

04-2041-CD
HRI, INC., et al vs. RAYMOND A. GRAFF, et al.

HRI et al vs Raymond Graff et al
2004-2041-CD

Date: 06/29/2005

Clearfield County Court of Common Pleas

User: BILLSHAW

Time: 02:41 PM

ROA Report

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Case: 2004-02041-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date		Judge
12/30/2004	New Case Filed.	No Judge
X	Filing: Civil Complaint Paid by: Taladay, Mathew B. (attorney for HRI, Inc.) Receipt number: 1892882 Dated: 12/30/2004 Amount: \$85.00 (Check) 1 CC to Shff. 4 CC to Atty. Taladay.	X No Judge
01/19/2005	X Affidavit of Service filed. Certified copy of Complaint, on Jan. 13, 2005, upon Raymond A. Graff, William H. Graff, Rose M. Graff, and Graff Tank, Inc. Filed by s/ Matthew B. Taladay, Esquire. No CC	X No Judge
01/29/2005	Scheduling Order For Emergency Motion For Protective Order, Upon consideration, a rule is issued upon plaintiffs to appear on the 3rd	Fredric Joseph Ammerman
02/02/2005	X Sheriff Return, Jan. 21, 2005. Papers served on Defendant Meeker Equipment Co., Inc., by Montgomery Co. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	X No Judge
02/03/2005	X Entry of Appearance and Demand for Jury Trial, filed by Atty. Silverman. no cert. copies. Enter our appearance on behalf of Defendant's Meeker Equipment Co., Inc.. Defendants9S) hereby demands a jury trial in this matter.	X No Judge
03/01/2005	X Praeipe to Issue Writ of Summons to Join DM Industries, Inc. d/b/a DM Industries and Intern-O-Therm Corporation as Additional Defendants, filed by Atty. Silverman 2 Cert. to Atty. & 2 Cert. to Sheriff with Summon's	X No Judge
03/02/2005	X Defendant, Meeker Equipment Company, Inc's Answer and New Matter filed. 1 cert. to Atty.	X No Judge
03/04/2005	X Certificate of Service, filed by Atty Taladay no cert. copies. RE: Important notice to Raymond Graff, William Graff, Rose Graff and Graff Tank.	X No Judge
03/10/2005	X Reply to New Matter, filed by Atty. Taladay no cert. copies.	X No Judge
03/14/2005	X Defendant, Meeker Equipment Company, Inc's Complaint Against Additional Defendants, DM Industries, Inc. T/A DM Industries and Intern-O-Therm, Corporation, filed by Atty. Silverman no cert. copies.	X Fredric Joseph Ammerman
03/21/2005	X Entry of Appearance, enter appearance of Thomas T. Frampton, Esquire, Dana L. Bacs, Esquire, and Goehring, Rutter & Boehm, on behalf of Defendants Raymond A. Graff, William Graff, and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc. filed by s/ Thomas T. Frampton, Esquire. No CC	X No Judge
03/24/2005	X Affidavit of Service filed. copy of the Writ of Summons served upon Intern-O-Therm Corp. on March 15, 2005. Filed by s/ Phillip B. Silverman, Esquire. No cc	X No Judge
X	X Affidavit of Service filed. copy of the Defendant Meeker Equip. Co. Inc's Complaint against Intern-O-Therm, Corp. was served upon Intern-O-Therm on March 15, 2005. Filed by s/ Phillip B. Silverman, Esquire. No CC	X No Judge
03/28/2005	X Praeipe For Entry of Appearance, filed. no cert. copies. Enter appearance on behalf of Additinal Defendant Intern-O-Therm Corp. John B. Cromer & Patrick L. Mechas.	X No Judge
03/31/2005	X Praeipe For Entry of Appearance, filed on behalf of DM Industries, Inc. t/a DM Industries. Filed by s/ Paul E. Pongrace, III, Esquire. No CC	X No Judge

Civil Other

Date	Judge
04/04/2005	No Judge
Answer, New Matter and New Matter Pursuant to Pa.R.C.P 2252(d) To Complaint Against Additional Defendants, filed by s/ Patrick L. Mechas, Esquire. No CC	
04/08/2005	No Judge
Reply To New Matter Pursuant to Rule 2252(d) of Additional Defendant, Infern-O-Therm Corporation, filed by s/ Paul E. Pongrace, III, Esquire. No CC	
04/11/2005	No Judge
Sheriff Return, NOW March 02, 2005 Sheriff of Elk County was Deputized by C. Hawkins to serve the within summons to join additional defendant on DM Industries Inc. Now, March 08, 2005 2: 57 PM summons served. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	
04/18/2005	No Judge
Answer, Reply and New Matter filed. Filed by s/ Thomas T. Frampton, Esquire. No CC	
	No Judge
Reply of Defendant, Meeker Equipment Company, Inc. to New Matter of Additional Defendant, Infern-o-Therm Corporation, filed by s/ Phillip B. Silverman, Esquire. No CC	
	No Judge
Affidavit of Service, Meeker Equipment Company, Inc.'s Interrogatories and Request for Production of Documents and Things addressed to Infern-O-Therm, served on April 4, 2005. filed by s/Phillip B. Silverman, Esquire. No CC	
04/21/2005	No Judge
Reply Of Defendants Raymond A. Graff, William Graff and Rose Graff t/d/b/a Graff Tank and Graff Tank, Inc. to New Matter Pursuant to Rule 2252(d) of Additional Defendant, Infern-O-Therm Corporation, filed by s/ Thomas T. Frampton, Esquire. No CC	
04/25/2005	No Judge
Defendant, Meeker Equipment Company, Inc.'s Reply to New Matter of Defendants, Raymond A. Graff, William Graff, and Rose M. Graff t/d/b/a Graff Tank, Graff Tank, Inc. Pursuant to Pennsylvania Rule of Civil Procedure 2252(d), filed by s/Phillip B. Silverman, Esq. No CC	
04/27/2005	No Judge
Reply To New Matter Pursuant to Rule 2252(d) of Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank and Graff Tank Inc. Filed by s/ Paul E. Pongrace, III, Esquire. No CC	
	No Judge
Notice of Service, Responses To Defendant Meeker Equipment Co. Inc. the 26th day of April 2005, to Phillip B. Silverman, Esquire; Thomas T. Frampton, Esquire; Paul E. Pongrace, III, Esquire; and Patrick L. Mechas, Esquire. Filed by s/ Matthew B. Taladay, Esquire. No CC	
04/28/2005	No Judge
Motion for Protective Order Pursuant to Rule 4012, filed by s/Paul E. Pongrace, III, Esq. No CC	
	Fredric Joseph Ammerman
Response to Motion for Protective Order, Filed by s/Matthew B. Taladay, Esquire. No CC	
04/29/2005	Fredric Joseph Ammerman
Scheduling Order For Emergency Motion For Protective Order, a rule is issued upon plaintiffs to appear on the 3rd day of May, 2005 at 2:00 p.m. in Courtroom 1 for argument on the Motion for Protective Order. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC C/A, 2CC Atty Pongrace	
05/02/2005	Fredric Joseph Ammerman
Motion to Join in Motion for Protective Order Pursuant to Rule 4012, filed by Atty. Mechas no cert. copies.	
	Fredric Joseph Ammerman
Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22 filed by s/ Matthew B. Taladay, Esquire. No CC	

Civil Other

Date	Judge
05/03/2005	Fredric Joseph Ammerman
05/04/2005	Fredric Joseph Ammerman
05/05/2005	Fredric Joseph Ammerman
05/09/2005	Fredric Joseph Ammerman
05/16/2005	Fredric Joseph Ammerman
05/23/2005	Fredric Joseph Ammerman
05/27/2005	Fredric Joseph Ammerman
05/31/2005	Fredric Joseph Ammerman
06/01/2005	Fredric Joseph Ammerman
06/10/2005	Fredric Joseph Ammerman
06/15/2005	Fredric Joseph Ammerman
06/15/2005	Fredric Joseph Ammerman

Motion to Join in Motion for Protective Order Pursuant to Rule 4012, filed by s/Thomas T. Frampton, Esq. No CC
 Order, NOW, this 3rd day of May, 2005, following argument on the Emergency Motion for Protective Order filed on behalf of additional Defendant DM Industries, it is the ORDER of this Court that said Motion is hereby granted to the extent that: (see original). BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Taladay, Frampton, Bacsi, Silverman, Pongrace, Mechas, Cromer
 Reply To New Matter of Defendants, Raymond A. Graff, William Graff, Rose M. Graff t/d/b/a Graff Tank and Graff Tank, Inc. Filed by s/ Patrick L. Mechas, Esquire. No CC
 Defendant/Third-Party Plaintiff, Meeker Equipment Co., Inc.'s Preliminary Objections to Additional Defendants, Infern-O-Therm Corporation's New Matter Pursuant to PA R.C.P. 2252(d). filed by s/ George W. Vokolos, Esquire. 1CC Vokolos
 Reply To New Matter of Original Defendant, Meeker Equipment Co., Inc. filed by s/ Paul E. Pongrace, III, Esquire. No CC
 Answer, New Matter and New Matter Pursuant To Pa.R.C.P. 2252(d) of Additional Defendant, DM Industries Inc., t/a DM Industries to Complaint to Join, filed by Paul E. Pongrace, III, Esquire. No CC
 Response To Meeker Equipment Co., Inc.'s Preliminary Objections to Infern-O-Therm Corporation's New Matter Pursuant to Pa.R.C.P. 2252(d). Filed by s/ Patrick L. Mechas, Esquire. No CC
 Defendant, Meeker Equipment Company, Inc.'s Reply to New Matter of Additional Defendant, DM Industries, Inc. T/A/DM Industries, filed by s/ Phillip B. Silverman, Esquire. No CC
 Reply to New Matter of Additional Defendant, DM Industries, INC. t/a DM Industries, filed by s/ Patrick L. Mechas, Esquire. No CC
 Order, AND NOW, this 1st day of June, 2005, upon consideration of Defendant/Third Party Plaintiff, Meeker Equipment Co., Inc.'s Preliminary Objections to Additional Defendant, Infern-O-Therm Corporation's New Matter, it is the Order of the Court that argument has been scheduled for the 7th day of July, 2005 at 2:00 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, Pres. Judge. 5CC Atty Vokolos
 Certificate of Service, copy of Meeker Equipment Company, Inc.'s Affidavit of Service of Court Order entering Rule and Preliminary Objections and accompanying Memorandum of Law, on June 8, 2005 upon: Matthew B. Taladay, Esquire; Thomas T. Frampton, Esquire; Paul E. Pongrace, Esquire; and Patrick L. Mechas, Esquire. Ffiled by s/ George W. Vokolos, Esquire. No CC
 Notice of Service of Combined First Set of Interrogatories and Requests For Production Submitted to the Plaintiffs by the Graff Defendants, filed by s/ Thomas T. Frampton, Esquire. No CC
 Notice of Service of Interrogatories Directed to Infern-O-Therm Corporation, filed by s/ Paul E. Pongrace, III, Esquire. No CC
 Notice of Service of Interrogatories Directed to Plaintiffs, filed by s/ Paul E. Pongrace, III, Esquire. NO CC

Date: 12/09/2005

Clearfield County Court of Common Pleas

User: LBENDER

Time: 03:49 PM

ROA Report

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Case: 2004-02041-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date	Selected Items	Judge
06/15/2005	☒ Notice of Service of Interrogatories Directed to Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc. filed by s/ Paul E. Pongrace, III, Esquire. No CC	☒ Fredric Joseph Ammerman
	☒ Notice of Interrogatories Directed to Meeker Equipment Co., Inc, filed by s/ Paul E. Pongrace, III, Esquire. No CC	☒ Fredric Joseph Ammerman
07/11/2005	☒ Order, NOW, this 8th day of July, 2005, following argument on the Preliminary Objections filed on behalf of Meeker Equipment Co. to Infern-O-Therm Corporation's New Matter it is the Order of this Court that the said Preliminary Objections be and are hereby Dismissed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Taladay, Frampton, Bacs, Silverman, Pongrace, Mechas, Cromer	☒ Fredric Joseph Ammerman
07/12/2005	☒ Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, filed by s/ Matthew B. Taladay, Esquire. No CC	☒ Fredric Joseph Ammerman
07/13/2005	☒ Notice of Service, Plaintiff's Responses to Defendant DM Industries' First Set of Discovery Materials served upon Paul E. Pongrace, III, Esq. Filed by Matthew B. Taladay, Atty. No CC.	☒ Fredric Joseph Ammerman
	☒ Notice of Service, Plaintiff's Responses to GRAFF Defendant First Set of Discovery Materials served upon Thomas T. Frampton, Esq. Filed By Matthew B. Taladay, Atty. No CC.	☒ Fredric Joseph Ammerman
→ 07/25/2005	☒ Defendant, Meeker Equipment Company, Inc's Reply to New Matter of Additional Defendant, Infern-O-Therm Corporation Pursuant To Pennsylvania Rule Of Civil Procedure 2252(d). Filed by Phillip B. Silverman, Esquire. 1CC to Atty	☒ Fredric Joseph Ammerman
08/01/2005	☒ Notice of Service of Interrogatories and Request for Production of Documents directed to Original Defendant, Meeker Equipment Co., Inc. to Philip B. Silverman Esquire on July 28, 2005, filed by s/ Patrick L. Mechas Esq. No CC.	☒ Fredric Joseph Ammerman
08/04/2005	☒ Notice of Service of Interrogatories and Request for Production of Documents directed to Plaintiffs, HRI Inc. and Whitaker Roads Corporation to their counsel Matthew B. Taladay Esquire on August 3, 2005 filed by s/ Patrick L. Mechas Esquire. No CC.	☒ Fredric Joseph Ammerman
	☒ Notice of Service of Interrogatories and Request for Production of Documents directed to Original Defendants Raymond A. Graff, William Graff, Rose M. Graff, Graff Tank, Graff Tank Inc., to their counsels Thomas T. Frampton Esq., and Dana L. Bacs, Esq., filed by s/ Patrick L. Mechas Esquire. No CC.	☒ Fredric Joseph Ammerman
08/15/2005	☒ Defendant, Meeker Equipment Co., Inc.'s Petition for Leave of Court to Join DuFour, Inc. as an Additional Defendant, filed by s/George W. Vokolos, Esq. One CC Attorney Vokolos	☒ Fredric Joseph Ammerman
08/17/2005	☒ Rule, dated August 17, 2005, filed. upon consideration of the attached Petition for Leave of Court to Join DuFour Inc., as an Additional Defendant, a Rule is hereby issued upon the parties to Show cause why the petition should not be granted. Rule Returnable the 7th day of September 2005, for filing written response. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 8CC Atty Vokolas w/memo re: service.	☒ Fredric Joseph Ammerman
08/19/2005	☒ Notice of Service of Interrogatories and Request for Production of Documents Directed to Additional Defendant, DM Industries, Inc. and DM Industries by mailing to Paul E. Pongrace III Esq. on August 16, 2005, filed by s/ Patrick L. Mechas Esq. No CC.	☒ Fredric Joseph Ammerman

Date: 06/29/2005

Time: 02:41 PM

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Clearfield County Court of Common Pleas

ROA Report

Case: 2004-02041-CD

Current Judge: Fredric Joseph Ammerman

User: BILLSHAW

Civil Other

Date	Judge
06/15/2005	X Notice of Service of Interrogatories Directed to Raymond A. Graff, William Fredric Joseph Ammerman Graff and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc. filed by s/ Paul E. Pongrace, III, Esquire. No CC
	✓ Notice of Interrogatories Directed to Meeker Equipment Co., Inc, filed by s/ Fredric Joseph Ammerman Paul E. Pongrace, III, Esquire. No CC

Date: 12/09/2005

Clearfield County Court of Common Pleas

User: LBENDER

Time: 03:49 PM

ROA Report

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Case: 2004-02041-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date	Selected Items	Judge
08/24/2005	✓ Certificate of Service, filed. served a copy of Defendant, Meeker Equipment Company, Inc's Petition for Leave to Court to Join DuFour Inc., as an Additional Defendant and said Petition's Accompanying Memorandum of Law to all parties of record on August 11, 2005 and a copy of this Honorable Court's Rule relative to the aforementioned Petition on August 22, 2005 to Matthew B. Taladay Esq., Thomas T. Frampton Esq., Paul E. Pongrace III Esq., and Patrick L. Mechas Esq., filed by s/ George W. Vokolas Esq. NO CC.	✓ Fredric Joseph Ammerman
08/31/2005	✓ Notice of Service, filed. Do hereby certify that I Propounded on Additional Defendant DM Industries Inc., via United States mail on the 30th day of August 2005, Plaintiffs' Response to Defendant Infern-O-Therm's First Set of Discovery materials to Patrick L. Mechas Esq., and copies to Paul E. Pongrace III Esq., Thomas T. Frampton Esq., and George W. Vokolas Esq., filed by Matthew B. Taladay Esq. No CC.	✓ Fredric Joseph Ammerman
09/19/2005	✓ Praeipce For Entry of Appearance, filed Enter my appearance on behalf of the additional defendant, DuFour Inc. filed by s/ Terry R. Heeter Esq. No CC, copy to C/A	✓ Fredric Joseph Ammerman
09/28/2005	✓ Notice of Service of Answers to Interrogatories and Responses to Request for Production of Documents Propounded by Additional Defendant DM Industries, Inc., t/a DM Industries, filed by s/ Patrick L. Mechas Esq. No CC.	✓ Fredric Joseph Ammerman
10/31/2005	✓ Praeipce to Change Counsel's Address, filed. Kindly change the mailing address of Paul E. Pongrace III, Esquire and Redman & Pongrace to 610 Two Chatham Center, 112 Washington Place, Pittsburgh, PA 15219, filed by s/ Paul E. Pongrace III Esq. No CC and copy to C/A.	✓ Fredric Joseph Ammerman
11/14/2005	✓ Motion To Compel, filed by s/ Paul E. Pongrace, III, Esquire. No CC	✓ Fredric Joseph Ammerman

Date: 01/06/2006

Clearfield County Court of Common Pleas

User: LBENDER

Time: 10:23 AM

ROA Report

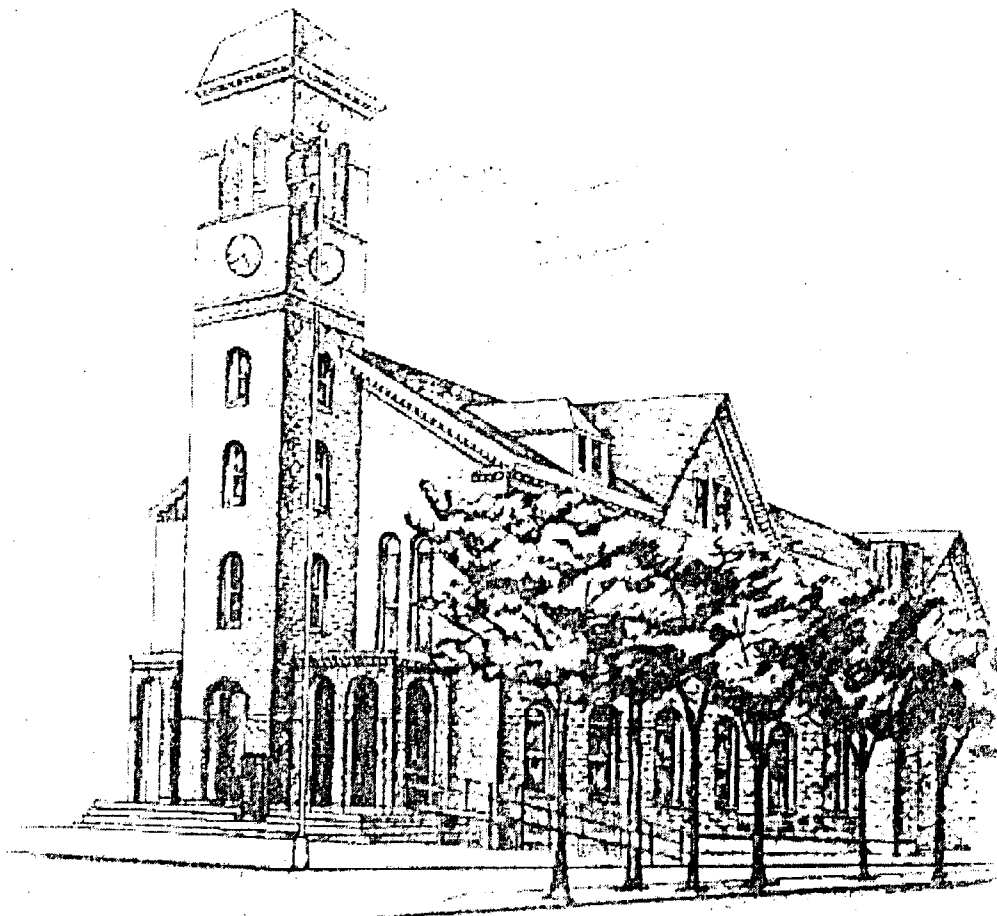
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Case: 2004-02041-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date	Selected Items	Judge
11/14/2005	X Praecipe for Argument, filed by s/ Paul E. Pongrace II Esq. No CC.	Fredric Joseph Ammerman
12/09/2005	X Entry of Appearance, on behalf of Defendant Meeker Equipment Co., Inc. X Filed by s/ George W. Vokolos, Esquire. No CC, copy to C/A	Fredric Joseph Ammerman
12/14/2005	X Proposed Scheduling Order, AND NOW, this 13th day of December, 2005, X defendant's Motion to Compel is scheduled for January 11, 2006, at 10:00 a.m. BY THE COURT: /s/Fredric J. Ammerman, P.J. Three CC Attorney Pongrace	Fredric Joseph Ammerman
12/19/2005	X Order AND NOW, this 16th day of December, 2005, upon consideration of Defendant, Meeker Equipment Co., Inc.'s Petition for Leave of Court to Join Additional Defenant, DuFour, Inc. and any and all responses thereto, or argument thereupon, it is hereby ORDERED and DECREED that Defendant, Meeker Equipment Co., Inc., be and is hereby granted Leave of Court to Join DuFour Inc., as an Additional Defendant in the above matter within thrity (30) day s of the date of this Order. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC attys: Taladay, T. Frampton, D. Bacsi, P. Silverman, Vokolas, Pongrace, Mechas, Cromer, and Heeter.	Fredric Joseph Ammerman



CLEARFIELD COUNTY
COURT CALENDAR
2005

No. 04-2041-CD

**HRI, INC. and WHITAKER
ROADS CORPORATION**

MATTHEW B. TALADAY, ESQ.

vs.

**RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b a GRAFF TANK,
GRAFF TANK, INC. and**

MEEKER EQUIPMENT CO., INC.

**THOMAS T. FRAMPTON, ESQ.
DANA L. BACSI, ESQ.**

Goehring, Rutter & Boehm, 1424
Frick Bldg., 437 Grant St., PGH
15219 412-281-0587

PHILLIP B. SILVERMAN, ESQ.
Mintzer, Sarowitz, Zeris, Ledva
& Meyers, 22ND Floor, 1528 Walnut
St., Phila, PA 19102 215-735-7200

vs.

DM INDUSTRIES, INC., t/a DM INDUSTRIES

and INFERN-O-THERM CORPORATION

PAUL E. PONGRACE, III, ESQ.
Redman & Pongrace, 300 Weyman
Plaza, Ste. 310, PGH 15236
412-884-4697

**PATRICK L. MECHAS, ESQ.
JOHN B. CROMER, ESQ.**
Burns, White & Hickton,
Four Northshore Center, 106
Isabella St., PGH 15212
412-995-3000

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Complaint

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

FILED

DEC 30 2004

m/11:00/BA

William A. Shaw
Prothonotary

1 cert to SHF
4 cert to Atty

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 Ext. 1303

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER	:	
ROADS CORPORATION,	:	
Plaintiffs	:	
vs.	:	No.
	:	
RAYMOND A. GRAFF, WILLIAM	:	
GRAFF and ROSE M. GRAFF,	:	
t/d/b/a GRAFF TANK, GRAFF	:	
TANK, INC. and MEEKER	:	
EQUIPMENT CO., INC.,	:	
Defendants	:	

COMPLAINT

AND NOW, comes the Plaintiffs, HRI, Inc., and Whitaker Roads Corporation, by its attorneys, Hanak, Guido and Taladay, and hereby bring the within Complaint:

1. HRI, Inc. is a corporation chartered in the State of Delaware that trades and does business within the Commonwealth of Pennsylvania with corporate offices at 1750 West College Avenue, Suite 1, State College, Pennsylvania 16801.
2. Whitaker Roads Corporation is a Pennsylvania business corporation and a wholly owned subsidiary of HRI, Inc., with offices and principal place of business at Route 322 East, Clearfield, Pennsylvania 16830.
3. Defendants are Raymond A. Graff, William H. Graff and Rose M. Graff who trade and do business as Graff Tank ("Graff") and who have a business address of 731A North Main Street, P.O. Box 336, Hubbard, OH 44425.

4. Graff Tank, Inc. is an Ohio business corporation with offices and principal place of business at 731A North Main Street, P.O. Box 336, Hubbard, OH 44425.

5. Defendant Meeker Equipment Co., Inc. ("Meeker") is, upon information and belief, a Pennsylvania business corporation with offices and principal place of business at 516 North Broad Street, P.O. Box 925, Lansdale, Pennsylvania 19446-0661.

6. Defendant Graff at all times relevant hereto was in the business of designing, constructing, maintaining, repairing, fabricating and assembling commercial storage tanks for the petroleum, emulsion, polymer and related industries.

7. Defendant Meeker at all times relevant hereto was in the business of offering for sale combustion heating units for storage tanks used in the petroleum, emulsion, polymer and related industries.

8. In the Fall of 2001, the Plaintiffs solicited proposals from the Defendants and others for the design, construction and provision of a combustion package for a commercial petroleum emulsion storage package for the purposes of storing and dispensing MC-70 cutback, including, but not limited to, emulsions, asphalt and/or road oils (MC-70 tank).

9. On or about December 13, 2001, Graff submitted a proposal to HRI for construction of a 24' diameter by 18' high MC-70 tank. A copy of the three page proposal is attached hereto as Exhibit "A".

10. On or about May 21, 2002, HRI, Inc. submitted a purchase order to Graph, entering a Purchase Order Agreement No. 1043. A copy of this Purchase Order is attached hereto as Exhibit "B".

11. On or about December 20, 2001, Meeker submitted to Whitaker Roads Corporation a quote for a combustion package for use in the proposed MC-70 tank. A copy of that proposal is attached as Exhibit "C".

12. On or about May 31, 2002, HRI, Inc., submitted a Purchase Order to Meeker for a combustion package for use in a 24' diameter by 18' high insulated MC-70 tank to be constructed at the Whitaker Roads Corporation facilities, Clearfield Emulsion Plant. A copy of that Purchase Order is attached hereto as Exhibit "D".

13. In accordance with the Purchase Order, Meeker did sell and HRI did purchase a CPA-200 Combustion Package which was shipped to the Clearfield Emulsion Plant in Clearfield County, Pennsylvania.

14. HRI at all times relied on the knowledge, experience and expertise of Meeker to establish the appropriate specifications for the combustion package.

15. In accordance with the Purchase Order, Graff did install and HRI did fully pay for the furnishing and construction of a 24' diameter by 18' high MC-70 tank, which was constructed by Graff at the Whitaker Roads Corporation, Clearfield Emulsion Plant and was completed on or about July, 2002.

16. In accordance with its contractual obligation, Graff did install in the CPA-200 combustion package furnished by Meeker in the MC-70 tank.

17. HRI at all times relied on the knowledge, experience and expertise of Graff in the proper design, fabrication and construction of the tank, including, but not limited to, the proper placement of all temperature sensors, heating elements, in-flow and out-flow pipes, and safety features.

18. HRI put the MC-70 tank into service on or about July, 2002 and at no time undertook any material change or usage modification of the MC-70 tank.

19. On or about August 13, 2004, a massive explosion and fire occurred at the HRI/Whitaker Roads facility.

20. The point of origin of the explosion and fire was the MC-70 tank fabricated and installed by Graff and containing the combustion package provided by Meeker. At the time of the incident, this tank was properly being used for the storage of a road oil product (MC-70 cutback).

21. The storage and dispensing of emulsions, asphalt and road oils, including MC-70 cutback, were the intended and foreseeable uses of the Graff tank.

22. The CPA-200 combustion package provided by Meeker was represented by the sellers as suitable for its intended purpose in the heating of emulsion, asphalt and road oils, including MC-70 cutback, in an 18' by 24' storage tank.

23. The explosion and fire and resulting damage were solely and proximately the responsibility of the Defendants, as set forth herein.

Count I

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Breach of Warranty - Fitness for a Particular Purpose

24. Paragraphs 1 through 23 are incorporated herein by reference as if set forth in full.

25. Plaintiff HRI at all times relevant hereto relied on the experience, expertise, counsel and judgment of Defendant Graff to fabricate, construct and erect a tank that was suitable for its intended purpose of the commercial storage and dispensing of petroleum emulsions, including, but not limited to, MC-70 cutback.

26. Graff expressly or impliedly warranted that the tank construction configuration and design were suitable and fit for that particular purpose.

27. The MC-70 tank constructed and installed by Graff was unsuitable for the Plaintiff's purposes as follows:

(a) The contents temperature sensor was improperly placed in a position above the distribution outflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) The contents temperature sensor was improperly placed, thereby defeating the emergency features of the inferno-therm heating unit installed in the tank.

(c) The MC-70 tank lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The MC-70 tank lacked adequate sensors or other safety devices to prevent overheating of the contents, which could and did result in overheating of the tank contents resulting in an explosion and fire.

(e) The tank lacked adequate warning devices to alert its users of overheating of the contents.

28. Graff failed to provide conspicuous and adequate warnings of the dangers of drawing the contents level below the level of the temperature sensor when it knew or should have known that to do so would defeat the proper functioning of the sensor and result in a dangerous condition.

WHEREFORE, the Plaintiffs demand judgment in an amount in excess of \$25,000.00.

Count II

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Negligence

29. Plaintiffs incorporate by reference paragraphs 1 through 28 as if set forth in full herein.

30. The losses sustained by HRI were solely and proximately caused by the negligence of the Defendant, his employees or agents which is as follows:

(a) The contents temperature sensor was improperly placed in a position above the distribution outflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) The contents temperature sensor was improperly placed, thereby defeating the emergency features of the inferno therm heating unit installed in the tank.

(c) The MC-70 tank lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The petroleum emulsion storage tank lacked adequate sensors or other safety devices to prevent overheating of the stored products contents, which could

and did result in overheating of the tank contents resulting in an explosion and fire.

(e) The tank lacked adequate warning devices to alert its users of imminent overheating of the contents.

WHEREFORE, Plaintiff demands judgment in its favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count III

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

Meeker Equipment Company, Inc., Defendant

Negligence

31. Plaintiffs incorporate by reference paragraphs 1 through 30 as if set forth in full herein.

32. The losses sustained by Plaintiffs were solely and proximately caused by the negligence of Defendant Meeker Equipment Company, Inc. which is as follows:

(a) Failure to provide a combustion package suitable for use in an MC-70 storage tank as specified in Defendant's Purchase order.

(b) Failure to supply a combustion unit with all features necessary for its safe foreseeable operations.

(c) Failure to provide a combustion unit with all necessary warnings.

(d) Failure to supply a combustion package including a "low volume level sensing device" or other mechanism to prevent the contents level from dropping

below the temperature sensing level and thereby creating a dangerous condition.

WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count IV

**HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
vs.
Meeker Equipment Company, Inc., Defendant**

Breach of Warranty - Fitness for a Particular Purpose

33. Paragraphs 1 through 32 are incorporated by reference as if set forth in full herein.

34. Plaintiffs at all times relevant hereto relied on the knowledge, experience, expertise and recommendations of the Defendant Meeker to provide a combustion package suitable for its intended use in heating commercially stored MC-70 cutback, including, but not limited to, emulsions, asphalt and/or road oils.

35. Defendant Meeker expressly or impliedly warranted that the combustion package was suitable or fit for that particular purpose.

36. The combustion package provided by Meeker were unsuitable for the Plaintiffs' purposes as follows:

(a) The combustion package temperature sensor was improperly placed defeating or eliminating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) Meeker failed to supply a combustion unit with all features necessary for its safe foreseeable operations.

(c) The combustion package lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The combustion package lacked adequate warning instructions or devices to alert users of imminent overheating of the tank contents.

(e) The combustion package lacked adequate sensors or other safety devices to prevent the overheating of contents, which could and did result in the overheating of the tank contents resulting in a fire and explosion.

WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count V

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank, Graff Tank, Inc., and
Meeker Equipment Company, Inc., Defendants**

Damages

37. As a direct and proximate result of the negligence and/or breach of warranties of the Defendants, jointly or severally, the Plaintiffs sustained damages as follows:

(a) Complete destruction of a 61,000 gallon

MC-70 tank resulting in a loss which is currently unliquidated but estimated to be in excess of \$130,000.00;

(b) Complete destruction of a 12,000 gallon MC-70 tank resulting in a loss estimated to be \$15,000.00;

(c) Damage to various metering gauges resulting in a loss estimated to be \$1,228.00;

(d) Damage to the insulation skin on tanks No. 11 and 12 located at the Whitaker Roads facility resulting in a loss estimated at \$2,500.00;

(e) Damage to pump and motors estimated to be \$4,556.00;

(f) Damage to the Whitaker Roads facility shop buildings necessitating repairs, estimated costs \$2,732.00;

(g) Clean up costs in the estimated amount of \$25,000.00;

(h) Damage to a tanker truck located on the premises at the time of the explosion resulting in a loss of \$3,333.33;

(j) Loss of 1,670 gallons of MC-70 road oil at a cost of \$1,870.00;

(k) Cost of installing security fence and covering explosion site to preserve scene and to protect HRI employees and site visitors, \$3,105.00;

(l) Reimbursement to responding fire departments for cost of chemical fire suppressant foam, \$9,944.00; and

(m) Administrative costs of reconstruction and commissioning MC-70 tank, currently unliquidated.

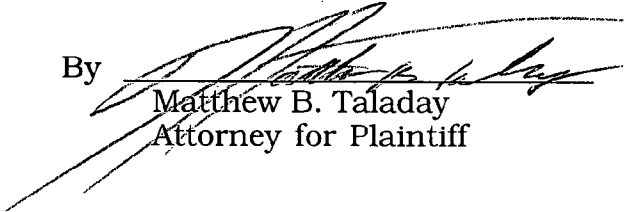
WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, counsel fees and such other relief as the Court may deem appropriate.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By


Matthew B. Taladay
Attorney for Plaintiff



Graff Tank

731A N. Main Street • P.O. Box 336
Hubbard, Ohio 44425-0336
(330) 534-3660 • Fax: (330) 534-3646
1-800-876-6671

Whitaker Roads
Clearfield/Woodland
Attn: Mr. Tim Olson

December 13, 2001

Gentlemen:

In response to your request for pricing for the fabrication & erection of one 24' dia. x 18' high tank per API 650 at your site in Clearfield, PA, Graff Tank offers the following:

24' dia. x 18' high Field-built Tank

Specifications:

Material: A-36 Carbon Steel, 1/4" nominal thickness for bottom, shell and roof.
Fittings: 24" shell and roof manways, 4-3" and 2-4 150# RFSO Flanged Fittings.
Standard: Tank would be built and tested to API 650 App. A&M (where applicable) with the reduced joint efficiency (.70) clause in effect.
Options: Ladder: Caged galvanized roof access ladder: included
Handrail: Two 8' wing rails: included.
Insulation Drip edge: included.
Heater Installation: approx. (heating element installation only, no hookup or commissioning)

Field Notes:

- Site access is assumed to be adequate for crane and equipment positioning.
- Ten-hour work days for erection and painting of steel are assumed.
- No painting is included in pricing: Primer painting for under the insulation would be in the neighborhood of
- Hydro-test by others. Also, DEP Certified Inspection by others (if applicable).
- Foundation preparation, painting, heating elements and insulation by others.
- All construction on site would be performed by experienced *non-union* personnel.

All applicable taxes would be additional to the stated pricing.

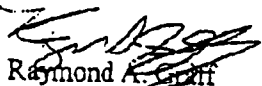
Terms: Net 30 w/ progressive payments. Pricing is valid for minimum of 30 days.

Schedule: Material ordering and engineering: 2-4 wks; fabrication: 1-2 wks; on-site erection: approx. 3-4 wks depending on weather.

If you have any questions about the above information, don't hesitate to call.

42 days Total

Sincerely,


Raymond A. Graff

Graff Tank

WR Fx: 814-857-5159

HRI, INC.

B14

Western Division
P.O. Box 402
Clearfield, PA 16830
(814) 857-7635
(814) 857-5159- Fax

**SUBCONTRACT AGREEMENT/
PURCHASE ORDER NO.**

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

01042

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

DM INDUSTRIES
326 Center Street
St. Marys, PA 15857
(814) 834-2321- Phone/Fax

Page 1

SHIP TO
WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE ORDERED 5/21/02			FOR Installation DELIVERY As Scheduled			TERMS Net 30' Days		PRICE QUOTED Richard		ORDERED FROM Same	
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION					UNIT PRICE QUOTED
			LS		LS	Furnish and Install Insulation on Purchaser's New 24'Ø x 18'High Heated Tank per the attached Quotation dated May 30, 2002					\$18,080.00
<u>NOTES & QUALIFICATIONS:</u>											
1. Delivery and installation to be determined.											
2. DM Industries (Subcontractor) is responsible to ensure that all items are properly loaded and secured for and during transportation to the jobsite.											
3. SAFETY- Subcontractor is responsible for compliance with all current HRI, Inc., and OSHA safety rules and regulations during the conduct of its performance on and in connection with this project, and shall indemnify and defend HRI, Inc. for any and all expenses incurred for fines, penalties or corrective measures imposed as a result of acts of commission or omission by Subcontractor, its agents, employees, or assigns in failure to comply with said safety rules and regulations.											
4. DM Industries guarantees and warrants the above described insulation against all defects in materials and workmanship.											
5. INDEMNIFICATION OF OWNER (HRI, INC.) FROM ALL LIABILITY- The Subcontractor (DM INDUSTRIES) shall have charge of and responsibility for its entire work as described herein until completion and acceptance, and shall alone be liable for and shall pay all loss or damage caused by it or its servants, agents, or employees to property, buildings or adjacent work and for any accident to persons that may occur during the performance of the work											

DM INDUSTRIES

APPROVED

Robert R. Hoover, Mgr. of Procurement
John R. Kulka, Pres.

ACCEPTED BY:

EXHIBIT "B"

Phillip H. Diehl, Vice Pres.

DATE:

HRI, INC.

Western Division
P.O. Box 402
Clearfield, PA 16830

Page 2

SUBCONTRACT AGREEMENT/ PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

01042

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

DM INDUSTRIES
326 Center Street
St. Marys, PA 15857

SHIP TO
WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE ORDERED 5/21/02			FOR Installation DELIVERY As Scheduled			TERMS Net 30 Days			PRICE QUOTED Richard			ORDERED FROM Same		
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION							UNIT PRICE QUOTED	
						covered by this contract or at any time thereafter as a consequence of the performance of said work. The Subcontractor shall observe all state and municipality laws, ordinances and regulations and shall defend and save harmless the Owner from all suits and claims whatsoever for loss of life or injury occurring to employees of the Subcontractor who perform such work. The Subcontractor agrees to fully indemnify, protect, defend and save harmless the Owner from all liability from all claims, loss, damage, suits and actions of every kind from all costs and expenses in connection with such claims, suits and actions due to injuries to persons or damage to property whether resulting from accident, negligence or any other cause whatsoever occurring during the performance of the work covered by this contract or at any time thereafter as a consequence of the performance of the same or which may at any time occur or result from or be caused by such work and if there are any such claims unsettled when the work herein provided for is completed, final settlement by the Owner and Subcontractor shall be deferred until such claims are adjusted or suitable special indemnity acceptable to the Owner is provided by the Subcontractor. Subcontractor shall provide proof of insurance in accordance with the attached "HRI, INC., MINIMUM INSURANCE REQUIREMENTS". Subcontractor is subject to all provisions of the Commonwealth Nondiscrimination/Sexual Harassment Clause which is incorporated herein by reference.								

SALES TAX EXEMPT

CONFIRMING ORDER

SALES TAX EXEMPT

DM INDUSTRIES

ACCEPTED BY:

DATE:

APPROVED

CONFIRMING ORDER
Robert R. Hoover, Mgr. of Procurement
John R. Kulka, Pres.

Phillip H. Diehl, Vice Pres.

DM INDUSTRIES
326 CENTER ST.
ST. MARYS, PA. 15857
Phone / Fax (814) 834-2321

5/30/02

Whitaker Roads
Attn: Tim Olson

Dear Tim:

I am pleased to submit the following price quotation (labor and material) for the insulation of the 24ft. diameter by 18-foot high tank located at your facility.

Price: \$18,080.00

Contractor will install 4" fiberglass, 2 layers, 2" thick fastened with weld pins and covered with .032 aluminum sheets secured with appropriate stainless steel screws and bands. First foot on the bottom will be cellular glass to prevent wicking. Top will consist of 2" cellular glass adhered with steep asphalt and covered with 4 layers of fiberglass paper imbedded with steep asphalt, finished with a flooded topcoat of steep asphalt.

Note: A rain gutter must be installed on this tank. This would be done by the tank manufacturer.

Yours truly,

Richard L. Sadley

Quotation #2219



MEEKER EQUIPMENT CO., INC.
516 N. Broad St., PO Box 925
Lansdale, PA 19446-0661
Office: (215) 361-2900
Fax: (215) 361-1725
Email: info@meekerequipment.com

December 20, 2001

Mr. Tim Olson
Whitaker Roads Corp.
PO Box 402
Clearfield, PA 16830

Dear Tim:

We are pleased to quote on your equipment requirements as follows:

CPA-200: Combustion package to be installed into existing horizontal tank for heating asphalt.

Main Combustion Tube: 16" seamless tube with two (2) 5" secondary heat transfer tubes, and two (2) 5" x 6" jacketed stacks.

Infern-O-Therm Burner Model 200: This is a heavy duty, industrial burner designed and manufactured by Infern-O-Therm for the process industry. Standard is #2 fuel oil with 828,000 BTU per hour input, natural gas, propane and combination burners are optional. Burner is equipped with Infern-O-Therm automatic temperature control with built in high limit switch, Fireye flame control with UV flamescanner, alarm circuit with horn, and weatherproof cover with hinged door. The control box is NEMA 13. Fan motor is TEFC 1.15 S.F. IOT burners use UL approved controls.

Combustion Chamber: High temperature refractory with Cloverleaf supercharger which maintains the back pressure at approximately 6" in the forward combustion chamber. This causes a high efficiency burning process by properly mixing the super heated air with the fuel vapors in the hot atmosphere of the combustion chamber for complete combustion with cleaner exhaust and low fuel consumption.

PRICE FOB FACTORY ...\$ 14,630.00

Optional Natural Gas/Oil Combination Burner ... Add \$ 2,750.00

Branch Office:
200 E. Campus View Blvd.
Suite 200
Columbus, OH 43235
Office: (614) 717-0100
Fax: (614) 431-8294
Email: hotmixohio@aol.com

EXHIBIT "C"

#2219

Terms: Twenty-five (25%) with order
Seventy (70%) when equipment is ready to ship
Five (5%) net 30 days

FOB: All prices are quoted FOB Factory

Delivery: Four (4) to six (6) weeks after receipt of order

Taxes: No state and/or local taxes or permits are included in pricing. Any taxes will be responsibility of the customer.

Thank you for the opportunity to quote you on your requirements and I look forward to your order.

Very truly yours,

MEEKER EQUIPMENT CO., INC.



Nick Diodad

Accepted by: _____

Date: _____

HRI, INC.

Western Division
P. O. BOX 402
CLEARFIELD, PA 16830
814/857-7635 Phone
814/857-5159 Fax

MEEKER EQUIPMENT CO., INC.
516 N. Broad Street
P. O. Box 925
Lansdale, PA 19446-0661

215/361-2900 Phone
215/361-1725 Fax

PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

1044

**ALL ORDERS TO BE SHIPPED PREPAID
FOR DELIVERED TO JOBSITE**

SHIP TO
WHITAKER ROADS CORPORATION
Barrett Curve Emulsion Plant
Route 322
3 Mi. East of Clearfield
Clearfield, PA 16830
Phone: 814/857-7635

DATE ORDERED 5/31/02		FOR DELIVERY As Scheduled		TERMS *As Noted		PRICE QUOTED Nick Diodad	ORDERED FROM David Garrett
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION	UNIT PRICE QUOTED
			LS		LS	Furnish CPA-200 Combustion Package for New 24' Ø x 18' H Insulated Tank Per the Attached Quotation dated December 20, 2001. Seller shall Ship Prepaid and Invoice Purchaser for Freight. The above described Combustion Package shall be Guaranteed and Warranted in accordance with each respective Manufacturer's Warranty, and Seller is responsible to ensure all said Warranties are provided to Purchaser and fully honored. Purchaser has relied on Seller's expertise to establish the specifications for the subject Combustion Package; accordingly, Seller furthermore Guarantees and Warrants that all specified components - regardless of Manufacturer - will function harmoniously and efficiently for their intended purpose. All above described equipment must conform to current OSHA and UL Specifications and Require- ments. * Payment Terms: 25% With Order 60% Upon Shipment 15% Net 30 Days Following Delivery SALES TAX EXEMPT Seller is subject to all Provisions of the Commonwealth Nondiscrimination/Sexual Harass- ment Clause which is incorporated herein by reference. CONFIRMING ORDER	\$14,630.00

APPROVED

Robert B. Hoover, Mgr. of Procurement

John R. Kulka, President

Phillip H. Diehl, Vice President

ACCEPTED BY:

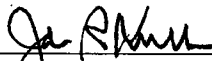
EXHIBIT "D"

VERIFICATION

I, JOHN R. KULKA, President of HRI, INC., do hereby verify that I have read the foregoing COMPLAINT. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

12.16.04
Date

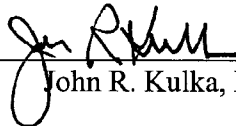

John R. Kulka, President

VERIFICATION

I, JOHN R. KULKA, President of WHITAKER ROADS CORPORATION, do hereby verify that I have read the foregoing COMPLAINT. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

12.16.04
Date



John R. Kulka, President

HANAK, GUIDO and TALADAY
Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

Telephone: (814) 371-7768
Fax: (814) 371-1974

498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Nicole Hanak Bankovich
S. Casey Bowers

December 29, 2004

William A. Shaw
Prothonotary
P.O. Box 549
Clearfield, PA 16830

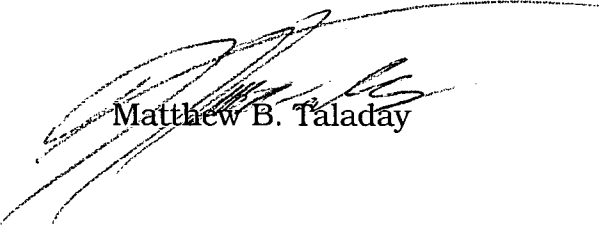
Re: HRI, Inc. and Whitaker Roads
Corporation vs. Raymond A. Graff,
William Graff and Rose M. Graff,
t/d/b/a Graff Tank, Graff Tank, Inc.
and Meeker Equipment Co., Inc.

Dear Bill:

Enclosed is an original and five copies of Complaint in Civil Action to be filed on behalf of the Plaintiffs in the above referenced matter. Also enclosed is our check made payable to you in the sum of \$85.00 representing payment of the filing fee.

Please file the original Complaint and certify the copies. I would appreciate your forwarding one certified copy to the Sheriff for service upon Meeker Equipment in Lansdale, Pennsylvania. Please, return four certified copies to me in the envelope provided for service by mail. If you have any questions concerning the enclosed, please do not hesitate to contact me.

Sincerely,



Matthew B. Taladay

MBT:kam

Encs.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Affidavit of Service

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

FILED
6th 01/10/05
JAN 19 2005
NO CC

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No. 04-2041-CD

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

AFFIDAVIT OF SERVICE

I hereby certify that on January 13, 2005, I served by
Certified Mail, Return Receipt Requested, a Court certified copy of
Complaint upon the following:

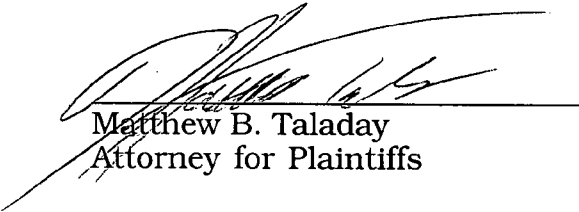
Raymond A. Graff
731A North Main Street
P.O. Box 336
Hubbard, OH 44425
Certified Mail 7099 3220 0011 0187 9188

William H. Graff
731A North Main Street
P.O. Box 336
Hubbard, OH 44425
Certified Mail 7099 3220 0011 0187 9171

Rose M. Graff
731A North Main Street
P.O. Box 336
Hubbard, OH 44425
Certified Mail 7099 3220 0011 0187 9164

Graff Tank, Inc.
731A North Main Street
P.O. Box 336
Hubbard, OH 44425
Certified Mail 7099 3220 0011 0187 9157

Return Receipt Cards are attached hereto as Exhibit "A".

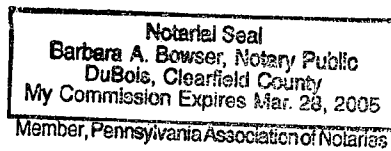


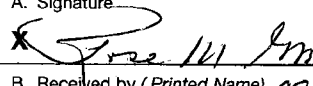
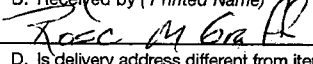
Matthew B. Taladay
Attorney for Plaintiffs

Sworn to and subscribed before
me this 18th day of January, 2005.



Barbara A. Bowser
Notary



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature  ☐ Agent ☐ Addressee	
1. Article Addressed to: RAYMOND A. GRAFF 731A NORTH MAIN STREET PO BOX 336 HUBBARD OH 44425		B. Received by (Printed Name) C. Date of Delivery 	
		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number (Transfer from service label) 7099 3220 0011 0187 9188			
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540			

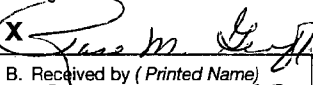
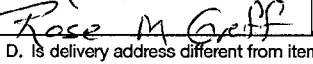
SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature  ☐ Agent ☐ Addressee	
1. Article Addressed to: WILLIAM H. GRAFF 731A NORTH MAIN STREET PO BOX 336 HUBBARD OH 44425		B. Received by (Printed Name) C. Date of Delivery 	
		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number (Transfer from service label) 7099 3220 0011 0187 9171			
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540			

EXHIBIT "A"

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ <i>Rose M Graff</i> ☐ Agent ☐ Addressee	
1. Article Addressed to: ROSE M. GRAFF 731A NORTH MAIN STREET PO BOX 336 HUBBARD OH 44425		B. Received by (Printed Name) ☐ C. Date of Delivery <i>Rose M Graff</i>	
		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	
Article Number 7099 3220 0011 0187 9164 (Transfer from service label)			
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540			

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ <i>Rose M Graff</i> ☐ Agent ☐ Addressee	
1. Article Addressed to: GRAFF TANK INC. 731A NORTH MAIN STREET PO BOX 336 HUBBARD OH 44425		B. Received by (Printed Name) ☐ C. Date of Delivery <i>Rose M Graff</i>	
		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number 7099 3220 0011 0187 9157 (Transfer from service label)			
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540			

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100100
NO: 04-2041-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: HRI, INC. and WHITAKER ROADS CORPORATION
vs.
DEFENDANT: RAYMOND A. GRAFF al

SHERIFF RETURN

NOW, January 10, 2005, SHERIFF OF MONTGOMERY COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON MEEKER EQUIPMENT CO. INC..

NOW, January 21, 2005 AT 8:50 AM SERVED THE WITHIN COMPLAINT ON MEEKER EQUIPMENT CO. INC., DEFENDANT. THE RETURN OF MONTGOMERY COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED⁶⁴
012:3889
FEB 02 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100100
NO: 04-2041-CD
SERVICES 1
COMPLAINT

PLAINTIFF: HRI, INC. and WHITAKER ROADS CORPORATION
vs.
DEFENDANT: RAYMOND A. GRAFF al

SHERIFF RETURN

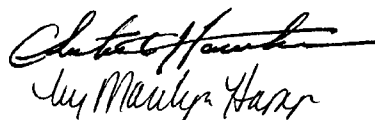
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	HANAK	13824	10.00
SHERIFF HAWKINS	HANAK	13823	30.00
MONTGOMERY CO.	HANAK	13825	33.00

Sworn to Before Me This

_____ Day of _____ 2005

So Answers,



Chester A. Hawkins
Sheriff

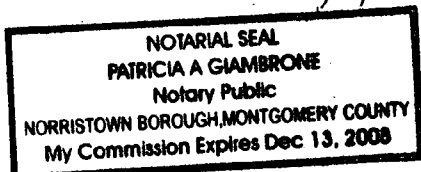
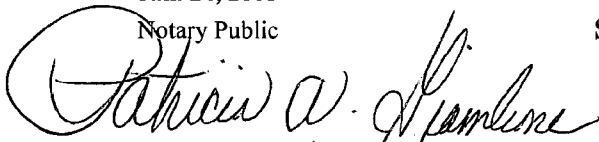
SHERIFF'S RETURN**PROTHONOTARY B-205****DEFENDANT: Meeker Equipment Company****DOCUMENT SERVED: Civil****INDIVIDUAL SERVED: Ivette Morales****RELATIONSHIP TO DEFENDANT: Office Manager****DATE AND PREVAILING TIME: Jan. 21, 2005 @ 08:50****LOCATION: 516 North Broad Street, Lansdale, PA**

The above document was served on the defendant as per information listed above in the County of Montgomery, Commonwealth of Pennsylvania.

Affirmed and subscribed before me on this day so answers.

Jan. 24, 2005

Notary Public



John P. Durante
Sheriff of Montgomery County

Deputy Sheriff
Zappala



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

ROBERT SNYDER
CHIEF DEPUTY
CYNTHIA AUGHENBAUGH
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK
PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 100100

TERM & NO. 04-2041-CD

HRI, INC. and WHITAKER ROADS CORPORATION

COMPLAINT

vs.

RAYMOND A. GRAFF al

SERVE BY: 01/29/04

MAKE REFUND PAYABLE TO HANAK, GUIDO & TALADAY, ESQ.

SERVE: MEEKER EQUIPMENT CO. INC.

ADDRESS: 516 NORTH BROAD ST., P.O.BOX 925, LANSDALE, PA 19446-0661

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF MONTGOMERY COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, January 10, 2005.

PERSON SERVED Ivette Morales
RELATION / POSITION Office manager
PLACE OF SERVICE 95 Given
TIME OF SERVICE 0950
DATE OF SERVICE 1-21-05
NUMBER OF ATTEMPTS 1 SHERIFF OF
DEPUTY Zappala
DEPUTY
LAST DAY OF SERVICE 1-29-05

RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

RECEIVED
MONTGOMERY COUNTY
SHERIFFS DEPT.
05 JAN 19 AM 9:01

B205

☐ FORM MGSD 101



SHERIFF'S OFFICE
COUNTY of MONTGOMERY

COURT HOUSE

AIRY AND SWEDE STREETS
NORRISTOWN, PENNSYLVANIA 19404
TELEPHONE (610) 278-3331

CUSTOMER'S COPY ☐

421942 ☐

Plaintiff

HRI Inc

Defendant

Meeker Equipment Co

Filed By

Clearfield

Date

1-19-05

☐ INVOICE for charges
☒ RECEIPT for payment

Docket No.

B205

Type of Transaction

AMOUNT

Docketing and Service

33

Additional Defendant

Surcharge

Writ of Execution

Garnishment

Interrogatory

Affidavit—Notary

Pistol Permit No.

Property Claim

Poundage

Notarial Certificate

Sheriff's Acknowledgment

Prothonotary Acknowledgment

Mileage

Additional Mileage

Check No.

13825

Clerk

12

33

43967

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**

BY: PHILLIP B. SILVERMAN, ESQUIRE

Identification No.: 02201

22nd Floor

1528 Walnut Street

Philadelphia, PA 19102

(215) 735-7200

MSZL&M File No. 6400.0006

Attorney for Defendant(s),
MEEKER EQUIPMENT CO., INC.

HRI, INC. and WHITAKER ROADS
CORPORATION,

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF and
ROSE M. GRAFF t/d/b/a GRAFF TANK;
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

COURT OF COMMON PLEAS
Clearfield County

No. 04-2041-~~0~~CD

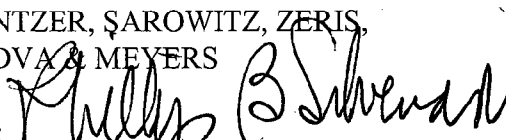
ENTRY OF APPEARANCE AND DEMAND FOR JURY TRIAL

TO THE PROTHONOTARY:

Kindly enter our appearance on behalf of defendant(s), MEEKER EQUIPMENT CO., INC.,
in the within action. Defendant(s) hereby demands a jury trial in this matter. Jury of twelve with
alternates, demanded.

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS

BY:


PHILLIP B. SILVERMAN, ESQUIRE

Attorney for Defendant(s), MEEKER EQUIPMENT
CO., INC.

FILED
m110:3901
FEB 03 2005

William A. Shaw
Prothonotary/Clerk of Courts

FILED

FEB 03 2005

William A. Shaw
Prothonotary/Clerk of Courts

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: PHILLIP B. SILVERMAN, ESQUIRE
Identification No.: 02201
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant,
MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

No. 04-2041-CD

PRAECIPE TO ISSUE WRIT OF SUMMONS TO JOIN
DM INDUSTRIES, INC. D/B/A DM INDUSTRIES AND INFERN-O-THERM
CORPORATION AS ADDITIONAL DEFENDANTS

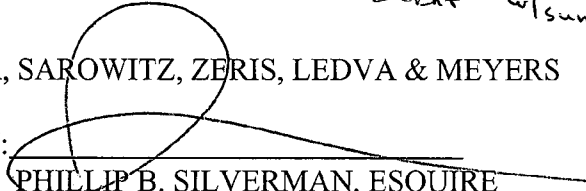
TO THE PROTHONOTARY:

Kindly issue a Writ of Summons to join Additional Defendants:

DM Industries, Inc. d/b/a DM Industries
352 Walnut Street,
St. Mary's, PA 15857
and
Infern-O-Therm Corporation
Foot of Locust Street
Keyport, NJ 07735

in the within action.

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 
PHILLIP B. SILVERMAN, ESQUIRE
Attorney for Defendant:
MEEKER EQUIPMENT CO., INC.

FILED

MAR 01 2005

William A. Shaw

Prothonotary/Clerk of Courts

2 CERT w/ Summons to

2 CERT w/ Summons to Sheriff

FILED

MAR 01 2005

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION**

SUMMONS

**HRI, Inc.
Whitaker Roads Corporation
Plaintiffs**

Vs.

NO.: 2004-02041-CD

**Raymond A. Graff
William Graff
Roae M. Graff
Graff Tank
Graff Tank, Inc.
Meeker Equipment Co. Inc.
Defendants**

and

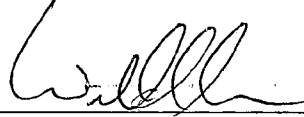
**DM Industries, Inc.
DM Industries
Infern-O-Therm Corporation
Additional Defendants**

TO:

**DM INDUSTRIES, INC.
DM INDUSTRIES
INFERN-O-THERM CORPORATION**

To the above named Additional Defendant(s) you are hereby notified that you are joined in the above Civil Action.

Date: 03/01/2005



William A. Shaw
Prothonotary

Issuing Attorney: Phillip B. Silverman, Esq.
Attorney for Defendant: MEEKER EQUIPMENT CO., INC.

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: PHILLIP B. SILVERMAN, ESQUIRE

Identification No.: 02201

22nd Floor

1528 Walnut Street

Philadelphia, PA 19102

(215) 735-7200

MSZL&M File No. 6400.0006

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE
ENCLOSED A COPY OF PLEADING WITHIN TWENTY (20)
DAYS FROM SERVICE HEREOF, OR A JUDGMENT WILL
BE ENTERED AGAINST YOU

Phillip B. Silverman
PHILLIP B. SILVERMAN, ESQUIRE
ATTORNEY FOR DEFENDANT

Attorney for Defendant,
MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

No. 04-20⁴21-CD

DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S
ANSWER AND NEW MATTER AND CROSSCLAIM

ANSWER

1. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
2. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

FILED

MAR 02 2005
m/12:05
William A. Shaw
Prothonotary/Clerk of Courts

1 CENT TO ATT

3. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
4. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
5. Admitted.
6. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
7. Denied as stated. Answering defendant, at all times material to this cause of action, was in the business of offering for sale the equipment to the hot mix asphalt industry.
8. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
9. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof

is demanded at the time of trial.

10. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
11. Denied as stated. Exhibit "C" speaks for itself.
12. Denied as stated. Exhibit "D" speaks for itself.
13. Admitted in part and denied in part. It is admitted that Meeker did sell and HRI did purchase a CPA-200 combustion package, with respect to the remainder of this paragraph, it is denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
14. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
15. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
16. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of

this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

17. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
18. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
19. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
20. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
21. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

22. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
23. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
- 24-28. Denied. These paragraphs are deemed to be denied in that they are directed to other defendants.
- 29-30. Denied. These paragraphs are deemed to be denied in that they are directed to other defendants.
31. Denied. Answering defendant incorporates by reference and makes a part hereof it's answer to paragraph 1-30 as though same were herein after set forth at length.
32. Denied. Answering defendant denies that it was in any way negligent as averred. To the contrary, at all times material to this cause of action, answering defendant acted in a proper and careful manner under the circumstances.
33. Denied. Answering defendant incorporates by reference and makes a part hereof it's answer to paragraphs 1-32 as though same were herein after set forth at length.
34. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

35. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial. By way of further answer, this paragraph is deemed to be denied as a legal conclusion.
36. Denied. Answering defendant denies that the combustion package was unsuitable for plaintiffs' purposes as alleged. Answering defendant provided the combustion package ordered by plaintiffs. That which was ordered was supplied to plaintiffs by Infern-O-Therm and installed by the other defendant, DM Industries, Plaintiffs, or an unknown third parties.
37. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

WHEREFORE, Defendant, Meeker Equipment Company, Inc. denies that it is liable to the Plaintiffs in any sum of money.

NEW MATTER

38. At all times relevant herein, there existed the Pennsylvania Comparative Negligence Act, the relevant portions of which are incorporated herein by reference. Plaintiffs' claims are limited and/or barred by the terms of that Act.
39. If plaintiffs suffered any injuries or damages as alleged, they were caused solely and primarily by plaintiffs' own carelessness, recklessness, and negligence, and plaintiff's recovery is barred or otherwise limited or reduced in accordance with

the provisions of the Pennsylvania Comparative Negligence Act, the terms of which Act are incorporated herein by reference.

40. Answering defendant pleads the affirmative defense of the Doctrine of Assumption of Risk. Plaintiffs' claims are barred and/or limited by the assumption of risk.
41. Answering defendant supplied the Infern-O-Therm burner model 200. It did not manufacture the product.
42. The product supplied by answering defendant was installed by the other defendant, DM Industries, plaintiffs, or an unknown third parties.
43. Answering defendant avers and therefore believes that plaintiffs stored an improper product in the tank.
44. Answering defendant avers and therefore believes that the combustion package was improperly installed.

WHEREFORE, defendant, Meeker Equipment Company, Inc., demands judgement in it's favor.

**DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S CROSSCLAIM
AGAINST DEFENDANTS, RAYMOND A. GRAFF, WILLIAM GRAFF AND
ROSE M. GRAFF T/D/B/A GRAFF TANK; GRAFF TANK, INC.**

45. Answering defendant incorporates by reference and makes a part hereof the allegations of negligence and breach of warranty against defendants, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank and Graff Tank, Inc. from plaintiffs' complaint as though same were herein after set forth at length.

WHEREFORE, defendants, Raymond A. Graff, William Graff, and Rose M. Graff t/d/b/a Graff Tank and Graff Tank, Inc. are alone liable or liable over to plaintiff or jointly or severley liable the damages which plaintiffs may have so sustained.

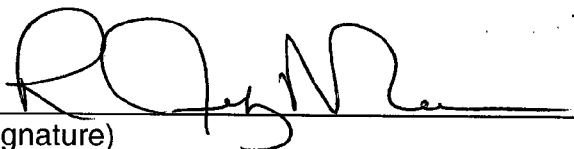
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 
PHILLIP B. SILVERMAN, ESQUIRE
Attorney for Defendant: **MEEKER
EQUIPMENT CO., INC.**

VERIFICATION

The undersigned is authorized to sign this verification with regards to the foregoing document. The facts contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. The language of this pleading is that of counsel and not of signer. This verification is made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.

R JEFFREY MEEKER
(Print name)


(Signature)

DATE: 2-14-05

MSZL&M FILE NO.: 6400.0006

FILED

MAR 02 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Certificate of Service

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

FILED
M/10:37
MAR 04 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No. 04-2041-CD

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

CERTIFICATE OF SERVICE

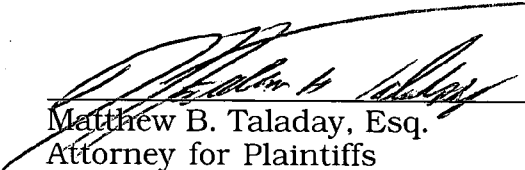
I hereby certify that on March 3, 2005, I mailed Default
Notices, copies of which are attached hereto, by first class mail,
postage prepaid, to the following:

Raymond A. Graff
731A North Main Street
P.O. Box 336
Hubbard, OH 44425

William H. Graff
731A North Main Street
P.O. Box 336
Hubbard, OH 44425

Rose M. Graff
731A North Main Street
P.O. Box 336
Hubbard, OH 44425

Graff Tank
731A North Main Street
P.O. Box 336
Hubbard, OH 44425


Matthew B. Taladay, Esq.
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No. 04-2041-CD

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

IMPORTANT NOTICE

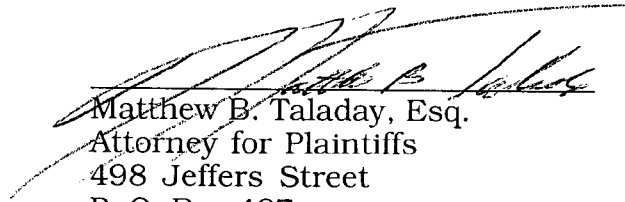
TO: Raymond A. Graff
731A North Main Street
P.O. Box 336
Hubbard, OH 44424

DATE: March 3, 2005

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO
TAKE ACTION REQUIRED OF YOU IN THIS CASE. UNLESS YOU ACT
WITHIN TEN (10) DAYS OF THE DATE OF THIS NOTICE, JUDGMENT
MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU
MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU
SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO
NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR

TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU
CAN GET LEGAL HELP:

Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 Ext. 1300



Matthew B. Taladay, Esq.
Attorney for Plaintiffs
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No. 04-2041-CD

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

IMPORTANT NOTICE

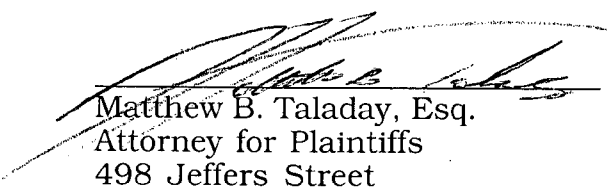
TO: William H. Graff
731A North Main Street
P.O. Box 336
Hubbard, OH 44424

DATE: March 3, 2005

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO
TAKE ACTION REQUIRED OF YOU IN THIS CASE. UNLESS YOU ACT
WITHIN TEN (10) DAYS OF THE DATE OF THIS NOTICE, JUDGMENT
MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU
MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU
SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO
NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR

TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU
CAN GET LEGAL HELP:

Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 Ext. 1300



Matthew B. Taladay, Esq.
Attorney for Plaintiffs
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No. 04-2041-CD

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

IMPORTANT NOTICE

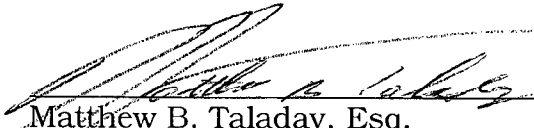
TO: Rose M. Graff
731A North Main Street
P.O. Box 336
Hubbard, OH 44424

DATE: March 3, 2005

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EQUIPMENT CO., INC.,
Defendants

IMPORTANT NOTICE

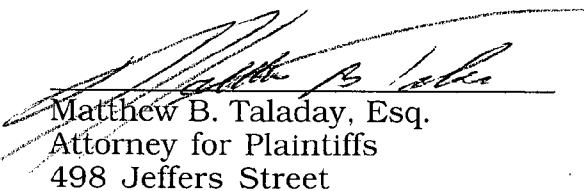
TO: Graff Tank
731A North Main Street
P.O. Box 336
Hubbard, OH 44424

DATE: March 3, 2005

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Matthew B. Taladay, Esq.
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498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

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OF CLEARFIELD COUNTY, PENNSYLVANIA

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TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Reply to New Matter

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

FILED
MAR 10 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No. 04-2041-CD

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

**PLAINTIFFS' REPLY TO NEW MATTER
FILED BY DEFENDANT MEEKER EQUIPMENT COMPANY, INC.**

AND NOW, come the Plaintiffs, HRI, Inc. and Whitaker Roads Corporation, by their attorneys, Hanak, Guido and Taladay, and hereby respond to New Matter of Defendant Meeker Equipment Company, Inc. as follows:

38. The allegations set forth in paragraph 38 of New Matter constitute a conclusion of law to which no response is required.

39. The Plaintiffs deny all allegations that they were in any way careless, reckless or negligent. The remaining allegations of paragraph 39 constitute a conclusion of law to which no response is required.

40. Paragraph 40 of the New Matter of Defendant Meeker Equipment Company, Inc. constitutes a conclusion of law to

which no response is required. However, Plaintiffs deny applicability of the Doctrine of Assumption of Risk to the present case.

41. Admitted.

42. It is admitted that Defendant Meeker Equipment Company, Inc. did not install the product that it supplied.

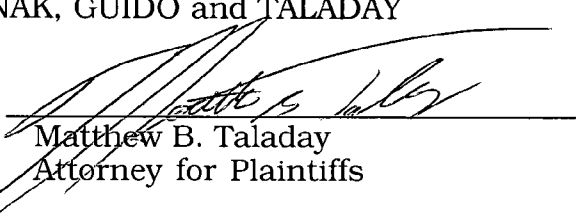
43. Denied. To the contrary, the Plaintiffs at all time utilized the tank and appurtenant structures for their usual, customary and proper purposes, which purposes were known to the responding Defendant.

44. After reasonable investigation, Plaintiffs are without information sufficient to form a belief as to the truth of the allegations of paragraph 44 of the New Matter of Defendant Meeker Equipment Company, Inc. Therefore, the same are denied and strict proof thereof is demanded at the time of trial.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By

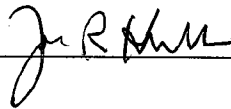

Matthew B. Taladay
Attorney for Plaintiffs

VERIFICATION

I, **John R. Kulka**, President of HRI, INC., do hereby verify that I have read the foregoing REPLY TO NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 03.08.05

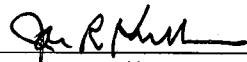


VERIFICATION

I, **John R. Kulka**, President of WHITAKER ROADS CORPORATION, do hereby verify that I have read the foregoing REPLY TO NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 03.08.09



John R. Kulka

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No. 04-2041-CD

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK. GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 2005, I
mailed a true and correct copy of the foregoing Reply to New Matter
by first class mail, postage prepaid, to the following:

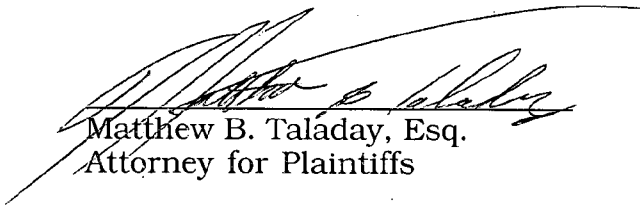
Phillip B. Silverman, Esq.
Attorney for Defendant Meeker Equipment Company, Inc.
Minter Sarowitz Zeris Ledva & Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102-3614

Raymond A. Graff
Defendant
731A North Main Street
P.O. Box 336
Hubbard, OH 44425

William H. Graff
Defendant
731A North Main Street
P.O. Box 336
Hubbard, OH 44425

Rose M. Graff
Defendant
731A North Main Street
P.O. Box 336
Hubbard, OH 44425

Graff Tank
Defendant
731A North Main Street
P.O. Box 336
Hubbard, OH 44425



Matthew B. Taladay, Esq.
Attorney for Plaintiffs

FILED

MAR 10 2005

William A. Shaw
Prothonotary/Clerk of Courts

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: PHILLIP B. SILVERMAN, ESQUIRE
Identification No.: 02201
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant, **MEEKER
EQUIPMENT CO., INC.**

FILED NO CC
M/10:33 AM
MAR 14 2005

William A. Sherry
Prothonotary/Clerk of Courts

HRI, INC. AND WHITAKER ROADS
CORPORATION

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

2041-CD
No. 04-2021-CD

**DEFENDANT, MEEKER EQUIPMENT COMPANY, INC'S COMPLAINT
AGAINST ADDITIONAL DEFENDANTS, DM INDUSTRIES, INC. T/A
DM INDUSTRIES AND INFERN-O-THERM, CORPORATION**

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE
IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE,
GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO
FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL AND INFORMATION SERVICE
P. O. Box 549
Clearfield, Pennsylvania 16830
Telephone: 814-765-2641

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI
NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE
PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR
TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA
ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE
CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE FILADELFA
SERVICIO DE REFERENCIA E INFORMACION LEGAL
P. O. Box 549
Clearfield, Pennsylvania 16830
Telefono: 814-765-2641

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**

BY: PHILLIP B. SILVERMAN, ESQUIRE

Identification No.: 02201

22nd Floor

1528 Walnut Street

Philadelphia, PA 19102

(215) 735-7200

MSZL&M File No. 6400.0006

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE ENCLOSED
A COPY OF PLEADING WITHIN TWENTY (20) DAYS FROM
SERVICE HEREOF, OR A JUDGMENT WILL BE ENTERED
AGAINST YOU.

PHILLIP B. SILVERMAN, ESQUIRE
ATTORNEY FOR DEFENDANT

Attorney for Defendant,
MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC. AND

DM INDUSTRIES, INC. T/A DM INDUSTRIES
326 Centers Street
St. Mary's, PA 15857

Additional Defendant

and

INFERN-O-THERM, CORPORATION
Foot of Locust Street
Keyport, NJ 07735

Additional Defendant

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

No. 04-2021-CD

DEFENDANT, MEEKER EQUIPMENT COMPANY, INC'S COMPLAINT
AGAINST ADDITIONAL DEFENDANTS, DM INDUSTRIES, INC. T/A
DM INDUSTRIES AND INFERN-O-THERM, CORPORATION

1. Plaintiffs brought suit as of the above court term and number to recover for
property damage as alleged in their complaint, a copy of which is attached hereto

and marked Exhibit "A".

2. Defendant, Meeker Equipment Company, Inc. filed an Answer to plaintiffs' Complaint, a copy of which is attached hereto and marked Exhibit "B".
3. Infern-O-Therm Corporation is a business entity located at Foot of Locust Street, Keyport, NJ 07735.
4. DM Industries, Inc. t/a DM Industries is a business entity located at 326 Centers Street, St. Mary's, PA 15857.
5. At all times material to this cause of action, additional defendant, Infern-O-Therm Corporation, manufactured, sold and shipped the CPA-200 combustion package to plaintiffs.
6. Defendant, Meeker Equipment Company, Inc., avers and therefore believes that additional defendant, DM Industries, Inc. t/a DM Industries, its agents, servants, workmen or employees acting within the course and scope of their employment either alone or with others installed the CPA-200 combustion package on the tank referred to in plaintiffs' Complaint.

COUNT I

Meeker Equipment Company, Inc. v. Infern-O-Therm, Corporation

7. Defendant, Meeker Equipment Company, Inc. incorporates by reference and makes a part hereof paragraphs 1-6 as though same were herein after set forth at length.
8. Additional defendant, Infern-O-Therm, Corporation, is a seller potentially liable to plaintiffs pursuant to Restatement of Torts 2nd 402(a).
9. If there was any negligence on the part of defendant, Meeker Equipment

Company, Inc., said acts or omissions being specifically denied, the damages and losses alleged to have been sustained by plaintiffs were caused by additional defendant, Infern-O-Therm, Corporation as follows:

- a. Failure to provide a combustion package suitable for use in the storage tank.
 - b. Failure to supply a combustion package with all features necessary for it's safe foreseeable operations.
 - c. Failure to provide a combustion package with all necessary warnings.
 - d. Failure to supply a combustion package including a low volume level sensing device or other mechanism to prevent the contents level from dropping below the temperature sensing level and thereby creating a dangerous condition.
 - e. Failure to supply appropriate instructions to the installer with the combustion package.
10. Additional defendant, Infern-O-Therm, Corporation, expressly or impliedly warranted that the combustion package was suitable or fit for the purpose referred to in plaintiffs' Complaint.

WHEREFORE, additional defendant, Infern-O-Therm, Corporation, is alone liable or liable over to plaintiffs or jointly or severally liable for damages and losses which plaintiffs may have so sustained.

COUNT II

Meeker Equipment, Inc. v. DM Industries, Inc. t/a DM Industries

11. Defendant, Meeker Equipment Inc., incorporates by reference and makes a part

hereof paragraphs 1-10 as though same were herein after set forth at length.

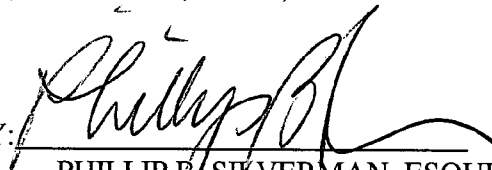
12. If there any negligence on the part of defendant, Meeker Equipment, Inc., said acts or omissions being specifically denied, the incident described in plaintiffs' Complaint was caused by the negligence of the defendant, DM Industries, Inc. t/a DM Industries, it's agents, servants, workmen or employees acting in the course and scope of their employment as follows:

- a. The contents temperature sensor was improperly placed in a position above the distribution overflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.
- b. The contents temperature sensor was improperly placed, therefore, defeating the emergency feature of the Infern-O-Therm heating package.
- c. Improperly installing the CPA-200 combustion package.
- d. Failure to warn users of imminent overheating of the tank contents thus resulting in the explosion and fire.

WHEREFORE, additional defendant, DM Industries, Inc. t/a DM Industries is alone liable of liable over to plaintiffs or jointly or severly liable for the damages and losses which plaintiffs may have so sustained.

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY:



PHILLIP B. SILVERMAN, ESQUIRE
Attorney for Defendant: **MEEKER
EQUIPMENT CO., INC.**

VERIFICATION

The undersigned is authorized to sign this verification with regards to the foregoing document. The facts contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. The language of this pleading is that of counsel and not of signer. This verification is made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.

R JEFFREY MEEKER

(Print name)

R Jeffrey Meeker

(Signature)

DATE: 3-2-05

MSZL&M FILE NO.: 6400.0006

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

CIVIL ACTION - AT LAW

No. 04-2041-D

Type of Pleading:

Complaint

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 30 2004

Attest.



Matthew B. Taladay
F. C. Taladay
Clearfield County

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

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Plaintiffs

vs.

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IN THE COURT OF COMMON PLEAS
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GRAFF and ROSE M. GRAFF,
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EQUIPMENT CO., INC.,
Defendants

COMPLAINT

AND NOW, comes the Plaintiffs, HRI, Inc., and Whitaker Roads Corporation, by its attorneys, Hanak, Guido and Taladay, and hereby bring the within Complaint:

1. HRI, Inc. is a corporation chartered in the State of Delaware that trades and does business within the Commonwealth of Pennsylvania with corporate offices at 1750 West College Avenue, Suite 1, State College, Pennsylvania 16801.
2. Whitaker Roads Corporation is a Pennsylvania business corporation and a wholly owned subsidiary of HRI, Inc., with offices and principal place of business at Route 322 East, Clearfield, Pennsylvania 16830.
3. Defendants are Raymond A. Graff, William H. Graff and Rose M. Graff who trade and do business as Graff Tank ("Graff") and who have a business address of 731A North Main Street, P.O. Box 336, Hubbard, OH 44425.

4. Graff Tank, Inc. is an Ohio business corporation with offices and principal place of business at 731A North Main Street, P.O. Box 336, Hubbard, OH 44425.

5. Defendant Meeker Equipment Co., Inc. ("Meeker") is, upon information and belief, a Pennsylvania business corporation with offices and principal place of business at 516 North Broad Street, P.O. Box 925, Lansdale, Pennsylvania 19446-0661.

6. Defendant Graff at all times relevant hereto was in the business of designing, constructing, maintaining, repairing, fabricating and assembling commercial storage tanks for the petroleum, emulsion, polymer and related industries.

7. Defendant Meeker at all times relevant hereto was in the business of offering for sale combustion heating units for storage tanks used in the petroleum, emulsion, polymer and related industries.

