

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

FILED  
U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION  
08 DEC -3 AM 11:13  
SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

MARK McMANAWAY; DAVID )  
RANCOURT; BRENT LASHER; JODY )  
AISTROP; WILLIAM EARL BICKELL; )  
MATTHEW DALE BOARD; LARRY )  
BUNNER; WILLIAM DeLASHMUTT; )  
JEFFREY FROMME; JEFFERY HENKE; )  
ANTHONY HUFF; BEN McINTYRE; )  
JEFFREY ALAN VARNER; TOMMY J. )  
EBERT, JR; LUCAS RAY WHISTLE; and )  
MICAH PARTLOW, )

v. )

KBR, INC.; KELLOGG, BROWN & )  
ROOT SERVICES INC.; )  
KBR TECHNICAL SERVICES, INC.; )  
OVERSEAS ADMINISTRATIVE )  
SERVICES, LTD.; and )  
SERVICE EMPLOYEES )  
INTERNATIONAL, INC. )

3:08-cv-0186 RLY-WGH

Cause No. \_\_\_\_\_

JURY DEMANDED

PLAINTIFFS' ORIGINAL COMPLAINT & JURY DEMAND

Come now the Plaintiffs, by counsel, and for their cause of action against the  
Defendants, allege and state as follows:

Plaintiffs MARK McMANAWAY; DAVID RANCOURT; BRENT LASHER;  
JODYAISTROP; WILLIAM EARL BICKELL; MATTHEW DALE BOARD; LARRY  
BUNNER; WILLIAM DeLASHMUTT; JEFFREY FROMME; JEFFERY HENKE;  
ANTHONY HUFF; BEN McINTYRE; JEFFREY ALAN VARNER; TOMMY J. EBERT, JR.;  
and LUCAS RAY WHISTLE (together, "Tell City Guardsmen") file this Original

Complaint and Jury Demand against Defendants KBR, INC.; KELLOGG, BROWN & ROOT SERVICES INC.; KBR TECHNICAL SERVICES, INC.; OVERSEAS ADMINISTRATIVE SERVICES, LTD.; and SERVICE EMPLOYEES INTERNATIONAL, INC. (together, "KBR"), and would respectfully show the following:

### FACTUAL BACKGROUND TO CASE

1.1 KBR, a private company, and its operating subsidiaries (including Cayman Island subsidiaries set up by KBR for various purposes described further below) received billions of dollars of no-bid contracts for work in Iraq in 2003. This suit arises from one of the projects KBR was charged with safely completing, a project involving the restoration of the Qarmat Ali water plant in southern Iraq so the facility could resume pumping water down into the Iraqi oil wells for more consistent oil flow. After major combat operations ceased in southern Iraq, KBR, a self-proclaimed expert in overseas infrastructure projects, was responsible at Qarmat Ali for proper site survey before and as work progressed. For allegedly timely completing the Qarmat Ali project, KBR received not only base contract payments but also retrospective "award" payments after Qarmat Ali was back on line.

1.2 Instead of doing what KBR promised and was paid to do for the Qarmat Ali project, KBR managers based in Kuwait City; Houston, Texas; Alexandria, Virginia; and elsewhere disregarded and downplayed the extreme danger of wholesale site contamination by sodium dichromate, a toxic chemical used at the site as an anti-corrosive and containing nearly pure hexavalent chromium. KBR managers knew

about both the site contamination and the extreme danger of hexavalent chromium<sup>1</sup>. What these knowing acts and omissions meant to the Tell City Guardsmen providing security for the actual work at Qarmat Ali, along with the British troops and the American civilians actually carrying on the work at Qarmat Ali, was months and months of unprotected, unknowing, direct exposure to one of the most potent carcinogens and mutagenic substances known to man, hexavalent chromium. When the Tell City Guardsmen and American civilians actually working at Qarmat Ali began experiencing the most characteristic symptom of acute hexavalent chromium poisoning, nasal excoriation (bleeding from the nose) known to toxicologists as "chrome nose", KBR managers told men onsite it was simply an effect of the "dry desert air" and they must be "allergic to sand". The Tell City Guardsmen were repeatedly told that there was no danger on site, even after KBR managers knew that blood testing of American civilians exposed onsite confirmed elevated chromium levels. What was not revealed until Congressional Hearings in June 2008 was the extent of knowledge of KBR managers about the danger on-site and the ongoing concealment of the exposures to the Tell City Guardsmen and others. See, Senate Democratic Policy Committee Hearing, "The Exposure at Qarmat Ali: Contractor Misconduct and the Safety of U.S. Troops in Iraq", June 20, 2008, at <http://dpc.senate.gov/hearings/hearing44/> ("The United States Senate Hearing"). As outlined further below, KBR is apparently still withholding from

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<sup>1</sup> According to Dr. Max Costa, a recognized expert on the human effects of hexavalent chromium and Chairman of the NYU Medical School Department of Environmental Medicine, exposure to 30-40 micrograms of hexavalent chromium per cubic meter, about one grain of table salt spread out over an entire cubic meter, has been demonstrated to show more than 50 (fifty) percent increase in cancers in exposed humans.

the United States Army the full extent of KBR managers' knowledge of the dangers to the soldiers and others onsite, dangers directly impacting the current and future health evaluations of the soldiers exposed at Qarmat Ali.

1.3 Several of the Indiana National Guardsmen have already manifested respiratory system tumors characteristically associated with hexavalent chromium exposure, and many of the Tell City Guardsmen continue to experience chemical sensitivities and rashes consistent with the impacts of hexavalent chromium poisoning. As has become clear only recently, the Tell City Guardsmen and other exposed persons now require ongoing, expensive follow-up health care for the health impacts of these exposures, as well as compensation for the reasonably anticipated manifestations over time, including the cancers, potential impact on their offspring, and heightened reaction to chromium salts in the environment.

1.4 The Tell City Guardsmen never shirked their responsibilities to their families, the State of Indiana, or this Nation. A number joined up in a tradition of military service dating back to the Revolutionary War. The Tell City Guardsmen have consistently gone above and beyond the call of duty for their fellow citizens, year after year, many for decades, responding to natural disasters; serving after 9-11 to protect the home front; and proudly putting themselves on the line in Iraq. The Tell City Guardsmen and their fellow soldiers accepted the hazards from enemy action while doing their part to assist the United States in restoring freedom to Iraq, but could not even imagine that KBR's managers would act in a manner that directly and continuously exposed them to serious health impacts for the rest of their lives. They have filed this legal action because they

believe that KBR, having profited handsomely, should be held accountable for these costs it has imposed on the Tell City Guardsmen, and the burdens should not just be dumped by KBR on the Tell City Guardsmen, their families, or the United States taxpayer.

