

1 BINGHAM McCUTCHEN LLP
2 RICK R. ROTHMAN (SBN 142437)
3 355 South Grand Avenue, Suite 4400
4 Los Angeles, California 90071-1560
5 Telephone: (213) 680-6400
6 Facsimile: (213) 680-6499
7 Attorneys for Semtech Corporation

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

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9 In the Matter of the Petition of:
10 SEMTECH CORPORATION FOR
11 REVIEW OF ACTION BY THE
12 CALIFORNIA REGIONAL WATER
13 QUALITY CONTROL BOARD, LOS
14 ANGELES REGION, IN ISSUING
CLEANUP AND ABATEMENT ORDER
NO. R4-2013-0036

No. _____
PETITION FOR REVIEW
[To Be Held in Abeyance Under
23 C.C.R. § 2050.5]
[Water Code § 13320(a)]

15 This Petition for Review is submitted on behalf of Semtech Corporation
16 (“Semtech” or “Petitioner”) pursuant to California Water Code Section 13320 and California
17 Code of Regulations Title 23, Section 2050, for review of Cleanup and Abatement Order No.
18 R4-2013-0036 (the “CAO”), which was issued by the Executive Officer of the California
19 Regional Water Quality Control Board, Los Angeles Region (“Regional Board”) on October 8,
20 2013.

21 **I. NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL**
22 **ADDRESS OF PETITIONER**

23 Petitioner is Semtech Corporation. All correspondence and other written
24 communications regarding this matter should be addressed as follows:
25
26

1 Mr. Randall H. Holliday
2 Vice-President, General Counsel, and Secretary
3 Semtech Corporation
4 200 Flynn Road
5 Camarillo, CA 93012
6 (805) 480-2153
7 rholliday@semtech.com

8 With a copy to Petitioner's counsel:

9 Counsel for Petitioner Semtech Corporation
10 Rick R. Rothman, Esq.
11 Bingham McCutchen LLP
12 355 South Grand Avenue, Suite 4400
13 Los Angeles, California 90071
14 (213) 680-6400
15 rick.rothman@bingham.com

16 **II. SPECIFIC ACTION OF THE REGIONAL BOARD FOR WHICH
17 REVIEW IS SOUGHT**

18 The Regional Board action for which this petition is filed is the issuance of the
19 CAO. Petitioner requests the State Water Resources Control Board ("State Board") review the
20 Regional Board's CAO and determine that the CAO was improperly issued. A copy of the CAO
21 is attached hereto as Exhibit 1.

22 **III. DATE OF ACTION FOR WHICH REVIEW IS SOUGHT**

23 The date of the Regional Board's action subject to review is October 8, 2013, the
24 date that the Executive Officer of the Regional Board issued the CAO.

25 **IV. STATEMENT OF REASONS THE ACTION WAS
26 INAPPROPRIATE OR IMPROPER**

The issuance of the CAO was beyond the authority of the Regional Board,
inappropriate, improper, or not supported by the record, for the following reasons:

A. The CAO includes findings of fact that are not supported by substantial
evidence in the record.

1 B. The CAO fails to identify additional parties responsible for the wastes
2 allegedly discharged to the environment, which are subject to cleanup and abatement.
3 Specifically, the CAO fails to identify CBS Corporation (“CBS”) and Northrop Grumman
4 Systems Corporation (“Northrop”), successors of the former Westinghouse Electric Corporation
5 (“WEC”), as responsible parties. The contamination of soil and groundwater at the former
6 manufacturing facility located at 652 Mitchell Road in Newbury Park, California (the “Site”)
7 was caused by WEC as the result of its historical operations both at the Site and at the nearby
8 facility located at 2427 W. Hillcrest Drive in Newbury Park, California (SLT4L4231815; Case
9 No. 0423) (the “Skyworks Facility”). The CAO also fails to identify Skyworks Solutions, Inc.
10 (“Skyworks”), the current operator of the upgradient Skyworks Facility, as a responsible party.
11 Sufficient evidence exists in the record indicating that discharges from the Skyworks Facility
12 have impacted and may continue to impact groundwater at the Site.

13 C. The CAO requires Petitioner to submit technical reports and perform
14 investigations and corrective action under arbitrary and unreasonable timeframes. The CAO
15 requires multiple investigations, which may require submittal of multiple work plans, to be
16 completed, as well as a comprehensive Remedial Action Plan to be submitted on the same date.
17 In particular, the deadline for submittal of the Remedial Action Plan is too early as data from the
18 investigations are necessary to evaluate, prepare, and submit an effective Remedial Action Plan
19 to the Regional Board.

20 D. The CAO fails to bridge the analytic gap, explaining the rationale for
21 required actions by the Regional Board.

22 E. The Regional Board has not conducted an evidentiary hearing on the
23 allegations set forth in the CAO in violation of Petitioner’s due process rights.

24 Petitioner is filing a Petition for Reconsideration of the CAO with the Regional
25 Board, concurrently with the filing of this Petition because there are concurrent filing deadlines
26

1 for both petitions. A copy of the Petition for Reconsideration is attached hereto as Exhibit 2.
2 Petitioner's Petition for Reconsideration is based upon the issues mentioned in this Petition.
3 Petitioner requests that this Petition be held in abeyance pursuant to Title 23 of the California
4 Code of Regulations, Section 2050.5, and reserves its right to supplement this Petition with a
5 submission of amendment(s) to this Petition as necessary.

6 **V. MANNER IN WHICH PETITIONER HAS BEEN AGGRIEVED**

7 Petitioner is aggrieved for the reasons set forth in Paragraph IV above. In
8 particular, Petitioner is aggrieved because the CAO imposes obligations solely on Petitioner and
9 SPT Investments, Inc. ("SPT") even though Petitioner is not responsible for the waste
10 discharges, specifically discharges of trichloroethylene ("TCE") from upgradient sources and the
11 underground storage tank commonly referred to as UST 5, both of which drive much of the Site
12 investigation and potential remediation imposed by the CAO. Petitioner reserves its right to
13 supplement this Petition to provide a more detailed statement of the manner in which it is
14 aggrieved at the appropriate time.

15 Again, Petitioner believes these issues may be resolved through its Petition for
16 Reconsideration which is being filed with the Regional Board concurrently with this Petition.
17 However, if the Petition for Reconsideration is denied, Petitioner reserves its right to supplement
18 this Petition with a submission of amendment(s) as necessary.

19 **VI. REMEDY SOUGHT BY PETITIONER**

20 Depending on the outcome of the Petition for Reconsideration, all of the issues
21 raised in this Petition may be resolved or rendered moot. Accordingly, Petitioner requests the
22 State Board hold this Petition in abeyance pending the outcome of its Petition for
23 Reconsideration, at which time Petitioner will, if necessary, request the State Board consider this
24 Petition and schedule a hearing. In the event that the Regional Board denies the Petition for
25
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1 Reconsideration, Petitioner will be asking the State Board to set aside the CAO or to amend the
2 CAO in accordance with this Petition and applicable law.

3 **VII. POINTS AND AUTHORITIES**

4 As noted above, Petitioner believes the Petition for Reconsideration filed with the
5 Regional Board may result in resolving all issues that Petitioner has with the CAO, and for that
6 reason presenting a full discussion of points and authorities would appear to be premature.

7 However, Petitioner incorporates by reference all points and authorities identified in its Petition
8 for Reconsideration. In addition, if the Petition for Reconsideration is denied, Petitioner reserves
9 their right to supplement this Petition with a submission of a separate points and authorities as
10 necessary.

11 **VIII. OTHER PERSONS WITH INTERESTS IN THIS PETITION**

12 As indicated in the attached Proof of Service, a copy of this Petition is being
13 simultaneously served by UPS upon CBS, Northrop, Skyworks, and SPT.

14 **IX. NOTICE TO REGIONAL BOARD**

15 As indicated in the attached Proof of Service, a copy of this Petition is being
16 simultaneously served by UPS upon the Executive Officer of the Regional Board.

17 **X. SUBSTANTIVE ISSUES RAISED BEFORE REGIONAL BOARD**

18 Although Petitioner engaged in a discussion with the Regional Board regarding
19 the terms of the draft CAO prior to the Regional Board issuing the final CAO on October 8,
20 2013, Petitioner was not given the opportunity to have a public hearing on the draft CAO before
21 the final CAO was issued. As discussed above, Petitioner believes the Petition for
22 Reconsideration filed with the Regional Board may result in resolving all issues that Petitioner
23 has with the CAO. However, if the Petition for Reconsideration is denied, Petitioner has
24 previously raised before the Regional Board the substantive issues raised in this Petition via
25 written comment.

26

1 **XI. REQUEST TO PREPARE REGIONAL BOARD RECORD**

2 As discussed above, Petitioner requests that this Petition be held in abeyance at
3 this time, but reserves the right to amend this Petition to request that the Regional Board prepare
4 the record in this matter.

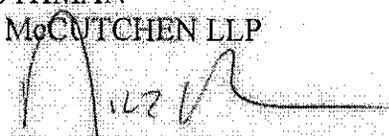
5 **XII. CONCLUSION**

6 For the reasons stated herein, Petitioner believes it has been aggrieved by the
7 Regional Board's CAO. However, until such time as the Petition for Reconsideration filed with
8 the Regional Board has been reviewed and Petitioner requests the State Board consider this
9 Petition, Petitioner requests the State Board hold this Petition in abeyance.

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DATED: November 7, 2013

RICK R. ROTHMAN
BINGHAM MCCUTCHEN LLP

By: 
Rick R. Rothman

Attorneys for Petitioner Semtech Corporation

1 William D. Wall
2 Vice President, Senior Counsel
3 CBS Law Department
4 CBS Corporation
5 20 Stanwix Street, 10th Floor
6 Pittsburgh, PA 15222

Elizabeth C. Brown
Senior Counsel
Northrop Grumman Corporation
1840 Century Park East
Los Angeles, CA 90067

5 Matthew L. Wein
6 Senior Counsel
7 SPT Investments, Inc.
8 One Amgen Center Drive, MIS 28-1-A
9 Thousand Oaks, CA 91320

Neil M. Ledbetter
Regulatory Contact
Skyworks Solutions, Inc.
2427 W. Hillcrest Drive
Newbury Park, CA 91320

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct and that this declaration was executed on November 7, 2013.
11

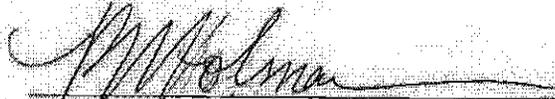
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14 P.W. Holman
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Exhibit 1



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

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 Amgen 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. 204EY00)**

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 MEHRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/losangeles

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), or Ms. Thizar Tintut-Williams, Site Cleanup Unit III Chief at (213) 576-6723 (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 Corporation¹ 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 Shadows² bought the Site in 1982 from the Janss Investment Corporation³.
- 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.

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

² 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."

³ 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.⁴ 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

⁴ 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.⁵ CBS and Northrop 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 Northrop 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.⁶ 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,

⁵ 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).

⁶ 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 $\mu\text{g/L}$.

- b. Nitrate (MCL = 10,000 $\mu\text{g/L}$) concentrations ranged from 210 to 1,500,000 $\mu\text{g/L}$ (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 $\mu\text{g/L}$, above the San Francisco Bay Regional Water Quality Control Board's May 2008 Interim Final Environmental Screening Level (ESL) of 100 $\mu\text{g/L}$ (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 $\mu\text{g/L}$) 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 $\mu\text{g/L}$ (Figure 10). However, the analytical detection limit for Freon 113 in the groundwater samples collected adjacent to UST 5 was 1,600 $\mu\text{g/L}$ and the groundwater concentrations for this chemical adjacent to UST 5 was reported as below the detection limit (<1,600 $\mu\text{g/L}$). 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 $\mu\text{g/L}$) 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 $\mu\text{g/L}$. 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 $\mu\text{g/L}$. Although groundwater concentrations for acetone adjacent to UST 5 were reported as below the detection limit (<120,000 $\mu\text{g/L}$), it is inconclusive that UST 5 is a source of acetone.
- f. Fluoride (MCL = 4,000 $\mu\text{g/L}$) concentrations ranged from 130 to 17,000 $\mu\text{g/L}$. 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.⁷ 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.

⁷ 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 (*Zoecon 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"⁸ 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.⁹ 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 Semtech and SPT are primarily liable for the cleanup of wastes at the Site in accordance with this Order. In the event that Semtech 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

⁸ 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.

⁹ See, e.g., State Water Board Orders WQ 86-18 (*Vallico 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

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
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, 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 th January 15 th
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 th July 15 th
5.c.	Submit quarterly remediation progress reports.	October 15 th January 15 th 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

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

Constituent
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 th
July - December	January 15 th

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 ₃ and smaller amounts of HCl and H ₂ SO ₄ 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

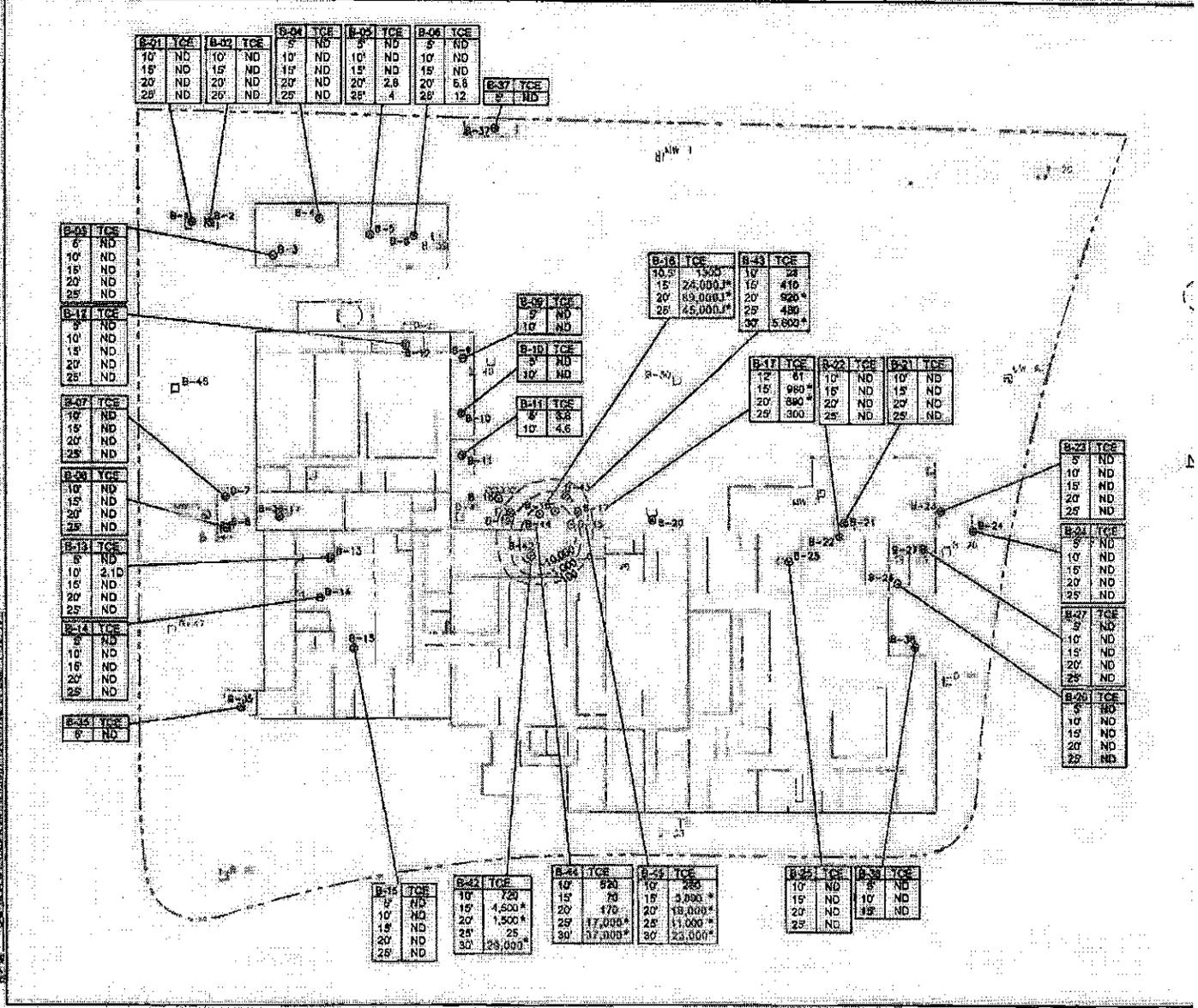
TPH - total petroleum hydrocarbons
gal - gallons

1,1-DCE - 1,1-

FIGURES

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



B-01 TCE		B-02 TCE		B-03 TCE		B-04 TCE		B-05 TCE		B-06 TCE	
10'	ND	10'	ND	10'	ND	10'	ND	10'	ND	10'	ND
15'	ND	15'	ND	15'	ND	15'	ND	15'	ND	15'	ND
20'	ND	20'	ND	20'	ND	20'	2.6	20'	5.8	20'	ND
25'	ND	25'	ND	25'	ND	25'	4	25'	12	25'	ND

B-37 TCE	
5'	ND

B-04 TCE	
5'	ND
10'	ND
15'	ND
20'	ND
25'	ND

B-12 TCE	
5'	ND
10'	ND
15'	ND
20'	ND
25'	ND

B-07 TCE	
10'	ND
15'	ND
20'	ND
25'	ND

B-06 TCE	
10'	ND
15'	ND
20'	ND
25'	ND

B-13 TCE	
5'	ND
10'	2.1D
15'	ND
20'	ND
25'	ND

B-14 TCE	
5'	ND
10'	ND
15'	ND
20'	ND
25'	ND

B-35 TCE	
5'	ND

B-09 TCE	
5'	ND
10'	ND

B-10 TCE	
5'	ND
10'	ND

B-11 TCE	
5'	3.8
10'	4.6

B-16 TCE	
10.5'	1500
15'	24,000*
20'	89,000.1*
25'	45,000.1*

B-43 TCE	
10'	24
15'	410
20'	920*
25'	480
30'	5,800*

B-17 TCE	
15'	980*
20'	380*
25'	300

B-22 TCE	
10'	ND
15'	ND
20'	ND
25'	ND

B-21 TCE	
10'	ND
15'	ND
20'	ND
25'	ND

B-23 TCE	
5'	ND
10'	ND
15'	ND
20'	ND
25'	ND

B-24 TCE	
5'	ND
10'	ND
15'	ND
20'	ND
25'	ND

B-25 TCE	
5'	ND
10'	ND
15'	ND
20'	ND
25'	ND

B-26 TCE	
5'	ND
10'	ND
15'	ND
20'	ND
25'	ND

B-15 TCE	
5'	ND
10'	ND
15'	ND
20'	ND
25'	ND

B-22 TCE	
10'	720
15'	4,500*
20'	1,500*
25'	25
30'	28,000*

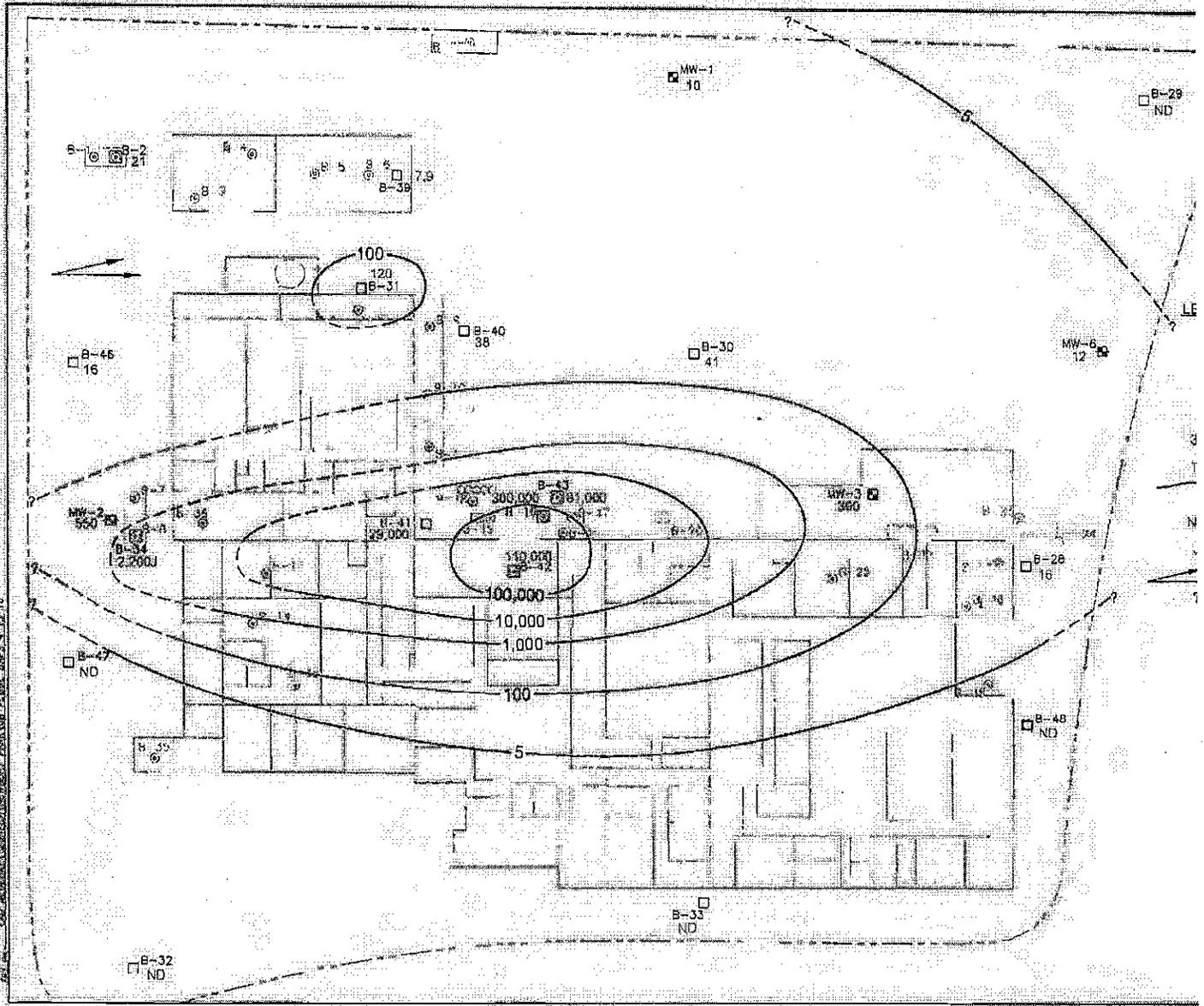
B-24 TCE	
10'	520
15'	70
20'	170
25'	17,000*
30'	17,000*

