

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of )  
FAIRCHILD SEMICONDUCTOR CORPORATION )  
AND SCHLUMBERGER TECHNOLOGY )  
CORPORATION )  
For Request For Stay of Site Cleanup )  
Requirements Order No. 89-16 and )  
NPDES Permit No. 89-15 of the )  
California Regional Water Quality )  
Control Board, San Francisco Bay )  
Region. Our File No. A-608. )

ORDER NO. WQ 89-5

BY THE BOARD:

On January 18, 1989, the Regional Water Quality Control Board, San Francisco Region (Regional Board) adopted Order No. 89-16, Site Cleanup Requirements and Order No. 89-15, National Pollutant Discharge Elimination System (NPDES) Permit for Fairchild Semiconductor Corporation and Schlumberger Technology Corporation (hereinafter "Fairchild"). On February 17, 1989 Fairchild filed a petition for review of the above orders. Included in the petition was a request for stay of certain provisions of the orders. Our order today deals only with the request for stay. For the reasons discussed herein, the stay will be granted.

## I. BACKGROUND

Fairchild (also hereinafter "discharger") owned and operated a semiconductor manufacturing facility in the City of San Jose, Santa Clara County. Fairchild operated the facility from April 1977 until its closure in October 1983. In November 1981, the discharger discovered that an underground tank had failed, resulting in releases of several industrial chemicals to soil and groundwater. Additional investigation revealed more extensive groundwater contamination offsite. The discharger took interim remedial actions, including removal of the defective tank, excavation of contaminated soil, and installation of a slurry wall around the perimeter of the property. These interim actions served to bring the plume of contaminants under hydraulic control. The plume was reduced in size from 4,900 feet to approximately 2,400 feet, and in concentration of TCA from 5,600 parts per billion (ppb) to 430 ppb.<sup>1</sup> As part of the cleanup, the discharger has been extracting groundwater and discharging pursuant to an NPDES permit, to a storm drain which is tributary to Canoas Creek, which flows into South San Francisco Bay.

The Regional Board adopted an NPDES permit for the groundwater extraction in November 1982. The first requirements for site cleanup were adopted in 1986, and have been amended twice since.

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1. Petitioner has indicated that recent monitoring data shows a further reduction of TCA to approximately 30 ppb.

In its action of January 1989, the Regional Board issued a new NPDES permit and amended the existing site cleanup requirements. In the site cleanup requirements, the Regional Board found that it was necessary to further define the plume in a specific area, and required as Task 13 a proposal for new monitoring wells by May 1, 1989. Additionally, a report documenting the installation of the necessary wells is required as Task 14 by July 3, 1989.

In the NPDES permit, the Regional Board found that it was necessary to upgrade the treatment of groundwater from a specified extraction well/discharge point. A technical report with a preliminary design of the new treatment system was required as Task 4 by March 20, 1989.

Fairchild has requested a stay of Task 13 and Task 4 above. We held a hearing on this matter on April 5, 1989.

## II. CONTENTIONS AND FINDINGS

Water Code Section 13321 authorizes the State Board, upon notice and a hearing, to stay in whole or in part the effect of a decision and order of a Regional Board. Our regulations authorize a stay under very specific conditions. In pertinent part, 23 California Code of Regulations, Section 2053 provides:

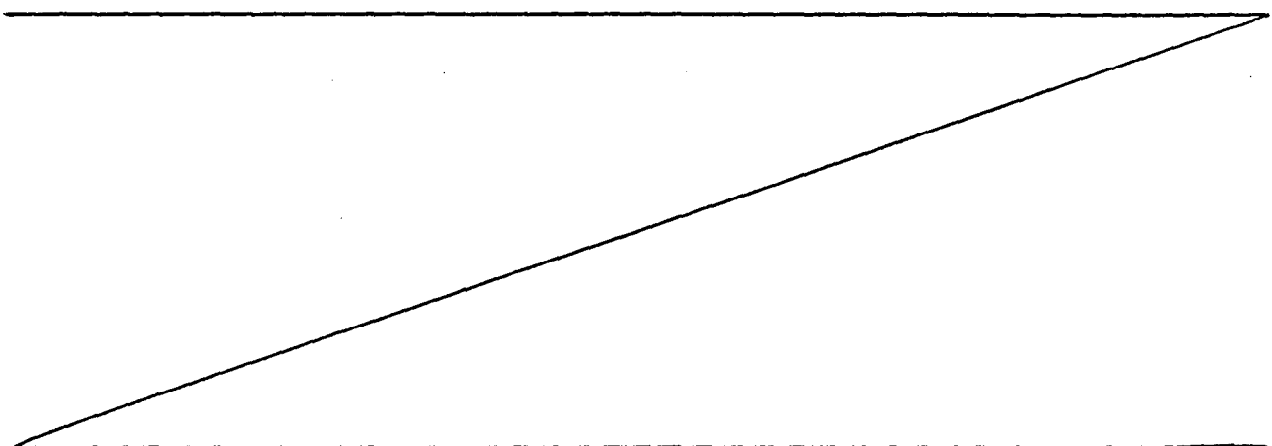
"(a) A stay of the effect of an action of a regional board be granted only petitioner alleges facts and produces proof of:

"(1) substantial harm to petitioner or to the public interest if a stay is not granted,

- "(2) a lack of substantial harm to other interested persons and to the public if a stay is granted, and
- "(3) substantial questions of fact or law regarding the disputed action."

As part of its petition, and at the hearing, Fairchild presented sufficient information for us to find that the above tests are met. We find that Fairchild could incur additional costs to comply with the tasks if a stay is not issued. Further, Fairchild has shown that there will be no substantial harm to the public in allowing the status quo to exist while we review the petition. Finally, testimony at the hearing and written submittals indicate there are questions of fact and law as to whether these technical reports are needed.

We note that the tasks which we are asked to stay are part of the issues raised in the petition itself which we will consider at a later date. Our order today is explicitly limited to the stay request, and is not meant to prejudice any action we may take on the petition as a whole.



III. ORDER

IT IS HEREBY ORDERED THAT the requested stay of Task 13 of Order 89-16 and Task 4 of order 89-15 is granted.

CERTIFICATION


The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 20, 1989.

AYE:           W. Don Maughan  
                  Darlene E. Ruiz  
                  Edwin H. Finster  
                  Eliseo M. Samaniego  
                  Danny Walsh

NO:             None

ABSENT:       None

ABSTAIN:      None

  
Maureen Marche  
Administrative Assistant  
to the Board