### PARTIES

2.1 The Tell City Guardsmen, although from throughout Indiana, primarily deployed to Iraq with "Charlie Company" of the Indiana National Guard, based in Tell City. In their civilian roles as well they truly constitute the backbone of our Nation, working in our police departments, schools, mines, and factories. Mark McManaway, also known as "Sergeant Mac", is from Cannelton and supports his family in his civilian life as a trucker. David Rancourt is from South Bend and works in civilian life as a security guard at the University of Notre Dame. Ben McIntyre protects his community as a police officer in his civilian life and lives in Bourbon, Indiana. Brent Lasher is from Fulda and works in civilian life in a local factory. Jody Aistrop is from Elkhart and works now in plant maintenance. William Earl Bickell lives in Tell City, and William DeLashmut is from Grandview. Matthew Dale Board is from Leopold, and he works as an underground miner. Larry Bunner, who works in the school system in his civilian life, is also from Cannelton. Jeffrey Fromme, of Ferdinand, Indiana, supports his family as a maintenance worker. Jeffery Henke is from the town of Jasper, and he works in civilian life as a steel worker. Anthony Huff lives with his family in Tell City, and he works in civilian life as a line worker. Jeffrey Alan Varner lives in Cannelton and supports his family as a construction worker. Tommy J. Ebert lives in Saint Meinrad

and works in Quality Control, and Lucas Ray Whistle is from Fulda and works as a trucker. Micah Partlow is from Goshen and is attending college.

2.2 Defendant, KBR, INC. is a foreign company with its principal place of business in the State of Texas and was created and functions solely for the accumulation of monetary profit. This Defendant may be served with process by service upon its registered agent, C T CORPORATION SYSTEM, 350 N. ST. PAUL STREET, DALLAS, TEXAS 75201 or by service upon its President, William P. Utt, 601 Jefferson, Suite 3400, Houston, Texas 77002.

2.3 KELLOGG, BROWN & ROOT SERVICES INC., is a foreign company with its principal place of business in the State of Texas that was created and functions solely for the accumulation of monetary profit. This Defendant may be served with process by service upon its registered agent, C T CORPORATION SYSTEM, 350 N. ST. PAUL STREET, DALLAS, TEXAS 75201 or by service upon its President, Andrew R. Lane, 1401 McKinney Street, Houston, Texas 77010.

2.4 Defendant, KBR TECHNICAL SERVICES, INC., is a foreign company with its principal place of business in the State of Texas that was created and functions solely for the accumulation of monetary profit. This Defendant may be served with process by service upon its registered agent, C T CORPORATION SYSTEM, 350 N. ST. PAUL STREET, DALLAS, TEXAS 75201 or by service upon its President, Andrew R. Lane, 1401 McKinney Street, Houston, Texas 77010.

2.5 The following two entities were incorporated by KBR managers in the Cayman Islands for purposes exposed in Senate Hearing in 2008, as outlined by Senator Byron L. Dorgan:

It was created for one purpose only. That purpose was to hire American workers, but pay them through a post office box in the Cayman Islands so that the company could claim to the United States government that these workers were not really American workers subject to U.S. taxes. So they didn't have to pay any payroll taxes on their American workers that they hired and sent to Iraq if they ran their payroll through Post Office Box 847 in the Cayman Islands.

The United States Senate Hearing, June 20, 2008.

2.6 Defendant OVERSEAS ADMINISTRATIVE SERVICES, LTD. was incorporated by KBR's managers in the Cayman Islands, but manages its operations from KBR's offices at 4100 Clinton Avenue, Houston, Texas 77020. This Defendant may be served with process by service upon its agent KBR TECHNICAL SERVICES, INC by service upon C T CORPORATION SYSTEM, 350 N. ST. PAUL STREET, DALLAS, TEXAS 75201 or by service upon its President, William P. Utt, 601 Jefferson, Suite 3400, Houston, Texas 77002.

2.7 Defendant SERVICE EMPLOYEES INTERNATIONAL INC. was incorporated by KBR's managers in the Cayman Islands, but manages its operations from KBR's offices at 4100 Clinton Avenue, Houston, Texas 77020. This Defendant may be served with process by service upon its agent KBR TECHNICAL SERVICES, INC by service upon C T CORPORATION SYSTEM, 350 N. ST. PAUL STREET, DALLAS, TEXAS 75201 or by service upon its President, William P. Utt, 601 Jefferson, Suite 3400, Houston, Texas 77002.

#### Venue & Jurisdiction

3.1 The Tell City Guardsmen are citizens of the State of Indiana, and the KBR Defendants each maintain a principal place of business in the State of Texas. Claims are

each made for damages well in excess of \$75,000. Jurisdiction is therefore proper before this Court pursuant to 28 U.S.C. § 1332 (diversity jurisdiction). Venue is proper in this Court pursuant to 28 U.S.C. § 1391, as KBR Defendants reside in the Southern District of Indiana for venue purposes, including, but not limited to, regular recruitment in Indiana and their employment of citizens of Indiana by KBR, and by the fact that they directed activity into Indiana by way of their knowledge that their herein-described actions would have an effect and an impact in Indiana.

#### Factual Background

4.1 This suit is necessary to collect a legal debt and damages due and owing the Tell City Guardsmen because of KBR's acts and omissions that proximately led to the Tell City Guardsmen's unprotected exposure to injurious levels of hexavalent chromium at the Qarmat Ali site. The Tell City Guardsmen agreed to undertake and appreciated the hazards from foreign enemies while doing their part to assist the United States in restoring freedom to Iraq, but could not even imagine that KBR's managers would act in a manner that directly and continuously exposed them to serious health impacts for the rest of their lives.

4.2 There is no doubt that KBR's managers knew before the Tell City Guardsmen ever arrived at Qarmat Ali about the dangerous contamination at the site, at least according to the sworn statement of KBR's southern Iraq Health Safety Environment (HSE) manager Johnny Morney:

Q. How did you learn Sodium -

A. Jake Duhan was making a round as a safety professional. He made a round and he observed this.



Q. Mr. Duhan --

A. Right.

Q. -- this observation that was conveyed to you --

A. Right.

Q. -- in May 2003 --

A. Right.

Q. -- how was it conveyed to you in May 2003? In what manner? Did you get a memo, did you get a email?

A. In a conversation. He came in and it was in his daily report and we had a discussion, which was a requirement of all our HSE coordinators....

