

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Ralph Lambert)
MEETING DATE: June 14, 2017

ITEM: 6A

SUBJECT: Mayhew Center, 3301-3341 Vincent Road, Pleasant Hill, Contra Costa County – Status Report on Cleanup Plan Acceptability

CHRONOLOGY: December 2013 – adopted site cleanup order

DISCUSSION: The purpose of this status report is twofold: (i) to update the Board on the status of this solvent-impacted site and (ii) to seek Board feedback on a proposed cleanup plan before staff formally responds. Two interested parties in the site's vicinity have raised objections to the proposed cleanup plan.

Background

The Mayhew Center site is located near the Pleasant Hill - Walnut Creek border less than a mile from the Pleasant Hill BART station (see Appendix D site map). Releases of tetrachloroethene (PCE) from past site operations have impacted soil, soil vapor, and groundwater at and near the two-acre site. Past investigations have identified two PCE source areas: the first along the western common property boundary with Walnut Creek Manor (WCM) and the second near the middle of the Mayhew Center property. The first source area has impacted soil and shallow groundwater at the edge of the upgradient WCM property. The groundwater plume extends from the source areas to the northeast about 1,100 feet, commingling with petroleum from the Haber Oil site and with trichloroethene (TCE) from the Hookston Station site. A groundwater cleanup system installed by the Hookston Station dischargers is effectively treating PCE originating from the Mayhew Center site but only at the far end of the PCE plume.

Board staff required initial investigations at the Mayhew Center and WCM properties and subsequently concluded that the PCE release occurred at the Mayhew Center site. As a result, in 2013, the Board adopted a site cleanup order. The order required the landowners at the time, Mayhew Center, LLC, and Mr. Dean Dunivan, to complete the site investigation and to prepare and implement a cleanup plan.

Cleanup Obstacles

Progress with completing tasks in the site cleanup order has been slow, due to a combination of circumstances. The initial investigations did not identify a specific activity or source for the subsurface PCE impacts. As a result, the Mayhew Center landowners and WCM blamed each other for the PCE contamination. The two sides sued each other in the mid-2000s and in 2010 a federal court decided in favor of WCM, requiring the Mayhew Center landowners (and prior landowners) to pay \$1.65 million to WCM. Approximately \$1 million of this amount was put

into an escrow account to be used for cleanup at WCM. However, the two parties could not agree on a cleanup approach, and the court ultimately turned the funds over to WCM. Following this outcome, the Mayhew Center landowners claimed financial hardship and were unable to make any cleanup progress. In 2012, they stopped paying on their loan, and in 2014 a court-appointed receiver took control of the property. The receiver performed some interim remedial actions, chiefly vapor mitigation at two onsite buildings, but lacked the cash flow to do more and was not bound by the Board's site cleanup order in any event.

CLRRRA Agreement

In November 2016, Board staff were approached by a potential buyer (GP Vincent), who was interested in acquiring the property in foreclosure. GP Vincent wished to enter into a California Land Reuse and Revitalization Act (CLRRRA) agreement with the Board. CLRRRA provides eligible parties such as potential purchasers certain immunities in order to promote the cleanup and redevelopment of blighted, contaminated properties, often referred to as "Brownfields." A CLRRRA agreement provides an eligible party with liability protection for the site's contamination while requiring it to conduct necessary site investigation and cleanup.

In this case, GP Vincent plans significant cleanup work to address site contamination and continue its commercial land use. Board staff has confirmed GP Vincent's eligibility for a CLRRRA agreement. We also concluded that there would be a substantial cleanup benefit if the Board entered into a CLRRRA agreement with GP Vincent. I entered into the CLRRRA agreement on January 31, 2017. In early February, immediately following the CLRRRA agreement, GP Vincent bought the note from the bank and foreclosed on Mayhew Center, LLC, and Mr. Dean Dunivan. We briefed the Board on this action in the March 2017 Executive Officer's Report.

Response Plan

Under CLRRRA, a cleanup plan is called a "Response Plan." GP Vincent's Response Plan proposes sub-slab depressurization under three buildings (to eliminate vapor intrusion), treatment of impacted soil using soil vapor extraction, groundwater treatment using injections of an appropriate substrate, and subsurface monitoring to confirm treatment effectiveness. The groundwater injections are planned around two onsite buildings and at the downgradient edge of the property as well as around a hot spot in the street. Treatment is designed to be protective of human health under the existing commercial land use. We conclude that the Response Plan will address all contamination from the site and reduce concentrations to levels protective of human health under current and expected future land uses.

Public Comments

We circulated the Response Plan for public comment, as required by CLRRRA. We received comments from WCM and from named dischargers for the downgradient Hookston Station site (Appendix C). We requested minor revisions to the Response Plan to address some comments, and in late May GP Vincent submitted

an updated Response Plan that contains the requested revisions. We have prepared a response to comments (Appendix B). The comments raise two key issues.

First, does the Response Plan address the full extent of the contamination? Both commenters argue that it does not, since it does not propose work on the WCM property or on the full extent of the offsite groundwater plume. We disagree. The proposed cleanup is expected to remediate both onsite and offsite contamination to levels that are protective of human health under current and expected future conditions. Further, Mayhew Center, LLC, and Mr. Dean Dunivan are still responsible for compliance with the Board's site cleanup order. As an aside, the new owners contend that the CLRRA agreement only requires cleanup of the source property. We disagree with this contention. However, this is a moot point since the Response Plan adequately addresses both onsite and offsite contamination.

Second, should GP Vincent be subject to the federal court judgment or the Board's 2013 site cleanup order? WCM argues that it should. We disagree. GP Vincent had no role in the site contamination, is not a party to the court judgment, and naming it to the site cleanup order would be inappropriate given the CLRRA agreement.

Next Steps

We plan to approve the updated Response Plan (see Appendix A, draft approval letter). Due to the degree of controversy generated by the Response Plan, we are providing this status report to give the Board an opportunity to offer its feedback before staff formally responds to the Response Plan.

**RECOMMEN-
DATION:**

Provide feedback to staff; no formal Board action is necessary.

File No. 07S0183 (RAL)

Appendices:

- A – Draft Response Plan Approval Letter
- B – Response to Comments
- C – Comments Received
- D – Site Map

Appendix A

DRAFT RESPONSE-PLAN APPROVAL LETTER



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

June XX, 2017
File No. 07S0183 (RAL)

GP Vincent I, GP Vincent II, LLC and GP Vincent III, LLC
Attn.: Mr. Kirk McKinney, Managing Member
1530 Meridian Avenue, Suite 106
San Jose, CA 95125

SUBJECT: Approval of Response Plan for the Mayhew Center Site, 3301-3341 Vincent Road, Pleasant Hill, Contra Costa County

Dear Mr. McKinney:

This letter approves the May 31, 2017, *Final Site Assessment Report and Response Plan* (Response Plan) submitted on behalf of GP Vincent I, LLC, GP Vincent II, LLC, and GP Vincent III, LLC (collectively referred to as GPV). This letter is sent to you as the managing member of GPV, owners of the subject Site.

Background

Groundwater, soil and soil vapor contamination consisting of the solvent tetrachloroethene (PCE) and its degradation products were detected onsite and offsite, originating from an onsite source. On December 13, 2013, the Water Board adopted Site Cleanup Requirements Order No. 2013-0040 (Order). The Order requires two named dischargers, Mayhew Center, LLC, and Mr. Dean Dunivan, to complete onsite and offsite investigations and conduct cleanup measures to abate water quality impacts. The named dischargers failed to comply with the Order and lost access to the property when the lender placed the property in receivership in 2014. The Mayhew Center, LLC, license was suspended by the Franchise Tax Board. Remedial activities at the Site stalled and no real progress has been made since 2014.

On January 31, 2017, GPV entered into a California Land Reuse and Revitalization Act (CLRRA) agreement with the Water Board.¹ Subsequently, GPV took title to the property through the foreclosure process. Pursuant to the CLRRA agreement, GPV has proposed a Response Plan which will address the contamination, reducing levels of contaminants to concentrations that will not pose a threat to the environment or human health, given current property uses. Responsibility for any additional work beyond the scope of the CLRRA agreement lies with Mayhew Center, LLC, and Mr. Dean Dunivan.

Response Plan Summary

¹ See GeoTracker webpage:

https://geotracker.waterboards.ca.gov/regulators/deliverable_documents/3828383505/01_31_2017_GP_Vincent_CLRRA_Agreement_-_final_-_GP_Vincent_Signed.pdf

The Response Plan includes the installation of sub-slab depressurization systems, soil vapor extraction, groundwater treatment via injections for in-situ bioremediation, institutional controls, and long term monitoring, as summarized below. Table 1 of the Response Plan lists Environmental Screening Levels (ESLs)² for soil, soil gas, groundwater, and indoor air that are applicable to the property and are based upon current uses. These ESLs will be used as cleanup goals.

