

PaulHastings

Paul, Hastings, Janofsky & Walker LLP

1299 Pennsylvania Avenue, NW, 10th Floor, Washington, DC 20004-2400

telephone 202-508-9500 / facsimile 202-508-9700 / internet www.paulhastings.com

Atlanta / Costa Mesa / London / Los Angeles / New York / San Francisco / Stamford / Tokyo

(202) 508-9550

[charlespatrizia@paulhastings.com](mailto:charlespatrizia@paulhastings.com)

July 16, 2002

21914.79517

**VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)**

Karen D. Cyr, Esq.  
General Counsel  
United States Nuclear Regulatory Commission  
Room 17D23  
One White Flint North Building  
11555 Rockville Pike  
Rockville, MD 20853

Re: Demand For Indemnity and to Pay Costs of Investigation and Remediation Re: Former  
Nuclear Facility in Hicksville, New York

Dear Ms. Cyr:

This law firm represents GTE Operations Support, Inc. ("GTEOSI") which, acting on its own behalf and on behalf of its past and present affiliates, has received notice from the New York State Department of Environmental Conservation ("NYDEC") about the alleged presence of contamination at a facility in Hicksville, New York ("the Hicksville facility") at which uranium fuel was manufactured and other nuclear material was processed by Sylvania Electric Products, Inc. ("Sylvania Electric") and Sylvania-Corning Nuclear Corporation ("Sylcor") from 1952 until 1966. GTEOSI is conducting an investigation, and will conduct any necessary remediation, under a voluntary agreement with the NYDEC. GTEOSI presently is awaiting the NYDEC's approval to conduct further investigation and to start soil remediation at the Hicksville facility. GTEOSI and certain affiliates also have been served in certain litigation, Stevens, et al. v. Verizon Communications Inc., Civ. Action No. 02 CV 2543, and Schwinger, et al. v. Verizon Communications Inc., Civ. Action No. 02 CV 2017, each pending in the United States District Court for the Eastern District of New York. By this letter, GTEOSI hereby provides notice of a demand for indemnity and to pay the costs of investigation and remediation. GTEOSI believes that the United States and the United States Nuclear Regulatory Commission ("NRC") are required to indemnify and are liable for the costs of remediation and investigation under certain licenses and contracts and the applicable law.

Karen D. Cyr, Esq.  
General Counsel  
United States Nuclear Regulatory Commission  
July 16, 2002  
Page 2

The uranium fuel was manufactured pursuant to contracts with the United States Atomic Energy Commission ("AEC") or other government entities or under licenses issued by the AEC. One of those contracts was AT(30-1)-1293, and one of those licenses was Special Nuclear Materials License SNM-82. Records currently available indicate that the relevant contracts were cost plus contracts, that the uranium was government furnished material, that most if not all of the equipment at the Hicksville facility was government owned or acquired under the cost plus contract at government expense, and that the government paid for most if not all of the improvements made to the facility and used for the performance of the contracts. The uranium fuel manufactured under AEC contract was supplied to the AEC's Savannah River facility as part of the atomic weapons program. The AEC exercised regulatory control over the Hicksville facility, and, pursuant to the terms of the licenses and contracts, had approval authority related to the process and equipment used and standards to be met in operations, including, but not limited to, environmental standards. GTEOSI believes the AEC conducted inspections to ensure that the manufacturing processes, including the handling and disposal of wastes, met AEC standards, and that the limits of permissible exposure to radioactive and other materials were not exceeded.

When the Hicksville facility ceased operations in 1966, it was decommissioned after the AEC Division of Materials Licensing had set the acceptable levels of residual radioactivity and determined that those levels had been achieved during the closure of the facility. The AEC paid for the decommissioning and arranged for the disposition of the government furnished and owned material. The facility was released for unrestricted use by the New York Department of Labor based, in part, on the findings of the AEC. No nuclear activities have taken place on the Hicksville facility since its decommissioning in 1966.

