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I.
INTRODUCTION

On August 4, 1995, the defendants Robert and Stuart Depper were convicted after entering no contest pleas to the environmental crime of unlawfully disposing of hazardous waste (Health and Safety Code § 25189.5(b)). Robert pled to two such counts as misdemeanors; Stuart pled to one felony count.

II.
FACTS

The defendants, Robert Depper and Stuart Depper, are father and son. Robert owns and Stuart has operated a dry cleaning facility known as the Glovatorium located at 3815 Broadway in Oakland. In September 1990, Sgt. Alan Whitman of the Oakland Police Department spoke with a former employee of the Glovatorium, Nicholas Evans, who had earlier contacted the California Department of Health Services "Toxic Tips Line". Evans' initial "tip" was that Bob (Robert) Depper had dumped soil contaminated with dry cleaning solvent onto the ground at his home in Orinda.

Evans told Whitman that he had been employed by the Glovatorium as a maintenance man for several months, ending about seven months prior to the interview. He said that, while he was working there, dry cleaning waste filter powder was routinely dumped into the facility dumpster for pick-up by the trash company. He also said that dry cleaning fluids and waste water containing dry cleaning fluids were routinely allowed to flow into the sanitary sewer system through floor drains. This would

1
2 typically occur at the time of frequent spills in the "dry
3 cleaning room". Evans had seen both defendants witness such
4 spillage flowing into the floor drains.

5 Evans also said that the facility had several underground
6 storage tanks for dry cleaning solvent, and that at least one was
7 leaking, as it was continually filling with water. Stuart Depper
8 told him that there was an underground creek running near the
9 tank, and that, since it was filling with water, it needed to be
10 pumped out every other day. Evans' job was to pump out, using a
11 sump pump, the fluid from a well sunk into the ground near the
12 tanks. This fluid would go through a pipe into a 55 gallon drum.
13 Evans would then skim off the solvent floating on the top, reuse
14 it, and throw the contaminated water beneath the solvent into the
15 sewer drain. The foul smelling water was black and oily. Both
16 defendants were aware of this regular procedure.

17 Evans further explained that he was once told by Robert
18 Depper to dig up, by hand, soil beneath a floor near the leaking
19 underground tank, in the hopes of digging down to the end of the
20 contamination. Fifteen drums were filled with the soil, which was
21 literally dripping with solvent, before it was decided that, using
22 this method, the perimeter of the contamination could not be
23 reached. The concrete floor was replaced over the contamination
24 and the open drums were placed in the "drying room" to hopefully
25 evaporate (and illegally pollute the air).

26 Later, Evans was instructed by Robert Depper to place five of
27 the drums in a company truck and take them to his home in Orinda.

1
2 There the contents of the drums were dumped in Depper's
3 backyard. Evans also gave Sgt. Whitman the name of another former
4 employee, Andrew Wilson, who was contacted and corroborated Evans'
5 description of what had happened.

6 Having contacted the East Bay Municipal Utility District
7 (EBMUD) and determined that the Glovatorium had illegally allowed
8 dry cleaning waste into the sewers on prior occasions, Sgt.
9 Whitman obtained two search warrants, which were served on October
10 15, 1990. At the Depper home in Orinda, soil consistent with that
11 described by the employees was sampled. Laboratory results
12 indicated the presence of chemicals similar to those within the
13 Glovatorium. At the Glovatorium, the monitoring well and sump
14 pump near the underground tanks was found exactly where the
15 employees said they were. Samples from it exhibited practically
16 pure solvent floating on top of contaminated ground water. A
17 similar mixture was found in the drum beneath the pipe emanating
18 from the well. Samples from the sewer drains showed high levels
19 of dry cleaning wastes, primarily stoddard solvent (a hazardous
20 waste). Samples from the dumpster (belonging to Oakland
21 Scavenger) showed extremely high levels of toxic perchloroethylene
22 (tetrachloroethylene or "perk") mingled with less exotic waste.
23 When such a toxic carcinogen is illegally sent to a landfill
24 (where it inevitably goes once placed into a conventional dumpster
25 as here) rainwater leaches the poison into our drinking water
26 supply. The drums of contaminated soil described by Evans were
27 found in the drying room.

1
2 In August, 1992, in response to complaints from neighbors
3 that large dry cleaning machines were sitting unattended outside
4 the Glovatorium, Sgt. Whitman and a hazardous waste specialist
5 from the County Health Department went to the rear of the
6 facility. There they found the machines which concerned the
7 neighbors, discovering toxic perchloroethylene within them, on the
8 sidewalk, and also inside the full dumpster sitting nearby.

9 Another search warrant was served on the facility on October
10 16, 1992. The probable cause included the fact that according to
11 county records the defendants had done nothing, in spite of
12 explicit instructions, about the underground tanks which were
13 continuously polluting the groundwater beneath their facility.

14 Remarkably, the same conditions found during the service of
15 the first search warrant still existed. The open floor drains
16 were again contaminated with dry cleaning waste, (some was even
17 dumped during the warrant service). These floor drains, which
18 Stuart Depper had assured EBMUD had been sealed, were not sealed
19 in any way. Drums of hazardous waste were everywhere, much of it
20 obviously stored beyond the 90-day limit, (some of the drums from
21 1989 were still there) and improperly labeled and sealed.

22 The underground tanks were still in place, apparently not in
23 use any longer, but still leaking. Samples from the monitoring
24 well again showed a solvent water mixture. This time a sample was
25 actually extracted from one of the tanks, which also showed a
26 solvent water mixture. In addition, a piece of concrete flooring
27 near the tanks was removed, and samples of soil found beneath it

1
2 showed extensive contamination.

3 Members of the Bay Area Air Quality Management District
4 (BAAQMD) found numerous violations of air quality regulations,
5 including the storage of solvents and dry cleaning waste in open
6 containers, the operation of dry cleaning machines which were
7 leaking and dripping solvent, and the usage of an inadequate waste
8 filtration system. This was extraordinary, given that the
9 defendants had previously received a variety of violation notices
10 for the exact same violations.

11 The defendants were each charged with six felony and
12 three misdemeanor violations of the Hazardous Waste Control Act
13 (Health and Safety Code sections 25100 et seq.). These included
14 four violations of section 25189.5(b) (unlawfully disposing of
15 hazardous wastes at non-permitted and unauthorized locations), one
16 violation of section 25189.5(c) (unlawful transportation of
17 hazardous waste), and one violation of section 25189.5(d)
18 (unlawfully storing hazardous waste beyond the 90 day limit). The
19 misdemeanors relate to inappropriate handling of the hazardous
20 wastes thus stored.

21 The defendants were also charged with two felony violations
22 of Water Code section 13387, for unlawfully dumping wastes into
23 the sewer system in violation of federal pretreatment regulations.
24 They were further charged with five misdemeanor violations of
25 those regulations appurtenant to the Air Resources Division of the
26 Health and Safety Code (Division 26 - Health and Safety Code
27 sections 39000 et seq.).

1
2 It should be noted for purposes of sentencing that the
3 facility has remained in violation of a number of environmental
4 laws until this very day, in spite of numerous requests by
5 regulatory agencies that the defendants bring it into compliance.
6 (See section V(F), *infra*).

