

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

ORDER No. 99-076

SITE CLEANUP REQUIREMENTS FOR:

THREE SISTERS RANCH ENTERPRISES, SOLVENT SERVICES COMPANY, ARTHUR G. MAIONCHI, EDWARD A. MAIONCHI, THOMAS S. DINETTE, CHARLES J. KRAFT, JAMES R. DAVIS, PRISCILLA G. DAVIS, DAVIS REVOCABLE TRUST, JOSEPH BULLOCK, DARMA WINDER, CAROL SCARIONI, AND THE SHIRLEY FAULSTICH TRUST

for the property located at

1470 INDUSTRIAL AVENUE  
SAN JOSE, SANTA CLARA COUNTY, CA

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Regional Board), finds that:

1. **Site Location:** The site is located at 1470 Industrial Avenue near the intersection of Highways 101 and 880 in San Jose (Figure 1). Coyote Creek is approximately 1/3 mile to the northeast and the Guadalupe River is about 1 mile to the west. San Francisco Bay is approximately 10 miles to the north. The local area is used primarily for commercial and industrial purposes.
2. **Site History:** The site is currently vacant. It has one existing structure, which was formerly used as a solvent recycling facility. The site has been owned by Three Sisters Ranch Enterprises since 1986. While the site is not presently being used, Three Sisters Ranch Enterprises has leased the property to various businesses who used it primarily for storing trucks and construction equipment.

The use of the property prior to 1970 is not known. From 1970 to 1986, the site was owned by James and Priscilla Davis, or the Davis Revocable Trust. From about 1971 to 1974, the property was leased to Arthur G. Maionchi, Edward A. Maionchi, Thomas S. Dinette, and Charles J. Kraft, who operated a solvent recycling facility as a partnership under the name Solvent Services Company. In about 1975, Solvent Service Company closed its facility at Industrial Avenue and moved all operations to 1021 Berryessa Road in San Jose. Solvent Services Company continued to operate at Berryessa Road as a partnership until about 1980, when the partners formed a corporation. From about 1980 to 1990, both the partnership, Solvent Services Company (SSC), and the corporation, Solvent Services Company, Inc.(SSCI), continued to operate the Berryessa facility. In about 1990, USPCI, a subsidiary of Union Pacific Company, acquired SSCI through a merger transaction. USPCI sold the operation to Laidlaw Environmental Services in

about 1994. Laidlaw Environmental Services changed its name to Safety-Kleen Corporation in about 1998 and continues to operate the Berryessa facility today. The amount of corporate liability, if any, of SSCI and its successor corporations for the contamination at the Industrial Avenue site is currently being determined in a lawsuit titled *Three Sisters Ranch Enterprises v. Saftey-Kleen (San Jose), Inc., et al.*, pending in the United States District Court for the Northern District of California. The case is assigned to United States District Judge Jeremy Fogel. William Nagel has been assigned the role of Special Master in that case for purposes of resolving discovery disputes, scheduling, and other procedural matters.

The facility operated by SSC at 1470 Industrial Avenue in the early 1970s was used primarily for recycling a kerosene-based "cutting" or "lapping" oil used in the manufacture of computer memory disks. The recycling was accomplished by settling out aluminum fines from used oil in a long, rectangular-shaped above-ground steel tank, and then by filtering the product after settlement in a small above-ground tank. Other operations that may have occurred at the facility include distilling of chlorinated solvents and neutralization of acid wastes. Records from the San Jose Fire Department indicate that during the period of SSC's operations, there were several large above ground storage tanks as well as a 6000 gallon underground sump and two 7500 gallon underground storage tanks.

3. **Named Dischargers:** James R. Davis, Priscilla G. Davis, and the Davis Revocable Trust are named as dischargers because they owned the property during the time of the activity that resulted in the discharge, and had knowledge or should have had knowledge of the discharge or the activities that caused the discharge, and had the legal ability to prevent the discharge.

Solvent Services Company, Arthur G. Maionchi, Edward A. Maionchi, Thomas S. Dinette, and Charles J. Kraft are named as dischargers because of substantial evidence that they discharged pollutants to soil and groundwater at the site.

Solvent Services Company, Inc., USPCI, Union Pacific Company, and Safety-Kleen Corporation are not named as dischargers at this time. The Regional Board may revise this Order at a later date to add the above-named companies to the Order if further evidence indicates they have legal responsibility for the discharges that occurred at 1470 Industrial Avenue.

