

Message

From: Debra Rubenstein [drubenstein@apple.com]
Sent: 8/11/2021 7:16:29 PM
To: Reynolds, Rebekah [Reynolds.Rebekah@epa.gov]
CC: Colin Scanlon [cscanlon@apple.com]
Subject: Letter re CBI for EPA Visit to 825 Stewart Drive, Sunnyvale
Attachments: 8-11-21 Letter to EPA re CBI for 825 Stewart Drive.pdf

Rebekah,

In follow up to our conversation, I enclose a letter on behalf of Apple Inc. claiming CBI relating to any information collected and/or documented during the EPA site visit on August 19, 2021. Any questions let me know.

Debra

Debra Rubenstein | Senior Counsel | Environment Health & Safety | ☐ Apple Inc. | desk +1 669.276.9741 | mobile +1 408.893.9762 | One Apple Park Way MS 60-2LAW Cupertino, CA 95014 | drubenstein@apple.com

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August 11, 2021

VIA Email reynolds.rebekah@epa.gov

Rebekah Reynolds, Assistant Regional Counsel

US EPA Region 9

75 Hawthorne Street

Mail Code: ORC-3-2

San Francisco, CA 94105

Re: 825 Stewart Drive, Sunnyvale, CA – TRW Microwave Superfund Site (the Site)

Dear Ms. Reynolds,

Please accept this letter on behalf of Apple Inc. (Apple) in follow up to our discussion on August 10, 2021, and to formally request that any information relating to Apple operations at the Site (including but not limited to any hardware, process or other sensitive information) viewed or documented by EPA during its upcoming Site visit on August 19, 2021, be maintained as confidential business information (CBI) pursuant to *40 CFR Part 2, Subpart B, §2.203(b)*.

A CBI claim is defined as “a claim or allegation that business information is entitled to confidential treatment for reasons of business confidentiality, or a request for a determination that such information is entitled to such treatment.” *40 CFR §2.201(h)*

“The basis for claims of business confidentiality include the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information. The definition is meant to encompass any concept which authorizes a Federal agency to withhold business information under 5 U.S.C. 552(b)(4), as well as any concept which requires EPA to withhold information from the public for the benefit of a business under 18 U.S.C. 1905 or any of the various statutes cited in §§2.301 through 2.309.” *40 CFR §2.201(e)*

We have been informed that EPA is interested in viewing the following areas at the Site:

- The sub-slab depressurization system.
- The building’s concrete slab and cracks that were sealed to prevent vapor intrusion as well as any building concrete slab penetrations (e.g., from pipes or seams in

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the building). EPA also asked to see the spaces between the walls of the three sections of the buildings that were sealed in 2014-2015.

- Past indoor air sampling locations.
- The location where contaminated soil was excavated from underneath the building.
- The location of groundwater monitoring wells.
- The location of the previous bioremediation system and injection locations.

Some of these areas are located inside the Site building, which is made up of several highly confidential laboratories. As such, EPA may see or be interested in documenting or photographing certain operations and areas, which contain trade secret, proprietary and/or company confidential information. These operations and areas are entitled to protection and should all be maintained as CBI. Therefore, all information collected and documentation created during or relating to the Site visit (e.g. field notes and photographs) are being claimed by Apple as CBI and EPA should treat the information as such under the CBI regulations at 40 CFR Part 2.

If EPA would like to take a photograph during the visit to the Site, we request that EPA asks in advance of taking a photograph to limit, as much as possible, that any materials covered by CBI are being photographed. We will also request that any photographs taken by EPA be shared with Apple at the conclusion of the Site visit and marked as CBI if appropriate.

Should you have any questions or require any additional information in relation to this CBI request, you can reach me at +1.415.893.9762 or at drubenstein@apple.com.