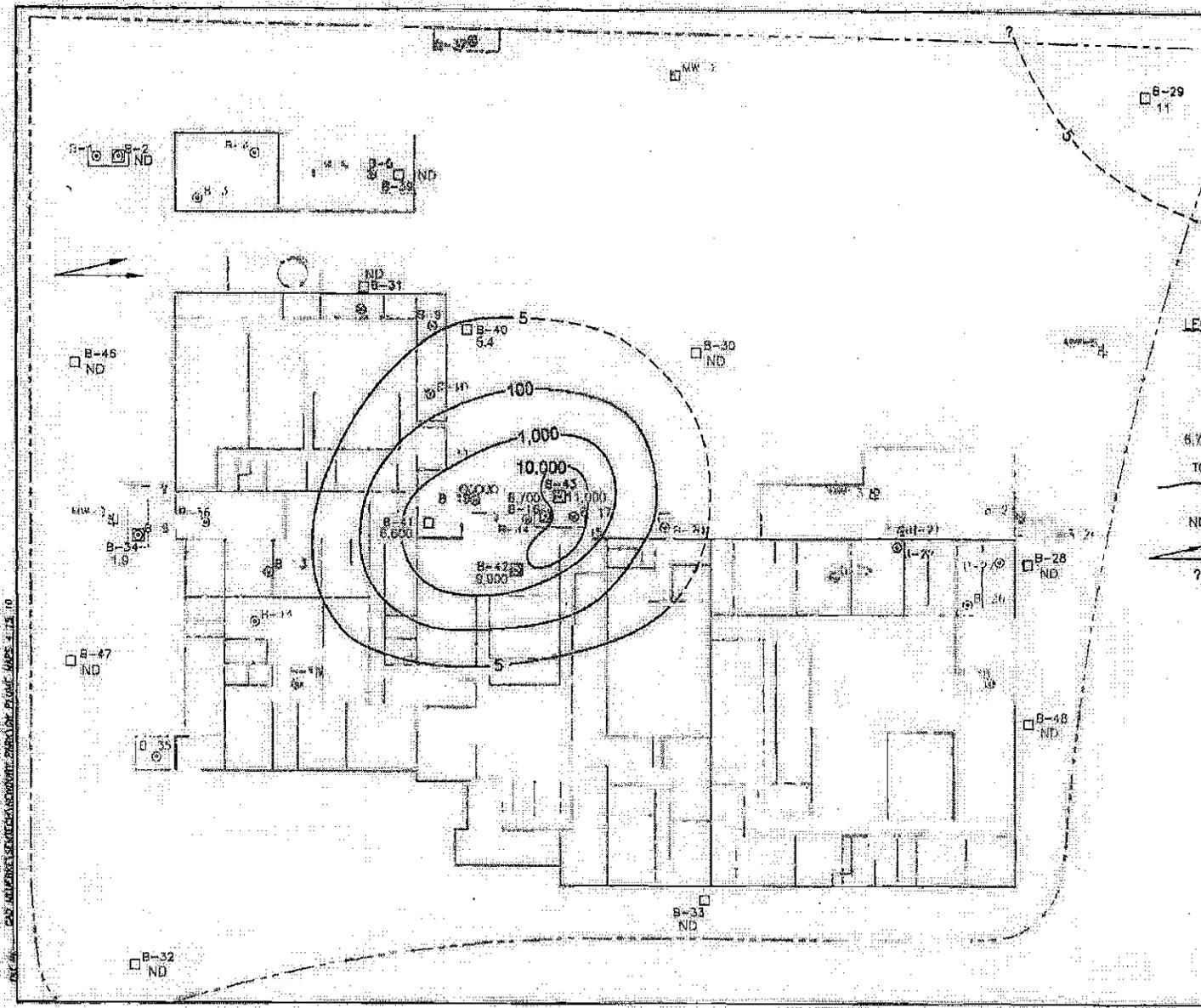
B-25 TCE	
10'	280
15'	3,800*
20'	18,000*
25'	11,000*
30'	23,000*

B-22 TCE	
10'	ND
15'	ND
20'	ND
25'	ND

B-33 TCE	
5'	ND
10'	ND
15'	ND
20'	ND
25'	ND

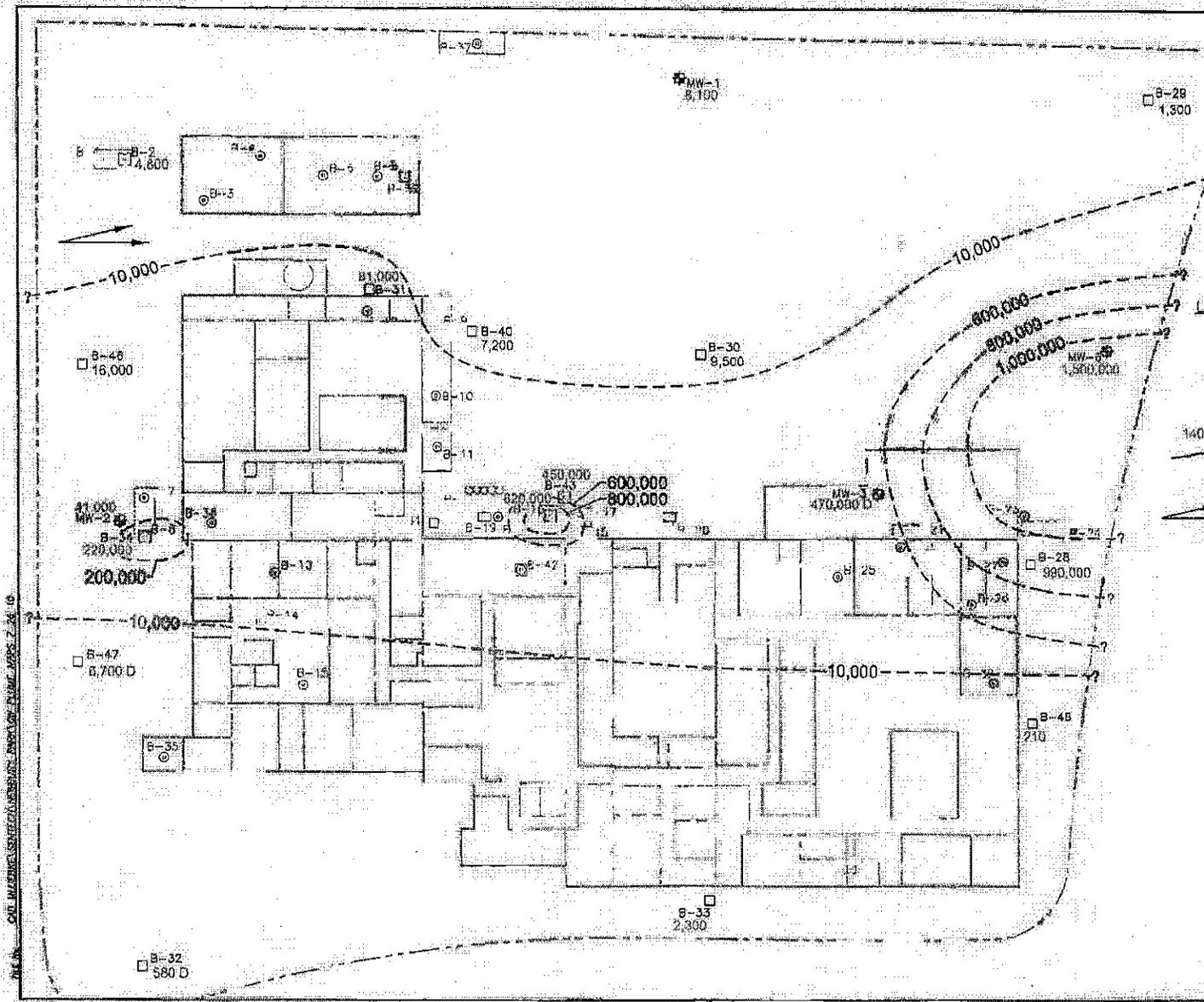
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 DATE: 4/12/08



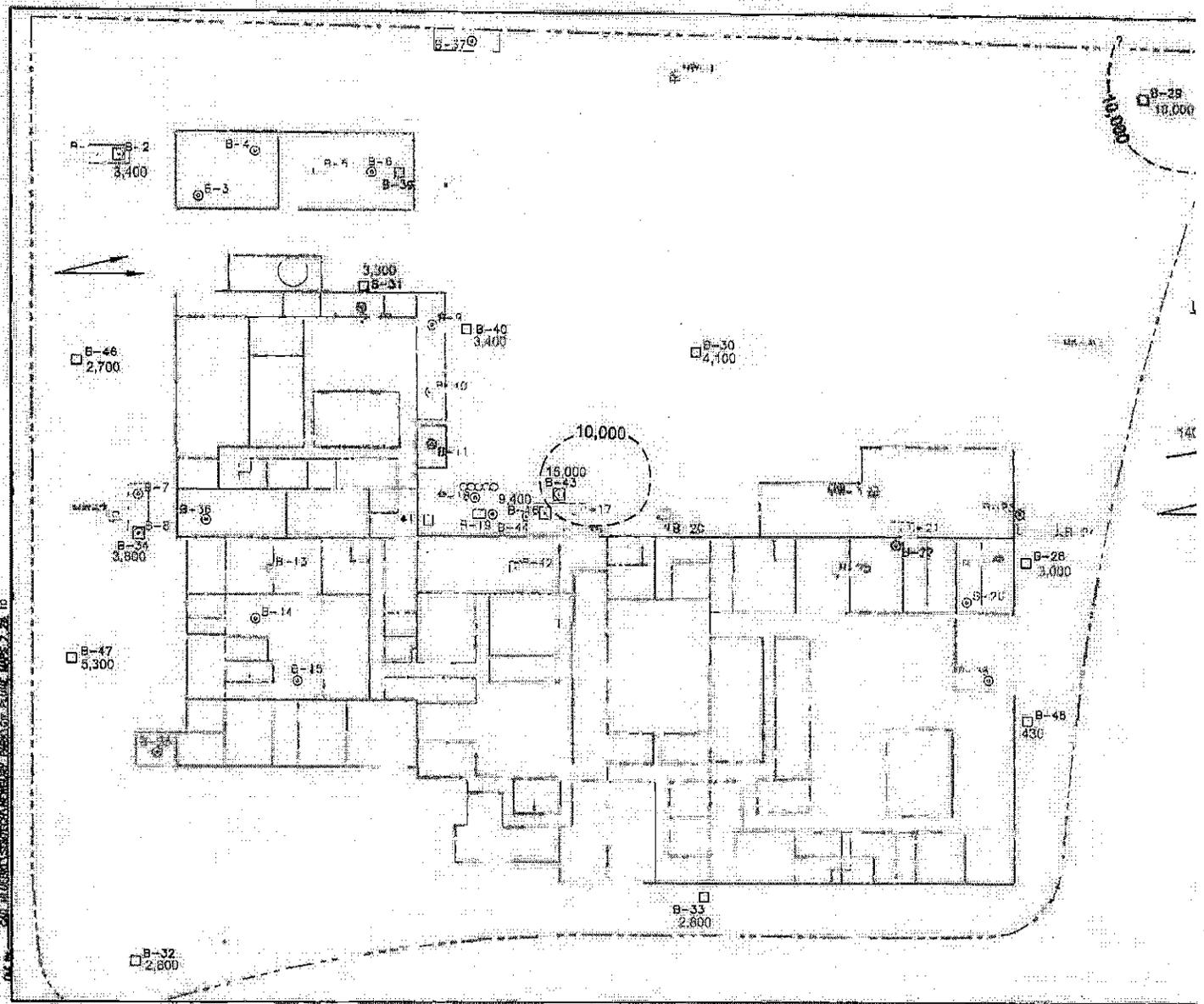


AC 4 POS AND PRTS STATIONARY TRACKING RANGE 4.75 TO 10

LF
6.7
TC
NT
?



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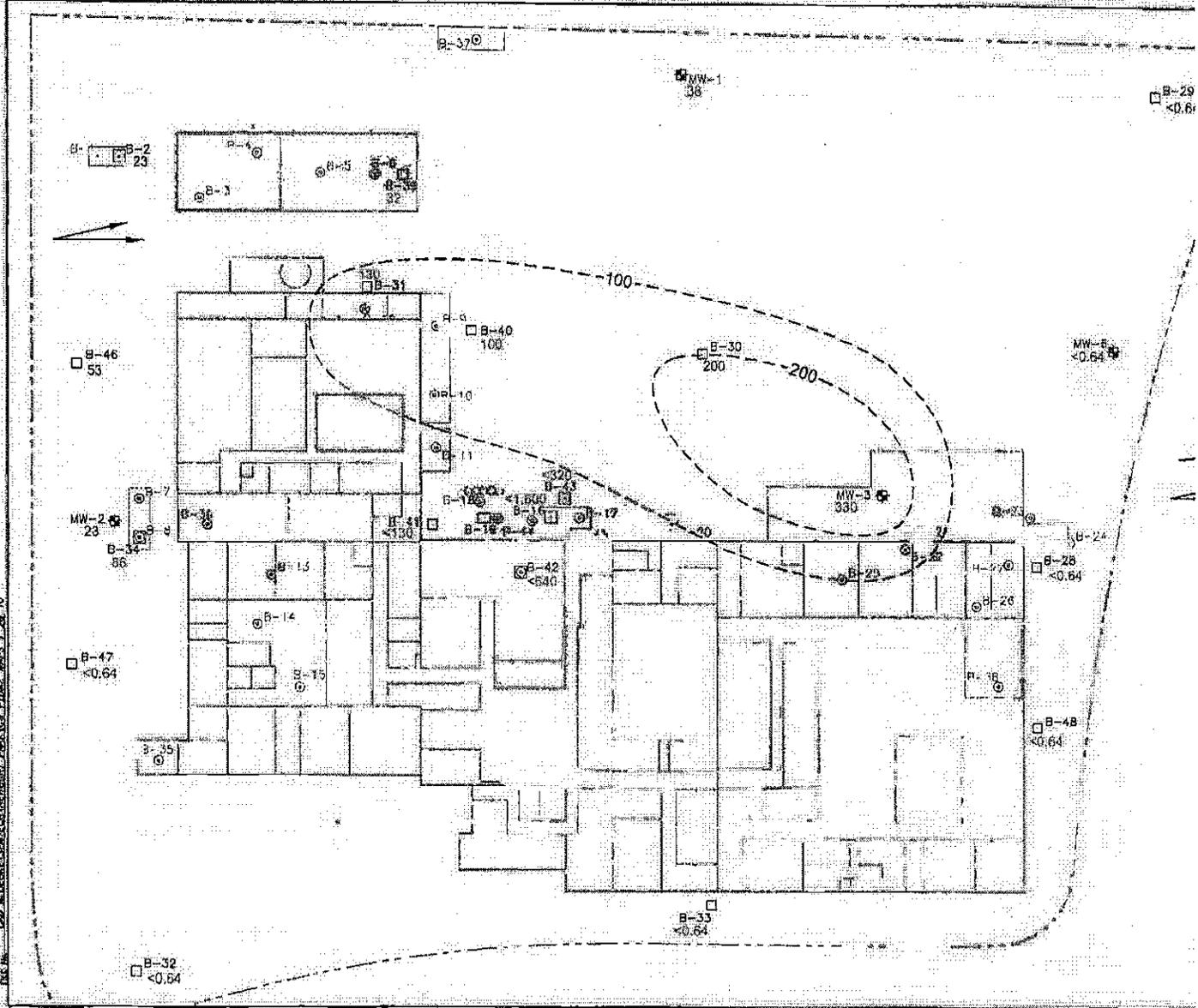
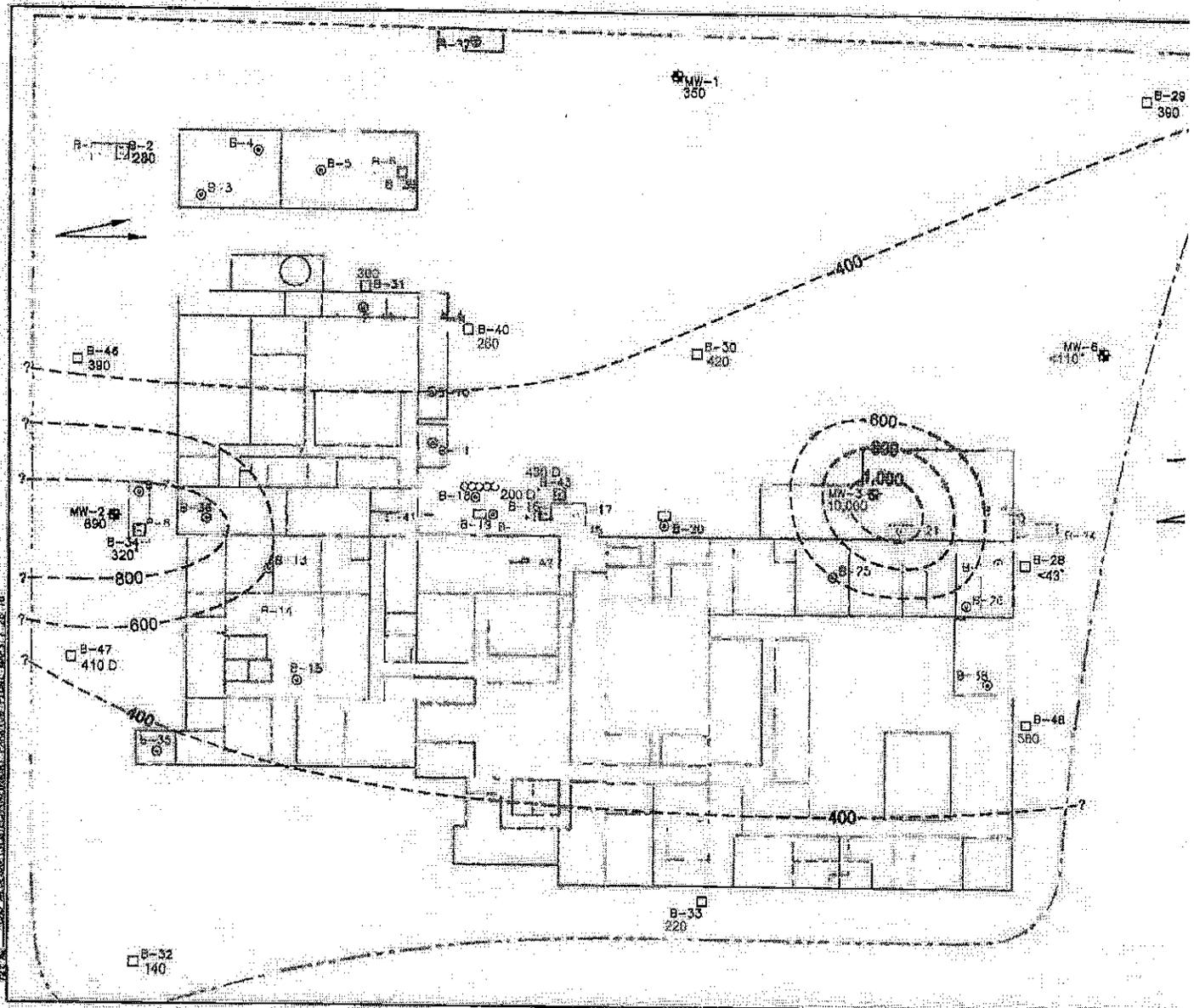
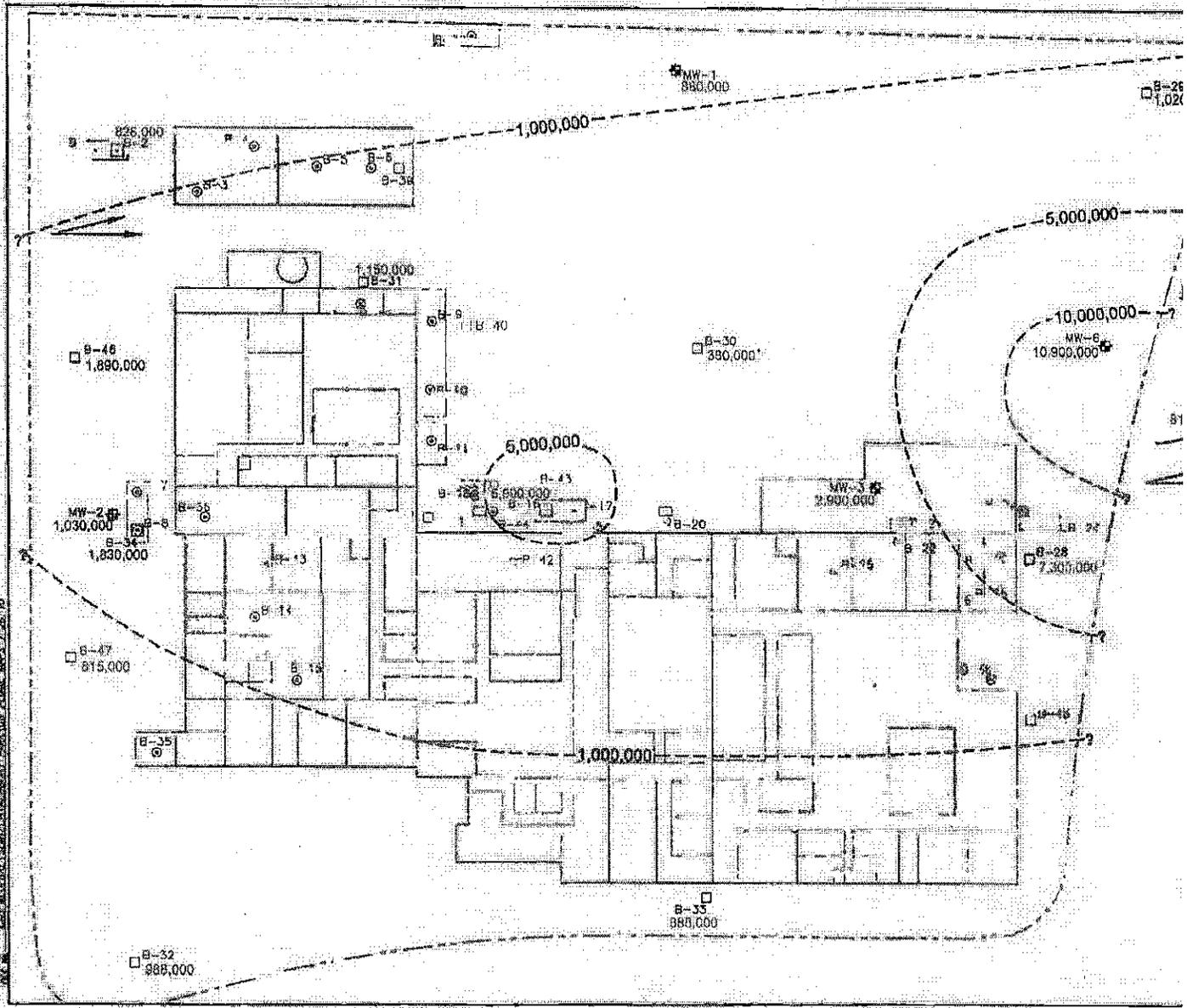