Sub-slab Depressurization systems (SSDs) – The Response Plan proposes SSDs at onsite buildings II and III and an offsite building north of the Site to mitigate vapor intrusion into the buildings. The SSDs include ventilating fans linked to vapor extraction pits under the buildings to vent PCE vapors before they enter the buildings.

Soil Vapor Extraction – The Response Plan proposes to remove soil vapor from two vadose zones with high concentrations. It proposes treating these impacted vadose zone areas until extracted vapor concentrations reach asymptotic levels.

Groundwater Treatment – The Response Plan proposes a one to three year pilot study by injecting to enhance in-situ bioremediation prior to design of the full groundwater treatment system. The pilot study proposes to inject a mixture of organic substrate, ferrous iron, and dechlorinating bacterial cultures (if needed) in a portion of the plume to verify the effectiveness and longevity of the injections along with injection spacing, depths of treatment, and testing injection pressure. These multiple injections will be conducted onsite from approximately 15 to 40 feet deep to promote in-situ bioremediation with enhanced reductive dechlorination. Following the pilot study, additional injections will include the onsite plume and nearby downgradient offsite areas. The objective is to reduce the groundwater contaminant concentrations below levels that may cause vapor intrusion to indoor air.

Institutional Controls – The Response Plan proposes institutional controls requiring the maintenance and operation of the SSDs and prohibit the installation of onsite groundwater supply wells. The SSDs will operate until sub-slab soil vapor concentrations are consistently below the PCE vapor intrusion ESLs for commercial land use of 210 µg/m³. Groundwater use restrictions already exist and will remain in place until groundwater achieves applicable ESLs.

Long Term Monitoring – The Response Plan proposes monitoring groundwater for 10 years to verify the effectiveness of the proposed treatment and to monitor for rebound.

Public Comments Received on the Response Plan

On February 3, 2017, Water Board staff issued a fact sheet inviting public comments on the Response Plan. We received comments from representatives of two nearby properties: Walnut Creek Manor and Hookston Station.³ The commenters urged the Water Board to require GPV to comply with a civil court judgment⁴ and the Order. We disagree. GPV had no role in the site contamination, is not a party to the court judgment, and naming it to the Order is unnecessary

² See Water Board webpage: http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.shtml

³ See GeoTracker webpage: http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL601392782

⁴ See GeoTracker webpage: https://geotracker.waterboards.ca.gov/regulators/deliverable_documents/6379917979/07S0183%20receiver%20Court%20Order%207%2D14%2Epdf

given the CLRRA agreement. Mayhew Center, LLC, and Mr. Dean Dunivan remain the Dischargers to the court judgment and the Order.

The commenters also argued that the Response Plan does not address the full extent of the contamination, since it does not propose work on the WCM property or on the full extent of the offsite groundwater plume. We disagree. The proposed cleanup is expected to remediate both on and off-site contamination to levels that are protective of human health under current and expected future conditions. Further, Mayhew Center, LLC, and Mr. Dean Dunivan are still responsible for compliance with the Order. As an aside, the new owners contend that the CLRRA agreement only requires cleanup of the source property. We disagree with this contention. However, this is a moot point since the Response Plan addresses both onsite and offsite contamination.

Other comments and responses are presented separately in the Response to Comments. Water Board staff requested revisions of the Response Plan based on editorial comments submitted by the commenters; those revisions are reflected in the May 31, 2017, Response Plan.

Response Plan Approval

I find that the Response Plan proposes to conduct appropriate environmental cleanup both at the Site and offsite. I find that the proper completion of the Response Plan will allow existing land uses to continue without unreasonable risk to human health and the environment. I also find that proper completion of the Response Plan constitutes “*appropriate care*,” as required by subdivision (a) of Section 25395.67 of the Health and Safety Code. I hereby approve the Response Plan.

Requirement for Technical Reports

As specified in Exhibit C of the CLRRA agreement, GPV is required to submit the following technical reports over the next year:

- Injection Pilot Test Workplan is due 5 months following Response Plan approval;
- SSD Implementation Report is due 6 months following Response Plan approval and subject to final vapor mitigation measures selection;
- Proposed institutional controls are due concurrent with the SSD implementation Report;
- The soil vapor extraction implementation report is due 6 months following Response Plan approval; and
- Annual O&M Reports are due at the beginning of each year until case closure.

In addition, GPV will submit semi-annual groundwater sampling reports within 60-days of sampling until 2027.

GPV is requested to submit all documents in electronic format to the State Water Resources Control Board’s GeoTracker database. Guidance for electronic information submittal is available at: http://www.waterboards.ca.gov/water_issues/programs/ust/electronic_submittal/. Please note that this includes all analytical data, monitoring well latitudes, longitudes, and elevations, water depths, Site maps, boring logs (PDF format), and complete copies of reports and correspondence including the signed transmittal letters and professional certifications (PDF format). All reports submitted should have the Water Board file number 07S0183 on the first page of the report.

If you have any questions, please contact Mr. Ralph Lambert of my staff at (510) 622-2382 or via e-mail at: RALambert@waterboards.ca.gov.

Sincerely,

Bruce H. Wolfe
Executive Officer

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Appendix B
RESPONSE TO COMMENTS

DR. TERRY F. YOUNG, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

1515 Clay St., Suite 1400, Oakland, CA 94612 | www.waterboards.ca.gov/sanfranciscobay

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

RESPONSE TO COMMENTS

TO: Bruce H. Wolfe
Executive Officer

Date: May 31, 2017
File No. 07S0183 (RAL)

FROM: Ralph A. Lambert
Engineering Geologist

CONCUR: Laurent Meillier
Section Leader
Toxics Cleanup Division

Stephen A. Hill
Division Chief
Toxics Cleanup Division

SUBJECT: **Responses to Comments on the Draft Response Plan for Mayhew Center Site, 3301-3341 Vincent Road, Pleasant Hill, Contra Costa County**

This document provides the Water Board staff's responses to comments received on the *Draft Response Plan* for the Site located at 3301-3341 Vincent Road, Pleasant Hill. On February 3, 2017, we circulated the draft Response Plan and Fact Sheet to interested parties for a minimum 30-day public comment period according to the public participation process under the California Land Reuse and Revitalization Act (CLRRA). The Water Board received comments from the following parties:

Comment Letter No.	Date Received	Commenter
1	3-3-2017	Brian A. Kelly, Esq, on behalf of Walnut Creek Manor (WCM) – includes comments from WCM's technical consultant (Scott Warner of Ramboll Environ)
2	3-8-2017	Brian S. Bjorklund of ERM on behalf of Hookston Station parties

We have grouped the comments by subject, which are listed immediately below. We have annotated the comment letters to show the text that corresponds to each numbered comment.

- Buyer eligibility for CLRRA agreement
- Offsite impacts and remediation
- Pre-agreement communications
- Upgradient access for remedial activities
- Upgradient "reach" of proposed remedial actions
- Applicability of court decision and Water Board order
- Contingent future remediation
- Miscellaneous

Buyer eligibility for CLRRA agreement

1. Comment (WCM): To qualify as a bona fide purchaser (BFP) under CLRRA, the person must have made "all appropriate inquiries" into the previous ownership and uses of the site and must "exercise appropriate care" with respect to the release or threatened release of hazardous

materials at the site. Failing to address a known release and ongoing threats from such releases does not satisfy this mandate. The new owners have failed to make these efforts.

Response: This comment conflates the “all appropriate inquiries” standards with the concepts of “exercising appropriate care” with respect to the release or threatened release of hazardous materials at the Site. The Phase I conducted by the new owners of the Mayhew Center properties, the GP Vincent entities, meets the “all appropriate inquiries” standard. EnviroAssets Phase I Environmental Site Assessment report, dated January 12, 2017, is available on Geotracker. Once implemented, the draft Response Plan work will meet the appropriate care standard required under CLRRRA.

Offsite impacts and remediation

2. Comment (WCM): The Regional Board should require that any approved Response Plan address offsite locations impacted by the Mayhew Center property. At a minimum, the Response Plan must include sampling, analysis and remediation that will protect the seniors' population and the property at WCM.
3. Comment (WCM): The Regional Board may not approve a response plan that fails to comply with statutory requirements. Here, the draft Response Plan fails to include a proper evaluation of whether the release or threatened release poses an unreasonable risk to human health and safety or the environment as defined in Health & Safety Code section 25395.94(b). Further, to comply with statutory requirements, the Regional Board must make a finding that when implemented, the plan will place the site in a condition that allows it to be used for its reasonably anticipated future land use without unreasonable risk to human health and safety and the environment. By failing to address and resolve those known and any continuing impacts from the PCE contamination originating from and migrating beyond the boundary of the Mayhew Center property, the Response Plan is inadequate.
4. Comment (WCM): The draft Response Plan states there is no risk of soil vapor exposure to residents of WCM based upon data from Environ 2015. The Environ 2015 report states that PCE in soil vapor continues to spread to the WCM property and as of that time, the soil vapor concentrations close to a residential building exceeded risk-based levels. Scott Warner submitted a declaration stating that the PCE is spreading and getting worse at WCM. To meet the requirement of all appropriate inquiries and address unreasonable risks, the Response Plan must address contamination that has migrated to WCM and other non-source property.
5. Comment (Hookston): Investigation and remediation of offsite portions of the Mayhew Center plume are necessary and are a requirement of the Order and should be completed by GPV and/or those dischargers named on the Order.
6. Comment (Hookston): These offsite impacts should be fully characterized by GPV and/or those dischargers named on the Order.
7. Comment (Hookston): The Order states that the on-site vertical and horizontal extent of groundwater impacts is not sufficiently defined. Additionally, Tasks 4 and 5 of the Order require an Offsite Remediation Investigation Workplan and Completion of Offsite Remedial Investigation, respectively. The offsite investigation is required to define the vertical and lateral extent of soil, soil vapor, groundwater, and indoor air pollution and any additional on-site investigation work that may be needed should be included with this task.