Very truly yours,

Apple Inc., a California corporation

By: *Debra J Rubenstein*
Debra J Rubenstein
Senior Counsel, Environment, Health & Safety

CC: Colin Scanlon

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One Apple Park Way
Cupertino, CA 95014
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Apple Confidentiality Agreement

This Apple Confidentiality Agreement (the "**Agreement**") between Apple Inc., a California corporation located at One Apple Park Way, Cupertino, California 95014 United States ("**Apple**") and Environmental Protection Agency, located at Environmental Protection Agency 75 Hawthorne Street San Francisco, CA 94105, United States, ("**Company**"), is effective as of August 9, 2021 ("**Effective Date**").

1. Scope

This Agreement governs any Confidential Information disclosed in connection with the Purpose.

In this Agreement: (i) "**Confidential Information**" means any nonpublic information, or material, which may include product plans, specifications, designs, photographs, costs, prices, project names, business plans, marketing plans, forecasts, orders, materials, components, prototypes, or pre-release products, disclosed by one party or any of its Affiliates (the "**Discloser**") to the other party or any of its Affiliates (the "**Recipient**") in connection with the Purpose, including information Recipient learns from Discloser's employees or Consultants or through inspection of Discloser's property; (ii) "**Purpose**" means Apple's evaluation, purchase or use of Company's, or its Affiliates', goods, services, technology, or other property (including intellectual property, real property, and personal property); (iii) "**Affiliate**" means any entity that Controls, is Controlled by, or is under common Control with a party; (iv) "**Control**" means the legal, beneficial, or equitable ownership, directly or indirectly, of more than 50% of the capital stock (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights; and (v) "**Consultants**" means a party's bankers, accountants, auditors, attorneys, financial advisers, and independent contractors.

Confidential Information also includes: the fact that the parties and their respective Affiliates and Consultants have discussed the Purpose; the substance of their discussions; and the terms, conditions, and existence of this Agreement.

2. Disclosure and Use Restrictions

Recipient may only disclose Confidential Information to its employees or Consultants who: (i) have a need to know in order to accomplish the Purpose; and (ii) are bound by a written agreement that prohibits any unauthorized disclosure or use of the Confidential Information that is at least as restrictive as the terms and conditions of this Agreement. Recipient shall not disclose, and shall cause its Consultants not to disclose, Confidential Information to any other person or entity without Discloser's prior written consent in each instance. Recipient and its Consultants may only use Confidential Information for the Purpose. Recipient and its Consultants must use a reasonable degree of care to protect Confidential Information it receives and to prevent any unauthorized use or disclosure of Confidential Information. Recipient shall be directly liable for any liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, as incurred by either party and their respective

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Affiliates, related to any unauthorized disclosure or use of Discloser's Confidential Information by Recipient or any of its Consultants.

3. Exclusions

Confidential Information does not include information that: (i) was known by Recipient without restriction before receipt of the Confidential Information; (ii) is publicly available through no fault of Recipient; (iii) is rightfully received by Recipient from a third party without a duty of confidentiality; or (iv) is independently developed by Recipient. Recipient may disclose Confidential Information to the extent it is required by law if it makes reasonable efforts to provide prior notice to Discloser and seeks protective treatment of the Confidential Information. The fact that a disclosure was legally required will not alter the nature of the Confidential Information.

4. Intellectual Property

Except as expressly set forth in this Agreement, nothing in this Agreement is intended to grant a license to or waive any rights in either party's patents, copyrights, trademarks, or mask works. Receipt of Confidential Information will not constitute or be used to show or support notice or knowledge of any patents.

5. Feedback

Any ideas, suggestions, or recommendations made by Recipient regarding Discloser's Confidential Information in connection with the Purpose, ("**Feedback**"), may be used and incorporated into Discloser's products, technologies, and services without paying royalties and without any other obligations or restrictions so long as Discloser does not infringe Recipient's patents, copyrights or trademark rights.

6. Residuals

In connection with the Purpose, Apple and its Affiliates shall be free to use any ideas, concepts, know-how and techniques retained in the unaided memory of the persons who had access to the Confidential Information ("**Residuals**") for any purpose (subject to any patents or copyrights of Company and its Affiliates), and Apple and its Affiliates have no obligation to limit or restrict the assignment of such persons. A person's memory is unaided if the person has not intentionally memorized the Confidential Information.

