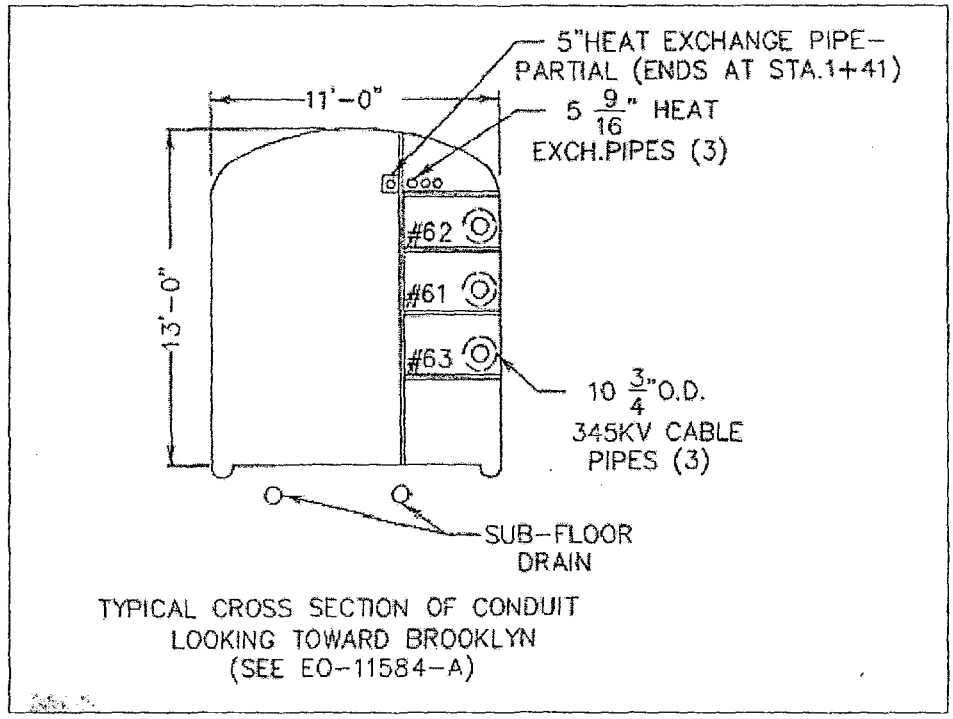

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LOOKING TOWARD BROOKLYN
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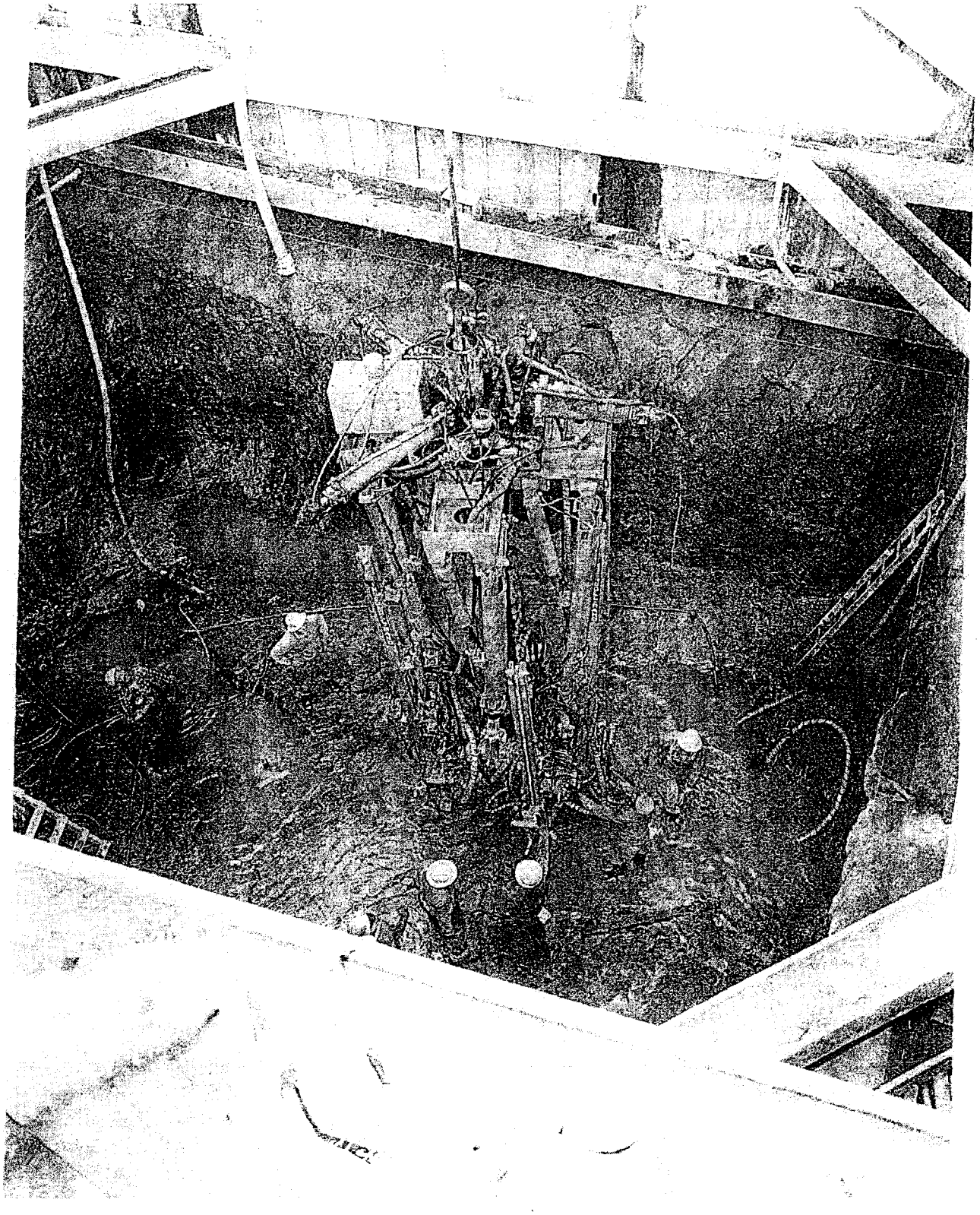

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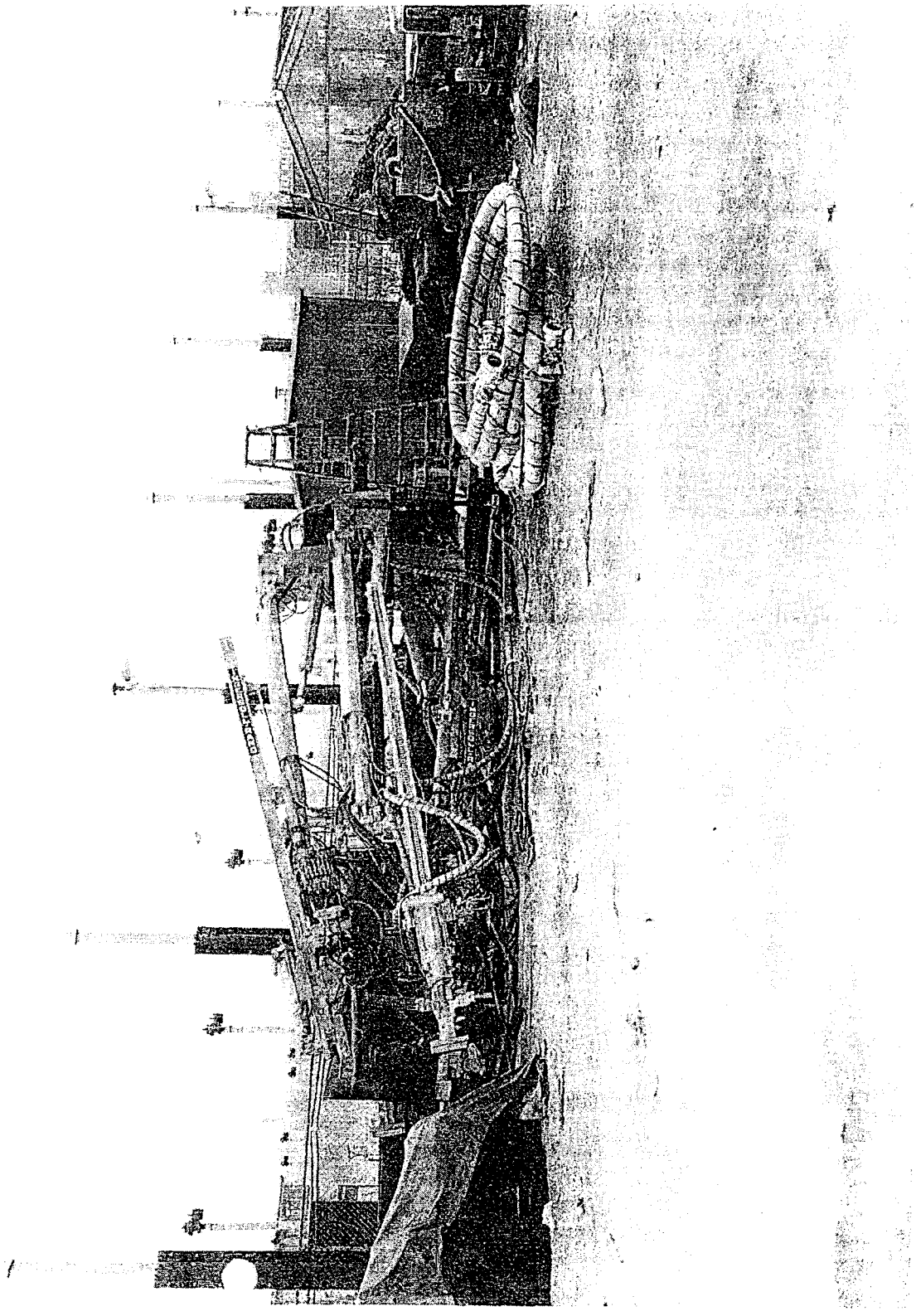

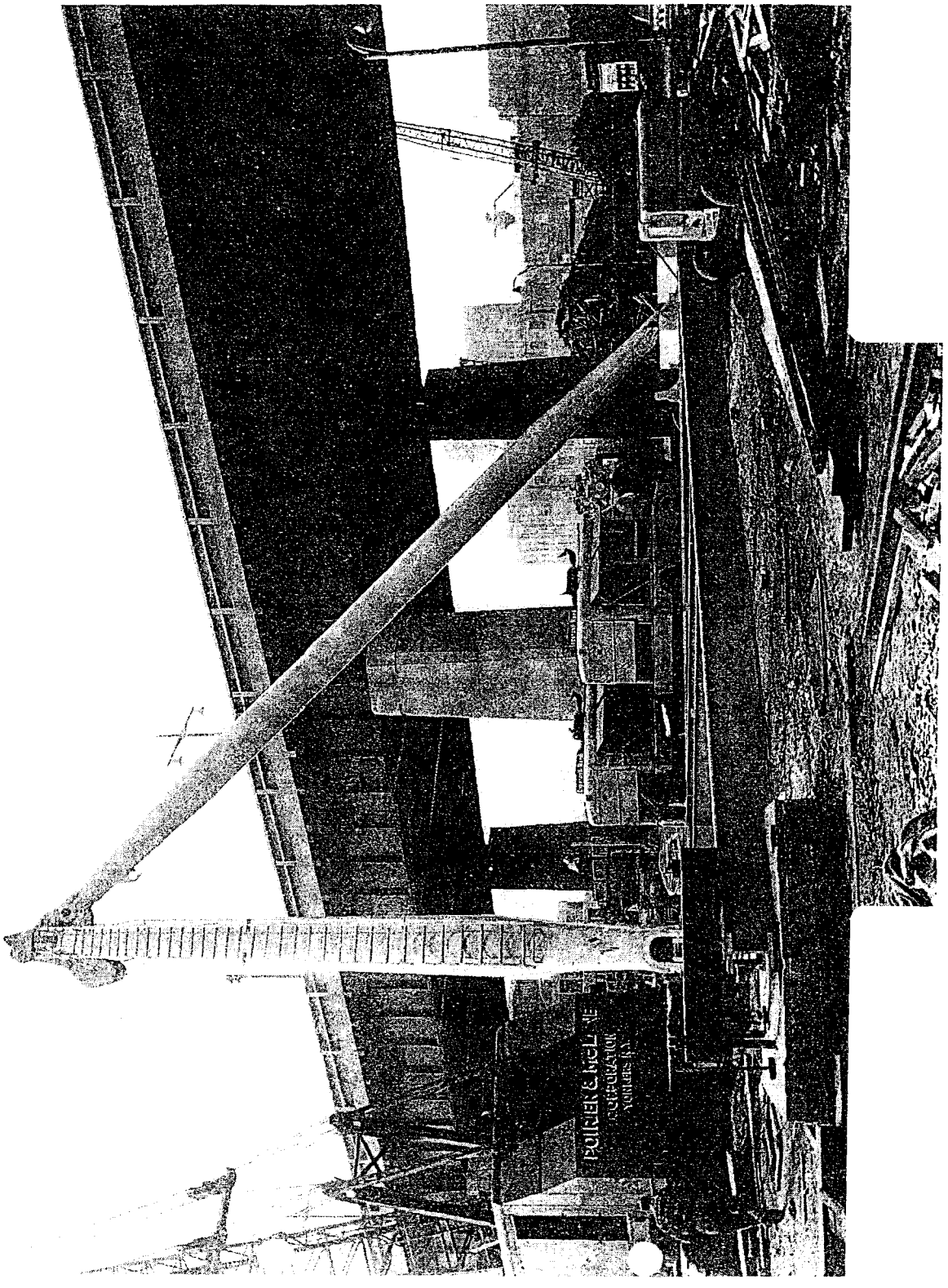
POIRIER & McLANE
CORPORATION
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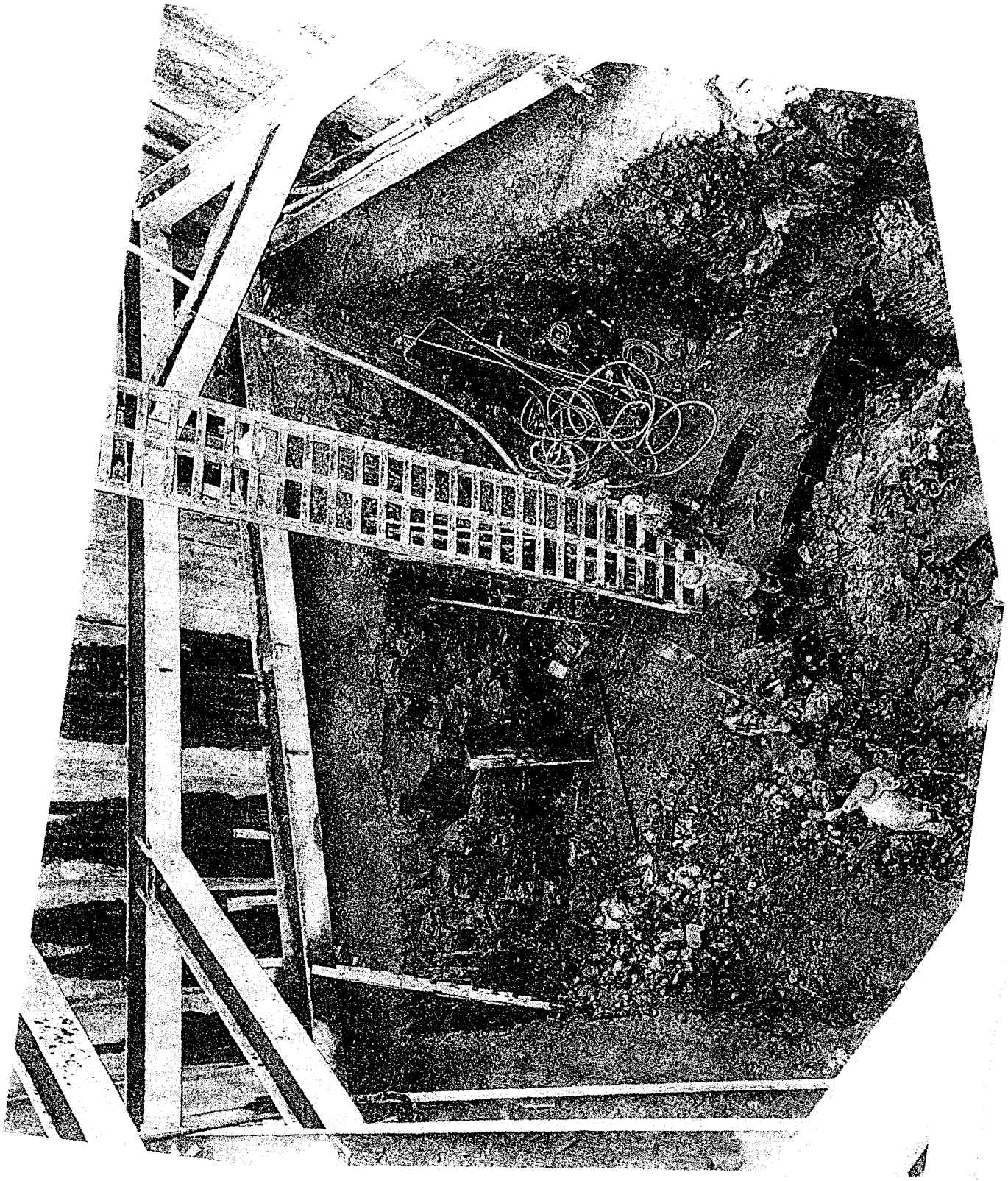

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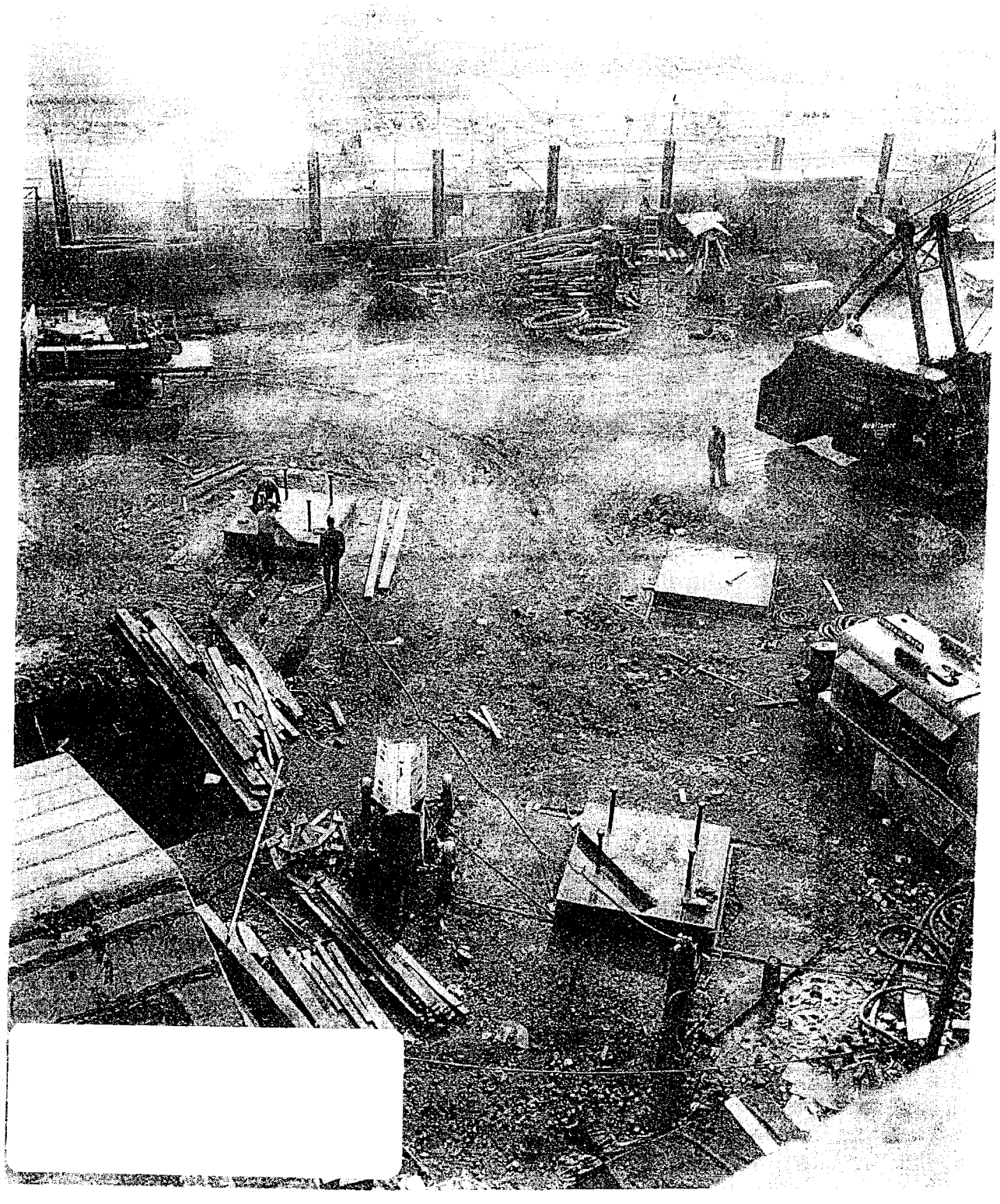

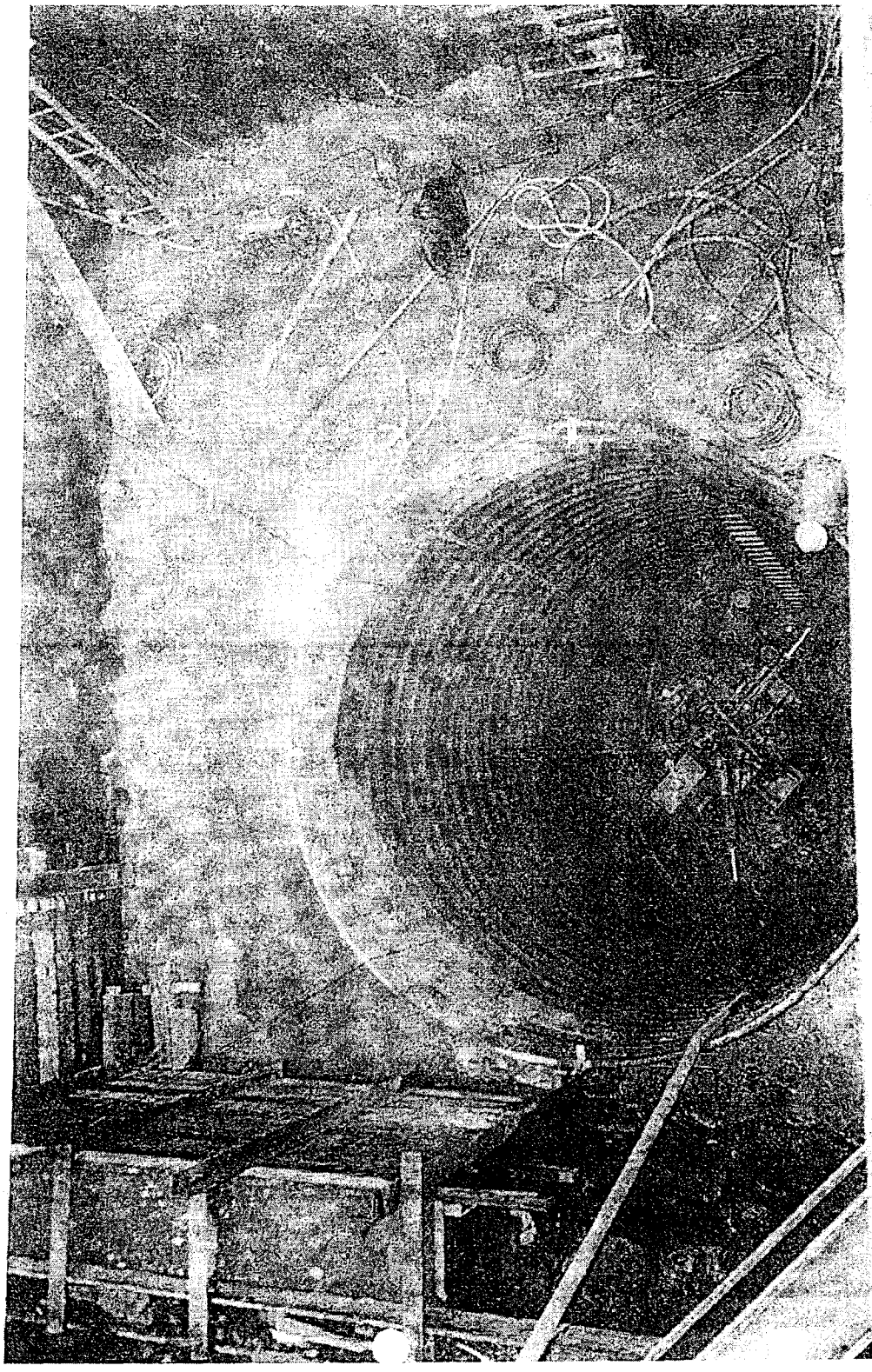

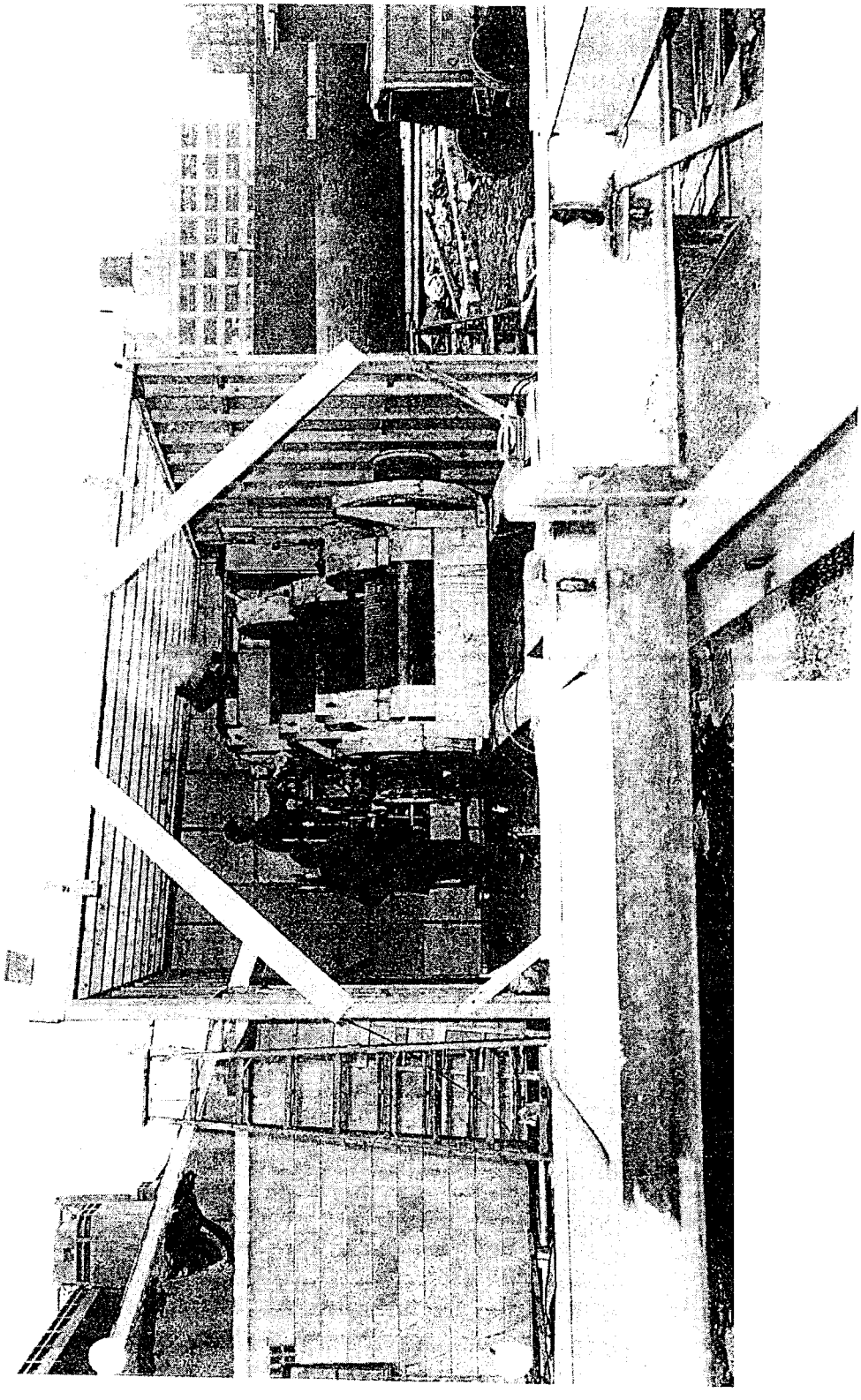

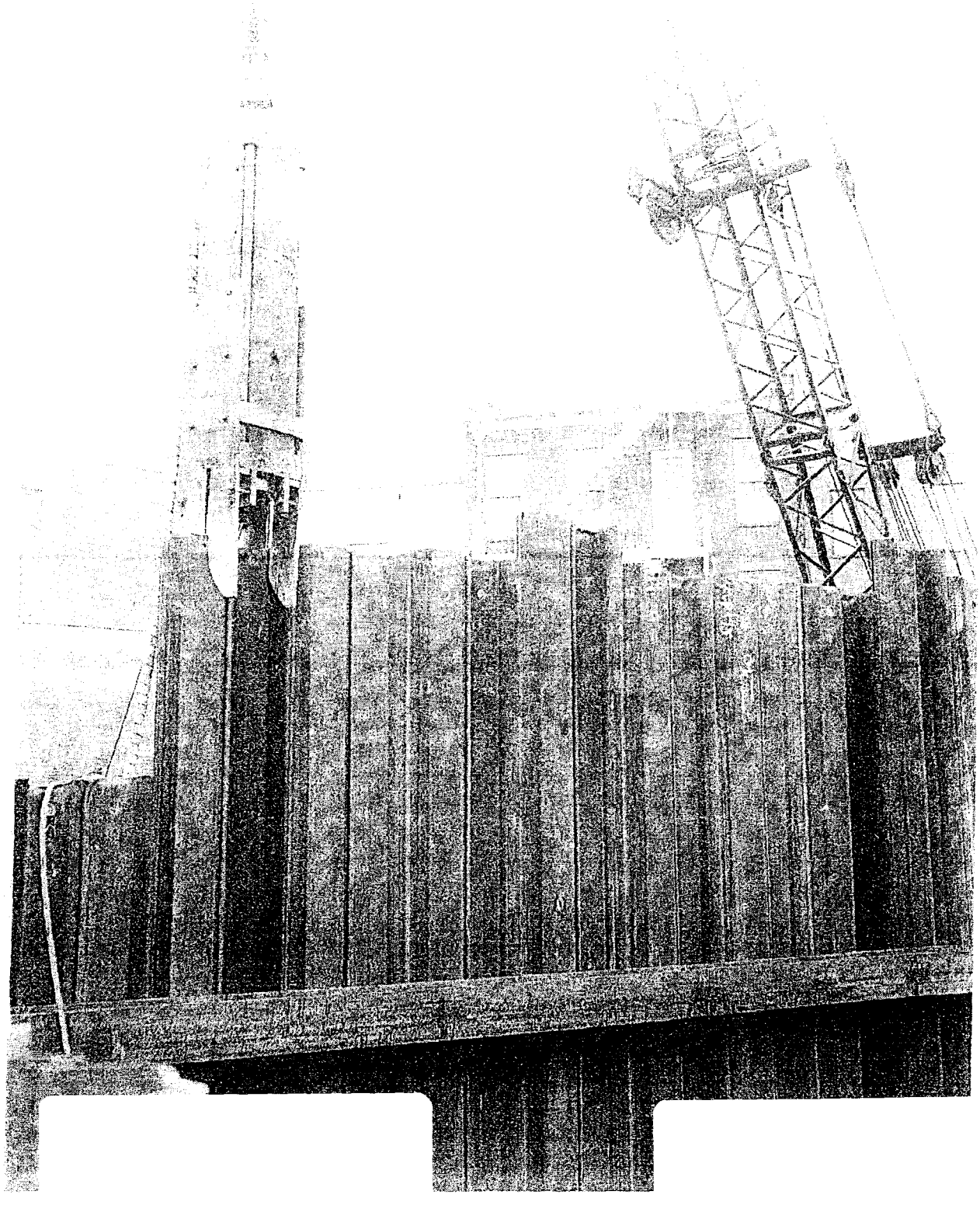

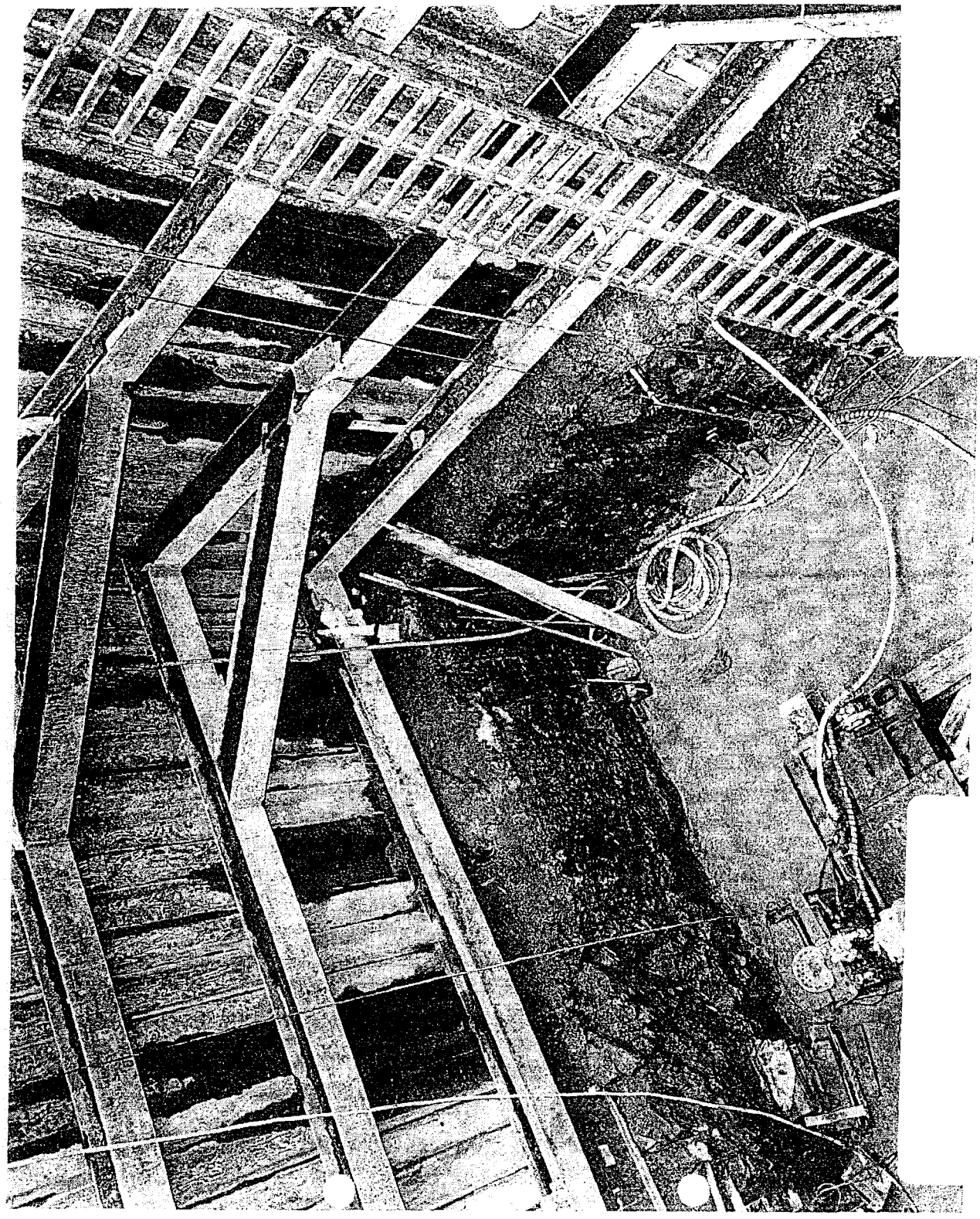

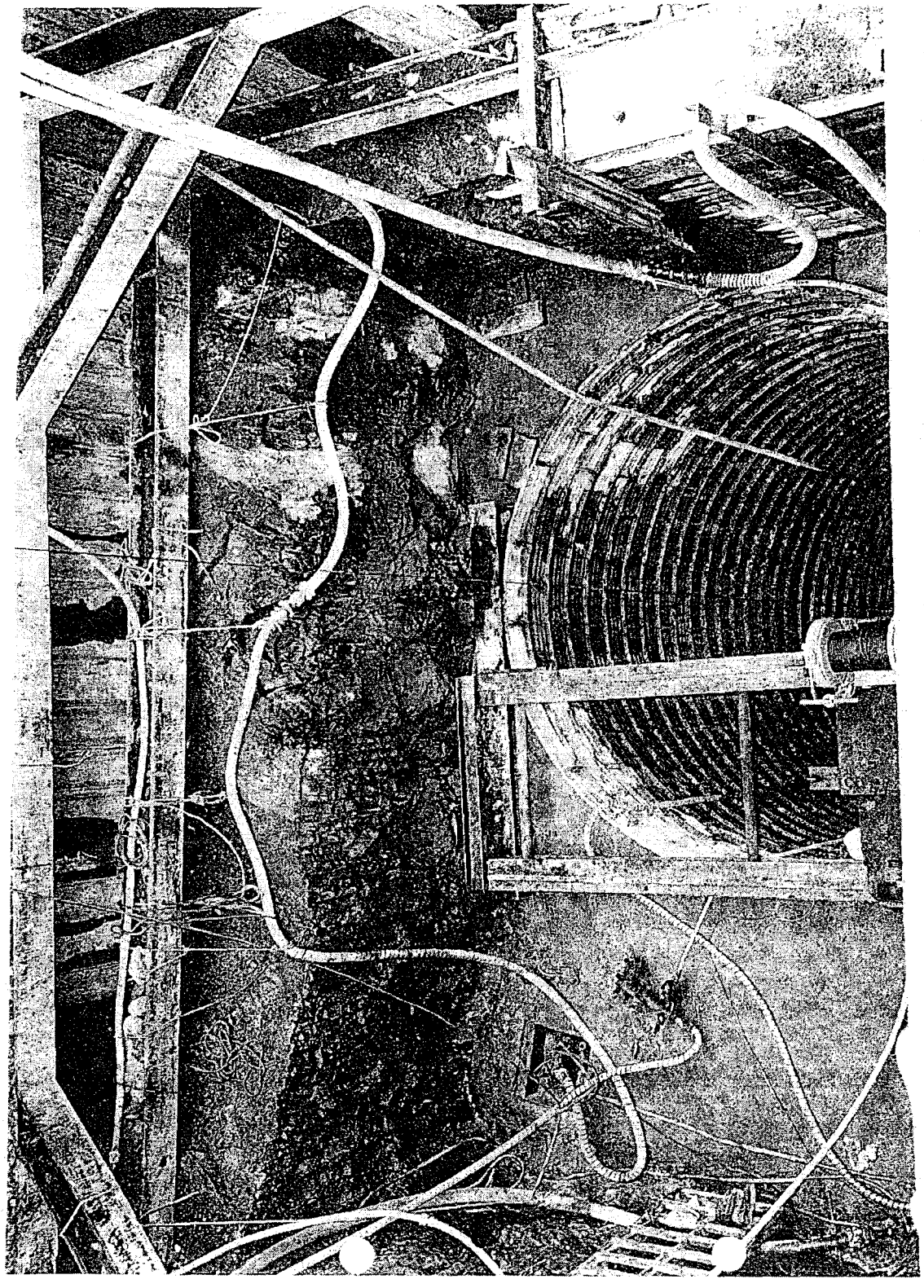

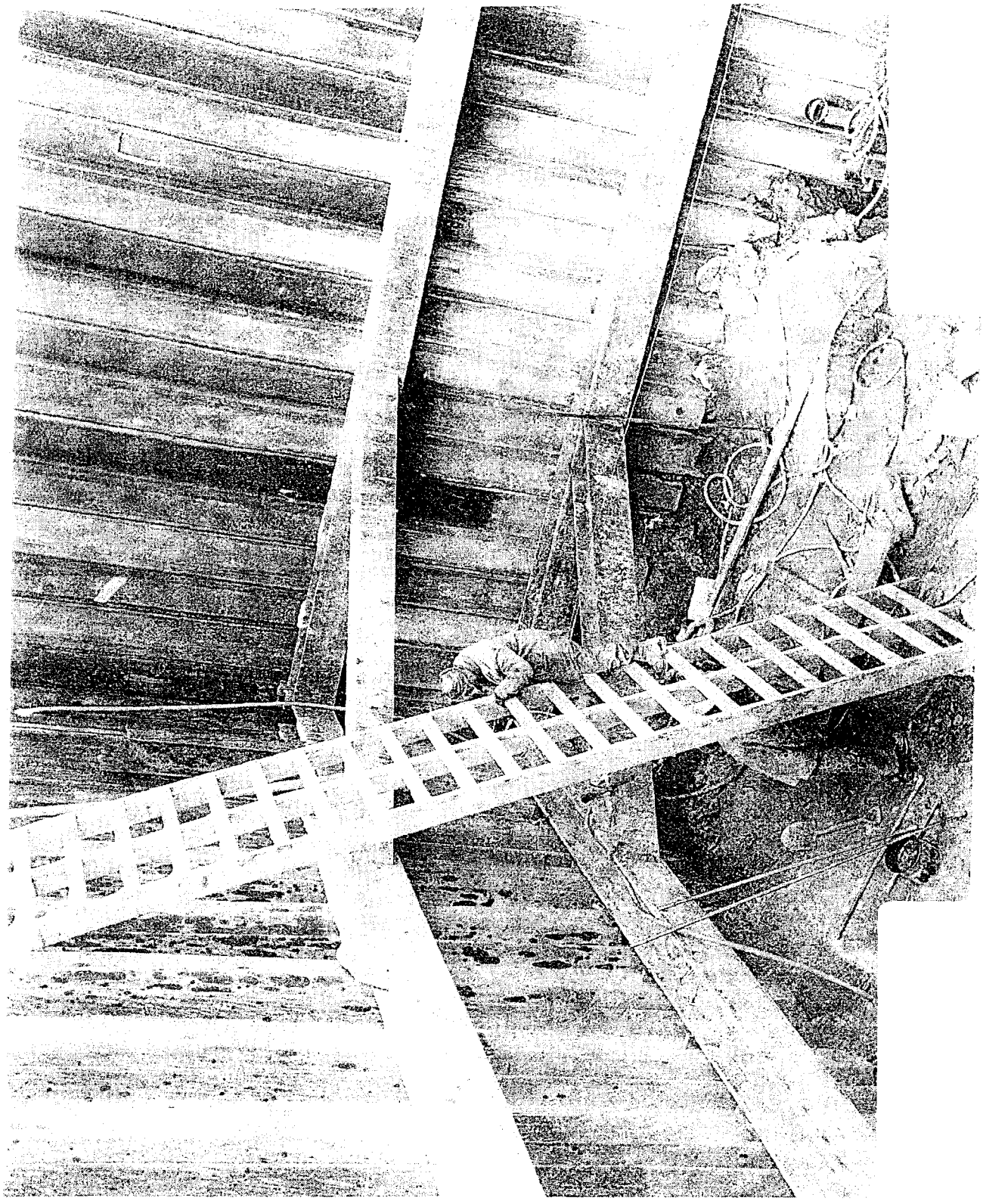

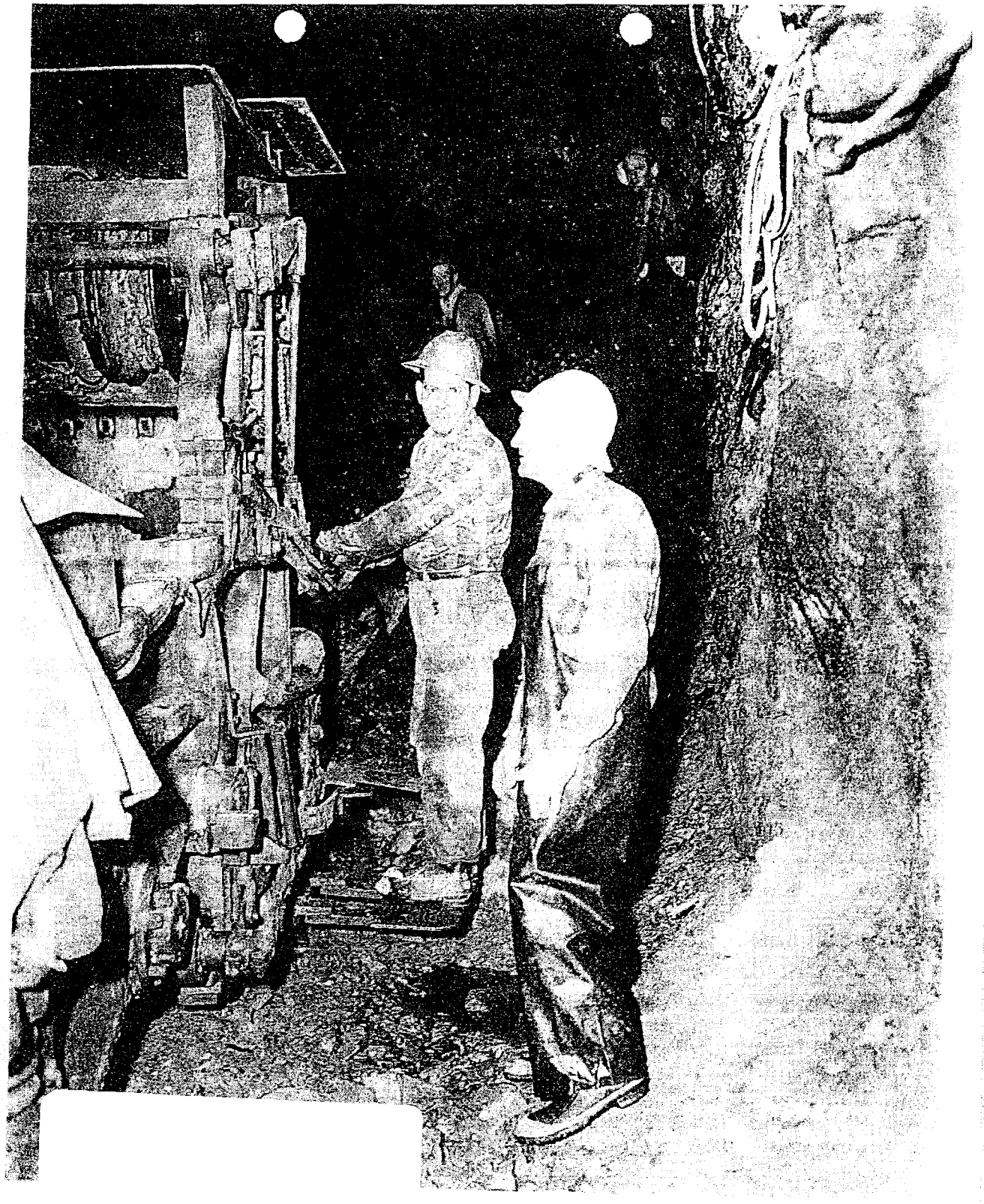

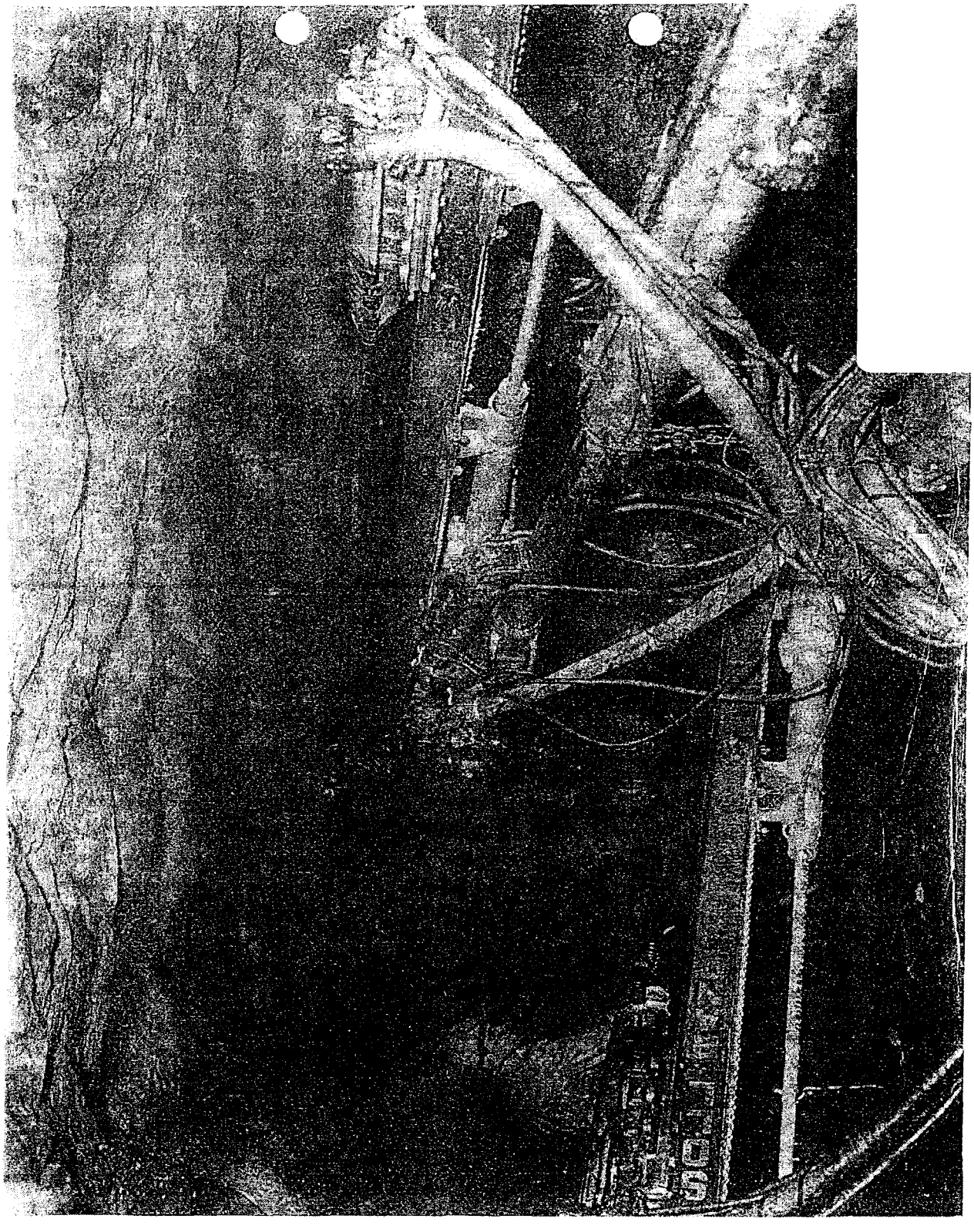

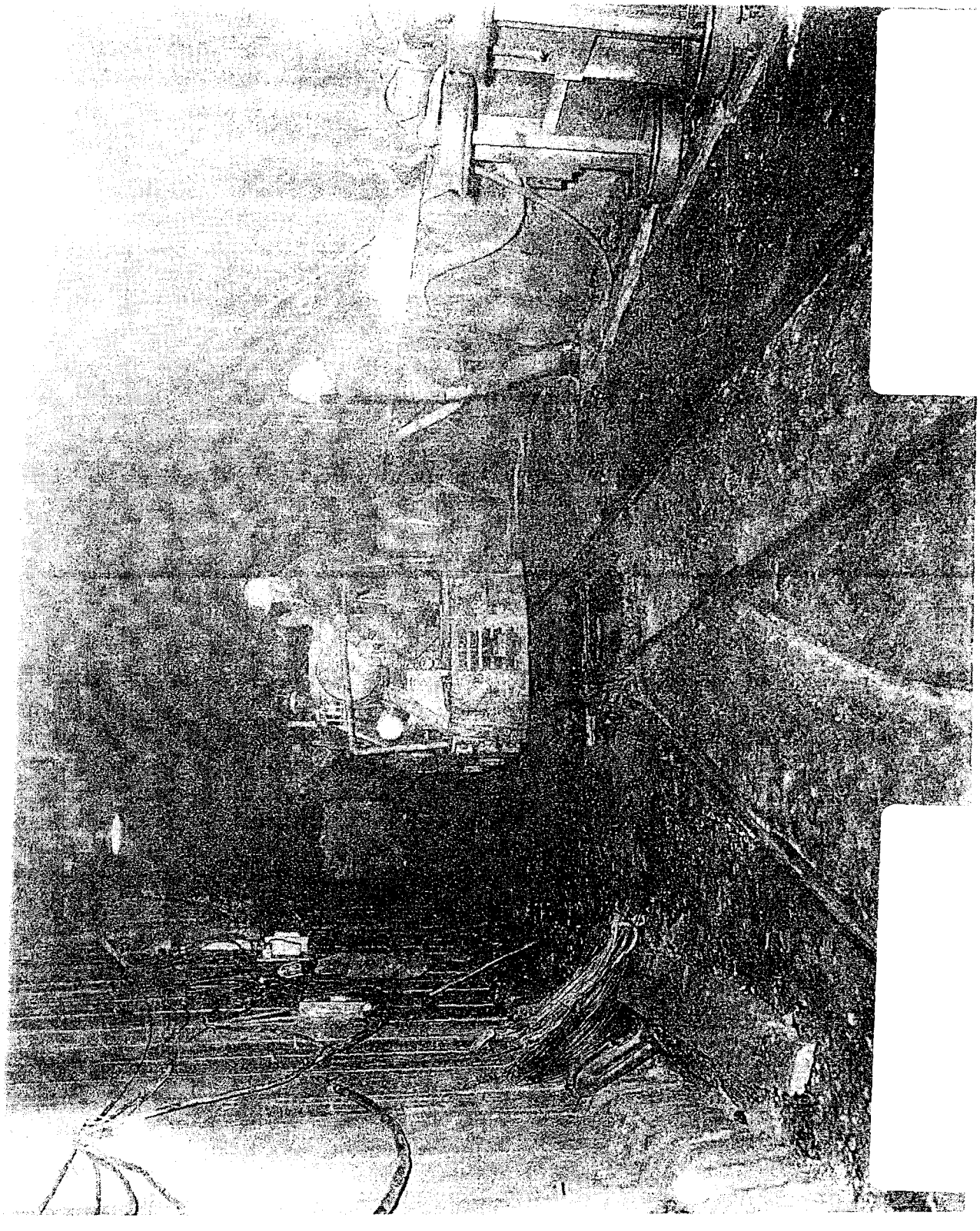

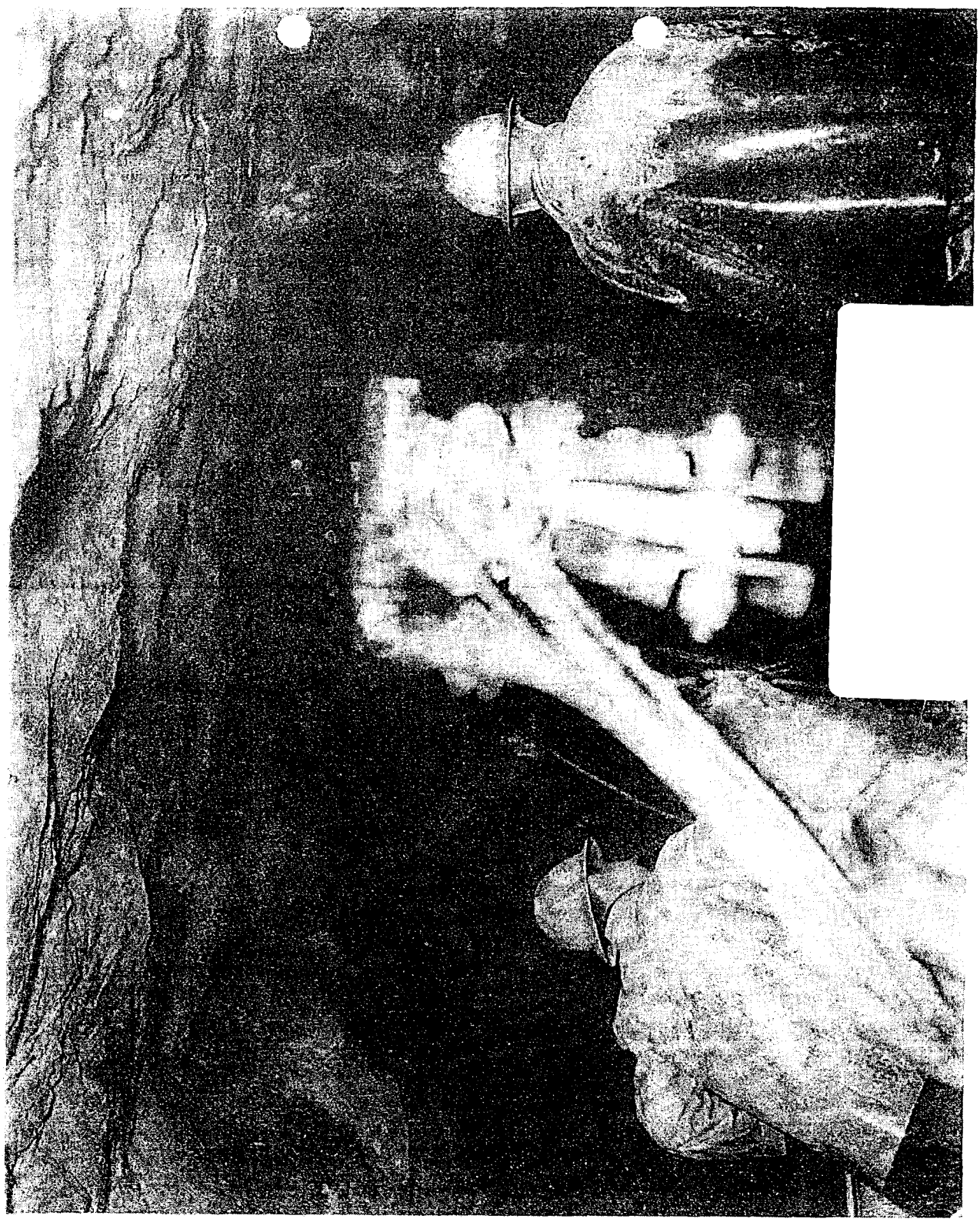

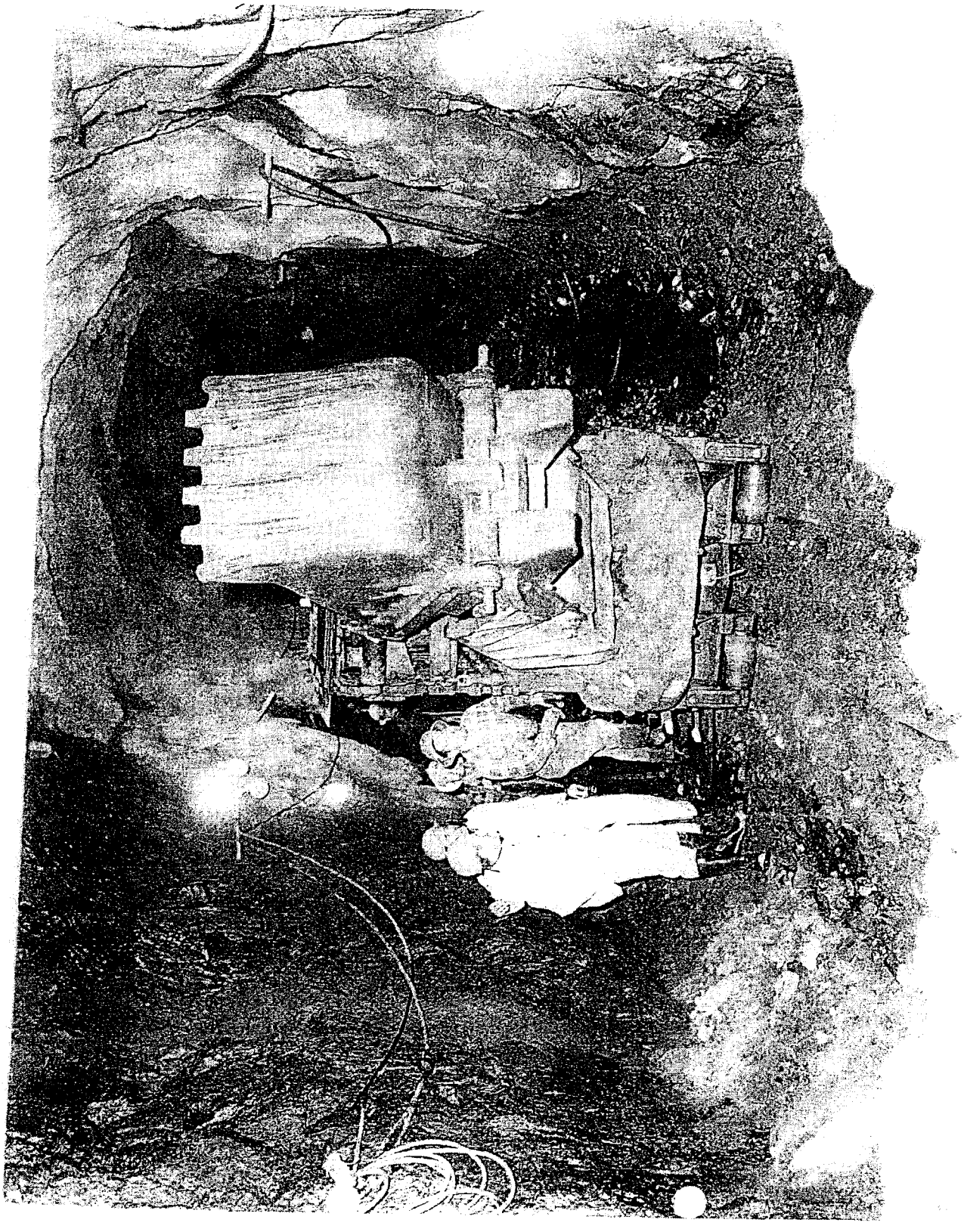

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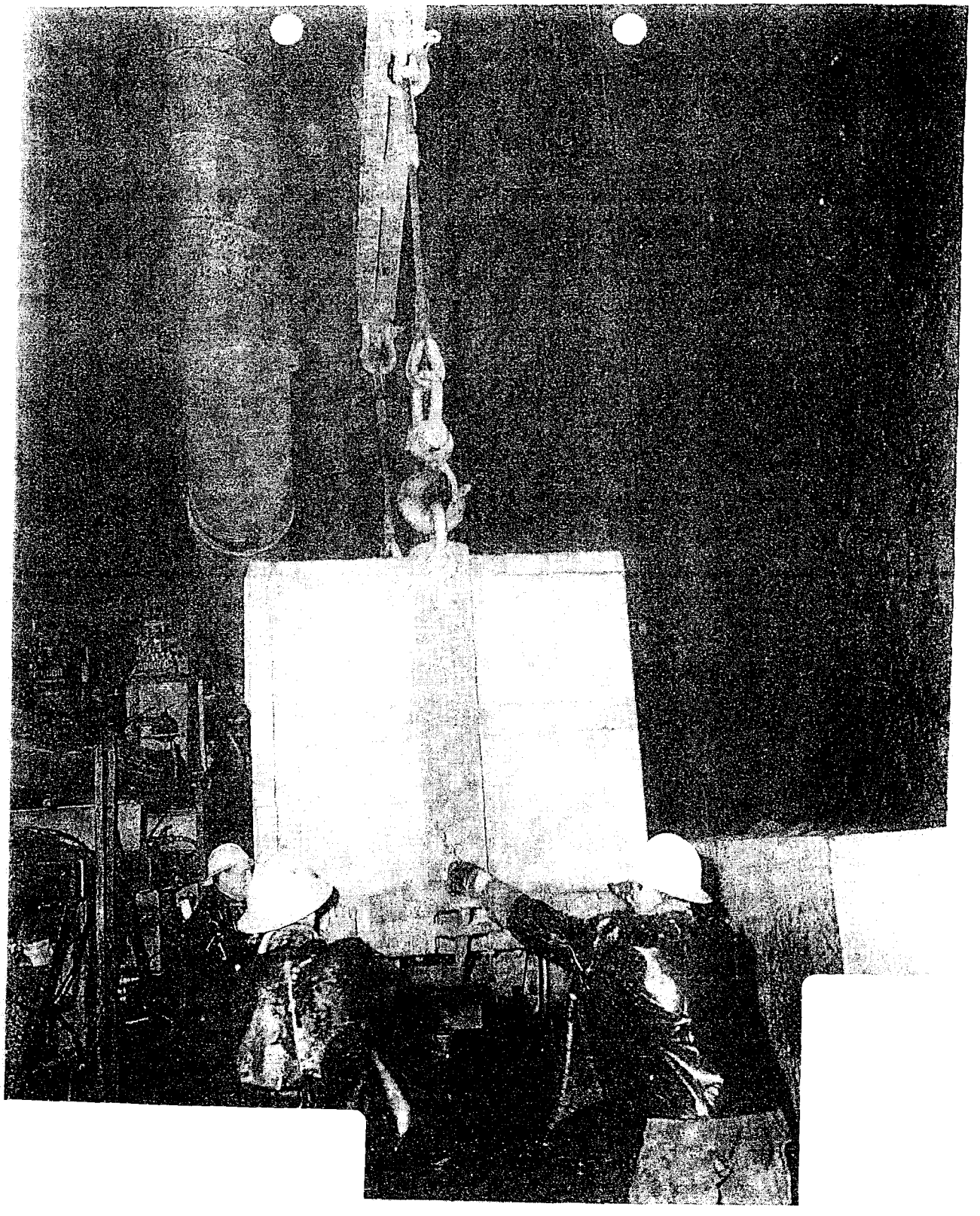

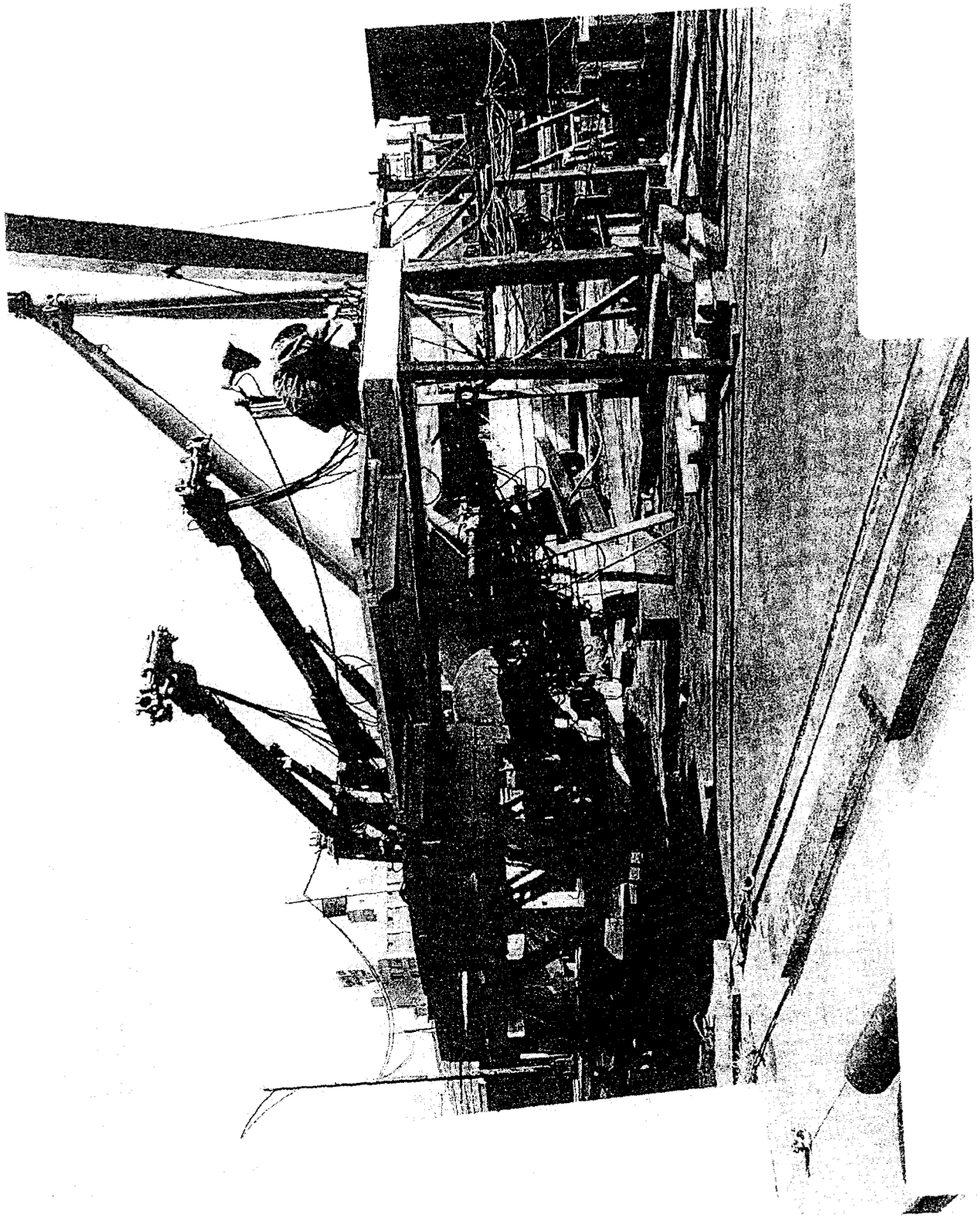

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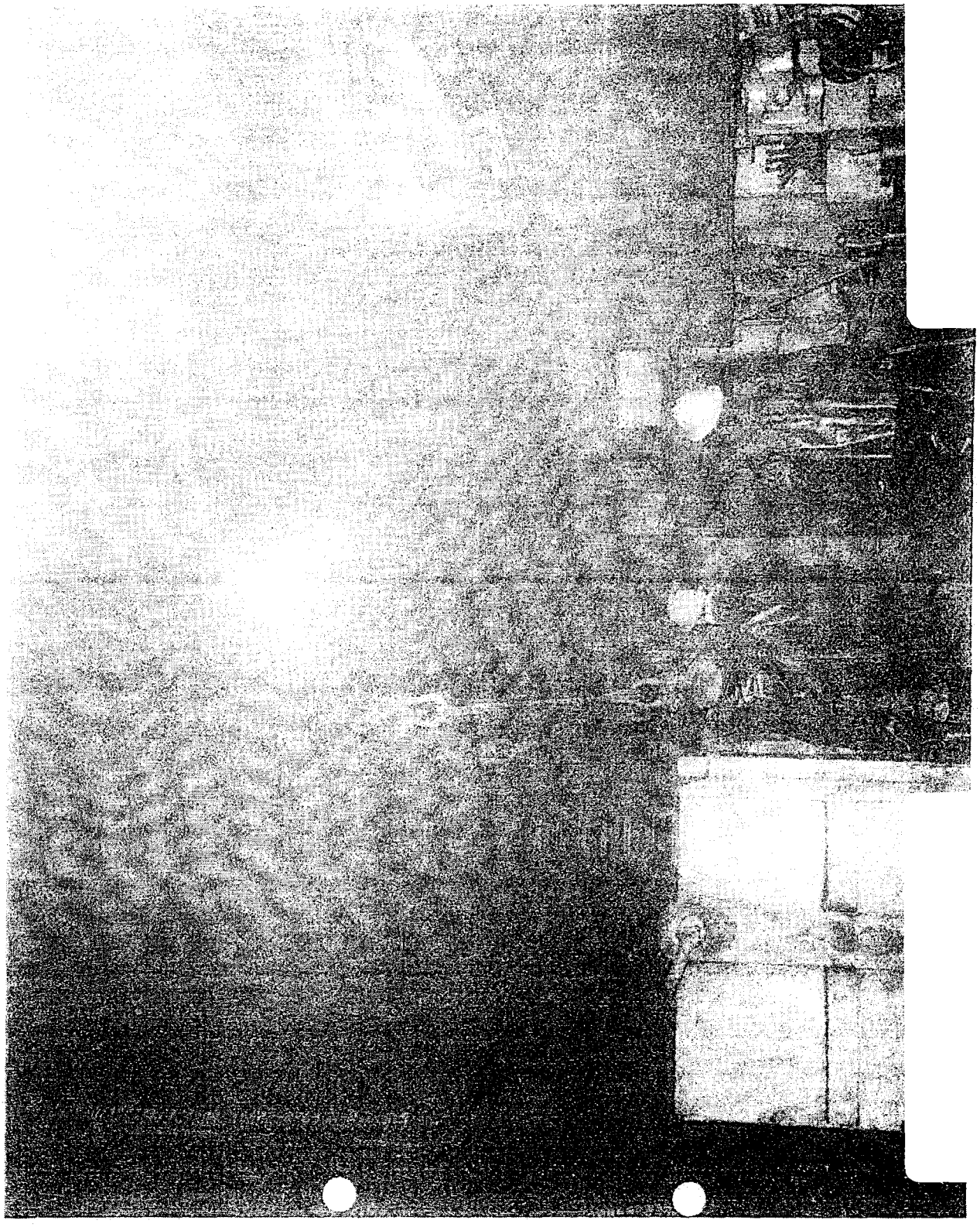