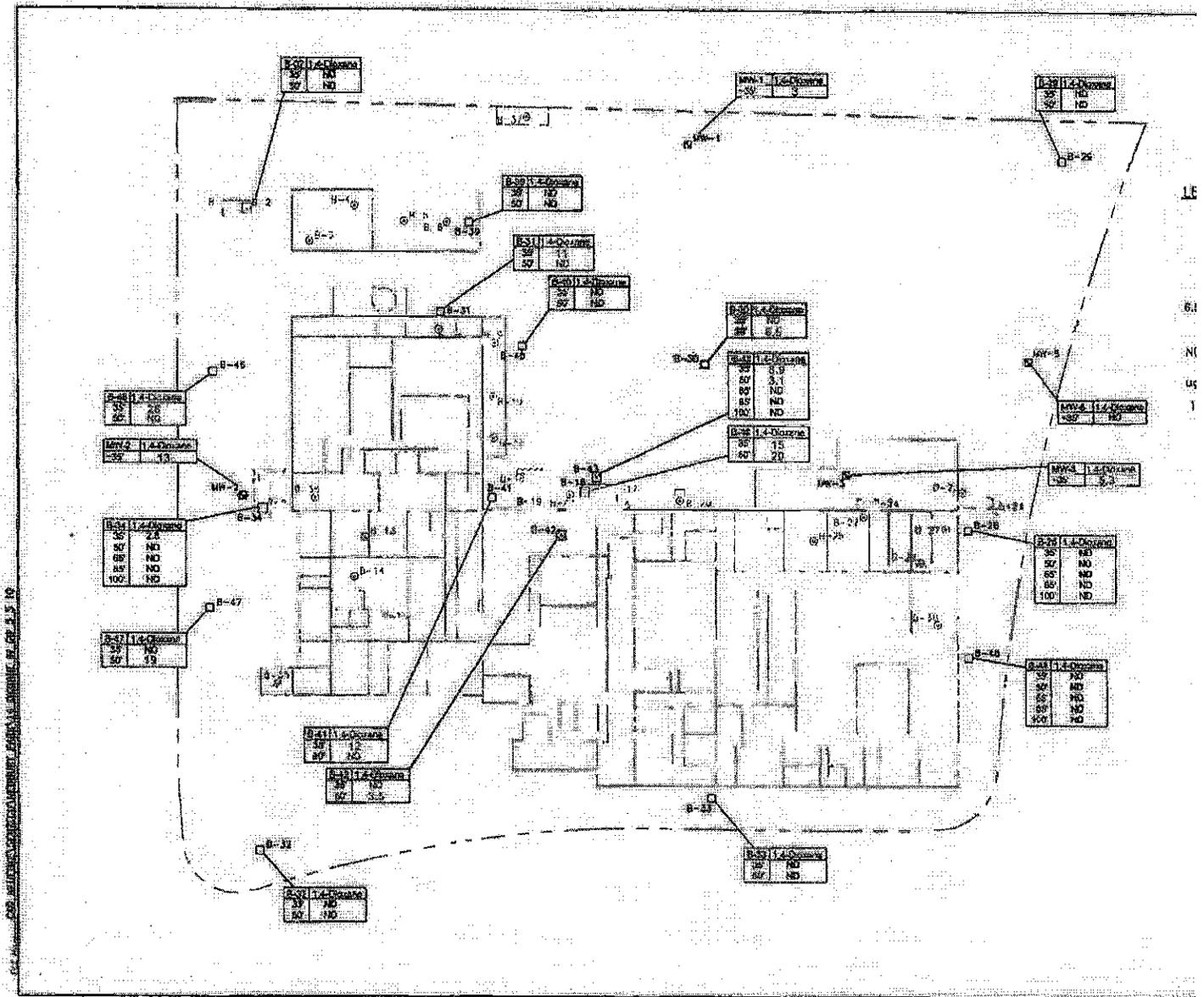
FIG. 10. CAD. ALBERTA. SOUTHWESTERN. INDUSTRIAL. PLANT. AREA. 7. 19. 10.



PLAN OF THE FACILITY SHOWING MONITORING WELLS AND BOREHOLES



SCALE: 1" = 100' (SEE NOTE ON SHEET 2 OF 2)



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 G 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 Query (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." This information was provided by Semtech in its CUQ.</p> <p>Further, Regional Board staff dated March 6, 2013, acknowledged that the list of chemicals provided by Semtech in the CUQ was accurate. However, Semtech noted that some chemicals listed on the CUQ were used in the 1960s, but rather were used in the 1970s. 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 200 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-
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 (Haley & 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 S (Skyworks) conducted a study occurring (background) conce the neighboring area, includin Groundwater samples were col off-site in shallow groundwater that background concentration groundwater in the vicinity of Semtech site were approximat</p> <p>TDS is not a chemical of conc neighboring Skyworks site. Th treatment system located abov Skyworks site is designed to t volatile organic compounds an treatment system does not rem the groundwater being treated. by monitoring reports of the g treatment system showing that effluent concentrations of TDS Skyworks Solutions TDS efflu are within the background con TDS.</p> <p>In contrast, elevated TDS conc been reported in the waste stre</p>

¹ 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

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 neutralization vessels. The U sludge with elevated TDS con 35,000 mg/l) that was later ha facility.</p> <p>A maximum historical TDS co 230,000 mg/l (12/20/1990) wi groundwater beneath and adja Semtech site. This is evidence impacted groundwater with T recent groundwater investigat 2010, a maximum TDS conce mg/l was detected in shallow proximity to UST 4. In fact, a groundwater TDS hot-spots w site USTs.</p> <p>Therefore, available data indi TDS concentrations in ground of background concentrations Semtech's operations and not site Skyworks.</p>
I.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 rec drill inside the building. Purs Water Code section 13360, th may not specify the design, lc</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, & 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 Regi Remediation Section (SCP No. current data from both the Sky Semtech sites, there is not eno the groundwater from the Skyv 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
 652 Mitchell Road, Newbury Park, California
 (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) we from the Semtech site did not supporting that Skyworks's pl on-site and has not migrated o site.</p> <p>Semtech has to address its ow contamination on-site and off- Skyworks is doing at its respe commingled plumes are clearl future, the Regional Board wi sites to work together to achie a productive manner.</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>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 wells is not enough to laterally delineate groundwater contamination; the requirement does not state additional wells shall be installed. Construction specifications. It states that the network of monitoring wells shall be expanded and that a work plan shall be submitted to the Regional Board of Supervisors.</p> <p>In its comment, Semtech proposed a number of wells with specific locations. A specific proposal may be adequate to meet the CAO requirement. However, it is required to include in a specific work plan to address the CAO requirement, not in the CAO itself.</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, the eastern portion of the original site was not included from September 30, 1960 to June 30, 1961.</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>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 received an e-mail from Semtech indicating that further analysis, we concur with that the weight of the informal 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 A. However, the Regional Board include hard deadlines to ensure environmental work is progressing. deadlines can be modified by the Executive Officer at the request of the responsible party. In the event that the result the needs of the required reasonable justification.</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
			whichever is first.	
1.8	Semtech	1/11/2013	<p>Attachment B</p> <p>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>	Comment noted. Attachment I suit the needs of the required v
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 parties considered in determining who should be held secondarily liable. In any party should only be placed in secondary liability where: (1) permit the activity that led to the release into the environment, and (2) the responsible party that is performing the activity. (See, e.g., State Water Board Order ("Vallco Park"), p. 3 ("Of course, that 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 (Prudential), p. 3 (“Based on unique facts of this case, we a landowner’s] argument that it secondary responsibility for the facts include: (a) the petitioner initiate or contribute to the ac waste, (b) the petitioner does right to carry out the cleanup fails to do so; (c) the lease is (d) the site investigation and proceeding well.”); State Water 89-8 (Spitzer) (noting that sec responsibility for the current the current long term lessee w connection with the activities the pollution, was appropriate directly responsible for chemi been identified and were maki toward cleanup); State Water 89-12 (San Diego Port Distric the current landowner was pre primarily responsible party be the former lessee was not prop Water Board Order WQ 92-13 that it was appropriate to nam landowner, who inherited the</p>

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				<p>deceased mother, as secondary cleanup was progressing satisfi Water Board Order WQ 83-9 (two factors for determining wh should be held secondarily lia whether or not the party initia the discharge; and (2) whether created or contributed to the d proceeding with cleanup).)</p> <p>Regional Board staff recogniz Investments, Inc. (SPT) has ne site. However, because no resj assumed cleanup responsibilit cleanup is progressing at the s appropriate at this time for the as secondarily liable. For the Semtech and SPT are primaril cleanup of wastes at the site in the CAO. In the event that Ser assume primary responsibility wastes at the site, and the Reg determines that cleanup is pro accordance with the CAO, the ability to modify the CAO and secondarily liable party.</p> <p>Further, under precedential or State Water Board, SPT is als</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 o cease when Semtech vacated t. State Board has interpreted th to include not only an active, i also a passive migration of wa continues as long as the pollut soil and groundwater at the Si Water Board Order WQ 86-2 (Corporation) finding that, bec actual movement of waste fro the site, a continuing discharg 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 responsibi condition of the land is with h Water Board Order WQ 87-5 (Agriculture) (noting that the S looks to three elements to dete landowner can be held accoun ownership, knowledge of the 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 owner's tenant had discharged (land); and State Water Board C (<i>Spitzer</i>) (thoroughly discussing Board precedent holding landowner 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 property owner primarily liable at this time for the following reasons:</p> <ol style="list-style-type: none"> 1. SPT was aware of the environmental issues associated with the Semtech site when it purchased the Site in 2001. 2. The cleanup of the site will be primarily property benefiting SPT. As such, SPT should share in the responsibility. 3. The Regional Board must ensure that the environmental assessment and cleanup are not unnecessarily delayed as it has occurred. Environmental assessment and cleanup were not 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 were taken at a reasonable pace. It appears

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No.	Commenter	Date	Comment Summary	Response
				Semtech and SPT have work under the recent investigati
2.2	SPT	1/11/2013	The Evidence Strongly Demonstrates that Semtech and WEC are the Sole Discharges.	<p>Regional Board staff agrees th strongly demonstrates that Ser the site. Accordingly, Semteck a responsible party in the CAC wastes at the site.</p> <p>However, after careful consid comments received, Regional determined that it lacks suffic time demonstrating that WEC' chemical use at the Site cause the discharge of waste at the s and Northrop Grumman were 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 understan its Westinghouse Electronic S Northrup Grumman in 1996. T renamed itself CBS Corporatic information indicates that both Grumman and CBS are succes However, if this information is Regional Board encourages No

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No.	Commenter	Date	Comment Summary	Response
3.2	Northrop Grumman and CBS	1/11/2013	<p>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.</p>	<p>provide documentation to the Board to support its contention.</p> <p>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, at the Site. 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.</p>
3.3	Northrop Grumman and CBS	1/11/2013	<p><u>Westinghouse Only Used A Portion Of The Original Site Building For About A Year As A Staging Area.</u></p> <p>Although Westinghouse leased a portion of a building at the site between 1960 to 1965,</p>	<p>The operational history of the Site history description of the site in the 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 subject to the recollection of an individual 10 years after the fact. A reasonable</p>

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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 12, 1965 and titled "Amendment 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 and Research Center Unit, No. 1, State of California (Site). On August 12, 1965, the document further states that "Westinghouse hereby releases Westinghouse Corporation from any and all liability arising from the lease agreement dated September 1, 1960 made by and between Westinghouse Corporation and Conejo Valley Water Company 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 [plant] to occupy the westerly portion of the building situated on Lot 11, Tract 1121 Light Manufacturing and Research Center Unit, No. 2". This indicates that Westinghouse</p>

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No.	Commenter	Date	Comment Summary	Response
				<p>occupying the eastern portion. The April 16, 1961, LA Times article states that the Astro-Electronics laboratory building was being operated by an "advance quarters," confirming the occupancy of WEC in 1961.</p> <p>On May 28, 1963, a new Lease Agreement was entered into between Semtech and the City of Newbury Park for 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 and was no longer occupying the building. Mr. Kilcoyne implies in his sworn statement that it would be reasonable to assume that WEC would have moved immediately into the (vacated) part of the building for the addition to the north to 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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No.	Commenter	Date	Comment Summary	Response
				<p>Mr. Kevin Kilcoyne's testimony in 1992, nearly thirty years after he was an electrical engineer that worked at the Site from approximately 1960 to 1966. Mr. 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 the site was leased, and likely occupied, 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 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 comments, Regional Board staff has determined that there is currently not enough credible evidence in the Board's files to demonstrate that Westinghouse operated the Site. No original documents regarding operations and/or chemical use were found by WEC's successors, Semtech, or the Regional Board. Therefore, CBS, Northrop Grumman and CBS 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, Northrop Grumman as a responsible party.</p>

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No.	Commenter	Date	Comment Summary	Response
			CBS' Technical Report.	
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 determin currently not enough credible evid Board's files to demonstrate that V the Site. The language noted by th removed from the CAO. No origi supporting WEC's operations at the site were found by WEC 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 G 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, c</p>

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	and CBS		<p><u>As In The Soil Surrounding UST 5 Are Entirely Consistent With Semtech's Operations</u></p> <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>related to Semtech's operations and has, therefore, been named as a responsible CAO for the cleanup of wastes at the Site.</p> <p>After careful consideration of all comments, the Regional Board staff has determined that there is currently not enough credible evidence in the Regional Board's files to demonstrate that Westinghouse used UST 5 at the Site and used UST 5. No original supporting evidence of Westinghouse's operations at the site were found by WEC, Semtech, SPT, or the Regional Board. CBS and Northrop Grumman are not responsible parties in the CAO. However, if information is discovered and/or presented to the Regional Board, the Regional Board may consider adding CBS and Northrop Grumman to the CAO to add CBS and Northrop Grumman as responsible parties.</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 Semtech did use TCE at the Site. Semtech has claimed that its use of TCE in the degreasers, this is contradicted by the sworn testimony of Gerald Lanahan that indicated vast amounts of TCE. The employee was used in the degreasers, the ul</p>

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No.	Commenter	Date	Comment Summary	Response
			<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>general cleaning operations. Semtech has been named as a responsible party for cleanup of wastes at the site.</p>
3.8	Northrop Grumman and CBS	1/11/2013	<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>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 cleanup of wastes at the site.</p>
3.9	Northrop	1/11/2013	<p>The TCE Contamination In Soil</p>	<p>Based on the observed concentrations</p>

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No.	Commenter	Date	Comment Summary	Response
	Grumman and CBS		<p><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>The Draft CAO states that Westinghouse occupied the eastern portion of the original building at 652 Mitchell Road. <u>Id.</u> at 2 and Figure 2. There is however considerable evidence that Westinghouse occupied the western portion of the building.</p> <p>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>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>soil, the Regional Board is unable duration of the release. However, that the piping under the former C leaked and is a source of TCE to groundwater. Semtech has, therefore responsible party in the CAO for at the site.</p> <p>For clarification purposes, based on agreements and the as-built plans Semtech, WEC occupied the eastern original building constructed in 1965. This part of the building by WEC established, although deposition that it was used for staging and pl</p> <p>The eastern portion of the building by Semtech in 1965. In time, the this portion of the building was in the use of this portion of the building Lab has been consistent since 1965.</p>

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No.	Commenter	Date	Comment Summary	Response
			<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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No.	Commenter	Date	Comment Summary	Response
			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.	

Exhibit 2

1 BINGHAM McCUTCHEM LLP
RICK R. ROTHMAN (SB 142437)
2 355 South Grand Avenue, Suite 4400
Los Angeles, California 90071-3106
3 Telephone: (213) 680-6400

4 Attorneys for Semtech Corporation
5
6
7

8 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
9 LOS ANGELES REGION
10

11 In the Matter of Petition to the California
Regional Water Quality Control Board, Los
12 Angeles Region, for Reconsideration of Cleanup
and Abatement Order No. R4-2013-0036
13

Docket No. _____

14 **PETITION OF SEMTECH CORPORATION FOR RECONSIDERATION OF**
15 **CLEANUP AND ABATEMENT ORDER NO. R4-2013-0036**

16 Semtech Corporation ("Semtech" or "Petitioner") hereby submits this Petition for
17 Reconsideration of Cleanup and Abatement Order No. R4-2013-0036 (the "CAO") by the
18 California Regional Water Quality Control Board, Los Angeles Region ("Regional Board"),
19 requiring assessment, monitoring, cleanup, and abatement of the effects of wastes discharged to
20 the soil and groundwater at the former manufacturing facility located at 652 Mitchell Road in
21 Newbury Park, California (the "Site"). Specifically, Semtech requests that the Regional Board
22 take the following actions:

- 23 (i) The Regional Board should reconsider its decision to remove from the
24 CAO identification of CBS Corporation ("CBS") and Northrop Grumman
25 Systems Corporation ("Northrop"), successors of the former
26 Westinghouse Electric Corporation ("WEC"), as responsible parties and
27 amend the CAO to identify CBS and Northrop as responsible parties.
28

1 Contamination of soil and groundwater at the Site was caused by WEC as
2 the result of its historical operations both at the Site and at the nearby
3 facility located at 2427 W. Hillcrest Drive in Newbury Park, California
4 (SLT4L4231815; Case No. 0423) (the "Skyworks Facility").

5 (ii) The Regional Board should reconsider its failure to identify Skyworks
6 Solutions, Inc. ("Skyworks"), the current operator of the upgradient
7 Skyworks Facility, as a responsible party. Indirect discharges of various
8 contaminants, including trichloroethylene ("TCE"), from two abandoned
9 underground storage tanks ("USTs") at Skyworks Facility have migrated
10 to and impacted the Site.

11 (iii) The Regional Board should reconsider and correct certain findings of fact
12 and conclusions of law. The CAO contains legal and factual errors not
13 supported by substantial evidence in the record.

14 (iv) The Regional Board should reconsider and modify certain schedules and
15 timing associated with required cleanup actions. The CAO requires
16 submission of technical reports and performance of corrective action
17 under arbitrary and unreasonable timeframes.

18 The CAO was and is based upon the aforementioned errors and, therefore, is subject to
19 reconsideration.

20 **FACTUAL BACKGROUND**

21 Prior to 1960, the Site was vacant, undeveloped land, surrounded by agricultural
22 land uses. CAO at 2-3. The Site was developed in 1960. *Id.* From 1960 to 1965, WEC leased a
23 portion of the main building at the Site in conjunction with its microelectronics manufacturing
24 operations in Newbury Park. *Id.* From 1961 to 1965, Semtech leased the other portion of the
25 main building for semiconductor manufacturing operations. *Id.* After WEC vacated the Site in
26 1965, Semtech leased the entire main building. *Id.* WEC also leased most of the then newly
27 built chemical storage building (a/k/a blockhouse) from 1965 to 1967, sharing the space with
28 Semtech. *Id.* Semtech leased and occupied at least a portion of the chemical storage building

1 from 1965 to 2001. *Id.* In 2001, SPT Investments, Inc. (“SPT”) purchased the Site. *Id.* The
2 Site has been vacant and unoccupied since Semtech vacated the Site in 2002. *Id.*

3 In the course of its operations, Semtech utilized four USTs at the Site. *Id.* at 4. In
4 1986, Semtech decided to decommission all onsite USTs and install an above-ground waste
5 treatment system. *See id.* UST 1, UST 2, and UST 3 were removed in 1987 under the oversight
6 of Ventura County and UST 4 was removed in 1995 under the Regional Board’s oversight. *Id.*
7 In 1994, a long-time Semtech employee, who formerly worked for WEC when it occupied the
8 Site, disclosed the location of another UST installed by WEC at the Site. *See* Ex. A (Letter from
9 John D. Poe to Hugo Roche (Nov. 17, 1994)). Semtech confirmed the existence of this UST,
10 designated UST 5, using ground penetrating radar. CAO at 4-5. The contents of UST 5 were
11 tested and found to contain elevated concentrations of TCE. *Id.* Semtech removed UST 5 in
12 1996. *Id.* at tbl.1.

