

IN THE SUPREME COURT OF NEVADA

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation,

Appellant,

vs.

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
corporation,

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County, Nevada
The Honorable Susan H. Johnson, District Judge
District Court Case No. A-16-744146-D

APPELLANT'S APPENDIX VOL 3 OF 27

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1 repairs to the alleged window defects in Unit 300, the mechanical piping and the sewer line. The
2 Association's Chapter 40 Notice states that the alleged residential tower window defect and the
3 residential tower fire blocking defect "present an unreasonable risk of injury to a person or property
4 (**Exhibit "1,"** p. 1 - 2). However, this alleged risk of injuries did not alleviate the Association from
5 its obligation to provide notice to Builders of the alleged imminent conditions, and to provide a
6 Chapter 40 Notice prior to the Association performing repairs of the alleged defects.

7 In addition, the Association contends in its Chapter 40 Notice that alleged sewer problems
8 "presented an unreasonable risk of injury to a person or property." (**Exhibit "1,"** p. 2). However,
9 as with the window and fireblocking defects, the Association was still obligated to provide Notice
10 to Builders to allow Builders to take reasonable steps to cure the alleged defect as soon as
11 practicable. NRS 40.670. As a result of the Association's failure to comply with Chapter 40,
12 Builders are entitled to summary judgment on the Association's Counter-Claim, as well as
13 Builders' Third Claim for Relief in its Complaint for Declaratory Relief.


14 **VI. CONCLUSION**

15 As demonstrated above, there are no genuine issues of material fact. The Association failed
16 to comply with the **mandatory** requirements set forth in Chapter 40 denying Builders' statutory
17 rights under NRS 40.6472. As a result, Builders are entitled to summary judgment as to the
18 Association's Counter-Claim, and partial summary judgment as to Builders' Third Claim for Relief
19 in their Complaint for Declaratory Relief, as a matter of law.

20 Dated: March 20, 2017

BREMER WHYTE BROWN & O'MEARA LLP

21
22 By:


Peter C. Brown, Esq., Nevada Bar No. 5887
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Attorneys for Plaintiffs/Counter-Defendants,
LAURENT HALLIER; PANORAMA
TOWERS I, LLC; PANORAMA
TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March, 2017, a true and correct copy of the foregoing document was electronically served through Wiznet upon all parties on the master e-file and serve list.

Crystal Williams

Crystal Williams, an Employee of
BREMER, WHYTE, BROWN & O'MEARA, LLC

Exhibit 1

Exhibit 1



Edward J. Song, Esq.

esong@leachjohnson.com

February 24, 2016

Mr. Laurent Hallier,
aka Laurence Hallier
2510 E. Sunset Road, #5-400
Las Vegas, NV 89120

**NOTICE TO CONTRACTOR PURSUANT TO
NEVADA REVISED STATUTES, SECTION 40.645**

Please take notice that Panorama Towers Condominium Unit Owners' Association, Inc., a Nevada non-profit corporation (Claimant), intends to pursue claims against you pursuant to Nevada Revised Statutes (NRS) 40.600 *et seq.*, arising from defects in the design and/or construction of the Panorama Towers condominium development located at 4525 Dean Martin Drive, Las Vegas, Nevada (the Development). Your legal rights are affected by this notice which is being given to satisfy the requirements of NRS 40.645.

Notice to others responsible. Pursuant to NRS 40.646, you must forward a copy of this Notice within 30 days, by certified mail, return receipt requested, to the last known address of each subcontractor, supplier or design professional whom you reasonably believe is responsible for the constructional defects identified below. Failure to send this Notice may restrict your ability to commence an action against such a subcontractor, supplier or design professional.

Response to notice. Pursuant to NRS 40.6472, you must provide a written response to each of the defects identified below within 90 days from your receipt of this Notice. Your response must state, as to each constructional defect identified below, whether you elect to repair the defect, propose to pay monetary compensation for the defect, or disclaim liability for the defect and the reasons therefore.

Your response to this Notice, and all communications pertaining to this Notice, should be directed to Edward J. Song, Esq., Leach Johnson Song & Gruchow, 8945 West Russell Road, Ste. 330, Las Vegas, Nevada 89148 (702/538-9074).

Preliminary list of constructional defects. This claim pertains to the following defects and resulting damages:

1. **Residential tower windows** – There are two tower structures in the Development, consisting of 616 residential condominium units located above common areas and retail spaces below. The window assemblies in the residential tower units were defectively designed such that water entering the assemblies does not have an appropriate means of exiting the assemblies. There are no sill pans, proper weepage components or other drainage provisions designed to direct water from and through the window assemblies to the exterior of the building.

This is a design deficiency that exists in all (100%) of the residential tower window assemblies.

As a consequence of this deficiency, water that should have drained to the exterior of the building has been entering the metal framing components of the exterior wall and floor assemblies, including the curb walls that support the windows, and is causing corrosion damage to the metal parts and components within these assemblies. Further, this damage to the metal components of the tower structures presents an unreasonable risk of injury to a person or property resulting from the degradation of these structural assemblies.

2. **Residential tower fire blocking** – The plans called for fire blocking insulation, as required by the building code, in the ledger shelf cavities and steel stud framing cavities at the exterior wall locations between residential floors in the two tower structures. (See plan detail attached as Exhibit A.) The purpose of this insulation is to deter the spread of fire from one tower unit to the units above or below. However, the insulation was not installed as required by the plans and building code.

This installation deficiency exists in all (100%) of the residential tower units, in which insulation was omitted either from the ledger shelf cavity, from the steel stud framing cavity, or from both.

This deficiency presents an unreasonable risk of injury to a person or property resulting from the spread of fire.

3. **Mechanical room piping** – The piping in the two lower and two upper mechanical rooms in the two tower structures has sustained corrosion damage as described in the attached ATMG report dated November 17, 2011 (Exhibit B).
4. **Sewer problem** – The main sewer line connecting the Development to the city sewer system ruptured due to installation error during construction, causing physical damage to adjacent common areas. This deficiency has been repaired. In addition to causing damage, the defective installation presented an unreasonable risk of injury to a person or property resulting from the disbursement of unsanitary matter.

Additional constructional defects. Claimant is still in the process of investigating the existing conditions at the Development, and accordingly, this preliminary list of defects is not intended as a complete statement of all of the defects in or at the Development. Claimant reserves the right to amend or update this list in the event that new defects and/or resulting damages are discovered during the course of investigation.

Requested documents. Pursuant to NRS 40.681, this will serve as Claimant's demand that you provide copies of all relevant documents pertaining to the construction of the Development, including plans, specifications, shop drawings, warranties, contracts, subcontracts, change orders, requests for information, inspection or other reports, soil and other engineering reports, photos, correspondence, memoranda, work orders for repair, videotapes,

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Unit Owners' Association
February 24, 2016
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audiotapes, and any and all policies of insurance that provided liability insurance coverage for your services or work in connection with the Development.

Mediation demand. Pursuant to NRS 40.680, this well serve as Claimant's demand for pre-litigation mediation with a mediator to be agreed to by the parties.

LEACH JOHNSON SONG & GRUCHOW



Edward J. Song, Esq.

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Las Vegas, Nevada 89148
3 Telephone: (702) 538-9074
Facsimile: (702) 538-9113

DISTRICT COURT
CLARK COUNTY, NEVADA

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a
Nevada non-profit corporation,

Claimant.

y.

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; PANORAMA TOWERS
II, LLC, a Nevada limited liability company;
PANORAMA TOWERS II MEZZ, LLC, a
Nevada limited liability company; M.J.
DEAN CONSTRUCTION, INC., a Nevada
corporation; SIERRA GLASS & MIRROR
INC., a Nevada corporation; F. RODGERS
CORPORATION, a Nevada corporation;
DEAN ROOFING COMPANY, a Nevada
corporation; FORD CONTRACTING, INC., a
Nevada corporation; INSULPRO PROJECTS,
INC., a Nevada corporation; FLIPPIN'S
TRENCHING, INC., a Nevada corporation;
X-TREME X-CAVATION, INC., a Nevada
corporation; SOUTHERN NEVADA
PAVING, INC., a Nevada corporation;
BOMBARD MECHANICAL, LLC, a
Nevada limited liability company; SILVER
STAR PLUMBING, INC., a close
corporation; FIVE STAR PLUMBING &
HEATING, LLC, a Nevada limited liability
company,

Respondents.

VERIFICATION

State of Nevada)
County of Clark)ss:

1 Dennis Kariger, being duly sworn according to law, deposes and says:

2 The undersigned on behalf of Claimant the Panorama Towers Condominium Unit
3 Owners' Association verifies that they have reviewed the expert reports included and referenced
4 to said notice as enumerated in Exhibit 1 and that the defects, damages, and injuries set forth in
5 those reports exist at the locations depicted therein within the Panorama Towers Condominium
6 community.

7 I declare under penalty of perjury that the foregoing is true and correct and that this
8 Verification was executed on this 24th day of February, 2016.

9 Dennis Kariger
[Signature]

10
11
12
13 Subscribed and sworn on before me
14 this 24th day of February, 2016.

15
16
17 Merlin Ann Calimping
18 NOTARY PUBLIC In and For Said
19 County and State

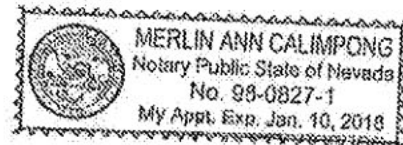
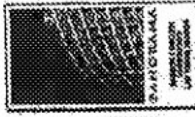


Exhibit “A”

Exhibit “A”

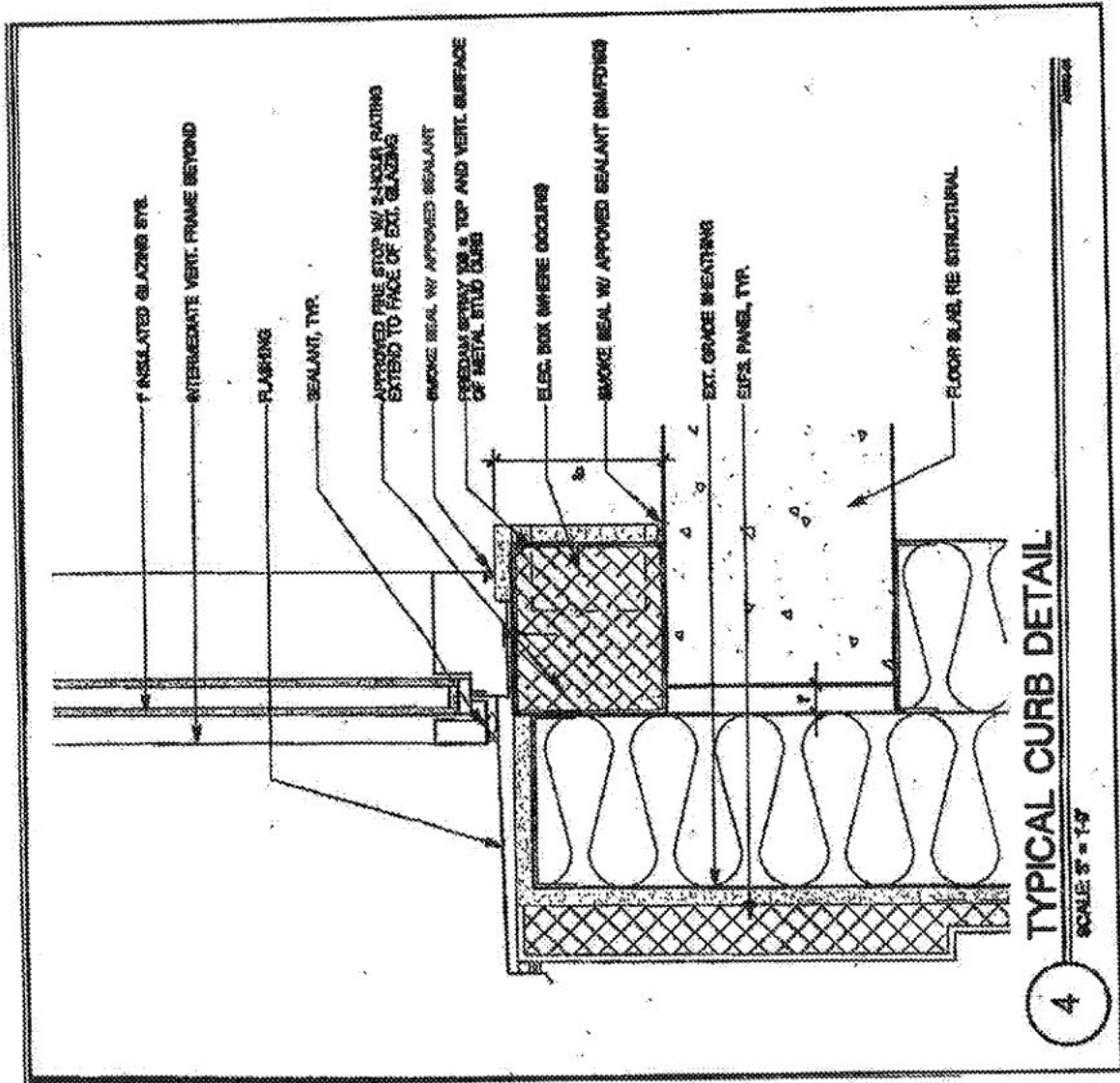


NO.	REVISION	DATE
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3	FOR APPROVAL	10/10/00
4	FOR APPROVAL	10/10/00
5	FOR APPROVAL	10/10/00
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DETAILS

A9.00.0



4

Exhibit “B”

Exhibit “B”

PANORAMA TOWER 1
UPPER MECHANICAL ROOM
Replacement Recommendation

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
Media Tanks	4 ferrous check valves		X		6
	Culligan ferrous parts		X		7
	tank steel flanges			X	
City Water Inlet	2 ferrous butterfly valves	X			4
	3 overhead butterfly valves	X			5
Zone 4 Hot Water Tank	ferrous check valve		X		2
	inlet carbon steel nipple		X		
	carbon steel drains		X		
Zone 3 Hot Water Tank	2 ferrous check valves		X		3
	inlet carbon steel nipple		X		
	carbon steel drains		X		
Hot Water Recirculation Pump	ferrous pump bowl assembly	X			1
	steel nipple		X		
Unidentified pipe run	carbon steel pipes, fittings, nipples		X		8
*Note: ferrous refers to carbon steel, ductile iron, or cast iron; if brass is used as a replacement, use red brass or 15% zinc maximum brass alloy					

**PANORAMA TOWER 1
UPPER MECHANICAL ROOM
Replacement Recommendation**

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
Media Tanks	4 ferrous check valves		X		6
	Culligan ferrous parts		X		7
	tank steel flanges			X	
City Water Inlet	2 ferrous butterfly valves	X			4
	3 overhead butterfly valves	X			5
Zone 4 Hot Water Tank	ferrous check valve		X		2
	inlet carbon steel nipple		X		
	carbon steel drains		X		
Zone 3 Hot Water Tank	2 ferrous check valves		X		3
	inlet carbon steel nipple		X		
	carbon steel drains		X		
Hot Water Recirculation Pump	ferrous pump bowl assembly	X			1
	steel nipple		X		
Unidentified pipe run	carbon steel pipes, fittings, nipples		X		8
*Note: ferrous refers to carbon steel, ductile iron, or cast iron; if brass is used as a replacement, use red brass or 15% zinc maximum brass alloy					

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
BP-1 Pump Unit	ferrous* pump bowls			X	2
	angle valves		X		1
	bypass butterfly valve	X			4
	inlet butterfly valve	X			4
	outlet butterfly valve	X			4
	flex connections with steel flanges			X	3
	pump butterfly valves	X			2
BP-2 Pump Unit	ferrous pump bowls			X	5
	angle valves		X		5
	bypass butterfly valve	X			9
	inlet butterfly valve	X			9
	outlet butterfly valve	X			9
	flex connections with steel flanges			X	9
	pressure gage nipple	X			5
	pump butterfly valves	X			6
	west pump butterfly valve fasteners	X			7
Media Tanks	4 ferrous check valves		X		12
	Culligan ferrous parts	X			27
	tank steel flanges			X	12
Pressure Regulator Manifold	ferrous butterfly valves	X			13
	3 ferrous strainers	X			13
	4 ductile iron pressure regulator bodies		X		13, 19
	3 ductile iron regulator bonnets (tops)		X		13, 18, 19
	leaking plastic lined steel nipples	X			14, 15
	non-leaking plastic lined steel nipples		X		16
	steel drain nipples	X			17

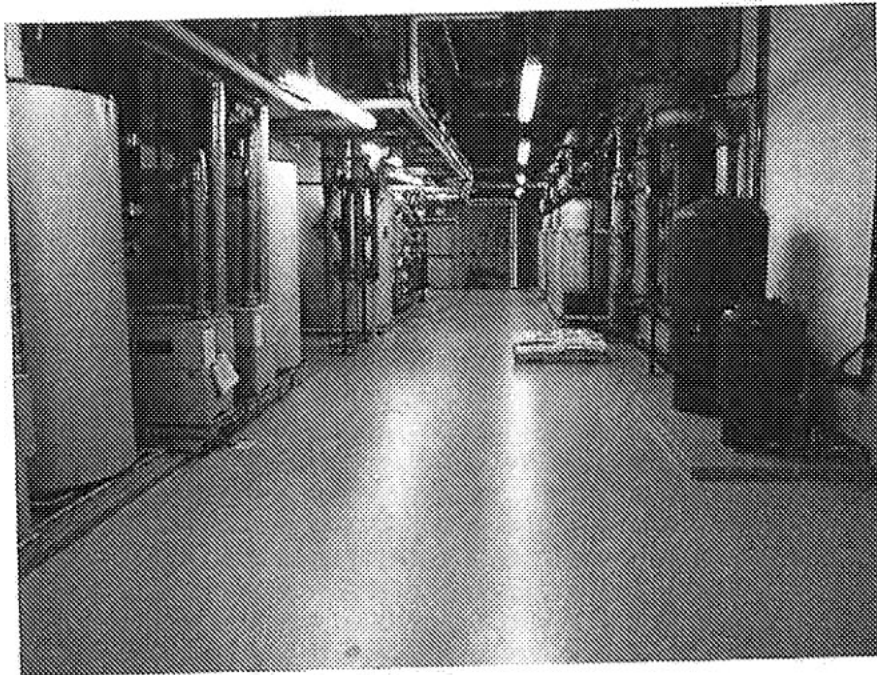
PANORAMA TOWER 2
LOWER MECHANICAL ROOM
Replacement Recommendation

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
City Water Inlet Manifold	6 ferrous butterfly valves	X			20
	2 ferrous strainers	X			20
	2 pressure regulator ductile iron bodies		X		20
Zone 1 Hot Water Tank	ferrous butterfly valve	X			23, 24
	ferrous check valve		X		23, 24
Zone 2 Hot Water Tank	ferrous butterfly valve	X			21, 22
	ferrous check valve		X		21, 22
Hot Water Recirculation Pumps	ferrous pump bowl assemblies	X			25, 26
Outlet Piping Sample Connections; Connections to Sink in Maintenance room	carbon steel nipples	X			28
Filter Bank	replace all carbon steel nipples, fittings	X			na
*Note: ferrous refers to carbon steel, ductile iron, or cast iron; if brass is used as a replacement, use red brass or 15% zinc maximum brass alloy					

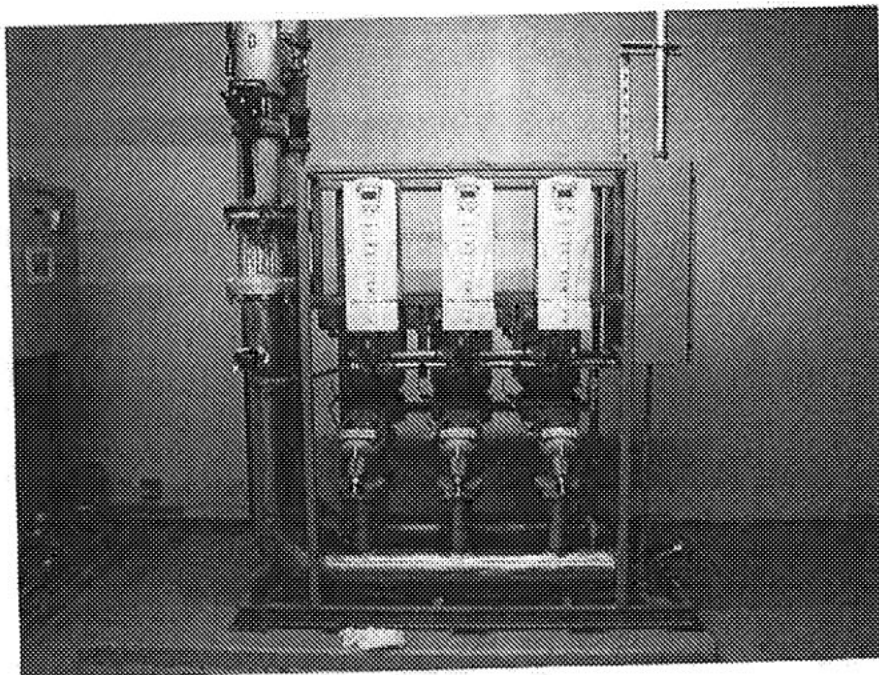
PANORAMA TOWER 2
UPPER MECHANICAL ROOM
Replacement Recommendation

UNIT / AREA	PART	DISPOSITION Replace with Stainless Steel, Brass*, Bronze, Copper as applicable			Photo Reference
		Now	1 - 5 years	Long Term	
Media Tanks	4 ferrous check valves		X		
	Culligan ferrous parts	X			
	tank steel flanges			X	
Overhead piping	cold to zone 3 and 4 - 2 carbon steel nipples		X		2
	carbon steel nipple to main cold line	X			1
Zone 4 Hot Water Tank	ferrous butterfly valve	X			
	ferrous check valve		X		
Zone 3 Hot Water Tank	ferrous butterfly valve	X			
	ferrous check valve		X		
Hot Water Recirculation Pumps	ferrous pump bowl assemblies	X			
	ferrous check valve		X		
*Note: ferrous refers to carbon steel, ductile iron, or cast iron; if brass is used as a replacement, use red brass or 15% zinc maximum brass alloy					

