

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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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 17 OF 27

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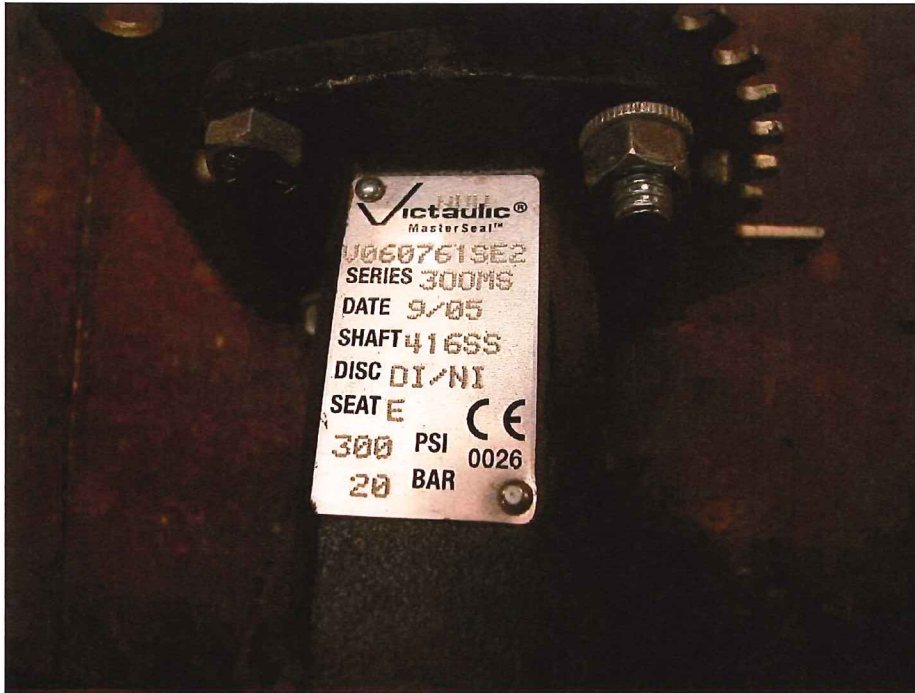
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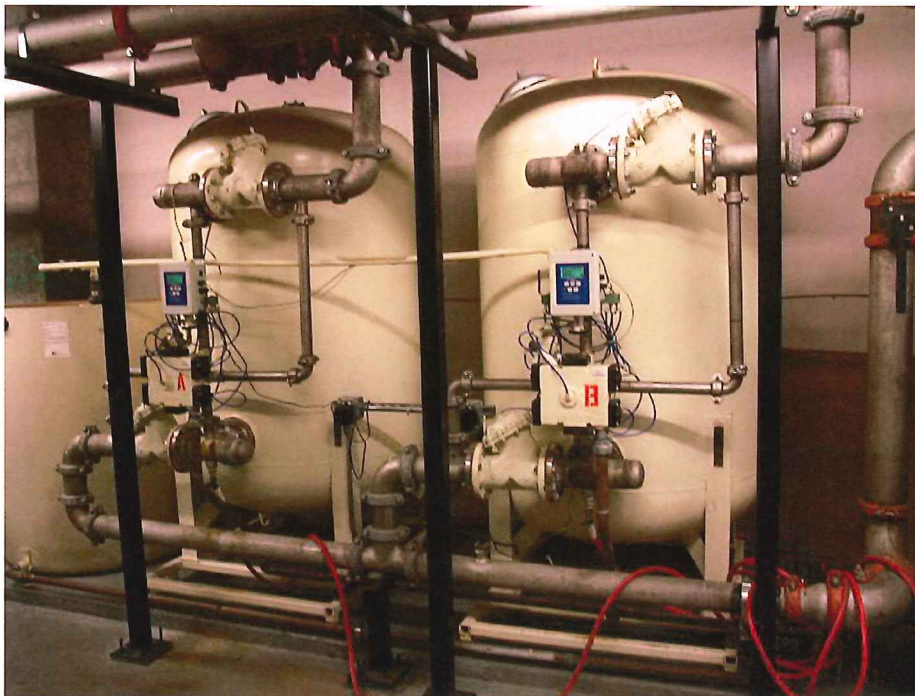
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PANORAMA 2 Lower Mechanical Room



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).

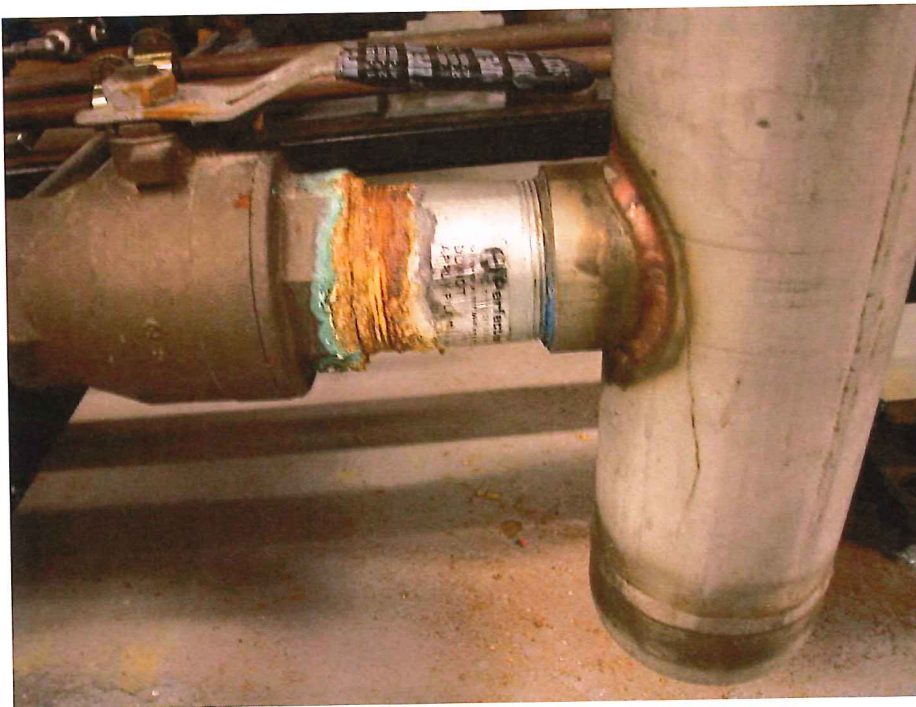


12. Media tanks (jpg41).

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).

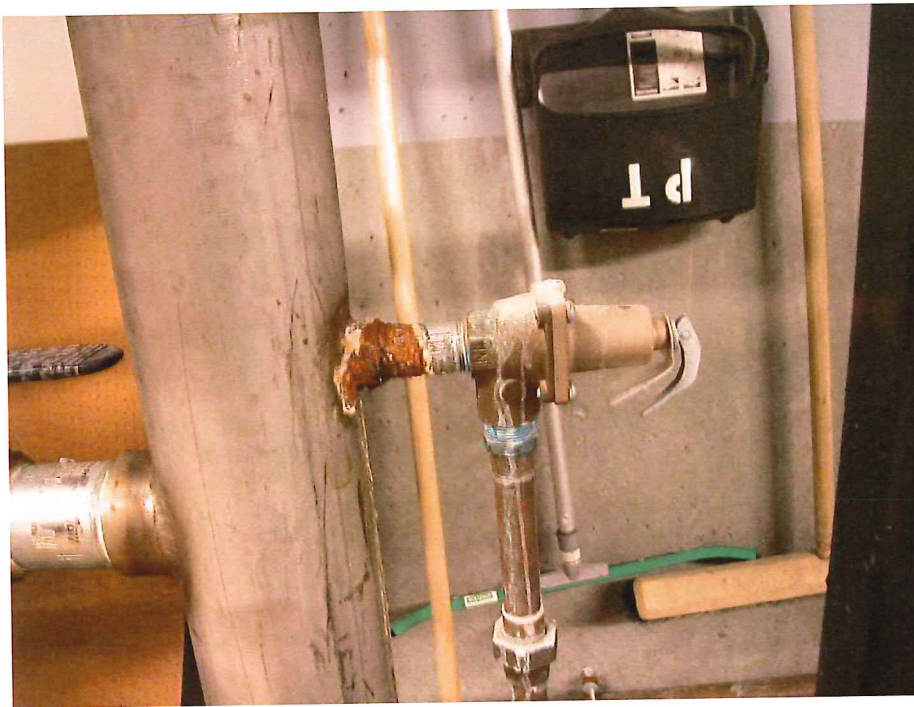


15. Carbon steel plastic lined nipple (lower southeast corner of manifold0 – replace with stainless steel (jpg52). Note: corrosion around Unistrut is a leak at the joint.

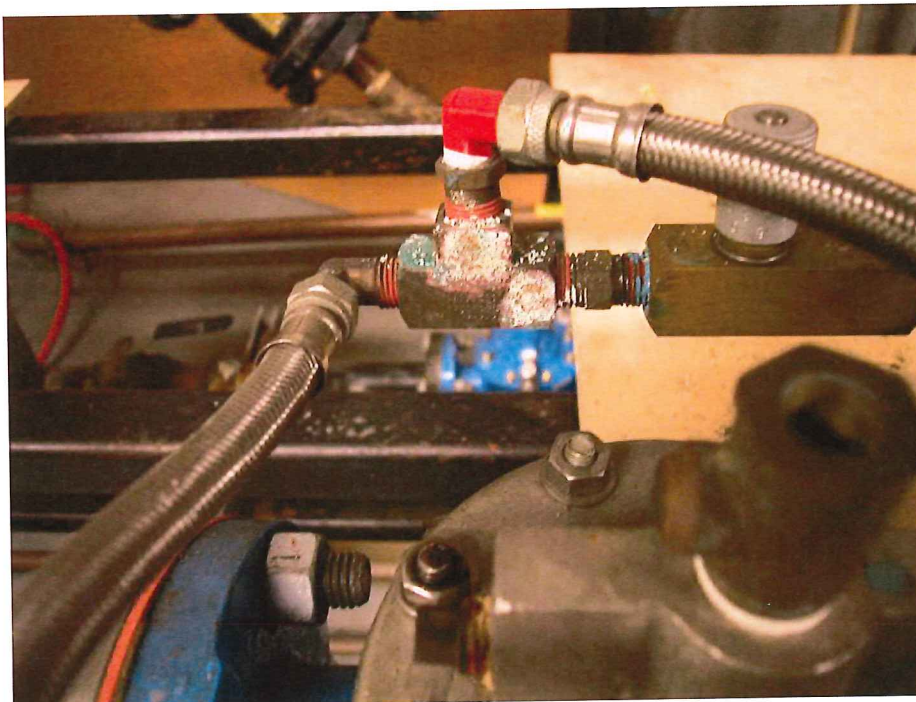


16. Leak in stainless weld leak; carbon steel plastic lined nipple not yet leaking, upper southeast corner of manifold (jpg53).

PANORAMA 2 Lower Mechanical Room

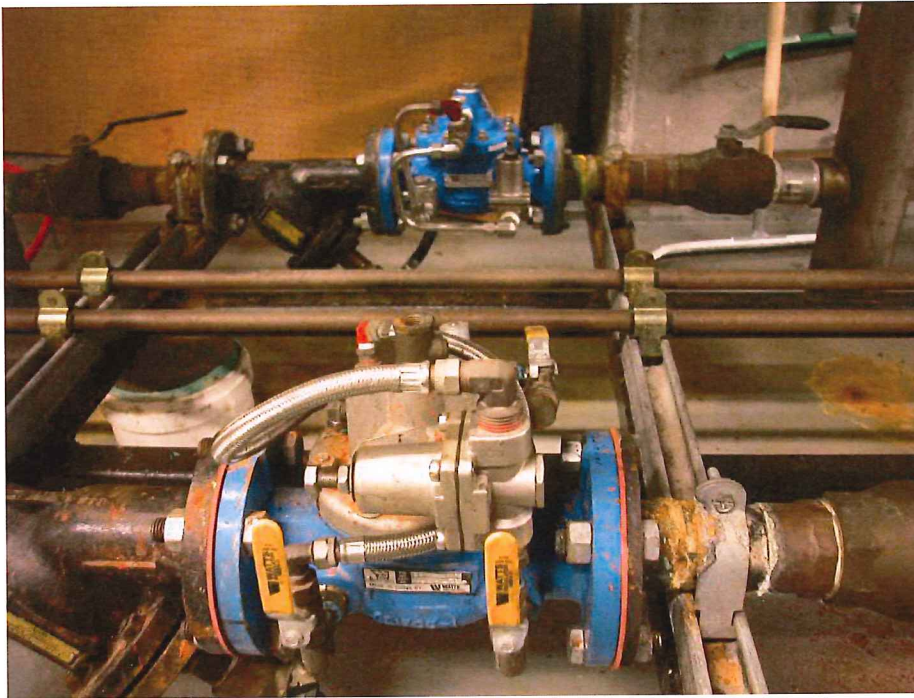


17. Carbon steel drain nipple on manifold – replace all in both buildings with stainless steel (jpg54).



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

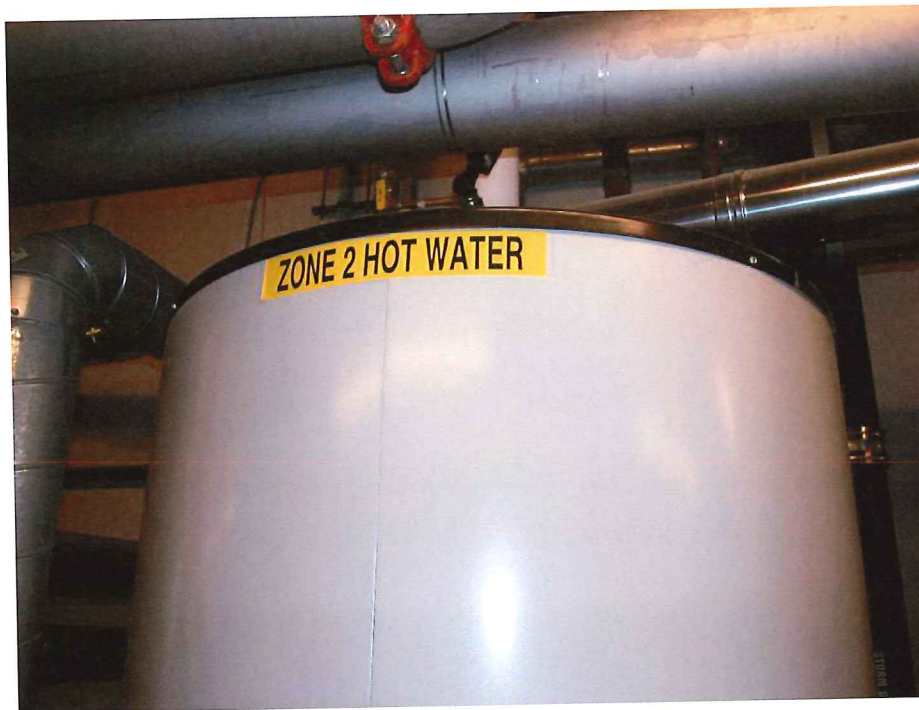


19. Lower pressure regulators; the far regulator is ductile iron top and bottom; the closer has a stainless steel top; visible residues at Unistrut are from connection leaks, not corrosion (jpg56).



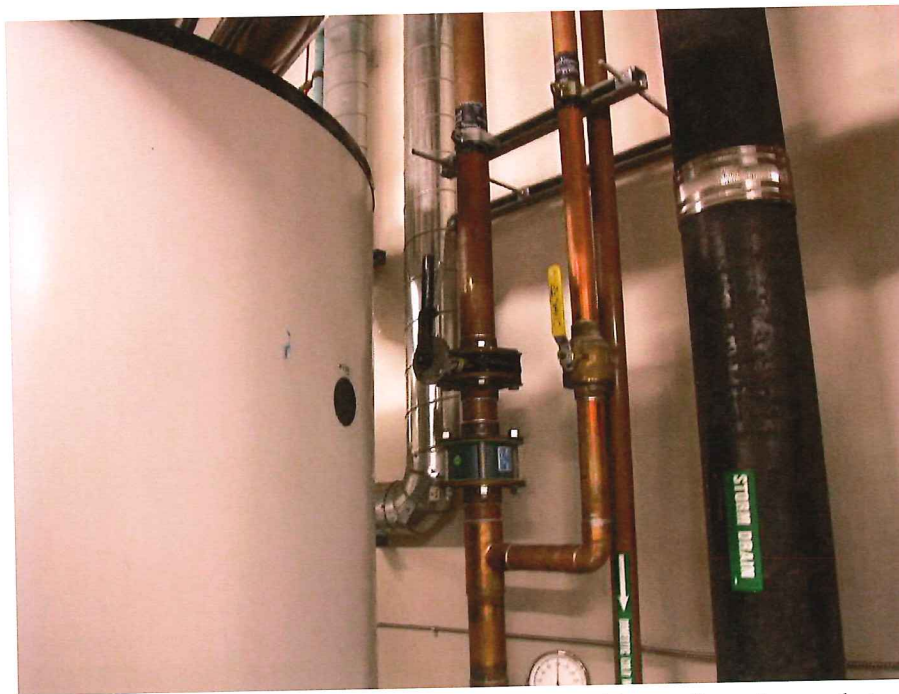
20. City water inlet manifold showing steel strainers, steel butterfly valves, and ductile iron pressure regulators with stainless steel tops (jpg43).

PANORAMA 2 Lower Mechanical Room



21. Zone 2

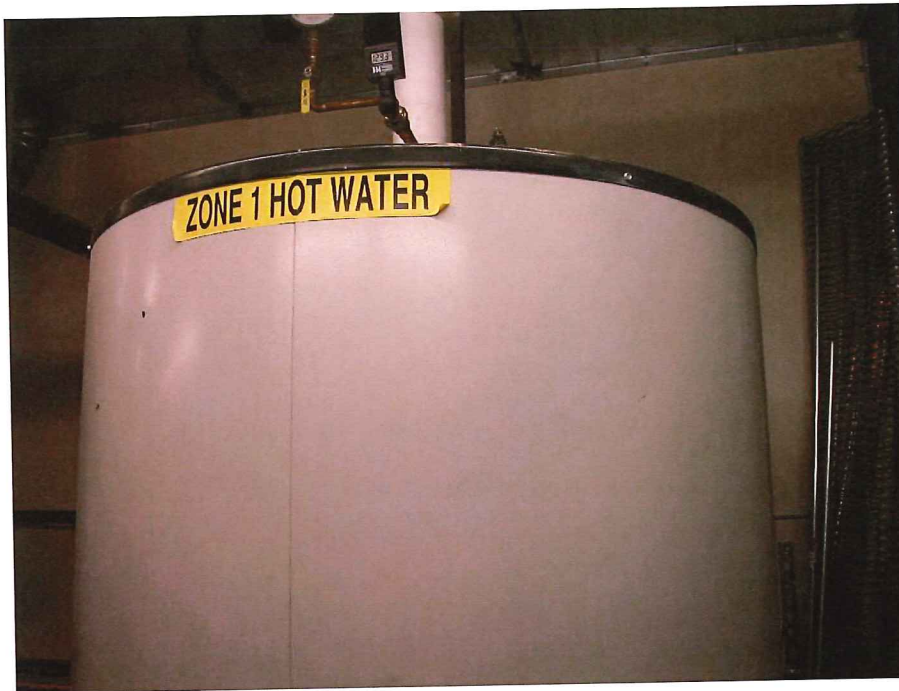
hot water tank (jpg44).



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).