7. Independent Development

Each party acknowledges that the other party may, currently or in the future: (i) make or use goods, services, or technologies that compete with its own; (ii) develop information internally or receive information from other third parties that may be similar to its own Confidential Information; or (iii) evaluate, invest in, or do business with its competitors or potential competitors. Neither party's execution of this Agreement nor its receipt of any Confidential Information will restrict such activities.

8. Warranty

Each party warrants that it has the right to disclose its Confidential Information. All Confidential Information is provided AS IS and without any warranty, express, implied, or otherwise, regarding its accuracy or performance.

9. No Press Releases or Other Public Statements

Neither party nor their respective Affiliates or Consultants shall issue press releases or other public statements regarding this Agreement or its subject matter without the other party's prior written approval; provided, however, Apple and its Affiliates may disclose the final results of any supplier responsibility assessments pursuant to its corporate compliance, corporate responsibility, and/or annual reporting programs.

10. General Compliance with Laws

The parties shall, and shall cause their respective Affiliates and Consultants to, comply with all applicable laws including export control and sanction controls.

11. No Assignment

This Agreement is not assignable or transferable by a party without the prior written consent of the other party. Any purported or attempted assignment, delegation, change of control, or other transfer without such consent will be null and void and will constitute a breach of this Agreement.

12. Return of Confidential Information

Upon written notice, Recipient shall return all tangible Confidential Information then in its, its Affiliates' and its Consultants', possession to Discloser and destroy all Confidential Information that cannot be returned, including any emails or other electronic documents containing Confidential Information (but excluding automatic electronic back-ups and archive systems) within 15 days after receipt of such notice.

13. Protection Period

Restrictions on use and disclosure of Confidential Information will remain in effect for 7 years from the date the Confidential Information was disclosed, however Confidential Information containing personally identifiable information will remain in effect perpetually.

14. Term and Termination

Either party may terminate this Agreement upon 15 days advance written notice to the other party. Upon termination of this Agreement Feedback, and Residual rights, and each party's disclosure and use obligations shall survive.

15. Governing Law & Disputes

This Agreement will be governed by the laws of the State of Delaware, without reference to conflict of laws principles. The confidentiality provisions of this Agreement will be enforceable under the Delaware Uniform Trade Secrets Act, Del. Code Ann. Title 6 Secs. 2001 et seq.

All disputes arising under or in connection with this Agreement will be finally settled under the then current Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with such rules. The arbitration will be conducted in English in San Francisco, California. Judgment upon any award rendered by the arbitrator may be confirmed or enforced in any court having jurisdiction. The arbitrators shall award to the prevailing party, if any, its costs and expenses, including its attorneys' fees. The prevailing party shall also be entitled to its attorneys' fees and costs in any action to confirm and/or enforce any arbitration award in any judicial proceedings. All materials in the proceedings created for the purpose of the arbitration, all other documents produced by another party in the proceedings not otherwise in the public domain, and all awards in the arbitration will be deemed "Confidential Information", except to the extent disclosure may be required of a party by legal duty to protect or pursue a legal right or to enforce or challenge an award in legal proceedings before a court or other judicial authority.

Either party may bring court proceedings in any court having jurisdiction to seek an injunction, specific performance, or other equitable relief to enforce any right or obligation under this Agreement. The parties agree that no bond need be posted to obtain injunctive or equitable relief, but if required by law or the court, the parties consent to a bond in the lowest amount permitted by law.

16. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to, and supersedes all prior or contemporaneous oral or written agreements or contractual provisions concerning any Confidential Information disclosed between the parties in connection with the same or similar purpose. Any amendments and waivers must be in writing and signed by both parties. Agreements, addenda, or supplements entered into between the parties prior to the Effective Date and that reference prior confidentiality provisions in connection with the same or similar purpose are amended to reference this Agreement in place of the prior provisions.

