

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
VALLCO PARK, LTD.)
For Review of Orders Nos. 86-48 and)
86-49 of the California Regional Water)
Quality Control Board, San Francisco)
Bay Region. Our File No. A-441.)

ORDER NO. WQ 86-18

BY THE BOARD:

On June 18, 1986, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board) adopted Orders Nos. 86-48 and 86-49. These orders established waste discharge requirements (site cleanup requirements) for two properties in Cupertino, Santa Clara County. The subjects of Order No. 86-48 were Siemens Components, Inc., a manufacturer of semiconductors, and the landowner, Vallco Park, Ltd., the petitioner. Order No. 86-49 was issued to petitioner as the landowner and to Intersil, Inc., also a semiconductor manufacturer. The petitioner objected to its inclusion in both orders and filed a timely petition on July 18, 1986.

I. BACKGROUND

The petitioner owns a parcel of land in an industrial park in Cupertino. In 1970, petitioner leased a portion of the parcel to Intersil, Inc. for a term of twenty years. In 1974 petitioner leased another part of the land to Siemens Components, Inc. for sixteen years with an option for another ten. In each lease the tenant agreed to various conditions including a provision that the premises could not be used in violation of the "laws,

ordinances, regulations or rules of any public authority." The landlord's remedy for a breach of the lease is to declare it in default and proceed to either arbitration or litigation.

Groundwater under both sites has been found to be polluted with organic solvents commonly used in the electronics industry, but the extent of the pollution has not been defined. The waste discharge requirements adopted by the Regional Board require investigation activities and cleanup.¹ The lessees are undertaking the required actions.

II. CONTENTION AND FINDING

Contention: Petitioner raises only one issue. Petitioner contends that the waste discharge requirements should not name Vallco Park, Ltd. as a discharger. Petitioner contends that any actual discharge was caused by the tenants and that investigation and cleanup should be their responsibility.

Finding: We have dealt with this issue previously in Orders Nos. WQ 86-11 and 86-15. In those orders, we concluded that it was appropriate to name the landowner in waste discharge requirements and site cleanups even though no day-to-day control of the property was exercised by a lessee. The ultimate responsibility for the condition of the land is with its owner. Accordingly, we find the Regional Board action naming the petitioner in its cleanup requirements to be reasonable. Petitioner argues that the lessee alone is responsible for the discharge and is in fact conducting the cleanup. In

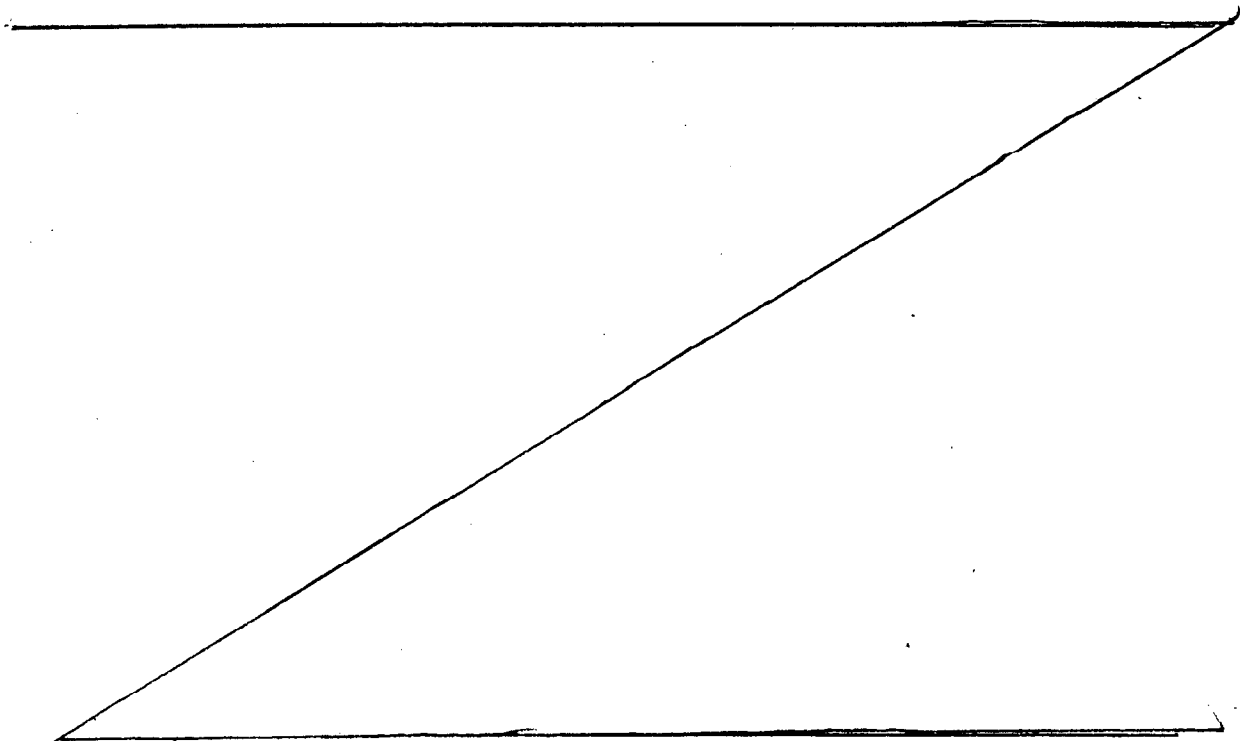
¹ We must again remind the Regional Board that issuance of cleanup and abatement orders in accordance with Water Code Section 13304, rather than issuance of waste discharge requirements, is the appropriate means to require cleanup actions. See Order No. WQ-86-8 at page 32.

such a situation, petitioner contends that, by being named, it could be liable if cleanup fails. We agree with the latter point. If the lessee fails to clean up the Regional Board should, as between the landowner and the public, place responsibility on the landowner. Naming the landowner in the requirements assures such responsibility.

Of course, it should be noted that the lessees have assumed primary responsibility and are in fact carrying out the cleanup activities. Given this state of affairs, the Regional Board should continue to look to the lessees regarding cleanup and only involve the landowner if the lessees fail to comply with the orders.

III. SUMMARY AND CONCLUSION

It is proper to name a landowner as a discharger in site cleanup requirements.



IV. ORDER

The petition is denied.

CERTIFICATION

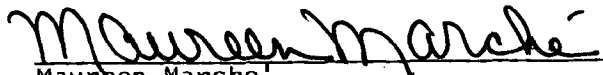
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 18, 1986.

AYE: W.D. Maughan
 D. Walsh
 D.E. Ruiz
 E.H. Finster

NO: E.M. Samaniego

ABSENT: None

ABSTAIN: None



Maureen Marche
Administrative Assistant to the Board