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ALVIN BACHARACH and BARBARA BORSUK

BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of
ALVIN BACHARACH AND BARBARA BORSUK

For Review of Alameda County Cleanup
Order Issued on January 14, 1991.
State of California Water Resources
Control Board File No. A-722.
Order No. WQ 91-

AFFIDAVIT OF
PHILIP W. MUSSER

I, Philip W. Musser, hereby declare:

1. I am now, and have been since December of 1982,
the President of the Robert J. Miller Company, General
Contractors, Inc. ("MILLER"), presently located at 385 Pittsburgh
Avenue, Richmond, California 94801; telephone number (415) 233-
9000. Prior to 1982, for approximately three years, I was an
employee of MILLER. I have an undergraduate degree from the
University of California at Berkeley, and I am a licensed general
contractor. MILLER performs exclusively petroleum related
activities. I have personal knowledge of the facts stated
herein, and would be competent to testify thereto.

2. I know, based upon my personal knowledge, that
MILLER, which began its business in 1943, has performed various
kinds of work for Douglas Motor Services ("DOUGLAS") on an

intermittent basis between 1979 and 1982. Since 1982, MILLER has performed limited service work for DOUGLAS, consisting of such activities as changing hoses and nozzles, fixing leaks and installing pumps at various garages owned or operated by DOUGLAS. On at least three or four occasions of which I am aware, MILLER has installed and/or removed underground gasoline storage tanks at garages owned or operated by DOUGLAS.

3. In late March or early April 1982, I was contacted by either Leland or Ronald Douglas to determine whether or not a 550-gallon underground petroleum storage tank located under the sidewalk in front of [redacted] 1432 Harrison Street garage in Oakland, California was leaking. On approximately April 19, 1982 MILLER performed an "air test" on the tank in question to determine whether or not it was leaking. Prior to 1984 (the year in which the California Underground Storage of Hazardous Substances law was enacted), the "air test" was the commonly performed method for determining the integrity of an underground petroleum storage tank.

4. The air test which MILLER performed on the DOUGLAS 550-gallon underground petroleum storage tank at the 1432 Harrison Street garage in Oakland on April 19, 1982 proceeded in the following manner. All product was first drained from the tank. The vent line and the vapor recovery line (if one existed on this tank) were each capped by a rubber plug; the pump was disconnected from the line and capped. MILLER then attempted to pressurize the tank and the appurtenant lines by placing four-to-five pounds psi (per square inch) of air on the fill pipe.

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However, the tank would not hold air and could not be pressurized. This clearly indicated that the tank, or the lines, or both, were leaking.

5. Kan Miller, a MILLER employee present at the air test, wrote me a note indicating that the test indicated that there were leaks in the underground tank system. He asked me to contact Ron or Lee Douglas with these results, and to determine whether DOUGLAS wished to determine the source of the leak by isolating the tank and lines. See Exhibit 1.

5. I personally informed either Leland or Ronald Douglas that the results of the tank air test definitely demonstrated that either the tank or the lines or both were leaking. In addition, MILLER informed DOUGLAS in writing about the leaks in MILLER'S October 19, 1982 invoice to DOUGLAS for the April and May 1982 work. This invoice specifically stated that MILLER "found many leaks in the tank and product line." See,

Petition for Review, Declaration of Alvin Bacharach, Attachment 3. I also informed DOUGLAS that we could dig up the tank and lines and isolate them in order to determine the source of the leaks.

6. Within approximately 10 days of the conclusion of the tank air test described above, and authorization from DOUGLAS to continue the investigation of the source of the leak, MILLER removed the portion of the concrete sidewalk overlying the tank. The reason for removing the concrete sidewalk above the tank was to identify whether the tank alone, the tank lines alone or both the tank and the tank lines were the source of the leak(s). This

was the routine practice at that time where the air test of an underground gasoline tank buried below a sidewalk had disclosed that either the tank or the tank lines or both were leaking. After the concrete sidewalk overlying the tank was removed, the upper portion of the tank and the lines immediately appurtenant to it were exposed to plain view. At this time, I personally observed both the tank and these lines to be rusted and perforated.

7. I am sure that I informed either Leland or Ronald Douglas personally of my observations shortly after the tank and lines were exposed. In addition, Leland and/or Ronald Douglas most likely personally observed the condition of the exposed tank and lines. Moreover, MILLER submitted a bid to DOUGLAS in May, 1982 for the removal of the leaking tank and lines and their replacement with a new tank. This bid was directed to the attention of Ron or Leland Douglas. See Exhibit 2. DOUGLAS did not respond to this bid.

8. Shortly before October 4, 1982, DOUGLAS contacted me and requested that MILLER submit two bids; one to replace both the tank and the lines, and one to simply remove the tank. MILLER submitted both bids as per DOUGLAS' request on October 4, 1982. See Exhibits 3 and 4.

9. I was never informed by DOUGLAS that DOUGLAS had rejected MILLER'S October 1982 bids. I believe that I learned that BERNARD had been awarded the bid to remove and replace the tank by DOUGLAS because Vernon Bernard contacted me to ask me some questions about the operation and/or request my assistance.

10. I have been provided a copy of the October 19, 1982 MILLER invoice to DOUGLAS, by Jonathan S. Leo, Esq. (counsel for Alvin Bacharach) and I recognize this document to be a true and correct copy of the original MILLER invoice.

11. In conclusion, I specifically recall that I personally observed the exposed tank and immediately appurtenant tank lines beneath the sidewalk at the 1432 Harrison Street, Oakland, California garage in late April or early May, 1982 and saw clear and unmistakable holes in both the tank and the lines as well as clear and unmistakable evidence that both the tank and the lines had badly rusted. Further, I am certain that either Leland or Ronald Douglas actually knew in May, 1982 of the leaking condition of the tank and its lines as above described.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of June, 1981 at Richard,

California.

Philip W. Musser
Philip W. Musser, President
Robert J. Miller Company,
General Contractors, Inc.