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6 Attorneys for Petitioner  
7 SPT Investments, Inc.

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

10 In the Matter of  
11 Cleanup and Abatement Order  
12 No. R4-2013-0036

SWRCB/OCC File No. \_\_\_\_\_

**SPT INVESTMENTS, INC. PETITION  
FOR REVIEW; REQUEST FOR  
HEARING**

California Water Code § 13320

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1 Pursuant to California Water Code Section 13320, SPT Investments, Inc. ("SPT") hereby  
2 respectfully petitions the California State Water Resources Control Board (the "State Board") to  
3 set aside or modify Cleanup and Abatement Order No. R4-2013-0036 (the "Order") issued by the  
4 Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (the  
5 "Regional Board"), on October 8, 2013, and requests an opportunity to be heard on this matter.

6 **I. NAME AND ADDRESS OF PETITIONER**

7 SPT Investments, Inc.  
8 One Amgen Center Drive, M/S 35-2-A  
9 Thousand Oaks, CA 91320-1799  
(805) 447-3727  
Email: mwein@amgen.com

10 **II. ACTION OF REGIONAL BOARD BEING PETITIONED**

11 The issuance of Cleanup and Abatement Order No. R4-2013-0036 by the Regional  
12 Board's Executive Officer. A true and correct copy of the Order is attached hereto as  
13 Attachment A.

14 **III. DATE OF REGIONAL BOARD ACTION**

15 The Order was issued by the Regional Board's Executive Officer on October 8, 2013.

16 **IV. STATEMENT OF REASONS THE ACTION WAS INAPPROPRIATE OR**  
17 **IMPROPER**

18 As further set forth in the Statement of Points and Authorities, attached hereto as  
19 Attachment B, the Order is inappropriate and improper for the following reasons:

20 **A. The Order Naming SPT as a Primary Responsible Party Is Contrary to State  
Board Precedent and Against the Public Interest**

21 The Order, pertaining to the "Former Semtech Corporation Facility" located in Newbury  
22 Park, California, names both Semtech Corporation, the 40-year operator of the facility, and SPT,  
23 the existing owner who acquired the property at the end of Semtech's tenure, as primary  
24 responsible parties. Naming SPT as a primary responsible party under the Order merely due to its  
25 current ownership is not only contrary to State Board decisions as to secondary responsibility, but  
26 is against the public interest, since it will only foster recalcitrance on the part of Semtech, the  
27 truly responsible party plainly recognized in the Order. Moreover, the Order is misplaced in its

1 assertion that by merely being the landowner SPT is liable as a discharger under California Water  
2 Code Sections 13304(a) and 13267. Through this Petition, SPT seeks to be removed from the  
3 Order or alternatively to at least change its status under the Order from a primary responsible  
4 party to a secondary responsible party consistent with State Board precedent.

5 **B. The Order Issued Under Delegation of Authority Without a Hearing Violates**  
6 **SPT's Right to Due Process**

7 No hearing has been afforded before the Regional Board, in violation of SPT's  
8 constitutional right of due process and statutory protections, regulations and procedures afforded  
9 by the California Water Code, Government Code and State Board.

10 **V. MANNER IN WHICH PETITIONER IS AGGRIEVED**

11 SPT is aggrieved by the Order, as the Order names it as a primary responsible party,  
12 which subjects it to significant monetary obligations to comply with the Order.

13 **VI. ACTION REQUESTED OF THE STATE BOARD**

14 SPT hereby requests the State Board to accept this Petition and set aside the Order with  
15 regard to SPT or modify the Order so as to name SPT as a secondary responsible party, rather  
16 than a primary responsible party. Title 23, Cal. Code of Regs., § 2052(a)(2)(B).

17 **VII. STATEMENT OF POINTS AND AUTHORITIES**

18 A Statement of Points and Authorities is filed concurrently herewith as Attachment B and  
19 incorporated herein by reference. *See also* paragraph IV above. SPT reserves the right to  
20 supplement its Points and Authorities in support of this Petition once the full administrative  
21 record is compiled by the Regional Board and to respond to other parties.

22 **VIII. STATEMENT THAT A COPY OF PETITION HAS BEEN SENT TO THE**  
23 **REGIONAL BOARD AND DISCHARGER**

24 A copy of the subject Petition has been sent concurrently to the Regional Board and  
25 Semtech Corporation.

1 **IX. ISSUES AND OBJECTIONS RAISED BEFORE THE REGIONAL BOARD**

2 SPT has previously raised the issues asserted in this petition with Regional Board staff in  
3 response to a draft Cleanup and Abatement Order prior to the issuance of the Order by the  
4 Regional Board's Executive Officer.

5 **X. REQUEST FOR HEARING TO PRESENT ADDITIONAL EVIDENCE**

6 SPT hereby requests that the State Board conduct a hearing on this matter for the purpose  
7 of oral argument and to receive additional evidence.

8 For the reasons stated herein, SPT respectfully requests that the State Board set aside the  
9 Order with regard to SPT or, in the alternative, name SPT as a secondary responsible party on the  
10 Order, rather than a primary responsible party.

11 Dated: November 6, 2013

Respectfully submitted,

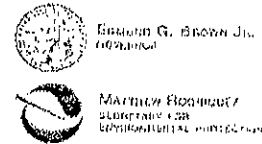
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13 By: 

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SPT Investments, Inc.

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# ATTACHMENT A



Los Angeles Regional Water Quality Control Board

October 8, 2013

Certified Mail  
Return Receipt Requested  
Claim Nos. Listed below

Mr. Matthew L. Wein  
Senior Counsel  
SPT Investments, Inc.  
One Angen Center Drive, M/S 28-1-A  
Thousand Oaks, CA 91320-1799  
Claim No. 7008 0150 0003 7881 1043

Mr. Randall H. Holliday  
Vice-President, General Counsel, and Secretary  
Semtech Corporation  
200 Flynn Road  
Camarillo, CA 93012  
Claim No. 7012 1640 0000 6294 5076

**SUBJECT: CLEANUP AND ABATEMENT ORDER NO. R4-2013-0036**

**SITE/CASE: FORMER SEMTECH CORPORATION FACILITY  
652 MITCHELL ROAD, NEWBURY PARK, CALIFORNIA  
(SITE CLEANUP NO. 0422, SITE ID NO. 204FY00)**

Dear Mr. Wein and Mr. Holliday:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of ground and surface waters and their beneficial uses within major portions of Los Angeles County and Ventura County. The above-referenced site is situated within the jurisdiction of the Regional Board.

Enclosed find Cleanup and Abatement Order (CAO) No. R4-2013-0036, directing SPT Investments, Inc. and Semtech Corporation (Dischargers) to assess, monitor, cleanup, and abate the effects of wastes discharged to the soil and groundwater at the former Semtech Corporation facility located at 652 Mitchell Road, Newbury Park, California (Site). This Order is issued under section 13304 of the California Water Code. Should the Dischargers fail to comply with any provision of this Order, it may be subject to further enforcement action, including injunction and civil monetary remedies, pursuant to applicable California Water Code sections including, but not limited to, sections 13304, 13308, and 13350.

A draft of this CAO was provided to you on November 2, 2012, inviting comments. Comments were provided on January 11, 2013 by SPT Investments, Inc., Semtech Corporation, and CBS Corporation and Northrop Grumman Systems Corporation, jointly, as successors of former Westinghouse Electric Corporation. The attached document, titled "Response to Comments -- Draft Cleanup and Abatement Order No. R4-2013-0036," summarizes the comments received and the responses to those comments.

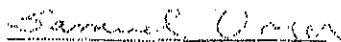
MARIA MPODIANAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | [www.waterboards.ca.gov/laurlgwqab](http://www.waterboards.ca.gov/laurlgwqab)

October 8, 2013

If you have any questions, please contact the project manager, Dr. Angelica Castaneda, at (213) 576-6737 ([Angelica.Castaneda@waterboards.ca.gov](mailto:Angelica.Castaneda@waterboards.ca.gov)), or Ms. Thizar Tintut-Williams, Site Cleanup Unit III Chief at (213) 576-6723 ([Thizar.Williams@waterboards.ca.gov](mailto:Thizar.Williams@waterboards.ca.gov)).

Sincerely,



Samuel Unger, P.E.  
Executive Officer

Enclosures:

1. Cleanup and Abatement Order No. R4-2013-0036
2. Response to Comments - Draft Cleanup and Abatement Order No. R4-2012-XXXX

cc:

Mr. Peter Duchesneau, Manatt, Phelps & Phillips LLP  
Mr. Craig Moyer, Manatt, Phelps & Phillips LLP  
Mr. John F. Cermak, Jr., Baker & Hostetler LLP  
Mr. Rick Rothman, Bingham McCutchen LLP  
Mr. Darin Kuida, SPT Investments Inc  
Mr. Kip Keenan, Northrop Grumman Electronic Systems Corporation  
Mr. Michael Flaughner, MWH  
Mr. James K. Nguyen, Brown and Caldwell  
Ms. Elizabeth C. Brown, Northrop Grumman Systems Corporation  
Mr. William D. Wall, CBS Corporation  
Ms. Jennifer L. Fordyce, State Water Resources Control Board  
Mr. Kurt Souza, Cal. DHS, Region 5 - So Cal. Branch, Drinking Water Field Operation  
Mr. Doug Beach, Ventura County Environmental Health Division, Ventura County  
Ms. Barbara Council, County of Ventura, Watershed Protection District  
Ms. Joanne Kelly, Resource Division Manager, City of Thousand Oaks

**CLEANUP AND ABATEMENT ORDER**

**NO. R4-2013-0036**



STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION

CLEANUP AND ABATEMENT ORDER NO. R4-2013-0036  
REQUIRING

SEMTECH CORPORATION AND  
SPT INVESTMENTS, INC.

TO ASSESS, MONITOR, CLEANUP, AND ABATE THE EFFECTS OF  
WASTES DISCHARGED TO WATERS OF THE STATE  
(PURSUANT TO CALIFORNIA WATER CODE SECTIONS 13304 AND 13267)

AT THE FORMER SEMTECH CORPORATION FACILITY  
652 MITCHELL ROAD  
NEWBURY PARK, CALIFORNIA  
(SITE CLEANUP NO. 0422 AND SITE ID NO. 204EY00)

This Cleanup and Abatement Order No. R4-2013-0036 (Order) is issued to Semtech Corporation and SPT Investments, Inc. based on provisions of California Water Code sections 13304 and 13267, which authorize the Regional Water Quality Control Board, Los Angeles Region (Regional Board) to issue a Cleanup and Abatement Order and require the submittal of technical and monitoring reports.

The Regional Board finds that:

**BACKGROUND**

1. **Dischargers:** Semtech Corporation (Semtech) and SPT Investments, Inc. (SPT) (hereinafter collectively called Dischargers) are Responsible Parties (RPs) due to their or their subsidiaries':
  - a. Ownership of the property located at 652 Mitchell Road, Newbury Park, California (hereinafter Site), and/or
  - b. Historical operations at the Former Semtech Corporation Facility located at the Site that resulted in the discharge of wastes to the environment. These wastes include volatile organic compounds (VOCs), particularly trichloroethylene (TCE), total petroleum hydrocarbons, and other inorganic waste such as nitrate (or its corresponding nitric acid) and fluoride (or its corresponding hydrofluoric acid).

As detailed in this Order, the Dischargers have caused or permitted waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State that creates, or threatens to create, a condition of pollution or nuisance.

2. **Location:** The Site is located at 652 Mitchell Road in Newbury Park, California. Figure 1, Site Location Map, attached hereto and incorporated herein by reference, depicts the location of the Site. Additionally, Figure 2, Site Plan and Surrounding Areas, also attached hereto and incorporated herein by reference, depicts the buildings occupying the Site, the Site occupants in time, and the surrounding area. Land use setting in the vicinity of the Site is industrial and commercial land use.
3. **Groundwater Basin:** The Site is in the Conejo Valley Groundwater Basin. As set forth in the *Water Quality Control Plan for the Los Angeles Region* (the Basin Plan), adopted on June 13, 1994, the Regional Board has designated beneficial uses for groundwater. These beneficial uses include municipal and domestic supply, as well as industrial and agricultural supply, in the Conejo Valley Groundwater Basin. In addition, the Basin Plan has established water quality objectives (including for total dissolved solids (TDS), sulfate, chloride, and boron) for the protection of these beneficial uses.

### SITE HISTORY

4. **Site Description and Activities:** The Site consists of approximately 4.148 acres and has been developed with a one-story main building on the southern half of the property (Figure 2). The northern areas of the property consist of paved areas used for parking and a small chemical storage building (blockhouse) adjacent to the northwest corner of the main building.

Based on lease agreements, Westinghouse Electric Corporation (WEC) leased, and likely occupied, a portion of the main building at the Site from 1960 to approximately 1965 (Figure 2). WEC was the first Site occupant. WEC's specific operations at the Site are not known. CBS Corporation (CBS) and Northrop Grumman Electronic Systems Corporation (Northrop Grumman), the successors of WEC, contend that, while WEC leased a portion of the main building for approximately five years, WEC only occupied the portion of the main building for about one year as a staging area as it prepared to move to another nearby location. In making these contentions, CBS and Northrop Grumman rely on sworn testimony of former WEC employees, a 1961 Los Angeles Times article, and a 1964 letter report to the Conejo Valley Sanitary Company. In addition to the main building, WEC leased a portion of the chemical storage building from 1965 to 1967. Northrop Grumman and CBS contend that WEC use of the chemical storage building was related to WEC's occupancy of an adjacent site (known as the Hillcrest Drive Property).

Semtech operated at the Site from 1961 to 2002 as a manufacturer of semiconductors (diodes and rectifiers). WEC and Semtech have been the only occupants of the Site since its development. Semtech shared the main building with WEC from 1961 to 1965, and the chemical storage building from 1965 to 1967. During Semtech's operation at the Site, several additions were made to the main building.

SPT purchased the Site in 2001 and is the current property owner. The Site has been vacant and unoccupied since approximately 2002 when Semtech vacated the Site.

### Property Ownership and Leasehold Information

Based on information in the Regional Board's files, the Site has the following property ownership and leasehold history:

- a. Prior to 1960, the Site was vacant/undeveloped land, surrounded by agricultural land uses. According to aerial photographs, the Site was developed in 1960 with the main building. In 1960, WEC leased approximately half of the main building as a tenant of Conejo Valley Corporation<sup>1</sup> under a lease dated September 30, 1960. WEC leased the portion of the main building until July 1965. On January 16, 1961, American Semiconductor Corporation (which later changed its name to Semtech Corporation) leased the other half of the main building at the Site (9,160 square feet), as a tenant of Conejo Valley Corporation. WEC leased a portion of the then newly built chemical storage building (blockhouse) from August 1965 to 1967, sharing the space with Semtech (Figure 2). Semtech leased and occupied the blockhouse from 1965 to 2001.
- b. Lynn Shadows<sup>2</sup> bought the Site in 1982 from the Janss Investment Corporation<sup>3</sup>.
- c. Semtech signed subsequent lease agreements for the Site with the following entities (as noted above, multiple additions/alterations were made to the building through the years) (Figure 2):
  - (1) Janss Corporation, Lease dated May 28, 1963, covering the half of the main building (9,160 square feet) being shared with WEC, and an addition of 10,000 square feet to the northwestern part of the main building. An underground storage tank (UST) to store acid (acid storage tank) (UST 2) was installed during this addition.
  - (2) Janss Corporation, Amendment No. 2 to Lease dated May 28, 1963, dated August 9, 1965, covering the lease of a newly erected chemical storage building (and a 2,000 gallon septic tank (UST 1)) for joint use and benefit of Semtech and WEC. Semtech was to occupy 502 square feet of the total 1,408 square feet chemical storage building.
  - (3) Janss Corporation, Amendment No. 3 to Lease dated May 28, 1963, dated August 9, 1965, indicating that Semtech will begin leasing the remaining portion of the main building (11,240 square feet) referred to as "Westinghouse space" previously leased to WEC.
  - (4) Janss Corporation, Amendment No. 4 to Lease dated May 28, 1963, dated January 11, 1967, covering the lease of the remaining 906 square feet portion of the chemical storage building being vacated by WEC.

<sup>1</sup> The status of the Conejo Valley Corporation on the California Secretary of State's website is listed as "dissolved."

<sup>2</sup> In 1996, Lynn Shadows converted from a general partnership to a limited liability company. The status of Lynn Shadows, LLC on the California Secretary of State's website is listed as "canceled."

<sup>3</sup> The status of Janss Investment Corporation and Janss Corporation on the California Secretary of State's website are both listed as "forfeited."

- (5) Janss Corporation, Lease dated May 9, 1967, covering the new improvements to the main building consisting of a 23,800 square feet addition to the eastern part of the building. An acid retention tank (UST 3) to be located north of the new addition as close as possible to the building is depicted on the plans associated with this lease.
  - (6) Janss Corporation, extension to the Lease dated May 9, 1967, signed on December 1, 1981.
  - (7) The Lynn Shadows, a general partnership, extension to the Lease dated December 17, 1986.
  - (8) The Lynn Shadows, Lease dated September 12, 1988 and Agreement for Construction of Improvements.
  - (9) The Lynn Shadows, a California Limited Liability Company, Extension of Lease dated September 15, 1997.
- d. SPT purchased the Site on April 17, 2001 from Rancho Conejo Partners, LLC.<sup>4</sup> SPT is the current owner of the Site.
5. **Chemical Usage:** Semtech's manufacturing process used hydrofluoric, hydrochloric, sulfuric, acetic, and nitric acids, sodium hydroxide, ammonium phosphate, hydrogen peroxide, aluminum oxide, silver, copper, nickel, acetone, zinc oxide, isopropanol, xylene, trichlorotrifluoroethane (Freon 113), Freon 12, Freon 13, Freon 22, Freon 502, toluene, 1,1,1-trichloroethane (TCA), and alkaline plating solutions containing cyanide. In addition, Semtech contends that limited quantities (4-10 gallons) of trichloroethylene (TCE) were used for engineering purposes. These chemicals were used by Semtech at different times and rates during Semtech's occupancy of the Site.

Semtech's process waste included acid, solvent, and alkaline plating solutions. Semtech reportedly operated four underground storage tanks (USTs) at the Site. Prior to 1987, acid wastes were directed to three USTs (UST 2, UST 3, and UST 4) for neutralization, solids reduction, and off-Site disposal (Figure 2). One additional tank, UST 1, west of the chemical storage building, received drips and spills from the block house and presumably from the adjacent fenced storage area. In mid-1986, Semtech decided to replace this underground waste handling system with an above-ground waste treatment system. Plans were made to continue to use UST 4 to handle wastes, while installing and starting the new system in the northeast corner of the main building. UST 1, UST 2, and UST 3 were removed in 1987 under the oversight of Ventura County. UST 4 was removed under the Regional Board's oversight in 1995.

In 1995, using ground penetrating radar, another UST (4,000 gallons) was discovered at the Site by Semtech. The tank was designated as UST 5. The contents of the tank were tested and found to contain elevated concentrations of trichloroethylene [220,000 micrograms per

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<sup>4</sup> Rancho Conejo Partners, LLC purchased the Site in March 2001.

kilogram ( $\mu\text{g}/\text{kg}$ ) in the sludge]. Semtech indicated that the tank belonged to the former tenant WEC.

In 2010, the Regional Board required WEC to submit information regarding its operations and chemical usage at the Site. In response, Northrup Grumman and CBS submitted a technical report to the Regional Board on November 1, 2010. In addition, Regional Board staff conducted multiple searches with local agencies in the area to discern WEC's operations and chemical usage. No detailed information, supported by original documents, was found regarding WEC's operations or chemical use at the Site. However, during a lawsuit concerning adjacent property unrelated to the Site, a former WEC employee testified under oath that WEC only used the Site for approximately one year as a staging or planning area prior to moving to other locations in Newbury Park.<sup>5</sup> CBS and Northrup Grumman contend that there is no evidence WEC used any chemicals, including TCE, at the Site, nor used UST 5. At the present time, the Regional Board lacks evidence to counter CBS and Northrup Grumman's contentions regarding WEC's usage of chemicals and UST 5.

Although Semtech has claimed that its use of TCE was limited, this is contradicted by the sworn deposition testimony of Semtech's former Manager and Director of Purchasing (in the same litigation previously mentioned), that indicated that Semtech used vast amounts of TCE. The employee testified that TCE was used in the degreasers, the ultrasonics, and in general cleaning operations.<sup>6</sup> In addition, the contents of UST 5 contain traces of silver, copper, and nickel, which were all used by Semtech in its operations. Underground piping also runs from the former Semtech QA Laboratory in the main building to former UST 5. This piping has also leaked contributing to the TCE contamination to the Site. Therefore, the evidence indicates that Semtech used UST 5 to handle waste derived from its operations.

#### EVIDENCE OF WASTE DISCHARGE AND BASIS FOR ORDER

6. **Waste Discharges:** Based on data from environmental assessments, wastes were discharged at and from the Site during industrial operations that began in approximately 1961. Soil, soil vapor, and groundwater assessments have been conducted at the Site since 1986. Sources of waste include five leaking underground storage tanks (USTs) that contained chemical mixtures. Table 1 shows the characteristics of the USTs at the Site.

The following summarizes the most recent assessment activities associated with the Site under Regional Board oversight:

**Soil Gas Investigation:** A Site-wide soil gas investigation was conducted in 2009 and 2010 by SPT pursuant to a California Water Code section 13267 Investigative Order, dated November 25, 2008. The VOCs most frequently detected in soil gas included TCE, PCE,

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<sup>5</sup> Deposition testimony of Mr. M Kevin Kilcoyne, former WEC employee, taken on February 20, 1992, *Rockwell International Corporation v. Janss Investment Corporation*, U.S. District Court, Central District of California, Case No. 89-6037 MRP (GHK).

<sup>6</sup> Deposition of Gerald Lanahan, former Semtech employee (Director of Purchasing), taken on May 18, 1992, *Rockwell International Corporation v. Janss Investment Corporation*, U.S. District Court, Central District of California, Case No. 89-6037 MRP (GHK).

Freon 11, Freon 113, 1,1-DCE, and methyl ethyl ketone (MEK). TCE and PCE were detected above the California Human Health Screening Levels (CHHSLs) for industrial/commercial land use. The highest TCE concentration detected in soil gas was 28,000 µg/L (CHHSL = 1.77 µg/L). The highest concentrations in soil gas were detected adjacent to the former UST 5 and directly beneath the former QA/QC lab (Figure 3). The TCE soil gas plume that exceeds CHHSLs extends beneath the main building.

**Soil Investigation:** A Site-wide soil investigation was conducted in 2010 and 2011 by Semtech under a California Water Code section 13267 Investigative Order, dated November 25, 2008. The following paragraphs summarize the main findings of the soil investigation:

- a. TCE was detected in soil at a maximum concentration of 37 mg/kg, exceeding USEPA Regional Screening Levels for residential soil (0.91 mg/kg) and industrial soil (6.4 mg/kg). The highest concentrations were detected in the proximity of former UST 5 and extended beneath the main building where the former QA/QC lab was located (Figure 4).
- b. TPH was detected at elevated soil concentrations in the vicinity of UST 5, reaching a maximum concentration of 20,000 mg/kg.
- c. Nitrate, fluoride, chloride, sulfate, aluminum, manganese, and sodium were detected in multiple soil samples at concentrations exceeding background levels. For example, the nitrate background level in soil was determined to be 12 mg/kg, the maximum nitrate concentration detected in soil adjacent to UST 2 was 240 mg/kg (twenty times higher than background levels), and groundwater samples adjacent to UST 2 detected nitrate concentrations of up to 220 mg/L or twenty-two times the nitrate maximum contaminant level (MCL) of 10 mg/L. Besides nitrate, similar observations apply to other inorganic chemicals. Therefore, inorganic contaminants in soil may be a continuous source to groundwater and may be the cause of elevated concentrations of nitrate, fluoride, chloride, and total dissolved solids in groundwater.
- d. In addition to the former UST areas, elevated levels (up to 70 mg/kg) of nitrate in soil were detected beneath the main building at the plating room and the etch room.

**Groundwater Investigation:** A Site-wide groundwater investigation was conducted in 2010 and 2011 by Semtech under a California Water Code section 13267 Investigative Order, dated November 25, 2008. In addition to collecting groundwater samples from the four dedicated monitoring wells at the Site, discrete groundwater samples were collected to a maximum depth of 200 feet below ground surface (bgs) to vertically delineate groundwater contamination. The following paragraphs summarize the main findings of the groundwater investigation:

- a. TCE (MCL = 5 µg/L) was detected in groundwater at concentrations ranging from 1.9 to 300,000 µg/L (Figures 5 and 6). UST 5 appears to be the predominant source of TCE impacts to groundwater at the Site because the TCE groundwater plume is centered at the former UST 5 location, extends to the west to the vicinity of former UST 2 and to the east to the vicinity of former UST 4. To date, it does not appear that the TCE groundwater

- plume has migrated off-Site to the east. TCE contamination in the UST 5 area extends from the water table at a depth of 35 feet bgs to 200 feet bgs where it was detected at 3.9 µg/L.
- b. Nitrate (MCL = 10,000 µg/L) concentrations ranged from 210 to 1,500,000 µg/L (Figures 7 and 8). The highest concentrations of nitrate were detected in and around former UST 2, UST 3, UST 4, and UST 5.
  - c. TPH was detected at concentrations ranging from 59 to 25,000 µg/L, above the San Francisco Bay Regional Water Quality Control Board's May 2008 Interim Final Environmental Screening Level (ESL) of 100 µg/L (Figure 9). Former UST 5 appears to be the predominant historical source because the highest concentrations of TPH in groundwater have been detected in samples adjacent to this tank. TPHs have also been detected in the vicinity of former UST 1.
  - d. Freon 113 (MCL = 1,200 µg/L) has been historically detected in the permanent groundwater monitoring wells with higher concentrations reported at MW-3 at the Site. During the latest investigation, Freon 113 was detected at concentrations ranging from 14 to 780 µg/L (Figure 10). However, the analytical detection limit for Freon 113 in the groundwater samples collected adjacent to UST 5 was 1,600 µg/L and the groundwater concentrations for this chemical adjacent to UST 5 was reported as below the detection limit (<1,600 µg/L). Since the Freon 113 detection limit around UST 5 is higher than the corresponding MCL, it is inconclusive that UST 5 is a source of Freon 113.
  - e. Acetone (ESL = 1,500 µg/L) has been historically detected in the permanent groundwater monitoring wells MW-1, MW-2, MW-3, and MW-4 at the Site at concentrations as high as 5,600 µg/L. During the latest investigation, acetone was reported as not detected. However, the analytical detection limit for acetone in the groundwater samples collected adjacent to UST 5 was up to 120,000 µg/L. Although groundwater concentrations for acetone adjacent to UST 5 were reported as below the detection limit (<120,000 µg/L), it is inconclusive that UST 5 is a source of acetone.
  - f. Fluoride (MCL = 4,000 µg/L) concentrations ranged from 130 to 17,000 µg/L. The highest concentrations of fluoride in groundwater were detected adjacent to former UST 3 (Figure 11). Based on the elevated concentrations of fluoride in soils adjacent to former UST 3, it appears that this area continues to be a source of fluoride to the groundwater.
  - g. Total dissolved solids (TDS) concentrations ranged from 114 to 10,900 mg/L in groundwater at the Site (Figure 12). TDS concentrations up to 1,640 mg/L have been documented to occur naturally at an upgradient Site (Haley & Aldrich, 2010). The water quality objective for TDS for the region is 800 mg/L. TDS is a general indicator of water quality, it measures primarily minerals and salts. Predominant sources of TDS at the Site appear to be UST 2, UST 3, UST 4, and UST 5.

- h. 1,4-dioxane (State of California Notification Level = 1 µg/L), an emergent chemical, has been detected at low concentrations in groundwater. Concentrations of 1,4-dioxane range from 2.8 to 28 µg/L in groundwater at the Site (Figure 13).

#### 7. Source Elimination and Remediation Status at the Site:

- a. UST 1, UST 2, UST 3, UST 4, and UST 5 have all been removed from the Site. Therefore, the contents of these tanks are no longer a source of soil and groundwater contamination.
- b. Only soil surrounding and beneath UST 4 was over-excavated following an approved remedial plan in 1995. However, the remedial excavation of UST 4 was limited by the proximity of the building and residual concentrations of chemicals of concern (mainly inorganic chemicals) were left in place in close proximity to the water table. The soil surrounding and beneath UST 1, UST 2, UST 3, and UST 5 continues to have residual contamination.
- c. Based on the groundwater data, the residual contamination left in the soil is still a source of groundwater contamination.

#### 8. Summary of Findings from Subsurface Investigations:

The Regional Board has reviewed and evaluated numerous technical reports and records pertaining to the discharge, detection, and distribution of wastes at the Site and its vicinity. The Dischargers have stored, used, and/or discharged volatile organic compounds, petroleum hydrocarbons, and inorganic chemicals at the Site.<sup>7</sup> Elevated levels of VOCs, petroleum hydrocarbons, and inorganic wastes have been detected in soil, soil vapor, and/or groundwater at or beneath the Site.

- a. The Site has elevated concentrations of VOCs, such as TCE, in shallow soil extending to the water table. The presence of VOCs in soil constitutes a continuous source of contamination to groundwater. VOCs concentrations in soil and soil vapor warrant remediation.
- b. The Site has elevated concentrations of VOCs that exceed their corresponding CHHSLs. VOCs, mainly TCE but also PCE and carbon tetrachloride, are widespread in soil gas beneath the main building. These elevated concentrations are a threat to human health due to potential indoor vapor intrusion. Although the building is currently vacant, elevated soil gas concentrations of VOCs shall be addressed to restore safe land use at the Site.

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<sup>7</sup> Under precedential Orders issued by the State Water Resources Control Board (State Water Board), SPT is liable for the cleanup of wastes at the Site regardless of its involvement in the activities that initially caused the pollution. The discharge of chemicals did not cease when Semtech vacated the premises. The State Water Board has interpreted the term "discharge" to include not only an active initial release, but also a passive migration of waste. The discharge continues as long as the pollutants remain in the soil and groundwater at the Site. (See State Water Board Orders WQ 86-2 (*Zoevan Corporation*), WQ 89-1 (*Schmidl*), and WQ 89-8 (*Spitzer*.)



- c. Shallow groundwater at a depth of 35 feet bgs, immediately adjacent to former UST 5, is contaminated with TCE up to 300,000 µg/L. This shallow groundwater TCE plume, centered at former UST 5, extends laterally to the east and west across the Site. In addition, this TCE groundwater plume has migrated vertically to deeper groundwater zones to a depth of at least 180 feet bgs. The lateral extent of the deep plume has not been determined.
- d. Groundwater adjacent to UST 2, UST 3, and UST 4 is impacted with high levels of inorganic contaminants, such as, nitrate and fluoride, resulting in elevated levels of TDS that exceed naturally occurring background concentrations and water quality objectives. Impacted soils associated with these tanks shall be addressed and remediated because they are potentially a continuous source to groundwater contamination.
- e. Groundwater has been impacted by the industrial operations historically conducted at the Site. Chemicals of concern include organic compounds and inorganic compounds that are comingled. Therefore, groundwater remedial alternatives will have to consider this complex mixture of contaminants that have different physical and chemical properties to restore groundwater quality to background conditions or to acceptable remedial cleanup goals.

#### 9. Regulatory Status:

On November 25, 2008, the Regional Board issued a California Water Code section 13267 Investigative Order to Semtech and SPT to complete soil, soil gas, and groundwater assessment at the Site. Both parties have been working with the Regional Board under a phased approach to complete Site assessment. The information gathered from this investigation warrants Site remediation.

On June 10, 2010, the Regional Board issued a California Water Code section 13267 Investigative Order to CBS and Northrop Grumman, as successors to WEC, to provide operational and chemical use information at the Site. Both parties submitted a technical report with information regarding WEC's occupancy of the Site.

On December 17, 2010, the Regional Board issued a California Water Code section 13267 Investigative Order to Semtech to provide historical operational and chemical use information at the Site. In response, Semtech produced records such as lease agreements, lay-out maps, historical plans, description of operations, and material safety data sheets.

On November 2, 2012, Regional Board Staff released a draft version of this Order (Draft CAO) for public review and comment. The Draft CAO identified Semtech, CBS and Northrop Grumman (as successors to WEC), and SPT as responsible parties for cleanup of wastes at the Site. Written comments on the Draft CAO were due on January 11, 2013, after an extension was approved by Regional Board Staff. Written comments were received on January 11, 2013 and were addressed by Regional Board Staff in the document titled "Response to Comments."

CBS and Northrop Grumman commented that multiple lines of evidence demonstrate that WEC's presence at the Site was limited in time (about one year) and limited in scope (office and staging) and could not have caused or contributed to the contamination at the Site. At the present time, the Regional Board lacks credible evidence countering this contention. After careful consideration of all comments received, the Regional Board has decided that there is currently not enough evidence in the Regional Board's files to demonstrate that WEC used chemicals at the Site, or that WEC had installed or used UST 5, and therefore caused or contributed to the contamination at the Site. Therefore, CBS and Northrop Grumman are not identified as responsible parties in this Order. However, if such information is discovered and/or provided to the Regional Board, the Regional Board may modify this Order to add CBS and Northrop Grumman as a responsible party.

SPT submitted comments requesting that the Board name SPT as a "secondarily liable"<sup>8</sup> responsible party to this Order. Through various orders, the State Water Board has identified several factors that should be considered in determining whether a party should be held secondarily liable. In general, however, a party should only be placed in a position of secondary liability where: (1) it did not cause or permit the activity that led to the initial discharge into the environment; and (2) there is a primarily responsible party that is performing the cleanup.<sup>9</sup> Because no responsible party has assumed cleanup responsibility and, thus, no cleanup is progressing at the Site, it is not appropriate at this time for the Regional Board to name SPT as secondarily liable. For these reasons, both Sentech and SPT are primarily liable for the cleanup of wastes at the Site in accordance with this Order. In the event that Sentech were to assume primary responsibility for cleaning up the wastes at the Site, and the Regional Board determines that cleanup is progressing in accordance with this Order, the Regional Board retains the ability to modify this Order and assign SPT as a secondarily liable party.

10. **Sources of Information:** The sources for the evidence summarized above include, but are not limited to: reports and other documentation in Regional Board files, telephone calls and e-mail communication with responsible parties, their attorneys and consultants, and Site visits.

#### AUTHORITY - LEGAL REQUIREMENTS

11. Section 13304(a) of the Water Code provides that:

*"(a) Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste*

<sup>8</sup> The term "secondarily liable" is not actually found in the Water Code itself, but rather finds its origin in State Water Board precedential orders. In practice, a party that is named secondarily liable is not obligated to comply with a cleanup and abatement order unless the "primarily responsible" party fails to comply.

<sup>9</sup> See, e.g., State Water Board Orders WQ 86-18 (*Vulco Park*), WQ 87-6 (*Prudential*), WQ 89-8 (*Spitzer*), WQ 89-12 (*San Diego Port District*), WQ 92-13 (*Wenwest*), and WQ 83-9 (*Alcoa*).

*or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant."*

12. Section 13304(c)(1) of the California Water Code provides that:

*"... the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. . . ."*

13. Section 13267(b)(1) of the California Water Code provides that:

*"In conducting an investigation..., the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."*

14. The State Water Board has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code section 13304*. This Policy sets forth the policies and procedures to be used during an investigation and/or cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. Resolution No. 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution No. 92-49 requires the waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23, California Code of Regulations (CCR), section 2550.4. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board.

15. The Regional Board adopted the Water Quality Control Plan for the Los Angeles Region (Basin Plan), which identifies beneficial uses and establishes water quality objectives to protect those uses. The Site overlies groundwater within the Conejo Valley Groundwater Basin. The beneficial uses of the groundwater beneath the Site are municipal and domestic supply, as well as industrial and agricultural supply. Water quality objectives that apply to the groundwater at the Site include the state MCLs. The chemicals in groundwater that exceed their corresponding MCLs include TCE, nitrate, and fluoride. The concentrations of TCE, nitrate, fluoride, TPH, and TDS in groundwater at the Site exceed the water quality objectives for the wastes. The exceedance of applicable water quality objectives in the Basin Plan constitutes pollution as defined in Water Code section 13050(1)(1). The wastes detected in groundwater, soil matrix, and soil vapor at the Site threaten to cause pollution, including contamination, and nuisance.