PANORAMA 1 Lower Mechanical Room

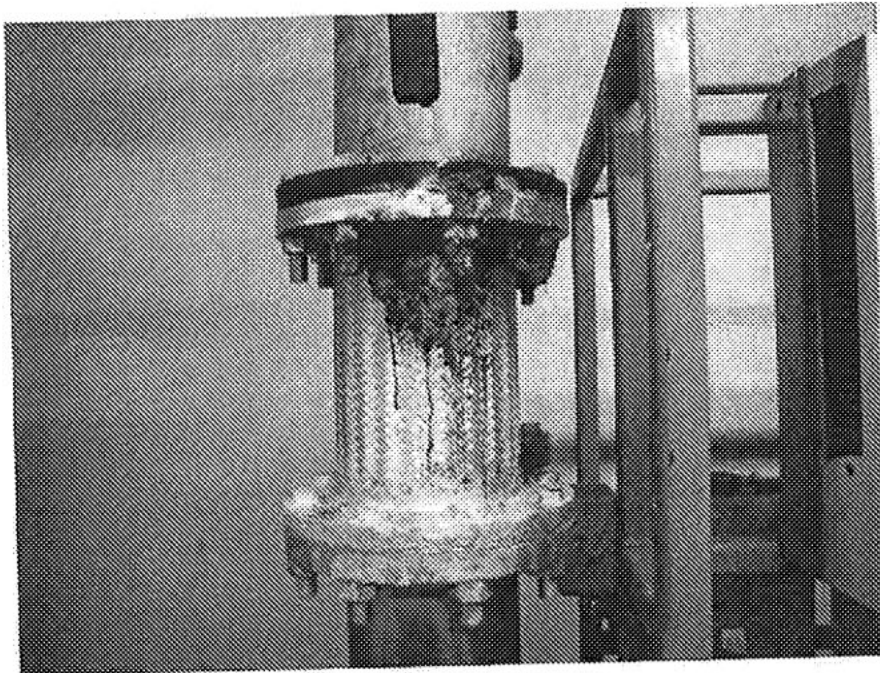


1. View of
lower mechanical room (jpg100).

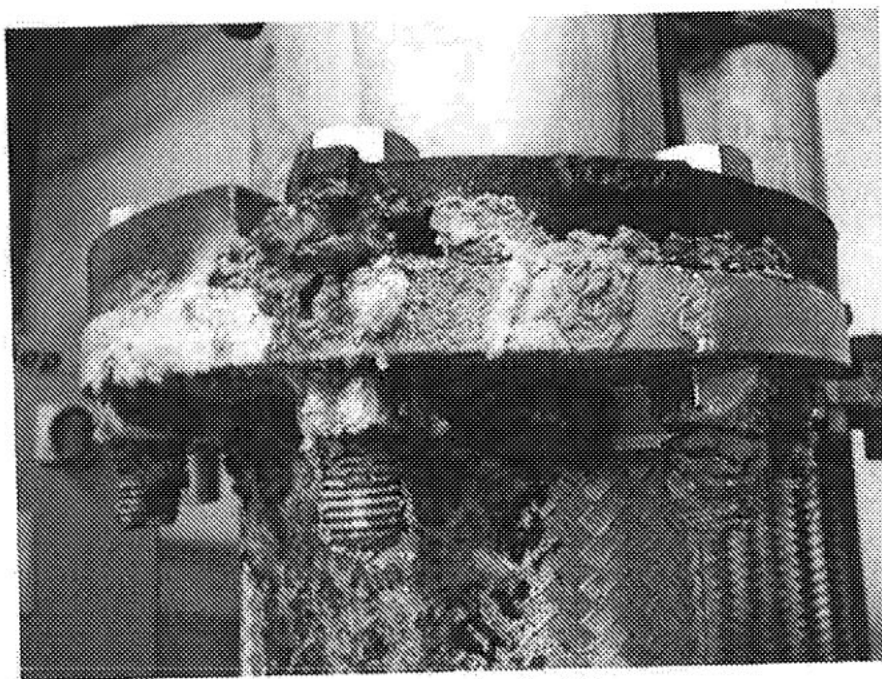


2. BP-1,
(jpg66)

PANORAMA 1 Lower Mechanical Room

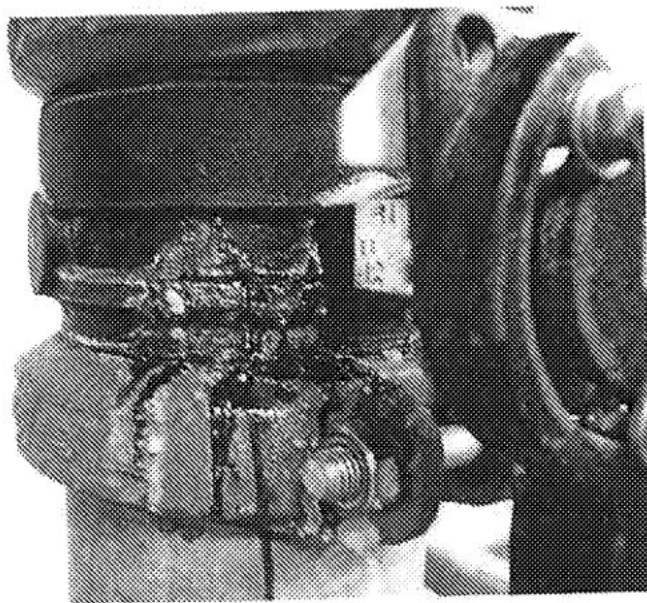


3. BP-1, flex
connection (jpg68)

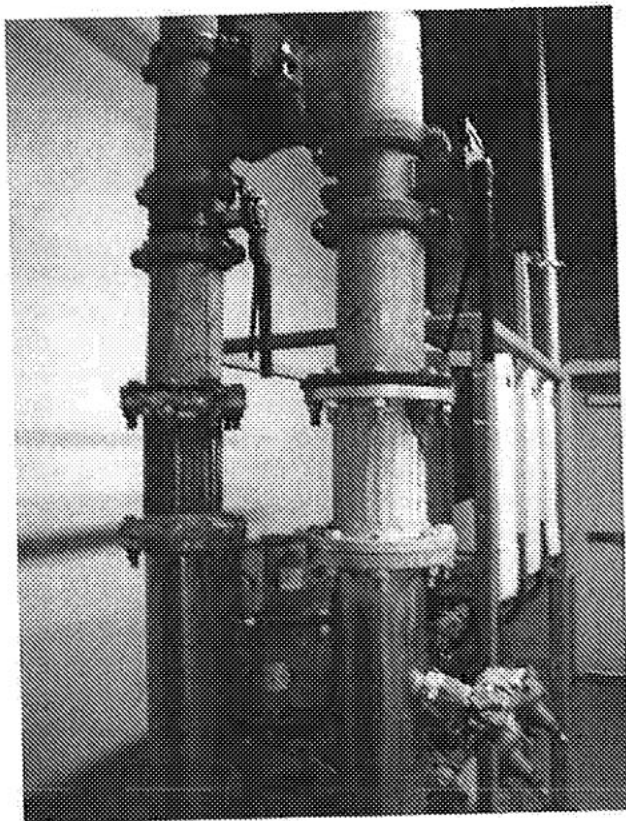


4. BP-1,
close up of leaking flex flange connection (jpg72)

PANORAMA 1 Lower Mechanical Room

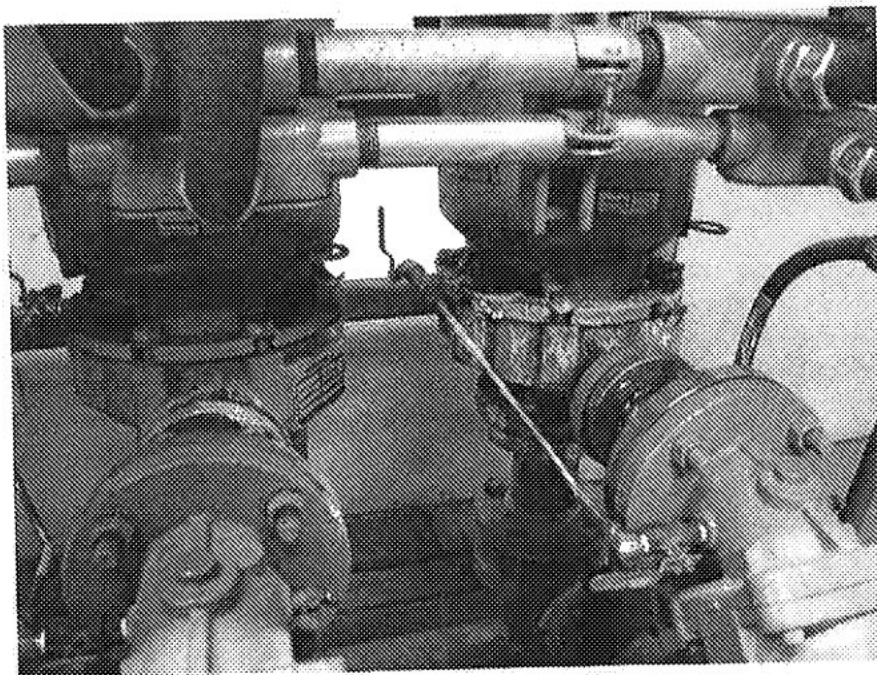


5. BP-1 (jpg 73)

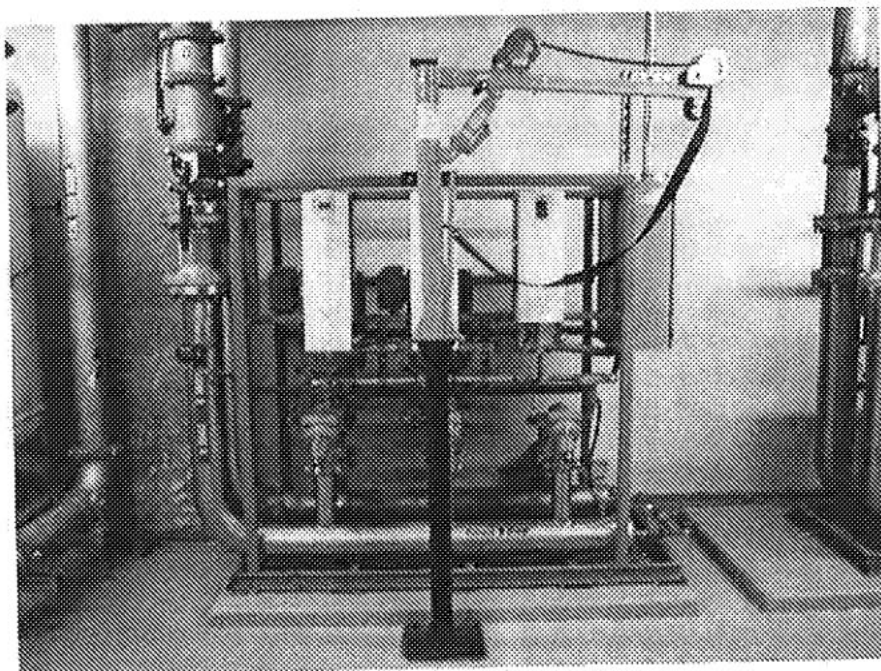


6. BP-1 (jpg(74)

PANORAMA 1 Lower Mechanical Room

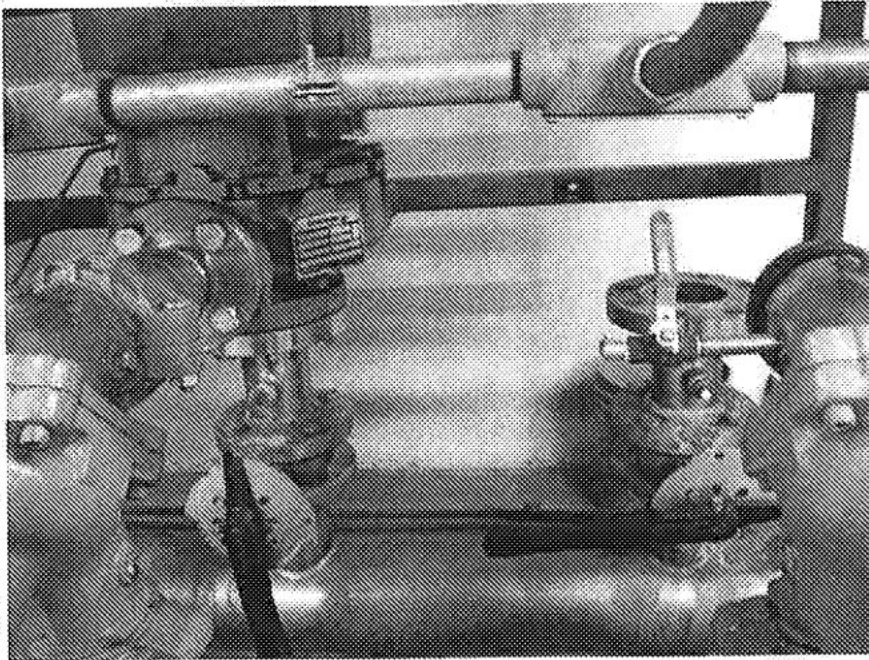


7. BP-1,
replace leaking ferrous pump housing now (jpg75).



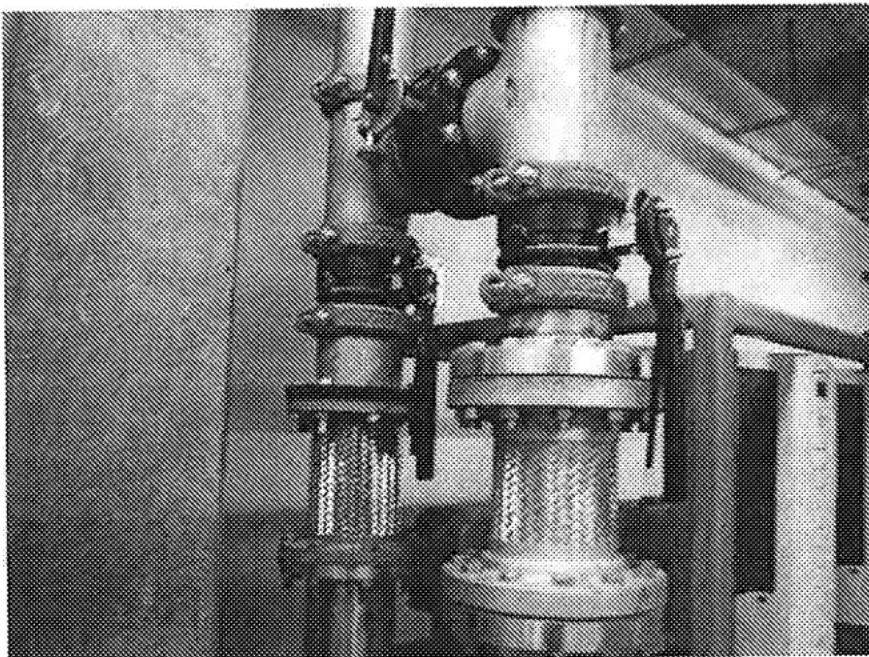
77) 8. BP-2, (jpg

PANORAMA 1 Lower Mechanical Room



9. BP-2,

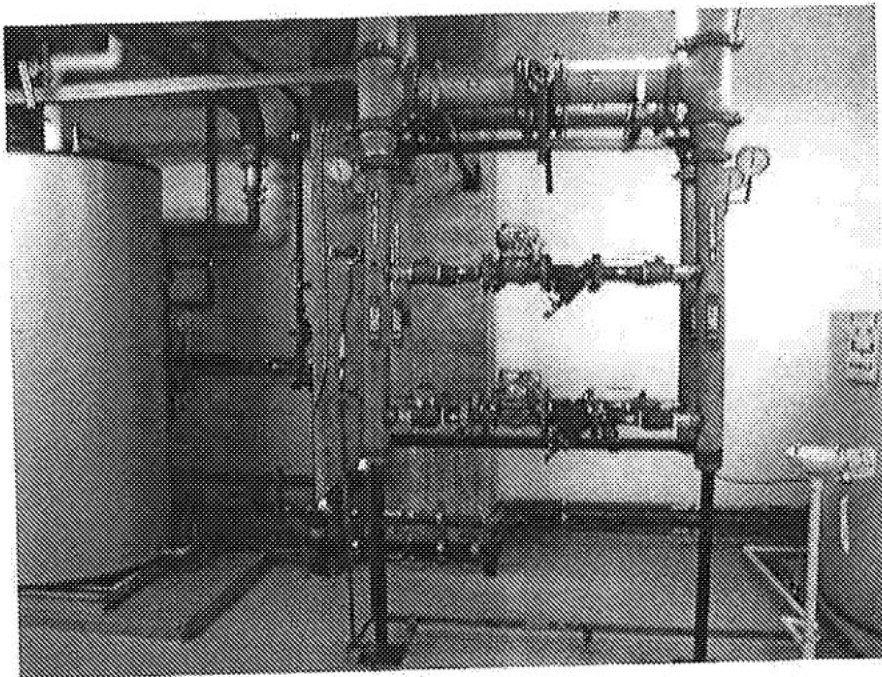
(jpg78)



10. BP-2,

(jpg79)

PANORAMA 1 Lower Mechanical Room



13. Pressure

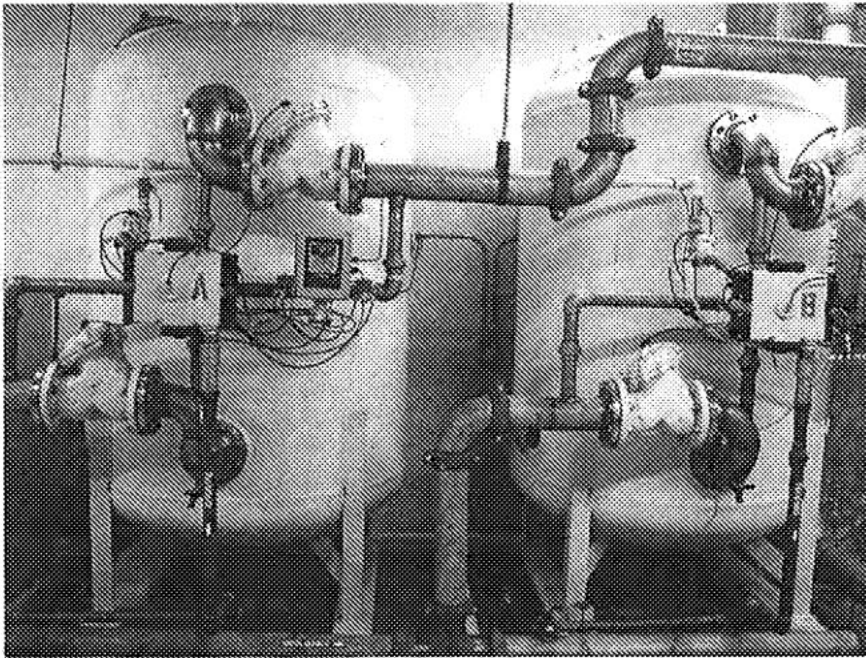
regulator manifold (jpg82).



14. Pressure

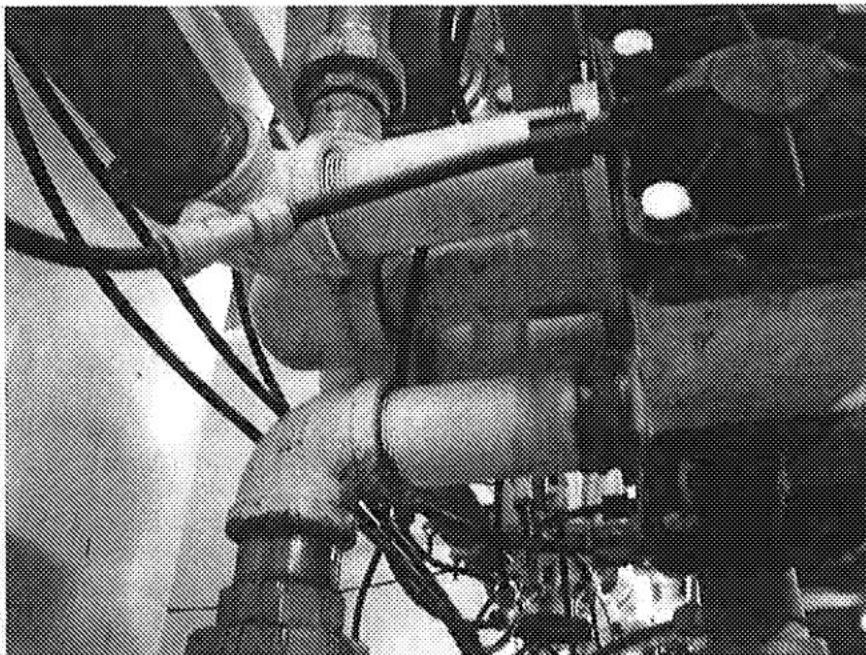
regulator manifold (jpg83) replace plastic lined steel nipple with stainless steel.

PANORAMA 1 Lower Mechanical Room



tanks (jpg80)

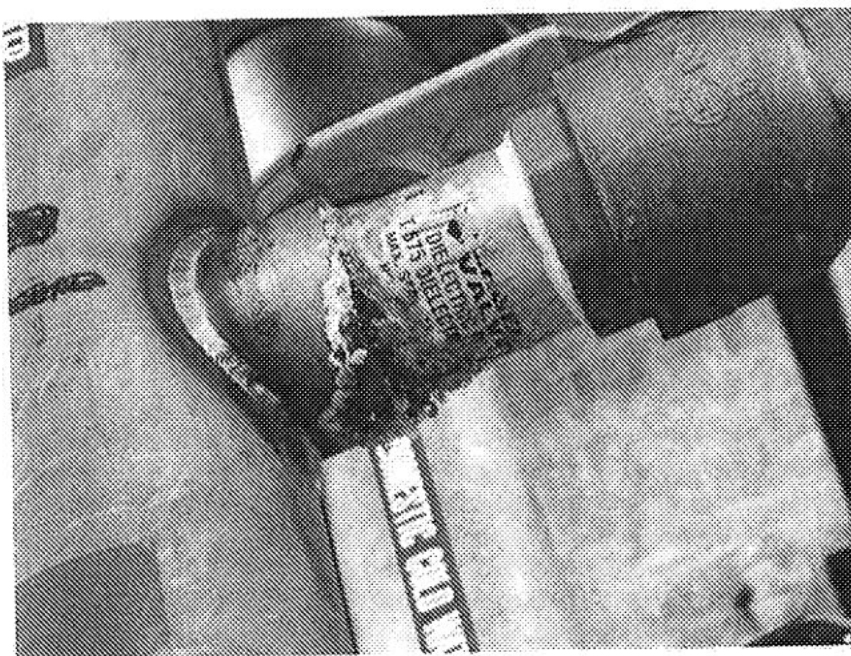
11. Media



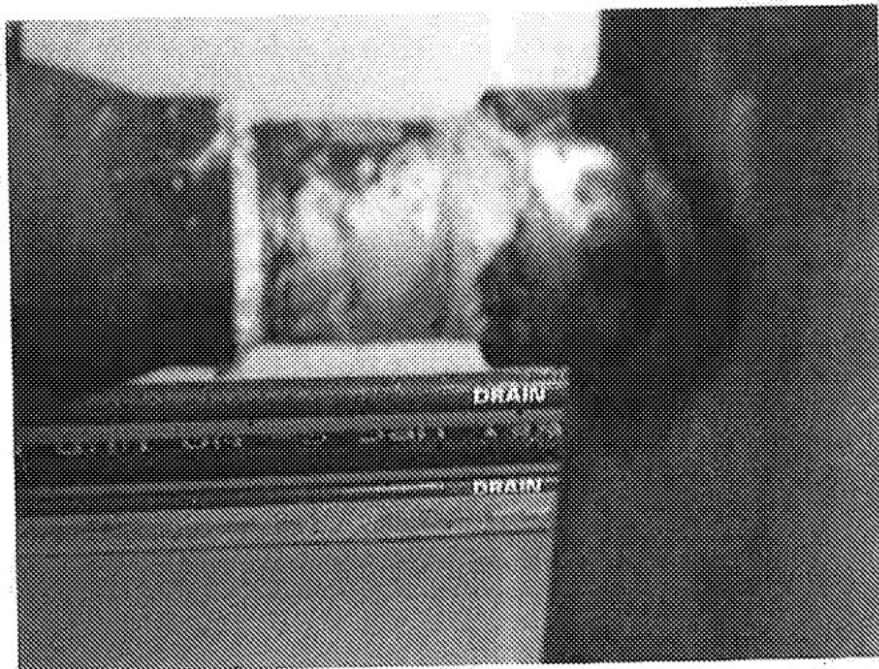
carbon steel parts (jpg81).

