

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

In the matter of:	)	Order R2-2012-0072
	)	<del>Proposed</del>
<b>MAYHEW CENTER, LLC</b>	)	
	)	<b>SETTLEMENT AGREEMENT AND</b>
<b>3301-3341 Vincent Road,</b>	)	<b>STIPULATION FOR ENTRY OF</b>
<b>Pleasant Hill, Contra Costa County</b>	)	<b>ADMINISTRATIVE CIVIL LIABILITY</b>
<hr/>	)	<b>ORDER; AND ORDER <del>PROPOSED</del></b>
	)	

**Section I: INTRODUCTION**

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation") is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board San Francisco Bay Region ("Regional Water Board"), on behalf of the Regional Water Board Prosecution Team ("Prosecution Team"), and Mayhew Center, LLC ("Mayhew Center") (collectively "Parties"), and is presented to the Regional Water Board or its delegate for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

**Section II: RECITALS**

2. 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.<sup>1</sup>

3. 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. This 13267 order required submittal by May 13, 2011, of a technical report acceptable to the Executive Officer of the Regional Water Board. On July 27, 2011, the Assistant Executive Officer issued a Notice of Violation ("NOV") to Mayhew Center. The NOV states that Mayhew Center failed to submit the technical Membrane Interface Probe ("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. Regional Water Board staff received the technical report on January 12, 2012, 253 days after the May 13, 2011, deadline.

<sup>1</sup> 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.

4. On June 18, 2012, pursuant to California Water Code section 13323, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint R2-2012-0022 ("the Complaint") to Mayhew Center. The Complaint sought to assess administrative civil liability pursuant to California Water Code section 13268, subdivision (b)(1). The Complaint alleges, inter alia, that Mayhew Center violated California Water Code section 13267 by submitting a technical report 253 days late.

5. The Parties have engaged in settlement negotiations and agree to fully settle the alleged violation sets forth in the Complaint without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to California Government Code section 11415.60.

6. Based on evidence provided to the Prosecution Team by Mayhew Center during settlement discussions conducted subsequent to the issuance of the Complaint, the Prosecution Team agrees to the following: (1) the alleged culpability factor is 1.1 (revised from 1.2 in consideration of new evidence that Mayhew Center attempted in good faith to complete the site investigation within three months of the NOV issuance); and (2) the Other Factors as Justice May Require is 0.75 (revised from 1 based on the progress being made by Mayhew Center's current legal and technical team). These changes are reflected in this Stipulation and Order and are addressed in detail in the Amended Enforcement Policy Methodology, attached hereto as Exhibit A and incorporated herein by reference.

7. To resolve by consent and without further administrative proceedings the alleged violation sets forth in the Complaint, the Parties have agreed to the imposition of administrative civil liability in the amount of **\$14,300** against Mayhew Center, which includes \$8,475 for staff costs.

8. The liability imposed by this Order is consistent with a reasonable liability determination using the methodology in the Enforcement Policy (see Exhibit A). The Prosecution Team believes that the resolution of the alleged violation sets forth in the Complaint is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning this violation, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

### **Section III: STIPULATIONS**

The Parties stipulate to the following:

9. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged herein and personal jurisdiction over the Parties to this Stipulation.

10. **Administrative Civil Liability:** Mayhew Center shall pay a total of **\$14,300** in stipulated administrative civil liability by check made payable to the State Water Resources Control Board Cleanup and Abatement Fund, no later than 30 days following execution of this Order by the Regional Water Board or its delegee. The check shall

reference the Order number listed on page one of this Stipulation. The original signed check shall be sent as instructed by an invoice to be provided from the State Water Resources Control Board, with copies to: Andrew Tauriainen, SWRCB Office of Enforcement, P.O. Box 100, Sacramento, CA 95812, and Laurent Meillier, San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612.

11. **Compliance with Applicable Laws:** Mayhew Center understands that payment of administrative civil liability in accordance with the terms of this Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.

