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Schlumberger Technology Corporation

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VIA FEDERAL EXPRESS

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Re: Comments on Naval Air Station Moffett Field
Federal Facility Agreement

Ladies and Gentlemen:

This letter submits Fairchild Semiconductor Corporation's ("Fairchild's") comments on the Federal Facilities Agreement (the "Agreement"), for Naval Air Station Moffett Field ("Moffett Field"), executed on August 8, 1989, by the Department of the Navy (the "Navy"), the Environmental Protection Agency ("EPA"), the California Department of Health Services ("DOHS") and the California Regional Water Quality Control Board - San Francisco Bay Region (the "RWQCB"). The Navy, EPA, DOHS and the RWQCB shall sometimes be referred to collectively in these comments as the "Parties".

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Fairchild applauds the Navy's decision to proceed with a Remedial Investigation ("RI") and Feasibility Study ("FS") at Moffett Field. At the same time, however, Fairchild contends the Agreement must be modified to address the environmental problems present at Moffett Field in a much more timely manner. In particular, Fairchild contends the federal government must commit to remediate Moffett Field on a schedule coordinated with the remedial program for the industrial area south of Highway 101. We are dismayed that the involved governmental agencies have concluded by the terms of the proposed agreement that the remediation of this federal facility does not need to proceed at the same pace as privately financed remedial programs in the Bay Area.

The federal government's failure to commit to a schedule coordinated with, or equally as fast as, the schedules private companies have followed and propose to continue following is troubling, given the magnitude of the environmental problems identified at Moffett Field. In short, Fairchild expects the federal government to match the remedial efforts being made by private companies in the area.

The data indicate that substantial chemical releases at Moffett Field have occurred during a lengthy period of time. According to the March 30, 1988 work plan prepared by IT Corporation for the Navy (the "Work Plan"), a long list of chemicals was released into the environment from Moffett Field operations over a 50-year period. These chemicals include polychlorinated biphenyls (PCBs), trichloroethylene (TCE), trichloroethane (TCA), tetrachloroethene (PCE), methyl ethyl ketone (MEK), toluene, freon 113, ethylene glycol, asbestos and a variety of fuels, paint thinners and solvents.

The volume of hazardous substances disposed of by the Navy at Moffett is staggering. For example, as the Work Plan describes, 150,000 to 750,000 gallons of hazardous substances were disposed of over a 30-year period into storm drains that emptied into a ditch at Moffett Field and eventually into San Francisco Bay (Work Plan, p. 2-39). Moreover, Navy personnel reportedly dumped 120,000 to 600,000 gallons of hazardous materials off the runway apron near hangars 2 and 3 and another 120,000 to 600,000 gallons of hazardous materials onto unpaved areas near the hangars themselves (Work Plan, p. 2-40). Another 75,000 to 150,000 gallons of hazardous materials were reportedly disposed of at the "runway" landfill (Work Plan, p. 2-38).

In addition to these and other areas in which hazardous

chemicals were disposed of, the Navy has identified 68 underground tanks and sumps at Moffett Field. A limited investigation of 31 tanks in 1987 showed that 12 tanks were leaking fuel or other hazardous materials into the soil." See Section 6.5 of the Agreement. Data that the Navy only recently made available confirm that many of the Navy's chemical releases have occurred in the area west of the runways, where they have merged in part with the plume emanating from the Middlefield-Ellis-Whisman area south of Highway 101.

Based on this evidence, Fairchild contends the federal government must proceed more quickly than is now required by the Agreement. In addition, the Navy should be required to coordinate its activities with remedial actions to be conducted by Fairchild and those private companies at Moffett Field. Fairchild and the other private companies are prepared to commence remediation of chemical residues underlying Moffett Field that were released from their facilities within a year. As discussed below, however, any attempt by these companies to commence remediation without the Navy's cooperation will risk spreading Moffett's contamination in the shallow aquifers, which will make it more difficult, more time consuming and more expensive to remediate the Moffett area. The Agreement also will make it more difficult for the Navy to identify its own sources of chemical residues, and will jeopardize the Navy's ability to implement appropriate source remedial controls.