12. Culligan

PANORAMA 1 Lower Mechanical Room

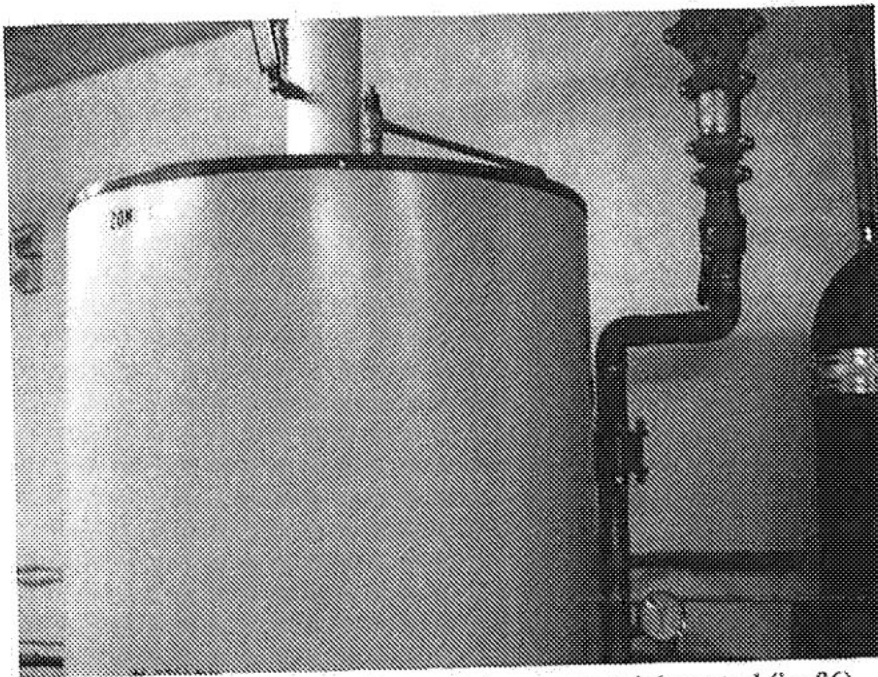


15. Another view of previous photo (jpg84).



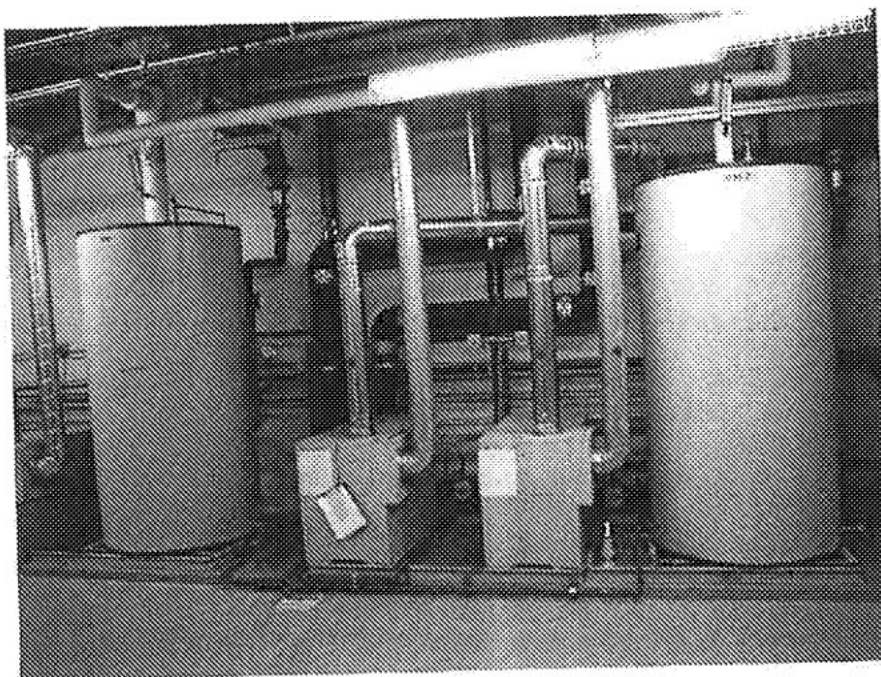
16. Pressure regulating manifold, leaking plastic lined nipple – replace with stainless steel now(jpg85).

PANORAMA 1 Lower Mechanical Room



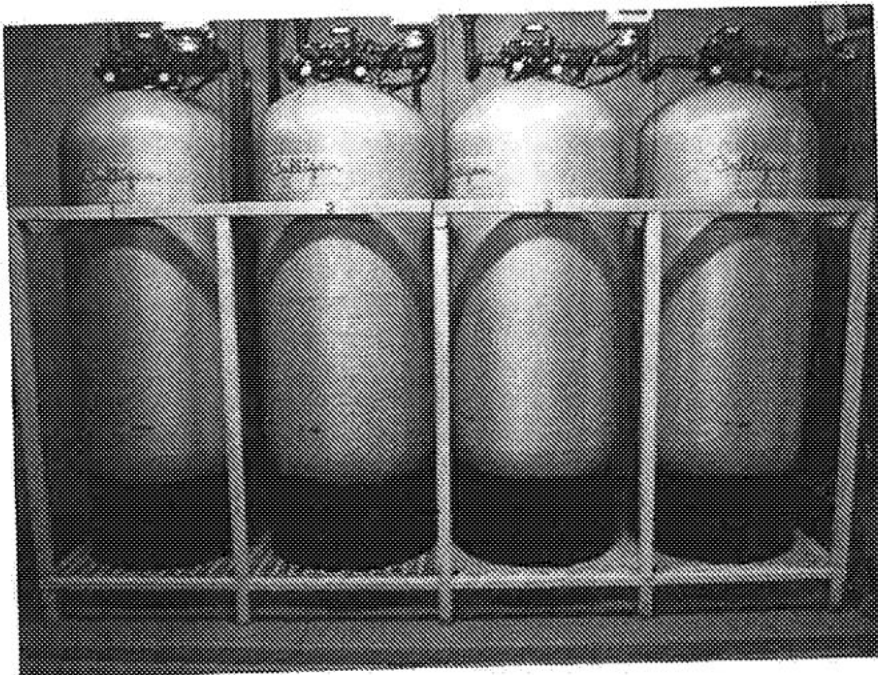
17. Hot water

tank ferrous check valve -- replace with bronze or stainless steel (jpg86).



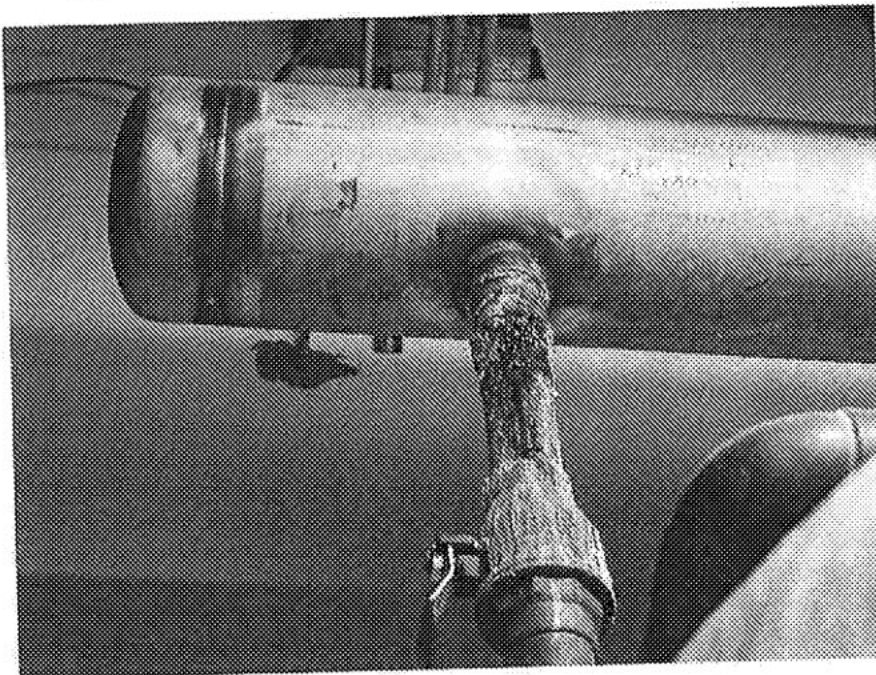
18. (jpg87)

PANORAMA 1 Lower Mechanical Room



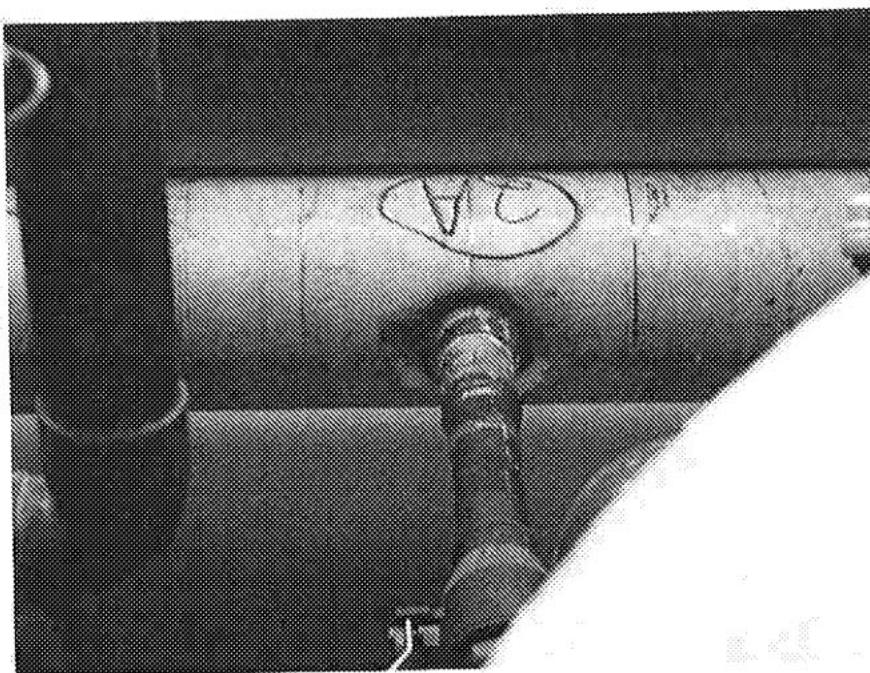
19. Filter

bank (jpg88).

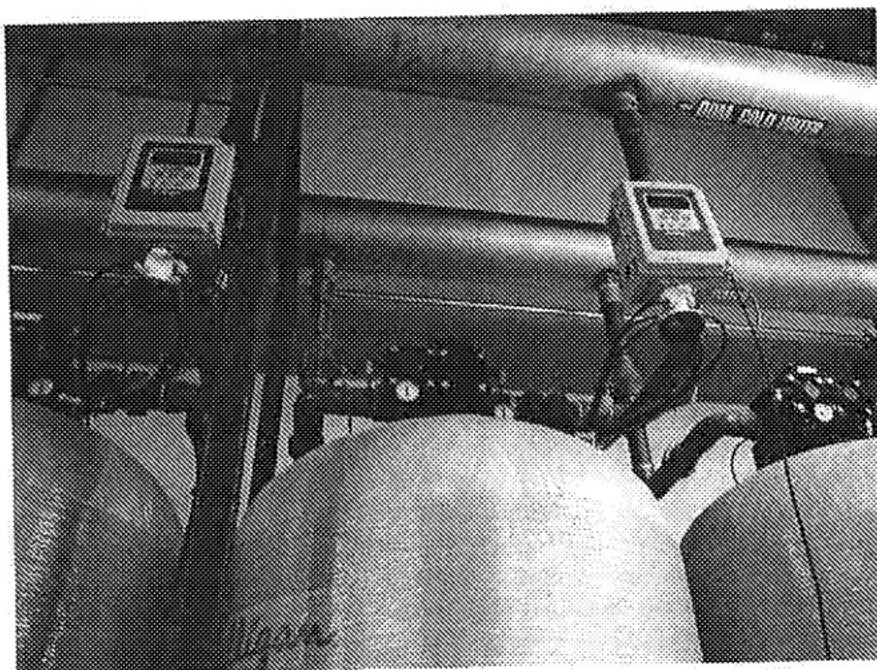


20. (jpg89)

PANORAMA 1 Lower Mechanical Room

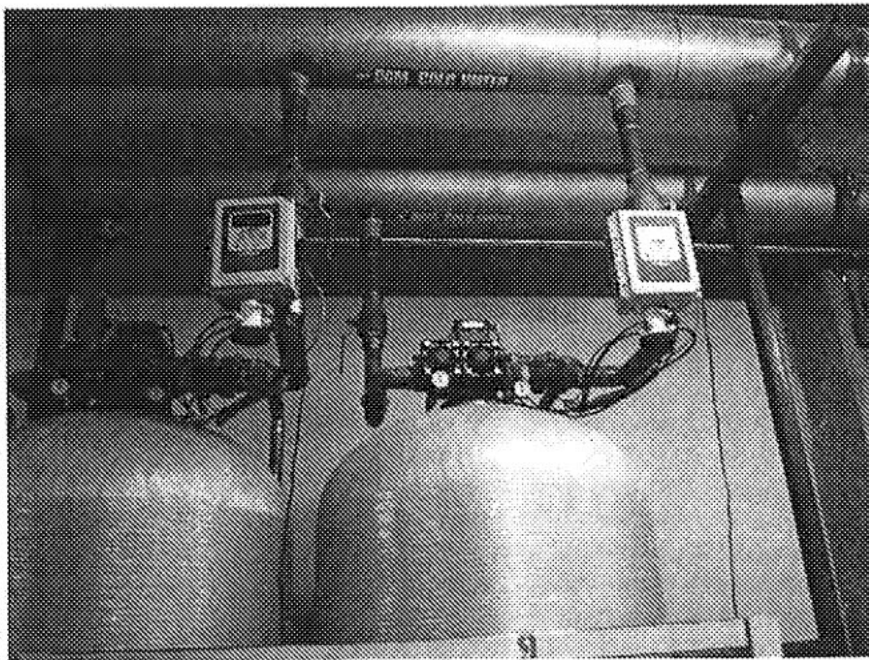


21. (jpg91)

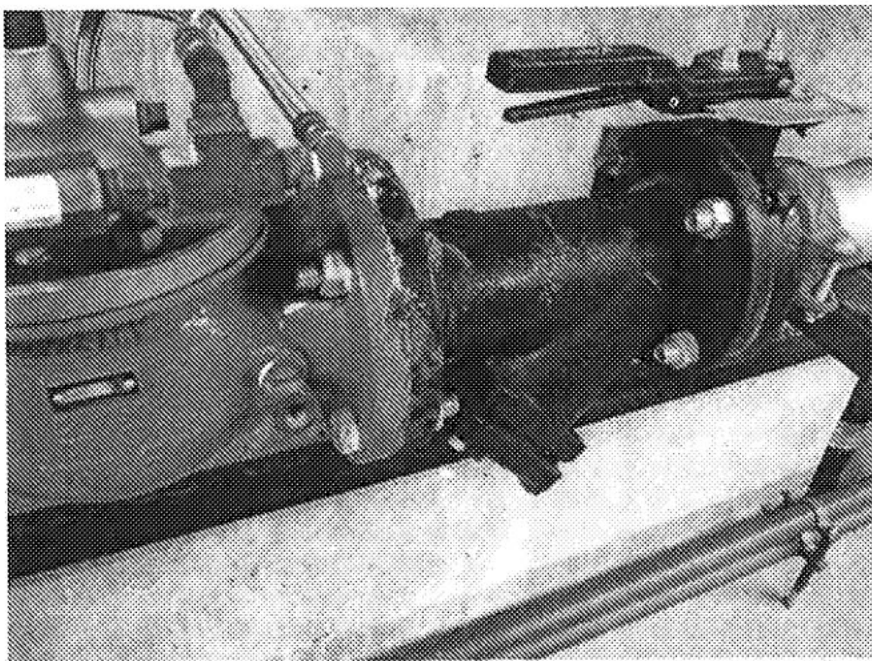


22. (jpg93)

PANORAMA 1 Lower Mechanical Room

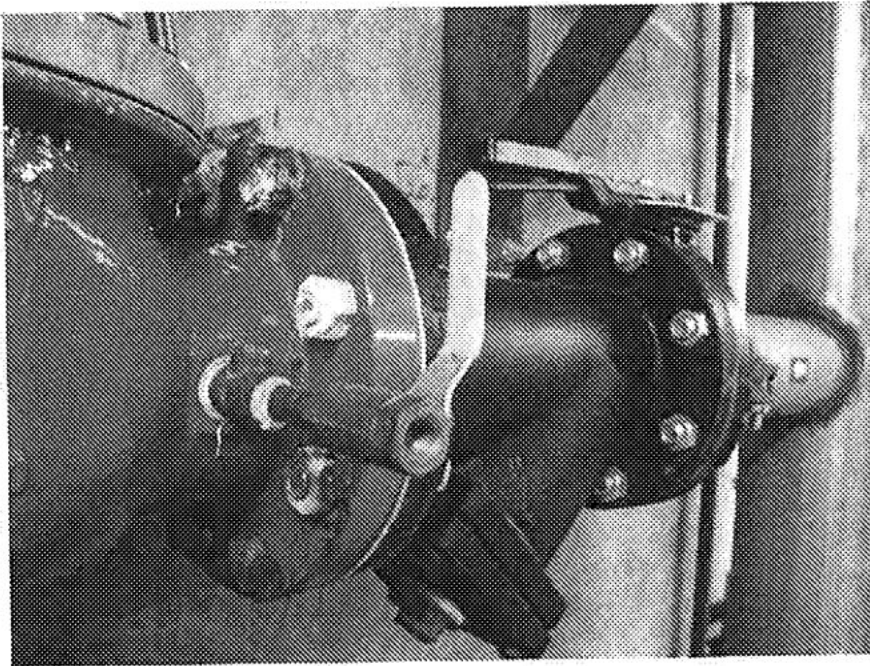


23. (jpg94)

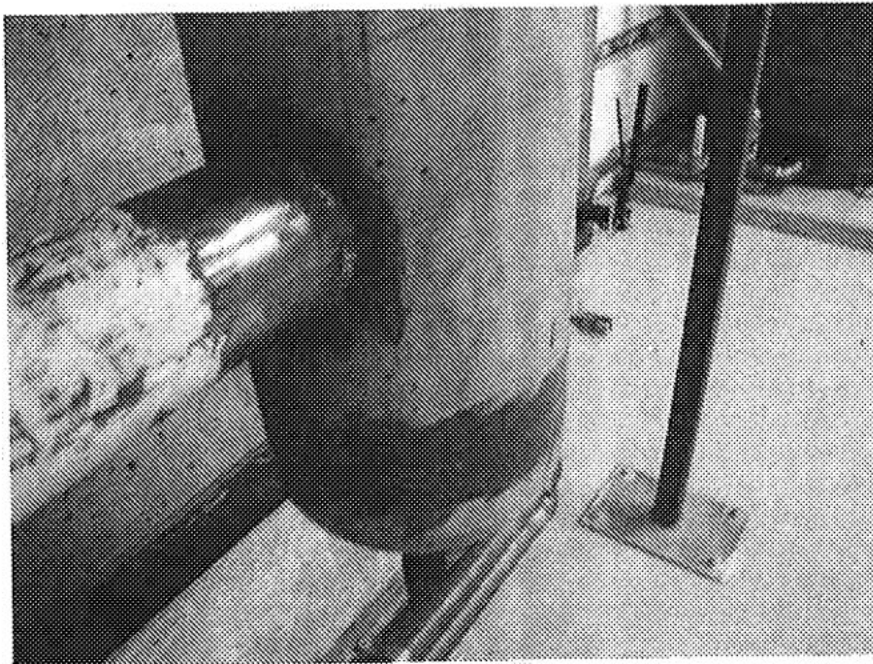


24. (jpg95)

PANORAMA 1 Lower Mechanical Room

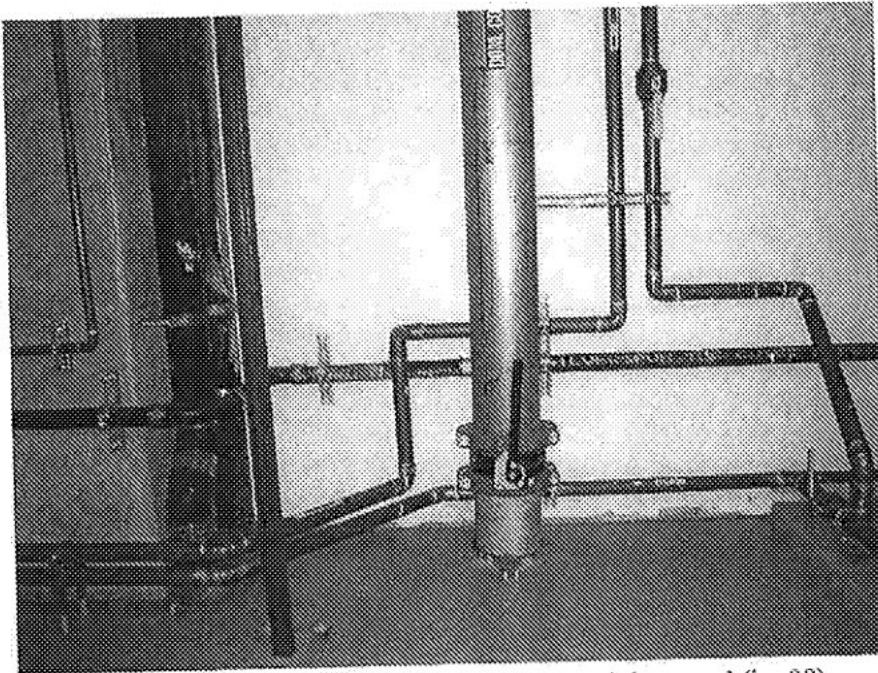


25. (jpg96)

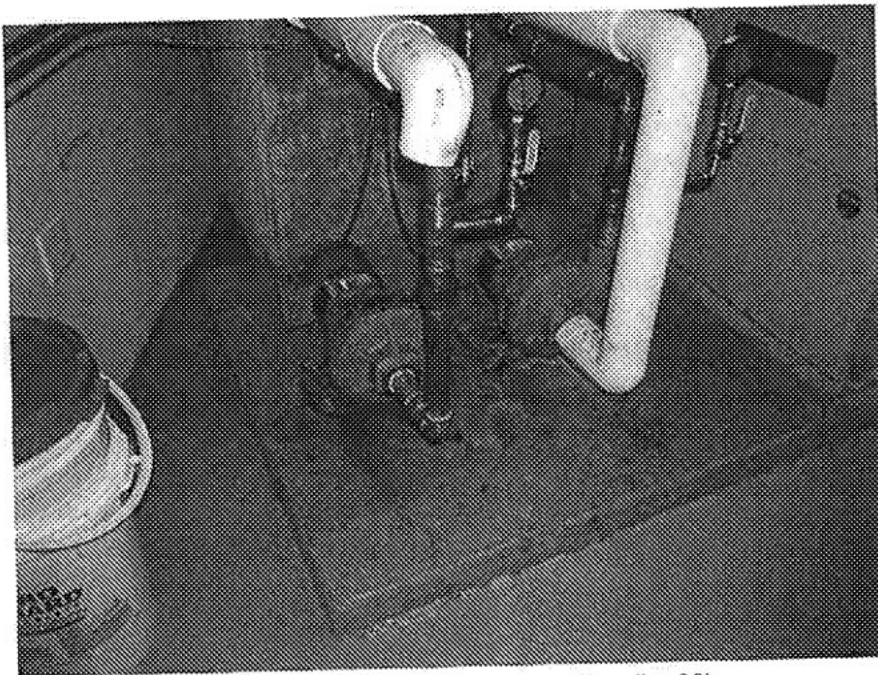


26. Evidence of removing welding tarnish with an acid e.g. hydrochloric; recommend cleaning with a stainless steel cleaner containing nitric acid.