12. **Party Contacts for Communications related to this Stipulation and Order:**

**For the Regional Water Board:**

Laurent Meillier  
San Francisco Bay Regional Water  
Quality Control Board  
1515 Clay Street, 14th Floor  
Oakland, CA 94612  
[LMeillier@waterboards.ca.gov](mailto:LMeillier@waterboards.ca.gov)  
(510) 622-3277

**For Mayhew Center:**

Dean Dunivan  
Mayhew Center, LLC  
3317 Vincent Road  
Pleasant Hill, CA 94523  
[RDDunivan@yahoo.com](mailto:RDDunivan@yahoo.com)

13. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

14. **Matters Covered by this Stipulation:** Upon adoption of the Order incorporating the terms set forth herein, this Stipulation, represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged herein or which could have been asserted against Mayhew Center as of the date of this Stipulation based on the specific facts alleged herein. The provisions of this Paragraph are expressly conditioned on Mayhew Center' full payment of administrative civil liability by the deadline specified above.

15. **Public Notice:** The Parties understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegee. In the event objections are raised during the public review and comment period, the Regional Water Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances. If significant new information is received during the public review and comment period that reasonably affects the propriety of presenting this Stipulation and Order to the Regional Water Board or its delegee for adoption, the Assistant Executive Officer may unilaterally

declare this Stipulation and Order void and decide not to present it to the Regional Water Board or its delegee.

16. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board, or its delegee, and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

17. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

18. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegee.

19. **If the Order Does Not Take Effect:** In the event that the Order does not take effect because it is not approved by the Regional Water Board or its delegee, or is vacated in whole or in part by the State Water Resources Control Board ("State Water Board") or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violation, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violation alleged herein in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

20. **No Admission of Liability:** In settling this matter, Mayhew Center does not admit to any of the allegations stated herein, or that it has been or is in violation of the Water Code, or any other federal, state or local law or ordinance, with the understanding that in the event of any future enforcement actions by the Regional Water Board, the

State Water Board or any other Regional Water Quality Control Board, this Stipulation and Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

21. **Waiver of Hearing:** Mayhew Center has been informed of the rights provided by Water Code section 13323, subdivision (b) and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

22. **Waiver of Right to Petition:** Mayhew Center hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

23. **Covenant Not to Sue:** Mayhew Center covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

24. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

25. **No Third Party Beneficiaries:** This Stipulation is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation for any cause whatsoever.

26. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

27. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board or its delegee, which incorporates the terms of this Stipulation.

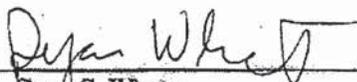
28. **Payment:** The total amount of \$14,300 will be paid commencing 12-10-12 in the amount of \$2,000 each month on the 10<sup>th</sup> of the month until paid in full.

Settlement Agreement and Stipulated Administrative Civil Liability Order  
Order No. R2-2012-0072  
MayheW Center, LLC

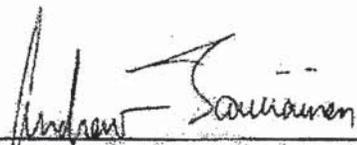
**IT IS SO STIPULATED.**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
SAN FRANCISCO BAY REGION PROSECUTION TEAM**

Date: 11/16/12

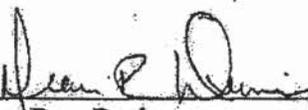
By:   
Dyan C. Whyte,  
Assistant Executive Officer

Approved as to form:

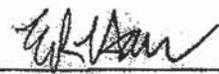
By:   
Andrew Taurainen, Senior Staff Counsel  
State Water Resources Control Board  
Office of Enforcement

**MAYHEW CENTER, LLC**

Date: 11-16-12

By:   
Dean Dunivan,  
President- Managing Member

Approved as to form:

By:   
Eric R. Haas  
Burnham Brown

**Section IV: ORDER OF THE REGIONAL WATER BOARD**

28. The Regional Water Board incorporates the Stipulation described above by this reference as if set forth fully herein.

29. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13327 and has applied the Penalty Calculation Methodology set forth in the State Water Resource Control Board's Enforcement Policy as shown in Exhibit A, which is incorporated herein by this reference. The Regional Water Board's consideration of these factors and application of the Penalty Calculation Methodology is based upon information obtained by the Prosecution Team in investigating the allegations set forth in the Stipulation, or otherwise provided to the Regional Water Board. In addition to these considerations, this Order recovers the costs incurred by Regional Water Board staff for this matter.

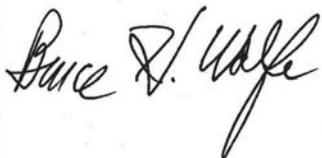
30. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.

31. The Stipulation and Order are severable; should any provision be found invalid the remainder shall be in full force and effect.

32. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if Mayhew Center fails to perform any of its obligations under the Order.

33. Fulfillment of Mayhew Center' obligations under this Order constitute full and final satisfaction of any and all liability for the matters alleged in the Stipulation in accordance with the terms of the Order.

**IT IS HEREBY ORDERED**, pursuant to Water Code section 13323 and Government Code section 11415.60 on behalf of the California San Francisco Bay Regional Water Quality Control Board that Mayhew Center shall pay **\$14,300** in administrative civil liabilities.



Digitally signed by  
Bruce H. Wolfe  
Date: 2012.12.27  
17:16:06 -08'00'

Date: \_\_\_\_\_

\_\_\_\_\_  
Bruce H. Wolfe  
Executive Officer

## **EXHIBIT A**

### **AMENDED ENFORCEMENT POLICY METHODOLOGY**

Pursuant to Water Code sections 13327 the Regional Water Board is required to consider the following factors in determining the amount of civil liability, including the nature, circumstances, extent, and gravity of the violations; whether the discharge is susceptible to cleanup or abatement; the degree of toxicity of the discharge; and with respect to the violator, the ability to pay; the effect on the ability to continue in business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters that justice may require.

On November 17, 2009, the State Water Resources Control Board ("State Water Board") adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy ("Enforcement Policy"). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in Water Code sections 13327.

**Violation:** Mayhew Center failed to submit a technical Membrane Interface Probe ("MIP") investigation report by the May 13, 2011, deadline set forth in a 13267 Order issued on April 4, 2011 ("13267 Order"). Regional Water Board staff received a preliminary and partial report for the investigation on January 20, 2012, 253 days after the required deadline. The Regional Water Board's Prosecution Team issued Administrative Civil Liability Complaint No. R2-2012-0022, dated June 18, 2012, to address the alleged violation of the 13267 Order.

This Amended Enforcement Policy Methodology revises the penalty calculation methodology contained in Exhibit D to Complaint No. R2-2012-0022 in accordance with new evidence and information submitted by Mayhew Center during settlement negotiations following issuance of the Complaint. Each factor in the Enforcement Policy and its corresponding category, adjustment, or amount for the failure to timely submit a technical report is presented below. The alleged violation by Mayhew Center in the Stipulation and this technical analysis is non-discharge violation for the purpose of applying the Enforcement Policy's penalty calculation methodology. This analysis omits step two of the calculation methodology, which addresses discharge violations.

#### **Steps 1 and 2 – Per Day Assessment for Discharge Violation**

Not applicable.

#### **Step 3 – Per Day Assessments for Non-Discharge Violation**

- a) ***Specific Factor:*** Potential Harm to Beneficial Uses

***Category:*** Moderate

**Discussion:** The potential for harm is moderate. PCE has been detected at the Mayhew Center property at concentrations up to 11 parts per million (“ppm”) in vadoze zone soils<sup>1</sup> and 7.3 ppm in groundwater.<sup>2</sup> Based on samples collected in 2012 by West Environmental Services and Technology, 956 µg/kg of PCE was detected in soil and 17.1 µg/l in groundwater at the neighboring property.<sup>3</sup> This release of contaminants threatens groundwater beneficial uses and may threaten indoor air. The full extent of impacts is not known at this time. Late submittal of the technical MIP investigation report has delayed characterization of the nature and extent of contaminants and implementation of corrective actions.

b) **Specific Factor:** Deviation from Requirement

**Category:** Moderate

**Discussion:** The deviation from requirement is “moderate” because the requirement to submit a report by a required deadline was partially compromised. The 13267 order issued on April 4, 2011, required the submittal of a summary report for the MIP investigation. Mayhew Center submitted preliminary data and findings for one of three borings targeted for the MIP investigation on January 20, 2012, 253 days after the May 13, 2011, deadline in the 13267 order. Therefore, the requirement was only moderately compromised because Mayhew Center did ultimately submit (though late) the required report, and the report contained some, but not all, of the required information.

c) **Specific Factor:** Days of Violation

**Amount:** 14 days

**Discussion:** The Enforcement Policy allows for a reduction in the total days of violation in some circumstances. A reduction in the number of days of violation is recommended because there was not a notable financial gain for Mayhew Center on a daily basis resulting from the violation. A reduction in days is permissible under the Multiple Day Violations factor when there is not an economic benefit from the violation measurable on a daily basis. Mayhew Center submitted preliminary field findings 253 days late. Pursuant to the Enforcement Policy Multiple Day Violations provision, the total days of violations are reduced from 253 to 14 days.