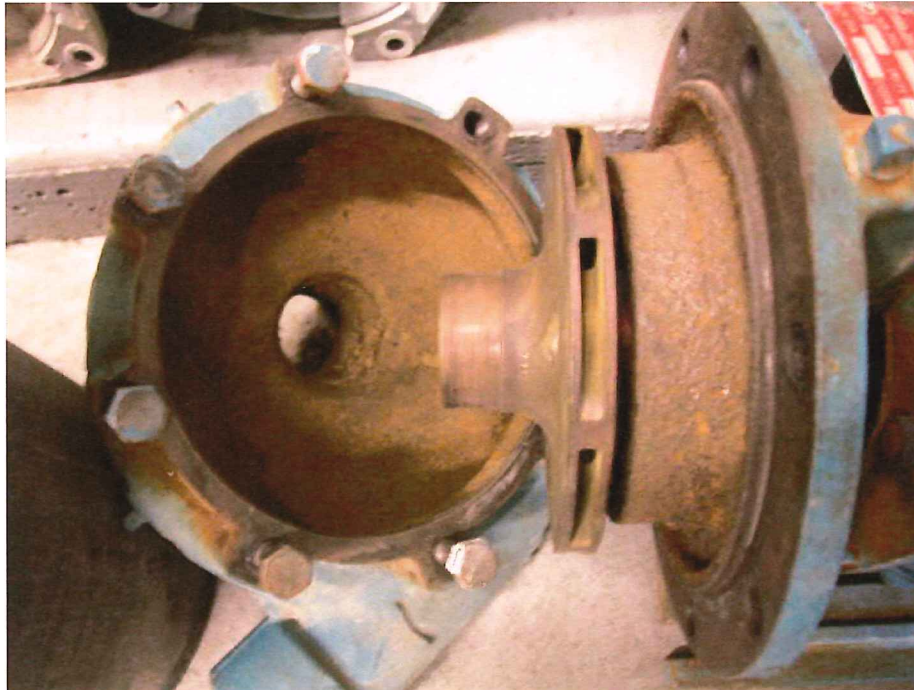
24. Piping associated with Zone 1 hot water tank with steel butterfly valve and steel check valve (jpg47).

PANORAMA 2 Lower Mechanical Room



25. Hot water

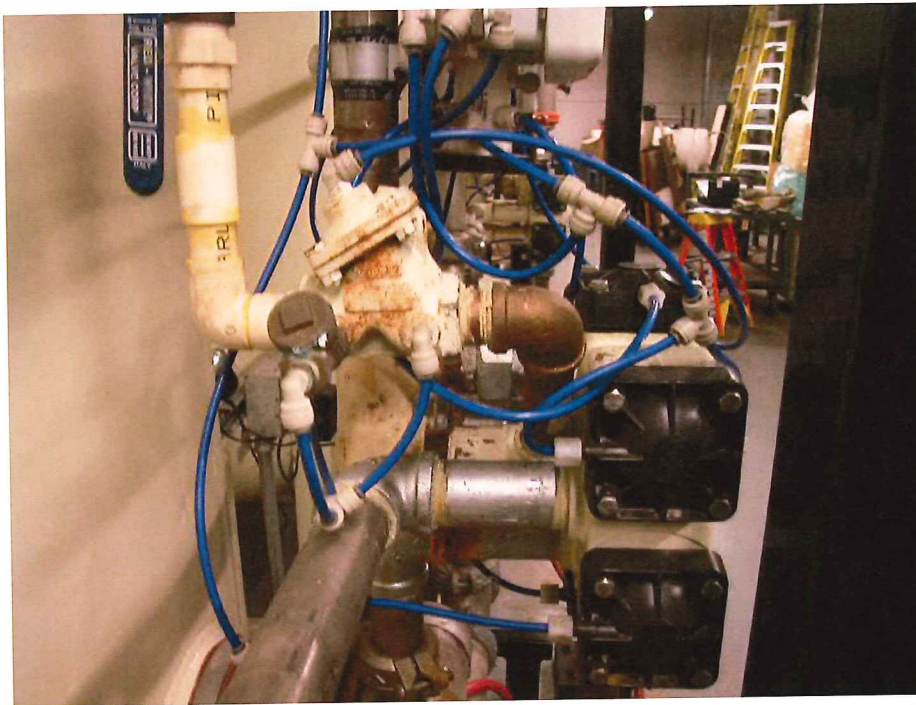
recirculation pumps with carbon steel housings (jpg48).



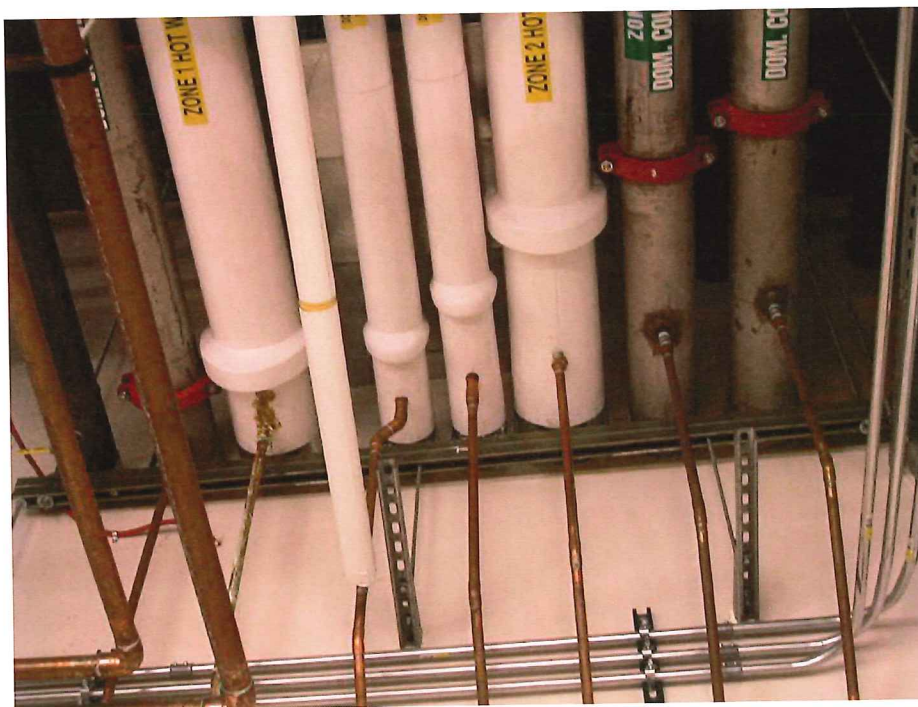
26. Close up

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

PANORAMA 2 Lower Mechanical Room

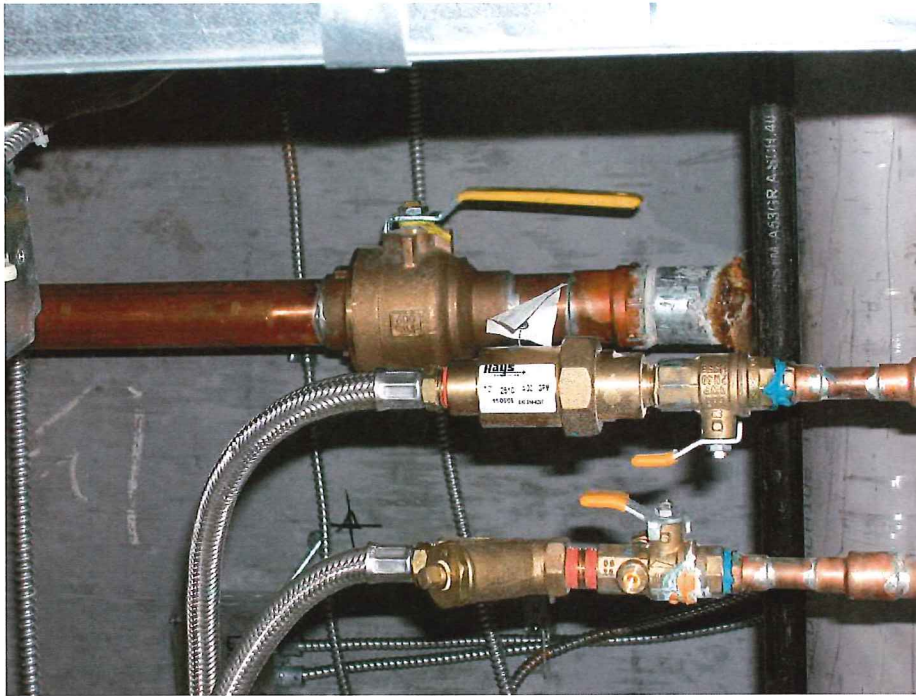


27. Ferrous (steel or iron) valve associated with Culligan water conditioning system (jpg 50).

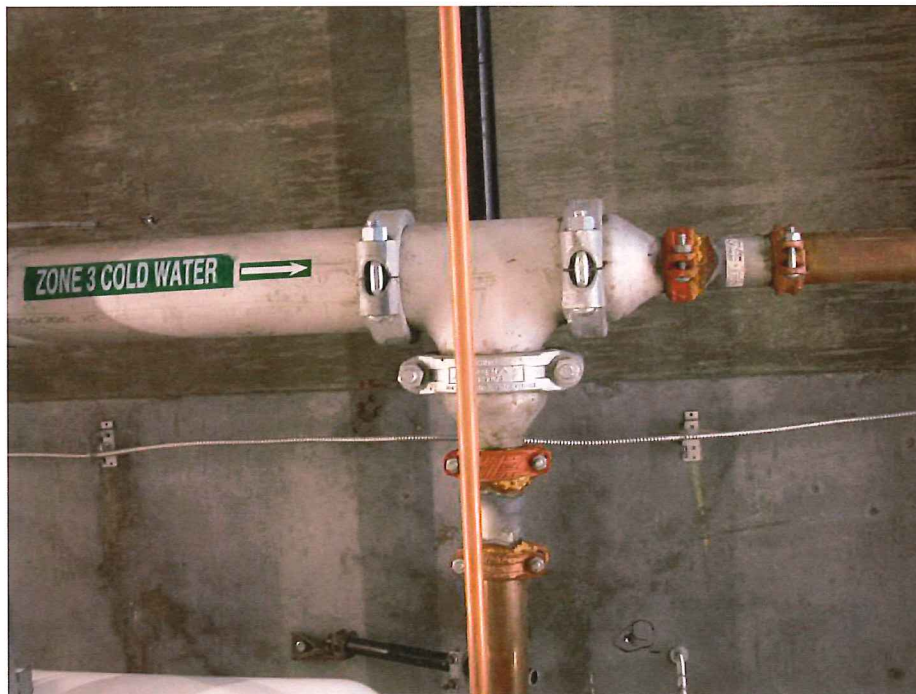


28. connections to outlet piping; replace carbon steel nipples with stainless steel (jpg57).

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).

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

METALLURGY GROUP

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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.

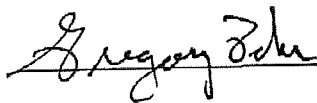
CLOSURE

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

Edward J. Song, Esq.

esong@leachjohnson.com

February 24, 2016

M.J. Dean Construction, Inc.
c/o Jolley Urga Woodbury & Little
3800 Howard Hughes Pkwy., 16th Floor
Las Vegas, NV 89169

**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.

0052

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,

Panorama Towers Condominium
Unit Owners' Association
February 24, 2016
Page 3

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.

EDWARD SONG, ESQ., NVB: 007922
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148
Telephone: (702) 538-9074
Facsimile: (702) 538-9113

Attorneys for Claimant

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Claimant,

v.

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 OF EXPERT
REPORTS PURSUANT TO 40.645**

VERIFICATION

State of Nevada)
)ss:
County of Clark)

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 B 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

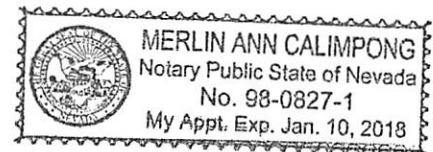


Exhibit “A”

Exhibit “A”



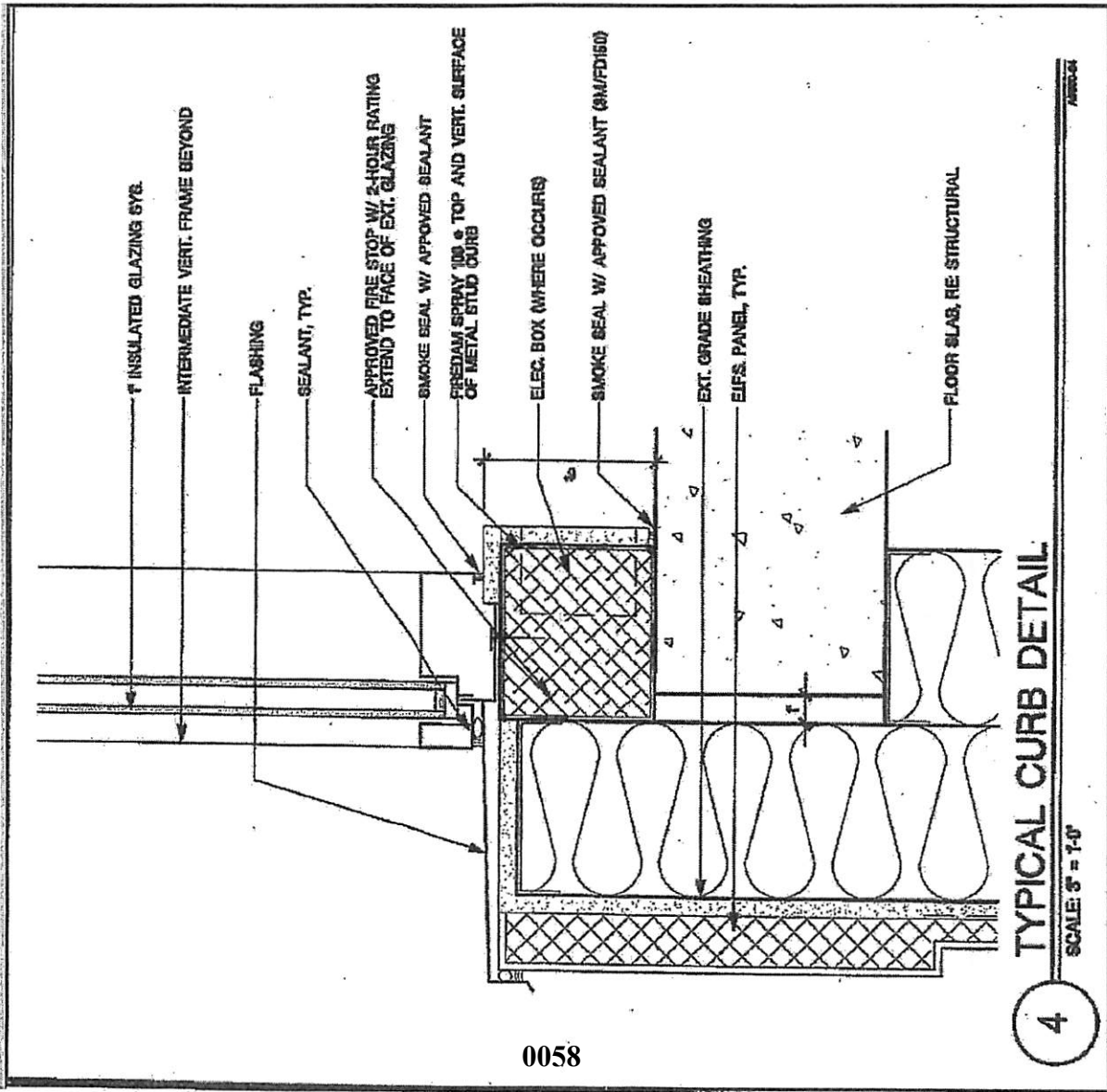
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NO.	REVISION	DATE	BY	CHKD.
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DETAILS

A9.00.0



0058

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
<p>*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</p>					

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 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	
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		
<p>*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</p>					

PANORAMA 1 Lower Mechanical Room

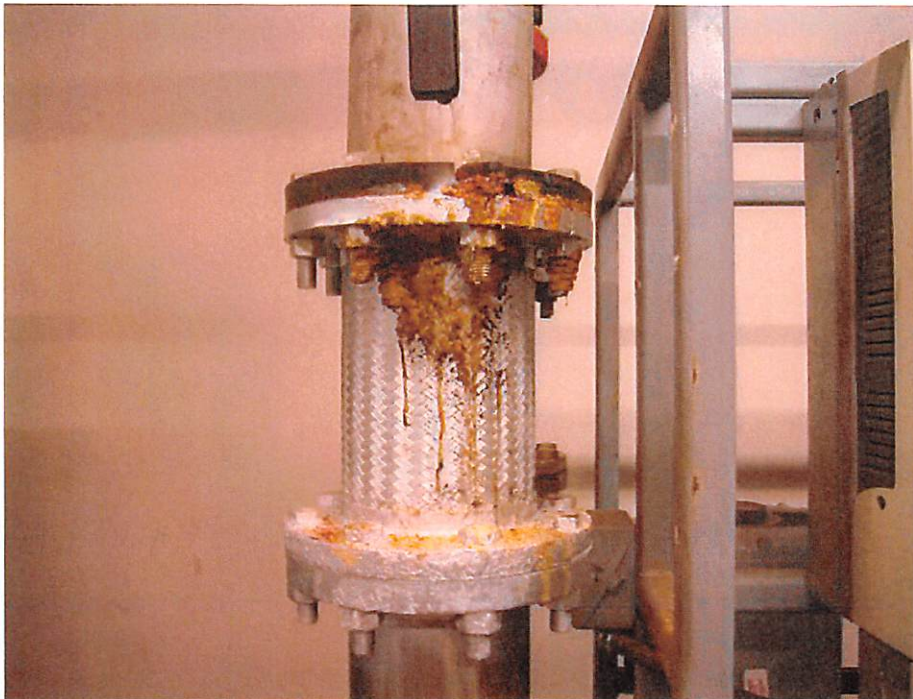


1. View of
lower mechanical room (jpg100).



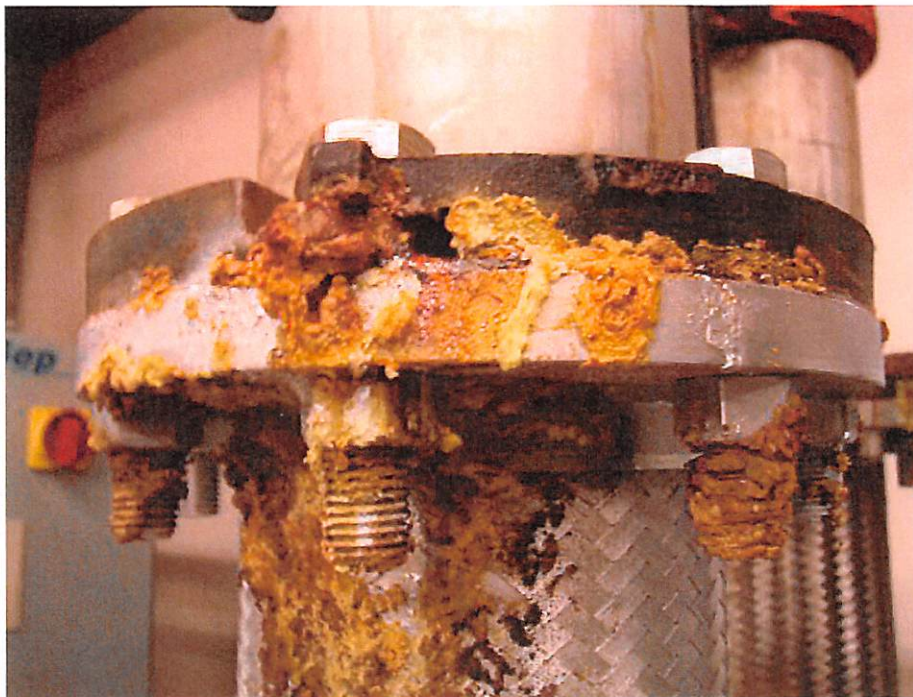
2. BP-1,
(jpg66)

