

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN SYMS, EILEEN SYMS,
THE SOMERSET GROUP, INC.,
UNITOOL CORPORATION,
LEW-PORT CONSTRUCTION CORPORATION,
C&S MACHINERY CORPORATION,
SYMS EQUIPMENT RENTAL CORPORATION and
LEW-PORT ELECTRIC CORPORATION,

Plaintiffs,

vs.

OLIN CORPORATION,
UNITED STATES DEPARTMENT OF DEFENSE,
WILLIAM COHEN, in his official capacity as
SECRETARY OF DEFENSE
UNITED STATES DEPARTMENT OF THE ARMY
LOUIS CALDERA, in his official capacity as
SECRETARY OF THE ARMY
UNITED STATES DEPARTMENT OF AIR FORCE,
F. WHITTEN PETERS, in his official capacity as
SECRETARY OF THE AIR FORCE,
UNITED STATES NUCLEAR REGULATORY
COMMISSION,
RICHARD MESERVE, in his official capacity as
CHAIRMAN of the UNITED STATES NUCLEAR
REGULATORY COMMISSION, and
THE UNITED STATES OF AMERICA,

Defendants.

**REQUESTS FOR
ADMISSION TO
THE GOVERNMENT
DEFENDANTS**

Civil Action No.:
00-CV-732A(F)

PLEASE TAKE NOTICE that Plaintiffs JOHN SYMS, EILEEN SYMS, THE SOMERSET GROUP, INC., UNITOOL CORPORATION LEW-PORT CONSTRUCTION, C&S MACHINERY CORPORATION, SYMS EQUIPMENT RENTAL CORPORATION and LEW-PORT ELECTRIC CORPORATION (collectively the "Plaintiffs"), pursuant to Rule 36 of the Federal Rules of Civil Procedure, by their attorneys, KNAUF, KOEGEL & SHAW, LLP, and RONALD L. KUIS, ESQ., hereby request that Defendants UNITED STATES DEPARTMENT OF DEFENSE, WILLIAM COHEN, in his official capacity as SECRETARY

OF DEFENSE, UNITED STATES DEPARTMENT OF THE ARMY, LOUIS CALDERA, in his official capacity as SECRETARY OF THE ARMY, UNITED STATES DEPARTMENT OF AIR FORCE, F. WHITTEN PETERS, in his official capacity as SECRETARY OF THE AIR FORCE, UNITED STATES NUCLEAR REGULATORY COMMISSION, RICHARD MESERVE, in his official capacity as CHAIRMAN OF THE UNITED STATES NUCLEAR REGULATORY COMMISSION, and THE UNITED STATES OF AMERICA (collectively the "Government Defendants") make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at trial, separately in writing under oath, within thirty (30) days of the date of this Request.

PLEASE TAKE FURTHER NOTICE that, in the event of your failure to comply with these requests for admissions, you may be precluded from introducing into evidence, and from otherwise using, each of the documents and things described and requested upon the trial of this action.

INSTRUCTIONS

1. If a request for admission is objected to based upon a claim of any privilege, identify the nature of the privilege (including work product) being claimed, and if the privilege is being asserted in connection with the claim or defense governed by state law, indicate the specific state privilege rule being evoked. In addition, for each objection based on a claim of any privilege, provide the following information:

(A) For documents:

- (1) the nature or type of document;
- (2) the general subject matter of the document;
- (3) the date of the document; and
- (4) the identity of the author and each and every recipient of the

document, and where not apparent, the relationship of the author and the recipient to each other.

(B) For oral communications:

- (1) the name of the person making the communications;
- (2) the names of the person(s) present when the communication was made, and where not apparent, the relationship of the person(s) present to the person(s) making the communication;
- (3) the date and place of the communication; and
- (4) the subject matter of the communication.

2. Each request for admission shall be accorded a separate response. The answer to a request shall not be supplied by referring to the answer of another request, unless the response supplies a complete and accurate answer to the request being answered.

3. Use of the singular shall include the plural and vice-versa, and use of one gender shall include the others.

4. Answers to requests should be based on all information known through the date of verification but these requests are continuing, and to the extent that the answers may be enlarged, diminished or otherwise modified by information acquired by you subsequent to the filing of your initial answers, you are required to serve them and file supplemental answers or documents setting forth such information.