7
8 **III.**
9 **THE CHARGES**

- 10 1. H & S § 25189.5(b) (disposal of hazardous waste in Orinda -
11 1990).
12 2. H & S § 25189.5(c) (transportation of hazardous waste to
13 Orinda - 1990).
14 3. H & S § 25189.5(b) (disposal of hazardous waste to dumpster -
15 1990).
16 4. Water Code § 13387(a)(4) (sewer discharge in violation of
17 pretreatment standards - 1990).
18 5. H & S § 25189.5(b) (disposal of hazardous waste by allowing
19 underground tanks to leak [4/90-4/93]).
20 6. H & S § 25189.5(b) (disposal of hazardous waste into dumpster
21 -1992).
22 7. Water Code § 13387(a)(4) (sewer discharge in violation of
23 pretreatment standards - 1992).
24 8. H & S § 25189.5(d) (storage of hazardous waste beyond 90 days
25 -1992).
26 9. Title 22 § 66262.34 (H & S § 25190) (inadequate labeling of
27 hazardous waste).
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10. Title 22 § 66264.173 (H & S § 25190) (storage of hazardous waste in open containers).
11. Title 22 § 66264.175 (H & S Code section 25190) (no secondary containment).
12. Regulation 8, Rule 17-301.2 of BAAQMD Rules and Regulations (H & S § 42400) (solvents and spent solvents in open containers).
13. Regulation 8, Rule 17-301.5 of BAAQMD Rules and Regulations (dry cleaning wastes in open containers [stoddard])
14. Regulation 8, Rule 27-301.7 of the BAAQMD Rules and Regulations (dry cleaning wastes in open containers [perchloroethylene]).
15. Regulation 8, Rule 17-301.1 of the BAAQMD Rules and Regulations (machines leaking solvent).
16. Regulation 8, Rule 17-303 of the BAAQMD Rules and Regulations (inadequate solvent filtration system).

IV.
NEGOTIATED DISPOSITION

A. Robert Depper

Robert Depper pled no contest to Counts 5 and 6 of the Information, with the understanding that he will be placed on probation. The conditions of probation are to include the requirement that, as the owner of the facility formerly known as the Glovatorium, he will be responsible for financing and conducting a investigation to determine the full extent of the environmental contamination at the site. Once the extent of the

1
2 contamination is determined, he must undertake whatever remedial
3 measures are necessary to clean up the site. The site
4 investigation and cleanup will be overseen by the Local Oversight
5 Program of the Alameda County Department of Environmental Health.
6 The court has indicated that the minimum \$5000 fine for each
7 offense (Health and Safety Code § 25192) will be stayed so that
8 the money can be applied to the cleanup effort.

9 Robert will further be ordered to divulge all of his
10 financial assets to his probation officer, so that the court can
11 assess his ability to comply with the terms of probation. The
12 recovery of costs incurred by regulatory agencies is left to the
13 discretion of the court. A search clause will allow law
14 enforcement and regulatory personnel to enter the facility without
15 a warrant.

16 **B. Stuart Depper**

17 Stuart Depper pled no contest to Count 5 of the Information
18 (disposal of hazardous waste by allowing the underground tanks to
19 leak) as a felony, with the understanding that he will not be
20 sentenced to State Prison. It is understood that the District
21 Attorney's Office will be asking the Court to impose substantial
22 jail time. The conditions of probation are to include the
23 requirements that, as the manager of that facility formerly known
24 as the Glovatorium, he will participate and cooperate with
25 regulatory agencies in accomplishing the required site
26 investigation and cleanup of the contamination caused by his
27 illegal acts.

1
2 The court has indicated that the minimum \$5000 fine for the
3 offense (Health and Safety Code § 25192) will be stayed so that
4 the money can be applied to the cleanup effort. The recovery of
5 costs incurred by regulatory agencies is left to the discretion of
6 the court. To the extent that it applies to him, a search clause
7 will allow law enforcement and regulatory personnel to enter the
8 facility without a warrant.

9
10 **V.
AGGRAVATING FACTORS**

11 A variety of factors show that the violations in this case
12 are unusually egregious. These include 1) the persistent nature
13 of the violations, after repeated warnings, 2) the fact that some
14 of the violations continue to this day, 3) the fact that the
15 defendants, particularly Stuart, have actually lied to
16 environmental regulators in order to avoid having to comply with
17 regulations or avoid responsibility, and 4) the extraordinarily
18 hostile attitude of the defendants towards regulators. What
19 follows are merely examples.

20
21 **A. Leaking underground tanks**

22
23 Employees of the facility have reported that the solvent
24 filled tanks were leaking in 1989 (PX transcript (hereinafter
25 "PXT") v.I, p.12), and that Stuart, the general manager, knew
26 this, both from the fact that he ordered the disposal of the
27 solvent/water mixture arising from the ground (*Id.* at p.13), and
28

1
2 that he mentioned that he knew that the tanks were in immediate
3 contact with an underground stream (*Id.*) One employee, Steven
4 Stith, reported to the police in 1990 that the skimming of the
5 solvent from the water had been going on for seven years.

6 The defendants had the tanks tested in 1990, and at
7 least one was found to be leaking (Report attached as Exhibit 1),
8 and made application for an SBA loan, claiming that the tanks were
9 leaking. (PXT v.I, pp. 67-68).

10 In spite of this knowledge, Stuart, when asked by an
11 Environmental Health official in 1990 about the tanks, said that
12 they were not leaking, a shameless lie (Inspection report attached
13 as Exhibit 2, p.3).

14
15
16 **B. Perchloroethylene**

17 In response to an 1989 inspection in which concern was
18 expressed about the facility's handling of toxic and carcinogenic
19 "perk" waste, Stuart wrote a response in which he stated "As
20 mentioned in our previous letter, we have not been generating
21 perchloroethylene waste for three years". (PXT v.I, pp.128-130).
22 During the October 1990 search warrant, perk machines were not
23 only in use (machines which inevitably generate waste material)
24 but perk waste was found to have been illegally dumped into the
25 dumpster (one of the felonies alleged in the Information). Thus,
26 this statement by Stuart was another blatant lie, apparently
27 designed to avoid the record keeping associated with proper waste

1
2 disposal, and conceal the ongoing illegal disposal.

3
4 **C. Sewer Drains**

5 According to employees, the regular practice of the
6 defendants has been to allow and encourage wholesale illegal
7 dumping of dry cleaning waste into the sewer system. (PXT v.I, pp.
8 10-14). This was confirmed by both search warrant inspections
9 (with actual samples retrieved from the sewer system).

10 EBMUD fervently desires not to have toxic dry cleaning waste
11 befouling its sewer system. The system employs a biological
12 treatment system, which is damaged when these poisons are
13 introduced into the sewage. (PXT v.VIII, pp.57-58). When the
14 treatment system is damaged, the treatment of the sewage is
15 incomplete and EBMUD's ultimate discharges into San Francisco Bay
16 and local landfills do not meet clean water standards. Thus
17 illegal discharges into EBMUD's sewer system, as occurred here,
18 have a direct correlation to pollution of the Bay.

19 Because of defendants' various prior violations of their
20 wastewater discharge permit, the new waste water discharge permit
21 issued to the Glovatorium by EBMUD in early 1992 included not only
22 a complete prohibition of the discharge of dry cleaning waste, but
23 also the requirement that the facility seal its floor sewer drains
24 (where violations had repeatedly occurred before) (PXT v. III,
25 pp.37-40; attached within Exhibit 3). This permit was hand
26 delivered to Stuart Depper in May of 1992, after mail delivery was
27 refused (*Id.* at 37).

1
2 EBMUD had earlier received a written report signed by Stuart
3 Depper stating that the floor drains were going to be sealed
4 (1/27/92; Attached within Exhibit 3). After the delivery of the
5 new permit EBMUD received a written report signed by Stuart Depper
6 stating that the floor drains were actually sealed (5/26/92;
7 Attached within Exhibit 3). As was learned at the execution of
8 the October 1992 search warrant, none of the floor drains were
9 sealed, and waste solvent was entering the system as the search
10 was conducted. (PXT v. IV, pp. 11, 18-21). The statement that the
11 drains were sealed in compliance with the permit was yet another
12 of Stuart Depper's flagrant lies.
13

14 **D. Air Board**

15 The Bay Area Air Quality Management District (BAAQMD)
16 regulates industrial facilities for air emissions in the Bay Area
17 counties. As can be seen from the Declaration of Jamie Kendall
18 (Attached as Exhibit 4), these defendants have presented
19 extraordinary difficulties to that agency.