PANORAMA 1 Lower Mechanical Room



connection (jpg68)

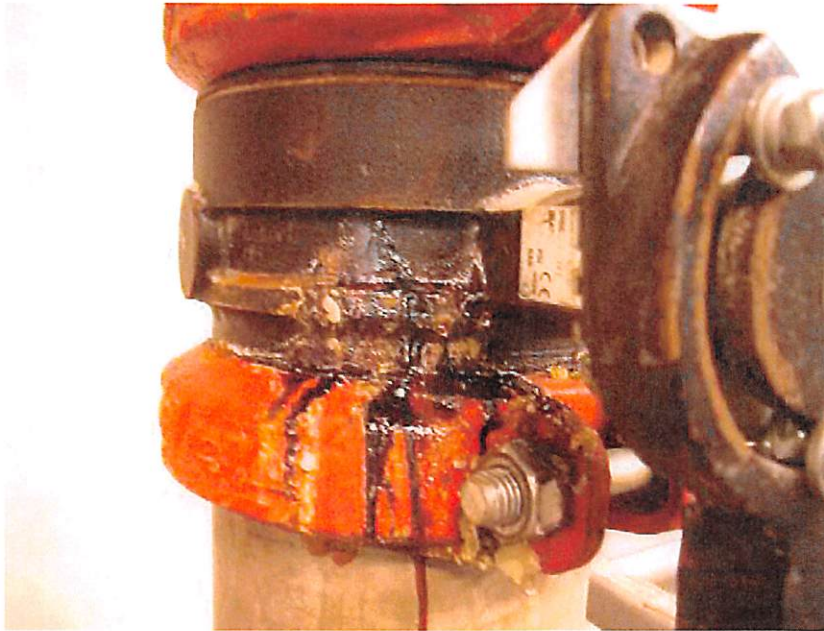
3. BP-1, flex



close up of leaking flex flange connection (jpg72)

4. BP-1,

PANORAMA 1 Lower Mechanical Room

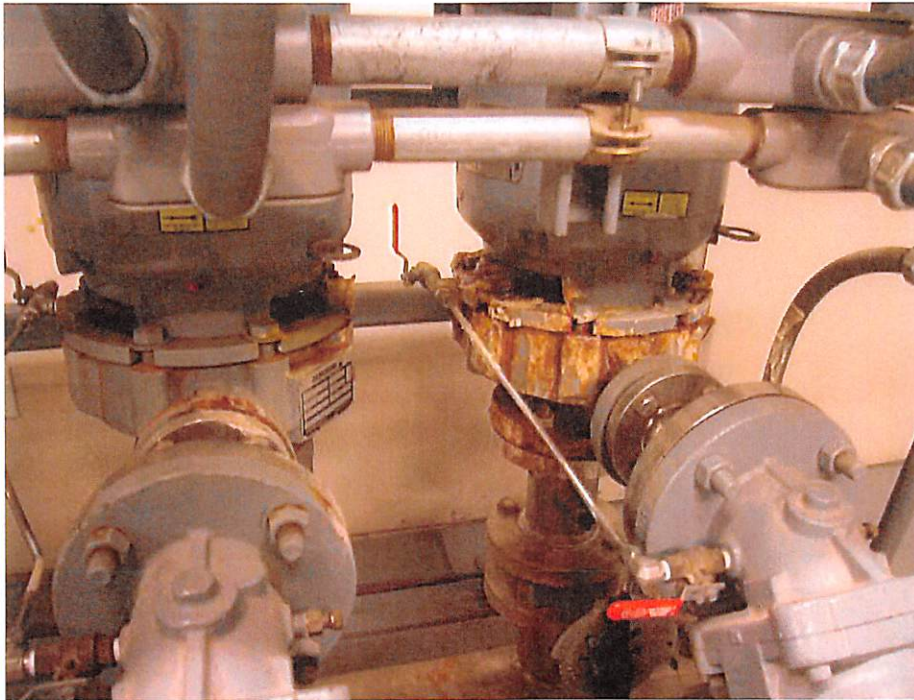


5. BP-1 (jpg 73)

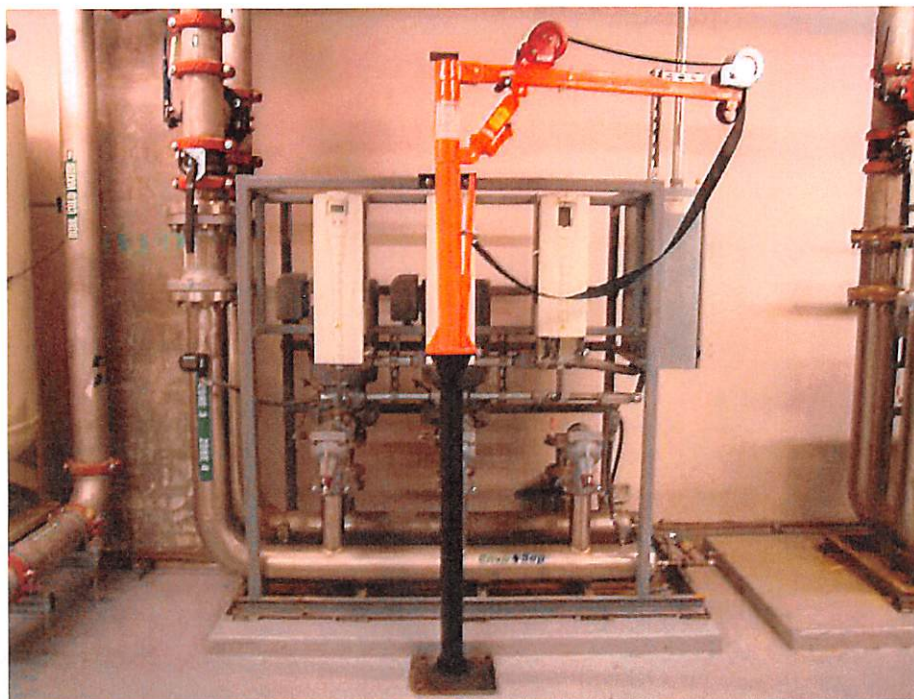


6. BP-1 (jpg(74)

PANORAMA 1 Lower Mechanical Room

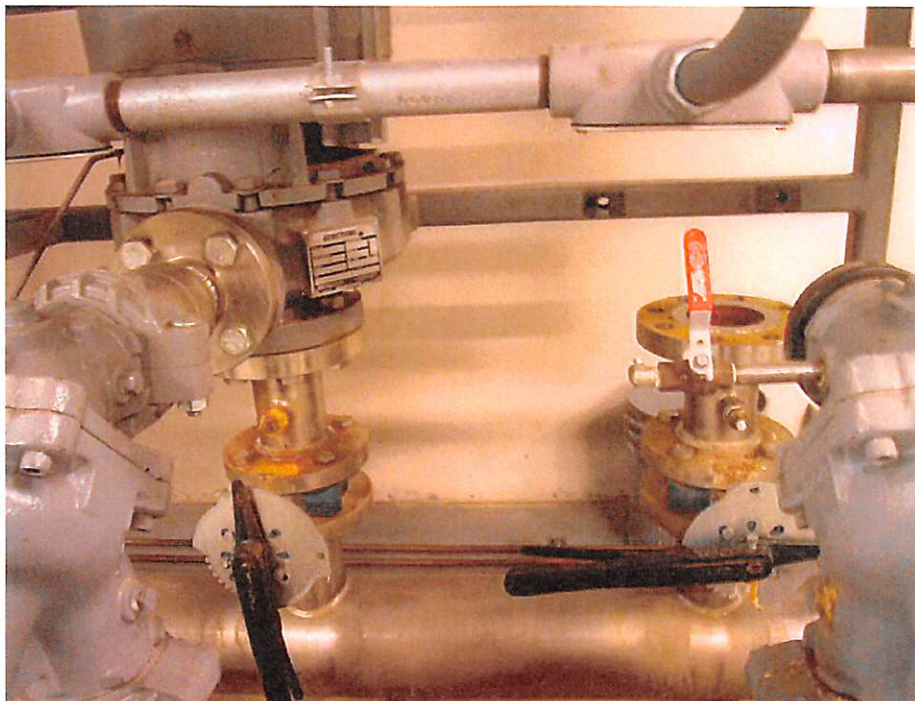


7. BP-1,
replace leaking ferrous pump housing now (jpg75).



77) 8. BP-2, (jpg

PANORAMA 1 Lower Mechanical Room



9. BP-2,

(jpg78)



10. BP-2,

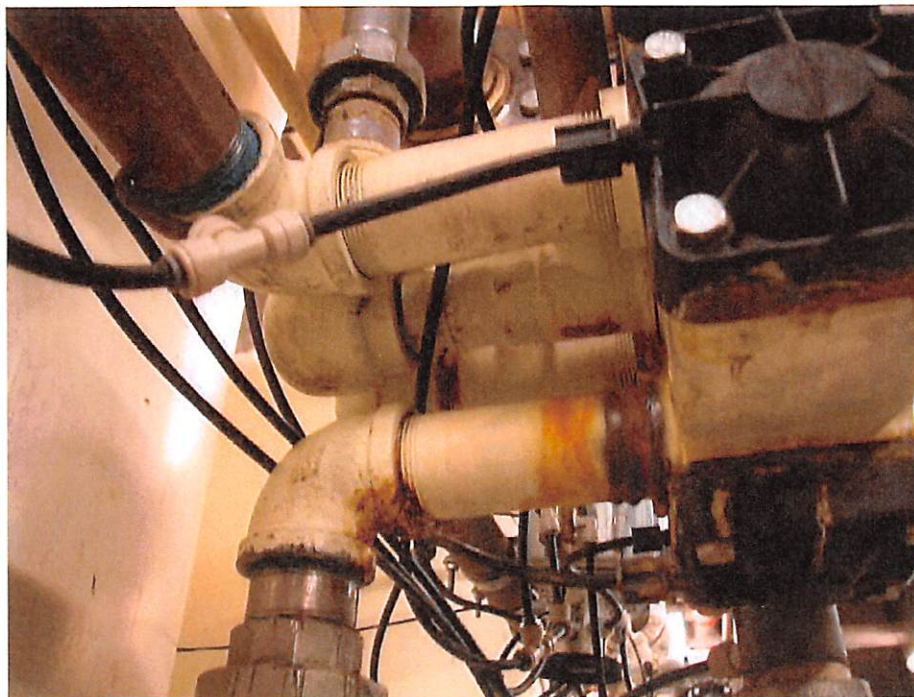
(jpg79)

PANORAMA 1 Lower Mechanical Room



tanks (jpg80)

11. Media



carbon steel parts (jpg81).

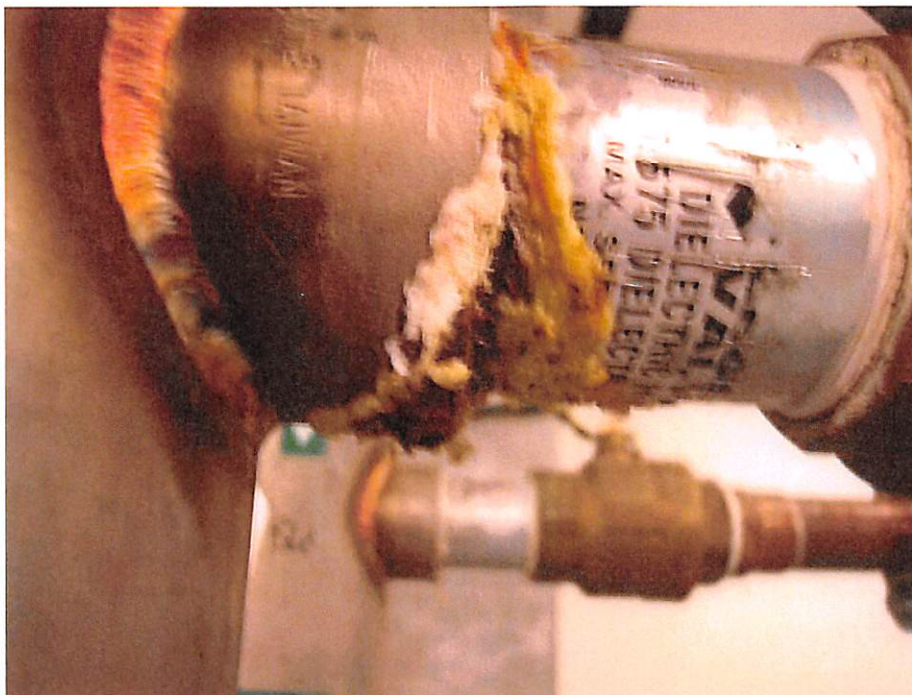
12. Culligan

PANORAMA 1 Lower Mechanical Room



13. Pressure

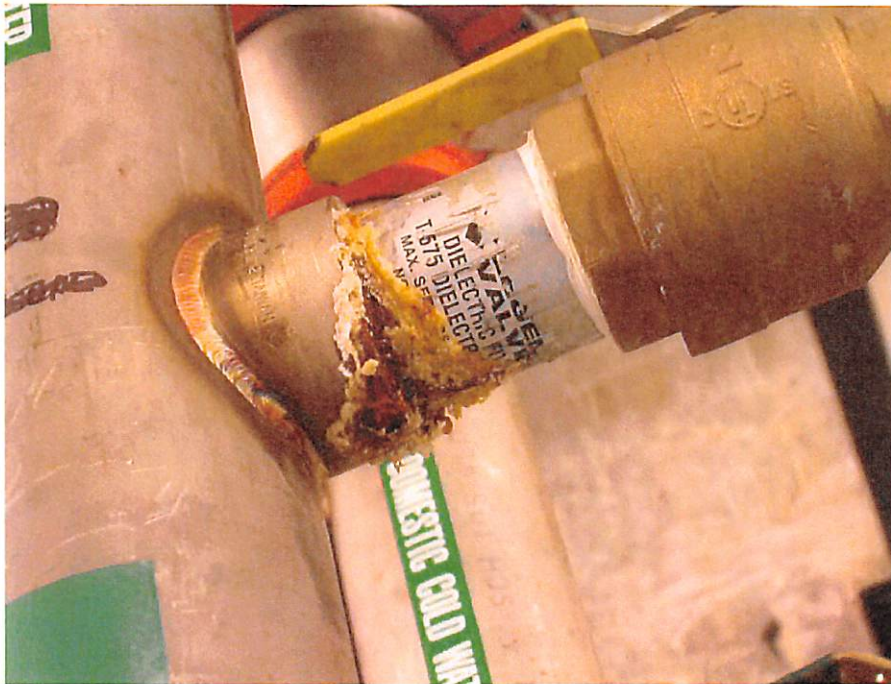
regulator manifold (jpg82).



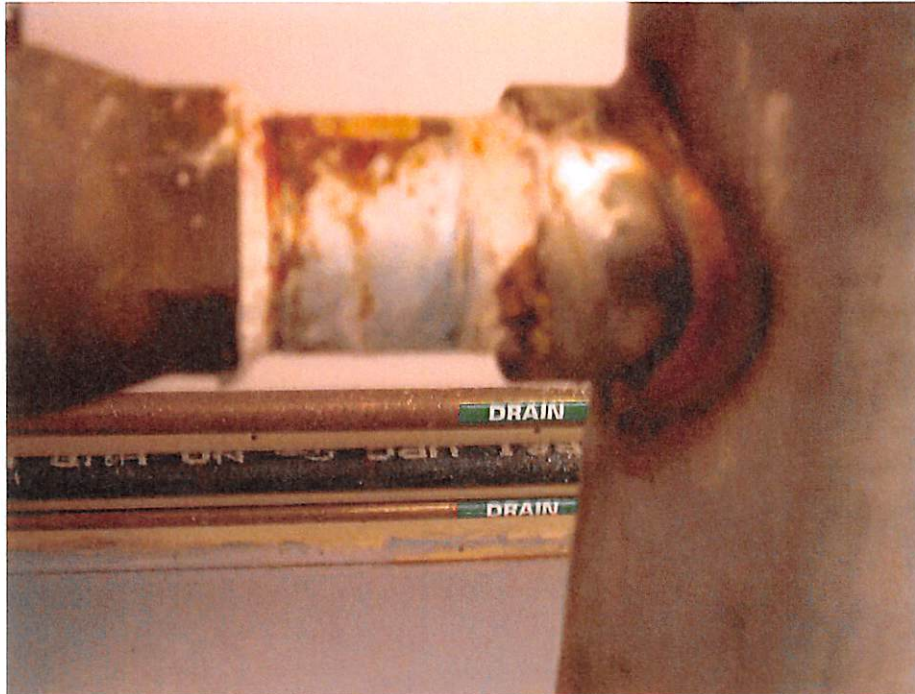
14. Pressure

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

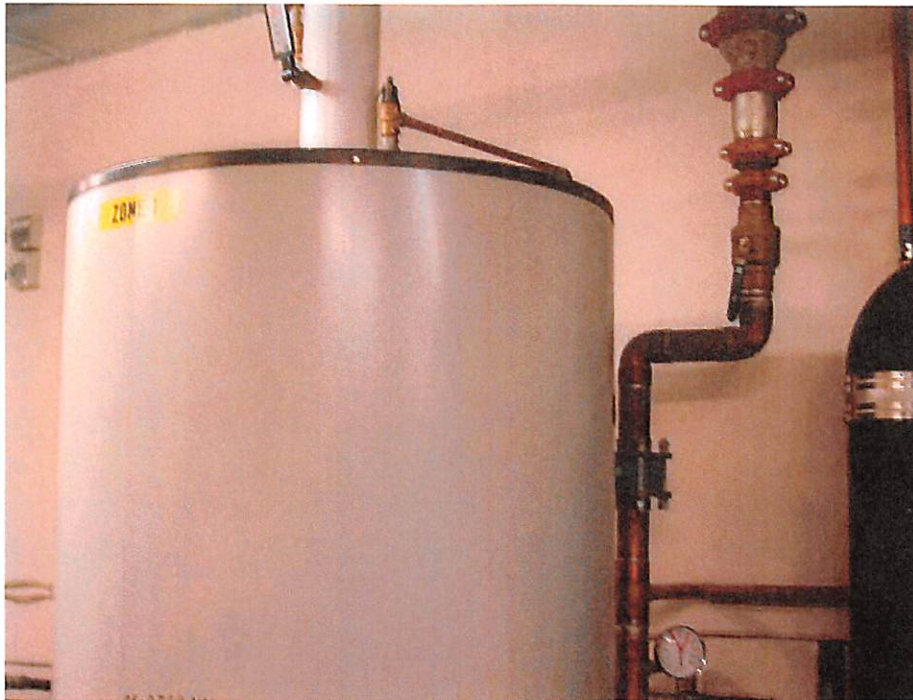
PANORAMA 1 Lower Mechanical Room



15. Another view of previous photo (jpg84).



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



17. Hot water

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



18. (jpg87)

PANORAMA 1 Lower Mechanical Room



bank (jpg88).