As documented by KBR managers, sixty (60) percent of the workers onsite reported symptoms of acute poisoning by the beginning of August 2003, and yet the work (and exposure) was not even stopped fully until September 2003. Exhibit "A-C", photos of sodium dichromate, Qarmat Ali. See, Exhibit "D", KBR internal memorandum, August 8, 2003. The repeated warnings, both in writing and in meetings, about the sodium dichromate onsite continued to be disregarded by KBR's managers from their offices while the Tell City Guardsmen continued to do their duty at Qarmat Ali. See, e.g. Exhibit "E", June 22, 2003 KBR HSE log. Unfortunately, this confirmed hazard was not timely shared with the United States Army by Mr. Morney, or any other KBR managers, even though KBR was fully aware that the soldiers providing security stayed within arms' reach of KBR workers on site:

Q. This information you shared about Sodium Dichromate the need for personal protective equipment in May 2003, did you make any effort as a manager to ensure it got to the U.S. Army soldiers being sent out there?

A. There was no need. *They were not working in the area / emphasis added/.*

4.2 A month before KBR managers finally shut down the contaminated site in September 2003, KBR managers did leave their offices to conduct an inspection of the Qarmat site in full "Level C" environmental protection (including suits protecting

against even skin exposure). Despite the protection KBR manages afforded themselves, they left the soldiers and civilian workers onsite unprotected and exposed. See, Exhibit "F", photo of KBR personnel, Qarmat Ali, Iraq, August 2003.

4.3 More disturbing, however, is that KBR, as part of the work for which KBR billed and was paid by the United States government, conducted a full-site analysis identifying the hazards at Qarmat Ali even earlier, in April 2003, according to senior KBR HSE manager, Chuck Adams:

Q. Site analysis has a very specific meaning to a health safety environment professional doesn't it?

A. Yes, it does. Normally when you do a site analysis, you go out and you look at -- get a good overview of the site and then you also take soil samples, core samples in areas that you may feel that there may be a possible contamination of the soil, other than just on the surface. You'll do air sampling if you feel that there's -- if -- if you see a risk from air sampling and noise sampling. There is all kinds of things you do for a risk assessment?

Q. This site analysis also called a risk assessment?

A. Yes.

Q. Mr. Cater /KBR site manager/ told you who had performed a risk assessment before you ever got there April 29, 2003?

A. Mr. Cater told me that the environmental group for OAS /KBR's Overseas Administrative Services/ had been out there to -- and looked over the site. He did not specifically say that they had done a risk assessment per se, but he said they had been given the go ahead by the environmental group and the military to go ahead and do the work.

Q. You also identify what efforts, if any, were made to actually identify properly hazards?

A. Yes, you identify the -- the air samples, the soil samples, what -- what processes you went through to get that -- that, you know, that checklist completed and where the samples were taken.

4.5 KBR's HSE manager for Iraq, Chuck Adams, has testified under oath that he was never provided the April 2003 "no notes" site assessment that was conducted by other KBR professionals months before the Tell City Guardsmen arrived at Qarmat Ali:

Q. Now, you said you -- you got Mr. Cater telling you somebody had been out there. Did you see any record of that site analysis?

A. No. Sorry, no.

Q. Now, when you say consultant specialists to come in and do soil and air samples, you're talking about folks from Houston, aren't you?

A. Folks from Houston. We use them as a consultant, if -- if we needed them. They were not working for us. They came in just on a consultant basis just to help us.

Q. Absolutely positive, you never saw, never even asked for, any documentation about any kind of site analysis done by Mr. Kimbro /KBR employee/ or anyone April of 2003?

A. No.

Q. Did it concern you at all that there is standard protocols for doing site analysis, soil samples, air sampling, a basic KBR checklist you've used around the world for years and nobody could show you one for this site?

A. Sure it concerned me, but based on the information I had been given, and you have to understand, again, I'm in charge -- I'm trying to cover a whole country. ....

4.6 What happened to Ed Blacke, the American civilian medic at Qarmat Ali, when he tried to take action to protect the workers and soldiers in late July 2003, points to the KBR handling of the site contamination:

As an EMT concerned that there was a health problem, I began to query all English-speaking personnel working at the facility, which included KBR, Halliburton, Iraqi Oil Company, U. S. Army National Guard and British soldiers, and all were suffering identical symptoms. The symptoms for all at the facility developed into continuous bloody noses, spitting up of blood, coughing, irritation of the nose, eyes, throat and lungs, and shortness of breath. In order to determine what might be the cause of these medical problems, I undertook a more in depth assessment of the facility with my Iraqi interpreter taking down the chemical names on the burst bags I initially noted as well as from the tanks in the Injection building. The chemical was Sodium Dichromate, which contains hexavalent chromium. I asked my Iraqi interpreter if he was aware of what the material in the bags was used for and was advised that it was injected into the water supply system for the oil fields as an anti-corrosive. He was reluctant to say more and when pressed he said he knew it was poisonous and that he was aware of many workers from the plant who were made ill by it. He said that it being a poisonous chemical was probably the

reason members of the Baath party had opened the storage bags and spread their contents all over the plant as part of their sabotage efforts in the facility. That evening, on my return to my quarters, I researched sodium dichromate on the internet, finding and downloading a Material Safety Data Sheet (MSDS) for the chemical (attached). The MSDS states that sodium dichromate is a hazardous material and a carcinogen, exposure to which is to be avoided. At this time, a colleague I knew from Chad provided me with an internal memo written by a KBR Industrial Hygienist that substantiated my personal findings. I was totally taken aback to find that KBR knew as early as May, from a UN report and from their Industrial Hygienist, that they were putting not only KBR workers but our security details from the U. S. and British in harms way, without the required training or personal protective equipment.

I reported my findings about the imminent danger sodium dichromate was posing to the workers at Qarmat Ali to the HSE and Project Manager in Kuwait and insisted that they take immediate action. A few days later, two representatives of the health, safety and environmental section of KBR came to Qarmat Ali to assess the situation and talk to the workers. Those individuals were Safety Manager Tommy Mornay and Medical Supervisor Ray Garcia. They held a meeting with the workers in which they told the workers that the sodium dichromate was a mild irritant at worst, that the plant had been thoroughly checked out and was safe, and that they were to get back to work. I was at the meeting and was shocked that fellow safety and medical professionals were telling such outrageous and blatant lies to the workers. I pointed out in the meeting that the NIOSH/CDC documents that I had on sodium dichromate directly contradicted their statements to the workers. At this point, Mr. Garcia, who was one of my superiors, directed me to be quiet and to leave. He then escorted me out of the meeting. Outside of the meeting, he advised me that I was being insubordinate, disruptive, and that my input was not appreciated. I was determined to pursue the complaint with higher-ups in KBR's HSE department in Kuwait, and upon attempting to do so, it was made clear to me that my presence in Iraq and Kuwait was no longer appreciated and that I would be better off going home. As a response to my complaints, the Medical Supervisor, Ray Garcia, under direction of the KBR Project Manager, directed me to accompany him to a clinic for blood workup. I was taken to a substandard medical clinic where I refused to submit to the tests due to the unsanitary conditions and unprofessional nature of the staff.