PANORAMA 1 Lower Mechanical Room

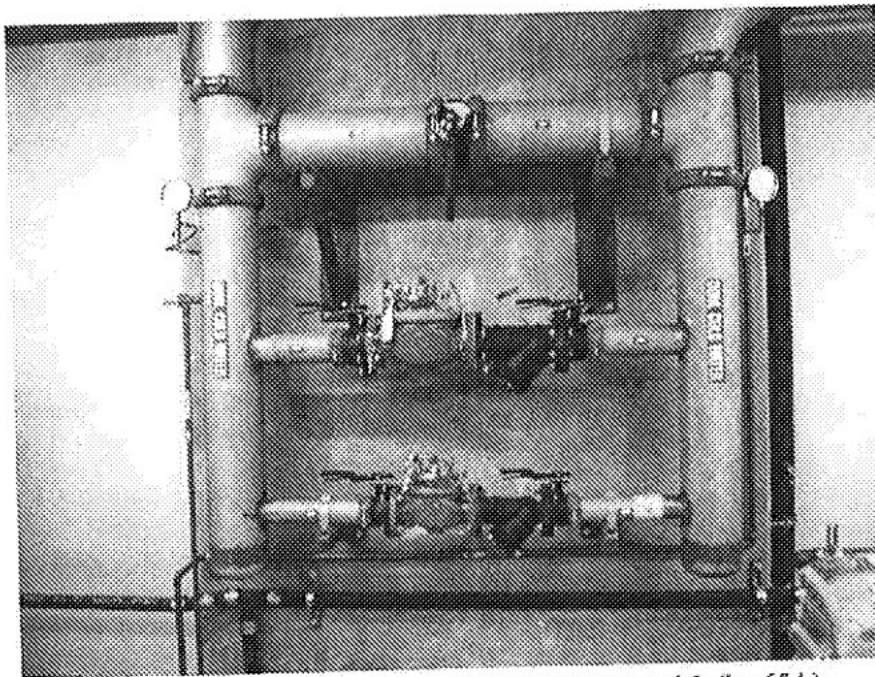


27. City water inlet; replace ferrous butterfly valve with stainless steel (jpg98).



28. Hot water recirculation pumps – replace with nonferrous alloy (jpg99).

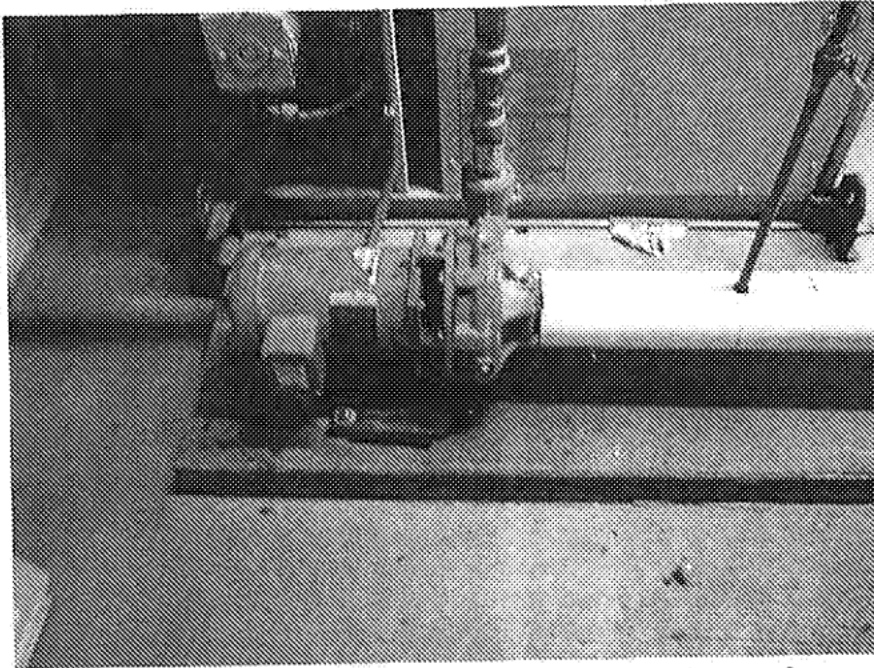
PANORAMA 1 Lower Mechanical Room



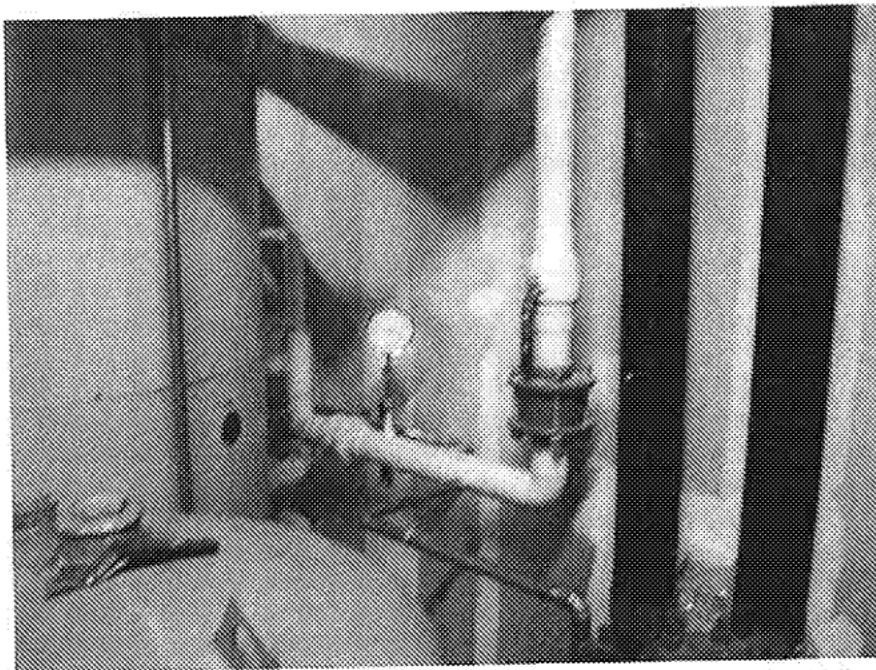
inlet manifold; rust is from acid cleaning to remove tarnish (jpg65A).

29 City water

PANORAMA TOWER 1 Upper Mechanical Room

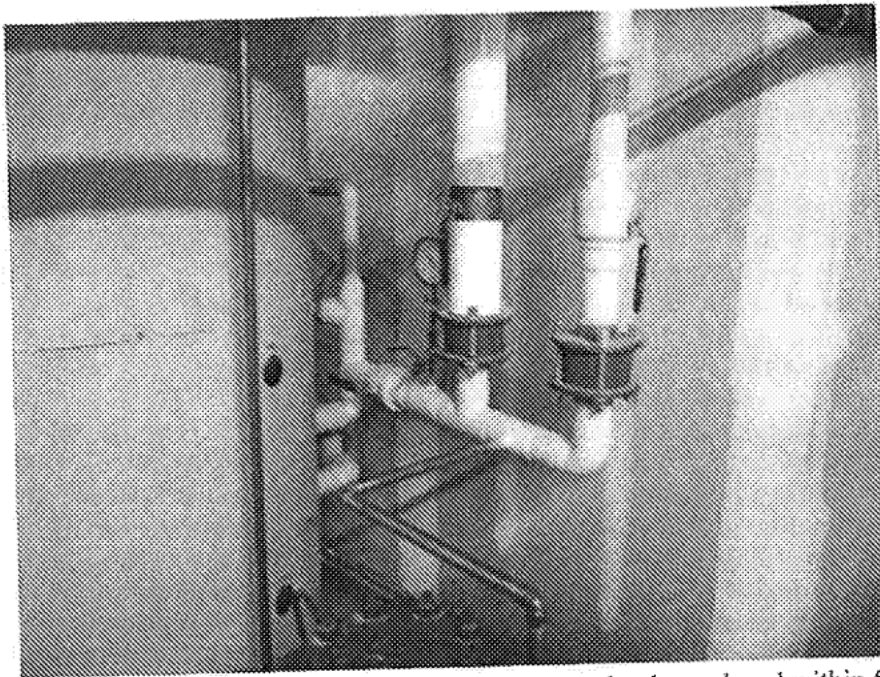


1. Hot water ferrous recirculation pump body requires replacement with a non-ferrous alloy now; replace carbon steel nipples now (jpg103).

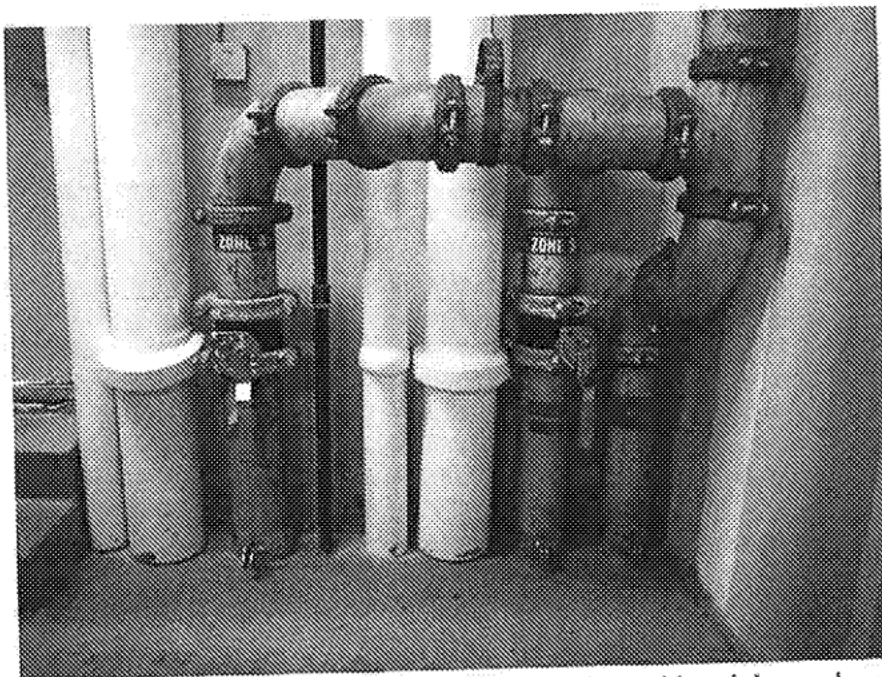


2. Zone 4 hot water system with ferrous check valve -- replace within 5 years (jpg104).

PANORAMA TOWER 1 Upper Mechanical Room

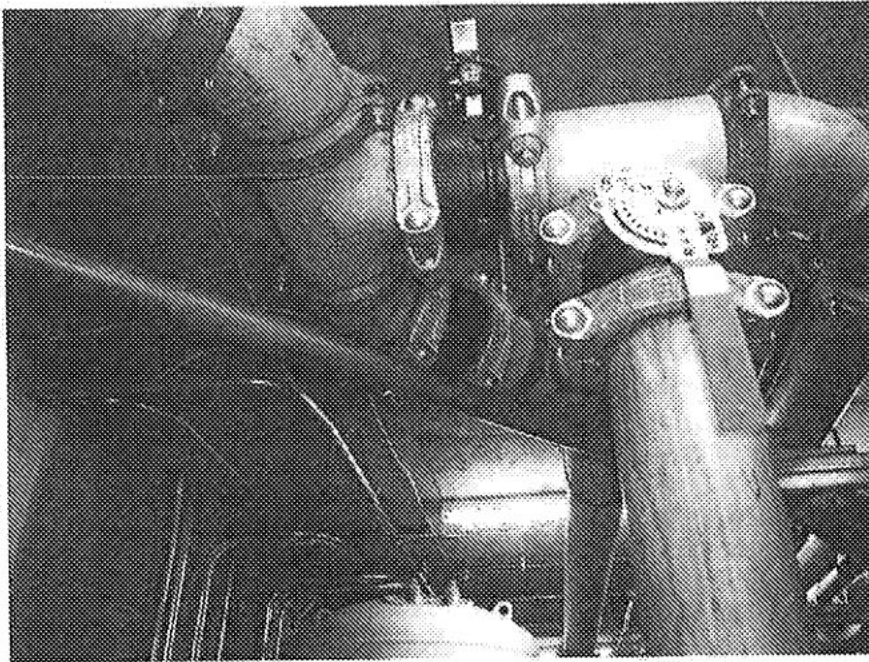


3. Zone 3 hot water system with 2 ferrous check valves that need to be replaced within 5 years.

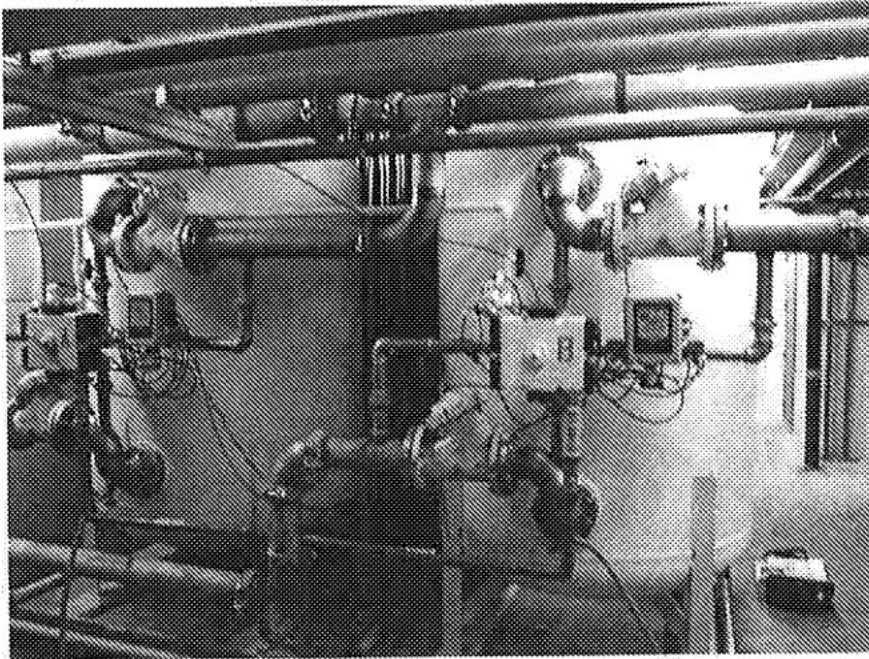


4. City water inlet, Zone 3 and 4 ferrous butterfly valves -- replace with stainless or bronze valves (jpg106).

PANORAMA TOWER 1 Upper Mechanical Room

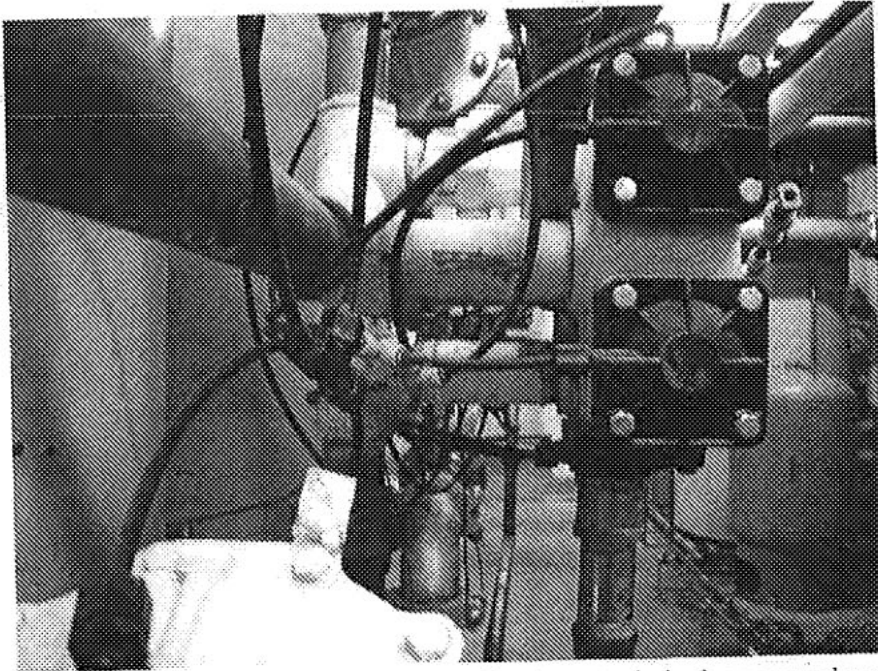


5. Feed water to water conditioners and bypass ferrous butterfly valves – replace now (jpg107).

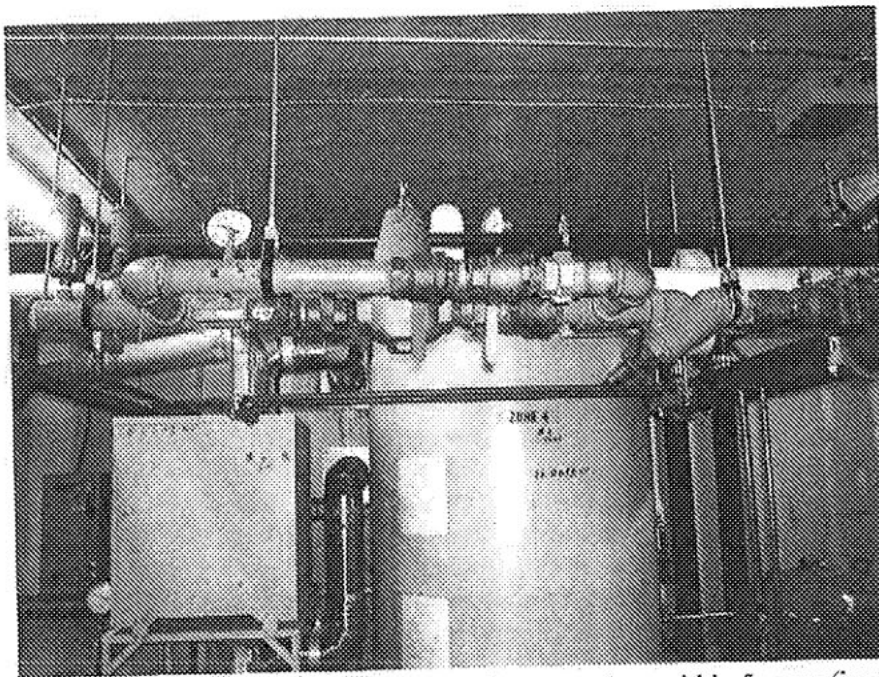


6. Media tanks with 4 ferrous check valves – replace valves within 5 years (jpg109).

PANORAMA TOWER 1 Upper Mechanical Room

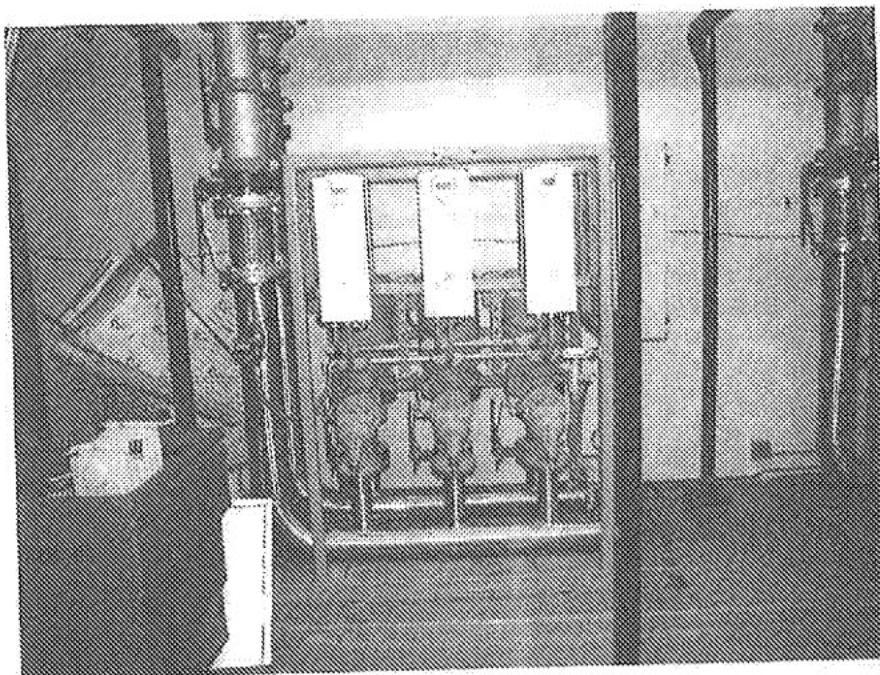


7. Media tanks with Culligan systems – replace all carbon steel nipples now; valves within 5 years (jpg108).



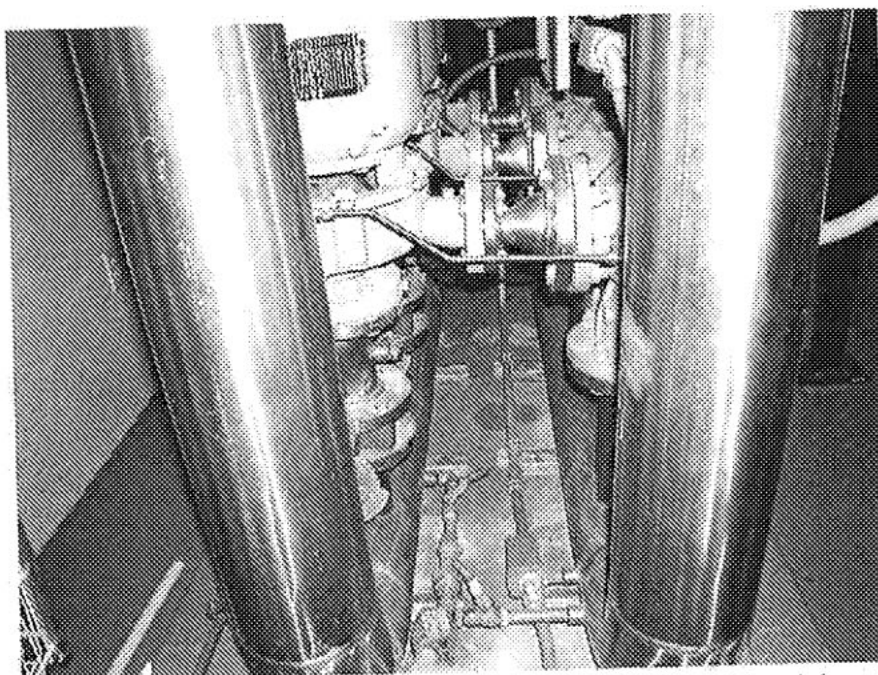
8. Unidentified pipe run with carbon steel lines – replace within 5 years (jpg110).

PANORAMA 2 Lower Mechanical Room



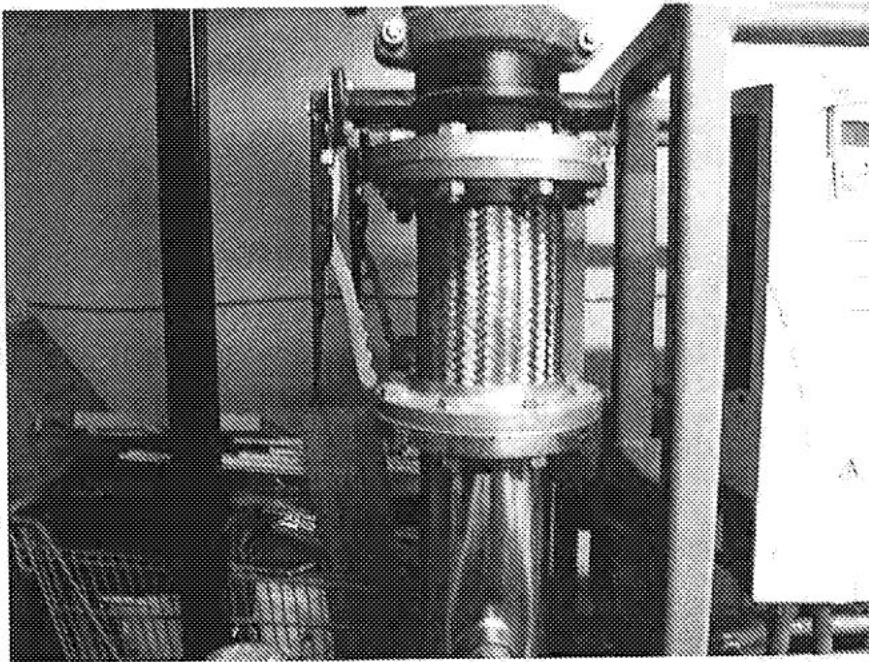
mounted unit (jpg39).