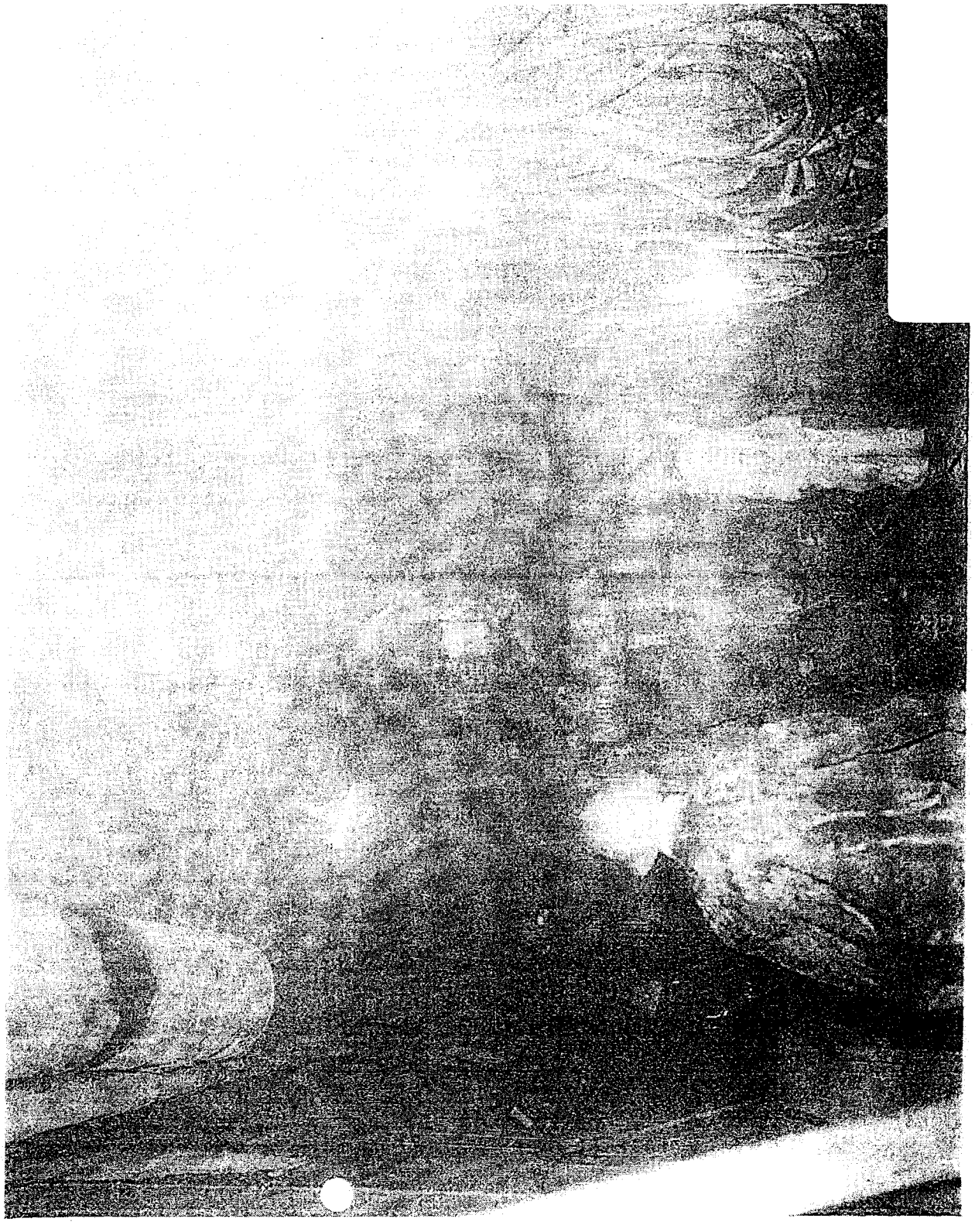

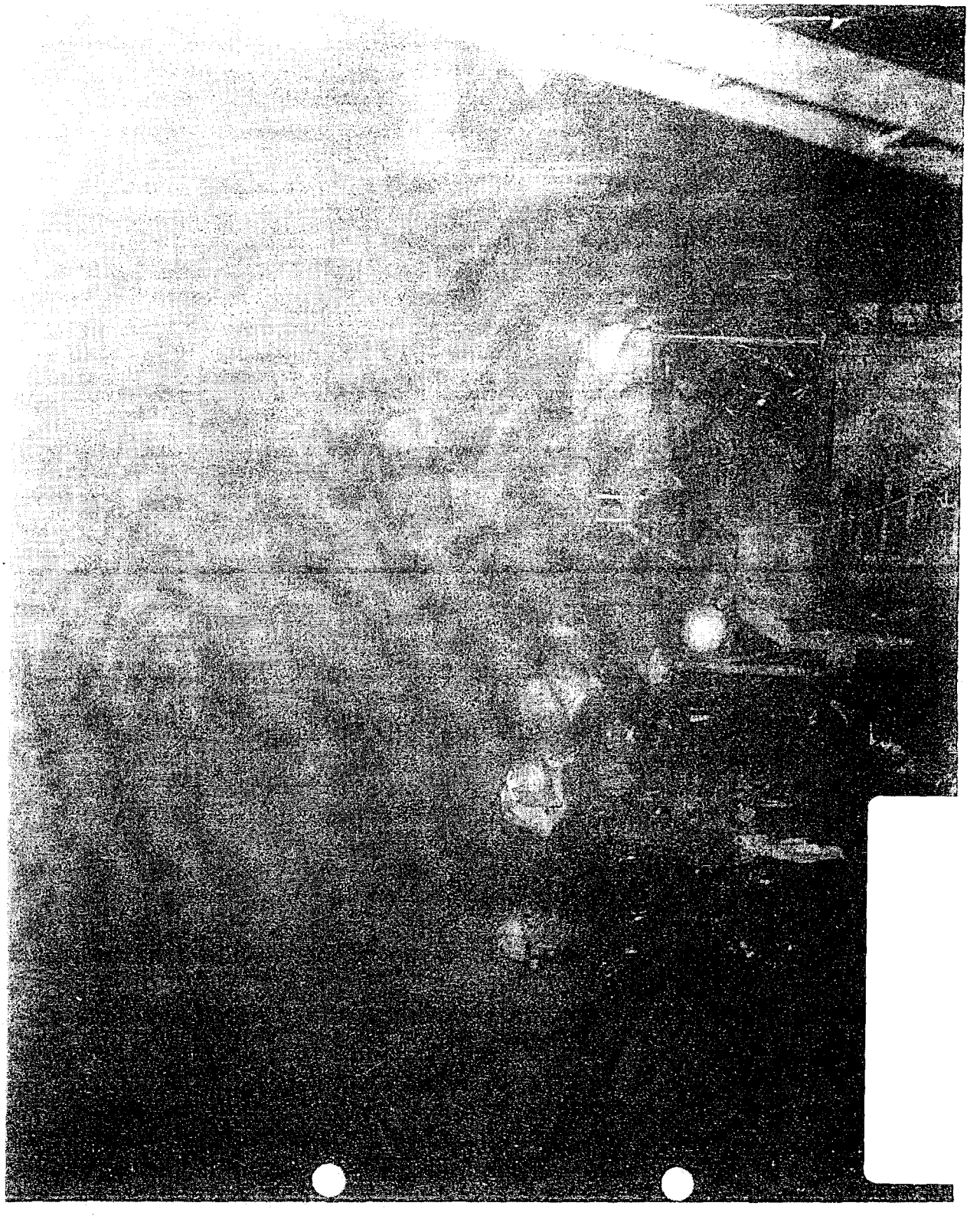

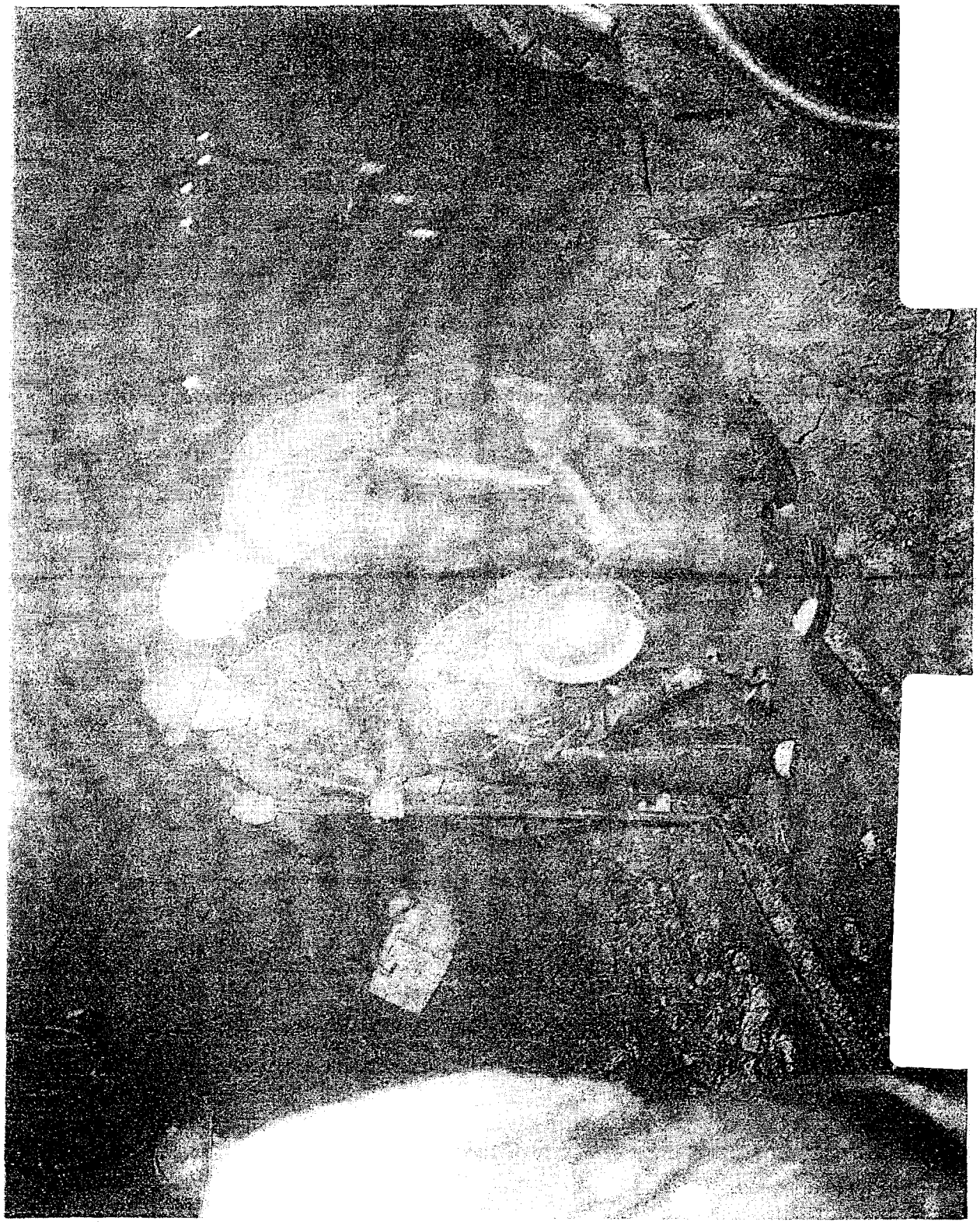

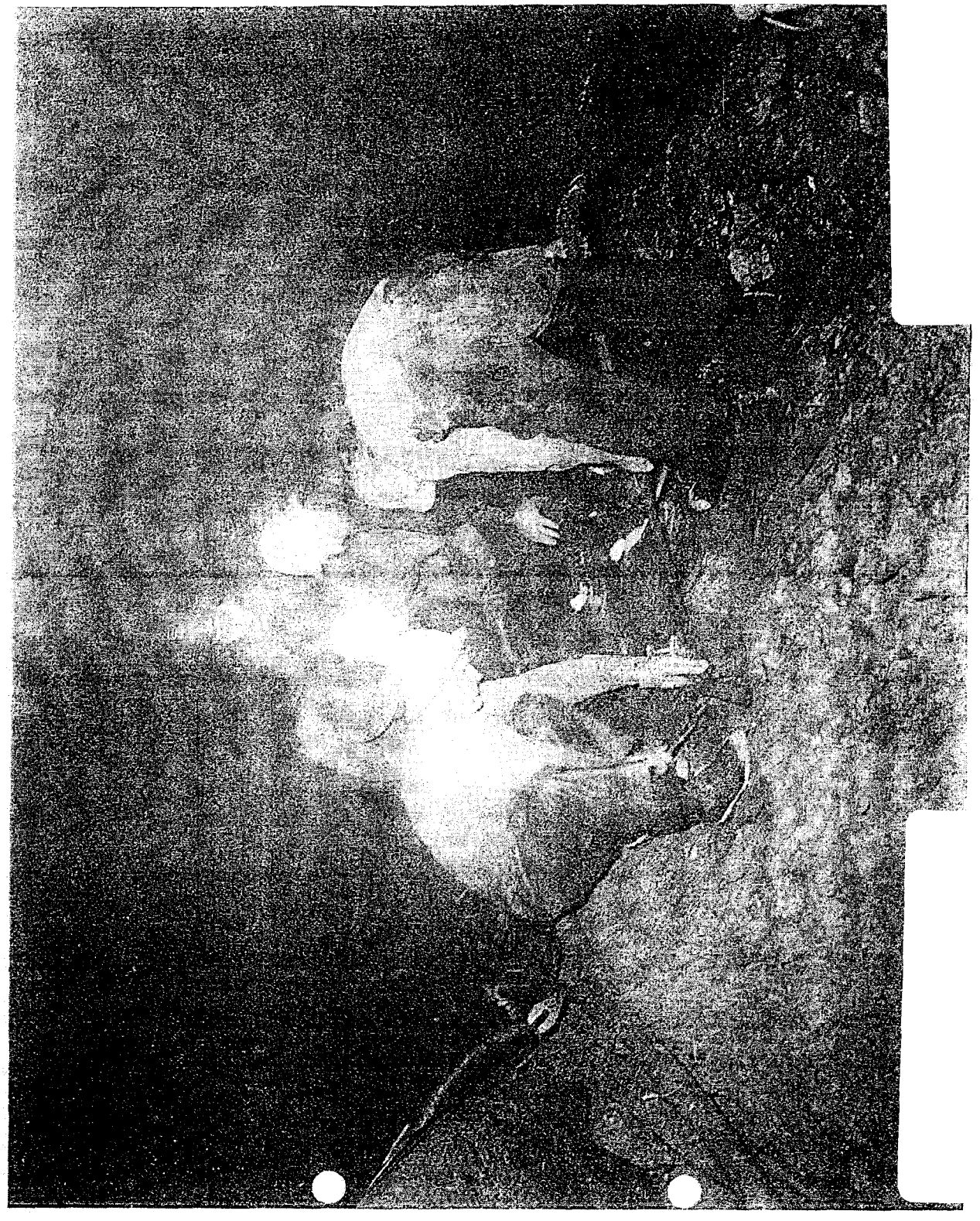

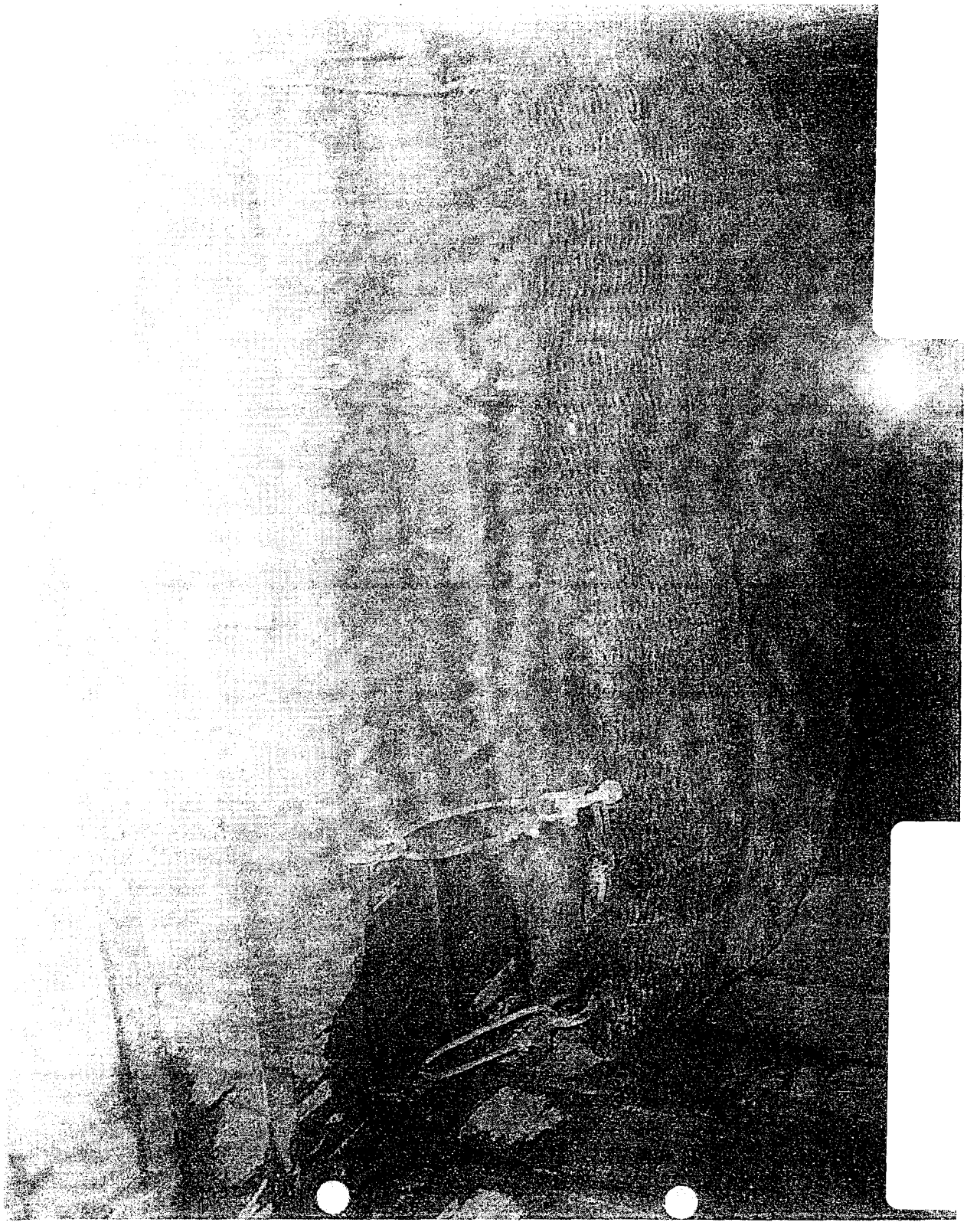

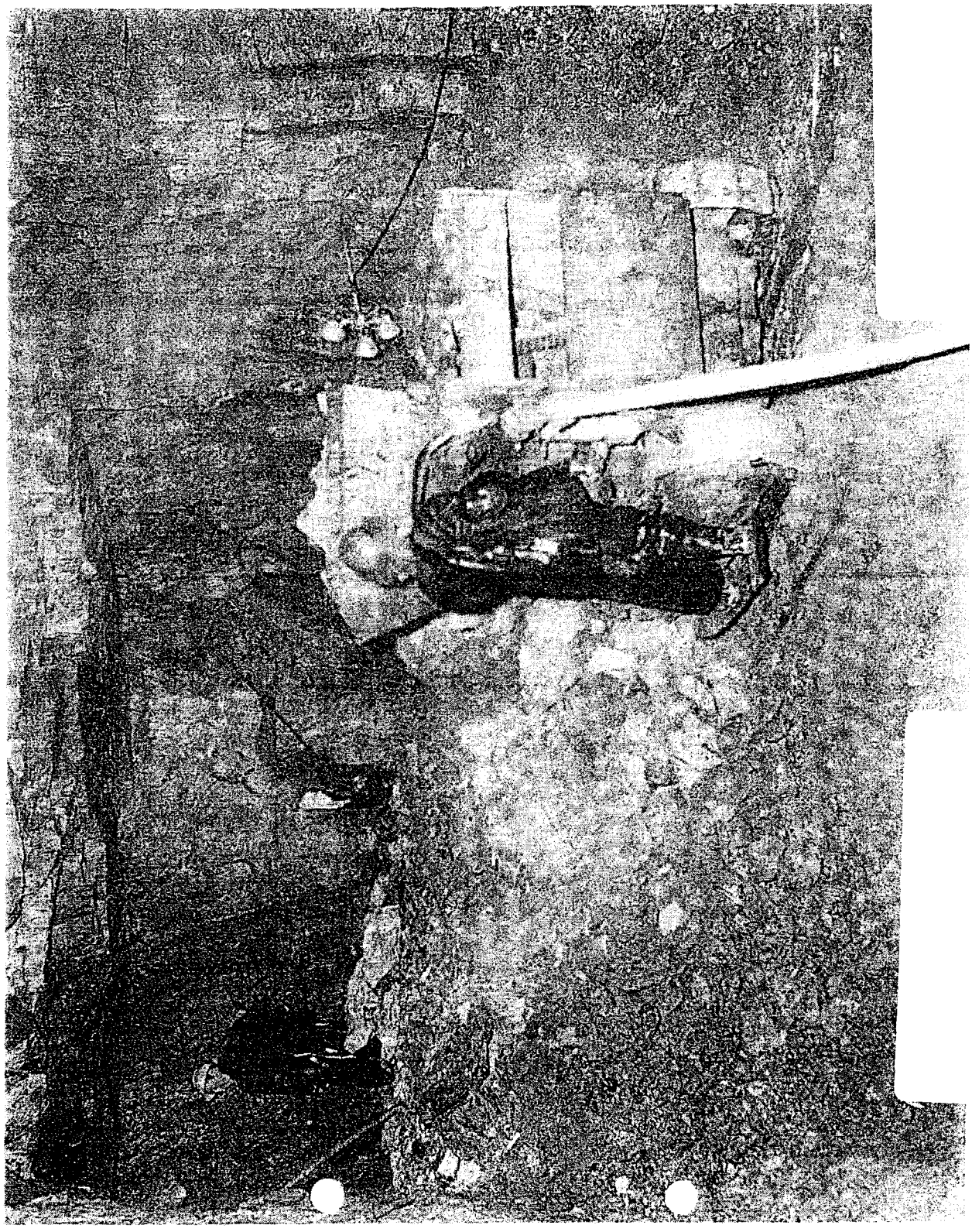

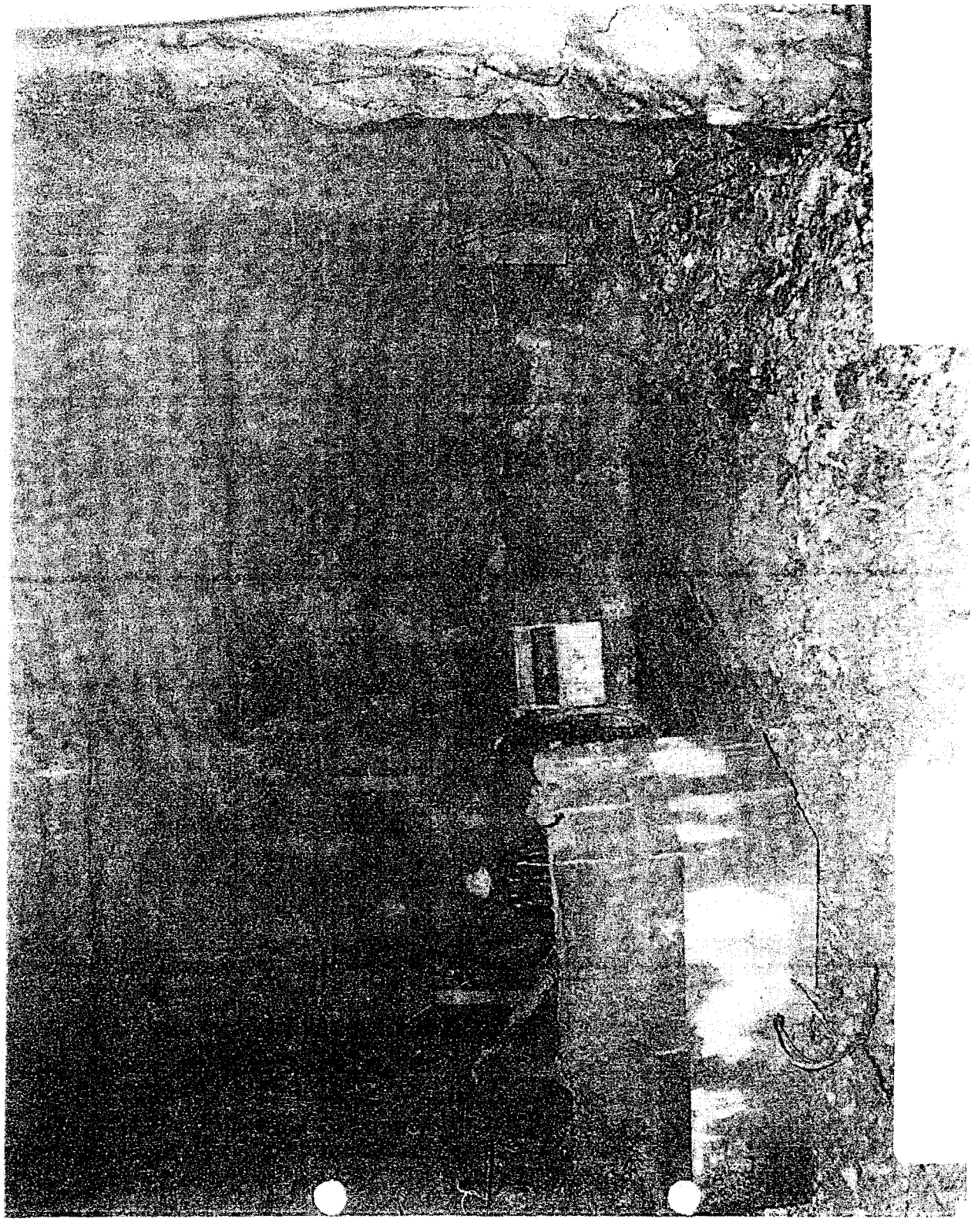

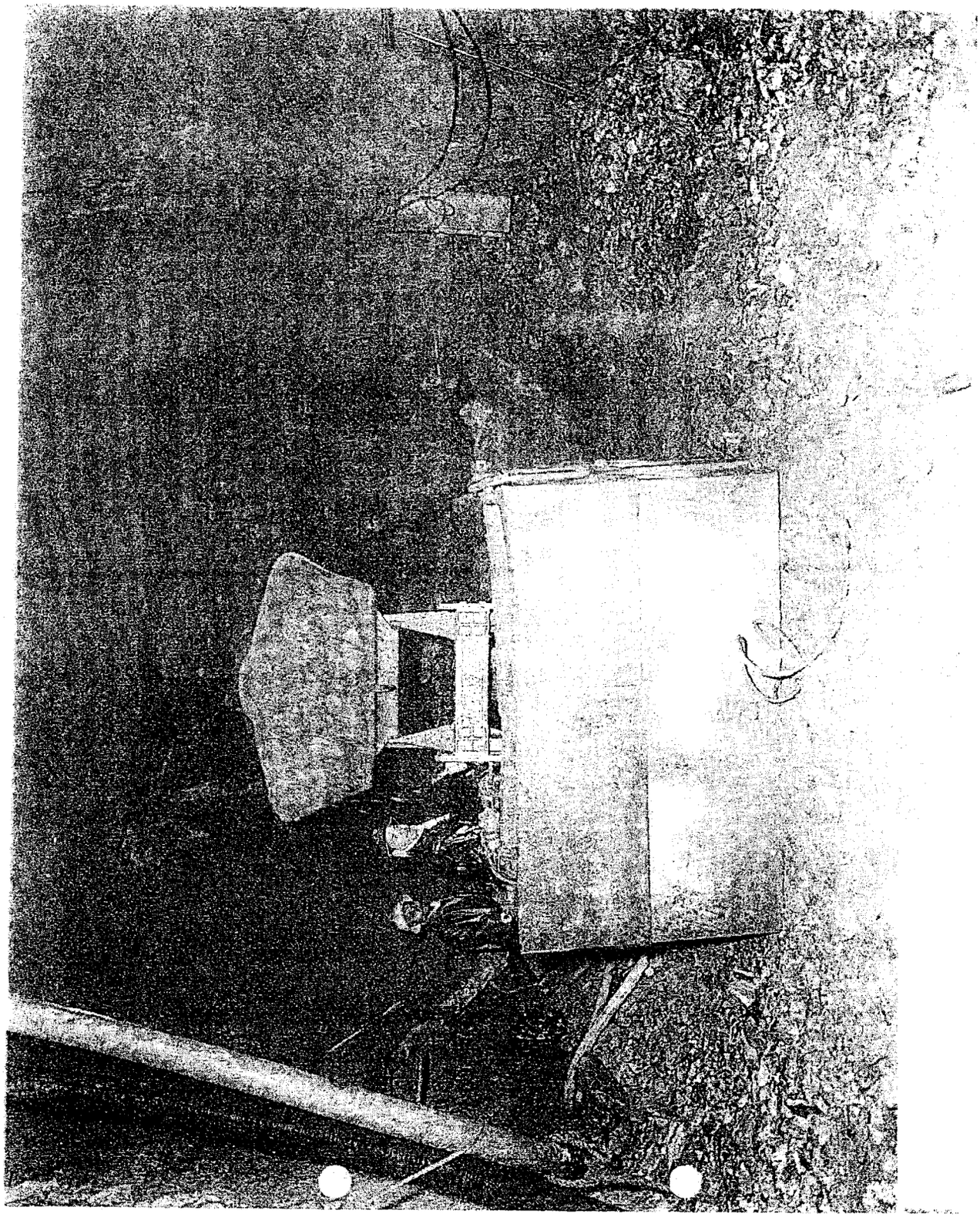

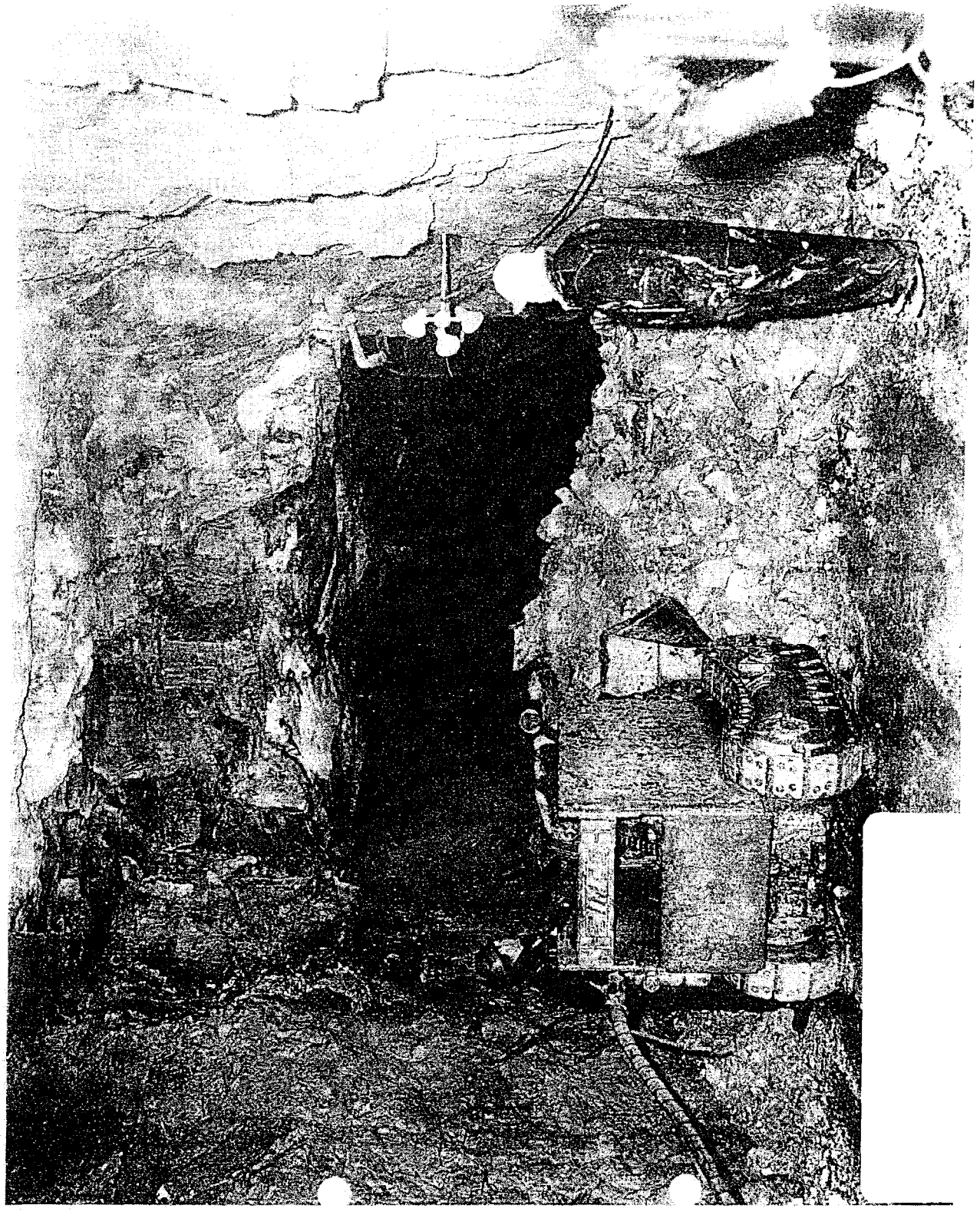

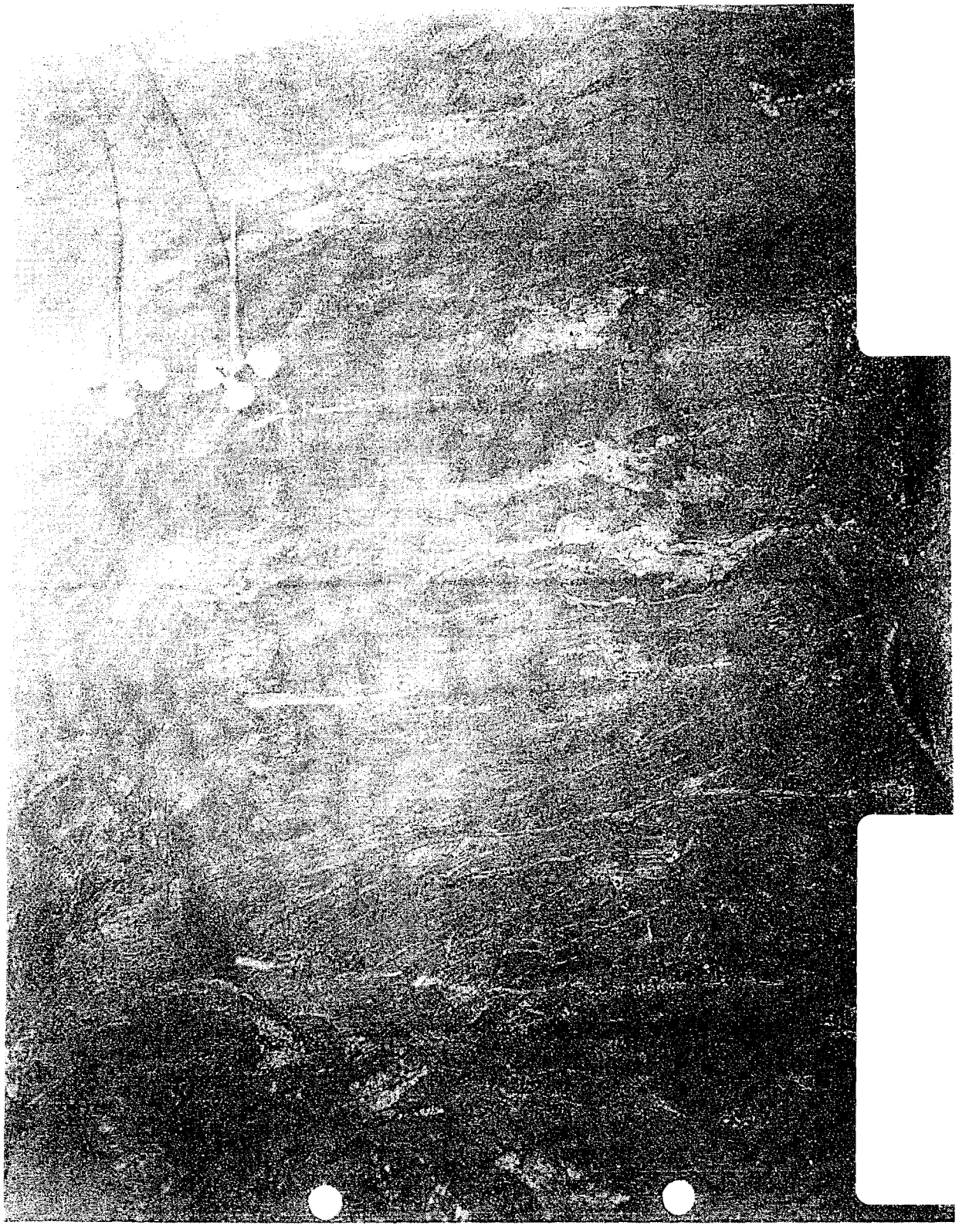

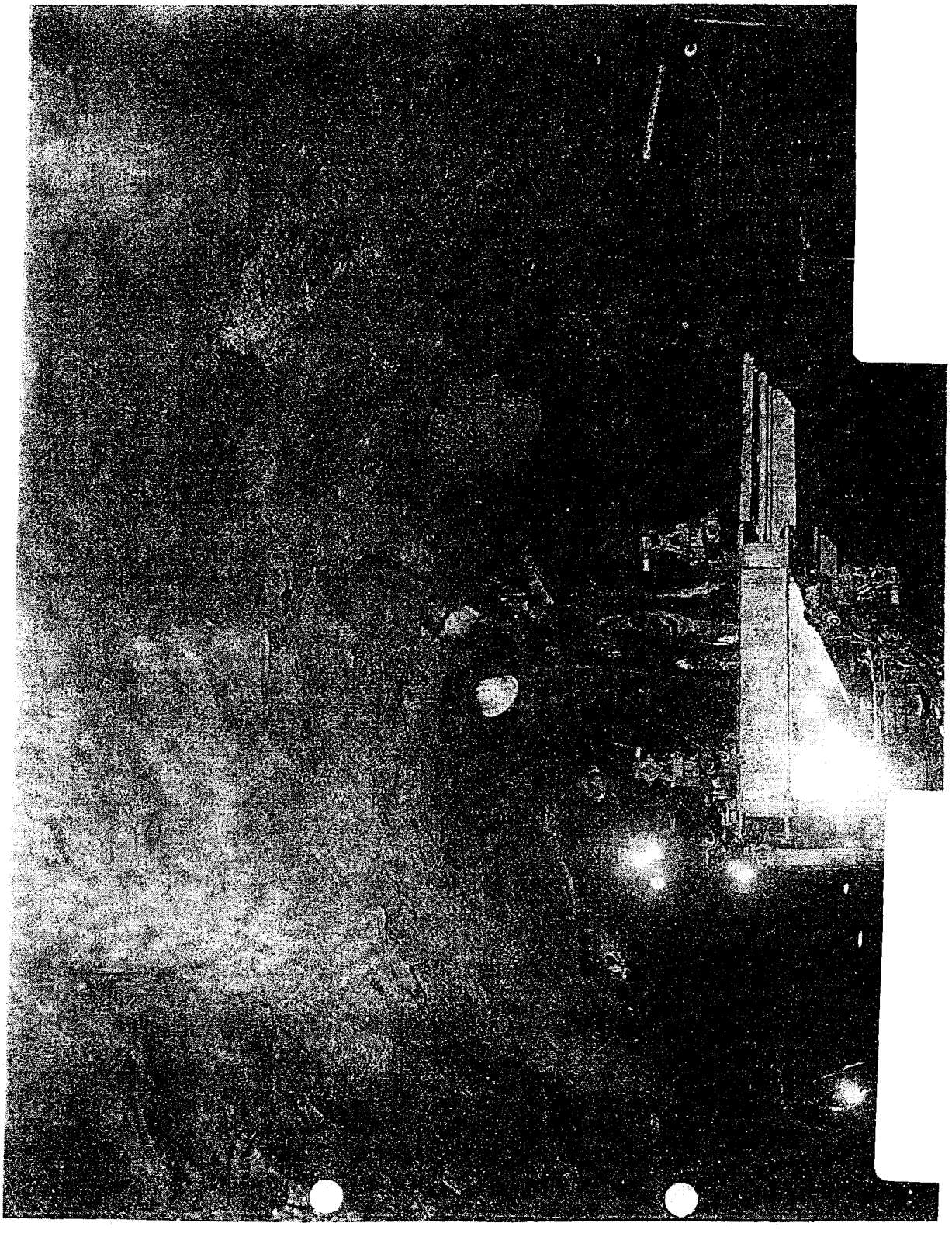

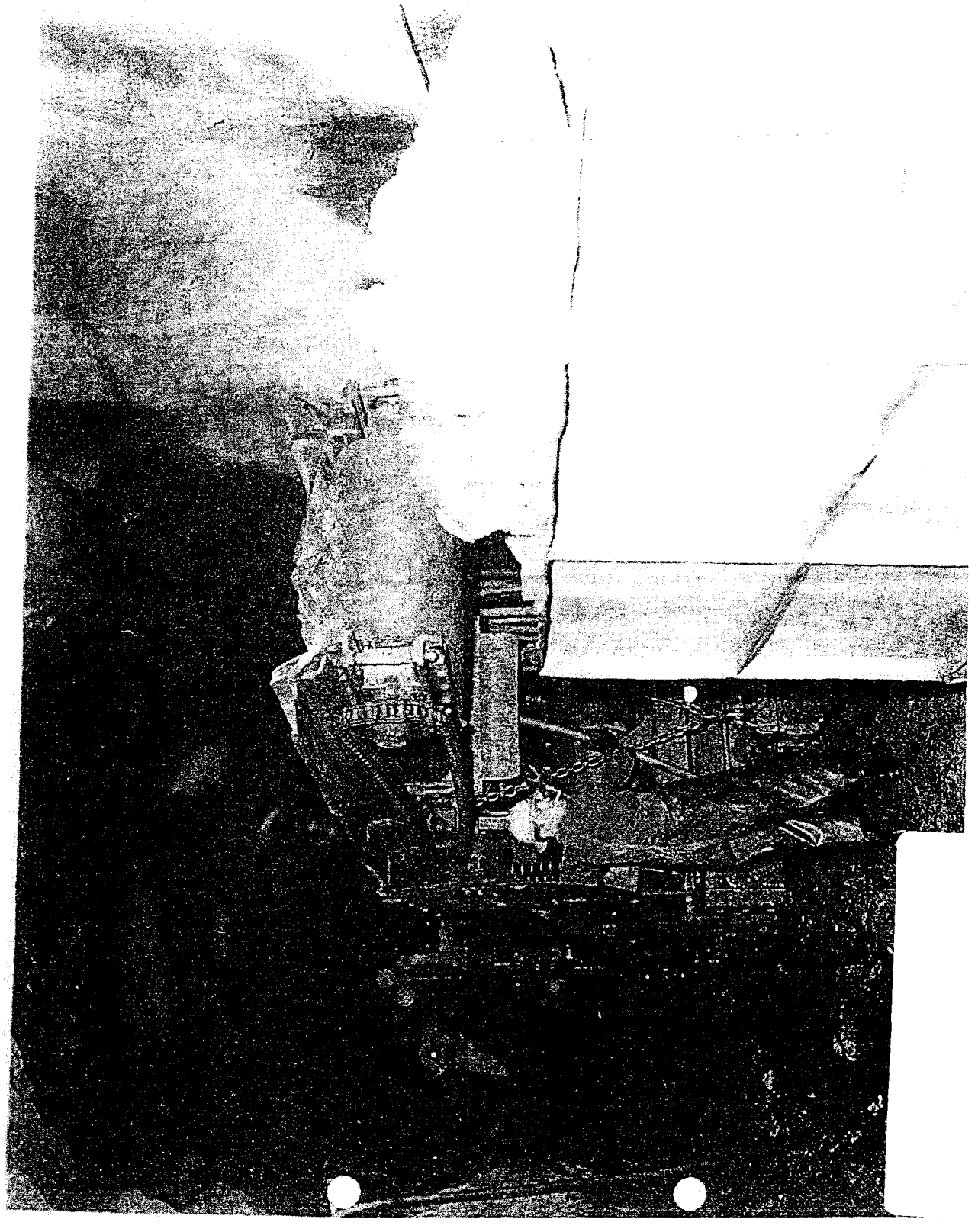

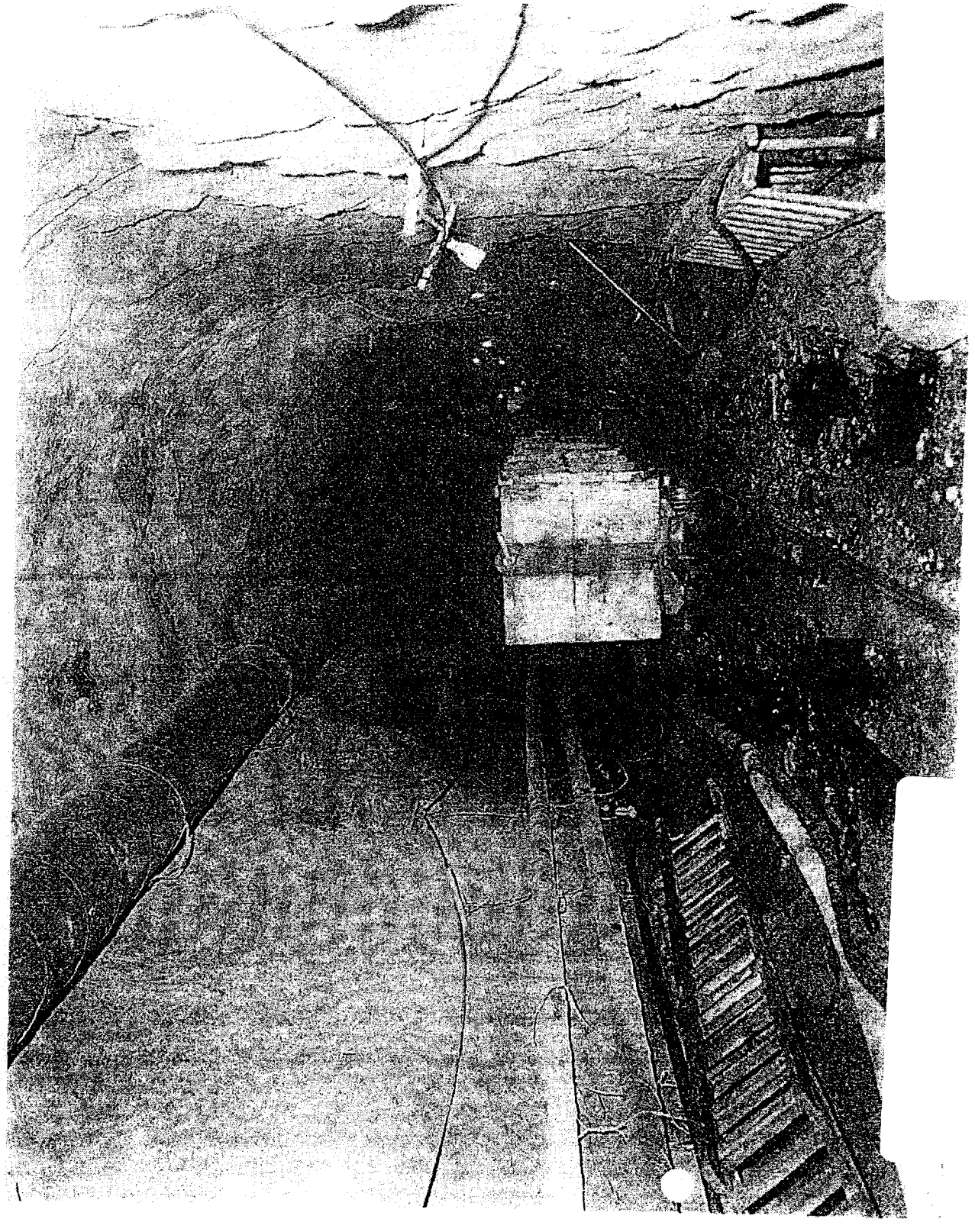

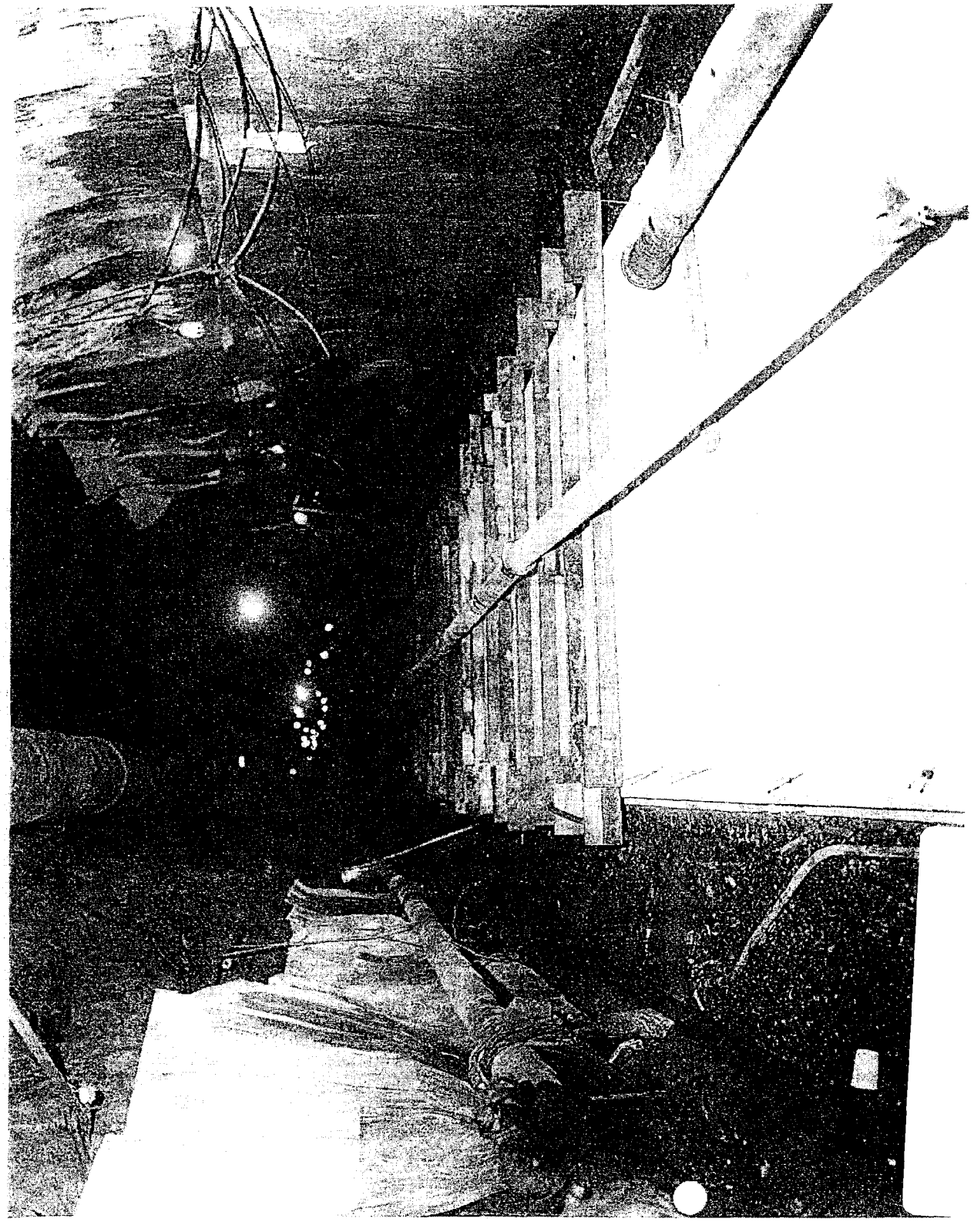

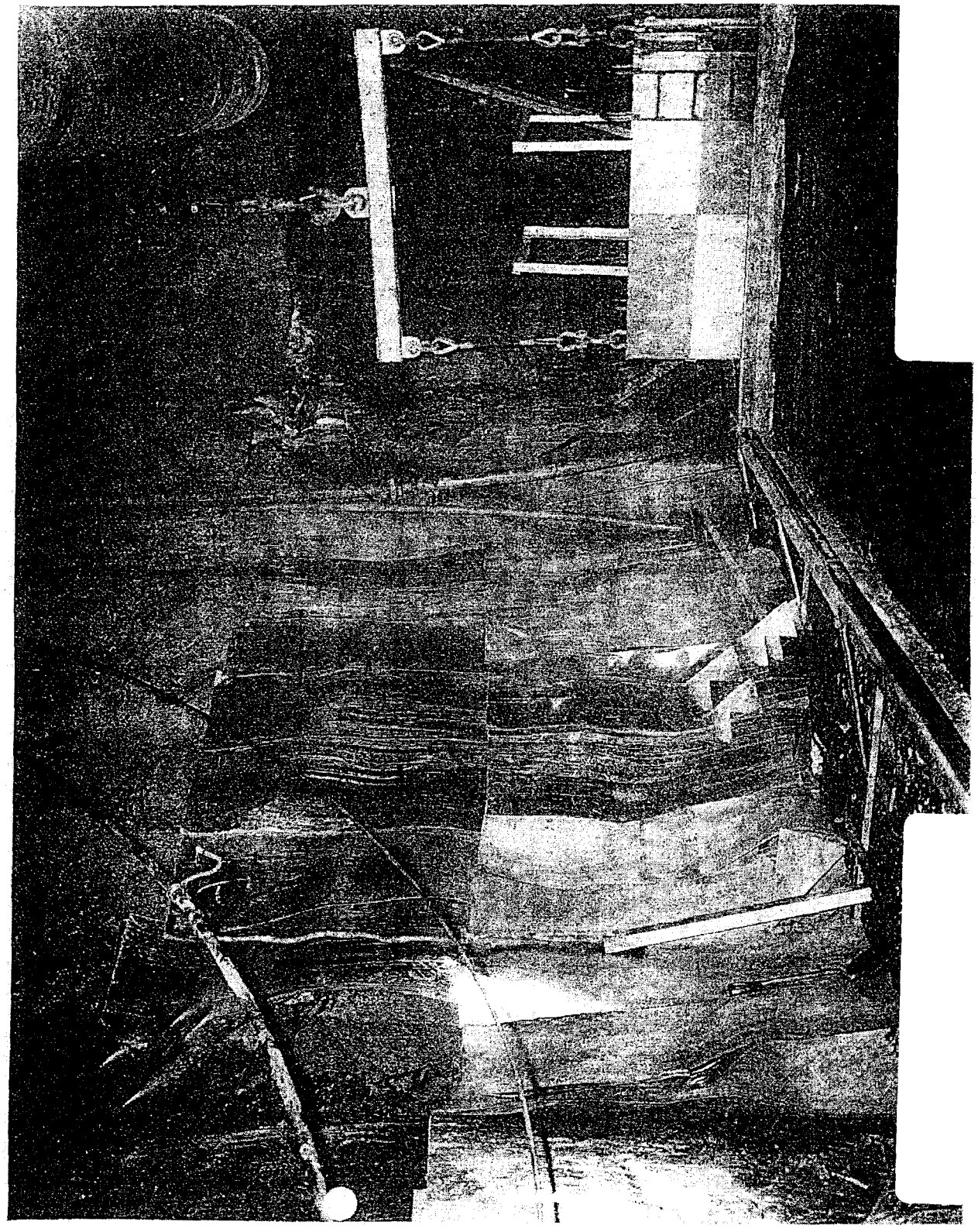

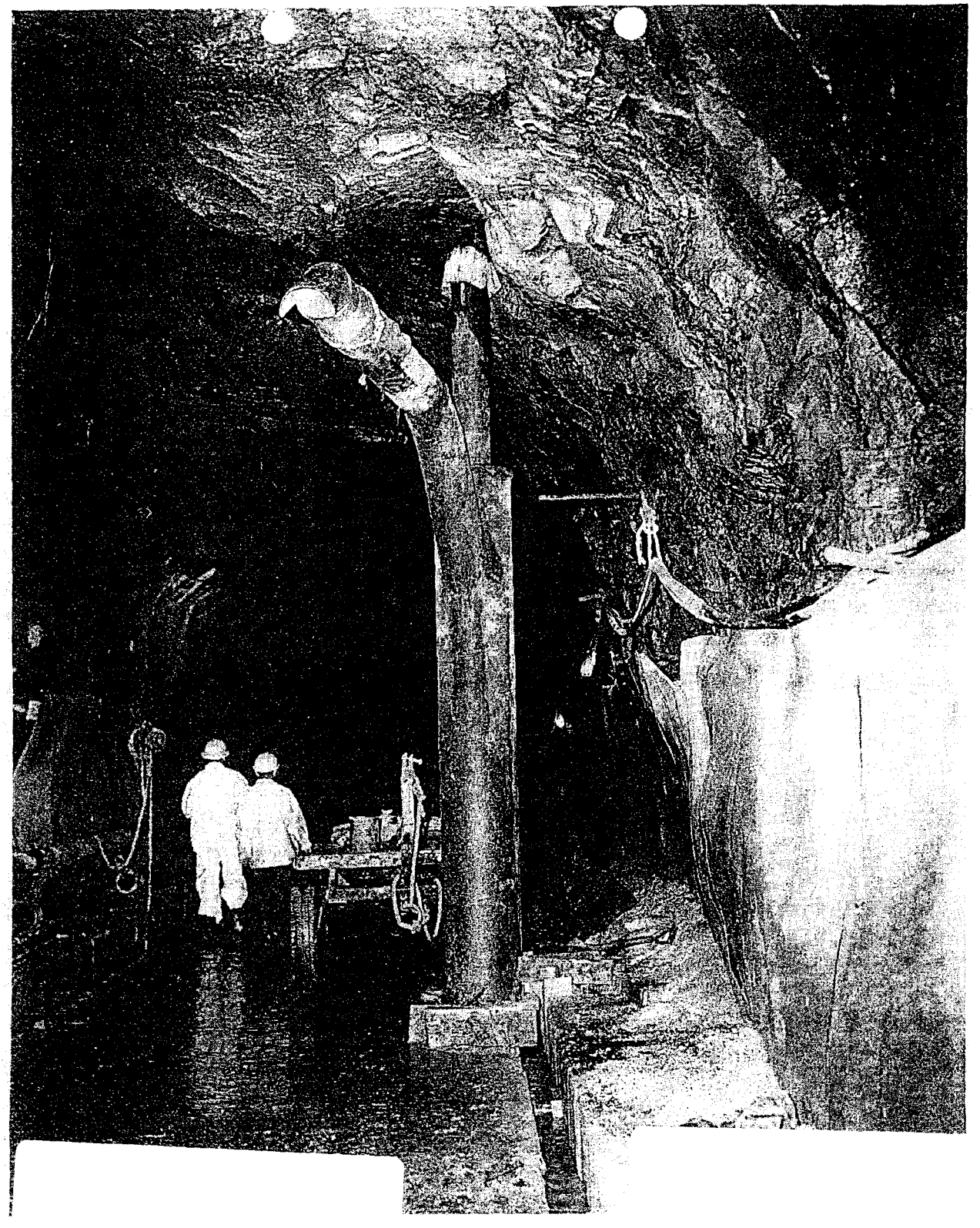

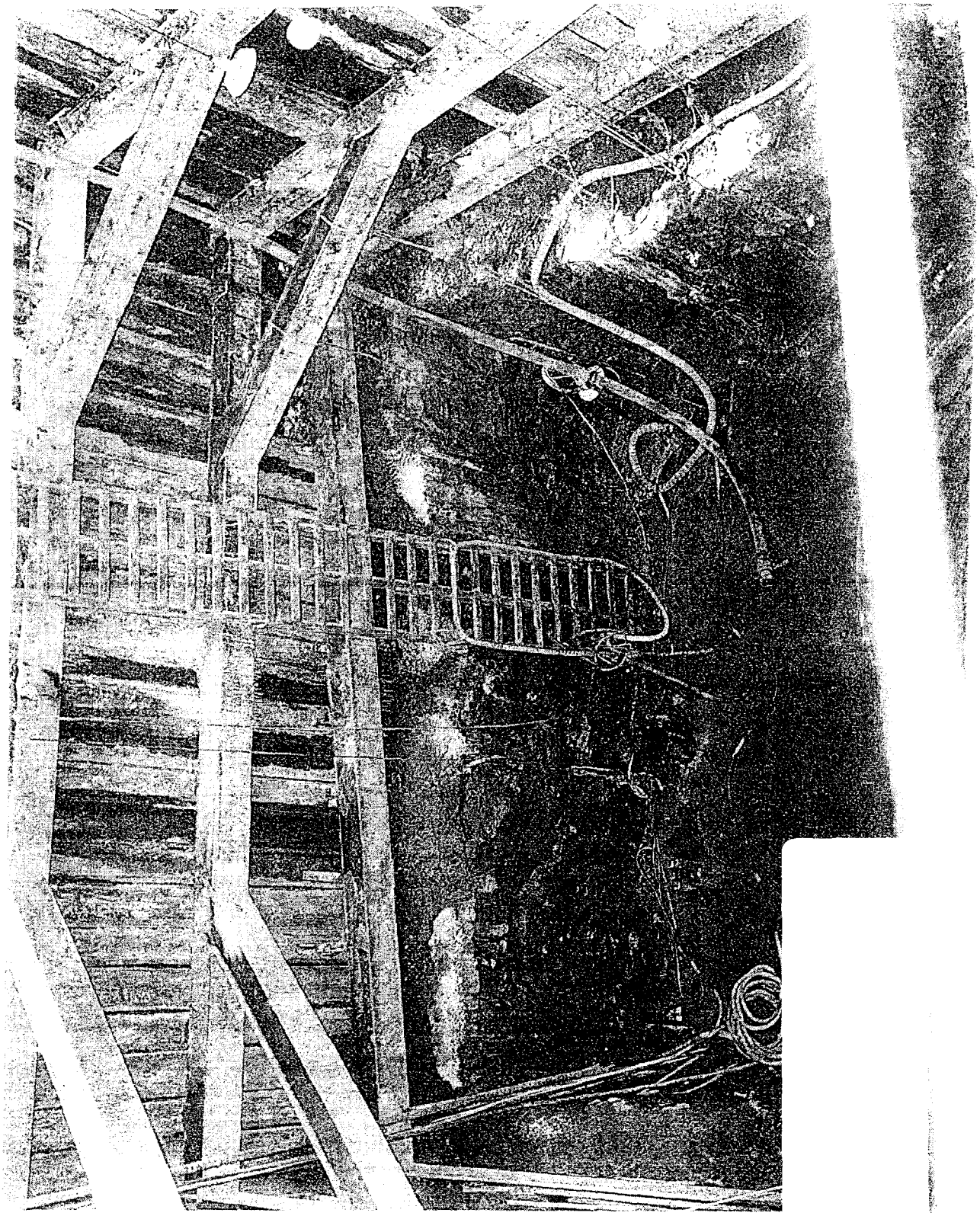

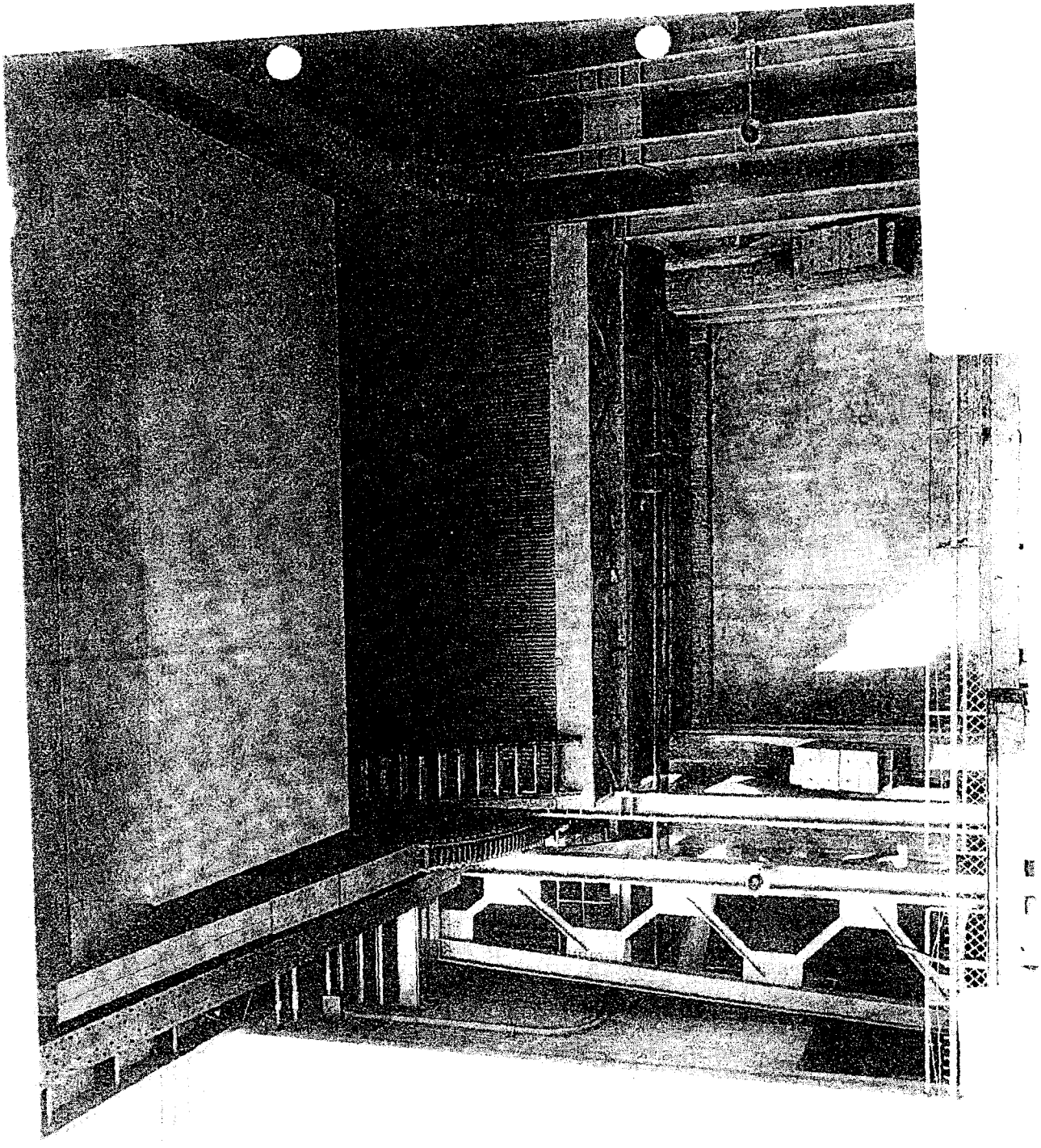

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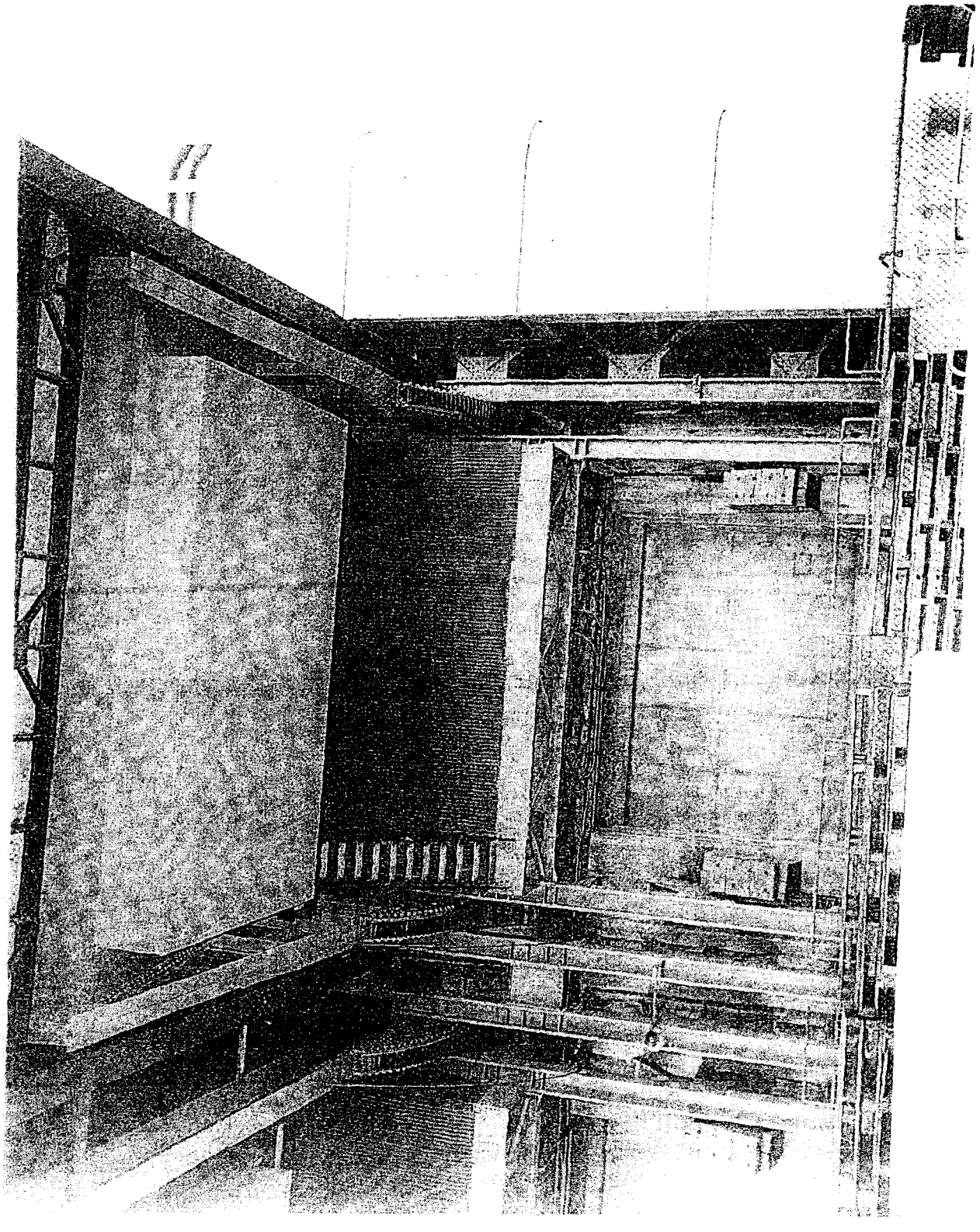

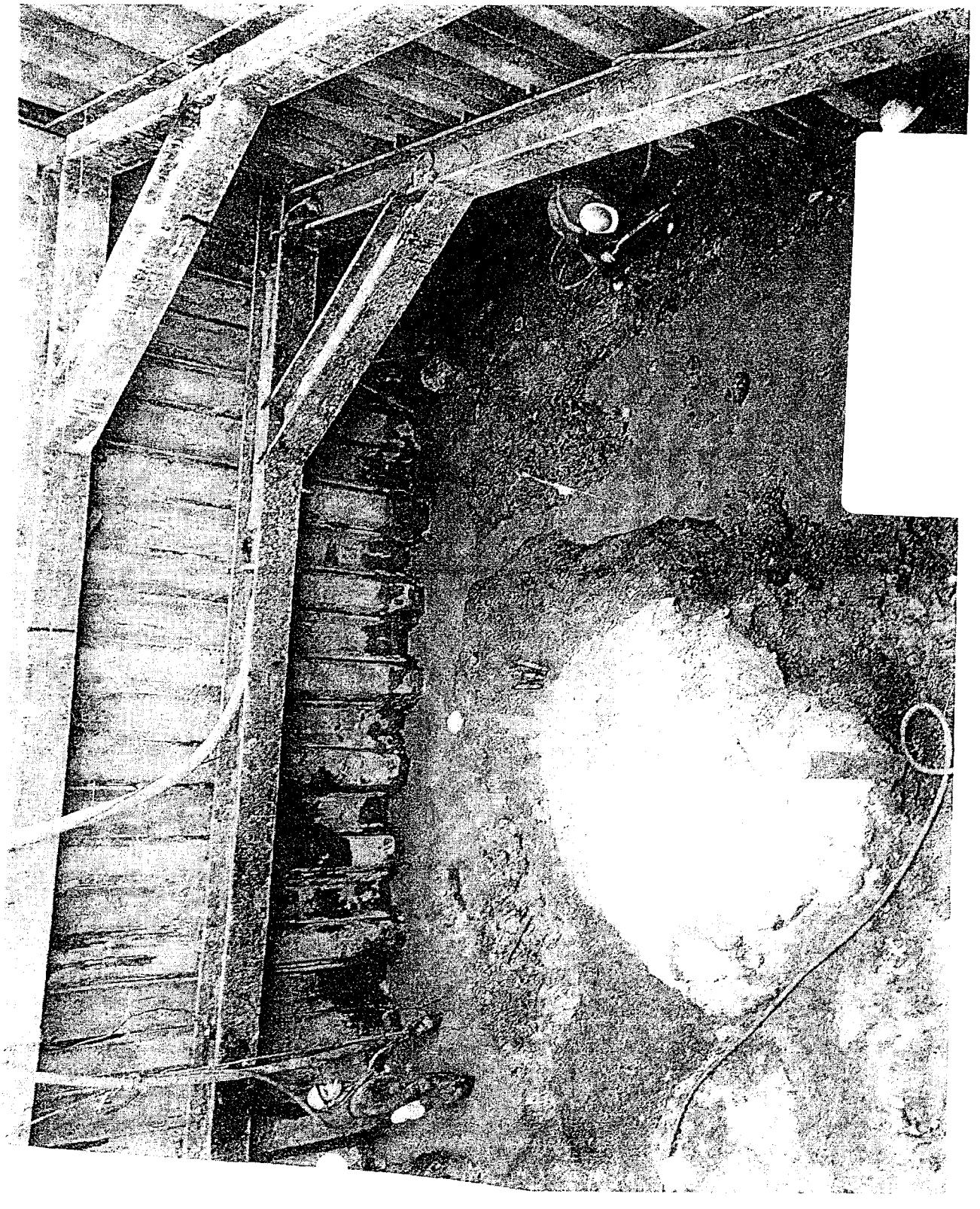

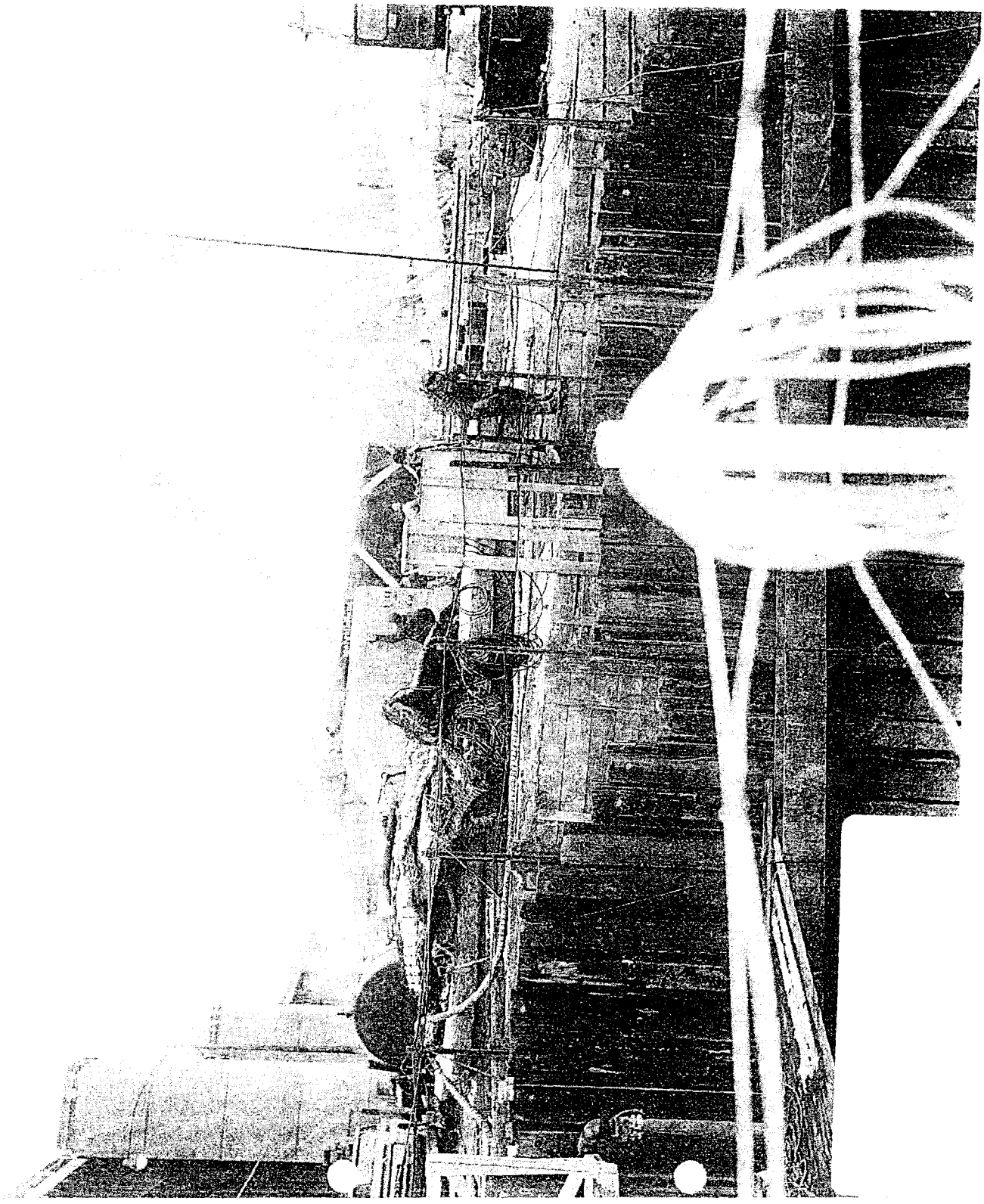

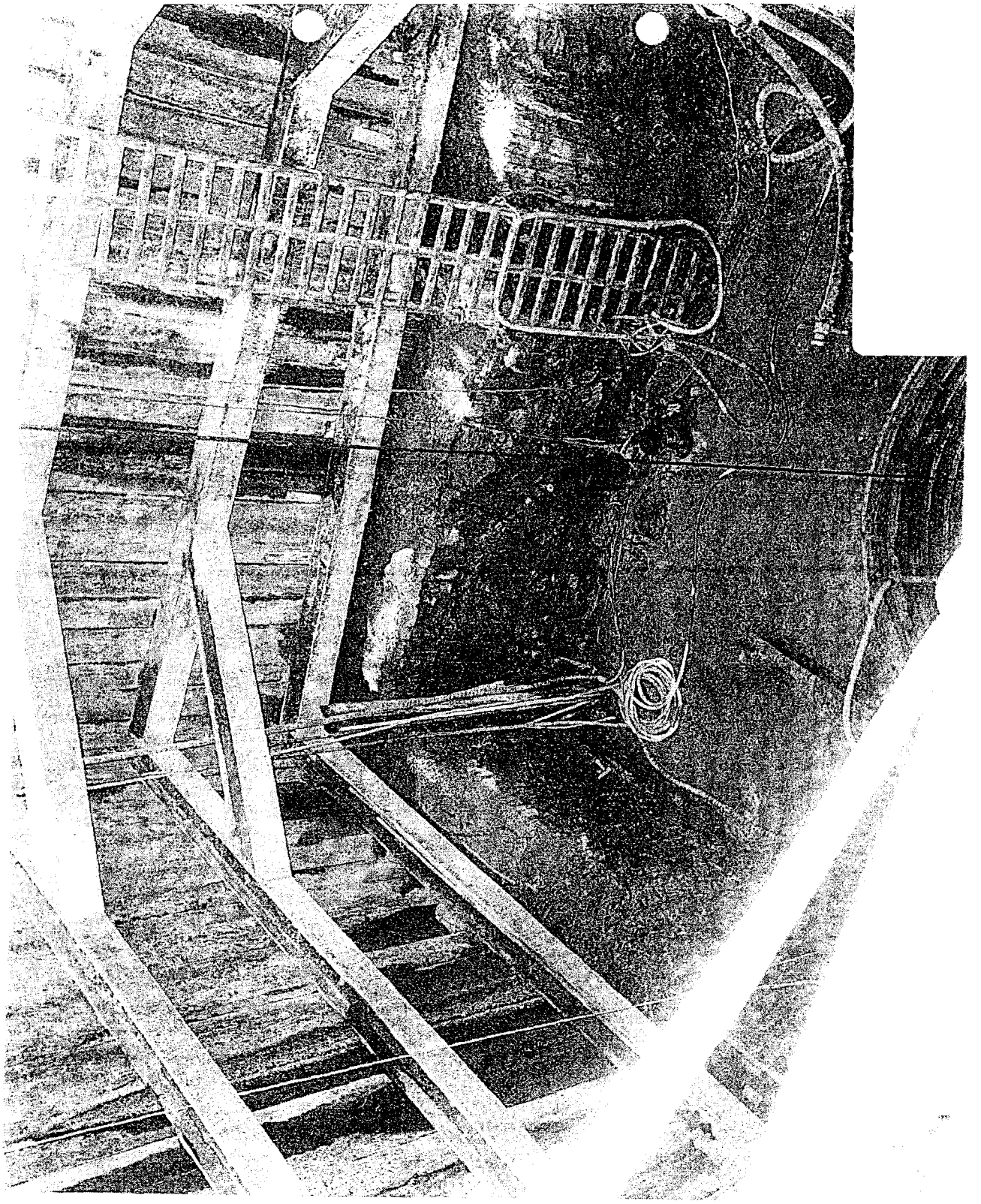

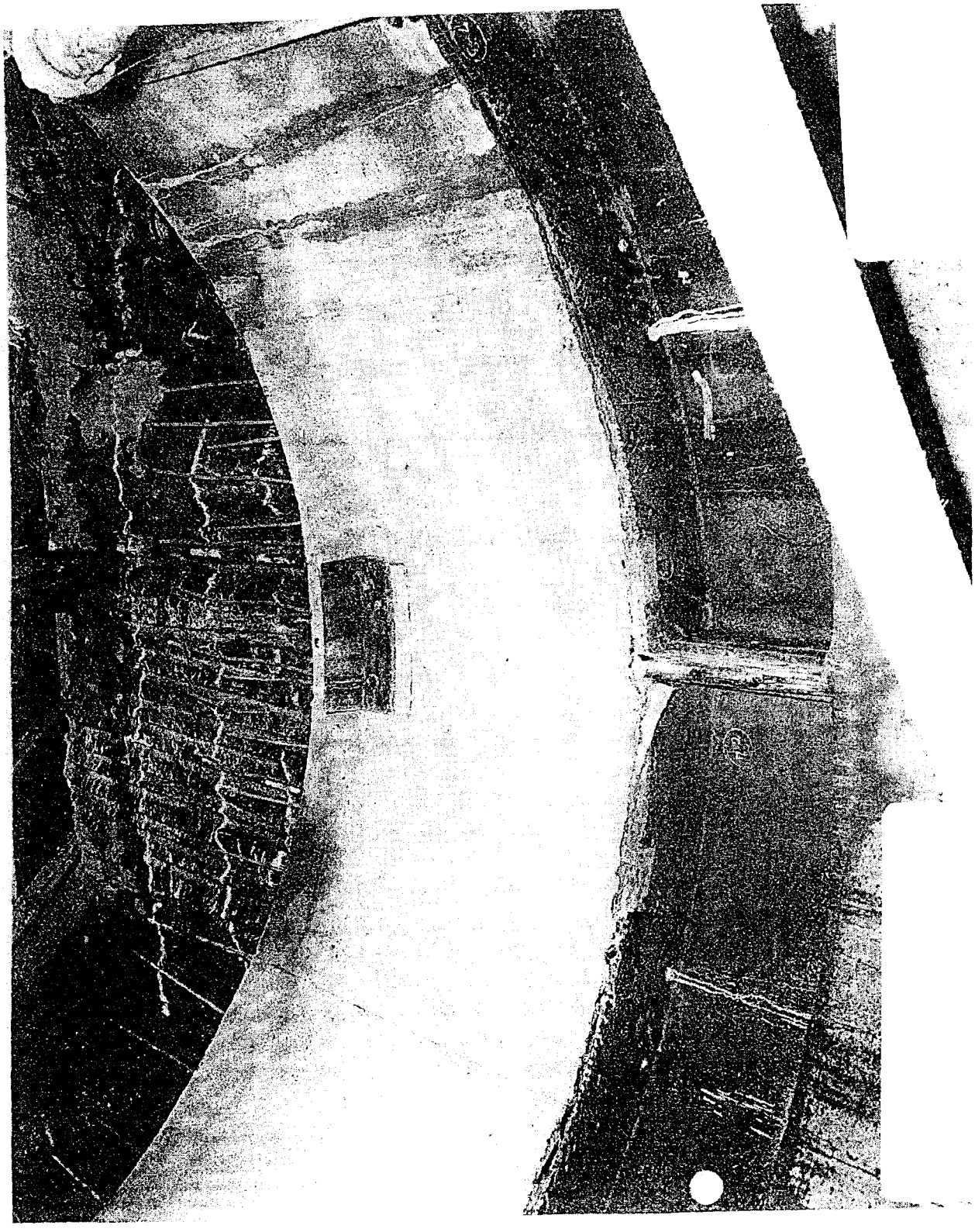

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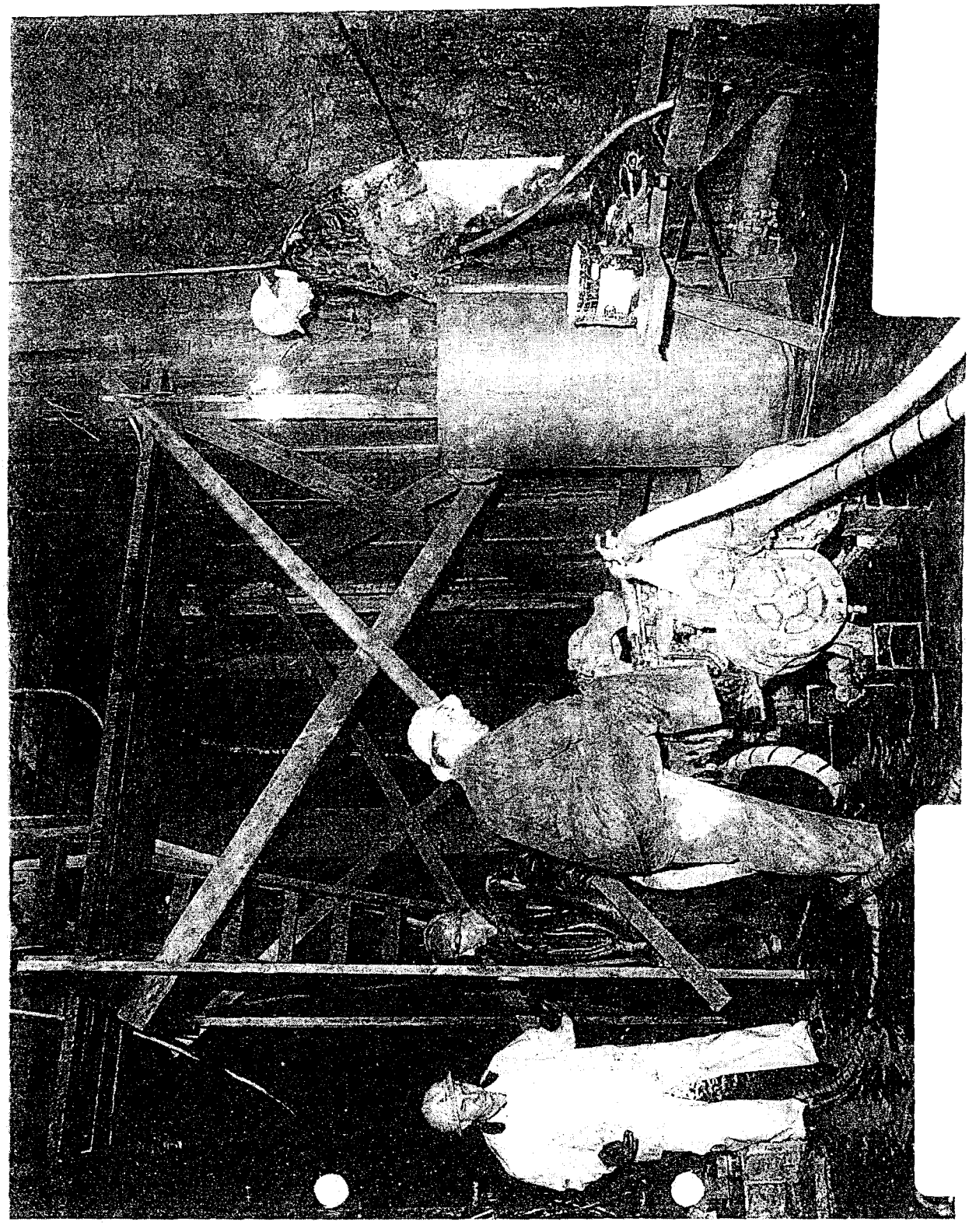

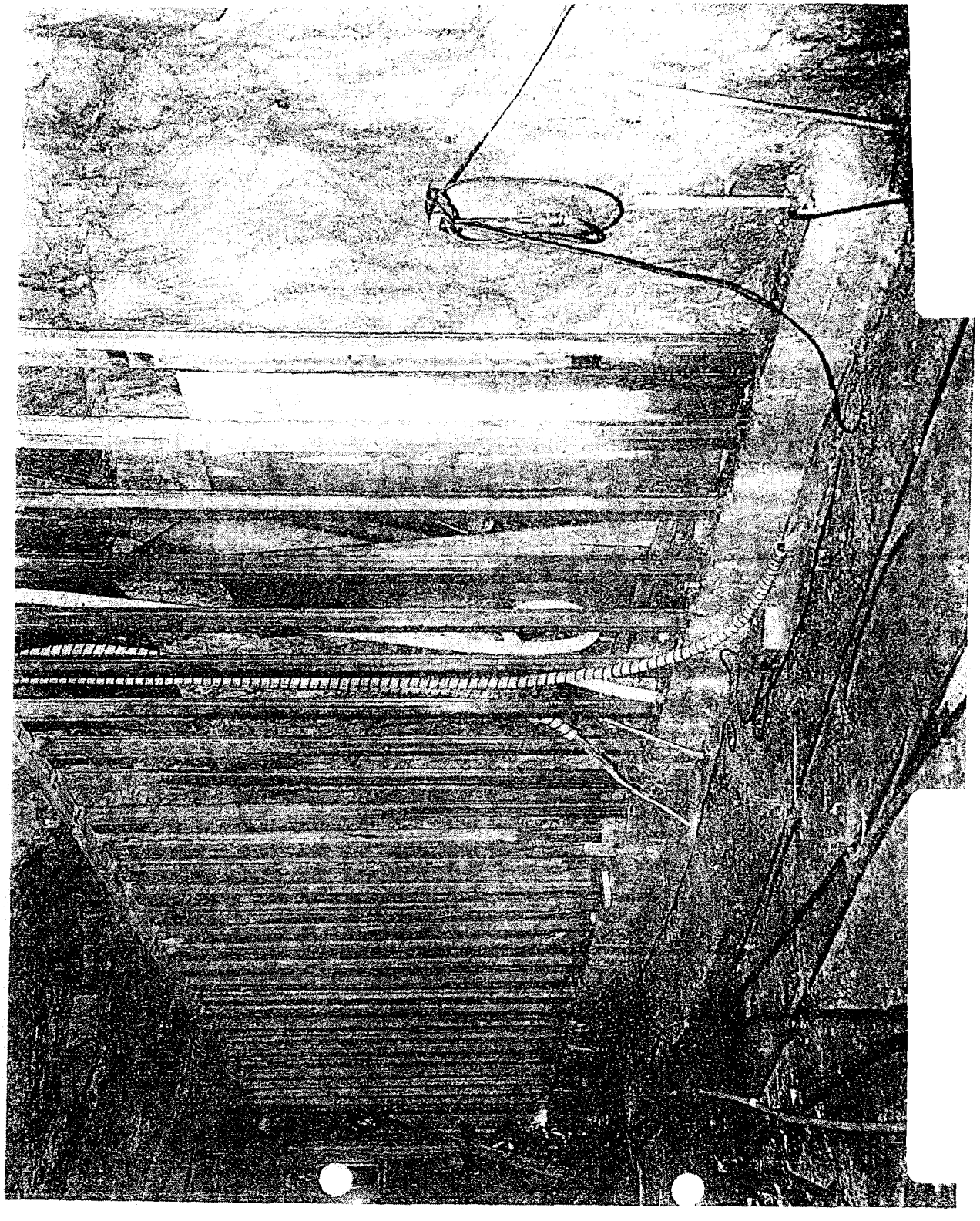

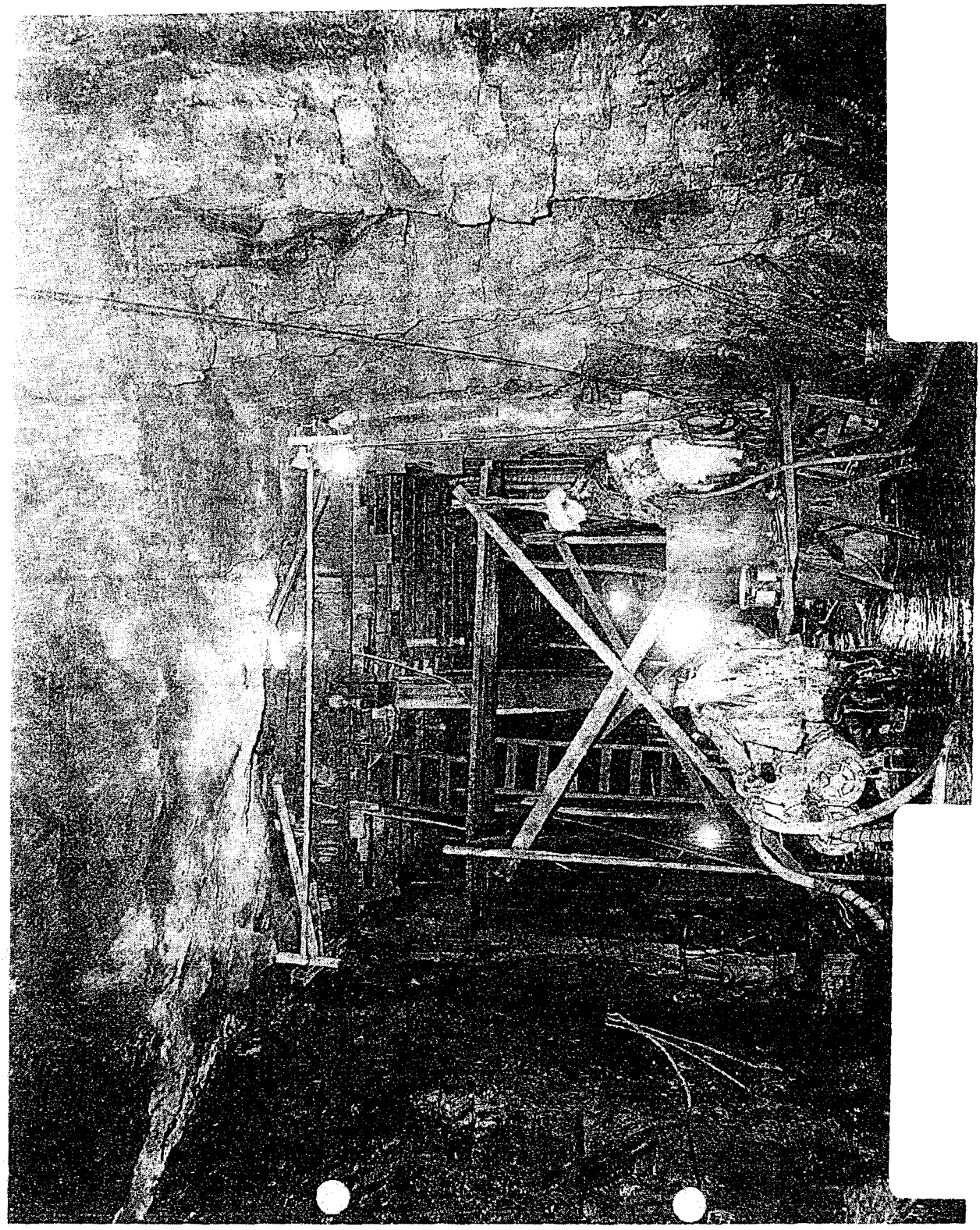

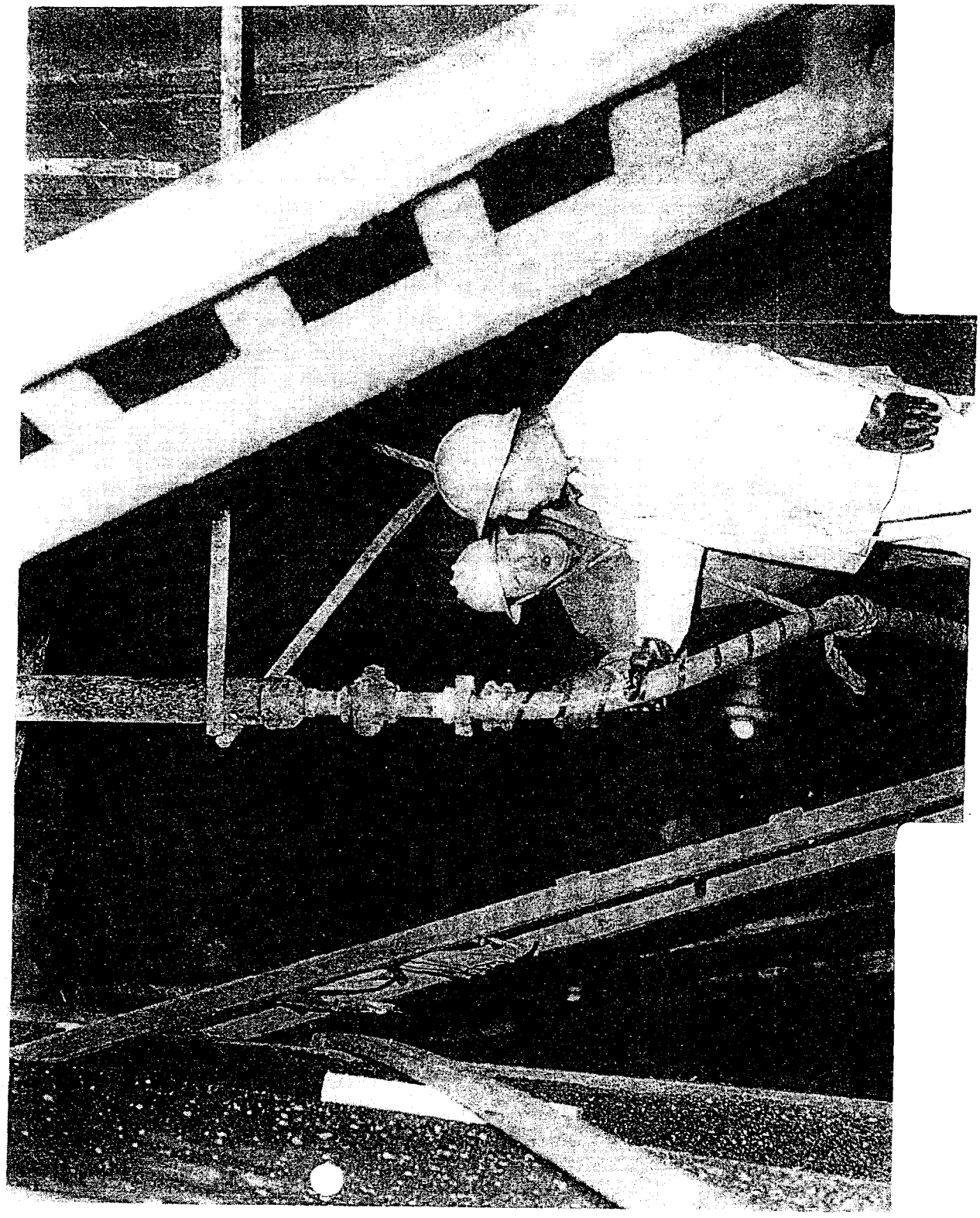

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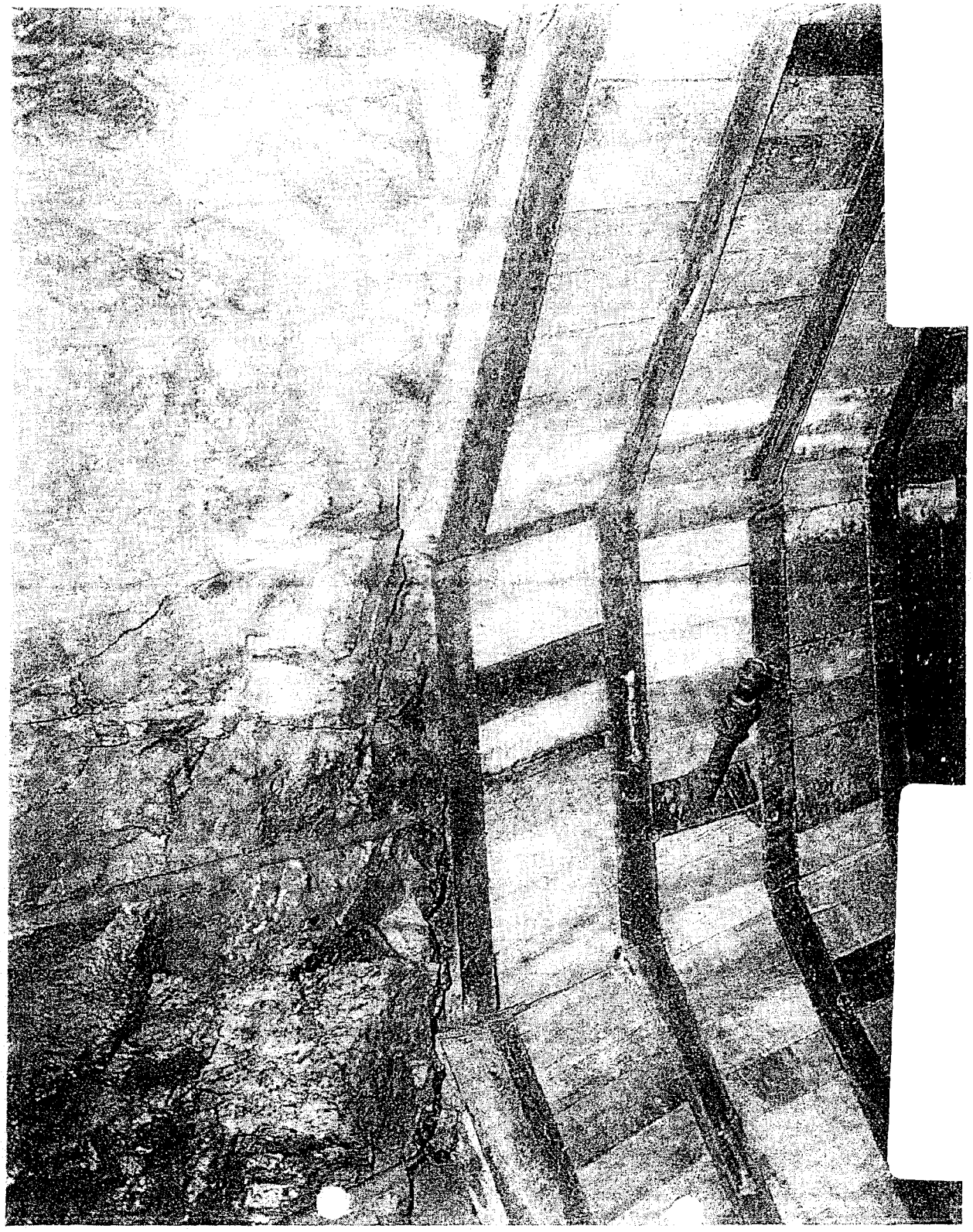

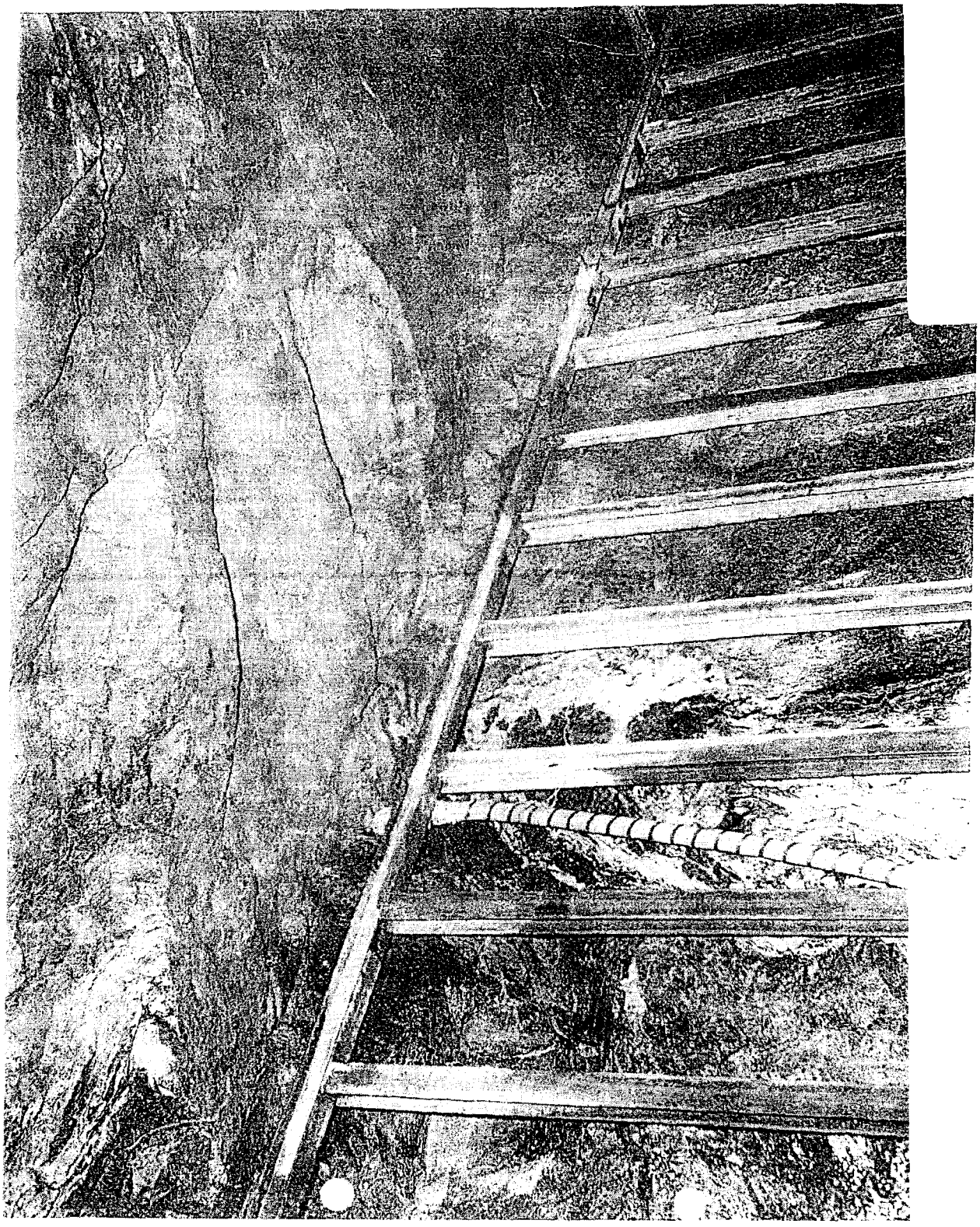

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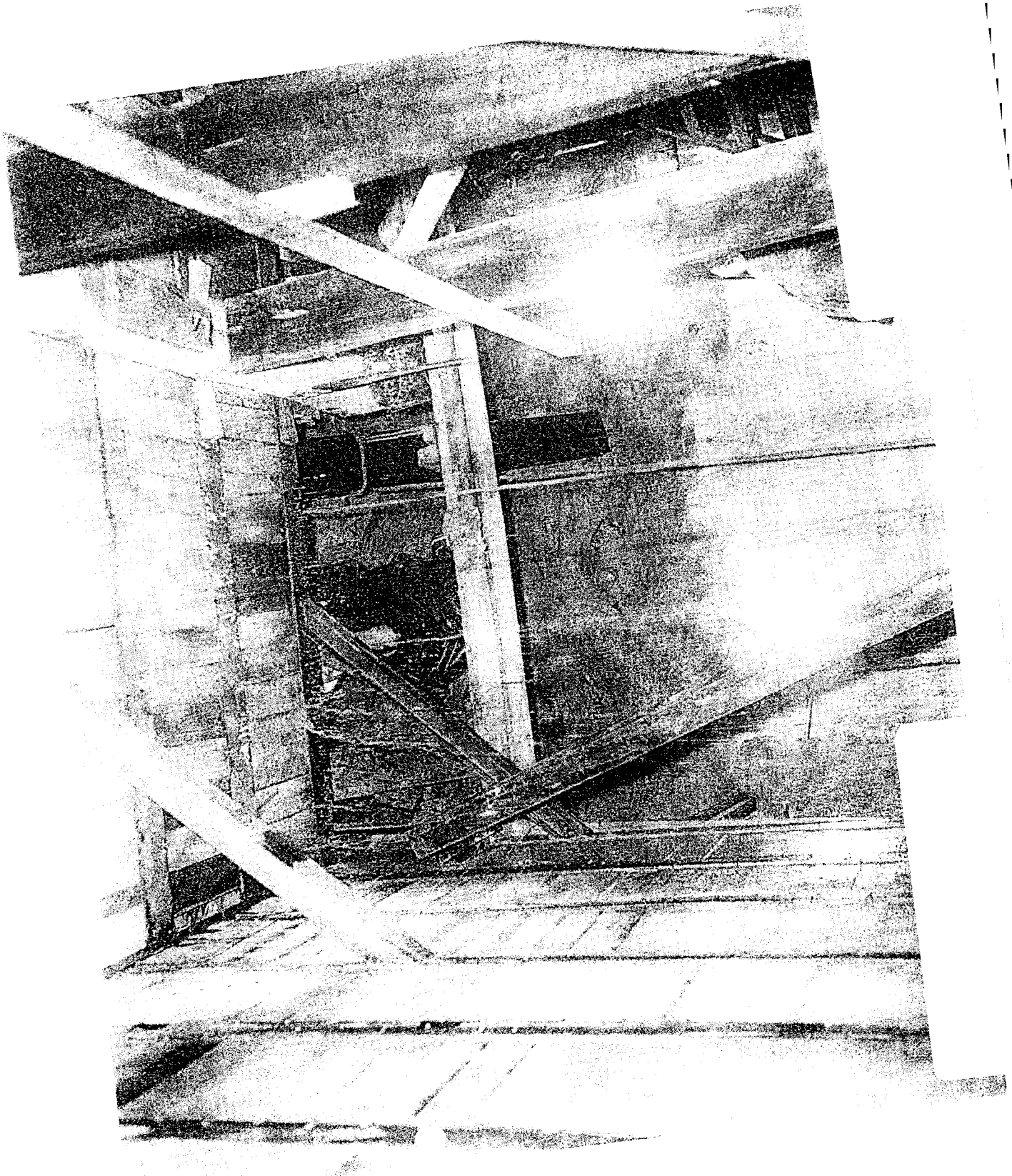

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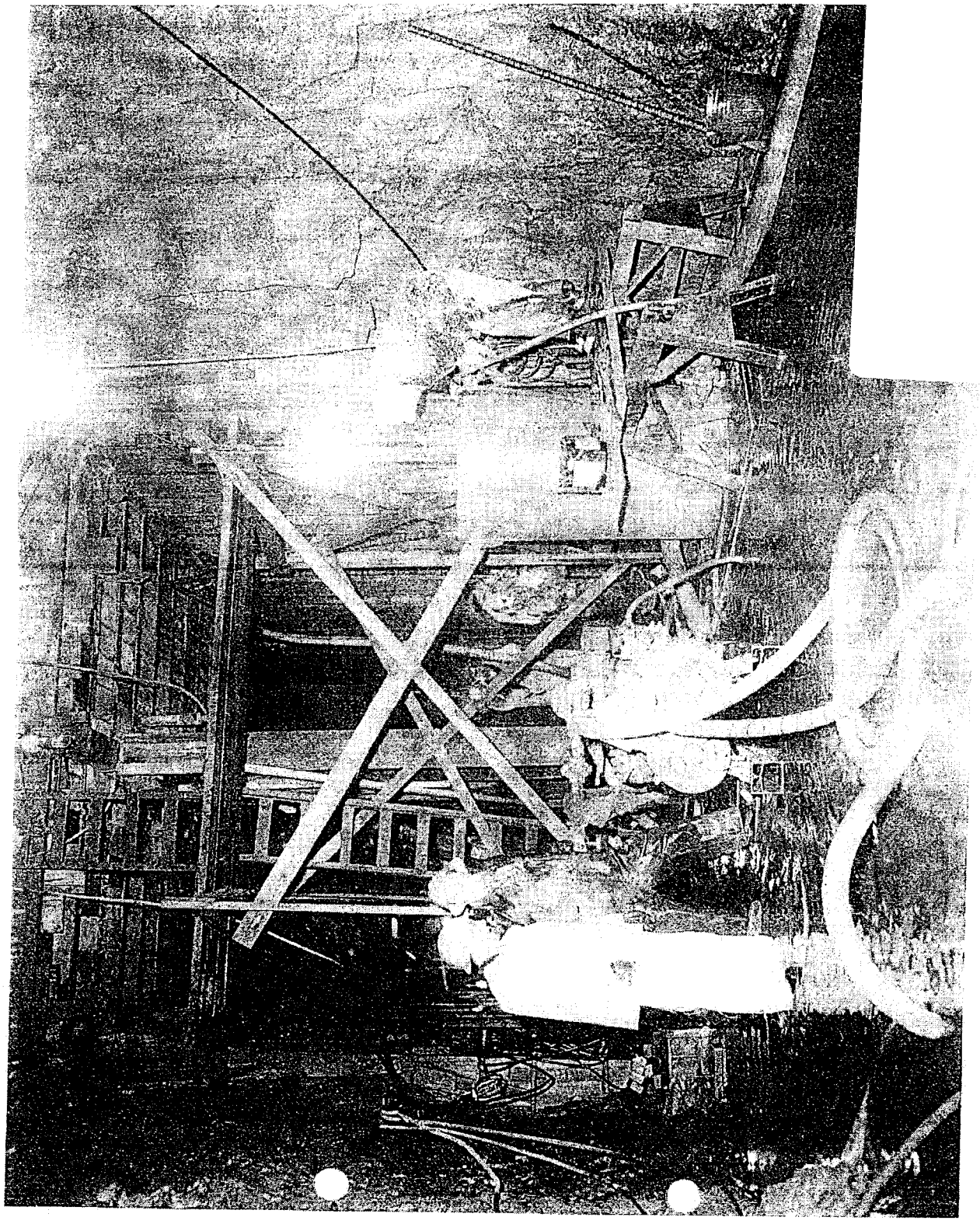

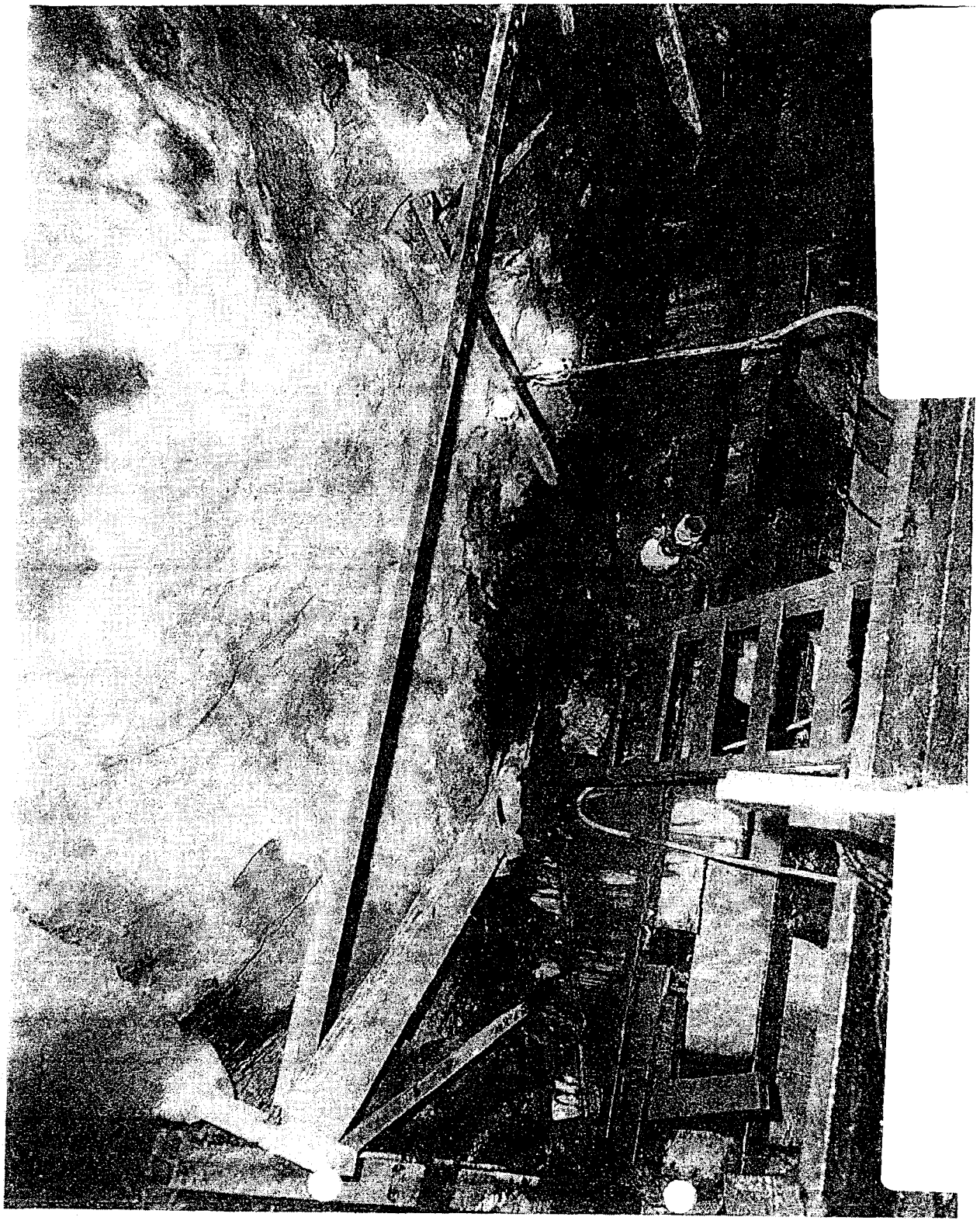

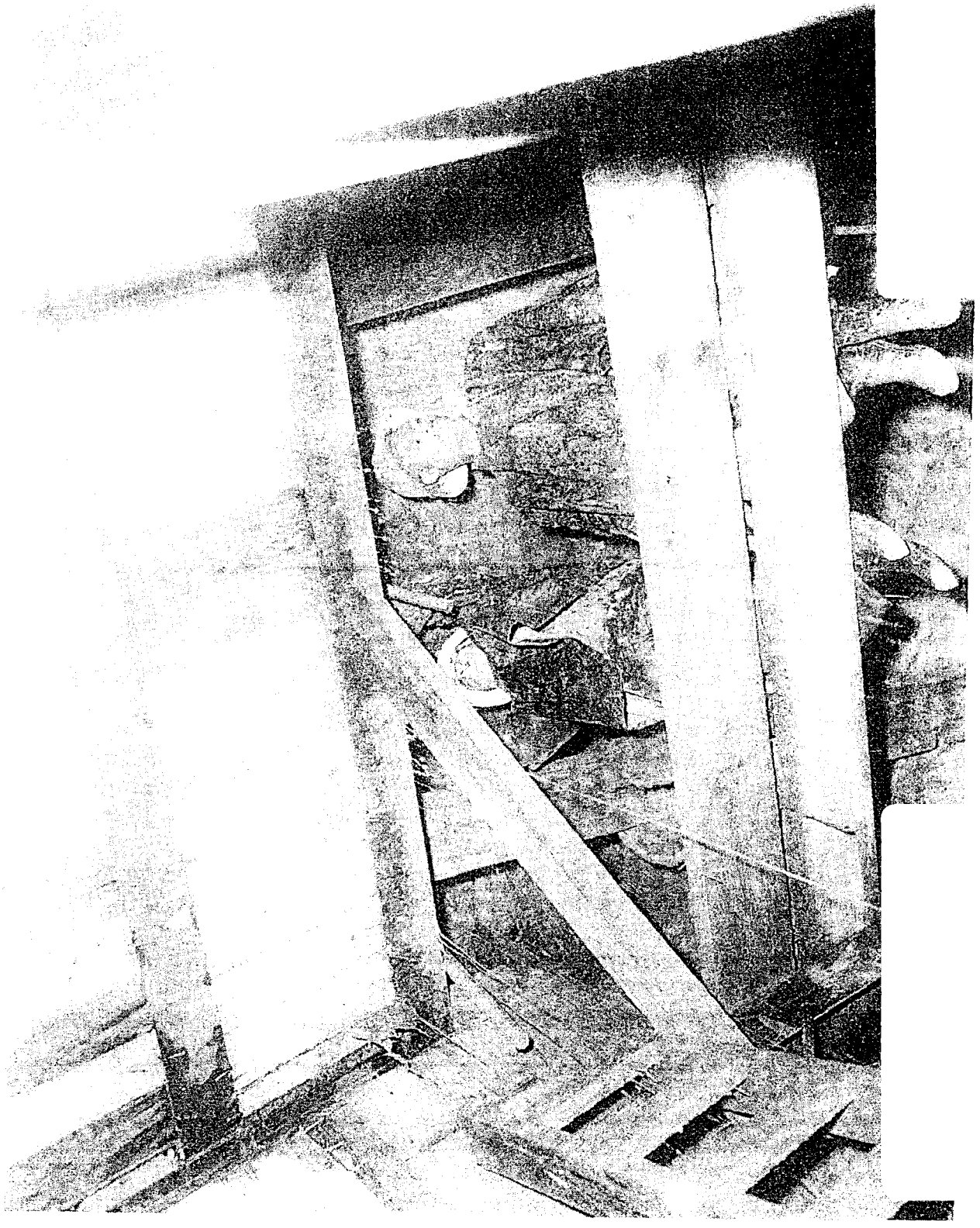

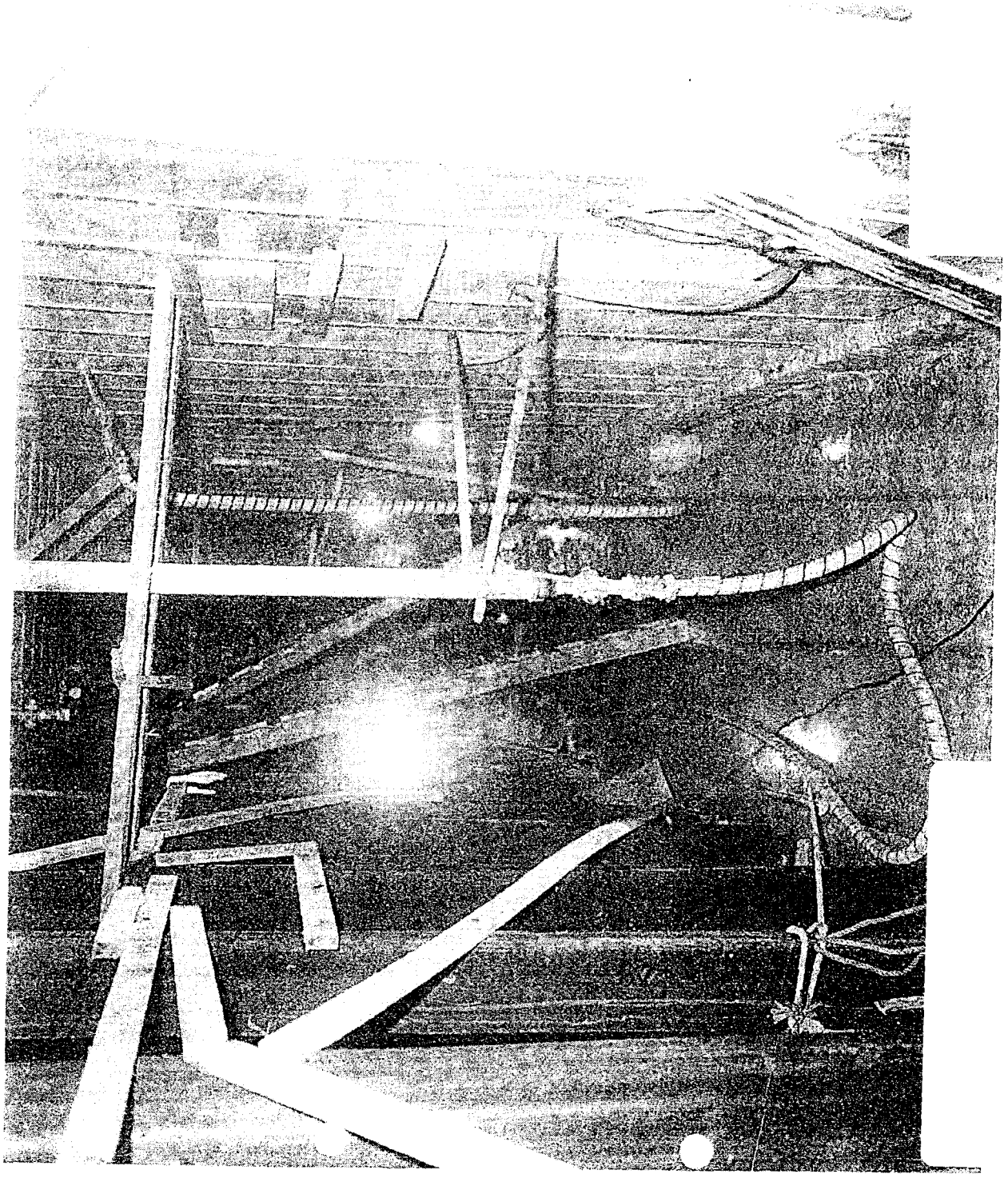

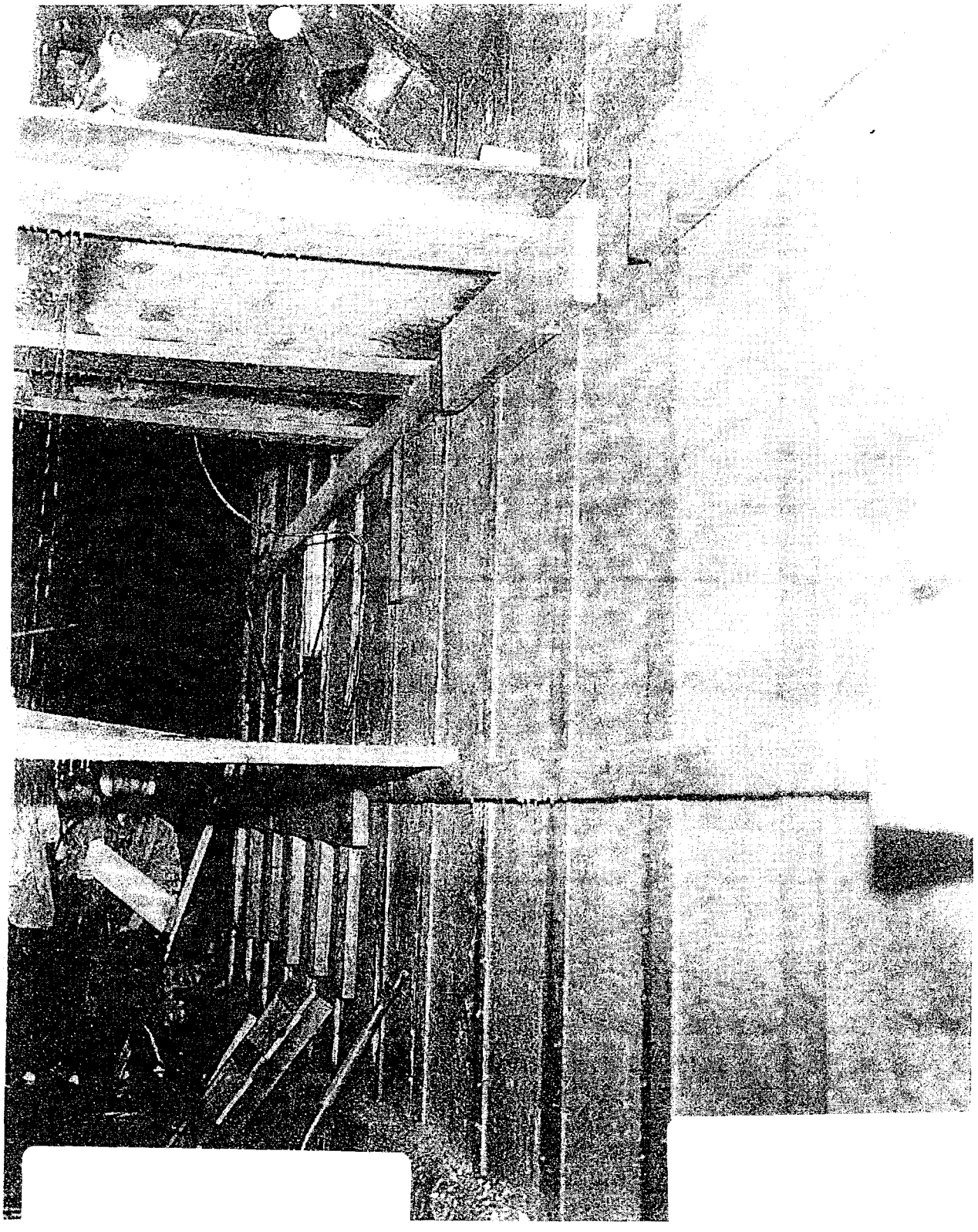

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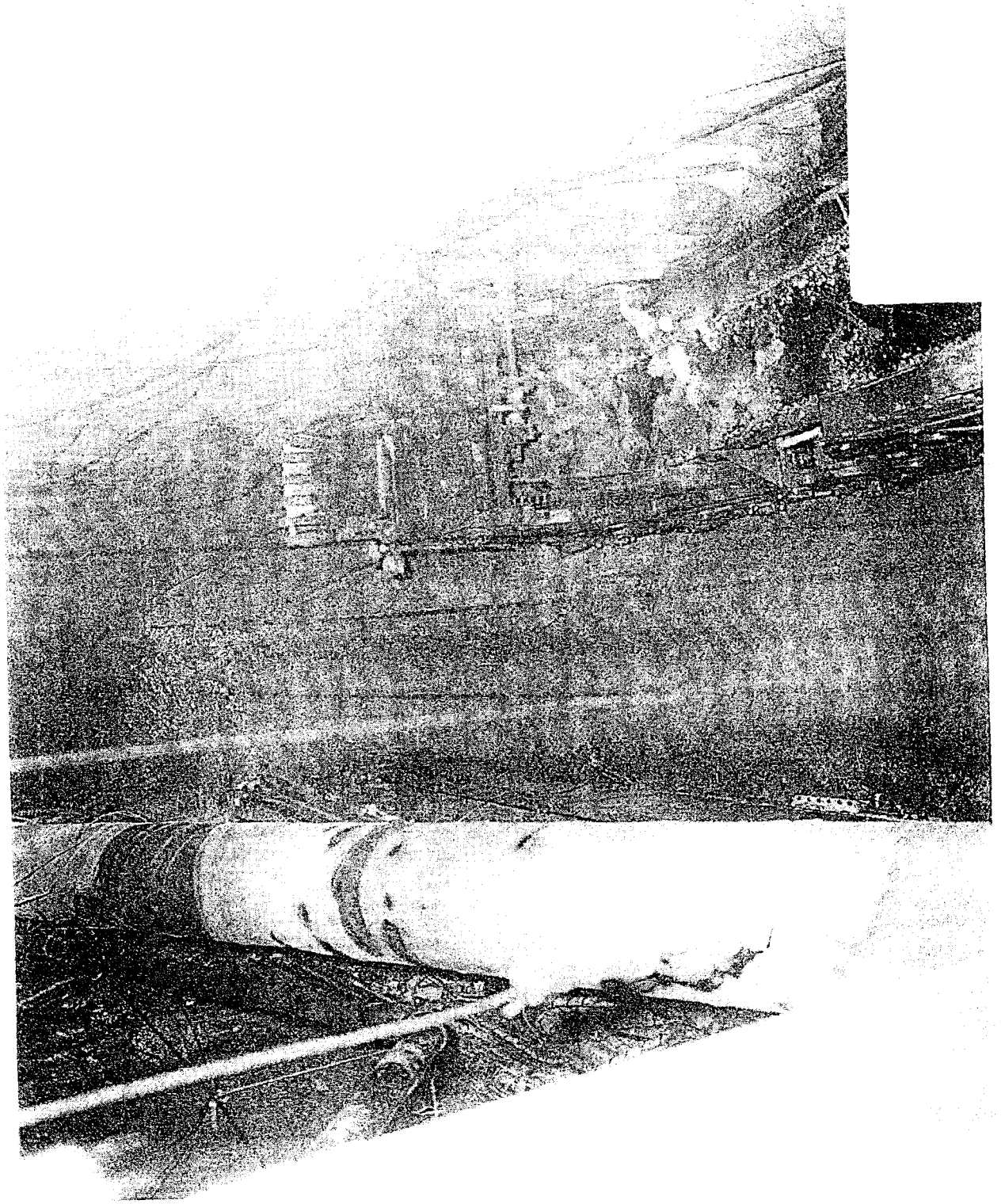

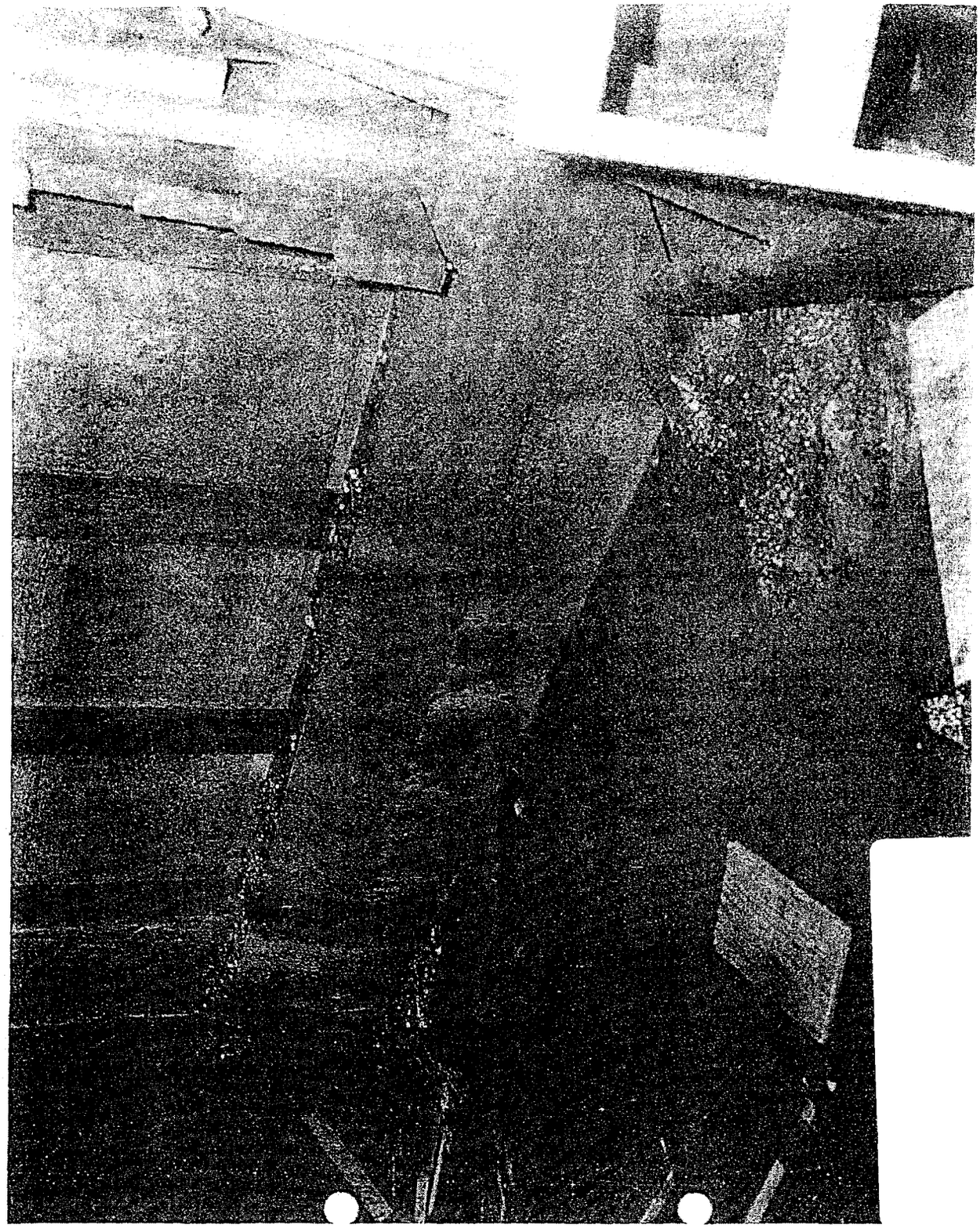

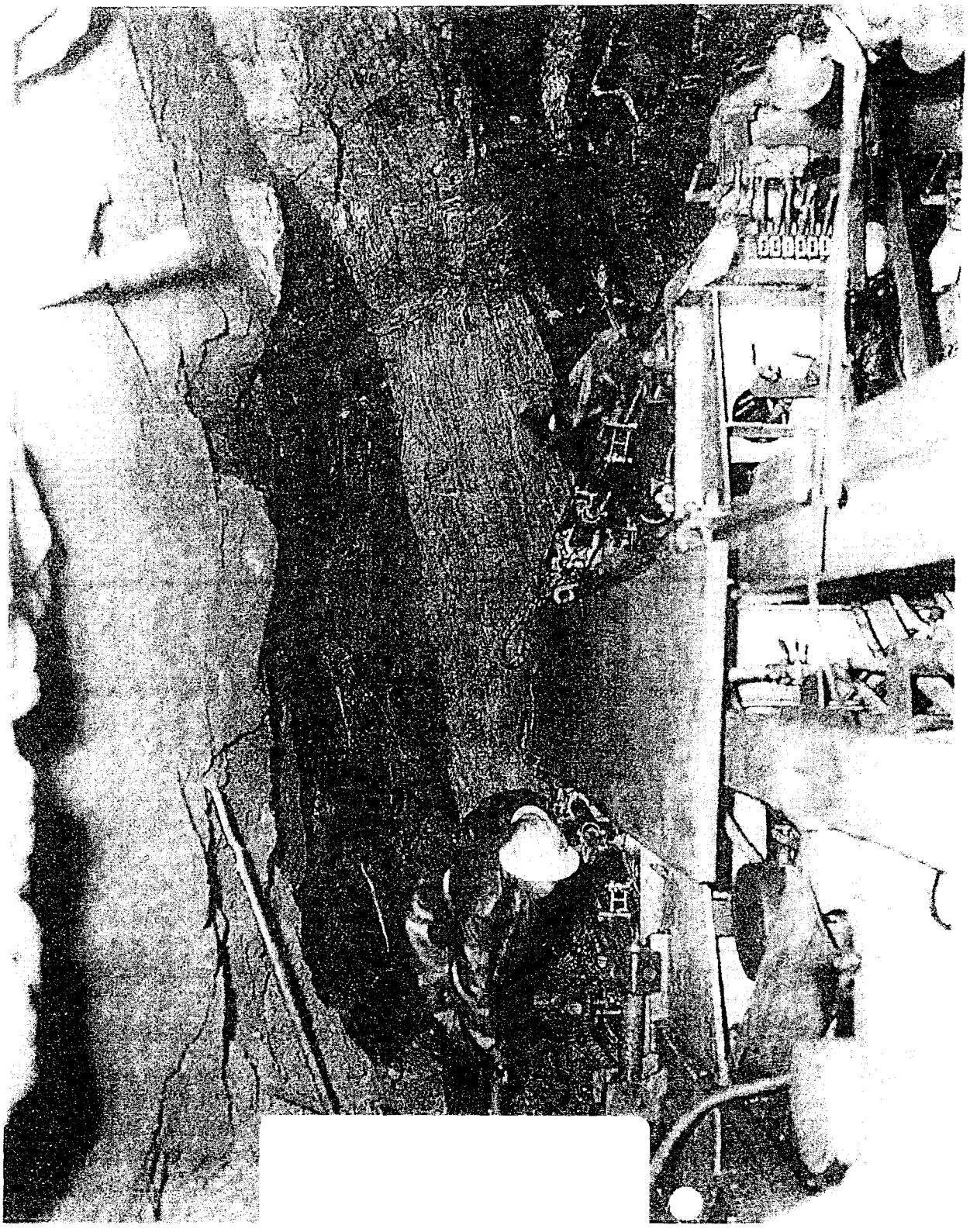

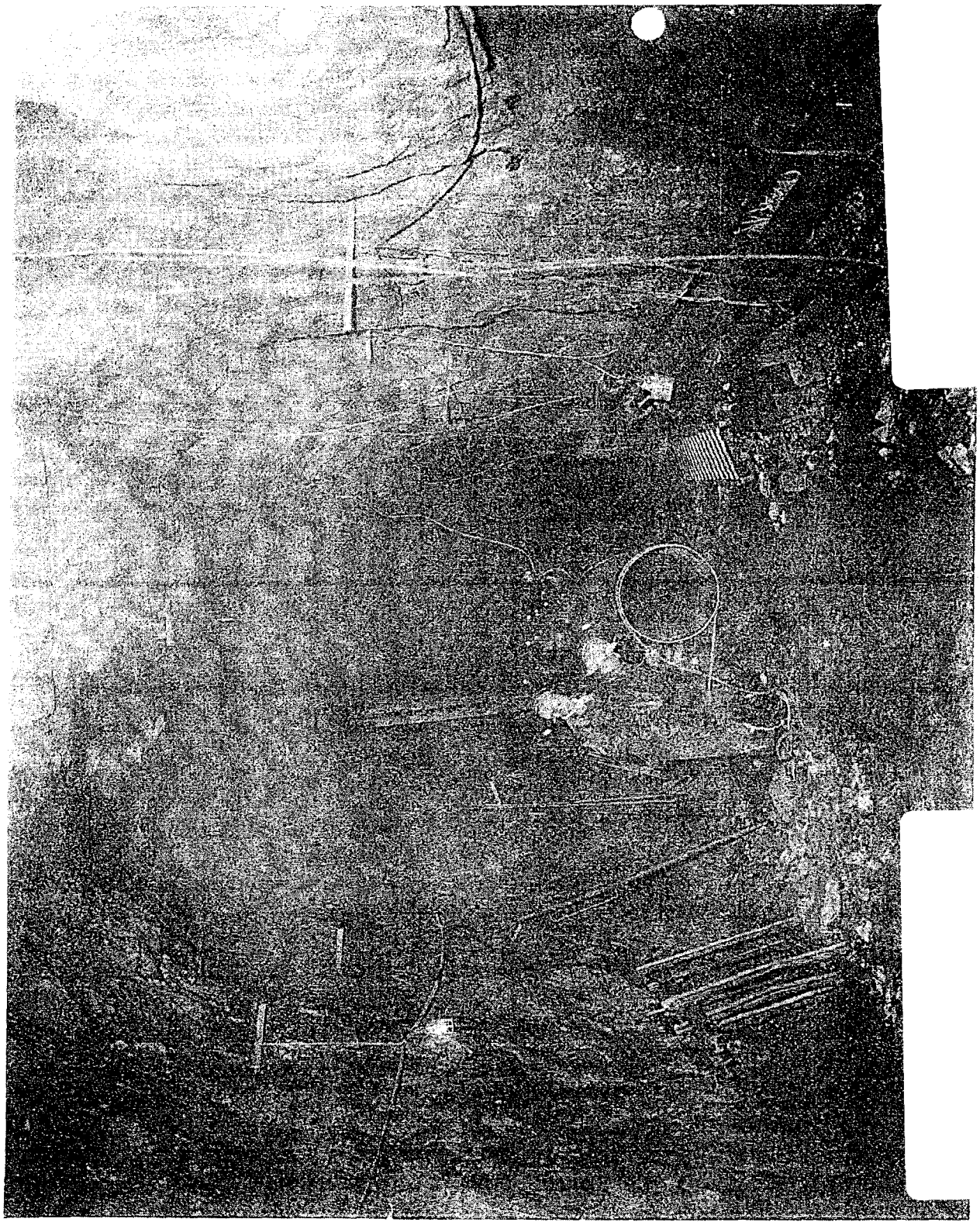

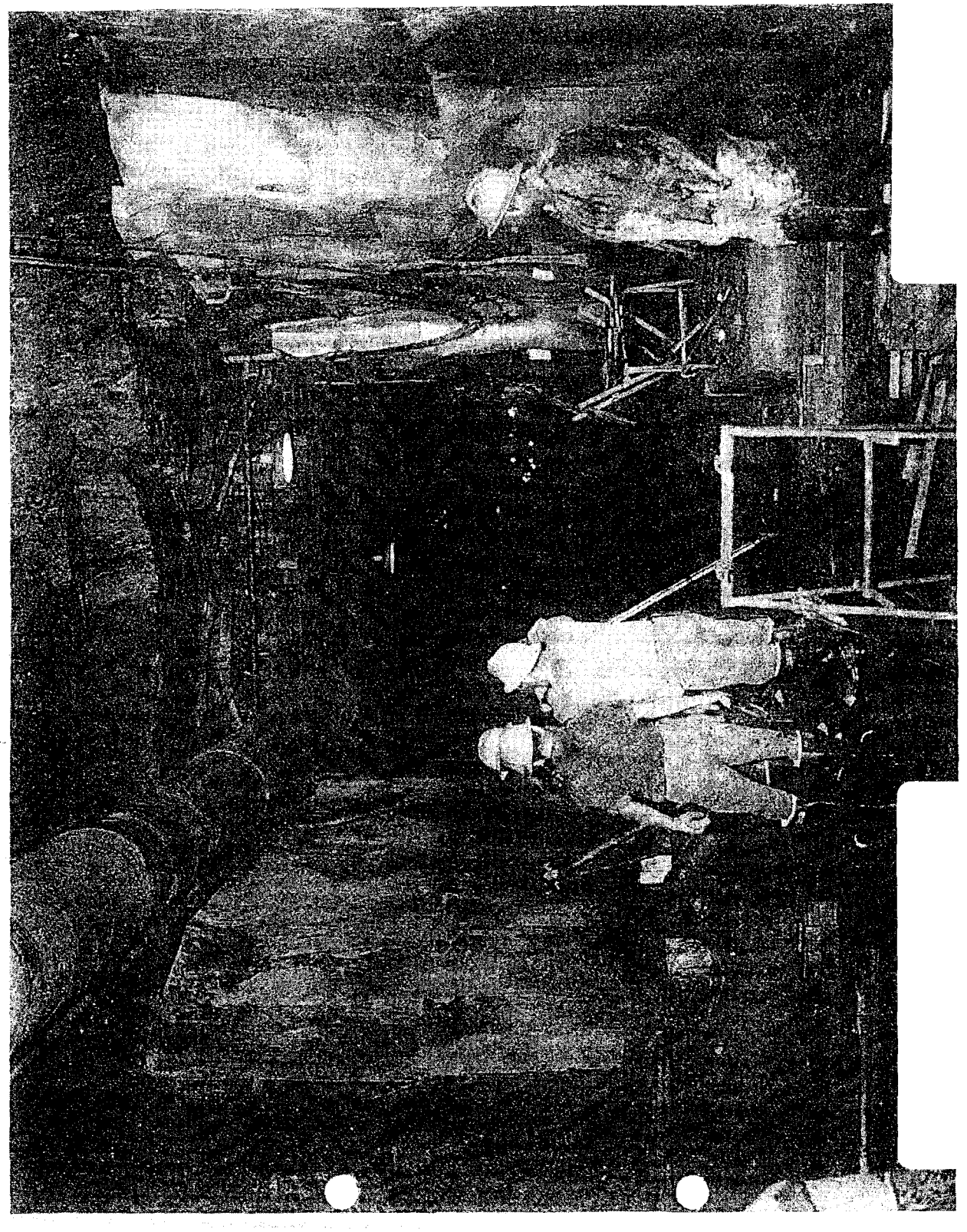

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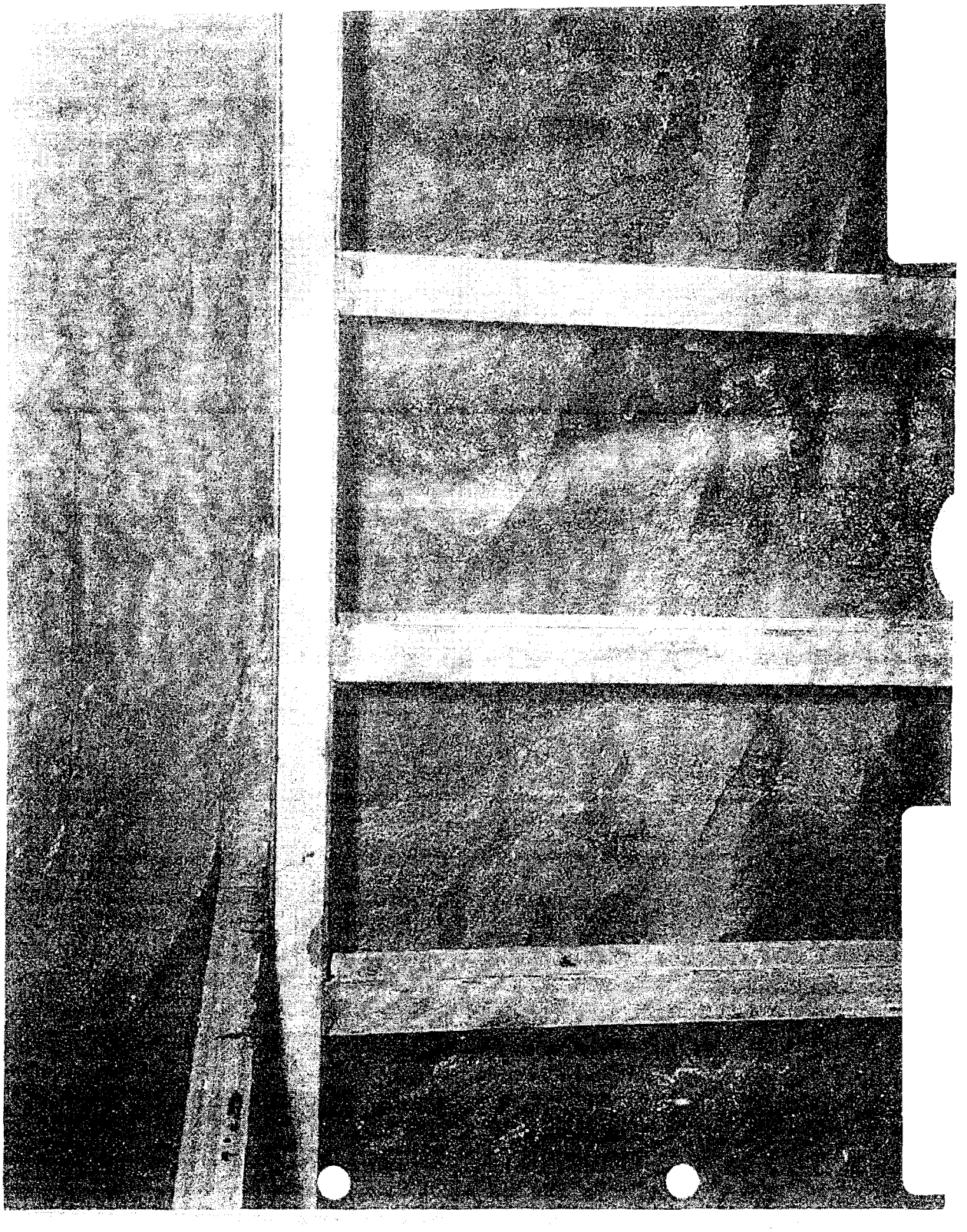