13 On November 25, 2008, the Regional Board issued an Investigative Order
14 pursuant to California Water Code Section 13267 to Semtech and SPT, requiring the completion
15 of soil, soil gas, and groundwater assessment at the Site. *Id.* at 9. Semtech and SPT complied
16 with the Investigative Order and have been working with the Regional Board under a phased
17 approach to complete Site assessment. *Id.* In 2010, the Regional Board issued additional
18 Investigative Orders to CBS and Northrop (as successors to WEC) as well as to Semtech to
19 provide operational and chemical use information at the Site. *Id.* CBS and Northrop submitted a
20 technical report with information regarding WEC’s occupancy of the Site. *Id.*; *see also* Ex. B
21 (Technical Report Submitted by Northrop Grumman Systems Corporation and CBS Corporation
22 (as Successor in Interest to Westinghouse Corporation) (Nov. 1, 2010) (w/o exhibits))
23 (“Technical Report”). Semtech produced records such as lease agreements, lay-out maps,
24 historical plans, description of operations, and material safety data sheets. CAO at 9. On
25 November 2, 2012, Regional Board Staff released a draft version of the CAO (“Draft CAO”), for
26 public review and comment. *Id.* The Draft CAO identified Semtech, CBS and Northrop (as
27 successors to WEC), and SPT as parties responsible for cleanup of wastes at the Site. *Id.*; *see*
28 *also* Draft CAO at 1. On October 8, 2013, after receipt of written comments, the Regional Board

1 issued the CAO in its final form, identifying only Semtech and SPT as responsible parties. CAO
2 at 1.

3 SUPPORTING RATIONALE

4 I. STANDARD OF REVIEW

5 The Regional Board commonly refers to parties subject to a cleanup and
6 abatement order as “dischargers.” *See, e.g., id.* California regulations define a “discharger” as
7 “any person who discharges waste which could affect the quality of waters of the state”
8 Cal. Code Regs. tit. 23 § 2601. Section 13304 of the California Water Code authorizes the
9 Regional Board to issue cleanup and abatement orders to any discharger “who has caused or
10 permitted, causes or permits, or threatens to cause or permit any waste to be discharged or
11 deposited where it is, or probably will be, discharged into the waters of the state and creates, or
12 threatens to create, a condition of pollution or nuisance” Cal. Water Code § 13304(a).
13 State Water Resources Control Board (“State Board”) Water Quality Order precedent makes
14 clear that liability for cleanup and abatement of wastes attaches irrespective of a party’s
15 involvement, or lack thereof, with respect to the conduct that initially caused the contamination.
16 *See, e.g., In re Petition of Zoecon Corp.*, Order No. WQ 86-2, at 4 (Feb. 20, 1986) (actual
17 movement of waste from contaminated to uncontaminated groundwater is sufficient to constitute
18 a “discharge”); *In re Petition of Schmidl*, Order No. WQ 89-1, at 4 (Jan. 19, 1989) (appropriate
19 to name a landowner who had no involvement with causing the contamination at issue a
20 responsible party); *In re Petition of Spitzer*, Order No. WQ 89-8, at 7 (May 16, 1989) (same).

21 State Board Resolution 92-49 sets forth the policies and procedures applicable to
22 investigations as well as cleanup and abatement activities. *See* State Board Res. 92-49, Policies
23 and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code
24 Section 13304 (“Resolution 92-49”). Resolution No. 92-49 states that the Regional Board must
25 use “any relevant evidence” to determine “whether a person shall be required to investigate a
26 discharge under [Water Code] Section 13267, or to clean up waste and abate the effects of a
27 discharge or a threat of a discharge under [Water Code] Section 13304” and must “make a
28 reasonable effort to identify the dischargers associated with the discharge.” Where several

1 potential sources may have contributed to the contamination subject to a cleanup order, the State
2 Board has indicated that all responsible persons must work in concert to perform investigation
3 and remediation activities. *See In re Petition of Union Oil Co. of Cal.*, Order No. WQ 90-2, at 8-
4 10 (Apr. 19, 1990) (requesting that, where numerous underground storage tanks may have
5 contributed to the contamination at issue, the San Diego Regional Water Quality Control Board
6 augment the record to show what steps it had taken to obtain reports and cleanup from other
7 responsible parties and then remanding the proceeding for the issuance of a consolidated order or
8 set of orders).

9 The fundamental question in this matter is whether the Regional Board, in issuing
10 the CAO, has considered all relevant evidence to properly identify all parties responsible for the
11 contamination impacting the Site. In the CAO, the Regional Board stated that because it
12 “lack[ed] evidence to counter CBS and Northrop[]’s contentions regarding WEC’s usage of
13 chemicals and UST 5” it would reverse its initial position and not name CBS and Northrop as
14 responsible parties. CAO at 5; *see also id.* at 10; Regional Board Response to Comments - Draft
15 Cleanup and Abatement Order No. R4-2013-0036 at 3.2, 3.4, 3.5 (“Response to Comments”).
16 Semtech recognizes that because WEC occupied the Site nearly 50 years ago sparse records exist
17 related to its Site-specific operations. However, as discussed in greater detail below, the denials
18 asserted on WEC’s behalf by CBS and Northrop in their recent comment letter to the Regional
19 Board are contradicted by testimonial evidence as well as by CBS and Northrop’s own
20 admissions in the record. In addition, despite ample evidence that contamination from the
21 Skyworks Facility has migrated to and impacted the Site, the Regional Board has provided
22 inadequate justification for its failure to name CBS and Northrop (as successors to WEC) and
23 Skyworks (as the current operator of the Skyworks Facility) as responsible parties. Accordingly,
24 the Regional Board’s failure to consider all relevant evidence in issuing the CAO was arbitrary,
25 capricious, and an abuse of discretion.

1 **II. RELEVANT EVIDENCE ESTABLISHES THAT WEC CAUSED WASTE**
2 **DISCHARGES AT THE SITE**

3 A. WEC Installed And Used UST 5

4 Despite CBS and Northrop's claim that "there is no evidence that [WEC] used
5 UST 5" (Ex. C (Letter from John Cermak to Paula Rasmussen (Jan. 11, 2013) at 2)
6 ("CBS/Northrop Comment Letter")), interviews of former WEC and Semtech employees who
7 worked at the Site during the period of overlapping operations (i.e. 1961 to 1965) reveal that
8 WEC was responsible both for the installation and utilization of UST 5 at the Site.
9 Correspondence shortly after the discovery of UST 5 and during its removal memorializes these
10 disclosures. For example, the existence of UST 5 was first divulged to Semtech by an individual
11 who formerly worked for WEC when it occupied the Site. See Ex. A (Letter from John D. Poe to
12 Hugo Roche (Nov. 17, 1994)). The results of Semtech's subsequent investigation into the
13 origins of UST 5, including interviews of several witnesses with firsthand knowledge of WEC's
14 operations at the Site, confirmed that WEC installed UST 5 prior to Semtech's occupancy of the
15 Site and used UST 5 in its operations. See Ex. D (Letter from Kimberly Bradley to Joseph
16 Leggett (Feb. 14, 1996)). On this basis, the Regional Board should add CBS and Northrop (as
17 successors to WEC) as responsible parties.

18 B. Evidence And Admissions Contradict CBS And Northrop's
19 Subsequent Denials Of WEC's Site Liability

20 In their comment letter in response to the Draft CAO, CBS and Northrop claim
21 that WEC only occupied the Site for about a year¹ as a "staging area," and as a result no
22 chemicals, including TCE, were used by WEC in its Site operations. See Ex. C (CBS/Northrop
23 Comment Letter at 1-2, 22-23). These claims are contradicted by evidence and admissions set
24 forth in the Technical Report previously submitted to the Regional Board by CBS and Northrop
25

26 _____
27 ¹ This claim is not supported by documented evidence. See Response to Comments at 3.3. It is
28 Semtech's position that WEC leased, and likely occupied, the eastern part of the main building at
the Site from 1960 to 1965.

1 in 2010. Relevant here, the Technical Report presents evidence that (i) WEC conducted research
2 and development at the Site not mere “staging”; (ii) WEC used TCE in its Site operations; and
3 (iii) WEC’s operational practices included collection and storage of organic solvents in USTs.
4 *See generally* Ex. B (Technical Report). This evidence further supports reconsideration of CBS
5 and Northrop (as successors to WEC) as responsible parties.

6 1. *CBS And Northrop Concede That WEC Performed Research And*
7 *Development At The Site*

8 CBS and Northrop claim that WEC used the Site “only as a staging area and not for
9 production or manufacturing activities.” Ex. C (CBS/Northrop Comment Letter at 1). To the
10 contrary, former WEC employees recalled that WEC’s operations in Newbury Park included,
11 among other things, research and development and that WEC was “doing research” at the Site.
12 Ex. B (Technical Report at 6). Research and development, in contrast to “staging,” is consistent
13 with the use of chemicals, including organic solvents such as TCE.

14 2. *Former Employees Reported That WEC Likely Used TCE At The Site*

15 CBS and Northrop also contend that “there is no evidence [WEC] used any chemicals
16 including TCE at the Site.” Ex. C (CBS/Northrop Comment Letter at 1). However, this claim is
17 plainly refuted by witness statements discussed by CBS and Northrop in the Technical Report.
18 Specifically, in the Technical Report CBS and Northrop disclosed that of the more than 41
19 individuals contacted in conjunction with its investigation, “the majority of the former
20 employees recalled no use of chemicals by [WEC] at the [Site], while *others thought certain*
21 *chemicals such as TCE might have been used . . .*” Ex. B (Technical Report at 7) (emphasis
22 added). Additionally, Northrop and CBS reported that at least one former employee thought
23 WEC “*had likely used TCE*” in its operations at the Site. *Id.* at 8 (emphasis added). Thus, by
24 CBS and Northrop’s own admission, relevant evidence suggests that WEC not only installed
25 UST 5 at the Site for use in its operations, but also that WEC utilized TCE at the Site.

26 3. *WEC Used USTs To Collect And Store Organic Solvents*

27 CBS and Northrop argue, based primarily on the testimony of former employee
28

1 Ivan Sarda, that even if WEC used UST 5, it would not have placed organic solvents in it. *See*
2 Ex. C (CBS/Northrop Comment Letter at 1-2). However, another former WEC employee, Kevin
3 Kilcoyne, provided sworn testimony that WEC regularly employed USTs to store organic
4 solvents, not acids. In particular, Mr. Kilcoyne testified that WEC used USTs to collect solvents
5 at, among others, the Skyworks Facility, and that solvents were periodically pumped out of such
6 tanks into a truck by a chemical disposal company. Ex. E (Deposition Transcript of Kevin
7 Kilcoyne (Feb. 2, 1992) (excerpted) at 43:20-44:24, 60:3-62:16). Mr. Kilcoyne explained that
8 acids as opposed to solvents could be neutralized or diluted and then disposed of into a drain
9 connected to the municipal sewer line. *Id.* at 40:10-22, 42:23-43:19. Mr. Kilcoyne's sworn
10 testimony thus demonstrates that WEC's standard operating procedure included collection and
11 storage of organic solvents in USTs.

12 Accordingly, relevant evidence along with CBS and Northrop's own admissions
13 support the conclusion that, consistent with its standard waste management practices of the early
14 1960s, WEC likely utilized TCE and other solvents at the Site and stored related waste in USTs
15 prior to disposal. Because witness testimony confirms that WEC installed and used UST 5,
16 WEC almost certainly caused waste to be discharged into the environment at the Site, which
17 provides a clear basis to reconsider the responsible parties previously identified in the CAO to
18 include CBS and Northrop (as successors to WEC).

19 **III. EVIDENCE BEFORE THE REGIONAL BOARD INDICATES THAT**
20 **SKYWORKS FACILITY DISCHARGES IMPACTED THE SITE**

21 The CAO fails to mention or recognize discharges from westerly off-Site sources,
22 namely the Skyworks Facility, and fails to include Skyworks as a responsible party. In response
23 to comments to the Draft CAO submitted by Semtech highlighting this discrepancy, the Regional
24 Board stated that "there is not enough evidence that the groundwater from the Skyworks
25 [Facility] has impacted the [Site]" because "Skyworks (down-gradient) wells across the street
26 from the [Site] did not detect TCE in 2011 supporting that Skywork's plume is contained on-site
27 and has not migrated onto the [Site]." Response to Comments at 1.4. This response fails to
28

1 consider impacts to the Site caused by historical and residual discharges from the Skyworks
2 Facility. At a minimum, there is sufficient evidence in the record to support a finding of indirect
3 discharges from the Skyworks Facility to the Site.

4 It is well-documented that soil and groundwater at the Skyworks Facility have
5 been impacted with various contaminants, including TCE, discharged from two abandoned USTs
6 formerly used by WEC. *See* Ex. F (California Water Code Sections 13267 and 13304 – Order to
7 Complete Soil, Soil Gas, and Groundwater Assessment (Oct. 22, 2007) at 2); Ex. G (Regional
8 Board Order No. 96-048, NPDES Permit No. CA0060348 (May 10, 1996 rev. June 10, 1996) at
9 ¶ 4). It is also well-documented that groundwater in the vicinity of the Site flows east; therefore,
10 based on the location and proximity of the Skyworks Facility in relation to the Site, Skyworks-
11 impacted groundwater is likely to have flowed onto or under the Site. *See* CAO at fig.5; *see also*
12 Ex. H (December 1990 Groundwater Monitoring Program (Jan. 29, 1991) at 1-3) (“Enviropro
13 Report”). In 1985, a groundwater extraction system was installed at the Skyworks Facility by
14 Rockwell International Corporation, which occupied the Skyworks Facility at that time. *See* Ex.
15 H (Enviropro Report at 1). In 1994, a recharge wellfield designed to create a hydraulic barrier
16 between the two properties was installed at the Skyworks Facility; however, groundwater
17 monitoring data collected by both Rockwell and Semtech since the recharge system start up
18 suggests the recharge system caused solvent-contaminated groundwater to migrate onto the Site.
19 *See* Ex. I (Review and Analysis of Environmental Conditions and History of Land Use
20 Regarding the Property Located at: 652 Mitchell Drive, Newbury Park, CA 91320 (Oct. 9,
21 1995)). Further, because contaminant concentrations, in particular TCE, along the western
22 boundary of the Site near well MW-2 have been consistently elevated and the general mineral
23 quality at both the Skyworks Facility and the Site’s western boundary have similar
24 characteristics, it is reasonable to conclude that residual Skyworks-impacted groundwater may
25 continue to migrate onto the Site. *See* Ex. J (Soil and Groundwater Additional Assessment
26 Report: 652 Mitchell Drive, Newbury Park, CA (Feb. 15, 2011) (w/o exhibits) at 4-2 to 5-1).
27 This is consistent with the Regional Board’s own prior determination that Site contamination,
28 including potential TCE impacts, originated at the Skyworks Facility. *See* Ex. K (Memorandum

1 from Harry Patel to Al Novak (Feb. 17, 1994) at ¶ 10) (“The TCE contamination seems to have
2 migrated onsite from [sic] the [Skyworks] facility located across the street.”). Because sufficient
3 evidence exists to indicate discharges from the Skyworks Facility have impacted and may
4 continue to impact groundwater at the Site, Semtech requests the CAO be reevaluated and CBS
5 and Northrop (as successors to WEC) and Skyworks (as the current operator of the Skyworks
6 Facility) be added as responsible parties.

7 **IV. THE CAO WAS AND IS BASED UPON ERRORS OF LAW AND FACT**
8 **NOT SUPPORTED BY SUBSTANTIAL EVIDENCE**

9 A. Insufficient Evidence Exists To Tie Pipes In QA Laboratory To UST 5

10 The Regional Board’s finding that “[u]nderground piping [] runs from the former
11 Semtech QA Laboratory in the main building to former UST 5” (CAO at 5) is not supported by
12 substantial evidence in the record. No evidence before the Regional Board conclusively
13 connects the QA Laboratory to UST 5. In fact, it appears that other parties, and presumably the
14 Regional Board, rely on a lone soil gas survey report in support of this proposition; however, this
15 report merely postulates that, based on the existence of piping underneath the QA Laboratory
16 and without any evidence as to the precise purpose or design of such piping, one of the various
17 potential terminal points for the pipes could have been UST 5. *See* Ex. L (Site-Wide Soil Gas
18 Survey (Dec. 16, 2009) at 6-1) (“Underground pipes were identified with the geophysical survey
19 in the QA Lab room. The pipes may have been routed from the QA Lab room to the former
20 Tank 5.”). Based on this single, unsupported conjecture alone, the Regional Board did not have
21 sufficient evidence to find that underground piping directed waste from the QA Laboratory to
22 UST 5. Accordingly, the Regional Board should reconsider the CAO and correct this
23 unsubstantiated finding of fact, pending further evaluation of the underground piping.

24 ///

25 ///

26 ///

27 ///

1 **V. THE CAO IMPOSES ARBITRARY AND UNREASONABLE**
2 **TIMEFRAMES FOR REMEDIAL ACTION**

3 A. The Deadline For The Remedial Action Plan Should Be After Completion
4 Of Soil, Soil Vapor, And Groundwater Investigations

5 The CAO requires that Semtech submit technical reports and perform
6 investigations and corrective action under arbitrary and unreasonable timeframes. Specifically,
7 the Regional Board fails to adequately stagger deadlines for the completion of multiple
8 investigations with the submittal of dependent cleanup plans. Pursuant to Required Actions 2
9 and 3, the CAO requires complete delineation of on- and off-Site waste discharges in soil, soil
10 vapor, and groundwater as well as a comprehensive Remedial Action Plan ("RAP") on the same
11 date. CAO at 14-16, att. A. Consequently, the deadline for submittal of the RAP is too early as
12 data from these investigations will be necessary to evaluate, prepare, and submit an effective
13 RAP to the Regional Board. Based on technical experience, a reasonable deadline for submittal
14 of the RAP would be three months after the submittal of final soil, soil vapor, and groundwater
15 reports. Because these investigations and technical reports are necessary to inform
16 comprehensive corrective action, Semtech requests that the Regional Board revise the CAO's
17 Time Schedule to provide at least three months between the submittal of final soil, soil vapor,
18 and groundwater reports and the RAP.

19 **CONCLUSION**

20 For the foregoing reasons, Semtech respectfully requests that the Regional Board
21 reconsider and revise the CAO as set forth above.

22 DATED: November 7, 2013

23 Respectfully submitted,

24 RICK R. ROTHMAN
25 BINGHAM McCUTCHEEN LLP

26 By: 

27 Rick R. Rothman
28 Attorneys for Petitioner Semtech Corporation

PROOF OF SERVICE

I, P.W. Holman, do hereby certify that on November 7, 2013 a true and correct copy of the enclosed **PETITION OF SEMTECH CORPORATION FOR RECONSIDERATION OF CLEANUP AND ABATEMENT ORDER NO. R4-2013-0036** was forwarded with the practice of this office for collection and processing in the ordinary course of business as indicated below:

(BY E-Mail) by transmitting via e-mail at losangeles@waterboards.ca.gov the document(s) listed above on this date before 5:00 p.m.

Samuel Unger (Via E-mail: sunger@waterboards.ca.gov)
Executive Officer

Ronji Moffett (Via E-mail: rmoffett@waterboards.ca.gov)
Executive Assistant

California Regional Water
Quality Control Board
Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Angelica Castaneda (Via E-mail: acastaneda@waterboards.ca.gov)
California Regional Water
Quality Control Board
Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

(BY OVERNIGHT UPS DELIVERY) I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.

Samuel Unger
Executive Officer
Ronji Moffett
Executive Assistant
California Regional Water Quality
Control Board, Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Angelica Castaneda
California Regional Water Quality
Control Board, Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

William D. Wall
Vice President, Senior Counsel
CBS Law Department
CBS Corporation
20 Stanwix Street, 10th Floor
Pittsburgh, PA 15222

Elizabeth C. Brown
Senior Counsel
Northrop Grumman Corporation
1840 Century Park East
Los Angeles, CA 90067

1 Matthew L. Wein
2 Senior Counsel
3 SPT Investments, Inc.
4 One Amgen Center Drive, MIS 28-1-A
5 Thousand Oaks, CA 91320

Neil M. Ledbetter
Regulatory Contact
Skyworks Solutions, Inc.
2427 W. Hillcrest Drive
Newbury Park, CA 91320

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct and that this declaration was executed on November 7, 2013.
8

9 
10 P.W. Holman
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Exhibit A

SEMTECH CORPORATION

November 17, 1994

Mr. Hugo Roche
Roche Property Management
301 East Wilbur Road
Thousand Oaks, CA 91360

Dear Hugo:

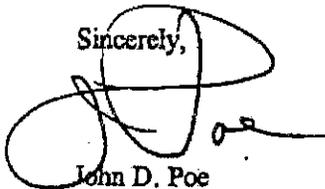
In follow-up to our meeting, we have been informed by a long-time Semtech employee, who also worked for Westinghouse when they occupied this facility, of the possible existence of a underground tank installed by Westinghouse on your property. To validate this we had our environmental consultants conduct a GPR (Ground Penetrating Radar) test. The results of this test confirmed the existence of an underground tank which appears to pre-date Semtech's lease of the building and property at 652 Mitchell Road. We believe that this may explain some of the ground water test results which we were unable to previously explain. Particularly, those which detected solvents which were not ever used by the Semtech Corporation.