5. All terms shall have the same meaning as set forth in Plaintiffs' First Set of Interrogatories and Notice to Produce Documents and Things to the Government Defendants, dated May 9, 2001.

REQUESTS FOR ADMISSIONS

1. The May 7, 1992 letter received by Plaintiffs from the Department of Energy, stating that '[t]his certification of compliance provides assurance that future use of the property

will result in no radiological exposure above DOE criteria and standards to protect member of the general public or site occupants”, a copy of which is annexed as Exhibit “A,” and was attached as Exhibit “G” to the Complaint, is not accurate today.

2. The May 7, 1992 letter received by Plaintiffs from the Department of Energy, stating that “[t]his certification of compliance provides assurance that future use of the property will result in no radiological exposure above DOE criteria and standards to protect member of the general public or site occupants”, a copy of which is annexed as Exhibit “A,” and was attached as Exhibit “G” to the Complaint, was not accurate when it was sent. *P*

3. The Government Defendants or their agents or contractors dug, developed, or installed the Distribution Systems (including TNT lines) and Disposal Systems (including but not limited to the drainage ditches and/or sewers) throughout the LOOW. *Admit*

4. The Government Defendants or their agents or contractors dug, developed, or installed the Distribution Systems and Disposal Systems leading off-site to the Niagara River. *A*

5. The Government Defendants or their agents or contractors dug, developed, or installed the Distribution Systems and Disposal Systems known as the Central Drainage Ditch and chemical waste lines which flow through the Original Site. *Admit*

6. Distribution Systems or Disposal Systems remaining at the LOOW currently act as potential conduits for migration of Contaminants from other portions of the LOOW, including the NFSS, onto and off the Existing Site. *Bi*

7. You and/or your contractors damaged the Existing Site during the surface Asbestos removal action performed in or about 1998. *A*

8. Phosgene gas, phenanthrene, or other Biological Substances were generated, experimented with, researched or Released on the Original Site. *?*

9. A hospital was located at the LOOW, and was used to treat subjects of human

experimentation.

10. Human body parts containing Radioactive Substances were buried at LOOW.

11. Radioactive Substances at the Original Site were cleaned up, remediated or removed to a standard or cleanup goal of 20 millirems per liter.

~~12.~~ Radioactive Substances at the Original Site were cleaned up, remediated or removed to at standard or cleanup goal of 50 millirems per liter.

13. Screening of the most recent round of samples taken revealed Radioactive Substances at the Existing Site, and at the portion of the Original Site now owned by Chemical Waste Management.

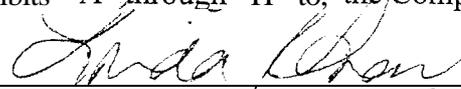
14. The 1972 summary abatement order issued by DOH pertaining to the Original Site, as revised in 1974, is still effective.

II. That each of the following documents, exhibited with this request, is genuine.

1. The documents annexed hereto in Exhibits "A" through "F". If any documents are illegible, and you have better copies of said document in files, please more legible copy to your response.

2. The documents annexed as Exhibits "A" through "H" to, the Complaint.

Dated: May 10, 2001



KNAUF, KOEGEL & SHAW, LLP

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experimentation.

10. Human body parts containing Radioactive Substances were buried at LOOW.

11. Radioactive Substances at the Original Site were cleaned up, remediated or removed to a standard or cleanup goal of 20 millirems per liter.

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13. Screening of the most recent round of samples taken revealed Radioactive Substances at the Existing Site, and at the portion of the Original Site now owned by Chemical Waste Management.

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2. The documents annexed as Exhibits "A" through "H" to the Complaint.

3. The documents annexed in Exhibit "G".

Dated: May 10, 2001



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CERTIFICATE OF SERVICE

I certify that the foregoing **First Set of Requests for Admissions** was served upon the Defendants by facsimile on May 10, 2001 and by placing copies of same in the U.S. Mail, first class, postage pre-paid on May 11, 2001, addressed to the following counsel of record:

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U

EXHIBIT A



Department of Energy

Field Office, Oak Ridge
P.O. Box 2001
Oak Ridge, Tennessee 37831--8723

May 7, 1992

Mr. John Sims
Somerset Group, Inc.
Lew-Port Industrial Park
Balmer Road
Youngstown, New York 14174

Dear Mr. Sims:

CERTIFICATION OF THE REMEDIAL ACTION PERFORMED AT THE NIAGARA FALLS STORAGE SITE VICINITY PROPERTIES FROM 1983 THROUGH 1986

The Department of Energy (&) has completed radiological surveys and taken remedial actions to decontaminate the properties in the vicinity of the DOE-owned Niagara Falls Storage Site (NFSS) in Lewiston, New York. These vicinity properties had been contaminated by radioactive materials that had originally been stored at NFSS.