20 In addition to the sheer number of violations committed by
21 the facility, the refusal to remedy such situations, after
22 persistent warning and cajoling, is truly remarkable. Moreover,
23 the consistent hostility and mendacity of the defendants,
24 particularly Stuart Depper (*id.* at pp. 3-4), offers a glimpse into
25 the frame of mind of those before the Court.
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2 **E. Pleasant Hill**

3 During this investigation, law enforcement authorities
4 learned from an employee of the Deppers that, at one of their
5 other dry cleaning facilities ("Dutch Girl Cleaners" in Pleasant
6 Hill), perchlorethylene waste was being illegally dumped onto soil
7 outside the back door. This was confirmed by an inspection and
8 sampling, leading to a lawsuit for civil penalties against both
9 Deppers (which was recently settled) by the Contra Costa County
10 District Attorney's Office (Superior Court Docket No. C92-04370).
11 It is interesting to note that the facility was owned by Robert
12 and managed by Stuart (as at the Glovatorium), clearly indicating
13 a pattern of unlawful behavior.

14
15 **F. Ongoing refusal to comply**

16 As mentioned, these defendants have, to this very day,
17 refused to comply with basic environmental requirements,
18 regulations which other businesses routinely comply with.
19 Examples beyond those previously outlined include:

20
21 **1. Site investigation**

22 An underground storage tank containing a petroleum product
23 requires that its owner or operator obtain a permit for its use.
24 (See the Declaration of Scott Seery, attached as Exhibit 5). Such
25 a permit requires that the tank be properly be monitored for
26 leakage. (*Id.*) The Deppers have never obtained a proper permit or
27 legally monitored their tanks (*Id.*)

1
2 More importantly, when the tanks were known to be leaking
3 (from samples taken at the time of the October 1990 search
4 warrant), the Deppers were asked to conduct a site investigation,
5 as required by law, to determine the extent of the contamination,
6 by a letter dated 1/8/91 (PXT v.I, p.105; attached as Exhibit 6).
7 This request was made repeatedly since that time and has still
8 never been done. (See Seery declaration).

9 This is made more notable by the opinion of an expert
10 toxicologist (Dr. Arulanantham) at the 1993 PX, that the sort of
11 heavy groundwater contamination found at the scene indicates a
12 situation which is clearly a threat to public health in a
13 residential neighborhood such as that immediately behind the
14 Glovatorium (PXT v.VIII, pp.59-61).

15
16 2. Hazardous waste storage and record keeping

17 The defendants have stored large quantities of hazardous
18 waste at their facility for years. Not only is it a legal
19 requirement that they properly dispose of it within 90 days, which
20 of course has not been done, but they are required to have it
21 hauled offsite under a hazardous waste manifest, so that
22 regulators can keep track of it. Repeated requests to identify
23 and properly dispose of the hazardous waste stored on the site,
24 and provide manifests to the County Environmental Health
25 Department (dating back to 1990) have been refused. (See the
26 Declaration of Larry Seto, attached as Exhibit 7).

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3 VI.
4 SENTENCING RECOMMENDATION

5 **A. Incarceration**

6 In addition to any fine and payment for cleanup of the site,
7 it would be appropriate to impose a significant amount of jail
8 time (one year) upon Stuart Depper. The evidence suggests a
9 wilful and deliberate pattern of criminal behavior, over a period
10 of years, regarding the environment. Moreover, measures to keep
11 the behavior hidden were clearly undertaken by this admittedly
12 clever man, even to the extent of lying to environmental
13 regulators. **The only plausible motivation for this long term**
14 **criminal behavior is greed.** It is respectfully suggested that
15 such offenses cannot be adequately punished, nor deterrence
16 achieved for others so inclined, by financial penalties alone.
17 Such financial losses would be considered nothing more than "a
18 cost of doing business". We, as a community, cannot afford to
19 send such a message. Nor can we fail to protect honest
20 businessmen and businesswomen who actually spend the money to
21 comply with these laws, placing them at a competitive disadvantage
22 with the Deppers of this world.

23
24 **B. Environmental compliance**

25
26 Obviously related to the crimes committed here is the
27 environmental situation at the site of their commission.
28

1
2 There clearly is contamination of the soil and groundwater at the
3 site, arising *inter alia* from leaking underground storage tanks.
4 It is respectfully recommended that as conditions of probation,
5 the defendant Deppers be ordered to:

- 6
- 7 1) Obey all the requirements of a hazardous waste generator
8 under the Hazardous Waste Control Act;
 - 9
 - 10 2) Submit to search of the business premises by any
11 environmental regulator or law enforcement officer;
 - 12
 - 13 3) Submit to the Alameda County Department of Environmental
14 Health, Hazardous Materials Division, for approval, and
15 implement a work plan for Initial Subsurface
16 Investigation. (See Declaration of Scott Seery, Exhibit
17 5). Said investigation should (according to applicable
18 regulations) be carried out under the auspices or
19 supervision of a licensed environmental engineer or
20 geologist acceptable to HazMat. Said investigation
21 should include soil sampling and groundwater monitoring.
 - 22
 - 23 4) Once the investigation determines the extent of the
24 contamination of the soil and groundwater, the
25 defendants must prepare and implement cleanup
26 procedures, by way of an acceptable corrective action
27 plan, within the normal timetables set by the Regional

1
2 Water Quality Control Board and the Hazardous Materials
3 Division. (*Id.*)
4

5 **C. Costs**

6 The Court has indicated a willingness to consider ordering
7 cost recovery for environmental agencies as a condition of
8 probation. These include (see invoices attached as Exhibit 8):
9

10 1) Laboratory fees for

11 10/90 search warrant samples \$4128.00

12 (paid by the Alameda County Hazardous Materials Program
13 Training and Response Trust Account)

14 2) Laboratory fees for

15 10/92 search warrant \$7849.00

16 (*Id.*)

17 3) Time spent on case by Environmental Health

18 personnel (this cost recovery is authorized

19 by County ordinance) \$33,702.00
20

21 **D. Fines**

22 Each of the crimes of which these defendants have been
23 convicted carry a minimum fine of \$5,000 (H & S § 25189.5(e)).
24 The Court has indicated that it will stay this amount, so that
25 such sums can be used for the cleanup of the site.
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Respectfully submitted,

THOMAS J. ORLOFF
District Attorney

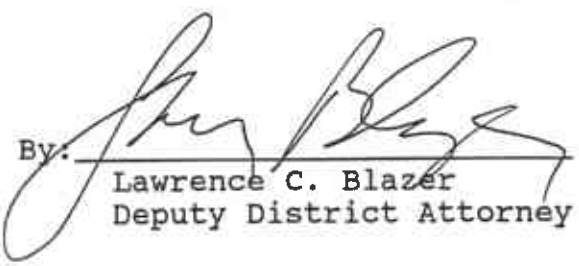
By: 
Lawrence C. Blazer
Deputy District Attorney

EXHIBIT 1



PETROTEK

P.O. Box 612317 • San Jose, California 95161

Phone: (408) 453-1888 • FAX (408) 453-1897
Contractors License # 450771

May 31, 1990

Glovatorium
3815 Broadway
Oakland, Ca. 94611

Attn: Eric Depper:

On May 22, 1990 I inspected the underground fuel tank and piping system at the above location.

This is a suction system for storage of stoddard solvent.

This tank and piping system utilizes one vacuum pump to service two tanks. Designated BLUE AND RED.

I had facility operator activate system for the BLUE tank and piping system. The BLUE tank immediately pulled 18 inches of vacuum and sustained vacuum for 20 minutes.

The RED tank would not pull any vacuum; even following two full minutes of operation.

Customer notes pumping failure began immediately following the October 17, earthquake.

Petrotek recommends removal and replacement of malfunctioning plumbing. Should local regulations permit, an above ground system replacement is recommended.

Should you have any further questions please contact either Dale McAnally or myself.

Sincerely,

Dan Myers

Dan Myers
RL

EXHIBIT 2

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

M E M O R A N D U M

TO: File

FROM: Gil Wistar *GW*

DATE: May 2, 1990

SUBJECT: Information gained from April 24, 1990 inspection at the
Glovatorium, 3815 Broadway, Oakland

I conducted a follow-up inspection at the Glovatorium to check on this facility's actions to comply with the generator, business plan, and underground tank violations for which it was cited in a Final Notice of Violation from this office dated January 22, 1990.

The following are the specific hazardous material/waste violations I noted during the inspection (Title 22).