8. In the Fall of 2001, the Plaintiffs solicited proposals from the Defendants and others for the design, construction and provision of a combustion package for a commercial petroleum emulsion storage package for the purposes of storing and dispensing MC-70 cutback, including, but not limited to, emulsions, asphalt and/or road oils (MC-70 tank).

9. On or about December 13, 2001, Graff submitted a proposal to HRI for construction of a 24' diameter by 18' high MC-70 tank. A copy of the three page proposal is attached hereto as Exhibit "A".

10. On or about May 21, 2002, HRI, Inc. submitted a purchase order to Graph, entering a Purchase Order Agreement No. 1043. A copy of this Purchase Order is attached hereto as Exhibit "B".

11. On or about December 20, 2001, Meeker submitted to Whitaker Roads Corporation a quote for a combustion package for use in the proposed MC-70 tank. A copy of that proposal is attached as Exhibit "C".

12. On or about May 31, 2002, HRI, Inc., submitted a Purchase Order to Meeker for a combustion package for use in a 24' diameter by 18' high insulated MC-70 tank to be constructed at the Whitaker Roads Corporation facilities, Clearfield Emulsion Plant. A copy of that Purchase Order is attached hereto as Exhibit "D".

13. In accordance with the Purchase Order, Meeker did sell and HRI did purchase a CPA-200 Combustion Package which was shipped to the Clearfield Emulsion Plant in Clearfield County, Pennsylvania.

14. HRI at all times relied on the knowledge, experience and expertise of Meeker to establish the appropriate specifications for the combustion package.

15. In accordance with the Purchase Order, Graff did install and HRI did fully pay for the furnishing and construction of a 24' diameter by 18' high MC-70 tank, which was constructed by Graff at the Whitaker Roads Corporation, Clearfield Emulsion Plant and was completed on or about July, 2002.

16. In accordance with its contractual obligation, Graff did install in the CPA-200 combustion package furnished by Meeker in the MC-70 tank.

17. HRI at all times relied on the knowledge, experience and expertise of Graff in the proper design, fabrication and construction of the tank, including, but not limited to, the proper placement of all temperature sensors, heating elements, in-flow and out-flow pipes, and safety features.

18. HRI put the MC-70 tank into service on or about July, 2002 and at no time undertook any material change or usage modification of the MC-70 tank.

19. On or about August 13, 2004, a massive explosion and fire occurred at the HRI/Whitaker Roads facility.

20. The point of origin of the explosion and fire was the MC-70 tank fabricated and installed by Graff and containing the combustion package provided by Meeker. At the time of the incident, this tank was properly being used for the storage of a road oil product (MC-70 cutback).

21. The storage and dispensing of emulsions, asphalt and road oils, including MC-70 cutback, were the intended and foreseeable uses of the Graff tank.

22. The CPA-200 combustion package provided by Meeker was represented by the sellers as suitable for its intended purpose in the heating of emulsion, asphalt and road oils, including MC-70 cutback, in an 18' by 24' storage tank.

23. The explosion and fire and resulting damage were solely and proximately the responsibility of the Defendants, as set forth herein.

Count I

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Breach of Warranty - Fitness for a Particular Purpose

24. Paragraphs 1 through 23 are incorporated herein by reference as if set forth in full.

25. Plaintiff HRI at all times relevant hereto relied on the experience, expertise, counsel and judgment of Defendant Graff to fabricate, construct and erect a tank that was suitable for its intended purpose of the commercial storage and dispensing of petroleum emulsions, including, but not limited to, MC-70 cutback.

26. Graff expressly or impliedly warranted that the tank construction configuration and design were suitable and fit for that particular purpose.

27. The MC-70 tank constructed and installed by Graff was unsuitable for the Plaintiff's purposes as follows:

(a) The contents temperature sensor was improperly placed in a position above the distribution outflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) The contents temperature sensor was improperly placed, thereby defeating the emergency features of the inferno-therm heating unit installed in the tank.

(c) The MC-70 tank lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The MC-70 tank lacked adequate sensors or other safety devices to prevent overheating of the contents, which could and did result in overheating of the tank contents resulting in an explosion and fire.

(e) The tank lacked adequate warning devices to alert its users of overheating of the contents.

28. Graff failed to provide conspicuous and adequate warnings of the dangers of drawing the contents level below the level of the temperature sensor when it knew or should have known that to do so would defeat the proper functioning of the sensor and result in a dangerous condition.

WHEREFORE, the Plaintiffs demand judgment in an amount in excess of \$25,000.00.

Count II

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Negligence

29. Plaintiffs incorporate by reference paragraphs 1 through 28 as if set forth in full herein.

30. The losses sustained by HRI were solely and proximately caused by the negligence of the Defendant, his employees or agents which is as follows:

(a) The contents temperature sensor was improperly placed in a position above the distribution outflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) The contents temperature sensor was improperly placed, thereby defeating the emergency features of the inferno therm heating unit installed in the tank.

(c) The MC-70 tank lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The petroleum emulsion storage tank lacked adequate sensors or other safety devices to prevent overheating of the stored products contents, which could

and did result in overheating of the tank contents resulting in an explosion and fire.

(e) The tank lacked adequate warning devices to alert its users of imminent overheating of the contents.

WHEREFORE, Plaintiff demands judgment in its favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count III

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

Meeker Equipment Company, Inc., Defendant

Negligence

31. Plaintiffs incorporate by reference paragraphs 1 through 30 as if set forth in full herein.

32. The losses sustained by Plaintiffs were solely and proximately caused by the negligence of Defendant Meeker Equipment Company, Inc. which is as follows:

(a) Failure to provide a combustion package suitable for use in an MC-70 storage tank as specified in Defendant's Purchase order.

(b) Failure to supply a combustion unit with all features necessary for its safe foreseeable operations.

(c) Failure to provide a combustion unit with all necessary warnings.

(d) Failure to supply a combustion package including a "low volume level sensing device" or other mechanism to prevent the contents level from dropping

below the temperature sensing level and thereby creating a dangerous condition.

WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count IV

**HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
vs.
Meeker Equipment Company, Inc., Defendant**

Breach of Warranty - Fitness for a Particular Purpose

33. Paragraphs 1 through 32 are incorporated by reference as if set forth in full herein.

34. Plaintiffs at all times relevant hereto relied on the knowledge, experience, expertise and recommendations of the Defendant Meeker to provide a combustion package suitable for its intended use in heating commercially stored MC-70 cutback, including, but not limited to, emulsions, asphalt and/or road oils.

35. Defendant Meeker expressly or impliedly warranted that the combustion package was suitable or fit for that particular purpose.

36. The combustion package provided by Meeker were unsuitable for the Plaintiffs' purposes as follows:

(a) The combustion package temperature sensor was improperly placed defeating or eliminating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) Meeker failed to supply a combustion unit with all features necessary for its safe foreseeable operations.

(c) The combustion package lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The combustion package lacked adequate warning instructions or devices to alert users of imminent overheating of the tank contents.

(e) The combustion package lacked adequate sensors or other safety devices to prevent the overheating of contents, which could and did result in the overheating of the tank contents resulting in a fire and explosion.

WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count V

**HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
vs.
Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank, Graff Tank, Inc., and
Meeker Equipment Company, Inc., Defendants**

Damages

37. As a direct and proximate result of the negligence and/or breach of warranties of the Defendants, jointly or severally, the Plaintiffs sustained damages as follows:

(a) Complete destruction of a 61,000 gallon

MC-70 tank resulting in a loss which is currently unliquidated but estimated to be in excess of \$130,000.00;

(b) Complete destruction of a 12,000 gallon MC-70 tank resulting in a loss estimated to be \$15,000.00;

(c) Damage to various metering gauges resulting in a loss estimated to be \$1,228.00;

(d) Damage to the insulation skin on tanks No. 11 and 12 located at the Whitaker Roads facility resulting in a loss estimated at \$2,500.00;

(e) Damage to pump and motors estimated to be \$4,556.00;

(f) Damage to the Whitaker Roads facility shop buildings necessitating repairs, estimated costs \$2,732.00;

(g) Clean up costs in the estimated amount of \$25,000.00;

(h) Damage to a tanker truck located on the premises at the time of the explosion resulting in a loss of \$3,333.33;

(j) Loss of 1,670 gallons of MC-70 road oil at a cost of \$1,870.00;

(k) Cost of installing security fence and covering explosion site to preserve scene and to protect HRI employees and site visitors, \$3,105.00;

(l) Reimbursement to responding fire departments for cost of chemical fire suppressant foam, \$9,944.00; and

(m) Administrative costs of reconstruction and commissioning MC-70 tank, currently unliquidated.

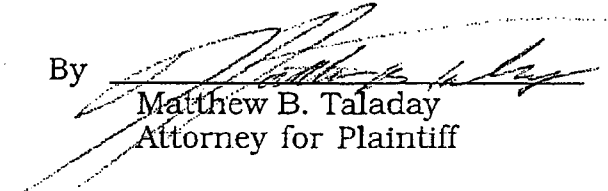
WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, counsel fees and such other relief as the Court may deem appropriate.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By


Matthew B. Taladay
Attorney for Plaintiff



Graff Tank

731A N. Main Street • P.O. Box 336
Hubbard, Ohio 44425-0336
(330) 534-3660 • Fax: (330) 534-3646
1-800-876-6671

Whitaker Roads
Clearfield/Woodland
Attn: Mr. Tim Olson

December 13, 2001

Gentlemen:

In response to your request for pricing for the fabrication & erection of one 24' dia. x 18' high tank per API 650 at your site in Clearfield, PA, Graff Tank offers the following:

24' dia. x 18' high Field-built Tank

Specifications:

Material: A-36 Carbon Steel, 1/4" nominal thickness for bottom, shell and roof.
Fittings: 24" shell and roof manways, 4-3" and 2-4 150# RFSS Flanged Fittings.
Standard: Tank would be built and tested to API 650 App. A&M (where applicable) with the reduced joint efficiency (.70) clause in effect.
Options: Ladder: Caged galvanized roof access ladder: included
Handrail: Two 8' wing rails: included.
Insulation Drip edge: included.
Heater Installation: approx. (heating element installation only, no hookup or commissioning)

Field Notes:

- Site access is assumed to be adequate for crane and equipment positioning.
- Ten-hour+ work days for erection and painting of steel are assumed.
- No painting is included in pricing: Primer painting for under the insulation would be in the neighborhood of
- Hydro-test by others. Also, DEP Certified Inspection by others (if applicable).
- Foundation preparation, painting, heating elements and insulation by others.
- All construction on site would be performed by experienced *non-union* personnel.

All applicable taxes would be additional to the stated pricing.

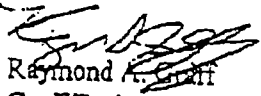
Terms: Net 30 w/ progressive payments. Pricing is valid for minimum of 30 days.

Schedule: Material ordering and engineering: 2-4 wks; fabrication: 1-2 wks; on-site erection: approx. 3-4 wks depending on weather.

If you have any questions about the above information, don't hesitate to call.

42 days Total

Sincerely,


Raymond A. Graff
Graff Tank
WR Fx: 814-857-5159

ATTN: Tim D
 $\frac{1}{2}$ " inlet 3'
 4' from
 Bottom

INLET/
 (OUTLET)

HEATER
 NOZZLE

INLET
 VENT

3" Flange
 Dist head out

ARM

Weld PINS

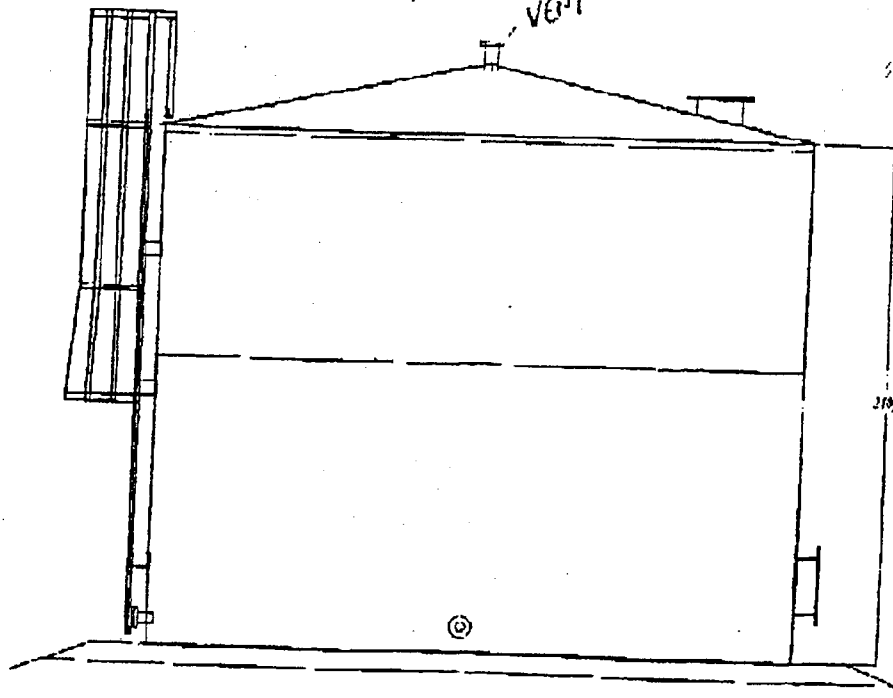
Heater

TEMPERATURE
 TOP 1" CIRC

3" Stand Pipe

$\frac{3}{4}$ "
 Sample
 Valve

3" Flange
 outlet for
 Dist to
 head.



HRI, INC.

B14

Western Division
P.O. Box 402
Clearfield, PA 16830
(814) 857-7635
(814) 857-5159- Fax

**SUBCONTRACT AGREEMENT/
PURCHASE ORDER NO.**

01042

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

DM INDUSTRIES
326 Center Street
St. Marys, PA 15857
(814) 834-2321- Phone/Fax

Page 1

WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

SHIP
TO

DATE ORDERED 5/21/02			FOR Installation DELIVERY As Scheduled			TERMS Net 30 Days			PRICE QUOTED Richard			ORDERED FROM Same		
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION						UNIT PRICE QUOTED		
			LS		LS	Furnish and Install Insulation on Purchaser's New 24'Ø x 18'High Heated Tank per the attached Quotation dated May 30, 2002						\$18,080.00		
<u>NOTES & QUALIFICATIONS:</u>														
1. Delivery and installation to be determined.														
2. DM Industries (Subcontractor) is responsible to ensure that all items are properly loaded and secured for and during transportation to the jobsite.														
3. SAFETY- Subcontractor is responsible for compliance with all current HRI, Inc., and OSHA safety rules and regulations during the conduct of its performance on and in connection with this project, and shall indemnify and defend HRI, Inc. for any and all expenses incurred for fines, penalties or corrective measures imposed as a result of acts of commission or omission by Subcontractor, its agents, employees, or assigns in failure to comply with said safety rules and regulations.														
4. DM Industries guarantees and warrants the above described insulation against all defects in materials and workmanship.														
5. INDEMNIFICATION OF OWNER (HRI, INC.) FROM ALL LIABILITY- The Subcontractor (DM INDUSTRIES) shall have charge of and responsibility for its entire work as described herein until completion and acceptance, and shall alone be liable for and shall pay all loss or damage caused by it or its servants, agents, or employees to property, buildings or adjacent work and for any accident to persons that may occur during the performance of the work														

DM INDUSTRIES

APPROVED

Robert R. Hoover
Robert R. Hoover, Mgr. of Procurement
John R. Kulka
John R. Kulka, Pres.

ACCEPTED BY:

EXHIBIT "B"

Phillip H. Diehl, Vice Pres.

HRI, NC.

Western Division
P.O. Box 402
Clearfield, PA 16830

Page 2

SUBCONTRACT AGREEMENT/ PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

01042

ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE

DM INDUSTRIES
326 Center Street
St. Marys, PA 15857

SHIP TO
WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE ORDERED	5/21/02	FOR Installation	DELIVERY As Scheduled	TERMS Net 30 Days	PRICE QUOTED	Richard	ORDERED FROM	Same
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION	UNIT PRICE QUOTED	

covered by this contract or at any time thereafter as a consequence of the performance of said work. The Subcontractor shall observe all state and municipality laws, ordinances and regulations and shall defend and save harmless the Owner from all suits and claims whatsoever for loss of life or injury occurring to employees of the Subcontractor who perform such work. The Subcontractor agrees to fully indemnify, protect, defend and save harmless the Owner from all liability from all claims, loss, damage, suits and actions of every kind from all costs and expenses in connection with such claims, suits and actions due to injuries to persons or damage to property whether resulting from accident, negligence or any other cause whatsoever occurring during the performance of the work covered by this contract or at any time thereafter as a consequence of the performance of the same or which may at any time occur or result from or be caused by such work and if there are any such claims unsettled when the work herein provided for is completed, final settlement by the Owner and Subcontractor shall be deferred until such claims are adjusted or suitable special indemnity acceptable to the Owner is provided by the Subcontractor.

Subcontractor shall provide proof of insurance in accordance with the attached "HRI, INC., MINIMUM INSURANCE REQUIREMENTS".

Subcontractor is subject to all provisions of the Commonwealth Nondiscrimination/Sexual Harassment Clause which is incorporated herein by reference.

SALES TAX EXEMPT

CONFIRMING ORDER

DM INDUSTRIES

APPROVED

Robert R. Hoover, Mgr. of Procurement
John R. Kulka, Pres.

ACCEPTED BY:

Phillip H. Diehl, Vice Pres.

DM INDUSTRIES
326 CENTER ST.
ST. MARYS, PA. 15857
Phone / Fax (814) 834-2321

5/30/02

Whitaker Roads
Attn: Tim Olson

Dear Tim:

I am pleased to submit the following price quotation (labor and material) for the insulation of the 24ft. diameter by 18-foot high tank located at your facility.

Price: \$18,080.00

Contractor will install 4" fiberglass, 2 layers, 2" thick fastened with weld pins and covered with .032 aluminum sheets secured with appropriate stainless steel screws and bands. First foot on the bottom will be cellular glass to prevent wicking. Top will consist of 2" cellular glass adhered with steep asphalt and covered with 4 layers of fiberglass paper imbedded with steep asphalt, finished with a flooded topcoat of steep asphalt.

Note: A rain gutter must be installed on this tank. This would be done by the tank manufacturer.

Yours truly,

Richard L. Sadley

Quotation #2219



MEEKER EQUIPMENT CO., INC.
516 N. Broad St, PO Box 925
Lansdale, PA 19446-0661
Office: (215) 361-2900
Fax: (215) 361-1725
Email: info@meekerequipment.com

December 20, 2001

Mr. Tim Olson
Whitaker Roads Corp.
PO Box 402
Clearfield, PA 16830

Dear Tim:

We are pleased to quote on your equipment requirements as follows:

CPA-200: Combustion package to be installed into existing horizontal tank for heating asphalt.

Main Combustion Tube: 16" seamless tube with two (2) 5" secondary heat transfer tubes, and two (2) 5" x 6" jacketed stacks.

Infern-O-Therm Burner Model 200: This is a heavy duty, industrial burner designed and manufactured by Infern-O-Therm for the process industry. Standard is #2 fuel oil with 828,000 BTU per hour input, natural gas, propane and combination burners are optional. Burner is equipped with Infern-O-Therm automatic temperature control with built in high limit switch, Fireye flame control with UV flamescanner, alarm circuit with horn, and weatherproof cover with hinged door. The control box is NEMA 13. Fan motor is TEFC 1.15 S.F. IOT burners use UL approved controls.

Combustion Chamber: High temperature refractory with Cloverleaf supercharger which maintains the back pressure at approximately 6" in the forward combustion chamber. This causes a high efficiency burning process by properly mixing the super heated air with the fuel vapors in the hot atmosphere of the combustion chamber for complete combustion with cleaner exhaust and low fuel consumption.

PRICE FOB FACTORY ...\$ 14,630.00

Optional Natural Gas/Oil Combination Burner ... Add \$ 2,750.00

Branch Office:
200 E. Campus View Blvd.
Suite 200
Columbus, OH 43235
Office: (614) 717-0100
Fax: (614) 431-8294
Email: hotmixohio@aol.com

EXHIBIT "C"

#2219

Terms: Twenty-five (25%) with order
Seventy (70%) when equipment is ready to ship
Five (5%) net 30 days

FOB: All prices are quoted FOB Factory

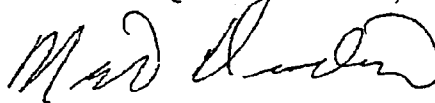
Delivery: Four (4) to six (6) weeks after receipt of order

Taxes: No state and/or local taxes or permits are included in pricing. Any taxes will be responsibility of the customer.

Thank you for the opportunity to quote you on your requirements and I look forward to your order.

Very truly yours,

MEEKER EQUIPMENT CO., INC.



Nick Diodad

Accepted by: _____

Date: _____

HRI, INC.

Western Division
P. O. BOX 402
CLEARFIELD, PA 16830
814/857-7635 Phone
814/857-5159 Fax

PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

1044

ALL ORDERS TO BE SHIPPED PREPAID
FOR DELIVERED TO JOBSITE

MEEKER EQUIPMENT CO., INC.
516 N. Broad Street
P. O. Box 925
Lansdale, PA 19446-0661

215/361-2900 Phone
215/361-1725 Fax

SHIP TO
WHITAKER ROADS CORPORATION
Barrett Curve Emulsion Plant
Route 322
3 Mi. East of Clearfield
Clearfield, PA 16830
Phone: 814/857-7635

DATE ORDERED 5/31/02		FOR DELIVERY As Scheduled		TERMS *As Noted		PRICE QUOTED Nick Diodad		ORDERED FROM David Garrett	
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION		UNIT PRICE QUOTED	
			LS		LS	Furnish CPA-200 Combustion Package for New 24' Ø x 18' H Insulated Tank Per the Attached Quotation dated December 20, 2001. Seller shall Ship Prepaid and Invoice Purchaser for Freight. The above described Combustion Package shall be Guaranteed and Warranted in accordance with each respective Manufacturer's Warranty, and Seller is responsible to ensure all said Warranties are provided to Purchaser and fully honored. Purchaser has relied on Seller's expertise to establish the specifications for the subject Combustion Package; accordingly, Seller furthermore Guarantees and Warrants that all specified components - regardless of Manufacturer - will function harmoniously and efficiently for their intended purpose. All above described equipment must conform to current OSHA and UL Specifications and Require- ments. * Payment Terms: 25% With Order 60% Upon Shipment 15% Net 30 Days Following Delivery SALES TAX EXEMPT Seller is subject to all Provisions of the Commonwealth Nondiscrimination/Sexual Harass- ment Clause which is incorporated herein by reference. CONFIRMING ORDER		\$14,630.00	

APPROVED

Robert E. Hoover, Mgr. of Procurement

John R. Kulka, President

ACCEPTED BY:

EXHIBIT "D"

Phillip H. Diehl, Vice President

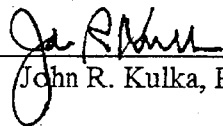
VERIFICATION

I, JOHN R. KULKA, President of HRI, INC., do hereby verify that I have read the foregoing COMPLAINT. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

12.16.04

Date



John R. Kulka, President

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: PHILLIP B. SILVERMAN, ESQUIRE
Identification No.: 02201
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE
ENCLOSED A COPY OF PLEADING WITHIN TWENTY (20)
DAYS FROM SERVICE HEREOF, OR A JUDGMENT WILL
BE ENTERED AGAINST YOU.

Phillip B. Silverman
PHILLIP B. SILVERMAN, ESQUIRE
ATTORNEY FOR DEFENDANT

Attorney for Defendant,
MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

No. 04-2021-CD

DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S
ANSWER AND NEW MATTER AND CROSSCLAIM

ANSWER

1. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
2. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.



3. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
4. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
5. Admitted.
6. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
7. Denied as stated. Answering defendant, at all times material to this cause of action, was in the business of offering for sale the equipment to the hot mix asphalt industry.
8. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
9. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof

is demanded at the time of trial.

10. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
11. Denied as stated. Exhibit "C" speaks for itself.
12. Denied as stated. Exhibit "D" speaks for itself.
13. Admitted in part and denied in part. It is admitted that Meeker did sell and HRI did purchase a CPA-200 combustion package, with respect to the remainder of this paragraph, it is denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
14. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
15. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
16. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of

this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

17. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
18. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
19. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
20. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
21. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

22. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
23. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
- 24-28. Denied. These paragraphs are deemed to be denied in that they are directed to other defendants.
- 29-30. Denied. These paragraphs are deemed to be denied in that they are directed to other defendants.
31. Denied. Answering defendant incorporates by reference and makes a part hereof it's answer to paragraph 1-30 as though same were herein after set forth at length.
32. Denied. Answering defendant denies that it was in any way negligent as averred. To the contrary, at all times material to this cause of action, answering defendant acted in a proper and careful manner under the circumstances.
33. Denied. Answering defendant incorporates by reference and makes a part hereof it's answer to paragraphs 1-32 as though same were herein after set forth at length.
34. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

35. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial. By way of further answer, this paragraph is deemed to be denied as a legal conclusion.
36. Denied. Answering defendant denies that the combustion package was unsuitable for plaintiffs' purposes as alleged. Answering defendant provided the combustion package ordered by plaintiffs. That which was ordered was supplied to plaintiffs by Infern-O-Therm and installed by the other defendant, DM Industries, Plaintiffs, or an unknown third parties.
37. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

WHEREFORE, Defendant, Meeker Equipment Company, Inc. denies that it is liable to the Plaintiffs in any sum of money.

NEW MATTER

38. At all times relevant herein, there existed the Pennsylvania Comparative Negligence Act, the relevant portions of which are incorporated herein by reference. Plaintiffs' claims are limited and/or barred by the terms of that Act.
39. If plaintiffs suffered any injuries or damages as alleged, they were caused solely and primarily by plaintiffs' own carelessness, recklessness, and negligence, and plaintiff's recovery is barred or otherwise limited or reduced in accordance with

the provisions of the Pennsylvania Comparative Negligence Act, the terms of which Act are incorporated herein by reference.

40. Answering defendant pleads the affirmative defense of the Doctrine of Assumption of Risk. Plaintiffs' claims are barred and/or limited by the assumption of risk.
41. Answering defendant supplied the Infern-O-Therm burner model 200. It did not manufacture the product.
42. The product supplied by answering defendant was installed by the other defendant, DM Industries, plaintiffs, or an unknown third parties.
43. Answering defendant avers and therefore believes that plaintiffs stored an improper product in the tank.
44. Answering defendant avers and therefore believes that the combustion package was improperly installed.

WHEREFORE, defendant, Meeker Equipment Company, Inc., demands judgement in it's favor.

**DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S CROSSCLAIM
AGAINST DEFENDANTS, RAYMOND A. GRAFF, WILLIAM GRAFF AND
ROSE M. GRAFF T/D/B/A GRAFF TANK; GRAFF TANK, INC.**

45. Answering defendant incorporates by reference and makes a part hereof the allegations of negligence and breach of warranty against defendants, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank and Graff Tank, Inc. from plaintiffs' complaint as though same were herein after set forth at length.

WHEREFORE, defendants, Raymond A. Graff, William Graff, and Rose M. Graff t/d/b/a
Graff Tank and Graff Tank, Inc. are alone liable or liable over to plaintiff or jointly or severley
liable the damages which plaintiffs may have so sustained.

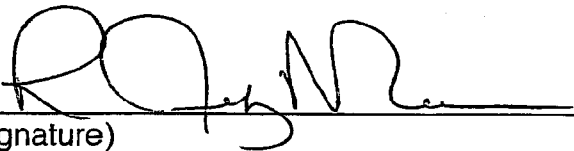
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 
PHILLIP B. SILVERMAN, ESQUIRE
Attorney for Defendant: **MEEKER**
EQUIPMENT CO., INC.

VERIFICATION

The undersigned is authorized to sign this verification with regards to the foregoing document. The facts contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. The language of this pleading is that of counsel and not of signer. This verification is made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.

R JEFFREY MEEKER
(Print name)


(Signature)

DATE: 2-14-05

MSZL&M FILE NO.: 6400.0006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

No.: 04-2041-CD

vs.

ENTRY OF APPEARANCE

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Filed on Behalf of Defendants:

Defendants.

Raymond A. Graff, William Graff and Rose
M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc.

Counsel of Record for This Party:

Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

FILED *no cc*
11:58 AM
MAR 21 2005 *(W)*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

No.: 04-2041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Defendants.

ENTRY OF APPEARANCE

TO: William A. Shaw, Prothonotary

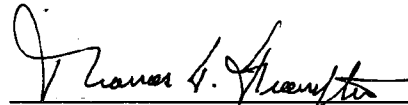
Please enter the appearance of Thomas T. Frampton, Esquire, Dana L. Bacsí, Esquire and
Goehring, Rutter & Boehm, on behalf of the Defendants Raymond A. Graff, William Graff and
Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc. in the above-captioned case.

Date: March 18, 2005

Respectfully Submitted,

GOEHRING, RUTTER & BOEHM

By:



Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacsí, Esquire
Pa. I.D. #80323

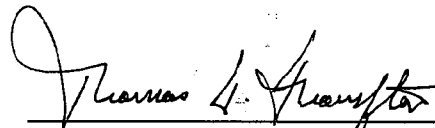
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ENTRY OF APPEARANCE** has been served on the following parties by first-class, postage prepaid U.S. mail, this 18th day of March, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Philip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris & Ledva
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102



Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

FILED

MAR 21 2005

William A. Shaw
Prothonotary/Clerk of Courts

Prothonotary/Clerk of Courts
County of Bucks, Pennsylvania

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**

BY: PHILLIP B. SILVERMAN, ESQUIRE

Identification No.: 02201

22nd Floor

1528 Walnut Street

Philadelphia, PA 19102

(215) 735-7200

MSZL&M File No. 6400.0006

Attorney for Defendant,

MEEKER EQUIPMENT CO., INC.

**HRI, INC. AND WHITAKER ROADS
CORPORATION**

vs.

**RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.**

**COURT OF COMMON PLEAS
CLEARFIELD COUNTY**

²⁰⁴¹
No. 04-2021-CD

FILED
m/11-03/01
MAR 24 2005
cc
(64)

William A. Shaw
Prothonotary/Clerk of Courts

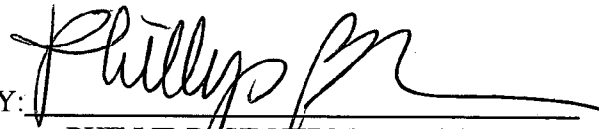
AFFIDAVIT OF SERVICE

The undersigned, being duly sworn according to law, deposes and says that a true and correct copy of the *Writ of Summons* in the above matter was served upon *Infern-O-Therm, Corporation*, on March 15, 2005. A copy of the green card evidencing same is attached hereto.

This affidavit is made subject to the penalties of 18 PA C.S. 4904 relating to unsworn falsification to authorities.

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY:



PHILLIP B. SILVERMAN, ESQUIRE

Attorney for Defendant: **MEEKER
EQUIPMENT CO., INC**

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Infern - I - Therm, Corp.
Fort of Louis + St
Keyport, NJ 07735

2. Article Number

(Transfer from service label)

7004 2510 0004 0808 7956

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7004 2510 0004 0808 7956



For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To	Infern - I - Therm
Street, Apt. No. or PO Box No.	Fort of Louis + St
City, State, ZIP+4	Keyport NJ 07735

PS Form 3800, June 2002

See Reverse for Instructions

LAW OFFICES
MINTZER SAROWITZ ZERIS LEDVA & MEYERS

A LIMITED LIABILITY PARTNERSHIP

**22ND FLOOR
1528 WALNUT STREET
PHILADELPHIA, PA 19102-3614
(215) 735-7200
FAX (215) 735-1714**

JAY E. MINTZER ♦
LAWRENCE S. SAROWITZ **
JAMES N. ZERIS ***
STEPHEN LEDVA, JR. ♦
ADDISON J. MEYERS ♦♦
DANIEL J. MCCARTHY ♦
KIMBERLY A. JUBANYIK *
LAWRENCE M. KELLY *
SCOTT D. KIRSCHBAUM ****
JEFFREY C. SOTLAND *
RICHARD A. GASH ***
KEVIN L. KELLY ○○○
JONATHAN M. FIELD *
DAVID S. COHEN *
PHILLIP B. SILVERMAN ***
HENRY J. ACHIRON ○○
MICHAEL E. STERN ○○
MARC D. SLOANE ○○
STEVEN N. CHERRY *
MICHAEL R. LITKE †††
JOHN H. MAUCHER *
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BRADLEY J. LEVINE ○○

NEW JERSEY OFFICE
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NEW YORK, NY 10006
(212) 968-8300
FAX (212) 968-9840

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255 ALHAMBRA CIRCLE
SUITE 1150
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FAX (305) 774-7743

LONG ISLAND OFFICE
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JAMES E. MURPHY *
LISA R. HARRIS ****
ERIKA L. OMUNDSON ††
JUDITH H. RING *
SUSY O. CHO *
SUSAN R. ENGLE *
PETER A. FRUCCIONE ○○
MAYYA S. GOTLIE ○○
JOHN C. BOBBER *
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GEORGE W. VOKOLOS *
BARBARA S. DIAMOND ****
GREGORY M. PATIENT ♦♦♦
JAMES P. BACKENSON *
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THOMAS V. CURTIN, JR. †††
LINDA S. STRAUSS ○○○
TERRELL K. ANDERSON ****
CHRISTOPHER J. POULOS *
DAVID R. DRATCH ♦♦♦♦
ROBERT D. PHILLIPS *
FRANK D. THOMPSON ****
ERIC A. ARRINGTON ****
THOMAS G. DARMODY ○○
CARLETHA S. PARKINSON ○○
HOLLY ANN McDONALD ♦♦
CATHERINE CARLSON ○○
MELISSA J. BEAROFF ††
BRIAN A. ANDRIS *

* MEMBER PA & NJ BAR
** MEMBER PA, NJ & NY BAR
*** MEMBER PA & NY BAR
**** MEMBER FLA BAR
○ MEMBER PA, NJ & FLA BAR
○○ MEMBER NY BAR
○○○ MEMBER NY & NJ BAR
† LLM TAXATION
†† MEMBER PA BAR
††† MEMBER NY, OH & AZ BAR
†††† MEMBER NJ BAR
♦ MEMBER FL, NY & DC BAR
♦♦ MEMBER FL & PA BAR
♦♦♦ MEMBER PA, NJ & CA BAR
♦♦♦♦ MEMBER PA, MASS, NJ & NY BAR
♦♦♦♦♦ MEMBER FL & W.VA. BAR
♦♦ MEMBER NY & MASS BAR

Email: gvokolos@defensecounsel.com

File Copy OUR FILE NO: 6400.0006

March 11, 2005

Via Certified Mail

Infern-O-Therm Corporation
Foot of Locust Street
Keyport, NJ 07735

Re: HRI, INC. AND WHITAKER ROADS CORPORATION V. RAYMOND A. GRAFF, WILLIAM GRAFF AND ROSE M. GRAFF T/D/B/A GRAFF TANK; GRAFF TANK, INC. AND MEEKER EQUIPMENT CO., INC.

Dear Sir/Madam:

Enclosed please find a Writ of Summons issued by the Prothonotary of Clearfield County, Pennsylvania, joining Infern-O-Therm as an Additional Defendant in the above matter and a Notice to Defend.

Kindly forward same to your Counsel or Insurer for immediate attention.

Very truly yours,

GEORGE W. VOKOLOS

GWV/tt
Enclosures

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: PHILLIP B. SILVERMAN, ESQUIRE
Identification No.: 02201
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant,
MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

²⁰⁴¹
No. 04-~~2021~~-CD

FILED
m/11:03/04
MAR 24 2005

NO CC
OK

AFFIDAVIT OF SERVICE

William A. Shaw
Prothonotary/Clerk of Courts

The undersigned, being duly sworn according to law, deposes and says that a true and correct copy of the *Defendant, Meeker Equipment Company, Inc's Complaint against Infern-O-Therm, Corporation* in the above matter was served upon *Infern-O-Therm*, on March 15, 2005. A copy of the green card evidencing same is attached hereto.

This affidavit is made subject to the penalties of 18 PA C.S. 4904 relating to unsworn falsification to authorities.

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY:



PHILLIP B. SILVERMAN, ESQUIRE
Attorney for Defendant: **MEEKER
EQUIPMENT CO., INC**

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Infern. O. Thurn, Corp.
Foot of Locust St.
Keyport, NJ 07735

2. Article Number

(Transfer from service label)

7004 2510 0004 0808 7635

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Signature]

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To *Infern. O. Thurn, Corp.*
Street, Apt. No. or PO Box No. *Foot of Locust St.*
City, State, ZIP+4 *Keyport, NJ 07735*

PS Form 3800, June 2002 (See Reverse for Instructions)

7004 2510 0004 0808 7635

LAW OFFICES

MINTZER SAROWITZ ZERIS LEDVA & MEYERS

A LIMITED LIABILITY PARTNERSHIP

JAY E. MINTZER *
LAWRENCE S. SAROWITZ **
JAMES N. ZERIS ***
STEPHEN LEDVA, JR. *
ADDISON J. MEYERS ♦♦
DANIEL J. MCCARTHY **
KIMBERLY A. JUBANYIK *
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MICHAEL R. LITKE †††
JOHN H. MAUCHER *
BENJAMIN J. TARTAGLIA, III *
BRADLEY J. LEVIEN ♦♦

* MEMBER PA & NJ BAR
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*** MEMBER PA & NY BAR
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† LLM TAXATION
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♦ MEMBER FL & W.VA. BAR
♦♦ MEMBER NY & MASS BAR

22ND FLOOR
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FAX (212) 968-9840

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FAX (516) 939-9201

FLORIDA OFFICE
255 ALHAMBRA CIRCLE
SUITE 1150
CORAL GABLES, FL 33134
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FAX (305) 774-7743

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JUDITH H. RING *
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PETER A. FRUCCIONE ♦♦
MAYVA S. GOTLIB ♦♦
JOHN C. BOBBE *
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CARLETHA S. PARKINSON ♦♦
HOLLY ANN McDONALD ♦♦
CATHERINE CARLSON ♦♦
MELISSA J. BEAROFF ††
BRIAN A. ANDRIS *

Email: psilverman@defensecounsel.com

File Copy OUR FILE NO: 6400.0006

March 10, 2005

Via Regular and Certified Mail

Infern-O-Therm, Corporation
Foot of Locust Street
Keyport, NJ 07735

Re: HRI, INC. AND WHITAKER ROADS CORPORATION V. RAYMOND A. GRAFF, WILLIAM GRAFF AND ROSE M. GRAFF T/D/B/A GRAFF TANK; GRAFF TANK, INC. AND MEEKER EQUIPMENT CO., INC.

Dear Sir/Madam:

Enclosed please find a copy of Defendant, Meeker Equipment Company, Inc's Complaint against Infern-O-Therm, Corporation, the original of which is being filed with the Court.

I would suggest you forward the enclosed to your liability insurance carrier so that your interests can be protected.

Very truly yours,

PHILLIP B. SILVERMAN

PBS/tt
Enclosure

7301.wpd

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC. and MEEKER EQUIPMENT
CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., DM INDUSTRIES,
and INFERN-O-THERM CORPORATION,

Additional Defendants.

CIVIL DIVISION

CASE NO. 2004-02041-CD

PRAECIPE FOR APPEARANCE

Filed on Behalf of: Additional Defendant,
Infern-O-Therm Corporation

Counsel for Record for This Party:

Patrick L. Mechas, Esquire
PA I.D. No. 61362

John B. Cromer, Esquire
PA I.D. No. 66773

BURNS, WHITE & HICKTON
Firm I.D. No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

JURY TRIAL DEMANDED

FILED 

MAR 28 2005

W.A. Story
William A. Story

Prothonotary, Clearfield County

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS)
CORPORATION,)

Plaintiffs,)

vs.)

RAYMOND A. GRAFF, et al.,)

Defendants,)

vs.)

DM INDUSTRIES, INC., DM)
INDUSTRIES, and INFERN-O-)
THERM CORPORATION,)

Additional Defendants.)

CASE NO. 2004-02041-CD

PRAECIPE FOR APPEARANCE

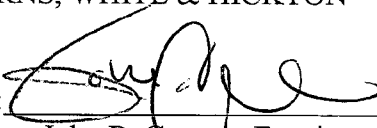
TO: Prothonotary, Clearfield County

Please enter my appearance on behalf of Additional Defendant, Infern-O-Therm Corporation, relative to the above-referenced action. Thank you.

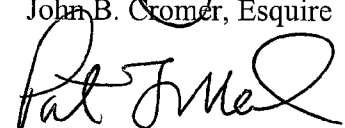
Respectfully submitted,

BURNS, WHITE & HICKTON

BY:


John B. Cromer, Esquire

BY:


Patrick L. Mechas, Esquire
Attorneys for Additional Defendant
Infern-O-Therm Corporation

CERTIFICATE OF SERVICE

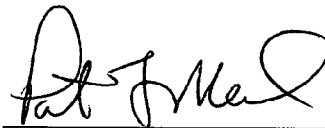
The undersigned hereby certifies that a true and correct copy of the within **Name of Praecipe for Appearance** was served upon all counsel of record via first class mail, postage prepaid, this 22nd day of March, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Phillip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
1528 Walnut Street – 22nd Floor
Philadelphia, PA 19102

Raymond A. Graff, William Graff and Rose M. Graff
Graff Tank t/d/b/a Graff Tank, Inc.
731A North Main Street
P.O. Box 336
Hubbard, OH 44425

DM Industries, Inc. d/b/a DM Industries
352 Walnut Street
St. Mary's PA 15857



Patrick L. Meca, Esquire
John B. Cromer, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

CIVIL DIVISION

No.: ~~103-Civil-2005~~ ^{04-2041-CD}

CODE:

**PRAECIPE FOR APPEARANCE
JURY TRIAL DEMANDED**

Filed on behalf of Additional Defendant,

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

Counsel of Record for this
Party:

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236

Telephone: (412) 884-4697
Facsimile: (412) 884-7326

FILED
MAR 31 2005

William A. Shaw
Prothonotary/Clerk of Courts

no cc
copy to
CIA
(60)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

CIVIL DIVISION

No.: ^{04-2041-CD}~~103-Civil-2005~~

CODE:

**PRAECIPE FOR APPEARANCE
JURY TRIAL DEMANDED**

Filed on behalf of Additional Defendant,

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

Counsel of Record for this
Party:

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236

Telephone: (412) 884-4697
Facsimile: (412) 884-7326

FILED ^{no cc}
^{m/j:21/04}
MAR 31 2005 ^{copy to}
William A. Shaw ^{CLA}
Prothonotary/Clerk of Courts ⁽⁶⁰⁾

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

CIVIL DIVISION

No. 04-20⁴~~2~~1 CD

PRAECIPE FOR APPEARANCE

Kindly enter my appearance on behalf of the additional defendant, DM Industries,
Inc., t/a DM Industries, in the above-captioned matter.

REDMAN & PONGRACE

By: _____



PAUL E. PONGRACE, III, ESQUIRE
Attorney for Additional Defendant,
DM Industries, Inc., t/a DM Industries

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the
Praecipe for Appearance has been served upon all counsel and parties of record this ____
day of _____, 2005, by First Class Mail, postage prepaid as follows:

Matthew B. Taladay, Esquire
HANAK, GUIDO and TALADAY
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
(Attorney for Plaintiffs)

Phillip B. Silverman, Esquire
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS
22nd Floor, 1528 Walnut Street
Philadelphia, PA 19102
(Attorney for Meeker Equipment Co., Inc.)

John B. Cromer, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212-5805
(Attorney for Infern-O-Therm Corporation)



PAUL E. PONGRACE, III, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

CASE NO. 2004-02041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC. and MEEKER EQUIPMENT
CO., INC.,

**ANSWER, NEW MATTER AND NEW
MATTER PURSUANT TO Pa.R.C.P.
2252(d) TO COMPLAINT AGAINST
ADDITIONAL DEFENDANTS**

Defendants,

Filed on Behalf of: Additional Defendant,
Infern-O-Therm Corporation

vs.

DM INDUSTRIES, INC., DM INDUSTRIES,
and INFERN-O-THERM CORPORATION,

Counsel for Record for This Party:

Additional Defendants.

Patrick L. Mechas, Esquire
PA I.D. No. 61362

John B. Cromer, Esquire
PA I.D. No. 66773

BURNS, WHITE & HICKTON
Firm I.D. No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

JURY TRIAL DEMANDED

FILED ¹⁰ _{cc}
m112:4361
APR 04 2005 (62)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF, ROSE M. GRAFF, GRAFF
TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., DM
INDUSTRIES, and INFERN-O-
THERM CORPORATION,

Additional Defendants.

CASE NO. 2004-02041-CD

NOTICE TO PLEAD

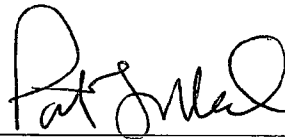
TO: All Parties of Record

You are hereby notified that a written response to the within **Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Complaint Against Additional Defendants** is due within twenty (20) days of the date of service thereof or judgment may be entered against you.

Respectfully submitted,

BURNS, WHITE & HICKTON

BY:



Patrick L. Mechas, Esquire
John B. Cromer, Esquire
Attorneys for Additional Defendant
Infern-O-Therm Corporation

1. As to the averments contained in Paragraph 1 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants, Infern-O-Therm Corporation, after reasonable

investigation, is unable to ascertain the truth or falsity thereof. Accordingly, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

2. As to the averments contained in Paragraph 2 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants, Infern-O-Therm Corporation, after reasonable investigation, is unable to ascertain the truth or falsity thereof. Accordingly, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

3. The averments contained in Paragraph 3 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are admitted.

4. The averments contained in Paragraph 4 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are directed to an Additional Defendant other than Infern-O-Therm Corporation and, accordingly, require no response thereto. To the extent that a response may be deemed necessary, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

5. The averments contained in Paragraph 5 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are admitted in part and denied in part. It is admitted that Additional Defendant, Infern-O-Therm Corporation, manufactured and shipped the CPA-200 combustion package to Whitaker Roads Corporation. It is denied that Additional Defendant, Infern-O-Therm Corporation, sold the CPA-200 combustion package to Plaintiffs. To the contrary, the CPA-200 combustion package was sold to Plaintiffs by original Defendant, Meeker Equipment Co., Inc.

6. The averments contained in Paragraph 6 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are directed to an Additional Defendant other than Infern-O-Therm Corporation and, accordingly, require no response thereto. To the extent that a

response may be deemed necessary, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

COUNT I

Meeker Equipment Co., Inc. v. Infern-O-Therm Corporation

7. The averments contained in Paragraphs 1 through 6 of Additional Defendant's, Infern-O-Therm Corporation, Answer are incorporated by reference thereto as if set forth fully herein.

8. The averments contained in Paragraph 8 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants constitute conclusions of law to which no response is required. To the extent that a response may be deemed necessary, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

9. The averments contained in Paragraph 9, and sub-paragraphs (a) through (e), of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. By way of further response, it is specifically denied that Infern-O-Therm Corporation's combustion package was defective or dangerous for its intended uses in any manner whatsoever. To the contrary, the combustion package was designed and manufactured in a safe, reasonable, prudent and non-defective manner. Thus, the averments contained in Paragraph 9, and sub-paragraphs (a) through (e), of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are specifically denied and strict proof thereof is demanded at the time of trial.

10. The averments contained in Paragraph 10 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants constitute conclusions of law to which no response is required. To the extent that a response may be deemed necessary, said averments are denied in

their entirety and strict proof of same is demanded at the time of trial. By way of further response, it is denied that Additional Defendant, Infern-O-Therm Corporation, is liable to Plaintiffs under any warranty theory. To the contrary, this Additional Defendant avers that the combustion package in question was properly designed, manufactured, was of merchantable quality and fit for the particular purpose for its foreseeable and intended use at the time of its original manufacture and sale.

WHEREFORE, Additional Defendant, Infern-O-Therm Corporation, denies that it is indebted to Plaintiffs in any sum whatsoever and demands judgment in its favor with costs to Plaintiffs.

COUNT II

Meeker Equipment Co., Inc. v. DM Industries, Inc. d/b/a DM Industries

11. The averments contained in Paragraphs 1 through 10, and all sub-paragraphs thereto, of Additional Defendant's, Infern-O-Therm Corporation, Answer are incorporated by reference thereto as if set forth fully herein.

12. The averments contained in Paragraph 12 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are directed to an Additional Defendant other than Infern-O-Therm Corporation and, accordingly, require no response thereto. To the extent that a response may be deemed necessary, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

WHEREFORE, Additional Defendant, Infern-O-Therm Corporation, denies that it is indebted to Plaintiffs in any sum whatsoever and demands judgment in its favor with costs to Plaintiffs.

**NEW MATTER PURSUANT TO RULE 1030 OF
THE PENNSYLVANIA RULES OF CIVIL PROCEDURE**

By way of further response to Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants, Additional Defendant, Infern-O-Therm Corporation, asserts the following New Matter pursuant to Rule 1030 of the Pennsylvania Rules of Civil Procedure:

13. The averments contained in Paragraphs 1 through 12, and all sub-paragraphs thereto, of Additional Defendant's, Infern-O-Therm Corporation, Answer are incorporated by reference thereto as if set forth fully herein.

14. This Additional Defendant hereby pleads Plaintiffs' failure to state a cause of action upon which relief may be granted as a complete bar to the entirety of Plaintiffs' Complaint.

15. This Additional Defendant hereby pleads the doctrine of comparative and/or contributory negligence as a complete and/or partial bar of Plaintiffs' Complaint.

16. This Additional Defendant hereby pleads Plaintiffs' assumption of known risk serves as a complete bar to the entirety of Plaintiffs' claims.

17. This Additional Defendant hereby pleads the doctrine of misuse and/or abnormal use as a complete and/or partial bar to the entirety of Plaintiffs' Complaint.

18. This Additional Defendant hereby pleads that any alleged dangerous or defective condition of the combustion package in question was the result of substantial changes made to the product after its purchase.

19. This Additional Defendant hereby pleads that any alleged dangerous or defective condition of the combustion package in question resulted from the action or inaction of parties

over which this Additional Defendant exercises no control and for whose conduct this Additional Defendant cannot be held liable.

20. This Additional Defendant believes and hereby pleads that the combustion package was improperly installed by an entity over which this Additional Defendant exercises no control and for whose conduct this Additional Defendant cannot be held liable.

21. This Additional Defendant hereby pleads that any defects and injuries alleged by Plaintiffs were caused by intervening, superseding, or other causes unrelated to any manufacture or sale by this Additional Defendant of any products.

22. This Additional Defendant hereby pleads that any alleged dangerous or defective condition of the combustion package in question and any resulting injuries and damages were the result of Plaintiffs' failure to heed specific warnings and common knowledge regarding the safe operation of the combustion package.

23. This Additional Defendant hereby pleads that any and all applicable statutes of limitation serve as a complete bar to the entirety of Plaintiffs' claims.

24. This Additional Defendant hereby pleads that the damages allegedly sustained by Plaintiffs were not proximately caused by this Additional Defendant.

25. This Additional Defendant hereby pleads that Plaintiffs were "sophisticated users" of the combustion package within the meaning of the Restatement of Torts (Second) §388 and, therefore, this Additional Defendant cannot be held liable in either strict liability or negligence.

26. This Additional Defendant hereby pleads that no warranties, express or implied, were extended to Plaintiffs by this Additional Defendant and, alternatively, to the extent that they may have been extended, they were not breached.

27. This Additional Defendant hereby pleads product misuse, abuse and substantial change as affirmative defenses to the claims of liability raised in Plaintiffs' Complaint.

WHEREFORE, Additional Defendant, Infern-O-Therm Corporation, denies that it is indebted to Plaintiffs in any sum whatsoever and demands judgment in its favor with costs to Plaintiffs.

**NEW MATTER PURSUANT TO RULE 2252(D) OF
THE PENNSYLVANIA RULES OF CIVIL PROCEDURE**

By way of further response to Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants, Additional Defendant, Infern-O-Therm Corporation, asserts the following New Matter pursuant to Rule 2252(d) of the Pennsylvania Rules of Civil Procedure:

28. The averments contained in Paragraphs 1 through 27, and all sub-paragraphs thereto, of Additional Defendant's, Infern-O-Therm Corporation, Answer are incorporated by reference thereto as if set forth fully herein.

29. This Additional Defendant incorporates herein by reference the averments of Plaintiffs' Complaint against original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, solely for purposes of this cross-claim only and without admitting same.

30. This Additional Defendant hereby pleads that original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are solely liable to Plaintiffs for alleged injuries and damages, if any.

31. In the event that it is determined that this Additional Defendant is liable to Plaintiffs, which liability is expressly denied, then this Additional Defendant avers that original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are jointly and severally liable to Plaintiffs for the injuries and damages allegedly sustained as a result of the occurrence giving rise to this action.

32. This Additional Defendant further avers that in the event that this Additional Defendant is determined to be liable to Plaintiffs on account of the events described in Plaintiffs' Complaint, which right of recovery is specifically denied, then this Additional Defendant avers that original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are liable over to this Additional Defendant under principles of contribution and/or indemnification pursuant to contract and/or law.

WHEREFORE, Additional Defendant, Infern-O-Therm Corporation, denies that it is indebted to Plaintiffs in any sum whatsoever and, in the alternative, denies that it is liable over to original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, and demands judgment in its favor with costs to Plaintiffs.

Respectfully submitted,

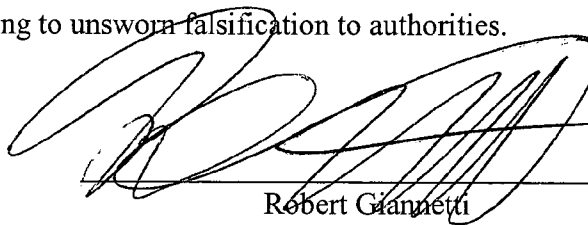
BURNS, WHITE & HICKTON

BY: 

Patrick L. Mechas, Esquire
John B. Cromer, Esquire
Attorneys for Additional Defendant
Infern-O-Therm Corporation

VERIFICATION

I, Robert Giannetti of Infern-O-Therm Corporation, hereby verify that the averments contained in the attached Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Complaint Against Additional Defendants are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to be 'R. Giannetti', is written over a horizontal line. The signature is stylized with large, sweeping loops.

Robert Giannetti

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Complaint Against Additional Defendants** was served upon all counsel of record via first class mail, postage prepaid, this 31st day of March, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Phillip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
1528 Walnut Street – 22nd Floor
Philadelphia, PA 19102

Thomas T. Frampton, Esquire
Dana L. Bacs, Esquire
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Paul E. Pongrance, III, Esquire
Redman & Pongrace
300 Weyman Plaza – Suite 310
Pittsburgh, PA 15236



Patrick L. Mechas, Esquire
John B. Cromer, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,

No.: ~~103-Civil-2005~~

2004-2041-CD

Plaintiffs,

CODE:

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

**REPLY TO NEW MATTER
PURSUANT TO RULE 2252(d) OF
ADDITIONAL DEFENDANT,
INFERN-O-THERM CORPORATION**

Defendants,

vs.

Filed on behalf of Additional Defendant,

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

Additional Defendants.

Counsel of Record for this
Party:

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236

Telephone: (412) 884-4697
Facsimile: (412) 884-7326

FILED *ND*
m/11:20/01 CC
APR 08 2005 *GW*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2021 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

**REPLY TO NEW MATTER PURSUANT TO RULE 2252(d) of ADDITIONAL
DEFENDANT, INFERN-O-THERM CORPORATION**

AND NOW comes the additional defendant, DM Industries, Inc., t/a DM Industries, by and through its undersigned counsel, and files the following Reply to New Matter Pursuant to Rule 2252(d) of Additional Defendant, Infern-O-Therm Corporation:

28. To the extent Paragraph 28 of additional defendant, Infern-O-Therm's New Matter Pursuant to 2252(d) purports to incorporate its previous averments of its Answer, this answering additional defendant hereby incorporates its Answer and New Matter as if fully set forth herein at length.

29. To the extent Paragraph 29 of additional defendant, Infern-O-Therm's New Matter Pursuant to Rule 2252(d) is directed to this answering additional defendant, and to the extent it purports to incorporate plaintiffs' Complaint, this answering additional defendant hereby incorporates its Answer and New Matter as if fully set forth herein at length.

30. To the extent Paragraph 30 of additional defendant, Infern-O-Therm's New Matter Pursuant to Rule 2252(d) is directed to this answering additional defendant, said allegations of Paragraph 30 contain conclusions of law to which no response is required. To the extent a response is required, it is specifically denied that this answering additional defendant is solely liable to the plaintiffs for any injuries and/or damages.

31. To the extent Paragraph 31 of additional defendant, Infern-O-Therm's New Matter Pursuant to Rule 2252(d) is directed to this answering additional defendant, said allegations of Paragraph 31 contain conclusions of law to which no response is required. To the extent a response is required, it is specifically denied that this answering additional defendant is jointly and severally liable to the plaintiffs or any other party for the injuries and damages allegedly sustained.

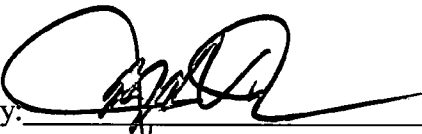
32. To the extent Paragraph 32 of additional defendant, Infern-O-Therm's New Matter Pursuant to Rule 2252(d) is directed to this answering additional defendant, said allegations of Paragraph 32 contain conclusions of law to which no response is

7

required. To the extent a response is required, it is specifically denied that this answering additional defendant is liable over to additional defendant, Infern-O-Therm, or any other party to this action, under the principles of contribution and/or indemnification.

WHEREFORE, this additional defendant, DM Industries, denies it is liable to any other party to this action in any sum or sums whatsoever and demands judgment in its favor with cost of suit.

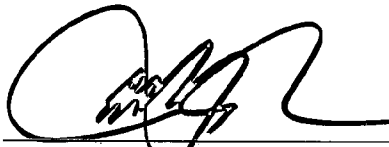
REDMAN & PONGRACE

By: 

PAUL E. PONGRACE, III, ESQUIRE
Attorney for Additional Defendant,
DM Industries, Inc., t/a DM Industries

VERIFICATION

I, Paul E. Pongrace, III, Esquire, do hereby state that I am the attorney for the additional defendant in this action, that the verification of my client cannot be obtained within the time frame allowed for the filing of the within document, and that the facts contained in the foregoing Reply to New Matter Pursuant to Rule 2252(d) of Additional Defendant, Infern-O-Therm Corporation are based upon information provided by the defendant, and are true and correct to the best of my information and belief. I understand that any false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'Paul E. Pongrace, III', written over a horizontal line.

PAUL E. PONGRACE, III, ESQUIRE

CERTIFICATE OF SERVICE

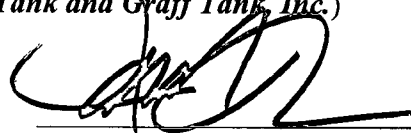
The undersigned counsel hereby certifies that a true and correct copy of the *Reply to New Matter Pursuant to Rule 2252(d) of Infern-O-Therm* has been served upon all counsel and parties of record this 5th day of April 2005, by First Class Mail, postage prepaid as follows:

Matthew B. Taladay, Esquire
HANAK, GUIDO and TALADAY
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
(Attorney for Plaintiffs)

Phillip B. Silverman, Esquire
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS
22nd Floor, 1528 Walnut Street
Philadelphia, PA 19102
(Attorney for Meeker Equipment Co., Inc.)

Patrick L. Mechas, Esquire
BURNS, WHITE & HICKTON
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(Attorney for Infern-O-Therm Corporation)

Thomas T. Frampton, Esquire
GOEHRING, RUTTER & BOEHM
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Attorney for Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc.)



PAUL E. PONGRACE, III, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100261

NO: 04-2041-CD

SERVICE # 1 OF 1

SUMMONS TO JOIN ADDITIONAL DEFENDANT

PLAINTIFF: HRI, INC.

vs.

DEFENDANT: RAYMOND A. GRAFF al

-vs-

DM INDUSTRIES, INC. d/b/a DM INDUSTRIES

SHERIFF RETURN

NOW, March 02, 2005, SHERIFF OF ELK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN SUMMONS TO JOIN ADDITIONAL DEFENDANT ON DM INDUSTRIES, INC. d/b/a DM INDUSTRIES.

NOW, March 08, 2005 AT 2:57 PM SERVED THE WITHIN SUMMONS TO JOIN ADDITIONAL DEFENDANT ON DM INDUSTRIES, INC. d/b/a DM INDUSTRIES, DEFENDANT. THE RETURN OF ELK COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED ^(SW)

APR 11 2005

0/9:30 / s.w.
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100261
NO: 04-2041-CD
SERVICES 1
SUMMONS TO JOIN ADDITIONAL DEFENDANT

PLAINTIFF: HRI, INC.
vs.
DEFENDANT: RAYMOND A. GRAFF al
-vs-
DM INDUSTRIES, INC. d/b/a DM INDUSTRIES

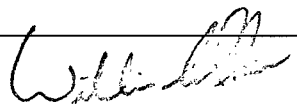
SHERIFF RETURN

RETURN COSTS

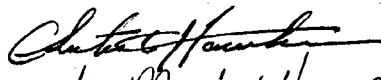
Description	Paid By	CHECK #	AMOUNT
SURCHARGE	MINTZER	70362	10.00
SHERIFF HAWKINS	MINTZER	70362	30.00
ELK CO.	MINTZER	70361	40.80

Sworn to Before Me This

_____ Day of _____ 2005



So Answers,


by 

Chester A. Hawkins
Sheriff

HRI, Inc.

IN THE COURT OF COMMON PLEAS
ELK COUNTY

vs.

No. 04-02041

Raymond A. Graff, et al.

DM Industries, Inc. d/b/a DM Industries, et al.
Additional Defendants

**STATE OF PENNSYLVANIA
COUNTY OF ELK**

John Gangloff, Deputy Sheriff, being duly sworn according to law, deposes and says, that on March 8, 2005 at 2:28 P.M. he attempted service upon DM Industries, Inc. d/b/a DM Industries at 352 Walnut St., St. Marys, Elk County, PA but found the building vacant.

John Gangloff, Deputy Sheriff, being duly sworn according to law, deposes and says, that on March 8, 2005 he performed a postal verification with the St. Marys Post Office and found a new address of 326 Center St., St. Marys for DM Industries, Inc.

John Gangloff, Deputy Sheriff, being duly sworn according to law, deposes and says, that he served DM Industries, Inc. d/b/a DM Industries at 326 Center Street, St. Marys, Elk County, PA by handing a true and attested copy of the Summons to Join Additional Defendant to Louis Sadley, Secretary, and made known to her the contents thereof on March 8, 2005 at 2:57 P.M.

Elk County Sheriff's Costs - \$40.80 PAID

Sworn to and subscribed before me this 14th

day of March A.D. 2005

Margaret J. Fitzgerald
Deputy Prothonotary

My Commission Expires January 7, 2008

So Answers:

Thomas C. Korte
John Gangloff

Sheriff

Deputy



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

ROBERT SNYDER
CHIEF DEPUTY
MARILYN HAMM
DEPT. CLERK

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 100261

TERM & NO. 04-2041-CD

HRI, INC.

SUMMONS TO JOIN ADDITIONAL DEFENDANT

vs.

RAYMOND A. GRAFF a/k/a

-vs-

DM INDUSTRIES, INC. d/b/a DM INDUSTRIES

SERVE BY: 03/31/05

MAKE REFUND PAYABLE TO MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS, LLP

SERVE: DM INDUSTRIES, INC. d/b/a DM INDUSTRIES

ADDRESS: 352 WALNUT ST., ST. MARYS, PA 15857

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF ELK COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, March 02, 2005.

RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED

-- APR 11 2005

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

No.: 04-2041-CD

vs.

ANSWER, REPLY AND NEW MATTER

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Filed on Behalf of Defendants:

Defendants.

Raymond A. Graff, William Graff and Rose
M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc.

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Counsel of Record for This Party:

Additional Defendants.

Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

To: All Parties

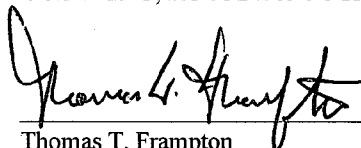
GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

NOTICE TO PLEAD

YOU ARE HEREBY NOTIFIED TO
PLEAD TO THE ENCLOSED NEW MATTER
WITHIN TWENTY (20) DAYS FROM SERVICE
HEREOF OR A DEFAULT JUDGMENT MAY
BE ENTERED AGAINST YOU.

GOEHRING, RUTTER & BOEHM

BY:


Thomas T. Frampton
Attorneys for Graff Defendants

FILED
m/10:47/04
APR 18 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

No.: 04-2041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

ANSWER, REPLY AND NEW MATTER

AND NOW, come the Defendants, Raymond A. Graff, William Graff and Rose M. Graff
t/d/b/a Graff Tank and Graff Tank, Inc. by and through their counsel Goehring, Rutter & Boehm
and file the following Answer, Reply to Cross-Claim and New Matter in the above-captioned
action:

ANSWER TO PLAINTIFF'S COMPLAINT

1. These answering Defendants are without knowledge or information sufficient to
admit or deny the averments in Paragraph 1, hence said averments are denied and proof thereof
is demanded at the time of trial.

2. These answering Defendants are without knowledge or information sufficient to admit or deny the averments in Paragraph 2, hence said averments are denied and proof thereof is demanded at the time of trial.

3. The averments of Paragraph 3 are denied. On the contrary the business known as Graff Tank is an Ohio business corporation as averred in Paragraph 4. By way of further answer, at the time of the construction of the tank at issue herein the business known as Graff Tank was a partnership with four (4) partners, Raymond A. Graff, William H. Graff, II, William H. Graff and Rose M. Graff.

4. The averments of Paragraph 4 are admitted.

5. These answering Defendants are without knowledge or information sufficient to admit or deny the averments in Paragraph 5, hence said averments are denied and proof thereof is demanded at the time of trial.

6. The averments of Paragraph 6 are admitted in part and denied in part. It is admitted that Defendant Graff at all times relevant hereto was in the business of constructing, maintaining, repairing, fabricating and assembling commercial storage tanks for the petroleum, emulsion, polymer and related industries. It is denied that the Defendant Graff designed commercial storage tanks. On the contrary Defendant Graff in constructing and fabricating commercial storage tanks worked to the specifications of the American Petroleum Institute (API) Standard 650. By way of further response, on occasions as herein, the general contractor, HRI, Inc., made overall configuration decisions and approved same.

7. The averments of Paragraph 7 are averments regarding the Defendant Meeker and hence these answering Defendants are not required to respond to these averments.

8. The averments of Paragraph 8 as they relate to these answering Defendants are denied. On the contrary the only solicitation to the answering Defendants by the Plaintiffs was an oral request to construct a tank to accommodate a combustion heater.

9. The averments of Paragraph 9 are admitted.

10. The averments of Paragraph 10 are denied. On the contrary the Purchase Order attached as Exhibit B is Agreement no. 1042 and between HRI and DM Industries.

11. The averments of Paragraph 11 are averments regarding the Defendant Meeker and hence these answering Defendants are not required to responds to these averments.

12. The averments of Paragraph 12 are averments regarding the Defendant Meeker and hence these answering Defendants are not required to responds to these averments.

13. The averments of Paragraph 13 are averments regarding the Defendant Meeker and hence these answering Defendants are not required to responds to these averments.

14. The averments of Paragraph 14 are averments regarding the Defendant Meeker and hence these answering Defendants are not required to responds to these averments.

15. The averments of Paragraph 15 are admitted in part and denied in part. It is admitted that Graff furnished and constructed the noted tank at Whitaker's Clearfield Emulsion Plant in or about July, 2002. However, as to the provisions of any purchase order or whether HRI fully paid for the project these answering Defendants are without knowledge or information sufficient to admit or deny these averments hence said averments are denied and proof thereof are demanded at the time of trial.

16. The averments of Paragraph 16 are denied. On the contrary Graff only installed the heating element from the package provided to it. Graff had no responsibility regarding placement, hook up or commissioning of the heating element.

17. These answering Defendants are without knowledge or information sufficient to admit or deny the averments in Paragraph 17, hence said averments are denied and proof thereof is demanded at the time of trial. By way of further answer HRI was the general contractor for the project at issue herein, had intimate knowledge of commercial storage tanks and gave overall configuration authorization for the tank at issue.

18. These answering Defendants are without knowledge or information sufficient to admit or deny the averments in Paragraph 18, hence said averments are denied and proof thereof is demanded at the time of trial.

19. The averments of Paragraph 19 are admitted.

20. These answering Defendants are without knowledge or information sufficient to admit or deny the averments in Paragraph 20, hence said averments are denied and proof thereof is demanded at the time of trial.

21. These answering Defendants are without knowledge or information sufficient to admit or deny the averments in Paragraph 21, hence said averments are denied and proof thereof is demanded at the time of trial. By way of further response Graff was never provided the specific uses of the tank other than storage of material at elevated temperatures.

22. These answering Defendants are without knowledge or information sufficient to admit or deny the averments in Paragraph 22, hence said averments are denied and proof thereof is demanded at the time of trial.

23. The averments of Paragraph 23 set forth legal conclusions to which on response is required. However, and to the extent that a response is required, these answering Defendants deny all responsibility for any alleged damages as the work performed by Graff was done in a proper and workmanlike manner and supplied for the purposes outlined to them by the Plaintiffs.

Count I

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Breach of Warranty – Fitness for a Particular Purpose

24. The responses of these answering Defendants to Paragraphs 1-23 of the Complaint are incorporated herein by reference.

25. These answering Defendants are without knowledge or information sufficient to admit or deny to the averments in Paragraph 25, hence said averments are denied and proof thereof is demanded at the time of trial. By way of further answer HRI was the general contractor for the project at issue herein, had intimate knowledge of commercial storage tanks and gave overall configuration authorization for the tank at issue.

26. The averments of Paragraph 26 are denied. On the contrary Plaintiff HRI specified where all nozzles were to be located as well as specifying the heater location. By way of further answer the Plaintiff is responsible for any misuse or abnormal use of the tank at issue.

27. The averments of Paragraph 27 and all of its subparts are denied. On the contrary:

- (a.) The placing of the temperature sensor was not the responsibility of Graff but rather the Plaintiffs;
- (b.) The placing of the temperature sensor was not the responsibility of Graff but rather the Plaintiffs;

- (c.) The Plaintiffs, particularly HRI which served as the general contractor for this project, never asked for a low volume sensing device. By way of further answer the tank did have a low level gauge.
- (d.) The placing of the temperature sensor was not the responsibility of Graff but rather the Plaintiffs. By way of further answer the Plaintiffs, particularly HRI which served as the general contractor for this project, never asked for a alleged sensors and the heating element and configuration of same were not the responsibility of Graff. Also, the tanks did have a low level gauge.
- (e.) The placing of the temperature sensor was not the responsibility of Graff but rather the Plaintiffs. By way of further answer the Plaintiffs particularly HRI which was knowledgeable in the industry and served as its own general contractor approved the configuration for the tank and was fully aware of the dangers associated with the operation of the tanks.

28. The averments of Paragraph 28 set forth legal conclusions to which no response is required. However, and to the extent a response is required these answering Defendants are without knowledge or information sufficient to admit or deny the averments in Paragraph 28, hence said averments are denied and proof thereof is demanded at the time of trial. By way of further response the level of material in the tank at issue was easy to ascertain and there was a low level gauge on the tank.

WHEREFORE, the Graff Defendants demand judgment against the Plaintiffs.

Count II

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Negligence

29. The responses of these answering Defendants to Paragraphs 1-28 of this Complaint are incorporated herein by reference.

30. The averments of Paragraph 30 and all of its subparts are denied. On the contrary at all times material hereto these answering Defendants performed their work in a proper and workmanlike manner. By way of further response these answering Defendants response to Paragraph 27 and its subparts is incorporated herein by reference.

WHEREFORE, the Graff Defendants demand judgment against the Plaintiffs.

Count III

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

Meeker Equipment Company, Inc., Defendant

Negligence

31. The responses of these answering Defendants to Paragraphs 1-30 of this Complaint are incorporated herein by reference.

32. The averments of Paragraph 32 assert claims against a Defendant other than these answering Defendants and hence no response is required.

Count IV

**HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
Meeker Equipment Company, Inc., Defendant**

Breach of Warranty – Fitness for a Particular Purpose

33. The responses of these answering Defendants to Paragraphs 1-32 of this Complaint are incorporated herein by reference.

34.-36. The averments of Paragraph 34-36 assert claims against a Defendant other than this answering Defendants and hence no response is required.

Count V

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc., and Meeker Equipment Company, Inc., Defendants

Damages

37. The averments of Paragraph 37 are denied. On the contrary, as to the claim of negligence and/or breach of warranty as to these answering Defendants, they aver that all work performed by them was done in a proper and workmanlike manner and the tank provided by the Graff Defendants was fit for the purposes as outlined to them by Plaintiff. As to the damages sustained by Plaintiffs, these answering Defendants are without knowledge or information sufficient to admit or deny these averments, hence said averments are denied and proof thereof is demanded at the time of trial.

WHEREFORE, the Graff Defendants demand judgment against the Plaintiffs.

Reply to Crossclaim of Defendant Meeker Equipment Company, Inc.

38. The Graff Defendants incorporate their responses to Paragraphs 1-37 of Plaintiffs' Complaint as if fully set forth herein and thus deny any claim of sole liability or liability over to the Plaintiffs or any joint and several liability with Defendant Meeker.

New Matter as to the Plaintiffs HRI, Inc. and Whitaker Roads Corporation

The Graff Defendants plead the following New Matter based on a review of documents and based on facts and information expected to be proved in discovery:

39. The Complaint against the Graff Defendants fails to state a claim upon which relief can be granted.

40. Plaintiffs were comparatively negligent and through their own conduct caused or contributed to their alleged damages.

41. There is no proximate causation between any claimed actions or inactions on the part of the Graff Defendants and any damages claimed by the Plaintiffs.

42. The claims are barred as Plaintiffs' damages, if any, were the result of intervening acts, omission, representations, misrepresentations, negligence, breach of warranty or breach of duty by others over whom the Graff Defendants had no control.

43. Plaintiffs' claim is limited by the Doctrine of Assumption of the Risk.

44. Plaintiffs' claim is limited or barred by its misuse and/or abnormal use of the tank at issue.

45. Plaintiffs were "sophisticated users" of the combustion package at issue within the meaning of the Restatement of Torts (Second) §388 and therefore the Graff Defendants cannot be held liable in either strict liability or negligence.

WHEREFORE, the Graff Defendants demand judgment against the Plaintiffs.

New Matter Pursuant to Pennsylvania Rule of Civil Procedure 2252(d)

By way of further response to Meeker Equipment Co., Inc.'s claims against the Graff Defendants and to assert claims against the Additional Defendants DM Industries, Inc. the DM Industries and Infern-O-Therm Corporation, the Graff Defendants assert the following New Matter pursuant to Rule 2252(d) of the Pennsylvania Rules of Civil Procedure:

46. The Graff Defendants incorporate herein by reference the averments of Plaintiffs' Complaint against original Defendant, Meeker Equipment Co., Inc. and Meeker's Complaint to Join Additional Defendants, DM Industries, Inc. t/a DM Industries and Infern-O-Therm Corporation solely for purpose of this cross-claim only and without admitting same.

47. The Graff Defendants also plead that original Defendant Meeker Equipment Co., Inc. and Additional Defendants, DM Industries, Inc. t/a DM Industries and Infern-O-Therm Corporation, are solely liable to Plaintiffs for any alleged damages, if any.

48. In the event that it is determined that the Graff Defendants are liable to Plaintiffs, which liability is expressly denied, then the Graff Defendants aver that original Defendant Meeker Equipment Co., Inc. and Additional Defendants, DM Industries, Inc. t/a DM Industries and Infern-O-Therm Corporation, are jointly and severally liable to Plaintiffs for the damages allegedly sustained as a result of the occurrence giving rise to this action.

49. The Graff Defendants further aver that in the event that they are determined to be liable to Plaintiffs on account of the events described in Plaintiffs' Complaint, which right of recovery is specifically denied, then the Graff Defendants aver that original Defendant, Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries and

Infern-O-Therm, are liable over to the Graff Defendants under principles of contribution and/or indemnification pursuant to contract and/or law.

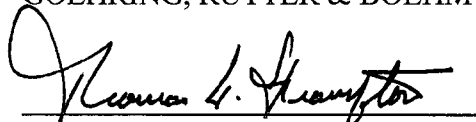
WHEREFORE, while the Graff Defendants deny that they are indebted to the Plaintiffs for any sum, they request that the Court find that if liability is to be imposed that the original Defendant Meeker Equipment Co., Inc. and the Additional Defendants DM Industries, Inc. t/a DM Industries and Infern-O-Therm Corporation are solely liable to Plaintiffs, that they are jointly and severally liable with the Graff Defendants to Plaintiffs for any damages allegedly sustained or they are liable over to the Graff Defendants under the principles contribution and/or indemnity.

Date: April 15, 2005

Respectfully Submitted,

GOEHRING, RUTTER & BOEHM

By:



Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587



Graff Tank

731A N. Main Street • P.O. Box 336
Hubbard, Ohio 44425-0336
(330) 534-3660 • Fax: (330) 534-3646
1-800-876-6671

VERIFICATION

I, William H. Graff, President of Graff Tank, Inc., do hereby verify

that I have read the foregoing ANSWER, REPLY TO CROSS-CLAIM, NEW
MATTER AND

NEW MATTER PURSUANT TO RULE 2252(D) and the statements therein
are correct to the best of my knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S.

Section 4904 relating to unknown falsification to authorities.

Date: April 15th, 2005
TANK, INC.

GRAFF

By:

William H.

Graff, President

CERTIFICATE OF SERVICE

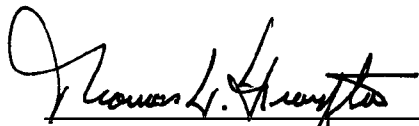
I hereby certify that a true and correct copy of the foregoing **ANSWER, REPLY AND NEW MATTER** has been served on the following parties Via Overnight Mail, this 15th day of April, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorney for Plaintiffs

Philip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris & Ledva
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
Attorney for Meeker Equipment Co., Inc.

Patrick L. Mechas, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Attorney for Infern-O-Therm Corporation

Paul E. Pongrace, III, Esquire
Redman & Pongrace
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236
Attorney for DM Industries, Inc. t/a DM Industries



Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

FILED

APR 18 2005

William A. Shaw
Prothonotary/Clerk of Courts

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: PHILLIP B. SILVERMAN, ESQUIRE
Identification No.: 02201
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant, *MEEKER
EQUIPMENT COMPANY, INC.*

FILED ^{GR} NO CC
m/10:40 AM
APR 18 2005

William A. Shaw
Prothonotary/Clerk of Courts

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

vs.

DM INDUSTRIES, INC., DM INDUSTRIES
AND INFERN-O-THERM CORPORATION

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

²⁰⁴¹
No. 04-~~2021~~-CD

**REPLY OF DEFENDANT, MEEKER EQUIPMENT COMPANY, INC. TO NEW MATTER
OF ADDITIONAL DEFENDANT, INFERN-O-THERM CORPORATION**

13. Denied. Answering defendant incorporates by reference and makes a part hereof
it's allegations from defendant's Complaint against additional defendant, Infern-
O-Therm Corporation as though same were herein after set forth at length.
14. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of
Civil Procedure 1029{e}. By way of further answer, this paragraph is deemed to
be denied as a legal conclusion.
15. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of

Civil Procedure 1029{e}. By way of further answer, this paragraph is deemed to be denied as a legal conclusion.

16. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}. By way of further answer, this paragraph is deemed to be denied as a legal conclusion.
17. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}. By way of further answer, this paragraph is deemed to be denied as a legal conclusion.
18. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
19. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
20. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
21. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
22. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
23. Denied. This paragraph is deemed to be denied as a legal conclusion.
24. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
25. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}. By way of further answer, this paragraph is deemed to

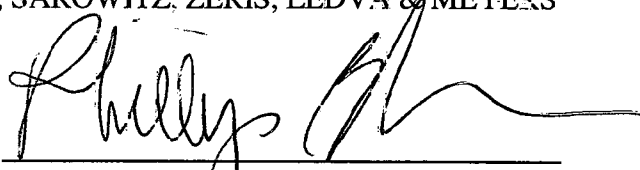
be denied as a legal conclusion.

26. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e).

27. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e).

WHEREFORE, defendant, Mecker Equipment Company, Inc., demands that the New Matter of additional defendant, Infern-O-Therm Corporation be dismissed.

MENTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

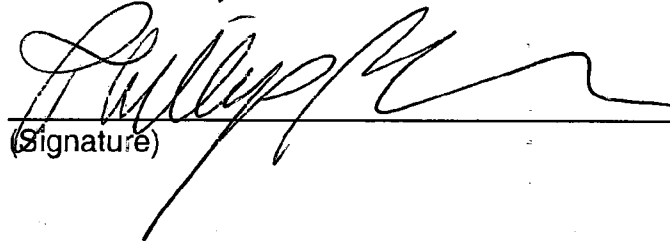
BY: 

PHILLIP B. SILVERMAN, ESQUIRE
Attorney for Defendant: **MECKER
EQUIPMENT COMPANY, INC.**

VERIFICATION

The undersigned is authorized to sign this verification with regards to the foregoing document. The facts contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. The language of this pleading is that of counsel and not of signer. This verification is made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.