8. Comment (WCM): Draft Response Plan, Section 4.4, Page 13, Paragraph 1. The report indicates that elevated soil vapor concentrations extend to the west onto the Walnut Creek Manor property, including concentrations exceeding regulatory guidance values for residential properties and beneath two Walnut Creek Manor property buildings. However, the Response Plan does not address the need to mitigate this harm to the WCM property and indicates a discussion and negotiation that did not include WCM owners, with the Water Board that there was no need to remediate the WCM site from Mayhew Center's direct impact. We do not agree with this conclusion and request a correction and explanation from the Water Board with a resultant change to the Response Plan that addresses the impact to WCM property.

Response to comments 2-8: We disagree with the premise that the Response Plan fails to adequately address offsite contamination. Additionally, these comments appear to confuse the issues between the prior owners, Mayhew Center, LLC, and Dean Dunivan (hereafter, the "Dunivan Parties"), and the new owners of the Mayhew Center properties, the GP Vincent entities, which the Regional Water Board determined were bona fide purchasers ("BFP") (hereafter GP Vincent entities are referenced as "BFP"). The new BFP owners of the parcels associated with the "Mayhew Center" are not the same and do not have the same legal obligations as the Dunivan Parties or the prior owners and operators of the businesses that caused or contributed to a release at the Site. As provided by CLRRRA, the Dunivan Parties remain responsible parties to respond to the Regional Water Board's order and WCM's judgment or settlement of \$1.65 million against the Dunivan Parties.

The BFP has not caused or contributed to any release at or in the vicinity of the Site and has voluntarily agreed to undertake identified remediation efforts pursuant to the agreement with the Regional Water Board under CLRRRA. CLRRRA is designed to encourage this very type of voluntary cleanup by parties not responsible for the contamination.

During preparation of the draft Response Plan, a comprehensive review of available data was performed, discussed between Regional Water Board staff and the BFP's consultants in two technical meetings, and summarized in the Response Plan. Regional Water Board staff has concluded that the prior investigations have been sufficient to determine that a response action is necessary.

Based upon available data, Regional Water Board staff has concluded that the WCM site is *upgradient* from the Mayhew Center site. We base this conclusion upon the fact that years of groundwater data from Mayhew Center, and the nearby Hookston Station and Haber Oil sites, all show that groundwater flow is to the northeast. Concentration data in groundwater also shows that flow is to the northeast, and maximum detected PCE in groundwater historically at Mayhew Center was 7,300 µg/L and the maximum to date at WCM was 17 µg/L. Also, WCM installed two wells in 2014 about 25 feet from the joint property line with Mayhew Center. One had no detectable PCE; the other was 0.77 µg/L (Groundwater Investigation Results – July 31, 2015). The Maximum Contaminant Level (MCL) for PCE is 5 µg/L. Based on WCM's own data, groundwater has been defined to below drinking water standards on its property.

The groundwater plume is fairly well defined, especially in the shallowest zone. Groundwater has been sampled from the Mayhew Center, WCM, and Cuff properties at 70 locations/depths. Since the cleanup order, additional groundwater, soil vapor, and indoor air sampling has been performed.

The downgradient and eastern extent of the PCE plume is defined by wells associated with the Haber Oil and Hookston Station wells to below drinking water standards. The western extent of the plume is defined on the WCM property, and the southern extent is defined onsite. Some questions remain about the possibility of another release offsite to the north, but within the plume, and that property owner (Cuff) is required to do an investigation. Some details of the offsite plume interior and deeper zones offsite are not well understood but will be better characterized by the investigation required of Cuff.

The contamination that has migrated to the WCM property is primarily limited to soil vapor and localized beneath an outdoor parking area (carport) and roadway. Although two soil vapor samples collected adjacent to or under a utility room at WCM exceeded the residential Environmental Screening Levels (ESLs) of $240 \mu\text{g}/\text{m}^3$ by one order of magnitude, all five outdoor air and sub-slab samples collected under and adjacent to the closest residential unit were less than residential ESLs. WCM collected three crawl space samples under the closest residential building in 2014. The highest results for PCE was $0.2 \mu\text{g}/\text{m}^3$. The current ESL for residential use for indoor air is $0.48 \mu\text{g}/\text{m}^3$ (Soil Vapor Investigation Results, April 24, 2015, Figure 3). Since that sampling, WCM has installed a passive soil vapor venting system. Soil and groundwater impacts extend in a small area out about 15 to 20 feet from the property line and under the carport. Given the low concentrations of PCE in groundwater, staff concludes that the presence of PCE in soil vapor is caused by passive migration of soil vapor from the source area at Mayhew Center.

Regional Water Board staff disagrees with WCM's allegations that the PCE is spreading and getting worse on its property, based on WCM's own data. WCM compared vapor samples it collected in 2014 with other samples collected in 2008. However, the sampling methods and sample depths were not the same and in both instances results are reported as mass, not concentrations. Indeed, the 2008 report describes the results as "semi-quantitation" and says that "a perfect comparison between matrix data (their data) and soil gas levels can rarely be achieved." The 2008 GoreSorber™ data is used for screening purposes. The WCM data was collected using the Waterloo Membrane™ sampler at about 2 feet deeper than the 2008 data and is also a screening method. The WCM Figure 2 (Environ 2015), used to show an increased plume, is not supported by WCM's data. For example on Figure 2, the large shaded area to the south (on Mayhew Center property) purportedly showing an "expanded area of PCE vapor impacts" does not include any 2014 sample data but does include 2008 data (G33) at $218.88 \mu\text{g}$. The northwest extension of the shaded area (around sample locations G10, G19, G20, G27, G39) also includes no 2014 data. No data was collected from the nearest sample location ENV-PSV-2 shown in this area. The western area that purportedly shows extension of the PCE soil gas plume contains no data from either 2008 or 2014. We cannot conclude that data from 2014 sample ENV-PSV-5 ($1,400 \mu\text{g}$) is greater than the nearest 2008 sample G24 ($>319 \mu\text{g}$). The same for sample pair ENV-PSV-4 and G25 ($2,000 \mu\text{g}$ vs $>331 \mu\text{g}$).

The Response Plan incorporates response actions that will both reduce the ongoing harm and threat of future harm to WCM from the chemicals founds on Mayhew Center and allow the current Mayhew Center impacts to WCM to improve over time and remediate offsite portions of the Mayhew Center plume. These elements include aggressive source area remediation with soil vapor extraction (SVE) and in-situ bioremediation and distal plume remediation with in-situ bioremediation. As the WCM property is located upgradient of the Mayhew Center property, the driver of impact to the WCM property is diffusion. The proposed SVE system will create a pressure gradient within the shallow low-permeability soils immediately upon startup that is designed to mitigate and reverse migration of soil vapor from the shallow soil source areas and

remove and reverse the concentration based drivers of diffusion. Subsequent in-situ bioremediation is designed to enhance dissolution and/or desorption of residual contaminant mass and drive biological degradation of residual solvent mass to non-chlorinated, nontoxic end products. Injections across the Mayhew Center and within the distal plume located north and northeast of the Mayhew Center will drive biological degradation throughout the Site plume and offsite of the Mayhew Center. Addressing a source area removes its potential to drive contamination upgradient, or for that matter downgradient, from the source area. In addition, the work will provide and facilitate remediation of the contamination in a reasonable timeframe. Staff has determined that once the proposed work has been implemented by the BFP, it will be protective of human health under current land uses. Table 1 of the Response Plan lists Environmental Screening Levels (ESLs)⁵ that are applicable to the property and current uses.

