and evidence which rebuts the basis for corporate succession described in the Prosecution Team brief. Any evidence that does not rebut the basis for corporate succession in the Prosecution Team's brief may be excluded.

All Designated Parties will be allowed to submit comments on any revisions to the CAO as proposed by the Prosecution Team. Interested parties may submit non-evidentiary policy statements regarding any revisions to the CAO as proposed by the Prosecution Team. All comments from Designated Parties or non-evidentiary policy statements from Interested Persons shall be limited to the proposed revisions. Any comments on the CAO from Designated Parties or non-evidentiary policy statements from Interested Persons that are outside the scope of the proposed revisions will 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.

IMPORTANT DEADLINES

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

January 24, 2014	<p>§ Objections due on Hearing Procedure.</p> <p>§ Deadline to request "Designated Party" status.</p> <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	<p>§ Deadline to submit opposition to requests for Designated Party status.</p> <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	<p>§ Advisory Team issues decision on requests for designated party status.</p> <p>§ Advisory Team issues decision on Hearing Procedure objections.</p>
February 21, 2014	<p>§ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements," above.</p> <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	<p>§ 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.</p> <p>§ Interested Persons' comments are due.</p> <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	<p>§ Prosecution Team shall submit its rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections.</p> <p>§ Deadline to submit requests for additional time.</p> <p>§ 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> <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	<p>§ All Designated Parties' deadline for responding to evidentiary objections.</p>
March 25, 2014 [†]	<p>§ Prosecution Team submits Summary Sheet and responses to comments.</p> <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>
August 22, 2014	<p>§ Prosecution Team shall submit briefing on the issue of whether Sunoco expressly or impliedly assumed liability for Cordero.</p> <p>§ Prosecution Team shall submit a revised proposed CAO removing Kennametal as a responsible party, clarifying the basis for removing Kennametal, and clarifying the basis for Sunoco's corporate successor liability.</p> <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>
September 12, 2014	<p>§ Sunoco may submit a written response to the Prosecution Team's brief on the issue of whether Sunoco expressly or impliedly assumed liability for Cordero.</p> <p>§ Designated Parties' comments due on proposed revisions to CAO</p> <p>§ Interested Parties' non-evidentiary policy statements due on proposed revisions to CAO</p> <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>
September 24, 2014	<p>§ Prosecution Team shall submit its rebuttal to Sunoco's response regarding the issue of whether Sunoco expressly or impliedly assumed liability for Cordero.</p> <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>
October 10, 2014	<p>§ Hearing</p>

[†] 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.