19. Filter



20. (jpg89)

PANORAMA 1 Lower Mechanical Room



21. (jpg91)

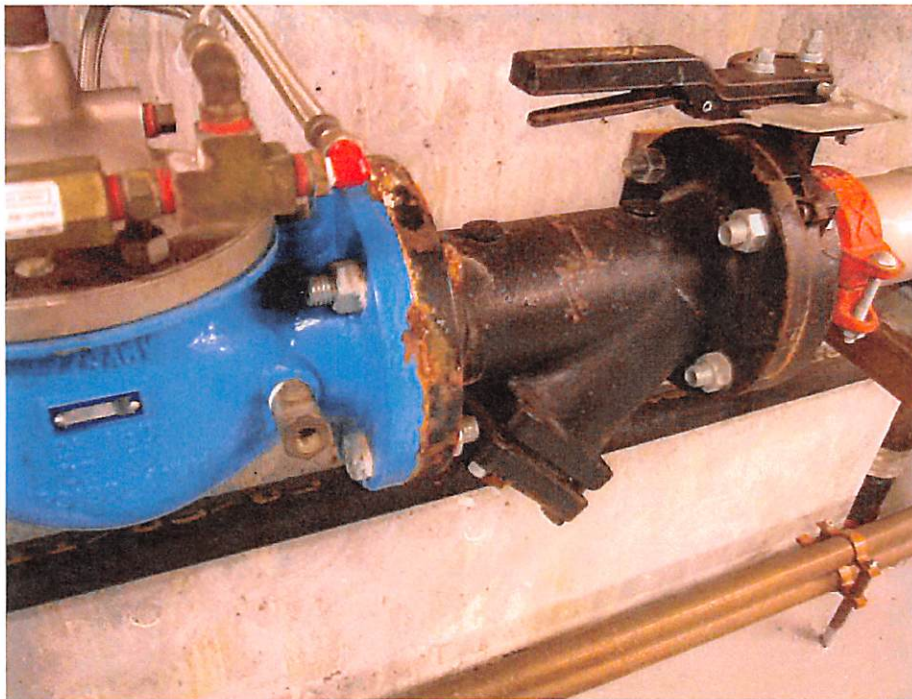


22. (jpg93)

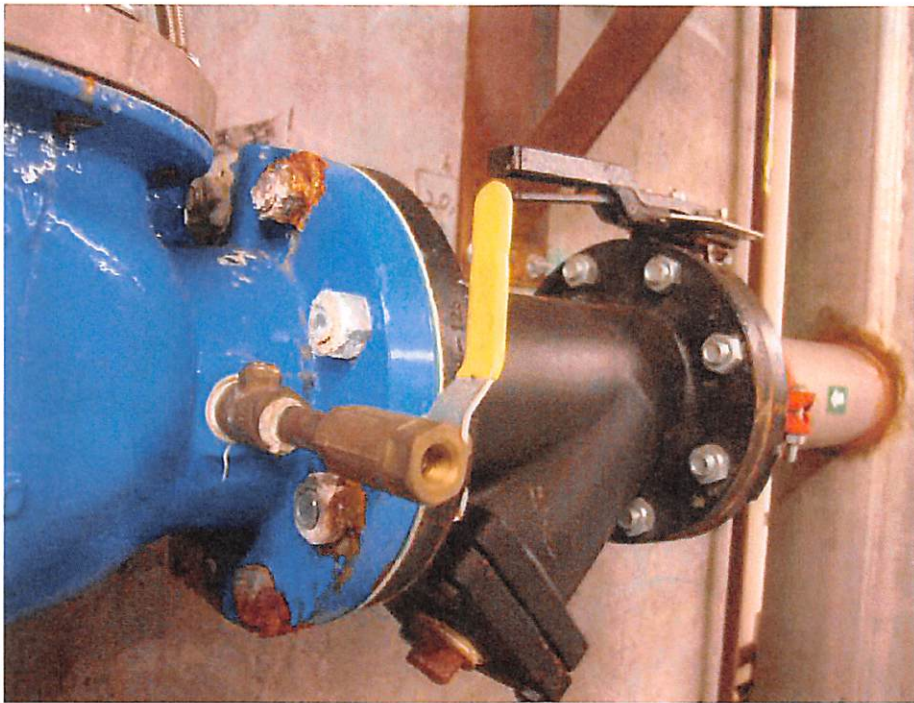
PANORAMA 1 Lower Mechanical Room



23. (jpg94)



24. (jpg95)

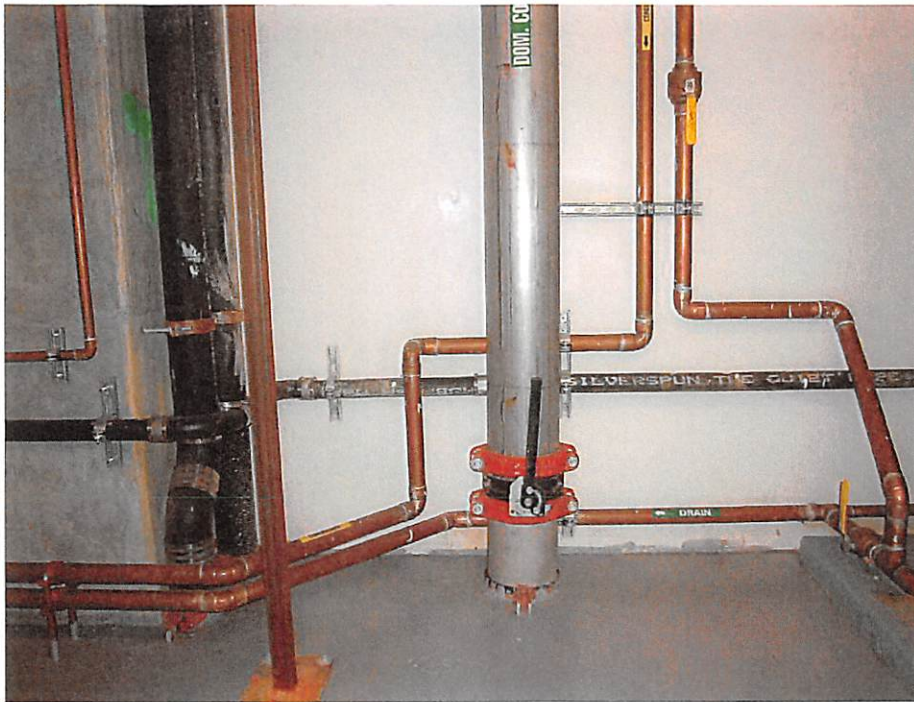


25. (jpg96)

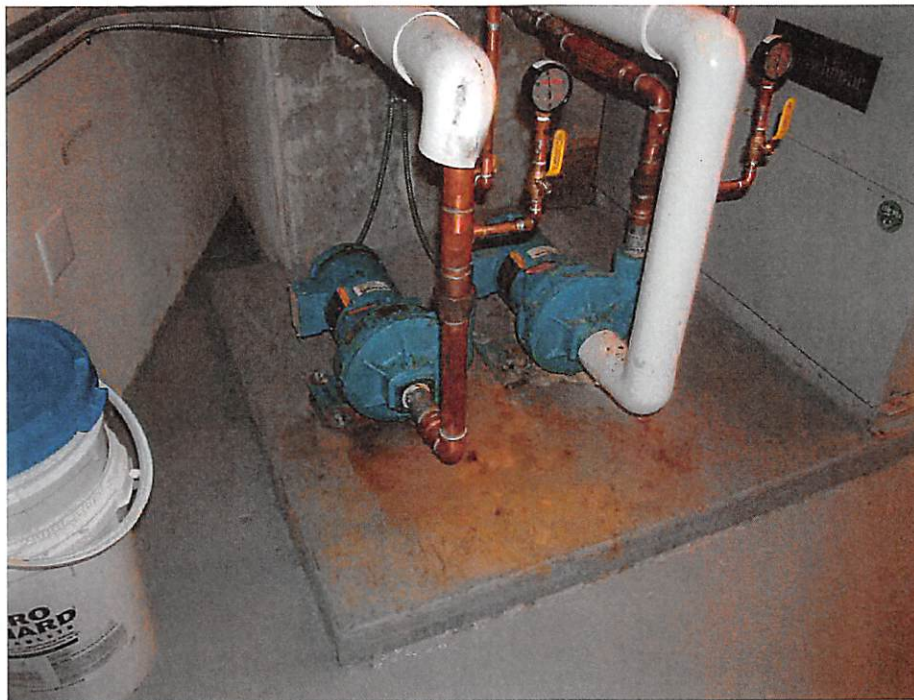


26. Evidence of removing welding tarnish with an acid e.g. hydrochloric; recommend cleaning with a stainless steel cleaner containing nitric acid.

PANORAMA 1 Lower Mechanical Room

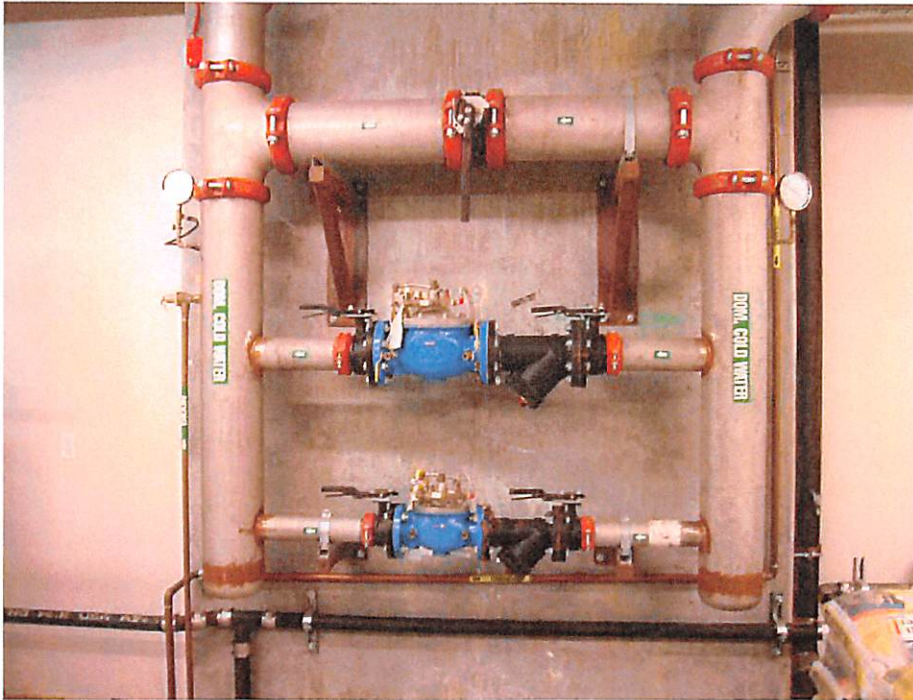


27. City water inlet; replace ferrous butterfly valve with stainless steel (jpg98).



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

PANORAMA 1 Lower Mechanical Room



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

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.

