

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 WALNUT CREEK MANOR,

No. C 07-5664 CW

5                                    Plaintiff,

ORDER DENYING  
MOTION FOR  
EXTENSION OF TIME  
FOR CLEANUP &  
ABATEMENT (Docket  
No. 279)

6                                    v.

7 MAYHEW CENTER, LLC, et al.

8                                    Defendants.

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10                                    \_\_\_\_\_/

11                                    Defendants Mayhew Center, LLC and Dean Dunivan request  
12 additional time to cleanup and abate the soil and groundwater  
13 contamination they caused on Plaintiff Walnut Creek Manor's  
14 property. Defendants' original deadline for completing this  
15 process under the terms of this Court's November 23, 2010  
16 injunction was November 23, 2012. Because Defendants have not  
17 established the requisite "good cause" for an extension of the  
18 deadline, as outlined in the injunction order, their request is  
19 denied.

20                                    DISCUSSION

21                                    The parties executed a settlement agreement in October 2010  
22 in which they stipulated that Defendants would promptly remedy the  
23 PCE contamination they caused on Plaintiff's property. Docket No.  
24 272, Defs.' Ex. B. On November 23, 2010, this Court approved the  
25 stipulation and issued an injunction ordering Defendants to  
26 commence cleanup on Plaintiff's property. Docket No. 273, Defs.'  
27 Ex. C.

28                                    In particular, the injunction required Defendants to reduce  
the levels of PCE concentration on that property to "the most

1 stringent standards or levels for residential properties  
2 articulated by the Regional Water Quality Control Board, San  
3 Francisco Bay Region." Id. at 2. Defendants were required to  
4 complete this process within two years of the injunction date.  
5 Id. at 4. If they failed to do so, then Plaintiff would be  
6 permitted to recover any funds remaining in an escrow account that  
7 Defendants created to fund their cleanup and abatement efforts.  
8 Id. at 8. If Defendants successfully completed cleanup and  
9 abatement before the two-year deadline, they would be permitted to  
10 keep any remaining funds in the escrow account for themselves.  
11 Id.

12 The injunction allowed for an extension of this deadline  
13 under certain, limited circumstances. Specifically, it provided  
14 that an extension would be granted only

15 upon a finding of good cause by the Court that  
16 [Defendants] have diligently pursued reasonable and  
17 appropriate measures to comply with the terms of this  
18 INJUNCTION ORDER in an effort to achieve RESIDENTIAL  
19 STANDARDS, but through no fault of [Defendants] or their  
20 consultants, additional time will be needed to CLEANUP  
21 AND ABATE [Plaintiff's contaminated property].

22 Id. at 6-7 (capital letters in original).

23 Defendants have not met this standard here. Plaintiff has  
24 submitted evidence documenting multiple instances where  
25 Defendants' own conduct led to delays in the remediation process.  
26 They note, for instance, that Defendants failed to provide  
27 mandatory insurance forms for their contractors, which delayed  
28 work on Plaintiff's property for several months. Declaration of  
29 Brian Kelly ¶¶ 17-18, Exs. B & C. Defendants attempt to blame  
30 this delay on Plaintiff, who restricted the contractors' access to  
31 its property, but neglect to mention that they expressly agreed to

1 provide these forms to Plaintiff as a precondition to accessing  
2 its property. See Defs.' Ex. E, Access Agreement. Defendants  
3 also ignore the fact that they failed to commence work on their  
4 own property -- to which they had full and unrestricted access --  
5 for more than a year after the injunction issued, despite pleas  
6 from the Regional Water Board to begin much sooner. Kelly Decl.,  
7 Ex. C. These delays cannot be said to have occurred through "no  
8 fault" of Defendants. Accordingly, under the terms of the  
9 injunction order, Defendants have not established "good cause" for  
10 an extension of the deadline. Nonetheless, Plaintiff has  
11 represented that it does not wish to recover the funds in the  
12 escrow account but rather wishes to leave them available for  
13 prompt cleanup and abatement of its property.

14 CONCLUSION

15 For the reasons set forth above, Defendants' motion for an  
16 extension of the cleanup and abatement deadline (Docket No. 279)  
17 is DENIED. The Court takes Plaintiff's request for attorney fees  
18 under submission.

19 By July 31, 2013, Defendants must perform all of the  
20 obligations they were to have performed by November 23, 2012. See  
21 Defs.' Ex. C, at 3-4. Plaintiff has represented that it does not  
22 intend to seek to recover the funds in the escrow account. Based  
23 on that representation, Plaintiff is ordered not to do so, absent  
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1 permission from the Court. Defendants must comply with all of  
2 their remaining obligations under the injunction.

3 IT IS SO ORDERED.

4  
5 Dated: 2/1/2013

  
6 CLAUDIA WILKEN  
7 United States District Judge  
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