17. Miscellaneous

Company and Apple shall each ensure that its Affiliates comply with the terms and conditions of this agreement. A written notification addressed to the authorized representative(s) of a party will be deemed to be notice (i) when personally delivered; (ii) when sent by confirmed facsimile; (iii) one day after having been sent by commercial overnight carrier specifying next-day delivery with written verification of receipt; or (iv) three days after having been sent by first class or certified mail postage prepaid. A copy of any notice sent to Apple or its Affiliates must also be sent simultaneously to Apple's General Counsel at [disclosurenotices@apple.com]. The words "include" or "including" will be deemed followed by "without limitation."

Understood and agreed by the parties' authorized representatives:

Message

From: Reynolds, Rebekah [Reynolds.Rebekah@epa.gov]
Sent: 8/10/2021 7:41:00 PM
To: Schulman, Michael [Schulman.Michael@epa.gov]; Plate, Mathew [Plate.Mathew@epa.gov]
CC: Poalinelli, Edwin [POALINELLI.EDWIN@EPA.GOV]
Subject: RE: Site visit: TRW Microwave Site 825 Stewart Drive building

I spoke with the attorney for apple.

We are not going to be signing the proposed NDA. She is going to send a letter to me saying that everything you create during the Site Walk (e.g., field notes, photos) is being claimed by Apple as CBI and we will treat it as such under our CBI regulations at 40 CFR Part 2. After the visit, you can send apple back everything you created and they can substantiate their claim. You may want to work with the apple representative while you are there to minimize any creation of CBI. So, for example, if it is possible to take a photo at an angle that wouldn't be claimed as CBI that would get you the info you need, you would probably want to do that.

Let me know if you have any questions.

Thanks.

From: Schulman, Michael <Schulman.Michael@epa.gov>
Sent: Monday, August 9, 2021 1:05 PM
To: Plate, Mathew <Plate.Mathew@epa.gov>; Reynolds, Rebekah <Reynolds.Rebekah@epa.gov>
Cc: Poalinelli, Edwin <POALINELLI.EDWIN@EPA.GOV>
Subject: FW: Site visit: TRW Microwave Site 825 Stewart Drive building

Hi Matt, FYI below, Apple is very interested in exactly where we want to go in the building. Apparently, this is a product development building with sensitive work underway. Attached are the figures and photos associated with past mitigation measures. I've requested a copy of the NDA, which Rebekah will review and if we can sign. I now also have a Montrose briefing with Enrique at 1-2 pm on Aug 19 that I need to attend, can you do an earlier morning start time? Or, if later, cover some of the site walk for me?

Thanks!
Michael

From: Kurt Batsel <batsel@dextra-group.com>
Sent: Monday, August 9, 2021 11:41 AM
To: Schulman, Michael <Schulman.Michael@epa.gov>
Subject: RE: Site visit: TRW Microwave Site 825 Stewart Drive building

Michael – I sent them quite a few maps as they were looking for details on each of the areas you want to visit. Here is the list I sent to them and attachments from previous reports that show where these areas are:

1. The sub-slab depressurization system. **Attachment 1** shows the locations of the roof vents and the interior vapor collection riser pipes, which collectively comprise the system.
2. The building's concrete slab and cracks that were sealed to prevent vapor intrusion as well as any building concrete slab penetrations (e.g., from pipes or seams in the building). EPA also asked to see the spaces between the walls of the three sections of the buildings that were sealed in 2014-2015. These items are shown on **Attachment 2**; however, much of this may no longer be accessible.

3. Past indoor air sampling locations (see **Attachment 3**).
4. The location where contaminated soil was excavated from underneath the building (see **Attachment 4**).
5. The location of groundwater monitoring wells (see **Attachment 5**).
6. The location of the previous bioremediation system and injection locations (see **Attachment 6**).