Phillip B. Silverman
(Print name)


(Signature)

DATE: 4/14/05

MSZL&M FILE NO.: 6400.0006

FILED

APR 18 2005

William A. Straw
Prothonotary/Clerk of Courts

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: PHILLIP B. SILVERMAN, ESQUIRE
Identification No.: 02201
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Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant,
**MEEKER EQUIPMENT COMPANY,
INC.**

FILED ^{GR} No CC
m/10:32/84
APR 18 2005

William A. Shaw
Prothonotary/Clerk of Courts

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

2041
No. 04-2021-CD

AFFIDAVIT OF SERVICE

The undersigned, being duly sworn according to law, deposes and says that a true and correct copy of the Defendant, Meeker Equipment Company, Inc.'s Interrogatories and Request for Production of Documents and Things addressed to Infern-O-Therm in the above matter was served upon Infern-O-Therm Corporation on April 4, 2005. A copy of the green card evidencing same is attached hereto.

This affidavit is made subject to the penalties of 18 PA C.S. 4904 relating to unsworn falsification to authorities.

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 

PHILLIP B. SILVERMAN, ESQUIRE
Attorney for Defendant: MEEKER
EQUIPMENT COMPANY, INC.

7004 2510 0004 0808 7949

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Sent To Infern-O-Therm Corp.
 Street, Apt. No., or PO Box No. Foot of Locust St
 City, State, ZIP+4 Keyport, NJ 07735
 PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Infern-O-Therm Corp.
Foot of Locust St
Keyport, NJ 07735

2. Article Number
 (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

- A. Signature X [Signature] ☐ Agent ☐ Addressee
- B. Received by (Printed Name) [Signature] C. Date of Delivery APR 20 2004
- D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

7004 2510 0004 0808 7949

LAW OFFICES
MINTZER SAROWITZ ZERIS LEDVA & MEYERS
A LIMITED LIABILITY PARTNERSHIP

JAY E. MINTZER 01
LAWRENCE S. SAROWITZ **
JAMES N. ZERIS ***
STEPHEN LEDVA, JR.*
ADDISON J. MEYERS ♦♦
DANIEL J. MCCARTHY**
KIMBERLY A. JUBANYIK *
LAWRENCE M. KELLY*
SCOTT D. KIRSCHBAUM ****
JEFFREY C. SOTLAND*
RICHARD A. GASH ***
KEVIN L. KELLY 000
JONATHAN M. FIELD*
DAVID S. COHEN *
PHILLIP B. SILVERMAN ***
HENRY J. ACHIRON 00
MICHAEL E. STERN 00
MARC D. SLOANE 00
STEVEN N. CHERRY *
MICHAEL R. LITKE †††
JOHN H. MAUCHER *
BENJAMIN J. TARTAGLIA, III *
BRADLEY J. LEVIEN 00

* MEMBER PA & NJ BAR
** MEMBER PA, NJ & NY BAR
*** MEMBER PA & NY BAR
**** MEMBER FLA BAR
0 MEMBER PA, NJ & FLA BAR
00 MEMBER NY BAR
000 MEMBER NY & NJ BAR
† LL.M. TAXATION
†† MEMBER PA BAR
††† MEMBER NY, OH & AZ BAR
†††† MEMBER NJ BAR
♦ MEMBER FL, NY & DC BAR
♦♦ MEMBER FL & PA BAR
♦♦♦ MEMBER PA, NJ & CA BAR
♦♦♦♦ MEMBER PA, MASS, NJ & NY BAR
♦♦♦♦♦ MEMBER FL & W.VA. BAR
♦♦ MEMBER NY & MASS BAR

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JAMES E. MURPHY *
LISA R. HARRIS ****
ERIKA L. OMUNDSON †††
JUDITH H. RING *
SUSY O. CHO *
SUSAN R. ENGLE *
PETER A. FRUCCIONE 00
MAYYA S. GOTLIB 00
JOHN C. BOBBER *
JENNIFER L. PUSTIZZI ††††
GEORGE W. VOKOLOS *
BARBARA S. DIAMOND ****
GREGORY M. PATIENT ♦♦♦
JAMES F. BACKENSON *
JENNIFER B. HUNTER *
ORLANDO E. VALLE ****
RAMON E. JAVIER ♦
GINA E. ROMANIK ****
CHRISTOPHER M. FOX *
ELIZABETH A. CLARK *
THOMAS V. CURTIN, JR. ††††
LINDA S. STRAUSS 000
TERRELL K. ANDERSON ****
CHRISTOPHER J. POULOS *
DAVID R. DRATCH ♦♦♦♦
ROBERT D. PHILLIPS *
FRANK D. THOMPSON ****
ERIC A. ARRINGTON ****
THOMAS G. DARMODY 00
CARLETHA S. PARKINSON 00
HOLLY ANN McDONALD ♦♦
CATHERINE CARLSON 00
MELISSA J. BEAROFF ††
BRIAN A. ANDRIS *

Email: psilverman@defensecounsel.com

File Copy OUR FILE NO: 400.0006

March 31, 2005

Via Certified Mail

Infern-O-Therm Corporation
Foot of Locust Street
Keyport, NJ 07735

RE: HRI, INC. AND WHITAKER ROADS CORPORATION V. RAYMOND A. GRAFF, WILLIAM GRAFF AND ROSE M. GRAFF T/D/B/A GRAFF TANK; GRAFF TANK, INC. AND MEEKER EQUIPMENT CO., INC.

Dear Sir/Madam:

I am enclosing a Request for Production of Document and Things, as well as Interrogatories addressed to Infern-O-Therm Corporation. Please answer these within thirty (30) days as required by the Pennsylvania Rules of Civil Procedure.

Very truly yours,

PHILLIP B. SILVERMAN

PBS/tt
Enclosures

cc: *Matthew B. Taladay, Esquire, HANAK, GUIDO & TALADAY*
Thomas T. Frampton, Esquire, GOEHRING, RUTTER & BOEHM
Paul E. Pongrace, III, Esquire, REDMAN & PONGRACE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER RCADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Defendants.

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

CIVIL DIVISION

No.: 04-2041-CD

**REPLY OF DEFENDANTS RAYMOND A.
GRAFF, WILLIAM GRAFF AND ROSE
GRAFF t/d/b/a GRAFF TANK AND
GRAFF TANK, INC. TO NEW MATTER
PURSUANT TO RULE 2252(d) OF
ADDITIONAL DEFENDANT, INFERN-O-
THERM CORPORATION**

Filed on Behalf of Defendants:

Raymond A. Graff, William Graff and Rose
M. Graff, t/d/b/a Graff Tank and Graff Tank,
Inc.

Counsel of Record for This Party:

Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacsi, Esquire
Pa. I.D. #80323

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

FILED ^{GW}
m/1:35/64 ^{no cc}
APR 21 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

No.: 04-2041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

**REPLY OF DEFENDANTS RAYMOND A. GRAFF, WILLIAM GRAFF AND ROSE
GRAFF t/d/b/a GRAFF TANK AND GRAFF TANK, INC. TO NEW MATTER PURSUANT
TO 2252(d) OF ADDITIONAL DEFENDANT, INFERN-O-THERM CORPORATION**

AND NOW, come the Defendants, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank and Graff Tank, Inc. (hereinafter "Graff Defendants") by and through their counsel Goehring, Rutter & Boehm and file the following Reply to New Matter Pursuant to 2252(d) of Additional Defendant, Infern-O-Therm Corporation in the above-captioned action:

28. The previously filed Answer, Reply and New Matter of the Graff Defendants is incorporated herein by reference.

29. The previously filed Answer, Reply and New Matter of the Graff Defendants is incorporated herein by reference.

30. The averments of Paragraph No. 30 set forth a legal conclusion to which no response is required. However, and to the extent that a response is required, the previously filed Answer, Reply and New Matter of the Graff Defendants is incorporated herein by reference.

31. The averments of Paragraph No. 31 set forth a legal conclusion to which no response is required. However, and to the extent that a response is required, the previously filed Answer, Reply and New Matter of the Graff Defendants is incorporated herein by reference.

32. The averments of Paragraph No. 32 set forth a legal conclusion to which no response is required. However, and to the extent that a response is required, the previously filed Answer, Reply and New Matter of the Graff Defendants is incorporated herein by reference.

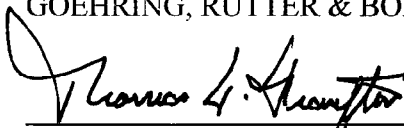
WHEREFORE, the Graff Defendants demand judgment in their favor against the Additional Defendant, Infern-O-Therm Corporation.

Date: April 19, 2005

Respectfully Submitted,

GOEHRING, RUTTER & BOEHM

By:



Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

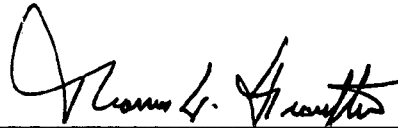
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

*Attorneys for Defendants, Raymond A. Graff,
William Graff and Rose M. Graff, t/d/b/a Graff
Tank and Graff Tank, Inc.*

ATTORNEY VERIFICATION

I, **THOMAS T. FRAMPTON, ESQUIRE**, being the attorney for Plaintiff, am duly authorized to make this verified statement on his behalf as the verified statement of Plaintiff cannot be obtained in time for the filing of this pleading. I hereby verify that the statements set forth in the within **REPLY OF DEFENDANTS RAYMOND A. GRAFF, WILLIAM GRAFF AND ROSE GRAFF t/d/b/a GRAFF TANK AND GRAFF TANK, INC. TO NEW MATTER PURSUANT TO RULE 2252(d) OF ADDITIONAL DEFENDANT, INFERN-O-THERM CORPORATION** are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "Thomas T. Frampton", written over a horizontal line.

Thomas T. Frampton, Esquire

CERTIFICATE OF SERVICE

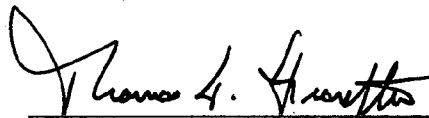
I hereby certify that a true and correct copy of the foregoing **REPLY OF DEFENDANTS RAYMOND A. GRAFF, WILLIAM GRAFF AND ROSE GRAFF t/d/b/a GRAFF TANK AND GRAFF TANK, INC. TO NEW MATTER PURSUANT TO RULE 2252(d) OF ADDITIONAL DEFENDANT, INFERN-O-THERM CORPORATION** has been served on the following parties by U.S. first-class mail, postage pre-paid, this 19 day of April, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorney for Plaintiffs

Philip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris & Ledva
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
Attorney for Meeker Equipment Co., Inc.

Patrick L. Mechas, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Attorney for Infern-O-Therm Corporation

Paul E. Pongrace, III, Esquire
Redman & Pongrace
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236
Attorney for DM Industries, Inc. t/a DM Industries



Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacci, Esquire
Pa. I.D. #80323

FILED

APR 21 2005

William A. Shaw
Prothonotary/Clerk of Courts

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**
BY: PHILLIP B. SILVERMAN, ESQUIRE
Identification No.: 02201
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant, **MEEKER
EQUIPMENT COMPANY, INC.**

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK, GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

vs.

DM INDUSTRIES, INC., DM INDUSTRIES
AND INFERN-O-THERM CORPORATION

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

²⁰⁴¹
No. 04-~~2021~~-CD

FILED ^{NO CC}
^{m/10/30/05}
APR 25 2005

^{Shaw}
William A. Shaw
Prothonotary/Clerk of Courts

**DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S REPLY TO
NEW MATTER OF DEFENDANTS, RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF TANK, GRAFF TANK, INC.
PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 2252(d)**

46. Denied. Answering defendant incorporates by reference and makes a part hereof
it's answer to Plaintiffs' Complain with New Matter and Crossclaims as well as
Complaints against Additional Defendants as though same were herein after set
forth at length.

47. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e). By way of further answer, this paragraph is deemed to be denied as a legal conclusion.
48. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e). By way of further answer, this paragraph is deemed to be denied as a legal conclusion.
49. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e). By way of further answer, this paragraph is deemed to be denied as a legal conclusion.

WHEREFORE, Defendant, Meeker Equipment Company, Inc., demands that the New Matter of Defendants, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank, Graff Tank, Inc., be dismissed.

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

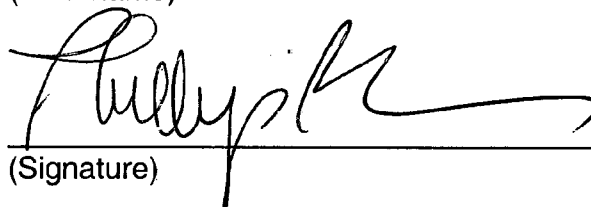
BY: 

PHILLIP B. SILVERMAN, ESQUIRE
Attorney for Defendant: **MEEKER
EQUIPMENT CO., INC.**

VERIFICATION

The undersigned is authorized to sign this verification with regards to the foregoing document. The facts contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. The language of this pleading is that of counsel and not of signer. This verification is made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.

Phillip B. Silverman
(Print name)


(Signature)

DATE: 4/22/05

MSZL&M FILE NO.: 6400.0006

FILED

APR 25 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,

No.: ~~103-Civil-2005~~

2004-2041

Plaintiffs,

CODE:

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

**REPLY TO NEW MATTER
PURSUANT TO RULE 2252(d) of
RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK and GRAFF TANK,
INC.**

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Filed on behalf of Additional Defendant,

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

Additional Defendants.

Counsel of Record for this
Party:

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236

Telephone: (412) 884-4697
Facsimile: (412) 884-7326

FILED

APR 25 2005

m/1:30 PM

William A. Shaw
Prothonotary

no c/c

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

²⁰⁴¹
No. 04-2021 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

**REPLY TO NEW MATTER PURSUANT TO RULE 2252(d) of RAYMOND A.
GRAFF, WILLIAM GRAFF and ROSE GRAFF, t/d/b/a GRAFF TANK and
GRAFF TANK, INC.**

AND NOW comes the additional defendant, DM Industries, Inc., t/a DM Industries, by and through its undersigned counsel, and files the following Reply to New Matter Pursuant to Rule 2252(d) of Raymond A. Graff, William Graff and Rose Graff, t/d/b/a Graff Tank and Graff Tank, Inc.:

46. To the extent Paragraph 46 is directed to this answering defendant and to the extent defendant, Graff, purports to incorporate the plaintiffs' Complaint, this

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

²⁰⁴¹
No. 04-~~2021~~ CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

**REPLY TO NEW MATTER PURSUANT TO RULE 2252(d) of RAYMOND A.
GRAFF, WILLIAM GRAFF and ROSE GRAFF, t/d/b/a GRAFF TANK and
GRAFF TANK, INC.**

AND NOW comes the additional defendant, DM Industries, Inc., t/a DM Industries, by and through its undersigned counsel, and files the following Reply to New Matter Pursuant to Rule 2252(d) of Raymond A. Graff, William Graff and Rose Graff, t/d/b/a Graff Tank and Graff Tank, Inc.:

46. To the extent Paragraph 46 is directed to this answering defendant and to the extent defendant, Graff, purports to incorporate the plaintiffs' Complaint, this

additional defendant hereby incorporates its Answer and New Matter as if fully set forth herein at length.

47. To the extent Paragraph 47 is directed to this answering defendant, Paragraph 47 contains conclusions of law to which no response is required. To the extent a response is required, it is specifically denied that additional defendant, DM Industries, Inc., t/a DM Industries is solely liable to plaintiffs or any other party for any alleged damages.

48. To the extent Paragraph 48 is directed to this answering defendant, Paragraph 48 contains conclusions of law to which no response is required. To the extent a response is required, it is specifically denied that this additional defendant, DM Industries, Inc., t/a DM Industries, is jointly and severally liable to the plaintiffs or any other party for the damages alleged.

49. To the extent Paragraph 49 is directed to this answering defendant, Paragraph 49 contains conclusions of law to which no response is required. To the extent a response is required, it is specifically denied that this additional defendant, DM Industries, Inc., t/a DM Industries, is liable over to Graff defendants or any other party under the principles of contribution and/or indemnification pursuant to contract and/or law.

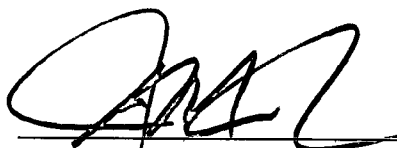
WHEREFORE, this additional defendant denies it is liable to any other party to this action in any sum or sums for any reason whatsoever and demands judgment in its favor with costs of suit.

REDMAN & PONGRACE

By: 
PAUL E. PONGRACE, III, ESQUIRE
Attorney for Additional Defendant,
DM Industries, Inc., t/a DM Industries

VERIFICATION

I, Paul E. Pongrace, III, Esquire, do hereby state that I am the attorney for the additional defendant in this action, that the verification of my client cannot be obtained within the time frame allowed for the filing of the within document, and that the facts contained in the foregoing Reply to New Matter Pursuant to Rule 2252(d) of Raymond A. Graff, William Graff and Rose Graff, t/a Graff Tank, Inc. and Graff Tank are based upon information provided by the additional defendant, and are true and correct to the best of my information and belief. I understand that any false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'Paul E. Pongrace, III', written over a horizontal line.

PAUL E. PONGRACE, III, ESQUIRE

CERTIFICATE OF SERVICE

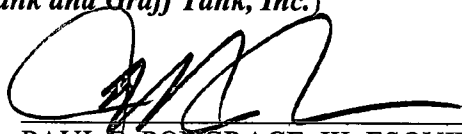
The undersigned counsel hereby certifies that a true and correct copy of the *Reply to New Matter Pursuant to Rule 2252(d) of Raymond A. Graff, William Graff and Rose Graff, t/a Graff Tank and Graff Tank, Inc.* has been served upon all counsel and parties of record this 21st day of April 2005, by First Class Mail, postage prepaid as follows:

Matthew B. Taladay, Esquire
HANAK, GUIDO and TALADAY
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
(Attorney for Plaintiffs)

Phillip B. Silverman, Esquire
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS
22nd Floor, 1528 Walnut Street
Philadelphia, PA 19102
(Attorney for Meeker Equipment Co., Inc.)

Patrick L. Mechas, Esquire
BURNS, WHITE & HICKTON
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(Attorney for Infern-O-Therm Corporation)

Thomas T. Frampton, Esquire
GOEHRING, RUTTER & BOEHM
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Attorney for Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc.)



PAUL E. PONGRACE, III, ESQUIRE

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Notice of
Service

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

FILED

APR 27 2005

m/11:00/w
William A. Shaw
Prothonotary
w/c/c

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being
counsel of record for Plaintiffs, do hereby certify that I propounded on
Defendant Meeker Equipment Co., Inc., via United States mail, first
class, postage pre-paid, this 26th day of April, 2005, Plaintiffs'
RESPONSES TO DEFENDANT MEEKER EQUIPMENT CO., INC.'s
FIRST SET OF DISCOVERY MATERIALS to the below indicated
person, at said address, being counsel of record for the Defendant:

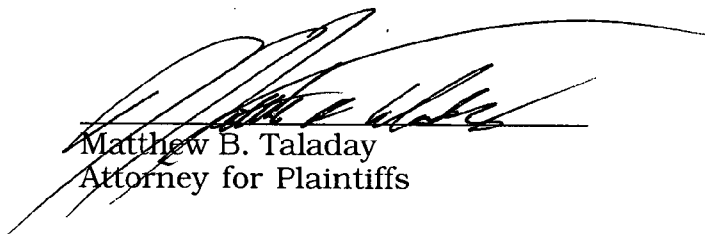
Phillip B. Silverman, Esq.
Attorney for Defendant Meeker Equipment Company, Inc.
Minter Sarowitz Zeris Ledva & Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102-3614

With copies to:

Thomas T. Frampton, Esq.
Attorney for Graff Defendants
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Paul E. Pongrace, III, Esq.
Attorney for DM Industries
Redman & Pongrace
Suite 310
300 Weyman Plaza
Pittsburgh, PA 15236

Patrick L. Mechas, Esq.
Attorney for Infern-O-Therm
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212



Matthew B. Taladay
Attorney for Plaintiffs

FILED

APR 27 2005

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

CIVIL DIVISION

No.: 04-2041

CODE:

**MOTION FOR PROTECTIVE ORDER
PURSUANT TO RULE 4012**

Filed on behalf of Additional Defendant,

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

Counsel of Record for this
Party:

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236

Telephone: (412) 884-4697
Facsimile: (412) 884-7326

FILED *No cc*
m/12:15/05
APR 28 2005
WAS William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

MOTION FOR PROTECTIVE ORDER PURSUANT TO RULE 4012

AND NOW comes the additional defendant, DM Industries, Inc., t/a DM Industries, by and through its undersigned counsel, and files the within Motion for Protective Order:

1. This action arises out of an explosion of an emulsion storage tank that occurred on plaintiffs' premises on or about August 13, 2004.
2. Plaintiffs' claims are based upon negligence and product liability actions.

3. This additional defendant, DM Industries, was joined in this action as recently as **March of 2005**.

4. To date, this additional defendant has not had sufficient time within which to file an Answer and New Matter to the Complaint to Join.

5. Moreover, Plaintiff is still collecting essential evidence insupport of its prima facie case by having recently served a Notice of Intent to Serve a Subpoena on the local fire marshal. This Notice of Intent was provided to the additional defendant on or about **April 18, 2005**.

6. Discovery has been exchanged between the parties. However, none of the discovery has been answered.

7. On or about **April 19, 2005** a letter from plaintiffs' counsel Matthew Taladay was forwarded to all defense counsel. In the letter, Attorney Taladay imposes an arbitrary deadline of **May 9, 2005** by which time the defendants must conduct any site inspections and/or investigations that they deem appropriate. The letter goes on to state that the plaintiffs will be removing the remnants of the exploded tank in order to construct a new storage tank on the same site. See letter dated April 19, 2005 attached hereto as Exhibit "A."

8. This defense counsel responded with a letter dated **April 21, 2005** directed to plaintiffs' counsel requesting a reasonable extension of time within which to perform the site inspection. See letter dated April 21, 2005 attached hereto as Exhibit "B," which requests a deadline of **June 30, 2005**.

9. Plaintiffs' counsel responded with another letter on **April 21, 2005** in which he refuses to extend the deadline he has imposed. According to the letter, plaintiffs appear willing to spoliage critical evidence which forms the basis of plaintiffs' Complaint. See letter dated April 21, 2005 attached hereto as Exhibit "C."

10. This Additional Defendant avers that having only two weeks notice before the subject damaged tank is removed from the premises and discarded is insufficient time within which to retain an expert and perform a site inspection.

11. This Additional Defendant believes it is being unduly rushed into incurring the expense of hiring an expert before any written discovery is completed.

12. This Additional Defendant will incur a financial hardship and an undue burden if the arbitrary **May 9, 2005** deadline imposed by plaintiffs is enforced.

13. As such, this Additional Defendant requests this Court to preclude plaintiffs from removing, destroying, relocating, modifying, discarding, and or otherwise disposing of the remains of the emulsion storage tank and all related equipment made the subject of this lawsuit until this Additional Defendant has a reasonable amount of time within which to retain an expert and perform a proper site inspection.

14. All defense counsel consent to and join in this Motion for Protective Order.

WHEREFORE, this Additional Defendant requests that this Court preclude Plaintiffs from removing, destroying, relocating, modifying, discarding, and/or otherwise disposing of the remains of the emulsion storage tank and all related equipment made the subject of this lawsuit until this Additional Defendant has a reasonable amount of time within which to retain an expert and perform a proper site inspection.

Respectfully submitted,

REDMAN & PONGRACE

By: 

PAUL E. PONGRACE, III, ESQUIRE
Attorney for Additional Defendant,
DM Industries, Inc., t/a DM Industries

HANAK, GUIDO and TALADAY
Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

Telephone: (814) 371-7768
Fax: (814) 371-1974

498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Nicole Hanak Bankovich
S. Casey Bowers

April 19, 2005

Fax Transmission

Via Fax and Regular U.S. Mail

Pages: 2

Thomas T. Frampton, Esq.
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
FAX: 412-281-2971

Paul E. Pongrace, III, Esq.
Redman & Pongrace
Suite 310
300 Weyman Plaza
Pittsburgh, PA 15236
FAX: 412-884-7326

Phillip B. Silverman, Esq.
Mintzer, Sarowitz, Zeris, Ledva &
Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
FAX: 215-735-1714

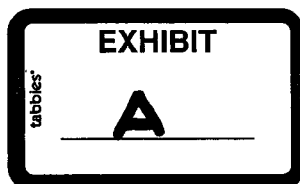
Patrick L. Mechas, Esq.
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
FAX: 412-995-3300

Re: HRI, Inc. and Whitaker Roads Corporation vs.
Raymond A. Graff, William Graff, and Rose M.
Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and
Meeker Equipment Co., Inc. vs. DM Industries,
Inc., t/a DM Industries and Infern-O-Therm
Corporation
Clearfield County Docket No.: 04-204-CD

Gentlemen:

The incident that is the basis for the above referenced suit occurred on August 13, 2004. The incident scene has been fenced off and preserved to permit opportunity for inspection by all interested parties.

It is imperative that arrangements be made by all parties to complete any and all inspections on or before May 9, 2005. HRI/Whitaker Roads must clear and prepare this site for the installation of a new storage tank in order to meet their capacity



Thomas T. Frampton, Esq.
Phillip B. Silverman, Esq.
Paul E. Pongrace, III, Esq.
Patrick L. Mechas, Esq.

-2-

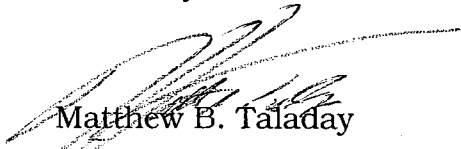
April 19, 2005

requirements for the upcoming construction season. The absence of this tank would result in significant additional consequential damages.

Beginning May 10, 2005 site clean up will commence. This clean up will include the dismantling and disposal of the storage tank in question.

HRI/Whitaker Roads will make every attempt to accomodate the scheduling of site inspections by the representatives of the parties. I would ask that you promptly contact my office to discuss proposals for inspection times and dates. I look forward to hearing from you.

Sincerely,



Matthew B. Taladay

MBT:kam

cc: Anthony L. Martino, II, Esq.
FAX: 973-290-9088

LAW OFFICES
REDMAN & PONGRACE
(STAFF COUNSEL FOR HARLEYSVILLE INSURANCE)

SCOTT T. REDMAN
PAUL E. PONGRACE, III

WRITER'S EMAIL: PPONGRACE@LEGAL-ORG.COM

300 WEYMAN PLAZA
SUITE 310
PITTSBURGH, PA 15236
TELEPHONE (412) 884-4697
FAX (412) 884-7326

April 21, 2005

Via Facsimile
814.371.1974

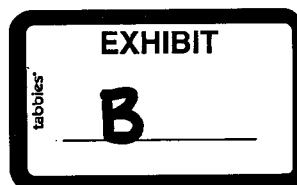
Matthew B. Taladay, Esquire
HANAK, GUIDO and TALADAY
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

**RE: *HRI, Inc. and Whitaker Roads Corporation vs. Raymond A. Graff,
William Graff and Rose Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and
Meeker Equipment Co., Inc. vs. DM Industries, Inc., t/a DM Industries
and Infern-O-Therm Corporation***
Docket No.: 04-2021 CD

Dear Mr. Taladay:

I am in receipt of your letter dated April 19, 2005 in which you request that the defendants perform a site inspection before May 9, 2005. I have spoken to other counsel, and I believe I speak for the defendants when I say that May 9th is not a feasible deadline for retaining experts, photographers or any other investigators that might be needed in the defense of this case. I am also concerned about my own schedule which does not allow me personally to visit the site before May 9th. I have quite a trial schedule coming up and need much of the time for trial preparation.

Although I would like to have more time within which to retain an expert and visit the site, I believe we can accomplish what we need to do before June 30, 2005. Please confirm that you are agreeable to that date, and if you are, I will make all attempts to visit the site with any experts that I may need to retain. If I do not hear from you – or if you are not agreeable to the postponement – I will promptly file a Motion for a Protective



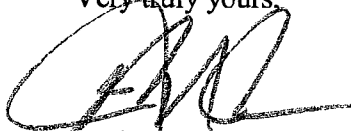
Matthew B. Taladay, Esquire

April 21, 2005

Page 2

Order with the Court. As such, I ask that you do not remove any of the equipment and materials made the subject of this lawsuit. I ask that you do not modify or change the site until a decision on the Motion for Protective Order is made. I will expedite the argument on the protective order as much as I can. If you have any questions, please call me to discuss as soon as possible.

Very truly yours,



Paul E. Pongrace, III

PEP/lac

cc Phillip B. Silverman, Esquire (215.735.1714)
Thomas T. Frampton, Esquire (412.281.2971)
Patrick L. Mechas, Esquire (412.995.3300)
Julie Whaley, MO-583627

HANAK, GUIDO and TALADAY
Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

Telephone: (814) 371-7768
Fax: (814) 371-1974

498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Nicole Hanak Bankovich
S. Casey Bowers

April 21, 2005

Fax Transmission:
(412) 884-7326

Pages:

2

Paul E. Pongrace, III, Esq.
Redman & Pongrace
Suite 310
300 Weyman Plaza
Pittsburgh, PA 15236

Re: HRI, Inc. and Whitaker Roads Corporation vs.
Raymond A. Graff, William Graff and Rose Graff,
t/d/b/a Graff Tank and Graff Tank, Inc. and
Meeker Equipment Co., Inc. vs. DM Industries,
Inc., t/a DM Industries and Infern-O-Therm

Dear Mr. Pongrace:

As explained in my prior letter, HRI has an extremely pressing need to have the tank dismantled and removed commencing on May 9, 2005. Even with this time frame, they will still be one month behind with the ideal completion date of their replacement tank.

If HRI is unable to commence dismantling of this tank as of May 9, they will likely encounter significant problems in meeting the provision commitments which are already contracted for the upcoming season. As discussed earlier, this would not only subject them to potential contractual liability, but would also greatly increase the consequential damage claim to which all defendants would be potentially subject.

Although I am sympathetic to the factors set forth in your letter, on behalf of my client, I must stick to the time window set

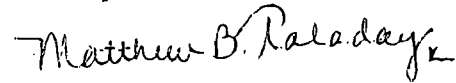


Paul E. Pongrace, III, Esq.
April 21, 2005
Page 2

forth in my prior letter. With that in mind, I will gladly take any other action or make any accommodations which would assist you or any other party defendant in complete of your inspection within the designated time frame.

If you wish to discuss this further, please contact my office.

Sincerely,



Matthew B. Taladay

MBT:kam

Enc.

cc: Anthony L. Martino, II, Esq. - Fax: 973-290-9088
Phillip B. Silverman, Esq. - Fax: 215-735-1714
Thomas T. Frampton, Esq. - Fax: 412-281-2971
Patrick L. Mechas, Esq. - Fax: 412-995-3300

CERTIFICATE OF SERVICE

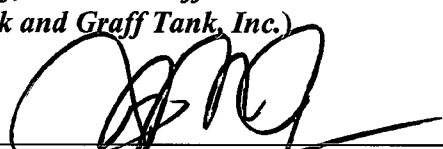
The undersigned counsel hereby certifies that a true and correct copy of the *Motion For Protective Order Pursuant to Rule 4012* as been served upon all counsel and parties of record this 27 day of April 2005, by First Class Mail, postage prepaid as follows:

Matthew B. Taladay, Esquire
HANAK, GUIDO and TALADAY
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
(Attorney for Plaintiffs)

Phillip B. Silverman, Esquire
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS
22nd Floor, 1528 Walnut Street
Philadelphia, PA 19102
(Attorney for Meeker Equipment Co., Inc.)

Patrick L. Mechas, Esquire
BURNS, WHITE & HICKTON
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(Attorney for Infern-O-Therm Corporation)

Thomas T. Frampton, Esquire
GOEHRING, RUTTER & BOEHM
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Attorney for Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc.)



PAUL E. PONGRACE, III, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

ORDER OF COURT

AND NOW, this _____ day of _____, 2005, it is hereby
ORDERED that Plaintiffs are precluded from removing, destroying, relocating,
modifying, discarding, and/or otherwise disposing of the remains of the emulsion storage
tank and all related equipment made the subject of this lawsuit until this Additional
Defendant has a reasonable amount of time within which to retain an expert and perform
a proper site inspection.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Response to Motion for
Protective Order

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

FILED^{CP} no cc
m 110:393d
APR 28 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

**RESPONSE TO DEFENDANT DM INDUSTRIES, INC.
t/a DM INDUSTRIES' MOTION FOR PROTECTIVE ORDER**

AND NOW, come the Plaintiff, HRI, Inc. and Whitaker Roads Corporation by their attorneys, Hanak, Guido and Taladay, and hereby respond to the Defendants' Motion for Protective Order:

1. Admitted. By way of further answer, the Graff Defendants, Meeker Equipment Company, Inc. and Infern-O-Therm Corporation were put on notice of the incident and advised of the Plaintiffs' need to clear the debris and construction the tank, and were therefore invited to inspect the premises by letters dated August 20, 2004, copies of those letters and return receipts are attached hereto.

These letters, which were mailed by certified mail, include the following language:

The purpose of this letter is to place you on notice, and invite you to participate in the investigation of the above explosion/fire scene. We request that your firm have a representative present to inspect the site as it has been left in its original state so no spoliation issues will be compromised.

This letter also serves as your formal notice that HRI, Inc. intends to begin clean up and repair work of the damaged scene as soon as possible so your immediate attention to this matter is of the utmost importance.

2. Admitted in part. Plaintiffs have also stated claims for breach of warranty against original Defendants.

3. Admitted, however, the Plaintiffs have asserted no claims directly against the Additional Defendant, DM Industries.

4. It is admitted that the Additional Defendant has not yet filed an Answer and New Matter to the Complaint to Join, but denied that Additional Defendant has not had sufficient time to do so.

5. Admitted.

6. Denied. Plaintiffs have provided responses to Interrogatories and Request for Production of Documents to all parties on April 26, 2005 which answers and documents are responsive to discovery requests propounded by Meeker Equipment Co., Inc.

7. Denied as stated. It is admitted that on April 19, 2005 the undersigned counsel for Plaintiffs advised the Defendants of the pressing need to dismantle and remove the remnants of the exploded tank. Plaintiffs are under strict contractual obligations to provide materials and labor for highway repair and reconstruction projects in the Summer 2005 construction season. The inability to

commence dismantling of the damaged tank by May 9, 2005 will result in the Plaintiffs' inability to timely meet their contractual obligations and may subject the Plaintiffs to liability for breach of contract and/or the Plaintiffs may incur additional extensive consequential damages in the form of lost revenue and/or additional cost of materials. By way of further answer, it is averred that the Plaintiffs in their letter of April 19, 2005 extended a pledge to accommodate any reasonable inspection request within the proposed time frame.

8. It is admitted that defense counsel requested an extension of the inspection deadline to June 30, 2005. It is denied that this requested extension is reasonable.

9. It is admitted that the letter attached as Exhibit "C" was forwarded by counsel for Plaintiffs to Defendants. It is denied that Plaintiffs intend to "spoliate" any evidence in this matter. By way of further answer, it is averred that the combustion package components of the tank in question have been properly removed and placed in storage and will remain available for inspection by Defendants' designated experts and representatives until the time of trial in this matter. The Plaintiffs intend only to remove the remnants of the exploded storage tank because its location is the only appropriate and reasonable site upon which a replacement tank can be placed.

10. The Defendants were provided with three week's notice of the tank demolition period, which is more than ample time to retain a qualified expert to inspect, review, photograph and document the explosion site.

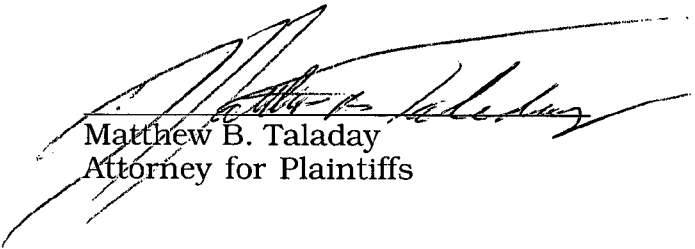
11. Defendants are not being forced to prematurely obtain their ultimate trial expert, but rather to contact and dispatch personnel qualified to measure, document, photograph and otherwise inspect the explosion site. All defense attorneys in this case are experienced trial counsel who know that experts such as fire, explosion and petroleum incident experts are customarily called upon to inspect and document accident scenes upon short notice.

12. It is believed that no Defendant will suffer financial hardship as a result of the proposed inspection deadline, in that all Defendants have confirmed the necessity to hire an inspector or investigator to document the scene. Any financial inconvenience to the Defendants would be minuscule compared to the financial impact upon the Plaintiffs.

13. The Plaintiffs hereby request this Honorable Court to issue an Order ruling that the Defendants shall conduct all desired inspection and documentation of the accident site on or before May 9, 2005. In the alternative, if the Court deems it reasonable to extend the inspection period, the Plaintiffs request an Order of Court holding the Defendants jointly and severally responsible for any and all consequential damages sustained by the Plaintiffs as a result of this delay.

14. To the extent that all other defense counsel joined in the Motion for Protective Order, the Plaintiffs point out that the Defendant Infern-O-Therm Corporation, the Graff Defendants and Meeker Equipment Company have been granted more than ample opportunity to perform all necessary inspections and documentation

based on the correspondences of August 20, 2004 which are attached
hereto.



Matthew B. Taladay
Attorney for Plaintiffs



HRI, INC.

Corporate Office

1750 West College Avenue, Suite #1

State College, PA 16801

Phone: (814) 238-5071 Fax: (814) 238-0131

August 20, 2004

Meeker Equipment Co., Inc.
516 North Broad Street
Post Office Box 925
Lansdale, PA 19446-0661

Re: Whitaker Roads Corporation
Fire/Explosion Incident
(Emulsion Tank Explosion)

GENTLEMEN:

Whitaker Roads Corporation, a subsidiary of HRI, Inc. suffered massive destruction at the business located in Woodland, 88 Barrett Road, Bradford Township, Clearfield County, Commonwealth of Pennsylvania on August 13, 2004 at 9:07 AM. The office of Tsikalas Investigations has been retained to investigate an *Origin and Cause Explosion and Fire Investigation* by HRI, Inc., 1750 West College Avenue, State College, PA 16801, telephone (814) 278-6906.

Both the Pennsylvania State Police Fire Marshal and the Certified Fire Investigator have carefully examined and investigated the explosion and fire scene and have determined that the explosion occurred from within the tank holding MC-70, specifically tank #19.

The purpose of this letter is to place you on notice, and invite you to participate in the investigation of the above explosion/fire scene. We request that your firm have a representative present to inspect the site as it has been left in its original state so no spoliation issues will be compromised.

This letter also serves as your formal notice that HRI, Inc. intends to begin cleanup and repair work of the damaged scene as soon as possible so your immediate attention to this matter is of the utmost importance.

A tentative date of September 2, 2004 is being scheduled for the additional inspections so all can be present at the same time. Please RSVP with your intentions to my attention at the above address and telephone number.

After the inspection is completed and permission is received from the Pennsylvania State Police Fire Marshal's Office, the removal and protection of evidence and clean up of the fire and explosion scene will take place. Any evidence removed from the scene will be properly stored and retained for future claim proceedings.

All correspondence regarding the above matter should be addressed to HRI, Inc. at the above mentioned address and telephone number.

Very truly yours,

HRI, INC.

Kevin G. Beach
Corporate Director of Safety

mw

c: Pennsylvania State Police Fire Marshals Office
VIA: Certified Mail, Return Receipt Requested

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MEEKER EQUIPMENT CO., INC.
POST OFFICE BOX 925
LANSDALE, PA 19446-0661

2. Article Number

(Transfer from service label)

7001 1940 0007 0890 3096

PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-2509

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☐ Agent☐ Addressee

B. Received by (Printed Name)

J. H. M. M. M.

C. Date of Delivery

8/23/04

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

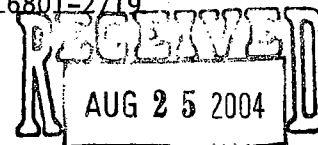
UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

KEVIN G. BEACH
HRI, INC.
1750 WEST COLLEGE AVENUE
STATE COLLEGE, PA 16801-2719



U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

7001 1940 0007 0890 3096

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To

MEEKER EQUIPMENT CO., INC.

Street, Apt. No.,
or PO Box No.

POST OFFICE BOX 925

City, State, ZIP+ 4

LANSDALE, PA 19446-0661

PS Form 3800, January 2001

See Reverse for Instructions



HRI, INC.

Corporate Office

1750 West College Avenue, Suite #1

State College, PA 16801

Phone: (814) 238-5071 Fax: (814) 238-0131

August 20, 2004

Graff Tank
731 A North Main Street
Post Office Box 336
Hubbard, OH 44425

Attention: Mr. Bill Graff

Re: Whitaker Roads Corporation
Fire/Explosion Incident
(Emulsion Tank Explosion)

GENTLEMEN:

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After the inspection is completed and permission is received from the Pennsylvania State Police Fire Marshal's Office, the removal and protection of evidence and clean up of the fire and explosion scene will take place. Any evidence removed from the scene will be properly stored and retained for future claim proceedings.

All correspondence regarding the above matter should be addressed to HRI, Inc. at the above mentioned address and telephone number.

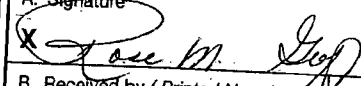
Very truly yours,

HRI, INC.

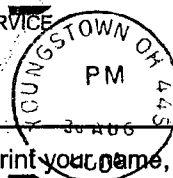
Kevin G. Beach
Corporate Director of Safety

mw

c: Pennsylvania State Police Fire Marshals Office
VIA: Certified Mail, Return Receipt Requested

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature  ☐ Agent ☐ Addressee	
1. Article Addressed to: BILL GRAFF GRAFF TANK 731 A NORTH MAIN STREET HUBBARD, OH 44425		B. Received by (Printed Name) Rose Graft C. Date of Delivery	
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? ☒ Yes If YES, enter delivery address below: ☐ No PO Box 336 Hubbard OH 44425	
3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.		4. Restricted Delivery? (Extra Fee) ☐ Yes	
PS Form 3811, August 2001		Domestic Return Receipt	

UNITED STATES POSTAL SERVICE



First-Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

KEVIN G. BEACH
 HRI, INC.
 1750 WEST COLLEGE AVENUE
 STATE COLLEGE, PA 16801-9713

RECEIVED
 SEP 2 2004



U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

7001 1940 0007 0890 3089

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To	
GRAFF TANK	
Street, Apt. No., or PO Box No.	731 A NORTH MAIN STREET
City, State, ZIP+ 4	HUBBARD, OH 44425
PS Form 3800, January 2001	
See Reverse for Instructions	



HRI, INC.

Corporate Office

1750 West College Avenue, Suite #1

State College, PA 16801

Phone: (814) 238-5071 Fax: (814) 238-0131

August 20, 2004

Infern-O-Therm Corporation
Post Office Box 190
Keyport, PA 07735

Attention: Mr. Robert Giannetti

Re: Whitaker Roads Corporation
Fire/Explosion Incident
(Emulsion Tank Explosion)

GENTLEMEN:

Whitaker Roads Corporation, a subsidiary of HRI, Inc. suffered massive destruction at the business located in Woodland, 88 Barrett Road, Bradford Township, Clearfield County, Commonwealth of Pennsylvania on August 13, 2004 at 9:07 AM. The office of Tsikalas Investigations has been retained to investigate an *Origin and Cause Explosion and Fire Investigation* by HRI, Inc., 1750 West College Avenue, State College, PA 16801, telephone (814) 278-6906.

Both the Pennsylvania State Police Fire Marshal and the Certified Fire Investigator have carefully examined and investigated the explosion and fire scene and have determined that the explosion occurred from within the tank holding MC-70, specifically tank #19.

The purpose of this letter is to place you on notice, and invite you to participate in the investigation of the above explosion/fire scene. We request that your firm have a representative present to inspect the site as it has been left in its original state so no spoliation issues will be compromised.

This letter also serves as your formal notice that HRI, Inc. intends to begin cleanup and repair work of the damaged scene as soon as possible so your immediate attention to this matter is of the utmost importance.

A tentative date of September 2, 2004 is being scheduled for the additional inspections so all can be present at the same time. Please RSVP with your intentions to my attention at the above address and telephone number.

After the inspection is completed and permission is received from the Pennsylvania State Police Fire Marshal's Office, the removal and protection of evidence and clean up of the fire and explosion scene will take place. Any evidence removed from the scene will be properly stored and retained for future claim proceedings.

All correspondence regarding the above matter should be addressed to HRI, Inc. at the above mentioned address and telephone number.

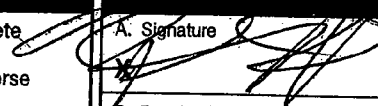
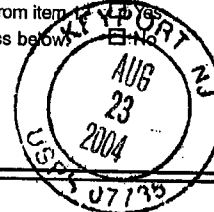
Very truly yours,

HRI, INC.

Kevin G. Beach
Corporate Director of Safety

mw

c: Pennsylvania State Police Fire Marshals Office
VIA: Certified Mail, Return Receipt Requested

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature  ☐ Agent ☐ Addressee	
1. Article Addressed to: ROBERT GIANNETTI INFERN-O-THERM CORPORATION FOOT OF LOCUST STREET KEYPORT, NJ 07735		B. Received by (Printed Name)	C. Date of Delivery
2. Article Number (Transfer from service label) 7001 1940 0007 0890 3072		D. Is delivery address different from item 1? If YES, enter delivery address below 	
3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.		4. Restricted Delivery? (Extra Fee) ☐ Yes	
PS Form 3811, August 2001 Domestic Return Receipt 102595-01-M-2509			

UNITED STATES POSTAL SERVICE

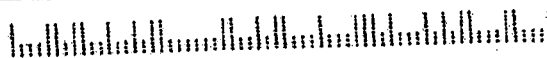


First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

KEVIN G. BEACH
HRI, INC.
1750 WEST COLLEGE AVENUE
STATE COLLEGE, PA 16801-2719

RECEIVED
AUG 25 2004



U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To
INVERN-O-THERM CORPORATION
Street, Apt. No.,
or PO Box No. FOOT OF LOCUST STREET
City, State, ZIP+4 KEYPORT, NJ 07735

PS Form 3800, January 2001

See Reverse for Instructions

7001 1940 0007 0890 3072

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No. 04-2041-CD

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

CERTIFICATE OF SERVICE

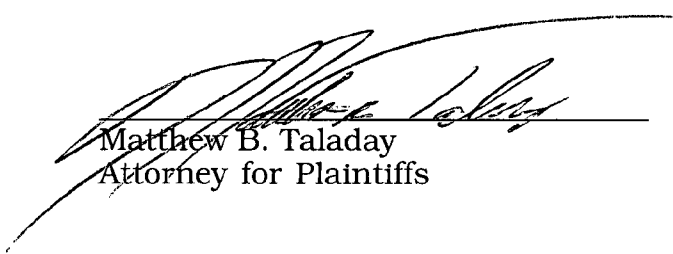
I hereby certify that on this 27th day of April, 2005, I
mailed a true and correct copy of the foregoing Response to Motion
for Protective Order by first class mail, postage prepaid, to the
following:

Thomas T. Frampton, Esq.
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Attorney for Graff Defendants

Paul E. Pongrace, III, Esq.
Redman & Pongrace
Suite 310
300 Weyman Plaza
Pittsburgh, PA 15236
Attorney for DM Industries, Inc.

Phillip B. Silverman, Esq.
Mintzer, Sarowitz, Zeris, Ledva &
Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
Attorney for Meeker Equipment Co.

Patrick L. Mechas, Esq.
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Attorney for Infern-O-Therm


Matthew B. Taladay
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

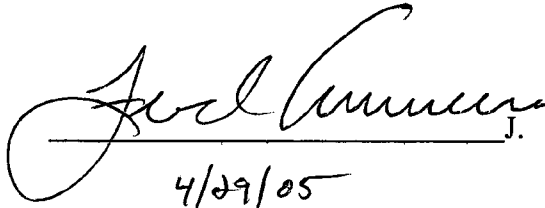
DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

SCHEDULING ORDER FOR
EMERGENCY MOTION FOR PROTECTIVE ORDER

Upon consideration, a rule is issued upon plaintiffs to appear on the 3rd day
of May, 2005 at 2:00 a.m./p.m. in Courtroom 1 at the
Clearfield County Courthouse for argument on the within Motion for Protective Order.

BY THE COURT:


4/29/05

FILED ^{OK}
1 cc
011:08 Bdl
APR 29 2005 clt
William A. Shaw
Prothonotary/Clerk of Courts
2cc Amy Longrace

FILED

MAY 02 2005

W/1:00 ✓ (P)
William A. Shaw
Prothonotary
W. C. C.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

CASE NO. 2004-02041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC. and MEEKER EQUIPMENT
CO., INC.,

**MOTION TO JOIN IN MOTION FOR
PROTECTIVE ORDER PURSUANT TO
RULE 4012**

Defendants,

Filed on Behalf of: Additional Defendant,
Infern-O-Therm Corporation

vs.

DM INDUSTRIES, INC., DM INDUSTRIES,
and INFERN-O-THERM CORPORATION,

Counsel for Record for This Party:

Patrick L. Mechas, Esquire
PA I.D. No. 61362

Additional Defendants.

John B. Cromer, Esquire
PA I.D. No. 66773

BURNS, WHITE & HICKTON
Firm I.D. No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS)
CORPORATION,)

Plaintiffs,)

vs.)

RAYMOND A. GRAFF, WILLIAM)
GRAFF, ROSE M. GRAFF, GRAFF)
TANK, GRAFF TANK, INC. and)
MEEKER EQUIPMENT CO., INC.,)

Defendants,)

vs.)

DM INDUSTRIES, INC., DM)
INDUSTRIES, and INFERN-O-)
THERM CORPORATION,)

Additional Defendants.)

CASE NO. 2004-02041-CD

MOTION TO JOIN IN MOTION FOR PROTECTIVE ORDER

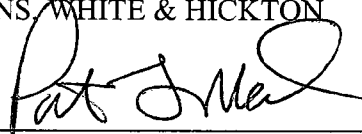
AND NOW, comes Additional Defendant, Infern-O-Therm Corporation, by and through its attorneys, Burns, White & Hickton, Patrick L. Mechas, Esquire and John B. Cromer, Esquire and files the within Motion to Join in Motion for Protective Order and, in support thereof, avers as follows:

1. Additional Defendant, Infern-O-Therm Corporation, hereby joins in the Motion for Protective Order Pursuant to Rule 4012 filed on behalf of Additional Defendant, DM Industries, Inc. t/a DM Industries incorporating the Motion herein as if set forth in its entirety.

WHEREFORE, Additional Defendant, Infern-O-Therm Corporation, hereby requests that this Honorable Court enter a Protective Order in the above-referenced action.

Respectfully submitted,

BURNS, WHITE & HICKTON

BY: 

Patrick L. Mechas, Esquire
John B. Cromer, Esquire
Attorneys for Additional Defendant
Infern-O-Therm Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **Motion to Join in Motion for Protective Order Pursuant to Rule 4012** was served upon all counsel of record via first class mail, postage prepaid, this 28th day of April, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Phillip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
1528 Walnut Street – 22nd Floor
Philadelphia, PA 19102

Thomas T. Frampton, Esquire
Dana L. Bacsí, Esquire
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Paul E. Pongrance, III, Esquire
Redman & Pongrace
300 Weyman Plaza – Suite 310
Pittsburgh, PA 15236



Patrick L. Mechas, Esquire
John B. Cromer, Esquire

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Certificate Prerequisite to
Service of a Subpoena

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

FILED (64)

MAY 02 2005

m/8-30/1

William A. Shaw

Prothonotary/Clerk of Courts

no c/c

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

vs.

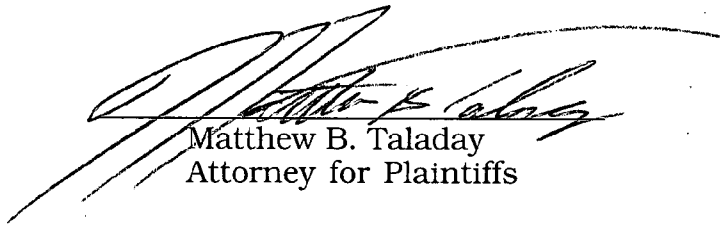
DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

As a prerequisite to service of subpoena for the production of
documents and things pursuant to Rule 4009.22, Plaintiffs certify that

1. A notice of intent to serve subpoena with a copy of
subpoena attached thereto was mailed or delivered to each
party at least twenty (20) days prior to the date on which
the subpoena is sought to be served;
2. A copy of the notice, including the proposed subpoena, is
attached to this certificate;
3. No objection to the subpoena has been received; and
4. The subpoena which will be served is identical to the one
attached to the notice of intent to serve the subpoena.

Date: 04-29-2005


Matthew B. Taladay
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

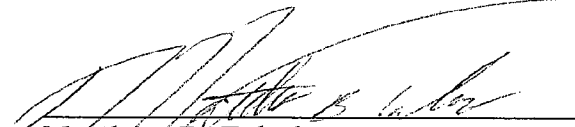
vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

**NOTICE OF INTENT TO SERVE SUBPOENA
TO PRODUCE DOCUMENTS AND THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.21**

Plaintiffs, HRI, Inc. and Whitaker Roads Corporation,
intend to serve a subpoena identical to the one attached to this
notice. You have twenty (20) days from the date listed below to
file of record and serve upon the undersigned objections to the
subpoena. If no objections are made, the subpoena may be
served.

Date: 4-18-05


Matthew B. Taladay
Attorney for Plaintiffs
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
(814) 371-7768

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

HRI, Inc. and

Whitaker Roads Corporation

Plaintiff(s)

Vs.

Raymond A. Graff, William Graff and

Rose M. Graff, t/d/b/a Graff Tank,

Graff Tank, Inc. and Meeker Equipment Co. Inc.

Defendant(s)

Vs

DM Industries, Inc. t/a DM Industries and

Infern-O-Therm Corporation

Additional Defendant(s)

No. 2004-02041-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Commissioner Jeffrey B. Miller, Custodian of Records, Pennsylvania State
Police (Name of Person or Entity) 1800 Elmerton Avenue
Harrisburg, PA 17110-9758

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

State Police Fire Marshall Report; Incident of August 13, 2004;
88 Barrett Road, Bradford Township, Clearfield County, Pennsylvania

(Address) 498 Jeffers Street
PO Box 487
DuBois, PA 15801

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Matthew B. Taladay, Esq.

ADDRESS: 498 Jeffers St. PO Box 487
DuBois, PA 15801

TELEPHONE: (814) 371-7768

SUPREME COURT ID # 49663

ATTORNEY FOR: Plaintiffs

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

DATE: Wednesday, April 13, 2005

Seal of the Court



CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

No.: 04-2041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

**MOTION TO JOIN IN MOTION FOR
PROTECTIVE ORDER PURSUANT TO
RULE 4012**

Defendants.

Filed on Behalf of Defendants:

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Raymond A. Graff, William Graff and Rose
M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc.

Additional Defendants.

Counsel of Record for This Party:

Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacsi, Esquire
Pa. I.D. #80323

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

FILED No
m/d: 50/6/ CC
MAY 03 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

No.: 04-2041-CD

VS.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Defendants;

VS.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

**MOTION TO JOIN IN MOTION FOR PROTECTIVE
ORDER PURSUANT TO RULE 4012**

AND NOW, come the Defendants, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank and Graff Tank, Inc. by and through their counsel Goehring, Rutter & Boehm and file the following Motion to Join in Motion for Protective Order in the above-captioned action:

1. Defendants, Raymond A. Graff, William Graff and Rose Graff, t/d/b/a Graff Tank, Graff Tank, Inc., hereby joins in the Motion for Protective Order Pursuant to Rule 4012 filed on behalf of Additional Defendant, DM Industries, Inc. t/a DM Industries incorporating the Motion herein as if set forth in its entirety.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

No.: 04-2041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Defendants;

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

**MOTION TO JOIN IN MOTION FOR PROTECTIVE
ORDER PURSUANT TO RULE 4012**

AND NOW, come the Defendants, Raymond A. Graff, William Graff and Rose M. Graff
t/d/b/a Graff Tank and Graff Tank, Inc. by and through their counsel Goehring, Rutter & Boehm
and file the following Motion to Join in Motion for Protective Order in the above-captioned
action:

1. Defendants, Raymond A. Graff, William Graff and Rose Graff, t/d/b/a Graff
Tank, Graff Tank, Inc., hereby joins in the Motion for Protective Order Pursuant to Rule 4012
filed on behalf of Additional Defendant, DM Industries, Inc. t/a DM Industries incorporating the
Motion herein as if set forth in its entirety.

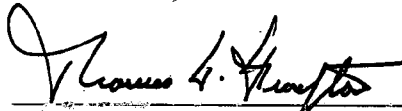
WHEREFORE, Defendants, Raymond A. Graff, William Graff and Rose Graff, t/d/b/a Graff Tank, Graff Tank, Inc., hereby requests that this Honorable Court enter a Protective Order in the above-referenced action.

Date: April 29, 2005

Respectfully Submitted,

GOEHRING, RUTTER & BOEHM

By:



Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

CERTIFICATE OF SERVICE

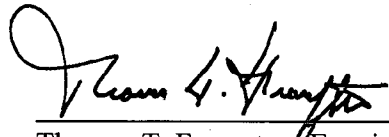
I hereby certify that a true and correct copy of the foregoing **MOTION TO JOIN IN MOTION FOR PROTECTIVE ORDER PURSUANT TO RULE 4012** has been served on the following parties Via Overnight Mail, this 29th day of April, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorney for Plaintiffs

Philip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris & Ledva
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
Attorney for Meeker Equipment Co., Inc.

Patrick L. Mechas, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Attorney for Infern-O-Therm Corporation

Paul E. Pongrace, III, Esquire
Redman & Pongrace
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236
Attorney for DM Industries, Inc. t/a DM Industries


Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

FILED

MAY 03 2005

William A. Shaw
Prothonotary/Clerk of Courts

2005 PS Rec 1

2005 PS Rec 1
2005 PS Rec 1

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HRI, INC. and WHITAKER
ROADS CORPORATION

-VS-

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT, INC.

-VS-

DM INDUSTRIES, t/a DM
INDUSTRIES and
INFERN-O-THERM CORPORATION :

No. 04-2041-CD

FILED
0/3:00 PM
MAY 04 2005

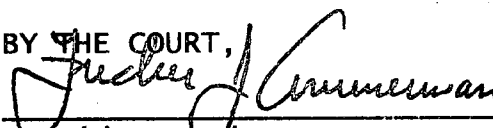
William A. Shaw
Prothonotary/Clerk of Courts

ICC Attys:
Taladay
Frampton
Bacsi
Silverman
Pongrace
Meehas
Cromes

O R D E R

NOW, this 3rd day of May, 2005, following argument on the Emergency Motion for Protective Order filed on behalf of additional Defendant DM Industries, it is the ORDER of this Court that said Motion be and is hereby granted to the extent that the Plaintiff shall be prohibited from clearing the debris and remaining portions of the tank in question from the area until and including June 3, 2005. Subsequent to that date, the Protective Order will dissolve and the Plaintiff is at liberty to proceed as the Plaintiff deems to be appropriate.

BY THE COURT,


President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC. and MEEKER EQUIPMENT
CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., DM INDUSTRIES,
and INFERN-O-THERM CORPORATION,

Additional Defendants.

CIVIL DIVISION

CASE NO. 2004-02041-CD

**REPLY TO NEW MATTER OF
DEFENDANTS, RAYMOND A. GRAFF,
WILLIAM GRAFF, ROSE M. GRAFF
t/d/b/a GRAFF TANK AND GRAFF
TANK, INC.**

Filed on Behalf of: Additional Defendant,
Infern-O-Therm Corporation

Counsel for Record for This Party:

Patrick L. Mechas, Esquire
PA I.D. No. 61362

John B. Cromer, Esquire
PA I.D. No. 66773

BURNS, WHITE & HICKTON
Firm I.D. No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

JURY TRIAL DEMANDED

FILED ⁶²
7/11/44 ^{CC}
MAY 05 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS)
CORPORATION,)

Plaintiffs,)

vs.)

RAYMOND A. GRAFF, WILLIAM)
GRAFF, ROSE M. GRAFF, GRAFF)
TANK, GRAFF TANK, INC. and)
MEEKER EQUIPMENT CO., INC.,)

Defendants,)

vs.)

DM INDUSTRIES, INC., DM)
INDUSTRIES, and INFERN-O-)
THERM CORPORATION,)

Additional Defendants.)

CASE NO. 2004-02041-CD

**REPLY TO NEW MATTER OF DEFENDANTS, RAYMOND A. GRAFF, WILLIAM
GRAFF, ROSE M. GRAFF t/d/b/a GRAFF TANK AND GRAFF TANK, INC.**

AND NOW, comes Additional Defendant, Infern-O-Therm Corporation, by and through its attorneys, Burns, White & Hickton, Patrick L. Mechas, Esquire and John B. Cromer, Esquire and files the within Reply to New Matter pursuant to Pennsylvania Rule of Civil Procedure 2252(d) of original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc. (hereinafter "Graff Defendants") and, in support thereof, avers as follows:

1. The averments contained in Paragraph 46 of the New Matter pursuant to Pennsylvania Rule of Civil Procedure 2252(d) filed on behalf of the Graff Defendants constitute conclusions of law to which no response is required. To the extent that a response may be

deemed necessary, said averments are denied in their entirety and strict proof of same is demanded at the time of trial. By way of further response, Infern-O-Therm Corporation hereby incorporates by reference thereto, as if set forth fully herein, its Answer and New Matter to the Complaint Against Additional Defendants filed on behalf of original Defendant, Meeker Equipment Co., Inc.

2. The averments contained in Paragraph 47 of the New Matter pursuant to Pennsylvania Rule of Civil Procedure 2252(d) filed on behalf of the Graff Defendants constitute conclusions of law to which no response is required. To the extent that a response may be deemed necessary, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

3. The averments contained in Paragraph 48 of the New Matter pursuant to Pennsylvania Rule of Civil Procedure 2252(d) filed on behalf of the Graff Defendants constitute conclusions of law to which no response is required. To the extent that a response may be deemed necessary, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

4. The averments contained in Paragraph 49 of the New Matter pursuant to Pennsylvania Rule of Civil Procedure 2252(d) filed on behalf of the Graff Defendants constitute conclusions of law to which no response is required. To the extent that a response may be deemed necessary, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

WHEREFORE, Additional Defendant, Infern-O-Therm Corporation, hereby denies that it is indebted to the Plaintiffs in any sum whatsoever, and in the alternative, denies that it is liable over to Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc., and demands judgment in its favor with costs to the Plaintiffs.

Respectfully submitted,

BURNS, WHITE & HICKTON

BY: 

Patrick L. Mechas, Esquire
John B. Cromer, Esquire
Attorneys for Additional Defendant
Infern-O-Therm Corporation

VERIFICATION

I, Robert Giannetti of Infern-O-Therm Corporation, hereby verify that the averments contained in the attached **Reply to New Matter of Defendants, Raymond A. Graff, William Graff, Rose M. Graff t/d/b/a Graff Tank and Graff Tank, Inc.** are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.


Robert Giannetti

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **Reply to New Matter of Defendants, Raymond A. Graff, William Graff, Rose M. Graff t/d/b/a Graff Tank and Graff Tank, Inc.** was served upon all counsel of record via first class mail, postage prepaid, this 3rd day of May, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Phillip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
1528 Walnut Street – 22nd Floor
Philadelphia, PA 19102

Thomas T. Frampton, Esquire
Dana L. Bacsí, Esquire
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Paul E. Pongrance, III, Esquire
Redman & Pongrace
300 Weyman Plaza – Suite 310
Pittsburgh, PA 15236



Patrick L. Mechas, Esquire
John B. Cromer, Esquire

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**
BY: GEORGE W. VOKOLOS, ESQUIRE
Identification No.: 88508
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant(s),
MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

COURT OF COMMON PLEAS

CLEARFIELD COUNTY

No. 04-²⁰⁴~~202~~-CD

ORDER

AND NOW, this _____ day of _____ 2005, upon consideration of Defendant/Third-Party Plaintiff Meeker Equipment Co., Inc.'s Preliminary Objections to Additional Defendant, Infern-O-Therm Corporation's Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) and any and all responses thereto, or argument thereupon, it is hereby **ORDERED** and **DECREED** that said Objections are **SUSTAINED** and Additional Defendant, Infern-O-Therm Corporation's New Matter Pursuant to Pa.R.C.P. 2252(d) is hereby **STRICKEN**, with prejudice.

BY THE COURT:

J.

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**
BY: GEORGE W. VOKOLOS, ESQUIRE
Identification No.: 88508
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant(s),
MEEKER EQUIPMENT CO., INC.

CA
FILED ¹⁰⁰
m18:30:51 Vokolos
MAY 09 2005

William A. Shaw
Prothonotary/Clerk of Courts

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

2041
No. 04-~~2021~~-CD

**DEFENDANT/THIRD-PARTY PLAINTIFF, MEEKER EQUIPMENT CO., INC.'S
PRELIMINARY OBJECTIONS TO ADDITIONAL DEFENDANT,
INFERN-O-THERM CORPORATION'S
NEW MATTER PURSUANT TO PA R.C.P. 2252(d)**

Defendant/Third-Party Plaintiff, Meeker Equipment Co., Inc., by and through its undersigned Counsel, hereby files the instant Preliminary Objections and in support thereof avers as follows:

1. Plaintiffs, HRI, Inc. and Whitaker Roads Corporation (hereafter "HRI") initiated the instant action by filing a Complaint in Civil Action against the Defendant, Meeker Equipment Co., Inc. (hereafter "Meeker") and Defendant, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank, Graff Tank, Inc. (hereafter "Graff") on or about December 30, 2004.

2. In their Complaint, Plaintiffs allege property damage as a result of the negligent and/or breach of warranty of original Defendants Meeker and Graff. (Attached hereto and marked

as Exhibit "A" is a true, correct and complete copy of Plaintiffs' Complaint).

3. Defendant/Third-Party Plaintiff, Meeker has filed an Answer to Plaintiffs' Complaint and denied all liability therein.

4. On or about March 1, 2005 this Honorable Court issued a Writ of Summons to Join Additional Defendants DM Industries, Inc. d/b/a DM Industries (hereafter "DM") and Infern-O-Therm Corporation (hereafter "Infern-O-Therm") as Additional Defendants in this matter.

5. On or about March 15, 2005 the aforementioned Writ of Summons was served on Additional Defendant, Infern-O-Therm via Certified Mail, Return Receipt.

6. On or about March 14, 2005 Defendant/Third-Party Plaintiff Meeker filed its Third-Party/Joinder Complaint against Additional Defendants, DM and Infern-O-Therm.

7. Subsequently thereto, Additional Defendant, Infern-O-Therm responded to Defendant/Third-Party Plaintiff, Meeker's Third-Party Complaint. (Attached hereto and marked as Exhibit "B" is a true, correct and complete copy of Additional Defendant, Infern-O-Therm's Answer, New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d) to the Complaint of Defendant/Third-Party Plaintiff, Meeker).

8. In the aforementioned response, Additional Defendant, Infern-O-Therm includes a New Matter Pursuant to Pa. R.C.P. 2252(d). (See Exhibit "B" at paragraphs 28 through 32).

9. Pennsylvania Rules of Civil Procedure 1028 entitled *Preliminary Objections* states in pertinent part, that:

(a) preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

... (2) to failure of a pleading to conform to law or rule of court ...;
... (4) legal insufficiency of pleading (demurrer);

Pa. R.C.P. 1028.

10. Pa.R.C.P. 2255, states, in pertinent part, that:

... (b) no pleading shall be filed between the additional defendant and any party *other than the one joining the additional defendant* except that the additional defendant may file a counterclaim against the Plaintiff.

Pa.R.C.P. 2255(b).

I. PRELIMINARY OBJECTIONS IN THE NATURE OF A MOTION TO STRIKE ADDITIONAL DEFENDANT, INFERN-O-THERM'S NEW MATTER PURSUANT(CROSSCLAIM) TO RULE 2252(d)

A. Additional Defendant, Infern-O-Therm's New Matter Pursuant to Rule 2252(d) must be stricken for failure to conform to Rule of Court and is legally insufficient pursuant to Pa. R.C.P. 1028(a)(2) and (4).

11. Defendant/Third-Party Plaintiff, Meeker hereby incorporates paragraphs 1 through 10 as if same were set forth more fully herein.

12. Paragraphs 28 through 32 of Additional Defendant Infern-O-Therm's Answer to Third-Party/Joinder Complaint of Defendant/Third-Party Plaintiff Meeker purports to set forth a New Matter/Crossclaim Pursuant to Pa. R.C.P. 2252(d). (See Exhibit "B" at paragraphs 28 through 32).

12. Paragraph 30 of Infern-O-Therm's aforementioned Answer to Defendant/Third-Party Plaintiff's Complaint reads as follows:

30. This Additional Defendant hereby pleads that original Defendants, Raymond

A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and

Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM

Industries, are solely liable to Plaintiffs for alleged injuries and damages.

(See Exhibit "B" at paragraph 30).

13. Paragraph 31 of Infern-O-Therm's aforementioned Answer to Defendant/Third-Party Plaintiff's Complaint reads as follows:

31. In the event that it is determined that this Additional Defendant is liable to Plaintiffs, which liability is expressly denied, then this Additional Defendant avers that original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are jointly and severally liable to Plaintiffs for the injuries and damages allegedly sustained as a result of the occurrence giving rise to this action.

(See Exhibit "B" at paragraph 31).

14. Paragraph 32 of Infern-O-Therm's aforementioned Answer to Defendant/Third-Party Plaintiff's Complaint reads as follows:

32. This Additional Defendant further avers that in the event that this Additional Defendant is determined to be liable to Plaintiffs on account of the events described in Plaintiffs' Complaint, which right of recovery is specifically denied, then this Additional Defendant avers that original Defendants, Raymond Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are liable over to this Additional Defendant under principles of contribution and/or indemnification pursuant to contract and/or law.

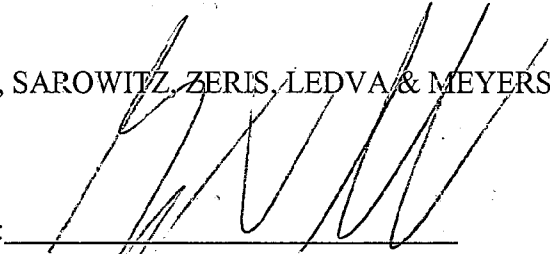
(See Exhibit "B" at paragraph 32).

15. Clearly, paragraphs 28 through 32 of Infern-O-Therm's Answer to Defendant/Third-Party Plaintiff Meeker's Joinder Complaint attempt to set forth a Crossclaim which, pursuant to Pa.R.C.P. 2255(b) is prohibited.

16. Rule 2255(b) explicitly prohibits such a Crossclaim and, therefore, Infern-O-Therm's New Matter Pursuant Pa.R.C.P. 2252(d) is legally insufficient.

WHEREFORE, Defendant/Third-Party Plaintiff, Meeker Equipment Co., Inc. respectfully requests this Honorable Court to enter the attached Order and strike Additional Defendant, Infern-O-Therm Corporation's New Matter Pursuant to Rule 2252(d) contained within Infern-O-Therm Corporation's Answer to Defendant/Third-Party Plaintiff's Joinder Complaint.

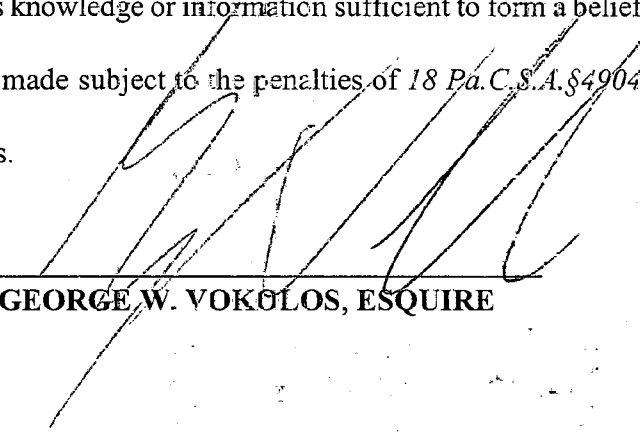
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 

GEORGE W. VOKOLOS, ESQUIRE
PHILLIP B. SILVERMAN, ESQUIRE
JENNIFER MASON, ESQUIRE
Attorney for Defendant(s):
MEEKER EQUIPMENT CO., INC.

VERIFICATION

The averments or denials of facts contained in the foregoing are true, based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are consistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. This Verification is made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.



GEORGE W. VOKOLOS, ESQUIRE

Dated: 5/6/05

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**
BY: GEORGE W. VOKOLOS, ESQUIRE
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22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant(s),
MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

No. 04-2021-CD

**MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY OBJECTIONS
TO INFERN-O-THERM CORPORATION'S
NEW MATTER PURSUANT TO PA R.C.P. 2252(d)**

I. FACTS

Plaintiffs, HRI, Inc. and Whitaker Roads Corporation (hereafter "HRI") initiated the instant action by filing a Complaint in Civil Action against the Defendant, Meeker Equipment Co., Inc. and Defendant, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank, Graff Tank, Inc. on or about December 30, 2004. In their Complaint, Plaintiffs allege property damage as a result of the negligent and/or breach of warranty of original Defendants Meeker and Graff. (See Exhibit "A").

Defendant/Third-Party Plaintiff, Meeker has filed an Answer to Plaintiffs' Complaint and denied all liability therein. On or about March 1, 2005 this Honorable Court issued a Writ of

Summons to Join Additional Defendants DM Industries, Inc. d/b/a DM Industries and Infern-O-Therm Corporation as Additional Defendants in this matter. On or about March 15, 2005 the aforementioned Writ of Summons was served on Additional Defendant, Infern-O-Therm via Certified Mail, Return Receipt.

On or about March 14, 2005 Defendant/Third-Party Plaintiff Meeker filed its Third-Party/Joinder Complaint against Additional Defendants, DM and Infern-O-Therm. Subsequently thereto, Additional Defendant, Infern-O-Therm responded to Defendant/Third-Party Plaintiff, Meeker's Third-Party Complaint. (See Exhibit "B").

II. LEGAL ARGUMENT

Pennsylvania Rules of Civil Procedure 1028 entitled *Preliminary Objections* states in pertinent part, that:

(a) preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

- ... (2) to failure of a pleading to conform to law or rule of court ...;
- ... (4) legal insufficiency of pleading (demurrer);

Pa. R.C.P. 1028

Pa.R.C.P. 2255, states, in pertinent part, that:

... (b) no pleading shall be filed between the additional defendant and any party *other than the one joining the additional defendant* except that the additional defendant may file a counterclaim against the Plaintiff.

Pa.R.C.P. 2255(b).

- A. Additional Defendant, Infern-O-Therm's New Matter Pursuant to Rule 2252(d) must be stricken for failure to conform to Rule of Court and is legally insufficient pursuant to Pa. R.C.P. 1028(a)(2) and (4).

Paragraphs 28 through 32 of Additional Defendant Infern-O-Therm's Answer to Third-Party/Joinder Complaint of Defendant/Third-Party Plaintiff Meeker purports to set forth a New Matter/Crossclaim Pursuant to Pa. R.C.P. 2252(d). (See Exhibit "B" at paragraphs 28 through 32). Paragraph 30 of Infern-O-Therm's aforementioned Answer to Defendant/Third-Party Plaintiff's Complaint reads as follows:

30. This Additional Defendant hereby pleads that original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are solely liable to Plaintiffs for alleged injuries and damages.

(See Exhibit "B" at paragraph 30). Furthermore, paragraph 31 of Infern-O-Therm's aforementioned Answer to Defendant/Third-Party Plaintiff's Complaint reads as follows:

31. In the event that it is determined that this Additional Defendant is liable to Plaintiffs, which liability is expressly denied, then this Additional Defendant avers that original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are jointly and severally liable to Plaintiffs for the injuries and damages allegedly sustained as a result of the occurrence giving rise to this action.

(See Exhibit "B" at paragraph 31). Finally, paragraph 32 of Infern-O-Therm's aforementioned Answer to Defendant/Third-Party Plaintiff's Complaint reads as follows:

32. This Additional Defendant further avers that in the event that this Additional Defendant is determined to be liable to Plaintiffs on account of the events described in Plaintiffs' Complaint, which right of recovery is specifically denied, then this Additional Defendant avers that original Defendants, Raymond Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are liable over to this Additional Defendant under principles of

contribution and/or indemnification pursuant to contract and/or law.

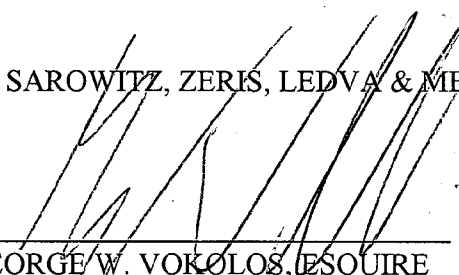
(See Exhibit "B" at paragraph 32).

Clearly, paragraphs 28 through 32 of Infern-O-Therm's Answer to Defendant/Third-Party Plaintiff Meeker's Joinder Complaint attempt to set forth a Crossclaim which, pursuant to Pa.R.C.P. 2255(b) is prohibited. Rule 2255(b) explicitly prohibits such a Crossclaim and, therefore, Infern-O-Therm's New Matter Pursuant Pa.R.C.P. 2252(d) is legally insufficient.

III. CONCLUSION:

WHEREFORE, Defendant/Third-Party Plaintiff, Meeker Equipment Co., Inc. respectfully requests this Honorable Court to enter the attached Order and strike Additional Defendant, Infern-O-Therm Corporation's New Matter Pursuant to Rule 2252(d) contained within Infern-O-Therm Corporation's Answer to Defendant/Third-Party Plaintiff's Joinder Complaint.

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 

GEORGE W. VOKOLOS, ESQUIRE

PHILLIP B. SILVERMAN, ESQUIRE

JENNIFER MASON, ESQUIRE

Attorney for Defendant(s):

MEEKER EQUIPMENT CO., INC.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

CIVIL ACTION - AT LAW

No. 04-2041-D

Type of Pleading:

Complaint

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 30 2004

Attest.

[Signature]
County
Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 • Ext. 1303

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

COMPLAINT

AND NOW, comes the Plaintiffs, HRI, Inc., and Whitaker Roads Corporation, by its attorneys, Hanak, Guido and Taladay, and hereby bring the within Complaint:

1. HRI, Inc. is a corporation chartered in the State of Delaware that trades and does business within the Commonwealth of Pennsylvania with corporate offices at 1750 West College Avenue, Suite 1, State College, Pennsylvania 16801.
2. Whitaker Roads Corporation is a Pennsylvania business corporation and a wholly owned subsidiary of HRI, Inc., with offices and principal place of business at Route 322 East, Clearfield, Pennsylvania 16830.
3. Defendants are Raymond A. Graff, William H. Graff and Rose M. Graff who trade and do business as Graff Tank ("Graff") and who have a business address of 731A North Main Street, P.O. Box 336, Hubbard, OH 44425.

4. Graff Tank, Inc. is an Ohio business corporation with offices and principal place of business at 731A North Main Street, P.O. Box 336, Hubbard, OH 44425.

5. Defendant Meeker Equipment Co., Inc. ("Meeker") is, upon information and belief, a Pennsylvania business corporation with offices and principal place of business at 516 North Broad Street, P.O. Box 925, Lansdale, Pennsylvania 19446-0661.

6. Defendant Graff at all times relevant hereto was in the business of designing, constructing, maintaining, repairing, fabricating and assembling commercial storage tanks for the petroleum, emulsion, polymer and related industries.

7. Defendant Meeker at all times relevant hereto was in the business of offering for sale combustion heating units for storage tanks used in the petroleum, emulsion, polymer and related industries.

8. In the Fall of 2001, the Plaintiffs solicited proposals from the Defendants and others for the design, construction and provision of a combustion package for a commercial petroleum emulsion storage package for the purposes of storing and dispensing MC-70 cutback, including, but not limited to, emulsions, asphalt and/or road oils (MC-70 tank).

9. On or about December 13, 2001, Graff submitted a proposal to HRI for construction of a 24' diameter by 18' high MC-70 tank. A copy of the three page proposal is attached hereto as Exhibit "A".

10. On or about May 21, 2002, HRI, Inc. submitted a purchase order to Graph, entering a Purchase Order Agreement No. 1043. A copy of this Purchase Order is attached hereto as Exhibit "B".

11. On or about December 20, 2001, Meeker submitted to Whitaker Roads Corporation a quote for a combustion package for use in the proposed MC-70 tank. A copy of that proposal is attached as Exhibit "C".

12. On or about May 31, 2002, HRI, Inc., submitted a Purchase Order to Meeker for a combustion package for use in a 24' diameter by 18' high insulated MC-70 tank to be constructed at the Whitaker Roads Corporation facilities, Clearfield Emulsion Plant. A copy of that Purchase Order is attached hereto as Exhibit "D".

13. In accordance with the Purchase Order, Meeker did sell and HRI did purchase a CPA-200 Combustion Package which was shipped to the Clearfield Emulsion Plant in Clearfield County, Pennsylvania.

14. HRI at all times relied on the knowledge, experience and expertise of Meeker to establish the appropriate specifications for the combustion package.

15. In accordance with the Purchase Order, Graff did install and HRI did fully pay for the furnishing and construction of a 24' diameter by 18' high MC-70 tank, which was constructed by Graff at the Whitaker Roads Corporation, Clearfield Emulsion Plant and was completed on or about July, 2002.

