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 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA

9 PEOPLE OF THE STATE OF CALIFORNIA,)
 10)
 Plaintiff,) No. 116653 A&B
 11)
 v.)
 12)
 13)
 14)
 ROBERT DEPPER,)
 STUART DEPPER)
 15)
 Defendants)

DECLARATION OF
 SCOTT SEERY

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 17 I, Scott Seery declare as follows:

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

26 Previously, I was an Environmental Geologist with PRC
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1 Environmental Management, Inc., a private environmental consulting
2 firm, a Research Analyst with Bendix Environmental Research, Inc.,
3 another private consulting firm, specialists in authoring
4 Environmental Impact Reports (EIR) and providing expert testimony in
5 cases involving toxicological and epidemiological studies. I have
6 B.S. in Geology from California State University, Hayward, and have
7 completed one year of post graduate study in the field of
8 environmental geology at this same institution. Further, I have well
9 over 900 hours of specialized training, including State, Department
10 of Health Services, Office of Emergency Services and USEPA certified
11 training in, among others, such areas as: hazard appraisal and
12 recognition planning, OSHA health and safety training for hazardous
13 waste workers, hazardous materials incident response operations, and
14 underground storage tank monitoring, closure/removal, contaminant
15 hydrogeology and site cleanup. I have conducted training in
16 inspection of underground storage tanks, including a course sponsored
17 by the University of California, Riverside Extension program for
18 regulators around the state of California.

19 The Environmental Protection Division is the local implementing
20 agency charged with enforcing the California Underground Storage of
21 Hazardous Substances Act (Health and Safety Code Section 25280
22 et. seq.) in those portions of Alameda County where cities do not
23 administer the law, or where the Division is contracted to do so.

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
27 had to be done to bring the facility into compliance with the law.

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1 In September 1995 I prepared a declaration containing this
2 information, and it was submitted to the Court as part of the District
3 Attorney's Sentencing Memorandum.

4 I was present at the sentencing of each of the defendants by
5 Judge Lambden, and the conditions of probation included the
6 requirement that they submit a work plan for a subsurface
7 investigation and related tasks for the site at 38th and Broadway, to
8 determine the extent of the environmental contamination at that
9 location. The workplan requirements included:

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

21 The oversight of this site has been difficult from the start.
22 Without going into all the details, Robert Depper initially refused
23 to hire a consultant until a petition to revoke probation was filed.

24 Sometime in early 1997 Frank Goldman was hired by the Deppers as
25 their consultant. He initially did not wish to include tank closure
26 in his workplan, but, after much argument, a tank closure plan was
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1 prepared by another contractor. Eventually the tanks were closed in
2 place.

3 After more negotiation, a workplan to do a preliminary site
4 assessment was approved. The plan called for collection of various
5 soil and ground water samples from borings at certain key locations
6 to determine if the soil and groundwater were contaminated.

7 On August 20, 1997, during the "drilling" of the sampling bores
8 (actually, each is driven or pushed pneumatically rather than
9 drilled), I went to the site and met with Goldman. Several of the
10 borings had not been drilled deep enough to reach groundwater.
11 Goldman, who was using a drilling tool different from the "Geoprobe"
12 proposed in the approved plan, said that his chosen equipment could
13 not go deep enough to reach ground water because of its limited
14 capabilities in this geologic setting, and that he was putting in
15 temporary well casings and waiting until the following winter until
16 groundwater would rise into the holes and samples could then be taken.
17 This was an unacceptable deviance from the workplan, because, if
18 appropriate equipment was used, there was no reason to wait for months
19 to determine if the groundwater was polluted. The plan was to
20 determine at that time whether there was contamination.

21 I learned that same day the tool that he had chosen to do the
22 work, an "Enviro-core," had an inner drill rod and outer conductor
23 casing which are driven simultaneously, a unique feature of this
24 device. I also learned that the inner drill could work (and go deeper)
25 without the outer one in place. I suggested that this be done, and,
26 after much complaining, Goldman finally admitted that the real reason
27 why he didn't want to drill deeper at that time was that 1) the

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1 project was now taking longer than he thought, and 2) the Depper's
2 hadn't paid him all that was owed at that point.

3 In other words, concerns about cost overruns and lack of payment
4 were the real reason for not drilling the few feet deeper, not
5 professional or technical considerations. I felt that his original
6 representations were dishonest. Nonetheless I agreed that he need not
7 do the deeper borings at all locations, but that some key ones would
8 be chosen. With the modified approach, he was able to reach
9 groundwater within a few feet. Both soil and groundwater turned out
10 to be contaminated with various dry-cleaning solvents.

11 Goldman was apparently angry at being required to comply with his
12 own workplan, and, without telling us, he applied to have the State
13 take over the site on January 2, 1998 (I found out when called by a
14 State employee). Goldman put as one of his reasons for removing the
15 County that the requirement of deeper drilling "threatened the
16 integrity of the investigation." This is incorrect, was not mentioned
17 to me at the time, and again, I feel was a dishonest representation
18 of the facts.