### DISCHARGERS' LIABILITY

16. Trichloroethylene, total petroleum hydrocarbons, nitrate (or its acid form nitric acid), fluoride (or its acid form hydrofluoric acid), and other waste constituents discharged at the Site constitute "waste" as defined in Water Code section 13050(d).
17. As described in the Findings of this Order, the Dischargers are subject to an order pursuant to Water Code section 13304 because the Dischargers have caused or permitted waste to be discharged or deposited where it has discharged to waters of the state and has created, and continues to threaten to create, a condition of pollution or nuisance. The condition of pollution is a priority violation and issuance or adoption of a cleanup or abatement order pursuant to Water Code section 13304 is appropriate and consistent with policies of the Regional Board.
18. Due to the activities described in this Order, the Dischargers have caused or permitted wastes, including VOCs, particularly TCE, TPHs, and inorganic compounds such as nitrate, fluoride and TDS, to be discharged or deposited where the wastes are, or probably will be discharged into the waters of the State, which creates a condition of pollution or nuisance. The Dischargers have caused or permitted VOCs, particularly TCE, TPHs, and inorganic compounds such as nitrate, fluoride and TDS, to be discharged or deposited where the wastes are or probably will pose a potential human health threat to occupants of the building onsite through direct contact exposure to contaminated soil and/or groundwater or through vapor intrusion into indoor air.
19. The Dischargers, as a former operator of facilities at the Site and the current owner of the Site, are responsible for complying with this Order.
20. This Order requires investigation and cleanup of the Site in compliance with the Water Code, the applicable Basin Plan, State Water Board Resolution No. 92-49, and other applicable plans, policies, and regulations.
21. As described in the Findings in this Order, the Dischargers are subject to an order pursuant to Water Code section 13267 to submit technical reports because existing data and information

about the Site indicate that waste has been discharged, is discharging, or is suspected of discharging, at the property, which is or was owned and/or operated by the Dischargers named in this Order. The technical reports required by this Order are necessary to assure compliance with Water Code section 13304 and State Water Board Resolution No. 92-49, including to adequately investigate and cleanup the Site to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.

22. The Regional Board is declining to name additional responsible parties for the Site in this Order at this time. Substantial evidence indicates that the Dischargers caused or permitted waste to be discharged into waters of the state and are therefore appropriately named as responsible parties in this Order.

### CONCLUSIONS

23. Issuance of this Order is being taken for the protection of the environment and as such is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, Title 14, sections 15061(b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup activities at the Site. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Dischargers' proposed remedial activities and possible associated environmental impacts. If the Regional Board determines that implementation of any plan required by this Order will have a significant effect on the environment, the Regional Board will conduct the necessary and appropriate environmental review prior to Executive Officer's approval of the applicable plan.
24. Pursuant to Water Code section 13304, the Regional Board may seek reimbursement for all reasonable costs to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action.
25. Any person aggrieved by this action of the Regional Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, Title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions will be provided upon request or may be found on the Internet at:  
[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)

## REQUIRED ACTIONS

**THEREFORE, IT IS HEREBY ORDERED**, pursuant to California Water Code sections 13304 and 13267, that the Dischargers shall assess, monitor, cleanup, and abate the effects of the waste forthwith discharging at and from 652 Mitchell Road, Newbury Park, California. "Forthwith" means as soon as reasonably possible, but in any event no later than the compliance dates below. More specifically, the Dischargers shall:

- 1. Develop and Update the Conceptual Site Model:** The Conceptual Site Model (CSM) should include a written presentation with graphic illustrations of discharge scenario, geology and hydrogeology, waste fate and transport in soil, soil gas, and groundwater, distribution of wastes, exposure pathways, sensitive receptors and other relevant information. The CSM shall be based upon the actual data already collected from the Site and shall identify data gaps, i.e., areas where further investigation is needed.

If information presented in the CSM suggests that assessment, characterization, and delineation of waste constituents is incomplete, the Dischargers shall prepare and submit a work plan to complete assessment and characterization of VOCs and other potential waste constituents in soil vapor, soil matrix, and groundwater and to fully delineate the vertical and lateral extent of wastes in the soil and groundwater onsite and offsite as set forth in Number 2 below.

The CSM shall also be updated as new information becomes available. The updated CSM shall be submitted upon request by the Regional Board.

- 2. Complete delineation of on- and off-Site waste discharges in soil, soil vapor, and groundwater:** Completely delineate the extent, vertically and laterally, of waste in soil, soil vapor, and groundwater caused by the discharge of wastes including, but not limited to, VOCs, TPH and inorganic waste constituents such as nitrate, fluoride, and TDS at the Site into the saturated and unsaturated zones. Assessment has been ongoing under Regional Board oversight and the Regional Board considers that there is enough delineation of contamination to initiate remediation. However, additional data and sampling may be needed to refine the current CSM, to select an appropriate remedial technology, and to establish remedial goals. Completion of delineation may require submittal of multiple work plans for approval.
- 3. Expand the network of monitoring wells to address the different groundwater zones beneath the Site and all the sources:** Currently, there are four monitoring wells at the Site screened approximately from 23 to 50 feet below ground surface (bgs) in the shallow groundwater zone. Based on the most recent investigations, groundwater contamination extends to at least 180 feet bgs in the vicinity of UST 5. The monitoring wells at the Site do not address multiple groundwater zones nor the UST 5 area. The network of monitoring wells shall

be expanded to assist in delineation, monitor the performance of remedial efforts and, potentially, be used to conduct remediation. See Attachment A: Time Schedule, for the deadline for this work.

Completion of groundwater delineation may require submittal of multiple work plans for approval in the future.

4. **Continue to conduct groundwater monitoring and reporting:**
    - a. Continue the existing semiannual groundwater monitoring and reporting program (Attachment B) as required on March 18, 2011 by the Regional Board. The first semiannual groundwater monitoring report under this Order is due on **January 15, 2014**.
    - b. As new wells are installed, incorporate them into the existing groundwater monitoring and reporting program.
  5. **Conduct remedial action:** Implement a cleanup and abatement program for the cleanup of wastes in soil, soil vapor, and groundwater and the abatement of the effects of the discharges of waste on beneficial uses of water. Specifically, the Dischargers shall:
    - a. Develop a comprehensive Remedial Action Plan(s) (RAP) for cleanup of wastes in the soil matrix, soil vapor, and groundwater originating from the Site and submit it to the Regional Board for review and approval. The RAP shall include, at a minimum:
      - (1) Preliminary cleanup goals for soil and groundwater in compliance with State Water Board Resolution No. 92-49 ("*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code section 13304*"). Section III.G. of Resolution No. 92-49 requires cleanup to background, unless that is not reasonable. Alternative cleanup levels to background must comply with California Code of Regulations, Title 23, sections 2550.4, and be consistent with maximum benefit to the people of the state, protect beneficial uses, and result in compliance with the Basin Plan. Alternative cleanup levels for groundwater shall not exceed water quality objectives in the Basin Plan, including Federal and California's MCLs, and Notification Levels for drinking water as established by the State Department of Public Health. Alternative cleanup levels for soil and soil vapor shall not exceed levels that will result in groundwater exceeding water quality objectives in the Basin Plan, including Federal and California's MCLs, and Notification Levels for drinking water as established by the State Department of Public Health.
- The following information shall be considered when establishing preliminary cleanup goals:
- A. Soil cleanup levels set forth in the Regional Board's *Interim Site Assessment and Cleanup Guidebook*, May 1996.
  - B. Human health protection levels set forth in the current USEPA Region IX's Regional Screening Levels.

- C. Protection from vapor intrusion and protection of indoor air quality based on the California EPA's January 2005 (or later version) *Use of Human Health Screening Levels (CHHSLs) in Evaluation of Contaminated Properties*. Soil vapor sampling requirements are stated in the April 2012 *Advisory - Active Soil Gas Investigations* by the Department of Toxic Substances Control (DTSC), the Los Angeles and San Francisco Regional Boards (or latest version). The 2011 *Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air* and the *Vapor Intrusion Mitigation Advisory* by the DTSC should also be considered.
- D. Groundwater cleanup goals shall not exceed applicable water quality objectives or criteria necessary to protect the beneficial uses, including the Regional Board's Basin Plan water quality objectives (e.g., California's MCLs), Notification Levels for drinking water as established by the State Department of Public Health, State Water Board's Ocean Plan water quality objectives, and the California Toxics Rule water quality criteria, at a point of compliance approved by the Regional Board.
- (2) Evaluation of the technology(ies) proposed for remediation of soil matrix, soil vapor, and groundwater.
  - (3) Description of the selection criteria for choosing the proposed method over other potential remedial options. Discuss the technical merit, suitability of the selected method under the given site conditions and waste constituents present, economic and temporal feasibility, and immediate and/or future beneficial results.
  - (4) Description of any bench-scale test or pilot projects intended to be implemented.
  - (5) Estimation of cumulative mass of wastes to be removed with the selected method. Include all calculations and methodology used to obtain this estimate.
  - (6) A proposed schedule for completion of the RAP.
- b. Upon Regional Board approval of the Remedial Action Plan(s), implement the RAP in accordance with the approved schedule.
  - c. Submit quarterly remediation progress reports to this Regional Board. The quarterly remediation progress reports shall document all performance data associated with the operating systems.
  - d. Submit revisions to or additional RAPs as needed if the implemented remedial measure does not completely achieve all site cleanup goals. Completion of the RAP may require multiple approved work plans.
  - e. Upon completion of implementation of the RAP, submit a Remedial Action Plan Completion Report.



6. **Public Review and Involvement:** A Public Participation Plan shall be prepared and/or updated when directed by the Executive Officer as necessary to reflect the degree of public interest in the investigation and cleanup process.
7. **Time Schedule:** The Dischargers shall submit all required work plans and reports and complete work within the schedule in any approved work plan or RAP and the time schedule listed in Attachment A attached hereto and incorporated herein by reference, which may be revised by the Executive Officer without revising this Order.
8. **Waste Discharge Requirements:** As part of the remediation efforts, chemical or biochemical compounds may need to be injected into the subsurface to facilitate cleanup and abatement activities. Depending on the selected remedy, the discharge of treated wastewater to surface and/or ground water may also be needed due to the cleanup and abatement activities. These technologies and waste discharges need to be covered by Waste Discharge Requirements (WDR) or other Orders pursuant to sections 13263, 13376, and 13304 of the California Water Code when appropriate. Chemical or biochemical compounds cannot be injected into the subsurface until a Site-specific WDR or applicable general WDR is issued by this Regional Board. Additionally, continued monitoring of the groundwater quality beneath the area of concern after the completion of this cleanup and abatement activity may be required.
9. **The Regional Board's authorized representative(s) shall be allowed:**
  - a. Entry upon premises where a regulated facility or activity is located, conducted, or where records are stored, under the conditions of this Order.
  - b. Access to copy any records that are stored under the conditions of this Order.
  - c. Access to inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order.
  - d. The right to photograph, sample, and monitor the Site for the purpose of ensuring compliance with this Order, or as otherwise authorized by the California Water Code.
10. **Contractor/Consultant Qualification:** As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, all reports shall be prepared by, or under the supervision of, a California registered professional engineer or geologist and signed by the registered professional. All technical reports submitted by a Discharger shall include a statement signed by the authorized representative certifying under penalty of law that the representative has examined and is familiar with the report and that to his knowledge, the report is true, complete, and accurate. All technical documents shall be signed by and stamped with the seal of the above-mentioned qualified professionals that reflects a license expiration date.
11. This Order is not intended to permit or allow the Dischargers to cease any work required by any other Order issued by the Regional Board, nor shall it be used as a reason to stop or redirect any investigation or cleanup or remediation programs ordered by the Regional Board or any other agency. Furthermore, this Order does not exempt the Dischargers from compliance with any other laws, regulations, or ordinances that may be applicable, nor does

it legalize these waste treatment and disposal facilities, and it leaves unaffected any further restrictions on those facilities that may be contained in other statutes or required by other agencies.

12. The Dischargers shall submit a 30-day advance notice to the Regional Board of any planned changes in name, ownership, or control of the Site and shall provide a 30-day advance notice of any planned physical changes to the Site that may affect compliance with this Order. In the event of a change in ownership or operator, the Dischargers also shall provide a 30-day advance notice, by letter, to the succeeding owner/operator of the existence of this Order, and shall submit a copy of this advance notice to the Regional Board.
13. Abandonment of any groundwater well(s) at the Site must be approved by and reported to the Regional Board at least 30 days in advance. Any groundwater wells removed must be replaced within a reasonable time, at a location approved by the Regional Board. With written justification, the Regional Board may approve the abandonment of groundwater wells without replacement. When a well is removed, all work shall be completed in accordance with California Department of Water Resources Bulletin 74-90, "California Well Standards," Monitoring Well Standards Chapter, Part III, sections 16-19.
14. In the event compliance cannot be achieved within the terms of this Order, the Discharger has the opportunity to request, in writing, an extension of the time specified. The extension request shall include an explanation why the specified date could not or will not be met and justification for the requested period of extension. Any extension request shall be submitted as soon as the situation is recognized and no later than the compliance date. Extension requests not approved in writing with reference to this Order are denied.
15. Reference herein to determinations and considerations to be made by the Regional Board regarding the terms of the Order shall be made by the Executive Officer or his/her designee. Decisions and directives made by the Executive Officer in regards to this Order shall be as if made by the Regional Board.
16. The Regional Board, through its Executive Officer, may revise this Order as additional information becomes available. Upon request by the Dischargers, and for good cause shown, the Executive Officer may defer, delete or extend the date of compliance for any action required of the Dischargers under this Order. The authority of the Regional Board, as contained in the California Water Code, to order investigation and cleanup, in addition to that described herein, is in no way limited by this Order.
17. Continue any remediation or monitoring activities until such time as the Executive Officer determines that sufficient cleanup has been accomplished and this Order has been satisfied.
18. Reimburse the Regional Board for reasonable costs associated with oversight of the investigation and cleanup of the waste at or emanating from the Site. Provide the Regional Board with the name or names and contact information for the person to be provided billing statements from the State Water Board.

19. The Regional Board, under the authority given by Water Code section 13267(b)(1), requires a Discharger to include a perjury statement in all reports submitted under this Order. The perjury statement shall be signed by a senior authorized representative (not by a consultant). The perjury statement shall be in the following format:

*"I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

20. The State Water Board adopted regulations requiring the electronic submittals of information over the internet using the State Water Board GeoTracker data management system. The Dischargers are required not only to submit hard copy reports required in this Order, but also to comply by uploading all reports and correspondence prepared to date on to the GeoTracker data management system. The text of the regulations can be found at the URL:  
[http://www.waterboards.ca.gov/ust/electronic\\_submittal/docs/text\\_regs.pdf](http://www.waterboards.ca.gov/ust/electronic_submittal/docs/text_regs.pdf)
21. Failure to comply with the terms or conditions of this Order may result in imposition of civil liabilities, imposed either administratively by the Regional Board or judicially by the Superior Court, in accordance with sections 13268, 13304, 13308, and/or 13350 of the California Water Code, and/or referral to the Attorney General of the State of California.
22. None of the obligations imposed by this Order on the Dischargers are intended to constitute a debt, damage claim, penalty or other civil action that should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of California intended to protect the public health, safety, welfare, and environment.

Ordered by:

Samuel Unger  
Samuel Unger, P.E.  
Executive Officer

Date: Oct. 8, 2013

## ATTACHMENTS

- Attachment A: Time Schedule  
Attachment B: Monitoring and Reporting Program for Groundwater

## TABLES

- Table 1: Summary of former Underground Storage Tanks at the Site

## FIGURES

- Figure 1: Site Location Map  
Figure 2: Site Plan and Surrounding Areas  
Figure 3: Estimated TCE isoconcentration in soil gas at 5 feet bgs  
Figure 4: Trichloroethene concentrations in soil  
Figure 5: TCE concentrations in groundwater (35 feet depth)  
Figure 6: Trichloroethene concentrations in groundwater (50 feet depth)  
Figure 7: Nitrate concentrations in groundwater (35 feet depth)  
Figure 8: Nitrate concentrations in groundwater at (50 feet depth)  
Figure 9: Hydrocarbon concentrations in groundwater  
Figure 10: Freon 113 concentrations in groundwater (35 feet depth)  
Figure 11: Fluoride concentrations in groundwater (35 feet depth)  
Figure 12: Total dissolved solids concentrations in groundwater (35 feet depth)  
Figure 13: 1,4-dioxane concentrations in groundwater

Note: All Figures were taken from technical reports prepared by Site consultants. Information on Table 1 was collected from reports prepared by Site consultants.

## REFERENCES

California Department of Toxic Substances Control, 2011. Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air.

California Department of Toxic Substances Control, 2011. Vapor Intrusion Mitigation Advisory.

California Department of Toxic Substances Control, 2012. Advisory Active Soil Gas Investigations.

California Department of Toxic Substances Control, 2012. Vapor Intrusion Public Participation Advisory.

California Office of Environmental Health Hazard Assessment, 2010. California Human Health Screening Levels (CHHSLs).

California Regional Water Quality Control Board, Los Angeles Region, 1996. Interim Site Assessment and Cleanup Guidebook.

California Regional Water Quality Control Board, Los Angeles Region, 1994. Water Quality Control Plan.

California Regional Water Quality Control Board, San Francisco Bay Region, 2008. Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater.

Haley & Aldrich Inc., 2010. Updated Baseline Laboratory Results for Skyworks Solutions Inc.

URS, 2002. Phase I Environmental Site Assessment Report for Skyworks Solutions.

USEPA, 2000. California Toxics Rule.

USEPA, 2011. Regional Screening Levels (RSL) for Chemical Contaminants at Superfund Sites.

**ATTACHMENT A: TIME SCHEDULE**

REQUIREMENT		DEADLINE
1	Develop and Update the Current Conceptual Site Model.	Annually or as needed depending on new data. First report is due July 2, 2014
2	Complete delineation of on- and off-Site waste discharges in soil, soil vapor, and groundwater. The Regional Board considers that there is enough delineation of contamination to initiate remediation. However, additional data and sampling may be needed to refine the current Conceptual Site Model, to select an appropriate remedial technology, and to establish remedial goals.	February 14, 2014
3	Expand the network of monitoring wells to address the different groundwater zones beneath the Site and all the sources. Submit a Work Plan for the installation of additional monitoring wells.	February 14, 2014
4	Continue to conduct groundwater monitoring and reporting.  <u>Monitoring Period</u> January to June July to December	Semiannual each year  <u>Report Due Date</u> July 15 <sup>th</sup> January 15 <sup>th</sup>
5	Conduct remedial action:	
5.a.	Submit a Remedial Action Plan(s) (RAP) for cleanup of wastes in the soil matrix, soil vapor, and groundwater originating from the Site that includes a time schedule for implementation.	February 14, 2014  According to the schedule approved by Executive Officer
5.b.	Implement the RAP.	<u>Report Due Dates</u> April 15 <sup>th</sup> July 15 <sup>th</sup>
5.c.	Submit quarterly remediation progress reports.	October 15 <sup>th</sup> January 15 <sup>th</sup>  According to the schedule approved by the Executive Officer
5.d.	Submit revisions to or additional RAPs as needed. Multiple Remedial Action Plans may be required to implement multiple remedial measures to achieve all Site cleanup goals.	

	REQUIREMENT	DUE DATE
5.e	Upon completion of implementation of the RAP, submit a RAP Completion Report.	According to the schedule approved by the Executive Officer
6	Public review and involvement: Submit a Public Participation Plan for review and approval.	February 14, 2014

## ATTACHMENT B

### MONITORING AND REPORTING PROGRAM FOR GROUNDWATER CLEANUP AND ABATEMENT ORDER NO. R4-2013-0036

This Monitoring and Reporting Program is part of Cleanup and Abatement Order No. R4-2013-0036 (Order). Failure to comply with this program constitutes noncompliance with this Order and the California Water Code, which can result in the imposition of civil monetary liability. All sampling and analyses shall be by USEPA approved methods. The test methods chosen for detection of the constituents of concern shall be subject to review and concurrence by the Regional Board.

Laboratory analytical reports to be included in technical reports shall contain a complete list of chemical constituents that are tested for and reported on by the testing laboratory. In addition, the reports shall include both the method detection limit and the practical quantification limit for the testing methods. All samples shall be analyzed within the allowable holding time. All quality assurance/quality control (QA/QC) samples must be run on the same dates when samples were actually analyzed. Proper chain of custody procedures must be followed and a copy of the completed chain of custody form shall be submitted with the report. All analyses must be performed by a California Department of Public Health accredited laboratory.

The Regional Board's *Quality Assurance Project Plan, September 2008*, can be used as a reference and guidance for project activities involving sample collection, handling, analysis and data reporting. The guidance is available on the Regional Board's web site at:

[http://www.waterboards.ca.gov/rwqcb4/water\\_issues/programs/remediation/Board\\_SGV-SFVCleanupProgram\\_Sept2008\\_QAPP.pdf](http://www.waterboards.ca.gov/rwqcb4/water_issues/programs/remediation/Board_SGV-SFVCleanupProgram_Sept2008_QAPP.pdf)

### GROUNDWATER MONITORING

The Dischargers shall collect groundwater samples from groundwater monitoring wells installed for the purpose of site investigation and monitoring. Any monitoring wells installed in the future shall be added to the groundwater monitoring program and sampled semiannually. The groundwater surface elevation (in feet above mean sea level [MSL]) in all monitoring wells shall be measured and used to determine the gradient and direction of groundwater flow.

The following shall constitute the monitoring program for groundwater:

Constituent
Volatile organic compounds (full scan)
Freon 113
1,4-dioxane
Title 22 metals
Fluoride, chloride, sulfate, nitrate



<b>Constituent</b>
Aluminum, potassium, calcium, sodium, magnesium, manganese
Total dissolved solids
Temperature*
pH*
Electrical Conductivity*
Dissolved oxygen*
Oxidation-Reduction Potential (ORP)*
Turbidity*

\*Field - To be measured in the field.

### MONITORING FREQUENCIES

1. Semiannual groundwater monitoring reports shall be submitted to the Regional Water Board according to the schedule below.

<u>Monitoring Period</u>	<u>Report Due</u>
January - June	July 15 <sup>th</sup>
July - December	January 15 <sup>th</sup>

2. Monitoring frequencies may be adjusted or parameters and locations removed or added by the Executive Officer if Site conditions indicate that the changes are necessary.

The groundwater monitoring reports shall include, but not be limited to:

- a. A table with monitoring well construction specifications such as well identification, date constructed, total depth of borehole, total depth of casing, screen interval, gravel pack interval, land surface elevation, and elevation of PVC casing.
- b. A table with the summary of water level data indicating well identification, date of measurement, reference point elevation, depth to water, and static water level elevation.
- c. A summary table with the concentration of prevalent volatile organic compounds (VOCs) detected in groundwater indicating well identification, date sampled, and prevalent VOCs.
- d. A summary table with concentrations of inorganic compounds/parameters indicating well identification, date sampled, fluoride, nitrate, chloride, sulfate, and TDS.
- e. A summary table with concentrations of Title 22, CCR, metals indicating well identification, date sampled, and each of the Title 22, CCR, metals.
- f. A summary table with the rest of the parameters.
- g. A figure showing site location.
- h. A figure showing groundwater flow direction and water level elevations.
- i. Figures showing iso-concentration curves for trichloroethylene, nitrate, fluoride. Different figures may be needed for different groundwater depths.
- j. Summary figure showing concentration of prevalent VOCs and 1,4-dioxane in each well at specific depths.

- k. Any other table or figure needed to show trends in time for concentrations and or water levels.

Specifications in this monitoring program are subject to periodic revisions. Monitoring requirements may be modified or revised by the Executive Officer based on review of monitoring data submitted pursuant to this Order.

## TABLES

Table 1: Summary of former Underground Storage Tanks at the Site

Table 1. Summary of former Underground Storage Tanks (USTs) at the Site

Underground Storage Tank (UST)	Installation-Removal Dates	Description/Use	Contents	Contaminants detected in soil surrounding the tank
UST 1	1965 (estimated) - 1987	750 gal - Metal tank (blind sump) used to catch spills from the block house.	Contained oil and water at the time of removal.	Inorganic chemicals and metals were detected at background concentrations.
UST 2	1963 (estimated) - 1987	5,000 gal - Concrete tank used by Semtech for neutralization. HF, HNO <sub>3</sub> and smaller amounts of HCl and H <sub>2</sub> SO <sub>4</sub> neutralized by addition of NaOH.	Elevated levels of nickel, copper and silver detected in the tank contents.	Fluoride, nitrate, chloride, sulfate. Sodium. Trace levels of silver, copper.
UST 3	1967 (estimated) - 1987	3,000 gal - Concrete tank used by Semtech for acid neutralization	Stored mostly nitric and hydrofluoric acid wastes. Fluoride and nitrate detected in the tank contents.	Nitrate, fluoride, copper, silver, nickel.
UST 4	1978 - 1995	6,000 gal - Concrete tank used by Semtech for acid neutralization/solids reduction.	Contents analysis was not conducted during removal. Based on the reported use, fluoride, nitrate, TDS, silver, copper are expected.	Nitrate, chloride, fluoride, sulfate. Trace levels of silver.
UST 5	(unknown) - 1996	4,000 gal - This concrete tank was discovered through a geophysical study in 1994. No documentation regarding installation/use was produced by any party.	Elevated concentrations of TCE, and lower concentrations of xylenes and PCE. Trace levels of metals mainly copper, nickel, silver were detected.	Elevated concentrations of organic chemicals in soil such as TCE, PCE, xylenes, and ethylbenzene. TPH. Heavy metals were not detected at elevated concentrations.

TCE - trichloroethylene  
TDS - total dissolved solids

MEK - methyl ethyl ketone  
PCE - tetrachloroethylene

TPH - total petroleum hydrocarbons  
gal - gallons

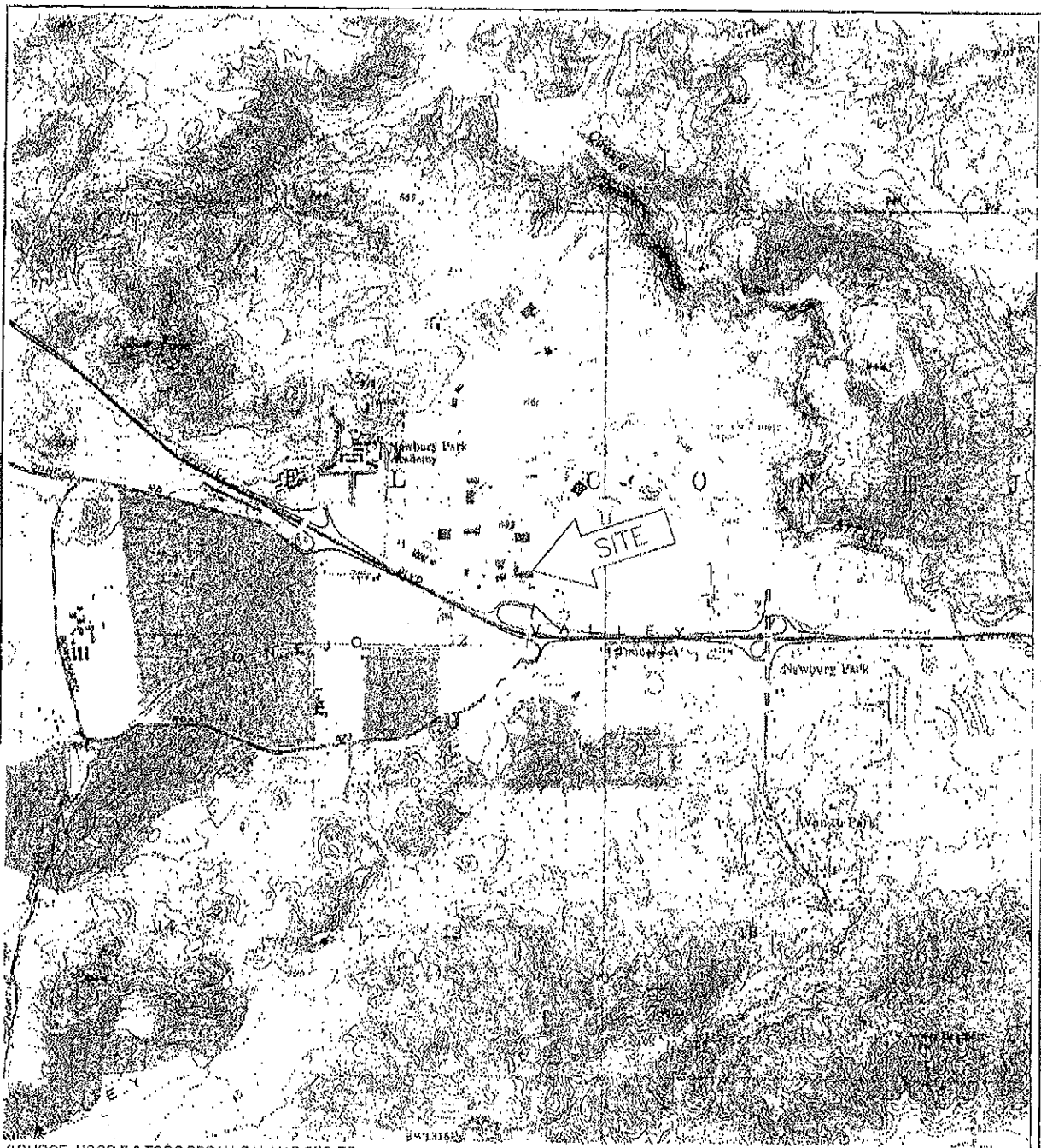
1,1-DCE - 1,1-

## FIGURES

- Figure 1: Site Location Map
- Figure 2: Site Plan and Surrounding Areas
- Figure 3: Estimated TCE isoconcentration in soil gas at 5 feet bgs
- Figure 4: Trichloroethene concentrations in soil
- Figure 5: TCE concentrations in groundwater (35 feet depth)
- Figure 6: Trichloroethene concentrations in groundwater (50 feet depth)
- Figure 7: Nitrate concentrations in groundwater (35 feet depth)
- Figure 8: Nitrate concentrations in groundwater at (50 feet depth)
- Figure 9: Hydrocarbon concentrations in groundwater
- Figure 10: Freon 113 concentrations in groundwater (35 feet depth)
- Figure 11: Fluoride concentrations in groundwater (35 feet depth)
- Figure 12: Total dissolved solids concentrations in groundwater (35 feet depth)
- Figure 13: 1,4-dioxane concentrations in groundwater

Note: All Figures were taken from technical reports prepared by Site consultants. Information on Table I was collected from reports prepared by Site consultants.

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SOURCE: USGS 7.5 TOPOGRAPHICAL MAP SERIES

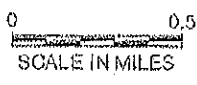
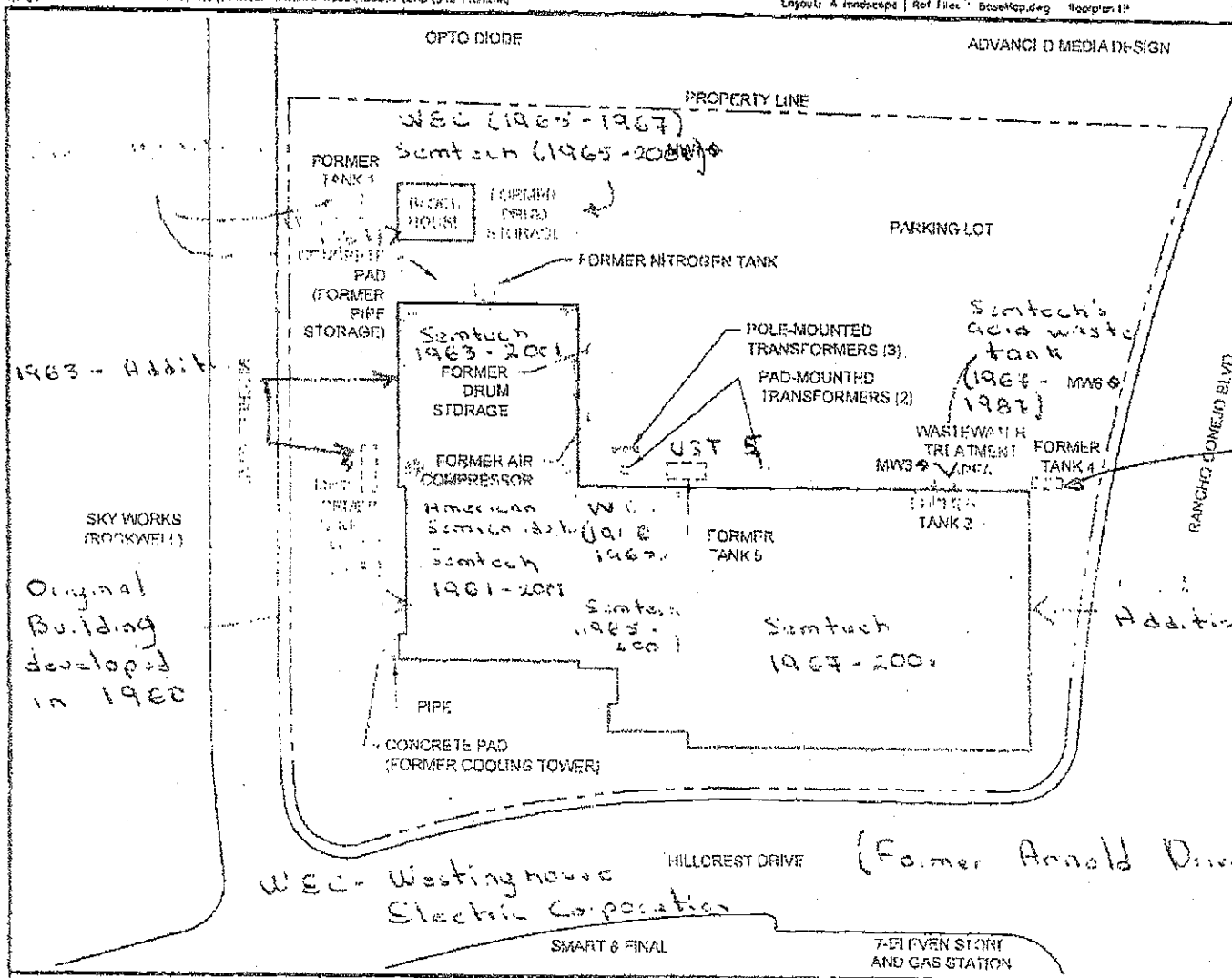
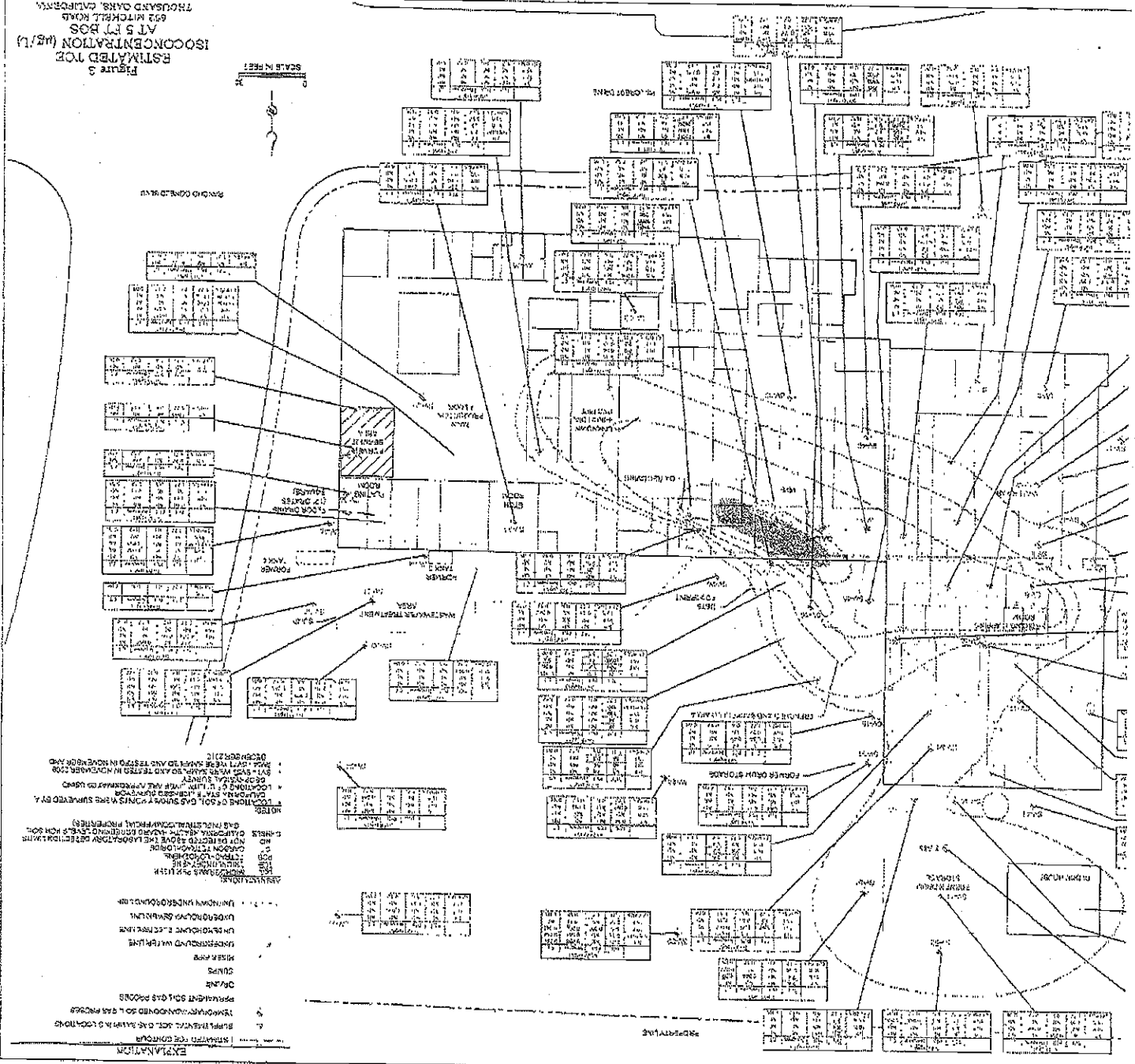