.....  
In my mind, it was criminally negligent of the KBR HSE and Project management to make a decision to continue to expose personnel to sodium dichromate poisoning at the Qarmat Ali water treatment plant when they knew of the exposure and knew of the absence of any personal protective gear whatsoever. I understand that KBR and Halliburton take the position that the air was tested at the plant and showed low levels of chromium, however, those tests were apparently done when the air was still, not during one of the frequent dust storms in which all of the materials on the ground became airborne. Furthermore, the levels of chromium from the ground samples show that the plant was a highly dangerous and unsafe and contaminated facility, and these facts were objective facts known by KBR management, in the face of which they made the conscious decision to continue to expose the American workers, the Iraqi workers, the American military personnel, and the British military personnel at the plant to these horrifically unsafe conditions. It is outrageous that American tax dollars are the source of the funding of the Iraqi operation of Halliburton and KBR when those companies have demonstrated

such total and complete disregard for the health and safety of the workers for whom they are responsible.

Statement of Ed Blacke, The United States Senate Hearing, June 20, 2008, at <http://dpc.senate.gov/hearings/hearing44/>.

4.7 Hexavalent Chromium is one of the most potent carcinogens known to man. Humans exposed to hexavalent chromium often exhibit the nasal bleeding associated with "chrome nose", confirming the specific injurious impact on the exposed individual. It can produce any type of cancer depending upon genetic susceptibility, quantity and route of exposure. It is important that humans not be exposed to this carcinogen since it can enter the human body by inhalation, ingestion, and also through the skin. Hexavalent Chromium can cause severe damage to the liver and kidneys, depress the immune system, and can enter every cell of the body and potentially produce widespread injury to every major organ in the body. This is because it looks the same as the nutrients sulphate and phosphate and is actively sucked up into cells by carriers that would normally transport these essential nutrients. It is very dangerous for humans to become exposed to even small amounts of hexavalent chromium. The most common cancer that develops following inhalation exposure to hexavalent chromium is lung cancer. Studies have also shown elevations of stomach, brain, GI, prostate, leukemia, lymphoma, urinary track, renal, bladder and bone cancers in worker exposed to hexavalent chromium by inhalation. Generally these cancers develop with a latency period of about 5 years for the blood cancers up to 15-20 years for the other types of cancers. Hexavalent chromium is also known to cause birth defects during

pregnancy and has also been reported to have effects on sperm in experimental animals. Hexavalent chromium is the substance made known by the Erin Brockovich story and movie.

4.8 In practical terms, this means that, based upon the best scientific evidence, persons exposed to injurious levels of hexavalent chromium have an expected 1 in 5 cancer rate. Once hexavalent chromium has damaged the body, and in particular at the cellular level, there is no "fix". Instead, vigilant health care and early treatment, if possible, is the only protection that medical science can afford exposed individuals from the anticipated future consequences.

#### **FIRST CAUSE OF ACTION – NEGLIGENCE**

5.1 The Tell City Guardsmen re-allege and incorporate each allegation contained in Paragraphs 1-4.8 of this Petition as if fully set for herein.

5.2 KBR's managers undertook to inspect and direct the site and work where the Tell City Guardsmen worked and were exposed to hazardous dust(s) for conformance with safety practices and procedures and/or otherwise undertook supervision of the same. As a result of these actions, KBR is liable to the Tell City Guardsmen under RESTATEMENT (SECOND) OF TORTS § 324A. In the alternative, or jointly, KBR knew, or should have known, of the dangers of the dusts to which the Tell City Guardsmen were exposed, yet consciously withheld the information from the Tell City Guardsmen.

5.3 The acts and omissions of KBR constitute negligence, in that KBR failed to exercise ordinary care in their assumption of the safety and health responsibilities, as well as direct

oversight of the work activities, of the Tell City Guardsmen, and these breaches proximately caused legal injuries to the Tell City Guardsmen. The Tell City Guardsmen suffered a direct impact, as evidenced by the nose bleeds and skin lesions they suffered while guarding this plant, such that Defendants negligently inflicted emotional distress upon the Plaintiffs for which Plaintiffs should be compensated.

### **SECOND CAUSE OF ACTION – GROSS NEGLIGENCE**

6.1 The Tell City Guardsmen re-allege and incorporate each allegation contained in Paragraphs 1-5.3 of this Petition as if fully set for herein.

6.2 The acts and omissions of KBR constitute gross neglect, as that term is defined by law. Viewed objectively from the standpoint of KBR at the time of the occurrences, the acts and omission of KBR involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and KBR had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety and welfare of others. As a result of the gross neglect and legal malice of KBR, the Tell City Guardsmen each received harmful exposure to a known carcinogen with serious short-term and long-term effects. Accordingly, the Tell City Guardsmen seek an award of exemplary damages.

### **RESULTING LEGAL DAMAGES**

7.1 The acts and omissions of KBR's corporate managers caused each of the Tell City Guardsmen to sustain actual damages. The Tell City Guardsmen are entitled to be compensated for the personal injuries and damages the Tell City Guardsmen sustained to the varying degrees each has experienced and will likely experience in the future. The Tell

City Guardsmen each sustained physical pain and mental anguish and, in reasonable probability, will continue to suffer physical pain and mental anguish in the future. To varying degrees, the Tell City Guardsmen have suffered and will continue to suffer physical impairment and disfigurement. The Tell City Guardsmen are reasonably expected to sustain a loss of earning capacity before the time of trial and a loss of future wage earning capacity. Because of the nature and severity of the injuries, the Tell City Guardsmen required medical treatment in the past and will, in reasonable probability, require additional medical treatment in the future. Charges for such medical treatment that have been made in the past and those which will in reasonable probability be made in the future have been and will be reasonable charges made necessary by the occurrence in question. As a result of Defendant's conduct, the Tell City Guardsmen have sustained damages in excess of the minimum jurisdictional limits of this Court.

7.2 Through the unlawful conduct set forth in the preceding paragraphs, Tell City Guardsmen have been physically impacted by the injurious effect of hexavalent chromium contained within the sodium dichromate to which they were exposed. Unfortunately, the acute effects, and even the ongoing allergenic effects (rashes, inflammatory reactions, and unnatural sensitivity to chromium present in their day to day exposures) are not the only reasonably anticipated results of the exposures. Given the nature of the unprotected exposures to this toxic chemical occasioned by KBR's misconduct, the Tell City Guardsmen face a twenty to thirty times risk of cancers and other harmful health effects, especially with regard to respiratory system (including the nasal airway) cancers. The only medically accepted method of treating this greatly enhanced risk is medical



surveillance for the Tell City Guardsmen on an ongoing basis.

