Defendant's Name: Kirk Hayward
PFN: DRQ685
CEN: 4308411
CEPD REPORT #: 11FE0152

DECLARATION IN SUPPORT OF PROBABLE CAUSE

THE UNDERSIGNED HEREBY DECLARES:

1. That she is a Peace Officer, employed by the Department of Toxic Substances Control (DTSC), State of California, Office of Criminal Investigations.

2. That the contents of this declaration provides probable cause to believe the above-named defendants committed the offenses indicated in the statement of facts below: A) PC §487; B) PC §182.

3. I declare under information and belief that the foregoing is true and correct:

INTRODUCTION AND SUMMARY

Kirk Hayward owned a business in Union City that transported and disposed of hazardous and non-hazardous waste for local businesses. Hayward's business was called Clearwater Environmental Management, Inc. ("Clearwater"). Kirk Hayward served as CEO and Vice-President.[1] He ran Clearwater from at least 1995 to 2011, when the Department of Toxic Substances Control (DTSC) executed a search warrant related to these charges.

Charles Seaton served as Vice-President of Operations at the time of the warrant, and oversaw the day-to-day operations of the business. Seaton started with the company in 2005, and Hayward thereafter groomed Seaton to run the business, though Hayward was still very much involved in directing daily operations.

Clearwater lost its license to transport hazardous waste in 2007, after Hayward was convicted of a felony relating to his operation of Clearwater and was sentenced to 60 days in jail and a $70,000 fine. The corporation was convicted as well. Hayward's probation was violated thereafter for similar crimes and he paid another fine in excess of $40,000.

1. Unlicensed Transportation; False Statements re True Identity of Transporter (in Manifests)

However, Clearwater continued to transport hazardous waste without a license in violation of Health and Safety Code §25163.[2]

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1 Hayward's wife served as President, but wasn't at the business much by the time of the search warrant.

2 Health and Safety Code §25163 reads, "[I]t is unlawful for any person to carry on, or engage in, the transportation of hazardous wastes unless the person holds a valid registration issued by the department." The section continues, "Any registration issued by the department to a transporter of hazardous waste is not transferable from the person to whom it was issued to any other person." "Person" includes any business concern or corporation. (Health and Saf. Code, §25118).

Clearwater hid in plain site through the illegal use by defendants of the identity and transporter's license (or "registration") of another company, UNI Waste, Inc.(UNI) on the sides of its trucks and on "manifests" (official records of hazardous waste disposal, required by both federal and state law). Causing false statements in manifests violates Health and Safety Code §25191.[3]

Violation of the above two statutes amounts to two supporting bases for **Count 5**, a Conspiracy charge.

2. False Statements in Manifests re *where* Hazardous Waste Disposed

Hayward and Seaton falsified manifests in another significant respect: the two repeatedly caused hazardous waste manifests to misrepresent that Clearwater transported hazardous waste to a small *oil recycling* facility owned by Clearwater and located in Silver Springs Nevada. Investigators have been unable to determine where defendants took most of the missing waste. The variety of possible reasons why they employed this ruse is set forth below.

Hayward and Seaton's scheme to list Silver Springs facility as the disposal facility in manifests, when this was untrue, again in violation of §25191, provides a third basis for the conspiracy charged in **Count 5**.

4. Defendants Defraud Customers who Paid for Lawful Transport & Disposal of Waste *as Hazardous*

Not only did defendants' scheme to falsify manifests undermine the public's interest in ensuring the proper disposal of hazardous waste, but defendants cheated their customers too.

Generators of hazardous waste are legally obligated to ensure proper disposal of their waste, and generators rely on transporters such as Clearwater to truly and accurately complete and submit manifests, to properly transport the waste, and to take it to a disposal facility permitted to accept it. Moreover, the price generators pay for disposal of waste as hazardous is typically far more expensive than *non*-hazardous disposal. Here, rather than help generators comply with hazardous waste laws, Defendants systematically *undermined* their customers' attempts to comply with the law, and cheated their customers out of significant sums of money.

Defendants caused invoices, manifests, and bills of lading to falsely represent to customers that Clearwater lawfully transported and disposed of their waste as hazardous at Clearwater's facility in Silver Springs, Nevada and that manifests documenting disposal would be and/or had been accurately and lawfully completed.