Obviously, we are very concerned with this finding, particularly given the expenses we have been forced to incur over the last several years in testing and evaluating the ground water on your property.

You should also be aware that Rockwell has turned on injection wells on their property. This action has caused the contamination on their property to be pushed onto your property. The attached report shows the significant increase in contaminants present in MW-2 after Rockwell turned on these injection wells. This should be of great concern to Roche Property Management, as it may result in the long-term contamination of the ground water on the 652 Mitchell Road property.

I will be out of town through November 27th, however, I would like to schedule a meeting with you after that time to discuss these items and determine courses of action.

Sincerely,



John D. Poe
Semtech Corporation

Exhibit B

TECHNICAL REPORT

**SUBMITTED BY
NORTHROP GRUMMAN SYSTEMS
CORPORATION
AND
CBS CORPORATION
(AS SUCCESSOR IN INTEREST TO
WESTINGHOUSE CORPORATION)**

PURSUANT TO

**REVISED REQUIREMENT
TO PROVIDE
OPERATIONAL AND CHEMICAL
USE INFORMATION -
FORMER WESTINGHOUSE ELECTRIC
CORPORATION FACILITY
AT 652 MITCHELL ROAD
NEWBURY PARK, CALIFORNIA 91320**

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NOVEMBER 1, 2010

This technical report ("Report") is submitted by Northrop Grumman Systems Corporation ("Northrop Grumman") and CBS Corporation ("CBS") (as successor in interest to Westinghouse Corporation ("Westinghouse")) (collectively, "Responding Parties") in response to the Revised Requirement to Provide Operational and Chemical Use Information ("Revised Order"). Specifically, the Revised Order directs the Responding Parties to provide the Los Angeles Regional Water Quality Control Board ("RWQCB") with information regarding Westinghouse's occupancy of the property located at 652 Mitchell Road, Newbury Park, California (the "Mitchell Road Property" or "Mitchell Road Site"). At the Mitchell Road Site, various chemicals, including trichloroethylene ("TCE"), chromium, copper, silver and other metals have been detected in an underground storage tank ("UST") referred to as "UST 5" and in the surrounding soils and in groundwater at the Mitchell Road Site.

The Revised Order requires the Responding Parties to complete a chemical storage and use questionnaire (the "Chemical Questionnaire") and a site audit questionnaire (the "Audit Questionnaire"). The completed Chemical Use Questionnaire and completed Audit Questionnaire are being submitted with this Report. The Revised Order also requires Responding Parties to provide a "detailed description of [Westinghouse's] operations" at the Mitchell Road Property and a layout map, trench and drain plans, sanitary piping plans/diagrams, etc. for the Mitchell Road Property. This Report contains the "detailed description" of Westinghouse's operations. It also has attached to it exhibits that contain plans and maps of the Site, to the extent that Responding Parties have been able to locate any such documents.

I. OVERVIEW AND SUMMARY

This Report first describes the investigation undertaken by Responding Parties to locate information responsive to the Revised Order. It then summarizes information developed through that investigation with respect to Westinghouse's occupancy of the Mitchell Road Site and its operations and chemical usage at the Site (including its alleged use of UST 5). As described below, and based on available information:

- (1) Westinghouse appears to have occupied a portion of the Mitchell Road Property (referred to below as the Leased Area) beginning in about 1960 and continuing for at least one year and potentially for several more years (until about 1965);
- (2) The Leased Area appears to have been used by Westinghouse as a "staging area" related to other operations that it had or was planning in the Newbury Park area, including possibly some research and development activities;
- (3) Westinghouse does not appear to have used TCE in its operations in the Leased Area, but even assuming that it did, it would have been in very small quantities and there is no indication that Westinghouse would have disposed of waste solvents in UST 5;
- (4) Other chemicals detected in UST 5 and in the soil surrounding the UST do not appear to be associated with Westinghouse operations in the Leased Area;
- (5) Responding Parties have not identified any evidence of spills or releases of TCE or other chemicals associated with Westinghouse's occupancy of the Leased Area;

- (6) Westinghouse had operations at a property located across the street from the Mitchell Drive Property known as 2421 W. Hillcrest Drive, Newbury Park, California (the "Hillcrest Drive Property" of the "Hillcrest Drive Site") from about late 1962/early 1963 until 1969. In 1965, as part of an amendment of the lease for the Hillcrest Drive Site ("Lease Amendment"), Westinghouse leased part of a small building, located north of the main building on the Mitchell Road Property, known as the "block house" ("Block House"), to store chemicals used at the Hillcrest Drive Site. The Lease Amendment provided that Westinghouse would share use of the Block House with Semtech Corporation ("Semtech"); and
- (7) Responding Parties have not identified what specific chemicals may have been stored in the Block House by Westinghouse (or Semtech) or any evidence of spills or releases associated with Westinghouse's use of the Block House.¹

As part of its investigation, the Responding Parties also identified certain information with respect to other sources and usage of TCE at the Mitchell Road Site. That information is also provided below.

Responding Parties reserve the right to amend or supplement this Report based on additional information that may become available to them.

II. INVESTIGATION CONDUCTED BY THE RESPONDING PARTIES

To respond to the RWQCB's request for a "detailed description of [Westinghouse's] operations" at the Mitchell Road Property, the Responding Parties first undertook an extensive search for records related to the Mitchell Road Property. That search was focused on documents extending back to the early 1960s (a half a century ago), when it appears that Westinghouse apparently first occupied a portion of a building at the Mitchell Road Property. The results of the records search is described below.

Based on the records identified during that search, Responding Parties identified and then located and interviewed a number witnesses (many of whom are now in their 80s and 90s or even older). The former employees who were interviewed had worked at the Mitchell Road Property and at other Westinghouse facilities in the vicinity of the Mitchell Road Site.

Finally, Responding Parties also conducted a search for information in public records located in state, county and municipal files. The scope of that search is described in more detail below.

A. Document Review

Northrop Grumman and CBS each searched its document repositories for documents relating to the Mitchell Road Property. As part of those searches, neither of the Responding Parties was able to locate the original lease with respect to Westinghouse's lease or occupancy of the Mitchell Road Property but did find one lease document with respect to the Block House, the Lease Amendment, which refers to the termination of a lease of a portion of the Mitchell Road

¹ Responding Parties are not aware of any issues related to the area of the Mitchell Road Site on which the Block House was located.

Site between Westinghouse and Conejo Valley Corporation, the owner of the Mitchell Road Property prior to Janss Investment Corporation ("Janss").²

As part of that search, CBS identified 25 boxes containing records related to litigation associated with the Hillcrest Drive Property, which is located across the street from the Mitchell Road Property, as depicted on the aerial photograph that is attached and marked as Exhibit A. The case in question was filed in 1989 in the United States District Court for the Central District of California and was styled Rockwell International Corporation v. Janss Investment Corporation, et al. (hereinafter the "Hillcrest Drive Litigation"). Westinghouse was one of the parties in the Hillcrest Drive Litigation, which along with the property owner, Janss, was named as a defendant in the Hillcrest Drive Litigation. That litigation involved claims related to soil and groundwater contamination involving TCE and other chemicals associated with the Hillcrest Drive Site, which Westinghouse apparently occupied beginning in late 1962 or early 1963 through the late 1960s.

Because the Hillcrest Drive Property was located across the street from the Mitchell Road Property (see Exhibit A) and had been occupied by Westinghouse, Responding Parties anticipated that the litigation files related to the Hillcrest Drive Litigation (the "Litigation Files") might contain information regarding the Mitchell Road Site. A detailed review of the Litigation Files was therefore made to identify any information contained in the Litigation Files with respect to Westinghouse's operations at the Mitchell Road Property.³ As discussed below, the review in fact led to the discovery of certain relevant information, including deposition testimony of former Westinghouse employees including one who was also a former Semtech employee.⁴ A lease document related to Westinghouse's use of the Block House on the Mitchell Drive Site was also located in the Litigation Files.

B. Locating and Interviewing Witnesses

A number of former Westinghouse employees who might have information regarding Westinghouse's activities associated with the Mitchell Road Property were identified based on the review of the Litigation Files. More than 41 former employees were initially identified. The Responding Parties engaged in an extensive and time-consuming process to locate and in some instances interview these former employees. Additional former employees were identified during the interviews.

As part of that process, Responding Parties determined that several of the former employees were deceased and one suffered from Alzheimer's. Some of the former employees who were located proved to have either no recollection (or a very limited recollection) of operations at the Mitchell Road Property or the Hillcrest Drive Property. Other former employees were identified and interviewed, however, who were able to provide relevant information. The information contained in this Report is based on information from Responding Parties' interviews with former Westinghouse employees that were conducted to respond to the

² The Lease Amendment is further discussed below and is attached to this Report as Exhibit E.

³ Nothing contained in this Report is intended to waive any privilege or protection with respect to the Hillcrest Drive Site Litigation or the content of the Litigation Files or with respect to the investigation undertaken to respond to the Revised Order.

⁴ The Litigation Files did not include any trial testimony from the Hillcrest Site Litigation, as it appears that the case was settled prior to trial.

Revised Order, together with deposition testimony of former Westinghouse employees from the Hillcrest Site Litigation.⁵

The process of interviewing these witnesses was made more difficult and time-consuming because Westinghouse's operations in Newbury Park during the 1960s were located in three different buildings (one on the Mitchell Road Property, the second at the Hillcrest Drive Property and the third located a short distance away at 1520 Lawrence Drive). Former employees thus might have worked at more than one of the three buildings, and witnesses at times confused these buildings. The three locations, and the nature of Westinghouse's operations at each of the locations, were:

- (1) The Mitchell Road Property: As addressed below, Westinghouse appears to have operated a staging area out of a 10,000 square foot space in the 30,000 square foot building located on the Mitchell Road Property, which is located at the intersection of Mitchell Road and Hillcrest Drive. That building was also referred to by some witnesses as the "Semtech building," because at various times it was occupied entirely or in part by Semtech. Moreover, the eastern portion of the Mitchell Road Property may have been known at one time as 2330 Arnold Drive; Arnold Drive was later renamed as Hillcrest Drive, so the reference to 2330 Arnold Drive would have been a reference to a portion of the Mitchell Road Property.
- (2) The Hillcrest Drive Property: Westinghouse also operated at a building across the street from the Mitchell Road Property from late 1962/early 1963 until the late 1960s. This building was also known as Building 886 and it originally had a street address of 2421 Arnold Drive (which later was renamed Hillcrest Drive). The property on which this building was located was the subject of the Hillcrest Drive Litigation. The building occupied by Westinghouse on the Hillcrest Drive Property was also known as the "Molecular Electronics Division building," and later as the "Xtel building."
- (3) 1520 Lawrence Drive Location: Westinghouse also had operations at 1520 Lawrence Drive in Newbury Park, a location that was "up the hill" from the above two locations. This location was also known as the Astro Electronics Lab.

C. Identification and Review of Public Records

Responding Parties submitted public records requests and made numerous telephone calls to state and county agencies and various municipalities in an effort to locate records related to Westinghouse's operations at the Mitchell Road Site. Records requests were made to the following: (1) the RWQCB; (2) City of Oxnard Fire Department; (3) City of Thousand Oaks Community Development Department, Building Division; (4) City of Thousand Oaks Public Works Department; (5) County of Ventura Resource Management Agency, Environmental Health Division; (6) County of Ventura East, Building and Safety Division; and (7) Ventura County Fire Protection District.

⁵ As noted above, Responding Parties reserve the right to amend or supplement this Report based on additional information that may become available to them.

Responding Parties were not able to locate records from any of these sources related to Westinghouse's operations at the Mitchell Road Site; for many of the agencies, any records from the relevant time period (the early 1960s), if any such records ever existed, were no longer available. The public records that were obtained related primarily to Semtech's occupancy of the Mitchell Road Site, which as addressed below, occurred concurrently with Westinghouse's occupancy of a portion of the building at the Mitchell Road Site and after Westinghouse's occupancy ended.

III. WESTINGHOUSE'S OPERATIONS AT THE MITCHELL ROAD SITE

Responding Parties did not locate an original lease regarding Westinghouse's occupancy of the Mitchell Road Property, other than the Lease Amendment with respect to the Block House that is discussed below. However, based on statements in the Lease Amendment and secondary evidence (including witness interviews), Westinghouse appears to have leased approximately 10,000 square feet of the western portion of the building located on the Mitchell Road Property (the "Leased Area") for a period of time between 1960 and 1965.

A. The Leased Area

The Leased Area was part of a larger, 30,000 square foot building located on the Mitchell Road Property. During the period Westinghouse occupied the Leased Area, the remainder of the building was occupied by Semtech, which subsequently occupied the entire building.

Based on witness interviews, the Leased Area is depicted in a figure from the Site-Wide Soil Gas Survey dated December 16, 2009 prepared for SPT Investments, Inc. by Brown & Caldwell (the "Soil Gas Survey Report"), a copy of which is attached as Exhibit B. Attached as Exhibit C is a figure from the Soil and Groundwater Assessment Report prepared by MWH dated May 17, 2010 which depicts the location of UST 5, and shows UST 5 as being located outside the boundaries of the Leased Area.

Westinghouse appears to have used the Leased Area as a "staging area" in connection with its other operations in Newbury Park that it either had or was planning. M. Kevin Kilcoyne, a former Westinghouse employee who worked as an engineer in Newbury Park, was deposed in the Hillcrest Site Litigation. The Mitchell Road Site was not at issue in the Hillcrest Site Litigation, but Mr. Kilcoyne's deposition testimony included testimony about Westinghouse's occupancy of the Mitchell Road Site. The transcript of Mr. Kilcoyne's deposition is attached as Exhibit D.

Mr. Kilcoyne testified that when he was first employed by Westinghouse in Newbury Park, he worked at what he referred to as a Semtech location at the corner of Mitchell Road and Hillcrest Drive. Id. at 14. This appears to be a reference to the Mitchell Road Site, in that Semtech apparently leased other portions of the Mitchell Road Site during the time Westinghouse appears to have occupied the Leased Area. Mr. Kilcoyne also testified that Westinghouse really did not need the space at that location because "we were only staging

there," and that Westinghouse only occupied that location from 1960 to 1961 "[u]ntil the other buildings were ready."⁶

While Mr. Kilcoyne's testimony indicates that Westinghouse only occupied space at the Mitchell Drive Site until about 1962, the Lease Amendment (together with the recollection of other former employees) indicates that Westinghouse leased and may have occupied the Leased Area at the Mitchell Road Site until about 1965. The Lease Amendment, which was produced in discovery in the Hillcrest Drive Litigation, is attached as Exhibit E. The Lease Amendment was entered into by and between Westinghouse, as the tenant, and Janss, as the owner of both the Hillcrest Drive Property and the Mitchell Road Property, and is dated August 12, 1965. In addition to addressing Westinghouse's lease of the Hillcrest Drive Property, it includes an agreement for Westinghouse to lease a building to be used for chemical storage on Lot 11. Responding Parties understand the reference to "Lot 11" (based on the legal description) to be to the Mitchell Road Site. From the Lease Amendment, it appears that any separate lease of the Leased Area was terminated effective July 1, 1965.

Mr. Kilcoyne's testimony that Westinghouse used the Leased Area as a "staging area" is consistent with the statements of other former Westinghouse employees. One former Westinghouse employee stated that even at the Hillcrest Drive Site (across the street), Westinghouse's operations were "mostly R&D" and that he was "[n]ot aware of anything going on at 652 Mitchell." Another former employee stated that the operations at the Mitchell Road Property were a "startup" for the systems group, the semiconductor advanced development group and imaging tubes. He went on to state that this was "[n]ot a manufacturing operation," and that they were "doing research." A former employee who was a technician in the support group stated that the building leased by Westinghouse at the Mitchell Road Property was "mainly office space" and was "mostly empty." He stated that there were just engineers there and that they used electricity to test semiconductors.

B. The Block House

The Block House referred to in the Lease Amendment was located on the northern side of the Mitchell Road Property. It was a separate building from the main building of which the Leased Area was a part. The location of the Block House is depicted on the aerial photograph that is attached as Exhibit A.

It appears that Westinghouse had the right to use the Block House beginning in about 1965, and that pursuant to the terms of the Lease Amendment, it shared the use of the Block House with Semtech. The use of the Block House was related to Westinghouse's occupancy of the Hillcrest Drive Property, located across the street. Westinghouse's occupancy of the Hillcrest Drive Property ended in about 1969, so it was likely the case that any use by Westinghouse of the Block House would have ended prior to or at the time its occupancy of the Hillcrest Drive Property ended.

⁶ At one point in Mr. Kilcoyne's deposition, counsel for Rockwell International Corporation in discussing the Mitchell Road Property refers to it as "Hillcrest." Exhibit D at 15. It is evident from the context of the deposition testimony however that the reference was to the Mitchell Road Property. In addition, the reference cannot have been to the Hillcrest Drive Property, because the question was directed to the 1960/1961 time period and Westinghouse did not occupy the Hillcrest Drive Property until late 1962 or early 1963.

IV. WESTINGHOUSE'S CHEMICAL USAGE AT THE MITCHELL ROAD PROPERTY

The discussion below separately addresses the Leased Area and the Block House.

A. Leased Area

Responding Parties have been unable to determine what, if any, chemicals that Westinghouse used in its operations in the Leased Area at the Mitchell Road Property. As noted above, however, Westinghouse appears to have used the Leased Area for research and office-related purposes that involved limited usage of chemicals.

Responding Parties also have not identified any documents or information that indicate that Westinghouse installed or used UST 5, which Responding Parties understand to have been a concrete/cement UST that was located on the northern side of the building occupied by Semtech on the Mitchell Road Property (see Exhibit C), outside the Leased Area.⁷

As discussed below, former Westinghouse employees confirmed the following regarding any chemical usage related to Westinghouse's operations in the Leased Area and any alleged use by Westinghouse of UST 5:

- (1) the majority of the former employees recalled no use of chemicals by Westinghouse at the Mitchell Road Property, while others thought certain chemicals such as TCE might have been used but in very small quantities (consistent with information provided by others that activities in the Leased Area were limited to office and/or research-type work);
- (2) certain former employees had no recollection of Westinghouse using a UST at the Mitchell Road Property;
- (3) the former employees consistently stated that if a concrete/cement UST had been used, it would only have been used for acids and not for solvents;
- (4) the former employees consistently stated that assuming any solvents such as TCE had been used in Westinghouse's operations in the Leased Area, there were extensive procedures in place to ensure that solvents were not poured down a drain or piped to a UST; and
- (5) most of the chemicals/metals found in UST 5 and in the soil surrounding UST 5 at the Mitchell Road Property would not have been used by Westinghouse during the time it occupied the Leased Area, either in its operations at the Mitchell Road Property or in its operations at the Hillcrest Drive Site, located across the street from the Mitchell Road Property.

⁷ Responding Parties understand Semtech to contend that Westinghouse used and installed UST 5 at the Mitchell Road Site.

1. Use of Chemicals by Westinghouse in its Operations in the Leased Area

As stated by one former Westinghouse employee, there were "[n]o chemicals in that area that I know of," and "I remember no chemical usage at 652 Mitchell Road." This employee also recalls only the presence of electronics labs at the Mitchell Road Property and no use of chemicals. Another former employee could not recall any use of chemicals but it was unclear if he had been employed at or was familiar with the Mitchell Road Property.

Another employee however thought Westinghouse had likely used TCE although he also stated that he was not a manufacturing operations person and that "quantities of anything used were very small." Another employee stated that Westinghouse may have used cleaning chemicals.

Thus, Responding Parties have been unable to determine what chemicals, if any, Westinghouse used in connection with its operations in the Leased Area, although it is possible that Westinghouse used TCE and possibly cleaning chemicals. Quantities of any chemicals (including TCE) that may have been used by Westinghouse in its operations in the Leased Area would, however, have been very small.⁸

Responding Parties also sought to determine whether the metals and substances (other than TCE) could have originated from Westinghouse's operations in the Leased Area at the Mitchell Road Property. This included an analysis of whether those chemicals would have been used in Westinghouse's operations in Newbury Park during the 1960 to 1965 timeframe.

Former Westinghouse employees were consistent in their statements that most of the chemicals and metals allegedly associated with UST 5 would not have been used in Westinghouse's Newbury Park operations during the 1960s. Ivan Sarda, a former Westinghouse engineer who was deposed in the Hillcrest Site Litigation, stated that the combination of chemicals and metals associated with UST 5 "[m]akes no sense to me at all." Mr. Sarda made clear that Westinghouse did not use most of the chemicals and metals found in or in the vicinity of UST 5, and with regard to some of them he stated that he could not imagine what purpose they might have been used for as part of Westinghouse's operations.

Another former Westinghouse employee, Gerald H. Lanahan, who later worked for Semtech and was also deposed in the Hillcrest Site Litigation, stated that the chemicals and metals were "[m]ore consistent with Semtech's operations." He pointed out that Westinghouse used gold in its semi-conductors, and would not have used either silver or copper, both of which were detected in the UST 5.