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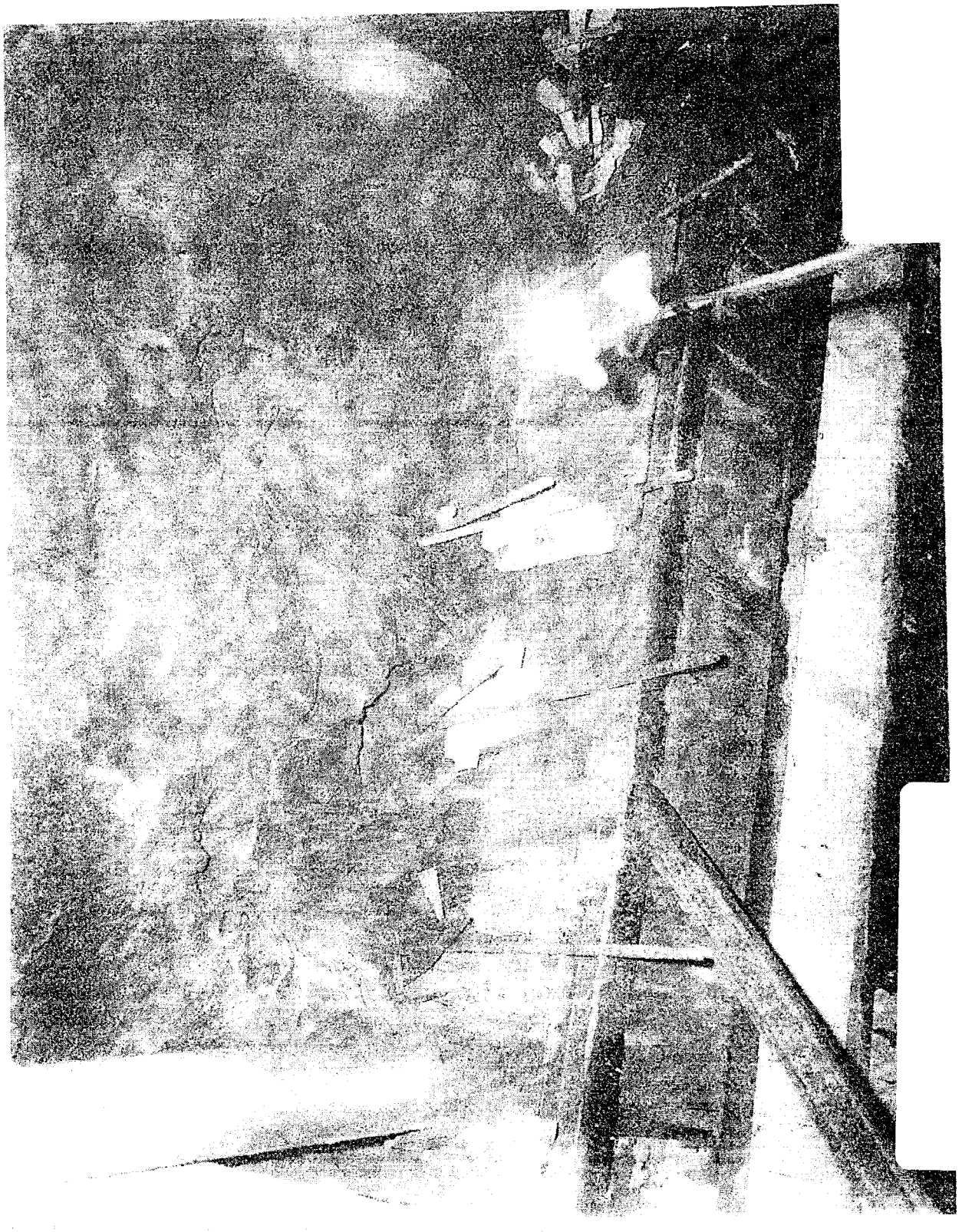

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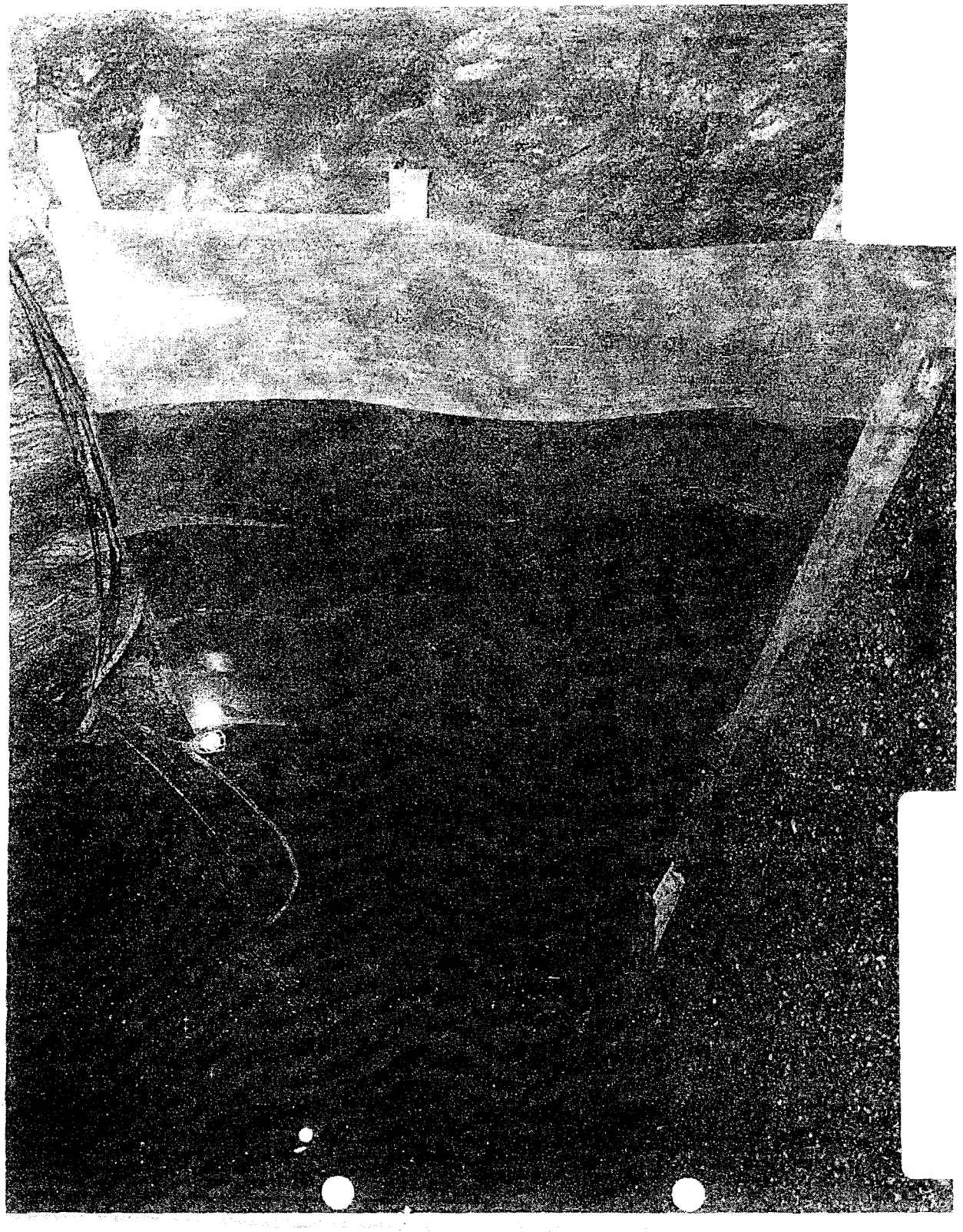

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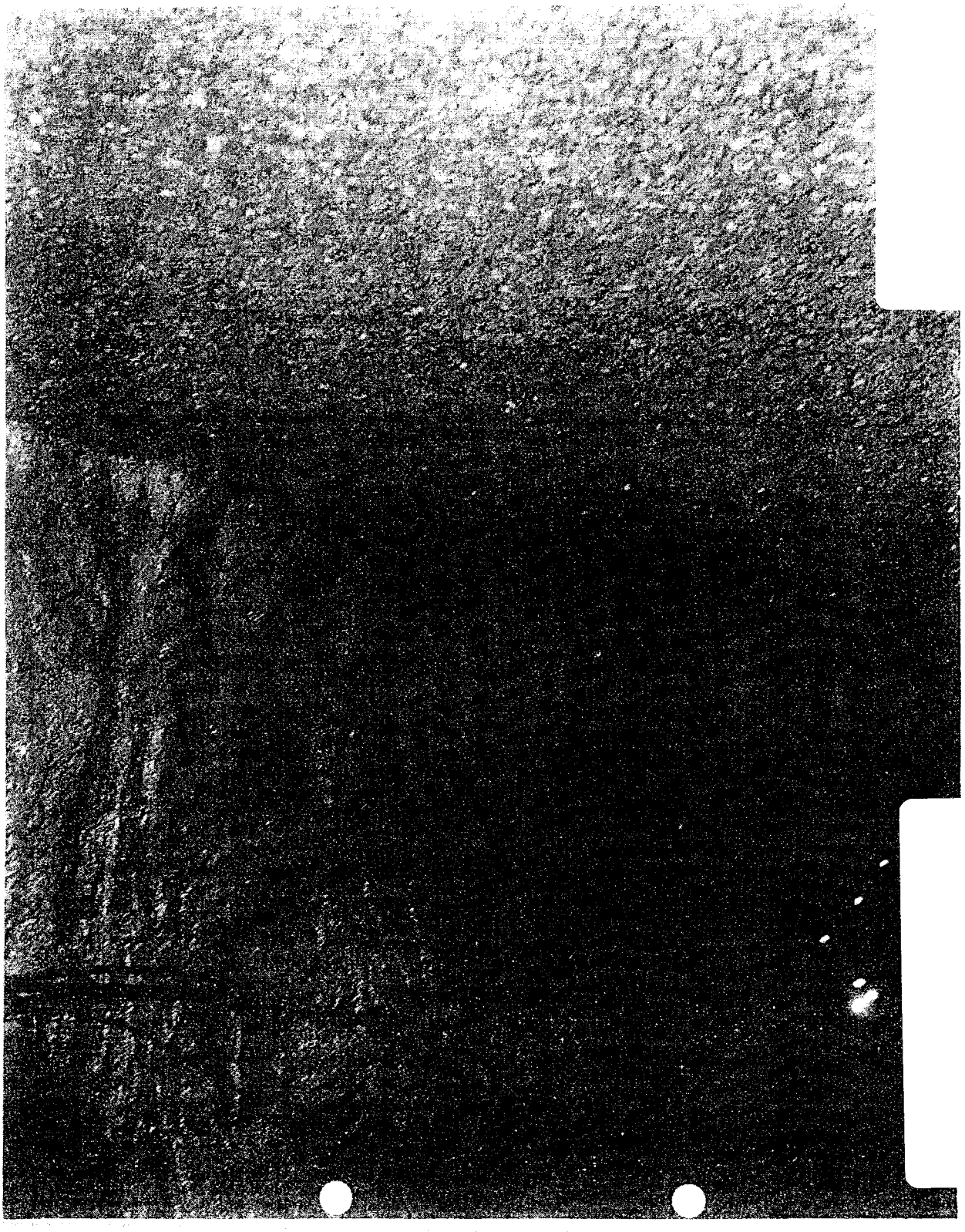

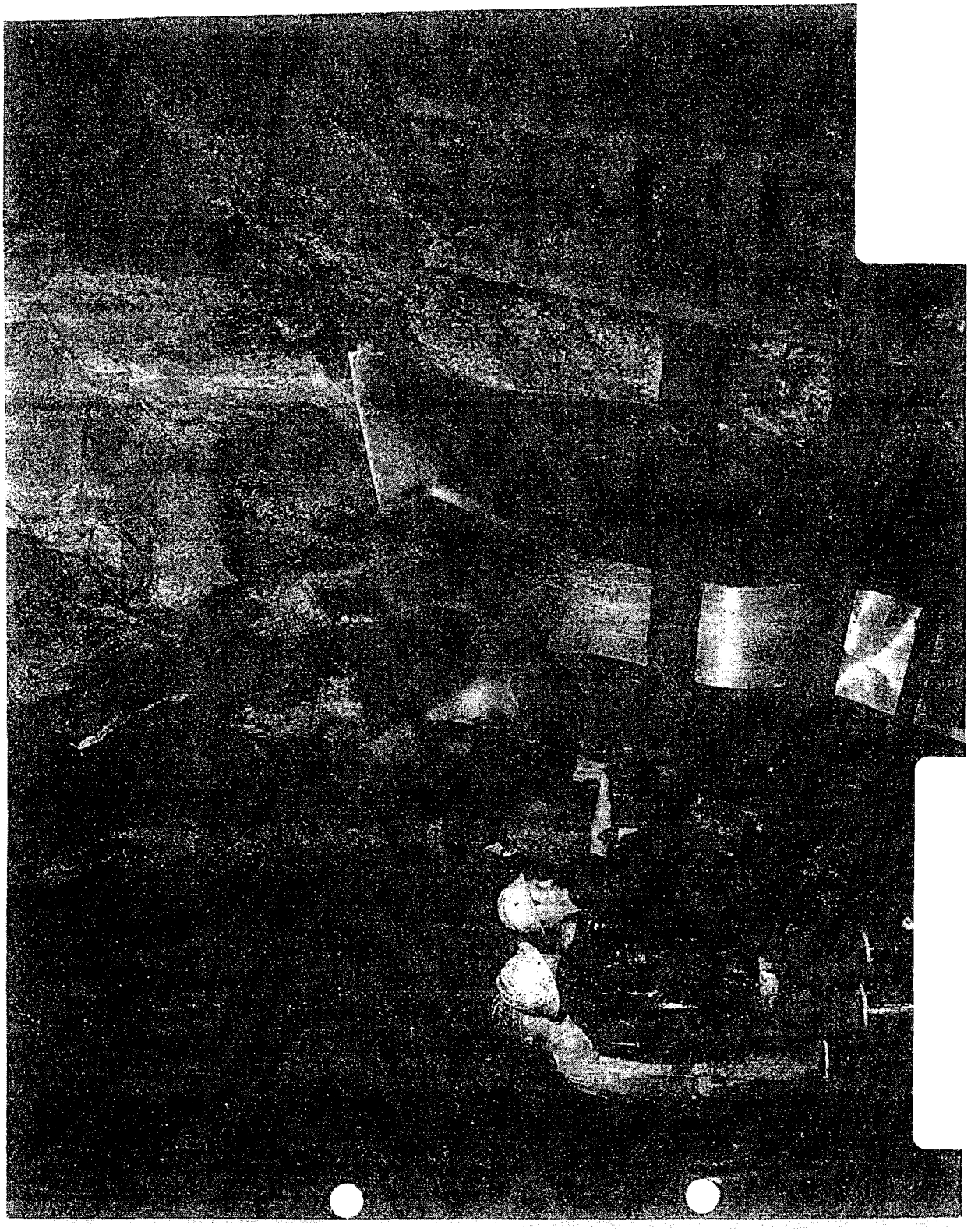

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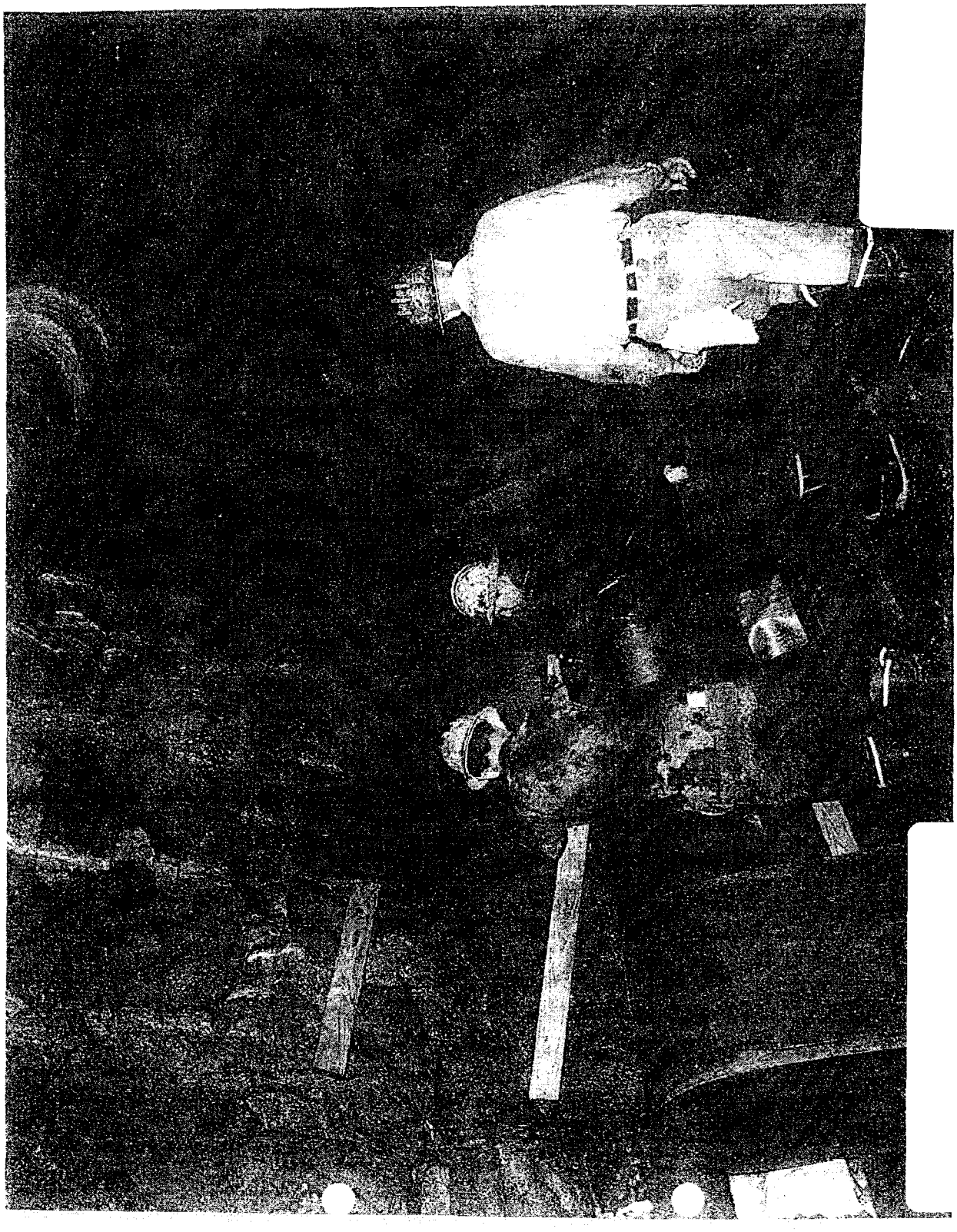

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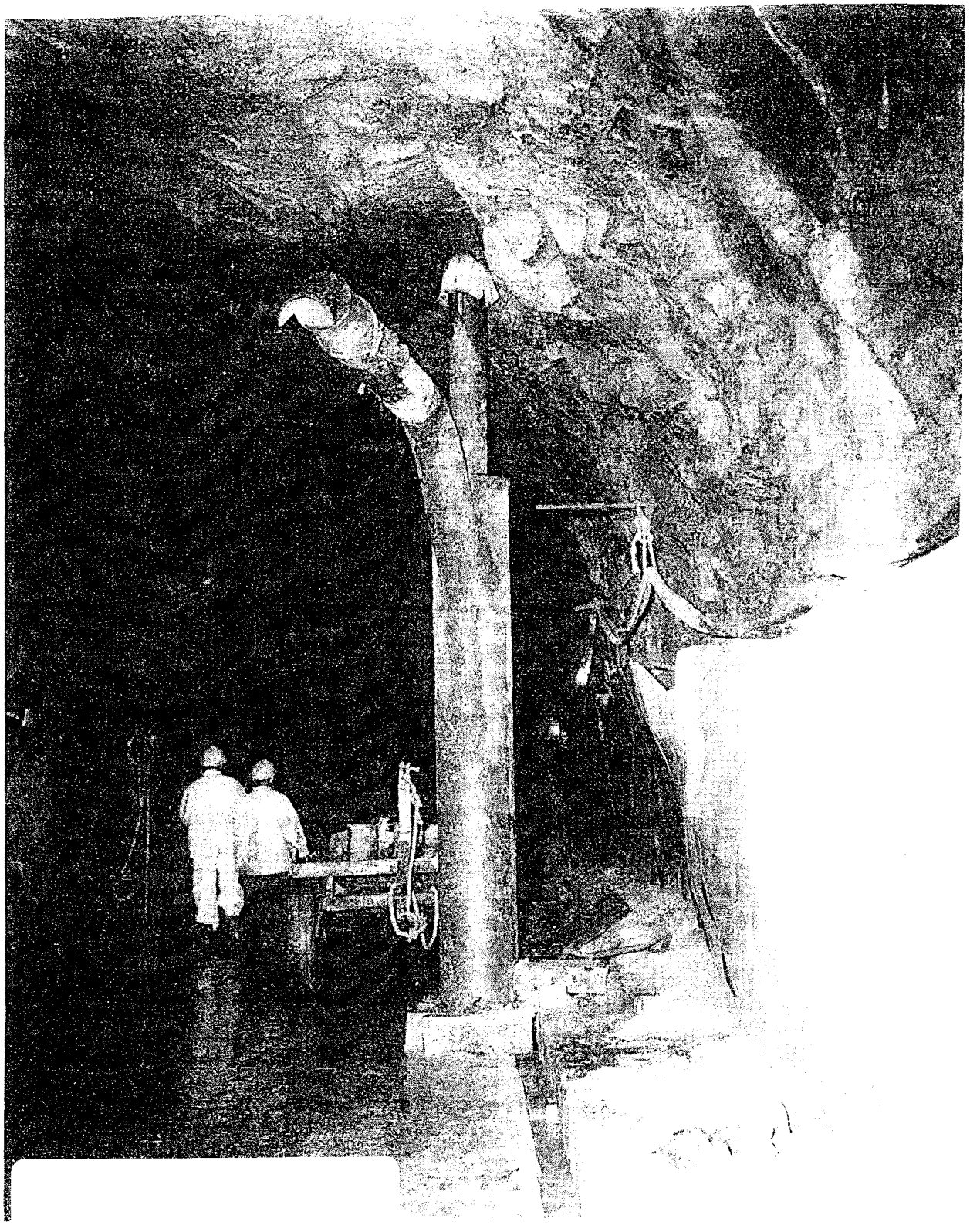

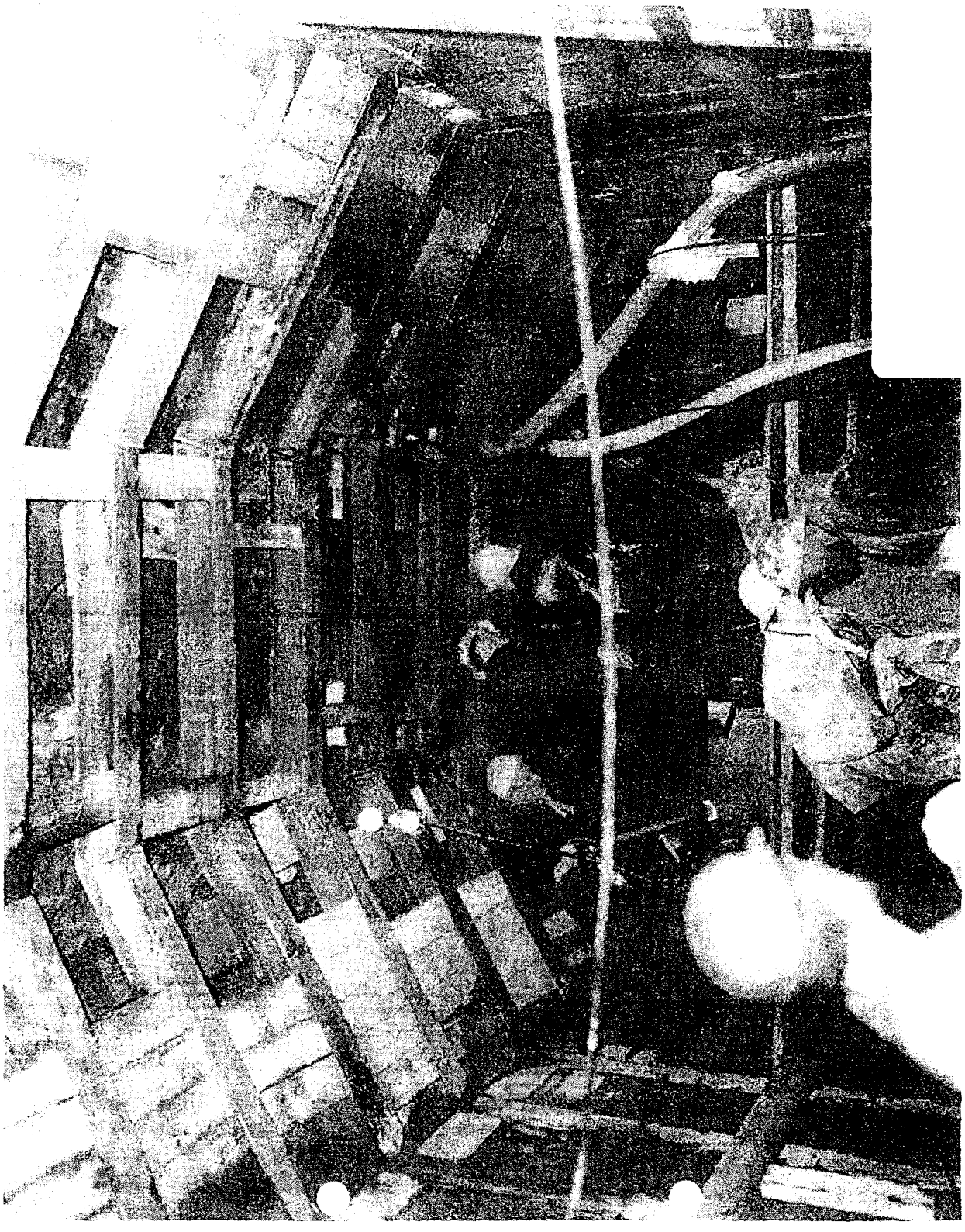

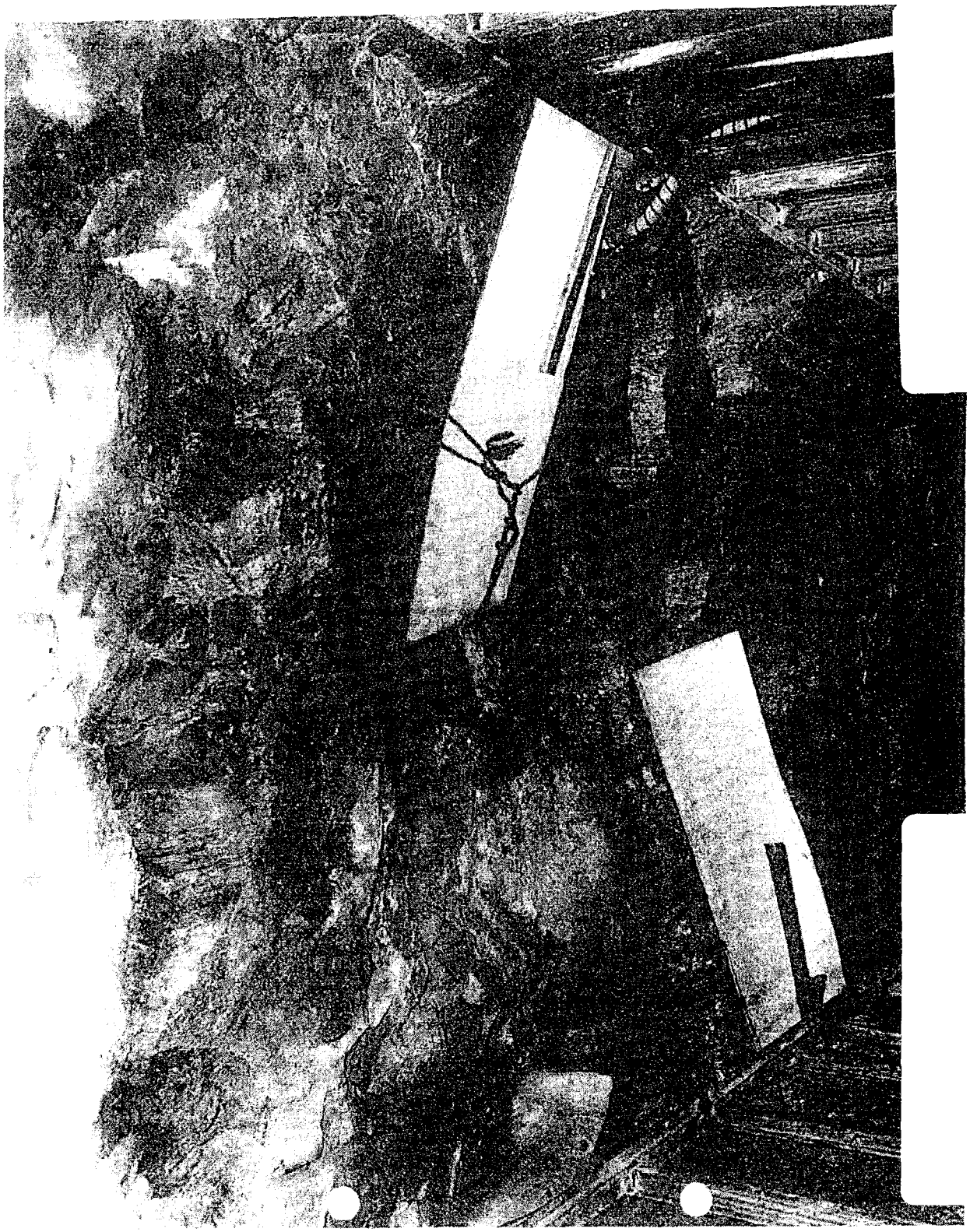

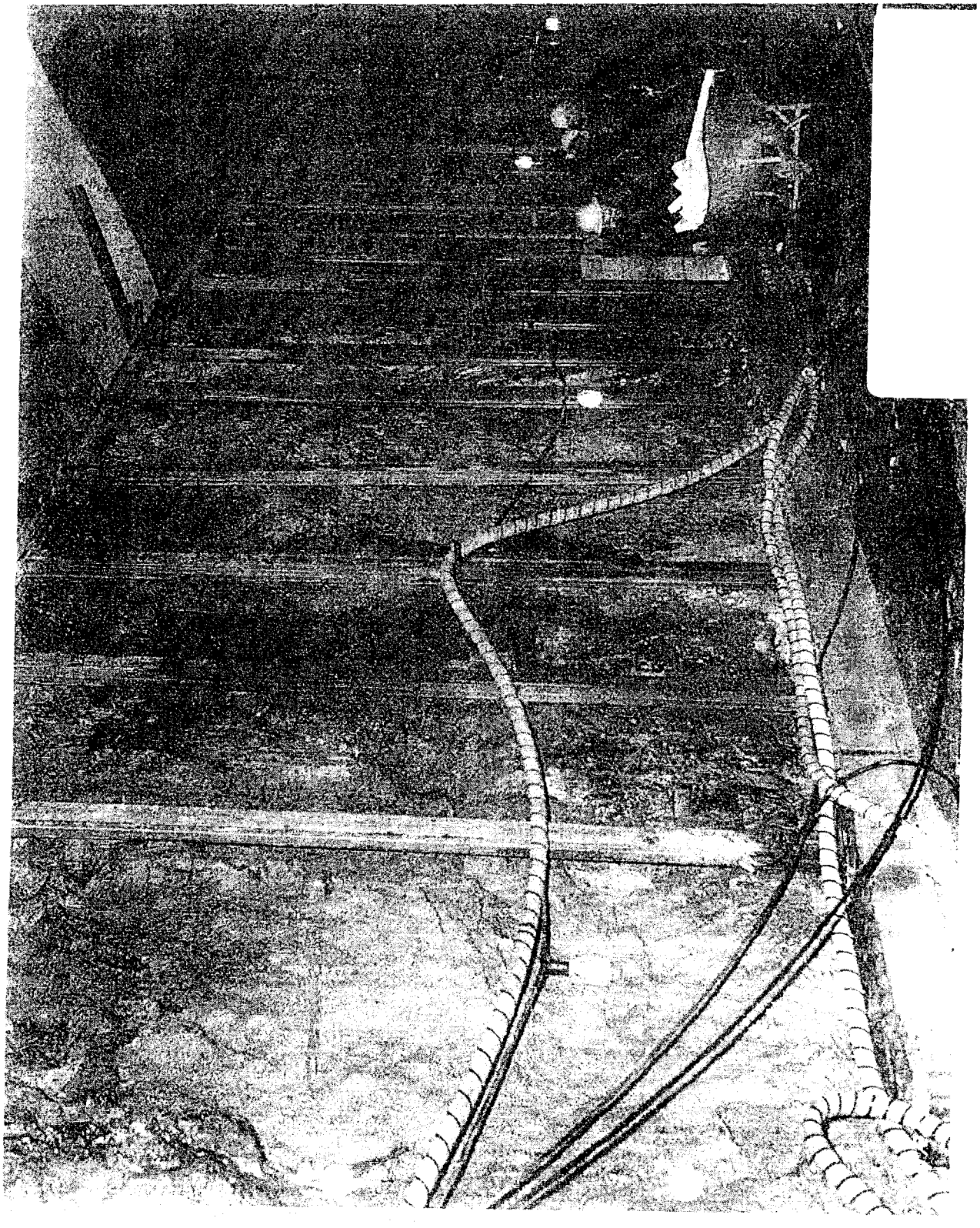

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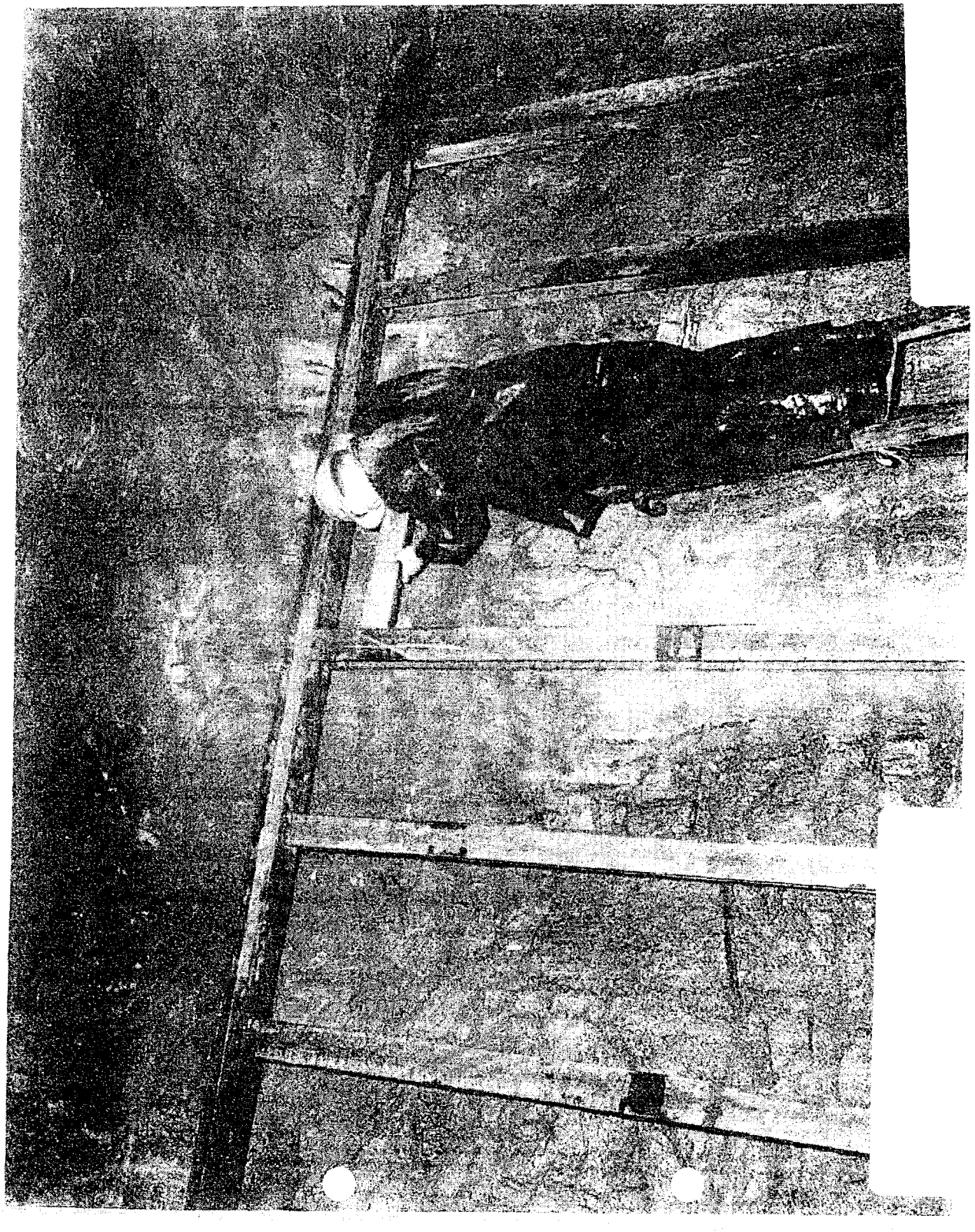

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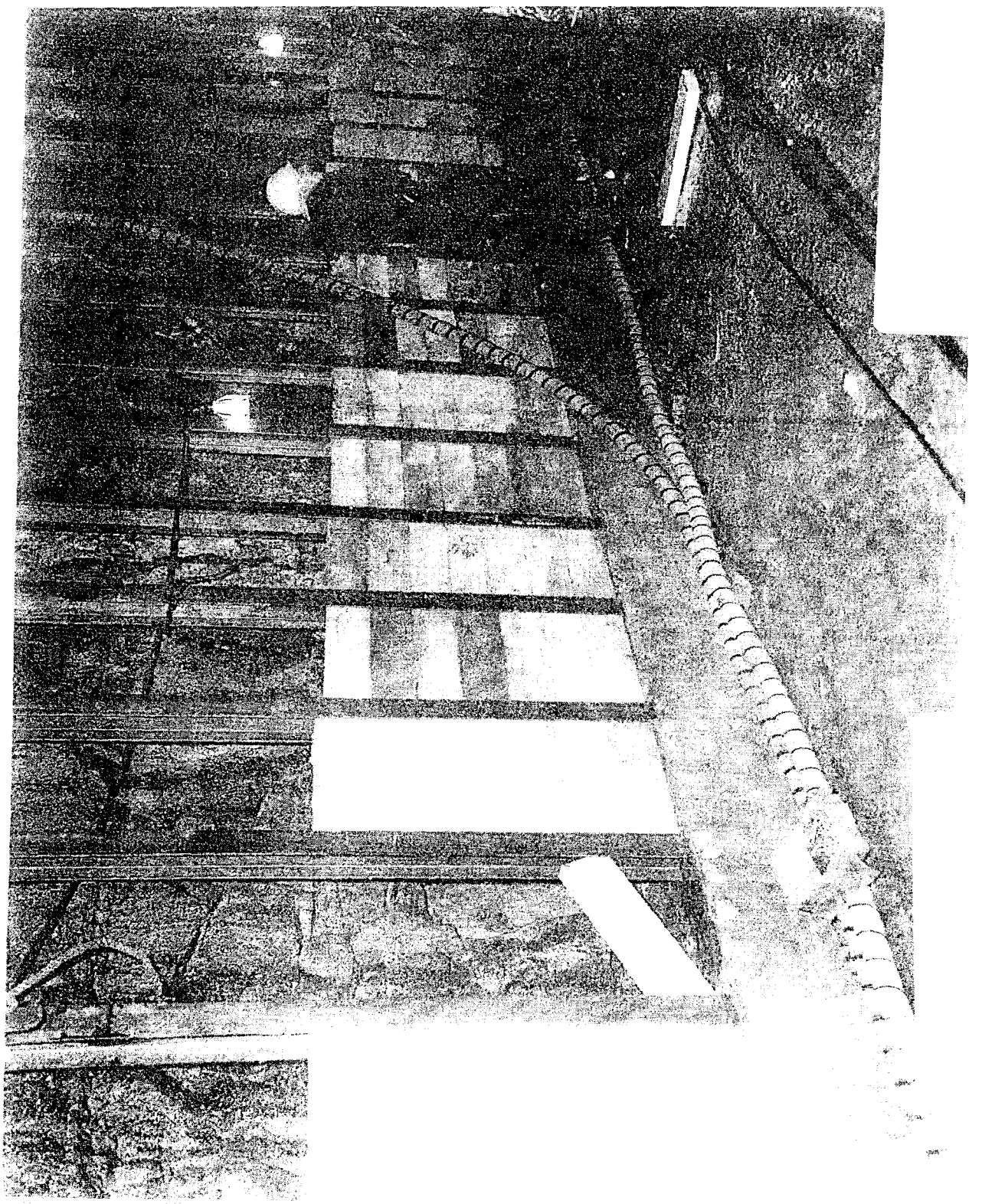

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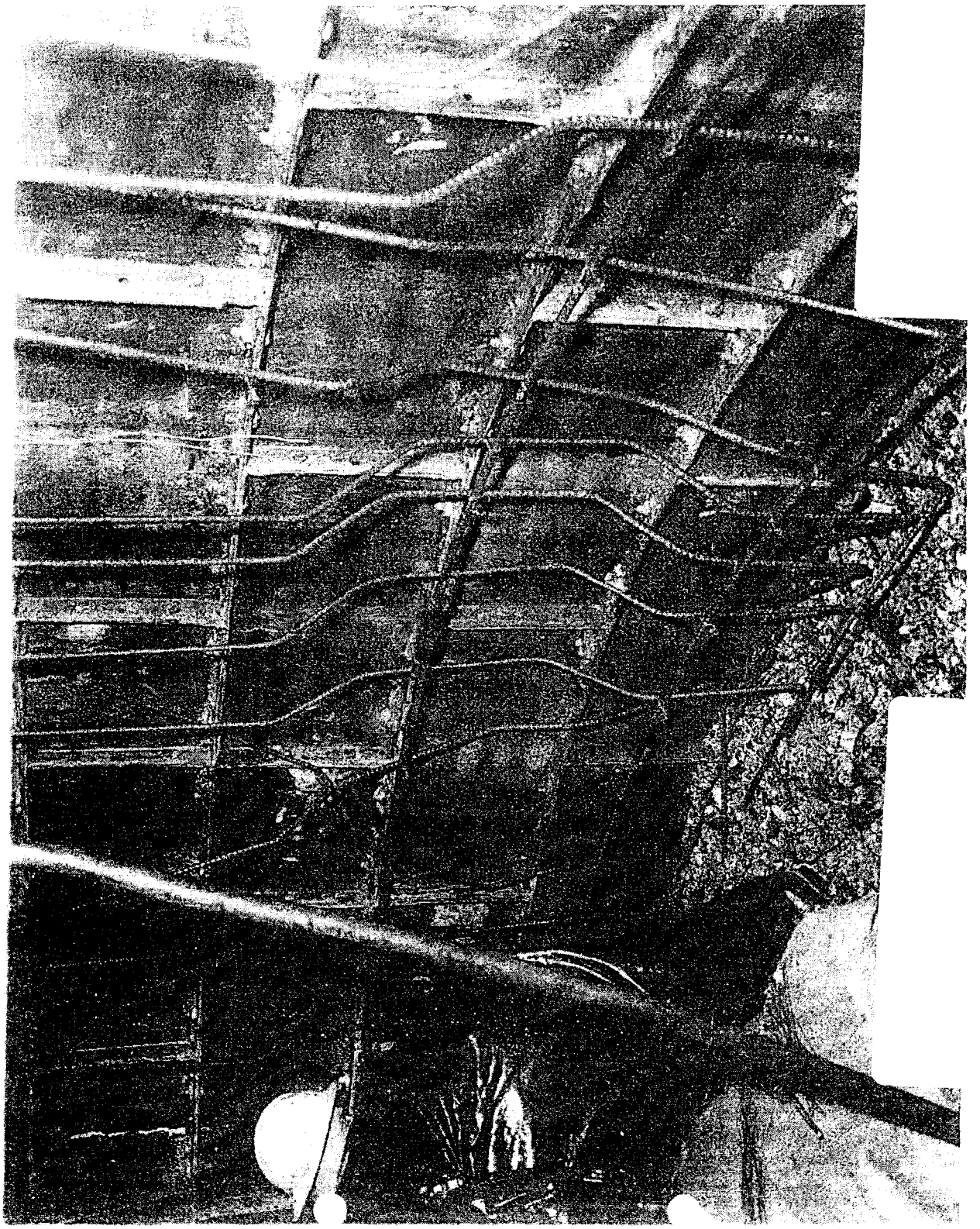

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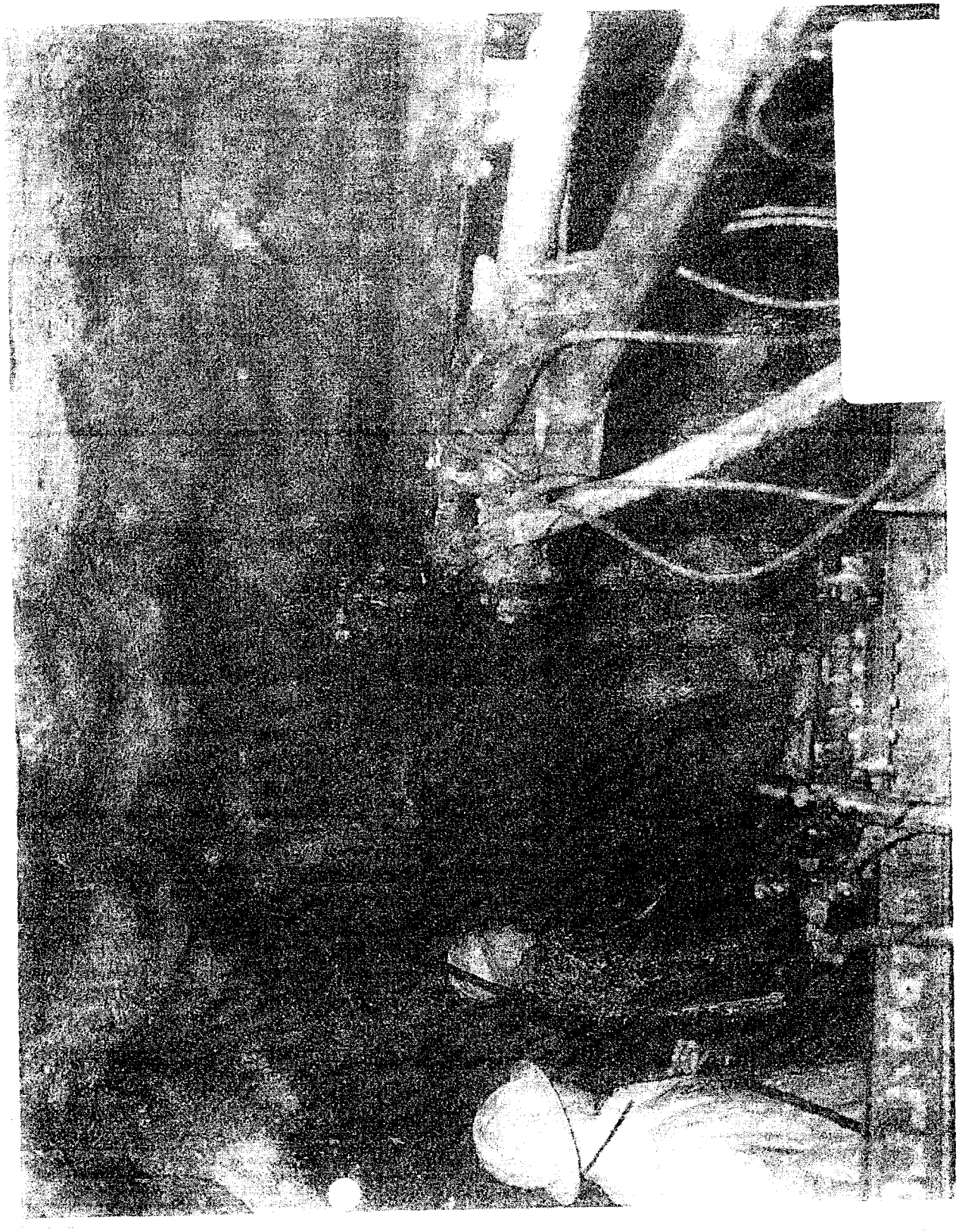

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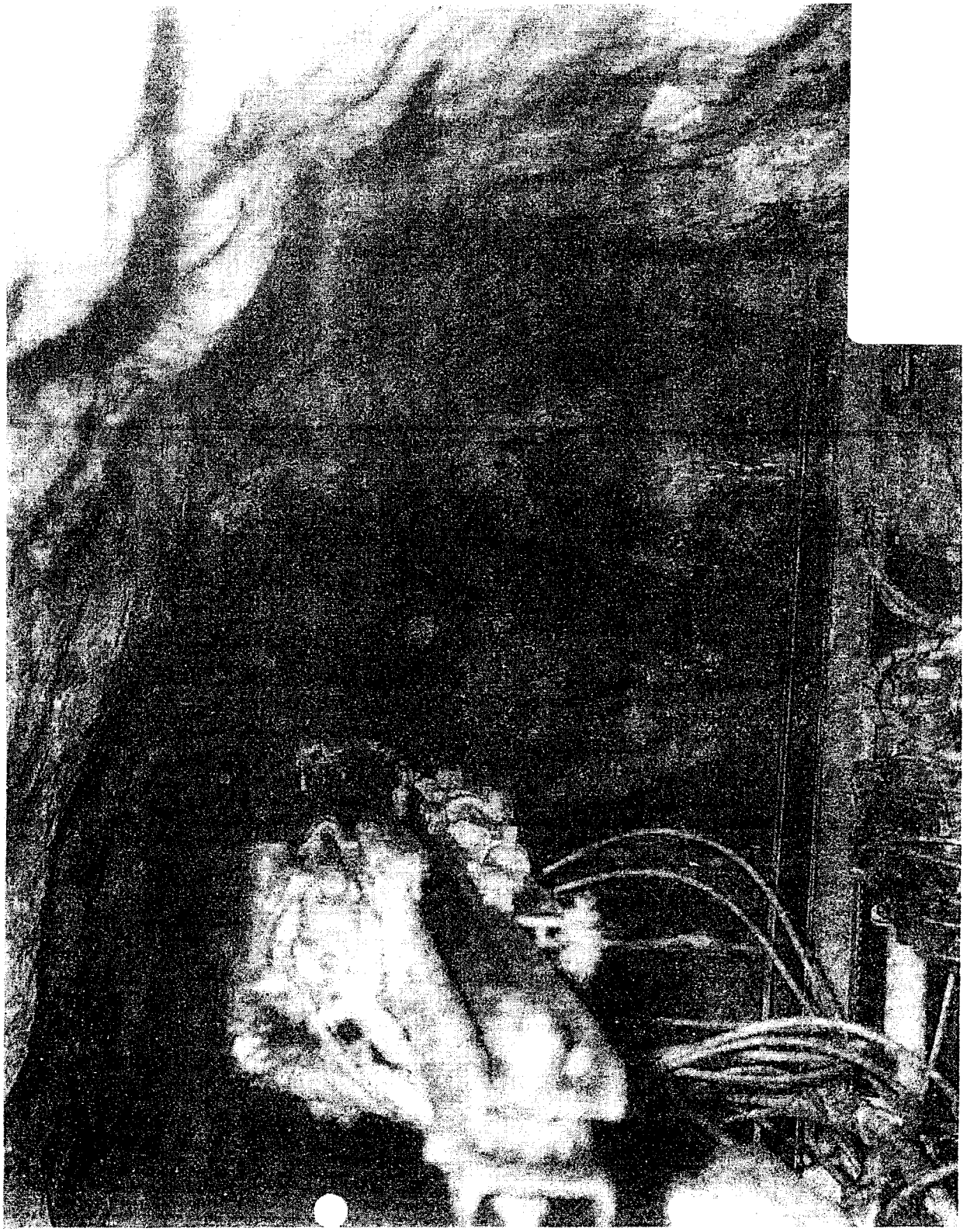

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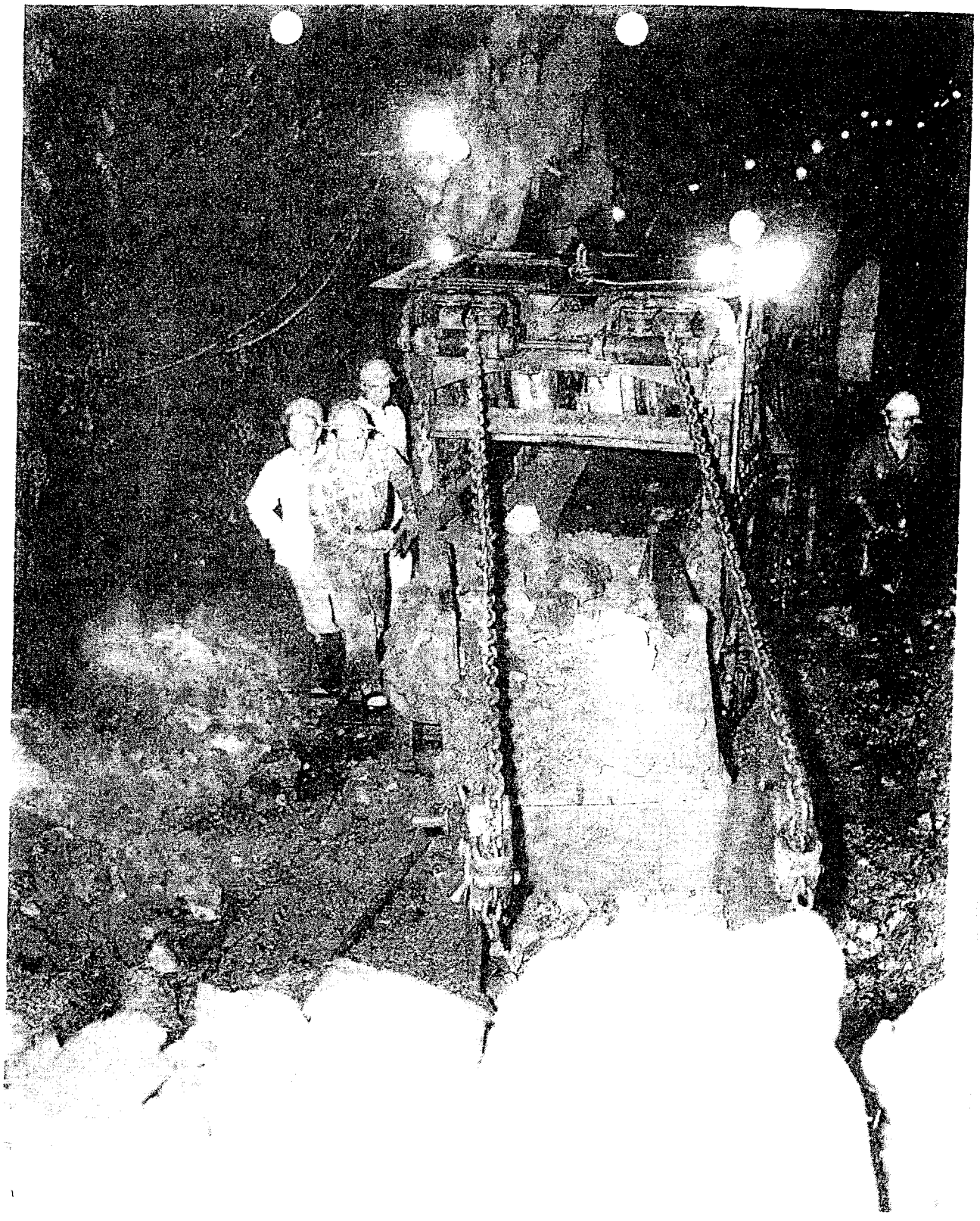

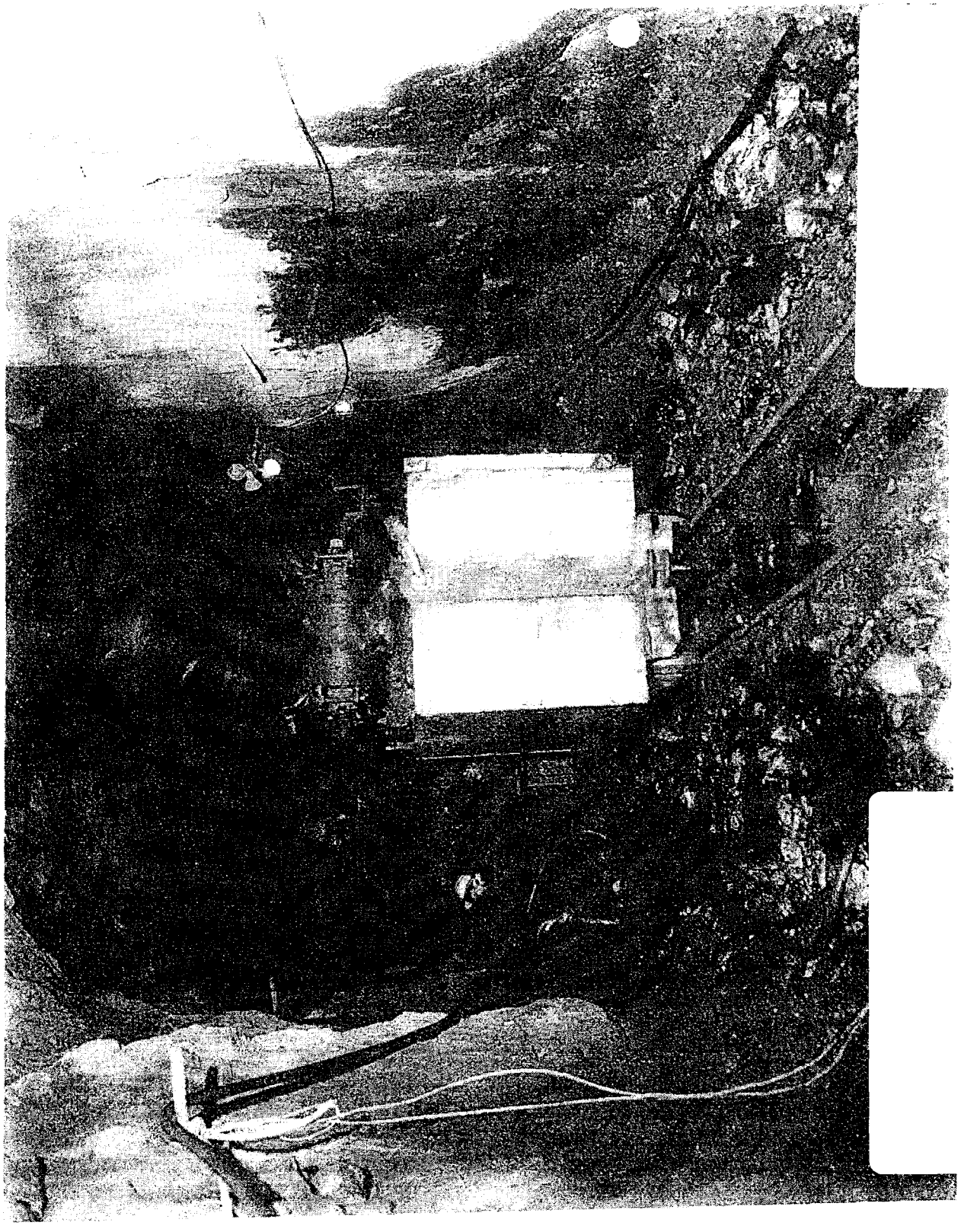

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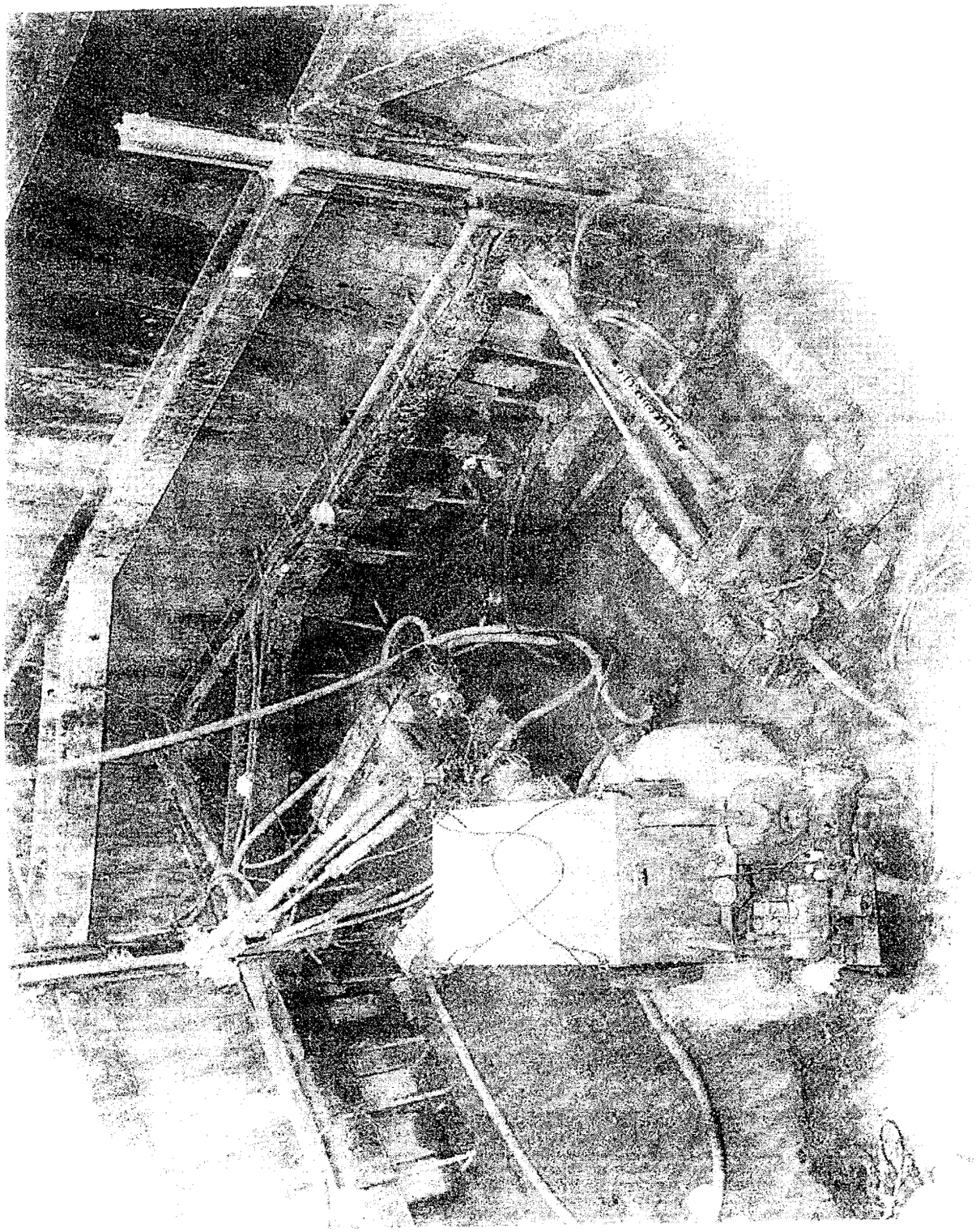

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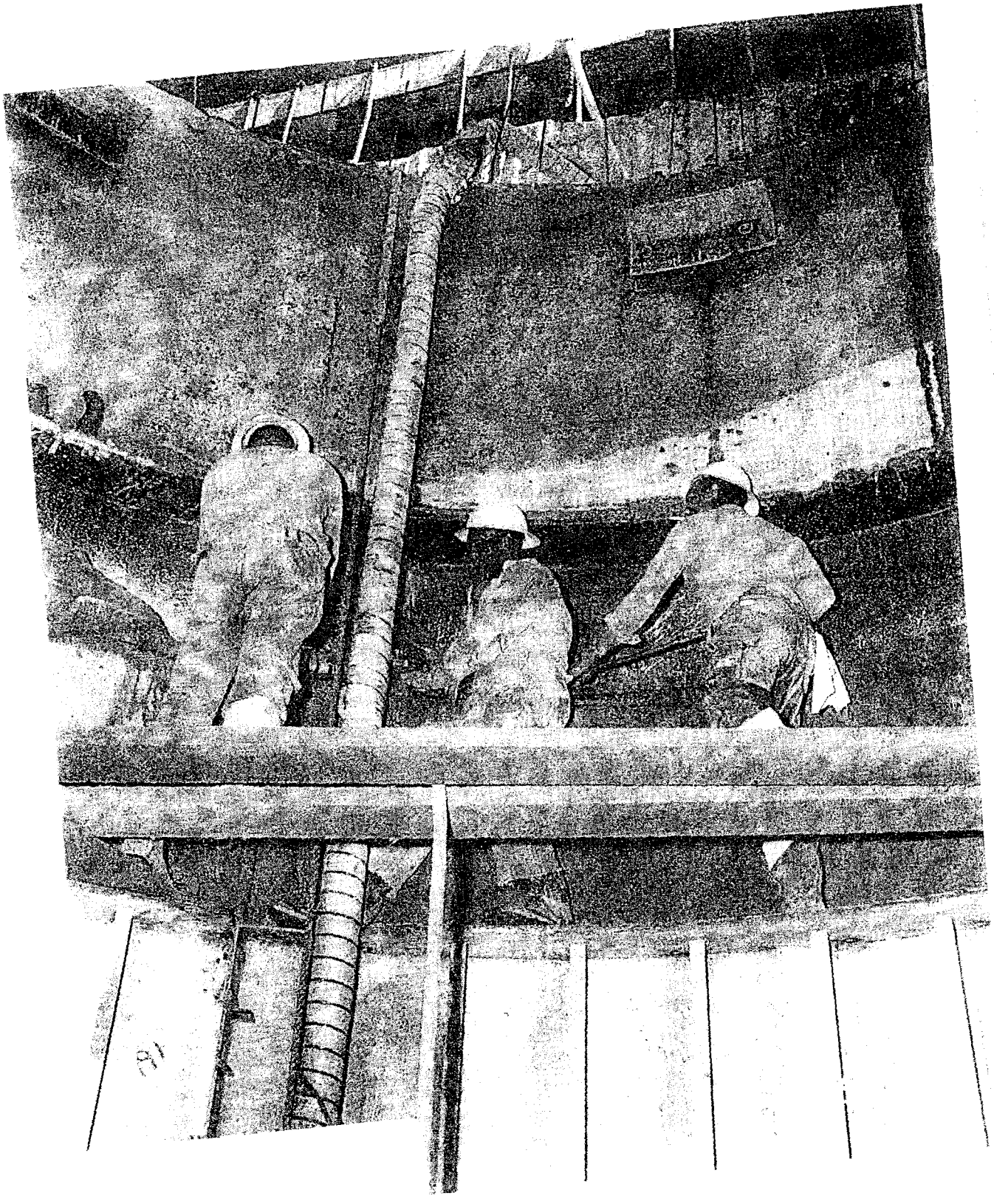

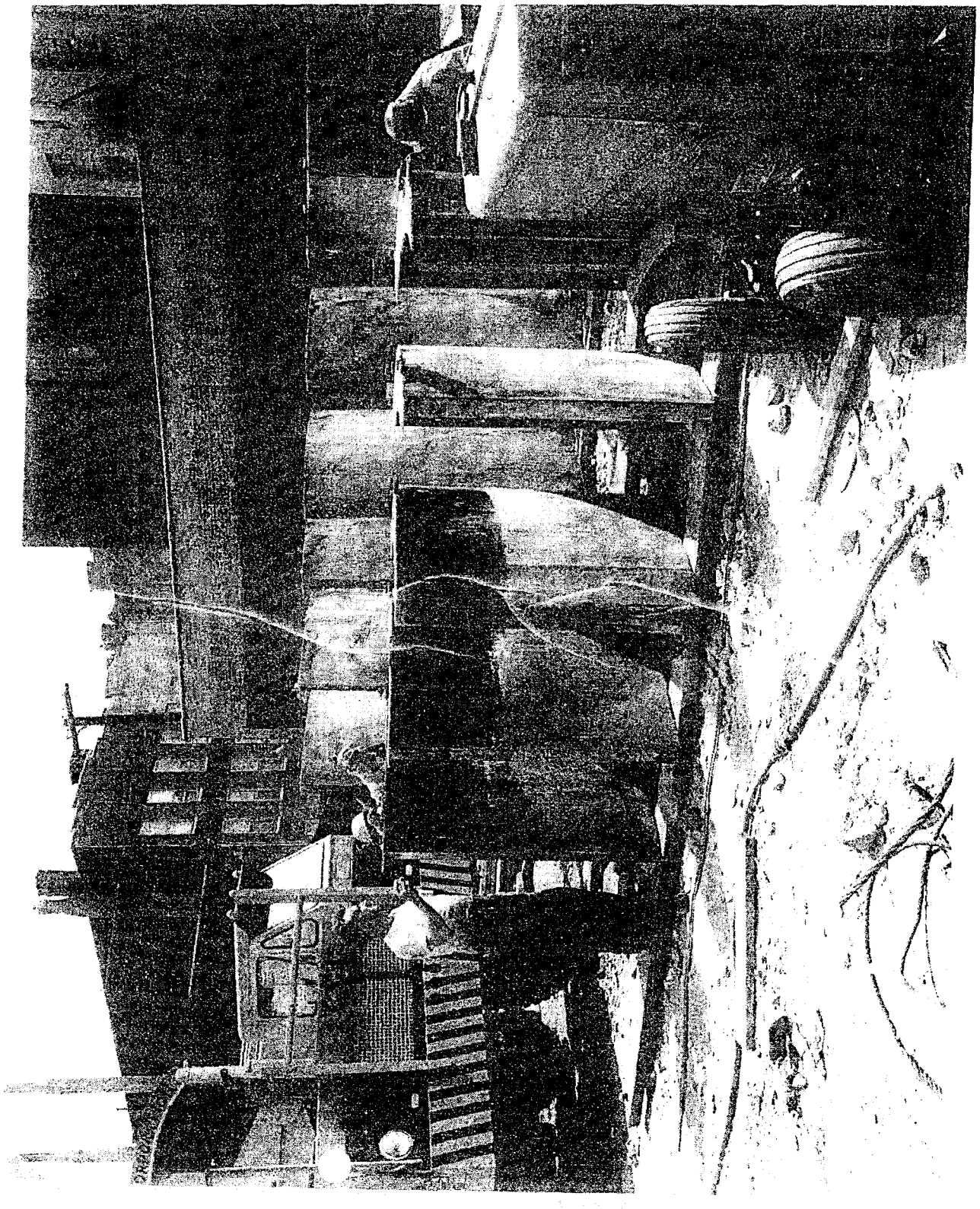

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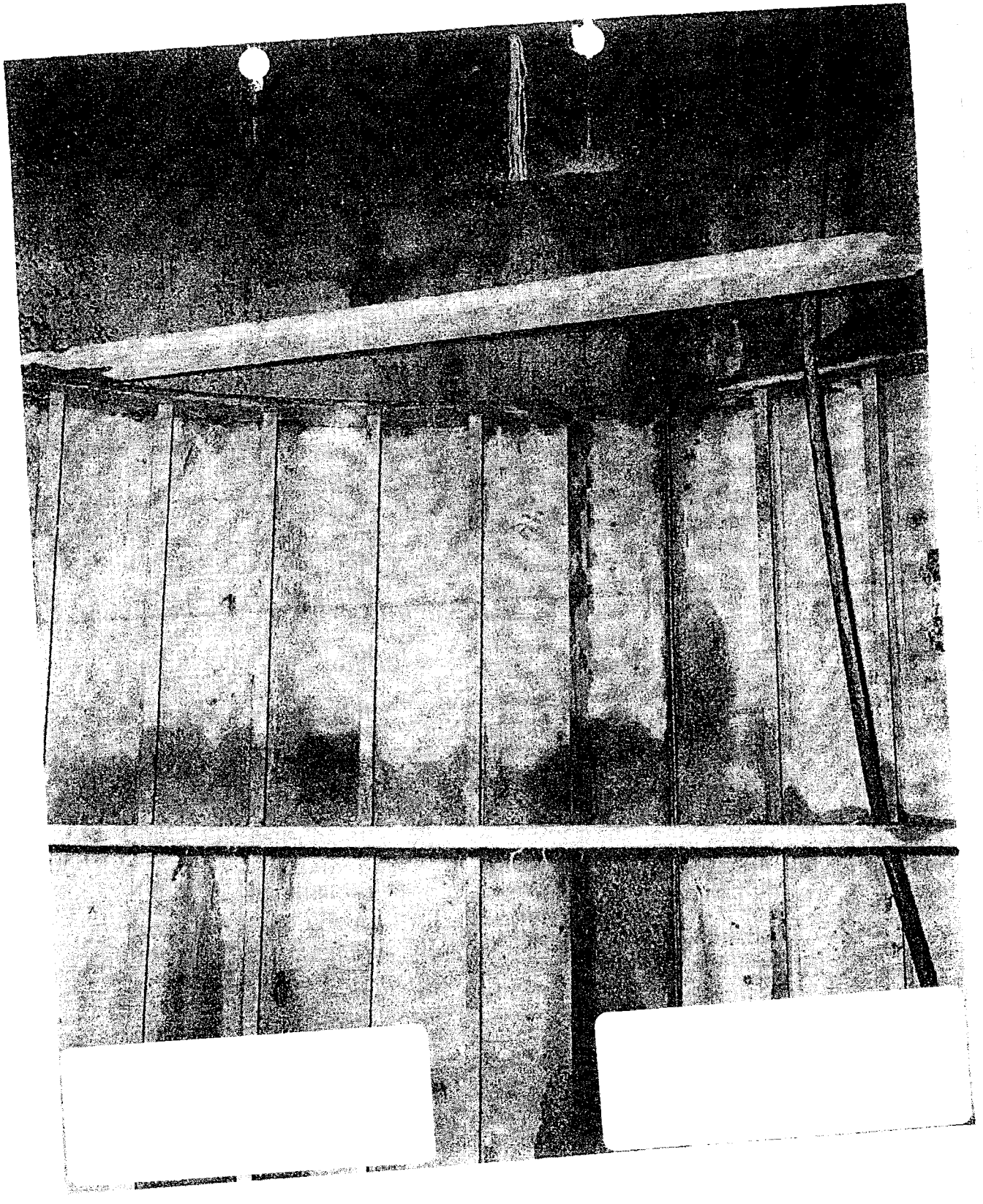

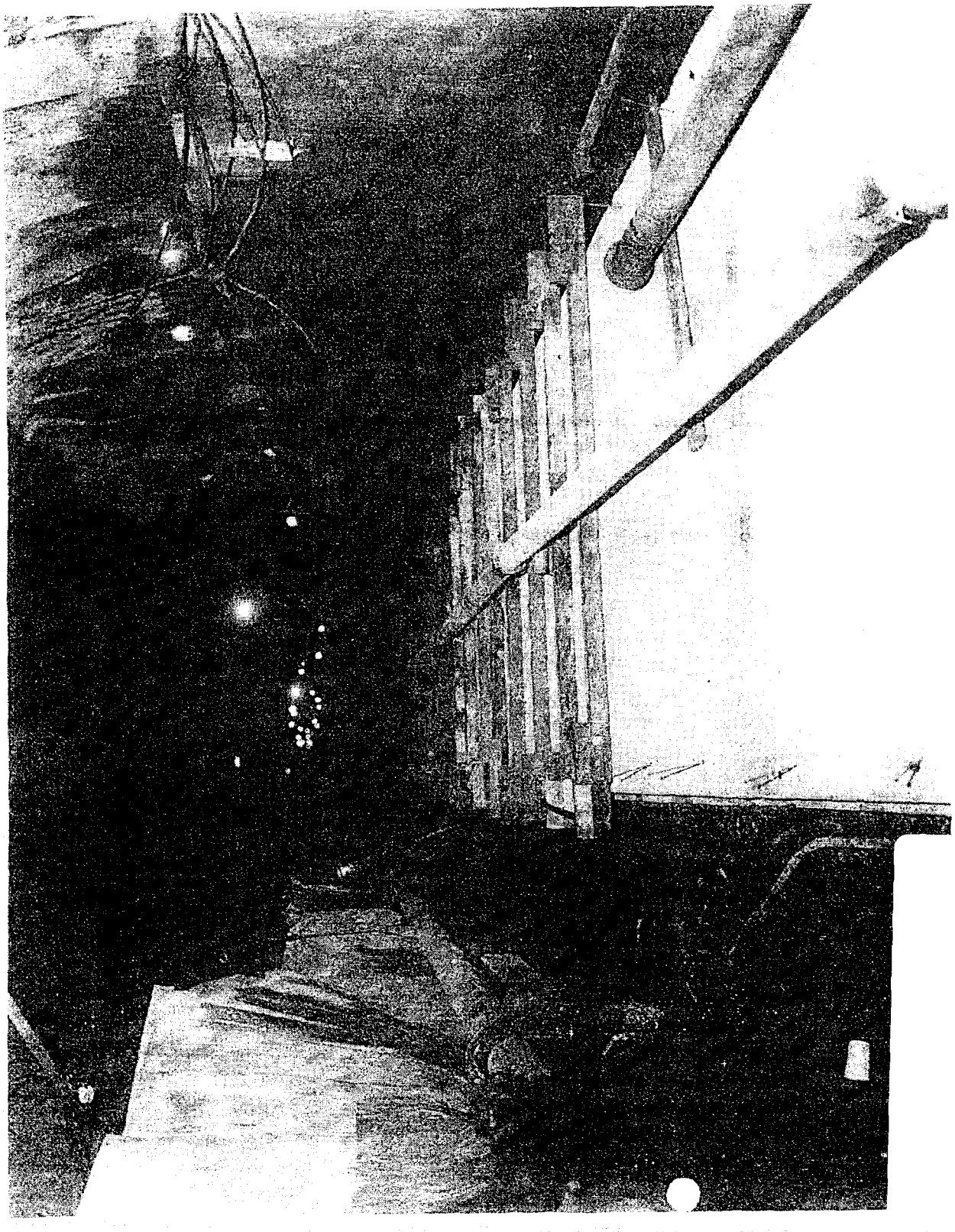

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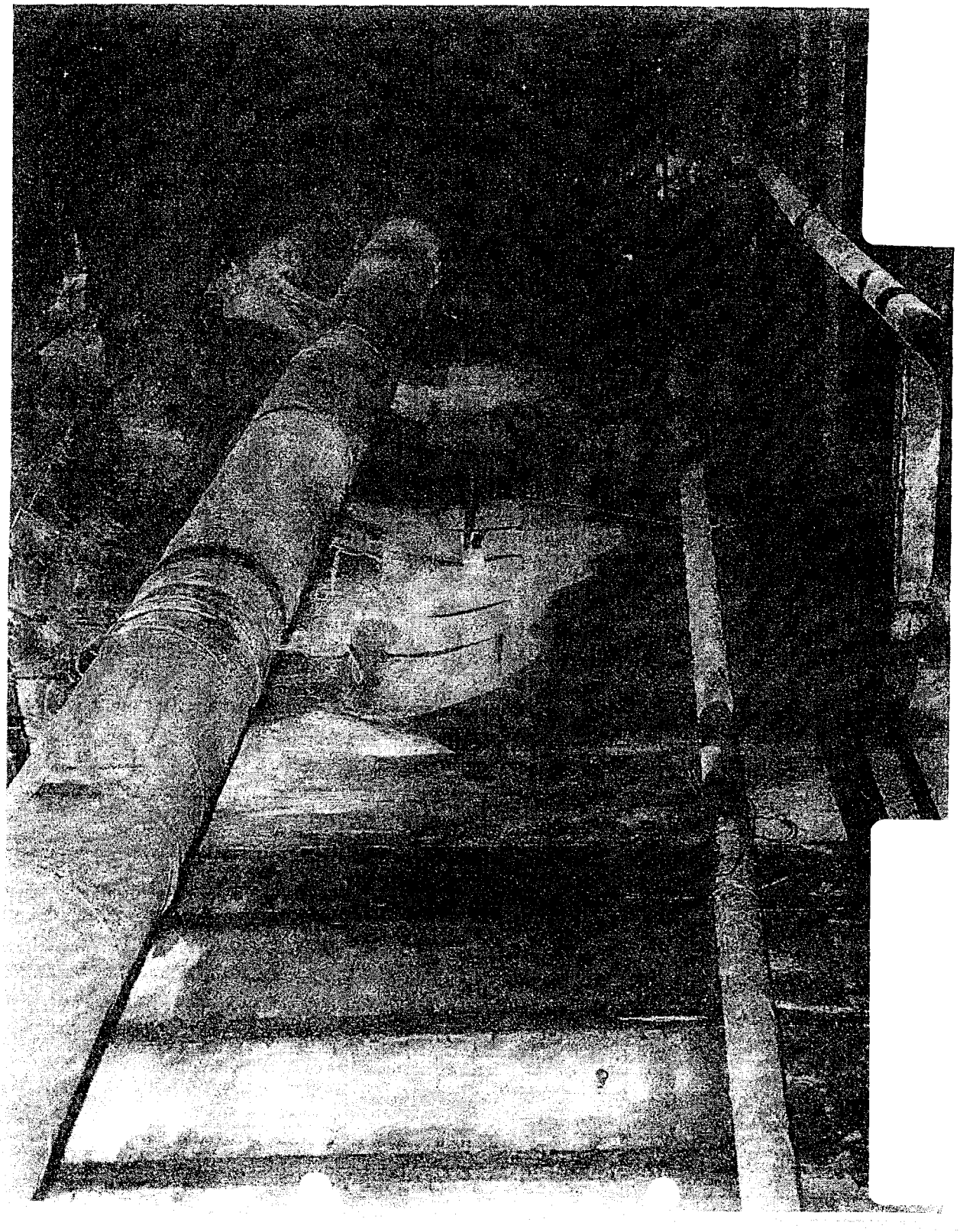

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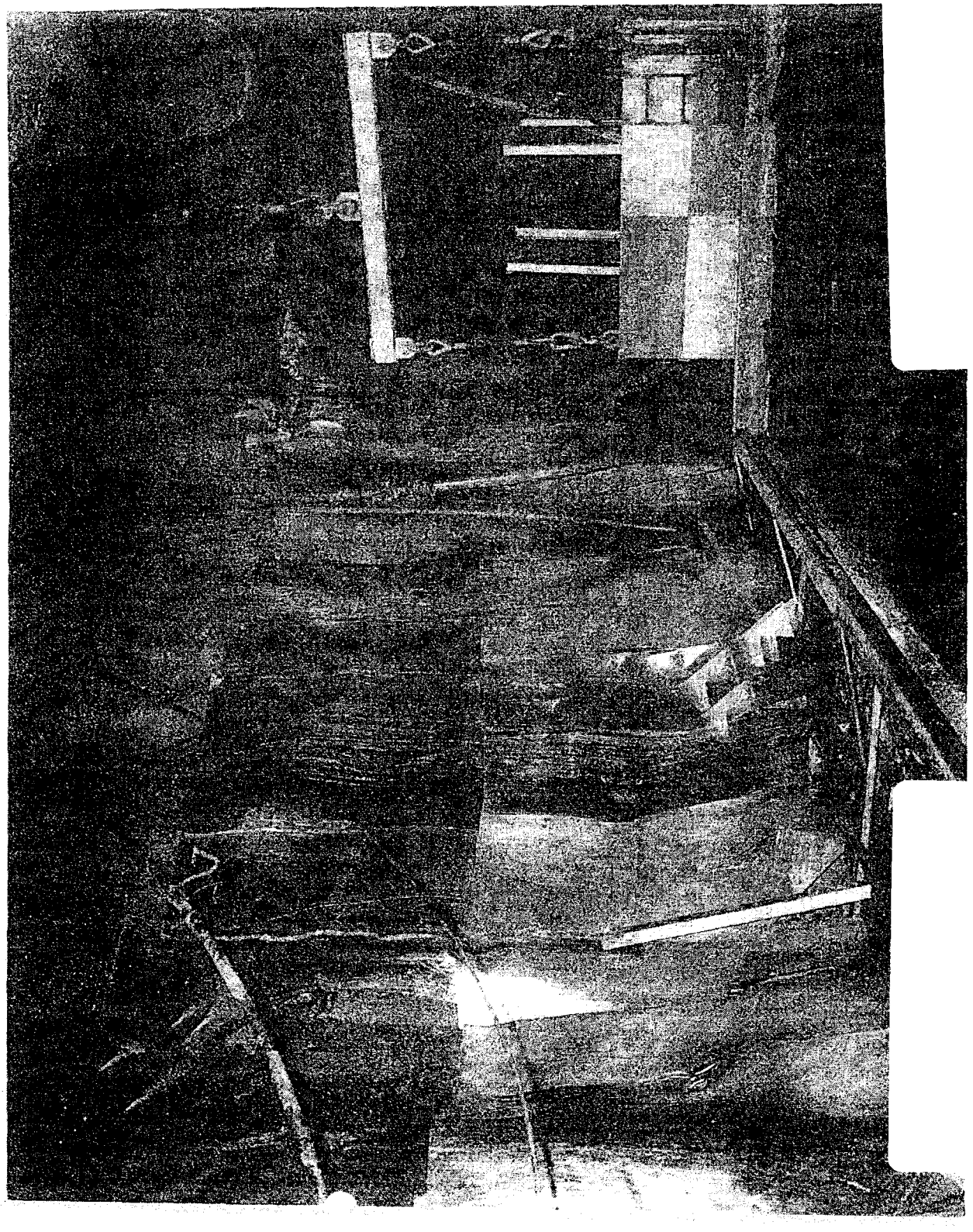

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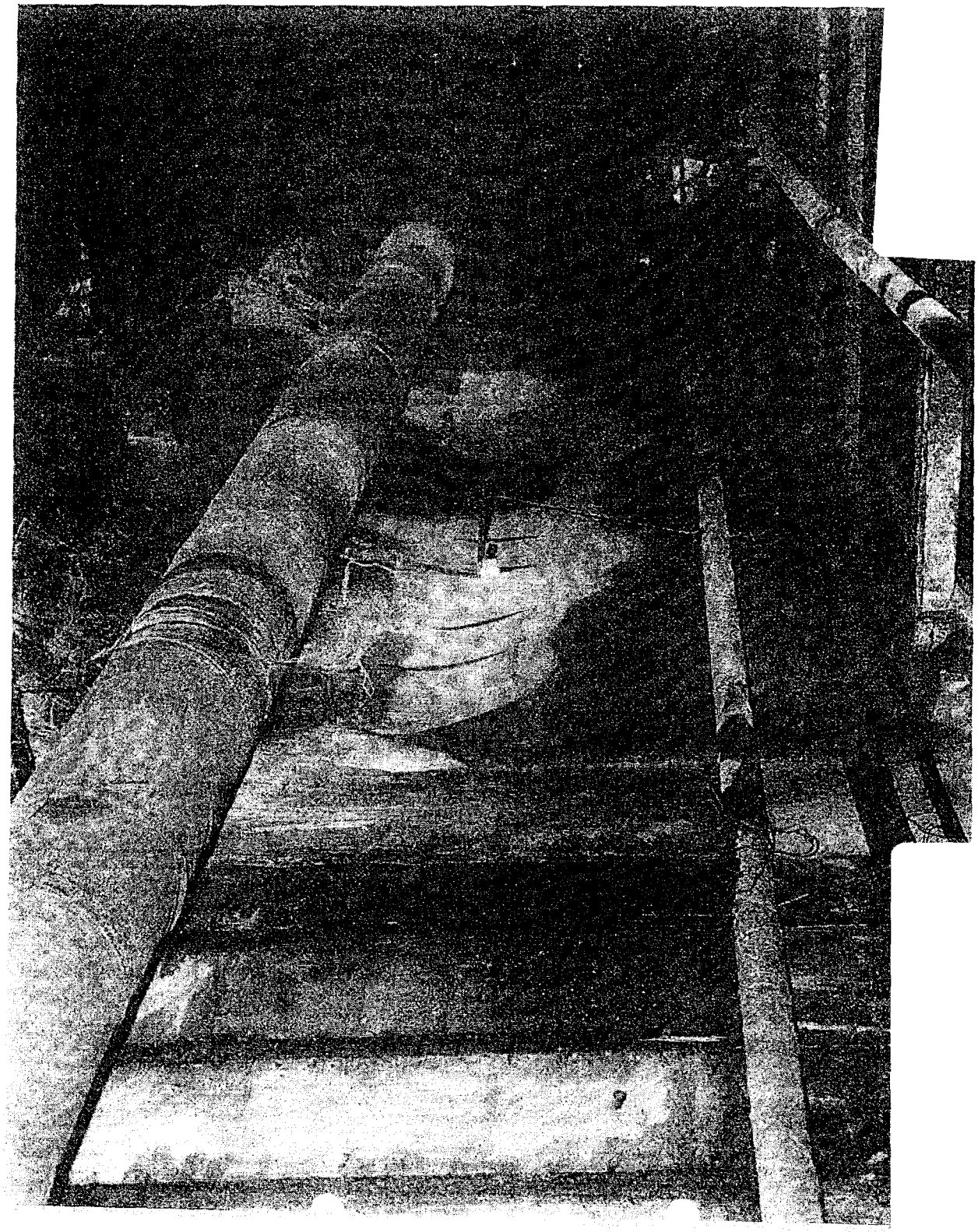

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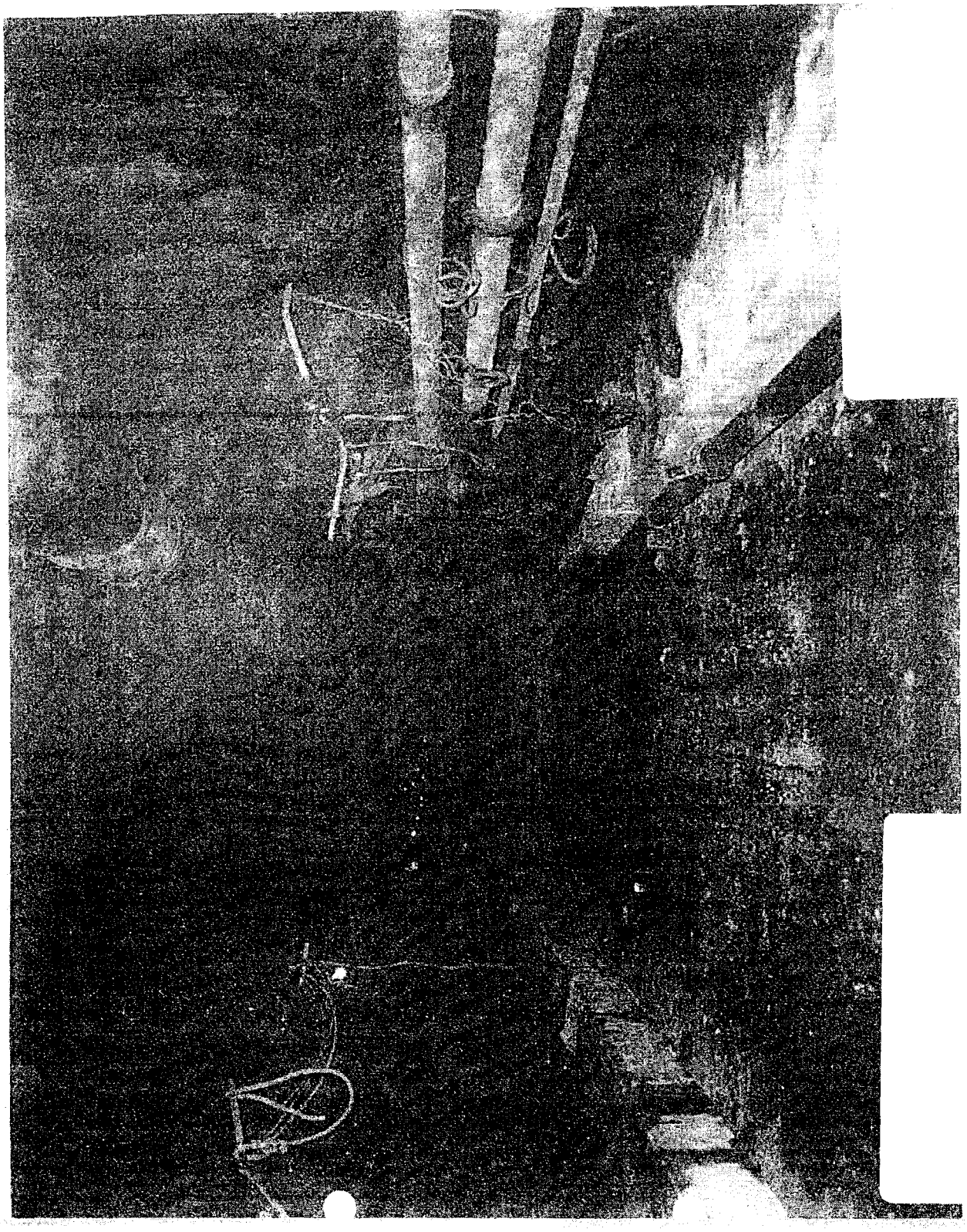

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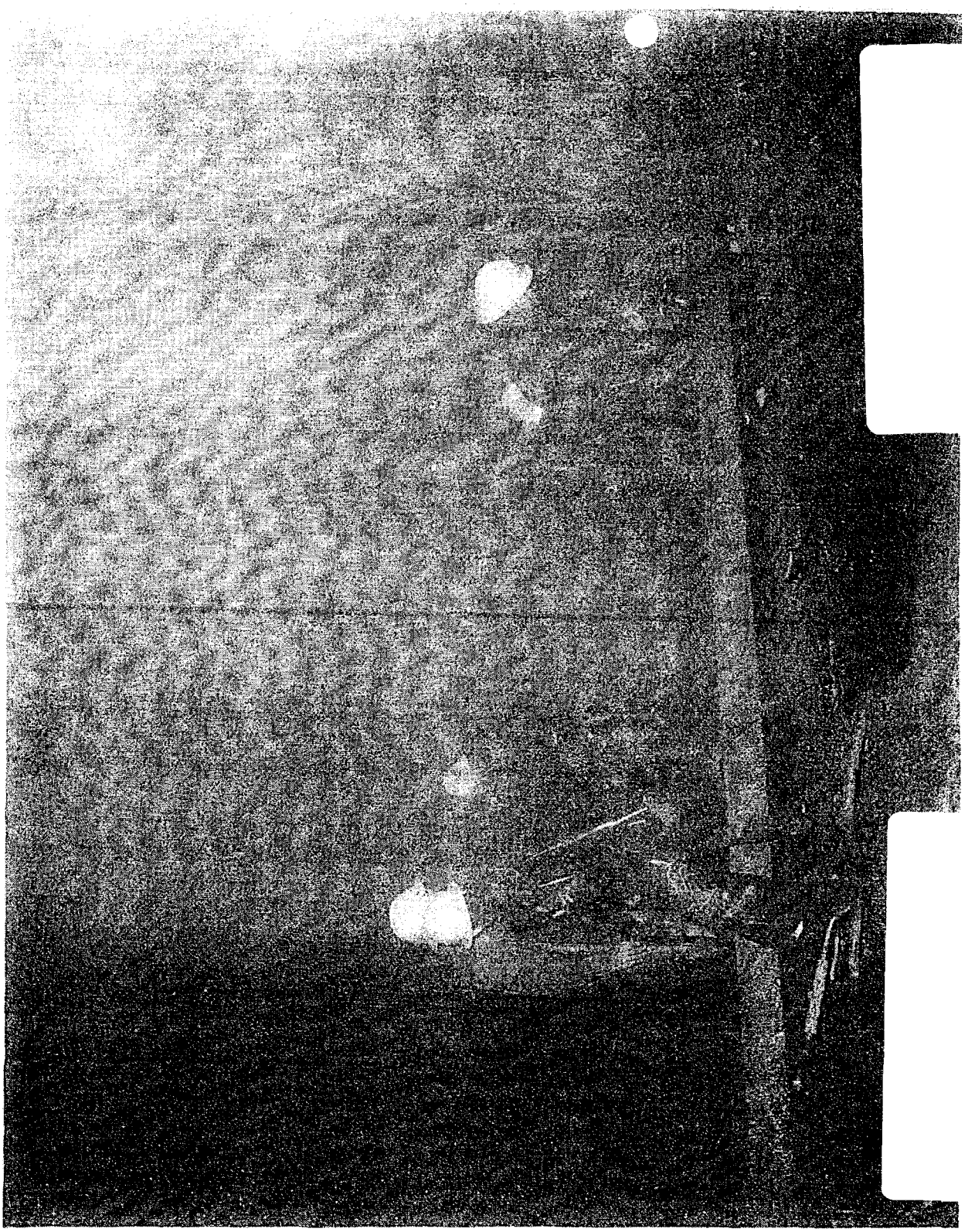

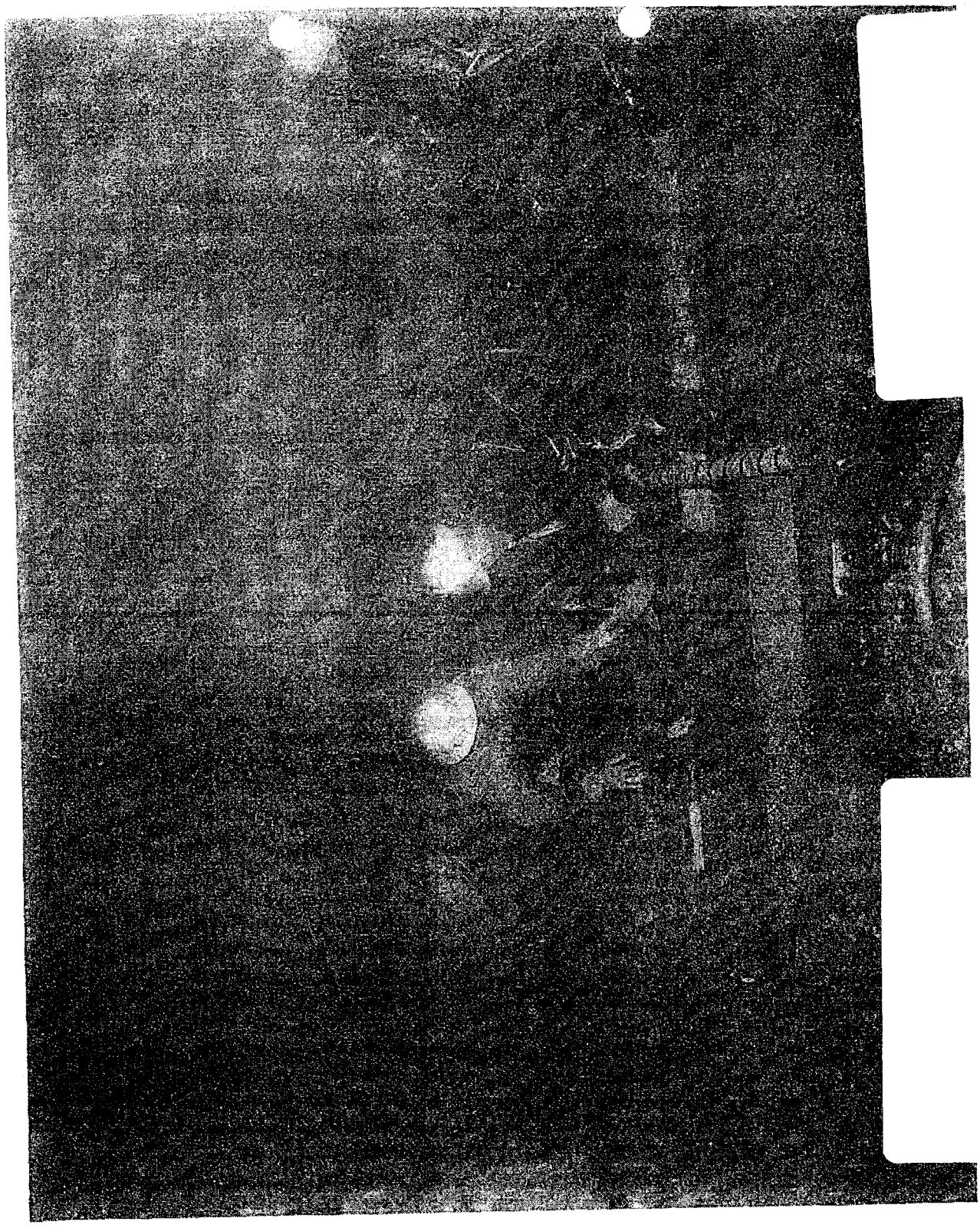

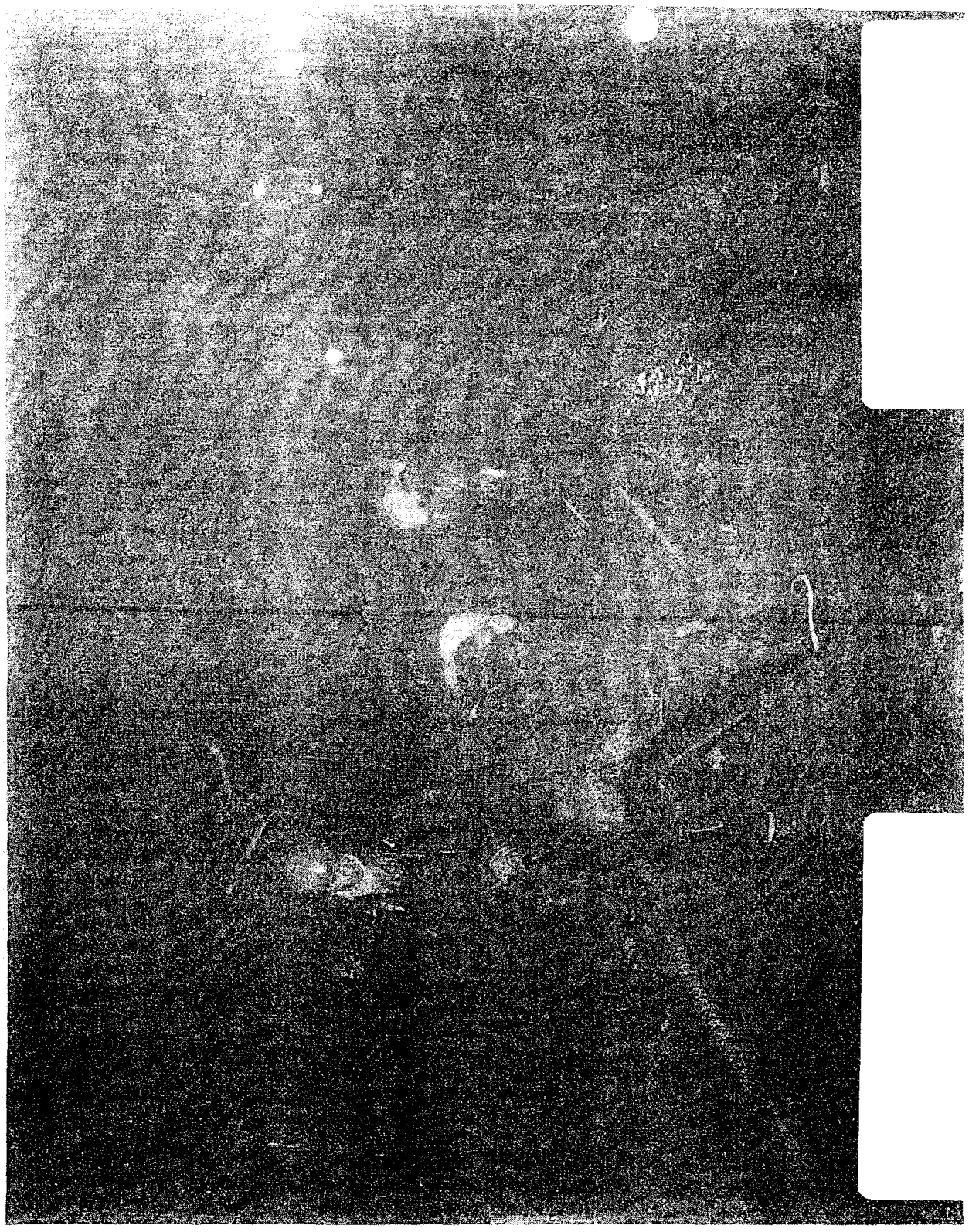

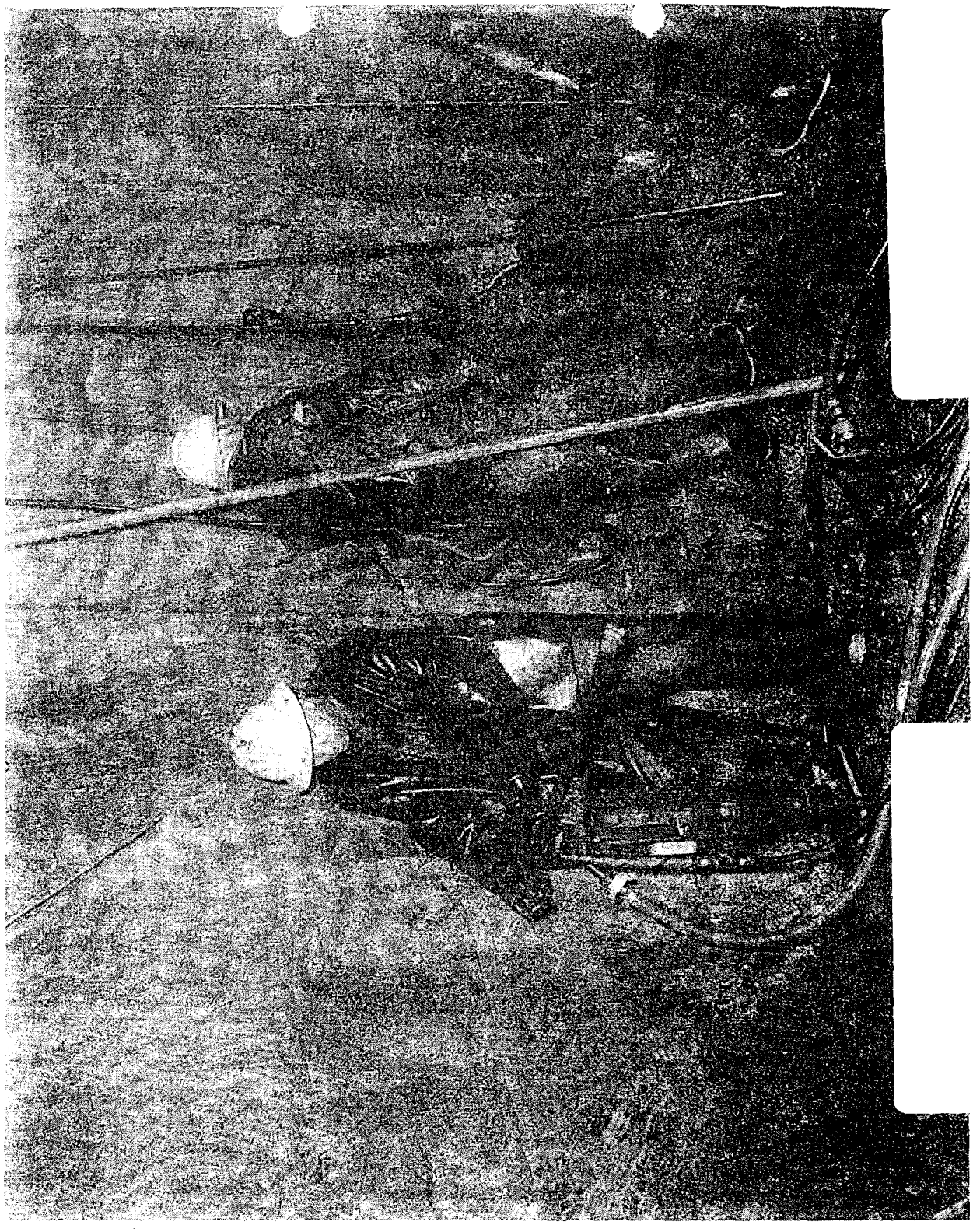

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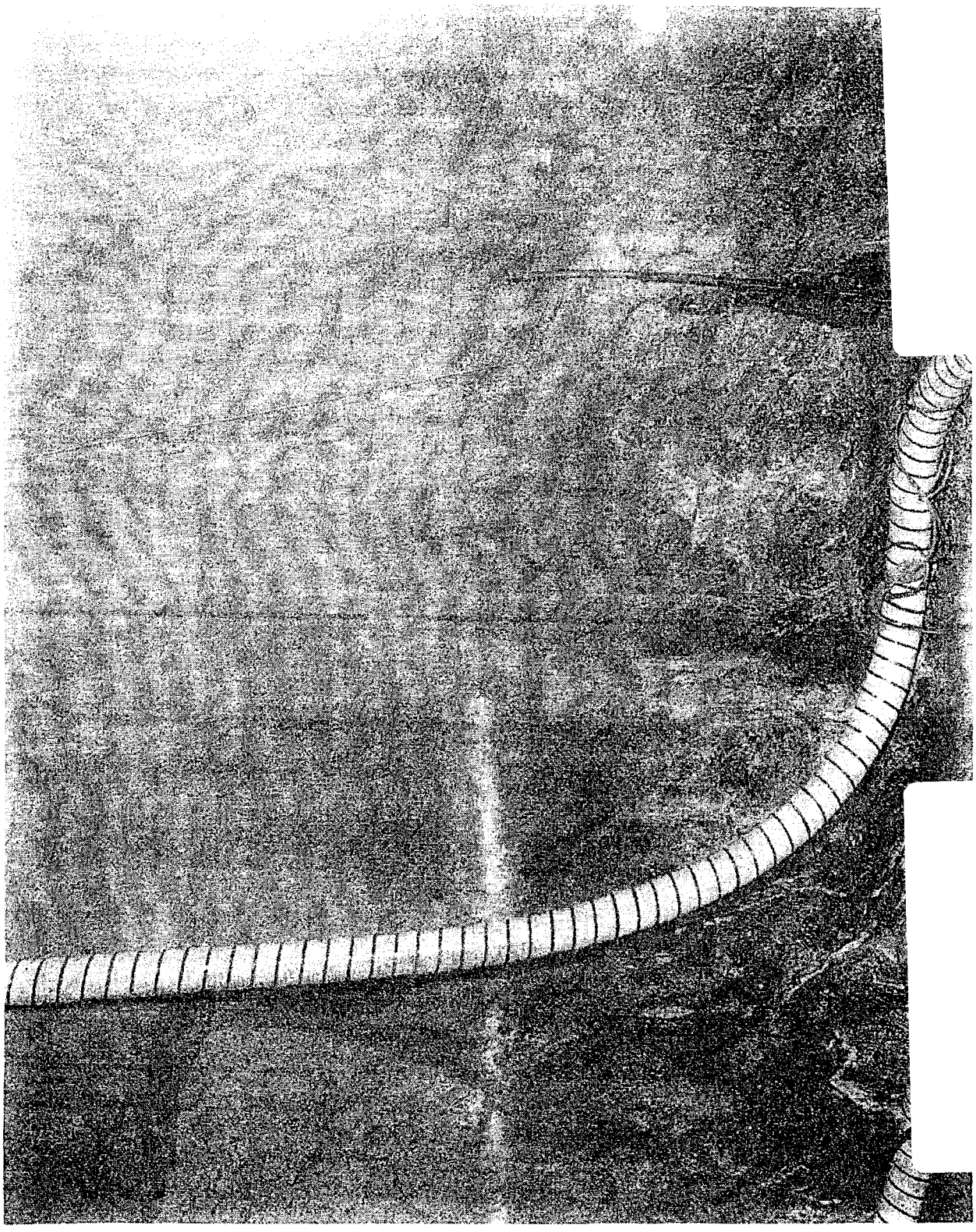