In negotiating the CLRRRA agreement, the BFP took the position that no offsite remediation is required by CLRRRA. We disagree, but resolution of that issue is not necessary for approval of the Response Plan. What is important is that the BFP has agreed to the Regional Water Board staff's request that the draft Response Plan should reasonably address offsite risk and should facilitate the reasonable cleanup of the groundwater. Overall, staff supports the proposed remedy and cleanup levels proposed in the Response Plan. Staff asked the BFP to remove or edit the following statements in the final Response Plan to avoid any confusion:

- On page ii, staff suggested replacing the statement “However, during the meeting on November 16, 2016, the Water Board clarified it would not seek to have GPV contribute to the investigation and remediation of these offsite plumes.” We suggest replacing the above sentence with, “The Water Board staff engaged in consultative services with GPV and discussed the scope of the Response Plan as contemplated by CLRRRA.”
- On page ii, staff suggests revising as follows: “the Water Board has indicated it will not ~~attempt to require~~ GVP to ~~remediate~~ access the Walnut Creek Manor Property for purposes of remediation.” Due to historical site access issues, Board staff agreed that attempting to gain cooperation and site access from WCM was not a wise use of resources. Staff anticipates that SVE and groundwater treatment on the Mayhew Center property will effectively address the remaining soil vapor contamination at the WCM property.
- On page iii, we suggested clarifying “in response to consultative discussions with the Water Board, a line of injections is proposed on the Cuff property and a line of injections east of the Cuff property.” As discussed above, Board staff agrees with the proposed injections and expects that these injections will reduce levels of PCE below the ESLs for groundwater to indoor air.
- We also suggested adding a sentence on page 15 to clarify that the ESLs are cleanup goals.

The Response Plan has been modified to address the above items.

Pre-agreement communications

9. Comment (WCM): The Regional Board should produce all written documents relating in any way to the referenced communications or agreements between the Regional Board and the new owners of the Mayhew Center property. For example, there are numerous references to a November 16, 2016 meeting with the ‘Water Board’ where the Board purportedly agreed to limit the new owners' obligations to address the environmental harm to WCM property. Such

⁵ See Regional Water Board webpage: http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.shtml

agreement not only violates the property rights of WCM, it also is inconsistent with the requirements of CLRRA and the Regional Board's obligations. Please make available immediately any such agreement and related documents.

10. Comment (WCM): Draft Response Plan, Executive Summary, Page ii, Paragraph 1. This paragraph incorrectly reports that no vapor threat to buildings on the WCM site has occurred. In fact, vapor has migrated on to the WCM site from Mayhew Center and WCM responsibly performed site protection activities that were only necessary because of the persistent and ongoing harm caused by the inaction by Mayhew Center in failing to perform the ordered clean up. We do not understand the statement that the "Water Board has indicated it will not attempt to require GVP to remediate the Walnut Creek Manor Property as WCM has received no direct communication from the Water Board on such decision and we have seen no public notes indicating such action by the Water Board. This paragraph points to a "meeting between GPV and the Water Board on November 16, 2016" where some agreements were made, but we do not find any public record in the Water Board's Geotracker website. If any agreements have been made, please provide for our review and comment.

Response to comments 9-10: Regional Water Board staff completed a review and production of responsive files in response to the request for documents on March 24, 2017.

No written agreements were made at the November 16, 2016 meeting. As contemplated by CLRRA, consultative services were provided to the BFP in order to allow it to discuss status of the Site, Regional Water Board staff's current understanding of the Site, and possible remediation efforts to be undertaken. As provided in CLRRA, the purpose of these consultative services prior to the CLRRA agreement being executed and prior to the Response Plan being prepared, is to provide the BFP an opportunity to determine the costs associated with the Site prior to purchase of the Site. There is nothing in CLRRA that requires public participation prior to entering into the CLRRA agreement and preparing the draft Response Plan. Discussions related to Walnut Creek Manor and other offsite areas were necessary as part of the CLRRA process. As discussed above, in negotiating the CLRRA agreement, the BFP took the position that no offsite remediation is required by CLRRA. Despite this position, the BFP ultimately has agreed to the Regional Water Board staff's request that the draft Response Plan address current offsite risks and to facilitate the reasonable cleanup of the groundwater. As described above, execution of the Response Plan will result in reduction of the groundwater plume, PCE concentrations remaining in soil, and PCE concentrations remaining in soil vapor.

Upgradient access for remedial activities

11. Comment (WCM): Draft Response Plan, Section 5.2, Page 16. This section on the "*Source Area Soil Vapor Extraction*" states that prior attempts to excavate these areas [i.e., areas on WCM impacted by PCE from Mayhew Center] were stymied by difficulties negotiating with the Walnut Creek Manor and excavating beneath existing structures and in proximity to an access road. Not only is this statement inaccurate, it does not and cannot change the need for the Mayhew Center property owners to address the ongoing contamination impacts to the WCM Property. To the extent this statement is necessary in the response plan, we request that this language be corrected to accurately reflect that the excavation plan developed by WEST on behalf of Mayhew Center did not address WCM's need to protect the property from design flaws in the excavation plan and despite agreement with the contractors on a reasonable solution, the prior owners of Mayhew Center refused to allow the contractors to meet WCM's needs for protecting its property and assets.

Response (WCM): Comment noted. The statement accurately reflects Regional Water Board staff's assessment of the situation. Some equipment was onsite and ready to conduct excavation on the WCM property, but WCM denied access in late 2012, reportedly because of a dispute regarding replacement of hundreds of feet of a carport structure. The result of denying access was that the Dunivan Parties were unable to complete remediation required by a Court-ordered deadline. Upon failure to meet that deadline, the Court gave to WCM the remaining money that the Dunivan Parties had placed into an escrow account (to be used for remedial efforts at WCM) and additional monies lost through a contempt of court judgement for failure to cleanup at WCM. In July and August 2014, WCM sent letters to Mayhew Center LLC's new consultant, informing him that he did not have access to perform any work at WCM. Board staff is aware that WCM has installed a passive soil vapor venting system by installing perforated piping that is vented to the surface near the carport area. Board staff is unaware of any steps taken by WCM to remediate the contamination on the WCM property. As discussed above, execution of the proposed Response Plan will result in source control and plume reduction. See also Response 2-8.

Upgradient "reach" of proposed remedial actions

12. Comment (WCM): Draft Response Plan, Section 5.2, Page 17. The report correctly notes that, with regard to the SOMA vapor extraction pilot test in 2013, the observed zone of influence from the vapor extraction was not definable because the pressure gradient was extremely limited in range. The response plan also notes that SOMA, because it could not detect an extended range of influence, suggests that a 10 to 12 foot capture zone per vapor extraction well would be reasonable. It appears that this response plan, with its design of extraction wells on 20-foot centers assumes that the 10 foot radius of influence suggested by SOMA is reasonable. We do not agree with this rationale, but request that substantial monitoring and testing is performed so that adjustments to the remedy design can be made if warranted.
13. Comment (WCM): Draft Response Plan, Section 5.3, Page 18. We acknowledge that in situ bioremediation can be an effective remedy if designed appropriately for site specific conditions and objectives. The approach in the response plan does not address impact to shallow groundwater that may exist higher than 20 feet depth, nor does it affect any groundwater beneath the WCM property. There also are no water quality goals or objectives associated with how to evaluate the success of the proposed approach. We request that a more detailed design of the pilot test be developed and provided for review.

Response to comments 12-13: Comments noted. The Response Plan Section 5.2 provides specific rationale for spacing of soil vapor extraction points based upon observed subsurface stratigraphy and professional judgment in similar subsurface conditions as follows: while SOMA was unable to define a zone of influence ("ZOI") for soil vapor extraction during its pilot testing in 2013, its estimate of 10-12 feet is reasonable given the observations of the relatively fine shallow subsurface, with the expectation that extended extraction will produce a pressure gradient that will extend the ZOI of the system. Additionally, the draft Response Plan provides that an implementation plan will be prepared with specific injectate mixtures and dosing design following pilot testing. Based on the pilot test, the implementation plan may propose changes to the targeted treatment depths and spacing. Based on groundwater results, a second round of source area injections will be conducted should VOCs rebound above commercial or industrial VI deep groundwater – fine-coarse ESLs in the source areas and persist for at least twelve months and other monitoring parameters (ORP, sulfate, and dissolved gas) indicate that subsurface conditions are no longer anaerobic (as evidenced by positive ORP, elevated sulfate concentrations, and no

ethane/ethene gas formation), a re-injection of ERD substrate will be completed in the source areas with demonstrated elevated concentrations.

Furthermore, SVE and diffusion of in-situ bioremediation injectate across the shallow water column should address impacts to shallow groundwater that may exist higher than 20 feet deep, and the Response Plan has been modified to state that injections will take place from about 15 to 40 feet in depth. Removal of concentrations in the source area will remove diffusion as the driving force that could impact upgradient WCM groundwater and will facilitate natural processes including advection that will remediate WCM groundwater in absence of a driving source of contamination. Based on sampling at WCM, groundwater containing PCE above drinking water standards only extends about 15 to 20 feet under the WCM property in an area of covered parking.

Additionally, the draft Response Plan provides a variety of water quality goals and objectives to evaluate the success of the proposed approach, including pilot testing and mid-term (Commercial or industrial VI deep groundwater – fine-coarse ESLs) and long term (drinking water) goals. (See Section 4.6 and Table 1.)