In truth, the waste was transported by an unlicensed entity, disposed of at locations unknown, and manifests were falsified regarding where the waste was taken and who the transporter was.

Several of the significant number of customers defendants defrauded are alleged as victims of Grand Theft by False Pretenses. These customers are Closure Solutions, Recology, BART, and Pape Machinery. The charges relating to each of these victims are set forth in the complaint respectively as **Counts 1 through 4**.

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3 Health and Safety Code §25191 makes "any false statement or representation in any . . . manifest, record . . . or other document filed, maintained, or used for the purpose of compliance with this chapter [Chapter, 6.5, the Hazardous Waste Control Act]" a misdemeanor.

Defendants' scheme to obtain payment from its customers by means of these false representations also provides a further basis for the Conspiracy charged in **Count 5**.

DETAILED STATEMENT OF FACTS

1. Unlicensed Transportation; False Statements re True Identity of Transporter (in Manifests)

Bob Kelly is a "waste broker," who arranges for the disposal of asbestos and other construction waste for his clients. His business is called UNI Waste, Inc. (UNI), and consists of Kelly and his wife. The couple operate UNI from their home in Ione, CA. In the past, UNI often hired Clearwater to transport waste for UNI clients, but in 2006, UNI obtained its own license from DTSC to transport hazardous waste. This posed a significant loss of business to Clearwater.

In 2007, Kelly and Hayward met at a Denny's in Stockton and signed a written lease agreement that Hayward presented which allowed UNI to "lease" Clearwater trucks "to perform the necessary functions required by" UNI for a rental fee that was not specified, but that would be based on "actual usage." The agreement specified that Clearwater retained responsibility for manifests, the employment and direction of the drivers, insurance and maintenance for the trucks, liability for acts and omissions, and other items.

The agreement itself said nothing about the use of UNI Waste's name. However, Kelly agreed verbally to allow Clearwater to use UNI's name when Clearwater hauled hazardous waste *for UNI clients*. Kelly did not tell Hayward that Clearwater could use the UNI's name and license number when Clearwater transported hazardous waste for *Clearwater* clients.

This use of UNI's license was illegal. Transportation of hazardous waste without a license is illegal, and transporters are specifically prohibited from using the license of another. (See footnote 2, Health and Safety Code §25163). Moreover, Clearwater went beyond its agreement with UNI. Hayward and Seaton used UNI's name and license on manifests for *all* Clearwater jobs, i.e. including jobs with which UNI was in no way involved.

Although Seaton was not party to the original agreement with UNI, it is clear that Seaton thereafter agreed with Hayward to cause the unlicensed transportation of hazardous waste by Clearwater. First, Seaton admitted he knew Clearwater had lost its license.

Further, in the fall of 2009, Seaton met with Bob Kelly and DTSC in Ione, at which time Seaton introduced himself to DTSC representatives as UNI's dispatcher. DTSC had contacted UNI about storage violations that DTSC found reflected in manifests submitted to DTSC by Clearwater. As explained in footnote 7, transporters that hold hazardous waste in excess of 10 days are in violation of Health and Safety Code §25189.5(d) unless they have a permit to store hazardous waste. Storage violations are thus apparent to DTSC based on manifests submitted to the agency. The manifests Clearwater submitted -- as UNI Waste -- showed a significant number of such storage violations. Although Kelly told DTSC he "leased" Clearwater trucks, neither he nor Seaton explained the arrangement or told DTSC that Kelly had allowed Clearwater to use the UNI name.

Moreover, neither Kelly nor Seaton told DTSC that most if not all of the manifests upon which the violations were based *had nothing to do with UNI and/or UNI clients* and were committed by Clearwater (Seaton admitted later that he knew that Clearwater was responsible for the violations and that Clearwater reimbursed UNI in full for the significant penalty that UNI paid DTSC, i.e, $45,000).

Finally, Seaton's willingness to falsify manifests in other respects as set forth below is also significant, as are lies he told DTSC in his recorded interview, also mentioned below.

As head of operations for Hayward, Seaton directed drivers to transport hazardous waste on a daily basis, including for jobs he knew did not involve UNI. Seaton also routinely filled out manifests using UNI's name and license number for jobs he knew did not involve UNI, including for the specific customers discussed below. Seaton and Hayward's agreement to operate Clearwater so as to cause the unlicensed transport of hazardous waste and to falsify manifests by using UNI's identity as the transporter are two of the bases supporting **Count 5**, i.e., Conspiracy to make False Statements in Manifests regarding the true identity and license of the transporter in violation of Health and Safety Code §25191 and Conspiracy to Transport Hazardous Waste without a License in violation of Health and Safety Code §25163.