Interviews with several other former Westinghouse employees confirmed Mr. Lanahan's statement that Westinghouse did not use either silver or copper. Mr. Lanahan mentioned that by contrast Semtech used both silver and copper, and that chromium was not used by Westinghouse but that Semtech would have used it in its nickel plating operations. Another former Westinghouse employee noted that based on his experience at Westinghouse in the fabrication of semiconductor devices, beryllium, cadmium, chromium, cobalt, lead, nickel,

⁸ From deposition transcripts in the Hillcrest Site Litigation, Responding Parties identified information with respect to other potential sources of TCE present at the Mitchell Road Property associated with Semtech's operations. That information is described in Section IV below.

vanadium and zinc would not have been used by Westinghouse. Each of these metals, however, were detected in or around UST 5⁹

2. Westinghouse's Alleged Use of UST 5

Responding Parties have not identified information indicating that Westinghouse installed or in fact used UST 5, which was not a part of the Leased Area (see Exhibits B and C). None of the former Westinghouse employees interviewed had any recollection regarding the presence or use by Westinghouse of a UST at the Mitchell Road Property. One former employee stated that there would have been "[n]o reason to use a UST." Another stated that he could not "imagine that we would have used a UST." A third employee stated that he could not "think of a reason for there to be a UST at [the Mitchell Road Property] location."¹⁰

Former employees were asked, assuming that Westinghouse had used a UST at the Mitchell Road Property, how it would have used a concrete/cement UST similar to UST 5. More specifically, former employees were asked whether solvents such as TCE would have been discharged by Westinghouse to a concrete/cement UST. The former employees, consistent with deposition testimony from the Hillcrest Drive Litigation, stated that Westinghouse's policies and practices at that time would have prohibited use of a concrete/cement UST to store or dispose of solvents. According to the deposition testimony of one such former employee, use of a cement UST to dispose of solvents was a "disciplinable offense" at Westinghouse.

As noted above, Ivan Sarda was an engineer who worked for Westinghouse at the Hillcrest Drive Property and was deposed in the Hillcrest Drive Litigation, and his deposition testimony is attached as Exhibit G. Westinghouse occupied a building on the Hillcrest Drive Property Drive from late 1962/early 1963 until the late 1960s.

Mr. Sarda testified that at the Hillcrest Drive Property, acids never were discharged or placed in a UST. *Id.* at 60-61. He was also asked whether TCE was ever disposed of into a UST. He denied that such a practice would ever occur, in part because it could cause an explosion. He testified as follows:

A. I WOULD SAY ALMOST CERTAINLY THAT IT WAS NEVER
DISPOSED OF.

Q. AND WHY WAS THAT?

A. BECAUSE IT WAS A -- IT WAS A PUNISHABLE OFFENSE TO
DO SO.

⁹ According to the Soil Gas Survey Report (at 2-2), Semtech's "manufacturing process has generally used hydrofluoric and nitric acids, sodium hydroxide, silver, copper, acetone, isopropanol, trichlorotrifluoroethane (Freon 113), 1, 1, 1-trichloroethane, and alkaline plating solutions containing cyanide."

¹⁰ It is noteworthy that UST 5 is not part of the Leased Area, but is located north of a portion of the main building on the Mitchell Road Property that was occupied by Semtech during and after Westinghouse may have occupied the Leased Area. Based on the Soil Gas Survey Report, it appears that there was piping in the portion of the building that was occupied by Semtech at the Mitchell Road Property that may have been connected to UST 5.

FOR ONE THING, IT WAS EXTREMELY DANGEROUS AND PEOPLE THERE WERE VERY SAFETY CONSCIOUS. AND, TWO, JUST TO ENSURE THAT THEY MAINTAINED VIGILANCE, THE -- IT WAS ALSO A DISCIPLINABLE OFFENSE FOR A DIRECT WORKER TO DO THAT.

Id. at 63.

Mr. Sarda also explained, in describing operations at the Hillcrest Drive Site, that if solvents such as TCE went down a sink "they terminated in a solvent safety can," and were not discharged to a UST. Id. at 43. He confirmed this repeatedly in his deposition:

Q. OKAY. AND THESE SINKS THAT WERE USED FOR THE CLEANING OF PARTS WITH TCE AND ACETONE, WHAT WERE THEY CONNECTED TO?

A. THEY WERE -- THEY WEREN'T CONNECTED TO ANYTHING. THE DOWNSPOUTS FROM THE SINKS ENDED, LITERALLY, JUST A FEW INCHES BELOW THE LOWER SURFACE OF THE SINK. AND A SOLVENT SAFETY CAN WAS PLACED UNDERNEATH THOSE -- UNDERNEATH THE DOWNSPOUTS TO COLLECT ANY RUNOFF THAT CAME FROM THE SINK.

Q. AND, AGAIN, MR. SARDA, HOW DO YOU KNOW THAT?

A. I SAW IT. I MEAN --

Q. OKAY.

A. THAT'S THE WAY THE PLACE WAS SET UP.

Q. ARE YOU FAMILIAR WITH HOW TCE, ACETONE, METHYL ETHYL KETONE AND ISOPROPYL ALCOHOL WERE DISPOSED OF AFTER USE IN THE ARNOLD BUILDING?

A. YES.

Q. HOW?

A. THEY WERE -- THEY WERE -- THEY WERE DISPOSED OF IN SOLVENT SAFETY CANS THAT RANGED IN SIZE FROM, SAY, A GALLON OR TWO TO FIVE GALLONS DEPENDING ON -- DEPENDING ON THE USAGE OR DEPENDING ON THE APPLICATION.

Q. WHAT DO YOU MEAN BY THAT?

A. WELL, FOR EXAMPLE, THE CANS UNDERNEATH THE SINK –

Q. WHICH SINK?

A. THE SOLVENT DISPOSAL SINKS. THE SINKS THAT WE WERE JUST TALKING ABOUT IN THE TWO YELLOW ROOMS.

-- ALMOST ALWAYS TERMINATED IN A FIVE-GALLON CAN BECAUSE THAT WAY YOU ONLY HAD TO EMPTY IT ONCE A WEEK OR WHATEVER. IT MINIMIZED THE AMOUNT OF TIME – THE NUMBER OF TIMES THAT YOU HAD TO EMPTY IT.

IN OTHER APPLICATIONS – FOR EXAMPLE, IN THE USE OF TCE – WHEN TCE WAS USED IN BEAKERS UNDER A HOOD, IT WAS USUALLY NOT Poured DOWN A SINK THAT TERMINATED IN A – THERE WASN'T A – THERE WASN'T A SINK WITH A SOLVENT CAN UNDERNEATH IT. THERE WAS A SOLVENT CAN – A WASTE SOLVENT CAN THERE AND THE OPERATOR Poured THE TCE INTO THE WASTE SOLVENT CAN.

Q. SO, IF I UNDERSTAND YOU CORRECTLY, WHEN SOLVENTS WERE USED FOR CLEANING PARTS IN SINKS, THEY WERE DISPOSED OF THROUGH THE SINKS INTO A SAFETY CAN.

BUT WHEN A SOLVENT WAS USED TO CLEAN PARTS IN A BEAKER, WHAT WAS DONE WITH THE CONTENTS OF THAT BEAKER?

A. IT WAS Poured MANUALLY, Poured DIRECTLY INTO A SOLVENT SAFETY CAN. IT DID NOT GO THROUGH A SINK INTO A SOLVENT SAFETY CAN.

Q. AND HOW DO YOU KNOW THIS, MR. SARDA? HOW DO YOU KNOW THIS?

A. I WITNESSED IT AND PERFORMED THE ACT MANY TIMES MYSELF.

Id. at 46-48 (emphasis added).

Mr. Sarda was also interviewed in connection with the preparation of this Report. In his interview, he confirmed that it was Westinghouse's practice to limit discharges to a UST to acids and to catch solvents in five gallon red metal canisters with spring-loaded lids, and that this was "standard Westinghouse practice." Thus, even if TCE or any other solvents were to have been used at the Mitchell Road Property, they would not have been placed in the UST.

Gerald H. Lanahan, a Westinghouse employee who later worked for Semtech, was also deposed in the Hillcrest Drive Litigation. A copy of his deposition transcript is attached as Exhibit G. Mr. Lanahan worked at the Hillcrest Drive Property. He confirmed Mr. Sarda's statement that in Westinghouse's operations, only acids would have gone to a UST and that solvents would not have. In fact, he testified that he had authored Westinghouse's written requirements for chemical handling that prohibited the pouring of solvents down a drain. Mr. Lanahan testified as follows:

**Q WERE SOLVENTS EVER Poured DOWN THESE DRAINS
YOU JUST DESCRIBED WHICH LED TO THE ACID DRAIN SYSTEM?**

A NO.

Q FOR THE SAME REASONS YOU HAVE JUST DESCRIBED?

A EXACTLY.

**Q ARE YOU AWARE OF ANY WESTINGHOUSE REGULATIONS
OR OTHER INSTRUCTIONS THAT PROHIBITED THE POURING OF
SOLVENTS DOWN THESE DRAINS?**

A YES.

Q CAN YOU DESCRIBE FOR ME WHAT YOU MEAN BY THAT?

A I WROTE SOME OF THEM.

Q WHAT SORT OF REGULATIONS WERE THEY?

**A WELL, THEY WERE SOME - THE REGULATIONS AND
RESTRICTIONS WE HAD PRIMARILY WERE WRITTEN IN THE
PROCESSES. THE PROCESSES THEMSELVES WERE VERY EXACT. IN
ADDITION TO THE PROCESSING, WE HAD SAFETY PRECAUTIONS THAT
WE ALL WERE AWARE OF.**

**PRETTY MUCH ALL THE ENGINEERS WERE INVOLVED IN
WRITING THESE SAFETY PRECAUTIONS AND DOS AND DON'TS AND
WERE VERY CAREFUL IN GOING OVER WITH EVERY EMPLOYEE THAT
CAME THROUGH THE PLANT.**

Q SO IS IT YOUR TESTIMONY THAT EVERY WESTINGHOUSE EMPLOYEE WAS TRAINED IN THE PROPER METHOD OF DISPOSING OF SOLVENTS AND ACIDS?

A NO, I CAN'T SAY EVERY WESTINGHOUSE EMPLOYEE. I CAN SAY PRETTY MUCH EVERY EMPLOYEE THAT WAS CONNECTED WITHIN THE CLEAN ROOM WAS FAMILIAR WITH THE PROCESSING.

Exhibit E at 39-40 (emphasis added).

Mr. Lanahan was asked how solvents were handled at Westinghouse and in response described the care and attention that was devoted to safely managing chemicals. His testimony in that regard is set forth below. The questions reference the "Arnold Building," which was the way the Hillcrest Drive Property was referred to prior to the change in the name of the street from "Arnold Drive" to "Hillcrest Drive."

Q HOW WOULD YOU CHARACTERIZE THE WAY SOLVENTS WERE HANDLED AT WESTINGHOUSE DURING YOUR EMPLOYMENT AT THE ARNOLD BUILDING?

A I THINK, OVERALL HANDLED VERY CAREFULLY. WE WERE A VERY UNIQUE GROUP AT THAT TIME. WESTINGHOUSE PRIDED ITSELF IN BEING THE SHOWPLACE OF SOUTHERN CALIFORNIA. WE WERE VERY SELECT IN THE ENGINEERING PEOPLE WE HIRED FROM VARIOUS OTHER LOCATIONS.

WE JUST ALL TOOK PRIDE IN THE PROCESSES AND THE HANDLING AND EVERYTHING ELSE THERE WAS IN THE EVERYDAY PRODUCTION.

Q AND THIS PRIDE AND WORKMANSHIP EXTENDED AS FAR AS THE METHODS OF DISPOSAL OF ORGANIC SOLVENTS?

A ABSOLUTELY.¹¹

Id. at 44 (emphasis added).

¹¹ Mr. Kilcoyne, the individual who testified that the Mitchell Road Site was primarily used by Westinghouse for staging for a one year period, was also asked during his deposition in the Hillcrest Drive Litigation about the handling of chemicals at the Hillcrest Drive Site. He stated that Westinghouse had used a plastic tank for solvent recovery that was periodically pumped out. Exhibit D at 40. He also stated however that spent or dirty solvent was not put down the sink. Id. at 59 and 172.

Mr. Lanahan's above testimony was that Westinghouse "took pride in the processes and the handling and everything else there was in the everyday production," and that pride "absolutely" extended to the methods of disposal of organic solvents and made Westinghouse "unique." This was confirmed by Mr. Sarda in his deposition testimony in the Hillcrest Drive Litigation (see Exhibit F). During Mr. Sarda's deposition he asked whether he could make a general unsolicited statement. He then went on to state the following:

A. I'VE SPENT MY WHOLE LIFE IN, ESSENTIALLY, THE SEMICONDUCTOR INDUSTRY OR SOLID-STATE DEVICE INDUSTRY. EVERY PLANT THAT I'VE EVER BEEN IN USED THE SAME KINDS OF SOLVENTS AND ACIDS THAT WESTINGHOUSE DID. IT'S ESSENTIALLY AN INDUSTRY STANDARD OPERATING PROCEDURE.

I CAN SAY WITHOUT ANY FEAR OF CONTRADICTION BY ANYBODY THAT WESTINGHOUSE HAD THE BEST OPERATING PROCEDURES AND THE – AND THE MOST CAREFUL OPERATING PROCEDURES OF ANY PLANT THAT I'VE EVER BEEN IN ANYPLACE IN THE COUNTRY.

THEY WERE VERY, VERY CONCERNED WITH WORKER SAFETY AND VERY, VERY CONCERNED WITH GOOD HOUSEKEEPING AND GOOD – GOOD – WELL, GOOD HOUSEKEEPING PRACTICES.

Id. at 69-70 (emphasis added).

3. Spills and Releases Associated with Westinghouse's Operations in the Leased Area

Based on interviews of former Westinghouse employees and information contained in the Litigation Files, Responding Parties did not identify evidence of any spills or releases of chemicals that were associated with Westinghouse's operations at the Mitchell Road Property. This is consistent with the fact that, as discussed above, Westinghouse's operations at the Mitchell Road Property appear to have been modest in scope and for only a limited time period. In addition, Westinghouse's activities in the Leased Area may not have involved the use of chemicals, but to the extent that they may have, would have involved only small quantities of chemicals. Finally, the lack of evidence of spills or releases is consistent with Westinghouse's general practices related to chemical handling and commitment to running a "clean" operation, as was described by the former employees in their deposition testimony in the Hillcrest Site Litigation.

B. Westinghouse's Use of the Block House

Based on the Lease Amendment, as well as the deposition testimony in the Hillcrest Site Litigation, Westinghouse's lease of the Hillcrest Drive Property permitted it to use the Block House on the Mitchell Drive Site beginning during 1965. Pursuant to the terms of the Lease Amendment, Westinghouse shared the use of the Block House with Semtech. The Block

House was a separate small building located on the northern portion of the Mitchell Drive Property (see Exhibit A).

Any joint use by Westinghouse of the Block House (with Semtech) appears to have begun in 1965. Responding Parties believe it would have ended in about 1969, when Westinghouse's occupancy of the Hillcrest Drive Property ended. Responding Parties have not identified any detailed information regarding the types of chemicals that may have been stored in the Block House. They also have not identified any information regarding any alleged spills or releases associated with Westinghouse's use of the Block House.

V. OTHER SOURCES OF TCE USAGE AT THE MITCHELL ROAD PROPERTY

Responding Parties understand Semtech to take the position that with respect to the Mitchell Road Site, "[a] check of our records indicate that a minor amount [of TCE], less than two gallons, was used by an engineer in the past in a lab experiment."¹² The Litigation Files, however, contain information regarding TCE purchases and use by Semtech at the Mitchell Road Site and the storage of waste solvent that is inconsistent with Semtech's use of a "minor amount" of TCE.

That information includes deposition testimony of Gerry Lanahan (Exhibit G). As noted above, Mr. Lanahan is a former Westinghouse employee who was later employed by Semtech. It also includes a sworn declaration by Mr. Lanahan that was filed with the Court in the Hillcrest Site Litigation, a copy of which is attached as Exhibit H, and a document produced by Semtech in the Hillcrest Drive Litigation that appears to reflect TCE purchases by Semtech during the 1980s.

During his deposition, Mr. Lanahan was asked at length about Westinghouse's use of TCE at the Hillcrest Drive Property, located across the street from the Mitchell Road Property. In responding, Mr. Lanahan contrasted Semtech's use of TCE at the Mitchell Road Property to Westinghouse's use of TCE at the Hillcrest Drive Property. Mr. Lanahan worked for Semtech at the Mitchell Road Property from 1965 to approximately 1978, where his responsibilities included purchasing. Id. at 45, 49. In his deposition testimony (Exhibit G), Mr. Lanahan stated that:

- (1) Semtech used TCE at the Mitchell Road Property (Id. at 49);
- (2) Semtech used TCE "in the degreasers, the ultrasonics and in general cleaning operations" (Id. at 50);
- (3) Semtech used "a lot" of TCE (Id. at 51); and
- (4) at the Mitchell Road Property, Semtech used ten to 20 times as much TCE as was used by Westinghouse at Hillcrest Drive (Id. at 52).

¹² This statement by Semtech was first made in a letter from Semtech to the County of Ventura dated March 31, 1988, a copy of which is Exhibit E to the September 10, 2010 letter from Bryan K. Brown of Bingham McCutcheon, counsel for Semtech. As also stated in a May 13, 2010 letter from SPT to the RWQCB, "[a]lthough Semtech has steadfastly denied the use of TCE in its manufacturing process, it admits having used a minor amount, less than two gallons . . . in a lab experiment." Id. at 3.

It also appears that Semtech purchased TCE as late as the 1980s from Rho-Chem and Allied Chemical, as reflected in a document produced by Semtech in the Hillcrest Litigation Files. A copy of which is attached as Exhibit I.¹³

Semtech's use of TCE at the Mitchell Road Site is also addressed in Mr. Lanahan's declaration in the Hillcrest Drive Litigation (Exhibit H), which states that while "[o]n average, Westinghouse used approximately ten gallons each week [of TCE] at 2421 Hillcrest" (*Id.* at 4), Semtech in its operations at the Mitchell Road Site used 20 times more solvent than Westinghouse had (*Id.* at 7). Thus, based on Mr. Lanahan's testimony and declaration, Semtech's weekly usage of TCE at the Mitchell Road Site would have been in the range of 200 gallons per week, or about 10,400 gallons per year. Mr. Lanahan's declaration characterizes Semtech as having used TCE in such volumes during a time in 1970s when "Semtech's 652 Mitchell Road facility was a large production plant employing over 500 people . . . and [was] producing a high volume of diodes and rectifiers." *Id.* at 5. Mr. Lanahan, in an interview for purposes of the preparation of this Report, also recalls purchasing TCE for Semtech from J.T. Baker and Allied Chemical.

In his deposition (Exhibit G), Mr. Lanahan also discussed where Semtech stored 55 gallon drums containing waste TCE at the Mitchell Road Property. He testified that:

- (1) the 55 gallon drums were not stored at the Block House (located in the northern part of the Mitchell Road Site that had, for a period of time, been leased to Westinghouse in connection with its operations at the Hillcrest Drive Property located across the street), but rather, were stored in an area north of the main building (*Id.* at 53-54);
- (2) a "lot of barrels" were accumulated by Semtech in the area north of the building because of high chemical usage (*Id.* at 56); and
- (3) the volume of waste was such that the waste drums were picked up a couple of times a month (*Id.*).

The area Mr. Lanahan identified where the 55 gallon drums of waste solvent having been stored appears to be the same area in which UST 5 is located (see Exhibit B).

During his deposition, Mr. Lanahan also was asked whether he had ever seen any spills or leaks of any solvent in the area of these storage drums outside the "Semtech building" at the Mitchell Road Site. The following is his exchange with counsel:

Q DID YOU EVER SEE ANY SPILLS OR LEAKS OF ANY SOLVENT IN THE AREA OF THESE STORAGE DRUMS OUTSIDE THE SEMTECH BUILDING?

A YES. THAT'S WHERE I THOUGHT YOU WERE FIRST TALKING ABOUT.

¹³ The document attached as Exhibit I was produced in connection with a 1992 deposition in the Hillcrest Site Litigation of Semtech's then president, John D. Poe, and authenticated by Mr. Poe as a Semtech business record.

Q DID YOU EVER SEE ANY SPILLS OR LEAKS OF
TRICHLOROETHYLENE IN THE VICINITY OF THESE BARRELS?

A YES.

Id. at 55-56.

Regarding Semtech's practices generally, Mr. Lanahan made the following statement in his declaration (Exhibit H):

Semtech displayed little of the concern for safety that was foremost at Westinghouse. Semtech disposed of waste organic solvents by collecting them in 55-gallon drums which it stored outside the building at 652 Mitchell Road. While working for Semtech at 652 Mitchell Road, I witnessed some small spills of organic solvents by Semtech employees, both inside the plant and outdoors.

Id. at 6.

The deposition testimony of Mr. Sarda (Exhibit F) also touched on Semtech's practices at the Mitchell Road Property. After testifying about Westinghouse's practices that would have barred any mixing of acids and solvents, Mr. Sarda noted that there was an explosion at the Semtech facility on the Mitchell Road Property in which one worker was killed and several were severely injured, that was a result of acids and solvents being poured together. Id. at 64. Other former Westinghouse employees interviewed in connection with this Report confirmed the event referred to by Mr. Sarda in his deposition testimony.

I, Kip Keenan, do hereby declare under penalty of perjury under the laws of California, that I am Sector Director, Electronic Systems Environmental, Health, Safety & Fire Protection for Northrop Grumman Electronic Systems, that I am authorized to attest to the veracity of the information contained in the foregoing Technical Report, and that the information contained in the foregoing Technical Report, is true and correct, to the best of my knowledge and based on information identified as part of the investigation described in the Report, and that this declaration was executed at Baltimore, Maryland, on November 1, 2010.