16. In accordance with its contractual obligation, Graff did install in the CPA-200 combustion package furnished by Meeker in the MC-70 tank.

17. HRI at all times relied on the knowledge, experience and expertise of Graff in the proper design, fabrication and construction of the tank, including, but not limited to, the proper placement of all temperature sensors, heating elements, in-flow and out-flow pipes, and safety features.

18. HRI put the MC-70 tank into service on or about July, 2002 and at no time undertook any material change or usage modification of the MC-70 tank.

19. On or about August 13, 2004, a massive explosion and fire occurred at the HRI/Whitaker Roads facility.

20. The point of origin of the explosion and fire was the MC-70 tank fabricated and installed by Graff and containing the combustion package provided by Meeker. At the time of the incident, this tank was properly being used for the storage of a road oil product (MC-70 cutback).

21. The storage and dispensing of emulsions, asphalt and road oils, including MC-70 cutback, were the intended and foreseeable uses of the Graff tank.

22. The CPA-200 combustion package provided by Meeker was represented by the sellers as suitable for its intended purpose in the heating of emulsion, asphalt and road oils, including MC-70 cutback, in an 18' by 24' storage tank.

23. The explosion and fire and resulting damage were solely and proximately the responsibility of the Defendants, as set forth herein.

Count I

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Breach of Warranty - Fitness for a Particular Purpose

24. Paragraphs 1 through 23 are incorporated herein by reference as if set forth in full.

25. Plaintiff HRI at all times relevant hereto relied on the experience, expertise, counsel and judgment of Defendant Graff to fabricate, construct and erect a tank that was suitable for its intended purpose of the commercial storage and dispensing of petroleum emulsions, including, but not limited to, MC-70 cutback.

26. Graff expressly or impliedly warranted that the tank construction configuration and design were suitable and fit for that particular purpose.

27. The MC-70 tank constructed and installed by Graff was unsuitable for the Plaintiff's purposes as follows:

(a) The contents temperature sensor was improperly placed in a position above the distribution outflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) The contents temperature sensor was improperly placed, thereby defeating the emergency features of the inferno-therm heating unit installed in the tank.

(c) The MC-70 tank lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The MC-70 tank lacked adequate sensors or other safety devices to prevent overheating of the contents, which could and did result in overheating of the tank contents resulting in an explosion and fire.

(e) The tank lacked adequate warning devices to alert its users of overheating of the contents.

28. Graff failed to provide conspicuous and adequate warnings of the dangers of drawing the contents level below the level of the temperature sensor when it knew or should have known that to do so would defeat the proper functioning of the sensor and result in a dangerous condition.

WHEREFORE, the Plaintiffs demand judgment in an amount in excess of \$25,000.00.

Count II

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Negligence

29. Plaintiffs incorporate by reference paragraphs 1 through 28 as if set forth in full herein.

30. The losses sustained by HRI were solely and proximately caused by the negligence of the Defendant, his employees or agents which is as follows:

(a) The contents temperature sensor was improperly placed in a position above the distribution outflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) The contents temperature sensor was improperly placed, thereby defeating the emergency features of the inferno therm heating unit installed in the tank.

(c) The MC-70 tank lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The petroleum emulsion storage tank lacked adequate sensors or other safety devices to prevent overheating of the stored products contents, which could

and did result in overheating of the tank contents resulting in an explosion and fire.

(e) The tank lacked adequate warning devices to alert its users of imminent overheating of the contents.

WHEREFORE, Plaintiff demands judgment in its favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count III

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
vs.
Meeker Equipment Company, Inc., Defendant

Negligence

31. Plaintiffs incorporate by reference paragraphs 1 through 30 as if set forth in full herein.

32. The losses sustained by Plaintiffs were solely and proximately caused by the negligence of Defendant Meeker Equipment Company, Inc. which is as follows:

(a) Failure to provide a combustion package suitable for use in an MC-70 storage tank as specified in Defendant's Purchase order.

(b) Failure to supply a combustion unit with all features necessary for its safe foreseeable operations.

(c) Failure to provide a combustion unit with all necessary warnings.

(d) Failure to supply a combustion package including a "low volume level sensing device" or other mechanism to prevent the contents level from dropping

below the temperature sensing level and thereby creating a dangerous condition.

WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count IV

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
vs.
Meeker Equipment Company, Inc., Defendant

Breach of Warranty - Fitness for a Particular Purpose

33. Paragraphs 1 through 32 are incorporated by reference as if set forth in full herein.

34. Plaintiffs at all times relevant hereto relied on the knowledge, experience, expertise and recommendations of the Defendant Meeker to provide a combustion package suitable for its intended use in heating commercially stored MC-70 cutback, including, but not limited to, emulsions, asphalt and/or road oils.

35. Defendant Meeker expressly or impliedly warranted that the combustion package was suitable or fit for that particular purpose.

36. The combustion package provided by Meeker were unsuitable for the Plaintiffs' purposes as follows:

(a) The combustion package temperature sensor was improperly placed defeating or eliminating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) Meeker failed to supply a combustion unit with all features necessary for its safe foreseeable operations.

(c) The combustion package lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The combustion package lacked adequate warning instructions or devices to alert users of imminent overheating of the tank contents.

(e) The combustion package lacked adequate sensors or other safety devices to prevent the overheating of contents, which could and did result in the overheating of the tank contents resulting in a fire and explosion.

WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count V

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
vs.
Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank, Graff Tank, Inc., and
Meeker Equipment Company, Inc., Defendants

Damages

37. As a direct and proximate result of the negligence and/or breach of warranties of the Defendants, jointly or severally, the Plaintiffs sustained damages as follows:

(a) Complete destruction of a 61,000 gallon

MC-70 tank resulting in a loss which is currently unliquidated but estimated to be in excess of \$130,000.00;

(b) Complete destruction of a 12,000 gallon MC-70 tank resulting in a loss estimated to be \$15,000.00;

(c) Damage to various metering gauges resulting in a loss estimated to be \$1,228.00;

(d) Damage to the insulation skin on tanks No. 11 and 12 located at the Whitaker Roads facility resulting in a loss estimated at \$2,500.00;

(e) Damage to pump and motors estimated to be \$4,556.00;

(f) Damage to the Whitaker Roads facility shop buildings necessitating repairs, estimated costs \$2,732.00;

(g) Clean up costs in the estimated amount of \$25,000.00;

(h) Damage to a tanker truck located on the premises at the time of the explosion resulting in a loss of \$3,333.33;

(j) Loss of 1,670 gallons of MC-70 road oil at a cost of \$1,870.00;

(k) Cost of installing security fence and covering explosion site to preserve scene and to protect HRI employees and site visitors, \$3,105.00;

(l) Reimbursement to responding fire departments for cost of chemical fire suppressant foam, \$9,944.00; and

(m) Administrative costs of reconstruction and commissioning MC-70 tank, currently unliquidated.

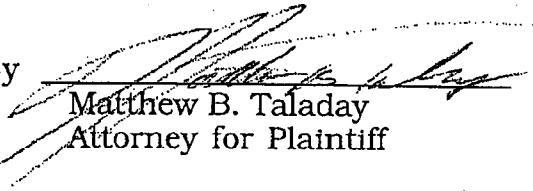
WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, counsel fees and such other relief as the Court may deem appropriate.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By


Matthew B. Taladay
Attorney for Plaintiff



Graff Tank

731A N. Main Street • P.O. Box 336
Hubbard, Ohio 44425-0336
(330) 534-3660 • Fax: (330) 534-3646
1-800-876-6671

Whitaker Roads
Clearfield/Woodland
Attn: Mr. Tim Olson

December 13, 2001

Gentlemen:

In response to your request for pricing for the fabrication & erection of one 24' dia. x 18' high tank per API 650 at your site in Clearfield, PA, Graff Tank offers the following:

24' dia. x 18' high Field-built Tank

Specifications:

Material: A-36 Carbon Steel, 1/4" nominal thickness for bottom, shell and roof.
Fittings: 24" shell and roof manways, 4-3" and 2-4 150# RFSO Flanged Fittings.
Standard: Tank would be built and tested to API 650 App. A&M (where applicable) with the reduced joint efficiency (.70) clause in effect.
Options: Ladder: Caged galvanized roof access ladder: included
Handrail: Two 8' wing rails: included.
Insulation Drip edge: included.
Heater Installation: approx. (heating element installation only, no hookup or commissioning)

Field Notes:

- Site access is assumed to be adequate for crane and equipment positioning.
- Ten-hour+ work days for erection and painting of steel are assumed.
- No painting is included in pricing: Primer painting for under the insulation would be in the neighborhood of
- Hydro-test by others. Also, DEP Certified Inspection by others (if applicable).
- Foundation preparation, painting, heating elements and insulation by others.
- All construction on site would be performed by experienced *non-union* personnel.

All applicable taxes would be additional to the stated pricing.

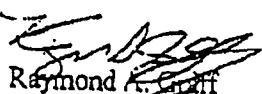
Terms: Net 30 w/ progressive payments. Pricing is valid for minimum of 30 days.

Schedule: Material ordering and engineering: 2-4 wks; fabrication: 1-2 wks; on-site erection: approx. 3-4 wks depending on weather.

If you have any questions about the above information, don't hesitate to call.

1/2 day Total

Sincerely,


Raymond A. Graff

Graff Tank

WR Fx: 814-857-5159

ATTN: Tim O
 1 1/2" inlet 3
 4' from
 Bottom

INLET/
 CIRCLET

HEATER
 NOZZLE

IN/OUT
 VENT

TEMPERATURE
 TIP 1" CIRC

3" Flange
 Dist head out

Wash Pans

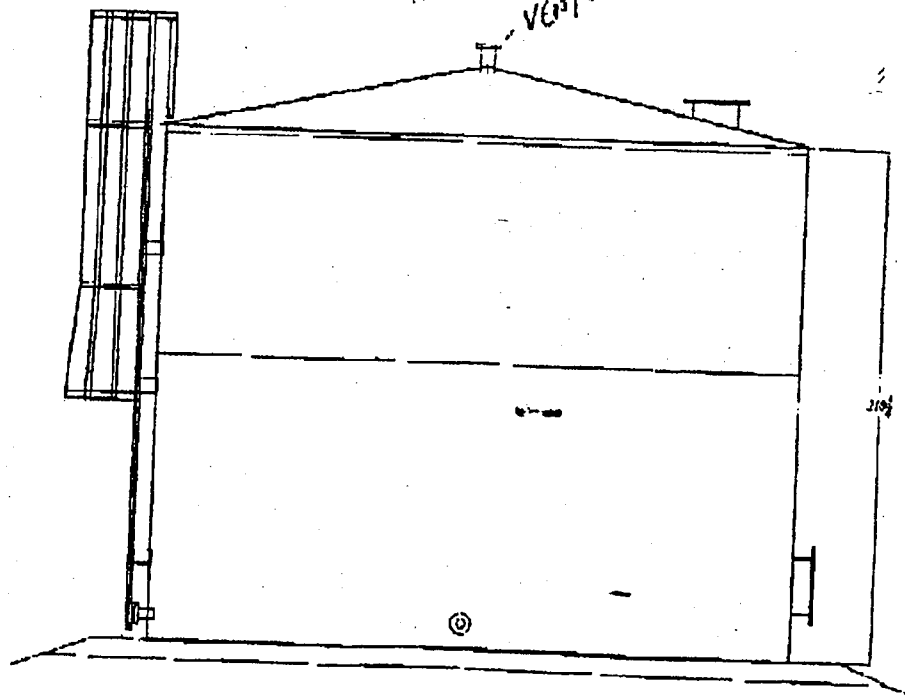
Heater

3" Stand Pipe

3/4" ---
 Sample

Value

3" Flange
 outlet for
 Dist to
 head.



HRI, INC.

B/H

Western Division
P.O. Box 402
Clearfield, PA 16830
(814) 857-7635
(814) 857-5159- Fax

**SUBCONTRACT AGREEMENT/
PURCHASE ORDER NO.**

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

01042

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

DM INDUSTRIES
326 Center Street
St. Marys, PA 15857
(814) 834-2321- Phone/Fax

Page 1

SHIP TO
WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE ORDERED 5/21/02		FOR Installation DELIVERY As Scheduled		TERMS Net 30 Days		PRICE QUOTED Richard	ORDERED FROM Same
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION	UNIT PRICE QUOTED
			LS		LS	Furnish and Install Insulation on Purchaser's New 24'Ø x 18'High Heated Tank per the attached Quotation dated May 30, 2002 <u>NOTES & QUALIFICATIONS:</u> 1. Delivery and installation to be determined. 2. DM Industries (Subcontractor) is respon- sible to ensure that all items are properly loaded and secured for and during transpor- tation to the jobsite. 3. SAFETY- Subcontractor is responsible for compliance with all current HRI, Inc., and OSHA safety rules and regulations during the conduct of its performance on and in connection with this project, and shall indemnify and defend HRI, Inc. for any and all expenses incurred for fines, penalties or corrective measures imposed as a result of acts of commission or omission by Subcontractor, its agents, employees, or assigns in failure to comply with said safety rules and regulations. 4. DM Industries guarantees and warrants the above described insulation against all defects in materials and workmanship. 5. INDEMNIFICATION OF OWNER (HRI, INC.) FROM ALL LIABILITY- The Subcontractor (DM INDUST- RIES) shall have charge of and responsibility for its entire work as described herein until completion and acceptance, and shall alone be liable for and shall pay all loss or damage caused by it or its servants, agents, or employees to property, buildings or adjacent work and for any accident to persons that may occur during the performance of the work	\$18,080.00

DM INDUSTRIES

APPROVED

Robert A. Hoover
Robert A. Hoover, Mgr. of Procurement
John R. Kulka
John R. Kulka, Pres.

ACCEPTED BY:

EXHIBIT "B"

SHIPPED BY: HRI, INC.

HRI, INC.

Western Division
P.O. Box 402
Clearfield, PA 16830

Page 2

SUBCONTRACT AGREEMENT/
PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

01042

ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE.

DM INDUSTRIES
326 Center Street
TO St. Marys, PA 15857

SHIP TO
WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE		FOR		TERMS		PRICE		ORDERED	
ORDERED 5/21/02		Installation		Net 30 Days		QUOTED Richard		FROM Same	
		RECEIVED As Scheduled							
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION			UNIT PRICE QUOTED

covered by this contract or at any time thereafter as a consequence of the performance of said work. The Subcontractor shall observe all state and municipality laws, ordinances and regulations and shall defend and save harmless the Owner from all suits and claims whatsoever for loss of life or injury occurring to employees of the Subcontractor who perform such work. The Subcontractor agrees to fully indemnify, protect, defend and save harmless the Owner from all liability from all claims, loss, damage, suits and actions of every kind from all costs and expenses in connection with such claims, suits and actions due to injuries to persons or damage to property whether resulting from accident, negligence or any other cause whatsoever occurring during the performance of the work covered by this contract or at any time thereafter as a consequence of the performance of the same or which may at any time occur or result from or be caused by such work and if there are any such claims unsettled when the work herein provided for is completed, final settlement by the Owner and Subcontractor shall be deferred until such claims are adjusted or suitable special indemnity acceptable to the Owner is provided by the Subcontractor.

Subcontractor shall provide proof of insurance in accordance with the attached "HRI, INC., MINIMUM INSURANCE REQUIREMENTS".

Subcontractor is subject to all provisions of the Commonwealth Nondiscrimination/Sexual Harassment Clause which is incorporated herein by reference.

CONFIRMING ORDER

SALES TAX EXEMPT

DM INDUSTRIES

APPROVED

Robert R. Hoover, Mgr. of Procurement

John R. Kulka, Pres.

Phillip H. Diehl, Vice Pres.

ACCEPTED BY:

DM INDUSTRIES
326 CENTER ST.
ST. MARYS, PA. 15857
Phone / Fax (814) 834-2321

5/30/02

Whitaker Roads
Attn: Tim Olson

Dear Tim:

I am pleased to submit the following price quotation (labor and material) for the insulation of the 24ft. diameter by 18-foot high tank located at your facility.

Price: \$18,080.00

Contractor will install 4" fiberglass, 2 layers, 2" thick fastened with weld pins and covered with .032 aluminum sheets secured with appropriate stainless steel screws and bands. First foot on the bottom will be cellular glass to prevent wicking. Top will consist of 2" cellular glass adhered with steep asphalt and covered with 4 layers of fiberglass paper imbedded with steep asphalt, finished with a flooded topcoat of steep asphalt.

Note: A rain gutter must be installed on this tank. This would be done by the tank manufacturer.

Yours truly,

Richard L. Sadley

Quotation #2219



MEEKER EQUIPMENT CO., INC.
516 N. Broad St., PO Box 925
Lansdale, PA 19446-0661
Office: (215) 361-2900
Fax: (215) 361-1725
Email: info@meekerequipment.com

December 20, 2001

Mr. Tim Olson
Whitaker Roads Corp.
PO Box 402
Clearfield, PA 16830

Dear Tim:

We are pleased to quote on your equipment requirements as follows:

CPA-200: Combustion package to be installed into existing horizontal tank for heating asphalt.

Main Combustion Tube: 16" seamless tube with two (2) 5" secondary heat transfer tubes, and two (2) 5" x 6" jacketed stacks.

Infern-O-Therm Burner Model 200: This is a heavy duty, industrial burner designed and manufactured by Infern-O-Therm for the process industry. Standard is #2 fuel oil with 828,000 BTU per hour input, natural gas, propane and combination burners are optional. Burner is equipped with Infern-O-Therm automatic temperature control with built in high limit switch, Fireye flame control with UV flamescanner, alarm circuit with horn, and weatherproof cover with hinged door. The control box is NEMA 13. Fan motor is TEFC 1.15 S.F. IOT burners use UL approved controls.

Combustion Chamber: High temperature refractory with Cloverleaf supercharger which maintains the back pressure at approximately 6" in the forward combustion chamber. This causes a high efficiency burning process by properly mixing the super heated air with the fuel vapors in the hot atmosphere of the combustion chamber for complete combustion with cleaner exhaust and low fuel consumption.

PRICE FOB FACTORY ...\$ 14,630.00

Optional Natural Gas/Oil Combination Burner ... Add \$ 2,750.00

Branch Office:
200 E. Campus View Blvd.
Suite 200
Columbus, OH 43235
Office: (614) 717-0100
Fax: (614) 431-8294
Email: hotmixohio@aol.com

EXHIBIT "C"

#2219

Terms: Twenty-five (25%) with order
Seventy (70%) when equipment is ready to ship
Five (5%) net 30 days

FOB: All prices are quoted FOB Factory

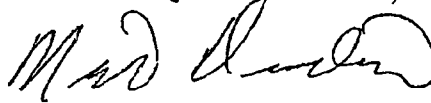
Delivery: Four (4) to six (6) weeks after receipt of order

Taxes: No state and/or local taxes or permits are included in pricing. Any taxes will be responsibility of the customer.

Thank you for the opportunity to quote you on your requirements and I look forward to your order.

Very truly yours,

MEEKER EQUIPMENT CO., INC.



Nick Diodad

Accepted by: _____

Date: _____

HRI, INC.

Western Division
P. O. BOX 402
CLEARFIELD, PA 16830
814/857-7635 Phone
814/857-5159 Fax

PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

1044

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE -**

MEEKER EQUIPMENT CO., INC.

516 N. Broad Street
P. O. Box 925
Lansdale, PA 19446-0661

215/361-2900 Phone
215/361-1725 Fax

WHITAKER ROADS CORPORATION

SHIP TO Barrett Curve Emulsion Plant
TO Route 322
3 Mi. East of Clearfield
Clearfield, PA 16830
Phone: 814/857-7635

DATE		FOR		PRICE		ORDERED	
ORDERED 5/31/02		DELIVERY As Scheduled		TERMS *As Noted		QUOTED Nick Diodad FROM David Garrett	
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION	UNIT PRICE QUOTED
			LS		LS	Furnish CPA-200 Combustion Package for New 24' Ø x 18' H Insulated Tank Per the Attached Quotation dated December 20, 2001. Seller shall Ship Prepaid and Invoice Purchaser for Freight. The above described Combustion Package shall be Guaranteed and Warranted in accordance with each respective Manufacturer's Warranty, and Seller is responsible to ensure all said Warranties are provided to Purchaser and fully honored. Purchaser has relied on Seller's expertise to establish the specifications for the subject Combustion Package; accordingly, Seller furthermore Guarantees and Warrants that all specified components - regardless of Manufacturer - will function harmoniously and efficiently for their intended purpose. All above described equipment must conform to current OSHA and UL Specifications and Requirements. * Payment Terms: 25% With Order 60% Upon Shipment 15% Net 30 Days Following Delivery SALES TAX EXEMPT Seller is subject to all Provisions of the Commonwealth Nondiscrimination/Sexual Harassment Clause which is incorporated herein by reference. CONFIRMING ORDER	\$14,630.00

APPROVED

Robert L. Hoover
Robert L. Hoover, Mgr. of Procurement

John R. Kulka
John R. Kulka, President

Phillip H. Diehl
Phillip H. Diehl, Vice President

ACCEPTED BY:

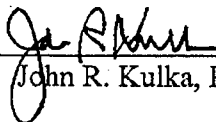
EXHIBIT "D"

VERIFICATION

I, JOHN R. KULKA, President of HRI, INC., do hereby verify that I have read the foregoing COMPLAINT. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

12.16.06
Date


John R. Kulka, President

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

CASE NO. 2004-02041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC. and MEEKER EQUIPMENT
CO., INC.,

**ANSWER, NEW MATTER AND NEW
MATTER PURSUANT TO Pa.R.C.P.
2252(d) TO COMPLAINT AGAINST
ADDITIONAL DEFENDANTS**

Defendants,

Filed on Behalf of: Additional Defendant,
Infern-O-Therm Corporation

vs.

DM INDUSTRIES, INC., DM INDUSTRIES,
and INFERN-O-THERM CORPORATION,

Counsel for Record for This Party:

Additional Defendants.

Patrick L. Mechas, Esquire
PA I.D. No. 61362

John B. Cromer, Esquire
PA I.D. No. 66773

BURNS, WHITE & HICKTON
Firm I.D. No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF, ROSE M. GRAFF, GRAFF
TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., DM
INDUSTRIES, and INFERN-O-
THERM CORPORATION,

Additional Defendants.

CASE NO. 2004-02041-CD

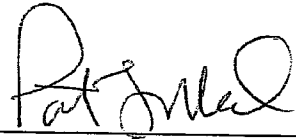
NOTICE TO PLEAD

TO: All Parties of Record

You are hereby notified that a written response to the within **Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Complaint Against Additional Defendants** is due within twenty (20) days of the date of service thereof or judgment may be entered against you.

Respectfully submitted,

BURNS, WHITE & HICKTON

BY: 

Patrick L. Mechas, Esquire
John B. Cromer, Esquire
Attorneys for Additional Defendant
Infern-O-Therm Corporation

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF, ROSE M. GRAFF, GRAFF
TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., DM
INDUSTRIES, and INFERN-O-THERM
CORPORATION,

Additional Defendants.

CASE NO. 2004-02041-CD

**ANSWER, NEW MATTER AND NEW MATTER PURSUAN TO
Pa.R.C.P. 2252(d) TO COMPLAINT AGAINST ADDITIONAL DEFENDANTS**

AND NOW, comes Additional Defendant, Infern-O-Therm Corporation, by and through its attorneys, Burns, White & Hickton, Patrick L. Mechas, Esquire and John B. Cromer, Esquire and files the within Answer, New Matter and New Matter pursuant to Pennsylvania Rule of Civil Procedure 2252(d) to Defendant's, Meeker Equipment Co., Inc., Complaint Against Additional Defendants and, in support thereof, avers as follows:

ANSWER

1. As to the averments contained in Paragraph 1 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants, Infern-O-Therm Corporation, after reasonable

investigation, is unable to ascertain the truth or falsity thereof. Accordingly, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

2. As to the averments contained in Paragraph 2 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants, Infern-O-Therm Corporation, after reasonable investigation, is unable to ascertain the truth or falsity thereof. Accordingly, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

3. The averments contained in Paragraph 3 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are admitted.

4. The averments contained in Paragraph 4 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are directed to an Additional Defendant other than Infern-O-Therm Corporation and, accordingly, require no response thereto. To the extent that a response may be deemed necessary, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

5. The averments contained in Paragraph 5 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are admitted in part and denied in part. It is admitted that Additional Defendant, Infern-O-Therm Corporation, manufactured and shipped the CPA-200 combustion package to Whitaker Roads Corporation. It is denied that Additional Defendant, Infern-O-Therm Corporation, sold the CPA-200 combustion package to Plaintiffs. To the contrary, the CPA-200 combustion package was sold to Plaintiffs by original Defendant, Meeker Equipment Co., Inc.

6. The averments contained in Paragraph 6 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are directed to an Additional Defendant other than Infern-O-Therm Corporation and, accordingly, require no response thereto. To the extent that a

response may be deemed necessary, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

COUNT I

Meeker Equipment Co., Inc. v. Infern-O-Therm Corporation

7. The averments contained in Paragraphs 1 through 6 of Additional Defendant's, Infern-O-Therm Corporation, Answer are incorporated by reference thereto as if set forth fully herein.

8. The averments contained in Paragraph 8 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants constitute conclusions of law to which no response is required. To the extent that a response may be deemed necessary, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

9. The averments contained in Paragraph 9, and sub-paragraphs (a) through (e), of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. By way of further response, it is specifically denied that Infern-O-Therm Corporation's combustion package was defective or dangerous for its intended uses in any manner whatsoever. To the contrary, the combustion package was designed and manufactured in a safe, reasonable, prudent and non-defective manner. Thus, the averments contained in Paragraph 9, and sub-paragraphs (a) through (e), of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are specifically denied and strict proof thereof is demanded at the time of trial.

10. The averments contained in Paragraph 10 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants constitute conclusions of law to which no response is required. To the extent that a response may be deemed necessary, said averments are denied in

their entirety and strict proof of same is demanded at the time of trial. By way of further response, it is denied that Additional Defendant, Infer-O-Therm Corporation, is liable to Plaintiffs under any warranty theory. To the contrary, this Additional Defendant avers that the combustion package in question was properly designed, manufactured, was of merchantable quality and fit for the particular purpose for its foreseeable and intended use at the time of its original manufacture and sale.

WHEREFORE, Additional Defendant, Infer-O-Therm Corporation, denies that it is indebted to Plaintiffs in any sum whatsoever and demands judgment in its favor with costs to Plaintiffs.

COUNT II

Meeker Equipment Co., Inc. v. DM Industries, Inc. d/b/a DM Industries

11. The averments contained in Paragraphs 1 through 10, and all sub-paragraphs thereto, of Additional Defendant's, Infer-O-Therm Corporation, Answer are incorporated by reference thereto as if set forth fully herein.

12. The averments contained in Paragraph 12 of Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants are directed to an Additional Defendant other than Infer-O-Therm Corporation and, accordingly, require no response thereto. To the extent that a response may be deemed necessary, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

WHEREFORE, Additional Defendant, Infer-O-Therm Corporation, denies that it is indebted to Plaintiffs in any sum whatsoever and demands judgment in its favor with costs to Plaintiffs.

**NEW MATTER PURSUANT TO RULE 1030 OF
THE PENNSYLVANIA RULES OF CIVIL PROCEDURE**

By way of further response to Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants, Additional Defendant, Infern-O-Therm Corporation, asserts the following New Matter pursuant to Rule 1030 of the Pennsylvania Rules of Civil Procedure:

13. The averments contained in Paragraphs 1 through 12, and all sub-paragraphs thereto, of Additional Defendant's, Infern-O-Therm Corporation, Answer are incorporated by reference thereto as if set forth fully herein.

14. This Additional Defendant hereby pleads Plaintiffs' failure to state a cause of action upon which relief may be granted as a complete bar to the entirety of Plaintiffs' Complaint.

15. This Additional Defendant hereby pleads the doctrine of comparative and/or contributory negligence as a complete and/or partial bar of Plaintiffs' Complaint.

16. This Additional Defendant hereby pleads Plaintiffs' assumption of known risk serves as a complete bar to the entirety of Plaintiffs' claims.

17. This Additional Defendant hereby pleads the doctrine of misuse and/or abnormal use as a complete and/or partial bar to the entirety of Plaintiffs' Complaint.

18. This Additional Defendant hereby pleads that any alleged dangerous or defective condition of the combustion package in question was the result of substantial changes made to the product after its purchase.

19. This Additional Defendant hereby pleads that any alleged dangerous or defective condition of the combustion package in question resulted from the action or inaction of parties

over which this Additional Defendant exercises no control and for whose conduct this Additional Defendant cannot be held liable.

20. This Additional Defendant believes and hereby pleads that the combustion package was improperly installed by an entity over which this Additional Defendant exercises no control and for whose conduct this Additional Defendant cannot be held liable.

21. This Additional Defendant hereby pleads that any defects and injuries alleged by Plaintiffs were caused by intervening, superseding, or other causes unrelated to any manufacture or sale by this Additional Defendant of any products.

22. This Additional Defendant hereby pleads that any alleged dangerous or defective condition of the combustion package in question and any resulting injuries and damages were the result of Plaintiffs' failure to heed specific warnings and common knowledge regarding the safe operation of the combustion package.

23. This Additional Defendant hereby pleads that any and all applicable statutes of limitation serve as a complete bar to the entirety of Plaintiffs' claims.

24. This Additional Defendant hereby pleads that the damages allegedly sustained by Plaintiffs were not proximately caused by this Additional Defendant.

25. This Additional Defendant hereby pleads that Plaintiffs were "sophisticated users" of the combustion package within the meaning of the Restatement of Torts (Second) §388 and, therefore, this Additional Defendant cannot be held liable in either strict liability or negligence.

26. This Additional Defendant hereby pleads that no warranties, express or implied, were extended to Plaintiffs by this Additional Defendant and, alternatively, to the extent that they may have been extended, they were not breached.

27. This Additional Defendant hereby pleads product misuse, abuse and substantial change as affirmative defenses to the claims of liability raised in Plaintiffs' Complaint.

WHEREFORE, Additional Defendant, Infern-O-Therm Corporation, denies that it is indebted to Plaintiffs in any sum whatsoever and demands judgment in its favor with costs to Plaintiffs.

**NEW MATTER PURSUANT TO RULE 2252(D) OF
THE PENNSYLVANIA RULES OF CIVIL PROCEDURE**

By way of further response to Meeker Equipment Co., Inc.'s Complaint Against Additional Defendants, Additional Defendant, Infern-O-Therm Corporation, asserts the following New Matter pursuant to Rule 2252(d) of the Pennsylvania Rules of Civil Procedure:

28. The averments contained in Paragraphs 1 through 27, and all sub-paragraphs thereto, of Additional Defendant's, Infern-O-Therm Corporation, Answer are incorporated by reference thereto as if set forth fully herein.

29. This Additional Defendant incorporates herein by reference the averments of Plaintiffs' Complaint against original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, solely for purposes of this cross-claim only and without admitting same.

30. This Additional Defendant hereby pleads that original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are solely liable to Plaintiffs for alleged injuries and damages, if any.

31. In the event that it is determined that this Additional Defendant is liable to Plaintiffs, which liability is expressly denied, then this Additional Defendant avers that original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are jointly and severally liable to Plaintiffs for the injuries and damages allegedly sustained as a result of the occurrence giving rise to this action.

32. This Additional Defendant further avers that in the event that this Additional Defendant is determined to be liable to Plaintiffs on account of the events described in Plaintiffs' Complaint, which right of recovery is specifically denied, then this Additional Defendant avers that original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are liable over to this Additional Defendant under principles of contribution and/or indemnification pursuant to contract and/or law.

WHEREFORE, Additional Defendant, Infern-O-Therm Corporation, denies that it is indebted to Plaintiffs in any sum whatsoever and, in the alternative, denies that it is liable over to original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, and demands judgment in its favor with costs to Plaintiffs.

Respectfully submitted,

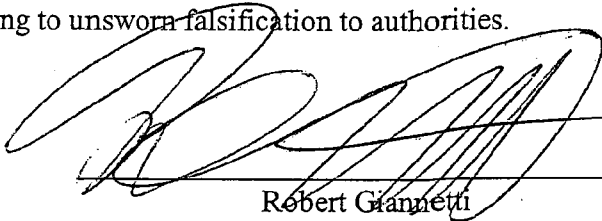
BURNS, WHITE & HICKTON

BY: 

Patrick L. Mechas, Esquire
John B. Cromer, Esquire
Attorneys for Additional Defendant
Infern-O-Therm Corporation

VERIFICATION

I, Robert Giannetti of Infern-O-Therm Corporation, hereby verify that the averments contained in the attached Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Complaint Against Additional Defendants are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



Robert Giannetti

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Complaint Against Additional Defendants** was served upon all counsel of record via first class mail, postage prepaid, this 31st day of March, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Phillip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
1528 Walnut Street – 22nd Floor
Philadelphia, PA 19102

Thomas T. Frampton, Esquire
Dana L. Bacsí, Esquire
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Paul E. Pongrance, III, Esquire
Redman & Pongrance
300 Weyman Plaza – Suite 310
Pittsburgh, PA 15236



Patrick L. Mechas, Esquire
John B. Cromer, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

CIVIL DIVISION

No.: 04-2041 CD

CODE:

**REPLY TO NEW MATTER OF
ORIGINAL DEFENDANT, MEEKER
EQUIPMENT CO., INC.**

Filed on behalf of Additional Defendant,

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

Counsel of Record for this
Party:

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236

Telephone: (412) 884-4697
Facsimile: (412) 884-7326

FILED

MAY 16 2005 @
M/11:30
William A. Shaw
Prothonotary
no c/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2021 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

REPLY TO NEW MATTER OF ORIGINAL DEFENDANT,
MEEKER EQUIPMENT CO., INC.

AND NOW, comes the additional defendant, DM Industries, Inc., t/a DM Industries, by and through its undersigned counsel, and files the following Reply to Original Defendant, Meeker Equipment Co., Inc.'s New Matter:

38. - 40. The allegations of these paragraphs state conclusions of law to which no response is required.

41. This additional defendant is without information sufficient to form a belief as to the truth of Paragraph 41, and as such, denies the same. Strict proof is demanded at the time of trial.

42. It is specifically denied that any product supplied by Meeker Equipment Company, Inc. was installed by this additional defendant, DM Industries. Rather, it is averred that any equipment installed – specifically the temperature sensor and/or combustion package – was installed by an entity other than this answering additional defendant.

43. This additional defendant is without information sufficient to form a belief as to the truth of Paragraph 43, and as such, denies the same. Strict proof is demanded at the time of trial.

44. This additional defendant is without information sufficient to form a belief as to the truth of Paragraph 44, and as such, denies the same. Strict proof is demanded at the time of trial.

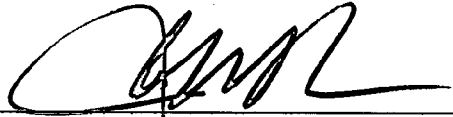
WHEREFORE, this additional defendant denies it is liable to any other party to this action and demands judgment in its favor with cost of suit.

**DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S CROSSCLAIM
AGAINST DEFENDANTS, RAYMOND A. GRAFF, WILLIAM GRAFF AND ROSE
M. GRAFF, t/d/b/a GRAFF TANK AND GRAFF TANK, INC.**

45. The allegations of Paragraph 45 are directed to a defendant other than this answering additional defendant and as such, no response is required.

WHEREFORE, this additional defendant denies it is liable to any other party to this action and demands judgment in its favor with cost of suit.

REDMAN & PONGRACE

By: 

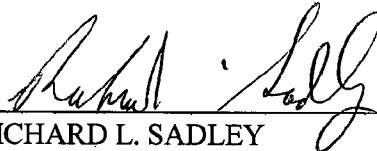
PAUL E. PONGRACE, III, ESQUIRE
Attorney for Additional Defendant,
DM Industries, Inc., t/a DM Industries

VERIFICATION

I, Richard L. Sadley, have read the foregoing Reply to New Matter of Original Defendant, Meeker Equipment Co., Inc. Although the language contained in the foregoing document may have been composed by counsel, the factual statements therein are correct to the best of my personal knowledge, or information and belief. I am authorized to make this verification by virtue of my position as President of the defendant corporation.

This statement and verification are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

DM INDUSTRIES, INC., t/a DM INDUSTRIES

X 

RICHARD L. SADLEY

CERTIFICATE OF SERVICE

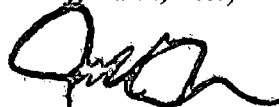
The undersigned counsel hereby certifies that a true and correct copy of the ***Reply*** to ***New Matter of Original Defendant, Meeker Equipment Co., Inc.*** as been served upon all counsel and parties of record this 13th day of ***May, 2005***, by First Class Mail, postage prepaid as follows:

Matthew B. Taladay, Esquire
HANAK, GUIDO and TALADAY
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
(Attorney for Plaintiffs)

Phillip B. Silverman, Esquire
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS
22nd Floor, 1528 Walnut Street
Philadelphia, PA 19102
(Attorney for Meeker Equipment Co., Inc.)

Patrick L. Mechas, Esquire
BURNS, WHITE & HICKTON
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(Attorney for Infern-O-Therm Corporation)

Thomas T. Frampton, Esquire
GOEHRING, RUTTER & BOEHM
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Attorney for Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc.)



PAUL E. PONGRACE, III, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,

No.: 04-2041 CD

Plaintiffs,

CODE:

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

**ANSWER, NEW MATTER and NEW
MATTER PURSUANT TO Pa.R.C.P.
2252(d) of ADDITIONAL
DEFENDANT, DM INDUSTRIES,
INC., t/a DM INDUSTRIES TO
COMPLAINT TO JOIN**

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Filed on behalf of Additional Defendant,

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

Additional Defendants.

Counsel of Record for this
Party:

To the Within Parties:

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

*You are hereby notified to file a written
response to the enclosed New Matter and
New Matter Pursuant to Pa.R.C.P.
2252(d) within twenty (20) days of service
hereof or a judgment may be entered
against you.*

REDMAN & PONGRACE
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236

Telephone: (412) 884-4697
Facsimile: (412) 884-7326


Paul E. Pongrace, III, Esquire

FILED

MAY 16 2005

m/11:30/w @
William A. Shaw
Prothonotary
no 4/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P.
2252(d) OF ADDITIONAL DEFENDANT, DM INDUSTRIES, INC., t/a DM
INDUSTRIES TO COMPLAINT TO JOIN

AND NOW, comes the additional defendant, DM Industries, Inc., t/a DM Industries, by and through its undersigned counsel, and files the following Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to original defendant's Complaint to Join:

1. Admitted. By way of further response, plaintiffs' Complaint speaks for itself.

2. Admitted. By way of further response, original defendant Meeker's Answer speaks for itself.

3. This additional defendant is without information sufficient to form a belief as to the truth of the averments of Paragraph 3 and as such, denies the same. Strict proof is demanded at the time of trial.

4. Admitted.

5. This additional defendant is without information sufficient to form a belief as to the truth of the averments of Paragraph 5 and as such, denies the same. Strict proof is demanded at the time of trial.

6. Denied. It is specifically denied that DM Industries, Inc., t/a DM Industries, through its agents, servants, workmen, or employees, installed any type of combustion package on the subject tank referred to in plaintiffs' Complaint.

COUNT I

7. To the extent Paragraph 7 purports to incorporate the previous averments of the Complaint to Join, this additional defendant hereby incorporates its Answer and New Matter as if fully set forth herein at length.

8. - 10. These Paragraphs are directed to an additional defendant other than this answering additional defendant and as such, no response is required.

WHEREFORE, this additional defendant, DM Industries, denies it is liable to any other party to this action in any sum or sums whatsoever and demands judgment in its favor with cost of suit.

COUNT II

11. To the extent Paragraph 11 purports to incorporate the previous averments of the Complaint to Join, this additional defendant hereby incorporates its Answer and New Matter as if fully set forth herein at length.

12. To the extent that the allegations contained in Paragraph 12 of the Complaint to Join, including sub-paragraphs (a) through (d) thereof inclusive, constitute conclusions of law, no response is required and said allegations are deemed to be denied by operation of law. To the extent that a response is deemed to be required, said allegations are denied and strict proof is demanded as to legal causation of the damages sought. By way of further response, it is specifically denied that this additional defendant installed and/or performed any work whatsoever on the subject contents temperature sensor and/or the CPA 200 combustion package.

WHEREFORE, this additional defendant, DM Industries, denies it is liable to any other party to this action in any sum or sums whatsoever and demands judgment in its favor with cost of suit.

NEW MATTER

13. If the temperature sensor referred to was improperly installed on the storage tank referred to in plaintiffs' Complaint, then said installation was performed by another entity unrelated to this additional defendant, and over which this additional defendant had no control.

14. If the combustion package referred to in plaintiffs' Complaint and the Complaint to Join was improperly installed on said storage tank, then said installation was performed by another entity unrelated to this additional defendant, and over which this additional defendant had no control.

15. It is averred this additional defendant was hired to furnish and install insulation on the subject storage tank referred to in the plaintiffs' Complaint. Said sub-contract agreement is attached hereto as Exhibit "A." Said bid letter dated May 30, 2002 is attached hereto as Exhibit "B." Both exhibits are incorporated as if fully stated herein.

16. It is averred that the only work performed by this additional defendant was the furnishing and insulating of the subject storage tank referred to in plaintiffs' Complaint. Said sub-contract agreement is attached hereto as Exhibit "A." Said bid letter dated May 30, 2002 is attached hereto as Exhibit "B." Both exhibits are incorporated as if fully stated herein.

17. At this stage, additional defendant cannot determine to whom the original defendant is referring in various allegations in the Complaint to Join making reference to agents, servants, and employees of this additional defendant and accordingly, dependent upon such identifications, such individuals and/or entities may not be the agent, servant,

or employee of this additional defendant working within the course and scope of their employment, which can be a defense which this additional defendant reserves the right to later assert.

18. Additional defendant is in no way liable to the plaintiff since plaintiffs' damages were the result of intervening and/or superseding causes over which this additional defendant had no control.

19. If plaintiff sustained any damages as alleged in their Complaint, which is denied, then plaintiffs' claims are barred and must be reduced or diminished by their contributory/comparative negligence and the same is hereby pleaded as an affirmative defense.

20. Additional defendant is in no way liable to the plaintiff because plaintiffs' damages were the result of negligent acts or omissions of third parties, over which this additional defendant had no control.

21. Plaintiffs' claims in their Complaint and those of original defendant in its Complaint to join are barred in whole or in part due to the expiration of the applicable statute of limitations.

22. Additional defendant is not liable for the plaintiffs' alleged damages as said damages were pre-existing conditions.

23. Plaintiffs' Complaint and original defendant's Complaint to Join fail to state a claim upon which relief may be granted.

24. Plaintiffs' claims are barred by the doctrine of assumption of the risk.

25. Plaintiffs' claims are or may be barred in whole or in part by plaintiffs' failure to mitigate its damages, and/or losses.

26. It is believed and averred that this answering additional defendant had neither actual nor constructive knowledge of any alleged hazardous and/or dangerous condition existing at or about the area where this incident occurred, said condition being expressly and specifically denied, and it is averred that neither plaintiff nor any other party can recover against this answering additional defendant absent such actual or constructive notice of an alleged hazardous condition.

27. It is believed and therefore averred that discovery will show that the alleged dangerous condition that plaintiffs claim was present on the subject tank, the same being specifically and unequivocally denied, was open and obvious to the plaintiff and all other parties hereto.

28. The harm sustained by the plaintiff, if any, was not foreseeable by the additional defendant.

29. Additional defendant exercised all reasonable care necessary to discover the existence of any and all dangerous conditions on and around the subject tank, said conditions being specifically and unequivocally denied.

WHEREFORE, this additional defendant denies it is liable to the plaintiff in any sum or sums whatsoever and demands judgment in its favor with costs of suit.

NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d)

30. Solely for the purposes of this New Matter, this additional defendant hereby incorporates by reference as if fully set forth herein the averments contained in plaintiffs' Complaint.

31. If the plaintiff has sustained damages as alleged, which damages are specifically denied, then this additional defendant avers that defendant, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Company, Inc., and additional defendant, Infern-O-Therm Corporation, are directly liability to the plaintiff or liable over to this additional defendant for contribution and/or indemnity in the event this additional defendant is found liable, which liability is expressly denied, for the reasons set forth in plaintiffs' Complaint. This additional defendant preserves the right to either contribution and/or indemnification from defendants, Raymond A. Graff, William Graff, Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc., Meeker Equipment Company, Inc. and additional defendant, Infern-O-Therm Corporation.

WHEREFORE, by this New Matter, this additional defendant asserts that the co-defendants Raymond Graff, William Graff, Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc., Meeker Equipment Company, Inc. and additional defendant, Infern-O-Therm

Corporation, are solely liable to the plaintiff, or in the alternative, liable over to this additional defendant for either contribution and/or indemnification.

REDMAN & PONGRACE

By: 

PAUL E. PONGRACE, III, ESQUIRE
Attorney for Additional Defendant,
DM Industries, Inc., t/a DM Industries

HRI, INC. B14

Western Division
P.O. Box 402
Clearfield, PA 16830
(814) 857-7635
(814) 857-5159- Fax

SUBCONTRACT AGREEMENT/ PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

01042

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

DM INDUSTRIES
326 Center Street
St. Marys, PA 15857
(814) 834-2321- Phone/Fax

Page 1

WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

SHIP
TO

DATE ORDERED 5/21/02		FOR Installation DELIVERY As Scheduled		TERMS Net 30 Days		PRICE QUOTED Richard		ORDERED FROM Same	
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION			UNIT PRICE QUOTED
			LS		LS	Furnish and Install Insulation on Purchaser's New 24'Ø x 18'High Heated Tank per the attached Quotation dated May 30, 2002			\$18,080.00
						<u>NOTES & QUALIFICATIONS:</u> 1. Delivery and installation to be determined. 2. DM Industries (Subcontractor) is responsible to ensure that all items are properly loaded and secured for and during transportation to the jobsite. 3. SAFETY- Subcontractor is responsible for compliance with all current HRI, Inc., and OSHA safety rules and regulations during the conduct of its performance on and in connection with this project, and shall indemnify and defend HRI, Inc. for any and all expenses incurred for fines, penalties or corrective measures imposed as a result of acts of commission or omission by Subcontractor, its agents, employees, or assigns in failure to comply with said safety rules and regulations. 4. DM Industries guarantees and warrants the above described insulation against all defects in materials and workmanship. 5. INDEMNIFICATION OF OWNER (HRI, INC.) FROM ALL LIABILITY- The Subcontractor (DM INDUSTRIES) shall have charge of and responsibility for its entire work as described herein until completion and acceptance, and shall alone be liable for and shall pay all loss or damage caused by it or its servants, agents, or employees to property, buildings or adjacent work and for any accident to persons that may occur during the performance of the work			

EXHIBIT

A

DM INDUSTRIES

ACCEPTED BY:

APPROVED

Robert J. Hoover
Robert J. Hoover, Mgr. of Procurement
John R. Kulka
John R. Kulka, Pres.

HRI, NC.

Western Division
P.O. Box 402
Clearfield, PA 16830

Page 2

SUBCONTRACT AGREEMENT/ PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

01042

ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE

DM INDUSTRIES

326 Center Street

St. Marys, PA 15857

WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE ORDERED 5/21/02		FOR Installation DEIVERY As Scheduled		TERMS Net 30 Days		PRICE QUOTED Richard		ORDERED FROM Same	
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION		UNIT PRICE QUOTED	
						covered by this contract or at any time thereafter as a consequence of the performance of said work. The Subcontractor shall observe all state and municipality laws, ordinances and regulations and shall defend and save harmless the Owner from all suits and claims whatsoever for loss of life or injury occurring to employees of the Subcontractor who perform such work. The Subcontractor agrees to fully indemnify, protect, defend and save harmless the Owner from all liability from all claims, loss, damage, suits and actions of every kind from all costs and expenses in connection with such claims, suits and actions due to injuries to persons or damage to property whether resulting from accident, negligence or any other cause whatsoever occurring during the performance of the work covered by this contract or at any time thereafter as a consequence of the performance of the same or which may at any time occur or result from or be caused by such work and if there are any such claims unsettled when the work herein provided for is completed, final settlement by the Owner and Subcontractor shall be deferred until such claims are adjusted or suitable special indemnity acceptable to the Owner is provided by the Subcontractor. Subcontractor shall provide proof of insurance in accordance with the attached "HRI, INC., MINIMUM INSURANCE REQUIREMENTS". Subcontractor is subject to all provisions of the Commonwealth Nondiscrimination/Sexual Harassment Clause which is incorporated herein by reference.			

SALES TAX EXEMPT

CONFIRMING ORDER

DM INDUSTRIES

APPROVED

Robert R. Hoover, Mgr. of Procurement
John R. Kulka, Pres.

ACCEPTED BY:

DM INDUSTRIES
326 CENTER ST.
ST. MARYS, PA. 15857
Phone / Fax (814) 834-2321

5/30/02

Whitaker Roads
Attn: Tim Olson

Dear Tim:

I am pleased to submit the following price quotation (labor and material) for the insulation of the 24ft. diameter by 18-foot high tank located at your facility.

Price: \$18,080.00

Contractor will install 4" fiberglass, 2 layers, 2" thick fastened with weld pins and covered with .032 aluminum sheets secured with appropriate stainless steel screws and bands. First foot on the bottom will be cellular glass to prevent wicking. Top will consist of 2" cellular glass adhered with steep asphalt and covered with 4 layers of fiberglass paper imbedded with steep asphalt, finished with a flooded topcoat of steep asphalt.

Note: A rain gutter must be installed on this tank. This would be done by the tank manufacturer.

Yours truly,

Richard L. Sadley



VERIFICATION

I, Richard L. Sadley, have read the foregoing Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to the Complaint to Join. Although the language contained in the foregoing document may have been composed by counsel, the factual statements therein are correct to the best of my personal knowledge, or information and belief. I am authorized to make this verification by virtue of my position as President of the defendant corporation.

This statement and verification are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

DM INDUSTRIES, INC., t/a DM INDUSTRIES

X Richard L. Sadley 4-19-05
RICHARD L. SADLEY

CERTIFICATE OF SERVICE

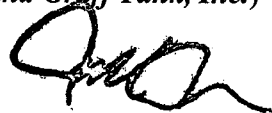
The undersigned counsel hereby certifies that a true and correct copy of the *Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) of Additional Defendant, DM Industries, Inc., t/a DM Industries to Complaint to Join* as been served upon all counsel and parties of record this 13th day of *May, 2005*, by First Class Mail, postage prepaid as follows:

Matthew B. Taladay, Esquire
HANAK, GUIDO and TALADAY
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
(Attorney for Plaintiffs)

Phillip B. Silverman, Esquire
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS
22nd Floor, 1528 Walnut Street
Philadelphia, PA 19102
(Attorney for Meeker Equipment Co., Inc.)

Patrick L. Mechas, Esquire
BURNS, WHITE & HICKTON
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(Attorney for Infern-O-Therm Corporation)

Thomas T. Frampton, Esquire
GOEHRING, RUTTER & BOEHM
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Attorney for Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc.)



PAUL E. PONGRACE, III, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

CASE NO. 2004-02041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC. and MEEKER EQUIPMENT
CO., INC.,

**RESPONSE TO MEEKER EQUIPMENT
CO., INC.'S PRELIMINARY
OBJECTIONS TO INFERN-O-THERM
CORPORATION'S NEW MATTER
PURSUANT TO Pa.R.C.P. 2252(d)**

Defendants,

Filed on Behalf of: Additional Defendant,
Infern-O-Therm Corporation

vs.

DM INDUSTRIES, INC., DM INDUSTRIES,
and INFERN-O-THERM CORPORATION,

Counsel for Record for This Party:

Additional Defendants.

Patrick L. Mechas, Esquire
PA I.D. No. 61362

John B. Cromer, Esquire
PA I.D. No. 66773

BURNS, WHITE & HICKTON
Firm I.D. No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

JURY TRIAL DEMANDED

FILED ⁶⁰
11:22 AM
MAY 23 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS)
CORPORATION,)

Plaintiffs,)

vs.)

RAYMOND A. GRAFF, WILLIAM)
GRAFF, ROSE M. GRAFF, GRAFF)
TANK, GRAFF TANK, INC. and)
MEEKER EQUIPMENT CO., INC.,)

Defendants,)

vs.)

DM INDUSTRIES, INC., DM)
INDUSTRIES, and INFERN-O-)
THERM CORPORATION,)

Additional Defendants.)

CASE NO. 2004-02041-CD

**RESPONSE TO MEEKER EQUIPMENT CO., INC.'S PRELIMINARY OBJECTIONS
TO INFERN-O-THERM CORPORATION'S NEW MATTER
PURSUANT TO Pa.R.C.P. 2252(d)**

AND NOW, comes Additional Defendant, Infern-O-Therm Corporation, by and through its attorneys, Burns, White & Hickton, Patrick L. Mechas, Esquire and John B. Cromer, Esquire and files the within Response to Meeker Equipment Co., Inc.'s Preliminary Objections to Infern-O-Therm Corporation's New Matter Pursuant to Pa.R.C.P. 2252(d):

FACTS

1. The instant civil action arises out of a fire and explosion that occurred at the HRI/Whitaker Roads facility on or about August 13, 2004. (Plaintiffs' Complaint, paragraph 19.) Plaintiffs' Complaint sounds in breach of warranty – fitness for a particular purpose and

negligence as to both Original Defendants, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc.

2. On or about March 2, 2005, Defendant Meeker Equipment Company, Inc. filed a Complaint to Join outlining the allegations against Additional Defendants, Infern-O-Therm Corporation, DM Industries, Inc., and DM Industries .

3. Defendant/Third-Party Plaintiff, Meeker Equipment Co., Inc.'s (hereinafter "Meeker") Complaint to Join sounds in product liability, negligence and breach of warranty.

4. On or about March 31, 2005, Additional Defendant, Infern-O-Therm Corporation (hereinafter "Infern-O-Therm") filed its Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) to Meeker's Complaint against Additional Defendants.

Infern-O-Therm's New Matter pursuant to 2252(d) states specifically:

- "29. This Additional Defendant incorporates herein by reference the averments of Plaintiffs' Complaint against original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, solely for purposes of this cross-claim only and without admitting same.
30. This Additional Defendant hereby pleads that original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are solely liable to Plaintiffs for alleged injuries and damages, if any.
31. In the event that it is determined that this Additional Defendant is liable to Plaintiffs, which liability is expressly denied, then this Additional Defendant avers that original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are jointly and severally liable to Plaintiffs for the injuries and damages allegedly

sustained as a result of the occurrence giving rise to this action.

32. This Additional Defendant further avers that in the event that this Additional Defendant is determined to be liable to Plaintiffs on account of the events described in Plaintiffs' Complaint, which right of recovery is specifically denied, then this Additional Defendant avers that original Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and Meeker Equipment Co., Inc. and Additional Defendant, DM Industries, Inc. t/a DM Industries, are liable over to this Additional Defendant under principles of contribution and/or indemnification pursuant to contract and/or law."

5. Meeker has filed Preliminary Objections to Infern-O-Therm's New Matter Pursuant to Pa.R.C.P. 2252(d). Meeker alleges that Pa.R.C.P. Rule 2255(b) explicitly prohibits those crossclaims set forth in Infern-O-Therm's New Matter Pursuant to Pa.R.C.P. 2252(d) paragraphs 28 through 32. For the following reason, Meeker's Preliminary Objections should be overruled/denied.

ARGUMENT

6. Meeker's Preliminary Objections to Infern-O-Therm's Crossclaim, allege that this Crossclaim is inappropriate under Rule 2255(b). Infern-O-Therm submits that Meeker misapplies Rule 2255(b) and that Infern-O-Therm has stated a proper crossclaim against Meeker. Notably, Meeker's Preliminary Objections are devoid of any case law to support the assertions contained within Meeker's Preliminary Objections.

7. Rule 2252 was amended in 1969 to provide a "procedure for joining any party or defendant, who might be solely liable, liable over or jointly or severally liable with the joining party. The purpose of these amendments was to provide a shortcut procedure for disposing of matters involving numerous parties with divergent interests" Ragan v. Steen, 229 Pa.

Super. 515, 525, 331 A.2d. 724 (1974); Goughenour v. Campbell, 219 Pa. Super. 142, 281 A.2d. 69 (1971). (Emphasis added).

8. Additionally, the rule regarding joinder of additional defendants is to be broadly construed to effectuate its purpose of avoiding multiple lawsuits by settling in one action all claims arising out of transactions or occurrences which give rise to Plaintiffs' Complaint. Olson v. Grutza, 428 Pa. Super. 378, 389, 631 A.2d. 191 (1993).

9. Rule 2252 allows the moving party to assert an "additional defendant" claim against any party in an action by setting forth such claim in the moving party's answer under the heading of "new matter." Rule 2252 does not conflict with Rule 2255. Rule 2255 regulates procedures after an additional defendant has been properly joined. Rule 2252, on the other hand, governs procedure to be followed to accomplish joinder. Findlay TP v. Ryan Homes, Inc., 420 A.2d 1341, 1343, 279 Pa. Super. 294 (1980).

10. Rule 2252 is intended to allow exactly the types of pleadings which provides for Infern-O-Therm's joinder of Meeker. Infern-O-Therm has effectuated the joinder of Meeker by and through its 2252 crossclaim. Thus, Defendant, Infern-O-Therm's crossclaims do not run afoul of Rule 2255.

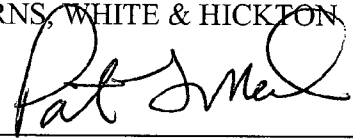
11. Rule 2255 is applicable once this joinder has taken place. Thus, Infern-O-Therm is now precluded from answering Plaintiffs' Complaint directly or, in the alternative, Plaintiff filing an additional complaint against Infern-O-Therm.

12. Clearly, based on the foregoing, Meeker has misapplied Rule 2255 to the instant action, and thus, Meeker's Preliminary Objections must be overruled.

WHEREFORE, the Defendant, Infern-O-Therm Corporation, respectfully requests that this Honorable Court enter an Order denying and/or overruling Defendant, Meeker Equipment Co., Inc.'s Preliminary Objections.

Respectfully submitted,

BURNS, WHITE & HICKTON

BY: 

Patrick L. Mechas, Esquire
John B. Cromer, Esquire
Attorneys for Additional Defendant
Infern-O-Therm Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **Response to Meeker Equipment Company Inc.'s Preliminary Objections to Infern-O-Therm Corporation's New Matter Pursuant to Pa.R.C.P. 2252(d)** was served upon all counsel of record via first class mail, postage prepaid, this 19th day of May, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Phillip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
1528 Walnut Street – 22nd Floor
Philadelphia, PA 19102

Thomas T. Frampton, Esquire
Dana L. Bacsi, Esquire
Goehring, Rutter & Boehm
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437 Grant Street
Pittsburgh, PA 15219

Paul E. Pongrance, III, Esquire
Redman & Pongrace
300 Weyman Plaza – Suite 310
Pittsburgh, PA 15236



Patrick L. Mechas, Esquire
John B. Cromer, Esquire

FILED

MAY 23 2005

William A. Shaw
Prothonotary/Clerk of Courts

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**
BY: PHILLIP B. SILVERMAN, ESQUIRE
Identification No.: 02201
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

FILED *no cc*
m/10:41/84
MAY 27 2005 *@*

William A. Shaw
Prothonotary/Clerk of Courts

Attorney for Defendant,
MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

2041
No. 04-~~2021~~-CD

**DEFENDANT, MEEKER EQUIPMENT COMPANY, INC'S REPLY TO NEW MATTER OF
ADDITIONAL DEFENDANT, DM INDUSTRIES, INC. T/A/ DM INDUSTRIES**

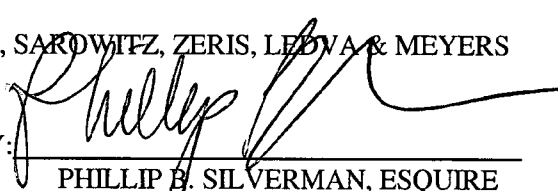
13. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
14. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
15. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
16. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
17. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
18. Denied. This paragraph is deemed to be denied as a legal conclusion.

19. Denied. This paragraph is deemed to be denied as a legal conclusion.
20. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
21. Denied. This paragraph is deemed to be denied as a legal conclusion.
22. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
23. Denied. This paragraph is deemed to be denied as a legal conclusion.
24. Denied. This paragraph is deemed to be denied as a legal conclusion.
25. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
26. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
27. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
28. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.
29. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}.

WHEREFORE, Defendant, Meeker Equipment Company, Inc., demands that the New Matter of Additional Defendant, DM Industries, Inc. t/a/ DM Industries, be dismissed.

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY:


PHILLIP B. SILVERMAN, ESQUIRE
Attorney for Defendant: **MEEKER**
EQUIPMENT CO., INC.

VERIFICATION

The undersigned is authorized to sign this verification with regards to the foregoing document. The facts contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. The language of this pleading is that of counsel and not of signer. This verification is made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.

Philip B. Silverman
(Print name)


(Signature)

DATE:

6/24/05

MSZL&M FILE NO.: 6400.0006

FILED

MAY 27 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC. and MEEKER EQUIPMENT
CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., DM INDUSTRIES,
and INFERN-O-THERM CORPORATION,

Additional Defendants.

CIVIL DIVISION

CASE NO. 2004-02041-CD

**REPLY TO NEW MATTER OF
ADDITIONAL DEFENDANT, DM
INDUSTRIES, INC. t/a DM INDUSTRIES**

Filed on Behalf of: Additional Defendant,
Infern-O-Therm Corporation

Counsel for Record for This Party:

Patrick L. Mechas, Esquire
PA I.D. No. 61362

John B. Cromer, Esquire
PA I.D. No. 66773

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Firm I.D. No. 828
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106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

JURY TRIAL DEMANDED

FILED

MAY 31 2005

M/11:45/16-66
William A. Shaw
Prothonotary
no 9/C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,

New Plaintiffs, Pursuant to Paragraph

vs. of law to which no reply

RAYMOND A. GRAFF, WILLIAM
GRAFF, ROSE M. GRAFF, GRAFF
TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., DM
INDUSTRIES, and INFERN-O-
THERM CORPORATION,

Additional Defendants.

CASE NO. 2004-02041-CD

**REPLY TO NEW MATTER OF ADDITIONAL DEFENDANT,
DM INDUSTRIES, INC. t/a/ DM INDUSTRIES**

AND NOW, comes Additional Defendant, Infern-O-Therm Corporation, by and through its attorneys, Burns, White & Hickton, Patrick L. Mechias, Esquire and John B. Cromer, Esquire and files the within Reply to New Matter pursuant to Pennsylvania Rule of Civil Procedure 2252(d) of Additional Defendant, DM Industries, Inc. t/a DM Industries and, in support thereof, avers as follows:

1. As to the averments contained in Paragraph 30 of DM Industries, Inc. t/a DM Industries' New Matter Pursuant to Pennsylvania Rule of Civil Procedure 2252(d), Additional Defendant, Infern-O-Therm Corporation, hereby incorporates by reference thereto as if fully set

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF, ROSE M. GRAFF, GRAFF
TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., DM
INDUSTRIES, and INFERN-O-
THERM CORPORATION,

Additional Defendants.

CASE NO. 2004-02041-CD

**REPLY TO NEW MATTER OF ADDITIONAL DEFENDANT,
DM INDUSTRIES, INC. t/a/ DM INDUSTRIES**

AND NOW, comes Additional Defendant, Infern-O-Therm Corporation, by and through its attorneys, Burns, White & Hickton, Patrick L. Mechas, Esquire and John B. Cromer, Esquire and files the within Reply to New Matter pursuant to Pennsylvania Rule of Civil Procedure 2252(d) of Additional Defendant, DM Industries, Inc. t/a DM Industries and, in support thereof, avers as follows:

1. As to the averments contained in Paragraph 30 of DM Industries, Inc. t/a DM Industries' New Matter Pursuant to Pennsylvania Rule of Civil Procedure 2252(d), Additional Defendant, Infern-O-Therm Corporation, hereby incorporates by reference thereto as if fully set

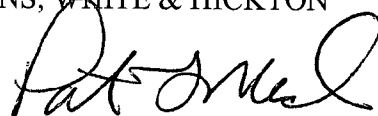
forth herein its Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) filed in response to the Complaint Against Additional Defendants.

2. The averments contained in Paragraph 31 of DM Industries, Inc. t/a DM Industries New Matter Pursuant to Pennsylvania Rule of Civil Procedure 2252(d) constitute conclusions of law to which no response is required. To the extent that a response may be deemed necessary, said averments are denied in their entirety and strict proof of same is demanded at the time of trial.

WHEREFORE, Additional Defendant, Infern-O-Therm Corporation, hereby denies that it is indebted to the Plaintiffs in any sum whatsoever, and in the alternative, denies that it is liable over to Additional Defendant, DM Industries, Inc. t/a DM Industries, and demands judgment in its favor with costs to the Plaintiffs.

Respectfully submitted,

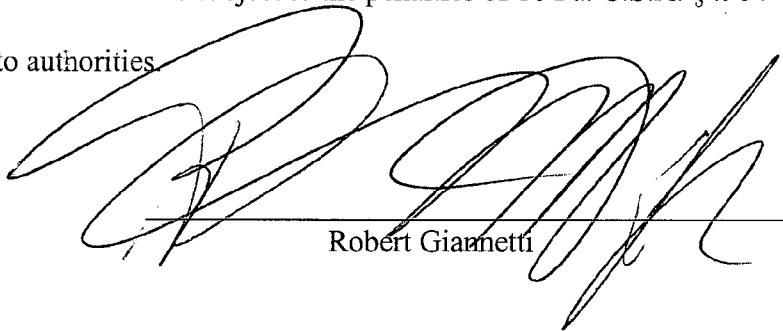
BURNS, WHITE & HICKTON

BY: 

Patrick L. Mechas, Esquire
John B. Cromer, Esquire
Attorneys for Additional Defendant
Infern-O-Therm Corporation

VERIFICATION

I, Robert Giannetti, Jr. of Infern-O-Therm Corporation, hereby verify that the averments contained in the attached **Reply to New Matter of Additional Defendant, DM Industries, Inc. t/a DM Industries** are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



Robert Giannetti

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **Reply to New Matter of Additional Defendant, DM Industries, Inc. t/a DM Industries** was served upon all counsel of record via first class mail, postage prepaid, this Han day of

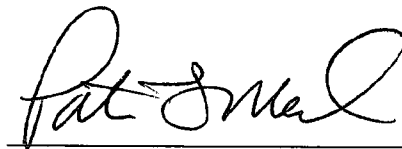
May, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
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Mintzer, Sarowitz, Zeris, Ledva & Meyers
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Thomas T. Frampton, Esquire
Dana L. Bacsí, Esquire
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Pittsburgh, PA 15219

Paul E. Pongrance, III, Esquire
Redman & Pongrace
300 Weyman Plaza – Suite 310
Pittsburgh, PA 15236



Patrick L. Mechas, Esquire
John B. Cromer, Esquire

FILED

MAY 31 2005

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION

vs.

No. 04-2041-CD

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK; GRAFF TANK,
INC. and MEEKER EQUIPMENT
INC.

vs.

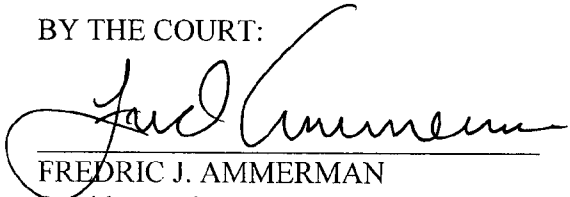
DM INDUSTRIES, INC. DM
INDUSTRIES and INFERN-O-THERM
CORPORATION

FILED 5cc
p/3:3481 Amy Vokobos
JUN 01 2005 W/memo
William A. Shaw Re: Service
Prothonotary/Clerk of Courts (GK)

ORDER

AND NOW, this 1 day of June, 2005, upon
consideration of Defendant/Third Party Plaintiff, Meeker Equipment Co., Inc.'s
Preliminary Objections to Additional Defendant, Infern-O-Therm Corporation's
New Matter filed in the above matter, it is the Order of the Court that argument has
been scheduled for the 7 day of July, 2005, at 2:00
P.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield,
PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: GEORGE W. VOKOLOS, ESQUIRE
Identification No.: 88508
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant,
MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF AND
ROSE M. GRAFF T/D/B/A GRAFF TANK; GRAFF
TANK, INC. AND MEEKER EQUIPMENT CO.,
INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

²⁰⁴¹
No. 04-2021-CD

FILED
m/110:4561
JUN 10 2005

William A. Shaw
Prothonotary/Clerk of Courts
NO CC
(62)

CERTIFICATE OF SERVICE

I, GEORGE W. VOKOLOS, ESQUIRE, hereby certify that I caused to be served a copy of
Defendant, *Meeker Equipment Company, Inc.'s Affidavit of Service of Court Order entering Rule and
Preliminary Objections and accompanying Memorandum of Law* to all parties of record in this
proceeding in accordance with the requirements of the Rules of Civil Procedure by First Class Mail,
postage pre-paid on June 8, 2005 upon:

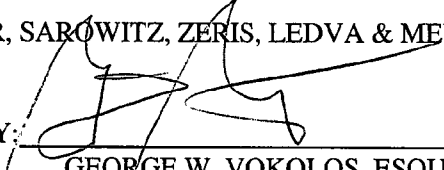
Matthew B. Taladay, Esquire
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Paul E. Pongrace, Esquire
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Pittsburgh, PA 15219

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BURNS, WHITE & HICKTON
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 

GEORGE W. VOKOLOS, ESQUIRE
Attorney for Defendant: **MEEKER
EQUIPMENT CO., INC.**

FILED

JUN 10 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

No.: 04-2041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

**NOTICE OF SERVICE OF COMBINED
FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION
SUBMITTED TO THE PLAINTIFFS BY
THE GRAFF DEFENDANTS**

Defendants.

vs.

Filed on Behalf of Defendants:

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Raymond A. Graff, William Graff and Rose
M. Graff, t/d/b/a Graff Tank and Graff Tank,
Inc.

Additional Defendants.

Counsel of Record for This Party:

Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
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FILED NO
m/11:24/01 CC
JUN 10 2005 (K)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

CIVIL DIVISION

No.: 04-2641-CD

**NOTICE OF SERVICE OF COMBINED FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION SUBMITTED TO THE
PLAINTIFFS BY THE GRAFF DEFENDANTS**

KINDLY take notice that the Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc., by and through their attorneys, Thomas T. Frampton, Esquire, Dana L. Bacsí, Esquire and Goehring, Rutter & Boehm, have served Combined First Set of Interrogatories and Requests for Production of Documents on Plaintiff by mailing same its attorneys, Matthew B. Taladay, Esquire, Hanak, Guido and Taladay at 498 Jeffers Street, P.O. Box 487, DuBois, PA 15801 via U.S. mail, postage prepaid, this 7th day of June, 2005.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

CIVIL DIVISION

No.: 04-2041-CD

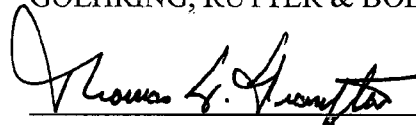
**NOTICE OF SERVICE OF COMBINED FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION SUBMITTED TO THE
PLAINTIFFS BY THE GRAFF DEFENDANTS**

KINDLY take notice that the Defendants, Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc., by and through their attorneys, Thomas T. Frampton, Esquire, Dana L. Bacs, Esquire and Gcehring, Rutter & Boehm, have served Combined First Set of Interrogatories and Requests for Production of Documents on Plaintiff by mailing same its attorneys, Matthew B. Taladay, Esquire, Hanak, Guido and Taladay at 498 Jeffers Street, P.O. Box 487, DuBois, PA 15801 via U.S. mail, postage prepaid, this 7th day of June, 2005.

Respectfully Submitted,

GOEHRING, RUTTER & BOEHM

By:



Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

Firm #102
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(412) 281-0587

*Attorneys for Defendants, Raymond A.
Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc.*

CERTIFICATE OF SERVICE

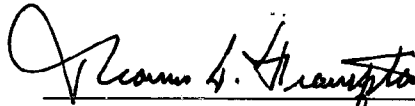
I hereby certify that a true and correct copy of the foregoing **NOTICE OF SERVICE OF COMBINED FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION SUBMITTED TO THE PLAINTIFFS BY THE GRAFF DEFENDANTS** has been served on the following parties by U.S. first-class mail, postage pre-paid, this 7th day of June, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorney for Plaintiffs

Philip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris & Ledva
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
Attorney for Meeker Equipment Co., Inc.

Patrick L. Mechas, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Attorney for Infern-O-Therm Corporation

Paul E. Pongrace, III, Esquire
Redman & Pongrace
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236
Attorney for DM Industries, Inc. t/a DM Industries



Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

FILED

JUN 10 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

CIVIL DIVISION

No.: 04-2041 CD

CODE:

**NOTICE OF SERVICE OF
INTERROGATORIES DIRECTED TO
INFERN-O-THERM CORPORATION**

Filed on behalf of Additional Defendant,

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

Counsel of Record for this
Party:

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236

Telephone: (412) 884-4697
Facsimile: (412) 884-7326

FILED

JUN 15 2005
11:55
William A. Shaw
Prothonotary/Clerk of Courts
w. c/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

NOTICE OF SERVICE OF INTERROGATORIES DIRECTED TO INFERN-O-THERM

The undersigned, Paul E. Pongrace, III, Esquire, avers and says that Interrogatories and Request for Production of Documents were served on counsel for additional defendant addressed below on the 10th day of June 2005, by First-Class Mail, Postage Pre-Paid, and that said Interrogatories and Request for Production of Documents contained a notice to said counsel to answer same within thirty (30) days of the date of service.

Patrick L. Mechas, Esquire
BURNS, WHITE & HICKTON
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212



PAUL E. PONGRACE, III, ESQUIRE
Attorney for DM Industries, Inc., t/a DM Industries

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

CIVIL DIVISION

No.: 04-2041 CD

CODE:

**NOTICE OF SERVICE OF
INTERROGATORIES DIRECTED TO
PLAINTIFFS**

Filed on behalf of Additional Defendant,

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

Counsel of Record for this
Party:

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236

Telephone: (412) 884-4697
Facsimile: (412) 884-7326

FILED

JUN 15 2005

William A. Shaw

Prothonotary/Clerk of Courts

no c/c

60

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

NOTICE OF SERVICE OF INTERROGATORIES DIRECTED TO PLAINTIFFS

The undersigned, Paul E. Pongrace, III, Esquire, avers and says that Interrogatories and Request for Production of Documents were served on counsel for plaintiff addressed below on the 10th day of June 2005, by First-Class Mail, Postage Pre-Paid, and that said Interrogatories and Request for Production of Documents contained a notice to said counsel to answer same within thirty (30) days of the date of service.

Matthew B. Taladay, Esquire
HANAK, GUIDO and TALADAY
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801



PAUL E. PONGRACE, III, ESQUIRE
Attorney for DM Industries, Inc., t/a DM Industries

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,

No.: 04-2041 CD

Plaintiffs,

CODE:

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

**NOTICE OF SERVICE OF
INTERROGATORIES DIRECTED TO
RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK and GRAFF TANK,
INC.**

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Filed on behalf of Additional Defendant,

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

Additional Defendants.

Counsel of Record for this
Party:

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236

Telephone: (412) 884-4697
Facsimile: (412) 884-7326

FILED

JUN 15 2005
11:55
William A. Shaw
Prothonotary/Clerk of Courts
pc c/c. @

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

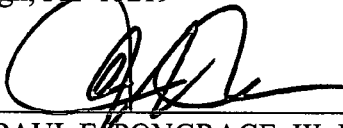
DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

**NOTICE OF SERVICE OF INTERROGATORIES DIRECTED TO RAYMOND A.
GRAFF, WILLIAM GRAFF and ROSE GRAFF, t/d/b/a GRAFF TANK AND GRAFF
TANK, INC.**

The undersigned, Paul E. Pongrace, III, Esquire, avers and says that Interrogatories and Request for Production of Documents were served on counsel for defendants addressed below on the 10th day of June 2005, by First-Class Mail, Postage Pre-Paid, and that said Interrogatories and Request for Production of Documents contained a notice to said counsel to answer same within thirty (30) days of the date of service.

Thomas T. Frampton, Esquire
GOEHRING, RUTTER & BOEHM
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219



PAUL E. PONGRACE, III, ESQUIRE
Attorney for DM Industries, Inc., t/a DM Industries

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,

No.: 04-2041 CD

Plaintiffs,

CODE:

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

**NOTICE OF SERVICE OF
INTERROGATORIES DIRECTED TO
MEEKER EQUIPMENT CO., INC.**

Defendants,

Filed on behalf of Additional Defendant,

vs.

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Counsel of Record for this
Party:

Additional Defendants.

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236

Telephone: (412) 884-4697
Facsimile: (412) 884-7326

FILED

JUN 15 2005
m. j. j. j. j. j.
William A. Shaw
Prothonotary/Clerk of Courts
no c/c @

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

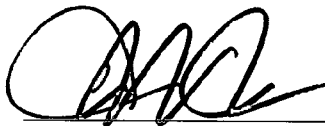
DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

**NOTICE OF SERVICE OF INTERROGATORIES DIRECTED TO MEEKER
EQUIPMENT CO., INC.**

The undersigned, Paul E. Pongrace, III, Esquire, avers and says that Interrogatories and Request for Production of Documents were served on counsel for defendant addressed below on the 10th day of June 2005, by First-Class Mail, Postage Pre-Paid, and that said Interrogatories and Request for Production of Documents contained a notice to said counsel to answer same within thirty (30) days of the date of service.

Phillip B. Silverman, Esquire
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS
22nd Floor, 1528 Walnut Street
Philadelphia, PA 19102



PAUL E. PONGRACE, III, ESQUIRE
Attorney for DM Industries, Inc., t/a DM Industries

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC., and MEEKER EQUIPMENT CO, INC.,
Defendants

vs.

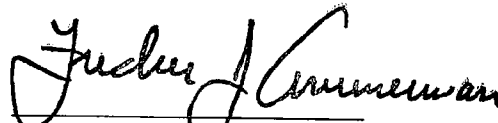
DM INDUSTRIES, INC., DM INDUSTRIES, and
INFERN-O-THERM CORPORATION,
Additional Defendants

NO. 04-2041-CD

ORDER

NOW, this 8th day of July, 2005, following argument on the Preliminary
Objections filed on behalf of Meeker Equipment Co. to Infern-O-Therm Corporation's New
Matter it is the ORDER of this Court that the said Preliminary Objections be and are hereby
DISMISSED.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

019:52/01
JUL 11 2005

William A. Shaw
Prothonotary/Clerk of Courts

@
icc
Amy Taladay
Frampton
Bacsi
Silverman
Pongrace
Mechas
Crome

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Certificate Prerequisite to
Service of a Subpoena

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

Dated: July 11, 2005

FILED ^{NO} ^{CC}
m110:3461
JUL 12 2005 ^{CL}
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

As a prerequisite to service of subpoena for the production of
documents and things pursuant to Rule 4009.22, Plaintiffs certify that

1. A notice of intent to serve subpoena with a copy of
subpoena attached thereto was mailed or delivered to each
party at least twenty (20) days prior to the date on which
the subpoena is sought to be served;
2. A copy of the notice, including the proposed subpoena, is
attached to this certificate;
3. No objection to the subpoena has been received; and
4. The subpoena which will be served is identical to the one
attached to the notice of intent to serve the subpoena.

Dated: July 11, 2005

Matthew B. Taladay
Matthew B. Taladay
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

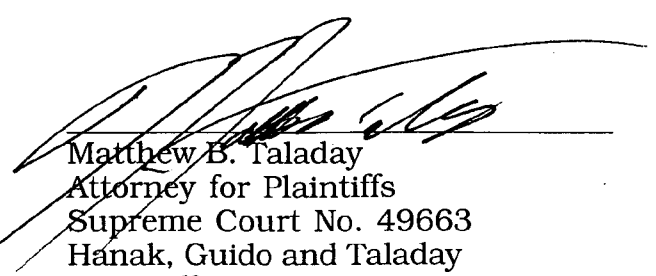
vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

**NOTICE OF INTENT TO SERVE SUBPOENA
TO PRODUCE DOCUMENTS AND THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.21**

Plaintiffs, HRI, Inc. and Whitaker Roads Corporation,
intend to serve a subpoena identical to the one attached to this
notice. You have twenty (20) days from the date listed below to
file of record and serve upon the undersigned objections to the
subpoena. If no objections are made, the subpoena may be
served.

Date: 06/06/05



Matthew B. Taladay
Attorney for Plaintiffs
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
(814) 371-7768

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

HRI, Inc.

*

Whitaker Roads Corporation

Plaintiff(s)

Vs.

*

No. 2004-02041-CD

Raymond A. Graff, William Graff,

*

Rose M. Graff, Graff Tank, Graff Tank, Inc.,

Mecker Equipment Co. Inc., DM Industries,

Inc., DM Industries, and Infern-O-Therm

Corporation

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Jeffrey B. Miller, Custodian of Records, Pennsylvania State Police
(Name of Person or Entity) 1800 Elmerton Avenue
Harrisburg, PA 17110-9758

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

and attachments to the
The photographs referenced in Pennsylvania State Police Fire
Investigation Report, Incident No. C03-0794132; Incident date: 08/13/04.