Figure 1  
SITE LOCATION  
652 MITCHELL ROAD  
THOUSAND OAKS, CALIFORNIA



DATE DEC 2008	PROJECT NUMBER 136097	<b>SITE PLAN AND SURROUNDING AREAS</b>	
<b>BROWN AND CALDWELL</b> IRVINE, CALIFORNIA			

ESTIMATED JOE  
ISOCOONENTRATION (#/L)  
AT 5 FT BOS  
THOUSAND GARS, CALIFORNIA  
652 MITCHELL ROAD



**EXPLANATION**

1. SURVEY POINTS AND LOCATIONS

2. ISOCOONENTRATION DATA

3. TEMPERATURE DATA

4. DEPTH DATA

5. TIME DATA

6. DATE DATA

7. UNDEVELOPED WATER LINE

8. UNDEVELOPED SEWER LINE

9. UNDEVELOPED ELECTRICAL

10. UNDEVELOPED GAS LINE

11. UNDEVELOPED WATER MAIN

12. UNDEVELOPED SANITARY

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100. UNDEVELOPED SANITARY





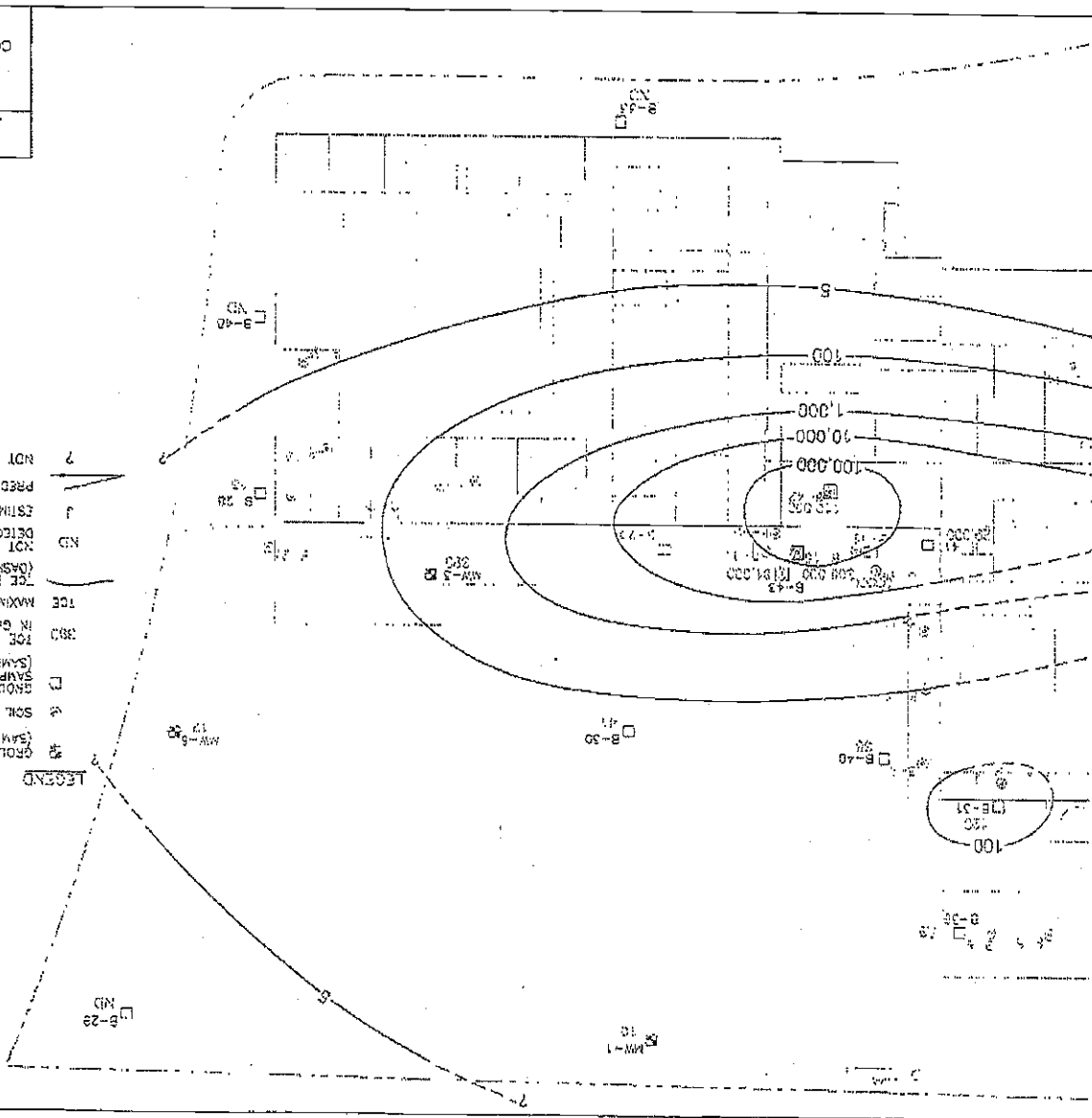
TRICHLOROETHYLENE (TCE)  
CONCENTRATIONS IN GROUNDWATER  
(36' Depth)  
ROUTE 48  
MAYBERRY PARK, CALIFORNIA

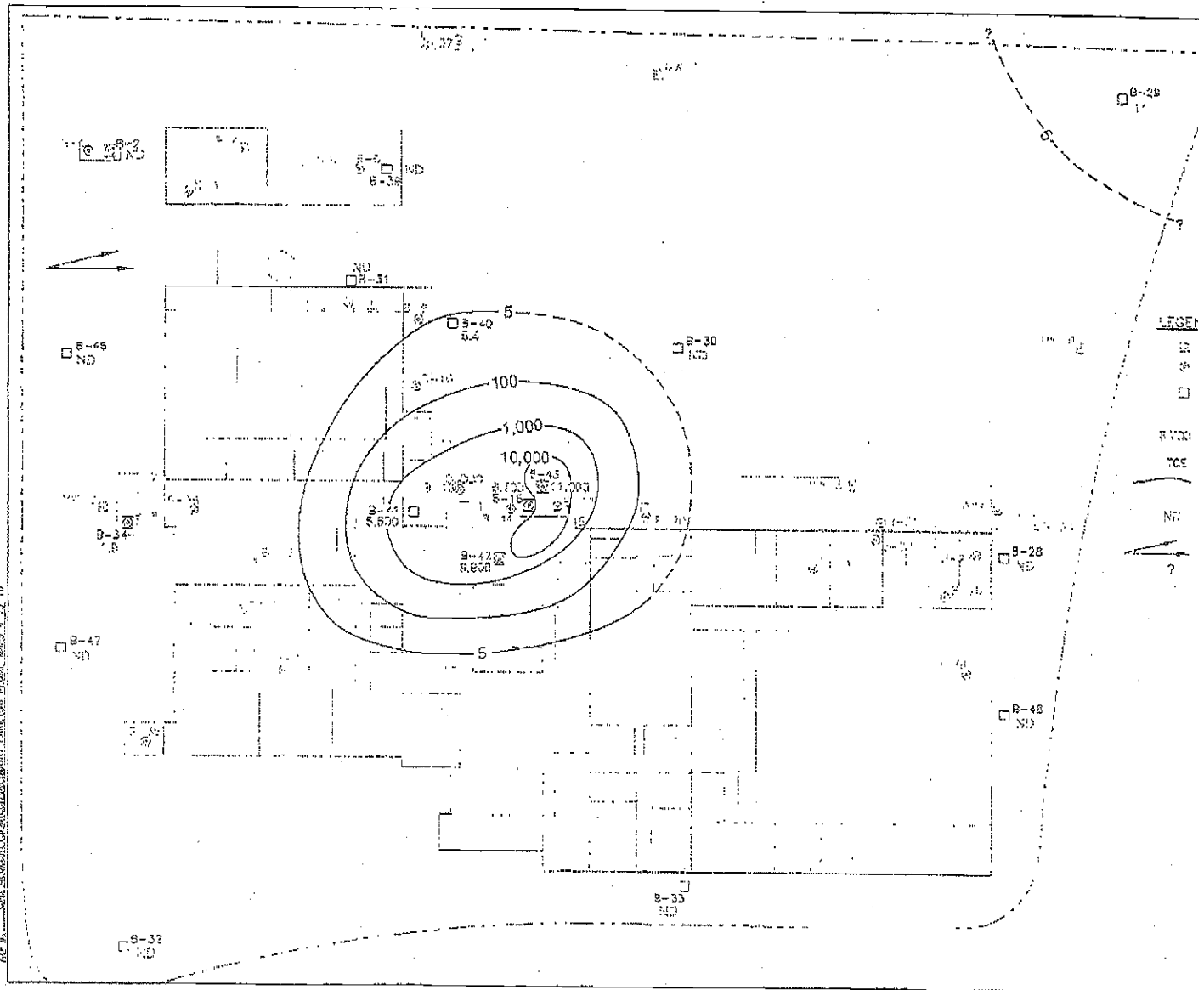
MWH

SCALE  
0 10 20 FEET

2 NOT ENOUGH DATA TO INTERPRET FURTHER  
 1 PREDOMINANT GROUNDWATER FLOW DIRECTION  
 J ESTIMATED VALUE  
 ND DETECTION LIMIT  
 NOT DETECTED ABOVE THE METHOD  
 (DASHED WHERE INTERFERED)  
 TCE ISOCONCENTRATION CONTOUR IN ug/L  
 TCE MAXIMUM CONTAMINANT LEVEL (MCL): 5 ug/L  
 TCE CONCENTRATION (ug/L)  
 IN GROUNDWATER (36' DEPTH)  
 GROUNDWATER MONITORING WELL  
 (SAMPLED JAN 20, 2010)  
 SOIL BORING LOCATION  
 GROUNDWATER MONITORING WELL  
 (SAMPLED NOV/DEC 2009 & MAR 2010)

LEGEND

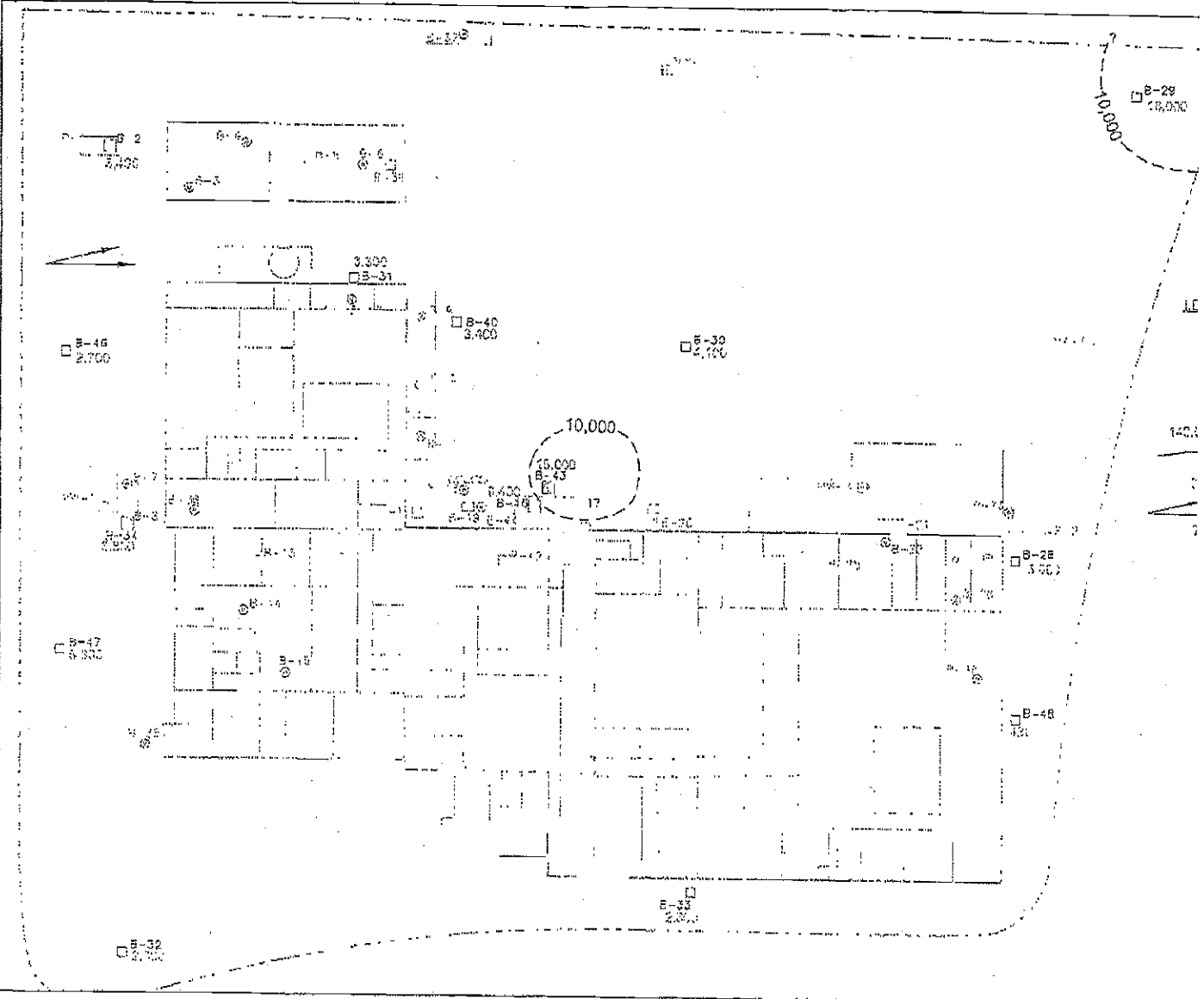




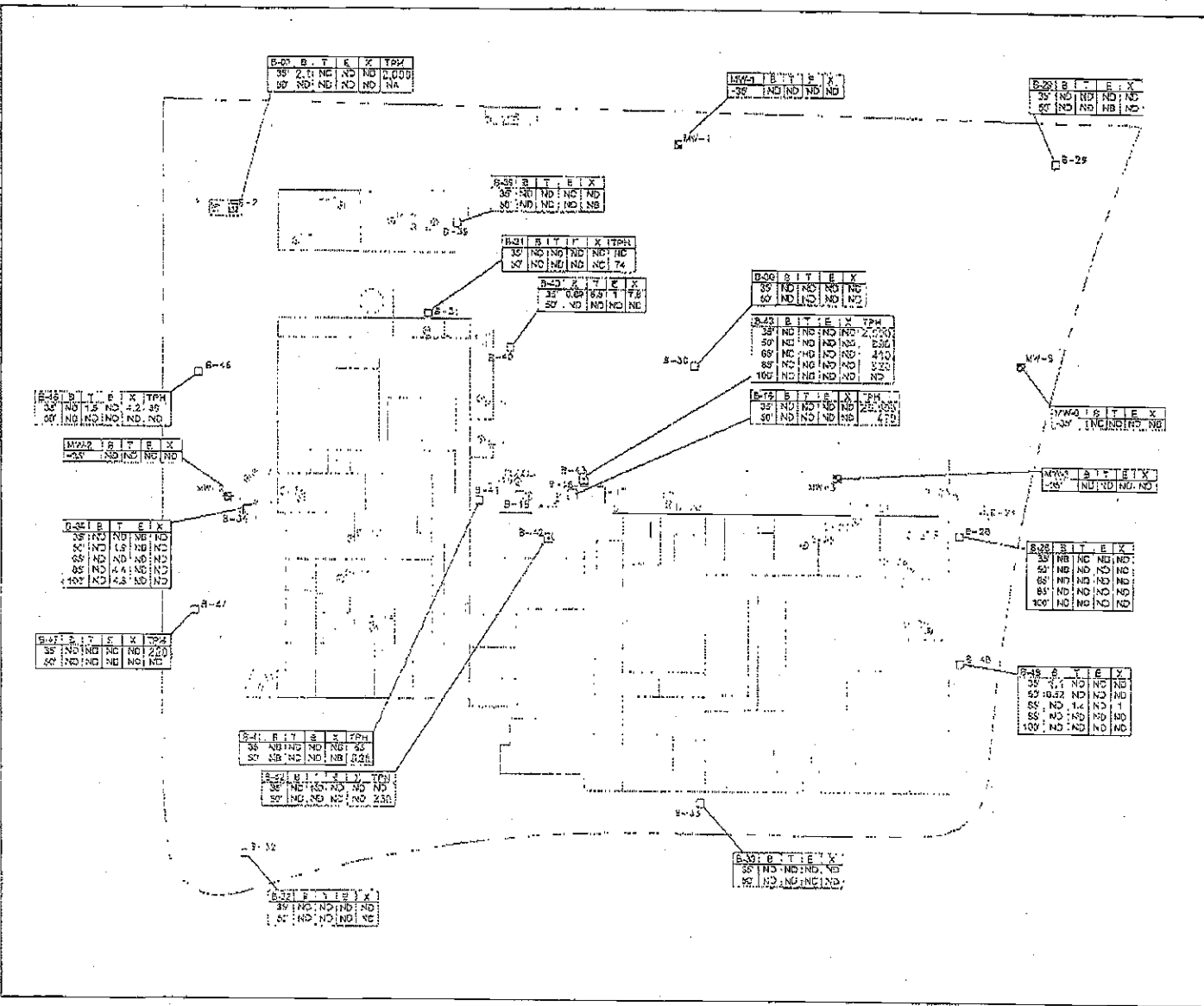
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FILE NO. 010, AIR FORCE SPECIAL AIRBORNE FORCE, PLANE, MASS., 2.26.10



2025 RELEASE UNDER E.O. 14176



B	T	E	X	TPH
35	ND	ND	ND	2,000
50	ND	ND	ND	NA

B	T	E	X
35	ND	ND	ND
50	ND	ND	ND

B	T	E	X
35	ND	ND	ND
50	ND	ND	ND

B	T	E	X
35	ND	ND	ND
50	ND	ND	ND

B	T	E	X	TPH
35	ND	ND	ND	ND
50	ND	ND	ND	74

B	T	E	X
35	ND	ND	ND
50	ND	ND	ND

B	T	E	X
35	ND	ND	ND
50	ND	ND	ND

B	T	E	X	TPH
35	ND	ND	ND	2,000
50	ND	ND	ND	230
65	ND	ND	ND	410
80	ND	ND	ND	320
100	ND	ND	ND	ND

B	T	E	X	TPH
35	ND	ND	ND	2,000
50	ND	ND	ND	470

B	T	E	X	TPH
35	ND	ND	ND	2,300
50	ND	ND	ND	ND

B	T	E	X
35	ND	ND	ND
50	ND	ND	ND

B	T	E	X
35	ND	ND	ND
50	ND	ND	ND
65	ND	ND	ND
80	ND	ND	ND
100	ND	ND	ND

B	T	E	X	TPH
35	ND	ND	ND	2,000
50	ND	ND	ND	ND

B	T	E	X	TPH
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50	ND	ND	ND	ND

B	T	E	X	TPH
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50	ND	ND	ND	ND

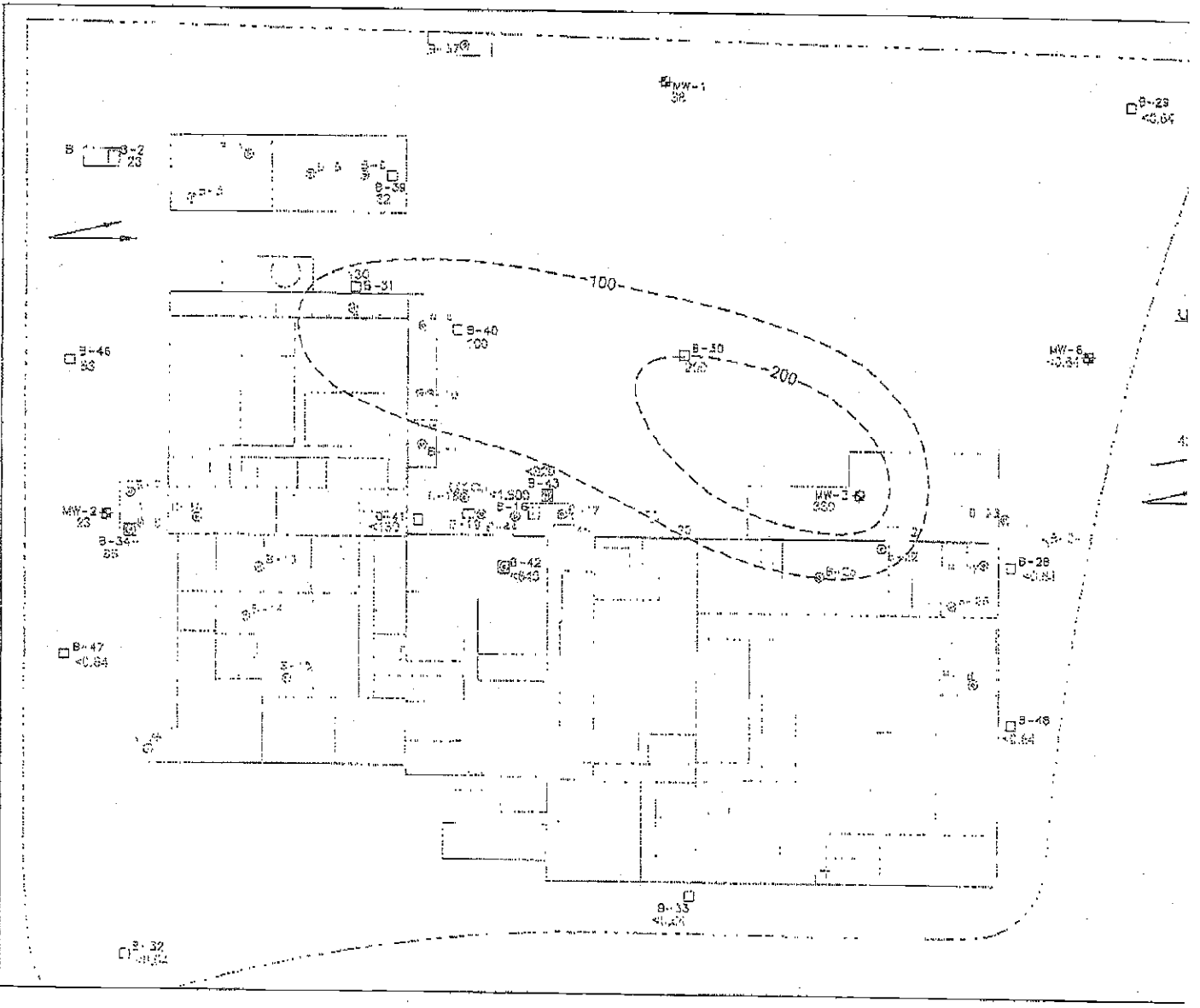
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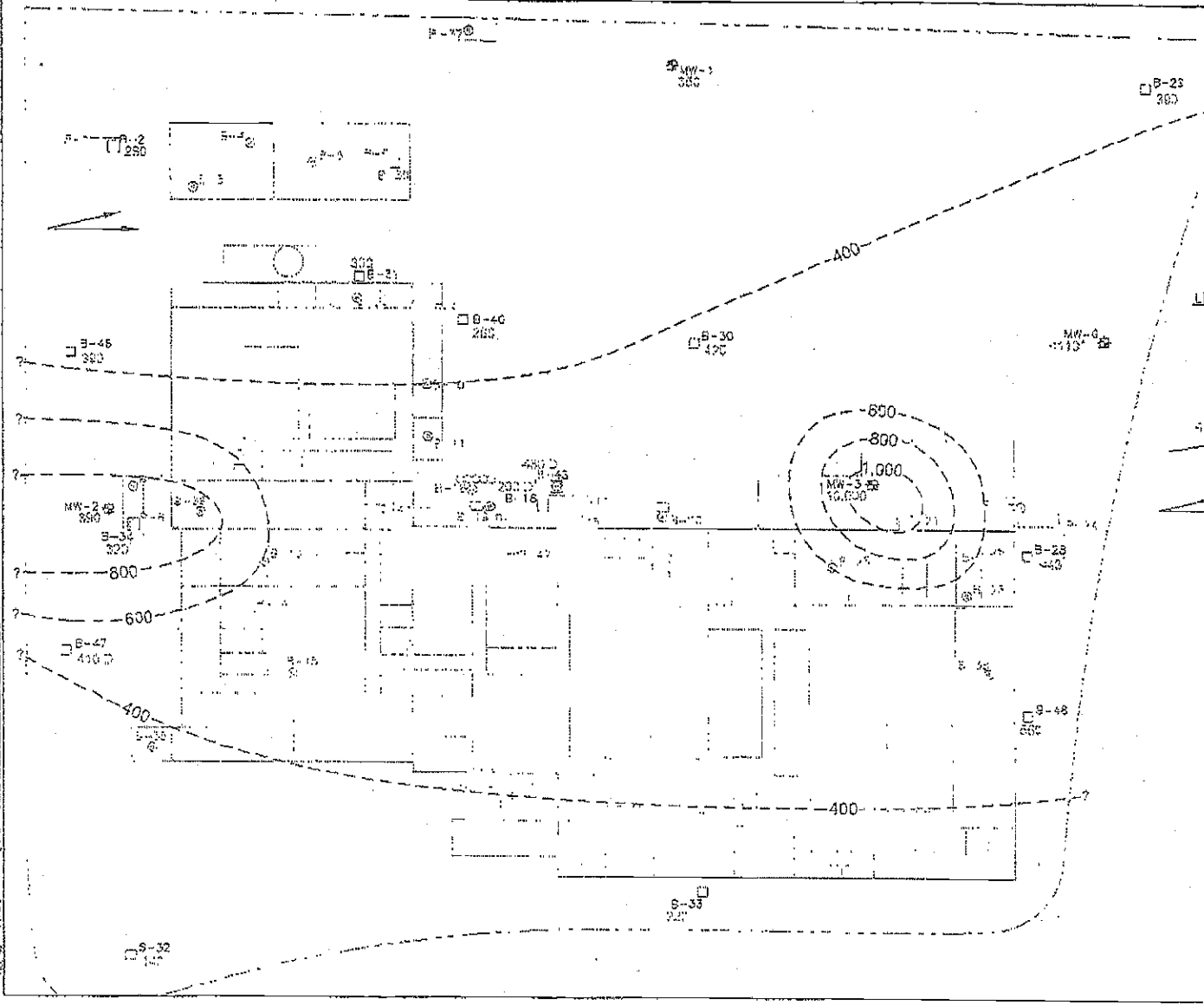
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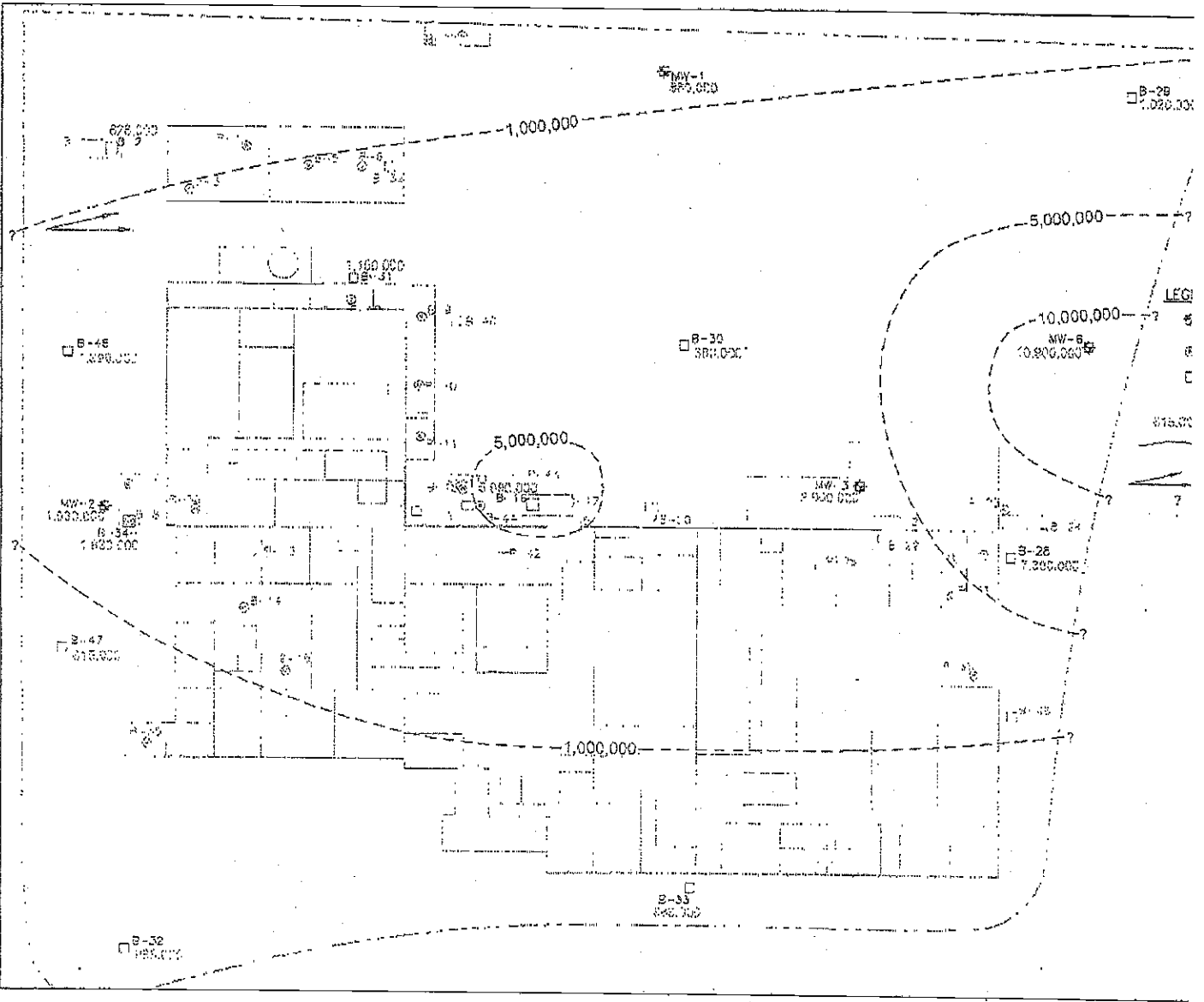
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U.S. GEOLOGICAL SURVEY WATER RESOURCES DIVISION



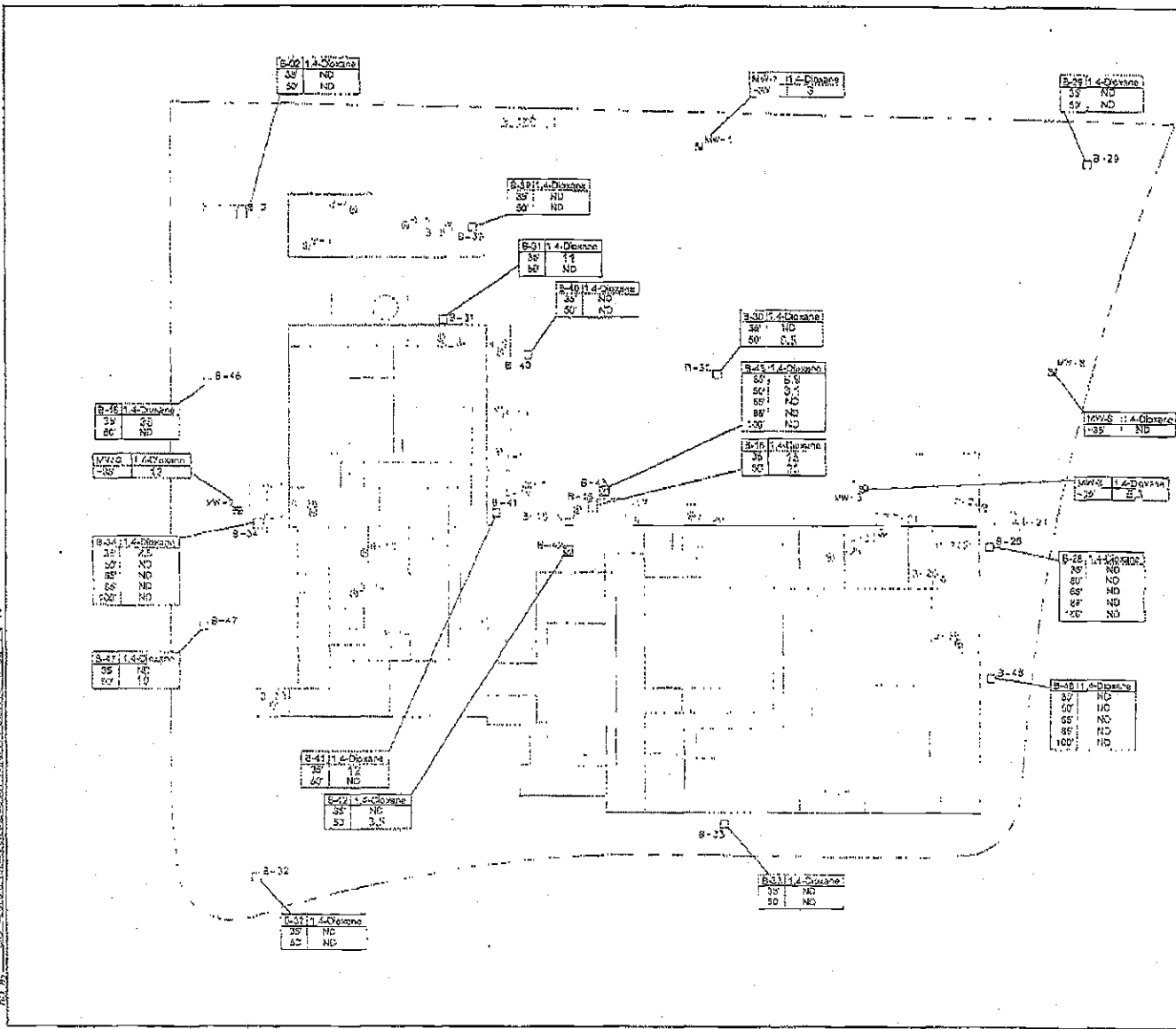






CAD: ALPINE SERVICES/PROPERTY\_DRAWING/PLANS/22\_10

03 - SURFACE SUBSTRATE PROPERTY REPORT - W. 06 - 5 - 10



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B-01 1.4-Openings

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MW-1 1.4-Openings

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50	ND

B-29 1.4-Openings

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50	ND

B-31 1.4-Openings

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B-01 1.4-Openings

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B-10 1.4-Openings

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50	ND

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50	ND

MW-8 1.4-Openings

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50	ND

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50	ND

MW-2 1.4-Openings

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50	ND

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B-41 1.4-Openings

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50	ND

B-27 1.4-Openings

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B-28 1.4-Openings

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B-32 1.4-Openings

35	ND
50	ND

B-23 1.4-Openings

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50	ND

## **RESPONSE TO COMMENTS**

Response to Comments - Draft Cleanup and Abatement Order No. R4-2013-  
 Comment Deadline: January 11, 2013  
 Former Semtech Corporation Site  
 652 Mitchell Road, Newbury Park, California  
 (SCP No. 0422 and Site ID No. 204EY00)

Comments received from:

1. Semtech Corporation (Semtech)
2. Manatt Phelps & Phillips, LLP, on behalf of SPT Investments, Inc. (SPT)
3. Baker & Hostetler LLP, on behalf of Northrop Grumman Systems Corporation (Northrup Corporation (CBS) (successors of Westinghouse Electric Corporation (WEC)

No.	Commenter	Date	Comment Summary	Response
1.1	Semtech	1/11/2013	<p><u>Semtech's Operations on the Site</u></p> <p>During its occupancy of the Site, Semtech was engaged in the design and manufacture of integrated circuits and related electronic components. The associated manufacturing processes utilized a limited number of chemicals including: sodium hydroxide, silver, copper, alcohol, hydrofluoric and nitric acids, acetone, xylene, chlorinated solvents, and alkaline plating solutions containing cyanide. Most Semtech employees with historic knowledge of Semtech's chemical purchases have confirmed Semtech did not use trichloroethylene ("TCE") in bulk at the Site.</p>	<p>Except for zinc, the chemicals 5 of the Draft CAO were identified in the submitted Chemical Use (CUQ) dated March 18, 2011. The CUQ listed zinc oxide. Therefore, Paragraph 5 of the CAO should read "zinc oxide" instead of "zinc chemicals" will remain unchanged. Information was provided by Semtech on March 18, 2011.</p> <p>Further, Regional Board staff advised on March 6, 2013, acknowledging that the list of chemicals submitted by Semtech in the CUQ was incomplete. However, Semtech noted that the chemicals listed on the CUQ were from the 1960s, but rather were used during Semtech's site occupancy. A sentence was added to the CAO stating that chemicals were used during Semtech's site occupancy.</p>

Response to Comments - Draft Cleanup and Abatement Order No. R4-2013-  
 Comment Deadline: January 11, 2013  
 Former Semtech Corporation Site  
 652 Mitchell Road, Newbury Park, California  
 (SCP No. 0422 and Site ID No. 204EY00)

No.	Commenter	Date	Comment Summary	Response
			<p>Paragraph #5 of the Draft CAO identifies several chemicals purportedly linked to the Site. However, Semtech did not use a number of these chemicals in its operations, including: acetic acid, ammonium phosphate, hydrogen peroxide, aluminum oxide, zinc, Freon 12, 13, 22, and 502, and toluene. To the extent that RWQCB may have evidence or documents indicating these chemicals are linked to any prior Semtech operations at the Site, we request such evidence be provided to Semtech.</p>	
1.2	Semtech	1/11/2013	<p><u>TDS</u>          Groundwater monitoring conducted by Semtech indicates prior operations at the Site may have contributed to the presence of TDS on the Site. However, TDS may also be related to operations on the nearby Skyworks Facility.          Concentrations of TDS in</p>	<p>Regional Board staff disagree: Total Dissolved Solids (TDS) amount of dissolved material reported in milligrams per liter in fresh water naturally ranging from 100 to 500 mg/L. Naturally occurring dissolved sodium, chloride, magnesium contribute to TDS values. High TDS limit the suitability of water source and irrigation supply.</p>

Response to Comments - Draft Cleanup and Abatement Order No. R4-2013-1  
 Comment Deadline: January 11, 2013  
 Former Semtech Corporation Site  
 652 Mitchell Road, Newbury Park, California  
 (SCP No. 0422 and Site ID No. 204EY00)

No.	Commenter	Date	Comment Summary	Response
			<p>Skyworks effluent was 1,100 milligrams per liter (mg/l) in 2011 (Skyworks, 2001) and was 1,000 mg/l from effluent in August 2012, from data on GeoTracker. In addition, TDS concentrations at Skyworks, averaged 1,000 mg/L in their wells (Halcy &amp; Aldrich, 2010). It is possible that high TDS from Skyworks may have commingled from TDS-impacted groundwater at the Site.</p>	<p>On July 11, 2002, Skyworks Solutions (Skyworks) conducted a study occurring (background) concerning the neighboring area, including Groundwater samples were collected off-site in shallow groundwater that background concentration groundwater in the vicinity of Semtech site were approximately</p> <p>TDS is not a chemical of concern neighboring Skyworks site. The treatment system located above Skyworks site is designed to treat volatile organic compounds and the treatment system does not remove the groundwater being treated. by monitoring reports of the groundwater treatment system showing that effluent concentrations of TDS from Skyworks Solutions TDS effluent are within the background concentration TDS.</p> <p>In contrast, elevated TDS concentrations have been reported in the waste stream</p>

<sup>1</sup> The neighboring Skyworks Solutions site is located across the street to the west from the Semtech Site.