Fairchild's specific comments and proposals are set forth below.

A. Coordination with MEW PRPs. Section 7.7 of the Agreement recognizes that chemical plumes originating in the Middlefield-Ellis-Whisman Study Area (the "MEW Area") south of Highway 101 have merged with chemical releases resulting from Navy operations. This section goes on to indicate that these releases "may be addressed" by a separate agreement between the regulatory agencies and the potentially responsible parties in the MEW Area (the "MEW PRPs"), a group that includes Fairchild. Except for this provision, and two vague references to the MEW Area in the Management Plan Outline (Attachment 2), the Agreement contains no reference to coordination of the investigations and remedial activities to be conducted by the Navy with those of the companies. Fairchild contends that the discretionary nature of Section 7.7 must be changed to mandate that the Navy coordinate its activities with the actions of the private party MEW PRPs.

Both the existing and the proposed version of the

National Contingency Plan require federal agencies to coordinate response actions with private parties. 40 CFR §300.22(b); § 300.105(a)(3) (proposed). The Agreement should, therefore, be modified to include provisions that require (1) coordination of the Navy's remedial investigation with remedial activities undertaken by the MEW PRPs, (2) joint remedial design/remedial action by the Navy and the MEW PRPs to address merged plumes, (3) cost allocation and dispute resolution between the Navy and the MEW PRPs, (4) access by the MEW PRPs to Moffett Field, (5) determination of ARARs, remediation technology and remediation goals that are consistent with EPA's Record of Decision for the MEW Area and (6) coordination of termination rights and obligations. In addition, Section 34.2 of the Agreement, which addresses judicial review of actions taken under the Agreement, should be modified to clarify that it does not apply to the exercise of the rights of the MEW PRPs to seek judicial review under a consent decree for the MEW Area if an issue arises under that decree that relates to actions taken by EPA or the Navy under the Agreement.

In addition to the legal requirements for coordinated and expeditious remedial actions, there are very significant technical and practical reasons to accelerate the investigation and control of Navy sources of chemical residues in the area of the merged plumes. Without knowing more about the Navy's sources than its investigations have revealed so far, there is a very high likelihood that any attempt at area-wide groundwater remediation will be counter-productive. This is because area-wide groundwater pumping and treatment will cause chemicals to migrate in and possibly between the shallow aquifer zones from areas of relatively high chemical concentration to clean areas or areas with relatively low concentrations. This in turn will create even larger areas with chemical residues, which will be more difficult, time-consuming, and expensive to remediate.

In short, effective remediation of the Moffett area requires immediate identification and control of the Navy's sources of chemical residues. This is the central technical basis of the MEW regional remedial program proposed in the MEW Feasibility Study approved by EPA in 1988. This approach must be employed in a coordinated fashion at Moffett Field because Moffett's underground contaminants are already commingled with the MEW plume and because Moffett and the MEW sites are physically contiguous.

Fairchild proposes that the most efficient way to handle this coordination is to identify areas in which the chemical plumes may have merged so that appropriate interim remedial source control

measures may be initiated. For areas where the Moffett sources have already been identified, interim remedial measures can be constructed immediately; for areas where further source investigation must be performed before remedial measures can be designed, the investigations must be completed on a priority basis. This approach will allow the earliest possible installation of a groundwater extraction system to begin remediation of the regional plume. Fairchild is willing to bear its fair share for these remedial actions.

Moreover, to help in the coordination of activities, Fairchild is willing to become a party to the Agreement with EPA and the Navy. Alternatively, Fairchild is willing to enter into a separate agreement with the Navy, the regulatory agencies, and other potentially responsible parties. In either case, Fairchild believes remediation can and should be commenced within nine months rather than waiting until July 1995 as the proposed Agreement contemplates.

