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Mary Elizabeth Ward, Esquire
U.S. Department of Justice
Environment and Natural Resource Division
Environmental Defense Section
P.O. Box 23986
Washington, DC 20026-3986

Ray Pilon, Project Manager
Army Corps of Engineers
Department of Defense
1776 Niagara Street
Buffalo, NY 14207

Re: Asbestos Remediation at the Property of the Somerset Group

Dear Ms. Ward and Mr. Pilon:

As you know, this office represents the Somerset Group, Inc. and John Syms in matters arising at the Lake Ontario Ordnance Works.

I. Failure to Complete Asbestos Remediation

Enclosed for your information is a copy of an Administrative Complaint, CAA-III-112, dated July 22, 1998, filed by EPA Region III against respondents, Vesuvius USA Corporation and others. The Administrative Complaint alleges that the respondents had violated the Federal Clean Air Act during the course of an asbestos remediation project conducted on the property of Vesuvius USA, located in Zelienople, Pennsylvania. The Administrative Complaint alleges in Paragraph 28, in pertinent part, that:

"... the [EPA inspector] observed in and around the Facility debris which contained broken, suspected asbestos-containing transite wall and roof panels, which were being removed from the Facility."

The allegations in Paragraph 29 continue:

"... the [EPA inspector] observed that the transite at the Facility was dry, damaged and broken into small pieces and was crumbled, pulverized, or reduced to a powder or had a high probability of becoming crumbled, pulverized or reduced to a powder by the renovation at the Facility and that the transite was not in containment."

The respondents to the Administrative Complaint eventually settled all allegations raised by EPA Region III with the payment of significant fines and penalties.

I bring this Administrative Complaint to your attention because of the apparent problems associated with the asbestos remediation project that was recently conducted by contractors and representatives of the Army Corps of Engineers at the Somerset Group property. A casual inspection of the Somerset Group property reveals site conditions that are exactly the same as those described in the enclosed Administrative Complaint: small and large pieces of crumbled and shattered transite remain scattered across the Somerset Group property despite a declared \$1 million asbestos remediation. At two recent Restoration Advisory Board (RAB") meetings, it was represented by the Army Corps of Engineers that the remediation of the asbestos-containing materials found on the Somerset Group property is complete. This assertion is simply not correct. The contractor has failed to provide the required containment for materials remaining on the site which appear to be "friable asbestos material," within the meaning of 40 C.F.R. § 61.141. In addition, the remediation contractor has left in place transite panels on the main production building of the former Air Force Plant No. 68; many of these transite panels were apparently broken by the contractor and now represent a potential source for the release of friable asbestos. Copies of representative site photographs are enclosed showing the asbestos containing materials scattered across the Somerset Group property.

Given the site conditions as they exist today, it appears that the Army Corps of Engineers and its contractors have violated and continue to violate 40 C.F.R. Part 61, Subpart M, Sections 61.140 - 61.156, National Emission Standard for Asbestos.

Furthermore, Mr. Syms has advised the Army Corps of Engineers that friable asbestos is found at various locations in buildings presently owned by the Somerset Group. Despite repeated requests, the Army Corps of Engineers has refused to undertake the remediation and removal of these asbestos-containing materials. I would like to remind you that under the Defense Environmental Restoration Program ("DERP") for Formerly Used Defense Sites ("FUDS"), the Department of Defense is responsible for more than remediation of exterior building conditions. Section 211 of the Superfund Amendments and Reauthorization Act ("SARA") lists three goals of DERP: (1) identification, investigation, research and development, and cleanup of contamination from hazardous substances, pollutants, and contaminants; (2) correction of other environmental damage, such as detection and disposal of unexploded ordnance, which creates an imminent and substantial endangerment to the public health or welfare or to the environment; and (3) demolition and removal of unsafe buildings and structures. Somerset Group's position is and has been that the degraded asbestos-containing materials found in ceiling tiles, floor tiles, and other interior building materials is a dangerous condition falling under the scope of the DERP/FUDS program. The failure of the Army Corps of Engineers to acknowledge this responsibility is a violation of the mandate found in Section 211 of SARA.

I would appreciate your prompt review of the site conditions found at the Somerset Group property and your proposal for a remedial response by the Army Corps of Engineers.

II. Site Access Agreement

The site access agreement between the Army Corps of Engineers and the Somerset Group has recently expired. In order to allow further site remediation to occur, it will be

necessary to execute a new access agreement. The Somerset Group is prepared to allow such site access to occur, but first it requires that the Army Corps of Engineers honor its prior commitments to provide the Somerset Group with all available site characterization data. Recently, Mr. Syms requested this information from a remediation contractor working on the Somerset Group property and was told that this information could not be made available to him. I also recently filed an appeal under the Federal Freedom of Information Act after receiving a "no records" response from the Army Corps of Engineers. My original request for records was limited to groundwater monitoring data obtained from groundwater monitoring wells located on the Somerset Group property. After filing my appeal, I received a telephone call from counsel for the Army Corps of Engineers indicating that documents responsive to my request were, in fact, available and would in due course be provided to me. I have tentatively agreed to withdraw my appeal upon receipt of such documents.

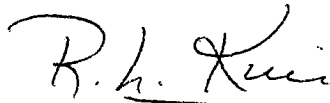
The issue comes down to this: Somerset Group requires that the Army Corps of Engineers make a good faith effort to turn over the relevant site characterization data. Any further delay or obfuscation merely confirms the long-held suspicion that this data is being intentionally withheld from the individuals who are in daily possession of the property.

II. Damage to Property and Equipment by the Asbestos Remediation Contractor

Finally, I have also been informed that the asbestos remediation contractor has damaged equipment and other property owned by the Somerset Group during the course of the remedial activity; information on this subject was previously provided to the Army Corps of Engineers under separate cover. The Somerset Group has all relevant documentation, including contractor proposals to repair the damages caused by the remediation contractor; these documents are available for your review. I assume that the contractor, on behalf of the Army Corps of Engineers, maintained standard public liability insurance during the course of work at the Somerset Group property. At your earliest opportunity, you or the contractor should contact the insurance carrier with a notice of claim and arrange for a site visit with a claims adjuster to review the nature and extent of this damage. Alternatively, the Somerset Group will allow the contractor to propose a monetary settlement for these claims. Prior communications on this subject from the Army Corps of Engineers are viewed by the Somerset Group to be non-responsive.

If you have any further questions, please do not hesitate to call either Linda Shaw at 716/546-8430 or me at 412/731-7246.

Very truly yours,



Ronald L. Kuis

RLK/sbg
Enclosures

cc: Linda R. Shaw, Esquire, w/o encl.
Somerset Group, Inc., w/o encl.