The final step in this decontamination effort is to certify that these properties are in compliance with applicable decontamination criteria and standards. This certification of compliance provides assurance that future use of the property will result in no radiological exposure above DOE criteria and standards established to protect members of the general public or site occupants. Enclosed you will find a certification statement for the properties owned by the Somerset Group, Inc.

-When completed, a formal certification docket will be placed in the Lewiston library. This docket will summarize all actions taken to bring the NFSS vicinity properties into compliance with DOE criteria and standards, and will provide references to all pertinent documents.

If you have any questions, please contact Mr. Ronald Kirk at (615) 576-7477.

Sincerely,

Lester K. Price, Director
Former Sites Restoration Division

EW-93:Kirk

Enclosure

EXHIBIT B

HOOKER ELECTROCHEMICAL COMPANY
NIAGARA FALLS

Contract No. ^{NEW YORK} AT-(30-1)-1524

July 15, 1955

F. W. Malone
Site Representative
Niagara Falls Site

Subject: Clean-up of radioactive waste deposits in
Olin-Eiathieson-Navy Area .

Dear Mr. Malone,

In preparation for clean-up of the area to be released to Olin-Mathieson-Navy P.B.Klevin from Health & Safety Laboratory N.Y.O.O. inspected the areas on October 12, 13, 1954 to determine the degree of contamination present on the property and made recommendation in his report to W.B. Harris chief, Industrial Hygiene Branch, Health and Safety Laboratory N.Y.O.O. dated November 2, 1954.

Immediately following the receipt of this report at the site, personnel of the Hooker Electrochemical Co., began to carry out these recommendations. Work was continued until the freezing weather made it impractical. It was the first week in April of 1955 before work could be resumed on this project.

P.B.Klevin visited the site again on April 26, 27-1955, to record the progress made up to that time and his report of May 19, 1955, to W.B. Harris made recommendations for further work to be done. Using his report as a guide we have accomplished the following since his visit.

A. North of "M" Street

1. Compressor House Area

It was found necessary to remove the burial area directly east of the Bldg., 8212 to a depth of 12 inches and back fill with uncontaminated soil.

2. Cement Compressor Bldg.

The same procedure was followed on the burial Area west of the building as was done in item 1 above.

HOOKER ELECTROCHEMICAL COMPANY
NIAGARA FALLS
NEW YORK
Contract No. AT-(30-1)-1524

Cont.

3. North of Cement Pad.

Burnt combustibles and other contaminated materials were shovelled in to drums and removed from the area.

4. Rochester Burial Area

Cesium gap removed from area. Fresh soil was added to burial area to give greater coverage.

5. Castle Garden Dump

All material removed that had a meter reading greater than 0.63 mr/hr gamma.

A thorough inspection of the railroad siding North of "M" Street was made and it was found necessary to remove considerable ballast along the track including between the ties. Fresh ballast to be added by Olin-Xathieson during the reactivation of their sidings should sufficiently reduce the hazard of any contaminated waste that might still be mixed in the existing ballast.

During the cleaning of the sewer system by the plumbing contractor for Olin-Xathieson we have agreed to check this material and remove it in drums if it proves to be contaminated.

We have revised d.w.g., A-53 to show the contaminated areas as they exist today. All contaminated wastes removed from Olin-Xathieson-Navy Area has been placed in the A.E.C. area as shown on the drawing A-53.

All recommendations as made in P.B.Klevins reports of Nov. 2, 1954 and May 19, 1955 have been followed and we feel that the area is now safe for occupancy by Olin-Mathieson personnel with the knowledge of existing burials as shown on the drawing.