Applicability of court decision and Water Board order

14. Comment (WCM): Consistent with the Federal Court Judgment and jury verdict, the Regional Board found that Mayhew Center was the release location and remains a continuing source of PCE to soil and groundwater. Rather than providing a plan to address this impact, the Phase I and the draft Response Plan wrongly imply that a monetary payment to WCM following a contempt order against the prior owners of Mayhew Center somehow shields the new owners from addressing and resolving the full impact of the environmental harm resulting from the contamination at the Mayhew Center property. It does not. To the contrary, the monetary payment was the direct consequence Mayhew Center owners' contempt citation for failing to perform the required remediation in a timely fashion. This contempt citation did not alter the jury verdict, federal trial court rulings or the Regional Board's finding that the Mayhew Center property is the source of the PCE contamination present at the WCM.
15. Comment (WCM): Draft Response Plan, Section 2.6, Page 5, Paragraph 1. The 2009 Civil Judgment requiring Mayhew Center and its managing member to remediate WCM property to residential standards does not allow any new owners of the property to ignore ongoing contamination migrating from the Mayhew Center property to the WCM property. WCM did install a vapor protection system in 2015 with the intent of providing a barrier to Mayhew Center's vapor and to protect WCMs property and occupants. The system is not a vapor remediation system nor does it alter the need for the Mayhew Center owners to properly address the ongoing migration of contaminants from the Mayhew Center property. We request that the Response Plan be corrected to reflect the factual record of this condition.

Response to comments 14-15: Regional Water Board Order No. R2-2013-0040 only applies to the Dunivan Parties. The new owners of the properties are not subject to the Order or the judgments obtained against the Dunivan Parties. Further, the Regional Water Board is not involved in the litigation concerning the Dunivan Parties. However, as discussed in Response 2-8, the Response Plan will address potential “ongoing migration of contaminants from the Mayhew Center property” and “reduce the ongoing harm and threat of future harm to WCM from the chemicals found on Mayhew Center, and allow the current Mayhew Center impacts to WCM to improve over time.”

Contingent future remediation

16. Comment (WCM): Before a response plan can be approved, it must include provisions for the agency to require further response actions based on the discovery of hazardous materials that pose an unreasonable risk to human health and safety or the environment that are discovered during the course of the response action or subsequent development of the site. Such a requirement is needed precisely to assure that all necessary action is performed. However, the draft Response Plan fails to include these provisions, and implies that the new owners need not address the harm caused beyond its boundaries. The Response Plan must assure that any and all harm caused beyond the Mayhew Center boundary is the subject of further response actions.

Response: See Responses 2-8 and 14-15 concerning offsite cleanup. A provision related to the discovery of hazardous material that pose an unreasonable risk to human health and safety or the environment that are discovered during the course of the response action or subsequent development of the Site has been added as Section 5.8 of the final Response Plan.

Miscellaneous

17. Comment (Hookston): Responsibility for sampling MW-21A and MW-21B, which are located approximately 100 feet northeast and downgradient of MW-20A/MW-20B, should rest with GPV and/or those dischargers named on the Order, as outlined in the Self-Monitoring Program for the Mayhew Center site in the Order.

Response: Comment noted. The BFP entities are not named in the Order and do not have any legal obligations under that Order. The dischargers named in the Order are responsible for sampling those monitoring wells. Additionally, during negotiation of the CLRRA agreement, the BFP agreed to monitor offsite wells MW-20A and MW-20B in response to a direct request by Regional Water Board staff to enhance data gathering at the Site and near-Site areas. This concession, along with other offsite actions incorporated in the Response Plan, reflects the BFP entities' existing commitment to work with the Regional Water Board. Furthermore, all sample results from wells MW-21A and MW-21B collected since January 2009 have been below the applicable ESL for the groundwater to indoor air exposure pathway. Indoor air exposure is the only current potential exposure pathway in the immediate area.

18. Comment (WCM): Draft Response Plan, Executive Summary, Page I, Paragraph 2. The report states that several downgradient properties (i.e., Hookston Station and Pitcock Petroleum/Haber Oil sites) and the adjacent Cuff property have been impacted by the release of PCE from Mayhew Center. However, no mention is made that the adjacent WCM property has been impacted and harmed by Mayhew Center's release of PCE. We request that this paragraph be modified to include this factual information.

Response: Comment noted. The final response plan section referenced in this comment has been revised to reflect this comment.

19. Comment (WCM): Draft Response Plan, Section 2.3, Page 3, Paragraph 1. This section claims that the depth of groundwater generally is encountered at about 20 feet below ground surface. This section should be corrected to reflect that groundwater levels are historically higher and have been detected in the 13 to 19 foot level over the course of several investigations, including the WEST

study of 2012 (see Draft Response Plan Section 3.5, Page 9) that notes the higher groundwater occurrence.

Response: Comment noted. The final response plan has been revised to say that groundwater has been found as shallow as 13 feet.

20. Comment (WCM): Draft Response Plan, Section 2.5, Page 4, Paragraph 1. The report notes that the highest concentration of PCE detected beneath the Mayhew Center site is 11 milligrams per kilogram (mg/kg); however, the actual highest reported concentration is 14 mg/kg at a location along the planter strip boundary with WCM as indicated in the 2008 AMEC Geomatrix site characterization report.

Response: Comment noted. The text referred to in this comment is a direct quote from a Regional Water Board letter and therefore will remain for its relevance in the regulatory history narrative. We acknowledge that the highest reported concentration is 14 mg/kg from location CS-4 on the Mayhew Center property and over 10 feet from the property line. The 11 mg/kg was collected from MC-7 on the Mayhew Center property but near the property line with WCM.

21. Comment (WCM): Draft Response Plan, Section 4.1, Page 11. The Draft Response Plan provides a revised conceptual model and fate and transport discussion that appears to indicate the presence of a dense non-aqueous phase liquid (DNAPL) which essentially indicates that PCE occurs as a pure product on the Mayhew Center site. Yet the Water Board Fact Sheet and this Draft Response Plan do not appear to directly focus on a necessity to mitigate or remediate the presence of DNAPL at the Mayhew Center site (or adjacent sites where DNAPL may have migrated). The response plan should clarify the intent of such description and if there is a suspicion that DNAPL is present, should provide an indication that its recommended remedial methods will address this condition.

Response 10: Comment noted. The comment refers to text provided in the section entitled “Generalized Fate and Transport Discussion”, which provides a non-site-specific discussion of fate and transport phenomena for the benefit of the reader. Further discussion of DNAPL in the site-specific Section 4.2 expressly concludes that “there is limited mass of PCE as DNAPL, and that if it remains on Site, it exists as residual ganglia rather than a continuous pool.” We note that SVE is a proven physical method of source-zone remediation, including where residual DNAPL may exist, and particularly when combined with subsequent in-situ bioremediation of dissolved phase contamination as provided for in the Response Plan.

22. Comment (WCM): Draft Response Plan, Section 7.0, Page 22. The Conclusion section of this report should be modified to reflect any changes made to this document based on responding to the comments provided herein.

Response: Comment noted. The Conclusion section will be changed to reflect any other changes made to the Draft Response Plan.

Appendix C

COMMENTS RECEIVED

NEW YORK
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OF DUANE MORRIS

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ALLIANCE WITH
MIRANDA & ESTAVILLO

March 3, 2017

VIA EMAIL AND FEDERAL EXPRESS

Ralph Lambert PG CHg
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland CA 94612

Re: **Comments to Response Plan, Mayhew Center, Vincent Road and Mayhew Way, Pleasant Hill, February 2017**

Dear Mr. Lambert:

This office represents Walnut Creek Manor (“WCM”). We have reviewed the Regional Board’s *Invitation to Comment/Planned Soil and Groundwater Cleanup Actions Mayhew Center, Vincent Road and Mayhew Way, Pleasant Hill* February 2017 (the “Fact Sheet”) and submit the following comments to the Draft Site Assessment Report and Response Plan (the “Response Plan”).

WCM is encouraged that after many years of inactivity and delay, a Response Plan is being presented to address the contamination impacts at the Mayhew Center (“MC”) property. However, WCM is troubled that the Response Plan does not provide a proposal to test, remediate or monitor the existing and ongoing PCE impacts to the WCM property from the MC contamination. In this sense, the Response Plan is not protective of, and fails to address, the risk to human health and safety and the environment, as is statutorily required by the California Land Reuse and Revitalization Act (“CLRRRA”). To address this shortcoming and to avoid potential future disputes, WCM requests that the Regional Board require that any approved Response Plan address offsite locations impacted by the MC property. At a minimum, the Response Plan must include sampling, analysis and remediation that will protect the seniors’ population and the property at WCM.

RTC #2

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9 At the outset, WCM requests that the Regional Board produce all written documents relating in any way to the referenced communications or agreements between the Regional Board and the new owners of the MC property. For example, there are numerous references to a November 16, 2016 meeting with the “Water Board” where the Board purportedly agreed to limit the new owners’ obligations to address the environmental harm to WCM property. Such agreement not only violates the property rights of WCM, it also is inconsistent with the requirements of CLRRA and the Regional Board’s obligations. Please make available immediately any such agreement and related documents. WCM reserves all rights to bring appropriate actions in response.