B. Scheduling Concerns.

1. RI/FS. Attachment 3 to the Agreement requires the Navy to submit a draft RI report for Phases I and II of its investigation by July 1, 1991, or within 180 days of the last Phase II sample. The Agreement indicates that this date may be extended "based on field conditions". The deadline for completion of a draft FS is 180 days after the initial screening of remedial alternatives becomes final, with a non-enforceable "target" date of June 1, 1992.

Section 120(e)(1) of CERCLA requires EPA and state regulatory agencies to require "expeditious completion" of the RI/FS. The need for prompt completion is heightened here because of the potential effect of the investigation on the remedial activities to be conducted by the private party MEW PPS. Nevertheless, the Parties have agreed to a schedule allowing the Navy to submit a draft of the RI almost three years after submission of the Navy's work plan and setting no enforceable deadlines for completion of the RI/FS. The leisurely pace contemplated by the Agreement does not comply with the requirement for expeditious completion mandated by Section 120(e)(1). Fairchild contends that the Agreement should be amended to establish a fixed and enforceable deadline for completion of the final RI/FS.

2. Commencement of Remedial Action. Section

120(e)(2) of CERCLA requires the Navy to commence "substantial continuous physical on-site remedial action" within 15 months after completion of the RI/FS. In contrast, the Agreement provides for "initiation of remedial construction" within 15 months after signature of the ROD, which, in turn, will be at least 11 months after the FS becomes final. The Agreement sets no deadline for the completion of construction and commencement of actual remediation. This schedule directly contravenes Section 120(e)(2).

3. Other Reports. The schedule set forth in Attachment 3 lists a number of significant additional reports to be submitted by the Navy. With the exception of the draft RI, however, the schedule does not establish a fixed and enforceable deadline for any of these reports. The Agreement provides for establishment of deadlines for some reports "per consultation section". The footnote interpreting this reference indicates that these deadlines will be established pursuant to Section 9 of the Agreement. (Fairchild assumes this reference means that the outside deadline will be the last date on which dispute resolution may be invoked following submission of a final draft incorporating all comments or 35 days after a final decision if dispute resolution has been invoked.) For other documents (the draft RD and the O & M Plan), the attachment simply indicates that the deadline is "to be determined".

Section 120(e)(4) of CERCLA requires each interagency agreement to contain a schedule for completion of remedial actions. Fairchild believes that, at the very least, the Agreement should establish fixed and enforceable deadlines for each "primary" document. Fairchild recognizes that unforeseen events could require extensions but believes that Section 27 of the Agreement provides a more than adequate procedure for handling these contingencies. Similarly, the fact that other provisions of the Agreement (such as the dispute resolution provisions) may result in extensions should not prevent the Parties from establishing specific deadlines that are enforceable unless extended in accordance with the terms of these other provisions.

4. Other Provisions Affecting Schedule.

a. Document Review and Revision Time.

Section 9.7.2 of the Agreement requires the regulatory agencies to provide comments on draft documents within 60 days, with the right to extend this deadline for 30 days. Under Sections 9.7.5 and 9.7.6 the Navy then has an additional 60 days to incorporate comments, with a unilateral right to extend the period for an additional 30 days. The document does not become final until an additional 30 days after these periods. As a result, seven months pass between the submission of a draft and the finalization of the draft. This period may be further extended under Section 27 of the Agreement for "good cause", a term defined to mean whatever the Parties agree it means.

These lengthy comment and redraft periods interject an unreasonable amount of delay into the investigation and remediation process. Fairchild proposes that the regulatory agencies provide comments within 30 days and that the Navy incorporate comments within 30 days thereafter. Any unilateral extension should be limited to 20 days. These time frames are consistent with periods agreed to by the agencies and the United States Army in the federal facilities agreement for the Sacramento Army Depot and in similar agreements with civilian PRPs. Additional extensions under Section 27 should be limited to 15 days unless a force majeure event occurs.

b. Dispute resolution. The dispute resolution procedures set forth in the Agreement introduce further potential sources for delay into the investigation and remediation process.

