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February 23, 2010

By Certified Mail
Return Receipt Requested

Bruce H. Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

Re: Mayhew Center Property at 3301-3341 Vincent Road, Pleasant Hill, California

Dear Mr. Wolfe:

This law firm represents Union Pacific Railroad Company ("Union Pacific") in connection with environmental investigation and remediation relating to the Hookston Station property in Pleasant Hill, California, and its relationship to a regional groundwater plume that contains trichloroethene ("TCE"), tetrachloroethene ("PCE"), petroleum hydrocarbons and other constituents.

For several years, the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") has been directing the owner (Mayhew Center, LLC) and former tenant (Etch-Tek) of the Mayhew Center property, located at 3301-3341 Vincent Road and upgradient of the Hookston Station site, to investigate and provide information concerning PCE detected in groundwater at and downgradient from the Mayhew Center property. As discussed below, sufficient data and information have been gathered that conclusively identifies the Mayhew Center property as a PCE contamination source. In fact, last year, in CERCLA litigation in the federal District Court for Northern California, Mayhew Center was found liable for this contamination.¹ To date, however, only Union Pacific and the other Hookston Station parties have been required by the Regional Board to address the solvent plume.

Accordingly, we are urging the Regional Board to issue a cleanup order to Mayhew Center, LLC and Etch-Tek, naming these parties as "dischargers" and requiring them to take the necessary steps to respond to and clean up PCE and its degradation products, including TCE, that

¹ See *Walnut Creek Manor, LLC. v. Mayhew Center, LLC. et al*, No. C 07-05664 CW (N.D.Cal. 2009).



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have spread from the Mayhew Center property beneath the Hookston Station property and into other downgradient areas.

Union Pacific and other former and current owners of the Hookston Station property have been diligently and responsibly investigating and implementing remedial measures at and downgradient of the Hookston Station property, pursuant to Site Cleanup Requirements Orders issued by the Regional Board. These remedial efforts have included the closure of potentially-affected irrigation wells, installation and maintenance of vapor intrusion prevention systems in certain homes, and most recently, installation of a permeable reactive barrier to remediate chemically-impacted A-zone groundwater immediately upgradient of the Colony Park neighborhood. These remedial measures have been effective in eliminating potential exposure routes and reducing contaminant levels and migration potential in the groundwater plume.²

During the investigation of the Hookston Station site, PCE and associated breakdown products were detected in soil vapor samples collected along Vincent Road near the Mayhew Center property. It is undisputed that Hookston Station is not a source of PCE. The Regional Board initially identified several potential sources for this contamination including the Mayhew Center property, the Walnut Creek Manor property at 81 Mayhew Way, and the Cuff Property Management Company property at 3343-3355 Vincent Road. These parties received Water Code 13267 letter directives requesting documentation of historical chemical uses and/or soil and groundwater investigations to define the nature and extent of the identified PCE contamination.

Unfortunately, Mayhew Center and Walnut Creek Manor have spent much of their efforts challenging, rather than implementing, the Regional Board's directives. These two parties also sued each other in federal District Court over responsibility for the PCE contamination. As noted above, that litigation resulted last year in a finding that Mayhew Center is liable for the PCE contamination.³

The Regional Board has substantial evidence supporting Mayhew Center's responsibility for this contamination. Soil and groundwater investigations conducted at and around the Walnut Creek Manor and Mayhew Center properties have identified two significant PCE source areas and extremely elevated concentrations of PCE in soils on the Mayhew Center property (14,000 ug/kg).⁴ PCE has also been detected in groundwater at concentrations as high as 1,200 ug/L in

² See ERM Status Report on Remedy Effectiveness (December 2009).

³ The evidence for sources of PCE on the Mayhew Center property was so overwhelming that the federal District Court jury awarded Walnut Creek Manor over \$1.9 million in damages based on a finding that the PCE contamination present on the Walnut Creek Manor property originated from Mayhew Center. Following the jury's verdict, in adjudicating the remaining non-jury claims, the federal District Court Judge reached the same conclusion. See *Walnut Creek Manor, LLC v. Mayhew Center, LLC et al*, 2009 U.S. Dist. LEXIS 103794 (N.D.Cal. 2009). We understand that the Mayhew Center entities have now sued Etch-Tek and its officers to recover response costs and other damages associated with the PCE releases at the Mayhew Center property.