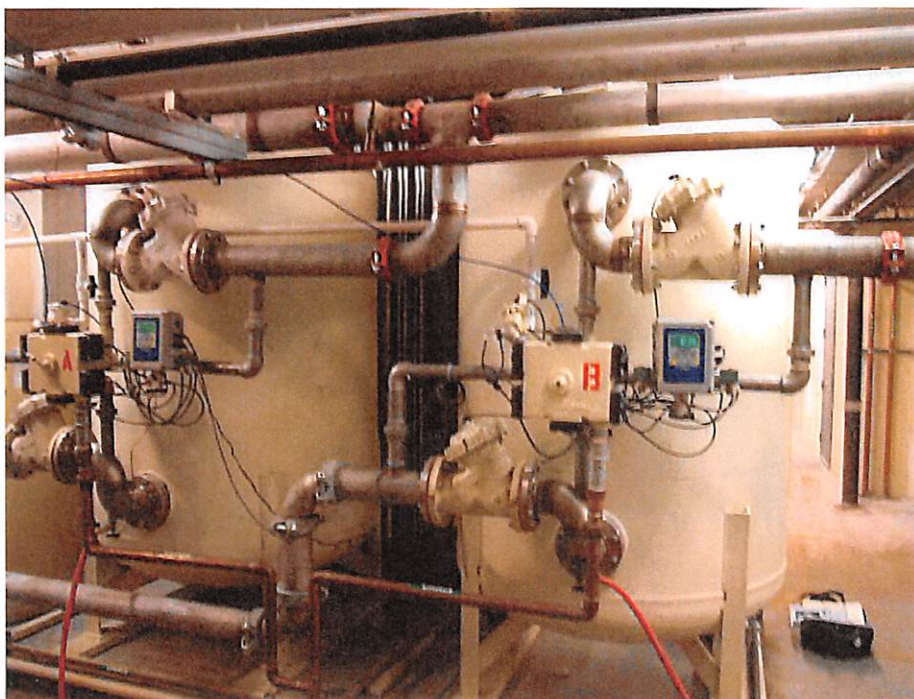


4. City water inlet, Zone 3 and 4 ferrous butterfly valves – replace with stainless or bronze valves (jpg106).

PANORAMA TOWER 1 Upper Mechanical Room

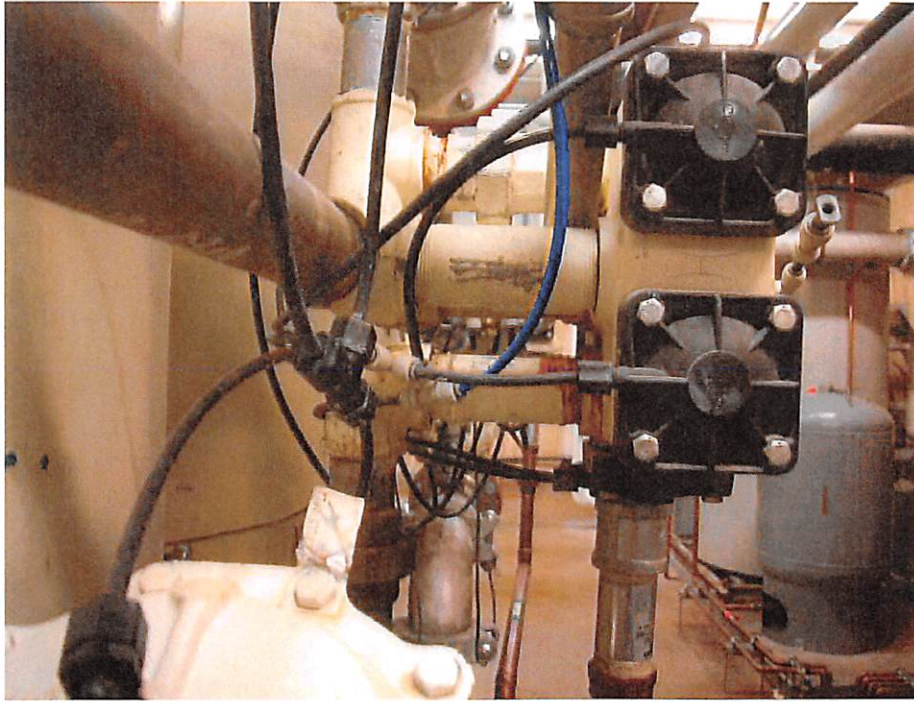


5. Feed water to water conditioners and bypass ferrous butterfly valves – replace now (jpg107).

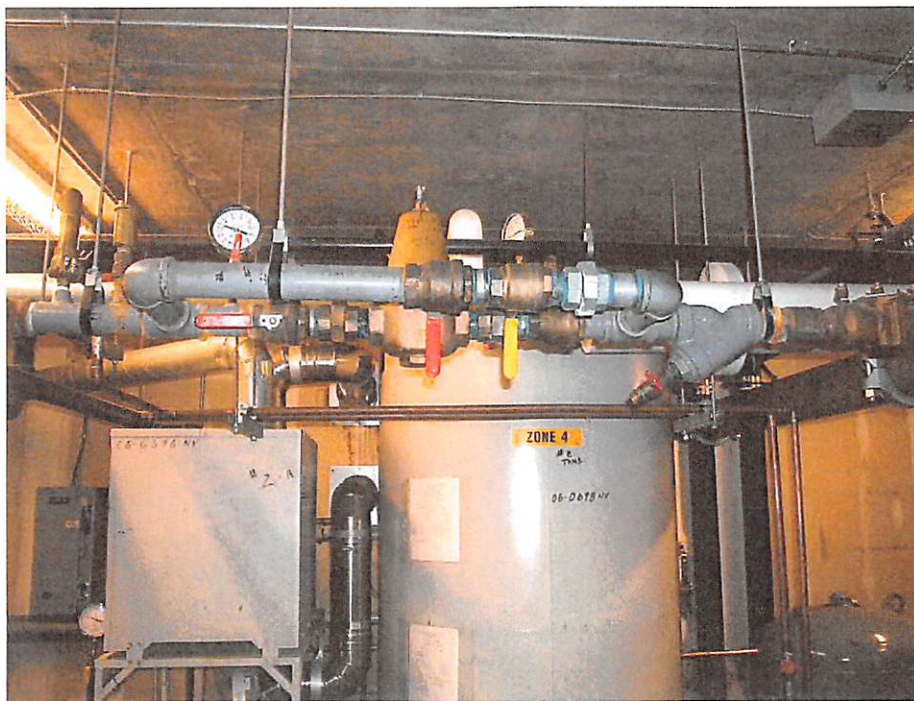


6. Media tanks with 4 ferrous check valves – replace valves within 5 years (jpg109).

PANORAMA TOWER 1 Upper Mechanical Room

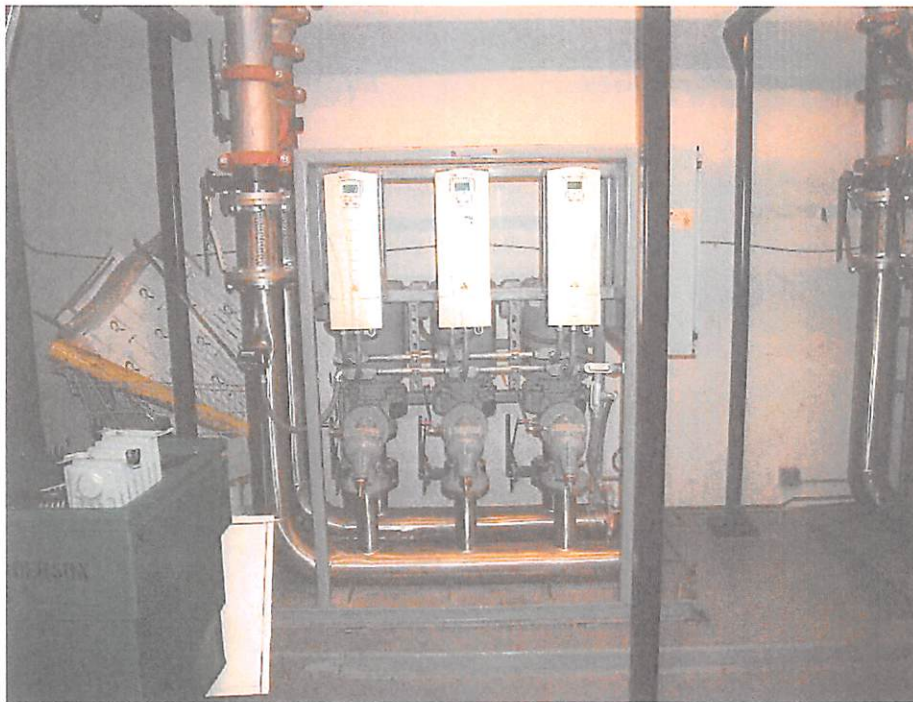


7. Media tanks with Culligan systems – replace all carbon steel nipples now; valves within 5 years (jpg108).



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

PANORAMA 2 Lower Mechanical Room



1. BP-1 skid mounted unit (jpg39).

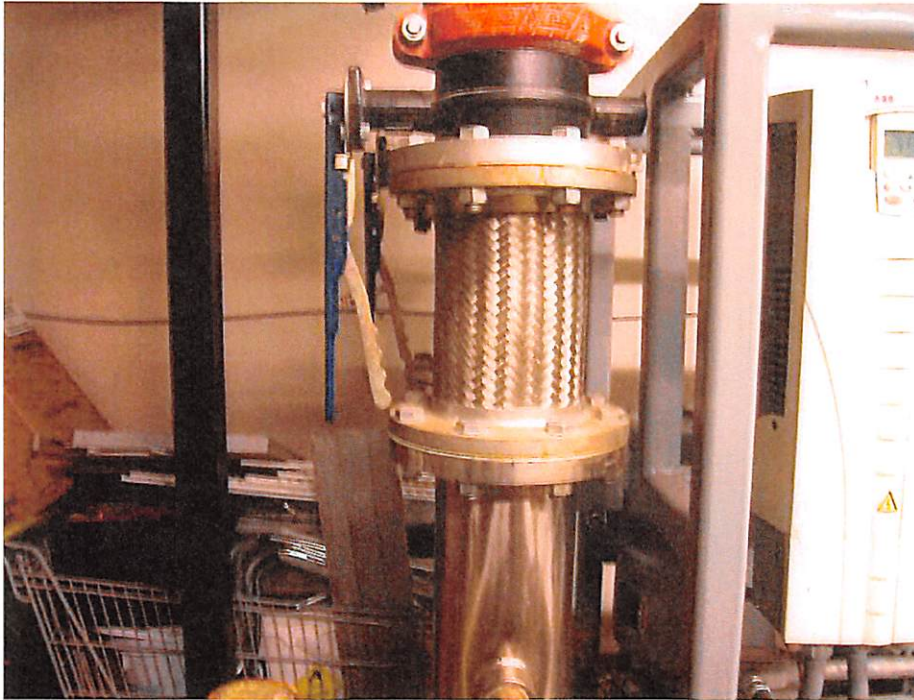
1. BP-1 skid



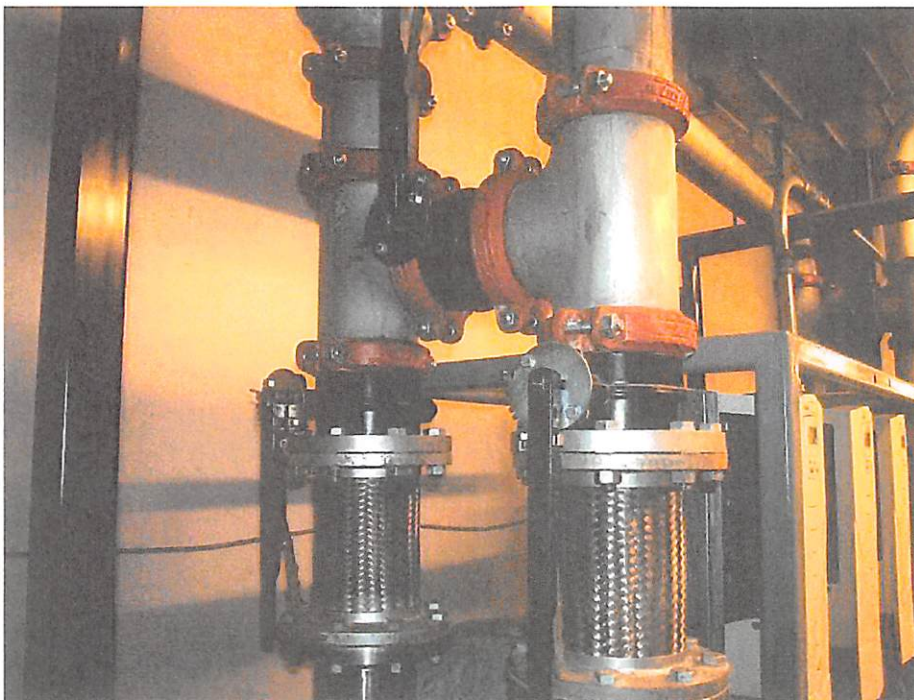
2. End view BP-1 skid mounted unit; stainless butterfly valves shipped with unit have been replaced with carbon steel valves that should be replaced now with stainless (jpg25).

2. End view

PANORAMA 2 Lower Mechanical Room

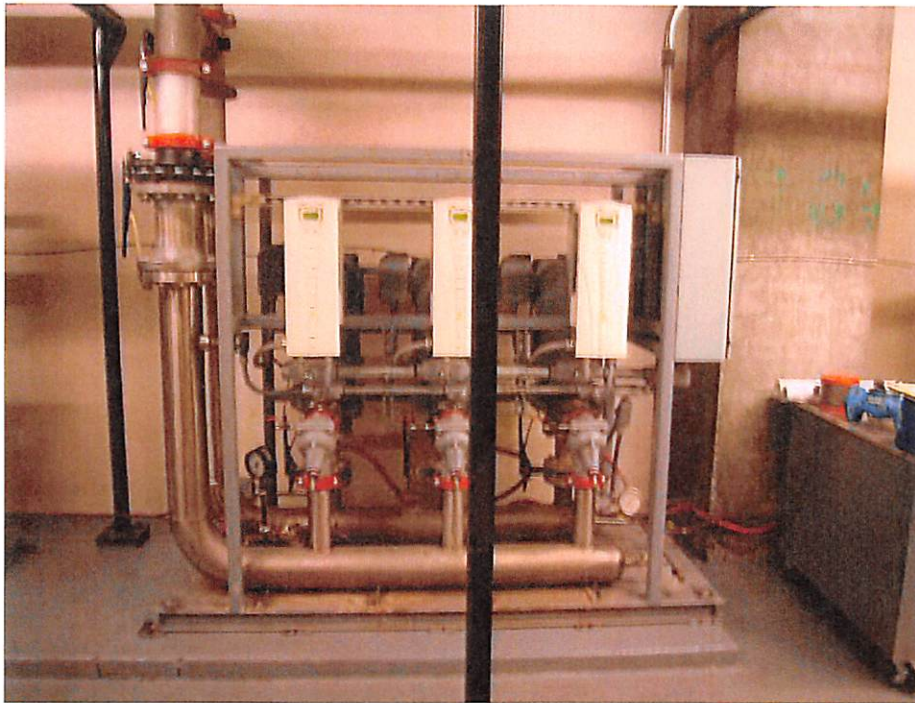


3. BP-1 Flex joint below carbon steel butterfly valve – replace valve now – see below (jpg28).



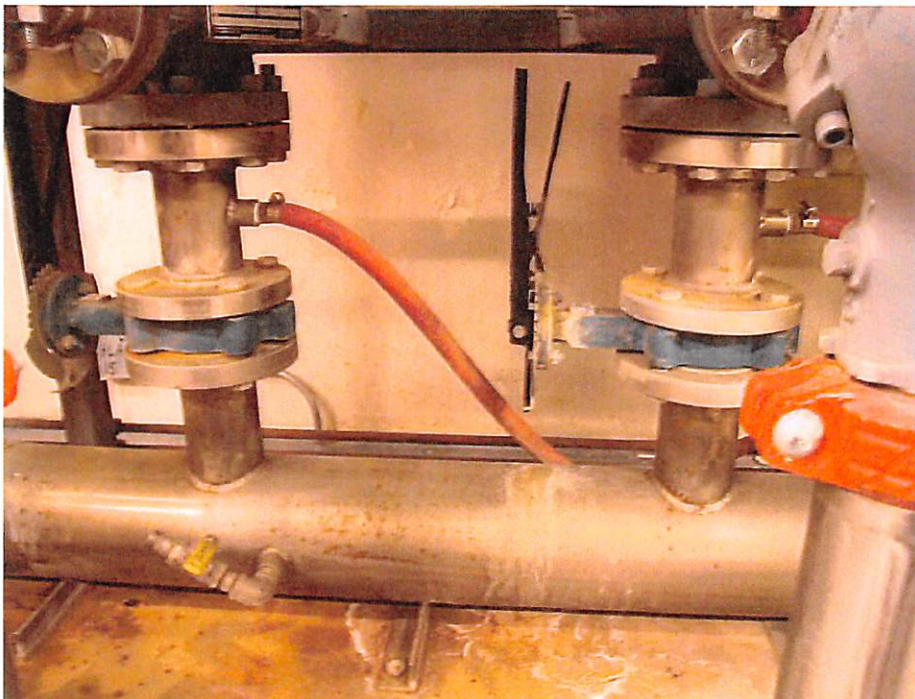
4. BP-1 showing inline and bypass carbon steel butterfly vales – all need to be replaced now (jpg29).

PANORAMA 2 Lower Mechanical Room



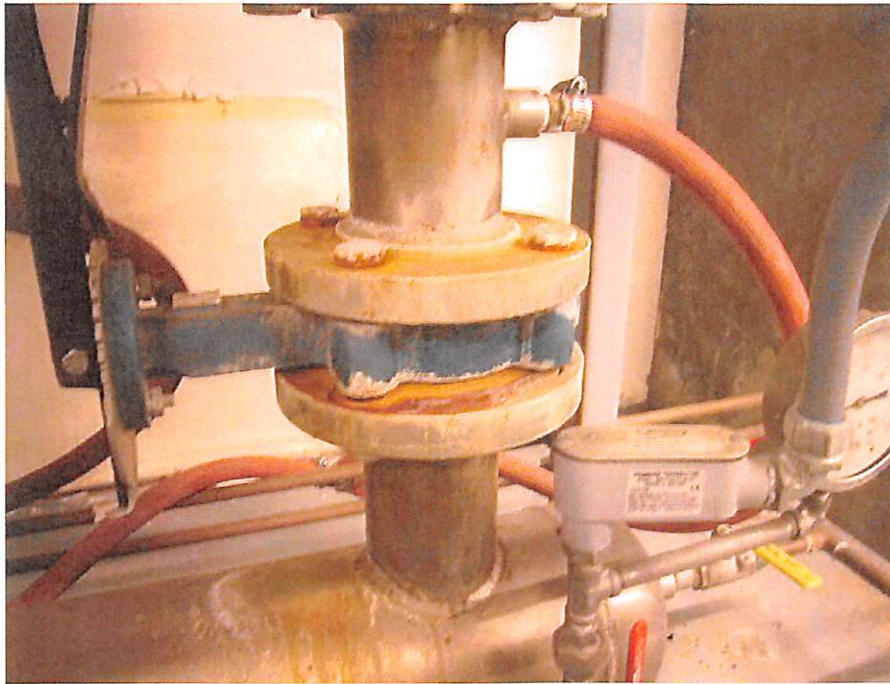
pressure skid mounted unit (jpg40).

5. BP-2 high

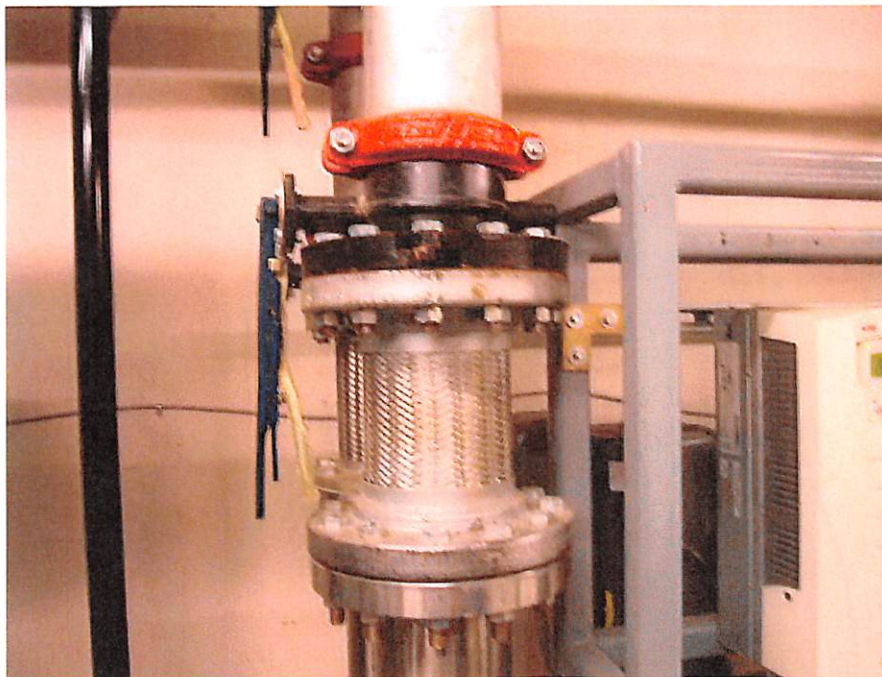


6. BP-2 center and east carbon steel butterfly valves – need to be replaced with stainless now (jpg27).

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

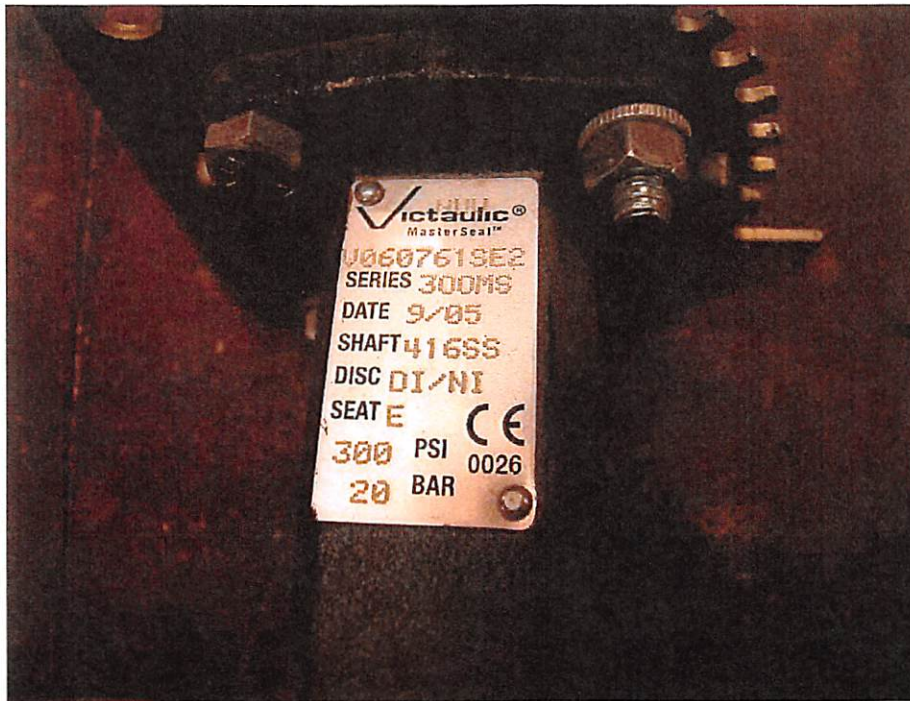


9. BP-2 inlet, outlet, and bypass butterfly valves need to be replaced with stainless steel valves now (jpg31).

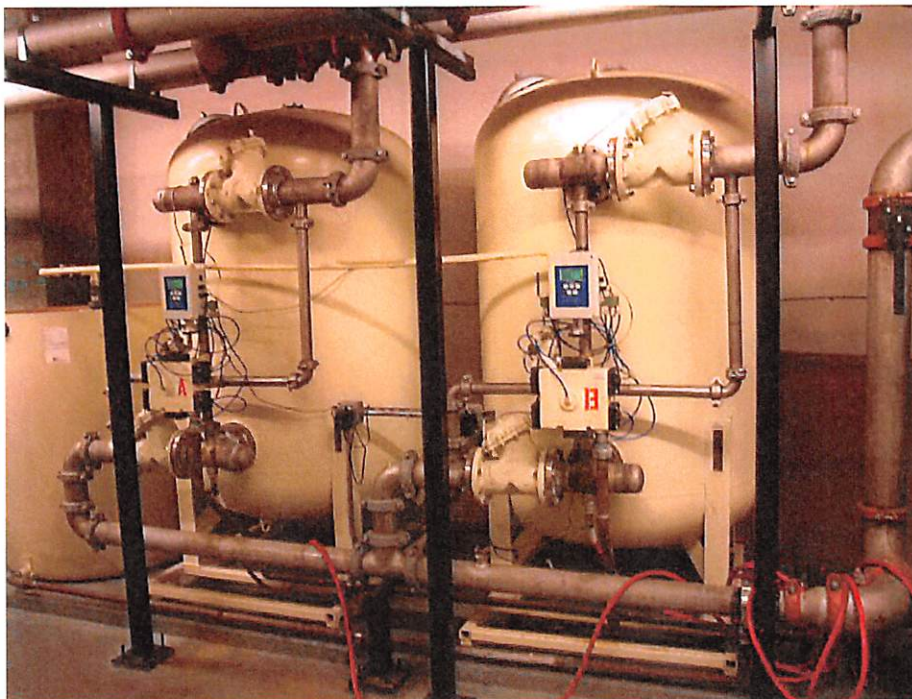


10. Typical inside of carbon steel butterfly valve after several months service; this is the reason they must be replaced as soon as practical with stainless steel valves (jpg33).

PANORAMA 2 Lower Mechanical Room

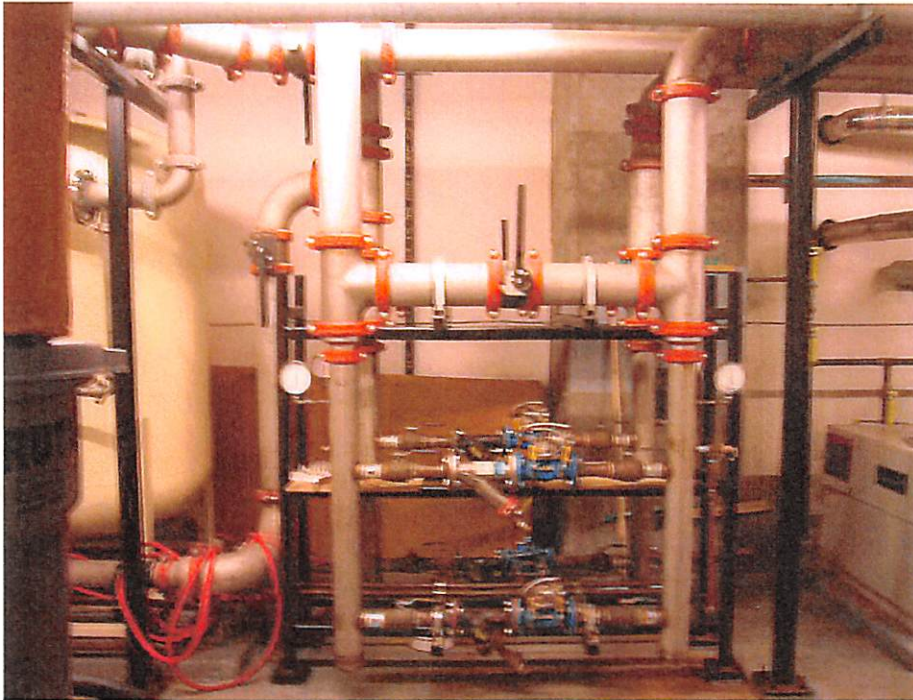


11. Name plate on typical carbon steel butterfly valve showing it has an AISI Type 416 stainless steel shaft; the ductile iron disc has a nickel edge (jpg34).