<sup>1</sup> LFR. Conceptual Site Model and Data Gap Evaluation 3301-3341 Vincent Road Property, Pleasant Hill, California. Figure 5. May 16, 2007.

<sup>2</sup> Schutze & Associates, Inc. Preliminary Results for PCE (Soil Borings) Mayhew Center, Pleasant Hill, California. Figure 1. February 2012.

<sup>3</sup> Draft Interim Remedial Action Plan, Mayhew Center/Walnut Creek Manor, Mayhew Way and Vincent Road Pleasant Hill, California Regional Board Case No. 07S0183. West Environmental Services and Technology. August 2012.

d) **Initial Civil Liability:** Initial Amount of Administrative Civil Liability

Amount: \$4,900

**Discussion:** The maximum \$1,000 per day statutory requirement is multiplied by the reduced number of days—14 days—to calculate a new starting liability of \$14,000 for the penalty methodology. Considering the specific factors (a) through (c) above, the maximum liability of \$14,000 is multiplied by a factor of 0.35 (Table 3 of the Enforcement Policy) resulting in an initial liability of \$4,900.

**Step 4 – Adjustments to Determine Initial Liability for Violation**

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

a) **Specific Factor:** Culpability

**Adjustment:** 1.1

**Discussion:** Mayhew Center was negligent in failing to submit a technical report for the Property by the required deadline. Following the issuance of the April 4, 2011, 13267 Order, Regional Water Board staff communicated with Mayhew Center to remind Mayhew Center of the late report submittal. Despite clear directives from Regional Water Board staff “to avoid, or minimize enforcement action” in the NOV of July 27, 2011, Mayhew Center submitted the Technical report 253 days late.

b) **Specific Factor:** Cleanup and Cooperation

**Adjustment:** 1.2

**Discussion:** Mayhew Center did not cooperate with Regional Water Board staff in resolving the late report violation. The delayed submittal of the technical report has negatively impacted implementation of corrective measures. A Regional Water Board staff email, dated July 8, 2011, requested written confirmation that Mayhew Center had submitted the documents required in a court decision to gain access to the neighboring property.<sup>4</sup> As noted in the NOV of July 27, 2011, Regional Water Board staff did not receive documentation that Mayhew Center complied with the access requirements to a neighboring property to conduct the required investigation and emphasized to Mayhew Center that it should complete

<sup>4</sup> Appendix D of the October 28, 2010, court decision by Claudia Wilken required Mayhew Center to submit the following documentation to the neighboring property owner to obtain access to the property: sufficient proof of liability insurance, release of waiver of liens by vendors to undertake work relating to the required remediation, and certificate of worker's compensation.

the investigation on its Property while waiting for approval to access the neighboring property.

- c) **Specific Factor:** History of Violations

**Adjustment:** 1.2

**Discussion:** Regional Water Board staff issued a Water Code section 13267 Order on July 29, 2005, requesting the submittal of a Technical Report to determine the source and extent of PCE in soils and groundwater at the Property. Mayhew Center failed to submit an acceptable Technical report by August 24, 2005, which lead to the issuance of a Notice of Violation dated September 27, 2005. Regional Water Board staff repeated their request for a site characterization and site history report on December 13, 2006, July 22, 2010, September 30, 2010, and January 10, 2011. Mayhew Center received a total of six 13267 orders between January 2005 and April 2011 which consistently directed Mayhew Center to provide information about and investigate its property for PCE contaminants prior to being issued the May 13, 2011, deadline for the technical MIP investigation report. Mayhew Center has demonstrated a chronic pattern of violating Water Code section 13267 Order requirements.

**Step 5 – Determination of Total Base Liability Amount**

- a) **Total Base Liability:** The Adjusted Total Liability

**Amount:** \$7,762

**Discussion:** The adjusted liability is calculated by multiplying the initial liability by the adjustments above (i.e.,  $(\$4,900) \times (1.1)(1.2)(1.2)$ ), resulting the total base liability of \$7,762.