(Address) 498 Jeffers Street
PO Box 487
DuBois PA 15801

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Matthew B. Taladay, Esq.

ADDRESS: 498 Jeffers St. PO Box 487

DuBois PA 15801

TELEPHONE: (814) 371-7768

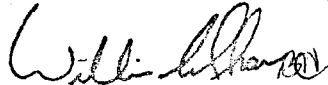
SUPREME COURT ID # 49663

ATTORNEY FOR: Plaintiffs

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



Deputy

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

DATE: Thursday, June 02, 2005

Seal of the Court

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being
counsel of record for Plaintiffs, do hereby certify that I propounded on
Additional Defendant DM Industries, Inc., via United States mail, first
class, postage pre-paid, this 12th day of July, 2005, Plaintiffs'
RESPONSES TO DEFENDANT DM INDUSTRIES' FIRST SET OF
DISCOVERY MATERIALS to the below indicated person, at said
address, being counsel of record for the Defendants:

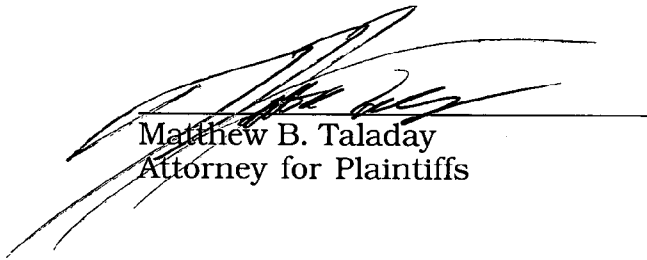
Paul E. Pongrace, III, Esq.
Attorney for DM Industries
Redman & Pongrace
Suite 310
300 Weyman Plaza
Pittsburgh, PA 15236

With copies to:

Thomas T. Frampton, Esq.
Attorney for Graff Defendants
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Patrick L. Mechas, Esq.
Attorney for Infern-O-Therm
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

George W. Vokolos, Esq.
Attorney for Defendant Meeker Equipment
Company, Inc.
Minter Sarowitz Zeris Ledva & Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102-3614



Matthew B. Taladay
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Notice of
Service

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

cr FILED *no cc*
0 m/11.0001
JUL 13 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being counsel of record for Plaintiffs, do hereby certify that I propounded on Defendants Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank, and Graff Tank, Inc., via United States mail, first class, postage pre-paid, this 12th day of July, 2005, Plaintiffs' RESPONSES TO GRAFF DEFENDANT FIRST SET OF DISCOVERY MATERIALS to the below indicated person, at said address, being counsel of record for the Defendants:

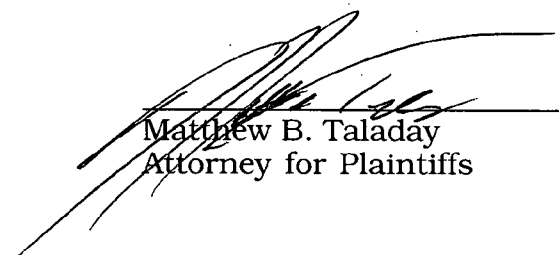
Thomas T. Frampton, Esq.
Attorney for Graff Defendants
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

With copies to:

Paul E. Pongrace, III, Esq.
Attorney for DM Industries
Redman & Pongrace
Suite 310
300 Weyman Plaza
Pittsburgh, PA 15236

Patrick L. Mechas, Esq.
Attorney for Infern-O-Therm
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

George W. Vokolos, Esq.
*Attorney for Defendant Meeker Equipment
Company, Inc.*
Minter Sarowitz Zeris Ledva & Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102-3614



Matthew B. Taladay
Attorney for Plaintiffs

MAINTENANCE OF ORDER

MAINTENANCE OF ORDER

MAINTENANCE OF ORDER

FILED

JUL 13 2005

William A. Shew
Prothonotary/Clerk of Courts

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**

BY: PHILLIP B. SILVERMAN, ESQUIRE

Identification No.: 02201

22nd Floor

1528 Walnut Street

Philadelphia, PA 19102

(215) 735-7200

MSZL&M File No. 6400.0006

Attorney for Defendant, **MEEKER
EQUIPMENT CO., INC.**

HRI, INC. AND WHITAKER ROADS
CORPORATION

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

2041
No. 04-~~2021~~-CD

**DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S REPLY TO NEW MATTER
OF ADDITIONAL DEFENDANT, INFERN-O-THERM CORPORATION
PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 2252(d)**

28. Denied. Answering defendant incorporates by reference and makes a part hereof its answer to plaintiffs' complaint and complaint against additional defendants as though same were herein after set forth at length.

29. Denied. Answering defendant incorporates by reference and makes a part hereof its answer to plaintiffs' complaint with new matter and crossclaims and complaint against additional defendants as though same were herein after set forth at length.

30. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e). By way of further answer, this paragraph is deemed to be denied as a legal conclusion.

FILED

JUL 25 2005 *62*
m/8:30
William A. Shaw
Prothonotary/Clerk of Courts
1 SENT TO ATT

31. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}. By way of further answer, this paragraph is deemed to be denied as a legal conclusion.

32. Denied. This paragraph is deemed to be denied pursuant to Pennsylvania Rules of Civil Procedure 1029{e}. By way of further answer, this paragraph is deemed to be denied as a legal conclusion.

WHEREFORE, defendant, Meeker Equipment Company, Inc., demands that the new matter of additional defendant, Infern-O-Therm Corporation, pursuant to Pennsylvania Rule of Civil Procedure 2252(d) be dismissed.

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 

PHILLIP B. SILVERMAN, ESQUIRE

Attorney for Defendant: **MEEKER
EQUIPMENT CO., INC.**

VERIFICATION

The undersigned is authorized to sign this verification with regards to the foregoing document. The facts contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. The language of this pleading is that of counsel and not of signer. This verification is made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.

Phillip B. Silverman
(Print name)

Phillip B. Silverman
(Signature)

DATE: 7/21/05

MSZL&M FILE NO.: 6400.0006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

CASE NO. 2004-02041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC. and MEEKER EQUIPMENT
CO., INC.,

**NOTICE OF SERVICE OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO ORIGINAL
DEFENDANT, MEEKER EQUIPMENT
CO., INC.**

Defendants,

vs.

DM INDUSTRIES, INC., DM INDUSTRIES,
and INFERN-O-THERM CORPORATION,

Filed on Behalf of: Additional Defendant,
Infern-O-Therm Corporation

Additional Defendants.

Counsel for Record for This Party:

Patrick L. Mechas, Esquire
PA I.D. No. 61362

John B. Cromer, Esquire
PA I.D. No. 66773

BURNS, WHITE & HICKTON
Firm I.D. No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

JURY TRIAL DEMANDED

FILED *no cc*
m/3:15pm
AUG 01 2005 *lm*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF, ROSE M. GRAFF, GRAFF
TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., DM
INDUSTRIES, and INFERN-O-
THERM CORPORATION,

Additional Defendants.

CASE NO. 2004-02041-CD

**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO ORIGINAL DEFENDANT,
MEEKER EQUIPMENT CO., INC.**

TO: PROTHONOTARY OF CLEARFIELD COUNTY

I hereby certify that on the 28th day of July, 2005, Additional Defendant, INFERN-O-THERM CORPORATION served Interrogatories and Request for Production of Documents Directed to Original Defendant, Meeker Equipment Co., Inc. by mailing the same to their counsel of record as follows:

Phillip B. Silverman, Esquire
Mintzer, Sarowitz, Zerisk, Ledva & Meyers
1528 Walnut Street – 22nd Floor
Philadelphia, PA 19102

BURNS, WHITE & HICKTON

BY: Patrick L. Mechas / MES

Patrick L. Mechas, Esquire

John B. Cromer, Esquire

Attorneys for Additional Defendant

Infern-O-Therm Corporation

CERTIFICATE OF SERVICE

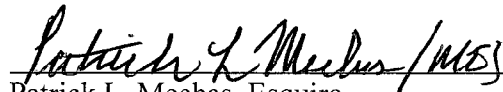
The undersigned hereby certifies that a true and correct copy of the within **NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO ORIGINAL DEFENDANT, MEEKER EQUIPMENT CO., INC.**, was served upon all counsel of record via first class mail, postage prepaid, this 28th day of July, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Phillip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
1528 Walnut Street – 22nd Floor
Philadelphia, PA 19102

Thomas T. Frampton, Esquire
Dana L. Bacs, Esquire
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Paul E. Pongrance, III, Esquire
Redman & Pongrace
300 Weyman Plaza – Suite 310
Pittsburgh, PA 15236


Patrick L. Mechas, Esquire
John B. Cromer, Esquire

FILED

AUG 01 2005

William A. Shaw
Prothonotary/Clerk of Courts

FILED ^{NO CC}
m/12:26/04
AUG 04 2005 ^{EN}

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

CASE NO. 2004-02041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC. and MEEKER EQUIPMENT
CO., INC.,

**NOTICE OF SERVICE OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO ORIGINAL
DEFENDANTS RAYMOND A. GRAFF,
WILLIAM GRAFF, ROSE M. GRAFF,
GRAFF TANK, GRAFF TANK, INC.**

Defendants,

vs.

DM INDUSTRIES, INC., DM INDUSTRIES,
and INFERN-O-THERM CORPORATION,

Filed on Behalf of: Additional Defendant,
Infern-O-Therm Corporation

Additional Defendants.

Counsel for Record for This Party:

Patrick L. Mechas, Esquire
PA I.D. No. 61362

John B. Cromer, Esquire
PA I.D. No. 66773

BURNS, WHITE & HICKTON
Firm I.D. No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS)
CORPORATION,)

Plaintiffs,)

vs.)

RAYMOND A. GRAFF, WILLIAM)
GRAFF, ROSE M. GRAFF, GRAFF)
TANK, GRAFF TANK, INC. and)
MEEKER EQUIPMENT CO., INC.,)

Defendants,)

vs.)

DM INDUSTRIES, INC., DM)
INDUSTRIES, and INFERN-O-)
THERM CORPORATION,)

Additional Defendants.)

CASE NO. 2004-02041-CD

**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO ORIGINAL DEFENDANTS
RAYMOND A. GRAFF, WILLIAM GRAFF, ROSE M. GRAFF, GRAFF TANK,
GRAFF TANK, INC.**

TO: PROTHONOTARY OF CLEARFIELD COUNTY

I hereby certify that on the 3rd day of August, 2005, Additional Defendant, INFERN-O-THERM CORPORATION, served Interrogatories and Request for Production of Documents Directed to Original Defendants Raymond A. Graff, William Graff, Rose M. Graff, Graff Tank, Graff Tank, Inc., by mailing the same to their counsel of record as follows:

Thomas T. Frampton, Esquire
Dana L. Bacsí, Esquire
Goehring, Rutter & Boehm
1424 Frick Building
427 Grant Street
Pittsburgh, PA 15219

BURNS, WHITE & HICKTON, LLC

BY: 
Patrick L. Mechas, Esquire
John B. Cromer, Esquire
Attorneys for Additional Defendant,
Infern-O-Therm Corporation

CERTIFICATE OF SERVICE

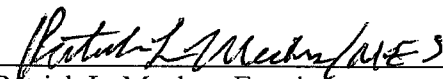
The undersigned hereby certifies that a true and correct copy of the within
**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO ORIGINAL DEFENDANTS
RAYMOND A. GRAFF, WILLIAM GRAFF, ROSE M. GRAFF, GRAFF TANK,
GRAFF TANK, INC.,** was served upon all counsel of record via first class mail, postage
prepaid, this 3rd day of August, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Phillip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
1528 Walnut Street – 22nd Floor
Philadelphia, PA 19102

Thomas T. Frampton, Esquire
Dana L. Bacsí, Esquire
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Paul E. Pongrance, III, Esquire
Redman & Pongrace
300 Weyman Plaza – Suite 310
Pittsburgh, PA 15236



Patrick L. Mechas, Esquire
John B. Cromer, Esquire

FILED

AUG 04 2005

William A. Shaw
Prothonotary/Clerk of Courts

FILED ^{no cc}
m/12:26/01
AUG 04 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

CASE NO. 2004-02041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC. and MEEKER EQUIPMENT
CO., INC.,

**NOTICE OF SERVICE OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO PLAINTIFFS, HRI, INC.
AND WHITAKER ROADS
CORPORATION**

Defendants,

vs.

DM INDUSTRIES, INC., DM INDUSTRIES,
and INFERN-O-THERM CORPORATION,

Filed on Behalf of: Additional Defendant,
Infern-O-Therm Corporation

Additional Defendants.

Counsel for Record for This Party:

Patrick L. Mechas, Esquire
PA I.D. No. 61362

John B. Cromer, Esquire
PA I.D. No. 66773

BURNS, WHITE & HICKTON
Firm I.D. No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS)
CORPORATION,)

Plaintiffs,)

vs.)

RAYMOND A. GRAFF, WILLIAM)
GRAFF, ROSE M. GRAFF, GRAFF)
TANK, GRAFF TANK, INC. and)
MEEKER EQUIPMENT CO., INC.,)

Defendants,)

vs.)

DM INDUSTRIES, INC., DM)
INDUSTRIES, and INFERN-O-)
THERM CORPORATION,)

Additional Defendants.)

CASE NO. 2004-02041-CD

**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS, HRI, INC.
AND WHITAKER ROADS CORPORATION**

TO: PROTHONOTARY OF CLEARFIELD COUNTY

I hereby certify that on the 3rd day of August, 2005, Additional Defendant, INFERN-O-THERM CORPORATION, served Interrogatories and Request for Production of Documents Directed to Plaintiffs, HRI, Inc. and Whitaker Roads Corporation, by mailing the same to their counsel of record as follows:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 16801

BURNS, WHITE & HICKTON, LLC

BY: Patrick L. Mechas / 11485
Patrick L. Mechas, Esquire
John B. Cromer, Esquire
Attorneys for Additional Defendant,
Infern-O-Therm Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within
**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS HRI, INC. AND
WHITAKER ROADS CORPORATION**, was served upon all counsel of record via
first class mail, postage prepaid, this 3rd day of August, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Phillip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
1528 Walnut Street – 22nd Floor
Philadelphia, PA 19102

Thomas T. Frampton, Esquire
Dana L. Bacsí, Esquire
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Paul E. Pongrance, III, Esquire
Redman & Pongrace
300 Weyman Plaza – Suite 310
Pittsburgh, PA 15236

Patrick L. Mechas / MB
Patrick L. Mechas, Esquire
John B. Cromer, Esquire

FILED

AUG 04 2005

William A. Shaw
Prothonotary/Clerk of Courts

FILED

m 19:32

AUG 15 2005

William A. Shaw
Prothonotary/Clerk of Courts

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: GEORGE W. VOKOLOS, ESQUIRE
Identification No.: 88508
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant(s),
MEEKER EQUIPMENT CO., INC.

HRI, INC. and WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF t/d/b/a GRAFF TANK;
GRAFF TANK, INC. And MEEKER
EQUIPMENT CO., INC.

vs.

DM INDUSTRIES, INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

No. 04-20⁴¹21-CD

**DEFENDANT, MEEKER EQUIPMENT CO., INC.'S
PETITION FOR LEAVE OF COURT TO JOIN
DuFOUR, INC. AS AN ADDITIONAL DEFENDANT**

Defendant, Meeker Equipment Co., Inc., by and through its undersigned Counsel, hereby files the instant Petition for Leave of Court to Join DuFour, Inc. as an Additional Defendant in this matter and in support thereof avers as follows:

1. Plaintiffs, HRI, Inc. and Whitaker Roads Corporation (hereafter "HRI") initiated the instant action by filing a Complaint in Civil Action against Defendant, Meeker Equipment Co., Inc. (hereafter "Meeker") and Defendants, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank, Graff Tank, Inc. (collectively hereafter "Graff") on or about December 30, 2004.

2. In their Complaint, Plaintiffs allege property damage as a result of the negligence and/or breach of warranty of original Defendants Meeker and Graff. (Attached hereto and marked Exhibit "A" is a true, correct and complete copy of Plaintiffs' Complaint).

3. More specifically, Plaintiffs allege that the claimed property damage was caused by certain defects and/or oversights in the fabrication, construction and/or erection of a commercial storage tank and its component parts. (See Exhibit "A").

4. On or about July 5, 2005 Meeker received Plaintiffs Answers to Graff's and Additional Defendant, DM Industries, Inc.'s (hereafter "DM") Interrogatories and Request for Production of Documents. (Attached hereto and marked as Exhibits "B" and "C", respectively, are the aforementioned written discovery requests and response thereto).

5. Graff's Interrogatory Number 25 asks "[w]ho had the overall responsibility of constructing the completed tank with all of its components and commissioning it? (See Exhibit "B: at page 11)).

6. Plaintiffs response to the aforestated Interrogatory was that:

Graff Tank, Inc. and related Defendants have the responsibility for constructing the completed tank and locating the various components and installing, but not connecting, the combustion package.

Meeker Equipment, Inc. had the responsibility to provide a suitable combustion package. DM Industries had the responsibility to install insulation.

DuFour, Inc. was responsible for connection and start up of the combustion. (emphasis added). (See Exhibit "B" at page 11).

7. Furthermore, in response to Interrogatory Number 3 of DM, Plaintiffs identify DuFour, Inc. as participating in the manufacturing, construction, assembly, maintenance, filling, emptying and use of the subject storage tank. (See Exhibit "C" at Number 3).

2. In their Complaint, Plaintiffs allege property damage as a result of the negligence and/or breach of warranty of original Defendants Meeker and Graff. (Attached hereto and marked Exhibit "A" is a true, correct and complete copy of Plaintiffs' Complaint).

3. More specifically, Plaintiffs allege that the claimed property damage was caused by certain defects and/or oversights in the fabrication, construction and/or erection of a commercial storage tank and its component parts. (See Exhibit "A").

4. On or about July 5, 2005 Meeker received Plaintiffs Answers to Graff's and Additional Defendant, DM Industries, Inc.'s (hereafter "DM") Interrogatories and Request for Production of Documents. (Attached hereto and marked as Exhibits "B" and "C", respectively, are the aforementioned written discovery requests and response thereto).

5. Graff's Interrogatory Number 25 asks "[w]ho had the overall responsibility of constructing the completed tank with all of its components and commissioning it? (See Exhibit "B: at page 11).

6. Plaintiffs response to the aforestated Interrogatory was that:

Graff Tank, Inc. and related Defendants have the responsibility for constructing the completed tank and locating the various components and installing, but not connecting, the combustion package.

Meeker Equipment, Inc. had the responsibility to provide a suitable combustion package. DM Industries had the responsibility to install insulation.

DuFour, Inc. was responsible for connection and start up of the combustion. (emphasis added).(See Exhibit "B" at page 11).

7. Furthermore, in response to Interrogatory Number 3 of DM, Plaintiffs identify DuFour, Inc. as participating in the manufacturing, construction, assembly, maintenance, filling, emptying and use of the subject storage tank. (See Exhibit "C" at Number 3).

8. Darrell DuFour, a representative of DuFour, Inc., was present for a meeting and inspection of the alleged loss site held on September 2, 2004 at the Plaintiff's facilities. (See Exhibit "C" at Number 28).

9. Proposed Additional Defendant, DuFour could not be properly joined nor could the extent of its involvement in the incident matter be determined until Moving Defendant recently received the attached discovery responses.

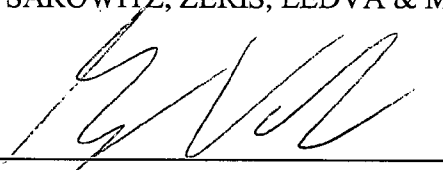
10. Since proposed Additional Defendant, DuFour is identified as a party participating in the manufacture, construction, assembly, maintenance, filling, emptying and use of the subject storage tank, DuFour is an indispensable party to this litigation and therefore must be joined as an Additional Defendant.

11. Proposed Additional Defendant DuFour should be joined as an Additional Defendant in the instant matter in the interest of judicial economy, so that the respective rights and liabilities of all parties to this matter may be justly adjudicated in a single action, rather than requiring multiple and vexatious litigation.

12. Proposed Additional Defendant, DuFour will not be prejudiced by the joinder in the instant matter, because its representatives have been aware of the instant litigation from its outset and, procedurally, little if any discovery is passed between the parties.

WHEREFORE, Defendant, Meeker Equipment Co., Inc. respectfully requests that this Honorable grant it leave to join DuFour, Inc. as an Additional Defendant in the within action.

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 

GEORGE W. VOKOLOS, ESQUIRE

Attorney for Defendant(s):

MEEKER EQUIPMENT CO., INC.

HRI, INC. and WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF t/d/b/a GRAFF TANK;
GRAFF TANK, INC. And MEEKER
EQUIPMENT CO., INC.

vs.

DM INDUSTRIES, INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

No. 04-2021-CD

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S,
MEEKER EQUIPMENT CO., INC.,
PETITION FOR LEAVE OF COURT TO JOIN
DuFOUR, INC. AS AN ADDITIONAL DEFENDANT**

I. FACTS:

Plaintiffs, HRI, Inc. and Whitaker Roads Corporation (collectively hereafter "HRI") initiated the instant action by filing a Complaint in Civil Action against defendant, Meeker Equipment Co., Inc. (hereafter "Meeker") and defendants, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank, Graff Tank, Inc. (hereafter "Graff") on or about December 30, 2004. In their Complaint, Plaintiffs allege property damage as a result of the negligence and/or breach of warranty of original Defendants Meeker and Graff. (See Exhibit "A").

More specifically, Plaintiffs allege that the claimed property damage was caused by certain defects and/or oversights in the fabrication, construction and/or erection of a commercial storage tank and its component parts. (See Exhibit "A").

On or about July 5, 2005, Meeker received Plaintiffs Answers to Graff's and Additional Defendant, DM Industries, Inc.'s (hereafter "DM") Interrogatories and Request for Production of Documents. (See Exhibits "B" and "C"). Graff's Interrogatory Number 25 asks "[w]ho had the overall responsibility of constructing the completed tank with all of its components and commissioning it? (See Exhibit "B:" at page 11).

Plaintiffs response to the aforesated Interrogatory was that:

Graff Tank, Inc. and related Defendants have the responsibility for constructing the completed tank and locating the various components and installing, but not connecting, the combustion package.

Meeker Equipment, Inc. had the responsibility to provide a suitable combustion package. DM Industries had the responsibility to install insulation.

DuFour, Inc. was responsible for connection and start up of the combustion. (emphasis added).(See Exhibit "B" at page 11).

Furthermore, in response to Interrogatory Number 3 of DM, Plaintiffs identify DuFour, Inc. as participating in the manufacturing, construction, assembly, maintenance, filling, emptying and use of the subject storage tank. (See Exhibit "C" at Number 3).

Darrell DuFour, a representative of DuFour, Inc., was present for a meeting and inspection of the alleged loss site held on September 2, 2004 at the Plaintiff's facilities. (See Exhibit "C" at Number 28).

Proposed Additional Defendant, DuFour could not be properly joined nor could the extent of its involvement in the incident matter be determined until Moving Defendant recently received the attached discovery responses. Since proposed Additional Defendant, DuFour is identified as a party participating in the manufacture, construction, assembly, maintenance, filling, emptying and use of the subject storage tank, DuFour is an indispensable party to this litigation and therefore must be joined as an Additional Defendant.

Proposed Additional Defendant DuFour should be joined as an Additional Defendant in the instant matter in the interest of judicial economy, so that the respective rights and liabilities of all parties to this matter may be justly adjudicated in a single action, rather than requiring multiple and vexatious litigation. Proposed Additional Defendant, DuFour will not be prejudiced by the joinder in the instant matter, because its representatives have been aware of the instant litigation from its outset and, procedurally, little if any discovery is passed between the parties.

II. LEGAL ARGUMENT:

Pennsylvania Rule of Civil Procedure 2253 states:

Neither a Praecipe for Writ to Join an Additional Defendant nor a Complaint if the joinder is commenced by a Complaint shall be filed by the original Defendant or an Additional Defendant later than 60 days after the service upon the original Defendant of the initial pleading of the Plaintiff or any amendment thereof unless *such filing is allowed by the court upon good cause shown (emphasis added)*.

Pa.R.C.P. 2253.

In the instant matter, it is clearly in the best interest of all parties as well as the court to allow the joinder of proposed Additional Defendant, DuFour, at this time. The proposed Additional Defendant is an indispensable party to the resolution of this matter and joinder will in no way prejudice the rights of any party.

Numerous courts throughout the Commonwealth of Pennsylvania have allowed late joinder for various reasons. In Albert Einstein Medical Center v. Cavanaugh, 75 Pa. D.&C.2d 115 (1975) and Bierkamp v. Philadelphia, 11 Pa. D.&C.3d 111 (1979), the courts allowed the late joinder where the Plaintiff's claim was not known until fully developed during the discovery proceedings.

In the instant matter, DuFour's involvement was not fully known until Meeker received Plaintiffs' responses to Graff's and DM's Interrogatories and Request for Production of Documents. As those responses clearly show, DuFour was involved in the manufacturing, construction, assembly and/or maintenance of the subject storage tank and its component parts. (See Exhibits "B" and "C").

In Rau v. Mankow, 17 A.2d 422 (Pa. 1941) the Supreme Court of Pennsylvania discussed the policy underlying Rule 2253. The Court stated:

the purpose of third party practice is to avoid multiplicity of suit by adjudicating in one suit the rights and liabilities of all parties to a single action, which constitutes the cause of action and the rules should, if

possible, be construed to accomplish that purpose.

Id. 425-426: see also Regan v. Steen, 331 A.2d 724 (Pa .Super. 1974) and Martinelli v. Mulloy, 299 A.2d 19 (Pa.Super. 1972). More recently, the Court in Shelly Foundations, Inc. v. Able-Hess Associates, Inc., 53 Pa D.&C.4th 438 (2001), found that allowing late joinder of the proposed Additional Defendant would:

“ . . . further the intent of the Third-Party Joinder rules of avoiding a multiplicity of lawsuits and adjudicating all the rights and liabilities of those involved in the incident in a single lawsuit. . . ”

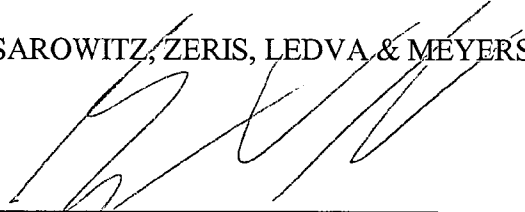
Id. at 448. The Shelly Court based its holding on the overall discretion given to courts under the liberal construction of Rule 2253.

Clearly, proposed Additional Defendant, DuFour is an indispensable party to the instant matter. First and foremost, DuFour was actively involved in the design, assembly and erection of the subject storage tank and its component parts. As such, DuFour’s joinder is necessary to insure the just adjudication of all rights and liabilities of those involved. Secondly, failure to allow the joinder of DuFour as a party to this matter would undoubtedly lead to multiple and vexatious litigation regarding the identical situation. If in fact, there was a defect in the design, construction, assembly and/or erection of the subject tank and/or its component parts, then DuFour would be liable jointly and severally to Plaintiffs and/or by way of contribution and indemnification in this matter.

Finally, the joinder of DuFour as an Additional Defendant in this matter would cause no prejudice to any other party in this lawsuit. As shown above, DuFour was aware of this litigation from the its outset. DuFour participated in a site inspection and discussion on September 2, 2004. More importantly, the joinder of DuFour at this junction would serve the interest of judicial economy.

WHEREFORE, Defendant, Meeker Equipment Co., Inc. respectfully requests that this Honorable grant it leave to join DuFour, Inc. as an Additional Defendant in the within action.

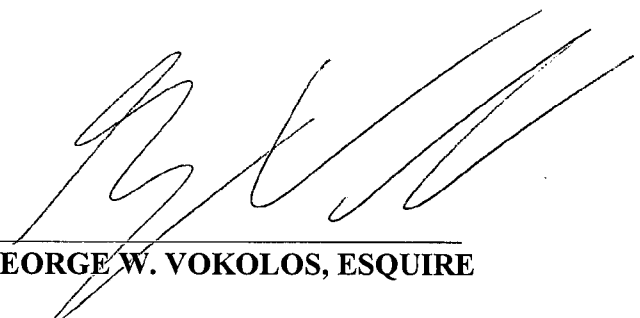
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 

GEORGE W. VOKOLOS, ESQUIRE
Attorney for Defendant(s):
MEEKER EQUIPMENT CO., INC.

VERIFICATION

The averments or denials of facts contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. This verification is made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.



GEORGE W. VOKOLOS, ESQUIRE

Date: 8/11/05

CERTIFICATE OF SERVICE

I do hereby certify that service of a true and correct copy of the within Petition for Leave of Court to Join DuFour, Inc. as an Additional Defendant was made on the below noted date by First Class, United States First Class Mail, postage pre-paid to the following:

LAW OFFICES OF REDMAN & PONGRACE

Paul E. Pongrace, III, Esquire
Suite 310
300 Weyman Plaza
Pittsburgh, PA 15236

GOEHRING, RUTTER & BOEHM

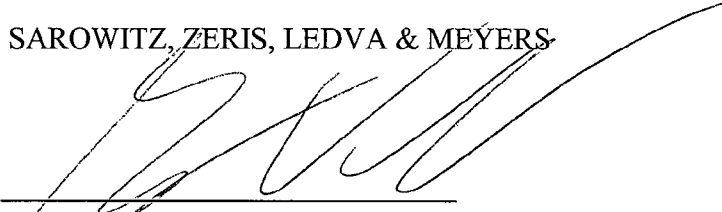
Thomas T. Frampton, Esquire
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

BURNS, WHITE & HICKTON

Patrick L. Mechas, Esquire
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

HANAK, GUIDO & TALADAY
Matthew B. Taladay, Esquire
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 
GEORGE W. VOKOLOS, ESQUIRE
Attorney for Defendant(s):
MEEKER EQUIPMENT CO., INC.

Date: 8/11/05

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

CIVIL ACTION - AT LAW

No. 04-2041-①

Type of Pleading:

Complaint

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 30 2004

Attest.

[Signature]
P. C. Clerk
Clearfield County

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 Ext. 1303

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER	:	
ROADS CORPORATION,	:	
Plaintiffs	:	
vs.	:	No.
RAYMOND A. GRAFF, WILLIAM	:	
GRAFF and ROSE M. GRAFF,	:	
t/d/b/a GRAFF TANK, GRAFF	:	
TANK, INC. and MEEKER	:	
EQUIPMENT CO., INC.,	:	
Defendants	:	

COMPLAINT

AND NOW, comes the Plaintiffs, HRI, Inc., and Whitaker

Roads Corporation, by its attorneys, Hanak, Guido and Taladay, and
hereby bring the within Complaint:

1. HRI, Inc. is a corporation chartered in the State of Delaware that trades and does business within the Commonwealth of Pennsylvania with corporate offices at 1750 West College Avenue, Suite 1, State College, Pennsylvania 16801.

2. Whitaker Roads Corporation is a Pennsylvania business corporation and a wholly owned subsidiary of HRI, Inc., with offices and principal place of business at Route 322 East, Clearfield, Pennsylvania 16830.

3. Defendants are Raymond A. Graff, William H. Graff and Rose M. Graff who trade and do business as Graff Tank ("Graff") and who have a business address of 731A North Main Street, P.O. Box 336, Hubbard, OH 44425.

4. Graff Tank, Inc. is an Ohio business corporation with offices and principal place of business at 731A North Main Street, P.O. Box 336, Hubbard, OH 44425.

5. Defendant Meeker Equipment Co., Inc. ("Meeker") is, upon information and belief, a Pennsylvania business corporation with offices and principal place of business at 516 North Broad Street, P.O. Box 925, Lansdale, Pennsylvania 19446-0661.

6. Defendant Graff at all times relevant hereto was in the business of designing, constructing, maintaining, repairing, fabricating and assembling commercial storage tanks for the petroleum, emulsion, polymer and related industries.

7. Defendant Meeker at all times relevant hereto was in the business of offering for sale combustion heating units for storage tanks used in the petroleum, emulsion, polymer and related industries.

8. In the Fall of 2001, the Plaintiffs solicited proposals from the Defendants and others for the design, construction and provision of a combustion package for a commercial petroleum emulsion storage package for the purposes of storing and dispensing MC-70 cutback, including, but not limited to, emulsions, asphalt and/or road oils (MC-70 tank).

9. On or about December 13, 2001, Graff submitted a proposal to HRI for construction of a 24' diameter by 18' high MC-70 tank. A copy of the three page proposal is attached hereto as Exhibit "A".

10. On or about May 21, 2002, HRI, Inc. submitted a purchase order to Graph, entering a Purchase Order Agreement No. 1043. A copy of this Purchase Order is attached hereto as Exhibit "B".

11. On or about December 20, 2001, Meeker submitted to Whitaker Roads Corporation a quote for a combustion package for use in the proposed MC-70 tank. A copy of that proposal is attached as Exhibit "C".

12. On or about May 31, 2002, HRI, Inc., submitted a Purchase Order to Meeker for a combustion package for use in a 24' diameter by 18' high insulated MC-70 tank to be constructed at the Whitaker Roads Corporation facilities, Clearfield Emulsion Plant. A copy of that Purchase Order is attached hereto as Exhibit "D".

13. In accordance with the Purchase Order, Meeker did sell and HRI did purchase a CPA-200 Combustion Package which was shipped to the Clearfield Emulsion Plant in Clearfield County, Pennsylvania.

14. HRI at all times relied on the knowledge, experience and expertise of Meeker to establish the appropriate specifications for the combustion package.

15. In accordance with the Purchase Order, Graff did install and HRI did fully pay for the furnishing and construction of a 24' diameter by 18' high MC-70 tank, which was constructed by Graff at the Whitaker Roads Corporation, Clearfield Emulsion Plant and was completed on or about July, 2002.

16. In accordance with its contractual obligation, Graff did install in the CPA-200 combustion package furnished by Meeker in the MC-70 tank.

17. HRI at all times relied on the knowledge, experience and expertise of Graff in the proper design, fabrication and construction of the tank, including, but not limited to, the proper placement of all temperature sensors, heating elements, in-flow and out-flow pipes, and safety features.

18. HRI put the MC-70 tank into service on or about July, 2002 and at no time undertook any material change or usage modification of the MC-70 tank.

19. On or about August 13, 2004, a massive explosion and fire occurred at the HRI/Whitaker Roads facility.

20. The point of origin of the explosion and fire was the MC-70 tank fabricated and installed by Graff and containing the combustion package provided by Meeker. At the time of the incident, this tank was properly being used for the storage of a road oil product (MC-70 cutback).

21. The storage and dispensing of emulsions, asphalt and road oils, including MC-70 cutback, were the intended and foreseeable uses of the Graff tank.

22. The CPA-200 combustion package provided by Meeker was represented by the sellers as suitable for its intended purpose in the heating of emulsion, asphalt and road oils, including MC-70 cutback, in an 18' by 24' storage tank.

23. The explosion and fire and resulting damage were solely and proximately the responsibility of the Defendants, as set forth herein.

Count I

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Breach of Warranty - Fitness for a Particular Purpose

24. Paragraphs 1 through 23 are incorporated herein by reference as if set forth in full.

25. Plaintiff HRI at all times relevant hereto relied on the experience, expertise, counsel and judgment of Defendant Graff to fabricate, construct and erect a tank that was suitable for its intended purpose of the commercial storage and dispensing of petroleum emulsions, including, but not limited to, MC-70 cutback.

~~26. Graff expressly or impliedly warranted that the tank~~
construction configuration and design were suitable and fit for that particular purpose.

27. The MC-70 tank constructed and installed by Graff was unsuitable for the Plaintiffs purposes as follows:

(a) The contents temperature sensor was improperly placed in a position above the distribution outflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) The contents temperature sensor was improperly placed, thereby defeating the emergency features of the inferno-therm heating unit installed in the tank.

(c) The MC-70 tank lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The MC-70 tank lacked adequate sensors or other safety devices to prevent overheating of the contents, which could and did result in overheating of the tank contents resulting in an explosion and fire.

(e) The tank lacked adequate warning devices to alert its users of overheating of the contents.

28. Graff failed to provide conspicuous and adequate warnings of the dangers of drawing the contents level below the level of the temperature sensor when it knew or should have known that to do so would defeat the proper functioning of the sensor and result in a dangerous condition.

WHEREFORE, the Plaintiffs demand judgment in an amount in excess of \$25,000.00.

Count II

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Negligence

29. Plaintiffs incorporate by reference paragraphs 1 through 28 as if set forth in full herein.

30. The losses sustained by HRI were solely and proximately caused by the negligence of the Defendant, his employees or agents which is as follows:

(a) The contents temperature sensor was improperly placed in a position above the distribution outflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) The contents temperature sensor was improperly placed, thereby defeating the emergency features of the inferno therm heating unit installed in the tank.

(c) The MC-70 tank lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The petroleum emulsion storage tank lacked adequate sensors or other safety devices to prevent overheating of the stored products contents, which could

and did result in overheating of the tank contents resulting in an explosion and fire.

(e) The tank lacked adequate warning devices to alert its users of imminent overheating of the contents.

WHEREFORE, Plaintiff demands judgment in its favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count III

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
vs.

Meeker Equipment Company, Inc., Defendant

Negligence

~~31.~~ Plaintiffs incorporate by reference paragraphs 1 through 30 as if set forth in full herein.

32. The losses sustained by Plaintiffs were solely and proximately caused by the negligence of Defendant Meeker Equipment Company, Inc. which is as follows:

(a) Failure to provide a combustion package suitable for use in an MC-70 storage tank as specified in Defendant's Purchase order.

(b) Failure to supply a combustion unit with all features necessary for its safe foreseeable operations.

(c) Failure to provide a combustion unit with all necessary warnings.

(d) Failure to supply a combustion package including a "low volume level sensing device" or other mechanism to prevent the contents level from dropping

below the temperature sensing level and thereby creating a dangerous condition.

WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count IV

**HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
vs.
Meeker Equipment Company, Inc., Defendant**

Breach of Warranty - Fitness for a Particular Purpose

33. Paragraphs 1 through 32 are incorporated by reference as if set forth in full herein.

34. Plaintiffs at all times relevant hereto relied on the knowledge, experience, expertise and recommendations of the Defendant Meeker to provide a combustion package suitable for its intended use in heating commercially stored MC-70 cutback, including, but not limited to, emulsions, asphalt and/or road oils.

35. Defendant Meeker expressly or impliedly warranted that the combustion package was suitable or fit for that particular purpose.

36. The combustion package provided by Meeker were unsuitable for the Plaintiffs' purposes as follows:

(a) The combustion package temperature sensor was improperly placed defeating or eliminating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) Meeker failed to supply a combustion unit with all features necessary for its safe foreseeable operations.

(c) The combustion package lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The combustion package lacked adequate warning instructions or devices to alert users of imminent overheating of the tank contents.

(e) The combustion package lacked adequate sensors or other safety devices to prevent the overheating of contents, which could and did result in the overheating of the tank contents resulting in a fire and explosion.

WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count V

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
vs.
Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank, Graff Tank, Inc., and
Meeker Equipment Company, Inc., Defendants

Damages

37. As a direct and proximate result of the negligence and/or breach of warranties of the Defendants, jointly or severally, the Plaintiffs sustained damages as follows:

(a) Complete destruction of a 61,000 gallon

MC-70 tank resulting in a loss which is currently unliquidated but estimated to be in excess of \$130,000.00;

(b) Complete destruction of a 12,000 gallon MC-70 tank resulting in a loss estimated to be \$15,000.00;

(c) Damage to various metering gauges resulting in a loss estimated to be \$1,228.00;

(d) Damage to the insulation skin on tanks No. 11 and 12 located at the Whitaker Roads facility resulting in a loss estimated at \$2,500.00;

(e) Damage to pump and motors estimated to be \$4,556.00;

(f) Damage to the Whitaker Roads facility shop buildings necessitating repairs, estimated costs \$2,732.00;

(g) Clean up costs in the estimated amount of \$25,000.00;

(h) Damage to a tanker truck located on the premises at the time of the explosion resulting in a loss of \$3,333.33;

(j) Loss of 1,670 gallons of MC-70 road oil at a cost of \$1,870.00;

(k) Cost of installing security fence and covering explosion site to preserve scene and to protect HRI employees and site visitors, \$3,105.00;

(l) Reimbursement to responding fire departments for cost of chemical fire suppressant foam, \$9,944.00; and

(m) Administrative costs of reconstruction and commissioning MC-70 tank, currently unliquidated.

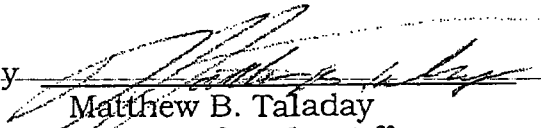
WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, counsel fees and such other relief as the Court may deem appropriate.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By


Matthew B. Taladay
Attorney for Plaintiff



Graff Tank

731A N. Main Street • P.O. Box 336
Hubbard, Ohio 44425-0336
(330) 534-3650 • Fax: (330) 534-3646
1-800-876-6671

Whitaker Roads
Clearfield/Woodland
Attn: Mr. Tim Olson

December 13, 2001

Gentlemen:

In response to your request for pricing for the fabrication & erection of one 24' dia. x 18' high tank per API 650 at your site in Clearfield, PA, Graff Tank offers the following:

24' dia. x 18' high Field-built Tank

Specifications:

Material: A-36 Carbon Steel, 1/4" nominal thickness for bottom, shell and roof.
Fittings: 24" shell and roof manways, 4-3" and 2-4 150# RFSO Flanged Fittings.
Standard: Tank would be built and tested to API 650 App. A&M (where applicable) with the reduced joint efficiency (.70) clause in effect.
Options: Ladder: Caged galvanized roof access ladder: included
Handrail: Two 8' wing rails: included.
Insulation Drip edge: included.
Heater Installation: approx. (heating element installation only, no hookup or commissioning)

Field Notes:

- Site access is assumed to be adequate for crane and equipment positioning.
- Ten-hour+ work days for erection and painting of steel are assumed.
- No painting is included in pricing: Primer painting for under the insulation would be in the neighborhood of
- Hydro-test by others. Also, DEP Certified Inspection by others (if applicable).
- Foundation preparation, painting, heating elements and insulation by others.
- All construction on site would be performed by experienced *non-union* personnel.

All applicable taxes would be additional to the stated pricing.

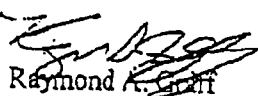
Terms: Net 30 w/ progressive payments. Pricing is valid for minimum of 30 days.

Schedule: Material ordering and engineering: 2-4 wks; fabrication: 1-2 wks; on-site erection: approx. 3-4 wks depending on weather.

If you have any questions about the above information, don't hesitate to call.

72 days Total

Sincerely,


Raymond A. Graff

Graff Tank

WR Fx: 814-857-5159

ATTN: Tim D

1 1/2" inlet 3'
4' from
Bottom

INLET/
OUTLET

HEATER
NOZZLE

INLET
VENT

TEMPERATURE
TRIP 1" CARG

3" Flange
Dist head out

Weld Pairs
Heater

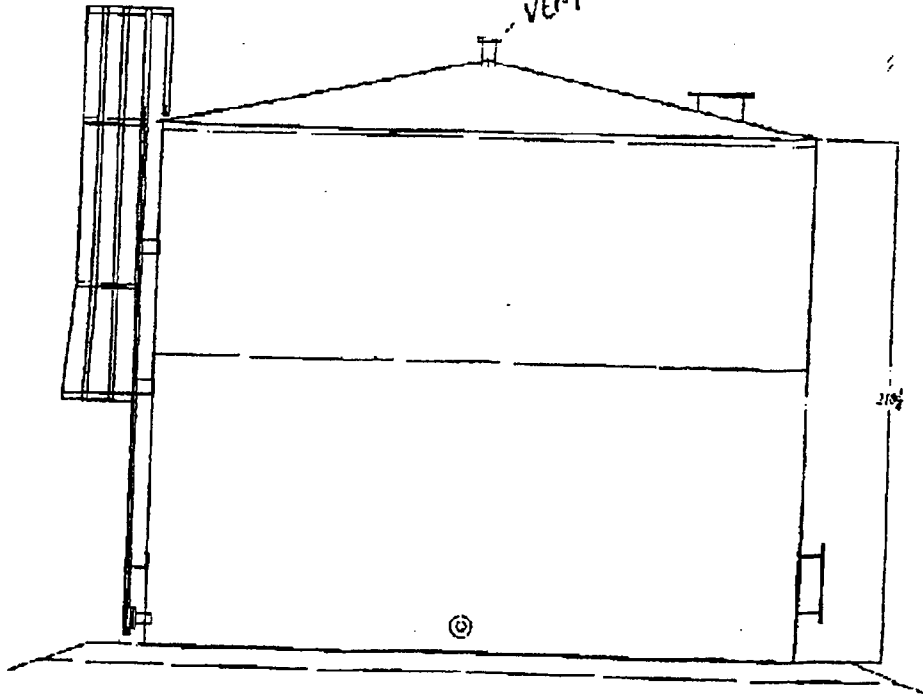
3" Stand Pipe

3/4"

Sample

Valve

3" Flange
outlet for
Dist to
head.



HRI, INC.

B14

Western Division
P.O. Box 402
Clearfield, PA 16830
(814) 857-7635
(814) 857-5159- Fax

**SUBCONTRACT AGREEMENT/
PURCHASE ORDER NO.**

01042

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

DM INDUSTRIES
326 Center Street
St. Marys, PA 15857
(814) 834-2321- Phone/Fax

Page 1

WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

SHIP
TO

DATE ORDERED 5/21/02		FOR Installation DELIVERY As Scheduled		TERMS Net 30' Days		PRICE QUOTED Richard	ORDERED FROM Same
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION	UNIT PRICE QUOTED
			LS		LS	Furnish and Install Insulation on Purchaser's New 24'Ø x 18'High Heated Tank per the attached Quotation dated May 30, 2002 <u>NOTES & QUALIFICATIONS:</u> 1. Delivery and installation to be determined. 2. DM Industries (Subcontractor) is responsible to ensure that all items are properly loaded and secured for and during transportation to the jobsite. 3. SAFETY- Subcontractor is responsible for compliance with all current HRI, Inc., and OSHA safety rules and regulations during the conduct of its performance on and in connection with this project, and shall indemnify and defend HRI, Inc. for any and all expenses incurred for fines, penalties or corrective measures imposed as a result of acts of commission or omission by Subcontractor, its agents, employees, or assigns in failure to comply with said safety rules and regulations. 4. DM Industries guarantees and warrants the above described insulation against all defects in materials and workmanship. 5. INDEMNIFICATION OF OWNER (HRI, INC.) FROM ALL LIABILITY- The Subcontractor (DM INDUSTRIES) shall have charge of and responsibility for its entire work as described herein until completion and acceptance, and shall alone be liable for and shall pay all loss or damage caused by it or its servants, agents, or employees to property, buildings or adjacent work and for any accident to persons that may occur during the performance of the work	\$18,080.00

DM INDUSTRIES

APPROVED

Robert J. Hopver
Robert J. Hopver, Mgr. of Procurement

John R. Kulka
John R. Kulka, Pres.

ACCEPTED BY:

EXHIBIT "B"

Phillip H. Diehl
Phillip H. Diehl Vice Pres

HRI, NC.

Western Division
P.O. Box 402
Clearfield, PA 16830

Page 2

SUBCONTRACT AGREEMENT/ PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

01042

ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE

DM INDUSTRIES
326 Center Street
St. Marys, PA 15857

SHIP TO
WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE ORDERED 5/21/02		FOR Installation DELIVERY As Scheduled		TERMS Net 30 Days		PRICE QUOTED Richard		ORDERED FROM Same	
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION			UNIT PRICE QUOTED
						covered by this contract or at any time there- after as a consequence of the performance of said work. The Subcontractor shall observe all state and municipality laws, ordinances and regulations and shall defend and save harmless the Owner from all suits and claims whatsoever for loss of life or injury occurring to employees of the Subcontractor who perform such work. The Subcontractor agrees to fully indemnify, protect, defend and save harmless the Owner from all liability from all claims, loss, damage, suits and actions of every kind from all costs and expenses in connection with such claims, suits and actions due to injuries to persons or damage to property whether resulting from accident, negligence or any other cause whatsoever occurring during the performance of the work covered by this contract or at any time thereafter as a consequence of the per- formance of the same or which may at any time occur or result from or be caused by such work and if there are any such claims unsettled when the work herein provided for is completed, final settlement by the Owner and Subcontractor shall be deferred until such claims are adjusted or suitable special indemnity acceptable to the Owner is provided by the Subcontractor. Subcontractor shall provide proof of insurance in accordance with the attached "HRI, INC., MINIMUM INSURANCE REQUIREMENTS". Subcontractor is subject to all provisions of the Commonwealth Nondiscrimination/Sexual Harassment Clause which is incorporated herein by reference.			

SALES TAX EXEMPT

DM INDUSTRIES

ACCEPTED BY:

APPROVED

CONFIRMING ORDER
Robert R. Hoover, Mgr. of Procurement
John R. Kulka, Pres.

Phillip H. Diehl, Vice Pres.

DM INDUSTRIES
326 CENTER ST.
ST. MARYS, PA. 15857
Phone / Fax (814) 834-2321

5/30/02

Whitaker Roads
Attn: Tim Olson

Dear Tim:

I am pleased to submit the following price quotation (labor and material) for the insulation of the 24ft. diameter by 18-foot high tank located at your facility.

Price: \$18,080.00

Contractor will install 4" fiberglass, 2 layers, 2" thick fastened with weld pins and covered with .032 aluminum sheets secured with appropriate stainless steel screws and bands. First foot on the bottom will be cellular glass to prevent wicking. Top will consist of 2" cellular glass adhered with steep asphalt and covered with 4 layers of fiberglass paper imbedded with steep asphalt, finished with a flooded topcoat of steep asphalt.

Note: A rain gutter must be installed on this tank. This would be done by the tank manufacturer.

Yours truly,

Richard L. Sadley

Quotation #2219



MEEKER EQUIPMENT CO., INC.
516 N. Broad St., PO Box 925
Lansdale, PA 19446-0661
Office: (215) 361-2900
Fax: (215) 361-1725
Email: info@meekerequipment.com

December 20, 2001

Mr. Tim Olson
Whitaker Roads Corp.
PO Box 402
Clearfield, PA 16830

Dear Tim:

We are pleased to quote on your equipment requirements as follows:

CPA-200: Combustion package to be installed into existing horizontal tank for heating asphalt.

Main Combustion Tube: 16" seamless tube with two (2) 5" secondary heat transfer tubes, and two (2) 5" x 6" jacketed stacks.

Infern-O-Therm Burner Model 200: This is a heavy duty, industrial burner designed and manufactured by Infern-O-Therm for the process industry. Standard is #2 fuel oil with 828,000 BTU per hour input, natural gas, propane and combination burners are optional. Burner is equipped with Infern-O-Therm automatic temperature control with built in high limit switch, Fireye flame control with UV flamescanner, alarm circuit with horn, and weatherproof cover with hinged door. The control box is NEMA 13. Fan motor is TEFC 1.15 S.F. IOT burners use UL approved controls.

Combustion Chamber: High temperature refractory with Cloverleaf supercharger which maintains the back pressure at approximately 6" in the forward combustion chamber. This causes a high efficiency burning process by properly mixing the super heated air with the fuel vapors in the hot atmosphere of the combustion chamber for complete combustion with cleaner exhaust and low fuel consumption.

PRICE FOB FACTORY ... \$ 14,630.00

Optional Natural Gas/Oil Combination Burner ... Add \$ 2,750.00

Branch Office:
200 E. Campus View Blvd.
Suite 200
Columbus, OH 43235
Office: (614) 717-0100
Fax: (614) 431-8294
Email: hotmixohio@aol.com

EXHIBIT "C"

#2219

Terms: Twenty-five (25%) with order
Seventy (70%) when equipment is ready to ship
Five (5%) net 30 days

FOB: All prices are quoted FOB Factory

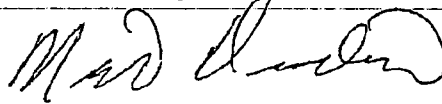
Delivery: Four (4) to six (6) weeks after receipt of order

Taxes: No state and/or local taxes or permits are included in pricing. Any taxes will be responsibility of the customer.

Thank you for the opportunity to quote you on your requirements and I look forward to your order.

Very truly yours,

MEEKER EQUIPMENT CO., INC.



Nick Diodad

Accepted by: _____

Date: _____

HRI, INC.

Western Division
P. O. BOX 402
CLEARFIELD, PA 16830
814/857-7635 Phone
814/857-5159 Fax

PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

1044

**ALL ORDERS TO BE SHIPPED PREPAID
FOR DELIVERED TO JOBSITE**

MEEKER EQUIPMENT CO., INC.

516 N. Broad Street
P. O. Box 925
Lansdale, PA 19446-0661

215/361-2900 Phone
215/361-1725 Fax

WHITAKER ROADS CORPORATION

SHIP TO Barrett Curve Emulsion Plant
Route 322
3 Mi. East of Clearfield
Clearfield, PA 16830
Phone: 814/857-7635

DATE ORDERED 5/31/02		FOR DELIVERY As Scheduled		TERMS *As Noted		PRICE QUOTED Nick Diodad	ORDERED FROM David Garrett
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION	UNIT PRICE QUOTED
			LS		LS	Furnish CPA-200 Combustion Package for New 24' Ø x 18' H Insulated Tank Per the Attached Quotation dated December 20, 2001. Seller shall Ship Prepaid and Invoice Purchaser for Freight. The above described Combustion Package shall be Guaranteed and Warranted in accordance with each respective Manufacturer's Warranty, and Seller is responsible to ensure all said Warranties are provided to Purchaser and fully honored. Purchaser has relied on Seller's expertise to establish the specifications for the subject Combustion Package; accordingly, Seller furthermore Guarantees and Warrants that all specified components - regardless of Manufacturer - will function harmoniously and efficiently for their intended purpose. All above described equipment must conform to current OSHA and UL Specifications and Require- ments. * Payment Terms: 25% With Order 60% Upon Shipment 15% Net 30 Days Following Delivery SALES TAX EXEMPT Seller is subject to all Provisions of the Commonwealth Nondiscrimination/Sexual Harass- ment Clause which is incorporated herein by reference. CONFIRMING ORDER	\$14,630.00

APPROVED

Robert E. Hoover
Robert E. Hoover, Mgr. of Procurement

John R. Kulka
John R. Kulka, President

ACCEPTED BY:

EXHIBIT "D"

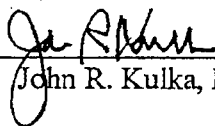
Phillip H. Hahel
Phillip H. Hahel, Vice President

VERIFICATION

I, JOHN R. KULKA, President of HRI, INC., do hereby verify that I have read the foregoing COMPLAINT. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

12.16.04
Date


John R. Kulka, President

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Answers to
Interrogatories of
Graff Defendants

Filed on Behalf of:
Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION.

CIVIL DIVISION

Plaintiffs.

No.: 04-2041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC..

Defendants.

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION.

Additional Defendants.

**PLAINTIFFS' RESPONSES TO
COMBINED FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION SUBMITTED TO THE PLAINTIFFS BY THE GRAFF DEFENDANTS**

AND NOW, comes Defendants. Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc. (hereinafter "Graff Defendants"), by and through their attorneys, Gochring, Rutter & Boehm, Thomas T. Frampton, Esquire, and Dana L. Bacs, Esquire, and pursuant to the discovery provisions of the Rules of Civil Procedure, it is hereby demanded that Plaintiffs answer the following Interrogatories separately, fully, in writing, and under oath, within thirty (30) days of the service hereof and that all items requested to be produced for copying and inspection within thirty (30) days from the date of service hereof. If Plaintiffs file objections to any of the Interrogatories propounded herein, it is demanded that the Interrogatories not objected to be answered within the aforesaid period. It is further demanded that Plaintiffs reasonably supplement Answers to these Interrogatories to include information

acquired subsequent to the date of these Answers, as provided by Pennsylvania Rules of Civil Procedure 4007.4.

When used herein, the word "Plaintiff" and the word "you" shall be deemed synonymous and shall be deemed to include any and all appropriate agents, servants, employees, attorneys and other representatives of Plaintiff.

Additional copies of these Interrogatories have been served for use in answering them. Please answer the Interrogatories in the appropriate space. If Plaintiffs require more space for Answers, please annex extra pages.

A. "Identify" as applied to a person means to state the following:

1. Full name;
2. Title, if any;
3. Present home address;
4. Present business address; and
5. Person, if any, for whom the person identified was acting at the time to which the Interrogatory relates;

B. "Identify" as applied to any writing means to state the following:

1. Its date;
2. Identity of its author(s);
3. Identity of its sender(s);
4. Identity of person(s) to whom addressed;
5. Identity of recipient;
6. Format;
7. Title;
8. Number of pages;
9. Complete summary of contents; and
10. Identity of person(s) known or believed to have possession, custody or access to the writing. If the writing is produced, Nos. 8,9, and 10 above need not be included in the answer to the Interrogatory requiring identification.

C. "Identify" as applied to an oral statement, conversation or conference means to:

1. Identify the person making each statement, the person to whom each statement was made, and all other persons present at the time of each statement;

2. State the date of such statement, conversation or conference;
 3. State the place where such statement, conversation or conference was held;
 4. If by telephone; identify the person participating in the telephone call. the person making the call, and the places where the person participating in the all were located; and
 5. Describe the substance of each statement, conversation or conference.
- D. "Person" means any individual, firm, association, partnership, corporation, trustee or other entity and also, where relevant, the persons representing or acting for such "person."
- E. "State" or "describe" means to set forth every fact relevant to the answer of the Interrogatory and to set forth each such fact fully and unambiguously.
- F. "Plaintiff" means Plaintiff, Plaintiff's representatives, or attorneys.
- G. "Communication" or "communications" as used herein includes, without limitation, writings and printed matter of every and description, and oral statements, conversations, discussions and conferences.
- H. "Document" or "documents" as used herein includes, without limitation, writings, drawings, graphs, charts, photographs, phono-records and any other compilations of data from which information can be obtained, translated, if necessary, into readily usable form, letters, memoranda, notes and statements.

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. List the names, job titles and current employment status with Whitaker Roads Corporation of individuals who were employed by Whitaker Roads Corporation at its Route 322 East, Clearfield, Pennsylvania, facility on August 13, 2004.

ANSWER:

Tim Olsen, Area Manager
Walt Shimmel, Plant Superintendent
Shawn McFarland, Lab Tech/Mill Operator
Lynn Smith, Mill Operator/Laborer

2. Of the individuals listed in Response to Interrogatory 1 indicate the individuals who had the authority to discharge emulsions, asphalt and road oils from the tanks on the Whitaker Roads' site located on Route 322 East, Clearfield, Pennsylvania.

ANSWER:

Walt Shimmel

3. Were individuals other than Whitaker Roads' employees listed in response to Interrogatory 1 (including independent contractors) working at the Whitaker Roads' site at issue on August 13, 2004?

ANSWER:

Yes

4. If the Response to Interrogatory 3 is affirmative, please identify the individual(s), the name of that individuals' employer and business address.

ANSWER:

Lester Whitmire
Winters & Fleming
Butler, PA

5. On August 13, 2004, were there operating procedures in place for the operation of the tanks on the Whitaker Roads' facility at issue?

- a.) If answered in the affirmative, were those operating procedures oral or written.
- b.) If oral, please set forth in detail those operating procedure.
- c.) If written, please provide a complete copy of those operating procedures.

ANSWER:

Please see attached sheet.

#5. - On August 13th, 2004, were there operating procedures in place for the operation of the tanks on the Whitaker Roads' facility at issue?

Answer: Yes

- a.) If answered in the affirmative, were those operating procedures oral or written?
- b.) If oral, please set forth in detail those operation procedures.
- c.) If written, please provide a complete copy of those operating procedures.

Answer: (a) Oral

(b) *Loading from a Tank into a Truck:*

First identify the product and how much is to be loaded. Pull the truck onto the scale and get the lightweight of the truck. Block the wheels and attach the grounding cable to the truck, then open dome lid on the truck and put the loading pipe into the tank. Check all of the valves from the tank to be loaded out of to the pump, making sure they are in the right positions. Open the valve on the tank and turn on pump, filling tanker with the needed gallons by watching the read-out on the scale. After the tanker is loaded, shut off the pump, pull the load pipe up out of the oil, and reverse the pump, pushing the unwanted oil back into the tank. Close the valve at the tank and turn off pump. Close dome-lid on tanker and get the final weight on the tanker. Print the final ticket, remove wheel blockers, and unlock grounding cable. The truck can then be on its way.

Unloading a Tanker back into a Tank:

Park the tanker at the pump location. Before removing cap from the tanker, unload the outlet, and check to make sure valve is closed. Remove the cap and hook up the pump hose, making sure the camlock fitting on the hose is locked down. Open the dome-lid on the tanker, set valves in the right positions from the pump to the tank you want to unload into. Open the valve on the tanker and start pump. When the tank is empty, close the valve on the tanker. Unlock the camlocks on the unload hose so the pump can suck air into the line and push the oil back into the tank clearing the line. After the line is cleared, remove the hose from the tanker, close the tank valve, and shut off the pump. Close the dome-lid on the tanker and put the cap back on the tanker. Unload outlet, and the truck can then be on its way.

Milling into a Tank:

Set valves from the mill to the tank in the right positions. Open valve on the product tanks you need to use to mill the product you want to make. Open valve on the tank you want to mill into. Start mill run product watching the run ratio. Chart when done milling the desired amount. Shut off products feeding the mill, and run three gallons of fuel through the mill to flush the line from the mill to the tank. Shut off the valve on the tank you were milling into. Shut off mill, and close all product tank valves you were using to make the emulsion.

Circulation of Product in a Tank:

Set all valves from the tank to the pump in the right positions. Open valves on the tank and turn on pump. Circulate the product for however long you need to. Reverse pump for a few minutes. Close valve on the tank and turn off pump.

Blending MC into a Tank:

Set all valves in the right positions from the AC and fuel meters to the tank you want to blend into. Open the valve on the AC tank and the fuel tank. Open the valve on the tank you want to blend into. Turn on the circulation pump. Turn on the fuel pump, and then turn on the AC pump, watching the run ratio. Chart blend of MC oil. When done blending the amount of oil needed, shut off the AC-pump, and let the fuel pump run an extra five gallons of fuel through the line to flush the line out. Turn off the fuel pump, close the tank valve and shut off the circulation pump. Close the AC-tank valve and the fuel tank valve.

6. Please identify all the tanks located at Whitaker Roads' site at issue on August 13, 2004, by fabricator's date of completion and use and produce a copy of the specifications, job proposals, and purchase orders for each tank and component parts thereof.

ANSWER:

Please see attached sheet.

7. What specific operations were being performed within/around the tank in question at the time of and two hours before the explosion, and by whom?

- a.) Provide the requested operations in chronological order identifying by time when those operations were being done in reference to the time of the explosion.

ANSWER:

An HRI employed distributor/operator unloaded MC-70 from Tank #19 from 3" unload valve into distribution truck #28-14 around 6:00 a.m. Crossett Tanker #323 was parked by Tank #19 to be unloaded. Tanker had E-3M Emulsion.

8. Was anyone working on or near the nearby tanker truck at the time of the explosion?

- a.) If answered in the affirmative, identify the individual working on said tanker truck.

ANSWER:

No

Response to Interrogatory No 6

6. HRI is unaware of the origin, history or manufacture of all tanks located on the premises as of August 13, 2004. The following tanks were installed during the time period was the owner of the facility:

Tank #9 was constructed in 2002 by Graff Tank

Tank #19 (MC 70 tank which is the subject of this action) was constructed in 2003 by Graff Tank

Tank #8 was constructed in 2004 by Graff Tank

Specifications, proposals and purchase orders for Tank #19 will be provided herewith.

9. Was this tanker truck being loaded, or had it been previously loaded?

a.) If so, when and with what material?

ANSWER:

Yes, it was previously loaded with E-3M Emulsion.

10. Was the tank heater operating at the time of the explosion?

a.) If answered affirmatively, for how long prior to the explosion had it been operating?

ANSWER:

Yes. The times of operation are unknown. Based on representatives, it is believed the tank was in operation for 2.6 hours on August 13, 2004.

11. If the tank heater was not operating at the time of the explosion, who turned it off and how long had it been turned off?

ANSWER:

N/A

12. Were there any anomalies associated with the operation of the tank and/or heater at issue prior to the explosion?

ANSWER:

No

13. Were any adjustments/modifications made to the tank or heater after their initial installation?

ANSWER:

No

14. Were the contents of the tank being recirculated (i.e., discharged from the tank and subsequently re-admitted?

ANSWER:

No

15. Were any other operations performed that would cause some of the contents of the tank not to be stagnant?

a.) If answered in the affirmative, please identify.

ANSWER:

No

16. What was the level and temperature of the tank contents at the time of the explosion?

ANSWER:

The tank contained approximately 3,000 (approximately 14") gallons at the time of the explosion. The temperature was set at 170°, however, the actual temperature of the tank contents is unknown because of the defects in the placement of the temperature sensor as set forth in the Complaint.

17. How much of the contents, if any, was removed from the tank after the explosion?

ANSWER:

None

18. Were any samples taken of any contents removed?

- a.) If samples were removed were the samples tested after the explosion?
- b.) If answered in the affirmative, please provide copies of all test results.

ANSWER:

No

19. Were any of the contents leaking from the tank before or after the explosion?

- a.) If answered in the affirmative, identify from what part of the tank the leaks were located.

ANSWER:

No

20. What parameters of the tank and its contents are monitored (e.g., level, temperature, etc.), and how frequently?

- a.) Is this done manually or automatically.
- b.) What are the respective operating ranges for these parameters?
- c.) How are the plant operators made aware if these parameters go beyond their respective acceptable limits.
- d.) What are the associated procedures if this occurs?
- e.) What were the values of these parameters leading up to the explosion.

ANSWER:

Please see attached sheet.

21. What was the set-point(s) of the tank heater temperature sensor (i.e., at what tank content temperature would the heater be secured?

ANSWER:

Set points would be 180° - 190°.

22. Who was responsible for the proper location and orientation of the heating tube?

ANSWER:

Graff Tank/Graff Tank, Inc. and/or their principals, agents and employees

#20. What parameter of the tank and its contents are monitored (e.g., level, temperature, etc.), and how frequently?

Answer: *Temperature and Level are checked daily. Condition of the tanks and piping are checked daily, also. Temperature and tank level, tank and piping are checked manually each day. The tanks also have a high level light which comes on if the tank gets too full.*

(a) Is this done manually or automatically?

Manually

(b) What are the respective operating ranges for these parameters?

Temperature on the MC Oil can be between 120° and 180°

Tank level not to exceed 16' 7" on MC tank #19

(c) How are the plant operators made aware if these parameters go beyond their respective acceptable limits?

They manually check the tanks' temperature and tank levels through out the day.

(d) What are the associated procedures if this occurs?

If the temperature on the oil becomes too high, turn off the heater and let the oil cool down. Then determine why the temperature of the oil got too high.

(e) What were the values of these parameters leading up to the explosion?

Temperature was around 170°

The level of the oil in the tank was around 12" or 3,000 gallons

23. Who was responsible for the selection of the location of the tank instrumentation, fill and discharge line connections?

ANSWER:

Graff Tank/Graff Tank, Inc. and/or their principals, agents, and employees

24. Who purchased this ancillary equipment/instrumentation?

ANSWER: Meeker Equipment provided the temperature sensor as part of the combustion package. Walter Shimmel purchased the high level indicator.

25. Who had the overall responsibility of constructing the completed tank with all of its components and commissioning it?

ANSWER:

Please see attached sheet.

26. Were any contents stored/added to the tank other than the MC-70 mix noted in HRI's report?

ANSWER:

No

27. What type of fuel was used by the tank heater?

ANSWER:

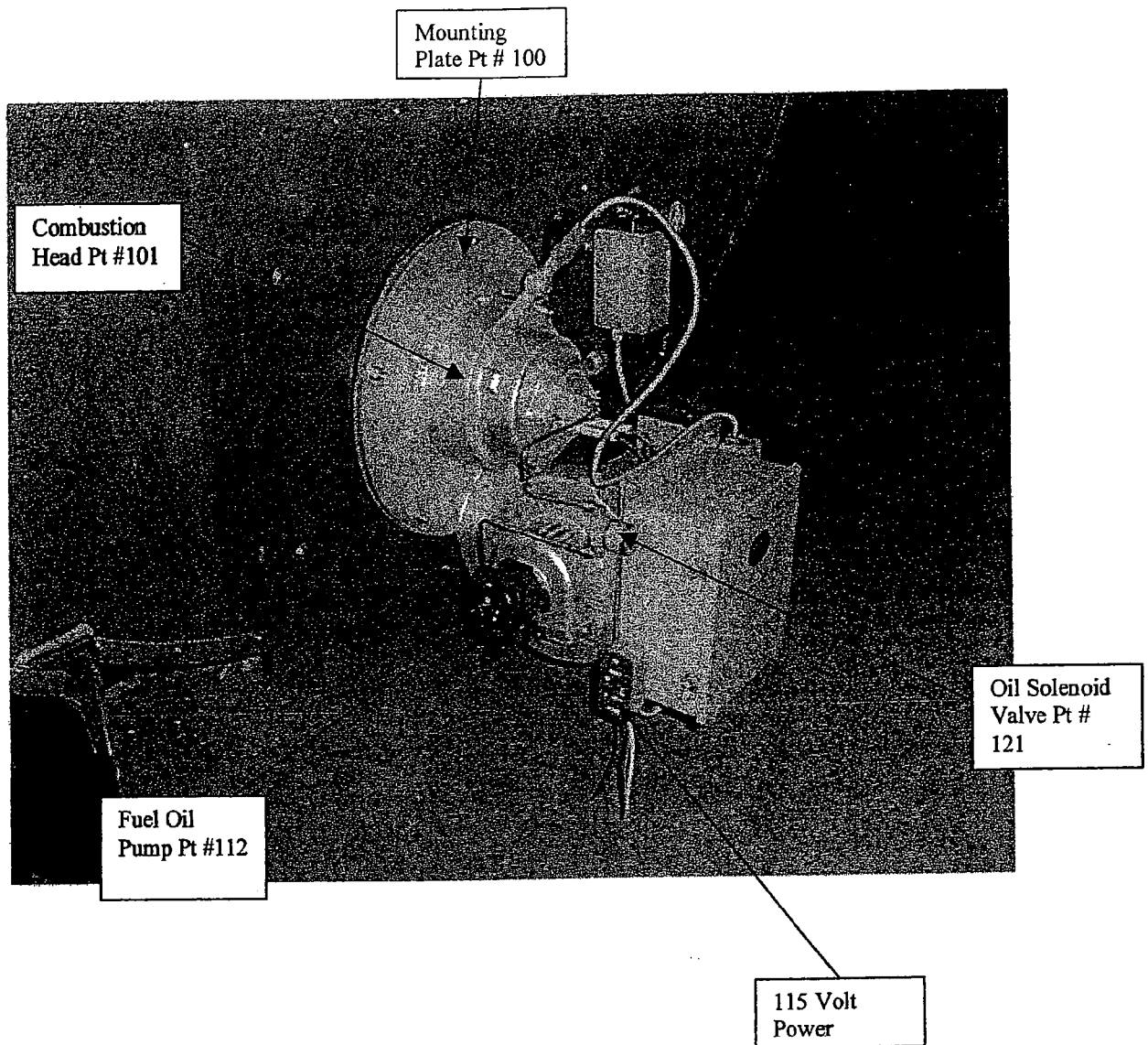
#2 Off Road Heating Fuel

Response to Interrogatory No. 25

25. Graff Tank, Inc. and related Defendants had the responsibility for constructing the completed tank and locating the various components and installing, but not connecting, the combustion package.

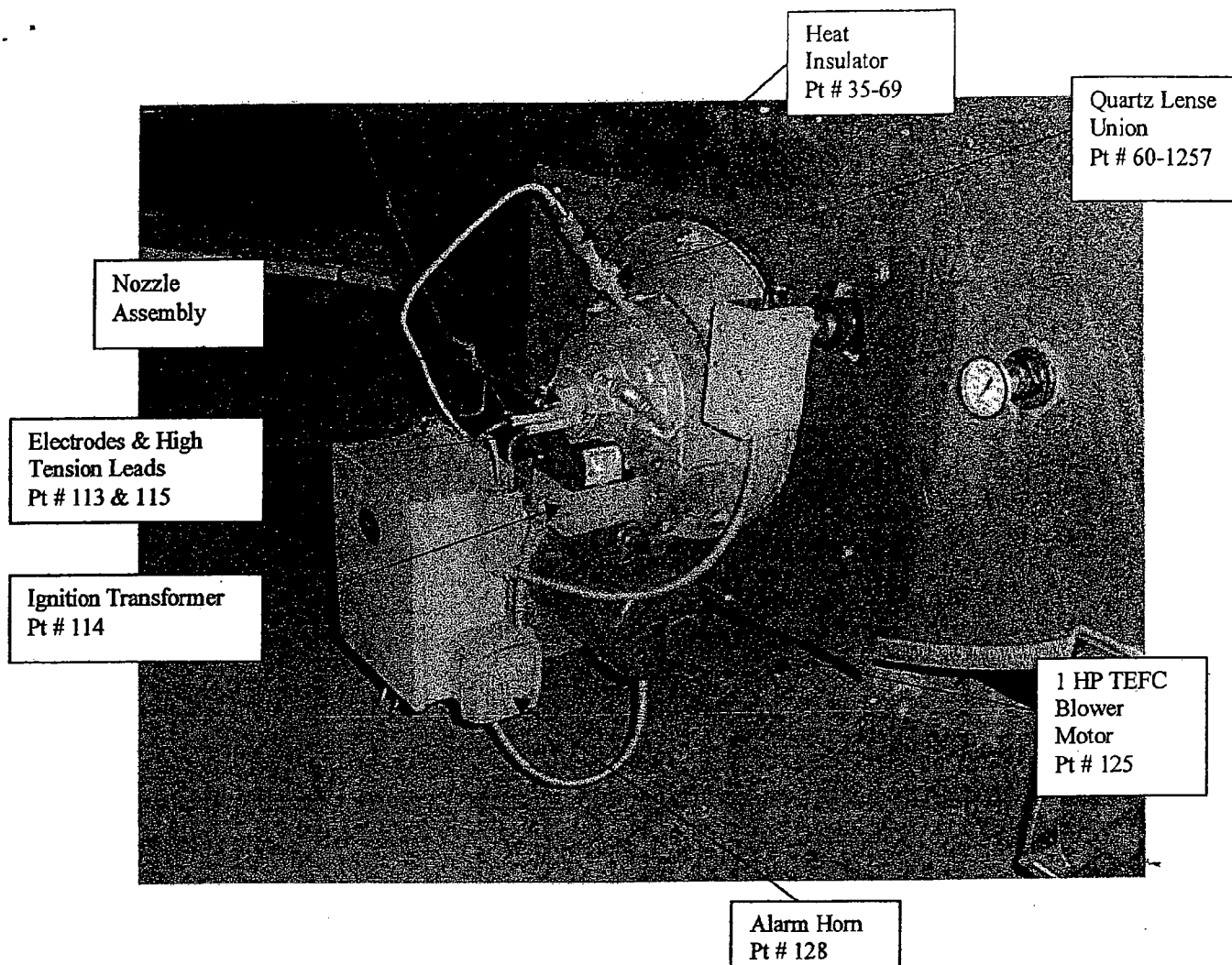
Meeker Equipment, Inc. had the responsibility to provide a suitable combustion package. DM Industries had the responsibility to install insulation.

DuFour, Inc. was responsible for connection and start up of the combustion.

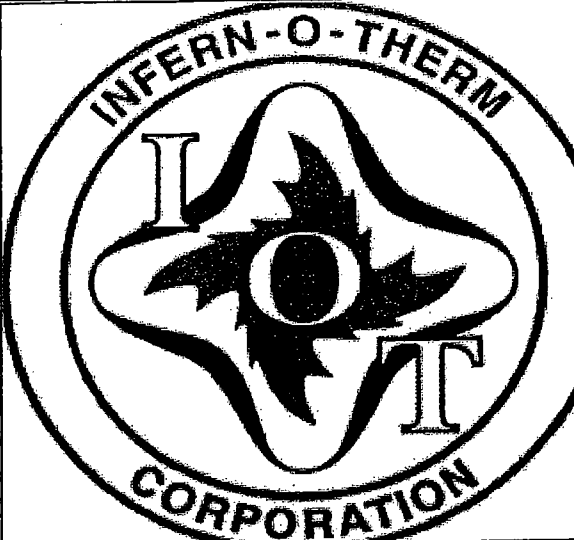


48/13-200 Oil Fired Burner

mesker - 215-361-2900



48/13-200 Oil fired Burner

8/20/98	BURNER PARTS 48/13 THROUGH 200						
	BURNER SIZE	CODE	NOZZLE RATING				
	48/13	A	2.25				
	48/100	AB	3.00				
	150	B	4.50				
	200	C	6.00				
99	Burner ring						
100	Mounting plate						
100-G	Gas base, includes poured refractory						
100-A	Burner mounting MTG bolts, 1/2" X 2" (set of 5)						
100-B	Burner mountin nuts MTG 1/2" (set of 5)						
100-C	Burner mounting washers MTG (set of 10)						
	COMBUSTION HEADS & PARTS						
101	Combustion head only						
101-A	Combustion head complete						
130	Nozzle orifice brick						
101-AA	Combustion head studs (set of 3)						
101-B	Combustion head stud nuts, 3/8" (set of 3)						
101-C	Combustion head Gasket						
101-D	Combustion head sight glass						
101-E	Combustion head sight glass gasket						
101-F	Combustion head sight glass rim						
101-G	Combustion head sight glass screws (set of 2)						
	FAN HOUSING & PARTS						
102	Fan housing						
102-A	Fan housing mounting studs 3/8" MTG (set of 2)						
102-B	Fan housing mounting nuts 3/8" MTG (set of 2)						
102-C	Fan housing mounting washers MTG (set of 2)						
126	Air intake screen						
102-D	3/8" spacer block						
104	Throat						
104-A	Throat bolt, 5/16"						
104-B	Throat bolt nut, 5/16" XX						
104-C	Throat bolt lockwasher						
103	Motor mounting plate						
103-A	Motor mountin plate screws 1/4 X 20 (set of four)						
103-B	Motor mounting bolts, 3/8" (set of 4)						
	BURNER MOUNTING GASKET						
105	Burner gasket						
	SCANNER PARTS						
106	Scaner nipple, 1/2" X 3"						
106-A	Scaner nipple, 1/2" X 2"						

END PAGE #1

8/20/98				
	NOZZLE ASSEMBLY & PARTS			
111	Nozzle assembly complete, #2 fuel oil			
111-A	Nozzle assembly gasket			
111-B	Nozzle assembly screws, 1/4" X 20 (set of 2)			
111-G	Nozzle assembly complete (Natural gas)			
112	Nozzle mounting plate			
112-A	Nozzle mounting plate electrode clamp			
112-B	Nozzle mounting plate electrode clamp screw			
112-C	Nozzle tube set screw			
116	Nozzle tube 1/8" X 4" brass			
116-A	Nozzle tube angle adapter, 1/8" female X 1/4" flare			
117	Nozzle adapter			
118	Nozzle (according to burner model)			
145	Nozzle assembly wing nuts (two required)			
	IGNITION PARTS			
113	Electrodes (set of 2)			
114	Ignition transformer (12,000 volts)			
115	High tension leads (set of two)			
	FUEL OIL PUMP & OIL SYSTEM PARTS			
119	Copper fuel line, with flare nuts (solenoid valve to nozzle assembly)			
120	Copper fuel line, with flare nuts (fuel pump to solenoid valve)			
121	Solenoid oil valve			
121-A	Elbow 90 dg., 1/4" flare X 1/8" male			
121-B	1/8" female X male adapter			
141	Pump screen			
136	Fusible valve (flare both ends)			
122	Fuel oil pump			
122-A	Elbow 90 dg., 3/8" female X 1/2" male			
122-B	Fuel oil pump mounting screws			
	PUMP COUPLING			
123	Pump to fan coupling			
	FAN			
124	Fan			
	MOTORS			
125	Motor, 1 HP, 1 PH, 60 HZ, 3450 RPM			
125-A	Motor, 1/3 HP, 1 PH, 60 HZ, 3450 RPM			
125-B	Motor, 1/8 HP, 1 PH, 60 HZ, 3450 RPM			
	BURNER COVER, BACK PLATES & PARTS			
135	Back plate			
135-A	Back plate brackets, (set of 4)			
135-B	Back plate cap screws, (set of 4)			
135-C	Back plate flat washers, (set of 4)			
137	Burner cover			

8/20/98	MOTOR STARTERS, RELAYS & CAD CELLS			
138	Motor starter			
138-A	Motor starter contactor			
139	Control panel (less relay)			
140	Relay, burner motor			
142	Cad cell			
	TEMPERATURE CONTROL			
131	F2C-1078 I-O-T temperatur controler			
131-A	Thermowell for F2C			
	FIREYE CONTROLS			
	MODEL #48/100, #150, #200 GAS OR OIL			
1	MEC-120* - Chassis (comp. w/programmer, amplifire & set-up			
2	MEC-120* - Chassis bare			
3	MEP-230-H programmer			
4	MAUVI-U.V. amplifier			
5				
6	FIREYE UV-1A-3 flame scanner			
7				
8	61-3060 wiring base			
9	60-1257 Quartz lense union			
10	35-69 heat insulator			
11	92-45 Quartz window			
12	124-14 (O) ring			
13	30-187 bushing for Quartz lenz			
	ELECTRICAL PARTS			
127 A	Burner toggle switch			
128	Alarm horn			
	COMBUSTION CHAMBERS			
510	48\13 (10") Combustion chamber (complete)			
511	48\13 (10") Combustion chamber (liner) each			
512	48/13 (10") Combustion chamber (cloverleaf)			
510-A	48\100 (12") Combustion chamber (complete)			
511-A	48\100 (12") Combustion chamber (liner) each			
512-A	48\100 (12") Combustion chamber (cloverleaf)			
510-B	150 (14") Combustion chamber (complete)			
511-B	150 (14") Combustion chamber (liner) each			
512-B	150 (14") Combustion chamber (cloverleaf)			
510-C	200 (16") Combustion chamber (complete)			
511-C	200 (16") Combustion chamber (liner) each			
512-C	200 (16") Combustion chamber (cloverleaf)			

Becke t

inst. To Informer

Port # 746009

wires

white to white

Blue to yellow

ELECTRICAL CIRCUITS AND TROUBLE SHOOTING

SERVICE PROCEDURE	PROBLEM	CAUSE
1) check power at fuse box	No Power	Blown fuse
2) Check power at terminal block.	No power at terminal block, (black and white terminals.) No power at terminal block, (white and red terminals.)	Open wire inline or loose connection or defective switch. Operating control relay will not pull in loose connection in 2"x4" junction box at temp. control or open wire in control circuit.
3) Check power at motor.	No power at motor.	Open wire at burner motor or defective motor.
4) Check power at solenoid valve.	No power at solenoid valve	Open wire at terminal block #3 from fireeye control or defective solenoid valve.
5) Check spark from transformer (remove both wires from electrodes and keep a gap.	No spark at transformer.	Open wire from terminal #4 (yellow) at fireeye control or defective transformer.
6) Check fuel supply, (Make sure there is fuel by opening bleeder on side of fuel pump).	No fuel supply.	Clogged fuel oil line or filter or fuel pump screen as a result of dirty oil.
7) Check electrode setting and nozzle	No spark or ignition	Electrodes and nozzle setting may be off or parts may be dirty
8) Recheck Current from transformer.	No sufficient spark at transformer.	Transformer may be weak and spark may be blown away from electrodes.
9) Recheck fireye controls	Fireye control can't see ultra-violet and relay will not hold in.	Quartz lense may be dirty, or improper oil pressure, or open wire to flame scanner or defective fireeye control, or defective scanner, or defective quartz lense.
10) Check voltage to flame scanner (connect DC volt meter to test jacks set on 25 volt DC scale. Initiate a normal start-up. When flame is established, test meter should read 4 volts DC. It is normal for the meter to fluctuate, if the meter bends backwards, reverse the leads.	Voltage may be incorrect.	
11) Recheck controls.	Firing rate off.	electrode setting off.

meaker Equipment

Bob or Nick

215-361-2900



HRI, INC.

