

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

COMPLAINT NO. R2-2012-0022

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
MAYHEW CENTER, LLC
3301-3341 VINCENT ROAD
PLEASANT HILL, CONTRA COSTA COUNTY

This Complaint is issued to Mayhew Center, LLC (Mayhew Center) pursuant to California Water Code section 13268, subdivision (b)(1), which authorizes the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) to impose administrative civil liability, and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint. The Complaint alleges Mayhew Center's failure to submit a required technical report acceptable to the Executive Officer of the Regional Water Board for a cumulative period of 253 days between May 13, 2011, and January 20, 2012, in violation of Water Code section 13267. The Complaint assesses \$16,942 in penalties.

The Assistant Executive Officer of the Regional Water Board hereby gives notice that:

1. Mayhew Center owns the property located at 3301-3341 Vincent Road, Pleasant Hill, Contra Costa County (Property). The building parcels were developed in the early to mid-1970s. Mayhew Center assumed ownership of the property on January 3, 1993. Commercial space at the Property has been and continues to be used primarily as leased commercial office space.¹
2. Mayhew Center is the responsible party as the owner of the Property where the highest concentration of perchloroethylene (PCE), a chlorinated hydrocarbon, was detected in vadoze-zone soil. Elevated concentrations of PCE have also been detected in soil gas and groundwater at the Property.
3. Mayhew Center is alleged to have violated provisions of the law for which the Regional Water Board may impose civil liability pursuant to Water Code section 13268, subdivision (b)(1). This Complaint proposes to assess \$16,942 in penalties for the violations cited, consistent with the State Water Resources Control Board Enforcement Water Quality Enforcement Policy (Enforcement Policy). On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy. The Enforcement Policy was approved by the Officer of Administrative Law and became effective on May 20, 2010.

¹ LFR. Scope of Work to Address Data Gaps at the 3301-3341 Vincent Road Property in Pleasant Hill, California. Attachment 1, p.6, Conceptual Site Model and Data Gap Evaluation, 3301-3341 Vincent Road Property, Pleasant Hill, California. May 16, 2007.

The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327. The civil liability is assessed at \$16,942. The Assistant Executive Officer intends to seek additional liability for staff costs incurred in bringing the matter to settlement or hearing.

4. Unless waived, the Regional Water Board will hold a hearing on this matter on September 12, 2012, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland. The attached Hearing Procedure provides important information on how those proceedings will be conducted and deadlines by which parties must take specific actions and/or submit information.

STATEMENT OF PROHIBITIONS AND REQUIREMENTS

5. The Regional Water Board is required to prescribe requirements as to the nature of any proposed discharge to waters of the state pursuant to Water Code section 13263. The term "waters of the State" includes all surface water and groundwater within the State. (Water Code § 13050, subd. (d)).
6. Water Code section 13267 authorizes the Regional Water Board to investigate and to require technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposed to discharge waste to the waters of the State.

ALLEGED VIOLATIONS OF PROHIBITIONS AND REQUIREMENTS APPLICABLE TO MAYHEW CENTER

7. On April 4, 2011, the Executive Officer approved a revised *Site Investigation Work Plan*, dated March 15, 2011, and required Mayhew Center to submit technical reports for the subsurface investigations described in the work plan pursuant to Water Code section 13267 (Exhibit A; incorporated by this reference as if fully set forth therein). This 13267 order required submittal by May 13, 2011, of a technical report of findings from a Membrane Interface Probe (MIP) investigation.
8. On July 27, 2011, the Assistant Executive Office issued a Notice of Violation (NOV) to Mayhew Center (Exhibit B; incorporated by this reference as if fully set forth therein). The NOV states that Mayhew Center failed to submit the technical MIP investigation report by May 13, 2011, and that a fine of up to a \$1,000 may be imposed for each day the report is late.

9. Regional Water Board staff conveyed to Mayhew Center that investigation of its property should proceed and not be held up while attempting to obtain access to the neighboring property for a portion of the investigation. Staff sent emails about proceeding with investigation of its property on August 18 and September 26, 2011.
10. On January 20, 2012, Regional Water Board staff received a partial submittal for the technical MIP investigation report. The submittal consisted of raw (pending final) MIP data for one of the three MIP borings identified in the March 15, 2011, work plan along with an email (Exhibit C; incorporated by this reference as if fully set forth therein) which provided preliminary findings from the investigation and recommendations for conducting additional investigation. Regional Water Board staff received this information 253 days after the May 13, 2011 deadline. Due to alleged property access issues, a final technical report for the MIP investigation is pending completion of two remaining MIP borings on the neighboring property.

WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED DUE TO NONCOMPLIANCE WITH CALIFORNIA WATER CODE SECTION 13267

11. Pursuant to Water Code section 13368, subdivision (a)(1), any person who violates a 13267 order issued by the Regional Water Board is liable under Water Code section 13368, subdivision (b)(1), wherein administrative civil liability may be imposed by the Regional Water Board in an amount not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

PROPOSED CIVIL LIABILITY

12. Regional Water Board Enforcement staff used the Enforcement Policy methodology to calculate a proposed administrative civil liability, which is described in detail in Exhibit D. Exhibit D is incorporated by this reference as if fully set forth therein.
13. The Assistant Executive Officer of the Regional Water Board proposes that administrative civil liability (ACL) be imposed in the amount of \$16,942, of this amount \$8,475 is for recovery of staff costs incurred thus far.

The proposed liability amount is more than the minimum liability, 10 percent higher than the economic benefit received as a result of the alleged violations or \$1,595, and less than the maximum liability of \$253,000 (Exhibit D).

14. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including, but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal, and expert witness costs) incurred after the date of the issuance of this complaint through completion of the hearing.

15. Issuance of this Complaint is an enforcement action, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) in accordance with Title 14, California Code of Regulations, section 15321, subdivision (a)(2).

Dyan C. Whyte
Assistant Executive Officer

June 18, 2012
Date

Exhibit A: Approval of Investigation Work Plan and Requirement for Technical Reports – Mayhew Center, 3301-3341 Vincent Road, Contra Costa County. April 4, 2011.

Exhibit B: Notice of Violation for Failure to Submit Technical Report Mayhew Center, 3301-3341 Vincent Road, Contra Costa County. July 27, 2011.

Exhibit C: January 20, 2012, Regional Water Board Staff Correspondence.

Exhibit D: Factors Considered in Determining Administrative Civil Liability