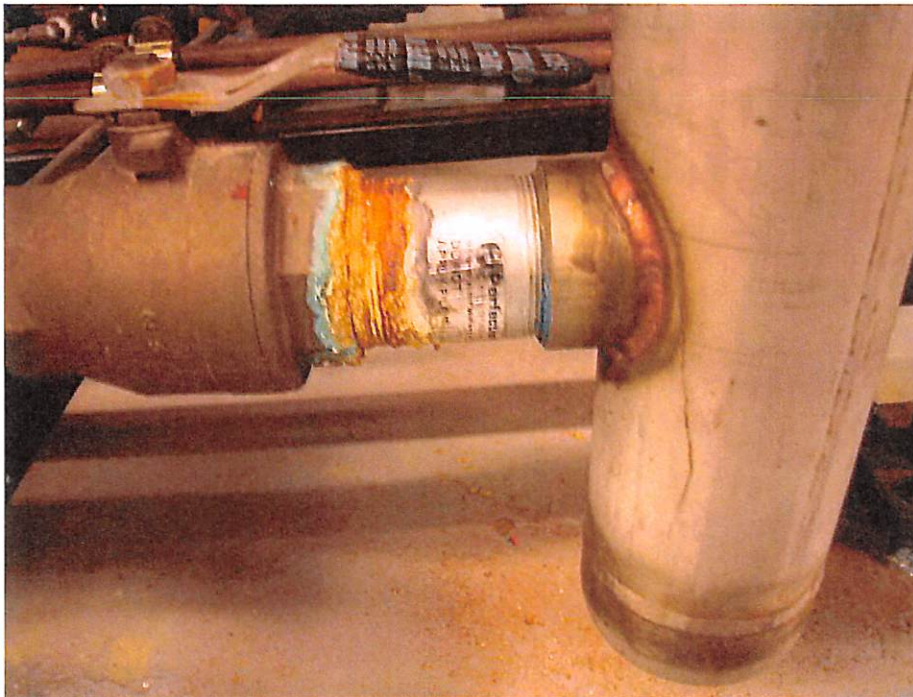


12. Media tanks (jpg41).

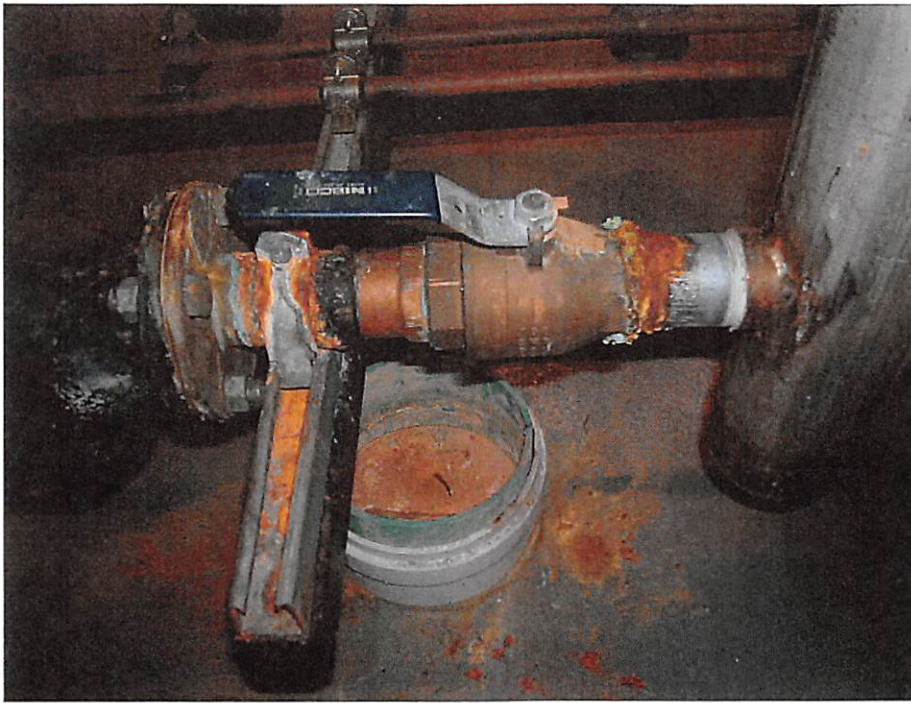
PANORAMA 2 Lower Mechanical Room



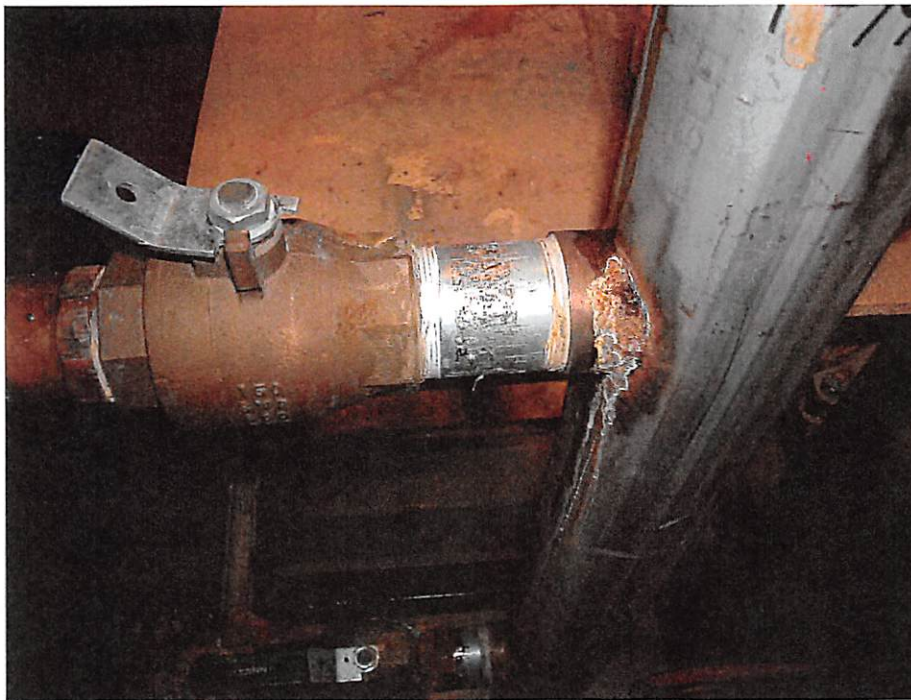
13. PRV manifold with 3 carbon steel strainers, steel butterfly valves, and ductile iron pressure regulators (jpg42).



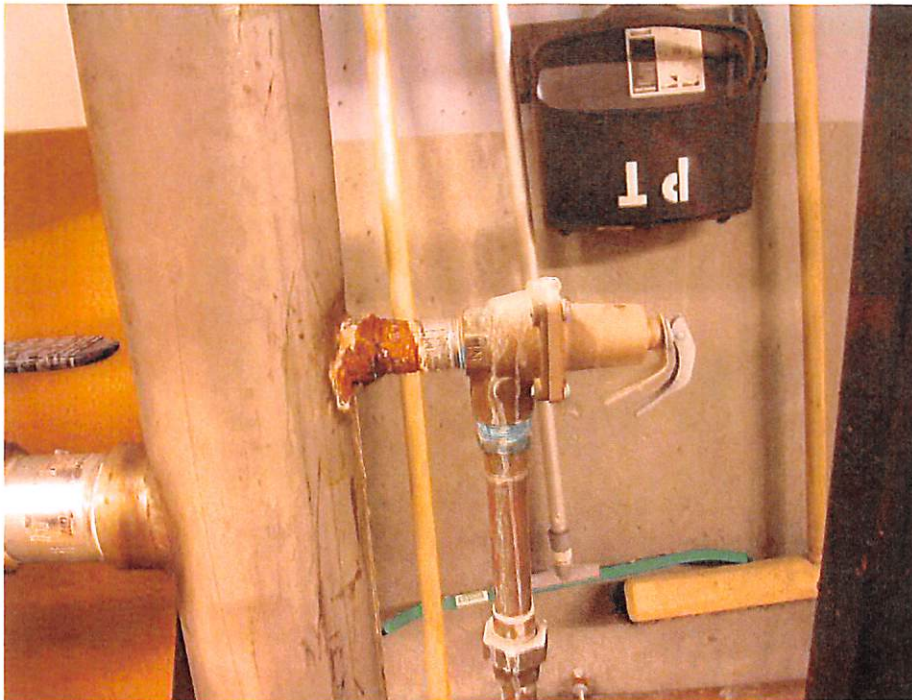
14. Carbon steel plastic lined nipple (lower northwest corner of manifold) - replace with stainless steel (jpg51).



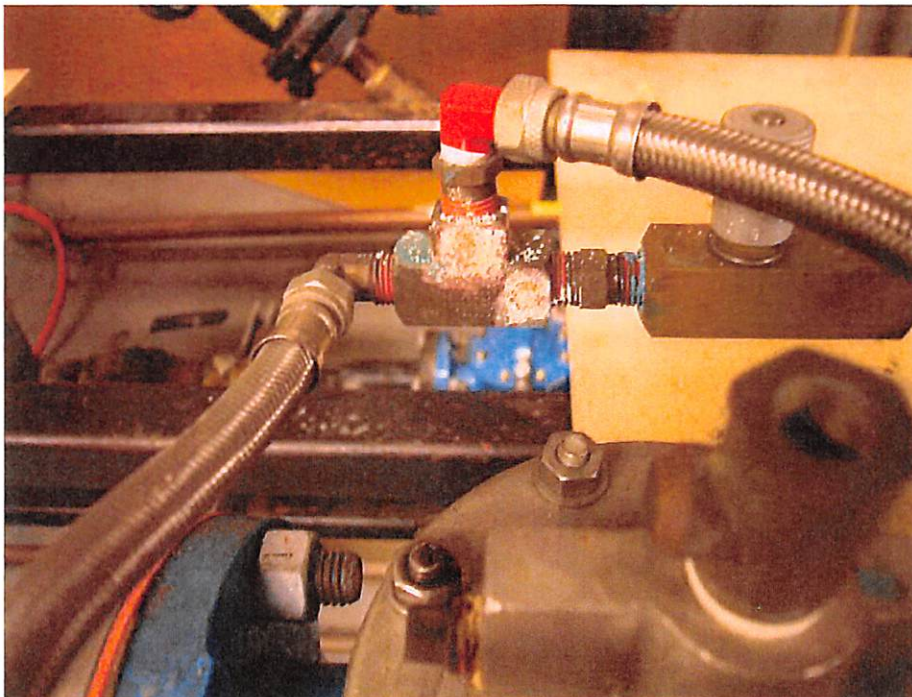
15. Carbon steel plastic lined nipple (lower southeast corner of manifold0 – replace with stainless steel (jpg52). Note: corrosion around Unistrut is a leak at the joint.



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

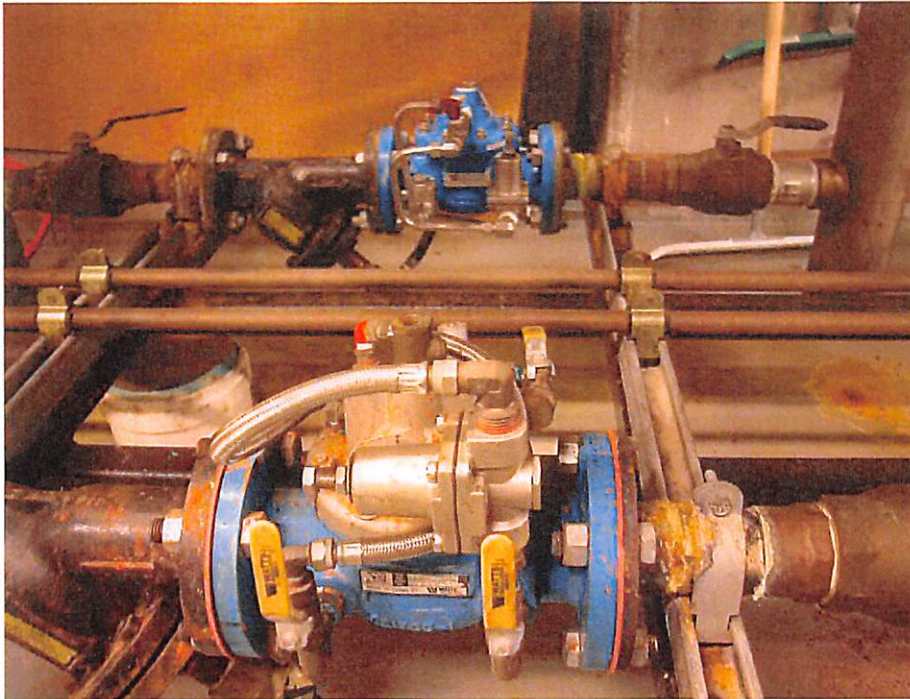


17. Carbon steel drain nipple on manifold – replace all in both buildings with stainless steel (jpg54).

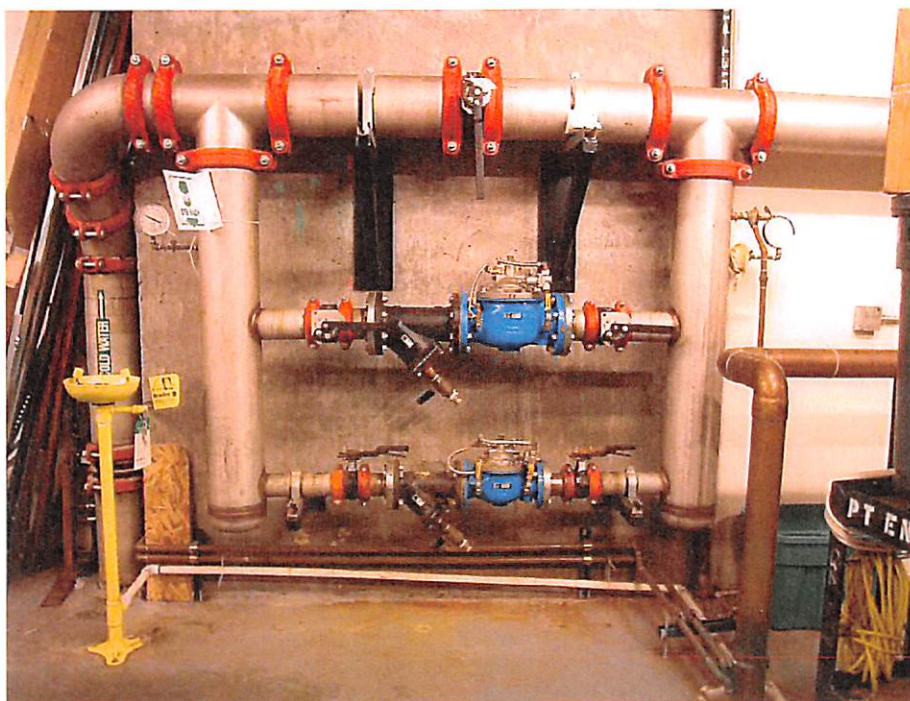


18. Yellow brass T-fitting exhibiting de-zincification corrosion through the wall – replace yellow brass fittings as they leak as part of normal maintenance (jpg55).

PANORAMA 2 Lower Mechanical Room

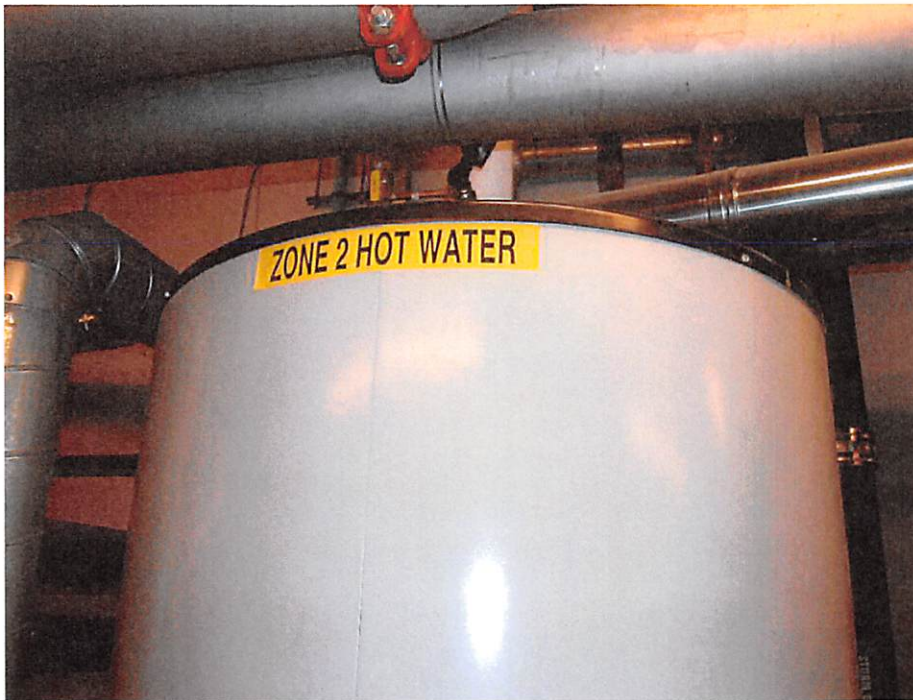


19. Lower pressure regulators; the far regulator is ductile iron top and bottom; the closer has a stainless steel top; visible residues at Unistrut are from connection leaks, not corrosion (jpg56).



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

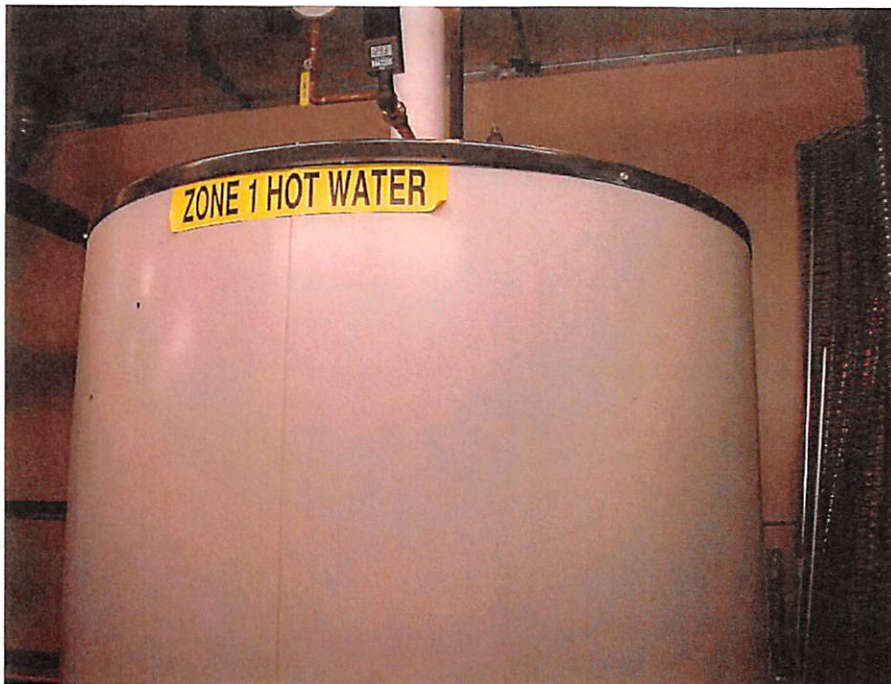
hot water tank (jpg44).



22. Piping

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

PANORAMA 2 Lower Mechanical Room



water tank (jpg46).