Sec. 66508

- Although most containers of hazardous materials and wastes are now labeled properly, several stray drums had no labels: a 55-gallon aqueous ammonia drum and a 5-gallon pail of waste oil.
- I perused the disposal record carefully. Receipts on-site for perchloroethylene ("perc.," a chlorinated solvent) waste date back to 1/19/88; there is a 4-month gap between 1/19/88 and 5/20/88 that may indicate storage greater than 90 days. Also, receipts/manifests for the full three years prior to the inspection date were not produced because the owner, Stu Depper, claims that the Glovatorium only began to generate perc. waste immediately prior to the initial 1/19/88 pickup date. (Curiously, Alan Whitman of Oakland PD has found evidence that Safety-Kleen picked up some perc. waste from the facility prior to 1988.)
- For stoddard (petroleum-based) solvent, Mr. Depper produced receipts for disposal of "still-bottom" waste dating back to 1/8/88. There is a gap of 6 months between 3/17/88 and 9/26/88 (Depper claims that this was the result of the stoddard distillation unit being out of commission during the summer of 1988, meaning that no purification of stoddard occurred over this period and therefore no waste was generated.) In addition, there is a gap of more than 90 days between 12/13/88 and 4/3/89. Mr. Depper says that he took stoddard waste to the

former Chevron station at 3701 Broadway prior to 1/88, and received no receipts for this disposal.

Sec. 66492

- The on-site records for disposal of both perc. and stoddard solvent are incomplete, since they don't go back the full three years required under this section, and contain some gaps that might indicate storage of hazardous waste for over 90 days.

Sec. 67124

- The aqueous ammonia drum referred to earlier was inaccessible, hidden behind several pieces of equipment and two-wheeled laundry carts. In my judgment, this violates the aisle-space provision of Title 22; Mr. Depper argued this point because he felt that the drum should be inaccessible to employees.

Business Plan (Health and Safety Code)

Sec. 25504(a), 25504(b)(3), and 25509(a)

- The Glovatorium still has not sent a hazardous material/waste inventory to our office. Mr. Depper stated that he has submitted a chemical inventory to the Bay Area Air Quality Management District, and implied that he thought this satisfied the "agencies'" chemical inventory requirement.
- Whereas the Glovatorium has submitted certain elements of the required emergency response and contingency plan, as well as an employee training plan, it has not submitted a suitable evacuation plan complete with a floor plan of the facility showing hazardous material storage areas.

* **Underground Tanks (Title 23)**

Sec. 2641

- This section specifies the requirements for underground tank monitoring alternatives.
- Here is the situation at the facility: there are six tanks, five of which are installed in a row, vertically, beneath part of the building. This cluster of five tanks has one observation well, supposedly downgradient of the tanks, which range in size from 1,000-gallon to 3,000-gallon. The sixth tank, the 3,000-gallon "fill tank," is located under the sidewalk outside the building, and has no monitoring associated with it. All six tanks contain stoddard solvent, some being clean and some being relatively dirty, but none is considered a waste material.

- The only monitoring that the facility uses is the annual checking of the one observation well (I saw no reports showing that even this has been done).
- Minimum monitoring requirements that Alternative #2 of this section specifies:
 - a. four monitoring wells around the cluster of five tanks, to be sampled twice a year;
 - b. two monitoring wells around the single outside tank; and
 - c. an indeterminate number of vadose (dry soil vapor) wells around both tank areas.

Mr. Depper stated that he has solicited bids from four consultants to handle his underground tank problems, but this office has received nothing from the Glovatorium or any of these consultants.

Interestingly, on April 10, Mr. Lito Ding from the federal Small Business Administration in Mountain View, CA called me to check out an application that the Glovatorium had filed to obtain an SBA loan or grant for underground tank repair. Apparently, Mr. Depper indicated on the application that the October 1989 earthquake "caused his tanks to leak." During the April 24 inspection, I asked him if he knew whether his tanks were in fact leaking, making no reference to the SBA application; he emphatically denied that they were leaking, because the insides had been coated with some sort of leak-proof material within the past several years.

Other Information

The Deppers own the building and the tanks. Technichem in Emeryville (the current perc. waste hauler) supplies recycled perc. to the facility. East Bay Oil in Richmond supplies the stoddard (Chevron 325) solvent, a total of 4,000 to 5,000 gallons of which was used in 1989 at the Glovatorium. Recycletron Oil Co. (AKA Refineries Service) of Patterson, CA picks up the waste stoddard. Business at the facility is heaviest during the winter (November to February).

EXHIBIT 3



EAST BAY
MUNICIPAL UTILITY DISTRICT

WALTER J. BISHOP
MANAGER OF WASTEWATER

CERTIFIED MAIL
(Return Receipt Requested)
Certified Mail No. **978053**

March 23, 1992

HAND-DELIVERED MAY 13, 1992

THE GLOVATORIUM
3815 Broadway
Oakland, CA 94611

Attn: Stu Depper

Dear Drycleaner:

Re: Drycleaner Wastewater Discharge Permit

Enclosed is the Wastewater Discharge Permit for your facility, effective March 21, 1992, through March 20, 1993 for your information and records. Please read the Terms and Conditions and Standard Provisions and Reporting Requirements attached to the permit. As a permit holder, you are legally responsible to know all permit conditions and requirements.

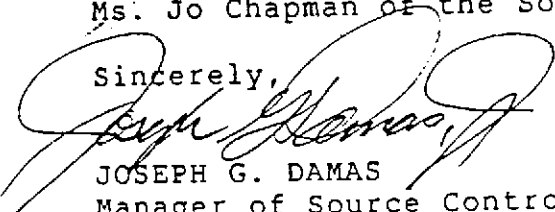
THE GLOVATORIUM shall report to the Source Control Division any changes, permanent or temporary, to the premise or operations that significantly affect the quality or volume of wastewater discharge or deviate from the Terms and Conditions under which the permit was granted.

A Wastewater Discharge Compliance Report form is enclosed. You are required to complete, sign and submit the enclosed certification statement within 30 calendar days of receipt of this letter. Please send the completed form to:

EAST BAY MUNICIPAL UTILITY DISTRICT
P.O. Box 24055, MS 702
Oakland, CA 94623-1055
Attention: Jo Chapman

If you have any questions regarding this Permit, please contact Ms. Jo Chapman of the Source Control Division at (510) 287-1607.

Sincerely,


JOSEPH G. DAMAS
Manager of Source Control

JGD:NJC:njc

Enclosures



WASTEWATER DISCHARGE PERMIT

Terms and Conditions

THE GLOVATORIUM
3815 Broadway
Oakland, CA 94611

ACCOUNT NO. 05420492

GENERAL CONDITIONS: This Wastewater Discharge Permit is issued for a specific operation and is not assignable to another user or transferable to any location.

PROHIBITION: THE GLOVATORIUM shall not discharge drycleaning process waste, including still oil and separator water, to the sewer. THE GLOVATORIUM shall not connect any drycleaning processes to the sewer.

COMPLIANCE CONDITIONS: THE GLOVATORIUM shall:

- o Permanently seal all floor drains, or install berms (physical barriers) to separate drycleaning machines from floor drains.
- o Notify EBMUD - Source Control at 465-3700 immediately upon any accidental spill to the sanitary sewer. Formal written notification describing the circumstances and remedies shall be submitted to EBMUD within 5 working days of the occurrence.
- o Maintain current, written disposal procedures describing the method used to dispose of process wastes.
- o Train designated employees in proper disposal and spill procedures.
- o Post a sign in the work area indicating the Prohibition of Discharge, proper disposal procedures, and notification of EBMUD in event of accidental spill to the sanitary sewer.
- o Maintain all waste disposal manifests on-site for no less than three (3) years. These records shall be made available to the EBMUD inspector.
- o Submit an annual Certification Statement by May 1, 1992, stating that the business is meeting the requirements of this permit.

COMPLIANCE INSPECTIONS: The District will conduct random, unannounced inspections to verify compliance with the conditions of this permit.

DISTRICT ENFORCEMENT AND PENALTIES: Enforcement for non-compliance will result in penalties provided in Ordinance No. 311.

PERMIT FEE: \$200.00

TERM OF PERMIT: This permit is valid for one year, between the period of March 21, 1992 and March 20, 1993.