Response to Comments - Draft Cleanup and Abatement Order No. R4-2013-0  
 Comment Deadline: January 11, 2013  
 Former Semtech Corporation Site  
 652 Mitchell Road, Newbury Park, California  
 (SCP No. 0422 and Site ID No. 204EY00)

No.	Commenter	Date	Comment Summary	Response
				<p>Semtech's operations. Undergr (USTs) 2, 3, and 4 were used b neutralization vessels. The US sludge with elevated TDS conc 35,000 mg/l) that was later hau facility.</p> <p>A maximum historical TDS coi 230,000 mg/l (12/20/1990) was groundwater beneath and adjac Semtech site. This is evidence impacted groundwater with TD recent groundwater investigati 2010, a maximum TDS concentr mg/l was detected in shallow g proximity to UST 4. In fact, al groundwater TDS hot-spots we site USTs.</p> <p>Therefore, available data indic TDS concentrations in ground of background concentrations Semtech's operations and not t site Skyworks.</p>
1.3	Semtech	1/11/2013	<p><u>Drilling Inside the Building</u>          Given the TCE plume's current position in the subsurface, it will be difficult to drill inside</p>	<p>The Regional Board is not requ drill inside the building. Pursu Water Code section 13360, the may not specify the design. loc</p>

Response to Comments - Draft Cleanup and Abatement Order No. R4-2013-0  
 Comment Deadline: January 11, 2013  
 Former Semtech Corporation Site  
 652 Mitchell Road, Newbury Park, California  
 (SCP No. 0422 and Site ID No. 204EY00)

No.	Commenter	Date	Comment Summary	Response
			<p>the building and may impede the ability to fully delineate the impacts to deeper depths.</p>	<p>construction, or particular man Semtech may comply with the comply with the CAO in any la Semtech, however, is required CAO, including fully delineati groundwater and meet cleanup particular site conditions of an that there may be only one way requirement.</p> <p>The Board notes, however, tha currently vacant. This is a sign over occupied buildings. Regic work with Semtech and SPT, a consultants, to determine the n method to fully delineate the in groundwater.</p>
1.4	Semtech	1/11/2013	<p><u>Alternative Sources</u>          Based on items 1, 6, &amp; 8e of the Draft CAO, the document fails to mention or recognize discharges from westerly off-site sources, namely the Skyworks Facility (formerly Rockwell), located at 2421 W. Hillcrest Drive, Newbury Park, CA, as a responsible party ("RP"). At a minimum, there is sufficient</p>	<p>The Skyworks Solutions site is under the oversight of the Reg: Remediation Section (SCP No. current data from both the Sky Semtech sites, there is not eno the groundwater from the Sky impacted the Semtech site.</p> <p>Skyworks is treating groundwa organic compounds (VOCs) an Skyworks groundwater plume</p>



Response to Comments - Draft Cleanup and Abatement Order No. R4-2013-  
 Comment Deadline: January 11, 2013  
 Former Semtech Corporation Site  
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 (SCP No. 0422 and Site ID No. 204EY00)

No.	Commenter	Date	Comment Summary	Response
			<p>evidence to support a finding of indirect discharges to the Site. It is well-documented in numerous technical reports that Skyworks (SLT4L4231815, Case Number 0423) has discharged or released VOCs and 1,4-dioxane, impacting the vadose and shallow groundwater zones. It is also well documented that groundwater flow was easterly; thus, Skyworks-impacted groundwater is suspected to have flowed onto or under the Site.</p> <p>Semtech requests that Skyworks be reevaluated and added as RP, as sufficient evidence exists to indicate discharges from the Skyworks Facility have impacted groundwater on the Site. Paragraph #25 of the Draft CAO indicated the Dischargers may seek to petition the State Water Board to review the exclusion of Skyworks from the Draft CAO as an RP. Further, RWQCB has not demonstrated why the Skyworks Facility is</p>	<p>Skyworks (down-gradient) well from the Semtech site did not c supporting that Skyworks's plu on-site and has not migrated or site.</p> <p>Semtech has to address its own contamination on-site and off- Skyworks is doing at its respec commingled plumes are clearly future, the Regional Board wil sites to work together to achiev a productive manner.</p>

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1.5	Semtech	1/11/2013	<p>not added to the RP first and needs to commit that they are partially responsible for their contributions to groundwater impacts to the former Semtech Site.</p>	
1.5	Semtech	1/11/2013	<p><u>Scope of CAO</u>          The Draft CAO also contains broad cleanup requirements which would result in unnecessary and unduly burdensome expense to the RPs at the Site. From a technical perspective, it only appears necessary to install three new groundwater monitoring wells in the deep zone, three new wells in the middle zone, and one to two new wells in the shallow zone to delineate the extent of impacted groundwater on the Site, as per the RWQCB's request.</p>	<p>The CAO requires different ph environmental work. Requirement 14 states that the current network of wells is not enough to laterally delineate groundwater contamination. The requirement does not state additional wells shall be installed. The construction specifications. The states that the network of monitoring wells shall be expanded and that a work plan be submitted to the Regional Board.</p> <p>In its comment, Semtech proposed a number of wells with specific construction specifications. A specific proposal may be adequate to meet the CAO requirement. However, it is not in a specific work plan to address the requirement, not in the CAO it</p>
1.6	Semtech	1/11/2013	<p><u>Figure 2</u>          The 2009 Site-Wide Soil and Gas Survey prepared by Brown</p>	<p>Based on original lease agreement covering the eastern portion of the original site from September 30, 1960 to Ju</p>

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			<p>and Caldwell notes that WEC leased the western portion of the original building in 1960. However, the figure included with the Draft CAO indicates WEC leased the eastern portion. Please confirm which portion of the building WEC leased.</p>	<p>and Northrup Grumman contended occupied the eastern portion for one out of the five year lease period. Semtech and WEC shared the building (blockhouse) from August 10, 1967.</p> <p>On March 6, 2013, Regional Board B received an e-mail from Semtech indicating that further analysis, we concur with that the weight of the information and histories does in fact show that the <u>eastern</u> portion of the original</p>
1.7	Semtech	1/11/2013	<p><u>Attachment A</u>          The RAP (Requirement 5A) and Public Participation Plan (Requirement 6) due dates appear progressive. It is recommended that the RAP due date be changed to "To be determined by the Executive Officer" as Requirement 2 and 3 should be completed first to prepare a more complete RAP. It is also recommended that the Public Participation Plan due date be prepared at the same time as requirements 2 and/or 3.</p>	<p>Comment noted. Attachment 1. However, the Regional Board 1 include hard deadlines to ensure environmental work is progressing. deadlines can be modified by the Officer at the request of the respondent to suit the needs of the required work with reasonable justification.</p>

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1.8	Semtech	1/11/2013	<p><u>Attachment B</u>            The draft CAO notes that reports that do not comply with the required format will be REJECTED. However, it remains unclear what a "required format" would entail. Please provide the required format as the Draft CAO does not reference or provide one.</p>	<p>Comment noted. Attachment E suit the needs of the required w</p>
2.1	SPT	1/11/2013	<p>SPT requests that the Regional Board modify the Draft CAO to name SPT as a secondary liable party in the final CAO and to name Semtech, CBS, and Northrop (CBS and Northrop as successors in interest to Westinghouse Electric Corporation ("WEC") as primary liable parties in the final CAO.</p> <p>Under long-standing State Water Resources Control Board ("SWRCB") and Regional Water Quality Control Board precedent, the liability of a</p>	<p>Distinguishing between primary liability in the CAO is not appropriate. Through various orders, Board has identified several factors considered in determining who be held secondarily liable. In general, a party should only be placed in secondary liability where: (1) it permit the activity that led to the contamination into the environment, and (2) it is the responsible party that is performing the cleanup activities. (See, e.g., State Water Board Order (Vallejo Park), p. 3 ("Of course, the lessees have assumed responsibility and are in fact conducting cleanup activities. Given this precedent, the Regional Board should continue</p>

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			<p>current landowner that did not cause or contribute to the activity that led to the discharge is secondary to that of the parties that actually operated the facility or otherwise caused the discharge in question. (SWRCB, Order No. WQ 09-01 [SWRCB orders have found secondary liability appropriate where owner did not initiate or contribute to discharge]; SWRCB, Order No. WQ 92-13; SWRCB, Order No. WQ 89-1.) In this matter, the only entities that have occupied the Site during its entire history are named in the Draft CAO: Semtech and CBS/Northrop (as successors in interest to WEC). (Draft CAO, p. 3). All evidence indicated that Semtech and WEC used chemicals such as those discharged at the Site and therefore are both responsible for all discharges that have occurred at the Site.</p>	<p>lessees regarding cleanup and landowner if the lessees fail to orders.”); State Water Board Order (Prudential), p. 3 (“Based on the unique facts of this case, we agree with the landowner’s] argument that it is secondary responsibility for the facts include: (a) the petitioner did not initiate or contribute to the act waste, (b) the petitioner does not have the right to carry out the cleanup unless the owner fails to do so; (c) the lease is for a fixed term; (d) the site investigation and cleanup are proceeding well.”); State Water Board Order 89-8 (Spitzer) (noting that secondary responsibility for the current discharge is the current long term lessee with respect to the connection with the activities that caused the pollution, was appropriate. The current landowner was not directly responsible for chemical discharges that have been identified and were making progress toward cleanup); State Water Board Order 89-12 (San Diego Port District) (noting that the current landowner was primarily responsible party because the former lessee was not progressing with cleanup). State Water Board Order WQ 92-13 (noting that it was appropriate to name the current landowner, who inherited the</p>

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				<p>deceased mother, as secondary cleanup was progressing satisfactorily. (See Water Board Order WQ 83-9 for two factors for determining who should be held secondarily liable: (1) whether or not the party initiated the discharge; and (2) whether the party created or contributed to the discharge. (See proceeding with cleanup).)</p> <p>Regional Board staff recognize that Semtech Investments, Inc. (SPT) has no liability at the site. However, because no responsible party has assumed cleanup responsibility and cleanup is progressing at the site, it is not appropriate at this time for the Regional Board to name SPT as secondarily liable. For these reasons, Semtech and SPT are primarily responsible for cleanup of wastes at the site in the CAO. In the event that Semtech or SPT assume primary responsibility for cleanup of wastes at the site, and the Regional Board determines that cleanup is progressing in accordance with the CAO, the Regional Board has the ability to modify the CAO and name SPT as secondarily liable party.</p> <p>Further, under precedential order R4-2013-0, State Water Board, SPT is also</p>

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No.	Commenter	Date	Comment Summary	Response
				<p>cleanup of wastes at the site re involvement in the activities th the pollution. The discharge of cease when Semtech vacated th State Board has interpreted the to include not only an active, i also a passive migration of wa: continues as long as the polluti soil and groundwater at the Sit Water Board Order WQ 86-2 ( Corporation) finding that, bec: actual movement of waste from the site, a continuing discharge the current owner could be hel State Water Board Order WQ ( California Edison) (noting tha: an ongoing duty to make sure: kept in a reasonably safe cond State Water Board Order WQ: p. 2 ("The ultimate responsibil condition of the land is with it Water Board Order WQ 87-5 ( Agriculture) (noting that the S looks to three elements to dete landowner can be held account ownership, knowledge of the a ability to regulate it); State W WQ 89-1 (Schmidl) (holding a had ultimate responsibility for</p>

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No.	Commenter	Date	Comment Summary	Response
				<p>though they acquired the property, the former owner's tenant had discharged the land; and State Water Board (Spitzer) (thoroughly discussing Board precedent holding landowners responsible for cleanup of pollution on the site regardless of their involvement that initially caused the pollution).</p> <p>Moreover, it is appropriate to hold the former owner primarily liable at this time for the following reasons:</p> <ol style="list-style-type: none"> <li>1. SPT was aware of the environmental risks associated with the Semtech site when it purchased the Site in 2001.</li> <li>2. The cleanup of the site will benefit the property benefiting SPT. As such, SPT should share in the responsibility.</li> <li>3. The Regional Board must ensure that the assessment and cleanup are completed as quickly as possible as it has occurred unreasonably as it has occurred. Environmental assessment and cleanup have been taken more than 20 years. In 2001, the Board issued a 13267 investment order to Semtech and SPT for full site cleanup. This was only after this recent investigation that environmental assessment and cleanup are at a reasonable pace. It appears</li> </ol>



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No.	Commenter	Date	Comment Summary	Response
2.2	SPT	1/11/2013	The Evidence Strongly Demonstrates that Semtech and WEC are the Sole Discharges.	<p>Semtech and SPT have work under the recent investigativ</p> <p>Regional Board staff agrees th strongly demonstrates that Scr the site. Accordingly, Semtech a responsible party in the CAC wastes at the site.</p> <p>However, after careful consid comments received, Regional determined that it lacks suffici time demonstrating that WEC chemical use at the Site cause the discharge of waste at the s and Northrop Grumman were i responsible parties in the CAC information is discovered and/ Regional Board, the Regional the CAO to add CBS and Nort responsible party.</p>
3.1	Northrop Grumman and CBS	1/11/2013	Northrop Grumman disputes that it is the successor to Westinghouse Electric Corporation, a former tenant at the Site, and is continuing its discussions with CBS in that regard.	The Regional Board understand its Westinghouse Electronic Sy Northrup Grumman in 1996. T renamed itself CBS Corporatic information indicates that both Grumman and CBS are success However, if this information is Regional Board encourages Ne

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No.	Commenter	Date	Comment Summary	Response
3.2	Northrop Grumman and CBS	1/11/2013	In summary, there is no evidence that Westinghouse used UST 5 during its brief tenancy at the Site and there is no factual or legal basis to issue a cleanup and abatement order to Northrop Grumman or CBS. Instead, all of the evidence points to Semtech as the likely source of the contamination at the Site. In this regard, the Draft CAO did not take into account testimony and information provided to the Regional Board in the Technical Report dated November 1, 2010 submitted by Northrop Grumman and CBS.	provide documentation to the Board to support its contention.  After careful consideration of all comments, the Regional Board staff has determined that there is currently not enough credible evidence in the Board's files to demonstrate that Westinghouse used UST 5 at the Site, or that WEC had installed UST 5 at the Site, therefore caused or contributed to the contamination at the Site. No original documents regarding UST 5 operations and/or chemical use were found by WEC's successors, Semtech, or the Regional Board. Therefore, CBS and Northrop Grumman are not identified as responsible parties in the CAO. However, if such information is provided to the Regional Board, the Board may modify the CAO to add CBS and Northrop Grumman as a responsible party.
3.3	Northrop Grumman and CBS	1/11/2013	<u>Westinghouse Only Used A Portion Of The Original Site Building For About A Year As A Staging Area.</u>  Although Westinghouse leased a portion of a building at the site between 1960 to 1965,	The operational history of the Site history description of the Site on original lease agreements prepared by Semtech and WEC. These lease agreements and documents signed at the time of the lease by interested parties, and are not in the recollection of an individual ten years after the fact. A reasonable

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No.	Commenter	Date	Comment Summary	Response
			<p>according to sworn testimony, Westinghouse only occupied a portion of the building for about a year and it used that portion of the building only as a staging area and not for production or manufacturing activities</p> <p>The multiple lines of evidence clearly demonstrate that Westinghouse's presence at the Leased Area was limited in time (about one year) and limited in scope (office and staging) and could not have caused or contributed to the contamination at the Site.</p>	<p>that a lessee will physically occupy the building and is leasing and paying for.</p> <p>Reference is made to the document dated August 2, 1962 between Westinghouse Corporation and WEC. The document states that WEC has given legal notice to Westinghouse of its lease agreement dated September 1, 1960 covering the lease of the property located on Tract 1121, Rancho Light Manufacturing Research Center Unit, No. 1, State of California (Site). On July 1, 1965, the document further states that "Westinghouse hereby releases Westinghouse Corporation from any and all obligations arising from the lease agreement dated September 1, 1960 made by and between Westinghouse Corporation and Conejo Valley Manufacturing and Research effective July 1, 1965."</p> <p>Semtech's original Lease Agreement dated January 1, 1965 and confirm the above referenced lease agreement dated January 1, 1965. "American Semiconductor [later] occupy the westerly portion of the building situated on Lot 11, Tract 1121, Light Manufacturing and Research Center Unit, No. 2". This indicates that WI</p>

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				<p>occupying the eastern portion of the building. The April 16, 1961, LA Times article reported that the Astro-Electronics laboratory was being operated by an "advanced electronics company" confirming the occupancy of WEC in 1961.</p> <p>On May 28, 1963, a new Lease Agreement was entered into between Semtech to continue occupying the eastern portion of the building and a new addition to the north. The exhibit to the lease (Exhibit A) clearly shows the eastern portion occupied by WEC as "premise 1." This indicates that WEC was occupying the eastern portion of the building until May 28, 1963. Mr. Kilcoyne implies in his statement that it would be reasonable to assume that WEC would have moved immediately to the new (vacated) part of the building for the addition to the north to begin in June 1963.</p> <p>Finally, "Amendment No. 3 to the Lease Agreement dated August 9, 1963" provided "Westinghouse space" to Semtech. It is noted that, by 1965, WEC had vacated the eastern portion of the main building and Semtech moved into it.</p>

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				<p>Mr. Kevin Kilcoyne's testimony from 1992, nearly thirty years after he was an electrical engineer that worked at the site approximately 1960 to 1966. Kilcoyne's testimony indicates that he occupied the Semtech site for one year, the lease agreements indicate. Therefore, based on documents reviewed, Regional Board staff has determined that CBS is not the main building at the Site from 1960 to July 1, 1965.</p>
3.4	Northrop Grumman and CBS	1/11/2013	<p><u>There is No Evidence of Westinghouse Used Chemicals Including TCE At The Site</u></p> <p>As discussed above, Westinghouse used the so-called Leased Area for only a year as a staging area. This alone makes it unlikely that there would have been any chemical usage.</p> <p>The possible use by Westinghouse of chemicals in the leased Area was discussed in Northrop Grumman's and</p>	<p>After careful consideration of all evidence, Regional Board staff has determined that there is currently not enough credible evidence in the Board's files to demonstrate that CBS is responsible for the Site. No original documents of operations and/or chemical usage were found by WIEC's successors, Semtech, or the Regional Board. Therefore, CBS and Northrop Grumman are not identified as responsible parties in the CAO. However, if such information is provided to the Regional Board, it may modify the CAO to add CBS and Northrop Grumman as a responsible party.</p>

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No.	Commenter	Date	Comment Summary CBS' Technical Report.	Response
3.5	Northrop Grumman and CBS	1/11/2013	<p><u>The Use of An UST By Westinghouse At Other Locations Is Not Evidence Westinghouse Used Chemicals At The Site</u></p> <p>The Draft CAO states that "official documents indicate that [Westinghouse] used USTs to manage chemical waste in the nearby buildings (Exhibit 1 and 2)" and that "[f]ormer Westinghouse] employees confirmed the use of TCE and other solvents such as acetone, methyl ethyl ketone, and isopropyl alcohol at other facilities in the area at the time." Id. at 5. Relying on this statement, the Draft CAO concludes that it is likely that Westinghouse "could have used UST 5 to handle waste derived from their operations." This conclusion is not supportable on its face.</p>	<p>After careful consideration of all c Regional Board staff has determinir currently not enough credible evic Board's files to demonstrate that 1 the Site. The language noted by th removed from the CAO. No orig supporting WEC's operations at the site were found by WE( Semtech, SPT, or the Regiona CBS and Northrop Grumman are responsible parties in the CAO. H information is discovered and/or Regional Board, the Regional Bo CAO to add CBS and Northrop C responsible party.</p>
3.6	Northrop Grumman	1/11/2013	<p><u>The Metals And Chemicals Found In The Contents Of UST 5, As Well</u></p>	<p>Regional Board staff agrees that chemicals such as silver, nickel,</p>

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No.	Commenter and CBS	Date	Comment Summary <u>As In The Soil Surrounding UST 5 Are Entirely Consistent With Semtech's Operations</u>	Response related to Semtech's operations at has, therefore, been named as a re CAO for the cleanup of wastes at
			<p>Even assuming, despite the absence of any supporting evidence, that Westinghouse used UST 5, it would have at most used it briefly in the 1960s to hold acid waste and that acid waste would have been pumped out and transported off-site for disposal. The chemicals and metals that have been documented to be present in and around UST 5 include chemicals and metals that cannot be tied to any possible Westinghouse operation at the Site or at any other Westinghouse site in Newbury Park and in fact, are entirely consistent with Semtech's operations.</p>	<p>After careful consideration of all cc Regional Board staff has determine currently not enough credible evidence Board's files to demonstrate that W the Site and used UST 5. No original supporting WEC's operations at the site were found by WEC Semtech, SPT, or the Regional CBS and Northrop Grumman are n responsible parties in the CAO. No information is discovered and/or p Regional Board, the Regional Boa CAO to add CBS and Northrop Gr responsible party.</p>
3.7	Northrop Grumman and CBS	1/11/2013	<p><u>According To Its Former Employee Semtech Used Vast Amounts Of TCE In Its Operations</u></p> <p>Westinghouse would not have disposed of TCE in UST 5. A question that therefore must be</p>	<p>Regional Board staff agrees that t that Semtech did use TCE at the s Semtech has claimed that its use c this is contradicted by the sworn c of Gerald Lanahan that indicated vast amounts of TCE. The employ was used in the degreasers, the ul</p>

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No.	Commenter	Date	Comment Summary	Response
3.8	Northrop Grumman and CBS	1/11/2013	<p>considered is where did the high levels of TCE originate? The Draft CAO states as to Semtech's chemical usage that "limited quantities (4-10 gallons) of trichloroethylene (TCE) have reportedly been used for engineering purposes." Id. at 4. Northrop Grumman does not understand this statement in view of the detailed evidence submitted by Northrop Grumman regarding Semtech's extensive TCE usage.</p> <p><u>Semtech Used The Area Around UST 5 To Store Fifty-Five Gallon Drums Containing Waste Chemicals Including TCE And Had Leaks And Spills From The Handling Of The Waste</u></p> <p>As discussed in Northrop Grumman's and CBS' Technical Report, Mr. Lanahan also discussed where Semtech stored 55 gallon drums containing waste TCE at the Mitchell Road Property.</p>	<p>general cleaning operations. Semtech has been named as a responsible party for cleanup of wastes at the site.</p> <p>Comment noted. There is a site lay out showing a former drum storage area approximately west of UST 5. Semtech has, therefore, a responsible party in the CAO for wastes at the site.</p>
3.9	Northrop	1/11/2013	The TCE Contamination In Soil.	Based on the observed concentrations



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No.	Commenter	Date	Comment Summary	Response
	Grumman and CBS		<p data-bbox="690 346 1120 525"><u>Soil Vapor and Groundwater Beneath The former QA Laboratory Indicates Prolonged Discharges of Solvents Over many Years By a Long-Time Occupant</u></p> <p data-bbox="690 567 1128 850">The Draft CAO states that Westinghouse occupied the eastern portion of the original building at 652 Mitchell Road, Id. at 2 and Figure 2. There is however considerable evidence that Westinghouse occupied the western portion of the building.</p> <p data-bbox="690 892 1128 1176">Even assuming for argument's sake that Westinghouse leased the eastern portion, it would, as discussed above, only have occupied the space for one year. This contrasts with Semtech's presence in that same location for more than 30 years.</p> <p data-bbox="690 1218 1120 1375">The soil, soil vapor, and groundwater data collected in the vicinity of UST 5 suggests a substantial portion of the release likely occurred beneath the eastern</p>	<p data-bbox="1169 346 1583 598">soil, the Regional Board is unable to determine the duration of the release. However, that the piping under the former QA building leaked and is a source of TCE to the groundwater. Semtech has, therefore, been the responsible party in the CAO for the release at the site.</p> <p data-bbox="1169 640 1583 892">For clarification purposes, based on historical agreements and the as-built plans for the former Semtech, WEC occupied the eastern portion of the original building constructed in 1965. This part of the building by WEC was established, although deposition to the ground that it was used for staging and plant</p> <p data-bbox="1169 934 1583 1102">The eastern portion of the building was occupied by Semtech in 1965. In time, the use of this portion of the building for the Lab has been consistent since 1965.</p>

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			<p>portion of the original 1960 building, known as the QA laboratory, rather than from the UST itself.</p> <p>It appears that leaks in the piping system beneath the former QA laboratory are at least partially responsible for the presence of TCE in soil, soil vapor, and groundwater beneath the former QA lab.</p> <p>It is evident that TCE was discharged to the piping system for many years by a long-time occupant, regardless of whether or not that occupant understood the lines fed UST 5. As has been observed at numerous other contaminated sites where solvents have been discharged, underground piping deteriorates over time and releases solvents through holes in the piping and damaged connections such as elbows and tees. Thus it is reasonable to conclude that the prolonged discharge of solvents to the piping by a long-time occupant resulted in</p>	

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			the Site conditions observed today beneath and in the vicinity of the former QA laboratory. The only long-time occupant of the QA laboratory was Semtech.	

# ATTACHMENT B

1 STATEMENT OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 SPT Investments, Inc. ("SPT") hereby petitions the California State Water Resources  
4 Control Board (the "State Board") seeking a change in its status under Cleanup and Abatement  
5 Order R4-2013-0036 (the "Order") issued by the Executive Officer of the Regional Water Quality  
6 Control Board, Los Angeles Region (the "Regional Board"). The Order, pertaining to the  
7 "Former Semtech Corporation Facility" located in Newbury Park, California (the "Site"), names  
8 both Semtech Corporation ("Semtech"), the 40-year operator of the facility, and SPT, who  
9 acquired the property at the end of Semtech's tenure, as primary responsible parties. Naming  
10 SPT as a primary responsible party under the Order merely due to its current ownership is not  
11 only contrary to State Board decisions as to secondary responsibility, but also against the public  
12 interest and counterproductive, since it will only foster recalcitrance on the part of Semtech, the  
13 truly responsible party plainly recognized in the Order. Through this Petition, SPT seeks to be  
14 removed from the Order or alternatively to at least change its status under the Order from a  
15 primary responsible party to a secondary responsible party consistent with State Board precedent.

16 **II. BACKGROUND**

17 **A. The Site**

18 The Former Semtech Corporation Facility (the "Site") is approximately 4.148 acres and  
19 located at 652 Mitchell Road, Newbury Park, California. There have been only two occupants of  
20 the Site since its development: Semtech and Westinghouse Electric Corporation ("WEC").  
21 Order, ¶ 4. Prior to 1960 the Site was vacant, undeveloped land. *Id.* Various contaminants,  
22 including volatile organic compounds ("VOCs"), such as trichloroethylene ("TCE"), have been  
23 detected at the Site in groundwater, soil and soil gas. Order, ¶¶ 6, 8.

24 1. SPT

25 SPT is the current owner of the Site, which it purchased in 2001. Shortly after SPT  
26 acquired the Site, Semtech vacated the premises. Order, ¶ 4. By the time SPT acquired the Site,  
27 WEC had been gone for 35 years. The site has since remained vacant and unoccupied. *Id.* As  
28 recognized by the Regional Board staff, SPT has never conducted manufacturing operations or

1 otherwise used any chemicals on the Site. Response to Comments (“RTC”), p. 11. Other than  
2 being assigned rights and interest in the existing leases for the Site, SPT never separately entered  
3 into a new lease with Semtech. Order, ¶ 4. Semtech has not disputed that it ceased using  
4 chemicals such as TCE by the time SPT acquired the property and did not discharge any waste  
5 during SPT’s ownership.

6                   2.       Semtech

7                   For over 40 years, from 1961 to 2002, Semtech operated on the Site under a series of  
8 leases, initially as American Semiconductor Corporation and then after as Semtech. Order, ¶ 4.  
9 Founded in 1960, Semtech, an international, publicly traded company on NASDAQ, characterizes  
10 itself as a leading supplier of high-quality analog and mixed-signal semiconductor products.<sup>1</sup>  
11 According to its 2013 Annual Report, Semtech had record revenues of \$537 million.<sup>2</sup>

12                   a.       Semtech Operations on the Site

13                   At the Site, Semtech manufactured semiconductors and other electronics, which it admits  
14 involved numerous types of chemicals, underground storage tanks (“USTs”) and conveyance  
15 piping, and the generation of waste. Semtech concedes that it used TCE, but has contended it was  
16 only in limited quantities (up to 10 gallons). Order, ¶ 5. However, as set forth in the Order, the  
17 Regional Board staff found that Semtech’s claims were starkly contradicted by, among other  
18 things, the sworn testimony in prior federal district court litigation by Gerald Lanahan, Semtech’s  
19 former Manager and Director for Purchasing,<sup>3</sup> that Semtech used vast amounts of TCE, including  
20 in degreasers, for ultrasonics, and for general cleaning operations. Order, ¶ 5. In particular, the  
21 deposition transcript of Gerald Lanahan, attached hereto as Exhibit 1, establishes that Semtech  
22 used upwards of tens of thousands of gallons of TCE in its operations during the 1970s and  
23 spilled TCE (i.e., caused discharges) at the Site in the years prior to SPT’s ownership. Under  
24 oath, among other things, Mr. Lanahan testified:

25  
26  
27 <sup>1</sup> <http://www.semtech.com/company/>.

<sup>2</sup> <http://investors.semtech.com/annuals.cfm>.

28 <sup>3</sup> Deposition of Gerald Lanahan, May 18, 1992, *Rockwell Int’l Corp. v. Janss Investment Corp.*, U.S. District Court, Central District of California, Case No. 89-6037 MRP (GHK) (“Lanahan Dep.”).

- 1 • In about 1965, Mr. Lanahan began working as a process engineer for Semtech at the Site,  
2 where he worked for 13 years. (Lanahan Dep. 46:1-9.) Mr. Lanahan testified that he  
3 became familiar with all aspects of Semtech's operations and *that Semtech used TCE in*  
4 *degreasers, ultrasonics, and in general cleaning operations.* (Lanahan Dep. 50:15-18),  
5 emphasis added.)
- 6 • After 11 years working as a process engineer (which would be approximately 1976), Mr.  
7 Lanahan changed positions at Semtech and became responsible for purchasing of  
8 materials, *including TCE*, and had direct knowledge of the amount of TCE purchased and  
9 used by Semtech. (Lanahan Dep. 46:10-47:1; 49:2-50:1.) When asked about TCE use by  
10 Semtech, Mr. Lanahan testified: "[Semtech] used a lot [of TCE]." (Lanahan Dep.  
11 51:19-22, emphasis added.)
- 12 • Mr. Lanahan further testified that Semtech stored used TCE in 55-gallon drums at a  
13 location at the Site "just outside of the main doors." (Lanahan Dep. 53:2-54:5.) (The  
14 location where the primary TCE plume is located at the Site.) He also stated that Semtech  
15 "accumulated a lot of barrels" before they were picked up for disposal (based on  
16 Lanahan's estimate of TCE use, Semtech would have generated hundreds of barrels of  
17 TCE waste per year). (Lanahan Dep. 56:9-57:1.)
- 18 • Mr. Lanahan testified that he observed spills and leaks of TCE from the 55-gallon drums.  
19 (Lanahan Dep. 54:24-57:18.)

20 b. Semtech Leases

21 As set forth in the Order, Semtech leased the Site throughout its tenure under a series of  
22 leases, amendments and extensions. Order, ¶ 4. Semtech leased the Site from Janss Corporation  
23 up until 1982 and then from Lynn Shadows, who acquired the Site that year. As addressed  
24 below, in 2001 Rancho Conejo Partners, L.L.C, and then SPT Investments, Inc., acquired the Site.

25 As demonstrated by the terms of its leases, Semtech should be primarily responsible for  
26 any contamination that it caused at the Site, not the property's owner. For instance, under  
27 Semtech's 1988 lease,<sup>4</sup> it was responsible for complying with the law, prohibited from causing

28 <sup>4</sup> A copy of the September 12, 1988, lease between Semtech and Lynn Shadows is attached hereto as Exhibit 2.

1 waste and a nuisance, and required to repair any damage it caused, including that:

- 2       ▪ Semtech would “not damage the leased premises and [Semtech] shall, at  
3       [Semtech’s] sole cost and expense, promptly repair any damage to the leased  
4       premises resulting from Semtech’s use thereof.” (1988 Lease, ¶ 3.)
- 5       ▪ Semtech would “comply promptly with all statutes, ordinances, rules, orders, and  
6       regulations of federal, state, county or city governments regulating the use by  
7       tenant of the leased premises including, but not limited to, *those pertaining to the*  
8       *use, storage, handling and cleanup of hazardous or toxic waste or materials, all*  
9       *at [Semtech’s] sole cost and expense.* The restrictions set forth in this paragraph  
10      shall extend to all agents and employees of [Semtech].” (1988 Lease, ¶ 7,  
11      emphasis added.)
- 12      ▪ Semtech, “[u]pon expiration or prior termination of this Lease and to the extent  
13      directed by Landlord in writing, shall promptly restore the premises to the  
14      condition in which received, ordinary wear and tear excepted.” (1988 Lease, ¶ 8.)
- 15      ▪ Semtech would “maintain the leased premises, and every part thereof, in good  
16      condition and repair.” (1988 Lease, ¶ 9.)
- 17      ▪ Semtech agreed to “keep the leased premises and the outside areas adjacent thereto  
18      at all times in a neat, clean and sanitary condition . . . and shall not commit nor  
19      permit any waste or nuisance thereon.” (1988 Lease, ¶ 13.)
- 20      ▪ Semtech would “comply with all federal, state and local laws and regulations in  
21      [Semtech’s] use and occupancy of the [Site], including but not limited to, those  
22      pertaining to the storage, placement, handling or use of material or substances  
23      falling within the definition of a toxic or hazardous waste, substance or material  
24      under state and federal law.” (1988 Lease, ¶ 45.)
- 25      ▪ Semtech is “not relieve[d] from any liability [it] may have to Landlord or others  
26      arising by the previous lease, or by law, from [Semtech’s] use and occupancy of  
27      the leased premises including, but not limited to, *any obligation for removal or*  
28      *cleanup required by law by reason of the storage, placement, handling or use on*



1                    *the leased premises, of materials falling within the definition of a toxic or*  
2                    *hazardous waste or material under state or federal law.”* (1988 Lease, ¶ 32,  
3                    emphasis added.)