First, Section 10.3 gives any Party 30 days to submit a dispute to the Dispute Resolution Committee. In the interim, the Agreement calls for the Parties to attempt to resolve the dispute on an informal basis. Fairchild believes the period for informal dispute resolution should be reduced to 14 days, which is consistent with the period proposed by EPA under the consent decree currently being negotiated for the MEW Area.

In addition, Sections 10.10 and 27.2 provide for automatic extensions of deadlines for work affected by a dispute. Fairchild believes such an extension should be granted only if the Navy prevails in dispute resolution or if the narrow conditions of Section 10.11 (relating to work stoppages ordered by a member of the Dispute Resolution Committee) are met. Sections 10.11 and 10.12

should, in turn, require the Dispute Resolution Committee to reach a resolution of any dispute regarding work stoppage within no more than 7 days.

Finally, Section 10.13 gives the Navy 35 days to implement the decision resulting from dispute resolution. The Navy should be required to implement these decisions within a shorter period, especially if the Navy is not the prevailing party or the decision can be implemented within a shorter period.

C. Other Comments.

1. Definition of Moffett Field (Section 1.9). NAS Moffett Field ("NASMF") should be defined more precisely. Does NASMF, for example, include any facilities now or formerly operated by the National Aeronautics and Space Administration?

2. EPA's Right to Require Additional Work (Sections 8.2 and 9.10.4). Some provisions of the Agreement relating to EPA's right to require further work are unduly restrictive. Section 8.2 provides that the Navy's performance under the Agreement will be "deemed . . . protective of human health and the environment" and that "no further corrective action" under RCRA will be required. This Section seems overbroad given the preliminary stage of the Navy's investigations and should be deleted.

Section 9.10.4 of the Agreement authorizes EPA, DOHS or the RWQCB to require further work through modification of a report or amendment of the Agreement. There may, however, be some cases in which modification of a report issued several months or years previously is not an appropriate method for dealing with new work required because of, for example, the discovery of a new source. On the other hand, Section 24 requires the concurrence of all Parties prior to any amendment of the Agreement. Section 9.10.4 should be amended to provide for a procedure by which the agencies may order additional work without requiring the amendment of a report or the Navy's consent.

On a related issue, the Parties need to clarify the circumstances under which EPA can order a Phase III investigation. The only reference to a Phase III is footnote 9 to Attachment 3, which indicates that "[i]f it is determined that further investigative work is required, Phase III tasks will be initiated." The Agreement should be clarified to ensure that EPA has the right to require this investigation if potential releases not covered by

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Phase II are discovered, as well as the right to require the expeditious investigation and remediation required by Section 120(e) of CERCLA. (As currently contemplated, the Phase III RI/FS would not be complete until 1996 and construction of a remedial system would not begin until July 1998.)

3. Covenant Not to Sue (Section 25). A provision should be added to this Section clarifying that nothing in this Agreement affects the rights of any third party to bring an action against the Navy seeking reimbursement for response costs incurred by such third party with respect to releases originating at Moffett Field.

D. Conclusion

Fairchild and other MEW companies have requested on numerous occasions that the Navy and EPA accelerate the pace of investigations at Moffett Field and coordinate the RI/FS and RD/RA processes with the MEW PRPs. In support of these requests, Fairchild has presented ample evidence showing the problems created by the go-slow approach adopted by the Agreement. In spite of these requests, the regulatory agencies and the Navy appear determined to proceed with an agreement whose only effect will be to further institutionalize the ongoing delays in investigating and cleaning up Moffett Field. Because of the delays, the Agreement threatens to make cleanup of areas north of 101 more expensive and time consuming unless Navy agrees to implement a program of immediate source control and investigation.

Fairchild requests that the Agreement be modified (1) to require an expeditious completion of an RI/FS and commencement of remedial action in accordance with established and enforceable deadlines complying with Section 120 of CERCLA, (2) to require the Navy to negotiate and enter into a comprehensive settlement with the MEW PRPs within 30 days and (3) to make the other changes described in Part C above.

Sincerely,
Schlumberger Technology Corporation

C. R. Bostic
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cc: See Attached List

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