Three Sisters Ranch Enterprises, a partnership including partners Joseph Bullock, Darma Winder, Carol Scarioni, and the Shirley Faulstich Trust, are considered Secondary Dischargers by the Board since they did not actively cause the discharge, and other dischargers named in this Order can effectively accomplish the tasks required by this Order. Three Sisters Ranch Enterprises will be responsible for compliance with this Order only if the Board or Executive Officer find that other named dischargers have failed to comply with the requirements of this Order.

Three Sisters Ranch Enterprises, Joseph Bullock, Darma Winder, Carol Scarioni, the Shirley Faulstich Trust James R. Davis, Priscilla G. Davis, the Davis Revocable Trust, Solvent Services Company, Kem Klean, Arthur G. Maionchi, Edward A. Maionchi, Thomas S. Dinette, Charles J. Kraft, Joseph Bullock, Darma Winder, Carol Scarioni, and the Shirley Faulstich Trust are referred to as "dischargers".

If additional information is submitted indicating that other parties caused or permitted any waste to be discharged on the site where it entered or could have entered waters of the State, the Board will consider adding those parties' names to this order.

4. **Regulatory Status:** This site is currently not subject to Board order.
5. **Site Hydrogeology:** The site is covered with a thin layer of asphalt or gravel to a depth of about 1 foot. Soil borings taken at the site indicate that there is a uniform layer of clayey silt from 1 to 7 feet bgs, overlying a layer of silty clay to clay material to the maximum depths drilled (about 25 feet bgs). No significant sand or gravel materials were observed in the soil borings. Saturated soils were encountered at about 20 feet bgs.

The direction of groundwater flow at the site is not known. However, groundwater in this area typically flows north toward San Francisco Bay, approximately nine miles away. Groundwater flows north to northwest at other sites within a one mile radius. The nearest major surface water is Coyote Creek, approximately 1/2 mile to the east.

6. **Remedial Investigation:** In November 1997, the current property owners performed a soil gas survey in the southern concern of the site where underground storage tanks were suspected. This investigation confirmed the presence of VOCs in the subsurface.

A follow-up investigation was performed in April of 1998 in order to determine the impact to soil and groundwater. Eleven soil borings were drilled to a maximum depth of 25 feet below ground surface (bgs). Soil and groundwater samples were collected from each of the borings and analyzed for VOCs. Maximum contamination levels (MCLs) were exceeded in the groundwater for the following chemicals: benzene, chlorobenzene, 1,2-dichlorobenzene, 1,1-dichloroethane, cis-1,2-dichloroethene, trans-1,2-dichloroethene, ethylbenzene, freon 113, tetrachloroethene (PCE), toluene, 1,2,4-trichlorobenzene, 1,1,1-trichloroethane, trichloroethene (TCE), vinyl chloride, and xylene. Figures 2, 3, and 4 illustrate the groundwater concentrations for cis-1,2-DCE, vinyl chloride and xylene respectively. The highest concentrations (220,000 µg/l of cis-1,2-DCE, 26,000 µg/l of vinyl chloride and 154,000 µg/l of xylene) were found at the property boundary adjacent to Industrial Avenue, with lesser concentrations as you move away from Industrial Avenue. The off-site extent of the contamination has not been investigated.

7. **Interim Remedial Measures:** No interim remedial measures have been proposed at this time. Interim remedial measures need to be implemented at this site to reduce the threat to water quality, public health, and the environment posed by the discharge of waste and to provide a technical basis for selecting and designing final remedial measures.
8. **Adjacent Sites:** None of the adjacent sites to this property are regulated by the Regional Board or are known to have contaminated groundwater.
9. **Basin Plan:** The Board adopted a revised Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) on June 21, 1995. This updated and consolidated plan represents the Board's master water quality control planning document. The revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law on July 20, 1995, and November 13, 1995, respectively. A summary of regulatory provisions is contained in 23 CCR 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwaters.

The potential beneficial uses of groundwater underlying and adjacent to the site include:

- a. Municipal and domestic water supply
- b. Industrial process water supply
- c. Industrial service water supply
- d. Agricultural water supply
- e. Freshwater replenishment to surface waters

At present, there is no known use of groundwater underlying the site for the above purposes.