Walter J. Bishop, Manager
EBMUD, Wastewater Department
P.O. Box 24055
Oakland, CA 94623-1055



WASTEWATER DISCHARGE COMPLIANCE REPORT

APPLICANT BUSINESS NAME THE GLOVATORIUM		EBMUD ACCOUNT NUMBER . 054-20492	
FACILITY ADDRESS THE GLOVATORIUM		BUSINESS MAILING ADDRESS THE GLOVATORIUM	
STREET ADDRESS 3815 Broadway		STREET ADDRESS 3815 Broadway	
CITY Oakland		CITY Oakland	
ZIP CODE 94611		ZIP CODE 94611	
PHONE (510) 658-8660			

WASTE TREATMENT AND DISPOSAL METHOD: DESCRIBE HOW YOU TREAT AND DISPOSE OF DRYCLEANING WASTES AND WASTEWATER. IN ADDITION, PLEASE PROVIDE INFORMATION REGARDING ANY CHANGES TO YOUR PREMISE OR OPERATIONS. YOU ARE REQUIRED TO ATTACH COPIES OF HAZARDOUS WASTE MANIFESTS OR TRANSPORTER RECEIPTS FOR ANY OFFHAUL OF DRYCLEANING WASTES DURING THE REPORTING PERIOD.

We are sealing three (3) drains in the drycleaning room.

We are building a berm around the drain in the air compressor room.

We are storing waste solvent safely and are properly labelling it.

CERTIFICATION STATEMENT

"I HAVE PERSONALLY EXAMINED AND AM FAMILIAR WITH THE INFORMATION SUBMITTED IN THIS DOCUMENT AND THE REQUIREMENTS OF THE WASTEWATER DISCHARGE PERMIT FOR THIS FACILITY. I CERTIFY THAT THE ABOVE NAMED FACILITY DOES NOT DISCHARGE DRYCLEANING WASTES OR WASTEWATER TO THE SEWER IN ACCORDANCE WITH THE TERMS OF THE WASTEWATER DISCHARGE PERMIT."

Stuart Depper
NAME (PRINT OR TYPE)

MDR
TITLE

[Signature]
SIGNATURE

January, 27, 1992
DATE

SD-30.3 • 6/86

EXHIBIT 4

1 Thomas J. Orloff
2 District Attorney
3 County of Alameda
4 LAWRENCE C. BLAZER (Bar No. 95598)
5 Deputy District Attorney
6 Consumer & Environmental Protection Division
7 7677 Oakport Street, Suite 400
8 Oakland, CA 94621
9 (415) 569-9281

10 Attorneys for Plaintiff

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 PEOPLE OF THE STATE OF CALIFORNIA,)

14 Plaintiff,)

No. 116653

15 v.)

16 ROBERT DEPPER,
17 STUART DEPPER,)

DECLARATION OF
JAMIE KENDALL

18 Defendants.)
19 _____)

20 I, Jamie Kendall, declare as follows:

21 I am a Supervising Air Quality Inspector with the Bay Area
22 Quality Management District (BAAQMD), the local air pollution control
23 agency empowered to adopt orders, regulations and rules pertaining to
24 the control of air pollution. As an air quality inspector, my duties
25 have included regular compliance inspections at industrial facilities.

26 I have a B.S. degree in Conservation and Resource Studies from
27 UC Berkeley (1982) and since joining the District 13 years ago have
28 received extensive training regarding air pollution compliance
requirements. I have also been certified to deal with hazardous
materials matters ("Hazwoper" Training) pursuant to a 40 hour course

1 with annual 8 hour refresher courses.

2 I am familiar with the dry cleaning facility once known as the
3 Glovatorium, located at 3815 Broadway in Oakland. (The facility has
4 undergone several name changes without any apparent change in
5 ownership or management). I was the assigned inspector for that
6 facility between 1990 and 1993 and have supervised those who have
7 inspected it since then.

8 In dealing with those who operated the facility, we were
9 frequently told to deal with Stuart Depper, who appeared to be in
10 charge of the operation. Other Deppers with whom we dealt certainly
11 deferred to him on most issues.

12 During the time I have been responsible for inspecting the
13 facility, over 25 Notices of Violation have been issued by our agency
14 regarding petroleum solvent, perchloroethylene and various permit and
15 administrative violations. Each Notice identifies a violation of
16 District regulations, and the inspector then explains the violation
17 to the facility operator, advising him or her of compliance options
18 and of a return visit to verify compliance. Apart from technical
19 paperwork violations, the regulations typically violated by the
20 Deppers include:

- 21 1. open containers containing solvents (9 violations in 3
22 years),
- 23 2. dripping solvent from industrial machinery (several
24 occasions on which the flow far exceeded regulatory limits),
25 and
- 26 3. mishandling hazardous waste (i.e. illegally exposing waste
27 filter powder, and refusal to provide waste disposal
28 records).

27 Many of the violations have been of the sort which potentially

1 place the public at risk. For example, perchloroethylene, when left
2 in open containers or allowed to drip from machines without fixing the
3 problem, is a toxic air contaminant, known to the State to cause
4 cancer. It is also a contributor to smog as is petroleum solvent.
5 Needless to say, employees and nearby residents breathing these fumes
6 are placed in a potentially harmful situation.

7 One of the most frustrating aspects of our dealings with the
8 Deppers and the Glovatorium is the fact that the same types of
9 violations have occurred repeatedly, with little apparent effort to
10 take care of them. When the search warrant was served in October
11 1992, there were already pending violations under review by our agency
12 against the facility. When we participated in the execution of the
13 search warrant, we found many of the same types of violations that had
14 been identified previously and pointed out to the Deppers. We then
15 made a formal referral of those violations to the District Attorney's
16 Office for criminal prosecution (a rare event). These violations are
17 among those before this Court.

18 Aside from any environmental damage, this facility, in my
19 experience, has been one of the worst which we regulate (over 10,000
20 facilities) based on three different criteria: 1) the sheer number of
21 violations, 2) the refusal to mitigate or correct violations once they
22 were brought to the attention of the Deppers, and 3) the hostility and
23 apparent lack of cooperation consistently exhibited by the Deppers.
24 The practices observed at the site can only be described as amazing.
25 For example, I observed a visible cloud of petroleum vapors in the
26 "drying room" at the Glovatorium. I have never seen such a form of
27 blatant air contamination at any other dry cleaning facility. I have

1 never seen such egregious leaks of perchloroethylene at any dry
2 cleaning facility. Neither I, nor anyone on our staff has ever seen
3 anyone take contaminated filter powder (diatomaceous earth) and spread
4 it over the ground in an apparent effort to aerate and volatilize the
5 contaminants (and pollute the air) as we have so observed at
6 Glovatorium. I have rarely seen other facilities completely eschew
7 preventive maintenance (which would abate many of these problems) as
8 have the Deppers.

9 The attitude of Stuart Depper is something which we have found
10 particularly difficult. His arrogance, contentiousness and
11 unwillingness to cooperate have been remarkable. He has regularly
12 questioned our efforts to regulate his industrial processes, and when
13 not being evasive, sometimes questions our knowledge of equipment and
14 solvents. It reached the point where we simply could not trust his
15 representations regarding materials used in his processes, and had to
16 start taking actual samples of the material to verify for ourselves
17 what was present. He once said that solvent was water, that material
18 being used in a spray booth was not regulated (which turned out to be
19 false), and that machines leaking perchloroethylene had been serviced
20 when they obviously had not.

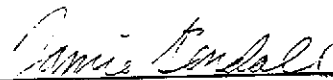
21 In my opinion, what makes this attitude even more inappropriate
22 is the fact that Stuart Depper is intelligent; he has attended
23 regulatory workshops which we have conducted to include dry cleaner
24 operators in the drafting of applicable rules, and has even acted as
25 a consultant and equipment distributor to other dry cleaners. In his
26 case ignorance cannot be used as an excuse.

27 To a third party this may appear to be some sort of personality
28

1 conflict, however, that is not the case. In my dealings with
2 virtually all other industrial facilities, I have been able to
3 inspect, issue notices of violation and consult with their management
4 in a cordial and businesslike manner. What has occurred here is truly
5 unusual. Moreover, in dealing with my colleagues at other agencies,
6 I know that the same sort of difficulties have been presented to them
7 by the Deppers.