Signature: 
Kip Keenan

Exhibits

- Exhibit A: Aerial Photograph showing location of Mitchell Road Property, the Hillcrest Drive Property and the "Block House"
- Exhibit B: Figure showing location of Leased Area
- Exhibit C: Figure showing location of UST 5
- Exhibit D: Deposition of M. Kevin Kilcoyne
- Exhibit E: Lease Amendment
- Exhibit F: Deposition of Ivan Sarda
- Exhibit G: Deposition of Gerald Lanahan
- Exhibit H: Declaration of Gerald Lanahan
- Exhibit I: Document showing Semtech TCE purchases

Exhibit C

BakerHostetler

Baker & Hostetler LLP

2100 Wilshire Boulevard
50th Floor
Los Angeles, CA 90007-2100
T 310 820 8800
F 310 820 8850
www.bakerlaw.com

January 11, 2013

VIA E-MAIL AND FEDEX

John F. Cermak, Jr.
direct dial 310.442.8886
cermak@bakerlaw.com

Paula Rasmussen
Assistant Executive Officer
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Subject: Draft Cleanup and Abatement Order No. R4-2012-XXXX

Site/Case: Former Semtech Corporation Facility
652 Mitchell Road, Newbury Park, California
(Site Cleanup No. 0422, Site ID No. 204EY00)

Dear Ms. Rasmussen:

This letter is submitted on behalf of Northrop Grumman Systems Corporation ("Northrop Grumman") and CBS Corporation to respond to your letter of November 2, 2012 transmitting a draft cleanup and abatement order ("Draft CAO") that would seek to direct SPT Investments, Inc., Semtech Corporation ("Semtech"), CBS Corporation ("CBS") and Northrop to assess, monitor, and cleanup and abate waste ... at the former Semtech Corporation facility located at 652 Mitchell Road, Newbury Park, California ... [(the "Site" or "Mitchell Road Site")]. Your letter invites the submission of "written comments and/or evidence regarding this Draft CAO." The deadline for the submission of comments and/or evidence has been extended to January 11, 2012. Northrop Grumman disputes that it is the successor to Westinghouse Electric Corporation ("Westinghouse"), a former tenant at the Site, and is continuing its discussions with CBS in that regard.

As discussed below: (a) although Westinghouse leased a portion of a building at the Site between 1960 to 1965, 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; (b) there is no evidence Westinghouse used any chemicals including TCE at the Site; (c) the use of waste tanks by Westinghouse at other locations in Newbury Park is not probative of whether chemicals may have been used by Westinghouse at the Site; (d) even if such unrelated use were somehow relevant to prove chemical usage (which it is not), deposition testimony by several former Westinghouse employees (as well as

Chicago Cincinnati Cleveland Columbus Costa Mesa
Denver Houston Los Angeles New York Orlando Washington, DC

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evidence attached to the Draft CAO) makes clear that such an underground storage tank ("UST") would have been used, if at all, for acids not solvents such as TCE; (e) the metals and chemicals found in the vicinity of and inside of UST 5 are entirely consistent with Semtech's operations; (f) Semtech, according to the sworn testimony of its former manager and director of purchasing, used vast amounts of TCE in its operations; (h) according to the testimony of a former Semtech employee, Semtech used the area above UST 5 to store fifty-five gallon drums containing waste chemicals including TCE and there were leaks and spills from the handling of such drums; and (g) the extent of the TCE contamination beneath the quality assurance ("QA") laboratory south of UST 5 indicates extensive use of TCE by a long-time occupant over a prolonged period of time. 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 clean-up 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 Water Quality Control Board ("RWQCB") in the Technical Report dated November 1, 2010 submitted by Northrop Grumman and CBS ("Technical Report").

(a) Westinghouse Only Used A Portion Of The Original Site Building For About A Year As A Staging Area

The Draft CAO states that "Westinghouse . . . leased a portion of the main building at the Site from 1960 to approximately 1965 . . ." and also states that Semtech shared the main building with WEC from 1961 to 1965 . . ." *Id.* at 3. The implication of these statements is that Westinghouse was present and operated at the Site for a five year period. In fact, Westinghouse only occupied a portion of the building ("Leased Area") for about a year. As set forth in Northrop Grumman's and CBS' Technical Report¹:

Westinghouse appears to have used the Leased Area as a "staging area" in connection with its other operations in Newbury Park that it either had or was planning. M. Kevin Kilcoyne, a former Westinghouse employee who worked as an engineer in Newbury Park, was deposed in litigation involving the property at 2421 Hillcrest Drive (the Hillcrest Site Litigation). The Mitchell Road Site was not at issue in the Hillcrest Site Litigation, but Mr. Kilcoyne's deposition testimony included testimony about Westinghouse's occupancy of the Mitchell Road Site. The transcript of Mr. Kilcoyne's deposition is attached as Exhibit D.

¹ The Technical Report (and all exhibits thereto) is incorporated by reference in its entirety into this letter, and is attached and marked as Attachment A.

Mr. Kilcoyne testified that when he was first employed by Westinghouse in Newbury Park, he worked at what he referred to as a Semtech location at the corner of Mitchell Road and Hillcrest Drive.

This appears to be a reference to the Mitchell Road Site, in that Semtech apparently leased other portions of the Mitchell Road Site during the time Westinghouse appears to have occupied the Leased Area. Mr. Kilcoyne also testified that Westinghouse really did not need the space at that location because "we were only staging there," and that Westinghouse only occupied that location from 1960 to 1961 "[u]ntil the other buildings were ready."

Mr. Kilcoyne's testimony that Westinghouse used the Leased Area as a "staging area" is consistent with the statements of other former Westinghouse employees. One former Westinghouse employee stated that even at the Hillcrest Drive Site (across the street), Westinghouse's operations were "mostly R&D" and that he was "[n]ot aware of anything going on at 652 Mitchell." Another former employee stated that the operations at the Mitchell Road Property were a "startup" for the systems group, the semiconductor advanced development group and imaging tubes. He went on to state that this was "[n]ot a manufacturing operation," and that they were "doing research." A former employee who was a technician in the support group stated that the building leased by Westinghouse at the Mitchell Road Property was "mainly office space" and was "mostly empty." He stated that there were just engineers there and that they used electricity to test semiconductors.

Technical Report at 5-6.

For ease of reference, the following is Mr. Kilcoyne's actual testimony:

Q. Where did you first go to work for Westinghouse in Newbury Park?

A. When I first went to work there, there was a building on Hillcrest Drive, which is now occupied by Semtech Corporation. And that building was Westinghouse's original staging area where they bought a parcel of land of about 50 acres.

And one of the things that we did was plan a -- two buildings there, a main building and a small

administration building, which were located up on Rancho Conejo. Is that it? No. It was on Lawrence Drive, at the junction of Rancho Conejo Boulevard. But on fifteen hundred Lawrence Drive. 1520 I think they called it at the time.

Q. So when you first went to work for Westinghouse in Newbury Park you were working at what is now the Semtech location?

A. That's right. And Semtech, which was a fledgling little company - - we had rented half of the building, the front half, and they rented the back half of the building. When we vacated the building, they later took over the whole building. It was sort of as long as their company was growing, it was sort of kind of in the plan. And that's how they got in the back door. Because we really didn't need it; we were only staging there.

Q. How long did Westinghouse occupy that building on Hillcrest?

A. About one year.

Q. So far 1960 to 1961 - -

A. Right.

Q. - - approximately?

A. Approximately. Until the other buildings were ready.

Q. And then, I take it, it moved the operation, whatever that operation was, up to - -

A. Right.

Technical Report, Exhibit D, at 14-15 (Attachment B).

Mr. Kilcoyne's testimony is further supported by a Los Angeles Times Article dated April 1961 about industry coming to Conejo Valley (where Newbury Park is located) which states that "The Astro Electronic laboratory of Westinghouse Electric is now operated 'by an advance team in lease quarters' awaiting completion of its building." A copy of the article is attached and marked as Attachment B.

Some of the most compelling evidence, however, that Westinghouse had only a limited presence at the Site and, as discussed below, did not use chemicals during that limited period of occupancy, is provided by the Draft CAO itself. Exhibit 1 to the Draft CAO is a letter report to the Conejo Valley Sanitary Company ("Conejo Valley Letter Report"). The Conejo Valley Letter Report is dated February 19, 1964 (during the period of Westinghouse's alleged occupancy) and provides as follows:

[W]e have visited each potential contributor of industrial wastes to the CVSC system within the Rancho Conejo Industrial Park. Our object was to locate the sources of various materials, notably hexavalent chromium, cyanide, solvents and oil . . ."

According to the Conejo Valley Letter Report, the Site (referenced as 652 Mitchell Road) was one of the locations that was inspected in person. The Conejo Valley Letter Report contains a discussion of Semtech's operations, but there is no reference whatsoever to Westinghouse.

The Conejo Valley Letter Report would clearly have identified Westinghouse's operations, if Westinghouse had had operations similar to those of Semtech's or was using chemicals at that location as of the date the inspection took place. The result of the inspection documented in the Conejo Valley Letter Report also refutes the statement in the Draft CAO that Westinghouse and Semtech "used similar chemicals in their operations and maintenance activities." Id.

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.

(b) There Is No Evidence Westinghouse Used Chemicals Including TCE At The Site

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.

The possible use by Westinghouse of chemicals in the Leased Area was discussed in Northrop Grumman's and CBS' Technical Report as follows:

As stated by one former Westinghouse employee, there were "[n]o chemicals in that area that I know of," and "I remember no chemical usage at 652 Mitchell Road." This employee also recalls only the presence of electronics labs at the Mitchell Road Property and no use of chemicals. Another former employee could not recall any use of chemicals but it was unclear if he had been employed at or was familiar with the Mitchell Road Property.

Another employee however thought Westinghouse had likely used TCE although he also stated that he was not a manufacturing operations person and that "quantities of anything used were very small." Another employee stated that Westinghouse may have used cleaning chemicals.

Thus, Responding Parties have been unable to determine what chemicals, if any, Westinghouse used in connection with its operations in the Leased Area, although it is possible that Westinghouse used TCE and possibly cleaning chemicals. Quantities of any chemicals (including TCE) that may have been used by Westinghouse in its operations in the Leased Area would, however, have been very small. Moreover, as discussed in detail below, even if TCE had been used, there is extensive deposition testimony that it would not have been disposed of in an UST.

Responding Parties also sought to determine whether the metals and substances (other than TCE) that are associated with UST 5 could have originated from Westinghouse's operations in the Leased Area at the Mitchell Road Property. This included an analysis of whether those chemicals would have been used in Westinghouse's operations in Newbury Park during the 1960 to 1965 timeframe.

Former Westinghouse employees were consistent in their statements that most of the chemicals and metals allegedly associated with UST 5 would not have been used in Westinghouse's Newbury Park operations during the 1960s. Ivan Sarda, a former Westinghouse engineer who was deposed in the Hillcrest Site Litigation, stated that the combination of chemicals and metals associated with UST 5 "[m]akes no sense to me at all." Mr. Sarda made clear that Westinghouse did not use most of the chemicals and metals found in or in the vicinity of UST 5, and with regard to some of them he stated that he could not imagine what purpose they might have been used for as part of Westinghouse's operations.

Another former Westinghouse employee, Gerald H. Lanahan, who later worked for Semtech and was also deposed in the Hillcrest Site Litigation, stated that the chemicals and metals were "[m]ore consistent

with Semtech's operations." He pointed out that Westinghouse used gold in its stem-conductions, and would not have used either silver or copper, both of which were detected in the UST 5.

Interviews with several other former Westinghouse employees confirmed Mr. Lanahan's statement that Westinghouse did not use either silver or copper. Mr. Lanahan mentioned that by contrast Semtech used both silver and copper, and that chromium was not used by Westinghouse but that Semtech would have used it in its nickel plating operations. Another former Westinghouse employee noted that based on his experience at Westinghouse in the fabrication of semiconductor devices, beryllium, calcium, chromium, cobalt, lead, nickel, vanadium or zinc would not have been used by Westinghouse.

Technical Report at 8-9.

As discussed in more detail below, "[e]ach of these metals, however, were detected in and around UST 5." *Id.*

(c) The Use Of An UST By Westinghouse At Other Locations Is Not Evidence Westinghouse Used Chemicals At The Site

The Draft CAO states that "official documents indicate that [Westinghouse] used USTs to manage chemical waste in the nearby buildings (Exhibits 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." *Id.* As discussed below, this conclusion is not supportable on its face.

The official documents which are referenced in the Draft CAO are the Conejo Valley Letter Report, which is discussed above, and a map of what appears to be the Westinghouse facility at 2421 Hillcrest Drive. The Conejo Valley Letter Report references two Westinghouse locations, one located at 1520 Lawrence Drive and another at 711 Mitchell Drive. Both apparently used holding tanks for acids and caustics. What is particularly noteworthy is that the Conejo Valley Letter Report confirms that solvents were not placed in the holding tanks, but "are dumped into cans, for separate disposal." *Id.* at 2. As discussed below, this is consistent with testimony from the Hillcrest Site Litigation that solvents would not be disposed of in USTs. In addition, the Conejo Valley Letter Report confirms that the waste in the holding tanks was disposed of by being hauled away by Rawls Sanitation Company.

The second document, as noted above, apparently a map of the 2421 Hillcrest Drive facility, references waste tanks. There is extensive deposition testimony in the Hillcrest Site Litigation by three former Westinghouse employees confirming that the UST at the Hillcrest Drive Facility was used to hold acids but that solvents were not poured into the holding tank. In fact, as discussed below, mixing solvents and acids

could cause an explosion and was strictly prohibited by Westinghouse. This is consistent, of course, with the handling of solvents and acids by Westinghouse described in the Conejo Valley Letter Report.

This brings us back to the conclusion in the Draft CAO that because the Westinghouse facilities in the area used holding tanks, such a holding tank must have been used at the Site. This conclusion is not supported by the evidence. First, there were no operations at the Site comparable to those at the other Westinghouse locations. While the Site was briefly used as a staging area, other facilities such as 2421 Hillcrest were engaged in manufacturing. In fact, the 2421 Hillcrest location was used for semiconductor manufacturing and was part of the Molecular Electronics Division. See Technical Report, Exhibit D (Kilcoyne Deposition at 18 and 30). The facility on Lawrence Drive was a research and development operation associated with a different Westinghouse division. *Id.* at 9. According to the Conejo Valley Letter Report, 711 Mitchell Road was one of the buildings associated with the Lawrence Drive operations. None of these operations are, however, comparable to Westinghouse's operations at the Site, as the Site operations were described by various former employees. The existence of the above manufacturing and research operations further supports the conclusion that it is extremely unlikely that Westinghouse had substantive operations at the Site.

Even if for argument's sake we assume the use of UST 5 during Westinghouse's brief presence at the Site (although there is no evidence of such use), consistent with the practice at other Westinghouse locations, UST 5 would at most have been used to hold acids (and certainly not solvents) and the waste in the tank would have been hauled away, not left in the tank. This is not only borne out by the Conejo Valley Letter Report, but by the consistent testimony of several witnesses in the Hillcrest Site Litigation. The summary of this testimony from the Technical Report is instructive and is repeated in this letter for ease of reference:

Responding Parties have not identified information indicating that Westinghouse installed or in fact used UST 5, which was not a part of the Leased Area (see Exhibits B and C). None of the former Westinghouse employees interviewed had any recollection regarding the presence or use by Westinghouse of a UST at the Mitchell Road Property. One former employee stated that there would have been "[n]o reason to use a UST." Another stated that he could not "imagine that we would have used a UST." A third employee stated that he could not "think of a reason for there to be a UST at [the Mitchell Road Property] location."

Former employees were asked, assuming that Westinghouse had used a UST at the Mitchell Road Property, how it would have used a concrete/cement UST similar to UST 5. More specifically, former employees were asked whether solvents such as TCE would have been discharged by Westinghouse to a concrete/cement UST. The former employees, consistent with deposition testimony from the Hillcrest Drive Litigation, stated that Westinghouse's policies and practices at that time

would have prohibited use of a concrete/cement UST to store or dispose of solvents. According to the deposition testimony of one such former employee, use of a cement UST to dispose of solvents was a "disciplinable offense" at Westinghouse.

As noted above, Ivan Sarda was an engineer who worked for Westinghouse at the Hillcrest Drive Property and was deposed in the Hillcrest Drive Litigation, and his deposition testimony is attached as Exhibit G. Westinghouse occupied a building on the Hillcrest Drive Property Drive from late 1962/early 1963 until the late 1960s.

Mr. Sarda testified that at the Hillcrest Drive Property, acids never were discharged or placed in a UST. Id. at 60-61. He was also asked whether TCE was ever disposed of into a UST. He denied that such a practice would ever occur, in part because it could cause an explosion. He testified as follows:

A. I WOULD SAY ALMOST CERTAINLY
THAT IT WAS NEVER DISPOSED OF.

Q. AND WHY WAS THAT?

A. BECAUSE IT WAS A -- IT WAS A
PUNISHABLE OFFENSE TO DO SO.

FOR ONE THING, IT WAS EXTREMELY
DANGEROUS AND PEOPLE THERE WERE VERY
SAFETY CONSCIOUS. AND, TWO, JUST TO ENSURE
THAT THEY MAINTAINED VIGILANCE, THE -- IT WAS
ALSO A DISCIPLINABLE OFFENSE FOR A DIRECT
WORKER TO DO THAT.

Id. at 63.

Mr. Sarda also explained, in describing operations at the Hillcrest Drive Site, that if solvents such as TCE went down a sink "they terminated in a solvent safety can," and were not discharged to a UST. Id. at 43. He confirmed this repeatedly in his deposition:

"Q. OKAY. AND THESE SINKS THAT WERE
USED FOR THE CLEANING OF PARTS WITH TCE AND
ACETONE, WHAT WERE THEY CONNECTED TO?

A. THEY WERE - THEY WEREN'T CONNECTED TO ANYTHING. THE DOWNSPOUTS FROM THE SINKS ENDED, LITERALLY, JUST A FEW INCHES BELOW THE LOWER SURFACE OF THE SINK. AND A SOLVENT SAFETY CAN WAS PLACED UNDERNEATH THOSE - UNDERNEATH THE DOWNSPOUTS TO COLLECT ANY RUNOFF THAT CAME FROM THE SINK.

Q. AND, AGAIN, MR. SARDA, HOW DO YOU KNOW THAT?

A. I SAW IT. I MEAN -

Q. OKAY.

A. THAT'S THE WAY THE PLACE WAS SET UP.

Q. ARE YOU FAMILIAR WITH HOW TCE, ACETONE, METHYL ETHYL KETONE AND ISOPROPYL ALCOHOL WERE DISPOSED OF AFTER USE IN THE ARNOLD BUILDING?

A. YES.

Q. HOW?

A. THEY WERE - THEY WERE - THEY WERE DISPOSED OF IN SOLVENT SAFETY CANS THAT RANGED IN SIZE FROM, SAY, A GALLON OR TWO TO FIVE GALLONS DEPENDING ON - DEPENDING ON THE USAGE OR DEPENDING ON THE APPLICATION.

Q. WHAT DO YOU MEAN BY THAT?

A. WELL, FOR EXAMPLE, THE CANS
UNDERNEATH THE SINK --

Q. WHICH SINK?

A. THE SOLVENT DISPOSAL SINKS. THE
SINKS THAT WE WERE JUST TALKING ABOUT IN THE
TWO YELLOW ROOMS.

-- ALMOST ALWAYS TERMINATED IN A
FIVE-GALLON CAN BECAUSE THAT WAY YOU ONLY
HAD TO EMPTY IT ONCE A WEEK OR WHATEVER. IT
MINIMIZED THE AMOUNT OF TIME -- THE NUMBER OF
TIMES THAT YOU HAD TO EMPTY IT.

IN OTHER APPLICATIONS -- FOR
EXAMPLE, IN THE USE OF TCE -- WHEN TCE WAS
USED IN BEAKERS UNDER A HOOD, IT WAS
USUALLY NOT POURED DOWN A SINK THAT
TERMINATED IN A -- THERE WASN'T A -- THERE
WASN'T A SINK WITH A SOLVENT CAN UNDERNEATH
IT. THERE WAS A SOLVENT CAN -- A WASTE
SOLVENT CAN THERE AND THE OPERATOR POURED
THE TCE INTO THE WASTE SOLVENT CAN.

Q. SO, IF I UNDERSTAND YOU
CORRECTLY, WHEN SOLVENTS WERE USED FOR
CLEANING PARTS IN SINKS, THEY WERE DISPOSED
OF THROUGH THE SINKS INTO A SAFETY CAN.

BUT WHEN A SOLVENT WAS USED TO
CLEAN PARTS IN A BEAKER, WHAT WAS DONE WITH
THE CONTENTS OF THAT BEAKER?

A. IT WAS POURED MANUALLY, POURED
DIRECTLY INTO A SOLVENT SAFETY CAN. IT DID

NOT GO THROUGH A SINK INTO A SOLVENT SAFETY
CAN.

Q. AND HOW DO YOU KNOW THIS, MR.
SARDA? HOW DO YOU KNOW THIS?

A. I WITNESSED IT AND PERFORMED THE
ACT MANY TIMES MYSELF.

Id. at 46-48 (emphasis added).

Mr. Sarda was also interviewed in connection with the preparation of this Report. In his interview, he confirmed that it was Westinghouse's practice to limit discharges to a UST to acids and to catch solvents in five gallon red metal canisters with spring-loaded lids, and that this was "standard Westinghouse practice." Thus, even if TCE or any other solvents were to have been used at the Mitchell Road Property, they would not have been placed in the UST.