⁴ The ESLs for PCE in soil are 370 and 700 ug/kg for residential and commercial land uses, respectively.



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samples collected on the Mayhew Center property and at a concentration of 2,330 ug/L immediately downgradient of the Mayhew Center property.⁵ The December 2008 Subsurface Investigation Report prepared by AMEC on behalf of Walnut Creek Manor has identified two significant PCE source areas on the Mayhew Center property.

Groundwater monitoring data shows that PCE contamination from the Mayhew Center property is degrading into TCE and other byproducts as it migrates in groundwater across and commingles with petroleum hydrocarbon contamination from the nearby Pitcock Petroleum property.⁶ This contamination also commingles with TCE contamination in the northern portion of the Hookston Station property and then flows through a portion of the site's A-zone permeable reactive barrier before migrating below portions of the Colony Park neighborhood.

Furthermore, the Regional Board's own correspondence confirms the Mayhew Center property is the source of the PCE contamination. In its October 6, 2009 letter to Walnut Creek Manor, the Regional Board stated that it "has received information indicating the presence of a source of tetrachloroethene on Mayhew Center property, adjacent to the property with Walnut Creek Manor." Most recently, the Regional Board found that the detections of PCE "are consistent with a conceptual model indicating Mayhew Center as the source of this contamination," and that this contamination "threatens to adversely affect the beneficial uses of groundwater, represents a condition of pollution in waters of the State, and may pose an unacceptable risk to human health."⁷ Despite these conclusions, the Regional Board has not issued a cleanup order to Mayhew Center. Consequently, the Mayhew Center property remains a continuing and unabated source of solvent contamination and the Mayhew Center parties continue to enjoy the benefits – inequitably, without contribution – of the Hookston Station parties' remedial measures.⁸

Given these undisputed facts, a federal court's and jury's findings of liability, and the Regional Board's own conclusions, the time has come for the Regional Board to issue a cleanup order to Mayhew Center and Etch-Tek imposing specific investigation and remedial obligations

⁵ The Maximum Contaminant Level for PCE in drinking water is 5 ug/L.

⁶ While significant releases of petroleum hydrocarbons, benzene and other compounds have been documented at the Pitcock Petroleum property, the Regional Board has not ordered the responsible parties at this site to undertake any groundwater remediation.

⁷ Regional Board January 19, 2010 letter to Mayhew Center, LLC.

⁸ To date, the Hookston Station parties have spent over \$6.8 million in investigating and remediating solvent contamination in the area.



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on both parties with specific deadlines for compliance. We urge the Regional Board to act immediately.⁹

The order should also require the Mayhew Center parties to address PCE and its degradation products (which includes TCE) that have migrated in groundwater and into soil vapor from the Mayhew Center property across the Hookston Station property and into the Colony Park neighborhood, including requiring the Mayhew Center parties to participate in the Hookston Station parties' offsite groundwater and vapor intrusion remedial and monitoring efforts. Union Pacific and the other Hookston Station parties should not be required to remediate groundwater and vapor contamination that originates from the Mayhew Center property.

On behalf of Union Pacific, we would appreciate the opportunity to meet with your staff to review the data and address any questions you may have. Please contact me (415) 954- 4969 or Deborah Tellier (415) 954-4970 to discuss this matter.

Sincerely,

John J. Gregory

cc: (Via Email)
Robert Bylsma, Esq., Union Pacific Railroad Company
James Diel, Union Pacific Railroad Company
Deborah Tellier, Esq., Farella Braun + Martel LLP
James Kennedy, Contra Costa County Redevelopment Agency
Daniel Helix

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⁹ Although Mayhew Center submitted a Site Investigation Work Plan to the Regional Board on December 21, 2009 in response to an informal request from the Regional Board, we understand Regional Board staff was very dissatisfied with the Work Plan which was focused more on trying to locate contamination sources on the Walnut Creek Manor property than on completing characterization on Mayhew Center's own property. While we support efforts to further characterize the PCE contamination in this area, we do not believe that the Regional Board's current approach with Mayhew Center will result in any meaningful and timely cleanup of contamination at and emanating from the Mayhew Center property. In responding to informal requests and letter directives from the Regional Board, Mayhew Center has clearly demonstrated, and based on its most recent submission, continues to demonstrate, that it has no interest in dealing with its own contamination problems.