8
9 I declare the foregoing to be true, to the best of my knowledge,
10 under penalty of perjury.

11 Executed this 7th day of September, 1995.

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14 Jamie Kendall

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EXHIBIT 5

1 Thomas J. Orloff
District Attorney
2 County of Alameda
LAWRENCE C. BLAZER (Bar No. 95598)
3 Deputy District Attorney
Consumer & Environmental Protection Division
4 7677 Oakport Street, Suite 400
Oakland, CA 94621
5 (415) 569-9281

6
7 Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10 PEOPLE OF THE STATE OF CALIFORNIA,)
11 Plaintiff,) No. 116653
12 v.)
13 ROBERT DEPPER,)
STUART DEPPER,) **DECLARATION OF**
14 Defendants.) **SCOTT SEERY**
15)

16 I, Scott Seery declare as follows:

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

24 I have been with Alameda County for over six and one half years.
25 Previously, I was Environmental Geologist with PRC Environmental
26 Management, Inc., a private environmental consulting firm, a Research
27 Analyst with Bendix Environmental Research, Inc., another private

28

1 consulting firm, specialists in authoring Environmental Impact Reports
2 (EIR) and providing expert testimony in cases involving toxicological
3 and epidemiological studies. I have B.S. in Geology from California
4 State University, Hayward, and have completed one year of post
5 graduate study in the field of environmental geology at this same
6 institution. Further, I have well over 500 hours of specialized
7 training, including State, Department of Health Services, Office of
8 Emergency Services and USEPA certified training in, among others, such
9 areas as hazard appraisal and recognition planning, OSHA health and
10 safety training for hazardous waste workers, hazardous materials
11 incident response operations, and underground storage tank monitoring,
12 closure/removal, and cleanup. I have conducted training in inspection
13 of underground storage tanks, including a course sponsored by the
14 University of California, Riverside Extension program for regulators
15 around the state of California.

16 The Environmental Protection Division is the local implementing
17 agency charged with enforcing the California Underground Storage of
18 Hazardous Substances Act (Health and Safety Code Section 25280
19 et. seq.) in those portions of Alameda County where cities do not
20 administer the law.

21 The purpose of the law is to monitor and control the release
22 of contamination into soil and groundwater through leaks in
23 underground storage tank (UST) systems. (See Health and Safety Code
24 Section 25280) I have been actively involved in conducting tank
25 inspections and the permitting process for most of the last seven and
26 one half years. The Division is also the administering agency charged
27 with enforcing the Hazardous Materials Release Response Plans and
28

1 Inventory Act. (Health and Safety Code Sections 25500 et. seq.) This
2 law requires handlers of hazardous materials, in excess of threshold
3 quantities (i.e. 55 gallons), to submit inventories of those materials
4 along with emergency contingency plans, (Hazardous Materials Business
5 Plans - HMBPs) to the local emergency response agencies, to be used
6 by them to minimize dangers in the event of any emergencies involving
7 the materials.

8 Underground storage tanks which contain petroleum products such
9 as stoddard solvent require a permit from our agency to operate. One
10 of the legally required conditions of the permit is that the tanks be
11 monitored in an approved fashion to detect leaks. My review of our
12 files indicates that the underground tanks located at 3815 Broadway
13 in Oakland have never been properly monitored pursuant to the
14 requirements of Title 23 of the California Code of Regulations.

15 It is my understanding that the owner of the tanks has said that
16 they are no longer in use. When tanks are taken out of use, it is
17 legally required that they be properly "closed" by way of a closure
18 plan submitted to and approved by our agency. A review of the record
19 indicates that no such closure plan has ever been approved (or even
20 submitted) for the tanks which exist at 3815 Broadway.

21 One of the purposes of a closure plan is to determine if a leak
22 has occurred so that it can be dealt with. If such a leak is
23 detected, either as part of a closure process or by conventional
24 monitoring, it becomes the obligation of the owner or operator to
25 conduct an investigation to determine the extent of the contamination
26 and the degree of cleanup required. The records in this case indicate
27 our knowledge (and that of the defendants) of extensive leakage from
28

1 the tanks as early as 1990. In spite of repeated requests for a
2 workplan (which is legally required) to assess the damage caused by
3 the leakage, no plan has ever been submitted.

4 So, in spite of obvious evidence of gross groundwater pollution
5 beneath the building, over the past several years this facility has
6 refused to comply with even the most rudimentary underground tank
7 requirements.

8 To achieve compliance with California laws regarding USTS, this
9 is what must be done:

10 According to Article 7, Section 2670 et seq. of Title 23,
11 California Code of Regulations (CCR), tanks which are leaking and
12 cannot or will not be repaired, or those which are abandoned or
13 otherwise no longer in use, are to be permanently closed. Permanent
14 tank closure involves the removal of remaining liquids, and, among
15 other steps, either 1) removal of the tank, or 2) in-place
16 decommissioning by filling the tank with an inert solid. Either
17 method of tank closure requires the submittal of an application for
18 tank closure to our agency and, in this case, the Oakland Fire
19 Department, for approval. Tank closure permits are issued by the Fire
20 Department.

21 Permanent tank closure is required for this site. To facilitate
22 the pending closures, it is paramount to determine the exact number
23 and locations of the tanks. Therefore, engineering "as-built"
24 drawings, or, in the absence of such drawings, the use of remote
25 sensing techniques, such as ground penetrating radar, must be used to
26 determine tank locations.

27 Article 11 of 23CCR requires a soil and water investigation (SWI)

1 to be performed to determine the extent of soil and ground water
2 pollution as a result of the release from the leaking tanks. A SWI
3 work plan must be submitted to our agency which describes the proposed
4 scope of the required SWI. The SWI will include, among other tasks,
5 the construction of monitoring wells and drilling of soil borings and
6 collection and analysis of both soil and water samples. Once the
7 extent of the pollution has been determined by completing the SWI, a
8 corrective action plan (CAP) must be developed outlining the degree
9 of cleanup required.

10 In addition, Article 5, Section 2655, 23CCR, requires free-phase
11 (floating) product to be removed from the ground water to the extent
12 practical. The regulation provides that our agency determine the
13 appropriate method. This material must be properly treated,
14 discharged or disposed of in compliance with applicable local, state,
15 and federal regulations.

16 The regulations further require that technical reports describing
17 project status are to be submitted to our agency every 3 months until
18 the assessment and cleanup project has been completed. Lastly, an
19 *Underground Storage Tank Unauthorized Release (Leak) / Contamination*
20 *Site Report* is required to be submitted to our agency for
21 distribution.

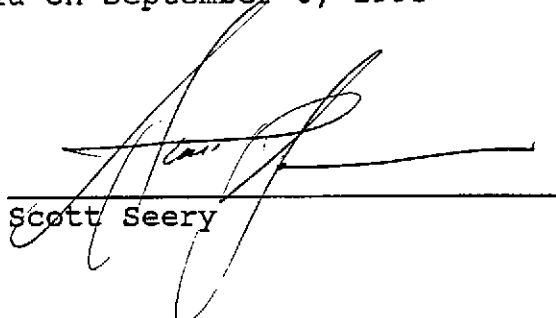
22 This declaration has focused on the outstanding tank difficulties
23 at the site, without addressing the hazardous waste storage problems
24 which have apparently not been dealt with, in spite of repeated
25 requests to Stuart Depper by my colleagues, Gil Wistar and Larry Seto.

26
27 I declare the foregoing to be true, to the best of my knowledge,
28

1 under penalty of perjury.