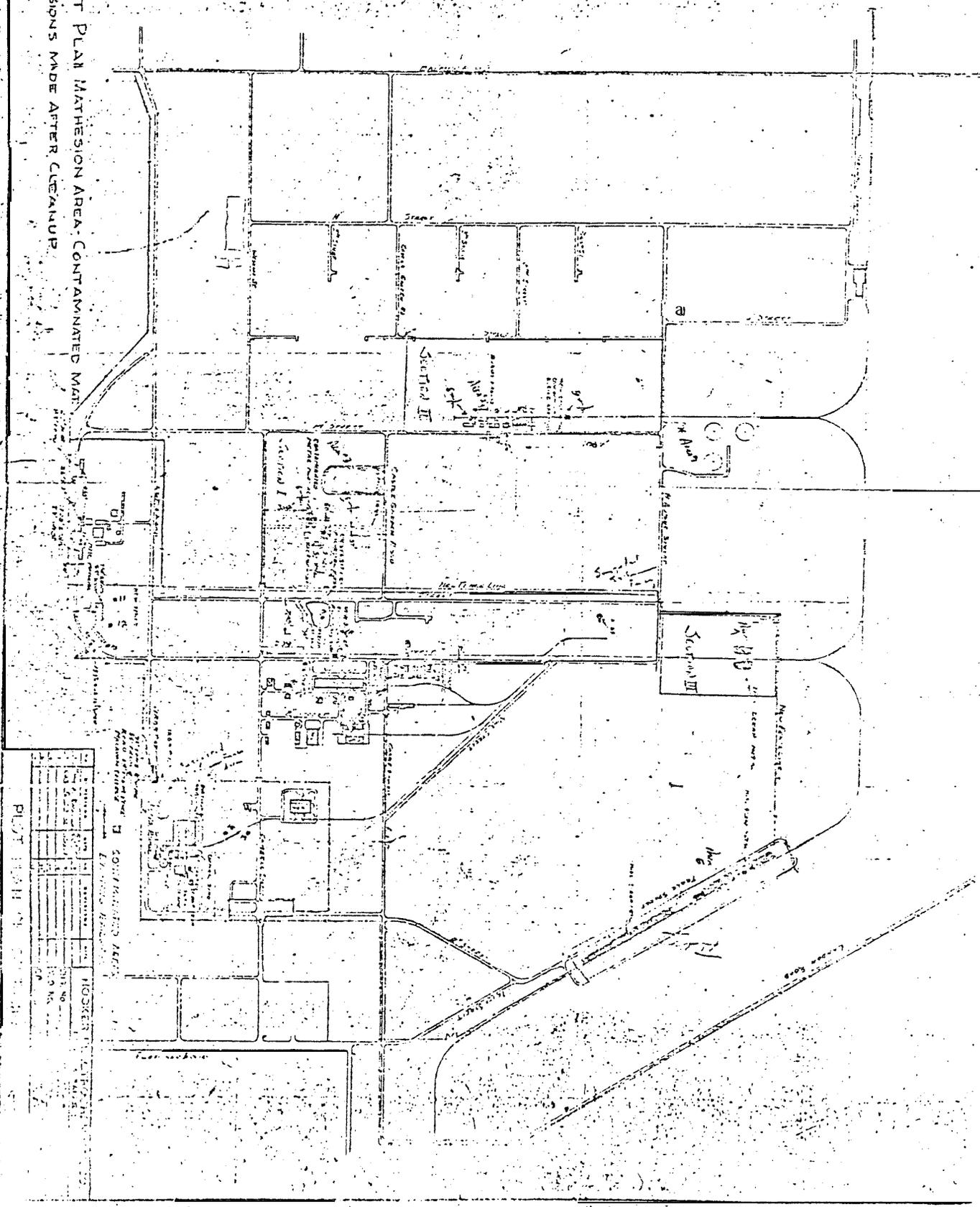
It is understood we will be ready at any time to cooperate with Olin-Mathieson in furnishing them with any additional data that they might need and also supply with monitoring at any time they might need such assistance.

Very Truly Yours,



A. P. Walker
Dept. Head Plant 31

PLCT PLAN MATHESSION AREA - CONTAMINATED MAT
REVISIONS MADE AFTER CLEANUP



PLCT PLAN

NO.	DATE	DESCRIPTION	BY
1			
2			
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MOORE T. CROFT
 ENGINEER