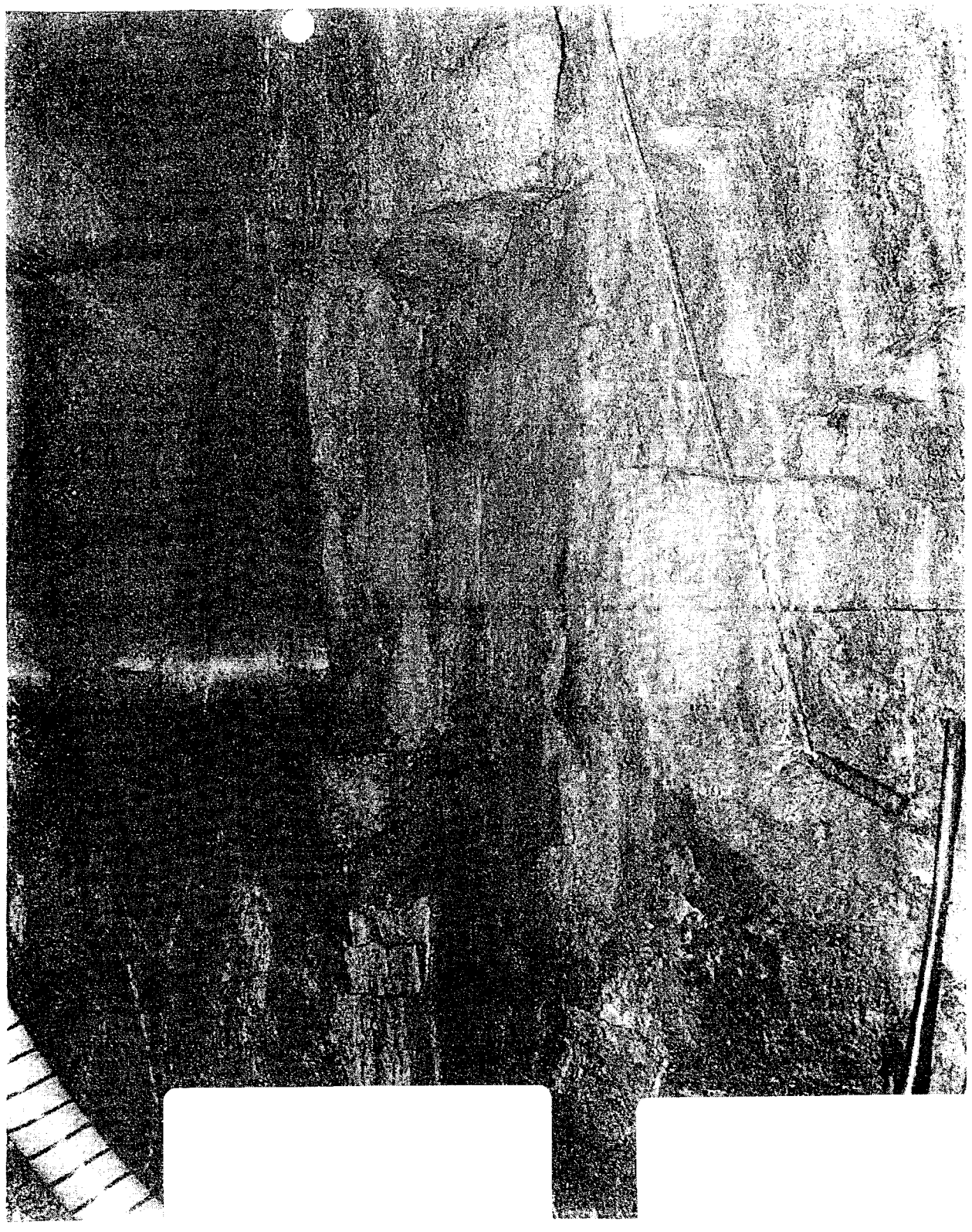

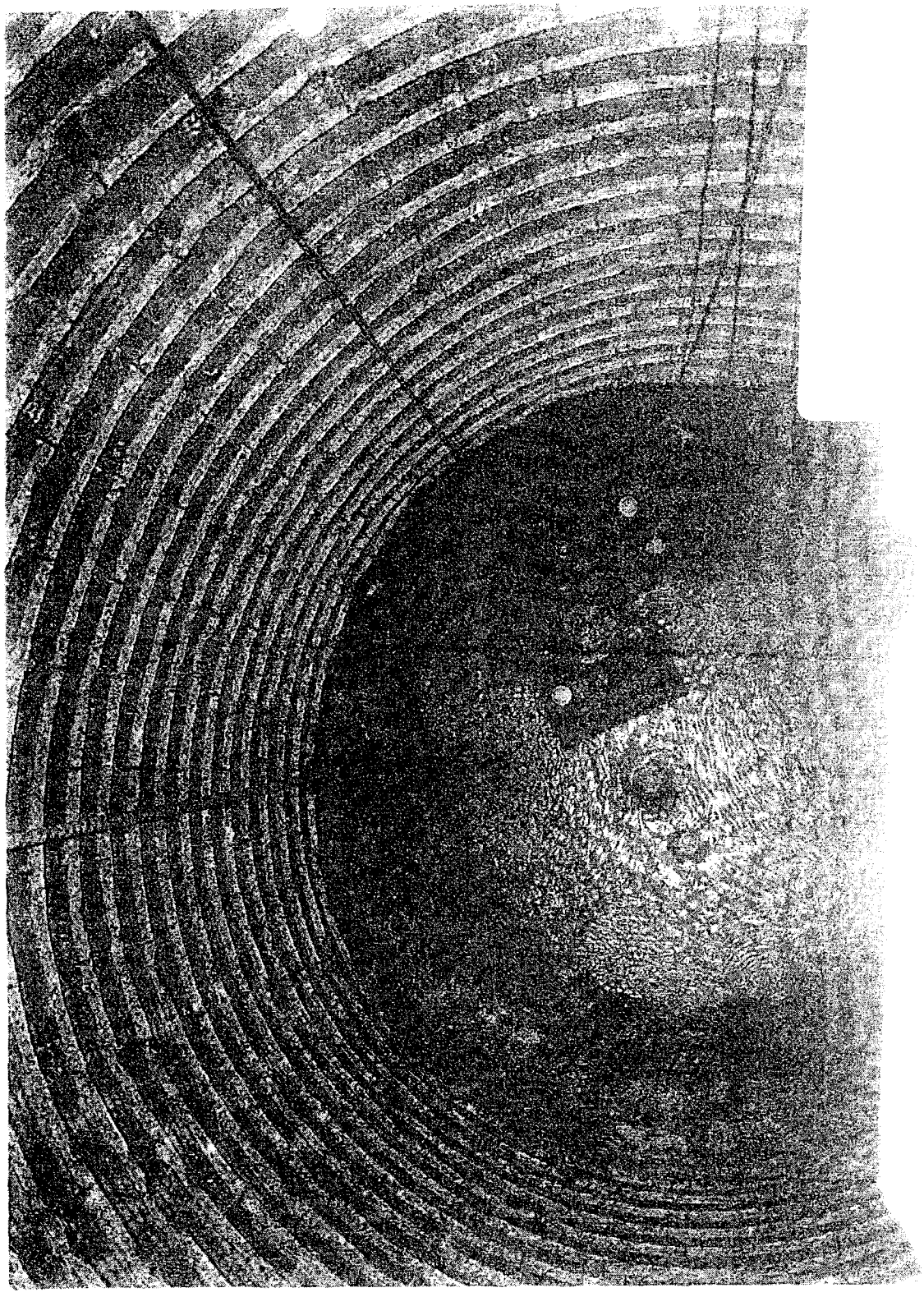

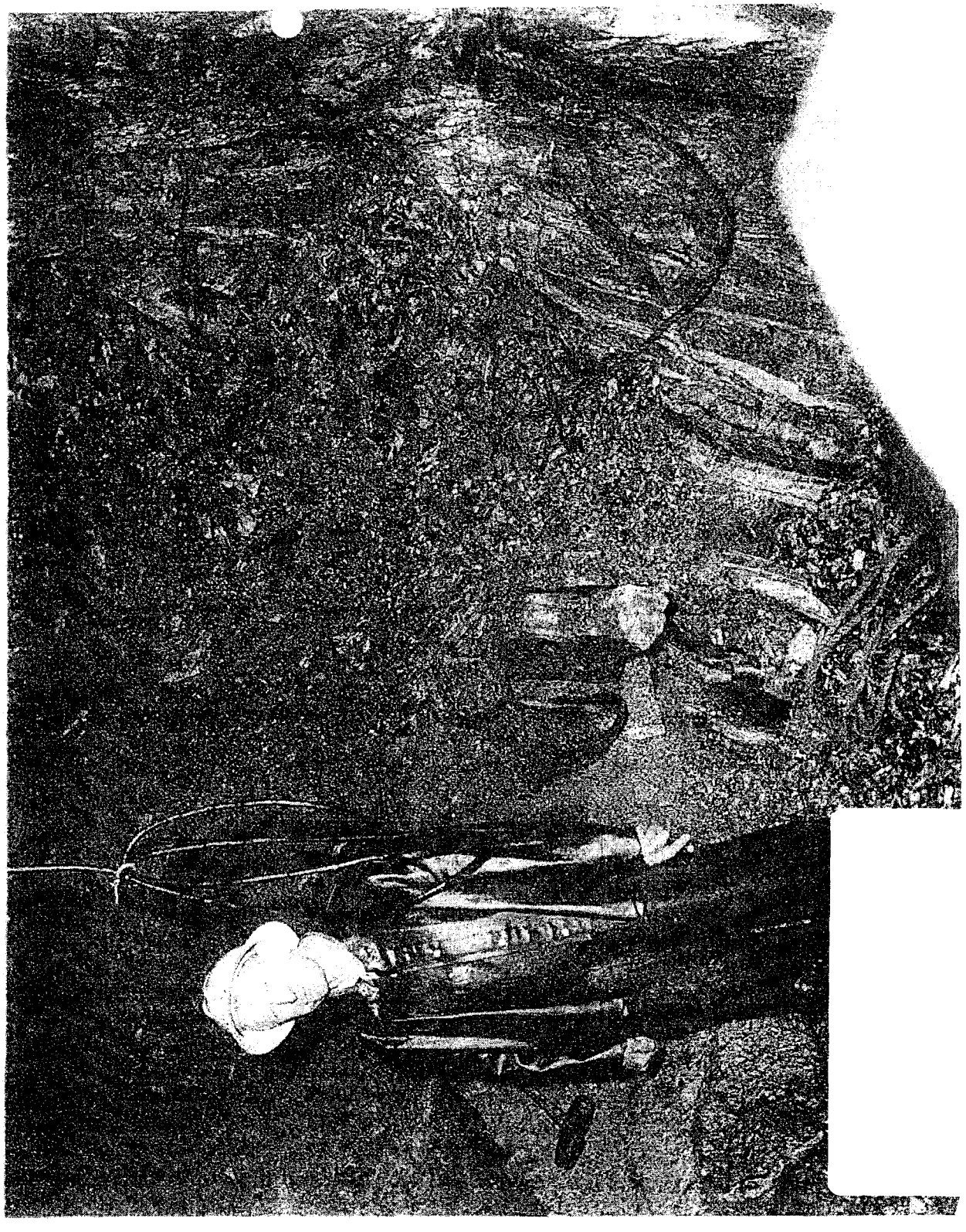

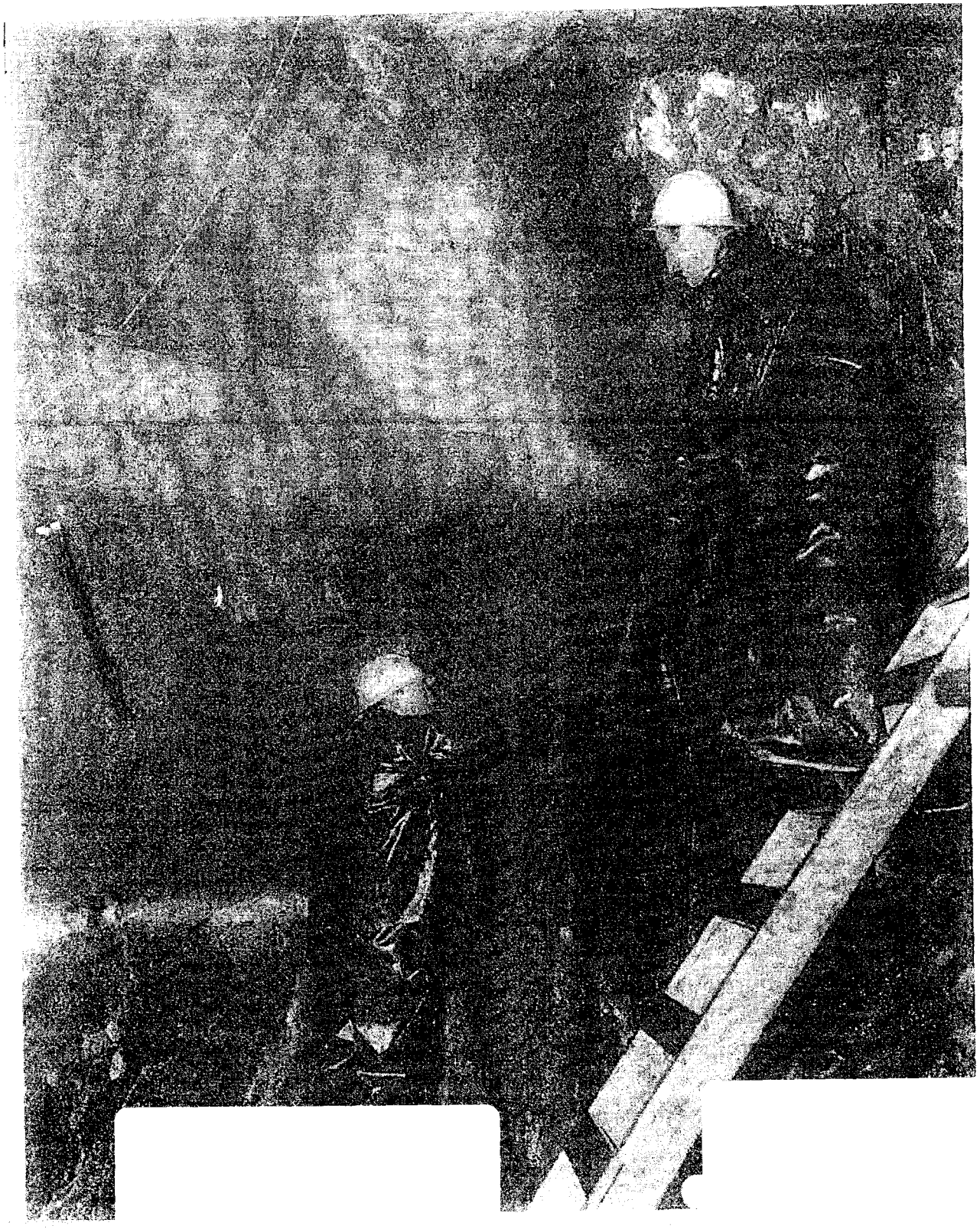

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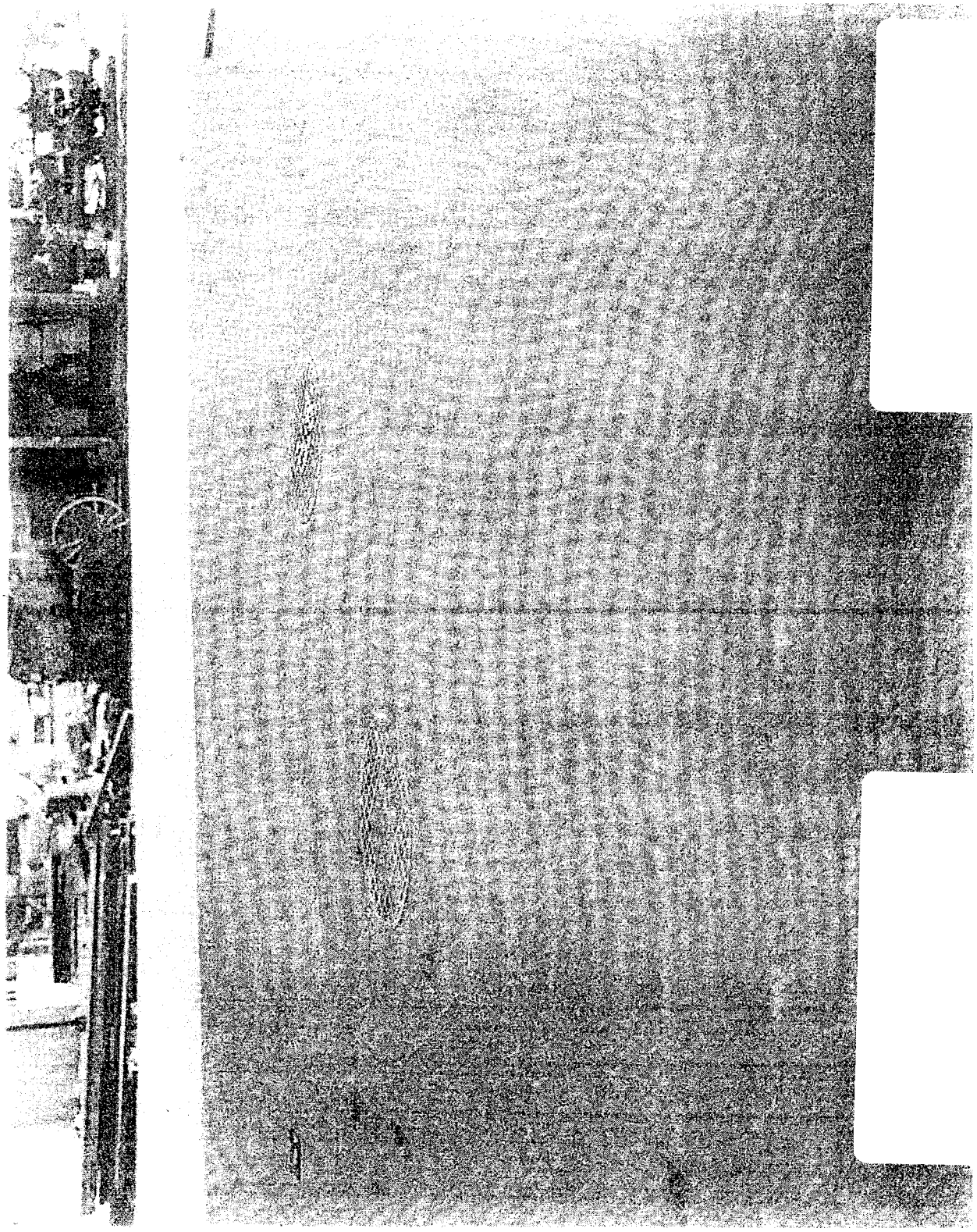

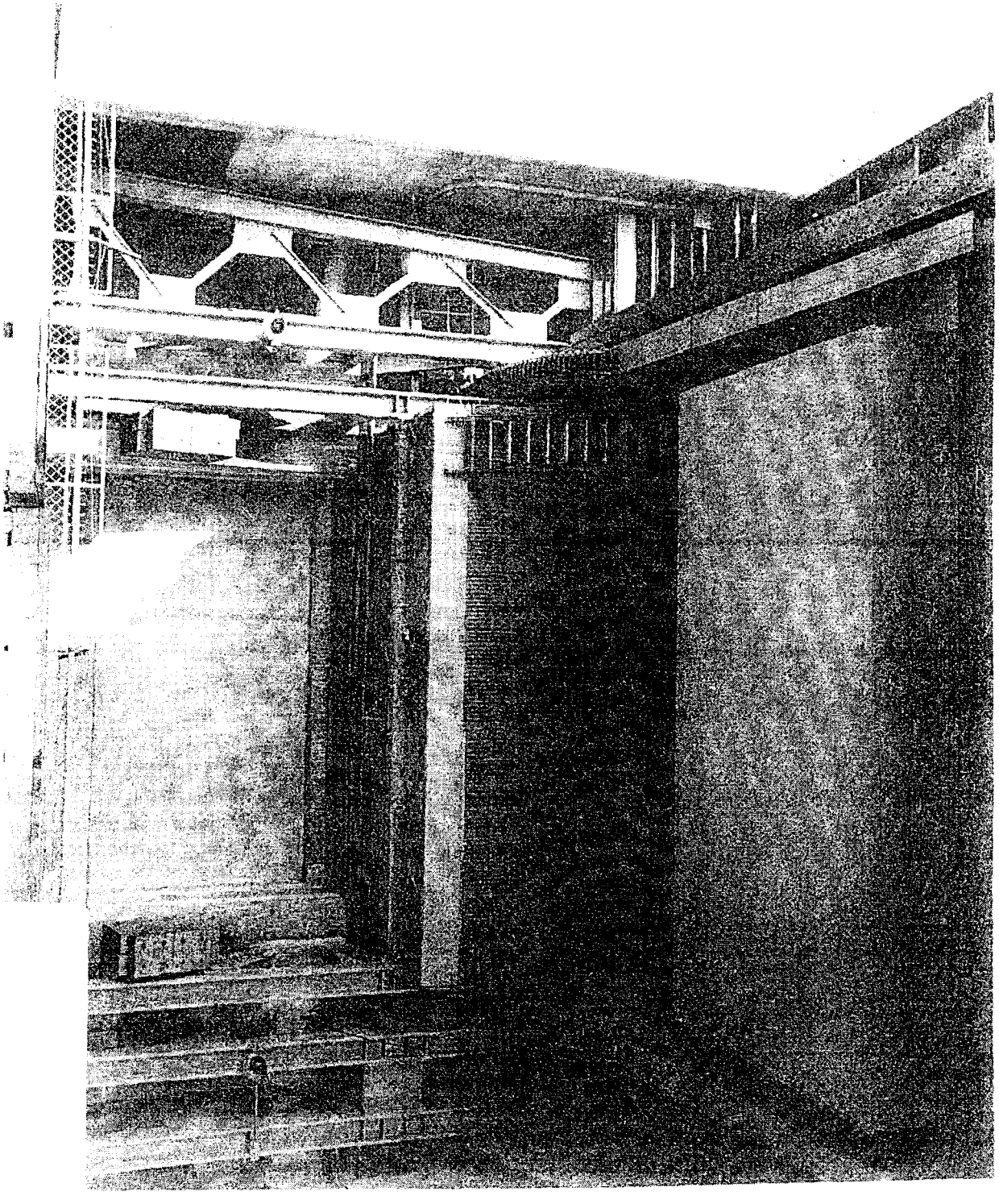

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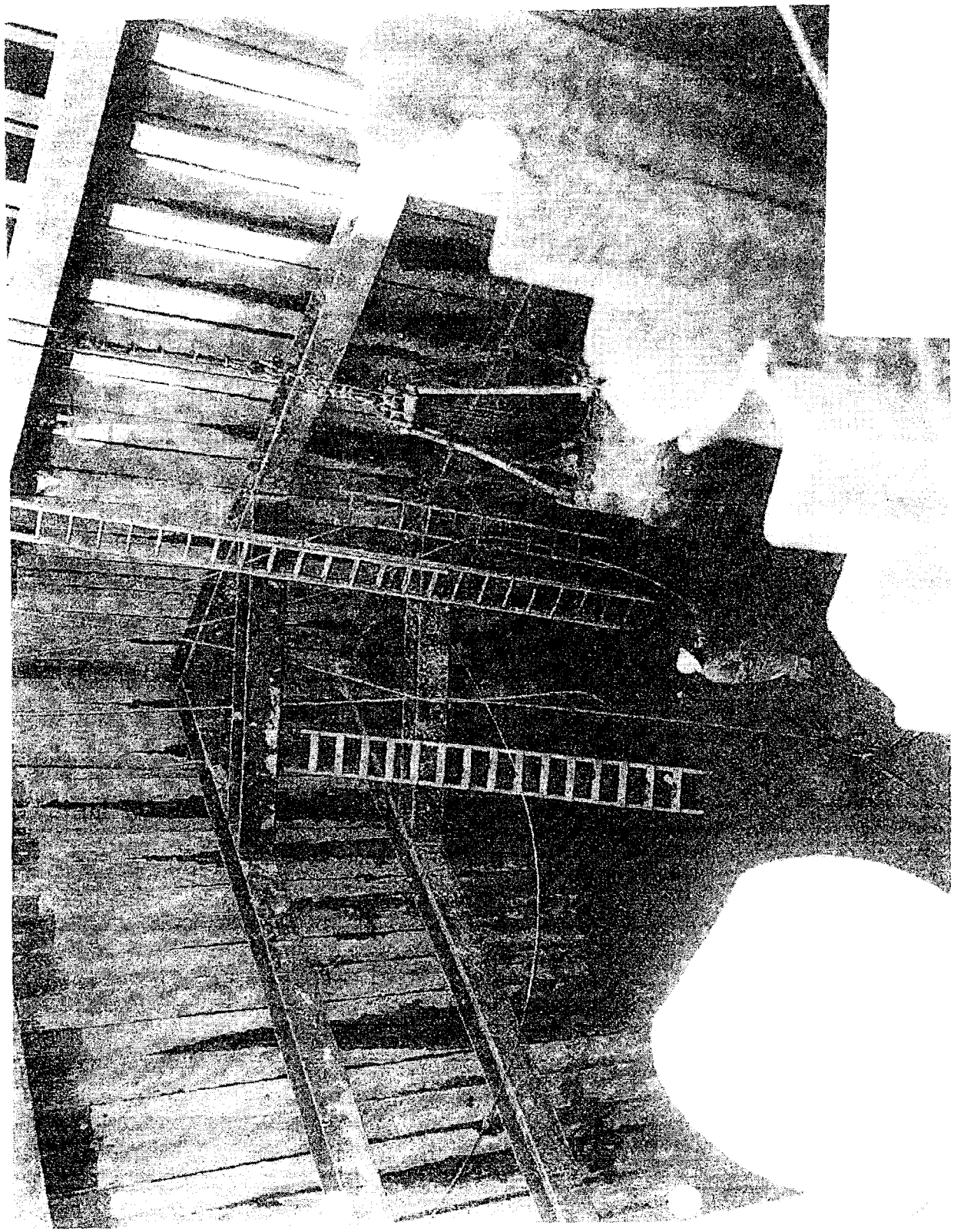

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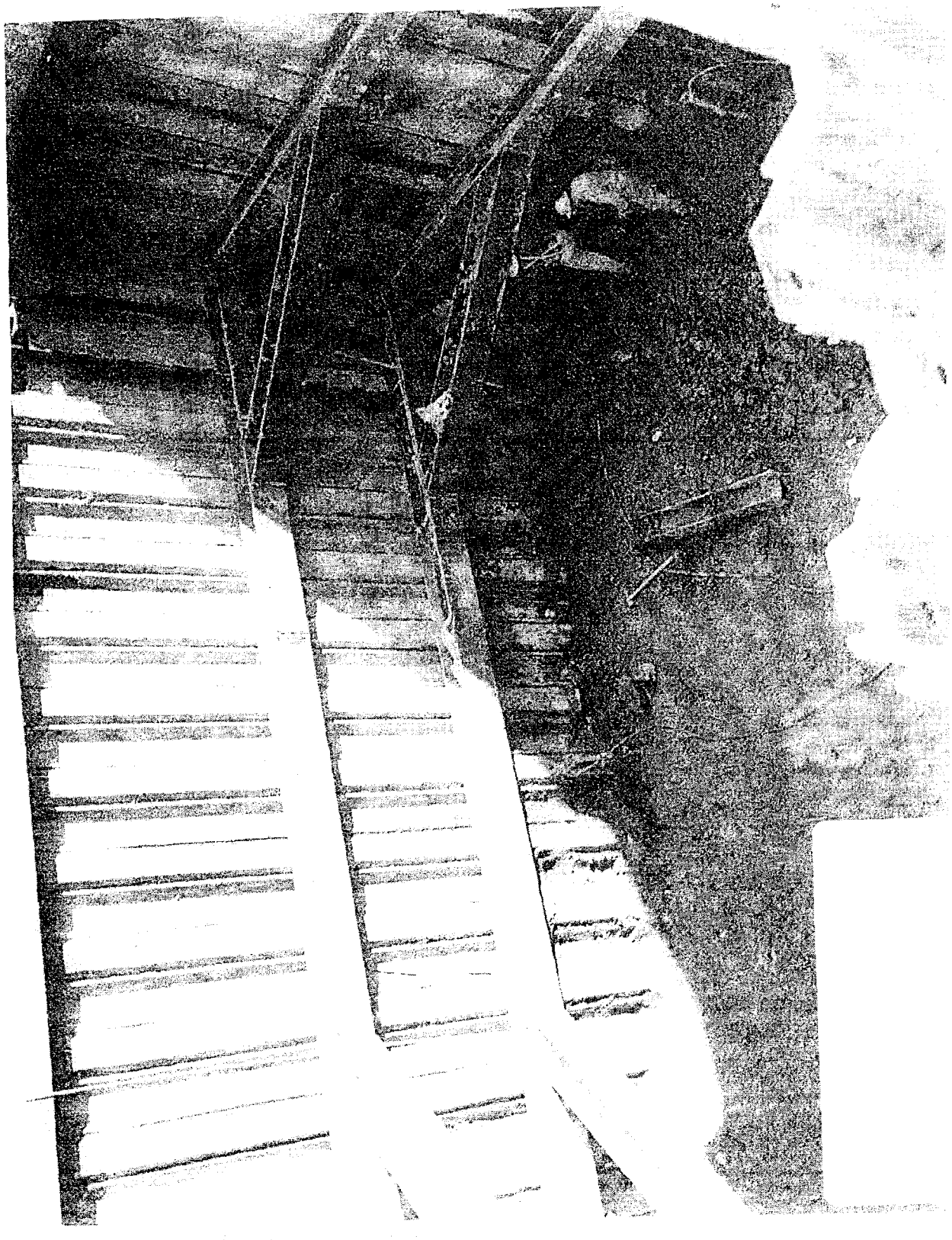

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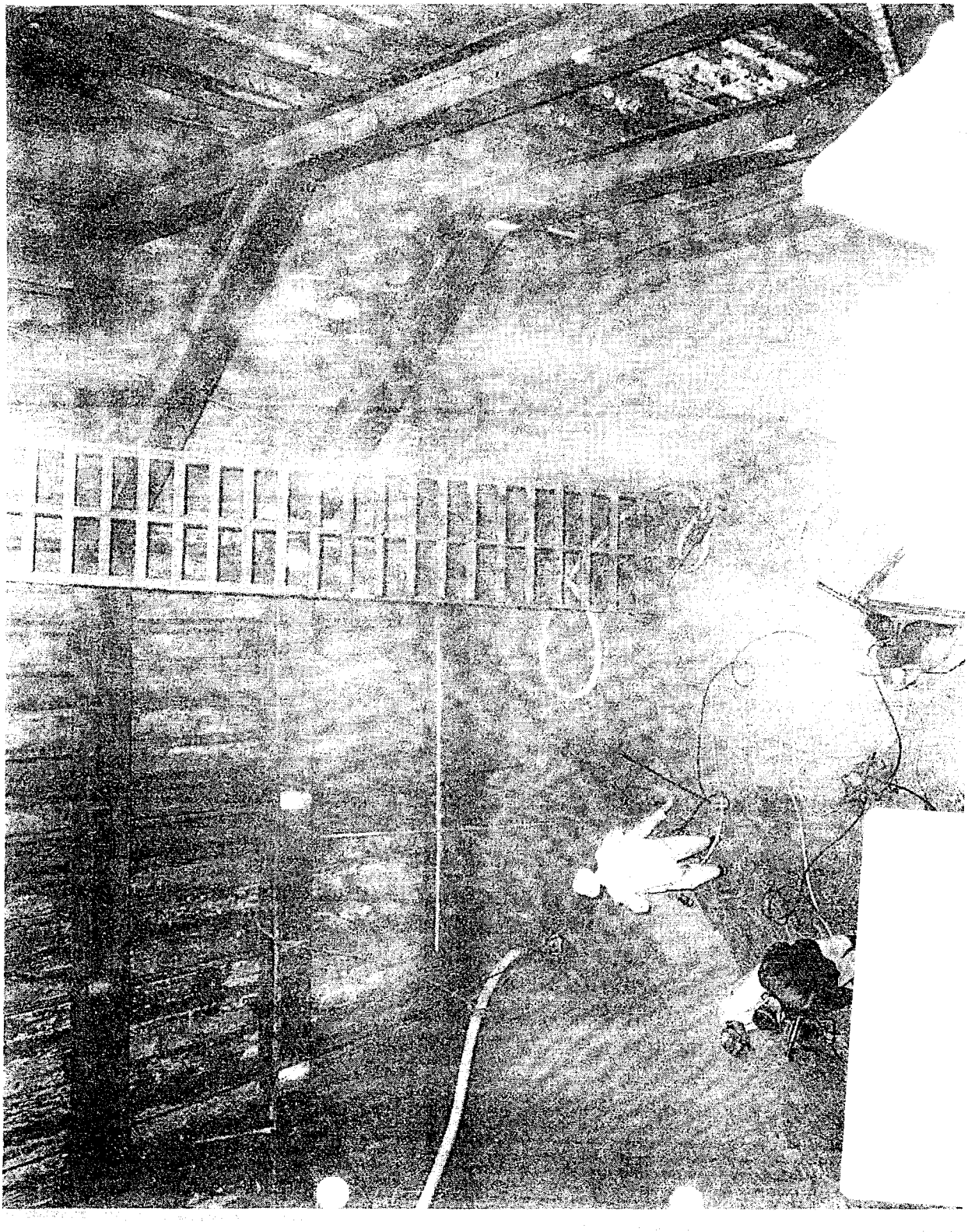

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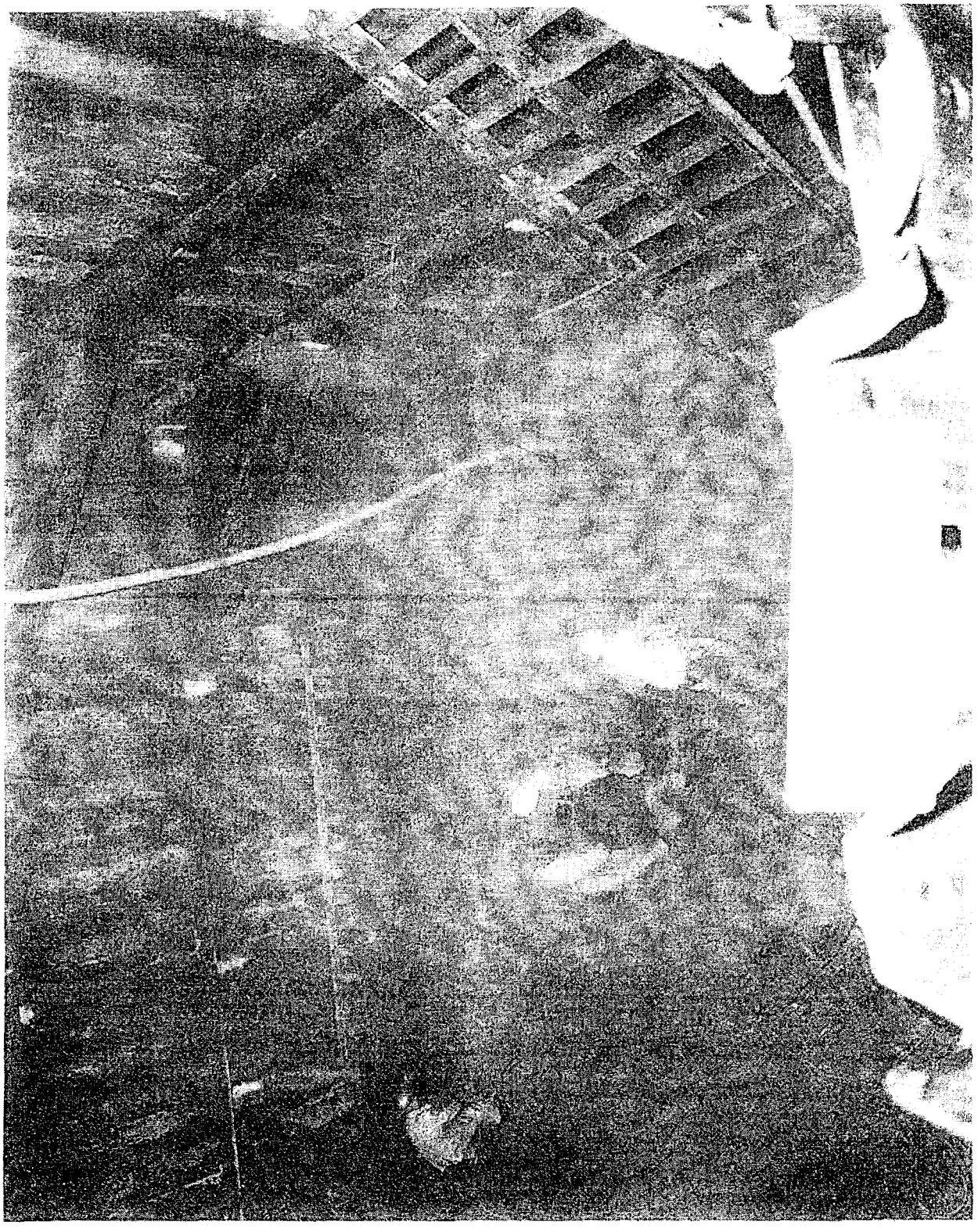

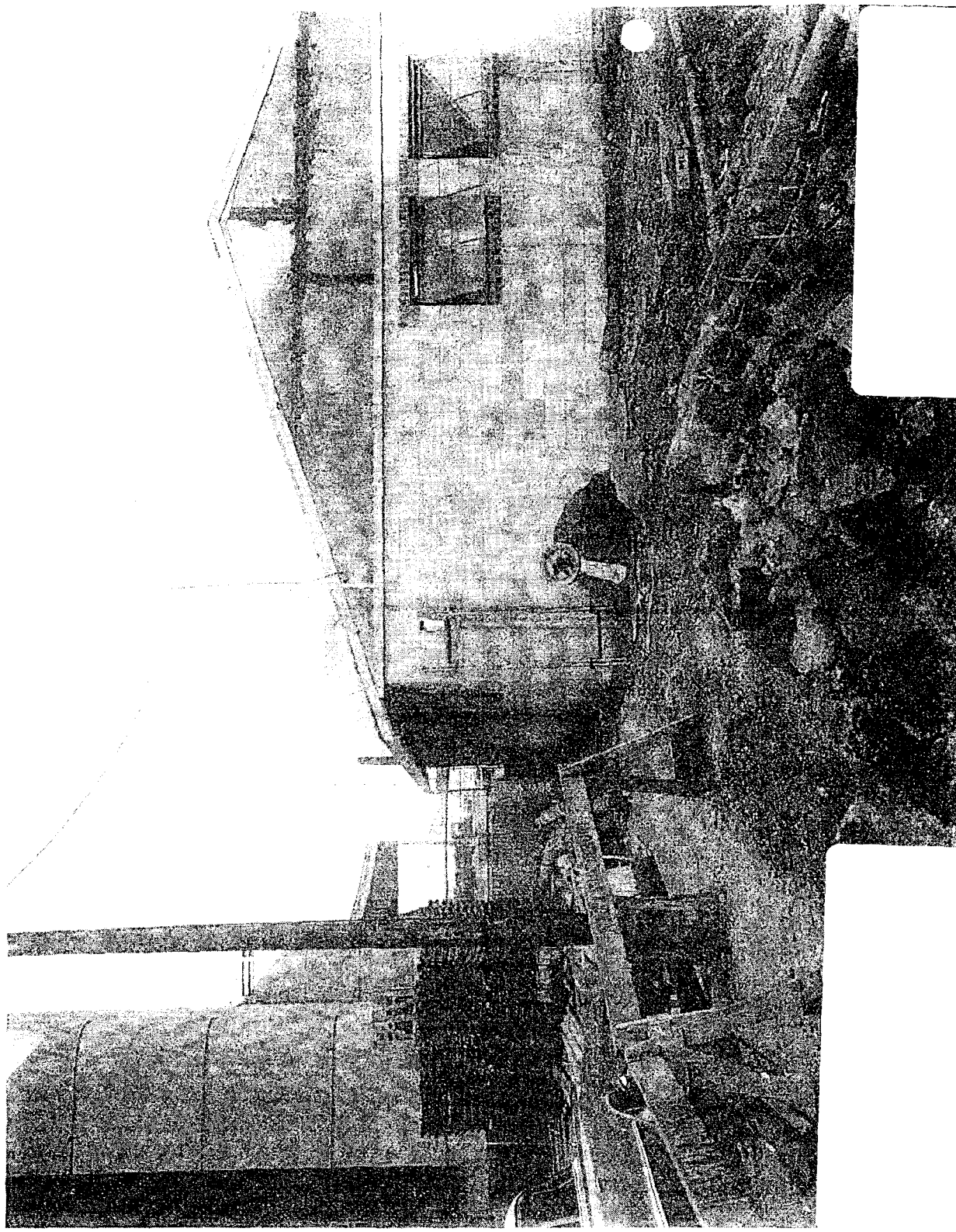

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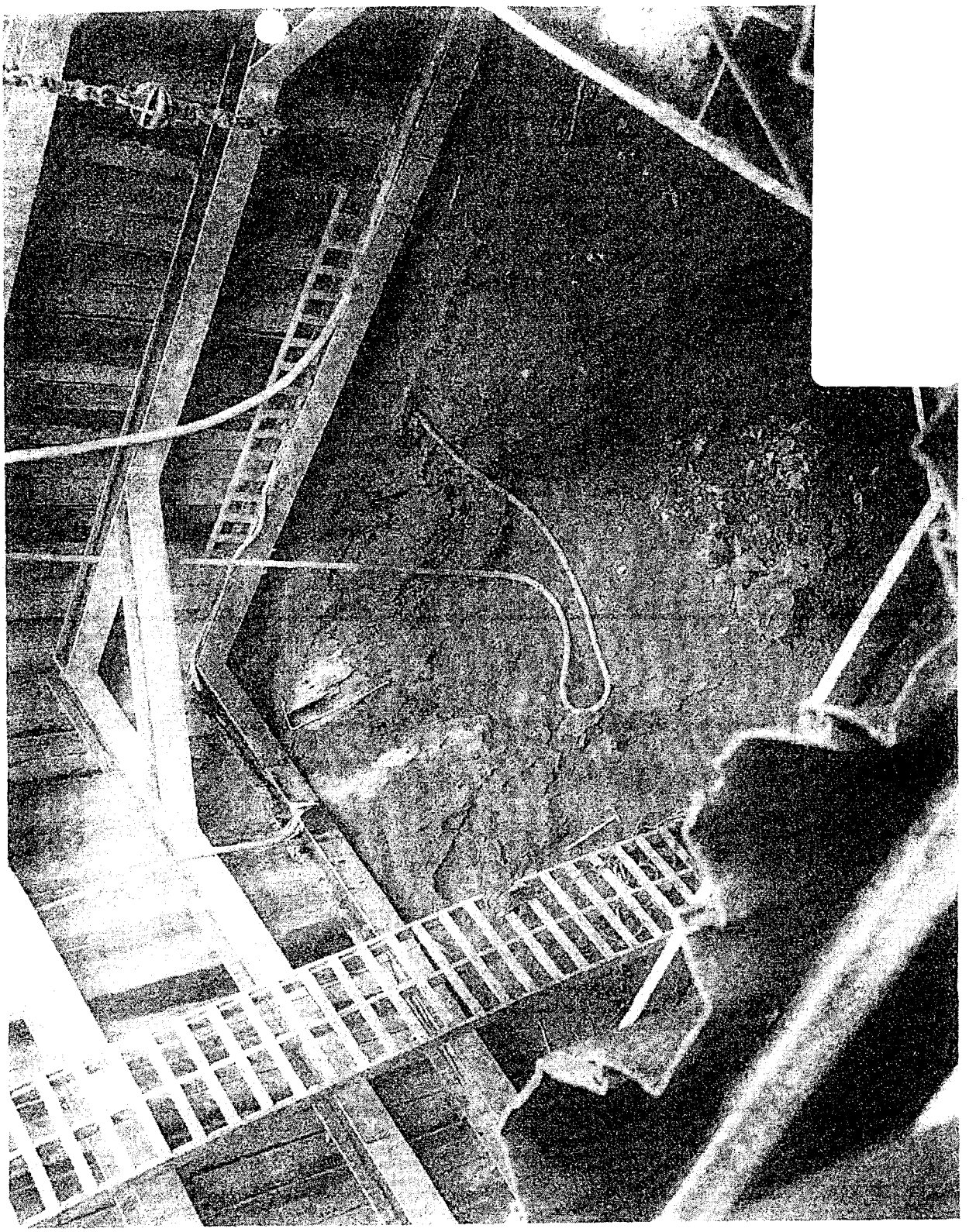

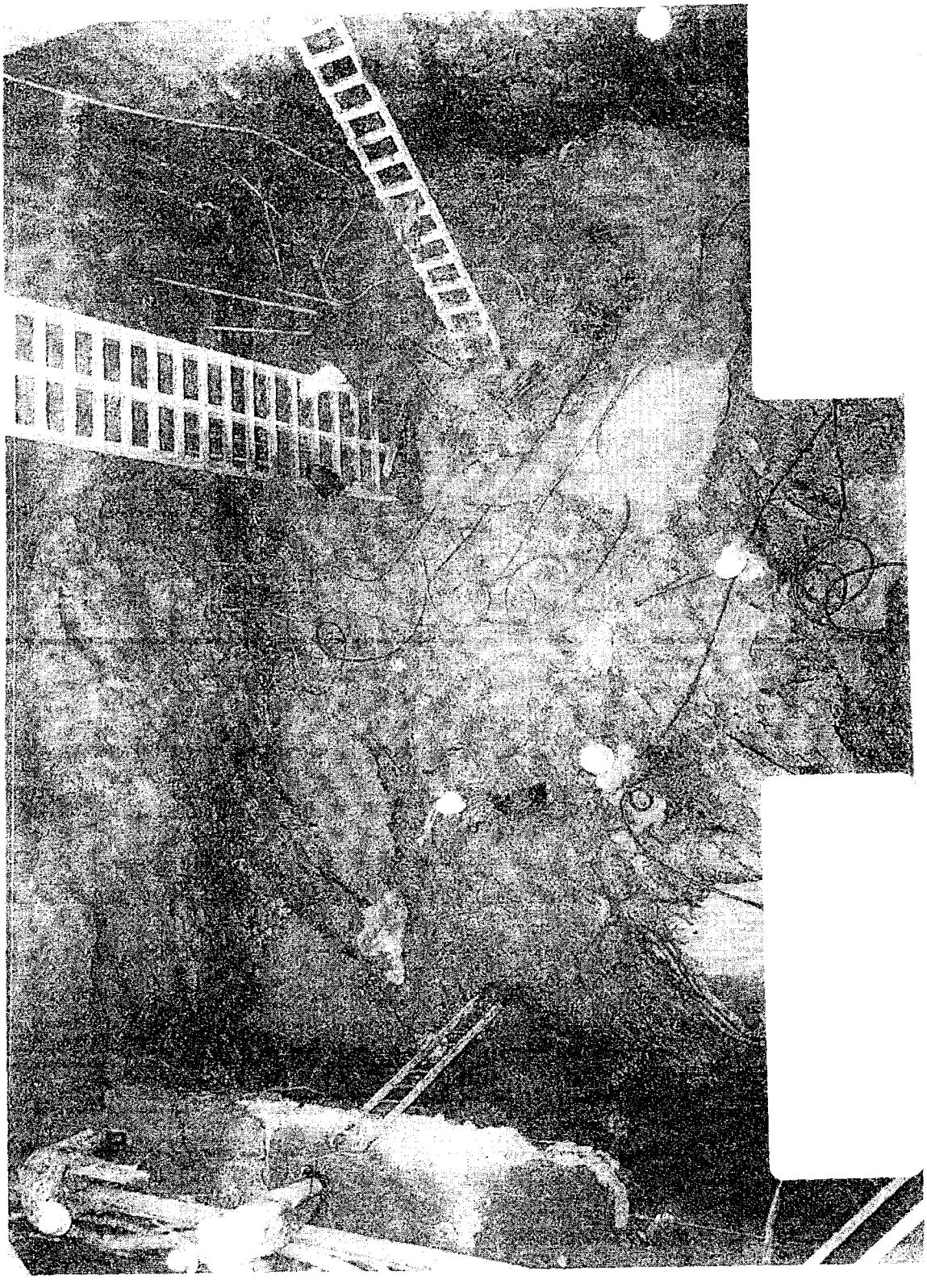

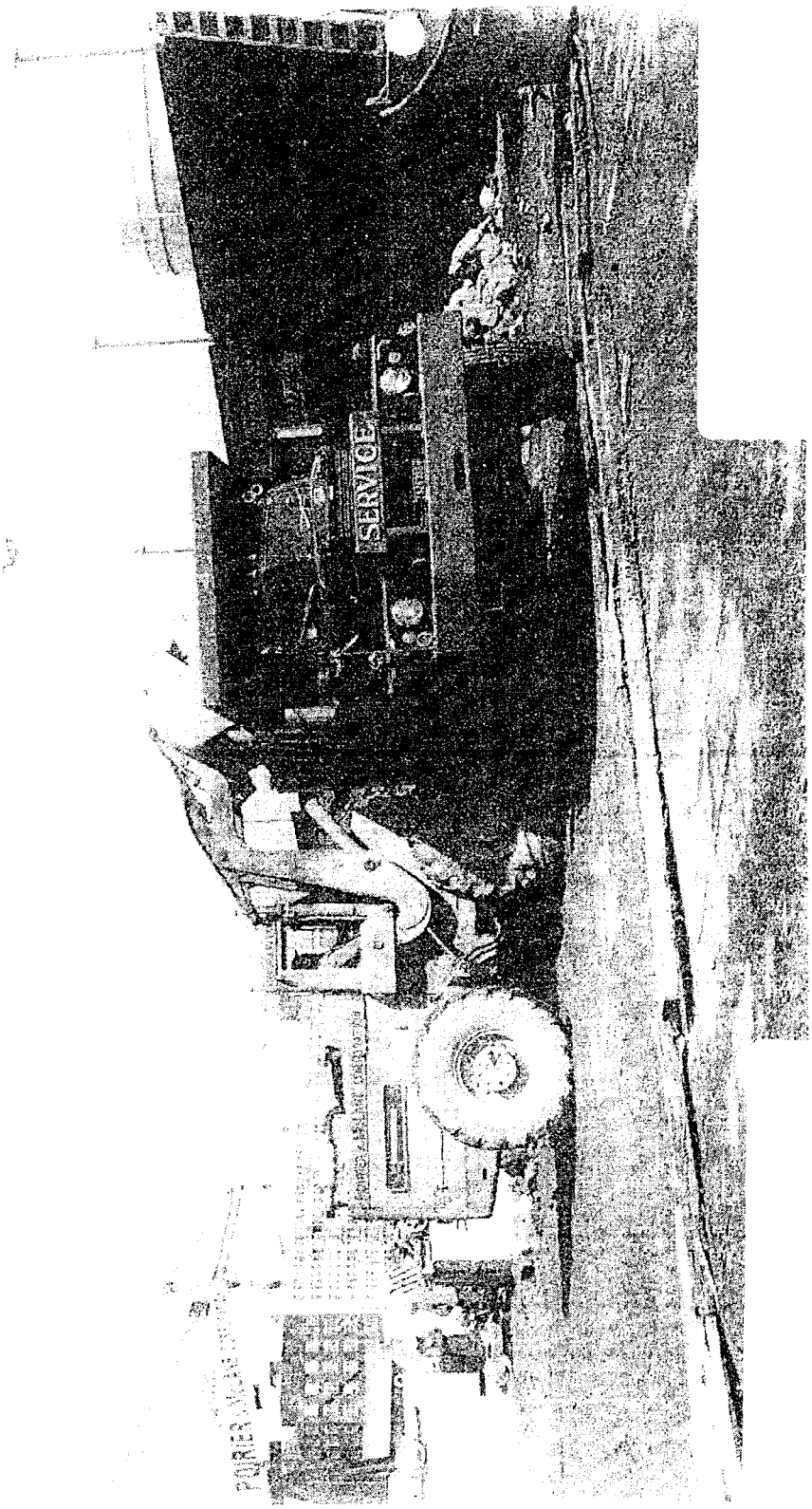
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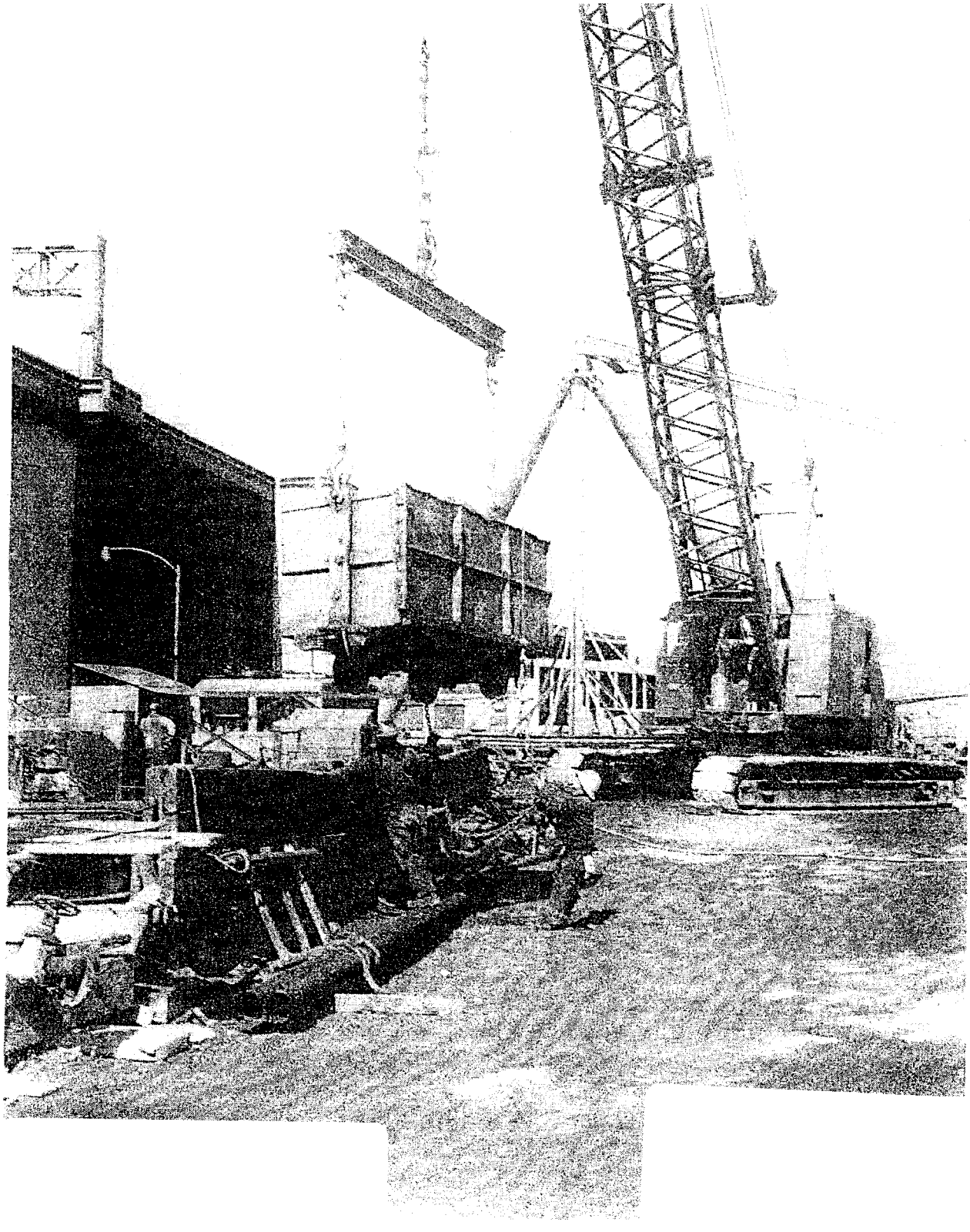

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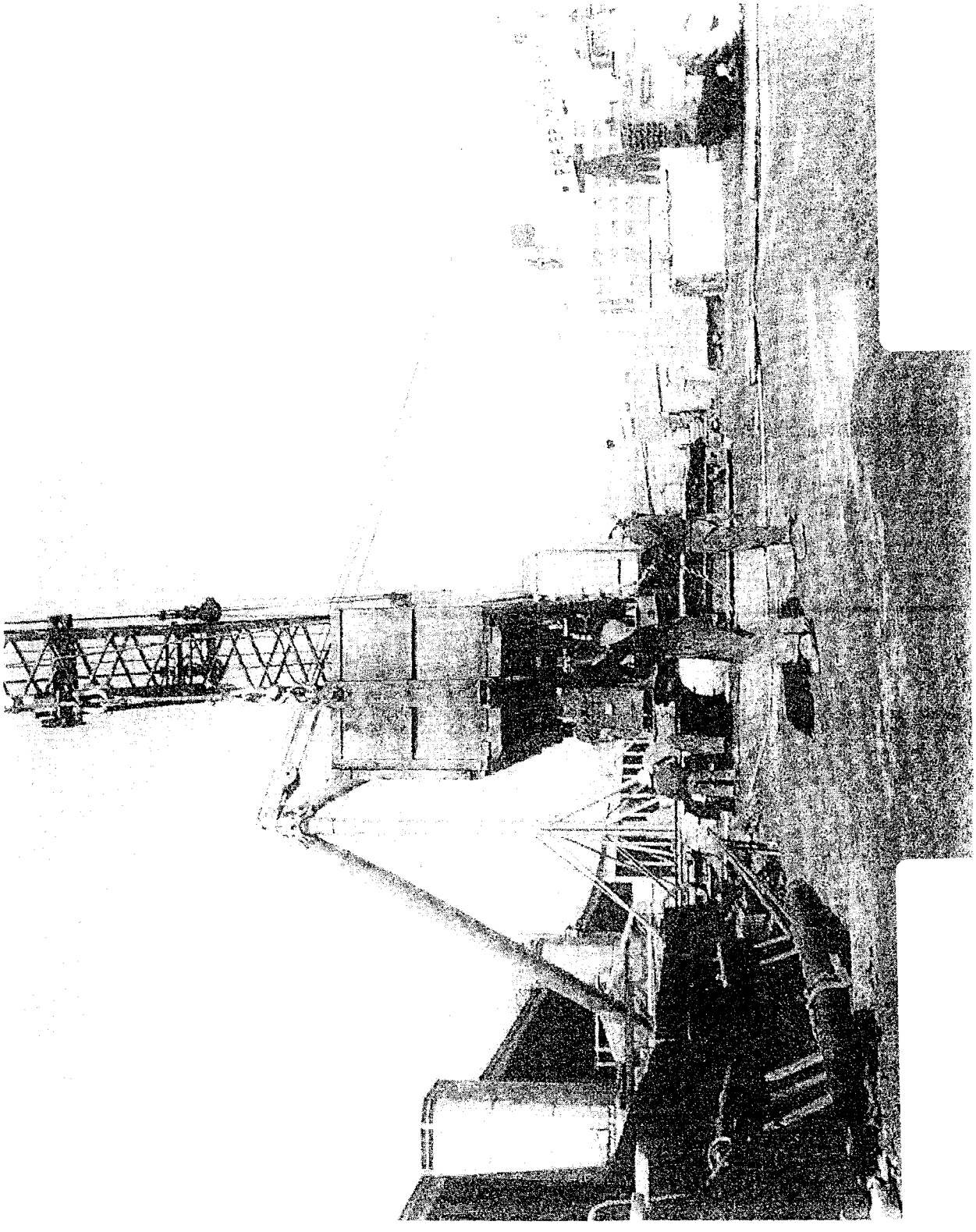

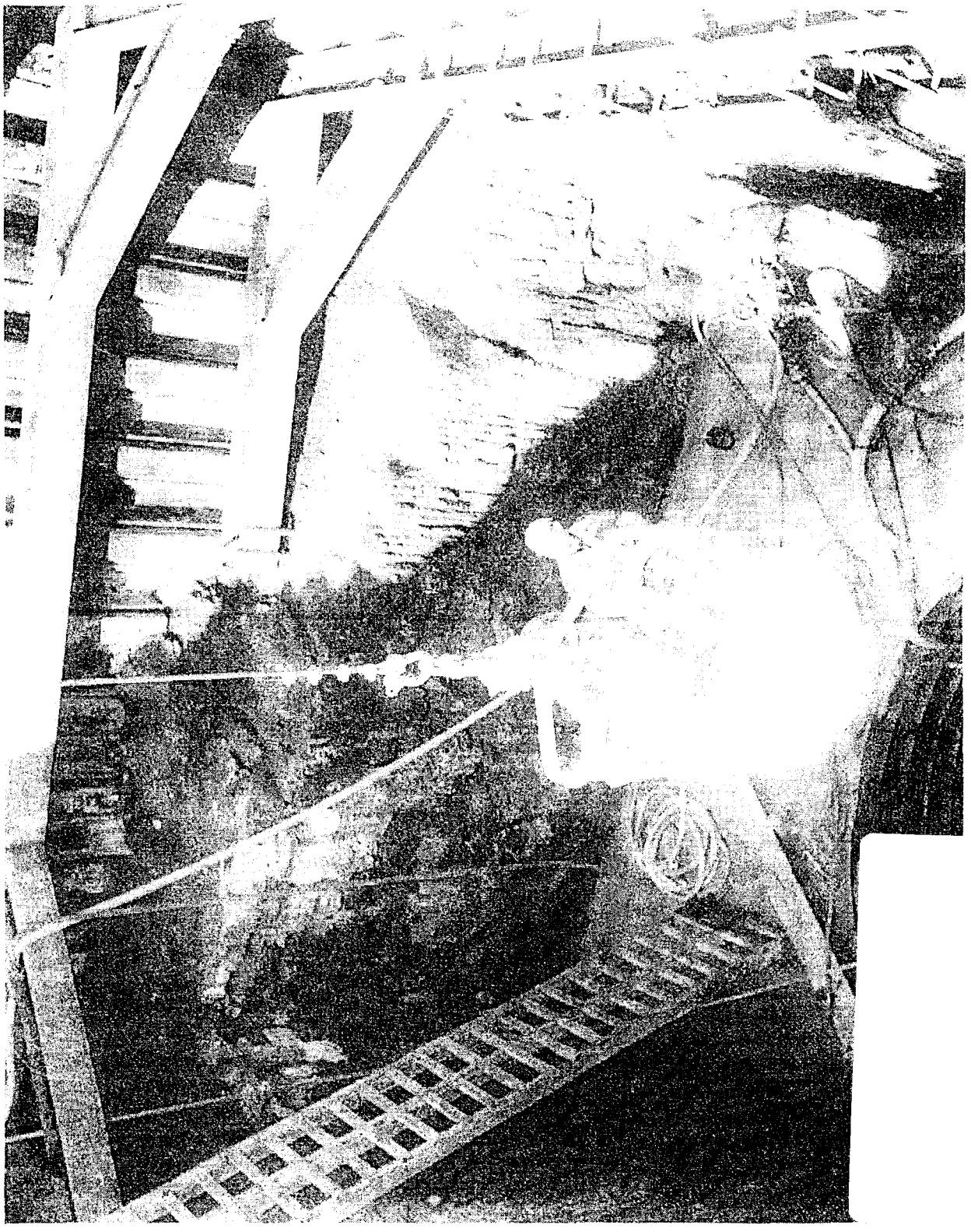

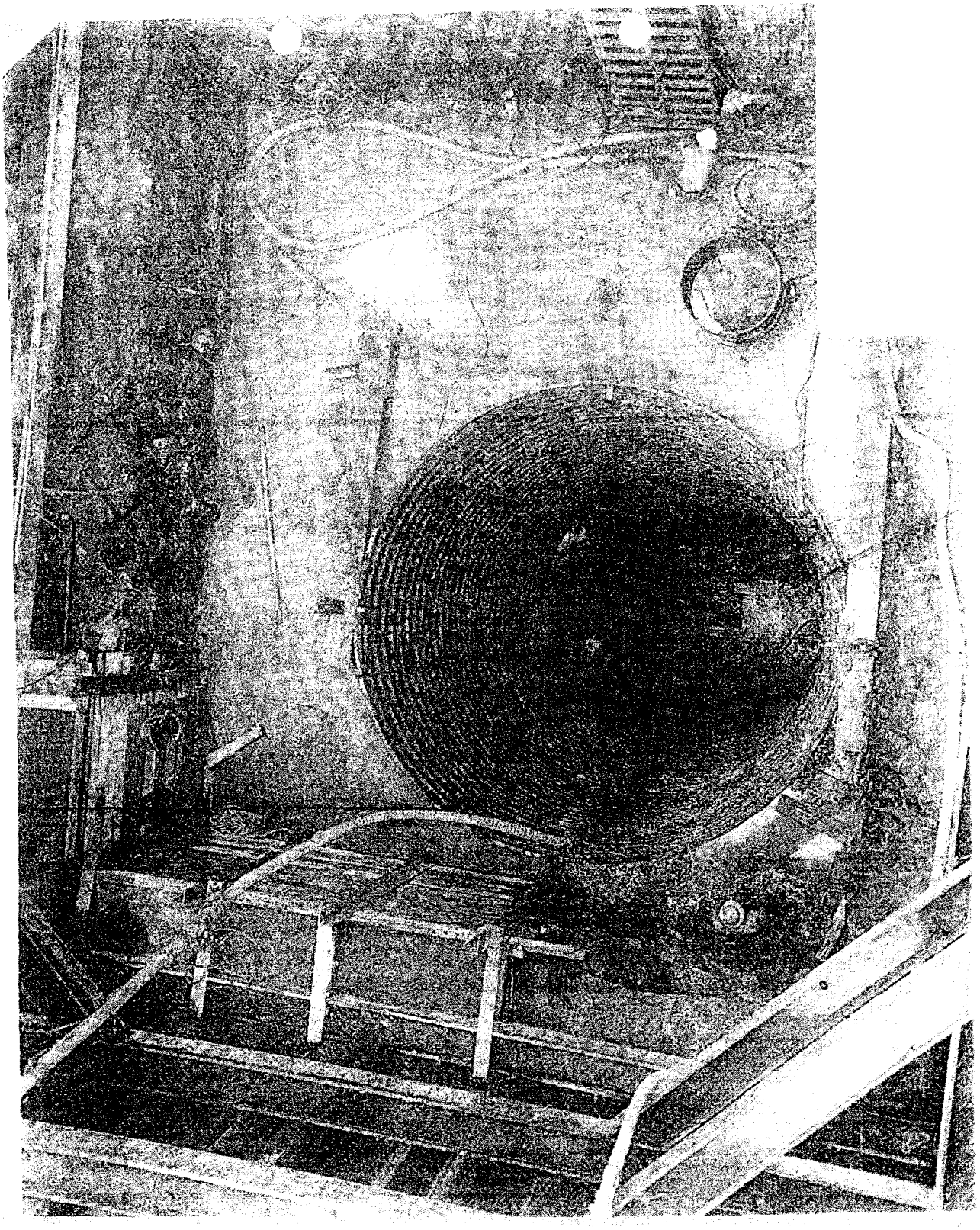

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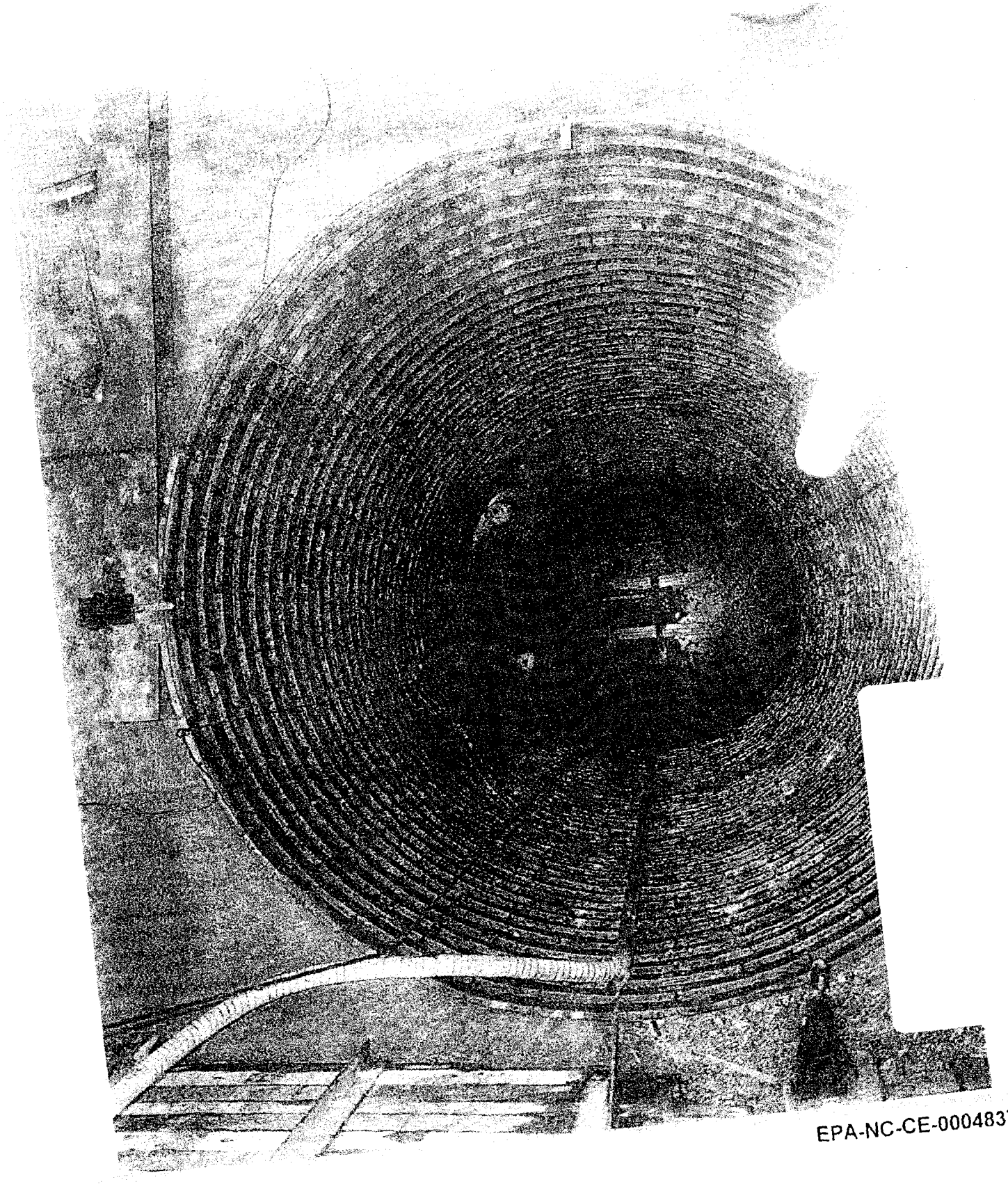

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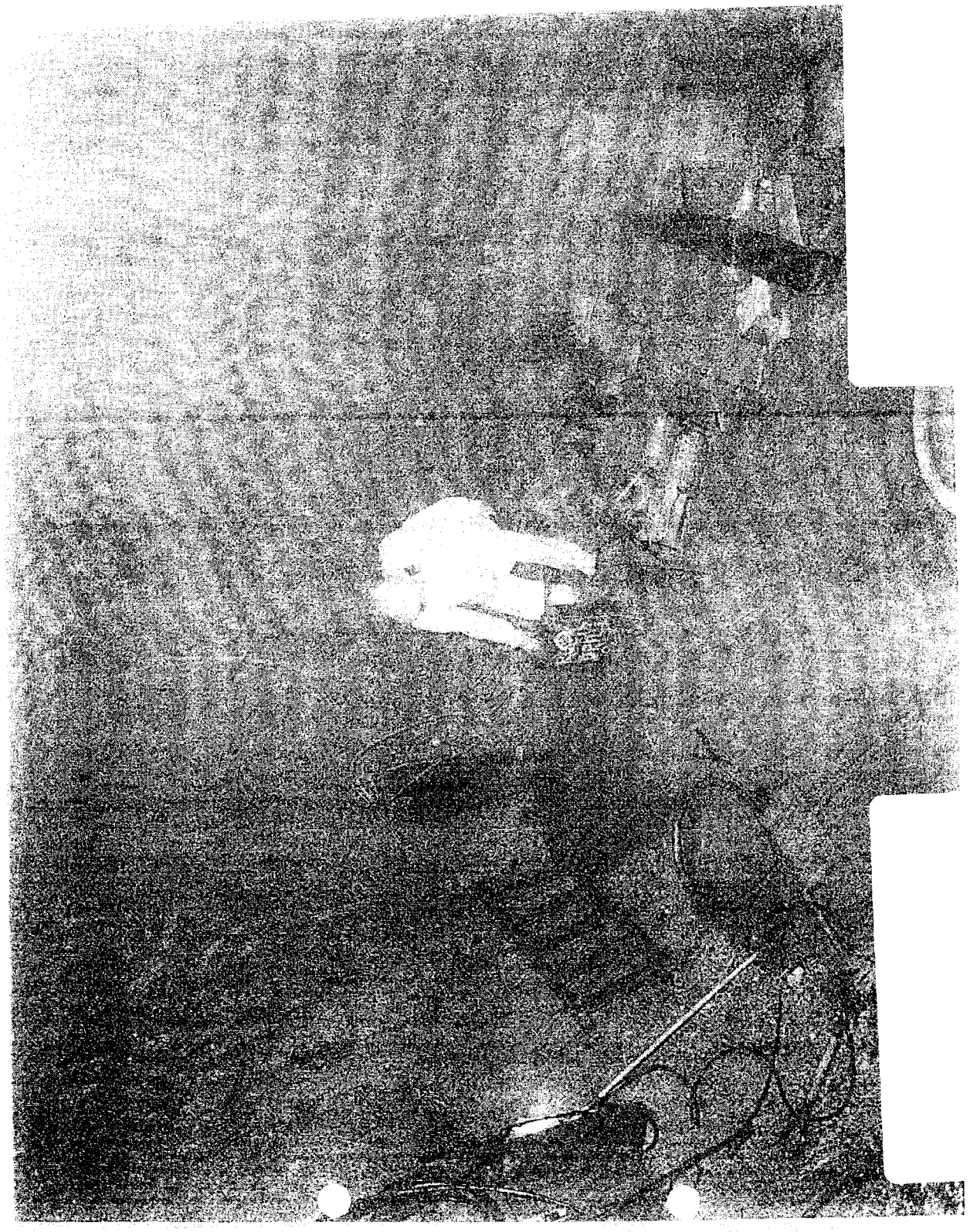

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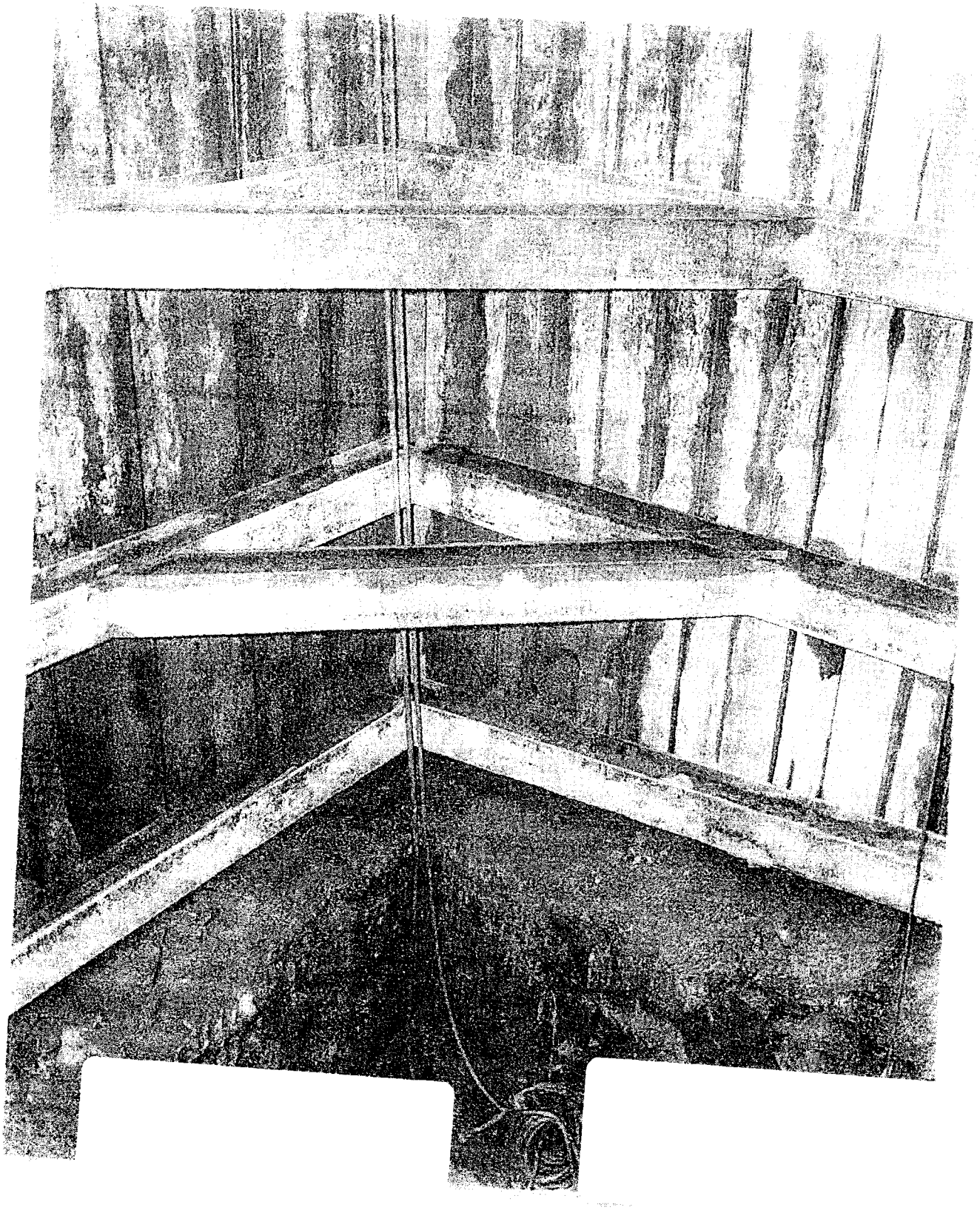

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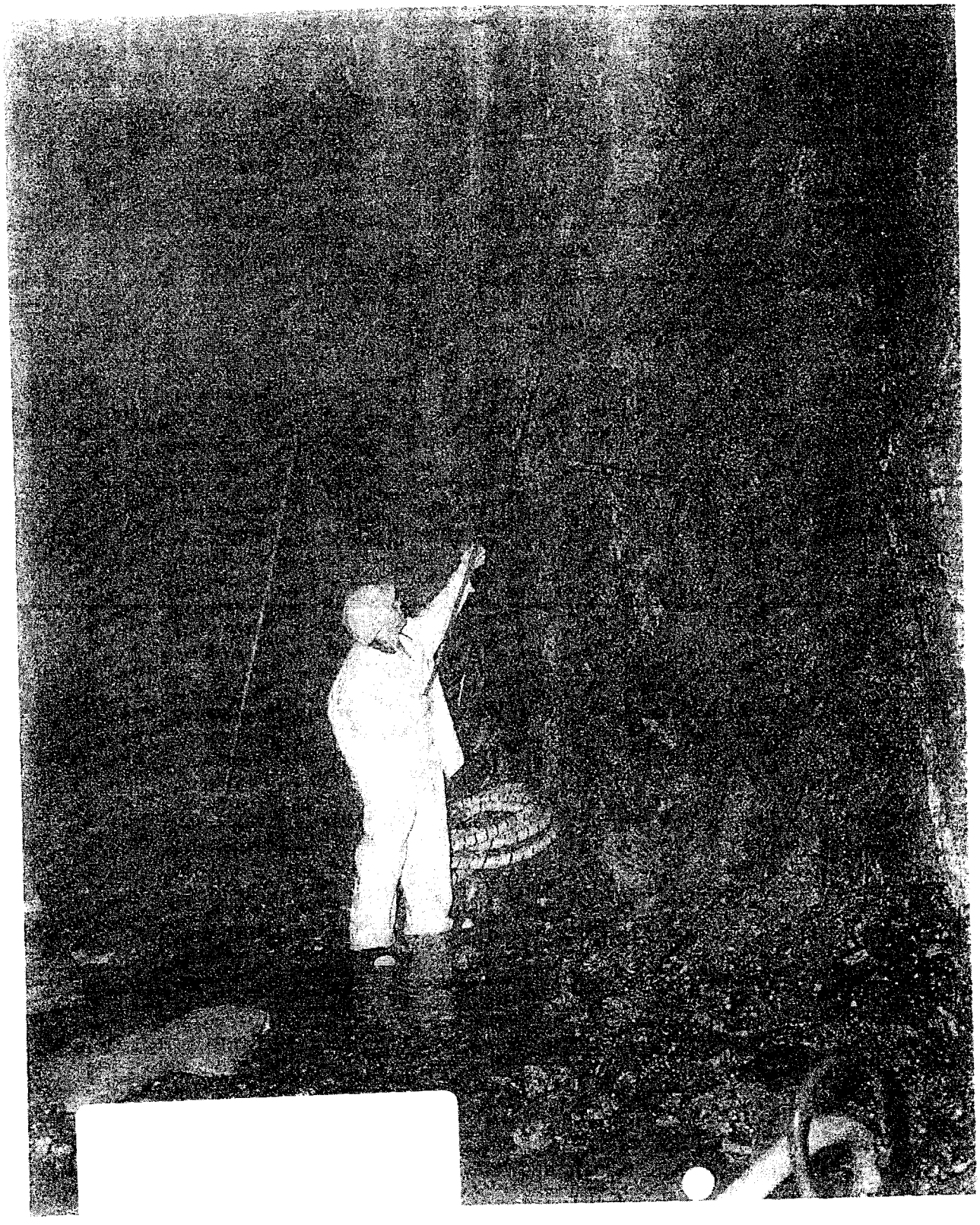

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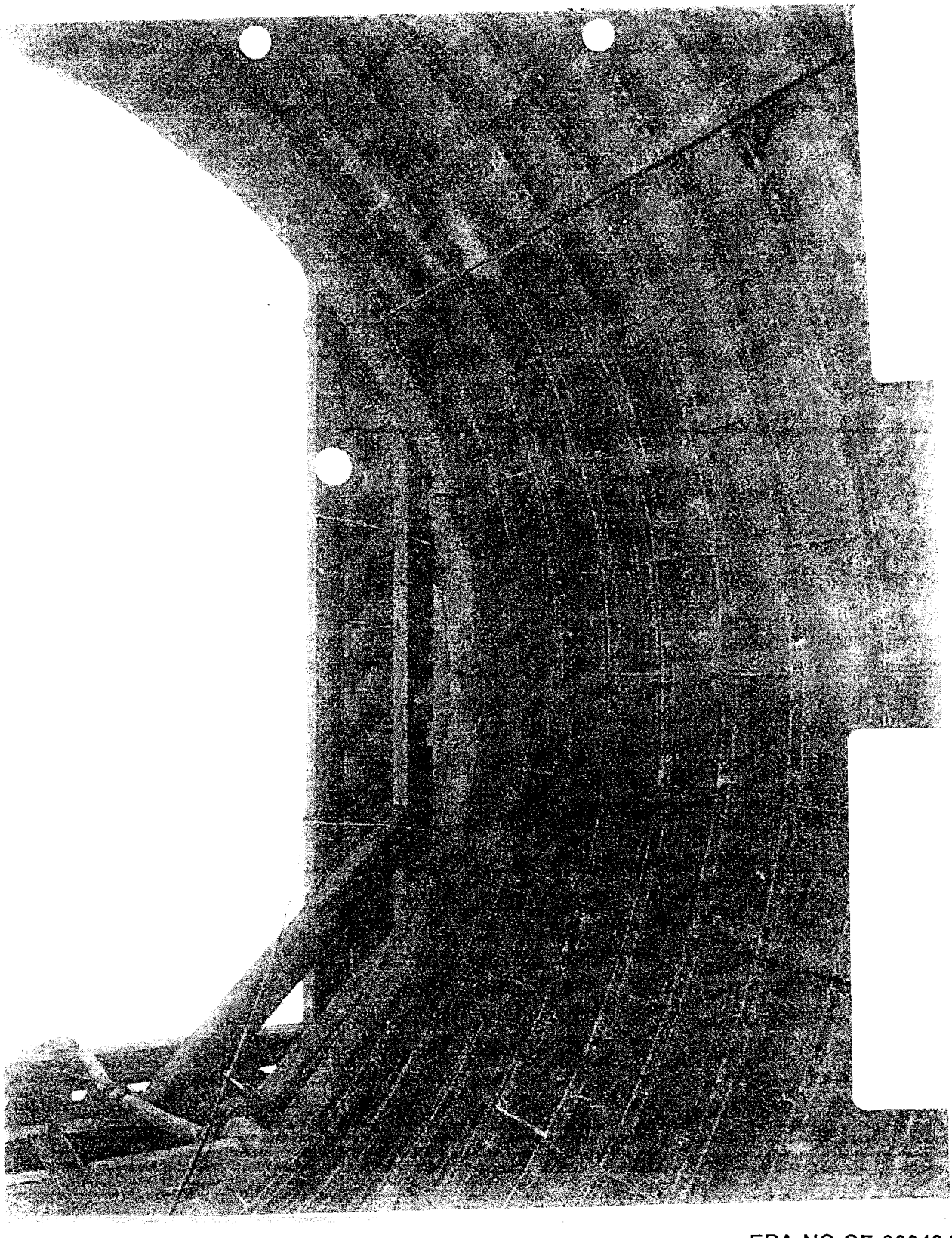

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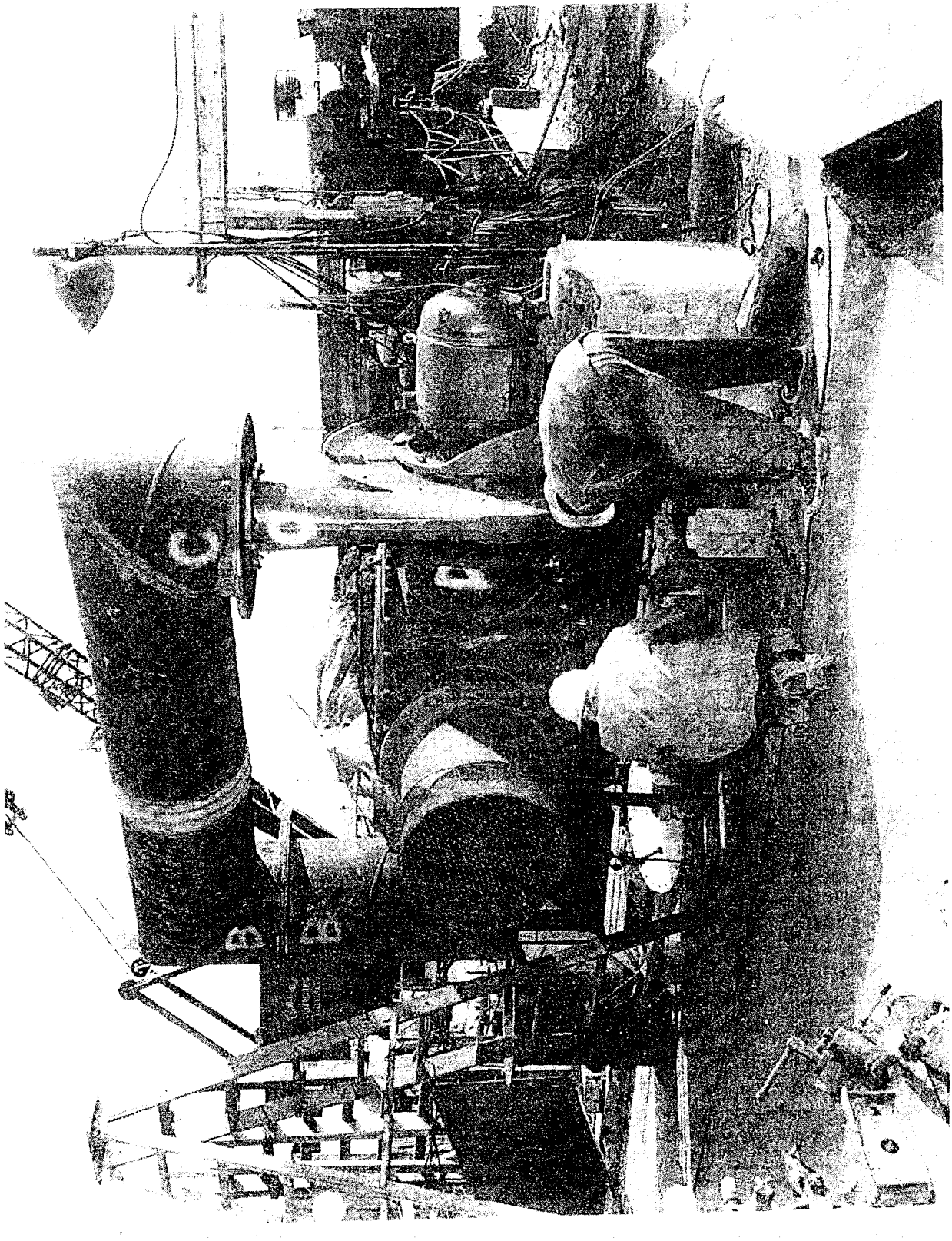

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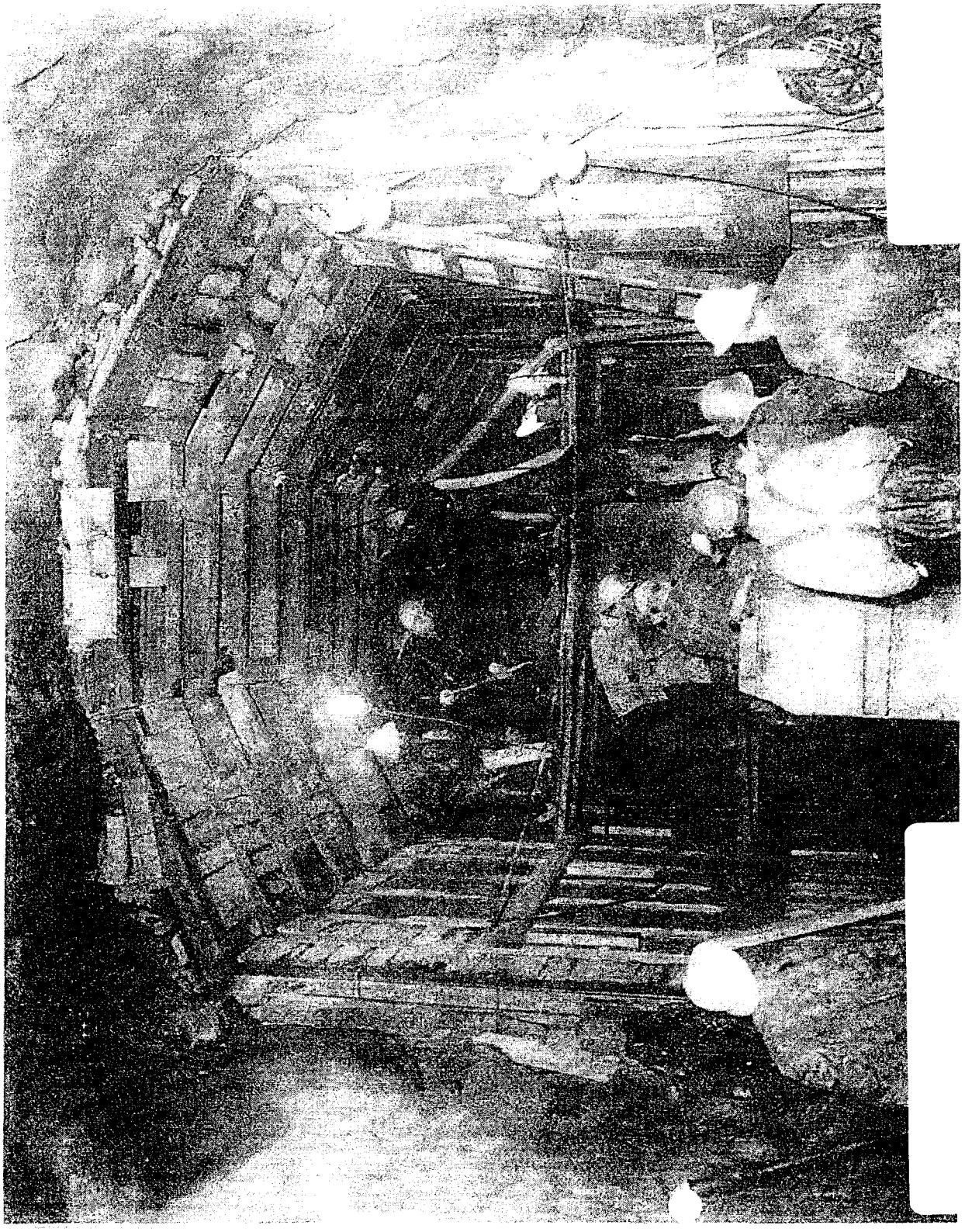

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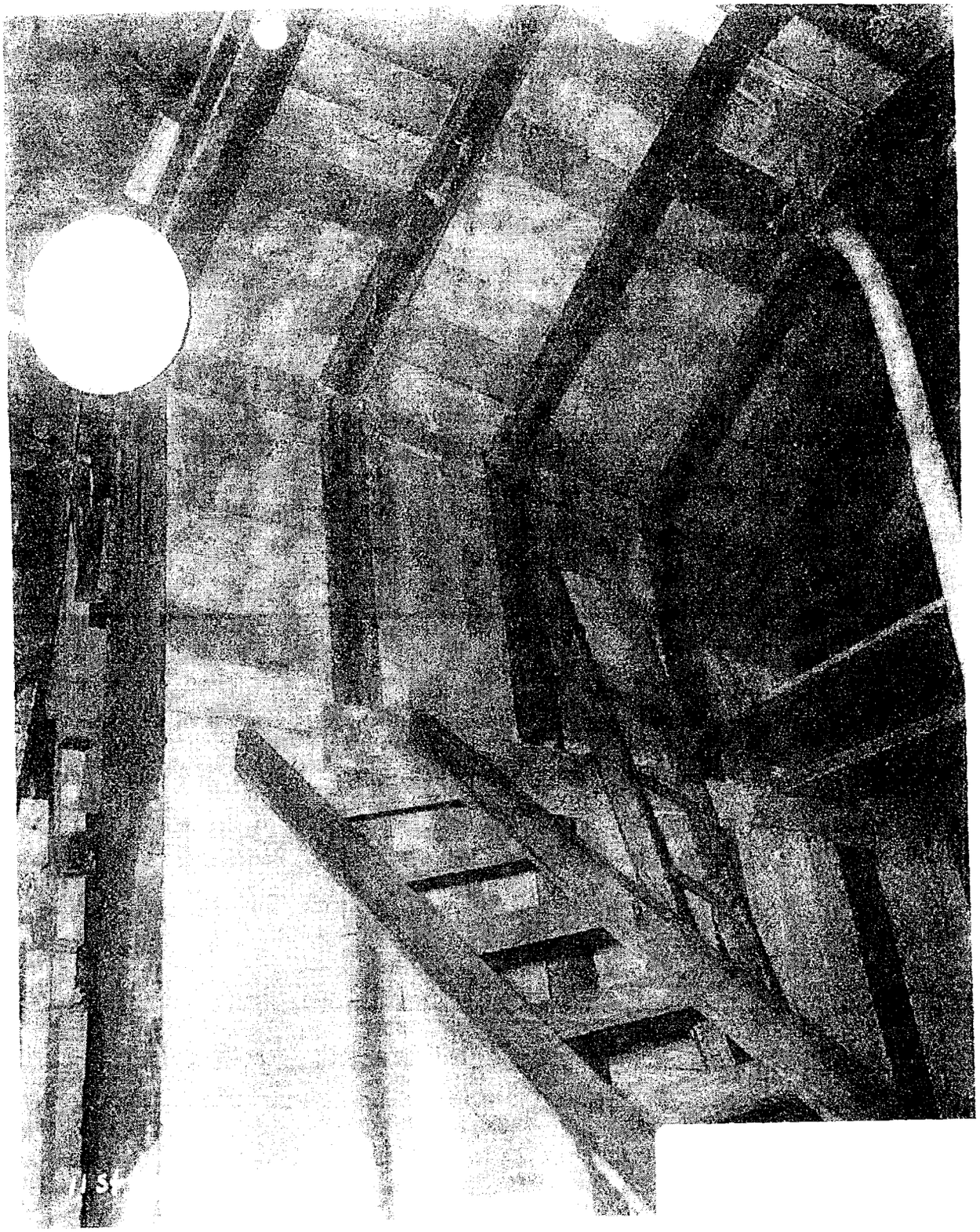

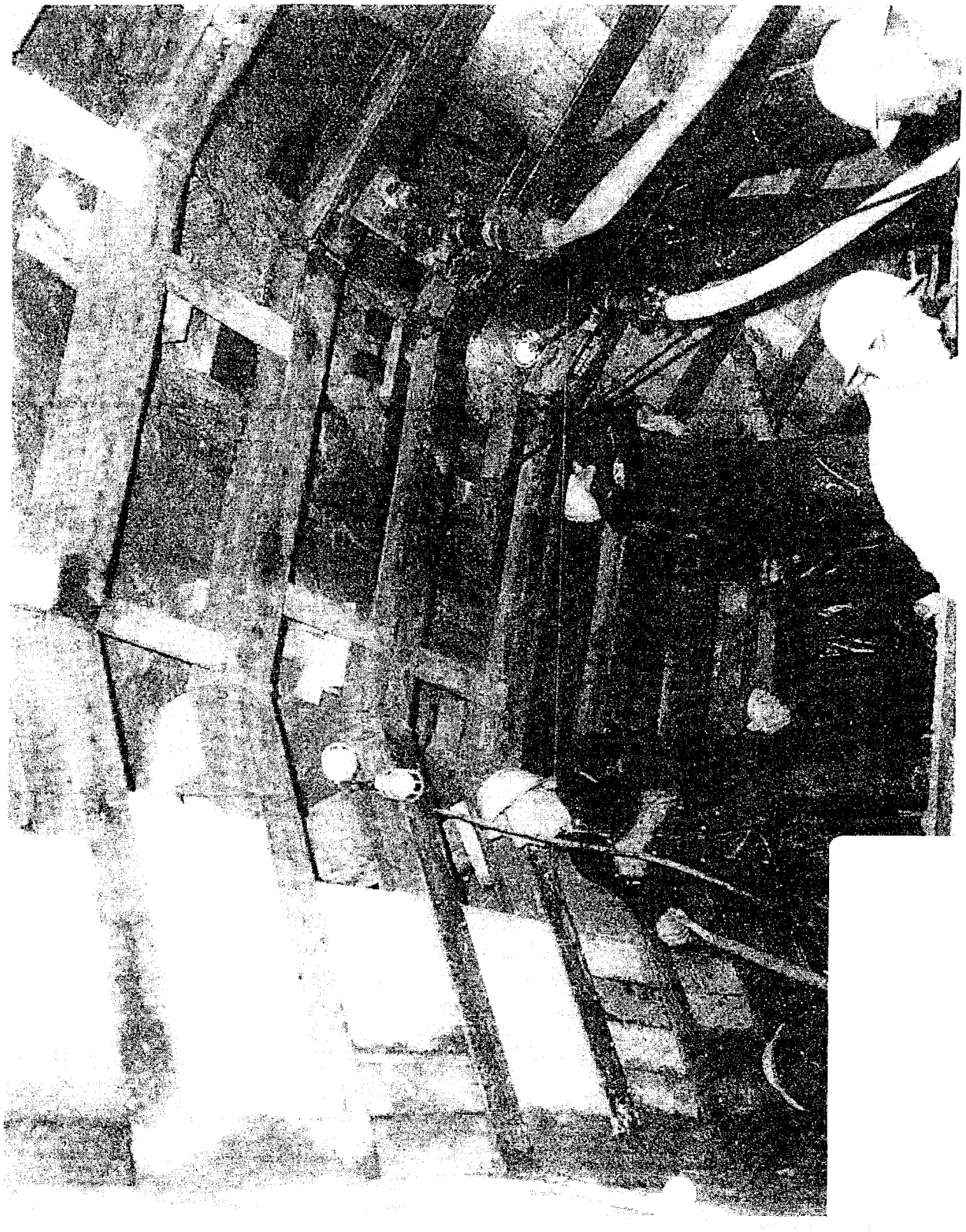

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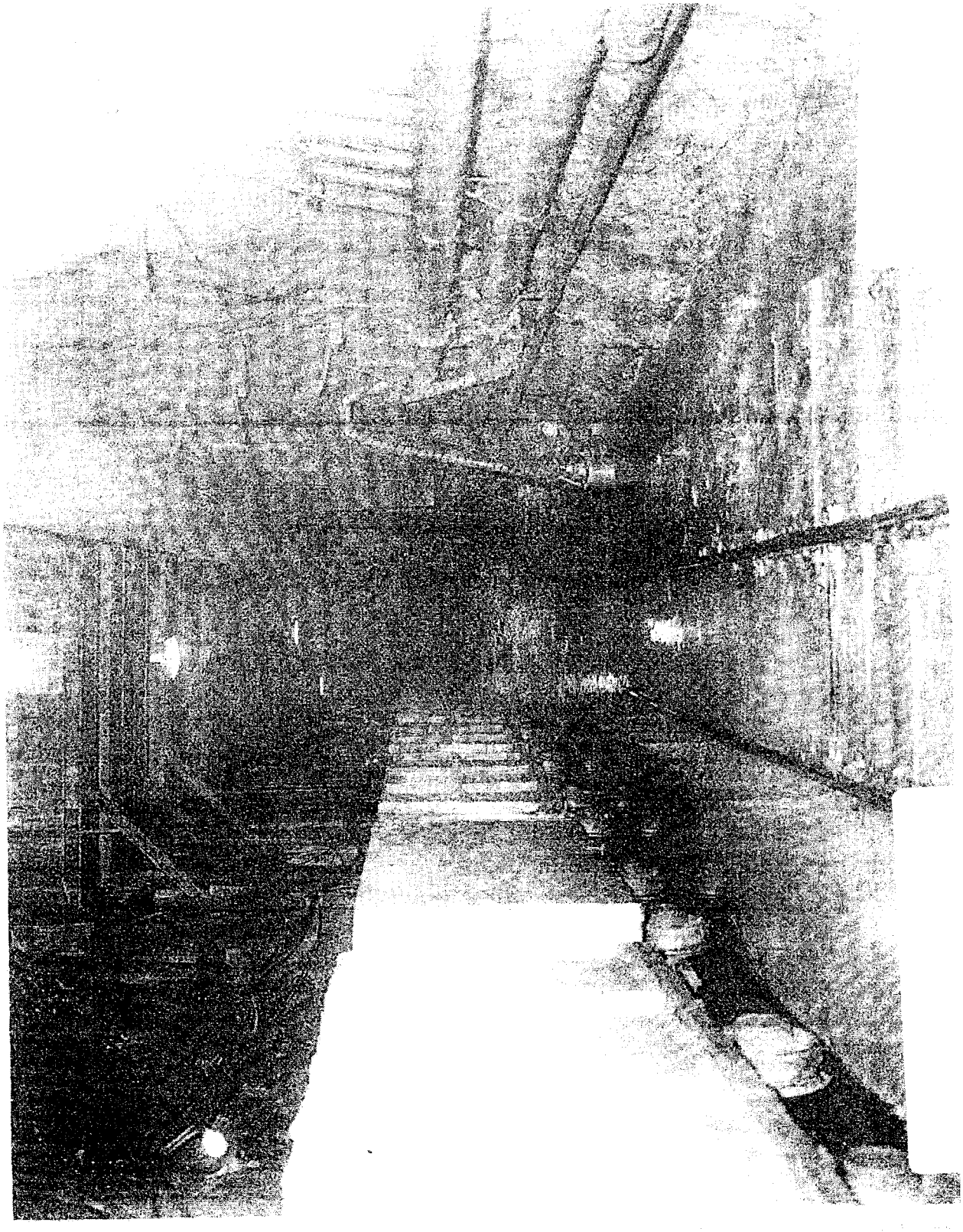

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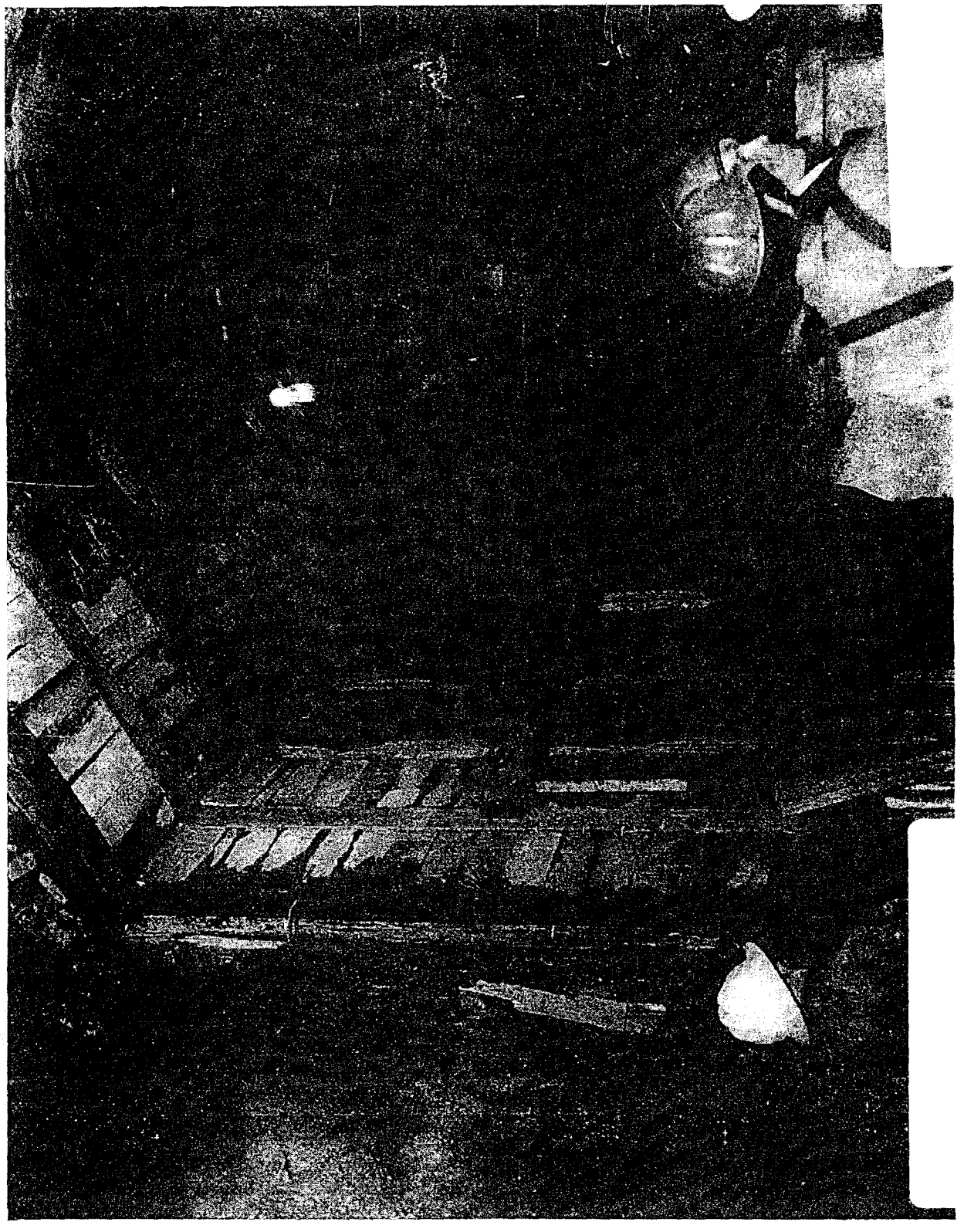