7.3. As a direct and proximate result of the conduct of KBR outlined above, Tell City Guardsmen have suffered physical injuries including but not necessarily limited to acute effects (immune system hypersensitivity, decreased respiratory functioning), and various physical manifestations of emotional distress associated with the injurious exposure.

7.4 As a direct and proximate result of the conduct of KBR outlined above, Tell City Guardsmen have been exposed to greater risks of severe injury and death. Tell City Guardsmen's increased risk of additional and serious injury is a direct and proximate result of KBR's liability as set forth above. In the absence of the injurious exposure, the Tell City Guardsmen would not be at the increased risk of additional and serious injury. The Tell City Guardsmen would also not be forced to expend additional monies and incur additional economic damages for appropriate medical monitoring, including at least a biannual CT (computerized axial tomography) scan and sputum pathology screening.

7.5. As a direct and proximate result of KBR's liability, a medically indicated monitoring regime is reasonably necessary and supported by contemporary scientific principles. As a direct and proximate result of KBR's wrongful conduct, Tell City Guardsmen have sustained and will continue to sustain direct physical impacts from the injurious exposures, including damaged immune systems and emotional distress and physical manifestations thereof, mental anguish, economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in amounts to be proven at trial, to monitor the health of the Tell City Guardsmen, and to pay or reimburse Tell City Guardsmen for all evaluative, monitoring, diagnostic,

preventative, and corrective medical, surgical, and incidental expenses caused by KBR's wrongdoing.

7.6 As a result of Defendants' acts and/or omissions, the Tell City Guardsmen have sustained damages in excess of the minimum jurisdictional limits of this Court.

7.7 The Tell City Guardsmen are entitled under law to the recovery of prejudgment interest at the maximum legal rate.

**INAPPLICABILITY OF CERTAIN ALLEGED LEGAL EXCUSES/DEFENSES  
ANTICIPATED TO BE ASSERTED BY KBR**

**Fraudulent concealment/tolling of statute of limitations/discovery rule**

8.1 KBR may be anticipated to claim that some or all of the Tell City Guardsmen's claims are barred by the applicable statute of limitations. This excuse is barred by KBR's active concealment of its misconduct and the injurious effects of the exposure on the Tell City Guardsmen. Even as recently as the fall of 2008, KBR apparently was still providing to the United States Army, for further dissemination to our soldiers, information denying any knowledge by KBR of the site contamination until the end of July 2003 (even though KBR managers were admittedly aware by at least May 2003, *see, Para. 4.2*). *See* Exhibit "G", Chronology. KBR both morally and legally may not benefit from fraudulent concealment of its wrongdoing.

8.2 KBR's concealment was not limited to the false and misleading statements it disseminated; KBR conducted evidentiary "spoliation" to further attempt to make it more difficult to hold it accountable for its actions. Even though soil testing showed

almost 1.6 percent of the soil was sodium dichromate at differing tested locations, and most of the civilian workers incompletely tested (as outlined in the following paragraph) showed elevated chromium levels, KBR reported instead that its air testing showed only "safe" levels of chromium exposure. *But see, Exhibits "A"-"D"*. However, according to KBR's own industrial hygienist, Dr. Sudhir Desai, KBR waited until after the most injurious exposure from the contaminated site, during the "shamal", or Iraqi windy season in June and July, to actually conduct any air sampling:

Q. As a industrial hygienist, OSHA professional, how reasonable is it, or unreasonable, not to take samples during a dust storm when workers are frequently working in dust storms?

A. He should have collected. Personal opinion.

Q. Because?

A. It's an ambient condition that can change.

Q. And if you have a work site with identified sodium dichromate around in bags, mixing room, buried in the sludge, how critical is it, if you really want to know what the risks are, to take samples during dust storms?

A. It's obvious he should have collected.

Q. Ever get any explanation from any HSE manager, including Dennis Bagnocche /KBR corporate HSE manager/, why Mr. Keyston, when sent out there, didn't take samples during dust storms?

A. I do not know.

Q. Really excusable, from a safety standpoint, not to take samples during a dust storm?

A. No.

8.3 By its nature, hexavalent chromium is quickly introduced and "uptaken" at the cellular level, and it quickly damages the cell at a most basic level, then is quickly disposed of by the human body. The most visible sign of acute poisoning - bleeding from the nose - is apparent at the time of the exposure, and may or may not continue on an intermittent level thereafter. What that means is that there is no test, unless taken in a brief window of time within weeks of the exposure, that can specifically confirm

hexavalent chromium presence and levels, and the affected individual is simply left with a ticking health time bomb. KBR conducted incomplete blood testing on civilian workers exposed at Qarmat Ali, and the blood testing revealed elevated levels of total chromium (which includes but is not limited to just hexavalent chromium). KBR's medical director, Dr. Robert Conte, confirmed that when confronted with these blood test results, KBR's managers made the decision not to have the exact test done that would be necessary to confirm the presence and extent of hexavalent chromium toxicity in the workers showing symptoms:

Q. You knew the initial human medical monitoring tests did not include tests that would identify levels of hexavalent chromium in blood?

A. We knew it would involve just total chromium; that's correct.

Q. What --

A. Total chromium.

Q. What I just said was correct?

A. Correct.

Q. You knew the tests that were done would not identify the level of hexavalent chromium in the blood?

A. That's correct.

Q. You knew the tests that were done would not identify the level of hexavalent chromium in the blood?

A. That's correct.

Q. These discussions that you were involved in --

A. Yeah.

Q. -- with managers including by e-mail --

A. Uh-huh.

Q. -- you were always sitting in corporate offices in Houston when you were involved in it?

A. That's correct.

Q. These discussions that you've told us about where --

A. Uh-huh.

Q. -- hexavalent chromium blood tests hasn't yet been done, all conducted here in Houston, Texas?

A. My -- my -- yeah. Any discussions I would

have had would have been by e-mail and discussed out of my office in Houston. That's correct.

8.4 The Tell City Guardsmen repeatedly received information in 2003 that their exposure to the chemicals at Qarmat Ali was minimal and that there was no significant health risk. It was not until after June 2008, during the Senate Hearings described above, that the extent of the exposure (and KBR's concealment of same) was revealed to the public. In June or July of 2008, the Commander of the Indiana National Guard was notified; and he set about the task of attempting to notify the soldiers exposed, including the Tell City Guardsmen. Therefore, the Tell City Guardsmen did not know, and in the exercise of reasonable care, could not have known of the basis for this claim.