10. **Other Board Policies:** Board Resolution No. 88-160 allows discharges of extracted, treated groundwater from site cleanups to surface waters only if it has been demonstrated that neither reclamation nor discharge to the sanitary sewer is technically and economically feasible.

Board Resolution No. 89-39, "Sources of Drinking Water," defines potential sources of drinking water to include all groundwater in the region, with limited exceptions for areas of high TDS, low yield, or naturally-high contaminant levels.

11. **State Water Board Policies:** State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and requires attainment of background levels of water quality, or the highest level of water quality which is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background must be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality

objectives. Given the Board's past experience with groundwater pollution cases of this type, it is unlikely that background levels of water quality can be restored. This initial conclusion will be verified when a cleanup plan is prepared. This order and its requirements are consistent with Resolution No. 68-16.

State Water Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304," applies to this discharge. This order and its requirements are consistent with the provisions of Resolution No. 92-49, as amended.

12. **Preliminary Cleanup Goals:** The discharger will need to make assumptions about future cleanup standards for soil and groundwater, in order to determine the necessary extent of remedial investigation, interim remedial actions, and the draft cleanup plan. Pending the establishment of site-specific cleanup standards, the following preliminary cleanup goals should be used for these purposes:
  - a. **Groundwater:** Applicable water quality objectives (e.g. maximum contaminant levels, or MCLs) or, in the absence of a chemical-specific objective, risk-based levels (e.g. drinking water equivalent levels).
  - b. **Soil:** 1 mg/kg total volatile organic compounds (VOCs), 10 mg/kg total semi-volatile organic compounds (SVOCs), and background concentrations of metals.
13. **Basis for 13304 Order:** The discharger has caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the State and creates or threatens to create a condition of pollution or nuisance.
14. **Cost Recovery:** Pursuant to California Water Code Section 13304, the discharger is hereby notified that the Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this order.
15. **CEQA:** This action is an order to enforce the laws and regulations administered by the Board. As such, this action is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15321 of the Resources Agency Guidelines.
16. **Notification:** The Board has notified the dischargers and all interested agencies and persons of its intent under California Water Code Section 13304 to prescribe site cleanup requirements for the discharge, and has provided them with an opportunity to submit their written comments.

17. **Public Hearing:** The Board, at a public meeting, heard and considered all comments pertaining to this discharge.

**IT IS HEREBY ORDERED**, pursuant to Section 13304 of the California Water Code, that the discharger (or its agents, successors, or assigns) shall cleanup and abate the effects described in the above findings as follows:

**A. PROHIBITIONS**

1. The discharge of wastes or hazardous substances in a manner which will degrade water quality or adversely affect beneficial uses of waters of the State is prohibited.
2. Further significant migration of wastes or hazardous substances through subsurface transport to waters of the State is prohibited.
3. Activities associated with the subsurface investigation and cleanup which will cause significant adverse migration of wastes or hazardous substances are prohibited.

**B. TASKS**

1. **REMEDIAL INVESTIGATION WORKPLAN**

COMPLIANCE DATE: November 1, 1999

Submit a workplan acceptable to the Executive Officer to define the vertical and lateral extent of soil and groundwater pollution. The workplan should specify investigation methods, the locations of proposed sampling, the type of analyses to be performed, and a proposed time schedule.

2. **COMPLETION OF REMEDIAL INVESTIGATION**

COMPLIANCE DATE: 90 days after approval of the Investigation Workplan

Submit a technical report acceptable to the Executive Officer documenting completion of necessary tasks identified in the Task 1 workplan. The technical report should define the vertical and lateral extent of pollution down to concentrations at or below typical cleanup standards for soil and groundwater.

3. **INTERIM REMEDIAL ACTION WORKPLAN**

COMPLIANCE DATE: April 1, 2000

Submit a workplan acceptable to the Executive Officer to evaluate interim remedial action alternatives and to recommend one or more alternatives for implementation. The workplan should specify a proposed time schedule. Work may be phased to allow the investigation to proceed efficiently. If groundwater extraction is selected as an interim remedial action, disposal of the treated groundwater must be addressed. If neither reclamation nor discharge to the sanitary sewer is technically or economically feasible, then a "Notice of Intent" shall be submitted to obtain coverage under the general NPDES permit for discharge of extracted and treated groundwater to waters of the State (Order No. 94-087, NPDES No. CAG912003).