2 Executed at Oakland, California on September 6, 1995

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Scott Seery

EXHIBIT 7

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THOMAS J. ORLOFF
District Attorney
County of Alameda
LAWRENCE C. BLAZER (Bar No. 95598)
Deputy District Attorney
Consumer & Environmental Protection Division
7677 Oakport Street, Suite 400
Oakland, CA 94621
(415) 569-9281

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA,)
)
) Plaintiff,) No. 116653
)
)
) v.)
)
) ROBERT DEPPER,)
) STUART DEPPER,) DECLARATION OF
)) LARRY SETO
)
) Defendants.)
)

I, Larry Seto, declare as follows:

1. I am a Senior Hazardous Materials Specialist with the Alameda County Department of Public Health, Environmental Protection Division. I have been with the Division for 13 years. I have a bachelor's degree from Cal State Long Beach in Criminalistics and Chemistry. Before joining the County, I was a chemist in the private sector for several years, including time spent as a criminalist in the Houston Police Department crime laboratory.

2. My duties include hazardous waste generator inspections, underground storage tank inspections, hazardous materials business plan inspections, responding to hazardous materials emergencies

1
2 and overseeing site remediation when spills or contamination has
3 occurred.

4 3. I participated in the execution of the search warrant on
5 the Glovatorium at 3815 Broadway, Oakland, in October of 1992.
6 Although my primary role was to conduct sampling, I noticed at
7 that time that there were numerous drums of dry cleaning waste
8 (which is almost always "hazardous" waste under the Hazardous
9 Waste Control Act) which were illegally stored at the facility, in
10 that they were:

- 11 1) unlabeled or improperly labeled (without any
12 identification of the product or beginning accumulation
13 dates),
- 14 2) not sealed properly,
- 15 3) were stored outside without lids, or without the lids
16 being properly secured (where rainwater would allow the
17 drum contents to overflow),
- 18 4) without sufficient aisle space between the drums (not
19 allowing firemen and other emergency personnel proper
20 access in case of a fire or other emergency), and
- 21 5) not properly transported offsite within the 90 day limit
22 set by law.

23 Our suspicion that the contents of virtually all of these drums
24 was "hazardous" was confirmed by the laboratory analyses of the
25 samples which I had taken.

26 4. Many of the drums discovered two years earlier (at the
27 time of the October, 1990 search warrant) were still on the
28

1
2 premises when I entered in 1992. I know from my review of the
3 files that the Hazardous Materials Specialist at that time, Gil
4 Wistar, had requested Robert and Stuart Depper to properly
5 characterize and dispose of the hazardous waste several times
6 during 1989 and 1990, and by letter dated 1/8/91. One of the
7 legal requirements of a hazardous waste generator is the creation
8 and retention of hazardous waste manifests when transporting and
9 disposing of the waste, so that they can be provided to regulatory
10 personnel to confirm the proper handling of the waste. Despite
11 repeated requests that the waste be dealt with and the appropriate
12 paperwork provided to us, a review of our records show that this
13 was never done.

14 5. On September 21, 1994, I conducted a routine inspection
15 of the facility (which has changed names more than once). I was
16 allowed entry by the accountant, John Yep, who was apparently in
17 charge at that time. I found over 50 drums of suspected hazardous
18 waste. Again, many were improperly labeled and many had been
19 there longer than the 90 day limit. I also noticed that many of
20 the drums of hazardous waste identified at the October, 1992
21 search warrant were now missing (we had spray painted numbers on
22 them for ID purposes). During the inspection Stuart Depper, the
23 manager of the facility, spoke with me over the phone and ordered
24 me off the premises. He was angry that I was conducting the
25 inspection. I then immediately left, and sent to Stuart Depper
26 the letter dated September 23, 1994, attached hereto as an
27 exhibit. In that letter I set forth the violations and formally
28

1
2 requested all the manifests required for the legal disposal of the
3 missing waste.

4 6. On September 29, 1994, a meeting was held at my office
5 which included Stuart Depper and his attorney Gregory O'Hara.
6 Although much of the conversation dealt with the underground
7 tanks, an ongoing problem at the facility which is not addressed
8 in this declaration, I specifically mentioned the hazardous waste
9 storage problems, and Stuart Depper specifically promised to
10 provide me with the manifests for the missing hazardous waste. As
11 of this date no manifests have ever been provided.

12 7. So, although legally required to do so under the
13 Hazardous Waste Control Act and its accompanying regulations, the
14 Deppers have not provided manifests for the disposal of the
15 hazardous waste found at their facility in 1990, 1992 and 1994.
16 We know that some of that waste has disappeared from the facility.
17 Apparently there is also hazardous waste still being illegally
18 stored on the site.

19
20 I declare the foregoing to be true to the best of my
21 knowledge, under penalty of perjury.

22 Executed this 26th day of September, 1995.

23
24
25 
26 _____
27 Larry Seto

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
C. V. ...



RAFIK A. SHAHID, Assistant Agency Director

September 23, 1994

ALAMEDA COUNTY CC 430-4510
DEPT. OF ENVIRONMENTAL HEALTH
ENVIRONMENTAL PROTECTION DIVISION
1131 HARBOR BAY PKWY., RM.250
ALAMEDA, CAL. 94502-6577

Mr. Stuart Depper
3815 Broadway Street
Oakland, CA 94611

RE: The Leather Cleaner, 3815 Broadway, Oakland, CA

Dear Mr. Depper:

On September 21, 1994, I performed a routine hazardous materials/waste inspection with Paul Smith from my office at the above site. We were given consent to perform our inspection from your Accountant, John Yep. Prior to our inspection, Mr. Yep informed us that The Leather Cleaner will be going out of business effective September 26, 1994. During our inspection, we observed the following violations of the Hazardous Waste Control Law:

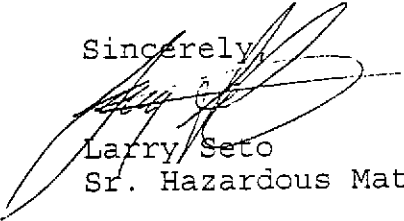
1. There are a minimum of fifty (50), 55 gallon drums located throughout the facility. Most of the drums are not labelled, or are improperly labelled without an accumulation start date.
2. A number of the labelled drums on-site have an accumulation start date which exceeds the 90 day accumulation time.
3. Numerous uncovered containers containing hazardous materials/waste are stored throughout the site.
4. In a number of locations, there is inadequate aisle space to allow the movement of equipment and personnel in the event of an emergency.
5. There are six underground tanks on-site that are not registered and permitted. These tanks must be permanently closed if the storage of hazardous substances has ceased and the tanks will not be used, or are not intended for use, for the storage of hazardous substances within the next 12 consecutive months. (Section 2670(c), Article 7, California Code of Regulations, Title 23)

In addition, we did not see any of 55 gallon drums that we numbered during our last site visit on October 16, 1992. Please submit within 30 days copies of all manifests for the disposal of hazardous waste from the above site since October 16, 1992.

We were approximately thirty (30) minutes into the inspection when you called the facility. After scheduling a meeting with me to complete my inspection next Thursday, September 29, 1994 at 1:00pm with yourself, and the new business owner, you asked us to leave. (We agreed no attorneys will be present during this meeting). Mr. Smith and I left the premises immediately after I completed my phone conversation with you.

Please be prepared to address the violations noted in this letter next Thursday.

Sincerely,



Larry Seto
Sr. Hazardous Materials Specialist

cc: John Yep, Accountant, The Leather Cleaner
Ed Howell, Chief, Environmental Protection
Files

EXHIBIT 8



Curtis & Tompkins, Ltd., Analytical Laboratories, Since 1878

2323 Fifth Street, Berkeley, CA 94710. Phone (415) 486-0900

INVOICE

Number 102122

Date

26-OCT-90

FOR PROFESSIONAL SERVICES

Alameda County Health Care

80 Swan Way

Rqom 200

Oakland, CA 94621

ATTN: Gil Wistar

P.O. No. ~~430-5215~~

DEPT	DESCRIPTION	#	PRICE PREMIUM	EXTENDED
1- 4500	EPA 8010 Purgeable Halocarbons	1	\$80.00	\$80.00

JOB #: GLOVATORIUM / ³⁸¹⁵ 3821 Broadway
LOGIN: 101980

TOTAL: \$80.00

Distribution:
White Original and Green Copy to Client
Yellow Copy to C&T Accounting
Pink Copy to C&T File

OK to pay - P.O. # 430-6971

Gilbert M. Wistar

TERMS: NET CASH PAYABLE UPON PRESENTATION OF INVOICE. AMOUNT UNPAID OVER 30 DAYS OF DATE OF INVOICE SUBJECT TO A SERVICE CHARGE OF 1 1/2% PER MONTH (EQUAL TO 18% PER ANNUM).