Concerning the draft Response Plan, WCM provides the following, non-exhaustive concerns and comments. In addition, WCM’s consultants at Ramboll Environ will provide further technical comments to the Response Plan, which are incorporated in these comments.

A. The Draft Response Plan Fails to Address Existing and Continuing Impacts to the WCM Property Caused by the MC PCE Source.

3 The Regional Board may not approve a response plan that fails to comply with statutory requirements. Here, the draft Response Plan fails to include a proper evaluation of “whether the release or threatened release poses an unreasonable risk to public health and safety or the environment.” Cal. Health & Safety Code § 25395.94(b). Further, to comply with statutory requirements, the Regional Board must make a finding that, “[w]hen implemented, the plan will place the site in a condition that allows it to be used for its reasonably anticipated future land use without unreasonable risk to human health and safety and the environment.” Cal. Health & Safety Code § 25395.96(b)(2). By failing to address and resolve those known and any continuing impacts from the PCE contamination originating from and migrating beyond the boundary of the MC property, the Response Plan is inadequate.

4 For example, the draft Response Plan states that there is no risk or threat of soil vapor exposure to residents of WCM, ostensibly because “data presented in Environ 2015 did not identify a current indoor air exposure” at WCM. (See, Response Plan, p. 15). Citing this 2015 Environ report, the Response Plan states that “samples collected in 2015 (sic) on the Walnut Creek Manor do not show a current threat to residential indoor air quality from the soil vapor plume.” See Response Plan, p. 13; Phase I, Section 4.3.2, p. 13 (samples were collected in 2014). This ignores that elevated PCE soil vapor readings were detected immediately adjacent to residential buildings at WCM and that the 2015 Environ report confirms “that PCE in soil vapor continues to spread from the MC property to the WCM property.” As a result, even more than 2 years ago, “the soil vapor concentrations of PCE are greater than California risk-based levels in certain areas close to a residential building at WCM.” See Environ, Soil Vapor Investigation Results for Walnut Creek Manor, April 24, 2015, p. 1.¹ In fact, Scott Warner, the consultant

¹Available online at:

https://geotracker.waterboards.ca.gov/regulators/deliverable_documents/2137959361/07S0183%20WCM%20Soil%20Vapor%20Investigation_4-24-15.pdf

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involved on this study, provided a declaration confirming that the PCE is spreading and getting worse at WCM.² Given that nothing has happened to reduce the source PCE from the MC property, it is simply not possible to assess the current risks. Thus, to meet the requirement of all appropriate inquiries and to address unreasonable risks, the Response Plan must address the contamination that has migrated to WCM and any other non-source property.

14 Consistent with the Federal Court Judgment and jury verdict, the Regional Board also made a finding of fact that the “Mayhew Center was the release location and remains a continuing source of PCE to soil and groundwater.” (Order No. R2-2013-0040 Adoption of Site Cleanup Requirements for: Mayhew Center, LLC, and Dean Dunivan, December 11, 2013, P. 4, para. 2.) Furthermore, the Regional Board acknowledged that the MC source has impacted the WCM property:

The area of impacted soil, having concentrations high enough to act as a *continuing source* (referred to as a secondary source), has been sufficiently delineated and is located along the common property boundary with Walnut Creek Manor. This impacted area extends approximately 50 feet along the common property line between building II at Mayhew Center and Walnut Creek Manor, and about *15 to 20 feet from both sides* of the property line. (Id.)

Rather than providing a plan to address this impact, the Phase I and the draft Response Plan wrongly imply that a monetary payment to WCM following a contempt order against the prior owners of MC somehow shields the new owners from addressing and resolving the full impact of the environmental harm resulting from the contamination at the MC property. It does not. To the contrary, the monetary payment was the direct consequence MC owners’ contempt citation for failing to perform the required remediation in a timely fashion. This contempt citation did not alter the jury verdict, federal trial court rulings or the Regional Board’s finding that the MC property is the source of the PCE contamination present at the WCM. That WCM has voluntarily undertaken responsible efforts to reduce potential future migration of contaminants from the MC property to the WCM property does not alter this fact. Nor does WCM’s good faith efforts to protect itself and its tenants reduce, let alone eliminate, the obligation of the new MC owners to investigate and address the past harms and future risks resulting from the contaminated conditions at the MC property.

Because the draft Response Plan addresses only part of the harm caused by the release at the MC property, WCM requests that it not be approved in its current form.

² See Scott Warner Declaration at https://geotracker.waterboards.ca.gov/regulators/deliverable_documents/8629363834/Warner%20Dec%20and%20POS.pdf

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March 3, 2017
Page 4

B. The Draft Response Plan Does Not Include Mandatory Provisions Relating to Potential Future Response Actions.

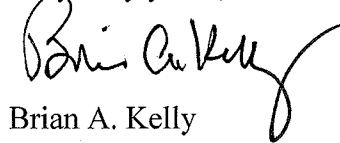
16 Before a response plan can be approved, it must include “[p]rovisions for the agency to require further response actions based on the discovery of hazardous materials that pose an unreasonable risk to human health and safety or the environment that are discovered during the course of the response action or subsequent development of the site.” Cal. Health & Safety Code § 25395.96(a)(8). Such a requirement is needed precisely to assure that all necessary action is performed. However, the draft Response Plan fails to include these provisions, and implies that the new owners need not address the harm caused beyond its boundaries. It is critical—and required for approval—that the Response Plan assure that any and all harm caused beyond the MC boundary is the subject of further response actions. See, also, Cal. Health & Safety Code § 25395.94(b) (“The agency shall evaluate the adequacy of the site assessment plan to ensure that it contains all necessary information.”).

C. Prospective Buyer Has Failed to Take All Appropriate Inquiries with Respect to the Impacts to Adjoining Properties.

1 To qualify as a bona fide purchaser under the CLRAA, the person must have, among other requirements, “made all appropriate inquiries into the previous ownership and uses of the site” and must “exercise[] appropriate care with respect to the release or threatened release of hazardous materials at the site.” Cal. Health & Safety Code § 25395.80(a), (b). Failing to address a known release and ongoing threats from such releases does not satisfy this mandate. For this and the reasons set forth herein, WCM submits that the new owners have failed to make these efforts.

WCM continues to request that it be included in future discussions regarding the contamination from the MC property, which continues to cause harm to WCM.

Very truly yours,



Brian A. Kelly

cc: Milt Eberle (*via electronic mail*)
Scott Warner (*via electronic mail*)

Mr. Ralph Lambert, P.G.
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, 15th Floor
Oakland, California 94612
VIA ELECTRONIC MAIL

**TECHNICAL COMMENTS
DRAFT SITE ASSESSMENT REPORT AND RESPONSE PLAN
SOIL AND GROUNDWATER CLEAN UP ACTIVITIES FACT SHEET
MAYHEW CENTER, PLEASANT HILL, CALIFORNIA**

Dear Ralph:

Ramboll Environ US Corporation ("Ramboll Environ"), on behalf of Walnut Creek Manor ("WCM"), has reviewed two documents (and associated historical documents and information) recently posted by the San Francisco Bay Regional Water Quality Control Board ("Water Board") related to the draft clean up response plan submitted for the Mayhew Center (MC) site, located at 3301-3341 Vincent Road, Pleasant Hill California. Numerous investigations and a Federal Court judgement confirms that the MC property is the source of the release of tetrachloroethylene ("PCE") into the subsurface with direct impact to adjacent properties including WCM. The two primary documents reviewed are:

- "Draft Site Assessment Report and Response Plan, Mayhew Center, 3301-3341 Vincent Road, Pleasant Hill, California," Global ID: SL060134185, Case 07S0183, Prepared by EnviroAssets, Inc., Oakland, California, on behalf of GP Vincent I, LLC, GP Vincent II, LLC, and GP Vincent III, LLC., Dated January 31, 2017 ("Draft Response Plan").
- "Fact Sheet, Invitation to Comment, Planned Soil and Groundwater Cleanup Activities, Mayhew Center, Vincent Road and Mayhew Way, Pleasant Hill, California, February 2017 ("Fact Sheet").

The Fact Sheet specifically invites comments on the Draft Response Plan. Therefore, the comments provided herein are focused primarily on the plan although a few comments on the Fact Sheet content also are provided.

Overall, on behalf of WCM, we support the implementation of actions to remedy the contamination at and emanating from MC site and improve its economic value and utility in the community. However, the response plan also should include activities and provisions that reduce the ongoing harm and threat of future harm to WCM from the chemicals found on MC, and allow

Date March 3, 2017

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the current MC impacts to WCM to improve over time. Although the response plan identifies WCM as a property that has been impacted by the release of contaminants from MC, the plan does not specify the need to remedy or protect WCM from further impact. We request that the plan be modified accordingly.

The following are specific comments to the Fact Sheet and the Response Plan.