4                    3.        Westinghouse

5                    WEC leased certain portions of the property from 1960 to 1967. Order, ¶ 4. The  
6                    Regional Board has concluded that it lacks evidence to counter claims by Northrop Grumman  
7                    Electronic Systems Corporation and CBS Corporation, successors to WEC, that WEC used the  
8                    Site for only approximately one year as a staging or planning area and that no chemicals or USTs  
9                    were used. Order, ¶¶ 5, 9. While there is evidence that WEC used chemicals, including TCE,  
10                    WEC claims that such operations took place at another nearby location. However, if information  
11                    is discovered or provided to the Regional Board to substantiate that WEC used chemicals at the  
12                    Site, installed or used UST 5, and therefore caused or contributed to the contamination at the Site,  
13                    the Order provides that the Regional Board may modify the Order to add CBS and Northrop  
14                    Grumman as responsible parties. Order, ¶ 9. SPT reserves all rights, claims and remedies with  
15                    regard to WEC, CBS and Northrop Grumman.

16                    **B.        CAO R4-2013-0036**

17                    On October 8, 2013, the Executive Officer of the Regional Board issued the Order,  
18                    apparently under delegation of authority and without a hearing, naming Semtech and SPT as  
19                    dischargers. The Order directs the parties to assess, monitor, clean up and abate the effects of  
20                    wastes discharged to the soil and groundwater at the Site. As explained above, the Order found  
21                    that Semtech’s operations resulted in the discharge of wastes to the environment, including  
22                    VOCs, particularly TCE, total petroleum hydrocarbons, and other inorganic waste, such as nitrate  
23                    and fluoride. Order, ¶ 1.

24                    Despite SPT’s comments and requests to the Regional Board staff prior to issuing the  
25                    Order citing State Board precedent, the Order nonetheless also names SPT as a discharger and  
26                    primary responsible party. The Regional Board has not cited any evidence that any discharges  
27                    occurred during the time of SPT’s ownership, but instead claims that SPT is liable as a landowner  
28                    regardless of its involvement in the activities that initially caused the pollution, claiming that a

1 discharge also includes passive migration of waste. Order, ¶ 8 n.7. Putting the cart before the  
2 horse, given there has never been a cleanup and abatement order (“CAO”) concerning the Site,  
3 the Order concludes “since no responsible party has assumed cleanup responsibility, and thus, no  
4 cleanup is progressing at the Site, it is not appropriate at this time for the Regional Board to name  
5 SPT as secondarily liable.”

6 **III. THE ORDER IS INCONSISTENT WITH COURT AND STATE BOARD**  
7 **DECISIONS, CREATES DISINCENTIVES TO PROMPT REMEDIATION, AND**  
8 **MUST BE REVISED**

9 The Regional Board concedes that SPT did not cause or contribute to any discharge. Yet,  
10 despite no previous CAOs, the Order concludes that because no responsible party has assumed  
11 cleanup responsibility, and thus no cleanup is progressing at the Site, it is not appropriate at this  
12 time to name SPT as secondarily liable. SPT should not be named on the Order in the first place  
13 since it played no active role and did not have any involvement with the activities involved with  
14 the alleged discharges. Moreover, a fair reading of the State Board’s own decisions and good  
15 public policy would dictate that under the circumstances of this matter, Semtech, a large  
16 international company fully capable of performing the cleanup – and determined by the Regional  
17 Board to have discharged waste on the Site – should be named as the primary responsible party.  
18 SPT – who came to own the property only after the alleged discharges occurred and never  
19 discharged any waste itself – should at best be named as a secondarily liable party without  
20 cleanup obligations, unless and until Semtech violates the Order.

21 **A. State Board Precedent Rejects Primary Responsibility for Parties Like SPT**

22 The State Board has long held that the “initial responsibility for cleanup is with the  
23 operator, but . . . it is appropriate to look to the owner to assure cleanup in the event the operator  
24 fails in its obligations.” *In the Matter of the Petition of Mr. and Mrs. William R. Schmidl*, Order  
25 No. WQ 89-01 (“*Schmidl*”) at 4. According to *Schmidl*, while the landowner must assume  
26 ultimate responsibility, the “user/discharger bears primary responsibility for compliance with the  
27 Regional Board orders.” *Id.* The State Board has “found secondary liability status where, among  
28 other things, the discharger did not cause or contribute to the discharge,” such as in the case of  
SPT. (*Ultramar*, n.1 [citing *In the Matter of the Petitions of Spitzer*, Order No. WQ 89-8

1 ("Spitzer"), and *In the Matter of the Petitions of Vallco Park*, Order No. WQ 86-18 ("Vallco").  
2 "All of the [State Board's] orders addressing primary versus secondary liability have made a  
3 distinction between those parties who were considered responsible parties due solely to their land  
4 ownership (or, in one case, their possession of a long-term lease) and those parties *who actually*  
5 *operated the facility or otherwise caused the discharge in question.*" (*In the Matter of the*  
6 *Petitions of Aluminum Company of America*, Order No. WQ 93-9 ("Alcoa"), at 12 n.8 [citations  
7 omitted], emphasis added.)<sup>5</sup> "The Board has concluded that the initial responsibility for cleanup  
8 should be with the operator or the party who created the discharge." *Id.*

9 **B. As No Cleanup and Abatement Orders Were Previously Issued, Let Alone**  
10 **Violated, It Is Premature to Name SPT as a Primary Responsible Party**

11 The Order provides that in the event that Semtech were to assume primary responsibility  
12 for cleaning up the waste at the Site and the Regional Board determines that the cleanup is  
13 progressing in accordance with this Order, the Regional Board retains the ability to modify this  
14 Order and assign SPT as a secondarily liable party. Order, ¶ 9. Such a position is against public  
15 policy and can only foster recalcitrance on the part of Semtech. Naming both parties as primarily  
16 liable will only lead to disputes and encourages Semtech to drag its feet on the cleanup, which it  
17 caused. By naming SPT as secondarily liable, it will clearly communicate to Semtech that the  
18 Regional Board will look first to it to comply with the Order.

19 As is clear from the multiple State Board decisions addressing secondary responsibility,  
20 the totality of the circumstances needs to be considered, which in the case of SPT leads to the  
21 conclusion that it is appropriate to name SPT as secondarily responsible. In this matter, the newly  
22 issued Order summarizes the history of the prior orders concerning the Site, which included  
23 California Water Code Section 13267 Investigation Orders issued to Semtech, CBS, Northrop,  
24 and SPT. Order, ¶ 9. Nowhere in the Order does the Regional Board indicate any prior orders

25 \_\_\_\_\_  
26 <sup>5</sup> In *Alcoa*, unlike in this matter, the State Board found it necessary to name parties who did not actually engage in the  
27 mining activities that resulted in the ongoing discharge because "[t]he mine operators, the entity which created the  
28 problem, are no longer in existence." *Alcoa* at 12. In this matter, Semtech is a large, international company, with its  
latest revenues reported on its website to be \$659 million. <http://www.semtech.com/company/> Indeed, the Site  
played an instrumental role in making the company the success that it is today, since it was founded only shortly  
before it commenced its over 40 years of operations at the Site.

1 have been violated and there have been no prior CAOs for the Site. Indeed, the Regional Board  
2 admits that "after this recent [13267] investigative order that environmental assessment has  
3 progressed at a reasonable pace."<sup>6</sup> RTC, p. 13.

4 The Regional Board cites to *In the Matter of the Petitions of Wenwest, Inc., et al.*, Order  
5 WQ 92-13 ("*Wenwest*"). Order, n.9. The Regional Board staff apparently draws their conclusion  
6 that the work must be progressing on the cleanup before it can draw a distinction between  
7 primary/secondary responsibility from a footnote in *Wenwest*. *Wenwest*, n.2; RTC, p. 10.  
8 However, in *Wenwest*, the State Board merely found it was not an unreasonable conclusion to  
9 reach in that matter, but took notice that the work was progressing satisfactorily at the time the  
10 case stood before it. *Id.* Indeed, the State Board found it appropriate to name Susan Rose, the  
11 existing owner of the site at issue, as secondarily liable because she "neither caused nor permitted  
12 the activity which led to the discharge." (*Id.* at 3, 8, 9.)

13 The Order's reliance upon *In the Matter of the Petition of San Diego Unified Port District*,  
14 Order No. WQ 89-12 ("*San Diego Port District*"), is equally misplaced. Order, n.9, RTC, p. 10.  
15 Rather, *San Diego Port District* serves to demonstrate why SPT should be named secondarily  
16 liable. In *San Diego Port District*, the Regional Board adopted an addendum to a three-year-old  
17 CAO adding the San Diego Port District as a responsible party. In response to the Port District's  
18 petition, the State Board declined to name it as secondarily responsible, rather than primary, as it  
19 found that the Port District *permitted* the discharges and that Paco, the lessee, was several months  
20 behind in the implementation of the CAO. Importantly, unlike with SPT, the State Board found  
21 that the Port District had significant control over choosing its lessee and over the activities of the  
22 lessee. In the case of SPT, it is undisputed that shortly after SPT acquired the property and  
23 inherited the lease, Semtech vacated the premises. Given that Semtech was at the end of its 40-  
24 year tenure when SPT acquired the Site, it is quite obvious SPT did not have any control over the  
25 activities of Semtech that caused the alleged discharges and there is no evidence to the contrary.

26 <sup>6</sup> Buried in its response to comments and not cited in the Order, the Regional Board staff asserts that it is also  
27 appropriate to name SPT primarily liable, since it was aware of the environmental issues associated with the Site  
28 when it purchased the Site in 2001 and that the cleanup of the Site will add value to the property, benefiting SPT.  
RTC, p. 13. There is no evidence to support these claims, which are irrelevant even by the Regional Board's own  
characterization of the factors to take into account for secondary responsibility.

1 Likewise, SPT never had the opportunity to exercise any control in choosing Semtech as the  
2 lessee, which it merely inherited due to its acquisition of the Site. Ever since, the Site has  
3 remained unused and vacant.

4 Similarly, the Regional Board's reliance on *Valleco*, WQ 86-18, and *Spitzer*, WQ 89-8, in  
5 support of the Order is not well-founded. These decisions further support naming SPT as  
6 secondarily responsible. *Valleco* held that the Regional Board should first look to the lessees  
7 regarding cleanup and "*only involve the landowner if the lessees fail to comply with the orders.*"  
8 *Valleco* at 3. In *Spitzer*, from the start the order issued by the Regional Board provided that the  
9 owners would be responsible only if the other named dischargers did not timely complete the  
10 tasks. *Spitzer*, n.6. In the case of SPT, the Regional Board has it backwards by initially naming  
11 SPT primarily responsible on the Order and only considering a change in its status should  
12 Semtech comply with the Order. As explained below, this is counterproductive.

13 C. **Naming SPT as Secondarily Liable Would Promote Cleanup and Good Public**  
14 **Policy**

15 Naming both SPT and Semtech as primary responsible parties works against the prompt  
16 compliance with the Order to clean up the Site and is against public policy. *In the Matter of the*  
17 *Petition of Prudential Insurance Company of America*, Order No. WQ 87-06 ("*Prudential*"), also  
18 cited in the Order, is informative in such regard. Order, n.9, RTC, p. 10. In *Prudential*,  
19 Prudential leased a site to Fairchild Semiconductor for ten years and to Micro Power for another  
20 five years. (Prudential clearly was the owner at the time of the discharges, unlike SPT.) The  
21 Regional Board named Prudential to the CAO, along with Fairchild and Micro Power, merely  
22 because of its ownership of the property. In response to Prudential's petition, the State Board  
23 agreed that Prudential should bear secondary responsibility only for the cleanup, finding that "the  
24 difficult position into which the petitioner has been placed does not further any legitimate public  
25 purpose. The petitioner is named in the order and bears ultimate responsibility for everything in  
26 it. A more careful crafting of the Regional Board order would satisfy all concerned while  
27 protecting the public's interest in seeing that the pollution is cleaned up." *Id.* 4.

1            *In the Matter of the Petition of United States Department of Agriculture, Forest Service,*  
2 Order No. WQ 87- 5 (“*USDA*”), is cited by the Regional Board in its Response to Comments.  
3 RTC, p. 12. Yet, in *USDA*, the State Board recognized that “even though the law permits naming  
4 of a landowner . . . it is not mandatory. In previous cases, we have reviewed the Regional  
5 Board’s ability to determine the relative advantages and disadvantages of including a landowner  
6 in the order. What we must determine is whether the Regional Board’s exercise of discretion is  
7 appropriate.” *Id.* at 4. Although the State Board in *USDA* found “there is no question that the  
8 petitioner knew what was going on in the mining operation” and that “the petitioner was also, by  
9 its own admission, in a good position to control how the mining operation was conducted,” it  
10 nonetheless concluded that “the Regional Board should not seek enforcement of the waste  
11 discharge requirements against the [Petitioner] unless [the operator] fails to comply.” *USDA* at 3,  
12 5.

13            Crafting the Order to name SPT as secondarily responsible would serve to the advantage  
14 of and protect the public interest, while better achieving the objectives of the Regional Board. It  
15 cannot be reasonably disputed that Semtech’s 40 years of operations dating back to the early  
16 1960s resulted in discharges that caused contamination, that Semtech is clearly liable under the  
17 terms of its leases to address any contamination it may have caused, and that Semtech has the  
18 financial ability, with annual revenues well in excess of one-half billion dollars, to comply with  
19 the Order. Designating Semtech as the primary responsible party and SPT as secondary would  
20 squarely and appropriately rest the responsibility for compliance upon Semtech, which in turn  
21 would facilitate cleanup and discourage recalcitrance. On the other hand, naming SPT as a  
22 primary responsible party would only serve to reward Semtech for laying waste to the Site that it  
23 left behind in the wake of its success, which is not in the public interest. Indeed, there is no  
24 disadvantage to naming SPT secondarily responsible. As recognized by the Order, by naming an  
25 existing landowner as secondarily liable, the landowner nonetheless remains responsible for  
26 complying with an order in the event that the primary responsible party does not. Order, n.8.

1           D.     Contrary to Prior State Board Decisions, the Courts Have Ruled that Passive  
2                    Migration Is Not a Discharge

3           The Order is misplaced in its assertion that by merely being the landowner SPT is liable  
4     under California Water Code Sections 13304(a) and 13267, by claiming that a discharge  
5     continues as long as the pollutants remain in the soil and groundwater at the Site.<sup>7</sup> Order, ¶ 8,  
6     n.7. The Regional Board's conclusion is based upon antiquated State Board holdings that the  
7     term "discharge" includes passive migration of waste, including in *In the Matter of the Petition of*  
8     *Zoecon Corporation*, WQ-86-2, *Schmidl*, WQ 89-1, and *Spitzer*, WQ 89-8. This interpretation  
9     has since been supplanted. In 2011 the Ninth Circuit Court of Appeals held that liability for a  
10    discharge under Water Code Section 13304<sup>8</sup> is not intended to encompass those whose  
11    involvement was "remote and passive." *Redevelopment Agency of the City of Stockton v. BNSF*  
12    *Railway Co., et al.* (9th Cir. 2011) 643 F.3d 668, 677 (finding that the Railroad's involvement  
13    with the petroleum spill was not only remote, but was nonexistent, as the Railroads engaged in no  
14  
15  
16  
17  
18

19           <sup>7</sup> By naming both parties to the Order as being primary responsible parties, the Order improperly imposes joint and  
20    several liability. Section 13304 allows for only a several obligation and is devoid of any mention of joint and several  
21    obligations. California law imposes a general presumption against joint and several obligations unless there are  
22    express words to the contrary. Civ. Code § 1431. Indeed, it is the adopted policy of the People of California, as  
23    codified at Civil Code Section 1431.1, that the imposition of joint and several liability is frequently inequitable and  
24    unjust. Rather, the text of Section 13304 requires the Regional Board to demonstrate that each discharge of waste  
25    causes or permits, or threatens to cause or permit, the waste to be discharged or deposited where it is, or probably will  
26    be, discharged into waters of the state and creates, or threatens to create, a condition of pollution or nuisance.  
27    Section 13304(a) further provides that such person "shall upon order of the regional board, clean up *the waste or*  
28    *abate the effects of the waste . . .*" (Emphasis added.) The language of the statute does not state that each proven  
   discharger shall be responsible for cleaning up and abating the waste caused by any other discharges that may have  
   occurred on the site.

<sup>8</sup> Section 13304(a) of the California Water Code provides:

          Any person who has discharged or discharges waste into the waters of this state in violation of any  
          waste discharge requirement or other order or prohibition issued by a regional board or the state board,  
          or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be  
          discharged or deposited where it is, or probably will be, discharged into the waters of the state and  
          creates, or threatens to create, a condition of pollution or nuisance . . . .

1 active, affirmative or knowing conduct with regard to the passage of contamination into the soil).<sup>9</sup>

2 There is no evidence whatsoever that SPT caused or permitted any discharge. It had no active  
3 involvement in the activities leading to a discharge on the Site. SPT had no involvement with  
4 Semtech's 40 years of operations involved with the discharges, which by Semtech's own  
5 admission concluded prior to SPT's purchase of the Site.

6 **E. The Order Violates SPT's Right to Due Process**

7 The Order violates SPT's right to due process. *Morongo Band of Mission Indians v. State*  
8 *Water Resources Control Board* (2009) 45 Cal. 4th 731, 737 ("When . . . an administrative  
9 agency conducts adjudicative proceedings, the constitutional guarantee of due process of law  
10 requires a fair tribunal"); *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th  
11 81, 90 ("The protections of procedural due process apply to administrative proceedings . . . Due  
12 process . . . always requires . . . [a] 'constitutional floor' of a 'fair trial in a fair tribunal,' in other  
13 words, a fair hearing before a neutral or unbiased decision-maker." (quoting *Bracey v. Gramley*  
14 (1997) 520 U.S. 899, 904-905 and *Winthrow v. Larkin* (1975) 421 U.S. 35, 43)); *Memphis Light,*  
15 *Gas & Water Div. v. Craft* (1978) 436 U.S. 1, 14 (notice in an administrative adjudicatory hearing  
16 must "apprise the affected individual of, and permit adequate preparation for, an impending  
17 'hearing'"). The Order issued by the Executive Officer,<sup>10</sup> as both prosecutor and adjudicator,  
18 requires that SPT initiate the undertaking of costly investigation and remediation without any  
19 opportunity for the matter to be heard before the Regional Board. *Morongo*, 45 Cal. 4th at 737  
20 (procedural fairness requires internal separation between advocates and decision makers to  
21 preserve neutrality).

22 There was no opportunity provided to SPT, or even an advisory of its right, to have a an  
23

24 <sup>9</sup> In another decision, the Ninth Circuit also found that passive migration was not a "discharge" under the  
25 Comprehensive Environmental Response, Compensation and Liability Act. *Carson Harbor Village Ltd. v. Unocal*  
26 *Corp.* (9th Cir. 2001) (*en banc*) 270 F.3d 863, 879-80, *citing* 42 U.S.C. § 6903(3) and 42 U.S.C. § 9607(a)(2).  
27 Likewise, the California Court of Appeal has held that a "'discharge or release' as used in [I] health and Safety Code]  
28 Section 25249.5 refers to a movement of chemicals from a confined space into the land or the water. The subsequent  
passive migration of chemicals through the soil or water after having been so discharged or released by a party does  
not constitute another discharge or release." *Consumer Advocacy Group, Inc. v. Exxon Mobil Corp.* (2002) 104  
Cal.App.4th 438, 449.

<sup>10</sup> Moreover, the Order does not provide any finding or other proof that there was a proper delegation of authority to  
the Executive Officer to issue the Order.



1 impartial hearing before the Regional Board. The issuance of a CAO is an adjudicative  
2 proceeding and governed by Chapter 4.5 of the Administrative Procedure Act, Government Code,  
3 Section 11400 et seq.<sup>11</sup> *Summary of Regulations Governing Adjudicative Proceedings before the*  
4 *California Water Boards*, Office of Chief Counsel, State Water Resources Control Board, August  
5 2, 2006, at 2. Government Code Section 11425.10(a) requires the Regional Board to “give the  
6 person to which the agency action is directed notice and an opportunity to be heard, including the  
7 opportunity to present and rebut evidence.”

8 The authority to issue orders under Water Code Sections 13267 and 13304 is entrusted in  
9 the Regional Board, not the Executive Officer. While the Regional Board may have delegated  
10 authority to its Executive Officer to issue CAOs, the Executive Officer has no authority  
11 independent of the Regional Board’s delegation and it does not eclipse the right to a hearing  
12 before the Regional Board. The State Board has long held that recipients of CAOs by an  
13 Executive Officer have an opportunity to be heard before the Regional Board:

14 After reviewing a cleanup and abatement order *issued by the*  
15 *Regional Board Executive Officer*, the discharger may submit  
16 comments and request changes in the order. The Executive Officer  
17 may amend the order in response. *The discharger may also request*  
18 *an opportunity to be heard by the Regional Board, which may*  
19 *amend or rescind the order. In the Matter of the Petition of BKK*  
20 *Corporation*, 86-13, p. 5. (Emphasis added.) See also *In the*  
21 *Matter of the Petition of Lake Madrone Water District*, 85-10;  
22 *Machado v. SWRCB* (2001) 123 Cal.App.4th 1107.

23 Further, Water Code Section 13228.14 leaves the final discretion to the full Regional  
24 Board as to any hearings or investigations to clean up or abate waste. Contrary to the unilateral  
25 issuance of the Order by the Executive Officer without a hearing, any final action as to cleanup  
26 and abatement must be taken by the *full* Regional Board, not an Executive Officer, nor even a  
27 panel of Regional Board members. Water Code Section 13228.14 provides, in part:

28 (a) Any hearing or investigation by a regional board relating to . . .  
*requiring the cleanup or abatement of waste . . .* may be conducted  
by a panel of three or more members of the regional board, *but any*  
*final action in the matter shall be taken by the regional board. Due*

<sup>11</sup> Title 23 of the California Code of Regulations, Section 648(b) (“all adjudicatory proceedings before the State Board, the Regional Board . . . shall be governed by these regulations, Chapter 4.5 of the Administrative Procedures Act (commencing with Section 11400 of the Government Code) . . .”).

1 *notice of any hearing shall be given to all affected persons.* After  
2 a hearing, the panel shall report its proposed decision and order to  
3 the regional board and shall supply a copy to all parties who  
4 appeared at the hearing and requested a copy . . .

5 (c) The regional board, after making an independent review of the  
6 record and taking additional evidence as may be necessary, may  
7 adopt, with or without revision, or reject, the proposed decision and  
8 order of the panel. (Emphasis added.)

9 Accordingly, SPT has requested an opportunity to be heard before the Regional Board  
10 with regard to the Order and to have an opportunity to supplement the record. Cal. Code of Reg.,  
11 Tit. 23, § 2050.6.

12 **IV. CONCLUSION**

13 For the reasons set forth above, SPT respectfully requests that the State Water Resources  
14 Control Board revise the Order or remand it back to the Regional Board for further action.

15 Dated: November 6, 2013

16 Respectfully submitted,

17 By: 

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# EXHIBIT 1

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROCKWELL INTERNATIONAL CORPORATION, a corporation,  
Plaintiff(s),

vs.

No. 89 6037 MRP (GHK)

JANSS INVESTMENT CORPORATION, a corporation; CITY CENTER CORPORATION, a corporation; JANSS CORPORATION, a corporation; EDWIN GREGSON; PATRICIA GREGSON MILLINGTON; WESTINGHOUSE ELECTRIC CORPORATION, a corporation; TELLER INDUSTRIES, INC., a corporation; XTEL, INC., a corporation; and MICROSEMICONDUCTOR CORPORATION, a corporation,  
Defendant(s),

**ORIGINAL**

AND RELATED CROSS-CLAIMS

DEPOSITION OF GERALD LANAHAN

Taken on May 18, 1992

VICKI D. NIELSON  
Certified Shorthand Reporter  
510 Southwest Third Avenue, Suite 400  
Portland, Oregon 97204  
FAX (503) 243-6815

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3

4 ROCKWELL INTERNATIONAL )  
CORPORATION, a corporation, )  
5 )  
6 Plaintiff(s), )  
7 vs. )  
8 JANSSE INVESTMENT CORPORATION, )  
A corporation; et al., )  
9 Defendant(s). )

No. 89 6037 MRP (GHK)

10  
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14 DEPOSITION OF GERALD LANAHAN  
15  
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17 BE IT REMEMBERED that pursuant to Notice, the  
18 deposition of Gerald Lanahan was taken in behalf of  
19 defendant and cross-defendant Westinghouse Electric  
20 Corporation, before Vicki Nielson, a Certified Shorthand  
21 Reporter for Oregon, on Monday, May 18, 1992, commencing at  
22 the hour of 9:30 a.m., in the law offices of Haglund &  
23 Kirtley, 101 Southwest Main Street, Portland, Oregon.  
24  
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APPEARANCES

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FOR THE DEFENDANT(S):

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appearing in behalf of Westinghouse Electric  
Corporation

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280 Declaration of Gerald Lanahan  
Marked 6

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## P-R-O-C-E-E-D-I-N-G-S

GERALD LANAHAN

was thereupon produced as a witness in behalf of the defendants, and having been first duly sworn on oath by the Certified Shorthand Reporter, was examined and testified as follows:

## EXAMINATION

Q (By Mr. McCann) Would you, please, state your full name for the record.

A Gerald Lanahan.

Q And what is your present home address, Mr. Lanahan?

A 10325 Southwest 57th Place, Portland.

Q Now, we've met once before, haven't we?

A Yes.

Q And at that time, we discussed your employment in the Newbury Park, California area during the 1960's and 1970's, didn't we?

A Yes.

Q After we met, we prepared a declaration that you executed concerning the things we talked about, didn't we?

A Yes.



1 MR. McCANN: I would like to have that marked as  
2 the first Exhibit.

3 (Marked for identification: Exhibit 280,  
4 Declaration of Gerald Lanahan.)

5 Q (By Mr. McCann) I just had marked as Exhibit 280  
6 a copy of a document entitled declaration of Gerald  
7 Lanahan. And I handed it to you. And I ask whether it's a  
8 true copy of the declaration that you executed in March of  
9 this year?

10 A Yes.

11 Q Have you ever had your deposition taken before?

12 A No.

13 Q I would like to take a few minutes then, on the  
14 record, and explain some of the ground rules what we are  
15 going to do today. As you can see, the court reporter is  
16 transcribing everything we say verbatim.

17 And she will prepare a booklet containing all the  
18 questions and answers and other comments here today for you  
19 to review. She should be delivering it within the next few  
20 weeks.

21 And you will then have an opportunity to make any  
22 changes that you think are necessary to have your answers  
23 accurately reflect what you would like them to reflect in  
24 order to make your testimony as accurate as possible. Then  
25 you should sign the transcript.

1           And as we've previously discussed, I believe our  
2 stipulation will be that you can send it directly to me  
3 after you have signed it.

4           You should keep in mind that although you can  
5 change any answers, the lawyers involved in the case can  
6 comment about that fact, as it may reflect on your  
7 credibility as a witness. So we all have an interest in  
8 having your best answers right here today.

9           We will try to complete this examination as  
10 quickly as possible to get you out of here and I know Mr.  
11 Flick has to go down to Los Angeles this afternoon.

12           But I do encourage you to take as much time as  
13 you need to make sure that you do understand my questions  
14 and give you as much time as you need to make your answers  
15 accurate.

16           If at any point you need to take a break to go to  
17 the bathroom or get a drink of water or just stretch your  
18 legs or whatever, just let us know and we'll do that.

19           If at any point you don't understand one of my  
20 questions either because I just speak too fast, which I  
21 often do, or the question doesn't make sense to you in  
22 light of your experience, just let me know and I'll either  
23 have it read back or I'll repeat it or rephrase it to try  
24 to clear up any confusion.

25           You do have to give verbal responses to all the

1 questions. Nods of the head or huh-uh or uh-huh are  
2 practically impossible for the reporter to report. And so,  
3 therefore, yeses and nos and verbal explanations are what  
4 we need today.

5 And, likewise, it's important to know that during  
6 a deposition she can only take one person's comments at a  
7 time.

8 So unlike in normal ordinary conversation where  
9 you often know where someone is going and sort of jump in  
10 and answer the question or begin your next comment, you  
11 have to be careful to wait for the question to be completed  
12 and then provide your answer. And I will try to make sure  
13 your answer is completed before I ask the next question.

14 Finally, you should remember that you are under  
15 oath here today providing testimony just as though you were  
16 in a court of law.

17 From time to time, Mr. Flick might object to a  
18 question that I ask. And he does that to preserve a record  
19 for a judge to make a determination later on. But in the  
20 meantime, despite any objection, I'm entitled to a complete  
21 answer to the question while we're here today.

22 Do you understand all of that?

23 A Yes.

24 Q Have you consumed any alcohol or prescription  
25 medicines or any other substance that might impair your

1 ability to remember or to articulate answers to the  
2 questions here today?

3 A No.

4 Q Is there any other reason that you cannot provide  
5 accurate testimony here today?

6 A No.

7 Q Good. Thank you. What is your current  
8 occupation, Mr. Lanahan?

9 A Manufacturer's rep.

10 Q And what sort of rep manufacturer do you  
11 represent?

12 A Do you want me to list the factories?

13 Q If you could give me a general description of  
14 what you are involved in.

15 A Sporting goods and marine manufacturers.

16 Q Do you currently have anything to do with  
17 manufacturing of silicon chips or high-tech devices like  
18 that?

19 A No.

20 Q What is your work address?

21 A Same as my home address, 10325 --

22 Q Southwest --

23 A -- Southwest 57th Place, Portland.

24 Q And how long have you been in the business that  
25 you are now engaged in?

- 1           A     12 years.
- 2           Q     How long have you lived in Portland?
- 3           A     12 years.
- 4           Q     So you started this business at the time you  
5 moved here?
- 6           A     Correct.
- 7           Q     And you have done that ever since?
- 8           A     Yes.
- 9           Q     Did you, at any time, work for Westinghouse  
10 Electric Corporation in Newbury Park, California?
- 11          A     Yes.
- 12          Q     Where was the building in which you worked  
13 located in Newbury Park? Do you know the address of the  
14 building?
- 15          A     No, I don't remember.
- 16          Q     Was the building in which you worked located on  
17 the corner of Arnold Drive and Mitchell Road, in Newbury  
18 Park, California?
- 19          A     Yes.
- 20          Q     If I refer to the building as the Arnold  
21 building, will you understand the building that I'm talking  
22 about?
- 23          A     Yes.
- 24          Q     When did you begin working for Westinghouse at  
25 the Arnold building?

1           A     I want to say it's 1960. About 1960 to 1965 is  
2 what I recollect.

3           Q     Was your work for Westinghouse always in the  
4 building on Arnold Drive and Mitchell Road?

5           A     Yes.

6           Q     When you say that you began working there in  
7 1960, is that a rough approximation or do you have some  
8 reason to believe that that's the accurate date?

9           A     No, that's what I remember.

10          Q     And what do you mean by that's what you  
11 remember? Do you have some reason to believe that it was  
12 in the year 1960 or is it just your estimate?

13          A     Just my estimate.

14          Q     Could it have been a little bit later than that?

15          A     Yes.

16          Q     Do you know whether, before you began working at  
17 the Arnold building, Westinghouse had operations in the  
18 Arnold building?

19          A     If they did, it wasn't -- it was still fairly  
20 new, so it would have been -- it wouldn't have been for a  
21 long period, if they did. I just can't remember. I think  
22 I started pretty much when that building opened.

23          Q     Okay. Thank you. If I were to tell you that the  
24 building opened for occupancy in approximately November of  
25 1962, would that refresh your recollection in any way more

1 precisely as to when you began to work in the Arnold  
2 building?

3 A You know, I don't think this came up before, but  
4 I think I started in another building prior to the Arnold  
5 building.

6 Q Would you have been working in the building up on  
7 Lawrence Drive, the astroelectronics building?

8 A Yes, I think that's correct. I think that's  
9 where the three divisions started. And then when this  
10 building was completed, I moved down from that building.

11 Q You believe you moved from the Lawrence Drive  
12 astroelectronics building to the Arnold building at the  
13 time it opened in November of 1962?

14 A Yes.

15 Q I believe you stated that you worked there until  
16 approximately 1965 or 1966. Is that what you stated?

17 A Yes.

18 Q Did you work in the Arnold building continuously  
19 from the time it opened until you left working for  
20 Westinghouse?

21 A Yes.

22 Q When you left working for Westinghouse at the  
23 Arnold building, were there any operations continuing at  
24 the Arnold building when you left?

25 A No, there wasn't. They pretty much shut the

1 facility down. And at that particular time, they were  
2 looking for people to buy the equipment, so it was shut  
3 down.

4 Q Is it your understanding then that you worked at  
5 the Arnold building basically from the beginning of  
6 Westinghouse's operations there until the end of those  
7 operations?

8 A Yes.

9 Q What was your position at the time you started  
10 working for Westinghouse?

11 A Engineer.

12 Q This was up in the astroelectronics lab?

13 A Yes.

14 Q Did your position change when you moved down to  
15 the Arnold building?

16 A No, pretty much it remained engineering. The  
17 titles may have changed somewhat, but the function was  
18 engineering.

19 Q What were your duties and responsibilities as an  
20 engineer for Westinghouse at that time?

21 A Writing the processes for the manufacturer of  
22 microelectronics primarily in the photo resist and the  
23 evaporation areas.

24 Q Did your duties ever change as a result of your  
25 move to the Arnold building?



1 A No.

2 Q Did your duties remain the same for the entire  
3 time that you worked at the Arnold building?

4 A Yes.

5 Q What division of Westinghouse were you working  
6 for in the Arnold building?

7 A I believe we called it microelectronics.

8 Q The microelectronics division?

9 A Yes.

10 Q Generally speaking, what sort of work did  
11 Westinghouse do? What did the microelectronics division of  
12 Westinghouse do?

13 A We did research basically, small production in  
14 the manufacturing of silicon chips.

15 Q Can you describe what you did in relation to that  
16 operation as an engineer in the photo resist and other  
17 areas that you mentioned? Can you just give me some  
18 general description of what your responsibilities were in  
19 relationship to the manufacture of these silicon chips?

20 A I mean, I can go all day long.

21 Q Well, can you give me a general statement of the  
22 scope of your duties then?

23 A Scope of the duties was, like as I mentioned  
24 before, setting up the manufacturing processing of these  
25 various chips and wafers to make an end device.

1 Q Were your activities located in any specific part  
2 of the Arnold building?

3 A Yes.

4 Q What part would that have been?

5 A That would have been called the photo resist  
6 room. It was actually all within what we called the clean  
7 room, so I don't know how more defined you want to be than  
8 that.

9 Q Were you familiar with the operations or  
10 activities carried on in other parts of the building other  
11 than the photo resist area?

12 A Yes.

13 Q How did you become familiar with these other  
14 operations?

15 A We were a fairly small group, very integrated  
16 group and so we pretty much interfaced with each other.  
17 One process lent itself to another process, so you had to  
18 be familiar with before and after each operation.

19 Q Were you able to view other operations from your  
20 vantage point in the photo resist area?

21 A Yes.

22 Q And how was that possible?

23 A The entire clean room was surrounded with  
24 windows. And so you had an outer hallway that you could  
25 walk around. Inner -- I want to say offices, but inner.

1 work areas within the clean room also had windows that you  
2 could see from one operation to the other.

3 Q You say that it was a fairly small and integrated  
4 group. Approximately how many people were working at the  
5 building while you were there?

6 A If I had to guess, a maximum in that particular  
7 building maybe 100.

8 Q Did the number of employees of the building vary  
9 over the five or six years that you were there?

10 A Yes.

11 Q Actually I think I may have misspoken. You were  
12 in that building what, only approximately four years?

13 A Yes.

14 Q You say that it varied. Can you give me some  
15 quantification as to the minimum or maximum?

16 A No, I can't remember.

17 Q Somewhere around 100 people?

18 A That would be my guess.

19 Q Were organic solvents used by Westinghouse in the  
20 Arnold building during the period in which you worked  
21 there?

22 A Yes.

23 Q Which solvents were used?

24 A Primarily trichloroethylene, acetone, isopropyl  
25 alcohol, very small amounts of methyl ethyl ketone. That's

1 about it.

2 Q Was trichloroethane, TCA, ever used by the Arnold  
3 building at Westinghouse while you were there?

4 A Not that I recall.

5 Q Was dichloroethylene, DCE, ever used at the  
6 Arnold building at the time you were there?

7 A It may have in the diffusion areas, but I  
8 couldn't say for certain.

9 Q If you were to estimate that it may have, do you  
10 have some idea of the amounts that might have been used in  
11 that area?

12 A Very small amounts. If it was used at all, it  
13 was probably used as a dopant. And in those quantities it  
14 would have been very, very small amounts.

15 Q When you say very, very small amounts, can you  
16 help quantify that in your experience?

17 A Probably talking ounces.

18 Q Over what period of time?

19 A Again, I'm just speculating. If it was used at  
20 all, it would probably -- I couldn't guess. It's just too  
21 many years ago.

22 Q What makes you think that some other solvent  
23 other than the chief ones that you have mentioned before,  
24 the TCE, acetone, methyl ethyl ketone and isopropyl  
25 alcohol, might have been used in other operations? What

1 draws you to conclude that perhaps something like DCE may  
2 have been used; although, you say you don't know for sure?

3 A Maybe we better go back. You are telling me that  
4 -- you are saying it's DCE?

5 Q There is another chemical called  
6 dichloroethylene, which has been mentioned in this case.  
7 And my question to you is whether you know whether DCE was  
8 ever used by Westinghouse at the facility?

9 A I think I might have been confused. I am  
10 thinking more of a dopant. Dichloroethene, I think, was  
11 related as a solvent and I can say probably was not used.  
12 I was going off on a wrong tangent.

13 Q Do you know whether methylene chloride would have  
14 ever been used by Westinghouse?

15 A If it was, again, it would have been used in more  
16 of a research manner and very, very small quantities.

17 Q How about Freon 113?

18 A It's in that same classification, very small  
19 amounts.

20 Q Do you know --

21 A It was probably used, but very, very small  
22 amounts.

23 Q And, again, can you help me quantify what you  
24 mean by very, very small amounts?

25 A Maybe two gallons a year, if that.

1 Q If that?

2 And on what basis do you make that estimate?

3 A I think I can recall seeing it used and maybe  
4 even trying it myself at times.

5 Q What sorts of operations might methylene chloride  
6 or 113 have been used?

7 A In a cleaning operation.

8 Q When you say that these chemicals may have been  
9 used in small amounts, how do you distinguish between the  
10 amount that they might have been used as between TCE,  
11 isopropyl alcohol, acetone?

12 A If they would have been used at all, it would  
13 have been more in a research mode, trial and error. We are  
14 always looking to find different materials that would work  
15 better, trying to write up better processes.

16 And, therefore, it was never incorporated, as far  
17 as I know, as part of any regular process. So, therefore,  
18 the quantities would have been very minimal.

19 Q How was trichloroethylene, TCE, packaged when it  
20 was purchased?

21 A All the solvents were purchased in one gallon  
22 glass containers. And we did this for purity.

23 Q What quantity of trichloroethylene was kept in  
24 inventory by Westinghouse in the Arnold building at the  
25 time you were there?

1           A     I would have to guess. I couldn't say for sure  
2 what kind of quantities were kept as far as supplies. It  
3 would have varied, I think, with availability and also the  
4 supply area. And I'm just not sure.

5           Q     Where in the Arnold building were these supplies  
6 of fresh trichloroethylene stored?

7           A     Well, they were located in what we call the  
8 stores area. And employees would be able to go back and  
9 draw them out as required.

10          Q     Were fresh quantities of TCE kept anywhere else  
11 in the Arnold building?

12          A     No.

13          Q     Were there any quantities of fresh TCE kept in  
14 the clean room itself?

15          A     The only fresh supplies in the production area  
16 would have been in a gallon bottle ready to be used for  
17 production. No more than that in any one location, though.

18          Q     Where was the ready to be used fresh TCE kept in  
19 the Arnold building?

20          A     At the various work stations, there were all  
21 kinds of cabinets. And they would have been kept in the  
22 cabinet.

23          Q     In what areas of the Arnold building was TCE used  
24 at the time you were there?

25          A     It would have been used throughout the clean room

1 areas. So again, confined in the clean room area, this  
2 inner area that we spoke before. It was used in various  
3 operations for cleaning.

4 Q Can you list for me these operations?

5 A The types of operations?

6 Q That you recall.

7 A The biggest use probably of TCE was degreasing  
8 and a degreasing chamber, vapor degreaser. And do you want  
9 me to go into the methods of filling it and emptying it?

10 Q We will get to that eventually. We should keep  
11 it to a question and answer basis to provide a clean  
12 record.

13 But with respect to the various operations, I  
14 understand you have mentioned that there was a photo resist  
15 operation that you were largely involved in?

16 A Yes.

17 Q What other operations were there in the clean  
18 room area?

19 A Well, starting with mask making, photo resist,  
20 diffusion, assembly, evaporation. They were primarily the  
21 areas.

22 Q Of these operations, in which of these operations  
23 would TCE be used at the Arnold building while you were  
24 there?

25 A They could have been used in every one of those



1 locations and probably were.

2 Q How was the TCE used in these various  
3 operations? I should say, by what mechanism was the TCE  
4 applied in these operations?

5 A Are you familiar with the degreaser, vapor  
6 degreasers and how they work?

7 Q I am.

8 A Okay. That's one method.

9 (A discussion held off the record.)

10 Q (By Mr. McCann) So the TCE was used in vapor  
11 degreasers?

12 A Yes.

13 Q Was it used with any other sorts of equipment?

14 A It was used, oh, in various different methods.  
15 Usually in a glass beaker, if it was used in bulk like  
16 that, for dipping, you know, parts into.

17 It may have been used in what we called squirt  
18 bottles where a part might have been squirted off to clean  
19 it. And this was over another beaker. So the contaminated  
20 TCE would go into the beaker and then be disposed of.

21 Q Was it ever used with what are called ultrasonic  
22 degreasers?

23 A I classify vapor degreasers with ultrasonics.  
24 They were basically -- in fact, I think we had some  
25 ultrasonic vapor degreasers that were all one.

1 Q All one unit to do both functions?

2 A Uh-huh.

3 Q I see. How many of these degreasers were there  
4 in the clean room that you can recall? Was it more than  
5 one?

6 A Oh, yeah. But I would only be guessing.

7 Q Can you describe for me how large they were or  
8 what capacity they were?

9 A Well, I know we had several different sizes. The  
10 one that comes to my mind is a container that would  
11 probably hold a gallon of fluid. And do you want me to  
12 give you rough dimensions of this thing?

13 Q No, that's okay. I was mostly interested in  
14 knowing approximately how much solvent would be held by  
15 one.

16 Were these degreasers tabletop models or floor  
17 standing models or can you describe their general --

18 A Pretty much they were tabletop models.

19 Q You said pretty much. Were there --

20 A Well, there may have been a floor model, but I  
21 think the majority of them would have been tabletop.

22 Q Were all of these degreasers located within the  
23 clean room?

24 A Yes.

25 Q How was fresh TCE transferred into the degreasers

1 from the bottles in which they were purchased, in which the  
2 TCE was purchased?

3 A You opened up the glass container and pour it in.

4 Q Pour it directly from the bottle to the --

5 A Right into the container.

6 Q There was no intermediate container involved?

7 A Right.

8 Q Why was that?

9 A Again, we were buying the highest purity  
10 electronic solvents we could buy. That was the reason why  
11 it came in a glass bottle. And to transfer it to any other  
12 container would have contaminated it. So we wanted to try  
13 to keep it as free from contamination as possible.

14 Q What quantity of TCE did Westinghouse use in its  
15 operations at the Arnold building while you were there?

16 A Again, I'd only be guessing.

17 Q Can you give me a rough estimate over time, say,  
18 in a week, how much TCE might have been used?

19 A Maybe at our peak time with all the, you know,  
20 peak employees, if we used 25 gallons a week, I'd be  
21 surprised.

22 Q When we previously spoke and as you stated in  
23 your declaration, you thought that the estimate was about  
24 ten gallons a week. Do you believe that estimate to be low  
25 now or --

1           A     Well, you know, I'm trying to recall over the  
2 whole period of time. You know, we did have variations in  
3 personnel there. And that's why I classified it at a peak,  
4 so that would be the maximum. And it could have very well  
5 been 10 to 25, somewhere in that class.

6           Q     How was acetone packaged when it was purchased by  
7 Westinghouse?

8           A     Also in one gallon glass containers.

9           Q     In the same way the TCE was?

10          A     Yes.

11          Q     What quantity of acetone was kept by Westinghouse  
12 inventory?

13          A     Again, I would only speculate. I have no idea.

14          Q     Was the acetone kept in the same storage area  
15 that you mentioned that fresh TCE was stored?

16          A     All the solvents were kept in the same area.

17          Q     Was fresh acetone kept anywhere within the clean  
18 room?

19          A     Yes.

20          Q     Again, would you say that it was in a ready to  
21 use mode, there was some kept in small cabinets in the  
22 clean room?

23          A     Yes. Again, in the same glass bottle.

24          Q     In what areas of the building was acetone used?

25          A     I would say, again, it would be used in all the

1 areas.

2 Q All the areas in the clean room?

3 A Yes.

4 Q Would it have been used in any areas outside of  
5 the clean room?

6 A Not that I'm aware of.

7 Q Were TCE and acetone used in the same areas of  
8 the building?

9 A Yes.

10 Q Were there any areas where one may have been used  
11 where the other was not?

12 A Very possible.

13 Q What sorts of operations or areas within the  
14 clean room might acetone have been used where TCE was not  
15 used?

16 A Again, in pretty much every department. Acetone  
17 was used more frequently than TCE, in that it was the last  
18 operation in cleaning usually following a water rinse, so  
19 it allowed it to be blowed off and to give it a clean  
20 surface and dry very rapidly.

21 Q Can you describe for me the mechanisms by which  
22 acetone was applied or used? You have sort of hinted at it  
23 already. And I will try to get in and focus on -- you  
24 mentioned some things were blown off. Can you tell me how  
25 it was used? For example, let me start, was it used in

1 vapor degreasers like TCE?

2 A No.

3 Q Can you then tell me what mechanisms it was used  
4 in?

5 A I would say, again, probably about 90 percent of  
6 its use were in beakers, Pyrex beakers, where the parts  
7 were emersed and then pulled out. And that was pretty much  
8 the way it was used. And all the degreasers or solvents  
9 were used under hooded areas.

10 Q Can you describe for me what you mean by a hood  
11 under which acetone was used?

12 A Well, we had various sinks set up where the air  
13 was being drawn out through these hooded areas. And to  
14 keep the TCE and solvent smells and levels down in the  
15 clean room, most of these operations were done underneath  
16 the hood area.

17 Q Is it your testimony that the acetone was used in  
18 a sink?

19 A Yeah, it could have been used in a sink also.

20 Q Would you describe what you mean by being used in  
21 a sink, as you previously testified it was used in beakers?

22 A It could have been used in the sink area as the  
23 same way I just described in a beaker. Again, usually  
24 following an acid rinse in water and then going from the  
25 water to the acetone within the sink area.

1 Q So let me see if I can break that down. The part  
2 that you are talking about moving from acid through a water  
3 rinse to the acetone is a silicon wafer? Is that what you  
4 are speaking of?

5 A Yes.

6 Q So if I understand you correctly, a silicon wafer  
7 would be some operation involving where acid would be  
8 applied to the silicon wafer, at which point it would be  
9 rinsed in a sink?

10 A Yes.

11 Q Then emersed in acetone?

12 A Yes.

13 Q Would the acetone itself in any way be in the  
14 sink or is it your testimony that it was nearby the sink?

15 A Depending on the operation, it could have been in  
16 the sink or next to the sink.

17 Q By the "it", acetone itself or in a beaker full  
18 of acetone?

19 A The acetone beaker.

20 Q Was free running acetone ever used in a sink?

21 A Disposed of in the sink?

22 Q Yes.

23 A No.

24 Q Was it ever held in a sink without being in a  
25 beaker itself?

1 A No.

2 Q So it's your testimony that acetone always was  
3 held in a beaker?

4 A Correct.

5 Q What was the capacity of the beakers in which  
6 acetone was used, if you can estimate for me? I realize  
7 this is difficult.

8 A You know, beakers, when you buy them, come in  
9 milliliter sizes. And I cannot recall what milliliter they  
10 held. If I had to guess, I'd say a pint.

11 Q How was fresh acetone transferred to the beakers  
12 or other vessels in which it was used from the bottles in  
13 which the acetone was purchased?

14 A They would be poured directly from the container  
15 it was purchased in, the glass container, into the beaker.

16 Q Was this through the same reasons of maintaining  
17 purity that you mentioned before?

18 A Yes.

19 Q Can you estimate for me what quantity of acetone  
20 Westinghouse used in its operations at the Arnold building  
21 while you were there?

22 A I'd have to again guess, but I'd say 25 to 50  
23 percent more than a trichloroethylene.

24 Q More than trichloroethylene?

25 A Yes.



1 Q On what do you base that estimate?

2 A Well, it was used more frequently than  
3 trichloroethylene. I want to retract and say probably it  
4 was used about the same amount, because thinking about it,  
5 trichloroethylene wasn't used as frequently, but where it  
6 was used, was used in larger amounts.

7 In other words, the degreasers would have held  
8 more trichloroethylene than the beakers of acetone, so it  
9 was probably about equal.

10 Q How were soiled or waste solvents collected for  
11 disposal from the equipment or vessels or beakers in which  
12 it was used?

13 A The primary disposal method was what we called an  
14 explosion proof container, which was designed for the  
15 purposes of carrying solvents.

16 These containers, if I recall, were either two  
17 and a half to three gallon and may have been five gallon,  
18 were kept in the various work stations. And the  
19 contaminant solvent then was poured into these cans.

20 Q Is this procedure you described safe for both TCE  
21 and acetone?

22 A Yes.

23 Q How were soiled quantities of TCE or waste TCE  
24 dispensed from the vapor degreasers you described into the  
25 safety cans?

1           A     They all came with drains. So primarily you just  
2 opened the drain, held a container underneath the drain  
3 usually with a funnel or something so you didn't have a  
4 spill or anything in there and drained it right into that  
5 container.

6           Q     With respect to the beakers of acetone, were they  
7 simply just poured into the waste containers you described?

8           A     Yes.

9           Q     Were these waste containers that you have  
10 described, did they have some sort of a cap or lid?

11          A     Oh, yes.

12          Q     Can you describe that for me?

13          A     They had a spring loaded cap on the opening. I  
14 believe I remember some sort of a screen measure there over  
15 the opening. And so, therefore, when you opened it, you  
16 had to depress it to keep it open, dump your solvent in.  
17 And then when you released it, it shut.

18          Q     You are talking about depressing it and releasing  
19 it to activate the lid? What sort of a mechanism are you  
20 talking about?

21          A     Just a lever type of thing that you operated with  
22 your finger.

23          Q     What was done with the small safety containers of  
24 waste solvents once they had been filled with waste  
25 solvent?

1           A     They were usually transported to an area where  
2 they were dumped into a 55 gallon container.

3           Q     Did you ever see any spills or leaks of any  
4 solvents from these small waste containers at Westinghouse?

5           A     No.

6           Q     Did you ever hear about any spills or leaks of  
7 these small containers of solvents?

8           A     No.

9           Q     You say that the drums into which these  
10 containers were decanted was a 55 gallon barrel?

11          A     As I recall.

12          Q     What were these barrels made of?

13          A     Steel.

14          Q     And where were these storage drums kept, these  
15 large 55 gallon drums?

16          A     It's still a vague area. We discussed this  
17 before. And I can't say for certain where they were  
18 stored. I recall them storing them outside the building.  
19 They may have been inside the building. I just -- I can't  
20 recall.

21          Q     When you say outside the building, is there any  
22 specific area outside the building which you seem to recall  
23 anymore than others?

24          A     No.

25          Q     We previously had discussed an area referred to

1 variously as the tank farm or the gas farm in the northwest  
2 corner where there was some compressed gas bottles and  
3 deionized water and things like that.

4           Do you recall that area where these drums may  
5 have been stored?

6           A     You didn't happen to bring a drawing of that, did  
7 you?

8           Q     I don't think I have one. I don't think I do.  
9 If I showed you a map of the building, would it assist your  
10 recollection in determining where?

11          A     It might.

12           MR. FLICK: Would you read back the question.

13                     (The record read back, as requested.)

14           MR. McCANN: I thought I said, "Do you recall  
15 that being the area where these drums may have been  
16 stored," but I may be mistaken.

17           THE WITNESS: Kevin, I'm looking at these notes  
18 that we took before. And I think at that time you had the  
19 location of the building, we located it at the northwest  
20 corner. I'd have to go along with what I said at that  
21 time.

22           Q     (By Mr. McCann) I do have one copy of a document  
23 that has been marked as Exhibit 4 from a deposition, which  
24 it purports to be a floor plan of the Arnold building  
25 labeled floor plan, sanitary piping plan.

1 MR. McCANN: Off the record.

2 (Discussion held off the record.)

3 MR. McCANN: I believe it's labeled drawing P-1.  
4 It's a little bit difficult to read. I'm showing it now to  
5 Mr. Lanahan.

6 Q (By Mr. McCann) It's sort of a bad copy and  
7 reduced copy. But in looking at this diagram, does it  
8 assist your recollection at all to determine where, outside  
9 the Westinghouse Arnold building, these 55 gallon drums of  
10 waste solvents were collected?

11 A This is off the record. The building is facing  
12 this way.

13 Q We should probably put this on the record. As  
14 you are looking at the drawing, north is to the top and  
15 Arnold Drive would run along the bottom of the drawing and  
16 Mitchell Road would run north and south along the  
17 right-hand margin.

18 With that orientation, as I think Mr. Flick would  
19 agree, does looking at the drawing assist your recollection  
20 at all in remembering where these --

21 A I still think it was the northwest area.

22 MR. McCANN: Let the record reflect that the  
23 witness pointed to the area labeled -- well, I don't see  
24 the label on this map. I believe it was previously labeled  
25 a gas farm in this area -- or another one -- this is a

1 reduced one -- area in the northwest corner of the Arnold  
2 building.

3 Q (By Mr. McCann) What was the floor of the area  
4 in which these drums were collected made of?

5 A Again, I'd only be guessing, Kevin. I want to  
6 say that they were concrete, because we had the gas farm  
7 set up there, too. And I believe that was on a concrete  
8 pad we had there.

9 Q What was done with the waste storage drums in  
10 which the solvents were collected?

11 A They were picked up by various disposal people.

12 Q How frequently were they picked up?

13 A I would have to only guess.

14 Q How do you know that the drums were picked up?

15 A Oh, I've seen them being picked up.

16 Q Was it picked up on a regular basis?

17 A Yes. I'd have to say monthly.

18 Q Is that an estimate or --

19 A That's an estimate.

20 Q Could it have been more frequently or less  
21 frequently?

22 A It could be more frequently.

23 Q More frequently?

24 A More or less.

25 Q More or less?

1           Did you ever have any spills or leaks of solvents  
2 from these 55 gallon storage drums?

3           A     No.

4           Q     Did you ever see any spills or leaks of solvents  
5 in the process of decanting solvents from these small  
6 containers to the 55 gallon drums?

7           A     No.

8           Q     Did you ever hear about any spills or leaks of  
9 solvents in the area of these 55 gallon drums?

10          A     No.

11          Q     Were any organic solvents used by Westinghouse at  
12 the Arnold building at the time you were there ever  
13 disposed of or collected for disposal in any way other than  
14 the process that you have just described of decanting the  
15 55 gallon drums?

16          A     The only other method might have been pouring it  
17 back into a used glass container, if one of those explosion  
18 proof containers were available or if it was used in a  
19 location where it didn't warrant an explosion proof  
20 container.

21                 So it would have been poured into an empty  
22 container and then carried out to the site where the drums  
23 were and disposed of the same way.

24          Q     By disposed of the same way, you mean poured from  
25 those glass containers into the five gallon drums as well?

1 A Yes.

2 Q With respect to the ultimate disposal or ultimate  
3 collection of the waste solvents, were they ever disposed  
4 of or collected in any other way other than by being poured  
5 into the 55 gallon drums and being hauled away?

6 A No.

7 Q Were acids used by Westinghouse at the Arnold  
8 building during the time that you were employed there?

9 A Yes.

10 Q Which acids were used?

11 A Nitric, hydrofluoric, hydrochloric, sulfuric.  
12 That's all I can recall.

13 Q Why were these acids used?

14 A They were necessary to as part of the process for  
15 etching the silicon wafers.

16 Q How were the acids used in these etching  
17 processes? Again, if you can describe for me the sorts of  
18 equipment that were used and how the acids themselves were  
19 dispensed.

20 A Acids were only used in designated areas. Those  
21 areas were hooded sink areas where both the hood and water  
22 was available. The acids were poured always in Pyrex  
23 beakers and just contained in that area.

24 Q Were these hooded sink areas that you just  
25 described the same hooded sink areas that you mentioned



1 previously nearby which solvents were used?

2 A Yes.

3 Q Where were these various acid sinks and hood  
4 arrangements located?

5 A They were primarily located in the photo resist,  
6 evaporation and diffusion areas.

7 Q Were TCE, acetone or any other organic solvents  
8 ever used in those sinks themselves?

9 A Yes.

10 Q Can you describe for me what you mean by that,  
11 being used in the sinks? Is that the thing you have  
12 previously described?

13 A Exactly.

14 Q What I'm trying to ask is whether these were ever  
15 poured directly into these sinks.

16 A Absolutely not. Kevin, I just might say that if  
17 you poured solvents and acids together into a sink, you  
18 will have an explosion. And so we were very, very careful  
19 about not pouring either acids or solvents into the drain.

20 Q Do you know how acids were disposed of after they  
21 were used?

22 A The designated sink areas had an acid disposal,  
23 you know, the best I can recall. And basically the  
24 contaminated acids were poured down these sink areas. And  
25 to the best of my knowledge, ran down to an outside storage

1 tank.

2 Q Were solvents ever poured down these drains you  
3 just described which led to the acid drain system?

4 A No.

5 Q For the same reasons you have just described?

6 A Exactly.

7 Q Are you aware of any Westinghouse regulations or  
8 other instructions that prohibited the pouring of solvents  
9 down these drains?

10 A Yes.

11 Q Can you describe for me what you mean by that?

12 A I wrote some of them.

13 Q What sort of regulations were they?

14 A Well, they were some -- the regulations and  
15 restrictions we had primarily were written in the  
16 processes. The processes themselves were very exact. In  
17 addition to the processing, we had safety precautions that  
18 we all were aware of.

19 Pretty much all the engineers were involved in  
20 writing these safety precautions and dos and don'ts and  
21 were very careful in going over with every employee that  
22 came through the plant.

23 Q So is it your testimony that every Westinghouse  
24 employee was trained in the proper method of disposing of  
25 solvents and acids?

1           A     No, I can't say every Westinghouse employee. I  
2 can say pretty much every employee that was connected  
3 within the clean room was familiar with the processing.

4           Q     How did they become familiar with this process?  
5 How were they instructed?

6           A     Normally through supervisors. Every area had a  
7 supervisor that was in charge of that particular area. Any  
8 employee coming in would report to that supervisor. It was  
9 the responsibility of that supervisor to train that  
10 employee following the instructions that he was given.

11          Q     How often was this training given? I think I  
12 understood you to say that this training was given when  
13 this employee first became employed; is that correct?

14          A     That's correct.

15          Q     Was the training ever repeated or given another  
16 time?

17          A     I'm sure it was. You know, I'm sure it was  
18 brought up on various occasions. And if not exact going  
19 over a list, maybe someone looking over someone's shoulder  
20 to remind them. We were constantly looking for problems in  
21 that respect.

22          Q     Did this training and instruction on disposal of  
23 solvents and acids you talk about include instructions not  
24 to pour solvents down acid sink drains?

25          A     Yes.

1 Q Do you know where this tank that you mentioned in  
2 which acids were collected was located?

3 A I want to say, again, it was on the west side of  
4 the building.

5 Q How do you know where that tank was?

6 A Again, that's my best recollection, that I just  
7 recall it being there.

8 Q What was done with the acids that were collected  
9 in this tank?

10 A They were neutralized and, again, pumped out and  
11 disposed of.

12 Q How was this pumping and disposal accomplished?

13 A By an outside service that would come and pump it  
14 out.

15 Q I take it they would bring some kind of a pump  
16 truck that would come and collect them?

17 A Yes.

18 Q Did you ever see this operation underway, this  
19 pumping action taking place?

20 A Yes.

21 Q I take it, in order to accomplish this that the  
22 truck would position itself somewhere near the tank?

23 A Yes.

24 Q Can you describe for me exactly how this  
25 operation would take place?

1           A     The truck would come, park fairly close to the  
2 tank. He would then -- there was a manhole type of  
3 situation. Would remove the manhole cover, put his hose  
4 down into the underground tank and then remove the  
5 contents.

6           Q     You have seen this activity taking place?

7           A     Yes.

8           Q     Have you seen it more than once?

9           A     Yes.

10          Q     How often was this tank pumped?

11          A     I'd only speculate. I couldn't tell you.

12          Q     Was it done on a fairly regular basis?

13          A     Yes.

14          Q     Having seen that take place, was that one of the  
15 bases on which you know the location of the tank in which  
16 the acid was collected?

17          A     Yes.

18          Q     Can you tell me just in terms along the western  
19 wall of the building where this tank was located?

20          A     I can't recall.

21          Q     Can you tell me whether you believe it was in the  
22 middle or near the south or near the north end of the wall?

23          A     I'd have to say it's more towards the north end  
24 of the wall.

25          Q     Is it your testimony that it was close to the

1 northwest corner or further south?

2 A Kevin, I don't know. I can't say for sure.

3 Q Do you know what this tank was made of?

4 A I believe it was concrete lined.

5 Q Was the tank completely underground?

6 A Yes.

7 Q Do you know how this tank was fed? Do you know  
8 how the tank was plumbed to the building?

9 A We had inside plastic piping from the sinks that  
10 we already mentioned, the acid sinks. Those pipes would  
11 run into this underground tank and drain into the tank.

12 Q Did any portion of this tank protrude above the  
13 surface of the ground?

14 A No.

15 Q Do you know whether waste solvents were ever  
16 stored in an underground tank by Westinghouse during your  
17 employment at the Arnold building?

18 A Definitely not.

19 Q Why do you say that?

20 A It just would not have been procedure for us to  
21 do that. We just used 55 gallon containers.

22 Q Other than the underground acid holding tank you  
23 just described, were there any other underground tanks at  
24 or around the Arnold building used by Westinghouse during  
25 your employment there?

1 A Not that I can recall.

2 Q Did you ever see any spills or leaks of organic  
3 solvents onto the ground outside the Arnold building during  
4 your employment there?

5 A No.

6 Q Did you at any time hear about any spills or  
7 leaks of organic solvents onto the ground outside the  
8 Arnold building during the time you were employed there?

9 A No.

10 Q How would you characterize the way solvents were  
11 handled at Westinghouse during your employment at the  
12 Arnold building?

13 A I think, overall handled very carefully. We were  
14 a very unique group at that time. Westinghouse prided  
15 itself in being the showplace of Southern California. We  
16 were very select in the engineering people we hired from  
17 various other locations.

18 We just all took pride in the processes and the  
19 handling and everything else there was in the everyday  
20 production.

21 Q And this pride and workmanship extended as far as  
22 the methods of disposal of organic solvents?

23 A Absolutely.

24 Q Did you at any time work for Semtech Corporation  
25 in Newbury Park?

- 1           A     Yes.
- 2           Q     Where was the building in which you worked for  
3 Semtech located in Newbury Park?
- 4           A     Across the street from this building.
- 5           Q     Across Mitchell Road from the Arnold building?
- 6           A     Yes.
- 7           Q     Do you have any recollection of the address of  
8 that building on Mitchell Road?
- 9           A     No.
- 10          Q     If I mentioned 652 Mitchell Road, does that ring  
11 a bell?
- 12          A     Yes, it does.
- 13          Q     Is your recollection now that that is the  
14 address?
- 15          A     Yes.
- 16          Q     I will refer to that building then as the 652  
17 Mitchell building or the Semtech building. And you will  
18 understand what I mean by that?
- 19          A     Yes.
- 20          Q     When did you begin working for Semtech at the 652  
21 Mitchell Road building?
- 22          A     Immediately after having left Westinghouse.
- 23          Q     Can you tell me, again, about approximately when  
24 that was?
- 25          A     1965. I worked there for about thirteen years.



1 Q You worked for Semtech for about thirteen years?

2 A Yes.

3 Q Was your work for Semtech always located at the  
4 652 Mitchell Road building?

5 A Yes.

6 Q So you worked for Semtech Corporation in the  
7 building located at 652 Mitchell Road from approximately  
8 1965 or so till approximately 1978 or so?

9 A Yes.

10 Q What was your position at the time you started  
11 working for Semtech?

12 A Process engineering.

13 Q Is that the same position you held at  
14 Westinghouse?

15 A Yes.

16 Q What were your duties and responsibilities at  
17 Semtech?

18 A Very similar to that of Westinghouse.

19 Q Did your duties and responsibilities ever change  
20 during the 13 years you worked at Semtech?

21 A Yes.

22 Q In what way?

23 A From process engineering, I became a product  
24 engineer. From product engineering, I became involved in  
25 purchasing materials, manager and then director of

1 purchasing.

2 Q Generally speaking again, what sort of work did  
3 Semtech do at its 652 Mitchell Road building?

4 A They manufactured diodes and rectifiers.

5 Q Can you describe for me that operation? Can you  
6 describe that operation for me in comparison to the  
7 operation that was going on at Westinghouse?

8 A In what respect, Kevin?

9 Q I guess that was a bad question. I think you  
10 testified that Westinghouse was manufacturing computer chip  
11 integrated circuits?

12 A Right.

13 Q Can you describe for me what the difference is  
14 between the manufacturing of computer chips at Westinghouse  
15 compared to the operation for manufacturing diodes and  
16 rectifiers at Semtech?

17 A I think maybe the best way of describing it is  
18 area of sophistication. It takes a lot of highly skilled  
19 sophistication to make microelectronics. To make a diode  
20 rectifier it takes less.

21 So, therefore, if you look at the two operations,  
22 the processing of the Westinghouse facility was much more  
23 exact than that of Semtech.

24 Q Can you describe what your duties and  
25 responsibilities were in relationship to this operation at

1 Semtech, I mean, in the context as a process engineer? Was  
2 it similar to what you were doing at Westinghouse or  
3 different?

4 A No, it was similar.

5 Q Can you describe what that was, again, for me  
6 with respect to Semtech?

7 A Again, writing the processes that were required  
8 to manufacture the diode rectifier, overseeing some of the  
9 supervision of the various areas. That was primarily the  
10 responsibility.

11 Q Were you familiar with the operations or  
12 activities Semtech carried on in all parts of the building  
13 at 652 Mitchell Road?

14 A Yes.

15 Q And how did you become familiar with those  
16 operations other than those that you were directly involved  
17 in?

18 A I just made it my duty.

19 Q Did it eventually become part of your  
20 responsibility to know what was going on in the rest of the  
21 building?

22 A Well, again, in process engineering, it is a  
23 tremendous advantage to know processing prior to and after  
24 your particular part of the operation. So it becomes  
25 necessary that you know what's going on in all the

1 operations.

2 Q I believe you testified that eventually your  
3 duties and responsibilities included certain purchasing  
4 functions?

5 A Yes.

6 Q In what way did your duties and responsibilities  
7 change when you adopted those functions?

8 A The engineering function stopped and the  
9 purchasing function began. In other words, I became  
10 full-time purchasing.

11 Q At approximately what point in your 13 year  
12 tenure at Semtech did that occur?

13 A I would like to say that was about 11 years after  
14 joining them.

15 Q So it was closer to the end of the time you left?

16 A Yes.

17 MR. McCANN: Off the record.

18 (A break was taken.)

19 Q (By Mr. McCann) Were organic solvents used by  
20 Semtech at 652 Mitchell Road during the period which you  
21 were employed there?

22 A Yes.

23 Q Which solvents were used at Semtech?

24 A Primarily, again, TCE, acetone, isopropyl  
25 alcohol, small amounts of methyl ethyl ketone. That's for

1 the most part.

2 Q Was trichloroethane used by Semtech during your  
3 employment there?

4 A Not that I know of.

5 Q Was Freon 113 used by Semtech during the time you  
6 were employed there?

7 A No.

8 Q Was dichloroethylene, DCE, used while you were  
9 employed there?

10 A No.

11 Q How about methylene chloride?

12 A Yes.

13 Q What quantities of methylene chloride?

14 A Very small amounts.

15 Q For what purposes was TCE used by Semtech during  
16 your employment there?

17 A Again, in the degreasers, the ultrasonics and in  
18 general cleaning operations.

19 Q What sorts of equipment was used by Semtech to  
20 apply the TCE?

21 A Very similar to Westinghouse.

22 Q In what way was the equipment different? The  
23 implication is that it may have different in some ways. My  
24 question is: In what ways would it have been different?

25 A No. I would have to say it was the same.

1 Q How many degreasers for TCE were operated by  
2 Semtech during your employment there, if you know?

3 A Less than six.

4 Q Was it more or less than were used at  
5 Westinghouse?

6 A Probably the same.

7 Q Was there a similar clean room arrangement at  
8 Semtech that there was at Westinghouse?

9 A No.

10 Q Why is that?

11 A It just didn't require it. The manufacturing of  
12 the rectifier diodes that we talked about in relationship  
13 to the microelectronics just didn't warrant the clean room  
14 atmosphere that we had at Westinghouse.

15 Q What was the capacity? How much fluid could be  
16 contained in the degreasers used at Semtech?

17 A Again, about the same amount as Westinghouse, one  
18 gallon.

19 Q What quantity of TCE did Semtech use at its  
20 operations at 652 Mitchell Road during the time you were  
21 employed there?

22 A It used a lot.

23 Q What do you mean by that? Can you give me an  
24 estimate?

25 A We already talked about the Westinghouse

1 quantity. And I'd have to say ten times, maybe 15 times,  
2 maybe 20 times that amount at Semtech I can recall that we  
3 had.

4 And giving you the relationship of employees we  
5 had, I believe 525 people at the maximum, there was a lot  
6 of people.

7 Q Approximately what point in time during your 13  
8 years at Semtech did this maximum occur, maximum number of  
9 employees?

10 A If I had to guess, I'd say 1973.

11 Q You say acetone was used by Semtech while you  
12 were there, correct?

13 A Yes.

14 Q For what purpose was it used?

15 A For, again, cleaning, one of the last operations  
16 in any acid rinses and just used for a general cleaning off  
17 of the materials you were working with.

18 Q Can you describe for me, again, how it was used  
19 and what equipment was used to apply the acetone?

20 A Again, used primarily in beakers similar to  
21 Westinghouse. And quantities, again, would have been about  
22 the same ratio as I just gave for TCE over Westinghouse.

23 Q So again, ten to even 20 times as much --

24 A Yes.

25 Q -- total used there as was used at Westinghouse?

1 A Yes.

2 Q How were soiled or waste solvents collected for  
3 disposal from the vessels in which it was used at Semtech?

4 A They were disposed of, again, in the 55 gallon  
5 drums at Semtech. We used both the explosion proof  
6 containers that we used at Westinghouse, also using the  
7 containers that they came in as vehicles for disposing and  
8 putting into the 55 gallon drums.

9 Q When you mentioned the containers that they came  
10 in, the "they" in your sentence, I believe, is any solvent?

11 A Yes.

12 Q Were these containers in which solvents were  
13 purchased at Semtech also glass containers?

14 A Yes.

15 Q Was the procedure you just described for  
16 disposing of them in 55 gallon drums the same for all  
17 solvents used by Semtech?

18 A Yes.

19 Q Where were the 55 gallon drums in which solvents  
20 were disposed of at Semtech located?

21 A Assuming that from what you told me on that  
22 drawing there that both buildings really face the same  
23 direction, the back of the building then would be north,  
24 correct?

25 Q Yes.



1           A     Then it would be north, the north side of the  
2 building.

3           Q     How far from the building were they stored?

4           A     Just right outside one of the main doors there.  
5 I believe we called that a receiving door.

6           Q     Was there ever another area used for the storage  
7 of these barrels than immediately outside the north wall of  
8 the building?

9           A     Not that I know of.

10          Q     Do you recall an area known as the block house?

11          A     Yeah. I was just going to say there may have  
12 been an exception where not used solvents, but new solvents  
13 may have been kept in there. In fact, I know they were.

14          Q     Were waste solvents ever stored out behind the  
15 block house?

16          A     No, not that I can recall.

17          Q     What was done with the 55 gallon drums of waste  
18 solvents that were collected at Semtech?

19          A     They were also picked up by salvaging operations.

20          Q     What was the surface of the ground made of where  
21 these drums were stored out behind Semtech's building?

22          A     It may have been asphalt to start with, but then  
23 it was concrete in later years.

24          Q     Did you ever see any spills or leaks of any  
25 solvent from the small waste containers into which the

1 waste solvent was decanted?

2 A Occasionally I have seen very small ones where  
3 the barrels may have overflowed or in pouring it from one  
4 vessel to another, there may have been some spill.

5 Q My question was backing up a little bit, starting  
6 at the beginning of the process, did you ever see such  
7 spills either indoors or outside doors of Semtech when the  
8 solvents were being decanted from whatever vessel they were  
9 being used in into the smaller waste containers?

10 A Yes. In 13 years, you are bound to see some of  
11 those things happen.

12 Q Did you ever see any spills or leaks of TCE in  
13 that way?

14 A Yes.

15 Q Were these storage drums that you referred to  
16 also metal storage drums?

17 A Yes.

18 Q These are the 55 gallon drums?

19 A Yes.

20 Q Did you ever see any spills or leaks of any  
21 solvent in the area of these storage drums outside the  
22 Semtech building?

23 A Yes. That's where I thought you were first  
24 talking about.

25 Q Did you ever see any spills or leaks of

1 trichloroethylene in the vicinity of these barrels?

2 A Yes.

3 Q Did you ever see any spills or leaks of any  
4 organic solvents anywhere else onto the ground near the  
5 Semtech building outdoors?

6 A No.

7 MR. McCANN: Off the record.

8 (Discussion held off the record.)

9 Q (By Mr. McCann) You may have already stated this  
10 and I didn't hear you. The small waste containers, into  
11 which -- sort of the intermediate small waste containers  
12 going from, say, a degreaser to the 55 gallon drums, were  
13 these the same types of containers used at the Westinghouse  
14 building?

15 A Yes.

16 Q The same spring loaded?

17 A Yes.

18 Q How often were the waste drums that were  
19 collected out of the building picked up from Semtech  
20 Corporation?

21 A I want to say a couple times a month. And the  
22 reason is we accumulated a lot of barrels before they were  
23 picked up.

24 Q Because you were using so much more of the  
25 chemical?

1           A     Right.

2           MR. McCANN: I don't have any other questions.

3

4

EXAMINATION

5

6           Q     (By Mr. Flick) Mr. Lanahan, I'm Wayne Flick and  
7 I represent Rockwell. And I introduced myself earlier this  
8 morning. And I have just a few questions for you.

9           A     Okay.

10          Q     Just a moment ago when Mr. McCann asked you if  
11 you had ever seen leaks or spills when the waste solvent  
12 was transferred into the smaller waste containers, you said  
13 in 13 years you were bound to see spills.

14                 Did you specifically ever see spills, though, or  
15 was that just sort of a general comment, over that span of  
16 time, one --

17          A     I have seen spills. Again, these were pretty  
18 small spills, nothing major.

19          Q     Let's leave Semtech and go back to Westinghouse  
20 now. You were at the Arnold building then, I take it, when  
21 the operations closed there and the operations moved back  
22 to Baltimore, correct?

23          A     Yes.

24          Q     Were you involved in any way in the closing of  
25 that facility?

1 A In what respect?

2 Q In any respect at all, either in the physical  
3 taking apart of the operation or --

4 A No.

5 Q None at all?

6 A No, not in that part of it.

7 Q Do you have any knowledge of the physical taking  
8 apart of the building?

9 A No.

10 Q You don't know then, I take it, about any  
11 equipment removal from the building?

12 A No.

13 Q Do you know what Westinghouse did with the  
14 building after the operation moved?

15 A What they did with it?

16 Q Yes.

17 A The building?

18 Q Yes.

19 A The building stayed there. I mean, I don't  
20 understand your questioning.

21 Q Assuming that Westinghouse had that building  
22 under lease at the time and the lease didn't necessarily  
23 expire at the same time that the operations moved to  
24 Baltimore, do you know then what they might have done with  
25 the remainder of their lease?

1           A     I think it was subleased, if they still kept the  
2 lease, or they just dropped it and walked away. I'd only  
3 be speculating there. I don't know. I know operations  
4 continued in that building after Westinghouse left by a  
5 number of people.

6           Q     But do you know who moved in immediately  
7 afterwards?

8           A     No, I don't. If you would give me a name, I  
9 might recall, but I just can't recall without that.

10          Q     If I told you that a company named Teller  
11 Industries moved in immediately afterwards, would that  
12 refresh your recollection?

13          A     That could. Very possible.

14          MR. McCANN: Object. That assumes facts not in  
15 evidence.

16          Q     (By Mr. Flick) To whom did you report at  
17 Westinghouse?

18          A     I want to say, at what point? Because we had a  
19 lot of managers there. Fred Innis (ph) comes to mind as  
20 one.

21          Q     Would he have been the first manager to whom you  
22 reported?

23          A     I can't say. I don't recollect.

24          Q     Do you recall the names of any others and not in  
25 any particular sequence?

1           A     Can you give me some hints?

2           Q     No.

3           A     Okay. Then I can't.

4           Q     Okay. Does the name Chuck Bodine or Chuck

5 Bodine?

6           A     Chuck Bodine I did not report to.

7           Q     You did not, but the name means something?

8           A     Yes.

9           Q     How do you know Mr. Bodine?

10          A     He worked there, I want to say -- Chuck Bodine?

11 I want to say he was just an engineer there. I don't think

12 he had overall engineering management responsibility.

13          Q     How about Jimmy Coleman?

14          A     Jim Coleman, if anything, was a technician.

15 That's what I recall.

16          Q     Jack Darr?

17          A     Oh, God. You are going back. Jack Darr was not

18 over this facility. He may have been over the whole

19 facility, all three operations, as I recall. And that was

20 really early stages.

21                 Chuck Woodward is another name that comes to

22 mind.

23          Q     And what was his position?

24          A     He would have been one of the managers in the

25 microelectronics division.

1 Q So he would have been at your level or he would  
2 have been --

3 A Above. Above my level.

4 Q So he was someone then that you would have  
5 reported to?

6 A Uh-huh.

7 Q How about Harry Knowles?

8 A Harry Knowles, the name is familiar, but I want  
9 to say that Knowles was more responsible for what we call  
10 the systems group. He would not have been that -- I don't  
11 believe would have been that connected with the building we  
12 are talking about.

13 Q Okay. How about Gene LeBlanc?

14 A Gene LeBlanc would have been my level, an  
15 engineer.

16 Q Rod Lewis?

17 A Rod Lewis? That name just doesn't do anything  
18 for me.

19 Q How about Paul Reagan?

20 A Paul Reagan, he would have been my level and, I  
21 think, at one small time I may have reported to him.

22 Q George Spencer?

23 A George Spencer was involved in the applications,  
24 so he really had very little to do with any solvent  
25 handling or anything like that. He was an engineer.



1 Q Okay. How about a CJ Stoll, S-t-o-l-l?

2 A CJ was my equal. He was an engineer in  
3 diffusion, came from Texas Instruments.

4 Q And how about an Edgar Sack?

5 A Ed Sack didn't have anything to do with this  
6 facility. He was back in Pennsylvania and Baltimore, I  
7 think. I think if you had to place Ed Sack, Ed Sack maybe  
8 on the ladder was above both operations, the operation back  
9 in Maryland, Baltimore and the facility out here in  
10 microelectronics.

11 Q Okay. Could you estimate the volume of  
12 production at the Arnold facility in whatever unit you  
13 might think is appropriate, whether that's number of  
14 projects or number of --

15 A I couldn't give you a number of units. The only  
16 thing I could tell you is the so-called production was  
17 minimal. It was not what you thought or think of as a high  
18 production facility. I like to classify it as just kind of  
19 a step between really research and production.

20 Q There have been earlier references in other  
21 depositions to the yellow rooms.

22 A Well, that's a photo resist room.

23 Q Okay. You anticipated my question.

24 A Okay.

25 Q I believe Mr. McCann asked you this question, but

1 I want to make sure that it's clear. Other than the tank  
2 that you said that you believe is concrete that you believe  
3 is at the northwest corner of the building --

4 MR. MCCANN: That misstates his testimony. I  
5 object. It already misstates his testimony.

6 Q (By Mr. Flick) Okay. Other than the concrete  
7 tank that you testified about when Mr. McCann was asking  
8 you questions, are you aware of any other tanks that were  
9 located either above or below the ground on the property at  
10 the time that Westinghouse occupied the facility?

11 A No.

12 Q There has been earlier testimony of a fiberglass  
13 or a plastic tank that may have been a pale green in color  
14 that was located on the western side of that building.  
15 Does that refresh your recollection as to whether or not  
16 there were ever any other tanks?

17 A I can't recall that.

18 Q There has been earlier testimony also about a  
19 trench that ran from the east to the west inside the  
20 building under the floor of the building in which some  
21 pipes rested. Are you familiar with that trench?

22 A A little bit.

23 Q Okay. What do you recall about the trench?

24 A Well, it basically ran east to west, but it went  
25 through all the clean room area. I recall that being a

1 concrete lined trench going from the various locations  
2 within that clean room. It was covered with a metal cover  
3 and with pipelines running through it.

4 Q You said it was concrete lined. Do you recall it  
5 was concrete lined? Do I take it then that you actually  
6 saw inside it at some point?

7 A Yes.

8 Q Meaning those metal plates at least at one point  
9 were removed?

10 A I recall taking the lid off. Don't ask me why.  
11 But I remember opening it up one time and looking down  
12 there.

13 Q Do you recall ever seeing any freestanding  
14 liquids or any liquids running through the trench?

15 A No.

16 Q Do you recall any leaks or any breakages in the  
17 pipes that were in the trench?

18 A No.

19 Q Who was in charge of maintenance at the plant  
20 while you were working there?

21 A I want to say Norm, but I can't think of Norm's  
22 last name.

23 Q Do you know from whom Westinghouse purchased its  
24 TCE?

25 A For certain or I can give you a guess?

1 Q Well, give me your best guess.

2 A Well, it would have been J.T. Baker or Allied  
3 Chemical.

4 Q And is it your testimony that it was always  
5 purchased in the one gallon glass containers?

6 A Yes.

7 Q It was never purchased in larger quantities?

8 A No.

9 Q You said that you recall seeing a tank type truck  
10 come to empty or to pump from the tank outside the west  
11 side of the building. Do you recall the name of the  
12 company?

13 A No.

14 Q Do you recall what the truck looked like,  
15 specifically the color?

16 A No.

17 Q Do you recall anything about the truck?

18 A No. It was a waste hauling truck. You know,  
19 basically they all look the same.

20 Q Do you know who was in charge of purchasing while  
21 you were at the Arnold facility?

22 A I think Ed Harder.

23 Q Harder?

24 A Harder, H-a-r-d-e-r. And Ed also went to Semtech  
25 as purchasing.

1 Q Was there someone by the name of McCormick who  
2 might have been also or simultaneously responsible for  
3 purchasing?

4 A There may have been. That doesn't ring a bell.

5 Q Were there any floor drains in the floor of any  
6 part of the building and specifically in any of the clean  
7 rooms? By that I mean a drain that was actually cut into  
8 the floor into which liquids might have drained.

9 MR. McCANN: I object to the question as being  
10 ambiguous only in the since that -- or maybe it's compound.  
11 Are you asking whether there was a drain or whether there  
12 was liquid flowing into such drains?

13 MR. FLICK: I'm asking whether or not there were  
14 such drains.

15 THE WITNESS: I don't recall.

16 Q (By Mr. Flick) You don't recall?

17 A Huh-uh.

18 Q Do you recall any troughs or any trenches inside  
19 the building in the floor other than the east/west trench  
20 that I've already asked you about?

21 A No.

22 Q Did the D.I. water system produce waste?

23 A Produce waste?

24 Q Any sort of waste.

25 A Well, it produced dirty water that went down the

1 regular drain.

2 Q What do you mean by the regular drain?

3 A Your sewer line.

4 Q The one that was presumably connected to the city  
5 sewer?

6 A Right.

7 Q When Mr. McCann asked you about the concrete tank  
8 outside, the tank that you believe was concrete on the  
9 western side of the building, you said that you thought it  
10 was lined.

11 A Well, concrete lined, I said. It was made out of  
12 concrete. It may have been lined with something, but I'm  
13 not -- I don't know, you know, if it was or not.

14 Q And I believe you also said that no part of it  
15 was above ground?

16 A Correct.

17 Q I take it then that you must have seen it either  
18 when it was put in or at some point when the contents were  
19 removed from it?

20 A No.

21 Q How was it then that --

22 A What do you mean? When something was removed  
23 from it?

24 Q At least when the top portion of it was open?

25 A There was a manhole there that I mentioned.

1 Q And you have looked into the manhole?

2 A Yes.

3 Q And it's on that basis that you say it was  
4 concrete?

5 A Yes.

6 Q I think that's everything. Thank you, Mr.  
7 Lanahan.

8 MR. FLICK: I have two very short questions that  
9 just occurred to me, if that's okay with you.

10 MR. McCANN: It's okay with me. The stipulation  
11 can go at the end.

12 Q (By Mr. Flick) Number one, you have testified  
13 very early on, when Mr. McCann was discussing questions,  
14 that you and he had met once and that was the time at which  
15 you executed the declaration?

16 A Yes.

17 MR. McCANN: That misstates testimony already. It  
18 wasn't at the time he executed the declaration. We had met  
19 before and we worked it out and I sent it to him.

20 Q (By Mr. Flick) Was there any other time other  
21 than that one meeting that you met with Mr. McCann to speak  
22 about the subjects about which you testified today?

23 A No.

24 Q Was there any time at which you spoke to or met  
25 with anyone else that you understood to be representing

1 Westinghouse --

2 A No.

3 Q -- in this matter?

4 Okay. Thank you.

5 MR. McCANN: And this is for your information as  
6 well, but I should ask beforehand, is ten days sufficient  
7 time for you to review this transcript? I assume it would  
8 be less than 70 pages.

9 THE WITNESS: That's fine.

10 MR. McCANN: The stipulation then is that the  
11 reporter will send the original transcript to Mr. Lanahan  
12 and allow him ten days to read and sign it.

13 And Mr. Lanahan will sign the transcript, after  
14 making any changes that he believes are necessary to his  
15 answers to make his testimony accurate, and then he'll send  
16 the executed original of the transcript to me at Lasky,  
17 Haas, Cohler & Munter in a preaddressed and stamped  
18 envelope that you will provide to him.

19 And I will then notify counsel for the other  
20 parties of any changes that are made to the transcript.

21 If the original is not signed in the time  
22 allotted, we will use a certified copy as if it were the  
23 signed original and the reporter will be released of her  
24 duties once the original is sent to the witness.

25 MR. FLICK: So stipulated.

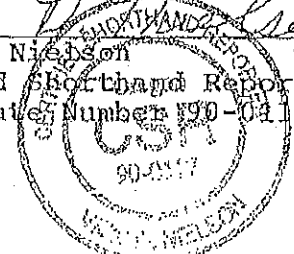


CERTIFICATE

STATE OF OREGON            )  
                                  ) ss.  
County of Multnomah        )

I, Vicki Nielson, a Certified Shorthand Reporter for the State of Oregon, do hereby certify that, pursuant to Notice, GERALD LANAHA appeared before me at the time and place mentioned in the caption herein; that the witness was by me first duly sworn on oath, and examined upon oral interrogatories propounded by counsel; that said examination, together with the testimony of said witness, was taken down by me in Stenotype and thereafter reduced to typewriting; and, that the foregoing transcript, pages 5 to 69, both inclusive, constitutes a full, true and accurate record of said examination of and testimony given by said witness, and all other oral proceedings had during the taking of said deposition, and of the whole thereof.

Witness my hand and Certified Shorthand Reporter stamp at Portland, Oregon, this 27th day of May, 1992.

*Vicki D. Nielson*  
Vicki D. Nielson  
Certified Shorthand Reporter  
Certificate Number 190-0417  


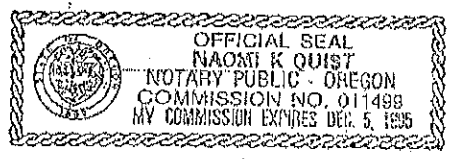
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STATE OF OREGON )  
County of Washington ) ss.  
~~Multnomah~~

I, Gerald Lanahan, being first duly sworn, depose and say upon oath that I have read the foregoing transcript, consisting of pages numbered 5 to 69, both inclusive; and that the same, together with the corrections, if any, made by me; constitutes the testimony given by me upon said deposition, as I verily believe.

Gerald Lanahan  
Gerald Lanahan

Subscribed and sworn to before me this 29<sup>th</sup> day of May, 1992.



Naomi K. Quist  
Notary Public for Oregon  
My commission expires  
12/5/95

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# EXHIBIT 2

LANDLORD

BUILDING LEASE  
(Triple Net)

BETWEEN

LYNN SHADOWS, A GENERAL PARTNERSHIP

LANDLORD

AND

SEMTECH CORPORATION

TENANT

Premises Address: 652 Mitchell Road  
Newbury Park, California

SEPTEMBER 12, 1988

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BUILDING LEASE AGREEMENT  
(Triple Net)

Landlord hereby Leases to Tenant and Tenant hereby hires from Landlord the premises hereinafter described on the terms, covenants and conditions set forth in this Lease consisting of Basic Lease Provisions, paragraphs A through L and General Lease provisions paragraphs 1 through 46.

BASIC LEASE PROVISIONS

A. Term and Commencement of Term. The term of this Lease is for 10 years commencing on September 1, 1988 and expiring on August 31, 1998.

B. Landlord.

Name of Landlord: Lynn Shadows, a general partnership

Address of Landlord For Notices: c/o Hugo Roche, Suite 257, 100 Thousand Oaks, Boulevard, Thousand Oaks, California.

C. Tenant.

Name(s) of Tenant: Semtech Corporation

Address of Tenant For Notices: 652 Mitchell Road, Newbury Park, California 91320.

Status of Tenant:  Individual(s),

Partnership  Corporation

Other: (specify) \_\_\_\_\_

Tenant's Trade Name: None

D. Leased Premises. The Lease Premises are shown in red on Exhibit A.

Address of leased premises: 652 Mitchell Road, Newbury Park, California.

Approximate square feet of leased premises 55,608 square foot building plus parking area on approximately 4.1 acres.



E. Use. Light manufacturing.

F. Initial Base Rent. \$15,288.00 per month

G. Security Deposit. \$3,066.00

H. Public Liability Insurance. The public liability insurance to be obtained by Tenant is \$2,000,000 combined single limit.

I. Late Charge. \$100.

J. Guarantor(s) of Lease (if any).

Name(s) of Guarantor(s): None

Addresses of Guarantor(s) \_\_\_\_\_

K. Broker. Tenant has only dealt with the following brokers (write "None" if appropriate): None

Landlord's broker is: None

TENANT(S) AND GUARANTORS WARRANT BY SIGNING THIS LEASE THAT THEY HAVE READ THE PROVISIONS OF THIS LEASE INCLUDING PARAGRAPHS A THROUGH L AND GENERAL LEASE PROVISIONS PARAGRAPHS 1 THROUGH 46 AND AGREE TO THE TERMS THEREOF.

L. Signatures.

LANDLORD:

TENANT:

NAME: Lynn Shadows, a general partnership

NAME: Semtech Corporation

BY Joseph B. Lizardi  
Partner

SIGNATURE: [Signature]  
TITLE: President of CEO

BY [Signature]  
Partner

SIGNATURE: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BY [Signature]  
Partner

BY [Signature]  
Partner

GENERAL LEASE PROVISIONS

This Lease is made and entered into by and between Landlord, and Tenant. The parties agree that:

1. LEASED PREMISES. Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the following Premises described in Paragraph D, Basic Lease Provisions.

2. DELAY IN DELIVERY OF POSSESSION. If Landlord, for any reason whatsoever, cannot deliver possession of the leased premises to Tenant at the commencement of the term, as hereinbefore specified, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom; but in that event there shall be a proportionate deduction of rent covering the period between the commencement of the said term and the time when Landlord can deliver possession. The term of this Lease shall not be extended by such delay.

3. USE. The premises shall be used solely for the purpose specified in paragraph E and shall not be used for any other purpose without Tenant first obtaining the written consent of Landlord thereto:

Tenant shall use the leased premises for the purpose specified herein in such a manner as to not damage the leased premises and Tenant shall, at Tenant's sole cost and expense, promptly repair any damage to the leased premises resulting from Tenant's use thereof.

4. PAYMENT OF RENT. Tenant hereby covenants and agrees to pay rent to Landlord, which rent shall be in the form of "base rent" and "additional rent", all as hereinafter provided. The payment of said base rent shall begin at the commencement of the term. All and other amounts payable herein shall be paid to Landlord at the office of Landlord, 5 E. Wilbur Road, Thousand Oaks, California 91360 or shall be paid at such other place as Landlord may designate in writing to Tenant for payment of rent from time to time.

5. BASE RENT. Tenant shall pay to Landlord for each and every month of the Lease term the base rent per month shown in paragraph F. The base rent shall be paid in advance on the first day of each and every calendar month. If the term of this Lease commences on a date other than the first day of the month, the rental for the first and last months, if less than thirty (30) days, shall be prorated. The base rent is subject to adjustment as provided below.

The monthly base rental as hereinabove set out shall be and is tied directly to the Consumer Price Index and the monthly payments of rent shall be increased and/or decreased (but never decreased below the initial monthly base rent) on September 1, 1993 in direct proportion to increases or decreases in the Consumer Price Index as hereinafter defined.

Adjusted Base  
Monthly Rent =  $\frac{\$15,288 \times \text{CPI July 1, 1993}}{\text{CPI July 1, 1988}}$

The term "Consumer Price Index" (CPI) means the Consumer Price Index, U.S. Department of Labor, Bureau of Labor Statistics, All Urban Consumers (1982-1984 Base Year) for the Los Angeles-Riverside-Anaheim California Area. In the event the Consumer Price Index referred to above ceases to be published during the term of this Lease or any revised or substituted Index ceases to be comparable to the Consumer Price Index as defined above, then the most reasonably comparable figures available shall be substituted therefore in

determining increases or decreases in rent. The July CPI shall be used for convenience as CPI published on the September 1 adjustment date.

6. INTEREST AND LATE CHARGE. Interest shall accrue on rent and other payments due under this Lease from the due date thereof at the maximum rate Landlord may lawfully charge at the time the rent or other charge becomes due. If any payment of rent or other sum due to be paid by Tenant under this Lease is not made within ten (10) days of the due date thereof Tenant shall pay Landlord the late charge specified in paragraph I in order to compensate Landlord for additional bookkeeping and administrative expenses Landlord may incur as a result of such late payment.

7. RESTRICTIONS ON USE. Tenant shall not use nor permit the leased premises to be used for any purpose other than that set forth in paragraph E above, and further covenants and agrees to execute and comply promptly with all statutes, ordinances, rules, orders, and regulations of federal, state, county or city governments regulating the use by tenant of the leased premises including, but not limited to, those pertaining to the use, storage handling and cleanup of hazardous or toxic waste or materials, all at Tenant's sole cost and expense. The restrictions set forth in this paragraph shall extend to all agents and employees of tenants.

8. IMPROVEMENTS. The term "improvements" as used herein means any improvement, addition or change to the leased premises, any alteration of the leased premises, or anything placed, installed or constructed in, on or upon the leased premises, whether characterized by law as a fixture or trade fixture, but does not include Tenant's personal property.

Tenant shall not make any improvement involving costs exceeding \$10,000, in, on or to the leased premises without the prior written consent of Landlord thereto. Any improvements made in, on or to the leased premises shall be made at the sole expense of Tenant and shall at once become a part of the realty and belong to Landlord, except for Tenant's personal property and trade fixtures.

Provided Tenant is not in default or in breach of this Lease, Tenant may during the term of this Lease, and shall at the written direction of Landlord immediately upon the expiration of this Lease, remove from the leased premises all of Tenant's personal property and trade fixtures. Tenant shall immediately at Tenant's cost and expense repair all damage to the leased premises resulting from such removal.

Upon the expiration or prior termination of this Lease and to the extent directed by Landlord in writing, Tenant shall promptly restore the leased premises to the condition in which received, ordinary wear and tear excepted. Upon the expiration or prior termination of this Lease, Tenant shall surrender the leased premises to Landlord as required by paragraph 18.

Tenant shall keep the leased premises and the real property on which they are situated free from any liens arising out of any work performed on the leased premises by or for Tenant, for material furnished to the leased premises by or for Tenant, or for any obligation incurred by Tenant. Landlord shall have the right to post on the leased premises a Notice of Nonresponsibility pursuant to Civil Code section 3094 for Tenant's improvements.

If any improvement to the leased premises is required by law, or by any governmental authority by reason of Tenant's use of the leased premises, Tenant shall, at Tenant's sole cost and expense, promptly make such improvement.

9. REPAIRS. Tenant shall at Tenant's sole cost and expense maintain the leased premises, and every part thereof, in good condition and repair. Tenant's repair obligation is for both the exterior and interior of the building the outside areas and parking areas and includes, but is not limited to, the roof, walls, foundation, ceiling, plumbing,

heating and air condition, electrical wiring, electrical fixtures, sprinkler system, doors and windows, landscaping, pavement and sidewalks.

10. UTILITIES. During the term of this Lease, Landlord shall make available to Tenant in or upon the leased premises the current facilities, which Tenant acknowledges are adequate, for the delivery to and the distribution within the leased premises of water, gas, electricity and telephone service and for the removal of sewage therefrom. Tenant, at Tenant's own cost and expense, shall pay for all water, gas, electricity, telephone, janitorial services and refuse removal for the leased premises, including all connections and installation charges.

11. WAIVER OF CLAIMS. Neither Landlord nor Landlord's agents, employees nor servants shall be liable and Tenant waives all claims against Landlord and Landlord's agents and employees for damage to persons or property sustained by Tenant or any occupant of the leased premises resulting from the condition of the leased premises or any part thereof or any equipment becoming out of repair, or resulting from any accident in or about the leased premises or resulting directly or indirectly from any act or neglect of any lessee or occupant or of any other person.

12. LANDLORD'S RIGHT TO INSPECT. Tenant shall permit Landlord and Landlord's agents to enter into and upon said premises at all reasonable times for the purpose of inspecting the same or for the purpose of placing notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the premises occasioned thereby.

13. CLEANLINESS AND WASTE. Tenant shall keep the leased premises and the outside areas adjacent thereto at all times in a neat, clean and sanitary condition, free from waste or debris and shall neither commit nor permit any waste or nuisance thereon.

14. INDEMNIFICATION. Except for the acts or omissions of Landlord, its agents or employees, Tenant shall save and hold harmless, indemnify and defend Landlord from any and all claims and liabilities for the death or injury to persons or for damage to property that may, in whole or in part, arise from or on the leased premises or from the use of the leased premises by Tenant under this Lease. Except for the acts or omissions of Landlord, its agents or employees, Tenant shall save and hold harmless, indemnify and defend Landlord against any liability that may arise because of the failure of Tenant to observe or abide by any of the terms or condition of this Lease or any applicable federal, state or municipal laws, rules or regulations.

15. TENANT'S INSURANCE - GENERAL LIABILITY AND PROPERTY DAMAGE. Tenant shall, at Tenant's own cost and expense, procure and continue in force, in the names of Landlord and Tenant, or Landlord shall be named as co-insured or an additional insured on such policy, a policy of general liability insurance against any and all claims for the death or injury to persons or damage to property occurring in, upon, or about the leased premises, including all damage from signs, glass, awnings, fixtures, or other appurtenances, now or hereafter erected upon the leased premises, during the term of this Lease. Such insurance at all times shall be in an amount not less than the amount specified in Paragraph H, Basic Lease Provisions combined single limit for injury or death to one or more than one person in any one accident and property damage. Such insurance shall be written in a company or companies authorized to engage in the business of general liability insurance in the State of California and Tenant shall deliver to Landlord customary certificates evidencing such insurance. Said policy shall also provide that the insurance carrier will give Landlord at least ten (10) days written notice of its intent to cancel said insurance policy prior to the cancellation thereof.

The policies of insurance provided herein are to be provided by Tenant and shall be for a period of not less than one (1) year, it being understood and agreed that thirty (30) prior to the expiration of any policy of insurance, Tenant will deliver to Landlord a renewal or new policy or certificate thereof to take the place of the policy expiring. Should Tenant fail to furnish policies as is provided in this Lease and at the time herein provided, Landlord may obtain such insurance and the premiums on such insurance shall be deemed additional rental to be paid by Tenant to Landlord upon demand.

16. LANDLORD'S INSURANCE: REIMBURSEMENT BY TENANT.

(a) Fire and Casualty Insurance. Landlord shall procure and maintain during the term of this Lease, fire insurance with a standard extended coverage casualty endorsement covering the leased premises to their full insurable value. No use except that which is expressly provided in this Lease shall be made or permitted to be made of the leased premises, nor acts done, which will increase the existing rate of fire or extended coverage insurance to be kept, nor shall Tenant use or sell, in or about the leased premises, any article which is prohibited by the standard form of fire insurance policy. Tenant shall at Tenant's sole cost and expense, comply with any and all requirements pertaining to the leased premises of any insurance organization or company, necessary for the maintenance of reasonable fire insurance covering the leased premises or the building of which they are a part.

(b) Reimbursement of Insurance Premiums. Tenant shall pay Landlord annually, on demand, an amount equal to the cost to Landlord to obtain fire and casualty insurance covering the leased premises. The term insurance also includes any sum actually paid by Landlord that falls within the deductible of \$1,000 of any insurance policy due to damage or destruction to the leased premises.

The amount of the insurance premiums attributable to the leased premises shall be determined according to the schedule or other breakdown of the total premiums given to Landlord by the insurance company, or by the insurance agent's schedule, which specifies the amount of premium for the leased premises.

In Landlord's demand of the insurance costs, Landlord shall submit in writing, Landlord's computation of the cost of insurance demanded. Upon written request by Tenant, Landlord shall furnish to Tenant, all information reasonably required for verification of the payment demanded consisting of the schedule or breakdown by the insurance company or agent and the amount actually paid falling within the deductible amount in the insurance policy, provided, however, that the furnishing of such information by Landlord is not a condition precedent to payment by Tenant of the amount demanded or an excuse for Tenant's failure to promptly remit the payment demanded on demand. Where this Lease commences on a day other than January 1, Tenant's share of the insurance costs for the first and last year of the term shall be prorated in the same ratio that the month of the term during that calendar year bears to twelve.

17. TAXES AND ASSESSMENTS. Tenant shall pay to Landlord each year, during the term of this Lease, an amount equal to all real property taxes on the leased premises. The following definitions shall govern the construction of this paragraph 17.

(a) The term "real property taxes" shall mean and include all taxes, assessments, and other governmental charges, general and special, ordinary and extraordinary, of any kind and nature whatsoever, applicable to the leased premises, including, but not limited to, assessments for public improvements or benefits which shall, during the term hereby leased, be laid, assessed, levied, imposed upon, or become due and payable and a lien upon the leased premises or any part thereof, but excluding franchise, estate, inheritance, succession, capital levy, transfer, income, or excess profits tax imposed upon Landlord; provided, that if, at any time during the term of this Lease, under the laws of California, or any political subdivision thereof in which the leased premises are or may be situated, a tax or excise on rents or other tax, however described, is levied or assessed

by California or such political subdivision against Landlord on account of the rent expressly reserved hereunder, as a substitute in whole or in part for taxes assessed or imposed by California or such political subdivision on land and buildings, or on land or buildings, such tax or excise on rents or other tax shall be included within the definition of "real property taxes," but only to the extent of the amount thereof which is lawfully assessed or imposed upon Landlord and which was so assessed or imposed as a direct result of Landlord's ownership of this Lease or of the rental accruing under this Lease. The term "real property taxes" also includes all taxes, assessments, or other charges levied in lieu of ad valorem taxes, or in addition thereto, as a result of California Constitution Article XIII A adopted on June 6, 1978.

(b) The term "taxes applicable to the leased premises" shall mean all taxes (as hereinabove defined) levied and assessed against the land and improvements comprising the leased premises if the leased premises or improvements are separately assessed. In the event the leased premises are not separately assessed but are part of a larger parcel for assessment purposes (hereinafter referred to as the "larger parcel"), "taxes applicable to the leased premises" shall mean that portion of the taxes assessed against the land and improvements comprising the larger parcel that Tenant's square feet of the leased premises bears to the area in square feet of all buildings within the larger parcel which area is available for leasing to tenants.

With respect to any assessment which may be levied against or upon the leased premises, Tenant shall be required to pay each year only the amount of such assessment, or portion thereof, as Landlord shall be required to pay during such year (with appropriate proration for any partial year), and shall have no obligation to continue such payment after the termination of this Lease.

If this Lease commences other than on July 1, during the first and last years of the term hereof, any property tax shall be prorated between the parties to the end that Tenant only pays the same for the period of the term of this Lease.

18. SURRENDER OF PREMISES. Upon the expiration or prior termination of this Lease, Tenant shall make any restoration required pursuant to paragraph 8, shall peacefully vacate the leased premises and deliver the same and all improvements (except for those to which the Tenant has the right of removal) in the condition required by paragraph 8, and shall surrender to Landlord all keys to and for the leased premises. Moreover, at such time, Tenant shall remove all rubbish and waste from the leased premises and place the same in a neat, clean and sanitary condition.

19. LEASEHOLD SUBORDINATION. Unless otherwise agreed in writing between Landlord and Tenant, if required by Landlord or Landlord's lender, this Lease is and at all times shall be subordinate to the lien or charge of any and all mortgages, deeds of trust, indentures or other encumbrances now existing or which may hereafter be made or created and covering the leased premises, provided, however, that the lender, mortgagee, or beneficiary under the deed of trust agrees that so long as Tenant is not in default or in breach of this Lease, this Lease shall remain in full force and effect upon and after the foreclosure of the mortgage or deed of trust and the sale of the property pursuant to such foreclosure. Tenant shall upon written request of Landlord, Tenant will make, execute, acknowledge and deliver any and all instruments requested by Landlord which are necessary or proper to effect the subordination of this Lease to any first mortgage, deed of trust, indenture or encumbrance, and hereby irrevocably appoints Landlord as Tenant's attorney-in-fact to make, execute, acknowledge and deliver any such instruments on the name and behalf of Tenant.

Notwithstanding any other provision of this paragraph 19 however, should the leased premises be purchased or otherwise acquired by any person in connection with any sale or other proceeding under the terms of any mortgage, deed of trust, indenture or other encumbrance, such person may elect to continue this Lease in full force and effect in the same manner and with like effect as if such person had been named as Landlord herein, and in the

event of such election, this Lease shall continue in full force and effect, as aforesaid, and Tenant shall attorn to such person.

20. ASSIGNMENT AND SUBLEASE. Tenant shall not assign this Lease or any interest therein, and shall not sublease or sublet the leased premises or any interest therein, except by written permission and consent of Landlord being first had and obtained, references elsewhere herein to assignees notwithstanding, and Landlord shall not unreasonably withhold Landlord's consent or permission. Any such subleasing or assignment, even with the approval of Landlord, shall not relieve Tenant from liability for payment of the rental herein provided or from the obligation to keep and be bound by the terms, conditions and covenants of this Lease. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease or a consent to the assignment or subletting of the leased premises.

Upon any assignment or subletting with the consent of Landlord any excess rental, or other consideration, paid by the assignee or the sublessee to Tenant for the lease or subleased premises shall belong to, and shall be paid to, Landlord. "Excess rental or consideration" means the difference between the amount paid by the assignee or sublessee for the lease or the subleased premises by way of rent or otherwise and the rent and other charges payable by Tenant to Landlord under this Lease.

21. SIGNS. Except for existing signs, Tenant shall not install or place any signs on the leased premises without Landlord's prior written consent thereto. As to signs as to which Landlord has consented, Tenant shall at Tenant's sole cost and expense obtain all requisite governmental permits and approvals necessary for the installation of the signs, Landlord may exercise reasonable control over the size, dimensions, and decor of the signs to maintain uniformity in signs throughout the Property.

22. DESTRUCTION OF PREMISES.

(a) Insured Total Destruction. In the event of a total destruction of the leased premises this Lease shall terminate. A destruction shall be deemed "total" if more than 75% of the leased premises are destroyed.

(b) Insured Partial Destruction. If there is a partial destruction of the leased premises during the term of this Lease from a cause insurable under fire insurance with a standard extended coverage casualty endorsement, Tenant shall forthwith repair the same upon receipt of the insurance proceeds, provided such repairs can be made within 120 days of the date of destruction. Any destruction shall not annul or void this Lease; however, base rent to be paid by Tenant under paragraph 5 shall be equitably adjusted according to the amount and value of the undamaged space remaining during the period of rebuilding or repair. If such repairs cannot be completed within 120 days, this Lease may be terminated at the option of either party.

If the leased premises are partially destroyed by any cause not covered by fire insurance with a standard extended coverage casualty endorsement, this Lease shall nevertheless remain in full force and effect. The rebuilding and repair of the damaged premises shall be accomplished by Tenant and Landlord shall make available to Tenant the fire and casualty insurance proceeds for that purpose. Any cost of rebuilding and repair in excess of the insurance proceeds shall be paid by Tenant. If the insurance proceeds exceed the cost of rebuilding and repair accomplished, such excess shall belong to Landlord.

(c) Destruction Within Last Three Years. In the event that during the last three years of the term of this Lease, or any extensions thereof, 50% or more of the leased premises should, by reason of fire or any other casualty, be damaged or destroyed, within sixty (60) days from the date of such destruction or damage, either Landlord or Tenant may elect to terminate this Lease by giving at least twenty (20) days written notice of such election to the other party.

23. CONDEMNATION. If the leased premises, or any part thereof, are taken by condemnation, or incident to the exercise of the power to eminent domain, (hereinafter referred to as "condemnation") the following shall apply:

(a) Termination of Lease. If the entire leased premises are taken or acquired by condemnation this Lease shall terminate, such termination shall take effect as of the date taking becomes effective by passage of title to the leased property to the condemning authority pursuant to court order, or by the physical taking of possession of the leased property by the condemning authority, whichever is earlier.

If only a portion of the leased premises is taken or acquired by or incident to condemnation and a part thereof remains which can be used for the purposes specified in paragraph E of this Lease, this Lease shall, except for the part actually taken, remain in full force and effect.

(b) Adjustment in Rent. If only a portion of the leased property is taken by condemnation and part thereof remains which can be used for the purposes specified in paragraph E of this Lease, base rent payable under paragraph 5 of this Lease shall be adjusted to the fair rental value of the leased premises remaining but all other provisions of the Lease shall remain in effect.

Such adjustment in rent shall take effect on the date title to the condemned portion of the leased premises passes to the condemning authority pursuant to court order or on the date the condemning authority takes physical possession of the condemned leased property, whichever is earlier.

(c) Condemnation Award. All compensation paid for the land and improvements taken, including severance damage, if any, shall belong to Landlord and Tenant hereby assigns to Landlord any and all rights that Tenant might otherwise have thereto.

(d) Non-Liability of Landlord. Landlord, under no circumstances, shall be or become liable for or on account of any damage to, loss of, or interference with Tenant's business occasioned by any condemnation or threat thereof.

#### 24. REMEDIES UPON DEFAULT.

(a) Except as otherwise provided herein, should Tenant default in the performance of any covenant or provision herein with reference to the payment of rent or other payment of money or the providing of insurance, and such default continues for three (3) days after receipt by Tenant of written notice from Landlord of such default, or should Tenant default in the performance of, or breach, any other covenant or provision of this lease other than the payment of money, or the providing of insurance, and such default, if curable, is not cured within five (5) days after service upon Tenant of a written notice thereof from Landlord, or if not curable within five (5) days after service upon Tenant of written notice thereof from Landlord, Tenant commences to cure the default within five (5) days of the notice and thereafter diligently pursues such cure to completion, Landlord may terminate Tenant's right of possession to the leased premises and may recover all of the following from Tenant:

(1) The worth at the time of the award of the unpaid rent which had been earned at the time of termination;

(2) The worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of awards exceeds the amount of such rental loss that Tenant proves could have reasonably been avoided;

(3) The worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided.

(4) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations hereunder or which the ordinary course of things would be likely to result therefrom.



None of Landlord's rights herein specified in the event of a default or breach by Tenant shall prejudice any other legal remedy available to Landlord other than those herein enumerated and the remedy described by Civil Code section 1951.4 is available to Landlord.

(b) No Waiver. Efforts by Landlord to mitigate the damages caused by Tenant's breach of this Lease shall not waive Landlord's right to recover damages under this paragraph. For the purpose of subparagraph (a) above, the following shall not constitute a termination of Tenant's right of possession:

(1) Acts of maintenance or preservation or efforts to relet the Property;

(2) Appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease.

(c) Re-entry. Upon a default of Tenant not cured within the time specified in subparagraph (a) or if Tenant vacates or abandons the premises, Landlord shall have the right to re-enter the leased premises and take possession thereof with or without terminating the lease upon giving the notice of re-entry as required by law.

(d) Remedies Shall be Cumulative. All rights and remedies of Landlord herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Landlord of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

25. DEFAULT BY LANDLORD. Landlord shall in no event be charged with default in the performance of any of Landlord's obligations hereunder unless and until Landlord shall have failed to perform such obligation within ten (10) days or such additional time as is reasonably required to correct any such defaults after notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation.

26. NOTICES. Whenever under this Lease a provision is made for any demand, notice or declaration of any kind or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other, it shall be in writing, personally served or sent by certified or registered mail with postage prepaid, addressed to Landlord and to Tenant at the address shown for Notices in paragraphs B and C.

Either party may by like notice at any time and from time to time designate a different address to which notices shall be sent. Such notices, shall be deemed sufficiently served or given for all purposes hereunder 24 hours after deposit in the United States mail, postage prepaid.

27. WAIVER. One or more waivers of any covenant, term, or condition of this Lease by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval of either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

28. LAW GOVERNING. The laws of the State of California shall govern the validity, performance and enforcement of this Lease.

29. ATTORNEYS FEES. In the event of a breach of this Lease (or an alleged breach of this Lease) by either party, the non prevailing party (whether by negotiation, settlement or suit) shall pay to the prevailing party said party's reasonable attorneys' fees.

30. PERSONAL PROPERTY TAXES. Tenant shall pay, before delinquency, all property taxes and assessments on the furniture, trade fixtures, equipment and other personal property of Tenant at any time situated on or installed in the leased premises. If, at any time during the term of this Lease, any of the foregoing are assessed as a part of the real property of which the leased premises are a part, Tenant shall pay to Landlord, upon demand, the amount of such additional taxes as may be levied against said real property by

reason thereof. For the purpose of determining said amount, figures supplied by the County Assessor as to the amount so assessed shall be conclusive.

31. COVENANTS BIND SUCCESSORS. All and singular the terms hereof shall apply to, run in favor of and shall be binding upon and inure to the benefit of, as the case may require, the parties hereto, and also their respective heirs, executors, administrators, personal representatives and assigns and successors in interest, subject at all times nevertheless to the provisions of paragraph 20 of this Lease relating to the restrictions upon assignment or subletting this Lease or the leased premises.

32. TENANT'S ACKNOWLEDGMENT OF CONDITION OF PREMISES. Tenant acknowledges that Tenant has actually occupied the leased premises for a long time pursuant to previous lease and therefore accepts the premises "as is" and "with all faults" and Landlord shall have no obligation to make alterations, repairs or to do anything else to make the premises suitable for Tenant's occupancy. Further, by execution of this Lease, Landlord does not relieve Tenant from any liability Tenant may have to Landlord or others arising by the previous lease, or by law, from Tenant's use and occupancy of the leased premises including, but not limited to, any obligation for removal or cleanup required by law by reason of the storage, placement, handling or use on the leased premises, of materials falling within the definition of a toxic or hazardous waste or material under state or federal law.

33. CORPORATE RESOLUTIONS. Tenant shall promptly furnish to Landlord (before the term commences) a certified corporate resolution attesting to the authority of the officers to execute the Lease on behalf of such corporation.

34. BANKRUPTCY OR INSOLVENCY. It shall constitute a breach of this Lease and Landlord at Landlord's option, and upon giving written notice of termination to Tenant, may terminate this Lease if any of the following events occur:

(a) Assignment of the Lease by operation of law except in the event of any corporate acquisition or merger to which Tenant is a part;

(b) The appointment of a receiver to take possession of all or substantially all of the assets of Tenant;

(c) A general assignment for benefit of creditors by Tenant;

(d) The filing of a petition in bankruptcy by or against Tenant and the Lease is not assumed within the time and manner prescribed by the Bankruptcy Code.

(e) The levy of a writ of execution or writ of attachment, against the leased premises, the business of Tenant conducted thereon, or Tenant's personal property therein and such levy is not discharged within thirty (30) days following such levy.

This Lease shall terminate on the date a written notice of termination is served on Tenant, in the manner provided by this Lease.

35. SALE OR ASSIGNMENT BY LANDLORD. Notwithstanding any of the provisions of this Lease, Landlord (a) may assign, in whole or in part, Landlord's interest in this Lease, and (b) may sell all or part of the Property. Upon such sale or assignment Landlord shall be relieved of Landlord's obligations to Tenant hereunder if the purchaser or assignee from Landlord assumes those obligations in writing.

36. SECURITY DEPOSIT. Tenant shall, immediately following the execution of this Lease, deposit with Landlord the sum specified in paragraph G. This sum shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease by said Tenant to be kept and performed during the term hereof. If, at any time during the term of this Lease, any of the rent herein reserved shall be overdue and unpaid, or any other sum payable by Tenant to Landlord hereunder shall

be overdue and unpaid, then Landlord may, at the option of Landlord (but Landlord shall not be required to) appropriate and apply any portion of said deposit to the payment of any such overdue rent and other sums. In the event of the failure of Tenant to keep and perform all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant, then, at the option of Landlord, Landlord may, after terminating this Lease appropriate and apply said entire deposit, or so much thereof as may be necessary, to compensate Landlord for all loss or damage sustained or suffered by Landlord due to such breach on the part of Tenant. Should the entire deposit, or any portion, be appropriated and applied by Landlord for the payment of overdue rent or other sums due and payable to Landlord by Tenant hereunder, then Tenant shall, upon the written demand of Landlord, forthwith remit to Landlord a sufficient amount in cash and restore said security to the original sum and Tenant's failure to do so within five (5) days after receipt of such demand shall constitute a breach of this Lease. Should Tenant comply with all of said terms, covenants and conditions and promptly pay all of the rental herein provided for as it falls due, and all other sums payable by Tenant to Landlord hereunder, the deposit shall be returned in full to Tenant at the end of the term of this Lease, or upon the earlier termination of this Lease by any of the provisions thereof.

37. TIME. Time is of the essence of this Lease.

38. PLACE OF EXECUTION. This Lease is made and entered into in Ventura County, California.

39. WARRANTY OF AUTHORITY. Each person signing this Lease on behalf of Tenant warrants that he or she is authorized and empowered to do so by Tenant and further warrants that by such signature Tenant executes this Lease. Where Tenant is a corporation, each person signing on behalf of Tenant warrants the Lease and his or her execution of it has been by a duly adopted resolution of the board of directors of Tenant, a copy of which, certified by the secretary of the corporation, will be delivered to Landlord promptly.

40. BROKER. Tenant warrants and represents that in the leasing of the space from Landlord, Tenant has dealt with no real estate broker or salesman working for a broker other than Landlord's broker, or a salesman working for Landlord's broker except for the broker shown in paragraph K, Basic Lease Provisions. Tenant shall save and hold harmless indemnify and defend Landlords from any claim, or alleged claim, for a commission or compensation from any person (including any person named in the space provided) by reason of Tenant's lease of the leased premises from Landlord except for a claim made by Landlord's broker.

41. ZONING, PERMITS AND APPROVALS. Tenant warrants that Tenant has determined that the leased premises can be used for the purposes set forth in Paragraph E, Basic Lease Provisions of this Lease under the applicable laws (including zoning laws) of the city or county in which the leased premises are located.

Tenant shall, at Tenant's sole cost and expense, obtain all permits (including, but not limited to, special use permits) and approvals that are required to be obtained from governmental agencies for Tenant's use of the leased premises for the purpose specified in Paragraph E, Basic Lease Provisions of this Lease. If any governmental authority requires, as a condition to any permit or approval required to be obtained from it, that the leased premises shall be improved, changed, or altered, or modified in any respect or additions be made thereto (all of which are collectively called "improvements"), Tenant shall accomplish the same at Tenant's sole cost and expense unless otherwise agreed in writing between Landlord and Tenant; provided, however, Landlord consents to such approval in writing. If Landlord does not consent to such improvements, Landlord, at Landlord's option, may terminate this Lease by service of a written notice of termination on Tenant within fifteen (15)

days after Tenant has advised Landlord in writing of the condition requiring the improvements. Landlord will not unreasonably withhold Landlord's consent to conditions imposed by governmental agency precedent to Tenant's use of the leased premises for the purposes specified in Paragraph E, Basic Lease Provisions.

42. HOLDING OVER. Any holding over by Tenant at the expiration of the term shall be on a tenancy from month to month subject to all of the provisions of this Lease except as to term.

43. INTEGRATION CLAUSE. There are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease.

44. OPTIONS TO EXTEND TERM.

(a) Grant of Options. Landlord hereby grants Tenant two options to extend the term of this Lease each for an additional term of five years (the First Option to Extend and the Second Option to Extend respectively). Tenant shall exercise Tenant's First Option to Extend the term by serving on Landlord, Tenant's written notice of Tenant's exercise of the option to extend not later than September 1, 1997. If the First Option to Extend is exercised, Tenant shall exercise Tenant's Second Option to Extend by serving on Landlord Tenant's written notice of Tenant's exercise of the option to extend on or before September 1, 2002.

(b) Events Terminating Options. Tenant's options to extend the term of this Lease shall terminate, whether or not exercised, if Landlord has served on Tenant three (3), or more, notices of default or breach by reason of Tenant's default or breach in the terms of this Lease. Further, Tenant shall have no right to extend the term of this Lease the term of this Lease shall not be extended, if Tenant is in default or in breach of this Lease at either the time Tenant exercises Tenant's option to extend, or at the expiration of the original term of this Lease, or the first extended term of this Lease, as appropriate.

(c) Rent During Each Extended Term. The monthly base rent payable pursuant to this Lease during the extended term shall be determined by mutual agreement between Landlord and Tenant, or by appraisal as hereinafter set forth. For the First Extended Term, the rent will be ten percent (10%) per annum, payable monthly, on the then fair market value of the leased premises as determined by the following procedure:

If Landlord and Tenant do not agree on the monthly rent to be paid during the extended term within thirty (30) days from the service of Tenants notice of exercise of Tenants option to extend, Landlord and Tenant shall meet for the purpose of selecting an appraiser to determine the fair market value of the leased premises (including all improvements constructed thereon). If Landlord and Tenant have not selected an appraiser within forty-five (45) days after service of Tenant's notice of exercise of the option to extend, Landlord shall appoint one appraiser and Tenant shall appoint one appraiser and each shall notify the other in writing of the appraiser so appointed. If either Landlord or Tenant fails to appoint such an appraiser within sixty (60) days after the service of the notice of exercise of Tenant's option to extend, the sole appraiser appointed shall determine the fair market value of the property. If Landlord and Tenant each appoint one appraiser, the two appraisers so appointed shall appoint a third appraiser and the three appraisers appointed shall determine the question of fair market value of the leased premises. All appraisers appointed herein shall be members of the American Institute of Real Estate Appraisers (NAI) and shall be familiar with commercial real property within the County of Ventura.

If three appraisers have been selected and no two appraisers agree on the fair market value of the property, then the determination of the appraiser who is neither the best nor the lowest shall be used.

If only one appraiser is appointed, Landlord and Tenant shall share the cost of such appraiser. Otherwise, Landlord shall pay the cost of the appraiser appointed by Landlord and Tenant shall pay the cost of the appraiser appointed by Tenant, and Landlord and Tenant shall share the cost of the appraiser appointed by the two appraisers selected by Landlord and Tenant.

Rent payable during the second extended term shall be determined by application of the following formula:

$$\frac{\text{Base Monthly Rent During Second Extended Term} - \text{Base Monthly Rent Payable During First Extended Term} \times \text{CPI for July 2003}}{\text{CPI for July 1998}}$$

The reference to CPI means the Consumer Price Index mentioned in paragraph 5 of the Lease governing base rent.

Except for the provisions pertaining to an option to extend all other provisions of the Lease shall remain in full force and effect during the extended term.

45. COMPLIANCE WITH LAWS. Tenant shall comply with all federal, state and local laws and regulations in Tenant's occupancy and use of the leased premises, including, but not limited to, those pertaining to the storage, placement, handling or use of material or substances falling within the definition of a toxic or hazardous waste, substance or material under state and federal law.

46. OPTION TO PURCHASE.

(a) Grant of Option. Landlord here grants Tenant an option to purchase the leased premises pursuant to the terms of the Agreement to Buy and Sell Real Property and Escrow Instructions, a copy of which is attached hereto as Exhibit B and is incorporated herein by reference. This option shall expire midnight August 31, 1998 unless exercised by Tenant prior to the expiration date.

(b) Exercise of Option. Tenant shall exercise the option by serving on Landlord on or before midnight August 31, 1998 Tenant's written notice of Tenant's exercise of the option.

(c) Opening of Escrow. Upon the exercise of the option by Tenant, Landlord and Tenant shall execute the Agreement to Buy and Sell Real Property and Escrow Instructions in the form of Exhibit B attached hereto and incorporated herein by reference within fifteen days after exercise of the option and shall open an escrow with an escrow company selected by Landlord. The name of the escrow company selected by Landlord shall be inserted in paragraph 5, Escrow Instructions of the Agreement to Buy and Sell Real Property and Escrow Instructions.

(d) Assignment. The grant by Landlord of this option to Semtech Corporation is personal as to Semtech Corporation and may not be assigned or otherwise transferred by it. Upon an assignment of this Lease as permitted by paragraph 20 of the Lease, unless otherwise agrees by Landlord in writing, this option to purchase shall thereupon terminate.

(e) Payment of Rent. Payment of rent and the performance of other obligations by Tenant under this Lease shall continue after the exercise of the option to purchase until the close of escrow.

47. Agreement For Construction of Improvements. Concurrently herewith, Landlord and Tenant are entering into an Agreement For Construction of Improvements. A default by Tenant under the terms of that agreement shall also constitute a default under the terms of this Lease (necessitating a three (3) day notice under paragraph 24)."

END OF LEASE

LEGAL DESCRIPTION OF DEMISED PREMISES

Lot 11 of Tract 1121 per the map recorded in Book 27, page 44 of Miscellaneous Records in the Office of the County Recorder, County of Ventura, State of California;

Together with that portion of Section 12, Township 1 North, Range 20 West, Rancho El Conejo, in the County of Ventura, State of California, as per map recorded in Book 1, page 746 of Deed in the Office of the County Recorder of said County, described as follows:

Beginning at the intersection of the northerly line of Arnold Drive, 60 feet wide with the easterly boundary of Tract No. 1121 as per map recorded in Book 27, page 44 of Maps, thence along said easterly boundary by the following two courses:

1st: North  $0^{\circ} 25' 00''$  East 122.16 feet, thence

2nd: North  $14^{\circ} 45' 00''$  East 272.51 feet to the northeast corner of Lot 11 of said Tract No. 1121, thence along the easterly prolongation of the northerly line of said Lot 11,

3rd: South  $89^{\circ} 52' 00''$  East 186.79 feet more or less to a point in the westerly line of that certain parcel of land locally known as and called Rancho Conejo Boulevard and described in easement deed to County of Ventura recorded in Book 2283, page 152 of Official Records, same being the beginning of a nontangent curve concave easterly having a radius of 1042.93 feet, thence along said westerly line by the following three courses:

4th: Southerly 375.38 feet along said curve through a central angle of  $20^{\circ} 37' 21''$  to a point of reverse curve, thence

5th: Southerly and westerly 37.98 feet along a curve concave northwesterly having a radius of 25.00 feet and a central angle of  $87^{\circ} 02' 52''$ , thence tangent to said curve,

6th: North  $89^{\circ} 35' 00''$  West 143.62 feet to the point of beginning.

LANDLORD

AGREEMENT FOR  
CONSTRUCTION OF IMPROVEMENTS

This Agreement for Construction of Improvements is made between LYNN SHADOWS, a general partnership ("Landlord") and SEMTECH CORPORATION ("Tenant") this 12<sup>TH</sup> day of SEPTEMBER 1988 with reference to the following facts:

*[Handwritten initials and scribbles]*

*[Handwritten initials]*

A. Landlord and Tenant have entered into a written lease whereby Landlord has leased to Tenant the premises at 652 Mitchell Road, Newbury Park, California;

B. Tenant has requested Landlord obtain the financing for and make certain improvements to the leased premises for Tenant; and

C. Landlord is willing to borrow the money to make such improvements for Tenant up to maximum amount of \$850,000.00;

NOW, THEREFORE, Landlord and Tenant agree that:

1. Construction of Tenant Improvements. Subject to the terms and conditions hereinafter set forth, Tenant shall construct improvements for the leased premises in accordance with plans and specifications prepared by Tenant and approved by Landlord for which costs of construction Landlord will repay Tenant up to the maximum sum of \$850,000.00 excluding interest (the "maximum amount"). Upon execution of this Agreement and approval of the plans and specifications as provided subsequently in this Agreement, Tenant shall promptly apply for a building permit for the improvements, and shall diligently pursue such application to completion.



2. Financing. Landlord will obtain a loan from the Bank of A. Levy for the cost of the tenant improvements pursuant to this paragraph. The interest rate on the funds borrowed shall be variable being two percent (2%) over the Bank of A. Levy's "Business Base Component" and therefore shall fluctuate over the ten year term of the loan. The loan costs or fees ("points") will be one and one-half (1.5%) percent.

Landlord shall make the borrowed funds available for Tenant and Tenant shall make the payments directly to the contractor hired by Tenant to perform the work. All costs of construction in excess of \$850,000.00 shall be borne by the Tenant.

JM  
of the funds actually borrowed by tenant

3. Contractor. The contractor obtained by Tenant to construct the work of improvement shall be licensed by the State of California for performance of the work and, prior to commencement of other work, shall be required to furnish Tenant with payment and performance bonds in an amount not less than 100% of the contract price. Landlord shall also be named as an obligee on such bonds. Tenant shall furnish Landlord with a copy of each of such bonds before construction commences.

4. Preliminary Plans and Specifications. Upon execution of this Agreement, Tenant shall prepare for Landlord's approval, preliminary plans and specifications for the tenant improvements. Landlord shall have fifteen (15) days from receipt of the preliminary plans and specifications within which to give Landlord's written approval or to disapprove all or a portion of the plans and specifications. Failure of Landlord to so approve or disapprove the plans and specifications, or any portions thereof, Landlord shall state in writing the reasons for such disapproval. Upon disapproval of any plans and specifications by Landlord, Tenant shall revise the plans and specifications within fifteen (15) working days and shall redeliver the revised plans and specifications to

Landlord and Landlord shall approve or disapprove them in the same manner and within the same period of time (i.e., fifteen days), as provided for the plans and specifications previously submitted. This procedure shall be followed until Landlord has approved the preliminary plans and specifications. Landlord shall not unreasonably withhold Landlord's approval of the preliminary plans and specifications submitted by Tenant.

5. Final Plans and Specifications. Tenant shall prepare final plans and specifications in accordance with the preliminary plans and specifications approved by Landlord and shall submit the final plans and specifications for approve to the City of Thousand Oaks, necessary for the issuance of a building permit. Tenant shall also deliver to Landlord a set of the final plans and specifications approved by the city of Thousand Oaks. Small or trivial deviations from the approved plans and specifications may be made without the prior written consent of Landlord. However, any substantial revision from any design, plan or specification previously approved by Landlord shall be submitted to Landlord for Landlord's prior written consent. A "substantial revision" is one that would change the estimated construction cost by 5% or more.

6. Notice of Nonresponsibility. Landlord may post upon the leased premises a notice of nonresponsibility in accordance with Civil Code section 3094 and may record such a notice with the county recorder, County of Ventura. In this regard, Tenant shall notify Landlord in writing of the anticipated date when commencement of the tenant improvements by the contractor hired by Tenant will begin, and shall also notify Landlord in writing when such construction has actually commenced. Such written notices will be given by Tenant to Landlord in order that Landlord may timely record and post the notice of responsibility.

7. Costs of Construction. For purposes of determining "payments to Landlord" under subparagraph 11, the term "costs of construction" include architectural and engineering fees incurred and preparation of the plans and specifications, financing costs ("points") for the loan obtained by Landlord to pay for construction costs paid by Tenant to the extent that such financing costs are paid out of the loan proceeds, including interest paid by Landlord to the lender plus 1%, attorneys fees pertaining to the construction, building permit and plan check fees as well as the cost of accomplishing the construction of the improvements such as labor, materials, equipment rental and the price to be paid by contractors or subcontractors by Tenant for the work of improvement.

8. Commencement of Construction. Upon Landlord's approval of the final plans and specifications and the issuance of the building permit therefor, Tenant shall promptly commence construction of the improvements in accordance with the final plans and specifications and diligently prosecute the work of improvement to completion.

9. Changes, Additions or Alterations. If Tenant shall request any change, addition or alteration in the final plans and specifications, Tenant shall submit to Landlord complete plans and specifications for any such change, addition or alteration for Landlord's consent. If Landlord approves the change, alteration or addition, its cost shall be added to the cost of construction as heretobefore defined but subject to the "maximum amount" for which Landlord is obligated to reimburse Tenant. No change to the plans and specifications shall be made by Tenant that would cause the cost of tenant improvements to exceed 5% of the estimated construction costs without Landlord's prior written consent thereto.

10. Completion. Upon completion of tenant improvement, Tenant shall record a notice of completion in accordance with Civil Code section 3093.

11. Payments to Landlord. Upon completion of the tenant improvements and the payment by Landlord of the costs of construction (up to a maximum amount of \$850,000.00) Tenant shall pay Landlord the monthly amount determined as hereinafter set forth. The monthly amount shall be the costs of construction and defined in subparagraph 7, amortized over the remaining months of the initial ten year term of the Agreement (the initial ten year term being the period of time from September 1, 1988 through August 31, 1998). The payment so determined shall be payable in equal monthly installments on the first day of each month commencing with the first day of the month following the month during which tenant improvements are completed. Landlord and Tenant acknowledge that the monthly payment may change slightly from time to time due to changes in the interest rate payable by Landlord to the Bank of A. Levy. To the extent that the financing costs are not paid out of the loan proceeds, Tenant shall reimburse Landlord for the financing costs paid by Landlord within ten (10) days of receipt of notice by Tenant from Landlord that such financing costs have been paid.

12. Breach of Lease. In the event that Tenant breaches its Lease with Landlord beyond the applicable cure period, if any, such breach shall also constitute a breach or default under this Agreement.

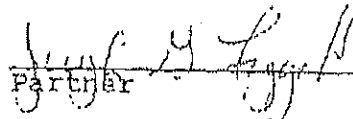
13. Default. Should Tenant default in the performance of any covenant or provision herein and such default continues for three (3) days after receipt by Tenant of written notice from the Landlord of such breach, the entire unpaid costs of construction (and any unpaid financing costs) shall, at the option of Landlord, become immediately due and payable.

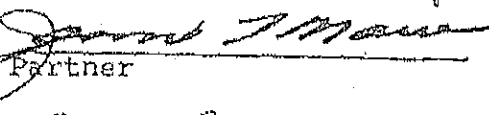
14. Attorneys' Fees. In the event of a breach of this Agreement (or an alleged breach of this Agreement) by either party, the nonprevailing party (whether by negotiation, settlement, suit or arbitration) shall pay to the prevailing party said party's reasonable attorneys' fees.

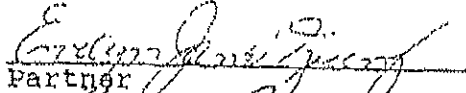
15. Removal of Personal Property. To the extent any improvements are personal property or trade fixtures, Tenant shall have the right to remove the same as provided in paragraph 8 of the Lease referred to in recital A.

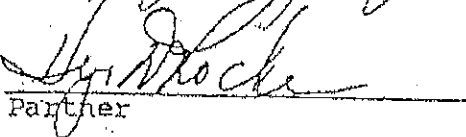
LANDLORD:

LYNN SHADOWS, a General Partnership

By   
Partner

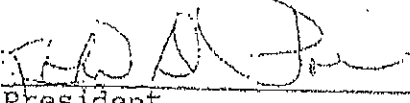
By   
Partner

By   
Partner

By   
Partner

TENANT:

SEMTECH CORPORATION

By   
President

By \_\_\_\_\_  
Secretary

LANDLORD

AGREEMENT TO BUY AND SELL REAL PROPERTY  
AND ESCROW INSTRUCTIONS

*[Handwritten initials and signatures]*

This Agreement is made and entered into as of the 12th day of SEPTEMBER, 1988, between LYNN SHADOWS, a general partnership, hereinafter called "Seller", and SEMTECH CORPORATION, hereinafter called "Buyer".

THE PARTIES AGREE THAT:

1. Purchase and Sale. Seller hereby sells to Buyer and Buyer purchases from Seller, upon all of the terms and conditions contained herein, the real property consisting of approximately 4.1 acres of land in Ventura County, California, described on Exhibit A attached hereto and incorporated herein by reference (the Subject Property).

2. Purchase Price. The purchase price for the Subject Property shall be the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000) as of September 1, 1988 plus the amount of purchase of improvements as defined by paragraph 11 of the Agreement for Construction of Improvements Eight Hundred Fifty Thousand Dollars (\$850,00) minus Three Thousand five Hundred and Forty-two Dollars (\$3,542) times the number of months between September 1, 1988 and the Option Date. The \$2,500,000 portion of the purchase price shall be adjusted monthly on the first day of each month according to changes in the Consumer Price Index (CPI) by application of the following formula:

$$\text{Adjusted Portion of Purchase Price} = \frac{\$2,500,000 \times \text{CPI on the First Day of the Month of Adjustment Date}}{\text{CPI for September 1988}}$$

The "CPI on the First Day of the Month of Adjustment Date" shall be the CPI for the first day of the month in which Buyer exercises Buyers Option to Purchase the property pursuant to the written lease (the Lease) between Seller

(Landlord) and Buyer (Tenant) of the property referred to in paragraph 1. For example, if Buyer exercises its option July 1, 1995, the "CPI on the First Day of the Month of Adjustment Date" would be July 1, 1995. The Consumer Price Index (CPI) is the Consumer Price Index mentioned in paragraph 5 of the Lease.

3. Payment of Purchase Price. The purchase price for the Subject Property shall be paid by Buyer to Seller as follows:

(a) Upon the opening of escrow, Buyer shall deposit into escrow, in cash, the sum of <sup>Twenty-Five</sup> ~~One Hundred~~ Thousand Dollars <sup>A 25,000</sup> (~~\$100,000~~).

(b) The balance of the purchase price shall be paid, in cash, by deposit in escrow at the close of escrow.

4. Title. Seller shall convey by grant deed to Buyer, or nominee, "good and marketable title to the Property, as evidenced by a standard form C.L.T.A. title insurance policy in the full amount of the purchase price issued by Ticor Title Insurance Company, subject only to such liens, encumbrances, easements, rights, restrictions or conditions as are shown upon the hereinafter described preliminary title report and not disapproved by Buyer. The escrow shall, immediately upon the opening of escrow, procure from Ticor Title Insurance Company and cause to be delivered to Buyer a preliminary title report describing the Property. Buyer shall have thirty (30) days in which to examine the preliminary title report and make any objections thereto. Buyer's failure to object to any exception or other matter contained in the preliminary title report within thirty (30) days of its receipt shall be deemed approval of the same. In the event that Buyer objects to any exception or other matter of title, Seller shall have thirty (30) days after receipt of notice thereof within which to remove the same. If Seller is unable or unwilling to remove any such exception or other matter,

Buyer may waive Buyer's objections to title and complete the purchase pursuant to the terms of this Agreement or terminate Buyer's rights to purchase the Property by giving Seller written notice within ten (10) days after the expiration of Seller's thirty (30) day period to remove the exception or other matter, and Buyer shall be entitled to the return of all monies actually paid into escrow for the purchase of said Property. Such return of money shall be Buyer's sole remedy against Seller and Seller shall not be liable to Buyer for damages for Seller's inability to remove or cure any matter affecting title as to which Buyer has objected.

5. Escrow Instructions. A fully executed copy of this Agreement to Buy and Sell Real Property and Escrow Instructions shall be deposited by Seller with \_\_\_\_\_, whose address is \_\_\_\_\_, as escrow agent, promptly after the execution and delivery hereof, and such delivery shall constitute the opening of an escrow with respect to the Subject Property pursuant to this Agreement to Buy and Sell Real Property and Escrow Instructions. It is agreed that the "General Provisions" as set forth in the escrow's printed form of escrow instructions now in use shall be deemed incorporated herein as though set forth in full herein, and the parties agree to be bound thereby. Said escrow shall be on the following terms and conditions:

(a) Unless previously extended in writing by Buyer and Seller, the escrow shall close as soon as possible, but in any event not later than 120 days after opening of escrow, it being understood and agreed that all parties shall exercise diligence to do all things necessary or desirable for closing said escrow at the earliest practicable date. If said escrow does not close as provided above, Buyer and Seller may at any time thereafter give written notice to the escrow to cancel the escrow and return all money and documents in escrow to their respective depositors, except such sums as may be



liquidated damages. The escrow shall comply with the notice without further consent from any other party to the escrow or from any broker. Cancellation of escrow as provided herein shall be without prejudice to whatever legal rights Buyer and Seller may have against each other. In the event that such notice is not given, the escrow shall close as soon thereafter as possible.

(b) The escrow shall deliver to Buyer promptly after the close of escrow for the sale of the Property a C.L.T.A. standard coverage policy of title insurance in the amount of the purchase price insuring title to the Property conveyed through escrow as being vested in Buyer, subject only to existing approved leases, current nondelinquent taxes and such other exceptions or matters pertaining to title as have been set forth in the preliminary title report delivered to Buyer (and not disapproved by Buyer) and any promissory note(s) and deed(s) of trust which Buyer incur in order to finance Buyer's purchase of the Property.

(c) The cost of the policy of title insurance shall be paid by Seller.

(d) Seller shall pay the cost of documentary tax stamps, the cost of preparing and recording the deed and one-half (1/2) of the escrow fee.

(e) Buyer shall pay, in addition to the other sums provided herein, one-half (1/2) of the escrow fee and the cost of preparing and recording the Deed of Trust.

(f) Ad valorem taxes for the fiscal year in which escrow closes and rentals, if any, shall be prorated as of the close of escrow.

(g) If any matters necessary to the closing of escrow have not been expressly covered herein, such matters shall be handled by the escrow in the customary manner for escrows in Ventura County as determined by the escrow.

(h) The escrow shall be subject to all of the provisions of this Agreement and any other instructions shall not supersede this Agreement in the event they are inconsis-

tent therewith unless such other instructions expressly provide with respect to any particular matter that this Agreement is so superseded.

6. Other Documents. All parties agree to execute all other documents necessary or desirable to carry out the true intent and purpose of this Agreement.

7. Time of the Essence. Time is of the essence hereof.

8. Binding on Successors and Assigns. This Agreement shall bind and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties, except as provided herein.

9. Notices. Any notices to be given to any party shall be given by certified mail, return receipt requested, and shall be deemed to have been given twenty-four hours after deposit in the United States Post office or Post Office receptacle, postage prepaid, and addressed as follows:

If to Seller:                   Lynn Shadows  
                                  c/o Hugo Roche  
                                  Suite 257  
                                  100 E. Thousand Oaks Boulevard  
                                  Thousand Oaks, California 91360

If to Buyer:                   SEMTECH Corporation  
                                  652 Mitchell Road  
                                  Newbury Park, California 91320

10. Hold Harmless. Seller shall hold Buyer harmless from any claims made by any brokers for commissions or fees resulting from agreements or representations made or allegedly

made by Seller. Buyer shall hold Seller harmless from any claims made by any brokers for commissions or fees resulting from agreements or representations made or allegedly made by Buyer.

11. Attorneys' Fees. In any action or proceeding arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the other party.

12. Entire Agreement. This instrument contains the entire agreement between Buyer and Seller regarding the Subject Property and supercedes any agreements or representations concerning the Subject Property or the duties of either Buyer or Seller in relation thereto and any such agreements or representations not expressly set forth in this Agreement are null and void.

13. Liquidated Damages. If escrow fails to close due to any fault of Buyer (except for performance by Buyer that is excused by Seller's failure to perform Seller's obligations under this Agreement), the sum of <sup>25,000</sup> \$100,000 deposited by Buyer into escrow as provided in paragraph 3 shall be paid to Seller as liquidated damages. The parties have discussed the question of damages and have agreed that it is impossible to ascertain the amount of actual damages Seller may sustain for a failure to close escrow and complete the purchase by Buyer and agree that the sum of <sup>Twenty-five</sup> ~~One-Hundred Thousand~~ <sup>\$25,000</sup> (\$100,000) constitutes a reasonable amount of liquidated damages.

EXECUTED as of the date and year first above set forth  
in Ventura County, California.

SELLER:

LYNN SHADOWS, a general  
partnership

BY *Joseph D. Leggett*  
Partner

BY *[Signature]*  
Partner

BY *[Signature]*  
Partner

BY *[Signature]*  
Partner

BUYER:

SEMTECH CORPORATION

BY *[Signature]*  
President

BY \_\_\_\_\_  
Secretary