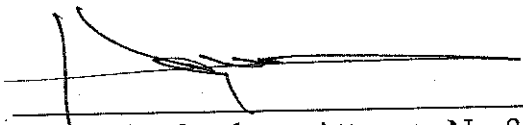
**Government Officer/state secrets/government contractor**

8.5 As a private company, KBR charges taxpayers enormous amounts of money, profits handsomely, and did so for its Qarmat Ali project. KBR often claims it is immune from being held accountable for its misconduct overseas. As at least one United States Court of Appeals has noted, however, "KBR is not a coordinate branch of the federal government." *Lane v. Halliburton*, 529 F.3d. 548, 560 (5<sup>th</sup> Cir. 2008). No legitimate argument can possibly be made that KBR was somehow instructed by government officers to expose our soldiers to harm, and no legitimate basis exists for KBR's claims of immunity for all its conduct in Iraq, particularly the conduct described in this Complaint.

Prayer

WHEREFORE, PREMISES CONSIDERED, Tell City Guardsmen respectfully request that each have judgment against Defendants for actual damages in excess of the minimum jurisdictional limits of this Court, punitive and exemplary damages, pre- and post-judgment interest as allowed by law, costs of suit, and all other relief, at law or in equity, to which Tell City Guardsmen may be justly entitled.

COHEN & MALAD, LLP

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Gregory L. Laker, Attorney No. 10322-49  
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**JURY DEMAND**

The Plaintiffs hereby demand a trial by jury.

COHEN & MALAD, LLP



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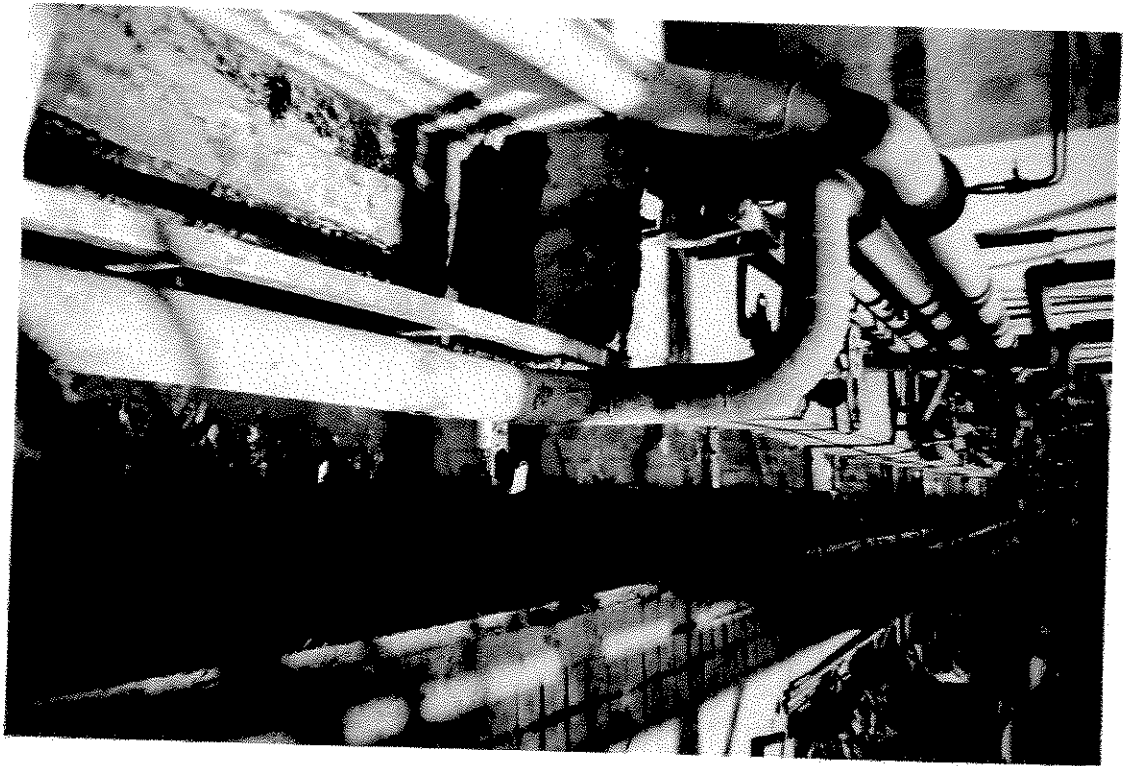
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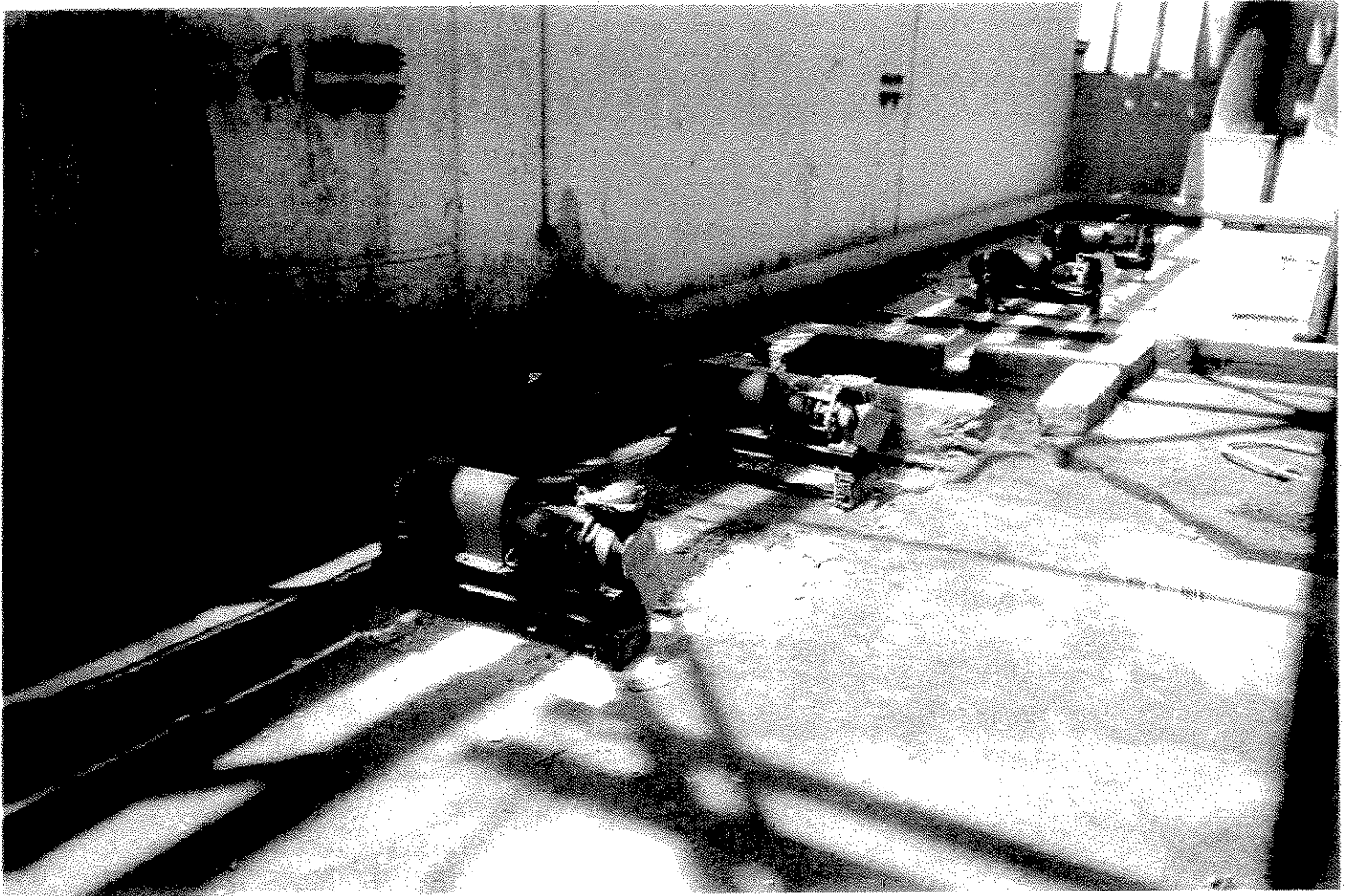