From: Schulman, Michael <Schulman.Michael@epa.gov>
Sent: Monday, August 9, 2021 2:31 PM
To: Kurt Batsel <batsel@dextra-group.com>
Subject: RE: Site visit: TRW Microwave Site 825 Stewart Drive building

Hi Kurt, I just got the NDA and having it looked at. Can you send me the map you sent Apple showing what we'd be visiting? Thanks, Michael

From: Kurt Batsel <batsel@dextra-group.com>
Sent: Monday, August 9, 2021 11:24 AM
To: Schulman, Michael <Schulman.Michael@epa.gov>
Subject: RE: Site visit: TRW Microwave Site 825 Stewart Drive building

Michael – We will all be there the night before so early start is no problem. Just let me know what works for you guys. Also, AECOM has an office in downtown San Jose that we could use for meeting space before or after if you think that would be beneficial. There isn't any meeting space that we could use at the Apple building. Just let me know on that as I will need to reserve the AECOM space if we want to use it.

Finally, I spoke with Apple last week and they are very interested in exactly where we want to go in the building. Apparently, this is a product development building with sensitive work underway. Based on your request to me, I forwarded Apple a list of there areas we would want to see and some maps showing where these things are/were. They also told me that they would expect all visitors to sign a Non-Disclosure Agreement and that they would forward the agreement directly to you and Matt Plate via email for signature. Not sure what EPA's position is on signing those, but I am just letting you know what Apple has requested.

From: Schulman, Michael <Schulman.Michael@epa.gov>
Sent: Monday, August 9, 2021 2:08 PM
To: Kurt Batsel <batsel@dextra-group.com>
Subject: RE: Site visit: TRW Microwave Site 825 Stewart Drive building

Hi Kurt,

Do you have a start time restriction? With traffic it is better for me to have an early morning start. Thanks, Michael

From: Kurt Batsel <batsel@dextra-group.com>
Sent: Monday, August 2, 2021 7:57 AM
To: Schulman, Michael <Schulman.Michael@epa.gov>
Subject: RE: Site visit: TRW Microwave Site 825 Stewart Drive building

Michael – Thanks for the confirmation.

From: Schulman, Michael <Schulman.Michael@epa.gov>
Sent: Friday, July 30, 2021 7:27 PM

To: Kurt Batsel <batsel@dextra-group.com>

Subject: RE: Site visit: TRW Microwave Site 825 Stewart Drive building

Hi Kurt,

EPA management has approved the site visit. Have a good weekend.

Michael

From: Kurt Batsel <batsel@dextra-group.com>

Sent: Friday, July 30, 2021 12:06 PM

To: Schulman, Michael <Schulman.Michael@epa.gov>

Subject: RE: Site visit: TRW Microwave Site 825 Stewart Drive building

Michael - GI Partners did not indicate any plans to attend.

From: Schulman, Michael <Schulman.Michael@epa.gov>

Sent: Friday, July 30, 2021 3:04 PM

To: Kurt Batsel <batsel@dextra-group.com>

Subject: RE: Site visit: TRW Microwave Site 825 Stewart Drive building

Thanks, I need to document the number of people for COVID. Do you think the building manager will want to be present?

From: Kurt Batsel <batsel@dextra-group.com>

Sent: Friday, July 30, 2021 11:54 AM

To: Schulman, Michael <Schulman.Michael@epa.gov>

Subject: RE: Site visit: TRW Microwave Site 825 Stewart Drive building

Hi, Michael – We will have the following people attend:

- Michael Shannon – Northrop Grumman's Corporate Manager, Environmental Remediation.
- Holly Holbrook – AECOM's Project Manager
- Myself – Northrop Grumman's Project Manager

I am expecting we will also have an escort from Apple but I have not yet been able to confirm who that will be. I'll let you know as soon as I hear back from Apple.

From: Schulman, Michael <Schulman.Michael@epa.gov>

Sent: Friday, July 30, 2021 11:43 AM

To: Kurt Batsel <batsel@dextra-group.com>

Subject: Re: Site visit: TRW Microwave Site 825 Stewart Drive building

Hi Kurt, excluding the EPA, how many people will be on the site walk?

Thanks!

On Jul 30, 2021, at 7:17 AM, Kurt Batsel <batsel@dextra-group.com> wrote:

Hi, Michael – Sounds good. I confirmed with GI Partners also. The Apple contact is on vacation this week, but I will talk to her about logistics first thing next week.