1. Fact Sheet Comment 1 – Page 1, Paragraph 3. The Water Board notes that cleanup was required by the Water Board in a 2013 order and that cleanup has not been completed to date “for various reasons.” We would like to clarify that several requests for cleanup and action at MC have been required of MC for well over a decade with little if any action from MC or its stakeholders. No cleanup has ever been performed and the limited “pilot testing” of some alternatives such as multi-phase extraction (“MPE”) were not completed nor ever were designed to remedy MC’s chemical impact to adjacent properties including those upgradient (i.e., WCM) or downgradient (i.e., Hookston Station).
2. Fact Sheet Comment 2 – Page 1, Paragraph 6. The Fact Sheet states that “Nobody is being exposed to impacted soil or groundwater at the [MC] Site or vicinity because the [MC] Site is paved and nobody is using the shallow groundwater.” We would like to clarify that the planter strip on the western edge of the MC Site, is a source zone and is unpaved. Furthermore, we are unaware of any specific health risk assessment performed by MC or the Water Board on potential risks from MC site to neighboring sites even though the Water Board acknowledged that “...there is a potential threat of PCE migrating into indoor air in some buildings at or near the [MC] Site.”
3. Fact Sheet Comment 3 – Pages 1, Paragraph 8. While we acknowledge the indication that MC will conduct several cleanup actions, we note that plan does not include cleanup actions to address the impact from the MC property to those adjacent properties, and specifically WCM, where numerous investigations, a Federal Court judgement, the Water Board, and the Draft Response Plan indicates that WCM has been impacted by MC’s release of chemicals into the subsurface. Reiterating our general comment, we request that the response plan specifically include activities and provisions that protect WCM from existing and further harm and allows the current MC impact to WCM to lessen over time.
4. Fact Sheet Comment 4 – Page 2, Paragraph 1. We agree that vapor extraction is an appropriate removal method for PCE in soil, however, there is no indication that the vapor extraction system as conceptually designed and discussed by the Draft Response Plan is intended to remedy vapor that has migrated to WCM. We therefore request that the plan be modified to include an objective that the MC chemicals impacting WCM are appropriately addressed.
5. Fact Sheet Comment 5 – Page 2, Paragraph 2. We acknowledge that “bioremediation” can be an effective remedy for dissolved chlorinated compounds, such as PCE, in groundwater. However, there is no indication that this remedial approach will in anyway reduce any mass of PCE that has migrated on to and beneath the WCM site adjacent to a primary MC source area.

The following comments are specific to the Draft Response Plan.

- RTC 18**
6. Draft Response Plan, Executive Summary, Page I, Paragraph 2. The report identifies that several downgradient properties (i.e., Hookston Station and Pitcock Petroleum/Haber Oil sites) and the adjacent Cuff property have been impacted by the release of PCE from MC. However, no mention is made that the adjacent WCM property has been impacted and harmed by MC’s release of PCE. We request that this paragraph be modified to include this factual information.

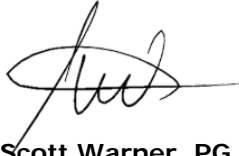
- 10 7. Draft Response Plan, Executive Summary, Page ii, Paragraph 1. This paragraph incorrectly reports that no vapor threat to buildings on the WCM site has occurred. In fact, vapor has migrated on to the WCM site from MC and WCM responsibly performed site protection activities that were only necessary because of the persistent and ongoing harm caused by the inaction by MC in failing to perform the ordered clean up. We do not understand the statement that the “Water Board has indicated it will not attempt to require GVP to remediate the Walnut Creek Manor Property as WCM has received no direct communication from the Water Board on such decision and we have seen no public notes indicating such action by the Water Board. This paragraph points to a “meeting between GPV and the Water Board on November 16, 2016” where some agreements were made, but we do not find any public record in the Water Board’s Geotracker website. If any agreements have been made, please provide for our review and comment.
- 19 8. Draft Response Plan, Section 2.3, Page 3, Paragraph 1. This section claims that the depth of groundwater generally is encountered at about 20 feet below ground surface. This section should be corrected to reflect that groundwater levels are historically higher and have been detected in the 13 to 19 foot level over the course of several investigations, including the WEST study of 2012 (see Draft Response Plan Section 3.5, Page 9) that notes the higher groundwater occurrence.
- 20 9. Draft Response Plan, Section 2.5, Page 4, Paragraph 1. The report notes that the highest concentration of PCE detected beneath the MC site is 11 milligrams per kilogram (mg/Kg); however, the actual highest reported concentration is 14 mg/kg at a location along the planter strip boundary with WCM as indicated in the 2008 AMEC Geomatrix site characterization report.
- 15 10. Draft Response Plan, Section 2.6, Page 5, Paragraph 1. The 2009 Civil Judgment “requiring MC and its managing member to remediate WCM property to residential standards” does not allow any new owners of the property to ignore ongoing contamination migrating from the MC property to the WCM property. WCM did install a vapor protection system in 2015 with the intent of providing a barrier to MC’s vapor and to protect WCMs property and occupants. The system is not a vapor remediation system nor does it alter the need for the MC owners to properly address the ongoing migration of contaminants from the MC property. We request that the Response Plan be corrected to reflect the factual record of this condition
- 21 11. Draft Response Plan, Section 4.1, Page 11. The Draft Response Plan provides a revised conceptual model and fate and transport discussion that appears to indicate the presence of a dense non aqueous phase liquid (DNAPL) which essentially indicates that PCE occurs as a pure product on the MC site. Yet the Water Board Fact Sheet and this Draft Response Plan do not appear to directly focus on a necessity to mitigate or remediation the presence of DNAPL at the MC site (or adjacent sites where DNAPL may have migrated). The response plan should clarify the intent of such description and if there is a suspicion that DNAPL is present, should provide an indication that its recommended remedial methods will address this condition.
- 8 12. Draft Response Plan, Section 4.4, Page 13, Paragraph 1. The report indicates that “elevated soil vapor concentrations extend to the west onto the Walnut Creek Manor property, including concentrations exceeding regulatory guidance values for residential properties...and beneath two Walnut Creek Manor property buildings.” However, the response plan does not address a need to mitigate this harm to the WCM property and indicates a discussion and negotiation that did not include WCM owners, with the Water Board that there was no need to remediation the WCM site from MC’s direct impact. We do not agree with this conclusion and request a correction and explanation from the Water Board with a resultant change to the response plan that addresses the impact to WCM property.

- 11 13. Draft Response Plan, Section 5.2, Page 16. This section on the "Source Area Soil Vapor Extraction" states that "prior attempts to excavate these areas [i.e., areas on WCM impacted by PCE from MC] were "stymied by difficulties negotiating with the Walnut Creek Manor and excavating beneath existing structures and in proximity to an access road." Not only is this statement inaccurate, it does not and cannot change the need for the MC property owners to address the ongoing contamination impacts to the WCM Property. To the extent this statement is necessary in the response plan, we request that this language be corrected to accurately reflect that the excavation plan developed by WEST on behalf of MC did not address WCM's need to protect the property from design flaws in the excavation plan and despite agreement with the contractors on a reasonable solution, the prior owners of MC refused to allow the contractors to meet WCM's needs for protecting its property and assets.
- 12 14. Draft Response Plan, Section 5.2, Page 17. The report correctly notes that, with regard to the SOMA vapor extraction pilot test in 2013, the observed zone of influence from the vapor extraction was not definable because the pressure gradient was extremely limited in range. The response plan also notes that SOMA, because it could not detect an extended range of influence, suggests that a 10 to 12 foot capture zone per vapor extraction well would be reasonable. It appears that this response plan, with its design of extraction wells on 20-foot centers assumes that the 10 foot radius of influence suggested by SOMA is reasonable. We do not agree with this rationale, but request that substantial monitoring and testing is performed so that adjustments to the remedy design can be made if warranted.
- 13 15. Draft Response Plan, Section 5.3, Page 18. We acknowledge that "in situ bioremediation" can be an effective remedy if designed appropriately for site specific conditions and objectives. The approach in the response plan does not, however, address impact to shallow groundwater that may exist higher than 20 feet depth, nor does it affect any groundwater beneath the WCM property. There also are no water quality goals or objectives associated with how to evaluate the success of the proposed approach. We request that a more detailed design of the pilot test be developed and provided for review.
- 22 16. Draft Response Plan, Section 7.0, Page 22. We request that the "Conclusion" section of this report be modified to reflect any changes made to this document based on responding to the comments provided herein.

Again, on behalf of WCM, we support the intent to remediate the MC property and support the general activities proposed in the Response Plan. Our objective is to assure that the plan does not ignore the ongoing impact to WCM from the MC property and includes provisions that protect WCM from further harm and allows the existing chemical impact from MC to WCM to lessen over time.

Thank you for your attention. Please do not hesitate to contact us if you have questions or require clarification of our comments.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'SW', with a horizontal line extending to the right.

