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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

8 PEOPLE OF THE STATE OF CALIFORNIA,)

9 Plaintiff,)

No. 116653A

10 v.)

11 ROBERT DEPPER,)

DECLARATION OF
SCOTT SEERY

12 Defendant)
13)
14)

15 I, Scott Seery declare as follows:

16 I am a Senior Hazardous Materials Specialist with the Alameda
17 County Environmental Health Department, Environmental Protection
18 Division. I have been with Alameda County for over eight and one half
19 years. My job responsibilities have included conducting inspections
20 of underground storage tanks and hazardous materials facilities and
21 hazardous waste generators to ensure compliance with applicable
22 California laws and regulations. At present I oversee the assessment
23 and cleanup of underground storage tank leaks.

24 Prior to the sentencing in this case I was asked to explain to
25 the court what underground storage tank laws were being violated at
26 the location of the "Glovatorium" (3815 Broadway in Oakland) and what
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1 had to be done to bring the facility into compliance with the law.
2 In September 1995 I prepared a declaration containing this
3 information. A copy (previously submitted to the court as part of the
4 District Attorney's Sentencing Memorandum) is attached as Exhibit 1.

5 As of this date **none** of the items which need to be addressed by
6 the owner or operator of the facility have been done.

7 On September 26, 1996, I was in court when Judge Lambden
8 sentenced Robert Depper. Mr. Depper was given three years of formal
9 probation with the suspension of one year in jail. The conditions of
10 probation included the requirement that he submit a work plan for a
11 subsurface investigation and related tasks for the site at 38th and
12 Broadway, to determine the extent of the environmental contamination
13 at that location. The workplan requirements included:

- 14 1) It must be acceptable to the Alameda County Department
15 of Environmental Health Services, Environmental
16 Protection Division.
- 17 2) It must be prepared by a licensed environmental
18 engineer or geologist.
- 19 3) It will include underground storage tank closure
20 applications.
- 21 4) It will include a plan to identify the location of
22 underground tanks at the facility.
- 23 5) It will include a workplan detailing the soil and
24 groundwater sampling and analysis to be done.

25 The details of the order were made by the Judge orally in open court.
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1 Arrangements were made to meet with Mr. Depper on October 31,
2 1996. At the meeting were Mr. Depper, John Murphy (Mr. Depper's
3 probation officer), John Kurzenhauser (the probation officer for
4 codefendant Stuart Depper, who was in custody) and John Walker, a
5 lawyer for Stuart Depper. The purpose of the meeting was to go over
6 the requirements associated with the court's order. Mr. Depper said
7 that he didn't believe that he had been ordered to hire a consultant
8 to do a workplan at the facility. I assured him that I was present
9 at the sentencing and that he had in fact been ordered to do so. He
10 was given a letter written by Larry Blazer of the District Attorney's
11 Office which set forth the details of the court order. (This letter,
12 which is accurate, is attached as Exhibit 2). Mr. Depper still
13 refused to agree that he was given such an order.

14 The requirement for a workplan to investigate this contaminated
15 site has existed for for a period of several years. This defendant
16 and his son have repeatedly been requested to provide it, and they
17 have consistently refused to do so.

18 At the same meeting I also provided Depper with a memo which set
19 forth, in lay terms, what was required. A copy is attached as Exhibit
20 3.

21 On November 14, 1996, I recontacted Mr. Depper to offer any
22 further assistance he might need. I gave him the names of four
23 reputable consulting firms who could do this work. He appeared
24 receptive to this. I know that Mr. Depper spoke with one of the firms
25 I recommended, Compliance and Closure, because Nelini Frush, who owns
26 part of the company, spoke with me about the situation. She told me
27 later that on November 25, Mr. Depper spoke with them and they agreed

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1 to prepare a workplan but he balked when they told him a retainer
2 would be necessary. He did not hire them.

3 On November 26, Mr. Depper called me. He said he had hired
4 another firm, Geomatrix, which was not on my recommended list but
5 would be acceptable. I asked him for the name and phone number of the
6 contact person and he asked "Why do you need that?", reluctant to
7 provide this information. He ultimately gave me the name. I called
8 this person and found that he was out until December 2 (the day after
9 Judge Lambden's deadline). The deadline came and went with no plan
10 submitted and I later learned from Susan Galardo of Geomatrix that
11 they were not going to enter into a contract with Mr. Depper. In
12 other words, they had never been hired by Mr. Depper as he had
13 represented.

14 On December 5, 1996 I talked with Mr. Depper again. He told me
15 he was going with Alton Geosciences, and that his contact was Matt
16 Katen. I called Katen, who had been to the site, and he said he was
17 looking into the situation. On December 17, still having received no
18 workplan, I called Matt Katen again. He hadn't heard from Mr. Depper
19 since the initial interview and several phone messages to Depper had
20 not been returned.

21 I called Mr. Depper and asked how things were going. His answer
22 was "They're going pretty well", saying that he was meeting with Katen
23 "tomorrow or the next day" (December 18 or 19). I asked if he had
24 received a bid package yet, and he said no, but that he had gotten
25 together a check to give the company to start things going. I called
26 Katen right back and asked about the meeting; he had not heard about
27 it, but it was possible.

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1 On December 30, 1996, Katen called me and told me that, in spite
2 of what I had heard from Depper, he had had no meeting with Depper,
3 had received no check from him and had not heard anything from him.

4 It appears to me that Mr. Depper is playing games. In spite of
5 Judge Lambden's direct order, and my corroboration of that order, Mr.
6 Depper refused to acknowledge at our meeting that he had any such an
7 obligation. He could have entered into a contract to do this work
8 with one firm, only to back out when he found out it would cost him
9 money up front. He told me he had hired another firm when he hadn't,
10 and actually lied to me about what was occurring with a third firm.
11 This taken by itself may not appear to be immensely serious. However,
12 it is consistent with a pattern of non-compliance with the law that
13 has occurred over a period of years, culminating in the criminal
14 conviction.

15 I also feel it appropriate to say that Mr. Depper, although an
16 older gentleman, does not appear to suffer from any intellectual
17 disability. He is actually quite sharp, and understands exactly what
18 is being discussed when we speak.

19 I feel that, given the history of this case, nothing substantive
20 will be done to address the contamination and other outstanding issues
21 at this site unless the court deals firmly with the situation.

22 I declare the foregoing to be true, to the best of my knowledge,
23 under penalty of perjury.

24 Executed at Oakland, California on ^{January} September 13, 1997

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27 
28 Scott Seery