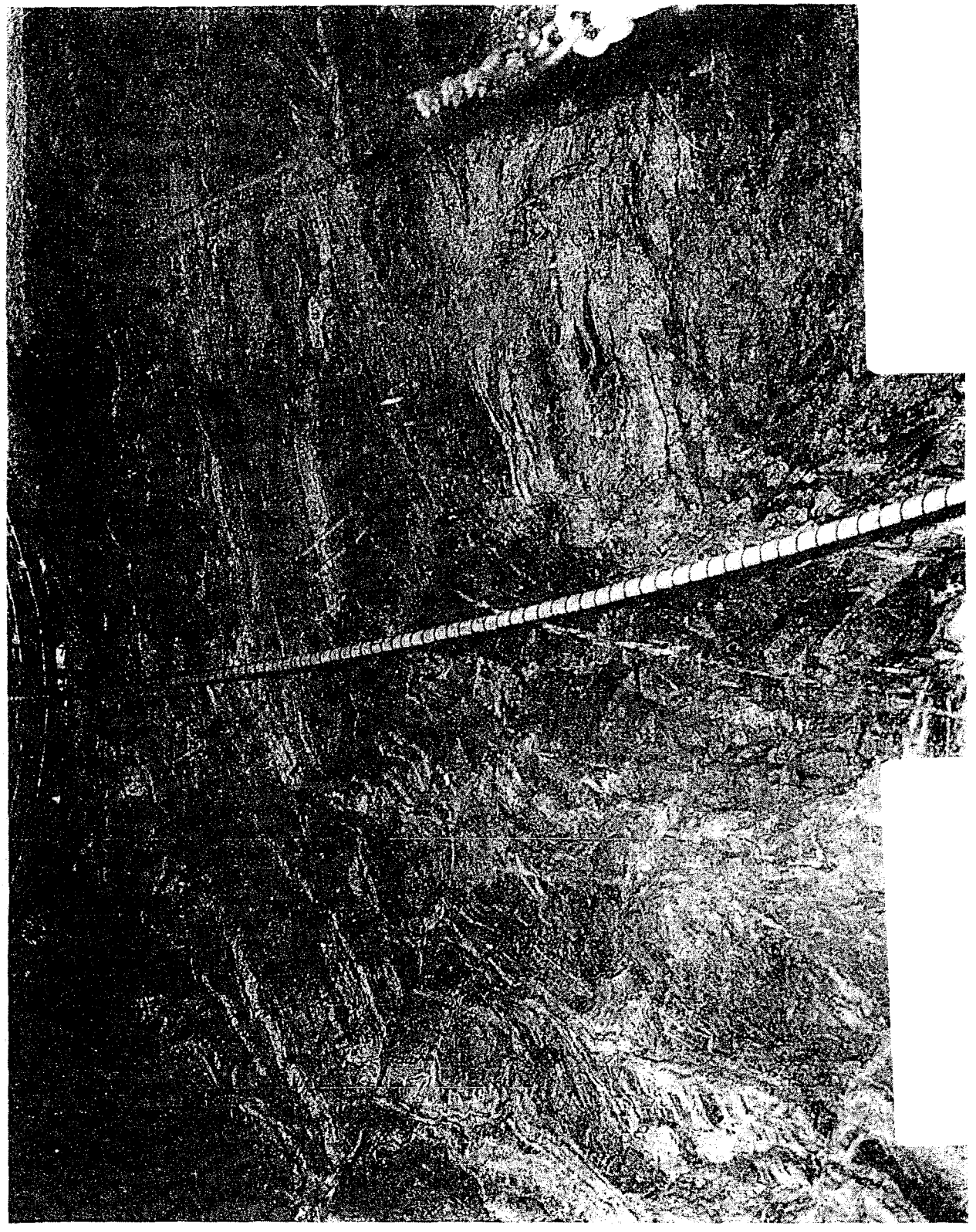

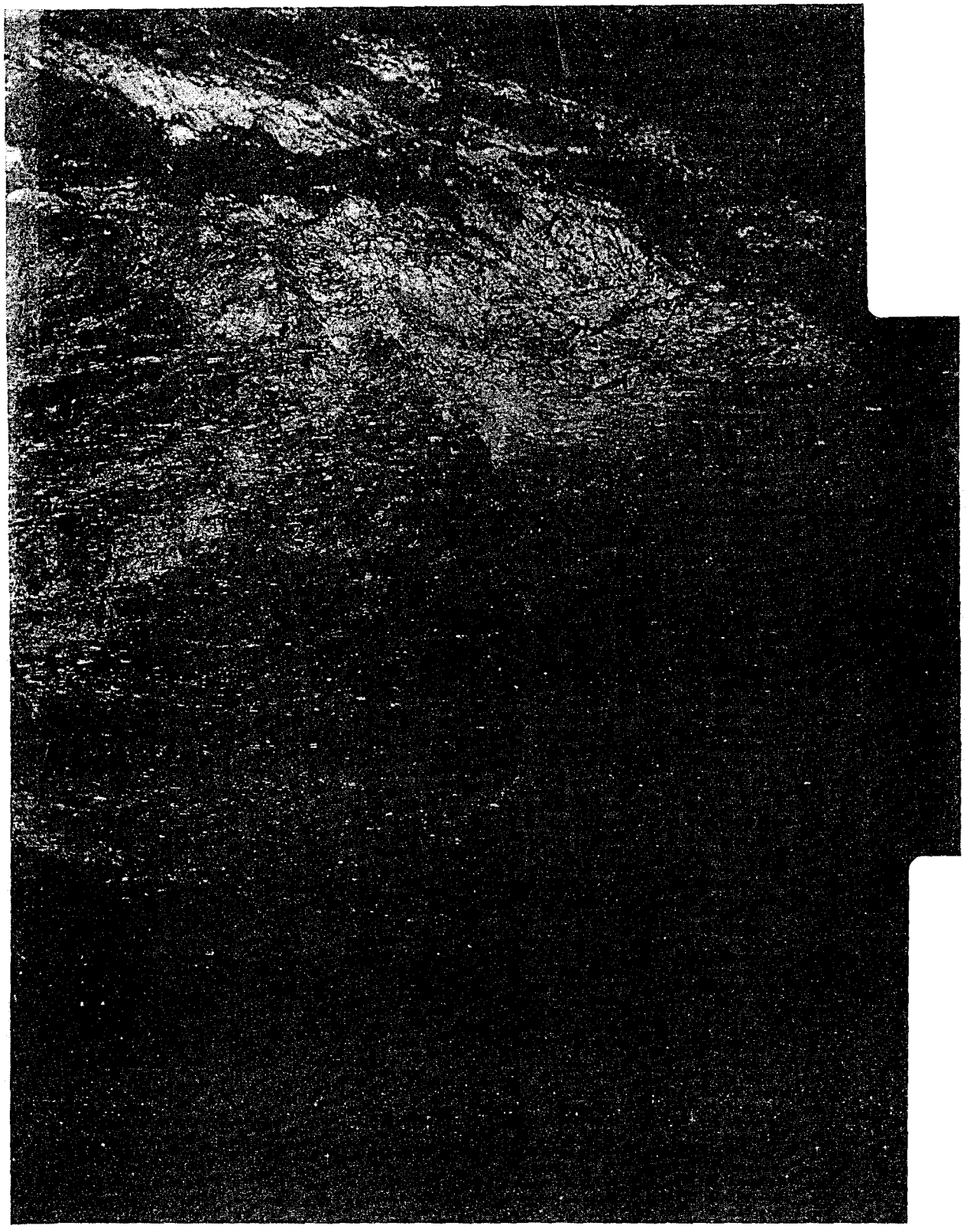

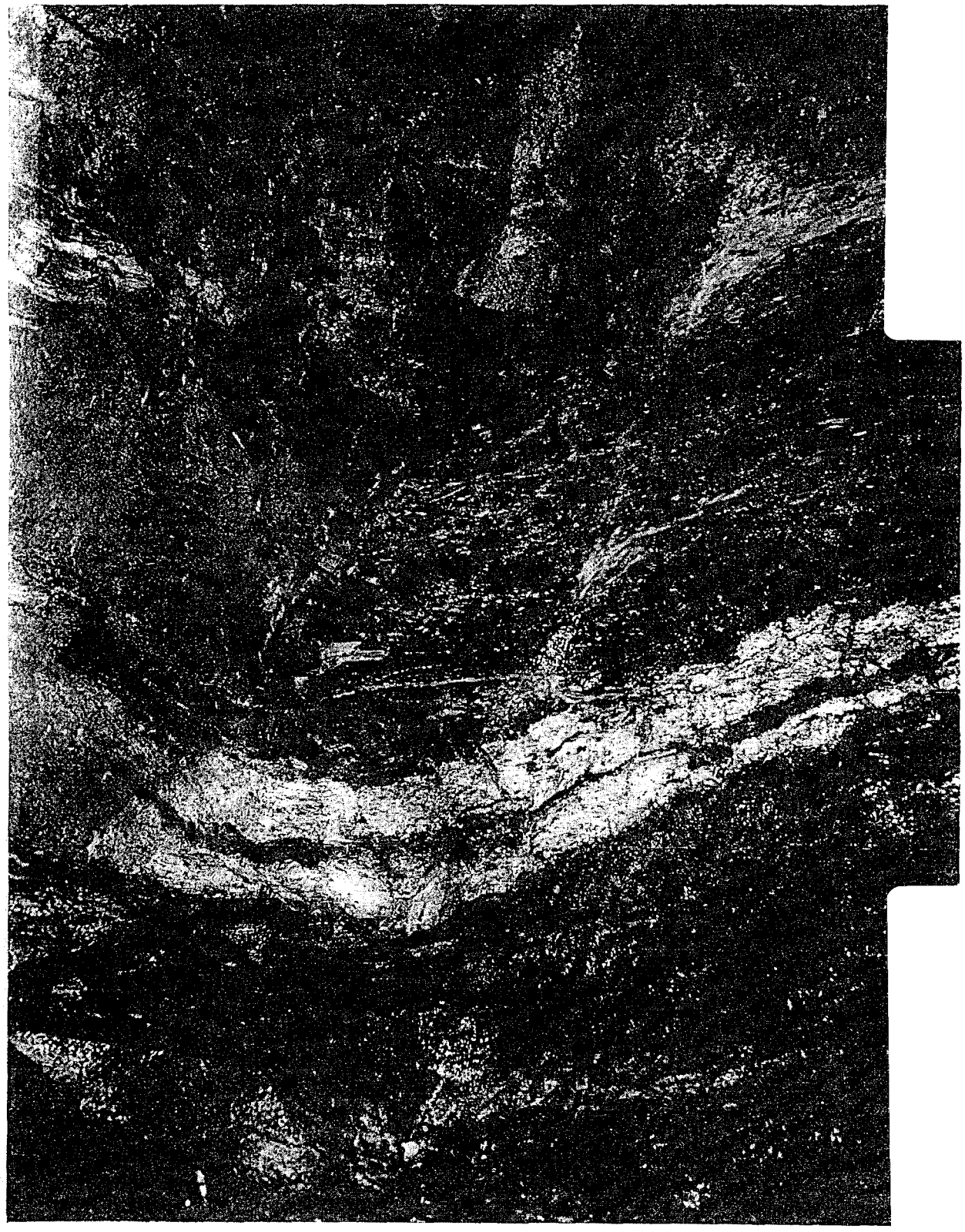

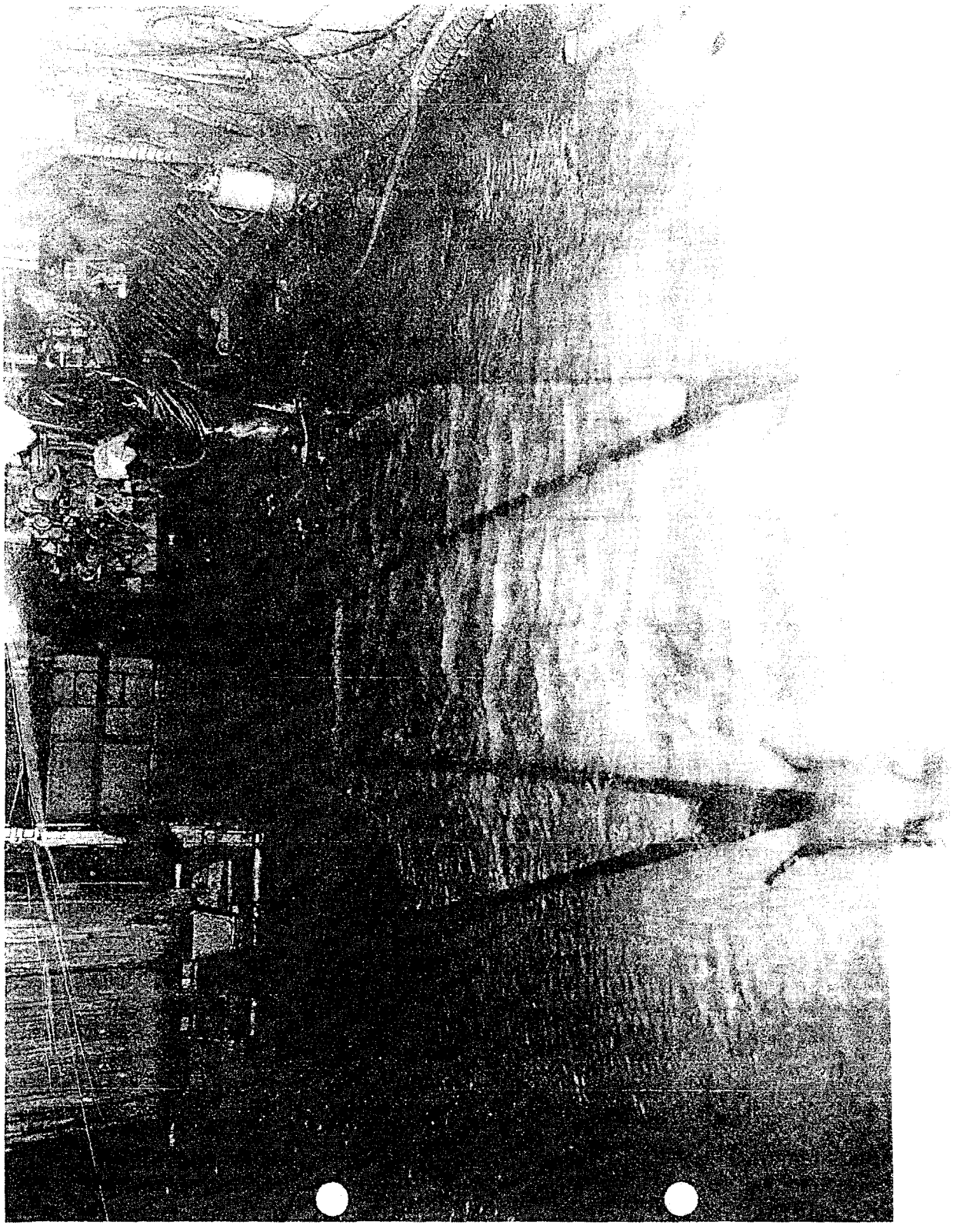

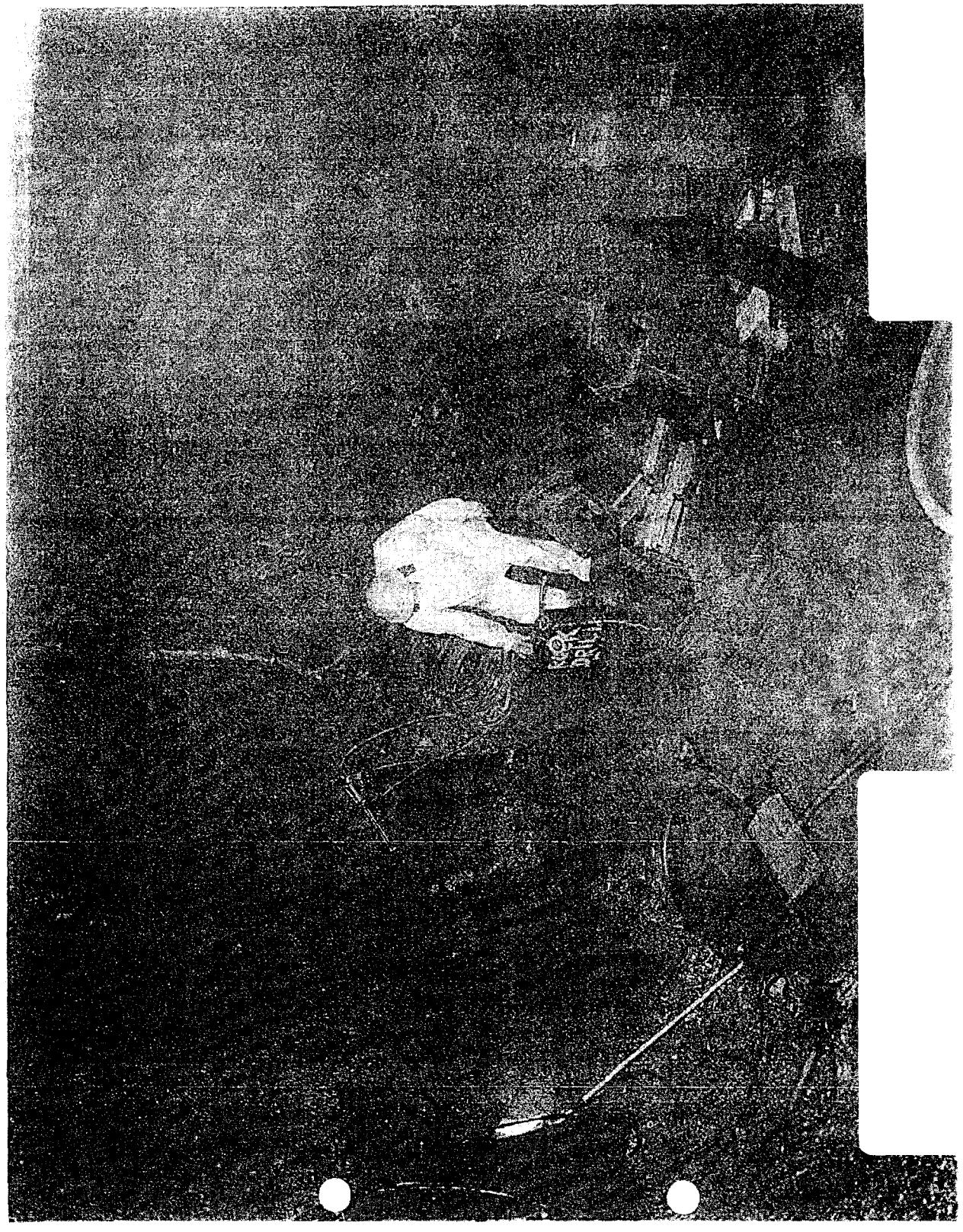

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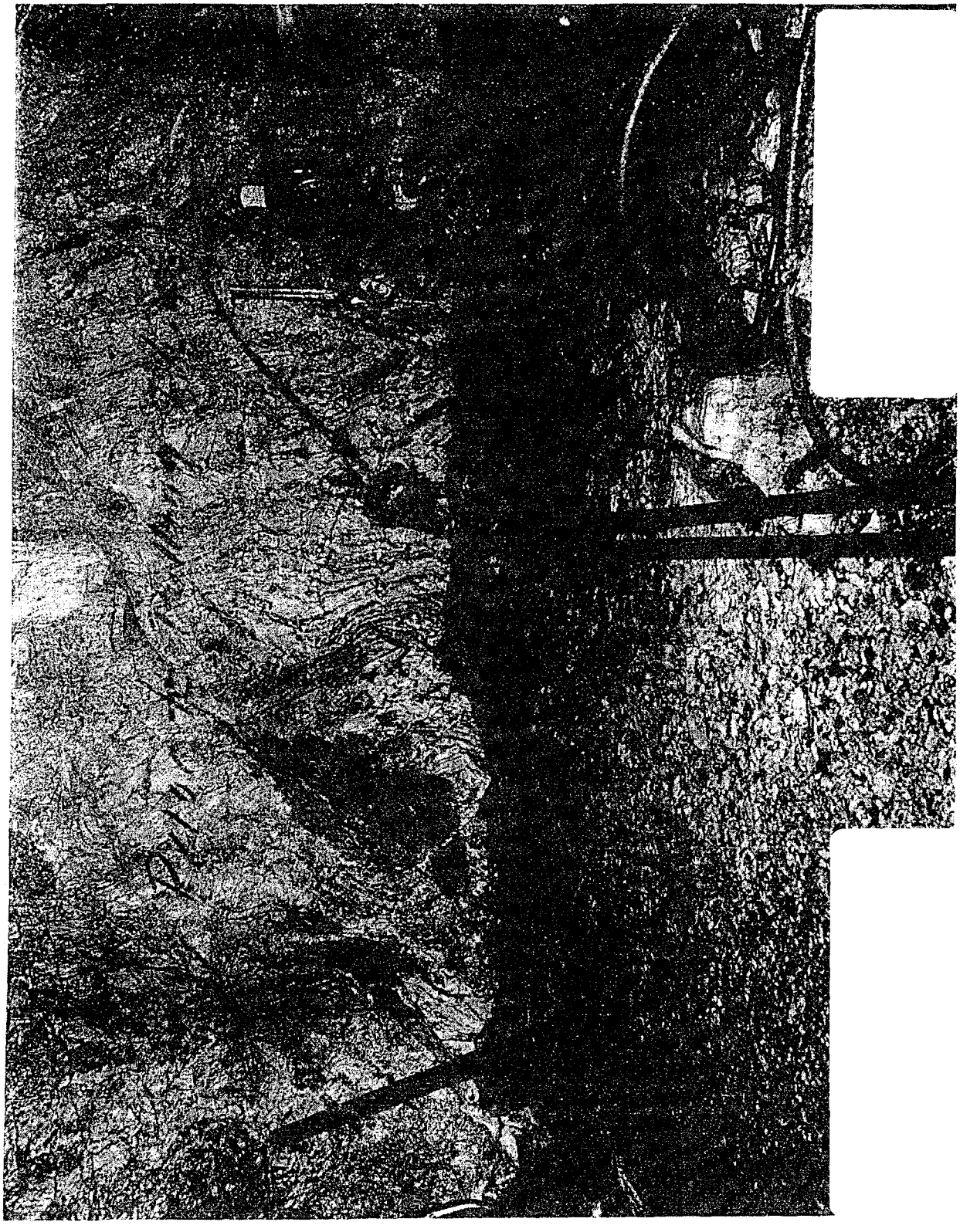

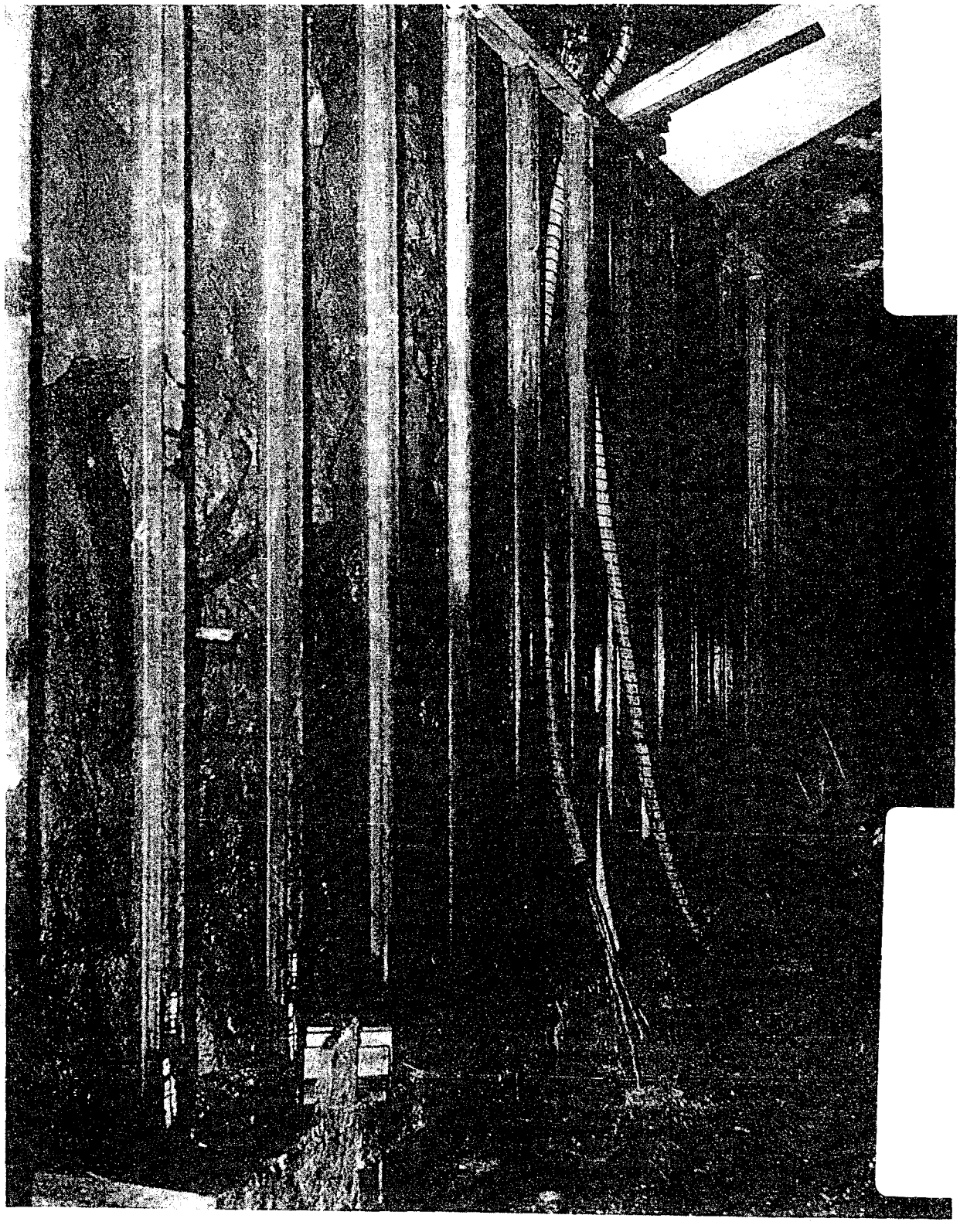

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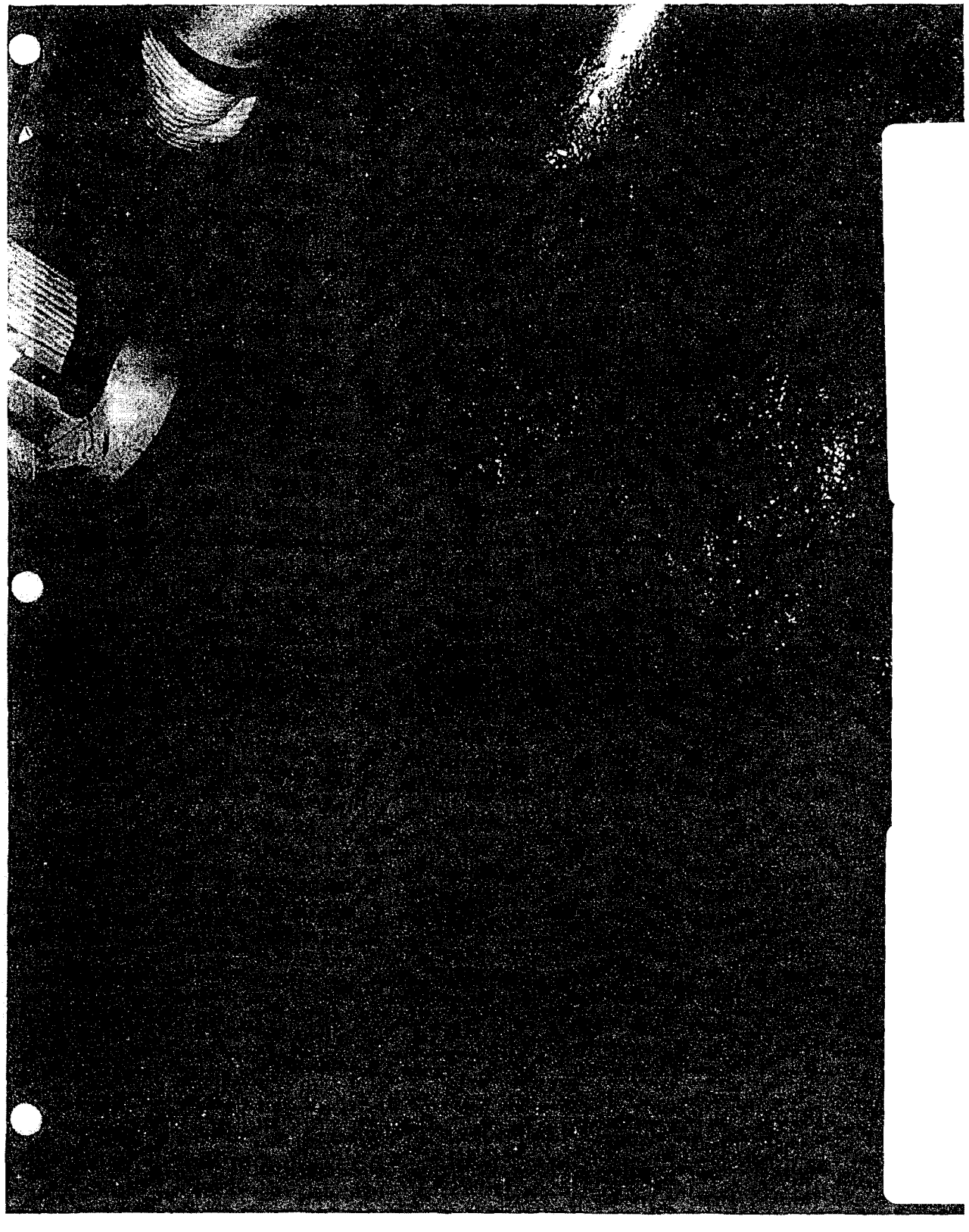

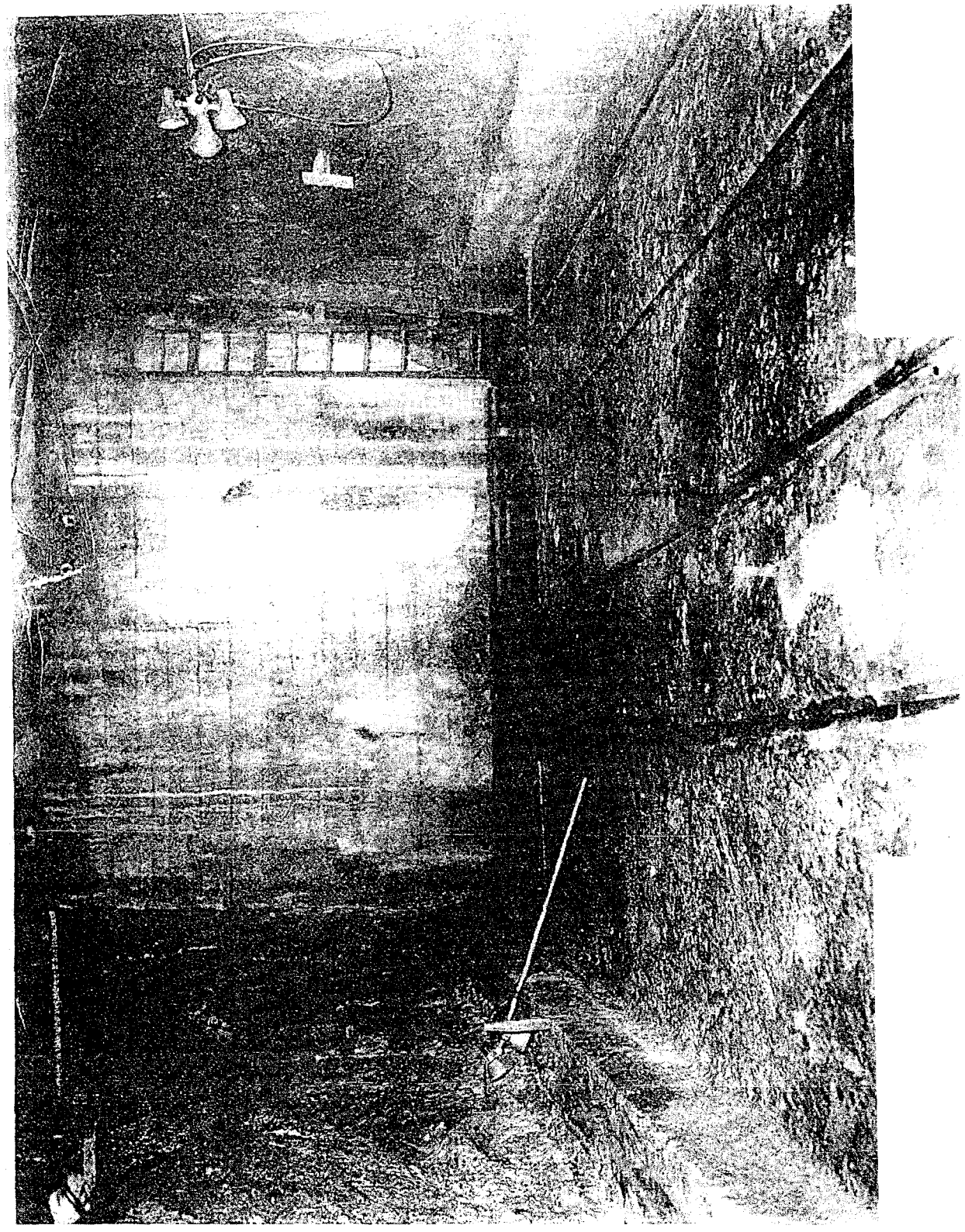

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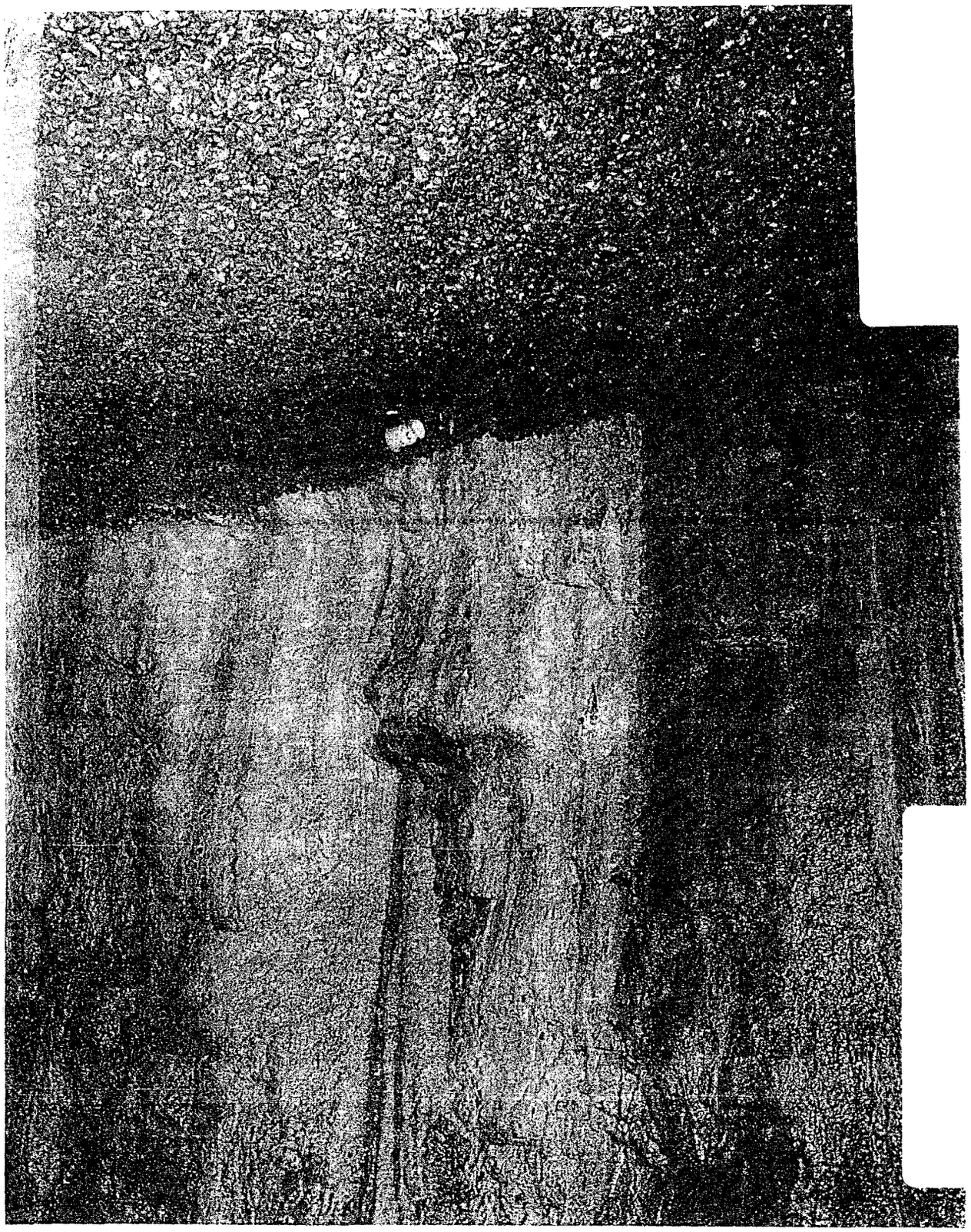

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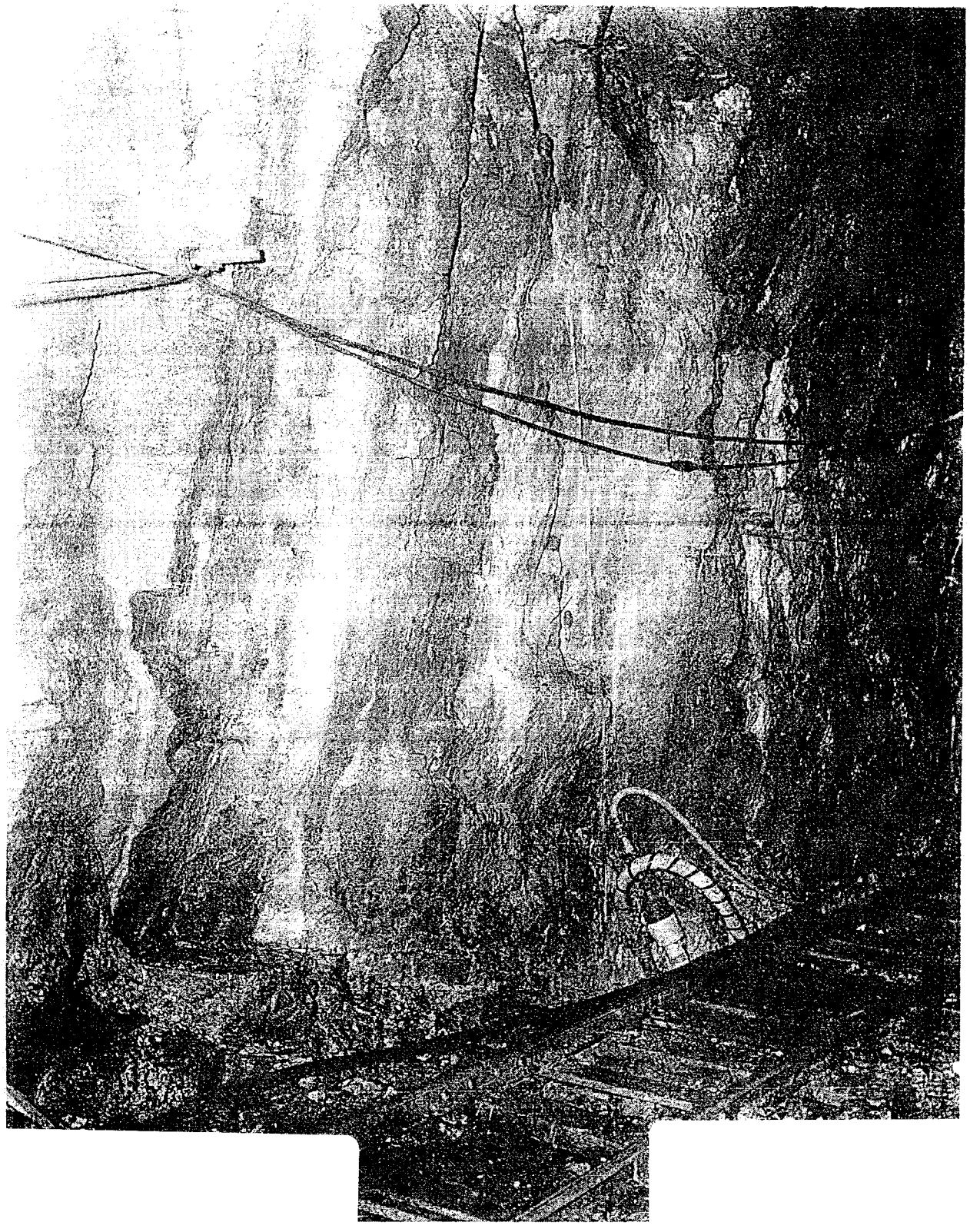

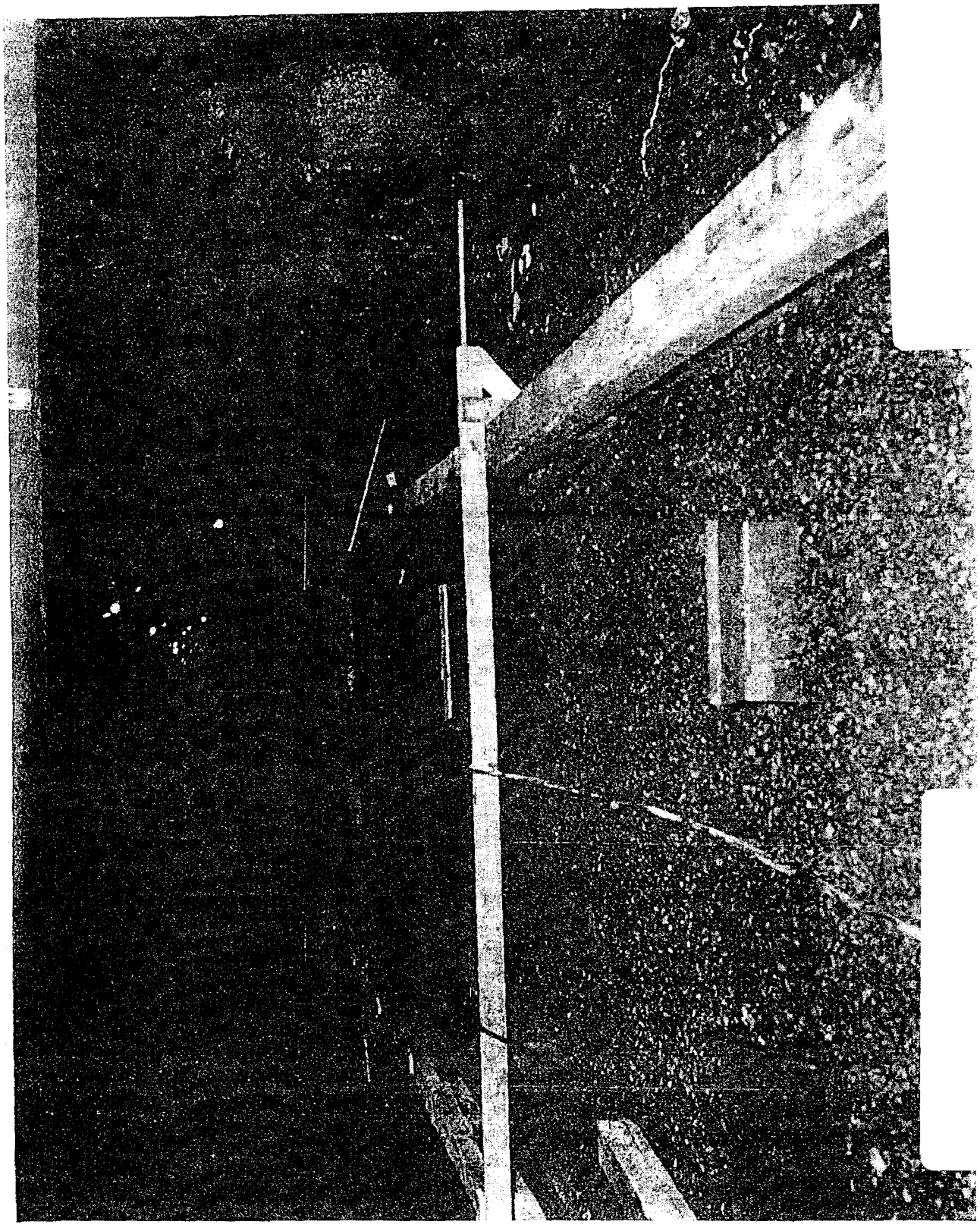

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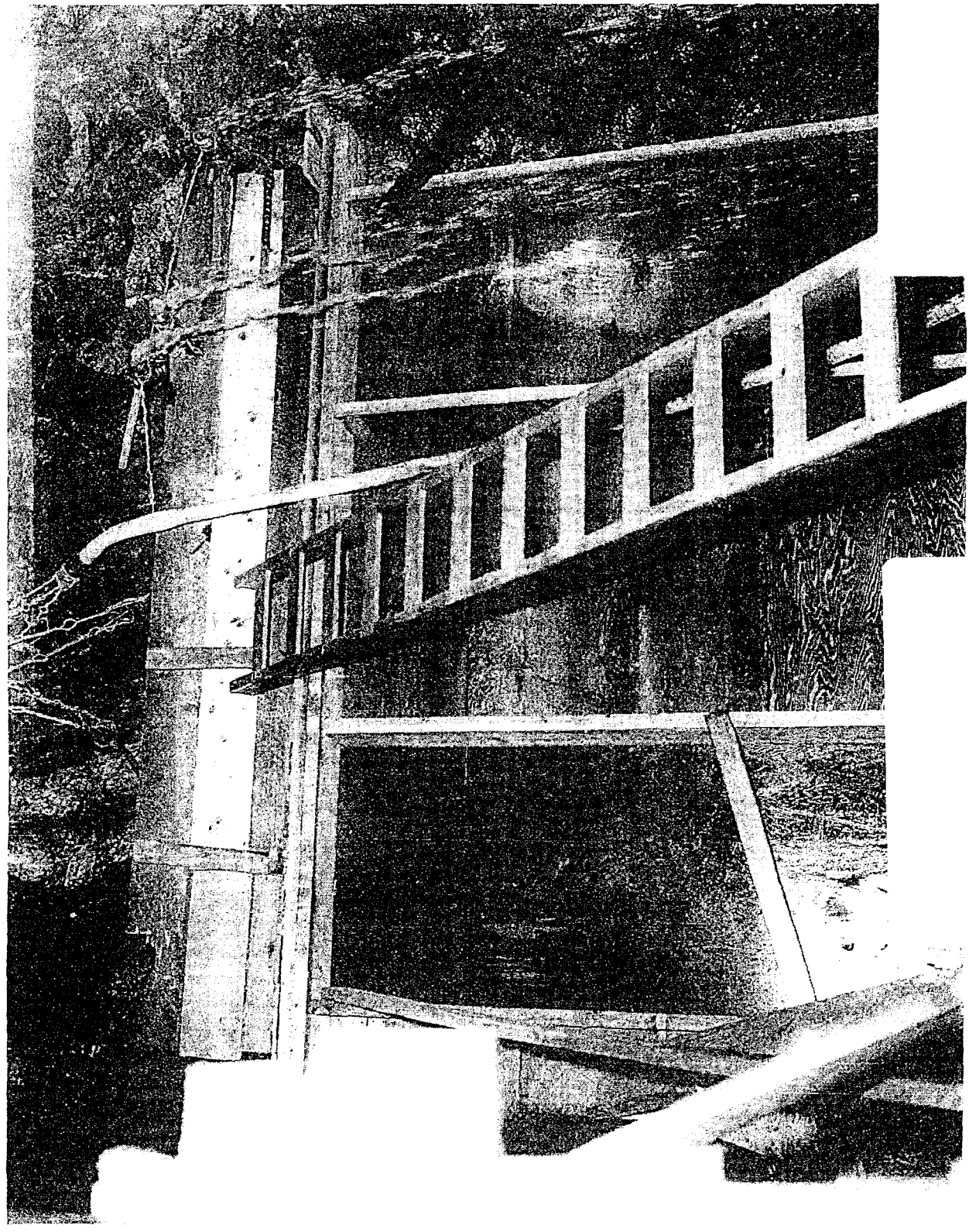
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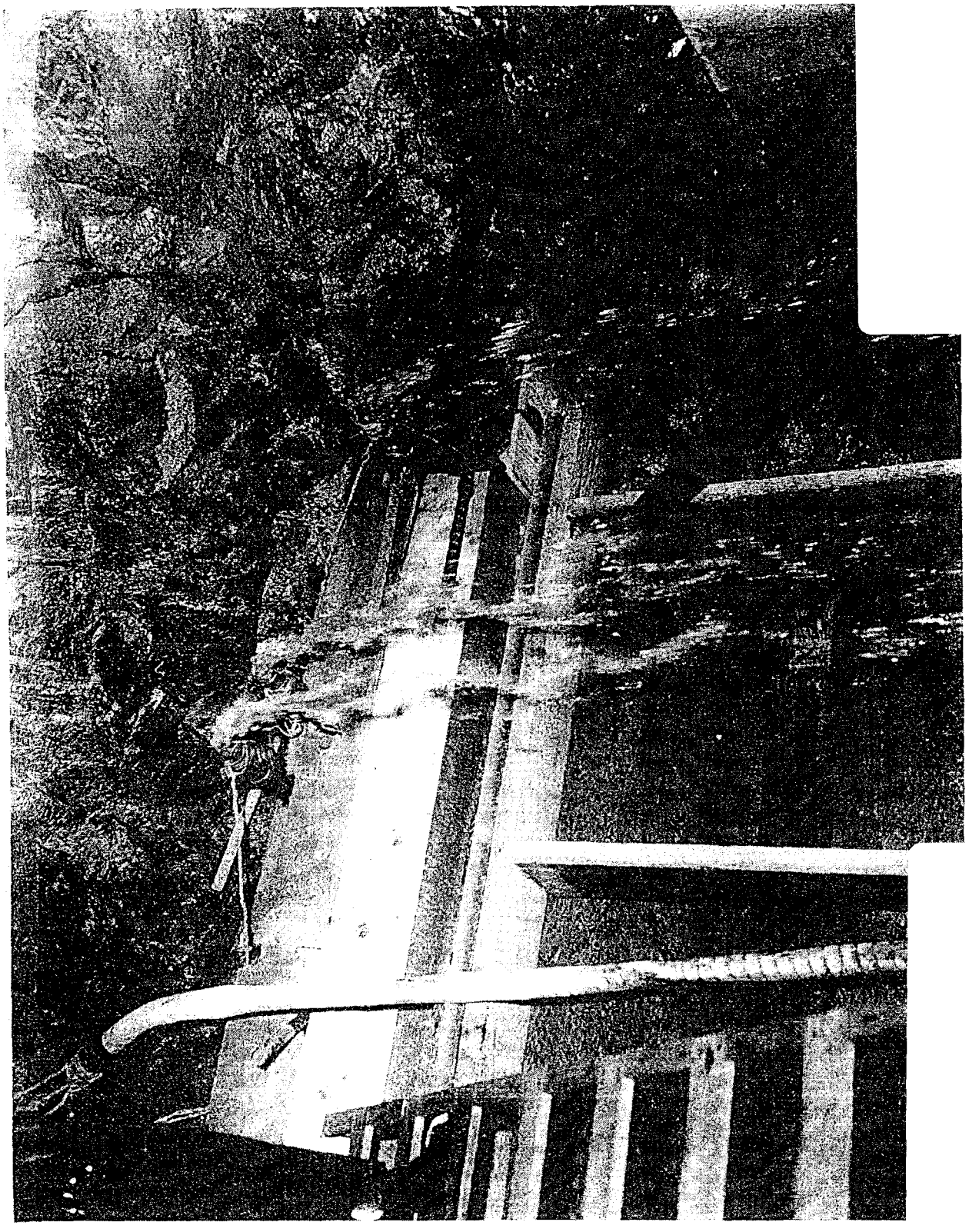

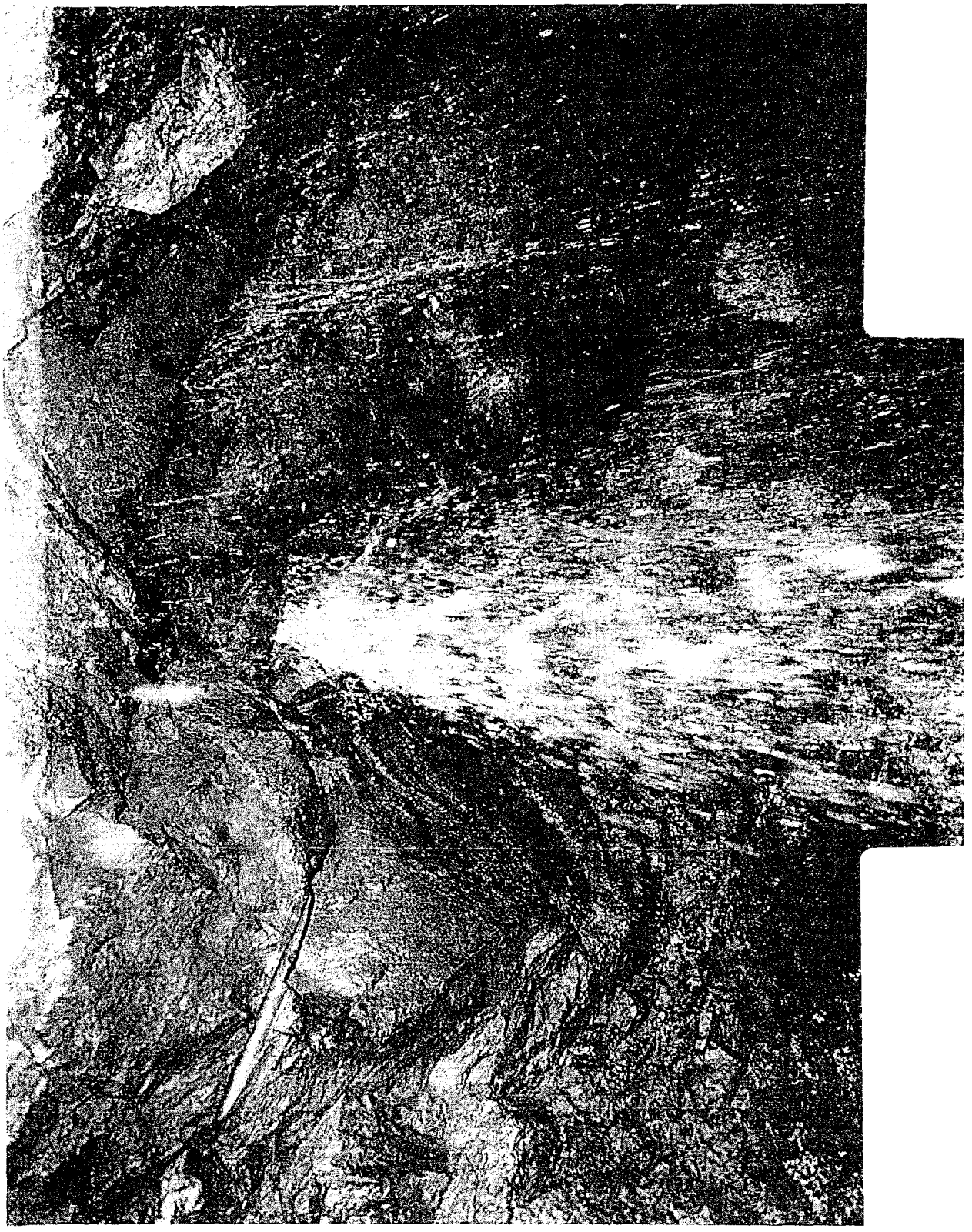

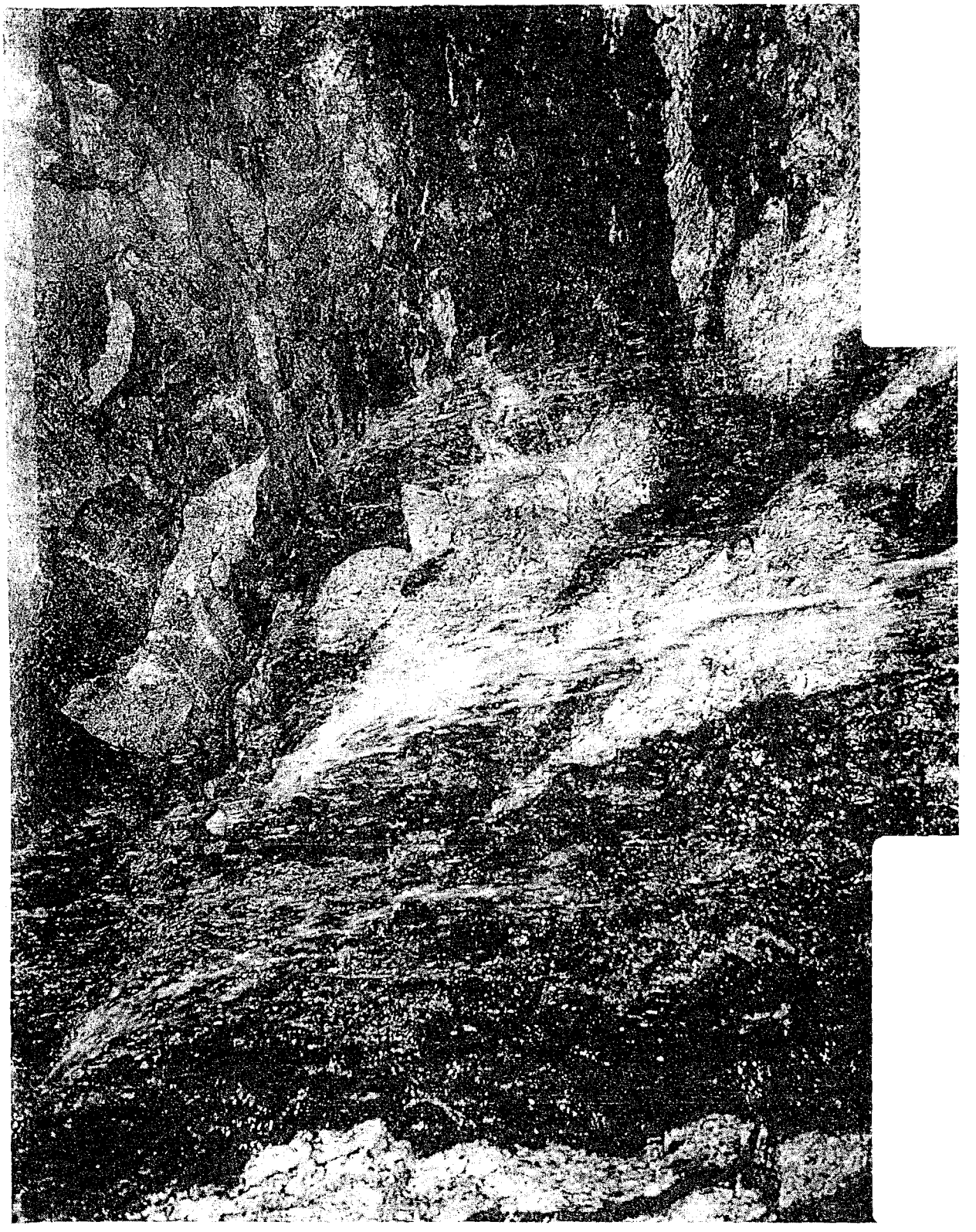

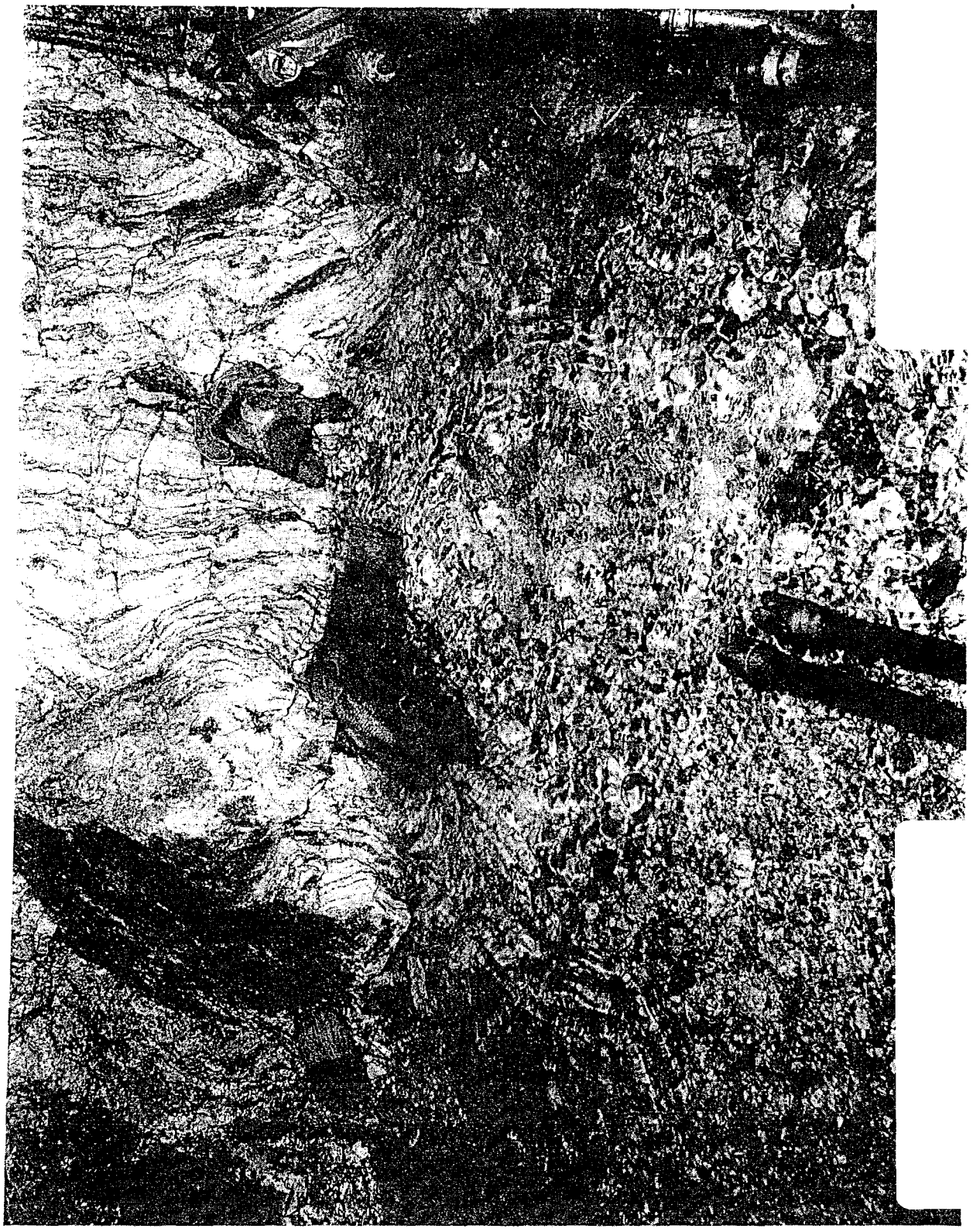

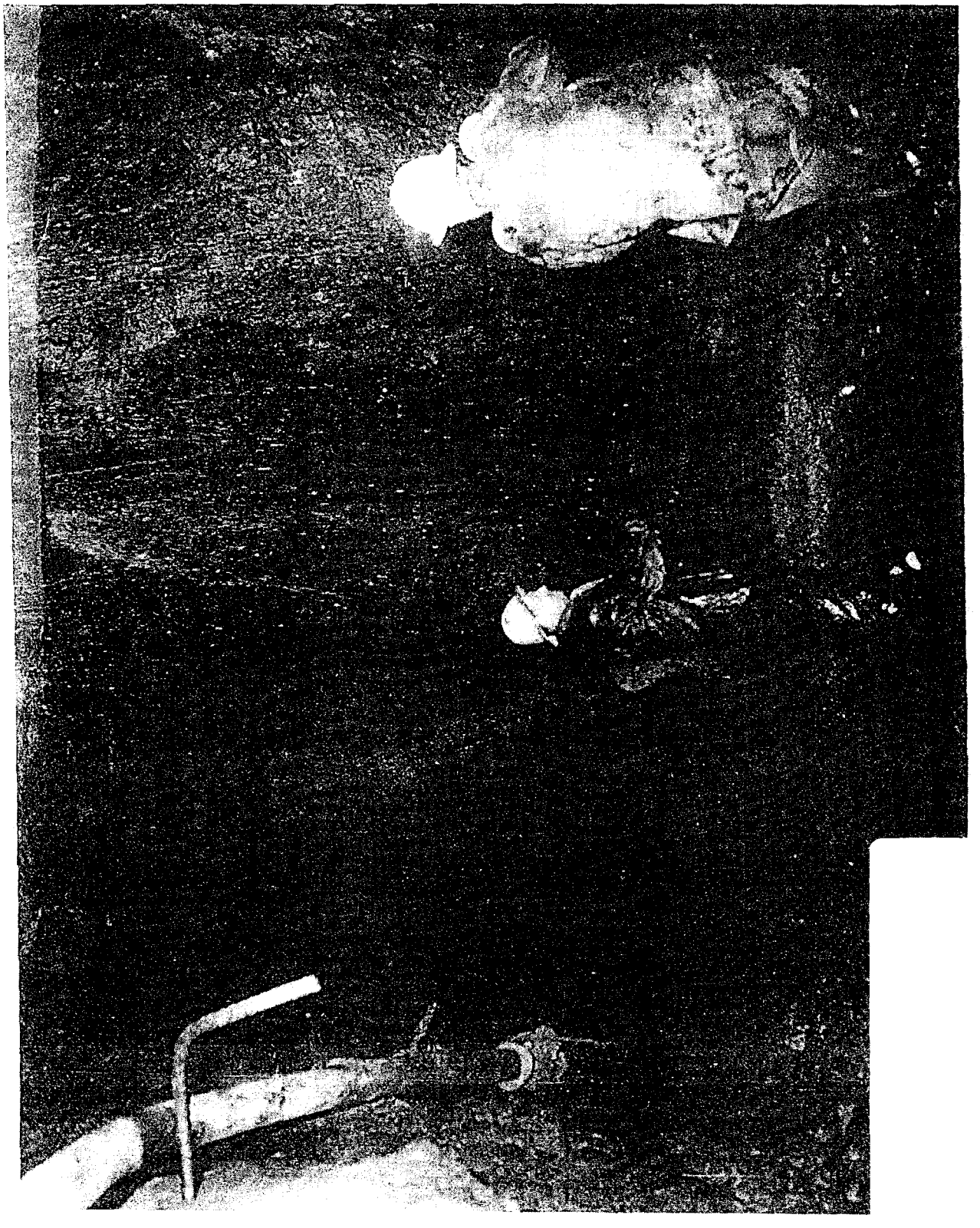

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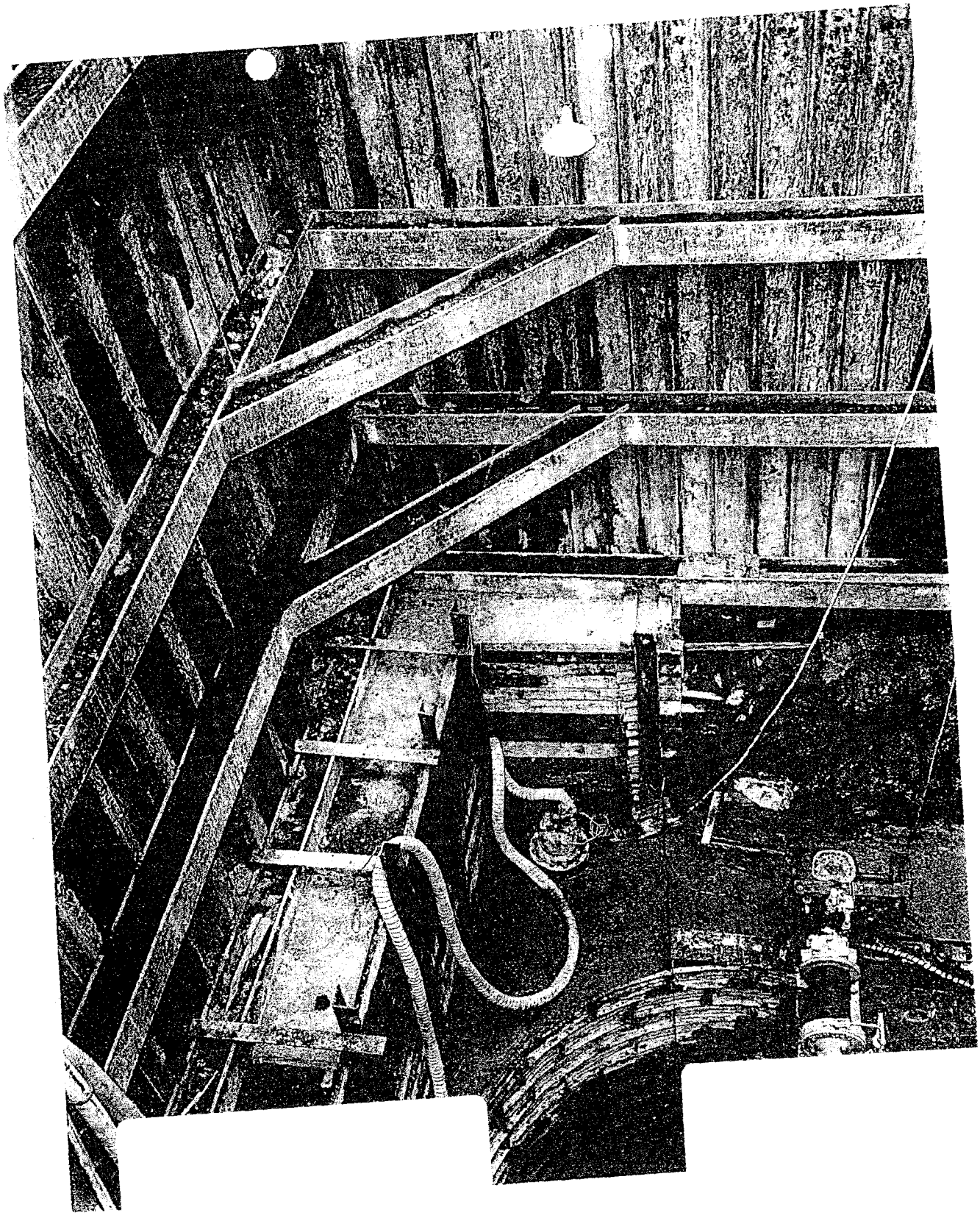

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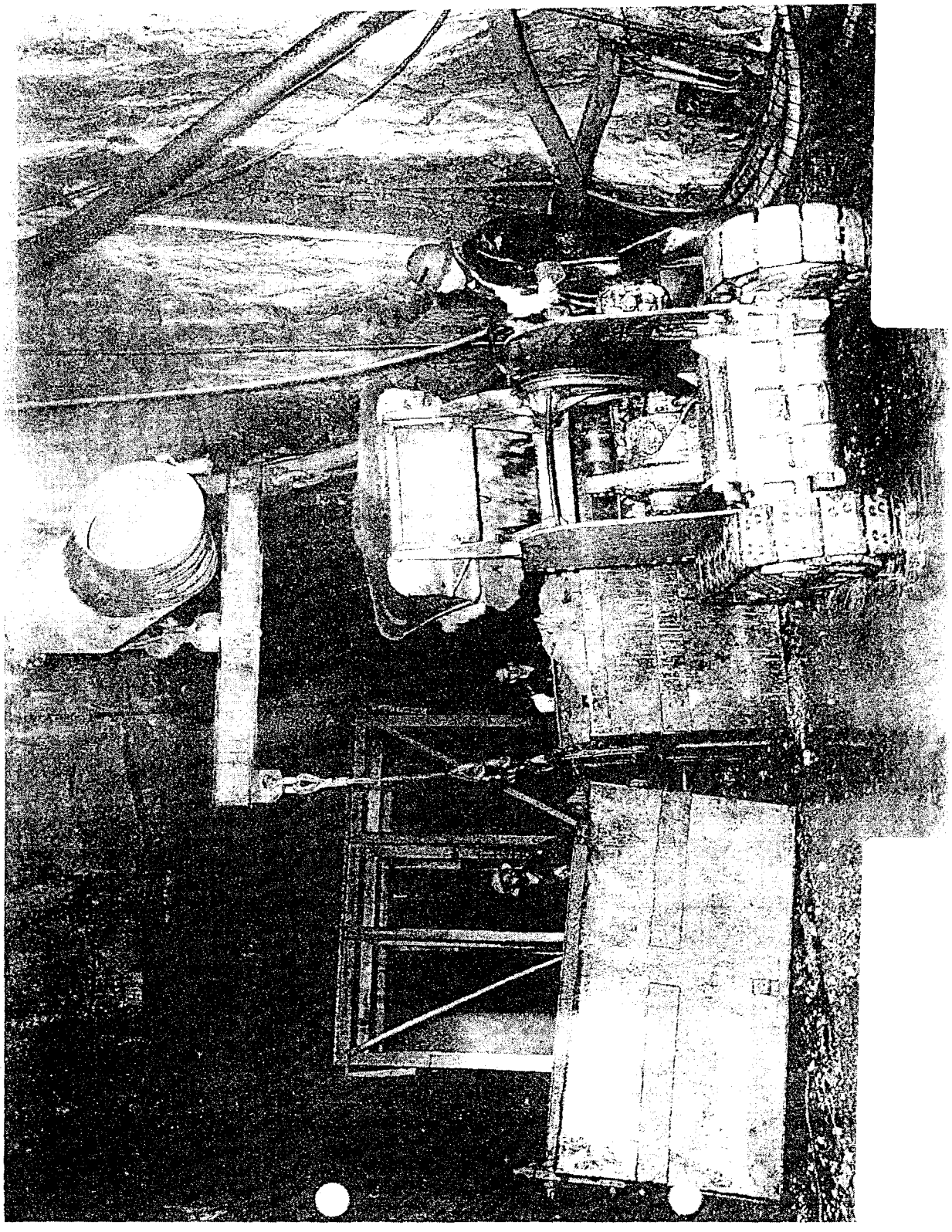

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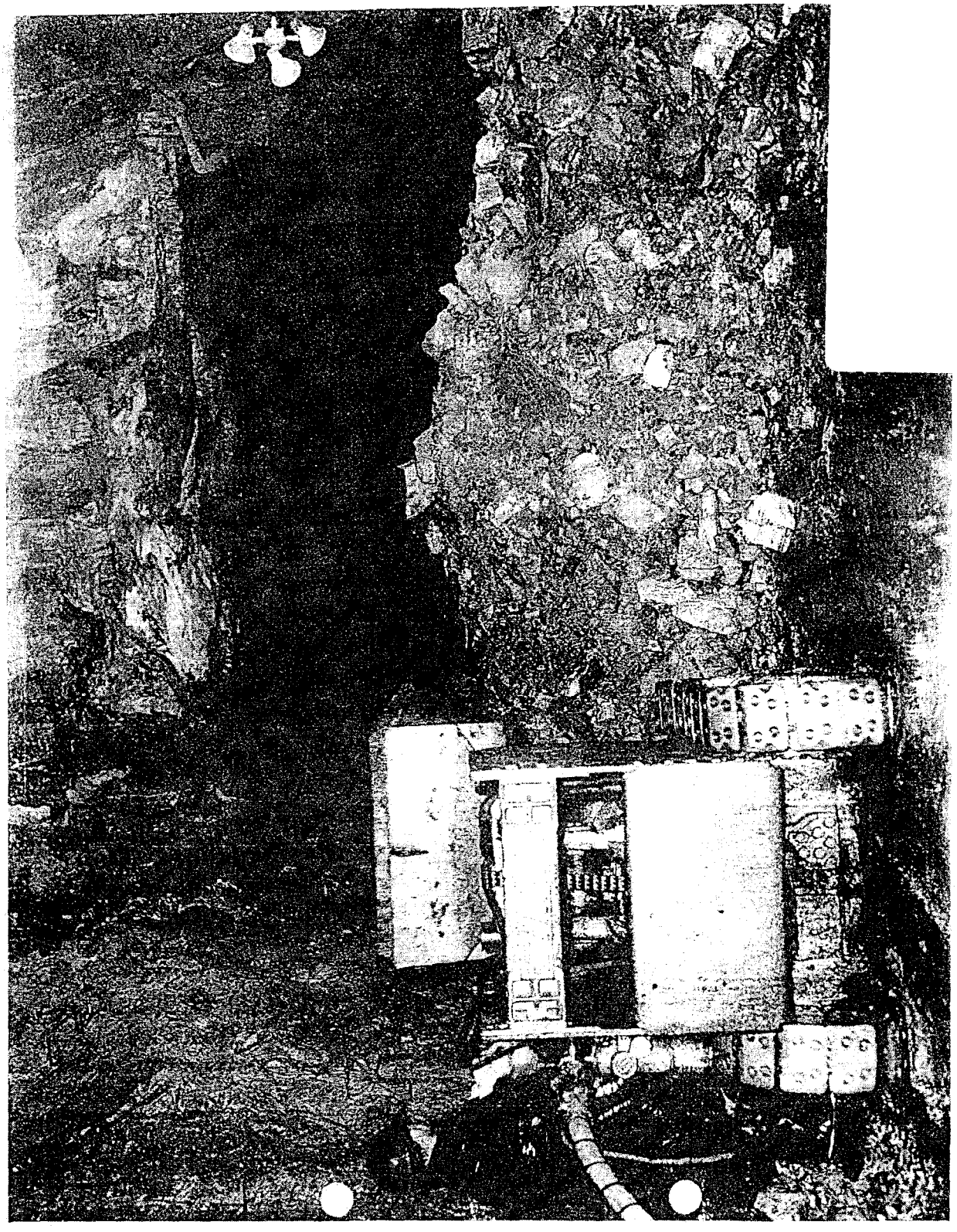

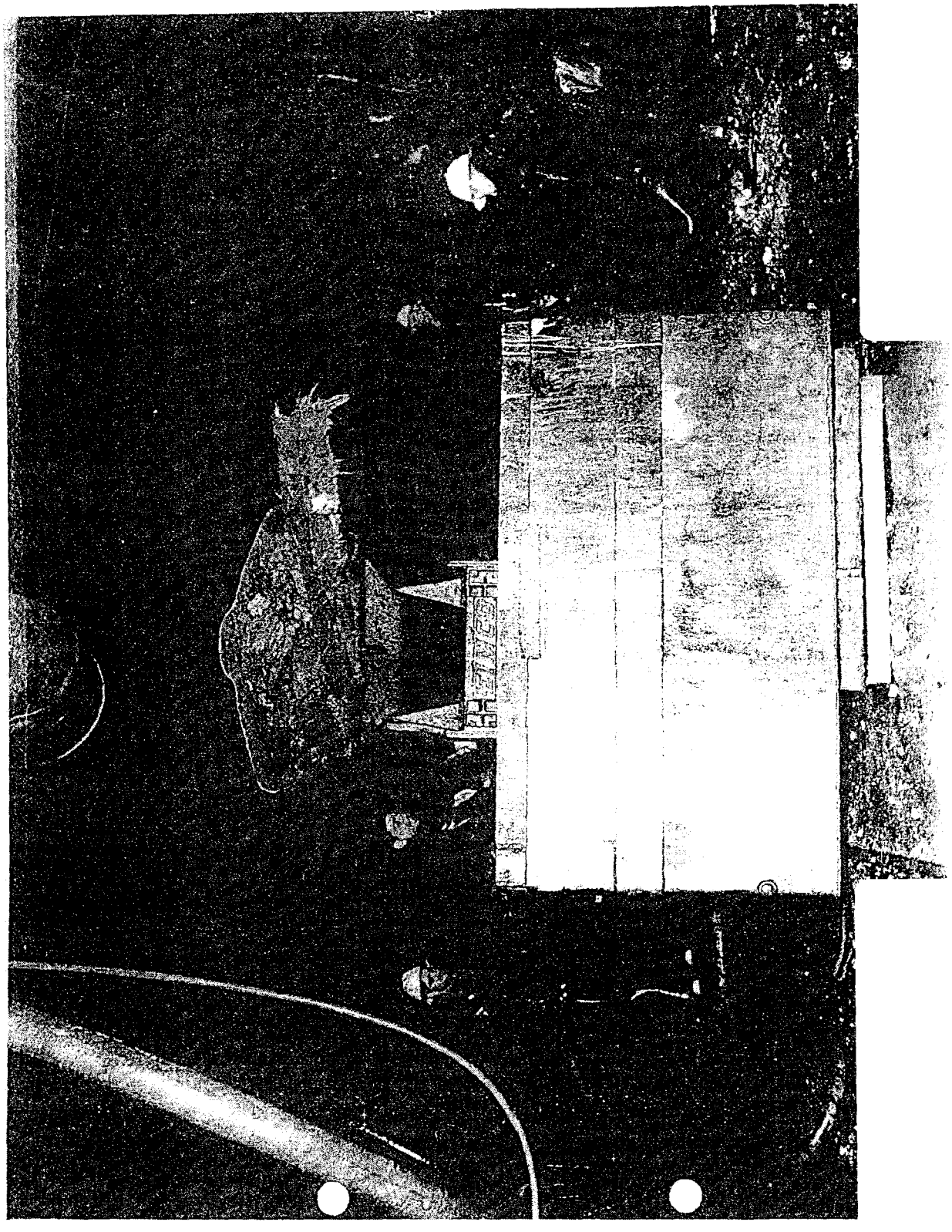

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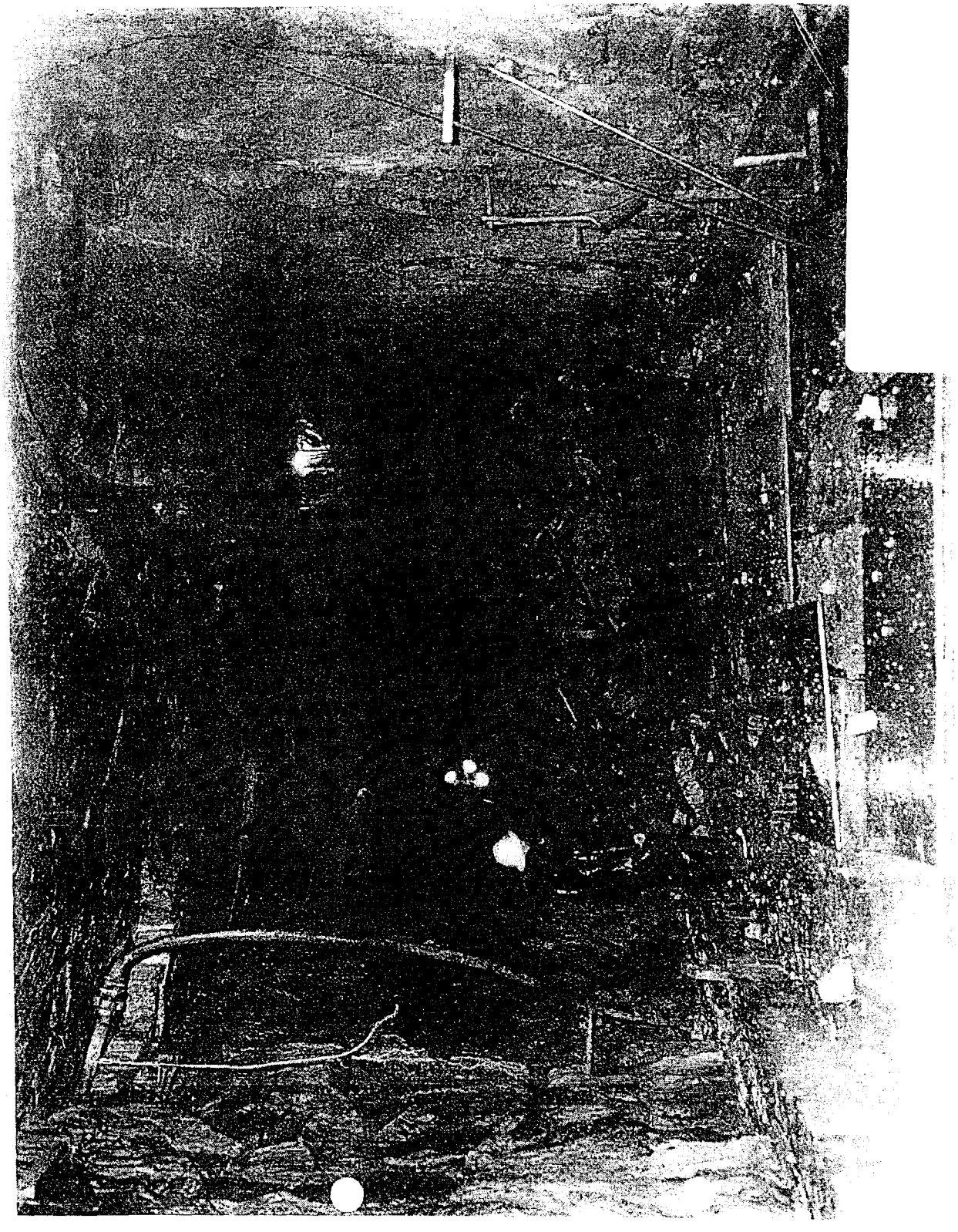

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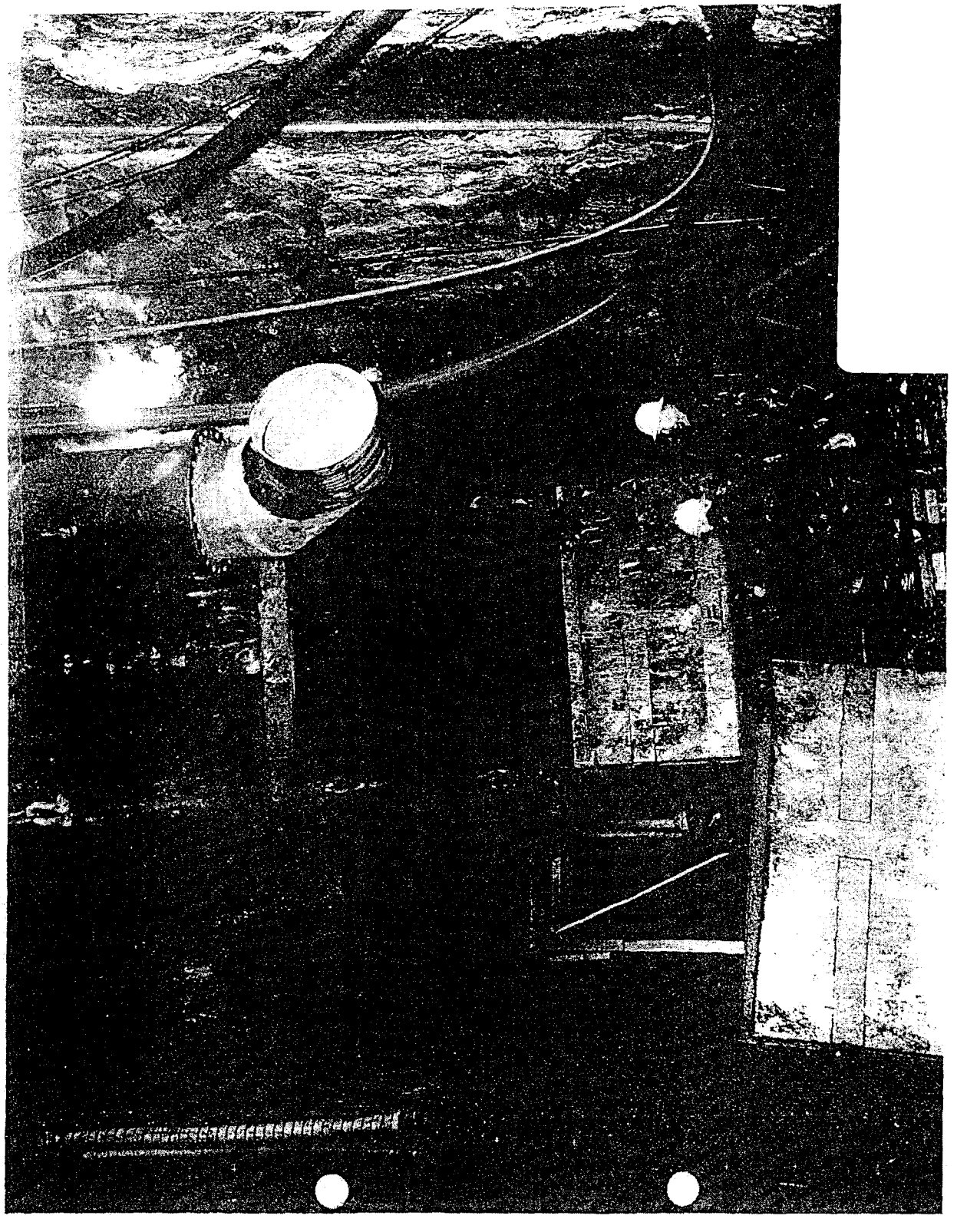

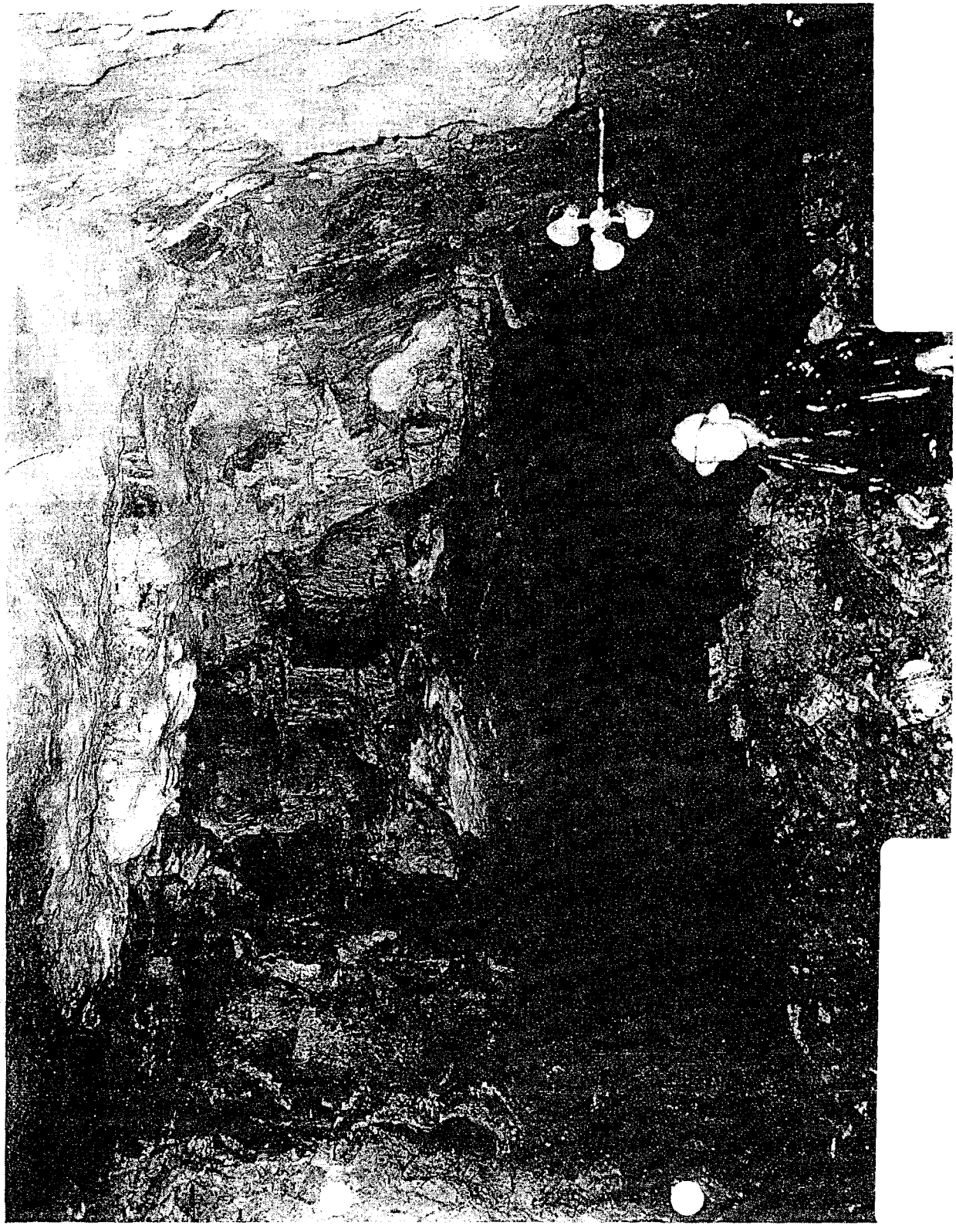

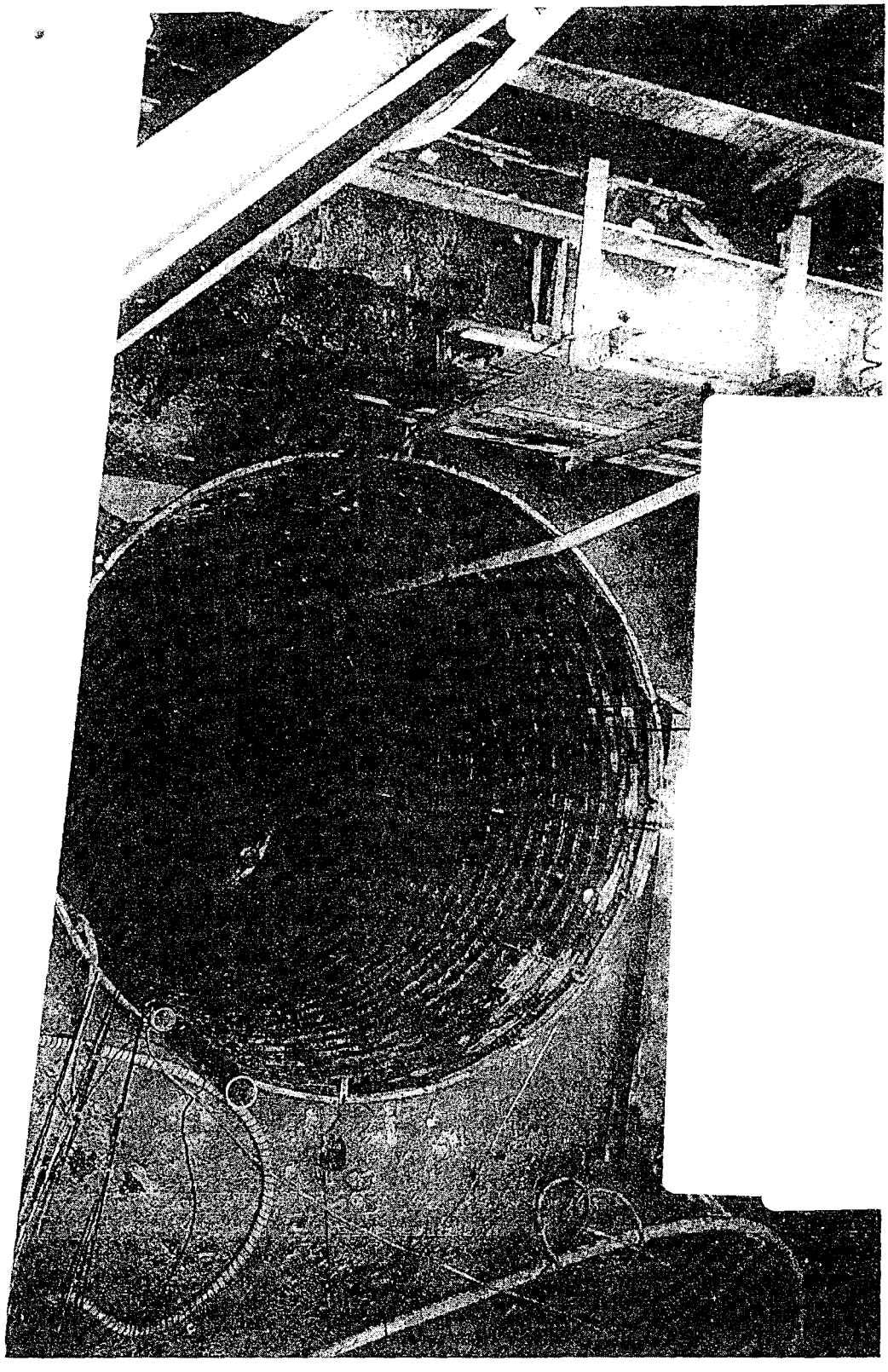

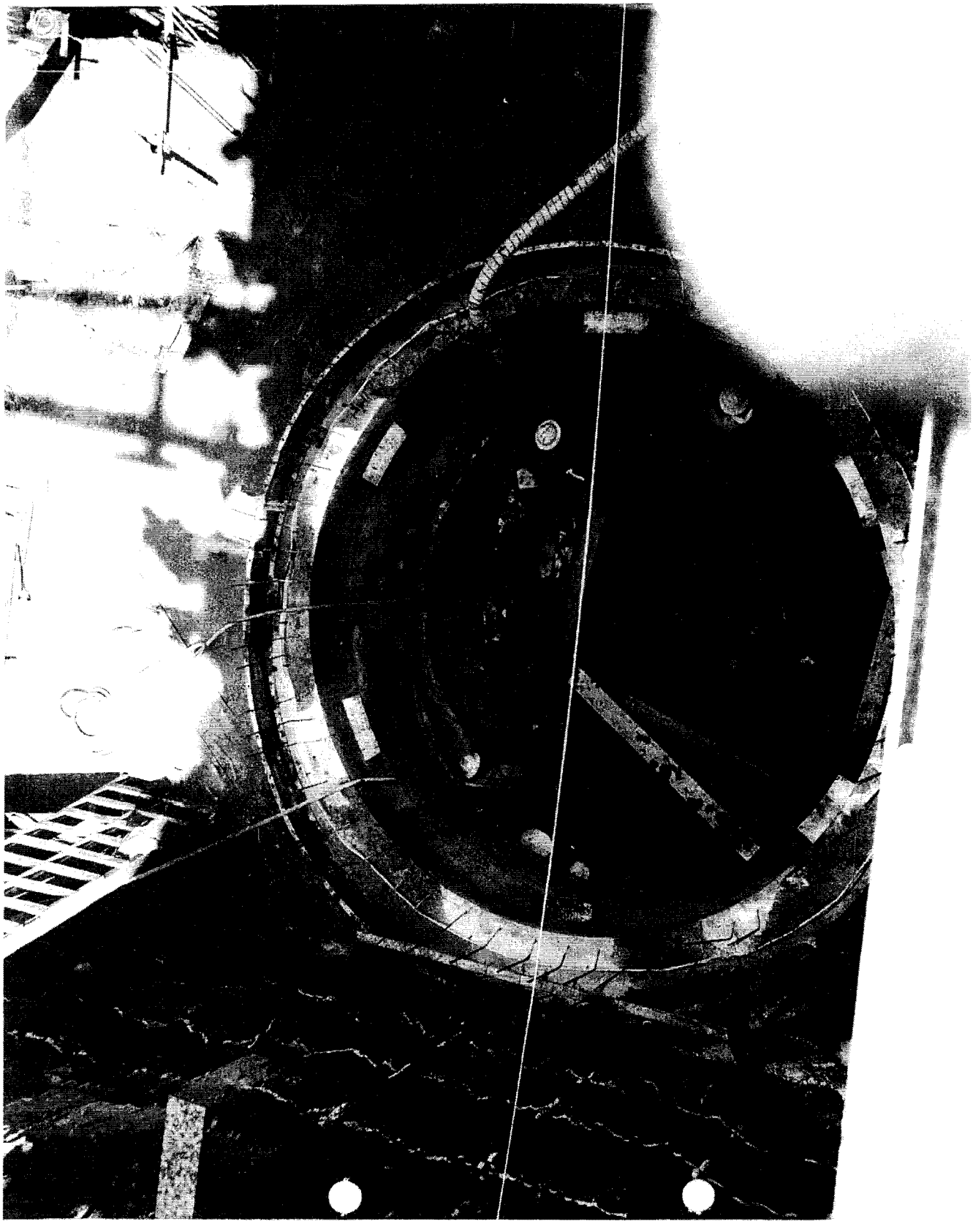

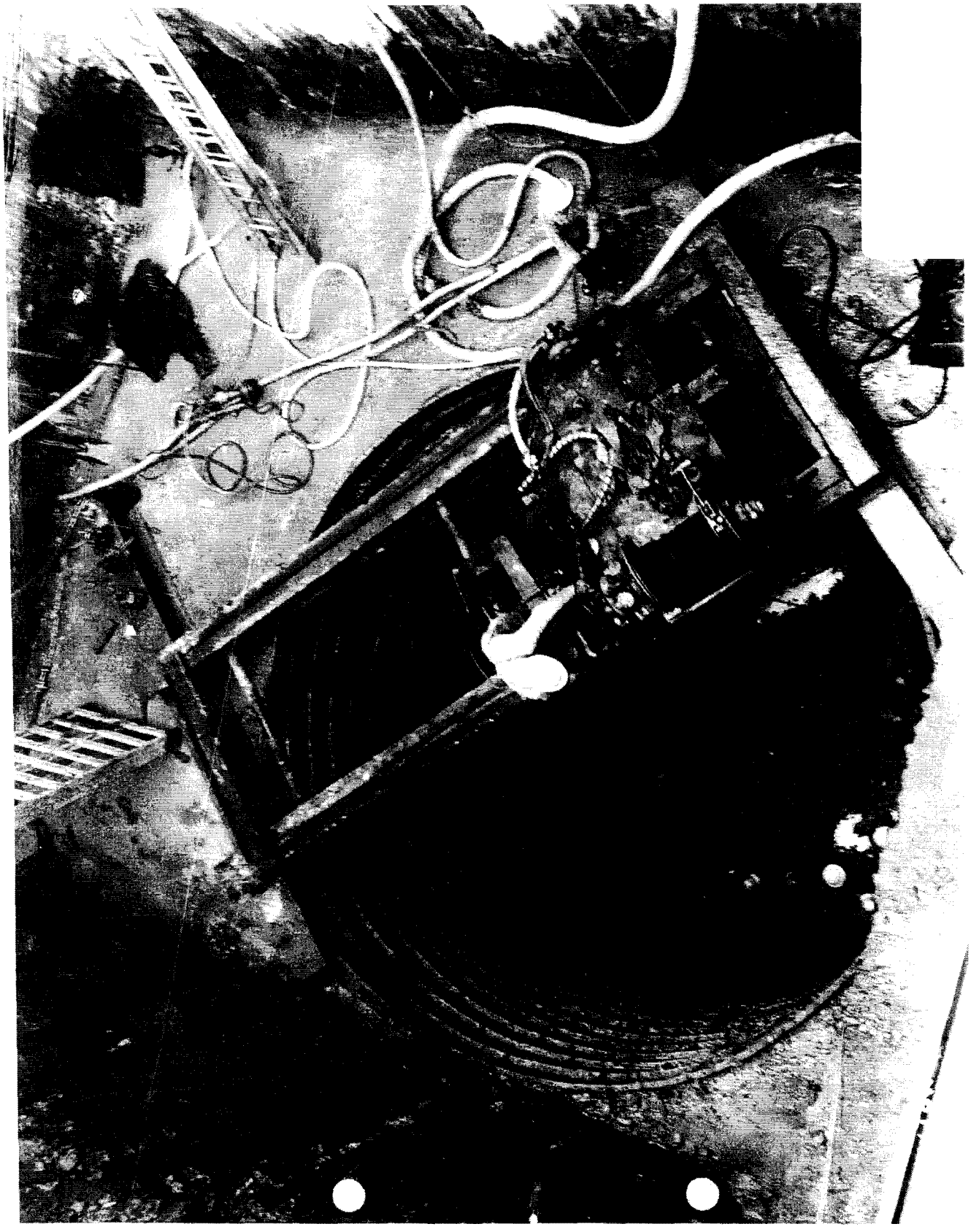

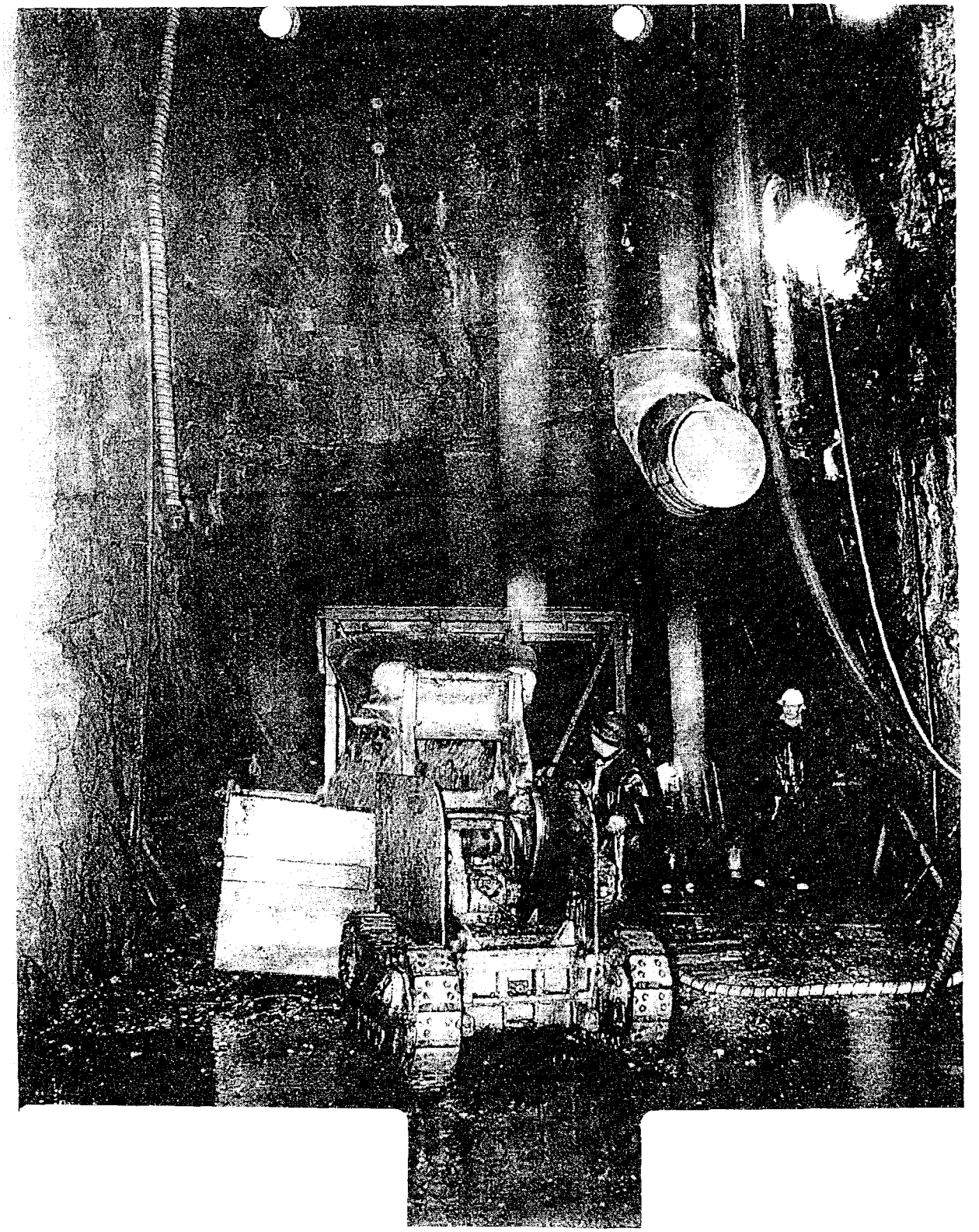

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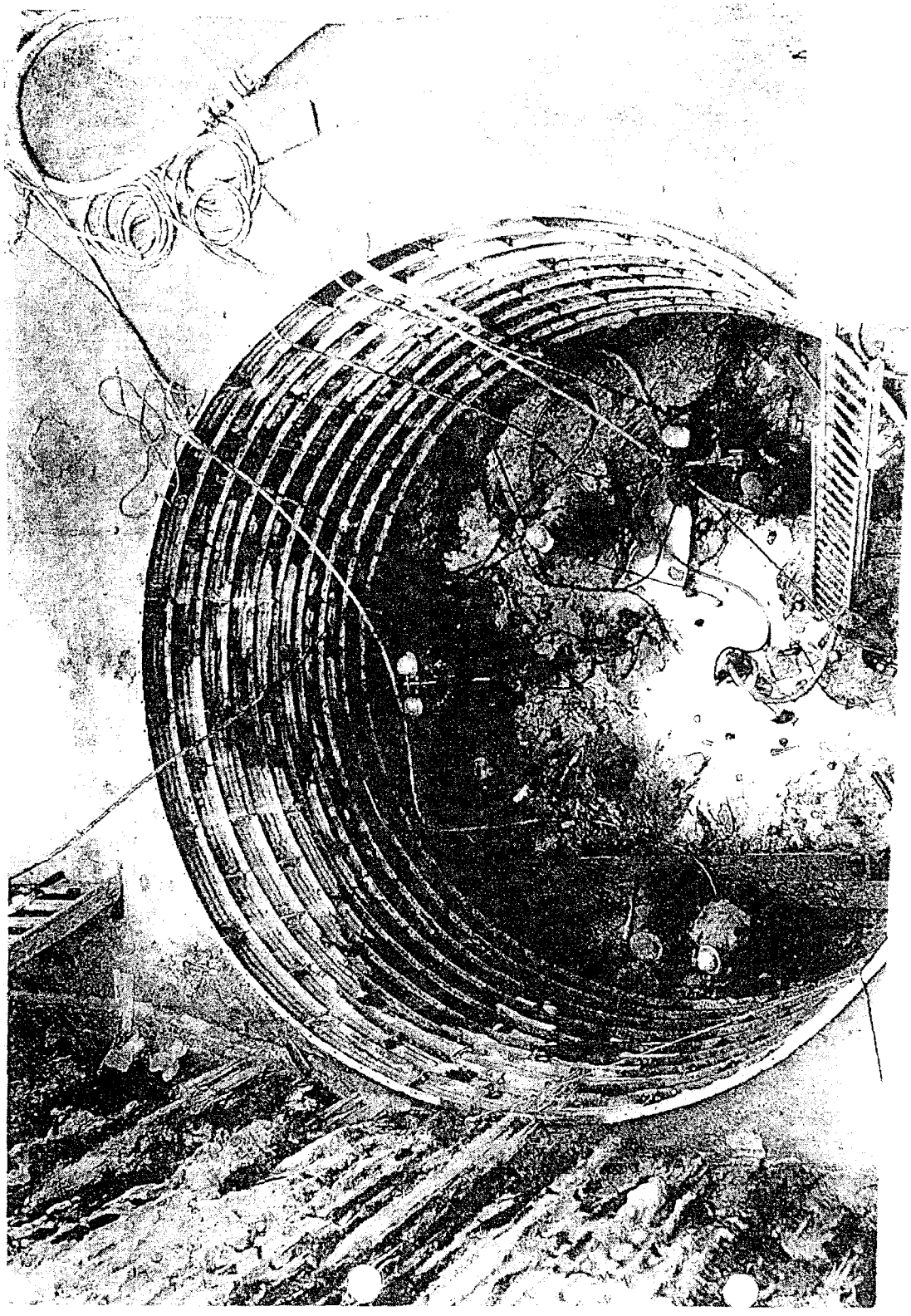

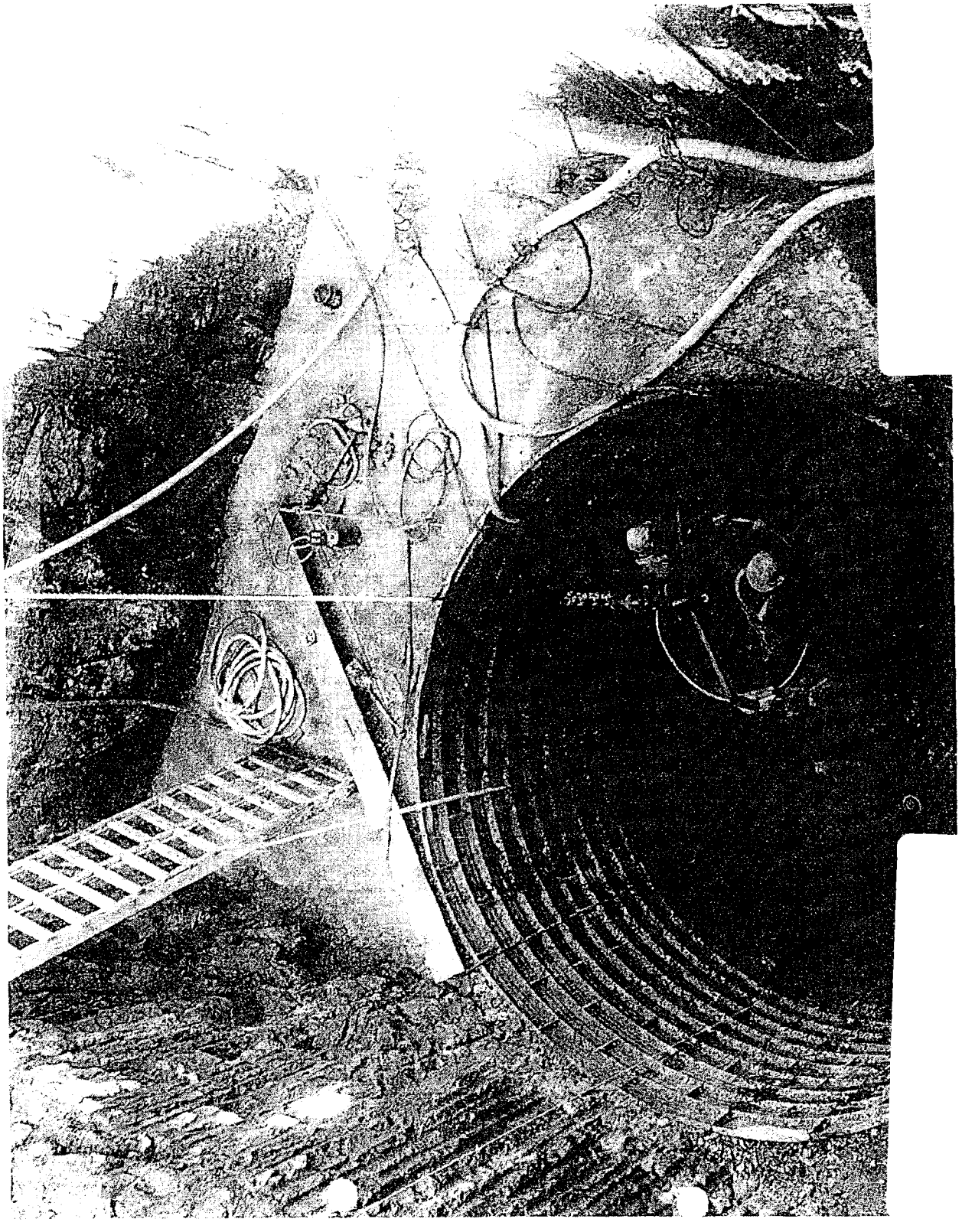

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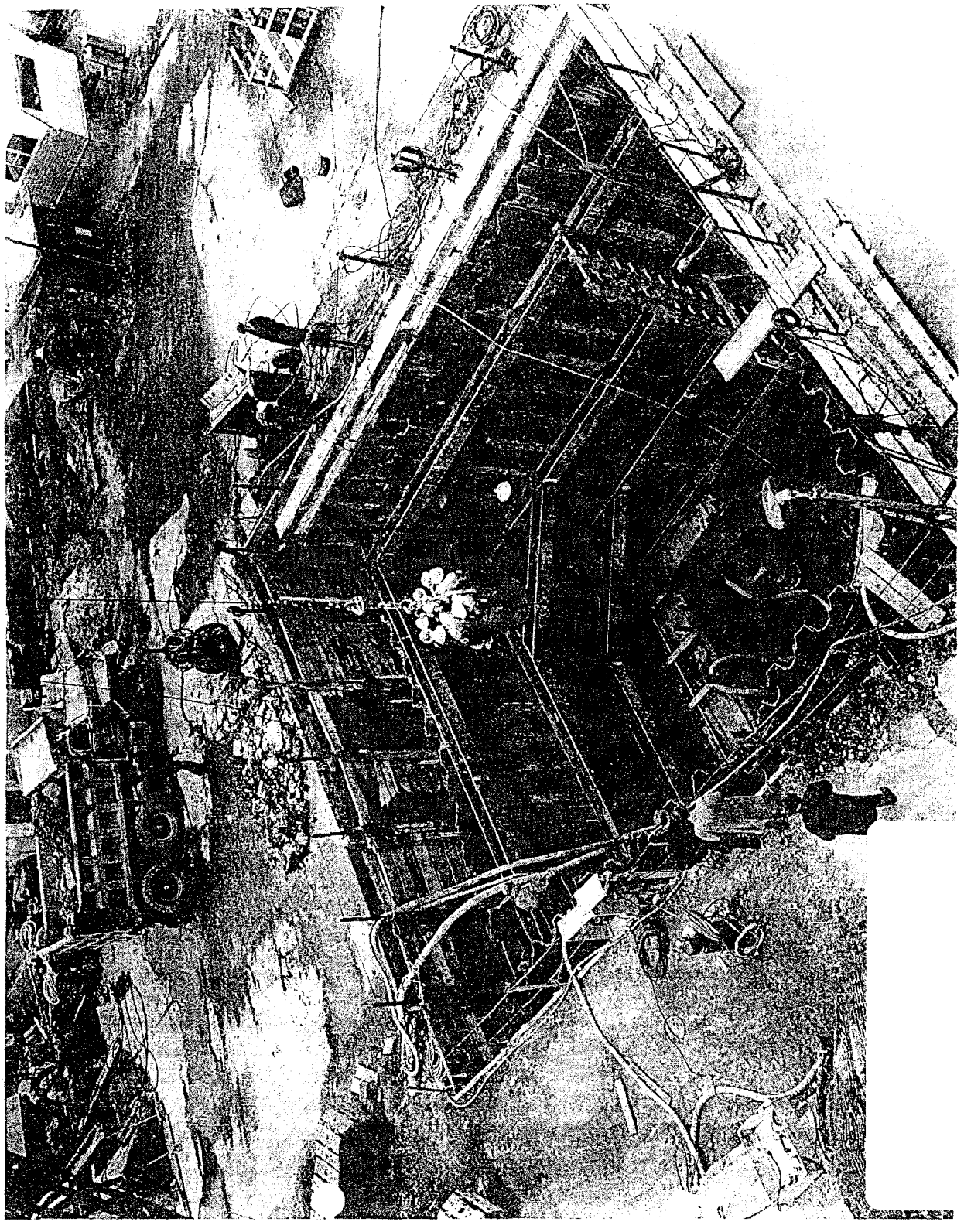