D. Fee

Western Division
P.O. Box 402
Clearfield, PA 16830
(814) 857-7635
(814) 857-5159- Fax

SUBCONTRACT AGREEMENT/ PURCHASE ORDER NO.	
THIS NUMBER MUST APPEAR ON PACKING SLIP AND INVOICE	01043
ALL ORDERS TO BE SHIPPED PREPAID FOR DELIVERED TO JOBSITE	

TO
GRAFF TANK
731 A N. Main Street
P.O. Box 336
Hubbard, OH 44425
(800) 876-6671
(330) 534-3660
(330) 534-3646- Fax

SHIP TO
WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE ORDERED 5/21/02			FOR DELIVERY As Scheduled			TERMS As Specified		PRICE QUOTED Raymond		ORDERED FROM Same	
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION					UNIT PRICE QUOTED
			LS		LS	Furnish and Erect one (1) 24' Dia. x 18' High Field-Built Tank per the Following: Material: A36 Carbon Steel, 1/4" Nom. Thickness for Bottom, Shell and Roof Fittings: 24" Shell and Roof Manways, 4-3" and 204" 150# RFSO Flanged Fittings Standard: Tank to be Built and Tested to API 650 App. AGM (where applicable) with the Reduced Joint Efficiency (.70) Clause in effect <u>OPTIONS:</u> Ladder: Caged Galvanized Roof Ladder Handrail: Two (2) 8" Wing Rails Insulation Drip Edge: Included					\$54,498.00
			LS		LS	Heater Installation (heating element installation only, no hookup or commissioning)					750.00
			LS		LS	Primer Painting for under the Insulation * NOT TO EXCEED PRICE					4,000.00
						TOTAL					\$59,248.00
						Adequate site access for crane and equipment positioning must be provided.					
						Ten hour + work days for erection and painting of steel are included.					
						Hydro-test by others. Also, DEP certified inspection by others (if applicable).					
						Foundation preparation, painting (other than primer noted above), heating elements and insulation by others.					

GRAFF TANK
ACCEPTED BY: _____

APPROVED
Robert K. Hoover, Mgr. of Procurement
John R. Kulka, President
William H. Diehl Vice Pres.

HRI, INC.

Western Division
P.O. Box 402
Clearfield, PA 16830

SUBCONTRACT AGREEMENT/
PURCHASE ORDER NO. 01043

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE

Page 2

TO GRAFF TANK
731 A N. Main Street
Hubbard, OH 44425

SHIP TO WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE ORDERED 5/21/02			FOR DELIVERY As Scheduled			TERMS As Specified	PRICE QUOTED Raymond	ORDERED FROM Same
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION		UNIT PRICE QUOTED
						All construction onsite will be performed by experienced non-union personnel. <u>SCHEDULE:</u> Material ordering and engineering: 2-4 weeks Fabrication: 1-2 weeks On-site erection: approx. 3-4 weeks, depending on weather <u>NOTES & QUALIFICATIONS:</u> 1. Payment terms: 35% upon delivery of material. Balance Net 30 Days following completion. 2. Graff Tank (Subcontractor) is responsible to ensure that all items furnished are properly loaded and secured for and during transportation to the jobsite. 3. SAFETY- Subcontractor is responsible for compliance with all current HRI, Inc., and OSHA safety rules and regulations during the conduct of its performance on and in connection with this project, and shall indemnify and defend HRI, Inc. for any and all expenses incurred for fines, penalties, or corrective measures imposed as a result of acts of commission or omission by Subcontractor, its agents, employees, or assigns in failure to comply with said safety rules and regulations. 4. Graff Tank guarantees and warrants the above described tank and appurtenances against all defects in materials and workmanship.		

GRAFF TANK

ACCEPTED BY:

APPROVED

Robert R. Hoover
Robert R. Hoover, Mgr. of Procurement

John R. Kulka
John R. Kulka, Pres.

Phillip H. Diehl, Vice Pres.

HRI, INC.

Western Division
P.O. Box 402
Clearfield, PA 16830

SUBCONTRACT AGREEMENT/ PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

01043

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

Page 3

TO

GRAFF TANK
731 A N. Main Street
P.O. Box 336
Hubbard, OH 44425

SHIP
TO

WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE ORDERED 5/21/02		FOR DELIVERY As Scheduled		TERMS As Specified		PRICE QUOTED Raymond		ORDERED FROM Same	
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION		UNIT PRICE QUOTED	
						5. INDEMNIFICATION OF OWNER (HRI, INC.) FROM ALL LIABILITY- The Subcontractor (Graff Tank) shall have charge of and responsibility for its entire work as described herein until completion and acceptance, and shall alone be liable for and shall pay all loss or damage caused by it or its servants, agents or employees to property, buildings or adjacent work and for any accident to persons that may occur during the performance of the work covered by this contract or at any time thereafter as a consequence of the performance of said work. The Subcontractor shall observe all state and municipality laws, ordinances and regulations and shall defend and save harmless the Owner from all suits and claims whatsoever for loss of life or injury occurring to employees of the Subcontractor who performs such work. The Subcontractor agrees to fully indemnify, protect, defend and save harmless the Owner from all liability from all claims, loss, damage, suits and actions of every kind from all costs and expenses in connection with such claims, suits and actions due to injuries to persons or damage to property whether resulting from accident, negligence or any other cause whatsoever occurring during the performance of the work covered by this contract or at any time thereafter as a consequence of the performance of the same or which may at any time occur or result from or be caused by such work and if there are any such claims unsettled when the work herein provided for is completed, final settlement by Owner and Subcontractor shall be deferred until such claims are adjusted or suitable special indemnity acceptable to the			

GRAFF TANK

ACCEPTED BY:

APPROVED

Robert R. Hoover, Mgr. of Procurement

John R. Kulka, Pres.

Phillip H. Diehl, Vice Pres.

HRI, INC.

Western Division
P.O. Box 402
Clearfield, PA 16830

Page 4

SUBCONTRACT AGREEMENT/
PURCHASE ORDER NO.

01043

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

TO

GRAFF TANK
731 A N. Main Street
P.O. Box 336
Hubbard, OH 44425

SHIP
TO

WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE ORDERED 5/21/02		FOR DELIVERY As Scheduled		TERMS As Specified		PRICE QUOTED Raymond		ORDERED FROM Same	
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION		UNIT PRICE QUOTED	
						Owner is provided by the Subcontractor.			
						Subcontractor must provide proof of insurance in accordance with the attached "HRI, INC., MINIMUM INSURANCE REQUIREMENTS".			
						Subcontractor is subject to all provisions of the Commonwealth Nondiscrimination/Sexual Harassment Clause which is incorporated herein by reference.			
						SALES TAX EXEMPT			
						CONFIRMING ORDER			

Robert R. Hoover
Robert R. Hoover, Mgr. of Procurement

HRI, INC. *D. Free*

Western Division
P. O. BOX 402
CLEARFIELD, PA 16830
814/857-7635 Phone
814/857-5159 Fax

PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

1044

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

TO MEEKER EQUIPMENT CO., INC.
516 N. Broad Street
P. O. Box 925
Lansdale, PA 19446-0661

215/361-2900 Phone
215/361-1725 Fax

SHIP TO WHITAKER ROADS CORPORATION
Barrett Curve Emulsion Plant
Route 322
3 Mi. East of Clearfield
Clearfield, PA 16830
Phone: 814/857-7635

DATE ORDERED 5/31/02		FOR DELIVERY As Scheduled		TERMS *As Noted		PRICE QUOTED Nick Diodad	ORDERED FROM David Garrett
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION	UNIT PRICE QUOTED
			LS		LS	Furnish CPA-200 Combustion Package for New 24' Ø x 18' H Insulated Tank Per the Attached Quotation dated December 20, 2001. Seller shall Ship Prepaid and Invoice Purchaser for Freight. The above described Combustion Package shall be Guaranteed and Warranted in accordance with each respective Manufacturer's Warranty, and Seller is responsible to ensure all said Warranties are provided to Purchaser and fully honored. Purchaser has relied on Seller's expertise to establish the specifications for the subject Combustion Package; accordingly, Seller furthermore Guarantees and Warrants that all specified components - regardless of Manufacturer - will function harmoniously and efficiently for their intended purpose. All above described equipment must conform to current OSHA and UL Specifications and Require- ments. * Payment Terms: 25% With Order 60% Upon Shipment 15% Net 30 Days Following Delivery SALES TAX EXEMPT Seller is subject to all Provisions of the Commonwealth Nondiscrimination/Sexual Harass- ment Clause which is incorporated herein by reference. CONFIRMING ORDER	\$14,630.00

APPROVED

Robert K. Hoover
Robert K. Hoover, Mgr. of Procurement

President

Quotation #2219



MEEKER EQUIPMENT CO., INC.
516 N. Broad St., PO Box 925
Lansdale, PA 19446-0661
Office: (215) 361-2900
Fax: (215) 361-1725
Email: info@meekerequipment.com

December 20, 2001

Mr. Tim Olson
Whitaker Roads Corp.
PO Box 402
Clearfield, PA 16830

Dear Tim:

We are pleased to quote on your equipment requirements as follows:

CPA-200: Combustion package to be installed into existing horizontal tank for heating asphalt.

Main Combustion Tube: 16" seamless tube with two (2) 5" secondary heat transfer tubes, and two (2) 5" x 6" jacketed stacks.

Infern-O-Therm Burner Model 200: This is a heavy duty, industrial burner designed and manufactured by Infern-O-Therm for the process industry. Standard is #2 fuel oil with 828,000 BTU per hour input, natural gas, propane and combination burners are optional. Burner is equipped with Infern-O-Therm automatic temperature control with built in high limit switch, Fireye flame control with UV flamescanner, alarm circuit with horn, and weatherproof cover with hinged door. The control box is NEMA 13. Fan motor is TEFC 1.15 S.F. IOT burners use UL approved controls.

Combustion Chamber: High temperature refractory with Cloverleaf supercharger which maintains the back pressure at approximately 6" in the forward combustion chamber. This causes a high efficiency burning process by properly mixing the super heated air with the fuel vapors in the hot atmosphere of the combustion chamber for complete combustion with cleaner exhaust and low fuel consumption.

PRICE FOB FACTORY ... \$ 14,630.00

Optional Natural Gas/Oil Combination Burner ... Add \$ 2,750.00

Branch Office:
200 E. Campus View Blvd.
Suite 200
Columbus, OH 43235
Office: (614) 717-0100
Fax: (614) 431-8294
Email: hotmixohio@aol.com

#2219

Terms: Twenty-five (25%) with order
Seventy (70%) when equipment is ready to ship
Five (5%) net 30 days

FOB: All prices are quoted FOB Factory

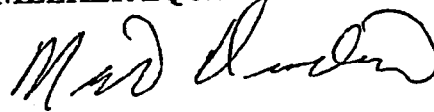
Delivery: Four (4) to six (6) weeks after receipt of order

Taxes: No state and/or local taxes or permits are included in pricing. Any taxes will be responsibility of the customer.

Thank you for the opportunity to quote you on your requirements and I look forward to your order.

Very truly yours,

MEEKER EQUIPMENT CO., INC.



Nick Diodad

Accepted by: _____

Date: _____

HRI, INC. *D. Free*

Western Division
P.O. Box 402
Clearfield, PA 16830
(814) 857-7635
(814) 857-5159- Fax

SUBCONTRACT AGREEMENT/ PURCHASE ORDER NO.

01042

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

DM INDUSTRIES
326 Center Street
TO St. Marys, PA 15857
(814) 834-2321- Phone/Fax

Page 1

SHIP TO WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE ORDERED 5/21/02		FOR Installation DELIVERY As Scheduled		TERMS Net 30 Days		PRICE QUOTED Richard	ORDERED FROM Same
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION	UNIT PRICE QUOTED
			LS		LS	Furnish and Install Insulation on Purchaser's New 24'Ø x 18'High Heated Tank per the attached Quotation dated May 30, 2002 <u>NOTES & QUALIFICATIONS:</u> 1. Delivery and installation to be determined. 2. DM Industries (Subcontractor) is responsible to ensure that all items are properly loaded and secured for and during transportation to the jobsite. 3. SAFETY- Subcontractor is responsible for compliance with all current HRI, Inc., and OSHA safety rules and regulations during the conduct of its performance on and in connection with this project, and shall indemnify and defend HRI, Inc. for any and all expenses incurred for fines, penalties or corrective measures imposed as a result of acts of commission or omission by Subcontractor, its agents, employees, or assigns in failure to comply with said safety rules and regulations. 4. DM Industries guarantees and warrants the above described insulation against all defects in materials and workmanship. 5. INDEMNIFICATION OF OWNER (HRI, INC.) FROM ALL LIABILITY- The Subcontractor (DM INDUSTRIES) shall have charge of and responsibility for its entire work as described herein until completion and acceptance, and shall alone be liable for and shall pay all loss or damage caused by it or its servants, agents, or employees to property, buildings or adjacent work and for any accident to persons that may occur during the performance of the work	\$18,080.00

DM INDUSTRIES

APPROVED

Robert Hoover
Robert Hoover, Mgr. of Procurement
John R. Kulka
John R. Kulka, Pres.

ACCEPTED BY:

Phillip H. Diehl Vice Pres.

HRI, INC.

Western Division
P.O. Box 402
Clearfield, PA 16830

SUBCONTRACT AGREEMENT/ PURCHASE ORDER NO.

01042

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

Page 2

DM INDUSTRIES
326 Center Street
St. Marys, PA 15857

WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

SHIP
TO

DATE ORDERED 5/21/02		FOR Installation DELIVERY As Scheduled		TERMS Net 30 Days		PRICE QUOTED Richard		ORDERED FROM Same	
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION		UNIT PRICE QUOTED	
						covered by this contract or at any time thereafter as a consequence of the performance of said work. The Subcontractor shall observe all state and municipality laws, ordinances and regulations and shall defend and save harmless the Owner from all suits and claims whatsoever for loss of life or injury occurring to employees of the Subcontractor who perform such work. The Subcontractor agrees to fully indemnify, protect, defend and save harmless the Owner from all liability from all claims, loss, damage, suits and actions of every kind from all costs and expenses in connection with such claims, suits and actions due to injuries to persons or damage to property whether resulting from accident, negligence or any other cause whatsoever occurring during the performance of the work covered by this contract or at any time thereafter as a consequence of the performance of the same or which may at any time occur or result from or be caused by such work and if there are any such claims unsettled when the work herein provided for is completed, final settlement by the Owner and Subcontractor shall be deferred until such claims are adjusted or suitable special indemnity acceptable to the Owner is provided by the Subcontractor. Subcontractor shall provide proof of insurance in accordance with the attached "HRI, INC., MINIMUM INSURANCE REQUIREMENTS". Subcontractor is subject to all provisions of the Commonwealth Nondiscrimination/Sexual Harassment Clause which is incorporated herein by reference.			

SALES TAX EXEMPT

DM INDUSTRIES

APPROVED

Robert R. Hoover, Mgr. of Procurement

John R. Kulka, Pres.

ACCEPTED BY:

DM INDUSTRIES
326 CENTER ST.
ST. MARYS, PA. 15857
Phone / Fax (814) 834-2321

5/30/02

Whitaker Roads
Attn: Tim Olson

Dear Tim:

I am pleased to submit the following price quotation (labor and material) for the insulation of the 24ft. diameter by 18-foot high tank located at your facility.

Price: \$18,080.00

Contractor will install 4" fiberglass, 2 layers, 2" thick fastened with weld pins and covered with .032 aluminum sheets secured with appropriate stainless steel screws and bands. First foot on the bottom will be cellular glass to prevent wicking. Top will consist of 2" cellular glass adhered with steep asphalt and covered with 4 layers of fiberglass paper imbedded with steep asphalt, finished with a flooded topcoat of steep asphalt.

Note: A rain gutter must be installed on this tank. This would be done by the tank manufacturer.

Yours truly,

Richard L. Sadley



HRI, INC.

D. Fees

Western Division
P. O. BOX 402
CLEARFIELD, PA 16830
814/857-7635 Phone
814/857-5159 Fax

PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

1046

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

TO

POWER EQUIPMENT COMPANY
1651 Route 68
New Brighton, PA 15066

724/452-5227 Phone
724/452-7298 Fax

SHIP
TO

WHITAKER ROADS CORPORATION
Barrett Curve Emulsion Plant
Route 322
3 Mi. East of Clearfield
Clearfield, PA 16830
Phone: 814/857-7635

DATE ORDERED 5/30/02		FOR DELIVERY As Scheduled		TERMS Net 30 Days		PRICE QUOTED Bill Marsh		ORDERED FROM Patrick Harper	
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION			UNIT PRICE QUOTED
			LS		LS	Furnish One (1) New Model M-34-V VIKING Pump Unit and 15 HP TEFC Motor Per the Attached Quotation Dated May 29, 2002. The Above Equipment Must Conform to Current OSHA and UL Specifications and Requirements. The Above Equipment is Guaranteed and Warranted In Accordance with Each Respective Manufacturer's Warranty. Seller is Responsible To Ensure All Said Warranties are Fully Honored. Seller Shall Ship Prepaid and Invoice Purchaser For Freight. Seller is subject to all Provisions of the Commonwealth Nondiscrimination/Sexual Harassment Clause which is Incorporated Herein by Reference. SALES TAX EXEMPT			\$7,870.00
						CONFIRMING ORDER			

POWER EQUIPMENT COMPANY

APPROVED

Robert K. Hoover
Robert K. Hoover, Mgr. of Procurement
Ch R Smith

1651 Rt. 68
New Brighton, PA 15068
Phone: 724-452-5227
Fax: 724-452-7298

Power Equipment Company

Fax

To:	Whitaker Roads/Mr. Bob Hoover	From:	Patrick J. Harper
Fax:	1-814-238-8409	Date:	May 29, 2002
Phone:	1-814-238-5071	Pages:	1
Re:	Viking asphalt pump unit quotation	CC:	

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Comments:

Dear Sir,

Per your conversation with our Bill Marsh, we are pleased to offer the following Viking pump unit for your consideration.

- (1) Viking pump unit, Model M-34-V, cast iron construction, jacketed stuffing box, casing, and head, v-belt drive unit consisting of fabricated steel baseplate, pedestal bearing, driving and driven v-belts, fully-enclosed v-belt guard, motor slide rail to adjust belt tension, and driven by a 15 Hp, 1160 RPM, 3 phase, 60 cycle, 230/460 volt, TEFC motor. The v-belt ratio will be such to give the pump a final drive speed of 230 RPM.

Price: \$7,870.00 net each.

Delivery: 4-5 weeks.

Terms: Net 30 days. F.O.B. Cedar Falls, IA. *(Seller to Ship Freight Prepaid and Invoice Purchaser)*

Quicker delivery can be arranged. We have a pump in stock and can build the drive equipment here if needed to meet your delivery needs.

If you have any questions, please give us a call. We look forward to your call and please know that your business is greatly appreciated.

Sincerely,

Patrick J. Harper

PURCHASE ORDER

PRICES SHOWN MAY NOT BE INCREASED WITHOUT OUR WRITTEN APPROVAL

NO: 03166

SHIP TO Whitaker Roads Corporation P.O. Box 402 Clearfield, Pa. 16830		BILL TO Whitaker Roads Corporation P.O. Box 402 Clearfield, Pa. 16830		FED ID # _____ EXEMPT # _____ Sales Tax Exempt _____	
VENDOR NAME & ADDRESS Graff Tank 731 A N. Main St. P.O. Box 336 Hubbard, Ohio 44425 1-800-876-6671			DATE 4/12/04	DATE DEL REQ'D 5/15/04	SHIP VIA _____
			COST ACCOUNTING _____		
			TERMS OF PAYMENT		
			DISCOUNT _____ % 15 DAYS ☐	NET 30 DAYS ☐	OTHER Monthly Est. ☐

ITEM	QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
	L.S.	Scope: Fabrication and Erection of 22' dia. x 20' high tank. Steel A 36m Bottom 5/16", Shell and Roof of 1/4 inch steel. Structure: rafters of 6" channel, center pole 6" and 8" channel with wear plate. Fittings: 1-24" shell man-way with davit, 1-24" roof manway with davit, 1 piece of 4" sch 40 pipe, 1 piece of 4" sch 80 pipe for heater stack, 2-4" shell nozzles, 2-3" 150# fittings. Re-use present ladder and wing railing/ Install swing gate at top of ladder onto roof. Roof. 1-24" man way, 2-6" fittings for heater stack. 1-8" vent with 180 degree turndown. 1 rain girder for insulation protection. Re-using high level alarm. Note: Tank heater is to be re-installed in new tank before roof is on and will hooked up by Graff Tank except for electric. Varec guage 2500 B to installed by Gfaff Tank. Stripping off and reuse of old insulation and skin. Reinstall insulation of tank using glass block ring on bottom to prevent wicking of new insulation. One application of Bitucote paint to exterior of tank. Cutting down of old tank by Graff. Tank base redone by Graff Tank. Tank will be built to API 650 standards A and M with reduced joint effieciency of 70 clause in affect. Hydro test by others. DEP inspection by others.		

THIS AGREEMENT IS SUBJECT TO ALL TERMS AND CONDITIONS ON REVERSE SIDE HERE OF AND ANY ATTACHED HERETO.

ACCEPTED BY: *William H. [Signature]*

TITLE: _____

DATE: 4/12/04

BY: *[Signature]*

TITLE: AREA MGR.

DATE: 4/11/04

THIS COPY MUST BE SIGNED AND

PRICES SHOWN MAY NOT BE INCREASED WITHOUT
OUR WRITTEN APPROVAL

NO: 03167***

SHIP TO		BILL TO Whitaker Roads Corporation P.O. Box 402 Clearfield, Pa. 16830		FED ID # _____ EXEMPT # _____ _____	
VENDOR NAME & ADDRESS		DATE	DATE DEL REQ'D	SHIP VIA	COST ACCOUNTING
		4/12/04			
		TERMS OF PAYMENT			
		DISCOUNT	NET	OTHER	
		_____% 15 DAYS ☐	30 DAYS ☐	progressive ☐	

ITEM	QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
	1.s.	Installation of standpipe using pipe supplied by Whitaker sch 40. Installation of insulation tin roof by Graff Tank. Total Price not to exceed \$ 116,596.00 Notes and Clarifications Safety- Graff Tank is responsible for compliance with all current Whitaker Roads/HRI and OSHA safety rules and regulations during construction. Graff Tank guarentees and warrants the above described tank against all defects in materials and workmanship. Graff Tank must provide proof of insurance to Whitaker Roads Corporation as minimum insurance requirements.		

THIS AGREEMENT IS SUBJECT TO ALL TERMS AND CONDITIONS ON REVERSE SIDE HERE OF AND ANY ATTACHED HERETO

ACCEPTED BY: *William H. Giff*

TITLE: _____

DATE: 4/12/04

BY: *Steve J. Reder*

TITLE: AREA MGR

DATE: 4/12/04

THIS COPY MUST BE SIGNED AND
RETURNED TO US PROMPTLY

Section VI – Health Hazard Data

Route(s) of Entry:	Inhalation? X	Skin? X	Ingestion? X	Eyes? X
--------------------	------------------	------------	-----------------	------------

Health Hazards (Acute and Chronic): Vapors may cause irritation of nasal and respiratory tract. Hot product will cause burns to skin; prolonged contact can cause irritation and dermatitis. Hot product splashed into eyes can cause thermal burns. Ingestion not a primary route of exposure – has a low order of acute toxicity

Carcinogenicity:	NTP?	IARC Monographs?	OSHA Regulated?
------------------	------	------------------	-----------------

Additional Toxicity Effects: The International Agency for Research on Cancer (IARC) has determined there is sufficient evidence for the carcinogenicity of extracts of steam-refined bitumens, air-refined bitumens, and pooled mixtures of steam and air-refined bitumens in experimental animals. Asphalt products, properly handled as outlined in this MSDS are not expected to cause cancer in humans. Skin contact, breathing of mists, fumes or vapors should be reduced to a minimum to avoid any ill effects. Chronic health effects would not be expected as long as good hygiene and proper safety precautions are practiced.

Signs and Symptoms of Exposure: N/A

Medical Conditions Generally Aggravated by Exposure: N/A

Emergency and First Aid Procedures:

EYES: Hot Material – Gently flush with large amounts of water. Call a physician immediately.

SKIN: Hot Material – Gently flush with cool water. Call a physician.

Cold Material – Remove asphalt with waterless hand cleaner & wash with soap and water. If irritation occurs, call a physician

INHALATION: Move person to fresh air immediately. If not breathing give artificial resuscitation. Immediately call a physician

INGESTION: Ingestion is not likely. If large amounts are swallowed, do not induce vomiting and immediately call a physician

Section VII-Precautions for Safe Handling and Use

Steps To Be Taken In Case Material Is Released Or Spilled: Stop source of leak. Eliminate sources of ignition. Contain by diking or impounding. Absorbents can be used to contain spill.

Waste Disposal Method: After containment, cutback asphalt can be collected for disposal. Advise authorities if product has entered a river or water source. Assure conformity with local and federal government regulations for disposal.

Environmental Effects: Fouling of water. May be toxic to aquatic animals.

Precautions To Be Taken In Handling And Storing: When opening covers and outlet cap on storage tanks, use faceshield and gloves to avoid possible injury from pressurized asphalt. Hydrogen sulfide can be generated and accumulated in storage tanks and bulk transport compartments. Stay upwind and vent storage hatches before unloading. Keep heating units and flues in storage tanks covered with at least 12 inches of asphalt. Do not overheat.

Section VIII – Control Measures

Respiratory Protection (Specify Type): Not required under normal conditions and adequate ventilation. Use air supplied respirators in confined spaces when asphalt vapor or H₂S gas exceed permissible limits.

Ventilation	Local Exhaust	Yes	Special	N/A
	Mechanical (General)	N/A	Other	N/A
Protective Gloves: Insulated gloves (hot asphalt)/Cloth Gloves (cold asphalt)	Eye Protection: goggles and faceshields for hot asphalt			

Other Protective Clothing or Equipment: Long sleeve shirts and long pants should be worn at all times around hot asphalt to prevent thermal burns.

Work/Hygienic Practices: Limit breathing hot fumes. Launder contaminated clothing before reuse.

INFORMATION SUPPLIED BY:	GENERAL MSDS ASSISTANCE	EMERGENCY PHONE NO:
Michael Guerin – 1/95 Rev. 8/1/96	(607) 753-1100	(607) 753-1100

DISCLAIMER

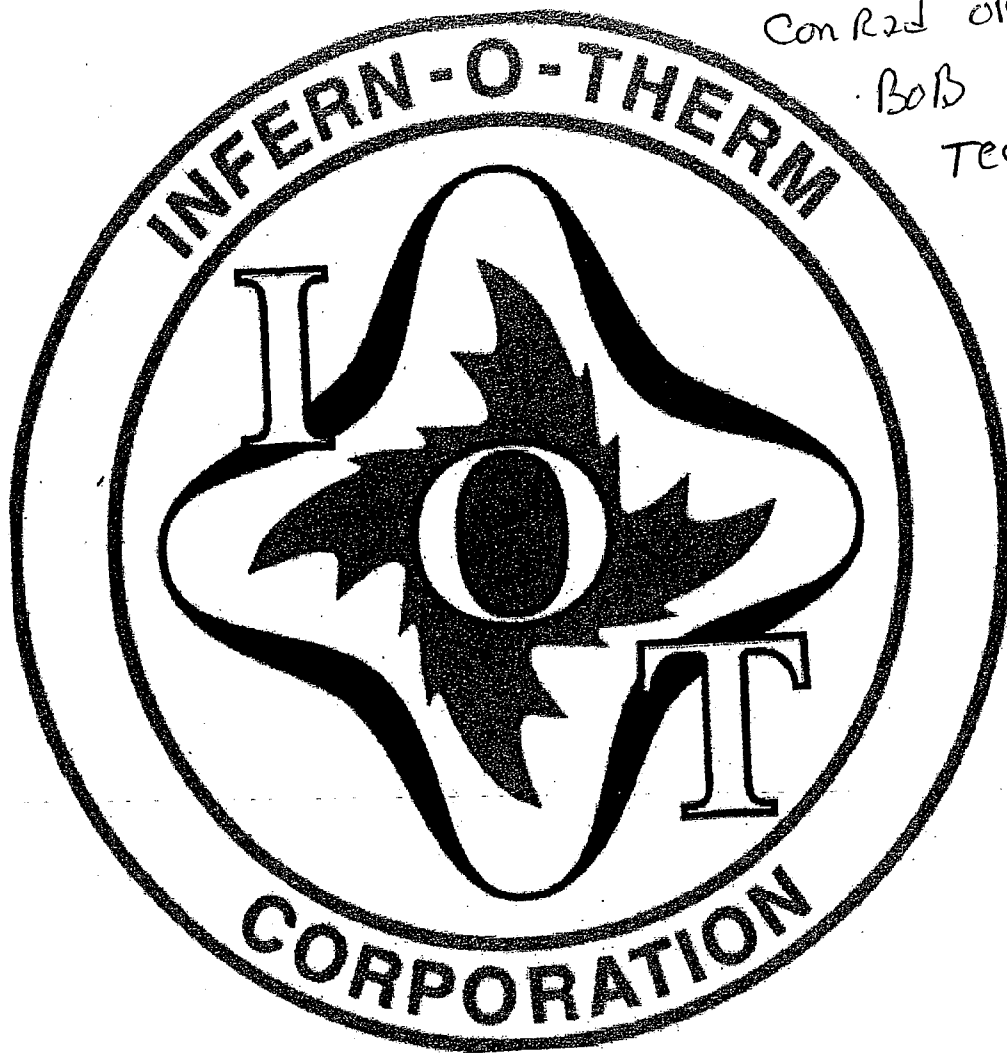
THE INFORMATION AND RECOMMENDATIONS CONTAINED HEREIN ARE, TO THE BEST OF Whitaker Roads Corporation's KNOWLEDGE AND BELIEF, ACCURATE AND RELIABLE AS OF THE DATE ISSUED. HOWEVER, NO WARRANTY OR GUARANTEE IS MADE AS TO ITS ACCURACY, RELIABILITY, OR COMPLETENESS. IT IS THE USER'S RESPONSIBILITY TO SATISFY ITSELF AS TO THE SUITABLENESS AND COMPLETENESS FOR HIS OWN PARTICULAR USE.

732-264-7700

Con Rad or

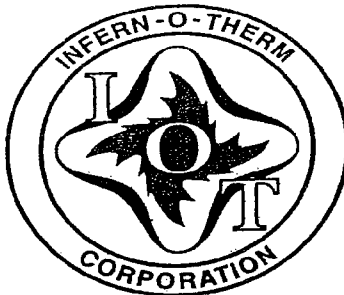
Bob

Tech.



CPA-200

Whitaker Roads S/N 3084-02



INFERN-O-THERM CORP.

PO BOX 190 ~ Foot of Locust St. ~ Keyport, NJ 07735
Phone 732-264-7700 ~ Fax 732-888-0115 ~ Email inferno@gateway.net

Satisfactory oil or gas heating depends on the proper installation of a correctly designed unit. This Manual, together with the regulation of the National Board of Fire Underwriters and with local ordinances or regulations must, therefore, govern all installations to insure the mutual satisfaction of the user, the dealer, and the manufacturer. It is to your advantage to comply with the standards thus established.

We shall gladly consult with you on prospective or actual installations to solve any mechanical or combustion problems that may arise.

Every unit shall be installed in accordance with the regulations of the National Board of Fire for the class, which regulations should be carefully followed in all cases. Authorities having local jurisdiction should be consulted before installations are made. Infern-O-Therm, manufactured in accordance with the National requirements, may require supplemental equipment for local regulations. It is your responsibility to be aware of these regulations and to furnish the required equipment.

COMPONENT PARTS

This general service discussion does not delve into problems of motors, transformers, fuel units, fuel tanks, etc., because their relatively small service problems are common to all units and are normally rather simple to solve. However, at this point, it is important to make one particular point on controls. Never use any combustion controls on Infern-O-Therm except those specified by us. These particular controls have special seal features required for Infern-O-Therm. Conventional controls on the market do not have this seal. Without the seal, dust, dirt and moisture in the air will enter the vital parts of the control and quickly damage it beyond repair. This is very important to keep in mind because we will take no responsibility for any costs involved resulting from use of the wrong type of control.

CONCLUSION

The purpose of the foregoing is to explain those points which are common only to Infern-O-Therm. We would like to emphasize that Infern-O-Therm is not a complicated machine, since we have reduced so many variables inherent in oil and gas fired equipment to there utmost simplicity. Many operators tend to over service Infern-O-Therm units and create problems which do not exist.

In closing, Infern-O-therm is designed to work at high CO2 readings and will do so at low smoke readings. Unlike the ordinary burner, when CO2 readings are low on Infern-O-Therm, the smoke readings will be high. Our field findings, for instance, show 8 and 9 smoke readings when CO2 readings are 8%. Yet, when CO2 readings are raised to 11 or 12%, smoke readings will drop to less than 2 on the bacherrack chart.

When desiring information for service or parts, please give model designation. Burner numbers are stamped on the burner fan housing, and the unit serial number is stamped on the burner cover door and on the burner end of the skid.

IMPORTANT: READ ENTIRE MANUAL BEFORE UNIT IS PUT INTO SERVICE

NOTICE: All service on this unit must be performed by trained and qualified personnel.

WARNING: Unit should be cool before any service is performed on hot product system. **SERIOUS INJURY COULD OCCUR IF THIS IS NOT FOLLOWED.**

WARNING: Turn off electrical power before any service is performed on electrical components.

WARNING: If exhaust stack is placed in service through any enclosure, proper protective measures should be taken to prevent heat-transfer to combustible material. Improper installation could result in fire damage.

WARNING: Three inch vent pipe at top of tank should be installed properly and continually maintained to prevent clogging. Improper ventilation can cause the tank to collapse.

WARNING: Improper installation of piping can cause damage to this unit.

COMBUSTION EFFICIENCY, OIL PRESSURE

The Infern-O-Therm burner unit, by virtue of its construction is distinctive in its operation. Positive pressure is generated throughout the combustion zone, thus eliminating the chimney necessity for ideal draft conditions, the so called "Chimney Pull", that most conventional types of burners depend upon. It is designed to operate at its maximum efficiency when producing its rated output with 10 to 13% CO₂ and a smoke reading of two or less in the combustion gas on the Bacharach scale, and any other setting will result in increased stack temperature and lowered efficiency. For this reason it is not possible to adjust the burner by observing the color or character of the flame.

SIMPLIFIED ADJUSTMENT PROCEDURE

Allow the burner to operate for about 10 minutes, then observe the stacks at the top of the tank. If there is a trace of smoke, an oil adjustment may be required. The oil pressure can be varied by a screw adjustment at the oil pump. (follow oil pump instructions). Contrary to popular belief, it is possible to have too much smoke with too little as well as too much pressure. Try increasing the oil pressure 1/2 turn at a time. If this fails to clear the stacks, then try decreasing the oil pressure until the stack is clear. A problem in an oil unit occurs when the fuel filter, or the screen on the fuel oil pump or the screen on the nozzle is dirty. These are three simple items to check if the burner is running with smoke.

If smoke continues to emit from stacks, it may be necessary to make additional tests and adjustments. Smoke emitting from the stacks could also occur when the nozzle tips deliver more or less than their stamped capacity. This is because the Infern-O-Therm burner is designed to burn at a fixed rate with a fixed amount of oil and air. (NOTE: a pressure gauge may be used when increasing or decreasing oil pressure).

NOZZLES: It is very important that proper nozzle size and spray angle be used with the Infern-O-Therm burner. If other than 30 deg. nozzle angle is used, the result will be carbon deposits in the nozzle chamber. This will eventually cause unsatisfactory burner operation and safety shutdown. If this occurs correct nozzle size and spray angle.

STARTING INFERN-O-THERM BURNERS

Before Starting Burner:

- 1) Check all electrical connections.

- 2) Check oil or natural gas connections to burner.
- 3) See that the electrodes are properly positioned (see troubleshooting). This burner was test fired before leaving the factory, but it is possible both electrodes and the UV flame scanner positions could be disturbed in shipment. The electrodes should be $\frac{3}{8}$ " below the center of the nozzle tip. The gap should be $\frac{3}{16}$ " from any grounded metal. The face of the nozzle tip should be $\frac{7}{16}$ " behind the orifice brick.
- 4) Motor lubrication: All motors have sealed bearings and do not require oiling
- 5) See that proper fuel oil is in the tank. Commercial standard #2 fuel or diesel. Follow fuel pump hook up instruction sheets.
- 6) Open valve in fuel line.
- 7) Close main switch and start burner.



PO BOX 190
AEROMARINE TERMINAL
KEYPORT NJ 07735
PH: 732-264-7700 FX: 732-888-0115

INFERNO-THERM CORP.

MANUAL START-UP AFTER EXTENDED SHUT DOWN ON ASPHALT SYSTEMS

Although the Infern-O-Therm heating system operates automatically, manual start-up is necessary after an extended shut down period where the Asphalt temperature has fallen below 100 degrees. The manual start-up procedure is outlined below.



The Burner should be MANUALLY cycled ON and OFF for a period of approximately two hours in the following manner:

1st Hour

- a) **On** for five (5) minutes,
- b) **Off** for ten (10) minutes

2nd Hour

- a) **On** for ten (10) minutes
- b) **Off** for five (5) minutes

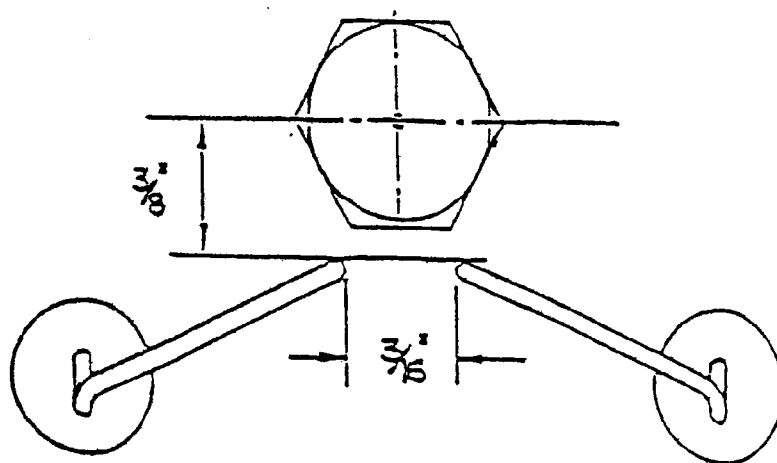
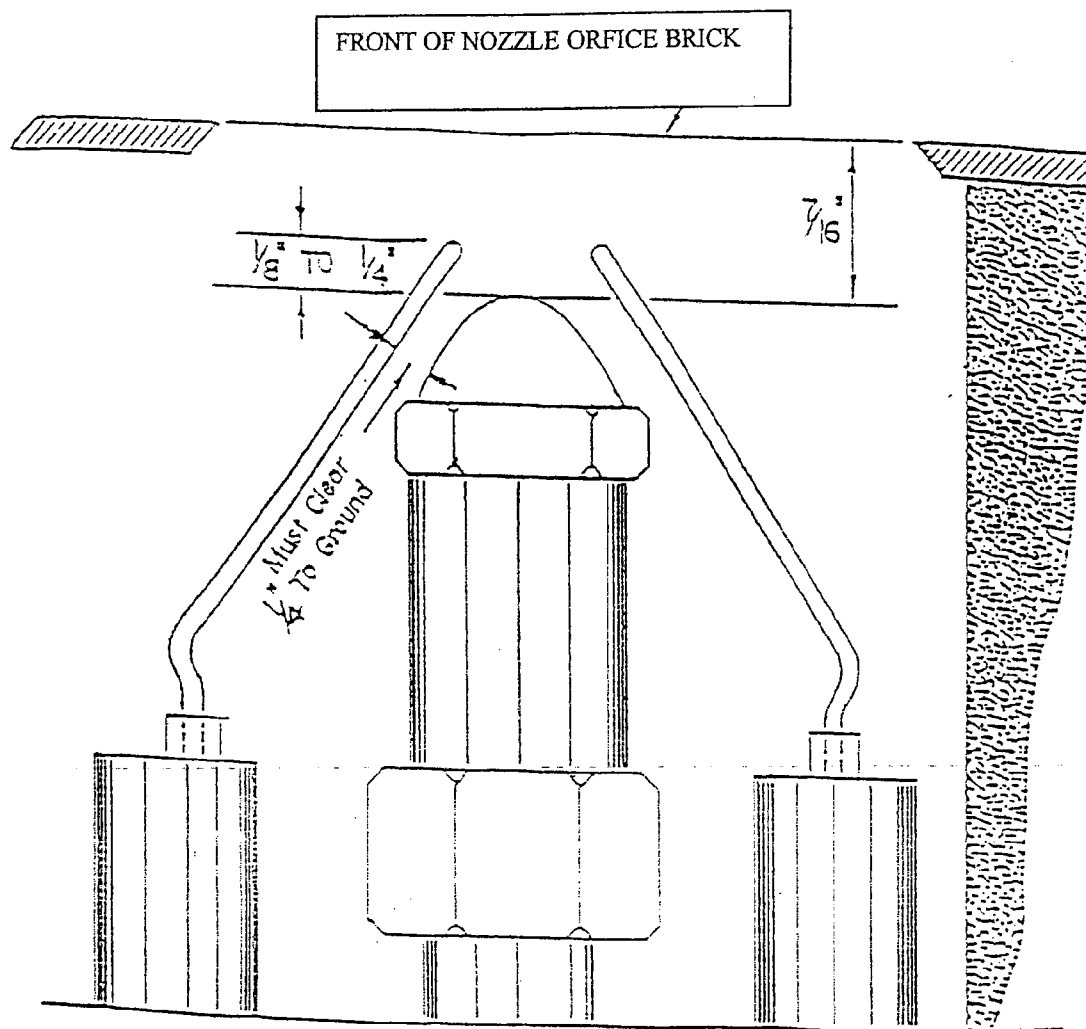
This above cycling schedule will liquefy the asphalt surrounding the Heat Exchange Tube and allow the metal to expand normally. After this two-hour manual cycling period, the heating system may be returned to automatic operation.

** Permanent damage to the heat transfer tube may result if this start-up procedure is not followed exactly. **

HEATING SYSTEM SPECIALISTS

VISIT OUR WEB SITE www.infernotherm.com

E Mail inferno@gateway.net



10 T Nozzle/Electrodes

**WEST BRANCH WARRIORS
PSSA PRIDE**

Sentco
Fuel Pump

Model H

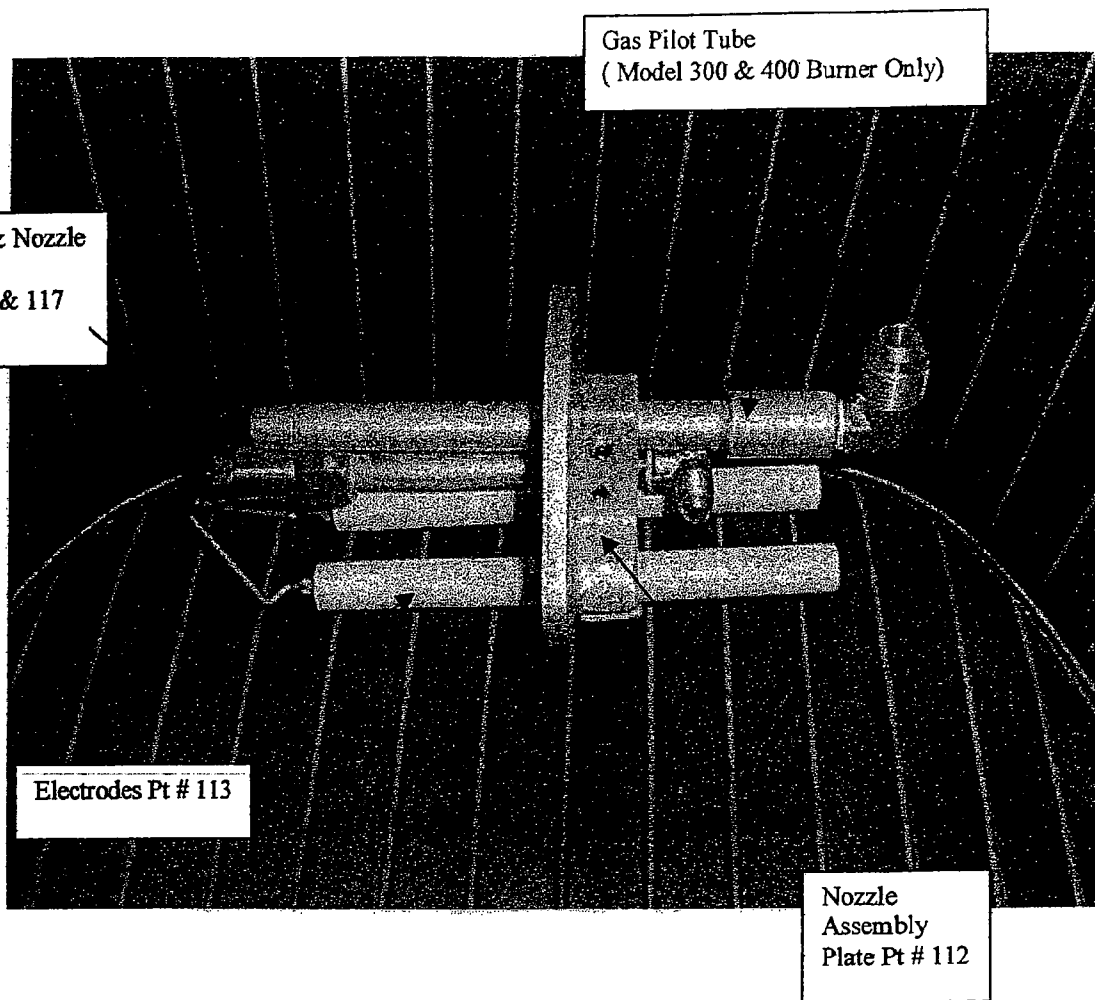
2 stage

Burner 200

2002

g

Red Reset



Nozzle Assembly for Oil Burner

Gas Pilot Tube (Model 300 & 400 Only)

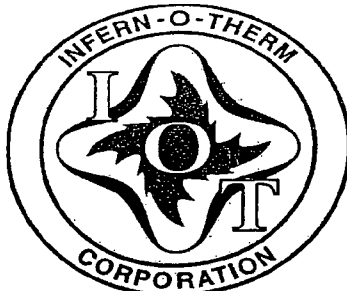
Nozzle
Assembly
Plate Pt #112

Nozzle Pt # 118

Electrodes Pt #113

Nozzle Adapter Pt # 117

Nozzle Assembly Straight Oil



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Infern-o-Therm Corporation recommends the following fuel pipe installation.

1- TWO PIPE SYSTEM; This method is preferred because any air in fuel line will self vent.

- A) By pass plug must be installed.
- B) Refer to fuel pump instructions for connections.

2- ONE PIPE INSTALLATION; This method is acceptable but should be done in the following manner.

- A) By-pass plug must be installed.
- B) Install a flare tee in the supply line three to four feet before fuel pump.
- C) Connect supply line to either inlet port.
- D) Connect third port to tee and bottom of return port.

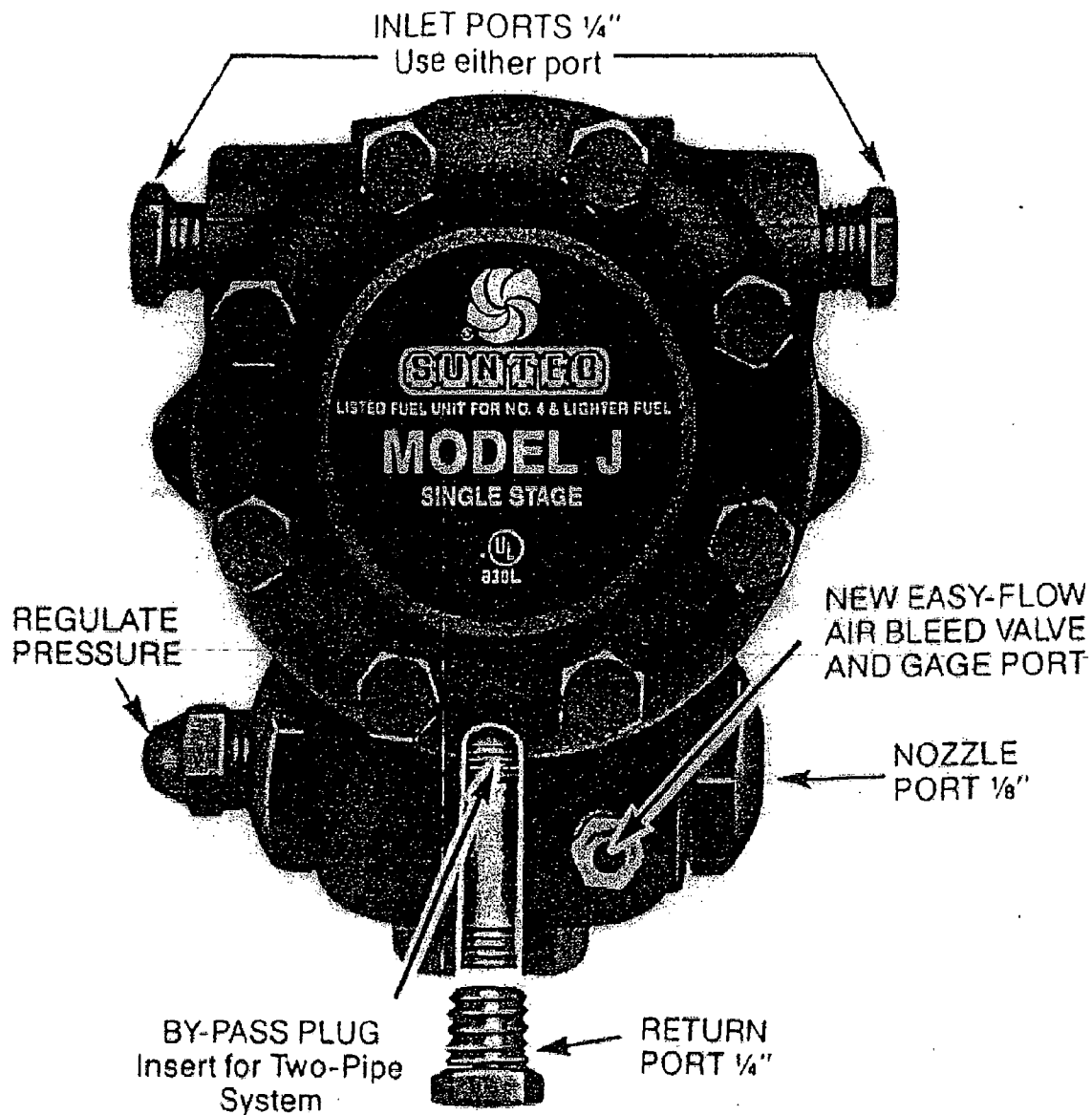
NOTE: This installation will not self vent air but will sufficiently cool the oil pump.

This method can only be used when bottom of fuel tank is higher than the burner.

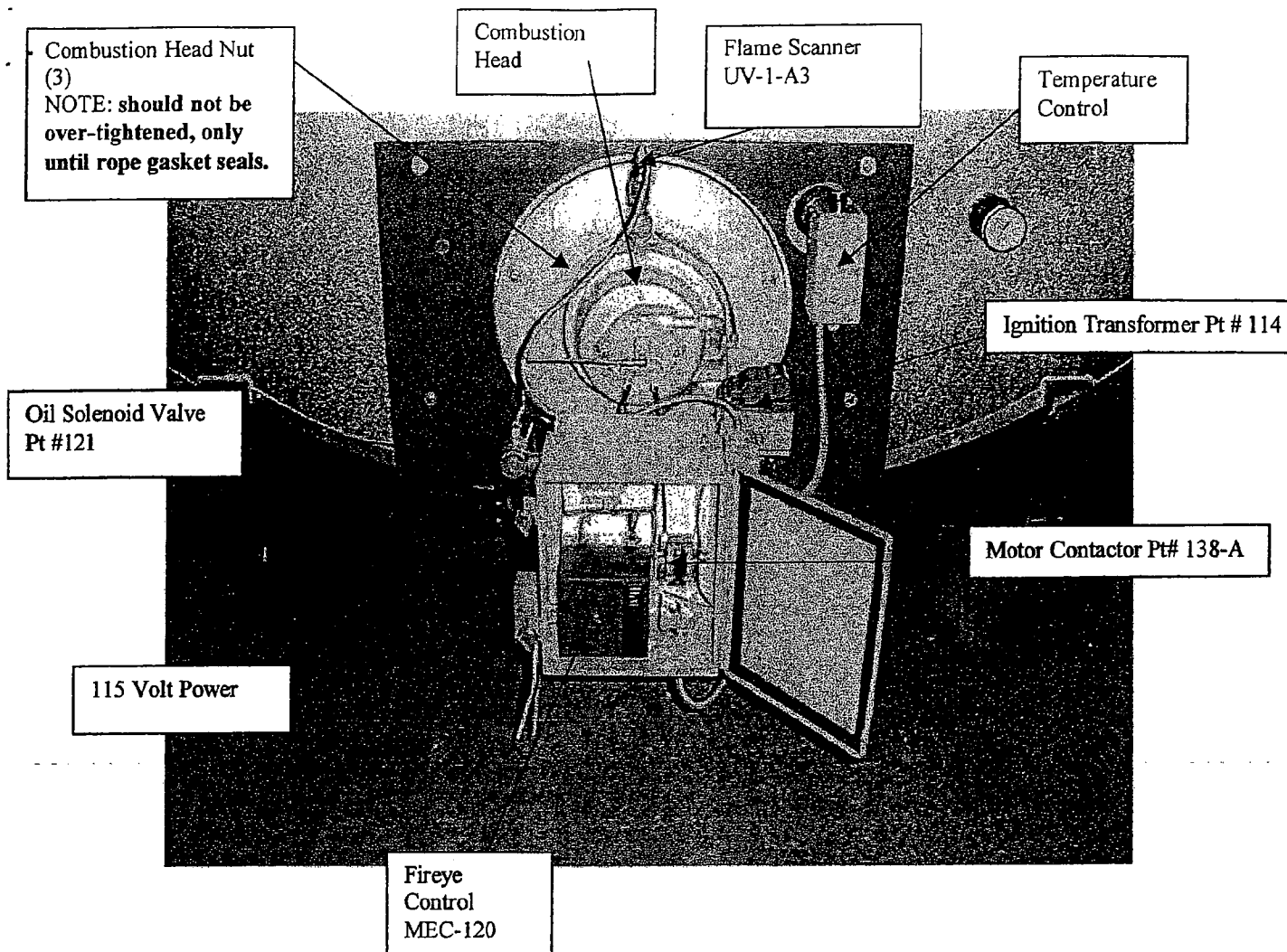
USE ONLY 1/2" OD copper line and only FLARE FITTINGS.
Compression Fittings may cause air leaks.

MODEL 300 & 400 require propane ignition. Customer to supply 100# propane tank and propane regulator, Fisher 2 stage, R32-CFF, & pig tail adaptor, 1669-12 w/7/8" hex nut x1/4"

REFER TO FUEL PUMP INSTRUCTION SHEET



Infer-O-Therm Fuel Oil Pump



48/13-200 Oil Fired Burner

48/13—2.25 GPH Nozzle 310,500 BTU per hr

48/100- 3.00 GPH Nozzle 414,000 BTU per hr

150----- 4.50 GPH Nozzle 621,000 BTU per hr

200----- 6.00 GPH Nozzle 828,000 BTU per Hr

28. Other than the investigation conducted by the Pennsylvania State Police were there any other investigations of the August 13, 2004, explosion at the Whitaker Roads' site located on Route 322 East in Clearfield, Pennsylvania?

- a.) If the response is in the affirmative, identify the individuals, organizations and/or agencies that conducted any such investigation.
- b.) If any such investigations were conducted and a report was generated, please provide a copy of that report.

ANSWER:

- (a) HRI, Inc. conducted an internal investigation into the explosion with the assistance of Tsikalas Fire Investigations
- (b) All documents generated as a result of this investigation have been previously provided through discovery or are attached hereto.
This response is subject to supplementation.

REQUEST FOR PRODUCTION OF DOCUMENTS

Please produce copies of the following documents:

1. Drawings and specifications of the heater including installation requirements.

RESPONSE:

All drawings and specifications in the possession of Plaintiffs have previously been provided in response to discovery requests or are attached hereto.

2. Drawings and specifications of the heater combustion tube; including, but not limited to, material types and thickness, installation requirements, etc.

RESPONSE:

All drawings and specifications in the possession of Plaintiffs have previously been provided in response to discovery requests or are attached hereto.

3. Logbooks related to the operation and contents of the tank in question.

RESPONSE:

See attached measurements of burner hours and tank readings.

4. Plant operating procedures, including all tank operations (i.e., loading, unloading, blending and recirculation).

RESPONSE:

Please see attached sheet.

5. Maintenance and repair records for the tank in question.

RESPONSE:

None

6. Material Safety Data Sheets (MSDS) for the tank contents.

RESPONSE:

Please see attached.

REQUEST FOR PRODUCTION OF DOCUMENTS

- #4. Plant operating procedures, including all tank operations (i.e., loading, unloading, blending, and recirculation).

Loading from a Tank into a Truck:

First identify the product and how much is to be loaded. Pull the truck onto the scale and get the lightweight of the truck. Block the wheels and attach the grounding cable to the truck, then open dome lid on the truck and put the loading pipe into the tank. Check all of the valves from the tank to be loaded out of to the pump, making sure they are in the right positions. Open the valve on the tank and turn on pump, filling tanker with the needed gallons by watching the read-out on the scale. After the tanker is loaded, shut off the pump, pull the load pipe up out of the oil, and reverse the pump, pushing the unwanted oil back into the tank. Close the valve at the tank and turn off pump. Close dome-lid on tanker and get the final weight on the tanker. Print the final ticket, remove wheel blockers, and unlock grounding cable. The truck can then be on its way.

Unloading a Tanker back into a Tank:

Park the tanker at the pump location. Before removing cap from the tanker, unload the outlet, and check to make sure valve is closed. Remove the cap and hook up the pump hose, making sure the camlock fitting on the hose is locked down. Open the dome-lid on the tanker, set valves in the right positions from the pump to the tank you want to unload into. Open the valve on the tanker and start pump. When the tank is empty, close the valve on the tanker. Unlock the camlocks on the unload hose so the pump can suck air into the line and push the oil back into the tank clearing the line. After the line is cleared, remove the hose from the tanker, close the tank valve, and shut off the pump. Close the dome-lid on the tanker and put the cap back on the tanker. Unload outlet, and the truck can then be on its way.

Milling into a Tank:

Set valves from the mill to the tank in the right positions. Open valve on the product tanks you need to use to mill the product you want to make. Open valve on the tank you want to mill into. Start mill run product watching the run ratio. Chart when done milling the desired amount. Shut off products feeding the mill, and run three gallons of fuel through the mill to flush the line from the mill to the tank. Shut off the valve on the tank you were milling into. Shut off mill, and close all product tank valves you were using to make the emulsion.

Circulation of Product in a Tank:

Set all valves from the tank to the pump in the right positions. Open valves on the tank and turn on pump. Circulate the product for however long you need to. Reverse pump for a few minutes. Close valve on the tank and turn off pump.

Blending MC into a Tank:

Set all valves in the right positions from the AC and fuel meters to the tank you want to blend into. Open the valve on the AC tank and the fuel tank. Open the valve on the tank you want to blend into. Turn on the circulation pump. Turn on the fuel pump, and then turn on the AC pump, watching the run ratio. Chart blend of MC oil. When done blending the amount of oil needed, shut off the AC-pump, and let the fuel pump run an extra five gallons of fuel through the line to flush the line out. Turn off the fuel pump, close the tank valve and shut off the circulation pump. Close the AC-tank valve and the fuel tank valve.

7. Photographs of the inside of the tank, bottom in particular, after the explosion but before it became full of rainwater.

RESPONSE:

None

8. Thank "as-built" drawings showing connections for instrumentation, piping, etc.

RESPONSE:

None other than documents previously provided or provided herewith.

9. Whittaker's requests for quotations for the tank, heater, insulation, etc. for the tank in question.

RESPONSE:

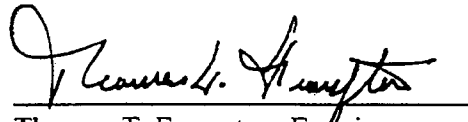
See documents previously provided or provided herewith.

Date: June 7, 2005

Respectfully Submitted,

GOEHRING, RUTTER & BOEHM

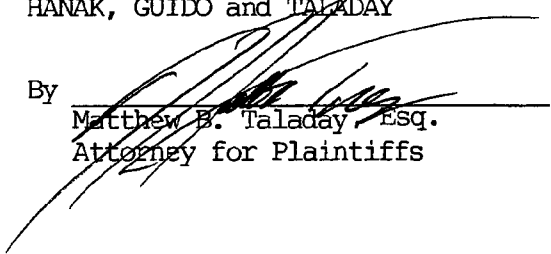
By:


Thomas T. Frampton, Esquire
Pa. I.D. #17286

Answered By:

HANAK, GUIDO and TALADAY

By


Matthew B. Taladay, Esq.
Attorney for Plaintiffs

Dana L. Bacs, Esquire
Pa. I.D. #80323

Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

*Attorneys for Defendants, Raymond A.
Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc.*

Bunner hrs.

2004

	#7	#8	#9	#10	#11	#13	#19
7-20-04	25933.7	—	9217.0	17779.2	5010.3	6841.1	—
7-21-04	25941.0	—	9231.4	17794.1	5013.2	6847.5	—
7-23-04	25964.6	—	9256.1	17841.0	5023.6	6858.1	—
7-26-04	25987.1	—	9279.2	17869.2	—	6877.3	—
7-27-04	25996.4	—	9281.7	17877.7	5038.9	6889.2	257.4
7-28-04	26009.2	—	9288.7	17884.3	5044.9	6898.1	—
7-29-04	26016.6	—	9293.6	17892.9	5044.9	6906.5	—
7-30-04	26024.3	—	9299.8	17900.1	5044.9	6915.9	251.9
8-2-04	26043.5	—	9326.7	17957.2	5053.5	6935.4	257.1
8-3-04	26052.3	—	9333.8	17976.7	—	6940.3	—
8-4-04	26060.6	—	9342.6	17992.8	5053.5	6948.1	—
8-5-04	26074.2	—	9349.1	17992.8	5065.4	6957.9	—
8-6-04	26081.7	—	9352.8	17992.6	5065.4	6968.3	—
8-9-04	26095.4	—	9362.0	18036.8	5076.0	6986.6	257.1
8-10-04	26107.5	—	9364.5	18044.4	5078.6	6993.4	—
8-11-04	26118.4	—	9367.0	18065.3	5079.8	7000.3	—
8-12-04	26125.7	—	9368.9	18075.9	5079.8	7005.1	264.6
8-13-04	26132.5	—	9374.5	18082.2	—	7017.1	267.2
8-16-04	26157.5	—	9384.3	18083.4	—	7036.4	—
8-17-04	26166.7	—	9384.3	18085.1	—	7042.1	—
8-18-04	26173.0	—	9386.4	18086.2	—	7047.0	—
8-19-04	26186.1	—	9389.6	18086.2	—	7051.6	—
8-20-04	26192.1	—	9399.0	—	5079.8	7060.0	—
8-23-04	26202.7	—	9417.9	18090.2	—	7078.5	—
8-24-04	26211.8	—	9418.8	18094.7	—	7085.7	—
8-25-04	26221.7	—	9419.8	18096.2	—	7093.0	—
8-26-04	26228.5	—	9420.8	18096.2	—	7098.3	—
8-27-04	26235.3	—	9422.7	18096.2	—	7104.1	—
8-30-04	26252.3	—	9435.4	18096.2	—	7121.9	—
8-31-04	26263.3	—	9435.4	18096.2	—	7128.9	—
9-1-04	26277.4	—	—	18096.2	—	7125.4	—

Tank Readings 2004

	# 11	# 12	# 13	# 16	# 17	# 18	# 19
7-20-04	101	131	44	↓ 144	—	50 1/2	132
7-21-04	101 1/4	158	27	MT	—	49 1/4	168 1/2
7-22-04	—	MT	63 1/2	↓ 75 1/4	—	46 1/2	156
7-23-04	31 1/2	116	50	↓ 111	—	46	155 1/2
7-26-04	29	198	40 1/2	↓ 120	—	45 3/4	110
7-27-04	37 1/2	199	63	↓ 3 1/4	65 1/4	45 1/2	189 1/2
7-28-04	20 1/2	—	—	—	—	—	—
7-29-04	39 1/2	133	59	↓ 40 1/2	—	—	160 1/2
7-30-04	61 3/4	75 3/4	76	↓ 67 1/2	65 1/4	41 1/2	166
8-2-04	6 1/2	74	54	↓ 94 1/4	—	—	154
8-3-04	2	170	54	↓ 142	61 1/2	—	107
8-4-04	15	110	43	↓ 36	—	40	124
8-5-04	78 1/2	62 1/4	36 1/4	↓ 55	—	39 1/2	84
8-6-04	78	122	52	↓ 88	—	38 1/2	47 1/2
8-9-04	31	29	45 1/2	↓ 119 1/2	—	—	102 1/2
8-10-04	31	95	70	↓ 31 1/2	—	—	102 1/2
8-11-04	17 1/2	106 1/2	58 1/2	↓ 57 1/2	—	37	88
8-12-04	43	163	2	↓ 71	—	28 1/2	42 1/4
8-13-04	MT	—	76 1/2	—	—	27 1/4	60nc
8-16-04	—	43 1/2	76	↓ 116	—	26	—
8-17-04	—	15	76	↓ 40	—	25	—
8-18-04	—	150	44	↓ 98	—	24 1/4	—
8-19-04	—	148 3/4	47	↓ 114	—	23	—
8-20-04	—	92	63	↓ 126	—	20 1/2	—
8-23-04	—	66 1/2	12	↓ 36	59 1/4	19 1/4	—
8-24-04	—	66 1/2	27	↓ 76	—	18 1/2	—
8-25-04	—	15	0	↓ 108	—	16 1/2	—
8-26-04	—	110	25	↓ 141	—	13 1/2	—
8-27-04	—	208 1/4	113	—	57	12 3/4	—
8-30-04	—	94	56	—	—	—	—
8-31-04	—	93	51	—	54 1/2	12 3/4	—
9-1-04	—	84	63	—	—	—	—

MATERIAL SAFETY DATA SHEET

Product: MC Cutback

Manufacturer: Whitaker Roads Corporation
P.O. Box 402
Clearfield, PA 16830

Emergency Telephone Number: (814) 857-7535
Telephone for Information: (814) 857-7635

Synonyms: Petroleum Asphalt Cutback, MC-30, MC-70, MC-250, MC-400, MC-800, MC-3000

Section II - Hazardous Ingredients/Identify Information

Hazardous Components (Specific Chemical Identity):	Common Name(s)	OSHA PEL	ACGIH TLV	Concentrations (%) Recommended (Optional)
Petroleum Asphalt 8052-42-4 Kerosene 8008-20-6		Not Established	5mg/m3	50-90% 10-50%

Section III - Physical/Chemical Characteristics

Boiling Point	320°F.	Specific Gravity (H2O =1)	N/A
Vapor Pressure (mm Hg.)	12mm Hg. @ 68°F	Melting Point	100-135°F
Vapor Density (Air =1)	Negligible	Evaporation Rate	N/A

Solubility in Water: Insoluble.

Appearance and Odor: Dark Brown to Black Semi-Solid Liquid with a Fuel Oil Odor.

Section IV - Fire and Explosion Hazard Data

Flash Point (Method Used) COC Method >103°F	Flammable Limits	LEL 0.8%	UEL 6.0%
Autoignition Temperature:	468°F		
Extinguishing Media:	Foam, carbon dioxide, dry chemical, water fog		
Special Fire-Fighting Procedures:	Avoid using water streams to prevent frothing. Use water spray to cool exposed surfaces		
Unusual Fire and Explosion Hazards:	NONE		

Section V - Reactivity Data

Stability	Unstable		Conditions to Avoid:
	Stable	X	Conditions to Avoid: Avoid open flames, heat or other source of ignition. Avoid contact. Vapors may be explosive. Avoid breathing vapors or fumes. Avoid contamination of water sources.

Incompatibility (Materials to Avoid): Strong Oxidizers, Liquid Chlorine

Hazardous Decomposition or Byproducts: Normal combustion forms carbon dioxide and water vapor, and may produce oxides of sulfur and nitrogen, and carbon monoxide.

Hazardous Polymerization	May Occur		Conditions to Avoid:
	Will Not Occur	X	Conditions to Avoid: Strong Oxidizers

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Answers to
Interrogatories of
Defendant DM Industries

Filed on Behalf of:
Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

**PLAINTIFFS' RESPONSES TO
INTERROGATORIES DIRECTED TO PLAINTIFFS**

You are required to answer under oath the following interrogatories within thirty (30) days from service hereof. These Interrogatories shall be deemed to be continuing so as to require Supplemental Answers under oath if the above-named individual(s) obtain(s) further information not contained in the answers to the following Interrogatories between the time answers are served and the time of trial.

1. State the name, address and telephone number of the person having the most knowledge of the contract between additional defendant, DM Industries and plaintiff, HRI/Whitaker Roads Corporation, dated May 20, 2002 for the insulation of the subject storage tank.

ANSWER:

Walt Shimmel
Whitaker Roads Corporation
Clearfield Emulsion Plan
(814) 857-7635

2. Please state the name, address and telephone number of the person having the most knowledge of the work performed by this additional defendant on the subject storage tank pursuant to the contract between this additional defendant, DM Industries, and the plaintiff, HRI/Whitaker Roads Corporation.

ANSWER:

Walt Shimmel
Whitaker Roads Corporation
Clearfield Emulsion Plant
(814) 857-7635

3. Please state the name, address and telephone number of all persons and business entities participating in any way in the manufacturing, construction, assembly, maintenance, filling, emptying, and use of the subject storage tank.

ANSWER:

Please see attached sheet.

4. For each person identified in your answer to the previous interrogatory, please state their job title, and briefly describe their job duties.

ANSWER:

Walt Shimmel - Plant Superintendent - to oversee the operations of the emulsion plant
Shawn McFarland - Lab Technician - to test the oils being produced to make sure they meet state specifications
Lynn Smith - Mill Operator - mills the products that we produce
Glenn Shimmell - Dist. Truck Operator - takes oil out to job sites and sprays down the product onto the roads
Graff Tank - constructed the tank

Also see Graff Defendants' Interrogatory No. 25.

Response to Interrogatory No. 3

Whitaker Roads Corporation Employees:

Walt Shimmel
Lynn Smith
Shawn McFarland
Glenn Shimmel
(814) 857-7635

Graff Tank/Graff Tank, Inc.
(agents, principals and employees)
731A N. Main Street
P.O. Box 336
Hubbard, OH 44425

Infern-O-Therm Corporation
Foot of Locust Street
Keyport, NJ 07735

Meeker Equipment Company, Inc.
516 North Broad Street
P.O. Box 925
Lansdale, PA 19446

DuFour, Inc.
4487 Drane Highway
Osceola Mills, PA 16666

DM Industries, Inc.
326 Center Street
St. Marys, PA 15857

5. Please state the name, address and telephone number of each person having knowledge that this additional defendant, DM Industries, performed any work other than insulating the subject storage tank pursuant to the contract of May 20, 2002 between HRI/Whitaker Roads and additional defendant, DM Industries.

ANSWER:

None

6. Please state the name, address and telephone number of each person having knowledge supporting the claim that this additional defendant, DM Industries, installed the subject combustion package on the subject storage tank.

ANSWER:

None

7. Please state the name, address and telephone number of each person having knowledge supporting the claim that this additional defendant, DM Industries, installed the content temperature sensor on the subject storage tank.

ANSWER:

None

8. Please state the name, address and telephone number of each person having knowledge supporting the claim that this additional defendant, DM Industries, acted negligently and/or failed to comply with any safety codes, regulations, or statutes.

ANSWER:

None

9. Please state the name, address and telephone number of each person having knowledge supporting the claim that this additional defendant, DM Industries, failed to comply with the standards or regulations of the tank insulating industry.

ANSWER:

None

10. Please specify the dangerous and/or hazardous condition which you contend this additional defendant, DM Industries, created, allowed to exist, or failed to repair or remedy.

ANSWER:

None

11. Please state the name, address and telephone number of each person who was in charge of the construction, manufacture and/or assembly of the subject storage tank.

ANSWER:

Graff Tank/Graff Tank, Inc.
731A N. Main Street
P.O. Box 336
Hubbard, OH 44425

Infern-O-Therm
Foot of Locust Street
Keyport, NJ 07735

DM Industries
326 Center Street
St. Marys, PA 15857

12. Please state whether you had any business dealings with the additional defendant, DM Industries, prior to the date of the subject explosion in August 13, 2004.

ANSWER:

Upon information and belief, yes, however, specifics are unknown.

13. If the answer is affirmative to the previous interrogatory, please state the dates, type of work performed, and whether there was written contracts governing said work.

ANSWER:

Information not currently available.

14. Please list all plans, blueprints, schematics, drawings, specifications, records, reports, memoranda, and other written or recorded documents relating to the purchase installation, manufacture, and assembly of the subject tank made the subject to this lawsuit.

- a. The name and address of the person who authored or formulated the document;
- b. The date of the document;
- c. The content of the document;
- d. The purpose of the document;
- e. The name, address and job title of the person who now has custody, control or possession of the original, or a copy of the document.
- f. Please attach a copy of such document to these answers to interrogatories.

ANSWER:

All documents meeting the above description have been previously provided in response to Request for Production of Documents.

15. If you had a contract, purchase order, or other written agreement with any party to this action, please attach said documentation.

ANSWER:

See response to Interrogatory No. 14.

16. Please list to the best of your knowledge, the names and addresses of all wholesalers, distributors, installers, manufacturers, or other intermediaries who had possession, control and/or ownership of the subject tank, made the subject of this lawsuit prior to August 13, 2004.

ANSWER:

N/A

~~17. Did any agent, servant, and/or employee of your business perform or~~
cause to be performed any tests, or tests before or during the installation and/or maintenance of the subject storage tank prior to August 13, 2004.

ANSWER:

No

18. Did any agent, servant, and/or employee of your business perform or cause to be performed any inspection during the installation and/or maintenance of the subject storage tank made the subject of this lawsuit. If so:

- a. What inspections were performed.
- b. The name, address and job title of the individual who performed said inspections.
- c. When were such inspections performed.

- d. The results of said inspections.
- e. Any changes or alterations in the design, manufacture, installation, and/or maintenance of the subject storage tank as a result of the inspections.
- f. The name, address and job title of each person who has possession, control or custody of the originals or copies of records or reports made of the inspection.
- g. Where and when said records and reports may be examined by counsel.

ANSWER:

No

19. Please list all existing sets of standard which pertain to the design, installation, manufacture and/or maintenance of the subject storage tank made the subject of this lawsuit. This list should contain standards promulgated by local, state, or federal government agencies, boroughs, and commissions, and by industry groups or associations.

ANSWER:

Plaintiffs relied on the expertise of Defendants Graff Tank/Graff Tank, Inc. and Meeker Equipment, Inc. to provide facilities complying with all applicable specifications for MC-70 emulsion tank and any documentation relating to these specifications in possession of Plaintiffs have been previously provided.

20. Please provide any and all evidence, documentation and/or other information in your possession which supports the contention that additional defendant, DM Industries, was responsible or otherwise obligated to install the subject combustion package on the subject storage tank.

ANSWER:

None

~~21. Please provide any and all evidence, documentation and/or information in~~
your possession which supports the contention that additional defendant, DM Industries, was responsible or otherwise obligated to install the contents temperature sensor on the subject storage tank.

ANSWER:

None

22. Please identify the statutes, codes, contracts, clauses or other ordinances with which you contend additional defendant, DM Industries, failed to comply.

ANSWER:

None

23. Please specifically identify what evidence you will use at the time of trial that will support the contention that additional defendant, DM Industries, was obligated or otherwise required to install the subject combustion package on the subject storage tank. Attach copies of all documents mentioned in this response.

ANSWER:

None

~~24. Please specifically identify what evidence you will use at the time of trial~~
that will support the contention that additional defendant, DM Industries, was obligated or otherwise required to install the subject contents temperature sensor on the subject storage tank. Attach copies of all documents mentioned in this response.

ANSWER:

None

25. What are the names and present addresses of any persons who have any knowledge of any facts, events, conditions or circumstances concerning the fire explosion prior to, at the time of, or following the explosion.

ANSWER:

Please see attached list.

Response to Interrogatory No. 25

Michael S. McCracken (Trooper)
R.D. #2, Box 314
Woodland, PA 16881
(814) 857-3800
PA State Police
Criminal Investigator/Fire Marshal

James M. Tsikalas
3423 William Penn Avenue
Johnstown, PA 15909
(814) 322-3310
Tsikalas Fire Investigations

Linda Lou McCloskey
615 Howard Avenue
Altoona, PA 16601
(814) 946-0448
Crawford Company
Claims Management Services (AIG Claims Adjuster)

Kevin G. Beach
115 Beaver Street
Bellefonte, PA 16823
(814) 355-1705
Unemployed

David M. Fees
1750 W. College Avenue
State College, PA 16801
(814) 278-6957
HRI, Inc.
Corporate Eq. Mgr.

John R. Kulka
1750 W. College Avenue
State College, PA 16801
(814) 278-6901
HRI, Inc.
President

Jeffery R. Reeder
1750 W. College Avenue
State College, PA 16801
(814) 278-6902
HRI, Inc.
V.P. & WPA Manager

Robert Granetti, Sr. & Robert Granetti, Jr.
P.O. Box 190
Foot of Locust Street
Keyport, NJ 07735
Infern-O-Therm Corp.

David Garrett
516 N. Broad Street
P.O. Box 925
Lansdale, PA 19446
(610) 277-4258
Meeker Equipment Corp.