From: Schulman, Michael <Schulman.Michael@epa.gov>
Sent: Friday, July 30, 2021 12:34 AM
To: Kurt Batsel <batsel@dextra-group.com>
Subject: RE: Site visit: TRW Microwave Site 825 Stewart Drive building

Hi Kurt,

Myself and Matt Plate will be able to visit the site on Thursday 8/19. The only caveat is that we both need final approvals for field work considering the current high COVID-19 transmission rates; however, this should not be an issue.

Thank you,
Michael

From: Schulman, Michael
Sent: Wednesday, July 28, 2021 11:41 AM
To: Kurt Batsel <batsel@dextra-group.com>
Subject: RE: Site visit: TRW Microwave Site 825 Stewart Drive building

Thanks, the date is OK for me and looks OK on Matt's calendar, but I'm confirming.

From: Kurt Batsel <batsel@dextra-group.com>
Sent: Wednesday, July 28, 2021 10:46 AM
To: Schulman, Michael <Schulman.Michael@epa.gov>
Subject: RE: Site visit: TRW Microwave Site 825 Stewart Drive building

Hi, Michael – We are available on Thursday 8/19. I am still waiting for confirmation from GI Partners and Apple, but I would not expect there to be any issues with them. I will give you final confirmation on it by the end of the week, but I wanted to go ahead and let you know that 8/19 is looking the best for us. We will plan to arrive the evening before so could start as early as you would like in the AM.

From: Schulman, Michael <Schulman.Michael@epa.gov>
Sent: Monday, July 26, 2021 2:47 PM
To: Kurt Batsel <batsel@dextra-group.com>
Subject: Site visit: TRW Microwave Site 825 Stewart Drive building

Hi Kurt,

EPA requests a site walk and inspection visit of the TRW Microwave Site 825 Stewart Drive building. Can you arrange for EPA access to the building from the current property owner, which I believe is GI DC Sunnyvale LLC? Myself and Matt Plate with EPA request reasonable access to visit the items addressed in the attached annual inspection memo and the 2014-2015 building mitigation measures that addressed the potential for vapor intrusion into the building, which included:

- The sub-slab depressurization system that was installed underneath the site building to vent vapors to the atmosphere.
- The building's concrete slab and cracks that were sealed to prevent vapor intrusion. As well as any building concrete slab penetrations (e.g., from pipes or seams in the building).
- Past indoor air sampling locations.
- The location where contaminated soil was excavated from underneath the building.
- The spaces between the walls of the three sections of the buildings that were sealed in 2014-2015.
- The emulsified vegetable oil in-situ bioremediation system.
- The location of groundwater monitoring wells.

EPA also wants to review any post 2014-2015 building modifications or changes to the building.

Can you get back to me this week with some dates for a site visit in August? Northrup Grumman and your consultant are also invited to attend, understanding that there may be COVID-19 related restrictions in how many people can visit the building or congregate. I am available for a site visit any week, except for August 9-11 and the week of August 23-27 and Matt Plate typically has limited availability on Fridays.

Feel free to call me to go over,
Thank you,

Michael Schulman

Remedial Project Manager
USEPA Region 9
75 Hawthorne St, San Francisco, CA 94105
415-972-3064 (o)
628-629-2421 (m)

From: Kurt Batsel <batsel@dextra-group.com>
Sent: Tuesday, May 25, 2021 2:03 PM
To: Schulman, Michael <Schulman.Michael@epa.gov>
Cc: TWright@gesonline.com; Holbrook, Holly <Holly.Holbrook@aecom.com>
Subject: TRW Microwave - 2020 SSD Inspection Memo

Hi, Michael – As you requested during our last discussion on TRW Microwave, attached is a technical memorandum prepared by GES that summarizes the 2020 SSD system inspection conducted at the onsite building currently leased by Apple. Please let me know if you have any questions or need any additional info.

Kurt R. Batsel, P.E. | The Dextra Group, Inc.
T: 770.578.9696 | batsel@dextra-group.com