Gerald H. Lanahan, a Westinghouse employee who later worked for Semtech, was also deposed in the Hillcrest Drive Litigation. A copy of his deposition transcript is attached as Exhibit G. Mr. Lanahan worked at the Hillcrest Drive Property. He confirmed Mr. Sarda's statement that in Westinghouse's operations, only acids would have gone to a UST and that solvents would not have. In fact, he testified that he had authored Westinghouse's written requirements for chemical handling that prohibited the pouring of solvents down a drain. Mr. Lanahan testified as follows:

Q. WERE SOLVENTS EVER Poured
DOWN THESE DRAINS YOU JUST DESCRIBED WHICH
LED TO THE ACID DRAIN SYSTEM?

A. NO.

Q. FOR THE SAME REASONS YOU HAVE
JUST DESCRIBED?

A. EXACTLY.

Q. ARE YOU AWARE OF ANY
WESTINGHOUSE REGULATIONS OR OTHER

INSTRUCTIONS THAT PROHIBITED THE POURING OF
SOLVENTS DOWN THESE DRAINS?

A YES.

Q CAN YOU DESCRIBE FOR ME WHAT
YOU MEAN BY THAT?

A I WROTE SOME OF THEM.

Q WHAT SORT OF REGULATIONS WERE
THEY?

A WELL, THEY WERE SOME - THE
REGULATIONS AND RESTRICTIONS WE HAD
PRIMARILY WERE WRITTEN IN THE PROCESSES.
THE PROCESSES THEMSELVES WERE VERY EXACT.
IN ADDITION TO THE PROCESSING, WE HAD SAFETY
PRECAUTIONS THAT WE ALL WERE AWARE OF.

PRETTY MUCH ALL THE ENGINEERS
WERE INVOLVED IN WRITING THESE SAFETY
PRECAUTIONS AND DOS AND DON'TS AND WERE
VERY CAREFUL IN GOING OVER WITH EVERY
EMPLOYEE THAT CAME THROUGH THE PLANT.

Q SO IS IT YOUR TESTIMONY THAT
EVERY WESTINGHOUSE EMPLOYEE WAS TRAINED IN
THE PROPER METHOD OF DISPOSING OF SOLVENTS
AND ACIDS?

A NO, I CAN'T SAY EVERY
WESTINGHOUSE EMPLOYEE. I CAN SAY PRETTY
MUCH EVERY EMPLOYEE THAT WAS CONNECTED
WITHIN THE CLEAN ROOM WAS FAMILIAR WITH THE
PROCESSING.

Exhibit E at 39-40 (emphasis added).

Mr. Lanahan was asked how solvents were handled at Westinghouse and in response described the care and attention that was devoted to safely managing chemicals. His testimony in that regard is set forth below. The questions reference the "Arnold Building," which was the way the Hillcrest Drive Property was referred to prior to the change in the name of the street from "Arnold Drive" to "Hillcrest Drive."

Q HOW WOULD YOU CHARACTERIZE THE WAY SOLVENTS WERE HANDLED AT WESTINGHOUSE DURING YOUR EMPLOYMENT AT THE ARNOLD BUILDING?

A I THINK, OVERALL HANDLED VERY CAREFULLY. WE WERE A VERY UNIQUE GROUP AT THAT TIME. WESTINGHOUSE PRIDED ITSELF IN BEING THE SHOWPLACE OF SOUTHERN CALIFORNIA. WE WERE VERY SELECT IN THE ENGINEERING PEOPLE WE HIRED FROM VARIOUS OTHER LOCATIONS.

WE JUST ALL TOOK PRIDE IN THE PROCESSES AND THE HANDLING AND EVERYTHING ELSE THERE WAS IN THE EVERYDAY PRODUCTION.

Q AND THIS PRIDE AND WORKMANSHIP EXTENDED AS FAR AS THE METHODS OF DISPOSAL OF ORGANIC SOLVENTS?

A ABSOLUTELY.

Id. at 44 (emphasis added).

Mr. Lanahan's above testimony was that Westinghouse "took pride in the processes and the handling and everything else there was in the everyday production," and that pride "absolutely" extended to the methods of disposal of organic solvents and made Westinghouse "unique." This was confirmed by Mr. Sarda in his deposition testimony in the Hillcrest Drive Litigation (see Exhibit F). During Mr. Sarda's deposition he asked whether he could make a general unsolicited

statement. He then went on to state the following:

A. I'VE SPENT MY WHOLE LIFE IN, ESSENTIALLY, THE SEMICONDUCTOR INDUSTRY OR SOLID-STATE DEVICE INDUSTRY. EVERY PLANT THAT I'VE EVER BEEN IN USED THE SAME KINDS OF SOLVENTS AND ACIDS THAT WESTINGHOUSE DID. IT'S ESSENTIALLY AN INDUSTRY STANDARD OPERATING PROCEDURE.

I CAN SAY WITHOUT ANY FEAR OF CONTRADICTION BY ANYBODY THAT WESTINGHOUSE HAD THE BEST OPERATING PROCEDURES AND THE -- AND THE MOST CAREFUL OPERATING PROCEDURES OF ANY PLANT THAT I'VE EVER BEEN IN ANYPLACE IN THE COUNTRY.

THEY WERE VERY, VERY CONCERNED WITH WORKER SAFETY AND VERY, VERY CONCERNED WITH GOOD HOUSEKEEPING AND GOOD -- GOOD -- WELL, GOOD HOUSEKEEPING PRACTICES.

Id. at 69-70 (emphasis added).

Technical Report at 9-14.

The foregoing makes clear that under no circumstances would Westinghouse have disposed of solvents in UST 5, and any use of UST 5 (for which there is no evidence) would have been limited to storing acids which would have been pumped out and disposed of. In addition, consistent with the Conejo Valley Letter Report's discussion of other Westinghouse locations, the witnesses in the Hillcrest Site Litigation confirmed that the acid waste contents of the holding tank at Hillcrest Drive were regularly hauled away. See Technical Report, Exhibit F (Sarda Deposition at 61) (referring to an acid pick-up truck pumping out tank); and Exhibit G (Lanahan Deposition at 41-42) (referring to neutralization and pumping out of acids in tank by a pump truck).

(d) The Metals And Chemicals Found In The Contents Of UST 5, As Well As In The Soil Surrounding UST 5 Are Entirely Consistent With Semtech's Operations

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.

According to sampling results included in the UST Removal Report for UST 5, see Attachment D, the UST 5 liquid contained 1, 1-dichloroethene and trichloroethene (also known as trichloroethylene or TCE); and the UST 5 sludge contained arsenic, barium, cadmium, chromium, cobalt, copper, mercury, nickel, silver, vanadium, molybdenum, and zinc, as well as 1, 1-dichloroethene, cis-1, 2-dichloroethene, trans-1, 2-dichloroethene, ethylbenzene, tetrachloroethene, TCE (at very high levels) and xylenes. Sampling in the soil around UST 5 in turn detected arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, nickel, silver, vanadium, zinc, ethylbenzene, cis-1, 2-dichloroethene, methylene chloride, TCE, and xylene. Finally, analysis of a sample of the concrete from the concrete tank itself detected arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, nickel, silver, vanadium, zinc, and acetone.

This vast array of chemicals and metals simply cannot be associated with Westinghouse. Even at the other Westinghouse locations in Newbury Park referenced in the Draft CAO only four chemicals are referenced: TCE, acetone, MEK and isopropyl alcohol. As demonstrated by the sworn testimony discussed above, Westinghouse would not have engaged in any mixing of acetone and TCE. Moreover as demonstrated above, the contents of UST 5 and the soil surrounding UST 5 contains a vast array of chemicals and metals that are in no way arguably associated with Westinghouse.

To quote Mr. Sarda, the combination of chemicals and metals associated with UST 5 "[m]akes no sense to me at all." Moreover, as noted by Mr. Lanahan a former Westinghouse and Semtech employee, the chemicals and metals are "[m]ore consistent with Semtech's operations."

In fact, as noted in the Draft CAO "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, isopropanol, xylene, . . . Freon 113 . . . Freon 12, 13, 22, 502, toluene, 1, 1, 1-trichloroethane (TCA), and alkaline plating solutions containing cyanide." Id. at 4. Moreover, as discussed below, Semtech used vast quantities of TCE according to the former procurement person for Semtech.

The foregoing chemicals and metals overlap with the sampling results associated with the contents of UST 5, the soil around UST 5 and the concrete from UST 5.

(e) According To Its Former Employee Semtech Used Vast Amounts Of TCE In Its Operations

As discussed above, Westinghouse would not have disposed of TCE in UST 5. A question that therefore must be 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. The following is the discussion of this issue in Northrop Grumman's and CBS' Technical Report.

Responding Parties understand Semtech to take the position that with respect to the Mitchell Road Site, "[a] check of our records indicate that a minor amount [of TCE], less than two gallons, was used by an engineer in the past in a lab experiment."² The Litigation Files, however, contain information regarding TCE purchases and use by Semtech at the Mitchell Road Site and the storage of waste solvent that is inconsistent with Semtech's use of a "minor amount" of TCE.

That information includes deposition testimony of Gerry Lanahan (Exhibit G). As noted above, Mr. Lanahan is a former Westinghouse employee who was later employed by Semtech. It also includes a sworn declaration by Mr. Lanahan that was filed with the Court in the Hillcrest Site Litigation, a copy of which is attached as Exhibit H, and a document produced by Semtech in the Hillcrest Drive Litigation that appears to reflect TCE purchases by Semtech during the 1980s.

During his deposition, Mr. Lanahan was asked at length about Westinghouse's use of TCE at the Hillcrest Drive Property, located across the street from the Mitchell Road Property. In responding, Mr. Lanahan contrasted Semtech's use of TCE at the Mitchell Road Property to Westinghouse's use of TCE at the Hillcrest Drive Property. Mr. Lanahan worked for Semtech at the Mitchell Road Property from 1965 to approximately 1978, where his responsibilities included purchasing. *Id.*

² Footnote 12 in the text of the Technical Report read as follows: This statement by Semtech was first made in a letter from Semtech to the County of Ventura dated March 31, 1988, a copy of which is Exhibit E to the September 10, 2010 letter from Bryan K. Brown of Bingham McCutcheon, counsel for Semtech. As also stated in a May 13, 2010 letter from SPT to the RWQCB, "[a]lthough Semtech has steadfastly denied the use of TCE in its manufacturing process, it admits having used a minor amount, less than two gallons . . . in a lab experiment." *Id.* at 3.

at 45, 49. In his deposition testimony (Exhibit G), Mr. Lanahan stated that:

- (1) Semtech used TCE at the Mitchell Road Property (id. at 49);
- (2) Semtech used TCE "in the degreasers, the ultrasonics and in general cleaning operations" (id. at 50);
- (3) Semtech used "a lot" of TCE (id. at 51); and
- (4) at the Mitchell Road Property, Semtech used ten to 20 times as much TCE as was used by Westinghouse at Hillcrest Drive (id. at 52).

It also appears that Semtech purchased TCE as late as the 1980s from Rho-Chem and Allied Chemical, as reflected in a document produced by Semtech in the Hillcrest Litigation Files. A copy of which is attached as Exhibit I.³

Semtech's use of TCE at the Mitchell Road Site is also addressed in Mr. Lanahan's declaration in the Hillcrest Drive Litigation (Exhibit H), which states that while "[o]n average, Westinghouse used approximately ten gallons each week [of TCE] at 2421 Hillcrest" (id. at 4), Semtech in its operations at the Mitchell Road Site used 20 times more solvent than Westinghouse had (id. at 7). Thus, based on Mr. Lanahan's testimony and declaration, Semtech's weekly usage of TCE at the Mitchell Road Site would have been in the range of 200 gallons per week, or about 10,400 gallons per year. Mr. Lanahan's declaration characterizes Semtech as having used TCE in such volumes during a time in 1970s when "Semtech's 652 Mitchell Road facility was a large production plant employing over 500 people . . . and [was] producing a high volume of diodes and rectifiers." id. at 5. Mr. Lanahan, in an interview for purposes of the preparation of this Report, also recalls purchasing TCE for Semtech from J.T. Baker and Allied Chemical."

Technical Report at 15-16.

Thus it is evident that Semtech is the source of the TCE contamination at the Site.

³ Footnote 18 in the text of the Technical Report states as follows: The document attached as Exhibit I was produced in connection with a 1992 deposition in the Hillcrest Site Litigation of Semtech's then president, John D. Poe, and authenticated by Mr. Poe as a Semtech business record.

(f) 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

As discussed in Northrop Grumman's and CBS' Technical Report:

In his deposition (Exhibit G), Mr. Lanahan also discussed where Semtech stored 55 gallon drums containing waste TCE at the Mitchell Road Property. He testified that:

- (1) the 55 gallon drums were not stored at the Block House (located in the northern part of the Mitchell Road Site that had, for a period of time, been leased to Westinghouse in connection with its operations at the Hillcrest Drive Property located across the street), but rather, were stored in an area north of the main building (Id. at 53-54);
- (2) a "lot of barrels" were accumulated by Semtech in the area north of the building because of high chemical usage (Id. at 56); and
- (3) the volume of waste was such that the waste drums were picked up a couple of times a month (Id.).

The area Mr. Lanahan identified where the 55 gallon drums of waste solvent having been stored appears to be the same area in which UST 5 is located (see Exhibit B).

During his deposition, Mr. Lanahan also was asked whether he had ever seen any spills or leaks of any solvent in the area of these storage drums outside the "Semtech building" at the Mitchell Road Site. The following is his exchange with counsel:

Q DID YOU EVER SEE ANY SPILLS OR
LEAKS OF ANY SOLVENT IN THE AREA OF THESE
STORAGE DRUMS OUTSIDE THE SEMTECH
BUILDING?

A YES THAT'S WHERE I THOUGHT YOU
WERE FIRST TALKING ABOUT

Q DID YOU EVER SEE ANY SPILLS OR
LEAKS OF TRICHLOROETHYLENE IN THE VICINITY OF
THESE BARRELS?

A YES

Id. at 55-56.

Regarding Semtech's practices generally, Mr. Lanahan made the following statement in his declaration (Exhibit H):

Semtech displayed little of the concern for safety that was foremost at Westinghouse. Semtech disposed of waste organic solvents by collecting them in 55-gallon drums which it stored outside the building at 652 Mitchell Road. While working for Semtech at 652 Mitchell Road, I witnessed some small spills of organic solvents by Semtech employees, both inside the plant and outdoors.

Id. at 6.

The deposition testimony of Mr. Sarda (Exhibit F) also touched on Semtech's practices at the Mitchell Road Property. After testifying about Westinghouse's practices that would have barred any mixing of acids and solvents, Mr. Sarda noted that there was an explosion at the Semtech facility on the Mitchell Road Property in which one worker was killed and several were severely injured, that was a result of acids and solvents being poured together. Id. at 64. Other former Westinghouse employees interviewed in connection with this Report confirmed the event referred to by Mr. Sarda in his deposition testimony.

Technical Report at 16-17.

The foregoing testimony from Mr. Sarda, a former Westinghouse and then Semtech employee, is all the more credible given that his testimony was provided under oath in a dispute completely separate and apart from this matter.

(g) The TCE Contamination In Soil, Soil Vapor and Groundwater Beneath The Former QA Laboratory Indicates Prolonged Discharges of Solvents Over Many Years By A Long-Time Occupant

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. As stated in the Technical Report:

Westinghouse appears to have leased approximately 10,000 square feet of the western portion of the building located on the Mitchell Road Property (the "Leased Area") for a period of time between 1960 and 1965....the Leased Area is depicted in a figure from the Site-Wide Soil Gas Survey dated December 16, 2009 prepared for SPT Investments, Inc. by Brown & Caldwell (the "Soil Gas Survey Report") a copy of which is attached as Exhibit B.

Technical Report at 5.

In addition, as testified by Mr. Kevin Kilcoyne:

Q. SO WHEN YOU FIRST WENT TO WORK FOR WESTINGHOUSE IN NEWBURY PARK YOU WERE WORKING AT WHAT IS NOW THE SEMTECH LOCATION?

A. THAT'S RIGHT. AND SEMTECH, WHICH WAS A FLEDGLING LITTLE COMPANY - WE HAD RENTED HALF OF THE BUILDING, THE FRONT HALF AND THEY RENTED THE BACK HALF OF THE BUILDING.

Technical Report, Exhibit D, at 14-15.

The "front half" of the building would clearly have been the western portion of the building as it fronts onto Mitchell Road. Thus, an employee who actually worked in the building at 652 Mitchell Road in 1960 testified that Westinghouse leased the "front half", that is, the western portion of the original building.

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.

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 portion of the original 1960 building, known as the QA laboratory, rather than from the UST itself. For example, soil vapor point SV-17 located in the former QA laboratory identified much higher TCE concentrations than sampling locations in immediate proximity to the UST such as SV-16, SV-19, and SV-20. Similar comparisons can be made with regard to soil and grab groundwater samples. TCE was detected at elevated concentrations in several soil samples at boring B-42, located in the former QA laboratory approximately 50 feet southwest of the UST. TCE was also detected in shallow soil samples (3 and 5 feet bgs) in the former QA lab at borings B-62 and B-63,

also located at least 50 feet southwest of the UST, suggesting a release point in addition to UST 5 within this portion of the building. TCE in a water table grab groundwater sample at boring B-42 was the second highest detected on the Site. All of these soil, soil vapor, and groundwater data indicate a substantial release of TCE occurred at the location of the former QA laboratory.

The December 2009 Site Wide Soil Gas Survey report prepared by Brown and Caldwell identified the presence of a buried pipeline approximately 18 inches below the former QA laboratory. Based on the layout of the piping, it appears multiple lines are present that likely conveyed materials from the building operations to UST 5.

It appears that leaks in the piping system are at least partially responsible for the presence of TCE in soil, soil vapor, and groundwater beneath the former QA lab. As discussed above, there is substantial evidence that Westinghouse did not conduct any substantive operations at the Site (staging) nor did it use or discharge solvents, much less discharge solvents to a piping system in the building that fed UST 5. Regardless, considering that Westinghouse was only present at the Site for one year immediately after the building was completed, it would be unreasonable to assume that the piping system which would have been brand new at that time would have released the quantity of TCE to the environment necessary to account for the current conditions. Rather, 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 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.

(h) Conclusion

It is clear that Westinghouse was present at the Site for only a brief period during which it used a portion of the Site building as a staging area. The multiple lines of evidence are clear and compelling in that regard. There is no evidence Westinghouse used UST 5 during this brief period or used chemicals in anything but de minimis quantities, although the more credible evidence is that there was no use of chemicals. Even assuming for argument's sake it had, it would have only used it to store acid waste for disposal, and any waste in UST 5 would have been removed and disposed of. The chemical/metal fingerprint of the contents of UST 5, based on the soil samples taken in the area of UST 5 and the sample taken from UST 5's concrete walls, clearly point to Semtech's operations. In addition, there is extensive evidence that Semtech used vast amounts of TCE in its operations, that it stored 55 gallon drums containing waste chemicals in the area north of the Site building where UST 5 is located, and that there were leaks and spills from such 55 gallon drums. Moreover, the extensive TCE contamination beneath the QA laboratory building indicates substantial use of TCE by an occupant over a prolonged time period. Semtech occupied the QA

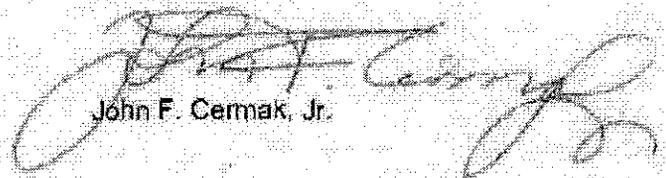
Paula Rasmussen
January 11, 2013
Page 23

lab building for over 30 years. In summary, there simply is no evidence that Westinghouse caused or even contributed to the contamination at the Site during its brief tenure there. On the other hand, there is substantial evidence that Semtech caused the contamination at the Site.

In view of the foregoing, there is no basis to name Northrop Grumman or CBS in a cleanup and abatement order and the Draft CAO should be revised to reflect the information contained in this letter. Northrop Grumman and CBS are available to meet with you and your staff to discuss the comments and evidence presented in this letter.

Please call me if you have any questions regarding the foregoing comments and evidence.

Sincerely,

A handwritten signature in dark ink, appearing to read "John F. Cernak, Jr.", is written over a light, textured background.

John F. Cernak, Jr.

JFC/nlw
Enclosures
cc: Angelica Castaneda (via FedEx) (with enclosures)

Exhibit D



MONTGOMERY WATSON

February 14, 1996

JGL Trustee Services
301 East Wilbur Road
Thousand Oaks, California 91360

Attention: Mr. Joseph Leggett

Subject: Response to Request for Background Information Regarding
Installation/Use of the Underground Storage Tank

Dear Mr. Leggett:

Thank you for your letter of February 5, 1996. We are anxious hear the outcome of the partners' meeting regarding the course of action for the underground storage tank (UST).

The conclusion that Semtech had neither installed nor used the UST is based on information and facts provided by Semtech. Semtech obtained their information based upon interviews with existing and former Semtech and Westinghouse employees who were at the facility in early 1961. These employees said Westinghouse had installed the UST, and that Semtech never used the materials detected in the UST. Additionally, no record of Semtech installing the tank was found, whereas other tank installation permits have been properly recorded and documented.

If you have any questions or we can be of additional service, please Kim Bradley at 510-975-3540 or Susan Mearns at 818-568-6582.

Sincerely,

MONTGOMERY WATSON

Kimberly M. Bradley
Project Manager

cc: Mr. Gary Stanulis, Semtech Corporation

Exhibit E