In 1996, as part of a national review of facilities that had been a part of the nuclear weapons program, the NRC discovered levels of radioactivity at the Hicksville facility that were slightly above expected background levels. The NRC reported its findings to NYDEC, which assumed primary oversight over the investigation and remediation. Shortly thereafter, GTEOSI entered into a Voluntary Investigation Agreement with the NYDEC. In cooperation with the NYDEC and the New York State Department of Health, GTEOSI conducted an extensive investigation that identified localized areas with slightly elevated levels of uranium, thorium, tetrachloroethene, trichloroethene and nickel. In addition, the investigation determined that residual radioactive materials have had a limited impact on the groundwater beneath the facility. The NYDEC has determined, however, that the facility does not present an immediate health hazard to workers at or neighbors of the facility.

Karen D. Cyr, Esq.  
General Counsel  
United States Nuclear Regulatory Commission  
July 16, 2002  
Page 3

In light of the information gathered in the investigation to date, GTEOSI has proposed to the NYDEC a soil remediation plan under which GTEOSI would excavate and remove soils exhibiting higher than naturally occurring levels of radioactive materials, and concurrently soils affected by the solvents. GTEOSI also has proposed additional soil and groundwater investigations to confirm the extent and amount of any contamination. The soil remediation plan and additional investigations are awaiting NYDEC approval. While no groundwater remediation plans have been prepared at this time, the additional water testing and/or conditions found to exist after the source material is removed may require GTEOSI to undertake measures to specifically address groundwater contamination.

Separately, as you know from an earlier letter relating to this site, dated June 14, 2002, there also is pending litigation asserting that the contamination and operations have affected third persons.

By this letter, GTEOSI provides notice to the United States and the NRC of the above-described investigation and remediation, and the pending third party claims. GTEOSI demands that the United States and the NRC pay for and/or indemnify GTEOSI for the costs of that investigation and remediation, and indemnify for any third party claims.

GTEOSI makes this demand on the grounds that the costs of investigation and remediation are recoverable by virtue of the licenses and contracts between the NRC's predecessor, the AEC, and Sylvania Electric and/or Sylcor, and, on information and belief, that the relevant licenses and contracts included indemnification clauses for these costs and third party claims. Moreover, to the extent the residual contamination arises from government furnished material whose clean-up at decommissioning was done at the direction of the AEC and to the levels of residual radioactivity dictated and found to be satisfied by the AEC, its ultimate disposition remains the obligation of the United States and the NRC. To the extent there are general indemnity clauses or nuclear hazard indemnity clauses in the subject licenses and contracts, those clauses also form the basis of this demand. Inasmuch as the uranium fuel manufacturing for the AEC was part of the national weapons program, we believe that the licenses and contracts included indemnity pursuant to Public Law 85-804 or predecessor authority, or that such authority is otherwise applicable. Moreover, because the AEC controlled the process, set all standards and provided the equipment for the process, under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the AEC was the "operator" of the facility and the "arranger" of the disposal of waste from the facility, and on that basis is obligated to pay for the present investigation and remediation. GTEOSI expressly reserves all rights in relation to the subject licenses and contracts, including for indemnity or contribution, equitable adjustment, or other rights, and all rights that arise under law, whether

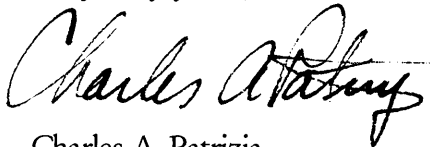
Karen D. Cyr, Esq.  
General Counsel  
United States Nuclear Regulatory Commission  
July 16, 2002  
Page 4

statutory, equitable or other, for indemnity or contribution. GTEOSI reserves the right to supplement this demand and to make such other or further claims as appropriate, as additional information becomes available.

Paul, Hastings, Janofsky & Walker LLP and Kirkland & Ellis are the counsel retained to represent GTEOSI in this matter. GTEOSI requests that the NRC authorize the continued retention of the above law firms to represent GTEOSI in this matter. Please contact me at the above number, Ned Isokawa of Paul Hastings (415-856-7003), or Alex Dimitrief (212-446-4951) or Douglas M. Poland (312-861-2377) of Kirkland & Ellis with respect to any questions the government has regarding GTEOSI's demand.

As you know from an earlier June 14, 2002 letter to you, the Hicksville facility is the subject of two suits pending in federal court in New York. At the moment, GTEOSI intends to move forward with the soil remediation and further investigation once it receives NYDEC approval. Therefore, GTEOSI would appreciate your prompt attention to this matter and confirmation of the NRC's acceptance of GTEOSI's demand.

Very truly yours,



Charles A. Patrizia  
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

CAP:jacj