Curtis & Tompkins, Ltd., Analytical Laboratories. Since 1878

2323 Fifth Street, Berkeley, CA 94710, Phone (415) 486-0900

INVOICE

FOR PROFESSIONAL SERVICES

Alameda County Health Care

80 Swan Way

Room 200

Oakland, CA 94621

ATTN: Gil Wistar

Number 102205

Date

06-NOV-90

P.O. No. ~~430-4971~~

DEPT	DESCRIPTION	#	PRICE PREMIUM	EXTENDED
1- 4500	TEH-Tot Ext Hydrocarbons	7	\$68.00	\$476.00

JOB #: GLOVATORIUM / 31 Muth, Orinda
 LOGIN: 101978

TOTAL: \$476.00

Distribution:
 White Original and Green Copy to Client
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OK To pay - P.O. # 430-6971

Gilbert M. Wistar



Curtis & Tompkins, Ltd., Analytical Laboratories, Since 1878

2323 Fifth Street, Berkeley, CA 94710. Phone (415) 486-0900

INVOICE

FOR PROFESSIONAL SERVICES

Alameda County Health Care
80 Swan Way
Room 200
Oakland, CA 94621

ATTN: Gil Wistar

Number 102208

Date

06-NOV-90

P.O. No. ~~430-6917~~

DEPT	DESCRIPTION	#	PRICE	PREMIUM	EXTENDED
1- 4500	TEH-Tot Ext Hydrocarbons	14	\$68.00		\$952.00

-8-

JOB #: GLOVATORIUM / ³⁸¹⁵ 3821 Broadway
LOGIN: 101981

TOTAL: \$952.00

Distribution:
White Original and Green Copy to Client
Yellow Copy to CGT Accounting
Pink Copy to CGT File

OK To pay - P.O. ~~430-6917~~
430-6971

Gilbert M. Wistar

TERMS: NET CASH PAYABLE UPON PRESENTATION OF INVOICE. AMOUNT UNPAID OVER 30 DAYS OF DATE OF INVOICE SUBJECT TO A SERVICE CHARGE OF 1 1/2% PER MONTH (EQUAL TO 18% PER ANNUM).



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2323 Fifth Street, Berkeley, CA 94710, Phone (415) 486-0900

INVOICE

FOR PROFESSIONAL SERVICES

Alameda County Health Care
80 Swan Way
Room 200
Oakland, CA 94621

ATTN: Gil Wistar

Number 102235

Date 08-NOV-90

P.O. No. 430-6971

DEPT	DESCRIPTION	#	PRICE PREMIUM	EXTENDED
			- % -	
1- 4500	EPA 8010 Purgeable Halocarbons	4	\$80.00	\$320.00 ✓
1- 4508	pH	1	\$8.00	\$8.00 ✓
1- 4507	Calif Title 26 Metals	2	\$160.00	\$320.00 ✓
1- 4500	TEH-Tot Ext Hydrocarbons	21	\$68.00	\$1,428.00 ✓
1- 4500	TEH-Tot Ext Hydrocarbons	8	\$68.00	\$544.00 ✓

JOB #: GLOVATORIUM / ³⁸¹⁵ 3821 Broadway
LOGIN: 101976

TOTAL: \$2,620.00

OK to pay - P.O. # 430-6971

Gilbert M. Wistar

Distribution:
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Curtis & Tompkins, Ltd., Analytical Laboratories, Since 1878

2323 Fifth Street, Berkeley, CA 94710, Phone (415) 486-0900

INVOICE

Number 109243

Date

11/30/92

P.O. No.

FOR PROFESSIONAL SERVICES

Alameda County Health Care
 Dept of Environmental Health
 470 27th St, Third Floor
 Oakland, CA 94612

ATTN: Ariv Levi

DEPT	DESCRIPTION	#	PRICE PREMIUM	EXTENDED
			- 3 -	
1- 4508	Total Oil & Grease	5	\$60.00	\$300.00
1- 4522	EPA 8010 Purgeable Halocarbons	37	\$100.00	\$3,700.00
1- 4506	Asbestos	1	\$50.00	\$50.00
1- 4508	Flash Point	2	\$25.00	\$50.00
1- 4507	Lead	1	\$35.00	\$35.00
1- 4504	Sample Disposal Fee	1	\$144.00	\$144.00
1- 4522	TVH-Total Volatile Hydrocarbons	42	\$85.00	\$3,570.00

JOB #: STANDARD / Glovatorium
 LOGIN: 109060

TOTAL: -----
 \$7,849.00

Distribution:
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EXHIBIT 6

Mr. Robert Depper
January 8, 1991
Page 3 of 4

must be implemented, subject to approval from the Oakland Fire Dept., the Bay Area Air Quality Management District, and us.

2. Soil borings and groundwater monitoring wells must be installed around the underground storage tanks, and downgradient of these tanks. Borings and wells must also be installed beneath the dry-cleaning room and dryer room, where there is evidence of significant subsurface contamination that may have already, and could continue to, migrate off-site. Following a full definition of the types, concentrations, and areal extent of hydrocarbon contamination, a comprehensive cleanup plan will need to be developed and implemented. Additionally, leakage/spillage from the dry-cleaning machines and dryers must be contained and prevented from reaching subsurface soils.
3. Contaminated sludge and water from the sanitary sewer drains and sumps must be removed and handled as hazardous waste. The Glovatorium must desist immediately from disposing of hydrocarbon-contaminated water or pure hydrocarbons to the sanitary sewer, either directly or indirectly, to the extent that such discharges exceed EBMUD influent limits.
4. Soils and debris in the 55-gallon drums are likely to qualify as hazardous waste, based on flammability or toxicity criteria. Therefore, this material must be removed from the site and be treated/disposed of as hazardous waste (unless the Glovatorium can demonstrate this waste to be nonhazardous, according to Sec. 66305, Div. 4, Title 22, California Code of Regulations). However, if all or part of this waste is proved to be nonhazardous, there still may be disposal restrictions that will require coordination with this office.
5. As mentioned in person to Stuart Depper on November 20, 1990, perchloroethylene-contaminated waste in the quarantined dumpster needs to be segregated from rubbish, with the solvent-laden waste handled as hazardous. The Glovatorium must send this office a letter that indicates how this waste will be segregated and treated or disposed of, and how the Glovatorium will handle such waste in the future (it is not appropriate to mix it with simple rubbish). If the letter is acceptable, a representative from this office will be available to remove the quarantine and witness the separation of hazardous waste from other trash.
6. Cleanup of contaminated soil at 31 Muth Drive in Orinda must be coordinated through the Contra Costa County Health Services Dept., Hazardous Materials Section. They can be reached at:

4333 Pacheco Blvd.
Martinez, CA 94553-2295

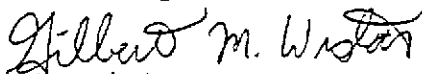
ph. (415) 646-2286

Mr. Robert Depper
January 8, 1991
Page 4 of 4

Please submit a work plan to this office that takes into account all of the above considerations. The work plan must be prepared and signed by a California-Registered Geologist or Professional Engineer; it must be thorough in scope and include a schedule for implementation of specific tasks. The work plan is due in 60 days, that is, no later than March 8, 1991.

If you have any questions concerning the contents of this letter, please contact the undersigned at 271-4320.

Sincerely,



Gil Wistar
Hazardous Materials Specialist

c: Ned Robinson, Attorney-at-Law (3730 Mt. Diablo Blvd., Suite 330,
P.O. Box 1757, Lafayette, CA 94549)
Jim Haltum, Contra Costa County Health Services Dept. (4333
Pacheco Blvd., Martinez, CA 94553-2295)
Alan Whitman, Oakland Police Dept.
Mark Thomson, Alameda County District Attorney's Office, Consumer
and Environmental Protection Division
Rafat A. Shahid, Asst. Agency Director, Environmental Health
files