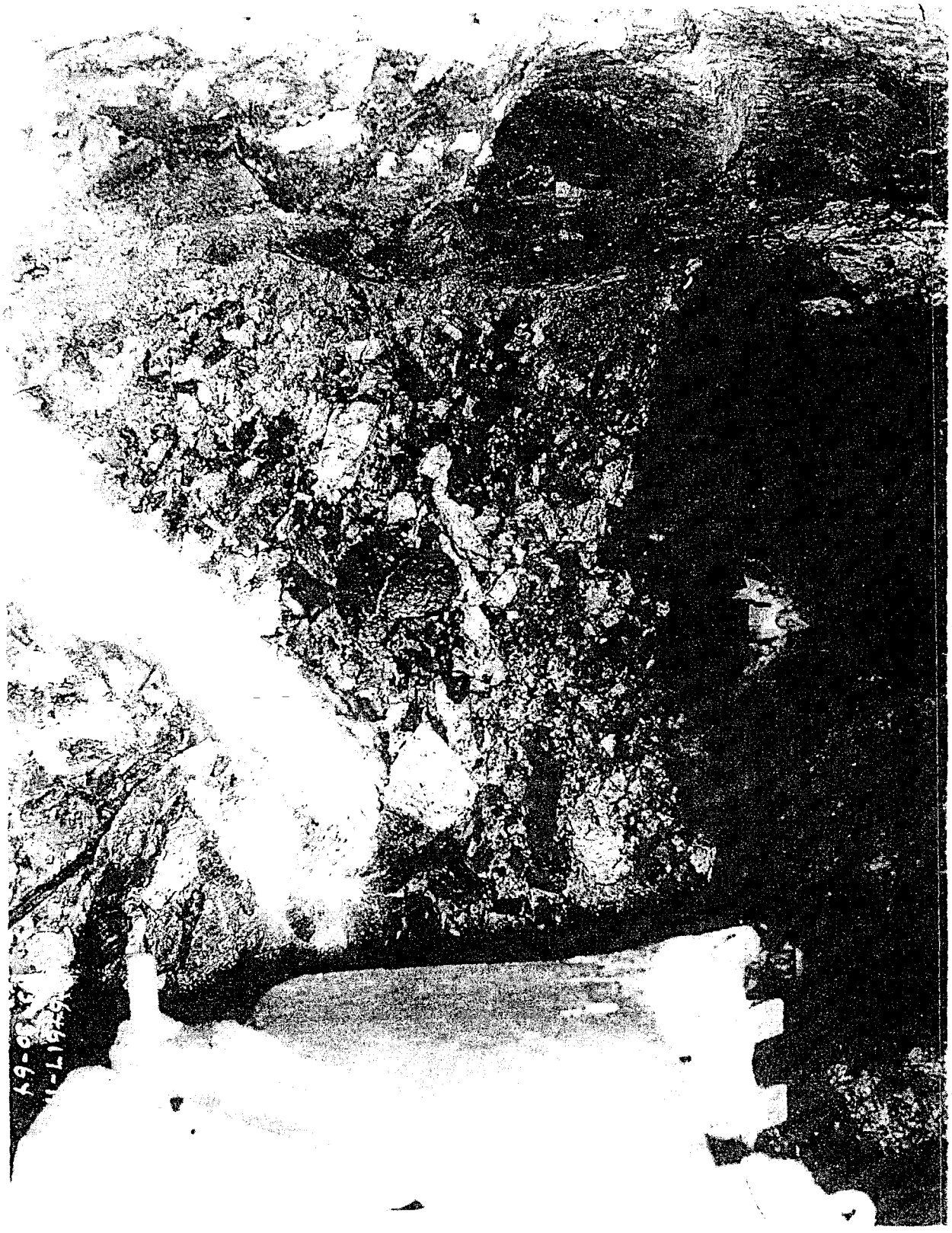

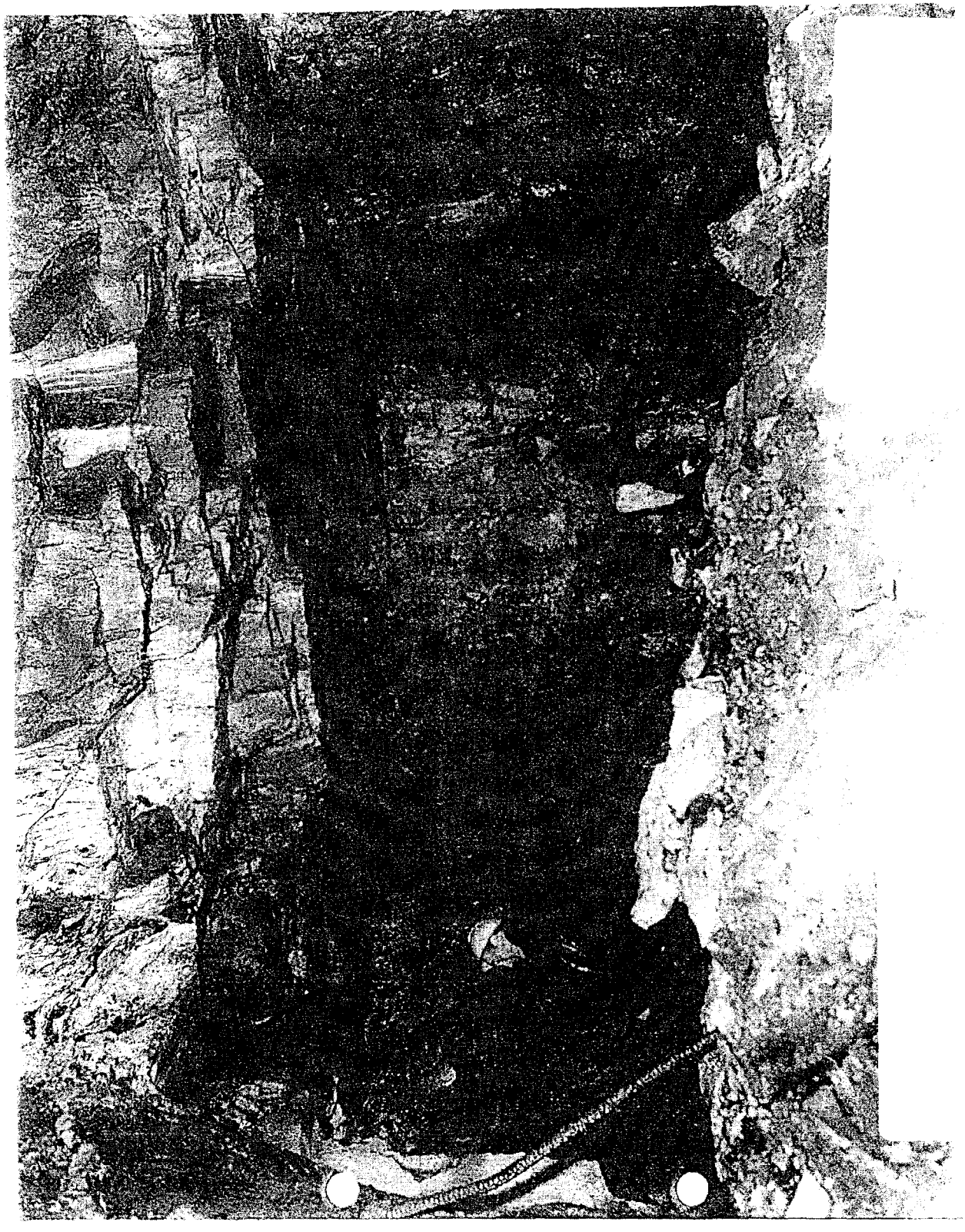

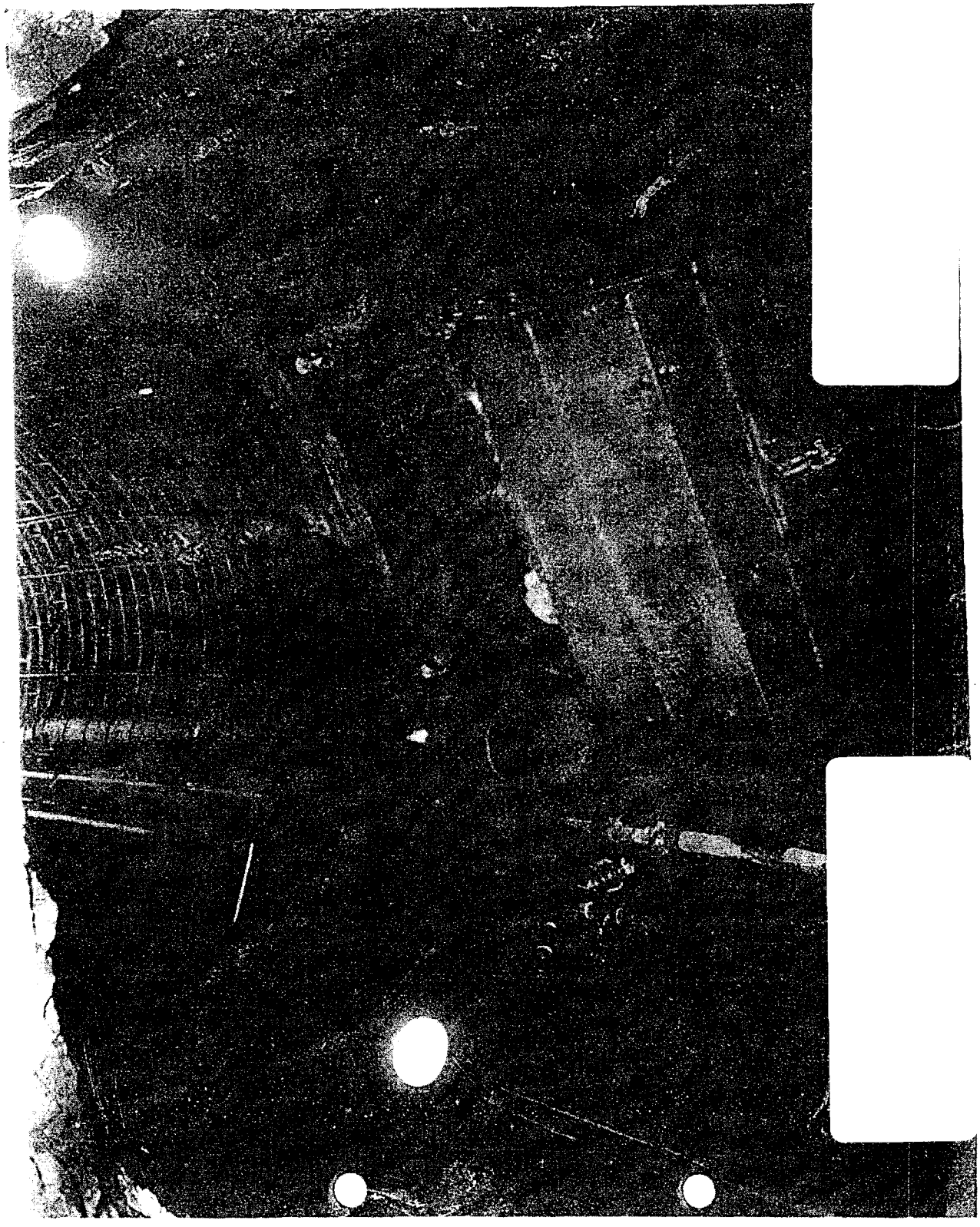

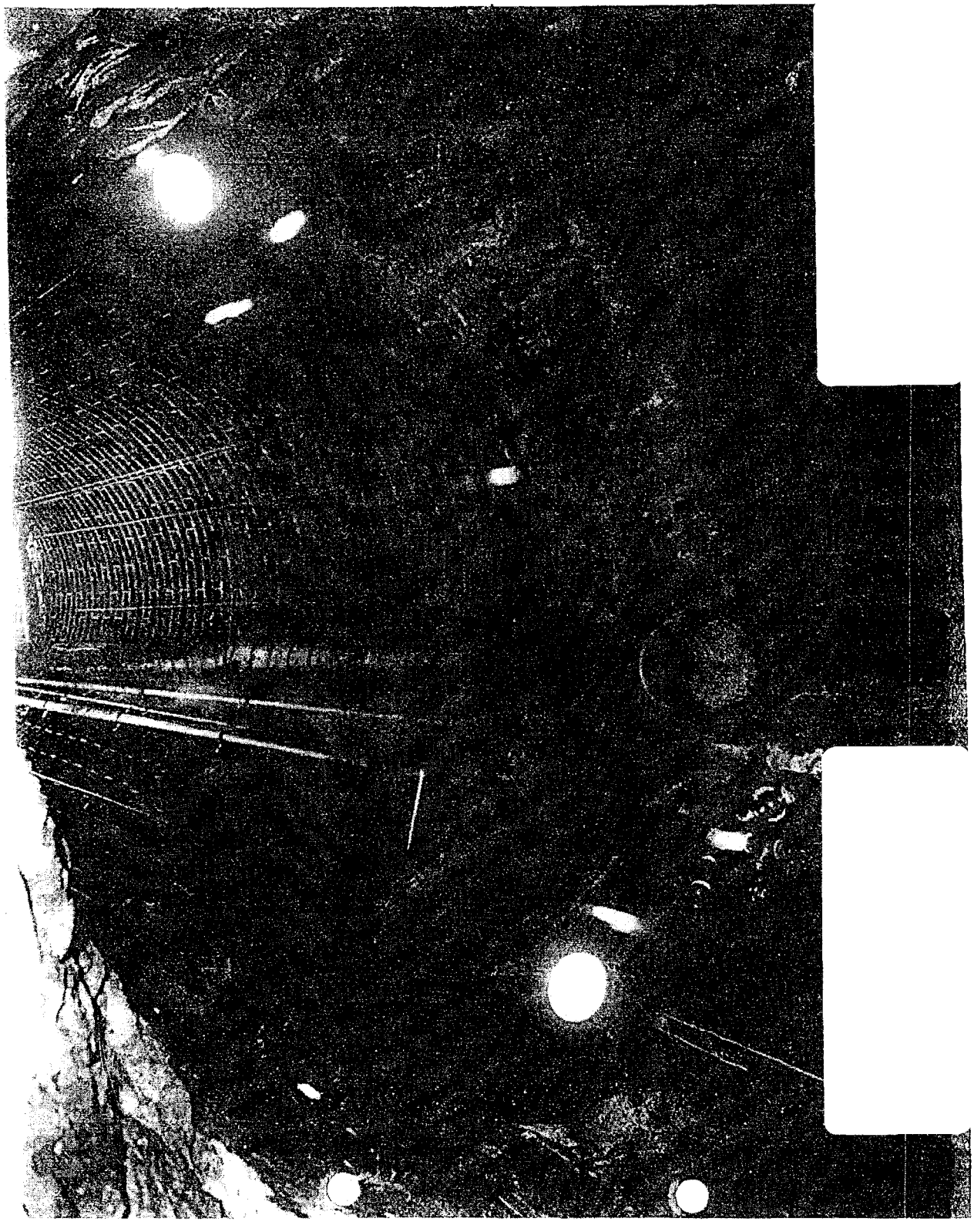

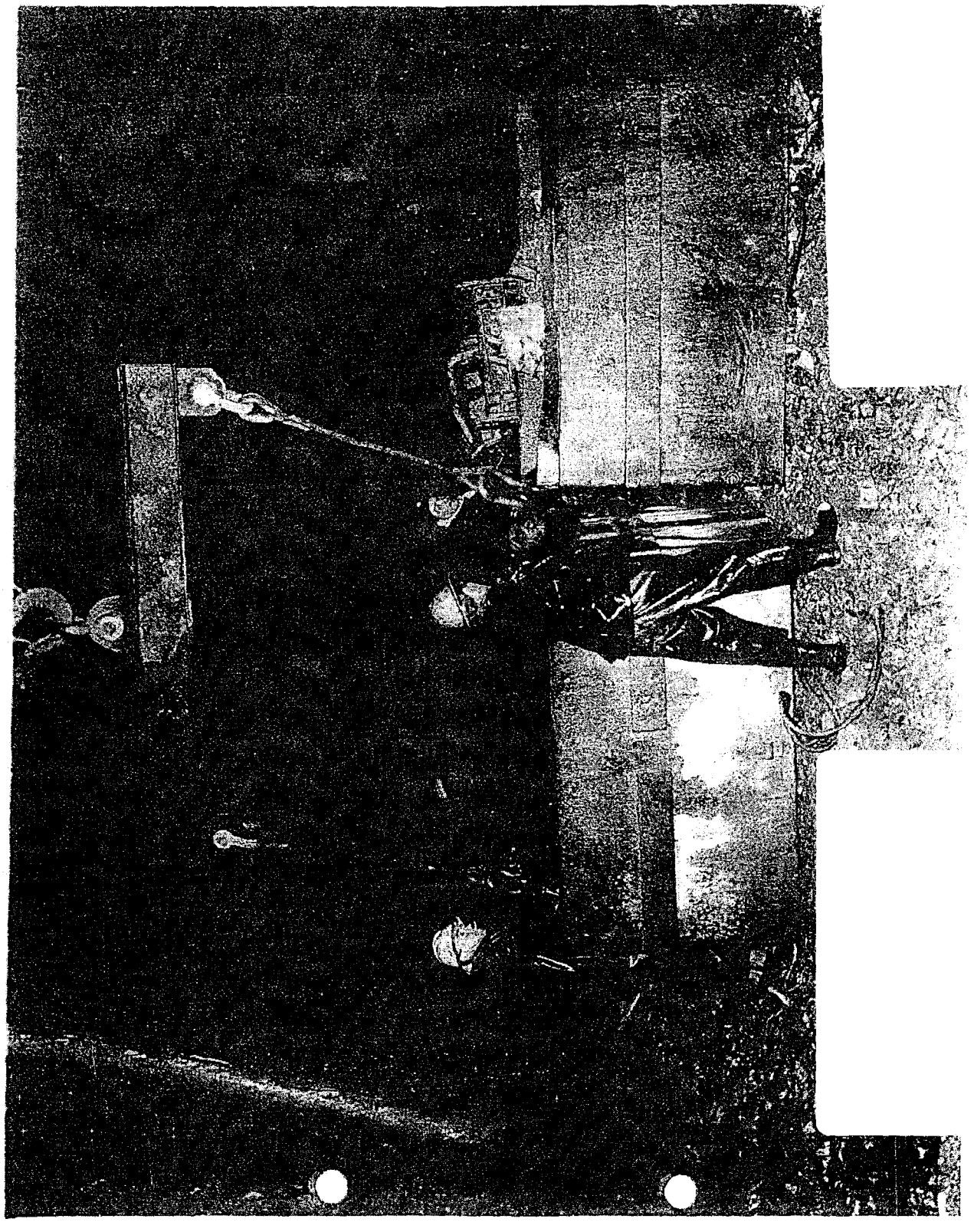

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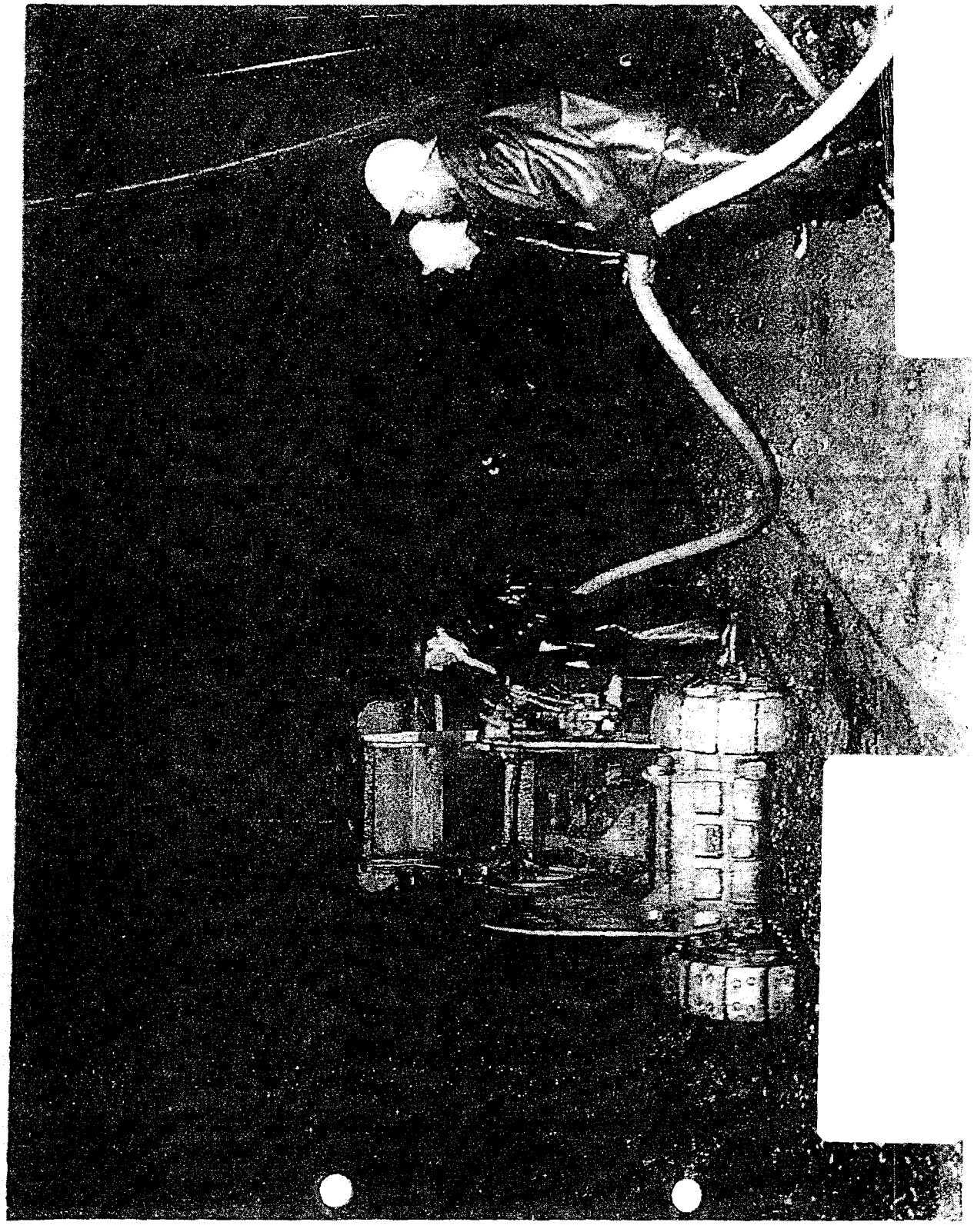

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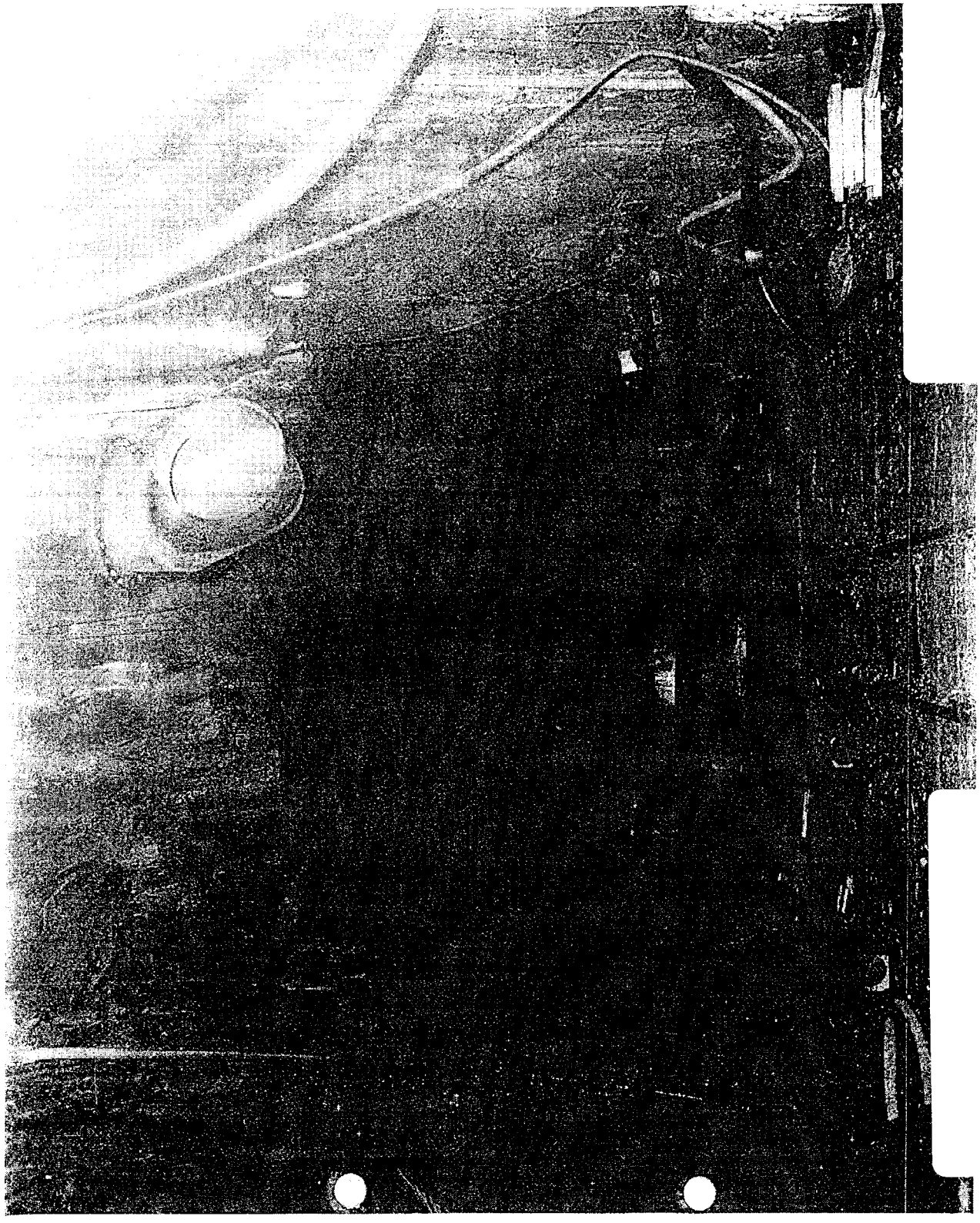

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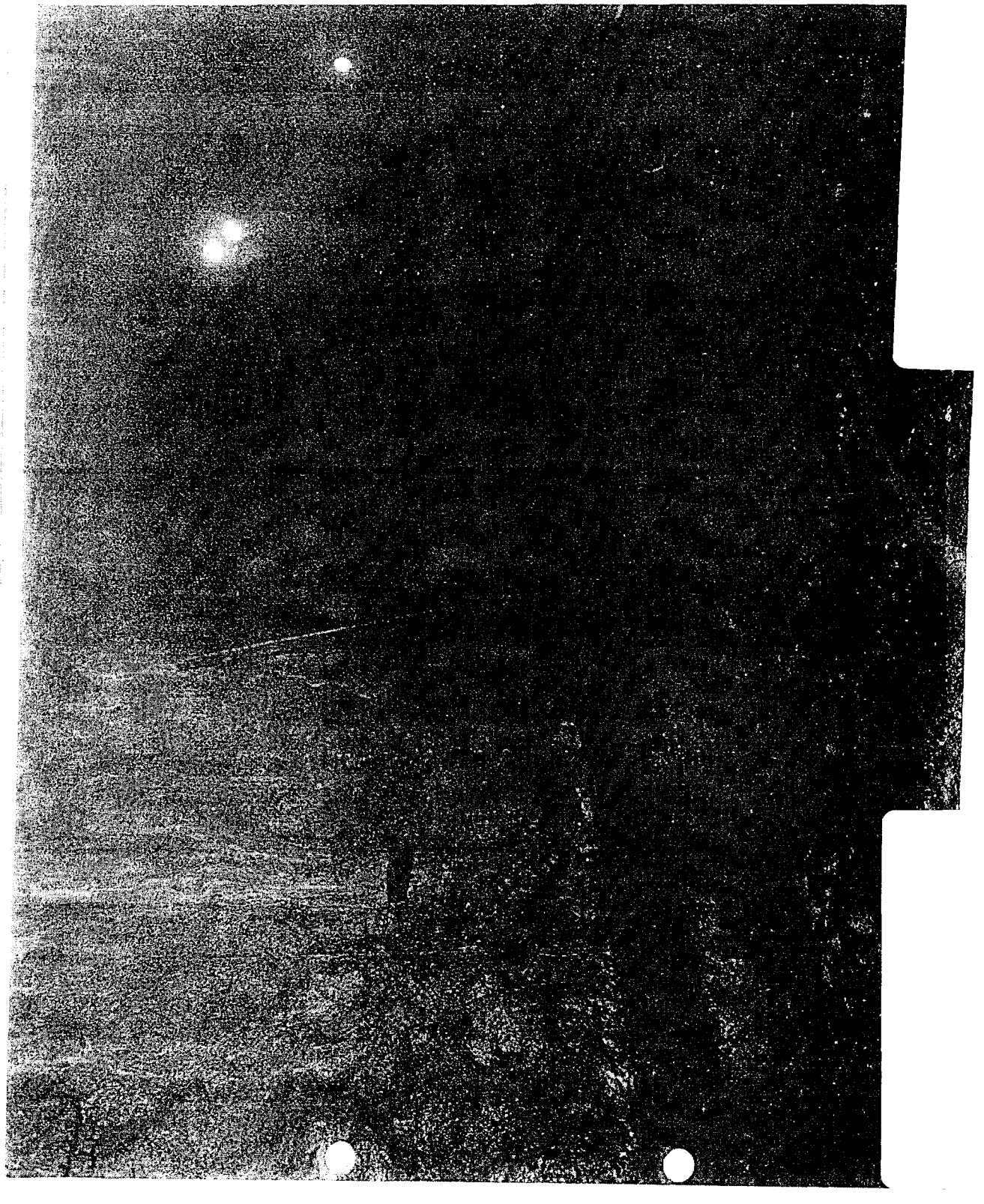

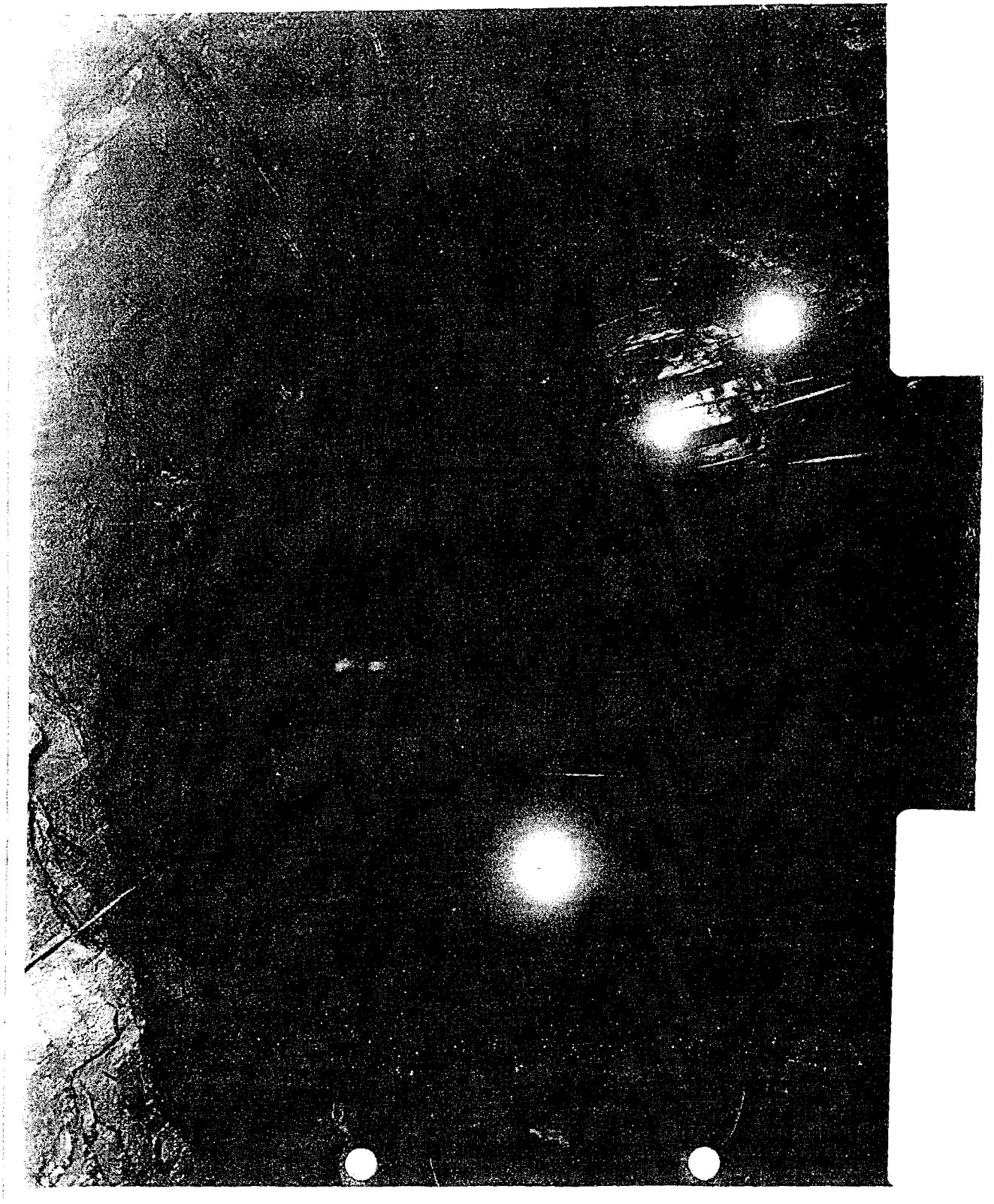

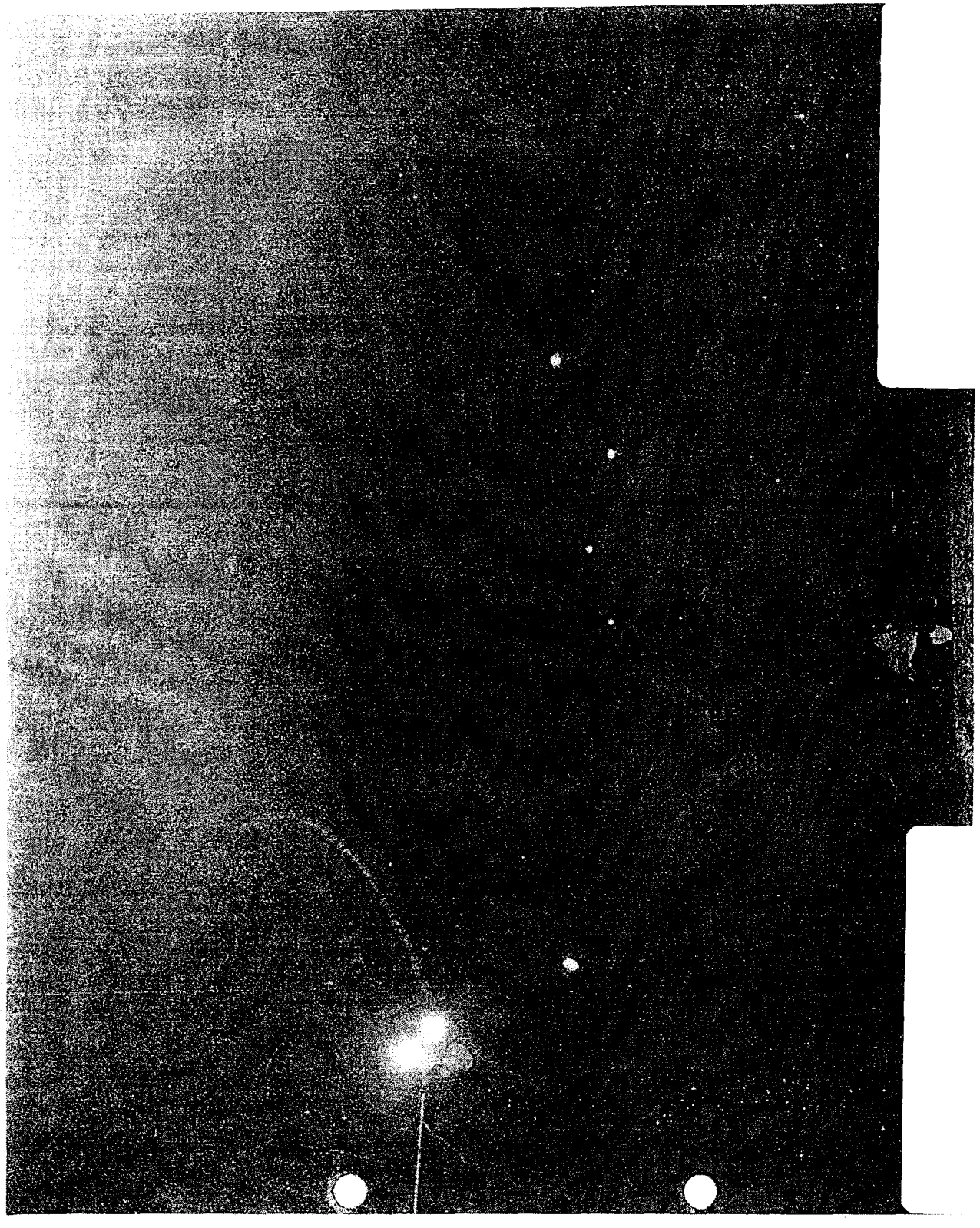

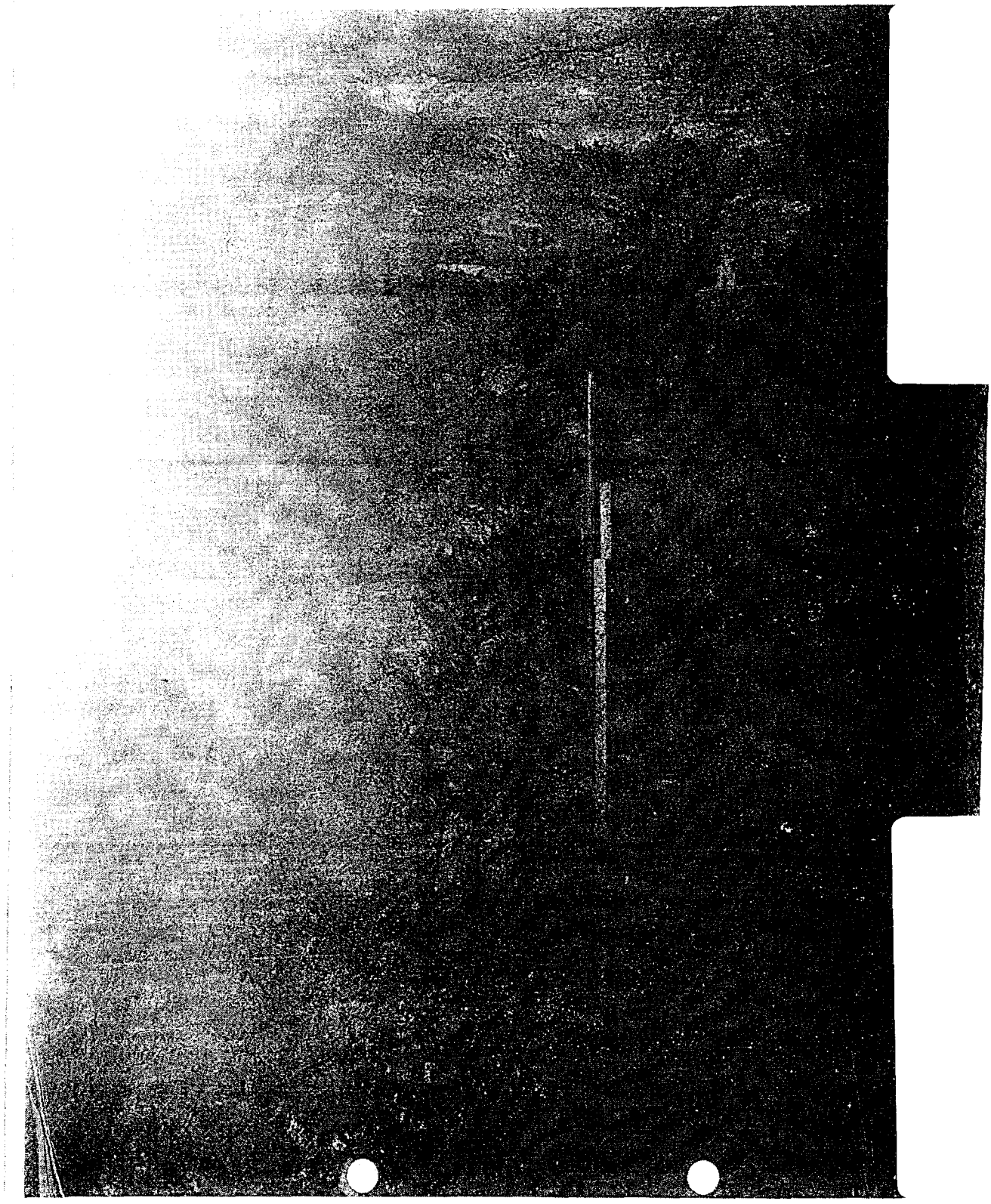

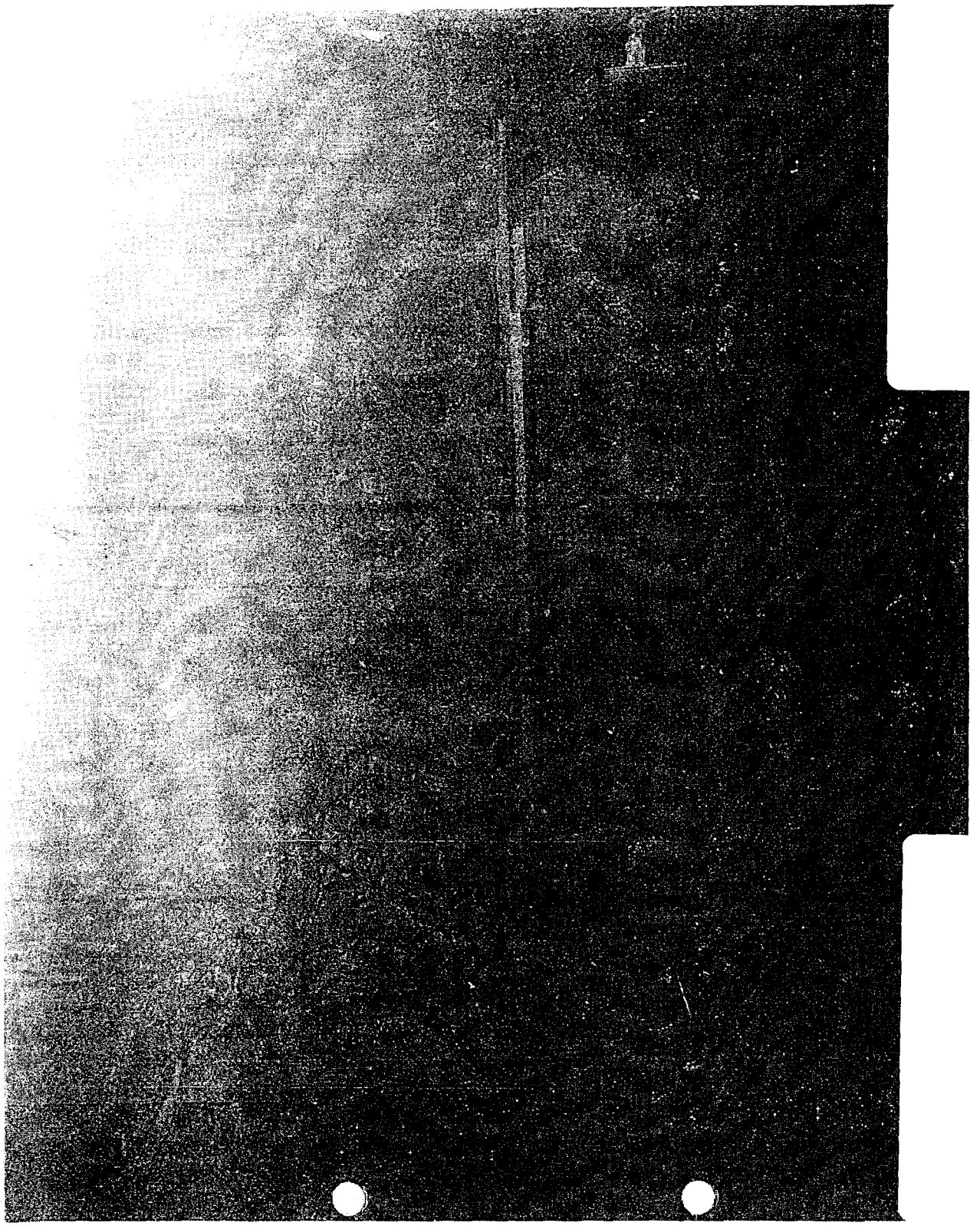

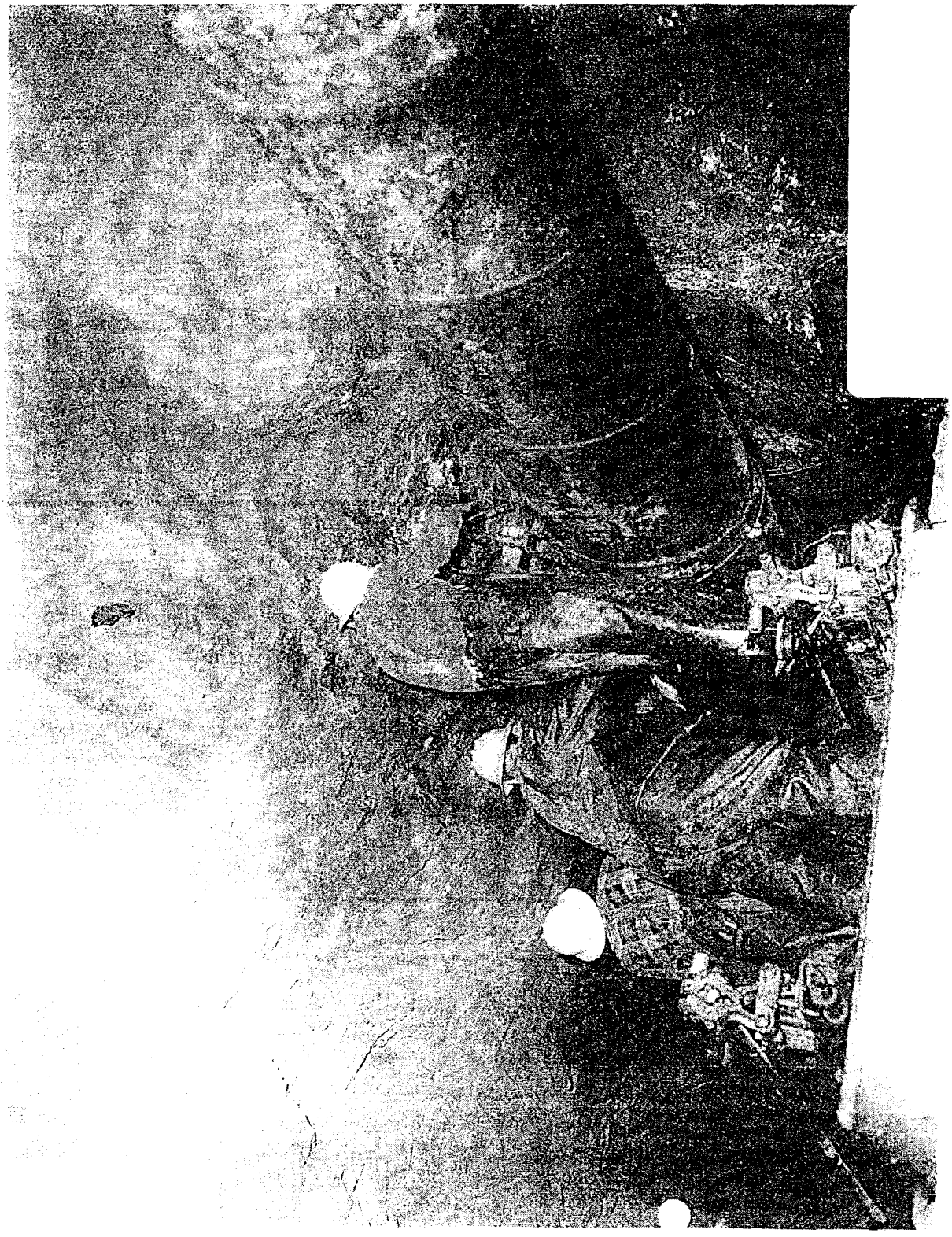

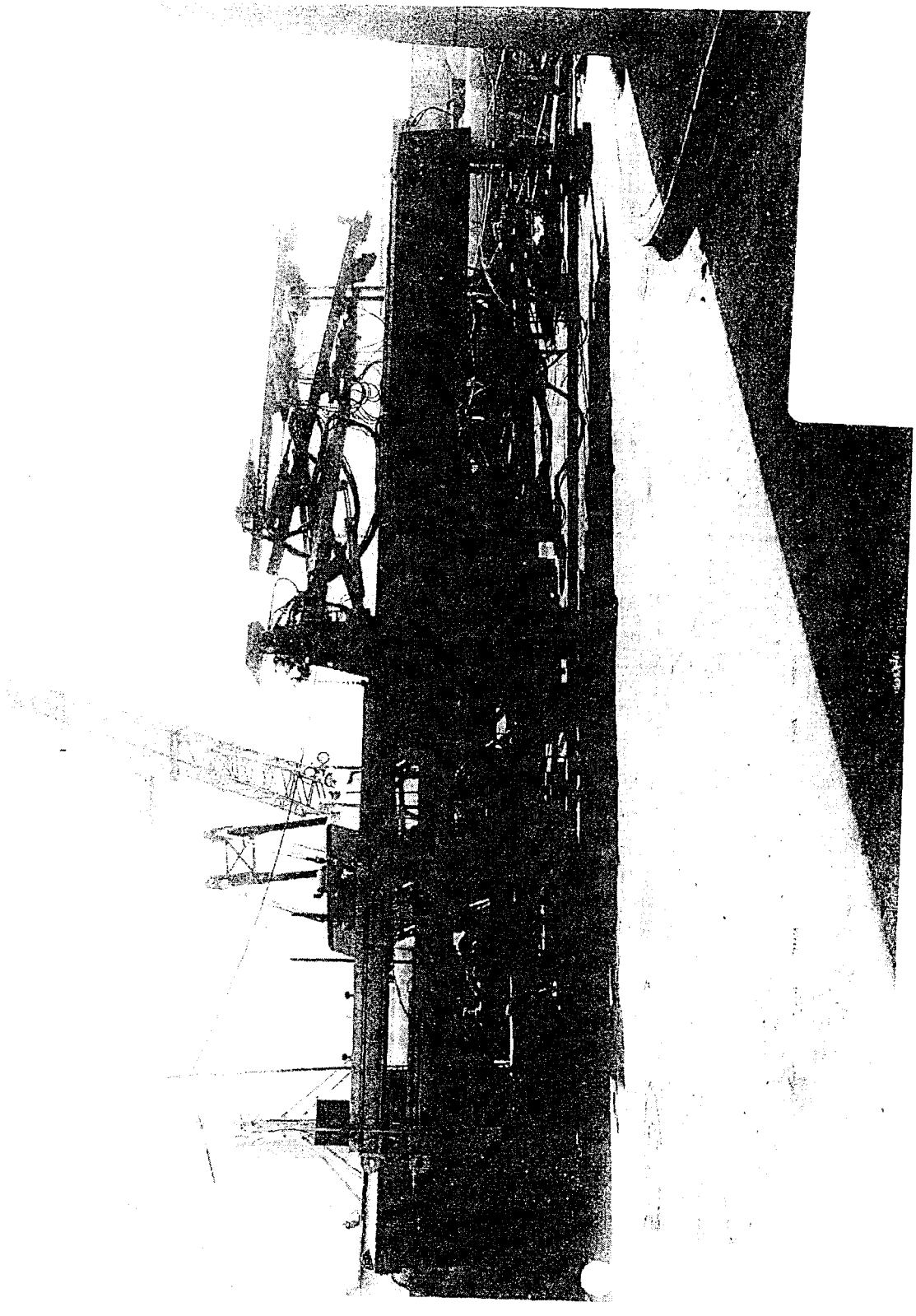

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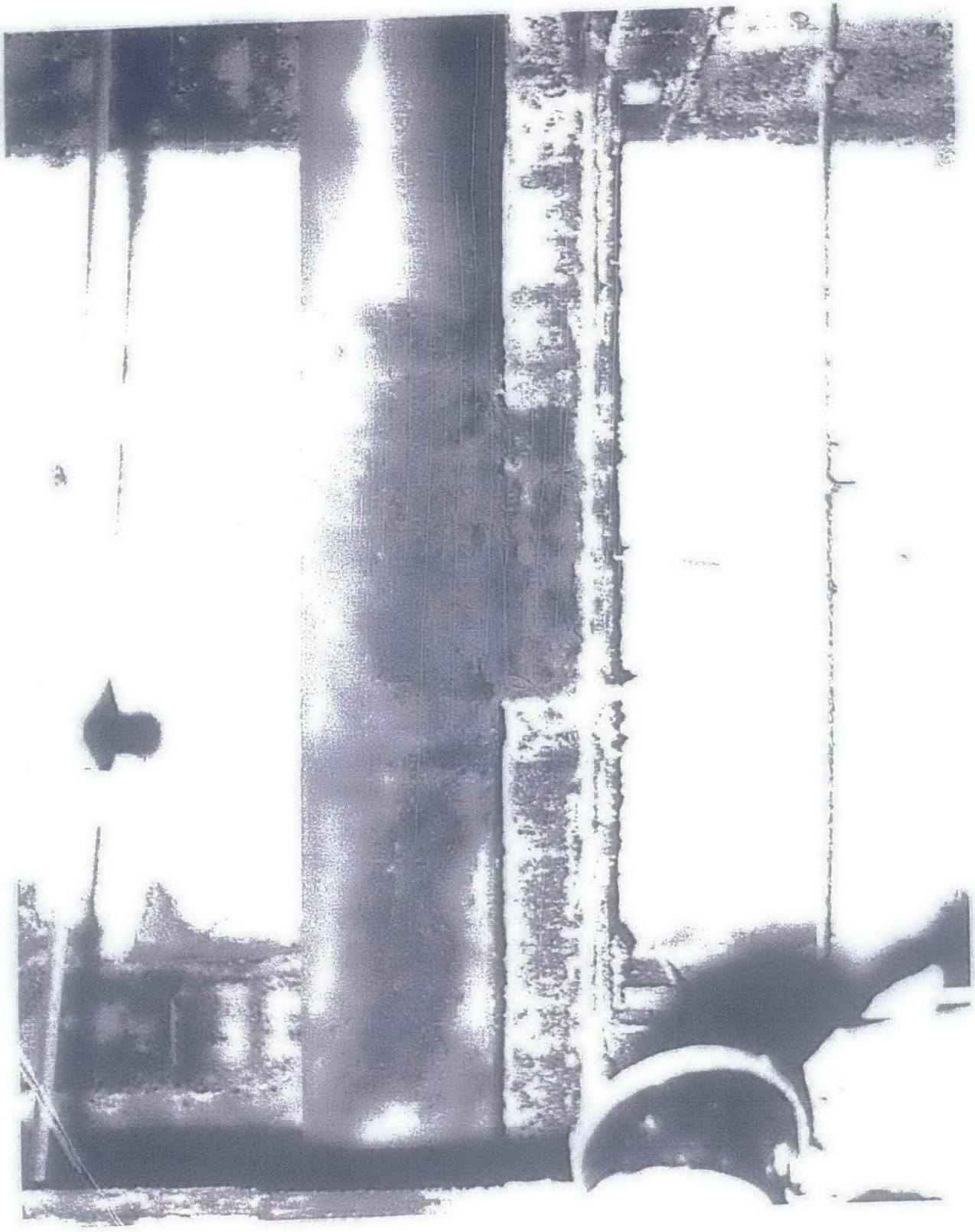

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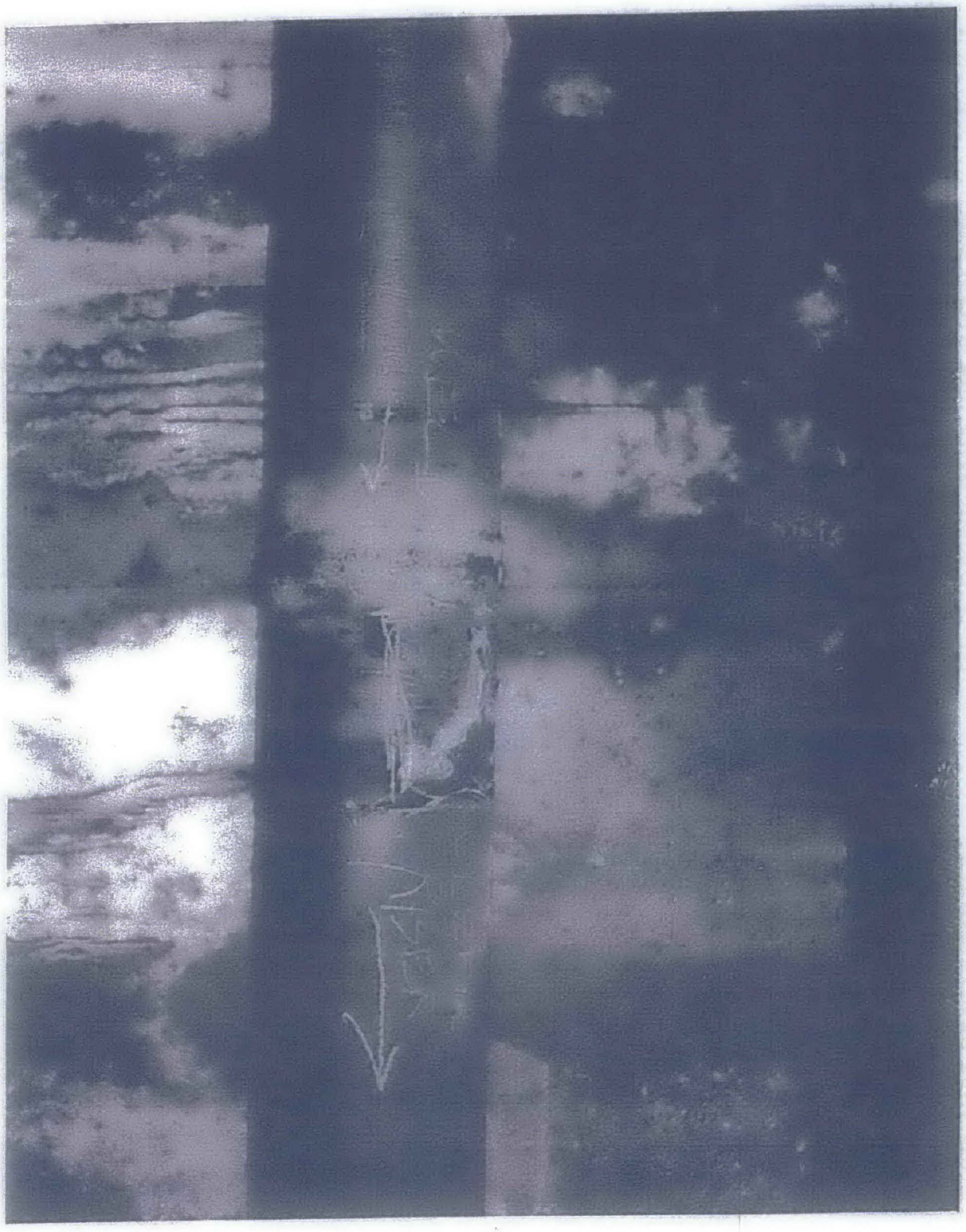

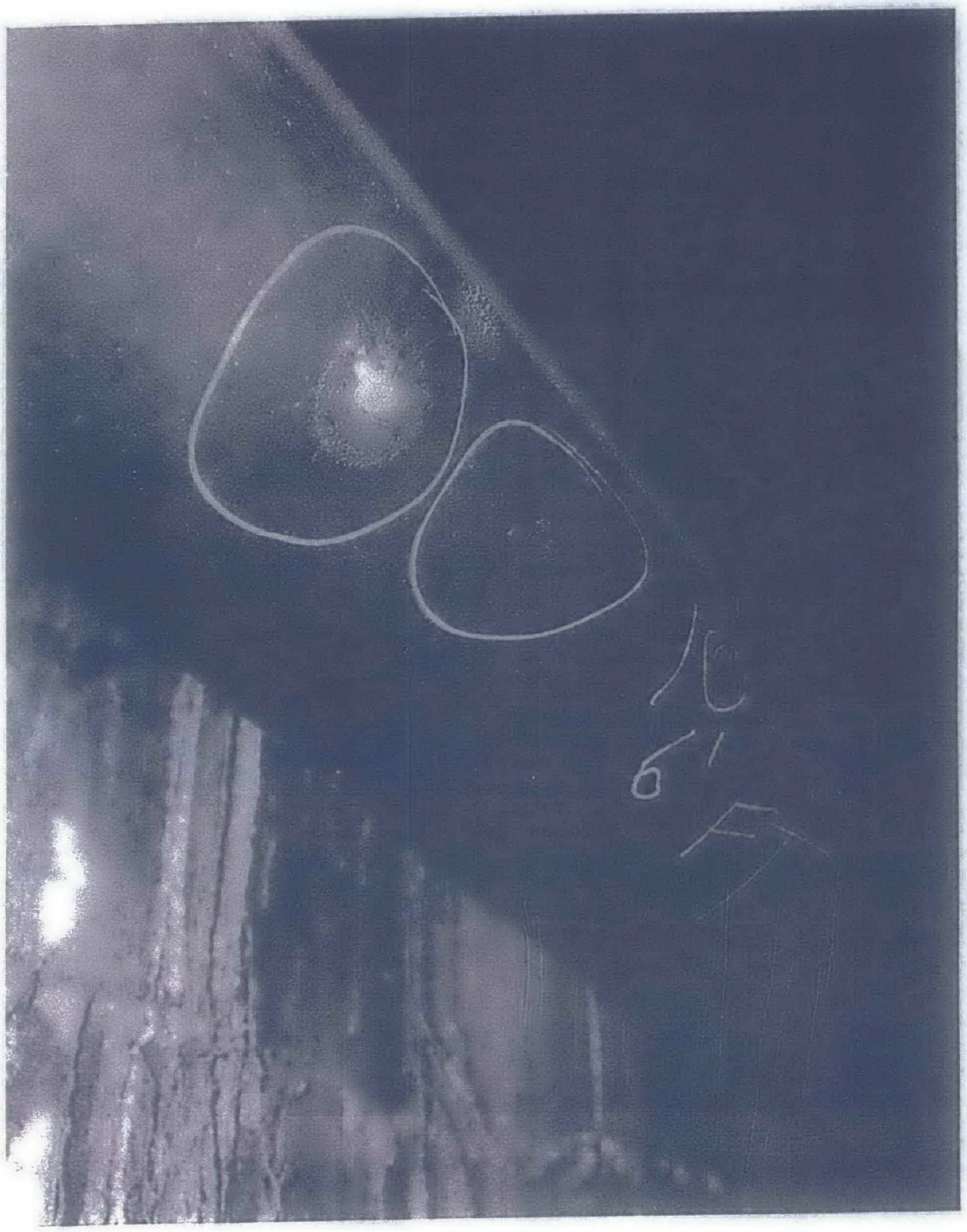

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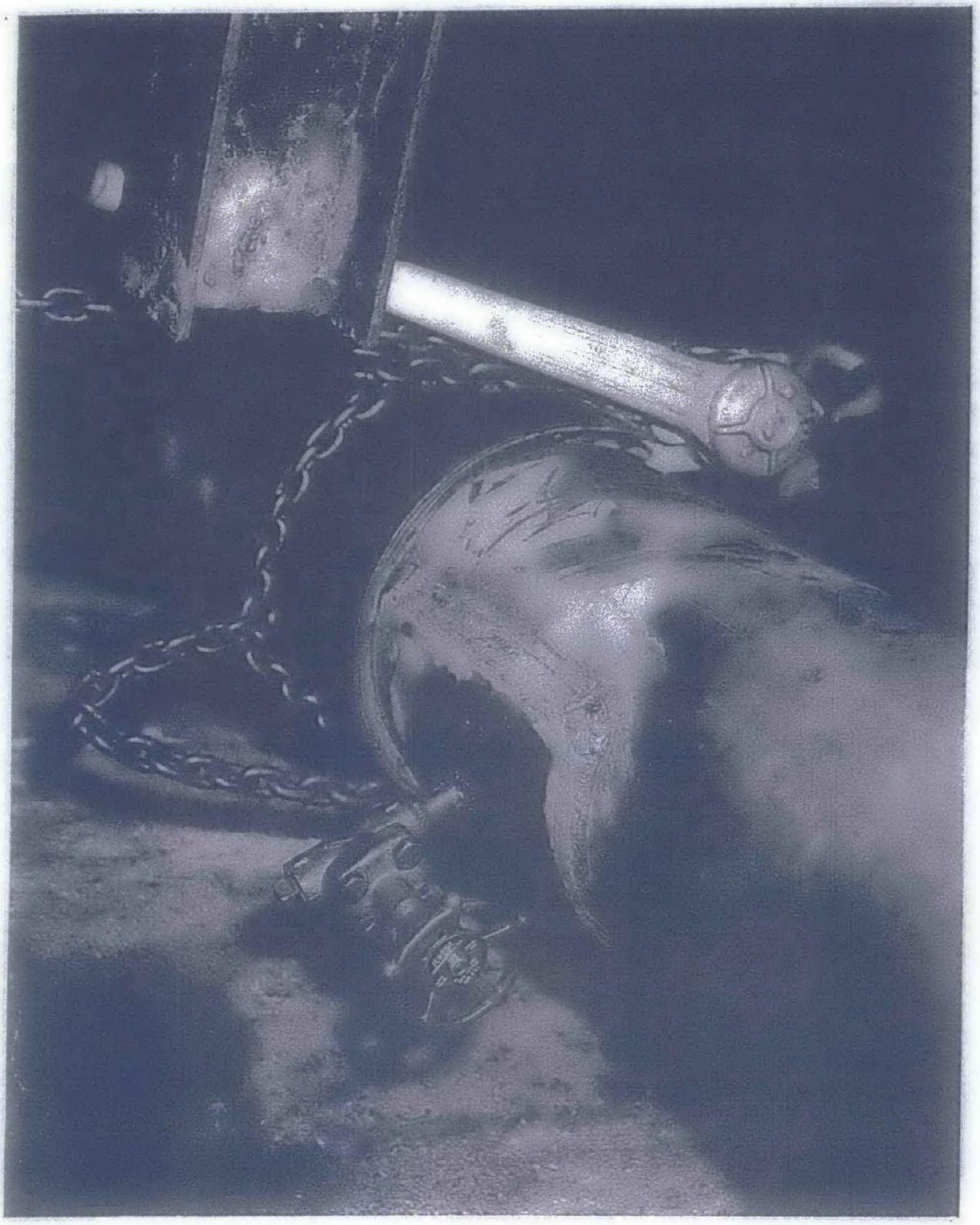

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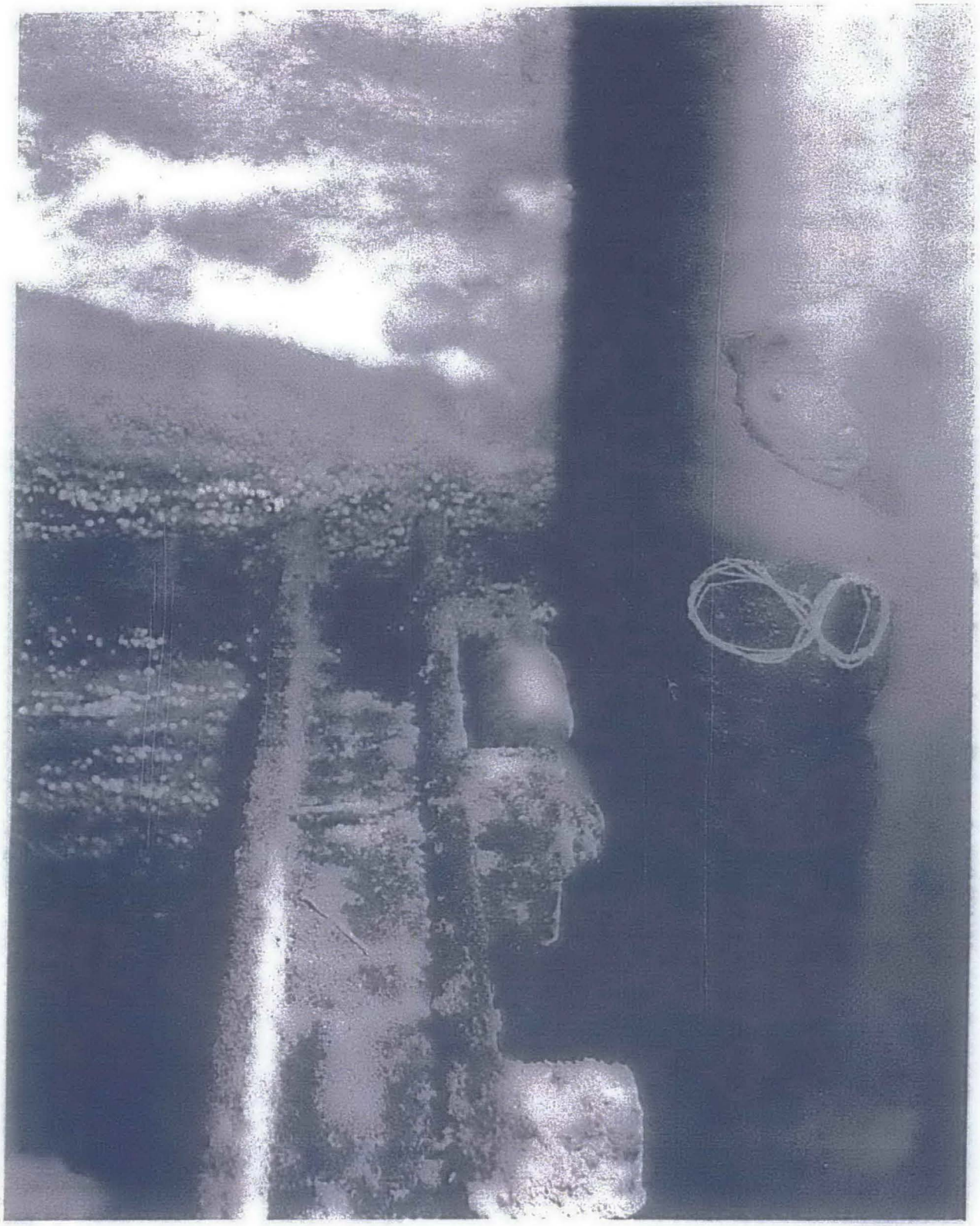

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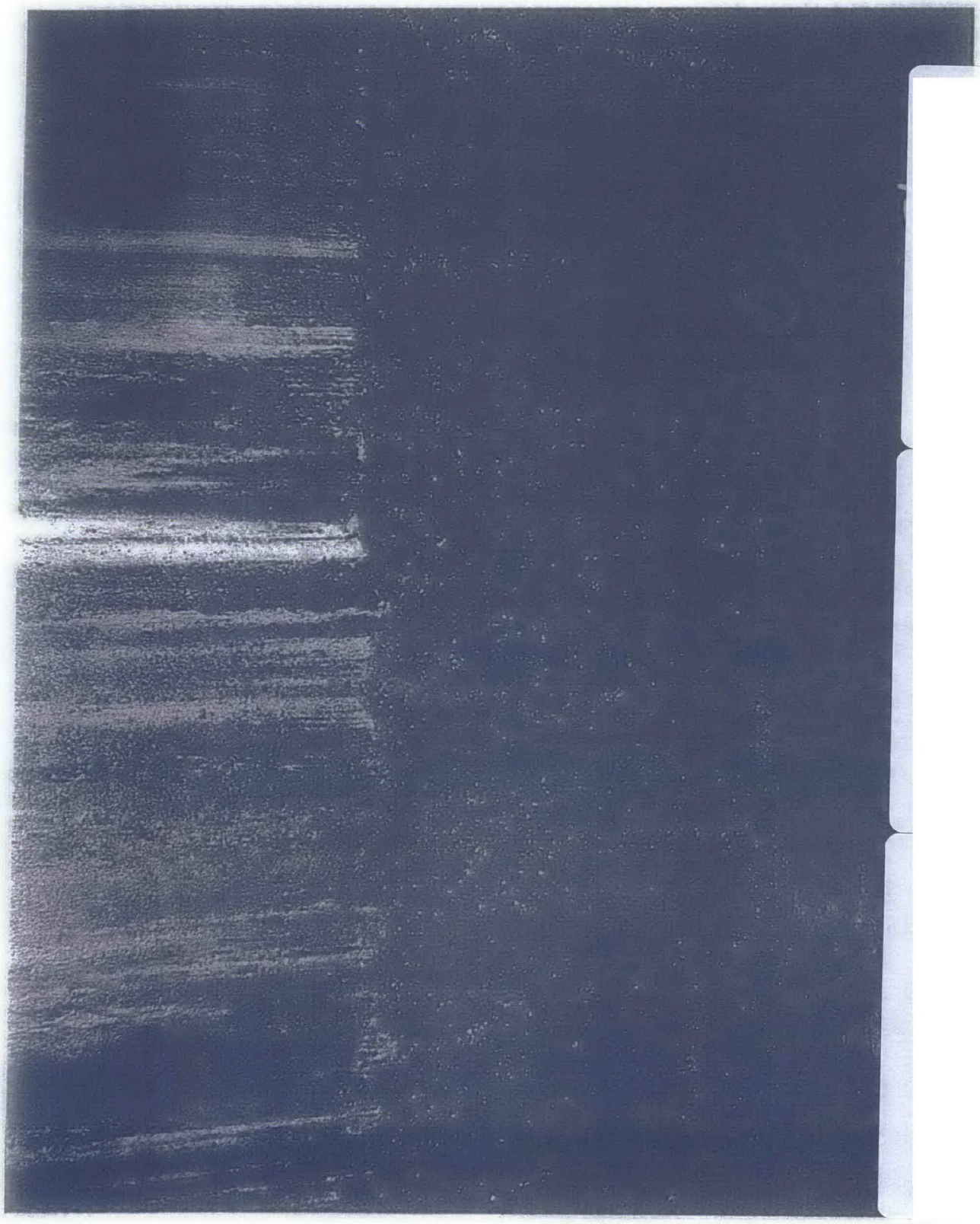

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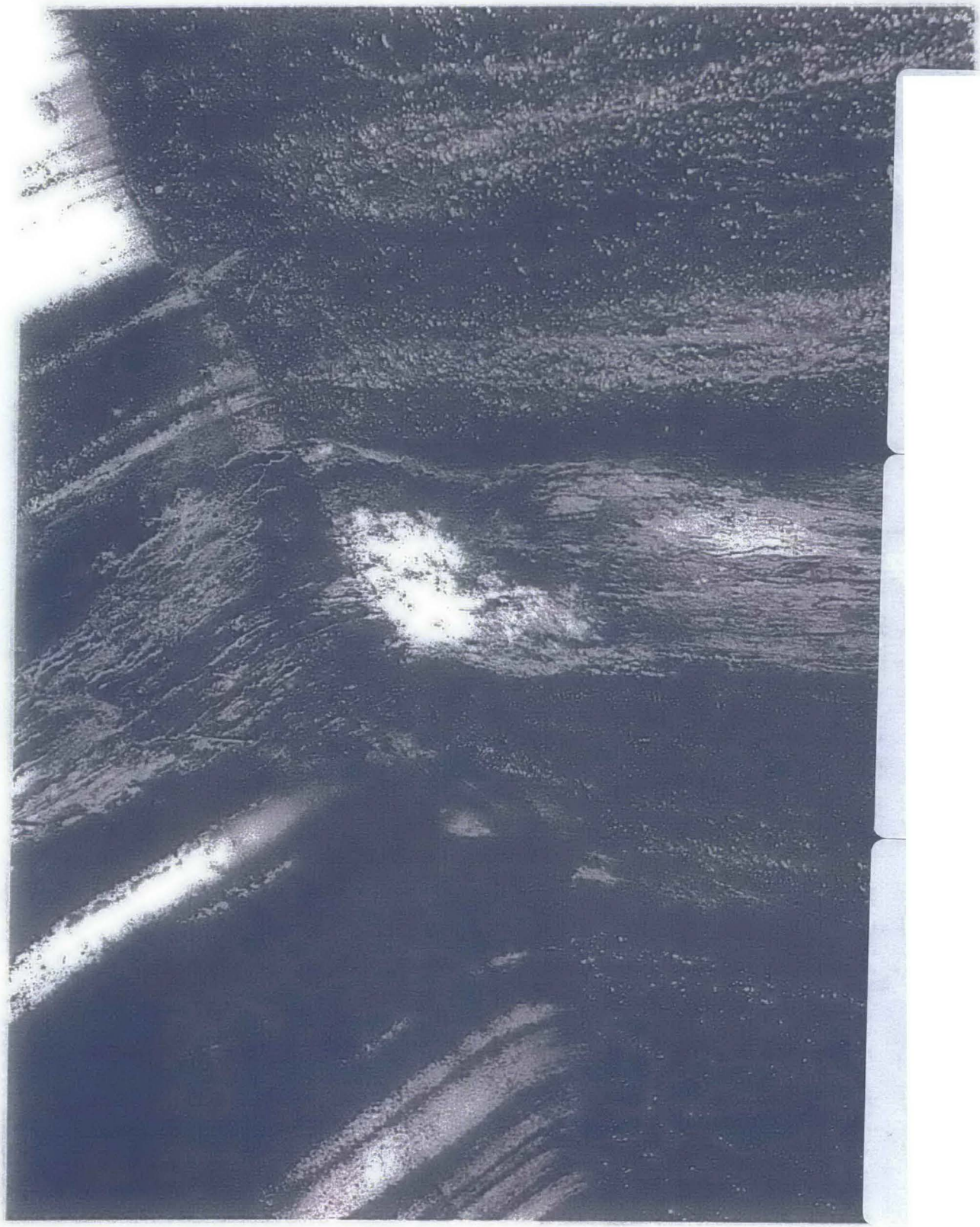

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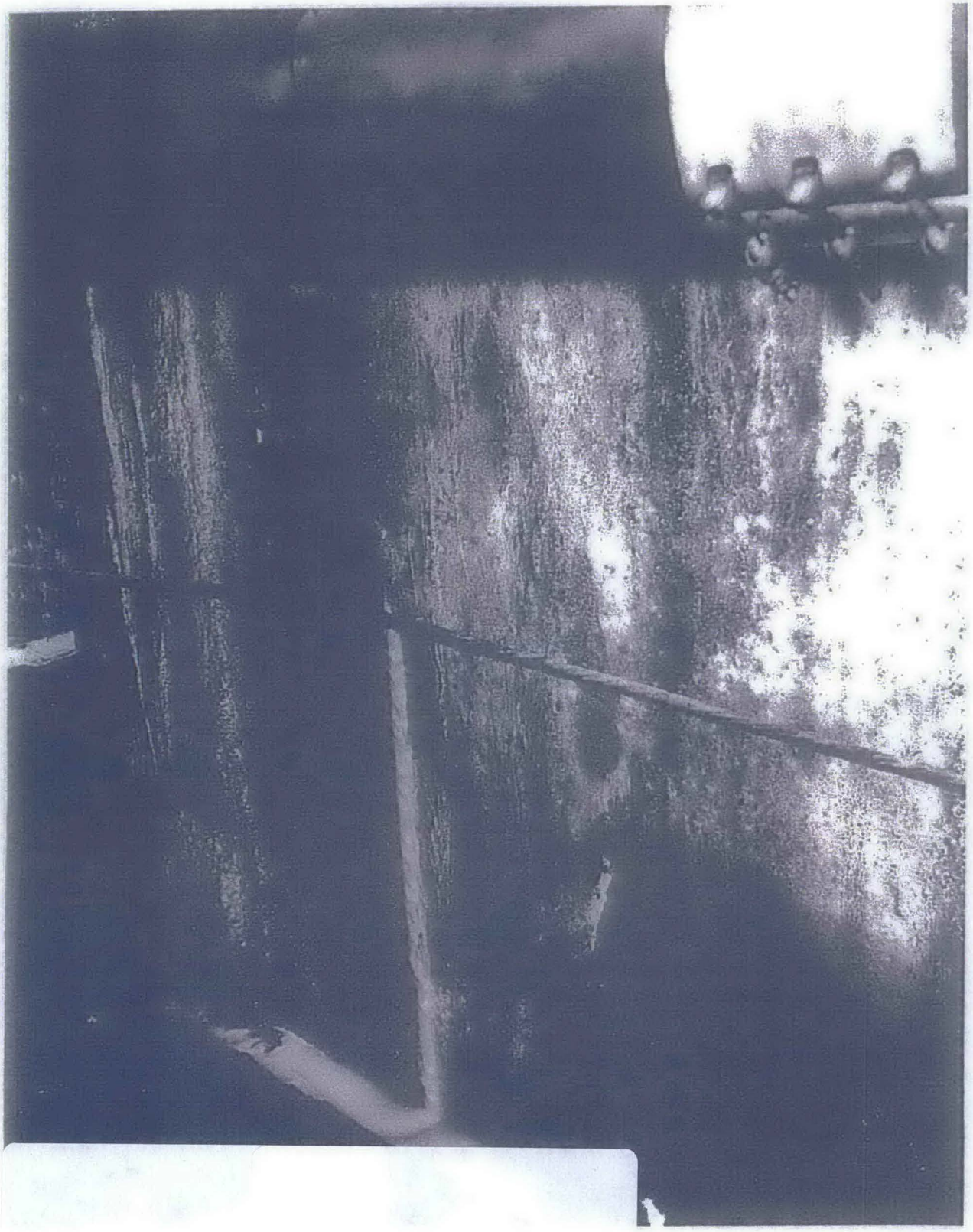

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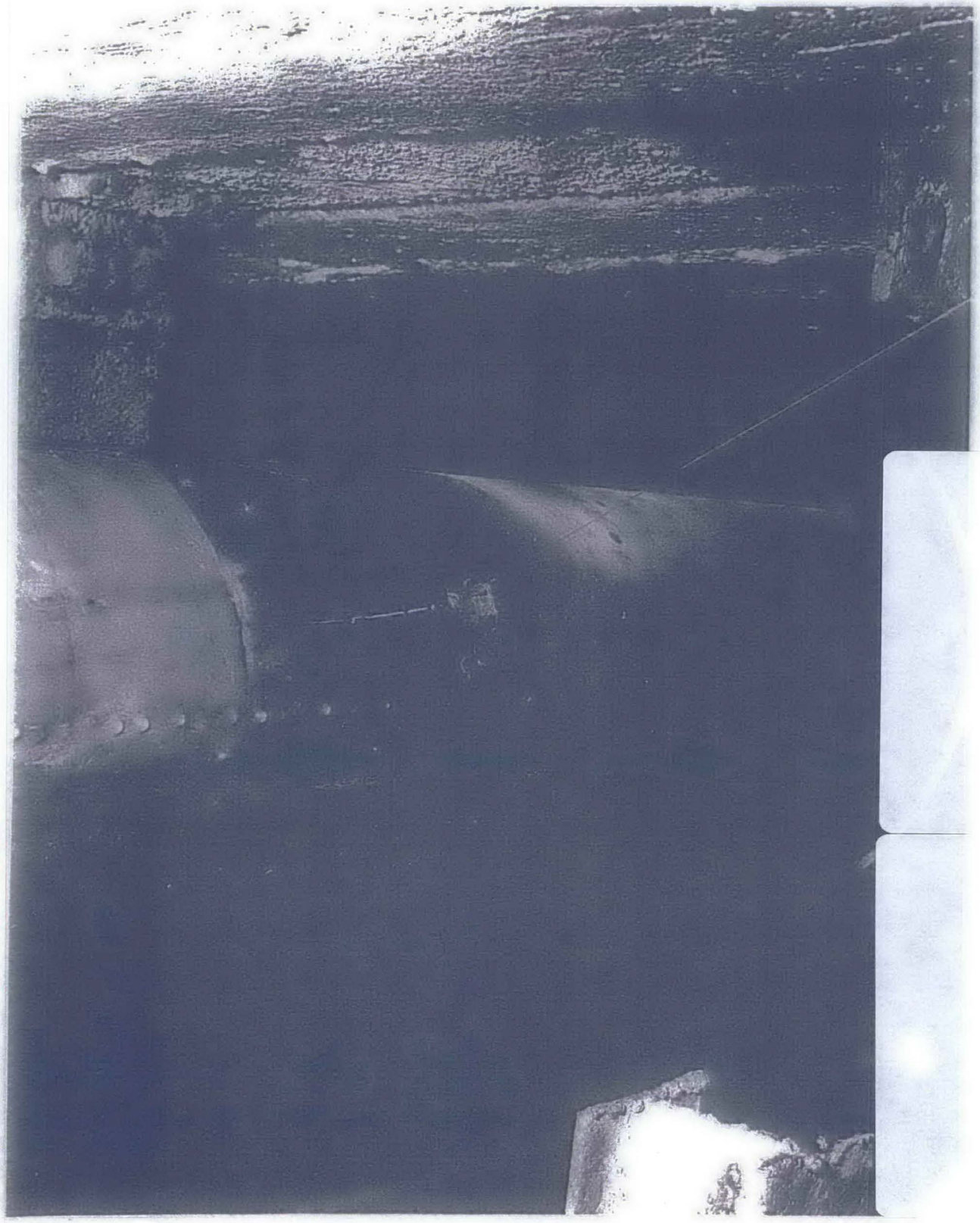

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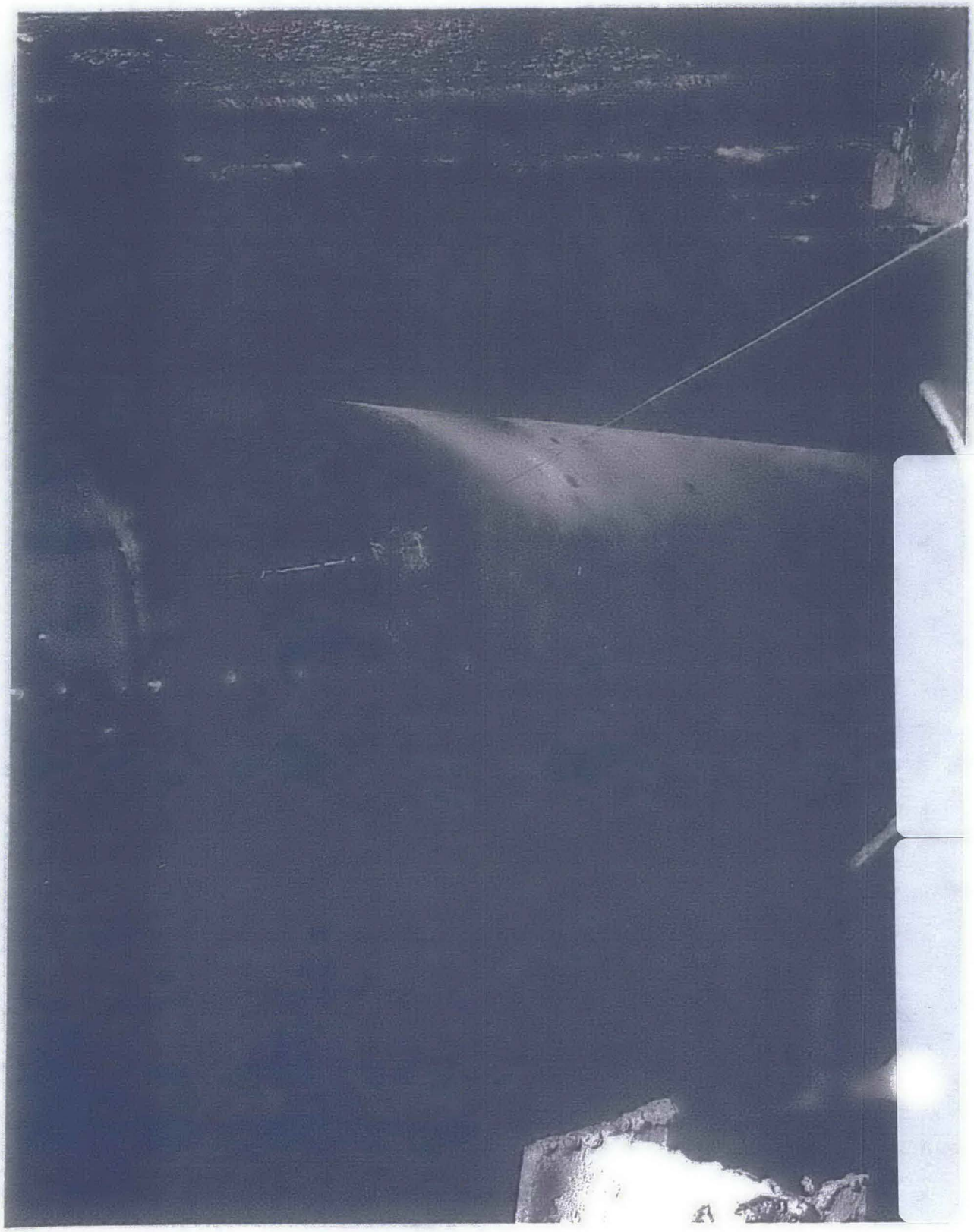

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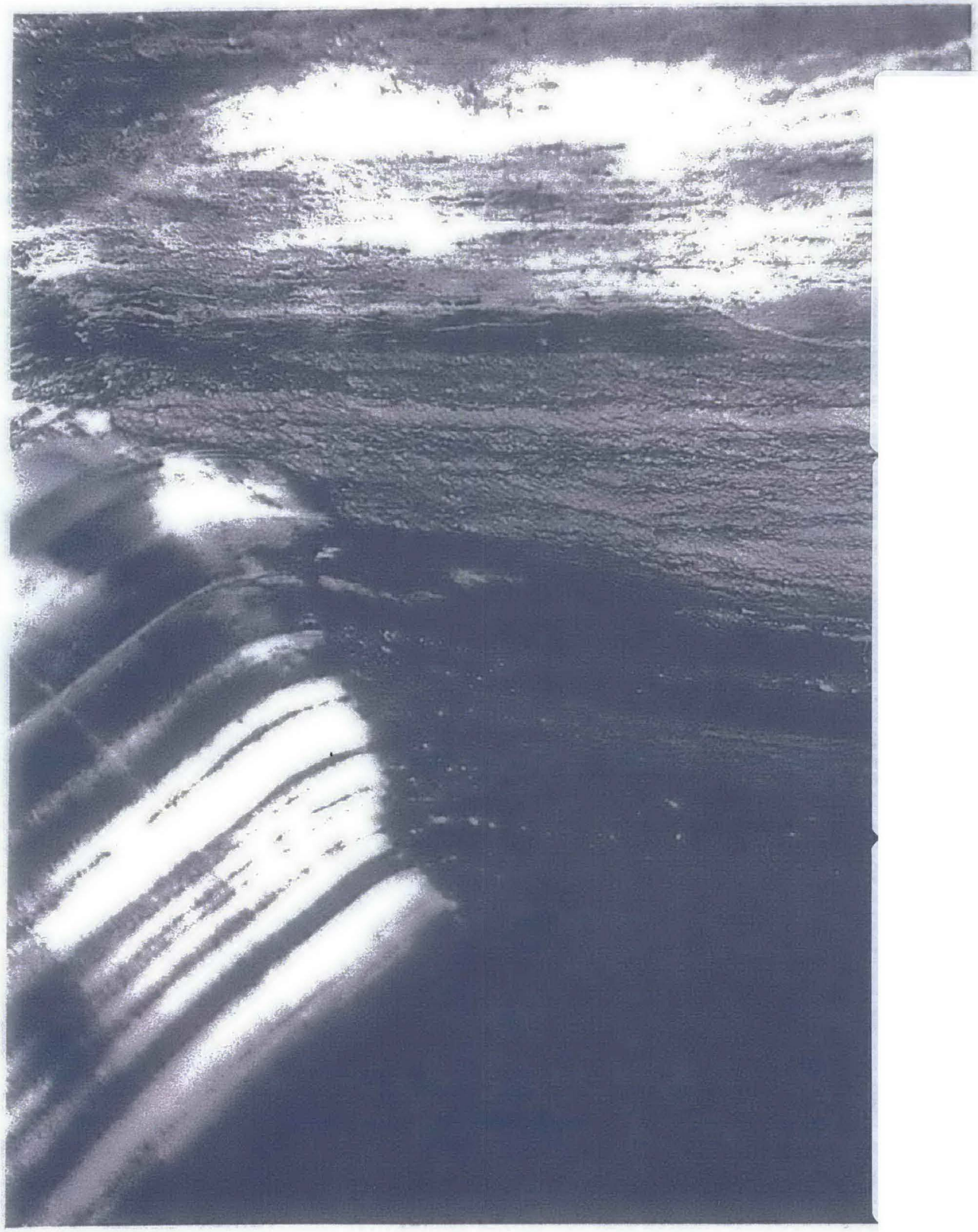

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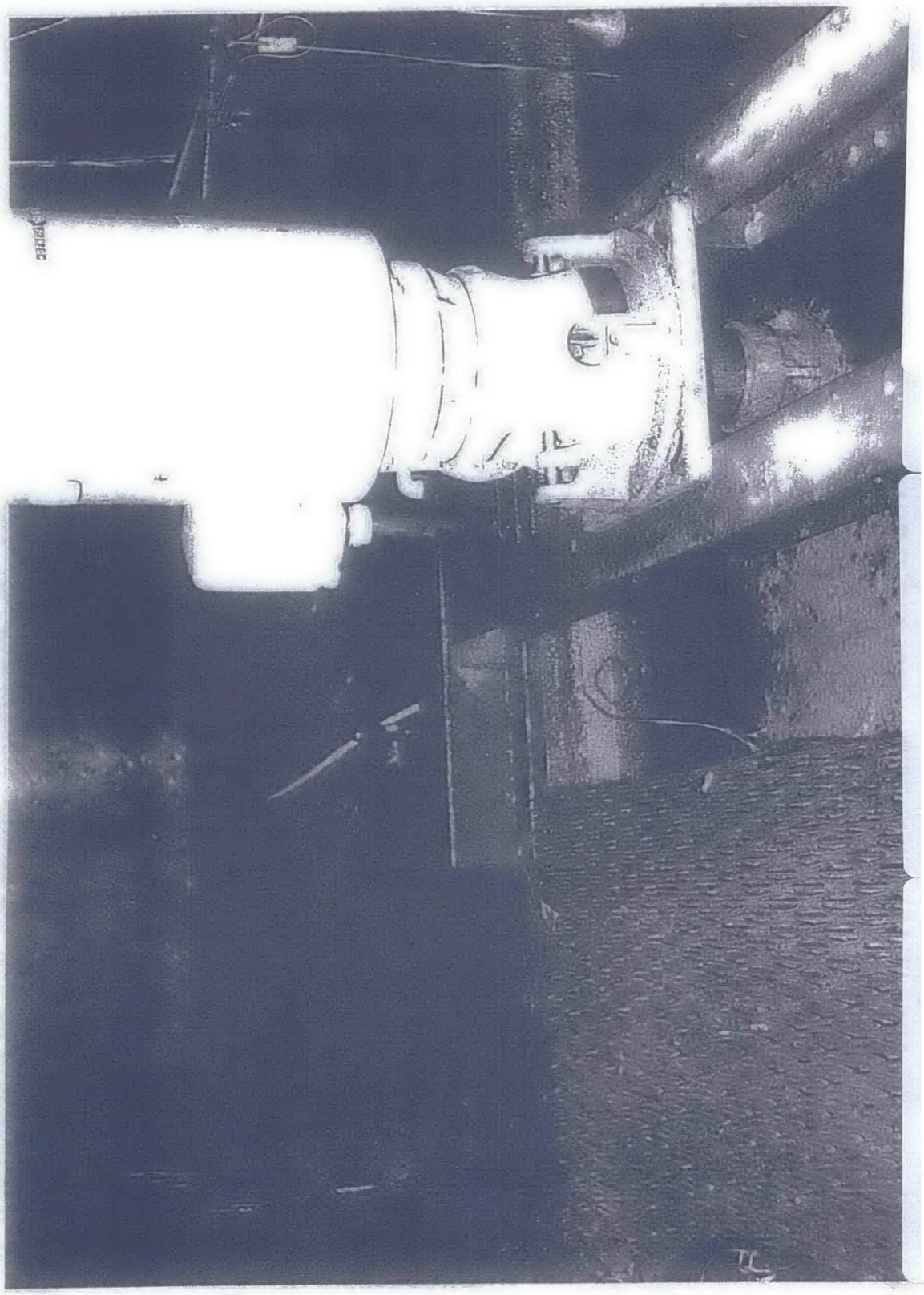

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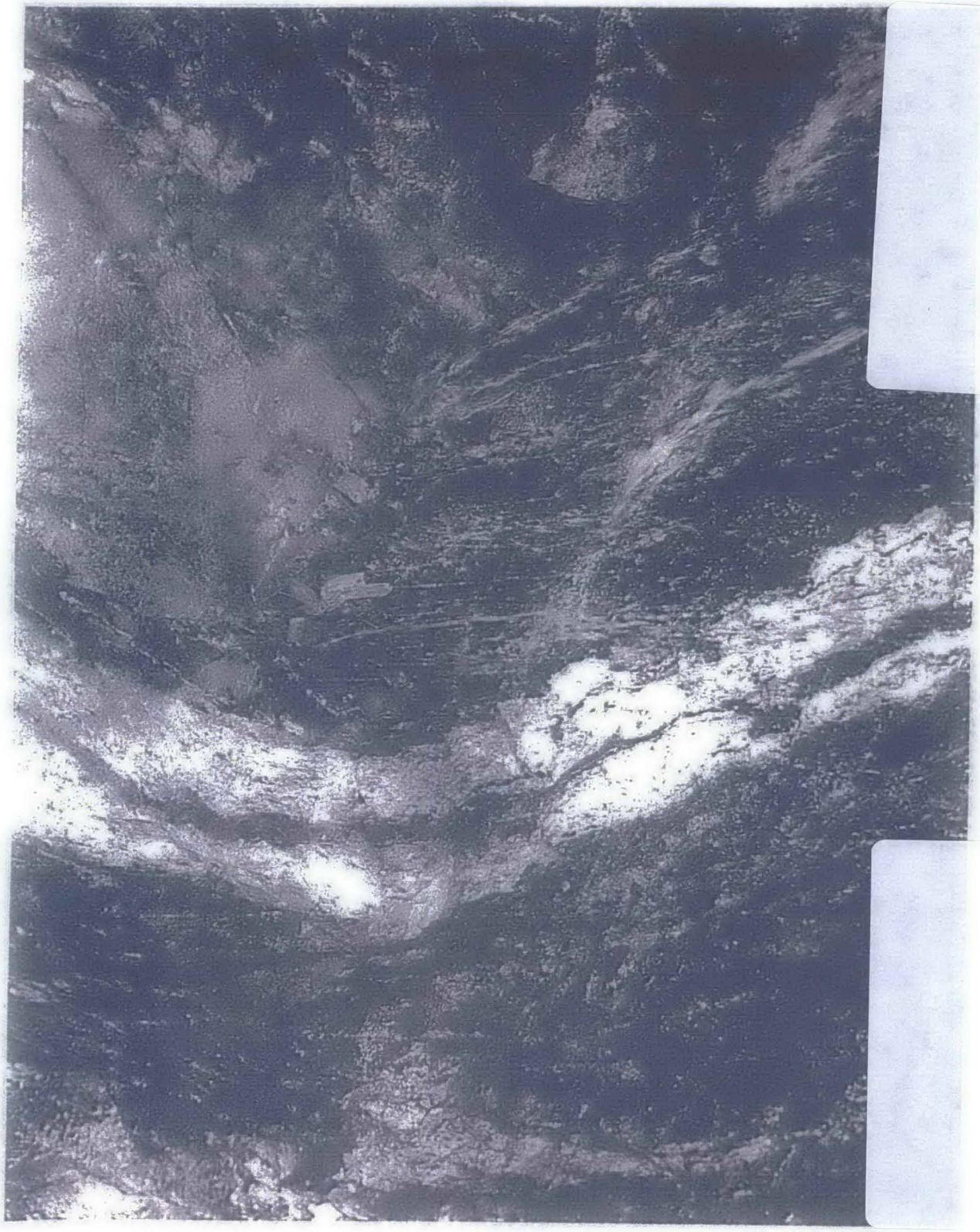

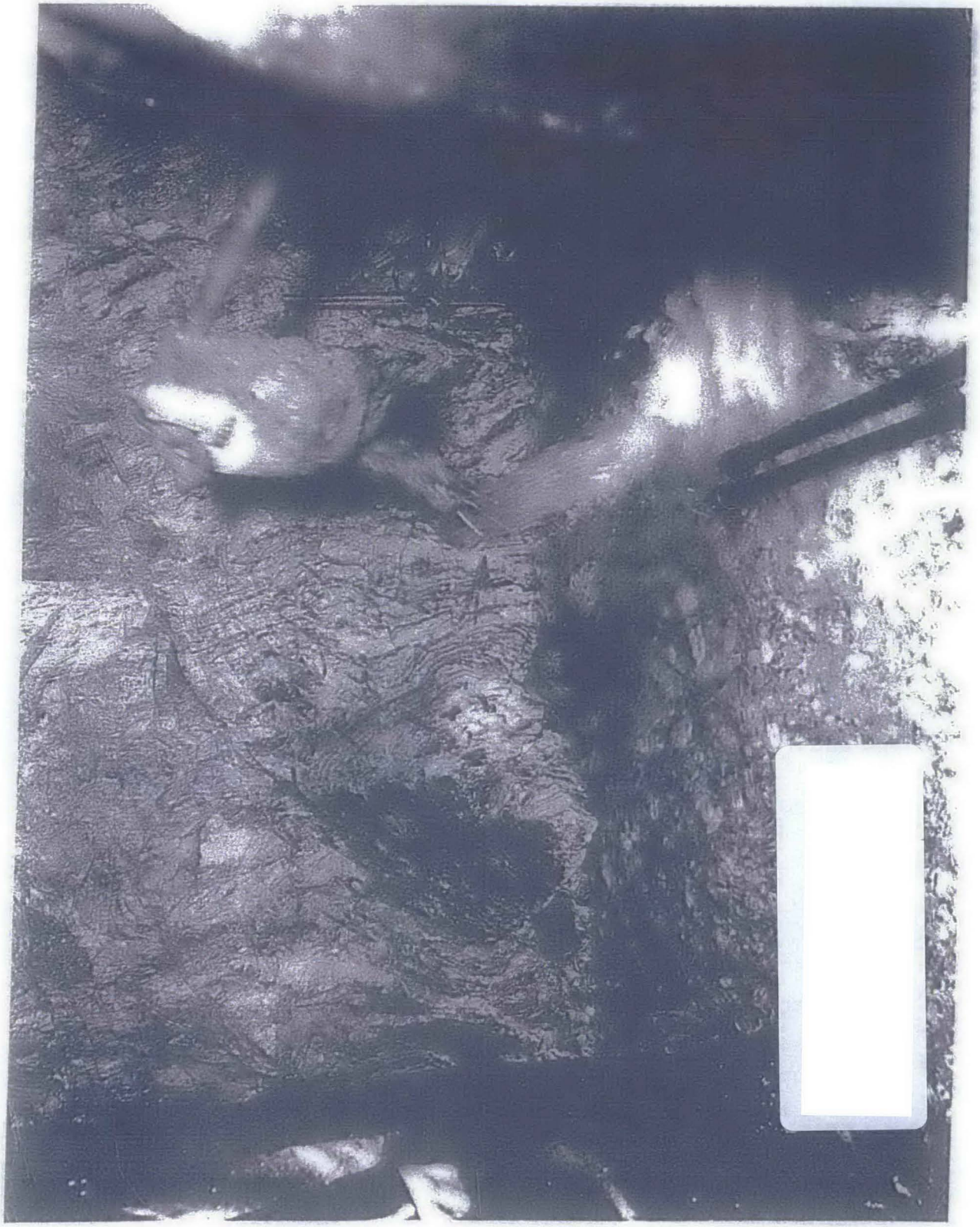

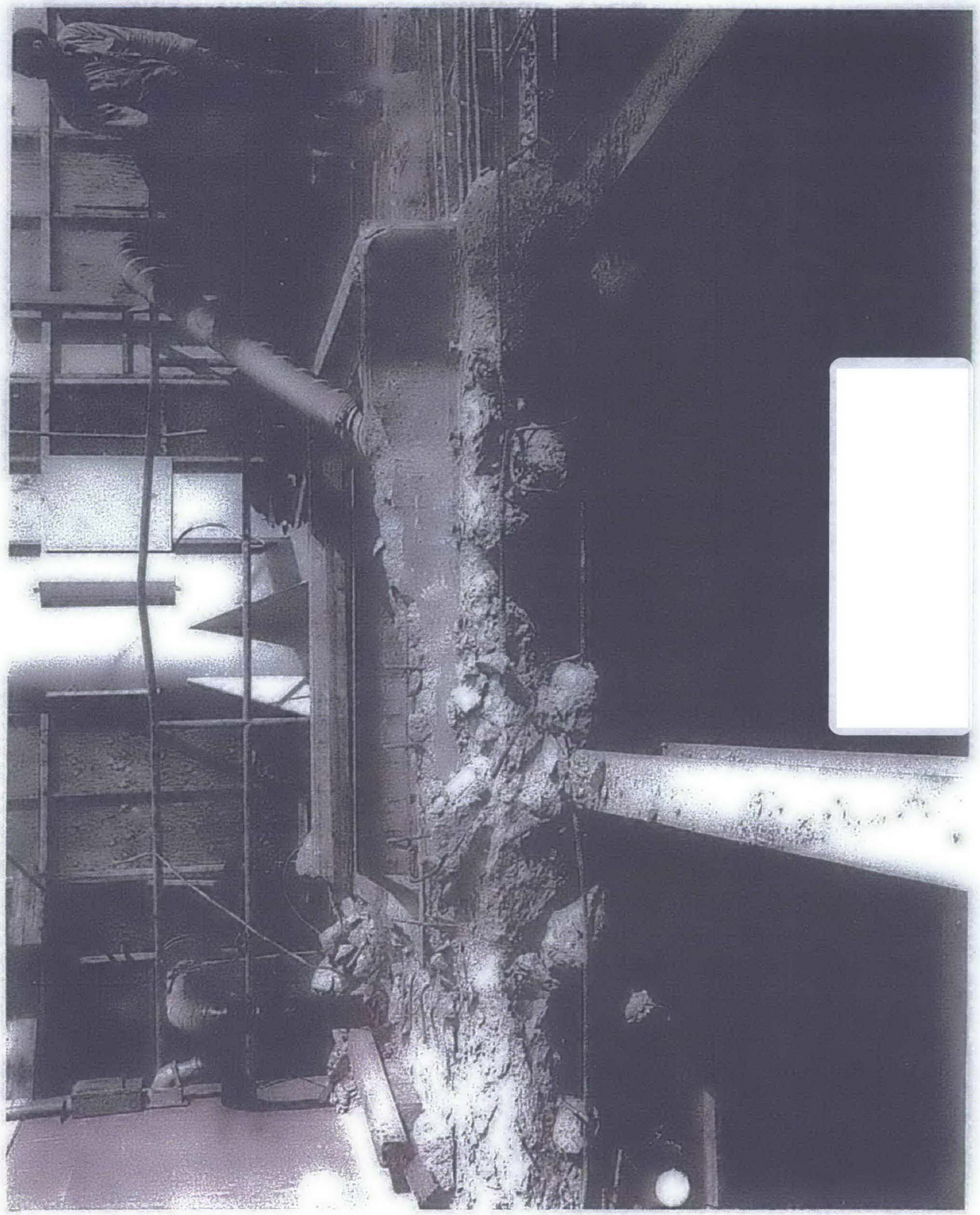

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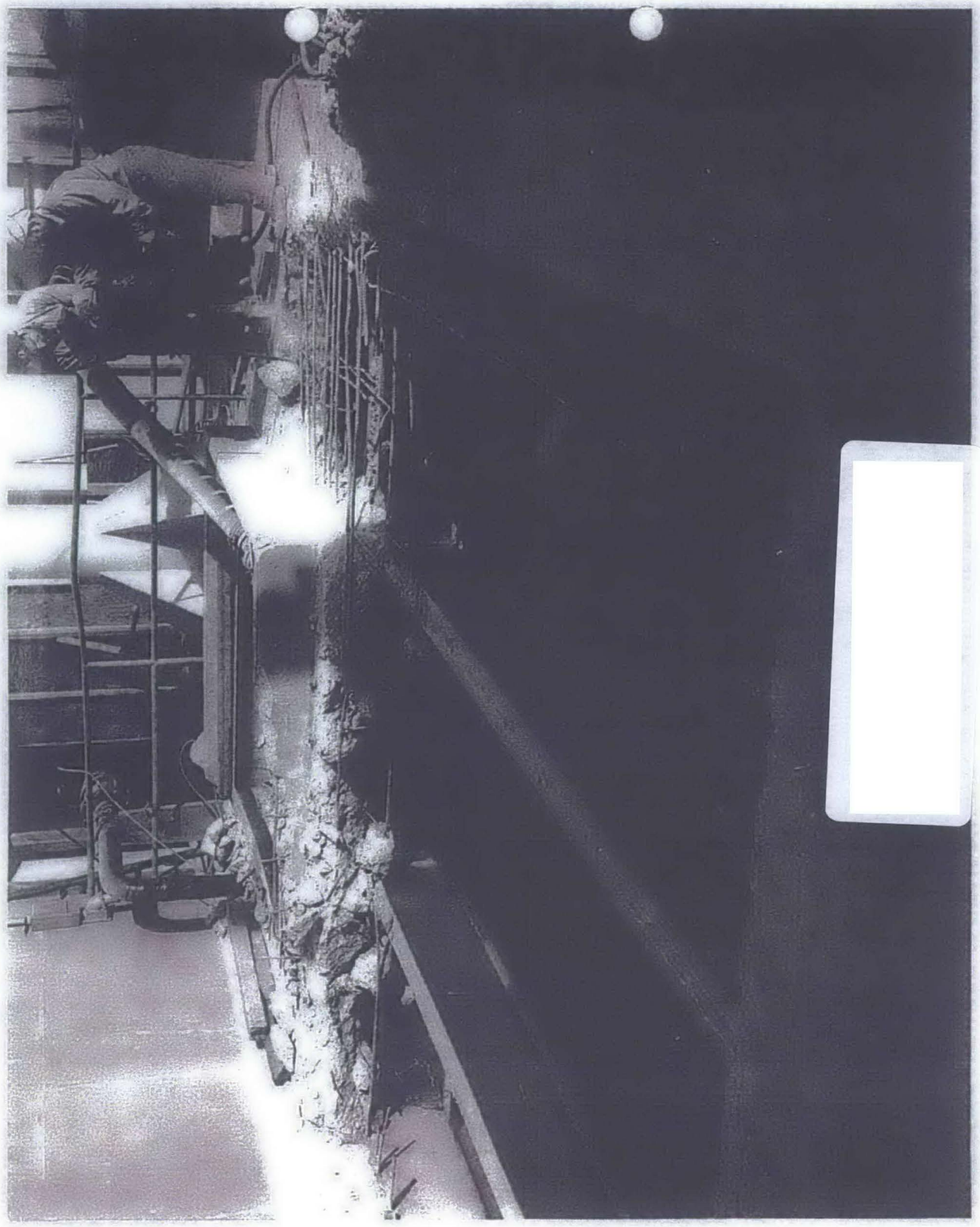