Darrell DuFour
4487 Drane Highway
Osceola Mills, PA 16666
(814) 339-7700
DuFour, Inc.
Electrician

William Graff
731A N. Main Street
P.O. Box 336
Hubbard, OH 44425
(800) 876-6671
Graff Tank
Owner

Tim Olson
212 Sunapee Drive
Johnstown, PA 15904
(814) 467-6288
HRI, Inc.
Emulsion Plant Manager

Walt Shimmel
4068 Rolling Stone Road
Morrisdale, PA 16858
(814) 345-7519
HRI, Inc.
Emulsion Plant Foreman

Shawn McFarland
HRI, Inc.
Plant Manager

Pit Laborer

26. What are the names and present addresses of any persons who have any knowledge of any facts, events, conditions, or circumstances concerning the claim of this case or any defense to the claim in this case.

ANSWER:

See response to Interrogatory No. 25.

27. As to each person named in the answer to the previous two interrogatories, please state whether you have a statement signed, adopted or approved, by such person.

----- If so, attach such statements to these responses. -----

ANSWER:

None, other than those previously provided or attached to Pennsylvania State Police Fire Marshal Report. This response is subject to supplementation.

28. Following the fire explosion did any agent, servant, and/or employee of your business have any conversation with any of the other parties to this lawsuit. If so,

please state: Yes

- a. The appropriate dates and times when each such conversation was made.
- b. The names of the individuals who the conversations were between/among.
- c. The substance of each such conversation.

ANSWER:

- (a) A meeting was held on or about September 2, 2004 at the HRI Whitaker Roads facilities
- (b) Divisions present at the meeting were Trooper McCracken, PA State Police, James Tsikalas, Darrell DuFour, Robert Granetti, Sr., Robert Granetti, Jr. (Infern-O-Therm Corp.) and David Fees (HRI, Inc.)

- (c) The meeting consisted of an inspection of the explosion scene and general discussions regarding the potential causes of the explosion and potential remedial measure to prevent future occurrences.
29. Give details of any communications passing between any agent, servant

and/or employee of your business and any of the parties relative to the incident in question.

ANSWER:

Any recorded details would be contained in the State Police Fire Marshal Report, HRI, Inc. Safety Report

30. With respect to any post-fire explosion meetings or conversations between

~~any agent, servant and/or employee of your business and any of the parties relative to the~~

accident in question, please state:

- a. At whose suggestion they were held.
- b. Whether any conversation was recorded or otherwise noted in writing.
- c. The names and addresses of all persons present on such occasion when any meetings were held.

ANSWER:

- (a) HRI, Inc.
- (b) Personal notes of HRI employee, David Fees, resulting from the meeting are enclosed herewith.
- (c) See response to Interrogatory No. 28.

31. If you intend to call an expert witness at trial, please state:

- a. The name and address of each such expert witness.
- b. The subject matter to which each such expert witness is expected to testify.

- c. The substance of the facts and opinions to which each expert is expected to testify and the summary of the grounds for each opinion and/or attach a copy of each expert's report to your answers to interrogatories.
- d. The educational background, field of expertise, professional experience of each of the expert witnesses identified in your answers above.

ANSWER:

Plaintiffs have not determined its experts for purposes of trial. This response will be supplemented in accordance with State and Local Rules of Civil Procedure.

32. Please identify and provide any and all evidence, documentation and/or other itemization which you will use at the time of trial to support your claim for damages as set forth in your Complaint.

ANSWER:

Plaintiffs have not yet determined what evidence will be presented at trial. This response will be supplemented in accordance with State and Local Rules of Civil Procedure.

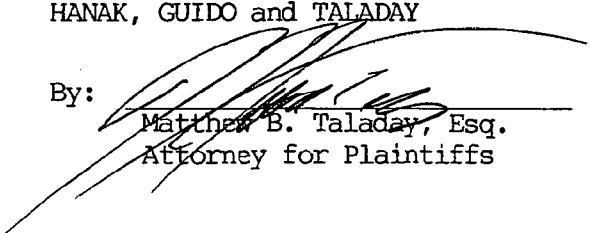
33. Please identify the material that was in the storage tank made the subject of this lawsuit at the time of the explosion. Also, please provide the composition of the material and its intended use.

MC-70 Dust Oil (Dust control) composed of asphalt and kerosene blend

Answered By:

HANAK, GUIDO and TALADAY

By:


Matthew B. Taladay, Esq.
Attorney for Plaintiffs

REDMAN & PONGRACE

By:


PAUL E. PONGRACE, III, ESQUIRE
Attorney for Additional Defendant,
DM Industries, Inc., t/a DM Industries

* Darrell Dufour Electrician

Graff Tank - not present Bill Duff (Spelling?)

Mickie - insulator

Dufour - Electrician

Safety Issues

Trooper McCracken, PA State Police

Trane Specialist/Expert

Tank 19 24'0" 18' H

Emulsion Explosion

MC-70 - 4300 gallon - 444°F ignition temp

Tank wall 1/4"

Tank top 5/16

Tank to be heated to 180°

Alarm System - Safety light high level 16'9"

Tank size 55,000 gallon

Alarm System - add audible alarm

- temp shut off switch - 180° + 150° = 330° ?

- low level switch

Tank in operation since May 2002

* Don't direct fire exit - low level below burner

- Material at 15 1/2"

- probe 32"-34" ?

- Hour Meter - 267.2 last meter read 264.6

- Burner Runs - re-set not tripped

- Probe should be at burner height of 18" not 32" ?

- Probe installation by tank builder & Electrician

Product drawn down to low
heat tube to high in tank (out of product level)
heater cooling for heat
heat tube red hot
ignited MC-70
Explosion

* MC-70 65% Kerosene

Design Deficiencies on Tank

- MC-70 - no direct fire (820,000 btu)
- re-vented outside boiler

Graff Tank

- 55,000 gal 18ft H 24ft Diameter
- ⊗ - 2 discharge outlets
 - - should be above water
- lighted level gauge
- 4300 gal 1" = 128 gal
- ⊗ - heater temp probe to high - read ambient air temp. - material melted higher than air temp
- MC-70 444° ignition point
- hour meter 267.3 - 264.6 3.4 hrs.

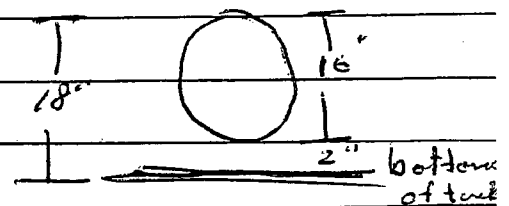
- ⊗ Audible Alarm - for over heat - automatic shut down on system
- ⊗ Cooling device - run through MC-70 (pipe) to cool material (transfer oil - not water) Steam if leak?
- Switch was shut off after the fire
- temp ^{regulator} gauge on thermometer - 0° → 350° F
- regulator was turned back after fire
- ⊗ Temp regulator should be fixed at 1
- Explosion Point 444° F
- Flash Point
- high level probe 16' 7" tank 18' high
- ⊗ - No low level probe
- ⊗ - Pulling off bottom discharge should automatically

2004 what needs done.

2005 CAPEX updates

545°F Flash point for asphalt

- (*) lighted and Audible Alarm
- (*) auto pressure exhaust fan on MC-70 Tank
- (*) low level shut off
- (*) cooling system
- (*) temp probe lower on tank in product w/overtemp alarm
- (*) temp regulator control fixed at 200°?
- (*) 2 discharge lines
 - 1- bottom
 - 2- above heater level
- (*) pulling off bottom should auto shut off heater
- (*) computerized hour reading meter system
- (*) External heater not direct fire.



- (*) Shawn McFarland - plant operator
- (*) Walt Shimmel - foreman
- (*) - labor
- (*) - truck driver/labor

- (*) New Tank Vent Restricted?
- (*) Acid Tank Location?
- (*) Heater to Jim (evidence room)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION

vs.

No. 04-2041-CD

RAYMOND W. GRAFF, WILLIAM
GRAFF AND ROSE M. GRAFF, t/d/b/a
GRAFF TANK; GRAFF TANK, INC.
and MEEKER EQUIPMENT CO., INC.

FILED

01/11/05
AUG 17 2005

William A. Shaw
Prothonotary/Clerk of Courts
8 CC Amy Volokos
W memo Re-service

RULE

NOW, this 17th day of August, 2005, upon consideration of the attached
Petition for Leave of Court to Join DuFour, Inc. as an Additional Defendant, a Rule is hereby
issued upon the parties to Show Cause why the Petition should not be granted. Rule
Returnable the 7th day of September, 2005, for filing written response.

NOTICE

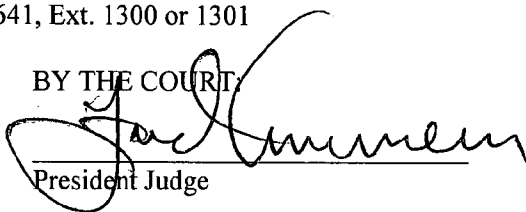
A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH
TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING MOTION OR
MOTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY
ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR
OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED
THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN
ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER
NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY
LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF
YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR
TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN
GET LEGAL HELP.

ATTORNEY FLEMING SHALL CAUSE A CERTIFIED COPY OF SAID
MOTION, AS WELL AS THIS ORDER ON BOTH THE DEFENDANTS AND THEIR
ATTORNEY, ROSADELE T. KAUFFMAN, ESQUIRE.

COURT ADMINISTRATOR
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830
(814) 765-2641, Ext. 1300 or 1301

BY THE COURT


President Judge



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC. and MEEKER EQUIPMENT
CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., DM INDUSTRIES,
and INFERN-O-THERM CORPORATION,

Additional Defendants.

CIVIL DIVISION

CASE NO. 2004-02041-CD

**NOTICE OF SERVICE OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO ADDITIONAL
DEFENDANT, DM INDUSTRIES, INC.
AND DM INDUSTRIES**

Filed on Behalf of: Additional Defendant,
Infern-O-Therm Corporation

Counsel for Record for This Party:

Patrick L. Mechas, Esquire
PA I.D. No. 61362

John B. Cromer, Esquire
PA I.D. No. 66773

BURNS, WHITE & HICKTON
Firm I.D. No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

JURY TRIAL DEMANDED

FILED *no cc*
m/1-3387
AUG 19 2005 

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,)

Plaintiffs,)

vs.)

RAYMOND A. GRAFF, WILLIAM)
GRAFF, ROSE M. GRAFF, GRAFF)
TANK, GRAFF TANK, INC. and)
MEEKER EQUIPMENT CO., INC.,)

Defendants,)

vs.)

DM INDUSTRIES, INC., DM)
INDUSTRIES, and INFERN-O-)
THERM CORPORATION,)

Additional Defendants.)

CASE NO. 2004-02041-CD

**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO ADDITIONAL
DEFENDANT, DM INDUSTRIES, INC. AND DM INDUSTRIES**

TO: PROTHONOTARY OF CLEARFIELD COUNTY

I hereby certify that on the 16th day of August, 2005, Additional Defendant, INFERN-O-THERM CORPORATION, served Interrogatories and Request for Production of Documents Directed to Additional Defendant, DM Industries, Inc. and DM Industries, by mailing the same to their counsel of record as follows:

Paul E. Pongrance, III, Esquire
Redman & Pongrace
300 Weyman Plaza – Suite 310
Pittsburgh, PA 15236

BURNS, WHITE & HICKTON, LLC

BY: 
Patrick L. Mechas, Esquire
John B. Cromer, Esquire
Attorneys for Additional Defendant,
Infern-O-Therm Corporation

CERTIFICATE OF SERVICE

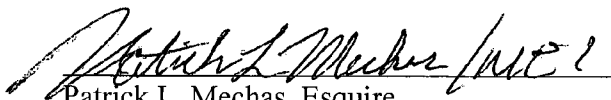
The undersigned hereby certifies that a true and correct copy of the within
**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO ADDITIONAL DEFENDANT,
DM INDUSTRIES, INC. AND DM INDUSTRIES** was served upon all counsel of
record via first class mail, postage prepaid, this 16th day of
August, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Phillip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
1528 Walnut Street – 22nd Floor
Philadelphia, PA 19102

Thomas T. Frampton, Esquire
Dana L. Bacsí, Esquire
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Paul E. Pongrance, III, Esquire
Redman & Pongrace
300 Weyman Plaza – Suite 310
Pittsburgh, PA 15236


Patrick L. Mechas, Esquire
John B. Cromer, Esquire

FILED

AUG 19 2005

William A. Shaw
Prothonotary/Clerk of Courts

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: GEORGE W. VOKOLOS, ESQUIRE
Identification No.: 88508
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant, **MEEKER EQUIPMENT
CO., INC.**

HRI, INC. AND WHITAKER ROADS CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF AND ROSE
M. GRAFF T/D/B/A GRAFF TANK; GRAFF TANK, INC.
AND MEEKER EQUIPMENT CO., INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

No. 04-²⁰⁴¹~~2021~~-CD

CERTIFICATE OF SERVICE

I, GEORGE W. VOKOLOS, ESQUIRE, hereby certify that I caused to be served a copy of Defendant, *Meeker Equipment Company, Inc.'s Petition for Leave of Court to Join DuFour, Inc. as an Additional Defendant and said Petition's Accompanying Memorandum of Law* to all parties of record in this proceeding in accordance with the requirements of the Rules of Civil Procedure by First Class Mail, postage pre-paid on **August 11, 2005**, and a copy of this Honorable Court's *Rule* relative to the aforementioned Petition on **August 22, 2005** to all parties of record in this proceeding in accordance with the requirements of the Rules of Civil Procedure by First Class Mail, postage pre-paid upon:

Matthew B. Taladay, Esquire
HANAK, GUIDO & TALADAY
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

Paul E. Pongrace, III, Esquire
REDMAN & PONGRACE
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236

Thomas T. Frampton, Esquire
GOEHRING, RUTTER & BOEHM
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

Patrick L. Mechas, Esquire
BURNS, WHITE & HICKTON
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 

GEORGE W. VOKOLOS, ESQUIRE
Attorney for Defendant: **MEEKER
EQUIPMENT CO., INC.**

FILED

m/10:33/01
AUG 24 2005

William A. Shaw
Prothonotary/Clerk of Courts

FILED

AUG 24 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Notice of
Service

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

FILED ^{NO CC}
m110:3481
AUG 31 2005 ^{LM}

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being
counsel of record for Plaintiffs, do hereby certify that I propounded on
Additional Defendant DM Industries, Inc., via United States mail, first
class, postage pre-paid, this 30th day of August, 2005,
Plaintiffs' RESPONSES TO DEFENDANT INFERN-O-THERM'S FIRST
SET OF DISCOVERY MATERIALS to the below indicated person, at
said address, being counsel of record for the Defendants:

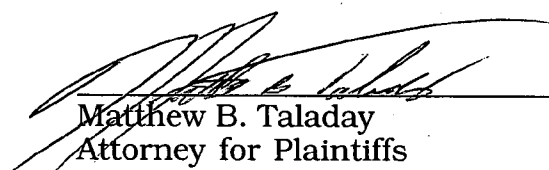
Patrick L. Mechas, Esq.
Attorney for Infern-O-Therm
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

With copies to:

Paul E. Pongrace, III, Esq.
Attorney for DM Industries
Redman & Pongrace
Suite 310
300 Weyman Plaza
Pittsburgh, PA 15236

Thomas T. Frampton, Esq.
Attorney for Graff Defendants
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

George W. Vokolos, Esq.
*Attorney for Defendant Meeker Equipment
Company, Inc.*
Minter Sarowitz Zeris Ledva & Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102-3614



Matthew B. Taladay
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

HRI, INC. and WHITAKER ROADS CORPORATION,	:	No. 04-2041-CD
Plaintiffs	:	
	:	TYPE OF CASE: Law
v.	:	
	:	TYPE OF PLEADING:
	:	Praeipice for Entry of Appearance
RAYMOND A. GRAFF, WILLIAM GRAFF and ROSE M. GRAFF	:	
t/d/b/a GRAFF TANK; GRAFF TANK, INC. and MEEKER	:	FILED ON BEHALF OF:
EQUIPMENT CO., INC.,	:	DuFour, Inc., Additional Defendant
Defendants	:	
	:	COUNSEL OF RECORD FOR THIS PARTY:
	:	Terry R. Heeter, Esquire
	:	Supreme Court No. 52750
v.	:	
	:	The Kooman Law Firm
DM INDUSTRIES, INC. t/a	:	Marianne Professional Center
DM INDUSTRIES,	:	P.O. Box 700
INFERN-O-THERM CORPORATION	:	Clarion, PA 16214
and DUFOUR, INC.,	:	(814) 226-9100 (Telephone)
Additional Defendants	:	(814) 226-7361 (Fax)
	:	
	:	COUNSEL OF RECORD FOR ADVERSE PARTY:
	:	Matthew B. Taladay, Esquire

jc
#23720

FILED^{no cc}
m 19:46 21
SEP 19 2005
Copy to CIA

William A. Shaw
Prothonotary/Clerk of Courts

HRI, INC. and WHITAKER ROADS
CORPORATION,
Plaintiffs

v.

RAYMOND W. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK; GRAFF,
TANK, INC. and MEEKER
EQUIPMENT CO., INC.
Defendants

v.

DM INDUSTRIES, INC. t/a
DM INDUSTRIES,
INFERN-C-THERM CORPORATION
and DUFCUR, INC.,
Additional Defendants

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

No. 04-2041-CD

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

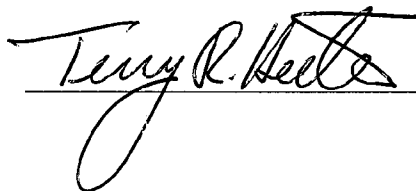
Enter my appearance on behalf of the additional defendant,
DuFour, Inc.

Papers may be served at the address set forth below.

TERRY R. HEETER, ESQUIRE
Attorney for Additional
Defendant, DuFour, Inc.
Supreme Court No. 52750
The Kooman Law Firm
Marianne Professional Center
P.O. Box 700
Clarion, PA 16214
(814) 226-9100

DATE: September 14, 2005

jc
#23720



HRI, INC. and WHITAKER ROADS CORPORATION,	:	IN THE COURT OF COMMON PLEAS OF
Plaintiffs	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	
RAYMOND W. GRAFF, WILLIAM GRAFF and ROSE M. GRAFF,	:	
t/d/b/a GRAFF TANK; GRAFF, TANK, INC. and MEEKER	:	
EQUIPMENT CO., INC.	:	CIVIL ACTION - LAW
Defendants	:	
v.	:	
	:	
DM INDUSTRIES, INC. t/a	:	
DM INDUSTRIES,	:	
INFERN-O-THERM CORPORATION	:	
and DUFOUR, INC.,	:	
Additional Defendants	:	No. 04-2041-CD

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

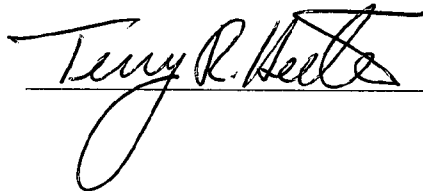
Enter my appearance on behalf of the additional defendant,
DuFour, Inc.

Papers may be served at the address set forth below.

TERRY R. HEETER, ESQUIRE
Attorney for Additional
Defendant, DuFour, Inc.
Supreme Court No. 52750
The Kooman Law Firm
Marianne Professional Center
P.O. Box 700
Clarion, PA 16214
(814) 226-9100

DATE: September 14, 2005

jc
#23720



HRI, INC. and WHITAKER ROADS	:	IN THE COURT OF COMMON PLEAS OF
CORPORATION,	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	
	:	
RAYMOND W. GRAFF, WILLIAM	:	
GRAFF and ROSE M. GRAFF,	:	
t/d/b/a GRAFF TANK; GRAFF,	:	
TANK, INC. and MEEKER	:	CIVIL ACTION - LAW
EQUIPMENT CO., INC.	:	
Defendants	:	
v.	:	
	:	
DM INDUSTRIES, INC. t/a	:	
DM INDUSTRIES,	:	
INFERN-O-THERM CORPORATION	:	
and DUFOUR, INC.,	:	
Additional Defendants	:	No. 04-2041-CD

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of September, 2005, served the foregoing Praecipe for Entry of Appearance by depositing a true and correct copy of the same in the United States mail, postage paid, at Clarion, Pennsylvania, addressed to the following:

THOMAS T. FRAMPTON, ESQUIRE
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

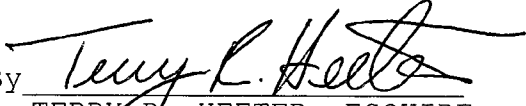
PATRICK L. MECHAS, ESQUIRE
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

PAUL E. PONGRACE, III, ESQUIRE
Redman & Pongrace
Suite 310
300 Weyman Plaza
Pittsburgh, PA 15236

MATTHEW B. TALADAY, ESQUIRE
Hanak, Guido & Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

GEORGE W. VOKOLOS, ESQUIRE
Mintzer Sarowitz Zeris Ledva & Myers, LLP
1528 Walnut Street, 22nd Floor
Philadelphia, PA 19102

Respectfully submitted,

By 
TERRY R. HEETER, ESQUIRE
The Kooman Law Firm
Attorney for Additional Defendant,
DuFour, Inc.
Marianne Professional Center
P.O. Box 700
Clarion, PA 16214
(814) 226-9100

jc
#23720

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

CASE NO. 2004-02041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC. and MEEKER EQUIPMENT
CO., INC.,

**NOTICE OF SERVICE OF ANSWERS TO
INTERROGATORIES AND RESPONSES
TO REQUEST FOR PRODUCTION OF
DOCUMENTS PROPOUNDED BY
ADDITIONAL DEFENDANT DM
INDUSTRIES, INC. t/a DM INDUSTRIES**

Defendants,

vs.

DM INDUSTRIES, INC., DM INDUSTRIES,
and INFERN-O-THERM CORPORATION,

Filed on Behalf of: Additional Defendant,
Infern-O-Therm Corporation

Additional Defendants.

Counsel for Record for This Party:

Patrick L. Mechas, Esquire
PA I.D. No. 61362

John B. Cromer, Esquire
PA I.D. No. 66773

BURNS, WHITE & HICKTON
Firm I.D. No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

JURY TRIAL DEMANDED

FILED

m/1:42/ cc
SEP 28 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS)
CORPORATION,)

Plaintiffs,)

vs.)

RAYMOND A. GRAFF, WILLIAM)
GRAFF, ROSE M. GRAFF, GRAFF)
TANK, GRAFF TANK, INC. and)
MEEKER EQUIPMENT CO., INC.,)

Defendants,)

vs.)

DM INDUSTRIES, INC., DM)
INDUSTRIES, and INFERN-O-)
THERM CORPORATION,)

Additional Defendants.)

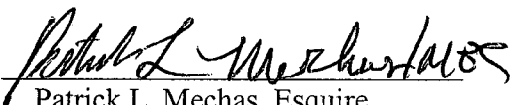
CASE NO. 2004-02041-CD

NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES AND
RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS
PROPOUNDED BY ADDITIONAL DEFENDANT DM INDUSTRIES, INC. t/a
DM INDUSTRIES

TO: PROTHONOTARY

The undersigned hereby certifies that the original of, Answers to Interrogatories and Responses to Request for Production of Documents Propounded by Additional Defendant DM Industries, Inc. t/a DM Industries were served on counsel of record, this 26th day of September, 2005.

BURNS, WHITE & HICKTON, LLC

BY: 
Patrick L. Mechas, Esquire
John B. Cromer, Esquire
Attorneys for Additional Defendant,
Infern-O-Therm Corporation

CERTIFICATE OF SERVICE

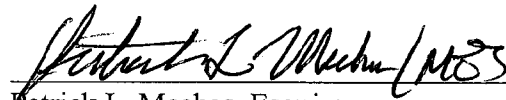
The undersigned hereby certifies that a true and correct copy of the within
**NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY
ADDITIONAL DEFENDANT, DM INDUSTRIES, INC. t/a DM INDUSTRIES** was
served upon all counsel of record via first class mail, postage prepaid, this 26th day of
September, 2005:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Phillip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
1528 Walnut Street – 22nd Floor
Philadelphia, PA 19102

Thomas T. Frampton, Esquire
Dana L. Bacsí, Esquire
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Paul E. Pongrance, III, Esquire
Redman & Pongrace
300 Weyman Plaza – Suite 310
Pittsburgh, PA 15236


Patrick L. Mechas, Esquire
John B. Cromer, Esquire

FILED

SEP 28 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HRI, INC. and WHITAKER ROADS
CORPORATION,

No.: 04-2041 CD

Plaintiffs,

CODE:

vs.

**PRAECIPE TO CHANGE COUNSEL'S
ADDRESS**

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Filed on behalf of Additional Defendant,

Defendants,

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Counsel of Record for this
Party:

Additional Defendants.

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
610 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219

Telephone: (412) 804-3355
Facsimile: (412) 804-3356

FILED
m/4/05
OCT 31 2005
copy to
CIA
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

PRAECIPE TO CHANGE COUNSEL'S ADDRESS

Kindly change the mailing of address of Paul E. Pongrace, III, Esquire and
Redman & Pongrace to 610 Two Chatham Center, 112 Washington Place, Pittsburgh, PA
15219.

REDMAN & PONGRACE

By: 

PAUL E. PONGRACE, III, ESQUIRE
Attorney for Additional Defendant,
DM Industries, Inc., t/a DM Industries

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the *Praecipe to Change Counsel's Address* has been served upon all counsel and parties of record this 28th day of October 2005, by First Class Mail, postage prepaid as follows:

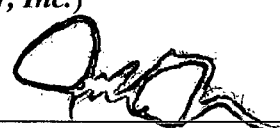
Matthew B. Taladay, Esquire
HANAK, GUIDO and TALADAY
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
(Attorney for Plaintiffs)

Phillip B. Silverman, Esquire
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS
22nd Floor, 1528 Walnut Street
Philadelphia, PA 19102
(Attorney for Meeker Equipment Co., Inc.)

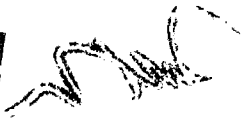
Patrick L. Mechas, Esquire
BURNS, WHITE & HICKTON
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(Attorney for Infern-O-Therm Corporation)

Thomas T. Frampton, Esquire
GOEHRING, RUTTER & BOEHM
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Attorney for Raymond A. Graff, William Graff and Rose M. Graff, v/d/b/a Graff Tank and Graff Tank, Inc.)

Terry R. Heeter, Esquire
THE KOOMAN LAW FIRM
Marianne Professional Center
P.O. Box 700
Clarion, PA 16214
(Attorney for Dufour, Inc.)



PAUL E. PONGRACE, III, ESQUIRE

A handwritten signature in black ink, appearing to be 'W. A. Shaw', is written over the 'FILED' stamp.

FILED

OCT 31 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION and DUFOUR, INC.,

Additional Defendants.

CIVIL DIVISION

No.: 04-2041 CD

CODE:

MOTION TO COMPEL

Filed on behalf of Additional Defendant,

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

Counsel of Record for this
Party:

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
610 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219

Telephone: (412) 804-3355
Facsimile: (412) 804-3356

FILED *NO CC*
m/11:47/24
NOV 14 2005 *(Col)*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION, and DUFOUR, INC.,

Additional Defendants.

MOTION TO COMPEL

AND NOW, comes the additional defendant, DM Industries, Inc., t/a DM Industries, by and through its undersigned counsel, and files the within Motion to Compel, and in support thereof avers as follows:

1. This is an action for an incident that allegedly took place on February 1, 2004.

2. On or about June 10, 2005 additional defendant served upon Meeker Equipment Co., Inc.'s counsel Additional Defendant's First Set of Interrogatories and First Request for Production of Documents (See Notice of Service attached hereto as Exhibit "A").

3. More than thirty (30) days have passed since additional defendant served said discovery requests.

4. Additional defendant has attempted to obtain responses to said discovery requests, but to no avail. (See correspondence attached hereto as Exhibit "B").

5. To date, original defendant has failed to provide responses to additional defendant's discovery requests, in violation of Pennsylvania Rule of Civil Procedure 4006(a)(2).

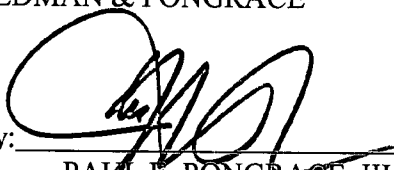
6. Original defendant has failed to provide a reasonable excuse for its failure to respond to additional defendant's discovery requests.

7. The original defendant's failure to respond to additional defendant's discovery requests has prejudiced additional defendant's ability to effectively prepare its defense in this case.

WHEREFORE, additional defendant requests this Court to enter an Order compelling Meeker Equipment Co., Inc. to provide full and complete answers to Additional Defendant's First Set of Interrogatories and First Request for Production of

Documents within twenty (20) days of the date of this Order, or suffer such sanctions as this Court sees proper to inflict upon further application.

REDMAN & PONGRACE

By: 

PAUL E. PONGRACE, III, ESQUIRE
Attorney for Additional Defendant,
DM Industries, Inc., t/a DM Industries

William A. Shaw
Notary Public/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

CIVIL DIVISION

No.: 04-2041 CD

CODE:

 **COPY**

**NOTICE OF SERVICE OF
INTERROGATORIES DIRECTED TO
MEEKER EQUIPMENT CO., INC.**

Filed on behalf of Additional Defendant,

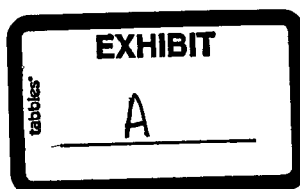
**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

Counsel of Record for this
Party:

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
300 Weyman Plaza
Suite 310
Pittsburgh, PA 15236

Telephone: (412) 884-4697
Facsimile: (412) 884-7326



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES and INFERN-O-THERM
CORPORATION,

Additional Defendants.

**NOTICE OF SERVICE OF INTERROGATORIES DIRECTED TO MEEKER
EQUIPMENT CO., INC.**

The undersigned, Paul E. Pongrace, III, Esquire, avers and says that Interrogatories and Request for Production of Documents were served on counsel for defendant addressed below on the 10th day of June 2005, by First-Class Mail, Postage Pre-Paid, and that said Interrogatories and Request for Production of Documents contained a notice to said counsel to answer same within thirty (30) days of the date of service.

Phillip B. Silverman, Esquire
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS
22nd Floor, 1528 Walnut Street
Philadelphia, PA 19102



PAUL E. PONGRACE, III, ESQUIRE
Attorney for DM Industries, Inc., t/a DM Industries

LAW OFFICES
REDMAN & PONGRACE
(STAFF COUNSEL FOR HARLEYSVILLE INSURANCE)

SCOTT T. REDMAN
PAUL E. PONGRACE, III

WRITER'S EMAIL: PPONGRACE@LEGAL-ORG.COM

300 WEYMAN PLAZA
SUITE 310
PITTSBURGH, PA 15236
TELEPHONE (412) 884-4697
FAX (412) 884-7326

August 19, 2005

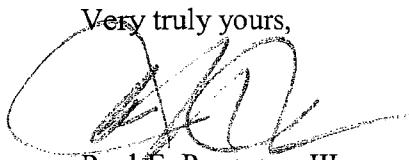
George W. Vokolos, Esquire
MINTZER, SAROWITZ, ZERIS
LEDVA & MEYERS
22nd Floor, 1528 Walnut Street
Philadelphia, PA 19102

**RE: *HRI, Inc. and Whitaker Roads Corporation vs. Raymond A. Graff,
William Graff and Rose Graff, t/d/b/a Graff Tank, Graff Tank, Inc. and
Meeker Equipment Co., Inc. vs. DM Industries, Inc., t/a DM Industries
and Infern-O-Therm Corporation***
Docket No.: 04-2041 CD

Dear Mr. Vokolos:

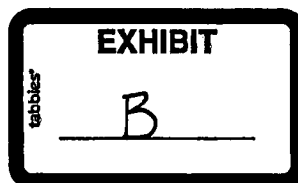
I note that interrogatories were served on your client on June 10, 2005 relative to this matter. Responses to those are now considerably overdue. I would appreciate hearing from you concerning the status of those, in the interest of foregoing a Motion to Compel.

Very truly yours,



Paul E. Pongrace, III

PEP/lac



9/16

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the *Motion to Compel* has been served upon all counsel and parties of record this ____ day of November 2005, by First Class Mail, postage prepaid as follows:

Matthew B. Taladay, Esquire
HANAK, GUIDO and TALADAY
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
(Attorney for Plaintiffs)

George W. Vokolos, Esquire
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS
22nd Floor, 1528 Walnut Street
Philadelphia, PA 19102
(Attorney for Meeker Equipment Co., Inc.)

Patrick L. Mechas, Esquire
BURNS, WHITE & HICKTON
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(Attorney for Infern-O-Therm Corporation)

Thomas T. Frampton, Esquire
GOEHRING, RUTTER & BOEHM
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(Attorney for Raymond A. Graff, William Graff and Rose M. Graff, t/d/b/a Graff Tank and Graff Tank, Inc.)

Terry R. Heeter, Esquire
THE KOOMAN LAW FIRM
Marianne Professional Center
P.O. Box 700
Clarion, PA 16214
(Attorney for Dufour, Inc.)



PAUL E. PONGRACE, III, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

CIVIL DIVISION

No. 04-2041 CD

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION, and DUFOUR, INC.,

Additional Defendants.

ORDER OF COURT

AND NOW, this _____ day of _____, 200__, it is
hereby **ORDERED** that the Meeker Equipment Co., Inc. will provide full and complete
answers to Additional Defendant's First Set of Interrogatories and First Request for
Production of Documents within twenty (20) days of the date of this Order, or suffer such
sanctions as this Court sees proper to inflict upon further application.

BY THE COURT:

J.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION and DUFOUR, INC.,

Additional Defendants.

CIVIL DIVISION

No.: 04-2041 CD

CODE:

PRAECIPE FOR ARGUMENT

Filed on behalf of Additional Defendant,

**DM INDUSTRIES, INC. t/a DM
INDUSTRIES**

Counsel of Record for this
Party:

PAUL E. PONGRACE, III, ESQUIRE
Pa. I.D. No. 72727

REDMAN & PONGRACE
610 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219

Telephone: (412) 804-3355
Facsimile: (412) 804-3356

FILED NO
CC
NOV 14 2005

William A. Shaw
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION, and DUFOUR, INC.,

Additional Defendants.

PRAECIPE FOR ARGUMENT

Kindly place the within Motion to Compel on the next available argument list.

REDMAN & PONGRACE

By: 

PAUL E. PONGRACE, III, ESQUIRE
Attorney for Additional Defendant,
DM Industries, Inc., t/a DM Industries

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**
BY: GEORGE W. VOKOLOS, ESQUIRE
Identification No.: 88508
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant,
MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

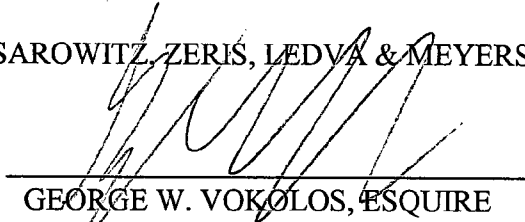
No. 04-²⁰⁴¹~~2021~~-CD

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance as co-counsel on behalf of defendant, ***MEEKER
EQUIPMENT CO., INC.***, in the within action.

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 

GEORGE W. VOKOLOS, ESQUIRE
Attorney for Defendant: ***MEEKER
EQUIPMENT CO., INC.***

116568.wpd

FILED ^{NR}CC
DEC 09 2005
William A. Shaw
Prothonotary/Clerk of Courts
copy to CIA
(60)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

No. 04-2041 CD

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF, t/d/b/a
GRAFF TANK, GRAFF TANK, INC. and
MEEKER EQUIPMENT CO., INC.

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION, and DUFOUR, INC.,

Additional Defendants.

FSA
PROPOSED SCHEDULING ORDER

AND NOW, this 13th day of December, 2005,
defendant's Motion to Compel is scheduled for January 11, 2006 at 10:00
a.m./p.m. at the Clearfield County Courthouse in Courtroom Number 1.

BY THE COURT:

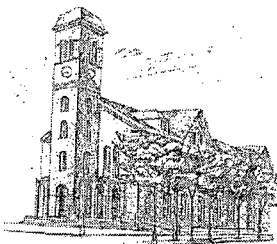
[Signature]
J.

FILED

019:5301
DEC 14 2005

William A. Shaw
Prothonotary/Clerk of Courts

3cc Any Longrace



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

X You are responsible for serving all appropriate parties.

_____ The Prothonotary's office has provided service to the following parties:

_____ Plaintiff(s)/Attorney(s)

_____ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

HRI, INC. and WHITAKER ROADS
CORPORATION

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF t/d/b/a GRAFF TANK;
GRAFF TANK, INC. And MEEKER
EQUIPMENT CO., INC.

No. 04-2021-CD

FILED

0/3:50 pm Taladay
DEC 19 2005 T. Frampton
D. Bacs
P. Silverman

vs.

DM INDUSTRIES, INC.

William A. Shaw Vokolos
Prothonotary Pongrace
mechas
Croner
Heeter

ORDER

AND NOW this 16 day of December, 2005 upon consideration of

Defendant, Meeker Equipment Co., Inc.'s Petition for Leave of Court to Join Additional Defendant,

DuFour, Inc. and any and all responses thereto, or argument there upon, it is hereby **ORDERED** and

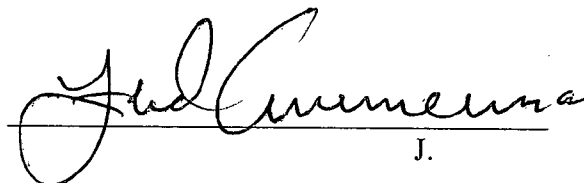
DECREED that Defendant, Meeker Equipment Co., Inc., be and is hereby granted Leave of Court

to join:

DuFour, Inc.
4487 Drane Highway
Osceola Mills, PA 19666

as an Additional Defendant in the above matter within thirty (30) days of the date of this Order.

BY THE COURT:


J.

FILED

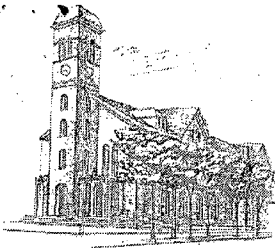
DEC 19 2005

William A. Shaw
Prothonotary

Copies to all atty -
including:

George Vokolas
(Mintzer, Sarowitz, Zeris
Ledva + Meyers)

&
Terry Heeter



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,


William A. Shaw
Prothonotary

DATE: 12-19-05

_____ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: GEORGE W. VOKOLOS, ESQUIRE
Identification No.: 88508
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant, **MEEKER
EQUIPMENT CO., INC.**

HRI, INC. AND WHITAKER ROADS
CORPORATION

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

No. 04-2041-CD

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

vs.

DUFOUR, INC.
4487 Drane Highway
Osceola Mills, PA 19666

THIRD-PARTY/JOINDER COMPLAINT
OF DEFENDANT, MEEKER EQUIPMENT CO., INC.
AGAINST ADDITIONAL DEFENDANT, DUFOUR, INC.

FILED *Dec 29*
31 1:46 PM '06 *EN*
JAN 10 2006

William A. Shaw
Prothonotary/Clerk of Courts

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE. GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Clearfield County
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forms escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted. LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Clearfield County
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**

BY: GEORGE W. VOKOLOS, ESQUIRE

Identification No.: 88508

22nd Floor

1528 Walnut Street

Philadelphia, PA 19102

(215) 735-7200

MSZL&M File No. 6400.0006

Attorney for Defendant, ***MEEKER
EQUIPMENT CO., INC.***

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

vs.

DUFOUR, INC.
4487 Drane Highway
Osceola Mills, PA 19666

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

No. 04-2041-CD

THIRD-PARTY/JOINDER COMPLAINT
OF DEFENDANT, MEEKER EQUIPMENT CO., INC.
AGAINST ADDITIONAL DEFENDANT, DUFOUR, INC.

Defendant/Third-Party Plaintiff, Meeker Equipment Co., Inc. (hereafter "Meeker"), by and through their attorneys, MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS, brings the following Third-Party Complaint against DuFour, Inc. (hereafter "DuFour") and in support thereof aver as follows:

1. Plaintiffs, HRI, Inc. and Whitaker Roads Corporation (hereafter "HRI") initiated

the instant action by filing a Complaint in Civil Action against Defendant, Meeker, and Defendants, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank, Graff Tank, Inc. (collectively hereafter "Graff") on or about December 30, 2004. (Attached hereto and marked Exhibit "A" is a true, correct and complete copy of HRI's Complaint.)

2. In their Complaint, Plaintiffs allege property damage as the result of the negligence and/or breach of warranty of original Defendants, Meeker and Graff. (See Exhibit "A").

3. More specifically, Plaintiffs allege that the claimed property damage was caused by certain defects and/or oversights in the fabrication, construction, erection and/or start-up of a commercial storage tank and its component parts. (See Exhibit "A").

4. Subsequent to the filing of the aforementioned Complaint in Civil Action, DM Industries, Inc. t/a DM Industries and Infern-O-Therm, Corporation were joined as Additional Defendants in that matter.

5. On or about December 16, 2005, this Honorable Court granted Meeker Leave of Court to Join DuFour as an Additional Defendant in this matter. (Attached hereto and marked Exhibit "B" is a true, correct and complete copy of the Honorable Court's December 16, 2005 Order).

6. Defendant/Third-Party Plaintiff, Meeker, has filed an Answer with New Matter and New Matter/Crossclaim to HRI's Complaint. (Attached hereto and marked Exhibit "C" is a true, correct and complete copy of said Answer).

7. Additional Defendant, DuFour, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business at 4487 Drane Highway, Osceola Mills, Pennsylvania 19666.

8. At all times material to this cause of action, Additional Defendant, DuFour, its agents, servants, workmen and/or employees acting within the course and scope of their employment either alone or with others were responsible, in whole or in part, for the fabrication, construction and/or erection of the commercial tank which is the subject of the instant lawsuit, and its component parts, including but not limited to, assembling, installing, connecting, maintaining and/or starting up the combustion package which was part of the subject storage tank.

COUNT I
MEEKER EQUIPMENT CO., INC. V. DUFOUR, INC.

9. Defendant, Meeker Equipment Co., Inc. incorporates by reference paragraphs 1 through 8 as though same were set forth herein at length.

10. If there was any negligence on the part of Meeker, said acts or omissions being specifically denied, then the incident described in Plaintiff's Complaint was caused by the negligence, carelessness and/or recklessness of Additional Defendant, DuFour, its agents, servants, workmen and/or employees acting in the course and scope of their employment as follows:

- a. The contents temperature sensor was not properly placed in a position above the distribution overflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition;
- b. The contents temperature sensor was improperly placed, therefore defeating the emergency feature of the Infern-O-Therm heating package;

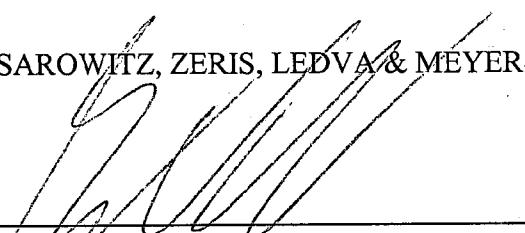
- c. Improperly installing the CPA-200 combustion package;
- d. Failing to warn users such as the Plaintiffs of eminent overheating of the tank's contents, thus resulting in the explosion and fire alleged in Plaintiffs' Complaint;
- e. Failing to properly wire, connect and/or assemble the subject combustion package;
- f. Failing to assemble, install and/or connect the subject combustion package pursuant to explicit instructions and/or industry standards;
- g. Failing to properly supervise and/or monitor the assembling, installation, connecting and/or start-up of the subject combustion package;
- h. Failing to properly connect, wire and/or start-up the subject combustion package;
- i. Failing to instruct Plaintiffs as to the proper methods and/or procedures for properly starting-up, implementing and/or using the subject combustion package;
- j. Failing to use due care under the circumstances.

11. If Plaintiffs, HRI, sustained injuries and/or damages as alleged, same being specifically denied, then Additional Defendant, DuFour, is solely liable to HRI, or jointly and severally liable or liable over to Meeker with respect to the cause of action declared upon by Plaintiffs, HRI, in the Complaint attached hereto and marked Exhibit "A". Any and all liability with respect to Defendants/Third-Party Plaintiff, Meeker, is denied.

12. Furthermore, Defendant/Third-Party Plaintiff, Meeker, are and/or may be entitled to contribution and/or indemnification from Additional Defendant, DuFour, should Plaintiffs, HRI, recover for damages allegedly sustained in the aforementioned incident. Any and all liability with respect to Meeker is denied.

WHEREFORE, Defendant/Third-Party Plaintiff, Meeker Equipment Co., Inc., respectfully requests that this Honorable Court find Additional Defendant, DuFour, Inc. solely liable to Plaintiff, liable over to Defendant/Third-Party Plaintiff, Meeker, jointly and/or severally liable with Defendant/Third-Party Plaintiff, Meeker, and/or liable over to Defendant/Third-Party Plaintiff, Meeker, for contribution and/or indemnification upon the cause of action alleged by Plaintiffs, HRI, Inc. and Whitaker Roads Corporation.

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 

PHILLIP B. SILVERMAN, ESQUIRE

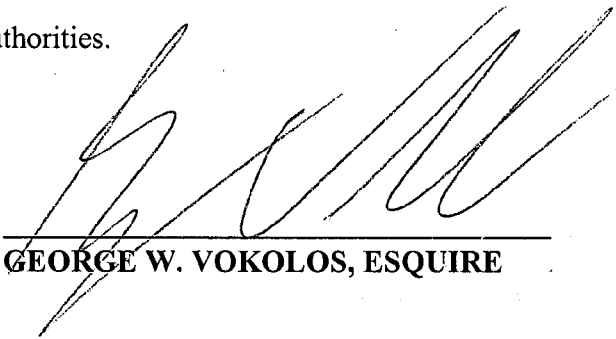
GEORGE W. VOKOLOS, ESQUIRE

Attorney for Defendant: **MEEKER**

EQUIPMENT CO., INC.

VERIFICATION

The averments or denials of facts contained in the foregoing are true, based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are consistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. This Verification is made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.



GEORGE W. VOKOLOS, ESQUIRE

Dated: 1/9/06

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

CIVIL ACTION - AT LAW

No. 04-2041-D

Type of Pleading:

Complaint

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 30 2004

Attest.

[Signature]
F. C. C. /
Clk. of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 Ext. 1303

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

COMPLAINT

AND NOW, comes the Plaintiffs, HRI, Inc., and Whitaker Roads Corporation, by its attorneys, Hanak, Guido and Taladay, and hereby bring the within Complaint:

1. HRI, Inc. is a corporation chartered in the State of Delaware that trades and does business within the Commonwealth of Pennsylvania with corporate offices at 1750 West College Avenue, Suite 1, State College, Pennsylvania 16801.

2. Whitaker Roads Corporation is a Pennsylvania business corporation and a wholly owned subsidiary of HRI, Inc., with offices and principal place of business at Route 322 East, Clearfield, Pennsylvania 16830.

3. Defendants are Raymond A. Graff, William H. Graff and Rose M. Graff who trade and do business as Graff Tank ("Graff") and who have a business address of 731A North Main Street, P.O. Box 336, Hubbard, OH 44425.

4. Graff Tank, Inc. is an Ohio business corporation with offices and principal place of business at 731A North Main Street, P.O. Box 336, Hubbard, OH 44425.

5. Defendant Meeker Equipment Co., Inc. ("Meeker") is, upon information and belief, a Pennsylvania business corporation with offices and principal place of business at 516 North Broad Street, P.O. Box 925, Lansdale, Pennsylvania 19446-0661.

6. Defendant Graff at all times relevant hereto was in the business of designing, constructing, maintaining, repairing, fabricating and assembling commercial storage tanks for the petroleum, emulsion, polymer and related industries.

7. Defendant Meeker at all times relevant hereto was in the business of offering for sale combustion heating units for storage tanks used in the petroleum, emulsion, polymer and related industries.

8. In the Fall of 2001, the Plaintiffs solicited proposals from the Defendants and others for the design, construction and provision of a combustion package for a commercial petroleum emulsion storage package for the purposes of storing and dispensing MC-70 cutback, including, but not limited to, emulsions, asphalt and/or road oils (MC-70 tank).

9. On or about December 13, 2001, Graff submitted a proposal to HRI for construction of a 24' diameter by 18' high MC-70 tank. A copy of the three page proposal is attached hereto as Exhibit "A".

10. On or about May 21, 2002, HRI, Inc. submitted a purchase order to Graph, entering a Purchase Order Agreement No. 1043. A copy of this Purchase Order is attached hereto as Exhibit "B".

11. On or about December 20, 2001, Meeker submitted to Whitaker Roads Corporation a quote for a combustion package for use in the proposed MC-70 tank. A copy of that proposal is attached as Exhibit "C".

12. On or about May 31, 2002, HRI, Inc., submitted a Purchase Order to Meeker for a combustion package for use in a 24' diameter by 18' high insulated MC-70 tank to be constructed at the Whitaker Roads Corporation facilities, Clearfield Emulsion Plant. A copy of that Purchase Order is attached hereto as Exhibit "D".

13. In accordance with the Purchase Order, Meeker did sell and HRI did purchase a CPA-200 Combustion Package which was shipped to the Clearfield Emulsion Plant in Clearfield County, Pennsylvania.

14. HRI at all times relied on the knowledge, experience and expertise of Meeker to establish the appropriate specifications for the combustion package.

15. In accordance with the Purchase Order, Graff did install and HRI did fully pay for the furnishing and construction of a 24' diameter by 18' high MC-70 tank, which was constructed by Graff at the Whitaker Roads Corporation, Clearfield Emulsion Plant and was completed on or about July, 2002.

16. In accordance with its contractual obligation, Graff did install in the CPA-200 combustion package furnished by Meeker in the MC-70 tank.

17. HRI at all times relied on the knowledge, experience and expertise of Graff in the proper design, fabrication and construction of the tank, including, but not limited to, the proper placement of all temperature sensors, heating elements, in-flow and out-flow pipes, and safety features.

18. HRI put the MC-70 tank into service on or about July, 2002 and at no time undertook any material change or usage modification of the MC-70 tank.

19. On or about August 13, 2004, a massive explosion and fire occurred at the HRI/Whitaker Roads facility.

20. The point of origin of the explosion and fire was the MC-70 tank fabricated and installed by Graff and containing the combustion package provided by Meeker. At the time of the incident, this tank was properly being used for the storage of a road oil product (MC-70 cutback).

21. The storage and dispensing of emulsions, asphalt and road oils, including MC-70 cutback, were the intended and foreseeable uses of the Graff tank.

22. The CPA-200 combustion package provided by Meeker was represented by the sellers as suitable for its intended purpose in the heating of emulsion, asphalt and road oils, including MC-70 cutback, in an 18' by 24' storage tank.

23. The explosion and fire and resulting damage were solely and proximately the responsibility of the Defendants, as set forth herein.

Count I

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Breach of Warranty - Fitness for a Particular Purpose

24. Paragraphs 1 through 23 are incorporated herein by reference as if set forth in full.

25. Plaintiff HRI at all times relevant hereto relied on the experience, expertise, counsel and judgment of Defendant Graff to fabricate, construct and erect a tank that was suitable for its intended purpose of the commercial storage and dispensing of petroleum emulsions, including, but not limited to, MC-70 cutback.

26. Graff expressly or impliedly warranted that the tank construction configuration and design were suitable and fit for that particular purpose.

27. The MC-70 tank constructed and installed by Graff was unsuitable for the Plaintiff's purposes as follows:

(a) The contents temperature sensor was improperly placed in a position above the distribution outflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) The contents temperature sensor was improperly placed, thereby defeating the emergency features of the inferno-therm heating unit installed in the tank.

(c) The MC-70 tank lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The MC-70 tank lacked adequate sensors or other safety devices to prevent overheating of the contents, which could and did result in overheating of the tank contents resulting in an explosion and fire.

(e) The tank lacked adequate warning devices to alert its users of overheating of the contents.

28. Graff failed to provide conspicuous and adequate warnings of the dangers of drawing the contents level below the level of the temperature sensor when it knew or should have known that to do so would defeat the proper functioning of the sensor and result in a dangerous condition.

WHEREFORE, the Plaintiffs demand judgment in an amount in excess of \$25,000.00.

Count II

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Negligence

29. Plaintiffs incorporate by reference paragraphs 1 through 28 as if set forth in full herein.

30. The losses sustained by HRI were solely and proximately caused by the negligence of the Defendant, his employees or agents which is as follows:

(a) The contents temperature sensor was improperly placed in a position above the distribution outflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) The contents temperature sensor was improperly placed, thereby defeating the emergency features of the inferno therm heating unit installed in the tank.

(c) The MC-70 tank lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The petroleum emulsion storage tank lacked adequate sensors or other safety devices to prevent overheating of the stored products contents, which could

and did result in overheating of the tank contents resulting in an explosion and fire.

(e) The tank lacked adequate warning devices to alert its users of imminent overheating of the contents.

WHEREFORE, Plaintiff demands judgment in its favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count III

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

Meeker Equipment Company, Inc., Defendant

Negligence

31. Plaintiffs incorporate by reference paragraphs 1 through 30 as if set forth in full herein.

32. The losses sustained by Plaintiffs were solely and proximately caused by the negligence of Defendant Meeker Equipment Company, Inc. which is as follows:

(a) Failure to provide a combustion package suitable for use in an MC-70 storage tank as specified in Defendant's Purchase order.

(b) Failure to supply a combustion unit with all features necessary for its safe foreseeable operations.

(c) Failure to provide a combustion unit with all necessary warnings.

(d) Failure to supply a combustion package including a "low volume level sensing device" or other mechanism to prevent the contents level from dropping

below the temperature sensing level and thereby creating a dangerous condition.

WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count IV

**HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
vs.
Meeker Equipment Company, Inc., Defendant**

Breach of Warranty - Fitness for a Particular Purpose

33. Paragraphs 1 through 32 are incorporated by reference as if set forth in full herein.

34. Plaintiffs at all times relevant hereto relied on the knowledge, experience, expertise and recommendations of the Defendant Meeker to provide a combustion package suitable for its intended use in heating commercially stored MC-70 cutback, including, but not limited to, emulsions, asphalt and/or road oils.

35. Defendant Meeker expressly or impliedly warranted that the combustion package was suitable or fit for that particular purpose.

36. The combustion package provided by Meeker were unsuitable for the Plaintiffs' purposes as follows:

(a) The combustion package temperature sensor was improperly placed defeating or eliminating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) Meeker failed to supply a combustion unit with all features necessary for its safe foreseeable operations.

(c) The combustion package lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The combustion package lacked adequate warning instructions or devices to alert users of imminent overheating of the tank contents.

(e) The combustion package lacked adequate sensors or other safety devices to prevent the overheating of contents, which could and did result in the overheating of the tank contents resulting in a fire and explosion.

WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count V

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
vs.
Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank, Graff Tank, Inc., and
Meeker Equipment Company, Inc., Defendants

Damages

37. As a direct and proximate result of the negligence and/or breach of warranties of the Defendants, jointly or severally, the Plaintiffs sustained damages as follows:

(a) Complete destruction of a 61,000 gallon

MC-70 tank resulting in a loss which is currently unliquidated but estimated to be in excess of \$130,000.00;

(b) Complete destruction of a 12,000 gallon MC-70 tank resulting in a loss estimated to be \$15,000.00;

(c) Damage to various metering gauges resulting in a loss estimated to be \$1,228.00;

(d) Damage to the insulation skin on tanks No. 11 and 12 located at the Whitaker Roads facility resulting in a loss estimated at \$2,500.00;

(e) Damage to pump and motors estimated to be \$4,556.00;

(f) Damage to the Whitaker Roads facility shop buildings necessitating repairs, estimated costs \$2,732.00;

(g) Clean up costs in the estimated amount of \$25,000.00;

(h) Damage to a tanker truck located on the premises at the time of the explosion resulting in a loss of \$3,333.33;

(j) Loss of 1,670 gallons of MC-70 road oil at a cost of \$1,870.00;

(k) Cost of installing security fence and covering explosion site to preserve scene and to protect HRI employees and site visitors, \$3,105.00;

(l) Reimbursement to responding fire departments for cost of chemical fire suppressant foam, \$9,944.00; and

(m) Administrative costs of reconstruction and commissioning MC-70 tank, currently unliquidated.

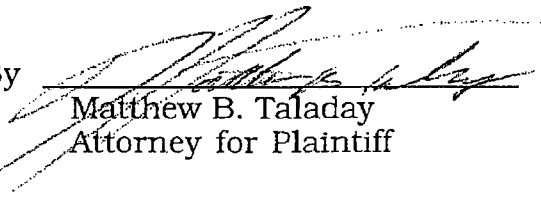
WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, counsel fees and such other relief as the Court may deem appropriate.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By


Matthew B. Taladay
Attorney for Plaintiff



Graff Tank

731A N. Main Street • P.O. Box 336
Hubbard, Ohio 44425-0336
(330) 534-3660 • Fax: (330) 534-3646
1-800-876-6671

Whitaker Roads
Clearfield/Woodland
Attn: Mr. Tim Olson

December 13, 2001

Gentlemen:

In response to your request for pricing for the fabrication & erection of one 24' dia. x 18' high tank per API 650 at your site in Clearfield, PA, Graff Tank offers the following:

24' dia. x 18' high Field-built Tank

Specifications:

Material: A-36 Carbon Steel, 1/4" nominal thickness for bottom, shell and roof.
Fittings: 24" shell and roof manways, 4-3" and 2-4 150# RFSO Flanged Fittings.
Standard: Tank would be built and tested to API 650 App. A&M (where applicable) with the reduced joint efficiency (.70) clause in effect.
Options: Ladder: Caged galvanized roof access ladder: included
Handrail: Two 8' wing rails: included.
Insulation Drip edge: included.
Heater Installation: approx. (heating element installation only, no hookup or commissioning)

Field Notes:

- Site access is assumed to be adequate for crane and equipment positioning.
- Ten-hour work days for erection and painting of steel are assumed.
- No painting is included in pricing: Primer painting for under the insulation would be in the neighborhood of
- Hydro-test by others. Also, DEP Certified Inspection by others (if applicable).
- Foundation preparation, painting, heating elements and insulation by others.
- All construction on site would be performed by experienced *non-union* personnel.

All applicable taxes would be additional to the stated pricing.

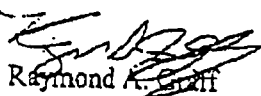
Terms: Net 30 w/ progressive payments. Pricing is valid for minimum of 30 days.

Schedule: Material ordering and engineering: 2-4 wks; fabrication: 1-2 wks; on-site erection: approx. 3-4 wks depending on weather.

If you have any questions about the above information, don't hesitate to call.

42 days Total

Sincerely,


Raymond A. Graff

Graff Tank

WR Fx: 814-857-5159

ATTN: Tim O
 $1\frac{1}{2}$ " inlet 2'
 4' from
 Bottom

INLET/
 (OUTLET)

HEATER
 WHEEL

3" Flange
 Dist head out

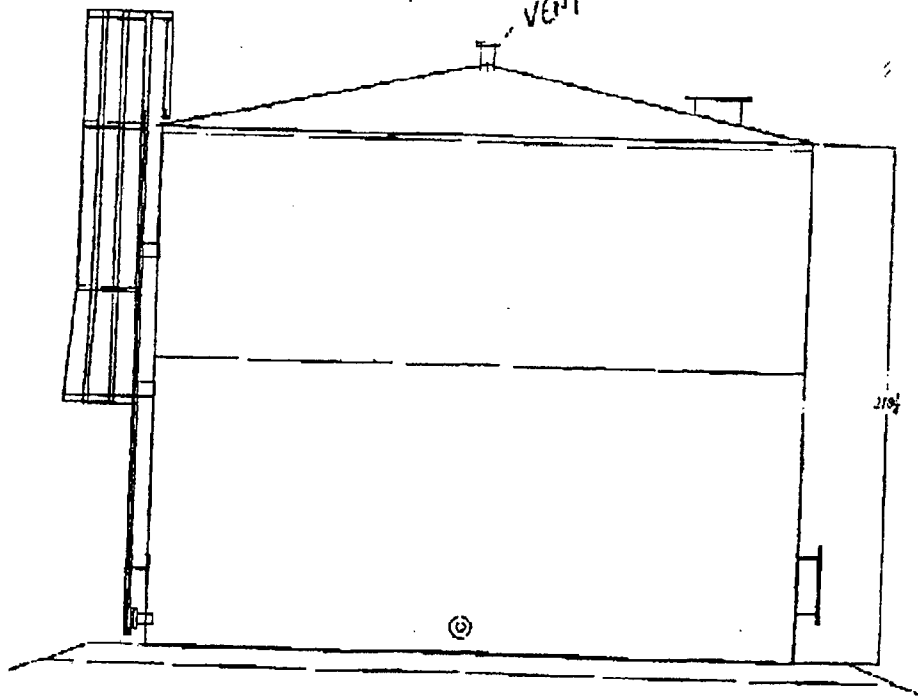
WHEEL
 HEATER

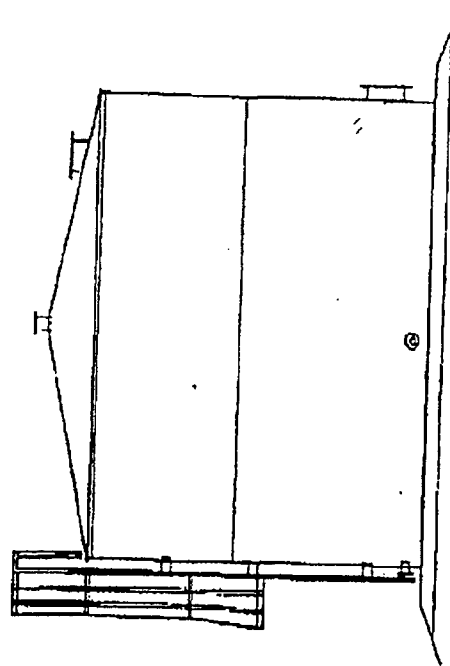
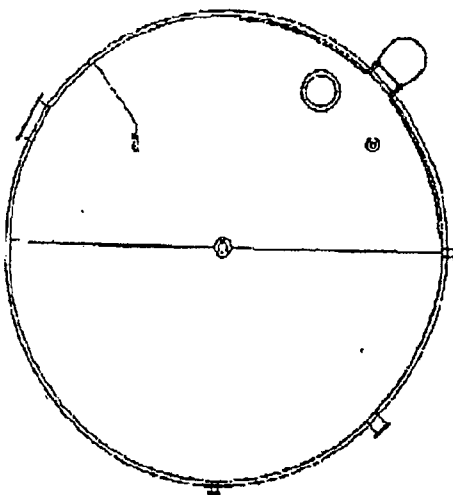
TEMPERATURE
 TAP 1" CPG

INLET
 VENT

3" Stand Pipe
 $\frac{3}{4}$
 Sample
 Valve

3" Flange
 outlet for
 Dist to
 head.



[illegible]

4	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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HRI, INC.

B14

Western Division
P.O. Box 402
Clearfield, PA 16830
(814) 857-7635
(814) 857-5159- Fax

**SUBCONTRACT AGREEMENT/
PURCHASE ORDER NO.**

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

01042

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

DM INDUSTRIES
326 Center Street
St. Marys, PA 15857
(814) 834-2321- Phone/Fax

Page 1

WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

SHIP
TO

DATE ORDERED 5/21/02		FOR Installation DELIVERY As Scheduled		TERMS Net 30 Days		PRICE QUOTED Richard	ORDERED FROM Same
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION	UNIT PRICE QUOTED
			LS		LS	Furnish and Install Insulation on Purchaser's New 24'Ø x 18'High Heated Tank per the attached Quotation dated May 30, 2002 <u>NOTES & QUALIFICATIONS:</u> 1. Delivery and installation to be determined. 2. DM Industries (Subcontractor) is responsible to ensure that all items are properly loaded and secured for and during transportation to the jobsite. 3. SAFETY- Subcontractor is responsible for compliance with all current HRI, Inc., and OSHA safety rules and regulations during the conduct of its performance on and in connection with this project, and shall indemnify and defend HRI, Inc. for any and all expenses incurred for fines, penalties or corrective measures imposed as a result of acts of commission or omission by Subcontractor, its agents, employees, or assigns in failure to comply with said safety rules and regulations. 4. DM Industries guarantees and warrants the above described insulation against all defects in materials and workmanship. 5. INDEMNIFICATION OF OWNER (HRI, INC.) FROM ALL LIABILITY- The Subcontractor (DM INDUSTRIES) shall have charge of and responsibility for its entire work as described herein until completion and acceptance, and shall alone be liable for and shall pay all loss or damage caused by it or its servants, agents, or employees to property, buildings or adjacent work and for any accident to persons that may occur during the performance of the work	\$18,080.00

DM INDUSTRIES

APPROVED

Robert A. Hopver, Mgr. of Procurement
John R. Kulka, Pres.

ACCEPTED BY:

EXHIBIT "B"

Phillip H. Diehl Vice Pres

HRI, NC.

Western Division
P.O. Box 402
Clearfield, PA 16830

Page 2

SUBCONTRACT AGREEMENT/ PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

01042

ALL ORDERS TO BE SHIPPED PREPAID
FOR DELIVERED TO JOBSITE

DM INDUSTRIES
326 Center Street
St. Marys, PA 15857

WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE ORDERED 5/21/02		FOR Installation As Scheduled		TERMS Net 30 Days		PRICE QUOTED Richard		ORDERED FROM Same	
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION		UNIT PRICE QUOTED	
						covered by this contract or at any time thereafter as a consequence of the performance of said work. The Subcontractor shall observe all state and municipality laws, ordinances and regulations and shall defend and save harmless the Owner from all suits and claims whatsoever for loss of life or injury occurring to employees of the Subcontractor who perform such work. The Subcontractor agrees to fully indemnify, protect, defend and save harmless the Owner from all liability from all claims, loss, damage, suits and actions of every kind from all costs and expenses in connection with such claims, suits and actions due to injuries to persons or damage to property whether resulting from accident, negligence or any other cause whatsoever occurring during the performance of the work covered by this contract or at any time thereafter as a consequence of the performance of the same or which may at any time occur or result from or be caused by such work and if there are any such claims unsettled when the work herein provided for is completed, final settlement by the Owner and Subcontractor shall be deferred until such claims are adjusted or suitable special indemnity acceptable to the Owner is provided by the Subcontractor. Subcontractor shall provide proof of insurance in accordance with the attached "HRI, INC., MINIMUM INSURANCE REQUIREMENTS". Subcontractor is subject to all provisions of the Commonwealth Nondiscrimination/Sexual Harassment Clause which is incorporated herein by reference.			

SALES TAX EXEMPT

CONFIRMING ORDER

DM INDUSTRIES

APPROVED

Robert R. Hoover, Mgr. of Procurement

John R. Kulka, Pres.

ACCEPTED BY:

Phillip H. Diehl, Vice Pres.

DM INDUSTRIES
326 CENTER ST.
ST. MARYS, PA. 15857
Phone / Fax (814) 834-2321

5/30/02

Whitaker Roads
Attn: Tim Olson

Dear Tim:

I am pleased to submit the following price quotation (labor and material) for the insulation of the 24ft. diameter by 18-foot high tank located at your facility.

Price: \$18,080.00

Contractor will install 4" fiberglass, 2 layers, 2" thick fastened with weld pins and covered with .032 aluminum sheets secured with appropriate stainless steel screws and bands. First foot on the bottom will be cellular glass to prevent wicking. Top will consist of 2" cellular glass adhered with steep asphalt and covered with 4 layers of fiberglass paper imbedded with steep asphalt, finished with a flooded topcoat of steep asphalt.

Note: A rain gutter must be installed on this tank. This would be done by the tank manufacturer.

Yours truly,

Richard L. Sadley

Quotation #2219



MEEKER EQUIPMENT CO., INC.
516 N. Broad St., PO Box 925
Lansdale, PA 19446-0661
Office: (215) 361-2900
Fax: (215) 361-1725
Email: info@meekerequipment.com

December 20, 2001

Mr. Tim Olson
Whitaker Roads Corp.
PO Box 402
Clearfield, PA 16830

Dear Tim:

We are pleased to quote on your equipment requirements as follows:

CPA-200: Combustion package to be installed into existing horizontal tank for heating asphalt.

Main Combustion Tube: 16" seamless tube with two (2) 5" secondary heat transfer tubes, and two (2) 5" x 6" jacketed stacks.

Infern-O-Therm Burner Model 200: This is a heavy duty, industrial burner designed and manufactured by Infern-O-Therm for the process industry. Standard is #2 fuel oil with 828,000 BTU per hour input, natural gas, propane and combination burners are optional. Burner is equipped with Infern-O-Therm automatic temperature control with built in high limit switch, Fireeye flame control with UV flamescanner, alarm circuit with horn, and weatherproof cover with hinged door. The control box is NEMA 13. Fan motor is TEFC 1.15 S.F. IOT burners use UL approved controls.

Combustion Chamber: High temperature refractory with Cloverleaf supercharger which maintains the back pressure at approximately 6" in the forward combustion chamber. This causes a high efficiency burning process by properly mixing the super heated air with the fuel vapors in the hot atmosphere of the combustion chamber for complete combustion with cleaner exhaust and low fuel consumption.

PRICE FOB FACTORY ... \$ 14,630.00

Optional Natural Gas/Oil Combination Burner ... Add \$ 2,750.00

Branch Office:
200 E. Campus View Blvd.
Suite 200
Columbus, OH 43235
Office: (614) 717-0100
Fax: (614) 431-8294
Email: hotmixohio@aol.com

EXHIBIT "C"

#2219

Terms: Twenty-five (25%) with order
Seventy (70%) when equipment is ready to ship
Five (5%) net 30 days

FOB: All prices are quoted FOB Factory

Delivery: Four (4) to six (6) weeks after receipt of order

Taxes: No state and/or local taxes or permits are included in pricing. Any taxes will be responsibility of the customer.

Thank you for the opportunity to quote you on your requirements and I look forward to your order.

Very truly yours,

MEEKER EQUIPMENT CO., INC.



Nick Diodad

Accepted by: _____

Date: _____

HRI, INC.

Western Division
P. O. BOX 402
CLEARFIELD, PA 16830
814/857-7635 Phone
814/857-5159 Fax

PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

1044

**ALL ORDERS TO BE SHIPPED PREPAID
FOR DELIVERED TO JOBSITE**

MEEKER EQUIPMENT CO., INC.

516 N. Broad Street
P. O. Box 925
Lansdale, PA 19446-0661

215/361-2900 Phone
215/361-1725 Fax

WHITAKER ROADS CORPORATION

SHIP TO Barrett Curve Emulsion Plant
Route 322
3 Mi. East of Clearfield
Clearfield, PA 16830
Phone: 814/857-7635

DATE ORDERED 5/31/02		FOR DELIVERY As Scheduled		TERMS *As Noted		PRICE QUOTED Nick Diodad	ORDERED FROM David Garrett
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION	UNIT PRICE QUOTED
			LS		LS	Furnish CPA-200 Combustion Package for New 24' Ø x 18' H Insulated Tank Per the Attached Quotation dated December 20, 2001. Seller shall Ship Prepaid and Invoice Purchaser for Freight. The above described Combustion Package shall be Guaranteed and Warranted in accordance with each respective Manufacturer's Warranty, and Seller is responsible to ensure all said Warranties are provided to Purchaser and fully honored. Purchaser has relied on Seller's expertise to establish the specifications for the subject Combustion Package; accordingly, Seller furthermore Guarantees and Warrants that all specified components - regardless of Manufacturer - will function harmoniously and efficiently for their intended purpose. All above described equipment must conform to current OSHA and UL Specifications and Require- ments. * Payment Terms: 25% With Order 60% Upon Shipment 15% Net 30 Days Following Delivery SALES TAX EXEMPT Seller is subject to all Provisions of the Commonwealth Nondiscrimination/Sexual Harass- ment Clause which is incorporated herein by reference. CONFIRMING ORDER	\$14,630.00

APPROVED

Robert R. Hoover
Robert R. Hoover, Mgr. of Procurement

John R. Kulka
John R. Kulka, President

ACCEPTED BY:

EXHIBIT "D"

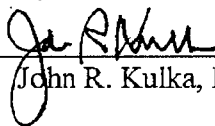
Phillip H. Diehl
Phillip H. Diehl, Vice President

VERIFICATION

I, JOHN R. KULKA, President of HRI, INC., do hereby verify that I have read the foregoing COMPLAINT. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

12.16.04
Date


John R. Kulka, President

HRI, INC. and WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF t/d/b/a GRAFF TANK;
GRAFF TANK, INC. And MEEKER
EQUIPMENT CO., INC.

vs.

DM INDUSTRIES, INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

No. 04-2021⁴¹-CD

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 19 2005

Attest.

John J. P.
Prothonotary/
Clerk of Courts

ORDER

AND NOW this 16 day of December, 2005 upon consideration of Defendant, Meeker Equipment Co., Inc.'s Petition for Leave of Court to Join Additional Defendant, DuFour, Inc. and any and all responses thereto, or argument there upon, it is hereby **ORDERED** and **DECREED** that Defendant, Meeker Equipment Co., Inc., be and is hereby granted Leave of Court to join:

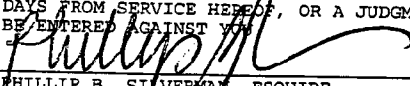
DuFour, Inc.
4487 Drane Highway
Osceola Mills, PA 19666

as an Additional Defendant in the above matter within thirty (30) days of the date of this Order.

BY THE COURT:

John J. P.
J.

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: PHILLIP B. SILVERMAN, ESQUIRE
Identification No.: 02201
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE
ENCLOSED A COPY OF PLEADING WITHIN TWENTY (20)
DAYS FROM SERVICE HEREOF, OR A JUDGMENT WILL
BE ENTERED AGAINST YOU.

PHILLIP B. SILVERMAN, ESQUIRE
ATTORNEY FOR DEFENDANT

Attorney for Defendant,
MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

No. 04-2021-CD

DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S
ANSWER AND NEW MATTER AND CROSSCLAIM

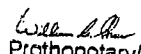
ANSWER

1. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
2. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAR 02 2005

Attest.


Prothonotary/
Clerk of Courts

3. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
4. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
5. Admitted.
6. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
7. Denied as stated. Answering defendant, at all times material to this cause of action, was in the business of offering for sale the equipment to the hot mix asphalt industry.
8. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
9. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof

is demanded at the time of trial.

10. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
11. Denied as stated. Exhibit "C" speaks for itself.
12. Denied as stated. Exhibit "D" speaks for itself.
13. Admitted in part and denied in part. It is admitted that Meeker did sell and HRI did purchase a CPA-200 combustion package, with respect to the remainder of this paragraph, it is denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
14. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
15. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
16. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of

this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

17. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
18. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
19. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
20. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
21. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

22. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
23. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
- 24-28. Denied. These paragraphs are deemed to be denied in that they are directed to other defendants.
- 29-30. Denied. These paragraphs are deemed to be denied in that they are directed to other defendants.
31. Denied. Answering defendant incorporates by reference and makes a part hereof it's answer to paragraph 1-30 as though same were herein after set forth at length.
32. Denied. Answering defendant denies that it was in any way negligent as averred. To the contrary, at all times material to this cause of action, answering defendant acted in a proper and careful manner under the circumstances.
33. Denied. Answering defendant incorporates by reference and makes a part hereof it's answer to paragraphs 1-32 as though same were herein after set forth at length.
34. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

35. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial. By way of further answer, this paragraph is deemed to be denied as a legal conclusion.
36. Denied. Answering defendant denies that the combustion package was unsuitable for plaintiffs' purposes as alleged. Answering defendant provided the combustion package ordered by plaintiffs. That which was ordered was supplied to plaintiffs by Infern-O-Therm and installed by the other defendant, DM Industries, Plaintiffs, or an unknown third parties.
37. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

WHEREFORE, Defendant, Meeker Equipment Company, Inc. denies that it is liable to the Plaintiffs in any sum of money.

NEW MATTER

38. At all times relevant herein, there existed the Pennsylvania Comparative Negligence Act, the relevant portions of which are incorporated herein by reference. Plaintiffs' claims are limited and/or barred by the terms of that Act.
39. If plaintiffs suffered any injuries or damages as alleged, they were caused solely and primarily by plaintiffs' own carelessness, recklessness, and negligence, and plaintiff's recovery is barred or otherwise limited or reduced in accordance with

the provisions of the Pennsylvania Comparative Negligence Act, the terms of which Act are incorporated herein by reference.

40. Answering defendant pleads the affirmative defense of the Doctrine of Assumption of Risk. Plaintiffs' claims are barred and/or limited by the assumption of risk.
41. Answering defendant supplied the Infern-O-Therm burner model 200. It did not manufacture the product.
42. The product supplied by answering defendant was installed by the other defendant, DM Industries, plaintiffs, or an unknown third parties.
43. Answering defendant avers and therefore believes that plaintiffs stored an improper product in the tank.
44. Answering defendant avers and therefore believes that the combustion package was improperly installed.

WHEREFORE, defendant, Meeker Equipment Company, Inc., demands judgement in it's favor.

**DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S CROSSCLAIM
AGAINST DEFENDANTS, RAYMOND A. GRAFF, WILLIAM GRAFF AND
ROSE M. GRAFF T/D/B/A GRAFF TANK; GRAFF TANK, INC.**

45. Answering defendant incorporates by reference and makes a part hereof the allegations of negligence and breach of warranty against defendants, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank and Graff Tank, Inc. from plaintiffs' complaint as though same were herein after set forth at length.

WHEREFORE, defendants, Raymond A. Graff, William Graff, and Rose M. Graff t/d/b/a
Graff Tank and Graff Tank, Inc. are alone liable or liable over to plaintiff or jointly or severley
liable the damages which plaintiffs may have so sustained.

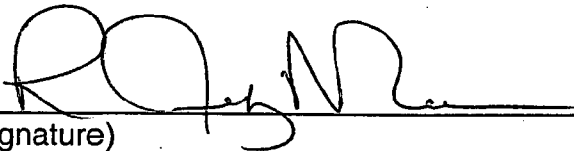
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 
PHILLIP B. SILVERMAN, ESQUIRE
Attorney for Defendant: **MEEKER**
EQUIPMENT CO., INC.

VERIFICATION

The undersigned is authorized to sign this verification with regards to the foregoing document. The facts contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. The language of this pleading is that of counsel and not of signer. This verification is made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.

R JEFFREY MEEKER
(Print name)


(Signature)

DATE: 2-14-05

MSZL&M FILE NO.: 6400.0006

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**

BY: GEORGE W. VOKOLOS, ESQUIRE

Attorney I.D. No. 88508

22nd Floor

1528 Walnut Street

Philadelphia, PA 19102

(215) 735-7200

MSZL&M File No. 6400.0006

Attorney for Defendant(s),

MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

NO. 04-2041-CD

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND
MEEKER EQUIPMENT CO., INC.

PRAECIPE TO SUBSTITUTE VERIFICATION

TO THE PROTHONOTARY:

Kindly substitute the attached Verification for that of Counsel's, which originally accompanied Third-Party/Joinder Complaint of Defendant, Meeker Equipment Co., Inc. Against Additional Defendant, Dufour, Inc. in the within action.

MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY:

GEORGE W. VOKOLOS, ESQUIRE

Attorney for Defendant(s),

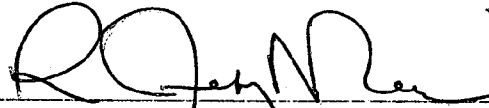
MEEKER EQUIPMENT CO., INC.

FILED *no cc*
mll:34
JAN 26 2006 *GP*

William A. Shaw
Prothonotary/Clerk of Courts

VERIFICATION

The facts contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. This verification is made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.



R. JEFFREY MEEKER

DATE: 1-13-06

6400.0006
Joinder Complaint

J. JEFFREY MEEKER

William A. Shaw
Prothonotary/Clerk of Courts

JAN 26 2006

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

HRI, INC. and WHITAKER ROADS CORPORATION,	:	No. 04-2041-CD
Plaintiffs	:	
	:	TYPE OF CASE: Law
	:	
v.	:	TYPE OF PLEADING:
	:	Answer and New Matter to Third-
RAYMOND A. GRAFF, WILLIAM GRAFF and ROSE M. GRAFF	:	Party/Joinder Complaint
t/d/b/a GRAFF TANK; GRAFF TANK, INC. and MEEKER	:	FILED ON BEHALF OF:
EQUIPMENT CO., INC.,	:	DuFour, Inc., Additional Defendant
Defendants	:	
	:	COUNSEL OF RECORD FOR THIS PARTY:
	:	Terry R. Heeter, Esquire
	:	Supreme Court No. 52750
	:	
v.	:	
	:	The Kooman Law Firm
DM INDUSTRIES, INC. t/a	:	Marianne Professional Center
DM INDUSTRIES,	:	P.O. Box 700
INFERN-O-THERM CORPORATION	:	Clarion, PA 16214
and DUFOUR, INC.,	:	(814) 226-9100 (Telephone)
Additional Defendants	:	(814) 226-7361 (Fax)
	:	
	:	COUNSEL OF RECORD FOR ADVERSE PARTY:
	:	Matthew B. Taladay, Esquire

jc
#23720

FILED
MAR 06 2006
m/8:30/4
William A. Shaw
Prothonotary/Clerk of Courts

HRI, INC. and WHITAKER ROADS CORPORATION,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	
	:	
RAYMOND W. GRAFF, WILLIAM GRAFF and ROSE M. GRAFF, t/d/b/a GRAFF TANK; GRAFF, TANK, INC. and MEEKER EQUIPMENT CO., INC.	:	CIVIL ACTION - LAW
Defendants	:	
v.	:	
	:	
DM INDUSTRIES, INC. t/a DM INDUSTRIES, INFERN-O-THERM CORPORATION and DUFOUR, INC.,	:	
Additional Defendants	:	No. 04-2041-CD

NOTICE

**YOU ARE HEREBY NOTIFIED TO PLEAD WITHIN TWENTY (20) DAYS
HEREAFTER TO THE NEW MATTER HEREINAFTER SET FORTH OR A DEFAULT
JUDGMENT MAY BE ENTERED AGAINST YOU FOR FAILURE TO RESPOND
THERE TO.**

**ANSWER AND NEW MATTER TO THIRD-PARTY/JOINDER COMPLAINT
OF DEFENDANT, MEEKER EQUIPMENT CO., INC.
AGAINST ADDITIONAL DEFENDANT, DUFOUR, INC.**

AND NOW, comes the additional defendant, **DUFOUR, INC.**, by and through its attorney, Terry R. Heeter, and avers that it has a full, complete and just defense to the allegations contained in the third-party/joinder complaint of defendant, Meeker Equipment Co., Inc., against additional defendant, DuFour, Inc., the nature whereof is as follows:

1. The averments of Paragraph 1 of the third-party/joinder complaint are admitted.

2. The averments of Paragraph 2 of the third-party/joinder complaint are admitted.

3. The averments of Paragraph 3 of the third-party/joinder complaint are admitted.

4. The averments of Paragraph 4 of the third-party/joinder complaint are admitted.

5. The averments of Paragraph 5 of the third-party/joinder complaint are admitted.

6. The averments of Paragraph 6 of the third-party/joinder complaint are admitted.

7. The averments of Paragraph 7 of the third-party/joinder complaint are admitted.

8. The averments of Paragraph 8 of the complaint are denied as stated. On the contrary, the additional defendant, DuFour, Inc. was only responsible for wiring the sensor to the burner and supplying the power to the burner.