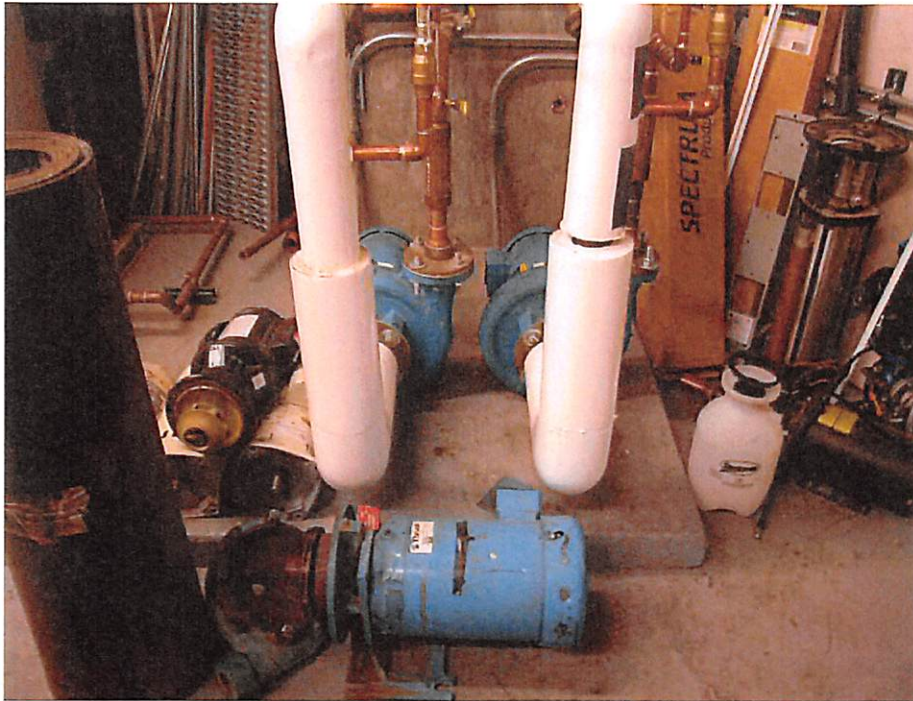
23. Zone 1 hot



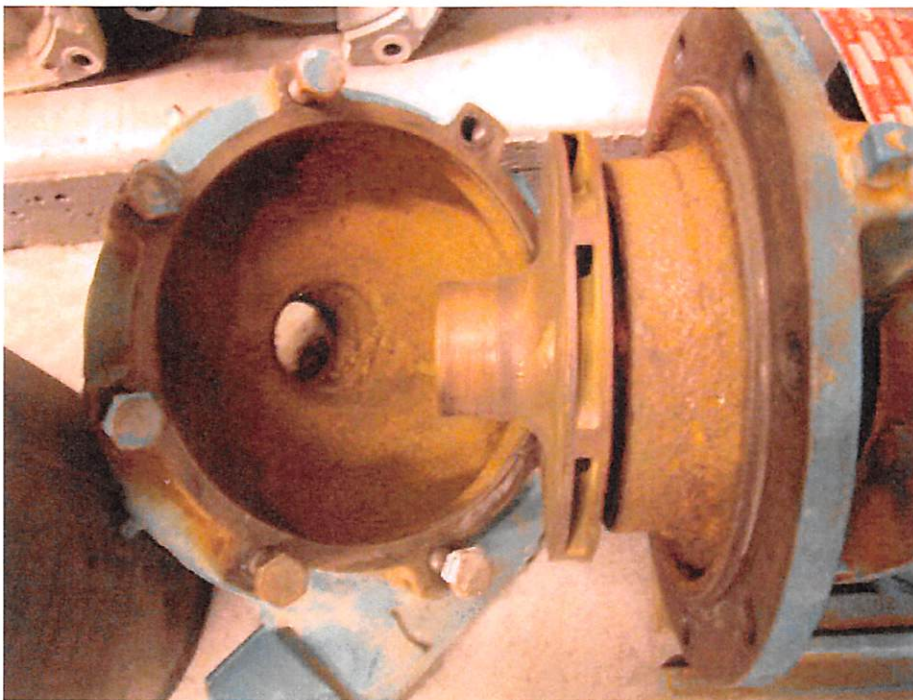
associated with Zone 1 hot water tank with steel butterfly valve and steel check valve (jpg47).

24. Piping

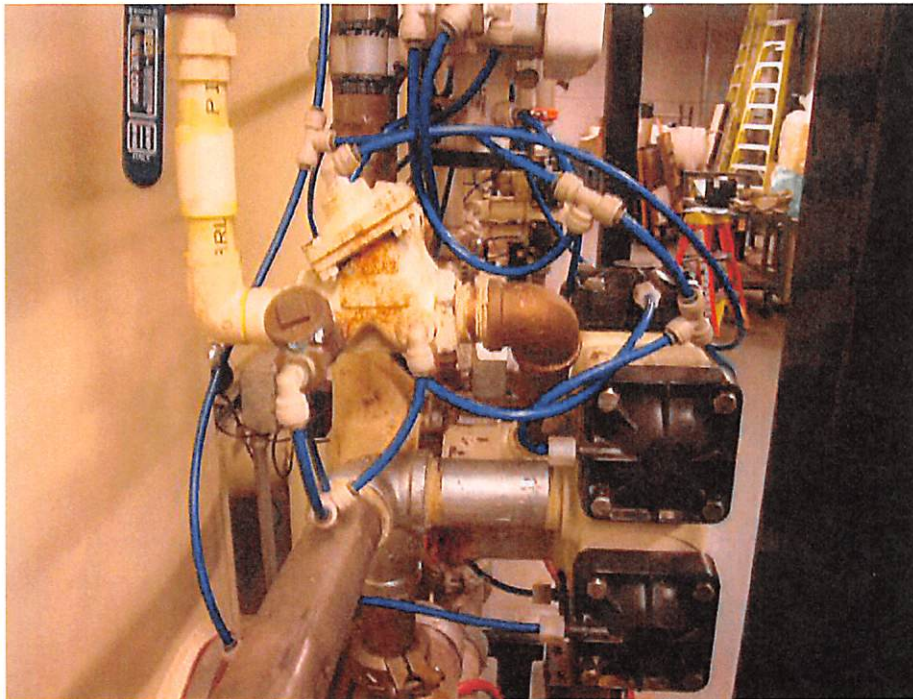
PANORAMA 2 Lower Mechanical Room



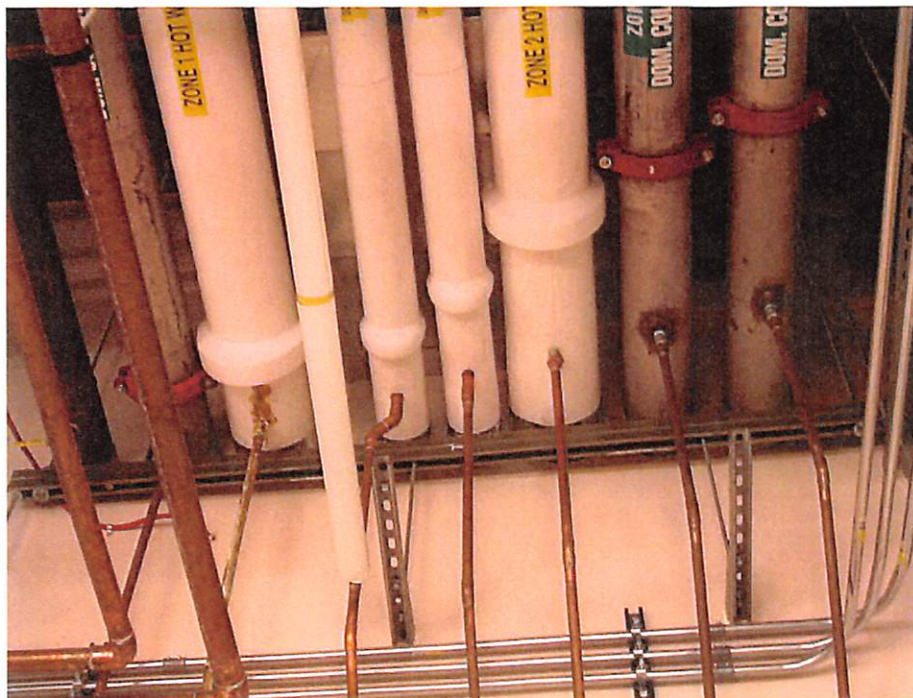
25. Hot water recirculation pumps with carbon steel housings (jpg48).



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

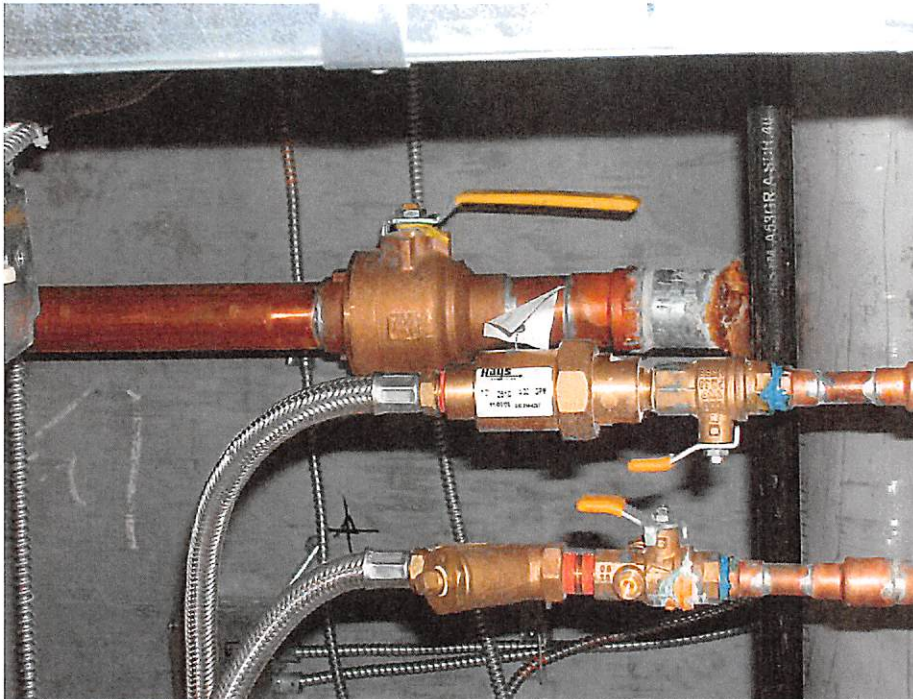


27. Ferrous (steel or iron) valve associated with Culligan water conditioning system (jpg 50).

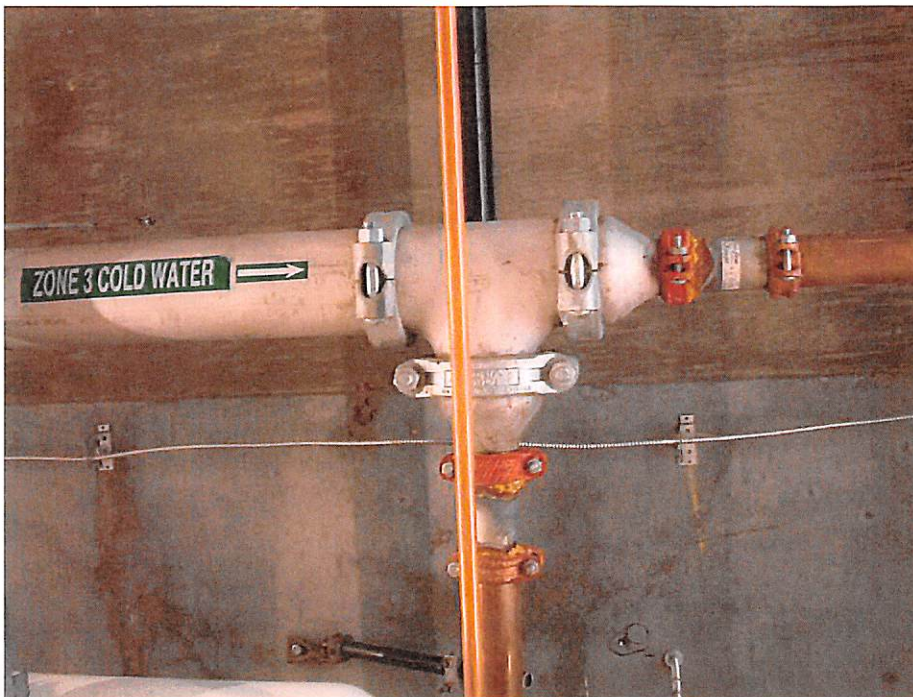


28. connections to outlet piping; replace carbon steel nipples with stainless steel (jpg57).

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).

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

METALLURGY GROUP

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FAILURE ANALYSIS • STRUCTURAL CONDITION ASSESSMENT

0099

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

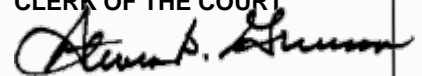


Gregory Fehr
Principal, Metallurgy
Licensed engineer (P.E.) in AL, OK
NACE Certified Cathodic Protection Specialist
NACE Certified Corrosion Technologist

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 "B"



1 FFCO

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 LAURENT HALLIER, an individual;
7 PANORAMA TOWERS I, LLC, a Nevada
8 limited liability company; PANORAMA
9 TOWERS I MEZZ, LLC, a Nevada limited
10 liability company; and M.J. DEAN
11 CONSTRUCTION, INC., a Nevada
12 corporation,

13 Plaintiffs,

14 Vs.

15 PANORAMA TOWERS
16 CONDOMINIUM UNIT OWNERS'
17 ASSOCIATION, a Nevada non-profit
18 corporation.

19 Defendant.

20
21 PANORAMA TOWERS
22 CONDOMINIUM UNIT OWNERS'
23 ASSOCIATION, a Nevada non-profit
24 corporation,

25 Counter-Claimant,

26 Vs.

27 LAURENT HALLIER, an individual;
28 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,

Counter-Defendants.

Case No. A-16-744146-D

Dept. No. XXII

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

1 PANORAMA TOWERS
2 CONDOMINIUM UNIT OWNERS'
3 ASSOCIATION, a Nevada non-profit
4 corporation,

5 Third-Party Plaintiff,

6 Vs.

7 SIERRA GLASS & MIRROR, INC.; F.
8 ROGERS CORPORATION; DEAN
9 ROOFING COMPANY; FORD
10 CONSTRUCTING, INC.; INSULPRO,
11 INC.; XTREME EXCAVATION;
12 SOUTHERN NEVADA PAVING, INC.;
13 FLIPPINS TRENCHING, INC.;
14 BOMBARD MECHANICAL, LLC; R.
15 RODGERS CORPORATION; FIVE
16 STAR PLUMBING & HEATING, LLC
17 dba SILVER STAR PLUMBING; and
18 ROES 1 through 1000, inclusive,

19 Third-Party Defendants.¹

20 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

21 These matters concerning:

- 22 1. Plaintiffs'/Counter-Defendants' Motion for Summary Judgment Pursuant to NRS
23 11.202(1) filed February 11, 2019; and
- 24 2. Defendant's/Counter-Claimant's Conditional Counter-Motion for Relief Pursuant to
25 NRS 40.695(2) filed March 1, 2019,
26 both came on for hearing on the 23rd day of April 2019 at the hour of 8:30 a.m. before Department
27 XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN
28 H. JOHNSON presiding; Plaintiffs/Counter-Defendants LAURENT HALLIER, PANORAMA
TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION,

¹ As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

1 INC. appeared by and through their attorneys, JEFFREY W. SAAB, ESQ. and DEVIN R.
2 GIFFORD, ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA; and
3 Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM
4 UNIT OWNERS' ASSOCIATION appeared by and through their attorneys, MICHAEL J. GAYAN,
5 ESQ. of the law firm, KEMP JONES & COULTHARD.² Having reviewed the papers and pleadings
6 on file herein, heard oral arguments of the lawyers and taken this matter under advisement, this
7 Court makes the following Findings of Fact and Conclusions of Law:
8

9 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

10 1. This case arises as a result of alleged constructional defects within both the common
11 areas and the 616 residential condominium units located within two tower structures of the
12 PANORAMA TOWERS located at 4525 and 4575 Dean Martin Drive in Las Vegas, Nevada. On
13 February 24, 2016, Defendant/Counter-Claimant PANORAMA TOWERS CONDOMINIUM UNIT
14 OWNERS' ASSOCIATION served its original NRS 40.645 Notice of Constructional Defects upon
15 Plaintiffs/Counter-Defendants (also identified herein as the "Contractors" or "Builders"), identifying
16 deficiencies within the residential tower windows, fire blocking, mechanical room piping and sewer.
17 Subsequently, after the parties engaged in the pre-litigation process with the NRS 40.680 mediation
18 held September 26, 2016 with no success, the Contractors filed their Complaint on September 28,
19 2016 against the Owners' Association, asserting the following claims that, for the most part, deal
20 with their belief the NRS 40.645 notice was deficient:
21

- 22
- 23 1. Declaratory Relief—Application of AB 125;
 - 24 2. Declaratory Relief—Claim Preclusion;
- 25

26 ²SCOTT A. WILLIAMS, ESQ. of the law firm, WILLIAMS & GUMBINER, also appeared telephonically on
27 behalf of PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION. Via Minute Order filed
28 January 13, 2017, this Court granted the Motion to Associate Counsel filed January 3, 2017 given non-opposition by
Plaintiffs/Counter-Defendants. However, no formal proposed Order granting the motion was ever submitted to the Court
for signature.

3. Failure to Comply with NRS 40.600, *et seq.*;
4. Suppression of Evidence/Spoliation;
5. Breach of Contract (Settlement Agreement in Prior Litigation);
6. Declaratory Relief—Duty to Defend; and
7. Declaratory Relief—Duty to Indemnify.

2. On March 1, 2017, PANORAMA TOWER CONDOMINIUM UNIT OWNERS' ASSOCIATION filed its Answer and Counter-Claim, alleging the following claims:

1. Breach of NRS 116.4113 and 116.4114 Express and Implied Warranties; as well as those of Habitability, Fitness, Quality and Workmanship;
2. Negligence and Negligence *Per Se*;
3. Products Liability (against the manufacturers);
4. Breach of (Sales) Contract;
5. Intentional/Negligent Disclosure; and
6. Duty of Good Faith and Fair Dealing; Violation of NRS 116.1113.

3. This Court previously dismissed the constructional defect claims within the mechanical room as being time-barred by virtue of the “catch-all” statute of limitations of four (4) years set forth in NRS 11.220.³ With respect to challenges to the sufficiency and validity of the NRS 40.645 notice, this Court stayed the matter to allow PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION to amend it with more specificity. This Court ultimately determined the amended NRS 40.645 notice served upon the Builders on April 15, 2018 was valid with respect to the windows' constructional defects only.⁴

...

³See Findings of Fact, Conclusions of Law and Order filed September 15, 2017.

⁴See Findings of Fact, Conclusions of Law and Order filed November 30, 2018.

1 4. The Builders or Contractors now move this Court for summary judgment upon the
2 basis the Association's claims are time-barred by the six-year statute of repose set forth in NRS
3 11.202(1), as amended by Assembly Bill (AB) 125 in 2015, in that its two residential towers were
4 substantially completed on January 16, 2008 (Tower I) and March 26, 2008 (Tower II), respectively,
5 and claims were not brought until February 24, 2016 when the NRS 40.645 Notice was sent; further,
6 the Association did not file its Counter-Claim until March 1, 2017.