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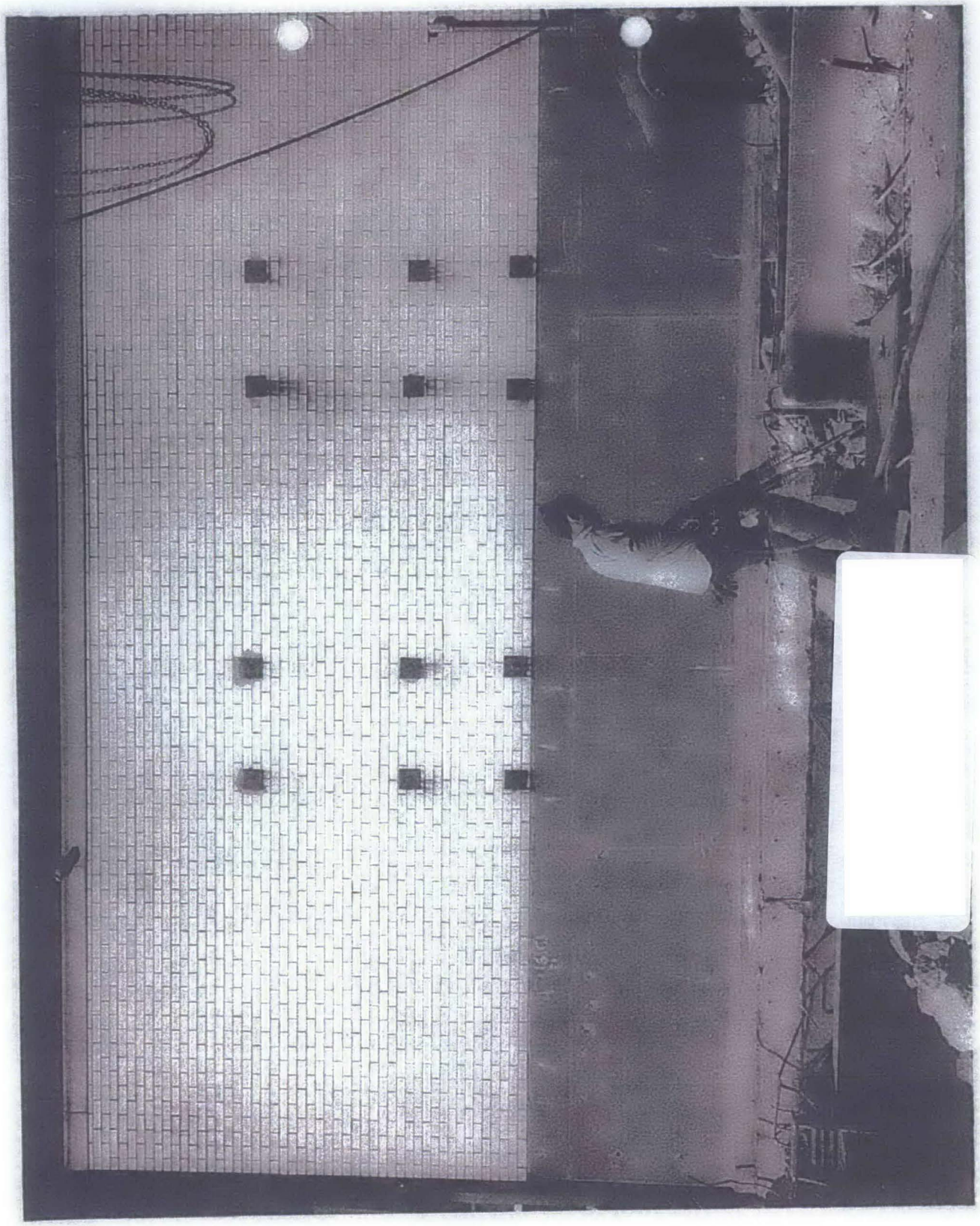

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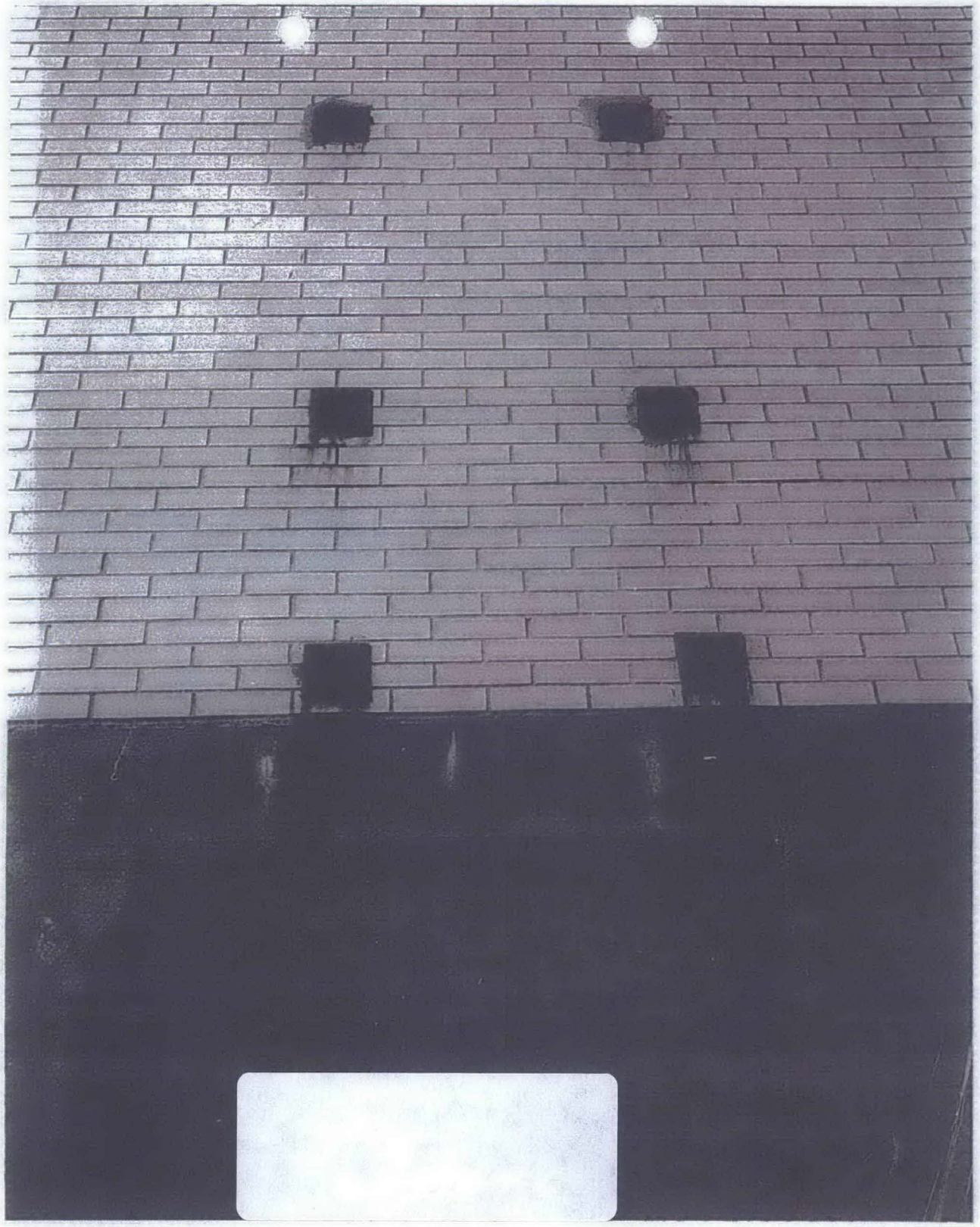

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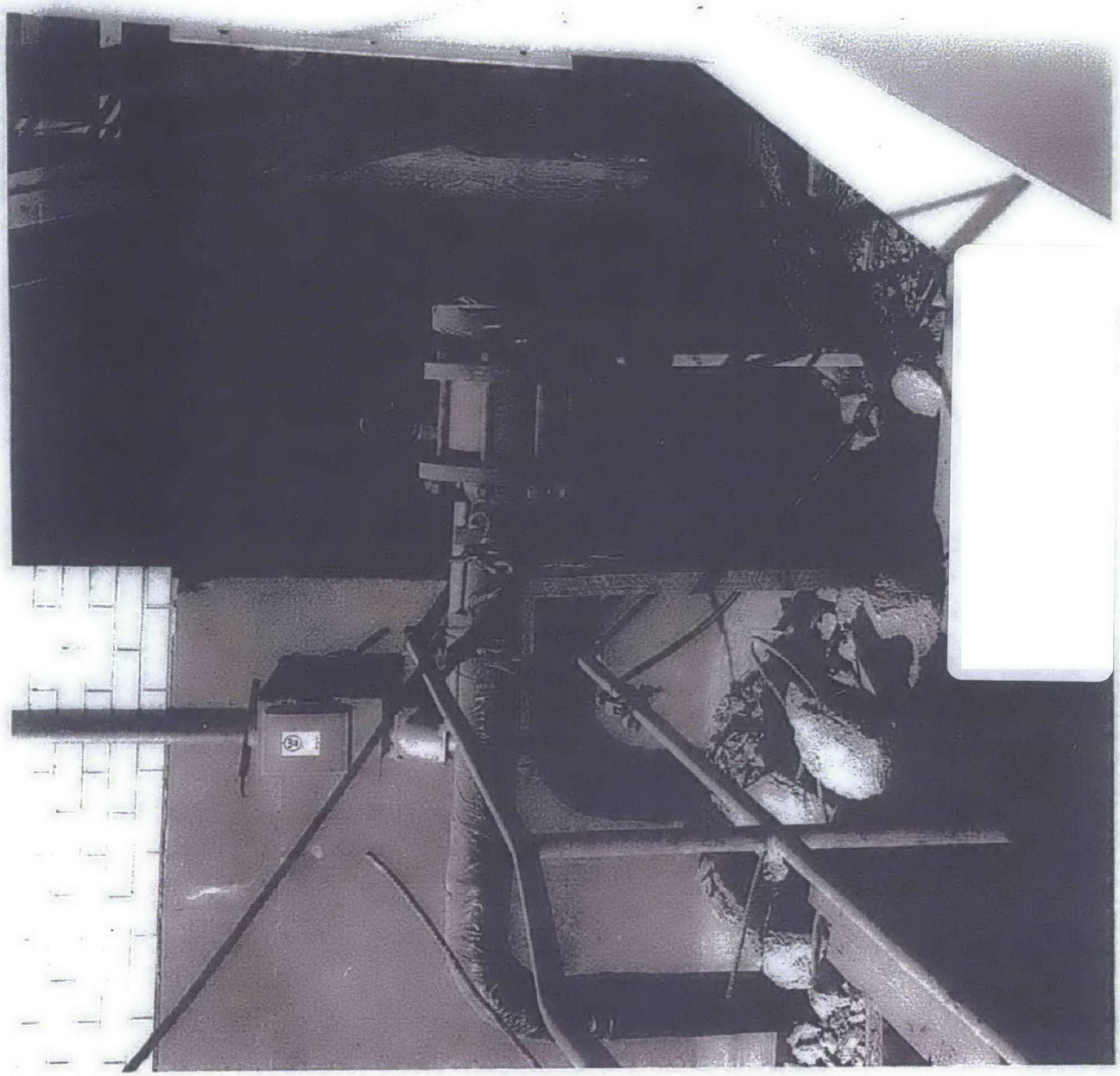

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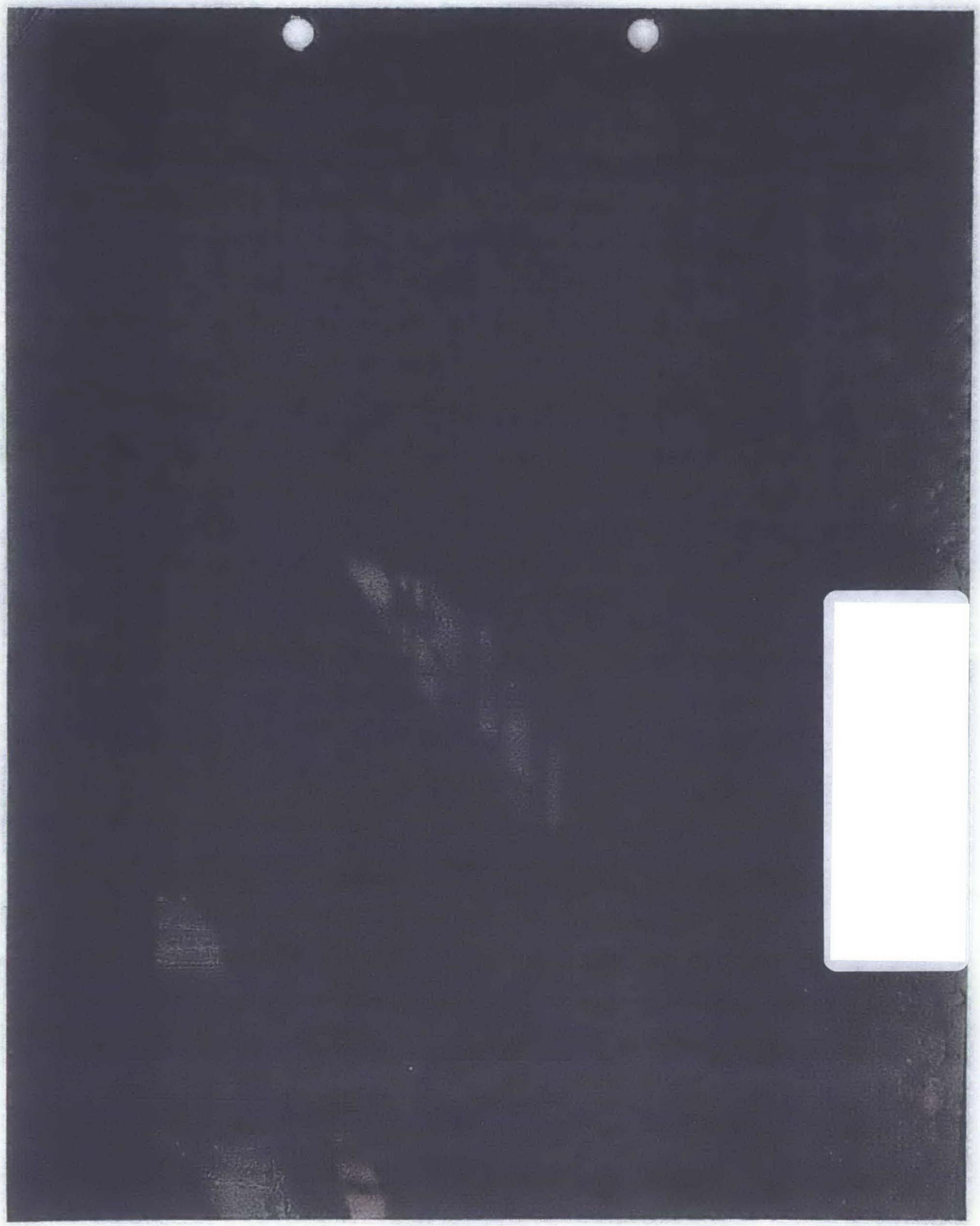

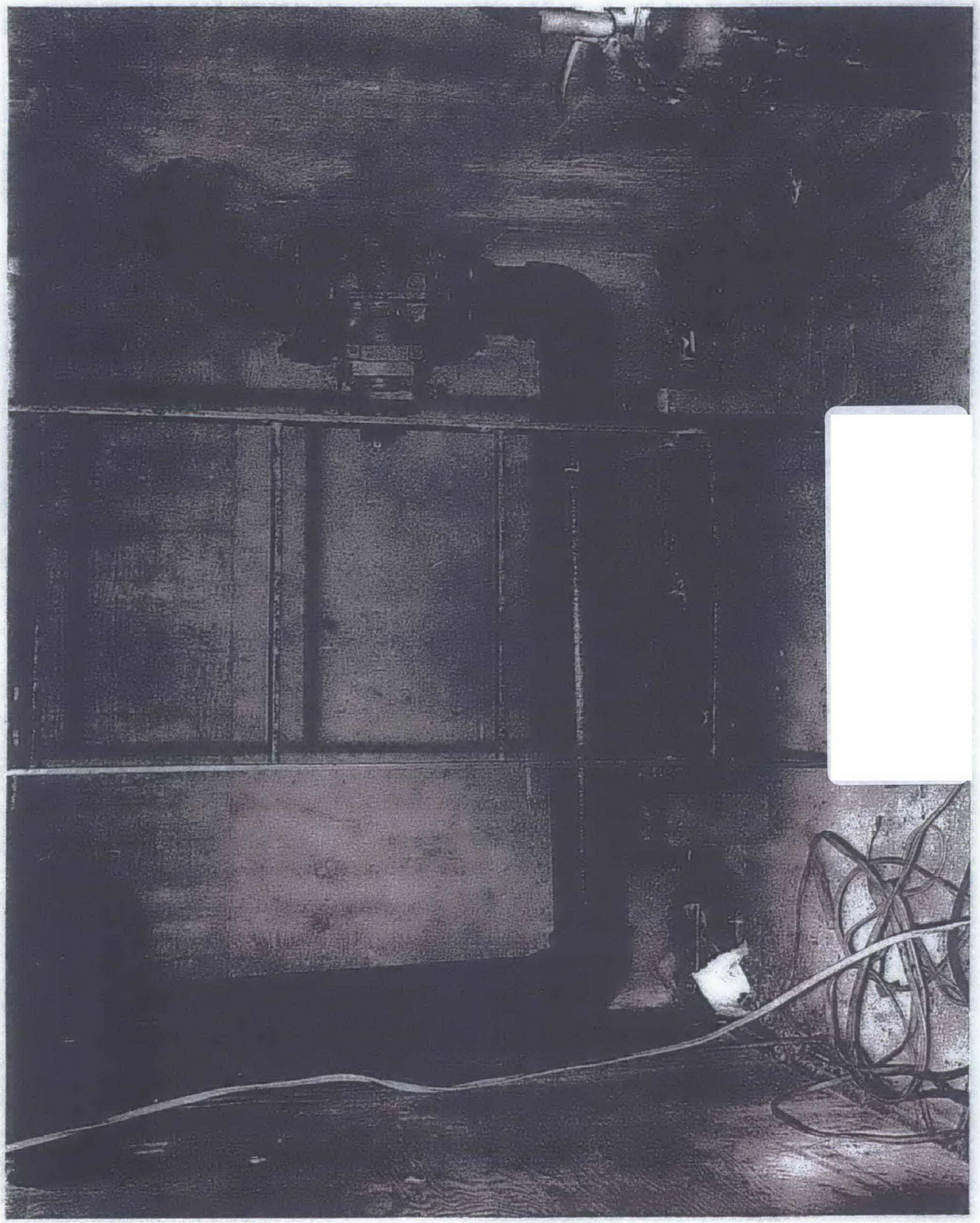

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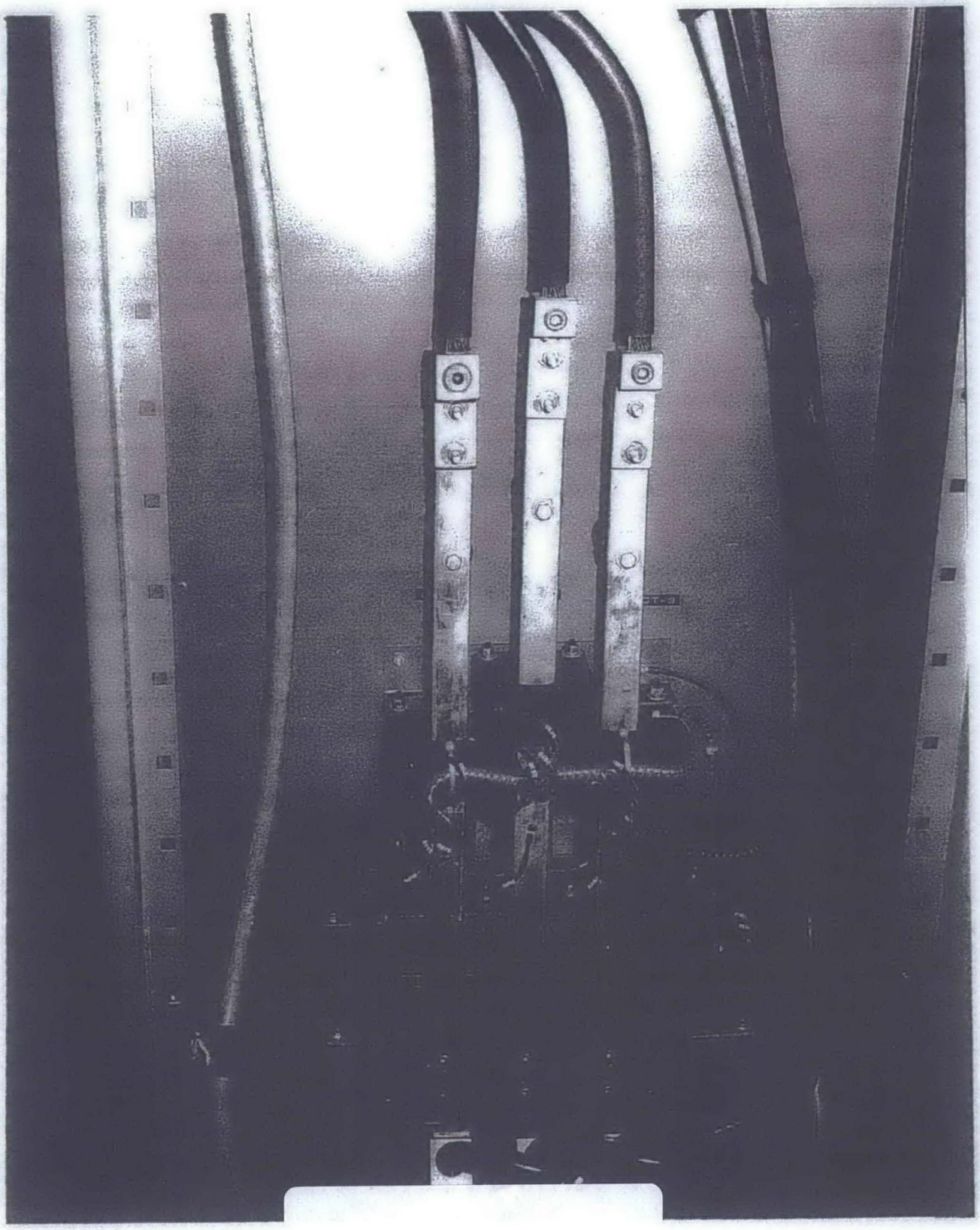

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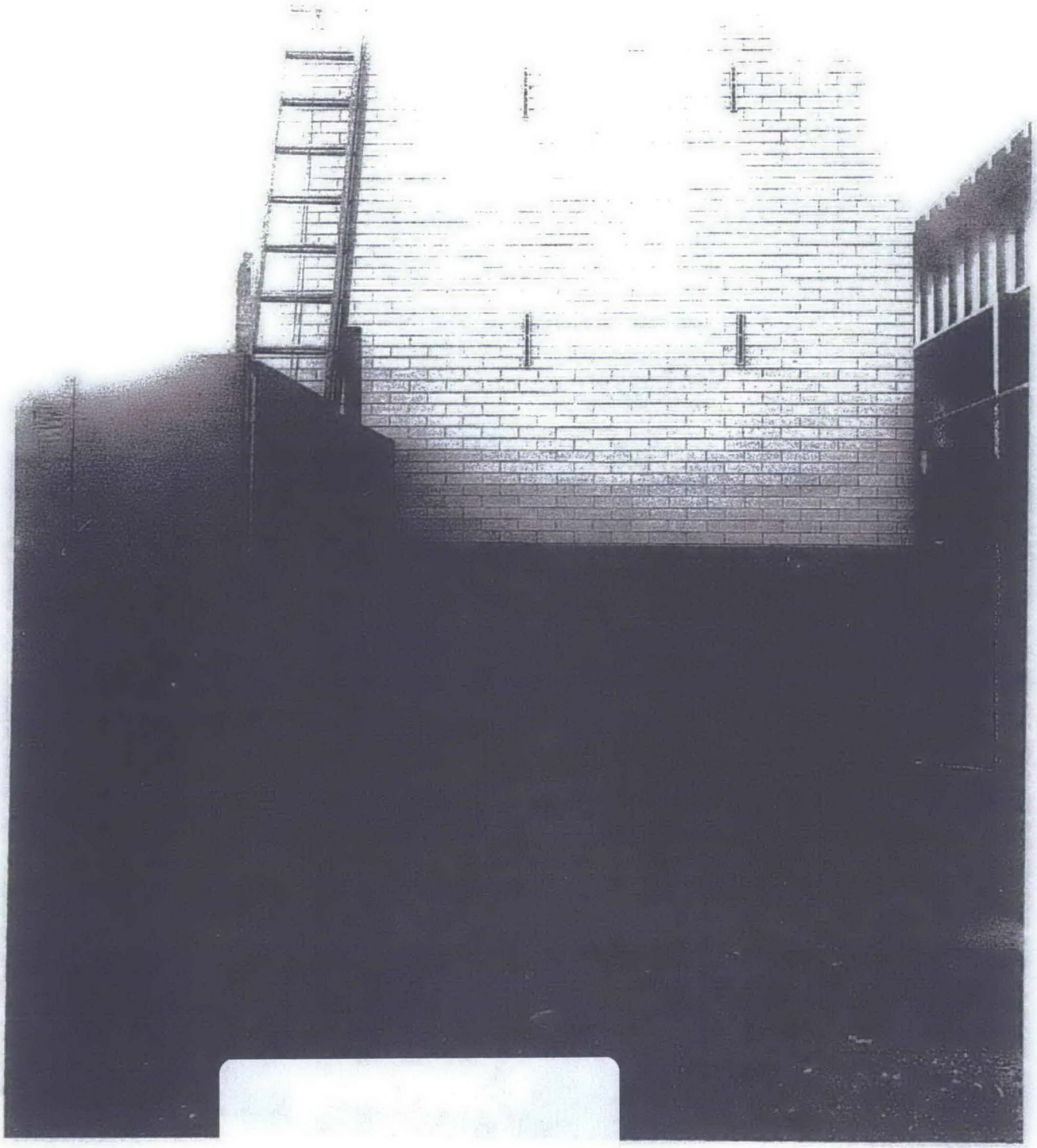

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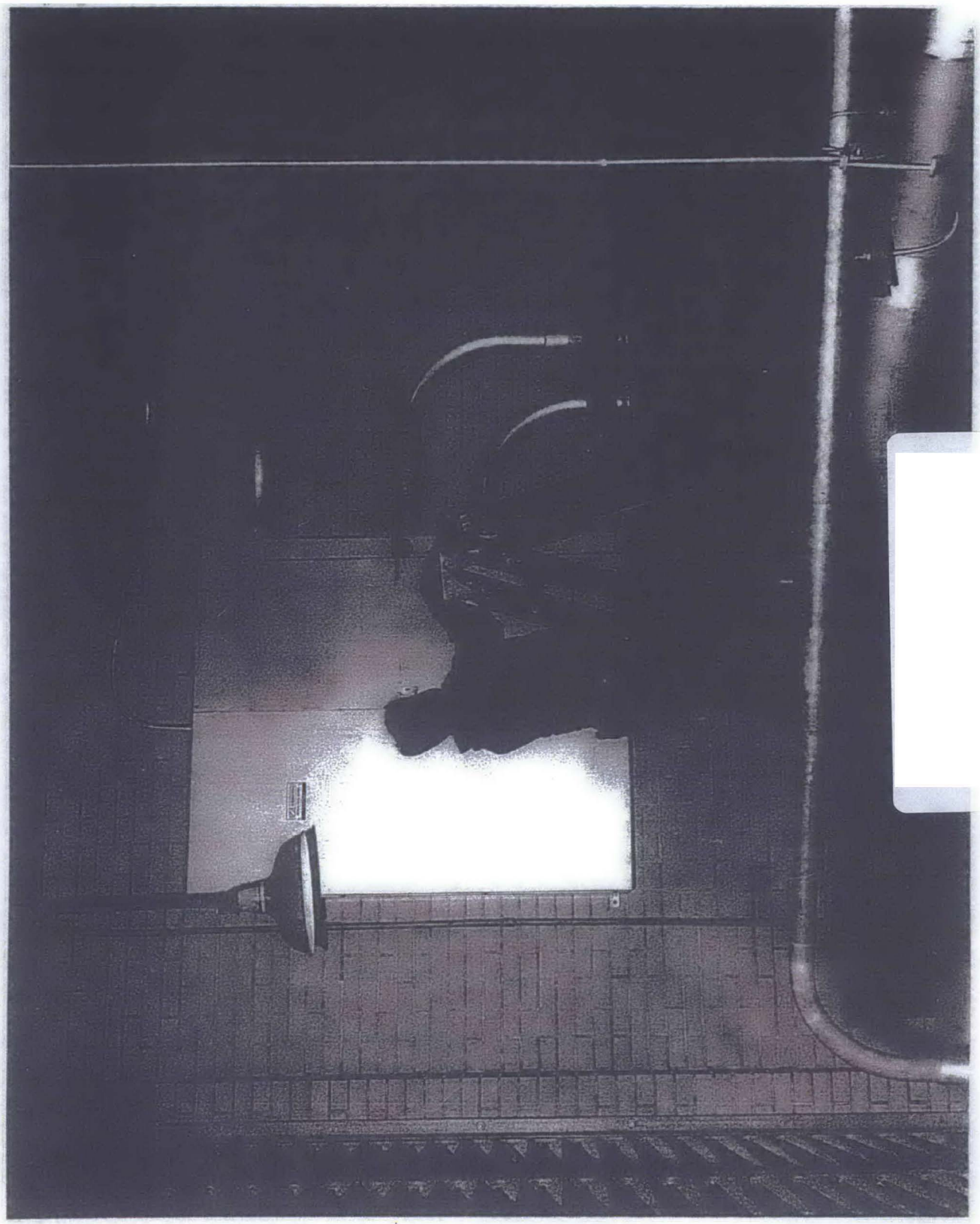

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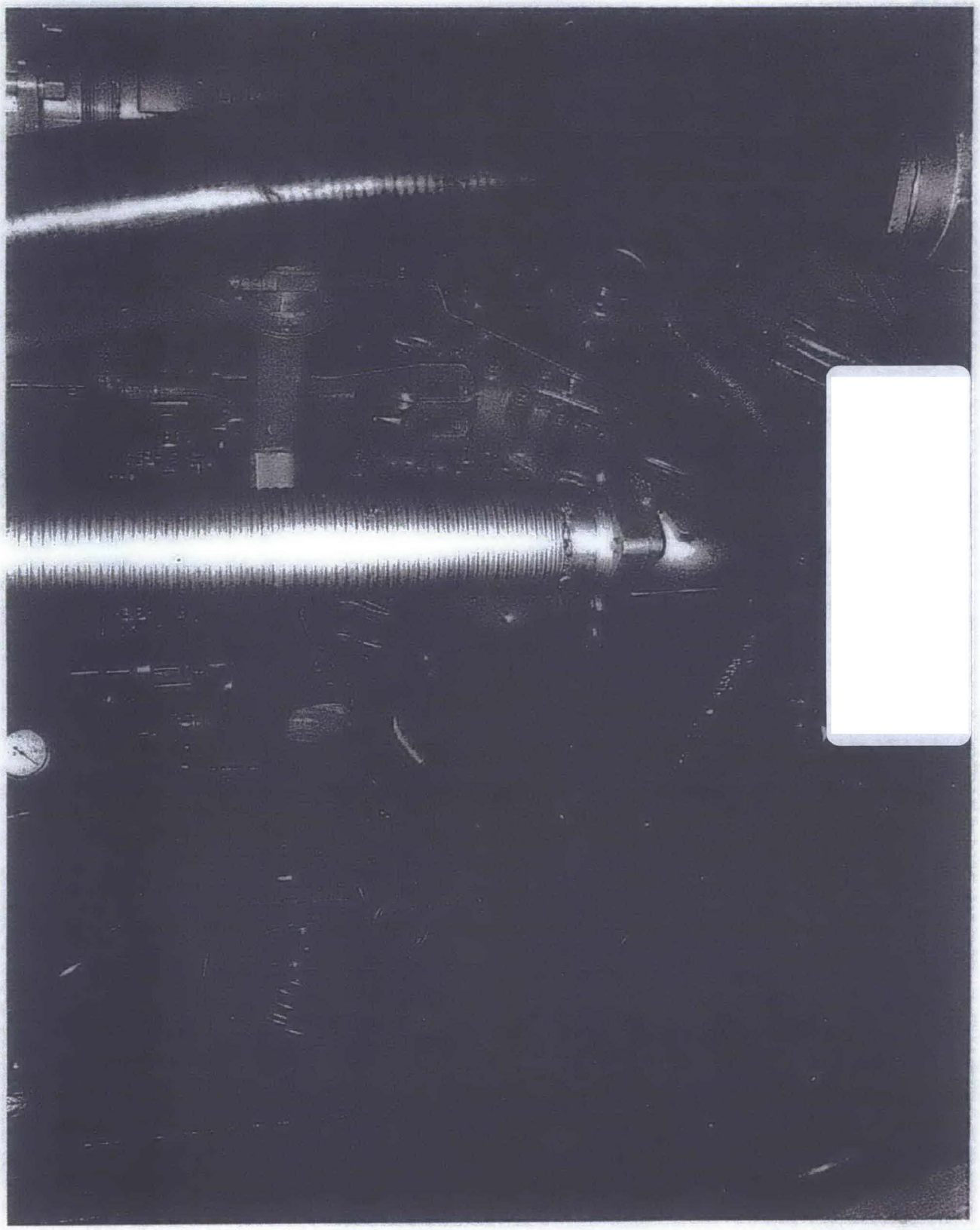

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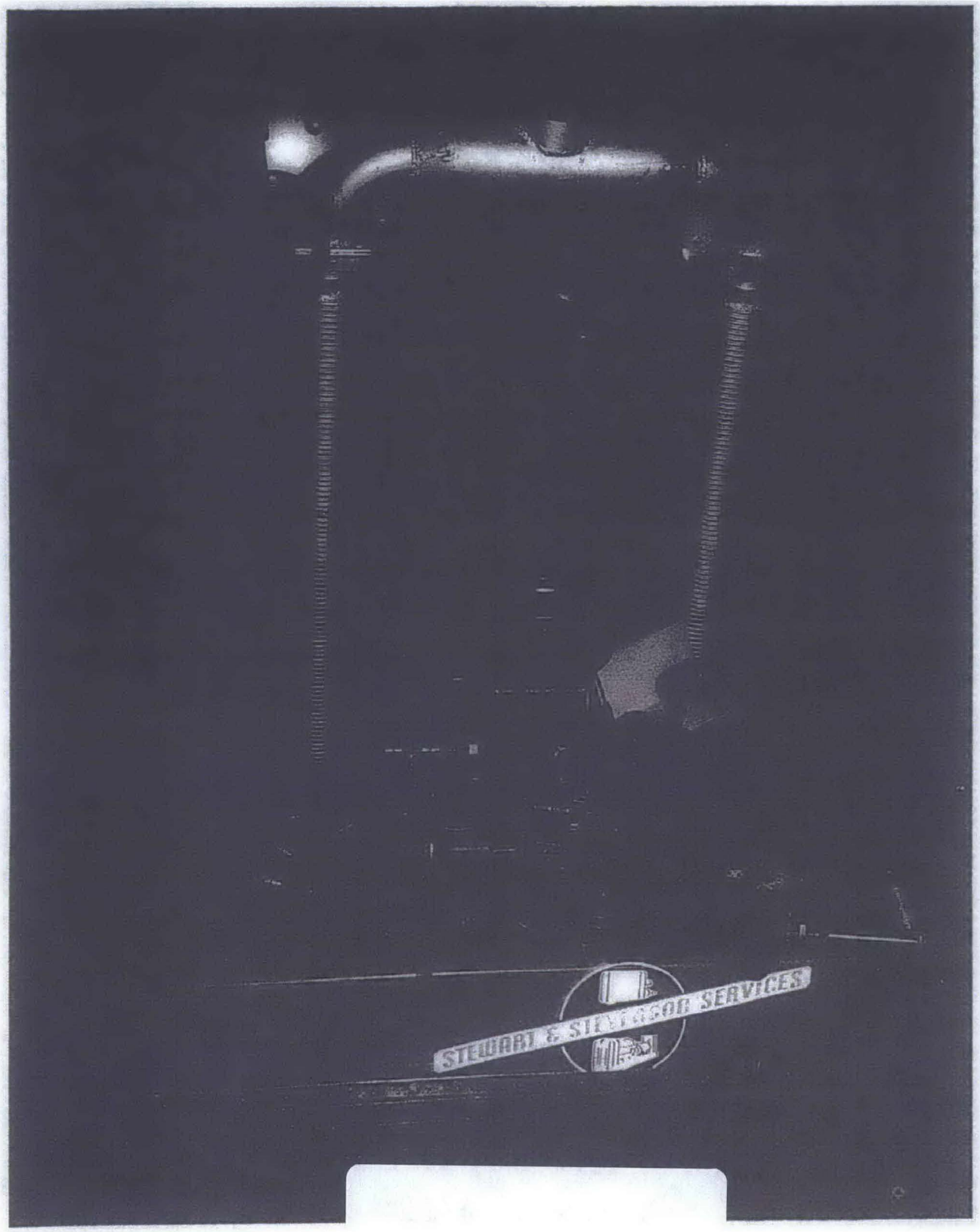

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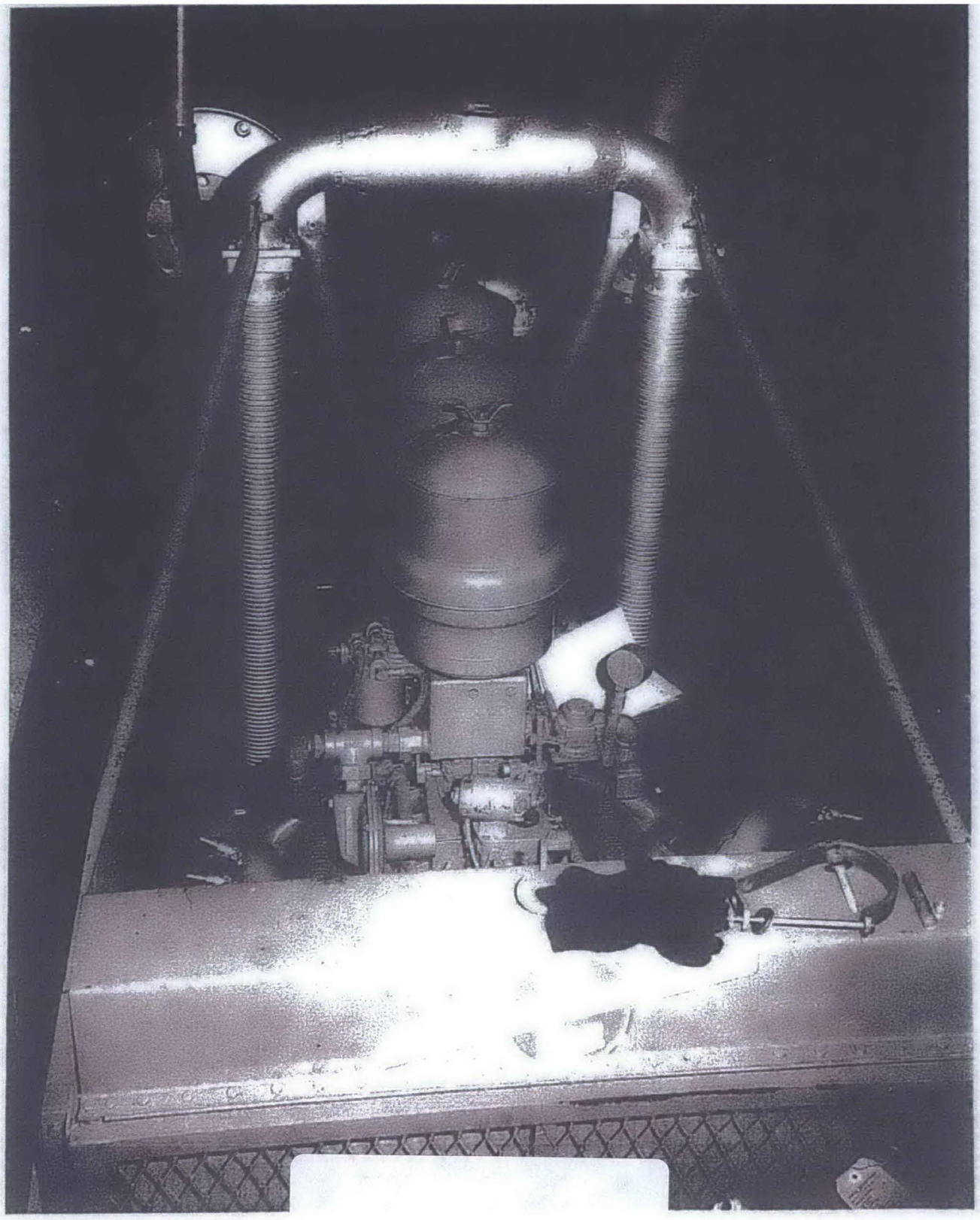

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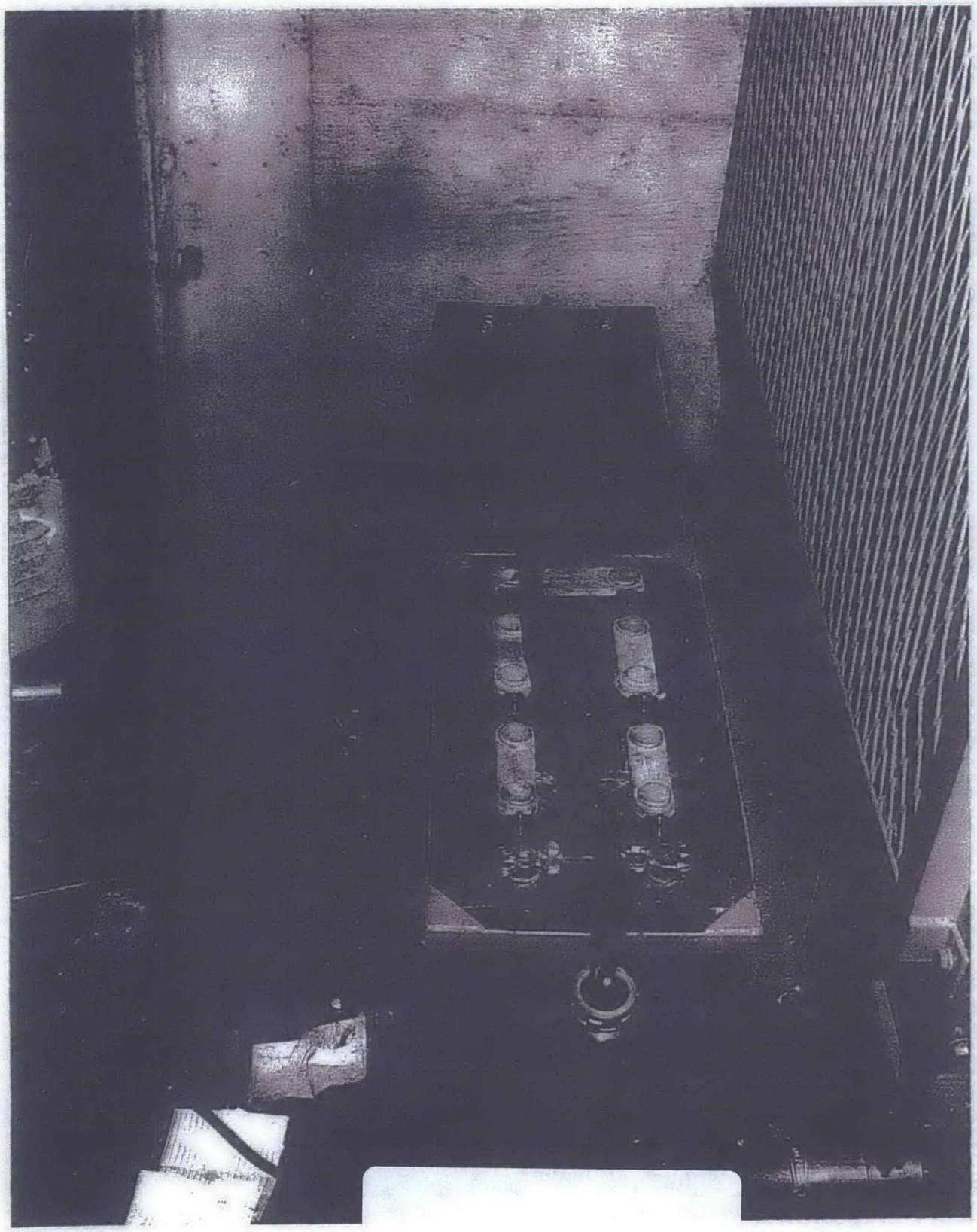

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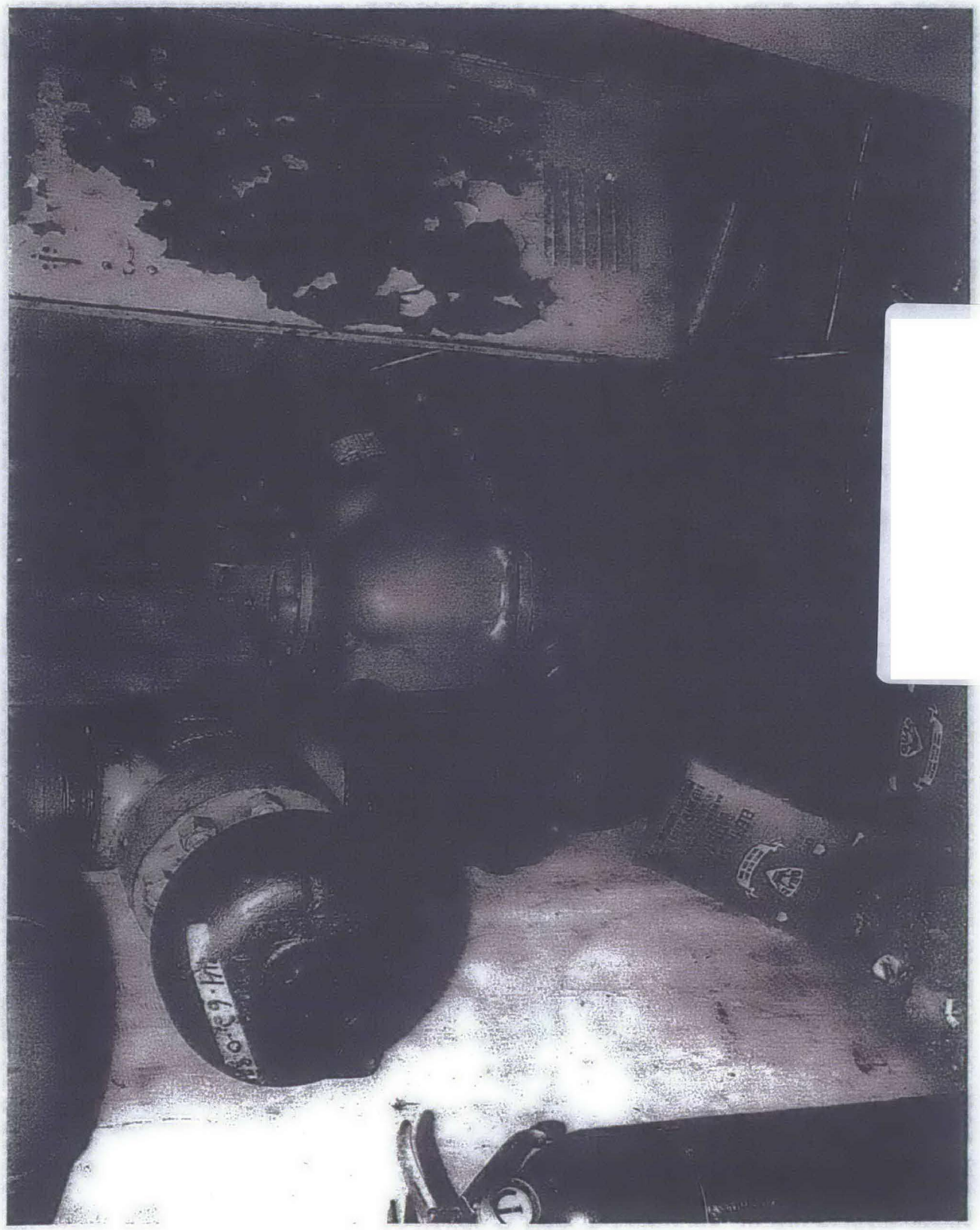

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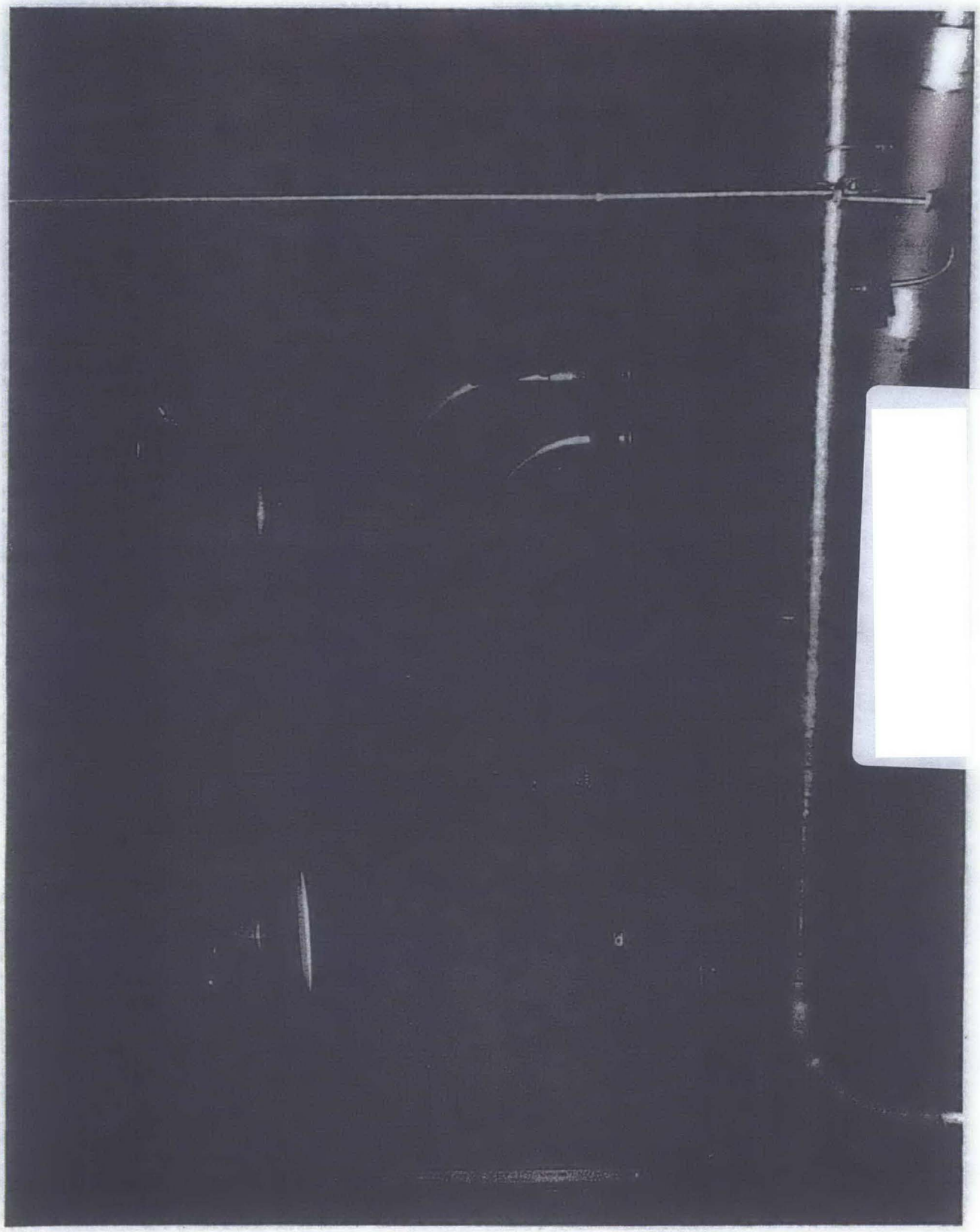

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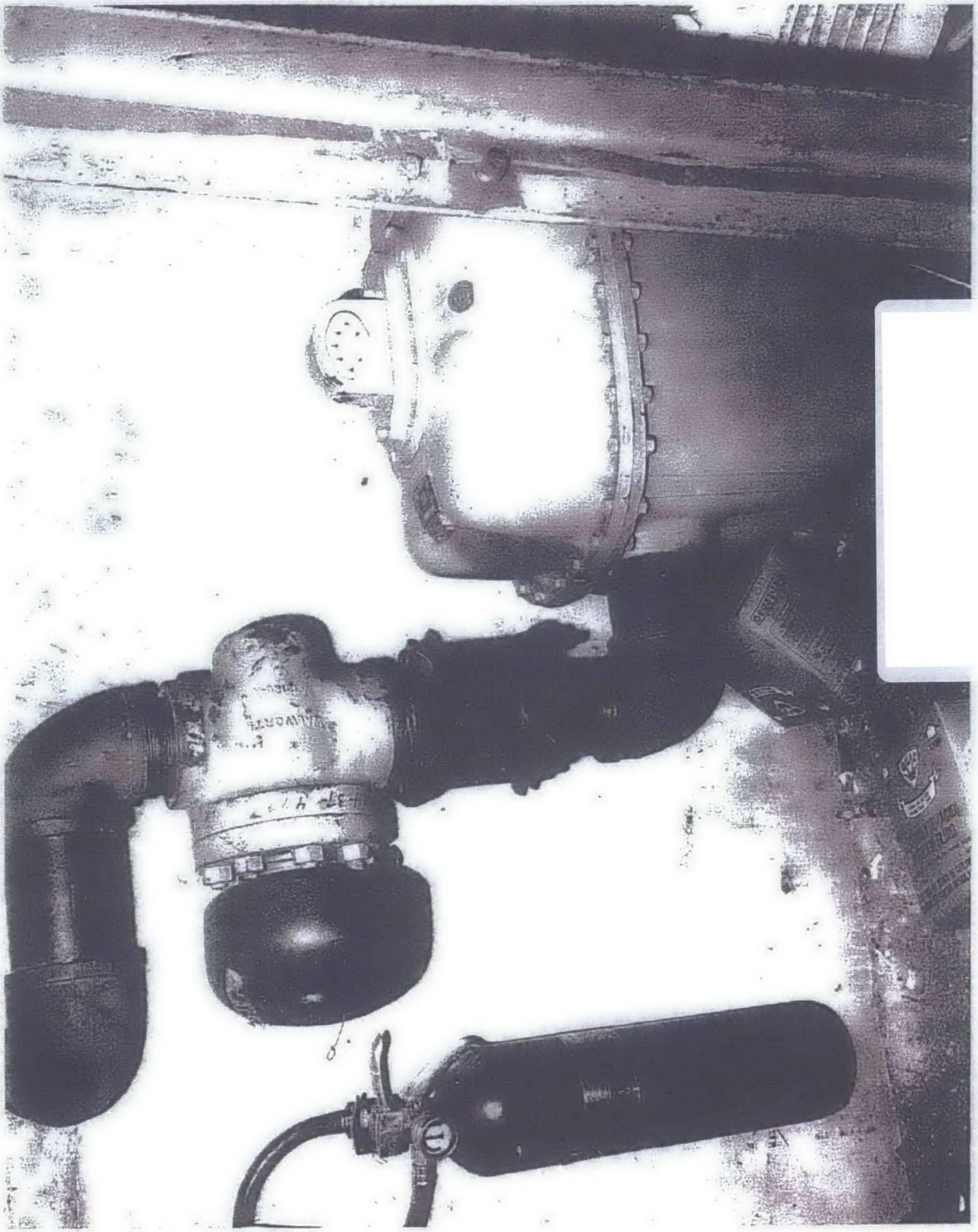

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DOUBLE-WALL TANK INSTALLATION & USE INSTRUCTIONS
DO NOT REMOVE

ATMOSPHERIC VESSEL

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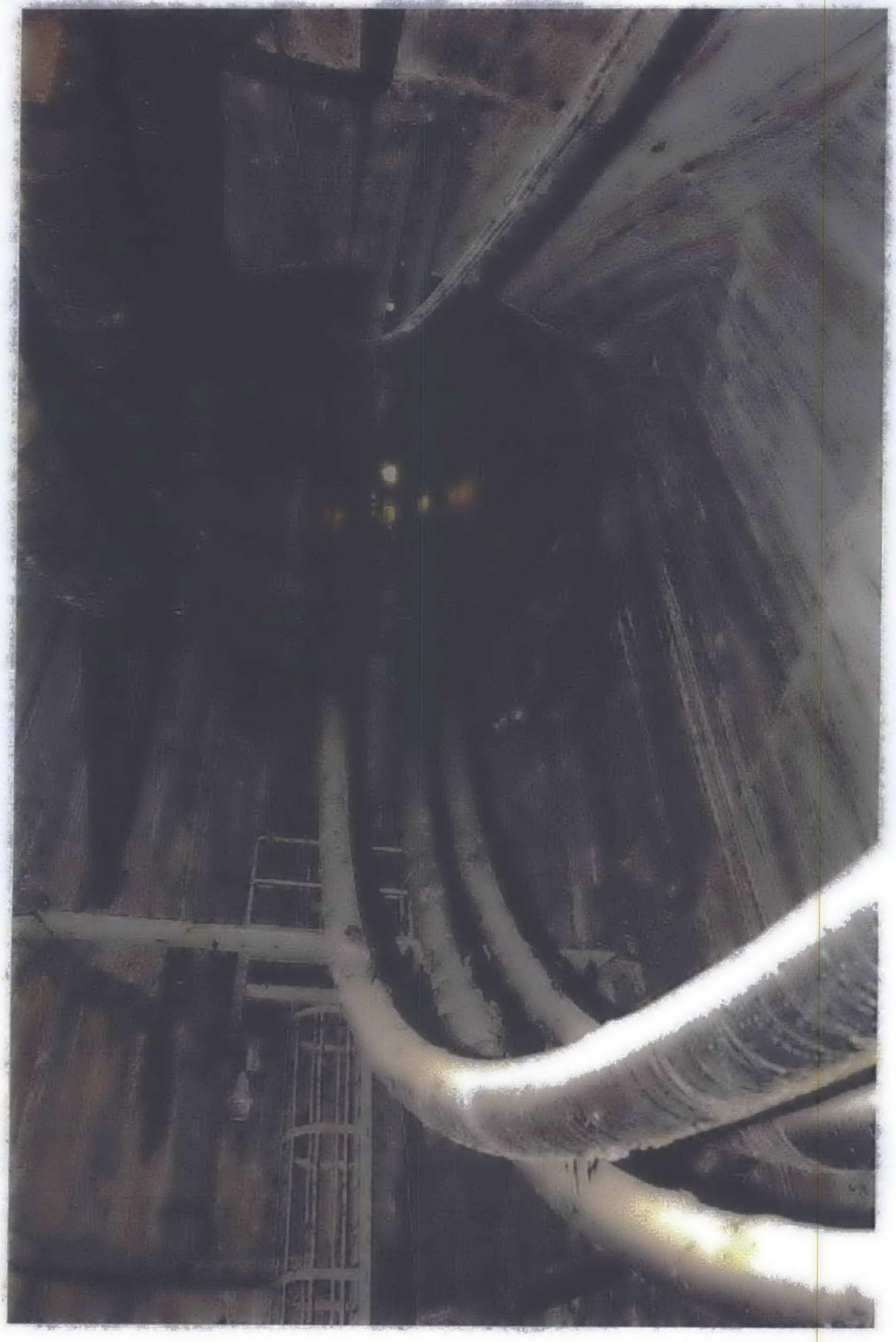

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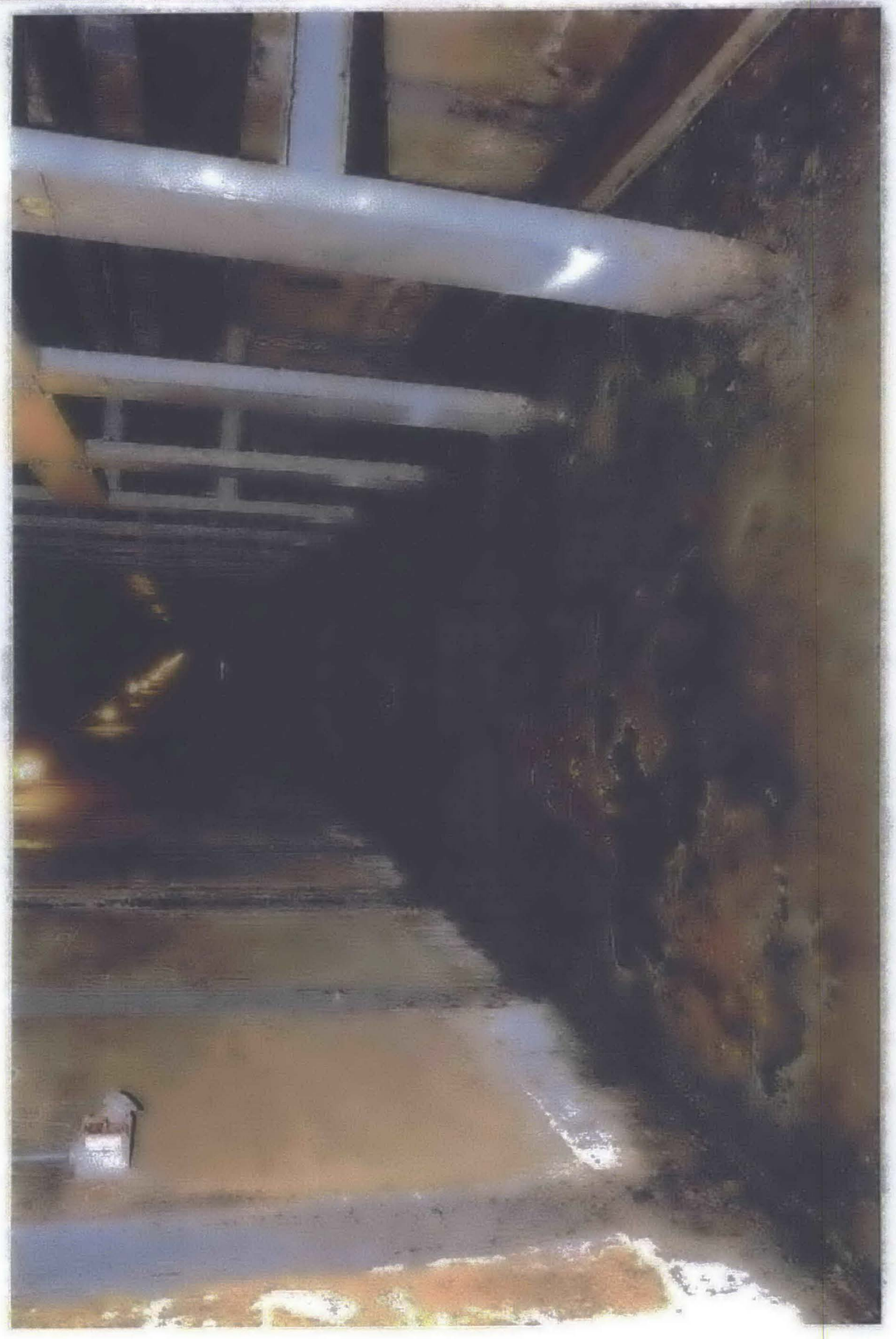

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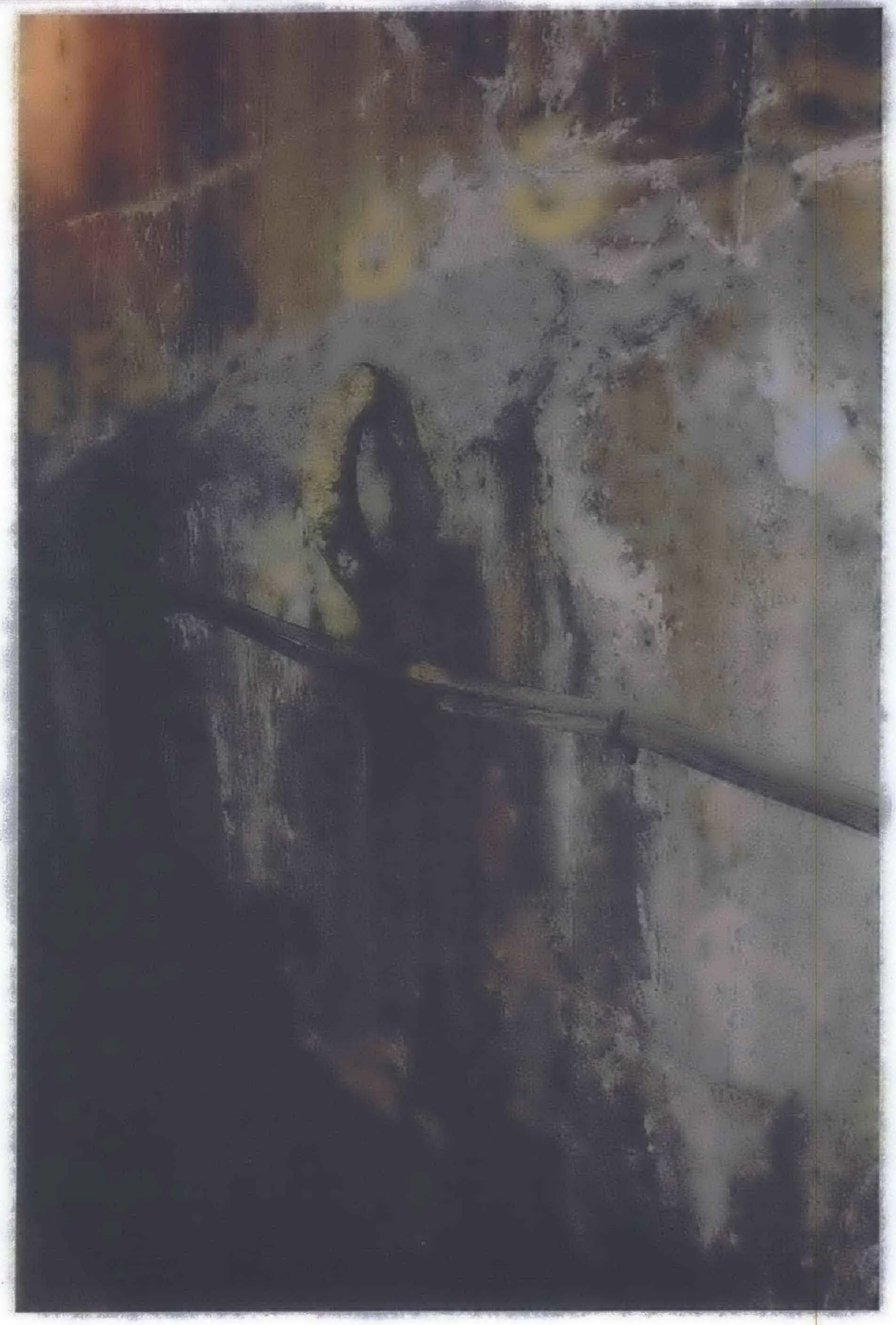

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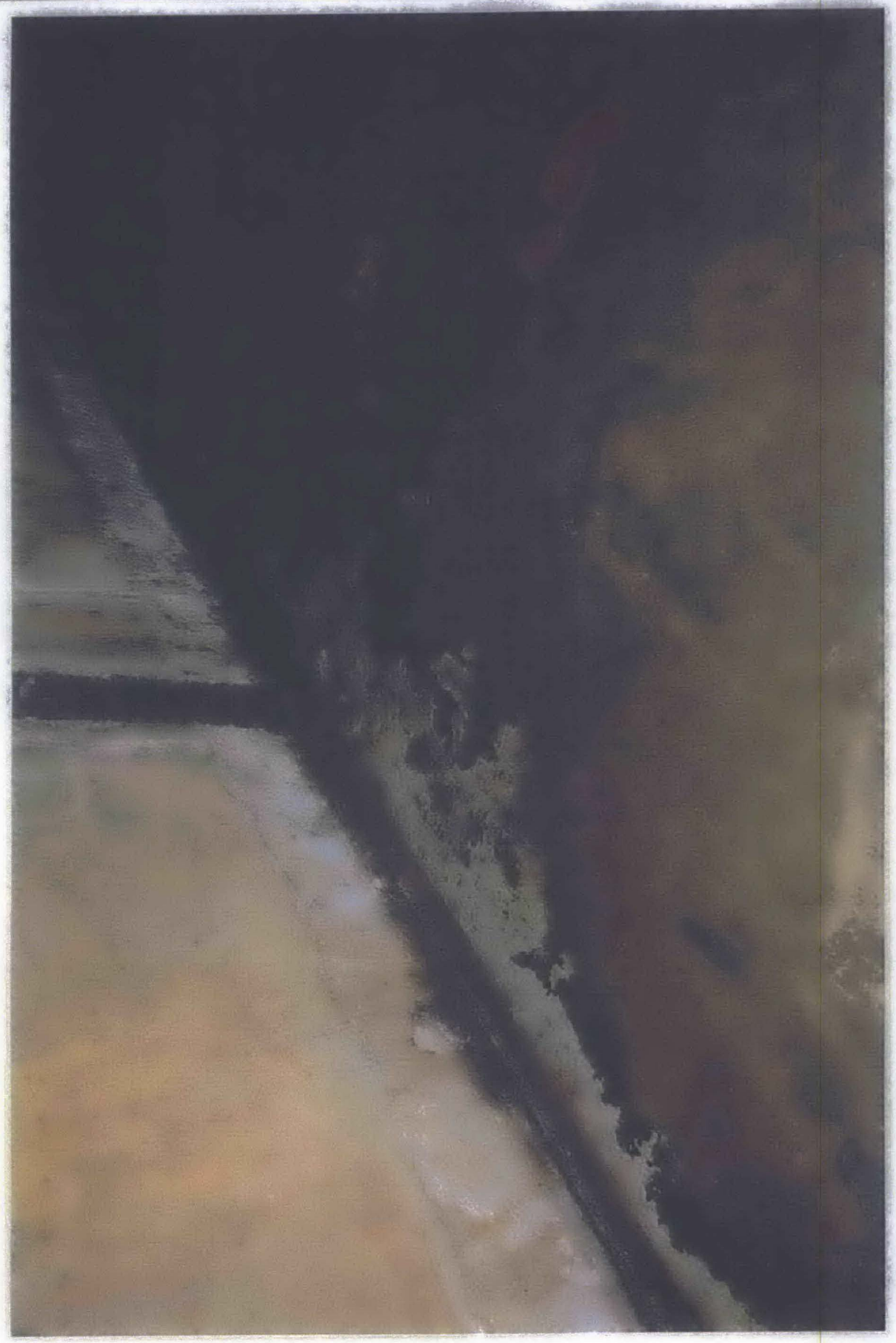

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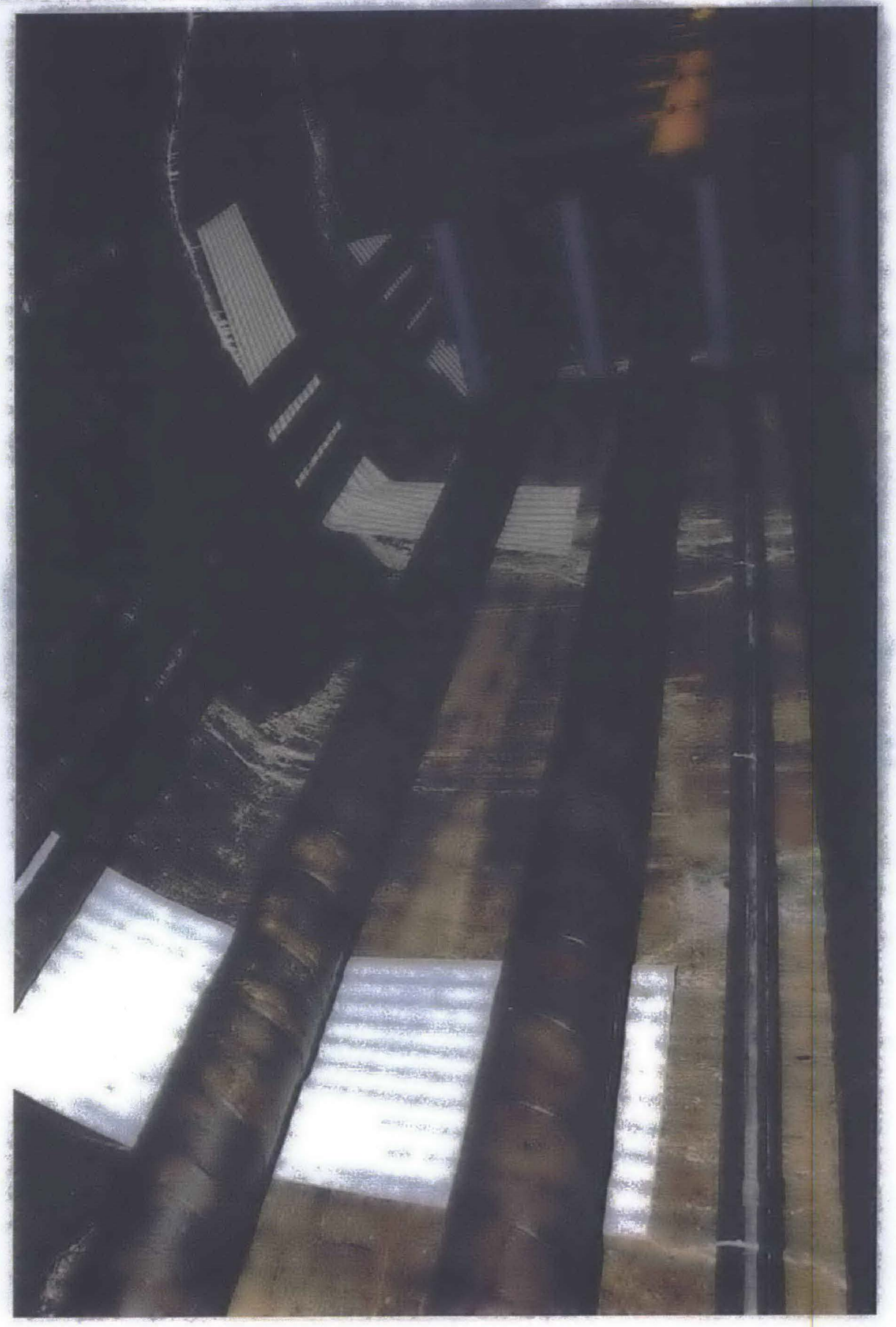

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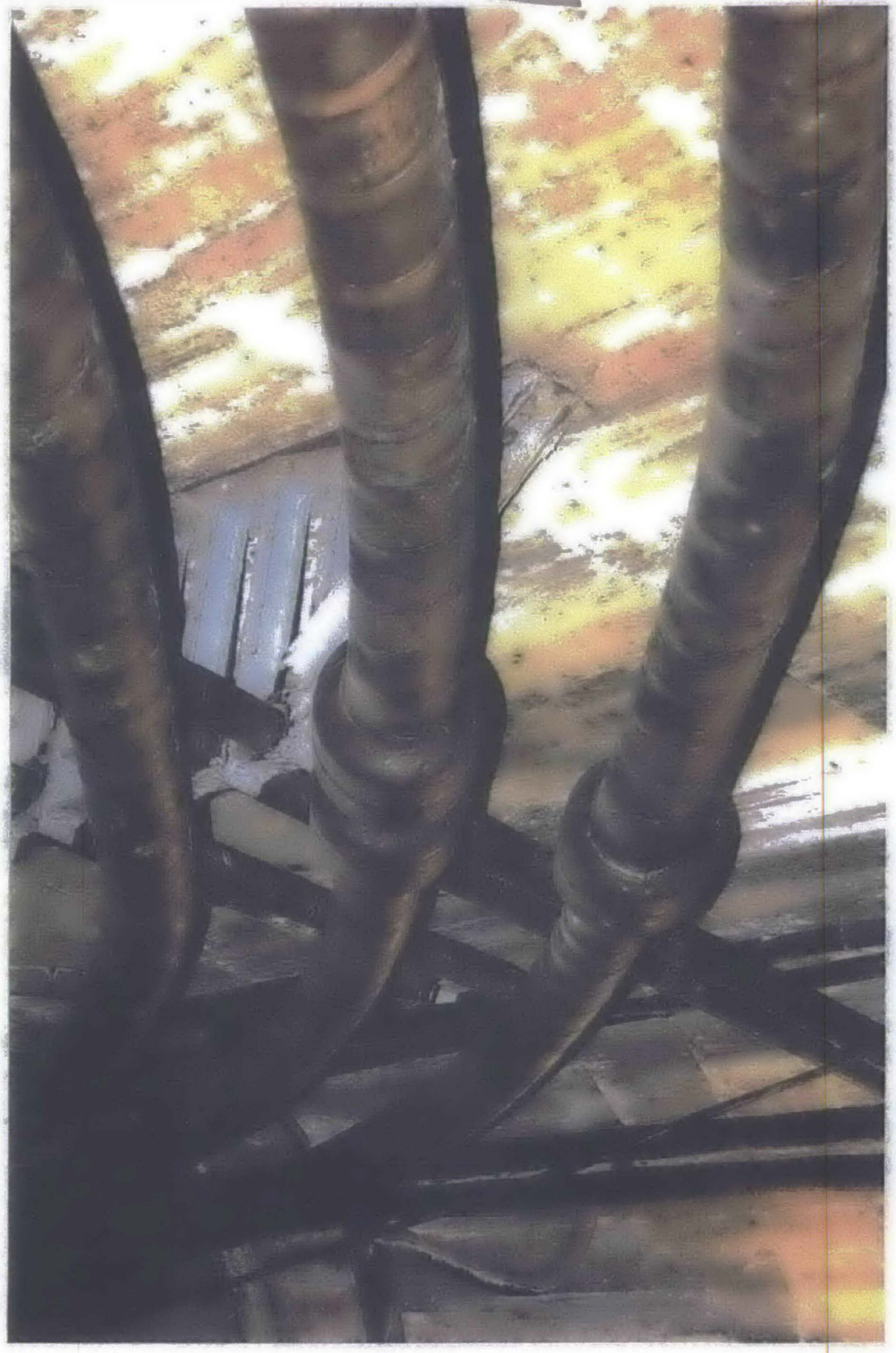

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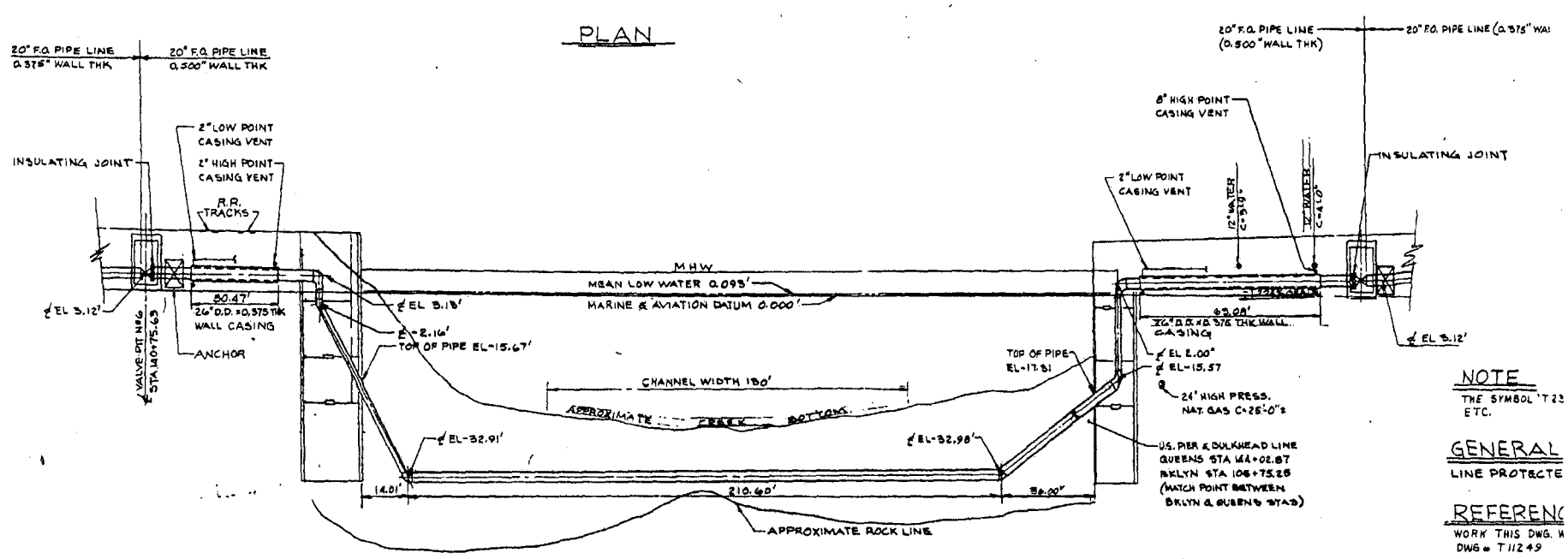

EPA-NC-CE-0005199

..endy E. Goldman
Executive Director
Division of Franchises, Concessions & Consents
40 Worth Street, 9 South
New York, New York 10013
Tel: 212/442-8040, Fax: 212/442-8070/8071

New York City Department of Transportation

Elliot G. Sander, Commissioner

RP # 871

Renewal Agreement
CON EDISON COMPANY, INC.
Account # 0111-07-1-06

02/02/96
10:18 AM
SYED

Date of Approval : → 11/09/95
Date of Contract : → From 03/12/74 TO 06/30/2005
Initial Security Deposit Required : $63,000.00
Additional Security Deposit Reqd. : $679,000.00
Total Security Deposit Required : $742,000.00

Description of Agreement:

To continue to maintain and use fuel oil pipelines in and along promenade walls adjacent to seawall in East River Park, East 14th Street & Avenue C, to 38th Street near FDR Drive, FDR Drive between East 71st & 73rd Streets, "Nepco Line" Kent Avenue between Metropolitan Avenue and First Street, in the Boroughs of Manhattan, Queens and Brooklyn.

Annual Compensation:

For the period of 03/12/1974 to 06/30/1995 →	$3,196,638.00
For the period of 07/01/1995 to 06/30/1996	$513,891.00
For the period of 07/01/1996 to 06/30/1997 →	$539,228.00
For the period of 07/01/1997 to 06/30/1998	$564,565.00
For the period of 07/01/1998 to 06/30/1999	$589,902.00
For the period of 07/01/1999 to 06/30/2000	$615,239.00
For the period of 07/01/2000 to 06/30/2001	$640,576.00
For the period of 07/01/2001 to 06/30/2002	$665,913.00
For the period of 07/01/2002 to 06/30/2003	$691,250.00
For the period of 07/01/2003 to 06/30/2004	$716,587.00
For the period of 07/01/2004 to 06/30/2005 →	$741,924.00

The billing for this consent takes place every July 1st.

For Further information contact : Mr. Syed Rahman
DOT-Revenue Unit
Tel: (212)-442-8069

Note: Combining Old Account Numbers 0111-07-1-06 (RP# 871), 0111-07-1-07 (RP# 884), 0111-07-4-01 (RP# 771), 0111-07-1-09 (RP# 897), and 0111-07-3-04 (RP# 873) into New Account Number 0111-07-1-06 (RP# 871).

(21 5 S.n.)

RP#871

A/C # 0111-07-1-06

THE CITY OF NEW YORK
DEPARTMENT OF TRANSPORTATION
40 Worth Street
New York, New York 10013

REVOCABLE CONSENT AGREEMENT

WHEREAS, by resolution adopted by the Board of Estimate on May 28, 1964 (Cal. No. 192) and approved by the Mayor on June 10, 1964, consent was granted to Consolidated Edison Company of New York, Inc. (the "Grantee") to construct, maintain and use a fuel oil line in and along the promenade walls adjacent to the seawall on the East River, Borough of Manhattan, from the shaft of the Company's tunnel under the East River located near Jackson Street to leased property of the Company north of 13th Street, the pipeline to continue in the tunnel to Hudson Avenue Generating Station in Brooklyn, said consent expired on June 10, 1974; and

WHEREAS, by resolution adopted by the Board of Estimate on March 9, 1972 (Cal. No. 139) and approved by the Mayor on April 20, 1972, consent was granted to the Grantee to continue to maintain and use a pipeline under, along and across certain streets in the Borough of Queens from the Company's Astoria Generating Station to its Ravenswood Generating Station, said consent expired on October 2, 1976; and

WHEREAS, by resolution adopted by the Board of Estimate on January 22, 1970 (Cal. No. 163) and approved by the Mayor on February 16, 1970, consent was granted to the Grantee to construct, maintain and use fuel pipelines under the city streets along the Franklin D. Roosevelt Drive and its vicinity between East 14th and 38th Streets, Borough of Manhattan, said consent expired on February 16, 1980; and

WHEREAS, by resolution adopted by the Board of Estimate on February 20, 1964 (Cal. No. 109) and approved by the Mayor on March 12, 1964, consent was granted to the Grantee to construct, maintain and use a fuel oil line under and along Franklin D. Roosevelt Drive between East 71st Street and East 73rd Street, Borough of Manhattan, said consent expired on March 12, 1974; and

WHEREAS, by resolution adopted by the Board of Estimate on January 23, 1964 (Cal. No. 182) and approved by the Mayor on January 29, 1964, consent was granted to Nepco, Inc. to construct, maintain and use a pipeline from Kent Avenue between Metropolitan Avenue and North First Street, Borough of Brooklyn, to 36th Avenue west of Vernon Boulevard, Borough of Queens, said consent expired on January 28, 1974; Nepco, Inc. conveyed its properties, including the aforesaid pipeline, to the Grantee by deed on October 1, 1984; and

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WHEREAS, Consolidated Edison Company of New York, Inc. (the "Grantee") has petitioned for consents to continue to maintain and use the above mentioned fuel oil pipelines, in the Boroughs of Manhattan, Queens and Brooklyn; and

WHEREAS, Grantee is the owner of the real property which is benefitted by this consent, or if not the owner, Grantee is the tenant of such real property and has obtained the consent of the owner of such property to use the adjacent inalienable property for the purposes set forth herein, and such owner's consent, if applicable, is attached hereto as Schedule A; and

WHEREAS, the New York City Department of Transportation (the "Grantor"), acting through the Commissioner of Transportation, has determined that it is appropriate that such consents be combined and granted, subject to the conditions stated herein;

IT IS HEREBY AGREED:

1. Consent granted. The consent of Grantor is hereby granted to the Grantee, a corporation organized and existing under the laws of the State of New York, having its principal place of business at 4 Irving Place, New York, NY 10003, to continue to maintain and use the above mentioned fuel oil pipelines, in the Boroughs of Manhattan, Queens and Brooklyn, as follows:

1. A fuel oil line in and along the promenade walk adjacent to the seawall on the East River, Borough of Manhattan, from the shaft of the Grantee's tunnel under the East River located near Jackson Street to leased property of the Grantee north of 13th Street and also the continuation of the said pipeline in the tunnel to the Hudson Avenue Generating Station in Brooklyn, the fuel oil line to be used for the conveyance of fuel oil between the Hudson Avenue Generating Station of the Grantee in Brooklyn and the East River Generating Station of the Grantee in Manhattan, the fuel oil line in the park to be as shown upon a plan entitled:

> "Plan showing location of Proposed Fuel Oil Line to be constructed in and along the promenade walk adjacent to the seawall in East River Park in the Borough of Manhattan, to accompany application dated Oct. 22, 1963 of Consolidated Edison Company of New York, Inc. to the Board of Estimate, City of New York"

—and signed Consolidated Edison Company of New York, Inc, By R.F. Brower, Vice President, a copy of which was attached and made part of the consent of 1964.

2. A 10 3/4-inch pipeline with a 2-inch foam glass insulation around the pipe, under, along and across certain streets in the Borough of Queens from the Grantee's Astoria Generating Station to its Ravenswood Generating Station, the route of the pipeline more particularly described as follows:

Commencing at the Astoria Generating Station on the north side of 20th Avenue at a point 275.1-feet east of 21st Street; thence westerly along 20th Avenue to 21st Street; then southerly along 21st Street to 33rd Avenue; thence westerly along 33rd Avenue to 11th Street; thence southerly along 11th Street to 33rd Road; thence westerly along 33rd Road to 10th Street; thence southerly along 10th Street to 37th Avenue; thence westerly along 37th Avenue to Vernon Boulevard; thence southerly along Vernon Boulevard a distance of 140-feet south of 37th Avenue; thence westerly to the west side of Vernon Boulevard and into the Ravenswood Generating Station, all in the Borough of Queens, the pipeline to be used for the conveyance of fuel oil from the Astoria Generating Station to the Ravenswood Generating Station, the pipeline to be as shown upon a plan consisting of eight sheets and entitled:

"Plan showing location of Proposed Fuel Oil Line to be constructed in 20th Ave. from 23rd St. to 21st St., 21st St. and 20th Ave. to 33rd Ave., 33rd Ave. and 21st St. to 11th St., 11th St. and 33rd Ave., to 33rd Rd., 33rd Rd. and 11th St. to 10th St., 10th St. and 33rd Rd. to 37th Ave., 37th Ave. and 10th St. to Vernon Blvd. and Vernon Blvd. Borough of Queens, to accompany application dated May 2, 1961 of Consolidated Edison Company of New York, Inc. to the Board of Estimate, City of New York"

—and signed Consolidated Edison Company of New York, Inc., By R.F. Brower, Vice-President, a copy of which was attached to and made a part of the consent of 1961.

3.(a) A 12-inch pipeline extending underground from an existing oil storage area owned by the Grantee at its East River electrical generating station located on the south side of East 14th Street east of Avenue C, thence under and across East 14th Street to the north side of said 14th Street, thence along East 14th Street west to the intersection of Avenue C and East 14th Street, thence along Avenue C to a point north of East 15th Street, thence in and along the sidewalk area of the east side of Avenue C to the East Service Road of Franklin D. Roosevelt Drive at East 19th Street, thence along the East Service Road of Franklin D. Roosevelt Drive to East 33rd Street, thence crossing to the West Service Road of Franklin D. Roosevelt Drive in roadway under elevated structure, thence along the West Service Road of Franklin D. Roosevelt Drive to the intersection of the south side of East 35th Street, thence westerly to a point of entry of the Grantee's Kips Bay Steam Generating Plant, on the north side of East 35th Street approximately 100-feet east of First Avenue to a proposed oil storage tank, all in the Borough of Manhattan.

(b) A 10-inch line with a 4-inch return from a point approximately 40-feet east of First Avenue on the south side of East 36th Street to the north side of East 36th Street, thence west to the intersection of sidewalk area of East 36th Street and First

Avenue, thence along First Avenue to a point of entry of the Waterside Electrical Generating Station, approximately 80-feet from the intersection of East 38th Street and First Avenue, Borough of Manhattan.

~~(c) A 12 inch line under and across the Franklin D. Roosevelt Drive south of East 36th Street to the wharf line, Borough of Manhattan.~~ CC

These pipelines are to be as shown upon a plan consisting of nine sheets and entitled:

> "Revised plan showing location of proposed fuel oil lines to be constructed in and along Ave. C from East 14th St. to F.D.R. Drive and in and along F.D.R. Drive to East 35th St. and in and along East 35th St. to east of First Ave., and from East 36th St. east of First Ave. in and along First Ave. to south of East 39th St., and in and across F.D.R. Drive between East 35th St. and East 36th Streets in the Borough of Manhattan, to accompany revised application dated October 17, 1968 of Consolidated Edison Company of New York, Inc., to the Board of Estimate, City of New York."

—and signed Consolidated Edison Company of New York, Inc. by A.N. Anderson, Vice President, a copy of which was attached and made a part of the consent of 1970.

4. A 6 5/8-inch fuel oil line covered with 2 inches of insulation from the Grantee's property on the southwest corner of East 71st Street and Franklin D. Roosevelt Drive, under and along Franklin D. Roosevelt Drive, to a point in the walkway of Franklin D. Roosevelt Drive 23.1 feet south of East 73rd Street where it enters property leased by the Grantee, the fuel oil pipe to be used to convey fuel oil to the 74th Street Power Plant of the Grantee, the pipe to be as shown upon a plan entitled:

> "Plan showing location of Proposed Fuel Oil Line to be constructed in and along Franklin D. Roosevelt Drive between E. 71st St. and East 73rd St. in the Borough of Manhattan, to accompany application dated December 13, 1961 of Consolidated Edison Company of New York, Inc. to the Board of Estimate, City of New York"

—and signed Consolidated Edison Company of New York, Inc., By R.F. Brower, Vice President, a copy of which was attached and made a part of the consent of 1964.

5. A 20-inch pipeline from Kent Avenue between Metropolitan Avenue and North First Street in the Borough of Brooklyn, thence along Kent Avenue to Franklin Street, thence along Franklin Street to Commercial Street, thence through private property and under Newton Creek to Second Street in the Borough of Queens, thence

along Second Street to 50th Avenue, thence along 50th Avenue to Fifth Street, thence along Fifth Street to 47th Avenue, thence along 47th Avenue to Jackson Avenue, thence along Jackson Avenue to 21st Street, thence along 21st Street to the intersection of 14th Street and 21st Street, thence along 14th Street to 36th Avenue, thence along 36th Avenue to a point 219 feet 6 inches west of Vernon Boulevard, thence northerly into a regulating station situated in a portion of property of the Grantee leased by Nepco, Inc., the pipeline to be used for the conveyance of fuel oil from the fuel oil storage terminal in the Borough of Brooklyn to the Ravenswood Generating Station of the Grantee in the Borough of Queens, the pipeline to be as shown upon a plan entitled:

> "Plan showing location of Proposed Fuel Oil Pipe Line from Kent Ave. between Metropolitan Ave. and North 1st Street to 36th Ave. west of Vernon Blvd. in the Boroughs of Brooklyn and Queens, to accompany application dated August 30, 1963 of Nepco, Inc. to the Board of Estimate, City of New York"

—and signed Nepco, Inc., By R.G. Weinand, Executive Vice-President, a copy of which was attached and made a part of the consent of 1964.

The pipelines are hereinafter referred to as the "Structure". This consent is granted upon the following terms and conditions:

6. Term. This consent shall take effect as of March 12, 1974, shall continue only during the pleasure of the Grantor and shall be revocable at any time by the Grantor, and shall expire on June 30, 2005 (the "Expiration Date"). The Grantee agrees that not later than six months prior to the aforesaid expiration of the term of this consent, it will petition the Grantor in writing for either a renewal or discontinuance thereof.

7. Annual compensation. (a) The Grantee shall pay into the treasury of the City of New York (the "City") as compensation for the privilege hereby granted the following:

For the period March 12, 1974	to	June 30, 1995	-$3,196,638	
For the period July 1, 1995	to	June 30, 1996	~~-$ 515,716~~	$513,891
For the period July 1, 1996	to	June 30, 1997	~~-$ 541,143~~	$539,228
For the period July 1, 1997	to	June 30, 1998	~~-$ 566,570~~	$564,565
For the period July 1, 1998	to	June 30, 1999	~~-$ 591,997~~	$589,902
For the period July 1, 1999	to	June 30, 2000	~~-$ 617,424~~	$615,239
For the period July 1, 2000	to	June 30, 2001	~~-$ 642,851~~	$640,576
For the period July 1, 2001	to	June 30, 2002	~~-$ 668,278~~	$665,913
For the period July 1, 2002	to	June 30, 2003	~~-$ 693,705~~	$691,250
For the period July 1, 2003	to	June 30, 2004	~~-$ 719,132~~	$716,587
For the period July 1, 2004	to	June 30, 2005	~~-$ 744,559~~	$741,924

(b) Annual payments shall be made in advance on or before July 1 of each year, provided, however, that the first payment shall be made within thirty (30) days after the date of the final approval of this consent by the Mayor (the "Approval Date") and shall be the sum due for the period March 12, 1974 to June 30, 1995, less any payments already made pertaining to the aforesaid period. Grantor hereby acknowledges receipt of ~~$1,337,250~~ $1,396,638.00 in payment of this charge.

(c) In the event the Grantee continues the maintenance and operation of the Structure after and in spite of the termination or expiration of this consent, the Grantee agrees to pay to the City the compensation as set forth herein at the rate in effect at the time of such termination or expiration and in the manner set forth herein, together with all taxes with respect to this structure it would have been required to pay had its maintenance and operation been duly authorized. Such payments shall not be deemed to constitute an extension of this consent and all of the City's rights shall remain in full force and effect notwithstanding such payments. Such rate of compensation shall continue up to the date of the restoration of the street after the removal, or deactivation at the discretion of the grantor, of the Structure.

(d) In the event that a future agreement for this Structure becomes effective subsequent to the expiration of this agreement, it is understood and agreed that as a condition of such future grant of consent the fees charged under such grant may be at the rate in effect during the period following the expiration date of this agreement.

(e) In the event any payment is not made on or before the date such payment is due, interest on such payment shall apply from the date such payment is due at the rate of one and one-half percent (1 1/2%) per month. If the Grantee shall fail to pay such compensation or taxes, or the interest thereon, if any, the Comptroller may withdraw the amounts thereof from the security fund hereinafter provided for. If the compensation or taxes owed exceeds the amount available in the security fund the Grantee shall be liable for the shortfall, and shall pay such to the City upon demand.

(f) The compensation provided herein shall not be considered in any manner in the nature of a tax, but shall be in addition to any and all taxes of whatsoever kind or description now or hereafter required to be paid under any local law of the City or by any law of the State of New York.

8. Removal or deactivation of structure. Within ten (10) days after the revocation or termination of this consent, the Grantee shall cause the Structure to be removed, or deactivated at the discretion of the Grantor, and all of the street affected thereby to be restored to its proper condition to the satisfaction of the Grantor. The entire cost of such work shall be borne by the Grantee.

If Grantee fails to so remove or deactivate the Structure, or so restore such street, within the time period stated above, Grantor shall have the right to cause the Structure to be removed or deactivated and such street to be restored. The cost to Grantor of causing such removal or deactivation and/or restoration shall be recovered from the security fund as provided for in this consent. If the cost of removal or deactivation and/or restoration exceeds the amount available in the security fund, the Grantee shall be liable for the shortfall, and shall pay such to the City upon demand.

9. Restrictions against transfer. This consent is for the exclusive use of the Grantee and solely for the purpose hereinabove mentioned and shall not, either in whole or in part, be sold, assigned, leased or sublet in any manner, nor shall title thereto, or right, interest or property therein pass to or vest in any other person, firm or corporation whatsoever, either by the acts of the Grantee or by operation of law, without the express written consent of the Grantor, which consent may be withheld by the Grantor in its sole discretion.

10. Grantee responsible for all costs. The Grantee shall pay the entire cost of all work, labor and material in connection with the Structure, and particularly,

(a) construction, maintenance and removal or deactivation of the Structure;
(b) the protection of all structures which shall in any way be disturbed by the construction, deactivation or removal of the Structure;
(c) any and all changes in sewers or other subsurface structures necessitated by the construction, deactivation or removal of the Structure, including the laying or relaying of pipes, conduits, sewers or other structures;
(d) the replacing or restoring of the pavement in the affected street which may be disturbed during the construction, deactivation or removal of the Structure;
(e) each and every item of the increased cost of the installation of any future structures or repairs or alterations to any existing or future structures caused by the presence in the street of the Structure; and
(f) the inspection of all work during the construction, deactivation or removal of the Structure as herein provided which may be required by the Grantor, the Department of Environmental Protection, or any other governmental body having jurisdiction.

11. Construction requirements. Prior to the commencement of any construction, alteration, deactivation or removal of the Structure, the Grantee shall obtain, at its sole cost and expense, any and all licenses, permits or other forms of approval or authorization which may be required by Grantor, the Department of Environmental Protection, or any other governmental body having jurisdiction. The Grantee shall perform all the duties which may be imposed by those agencies as conditions of such forms of approval or authorization, provided such conditions are not inconsistent with the provisions of this consent. The Grantee shall submit to the Grantor working plans which shall include and show in detail the method of construction of the Structure and the mode of protection or changes in all structures required by the construction, alteration, deactivation or removal of the same.

Upon the completion of the work the Grantee shall furnish to the Grantor, the Department of Environmental Protection, and to any other governmental body having jurisdiction, plans of such character as may be directed, showing accurately and distinctly the location, size and type of construction, and complete dimensions of the Structure erected or installed under this consent; also the location and dimensions of all substructures encountered during the progress of the work.

If so ordered by the Grantor, all work in connection with the installation, repair, deactivation or removal of the Structure shall be carried on only at night or continuously for twenty-four (24) hours each day.

12. City's access paramount. The Grantee shall allow to the City a right of way under or above any part of the Structure for any and all structures which are now or may be hereafter placed in the affected street by the City.

If, in the exercise of the sole discretion of the Grantor, the Grantor at any time decides to replace, alter or otherwise gain access to any structure located in or on the street that is affected by the Structure, the Grantor shall have the right to break through or remove all or any portion of the Structure. The cost to the Grantor of breaking through or removing the Structure shall be recovered from the security fund as provided for in this consent. If the cost of breaking through or removal exceeds the amount available in the security fund, the Grantee shall be liable for the shortfall, and shall pay such to the City upon demand.

13. Structure subject to City's supervision. The Structure and any fixtures laid therein shall be constructed, maintained and operated subject to the supervision and control of the proper authorities of the City. The Structure shall be open at all times to the inspection of all the authorities having jurisdiction.

14. Consent subject to rights of abutting property owners. This consent is subject to whatever right, title or interest the owners of abutting property or others may have in and to the affected street.

15. No rights conveyed. The Grantee acquires no right, title or interest in the space permitted to be occupied herein and it is expressly understood that said occupancy is considered temporary.

16. Maintenance of structure. The Grantee agrees to maintain the Structure in good, clean condition and shall not allow it to deteriorate, become unsightly, or develop into a dangerous condition or a condition which is not in the best interests of the general public.

17. No alienation of City's rights. It is expressly understood that the grant of this consent will not alienate or diminish the absolute right of the City to reenter into full possession of the street space described herein for any reason whatsoever, free of any encumbrance or obligation, upon the expiration of this consent or upon its revocation and cancellation.

18. Unconditional right of revocation. The Grantee expressly agrees that the Grantor may unconditionally revoke this consent and terminate the period thereof at any time without liability, at will, any provision herein to the contrary notwithstanding. In the event of such revocation and termination, the Grantee shall remain liable for the due and full performance of all the terms, covenants and conditions contained herein to be performed up to the time of said termination, and the Grantee's obligation to pay compensation shall continue up to the date of the removal of the Structure, or its deactivation at the discretion of the Grantor, and the restoration of the street affected thereby to the satisfaction of the Grantor.

19. Security fund. This agreement is contingent upon the express condition that in advance of the Approval Date, and before anything is done in exercise of the privilege conferred hereby, the Grantee shall deposit with the Comptroller of the City the sum of Six Hundred and ~~Eighty-one~~ seventy-nine Thousand, Six Hundred Dollars ($79,000) ~~($681,000)~~, in such form as shall be acceptable to the Comptroller, which sum together with the security of Sixty Three Thousand Dollars ($63,000) heretofore deposited with the Comptroller of the City of New York for the faithful performance of all the terms and conditions of the consent under which the structure was heretofore maintained, shall constitute a fund of Seven Hundred and Forty ~~four~~ two Thousand, ~~Six Hundred Dollars ($744,600)~~ $742,000 which fund shall be security for (a) the performance of all the terms and conditions of this consent and (b) the payment of all sums of money (including taxes) which may be due the City because of the construction, maintenance, operation, use, abandonment, deactivation or removal of the Structure.

cc

EPA-NC-CE-0000734

In case of default in the performance by Grantee of any of such terms and conditions, the Grantor shall have the right to cause the work to be done and the materials to be furnished for making the necessary changes or repairs, after ten (10) days' notice to the Grantee, and shall collect the cost thereof from the security fund, or in case of default in the payment of the annual charge or in the payment of any other sum of money (including taxes) which may become due to the City because of the construction, maintenance, operation, use, abandonment, deactivation or removal of the Structure, the Grantor shall collect the same, with interest, from the security fund after ten (10) days' notice in writing to the Grantee.

In case of any drafts so made upon the security fund, the Grantee shall, upon ten (10) days' notice in writing, pay to the Comptroller of the City a sum of money sufficient to restore the fund to the original amount and in default of the payment thereof, this consent may be cancelled and annulled, at the option of the Grantor.

If the amount deposited in the security fund is insufficient to cover any costs to the Grantor or any sum of money due to the Grantor, the Grantee shall be liable for the shortfall and shall pay such to the City upon demand.

Upon the termination or revocation of this consent, and at such time as the Structure has been removed, or deactivated at the discretion of the Grantor, and the street affected thereby has been restored to its proper condition to the satisfaction of the Grantor, in accordance with the terms of this consent, any amount remaining in the security fund shall be repaid to Grantee without interest.

No action or proceeding or rights under the provisions of this section shall affect any other legal rights, remedies or causes of action belonging to the City.

20. Notice required before work commences. Grantee shall give notice, in writing, to the Grantor, the Department of Environmental Protection, and any other governmental body having jurisdiction of its intention to begin the work hereby authorized at least forty-eight (48) hours before such work commences.

21. Discrimination prohibited. Pursuant to applicable laws prohibiting discrimination in employment, the Grantee agrees that it will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment.

22. Compliance with applicable laws. This consent is granted on the further and express condition that Grantee shall strictly comply with all applicable laws now in force or which may hereafter be adopted.

23. Indemnification and insurance. To the extent permitted by law, the Grantee shall be liable for, and shall hold the City, its officers, agents, servants or employees (the "Indemnitees") harmless from, all liabilities, obligations, fines, damages, penalties, claims, charges and expenses (including, without limitation, reasonable attorneys' fees and disbursements) ("Damages") that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of the construction, operation, maintenance, use, abandonment, deactivation or removal or by any reason of any defect or deterioration of the Structure, or otherwise in connection with this consent, whether or not the Damages are due to the negligence or otherwise of the City, its officers, agents, servants or employees. It is a condition of this consent that the City assumes no liability for Damages to either either persons or property on account of this consent. The Grantee shall, within ten (10) days after the Approval Date and before anything is done in exercise of the privilege conferred hereby, furnish and maintain on file with the Grantor, throughout the term of this consent, a certificate of insurance issued by a company authorized to do business in the State of New York, evidencing insurance coverage of ~~the Grantee,~~ the City and the Grantor for any injuries or damages occurring on, or in proximity to, the Structure, arising out of or as a result of the construction, operation, maintenance, use, abandonment, deactivation or removal or by any reason of any defect or deterioration thereof, and identifying the City and the Grantor as additional insureds, in the following minimum amounts: for bodily injury, including death, and property damage, (a)) $2,000,000 any one person and (b) $35,000,000 for any one occurrence. Grantee agrees to self-insure the above stated amount.

All insurance policies shall provide for at least 45 days prior written notice to be given to the City in the event that any coverage is modified to the detriment of the City, canceled, or not renewed. At least 30 days prior to the expiration of each policy period, the Grantee shall deliver to the City a certificate of insurance evidencing a replacement policy to be effective immediately upon the termination of the previous policy. In no event shall a lapse in the insurance coverage required under this Section occur at any time during the existence of the Structure, and replacement coverage meeting the requirements of this Section shall be in effect prior to the expiration of any policy period. The insurance requirements set forth in this Section shall in no way be intended to modify, limit or reduce the Grantee's obligations under any other indemnifications made in this consent by the Grantee to the City, or limit the Grantee's liability under this consent to the limits of the policies of insurance required to be maintained by the Grantee, hereunder. Any insurance maintained pursuant to

this agreement shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be cancelled terminated or modified to the detriment of the City, nor may the insurer's intention not to renew be implemented until 45 days after receipt by the New York City Department of Transportation, Division of Franchises Concessions and Consents, of a written notice delivered by the insurer via registered mail of such intent to so cancel, terminate, modify or not to renew." Failure to maintain insurance coverage in the foregoing amounts shall be a default under this consent.

24. INVESTIGATION CLAUSE

24.01 The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry relative to this agreement conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to this agreement or when it is the subject of the investigation, audit or inquiry.

24.02 A hearing shall be convened in accordance with section 20.03 below if (a) any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding, refuses to testify concerning the award of, or performance under, this agreement, before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath; or (b) any person refuses to testify concerning the award of, or performance under, this agreement, for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony.

24.03 (a) The commissioner or agency head whose agency is a party in interest to this agreement shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(b) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend this agreement pending the final determination pursuant to section 20.05 below without the City incurring any penalty or damages for delay or otherwise.

24.04 The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(b) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation of termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

24.05 The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate.

(a) The parties' good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has significant interest in an entity subject to penalties under section 20.04 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in section 20.03(a) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

24.06 (a) The term "license" or "permit" as used herein shall be defined as a license, permit, revocable consent, franchise or concession not granted as a matter of right.

(b) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(c) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(d) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

25. Special construction requirements The Grantee shall perform such other special construction requirements as are contained in Schedule B attached hereto and made a part hereof, if any.

26. Severability and Headings The clauses and provisions of this Revocable Consent Agreement are intended to be severable. The unconstitutionality or unconscionability of any term, clause or provision shall in no way defeat the effect of any other term, clause or provision.

Section and other headings are inserted for convenience only and shall not be used in any way to construe the terms of this Agreement.

Schedule A

N/A

EPA-NC-CE-0000740

restoration of the line to service. This test is to be witnessed by a representative of the New York City Fire Department.

(b) The 60-inch unused gas main shall inspected for "cave in", by the grantee's engineer, at intervals not greater than 12 months. A record of these inspections is to be maintained in the Grantee's office and shall be available to the Grantor upon request.

2. Fuel oil pipeline #5 from Kips Bay to Waterside:
(a) Violation order D39921 (leak detection system performance testing) shall be cleared within 90 days from the date that Pipeline #5 returned to service.

(b) A fixed foam extinguishing system shall be maintained in working order for the fuel oil tanks at Astoria, Kips Bay, East River, Ravenswood and North First Street. A steam smothering system shall be maintained in working order for the Hudson Avenue tanks and a water sprinkler system shall be maintained in working order for the 74th Street tanks. All extinguishing systems must be of a type accepted by the Fire Department.

(c) All piping arrangements shall be acceptable to the Fire Department.

(d) Vents shall be sized and provided in accordance with A.P.I. Spec. PR-2000. Any other modifications or alterations made to the tank would require the vents to be upgraded and approved by the Fire Department.

9. All pipes to be protected by sleeves, conduits or at least three feet of earth cover.

10. All pipeline routes or rights-of-way shall be identified by pipeline markers, signs or any type of identification acceptable to the Fire Department.

11. The Grantee shall maintain direct communication with the New York City Fire Department Communications Division for the purpose of reporting leaks or malfunctions in the pipeline, by means of Central Information Group.

12. The Grantee shall comply with all Federal, State, and New York City Regulations, Codes, Directives, etc., and shall conform to all current procedures, agreements, etc. as set forth by the Bureau of Fire Prevention.

Additional conditions for particular lines:

The maximum operating pressure for each of the pipeline shall be as follows:

Pipeline #1 - 199 p.s.i.
Pipeline #2 - 80 p.s.i.
Pipeline #3 - 100 p.s.i.
Pipeline #4 - 100 p.s.i.
Pipeline #5 - 260 p.s.i.
Pipeline #7 - 50 p.s.i.