19 In early January I accidentally became aware that Goldman had
20 made a public records request for all of the billing invoices to the
21 State for all of the LOP sites in Alameda County for 1997. I called
22 up Goldman to determine why such a request had been made, suspecting
23 that it had something to do with the Deppers, but not mentioning so
24 to him. He immediately became extremely upset at my inquiry, telling
25 me "it was none of my business", and that I was "harassing" him. He
26 said that the request was to assist him in "marketing" and had nothing
27 whatsoever to do with the Deppers.

28 He later called my supervisor, Tom Peacock, asking that I be

1 taken off the case. I then learned that Goldman had told Don Hwang,
2 the recipient of the records request, that it was being done on behalf
3 of the Deppers, to help them somehow with their regulatory problems.
4 In other words, Goldman was blatantly lying when he told me (and
5 others) that his request had nothing to do with the Deppers, when in
6 fact, it did.

7 I had nothing more to do with the records request, as it was
8 passed up the chain of command to determine what could be turned over.
9 Nonetheless, I learned a few weeks ago that Goldman and Robert Depper
10 had sued me, Peacock and Hwang along with the Department in an
11 attempt to get these records. (Alameda County No. 794362-9). The
12 lawsuit specifically says that Goldman's request for the records was
13 made on behalf of the Deppers.

14 The effort to get the State to take over the case occurred
15 without Goldman submitting a report showing what he had found at the
16 site. The report was only received by this office in late January
17 after various calls to Goldman, Goldman's lawyer and Depper's lawyer,
18 five months after the approved field work had been completed.

19 Although Goldman concedes that much of the contamination
20 originated at the site, his report was remarkable in that it contains,
21 with little if any supporting data, a concerted effort to blame
22 outside sources for much of the contamination found on the site.
23 Examples are:

- 24 1) an effort to blame a nearby gas station owned by
25 Unocal for some contaminants, even though all
26 available data indicates that the plume associated
27 with that site is substantially limited to that site;
- 28 2) an effort to blame the nearby "Earl Thompson property"

1 for some contamination merely because there were some
2 underground storage tanks on that property with some
3 contaminants contained *inside*. There have been no
4 environmental samples (soil or groundwater) taken at
5 that site; and

6 3) an effort to somehow blame the County for polluting
7 the site because the storm drain beneath the property
8 occasionally carries contaminants entrained in storm
9 water run-off (which would usually occur after the
10 first rain of the season). This is ridiculous because
11 the County does not own the storm drain, nor is it
12 responsible for its upkeep (See Exhibits 1 and 2).
13 Neither is there any evidence that any amount of
14 contamination was introduced to the site through the
15 storm drain. (The records in this case show that
16 there was gross pollution of the site over a period of
17 years, by these defendants, by way of leaking
18 underground solvent tanks and illegal dumping. The
19 reported sample results we have seen from the storm
20 drain indicate a relatively minuscule level of
21 contaminants).

22 These efforts to place blame elsewhere, consistent with the
23 defense strategy throughout the litigation of this case, are based on
24 scanty preliminary data, and are, in my opinion, biased and
25 unprofessional.

26 Another troubling issue is that Goldman's original workplan
27 called for shallow soil samples to be collected at various important
28 locations on the site. His report omitted most of the analysis data

1 from these key sample depths. When I asked for that data, his
2 response was that the samples were not taken, because the drilling
3 device used was somehow incompatible with the nature of the shallow
4 soil, and that a hand auger had to be used for the first few feet
5 anyway. However, Goldman's field notes (boring logs) specifically
6 indicate that most of the shallow samples were, in fact, collected.
7 Moreover, this morning I spoke with representatives of Precision
8 Sampling, the subcontractor who operated the drilling equipment at the
9 site. They said that shallow soil samples were, in fact, easily
10 recovered, and that no hand augers were used.

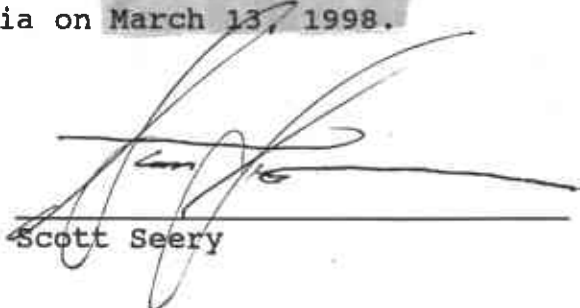
11 This discrepancy is a matter of concern because either Goldman
12 is lying about the samples or his field notes (and the representatives
13 of the drilling contractor) are completely wrong.

14 In concluding, the work done thus far is only preliminary. Now
15 that substantial contamination has been found, it is necessary to
16 determine the extent and nature of the contamination. At this point
17 the problem with Frank Goldman is his credibility. I and my
18 colleagues do not trust him. If we do not trust him, it is hard to
19 even trust the data he presents. This is an extremely difficult
20 situation, and I cannot see how it can be resolved without having
21 another consultant work on the case.

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 March 13, 1998.

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Scott Seery