7
8 5. PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION
9 opposes, arguing, first, the Builders do not provide this Court all facts necessary to decide the
10 motion which, therefore, requires its denial. Specifically, NRS 11.2055, the statute identifying the
11 date of substantial completion, defines such as being the latest of *three* events: (1) date the final
12 building inspection of the improvement is conducted; (2) date the notice of completion is issued for
13 the improvement; or (3) date the certificate of occupancy is issued. Here, the Association argues the
14 Builders provided only the dates the Certificates of Occupancy were issued for the two towers.⁵
15 Second, the NRS 40.645 notice was served within the year of "safe harbor" which tolled any
16 limiting statutes, and the primary action was filed within two days of NRS Chapter 40's mediation.
17 In the Owners' Association's view, its Counter-Claim filed March 1, 2017 was compulsory to the
18 initial Complaint filed by the Builders, meaning its claims relate back to September 28, 2016, and
19 thus, is timely. Further, the Association notes it learned of the potential window-related claims in
20 August 2013, less than three years before it served its notice, meaning their construction defect
21 action is not barred by the statute of limitations. The Association also counter-moves this Court for
22 relief under NRS 40.695(2) as, in its view, good cause exists for this Court to extend the tolling
23 period to avoid time-barring its constructional defect claims.
24
25

26
27 ⁵As noted *infra*, the Certificates of Occupancy also identify the date of the final building inspection as being
28 March 16, 2007 (Tower I) and July 16, 2007 (Tower II). That is, the Builders identified two of the three events, and not
just one.

CONCLUSIONS OF LAW

1
2 1. Summary judgment is appropriate and “shall be rendered forthwith” when the
3 pleadings and other evidence on file demonstrates no “genuine issue as to any material fact
4 [remains] and that the moving party is entitled to a judgment as a matter of law.” *See* NRCP 56(c);
5 Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026 (2005). The substantive law controls
6 which factual disputes are material and will preclude summary judgment; other factual disputes are
7 irrelevant. *Id.*, 121 Nev. at 731. A factual dispute is genuine when the evidence is such that a
8 rational trier of fact could return a verdict for the non-moving party. *Id.*

9
10 2. While the pleadings and other proof must be construed in a light most favorable to
11 the non-moving party, that party bears the burden “to do more than simply show that there is some
12 metaphysical doubt” as to the operative facts in order to avoid summary judgment being entered in
13 the moving party’s favor. Matsushita Electric Industrial Co. v. Zenith Radio, 475, 574, 586 (1986),
14 *cited by* Wood, 121 Nev. at 732. The non-moving party “must, by affidavit or otherwise, set forth
15 specific facts demonstrating the evidence of a genuine issue for trial or have summary judgment
16 entered against him.” Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992),
17 *cited by* Wood, 121 Nev. at 732. The non-moving party “is not entitled to build a case on the
18 gossamer threads of whimsy, speculation, and conjecture.” Bulbman, 108 Nev. at 110, 825 P.2d
19 591, *quoting* Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).
20
21

22 3. Four of Builders’ causes of action seek declaratory relief under NRS Chapter 30.
23 NRS 30.040(1) provides:

24 Any person interested under a deed, written contract or other writings constituting a contract,
25 or whose rights, status or other legal relations are affected by a statute, municipal ordinance,
26 contract or franchise, may have determined any question of construction or validly arising
27 under the instrument, statute, ordinance, contract or franchise and obtain a declaration of
28 rights, status or other legal relations thereunder.

...

1 Actions for declaratory relief are governed by the same liberal pleading standards applied in other
2 civil actions, but they must raise a present justiciable issue. Cox v. Glenbrook Co., 78 Nev. 254,
3 267-268, 371 P.2d 647, 766 (1962). Here, a present justiciable issue exists as PANORAMA
4 TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION served the Builders with a notice
5 of constructional defects pursuant to NRS 40.645 on February 24, 2016, and later demonstrated its
6 intention to purchase the claims through this litigation. As noted above, the Contractors propose the
7 remaining claim for constructional defects within the windows is time-barred by virtue of the six-
8 year statute of repose enacted retroactively by the 2015 Nevada Legislature through AB 125. As set
9 forth in their First Cause of Action, the Builders seek a declaration from this Court as to the rights,
10 responsibilities and obligations of the parties as they pertain to the association's claim. As the
11 parties have raised arguments concerning the application of both statutes of repose and limitation,
12 this Court begins its analysis with a review of them.
13

14
15 4. The statutes of repose and limitation are distinguishable and distinct from each other.
16 "Statutes of repose" bar causes of action after a certain period of time, regardless of whether
17 damage or an injury has been discovered. In contrast, 'statutes of limitation' foreclose suits after a
18 fixed period time following occurrence or discovery of an injury." Alenz v. Twin Lakes Village,
19 108 Nev. 1117, 1120, 843 P.2d 834, 836 (1993), *citing* Allstate Insurance Company v. Furgerson,
20 104 Nev. 772, 775 n.2, 766 P.2d 904, 906 n.2 (1988). Of the two, the statute of repose sets an
21 outside time limit, generally running from the date of substantial completion of the project and with
22 no regard to the date of injury, after which cause of action for personal injury or property damage
23 allegedly caused by the deficiencies in the improvements to real property may not be brought. G
24 and H Associates v. Ernest W. Hahn, Inc., 113 Nev. 265, 271, 934 P.2d 229, 233 (1977), *citing*
25 Lamb v. Wedgewood South Corp., 308 N.C. 419302 S.E.2d 868, 873 (1983). While there are
26

27 ...
28

1 instances where both the statutes of repose and limitations may result to time-bar a particular claim,
2 there also are situations where one statute obstructs the cause of action, but the other does not.

3 5. NRS Chapter 11 does not set forth a specific statute of limitations dealing with the
4 discovery of constructional defects located within a residence. However, the Nevada Supreme Court
5 has held these types of claims are subject to the “catch all” statute, NRS 11.220. *See Hartford*
6 *Insurance Group v. Statewide Appliances, Inc.*, 87 Nev. 195, 198, 484 P.2d 569, 571 (1971).⁶ This
7 statute specifically provides “[a]n action for relief, not hereinbefore provided for, must be
8 commenced within 4 years after the cause of action shall have accrued.”
9

10 6. The four-year limitations period identified in NRS 11.220 begins to run at the time
11 the plaintiff learns, or in the exercise of reasonable diligence should have learned of the harm to the
12 property caused by the constructional defect. *Tahoe Village Homeowners Association v. Douglas*
13 *County*, 106 Nev. 660, 662-664, 799 P.2d 556, 558 (1990), *citing Oak Grove Investment v. Bell &*
14 *Gossett Co.*, 99 Nev. 616621-623, 669 P.2d 1075, 1078-1079 (1983); *also see G and H Associates,*
15 *113 Nev. at 272, 934 P.2d at 233, citing Nevada State Bank v. Jamison Partnership*, 106 Nev. 792,
16 800, 801 P.2d 1377, 1383 (1990) (statutes of limitations are procedural bars to a plaintiff’s action;
17 the time limits do not commence and the cause of action does not accrue until the aggrieved party
18 knew or reasonably should have known of the facts giving rise to the damage or injury); *Beazer*
19 *Homes Nevada, Inc. v. District Court*, 120 Nev. 575, 587, 97 P.3d 1132, 1139 (2004) (“For
20 constructional defect cases, the statute of limitations does not begin to run until ‘the time the
21 plaintiff learns, or in the exercise of reasonable diligence should have learned, of the harm to the
22 property.’”).
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26 ⁶In *Hartford Insurance Group*, an action was brought for damages to a home caused by an explosion of a heater
27 made for use with natural as opposed to propane gas. The State’s high court held such matter was not an “action for
28 waste or trespass to real property” subject to a three-year statute of limitation nor was it an “action upon a contract...not
founded upon an instrument in writing” even though plaintiff sued under a theory of breach of express and implied
warranties. *See* NRS 11.190. This action fell into the “catch all” section, NRS 11.220, the statute of limitations of
which is four (4) years.

1 7. Prior to February 25, 2015, when AB 125 was enacted into law, the statutes of repose
2 were contained in NRS 11.203 through 11.205, and they barred actions for deficient construction
3 after a certain number of years from the date the construction was substantially completed. *See*
4 Alenz, 108 Nev. at 1120, 843 P.2d at 836. NRS 11.203(1) provided an action based on a known
5 deficiency may not be brought “more than 10 years after the substantial completion of such an
6 improvement.” NRS 11.204(1) set forth an action based on a latent deficiency may not be
7 commenced “more than 8 years after the substantial completion of such an improvement....” NRS
8 11.205(1) stated an action based upon a patent deficiency may not be commenced “more than 6
9 years after the substantial completion of such an improvement....” Further, and notwithstanding the
10 aforementioned, if the injury occurred in the sixth, eighth or tenth year after the substantial
11 completion of such an improvement, depending upon which statute of repose was applied, an action
12 for damages for injury to property or person could be commenced within two (2) years after the date
13 of injury. *See* NRS 11.203(2), 11.204(2) *and* 11.205(2) as effective prior to February 24, 2015.

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16 8. In addition, prior to the enactment of AB 125, NRS 11.202 identified an exception to
17 the application of the statute of repose. This exception was the action could be commenced against
18 the owner, occupier or any person performing or furnishing the design, planning, supervision or
19 observation of construction, or the construction of an improvement to real property *at any time* after
20 the substantial completion where the deficiency was the result of willful misconduct or fraudulent
21 misconduct. For the NRS 11.202 exception to apply, it was the plaintiff, not the defendant, who had
22 the burden to demonstrate defendant’s behavior was based upon willful misconduct. *See Acosta v.*
23 Glenfed Development Corp., 128 Cal.App.4th 1278, 1292, 28 Cal.Rptr.3d 92, 102 (2005).

24
25 9. AB 125 made sweeping revisions to statutes addressing residential construction
26 defect claims. One of those changes included revising the statutes of repose from the previous six
27 (6), eight (8) and ten (10) years to no “more than 6 years after the substantial completion of such an
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1 improvement..." See NRS 11.202 (as revised in 2015). As set forth in Section 17 of AB 125, NRS

2 11.202 was revised to state in pertinent part as follows:

3 1. No action may be commenced against the owner, occupier or any person performing or
4 furnishing the design, planning, supervision or observation of construction, or the
5 construction of an improvement to real property *more than 6 years* after the substantial
6 completion of such an improvement for the recovery of damages for:

7 (a) Any deficiency in the design, planning, supervision or observation of
8 construction or the construction of such an improvement;

9 (b) Injury to real or personal property caused by any such deficiency; or

10 (c) Injury to or the wrongful death of a person caused by any such deficiency.

11 (Emphasis added)

12 In addition, the enactment of AB 125 resulted in a deletion of the exception to the application of the
13 statute of repose based upon the developer's willful misconduct or fraudulent concealment.

14 **10.** Section 21(5) of AB 125 provides the period of limitations on actions set forth NRS
15 11.202 is to be applied *retroactively* to actions in which the substantial completion of the
16 improvement to the real property occurred before the effective date of the act. However, Section
17 21(6) also incorporated a "safe harbor" or grace period, meaning actions that accrued before the
18 effective date of the act are not limited if they are commenced within one (1) year of AB 125's
19 enactment, or no later than February 24, 2016.

20 **11.** NRS 11.2055 identifies the date the statute of repose begins to run in constructional
21 defect cases, to wit: the date of substantial completion of improvement to real property. NRS
22 11.2055(1) provides:

23 1. Except as otherwise provided in subsection 2, for the purposes of this section and
24 NRS 11.202, the date of substantial completion of an improvement to real property shall be
25 deemed to be the date on which:

26 (a) The final building inspection of the improvement is conducted;

27 (b) A notice of completion is issued for the improvement; or

28 (c) A certificate of occupancy is issued for the improvement, whichever
occurs later.

...

1 NRS 11.2055(2) states “[i]f none of the events described in subsection 1 occurs, the date of
2 substantial completion of an improvement to real property must be determined by the rules of the
3 common law.”

4 **12.** While the statute of repose’s time period was shortened, NRS 40.600 to 40.695’s
5 tolling provisions were not retroactively changed. That is, statutes of limitation or repose applicable
6 to a claim based upon a constructional defect governed by NRS 40.600 to 40.695 *still* toll deficiency
7 causes of action from the time the NRS 40.645 notice is given until the earlier of one (1) year after
8 notice of the claim or thirty (30) days after the NRS 40.680 mediation is concluded or waived in
9 writing. *See* NRS 40.695(1). Further, statutes of limitation and repose may be tolled under NRS
10 40.695(2) for a period longer than one (1) year after notice of the claim is given but only if, in an
11 action for a constructional defect brought by a claimant after the applicable statute of limitation or
12 repose has expired, the claimant demonstrates to the satisfaction of the court good cause exists to toll
13 the statutes of limitation and repose for a longer period.
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15 **13.** In this case, the Owners’ Association argues the Builders have not provided sufficient
16 information to determine when the statute of repose started to accrue, and without it, this Court
17 cannot decide the motion for summary judgment. Specifically, PANORAMA TOWERS
18 CONDOMINIUM UNIT OWNERS’ ASSOCIATION proposes the Builders have identified only
19 one date addressed within NRS 11.2055(1), and to establish the date of accrual, this Court needs all
20 three as the defining date is the one which occurs last. This Court disagrees with the Association’s
21 assessment the date of substantial completion has not been established for at least a couple of
22 reasons. *First*, the Builders did not provide just one date; they identified two events addressed in
23 NRS 11.2055, i.e. the date of the final building inspection and when the Certificate of Occupancy
24 was issued as identified in Exhibits C and D of their motion. Those dates are March 16, 2007 and
25 January 16, 2008, respectively, for Tower I, and July 16, 2007 and March 26, 2008, respectively, for
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1 Tower II. *Second*, this Court does not consider the Builders' inability or failure to provide the date
2 of the third event, i.e. when the notice of completion was issued, as fatal to the motion, especially
3 given the common-law "catch-all" provision expressed in NRS 11.2055(2) that applies if none of the
4 events described in NRS 11.2055(1) occurs. This Court concludes the dates of substantial
5 completion are January 16, 2008 (Tower I) and March 16, 2008 (Tower II), respectively, as these
6 dates are the latest occurrences. Given this Court's decision, the dates of substantial completion
7 obviously accrued before the enactment of AB 125. Applying the aforementioned analysis to the
8 facts here, this Court concludes the statute of repose applicable to the Association's constructional
9 defects claim is six (6) years, but, as it accrued prior to the effective date of AB 125 or February 24,
10 2015, the action is not limited if it was commenced within one (1) year after, or by February 24,
11 2016.
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13 **14.** In this case, the Association served its NRS 40.645 constructional defect notice on
14 February 24, 2016, or the date the one-year "safe harbor" was to expire. The service of the NRS
15 40.645 notice operated to toll the applicable statute of repose until the earlier of one (1) year after
16 notice of the claim or thirty (30) days after the NRS 40.680 mediation is concluded or waived in
17 writing. *See* NRS 40.695(1). The NRS 40.680 mediation took place and was concluded on
18 September 26, 2016. Applying the earlier of the two expiration dates set forth in NRS 40.695, the
19 statute of repose in this case was tolled thirty (30) days after the mediation or until October 26, 2016,
20 which is earlier than the one (1) year after the notice was served. PANORAMA TOWERS
21 CONDOMINIUM UNIT OWNERS' ASSOCIATION had up to and including October 26, 2016 to
22 institute litigation or its claims would be time-barred.
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24 **15.** PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION filed
25 its Counter-Claim against the Builders on March 1, 2017, over four (4) months after October 26,
26 2016. As noted above, in the Builders' view, the constructional defect claims relating to the
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1 windows, therefore, are time-barred. The Association disagrees, arguing its Counter-Claim was
2 compulsory, and it relates back to the date of the Complaint's filing, September 28, 2016.

3 Alternatively, the Association counter-moves this Court for relief, and to find good cause exists to
4 toll the statute of repose for a longer period given its diligence in prosecuting the constructional
5 defect claims against the Builders. The Court analyzes both of the Association's points below.

6 **16.** NRCP 13 defines both compulsory and permissive counter-claims. A counter-claim
7 is compulsory if it arises out of the transaction or occurrence that is the subject matter of the
8 opposing party's claim and does not require for its adjudication the presence of third parties of
9 whom the court cannot acquire jurisdiction. *See* NRCP 13(a). The purpose of NRCP 13(a) is to
10 make an "actor" of the defendant so circuity of action is discouraged and the speedy settlement of all
11 controversies between the parties can be accomplished in one action. *See Great W. Land & Cattle*
12 *Corp. v. District Court*, 86 Nev. 282, 285, 467 P.2d 1019, 1021 (1970). In this regard, the
13 compulsory counter-claimant is forced to plead his claim or lose it. *Id.* A counter-claim is
14 permissive if it does not arise out of the transaction or occurrence that is the subject matter of the
15 opposing party's claim. *See* NRCP 13(b).

16 **17.** Here, PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
17 ASSOCIATION proposes its counter-claims are compulsory as they arise out of the same
18 transaction or occurrence that is the subject matter of the Builders' claims. This Court disagrees.
19 The Builders' claims are for breach of the prior settlement agreement and declaratory relief
20 regarding the sufficiency of the NRS 40.645 notice and application of AB 125. The Association's
21 counter-claims of negligence, intentional/negligent disclosure, breach of sales contract, products
22 liability, breach of express and implied warranties under and violations of NRS Chapter 116, and
23 breach of duty of good faith and fair dealing are for monetary damages as a result of constructional
24 defects to its windows in the two towers. If this Court ruled against the Builders on their Complaint,
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1 the Association would not have lost their claims if they had not pled them as counter-claims in the
2 instant lawsuit. In this Court's view, the Association had two options: it could make a counter-claim
3 which is permissive or assert its constructional defect claims in a separate Complaint. Here, it
4 elected to make the permissive counter-claim. The counter-claim does not relate back to the filing
5 of the Complaint, September 28, 2016.

6 18. However, even if this Court were to decide the counter-claim was compulsory,
7 meaning the Association was forced to plead its claims in the instant case or lose them, the pleading
8 still would not relate back to the date of the Complaint' filing. As noted in Nevada State Bank v.
9 Jamison Family Partnership, 106 Nev. 792, 798, 801 P.2d 1377, 1381 (1990), statutes of limitation
10 and repose were enacted to "'promote repose by giving security and stability to human
11 affairs....They stimulate to activity and punish negligence.'" Citing Wood v. Carpenter, 101 U.S.
12 135, 139, 25 L.Ed.2d 807 (1879). Indeed, the key purpose of a repose statute is to eliminate
13 uncertainties under the related statute of limitations or repose and to create a final deadline for filing
14 suit that is not subject to any exceptions except perhaps those clearly specified by the state's
15 legislature. Without a statute of repose, professionals, contractors and other actors would face
16 never-ending uncertainty as to liability for their work. As stated by the Supreme Court in Texas in
17 Methodist Healthcare System of San Antonio, Ltd., LLP v. Rankin, 53 Tex.Sup.Ct.J. 455, 307
18 S.W.3d 283, 287 (2010), "'while statutes of limitations operate procedurally to bar the enforcement
19 of a right, a statute of repose takes away the right altogether, creating a substantive right to be free of
20 liability after a specified time.'" Quoting Galbraith Engineering Consultants, Inc. v. Pochucha, 290
21 S.W.3d 863, 866 (Tex. 2009). For the reasons articulated above, the Nevada Supreme Court held
22 the lower court did not err by finding a plaintiff, by instituting an action before the expiration of a
23 statute of limitation, does not toll the running of that statute against compulsory counter-claims filed
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