300213



Meeting Number	Date of Meeting	Location of Meeting
MOME030808	08-Aug-03	MWR Room – Crowne Plaza
<b>Purpose of Meeting:</b> Review potential environmental issue on Sodium Dichromate residue.		
<b>Attendees:</b>		
C.W. Adams	Mike Sumpter	
Rod Kimbro	Herb Myers	
Young Lee	Greg Althaus	
Leon Cater	Johnny Morney	
Will Van Ostrand	John Waterous	
Rob Hall	K. Singal	
Frank Luce	Kish Atit	
<b>Report Sent to: (in addition to attendees)</b>		
L.D. Loveladdy		
<b>Report Issued by:</b>	E. Sotillo	08-Aug-03
	(Signature)	(Date)

### Meeting Minutes

#### Status:

- Serious health problem at water treatment plant with a chemical called Sodium Dichromate.
- K. Singal reported that the problem seems worse than initially considered.
- Almost 60% of the people now exhibit the symptoms.
- Soil samples being evaluated. Expect results by next week.
- According to Leon's assessment, the chemical has been on the ground since day one.
- The chemical looks yellow on the soil, orange on the concrete.
- Water taps were installed so that people in the neighborhood would not make holes in the lines used by Halliburton.
- Suspect residue in the pipes.
- Need to check the chemicals that are used to build the fluids.
- Wind is blowing the product that is lying dry on the ground.
- People are potentially exposed to something that may be very dangerous.
- Y. Lee stated that the environmental group has no control over the long term solution to this issue. They are working on options for temporary remediation.
- **Alternative protective measures** to prevent exposure to our people on this location:
  - Temporary solutions proposed:
    - Set up a decontamination station where people can wash and change clothes.
    - Spray a chemical that would slowly stop the residue from being dusted.
    - Gravel the surface around all working areas.
    - Use a heavy oil that will crust over the surface.
- Sodium Dichromate could have been dumped on the ground for quite a long time. We do not know how deep it is but it looks like it is greater than 4 feet.

- Interior of containers/trailers need to be decontaminated.
- Original design did not include use of this chemical for injection.
- HSE department is coordinating medical test for all the people working in the area.
- There is no reason for shutting down the water station.
- Haliburton hands will wear a paper mask and goggles, while the temporary solution determined and implemented.
- Haliburton will use a spraying truck to keep the chemical watered down. Recommended to have a mist spray.

Action Items	ACTION BY	DATE
<b>Protection to individuals / Decontamination:</b> <ul style="list-style-type: none"><li>• Medical test every individual working in the area to assess level of exposure.</li><li>• Decontaminate interior of trailers and containers (wash with soap and water)</li><li>• Meet with Doctor at Shiaba Port tomorrow to set up a medical test program for the people working in the area.</li></ul>	C.W. Addams	09-Aug-03
<b>Soil remediation:</b> <ul style="list-style-type: none"><li>• Temporary solution: use gravel around the area, and water the chemical down to prevent the wind from dusting and blowing it.</li><li>• Permanent solution: yet to be proposed.</li></ul>		





## PROJECT RIO DAILY HSE LOG

Work Area: **Water Treatment Plant / Iraq**

### DAILY ACTIVITIES:

Construction manager and other KBR engineers on site today. Jobs going well, Khurafi workers (Indians & Iraq's) doing a good job of wearing PPE and following instructions.

Evaluated water filter tanks for entry, no equipment available yet from Khurafi. Access will be a vertical entry and require emergency equipment set up before permits can be issued. Discussed the job scope with Jim Baker, gave him a list of equipment need to begin the CSE process for the project. Khurafi already have the equipment necessary and should be getting on location asap. No entries to be conducted until all HSE requirements have been met.

X Had a discussion with Iraqi SOC workers, they confirmed the two products used in the agitators. Sodium Dichromate and Zinc Sulfate, John Monahan said he would attempt to get MSDS's off internet. Should be able to use this information for PPE requirements on CSE work. Also reviewed injection system in same area as agitators with KBR engineer, more chemicals were identified where CSE work may be needed. Not determined at this, something to watch for.

JD noted smoking material near the Halliburton diesel tanks, will cover in daily morning meetings, Khurafi to supply safety warning signs for "No Smoking" and "Do Not Enter" signs for the Halliburton HP pump areas.

### SAFETY ISSUES:

No KBR CSE permits available at this time, will use KBR site safety plan documents for CSE's until approved documents become available.

Items to watch for: Climbing at heights without fall protection, hand tools, skill saw used in table saw application.

### NON-SAFETY ISSUES:

5:30 am No shooters at 3.5 this morning, moved to 60.5 and waited to 7:am for back up team to arrive. Approx 150 workers showed up a gate but no security problems were reported and group were quickly dispersed.