2. False Statements in Manifests re *where* Hazardous Waste Disposed

Defendants conspired to falsely represent in manifests that hazardous waste had been disposed of at Clearwater's oil recycling facility in Silver Springs, Nevada. [4]

Clearwater's ownership of this facility provided a convenient method of hiding a number of illegal truths. It appears that defendants falsely represented that waste went to Silver Springs when Clearwater:

(1) Disposed of the waste as *non*-hazardous;[5] and/or

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(2) Illegally *consolidated* the waste with other waste;[6] and/or

(3) Illegally *stored* the waste prior to disposal (i.e., over 10 days);[7] and/or

(4) Took the waste to a licensed facility in Kettleman Hills under a continuing agreement with Kettleman Hills Facility (the agreement is called a "waste profile") to accept solid waste generated by the Silver Springs facility – when the waste was *not* generated by the Nevada facility, but by Clearwater customers. This scheme required a second false manifest representing that the Silver Springs facility had *generated* the hazardous waste. Seaton explained that this paper fiction saved money, since Clearwater could

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4 Defendants also conspired to falsely list the same facility as the *generator* of hazardous waste in manifests when it suited their needs.

5 This is a felony pursuant to Health and Safety Code §25189.5(a), which reads, "The disposal of any hazardous waste, or the causing thereof, is prohibited when the disposal facility which does not have a permit from the department [DTSC] ... or at any point which is not authorized..."

6 The law requires that facilities that consolidate waste (i.e., opening containers and mixing waste) be permitted or licensed to do so in order to ensure against spills, etc. Clearwater did not have a permit to consolidate waste.

7 The law allows *licensed* transporters to hold waste "in the normal course of transportation," *not to exceed 10 days*. However, a permit is required to store hazardous waste. Again, the permitting process is designed to minimize the risk of spills and other hazards attendant to the accumulation of hazardous waste. Knowing storage of hazardous waste without a permit is a felony (Health and Safety Code §25189.5(d)).

dispose of waste far more cheaply by consolidating it with other waste and disposing of it at Kettleman Hills under the Silver Springs waste profile.

Defendants' conspiracy to cause false statements in manifests regarding the Silver Springs facility is clear from a variety of circumstances.

First, both Seaton and Hayward *admitted* that Clearwater sometimes used the facility on manifests despite knowing the waste was disposed elsewhere. Seaton admitted he personally signed for receipt of waste at the Nevada facility when it didn't go there to save the company money. Seaton said Hayward taught him to do it. Seaton's signature is on far more manifests than is Hayward's. Notably, Seaton originally denied repeatedly that he had ever signed manifests for receipt of waste in Silver Springs when he was not at the facility at the time (despite a great number of manifests signed for many different days) before he admitted to the paper fiction.

Hayward, when confronted with the above by DTSC, claimed to DTSC investigators that he thought Clearwater had stopped committing this practice about a year prior to the time of the search warrant. However, less than a month before making this claim, Hayward signed a manifest as the generator in Silver Springs of solid hazardous waste when the facility did not generate solids and *after* Hayward had sold the facility.

Second, the Silver Springs facility in Nevada kept its own records that showed whenever either defendant signed a manifest for the receipt of waste at the Nevada facility, the Silver Springs records never received the waste. Moreover, Seaton and Hayward worked in Union City, not in Nevada, and the Silver Springs facility had its own personnel that signed for receipt for waste as it came in.

Third, Hayward and Seaton would sign for receipt at Silver Springs of large bins of soil and other *solid* waste -- waste that an oil recycling facility simply cannot process. The manager of the Silver Springs facility confirmed it would not accept – and did not accept – loads of solid waste that defendants signed for as having been received in Silver Springs.

Finally, even after Clearwater had sold the facility to another company effective April 1, 2011, Seaton continued to sign for receipt of waste at the Nevada site (and the Nevada facility had no record of receiving such waste).

DTSC was able to determine that some of the waste falsely manifested to Silver Springs was actually disposed of as *non*-hazardous at the local Altamont Landfill. In other instances, DTSC was able to determine that the waste was simply illegally stored in Clearwater's parking lot before being taken to Kettleman Hills. However, in most instances, DTSC has no way of knowing where the waste went.

DTSC conducted an audit, limited to a randomly selected eight-month period, of manifests that Clearwater submitted for a single hazardous waste stream (oily water), each of which represented that Clearwater transported the waste to its Nevada facility. The audit concluded that about 100,000 gallons of oily water never reached the Silver Springs facility. In other words, 100,000 gallons of oily water is missing for that time period (July through September of 2010 and January through May of 2011).

3. Defendants Defraud Customers who Paid for Lawful Transport & Disposal of Waste *as Hazardous*

Count 1: Closure Solutions (owned by Ronald Chinn)

Ronald Chinn owns an environmental consulting company, formerly called Closure Solutions.

Ronald Chinn hired Clearwater in August of 2010 to dispose of a large amount of hazardous waste from a site in Santa Clara County, owned by a woman named Lana Caljis. Although Chinn is an environmental consultant, Chinn's expertise is in hydrocarbons, so Chinn hired Clearwater since he was less familiar with the types of hazardous waste at the site.

Chinn met both defendants personally at the site. Chinn also exchanged emails with both defendants regarding details of the job. Hayward emailed Chinn a signed bid which identified some of the waste as hazardous, including a large amount of solid waste. Chinn was also provided with a copy of UNI Waste's DTSC transporter's registration

On September 10, 2009, Clearwater picked up the waste, including two large roll-off bins of *solid* hazardous waste. At the time of pick-up, Clearwater gave Chinn a manifest for the two bins (Manifest Number 004452746JJK) that listed UNI as the transporter and the Silver Springs facility as the destination. A Clearwater bill of lading in Seaton's handwriting also listed the Silver Springs facility as one of the destinations for the waste and referenced the same manifest number for the two bins.

On January 29, 2010, Seaton emailed Chinn a completed manifest for the two bins (the same manifest number as above). Seaton had signed the manifest both as the driver of the bins, and for receipt of the bins at the Silver Springs facility.

As stated above, Silver Springs did not accept *solid* waste. Moreover, the facility has *no record* of receiving waste under this manifest number on the above date, according to then-manager of the Silver Springs facility, John Reeder.

Further, UNI had nothing to do with Chinn's job. Notably, all the receipts for *non*-hazardous waste that Seaton emailed to Chinn listed the transporter as Clearwater.

About a week later, Seaton emailed an invoice for the job. Mr. Chinn paid Clearwater $24,209 based on defendants' misrepresentations that:

(1) the hazardous waste would be and had been lawfully transported by licensed transporter UNI;

(2) the hazardous waste would be taken to the Silver Springs facility, which was permitted to accept it; and

(3) disposal would be honestly and accurately documented in Manifest Number 004452746JJK.

The false manifest and invoice relating to the two bins of solids are attached as examples (Exhibit A).

Count 2: Recology (waste from fuel spill)

Recology collects municipal solid waste in the Bay Area.

On January 5, 2011, a Recology truck ruptured its gas tank while entering a parking lot in San Mateo County. Diesel fuel spilled into a nearby storm drain and into an open channel where the flow was contained by a local fire department.

Recology hired Clearwater to clean up the contaminated water and debris. Clearwater transported drums of solid waste on one truck, and liquid in two tanker trucks that same day, and on January 10th, Clearwater transported more waste in two tanker trucks.

Clearwater sent an invoice for nearly thirty thousand dollars on January 15, 2011. The invoice listed 5 hazardous waste manifest numbers for each of the five loads of hazardous waste: a) 007269277JJK; b) 007267675JJK; c) 007267682JJK; d) 007269168JJK; and e) 004451766JJK.

Clearwater also sent Recology 5 hazardous waste manifests matching the above manifest numbers. All 5 represented that the waste was disposed of at Clearwater's facility in Silver Springs, including two bins of *solid* waste (Manifest Number 004451766JJK above). All 5 manifests listed the transporter as UNI Waste.

Again, Clearwater's Silver Springs facility never received *any* of the waste listed on the manifests. Again, the Nevada facility was an *oil recycling facility* that did not even accept *solid* waste. And again, UNI had nothing to with the Recology job. Charles Seaton signed each of the false manifests, certifying receipt at Silver Springs of the waste in January of 2011.

Kirk Hayward is listed, in what appears to be his own handwriting, as having transported the two bins of *solid* hazardous waste to Silver Springs. The name and address for Recology is also in Hayward's handwriting, as is a description of the waste "boom and debris"). Hayward is also listed as the transporter on the manifest for some of the hazardous waste liquid (007267675JJK), again in his own handwriting.

Based on the above misrepresentations, Recology paid Clearwater, by check dated March 2, 2011, the full $29,083.75 bill.

Count 3: Long term Transportation of waste for BART

BART operates several maintenance sites for trains, including one in Hayward and one in Concord. Workers steam-clean the undersides of trains, and the wastewater accumulates in "blow pits." Hazardous waste analysis of the blow pit waste has showed the waste has exceeded permissible levels of chromium, so BART has elected to treat it as hazardous waste.

BART hired Clearwater for over 10 years to dispose of the above waste and other wastes relating to its operations *as hazardous.*

On numerous occasions, Clearwater picked up waste and misrepresented that it would be taken to the Silver Springs facility, would be transported by licensed transporter UNI, and that Clearwater would truly and accurately complete and submit the required manifests. Often, however, the waste was taken to an unknown location by an unlicensed transporter and the manifest was falsified.

Again, it is unknown where most of the missing waste went, but on one occasion, it is clear that the driver picked up two thousand gallons of hazardous waste from BART's shop in Hayward on April 20, 2011, and disposed of it immediately thereafter as non-hazardous waste at the Altamont Landfill. BART was provided a bill of lading for the load, listing manifest Number 007268409JJK and the destination for the waste as Silver Springs. However, Silver Springs has no record of receiving the waste on the date of the manifest, and a daily record ("Daily Field Ticket") for the driver that day shows he went directly from BART to Altamont "to unload." Altamont records confirm the time of disposal. BART was charged $2,220 dollars for that load. Charles Seaton's signature is on the manifest submitted to DTSC for the load, attesting to receipt at the Nevada facility.

Charles Seaton repeatedly falsely represented on additional manifests for BART that hazardous waste had been received in Silver Springs and that it had been taken there by transporter UNI. Seaton even signed for receipt in Nevada *after* Clearwater sold the Silver Springs business to another company.

In a randomly selected eight-month period in 2010, BART paid over $20,000 to Clearwater to dispose of waste as hazardous, where the manifest stated the waste went to Silver Springs and it didn't. Based on the above misrepresentations, BART paid Clearwater every invoice sent.

Count 4: Pape Machinery

Pape Machinery is a supplier of heavy construction equipment, operating at numerous locations in the Pacific Northwest.

Pape Machinery hired Clearwater in December of 2010 to dispose of a large amount of potentially hazardous soil from its facility in San Joaquin County. Clearwater picked up the soil in a single 20-yard bin on December 13, 2010.

Clearwater sent an invoice to Pape on or about December 28, 2010 for $2,635. The invoice referenced Hazardous Waste Manifest Number 004449701JJK and charges included lab analysis of the soil, removal of the "Hazardous Waste Solid;" and 12 hours of transportation at $100 per hour to "Clearwater Nevada."[8] Clearwater also sent Pape a manifest (same manifest number) representing that the waste was disposed of at Clearwater's facility in Silver Springs, Nevada and that the transporter was a registered hauler, UNI Waste.

Again, Clearwater's Silver Springs facility did not accept solid waste and had no record of receiving the waste manifested. Again, UNI Waste was not involved in the transportation or transaction.

Charles Seaton signed the false manifest, certifying receipt of the waste in Nevada. Seaton's handwriting was also found on a Daily Field Ticket that the driver filled out and submitted to Clearwater (found during in the search warrant). Seaton's handwriting lists the same charges as were found on the invoice, including "S.S Trans."

8 Silver Springs Nevada is about 200 miles from French Camp.

Based on the above misrepresentations, Pape Machinery paid Clearwater the full $2,635 by check dated January 26, 2011.

Dated: 2/10/14 at Oakland, California

Officer's Signature

Investigator Jennifer Kozak, Badge #23

CERTIFICATE OF PROBABLE CAUSE

The Court, upon the review of this declaration, hereby ✓ Finds ____ Does not Find good cause to detain the above-named individual.

Date: 2/10/14

Time: 3:05 p.m.

Magistrate of the Superior Court