COUNT I

MEEKER EQUIPMENT CO., INC. v. DUFOUR, INC.

9. The additional defendant, DuFour, Inc., incorporates Paragraphs 1 through 8 of the foregoing answer by reference as fully as if the same were set forth at length herein.

10. The averments of Paragraph 10 of the third-party/joinder complaint are denied pursuant to 1029(e) of the Pennsylvania Rules of Civil Procedure. In the event that it is ultimately determined that a response to said allegations is necessary, the averments of Paragraph 10 of the third-party/joinder complaint are denied as follows:

a. The additional defendant, DuFour, Inc., was not responsible for and did not place the temperature sensor as alleged in Paragraph 10(a) of the third-party/joinder complaint;

b. The additional defendant, DuFour, Inc., was not responsible for and did not place the temperature sensor as alleged in Paragraph 10(b) of the third-party/joinder complaint;

c. The additional defendant, DuFour, Inc., was not responsible under its contract for and did not install the CPA-200 combustion package as alleged in Paragraph 10(c) of the third-party/joinder complaint;

d. The additional defendant, DuFour, Inc., was not responsible under its contract to provide any such warnings as alleged in Paragraph 10(d) of the third-party/joinder complaint;

e. The additional defendant, DuFour, Inc., was not responsible under its contract for and did not assemble the subject combustion package. By way of further answer, the additional defendant, DuFour, Inc., properly wired and connected the subject combustion package in accordance with the terms of its contract;

f. The additional defendant, DuFour, Inc., was not responsible under its contract for and did not assemble the subject combustion package. By way of further answer, the additional defendant, DuFour,

Inc., wired and connected the subject combustion package in accordance with the terms of the contract;

g. The additional defendant, DuFour, Inc., was not responsible to supervise or monitor the assembling, installation or start up of the subject combustion package. By way of further answer, the additional defendant, DuFour, Inc., properly wired and connected the subject combustion package in accordance with the terms of its contract;

h. The additional defendant, DuFour, Inc., was not responsible to start-up the subject combustion package. By way of further answer, the additional defendant, DuFour, Inc., properly wired and connected the subject combustion package in accordance with the terms of its contract;

i. The additional defendant, DuFour, Inc., was not responsible to provide any instructions concerning the proper methods and/or procedures for starting up, implementing and or using the subject combustion package under the terms of its contract; and

j. The additional defendant, DuFour, Inc., did use due care under all applicable circumstances at all times relevant to the plaintiffs' causes of action.

11. The averments of Paragraph 11 of the third-party/joinder complaint constitute conclusions of law to which no response is necessary. In the event that it is ultimately determined that a response to said allegations is necessary, the averments of Paragraph 11 of the third-party/joinder complaint are denied pursuant to 1029(e) of the Pennsylvania Rules of Civil Procedure.

12. The averments of Paragraph 12 of the third-party/joinder complaint constitute conclusions of law to which no response is necessary. In the event that it is ultimately determined that a response to said allegations is necessary, the averments of Paragraph 12 of the third-party/joinder complaint are denied pursuant to 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, the additional defendant, DuFour, Inc., denies being indebted to any party for any sum or sums whatsoever and demands judgment in its favor, plus costs of court.

NEW MATTER

By way of further answer, the additional defendant, DuFour, Inc., avers as follows:

13. The additional defendant, DuFour, Inc., was not responsible for the placement of the contents temperature sensor as alleged in Paragraph 10(a) of the third-party/joinder complaint.

14. The additional defendant, DuFour, Inc., did not place the contents temperature sensor on the tank as alleged in Paragraph 10(b) of the third-party/joinder complaint.

15. The additional defendant, DuFour, Inc., did not install the CPA-200 combustion package as alleged in Paragraph 10(c) of the third-party/joinder complaint.

16. The additional defendant, DuFour, Inc., did not assemble the subject combustion package as alleged in Paragraphs 10(e) and 10(f) of the third-party/joiner complaint.

17. The additional defendant, DuFour, Inc., was not required to start up the subject combustion package as alleged in Paragraph 10(h) of the third-party/joiner complaint.

18. The additional defendant, DuFour, Inc., was not required to instruct the plaintiff as to the proper method and/or procedure for properly starting-up, implementing and/or using the subject combustion package as alleged in Paragraph 10(i) of the third-party/joiner complaint.

WHEREFORE, the additional defendant, DuFour, Inc., denies being indebted to any party for any sum or sums whatsoever and demands judgment in its favor, plus costs of court.

Respectfully submitted,

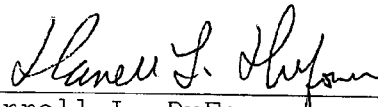
By 
TERRY R. HEETER, ESQUIRE
Attorney for Additional Defendant
DuFour, Inc.
Kooman, Heeter & Associates, PC
Marianne Professional Center
P.O. Box 700
Clarion, PA 16214
(814) 226-9100

TRH/jc
#23720

VERIFICATION

I, **DARRELL L. DUFOUR**, President of DuFour, Inc. verify that the statements made herein are true and correct to the best of my knowledge, information and belief and are made subject to the penalties of 18 Pa. Con. Stat. Ann. Section 4904 relating to unsworn falsification to authorities.

DATE: February 27, 2006



Darrell L. DuFour

HRI, INC. and WHITAKER ROADS CORPORATION,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	
	:	
RAYMOND W. GRAFF, WILLIAM GRAFF and ROSE M. GRAFF, t/d/b/a GRAFF TANK; GRAFF, TANK, INC. and MEEKER EQUIPMENT CO., INC.	:	CIVIL ACTION - LAW
Defendants	:	
v.	:	
	:	
DM INDUSTRIES, INC. t/a DM INDUSTRIES, INFERN-O-THERM CORPORATION and DUFOUR, INC.,	:	
Additional Defendants	:	No. 04-2041-CD

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of March, 2006, served the foregoing Answer and New Matter to Third-Party/Joinder Complaint of Defendant, Meeker Equipment Co., Inc., Against Additional Defendant, DuFour, Inc., by depositing a true and correct copy of the same in the United States mail, postage paid, at Clarion, Pennsylvania, addressed to the following:

THOMAS T. FRAMPTON, ESQUIRE
Goehring, Rutter & Boehm
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219

PATRICK L. MECHAS, ESQUIRE
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

PAUL E. PONGRACE, III, ESQUIRE
Redman & Pongrace
Suite 310
300 Weyman Plaza
Pittsburgh, PA 15236

MATTHEW B. TALADAY, ESQUIRE
Hanak, Guido & Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

GEORGE W. VOKOLOS, ESQUIRE
Mintzer Sarowitz Zeris Ledva & Myers, LLP
1528 Walnut Street, 22nd Floor
Philadelphia, PA 19102

Respectfully submitted,

By 
TERRY R. HEETER, ESQUIRE
Kooman, Heeter & Associates, PC
Attorney for Additional Defendant,
DuFour, Inc.
Marianne Professional Center
P.O. Box 700
Clarion, PA 16214
(814) 226-9100

jc
#23720

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101147
NO: 04-2041-CD
SERVICE # 1 OF 1
THIRD-PARTY JOINDER COMPLAINT

PLAINTIFF: HRI, INC. AND WHITAKER ROADS CORPORATION

vs.

DEFENDANT: RAYMOND A. GRAFF, WILLIAM GRAFF AND ROSE M. GRAFF t/d/b/a GRAFF TANK al
-VS- DUFOUR INC.

SHERIFF RETURN

NOW, January 17, 2006 AT 9:40 AM SERVED THE WITHIN THIRD-PARTY JOINDER COMPLAINT ON DUFOUR, INC. DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DARELL DUFOUR, OWNER A TRUE AND ATTESTED COPY OF THE ORIGINAL THIRD-PARTY JOINDER COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: SNYDER /

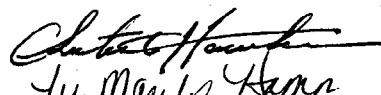
FILED
013:1361
MAR 21 2006
William A. Chaw
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	MINTZER	77210	10.00
SHERIFF HAWKINS	MINTZER	77210	37.19

Sworn to Before Me This

_____ Day of _____ 2006

So Answers,


Chester A. Hawkins
Sheriff

COPY

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: GEORGE W. VOKOLOS, ESQUIRE
Identification No.: 88508
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant, **MEEKER
EQUIPMENT CO., INC.**

HRI, INC. AND WHITAKER ROADS
CORPORATION

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

No. 04-2041-CD

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

vs.

DUFOUR, INC.
4487 Drane Highway
Osceola Mills, PA 19666

THIRD-PARTY/JOINDER COMPLAINT
OF DEFENDANT, MEEKER EQUIPMENT CO., INC.
AGAINST ADDITIONAL DEFENDANT, DUFOUR, INC.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JAN 10 2006

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Clearfield County
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forms escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted. LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Clearfield County
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**
BY: GEORGE W. VOKOLOS, ESQUIRE
Identification No.: 88508
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant, ***MEEKER
EQUIPMENT CO., INC.***

HRI, INC. AND WHITAKER ROADS
CORPORATION

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

No. 04-2041-CD

vs.

DUFOUR, INC.
4487 Drane Highway
Osceola Mills, PA 19666

THIRD-PARTY/JOINDER COMPLAINT
OF DEFENDANT, MEEKER EQUIPMENT CO., INC.
AGAINST ADDITIONAL DEFENDANT, DUFOUR, INC.

Defendant/Third-Party Plaintiff, Meeker Equipment Co., Inc. (hereafter "Meeker"), by and through their attorneys, MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS, brings the following Third-Party Complaint against DuFour, Inc. (hereafter "DuFour") and in support thereof aver as follows:

1. Plaintiffs, HRI, Inc. and Whitaker Roads Corporation (hereafter "HRI") initiated

the instant action by filing a Complaint in Civil Action against Defendant, Meeker, and Defendants, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank, Graff Tank, Inc. (collectively hereafter "Graff") on or about December 30, 2004. (Attached hereto and marked Exhibit "A" is a true, correct and complete copy of HRI's Complaint.)

2. In their Complaint, Plaintiffs allege property damage as the result of the negligence and/or breach of warranty of original Defendants, Meeker and Graff. (See Exhibit "A").

3. More specifically, Plaintiffs allege that the claimed property damage was caused by certain defects and/or oversights in the fabrication, construction, erection and/or start-up of a commercial storage tank and its component parts. (See Exhibit "A").

4. Subsequent to the filing of the aforementioned Complaint in Civil Action, DM Industries, Inc. t/a DM Industries and Infern-O-Therm, Corporation were joined as Additional Defendants in that matter.

5. On or about December 16, 2005, this Honorable Court granted Meeker Leave of Court to Join DuFour as an Additional Defendant in this matter. (Attached hereto and marked Exhibit "B" is a true, correct and complete copy of the Honorable Court's December 16, 2005 Order).

6. Defendant/Third-Party Plaintiff, Meeker, has filed an Answer with New Matter and New Matter/Crossclaim to HRI's Complaint. (Attached hereto and marked Exhibit "C" is a true, correct and complete copy of said Answer).

7. Additional Defendant, DuFour, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business at 4487 Drane Highway, Osceola Mills, Pennsylvania 19666.

8. At all times material to this cause of action, Additional Defendant, DuFour, its agents, servants, workmen and/or employees acting within the course and scope of their employment either alone or with others were responsible, in whole or in part, for the fabrication, construction and/or erection of the commercial tank which is the subject of the instant lawsuit, and its component parts, including but not limited to, assembling, installing, connecting, maintaining and/or starting up the combustion package which was part of the subject storage tank.

COUNT I
MEEKER EQUIPMENT CO., INC. V. DUFOUR, INC.

9. Defendant, Meeker Equipment Co., Inc. incorporates by reference paragraphs 1 through 8 as though same were set forth herein at length.

10. If there was any negligence on the part of Meeker, said acts or omissions being specifically denied, then the incident described in Plaintiff's Complaint was caused by the negligence, carelessness and/or recklessness of Additional Defendant, DuFour, its agents, servants, workmen and/or employees acting in the course and scope of their employment as follows:

- a. The contents temperature sensor was not properly placed in a position above the distribution overflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition;
- b. The contents temperature sensor was improperly placed, therefore defeating the emergency feature of the Infern-O-Therm heating package;

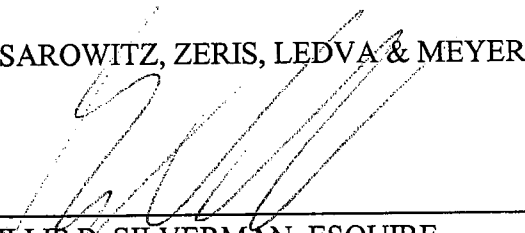
- c. Improperly installing the CPA-200 combustion package;
- d. Failing to warn users such as the Plaintiffs of eminent overheating of the tank's contents, thus resulting in the explosion and fire alleged in Plaintiffs' Complaint;
- e. Failing to properly wire, connect and/or assemble the subject combustion package;
- f. Failing to assemble, install and/or connect the subject combustion package pursuant to explicit instructions and/or industry standards;
- g. Failing to properly supervise and/or monitor the assembling, installation, connecting and/or start-up of the subject combustion package;
- h. Failing to properly connect, wire and/or start-up the subject combustion package;
- i. Failing to instruct Plaintiffs as to the proper methods and/or procedures for properly starting-up, implementing and/or using the subject combustion package;
- j. Failing to use due care under the circumstances.

11. If Plaintiffs, HRI, sustained injuries and/or damages as alleged, same being specifically denied, then Additional Defendant, DuFour, is solely liable to HRI, or jointly and severally liable or liable over to Meeker with respect to the cause of action declared upon by Plaintiffs, HRI, in the Complaint attached hereto and marked Exhibit "A". Any and all liability with respect to Defendants/Third-Party Plaintiff, Meeker, is denied.

12. Furthermore, Defendant/Third-Party Plaintiff, Meeker, are and/or may be entitled to contribution and/or indemnification from Additional Defendant, DuFour, should Plaintiffs, HRI, recover for damages allegedly sustained in the aforementioned incident. Any and all liability with respect to Meeker is denied.

WHEREFORE, Defendant/Third-Party Plaintiff, Meeker Equipment Co., Inc., respectfully requests that this Honorable Court find Additional Defendant, DuFour, Inc. solely liable to Plaintiff, liable over to Defendant/Third-Party Plaintiff, Meeker, jointly and/or severally liable with Defendant/Third-Party Plaintiff, Meeker, and/or liable over to Defendant/Third-Party Plaintiff, Meeker, for contribution and/or indemnification upon the cause of action alleged by Plaintiffs, HRI, Inc. and Whitaker Roads Corporation.

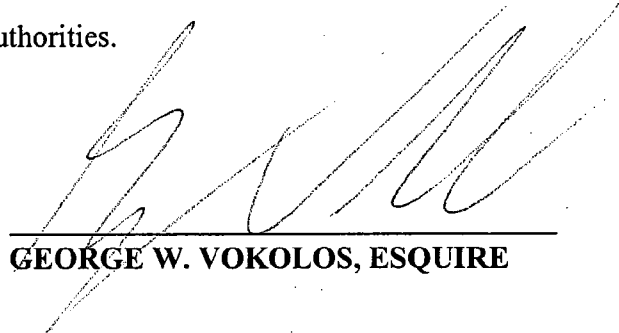
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 

PHILLIP B. SILVERMAN, ESQUIRE
GEORGE W. VOKOLOS, ESQUIRE
Attorney for Defendant: **MEEKER
EQUIPMENT CO., INC.**

VERIFICATION

The averments or denials of facts contained in the foregoing are true, based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are consistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. This Verification is made subject to the penalties of *18 Pa.C.S.A. §4904* relating to unsworn falsification to authorities.



GEORGE W. VOKOLOS, ESQUIRE

Dated: 1/9/06

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

CIVIL ACTION - AT LAW

No. 04-2041-9

Type of Pleading:

Complaint

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 30 2004

Attest.

[Signature]
P. C. Clerk
Clearfield County

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
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No.

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GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 Ext. 1303

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

No.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

COMPLAINT

AND NOW, comes the Plaintiffs, HRI, Inc., and Whitaker Roads Corporation, by its attorneys, Hanak, Guido and Taladay, and hereby bring the within Complaint:

1. HRI, Inc. is a corporation chartered in the State of Delaware that trades and does business within the Commonwealth of Pennsylvania with corporate offices at 1750 West College Avenue, Suite 1, State College, Pennsylvania 16801.

2. Whitaker Roads Corporation is a Pennsylvania business corporation and a wholly owned subsidiary of HRI, Inc., with offices and principal place of business at Route 322 East, Clearfield, Pennsylvania 16830.

3. Defendants are Raymond A. Graff, William H. Graff and Rose M. Graff who trade and do business as Graff Tank ("Graff") and who have a business address of 731A North Main Street, P.O. Box 336, Hubbard, OH 44425.

4. Graff Tank, Inc. is an Ohio business corporation with offices and principal place of business at 731A North Main Street, P.O. Box 336, Hubbard, OH 44425.

5. Defendant Meeker Equipment Co., Inc. ("Meeker") is, upon information and belief, a Pennsylvania business corporation with offices and principal place of business at 516 North Broad Street, P.O. Box 925, Lansdale, Pennsylvania 19446-0661.

6. Defendant Graff at all times relevant hereto was in the business of designing, constructing, maintaining, repairing, fabricating and assembling commercial storage tanks for the petroleum, emulsion, polymer and related industries.

7. Defendant Meeker at all times relevant hereto was in the business of offering for sale combustion heating units for storage tanks used in the petroleum, emulsion, polymer and related industries.

8. In the Fall of 2001, the Plaintiffs solicited proposals from the Defendants and others for the design, construction and provision of a combustion package for a commercial petroleum emulsion storage package for the purposes of storing and dispensing MC-70 cutback, including, but not limited to, emulsions, asphalt and/or road oils (MC-70 tank).

9. On or about December 13, 2001, Graff submitted a proposal to HRI for construction of a 24' diameter by 18' high MC-70 tank. A copy of the three page proposal is attached hereto as Exhibit "A".

10. On or about May 21, 2002, HRI, Inc. submitted a purchase order to Graph, entering a Purchase Order Agreement No. 1043. A copy of this Purchase Order is attached hereto as Exhibit "B".

11. On or about December 20, 2001, Meeker submitted to Whitaker Roads Corporation a quote for a combustion package for use in the proposed MC-70 tank. A copy of that proposal is attached as Exhibit "C".

12. On or about May 31, 2002, HRI, Inc., submitted a Purchase Order to Meeker for a combustion package for use in a 24' diameter by 18' high insulated MC-70 tank to be constructed at the Whitaker Roads Corporation facilities, Clearfield Emulsion Plant. A copy of that Purchase Order is attached hereto as Exhibit "D".

13. In accordance with the Purchase Order, Meeker did sell and HRI did purchase a CPA-200 Combustion Package which was shipped to the Clearfield Emulsion Plant in Clearfield County, Pennsylvania.

14. HRI at all times relied on the knowledge, experience and expertise of Meeker to establish the appropriate specifications for the combustion package.

15. In accordance with the Purchase Order, Graff did install and HRI did fully pay for the furnishing and construction of a 24' diameter by 18' high MC-70 tank, which was constructed by Graff at the Whitaker Roads Corporation, Clearfield Emulsion Plant and was completed on or about July, 2002.

16. In accordance with its contractual obligation, Graff did install in the CPA-200 combustion package furnished by Meeker in the MC-70 tank.

17. HRI at all times relied on the knowledge, experience and expertise of Graff in the proper design, fabrication and construction of the tank, including, but not limited to, the proper placement of all temperature sensors, heating elements, in-flow and out-flow pipes, and safety features.

18. HRI put the MC-70 tank into service on or about July, 2002 and at no time undertook any material change or usage modification of the MC-70 tank.

19. On or about August 13, 2004, a massive explosion and fire occurred at the HRI/Whitaker Roads facility.

20. The point of origin of the explosion and fire was the MC-70 tank fabricated and installed by Graff and containing the combustion package provided by Meeker. At the time of the incident, this tank was properly being used for the storage of a road oil product (MC-70 cutback).

21. The storage and dispensing of emulsions, asphalt and road oils, including MC-70 cutback, were the intended and foreseeable uses of the Graff tank.

22. The CPA-200 combustion package provided by Meeker was represented by the sellers as suitable for its intended purpose in the heating of emulsion, asphalt and road oils, including MC-70 cutback, in an 18' by 24' storage tank.

23. The explosion and fire and resulting damage were solely and proximately the responsibility of the Defendants, as set forth herein.

Count I

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Breach of Warranty - Fitness for a Particular Purpose

24. Paragraphs 1 through 23 are incorporated herein by reference as if set forth in full.

25. Plaintiff HRI at all times relevant hereto relied on the experience, expertise, counsel and judgment of Defendant Graff to fabricate, construct and erect a tank that was suitable for its intended purpose of the commercial storage and dispensing of petroleum emulsions, including, but not limited to, MC-70 cutback.

26. Graff expressly or impliedly warranted that the tank construction configuration and design were suitable and fit for that particular purpose.

27. The MC-70 tank constructed and installed by Graff was unsuitable for the Plaintiffs purposes as follows:

(a) The contents temperature sensor was improperly placed in a position above the distribution outflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) The contents temperature sensor was improperly placed, thereby defeating the emergency features of the inferno-therm heating unit installed in the tank.

(c) The MC-70 tank lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The MC-70 tank lacked adequate sensors or other safety devices to prevent overheating of the contents, which could and did result in overheating of the tank contents resulting in an explosion and fire.

(e) The tank lacked adequate warning devices to alert its users of overheating of the contents.

28. Graff failed to provide conspicuous and adequate warnings of the dangers of drawing the contents level below the level of the temperature sensor when it knew or should have known that to do so would defeat the proper functioning of the sensor and result in a dangerous condition.

WHEREFORE, the Plaintiffs demand judgment in an amount in excess of \$25,000.00.

Count II

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

**Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc., Defendants**

Negligence

29. Plaintiffs incorporate by reference paragraphs 1 through 28 as if set forth in full herein.

30. The losses sustained by HRI were solely and proximately caused by the negligence of the Defendant, his employees or agents which is as follows:

(a) The contents temperature sensor was improperly placed in a position above the distribution outflow pipe, defeating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) The contents temperature sensor was improperly placed, thereby defeating the emergency features of the inferno therm heating unit installed in the tank.

(c) The MC-70 tank lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The petroleum emulsion storage tank lacked adequate sensors or other safety devices to prevent overheating of the stored products contents, which could

and did result in overheating of the tank contents resulting in an explosion and fire.

(e) The tank lacked adequate warning devices to alert its users of imminent overheating of the contents.

WHEREFORE, Plaintiff demands judgment in its favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count III

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs

vs.

Meeker Equipment Company, Inc., Defendant

Negligence

31. Plaintiffs incorporate by reference paragraphs 1 through 30 as if set forth in full herein.

32. The losses sustained by Plaintiffs were solely and proximately caused by the negligence of Defendant Meeker Equipment Company, Inc. which is as follows:

(a) Failure to provide a combustion package suitable for use in an MC-70 storage tank as specified in Defendant's Purchase order.

(b) Failure to supply a combustion unit with all features necessary for its safe foreseeable operations.

(c) Failure to provide a combustion unit with all necessary warnings.

(d) Failure to supply a combustion package including a "low volume level sensing device" or other mechanism to prevent the contents level from dropping

below the temperature sensing level and thereby creating a dangerous condition.

WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count IV

**HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
vs.
Meeker Equipment Company, Inc., Defendant**

Breach of Warranty - Fitness for a Particular Purpose

33. Paragraphs 1 through 32 are incorporated by reference as if set forth in full herein.

34. Plaintiffs at all times relevant hereto relied on the knowledge, experience, expertise and recommendations of the Defendant Meeker to provide a combustion package suitable for its intended use in heating commercially stored MC-70 cutback, including, but not limited to, emulsions, asphalt and/or road oils.

35. Defendant Meeker expressly or impliedly warranted that the combustion package was suitable or fit for that particular purpose.

36. The combustion package provided by Meeker were unsuitable for the Plaintiffs' purposes as follows:

(a) The combustion package temperature sensor was improperly placed defeating or eliminating the ability of the sensor to provide an accurate reading in foreseeable and expected circumstances and resulting in a dangerous condition.

(b) Meeker failed to supply a combustion unit with all features necessary for its safe foreseeable operations.

(c) The combustion package lacked a "low volume level" sensing device or other mechanism to prevent the contents level from dropping below the temperature sensor level and thereby creating a dangerous condition.

(d) The combustion package lacked adequate warning instructions or devices to alert users of imminent overheating of the tank contents.

(e) The combustion package lacked adequate sensors or other safety devices to prevent the overheating of contents, which could and did result in the overheating of the tank contents resulting in a fire and explosion.

WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, fees and such other relief as the Court may deem appropriate.

Count V

HRI, Inc. and Whitaker Roads Corporation, Plaintiffs
vs.
Raymond A. Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank, Graff Tank, Inc., and
Meeker Equipment Company, Inc., Defendants

Damages

37. As a direct and proximate result of the negligence and/or breach of warranties of the Defendants, jointly or severally, the Plaintiffs sustained damages as follows:

(a) Complete destruction of a 61,000 gallon

MC-70 tank resulting in a loss which is currently unliquidated but estimated to be in excess of \$130,000.00;

(b) Complete destruction of a 12,000 gallon MC-70 tank resulting in a loss estimated to be \$15,000.00;

(c) Damage to various metering gauges resulting in a loss estimated to be \$1,228.00;

(d) Damage to the insulation skin on tanks No. 11 and 12 located at the Whitaker Roads facility resulting in a loss estimated at \$2,500.00;

(e) Damage to pump and motors estimated to be \$4,556.00;

(f) Damage to the Whitaker Roads facility shop buildings necessitating repairs, estimated costs \$2,732.00;

(g) Clean up costs in the estimated amount of \$25,000.00;

(h) Damage to a tanker truck located on the premises at the time of the explosion resulting in a loss of \$3,333.33;

(j) Loss of 1,670 gallons of MC-70 road oil at a cost of \$1,870.00;

(k) Cost of installing security fence and covering explosion site to preserve scene and to protect HRI employees and site visitors, \$3,105.00;

(l) Reimbursement to responding fire departments for cost of chemical fire suppressant foam, \$9,944.00; and

(m) Administrative costs of reconstruction and commissioning MC-70 tank, currently unliquidated.

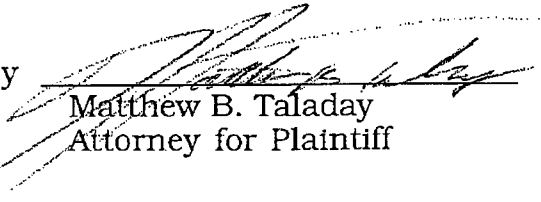
WHEREFORE, Plaintiffs demand judgment in their favor in an amount in excess of \$25,000.00 plus costs, counsel fees and such other relief as the Court may deem appropriate.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By


Matthew B. Taladay
Attorney for Plaintiff



Graff Tank

731A N. Main Street • P.O. Box 336
Hubbard, Ohio 44425-0336
(330) 534-3660 • Fax: (330) 534-3646
1-800-876-6671

Whitaker Roads
Clearfield/Woodland
Attn: Mr. Tim Olson

December 13, 2001

Gentlemen:

In response to your request for pricing for the fabrication & erection of one 24' dia. x 18' high tank per API 650 at your site in Clearfield, PA, Graff Tank offers the following:

24' dia. x 18' high Field-built Tank

Specifications:

Material: A-36 Carbon Steel, 1/4" nominal thickness for bottom, shell and roof.
Fittings: 24" shell and roof manways, 4-3" and 2-4 150# RFSO Flanged Fittings.
Standard: Tank would be built and tested to API 650 App. A&M (where applicable) with the reduced joint efficiency (.70) clause in effect.
Options: Ladder: Caged galvanized roof access ladder: included
Handrail: Two 8' wing rails: included
Insulation Drip edge: included.
Heater Installation: approx. (heating element installation only, no hookup or commissioning)

Field Notes:

- Site access is assumed to be adequate for crane and equipment positioning.
- Ten-hour+ work days for erection and painting of steel are assumed.
- No painting is included in pricing: Primer painting for under the insulation would be in the neighborhood of
- Hydro-test by others. Also, DEP Certified Inspection by others (if applicable).
- Foundation preparation, painting, heating elements and insulation by others.
- All construction on site would be performed by experienced *non-union* personnel.

All applicable taxes would be additional to the stated pricing.

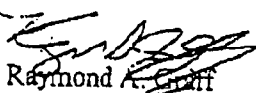
Terms: Net 30 w/ progressive payments. Pricing is valid for minimum of 30 days.

Schedule: Material ordering and engineering: 2-4 wks; fabrication: 1-2 wks; on-site erection: approx. 3-4 wks depending on weather.

If you have any questions about the above information, don't hesitate to call.

72 days Total

Sincerely,


Raymond A. Graff

Graff Tank

WR Fx: 814-857-5159

ATTN: Tim O
 $1\frac{1}{2}$ " inlet 3'
 4' from
 Bottom

INLET/
 OUTLET

HEATER
 NOZZLE

IN/OUT
 VENT

TEMPERATURE
 TIP 1" CABLE

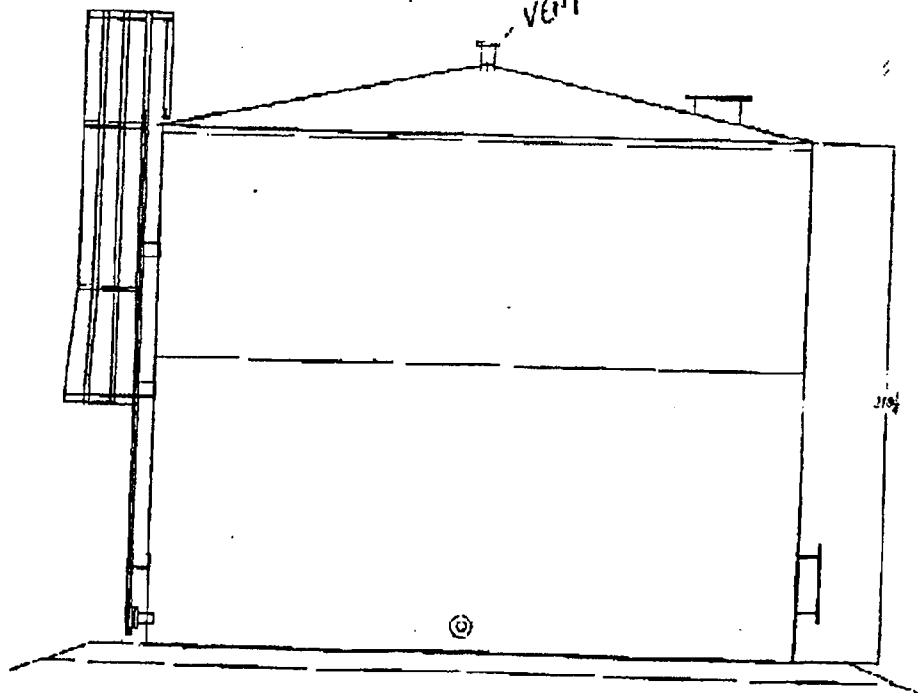
3" Flange
 Dist head out

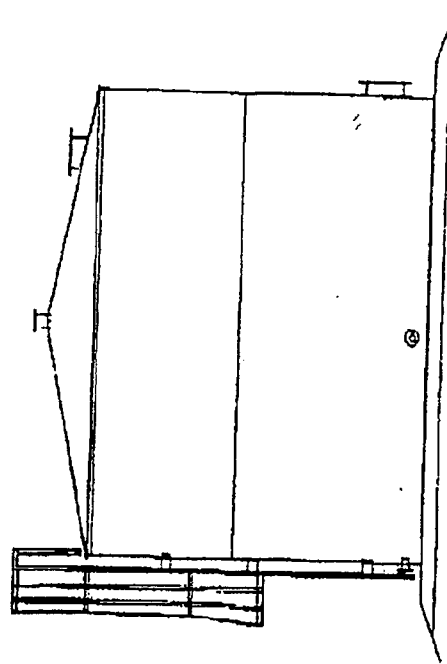
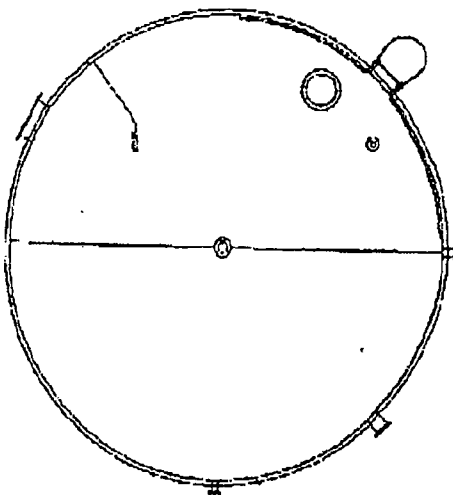
Weld PIPES

HEATER

3" Stand Pipe
 3/4
 Sample
 Valve

3" Flange
 outlet for
 Dist to
 head.





NO.	NAME	ST.	DATE	REMARKS
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77	1/2	1/2	1/2	1/2
78	1/2	1/2	1/2	1/2
79	1/2	1/2	1/2	1/2
80	1/2	1/2	1/2	1/2

[illegible]

HRI, INC.

B14

Western Division
P.O. Box 402
Clearfield, PA 16830
(814) 857-7635
(814) 857-5159- Fax

**SUBCONTRACT AGREEMENT/
PURCHASE ORDER NO.**

01042

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

**ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE**

DM INDUSTRIES
326 Center Street
St. Marys, PA 15857
(814) 834-2321- Phone/Fax

Page 1

WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

SHIP
TO

DATE ORDERED 5/21/02		FOR Installation DELIVERY As Scheduled		TERMS Net 30' Days		PRICE QUOTED Richard	ORDERED FROM Same
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION	UNIT PRICE QUOTED
			LS		LS	Furnish and Install Insulation on Purchaser's New 24'Ø x 18'High Heated Tank per the attached Quotation dated May 30, 2002 <u>NOTES & QUALIFICATIONS:</u> 1. Delivery and installation to be determined. 2. DM Industries (Subcontractor) is responsible to ensure that all items are properly loaded and secured for and during transportation to the jobsite. 3. SAFETY- Subcontractor is responsible for compliance with all current HRI, Inc., and OSHA safety rules and regulations during the conduct of its performance on and in connection with this project, and shall indemnify and defend HRI, Inc. for any and all expenses incurred for fines, penalties or corrective measures imposed as a result of acts of commission or omission by Subcontractor, its agents, employees, or assigns in failure to comply with said safety rules and regulations. 4. DM Industries guarantees and warrants the above described insulation against all defects in materials and workmanship. 5. INDEMNIFICATION OF OWNER (HRI, INC.) FROM ALL LIABILITY- The Subcontractor (DM INDUSTRIES) shall have charge of and responsibility for its entire work as described herein until completion and acceptance, and shall alone be liable for and shall pay all loss or damage caused by it or its servants, agents, or employees to property, buildings or adjacent work and for any accident to persons that may occur during the performance of the work	\$18,080.00

DM INDUSTRIES

APPROVED

Robert R. Hoover
Robert R. Hoover, Mgr. of Procurement
John R. Kulka
John R. Kulka, Pres.

ACCEPTED BY:

EXHIBIT "B"

Phillip H. Diehl Vice Pres

HRI, NC.

Western Division
P.O. Box 402
Clearfield, PA 16830

SUBCONTRACT AGREEMENT/ PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

01042

ALL ORDERS TO BE SHIPPED PREPAID
FOB DELIVERED TO JOBSITE

Page 2

DM INDUSTRIES
326 Center Street
St. Marys, PA 15857

WHITAKER ROADS CORPORATION
BARRETT CURVE EMULSION PLANT
ROUTE 322 3 MILES EAST OF
CLEARFIELD, PA

DATE ORDERED 5/21/02		FOR Installation DELIVERY As Scheduled		TERMS Net 30 Days		PRICE QUOTED Richard		ORDERED FROM Same	
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION		UNIT PRICE QUOTED	
						covered by this contract or at any time thereafter as a consequence of the performance of said work. The Subcontractor shall observe all state and municipality laws, ordinances and regulations and shall defend and save harmless the Owner from all suits and claims whatsoever for loss of life or injury occurring to employees of the Subcontractor who perform such work. The Subcontractor agrees to fully indemnify, protect, defend and save harmless the Owner from all liability from all claims, loss, damage, suits and actions of every kind from all costs and expenses in connection with such claims, suits and actions due to injuries to persons or damage to property whether resulting from accident, negligence or any other cause whatsoever occurring during the performance of the work covered by this contract or at any time thereafter as a consequence of the performance of the same or which may at any time occur or result from or be caused by such work and if there are any such claims unsettled when the work herein provided for is completed, final settlement by the Owner and Subcontractor shall be deferred until such claims are adjusted or suitable special indemnity acceptable to the Owner is provided by the Subcontractor. Subcontractor shall provide proof of insurance in accordance with the attached "HRI, INC., MINIMUM INSURANCE REQUIREMENTS". Subcontractor is subject to all provisions of the Commonwealth Nondiscrimination/Sexual Harassment Clause which is incorporated herein by reference.			

SALES TAX EXEMPT

CONFIRMING ORDER

DM INDUSTRIES

APPROVED

Robert R. Hoover, Mgr. of Procurement

John R. Kulka, Pres.

ACCEPTED BY:

Phillip H. Diehl, Vice Pres.

DM INDUSTRIES
326 CENTER ST.
ST. MARYS, PA. 15857
Phone / Fax (814) 834-2321

5/30/02

Whitaker Roads
Attn: Tim Olson

Dear Tim:

I am pleased to submit the following price quotation (labor and material) for the insulation of the 24ft. diameter by 18-foot high tank located at your facility.

Price: \$18,080.00

Contractor will install 4" fiberglass, 2 layers, 2" thick fastened with weld pins and covered with .032 aluminum sheets secured with appropriate stainless steel screws and bands. First foot on the bottom will be cellular glass to prevent wicking. Top will consist of 2" cellular glass adhered with steep asphalt and covered with 4 layers of fiberglass paper imbedded with steep asphalt, finished with a flooded topcoat of steep asphalt.

Note: A rain gutter must be installed on this tank. This would be done by the tank manufacturer.

Yours truly,

Richard L. Sadley

Quotation #2219



MEEKER EQUIPMENT CO., INC.
516 N. Broad St., PO Box 925
Lansdale, PA 19446-0661
Office: (215) 361-2900
Fax: (215) 361-1725
Email: info@meekerequipment.com

December 20, 2001

Mr. Tim Olson
Whitaker Roads Corp.
PO Box 402
Clearfield, PA 16830

Dear Tim:

We are pleased to quote on your equipment requirements as follows:

CPA-200: Combustion package to be installed into existing horizontal tank for heating asphalt.

Main Combustion Tube: 16" seamless tube with two (2) 5" secondary heat transfer tubes, and two (2) 5" x 6" jacketed stacks.

Infern-O-Therm Burner Model 200: This is a heavy duty, industrial burner designed and manufactured by Infern-O-Therm for the process industry. Standard is #2 fuel oil with 828,000 BTU per hour input, natural gas, propane and combination burners are optional. Burner is equipped with Infern-O-Therm automatic temperature control with built in high limit switch, Fireye flame control with UV flamescanner, alarm circuit with horn, and weatherproof cover with hinged door. The control box is NEMA 13. Fan motor is TEFC 1.15 S.F. IOT burners use UL approved controls.

Combustion Chamber: High temperature refractory with Cloverleaf supercharger which maintains the back pressure at approximately 6" in the forward combustion chamber. This causes a high efficiency burning process by properly mixing the super heated air with the fuel vapors in the hot atmosphere of the combustion chamber for complete combustion with cleaner exhaust and low fuel consumption.

PRICE FOB FACTORY ... \$ 14,630.00

Optional Natural Gas/Oil Combination Burner ... Add \$ 2,750.00

Branch Office:
200 E. Campus View Blvd.
Suite 200
Columbus, OH 43235
Office: (614) 717-0100
Fax: (614) 431-8294
Email: hotmixohio@aol.com

EXHIBIT "C"

#2219

Terms: Twenty-five (25%) with order
Seventy (70%) when equipment is ready to ship
Five (5%) net 30 days

FOB: All prices are quoted FOB Factory

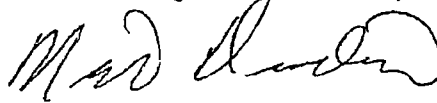
Delivery: Four (4) to six (6) weeks after receipt of order

Taxes: No state and/or local taxes or permits are included in pricing. Any taxes will be responsibility of the customer.

Thank you for the opportunity to quote you on your requirements and I look forward to your order.

Very truly yours,

MEEKER EQUIPMENT CO., INC.



Nick Diodad

Accepted by: _____

Date: _____

HRI, INC.

Western Division
P. O. BOX 402
CLEARFIELD, PA 16830
814/857-7635 Phone
814/857-5159 Fax

PURCHASE ORDER NO.

THIS NUMBER MUST APPEAR
ON PACKING SLIP AND INVOICE

1044

**ALL ORDERS TO BE SHIPPED PREPAID
FOR DELIVERED TO JOBSITE**

MEEKER EQUIPMENT CO., INC.

516 N. Broad Street
P. O. Box 925
Lansdale, PA 19446-0661

215/361-2900 Phone
215/361-1725 Fax

SHIP TO
WHITAKER ROADS CORPORATION
Barrett Curve Emulsion Plant
Route 322
3 Mi. East of Clearfield
Clearfield, PA 16830
Phone: 814/857-7635

DATE ORDERED 5/31/02		FOR DELIVERY As Scheduled		TERMS *As Noted		PRICE QUOTED Nick Diodad	ORDERED FROM David Garrett
JOB	PHASE	ITEM NO.	QUANTITY ORDERED	QUANTITY RECEIVED	UNIT	DESCRIPTION	UNIT PRICE QUOTED
			LS		LS	Furnish CPA-200 Combustion Package for New 24' Ø x 18' H Insulated Tank Per the Attached Quotation dated December 20, 2001. Seller shall Ship Prepaid and Invoice Purchaser for Freight. The above described Combustion Package shall be Guaranteed and Warranted in accordance with each respective Manufacturer's Warranty, and Seller is responsible to ensure all said Warranties are provided to Purchaser and fully honored. Purchaser has relied on Seller's expertise to establish the specifications for the subject Combustion Package; accordingly, Seller furthermore Guarantees and Warrants that all specified components - regardless of Manufacturer - will function harmoniously and efficiently for their intended purpose. All above described equipment must conform to current OSHA and UL Specifications and Require- ments. * Payment Terms: 25% With Order 60% Upon Shipment 15% Net 30 Days Following Delivery SALES TAX EXEMPT Seller is subject to all Provisions of the Commonwealth Nondiscrimination/Sexual Harass- ment Clause which is incorporated herein by reference. CONFIRMING ORDER	\$14,630.00

APPROVED

Robert A. Hoover
Robert A. Hoover, Mgr. of Procurement

John R. Kulka
John R. Kulka, President

ACCEPTED BY:

EXHIBIT "D"

Phillip H. Diehl
Phillip H. Diehl, Vice President

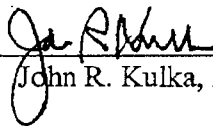
VERIFICATION

I, JOHN R. KULKA, President of HRI, INC., do hereby verify that I have read the foregoing COMPLAINT. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

12.16.04

Date



John R. Kulka, President

HRI, INC. and WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF t/d/b/a GRAFF TANK;
GRAFF TANK, INC. And MEEKER
EQUIPMENT CO., INC.

vs.

DM INDUSTRIES, INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

No. 04-2021-CD

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 19 2005

Attest.

William D. R.
Prothonotary/
Clerk of Courts

ORDER

AND NOW this 16 day of December, 2005 upon consideration of Defendant, Meeker Equipment Co., Inc.'s Petition for Leave of Court to Join Additional Defendant, DuFour, Inc. and any and all responses thereto, or argument there upon, it is hereby **ORDERED** and **DECREED** that Defendant, Meeker Equipment Co., Inc., be and is hereby granted Leave of Court to join:

DuFour, Inc.
4487 Drane Highway
Osceola Mills, PA 19666

as an Additional Defendant in the above matter within thirty (30) days of the date of this Order.

BY THE COURT:

John J. C...
J.

MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS
BY: PHILLIP B. SILVERMAN, ESQUIRE
Identification No.: 02201
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE
ENCLOSED A COPY OF PLEADING WITHIN TWENTY (20)
DAYS FROM SERVICE HEREOF, OR A JUDGMENT WILL
BE ENTERED AGAINST YOU.

Phillip B. Silverman
PHILLIP B. SILVERMAN, ESQUIRE
ATTORNEY FOR DEFENDANT

Attorney for Defendant,
MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND MEEKER
EQUIPMENT CO., INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

No. 04-2021-CD

DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S
ANSWER AND NEW MATTER AND CROSSCLAIM

ANSWER

1. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
2. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAR 02 2005

Attest.

William A. R.
Prothonotary/
Clerk of Courts

3. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
4. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
5. Admitted.
6. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
7. Denied as stated. Answering defendant, at all times material to this cause of action, was in the business of offering for sale the equipment to the hot mix asphalt industry.
8. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
9. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof

is demanded at the time of trial.

10. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
11. Denied as stated. Exhibit "C" speaks for itself.
12. Denied as stated. Exhibit "D" speaks for itself.
13. Admitted in part and denied in part. It is admitted that Meeker did sell and HRI did purchase a CPA-200 combustion package, with respect to the remainder of this paragraph, it is denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
14. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
15. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
16. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of

this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

17. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
18. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
19. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
20. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
21. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

22. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
23. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.
- 24-28. Denied. These paragraphs are deemed to be denied in that they are directed to other defendants.
- 29-30. Denied. These paragraphs are deemed to be denied in that they are directed to other defendants.
31. Denied. Answering defendant incorporates by reference and makes a part hereof it's answer to paragraph 1-30 as though same were herein after set forth at length.
32. Denied. Answering defendant denies that it was in any way negligent as averred. To the contrary, at all times material to this cause of action, answering defendant acted in a proper and careful manner under the circumstances.
33. Denied. Answering defendant incorporates by reference and makes a part hereof it's answer to paragraphs 1-32 as though same were herein after set forth at length.
34. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

35. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial. By way of further answer, this paragraph is deemed to be denied as a legal conclusion.
36. Denied. Answering defendant denies that the combustion package was unsuitable for plaintiffs' purposes as alleged. Answering defendant provided the combustion package ordered by plaintiffs. That which was ordered was supplied to plaintiffs by Infern-O-Therm and installed by the other defendant, DM Industries, Plaintiffs, or an unknown third parties.
37. Denied. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of this paragraph. Therefore, this paragraph is deemed to be denied and strict proof is demanded at the time of trial.

WHEREFORE, Defendant, Meeker Equipment Company, Inc. denies that it is liable to the Plaintiffs in any sum of money.

NEW MATTER

38. At all times relevant herein, there existed the Pennsylvania Comparative Negligence Act, the relevant portions of which are incorporated herein by reference. Plaintiffs' claims are limited and/or barred by the terms of that Act.
39. If plaintiffs suffered any injuries or damages as alleged, they were caused solely and primarily by plaintiffs' own carelessness, recklessness, and negligence, and plaintiff's recovery is barred or otherwise limited or reduced in accordance with

the provisions of the Pennsylvania Comparative Negligence Act, the terms of which Act are incorporated herein by reference.

40. Answering defendant pleads the affirmative defense of the Doctrine of Assumption of Risk. Plaintiffs' claims are barred and/or limited by the assumption of risk.
41. Answering defendant supplied the Infern-O-Therm burner model 200. It did not manufacture the product.
42. The product supplied by answering defendant was installed by the other defendant, DM Industries, plaintiffs, or an unknown third parties.
43. Answering defendant avers and therefore believes that plaintiffs stored an improper product in the tank.
44. Answering defendant avers and therefore believes that the combustion package was improperly installed.

WHEREFORE, defendant, Meeker Equipment Company, Inc., demands judgement in it's favor.

**DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S CROSSCLAIM
AGAINST DEFENDANTS, RAYMOND A. GRAFF, WILLIAM GRAFF AND
ROSE M. GRAFF T/D/B/A GRAFF TANK; GRAFF TANK, INC.**

45. Answering defendant incorporates by reference and makes a part hereof the allegations of negligence and breach of warranty against defendants, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank and Graff Tank, Inc. from plaintiffs' complaint as though same were herein after set forth at length.

the provisions of the Pennsylvania Comparative Negligence Act, the terms of which Act are incorporated herein by reference.

40. Answering defendant pleads the affirmative defense of the Doctrine of Assumption of Risk. Plaintiffs' claims are barred and/or limited by the assumption of risk.
41. Answering defendant supplied the Infer-O-Therm burner model 200. It did not manufacture the product.
42. The product supplied by answering defendant was installed by the other defendant, DM Industries, plaintiffs, or an unknown third parties.
43. Answering defendant avers and therefore believes that plaintiffs stored an improper product in the tank.
44. Answering defendant avers and therefore believes that the combustion package was improperly installed.

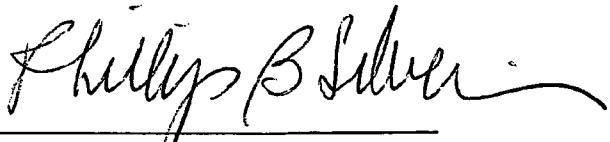
WHEREFORE, defendant, Meeker Equipment Company, Inc., demands judgement in it's favor.

**DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S CROSSCLAIM
AGAINST DEFENDANTS, RAYMOND A. GRAFF, WILLIAM GRAFF AND
ROSE M. GRAFF T/D/B/A GRAFF TANK; GRAFF TANK, INC.**

45. Answering defendant incorporates by reference and makes a part hereof the allegations of negligence and breach of warranty against defendants, Raymond A. Graff, William Graff and Rose M. Graff t/d/b/a Graff Tank and Graff Tank, Inc. from plaintiffs' complaint as though same were herein after set forth at length.

WHEREFORE, defendants, Raymond A. Graff, William Graff, and Rose M. Graff t/d/b/a Graff Tank and Graff Tank, Inc. are alone liable or liable over to plaintiff or jointly or severley liable the damages which plaintiffs may have so sustained.

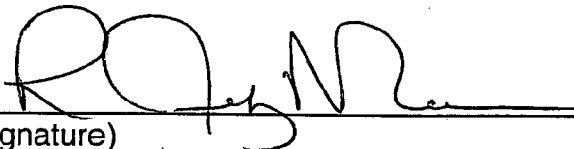
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 
PHILLIP B. SILVERMAN, ESQUIRE
Attorney for Defendant: **MEEKER**
EQUIPMENT CO., INC.

VERIFICATION

The undersigned is authorized to sign this verification with regards to the foregoing document. The facts contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. The language of this pleading is that of counsel and not of signer. This verification is made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.

R JEFFREY MEEKER
(Print name)


(Signature)

DATE: 2-14-05

MSZL&M FILE NO.: 6400.0006

**MINTZER, SAROWITZ, ZERIS,
LEDVA & MEYERS**
BY: GEORGE W. VOKOLOS, ESQUIRE
Attorney I.D. No. 88508
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 6400.0006

Attorney for Defendant,
MEEKER EQUIPMENT CO., INC.

HRI, INC. AND WHITAKER ROADS
CORPORATION

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

NO. 04-2041-CD

RAYMOND A. GRAFF, WILLIAM GRAFF
AND ROSE M. GRAFF T/D/B/A GRAFF
TANK; GRAFF TANK, INC. AND
MEEKER EQUIPMENT CO., INC. V.
DUFOUR, INC.

**DEFENDANT/THIRD PARTY PLAINTIFF, MEEKER EQUIPMENT CO., INC.'S
ANSWER TO ADDITIONAL DEFENDANT, DUFOUR, INC.'S NEW MATTER**

Answering Defendant/Third Party Plaintiff, Meeker Equipment Co., Inc. (hereafter "Meeker") by and through its undersigned counsel, hereby responds to Additional Defendant, DuFour, Inc.'s (hereafter "DuFour") New Matter and in support thereof incorporates by reference its Answer to Plaintiff's Complaint with New Matter and New Matter Crossclaim and in further support thereof, avers as follows:

13-18. Denied. The allegations contained in the corresponding paragraphs of DuFour's New Matter are specifically denied pursuant to Pa.R.C.P.129(e). Strict proof of same is demanded at the time of trial. Furthermore, the allegations contained in the corresponding paragraphs are mere conclusions of law to which no responsive pleading is

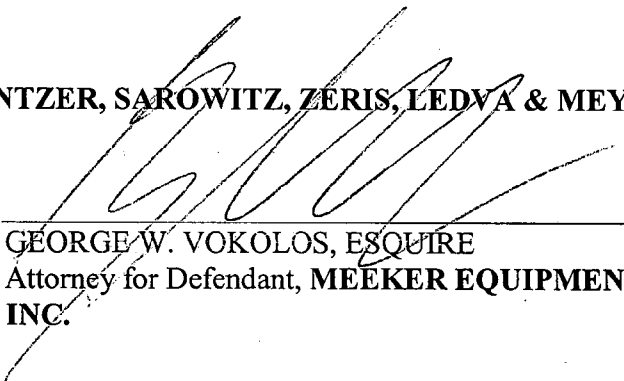
FILED No
m110:2401 ce
APR 13 2006

William A. Shaw
Prothonotary/Clerk of Courts

required and accordingly, there are deemed denied. Any liability on the part of Answering Defendant/Third Party Plaintiff, Meeker, is specifically denied.

WHEREFORE, Answering Defendant/Third Party Plaintiff, Meeker Equipment Co., Inc., demands judgment in its favor.

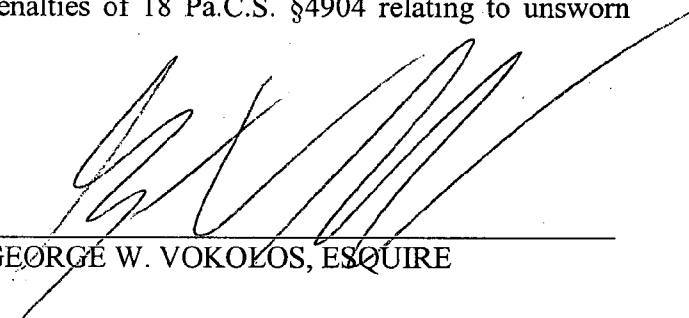
MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS

BY: 

GEORGE W. VOKOLOS, ESQUIRE
Attorney for Defendant, **MEEKER EQUIPMENT CO.,
INC.**

VERIFICATION

The averments or denials of facts contained in the foregoing are true, based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are consistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. This Verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



GEORGE W. VOKOLOS, ESQUIRE

Dated: April __, 2006

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION, and DUFOUR,
INC.,
Additional Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Certificate of
Service

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

Dated: May 15, 2006

FILED
MAY 16 2006
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION, and DUFOUR,
INC.,
Additional Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2006, I mailed
two original Notices of Deposition, copies of which are attached hereto,
by first class mail, postage prepaid, to the following:

George W. Vokolos, Esq.
*Attorney for Defendant Meeker Equipment
Company, Inc.*
Minter Sarowitz Zeris Ledva & Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102-3614

With copies to:

Thomas T. Frampton, Esq.
Attorney for Graff Defendants
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Patrick L. Mechas, Esq.
Attorney for Infern-O-Therm
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

Paul E. Pongrace, III, Esq.
Attorney for DM Industries
Redman & Pongrace
610 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219

Terry R. Heeter, Esq.
Attorney for DuFour
The Kooman Law Firm
P.O. Box 700
Clarion, PA 16214

Matthew B. Taladay
Matthew B. Taladay, Esq.
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

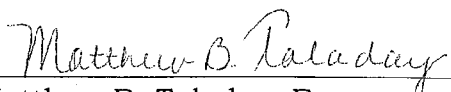
vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION, and DUFOUR,
INC.,
Additional Defendants

NOTICE OF DEPOSITION

TO: NICK DIODAD
c/o George W. Vokolos, Esq.

TAKE NOTICE that your deposition by oral examination will be taken on **Wednesday, June 28, 2006 at 10:00 a.m.** at the Quality Inn, 191 United Road (intersection of Route 255 & I-80), DuBois, Pennsylvania. This deposition is being taken for the purpose of discovery and for use at trial, pursuant to the Pennsylvania Rules of Civil Procedure regarding Discovery.


Matthew B. Taladay, Esq.
Attorney for Plaintiffs

cc: Schreiber Reporting Service

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

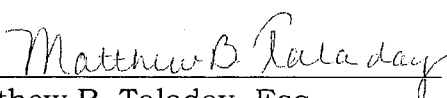
vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION, and DUFOUR,
INC.,
Additional Defendants

NOTICE OF DEPOSITION

TO: DAVID GARRETT
c/o George W. Vokolos, Esq.

TAKE NOTICE that your deposition by oral examination will
be taken on **Wednesday, June 28, 2006 at 1:00 p.m.** at the Quality
Inn, 191 United Road (intersection of Route 255 & I-80), DuBois,
Pennsylvania. This deposition is being taken for the purpose of discovery
and for use at trial, pursuant to the Pennsylvania Rules of Civil
Procedure regarding Discovery.


Matthew B. Taladay, Esq.
Attorney for Plaintiffs

cc: Schreiber Reporting Service

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

CIVIL ACTION - AT LAW

No. 04-2041-CD

Type of Pleading:

Certificate of
Service

Filed on behalf of:

Plaintiffs

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

(814) 371-7768

JURY TRIAL DEMANDED

Dated: May 15, 2006

FILED *no cc*
10:25 AM
MAY 16 2006 *SM*
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION,
Additional Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2006, I mailed
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Thomas T. Frampton, Esq.
Attorney for Graff Defendants
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219

With copies to:

Patrick L. Mechas, Esq.
Attorney for Infern-O-Therm
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

Paul E. Pongrace, III, Esq.
Attorney for DM Industries
Redman & Pongrace
610 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219

George W. Vokolos, Esq.
*Attorney for Defendant Meeker Equipment
Company, Inc.*
Minter Sarowitz Zeris Ledva & Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102-3614

Terry R. Heeter, Esq.
Attorney for DuFour
The Kooman Law Firm
P.O. Box 700
Clarion, PA 16214

Matthew B. Taladay
Matthew B. Taladay, Esq.
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION, and DUFOUR,
INC.,
Additional Defendants

NOTICE OF DEPOSITION

TO: WILLIAM GRAFF
c/o Thomas T. Frampton, Esq.

TAKE NOTICE that your deposition by oral examination will
be taken on **Tuesday, June 20, 2006 at 10:00 a.m.** at the Quality Inn,
191 United Road (intersection of Route 255 & I-80), DuBois,
Pennsylvania. This deposition is being taken for the purpose of discovery
and for use at trial, pursuant to the Pennsylvania Rules of Civil
Procedure regarding Discovery.

Matthew B. Taladay
Matthew B. Taladay, Esq.
Attorney for Plaintiffs

cc: Schreiber Reporting Service

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

HRI, INC., and WHITAKER
ROADS CORPORATION,
Plaintiffs

vs.

RAYMOND A. GRAFF, WILLIAM
GRAFF and ROSE M. GRAFF,
t/d/b/a GRAFF TANK, GRAFF
TANK, INC. and MEEKER
EQUIPMENT CO., INC.,
Defendants

No. 04-2041-CD

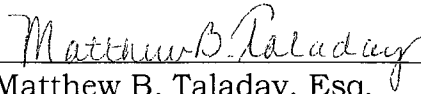
vs.

DM INDUSTRIES, INC. t/a DM
INDUSTRIES and
INFERN-O-THERM
CORPORATION, and DUFOUR,
INC.,
Additional Defendants

NOTICE OF DEPOSITION

TO: RAYMOND GRAFF
c/o Thomas T. Frampton, Esq.

TAKE NOTICE that your deposition by oral examination will
be taken on **Tuesday, June 20, 2006 at 1:00 p.m.** at the Quality Inn,
191 United Road (intersection of Route 255 & I-80), DuBois,
Pennsylvania. This deposition is being taken for the purpose of discovery
and for use at trial, pursuant to the Pennsylvania Rules of Civil
Procedure regarding Discovery.


Matthew B. Taladay, Esq.
Attorney for Plaintiffs

cc: Schreiber Reporting Service

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

No.: 04-2041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

**NOTICE OF SERVICE OF GRAFF
DEFENDANTS' ANSWERS TO
ADDITIONAL DEFENDANT, DM
INDUSTRIES, INC.'S
INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS**

Defendants.

vs.

Filed on Behalf of Defendants:

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION, and DUFOUR, INC.,

Raymond A. Graff, William Graff and Rose
M. Graff, t/d/b/a Graff Tank and Graff Tank,
Inc.

Additional Defendants.

Counsel of Record for This Party:

Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

FILED *NO*
m/1:36/01
MAY 22 2006 *LM*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION, and DUFOUR, INC.,

Additional Defendants.

CIVIL DIVISION

No.: 04-2041-CD

**NOTICE OF SERVICE OF GRAFF DEFENDANTS' ANSWERS TO
ADDITIONAL DEFENDANT, DM INDUSTRIES, INC.'S
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

TO THE PROTHONOTARY:

Please be advised that Graff Defendants' Answers to Additional Defendant, DM Industries, Inc.'s Interrogatories and Requests for Production of Documents, along with a copy of this Notice of Service of the same, were served upon Defendant this 18th day of May, 2006, by U.S. first-class mail, postage prepaid, at the address indicated below.

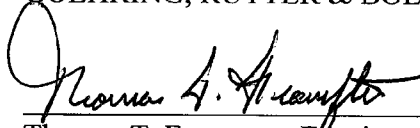
Paul E. Pongrace, III, Esquire
Redman & Pongrace
610 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219

Date: May _____, 2006

Respectfully Submitted,

GOEHRING, RUTTER & BOEHM

By:



Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

Firm #102
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(412) 281-0587

*Attorneys for Defendants, Raymond A.
Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **NOTICE OF SERVICE OF GRAFF DEFENDANTS' ANSWERS TO ADDITIONAL DEFENDANT, DM INDUSTRIES, INC.'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS** was served upon all counsel of record via first class mail, postage prepaid, this 18th day of May, 2006:

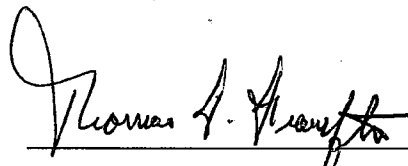
Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorney for Plaintiffs

Patrick L. Mechas, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Attorney for Infern-O-Therm Corporation

Terry R. Heeter, Esquire
Kooman, Heeter & Associates, P.C.
Marianne Professional Center
P.O. Box 700
Clarion, PA 16214
Attorney for DuFour, Inc.

George W. Vokolos, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
Attorney for Meeker Equipment Co., Inc.

Paul E. Pongrace, III, Esquire
Redman & Pongrace
610 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219
Attorney for DM Industries, Inc. t/a DM Industries



Thomas T. Frampton, Esquire

FILED

MAY 22 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

No.: 04-2041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

**NOTICE OF SERVICE OF GRAFF
DEFENDANTS' ANSWERS TO
DEFENDANT, MEEKER EQUIPMENT
COMPANY, INC.'S INTERROGATORIES**

Defendants.

Filed on Behalf of Defendants:

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION, and DUFOUR, INC.,

Raymond A. Graff, William Graff and Rose
M. Graff, t/d/b/a Graff Tank and Graff Tank,
Inc.

Additional Defendants.

Counsel of Record for This Party:

Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacsi, Esquire
Pa. I.D. #80323

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

FILED *no cc*
mjl: 3/6/04
MAY 22 2006 *LM*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION, and DUFOUR, INC.,

Additional Defendants.

CIVIL DIVISION

No.: 04-2041-CD

**NOTICE OF SERVICE OF GRAFF DEFENDANTS' ANSWERS TO DEFENDANT,
MEEKER EQUIPMENT COMPANY, INC.'S INTERROGATORIES**

TO THE PROTHONOTARY:

Please be advised that Graff Defendants' Answers to Defendant, Meeker Equipment Company, Inc.'s Interrogatories, along with a copy of this Notice of Service of the same, were served upon Defendant this 18th day of May, 2006, by U.S. first-class mail, postage prepaid, at the address indicated below.

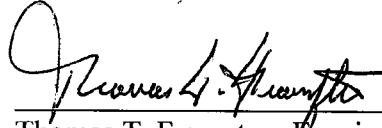
George W. Vokolos, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102

Date: May _____, 2006

Respectfully Submitted,

GOEHRING, RUTTER & BOEHM

By:



Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

Firm #102
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(412) 281-0587

*Attorneys for Defendants, Raymond A.
Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **NOTICE OF SERVICE OF GRAFF DEFENDANTS' ANSWERS TO DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S INTERROGATORIES** was served upon all counsel of record via first class mail, postage prepaid, this 18th day of May, 2006:

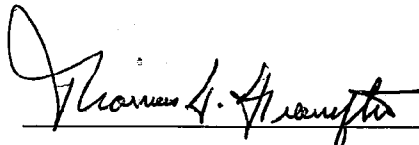
Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorney for Plaintiffs

Patrick L. Mechas, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Attorney for Infern-O-Therm Corporation

Terry R. Heeter, Esquire
Kooman, Heeter & Associates, P.C.
Marianne Professional Center
P.O. Box 700
Clarion, PA 16214
Attorney for DuFour, Inc.

George W. Vokolos, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
Attorney for Meeker Equipment Co., Inc.

Paul E. Pongrace, III, Esquire
Redman & Pongrace
610 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219
Attorney for DM Industries, Inc. t/a DM Industries



Thomas T. Frampton, Esquire

FILED

MAY 22 2006

William A. Shaw
Prothonotary/Clerk of Courts

7

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

No.: 04-2041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

**NOTICE OF SERVICE OF GRAFF
DEFENDANTS' RESPONSES TO
DEFENDANT, MEEKER EQUIPMENT
COMPANY, INC.'S REQUEST FOR
PRODUCTION OF DOCUMENTS**

Defendants.

Filed on Behalf of Defendants:

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION, and DUFOUR, INC.,

Raymond A. Graff, William Graff and Rose
M. Graff, t/d/b/a Graff Tank and Graff Tank,
Inc.

Additional Defendants.

Counsel of Record for This Party:

Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

FILED ^{NO} cc
MAY 22 2006 ^{11:36 AM} (Lm)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION, and DUFOUR, INC.,

Additional Defendants.

CIVIL DIVISION

No.: 04-2041-CD

**NOTICE OF SERVICE OF GRAFF DEFENDANTS' RESPONSES TO
DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S
REQUEST FOR PRODUCTION OF DOCUMENTS**

TO THE PROTHONOTARY:

Please be advised that Graff Defendants' Responses to Defendant, Meeker Equipment Company, Inc.'s Request for Production of Documents, along with a copy of this Notice of Service of the same, were served upon Defendant this 18th day of May, 2006, by U.S. first-class mail, postage prepaid, at the address indicated below.

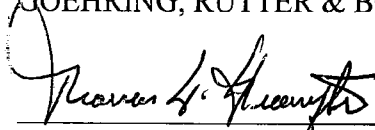
George W. Vokolos, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102

Date: May 18, 2006

Respectfully Submitted,

SOEHRING, RUTTER & BOEHM

By:



Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacs, Esquire
Pa. I.D. #80323

Firm #102
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(412) 281-0587

*Attorneys for Defendants, Raymond A.
Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **NOTICE OF SERVICE OF GRAFF DEFENDANTS' RESPONSES TO DEFENDANT, MEEKER EQUIPMENT COMPANY, INC.'S REQUEST FOR PRODUCTION OF DOCUMENTS**

was served upon all counsel of record via first class mail, postage prepaid, this 18th day of May,

2006:

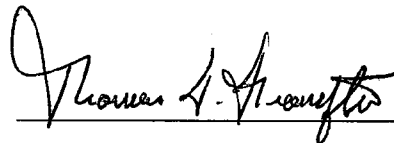
Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorney for Plaintiffs

Patrick L. Mechas, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Attorney for Infern-O-Therm Corporation

Terry R. Heeter, Esquire
Kooman, Heeter & Associates, P.C.
Marianne Professional Center
P.O. Box 700
Clarion, PA 16214
Attorney for DuFour, Inc.

George W. Vokolos, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
Attorney for Meeker Equipment Co., Inc.

Paul E. Pongrace, III, Esquire
Redman & Pongrace
610 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219
Attorney for DM Industries, Inc. t/a DM Industries



Thomas T. Frampton, Esquire

FILED

MAY 22 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

No.: 04-2041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Defendants.

**NOTICE OF SERVICE OF GRAFF
DEFENDANTS' ANSWERS TO
ADDITIONAL DEFENDANT, INFERN-O-
THERM CORPORATION'S
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

vs.

Filed on Behalf of Defendants:

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION, and DUFOUR, INC.,

Raymond A. Graff, William Graff and Rose
M. Graff, t/d/b/a Graff Tank and Graff Tank,
Inc.

Additional Defendants.

Counsel of Record for This Party:

Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacsi, Esquire
Pa. I.D. #80323

GOEHRING, RUTTER & BOEHM
Firm #102
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 281-0587

FILED *NO cc*
11:36 AM
MAY 22 2008 *LS*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

Plaintiffs,

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF
and ROSE M. GRAFF, t/d/b/a GRAFF TANK,
GRAFF TANK, INC. and MEEKER
EQUIPMENT CO., INC.,

Defendants,

vs.

DM INDUSTRIES, INC., t/a DM
INDUSTRIES, INFERN-O-THERM
CORPORATION, and DUFOUR, INC.,

Additional Defendants.

CIVIL DIVISION

No.: 04-2041-CD

**NOTICE OF SERVICE OF GRAFF DEFENDANTS' ANSWERS TO ADDITIONAL
DEFENDANT, INFERN-O-THERM CORPORATION'S INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS**

TO THE PROTHONOTARY:

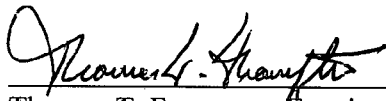
Please be advised that Graff Defendants' Answers to Additional Defendant, Infern-O-Therm Corporation's Interrogatories and Request for Production of Documents, along with a copy of this Notice of Service of the same, were served upon Defendant this 18th day of May, 2006, by U.S. first-class mail, postage prepaid, at the address indicated below.

Patrick L. Mechas, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

Date: May 18, 2006

Respectfully Submitted,

GOEHRING, RUTTER & BOEHM

By: 
Thomas T. Frampton, Esquire
Pa. I.D. #17286

Dana L. Bacsi, Esquire
Pa. I.D. #80323

Firm #102
437 Grant Street
1424 Frick Building
Pittsburgh, PA 15219
(412) 281-0587

*Attorneys for Defendants, Raymond A.
Graff, William Graff and Rose M. Graff,
t/d/b/a Graff Tank and Graff Tank, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **NOTICE OF SERVICE OF GRAFF DEFENDANTS' ANSWERS TO ADDITIONAL DEFENDANT, INFERN-O-THERM CORPORATION'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS** was served upon all counsel of record via first class mail, postage prepaid, this 18th day of May, 2006:

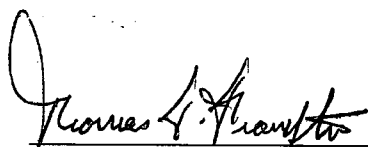
Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
Attorney for Plaintiffs

Patrick L. Mechas, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Attorney for Infern-O-Therm Corporation

Terry R. Heeter, Esquire
Kooman, Heeter & Associates, P.C.
Marianne Professional Center
P.O. Box 700
Clarion, PA 16214
Attorney for DuFour, Inc.

George W. Vokolos, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
22nd Floor
1528 Walnut Street
Philadelphia, PA 19102
Attorney for Meeker Equipment Co., Inc.

Paul E. Pongrace, III, Esquire
Redman & Pongrace
610 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219
Attorney for DM Industries, Inc. t/a DM Industries



Thomas T. Frampton, Esquire

FILED

MAY 22 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HRI, INC. and WHITAKER ROADS
CORPORATION,

CIVIL DIVISION

Plaintiffs,

CASE NO. 2004-02041-CD

vs.

RAYMOND A. GRAFF, WILLIAM GRAFF,
ROSE M. GRAFF, GRAFF TANK, GRAFF
TANK, INC. and MEEKER EQUIPMENT
CO., INC.,

**NOTICE OF SERVICE OF ANSWERS TO
INTERROGATORIES PROPOUNDED BY
DEFENDANT, MEEKER EQUIPMENT
CO., INC. AND RESPONSES TO
REQUEST FOR PRODUCTION OF
DOCUMENTS PROPOUNDED BY
DEFENDANT, MEEKER EQUIPMENT
CO., INC.**

Defendants,

vs.

DM INDUSTRIES, INC., DM INDUSTRIES,
INFERN-O-THERM CORPORATION, AND
DUFOUR, INC.

Filed on Behalf of: Additional Defendant,
Infern-O-Therm Corporation

Additional Defendants.

Counsel for Record for This Party:

Patrick L. Mechas, Esquire
PA I.D. No. 61362

John B. Cromer, Esquire
PA I.D. No. 66773

BURNS, WHITE & HICKTON
Firm I.D. No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

JURY TRIAL DEMANDED

FILED NO CC
JUN 02 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

HRI, INC. and WHITAKER ROADS)
CORPORATION,)

Plaintiffs,)

vs.)

RAYMOND A. GRAFF, WILLIAM)
GRAFF, ROSE M. GRAFF, GRAFF)
TANK, GRAFF TANK, INC. and)
MEEKER EQUIPMENT CO., INC.,)

Defendants,)

vs.)

DM INDUSTRIES, INC., DM)
INDUSTRIES, INFERN-O-THERM)
CORPORATION, AND DUFOUR,)
INC.)

Additional Defendants.)

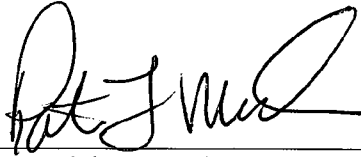
CASE NO. 2004-02041-CD

**NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES
PROPOUNDED BY DEFENDANT, MEEKER EQUIPMENT CO., INC. AND
RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS
PROPOUNDED BY DEFENDANT, MEEKER EQUIPMENT CO., INC.**

TO: PROTHONOTARY

The undersigned hereby certifies that the original of, Answers to Interrogatories
Propounded by Defendant, Meeker Equipment Co., Inc. and Responses to Request for
Production of Documents propounded by Defendant, Meeker Equipment Co., Inc. were
served on counsel of record, this 31st day of May, 2006.

BURNS, WHITE & HICKTON, LLC

BY: 
Patrick L. Mechas, Esquire
John B. Cromer, Esquire
Attorneys for Additional Defendant,
Infern-O-Therm Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within
**NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES
PROPOUNDED BY DEFENDANT MEEKER EQUIPMENT CO., INC. AND
RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS
PROPOUNDED BY DEFENDANT, MEEKER EQUIPMENT CO., INC.** was served
upon all counsel of record via first class mail, postage prepaid, this 31st day of May,
2006:

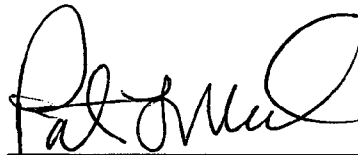
Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Paul E. Pongrance, III, Esquire
Redman & Pongrace
610 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219

George W. Vokolos, Esquire
Phillip B. Silverman, Esquire
Mintzer, Sarowitz, Zeris, Ledva & Meyers
1528 Walnut Street – 22nd Floor
Philadelphia, PA 19102

Terry R. Heeter, Esquire
The Kooman Law Firm
Marianne Professional Center
PO Box 700
Clarion, PA 16214

Thomas T. Frampton, Esquire
Dana L. Bacsí, Esquire
Goehring, Rutter & Boehm
1424 Frick Building
437 Grant Street
Pittsburgh, PA 15219



Patrick L. Mechas, Esquire
John B. Cromer, Esquire

HRI, INC. and WHITAKER ROADS CORPORATION, Plaintiffs	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	
RAYMOND W. GRAFF, WILLIAM GRAFF and ROSE M. GRAFF, t/d/b/a GRAFF TANK; GRAFF, TANK, INC. and MEEKER EQUIPMENT CO., INC. Defendants	:	CIVIL ACTION - LAW
	:	
v.	:	
	:	
DM INDUSTRIES, INC. t/a DM INDUSTRIES, INFERN-O-THERM CORPORATION and DUFOUR, INC., Additional Defendants	:	No. 04-2041-CD

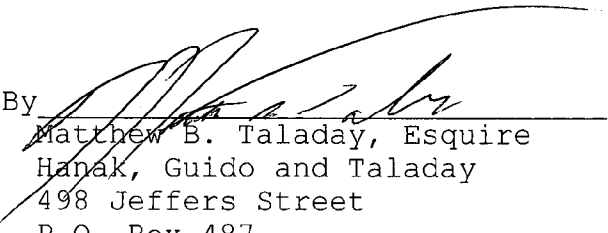
PRAECIPE FOR DISCONTINUANCE

TO THE PROTHONOTARY:

You are hereby directed to discontinue the above-captioned matter.

Respectfully submitted,

DATE: 10-18, 2006

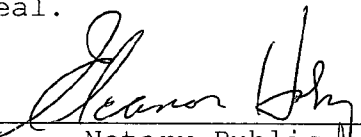
By 
Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

FILED Nocc
0/11:37am 1cert of disc
OCT 19 2006 issued to Atty
Taladay &
William A. Shaw Copy to C/A
Prothonotary/Clerk of Courts

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF CLEARFIELD)

On this, the 18th day of October, 2006, before me, the undersigned officer, personally appeared, **MATTHEW B. TALADAY**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

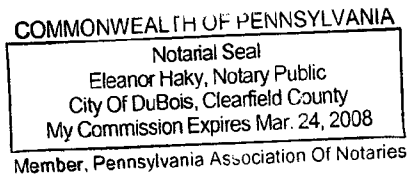
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public

My Commission Expires:

jc
#23720



HANAK, GUIDO and TALADAY
Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

Telephone: (814) 371-7768
Fax: (814) 371-1974

P.O. Box 487
DuBois, PA 15801
mbtaladay@verizon.net

Nicole Hanak Bankovich
S. Casey Bowers

October 18, 2006

William A. Shaw
Prothonotary
P.O. Box 549
Clearfield, PA 16830

Re: HRI, Inc. et al. vs. Graff, et al.
No. 2004-2041 CD

Dear Mr. Shaw:

Enclosed for filing please find a Praeceptum for Discontinuance. Kindly forward to my office a Certificate of Discontinuance. I have enclosed a self-addressed, stamped envelope for this purpose. If you have any questions regarding the enclosed, please contact me. Thank you for your assistance in this matter.

Sincerely,

Matthew B. Taladay

Matthew B. Taladay

MBT:kam

Encs.

cc: Daniel LaFrance, Esq.
Thomas T. Frampton, Esq.
George W. Vokolos, Esq.
Patrick L. Mechas, Esq.
Paul E. Pongrace, Esq.
Terry R. Heeter, Esq.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

HRI, Inc.
Whitaker Roads Corporation

Vs.

No. 2004-02041-CD

Raymond A. Graff
William Graff
Rose M. Graff
Graff Tank
Graff Tank, Inc.
Meeker Equipment Co. Inc.
DM Industries, Inc.
DM Industries
Infern-O-Therm Corporation
DuFour, Inc.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on October 19, 2006, marked:

Discontinued

Record costs in the sum of \$85.00 have been paid in full by Matthew B. Taladay Esq. .

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 19th day of October A.D. 2006.



William A. Shaw, Prothonotary