1. BP-1 skid

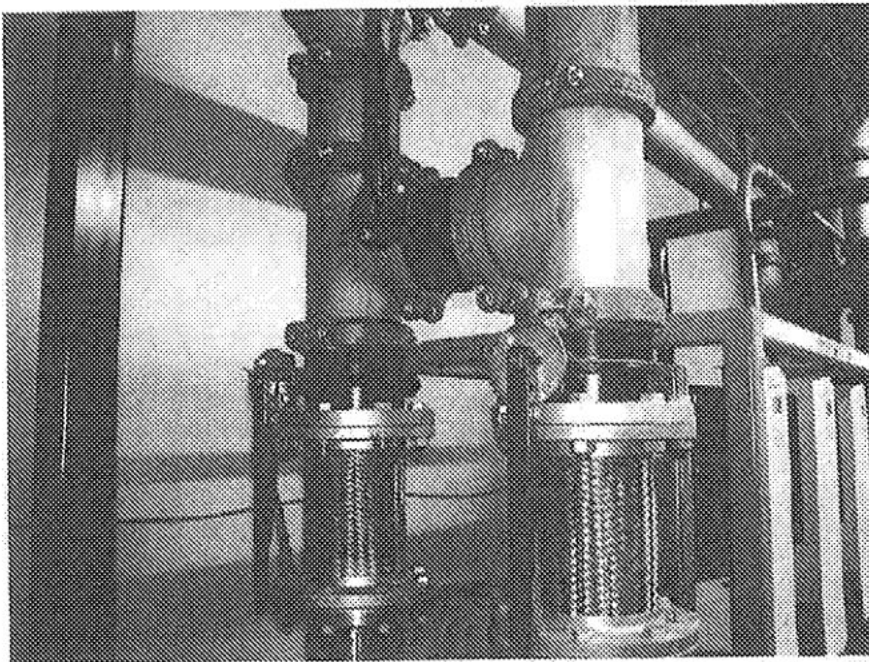


2. End view
BP-1 skid mounted unit; stainless butterfly valves shipped with unit have been replaced
with carbon steel valves that should be replaced now with stainless (jpg25).

PANORAMA 2 Lower Mechanical Room

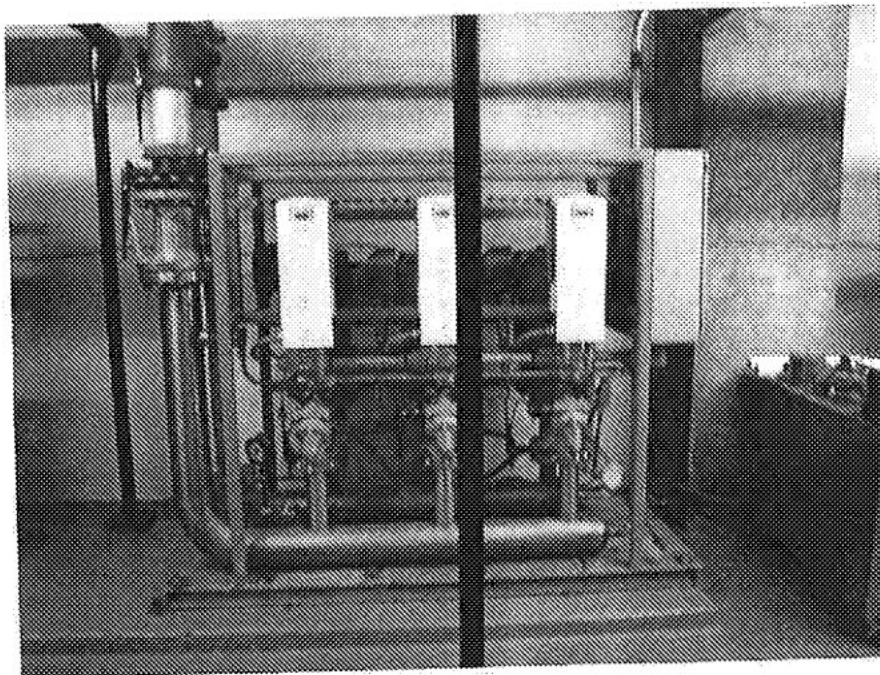


3. BP-1 Flex joint below carbon steel butterfly valve – replace valve now – see below (jpg28).



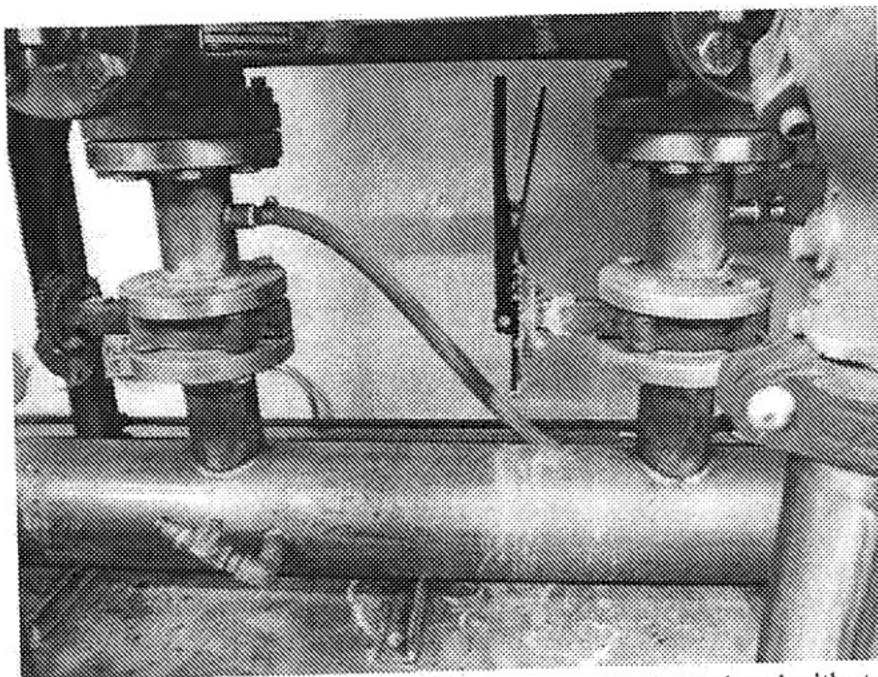
4. BP-1 showing inline and bypass carbon steel butterfly vales – all need to be replaced now (jpg29).

PANORAMA 2 Lower Mechanical Room



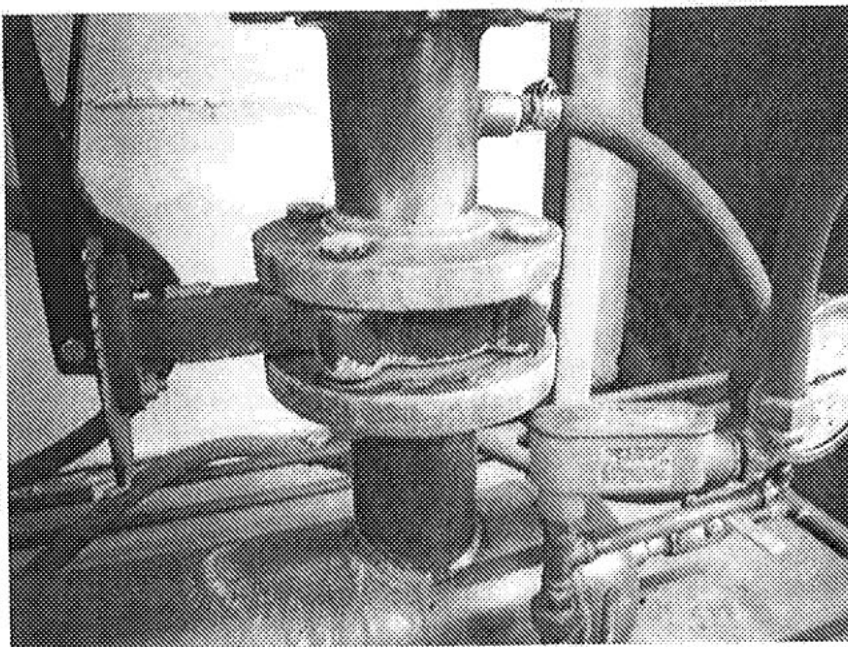
pressure skid mounted unit (jpg40).

5. BP-2 high

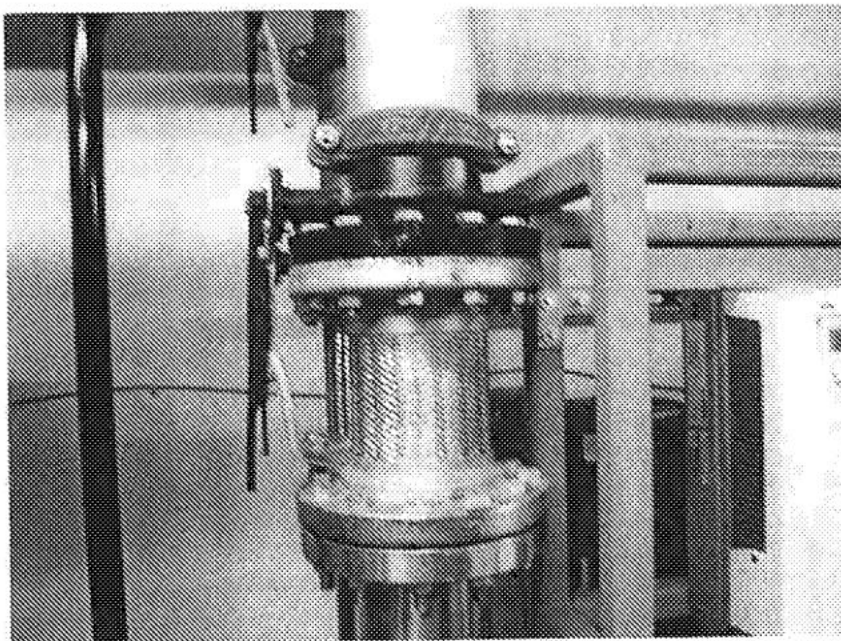


6. BP-2 center and east carbon steel butterfly valves – need to be replaced with stainless now (jpg27).

PANORAMA 2 Lower Mechanical Room

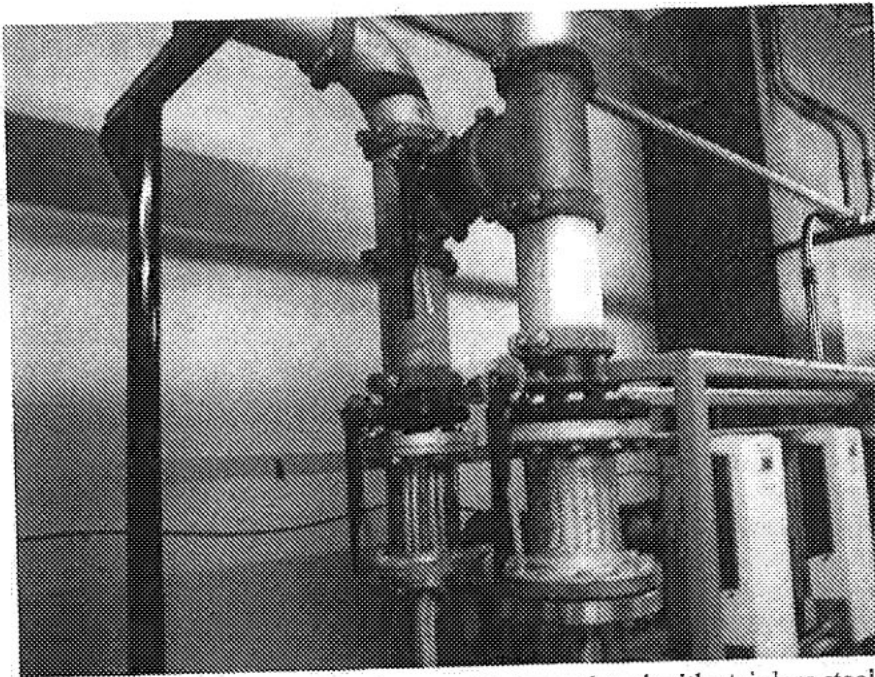


7. BP-2 west
carbon steel butterfly valve; valve and corroded fasteners need to be replaced now
(jpg26).

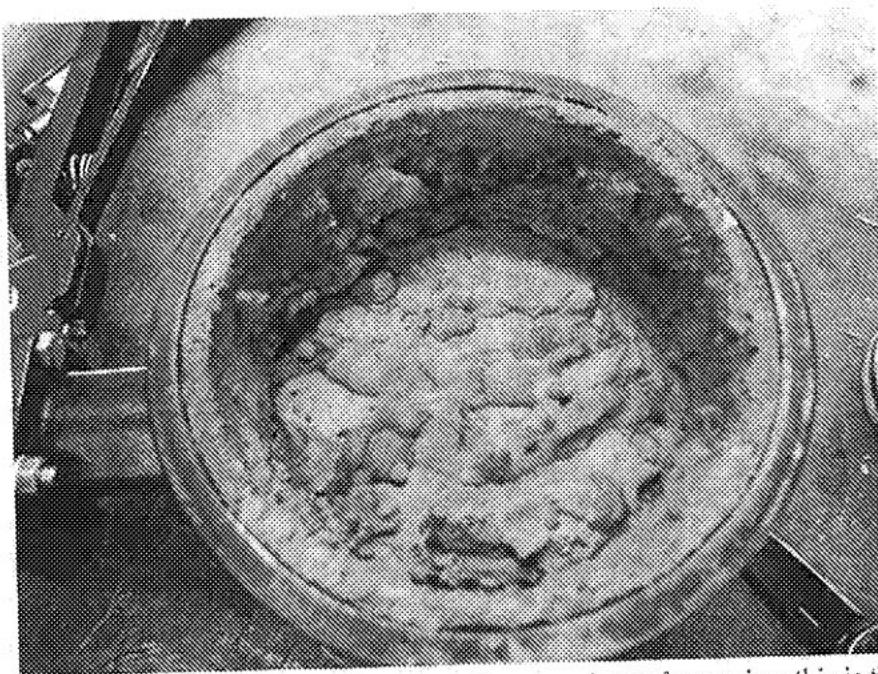


8. BP-2 high
pressure flex connection with carbon steel flanges (jpg30).

PANORAMA 2 Lower Mechanical Room

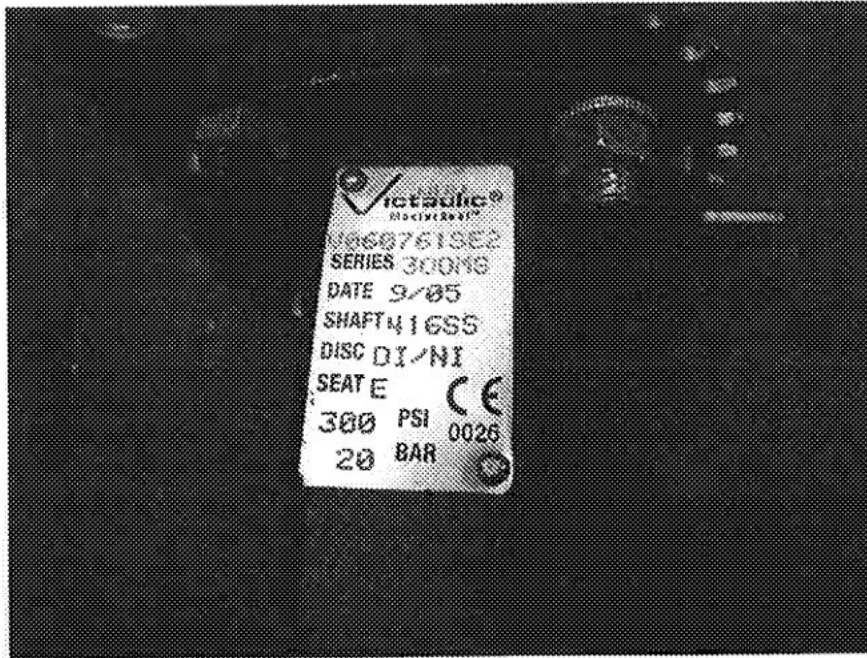


9. BP-2 inlet, outlet, and bypass butterfly valves need to be replaced with stainless steel valves now (jpg31).

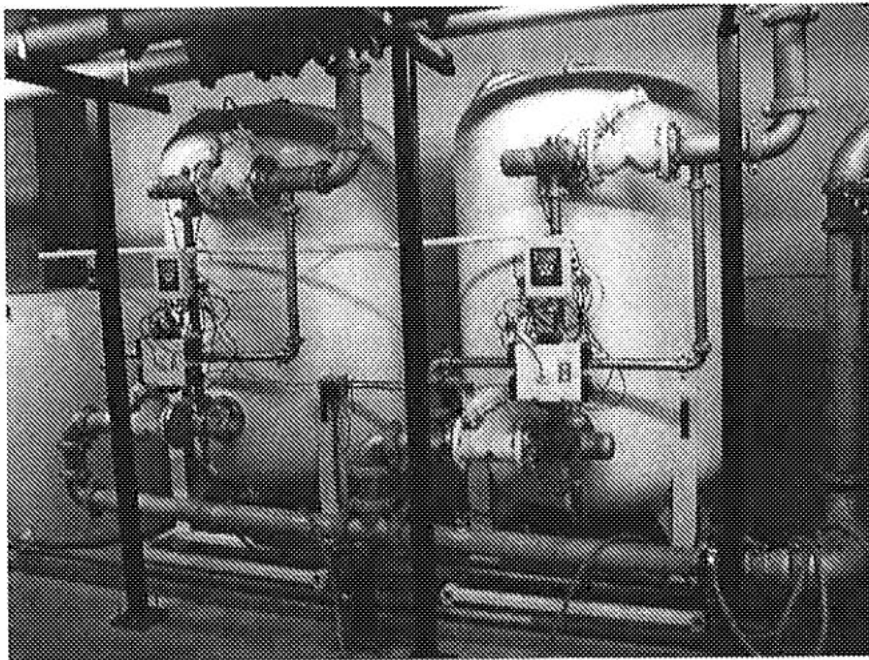


10. Typical inside of carbon steel butterfly valve after several months service; this is the reason they must be replaced as soon as practical with stainless steel valves (jpg33).

PANORAMA 2 Lower Mechanical Room

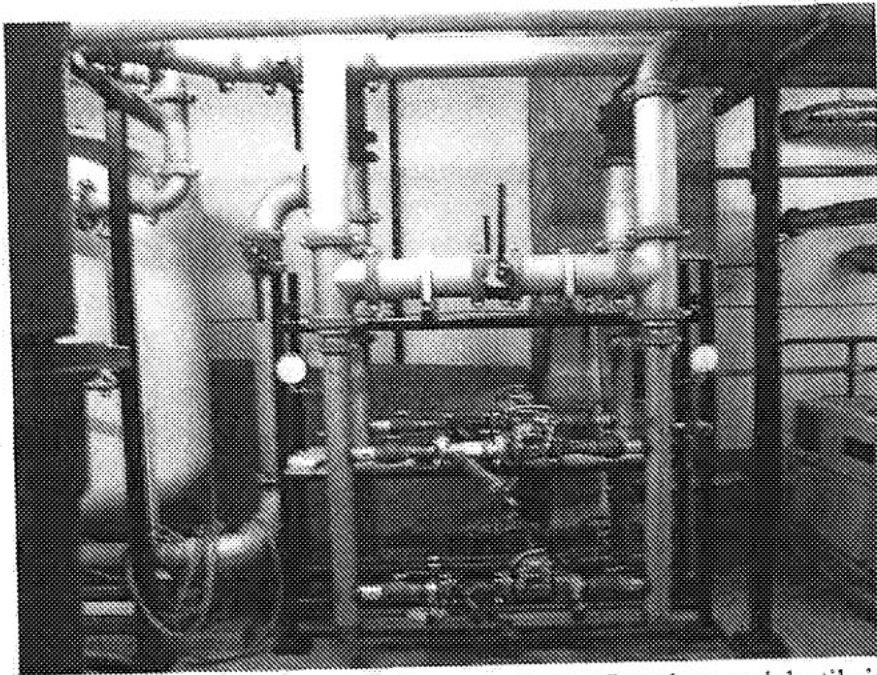


11. Name plate on typical carbon steel butterfly valve showing it has an AISI Type 416 stainless steel shaft; the ductile iron disc has a nickel edge (jpg34).

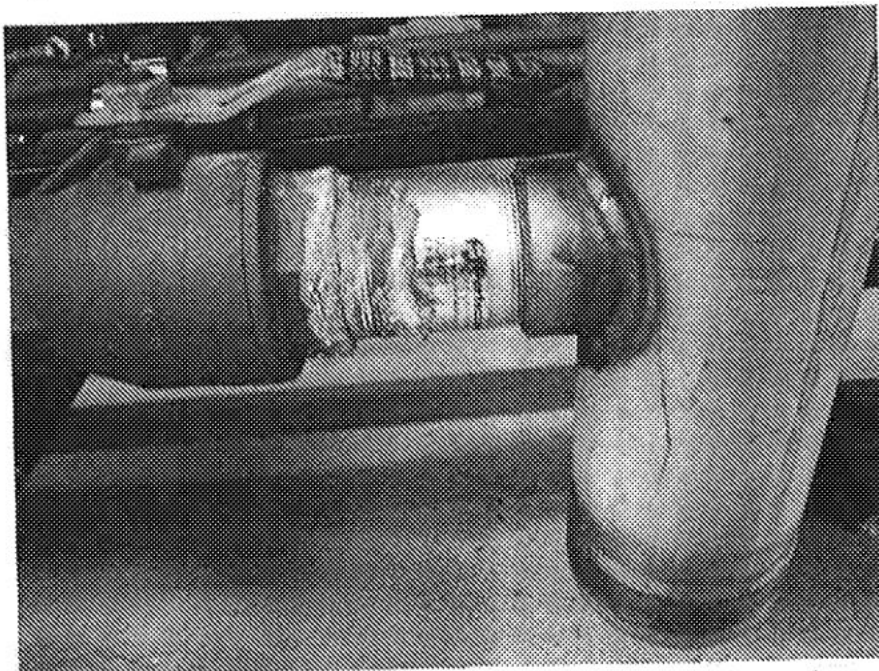


12. Media tanks (jpg41).

PANORAMA 2 Lower Mechanical Room



13. PRV manifold with 3 carbon steel strainers, steel butterfly valves, and ductile iron pressure regulators (jpg42).

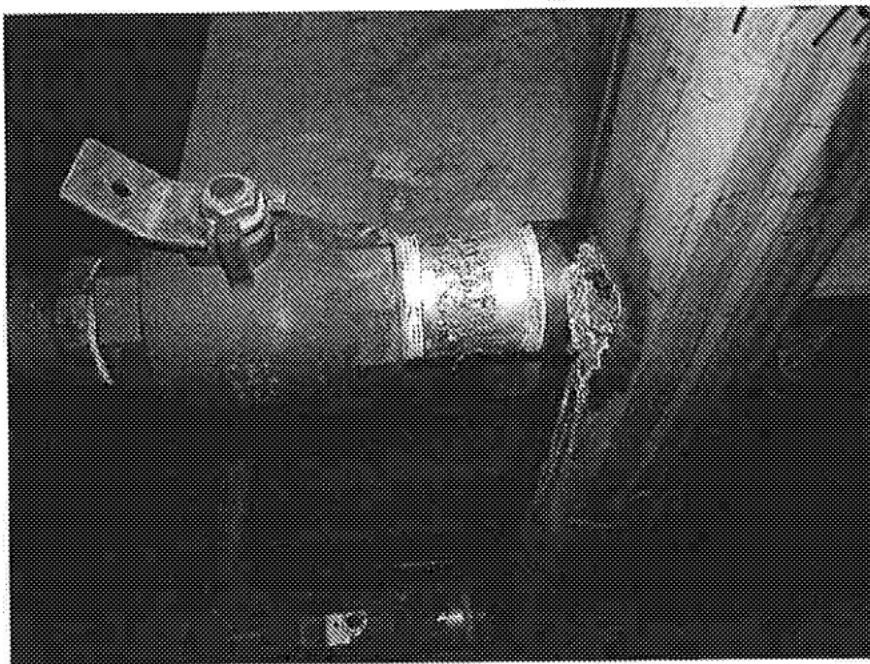


14. Carbon steel plastic lined nipple (lower northwest corner of manifold) - replace with stainless steel (jpg51).

PANORAMA 2 Lower Mechanical Room

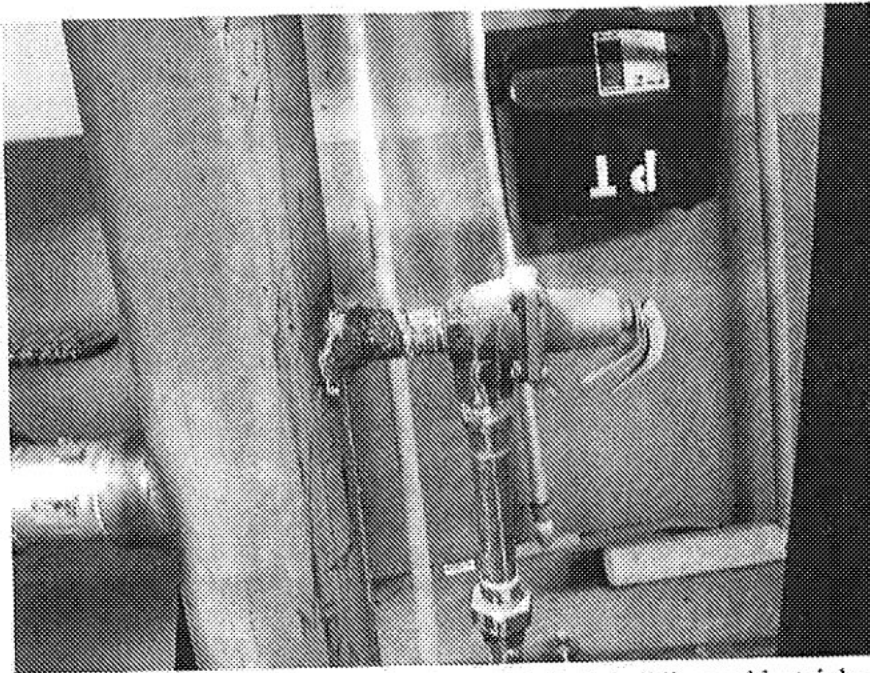


15. Carbon steel plastic lined nipple (lower southeast corner of manifold0 – replace with stainless steel (jpg52). Note: corrosion around Unistrut is a leak at the joint.