1. Fuel oil pipeline from the Astoria Generating Station to the Ravenswood Generating Station:

(a) Since the pipeline is out of service a 4 hour test, at twice maximum operating pressure, or at 398 p.s.i., is to be conducted on the entire length of the pipeline prior to

EPA-NC-CE-0000742

Acknowledgement by Executive Director

State, City and County of New York, ss.:

On this 9th day of November, 1995, before me personally came Wendy Goldman to me known and known to be the Executive Director of Franchise, Concession and Consents of the Department of Transportation of the City of New York, the person described as such in and who as such executed the foregoing instrument and she acknowledged to me that she executed the foregoing instrument and she acknowledged to me that she executed the same as Executive Director for the purposes therein mentioned.

Thomas C. Wu

Notary Public ~~or Commissioner of Deeds~~

THOMAS C. WU
NOTARY PUBLIC, State of New York
No. 41-4966235
Qualified in Queens County
Commission Expires April 30, 1996

RENEWAL FRM.
Acknowl. Page
Revised January 1994

In Witness Whereof, the parties hereunder have caused this revocable consent to be executed.

GRANTOR:
NYC DEPARTMENT OF TRANSPORTATION
DIV. OF FRANCHISES, CONCESSIONS
& CONSENTS

By: _____
Wendy Goldman
Executive Director

Accepted and agreed to:
GRANTEE:

Consolidated Edison Company of New York, Inc.

By: _____
(Signature)
John F. Cioffi
(Print Name of Signatory)
Treasurer
(Title)
October 24, 1995
(Date)

The foregoing consent is hereby approved.

RUDOLPH W. GIULIANI, MAYOR

By: _____
Richard Bonamarte
Director, Mayor's Office of Contracts

Dated, New York November 9, 1995

Approved as to form
Certified as to legal authority

By: _____
Acting Corporation Counsel
AUG 08 1995
(Date)

RENEWAL.FRM
Revised May 1994

EPA-NC-CE-0000744

Attachment to Contract

AFFIRMATION

The undersigned petitioner affirms and declares that to the best of my knowledge said petitioner is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the petitioner to receive public contracts except:

_____.

Full name of Petitioner: CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Address: 4 Irving Place

City: New York State: New York Zip Code: 10003

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A – Individual or Sole Proprietorship*
SOCIAL SECURITY NUMBER

_ _ _ _ _ _ _ _ _

☐ B – Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER

_ _ _ _ _ _ _ _ _

☒ C – Corporation
EMPLOYER IDENTIFICATION NUMBER

13 -5009340

If a corporation place seal here

By: John F. Cioffi
(Signature) John F. Cioffi

(Title) Treasurer

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a petitioner's disqualification. Social Security Numbers will be used to identify petitioners to ensure their compliance with laws, to assist the City in enforcement of laws as well as to provide the City a means of identifying businesses which seek City contracts.

Acknowledgement by Corporation

State, City, and County of New York, ss.,

On this 24th day of October, 1995, before me personally came John F. Cioffi, who being by me duly sworn, did depose and say that he/~~she~~ resides in the City of New York; that he/~~she~~ is the Treasurer of Consolidated Edison Company of New York Inc; the corporation described in and which executed the foregoing instrument; that he/~~she~~ knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order or resolution of the Board of ~~Directors~~ Trustees of said corporation; and that he/~~she~~ signed his/~~her~~ name thereto by like order or resolution.

Notary Public or Commissioner of Deeds

SYLVIA VADI
Notary Public, State of New York
No. 41-4967726
Qualified in ~~Queens~~ Nassau County
Commission Expires June 4, 1996

RENEWAL FRM.
Acknowl. Page
Revised January 1994

EPA-NC-CE-0000746

NEW YORK CITY DOT Department of Transportation

JANETTE SADIK-KHAN, Commissioner

June 8, 2012

Mr. Douglas Jabbour
Senior Real Estate Representative
Consolidated Edison Company of NY, Inc.
4 Irving Place, 21st Floor
New York, NY 10003

Re: Revocable Consent Agreement

Dear Mr. Jabbour:

Please find enclosed four unsigned original copies of the revocable consent agreement authorizing Consolidated Edison Company of New York Inc. TO MAINTAIN & USE FUEL OIL PIPELINES IN THE CERTAIN AREAS ALONG EAST RIVER, IN THE BOROUGH OF MANHATTAN, BROOKLYN & QUEENS.

In order for the Department of Transportation ("DOT") to proceed with the award of this revocable consent, we must receive the following documents from you within two weeks of the date of this letter:

- The attached four *original* copies of the agreement (which bear the original signature of the Corporation Counsel), signed and notarized by the responsible person.
- A completed and signed Affirmation Form (see attached). The address on the Affirmation Form must match the principal place of business in the agreement.
- A completed and signed Substitute Form W-9. The address on this form must match the principal place of business in the agreement.
- An insurance certificate demonstrating compliance with Section 20, Paragraph 1 of the original agreement, including a description of the structure and naming the City of New York as an additional insured.
- A copy of IRS Letter 147(c) as confirmation of your address and Tax ID Number (CONTACT THE IRS DIRECTLY AT: 1 – 800 – 829 – 0115).
- A letter confirming your address.

NYC Department of Transportation
Office of Franchises, Concessions and Consents
55 Water Street New York, NY 10041
T: 212.839.6550 F: 212.839.9894/95
www.nyc.gov/dct

AFFIRMATION

The undersigned petitioner affirms and declares that said petitioner is not in arrears to the City of New York upon debt, contract, or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the petitioner to receive public contracts except as shown in Exhibit A.

Full name of A, B, C, or D: Consolidated Edison Company of New York, Inc.

Address: 4 – Irving Place

City: New York State: New York Zip Code: 10003

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A - Individual or Sole Partnership*
SOCIAL SECURITY NUMBER

_____

☐ B - Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER

_____

☐ C - Corporation
EMPLOYER IDENTIFICATION NUMBER

_____

☐ D - Limited Liability Company
EMPLOYER IDENTIFICATION NUMBER

1 3 5 0 0 9 3 0

By: _____
(Signature)

VICE PRESIDENT & TREASURER
(Title)

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a petitioner's disqualification. Social Security Number will not be used to identify petitioners to ensure their compliance with laws, to assist the City enforcement of laws as well as to provide the City a means of identifying businesses which seek City contracts.

EXHIBIT A

Consolidated Edison Company of New York, Inc. ("Con Edison,") from time to time, is assessed certain charges, including but not limited to, elevator charges, fire prevention charges, parking tickets, environmental control board liens and judgments, all of which are incurred in the ordinary course of business of Con Edison and which while they may fall into arrears, are either being contested, litigated, investigated, disputed or in the process of being paid.

DO NOT SUBMIT FORM TO IRS - SUBMIT FORM TO REQUESTING AGENCY.

9/04 Revision

CITY OF NEW YORK
SUBSTITUTE FORM W-9: REQUEST FOR TAXPAYER IDENTIFICATION NUMBER & CERTIFICATION

TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.

Part I: Vendor Information

1. Legal Business Name:

Consolidated Edison Company of New York, Inc.

2. If you use DBA, please list below:

3. Entity Type (Check one only):

- [ ] Non-Profit Corporation
- [x] Corporation
- [ ] Government
- [ ] City of New York Employee
- [ ] Individual / Sole Proprietor
- [ ] Trust
- [ ] Joint Venture
- [ ] Partnership
- [ ] Limited Liability Co.
- [ ] Resident/Non-Resident Alien
- [ ] Non-United States Business Entity
- [ ] Estate

Part II: Taxpayer Identification Number (TIN) & Taxpayer Identification Type

1. Enter your TIN here: *(DO NOT USE DASHES)* 1 3 5 0 0 9 3 4 0

2. Taxpayer Identification Type (check appropriate box):

- [x] Employer ID No. (EIN)
- [ ] Social Security No. (SSN)
- [ ] Individual Taxpayer ID No. (ITIN)
- [ ] N/A (Non-United States Business Entity)

Part III: Primary 1099 Vendor & Remittance Address

1. Primary 1099 Vendor Address:

Number, Street, and Apartment or Suite Number

4 – Irving Place

City, State, and Nine Digit Zip Code or Country

New York, New York 10003

2. Remittance Address:

Number, Street, and Apartment or Suite Number

City, State, and Nine Digit Zip Code or Country

Part IV: Exemption from Backup Withholding

For payees exempt from Backup Withholding, check the box below. Valid explanation required for exemption. See instructions.

- [ ] **Exempt from Backup Withholding**

Part V: Certification

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Under penalties of perjury, I certify that the number shown on this form is my correct Taxpayer Identification Number (TIN).

Sign Here: _____ Signature | **212.460.3159** Phone Number | _____ Date

_____ Print Preparer's Name | _____ Phone Number

FOR SUBMITTING AGENCY USE ONLY

Submitting Agency Code: _____ Submitting Agency Name: _____

Contact Person: _____ Telephone Number: ( )

Payee/Vendor Code: _____

DO NOT FORWARD W-9 TO COMPTROLLER'S OFFICE. AGENCIES MUST FAX COMPLETED W-9 FORMS TO: (212) 613-8555.

THE CITY OF NEW YORK
DEPARTMENT OF TRANSPORTATION
55 Water Street
New York, New York 10041

REVOCABLE CONSENT AGREEMENT

WHEREAS Consolidated Edison Company of New York, Inc. (the "Grantee") has petitioned for consent to continue to maintain and use fuel oil pipelines (the "Structure") in the certain areas along East River, in the Boroughs of Manhattan, Brooklyn and Queens; and

WHEREAS this Revocable Consent is being granted to Grantee pursuant to Section 362 and Section 364 of the Charter of the City of New York;

WHEREAS the New York City Department of Transportation and the Department of Information, Technology and Telecommunications (the "Grantor"), acting through the Commissioner of Transportation, has determined that it is appropriate that such consent be granted, subject to the conditions stated herein;

IT IS HEREBY AGREED:

1. Consent granted. The consent of Grantor is hereby granted to the Grantee, a public service corporation organized and existing under the laws of the State of New York, having its principal place of business at 4 Irving Place, New York, New York 10003, to continue to maintain and use:

A. (Pipeline #1) A 10¾-inch pipeline with a 2-inch foam glass insulation around the pipe, commencing at the Astoria Generation Station on the north side of 20th Avenue at a point 275.1-feet east of 21st Street, thence westerly along 20th Avenue to 21st Street, thence southerly along 21st Street to 33rd Avenue, thence westerly along 33rd Avenue to 11th Street, thence southerly along 11th Street to 33rd Road, thence westerly along 33rd Road to 10th Street, thence southerly along 10th Street to 37th Avenue, thence westerly along 37 Avenue to Vernon Boulevard, thence southerly along Vernon Boulevard for a distance of 140-feet south of 37th Avenue, thence westerly to the west side of Vernon Boulevard and into the Ravenswood Generation Station, all in the Borough of Queens; the pipeline to be used for the conveyance of fuel oil from the Astoria Generation Station located at block 850, lot 1, to the Ravenswood Generation Station located at block 357, lot 1, and to be as shown upon a plan consisting of eight (8) sheets entitled:

"Plan showing location of proposed fuel oil line to be constructed in 20th Avenue from 23rd Street to 21st Street, 21st Street and 20th Avenue to 33rd Avenue, 33rd Avenue and 21st Street to 11th Street, 11th Street and 33rd Avenue to 33rd Road, 33rd Road and 11th Street to 10th Street, 10th Street and 33rd Road to 37th Avenue, 37th Avenue and 10th Street to Vernon Boulevard, and Vernon Boulevard, Borough of Queens, to accompany application dated May 2, 1961, of

Street to east of First Avenue, and from East 36th Street east of First Avenue in and along First Avenue to south of East 39th Street, and in and across Franklin D. Roosevelt Drive between East 35th Street and East 36th Street, in the Borough of Manhattan, to accompany revised application dated October 17, 1968, of Consolidated Edison Company Of New York, Inc. to the Board of Estimate City of New York"

–and signed Consolidated Edison Company Of New York, Inc. by A.N. Anderson, Vice President, Applicant, a copy of which was attached to and made a part of the consent of 1970, which was granted by a resolution adopted by the Board of Estimate on January 22, 1970 (Cal. No. 163) and approved by the Mayor on February, 1970; and

D. (1) (Pipeline #7) A 20-inch pipeline, commencing from Manhattan Avenue north of Clay Street, running northerly under and along Manhattan Avenue to Newtown Creek in the Borough of Brooklyn, thence under and across Newtown Creek to private property in the Borough of Queens located between Vernon Boulevard and Fifth Street, thence under said private property to 54th Avenue west of Vernon Boulevard, thence along 54th Avenue to Fifth Street, thence under private property to Borden Avenue and Fifth Street, thence along Fifth Street to 47th Avenue, thence along 47th Avenue to Jackson Avenue, thence along Jackson Avenue to 21st Street, thence along 21st Street to the intersection of 14th Street and 21st Street, thence along 14th Street to 36th Avenue, thence along 36th Avenue to the ending point at 36th Avenue east of 10th Street; the pipeline to be shown upon a plan consisting of twenty three (23) sheets made a part of consent of January 23, 1964 and as modified by revised sheets 1,11,12,13,14, and 15, and entitled:

"Revised Plan showing location of proposed fuel oil pipe line from Kent Avenue between Metropolitan Avenue and North 1st Street to 36th Avenue west of Vernon Boulevard in the Boroughs of Brooklyn and Queens to accompany application dated March 24, 1964, of Nepco, Inc. to the Board of Estimate City of New York"

–and signed Nepco, Inc., by R.G. Weinand, Executive Vice President, Applicant, a copy of which was attached to and made a part of the consent of 1964, which was granted by a resolution adopted by the Board of Estimate on June 11, 1964 (Cal. No. 20) and approved by the Mayor on July 6, 1964.

The Structure to be maintained and use in connection with Grantee's franchise.

This consent is granted upon the following terms and conditions:

2. Term. This consent shall continue only during the pleasure of the Grantor and shall be revocable at any time by the Grantor, and shall expire on the 30th of June following the tenth anniversary of its approval by the Mayor (the "Expiration Date"). The Grantee agrees that not later than six months prior to the aforesaid expiration of the term of this consent, it will petition the Grantor in writing for either a renewal or discontinuance thereof.

duly authorized. Such payments shall not be deemed to constitute an extension of this consent and all of the City's rights shall remain in full force and effect notwithstanding such payments. Such rate of compensation shall continue up to the date of the restoration of the street after the removal, or deactivation at the discretion of the grantor, of the Structure. During the period of continued maintenance and operation of the Structure, the Grantee shall be bound by all of the terms and conditions of this consent.

(d) In the event that a future agreement for this Structure becomes effective subsequent to the expiration of this agreement, it is understood and agreed that as a condition of such future grant of consent the fees charged under such grant may be at the rate in effect during the period following the expiration date of this agreement.

(e) In the event any payment is not made on or before the date such payment is due, interest on such payment shall apply from the date such payment is due at the rate of one and one-half percent (1 1/2%) per month. If the Grantee shall fail to pay such compensation or taxes, or the interest thereon, if any, the Comptroller may withdraw the amounts thereof from the security fund hereinafter provided for. If the compensation or taxes owed exceeds the amount available in the security fund the Grantee shall be liable for the shortfall, and shall pay such to the City upon demand.

(f) The compensation provided herein shall not be considered in any manner in the nature of a tax, but shall be in addition to any and all taxes of whatsoever kind or description now or hereafter required to be paid under any local law of the City or by any law of the State of New York.

4. Removal or deactivation of structure. Within ten (10) days after the revocation or termination of this consent, the Grantee shall cause the Structure to be removed, or deactivated at the discretion of the Grantor, and all of the street affected thereby to be restored to its proper condition to the satisfaction of the Grantor. The entire cost of such work shall be borne by the Grantee.

If Grantee fails to so remove or deactivate the Structure, or so restore such street, within the time period stated above, Grantor shall have the right to cause the Structure to be removed or deactivated and such street to be restored. The cost to Grantor of causing such removal or deactivation and/or restoration shall be recovered from the security fund as provided for in this consent. If the cost of removal or deactivation and/or restoration exceeds the amount available in the security fund, the Grantee shall be liable for the shortfall, and shall pay such to the City upon demand.

5. Restrictions against transfer of use of consent. This consent is for the exclusive use of the Grantee and solely for the purpose hereinabove mentioned and this consent for use shall not, either in whole or in part, be sold, assigned, leased or sublet in any manner, nor shall title thereto, or right, interest or property therein pass to or vest in any other person, firm or entity whatsoever, either by the acts of the Grantee or by operation of law, without the express written consent of the Grantor, which consent may be withheld by the Grantor in its sole discretion.

9. City's access paramount. The Grantee shall allow to the City a right of way under or above any part of the Structure for any and all structures which are now or may be hereafter placed in the affected street by the City.

If, in the exercise of the sole discretion of the Grantor, the Grantor at any time decides to replace, alter or otherwise gain access to any structure located in or on the street that is affected by the Structure, the Grantor shall have the right to break through or remove all or any portion of the Structure. To the extent practical under the circumstances, the Grantor shall give the Grantee prior notification of intent to break through or remove all or any portion of the Structure; opportunity to remove or otherwise protect and replace its Structure, and all fixtures and appliances connected therewith or attached thereto under the direction of the Commissioner; and opportunity to adjust its fixtures and appliances to provide for the safety of workers and the public and continuity of utility services that may otherwise be affected. The cost to the Grantor of breaking through or removing the Structure shall be recovered from the security fund as provided for in this consent. If the cost of breaking through or removal exceeds the amount available in the security fund, the Grantee shall be liable for the shortfall, and shall pay such to the City upon demand.

10. Structure subject to City's supervision. The Structure and any fixtures laid therein shall be constructed, maintained and operated subject to the supervision and control of the proper authorities of the City. The Grantee shall protect the Structure for which consent has been granted. Whenever such Structure is about to be disturbed by the regulating or grading of any street, the Grantee shall, on the receipt of a written notice from the City or its contractor, remove or otherwise protect and replace its Structure, and all fixtures and appliances connected therewith or attached thereto, where necessary, under the direction of the Commissioner. All such removal, protection, replacement or related activities required by this section shall be at the sole cost and expense of the Grantee. The City will endeavor to provide a thirty (30) day notice of such requirements, but reserves the right to require action sooner in cases of emergency. The Structure shall be available at all reasonable times for inspection by all the authorities having jurisdiction, subject to such prior notice as needed for the Grantee to provide access for such inspection.

11. Consent subject to rights of abutting property owners. This consent is subject to whatever right, title or interest the owners of abutting property or others may have in and to the affected street.

12. No rights conveyed. The Grantee acquires no right, title or interest in the space permitted to be occupied herein and it is expressly understood that said occupancy is considered temporary.

13. Maintenance of structure. The Grantee agrees to maintain the Structure in good, clean condition and shall not allow it to deteriorate, become unsightly, or develop into a dangerous condition or a condition which is not in the best interests of the general public.

No action or proceeding or rights under the provisions of this section shall affect any other legal rights, remedies or causes of action belonging to the City.

17. Notice required before work commences. Grantee shall give notice, in writing, to the Grantor and any other governmental entity having jurisdiction of its intention to begin the work hereby authorized at least forty-eight (48) hours before such work commences.

18. Discrimination prohibited. Pursuant to applicable laws prohibiting discrimination in employment, the Grantee agrees that it will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment.

19. Compliance with applicable laws. This consent is granted on the further and express condition that Grantee shall strictly comply with all applicable laws now in force or which may hereafter be adopted.

20. Indemnification and insurance. To the fullest extent permitted by law, the Grantee shall be liable for, and shall hold the City, its officers, agents, servants or employees (the "Indemnitees") harmless from, all liabilities, obligations, fines, damages, penalties, claims, charges and expenses (including, without limitation, reasonable attorneys' fees and disbursements) ("Damages") that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of any of the work performed by the Grantee pursuant to this consent ("Work") or by reason of any defect or deterioration of the Structure, or otherwise in connection with this consent, whether or not the Damages are due to the negligence or otherwise of the City, its officers, agents, servants or employees. It is a condition of this consent that the City assumes no liability for Damages to either persons or property on account of this consent.

During the entire term of this consent, the Grantee shall maintain Commercial General Liability insurance protecting the insureds from claims for property damage and/or bodily injury, including death that may arise from the Work, the Structure, or any operations under this consent. This insurance shall be in the amount of at least One Million Dollars ($1,000,000) per occurrence and Five Million Dollars ($5,000,000) aggregate. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, and name the City of New York, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 2026.

At the same time as the Grantee submits an executed version of this agreement, the Grantee shall submit proof of the required insurance in a form acceptable to the Commissioner. This shall include (a) a Certificate of Insurance certifying the issuance and effectiveness of such insurance with the specified minimum limits and the status of the City of New York as additional insured, and (b) a duly executed Certification by Broker in the form required by the Commissioner. In addition, prior to the expiration date of all policies, the Grantee shall submit proof satisfactory to the Commissioner of

does choose to so self insure, Grantee shall not be bound to any of the notice provisions related to cancellation and/or termination of insurance policies hereunder, however, should Grantee procure insurance for any of the coverage required hereunder, all such notice provisions shall remain in full force and effect.

21. INVESTIGATION CLAUSE

21.01 The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry relative to this agreement conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to this agreement or when it is the subject of the investigation, audit or inquiry.

21.02 A hearing shall be convened in accordance with section 21.03 below if (a) any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding, refuses to testify concerning the award of, or performance under, this agreement, before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath; or (b) any person refuses to testify concerning the award of, or performance under, this agreement, for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony.

21.03 (a) The Commissioner or agency head whose agency is a party in interest to this agreement shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(b) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend this agreement pending the final determination pursuant to section 21.05 below without the City incurring any penalty or damages for delay or otherwise.

21.04 The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(d) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

22. Special construction requirements. The Grantee shall perform such other special construction requirements as are contained in Schedule attached hereto and made a part hereof, if any.

23. Severability and Headings. The clauses and provisions of this Revocable Consent Agreement are intended to be severable. The unconstitutionality or unconscionability of any term, clause or provision shall in no way defeat the effect of any other term, clause or provision.

Section and other headings are inserted for convenience only and shall not be used in any way to construe the terms of this Agreement.

24. Advertising. No advertisement shall be placed on, affixed to, projected from, or in any way displayed on the Structure unless expressly authorized by this Agreement.

25. Modification or amendment. This Agreement constitutes the entire agreement between the parties hereto and no other representation made heretofore shall be binding upon the parties hereto. This Agreement may not be modified or amended except by written agreement executed by the parties hereto.

(c.) All piping arrangements shall be acceptable to the Fire Department.
(d.) Vents shall be sized and provided in accordance with A.P.I. Spec. PR-2000. Any other modifications or alterations made to the tank would require the vents to be upgraded and approved by the Fire Department.

9. All pipes to be protected by sleeves, conduits or at least three feet of earth cover.

10. All pipeline routes or rights-of-way shall be identified by pipeline markers, signs or any type of identification acceptable to the Fire Department.

11. The Grantee shall maintain direct communication with the New York City Fire Department Communications Division for the purpose of reporting leaks or malfunctions in the pipeline, by means of Central Information Group.

12. The Grantee shall comply with all Federal, State, and New York City Regulations, Codes, Directives, etc., and shall conform to all current procedures, agreements, etc. as set forth by the Bureau of Fire Prevention.

Additional conditions for particular lines:

The maximum operating pressure for each of the pipeline shall be as follows:

Pipeline #1	-	199 p.s.i.
Pipeline #2	-	80 p.s.i.
Pipeline #4	-	100 p.s.i.
Pipeline #5	-	260 p.s.i.
Pipeline #7	-	50 p.s.i.

Fuel oil pipeline from Astoria Generating Station to the Ravenswood Generating Station:

(a.) Since the pipeline is out of service a 4 hour test, at twice maximum operating pressure, or at 398 p.s.i., is to be conducted on the entire length of the pipeline prior to restoration of the line to service. This is to be witnessed by a representative of the New York City Fire Department.

(b.) The 60-inch unused gas main shall be inspected for "cave in", by the grantee's engineer, at intervals not greater than 12 months. A record of these inspections is to be maintained in the Grantee's office and shall be available to the Grantor upon request.

13. The New York City One Call Center shall be notified at least two but not more than ten working days, not including the date of the call, before the commencement date of the excavation, to ensure that no underground utility lines are affected by proposed work, unless Con Edison deems the work to be of an emergency in nature in which case notification will be just before work commences.

EPA-NC-CE-0000758

In Witness Whereof, the parties hereunder have caused this revocable consent to be executed.

GRANTOR:
NYC DEPARTMENT OF TRANSPORTATION
DIVISION OF FRANCHISES, CONCESSIONS & CONSENTS

By: _____
Anne Koenig
Executive Director

DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS

By: _____
Tanessa Cabe, Telecom Counsel

Accepted and agreed to:
GRANTEE:

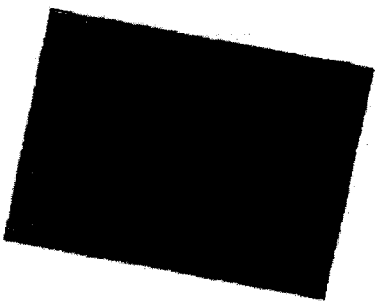
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By: _____
(Signature)

SCOTT SANDERS
(Print Name of Signatory)

VICE PRESIDENT & TREASURER
(Title)

_____
(Date)



The foregoing consent is hereby approved.

MICHAEL R. BLOOMBERG, MAYOR

By: _____
Elisa Velazquez, General Counsel
Mayor's Office of Contract Services

Dated, New York _____, 20 ___

Acknowledgment by New York City Department of Transportation

Executive Director

State, City and County of New York, ss.:

On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of whom the individual(s) acted, executed the instrument.

_____

Notary Public or Commissioner of Deeds

Acknowledgment by General Counsel

Department of Information, Technology and Telecommunications

State, City and County of New York, ss.:

On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of whom the individual(s) acted, executed the instrument.

_____

Notary Public or Commissioner of Deeds

Acknowledgment by Corporation

State, City, and County of New York, ss.,

On the 28th day of JUNE, in the year 2012 before me, the undersigned, personally appeared SCOTT SANDERS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of whom the individual(s) acted, executed the instrument.

Barbara Dunne

Notary Public or Commissioner of Deeds

BARBARA DUNNE
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02DU6158349
Qualified in Richmond County
Commission Expires January 2, 2015

APPROVAL OF A REVOCABLE CONSENT AGREEMENT BY STANDARD TYPE OF CLASS

AGENCY: Transportation

REVOCABLE CONSENT AGREEMENT: Consolidated Edison Company of New York, Inc.

I hereby approve as to form and certify as to legal authority the annexed revocable consent agreement by standard type of class. This approval is valid for one year and for a maximum of 50 consents.

The above approval is made on the express understanding that the substantive language of the subject revocable consent agreements will not be altered or changed in any way without prior submission to the office of the Corporation Counsel for approval, provided, however, that blank spaces in the revocable consent agreements requiring names, dates, locations, dollar amounts or other similar details may be completed.

Sharon Canton

ACTING CORPORATION COUNSEL 05 APR 16 2012

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Articles 17
and 27 of the New York State Environmental Conservation Law
and Article 12 of the Navigation Law and of the
regulations promulgated pursuant thereto at
Parts 370, et seq., 610, et seq., 700, et seq. and 750, et seq.
of Title 6 and Part 30, et seq., of Title 17
of the Official Compilation of Codes, Rules and Regulations
of the State of New York,
- by -
Consolidated Edison Company of New York, Inc.,

Respondent.

DEC Index No. D2-0003-96-12, et seq.

ORDER ON CONSENT
(Supplementing
Order on Consent Dated November 4, 1994
DEC Index No. R2-1023-88-06, et seq.)

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EPA-NC-CE-0000765

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 17 of the New York State Environmental Conservation Law and Article 12 of the Navigation Law and of the regulations promulgated pursuant thereto at Parts 610, et seq., 700, et seq. and 750, et seq. of Title 6 and Part 30, et seq., of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York,	ORDER ON CONSENT
- by -	DEC Index No. D2-0001-96-11
Consolidated Edison Company of New York, Inc., et seq.	
Respondent.	

WHEREAS,

1. The New York State Department of Environmental Conservation ("Department") is responsible for the enforcement of the Environmental Conservation Law ("ECL") of the State of New York, and Title 6 of the Official Compilation of the Codes, Rules and Regulations of the State of New York ("6 NYCRR") and any Orders issued thereunder.

2. The Department is and has been the agency of the State of New York having sole and, since 1985 as successor to the New York State Department of Transportation, exclusive jurisdiction pursuant to Article 17, Title 10 of the ECL, Section 12 of Chapter 35 of the Laws of 1985, Article 12 of the Navigation Law ("NL") and 6 NYCRR Parts 610, et seq. and 17 NYCRR Part 30, et seq., to regulate the transportation and storage of petroleum products within the State of New York.

3. It is the responsibility of the Department to conserve, improve and protect New York's natural resources and environment and control water, land and air pollution

in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well-being.

4. Consolidated Edison Company of New York, Inc. ("Con Edison"), is a New York Corporation with offices at 4 Irving Place in the City, County and State of New York and a person as that term is defined in NL § 172 and ECL §§ 17-0105, 25-0103 and 27-0901.

5. Con Edison owns and operates Major Oil Storage Facilities ("MOSFs"), Petroleum Bulk Storage Facilities ("PBSs") and other facilities as described in Appendix G of the comprehensive order on consent executed on November 4, 1994 and modified on March 27, 1995.

6. The comprehensive 1994 order requires Con Edison to implement schedules including the following: i) a comprehensive audit program including an independent compliance audit, an environmental management systems evaluation and a self auditing program; ii) remediation of over 50 sites; iii) funding of four environmental monitors; and iv) development and implementation of best management practices plans for its fuel oil pipelines, di-electric cable system, major onshore petroleum storage facilities and facility pollutant discharge systems. Con Edison has made significant progress toward completing the requirements of the comprehensive 1994 order.

7. Con Edison has developed and is implementing environmental projects that exceed the requirements of the comprehensive 1994 order. In developing and implementing an "environmental excellence" program Con Edison has: updated and distributed its corporate environmental policy; established an environmental committee of the board of trustees; established an environmental and safety committee of senior executives; elevated environmental affairs to the vice president level and hired an experienced outsider; developed an environmental awareness training program; hired additional environmental personnel; incorporated environmental related factors into management and employee performance evaluations; expanded the role of the law department in environmental matters; formed an environmental auditing group to perform in-house environmental compliance audits; developed and promulgated over 100

Corporate Environmental Procedures and a similar number of General Environmental Instructions which provide hands-on guidance for implementing the Environmental Procedures; installed a computerized incident tracking and reporting system (E2MIS); initiated a series of root cause analyses to discover trends and apply effective corrective actions; developed compliance plans for major facilities; appointed over 70 environmental managers to assist operation's management in environmental compliance and excellence programs and established environmental goals for each Company Department.

8. This Order on Consent is a supplement to the comprehensive Order on Consent executed on November 4, 1994 and reflects Con Edison's policy of open communications and cooperation with the Department and the Company's willingness to commit, through the mechanism of an Order on Consent, to programs that will help achieve full compliance with applicable environmental laws and regulations and also advance the Company's goal of demonstrating leadership land excellence in environmental protection.

9. Despite Con Edison's commitment to full compliance with environmental laws and regulations, and to environmental excellence, and despite the progress the Company has made toward attaining these goals, since November 4, 1994, Con Edison has:

(a) discharged petroleum products into the environment and failed to immediately cntain such discharges. Such discharges include the following events:

(i) DEC spill no. 9411975 where approximately 39,580 gallons of #6 fuel oil was released on December 7, 1994, from an underground pipeline during the transfer of oil from the Rainey Tank Farm to the #30 boiler.

(ii) DEC spill no. 9510743 where approximately 10,000 gallons of #6 fuel oil was released from Con Edison's No. 3 underground fuel oil pipeline on November 27, 1995. As the result of this spill, Con Edison decided to permanently retire the No. 3 fuel oil pipeline.

(iii) DEC spill no. 9514484 where 7,546 gallons of #4 fuel oil was released on February 12, 1996, from Con Edison's four (4) inch No. 5 return line which had not been inspected and repaired as required by the comprehensive 1994 order. Subsequent to this release Con Edison replaced the No. 5 fuel oil pipeline and the four (4) inch return line with a new underground fuel oil pipeline constructed of fiber reinforced plastic pipe enclosed in a steel casing made of steel pipe and

(iv) DEC spill no. 9610242 where approximately 4,000 gallons of low pour #6 fuel oil was released from Con Edison's No. 3 underground fuel oil pipeline on November 18, 1996. This release occurred while implementing measures to establish the integrity of the line prior to removing all oil from it with a "cleaning pig".

(b) During the period from May 16, 1995 to November 29, 1995, Con Edison exceeded the SPDES Permit No. NY 005193 limit of 65 parts per trillion of poly chlorinated biphenyls (PCBs) at outfall 004-M of the Rainey Tank Farm at Ravenswood Generating Station a total of six times. In response to the foregoing exceedances, Con Edison installed a carbon filter after its oil/water separator to eliminate the potential for any future PCB violations. Con Edison will keep the carbon filter and existing oil/water separator in service as part of its treatment process for this discharge.

(c) During the period of November 1995 to April 1996, the Ravenswood Steam Plant discharged from its floor drain system to the East River. Con Edison had not previously sought or secured authorization to discharge floor drain wastes from the Ravenswood Steam Plant to the waters of the State of New York.

(d) During the period from January 1, 1995 through January 23, 1996, Con Edison illegally stored more than 250,000 gallons of hazardous waste identified at 6 NYCRR §371.4(e) in an unpermitted area of the Astoria Generating Station in violation of 6 NYCRR §373-1.2 and without secondary containment in violation of [6 NYCRR § 373-2.9(f)(1)].

(e) During the period from September 1992 to April 18, 1997 Con Edison illegally transported hazardous wastes from street locations throughout the city to

Central Collection Facilities (Flush Truck Facilities) without using the prescribed hazardous waste manifest form in violation of 6 NYCRR § 372.2(b)(1).

(f) In September 1996, Con Edison engaged the services of an unqualified lead abatement contractor which resulted in the following:

(i) improper disposal of hazardous wastes in violation of 6 NYCRR §372.2(a)(8)(ii)(a);

(ii) release of hazardous wastes to the East River in violation of 6 NYCRR §373-3.3(b);

(iii) a container accumulating hazardous wastes was stored in a manner causing it to lead in violation of 6 NYCRR §373-3.9(d)(2);

(iv) hazardous waste was transported without a hazardous waste manifest in violation of 6 NYCRR §372.2(b)(5)(i); and

(v) hazardous waste was transported by an unpermitted transporter in violation of 6 NYCRR §372.2(b)(5)(ii)(a).

(g) On May 21, 1997 Con Edison reported to the Department that a barge transporting corrosive wastes was moored at the Astoria Facility for more than ten days in violation of 6 NYCRR §373-1.1(d)(1)(xv).

10. Con Edison hereby waives its right to a hearing with respect to this matter in a manner provided for by law and consents to the issuance of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

NOW, THEREFORE, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

ARTICLE I. PENALTY

1. Con Edison shall pay the amount of three hundred eighty five thousand dollars ($385,000.00) to the Department within thirty (30) days of the effective date of this Order by certified checks or money orders made payable as follows: one hundred thousand dollars ($100,000.00) to "Marine Resources Account of the Conservation Fund" and two hundred eighty five thousand ($285,000.00) to "Department of Environmental

Conservation" and delivered to the Department's offices, 50 Wolf Road, Albany, NY 12233-5550, Attn: Joseph M. Kowalczyk, Esq.

2. With regard to any penalty due pursuant to this Order which is not paid by the specified due date, Con Edison shall be liable for and shall pay interest from the due date at the rate specified by the New York Civil Practice Law and Rules for interest on a judgment.

3. In the event that Con Edison fails to pay any penalty due pursuant to this order by the date payment is due, this Order together with a notice of noncompliance specifying the amount due may be filed and enforced by trhe Department as a civil judgment pursuant to Civil Practice Law and Rules Article 50, *et seq.*, for the total penalty, including interest, in the amount set forth in the notice of noncompliance, in the State of New York and in any other jurisdiction(s) in which Con Edison is authorized to do business, does business or has any assets, without the need for any further proceeding whatsoever.

ARTICLE II. COMPLIANCE SCHEDULES

Con Edison shall implement the compliance schedules incorporated herein as Appendices in accordance with the terms and schedules provided for in this Order.

ARTICLE III. SUBMITTAL REVIEW AND APPROVAL.

A. Unless otherwise provided, whenever the Department's review and approval is required under the terms of this Order, including the Appendices attached hereto, with respect to any document, plan or other required submission (hereinafter, "Submittal"), the following provisions will apply:

1. Should Con Edison fail to receive any notification due from the Department within the time provided for herein, Con Edison shall write to the Department to determine whether the Department intends to comment on the Submittal or Revised Submittal in question, and wait fifteen (15) days for a response to that letter, before undertaking any of the activities described in and proposed by that Submittal or Revised Submittal.

2. Within sixty (60) days after receipt of a Submittal, the Department will determine if it fulfills the terms of this Order and will provide written notification to Con Edison of its approval or disapproval of the Submittal.

3. In the event that the Department disapproves any Submittal, it will state the reasons for such disapproval with sufficient particularity so as to allow Con Edison to remedy any alleged deficiency.

4. When any Submittal is disapproved by the Department, Con Edison shall submit a revision to such document, plan or other submission ("Revised Submittal") within thirty (30) days of its receipt of the Department's notice of disapproval, or such other reasonable period as the Department may provide upon its own volition or upon written request by Con Edison. Such Revised Submittal shall address each deficiency noted in the Department's notice.

5. Within thirty (30) days of receipt of any Revised Submittal, the Department will review the Revised Submittal and determine if it fulfills the terms of this Order and will provide written notification to Con Edison of its determination that it is approved, disapproved or approved conditioned upon such modifications as may be specified by the Department to make the Revised Submittal approvable.

(a) The Department will disapprove and will not approve a Revised Submittal with conditions if any changes required previously in a notice of disapproval pursuant to ¶A(3) of this Article were not made in the Revised Submittal or substantive or material modifications are required to make the Revised Submittal acceptable.

(b) In the event the Department disapproves any Revised Submittal or approves a Revised Submittal conditioned upon modifications and Con Edison fails to accept the modifications sought by the Department within ten (10) days after its receipt of the Department's written notification, Con Edison shall be considered to be in violation of the terms of this Order, without prejudice to Con Edison's right to contest such determination in accordance with **Article V [DISPUTE RESOLUTION]** of this Order.

6. When the Department approves any Submittal or Revised Submittal, Con Edison shall undertake any actions or activities required under or set forth in the approved Submittal or Revised Submittal, pursuant to the time schedule(s) contained therein.

B. Whenever the Department's review or review and comment (but not approval) is provided for under the terms of this Order, Con Edison may modify the Submittal in accordance with the Department's comments, but shall not be deemed to be in non-compliance with this Order if it does not do so.

C. Either the Department or Con Edison may request that the other party agree to an extension of the time to submit or comment upon a Submittal or Revised Submittal. If the other party agrees to the requested extension, such extension will be memorialized in writing by the Department's Regional Director for Region 2 and by Howard Somers or such other persons designated by Mr. Somers for Con Edison, without the need for a formal modification pursuant to **Article XII [MODIFICATION]** of this Order, unless the requested extension, together with any prior extensions, would postpone a Major Milestone Event by more than sixty (60) days.

D. With respect to any activities required by this Order the completion of which requires approval by a governmental entity other than the Department ("Other Approval");

1. Each time that Con Edison makes a submission or otherwise notifies the Department with respect to such activities, Con Edison shall advise the Department of the Other Approval, and shall provide therewith:

(a) its best estimate at that time of how long the process of obtaining the Other Approval may take;

(b) a description of the steps Con Edison has taken and proposes to take in order to obtain the Other Approval at the earliest possible time; and

(c) its best estimate at that time of the effect, if any, that any anticipated delay in obtaining the Other Approval may have upon Con Edison's commencement or completion of activities governed by this Order.

2. Any schedule established by or pursuant to this Order shall be deemed amended to allow Con Edison sufficient time to secure any necessary Other Approval and to require commencement of the activities for which such Other Approval is needed within thirty (30) days after Con Edison obtains such Other Approval or within the established schedule, whichever is later, and to allow corresponding additional time periods for commencement and completion of other required activities affected by the issuance of the Other Approval.

3. No formally promulgated Modified Order on Consent will be necessary for an extension due solely to the approval processes of other governmental entities.

4. Whenever the Department determines that an extension to any schedule is warranted pursuant to this Paragraph, the respective project managers for the Department and Con Edison will both sign a simple instrument that reflects the extent of the extension.

5. For purposes of this Paragraph, with respect to Con Edison's conduct relative to obtaining any Other Approval, Con Edison shall be held to the same standard as the standard to which it is held relative to the Department and others, as established by **Article III [STIPULATED PENALTIES]**, and **Article VI [ACCESS]**, ¶B of this Order, and a failure to satisfy a governmental entity's requirements for the issuance of any such Other Approval in a timely and good faith manner shall constitute grounds for the Department's refusing to recognize delays occasioned by such governmental entity's approval process as justification for the extension of any schedules established by this Order or the Appendices annexed hereto; provided however, that nothing in this paragraph or this Order shall be construed as obligating Con Edison to accede to any requirements, demands or conditions of a governmental entity that are arbitrary, capricious or otherwise unlawful.

ARTICLE IV. STIPULATED PENALTIES.

A. Failure to Comply Defined.

For purposes of this Article, with respect to activities other than Submittals or Revised Submittals, "fail to comply" or "failure to comply" shall mean the failure by Con Edison to perform a specified act in the manner required by this Order by the date required by this Order or any approved work plan, schedule or protocol. With respect to Submittals and Revised Submittals, the term "fail to comply" or "failure to comply" shall mean the failure by Con Edison to submit an original or revised document within the time limits set forth in or established pursuant to this Order and submission of a document that is of such poor quality as not to qualify as a good faith submission.

B. Classification of Failure to Comply Events.

1. The dates established by this Order and the Appendices hereto by which Con Edison must take, commence or complete required activities are classified as Major Milestone Events, Interim Milestone Events and Other Events, those which are Major or Interim Milestone Events being designated specifically, all others being Other Events.

2. Except for conceptual compliance plans, each work plan, schedule or, if appropriate, protocol to be submitted by Con Edison shall propose one (1) Major Milestone Event per work plan, schedule or protocol and at least one (1) Interim Milestone Event per six-month time period set forth in such work plan, schedule or protocol and may designate other, appropriate compliance dates as Other Events. Such proposed classifications shall be subject to Department approval. As part of its approval of each work plan, schedule or protocol, the Department may in its discretion modify Con Edison's proposed classification of Major Milestone, Interim Milestone and Other Events and shall notify Con Edison of such modification at the same time that it transmits its notice of approval of such work plan, schedule or protocol. Once the Department approves such work plan, schedule or protocol, the classification of Events as approved or modified by the Department shall become part of the approved work plan, schedule or protocol.

C. Imposition of Penalties for Failures to Comply.

1. In the event that Con Edison fails to comply with a compliance date established by or pursuant to this Order, the following stipulated penalties shall be paid by Con Edison:

Event	Period of Non-Compliance	Penalty Per Day
Major Milestone	Day 1-30	$1,500.00
	Day 31-60	$3,000.00
	Day 61 and thereafter	$7,500.00
Interim Milestone	Day 1-15	$ 750.00
	Day 16-30	$1,000.00
	Day 31-60	$1,500.00
	Day 61 and thereafter	$3,000.00
Other	Day 1-30	$ 250.00
	Day 31-60	$ 500.00
	Day 61 and thereafter	$1,000.00

2. Penalties begin to accrue on the day that failure to fulfill any obligation required under this Order occurs, and shall continue to accrue until Con Edison either performs the required activities or completes corrective action satisfactory to the Department. In the event that the Department determines that Con Edison has failed to comply with any term of this Order or any approved work plan, schedule or protocol, the Department will serve upon Con Edison a Notice of Failure to Comply which will set forth the nature of the failure to comply and the calculation of the stipulated penalties due. Within twenty-one (21) days after receipt of a Notice of Failure to Comply, Con Edison shall deliver the full stipulated penalty amount due to the Department, unless Con Edison pursues its rights to contest the penalty assessment as described hereafter in **Article V [DISPUTE RESOLUTION]** of this Order. In the event that Con Edison does not pay the stipulated penalty within such 21-day period and does not contest the penalty

assessment, then this Order together with the Notice of Failure to Comply may be filed and enforced as a confession of judgment for the total penalty amount set forth in the Notice of Failure to Comply plus statutory interest.

3. Additional stipulated penalties may be assessed by the Regional Director (Region 2) in accordance with the provisions of **Article V [DISPUTE RESOLUTION]**, ¶C(5) of this Order.

ARTICLE V. DISPUTE RESOLUTION.

A. Applicability and Effect.

If Con Edison either fails in a Revised Submittal to address the Department's comments to the Department's satisfaction, or refuses to undertake or complete any measures required by the Department pursuant to this Order, then Con Edison shall be in violation of this Order unless it first has invoked the dispute resolution mechanism established by this Article or commenced a proceeding pursuant to Article 78 of the Civil Practice Law and Rules ("Article 78"); provided, however, that invoking the provisions of this Article shall not toll or suspend either Con Edison's obligations or the accrual of stipulated penalties;

1. Parties to Meet and Confer.

In the event that a dispute arises between Con Edison and the Department with respect to any matter specified in ¶A of this Article or with respect to other matters relating to Con Edison compliance with the requirements of this Order, the parties shall confer and endeavor in good faith to resolve any differences that may exist. Con Edison shall request such a meeting by serving a written request therefor in the manner provided by **Article XIII [COMMUNICATIONS]** ¶(B)(1) of this Order within five (5) days of Con Edison's receipt of the Department's Notice of Noncompliance, Disapproval, or Violation or other Department Notice or Demand that Con Edison wishes to dispute. The parties shall attempt to meet and confer within five (5) days of the Department's receipt of Con Edison's written request. If, after conferring together in good faith, the parties are unable to resolve such differences, the matter shall be resolved in accordance with ¶C of this Article or Con Edison may commence an Article 78 proceeding, at its option within 30

days of the Department's determination and Con Edison hereby expressly waives its right to the four (4) month period provided in CPLR § 217 for commencing a review of an agency determination.

B. Procedure for Non-Article 78 Resolution if Parties Cannot Agree.

1. Within five (5) business days after the parties have met and conferred as provided by ¶B of this Article, Con Edison may make a written request for an opportunity to meet with the Regional Director of Region 2 and other involved Department staff to discuss the surrounding circumstances by transmitting same to the persons listed in **Article XIII [COMMUNICATIONS]**, ¶¶B(1) and (2) of this Order. Such request shall include a copy of the written Notice or Demand that is being challenged together with an affidavit setting forth with specificity the basis of the challenge. The Regional Director will consider any information presented by Con Edison in resolving the dispute.

2. Department Staff may submit a written response to the petition to the Regional Director within fifteen (15) business days of its receipt of the petition, and will transmit a copy thereof to Con Edison.

3. The Regional Director will meet with Con Edison and Staff representatives as soon as practicable after receipt of the Staff's response to Con Edison's written request, but in no event later than ten (10) business days after receipt of the response and consider any information presented by Con Edison and Staff in resolving the dispute. The Regional Director will notify Con Edison and Staff of the decision in writing within twenty (20) days of such meeting.

4. Stipulated penalties shall be calculated from the day the failure to comply first occurred unless Con Edison prevails with respect to the dispute, in which case, no stipulated penalties shall become due. In the event that Con Edison does not prevail, but the Regional Director finds that the petition was submitted in good faith, the Regional Director may: (1) find that the assessment of stipulated penalties was tolled from the initial date of Con Edison's failure to comply with the terms of this Order to the date of Con Edison's receipt of the Regional Director's decision; or (2) reduce the amount

of stipulated penalties otherwise due and payable pursuant to **Article IV [STIPULATED PENALTIES]**, ¶C(1) of this Order. For purposes of this ¶C, "good faith" shall mean that Con Edison had a reasonable prospect of success on the substantive merits. Con Edison may commence an Article 78 proceeding if it does not prevail before the Regional Director.

5. In the event that the Regional Director finds that Con Edison's request to meet (a) was not made in good faith in the first instance, (b) was wholly without merit or (c) was otherwise frivolous, the Regional Director may double the amount of stipulated penalties otherwise due in accordance with the schedule set forth in **Article IV [STIPULATED PENALTIES]**, ¶C(1) of this Order for the period between the date of failure to comply and the date of compliance.

6. The determination by the Regional Director will be final and binding upon Con Edison in the same manner as an Order by the Commissioner and will be deemed the equivalent of a confession of judgment for the amount determined to be due, and may be filed and enforced as a judgment pursuant to Civil Practice Law and Rules Article 50, et seq., for said amount without the need for any further proceedings whatsoever.

ARTICLE VI. ACCESS.

A. Department Access to Facilities.

Upon presentation of appropriate Department credentials, any duly designated officer, employee, consultant, contractor or agent of the Department shall be permitted by Con Edison to enter upon any of Con Edison's facilities or areas in the vicinity of any of Con Edison's facilities which may be under the control of Con Edison, and any areas under Con Edison's control necessary to gain access thereto, during all hours of operation, for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the Department deems necessary for ascertaining Con Edison's compliance with the provisions of the Environmental Conservation or Navigation laws and the rules, regulations, permits, licenses and administrative orders issued under such laws.

B. Con Edison Health and Safety and Operational Requirements

Department Staff will, when present at any Con Edison facility, abide by all of Con Edison's health and safety and operational requirements and policies; provided, however, that this paragraph shall not be construed as limiting staff's powers as otherwise provided for by law and shall not result in staff's being afforded less protection than staff would be if they were to abide by the Department's health and safety requirements. Department staff will be bound by Con Edison's trade secret confidentiality requirements and policies with respect to persons other than the Department or Con Edison, consistent with the principles in 6 NYCRR Part 616.

C. Access

1. Upon presentation of appropriate Department credentials, Department Staff will have access to all Con Edison facilities and to relevant records during all hours of operation, in order to inspect and/or perform such tests or undertake such other actions as the Staff may deem appropriate for ascertaining Con Edison's compliance with the provisions of this Order.

2. Con Edison is prohibited from imposing upon Department Staff a requirement regarding the use of safety apparel or safety equipment that is not strictly enforced by Con Edison with respect to all other persons, regardless of employer, under similar circumstances. Con Edison shall be in violation of this Order if it attempts to impose such a requirement.

3. Without in any way limiting the legal authority that the Department has to enter any regulated premises, Department Staff will undergo safety and health training required of Con Edison personnel or Con Edison contractor personnel prior to being given access to a particular facility or site, subject to the following:

(a) Upon notification by Con Edison to the Department of the mandatory training requirement(s) for such access, Con Edison and the Department shall meet at the earliest possible time thereafter to address the issue of whether such training is reasonable and necessary for purposes of Staff access. In the event that the Department determines that such training is not reasonable and necessary or required under applicable

federal, State or local laws, rules or regulations, access shall be granted without such training, or upon the monitor's presentation of an appropriate certificate of substantially similar training, or upon the monitor's execution and presentation of an appropriate waiver, consent or acknowledgment as are more fully described in ¶E(3)(b) of this Article.

(b) If the Department does not determine that the mandatory training is unreasonable or unnecessary,

(i) Con Edison will accept certification by the Department that the Staff has received training of the nature considered by the Department to be substantially similar to that required for access;

(ii) In the event that the Department determines that staff shall enter such a facility or site without such training, staff shall be given access upon presenting an executed waiver, consent or acknowledgment required of others given access although not having had such training;

(iii) In the event that access to a particular facility or site requires specialized training not received by staff and such training is required under applicable federal, state, or local laws, rules or regulations or the Department determines for any other reason that staff should be trained prior to entry, Con Edison shall at its expense arrange for and provide the necessary training. Con Edison, at its expense, shall arrange for and provide any training, medical, and other examinations required by the Nuclear Regulatory Commission ("NRC") as a condition to entering any Con Edison facility area subject to the jurisdiction of the NRC.

D. Con Edison Entry Onto Property Controlled by Others

Con Edison shall use best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, and approvals required to fulfill its obligations under this Order. If any access required to perform this Order is not obtained despite best efforts, Con Edison shall promptly so notify the Department in writing, and shall include in that notification a summary of the steps that Con Edison has taken to attempt to obtain access.

Thereafter, the Department will, as it deems appropriate, assist Con Edison in obtaining access.

ARTICLE VII. FORCE MAJEURE.

Con Edison shall not suffer any penalty under this Order, or be deemed to be in violation hereof or be subject to any proceeding or action, if Con Edison's compliance with any requirements hereof is rendered impossible by a natural event, war, strike, work stoppage, riot or other catastrophe as to which negligence or misconduct on the part of Con Edison was not the proximate cause; provided, however, that Con Edison shall make its best effort to comply nonetheless and shall, within one business day, notify the office of the Regional Director by telephone and the Department in writing, pursuant to the communications provision of this Order, after it obtains knowledge of any such condition or event and request an appropriate extension or modification of this Order.

ARTICLE VIII. FAILURE, DEFAULT AND VIOLATION OF ORDER.

The failure of Con Edison to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL.

ARTICLE IX. SUMMARY ABATEMENT.

The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers pursuant to Section 71-0301 of the ECL.

ARTICLE X. INDEMNIFICATION.

Con Edison shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Con Edison, its trustees, officers, employees, servants, agents, successors or assigns.

ARTICLE XI. EFFECTIVE DATE.

The effective date of this Order on Consent shall be the date that it is signed by the Commissioner. The Department shall provide Con Edison with a fully executed copy

of this Order on Consent as soon as practicable after this Order on Consent has been signed by the Commissioner.

ARTICLE XII. MODIFICATION.

If Con Edison desires that any provision of this Order be changed, Con Edison shall make timely written application therefor to the Commissioner, setting forth reasonable grounds for the relief sought. For purposes of this paragraph, "timely" shall mean that the written application is made as soon as reasonably possible after Con Edison identifies the grounds for such relief. The Commissioner shall have absolute discretion but will not arbitrarily withhold consent to the requested change and will respond promptly to the request. A formally promulgated Modified Order will not be required for a modification to any schedule under this Order that is covered by the provisions of **Article III [SUBMITTAL REVIEW AND APPROVAL]**, ¶D of this Order, or that otherwise modifies any schedule under this Order and does not postpone a Major Milestone Event by more than sixty (60) days.

ARTICLE XIII. COMMUNICATIONS.

A. All communications required by this Order to be made between the Department and Con Edison shall be made in writing and transmitted by United States Postal Service, or hand-delivered to the addressees in ¶¶B and C hereunder. Alternatively, Federal Express, Airborne Express or a comparable courier service may be utilized.

B. Communication to be made from Con Edison to the Department pursuant to this Order shall be made as follows:

1. One copy of the transmittal letter only, unless this order provides otherwise, to the Division of Environmental Enforcement, 50 Wolf Road, Albany, New York 12233-5500. Attention: Joseph M. Kowalczyk, Esq.; and

2. Four copies to the New York State Department of Environmental Conservation, 1 Hunters Point Plaza, 4740 21st Street, Long Island City, New York 11101-5407. Attention: Regional Director; and

C. Communication to be made from the Department to Con Edison pursuant to this Order shall be made as follows:

1. One copy to Garrett E. Austin, Esq., Consolidated Edison Co. of New York, Inc., Room 1800, 4 Irving Place, New York, New York 10003; and

2. Four copies to M. Peter Lanahan, Vice President, Environmental Affairs, Consolidated Edison Co. of New York, Inc., 4 Irving Place, New York, New York 10003, attention: Mr. Howard Somers.

D. The Department and Con Edison respectively reserve the right to designate other or different addressees on written notice to the other.

ARTICLE XIV. RESERVATION OF RIGHTS.

Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the Department may have against Con Edison with respect to investigatory, remedial or corrective action or with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances, petroleum, or constituents of either at or from Con Edison's facilities or areas in the vicinity of said facilities other than the four (4) petroleum releases identified in Whereas clause 9(a) above;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the Department may have against anyone other than Con Edison, its officers, trustees, agents, servants, employees, successors and assigns;

C. The Department's right, to the extent provided for by law, to enforce this Order against Con Edison, its officers, trustees, agents, servants, employees, successors or assigns in the event that Con Edison fails to fulfill any of the terms or provisions hereof; and

D. Except as specifically provided in this Order, any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the

Department may have against Con Edison for any alleged violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder.

ARTICLE XV. RELEASE.

A. This Consent Order shall be in full settlement of all civil and administrative claims and liabilities that could be asserted by Staff against Con Edison, its trustees, officers, employees, successors and assigns for any violation of the ECL, the Navigation Law or any associated rules, regulations permits, licenses or certificates either arising from events that occurred at any time prior to the effective date of this Order, except for those events or claims described in ¶B of this Article.

B. This Consent Order shall not be construed as being in settlement of any of the following claims or liabilities that could be asserted by Staff:

1. those based upon events, of which Staff did not have knowledge as of the effective date of this Order . For purposes hereof, "knowledge" shall mean that the person responsible for maintaining official Department records relative to incidents of the nature constituting the alleged violation or investigating events and violations of such nature had actual notice of the event through written or documented verbal means;

2. those legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the Department may have against Con Edison with respect to any investigatory, remedial or corrective action required or with respect to any claims for natural resources damages resulting from any release or threatened release at any time prior to the effective date of this Order of hazardous substances, petroleum, or constituents of either or discharges in excess of permit or other obligatory limits at or from Con Edison's facilities or areas in the vicinity of said facilities, other than the four (4) petroleum releases identified in Whereas clause number 9(a) above;

3. those based upon events that occurred at any time prior to the effective date of this Order that are determined by the Department to have been either committed with any of the culpable mental states defined in Penal Law §15.05 or caused by reckless conduct or gross negligence;

4. those based upon events occurring after the effective date of this Order.

ARTICLE XVI. BINDING EFFECT OF ORDER.

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Con Edison, its agents, employees, successors and assigns and all persons, firms, and corporations acting subordinate thereto.

ARTICLE XVII. FORMAL TERMS.

The provisions hereof shall constitute the complete and entire Order between Con Edison and the Department. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound, in accordance with the provisions of **Article XII [MODIFICATION]** of this Order. No informal oral or written advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Con Edison shall be construed as relieving Con Edison of its obligations to obtain such formal approvals as may be required by this Order.

DATED: Oct 23, , 1997

NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

JOHN P. CAHILL
Commissioner

CONSENT BY RESPONDENT

Consolidated Edison Company of New York, Inc. hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: _____

Title: Vice President, EHS.

Date: 10/17/97

STATE OF NEW YORK)

ss:

COUNTY OF New York)

On this 17 day of October, 1997, before me personally came M. Peter Lanahan, to me known, who being duly sworn, did depose and say that he is the Vice President, EHS of Consolidated Edison Company of New York, Inc., described in and which executed the foregoing instrument.

_____

Notary Public.

CHARLES J. GALLAGHER
Notary Public, State of New York
No. 41-4694445
Qualified in Queens County
Commission Expires Sept. 30, 1999

APPENDIX 1 - Benefit and Restoration Projects

I. Environmental Benefit Project

A. Objective

Within sixty (60) days of the effective date of this Order, Con Edison shall deposit the amount of three hundred forty five thousand dollars ($345,000.00) with the Nature Conservancy 1500 Broadway, Suite 808, New York, New York 10036, a corporation organized and existing under the New York State Not-For-Profit Corporation Law to be used to fund an Environmental Benefit Project (EBP). The monies will be expended on an EBP that will create a regional Natural Resources and Spills Response Geographic Information System (GIS) as discussed below.

It is extremely important that in the event of an oil or chemical spill that response resources be directed to those areas that are most sensitive and valuable as wildlife habitat. These sensitive areas include tidal wetland complexes where many species of fish are spawned and where many of the Harbor Herons forage and hunt. Unfortunately, the maps of these complexes and areas exist only as hundreds of paper maps or aerial photographs that are fragile and difficult, at times, to interpret. Other natural resource data that is crucial in mounting an adequate response to spills only exists as antiquated paper maps or as tables of data not spatially referenced.

When completed, the GIS will contain all pertinent natural resource and spills response information and maps for the five boroughs of New York City and the lower Hudson River estuary up to the Tappan Zee bridge. Data layers will include Tidal Wetland Maps, Freshwater Wetland Maps, Endangered Species Information, Land Use/Land Cover, Permitting Information, Critical Environmental Areas, Soils, marine Bathymetry, Environmental Sensitivity Indices, significant spill sites, ground elevation contour lines, groundwater depth contour lines, Petroleum Bulk Storage sites, Chemical Bulk Storage sites, and all major fuel oil and natural gas pipelines in New York City. Base map layers will include USGS Topology Maps, USGS Quadrangle maps, Sanborn Maps, Tax Maps, US Census Bureau's TIGER Line file and Census Track and NYC Lion file, and possibly aerial or satellite photography. This project is currently funded through the completion of most of these above layers for the borough of Staten Island.

This system will be an integral tool in planning for and responding to oil and chemical spills in the New York Harbor and lower Hudson River Estuary up to the Tappan Zee bridge. The Natural Resources and Spills Response GIS will allow regulators to quickly make regulatory decisions that might otherwise take hours or days to complete. These tasks include jurisdictional boundary checks, cumulative impact assessment, permit searches, violation tracking and expedited spills clean up decision making. The system will further benefit the public and the regulated community in that this digital information (maps) will be available to local, state, federal agencies, permittees, to Con Edison and to other interested parties pursuant to section 87 of the

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Public Officers Law (with the exception of sensitive data such as endangered Species locations).

B. Project Scope

This project will require a number of discrete functions to be completed:

1. New York State Tidal Wetland Maps

Map Digitization: there are two hundred and forty (240) tidal wetland maps for New York City.

Map Correction: after digitizing the maps will need to be corrected and transformed to local coordinate systems.

2. New York State Petroleum / Chemical Bulk Storage Facilities

Data Correction and Mapping of Sites: There are over 23,000 active registered sites in the New York City area. About 75% of the Sites are geocoded, but the data is outdated. The remaining sites need to be added to the coverages. Additionally, a subset of the data to be produced would include only EPA-regulated underground storage tanks.

3. New York Critical Environmental Areas

Map Digitization: the number of maps to be digitized is dependent upon the scale of the maps to be used. Large scale maps show more detail but cover less area than small scale maps. Under these constraints the total number of Critical Environmental Area maps to be digitized will fall between 10 and 50.

Map Correction: after digitizing the maps will need to be corrected and transformed to local coordinate systems.

4. New York State Coastal Freshwater Wetlands

Map digitization: there are approximately 15 such areas in New York City. Each area is covered by many small paper maps totaling approximately 75 maps.

Map Correction: after digitizing the maps will need to be corrected and transformed to local coordinate systems.

5. National Oceanic and Atmospheric Administration Bathymetry Data

Data Editing and Correction: this data is already digitized. The data must be edited and corrected to be utilized on DEC's GIS. The data may need to be purchased from a third party vendor.

6. New York State Natural Heritage Database

Data Editing and Correction: this data is generated through a joint effort of The NYSDEC and The Nature Conservancy. Some editing and correction is necessary to have the data conform to Region Two's GIS. Updates are made available frequently.

7. New York State Regional Land Use / Land Cover Maps

Data Editing and Correction: this data currently exists in digital but outdated format. This aspect of the project will include the use of a Global Positioning System (G.P.S.) Receiver (purchased with alternate funding) to ground-truth and update the existing data. Air photography interpretation will also be used. The time needed to undertake this task is predicated on the accuracy of the existing data for each borough.

8. National Oceanic and Atmospheric Administration (NOAA) Environmental Sensitivity Index

This data is already digitized but must be edited and corrected to be utilized. This data will be purchased from a third party vendor.

9. Depth of Groundwater

Data Editing and Correction and Digitization: This data can be purchased, but only in its raw form. The raw data will be converted to a useable form before being digitized.

10. Topography

Map Digitization: Maps covering the New York City area currently exist as image files and will be digitized.

Map Correction: After digitizing, the maps will be corrected and transformed to local coordinate sytems.

11. Spill Sites

Data Editing and Correction: Separate minor surface spills from the database, edit address data to conform to guidelines, and convert data. The data must then be digitized.

12. Routine Systems Administration

The GIS will require daily maintenance and updates

13. Network Installation, Configuration and Troubleshoot

Install, configure and troubleshoot a dial-in / dial-out connection for remote access of GIS.

C. **Fiscal Requirements**

Funding for this project will be expended as follows:

1. Staff Requirements

Project Manager, 3 years @ $65,000/year (total cost w/ overhead and benefits)

Project Technician, 3 years @ $35,000/year (total cost w/ overhead and benefits)

2. Material Requirements

Data layer acquisition: $25,000

Plotting, scanning and printing equipment: $20,000

3. Total Costs: $345,000.00

II. Restoration Project

Con Edison shall pay the amount of fifty eight thousand dollars ($58,000) to the Department within thirty (30) days of the effective date of this order, so the Department as Trustee of New York's natural Resources, can restore, replace, or acquire the equivalent of the resources indured as a result of the releases referenced in Whereas clause 9(a) above. Such payment shall be made by certified check made payable to Natural Resources Damages Fund Accound and delivered to the Department's offices at 50 Wolf Road, Albany, NY 12233-5500, Attention: Joseph M. Kowalczyk, Esq.

APPENDIX 2 - Environmental Monitors

This Appendix shall supersede any and all previous agreements between the Department and Con Edison regarding environmental monitors, including a memorandum of understanding executed on December 29, 1992 and revised on December 29, 1993 and the comprehensive November 4, 1994 order.

A. Positions

Con Edison shall make payments to the Department in accordance with the provisions of this Appendix for the funding of certain on-site Department Staff environmental monitors (collectively, the "Monitor"). Unless otherwise changed by agreement of the Department and Con Edison, one (1) monitors will be funded through December 31, 1999; a second monitor will be funded until Con Edison completes and the Department accepts work required to be performed pursuant to Appendix 4 of this order; a third monitor will be funded until Con Edison completes and the Department accepts the work required to be performed pursuant to Appendices 3 and 5 of this Order; and a fourth monitor will be funded until Con Edison completes and the Department accepts the work required to be performed pursuant to Appendix B of Order on Consent dated November 4, 1994, DEC Index No. R2-1023-88-06, et seq. Notwithstanding anything to the contrary in this Appendix, the Department reserves the right to impose additional monitors on Con Edison as a condition of a permit issued to Con Edison by the Department or as a result of an enforcement action.

B. Duties

The primary duties of the monitor will be to: (i) enhance the Department's ability to monitor and inspect Con Edison's facilities and thereby facilitate Con Edison's compliance with the requirements of the ECL and any rules and regulations promulgated pursuant thereto, federal requirements enforced by the Department, and any Department permits, Orders and Agreements; and (ii) monitor the implementation of the activities required by this Order and the Environmental Conservation and Navigation Laws. The duties of the Monitor will include, but not be limited to, the following:

1. participating in the processing and review of applications by Con Edison for Department approvals;
2. Monitoring Con Edison's compliance with existing and future Consent Orders, including processing and review of submissions for Department approval;
3. informing Con Edison and its facility operators of deficiencies in operations;
4. monitoring required sampling by Con Edison and assuring that such sampling is carried out in accordance with approved protocol(s)and, when appropriate, sampling;
5. investigating and reporting complaints against Con Edison;

6. participating in informational meetings and public hearings regarding Con Edison's facilities;
7. initiating and participating in enforcement actions related to Con Edison's operations; and
8. maintaining records and reports, including a monthly report, for the activities described above.

C. Funding

Additional funds shall be deposited into the existing Con Edison Environmental Monitoring Account as provided by this Paragraph:

1. The sum of two hundred fifty thousand dollars ($250,000.00) shall be maintained with the Department for funding of environmental activities related to Con Edison's operations. This sum is based on an estimate of annual Monitor program costs and is subject to quarterly revision. Subsequent quarterly payments shall be made for the duration of this order to maintain an account balance sufficient to meet the next nine months' anticipated expenses. Quarterly payments shall be made for the duration of this order in accordance with the following provisions.
2. Costs to be covered by this fund include:
   (a) Direct personal service costs and fringe benefits of the Environmental Monitor(s) and full-time Monitor supervisor(s), including the costs of replacement personnel for the person(s) regularly assigned to these positions.
   (b) Direct non-personal service costs, including without being limited to purchase or lease of a vehicle if necessary and its full operating costs, and any appropriate chemical sampling and analysis.
   (c) Inflation increases and negotiated salary increase.
   (d) Indirect support or overhead costs at the New York State Department of Environmental Conservation Federally-approved Indirect Cost Rate.
3. Upon written request by Con Edison, the Department shall make available any records (e.g., vouchers, time records) relating to such Monitor costs, consistent with applicable law.
4. As noted, the Department may revise the required payment on a quarterly basis to include all costs of monitoring to the Department. The quarterly revision may take into account factors such as inflation, salary increases, accrued interest to be applied to the balance, changes in operating hours and procedures and the need for additional On-site Monitors and supervision of such Monitors by full-time Monitor supervisors. Upon written request by Con Edison, the Department shall provide Con Edison with a written explanation of the basis for any modification.

5. Within 30 days of written notice by the Department that a payment is due, payment shall be forwarded to the Department. Payment should be sent to:

NYS Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-8010
Attention: Environmental Monitors

Payments shall be in advance of the period in which they will be expended.

6. Upon a determination by the Department that the Monitor is no longer required and payment of any outstanding costs, the unexpended balance, including interest, will be returned to Con Edison.
7. Failure to make the required payments shall be a violation of this order. The Department reserves all rights to take appropriate action to enforce the above payment provisions.
8. Con Edison shall furnish to the Monitor a current site policy and procedures manual for health and safety issues. Within ten (10) days of any revision to the health and safety plan, Con Edison shall notify the Department, in writing, of such modification.
9. Con Edison shall only be charged for monitor duties that relate to monitoring Con Edison's operations as set forth in this schedule.

D. <u>Access</u>

The provisions of **Article VI [ACCESS]** of this order shall apply to the Monitor.

APPENDIX 3 - FUEL OIL PIPELINES

A. Objective

This Appendix supplements and supersedes Appendix C of the November 4, 1994 Consent Order. ConEd shall implement best management practices, submitted in accordance with the provisions of the Conceptual Compliance Plan, with respect to the operation, inspection, maintenance and replacement of its pipeline systems used to transport petroleum between and among its various facilities and generating stations. Such improvements and corrective measures are the responsibility of ConEd and shall be accomplished to the greatest extent practicable within the shortest possible time frames.

B. Definitions

For purposes of this Appendix, the following terms shall have the meanings set forth in this Paragraph.

1. **"Aboveground oil pipeline"** means any part or section of pipeline that is not entirely or partially covered with earth or other material, or any part or section of pipeline that can be inspected in a subterranean vault or underground tunnel.

2. **"Material failure"** means degradation of pipeline integrity due to corrosion, erosion or structural failure causing a leak to develop not due to the actions of ConEd, its contractors or other parties related to the pipeline.

3. **" New underground oil pipeline"** means any part or section of pipeline that meets requirements promulgated or approved by the federal, state or local jurisdictional agency as of the effective date of this Order and, at a minimum, has the following attributes[1]:

(a) the pipeline shall be constructed of fiber reinforced plastic ("FRP") pipe enclosed within a steel casing ("secondary containment") made of steel pipe having a wall thickness consistent with ConEd's specifications for the pressure and temperature of the fuel oil to be handled per ASTM Specification A, 106 Grade B.

(b) the pipeline shall be insulated by filling the annular space between the FRP pipe and the steel casing, such insulation to meet or exceed the capabilities of the insulation on existing oil piping within the ConEd Oil Pipeline System;

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[1] The inner FRP pipe is not subject to electrolytic corrosion and does not require cathodic protection.

(c) the steel casing will have at least thirty-year cathodic protection by a system based upon standards that have been established by the National Association of Corrosion Engineers[2];

(d) the pipeline will be designed, installed and tested to assure that its capabilities meet ConEd's Oil Pipeline System requirements and the requirements of this Appendix; and

(e) the inner FRP pipe will be designed, installed and tested to meet ConEd's Oil Pipeline pressure and temperature requirements and the requirements of this Appendix.

4. **"Upgraded Underground Pipeline"** means any part or section of the existing ConEd Oil Pipeline System that is upgraded by ConEd shall be upgraded in accordance with the following provisions:

(a) the previously existing steel pipe that had been the oil carrying pipeline will no longer carry oil and will serve only as a structural mold for the insulating grout around the inner FRP pipe. Since that pipe is insulated, it cannot be cathodically protected;

(b) inserted into the previously existing steel pipeline will be new FRP pipe, which is equivalent to the FRP pipe used for New Underground Oil Pipeline. Since the FRP pipe is not subject to corrosion, it need not be cathodically protected; and

(c) an insulating concrete grout will be inserted into the annular space between the new FRP pipe and the previously existing steel pipeline.

5. **"Permanently Closed Oil Pipeline"** means any part or section of pipeline which has been taken out of service permanently as a fuel oil pipeline in accordance with applicable Federal, State and local regulations and good engineering practices.

6. **"Temporarily Out of Service Oil Pipeline"** means any part or section of pipeline which is out of service for thirty (30) or more days and which is not a Permanently Closed Oil Pipeline.

7. **"Underground Oil Pipeline"** means any part or section of pipeline which is partially or completely covered with earth or other material. Any part or section of a

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[2] Where ConEd must repair a section of a pipeline, such repair shall be in like kind to the existing pipeline.

pipeline within a subterranean vault or tunnel accessible for inspections is considered to be an aboveground oil
pipeline.

8. **"Section"** means that length of the pipeline that exists between two adjacent field welds.

9. **"Smart-Pig"** means a device that contains transducers capable of measuring wall thickness of steel pipe to industry standard tolerances or the use of such device.

C. **Provisions Regarding Pipeline System Requirements**

1. **General Provisions.**

(a) **Implementation Submission - Conceptual Compliance Plan** - Con Ed has submitted its Conceptual Compliance Plan to accomplish the tasks identified at the top of the columns in SCHEDULES C1 and C2, at the end of this Appendix. This submission includes the organizational structure and accountability mechanisms for the management of all tasks required by this Appendix, the purpose of which are to assure the implementation of the protocols and physical plant and operational modifications to the entire pipeline system. The Conceptual Compliance Plan has been approved by the Department, and except as otherwise modified by the
provisions of this Appendix, shall be implemented by Con Ed.

(b) **Department Review and Approval** - Con Ed's submissions required by this Appendix shall be reviewed and approved by the Department in the manner provided by Article VII [SUBMITTAL REVIEW AND APPROVAL] of this Order.

(c) **Temporarily Out of Service Oil Pipelines** - Pipelines that are Temporarily Out of Service are subject to the licensing, inspection and reporting requirements required by this Appendix and by regulations which may be applicable. However, Temporarily Out of Service oil pipelines that have the bulk fuel oil removed from them are not subject to inspection requirements. (See 3(h) below.)

d) **Permanently Closed Oil Pipelines** - Pipelines which have been Permanently Closed in accordance with the provisions of this Appendix are no longer subject to the requirements of this Appendix.

(e) **Quarterly Reports; Semi-Annual Reports; Annual Reports** - Commencing ninety (90) days after execution of the November 4, 1994 comprehensive order, ConEd submitted consolidated, quarterly reports which update SCHEDULES C1 and C2. This quarterly update was submitted until December 31, 1996; thereafter,

commencing July 1, 1997, ConEd shall submit consolidated, semi-annual reports concluding with the report due January 1, 2000; thereafter, ConEd shall submit annual reports until all work required to be undertaken by this Appendix (other than periodic, repetitious actions, such as inspections, manual reviews and updates, etc.) has been completed to the satisfaction of the Department, at which time the Department will provide ConEd with written notice of termination of the obligation created by this Paragraph.

(f) **Amendments to SCHEDULES** - SCHEDULES C1 and C2 shall be amended to reflect any additional corrective actions or procedural changes that may be determined to be necessary upon review of the environmental audit, conducted pursuant to Article III (COMPREHENSIVE ENVIRONMENTAL AUDIT PROGRAMS) of this Order and Appendix A or otherwise determined necessary by ConEd or the Department. Changes to be added to SCHEDULES C1 or C2 may include, but not be limited to, improvements or corrective actions related to Operations, Management, Inspection, Maintenance, Upgrade, Repair, Replacement or Closure of ConEd's Oil Pipelines.

(g) **Good Engineering Practices** - Completion of required tasks shall be accomplished in accordance with Department guidance and good engineering practices.

2. **Special Provisions: Operations and Management - SCHEDULE C1**

(a) **Submittal Requirements** - Within ninety (90) days of receipt of notification of Department approval of the Conceptual Compliance Plan implementation submission required by C(1)(a) of this Appendix, ConEd was required by the November 4, 1994 comprehensive order on consent to submit to the Department for review and approval, documents that address the items identified on SCHEDULE C1. Con Ed made such submissions which have received various levels of review by the Department. Within fifteen (15) days of receipt of notification of Department approval of the documents, ConEd is required to commence implementation on the approved time schedule.

(b) **Report on Personnel Training** - In addition to other subject matter, personnel involved in the operation, maintenance and repair of the pipelines are required to be instructed regarding the environmental consequences of actions that violate regulatory requirements and are to be trained in the means of preventing, containing and remediating the effects of accidental releases, and are to be instructed regarding the economic, environmental, infrastructure and health and safety effects of spills and leaks. ConEd has submitted a report on this training program and given its General Awareness Course to over 4000 employees. This report, which is under Department review, is required to include, at a minimum, curricula for and frequency of attendance at training

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sessions and the means and frequency of testing proficiency and understanding of employees whose responsibilities relate in any way to pipeline operation.

(c) **Pipeline Monitoring Report** - A Pipeline Monitoring Report shall document the manner and frequency of operation oversight and maintenance of each pipeline, associated process control equipment and automatic monitoring equipment as well as the means of determining pipeline stability and performance relative to loss of material from or degradation of the pipeline. The Pipeline Monitoring Report format has been submitted to the Department and is under Department review.

(d) **Spill Response, Emergency Shutdown and Alternate Fuel Contingency Drills** - A spill response and emergency shutdown drill program is required in which spill response drills, incorporating emergency pipeline shutdown and an alternate fuel supply contingency, are performed as frequently as necessary to assure the most rapid cessation, containment and remediation response possible in the event of a discharge. These drills shall test the plans required in paragraph C.2(f) of this appendix.

To satisfy the requirements of this paragraph, Con Ed has submitted an "Oil Spill Response Exercise Program" as part of a submission entitled "Emergency Shutdown/Spill Response Drills", to the Department for review and approval.

(e) **Operations Manual Review and Update** - ConEd's oil pipeline operations manual shall be reviewed and updated for the purpose of determining that the pipeline operations and management programs and the inspection and maintenance programs required by this Appendix will be carried into effect and become an integral part of ConEd's standard practices. The oil pipeline operations manual shall include current information on the operation and maintenance of the entire oil pipeline system. This manual shall include a section on management approval which specifically identifies all ConEd departments that are responsible for the reviewing, updating and implementing the procedures established by the manual. Con Ed has previously submitted the administrative procedures for the development of a Fuel Oil Pipeline Operations Manual and the Operations Manual to the Department for review and approval.

(f) **Spill Response Plans Review and Update** - Spill response plans are
required which include emergency pipeline shutdown plans and fuel supply contingency plans designed to deliver oil to generating stations for continued operation, while a leaking pipeline is out of service for repair or replacement.

Con Ed has submitted its "Emergency Fuel Supply and alternative Fuel Contingency Plans" which are under Department review.

Con Ed's spill response plan for its fuel oil pipelines was prepared in accordance with the interim final rule effective January 5, 1993, issued pursuant to OPA 90 by the Research and Special Programs Administration (RSPA) of the Department of Transportation. This plan is to be submitted for Department review and approval within ninety (90) days of the effective date of this order. In the event that OPA-approved spill response plans do not include the provisions required by this Appendix, they shall be revised, re-submitted to the Department for review and approval and, upon approval by the Department, re-submitted to United States Department of Transportation for approval. Administrative procedures to oversee the implementation of the requirements of this paragraph have previously been submitted to the Department for review and approval.

3. **Special Provisions: Inspection and Maintenance - SCHEDULE C2**

(a) **Submittal Requirements** - Within ninety (90) days of receipt of notification of Department approval of the Conceptual Compliance Plan implementation submission required by ¶C(1)(a) of this Appendix, ConEd was required to submit to the Department for review and approval, in the manner provided by Article VII [SUBMITTAL REVIEW AND APPROVAL] of this Order, documents that address the items identified on SCHEDULE C2 and the qualifications of personnel who will implement those tasks. Con Ed made such submissions which have received various levels of review by the Department. Within fifteen (15) days of receipt of notification of Department approval of the documents, ConEd has been required to or shall commence implementation in accordance with the approved time schedule.

(b) **Smart Pigging** - ConEd completed "smart-pigging" of the No. 4 pipeline in 1995 and shall smart pig it every three years thereafter if ConEd elects to repair it, as described in paragraph C(4)(b)(i-iv) of this appendix, rather than upgrade it, as described in paragraph B.4 of this appendix. Con Ed is not required to "smart pig" new underground oil pipelines or pipelines that have been designated for permanent closure.

(c) **Cathodic Protection System Inspections** - ConEd is required to submit to the Department, for review and approval, procedures to document and implement cathodic protection system inspections, tests and maintenance. These procedures shall include procedures for the monthly inspections of cathodic protection rectifiers. ConEd shall make its inspection, testing and maintenance records available to the Department upon request. Administrative procedures for implementing the requirements of this paragraph and updated annual inspection and test procedures have previously been submitted to the Department for review and approval.

(d) **Leak Detection System Testing** - ConEd shall conduct pressure decay testing on all active pipelines monthly and, as appropriate, evaluate its mass flow meter based leak detection systems on its fuel oil pipelines and submit evaluations

quarterly. Administrative procedures to implement the requirements of this paragraph and technical procedures have previously been submitted the Department for review and approval.

(e) **Equipment, Pump and Valve Maintenance** - The maintenance procedures will identify inspections or tests along with their required frequency, and the required maintenance activities along with their required frequency. Updated or newly developed maintenance procedures for ConEd's fuel oil pipeline equipment, pumps, heaters and valves have previously been submitted to the Department for review and approval. Upon their approval, Con Ed shall implement such procedures on all oil containing pipelines, both active and Temporarily Out of Service pipelines.

(f) **Spill Response Equipment Inspection** - ConEd shall inspect spill response equipment and document such inspections in accordance with its current OPA-90 Spill Response Plan. Documentation of these inspections shall be made available to the Department upon request. Con Ed has submitted Administrative procedures to the Department for review and approval to ensure that these inspections are conducted.

(g) **Inspection of Aboveground Pipelines and Street Valves** - Regular inspections shall be performed on the aboveground sections of pipelines and street valves on all pipelines containing oil, both active and Temporarily Out of Service oil pipelines. Inspection procedures for the aboveground pipelines and street valves have been reviewed, updated and submitted to the Department for review and approval.

(h) **Inspection of Temporarily Out of Service Oil Pipelines** - ConEd shall continue to inspect its Temporarily Out of Service Oil Pipelines until ConEd removes the bulk fuel oil from the pipeline. Documentation of these inspections shall be made available to the Department upon request. Within 60 days of the effective date of this Order, ConEd shall submit their procedure for inspecting the Temporarily Out of Service Oil Pipelines.

4. **Special Provisions: Corrective Actions**

(a) **Replaced Pipelines** - The following sections of the pipeline system have been replaced with New Underground Oil Pipeline:

(i) the underground section of the No. 2 line from the Manhattan Headhouse at 71st Street to the 74th Street Station; and

(ii) the No. 5 pipeline from Kips Bay to the Waterside Generating station. This replacement included both the fuel oil supply line and the return line.

(b) **Upgrade, Replacement or Repair of the No. 4 Pipeline** - Pipeline No. 4 is temporarily out of service and shall not be returned to service until it has been either upgraded, replaced or repaired. If ConEd decides to upgrade, replace or repair the No. 4 pipeline, ConEd shall notify the Department within 60 days of its decision and provide for Department review and approval a conceptual plan and proposed schedule to upgrade, replace or repair this pipeline. If ConEd decides to upgrade the pipeline, it will do so in accordance with the provisions specified in paragraph B.4 of this appendix, in which case there shall be no requirement thereafter to "smart-pig" the line. If ConEd decides to replace the pipeline, it will do so in accordance with the provisions specified in B.3 of this appendix, in which case there shall be no requirement thereafter to "smart pig" the line. If ConEd decides to repair the pipeline, it will do so in accordance with the following provisions:

(i) replace with new pipe all areas of pipe which, based on the results of the "smart-pigging," indicate that less than 60% of the original pipe thickness remains. Replacements will be made in accordance with ConEd Procedure FOPL-100;

(ii) inspect all buried elbows and repair or replace them, as necessary;

(iii) remove insulating joints and replace them with new pipe;

(iv) remove sleeves and replace them with new pipe.

(c) **Temporary/Permanent Pipeline Closures**

(i) **Bulk Oil Removal** - ConEd shall submit to the Department, for review and approval, ConEd's proposed methods and schedules for the bulk oil removal from its fuel oil pipelines in accordance with the following schedule.

(a) **No. 3 Pipeline** - The No. 3 pipeline (from Hudson Avenue Generating Station to East River Generating Station) is now classified as temporarily out of service and shall be permanently closed. Within 90 days of the effective date of this Consent Order, ConEd shall submit to the Department, for review and approval, ConEd's proposed method and schedule for the implementation of the bulk oil removal from this pipeline.

(b) **Nos. 1 and 7 Pipelines** - The No. 1 pipeline (from Astoria Generating Station to Ravenswood Generating Station) and the No. 7 pipeline (from the North First Street fuel oil terminal to the Rainey tank farm) are now temporarily out of service and shall be permanently closed. Within 60 days of the completion of the bulk oil removal from the No. 3 pipeline, ConEd shall submit to the

Department, for review and approval, ConEd's proposed methods and schedules for the bulk oil removal from Nos. 1 and 7 pipelines.

(c) **No. 2 Pipeline** - The portion of the No. 2 pipeline from the Head House at 71st Street, along the east side of the FDR Drive, to the 74th Street Generating Station, is temporarily out of service and shall be permanently closed. (This portion has been replaced by a new portion of pipeline, now in service, which runs alone the west side of the FDR.) The bulk oil has been removed and the pipeline has been cut and capped at each end. Within sixty (60) days of the bulk oil removal from pipelines 1,3,7 (whichever is completed last), ConEd shall submit a plan to the Department for review and approval to permanently close this pipeline.

(ii) **Pipeline Integrity Test** - ConEd shall perform a pipeline integrity test to identify and locate any leaks and potential areas of concern in the pipeline in accordance with the following schedule.

(a) **No. 3 Pipeline** - Within 60 days of removing the bulk oil from the No.3 pipeline, ConEd shall submit, for Department review and approval, a description of the method and schedule to perform the Pipeline Integrity Test on the No. 3 pipeline.

(b) **No. 1 Pipeline** - Within 60 days of removing the bulk oil from the No. 1 pipeline, ConEd shall submit, for Department review and approval, a description of the method and schedule to perform the Pipeline Integrity Test on the No. 1 pipeline.

(c) **No. 7 Pipeline** - Within 60 days of removing the bulk oil from the No. 7 pipeline, ConEd shall submit, for Department review and approval, a description of the method and schedule to perform the Pipeline Integrity Test on the No. 7 pipeline.

(iii) **Removing Residual Fuel Oil and Cleaning the Pipelines**

(a) **No. 3 Pipeline** - Within 30 days of the completion of the integrity test on the No. 3 pipeline, ConEd shall submit to the Department, for review and approval, ConEd's proposed method and schedule for removing the residual fuel oil and cleaning the pipeline.

(b) **No. 1 Pipeline** - Within 30 days of the completion of the integrity test on the No. 1 pipeline, ConEd shall submit to the Department, for review and approval, ConEd's proposed method and schedule for removing the residual fuel oil and cleaning the pipeline.

(c) **No. 7 Pipeline** - Within 30 days of the completion of the integrity test on the No. 7 pipeline, ConEd shall submit to the Department, for review and approval, ConEd's proposed method and schedule for removing the residual fuel oil and cleaning the pipeline.

(iv) **Reuse, Removal/Capping/Filling**

(a) **No. 3 Pipeline** - Within 90 days of the completion of removing the residual fuel oil and cleaning the No. 3 pipeline, ConEd shall submit to the Department, for review and approval, either a proposed method and schedule for removing sections of the pipeline from the ground or capping and filling the pipeline, or sections thereof, with an inert materialor ConEd's plan that describes the future use of the pipeline.

(b) **No. 1 Pipeline** - Within 90 days of the completion of removing the residual fuel oil and cleaning the No. 1 pipeline, ConEd shall submit to the Department, for review and approval, either a proposed method and schedule for removing sections of the pipeline from the ground or capping and filling the pipeline, or sections thereof, with an inert materialor ConEd's plan that describes the future use of the pipeline..

(c) **No. 7 Pipeline** - Within 90 days of the completion of removing the residual fuel oil and cleaning the No. 7 pipeline, ConEd shall submit to the Department, for review and approval, either a proposed method and schedule for removing sections of the pipeline from the ground or capping and filling the pipeline, or sections thereof, with an inert material or ConEd's plan that describes the future use of the pipeline.

(d) **No. 4 Pipeline** - The No. 4 pipeline (from East River Generating Station to Kips Bay oil storage tank) is temporarily out of service. The bulk oil has been removed and the pipeline has been purged with water. If ConEd decides to permanently close the No. 4 pipeline, ConEd shall notify the Department within 60 days of its decision and submit for Department review and approval, either a proposed method and schedule for removing sections of the pipeline from the ground or capping and filling the pipeline, or sections thereof, with an inert material, or ConEd's plan that describes the future use of the pipeline. A 20-foot section of pipeline has been removed from the pipeline on 25th Street.

(v) **Interim Remedial Measures (IRM) or Removal Actions** - While ConEd is cleaning, filling, removing or capping a section of pipeline, it may be appropriate to undertake certain IRM or removal actions prior to the submittal of a formal remedial work plan described in paragraph (viii) below. Prior to conducting such IRM or

removal actions, ConEd shall provide the Department with verbal notification and subsequent written confirmation describing the IRM or removal actions. With the exception of circumstances outside the control of ConEd, ConEd shall make best efforts to provide the Department with an opportunity to visually inspect the site prior to backfilling excavations.

(vi) **Pipeline Right-of-Way (ROW) Investigation and Remediation** - As part of paragraph (v), ConEd will identify areas of potential environmental concern based on information presently known or obtained upon subsequent investigation of historic or current leaks. For each pipeline proposed for closure, ConEd shall submit work plans for the investigation and, if necessary, remediation of the ROW and adjacent areas of each pipelineor any non-adjacent areas that are contaminated by a former leak from the pipeline.

The investigation and, if necessary, remediation of spill sites along the pipelines' ROW identified in Appendix B of the November 4, 1994 Consent Order, and known spills that have occurred between November 4, 1994 and the effective date of this order, shall be addressed in each pipeline's investigation work plan submitted in accordance with the requirements of this Appendix. The pipelines' ROW investigation and, if necessary, remediation will be performed in accordance with the manner discussed in Appendix B of the November 4, 1994 Consent Order and in accordance with the schedules submitted with the investigation work plans.

(vii) **Pipeline Closure** - A pipeline shall be considered Permanently Closed upon the completion of all the work described in section C.4(c) of this appendix.

(d) **Repair Actions for Problem Sections of Piping** - In the event that there are two leaks due to material failure in any section of any of its operating or Temporarily Out of Service Pipelines within a calendar year, ConEd will sleeve, remove or replace the entire section in which such leaks occurred. In all instances in which a thin wall condition is determined to exist on a pipeline, ConEd will repair the thin wall in accordance with the requirements of Specification FOPL 100.

(e) **Provisions for Cleaning** - The "New Underground Oil Pipeline", the "Upgraded Underground Pipeline" and the repaired underground pipeline shall be capable of being cleaned using an internal pig device.

(f) **Leak Detection Systems** - On October 6, 1995 ConEd submitted to the Department a preliminary engineering evaluation of the leak detection systems for ConEd's fuel oil pipelines. This evaluation included a review of the performance of the micro motion mass flow meters that have been installed on the No. 4 and No. 5 lines, a review of the performance of the positive displacement flow meter system on the No. 2,

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No. 3 and No.7 lines and ConEd's and recommendation(s) for a new leak detection system to be installed on the Nos. 2, 3 and 7 lines. The evaluation revealed that there was no known technology, including the micro motion mass flow meters, capable of detecting typical ConEd fuel oil pipeline leaks.

ConEd will continue to engage in meaningful Research and Development efforts to develop new technologies for improved fuel oil leak detection systems. ConEd will submit a progress report on its R&D efforts to the Department for review and approval on December 31, 1997 and semi-annually thereafter. This progress report shall include the actual or potential performance capabilities of any leak detection system that ConEd learns of or tests.

If ConEd develops or learns of a technology that may be capable of accurately and reliably detecting fuel oil leaks with rate leaks comparable to the typical pinhole leaks that have developed on ConEd's fuel oil pipelines in the past, ConEd shall notify the Department within 30 days after developing or learning of such a technology. Within 90 days after notifying the Department, ConEd shall submit for the Department's review and approval a report evaluating the new technology and a schedule for conducting any field testing necessary to ensure that the technology will perform as intended or, if the evaluation indicates that the technology is capable of meeting the performance criteria of this subdivision, a proposed schedule for installing the technology on ConEd's active fuel oil pipelines.

OIL PIPELINE OPERATIONS AND MANAGEMENT SCHEDULE

Pipeline System Description	Report on Personnel Training	Pipeline Monitoring Report	Emergency Shutdown/Spill Response Drills	Operations Manual - Review & Update	Spill Response Plans Review & Update
Line No. 1 Astoria GS to Ravenswood GS					
Line No. 2 74th St GS to Ravenswood GS					
Line No. 3 Hudson Ave GS to East River GS					
Line No. 4 East River GS to Kips Bay Station					
Line No. 5 Waterside GS to Kips Bay Station					
Line No. 7 North 1st St Terminal to Ravenswood GS					

OIL PIPELINE AND MAINTENANCE SCHEDULE

Pipeline System Description	Smart Pigging	Cathodic Protection System Inspection	Leak Detection System Testing	Equipment, Pump and Valve Maintenance	Spill Response Equipment Inspection	Inspection of Aboveground Pipelines and Street Valves
Line No. 1 Astoria GS to Ravenswood GS						
Line No. 2 74th St GS to Ravenswood GS						
Line No. 3 Hudson Ave GS to East River GS						
Line No. 4 East River GS to Kips Bay Station						
Line No. 5 Waterside GS to Kips Bay Station						
Line No. 7 North 1st St Terminal to Ravenswood GS						

D. Department Response to NonCompliance

1. **Penalty Adjustment** In the event that the Department institutes an enforcement action for any discharge of oil from Con Edison's fuel oil pipelines, the Department will, in determining the amount of the penalty to be assessed or imposed against Con Edison, take into consideration, to the maximum extent consistent with the Department's penalty policies and guidance, Con Edison's cooperation in the negotiation of this Order and its efforts to improve the environmental performance of its fuel oil pipeline system.

2. **Limited Immunity** - Except as provided in subdivision (3) of this section, the Department will not seek any civil or administrative penalties from Con Edison for the following discharges of oil to the environment from Con Edison's fuel oil pipelines:

A. any past discharge discovered during the ROW investigation for a pipeline;

B. any past discharge discovered during the repair, replacement, upgrading, or permanent closure work for a pipeline; and

C. any discharge of 100 gallons or less of oil that occurs prior to the completion of the repair, replacement, upgrading, or permanent closure work required by this Appendix, for the section of pipeline from which the discharge has occurred.

3. **Exclusions** - Notwithstanding anything to the contrary in this Order, the provisions of subdivisions 1 and 2 of this section shall not apply to the following :

(a) Discharges that are determined by the Department to have been committed with any of the culpable mental states defined in Penal Law Section 15.05 or caused by reckless conduct or gross negligence;

(b) Discharges caused by failure to comply with the requirements of this Order;

(c) Discharges for which Con Edison fails to provide notification to the Department in the manner specified in this Order orapplicable regulations;

(d) Discharges for which Con Edison fails to conduct remediation in the manner specified by the Department; and

(e) Discharges that contaminate the waters of the State or any sewer draining into the wastes of the State.

APPENDIX 4 - Facility Outfall Surveys

A. Objective

The objective of the outfall survey and follow up corrective action requirements of this Appendix is to ensure: (1) that the SPDES permits for Con Edison facilities for which such requirements were not previously imposed by the comprehensive 1994 order include and authorize all discharges of pollutants to the waters of the State from those facilities and all outfall structures through which they discharge pollutants to the waters of the State; and (2) that the required SPDES monitoring for those discharges is conducted at locations where best representative samples of the discharges can be collected for analysis.

B. Required Facility Surveys

Con Edison shall survey the discharge outfalls and discharge tunnels of the facilities listed below in Table 1 and shall, by the dates specified in that table, submit to the Department for its review and approval in accordance with the provisions of **ARTICLE II [SUBMITTAL REVIEW AND APPROVAL]** of this Order an acceptable and complete outfall survey report for each such facility.

C. Report Contents

To be deemed acceptable and complete for the purposes of this Appendix and **ARTICLE III [SUBMITTAL REVIEW AND APPROVAL]** of this Order, the outfall survey report for a facility listed below in Table 1 must:

(a) Identify every waste stream that the facility currently discharges or could reasonably be expected to discharge to the waters of the State and specify for each such waste stream its source, estimated flow, and the pollutants associated with its discharge to the waters of the State;

(b) Identify, on the basis of dye tests or other appropriate means, the exact location and approximate physical dimensions of the sump, pipe, discharge tunnel, or other outfall structure through which each such waste stream is discharged to the waters of the State;

(c) Identify and describe the location of the current SPDES monitoring point for each of the facility's discharges of pollutants to the waters of the State;

(d) Identify and describe the effects, if any, that surface water tidal action have on the facility's outflow pipes, discharge tunnels, and/or other outfall structures and on each of the facility's SPDES monitoring points;

(e) Recommend and justify, on the basis of the information specified above, the best representative SPDES monitoring point for each waste stream that the facility discharges to the waters of the State;

(f) Contain drawings identifying the location of the recommended best SPDES monitoring point for each such waste stream;

(g) Contain Con Edison's proposed timetable for installing and using each new best representative SPDES monitoring point recommended in the report;

(h) Contain Con Edison's proposed corrective action plan and implementation schedule for obtaining SPDES authorization from the Department for any unauthorized discharges of pollutants to the waters of the State or unauthorized outfall structures discovered at the facility during the required survey or eliminating any such discharges or outfall structures; and

(i) Contain Con Edison's proposed corrective action plan and implementation schedule for ensuring its compliance with the applicable effluent limitations of the facility's SPDES permit in the event that sampling at any new best representative SPDES monitoring point recommended in the report is expected to detect pollutants in concentrations exceeding such effluent limitations.

D. Follow Up Corrective Action

1 Implementation of Approved Plans

Upon the Department's approval of the outfall survey report for a facility listed below in Table 1, Con Edison shall in accordance with the approved report's timetable and/or corrective action plan implementation schedules:

(a) commence and complete the installation of each new best representative SPDES monitoring point identified in the approved report and begin using each such new monitoring point;

(b) eliminate each unauthorized discharge of pollutants to the waters of the State and each unauthorized outfall structure identified in the approved report or apply to the Department for SPDES permits or SPDES permit modifications authorizing such discharges and outfall structures; and

(c) commence and complete the approved report's corrective action plan for ensuring compliance with applicable effluent limitations at the required new best representative SPDES monitoring points, unless the plan calls for the installation or modification of water pollution control equipment, in which case, Con Edison shall implement the plan as provided below in subdivision (2) of this section.

2 Water Pollution Control Equipment

Notwithstanding anything to the contrary in this Appendix, if any corrective action plan contained in an approved outfall survey report calls for the installation of new water pollution control equipment or the modification of existing water pollution control equipment, the plan shall be implemented as follows:

(a) Upon the Department's approval of the outfall survey report containing the plan, Con Edison shall begin designing the new or modified equipment called for in the

plan and shall, in accordance with the approved implementation schedule for the plan, file with the Department for its review and approval engineering drawings and specifications for the new or modified equipment along with an application for permission to install and use the equipment and a proposed timetable setting forth the dates by which the equipment will be ordered, fabricated, installed or modified , tested, and placed into operation; and

(b) Upon the Department's approval of the application and proposed drawings, specifications, and timetable, Con Edison shall, in accordance with the approved timetable, commence and complete the installation or modification of the equipment and begin using the new or modified equipment.

E. Drawings, Diagrams, and Labels

1 Water Pollution Control Equipment

Within ninety (90) days after Con Edison completes the installation or modification of any water pollution control equipment called for in the corrective action plan of an approved outfall survey report, Con Edison shall file with Department final "as built" drawings for the new or modified equipment.

2 SPDES Monitoring Points

Within thirty (30) days after the Department's approval of an outfall survey report for a facility, or within thirty (30) days after Con Edison completes the installation of each new best representative SPDES monitoring point identified in the approved report, whichever is later, Con Edison shall clearly label each best representative SPDES monitoring point at the facility and shall submit to the Department a facility diagram identifying the location of each such monitoring point.

F. Temporary Authorization

1 SPDES Monitoring Points

The Department's approval of the outfall survey report for a facility listed below in Table 1 shall constitute temporary authorization for Con Edison to conduct the discharge monitoring specified in the facility's SPDES permit at the facility's existing SPDES monitoring points until such time as the new best representative SPDES monitoring points identified in the approved report have been installed. This temporary authorization to conduct discharge monitoring at locations other than the best representative SPDES monitoring points identified in an approved report is conditioned on Con Edison's compliance with the approved report's timetable for installing and using the new best representative SPDES monitoring points and shall extend until no later than the date specified in the approved report's timetable as the deadline for commencing the

use of the new best representative SPDES monitoring points, unless that date is extended pursuant to the provisions of **ARTICLE III [SUBMITTAL REVIEW AND APROVAL], ARTICLE VII [FORCE MAJEURE], or ARTICLE XII [MODIFICATION]** of this Order, in which case, the temporary authorization provided for herein shall expire on the revised deadline date.

2 Discharges and Outfall Structures

Except as otherwise provided in subdivision (3) of this subsection, the Department's approval of the outfall survey report for a facility listed below in Table 1 shall constitute temporary authorization for Con Edison:

(a) to operate any unauthorized outfall structures identified in the approved report until such time as it completes the approved report's corrective action plan for such outfall structures;

(b) to discharge to the waters of the State any unauthorized discharges of pollutants identified in the approved report until such time as it completes the approved report's corrective action plan for such discharges; and

(c) to discharge to the waters of the State, until such time as it completes the approved report's corrective action plan for ensuring compliance with effluent limitations, any discharges of pollutants that the approved report indicates are expected to exceed applicable effluent limitations at the new best representative SPDES monitoring points identified in the approved report.

During Con Edison's implementation of an approved report's corrective action plan for discharges expected to exceed applicable effluent limitations, Con Edison's compliance with the effluent limitations for such discharges shall be determined on the basis of monitoring conducted at the existing SPDES monitoring points for the discharges. If the monitoring results from the existing SPDES monitoring points do not detect pollutants in concentrations exceeding the applicable effluent limitations, Con Edison shall be deemed to have complied with those effluent limitations.

The temporary authorization provided for in this subdivision is conditioned upon Con Edison's compliance with the requirements of this Appendix and its timely implementation and completion of an approved report's corrective action plans for such outfall structures and discharges. For corrective action plans, other than those calling for the submission of applications to the Department for SPDES permits, SPDES permit modifications, or permission to install and use new or modified water pollution control equipment, such temporary authorization shall continue in effect until no later than the date specified in the corrective action plan's approved implementation schedule as the deadline for completing the plan, unless that date is extended pursuant to the provisions of **ARTICLE III [SUBMITTAL REVIEW AND APPROVAL], ARTICLE VII [FORCE MAJEURE], or ARTICLE XII [MODIFICATION]** of this Order, in which case, such temporary authorization shall continue until no later than the revised deadline date.

For any corrective action plan calling for the submission of an application requesting a SPDES permit or SPDES permit modification by the Department, temporary authorization for the unauthorized discharges or unauthorized outfall structures

for which such SPDES permit or permit modification were requested shall expire when the Department issues it final decision and determination on the application. In the event that the Department denies the application, Con Edison shall, within 30 days after receipt of the Department's final decision and determination, cease operating the unauthorized outfall structures or discharging to the waters of the State the unauthorized discharges for which the application was filed.

For any corrective action plan calling for the installation or modification of water pollution control equipment, the temporary authorization provided for herein shall continue in effect until no later than the date specified in the plan's approved timetable as the deadline for commencing the operation of such equipment, unless that date is extended pursuant to the provisions of **ARTICLE III [SUBMITTAL REVIEW AND APPROVAL], ARTICLE VII [FORCE MAJEURE], or ARTICLE XII [MODIFICATION]** of this Order, in which case, the temporary authorization shall remain in effect until no later than the revised deadline date.

3 Special Circumstances

The temporary authorization provided for in subdivision (2) of this section shall not extend to any discharge of pollutants to the waters of the State or outfall structure that the Department determines poses a risk of harm to public health or the environment, poses a threat to navigation, or may cause personal injuries, property damage, or adversely impacts natural resources. In the event that the Department makes such a determination for any discharge of pollutants or outfall structure described in subdivision (2), it shall set forth the reasons for such determination in its written notice of approval for the outfall survey report in which the discharge or outfall structure was identified. Unless Con Edison pursues its rights to contest the Department's determination pursuant to the provisions of Article IV [DISPUTE RESOLUTION] of this Order, it shall cease discharging to the waters of the State such discharge of pollutants or using such outfall structure within the time specified in the Department's written approval notification for the outfall survey report.

G Department Response to Noncompliance

1. In the event that the Department institutes enforcement proceedings for instances of non-compliance disclosed in an approved outfall survey report, it will consider, among other things, Con Edison's cooperation in the negotiation of this Order, its good faith efforts in correcting any such instances of non-compliance pursuant to the provisions of this Appendix, and the efforts that it has made since the issuance of the comprehensive 1994 order to foster its compliance with environmental laws and regulations and to improve the environmental performance of its facilities and operations.

2. In the event that the Department finds that penalties are warranted for any instances of non-compliance disclosed in an approved outfall survey report, the Department will not in determining the duration of the non-compliance for the purpose of calculating the penalties to be assessed include any period during which Con Edison continued an unauthorized discharge or continued operating an unauthorized discharge

pursuant to any temporary authorization provided to it under the provisions of Section F(2) of this Appendix.

TABLE 1

Deadline for Submitting Outfall Survey Report to the Department from Effective Date of Order

270 days	Astoria Site
270 days	East River Site
270 days	Arthur Kill Site
365 days	Ravenswood Site
365 days	60th Street Steam Plant
365 days	North First Street Terminal
365 days	Gowanus Gas Turbines
365 days	Narrow Gas Turbines
365 days	11th Street Tunnel

APPENDIX 5 - MOSF AND GENERATING STATION UNDERGROUND PIPING SYSTEMS

A. Objective

Con Edison shall develop and implement a periodic tightness testing program for all underground petroleum piping systems at its MOSF facilities, including No. 6 oil piping systems for which such testing is not required under the Department's bulk oil storage requirements, to minimize, to the greatest extent practicable, the potential for discharges of petroleum from such piping systems into the environment. The development and implementation of the required program is the responsibility of Con Edison and shall be accomplished to the greatest extent practicable within the shortest possible time frame.

B. Applicability

The tightness testing and other requirements of this Appendix apply only to the underground fuel oil piping systems associated with the petroleum fuel oil tanks at Con Edison's MOSFs. The requirements of this Appendix do not apply to Con Edison pipelines tested in the compliance schedules of Appendix 3 of this Order.

C. Underground Piping Testing

Within five (5) years of the effective date of this Order, and either every five (5) years thereafter for underground piping associated with underground tanks or every ten (10) years thereafter for underground piping associated with aboveground tanks, Con Edison shall tightness test all sections of underground petroleum piping at its MOSF facilities by a method meeting the requirements of the Department and the United States Environmental Protection Agency (EPA), as described in NYSDEC SPOTS Memo #2 - Tightness Testing Underground Petroleum Storage Tank Systems. (Note: The tightness test methods listed in the SPOTS Memo #2 can identify known leaks, but may be unable to identify holes in the piping that are sealed by coagulated No. 6 fuel oil.)

If the tightness test methods listed in the SPOTS Memo #2 prove to be inapplicable to the underground piping associated with ConEd's petroleum tanks, ConEd shall request Department approval to discontinue such tightness testing. If the Department agrees, ConEd shall submit an alternative method and schedule to the Department to tightness test the underground piping.

Any section of underground petroleum piping that is not currently equipped with the necessary fittings or access structures to perform tightness testing shall be retrofitted with such fittings and structures, as provided below in Section D.

April 23, 1998.

D. **Required Submissions**

1. **Conceptual Compliance Plan** - Within 180 days of the effective date of this Order, Con Edison shall submit to the Department for its review and approval in accordance with the provisions of Appendix II [Submittal Review and Approval] of this Order, a Conceptual Compliance Plan that contains the following:

(a) a list of the Con Edison departments responsible for the development and the implementation of the testing program;

(b) a description of all major tasks involved in the implementation of the testing program for each piping system or combination of interconnecting piping systems, including, but not limited to, piping retrofitting and actual tightness testing; and

(c) a schedule for implementing the tightness test for each section of piping within five (5) years of the effective date of this Order.

2. **Engineering Work Plans for Retrofitting the Underground Piping** - In the event that retrofitting is required for the tightness testing of an underground piping system, Con Edison shall, within the times specified in the approved Conceptual Compliance Plan, submit for the Department's review and approval, Engineering Work Plans for such work. In addition to engineering specifications, the Engineering Work Plans shall specify the procedures that will be used to prevent discharges of petroleum into the environment during retrofitting work.

3. **Tightness Test Reports** - Within thirty (30) days of the completion of tightness testing on any section of underground petroleum piping, Con Edison shall submit for Department review and approval a report describing the results of the testing and any necessary proposed corrective actions. The reports shall include copies of the original data sheets and test results. Such reports shall be submitted in accordance with the provisions of Appendix II [Submittal Review and Approval] of this Order for as long as there remains at least one Department environmental monitor. Thereafter, reports are to be submitted to the Region 2 Petroleum Bulk Storage Unit for Department review.

E. **Piping Tightness Testing Failure**

In the event that a section of underground petroleum piping fails a tightness test, Con Edison must notify the Department within two (2) hours of discovery of the failed test. Upon confirmation of a fuel oil leak, ConEd must initiate corrective actions, locate

the fuel oil leak and either repair or replace the piping. The piping must be repaired or replaced in accordance with State regulations and pass a Department-approved tightness test before being put back into service. Alternatively, the piping can be taken out of service and closed in accordance with State and Federal regulations.

F. **Department Response to Noncompliance**

1. **Penalty Adjustment** - In the event that the Department institutes an enforcement action for any discharges of petroleum from the underground piping systems subject to the requirements of this Appendix, the Department will, in determining the amount of the penalty to be imposed or assessed against Con Edison, take into consideration, to the maximum extent consistent with the Department's penalty policies and guidance, Con Edison's cooperation in the negotiation of this Order and its efforts to improve the environmental performance of its underground piping systems .

2. **Limited Immunity** - Except as provided in subdivision (3) of this section, the Department will not seek civil or administrative penalties from Con Edison for the following discharges of petroleum to the environment from the underground piping systems subject to the requirements of this Appendix:

(a) any discharge from a leaking section of an underground piping system that occurs prior to the first required tightness test for the leaking section of pipe; and

(b) any discharge from a leaking section of an underground piping system that is discovered as a result of the first required tightness test for the leaking section of piping;

3. **Exclusions** - Notwithstanding anything to the contrary in this Order, the provisions of subdivisions (1) and (2) of this section do not apply to the following:

(a) Discharges that are determined by the Department to have been caused by any of the culpable mental states defined in Penal Law Section 15.05 or were caused by reckless conduct or gross negligence;

(b) Discharges caused by failure to comply with the requirements of this order;

(c) Discharges for which Con Edison fails to provide notification to the Department in the manner specified in this Order or the Department's regulations; and

(d) Discharges for which Con Edison fails to conduct remediation in the manner specified by the Department; and

(e) Discharges that contaminate the waters of the State, or any sewer discharging into the waters of the State.