**Step 6 – Ability to Pay and to Continue in Business**

- a) **Specific Factor:** Ability to Pay and Continue in Business

**Discussion:** Mayhew Center will be able to pay the proposed civil liability and continue in business. Mayhew Center receives rent from commercial leases of office space and has funds in a \$1.15 million escrow account established for groundwater remediation costs pursuant to ongoing litigation over the contamination at the site. According to an October 28, 2010, court decision issued by Claudia Wilken U.S. District Judge, "Disbursements shall be made only to pay the reasonable fees and expenses of the Escrow Agent and for remediation work that is reasonably necessary to accomplish CLEANUP AND ABATEMENT pursuant to the Injunction Order." According to the Contra Costa County Assessor's Office the Property is valued at \$1,432,349. Mayhew Center obtains rent from tenants leasing buildings on the property. As an example of the rent

gained from these leases, a June 6, 2012 posting listed three vacancies that would generate a total monthly income of \$52,758. The Regional Water Board has no evidence that Mayhew Center would be unable to pay the proposed liability set forth in this Complaint or that the amount of the liability would cause undue financial hardship.

**Step 7 – Other Factors as Justice May Require**

- a) ***Specific Factor:*** Other factors as justice may require

***Discussion:*** Mayhew Center has completely replaced its legal and technical teams since the 13267 Order, and is now making significant progress in addressing soil, soil gas and groundwater contamination along the western boundary of their property. Mayhew Center submitted an acceptable Interim Remedial Action Plan to Regional Water Board staff in August 2012.<sup>3</sup> The plan includes a site conceptual model, data evaluation, identification of remedial goals, selection of the preferred interim remedial action and an implementation plan. The recent progress by Mayhew Center's new teams is not sufficient to alter the "cleanup and cooperation" factor identified above, because Mayhew Center was uncooperative during the period leading to the incomplete report in January 2012. However, the recent progress by Mayhew Center, and the cooperation from the legal and technical teams are significant, and indicate to Regional Water Board staff that Mayhew Center is likely to continue addressing the contamination on the site in a timely fashion. Therefore, a factor to 0.75 is appropriate.

- b) ***Specific Factor:*** Staff Costs

***Discussion:*** Regional Water Board enforcement staff time incurred to prepare this Complaint and supporting information is estimated to be 56.5 hours. Based on an average cost to the State of \$150 per hour, the total staff cost is estimated to be \$8,475. The Assistant Executive Officer intends to seek additional liability for staff costs incurred in bringing the matter to settlement or hearing.

**Step 8 – Economic Benefit**

- a) ***Specific Factor:*** Economic Benefit

***Discussion:*** Mayhew Center obtained an estimated economic benefit of \$1,450 by delaying the submittal of a Technical Report for the Property. By not timely submitting an acceptable Technical Report, Mayhew Center deferred expenditures associated with the required soil and groundwater cleanup at the Property. Staff estimated the economic benefit based on a one-time, non-depreciable expenditure of \$60,000, a conservative estimate for the initial field investigation and report writing. The U.S. Environmental Protection Agency BEN economic benefit model was run and calculated an economic benefit of \$1,450.

**Step 9 – Maximum and Minimum Liability Amounts**

a) ***Minimum Liability Amount***

***Amount:*** \$1,595

***Discussion:*** The Enforcement Policy requires that the adjusted Total Base Liability Amount be, at a minimum, 10 percent higher than the economic benefit received as a result of the alleged violation. Mayhew Center's estimated economic benefit plus 10 percent was calculated to be \$1,595 and is lower than the adjusted Total Base Liability. The economic benefit received does not exceed the Adjusted Total Base Liability of \$14,296.

b) ***Maximum Liability Amount***

***Amount:*** \$253,000

***Discussion:*** The maximum liability that may be imposed under Water Code section 13368, subdivision (b)(1) is \$253,000. This is based on the maximum liability of \$1,000 per day for 253 days of violation (from May 13, 2011, through January 20, 2012, the date Mayhew Center submitted a Technical Report for the Property).

**Step 10 – Final Liability Amount**

The final liability proposed for the late report is \$14,300<sup>5</sup> (the total base liability plus staff costs) based on consideration discussed of the factors above. The total proposed liability is based on the consideration of penalty factors discussed above and includes \$8,475 in staff costs. The final liability amount proposed falls within the maximum and minimum liability amounts

<sup>5</sup> It is the Regional Water Board Prosecution Team's practice to round the liability amount to the nearest hundred. Thus, the liability amount is \$14,300.