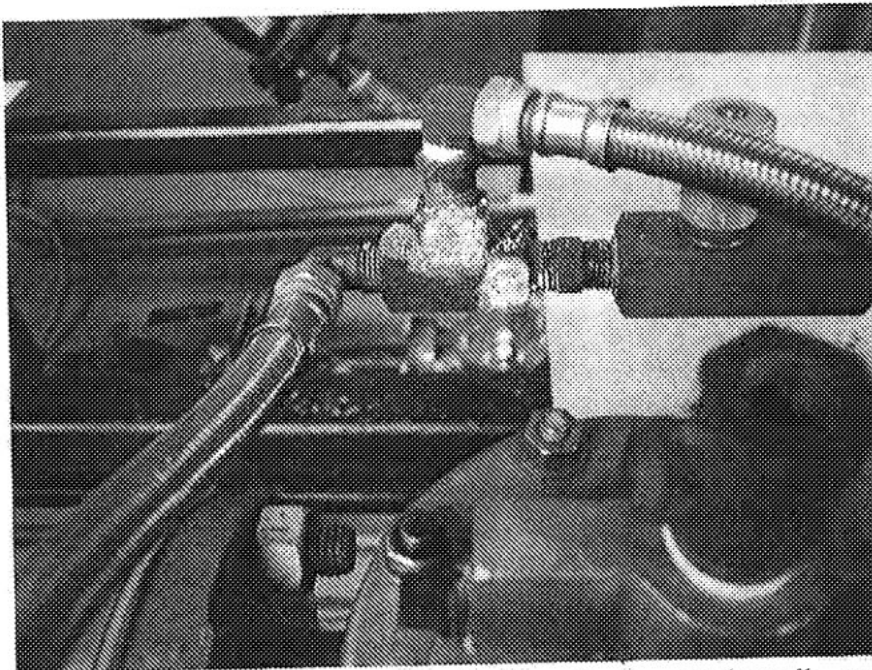


16. Leak in stainless weld leak; carbon steel plastic lined nipple not yet leaking, upper southeast corner of manifold (jpg53).

PANORAMA 2 Lower Mechanical Room

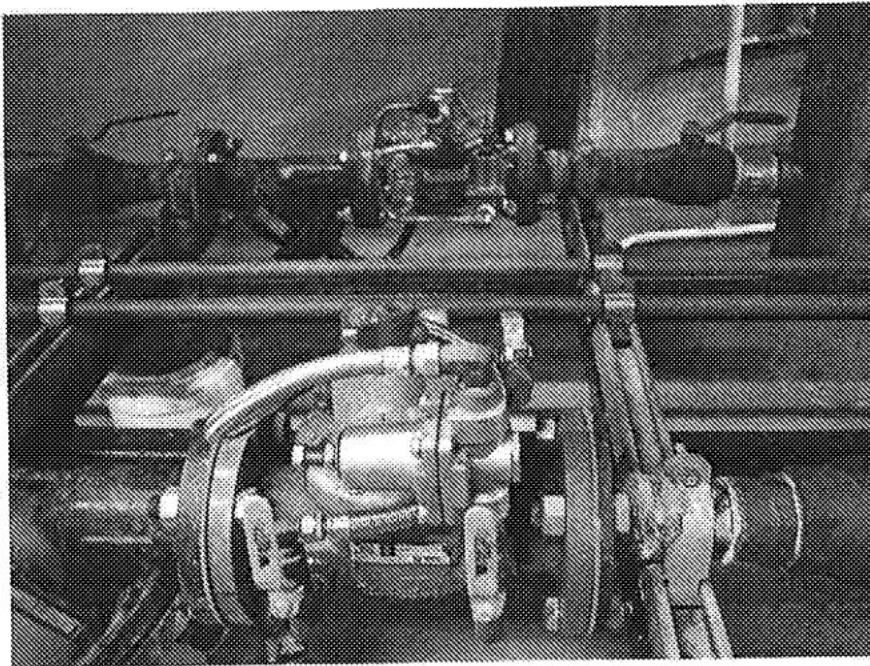


17. Carbon steel drain nipple on manifold -- replace all in both buildings with stainless steel (jpg54).

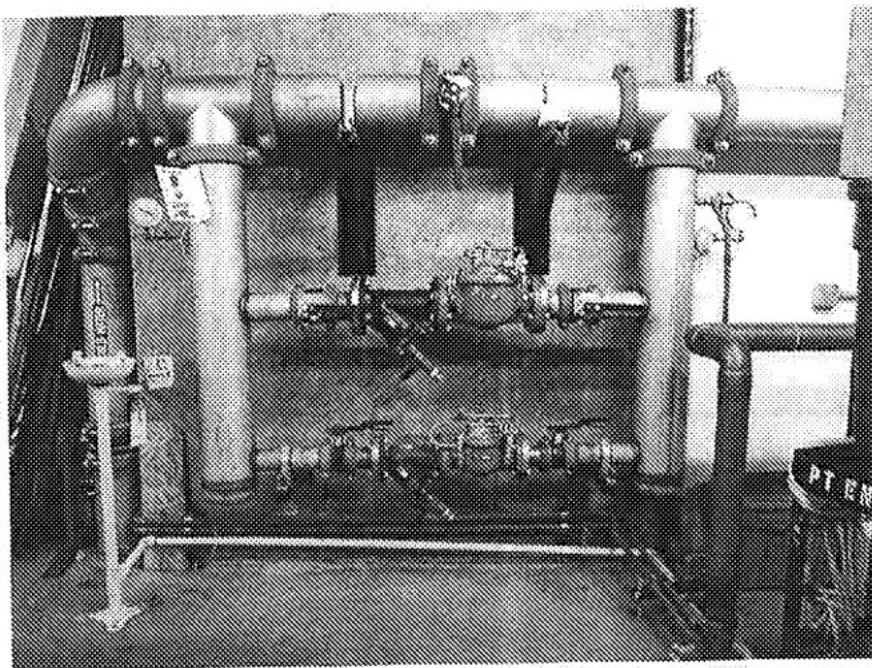


18. Yellow brass T-fitting exhibiting de-zincification corrosion through the wall -- replace yellow brass fittings as they leak as part of normal maintenance (jpg55).

PANORAMA 2 Lower Mechanical Room

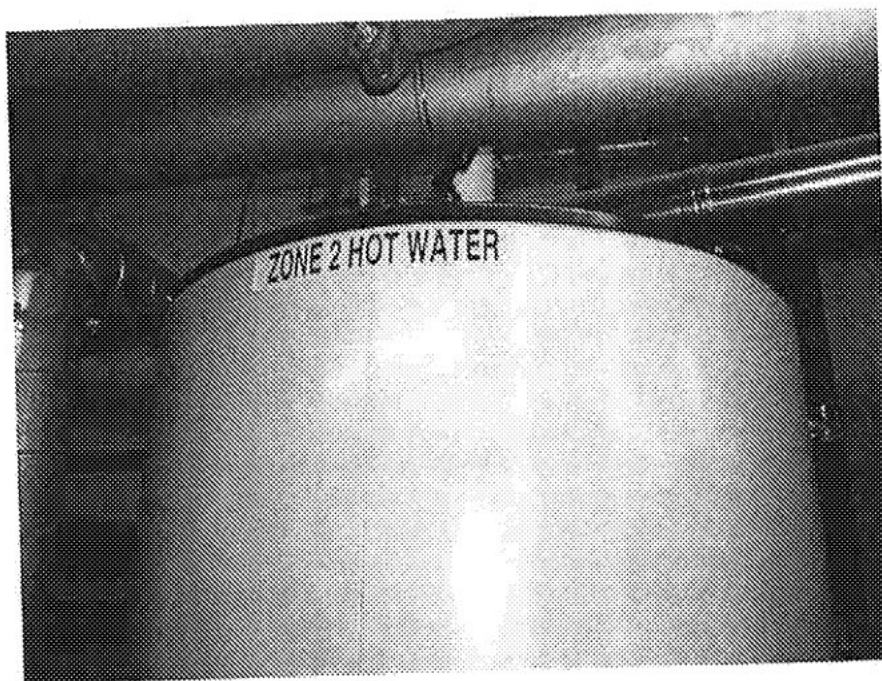


19. Lower pressure regulators; the far regulator is ductile iron top and bottom; the closer has a stainless steel top; visible residues at Unistrut are from connection leaks, not corrosion (jpg56).



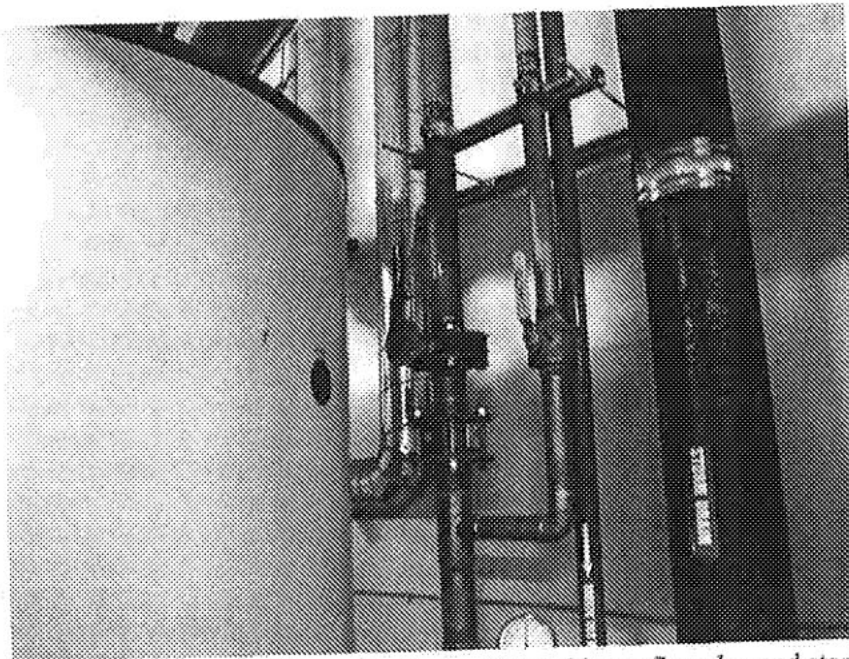
20. City water inlet manifold showing steel strainers, steel butterfly valves, and ductile iron pressure regulators with stainless steel tops (jpg43).

PANORAMA 2 Lower Mechanical Room



21. Zone 2

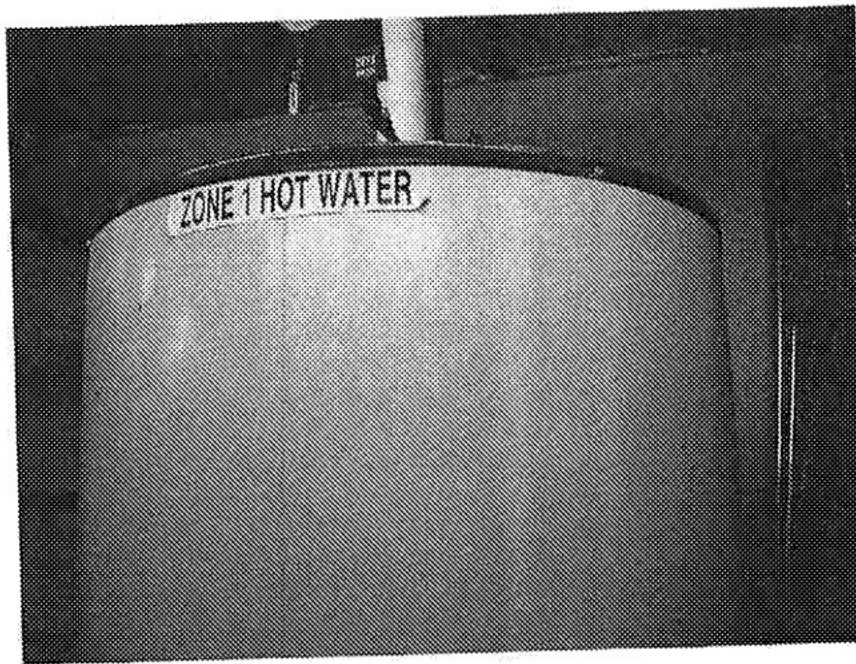
hot water tank (jpg44).



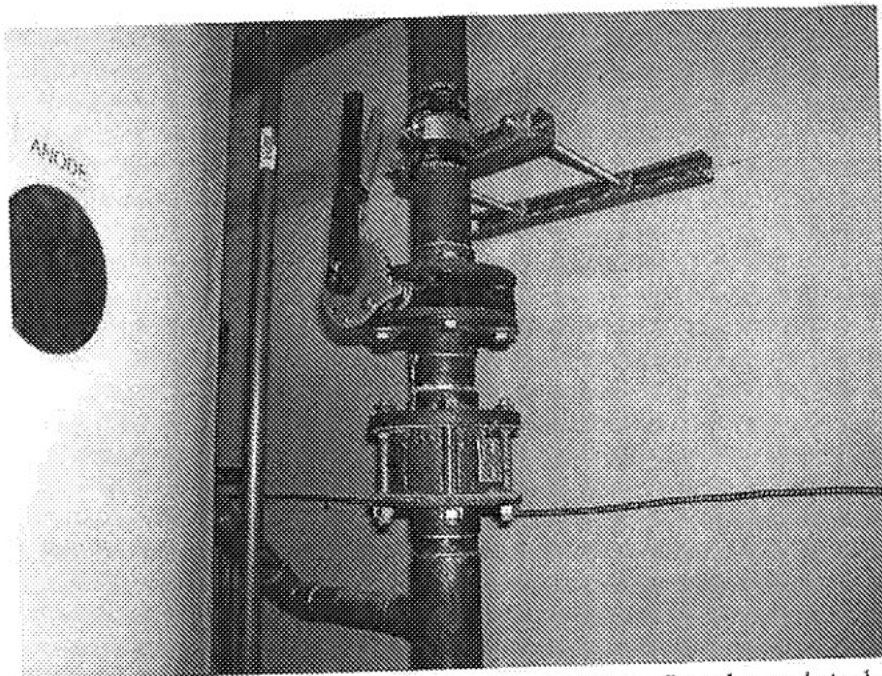
22. Piping

associated with Zone 2 hot water tank with steel butterfly valve and steel check valve (jpg45).

PANORAMA 2 Lower Mechanical Room

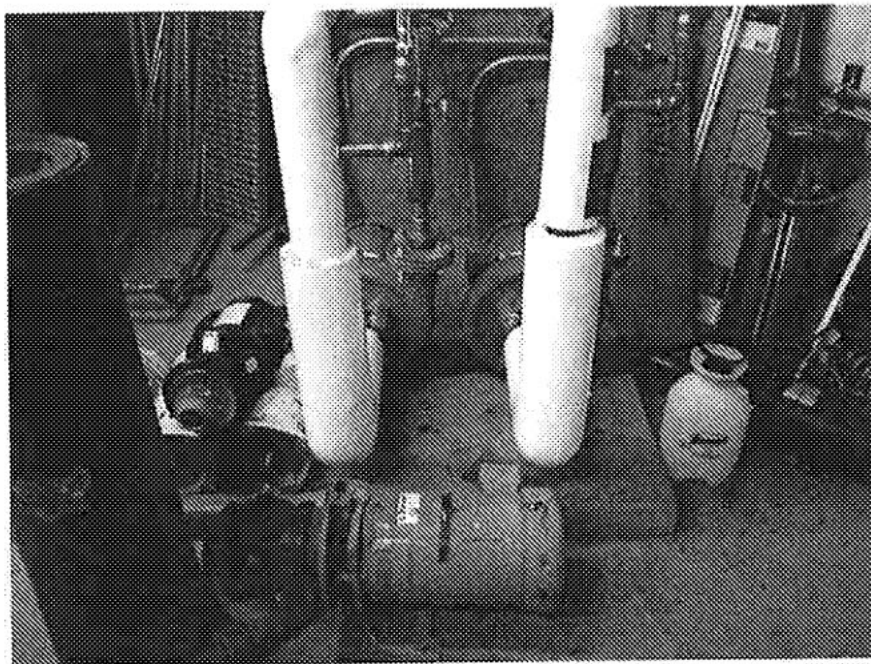


23. Zone 1 hot water tank (jpg46).

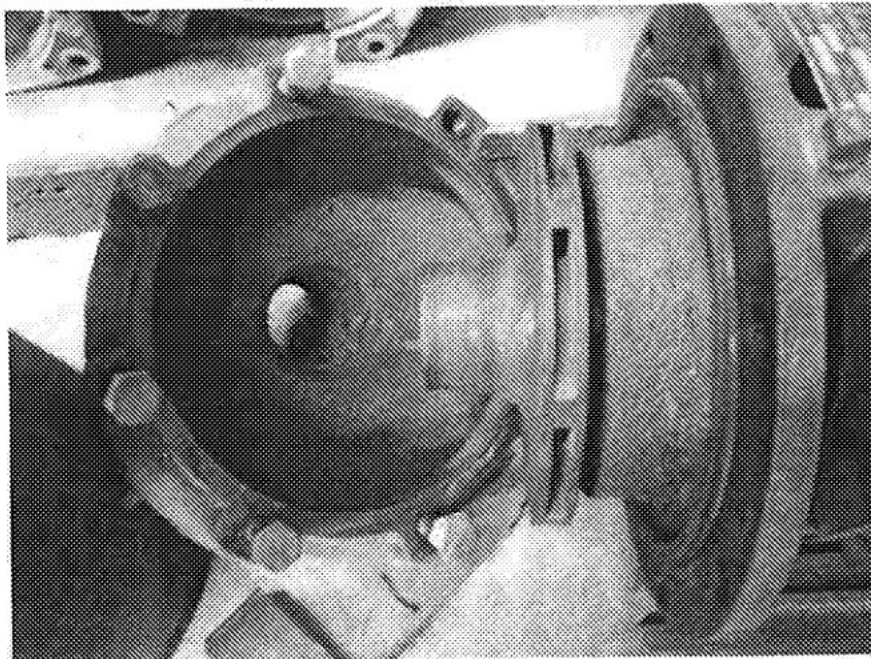


24. Piping associated with Zone 1 hot water tank with steel butterfly valve and steel check valve (jpg47).

PANORAMA 2 Lower Mechanical Room

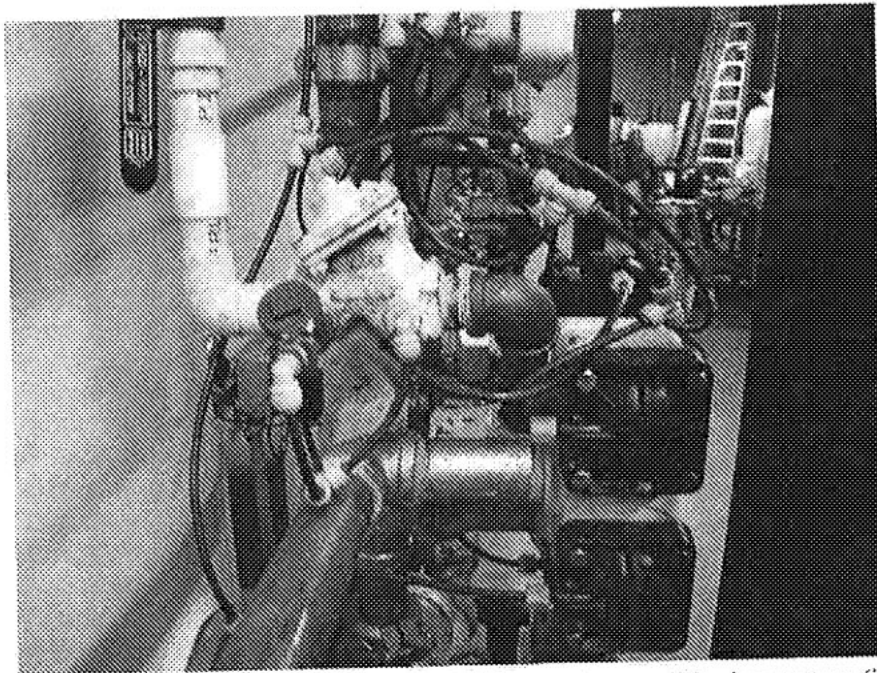


25. Hot water recirculation pumps with carbon steel housings (jpg48).

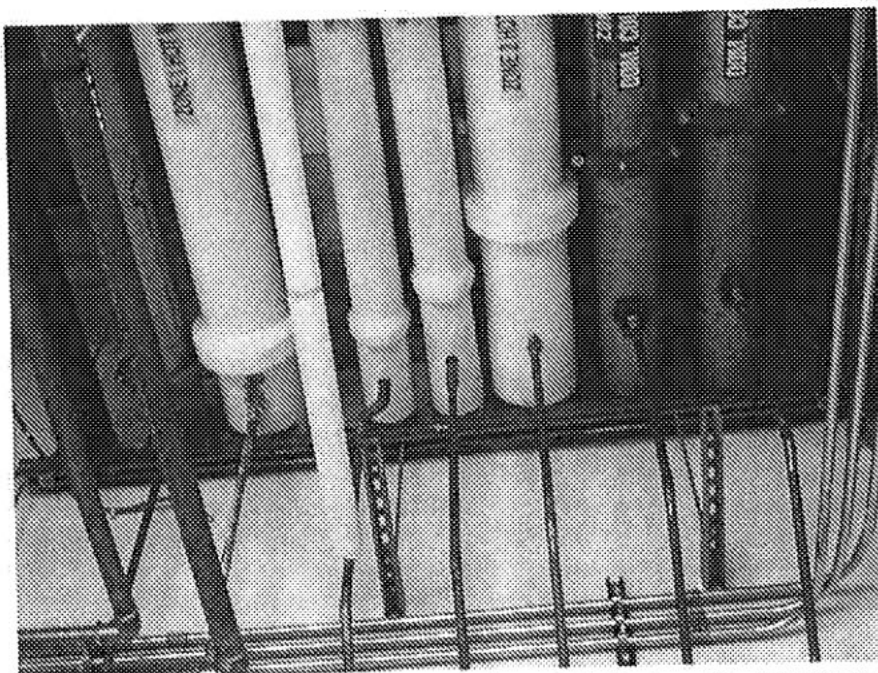


26. Close up view of steel pump housing exhibiting significant corrosion (jpg49).

PANORAMA 2 Lower Mechanical Room

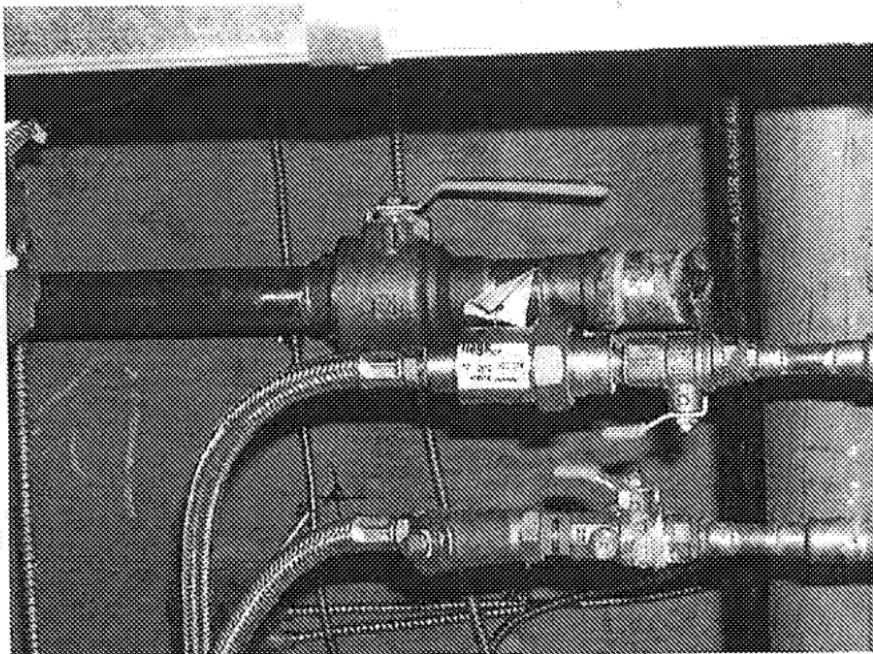


27. Ferrous (steel or iron) valve associated with Culligan water conditioning system (jpg 50).

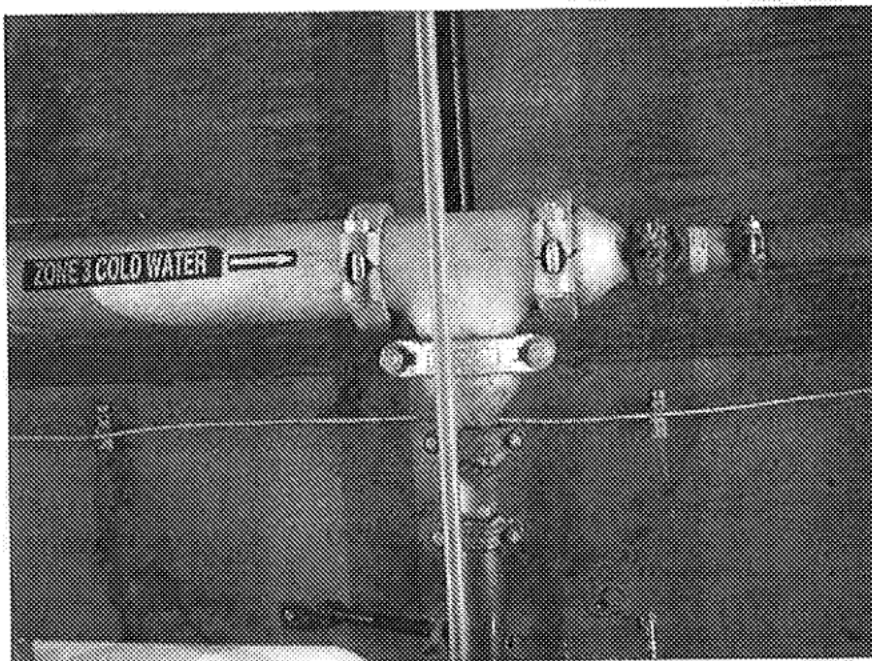


28. connections to outlet piping; replace carbon steel nipples with stainless steel (jpg57).