Scott Warner, PG (5938), CHG (73), CEG (1896)
Principal

510-420-2526
swarner@ramboll.com

cc: Milt Eberle, Walnut Creek Manor (electronic mail)

Brian Kelly, Duane Morris, LLP (electronic mail)

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8 March 2017

Mr. Ralph Lambert
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612



Subject: Comments on *Draft Site Assessment Report and Response Plan, Mayhew Center, 3301-3341 Vincent Road, Pleasant Hill, CA* (31 January 2017)

Dear Mr. Lambert:

ERM-West, Inc. (ERM) has reviewed the 31 January 2017 *Draft Site Assessment Report and Response Plan* (Site Assessment and Response Plan) prepared by EnviroAssets, Inc. for the Mayhew Center Site on behalf of GPV (GP Vincent I, LLC, GP Vincent II, LLC, and GP Vincent III, LLC) and has prepared this comment letter on behalf of the Hookston Station Site parties (Hookston Parties), which include Union Pacific Railroad Company, Daniel C. and Mary Lou Helix, Elizabeth Young, John V. Hook, Steven Pucell, Nancy Ellicock, and the Contra Costa Redevelopment Agency (now referred to as "Department of Conservation and Development").

The Hookston Parties support efforts to clean up any sources of contamination associated with the Mayhew Center (MC) property, in accordance with the requirements of Water Board Order No. R2-2013-0040 (Order). However, because we believe the nature and extent of MC impacts have not been fully characterized, the proposed remedial actions may be inappropriate or ineffective. The Hookston Parties believe the on- and off-site MC impacts should be fully characterized and defined prior to formulating a remedial strategy. Therefore, the Hookston Parties believe it is premature to provide specific comments regarding the suitability or efficacy of the proposed remedial actions.

Comments are provided below highlighting the Hookston Parties' continued concern that the MC on- and off-site impacts have not been adequately characterized or defined. In addition, downgradient

groundwater impacts emanating from MC, which commingle with the Hookston Station plume, should be delineated and regularly monitored by GPV and/or those dischargers named on the Order.

The Hookston Parties respectfully request the Water Board's consideration of the comments to the Site Assessment and Response Plan set forth in this letter.

COMMENTS

Section 2.5 Regulatory History

This section states that "The Water Board has concluded that the on-Site plume 'containing PCE [tetrachloroethene] and its degradation products at concentrations above drinking water standards extends north east about 1,300 feet and commingles with the groundwater contamination plumes from both the Haber Oil site and the Hookston Station site'" and "Of note, EKI [Erler & Kalinowski, Inc.] has presented a conclusion that the Cuff property is a separate source of chlorinated solvents¹, and during the meeting between GPV and the Water Board on November 16, 2016, the Water Board clarified it would not seek to have GPV contribute to the investigation and remediation of the Haber Oil site or the Hookston Station site."

The statements presented in the Site Assessment and Response Plan appear to suggest that no further investigation and remediation of the off-site portions of the MC plume are necessary because it commingles with the Hookston Station site and Haber Oil site plumes, which are currently undergoing remediation. The statements in the Site Assessment and Response Plan also suggest that because EKI has concluded that the Cuff property, which is immediately north and downgradient of the MC site, appears to be a separate volatile organic compound (VOC) source, this further appears to support a position that no investigation and remediation of the off-site portions of the MC plume are necessary. As further discussed in the following comment, investigation and remediation of off-site portions of the MC plume are necessary and are a requirement of the Order and should be completed by GPV and/or those dischargers named on the Order.

RTC #5

¹ EKI. 2016. *Evidence of Chlorinated Solvent Release on Cuff Property*. 26 January.

6 Furthermore, a Water Board email² appears to refute EKI's conclusion, stating that there are no data suggesting a surface release at the Cuff property, and that groundwater data from the MC and Cuff sites show a PCE plume in the A-zone flowing to the northeast and under the Cuff property. Soil vapor data from MC also show impacts leading to the Cuff property. These off-site impacts should be fully characterized by GPV and/or those dischargers named on the Order.

Section 3.0 Summary of Investigations

This section summarizes various environmental investigations performed at the MC site and states that *"Collectively, these investigations have adequately characterized the hazardous materials released at the site."*

We do not believe that the VOC-impacted groundwater originating from the MC site has been fully characterized on- or off site.

The figures included in the Site Assessment and Response Plan and in Appendix B (Historical Figures and Tables) of that document do not present MC plume maps or cross sections that adequately delineate the lateral and vertical extent of either on- or off-site groundwater impacts. One PCE isoconcentration map for the Cuff property is included in Appendix B, which clearly indicates PCE coming onto the Cuff site from the MC site. Historical figures showing PCE groundwater data indicate that the lateral and vertical extent of impacted groundwater is not fully defined. Several geologic cross sections, focused on the two source areas near the Walnut Creek Manor/MC property boundary and Building II areas, are included in Appendix B of the Site Assessment and Response Plan. However, no cross sections of downgradient impacted areas, including Building III and off-site areas, are included. Only one boring location (B-7) appears to have been sampled for groundwater below the shallow A-zone, and PCE was detected at an elevated concentration in this deeper sample (9.4 micrograms per liter [$\mu\text{g}/\text{L}$]).

The Order, which was finalized in December 2013, states that the on-site vertical and horizontal extent of groundwater impacts is not sufficiently

² Water Board. 2016. *Mayhew Center, review of data near Cuff property, case 07S0183*. Online. https://geotracker.waterboards.ca.gov/regulators/deliverable_documents/1867338418/Mayhew%20Center%2C%20review%20of%20data%20near%20Cuff%20property%2C%20case%2007S0183.pdf. 18 November.

defined. Task 3 of the Order requires Completion of Approved Onsite Remediation Investigation, which consists of submitting a technical report documenting completion of the investigation of the on-site horizontal and vertical extent of soil and groundwater impacts and definition of impacts down to concentrations at or below typical cleanup levels for soil and groundwater. Since the Order, only three additional borings and one groundwater monitoring well were installed onsite³. The results of this investigation indicate that elevated concentrations of PCE are found in groundwater at the downgradient property boundary (78 µg/L in MW-3) and along the eastern property boundary (89 µg/L in DP-3, and 6.3 µg/L in DP-2). These limited efforts have not adequately defined the extent of MC site related impacts in the subsurface as required by the 2013 Order.

7 Additionally, Tasks 4 and 5 of the Order require an Off-Site Remediation Investigation Workplan and Completion of Off-Site Remedial Investigation, respectively. The off-site investigation is required *“to define the vertical and lateral extent of soil, soil vapor, groundwater, and indoor air pollution”* and *“any additional on-site investigation work that may be needed should be included with this task.”* Sampling of monitoring well MW-20B, a deeper B-zone monitoring well located immediately downgradient of the MC site (which was installed and has been monitored at the expense of the Hookston Group) identified elevated concentrations of PCE (1,250 µg/L) during the most recent January 2016 sampling event⁴. The depth of PCE impacts and the downgradient extent of those impacts are not currently characterized.

PCE impacts in groundwater have not been fully characterized and additional on- and off-site lateral and vertical delineation of groundwater impacts is necessary to comply with the Order and provide an appropriate technical basis for designing and implementing remedial actions.

³ SOMA. 2014. *Site Investigation and Well Installation Report*, 3317 Vincent Road, Pleasant Hill, California. 3 July.

⁴ ERM. 2016. *First Quarter 2016 Monitoring Report*, Hookston Station Site, Pleasant Hill, California. 29 April.

Section 5.5 Long-Term Monitoring

This section describes long-term monitoring (10 years) of existing and new site monitoring wells and vapor monitoring points to support a risk-based closure strategy, including monitoring of off-site Hookston Station wells MW-20A and MW-20B.

17 We agree that GPV and/or those dischargers named on the Order should include MW-20A and MW-20B in their long-term groundwater monitoring program, consistent with our prior requests to have the MC site parties assume responsibility for monitoring these wells. We also believe that the responsibility for sampling MW-21A and MW-21B, which are located approximately 100 feet northeast and downgradient of MW-20A/MW-20B, should rest with GPV and/or those dischargers named on the Order, as outlined in the Self-Monitoring Program for the MC site in the Order. MW-21A/ MW-21B also contain elevated concentrations of PCE that originate from the MC site. As described in the Order, *“Overall, the data shows that there is downward migration of the PCE and associated breakdown products through water-bearing strata from the shallower A-zone to the deeper B-zone, and that these contaminants [sic] have migrated downgradient from the Site toward the northeast.”* The Hookston Parties will no longer monitor off-site, upgradient wells that are solely related to a third party’s VOC impacts.

CLOSING

On behalf of the Hookston Parties, thank you for your consideration of our comments on the *Draft Site Assessment Report and Response Plan* for the MC site. If you have any questions regarding this letter, please feel free to call me at (925) 946-0455.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian S. Bjorklund". The signature is fluid and cursive, with a large loop at the end.

Brian S. Bjorklund, PG, CHG
Partner

BSB/ip/0113680.48

cc: Mr. Daniel Helix
Ms. Lauren Mancuso, UPRR
Ms. Maureen Toms, Contra Costa County

Appendix D

SITE MAP

Site Map