4. **COMPLETION OF INTERIM REMEDIAL ACTIONS**

COMPLIANCE DATE: 90 days after approval of the Interim Remedial Action Workplan

Submit a technical report acceptable to the Executive Officer documenting completion of necessary tasks identified in the Task 3 workplan. For ongoing actions, such as soil vapor extraction or groundwater extraction, the report should document start-up as opposed to completion.

5. **PROPOSED FINAL REMEDIAL ACTIONS AND CLEANUP STANDARDS**

COMPLIANCE DATE: September 1, 2000

Submit a technical report acceptable to the Executive Officer containing:

- a. Results of the remedial investigation
- b. Evaluation of the installed interim remedial actions
- c. Feasibility study evaluating alternative final remedial actions
- d. Risk assessment for current and post-cleanup exposures
- e. Recommended final remedial actions and cleanup standards
- f. Implementation tasks and time schedule

Item c should include projections of cost, effectiveness, benefits, and impact on public health, welfare, and the environment of each alternative action.

Items a through c should be consistent with the guidance provided by Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), CERCLA guidance documents with respect to remedial investigations and feasibility studies, Health and Safety Code Section 25356.1(c), and State Board Resolution No. 92-49 as amended ("Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304").

Item e should consider the preliminary cleanup goals for soil and groundwater identified in finding 12 and should address the attainability of background levels of water quality (see finding 11).

9. **Delayed Compliance:** If the discharger is delayed, interrupted, or prevented from meeting one or more of the completion dates specified for the above tasks, the discharger shall promptly notify the Executive Officer and the Board may consider revision to this Order.

### C. PROVISIONS

1. **No Nuisance:** The storage, handling, treatment, or disposal of polluted soil or groundwater shall not create a nuisance as defined in California Water Code Section 13050(m).
2. **Good Operation and Maintenance (O&M):** The discharger shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.
3. **Cost Recovery:** The discharger shall be liable, pursuant to California Water Code Section 13304, to the Board for all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. If the site addressed by this Order is enrolled in a State Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the discharger over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.
4. **Access to Site and Records:** In accordance with California Water Code Section 13267(c), the discharger shall permit the Board or its authorized representative:
  - a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order.

- b. Access to copy any records required to be kept under the requirements of this Order.
  - c. Inspection of any monitoring or remediation facilities installed in response to this Order.
  - d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the discharger.
6. **Contractor / Consultant Qualifications:** All technical documents shall be signed by and stamped with the seal of a California registered geologist, a California certified engineering geologist, or a California registered civil engineer.
7. **Lab Qualifications:** All samples shall be analyzed by State-certified laboratories or laboratories accepted by the Board using approved EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control (QA/QC) records for Board review. This provision does not apply to analyses that can only reasonably be performed on-site (e.g. temperature).
8. **Document Distribution:** Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the following agencies:
- a. City of San Jose
  - b. Santa Clara County Department of Environmental Health
  - c. Santa Clara Valley Water District
  - d. Cal/EPA - Department of Toxic Substances Control
- The Executive Officer may modify this distribution list as needed.
9. **Reporting of Changed Owner or Operator:** The discharger shall file a technical report on any changes in site occupancy or ownership associated with the property described in this Order.
10. **Reporting of Hazardous Substance Release:** If any hazardous substance is discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the discharger shall report such discharge to the Regional Board by calling (510) 622-2300 during regular office hours (Monday through Friday, 8:00 to 5:00).

A written report shall be filed with the Board within five working days. The report shall describe: the nature of the hazardous substance, estimated quantity involved, duration of incident, cause of release, estimated size of affected area, nature of effect, corrective actions taken or planned, schedule of corrective actions planned, and persons/agencies notified.

This reporting is in addition to reporting to the Office of Emergency Services required pursuant to the Health and Safety Code.

13. **Periodic SCR Review:** The Board will review this Order periodically and may revise it when necessary. The discharger may request revisions and upon review the Executive Officer may recommend that the Board revise these requirements.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on September 15, 1999.



Loretta K. Barsamian  
Executive Officer

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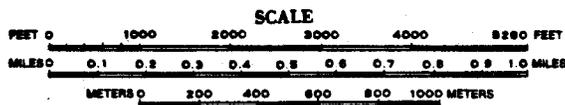
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FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY SUBJECT YOU TO ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO: IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UNDER WATER CODE SECTIONS 13268 OR 13350, OR REFERRAL TO THE ATTORNEY GENERAL FOR INJUNCTIVE RELIEF OR CIVIL OR CRIMINAL LIABILITY

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- Attachments: Figure 1. Site map  
Figure 2. Cis-1,2-DCE groundwater concentrations  
Figure 3. Vinyl chloride groundwater concentrations  
Figure 4. Xylene groundwater concentrations



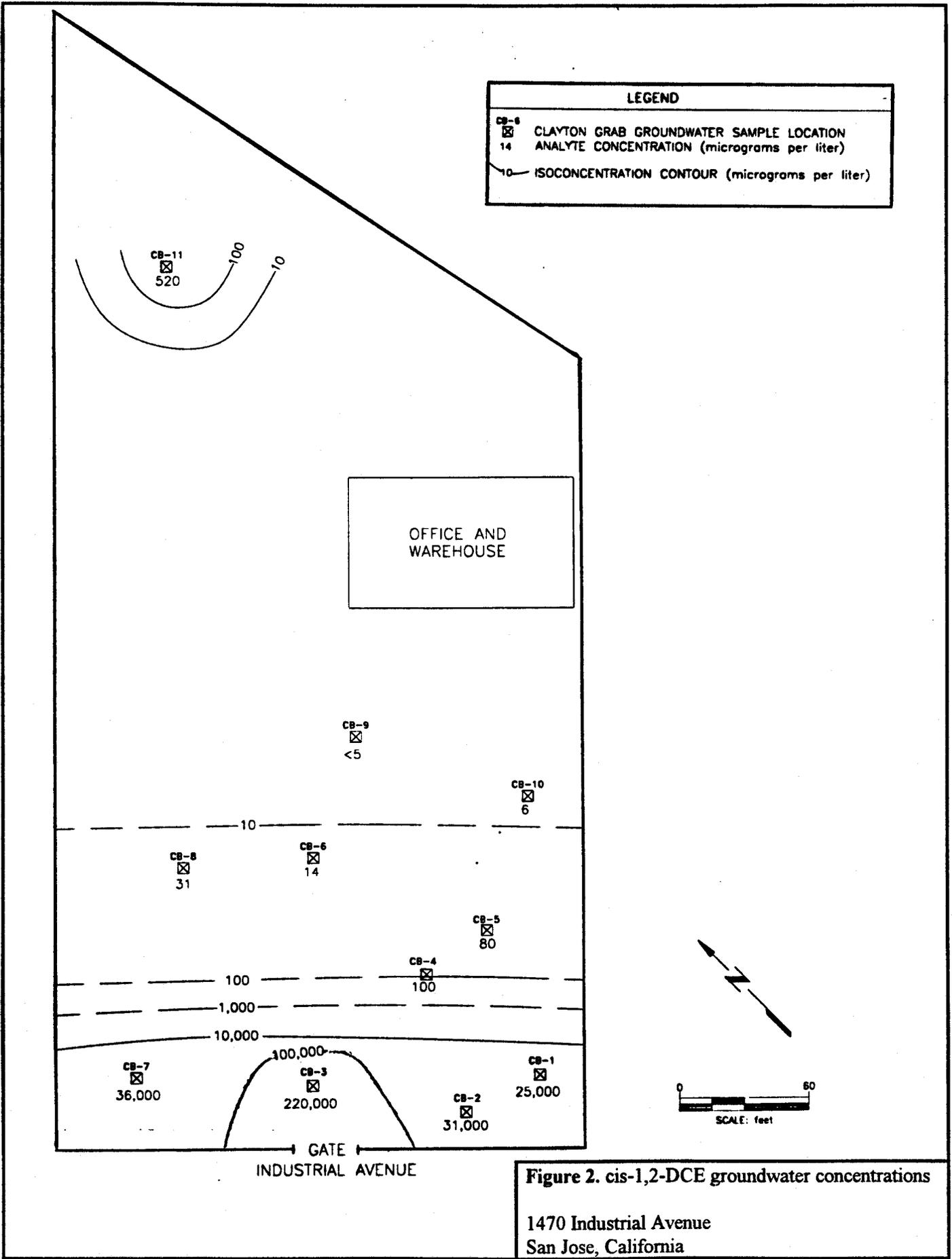
ONE INCH = 2100 FEET

CARTOGRAPHIC DEPARTMENT  
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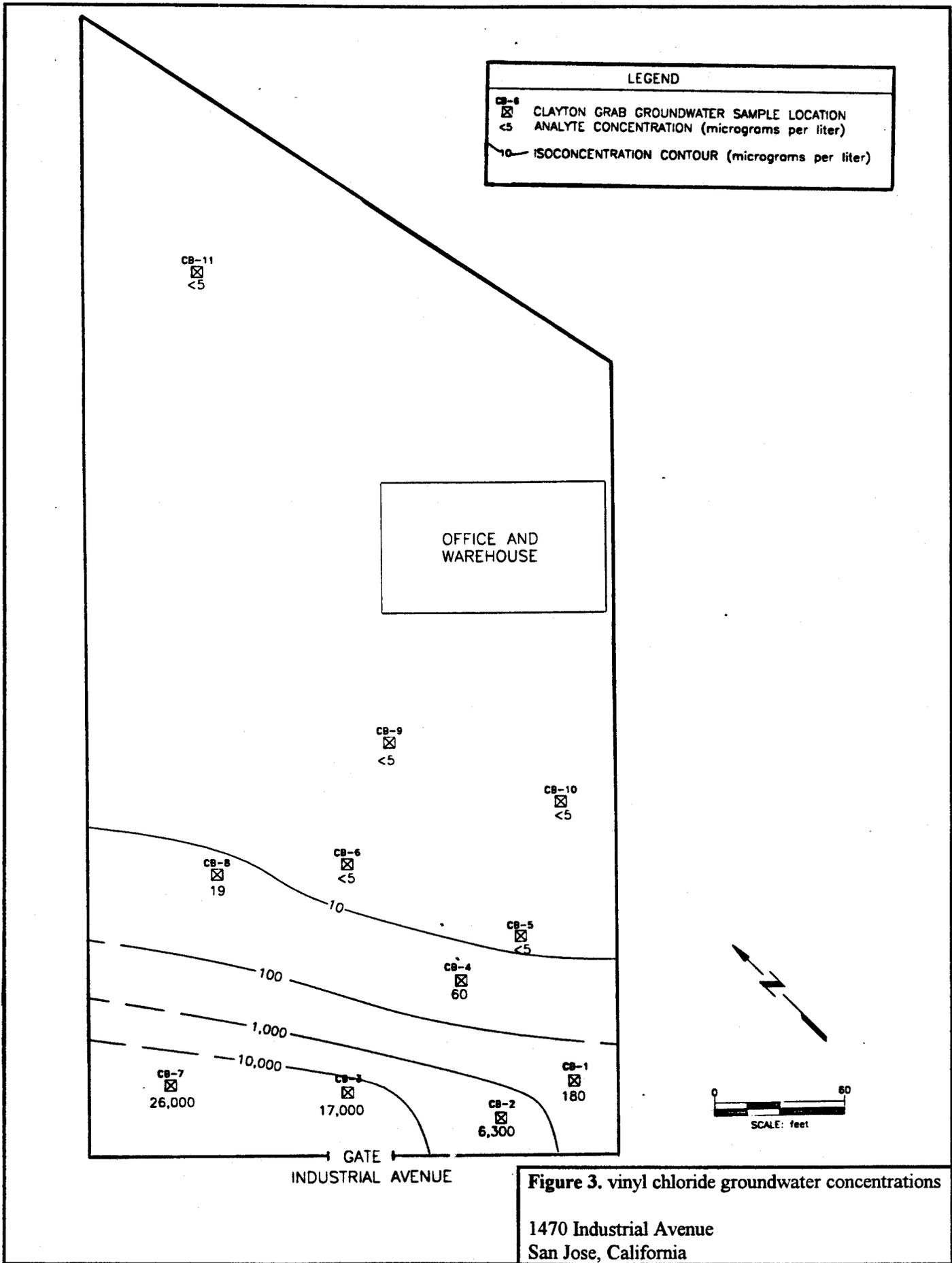
**CALIFORNIA STATE AUTOMOBILE ASSOCIATION**  
150 VAN NESS AVENUE SAN FRANCISCO, CA 94102

**Figure 1. Site Location Map**

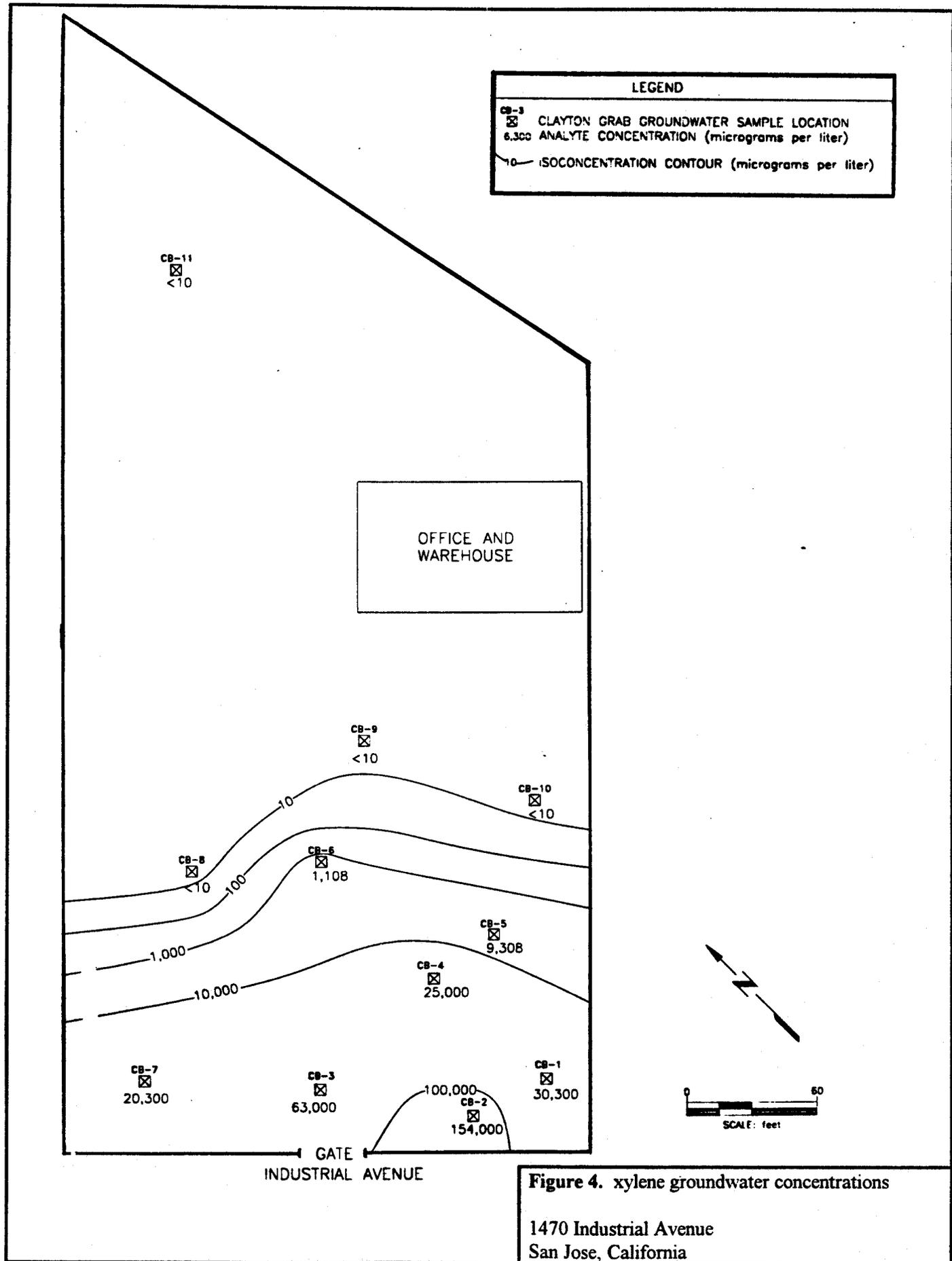
1470 Industrial Avenue  
San Jose, CA



**Figure 2. cis-1,2-DCE groundwater concentrations**  
 1470 Industrial Avenue  
 San Jose, California



**Figure 3. vinyl chloride groundwater concentrations**  
 1470 Industrial Avenue  
 San Jose, California



**Figure 4. xylene groundwater concentrations**  
 1470 Industrial Avenue  
 San Jose, California