PANORAMA TOWER 2 Upper Mechanical Room



1. Carbon steel nipple to cold water line — replace now (jpg62). Corrosion of brass HVAC condensate valves experiencing de-zincification - replace as necessary as part of regular maintenance.



2. Carbon steel nipples needing replacement now. (jpg64).



2764 n. Green Valley Pkwy #116, Henderson, NV 89014

17 November 2011

Mike Murphy
Panorama Towers Condominium Unit Owners Assoc.
4525 Dean Martin Drive
Las Vegas, NV 89103

Re: Report for Evaluation of Corrosion Damage to Mechanical Room Piping

Dear Mr. Murphy:

ATMG is pleased to present this report for the corrosion damage evaluation for the piping in the two lower and two upper Mechanical Rooms in the Panorama Towers. This task was performed in accordance with our proposal dated 5 October 2011.

PROJECT INFORMATION

On 9-20-11, a walk down was conducted of the lower and upper mechanical rooms of the two towers. The lower mechanical rooms exhibited more corrosion damage than the two upper mechanical rooms. Several replaced parts were on the floor in one of the upper mechanical rooms. Some connections were observed to be leaking. Our evaluation and reporting is in substantial accordance with the *Guideline for Structural Condition Assessment of Existing Buildings*, SEI/ASCE 11-99 published jointly by the Structural Engineering Institute and the American Society of Civil Engineers.

There are several dissimilar metal connections that are accelerating the corrosion attack on the less noble alloy in the connection. Our observations found stainless steel and copper based alloys (more noble) in contact with ductile iron and carbon steel (less noble). When dissimilar metals are in contact in a wet environment, the difference in

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FAILURE ANALYSIS • STRUCTURAL CONDITION ASSESSMENT

electric potential of these alloys creates a battery effect that powers the dissolution of the less noble alloy into the environment as a corrosion product.

When measured on a copper/copper sulfate electrode scale, stainless steel and copper based alloys (copper, brass, bronze) exhibit an electric potential to their wet environment of approximately -0.2 volts; carbon steel, cast iron, and ductile iron exhibit an electric potential of approximately -0.5 volts to their wet environment. This difference of 0.3 volts creates an electric current to flow out of the less noble metal which is the one with the more negative voltage. As the current leaves, it takes metal ions with it that become a corrosion product - usually some form of rust. This condition is called a galvanic corrosion cell. One amp of current can remove 20 pounds (lbs) of iron in one year. Therefore, these dissimilar metal galvanic corrosion cells can cause serious damage over time.

ATMG was directed to identify which sections of piping, fittings, pumps, valves, and regulators need to be replaced. In addition, those items were to be identified for replacement on a time schedule of: Replace now, Replace within 5 years, or Replace long term.

OBSERVATIONS

Primary Piping Parts

The identification of parts that need replacement has been noted on spreadsheets for each of the mechanical rooms. The recommended replacement schedule is also shown. An accompanying photographic log has been cross referenced to parts listed on the spreadsheets. In theory, the plastic lined steel nipples should not create a galvanic cell. However, if the liner is damaged during installation or not installed correctly, wet metal to metal contact can result leading to leaks as has been noted.

Yellow Brass Fittings and Valves

There are numerous small fittings and valves within the 4 rooms made of yellow brass that are experiencing a corrosion mechanism known as dezincification. A white powdery substance (zinc oxide) can be seen on the surface of these parts that confirms the water has corroded the zinc in the copper matrix to the point that it has reached the exterior surface.

This process will continue, and eventually water will begin to drip through these corroded zones. Since these parts are small and easily replaced, our recommendation is to leave them in service until the leaks begin to drip, and then replace them as is the current practice with the Maintenance Department.

Stainless Steel Piping Leaks

Some welded joints of the stainless steel piping exhibited leaks. Currently these are being weld repaired as they occur as part of the regular maintenance.

Other Observations - Bolting

In addition to the specific assigned tasks, a problem with bolting was noticed. We found mixed bolting in several flanged connections and bolts holding butterfly valves in position.

To properly share loads, bolts and cap screws in a connection should all be the same strength. Therefore, we recommend that the Maintenance Department should check each set of connections for mixed bolting. A query needs to be made with a plumbing engineering firm to find out which grade of bolts is required for each type of connection.

RECOMMENDATIONS

1. The major piping parts suffering corrosion should be replaced in accordance with the schedule shown on the accompanying spreadsheets.
2. Yellow brass fittings and valves should be replaced when dripping leaks caused by dezincification are noticed as part of the regular maintenance schedule.
3. The proper grade of bolting for the various connections should be determined, and replacements made accordingly.
4. Continue the repair welding of stainless steel leaks.

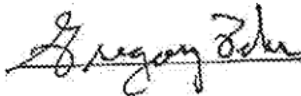
CLOSURE

We thank you for the opportunity to be of service. If there are any questions or needed modifications regarding this report, please contact Gregory Fehr at 702-204-4795, and we will make changes accordingly.

The assumptions, conclusions, recommendations, and opinions presented herein are: (1) based on the data provided and collected; (2) based on standard forensic methodology; (3) based on our corrosion experience and (4) prepared in accordance with generally accepted corrosion failure analysis principles and practice. We make no other warranty, either express or implied.

Sincerely,

ATMG



Gregory Fehr
Principal, Metallurgy
Licensed engineer (P.E.) in AL, OK
NACE Certified Cathodic Protection Specialist
NACE Certified Corrosion Technologist

GPF:ki

Encl: Spreadsheet - Panorama 1 Lower Mechanical Room
Spreadsheet - Panorama 1 Upper Mechanical Room
Spreadsheet - Panorama 2 Lower Mechanical Room
Spreadsheet - Panorama 2 Upper Mechanical Room
Photolog - Panorama 1 Lower Mechanical Room
Photolog - Panorama 1 Upper Mechanical Room
Photolog - Panorama 2 Lower Mechanical Room
Photolog - Panorama 2 Upper Mechanical Room

Exhibit 2

Exhibit 2

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March 29, 2016

VIA E-MAIL

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Scott Williams, Esq.
swilliams@williamsgumbiner.com
LAW OFFICE OF WILLIAMS &
GUMBINER, LLP

Re: Panorama Towers Condominium Unit Owners' Association v. Panorama Towers I, LLC, Panorama Towers II, LLC and M.J. Dean Construction, Inc.
BWB&O Client/Insured: Panorama Towers I, LLC, Panorama Towers II, LLC, and M.J. Dean Construction, Inc.
BWB&O File No.: 1287.551
Subject: Panorama Towers Condominium Unit Owners' Association February 24, 2016 Notice of Contractor Pursuant to Nevada Revised Statutes, Section 40.645

Dear Counsel:

On February 24, 2016, Panorama Towers Condominium Unit Owners' Association (the "HOA") served a Notice to Contractor Pursuant to Nevada Revised Statutes, Section 40.645. The Notice identified four categories of purported construction defects.

The Notice did not contain necessary information regarding the alleged sewer line, including the date of occurrence and the date of repair. Please provide that information at your earliest convenience. In addition, please confirm the current location of any sewer line materials that were removed and replaced as part of the repair.

Newport Beach	Las Vegas	Los Angeles	San Diego	Berkeley	Phoenix	Riverside	Denver	Beno
949.221.1000	702.258.6665	818.712.9800	619.236.0048	510.540.4881	602.274.1204	951.276.9020	303.256.8327	775.398.3087

H:\1287\551\Corr\Counsel 002.docx

AA0369

Edward Song, Esq.
Scott Williams, Esq.
BWB&O File No.:
March 29, 2016
Page 2

During the recent inspection of the alleged mechanical room piping issues, it became apparent that the vast majority of the alleged corroded pipes had already been replaced. Please provide the date(s) when that work was done and the identity of the contractor(s). Please also confirm whether and where the removed pipes have been stored for safekeeping.

This letter is not intended to serve as my clients' formal response to the Chapter 40 Notice. All rights are reserved and a formal response to the Chapter 40 Notice will be timely provided as per statute.

Should you have any questions regarding the above, please do not hesitate to contact the undersigned.

Very truly yours,

BREMER WHYTE BROWN & O'MEARA LLP



Peter C. Brown, Esq.

pbrown@bremerwhyte.com
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Exhibit 3

Exhibit 3

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7. Admitted in Oregon
8. Admitted in Texas
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12. Admitted in Illinois
13. Admitted in Utah
14. Admitted in Pennsylvania
15. Admitted in New Mexico
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April 29, 2016

VIA E-MAIL

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LAW OFFICE OF WILLIAMS &
GUMBINER, LLP

Re: **Panorama Towers Condominium Unit Owners' Association v. Panorama Towers I, LLC, Panorama Towers II, LLC and M.J. Dean Construction, Inc.**
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BWB&O File No.: 1287.551
Subject: **Panorama Towers Condominium Unit Owners' Association February 24, 2016 Notice of Contractor Pursuant to Nevada Revised Statutes, Section 40.645**

Dear Mr. Song and Mr. Williams:

On March 29, 2016, we sent you correspondence relating to your client's February 24, 2016 Chapter 40 Notice. We have not received any response.

We request that you please promptly provide the information we requested relating to the alleged sewer line defect, including the date of occurrence and the date of repair. We also ask that you provide us with the address of where any of the sewer line materials that were removed and replaced as part of the repair are being stored.

Edward Song, Esq.
Scott Williams, Esq.
April 29, 2016
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In addition, we request that you provide the date when any of the alleged corroded mechanical room pipes were replaced, the date(s) when this work was performed and the name and address of the contractor that performed this work. Please also confirm whether and where the removed pipes have been stored for safekeeping.

Please provide the above information no later than **May 3, 2016**.

This letter is not intended to serve as our clients' formal response to the Chapter 40 Notice. All rights are reserved and a formal response to the Chapter 40 Notice will be timely provided as per statute.

Thank you for your time and attention.

Very truly yours,

BREMER WHYTE BROWN & O'MEARA LLP



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Exhibit 4

Exhibit 4

ASSEMBLY BILL NO. 125—COMMITTEE ON JUDICIARY

FEBRUARY 6, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to constructional defects.
(BDR 3-588)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION -- Matter in *bolded italics* is new; matter between brackets ~~[omitted-matter]~~ is material to be omitted.

AN ACT relating to constructional defects; enacting provisions governing the indemnification of a controlling party by a subcontractor for certain constructional defects; enacting provisions governing wrap-up insurance policies or consolidated insurance programs covering certain claims for constructional defects; authorizing the parties to a claim for a constructional defect to agree to have a judgment entered before the filing of a civil action under certain circumstances; revising the definition of "constructional defect"; revising provisions governing the information required to be provided in a notice of constructional defect; removing provisions authorizing claimants to give notice of common constructional defects in residences or appurtenances; requiring a claimant to pursue a claim under a homeowner's warranty under certain circumstances; revising provisions governing the damages recovered by a claimant; revising the statutes of repose regarding actions for damages resulting from certain deficiencies in construction; revising provisions governing the tolling of statutes of limitation and repose regarding actions for constructional defects; prohibiting a homeowners' association from pursuing an action for a constructional defect unless the action pertains exclusively to the common elements of the association; and providing other matters properly relating thereto.



Legislative Counsel's Digest:

1 Under existing law, before an owner of a residence or appurtenance or certain
2 other persons may commence a civil action against a contractor, subcontractor,
3 supplier or design professional for certain defects in the residence or appurtenance,
4 the claimant must provide notice of the defect to the contractor. Not later than 30
5 days after the date on which the contractor receives the notice, the contractor must
6 forward a copy of the notice to each subcontractor, supplier or design professional
7 whom the contractor reasonably believes is responsible for a defect specified in the
8 notice. The subcontractor, supplier or design professional who receives the notice
9 must inspect the alleged constructional defect and may elect to repair the defect.
10 (NRS 40.645, 40.646, 40.647)

11 **Section 2** of this bill establishes the circumstances under which a provision in a
12 residential construction contract requiring a subcontractor to indemnify, defend or
13 otherwise hold harmless a controlling party for the negligence or intentional acts or
14 omissions of the controlling party is void and unenforceable. **Section 2** also enacts
15 provisions governing: (1) when a subcontractor's duty to defend a controlling party
16 arises; (2) the manner in which a controlling party may pursue indemnification
17 from a subcontractor when the controlling party is named as an additional insured
18 in the commercial general liability insurance policy of the subcontractor; and (3)
19 wrap-up insurance policies or consolidated insurance programs that cover two or
20 more contractors or subcontractors who perform work on residential construction
21 for risks associated with the construction.

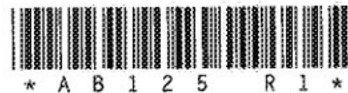
22 Existing law establishes a procedure by which the parties in a civil action may
23 agree to have a judgment entered in the action in accordance with the terms and
24 conditions of an offer of judgment. A court is prohibited from awarding costs or
25 attorney's fees to a party who rejects such an offer of judgment and fails to obtain a
26 more favorable judgment at trial. (NRS 17.115; N.R.C.P. 68) **Section 3** of this bill
27 establishes a similar procedure under which a person who has given notice of a
28 constructional defect and a contractor, subcontractor, supplier or design
29 professional who has received such a notice may agree to have a judgment entered
30 before a civil action for the constructional defect is commenced.

31 **Section 6** of this bill amends the existing definition of "constructional defect"
32 to provide that a constructional defect is a defect: (1) which presents an
33 unreasonable risk of injury to a person or property; or (2) which is not completed in
34 a good and workmanlike manner and proximately causes physical damage to the
35 residence or appurtenance.

36 **Section 8** of this bill amends the provision of existing law requiring certain
37 information to be included in a notice of constructional defect to require the notice
38 to: (1) state in specific detail, rather than in reasonable detail, each defect, damage
39 and injury to each residence or appurtenance that is subject to the notice; (2) state
40 the exact location of each defect, damage and injury, rather than describe in
41 reasonable detail the location of the defect; and (3) include a statement signed by
42 the owner of the residence or appurtenance in the notice that the owner verifies that
43 each defect, damage and injury exists in the residence or appurtenance.

44 **Sections 5, 8-13 and 22** of this bill remove a provision of existing law which
45 authorizes one notice to be sent concerning similarly situated owners of residences
46 or appurtenances within a single development that allegedly have common
47 constructional defects.

48 **Section 11** of this bill requires a claimant and an expert who provided an
49 opinion concerning an alleged constructional defect, or a representative of the
50 expert who has knowledge of the alleged defect, to: (1) be present when a
51 contractor, subcontractor, supplier or design professional conducts the required
52 inspection of the alleged defect; and (2) identify the exact location of the alleged
53 defect.



Under existing law, if a residence or appurtenance is covered by a homeowner's warranty that is purchased by or on behalf of the claimant, the claimant must diligently pursue a claim under the contract. (NRS 40.650) **Section 14** of this bill: (1) prohibits a claimant from filing a notice of constructional defect or pursuing a claim for a constructional defect unless the claimant has submitted a claim under the homeowner's warranty and the insurer has denied the claim; and (2) provides that a claim for a constructional defect may include only the claims that have been denied under the homeowner's warranty. **Section 14** further provides that statutes of limitation or repose are tolled from the time the claimant submits a claim under the homeowner's warranty until 30 days after the insurer denies the claim, in whole or in part.

Section 15 of this bill removes the provision of existing law that provides that a claimant may recover reasonable attorney's fees as part of the claimant's damages in a cause of action for constructional defects. **Section 15** also provides that certain costs recoverable as damages must have been incurred for constructional defects proven by the claimant.

Existing law provides that the statutes of limitation and repose applicable to a claim for constructional defects are tolled from the time that a claimant gives notice of a claim for constructional defects until 30 days after the mediation required by existing law is concluded or waived. (NRS 40.695) **Section 16** of this bill provides that the period for which the statutes of limitation and repose are tolled may not exceed 1 year. **Section 16** further authorizes a court to extend the tolling period if the claimant demonstrates good cause for such an extension.

Existing law generally limits the period in which an action for damages caused by a deficiency in construction of improvements to real property may be commenced after substantial completion of the improvement. These periods of limitation are known as statutes of repose, and the period set forth in each statute of repose during which an action must be commenced is: (1) for a known deficiency, 10 years after substantial completion of the improvement; (2) for a latent deficiency, 8 years after substantial completion of the improvement; and (3) for a patent deficiency, 6 years after substantial completion of the improvement. However, if a deficiency was a result of willful misconduct or was fraudulently concealed, an action may be commenced at any time after substantial completion of the improvement. (NRS 11.202-11.205) **Sections 17-19 and 22** of this bill provide that the statute of repose for all actions for damages caused by a deficiency in construction of improvement to real property is 6 years after substantial completion of the improvement. **Sections 17-19 and 22** also eliminate existing provisions of law that allow such actions to be commenced within 2 years after the date of an injury which occurs during the final year of the particular period of limitation. **Section 21** of this bill: (1) provides that the revised statutes of repose set forth in **sections 17-19** apply retroactively under certain circumstances; and (2) establishes a 1-year grace period during which a person may commence an action under the existing statutes of repose, if the action accrued before the effective date of this bill.

Existing law authorizes a homeowners' association to institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community. (NRS 116.3102) In *D.R. Horton, Inc. v. Eighth Judicial District Court*, 125 Nev. 449 (2009), the Nevada Supreme Court held that existing law grants standing to a homeowners' association to pursue constructional defect claims on behalf of units' owners with respect to constructional defects in individual units. **Sections 5 and 20** of this bill provide that an association may not pursue a constructional defect claim on behalf of itself or units' owners, unless the claim pertains exclusively to the common elements of the association.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 40 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *In any action or other proceeding involving a*
4 *constructional defect asserted by a claimant and governed by NRS*
5 *40.600 to 40.695, inclusive, and sections 2 and 3 of this act:*

6 *(a) Except as otherwise provided in paragraph (b), any*
7 *provision in a contract entered into on or after the effective date of*
8 *this act for residential construction that requires a subcontractor*
9 *to indemnify, defend or otherwise hold harmless a controlling*
10 *party from any liability, claim, action or cause of action resulting*
11 *from a constructional defect caused by the negligence, whether*
12 *active or passive, or intentional act or omission of the controlling*
13 *party is against public policy and is void and unenforceable.*

14 *(b) Except as otherwise provided in paragraph (c), a provision*
15 *in a contract entered into on or after the effective date of this act*
16 *for residential construction is not against public policy and is not*
17 *void and unenforceable under paragraph (a) to the extent that the*
18 *provision requires a subcontractor to indemnify, defend or*
19 *otherwise hold harmless a controlling party from any liability,*
20 *claim, action or cause of action resulting from a constructional*
21 *defect arising out of, related to or connected with the*
22 *subcontractor's scope of work, negligence, or intentional act or*
23 *omission.*

24 *(c) A provision in a contract entered into on or after the*
25 *effective date of this act for residential construction is against*
26 *public policy and is void and unenforceable under paragraph (a)*
27 *to the extent that it requires a subcontractor to defend, indemnify*
28 *or otherwise hold harmless a controlling party from any liability,*
29 *claim, action or cause of action resulting from a constructional*
30 *defect arising out of, related to or connected with that portion of*
31 *the subcontractor's work which has been altered or modified by*
32 *another trade or the controlling party.*

33 *(d) Except as otherwise provided in paragraph (e), if a*
34 *provision of a contract entered into on or after the effective date of*
35 *this act for residential construction that requires a subcontractor*
36 *to indemnify, defend or otherwise hold harmless a controlling*
37 *party is not against public policy and is not void and*
38 *unenforceable under this subsection, the duty of the subcontractor*
39 *to defend the controlling party arises upon presentment of a notice*
40 *pursuant to subsection 1 of NRS 40.646 containing a particular*
41 *claim, action or cause of action from which it can be reasonably*
42 *inferred that an alleged constructional defect was caused by or*



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1 attributable to the subcontractor's work, negligence, or wrongful
2 act or omission.

3 (e) If a controlling party gives a notice to a subcontractor
4 pursuant to NRS 40.646 that contains a claim, action or cause of
5 action from which it can be reasonably inferred that an alleged
6 constructional defect was caused by or attributable to the
7 subcontractor's work, negligence, or wrongful act or omission, the
8 claim, action or cause of action is covered by the subcontractor's
9 commercial general liability policy of insurance issued by an
10 insurer, and the controlling party is named as an additional
11 insured under that policy of insurance:

12 (1) The controlling party, as an additional insured, must
13 pursue available means of recovery of its defense fees and costs
14 under the policy before the controlling party is entitled to pursue a
15 claim against the subcontractor.