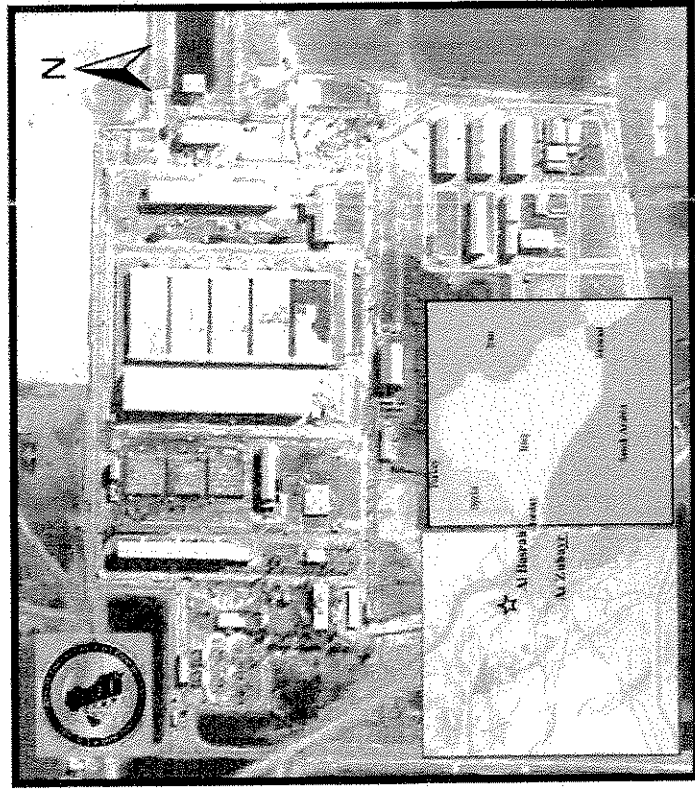
Reminded Jim Baker for the near miss report on the flat bed truck from 6/21/03  
Khurafi interpreter not working out very well, is never available at the job locations.

JD Lewis re-assigned to DS-1 for the day, left site about 11:am

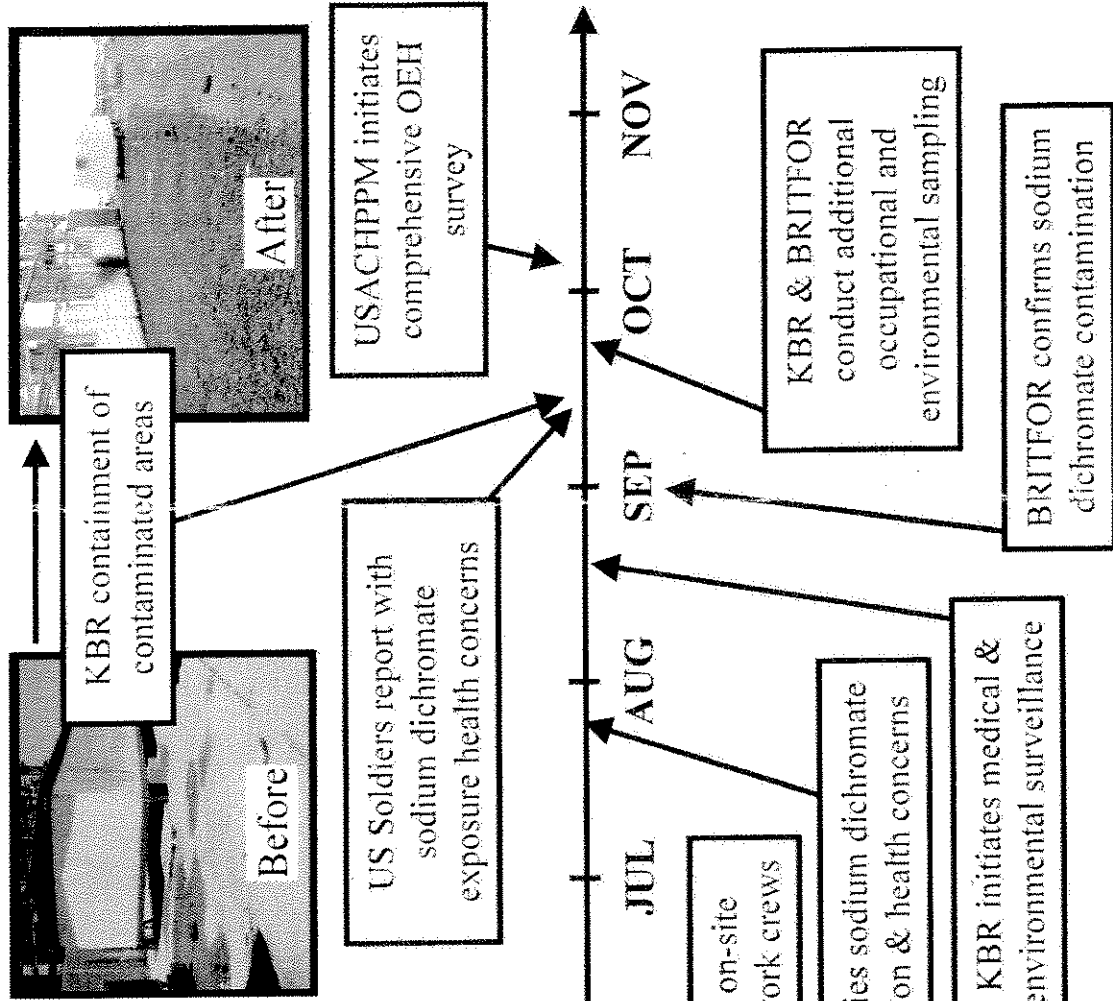








# Site History & Chronological Events



**Qarmat Ali** - an industrial water treatment plant (WTP) where sodium dichromate, an inexpensive corrosion inhibitor, was added to water as a critical step in the oil production process.

- **Poor work place hygiene practices**
- **Site contamination**





DEPARTMENT OF THE ARMY  
HEADQUARTERS 38<sup>TH</sup> INFANTRY DIVISION  
Indiana Army National Guard  
3912 West Minnesota Street  
Indianapolis, Indiana 46241-4064



INPPC-G3

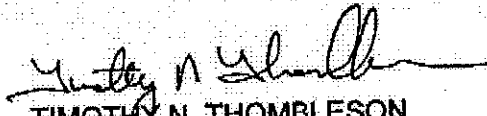
3 November 2008

MEMORANDUM FOR RECORD

SUBJECT: Qarmat Ali Water Treatment Facility  
RE: Soldiers Exposed to Sodium Dichromate

1. As the Executive Officer for 1-152 Infantry Battalion, I hereby verify that the attached list of soldiers performed duty at, or visited, the Qarmat Ali Water Treatment Facility, vicinity of Basra Iraq, during the period April thru September 2003.
2. The Department of Defense has determined that the industrial chemical Sodium Dichromate was present at this facility, during the aforementioned timeframe. As such, all soldiers listed had a high potential for direct exposure to this potentially hazardous element.

Encl  
as

  
TIMOTHY N. THOMBLESON  
COL, IN, INARNG  
Assistant Chief of Staff G3

DISTRIBUTION:  
JFHQ-IN-J1  
Soldier's Military Personnel Record (See Encl 1)  
File