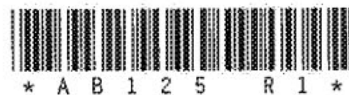
16 (2) Upon the final settlement of or issuance of a final
17 judgment in an action involving a claim for a constructional
18 defect, if the insurer has not assumed the controlling party's
19 defense and reimbursed the controlling party for the defense
20 obligation of the subcontractor, or if the defense obligation is not
21 otherwise resolved by the settlement or final judgment, the
22 controlling party has the right to pursue a claim against the
23 subcontractor for reimbursement of that portion of the attorney's
24 fees and costs incurred by the controlling party which are
25 attributable to the claims, actions or causes of action arising out
26 of, related to or connected with the subcontractor's scope of work,
27 negligence, or intentional act or omission.

28 (3) The provisions of subparagraphs (1) and (2) do not
29 prohibit a controlling party from:

30 (I) Following the requirements of NRS 40.600 to 40.695,
31 inclusive, and sections 2 and 3 of this act relating to providing
32 notice of an alleged constructional defect or any other procedures
33 set forth in those provisions; or

34 (II) Filing a third-party complaint against the
35 subcontractor if a claimant commences an action or amends a
36 complaint to add a cause of action for a constructional defect
37 against a controlling party which arises out of, relates to or is
38 otherwise connected with the subcontractor's scope of work,
39 negligence, or wrongful act or omission.

40 2. For any wrap-up insurance policy or other consolidated
41 insurance program that covers a subcontractor who performs
42 work on residential construction for which a contract is entered
43 into on or after the effective date of this act, for claims, actions or
44 causes of action for a constructional defect governed by NRS
45 40.600 to 40.695, inclusive, and sections 2 and 3 of this act:



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1 (a) The controlling party obtaining the wrap-up insurance
2 policy or other consolidated insurance program shall disclose the
3 total amount or method of calculation of any credit or
4 compensation for the premium required from a subcontractor or
5 other participant for that wrap-up insurance policy in the contract
6 documents.

7 (b) Except as otherwise provided in paragraph (c), the contract
8 documents must disclose, if and to the extent known:

9 (1) The policy limits;

10 (2) The scope of policy coverage;

11 (3) The policy term;

12 (4) The basis upon which the deductible or occurrence is
13 triggered by the insurer;

14 (5) If the policy covers more than one work of
15 improvement, the number of units, if any, indicated on the
16 application for the insurance policy; and

17 (6) A good faith estimate of the amount of available limits
18 remaining under the policy as of a date indicated in the disclosure
19 obtained from the insurer.

20 (c) The disclosure requirements of subparagraphs (1) to (4),
21 inclusive, of paragraph (b) may be satisfied by providing the
22 participant with a copy of the binder or declaration.

23 (d) The disclosures made pursuant to subparagraphs (5) and
24 (6) of paragraph (b):

25 (1) May be based upon information available at the time
26 the disclosure is made and are not inaccurate or made in bad faith
27 solely because the disclosures do not accurately reflect the actual
28 number of units covered by the policy or the amount of insurance
29 available, if any, when a later claim is made.

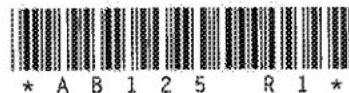
30 (2) Are presumptively made in good faith if:

31 (I) The disclosure pursuant to subparagraph (5) of
32 paragraph (b) is the same as that contained in the application to
33 the wrap-up insurance policy insurer; and

34 (II) The disclosure pursuant to subparagraph (6) of
35 paragraph (b) was obtained from the wrap-up insurance policy
36 insurer or broker.

37 ➡ The presumptions stated in subparagraph (2) may be overcome
38 only by a showing that the insurer, broker or controlling party
39 intentionally misrepresented the facts identified in subparagraph
40 (5) or (6) of paragraph (b).

41 (e) Upon the written request of any participant in the wrap-up
42 insurance policy or consolidated insurance program, a copy of the
43 insurance policy must be provided, if available, that shows the
44 coverage terms and items in subparagraphs (1) to (5), inclusive, of
45 paragraph (b). If the policy is not available at the time of the



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1 request, a copy of the insurance binder or declaration of coverage
2 may be provided in lieu of the actual policy.

3 (f) Any party receiving a copy of the policy, binder or
4 declaration shall not disclose it to third parties other than the
5 participant's insurance broker or attorney unless required to do so
6 by law. The participant's insurance broker or attorney may not
7 disclose the policy, binder or declaration to any third party unless
8 required to do so by law.

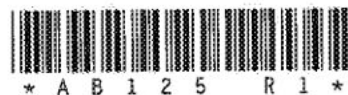
9 (g) If the controlling party obtaining the wrap-up insurance
10 policy or other consolidated insurance program does not disclose
11 the total amount or method of calculation of the premium credit or
12 compensation to be charged to the participant before the time the
13 participant submits its bid, the participant is not legally bound by
14 the bid unless that participant has the right to increase the bid up
15 to the amount equal to the difference between the amount the
16 participant included, if any, for insurance in the original bid and
17 the amount of the actual bid credit required by the controlling
18 party obtaining the wrap-up insurance policy or other
19 consolidated insurance program. This paragraph does not apply if
20 the controlling party obtaining the wrap-up insurance policy or
21 other consolidated insurance program did not require the
22 subcontractor to offset the original bid amount with a deduction
23 for the wrap-up insurance policy or program.

24 (h) The subcontractor's monetary obligation for enrollment in
25 the wrap-up insurance policy or consolidated insurance program
26 ceases upon the subcontractor's satisfaction of its agreed
27 contribution percentage, which may have been paid either as a
28 lump sum or on a pro rata basis throughout the subcontractor's
29 performance of the work.

30 (i) In the event of an occurrence, the dollar amount required
31 to be paid by a subcontractor as a self-insured retention or
32 deductible must not be greater than the amount that the
33 subcontractor would have otherwise been required to pay as a self-
34 insured retention or deductible under a commercial general
35 liability policy of comparable insurance in force during the
36 relevant period for that particular subcontractor and within the
37 specific market at the time the subcontract is entered into.

38 3. As used in this section:

39 (a) "Controlling party" means a person who owns real
40 property involved in residential construction, a contractor or any
41 other person who is to be indemnified by a provision in a contract
42 entered into on or after the effective date of this act for residential
43 construction.



1 (b) "Residential construction" means the construction of a
2 new residence, of an alteration of or addition to an existing
3 residence, or of an appurtenance.

4 (c) "Wrap-up insurance policy" is an insurance policy, or
5 series of policies, written to cover risks associated with the
6 construction, repair or landscaping of a new residence, of an
7 alteration of or addition to an existing residence, or of an
8 appurtenance, and covering two or more of the contractors or
9 subcontractors that work on that construction, repair or
10 landscaping.

11 Sec. 3. 1. At any time after a claimant has given notice
12 pursuant to NRS 40.645 and before the claimant commences an
13 action or amends a complaint to add a cause of action for a
14 constructional defect against a contractor, subcontractor, supplier
15 or design professional, the claimant or any contractor,
16 subcontractor, supplier or design professional who has received
17 notice pursuant to NRS 40.645 or 40.646 may serve upon one or
18 more other parties a written offer to allow judgment to be entered
19 without action in accordance with the terms and conditions of the
20 offer of judgment.

21 2. Except as otherwise provided in subsection 7, if, within 10
22 days after the date of service of an offer of judgment, the party to
23 whom the offer was made serves written notice that the offer is
24 accepted, the party who made the offer or the party who accepted
25 the offer may file the offer, the notice of acceptance and proof of
26 service with the clerk of the district court. Upon receipt by the
27 clerk, the clerk shall enter a judgment according to the terms of
28 the offer. Any judgment entered pursuant to this section shall be
29 deemed a compromise settlement. The judgment, the offer, the
30 notice of acceptance and proof of service, with the judgment
31 endorsed, become the judgment roll.

32 3. If the offer of judgment is not accepted pursuant to
33 subsection 2 within 10 days after the date of service, the offer shall
34 be deemed rejected by the party to whom it was made and
35 withdrawn by the party who made it. The rejection of an offer does
36 not preclude any party from making another offer pursuant to this
37 section. Evidence of a rejected offer is not admissible in any
38 proceeding other than a proceeding to determine costs and fees.

39 4. Except as otherwise provided in this section, if a party who
40 rejects an offer of judgment fails to obtain a more favorable
41 judgment in an action for a constructional defect, the court:

42 (a) May not award to the party any costs or attorney's fees;

43 (b) May not award to the party any interest on the judgment
44 for the period from the date of service of the offer to the date of
45 entry of the judgment;



1 (c) Shall order the party to pay the taxable costs incurred by
2 the party who made the offer; and

3 (d) May order the party to pay to the party who made the offer
4 any or all of the following:

5 (1) A reasonable sum to cover any costs incurred by the
6 party who made the offer for each expert witness whose services
7 were reasonably necessary to prepare for and conduct the trial of
8 the case.

9 (2) Any applicable interest on the judgment for the period
10 from the date of service of the offer to the date of entry of the
11 judgment.

12 (3) Reasonable attorney's fees incurred by the party who
13 made the offer for the period from the date of service of the offer
14 to the date of entry of the judgment. If the attorney of the party
15 who made the offer is collecting a contingent fee, the amount of
16 any attorney's fees awarded to the party pursuant to this
17 subparagraph must be deducted from that contingent fee.

18 5. To determine whether a party who rejected an offer of
19 judgment failed to obtain a more favorable judgment:

20 (a) If the offer provided that the court would award costs, the
21 court must compare the amount of the offer with the principal
22 amount of the judgment, without inclusion of costs.

23 (b) If the offer precluded a separate award of costs, the court
24 must compare the amount of the offer with the sum of:

25 (1) The principal amount of the judgment; and

26 (2) The amount of taxable costs that the claimant who
27 obtained the judgment incurred before the date of service of the
28 offer.

29 6. Multiple parties may make a joint offer of judgment
30 pursuant to this section.

31 7. A party may make to two or more other parties pursuant to
32 this section an apportioned offer of judgment that is conditioned
33 upon acceptance by all the parties to whom the apportioned offer
34 is made. Each party to whom such an offer is made may serve
35 upon the party who made the offer a separate written notice of
36 acceptance of the offer. If any party rejects the apportioned offer:

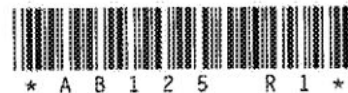
37 (a) The action must proceed as to all parties to whom the
38 apportioned offer was made, whether or not the other parties
39 accepted or rejected the offer; and

40 (b) The sanctions set forth in subsection 4:

41 (1) Apply to each party who rejected the apportioned offer.

42 (2) Do not apply to any party who accepted the apportioned
43 offer.

44 8. The sanctions set forth in subsection 4 do not apply to:



(a) *An offer of judgment made to multiple parties who received a notice pursuant to NRS 40.645 or 40.646 unless the same person is authorized to decide whether to settle the claims against all the parties to whom the offer is made and:*

(1) *There is a single common theory of liability against all the parties to whom the offer is made;*

(2) *The liability of one or more of the parties to whom the offer is made is entirely derivative of the liability of the remaining parties to whom the offer is made; or*

(3) *The liability of all the parties to whom the offer is made is entirely derivative of a common act or omission by another person.*

(b) *An offer of judgment made to multiple claimants unless the same person is authorized to decide whether to settle the claims of all the claimants to whom the offer is made and:*

(1) *There is a single common theory of liability claimed by all the claimants to whom the offer is made;*

(2) *The damages claimed by one or more of the claimants to whom the offer is made are entirely derivative of an injury to the remaining claimants to whom the offer is made; or*

(3) *The damages claimed by all the claimants to whom the offer is made are entirely derivative of an injury to another person.*

Sec. 4. NRS 40.600 is hereby amended to read as follows:

40.600 As used in NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act, unless the context otherwise requires, the words and terms defined in NRS 40.603 to 40.634, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. NRS 40.610 is hereby amended to read as follows:

40.610 "Claimant" means:

1. An owner of a residence or appurtenance; *or*

2. A representative of a homeowners' association ~~that is responsible for a residence or appurtenance and is~~ acting within the scope of the representative's duties pursuant to chapter 116 or 117 of NRS. ~~or~~

~~3. Each owner of a residence or appurtenance to whom a notice applies pursuant to subsection 4 of NRS 40.645.~~

Sec. 6. NRS 40.615 is hereby amended to read as follows:

40.615 "Constructional defect" means a defect in the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance and includes, without limitation, the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance:



1 1. Which ~~is done in violation of law, including, without~~
2 ~~limitation, in violation of local codes or ordinances;~~

3 ~~2. Which presents an unreasonable risk of injury to a person~~
4 ~~or property; or~~

5 2. Which is not completed in a good and workmanlike
6 manner and proximately causes physical damage to the residence,
7 an appurtenance or the real property to which the residence or
8 appurtenance is affixed. ‡

9 ~~3. Which is not completed in a good and workmanlike manner~~
10 ~~in accordance with the generally accepted standard of care in the~~
11 ~~industry for that type of design, construction, manufacture, repair or~~
12 ~~landscaping; or~~

13 ~~4. Which presents an unreasonable risk of injury to a person or~~
14 ~~property.‡~~

15 **Sec. 7.** NRS 40.635 is hereby amended to read as follows:

16 40.635 NRS 40.600 to 40.695, inclusive ‡, **and sections 2**
17 **and 3 of this act:**

18 1. Apply to any claim that arises before, on or after July 1,
19 1995, as the result of a constructional defect, except a claim for
20 personal injury or wrongful death, if the claim is the subject of an
21 action commenced on or after July 1, 1995.

22 2. Prevail over any conflicting law otherwise applicable to the
23 claim or cause of action.

24 3. Do not bar or limit any defense otherwise available, except
25 as otherwise provided in those sections.

26 4. Do not create a new theory upon which liability may be
27 based, except as otherwise provided in those sections.

28 **Sec. 8.** NRS 40.645 is hereby amended to read as follows:

29 40.645 1. Except as otherwise provided in this section and
30 NRS 40.670, before a claimant commences an action or amends a
31 complaint to add a cause of action for a constructional defect against
32 a contractor, subcontractor, supplier or design professional, the
33 claimant:

34 (a) Must give written notice by certified mail, return receipt
35 requested, to the contractor, at the contractor's address listed in the
36 records of the State Contractors' Board or in the records of the
37 office of the county or city clerk or at the contractor's last known
38 address if the contractor's address is not listed in those records; and

39 (b) May give written notice by certified mail, return receipt
40 requested, to any subcontractor, supplier or design professional
41 known to the claimant who may be responsible for the
42 constructional defect, if the claimant knows that the contractor is no
43 longer licensed in this State or that the contractor no longer acts as a
44 contractor in this State.

45 2. The notice given pursuant to subsection 1 must:



(a) Include a statement that the notice is being given to satisfy the requirements of this section;

(b) ~~{Specify in reasonable detail the defects or any damages or injuries}~~ **Identify in specific detail each defect, damage and injury to each residence or appurtenance that is the subject of the claim ~~+~~ and~~+~~ , including, without limitation, the exact location of each such defect, damage and injury;**

(c) Describe in reasonable detail the cause of the defects if the cause is known ~~+~~ and the nature and extent that is known of the damage or injury resulting from the defects ~~{and the location of each defect within each residence or appurtenance to the extent known.~~

~~3. Notice that includes an expert opinion concerning the cause of the constructional defects and the nature and extent of the damage or injury resulting from the defects which is based on a valid and reliable representative sample of the components of the residences or appurtenances may be used as notice of the common constructional defects within the residences or appurtenances to which the expert opinion applies.~~

~~4. Except as otherwise provided in subsection 5, one notice may be sent relating to all similarly situated owners of residences or appurtenances within a single development that allegedly have common constructional defects if:~~

~~(a) An expert opinion is obtained concerning the cause of the common constructional defects and the nature and extent of the damage or injury resulting from the common constructional defects;~~

~~(b) That expert opinion concludes that based on a valid and reliable representative sample of the components of the residences and appurtenances included in the notice, it is the opinion of the expert that those similarly situated residences and appurtenances may have such common constructional defects; and~~

~~(c) A copy of the expert opinion is included with the notice.~~

~~5. ~~+~~ ; and~~

(d) **Include a signed statement, by each named owner of a residence or appurtenance in the notice, that each such owner verifies that each such defect, damage and injury specified in the notice exists in the residence or appurtenance owned by him or her. If a notice is sent on behalf of a homeowners' association, the statement required by this paragraph must be signed under penalty of perjury by a member of the executive board or an officer of the homeowners' association.**

3. A representative of a homeowners' association may send notice pursuant to this section on behalf of an association ~~{that is responsible for a residence or appurtenance}~~ if the representative is acting within the scope of the representative's duties pursuant to chapter 116 or 117 of NRS.



1 ~~{6.}~~ 4. Notice is not required pursuant to this section before
2 commencing an action if:

3 (a) The contractor, subcontractor, supplier or design professional
4 has filed an action against the claimant; or

5 (b) The claimant has filed a formal complaint with a law
6 enforcement agency against the contractor, subcontractor, supplier
7 or design professional for threatening to commit or committing an
8 act of violence or a criminal offense against the claimant or the
9 property of the claimant.

10 **Sec. 9.** NRS 40.646 is hereby amended to read as follows:

11 40.646 1. Except as otherwise provided in subsection 2, not
12 later than 30 days after the date on which a contractor receives
13 notice of a constructional defect pursuant to NRS 40.645, the
14 contractor shall forward a copy of the notice by certified mail, return
15 receipt requested, to the last known address of each subcontractor,
16 supplier or design professional whom the contractor reasonably
17 believes is responsible for a defect specified in the notice.

18 2. If a contractor does not provide notice as required pursuant
19 to subsection 1, the contractor may not commence an action against
20 the subcontractor, supplier or design professional related to the
21 constructional defect unless the contractor demonstrates that, after
22 making a good faith effort, the contractor was unable to identify the
23 subcontractor, supplier or design professional whom the contractor
24 believes is responsible for the defect within the time provided
25 pursuant to subsection 1.

26 3. ~~{Except as otherwise provided in subsection 4, not}~~ **Not** later
27 than 30 days after receiving notice from the contractor pursuant to
28 this section, the subcontractor, supplier or design professional shall
29 inspect the alleged constructional defect in accordance with
30 ~~{subsection 1 of}~~ NRS 40.6462 and provide the contractor with a
31 written statement indicating:

32 (a) Whether the subcontractor, supplier or design professional
33 has elected to repair the defect for which the contractor believes the
34 subcontractor, supplier or design professional is responsible; and

35 (b) If the subcontractor, supplier or design professional elects to
36 repair the defect, an estimate of the length of time required for the
37 repair, and at least two proposed dates on and times at which the
38 subcontractor, supplier or design professional is able to begin
39 making the repair.

40 4. ~~{If the notice of a constructional defect forwarded by the~~
41 ~~contractor was given pursuant to subsection 4 of NRS 40.645 and~~
42 ~~the contractor provides a disclosure of the notice of the alleged~~
43 ~~common constructional defects to the unnamed owners to whom the~~
44 ~~notice may apply pursuant to NRS 40.6452;~~



* A B 1 2 5 R 1 *

1 ~~—(a) The contractor shall, in addition to the notice provided~~
2 ~~pursuant to subsection 1, upon receipt of a request for an inspection,~~
3 ~~forward a copy of the request to or notify each subcontractor,~~
4 ~~supplier or design professional who may be responsible for the~~
5 ~~alleged defect of the request not later than 5 working days after~~
6 ~~receiving such a request; and~~
7 ~~—(b) Not later than 20 days after receiving notice from the~~
8 ~~contractor of such a request, the subcontractor, supplier or design~~
9 ~~professional shall inspect the alleged constructional defect in~~
10 ~~accordance with subsection 2 of NRS 40.6462 and provide the~~
11 ~~contractor with a written statement indicating:~~
12 ~~—(1) Whether the subcontractor, supplier or design~~
13 ~~professional has elected to repair the defect for which the contractor~~
14 ~~believes the subcontractor, supplier or design professional is~~
15 ~~responsible; and~~
16 ~~—(2) If the subcontractor, supplier or design professional elects~~
17 ~~to repair the defect, an estimate of the length of time required for the~~
18 ~~repair, and at least two proposed dates on and times at which the~~
19 ~~subcontractor, supplier or design professional is able to begin~~
20 ~~making the repair;~~
21 ~~—5. If a subcontractor, supplier or design professional elects to~~
22 ~~repair the constructional defect, the contractor or claimant may hold~~
23 ~~the subcontractor liable for any repair which does not eliminate the~~
24 ~~defect.~~

25 **Sec. 10.** NRS 40.6462 is hereby amended to read as follows:
26 40.6462 ~~It. Except as otherwise provided in subsection 2,~~
27 ~~after~~ **After** notice of a constructional defect is given to a contractor
28 pursuant to NRS 40.645, the claimant shall, upon reasonable notice,
29 allow the contractor and each subcontractor, supplier or design
30 professional who may be responsible for the alleged defect
31 reasonable access to the residence or appurtenance that is the subject
32 of the notice to determine the nature and extent of a constructional
33 defect and the nature and extent of repairs that may be necessary. To
34 the extent possible, the persons entitled to inspect shall coordinate
35 and conduct the inspections in a manner which minimizes the
36 inconvenience to the claimant.

37 ~~{2. If notice is given to the contractor pursuant to subsection 4~~
38 ~~of NRS 40.645, the contractor and each subcontractor, supplier or~~
39 ~~design professional who may be responsible for the defect do not~~
40 ~~have the right to inspect the residence or appurtenance of an owner~~
41 ~~who is not named in the notice unless the owner requests the~~
42 ~~inspection in the manner set forth in NRS 40.6452. If the owner~~
43 ~~does not request the inspection, the owner shall be deemed not to~~
44 ~~have provided notice pursuant to NRS 40.645.}~~



1 **Sec. 11.** NRS 40.647 is hereby amended to read as follows:

2 40.647 1. ~~{Except as otherwise provided in NRS 40.6452,~~
3 ~~after}~~ *After* notice of a constructional defect is given pursuant to
4 NRS 40.645, before a claimant may commence an action or amend a
5 complaint to add a cause of action for a constructional defect against
6 a contractor, subcontractor, supplier or design professional, the
7 claimant must:

8 (a) Allow an inspection of the alleged constructional defect to be
9 conducted pursuant to NRS 40.6462; ~~{and}~~

10 (b) *Be present at an inspection conducted pursuant to NRS*
11 *40.6462 and identify the exact location of each alleged*
12 *constructional defect specified in the notice and, if the notice*
13 *includes an expert opinion concerning the alleged constructional*
14 *defect, the expert, or a representative of the expert who has*
15 *knowledge of the alleged constructional defect, must also be*
16 *present at the inspection and identify the exact location of each*
17 *alleged constructional defect for which the expert provided an*
18 *opinion; and*

19 (c) Allow the contractor, subcontractor, supplier or design
20 professional a reasonable opportunity to repair the constructional
21 defect or cause the defect to be repaired if an election to repair is
22 made pursuant to NRS 40.6472.

23 2. If a claimant commences an action without complying with
24 subsection 1 or NRS 40.645, the court shall:

25 (a) Dismiss the action without prejudice and compel the
26 claimant to comply with those provisions before filing another
27 action; or

28 (b) If dismissal of the action would prevent the claimant from
29 filing another action because the action would be procedurally
30 barred by the statute of limitations or statute of repose, the court
31 shall stay the proceeding pending compliance with those provisions
32 by the claimant.

33 **Sec. 12.** NRS 40.6472 is hereby amended to read as follows:

34 40.6472 1. Except as otherwise provided in NRS ~~{40.6452}~~
35 40.670 and 40.672, a written response must be sent by certified
36 mail, return receipt requested, to a claimant who gives notice of a
37 constructional defect pursuant to NRS 40.645:

38 (a) By the contractor not later than 90 days after the contractor
39 receives the notice; and

40 (b) If notice was sent to a subcontractor, supplier or design
41 professional, by the subcontractor, supplier or design professional
42 not later than 90 days after the date that the subcontractor, supplier
43 or design professional receives the notice.

44 2. The written response sent pursuant to subsection 1 must
45 respond to each constructional defect in the notice and:

