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Pages: 1-249

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION OF HAZARDOUS WASTE SITE
CLEANUP PROFESSIONALS
BEFORE THE
OFFICE OF APPEALS AND DISPUTE RESOLUTION

Docket No. 10 AP 01

*****x

IN THE MATTER OF JAMES J. DECOULOS

*****x

ADJUDICATORY HEARING

TIMOTHY M. JONES, Presiding Officer

Massachusetts Department of Environmental Protection
Office of Appeals and Dispute Resolution
One Winter Street, 2nd Floor
Boston, Massachusetts 02108
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Wednesday, January 26, 2011
Day One

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RE CROSS
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Ian Phillips

By Ms. Read.....11.....140

By Mr. Decoulos.....12, 102

MARK JABLONSKI

By Mr. Decoulos.....72.....97

By Ms. Read.....96

CYNTHIA BARAN

By Ms. Read.....146.....238

By Mr. Decoulos.....150.....245

Present:

Ian Phillips

Robert Luhrs

Mark Jablonski

Cynthia Baran

Paul Wright

Allen Wyman

1 P R O C E E D I N G S

2 HEARING OFFICER: Good morning. We're
3 on the record in the matter of James J. Decoulos,
4 Docket Number LSP 10 AP 01. We're here for the
5 Adjudicatory Hearing. It's January 26, 2011. I'm
6 Tim Jones, the Presiding Officer in the case.
7 This Adjudicatory Hearing is scheduled to occur
8 today and tomorrow. I have talked at length with
9 the parties on a couple of different occasions
10 about how this hearing would occur, and there are
11 a couple of orders in place about how it will
12 occur, as well. I think the parties are familiar
13 with those, as well as the adjudicatory rules.

14 One thing I'm going to be doing, just so
15 you know, I'm aware there's a stenographer here,
16 but just for my own purposes, I'm going to be
17 recording this just to test this new equipment I
18 have. So I'm going to be recording it on a new
19 digital device that I've got just to test this new
20 equipment. Just so you know why I'm doing that.

21 In terms of going forward, what we're
22 going to be doing is the department will be
23 presenting its case first, and putting on its
24 witnesses first, who will be cross-examined by

1 Mr. Decoulos, if he wishes. There's no obligation
2 to cross-examine witnesses, that's Mr. Decoulos'
3 choice.

4 As I have explained in the recent status
5 conference, generally, I'm going to be allocating
6 equal time for the parties to cross-examine the
7 witnesses. So generally, Mr. Decoulos will have
8 all of today to cross-examine the witnesses
9 presented by the Board, and Ms. Read may have all
10 of tomorrow, if she wishes, generally, to
11 cross-examine Mr. Decoulos' witnesses.

12 As I explained in the recent status
13 conference, I think it was this past Friday,
14 that's not a hard and fast rule. It's flexible.
15 It's gray. It depends upon the circumstances as
16 they arise, and as the subject matter of the
17 testimony is elicited, depending upon the needs of
18 the parties. So I may allow more time or less
19 time, depending upon how things go.

20 I will also -- I should say, I may allow
21 limited redirect examination, and then limited
22 recross examination, as well, for each of the
23 witnesses. Again, that will depend on the
24 examination.

1 Also, as a general matter, the scope of
2 cross-examination is limited to the scope of the
3 witness' direct testimony. Again, as I explained
4 in the recent status conference, that's not a hard
5 and fast rule, because one of the things you may
6 be doing or seeking to do in cross-examination is
7 to impeach the credibility of the witness, and
8 sometimes it is difficult to ascertain precisely
9 where the boundaries or the parameters of the
10 scope of the direct is, and where it's fair
11 game -- as opposed to where it's fair game for
12 cross-examination. That boundary is not always
13 clear.

14 We will be taking up those issues as we
15 go. With all that said, are there any questions
16 or preliminary matters that we should take up
17 right now before we begin with the Board putting
18 on its first witness? Ms. Read?

19 MS. READ: I do not have any. Thank
20 you.

21 HEARING OFFICER: Sir?

22 MR. JABLONSKI: I was wondering, would I
23 be able to testify today?

24 HEARING OFFICER: You are?

1 MR. JABLONSKI: I'm Mark Jablonski. I
2 was just wondering about the scheduling and the
3 process.

4 HEARING OFFICER: Mr. Jablonski is here
5 pursuant to a subpoena issued by me on behalf of
6 Mr. Decoulos. He has raised a question whether he
7 could testify today. I would like to get your
8 testimony in today so that we could avoid you
9 having coming back for another day. Mr. Decoulos
10 or Ms. Read, first, what are your thoughts on
11 that?

12 MS. READ: I'm certainly willing to try
13 to accommodate Mr. Jablonski. I do have four
14 witnesses to put on, and it is conceivable that if
15 the day was wearing on, that the witnesses could
16 be taken out of order since Mr. Jablonski is one
17 of Mr. Decoulos' witnesses. That being said, all
18 of my witnesses are sort of in the same position
19 of not wanting to have to return. But I will do
20 everything that I can to expedite, and I will be
21 somewhat flexible in that regard. I would like to
22 see how the day goes, but it makes sense for
23 Mr. Jablonski to go today.

24 HEARING OFFICER: What are your

1 thoughts, Mr. Decoulos?

2 MR. DECOULOS: I'm fine with that. My
3 concern is just how things are going to unfold
4 with tomorrow's scheduled hearing and whether my
5 witnesses need to be notified in case there's a
6 weather cancellation.

7 HEARING OFFICER: I expect tomorrow we
8 will go forward with the hearing. We won't know
9 whether there will be a cancellation of the
10 hearing tomorrow until tomorrow morning. I have
11 your numbers to contact you and let you know. I
12 think we should all assume it's going to go
13 forward unless you hear otherwise. It's my
14 understanding that most of the snow is going to
15 come this afternoon anyhow, so we should all be
16 ready to get up and go tomorrow morning.

17 With that said, Mr. Decoulos, could you
18 give me an estimate of the length of time you
19 expected to need to examine Mr. Jablonski?

20 MR. DECOULOS: 30 minutes.

21 HEARING OFFICER: Why don't we take
22 Mr. Jablonski first. Do you have a problem with
23 that, Mr. Decoulos?

24 MR. DECOULOS: You caught me a little

1 bit offguard.

2 HEARING OFFICER: Okay. Well, why don't
3 we take Mr. Jablonski after Mr. Phillips. Is it
4 Mr. Phillips; is that correct?

5 MR. PHILLIPS: That's correct.

6 HEARING OFFICER: Would that be okay
7 with you, Mr. Decoulos?

8 MR. DECOULOS: That's fine.

9 HEARING OFFICER: If you would like more
10 time to prepare for Mr. Jablonski, if this has
11 caught you offguard, we could even do it after a
12 lunch break, if you wish. Would you like to do
13 that?

14 MR. DECOULOS: Either that or a 5 minute
15 recess would be fine, as well.

16 HEARING OFFICER: Okay. Well, why don't
17 we see how Mr. Phillips' testimony goes, and we'll
18 either take Mr. Jablonski right after Mr. Phillips
19 or immediately after lunch. Is that acceptable to
20 you, Mr. Decoulos?

21 MR. DECOULOS: Yes.

22 HEARING OFFICER: Ms. Read?

23 MS. READ: Yes.

24 HEARING OFFICER: Mr. Jablonski?

1 MR. JABLONSKI: Yes.

2 HEARING OFFICER: Are there any other
3 matters that we need to take up before we begin?

4 MS. READ: May I just ask one logistical
5 matter? I assume that I need to ask my witnesses
6 to reaffirm their testimony before Mr. Decoulos
7 begins his cross-examination. Shall I do that
8 with their rebuttal testimony, as well?

9 HEARING OFFICER: That's correct. Good
10 question. I should have mentioned that, actually.
11 What we will do is I will swear in the witness,
12 and then you'll have an opportunity to present the
13 witness with his or his testimony. They can
14 quickly review it, ask them if they recognize it
15 as their testimony, ask them if they adopt that
16 testimony as theirs for purposes of this hearing,
17 and then we'll allow Mr. Decoulos to cross-examine
18 the witness.

19 MS. READ: Okay.

20 HEARING OFFICER: Any questions about
21 that, Mr. Decoulos?

22 MR. DECOULOS: No.

23 HEARING OFFICER: Any other questions or
24 issues to take up, Mr. Decoulos?

1 MR. DECOULOS: No.

2 HEARING OFFICER: With that said,

3 Ms. Read, why don't you call your first witness.

4 I assume it's Mr. Phillips, who is sitting next to
5 me.

6 MS. READ: Yes, it is.

7 HEARING OFFICER: Sir, could you please
8 state your full name for the record?

9 MR. PHILLIPS: Ian Michael Phillips.

10 HEARING OFFICER: Do you promise to tell
11 the truth, the whole truth, and nothing but the
12 truth?

13 MR. PHILLIPS: I do.

14 HEARING OFFICER: Okay. Thank you.

15 Ms. Read.

16 DIRECT EXAMINATION

17 BY MS. READ:

18 Q Good morning, Mr. Phillips. I'm handing you what
19 is marked as Exhibit B-6, and ask if you recognize
20 this as your direct testimony in this action?

21 A (Witness reviews document.) Yes, it is my direct
22 testimony in this action.

23 Q Similarly, I'm handing you what has been marked as
24 Exhibit B-62, your rebuttal testimony, and ask if

1 you recognize it as the rebuttal testimony that
2 you filed in this action?

3 A (Witness reviews document.) I recognize it as the
4 rebuttal testimony I filed in this action.

5 Q Do you adopt both the direct and the rebuttal
6 testimony that you previously filed in this action
7 for purposes of today's hearing?

8 A Yes.

9 Q If you were asked the questions in that testimony
10 today, you would give the same answers as you have
11 recorded there?

12 A I would give the same answers. There was a
13 sentence in there that I took a sentence from
14 Mr. Decoulos' report that had a followup table to
15 it, that had different data than was described in
16 the sentence. I referenced the sentence in my
17 report. But other than that, I'm comfortable with
18 what I've prepared.

19 MS. READ: Thank you.

20 HEARING OFFICER: Mr. Decoulos, you may
21 cross-examine Mr. Phillips.

22 CROSS EXAMINATION

23 BY MR. DECOULOS:

24 Q Good morning, Mr. Phillips.

1 A Good morning.

2 Q Your resume, which you included with your direct
3 testimony was proffered as Exhibit B-7; is that
4 correct?

5 A It's not attached to what I have here, but...

6 MR. DECOULOS: May I hand the resume to
7 the witness?

8 (Document tendered)

9 Q I'm just asking if that's the complete and entire
10 resume that you submitted as Exhibit B-7, which
11 was your resume?

12 A I believe so.

13 Q In your resume, on page 3 -- actually, page 4 of
14 5, you mentioned that you have prepared SPCC and
15 Facility Response Plans; is that correct?

16 A That's correct.

17 Q Could you describe for us what an SPCC plan is?

18 A The SPCC Plan relates and the Facility Response
19 Plan relate to facilities with larger storages of
20 oil. In this particular case, this was a project
21 that I had worked on on behalf of Boss Fuel at
22 Logan Airport.

23 Q When you say large storage, do you know how large
24 the storage of oil has to be?

1 Clean Water Act, which the SPCC Plan falls under,
2 and the need to harmonize with federal laws such
3 as the Clean Water Act. So part of the issues
4 that are at stake here are my compliance with 21E,
5 and that's why I believe that Mr. Phillips'
6 experience on preparations of plans under the
7 Clean Water Act are relevant to the issues here
8 under 21E.

9 HEARING OFFICER: Okay, well, you can
10 ask Mr. Phillips about his personal knowledge of
11 those requirements in that interplay that you were
12 talking about, and his general personal knowledge,
13 and try to establish how much he knows or doesn't
14 know about that.

15 Q Mr. Phillips, have you had a chance to review my
16 exhibits in this proceeding?

17 A I believe I went through all of them.

18 Q Would you dispute that this is Exhibit R-18 in my
19 list of exhibits?

20 A I would just have to look at the list to compare
21 it, obviously. There are many exhibits.

22 MR. DECOULOS: I'm handing the witness a
23 list of the web page that has been created, which
24 presents all of the exhibits in this matter.

1 HEARING OFFICER: I think we can
2 establish for the record that this is Exhibit
3 R-18. We can move on.

4 Q So at the bottom of page 2, which I have up on the
5 display screen, I'm going to hand you a hard copy
6 of it. At the bottom of the first column on page
7 2, it talks about what the purpose of SPCC plans
8 are, such as what you've prepared at Logan
9 Airport. Could you read that last paragraph as it
10 extends onto the top of the second column?

11 A "The purpose of the spill prevention control and
12 counter measure SPCC Rule is to help facilities
13 prevent the discharge of oil into navigable waters
14 or joining shore lines. This rule is a part of
15 the Environment Protection Agency's oil spill
16 prevention program, and was published under
17 authority of Section 311, Paragraph J,
18 Subparagraph 1, Subparagraph C of the Federal
19 Water Pollution Control Act (Clean Water Act in
20 1974). The rule may be found at Title 40, Code of
21 Federal Regulations, Part 1-12."

22 Q Thank you. Do you know what the requirements are
23 for preparing an SPCC Plan? You've prepared one
24 in Logan Airport, can you explain --

1 A It was many years ago that I worked on that
2 project. But fundamentally, it's identifying the
3 processes and measures to prevent releases to the
4 environment from oil storage.

5 Q I'm going to hand you the same exhibit, again, and
6 ask you to read the first sentence at the top of
7 the second column under the Subsection 1, which is
8 who is covered by the SPCC rule. Just that first
9 sentence, please.

10 A "A facility is covered by the SPCC rule if it has
11 an aggregate aboveground oil storage capacity
12 greater than 1,320 U.S. gallons or a completely
13 buried storage capacity greater than 42,000 U.S.
14 gallons and there is a reasonable expectation of
15 an oil discharge into or upon navigable waters of
16 the U.S. or adjoining shore lines."

17 Q Thank you. Now, at the top of page 6, column 1,
18 can you read that sentence that's highlighted?

19 A "Every SPCC plan must be prepared in accordance
20 with good engineering practices. Every SPCC plan
21 must be certified per a professional engineer
22 unless the owner/operator is able to and chooses
23 to self-certify the plan."

24 Q Thank you. Are you a professional engineer?

1 A I am not.

2 Q In your resume it says that you manage and
3 prepared the SPCC and Facility Response Plans for
4 the tank farm and fuel distribution system at
5 Logan International Airport. Who was the
6 professional engineer who prepared that plan?

7 A I don't remember who the professional engineer
8 was. It was at my previous firm.

9 MR. DECOULOS: Mr. Jones, I have a
10 section of Chapter 21E that I would like to
11 introduce that has not been introduced as an
12 exhibit, but it's a statute. I have copies of
13 what I'm going to hand to the witness, for you as
14 well as Ms. Read.

15 HEARING OFFICER: Mr. Decoulos, with
16 regard to statutes, regulations, other laws, you
17 don't need to introduce them as exhibits.

18 MR. DECOULOS: Right, that's what I
19 figured, but do you want a copy of what I'm going
20 to provide to Mr. Phillips now?

21 HEARING OFFICER: That would be fine.

22 Q Mr. Phillips, I'm handing you a copy of General
23 Laws Chapter 21E, Section 3. I would like for you
24 to read into the record Subsection C, which begins

1 with, "The Department shall."

2 A "The Department shall promulgate such regulations
3 as it deems necessary for the implementation,
4 administration and enforcement of this chapter.
5 FWPCA, CERCLA, and other pertinent laws. Such
6 regulations may include provisions waiving or
7 limiting the applicability of this chapter as to
8 any matter which the department determines to be
9 adequately regulated by another program or
10 government agency. The Department shall integrate
11 its implementation and enforcement of this chapter
12 with other programs established for the protection
13 of the public health, safety, welfare and the
14 environment."

15 Q Thank you very much.

16 HEARING OFFICER: Mr. Decoulos, just
17 also for your own benefit, because I know your
18 time is limited -- it's up to you how you want to
19 do it, but for example, when you're referring to a
20 provision of a regulation or statute, you can
21 simply refer to that, you don't have to have the
22 witness read it into the record. And that way, it
23 becomes part of the record, and that will save you
24 time as well. It's up to you.

1 MR. DECOULOS: I understand.

2 HEARING OFFICER: Sometimes there's a
3 particular purpose why one might want to have
4 something read into the record. Perhaps you want
5 to draw attention to that and focus on specific
6 sections or sentences of that. So it's completely
7 up to you as to whether you want to do that. But
8 I just wanted to let you know that you don't need
9 to do that because your time is limited. So it's
10 up to you.

11 MR. DECOULOS: Thank you. That's
12 probably the last time that I'm going to read a
13 regulation or statute into the record.

14 HEARING OFFICER: Well, again, it's your
15 choice.

16 Q Mr. Phillips, do you recall from Exhibit R-18 --
17 well, let me put it back up on the board, if you
18 would like. Do you recall what that threshold
19 requirement was for aboveground oil storage that
20 was on Exhibit R-18.

21 A 1,320 U.S. gallons.

22 Q What I'm going to put up on the display is
23 photographs that have been introduced into the
24 record. Have you had a chance, Mr. Phillips, to

1 look at photographs that have been put into the
2 record that are on my website?

3 A I have looked at -- I think I've looked at all of
4 them.

5 Q What I have up on the screen right now is
6 photograph Number 3.

7 HEARING OFFICER: Mr. Decoulos, for
8 purposes of the record, remind me, these
9 photographs are at R what on your website? I
10 don't recall specifically where they are.

11 MS. READ: I believe it's R-2.

12 HEARING OFFICER: Is it R-2?

13 MS. READ: Excuse me. RR-2. I believe
14 it's the first exhibit after his rebuttal
15 testimony, Mr. Decoulos' rebuttal testimony.

16 HEARING OFFICER: RR-2, and this is the
17 third photograph at RR-2?

18 MR. DECOULOS: Yes. And all of the
19 photographs are listed numerically. As I'm going
20 to presenting them today, these numbers will be
21 consistent with what's on the website. Because
22 what the website is actually doing is hyperlinking
23 to what they call Picasa Web Album.

24 HEARING OFFICER: I understand.

1 MR. DECOULOS: So these photographs were
2 downloaded directly from the Picasa Web Album, and
3 are being presented to the witnesses in that same
4 numerical order.

5 Q Mr. Phillips, Exhibit RR-58 was a Notice of
6 Responsibility that was issued to Richard Nantais
7 for a release of petroleum that occurred at 132
8 Main Street in Carver, identified as Release
9 Tracking Number 4-12848, and it's dated August 11,
10 1997. I'm going to hand this exhibit to you and
11 ask for you to read the last word on page 2 and
12 the first sentence of page 3.

13 A "The historic activities are not well known, but
14 do include an auto junkyard operation."

15 Q Thank you. So do you agree that the Department of
16 Environmental Protection, DEP, has admitted that
17 historic activities at 131 Main Street include an
18 auto junkyard operation?

19 A I didn't look at the beginning of that letter to
20 know who it was from or to. (Witness reviews
21 document.) That does appear to be a conclusion
22 reached by the department.

23 Q Now, photograph 3 that I have up on the screen is
24 an ariel photograph that I purchased from Eastern

1 Topographics, dated April 15, 1992. Do you agree?

2 A That's what's referenced on the screen.

3 Q If I zoom in on this photograph, can you identify
4 where I've zoomed in at is the Eagle Gas site,
5 that's the main thrust of this hearing, at 131
6 Main Street? Do you want me to zoom out?

7 A No, that looks approximately where it is.

8 Q Now, if I zoom in to the southerly portion of the
9 facility, do you think that what we're looking at
10 on April 15, 1992 could be an automotive junkyard?

11 A It looks like an open lot. I'm not sure whether
12 it's an automotive junkyard or not.

13 MS. READ: I would just like to note my
14 objection to the relevance of this document, given
15 that it is dated in 1992, and the work that is at
16 issue in this proceeding took place in 2003 to
17 2005. And also, I just want to reserve -- I'm not
18 waiving any objection as to the witness' adoption
19 of this exhibit and his own knowledge. I
20 understand that his testimony is simply
21 characterizing what he sees in the photograph.

22 HEARING OFFICER: Objection noted.

23 Q Mr. Phillips, showing you Figure 4, which was a
24 photograph shot at the rear yard of the Eagle Gas

1 site in 1997, which is noted, do you agree?

2 A Only to the extent that it says that on the
3 screen.

4 Q I'm going to show you Figure 5 next, Figure 6, and
5 Figure 7. Given those photographs, do you think
6 that there's a possibility that there may have
7 been more than 1,320 gallons of oil stored at the
8 Eagle Gas site in 1997?

9 A I would have no way of determining that.

10 Q Just a possibility, that's all I'm asking.

11 A If the photographs represent everything that was
12 there, it would be unlikely.

13 Q I'm going to hand you Exhibit RR-6, which is an
14 audit site inspection conducted by Thomas Potter
15 on August 19, 1998. Can you read me what's
16 highlighted?

17 A I'm not sure what it says. It says, "Mr. Nantais
18 install a drainpipe to pump -- something --
19 from -- something -- excavation pipe exist today."
20 That's the best I can make of that.

21 Q Thank you.

22 MS. READ: Again, I would just like to
23 register my objection to the relevance of this
24 evidence, given that it dates from 1998, which is

1 five years prior to the earliest work by
2 Mr. Decoulos.

3 HEARING OFFICER: Objection noted.

4 Mr. Decoulos, do you have any evidence to
5 establish that this was the condition of the
6 property on or immediately before the time of the
7 releases at issue here?

8 MR. DECOULOS: No. But part of my
9 testimony, your Honor, relates to the contaminated
10 stormwater outfall, which is the primary issue
11 here, that the contamination at that outfall was
12 due to historic surface releases. So that's the
13 relevancy of this information. I'm done with the
14 historic information, by the way.

15 HEARING OFFICER: That's fine, you can
16 take your time on it. I was just asking if there
17 was any additional evidence to establish that the
18 circumstances more proximate to the time of the
19 releases were similar to what appears in the
20 photographs here. I understand your position.
21 The exhibits will remain in the record. I
22 understand Ms. Read's objection to them, as well.
23 And that will go to the weight that I attach to
24 those exhibits.

1 MR. DECOULOS: Thank you.

2 Q Mr. Phillips, on November 12, 2010 I submitted
3 supplemental rebuttal testimony in this matter and
4 stated that --

5 HEARING OFFICER: Which supplemental
6 rebuttal testimony is this?

7 MR. DECOULOS: It's supplemental
8 rebuttal testimony Number 2, which is Exhibit
9 RR-56.

10 Q Can you read for me paragraph 9 of my testimony?
11 It's highlighted.

12 A Paragraph 9. "Based on topography shown in the
13 site plan presented as Exhibit RR-8, which was the
14 same as that presented in the 24-by-36 site plan
15 inserted in the Phase I initial site investigation
16 and Tier Classification, dated April 30, 2004
17 (Exhibit B-30), oil spills and stormwater surface
18 flows from an auto junkyard operation on the
19 easterly and southeasterly areas of the Eagle site
20 would flow to the downgradient catch basins shown
21 in Exhibit RR-8 (AKA CB4)."

22 Q Thank you. I'm going to pull up that site plan.

23 MR. DECOULOS: Would it help this
24 forum -- I also have a hard copy of it, which is a

1 chalk. By the way, I should have described for
2 the forum the chalks that I have provided today.

3 HEARING OFFICER: So you have the same
4 chalk on the hard copy as well as on your overhead
5 projector?

6 MR. DECOULOS: That's correct.

7 HEARING OFFICER: Are you going to be
8 asking Mr. Phillips questions about the chalk?

9 MR. DECOULOS: Yes.

10 HEARING OFFICER: Why don't we first
11 talk about the chalk because I believe -- is this
12 the chalk that you had objections to, Ms. Read?

13 MS. READ: If it's the one that is
14 showing right now, no. In general, I would have
15 no objection to site plans that came from
16 submittals by Mr. Decoulos to MassDEP, with the
17 one exception that I've noted previously that was
18 actually created after his work. Perhaps we
19 should talk about that one as such time as he
20 presents it. But in general, I have no objection
21 to the use of blowups of site plans that were in
22 submittals.

23 HEARING OFFICER: So this is actually an
24 exhibit, Mr. Decoulos, that you've submitted?

1 MR. DECOULOS: It's part of an exhibit.

2 HEARING OFFICER: So it's a blowup of an
3 exhibit.

4 MR. DECOULOS: Well, it's not a blowup,
5 it's actually to scale from the exhibit.

6 HEARING OFFICER: Understood. What
7 exhibit is this?

8 MR. DECOULOS: B-30. So what I'm
9 presenting is Appendix A from Exhibit B-30.

10 HEARING OFFICER: That's fine. You may
11 ask Mr. Phillips questions about that. It's up to
12 you whether you wish to use simply the hard copy
13 or also the image projected by the projector.

14 MR. DECOULOS: It may be easier to
15 actually use the image, and I've got a laser
16 pointer here that can help.

17 HEARING OFFICER: That's fine.

18 MR. DECOULOS: Give me a moment to pull
19 it up. This is Exhibit B of Exhibit B-30.

20 HEARING OFFICER: Appendix B or Exhibit
21 B?

22 MR. DECOULOS: I'm sorry. Appendix B of
23 Exhibit B-30.

24 Q Mr. Phillips, in my testimony, that supplemental

rebuttal testimony Number 2 that I filed that you read into the record, I stated that the southerly portion of the property here was likely to flow in which direction again? That it would flow to a downgradient catch basin in Exhibit RR-8.

Now Exhibit RR-8 is the disputed exhibit that the Board is contesting.

HEARING OFFICER: Do you need that for purposes of what you're doing now? Can't you just ask him questions about this?

MR. DECOULOS: I can do that.

HEARING OFFICER: I'm just trying to,
again, help you save time.

Q So on this Exhibit B-30, Appendix B, again, I stated in my testimony that oil spills and stormwater surface flows from an automotive junkyard operation on the easterly and southeasterly areas of the Eagle site would flow to a downgradient catch basin, which I'm alleging is identified in front of the property at 133 Main Street. Do you see where I'm pointing?

HEARING OFFICER: Is that identified as
DMH-127?

MR. DECOULOS: No, it's identified as CB

1 on this site plan, and in parenthesis 24 PPM.

2 HEARING OFFICER: Okay.

3 Q Would you dispute that testimony that I made?

4 A I don't know whether that area is paved or not
5 that you've been talking about and how much
6 infiltration or how much stormwater flow runoff
7 would be, nor do I know what the topography lines
8 on that map are actually depicting without knowing
9 what the specific elevations are, to tell you
10 whether it slopes in that direction or not.

11 Q Thank you. Now, on December 10, 2004, there was a
12 response to a fuel oil spill at the Eagle Gas
13 site, which is shown in photographs 93 through
14 103. And I'm going to put those photographs up on
15 the display screen. We're looking at photograph
16 93 right now, which again was a spill that
17 occurred on December 10, 2004. 94. 95.

18 Do you recognize -- first off, we're
19 looking at photograph 97 right now. Have you ever
20 visited the Eagle Gas site at 131 Main Street in
21 Carver?

22 A I have never been on the property, but I have been
23 to the site.

24 Q Does that mean you've stepped onto the property?

1 A I did not step onto the property.

2 Q So you've been on the Main Street right-of-way?

3 A I have been on the Main Street, yes, I have.

4 Q Does photograph 97 look like a familiar portion of
5 the Main Street right-of-way that you've been on
6 in the Town of Carver?

7 A Yes, it does.

8 Q Could you confirm or deny what the caption of that
9 photograph is?

10 A Would you like me to read the caption into the
11 record?

12 Q Sure.

13 A "97 - Emergency Spill Response with DEP employee
14 Cynthia Baran observing flow into downgradient
15 catch basin. December 10, 2004."

16 Q Showing you photograph 98, 99 --

17 HEARING OFFICER: Mr. Decoulos, I don't
18 think there's any dispute that that catch basin is
19 downgradient from the property; is that correct,
20 Ms. Read?

21 MS. READ: That's correct.

22 Q I'm going to hand you Exhibit RR-65, which
23 describes another spill of petroleum that occurred
24 at the Eagle Gas site in 2005. Do you agree that

1 that's what that e-mail describes?

2 A (Witness reviews document.) This appears to be two
3 e-mails, one from a Chief Craig Weston to Cynthia
4 Baran at DEP, and a response from Ms. Baran to
5 Chief Weston with regard to a spill of
6 approximately 5 gallons of gasoline on November 7,
7 2005.

8 Q Thank you. I'm going to hand you Exhibit RR-27.
9 Can you read the highlighted section on page 2. I
10 will pull it up on the screen here. Can you tell
11 me what this exhibit is entitled?

12 A This appears to be a printout from the DEP web
13 page, title in the right-hand side under Water,
14 Wastewater and Wetlands, there's a title called
15 Nonpoint Source Pollution Education: Motor Oil.

16 Q That section that I asked you to read on page 2,
17 can you read that again?

18 A "Oil that leaks from our cars onto roads and
19 driveways is washed into storm drains and then
20 usually flows directly into a lake or stream.
21 Used motor oil is the largest single source of
22 pollution in lakes, streams and rivers."

23 Q Can you read the next sentence after that?

24 A "Americans spill 180 million gallons of used oil

1 each year into the nation's waters."

2 Q Thank you.

3 MS. READ: I would just like to note for
4 the record that the Board is not disputing the
5 contents of these exhibits.

6 HEARING OFFICER: Again, Mr. Decoulos,
7 if you want to save yourself time, to the extent
8 that something is not disputed, you may want to
9 simply move on --

10 MR. DECOULOS: I'm done.

11 HEARING OFFICER: -- and know that it's
12 in the record. Then at the end of the
13 adjudicatory hearing, what I will have the parties
14 do is submit closing briefs, and then you can make
15 arguments as to why you believe your evidence
16 shows, and the Board doesn't, your points. So to
17 the extent that something is already in evidence
18 and not disputed, you may not want to waste your
19 time on it and move on. Again, that's up to you.

20 MR. DECOULOS: No, I'm done. Thank you.

21 Q Mr. Phillips, I'm handing you your rebuttal
22 testimony, Exhibit B-62, and I have highlighted
23 lines 18 through 23 on page 2. Can you read that,
24 please?

1 A "Furthermore, for surface runoff to cause the
2 gross contamination observed on multiple occasions
3 at the outfall to the brook, as Mr. Decoulos
4 opined, the amount of contamination on the surface
5 of the gas station would have to be comparable to
6 the amount of contamination at the outfall.
7 Mr. Decoulos has not presented any evidence that
8 gross volumes of contamination were present on the
9 surface of the station."

10 Q Thank you. Do you agree that your experience in
11 preparing SPCC plans, surface spills that occurred
12 on December 10, 2004 and in November of 2005,
13 November 7, 2005, could have occurred other times?
14 Do you believe that there could have been other
15 surface spills other than what's in the record of
16 December 10, 2004 and November 7, 2005 at this gas
17 station?

18 A I have no basis for an opinion either way on that.
19 There was nothing in the record that I read that
20 indicated that it was more often than that or less
21 often than that, for that matter.

22 Q Do you agree that spills that occur on the
23 concrete pad of the gas station of any size,
24 whether they're from a drip to 100 gallons, would

1 eventually flow on the surface and into South
2 Meadow Brook, based on your knowledge of the site?

3 A It would depend on the weather, it would depend on
4 a lot of features. Gasoline, for example, is a
5 volatile substance. It will volatilize into the
6 atmosphere and may not come to be there. It's
7 hard to say what would happen exactly. But if you
8 were in a rain event and the water was washing off
9 of that paving, that the water washes to the catch
10 basin. That's for sure.

11 Q Do you know which catch basin a spill would run to
12 from the concrete pad at the Eagle Gas Station?

13 A I would presume it would be running down the
14 street towards the catch basin in front of 133
15 Main Street.

16 Q Have you ever designed a stormwater collection
17 system?

18 A I have not.

19 Q Do you know the difference between a drainage
20 manhole and a catch basin?

21 A I do, generally.

22 Q Could you explain?

23 A A catch basin collects surface runoff. A drainage
24 manhole is generally a spot that does not collect,

1 but brings together various lines or presents an
2 opportunity to go in and inspect and clean out the
3 lines.

4 Q Thank you.

5 HEARING OFFICER: Mr. Decoulos, just for
6 my own purposes, are there any other -- well, I'm
7 going to save that. Nevermind, I'm going to save
8 it for later. You may resume.

9 Q I would like to have the witness go to Chalk
10 Number 1, which is Existing Site Plan, Figure
11 Number 4, from an IRA status report prepared in
12 June of 2003.

13 HEARING OFFICER: Well, let me ask you
14 this, Mr. Decoulos. Is this an exhibit in the
15 record?

16 MR. DECOULOS: Yes.

17 HEARING OFFICER: Which exhibit is it?
18 Let's reference whatever you're going to be
19 referring us to in terms of the exhibit
20 number that you've already established.

21 MR. DECOULOS: This is the Board's
22 Exhibit B-21, dated July 3, 2003. And again, I
23 would like to have the witness go up to the chalk,
24 which we can identify as Chalk Number 1.

1 HEARING OFFICER: We don't need to
2 identify it as Chalk -- are we talking about
3 Exhibit B-21?

4 MR. DECOULOS: We're talking about
5 Figure 4 in Exhibit B-21.

6 HEARING OFFICER: Okay, then let's
7 reference it that way.

8 MR. DECOULOS: It's just that I would
9 like to have the witness mark this plan, which I
10 have as a chalk, and I would like to introduce his
11 markings and other witnesses' markings into the
12 record, if that's allowed.

13 HEARING OFFICER: You may do that. Do
14 you have any objection to that, Ms. Read?

15 MS. READ: No.

16 HEARING OFFICER: Where is this, Mr.
17 Decoulos, that you're referring to that you want
18 him to mark up?

19 MR. DECOULOS: On the plan.

20 HEARING OFFICER: Okay. Is this
21 currently identified as Chalk 1?

22 MR. DECOULOS: That's what I would like
23 to do is I would like to introduce it and identify
24 it as Chalk 1.

1 HEARING OFFICER: Why don't you identify
2 it as Chalk 1.

3 MR. DECOULOS: So, again, Chalk 1 is
4 entitled Existing Site Plan, Eagle Gas Station,
5 Carver, Massachusetts. Prepared by Decoulos &
6 Company. Date: June 2003. Scale 1 inch equals
7 40, Figure Number 4.

8 HEARING OFFICER: And, again, for
9 purposes of clarity, Mr. Decoulos, this is from
10 Exhibit B-30, Appendix B; is that correct?

11 MR. DECOULOS: No. This is Exhibit
12 B-21.

13 Q Mr. Phillips, what I would like to have you do is
14 identify the catch basins and drainage manholes in
15 front of the Eagle Gas Station that are on this
16 plan in blue with this pen that I'm handing you.
17 Then I would like for you to identify which
18 direction the surface water is flowing on that
19 stormwater collection system.

20 A So you want the catch basins that are in front of
21 the property?

22 Q Right.

23 HEARING OFFICER: Why don't you identify
24 those with CB-1, CB-2, et cetera.

1 MR. DECOULOS: That would be a good
2 idea.

3 Q Maybe start upgradient.

4 A I'm assuming that this is the property boundary.
5 First one, CB-1, CB-2, CB-3. There's a catch
6 basin there. CB-4.

7 Q Now, if you could identify the drain manholes.

8 HEARING OFFICER: Why don't we call
9 those DMH-1, DMH-2, et cetera.

10 A DMH-1, DMH-2, and DMH-3.

11 Q Now, can you also identify on this chalk the
12 direction in which the stormwater collection
13 system flows?

14 A This does not indicate that, based on my visit to
15 the area. Generally, the topography is flowing
16 overall to a south, southeasterly direction.

17 Q Could you identify which direction the stormwater
18 collection system is flowing, based on your review
19 of the exhibits and your understanding of the
20 facts in this matter?

21 A Yes.

22 Q Could you identify with the large arrow which
23 direction stormwater would be flowing?

24 A In the stormwater system?

1 Q Yes.

2 A (Witness complies.)

3 Q Now, in your testimony, at page 5 --

4 A Would you like me to stay here?

5 Q Yes.

6 -- on line 6 to 8, you mentioned that
7 "He," and that's me, "did not assess the potential
8 for LNAPL to enter the stormwater drainage piping
9 through joints and/or cracks and, therefore, his
10 conclusion that the piping was not acting as a
11 preferential pathway was not supported."

12 Could you show us where joints and/or
13 cracks that you're referring to. If you want, I
14 can hand you your testimony again. Again, that's
15 lines 6 through 8. Could you show us where cracks
16 might be in that stormwater piping that you were
17 referring to in your testimony?

18 A It could be anywhere on the length of this
19 stormwater piping that's shown on this picture.
20 It was never assessed.

21 Q So you weren't referring to where the diesel
22 release that I was assigned to address? You
23 weren't referring to that?

24 A The extent of the diesel release that is the

1 subject here was never assessed to its extent to
2 figure out where the migration pathways were. It
3 appeared to be in contact with the storm drains in
4 various locations, and may have been in more
5 locations than even those ones identified.

6 Q I'm going to put Exhibit B-41 up on the display
7 screen.

8 HEARING OFFICER: Do you want
9 Mr. Phillips to continue standing?

10 MR. DECOULOS: Yes, I want him to
11 continue to stand. Thank you.

12 Q In Exhibit B-41 there was a site plan identified
13 as Figure 1. Do you agree?

14 A This is Figure 1, and it's dated December 2004.

15 Q Now, on this figure, can you tell me if I
16 identified the approximate extent of NAPL?

17 A You have presented your opinion as to the
18 approximate extent of NAPL.

19 Q Could you draw that approximate extent on Chalk
20 Number 1?

21 HEARING OFFICER: Mr. Phillips, could
22 you show me where you're referring to on the
23 overhead?

24 THE WITNESS: It's this line here.

1 HEARING OFFICER: I see.

2 A It extends from the building, incorporates 5RR,
3 which is the subject of the original notification.
4 It includes a number of the borings approximate to
5 the storm drain line, extends quite far into the
6 street and ends abruptly here.

7 I'm sorry. SO what did you ask me to
8 do? I'm sorry.

9 Q That's okay. Just for the record, too, just for
10 your understanding, when you say "here," it will
11 be helpful for the record for you to describe,
12 similar to what you did with the building, that it
13 ends at the proposed trench, for instance, shown
14 on Figure 1, so that the record reflects where you
15 were pointing.

16 HEARING OFFICER: Well, I think the
17 approximate extent of the NAPL speaks for itself
18 on that exhibit with the dashed line and the arrow
19 projecting from the label, approximate extent of
20 NAPL. So that speaks for itself.

21 Q So, again, what I would like for you to do is
22 approximately identify that extent on Chalk 1.

23 MS. READ: I would object to this. The
24 approximate extent is noted on the exhibit that is

1 being projected. This witness is simply --
2 there's just no basis here, no tools allowed here
3 for the witness to transfer the scale of what's
4 projected on the wall to the chalk. And, as I
5 said, the approximate extent, according to
6 Mr. Decoulos, is a matter of record. It's in the
7 exhibit that is being projected.

8 HEARING OFFICER: What's the purposes of
9 asking him to transfer onto your Chalk 1,
10 Mr. Decoulos?

11 MR. DECOULOS: Just to show where the
12 diesel NAPL impact intercepted the stormwater
13 drain.

14 MS. READ: I think that's a matter of
15 record on what's being projected.

16 HEARING OFFICER: And you can't do that
17 with the exhibit shown on -- you can have him
18 describe that on the exhibit shown on the wall.

19 MR. DECOULOS: I can. It's just that
20 there's some other questions that this is going
21 into.

22 HEARING OFFICER: I share Ms. Read's
23 concern. There is no way for him to accurately
24 transfer it onto Chalk 1. So it does raise issues

1 of concern, unless you can identify some
2 triangulation points where he can accurately
3 portray it onto Chalk 1.

4 MR. DECOULOS: Okay, that's all right.
5 It's not necessary.

6 Q So in your testimony you talked about the
7 potential for LNAPL to enter the stormwater piping
8 through joints or cracks, and that I concluded
9 that the piping was not acting as a preferential
10 pathway, and those conclusions were not supported.
11 What I would like to know from you is if LNAPL was
12 entering the drainage piping through joints and/or
13 cracks, as you allege, where do you think the
14 diesel NAPL would enter the storm drain piping as
15 shown on Chalk 1?

16 A That would have been the subject of the further
17 investigations that should have been performed,
18 including the video survey of the lines, as well
19 as investigations as described in my opinion. I
20 don't know the answer as to where it is. That's
21 not my assignment. My assignment is to look at
22 what we've done and answer the question as to
23 whether that had been adequately characterized.
24 Concentrations at the outfall were 3,000 parts per

1 million of total petroleum hydrocarbon. There is
2 no other source identified that could account for
3 that.

4 Q Could you confirm, based on your review and your
5 analysis, that the approximate extent of NAPL as
6 shown on Exhibit B-41 was roughly accurate? Were
7 you able to do that?

8 A Actually, I cannot do that. If you look at the
9 depiction here, there are no wells in this
10 vicinity here that serve as really the basis for
11 this line to the southern most portion of it. You
12 have DCW-1, which ended up having some indication
13 of product in it at some point, but there's
14 nothing in this area here to serve as the basis
15 for this whole portion of the line.

16 HEARING OFFICER: When you're talking
17 about this whole portion of the line, you're
18 referring to the southeastern border of
19 Mr. Decoulos' delineated approximate extent of
20 LNAPL; is that correct?

21 THE WITNESS: It's really the southern
22 side of it. The groundwater gradient is flowing
23 to the southeast, but it is essentially to the
24 south if you consider Main Street running

1 north/south.

2 Q I'm going to put up Exhibit B-53, which is an
3 exhibit presented by the Board, which was the
4 Phase II Comprehensive Site Assessment by ECS,
5 dated November 10, 2006. Do you agree that this
6 is the Phase II report prepared by ECS on
7 November 10, 2006?

8 MS. READ: Objection. There's no
9 dispute about the document.

10 HEARING OFFICER: You can move on,
11 Mr. Decoulos.

12 MS. READ: I would also just like to
13 note that I don't believe Mr. Phillips entered any
14 testimony about this particular exhibit. I'm
15 willing to be somewhat flexible about the
16 questioning, but I just want to note that for the
17 record.

18 HEARING OFFICER: How do you intend
19 to -- what's your line of questioning regarding
20 this for Mr. Phillips?

21 MR. DECOULOS: He's alleging that I did
22 not properly assess and delineate the extent of
23 NAPL, so I'm trying to refute those allegations.

24 HEARING OFFICER: Understood. Go ahead.

1 Q So ECS prepared a figure in this exhibit. Can you
2 read into the record what this title block is?

3 A "Eagle Gas, 131 Main Street, Route 58, Carver,
4 Massachusetts, Area Plan and Disposal Site
5 Boundary. Figure Number 3, dated October 2006."

6 Q Now, in this site plan, do you agree that ECS
7 prepared a legend?

8 A There is a legend on the site plan, yes.

9 Q What is the identifying marker for the disposal
10 site boundary?

11 A It is a dark line.

12 Q Can you identify where the dark line is on the
13 exhibit on the figure?

14 A The dark line is as depicted on the figure, it
15 includes an area in front of 131 -- in front of
16 the Eagle Gas site, which is 131 Main Street, and
17 includes the entire stormwater lines from in front
18 of the Eagle Gas Station to the outfall. Then
19 there's an inset, which is further down on the
20 picture, and I don't know how that depicts the
21 site boundaries on that inset. I don't know. I
22 can't see that in what you're showing.

23 Q Minus the stormwater collection system, which is
24 shown as a thick line, could you agree that the

1 extent of the LNAPL that ECS has identified is
2 roughly the same as what I showed on the December
3 2004 site plan that we just looked at, Exhibit
4 B-41?

5 A It looks like it extends quite a bit of a distance
6 further to the south in what you depicted, but I
7 would have to compare the two of them side by
8 side.

9 Q So I have Exhibit B-41 off on the right side of
10 the display screen, and then Exhibit B-53 on the
11 left side. Do you want me to do anything to help
12 you make that comparison any better?

13 A No, I think that's okay for right now. The ECS
14 boundary to the south extends all the way to the
15 existing tanks to the south and down to DCW-4 is
16 depicted there whereas on the --

17 HEARING OFFICER: Mr. Phillips, could
18 you show me where DCW-4 is on Mr. Decoulos'
19 drawing?

20 THE WITNESS: DCW-4 is here.

21 HEARING OFFICER: Thank you.

22 MR. DECOULOS: I have laser points, if
23 it helps.

24 HEARING OFFICER: Yes, you could use the

1 laser pointer, Mr. Phillips, that would be easier.

2 A So as I was describing, this site boundary here or
3 the southern site boundary is approximately a line
4 from about DCW-4 all the way across the tanks.

5 That would be this additional area to the south on
6 the Decoulos figure. I don't remember what the
7 scale is here, but it's some additional distance
8 in that direction. It extends beneath the
9 building, so further to the west, and does not --
10 it's a little hard to say what the northern
11 boundary is in comparison, because I can't tell
12 where each of the items are.

13 Q How about to the east?

14 A To the east, EOW-1, EOW -- it looks like it's
15 about the same there, though the same markings
16 aren't present. EOW-2 and EOW-1 are not shown on
17 the Decoulos figure here.

18 Q Does it make sense that ECS should show the
19 boundaries of NAPL contamination in a geometric
20 rectangular fashion?

21 A Could you please go back to the legend?

22 Q Sure.

23 A They're depicting areas of the disposal site
24 boundary, which is different than the NAPL

1 depiction. Is that your question?

2 Q Yes. Can you explain for the record the
3 difference between the delineation of NAPL and the
4 disposal site boundary?

5 A The disposal site boundary under the Massachusetts
6 contingency plan is to find where contamination
7 has come to be. The NAPL boundary would be based
8 on measurements taken in the field as to where the
9 separate phase petroleum was detected.

10 Q So would the NAPL boundary extend beyond the
11 boundaries of the disposal site boundary?

12 A It would not be expected to, no.

13 Q In fact, under the Massachusetts Contingency Plan,
14 it can't, can it?

15 A No, because the disposal site is defined as where
16 contamination has come to be.

17 Q Assuming that the NAPL that ECS has identified
18 here is within this disposal site boundary, where
19 do you think the NAPL would flow into the
20 stormwater collection system?

21 MS. READ: I would like to state an
22 objection here. My understanding of Mr. Decoulos'
23 line of testimony is that he's trying to
24 understand whether the ECS submittal substantiates

1 the correctness of Mr. Decoulos' submittals. That
2 is not what is at issue in this proceeding. What
3 is at issue in this proceeding is whether
4 Mr. Decoulos collected sufficient data to
5 substantiate his own opinions and whether --

6 So I would just object to spending a
7 significant amount of time trying to substantiate
8 the validity of Mr. Decoulos' opinions by
9 reference to other opinions of other LSPs. The
10 ECS plan was entered into evidence for a limited
11 purpose, which was simply to show that certain
12 types of assessment efforts were possible and were
13 performed by others, not that they came up with
14 correct answers about this site.

15 HEARING OFFICER: How do you respond to
16 that, Mr. Decoulos?

17 MR. DECOULOS: I'm being charged with
18 violations of professional competency and
19 professional responsibility under 309 CMR
20 4.03(3B). And I'm being charged with not
21 following the requirements and procedures set
22 forth under General Law Chapter 21E and 310 CMR
23 40. I think I have a right if the Department and
24 the LSP Board maintain that ECS and CEA, the

1 subsequent LSP of record, if their work allegedly
2 comported with the statute and the regulations, I
3 think I have a right to compare my investigative
4 work to theirs.

5 HEARING OFFICER: I think his comparison
6 is relevant. I will attach the appropriate amount
7 of weight to it, but I think it's certainly
8 relevant. It's appropriate for him to ask
9 questions about this.

10 MS. READ: I note my objection for the
11 record. Thank you.

12 HEARING OFFICER: Yes.

13 Q Mr. Phillips, can you describe where the
14 stormwater collection system would be impacted
15 from the rectangular disposal site boundary that
16 ECS has shown on Exhibit B-53?

17 A Based on their work, they are showing that the
18 boundary that the stormwater system is impacted at
19 the intersection approximately around DCW-4.
20 That's what they're showing.

21 Q That's the southerly most boundary of their
22 impact?

23 A Based on the drawing that is presented, yes.

24 Q With north being shown on the upper right-hand

1 corner of the figure?

2 A Again, assuming that I'm using north and south --
3 assuming that Main Street runs north/south.

4 Q Well, I'm just asking for you to interpret the
5 north arrow shown on this plan.

6 A What's your question about the north arrow on the
7 plan?

8 Q I'm just asking you to identify which bearing
9 direction the disposal site boundary has extended
10 to the south and impacted the stormwater
11 collection system?

12 A The stormwater collection system is running from
13 the boundary approximately DCW-4. It runs
14 approximately in a -- it would be helpful if you
15 can keep doing that because I can't follow the
16 line.

17 Q You can use the laser pointer again, if you want,
18 Mr. Phillips.

19 A That's okay. It's flowing in a southeasterly
20 direction for some distance and then jogs to more
21 of an east southeasterly direction.

22 Q So if diesel NAPL is within that geometric
23 rectangle that ECS is showing on the disposal site
24 boundary, where would the stormwater collection

1 system first be impacted approximately? If could
2 identify that on Chalk 1, I would appreciate it.

3 A On Chalk 1?

4 Q Yes.

5 A I can't identify it on Chalk 1 for the reasons we
6 talked about before, but it would be somewhere, in
7 ECS's opinion, somewhere within that box.

8 Q If diesel NAPL within that box was to flow into
9 the stormwater collection system --

10 HEARING OFFICER: The box we're talking
11 about, just for purposes of the record, is ECS's
12 LNAPL delineation at the property?

13 THE WITNESS: That's actually not the
14 LNAPL delineation --

15 HEARING OFFICER: I'm sorry. The
16 disposal boundary site.

17 THE WITNESS: The disposal boundary
18 site, yes.

19 Q So again, what I'm trying to discern is in your
20 testimony you stated that I did not assess the
21 potential for LNAPL to enter the stormwater
22 drainage piping through joints and/or cracks, and
23 therefore, his conclusion that the piping was not
24 acting as a preferential pathway was not

1 supported. So what I'm trying to determine here
2 is where the LNAPL would enter the stormwater
3 drainage piping.

4 A This is just ECS's opinion, it has nothing to do
5 with my opinion. My opinion would be that it is
6 somewhere along the piping. It's hard to say
7 exactly where along the piping it is because that
8 was not assessed. That's the point of discussion
9 here is that we needed to look at where along that
10 piping that contamination was entering into the
11 piping because of the very high concentrations,
12 the gross contamination down at the outfall.

13 Q Isn't it true that if diesel NAPL was within the
14 disposal site boundary as shown in the box of the
15 ECS site plan, that that diesel NAPL would flow
16 into the stormwater collection system within a
17 confined limited length?

18 A As it's depicted here, it would be the entire
19 length of the entire system that they define as
20 the disposal site boundary. I have no basis to
21 tell you where within both the box shown on the
22 property, as well as along the line that it's
23 entering into that system. That is the nature of
24 what needed to be done.

1 Q But at some point on this figure, doesn't the box
2 intersect the solid line?

3 A The box is composed of the solid line. I'm sorry,
4 I'm not following your question.

5 Q Can you agree that there's a box on this figure
6 that's hatched?

7 A Yes, there's a hatched box on that. It's part of
8 the disposal site within -- the hatched area is
9 within the disposal site boundary.

10 Q Can you point to where that hatched box intersects
11 a solid line that runs to the southeast?

12 A The solid line being part of the disposal site
13 boundary?

14 HEARING OFFICER: Mr. Decoulos, for
15 purposes of the record, it's perfectly clear where
16 that intersection is. And the intersection, just
17 for purposes of the record, that you're talking
18 about is the intersection of the hatched box, the
19 boundary site disposal site where it intersects
20 the line, the site disposal line projecting to
21 the -- I guess that would be the southeast.
22 That's perfectly clear on the exhibit.

23 MR. DECOULOS: Okay.

24 HEARING OFFICER: And just for purposes

1 of record, it's close -- it's almost right where
2 it says DCW-4.

3 MR. DECOULOS: That's what I'm trying to
4 get the witness to testify to, your Honor.

5 HEARING OFFICER: The way to do this in
6 the future. You don't have to have him testify to
7 that. You could just say, "Mr. Phillips, I'm
8 going to direct your attention to the intersection
9 of such and such line with the hatched box where
10 it says DCW-4, and I'm going to ask you questions
11 about that." Do you see where I'm referring?

12 MR. DECOULOS: Okay.

13 Q Can you agree, Mr. Phillips, that the area of the
14 box in proximity to DCW-4, as I'm pointing here
15 with the laser pointer, is a point where the
16 disposal site boundary becomes a cross-sectional
17 area, and it then becomes a solid line?

18 A Yes, a solid line extending to the southeast is
19 where the storm drain is. That's what we're
20 talking about, yes.

21 Q Can you agree that that solid line is intended to
22 represent the 15-inch reinforced concrete
23 stormwater collection trunk in the Main Street
24 right-of-way?

1 A It is in the approximate location of that.

2 Q Now, if stormwater was to flow from DCW-4 in this
3 drawing in a southeasterly direction along the
4 stormwater collection system, wouldn't you be able
5 to identify LNAPL in this drain manhole? And can
6 you provide -- or rather, that's DMH-2 as you
7 identified on Chalk 1. Can you agree that DMH-2
8 on your chalk that you've identified would be the
9 first intersecting junction point of the
10 stormwater collection system?

11 A I'm sorry, Mr. Decoulos, you've lost me in your
12 question. Could you please repeat that?

13 Q I would like to know what the first stormwater
14 structure is downgradient from the disposal site
15 boundary box that's shown on the ECS figure.

16 A Based on Chalk 1, the structure other than the
17 piping itself would be DMH-2 on Chalk 1.

18 Q Is stormwater piping considered a structure?

19 A For the purposes of what I'm looking at, yes. I
20 mean, that's what I'm thinking about here.

21 Q Can you admit that everything from the disposal
22 site boundary box that ECS has shown would have to
23 go through DMH-2?

24 A Everything being what?

1 Q Any contaminant of concern that I was responsible
2 for addressing as the LSP of record. Could you
3 confirm that any contaminant of concern had to go
4 through DMH-2?

5 A I cannot confirm that.

6 Q Why not?

7 A Because clearly we have gross contamination that's
8 emanating from that outfall. Only one area of the
9 gross contamination is the source. And it is
10 unknown to me, and had investigations been done,
11 where that oil may have been entering the drainage
12 piping, and it may have been beyond what is
13 referred to as DMH-2. I don't know that because
14 that investigation was not done.

15 Q Can you explain if it's not going to go through --
16 so you're saying that it may not go through -- The
17 contaminants of concern that I was responsible for
18 addressing may not go through DMH-2?

19 A It may not have entered the storm drain upstream
20 of DMH-2.

21 Q So what you're alleging is that DMH-2 may not
22 necessarily be a suitable point to visually
23 inspect, screen and sample to identify whether
24 diesel NAPL and the disposal site boundary box

1 that ECS has shown, that that may not be
2 sufficient?

3 A What I'm alleging is that further investigations
4 were required to render that opinion.

5 HEARING OFFICER: Mr. Decoulos, I have a
6 question for Mr. Phillips. My Phillips, can you
7 identify where the image projected on the wall --
8 remind me, is that B-53 or is that B-41?

9 MR. DECOULOS: 53.

10 HEARING OFFICER: -- B-53, which we're
11 looking on the wall, Figure 3 of B-53; correct?

12 MR. DECOULOS: Yes.

13 HEARING OFFICER: Mr. Phillips, are you
14 able to identify on that where approximately DMH-2
15 is? Mr. Decoulos, can you go back to the blown up
16 version surrounding the -- yes, blow that area
17 up -- surrounding -- yes. Approximately where is
18 DMH-2, if you can, Mr. Phillips. I don't want you
19 to guess.

20 THE WITNESS: It's approximately in this
21 area here. I believe this to be the catch basin,
22 which we referred to on the chalk, Catch Basin 3.
23 That may be this line here coming in and
24 connecting, but it's covered over entirely by the

1 disposal site boundary line. It's much thicker.

2 HEARING OFFICER: So DMH-2 is
3 approximately where the 4 is on the DCW-4? Again,
4 I don't want you to guess if you don't know,
5 but --

6 THE WITNESS: That would be approximate.
7 It's a little bit hard because it looks like the
8 scales are slightly different between this report
9 and that report, but it's in that general area
10 right around there.

11 HEARING OFFICER: Okay. Where the 4 is
12 on the DCW-4 approximate area?

13 THE WITNESS: Right.

14 MR. DECOULOS: For the record, can we
15 also say that that 4 is just above well BP-6.

16 HEARING OFFICER: That's shown there,
17 correct.

18 Q So, Mr. Phillips, you're alleging that I conducted
19 insufficient investigation to determine whether or
20 not the diesel LNAPL could have grossly
21 contaminated the stormwater collection system; is
22 that correct?

23 A That is correct.

24 Q Can you tell me what the figure of Chalk 1

1 represents?

2 A Chalk 1 says, "Existing Site Plan, Figure
3 Number 4."

4 Q What is shown on Chalk Number 1? What do you
5 think the purpose of Chalk Number 1 is?

6 A Without referencing back to the report, it would
7 appear to me that Chalk 1 is a plan showing the
8 location of various features at the site, and also
9 includes groundwater contour lines, presumably
10 based on elevations measured at various wells
11 across the site.

12 Q Can you explain for me the three items that are
13 shown in the legend of Chalk 1 and what they are?

14 A In the legend is a dashed line followed by a
15 Number 94.0, and that's listed as the groundwater
16 contour. There is a circle with two quarters
17 listed as DP-3. There's a symbol for a monitoring
18 well. And then there's a circle with half the
19 circle filled in DCD, which is listed as a soil
20 boring.

21 Q Are groundwater contours, monitoring wells and
22 soil borings shown on this site plan of Chalk 1?

23 A Yes, they are.

24 Q Can you tell me where those borings -- can you

1 identify whether or not a soil boring or a
2 monitoring well occurred in close proximity to
3 DMH-2?

4 A Yes, there is a symbol for a monitoring well DCW-2
5 located in proximity to DMH-2. I couldn't tell
6 you how close it is in reality.

7 Q Can you tell me if there was a boring or a
8 monitoring well installed in close proximity to
9 DMH-3?

10 A Yes, there is, DCW-3.

11 Q Further to the northwest, are there other borings
12 or monitoring wells that are shown on this chalk?

13 A Yes, there are other borings and monitoring wells
14 shown on the chalk, yes.

15 Q Are you aware that this was the first boring
16 investigation that I conducted to address the two
17 releases that I was responsible for?

18 A In 2003, yes, I believe that would be correct.

19 Q Are you aware that this subsurface boring
20 investigation was a one-day affair, and it was the
21 first step and continued assessment actions that I
22 took?

23 A I don't recall whether it was done in one day or
24 not.

1 Q In your testimony, again, Exhibit B-6 page 5, you
2 stated that I did not assess the potential for
3 LNAPL to enter the stormwater drainage piping
4 through joints and/or cracks, and therefore, his
5 conclusion that the piping was not acting as a
6 preferential pathway was not supported.

7 In that statement you're not alleging
8 that LNAPL could have gone along the exterior of
9 the piping, are you?

10 A I am stating simply what I stated, which was that
11 it was not adequately assessed, and that the
12 information was not adequate to explain conditions
13 that are actually existing in the environment.

14 Q Can you admit that everything that would leave the
15 disposal site boundary site box as shown on ECS'
16 plan would have to go through DMH-2?

17 MS. READ: I object. That question has
18 already been asked.

19 HEARING OFFICER: Overruled. You can
20 ask that question again. I'm not sure he answered
21 it before.

22 A Are you going to repeat the question?

23 HEARING OFFICER: Can you repeat the
24 question, Mr. Decoulos?

1 Q Can you admit that all of the diesel LNAPL and the
2 disposal site boundary box shown on the ECS figure
3 would have to flow through DMH-2?

4 A I answered that before. No, I won't admit that.
5 We don't know that.

6 Q So what other pathways could diesel LNAPL shown in
7 that disposal site boundary box, what other
8 pathways could this diesel LNAPL pursue to end up
9 at the stormwater outfall, which is the subject of
10 a large portion of the concern in this matter?
11 How would the diesel and the disposal boundary box
12 get to the outfall? I don't understand your
13 theory.

14 MS. READ: I would just like to note for
15 the record that the Board has not endorsed that
16 disposal site boundary as presented in the ECS
17 plan, but I would be happy for the witness to
18 answer the question.

19 HEARING OFFICER: Objection noted. You
20 can proceed.

21 A I have not come up with theories about how it
22 entered into it. I have said that it was not
23 adequately characterized to determine how that
24 occurred because the magnitude of the

1 contamination at the outfall is such that it is
2 not the result of routine runoff during storm
3 events. The concentrations are one to two orders
4 of magnitude higher than it is reported in the
5 literature for that type of runoff.

6 Q My question is how does it get there?

7 HEARING OFFICER: Mr. Phillips, I wanted
8 to follow up on that. You said it was one to
9 two -- what was your testimony?

10 THE WITNESS: One to two orders of
11 magnitude greater.

12 HEARING OFFICER: Greater than what is
13 reported in the literature for that kind of
14 runoff. You're referring to stormwater?

15 THE WITNESS: The urban stormwater
16 runoff type of thing is a 10 to 50 part per
17 million level, according to EPA. We have 3,000.
18 I believe there was another example.

19 HEARING OFFICER: Was that in your
20 testimony? Did you testify specifically to that?

21 THE WITNESS: I testified to the gross
22 level; I did not do a comparison.

23 HEARING OFFICER: Right, I don't
24 remember seeing that. You're testifying now that

1 it's your understanding that, generally, for
2 stormwater runoff of this sort of nature, what
3 would it be again? 10 to 50?

4 THE WITNESS: I was talking to one of my
5 colleagues last night, and the levels that we were
6 talking about were 10 to 50 parts per million.

7 HEARING OFFICER: And what was
8 discovered here was 3,000?

9 THE WITNESS: In excess of 3,000, yes,
10 sir.

11 HEARING OFFICER: Thank you.

12 Mr. Decoulos, you can proceed.

13 Q Mr. Phillips, that literature that you cite, does
14 it consider runoff from an automotive junkyard?

15 A It is in a published value, I don't know what
16 background to the publication that EPA went into.
17 Obviously, site specific conditions can increase
18 it or decrease it.

19 Q Does that literature you cite consider spills such
20 as that that occurred at the Eagle Gas site on
21 December 10, 2004 and November 7, 2005?

22 A I already told you what I know about the data
23 that's there. It's what's reported by EPA.

24 Q Do you believe that spills that occurred on

1 December 10, 2004 and November 7, 2005 -- strike
2 that. I've already asked this question.

3 HEARING OFFICER: Well, let me ask the
4 question. Mr. Phillips, do you have personal
5 knowledge of the spills that occurred in 2004 and
6 2005 that Mr. Decoulos was referring to, other
7 than what was shown to you in the photographs or,
8 I guess, one spill in the photograph, the other he
9 just asked you about with regard to an e-mail;
10 correct?

11 THE WITNESS: That's correct. That's
12 all the knowledge that I have about those events.

13 HEARING OFFICER: Okay. Do you have any
14 general understanding, based upon your experience,
15 what concentrations you would find at the outfall
16 from that type of a spill, assuming that it went
17 into the catch basin, and then traveled to the
18 outfall? And again, I don't want you to guess.

19 THE WITNESS: I will answer broadly,
20 because, obviously, I was not there and I don't
21 know how much entered the catch basin and how much
22 got to the outfall. So it's difficult to answer,
23 but also the difference is that we're also talking
24 about diesel fuel being at 3,000 and gasoline

1 being at different release. So it would be very
2 hard to give you a good answer on that.

3 When you have a spill usually like that,
4 as you can see even from the 5 gallon spill, you
5 know there's an emergency response right away.
6 The fire department shows up, they put down
7 speedi-dri, they put down pads. In the
8 photographs that are in the photo log, if you look
9 at that those pads from December 10th, they're
10 white. Now, that's could be because they were
11 just put down at that exact moment. You compare
12 that to the color of the pads for the two-year
13 time period at the outfall, which are dark brown,
14 it seems that it would be a grosser condition that
15 had been going on for the two-year time period.

16 HEARING OFFICER: Mr. Decoulos, I was
17 thinking maybe now would be a good time for a
18 short break. But if you want to proceed -- if
19 you're at a line of questioning that you want to
20 proceed with, we can do that.

21 MR. DECOULOS: It's a good time for me.

22 HEARING OFFICER: Then I'm thinking
23 also, instead of keeping Mr. Jablonski here
24 longer, and if it's okay with you, Mr. Decoulos,

1 give you 5 or 10 minutes, whatever you need, to
2 switch gears to Mr. Jablonski, so that you can
3 examine him and he can leave, because I think you
4 said it would only take 20 minutes for him;
5 correct?

6 MR. DECOULOS: Yes, 30, but it may only
7 be 15.

8 HEARING OFFICER: Is that acceptable to
9 you?

10 MR. DECOULOS: Yes, it is.

11 HEARING OFFICER: Ms. Read, is that
12 acceptable to you?

13 MS. READ: I think that's acceptable.
14 That would mean that his examination of
15 Mr. Phillips would continue after that?

16 HEARING OFFICER: That's right.

17 MS. READ: I think that's fine, as long
18 as it doesn't go a remarkably long period, longer
19 than anticipated.

20 HEARING OFFICER: For Mr. Jablonski?

21 MS. READ: Yes.

22 HEARING OFFICER: You don't anticipate
23 it will, do you?

24 MR. DECOULOS: No, I don't.

1 HEARING OFFICER: Is that acceptable?

2 MS. READ: That's fine.

3 (Recessed at 11:45 a.m.,
4 resumed at 11:57 a.m.)

5 HEARING OFFICER: We're back on the
6 record after a short break. The parties have
7 agreed to take Mr. Jablonski out of order in order
8 to allow him to leave, and then we'll proceed with
9 or continue with Mr. Phillips' testimony after
10 that.

11 Sir, could you please state your full
12 name for the record?

13 MR. JABLONSKI: Mark Jablonski.

14 HEARING OFFICER: Do you promise to tell
15 the truth, the whole truth and nothing but the
16 truth?

17 MR. JABLONSKI: I do.

18 HEARING OFFICER: Thank you.

19 Mr. Decoulos, you may examine Mr. Jablonski.

20 MR. DECOULOS: Just for understanding
21 the way this process is going to work, your Honor,
22 Mr. Jablonski has not filed prefiled testimony in
23 this matter. So I assume I will be asking
24 questions, and then the Board will cross-examine,

1 and I may have an opportunity to redirect if there
2 are any other issues that are relevant?

3 HEARING OFFICER: That's correct.

4 Mr. Jablonski is here pursuant to the subpoena
5 that I issued on your behalf. You may ask him
6 questions, and if Ms. Read chooses to ask him
7 questions, she may as well. So you may proceed.

8 MR. DECOULOS: Okay, thank you.

9 DIRECT EXAMINATION

10 BY MR. DECOULOS:

11 Q Mr. Jablonski, who do you work for?

12 A Mass. Department of Environmental of Protection,
13 Bureau of Waste Site Cleanup, Southeast Region.

14 Q How long have you worked for DEP?

15 A Since 1993.

16 Q What's your educational background?

17 A Civil Engineer, Bachelor of Science from
18 Northeastern. Engineer In Training through
19 Massachusetts, Haz-Mat Technician, ER Respondent.

20 Q When did you graduate from Northeastern?

21 A 1983.

22 Q What are your duties at DEP?

23 A I've been an auditor and emergency response
24 on-call respondent since 1993.

1 Q When did you conduct audits?

2 A Well, I've been kind of doing them all along since
3 '93 in different shapes and fashions.

4 Q So you've been conducting both audits and
5 emergency responses for the Department?

6 A Yes, on a part-time basis.

7 Q So what do you do full-time?

8 A I'm primarily an auditor, but I fill in backup for
9 emergency response during the day when there's
10 major spills going on.

11 Q Do you remember events that took place at the
12 Eagle Gas site or around the Eagle Gas site at 131
13 Main Street on May 16, 2003?

14 A Yes, I do.

15 Q Can you explain what you remember about that day?

16 A I got a call from Mike Moran, I believe it was --

17 HEARING OFFICER: I'm sorry. Who, sir?

18 THE WITNESS: Mike Moran. He was on
19 call, he took the initial phone call.

20 HEARING OFFICER: Could you spell his
21 name, please?

22 THE WITNESS: Michael Moran. It's in
23 the record.

24 HEARING OFFICER: M-o-r-a-n?

1 THE WITNESS: Yes.

2 A There was reportedly an oil sheen in the South
3 Brook Meadow that we had to respond to.

4 Q What else do you remember?

5 A How much detail would you like me to go into?

6 Q As much as you remember.

7 A Basically, responded to the 131 Main Street in
8 Carver. I first got there, looked at the outfall,
9 the storm drain outfall.

10 Q Is that what's shown on Photograph 20 that's up on
11 the display?

12 A Yes, that looks maybe like the right outfall, yes.

13 Q So would you agree that photographs 20 through 22
14 represent the outfall conditions that you
15 recollect on May 16, 2003?

16 A I can't recollect those were the exact conditions
17 that I saw, but I know I saw a sheen, because I
18 know I put a boom out to capture the sheen.

19 Q Is the boom that you placed shown on photograph
20 21?

21 A I can't be certain if that's the exact boom I
22 placed, but I know I put a boom out somewhere.

23 Q I'm sorry for interrupting. Can you continue what
24 else you recollect?

1 A Okay. Then after I put out the boom and started
2 going upstream, I know the DPW, I believe, was
3 already on scene and the fire department. We
4 started popping manholes, and basically started --
5 I took out a PID instrument to get VOC readings
6 from the manholes. I don't remember attaching
7 this --

8 Q Excuse me, Mr. Jablonski. A lot of the people in
9 this room don't understand what a PID is or a VOC.
10 Can you just explain for the record what those
11 are?

12 A Okay, sure. It's basically a field instrument
13 that detects fuel vapors in the air that we're
14 breathing.

15 Q What are you referring to again? PID?

16 A Yes, PID readings.

17 Q What does PID stand for?

18 A Photoionization detection.

19 Q Sorry. I just want to make the record clear.

20 A So I took about a 2 or 3-foot length tubing and I
21 attached it to the meter.

22 Q What kind of meter did you use?

23 A I don't recall. Whatever was in the truck at the
24 time.

1 Q Do you know if that PID meter was calibrated?

2 A Probably. We calibrate them weekly when we go on
3 call.

4 Q I'm sorry for interrupting. One last question.
5 Could you explain for the record what VOC stands
6 for?

7 A Volatile Organic Compounds.

8 Q Thank you.

9 A Where was I?

10 Q You were explaining the tubing that you attached
11 on the end of the PID.

12 A Yes. Basically started dropping that down and
13 taking readings, going up the street from the
14 storm drain outfall.

15 HEARING OFFICER: You were dropping them
16 into the manholes?

17 THE WITNESS: Yes, and noting the
18 readings.

19 A Also, looking for evidence of fuel odors or sheens
20 in the stormwater. Once I completed that task, I
21 started looking at the gas station, because the
22 last manhole by the gas station was where the
23 readings kind of stopped and where the fuel odor
24 had stopped. I remember talking to the gas

1 station owner, and maybe even Mr. Decoulos, about
2 what was going on at the gas station.

3 I recall that there was a fuel oil
4 delivery line failure in mid May. The date on
5 that was not clear, but I know it was leaking once
6 a week. Every time there was a delivery, it was
7 leaking. The concrete pad was all broken up. And
8 two days earlier, I know there was 6 feet of NAPL
9 in the monitoring well on the gas station.
10 Because in the field I know I put in those two
11 conditions to initiate NAPL recovery and repair
12 the spill bucket in the gas lines.

13 So to me, it was a potential source of
14 the sheen in the river entering into the storm
15 drain system. My job as a field responder is to
16 basically initiate a cleanup, assess it, and then
17 determine where the potential sources are, and
18 identify responsible parties.

19 So I had enough information in my mind
20 at the time, a line of evidence, to issue a field
21 Notice of Responsibility to Eagle Gas Station.

22 Q Now, based on your PID readings of the stormwater
23 structures, what lines of evidence led you to
24 believe that Eagle Gas was responsible for the

1 contamination at the outfall?

2 A Well, as I just stated, it was a combination of
3 factors. It was smelling it, having readings in
4 the storm drain, the NAPL that was detected two
5 days earlier, but was not removed. The fuel line
6 failure of the spill bucket was happening on a
7 once a week occurrence, and that was not reported
8 to DEP. So to me it was a combination of factors,
9 not just the storm drain alone.

10 HEARING OFFICER: The NAPL that you're
11 talking about that was discovered two days
12 earlier, you said that was 6 feet of NAPL?

13 THE WITNESS: Yes, right.

14 Q Mr. Jablonski, I have up on the display screen
15 Exhibit B-30, which is a Phase I report I
16 submitted to DEP in April of 2004. In that Phase
17 I report there was a large site plan, 24 inches by
18 36 inches, which showed the PID readings that you
19 collected. Do you recall me collecting any of the
20 PID readings with your instrument?

21 A To tell you the truth, not really. There were a
22 lot of people there that day and a lot of people
23 asking questions, so no, I don't recall all those
24 details, no.

1 Q In this Figure 1, which is up on the screen, I
2 showed PID readings that were collected that day.
3 Can you confirm or deny these readings which began
4 at CB-1 as shown on Chalk 1, continue to CB-2,
5 CB-3, CB-4, DMH-1 and DMH-2?

6 HEARING OFFICER: Mr. Decoulos, is there
7 any dispute regarding the PID readings?

8 MR. DECOULOS: That's where I'm getting
9 to.

10 MS. READ: There is none.

11 HEARING OFFICER: If you want,
12 Mr. Decoulos, you can just read them from the
13 exhibit, if you wish.

14 MR. DECOULOS: Okay.

15 Q So, Mr. Jablonski, CB-1, which has been identified
16 on the chalk here. I'm showing you Eagle Gas'
17 building right now at 131 Main Street. There is a
18 catch basin in front of the Eagle Gas Station
19 which has been identified as CB-1. There was a
20 PID reading of 0 PPM.

21 A I wouldn't call that in front of it as far as
22 where the gas dispensing equipment is.

23 Q When I refer to in front, I'm talking about the
24 property boundaries.

1 A Okay.

2 Q So if I could show you where the property
3 boundaries are. This thick line, which has 2 dots
4 in the middle, is defined as the property
5 boundary. So when I refer to front or sometimes
6 it's referred to as frontage, that's what I'm
7 referring to.

8 A Okay.

9 Q Can you admit that the catch basin identified as
10 CB-1 and CB-2 are in front of the Eagle Gas
11 property, 131 Main Street, that I'm pointing at?

12 A That's what the site plan shows, yes.

13 Q Can recall that these two catch basins had zero
14 PPM readings from your PID?

15 A I believe they were clean, yes, upgradient of the
16 gas station.

17 Q Do you recall that DMH-1, which was the point in
18 which those two catch basins entered into, also
19 had a non-detectable reading of zero parts per
20 million?

21 A If that's what the site plan indicates, I guess,
22 yes.

23 Q Do you have any reason to dispute the site plan
24 PID readings?

1 A No.

2 Q In front of the Eagle Gas Station is a drain
3 manhole, which has been identified as DMH-2.
4 There's a PID reading of 0.5 PPM.

5 A Right.

6 Q Do you agree with that?

7 A Yes.

8 Q Then there's another catch basin identified as
9 CB-3, which has zero PPM. Do you agree?

10 A Yes. The only thing I would take exception would
11 be, I recall looking on the detail on that site
12 plan on one of these -- I don't have it in front of
13 me, but it said those PID readings were collected
14 on May 14th by Mark Jablonski and Jim Decoulos,
15 and I wasn't there May 14th.

16 Q I agree. There was an error on that plan.

17 MS. READ: Again, I would just like to
18 note for the record that there is no dispute by
19 the Board about the readings that are reflected on
20 this plan.

21 HEARING OFFICER: We can take notice of
22 that, Mr. Decoulos.

23 Q So the catch basin, which has been identified as
24 CB-4, shows a sharp increase in PID readings from

1 the next upgradient structure, the DMH-2 --
2 Actually, the next downgradient structure from
3 DMH-2 is DMH-3, which has a PID reading of 27
4 parts per million. Do you have any reason or any
5 explanation for why there would be a sharp
6 increase in the PID responses from DMH-2 to DMH-3?

7 A Well, there could be a lot of variables. Fuel
8 could have washed down to the next catch basin and
9 just pooled there.

10 Q How would the fuel have migrated in that manner
11 you just described?

12 A Well, I recall the owner telling me about that
13 fuel line failure. It was leaking on a weekly --
14 every time there was a fuel delivery, there was a
15 leak.

16 Q Can you describe where that fuel line was located?

17 A I don't recall. It looks like it says remote
18 diesel fill pipe.

19 Q How would contamination run from the point shown
20 as remote diesel fill pipe abandoned in place, how
21 would it run from that point to DMH-3, and provide
22 a reading of 27 PPM?

23 A That's not my job to determine how it got there.
24 I just know there was a source of fuel that was

1 entering the environment that was going somewhere,
2 and that was a likelihood of happening. So the
3 probability of a release occurring to the storm
4 drain was very high during the time of my field
5 observations, based on just the evidence on the
6 station alone with the broken spill bucket and the
7 NAPL in the well that wasn't recovered. So there
8 were two sources just sitting there ready to
9 migrate into the storm drain.

10 Q Are you aware that the NAPL which led to the
11 initial release of RTN 4-17582 was at well BP-5RR
12 that I'm pointing at here on this plan?

13 A That's irrelevant to me.

14 Q But you have --

15 A When I go out and am doing a field call, you have
16 limited information. You're responding to a
17 release of sheen in the water, and you're doing a
18 quick inspection of the facility. And there was a
19 problem there with that facility with that broken
20 fuel line. That should have been reported. That
21 could have been the failure to notify.

22 Q I just told you that it was previously reported as
23 RTN --

24 A Not the spill bucket.

1 Q -- 17582.

2 A Not the spill bucket. That was a new condition.

3 Q How do you know that the spill bucket had failed?

4 A You said it in your report.

5 Q You believe that that's a separate condition?

6 A Yes.

7 Q Do you have any idea where that spill bucket was
8 located?

9 A Not right now, no.

10 Q Do you know whether or not the breach of that
11 spill bucket would have migrated in the subsurface
12 or on the surface?

13 A Probably both.

14 Q If it migrated in the subsurface, do you think
15 that maybe a PID screen of DMH-2 would have been
16 higher than 0.5 PPM?

17 A It depends when you measure it and when it
18 happened. There are too many variables.

19 Q Can you explain why there was a sharp increase in
20 PID responses from DMH-2 to DMH-3 from 0.5 PPM to
21 27 PPM?

22 A No.

23 Q I'm going to refer you to Exhibit B-17, which is
24 the release log form that you prepared. I'm going

1 to hand it to you.

2 A Okay. Actually, I didn't prepare this.

3 Q No?

4 A No.

5 Q Do you know whose writing that is?

6 A Michael Moran's.

7 Q Can you tell me on the bottom of the first page of
8 B-17 what it states?

9 A "Source of release or threat of release unknown."

10 Q Is that what Mike Moran checked off or did you
11 check that off?

12 A That's what you told him.

13 Q That's what I told him? Is that what you
14 remember?

15 A No, it's just on the form. It changes once you
16 get out in the field. It's not unknown anymore
17 once you get out in the field. That condition no
18 longer applies once you do a field response.

19 Q So this form was prepared before you were out in
20 the field?

21 A Yes.

22 Q On page 2 of the form, can you tell me whose
23 signature that is?

24 A Mike Moran's.

1 Q Page 3, whose writing is that?

2 A It looks like Mike Moran's.

3 Q And the last page?

4 A Mike Moran.

5 Q So it appears as though all of the handwriting on
6 Exhibit B-17 is of Mike Moran's?

7 A Yes.

8 Q I'm going to refer you to Exhibit B-18. Can you
9 tell me whose handwriting that is?

10 A That's mine.

11 Q Can you tell me what you wrote on the first page
12 of B-18?

13 A Do you want me to read the whole thing?

14 Q It's difficult to read, so if you could read it
15 for us, it would be appreciated. I have a copy of
16 it here so you don't have to read it from --

17 A I can read it from here.

18 Q Okay.

19 A "Conducted site inspection, determined oil sheen
20 on South Meadow Brook emanating from storm drain
21 that is connected to the catch basins in the Main
22 Street. Carver Highway Department removed catch
23 basin covers and oil sheen and vapors were noted.
24 Catch basin upgradient of gas station was clean.

1 Catch basin next to the gas station had diesel
2 fuel odor and oil sheen was noted on the
3 stormwater. It was determined that a diesel fuel
4 release was occurring and a field NOR was issued.
5 A boom was placed at the end of the storm drain
6 that discharges to South Meadow Brook. The oil
7 sheen did decrease" -- I'm not sure what I'm
8 saying there -- "or did decrease on the brook."
9 I'm not sure what I'm saying there. "Refer to the
10 field NOR for actions required."

11 Q So here you're saying that the catch basin next to
12 the gas station had diesel fuel odor, and an oil
13 sheen was noted on the stormwater. I'm going to
14 go back to the exhibit -- the plan that we were
15 looking at.

16 HEARING OFFICER: Hold on. Before you
17 do that. Mr. Jablonski, you referred to a -- you
18 state there that it was determined that a fuel oil
19 release was occurring. Which release are you
20 talking about?

21 THE WITNESS: The release that I
22 responded to.

23 HEARING OFFICER: I know, but you
24 testified previously that the owner of Eagle Gas

1 told you that the fuel line was leaking every time
2 that the tank was filled?

3 THE WITNESS: Yes, because I put that in
4 the field NOR as a condition to repair.

5 HEARING OFFICER: That's in the field
6 NOR?

7 THE WITNESS: Yes.

8 Q So what I'm asking you, again, Mr. Jablonski, is
9 you state that a catch basin next to the gas
10 station had diesel fuel odor and an oil sheen was
11 noted on the stormwater.

12 A Right, which was actually probably the manhole.
13 It wasn't a catch basin. I didn't use the right
14 term there.

15 Q Do you know the difference between a catch basin
16 and a drainage manhole?

17 A Yes.

18 Q What are they?

19 A Well, one, as Ian Phillips earlier described, one
20 catches stormwater from the pavement, the street;
21 and manhole is the structure that you can go down
22 and look at the connections where they join, and
23 they don't necessarily collect surface water or
24 stormwater, but it's an access manhole.

1 Q So what I'm trying to determine is where was that
2 catch basin that you wrote was next to the gas
3 station?

4 A It was probably the drain manhole.

5 Q You said it was probably the drain manhole?

6 A Yes.

7 Q So were you referring to what I'm pointing here
8 to, which is DMH-2?

9 A Right.

10 Q So why would the drainage manhole have a response
11 of 0.5 PPM and the catch basin downgradient, the
12 next catch basin downgradient have a PID response
13 of 24 PPM? Do you have any explanation for that?

14 A No. That, to me, wasn't important. I was just
15 collecting information that day. I mean, it was
16 important to note that the catch basin across the
17 street is zero, and the one upgradient of that
18 drain manhole is zero. So to me, that's where the
19 contamination starts.

20 Q Right at this drainage manhole?

21 A Right.

22 Q So you think 0.5 PPM response on a PID is evidence
23 of contamination?

24 A Yes. It's part of the equation, part of the

1 puzzle. When I'm out there, I'm putting pieces of
2 the puzzle together. And like I said before, the
3 spill bucket, the broken line, the NAPL in the
4 well, those were all things that were not being
5 attended to on that facility. So to me, that was
6 a new reportable release condition that was not
7 being addressed.

8 Q So did you issue a release tracking number?

9 A Yes.

10 Q What did you issue the tracking number on?

11 A Whatever the number is.

12 Q I mean, what was the source and extent of that
13 release, to the best of your knowledge, this new
14 reportable condition that you identified on
15 May 16th?

16 A It was oil sheen, it was -- it could have been
17 NAPL. I mean, you could have picked a bunch of
18 conditions. Release to storm drain. The broken
19 fuel line.

20 Q But the fact is, you don't know what the source
21 was, do you?

22 A I had a potential source. I had two sources.

23 Q What were they, again?

24 A The NAPL and the broken fuel line.

1 Q Can you explain what NAPL is, just for the record
2 just explain?

3 A It's diesel fuel.

4 Q Explain what it stand for, the N-A-P-L?

5 A Non-Aqueous Phase Liquid.

6 Q Thank you. So if you have non-aqueous phase
7 liquid, which was identified in the first release
8 that I was responsible for, 17582 --

9 A See, I didn't know that at the time I was out
10 there.

11 Q I understand. But if you have diesel NAPL in a
12 well right next to a storm drain collection
13 system, and you suspect that that NAPL was the
14 cause of the release at the stormwater outfall,
15 wouldn't you expect a higher PID response than 0.5
16 PPM downgradient of that NAPL?

17 A I'm not sure. I'm gathering more information, you
18 know.

19 Q Do you have any explanation as to why the catch
20 basin in front of the property of 133 Main Street
21 had a significantly higher PID response at 24
22 parts per million, and every other stormwater
23 structure downgradient of that all the way to the
24 outfall had similar elevated PID responses? Do

1 you have any explanation for that?

2 A No. This is the first time I'm looking at it in
3 eight years.

4 Q So your memory is not that clear?

5 A No, not on these PID readings.

6 Q I'm showing you photograph 23, which is entitled
7 DMH Inspection in front of Eagle, May 16, 2003.

8 Do you suspect -- now this is the drain manhole --

9 Well, do you agree that this is the drain manhole
10 to which we just saw on that Phase I site plan?

11 A Sure.

12 Q Do you agree that 24 is a blowup of that same
13 drainage manhole?

14 A Sure.

15 HEARING OFFICER: That's where the .5
16 PPM was?

17 THE WITNESS: Right.

18 Q Now, can you explain what 25 is, photograph 25?

19 A It looks like the bottom of a manhole.

20 Q What does the caption say?

21 A Detailed Inspection in Front of Eagle, May 16,
22 2003.

23 Q Do you see any evidence of diesel NAPL in that
24 photograph?

1 A Not in that photograph, no.

2 Q Is that consistent with the 0.5 PPM readings from
3 PID?

4 A Could be. I think the oil sheen was probably
5 noted in other storm drains, but like I said,
6 that's...

7 Q But you wrote in your release log form attachment,
8 Exhibit B-18, that it was the CB next to the gas
9 station that had diesel fuel odor and an oil sheen
10 was noted on the stormwater; isn't that correct?

11 A Right.

12 Q You know the difference between a CB and a DMH?

13 A Well, at the time you're writing in the field, I
14 mean...

15 Q But you're an engineer by education; right?

16 A Right, but I did change it. It could have been an
17 error that I did change in the NOR, the office
18 NOR.

19 Q Why would you have changed it?

20 A Because it wasn't correct.

21 Q So your testimony is that Exhibit B-18's
22 description of a CB next to the gas station should
23 have been the DMH next to the gas station?

24 A Yes, which was corrected in the office NOR.

1 Q Do you have any reason to believe that I may have
2 altered or changed any of these readings as shown
3 on Phase I site plan of Exhibit B-30?

4 A No.

5 Q Have you had any discussions with employees or
6 consultants to DEP about this release Tracking
7 Number 4-17825, which was entered into the DEP
8 database on May 16, 2003?

9 A That's the one I responded to?

10 Q Yes.

11 A Yes.

12 Q Who did you talk to you about that?

13 A You want the whole --

14 HEARING OFFICER: Do you want to specify
15 a time period, Mr. Decoulos?

16 Q Have you spoken to anyone recently within the last
17 year about that release?

18 A I have talked to emergency response and Cynthia
19 Baran about the things that are in the file.

20 Q What discussions did you have with Cynthia Baran?

21 A Looking for reports, IRA status reports.

22 Q Did she ask you to clarify any of the release
23 forms that you prepared as Exhibits B-18, B-19 or
24 B-20?

1 A No. The record pretty much stands for itself.

2 Q But you admitted that there was an error on B-18,
3 that the record was wrong, that the CB should have
4 been a DMH?

5 A Right, that's why we issue office NORs.

6 Q Did the office NOR say that it was a DMH?

7 A Yes, for the storm drain system.

8 Q But did it specifically say a drainage manhole?

9 A You don't have to get into that detailed in Notice
10 of Responsibilities. It's your job as a
11 privatized program, you could have closed out that
12 release and linked it or retracted it if you
13 didn't agree with the department's determination.

14 Q But you know that my credibility and professional
15 reputation is being challenged here, that I didn't
16 properly identify the contamination which caused
17 the outfall which lead to this release? Are you
18 aware of that?

19 A Just because of me being here now, I guess I am.
20 But I have just been kind of thrown into this at
21 the last minute.

22 Q I understand. Have you spoken to anyone at the
23 LSP Board about this release that you identified
24 on May 16, 2003?

1 A No. I sent an e-mail about asking you questions,
2 whether it was permissible to do that because I
3 was kind of like between a rock and a hard place.

4 MR. DECOULOS: No further questions.
5 Thank you.

6 HEARING OFFICER: Ms. Read?

7 MS. READ: If I could just have a moment
8 to review my notes.

9 CROSS EXAMINATION

10 BY MS. READ:

11 Q Mr. Jablonski, in your field NOR, which has been
12 marked as Exhibit B-19 -- just for the record, NOR
13 stands for Notice of Responsibility -- you have
14 identified certain actions to be taken. In your
15 position at DEP, are you authorized to determine
16 the immediate response actions and place them in a
17 field NOR in that way?

18 A Yes.

19 Q In the formal Notice of Responsibility that was
20 issued for this matter, the actions required, if
21 you just take a look at the bottom of page 2 --
22 and again, for the record, this is Exhibit B-20 --
23 the actions required, are they the same as those
24 in the field NOR?

1 A Yes.

2 Q On this formal Notice of Responsibility, you have
3 signed it for Richard Packard as Chief of the
4 Emergency Response section. Had Mr. Packard
5 reviewed the Notice of Responsibility before it
6 was issued?

7 A I don't recall. He probably did. He was probably
8 on vacation, and I was acting chief. But that's
9 going way back.

10 Q But in other words, this is an authorized order
11 from the Mass. Department of Environmental
12 Protection about which had happened at this site;
13 correct?

14 A Right. You have the field NOR and you have the
15 office NOR.

16 MS. READ: I don't think I have any
17 other questions.

18 HEARING OFFICER: Thank you.

19 MR. DECOULOS: I just have one last for
20 redirect.

21 REDIRECT EXAMINATION

22 BY MR. DECOULOS:

23 Q On that office NOR that you filed that Ms. Read
24 referred to, you mentioned that on page 3, the top

5 A Because, typically, we would assess the sources
6 and determine the best course of action before you
7 actually would construct something in the field.
8 So you would have to assess it. That's what a
9 Phase I/Phase II, you know, delineating nature and
10 extent for that particular release would determine
11 whether or not that was warranted or not.

13 A The LSP's.

15 HEARING OFFICER: Thank you. You're
16 free to go.

24 MS. READ: I don't mind when the lunch

1 break happens, whether it's now or later. My
2 overall concern, though, is that we proceed
3 expeditiously in general. We were flexible in
4 agreeing that Mr. Jablonski could testify earlier,
5 and I, likewise, have witnesses who have traveled
6 great distances to be here. As the party that
7 goes first, I anticipated that my witnesses would
8 be on today, and I would really like to do
9 everything possible to ensure that my witnesses
10 can be finished today.

11 I would be happy to take a lunch break
12 now. Personally, it could be shorter than 45
13 minutes. I haven't consulted with everyone, but
14 20 minutes, half hour, would be fine with me. But
15 I can also wait and do lunch after he finishes. I
16 do expect to request some redirect, not very much,
17 and I don't know how much Mr. Decoulos has left.
18 So I really don't mind which way we go as long as
19 it's relatively expeditious.

20 HEARING OFFICER: A half hour lunch
21 break would be fine with me, too, in the interest
22 of getting as much in as possible. What are your
23 thoughts, Mr. Decoulos?

24 MR. DECOULOS: I'm fine with that.

1 HEARING OFFICER: Mr. Decoulos, what are
2 your thoughts on how much longer you're going to
3 need with Mr. Phillips? Again, it's your choice
4 how you want to allocate your time. The
5 expectation was, however, that you would complete
6 your examination today, perhaps, maybe you could
7 go into the morning with one witness, but the bulk
8 of the testimony needs to be completed today.
9 Your cross needs to be completed today. So you
10 need to figure out how you want to allocate your
11 time. Maybe that's something you want to
12 contemplate over lunch. We'll take a half hour
13 lunch now.

14 MR. DECOULOS: That will be great.
15 Thank you.

16 HEARING OFFICER: So far you've spent
17 approximately an one hour and, I think, 45 minutes
18 with Mr. Phillips.

19 MR. DECOULOS: My best guess right now
20 is it may take another 45 to 60 minutes for
21 Mr. Phillips.

22 HEARING OFFICER: Okay. You should
23 consider that in the context of budgeting time for
24 the other witnesses, as well.

1 MR. DECOULOS: Sure.

2 HEARING OFFICER: Like I said, if we
3 need to go into tomorrow morning with one of the
4 Board's witnesses, we'll do that, but no more.
5 I'm giving a lot of leeway.

6 MR. DECOULOS: Any idea as to who that
7 witness might be, seeing how one of them is not
8 here?

9 MS. READ: I provided Mr. Decoulos with
10 the order of witnesses, and right now I'm not
11 anticipating changing that, but I need to consult
12 with my witnesses and see if there is anything
13 that would prevent him from being here tomorrow.
14 So if I may address that after lunch, as well.

15 HEARING OFFICER: Sure, that's fine.
16 With that said, why don't we take a half hour
17 break. We'll be back here at 10 after 1 and get
18 started no later than quarter after 1. Thank you.

19 (Recessed at 12:39 p.m.,
20 resumed at 1:18 p.m.)

21 HEARING OFFICER: We're back on the
22 record after a brief lunch break. Mr. Phillips is
23 back in the witness chair and you're still sworn,
24 Mr. Phillips, you're still under oath.

1 THE WITNESS: Yes, I understand that I'm
2 still sworn.

3 HEARING OFFICER: Mr. Decoulos, you can
4 resume your cross-examination of Mr. Phillips.

5 MR. DECOULOS: Thank you.

6 CROSS EXAMINATION, Continued

7 BY MR. DECOULOS:

8 Q Mr. Phillips, in your testimony today, as well as
9 your written prefiled direct testimony in Exhibit
10 B-6, you talked about my inadequate assessment to
11 identify the cause of the gross oil contamination
12 at the stormwater outfall in Carver. In Exhibit
13 B-6, for instance, on page 8, you mention that
14 additional assessment was needed to determine
15 whether the diesel release was migrating into the
16 storm water drainage piping. Given what you know
17 about my assessment work out there, what
18 additional assessment work would you have
19 recommended?

20 A I think I gave a couple of examples in my direct
21 testimony, including doing the video survey, as
22 well as potentially doing the test pits along the
23 piping to see whether there were other areas where
24 there was NAPL present in contact with the piping

1 itself. I also talked about looking at -- just
2 visually getting a cross section right-of-way in
3 place so that you could see whether there was any
4 indication that NAPL and/or groundwater was in
5 contact with the elevation of the piping.

6 Q Now, if LNAPL was in contact with the piping,
7 wouldn't that LNAPL reveal itself in DMH-2?

8 A As I said previously, not necessarily if it was in
9 contact beyond DMH-2.

10 Q So what's the magic route -- what's the potential
11 route that it could have progressed along to have
12 gone around DMH-2? So you're saying that there
13 were insufficient wells to rule out that
14 possibility of a subsurface pathway that would
15 have gone around DMH-2 from the diesel LNAPL and
16 found its way into the stormwater piping to the
17 south or downgradient of DMH-2?

18 A It's not my job to design the assessment program.
19 The department was clear on multiple occasions to
20 say that that needed to be done, and that further
21 work needed to be done. Those are examples of
22 what I would have done and would have recommended.
23 There could be other examples of things that could
24 be recommended. There is, based on the

1 information, I think, for me and for the
2 Department, pretty substantial evidence that
3 there's a gross contamination getting into that
4 outfall, and that there's only one source of gross
5 contamination out there that had been identified
6 to date at the time between 2003 and 2005.

7 Q So you believe beyond a reasonable doubt that that
8 gross contamination at the outfall could have only
9 come from the LNAPL release?

10 A I have diesel present, Mr. Decoulos, at the
11 outfall. I have measured thickness of diesel
12 adjacent to the pipe and ultimately across a very
13 large swath of area. It's pretty --

14 HEARING OFFICER: When you're saying
15 adjacent to the pipe, what are you talking about,
16 which area are you talking about?

17 THE WITNESS: I'm talking about in the
18 source area where the release occurred, there's
19 the well 5-RR, that's the one that was the subject
20 of the first notification. That's where they had
21 measured up to 6 feet thickness of product.
22 That's very approximate. It's hard to tell on the
23 drawings, but it's probably within 10 feet of the
24 pipe itself.

1 HEARING OFFICER: I just wanted you to
2 be as specific as possible. Go ahead, sorry to
3 interrupt.

4 MR. DECOULOS: I have no problems with
5 your interruptions, Mr. Jones.

6 HEARING OFFICER: I interrupted you, so
7 continue. You were talking about the factors you
8 considered.

9 A It's clear that there's diesel proximate to the
10 piping. It's clear that there's diesel release in
11 the environment throughout the property, and it's
12 clear that there's diesel at the outfall.

13 Q How do you draw the connection, is my question?
14 You're making assumptions, aren't you?

15 A I'm not the LSP on the job, Mr. Decoulos. What
16 I'm doing is I'm looking at the available
17 information, and I am, as well as the department
18 was, persuaded that those two items are connected.
19 If you look at, for example, the photographs that
20 you're talking about, a two-year time period, we
21 continue to have to have booms out there with
22 gross contamination, it looks like that. We don't
23 see that flowing over the street and into the
24 catch basin. We don't see that in the catch

1 basins that you're alleging that it's getting
2 into. This is an ongoing problem that goes on for
3 many years. It's not the 5-gallon spill on the
4 things that washes into the hole. That's not what
5 we're talking about.

6 Q I don't dispute what you're suggesting regarding a
7 5-gallon spill, Mr. Phillips. What I am
8 questioning is what are the facts that you're
9 making these allegations with? For instance,
10 DMH-2, which we're looking at here in photograph
11 24 on the display screen, it was uncovered on the
12 day in which the gross contamination was found on
13 May 16, 2003. Does the inside of that drain
14 manhole look grossly contaminated to you?

15 A No, it does not.

16 Q In June of 2004, there's another photograph of
17 that same drain manhole, DMH-2 in front of Eagle
18 Gas Station, June 24, 2004. Does that drain
19 manhole look grossly contaminated to you?

20 A I can't tell whether that's product in there or
21 not because of the reflection -- it could be the
22 reflection of the light or it could be product.
23 The point is, Mr. Decoulos, it's the adequate
24 assessment to look beyond DMH-2 and relying solely

1 on DMH-2 in the visual observation that is
2 important. And that's why what I was suggesting,
3 again, doing the video survey, maybe exposing it
4 in different areas other than just relying on the
5 result of DMH-2.

6 Q What would the video survey have shown other than
7 what we see at these photographs of the drain
8 manhole inverts?

9 A For example, beyond the DMH-2, it may have shown
10 that the pipe was discontinuous. It may have
11 shown that it's cracked or had failed in various
12 areas and that oil was seeping into the piping.
13 Those are the types of things that you're looking
14 for.

15 Q Can you confirm that there was a monitoring well
16 shown on Chalk 1 next to DMH-2?

17 A I think we talked about that earlier. I don't
18 remember the number of it, yes.

19 Q If I told you that that monitoring well was
20 identified as DCW-2, would you agree with that?

21 A If it's on that, then I would agree with that.

22 Q Can I show you the analytical results from June of
23 2003 of the soil and groundwater sampling from
24 that sampling point?

1 HEARING OFFICER: That's DCW-2, which is
2 next to what, again, Mr. Decoulos?

3 MR. DECOULOS: DMH-2.

4 Q Can you summarize for us -- this is the sampling
5 that was presented in the IRA status report from
6 July of 2003.

7 HEARING OFFICER: Which exhibit is this?

8 MR. DECOULOS: That's what I'm looking
9 for.

10 MS. READ: I believe it's B-21.

11 MR. DECOULOS: Yes, B-21.

12 Q Can you inform us as to what the soil sampling at
13 DCW-1 revealed in that report?

14 A From this table?

15 Q Yes.

16 HEARING OFFICER: DCW-1 or DCW-2?

17 MR. DECOULOS: I'm sorry. DCW-2.

18 A There is a sample that's collected from DCW-2 from
19 an elevation of 4 to 8 feet, and it has some
20 detectable concentrations of EPH, and the EPH
21 fractions, as well as one individual compound, it
22 looks like to me.

23 Q Would those concentrations that were detected bear
24 any resemblance to the contamination found at the

1 outfall?

2 A The EPA fraction is related to diesel. The
3 concentration here is quite low. The
4 concentration here is orders of magnitude less
5 than what you have at the outfall.

6 Q What about the groundwater sampling that was
7 conducted at DCW-2 on the next page, can you
8 explain how that might correlate with the diesel
9 contamination found at the outfall?

10 A There are no detectable concentrations of EPH
11 fraction at that location; whereas, at the
12 outfall, it was in excess of 3,000 parts per
13 million.

14 Q Do you agree that the PID screening of DMH-2 on
15 May 16, 2003 was 0.5 parts per million?

16 A I don't have any basis for disputing any of the
17 data that's reported.

18 Q So what's your theory as to how the gross
19 contamination of the outfall originated from the
20 diesel NAPL release? Are you alleging that the
21 subsurface contamination went around DMH-2 and
22 went around DCW-2? That somehow those two points
23 were insufficient to identify that pathway that
24 you're somehow alleging?

1 A As my opinion states, there has been inadequate
2 assessment. Looking in the manhole and seeing no
3 sheen is not an adequate assessment of what could
4 have been happening out there. Because it is
5 clear and the department was clear that the gross
6 contamination present at the outfall needed to be
7 further investigated because of the gross
8 contamination on the property.

9 HEARING OFFICER: Mr. Phillips, are
10 there other possible pathways around DMH-2?

11 THE WITNESS: I think there are. I
12 don't have all of the details about it. But if
13 you remember, if we go to the south, there are
14 those tanks and that line.

15 HEARING OFFICER: Could you put that
16 back up there, Mr. Decoulos, so we could look for
17 possible pathways?

18 MR. DECOULOS: Yes, I'm looking for it.

19 Q So what I have up on the screen right now is
20 Figure 1 from Exhibit B-30, which is a
21 comprehensive site plan which shows the hole
22 conditions at the property.

23 A Would you mind putting up, actually, the
24 photograph that shows the boundary of NAPL. That

1 would be an easier one for me to use.

2 HEARING OFFICER: Is that B-41 or B-53.

3 THE WITNESS: That would be B-41, I
4 believe.

5 Q I have a laser pointer, too, Mr. Phillips, if
6 that's convenient.

7 A That's fine. As long as you don't make me stand
8 for the whole rest of the deposition, I will be
9 fine.

10 Q So, again, the question is, we have PID screen of
11 0.5 at DMH-2, we have no detectable EPH
12 concentrations in the groundwater outside of the
13 stormwater collection system, and you're trying to
14 justify why additional assessment actions could
15 support a pathway from the diesel NAPL delineation
16 that's shown in Exhibit B-41 as Figure 1. You're
17 trying to explain how that diesel NAPL could have
18 gone past that manhole structure in that
19 monitoring well and worked its way into the
20 drainage piping, and then, subsequently to the
21 outfall; is that correct?

22 A I'm answering the question to the hearing officer,
23 but --

24 HEARING OFFICER: Yes, that's what I

1 have asked him to do, to try to identify possible
2 pathways.

3 A This entire area here has no investigatory work.
4 So this line -- and again, I didn't do the
5 investigation, but this is what I would have
6 looked at. This line is not based on any data in
7 this area.

8 HEARING OFFICER: The line you're
9 referring to is the southern boundary of --

10 THE WITNESS: The southern boundary of
11 the NAPL.

12 HEARING OFFICER: It's important that we
13 don't talk over each other so that we have a clear
14 record.

15 The southern boundary of the NAPL, as
16 identified by Mr. Decoulos, is what you're talking
17 about. So go ahead.

18 THE WITNESS: Correct.

19 A A scenario that I would have thought to
20 investigate, and it relates even to the
21 cross-sections that you have here, AA and BB, if
22 the NAPL migrates along piping in this area,
23 because there is piping along this area between
24 the tanks and the pump island. If you have the

1 preferential pathway where you have that material
2 moving along this zone, this could look very
3 different and could be bypassing DCW-2 and getting
4 to there. There are a lot of ifs, but the point
5 is, for me, this is what needs to be investigated
6 to affirmatively address the issue that we have
7 gross contamination at the outfall, and we have
8 gross contamination here.

9 Q Mr. Phillips, are you an underground storage tank
10 inspector?

11 HEARING OFFICER: Gross contamination
12 where? Just for purposes of the record.

13 THE WITNESS: Gross contamination, the
14 NAPL itself is what I would consider to be gross
15 contamination, and the emulsified sheen or
16 whatever you would call it at the outfall, I would
17 also refer to as gross contamination.

18 HEARING OFFICER: So you're talking
19 about the area within the NAPL boundary as
20 identified by Mr. Decoulos on that exhibit is
21 where you're identifying one point as gross
22 contamination?

23 THE WITNESS: That's correct.

24 Q Mr. Phillips, are you an underground storage tank

1 inspector?

2 A I am not.

3 Q Do you know the piping that you're talking about
4 from the pump island to underground storage tanks,
5 is that the piping that runs from the tanks to the
6 pump islands and the dispensers to fuel vehicles?

7 A I don't know what all the piping is that's in this
8 area, but there would be piping associated with
9 the lines, yes, that go from the tanks to the
10 islands.

11 Q Do you know what depth that supply line pipes are
12 generally installed at?

13 A I don't recall, no, I'm not sure that I know.

14 Q If I told you that they weren't more than 3 feet
15 below grade, would that surprise you?

16 A No, I would expect them to be below the frost
17 line.

18 Q You would expect the pipes from underground
19 storage tanks to the fuel pump dispensers to be
20 below the frost line?

21 A I would think so.

22 Q What depth would that be?

23 A I would say it's in a 2 to 4-foot range.

24 Q Do you know if EPH -- by the way, for the record,

1 EPH stands for extractable petroleum hydrocarbons.
2 Do you know if EPH concentrations were identified
3 in monitoring wells BP-6, MW-A or KEI-5?

4 HEARING OFFICER: Could you repeat the
5 question, Mr. Decoulos?

6 Q Do you know if EPH concentrations were identified
7 in monitoring wells in BP-6, MW-A or KEI-5?

8 A I don't know.

9 Q If I told you that they were below Method 1
10 standards, would you be surprised?

11 A I wouldn't be one way or the other. I don't
12 know -- Mr. Decoulos, the issues is I don't know
13 how the contamination got there. That was not my
14 assignment to determine how it got there. I would
15 have done, as I described, other types of
16 investigatory activities to determine how that
17 condition was occurring.

18 Q All I'm asking from you, Mr. Phillips, is to make
19 a suggestion as to what else you would have done.

20 A Okay. I have done that already. Would you like
21 me to do that again?

22 HEARING OFFICER: Well, with reference
23 to what is depicted on the wall, what else would
24 you have done? Mr. Decoulos, for purposes of the

1 record, will you identify those wells you were
2 just looking at? Just remind me, yes, what's
3 that?

4 MR. DECOULOS: BP-6, which is northwest
5 of DCW-2. MW-A, which is south of the three
6 5,000-gallon underground storage tanks. And
7 KEI-5, which is southwest of the three
8 5,000-gallon underground storage tanks.

9 Q Now, one of the other suggestions that you had was
10 to assess the condition of the piping by advancing
11 test pits adjacent to the piping to allow for the
12 visual inspection. And you made this suggestion
13 on page 14 of your testimony on lines 2 through 4.
14 Could you explain how test pits in a busy gas
15 station would have been advanced in this area?

16 A A test pit is advanced using an excavator or a
17 backhoe, and it is dug down in a very small area.
18 The soil is dug up, placed to the side or next to
19 the excavation, observations are made, and samples
20 may be collected or the material is put back,
21 tamped back down, and you move onto the next
22 location.

23 Q In a busy gas station, like I presume you realize
24 Eagle Gas is, would you have had to make any

1 special arrangements to excavate through the
2 pavement? For instance, would you have cut the
3 pavement or would you have just simply gone in
4 with a backhoe and just gone right through the
5 pavement?

6 A I don't know what the street opening requirements
7 are in the Town of Carver, but I would have found
8 out what the requirements are for opening the
9 street, and let them know that this is what we
10 needed to do, and to make the appropriate
11 arrangements to do that. Again, put the material
12 back, tamp it down so that you don't have
13 settling, and repaving that area. That's a
14 restoration question as opposed to the excavation
15 question.

16 Q But when you have a backhoe with teeth, how do you
17 get through the pavement?

18 A It depends on the type of pavement that it is. If
19 it's concrete, you're going to have to cut it. If
20 it's asphalt, you can probably tear through it.

21 Q So you tear through it how? How would you do that
22 with a backhoe?

23 HEARING OFFICER: Mr. Decoulos, do you
24 really want to waste your time talking about this

1 subject. I have a question for -- I mean, you
2 can.

3 MR. DECOULOS: No, that's fine.

4 HEARING OFFICER: I have a question for
5 Mr. Phillips. Mr. Phillips, with reference to
6 what we're looking at on the wall here -- what
7 exhibit is this, Mr. Decoulos?

8 MR. DECOULOS: B-41.

9 HEARING OFFICER: What else would you
10 have done looking at this?

11 THE WITNESS: The types of things that I
12 would have done. First, I would have done a
13 cross-section just to see what it looked like the
14 oil could be in contact with the piping, just as a
15 base of elevation. I then would have looked at
16 what other utilities were present at the site,
17 looking for a preferential pathway. I would have
18 also done a video inspection, because the material
19 appears, based on the high concentrations of the
20 outfall, is getting into that piping system.
21 Where is it getting into that system? The best
22 way for me to do that is to do visual observation.
23 A manhole and a catch basin hundreds of feet apart
24 or 100 feet apart or 50 feet apart aren't

1 answering that question for me.

2 Once I had done that, I probably would
3 then have tried to confirm that with a test pit
4 type of investigation. You know, "It looks like
5 the piping is bad here, here and here. Let's get
6 into those locations, see whether we have an
7 issue. Let's get some confirmation of what types
8 of things are going on."

9 With regard to the utilities on the
10 property itself, I would have looked at those
11 utilities, a preferential pathway, and if I
12 thought one could be one, then maybe a test pit,
13 maybe a monitoring well in that vicinity to start
14 trying to do that assessment to figure out where
15 it is and how it's getting in there. That's what
16 I would have done as an appropriate level of
17 effort.

18 Q Would you have installed additional wells in
19 addition to what is shown?

20 A I may have put wells in different locations than
21 those that are shown. Some of the ones that we're
22 talking about to the south of the tanks, I believe
23 are part of a previous investigation with regard
24 to the gasoline station. They weren't part of

1 Mr. Decoulos' investigation. They are present
2 there.

3 I would certainly try and take advantage
4 of whatever wells I had at my disposal, and it
5 might have been just doing soil borings as opposed
6 to actually installing wells. But that's the
7 information gathering I would think that the
8 department was looking for to assess how that was
9 occurring. And I haven't sat here and tried to
10 develop all of the alternatives or scenarios that
11 could have resulted in this.

12 HEARING OFFICER: You would have done
13 additional soil borings, as well?

14 THE WITNESS: It would depend on really
15 sort of the outcome that we're talking about,
16 where those utilities a potential pathway? If
17 they were, yes, or I might have done it as test
18 pits. I don't know for sure until you gather the
19 information and assess that information what the
20 next appropriate step is.

21 HEARING OFFICER: Thank you.
22 Mr. Phillips, do you know how water is supplied to
23 the building on the Eagle Gas property?

24 THE WITNESS: I have a recollection that

1 there's a private water supply well, and I want to
2 say that it's on the southwest corner of the
3 building, but I'm not sure.

4 Q So would you agree that there would not be a need
5 for a water supply, a municipal water supply line,
6 from the Main Street right-of-way into the Eagle
7 Gas Station building?

8 A Under the scenario if that well was contaminated,
9 there would need to be an alternate source. I'm
10 not sure what you're asking me.

11 Q I'm asking you, is there a municipal water supply
12 that the Eagle Gas property owner could have
13 tapped into in the Main Street right-of-way which
14 would have been another concerned piping utility,
15 which you theorized might be a pathway to the
16 stormwater outfall?

17 A I haven't seen any drawings that show that there's
18 a municipal water line going up and down Main
19 Street. I don't know whether there is one or not.

20 Q Do you know how sewers discharged from the Eagle
21 Gas property at 131 Main Street?

22 A I am not 100 percent certain about that. It may
23 be on a septic system or it may have a sewer line.
24 I don't know which one.

1 Q Do you believe that there is municipal sewer in
2 the Main Street right-of-way for the Eagle Gas
3 property?

4 A I don't know for sure.

5 Q Do have any other suspected piping utilities that
6 might be preferential pathways other than the
7 underground storage tank supply lines?

8 A I have not asked for nor have been made available
9 to me or present in the reports the utility plans
10 for it. So I can't tell you one way or the other,
11 I don't know.

12 Q Aren't you here as an expert for the Board to make
13 determinations like that?

14 A I'm here as an expert for the Board with the
15 opinion that there was not adequate assessment
16 done. And I'm talking -- you've asked me to talk
17 about the types of other assessments that I would
18 have done or would have considered doing as part
19 of an adequate assessment of this area.

20 Q One of the things that you just recently described
21 was your belief that cross-sections were
22 necessary. We're looking at Exhibit B-41 right
23 now, Figure 1. I'm now flipping to Figure 2. Can
24 you tell me what Figure 2 of Exhibit B-41 shows?

1 A Those are cross-sections, and I think they were
2 produced in December '04; is that right?

3 Q Well, you can identify it for the record.

4 A Yes, it's identified as a cross-section in
5 December '04, 2004.

6 Q Do you see any evidence of diesel NAPL being
7 intercepted by any utilities that could have gone
8 down to the stormwater outfall?

9 A It's a little bit confusing to me the drawing that
10 you're putting forward, because if you look at
11 A-A, looks like this the bottom of the storm drain
12 manhole is in contact the storm drain, and the
13 storm drain is in contact with the groundwater
14 table. Whereas, if you look at cross-section B-B
15 it shows it as some distance apart. I don't know
16 whether that's feet, inches, but they are
17 different. And I can't tell you how accurate that
18 is or whether there's LNAPL present. As that
19 picture is depicted, it has LNAPL being beneath
20 the water table as opposed to above the water
21 table, which is what you would expect. So there's
22 a bunch of items that come into play. What I
23 would say to you about this picture, and had it
24 been done in early 2003 as part of the original

1 assessment, I would say, you know, it looks like
2 the groundwater could rise and fall a relatively
3 small distance and bring the LNAPL into contact
4 with the piping.

5 Q Have you ever prepared cross-sections?

6 A Yes.

7 Q Are you aware of how sections are established at
8 various locations?

9 A Yes.

10 Q Can you explain in Figure 1 where cross sections
11 A-A and B-B were roughly located?

12 A Usually they're depicted as B-B prime and A-A
13 prime, as it goes across. But the cross-section
14 is essentially between the two Bs that you have
15 listed and the two As that you have listed.

16 Q In what figure?

17 A Figure 1 from December 2004.

18 Q In your testimony, Exhibit B-6, page 15, you
19 mentioned that it may have been appropriate to
20 conduct forensic testing to demonstrate the
21 petroleum products were running off of a paved
22 surface of Eagle Gas Station. Are you aware that
23 I attempted to conduct forensic testing with a new
24 technique that was presented in a course that the

1 Board approved for continuing education credit
2 taught by Michael Wade?

3 A I have a recollection of that, but I don't
4 remember anything specifically about that.

5 Q Are you aware that I met with the LSP Board's
6 Complaint Review Team to discuss the evidence and
7 information that was collected at the Eagle Gas
8 site?

9 A Generally aware of that.

10 Q Are you aware that on January 30, 2008, I
11 submitted a package to the Complaint Review Team
12 explaining some of the reasoning that went into my
13 work, and it's as shown on Exhibit RR-40?

14 A Yes, generally.

15 Q Are you aware that in Subsection E of that letter
16 that I explained my efforts to conduct forensic
17 testing with these new techniques that Michael
18 Wade was teaching in the course entitled
19 Environmental Chemistry and the Emergence of
20 Forensic Geochemistry?

21 A I do recall that.

22 Q Are you aware that none of the labs that I work
23 with, which include Alpha Analytical and Geolabs
24 were able to provide the testing that Mr. Wade

1 described in that course?

2 A I don't know what the testing that Mr. Wade
3 described in that course, what those testing
4 procedures are, so I can't answer your question
5 with regard to that. I know that Alpha did and
6 Geolabs did a number of fingerprint analysis to
7 identify the types of petroleum products that were
8 both at the outfall as well as in the source area,
9 and that they were all identified as diesel
10 products.

11 Q Now, the next issue of discussion I want to get
12 into is the efforts to collect LNAPL, and the
13 dispute I had with the department on the
14 appropriate method, either passive recovery of the
15 LNAPL or active recovery. Can you explain the
16 difference between the two?

17 A Active remediation is described in the MCP as
18 regular or periodic removal either by mechanical
19 or electric mechanical means.

20 The passive, usually the passive
21 techniques for product removal are some type of
22 canister or absorbent material that is floating in
23 a well and slowly collects material.

24 Q Are you aware that there was soil data collected

1 at this site, which demonstrated that the
2 permeability of the underlying soils was slow and
3 did not meet the standards established by the
4 American Petroleum Institute and other
5 organizations such as the U.S. Environmental
6 Protection Agency to justify active LNAPL
7 collection?

8 A The permeability testing that you're talking about
9 was not done until, I believe, late 2004 or 2005,
10 two years, really, after the request to do active
11 remediation. I think the department is pretty
12 clear on its views that if you could make a case,
13 as they always say in any EPA DEP training that
14 I've been to, "Make your case." If you can make
15 the case, then they will be willing to consider
16 it.

17 I think in this particular instance, you
18 know, you brought a vac truck out there. The vac
19 truck actually removed quite a bit of product.
20 The well caved in, and there were some problems
21 with the measurements. But within 21 days, is my
22 recollection, product was back in that well.

23 A mechanical mechanism of coming out
24 there every two weeks or every three weeks to

1 vacuum out product out of the well may have been a
2 technique that should have been considered,
3 especially if the well were made larger.

4 Q Are you aware of the LSP Association's LNAPL white
5 papers that have been prepared?

6 A Generally, yes.

7 Q So you're not aware of the specific
8 recommendations that the Tech Practices Committee
9 of the LSP Association has made?

10 A You'd have to ask me about a specific element of
11 that that you're interested in. I have read
12 through the papers, I've looked through them. I
13 haven't looked through them in a number of years,
14 I don't think.

15 Q Are you aware of DEP's LNAPL workgroup that has
16 been assembled?

17 A Yes, I'm not sure that it's still active, quite
18 honestly. The last time I saw Steve Boynton, he
19 had told me that nothing had been done on that for
20 quite a long time.

21 Q Who is Steve Boynton?

22 A He's a member of the LNAPL or the NAPL workgroup,
23 and I believe he's given presentations at the
24 LSPA, you know, meetings for the LSPA.

1 MS. READ: I just want to state my
2 objection for the record, too. The LSPA white
3 papers, the first one of them was not published
4 until April 2005, which is very late in the course
5 of Mr. Decoulos' work at this site, and the second
6 one was years later. And the LSPA -- excuse me,
7 the MassDEP workgroup was not formed until, I
8 believe, 2008, according to the exhibits that
9 Mr. Decoulos has put in. And MassDEP has not
10 changed its standards for the assessment and
11 remediation of LNAPL, and that the standards that
12 were in place at the time that the work was done
13 are what is at issue. I understand that some
14 flexibility is being allowed for the questioning
15 in this area, but I wanted to state my objection.

16 HEARING OFFICER: Where are you going
17 with the questioning, Mr. Decoulos?

18 MR. DECOULOS: Well, Mr. --

19 HEARING OFFICER: The standard of care
20 that is applicable in this case is the standard
21 that existed at the time that you were doing the
22 work out there. And subsequent policy discussions
23 years later, as I have ruled, are not relevant for
24 that purpose. So I'm curious where you're going

1 with this.

2 MR. DECOULOS: I'm not going much
3 further with it, but my point here is that the
4 recommendations that I made to excavate the LNAPL
5 in June of 2004 were consistent with
6 recommendations that Steve Boynton and other LSP
7 members have made to the department, and are
8 recommendations which are in the LNAPL White
9 Papers. So my point is that what I had proposed
10 was actually ahead of the curve.

11 Q Mr. Phillips, Exhibit B-33 is my Immediate
12 Response Action Status Report and Modification.
13 On page 3 --

14 A What is the date of that, please?

15 Q June 15, 2004. What I have up on the display
16 right now is the bottom of page 3. Can you read
17 to me the second last paragraph on page 3?

18 A The one that starts with, "To provide"?

19 Q Yes.

20 A "To provide for possible active NAPL recovery, a
21 PVC electrical conduit together with
22 groundwater/NAPL supply and return lines, shall be
23 provided between the sign island and recovery
24 well. As shown on figure 1, the lines shall

1 include one 2-inch Schedule 40 PVC line and two
2 1-inch Schedule 40 PVC lines."

3 Q Thank you. On page 4, can you read me the
4 sentence -- rather, the paragraph above the
5 underlined heading, "Project Schedule." The
6 paragraph begins, "If necessary."

7 HEARING OFFICER: Which exhibit is this,
8 Mr. Decoulos?

9 MR. DECOULOS: B-33.

10 A "If necessary, the active recovery system shall
11 consist of a submersible, explosion proof, NAPL
12 recovery pump which shall pump the product to an
13 aboveground holding tank. The tank shall be
14 located to the southwest of the sign island, an
15 additional utility trench will be required to
16 connect the recovery pump. This additional
17 excavation would be conducted on the Eagle
18 property and would not require cutting of asphalt
19 pavement."

20 Q Thank you. In your testimony on pages 5 and 6, on
21 page 5, it's at lines 19 through 22, and on page
22 6, it's at lines 1 through 2. You talk about
23 imminent hazard evaluations, the assessment of
24 substantial release migration, and critical

1 exposure pathways. Are you aware that there was a
2 CEP at this site for the original release, which
3 was identified as 4-13333?

4 A I am aware of that.

5 Q How are you aware of that? Is there any evidence
6 that has made you aware of that?

7 A Just the pleadings in this matter.

8 Q I'm pulling up Exhibit RR-54 right now, the second
9 page. Can you read for me the two sentences that
10 begin with, "The Private --" can you read that?
11 This is the second page, I'm showing you, of
12 Exhibit RR-54. Can you read for me the two
13 sentences, the first sentence which --

14 A It's like an eye test.

15 Q You can't read it?

16 A It's like an eye test. I'm happy to do whatever
17 you would like me to do. Would you like me to
18 read the highlighted portion?

19 Q Yes, please.

20 A "The private well at the gas station remains a CEP
21 that was present in the historic gasoline release
22 4-1333 (and was one of the COCs actually reported
23 in the RLF and RNF) (4,000 PPB MtBE and MW
24 approximately 40 to 50 feet from the private

1 well). The private well contamination was present
2 prior to the diesel release and low levels of MtBE
3 are still present in the well as of the last
4 sampling round."

5 Q Thank you. Are you aware that I was responsible
6 for responding to a release of diesel LNAPL on a
7 site that had a preexisting gasoline release?

8 A Yes.

9 Q Are you aware that there was commingling of the
10 gasoline and diesel releases?

11 A That's not entirely clear to me, but it wouldn't
12 surprise me.

13 Q If there's a preexisting release at a site,
14 wouldn't you expect that responsible party or
15 potentially responsible party to assume a
16 significant burden of the assessment work to
17 continue assessing and closing out that release?

18 A For any RTN number there is a responsible party
19 that needs to move forward and address the
20 conditions of that RTN number.

21 Q Do you think I was being overly aggressive in
22 advocating for my client to limit his work to
23 assessing and cleaning up the diesel release?

24 A I wasn't aware that you had done anything

1 different than to work on investigation and
2 cleanup of the diesel release.

3 Q You were not aware that I was working with Dave
4 Bennett, who was an LSP, as well Ted Kaegael, who
5 was a former LSP, to address that prior release?

6 A I knew there was another release on the site, and
7 I've seen their names, but I don't know what the
8 details of your work with them were, per se. As I
9 sit here right now, I can't recall.

10 Q I'm going to present you with Exhibit RR-59.

11 HEARING OFFICER: Mr. Decoulos, just for
12 your own purposes and your own time management
13 purposes, you have three hours left today.

14 MR. DECOULOS: Thank you.

15 Q Mr. Phillips, in your testimony, Exhibit B-6, this
16 is your first testimony of August 18, 2010, you
17 talked about the second site that's the subject of
18 this proposed disciplinary action against me. And
19 that had to do with the gas station in Randolph,
20 identified as the Speedy Lube Gas Station site.
21 On page 27 of your testimony, you were asked a
22 question by Ms. Read as to whether it was
23 appropriate to file an RAO after two rounds of
24 groundwater sampling because the source of the

1 contamination had been removed. And you were
2 asked to concur. Can you, again, just explain --

3 MS. READ: Could you just identify the
4 page and the lines, again?

5 Q Actually, let's just go to page 28, the top of
6 page 28, lines 1 through 4, which is your answer
7 to the question.

8 A What was your question again? I'm sorry.

9 Q So the question has to do with whether you
10 concurred with the two rounds of groundwater
11 sampling being appropriate to filing an RAO. And
12 also -- well, you can read the question for
13 yourself.

14 A Okay. I want to hear what your question is to me.

15 HEARING OFFICER: What's your question
16 to him?

17 Q My question to you is: You mentioned that it was
18 unclear what the source of the contamination was
19 at the site.

20 A Yes.

21 Q And what I would like to do is direct you to
22 Exhibit B-55, Section 7.0, and have you read the
23 first two lines of Section 7.0.

24 A "A review of the residual groundwater

1 contamination indicates that background levels
2 have not been achieved. However, the source of
3 the elevated constituents, the former USTs and the
4 petroleum contaminated soil have all been
5 removed."

6 Q Does that address your concern about being unclear
7 that the source of the contamination at the Speedy
8 Lube site was addressed?

9 A No, in part, because the groundwater contamination
10 between the first round and the second round had
11 increased. So if the source had been removed,
12 then there would not be a basis for an increase in
13 concentrations in the environment.

14 Q Are you aware that additional groundwater sampling
15 was done at the site that disputed what you just
16 said?

17 A When was that done? Are you talking about after
18 the RAO was filed?

19 Q Right, there was an amended RAO that was filed as
20 Exhibit B-58 on June 18, 2004. Are you aware that
21 that additional groundwater sampling is in
22 contrast with what you just said?

23 A If it's not in this RAO report, I don't recall it
24 specifically.

1 Q But do you agree that Exhibit B-58 is part of the
2 record?

3 A If it's on the list. The way that, as you -- I
4 hope you are aware, is that the recommendation of
5 the department is that you should sample quarterly
6 for a year to establish that cleanup has been
7 achieved in the groundwater to deal with the
8 fluctuations in groundwater elevations over the
9 seasons, et cetera. That does not preclude making
10 the case that less frequent is fine for a site.
11 In this particular case when you have two samples
12 one month apart and the concentrations are showing
13 an increase, it indicates that there is not that
14 seasonality that has been considered or that
15 potentially the source has not been adequately
16 removed.

17 Q Are you aware that my original RAO cited a Phase I
18 initial site investigation report by SAGE
19 Environmental, dated June 1998?

20 A I do recall SAGE Environmental, yes.

21 Q Are you aware that SAGE conducted groundwater
22 sampling in addition to what I did?

23 A I did not look at the SAGE report, but I would
24 expect that they would have had to file a Phase I

1 initial site investigation.

2 Q Are you aware that there was an open monitoring
3 well left by SAGE that was acting as a surface
4 source of contamination to the subsurface as shown
5 in Speedy Lube Photo 5?

6 A I can't see anything in Speedy Lube Photo 5 that
7 tells me what you're talking about, and I don't
8 know that that was the source of any kind of
9 contamination whatsoever. That's not clear to me.

10 Q If I stated that in the report that gasoline
11 impacted runoff was going off the concrete pad and
12 going into that open subsurface point, would you
13 be surprised?

14 A It would be hard to know how the runoff is going
15 and whether that is -- the previous picture showed
16 it as being blocked with soil. So I'm not sure
17 that you have a lot of runoff going into that, but
18 it is a possibility that that would be the case.
19 That would certainly make your ability to render
20 an opinion accurately, it would confound it because
21 you have results that are in conflict with what
22 you're trying to render an opinion on.

23 MR. DECOULOS: For the record, I'm
24 referring to Speedy Lube photos 5 through 7.

1 Q My last question, Mr. Phillips, in your testimony
2 in Exhibit B-6, page 29, lines 9 through 11, you
3 mention that my filtering of samples would have
4 likely resulted in BPH concentrations that were
5 biased low. Are you saying that filtering is not
6 allowed under the MCP at the time this work was
7 conducted?

8 A For volatile organic compounds such as gasoline,
9 so whether you're doing it by VOCs, by method of
10 8260 or VPH, it's not common practice to filter
11 the samples because that physical manipulation of
12 the samples will result in reducing the
13 concentrations. There are cases that that might
14 need to be done and it needs to be spoken about
15 specifically. As I said before, the department
16 says, "Make your case. Say why that had to be
17 done."

18 Q Can you tell me where in the MCP -- where in
19 General Law Chapter 21E, the MCP or any department
20 policy, final policy, that it makes that
21 statement?

22 A I believe in the VPH guidance document there is
23 that information.

24 Q Do you know when that VPH/EPH guidance document

1 became effective?

2 A I don't.

3 MR. DECOULOS: No further questions.

4 HEARING OFFICER: Ms. Read, do you have
5 any questions.

6 MS. READ: Just a few.

7 REDIRECT EXAMINATION

8 BY MS. READ:

9 Q Earlier when Mr. Decoulos was asking you about the
10 possibility or the photograph that he had that
11 appeared to be of a junkyard at the Eagle Gas site
12 that he represented depicted a junkyard, in your
13 answer to a question as to whether the surface
14 flows from that area would go to the downgradient
15 catch basin, your answer included a statement that
16 you didn't know whether the area was paved or
17 unpaved. I wonder if you would just briefly
18 explain how that would affect your knowledge of
19 the outcome of that question?

20 A With regard to a paved surface, you have no
21 infiltration, essentially. You just have runoff,
22 just like you would have runoff from a road into
23 the catch basin. If it's an unpaved surface,
24 unless it's a major rain event, most of the water

1 will puddle and infiltrate into the soil in that
2 area. It will not run off. It will take odd
3 little paths, but most of the water will end up
4 infiltrating into the soil.

5 Q If that area had been paved and, therefore, most
6 of the water had run off toward the catch basin
7 that was in front of 133 Main Street to which
8 Mr. Decoulos was referring, would that change your
9 testimony in any way or your opinion as to whether
10 runoff would be the source of the contamination
11 identified at the outfall beginning in May of
12 2003?

13 A Regardless of whether it was paved or unpaved,
14 that wouldn't change my opinion about the outfall.

15 Q I understand your answer. Also, Mr. Decoulos
16 directed your attention to the site plan from the
17 ECS Phase I report, I believe, and asked about the
18 disposal site boundary that was depicted on that
19 plan as roughly a rectangle and then a thicker
20 line running to the southeast. Could you clarify
21 for us, the line that was running away from the
22 rectangle and to the southeast, is it your
23 understanding that it depicted solely the interior
24 of the storm pipe in the street or did it --

1 A My interpretation would be that it incorporated
2 the entire pipe and the area around it as part of
3 the site because that's how contamination was
4 migrating and potentially getting into that
5 piping. So it would not just be the interior of
6 the pipe itself. If that's your question.

7 Q Yes, thank you. Mr. Decoulos also drew your
8 attention as to Exhibit B-41 and the plan
9 associated with it to certain other monitoring
10 wells that were south of the area.

11 MS. READ: Mr. Decoulos, would you mind
12 putting that up on the screen?

13 MR. DECOULOS: So this the Phase I site
14 plan?

15 MS. READ: The B-41 site plan, yes.

16 Q He asked you about wells that were noted as BP-6,
17 MW-A or KEI. Are those wells located downgradient
18 of the tank area that you were discussing as a
19 potential area from which the release could have
20 migrated?

21 A They are not -- particularly, the KEI well and the
22 MW-A well are more cross-gradient. The BP-6 well,
23 I think is the one he was talking about, may
24 potentially be downgradient, in a downgradient

1 direction.

2 Q Of the underground tanks?

3 A Of the unground tanks, yes, BP-6 would be
4 downgradient, a portion, but the other two would
5 be more cross-gradient, I believe.

6 Q And BP-6 is upgradient of the drain manhole;
7 correct?

8 A Drain Manhole Number 2, yes, that's correct.

9 MS. READ: I have no other questions.

10 HEARING OFFICER: Thank you,
11 Mr. Phillips.

12 MR. DECOULOS: Thank you very much,
13 Mr. Phillips.

14 MS. READ: Could we take a short break?

15 HEARING OFFICER: Sure. Five minute
16 break and we'll resume right after that.

17 (Recessed at 2:22 p.m.,
18 resumed at 2:31 p.m.)

19 HEARING OFFICER: We're back on the
20 record. In terms of ordering witnesses, it
21 appears Ms. Baran will be testifying next; is that
22 correct?

23 MS. READ: Yes.

24 HEARING OFFICER: Mr. Decoulos, what are

1 your expectations in terms of timeframes for
2 different witnesses? What are your thoughts?

3 MR. DECOULOS: You know, I
4 honestly don't -- I may go to 5 o'clock with
5 Ms. Baran, I just don't know. Somewhere between 4
6 and 5 o'clock right now is a best guess.

7 HEARING OFFICER: Then how long do you
8 expect to have your examination last with
9 Mr. Luhrs and -- who else is left?

10 MS. READ: Mr. Fitzgerald.

11 HEARING OFFICER: -- and Mr. Fitzgerald?

12 MS. READ: It might help if I let you
13 know that Mr. Fitzgerald would go after Ms. Baran,
14 so that I would hope that if his testimony was
15 shorter that we could finish his today.

16 HEARING OFFICER: So you would like to
17 have Mr. Fitzgerald go before Ms. Baran?

18 MS. READ: No, after. I'm just saying I
19 hope that given that his testimony would be
20 shorter, it was my fond hope that we would be able
21 to finish both of those witnesses today.

22 HEARING OFFICER: Yes, we're going to
23 finish two witnesses today. Do you want to pick
24 which two those are?

1 MR. DECOULOS: Well, I was prepared for
2 the order of Ms. Baran and then Mr. Luhrs, since
3 they are both in this room.

4 MS. READ: Mr. Luhrs, because the
5 testimony has -- it's been determined now that it
6 will go over until tomorrow, Mr. Luhrs has offered
7 to come back tomorrow. So the order would change.
8 I don't know if that would be terribly
9 prejudicial. Originally, all of our witnesses
10 were scheduled to go today, so I would hope that
11 that be would feasible to reorder since we've --

12 HEARING OFFICER: So have Mr. Luhrs come
13 back tomorrow?

14 MS. READ: Yes, and have Mr. Fitzgerald
15 go today.

16 HEARING OFFICER: Mr. Fitzgerald and
17 Ms. Baran today?

18 MS. READ: Yes.

19 HEARING OFFICER: Well, let's see what
20 we can do. Okay.

21 Can you state your name for the record,
22 please?

23 MS. BARAN: Cynthia Ann Baran.

24 HEARING OFFICER: Do you promise to tell

1 the truth, the whole truth and nothing but the
2 truth?

3 MS. BARAN: Yes.

4 HEARING OFFICER: Okay. Thank you.

5 Ms. Read.

6 DIRECT EXAMINATION

7 BY MS. READ:

8 Q Ms. Baran, I'm handing you what has been marked as
9 Exhibit B-1. Is this the direct testimony that
10 you filed in this action, and do you recognize it
11 as yours?

12 A Yes.

13 Q Do you adopt the substance of this testimony for
14 this hearing today?

15 A I do. I have a few corrections that I would just
16 like to note, if that's okay?

17 HEARING OFFICER: That's fine.

18 A They may not be all of them, but I did notice that
19 on page 13 line 9 --

20 MR. DECOULOS: I'm sorry, which exhibit?

21 MS. READ: B-1.

22 MR. DECOULOS: Page 13, line 9?

23 MS. READ: Yes.

24 A Line 9, I would like to include the words, they

1 were somehow omitted, after, "release to the
2 ground surface," insert, "or vadose zone."

3 On page 16, line 11, just the date is
4 inaccurate. The RNF was submitted on December 19,
5 2003, and the IRA plan was submitted on
6 January 28, 2004.

7 MR. DECOULOS: I'm sorry. What lines,
8 again?

9 THE WITNESS: Line 11, I believe.

10 HEARING OFFICER: It will be in the
11 transcript, Mr. Decoulos.

12 THE WITNESS: I'm just correcting the
13 date of the RNF submittal. I lumped them together
14 inadvertently, because usually they're submitted
15 together.

16 A And on page 25, line 7, at the end I just wanted
17 to add, "until the IRA plan modification submittal
18 on July 12, 2005."

19 Then there are several instances in my
20 direct testimony and rebuttal testimony where I
21 may have referred to catch basin versus storm
22 drain globally, and I could go through and correct
23 them all if you would like, but I, in general,
24 would just like to change catch basin to catch

1 basin and/or drain manhole.

2 HEARING OFFICER: I'm sorry. Catch
3 basin to what?

4 THE WITNESS: Catch basis or drain
5 manhole. I'm going back to the confusion about
6 the drain manhole versus catch basin. You can't
7 see it on this exhibit, Mr. Decoulos' exhibit, but
8 I may have carried that from that RNF form, I may
9 have carried some of the language -- some of it, I
10 think is correct, and some of it I may have called
11 the drain manhole the catch basin.

12 MS. READ: Would it be better if we
13 submitted an errata sheet?

14 THE WITNESS: It's sort of the labeling
15 of that one drain structure. So I just wanted to
16 clarify that my testimony may have the same
17 confusion.

18 MR. DECOULOS: Just for the record, I
19 would like to object to that.

20 HEARING OFFICER: Your testimony is
21 what, that you used catch basin and drain manhole
22 interchangeably?

23 THE WITNESS: In certain instances, yes.

24 HEARING OFFICER: Do you know what those

1 instances are?

2 THE WITNESS: I didn't have a chance to
3 read through all of them. One is on page 18, line
4 14, and one in the rebuttal on page 2, line 8.

5 HEARING OFFICER: So you haven't
6 reviewed your testimony to determine what other
7 instances of that interchange occur?

8 THE WITNESS: Not that I caught. I
9 think those are the two place, but it may occur
10 some place else that I didn't catch --

11 HEARING OFFICER: Okay.

12 THE WITNESS: -- when I realized that
13 became an issue.

14 HEARING OFFICER: Okay.

15 THE WITNESS: I believe that's it.

16 Q Handing you your rebuttal testimony, which was
17 marked as Exhibit B-60, is this the rebuttal
18 testimony that you filed in this action, and do
19 you recognize it as your own testimony?

20 A Yes.

21 Q Do you adopt it for this hearing?

22 A Yes.

23 MS. READ: Thank you.

24 HEARING OFFICER: Mr. Decoulos, you can

1 proceed.

2 MR. DECOULOS: Thank you.

3 CROSS EXAMINATION

4 BY MR. DECOULOS:

5 Q Ms. Baran, in your testimony, Exhibit B-1, page 4,
6 you offered exhibits and were asked whether they
7 were accurate and complete copies of the documents
8 in the MassDEP file. Do you see that list of
9 documents ranging from Exhibit B-13 all the way to
10 B-54 onto page 5?

11 A Yes.

12 Q Do you stand by that statement?

13 A Yes, I believe they are, to the best of my
14 knowledge.

15 Q Can we start with Exhibit B-29, which is the IRA
16 Modification Plan, dated April 21, 2004. What I
17 would like for you to show is that exhibit -- how
18 many pages is that exhibit?

19 HEARING OFFICER: Mr. Decoulos, do you
20 believe that some of the exhibits that were listed
21 there are not accurate and complete?

22 MR. DECOULOS: Yes. There's five or six
23 of them that are significantly deficient.

24 HEARING OFFICER: Do you want to just go

1 through those?

2 MR. DECOULOS: Sure. That would be
3 easier. I agree. And timely.

4 HEARING OFFICER: You can go through it,
5 just pick it up, though, and specifically ask her
6 about those and what's missing and why.

7 Q Do you agree that Exhibit B-29 was not complete?
8 I have it up on the screen.

9 A I believe the submittal that was filed to the
10 department was actually missing pages. So it's a
11 complete record of what was submitted to the
12 department. It may not be your complete report.

13 Q So you're saying that the IRA Modification Plan
14 that I filed on April 21, 2004 to the department
15 is not what I have up on the screen, which
16 consists of 101 pages and as is posted on my
17 website?

18 A I was talking about the text of the report.

19 Q Did you say that in your response?

20 MS. READ: May I be allowed to make a
21 statement on the record in this regard?

22 HEARING OFFICER: Sure.

23 MS. READ: To the extent there may be
24 errors in the exhibits as they were filed by the

1 Board, those errors are very possibly my own or
2 errors. In that, the investigator who we worked
3 with when we originally collected the Board's
4 copies of the DEP file, which we had to request
5 from DEP, has passed away, and that collection was
6 made some time ago when our active investigation
7 began in, I believe it was 2007, when the CRT
8 really began. So there may have been decisions or
9 I may -- in any case, the Board's records of the
10 DEP file may have been incomplete. I asked
11 Ms. Baran to review the DEP file itself, which
12 resides at the Southeast Region. So I believe her
13 answer is based on looking at the list.

14 And, again, I understand I'm just making
15 a statement as counsel, but her answer is based on
16 looking at the list and looking at the original
17 submittals as they were filed in the Southeast
18 Regional Office. So I apologize for problems that
19 that may have caused, but it was part of the
20 process of the loss of our investigator and my own
21 oversight, and I apologize.

22 HEARING OFFICER: Mr. Decoulos, why
23 don't you go through those as quickly as possible,
24 and perhaps, you can find out the reason why with

1 Ms. Baran, and perhaps we can correct the record
2 down the road.

3 MR. DECOULOS: Well, for the record,
4 your Honor, I have actually made the corrections,
5 and what's posted on my website is actually the
6 full versions of these exhibits as they were filed
7 with DEP. But the point I'm trying to raise here
8 is that if I did not make those corrections and
9 post them properly, we would not be looking at a
10 complete record of what I presented to the
11 Department.

12 So again, the first one is Exhibit B-29,
13 which was 101 pages. The second incomplete
14 exhibit is Exhibit B-30, which is a Phase I
15 Report. For instance, this was the Phase I report
16 I'm holding in my hands, which is a black GBC
17 bound report, which is an inch-and-a-half thick,
18 and includes a 24 inch by 36 inch site plan. If I
19 look at Exhibit B-30 that the Board presented to
20 me for this proceeding, I'm looking at an exhibit
21 that's significantly less, because mine is
22 double-sided, does not have the 24 inch by 36 inch
23 site plan, and is also missing some other
24 significant data, which I deem to be prejudicial.

1 HEARING OFFICER: But it's in the record
2 now?

3 MR. DECOULOS: It is now in the record.

4 HEARING OFFICER: So B-29 was made part
5 of the record by you.

6 MR. DECOULOS: I corrected it.

7 HEARING OFFICER: Where is that, B-29 is
8 what?

9 MR. DECOULOS: B-29 is the IRA
10 Modification Plan filed on April 21.

11 HEARING OFFICER: I understand, but
12 where is that as your exhibit? What is it?

13 MR. DECOULOS: It's the Board's exhibit,
14 and it's an exhibit that Ms. Baran --

15 MS. READ: He corrected the --

16 MR. DECOULOS: B-29. I just simply
17 corrected it, and put B-29 back. Well, actually
18 what I posted on the website was the true copy
19 that I filed with the department, not what the
20 Board provided to us.

21 HEARING OFFICER: I understand. So B-29
22 has been corrected by you. What else? B-30 was
23 corrected by you. What else?

24 MR. DECOULOS: B-33, B-37, and lastly, I

1 identify that B-53 was missing significant
2 critical documents for my defense that I didn't
3 notice until this weekend, and did not have a
4 chance to post on the website because I did not
5 generate that exhibit, it was generated by the
6 consulting firm, ECS.

7 HEARING OFFICER: And that's B-53?

8 MR. DECOULOS: B-53.

9 MS. READ: But that was stated in
10 Ms. Baran's testimony expressly that that was a
11 partial production, and that if anyone would like
12 to have the full product, the Board would provide
13 it.

14 MR. DECOULOS: That's not what it said.

15 HEARING OFFICER: Well, Mr. Decoulos, I
16 will allow you, if you want, to put in the entire
17 ECS report as an additional exhibit.

18 MR. DECOULOS: Thank you. I don't know
19 how long it will take for me to gather that,
20 because it would probably require a file review
21 with the Southeast Region, and then for me to scan
22 it and prepare it. It may take a few weeks.

23 MS. READ: I believe that we can
24 expedite that with the official copy that's at

1 Southeast. I'm certain that we can provide an
2 electronic copy within a few days.

3 HEARING OFFICER: Okay.

4 MS. READ: I should give that a caveat.
5 I do not work at Southeast, but my understanding
6 is that those documents have been scanned and that
7 that is available in electronic format.

8 HEARING OFFICER: Okay. Otherwise, we
9 have a correct version of everything else in the
10 record; right?

11 MR. DECOULOS: It appears to be to me.

12 THE WITNESS: May I add one thing? The
13 only difference would be the date stamp of when
14 the department received the document, so that
15 would be the official submittal date versus the
16 date of the report. That may affect time lines.

17 HEARING OFFICER: Okay.

18 THE WITNESS: But that's just a minor
19 comment.

20 HEARING OFFICER: Okay. Are you
21 satisfied with that, Mr. Decoulos? I'm just
22 trying to help to save time here.

23 MR. DECOULOS: I appreciate it. It
24 appears at this moment that I'm satisfied.

1 HEARING OFFICER: Okay. You may
2 proceed.

3 MR. DECOULOS: Thank you.

4 Q Ms. Baran, your resume was submitted into the
5 record as an exhibit, B-2. It states here that
6 your prior experience included being the Director
7 of Public Health for the Town of Eastham and its
8 first health director. Furthermore, that you're a
9 registered sanitarian; is that correct?

10 A Yes.

11 Q Are you familiar with the septic system rules that
12 are promulgated by the department and set forth as
13 Title V, 310 CMR 15?

14 A Yes.

15 Q Your resume also says that you're a present member
16 of the Brewster Conservation Commission; is that
17 correct?

18 A I'm no longer a present member. I was at this
19 time.

20 Q It also states that you're the Chair of the
21 Brewster Water Quality Review Committee?

22 A Yes.

23 Q What does that particular committee do and what
24 were its duties and charge?

1 A The Water Quality Review committee is comprised of
2 members of all of the major boards in town that
3 review water quality permits and issue water
4 quality certificates to major projects that may
5 impact water quality in the water quality
6 protection, the aquifer protection program in the
7 Town of Brewster.

8 Q Is that groundwater or surface water?

9 A Groundwater, but we review land uses that may
10 impact -- well, actually both. Water quality,
11 surface water and groundwater. We predominantly
12 focused on protection of drinking water supply
13 wells, but we also looked at surface water quality
14 as well.

15 Q How do you protect the aquifer through this
16 committee? What are some of the rules that you
17 take in protecting the aquifer?

18 A Reviewing major projects that are submitted for
19 their potential impacts to water quality. Planned
20 use, you know, overall square footage of a
21 project, impervious surfaces.

22 Q So are there some land uses that the committee
23 would deny in an aquifer protection zone?

24 A There are or there are potentially. There are

3 Q Are there any uses that would be restricted?

4 A There are many.

5 Q What are some examples?

6 HEARING OFFICER: Mr. Decoulos, what's
7 the relevance of this?

8 MR. DECOULOS: Mr. Jones, it's been my
9 contention, as you know, that the impact at the
10 stormwater outfall was caused by surface water
11 contamination. The point I'm trying to make is
12 that what Ms. Baran's experience is in the Town of
13 Brewster with the Water Quality Review Committee
14 is consistent with surface water, best management
15 practices that are adopted throughout the country
16 that protects surface waters. And I'm just trying
17 to understand what her experience is in evaluating
18 surface water contamination.

19 HEARING OFFICER: You can ask her about
20 her own personal knowledge and expertise in that
21 area, but let's not delve into how the City of
22 Brewster or Town of Brewster regulates uses, et
23 cetera. Let's move on.

24 MR. DECOULOS: Can I just ask one more

1 question on it?

2 HEARING OFFICER: Yes, sure.

3 Q Would the Town of Brewster allow an automotive
4 junkyard in an aquifer protection zone?

5 A No, it would not.

6 Q Why not?

7 A Because of the potential for impact.

8 Q Impact to what?

9 A To build surface water and to groundwater.

10 Q Thank you. Now, in your testimony, Exhibit B-1 on
11 page 16, you talk about the reuse or the
12 redevelopment of the gas station that you and I
13 had discussed as part of my work as the LSP of
14 record. And you described best management
15 practices, which are recommended to comply with
16 the Clean Water Act; is that correct?

17 A Yes.

18 Q So what are some examples of best management
19 practices under the Clean Water Act?

20 A Limiting impervious area, surface area of new
21 developments; implementing some sort of capture
22 and release to reduce total suspended solids
23 runoff, I believe, by 80 percent; implementing
24 drainage soils or other subsurface engineering

1 structures to contain and treat surface water
2 discharges on the property so it does not enter
3 storm drainage systems. This was -- I will stop
4 there.

5 Q I submitted an Exhibit RR-22, which was from the
6 U.S. Environmental Protection Agency, and it
7 talked about stormwater basic information and best
8 management practices. And I just want to make
9 sure that the best management practices that
10 you're describing are consistent with what EPA is
11 describing in this exhibit. At page 2, they talk
12 about --

13 HEARING OFFICER: Mr. Decoulos, I'm just
14 trying to, again, help you out. We can stipulate
15 that those include best management practices. I
16 think the Board is willing to stipulate that even
17 Eagle Gas probably didn't have best management
18 practices in place; is that right? And that your
19 proposal for best management practices included
20 best management practices. I think the board can
21 stipulate to that, and we can all move forward.
22 Is that okay with you?

23 MR. DECOULOS: As long as it's okay with
24 the Board to make that stipulation.

1 MS. READ: That's fine.

2 HEARING OFFICER: That, in fact, what
3 you've proposed were best management practices for
4 stormwater for the Eagle Gas site.

5 MR. DECOULOS: But what I'm trying to
6 get at is that the lack of BMPs --

7 HEARING OFFICER: I understand that your
8 position is that Eagle Gas didn't have BMPs in
9 place, and the lack of BMPs contributed, you
10 think, to the conditions at the outfall.

11 MR. DECOULOS: Not contributed, caused.

12 HEARING OFFICER: Caused. I understand,
13 and I think the Board understands your position,
14 as well.

15 MS. READ: Yes, we would, and of course,
16 our objection to this line of questioning is that
17 it is not relevant to his assessment of a
18 subsurface diesel release that was on the site and
19 its connection to the stormwater --

20 HEARING OFFICER: No, but I think we all
21 understand the conditions of the site and the
22 conditions that existed at the Eagle Gas site in
23 terms of BMPs that were not or in place, and that
24 Mr. Decoulos, in fact, proposed some BMPs for the

1 site.

2 MS. READ: Yes, we would not dispute
3 that.

4 Q Now, Exhibit RR-19, which I presented was a map --

5 HEARING OFFICER: Mr. Decoulos, I'm not
6 saying this just to cut you off. I want to be
7 clear. If you object to what I'm -- just object
8 and tell me you want me to stop. I'm just trying
9 to help you so you can focus on the crux of your
10 case.

11 MR. DECOULOS: Because I'm not an
12 attorney, Mr. Jones, I appreciate the comments.

13 HEARING OFFICER: Okay.

14 Q Exhibit RR-19 is a map that I obtained from the
15 U.S. Environmental Protection Agency, and what I
16 did was I then took a section of that map and
17 zoomed in -- well, what I did on RR-19 was I
18 showed where the Eagle Gas site was on this map
19 from EPA. And I would like for you to confirm,
20 Ms. Baran, that my identification of the Eagle Gas
21 site is roughly accurate.

22 HEARING OFFICER: Are you able to do
23 that, Ms. Baran?

24 THE WITNESS: I'm just trying to find

1 something as a reference point, because the arrow
2 is so large, I'm even having a hard time even
3 finding South Meadow Brook.

4 HEARING OFFICER: Could you identify a
5 reference point?

6 MR. DECOULOS: Sure. Town Hall is up
7 here at a point just to the north of the arrow.
8 The road to the Rod & Gun Club is identified by
9 this road here just above the arrow. And then the
10 stormwater outfall occurs at an intersection just
11 to the east of the arrow.

12 MS. READ: I would object to stipulating
13 anything about the outfall, given that the brook
14 is not on the map.

15 HEARING OFFICER: Yes, it's very
16 difficult to ascertain from this map what we're
17 looking at, Mr. Decoulos.

18 MR. DECOULOS: It can't be determined
19 based on the street labels where we are?

20 HEARING OFFICER: Well, can you identify
21 the street that the Eagle Gas Station is on?
22 Where is that?

23 MR. DECOULOS: Main Street is along
24 here.

1 HEARING OFFICER: And Eagle Gas Station
2 is close to what intersection of Main and what?

3 MR. DECOULOS: South Meadow Road, which
4 is the closest main intersection here.

5 MS. READ: It's not labeled.

6 MR. DECOULOS: The labeling, I agree, is
7 not very clear, but there are labels on there to
8 help identify its location.

9 MS. READ: In any case, the border that
10 Mr. Decoulos is referring to is really on the
11 road, and certainly the orange -- assuming that
12 Eagle Gas is in the location that he has
13 identified, it is not clear to me that this map is
14 intended to indicate that that side of the road is
15 within this boundary. So I would object on that
16 basis.

17 HEARING OFFICER: Is this an exhibit,
18 Mr. Decoulos?

19 MR. DECOULOS: Yes, RR-19.

20 HEARING OFFICER: What's the point of --

21 MR. DECOULOS: The point of this exhibit
22 is to demonstrate that the watershed which picks
23 up the stormwater collection system is part of an
24 urbanized area identified by EPA. And that

1 classification of an urbanized area leads to some
2 significant thresholds, as far as water quality
3 goes, of surface waters.

4 HEARING OFFICER: And the relevance of
5 that is?

6 MR. DECOULOS: The relevance of that is
7 that contamination at the stormwater outfall in an
8 urbanized area identified by EPA would not be
9 considered unusual.

10 MS. READ: I strongly object to -- I
11 object to the relevance of this information.
12 There's also no dispute that the site is within
13 the groundwater one characterization because it is
14 a drinking water source area. And this
15 alternative designation as an urban runoff area is
16 irrelevant to the requirements under Chapter 21E
17 and the Massachusetts Contingency Plan for
18 groundwater cleanup, and the risk factors
19 indicated by runoff to surface water. This is an
20 entirely different regulatory scheme that is not
21 relevant to the --

22 HEARING OFFICER: And, Mr. Decoulos, I
23 don't believe that what we're talking about that
24 was observed, the outfall depicted in all of the

MR. DECOULOS: Well, earlier today I opened with one of the opening pieces of information I provided was Chapter 21E, Section 3, which talked about the department's requirement to promulgate regulations consistent with the Clean Water Act, CERCLA, and other pertinent laws. My point is that this urbanized area, which is delineated under the requirements of a Clean Water Act is another law that the department is required to consider in implementing regulations and its enforcement of 21E in the MCP.

21 MR. DECOULOS: All I was trying to do is
22 just identify the Eagle Gas site, which I
23 identified was accurate.

1 can even do in your closing brief, too. You can
2 try to identify with this exhibit that -- because
3 all of the exhibits that are in evidence identify
4 that the Eagle Gas site is within this location,
5 and you can make your argument and extrapolate
6 from there, if want.

7 MR. DECOULOS: Okay. Thank you.

8 Q Ms. Baran, as registered sanitarian, you're
9 familiar with percolation rates that are used by
10 engineers and sanitarians to design septic
11 systems; is that correct?

12 A Yes.

13 Q Are you aware that the septic design that was
14 approved by the Carver Board of Health was
15 included in the Phase I report that I filed with
16 the department in April of 2004?

17 A I vaguely recollect that, yes. I haven't looked
18 at it recently.

19 Q Do you remember what the percolation rate was?

20 A No.

21 Q If I direct you to that -- I can hand you the
22 original, if you would like.

23 A Please.

24 HEARING OFFICER: You could just

1 identify what you identified as the percolation
2 rate, Mr. Decoulos.

3 MR. DECOULOS: There's no need for me
4 to -- because it's in the record again; right?

5 HEARING OFFICER: Yes.

6 Q Do you recall what the permeability of the
7 overburden soils were that I established through
8 slug testing in February of 2005 at the Eagle Gas
9 site?

10 A No.

11 Q Again, I can recite them.

12 HEARING OFFICER: If you're going to ask
13 Ms. Baran questions about that, then you can
14 establish what you identified.

15 Q Ms. Baran, in the report that I filed with the
16 department, which was entitled Immediate Response
17 Action Plan Modification, dated July 8, 2005,
18 Exhibit B-50, I identified the permeability rate
19 between 1.7 times 10 to the minus 5 centimeters
20 per second, and 1.85 times 10 to the minus
21 5-centimeters per second. In the work that you
22 had done that you have overseen of response
23 actions at this site, do those permeability rates
24 appear accurate? This is on page 22 of the

1 exhibit.

2 A Without reviewing your whole methodology, yes, I
3 would say those would be within reason.

4 Q Do you consider that rate slow permeability, rapid
5 permeability? What would you consider that type
6 of soil material?

7 A Slow.

8 Q In Exhibit RR-36, which I filed, it's entitled the
9 Phase IV Final Inspection Report and Completion
10 Statement by CEA. On page 2 of 5, CEA stated that
11 they were trying to discharge treated groundwater
12 to on site recharge galleries which were activated
13 on January 29, 2008?

14 MS. READ: Could you tell me again which
15 exhibit?

16 MR. DECOULOS: Exhibit RR-36.

17 Q Do you have it in front of you or do you want me
18 to pull it up on screen?

19 A I don't have it. I'm sorry. What was the title?

20 Q Phase IV Final Inspection Report, September 30,
21 2008. The first full paragraph here, the second
22 sentence, can you read that?

23 A "The HVE System was designed discharge treated
24 groundwater to an on site recharge gallery and was

1 activated January 29, 2008. The Infiltration
2 Gallery was unable to disperse the water
3 effectively in the subsurface, and the system was
4 shut down due to high water alarm in the discharge
5 gallery.

6 Q Do you think that the slow permeability of the
7 soil had anything to do with CEA's failure to
8 infiltrate treated groundwater into the
9 subsurface?

10 A It may have affected it, but it would also depend
11 on the size and construction of the infiltration
12 galleries. They may not have been properly sized
13 or installed.

14 Q So what did CEA then do when it failed to properly
15 size the galleries or design them to allow
16 subsurface infiltration? Do you know what they
17 did to discharge the treated groundwater?

18 MS. READ: I object to this question as
19 to the relevance to the quality of Mr. Decoulos'
20 work at this site.

21 HEARING OFFICER: Where are you going
22 with this, Mr. Decoulos?

23 MR. DECOULOS: This has to deal with the
24 issue of LNAPL collection, and the slow

1 permeability of the soil would completely support
2 my proposals to passively collect the LNAPL with
3 the backup of active NAPL collection. I'm just
4 trying to demonstrate that what I found was
5 consistent with what both ECS and CEA ended up
6 designing and approving.

7 MS. READ: And, again, the Board's
8 position is that what is at issue here is the
9 amount of information that Mr. Decoulos had at the
10 time that he rendered his opinion, and whether the
11 data that he had collected adequately supported
12 his opinion. And, therefore, the existence of
13 another design and another plan, which we --

14 HEARING OFFICER: But he's claiming one
15 of the reasons that he did what he did or did not
16 do what you would have liked him to do is because
17 of the permeability in the soils. And he's
18 claiming that the permeability issue was
19 corroborated by -- his position regarding
20 permeability was corroborated by what somebody
21 else found. It seems relevant to me.

22 MS. READ: What's at issue for the Board
23 is the scientific validity of an LSP's opinion at
24 the time it is rendered, and what data is

1 available and has been collected by the LSP in
2 order to support that opinion. And the MCP
3 contains performance standards, as well, that are
4 LSP's obligation to meet at the time they
5 performed the work. And, therefore, the existence
6 of postdated data is not relevant to whether the
7 LSP at the time had data to support the opinion.

8 In fact, we will be arguing that the
9 permeability calculations done in February of 2005
10 are two years late -- perhaps not two entire years
11 late, but that is at the very end of Mr. Decoulos'
12 work. And what's at issue is the support that he
13 had for his opinions beginning in January of '03.
14 I understand that this is a discussion of
15 permeability, and I'm willing to -- I understand
16 that you're allowing some flexibility in the line
17 of questioning. But the purpose of the privatized
18 system is not to make predictions, it's to gather
19 evidence and render a scientifically valid
20 opinion.

21 HEARING OFFICER: I understand that.
22 Mr. Decoulos, you can the ask those questions, but
23 let's move on.

24 MR. DECOULOS: And you understand that

1 all I'm trying to do is demonstrate that what I
2 proposed with the information I had ended up being
3 entirely consistent with what the department
4 approved after I was involved in this project.
5 That's where I'm going.

6 HEARING OFFICER: I understand.

7 Q Now, on Figure 3 of this Exhibit RR-36, CEA shows
8 a site plan of the Eagle Gas Station with their
9 the proposed HVE system, which collected
10 groundwater in NAPL. Can you confirm that the
11 area of NAPL collection is in the same general
12 area where I proposed to collect NAPL in June of
13 2004 and November of 2004?

14 A It's in the same general area.

15 Q Is it on the same side of the stormwater
16 collection trunk that's in the Main Street
17 right-of-way? Is it on the westerly side of that
18 stormwater collection trunk?

19 A The NAPL?

20 Q Yes, the remedial system that was designed,
21 approved and implemented at the Eagle Gas site,
22 was that system west of the stormwater collection
23 trunk? If you would like me to zoom --

24 A Yes. As you will note, they installed

1 significantly more recovery extraction wells. I
2 believe there are 11 or 12. And they also had
3 proposed using the infiltration gallery, in fact,
4 attempted to as part of their remedial effort.

5 Q To discharge the treated groundwater?

6 A No, to recover NAPL from the interceptor trench.

7 Q Can you tell me, after they failed to discharge
8 the treated groundwater, can you tell me where
9 they ended up discharging the groundwater?

10 A Yes, they received a NIPTES permit from EPA and
11 discharged it directly into the storm drain system
12 after the treatment.

13 Q Based on the chalk that Mr. Phillips identified
14 today, can you tell me which catch basin or drain
15 manhole the treated groundwater was discharged
16 into?

17 A Is the chalk still up?

18 Q Yes.

19 A It's over there. I'm sorry. I can't see it.

20 Q I can identify on here, if you would like. As a
21 matter of fact, it turns out that the catch basin
22 identification on CEA's plan is identical to what
23 Mr. Phillips marked today. CB-1 is shown on the
24 CEA plan is identical to the CB-1 that

1 Mr. Phillips identified on Chalk 1 today.

2 A I believe it's CB-1 then.

3 MS. READ: Could you, Mr. Decoulos,
4 inspect Chalk 1 and make sure that those two CB
5 numbers are the same, just for record.

6 MR. DECOULOS: I have already done it.
7 What do you want me to do?

8 MS. READ: I don't want you to make any
9 marks. I just want to make sure that what you're
10 stating on the record is correct that the two --
11 that on each of those two, the catch basin numbers
12 are the same.

13 MR. DECOULOS: CB-1, CB-2.

14 MS. READ: Okay. Thank you.

15 Q If I understand this correctly, ECS is pumping
16 through an HVE system groundwater and NAPL at the
17 same location where I proposed an infiltrator
18 trench in June of 2004 treating that groundwater
19 and then discharging it in an upgradient catch
20 basin, that's then flowing into the stormwater
21 collection through this same system that grossly
22 contaminated the stormwater outfall; is that
23 correct?

24 A That is correct, however, ECS had already

1 performed significant NAPL recovery prior to CEA's
2 involvement, and documented substantial recovery
3 of NAPL and groundwater. They also installed two
4 oil water separators in two of the -- I'm sorry,
5 you zoomed out and I lost my focus -- in two of
6 the subsurface structures in line --

7 Q Do you want to me to zoom in?

8 A That's okay.

9 -- downgradient of -- we're calling it
10 CB-1 -- of the discharge point. And a sandbag
11 dike oil water separator had been installed at the
12 outfall by that point. So there were many
13 remedial concluding -- active remedial, active
14 NAPL recovery and groundwater recovery actions
15 that had occurred prior to CEA's change from
16 discharge to the ground surface --

17 I can't read it. I'm sorry. Whatever
18 that is.

19 -- prior to their discharge to the storm
20 system. And they performed weekly inspections and
21 monthly testing of the discharge.

22 Q Where?

23 A At the effluent of the system prior to discharge.

24 Q When that effluent went into the stormwater

1 collection system at CB-1, doesn't it then flow to
2 DMH-1 in the collection system?

3 A It appears from the site plan that it does.

4 Q Then from DMH-1, doesn't it flow in a southerly
5 direction right through the diesel NAPL release
6 which has been alleged was a significant -- not
7 significant, it entirely caused the contamination
8 at the outfall? Isn't it true that that's where
9 that effluent is running right through?

10 A The treated effluent that meets all discharged
11 parameters is discharged to Catch Basin 1, and it
12 does flow through the storm drain system, and
13 ultimately discharges at the outfall at South
14 Meadow Brook.

15 Q But you didn't answer the question. Isn't it
16 true --

17 HEARING OFFICER: She just answered it.

18 Q Isn't it running right through the diesel NAPL
19 delineation area?

20 A The storm drain system itself exists in that area.

21 HEARING OFFICER: Within this storm
22 drain system, as I understand; correct?

23 THE WITNESS: Correct, within the
24 piping, yes.

1 Q You mentioned that CEA had made significant
2 progress on the remedial work, and we're talking
3 about a report dated September 30, 2008 three
4 years after I left this job. On page --

5 A I'm sorry. So this was the Phase IV Final
6 Inspection Report?

7 Q Yes.

8 A So they had just activated the system.

9 Q Yes. Can you read for me the first bullet on page
10 2?

11 HEARING OFFICER: You're still on the
12 Phase IV Report RR-36?

13 MR. DECOULOS: Yes.

14 Q RR-36. Page 2, the first bullet. Can you read
15 the first bullet?

16 A "The system has treated approximately 93,000
17 gallons of groundwater and has recovered
18 approximately 10 gallons of NAPL. This is a high
19 vacuum system. It would tend to volatilize a
20 significant amount of contaminants in the
21 groundwater. It's a multiphase recovery system.
22 The significant amount of the contamination may
23 have been volatilized and treated through the air
24 GAC, (Granulated Activated Carbon) GAC units."

1 Q Is diesel fuel a petroleum product that's likely
2 to easily volatilize?

3 A Fractions of it certainly are and under
4 significantly high vacuum, it's possible that it
5 could volatilize, yes.

6 Q But there would also be remaining constituents
7 that would be in a free phase form, wouldn't there
8 be?

9 A Sure. I thought you were getting to the
10 approximately 10 gallons of NAPL.

11 Q I am.

12 A I believe that that was what was recovered from
13 the oil water separator.

14 Q Right, and this is in the area where the source of
15 the diesel release occurred?

16 A Right. What's the date of that report?

17 Q September 30, 2008.

18 A It must be a subsequent report that reported when
19 they actually cleaned out the oil water separator,
20 they recovered approximately, I don't recall the
21 exact number, 440 gallons of NAPL in groundwater.

22 Q Over what period?

23 A It was a one-time event because the separator had
24 silted in -- or two times. I don't recall over

1 what time period, but it would be in addition to
2 this.

3 Q Could you estimate a year? Do you have any idea
4 approximately of what time period it might be?

5 A Sometime after this. I'm not sure.

6 Q Now, prior to CEA's involvement at this site,
7 there was another consultant involved in this
8 project, wasn't there?

9 A Yes.

10 Q Do you know who that was?

11 A ECS.

12 Q And ECS submitted reports to the department; isn't
13 that correct?

14 A Yes.

15 Q Isn't it true that you sponsored Exhibit B-53
16 which is a Phase II comprehensive site assessment
17 by ECS?

18 A Yes.

19 Q And as I pull that exhibit up, I want to direct
20 your attention to page 35, which is the summary
21 and findings. In Section 9.0, which is the
22 summary and findings, there's a bullet that begins
23 with the term -- well, the wording, "the extent of
24 the disposal site." Can you read that paragraph?

1 A Sure. "The extent of the disposal site in the
2 area of the Eagle Gas property is approximately
3 68 feet in length east/west, and approximately
4 40 feet wide north/south. (Shown in Figure 3.)
5 The estimated extent of LNAPL at the disposal site
6 is approximately 60 feet in length and up to
7 30 feet in width (Figure 6). Soil and groundwater
8 impact are not expected to exceed a vertical depth
9 of 20 feet in this area."

10 Q Now, in Exhibit B-41, which I e-mailed to you in
11 December of 2004, I delineated the approximate
12 extent of NAPL based on my assessment work to that
13 point. What I would like for you to do is to
14 measure and compare what ECS determined for an
15 approximate size of the LNAPL extent with what I
16 presented to you in December of 2004. I have
17 printed Exhibit B-41 to scale, and I have a scale
18 here, and I would like for you to measure the
19 length and width of that. Are you familiar with a
20 scale?

21 A Yes. If I can read it. My eyes are going.
22 Approximately 46 by 35.

23 Q Thank you.

24 A I note on your plan that you had not yet

1 delineated the extent of NAPL either under the
2 building or to the south of DCW-7. And I'm not
3 sure -- what's the date of this report -- if ECS
4 had completed assessment under the building at
5 that point either.

6 Q But they certainly had a good jump start in their
7 assessment work with what I had completed,
8 wouldn't you agree?

9 A They certainly used the wells that you had
10 installed as part of their assessment, and they
11 installed a significant number of additional
12 wells.

13 Q Now, in Exhibit B-53 on page 17, ECS talks about
14 stormwater drain line, manhole and catch basin
15 screening, and they talk about their screening and
16 sampling of the stormwater collection system. I'm
17 going to go to page 17. At the bottom of page 17,
18 Section 4.7.4, they talk about what they found in
19 the screening of the stormwater collection system,
20 both the drain manholes and the catch basins. Can
21 you read that into the record, please?

22 A "ECS has screened several of the stormwater
23 drain-line manholes and associated catch basin for
24 VOC via PID and for percent LEL. In October 2005,

1 low PID readings were detected in two of the
2 manholes and catch basins that were screened. No
3 LEL readings were detected in the manholes. In
4 July 2006, no PID readings were detected in the
5 manholes. The readings are presented in Table 8
6 and the locations of the utility structures are
7 shown on Figures 2 and 3."

8 Q Just to discuss, again, the inadequacy of this
9 exhibit as I opened with. These are two, the
10 Table 8, Figures 2 and 3 are critical for me to
11 take a look at and see exactly where they were in
12 relation to what I had conducted.

13 Now, on the next page, 4.7.5 ECS talks
14 about sampling of the stormwater collection
15 system. They also describe in the third sentence
16 that they didn't identify any compounds which were
17 above MassDEP ambient water quality criteria since
18 October 2005. Does that look like a reasonable
19 conclusion by them?

20 A If that's what their data supports, yes.

21 Q Did you review this report?

22 A I did.

23 Q Can you tell me if what ECS found in this report
24 of November 2006 was materially different than

1 what I have presented as Exhibit RR-8, which I
2 have posted here on this easel.

3 MS. READ: I would renew my objection to
4 what is posted on the easel. Mr. Decoulos, I
5 believe, we have now come to the exhibit to which
6 I have objected because it contains several
7 inaccuracies in terms of its foundation in data
8 that may have been collected by Mr. Decoulos.

9 HEARING OFFICER: What are the
10 inaccuracies?

11 MS. READ: For instance, the source --

12 MR. DECOULOS: Excuse me. Mr. Jones, I
13 think it might be good for a witness to testify as
14 to what the inaccuracies were rather than having
15 the counsel for the Board state what they were.

16 HEARING OFFICER: Well, no, Ms. Read has
17 objected to it because she believes that it
18 doesn't accurately portray the evidence in the
19 record. So I want to hear -- and she's objected
20 to you using this. So I would like to hear what
21 the inaccuracies are.

22 MS. READ: It indicates a source of the
23 NAPL release; it does not include the extent of
24 the NAPL release. And the source is very small

1 along the storm drain line -- excuse me, along the
2 remote fill line. It has a label that said,
3 "Mandated NAPL recovery trench by MassDEP," and
4 that's utterly inaccurate. MassDEP never mandated
5 a trench. And it includes other extraneous
6 information. My objection was to using it as a
7 chalk in terms of its creation of an impression on
8 various points.

9 It has the comparison of the highest
10 observed EPH stormwater concentrations and the
11 highest observed EPH stormwater concentrations at
12 the outfall. And it refers for the outfall to the
13 Phase I, dated May 6, 2004, but it doesn't note
14 that the data was collected in June of 2003. So
15 the date span between the two concentrations that
16 are being compared here is reduced from what it
17 really was.

18 So those are the types of
19 misrepresentations -- its advocacy on here. And
20 it just doesn't reflect accurately a lot of the
21 data.

22 I want to note my objection. I
23 certainly understand that you, as the hearing
24 officer, know what the data are and can refer to

1 the other parts of the record. I just wanted to
2 avoid giving an impression that this is an
3 accurate depiction of many of the features of the
4 site.

5 HEARING OFFICER: I think the right
6 thing to do is allow it to stay in subject to your
7 objections, and noting for the record that it has
8 a number of representations on it with which you
9 take issue and disagree and appear, based upon
10 what you've said, not to be supported by the
11 accurate information in the record. And
12 Mr. Decoulos, you are welcome to respond to that.
13 Again, this is something that can be responded to
14 in a closing brief. It doesn't have to be sorted
15 out right now.

16 MR. DECOULOS: Thank you. I just wanted
17 to hear from the witness, your Honor, really a
18 main witness as to why this might be considered
19 inaccurate, because I'm offended by it. I spent a
20 lot of time preparing it, and I just want to know
21 where the inaccuracies are.

22 HEARING OFFICER: You don't need to hear
23 from a witness regarding that. That's not
24 something that is proper for a witness to do.

1 It's proper for counsel to object on the basis of
2 it even coming in because it's not a reliable
3 piece of evidence. That's perfectly appropriate.
4 It's not appropriate for a witness to be
5 testifying to something that counsel argues does
6 not accurately portray evidence in the record.

7 If you want to ask Ms. Baran questions
8 about it, you may, subject to what Ms. Read has
9 already pointed out. And, again, you're welcome
10 to contradict what Ms. Read said based upon other
11 evidence in the record in your closing brief.

12 MR. DECOULOS: Thank you.

13 Q Now, one of the key issues that appears to be the
14 foundation of Ms. Read's argument, I'm objecting
15 to Exhibit RR-8, is my use of the phrase "mandated
16 NAPL recovery trench." Ms. Baran, can you state
17 when that recovery trench was installed?

18 A It was installed in December of, I believe, 2005.
19 I need to check. December 2004. I believe it was
20 December of 2004. I need to actually look at
21 my...

22 Q So December of 2004 is when the trench, which I
23 state on Exhibit RR-8, was mandated. Now, before
24 that trench was constructed, did I make any other

1 proposals to the department to install NAPL
2 recovery systems?

3 A Yes.

4 Q What were they?

5 A You initially proposed, I believe, a 12-inch
6 active NAPL recovery well. You later proposed
7 several passive recovery options, including
8 inserting the passive skimmer in one and/or two of
9 the wells. I believe you proposed an infiltration
10 gallery -- I'm sorry -- an interceptor trench at a
11 location on the Eagle Gas side of the stormwater
12 system.

13 Q Isn't it true that I submitted proposals in June
14 of 2004, November of 2004 for recovery of NAPL in
15 the area I showed on Exhibit RR-8, proposed NAPL
16 recovery trench by Decoulos?

17 A Do you have your smaller version?

18 Q I can put it up on the screen.

19 MS. READ: I do have a hard copy here, I
20 think.

21 MR. DECOULOS: It's up on the screen
22 right now.

23 HEARING OFFICER: This is RR-8,
24 Mr. Decoulos?

1 MR. DECOULOS: Yes, RR-8.

2 HEARING OFFICER: Do you have a
3 question, Mr. Decoulos?

4 A I'm sorry. What was the question?

5 Q I did ask a question. My question was: Isn't it
6 true that's what identified as proposal NAPL
7 recovery trench by Decoulos on RR-8 is consistent
8 with the location I presented in the IRA status
9 and Mod report, dated June 15, 2004?

10 A I would need to look at the Modification Report,
11 but it looks generally consistent.

12 Q Is it also generally consistent with what I
13 proposed for NAPL recovery in November of 2004?

14 A In November of 2004, I would also -- I believe
15 that -- if I could look at it, that would be
16 helpful. But I thought at that point you had
17 proposed two passive skimmers and potential for an
18 active recovery in one of the two extraction wells
19 that you had installed.

20 Q Isn't it true that in my June 2004 submission, I
21 also proposed an alternative of active recovery?

22 A In your June two thousand --

23 Q Exhibit B-33.

24 A You indicate that the initial phase will be --

1 "shall be made with a passive skimmer collection
2 system."

3 Q This is Exhibit B-33 you're reading?

4 A I believe so. June --

5 Q 2004?

6 A -- 15, 2004.

7 Q Yes.

8 A The Immediate Response Action Plan Status Report
9 and Modification. Yes. You propose an
10 interceptor trench and the NAPL collection shall
11 be made with a passive skimmer collection. It
12 proposes one 4-inch stainless steel ZORBO recovery
13 system, and the one unit can collect up to
14 one-half gallon of product, which must be manually
15 emptied.

16 Q Didn't I propose in the alternative active
17 recovery if the passive recovery didn't work?

18 A It says, "If necessary, an active recovery system
19 shall consist of a submersible, explosion proof,
20 NAPL recovery pump which shall pump the product to
21 an aboveground product holding tank."

22 So you said -- the proposal is for
23 passive recovery with a potential active -- it's
24 two sentences or maybe three. It's not supported

1 with the design for an active system or the
2 required parameters to design either how much
3 product would be recovered or how it would be
4 treated or infiltrated or recharged back to the
5 stormwater system. So I would say that's not a
6 complete proposal. You do mention that you would
7 consider active recovery, if necessary. It
8 doesn't say how you would evaluate if it was
9 necessary or submit a design proposal.

10 Q On the prior page on page 3, the second to last
11 paragraph, don't you agree that I go into a little
12 more detail about providing for a potential active
13 NAPL recovery system?

14 A I'm sorry, on page?

15 Q Page 3 of 4, second to last paragraph.

16 A You state that you provide an electrical conduit
17 and supply and return lines. That's providing a
18 conduit, that's not designing or installing.

19 Q Can you read that paragraph into the record?

20 A Sure. "To provide for possible active NAPL
21 recovery, a PVC electrical conduit, together with
22 groundwater/NAPL supply and return lines, shall be
23 provided between the sign island and the recovery
24 well. As shown on Figure 1, the lines shall

1 include one 2 inch Schedule 40 PVC line and two
2 1 inch Schedule 40 PVC lines."

3 I read that to say you will install
4 three small diameter PVC pipes in the ground.
5 That, to me, is not design of an active system.

6 Q Right, but wasn't I talking about just placing it
7 in the ground to prepare for possible active NAPL
8 recovery if passive recovery did not work?

9 A Yes, you were proposing to put three lengths of
10 PVC pipe in the ground to prepare, but you did not
11 submit a design for an active recovery system.

12 Q Is there something wrong with opening up the
13 ground and putting conduits in the ground --

14 A Not at all.

15 Q -- to prepare for a future design if the first one
16 failed?

17 A No. I'm just saying it wasn't designed for active
18 recovery or a complete proposal. But no,
19 absolutely, that's perfectly acceptable.

20 Q Is there something wrong with proposing a cost
21 effective less intrusive type of recovery system,
22 and then if that doesn't work, going to a more
23 complex and electrical demanding system?

24 A No. If the site specific conditions only warrant

1 the lesser cheaper remedial response action. You
2 need to take into account the site complexity,
3 potential migration pathways, the nature and
4 extent of the contaminant including the location
5 and recoverability of the product, and most
6 importantly, the sensitive receptors that were
7 abundant in that area.

8 So in some case, although -- yes, it is
9 preferable to go from a less expensive, easier to
10 install system, to try to that first. When you
11 have significant potential exposure pathways and
12 sensitive receptors in the area, it is not
13 appropriate to wait two-and-a-half years.

14 Q Where do you get the two-and-a-half years?

15 A Approximately two-and-a-half years. From the date
16 that you first reported the NAPL to the July 2005
17 submittal, which was the first time you submitted
18 most of the information necessary for an active
19 recovery system.

20 Q But we're talking Exhibit B-33 here. What's the
21 date of Exhibit B-33?

22 A June 15, 2004. And you asked -- I thought you
23 were asking when it was appropriate to install a
24 less complicated, cheaper, less expensive remedial

1 alternative, and my answer was what my answer was.

2 HEARING OFFICER: Mr. Decoulos, how much
3 longer do you have with Ms. Baran?

4 MR. DECOULOS: 10 to 15 minutes.

5 Q Doesn't it make sense, Ms. Baran --

6 HEARING OFFICER: Let me interrupt for a
7 minute. Is everybody okay with just continuing to
8 go, and then we'll take Mr. Fitzgerald? It's
9 Mr. Fitzgerald; right?

10 MS. READ: Yes.

11 HEARING OFFICER: I assume you're
12 Mr. Fitzgerald?

13 MS. READ: No, he's not. Actually,
14 Mr. Fitzgerald --

15 HEARING OFFICER: He's not here?

16 MS. READ: He is in the building. He
17 will come at 4 o'clock, unless we call him
18 earlier.

19 HEARING OFFICER: Okay. Great.

20 Q Doesn't it make sense, Ms. Baran, if you know that
21 there is free phase floating petroleum product in
22 the ground, to try to get it out as quick as
23 possible without waiting to do additional
24 assessment and discovery work?

1 A It is if you have adequately assessed the
2 preferential migration pathways and you have made
3 sure that you're not going to exacerbate site
4 conditions by drawing a mass of NAPL towards a
5 preferential pathway too sensitive for human and
6 environmental receptors. I think it became clear
7 when you installed your additional monitoring
8 wells, including DCW-7, where you found, I
9 believe, almost 7 feet of product adjacent to the
10 gas station in a relatively significant distance
11 from where you were focusing your efforts. You
12 hadn't, until that point, and even then still
13 needed to do more because we were concerned that
14 it was under the gas station itself with the
15 residence above it.

16 Q You mentioned that you were concerned about the
17 NAPL moving into a preferential pathway.

18 A Um-hmm.

19 Q Isn't the preferential pathway that's in dispute
20 here, the 15-inch reinforced concrete pipe, that's
21 the trunk of the stormwater collection system?

22 A Yes.

23 Q Where was the source of the diesel release, which
24 I was responsible for assessing and evaluating the

1 risk of?

2 A You reported that it was the remote diesel fuel
3 line. You never provided information to confirm
4 that by either digging it up and actually seeing
5 where along -- you only reported that a leak was
6 found. You never reported where or how or what
7 the actual extent of the release was. So part of
8 the investigation would have been to identify the
9 source, and maybe not the complete extent of NAPL,
10 but a much better understanding of where the NAPL
11 was and where it might be drawn to if you open up
12 a preferential pathway to the storm drain.

13 Q The delivery line that was the cause of the diesel
14 release, would you agree that it ran from the
15 4,000 gallon diesel UST to a fill pipe in close
16 proximity to the three 5,000 gallon gasoline USTs?

17 A That's where you have indicated that it was,
18 however, that site plan was not submitted in any
19 reports. I don't recall you ever showing that --
20 I can't read your arrow -- source of NAPL release
21 in that depiction. But to answer your question,
22 that's the information that you presented. I
23 never independently verified where, because I
24 couldn't, where the remote fill line was.

1 Q Wouldn't the release occur somewhere between the
2 diesel UST and the three 5,000 gallon gasoline
3 USTs.

4 A If the source of the release was solely the remote
5 fill line, yes. But that's a significant
6 distance. But the length of that and the tank.

7 Q Isn't that distance shorter than the proposed NAPL
8 recovery trench that I proposed?

9 A Which report was that?

10 Q B-33.

11 MS. READ: This is not in a report.

12 MR. DECOULOS: I'm going to pull it up
13 right now.

14 A In your report, it's not as long as the diesel,
15 the remote diesel fill line.

16 Q So in my report, the trench is 50 feet long and --
17 do you still have that exhibit that you measured
18 from? That's okay.

19 A I'm sorry.

20 Q So it appears as though there may be 10 feet to
21 the north that it may not have captured, and maybe
22 5 feet to the south that it may not have captured?
23 Would you agree with that?

24 A You hadn't delineated the extent of NAPL

1 contamination, so --

2 Q What were these borings that are shown on this
3 plan? You're telling me that these borings from
4 DCD, as shown on Chalk Number 1, did not show the
5 extent of NAPL contamination at that point in
6 time?

7 At least as it relates to the
8 preferential pathway that you described, what we
9 were all concerned about was reducing or
10 eliminating the impact to a preferential pathway,
11 and the borings and the subsurface investigations
12 that took place, we're trying to establish what
13 the LNAPL extent was before it hit that stormwater
14 collection system. Would you agree that those
15 subsurface borings and monitoring that was done
16 prior to this submission tried to accomplish that?

17 A The information you provided did not provide
18 analytical data for all of the soil borings nor
19 did it provide soil boring logs or well completion
20 reports in the status report for the time period
21 that you did, that you actually implemented those
22 response actions, which was required in the IRA
23 status report that followed these actions. So
24 it's difficult to ascertain what information you

1 had to know, and I believe that the analytical
2 data for the soil borings actually showed EPH
3 impact, significant EPH impact, which wasn't
4 really discussed in the status report.

5 Q Do you agree that Exhibit B-30, which is the Phase
6 I report filed two months earlier or 90 days --
7 excuse me -- on April 30, 2004, had a set of
8 boring logs in it as they were presented in
9 Appendix K?

10 A It may have. It was not the status report for
11 that reporting period.

12 Q But the information was given to the department in
13 this Phase I report, wasn't it? Would you like to
14 see the actual report that was submitted?

15 A Sure.

16 HEARING OFFICER: While Ms. Baran is
17 reviewing that, I just want to clarify. So you're
18 Mr. Wright; is that correct?

19 MR. WRIGHT: Yes.

20 HEARING OFFICER: I apologize.

21 MR. WRIGHT: No problem.

22 HEARING OFFICER: You're one of
23 Mr. Decoulos' witnesses; correct?

24 MR. WRIGHT: Yes.

1 HEARING OFFICER: And Mr. Fitzgerald is
2 due down here at 4?

3 MS. READ: At 4 o'clock, yes.

4 HEARING OFFICER: Do you know offhand
5 whether he's available tomorrow morning?

6 MS. READ: Reluctantly. We were really
7 hoping to get through three of the department's
8 witnesses today.

9 HEARING OFFICER: I understand.

10 MS. READ: We talked about it earlier,
11 and he said he would stay today to try to
12 facilitate being here today. But I don't know
13 that -- I think it would be possible for him to be
14 here tomorrow.

15 HEARING OFFICER: He's coming down here
16 at 4?

17 MS. READ: Yes. He's in the building,
18 has been all day.

19 HEARING OFFICER: Okay.

20 A There are some soil borings. I don't see well
21 completion reports. But yes, there are soil
22 borings.

23 Q Don't those soil boring logs and analytical data
24 which accompany this report establish what the

1 extent of the NAPL was prior to the stormwater
2 collection system in a north/south direction to
3 allow me to determine what the length of an
4 appropriate recovery trench might be?

5 A There was probably enough preliminary data to
6 establish the length. I don't believe you ever
7 even proposed a depth. I may be wrong, but in one
8 of the submittals, you did not propose a depth.
9 So a recovery trench that's 50 feet long and you
10 don't know how deep it is, nor do you know the
11 total mass of NAPL that may be drawn into it,
12 because at that point you had no information on
13 anywhere else on the site, including the location
14 immediately adjacent to the gas station that had
15 7 feet of NAPL.

16 Q Can you tell me in Exhibit B-33, there's a leader
17 to the proposed NAPL interceptor trench, can you
18 tell me what that says in its entirety? Do you
19 want me to zoom in?

20 A Yes. I'm sorry, I can't read it. Okay. It
21 wasn't discussed in the text. "Proposed NAPL
22 inceptor trench to 7 feet below grade." That was
23 based on your soil borings?

24 Q Soil borings, yes, as well as the depth of the

1 potential preferential pathway, which had not been
2 impacted according to my investigations up to that
3 point.

4 Now, in your testimony, you described
5 efforts that were taken at the outfall to contain
6 the sheen that was identified in May of 2003. And
7 you talked about a breach that occurred in those
8 containment booms on December 10, 2004. Do you
9 remember that part of your testimony?

10 A Yes.

11 Q Can you tell me, can you recollect events that
12 took place on December 10, 2004? Where were you
13 on December 10, 2004?

14 A Can you point me to which question that was in my
15 testimony?

16 Q It may take me a minute.

17 MS. READ: I see a reference to
18 December 10th on page 30 of Exhibit B-1. I'm not
19 sure if it this is the correct subject, however.

20 MR. DECOULOS: No.

21 Q On the rebuttal testimony of yours, B-60 on page
22 7, lines 15 through 20, you talked about small
23 incidental petroleum release. And then a few
24 pages later on page 10 at pages 19 to 23, you talk

1 about your witnessing sheen breakthrough, and you
2 describe that -- well, can you explain the sheen
3 breakthrough? Is it true that you saw sheen
4 breakthrough on November 30, 2004, December 1,
5 2004 and December 10, 2004?

6 A I'm sorry, where?

7 Q Page 10 of your rebuttal testimony, Exhibit B-60,
8 lines 19 through 23.

9 A Thank you. (Witness reviews document.) Yes.

10 Q So you saw sheen breakthrough into South Meadow
11 Brook beyond the containment booms and pads that
12 were set on November 30, 2004, December 1, 2004,
13 and December 10, 2004?

14 A Yes.

15 Q Do you have any evidence to support the
16 breakthrough on November 30th or December 1st?

17 A I may have photographs.

18 Q But they are not in the record; is that correct?

19 A I believe we only put one in the record, but I am
20 stating that I was there and witnessed it.

21 Q But you don't have --

22 A And the one from December 10th, I believe, is in
23 the record.

24 Q So, again, can you describe what occurred on

1 December 10, 2004 when you were in Carver at the
2 Eagle Gas site?

3 A I believe I was there to witness soil borings that
4 you were performing to actually further delineate
5 the extent of NAPL beyond the area that you had
6 previously investigated.

7 Q What happened in that effort to determine the
8 extent of LNAPL?

9 A There was a surface release.

10 Q Did anything else happen that you recall? Did the
11 subsurface investigation complete that day?

12 A I don't believe it did.

13 Q Do you know why?

14 A There was some issue with the drilling machine, I
15 believe. Did it blow a hydraulic line? I don't
16 really recall. Something happened. This was a
17 while ago.

18 Q If I told you that the hydraulic line failed and
19 spilled hydraulic fluid on the surface, would that
20 seem like a reasonable set of events that may have
21 occurred on December 10th?

22 A Yes.

23 Q And then there was another spill that occurred on
24 December 10th?

1 A I believe so.

2 Q Do you know what that spill was?

3 A I would have to look at the notes. I thought it
4 was an overfill, but I don't...

5 Q An overfill of what?

6 A Gasoline.

7 Q To a vehicle?

8 A I don't really recall.

9 Q Do you think it might have been significant, since
10 we had a vacuum recovery truck there from Cyn
11 Environmental?

12 A Yes.

13 Q Can you identify yourself in that photograph,
14 photo 94?

15 A Yes. I'm the person in the red and blue raincoat.

16 Q Can you identify the individual with the yellow
17 raincoat on and the hose?

18 A No.

19 Q So there's a second surface spill that occurs
20 while you're at this property on December 10,
21 2004. There's a hydraulic spill that occurs, part
22 of my work in trying to determine the extent of
23 LNAPL, and then there's another spill that occurs,
24 apparently significant enough to call in a tanker

1 vacuum truck to vacuum up the spill. Does that
2 appear accurate from these photographs that we're
3 looking at, which consist of photographs 93
4 through 103?

5 A Yes.

6 Q The spill that occurred at the Eagle Gas Site on
7 December 10, 2004, in which there was an emergency
8 spill response, where did that spill run to?

9 A It ran to two catch basins, as I recall. It ran
10 to -- I'm not sure what your designating them.
11 The catch basin that you can see them --

12 Q Does photograph 96 and 97 and 98 depict that first
13 catch basin --

14 A I believe so.

15 Q -- that the release may have run to?

16 A It's hard to tell. The release ran to that catch
17 basin, but as I recall, there was a sediment
18 buildup and some leaf debris before it was
19 removed. You can see him actually vacking up all
20 of the sediment that -- go back to that. That
21 catch basin was almost completely clogged. So the
22 groundwater -- sorry -- the surface water was
23 actually running around that catch basin and going
24 down Main Street to the next catch basin, which

1 actually discharges not at the outfall itself,
2 Meadow Brook that you were investigating, but at
3 an outfall on Main Street under the bridge.

4 HEARING OFFICER: Under the bridge?

5 THE WITNESS: Yes, at the bridge.

6 There's actually a drain pipe cemented into the
7 bridge. So under the bridge that goes over Main
8 Street. I don't know if you can see it. And
9 there was a sheen, granted a temporary sheen that
10 went away with time, that appeared also on the
11 area near the bridge. And there also was some
12 component of flow that discharged to the brook at
13 the outfall. But it was difficult to tell which
14 was being -- it was possible that some of that
15 could have come from further up, not just from
16 surface release, but from further up the drain.

17 Q I'm sorry. I don't understand what you're
18 describing.

19 A I said it was because that manhole --

20 Q This is photograph 96.

21 A -- was clogged with debris and silt --

22 Q You're not talking about the manhole, you're
23 talking about --

24 A I'm sorry. The catch basin cover.

1 Q -- the actual catch basin cover, aren't you?

2 A Yes, the cover.

3 Q So you're saying --

4 A It's difficult to see how much drained into that
5 particular catch basin. I'm sure there was some,
6 but a significant portion bypassed that catch
7 basin and flowed down Main Street to the next
8 catch basin.

9 Q If this catch basin cover was not clogged and was
10 free of debris in the cover, do you think that
11 that whole spill would have entered into that
12 catch basin?

13 A I haven't independently reviewed the flow
14 dynamics. It depends on how much water was
15 running down. I would imagine if there was really
16 significant flow, that some of it would still
17 bypass that catch basin.

18 Q So you agree that water or rainfall can actually
19 act to transport a surface spill that may have
20 occurred -- well, that did occur on December 10,
21 2004?

22 A Yes.

23 Q I'm going to take you to the one photograph that
24 you did submit on December 10, 2004. Photograph

1 164 is the photograph that you describe in your
2 rebuttal testimony on page 10 at lines 22 and 23;
3 is that correct?

4 A Yes.

5 Q So you're describing sheen breakthrough at the
6 outfall while there's a significant enough surface
7 spill that occurs on the Eagle Gas dispensing pad
8 that caused that spill to migrate along the Main
9 Street right-of-way into CB-4, and then discharge
10 into the outfall, and actually break out as a
11 sheen onto the surface water body, aren't you?

12 A Yes. I was responding to your statement that
13 said -- I was specifically asked to respond to
14 your statement that was, "While I was LSP of
15 record, there was no sheen breakthrough into South
16 Meadow Brook from the contaminated outfall after
17 the implementation of containment actions." On
18 that day and on previous days there was -- I
19 observed sheen breakthrough.

20 Q Are you aware of what I observed on May 16, 2003
21 when I first identified the contaminated outfall?

22 A I wasn't there. Only through the reports that I
23 have read.

24 Q Now, you received an e-mail from Fire Chief Craig

1 Weston on November 17, 2005, which is Exhibit
2 RR-65; is that correct?

3 MS. READ: Can you give her a copy of
4 the exhibit?

5 A I believe so. Yes.

6 Q So this is another example of a spill that was
7 reported that you were made aware of that flowed
8 onto the Main Street right-of-way; isn't that
9 correct?

10 A This was not reported as an official reportable
11 release.

12 Q Why not?

13 A Because it was responded to by the fire chief and
14 he estimated the size and spill of approximately
15 5 gallons. And 10 gallons of gasoline is a
16 reportable quantity to MassDEP.

17 Q Do you think that other spills could have occurred
18 similar to what occurred on December 10, 2004 on
19 that date that Chief Weston reported the spill?

20 A Yes, absolutely. It's a gas station.

21 Q But you agree that this is a busy gas station with
22 heavy truck traffic as shown in these photographs
23 that has quite a bit of traffic and quite a bit of
24 volume that it's pumping; would you agree to that?

1 A Yes.

2 Q Do you agree that the DEP reports from 1997 or
3 1998 described Eagle Gas Site as a former
4 automotive junkyard?

5 A Only in the reference that you made to it earlier
6 in the NOR.

7 Q But that's an official DEP document, isn't it?

8 A Yes, but you said -- I'm sorry. Could you ask the
9 question again? I may have misunderstood what
10 you're asking me.

11 Q Sure. Would you agree that DEP stated in
12 correspondence to the first potentially
13 responsible party at this site that there was an
14 auto junkyard operation at this site? I'm going
15 to give you, this is Exhibit RR-58.

16 A Yes. The NOR does state historic activities are
17 not well known, but do include an auto junkyard
18 operation.

19 Q Do you think it's likely that fluids from an
20 automobile or a truck could have flowed onto the
21 surface at the Eagle Gas site from this former
22 automotive junkyard operation?

23 A Yes. But it doesn't say -- it doesn't give a time
24 period for when the historic activities existed on

1 the site, so it's difficult to say. This report
2 is from August 11, 1997, and they're stating at
3 that time that it was historic activities. So
4 we're talking about very old contamination that
5 would not be likely to contribute to stormwater
6 runoff at this point.

7 HEARING OFFICER: Let me interrupt for a
8 moment. I believe you're Mr. Fitzgerald; is that
9 correct?

10 MR. FITZGERALD: Yes.

11 HEARING OFFICER: Just for the record,
12 Mr. Fitzgerald has arrived. Mr. Decoulos, how
13 much longer do you have with Ms. Baran?

14 MR. DECOULOS: 10 minutes.

15 HEARING OFFICER: Mr. Fitzgerald, are
16 you available first thing in the morning?

17 MR. FITZGERALD: I'd prefer not to come
18 in, but I suppose I --

19 HEARING OFFICER: Are you based here in
20 Boston?

21 MR. FITZGERALD: I am not.

22 HEARING OFFICER: You're in NERO?

23 MR. FITZGERALD: Yes.

24 HEARING OFFICER: But you are available?

1 MR. FITZGERALD: Reluctantly, yes.

2 HEARING OFFICER: What are your
3 thoughts, Ms. Read? My thinking is that it's
4 already 4:20. It's been a long day, I'm thinking
5 of wrapping it up at 5. And given that, I'm
6 thinking of having Mr. Fitzgerald come back, start
7 right off with him at 9, and then move onto
8 Mr. Luhrs, and have them wrapped up early in the
9 morning.

10 MS. READ: Personally, I think my group
11 would be willing to go to 5:30, if that would give
12 us a chance to complete Mr. Fitzgerald's
13 testimony. I don't know what Mr. Decoulos
14 anticipates for his examination of Mr. Fitzgerald,
15 but I would like to push to get that done, if at
16 all possible.

17 HEARING OFFICER: How long do you
18 anticipate with Mr. Fitzgerald?

19 MR. DECOULOS: 20 minutes.

20 HEARING OFFICER: Really?

21 MR. DECOULOS: Mr. Fitzgerald has
22 testified on the one site in Randolph.

23 HEARING OFFICER: I'm aware of that.

24 MR. DECOULOS: My concern in

1 cross-examining him is whether or not I'm entitled
2 to ask him questions that he is aware of regarding
3 LNAPL recovery.

4 HEARING OFFICER: Were there any LNAPL
5 recovery issues with regard to the site?

6 MR. DECOULOS: No.

7 HEARING OFFICER: No, I didn't think so.
8 So, no. So 20 minutes?

9 MR. DECOULOS: It might only be 10.

10 HEARING OFFICER: Okay. So stick
11 around, Mr. Fitzgerald. Let's take 5 minutes and
12 we'll keep going. You've got another 10 minutes
13 with Ms. Baran, and then we'll move onto
14 Mr. Fitzgerald.

15 MR. DECOULOS: We should be done by 5.

16 HEARING OFFICER: Well, if we need a
17 little bit longer, then so be it.

18 (Recessed at 4:24 p.m.,
19 resumed at 4:31 p.m.)

20 HEARING OFFICER: We're back on the
21 record after a short break. Mr. Decoulos, why
22 don't you resume your questioning.

23 THE WITNESS: While you're looking, may
24 I ask a clarifying question about a question I'm

1 not sure I answered while we were looking at this
2 last one?

3 HEARING OFFICER: Sure.

4 A Mr. Decoulos, when you were talking about the 5
5 gallon release that was reported by the Carver
6 Fire Department, did you ask me if it evidenced a
7 spill that impacted the storm drain?

8 Q No. I asked you whether or not you considered it
9 an unusual event whether it may have occurred at
10 other times, which may not have been reported --
11 not in the MCP context, but just simply public
12 officials were notified of the release.

13 A I'm sorry. You mentioned something about storm
14 drain system, and I wanted to be sure that it was
15 clear that it didn't impact the storm drain.

16 Q But we don't know that from that report, do we?
17 If you look at that exhibit from the fire chief,
18 he states that it impacted a drain manhole.

19 A No, he states there was a drainage manhole in the
20 area, but was diked off properly with no fuel
21 entering it.

22 Q Right, that he was aware of.

23 Now, I direct your attention to Exhibit
24 B-60, which is your rebuttal testimony, Ms. Baran,

1 on page 13, where you talk about Tier 1 Site
2 Permit Application. Now, I'm sorry for going
3 back, but in my rebuttal testimony, I mentioned on
4 page 17 that when I first met you and Mr. Hobill,
5 Mr. Hobill had informed me on March 11, 2004 that,
6 quote, "We do things differently here in the
7 Southeast Region." End quote.

8 Do you remember Mr. Hobill telling me
9 that on March 11, 2004?

10 A I do not.

11 Q As for the Tier 1 Permit Application, and that
12 issue which you go into on page 13 of Exhibit
13 B-60, you talk about how it was my duty after tier
14 classifying the site with a ranking that brought
15 it into a Tier 1 category, Tier 1A category, that
16 it was my duty to file a Tier 1 Permit
17 Application, and that I failed to do so.

18 Now, after I tier classified this site
19 on April 30, 2004, and completed my duties in July
20 of 2005, where did the department notify me that I
21 should file a Tier 1 Permit Application?

22 A Well, first, it's clearly required in the MCP.
23 And second, I believe the NON that we issued for
24 the release of the NAPL in the monitoring well

1 specifically required a tier classification with a
2 Tier 1 Permit, if applicable, depending on the
3 site ranking. I could pull out that NON, if you
4 would like.

5 Q No, that's okay. Now this response of yours on
6 page 13 is to rebut my testimony, which is at the
7 bottom of page 12, which stated, quote, "Several
8 times during 2004 and 2005, I asked Ms. Baran if
9 she wanted for me to comply with the provisions of
10 Subpart G of the MCP, and she informed me that it
11 was not important." End quote.

12 Do you agree that that's what your
13 rebutting testimony is in regards to?

14 A Yes, I was answering that question.

15 Q Isn't it true that I made, at least, six filings
16 after April 30th, 2004, and you allowed me to
17 continue to proposed actions without filing the
18 Tier 1 Permit Application?

19 A That is true, you were proposing modifications to
20 an IRA. A Tier 1 Permit application is not
21 required for IRA actions.

22 Q I direct your attention to Exhibit RR-7, which is
23 Notice of Audit Findings issued by the Department
24 on December 8, 1998 to Richard Nantais. I'm going

1 to pull it up on the screen. Now, can you explain
2 what your understanding of Mr. Nantais' liability
3 was under 21E in the MCP?

4 MS. READ: Objection. That's quite a
5 broad question that I don't see the relevance.

6 HEARING OFFICER: Yes, what's the
7 relevance of that?

8 MR. DECOULOS: I will strike that.

9 Q There's an Attachment B to this Notice of Audit
10 Finding and Notice of Noncompliance, and
11 Attachment B talks and summarizes the
12 noncompliance that occurred at the first release
13 at this site. And that's release Tracking
14 Number 4-13333. On page 2 of Attachment B, it
15 mentions that Mr. Nantais was to conduct sampling
16 to determine whether or not a condition of
17 substantial release migration exist. Do you agree
18 with that?

19 A Yes.

20 Q Do you agree that the next sentence in bold says
21 that, "The analytical results shall be provided to
22 the department immediately upon availability"?

23 MS. READ: I object to this line of
24 questioning. I don't see how it is relevant to

1 the quality of Mr. Decoulos' work in 2003 to 2005.
2 I just object to the amount of time we're spending
3 on that.

4 HEARING OFFICER: How do you respond to
5 that, Mr. Decoulos? Where are you going with
6 this?

7 MR. DECOULOS: This is a prior release
8 that occurred at the property that --

9 HEARING OFFICER: When?

10 MR. DECOULOS: In 1997, a gasoline
11 release. And this release had impacted a drinking
12 water well at 131 Main Street, had impacted a
13 drinking water well across the street at 132 Main
14 Street, and there was no evaluation of
15 preferential pathways or the stormwater collection
16 system in the Main Street right-of-way that
17 Mr. Nantais would be responsible for. Now, this
18 is five years prior to my involvement.

19 MS. READ: Exactly.

20 MR. DECOULOS: So no one even looked to
21 see whether or not the stormwater collection
22 system was impacted at that time.

23 HEARING OFFICER: So you're going to
24 argue that -- you want to argue that this is

1 another release, and they ignored the preferential
2 pathway in that case? Is that what you're
3 arguing?

4 MR. DECOULOS: That's part of the
5 argument.

6 HEARING OFFICER: Is there any evidence
7 that there was material released at the outfall
8 where the diesel release occurred here?

9 MR. DECOULOS: No, but no one looked.

10 HEARING OFFICER: Well, there's no
11 evidence there was any there; right?

12 MR. DECOULOS: That's correct.

13 HEARING OFFICER: I'm trying to
14 ascertain why it would be their immediate reaction
15 to look at the same preferential pathway if there
16 was no evidence of any contamination at the
17 outfall.

18 MR. DECOULOS: Because the release of
19 gasoline migrated across Main Street right through
20 the stormwater collection system, and required an
21 evaluation just as the department was demanding on
22 I.

23 MS. READ: I still object. There's no
24 relevance to whether Mr. Decoulos had adequate

1 data and information to support his opinions.

2 Mr. Decoulos has argued that the department didn't
3 sufficiently oversee Mr. Nantais as to this
4 release several years earlier. It has absolutely
5 nothing to do with the way that Mr. Decoulos
6 conducted his work in 2003 to 2005.

7 MR. DECOULOS: Photograph 21 depicts the
8 conditions that I observed for the first time that
9 anyone observed and reported for the first time on
10 May 16, 2003. And it's evident from these
11 photographs, as well as the sampling and the
12 pathways that were available, the assessment work
13 that I conducted, that this was an extremely old
14 release that was on Nantais' clock. If you look
15 at the photographs, you see the banks and just how
16 severely saturated they were with old oil.

17 My point is that the department who
18 issued this Notice of Noncompliance required the
19 responsible party to evaluate a substantial
20 release migration. They did not keep Nantais --
21 make him responsible, and they did not enforce
22 what they directed in writing.

23 MS. READ: And again, Mr. Decoulos is
24 required to address the site conditions as he

1 finds them. This was found in May of 2003. The
2 NAPL was found in monitoring well BP5-RR, at
3 latest, in January of 2003. So five months have
4 past. Mr. Decoulos' ability to age date this by a
5 visual observation it's just -- I mean, we'll
6 explore that --

7 HEARING OFFICER: Mr. Decoulos, we also
8 don't have evidence in the record, do we, that the
9 type of release that occurred seven years earlier
10 under Mr. Nantais?

11 MR. DECOULOS: We certainly do.

12 HEARING OFFICER: The circumstances that
13 surrounded it.

14 MR. DECOULOS: We certainly do.

15 HEARING OFFICER: The type of release
16 that occurred with respect to Mr. Nantais. Where
17 are you going with this?

18 MR. DECOULOS: I'm almost done with it.
19 I have one last thing.

20 HEARING OFFICER: Go ahead.

21 Q That is, in this Exhibit RR-7, on the last page --
22 actually the last page of Attachment B, would you
23 agree, Ms. Baran, that the department stated that,
24 "Therefore, you must also prepare and submit a

1 Tier 1 Application to the department"?

2 A Yes.

3 Q When a release tracking number is issued by the
4 department to a potentially responsible party and
5 other releases occur in close proximity or on that
6 same property, how does the department arrange
7 tracking numbers? In other words, does it keep
8 all of the tracking numbers together or does it
9 organize it by one tracking number?

10 A Initially, they are tracked individually as
11 separate releases. It's up to the license site
12 professional to link the numbers at tier
13 classification if they deem that's appropriate to
14 complete response actions, because response
15 actions should be conducted at a site not for each
16 individual release. So generally they are linked,
17 and generally, they are linked to the lowest
18 number, the initial number. That would have the
19 shortest time lines.

20 Q So the reality is that the two tracking numbers
21 that I was responsible for were actually linked to
22 this prior gasoline release that Mr. Nantais was
23 responsible for; isn't that correct? What I have
24 up on the screen right now is the database record

1 of release tracking number 17582, which is what I
2 was responsible for, and it states that the
3 primary RTN is Mr. Nantais' RTN 4-13333. Isn't
4 that correct, Ms. Baran?

5 A That may be what it says on that screen, but the
6 primary code or the primary RTN that it's linked
7 to is actually 4-17582. And the numbers were not
8 linked by the department -- well, the numbers were
9 linked after your involvement, and I don't have
10 the date of the ACOP that was -- I believe it was
11 in -- it's one of the exhibits.

12 MS. READ: April of 2007, Exhibit B-54.

13 A Yes. So that is an artifact of the fact that in
14 April 2007, the four numbers were linked because
15 Eagle Gas, Mr. -- I can't pronounce his name. I
16 apologize -- Badaoui assumed responsibility for
17 all four RTNs, so they were linked through the
18 administrative consent order.

19 Q So that was a voluntary assumption that
20 Mr. Badaoui had made?

21 A That was a voluntary action by Mr. Badaoui. He
22 took responsibility to complete site cleanup for
23 all four RTNs.

24 Q If you have a Tier 1 Application at a site and

1 there are subsequent tracking numbers that are
2 identified and reported to the department, is it
3 necessary to file additional Tier 1 Permit
4 Applications on those secondary and tertiary RTNs?

5 A Generally, that's why the releases are linked to a
6 primary number so that it's all covered under one
7 permit.

8 Q So if Mr. Nantais had filed a Tier 1 Permit
9 Application and he was responding, assessing and
10 appropriately cleaning up his gasoline release
11 under that Tier 1 Permit, more than likely any
12 additional releases would have been assessed and
13 responded to under the same Tier 1 Permit,
14 wouldn't they have?

15 A It depends on the release conditions. They are
16 completely different releases.

17 Q Now, on November 1, 2005, you had e-mail
18 correspondence with Kevin Kiernan and John Hobill
19 of the department, and I was able through
20 discovery and motions and a lot of arm twisting to
21 get this e-mail from your office, and it was
22 allowed by the presiding officer here, and I have
23 identified it as Exhibit RR-54. You wrote an
24 e-mail to Don Nagle, Jon Hobill and Kevin Kiernan

1 on October 28, 2005, which was attached to this
2 e-mail. Can you read what's highlighted there in
3 yellow?

4 A "The private well at the gas station remains a CEP
5 that was present in historic gasoline release RTN
6 4-1333 (and was one of the COCs actually reported
7 in the RLF and RNF, 4,000 PPB MtBE in a monitoring
8 well approximately 40 to 50 feet from a private
9 well.) The private well contamination was present
10 prior to the diesel release and low levels of MtBE
11 are still present in the well as of the last
12 sampling round."

13 Q Would you agree that gasoline poses a greater risk
14 to human health and the environment than diesel
15 fuel?

16 A Depends on the quantity.

17 Q If you had the same quantity, would the human
18 health risk and ecological risk be the same?
19 Would one have higher risk than another?

20 A In general, gasoline would more likely have higher
21 risk; however, diesel does have VPH fractions and
22 does contain benzene and other risk drivers.

23 Q But you agree that gasoline is a higher risk?

24 A It depends on the circumstances.

1 Q If it was the same quantity and the same
2 circumstances, same scenarios, which would have
3 the higher risk?

4 A Most likely gasoline.

5 Q Lastly, Exhibit RR-59, which I received, is a
6 newspaper article regarding the identification of
7 that first RTN at this site, and what occurred
8 that triggered the release notification, and
9 apparently, there was a personnel from the
10 department that had commented. Can you tell me
11 who that person was at the department?

12 A The article indicates the DEP spokeswoman Julie
13 Hutchinson. So Julie Hutchinson is an employee at
14 MassDEP in the Southeast Regional Office.

15 Q So was Julie Hutchinson working on this site prior
16 to your involvement in 2003?

17 A Apparently, yes. I don't have independent
18 knowledge, but I would presume if she is
19 discussing it, that she probably was.

20 Q Does Julie Hutchinson still work for the
21 department?

22 A Yes.

23 Q Did you ever discuss this prior release with her?

24 A I don't recall.

1 Q On page 14 of your rebuttal testimony, you're
2 responding to my rebuttal testimony in which I
3 talked about e-mail exchanges and the construction
4 of the recovery trench in December of 2004. And
5 you state that the reason for the numerous denials
6 of Mr. Decoulos' IRA plans was that Mr. Decoulos
7 consistently submitted plans that attempted to
8 circumvent MCP requirements and IRA requirements
9 issued by MassDEP; is that correct?

10 A I did state that.

11 Q When did I make attempts to circumvent the MCP
12 requirements?

13 A By submitting IRA plans and modifications without
14 supporting information or without the information
15 necessary to clearly evaluate the plan. And by
16 not including significant data that you had in
17 some of the IRA status reports, which were
18 predominantly as outlined in the ACO submitted
19 usually substantially late. So it deprived the
20 department the opportunity to have the information
21 presented and explained in the text in a timely
22 fashion so that they could make decisions
23 regarding the site and what risk the site actually
24 posed.

1 Also, in numerous submittals, you made
2 proposals which you didn't follow through on in
3 subsequent status reports and didn't provide an
4 explanation as to why. You didn't provide an LSP
5 opinion that your actions were in conformance with
6 the IRA plan that you had submitted, which is
7 required.

8 Q Where were those promises made and not kept?

9 A Almost every plan that you submitted, there were
10 several components, proposals that you made, that
11 you did not implement and you did not provide
12 technical justification as to why not.

13 Q Give me one example.

14 A Providing active recovery in your first proposal.
15 Implementing --

16 Q As far as that, didn't we agree that active
17 recovery was an alternative in that first IRA
18 plan? It was an alternative that was designed and
19 proposed in which the department denied?

20 A No, the first plan was actually presumptively
21 approved.

22 HEARING OFFICER: Mr. Decoulos, the only
23 reason I kept Mr. Fitzgerald here is because you
24 said that you were going to be done. If you're

1 not and you need to keep going with Ms. Baran,
2 then we'll wrap it up shortly with her and have
3 Mr. Fitzgerald back in the morning. But either
4 way, we have to make a decision here. Which way
5 is it?

6 MR. DECOULOS: These are pretty
7 important accusations thrown against me. I want
8 to know specifically what I was attempting to
9 circumvent. It seems to me that these accusations
10 are contrary to the tone of the e-mails that are
11 evident in our communications. And I just am
12 looking for details -- if you're going to make an
13 accusation that I'm attempting to circumvent a
14 requirement, I want to know exactly what they are.
15 I think this is a pretty important issue.

16 HEARING OFFICER: I understand, but the
17 reason why I'm asking you is because you told me
18 before you were going to be done in 10 minutes,
19 and here we are a half hour -- actually, 40
20 minutes later. So I'm trying to be as flexible as
21 possible, and Mr. Fitzgerald is waiting, too.
22 Should I ask Mr. Fitzgerald to come back in the
23 morning? I don't want to do that, he's already
24 said he doesn't want to come back in.

1 MR. DECOULOS: I think I can be done in
2 5 minutes.

3 HEARING OFFICER: I'm reluctant to do
4 that. Mr. Fitzgerald, would it be better for you
5 to come back early in the afternoon tomorrow
6 instead of having you come in first thing in the
7 morning?

8 MR. FITZGERALD: Yes, but I have a
9 commitment tomorrow afternoon that I have to be
10 out of here at a certain time.

11 HEARING OFFICER: How about late morning
12 for you tomorrow?

13 MR. FITZGERALD: Yes.

14 HEARING OFFICER: I apologize. I'm
15 trying to accommodate your schedule, but not keep
16 you here. My fear is that your 10 minutes with
17 Mr. Fitzgerald is going to turn into 45 minutes,
18 50 minutes an hour. I want to be flexible, I want
19 to accommodate you, but I also don't want to be
20 unfair to others here. I have to walk a fine
21 line, but also at the same time, it's a very
22 important hearing. Did you want to add something,
23 Ms. Read?

24 MS. READ: I just wanted to say that I

1 would like to do a very small amount of redirect
2 with Ms. Baran, but I don't expect to take more
3 than 5 minutes with that. So if we're talking
4 about 5 more minutes for Mr. Decoulos and 5
5 minutes for me --

6 HEARING OFFICER: But that's not going
7 to leave any time for Mr. Fitzgerald.
8 Mr. Fitzgerald, I apologize for keeping you here.
9 I thought we were going to wrap it up. What time
10 works best for you tomorrow? You tell me.

11 MR. FITZGERALD: Later in the morning to
12 avoid the rush, particularly with the snow.

13 HEARING OFFICER: What time? 11?

14 MR. FITZGERALD: Yes.

15 HEARING OFFICER: Okay, let's do that.

16 MR. FITZGERALD: And I will be out of
17 here by 2?

18 HEARING OFFICER: At the very latest.
19 My apologies.

20 Okay, Mr. Decoulos, let's wrap it up.

21 Q So, Ms. Baran, we were talking about examples of
22 circumventing the MCP. What was the first example
23 you gave me again?

24 A Your first IRA proposal proposed active recovery,

1 proposed a pump test which run NAPL, and if it
2 returned, you would install a 12-inch recovery
3 well and initiate active recovery NAPL.

4 Q Wasn't the initial proposal for passive recovery?

5 A I don't believe so. Can we pull up the plan?

6 Q June 15, 2004.

7 A If you look at the --

8 MS. READ: The first proposal is March
9 of 2003.

10 A That's the proposal that I'm referring to.

11 Q In that proposal, what exactly did it say?

12 MS. READ: That's a matter of record.

13 HEARING OFFICER: The proposal speaks
14 for itself, Mr. Decoulos.

15 Q In that proposal, I stated that we were going to
16 pump LNAPL from BP 5-RR, and if LNAPL didn't
17 return, then there would be no active recovery,
18 there would be no active LNAPL recovery system; is
19 that correct, from what you can recall?

20 A From what I can recall, yes.

21 Q So we pumped LNAPL from that well during that day,
22 and LNAPL didn't return; is that correct?

23 A You didn't specify a time period from which the
24 LNAPL needed to return by, and yes, the LNAPL did

1 return in feet and during your next inspection.

2 So were you just going to leave it there? The way
3 I read the plan was you pump it, if LNAPL returns,
4 you install active recovery.

5 Q But we were there for a pump test that day, and
6 LNAPL didn't return. Is it appropriate for you to
7 be using the word circumventing MCP requirements
8 because of this misunderstanding of what was going
9 to happen after LNAPL did or didn't return?

10 A Certainly, perhaps should have chosen a better
11 word; however, that was not -- it was numerous
12 plans, numerous submittals. It was not one. If
13 you look at the NONs, the request for IRA
14 specifically outlined actions that needed to be
15 taken. The two IRA plan denial letters
16 specifically outlined steps that needed to be
17 taken that predominantly you did not take.

18 Q Did I circumvent the MCP in these requirements?
19 As a matter of fact --

20 A By not implementing an IRA and not submitting the
21 active recovery plan until July of 2005 when the
22 release was reported in January 2003.

23 Q But there was a plan to recover NAPL in June of
24 2004; isn't that correct?

1 HEARING OFFICER: Mr. Decoulos, I'm not
2 going to let you argue with the witness. What we
3 can do is you can do this in your closing brief.
4 I understand your argument, I understand your
5 point. You don't believe you were circumventing
6 the MCP. I don't think it's necessary to keep
7 arguing with the witness about this, and you can
8 argue in your closing brief about it that it's
9 your position that what you did was not
10 circumventing the MCP, and you would characterize
11 otherwise.

12 MR. DECOULOS: Okay.

13 Q Then the last question I have is on page 15, which
14 might be considered in the same vein, and that is
15 on -- this is Exhibit B-60 again, page 15, you
16 mentioned at line 7 through 9 that you began
17 considering approving it only because Mr. Decoulos
18 appeared likely to construct the trench without
19 approval. Do you see where I'm referring?

20 A Yes.

21 Q Isn't that speculative?

22 A Yes, it's my opinion.

23 Q Didn't I construct the trench or didn't I manage
24 and oversee the construction of the trench with

1 you and Mr. Hobill's consent?

2 A Ultimately you did obtain approval with the
3 requirement --

4 Q Why do you use the word ultimately?

5 HEARING OFFICER: One person at a time.
6 Let the witness finish, Mr. Decoulos. Go ahead,
7 Ms. Baran.

8 A I used the word ultimately because of the reasons
9 outlined in my testimony for how the approval came
10 about in the short time line and the limited
11 information that we were given to provide such
12 approval. And the approval specifically said, "No
13 additional IRA activities at all shall be
14 conducted until an IRA plan modification was
15 submitted in full compliance with the MCP." And
16 several days after you installed the trench, you
17 conducted a pump test, I believe, without
18 approval.

19 Q Didn't we conduct that pump test with your
20 consent?

21 A I wasn't aware you were going to conduct a pump
22 test. Later, you did provide a written plan
23 because we required it. So you did ultimately,
24 again, receive approval, but not for the first

1 pump test.

2 MR. DECOULOS: No further questions.

3 Thank you.

4 HEARING OFFICER: Ms. Read.

5 MS. READ: Thank you. I just have a few
6 questions.

7 REDIRECT EXAMINATION

8 BY MS. READ:

9 Q Earlier Mr. Decoulos referred to certain -- his
10 calculation of rates of flow through the soil, the
11 permeability calculation of 1.7 times 10 to the
12 minus 5 centimeters per second. And I'm sorry, I
13 seem to be missing a phrase here of the name of
14 that calculation. That calculation was provided
15 on July 8, 2005 via Exhibit B-50. And my question
16 to you is: In the July 8, 2005 IRA modification,
17 were those calculations timely as his support for
18 his other IRA proposals for an interceptor trench
19 or recovery wells?

20 A No.

21 Q Are those the type of calculations that he should
22 have submitted as support for those proposals, in
23 part?

24 A In part, absolutely.

1 Q Mr. Decoulos has made several references to his
2 June of 2004 and November 2004 IRA proposals.
3 First for a recovery trench in June 2004 with an
4 option for active recovery, and then again, in
5 November of 2004 where conduits were going to be
6 put in place in case an active recovery system was
7 implemented.

8 What was the outstanding IRA requirement
9 as to active or passive recovery at that time?
10 Was optional active recovery in compliance with
11 the IRA requirements at that time?

12 A No. Multiple documents required active NAPL
13 recovery.

14 MS. READ: I think I will not ask the
15 witness to identify each and every one of those
16 documents. We'll save that, I think, for the --

17 HEARING OFFICER: It's in the record.
18 You can do that later.

19 MS. READ: Thank you.

20 Q Mr. Decoulos asked you some questions about
21 surface spills that happened on December 12th of
22 2004 and another on the November date. We viewed
23 photographs of the surface spills and the response
24 to the surface spills. My question is: Would

1 spills like those surface spills that ran into the
2 catch basin in front of 133 Main Street, the next
3 residence downstream from Eagle Gas, have caused a
4 release at the outfall like that that the DEP
5 photographed in March 2005, and that the Board
6 offered as Exhibit B-25, the photographs that I'm
7 handing you?

8 MR. DECOULOS: I object. It's
9 presumptive. How can the witness make an
10 assumption that what you see in a blown up
11 photograph like this is not consistent with spills
12 that may have occurred?

13 MS. READ: I'm sorry, but Mr. Decoulos'
14 entire assertion that this was caused by runoff is
15 also in the nature of a presumption. I just don't
16 think that's a basis for an objection.

17 HEARING OFFICER: She can testify from
18 her personal experience of whether that's the sort
19 of spill or release that would cause this sort of
20 contamination at the outfall in her personal
21 experience.

22 THE WITNESS: I was there on this day,
23 so I actually witnessed this.

24 HEARING OFFICER: What day is this that

1 you're identifying?

2 MS. READ: March 11, 2004.

3 HEARING OFFICER: The photograph you're
4 referring to is what, for purposes of record?

5 MS. READ: B-25. There are three
6 photographs that were together offered as B-25,
7 and they also appear in Mr. Decoulos' Picasa web
8 album, I believe, as photographs numbers 58
9 through 62.

10 A Absolutely not. A surface release, and I believe
11 it was December 10th, but the surface release such
12 as I witnessed on December 10th, I believe, would
13 cause and did cause, because I witnessed that as
14 well, a very minor sheen, one that you would have
15 to really look for as evidenced in that picture
16 with the containment where it was going through, a
17 very light sheen, and it would be relatively
18 temporary because of the water flow. That brook
19 has a significant water flow. It would be washed
20 away pretty much as soon as the storm drain flow
21 stopped and it would begin to get diluted. It
22 would not ever, in my opinion, look like this.

23 HEARING OFFICER: Where did you observe
24 that other sheen you were talking about?

1 THE WITNESS: At the bridge. Remember I
2 testified that it went to the next catch basin and
3 discharged at the bridge?

4 HEARING OFFICER: Um-hmm.

5 THE WITNESS: And there was a sheen
6 there temporarily. And the next time I performed
7 an inspection, you could not tell there was ever a
8 sheen, there was any impact.

9 HEARING OFFICER: And it looked
10 different from what is depicted in the photographs
11 that you're referring to presently; is that
12 correct?

13 THE WITNESS: Absolutely. The magnitude
14 isn't even -- I can't put words to the difference
15 in magnitude. This other release, the November 7,
16 2005 release that you're referring to, I didn't
17 witness, but the fire chief stated in his e-mail
18 that it never made it. It was cleaned up
19 immediately with speedi-dri and absorbent pads
20 which is normally what happens in the course of a
21 incidental surface spill at a gas station. As a
22 precaution, it sounds like the manhole was
23 properly diked off so no fuel ever entered it.

24 So I would say that most spills wouldn't

1 even get to the storm drain system if best
2 management practices are being implemented at gas
3 stations.

4 MS. READ: Mr. Decoulos also
5 photographed contamination at the outfall on other
6 occasions. If he could put up some of the
7 photographs starting with Number 44.

8 (Mr. Decoulos complies.)

9 Q Would the surface spills of the nature that you
10 witnessed on the 10th and the Chief described in
11 the e-mail result in that level of contamination
12 at the outfall?

13 A No, and certainly not on a recurring basis over
14 the course of several years.

15 MS. READ: And I will just state for the
16 record that there are other photographs taken by
17 Mr. Decoulos that show contamination at the
18 outfall, Numbers 70 and 71.

19 MR. DECOULOS: Where do you want me to
20 start at?

21 MS. READ: 70.

22 Q Would surface runoff of an overfill of gasoline
23 cause contamination that would look like that, in
24 your opinion?

1 A No.

2 Q I will just refer to some of the other photograph
3 numbers, unless you would like to see them right
4 now, other photos that show contamination at the
5 outfall are -- Number 70 and 71 were in March of
6 2004. 72 and 76 through 77 were in May of 2004.
7 Number 139 is in March of 2005, and Number 150 is
8 in June of 2005.

9 A If I could state, the one in March, a year later,
10 shows significant impacts again similar to the
11 ones that were photographed a year earlier.

12 Q Can you just specify which years you're
13 discussing, for the record?

14 A The DEP's photos.

15 Q Were in March of 2004?

16 A In 2004, and the March or April photographs from
17 2005, which is almost a year later.

18 Q Didn't Mr. Decoulos' own reports describe the
19 release at the outfall as seeming like diesel or
20 fuel oil? Repeatedly in each report, that the
21 visual appearance of the release at the outfall
22 appeared to be diesel?

23 A I believe so, yes, and his samples that he
24 collected of the surface water indicated

1 significant diesel contamination.

2 MS. READ: Thank you. I don't have any
3 other questions.

4 MR. DECOULOS: I just have one.

5 HEARING OFFICER: One more.

6 RE CROSS EXAMINATION

7 BY MR. DECOULOS:

8 Q If discharge of surface water was emanating from
9 an automotive junkyard, do you think that that
10 discharge could have caused contamination that you
11 just described in these photographs?

12 A I don't believe so. I think the incidental small
13 spills from the operations or from leaking gas
14 tanks that aren't contained could not possibly
15 result in that level of contamination. It's just
16 the volume and the mass of contamination don't
17 equate, especially on a small scale like this.
18 We're not talking 100-acre junkyard.

19 Q But we are talking an approximately 3-acre piece
20 of property that had an automotive junkyard on it,
21 aren't we?

22 A I never witnessed the junkyard, so I can't speak
23 to the size or the distance.

24 Q But other representatives of DEP did, didn't they?

1 HEARING OFFICER: She can't testify as
2 to what other witnesses observed.

3 A I don't know. It sounds like from the NOR it was
4 more a report that they had heard that it was, so
5 I don't know.

6 MR. DECOULOS: Thank you.

7 HEARING OFFICER: Thank you, Ms. Baran.
8 That concludes the hearing for today. We'll start
9 sharply at 9 o'clock tomorrow morning with
10 Mr. Luhrs. Are there any questions we need to
11 address today?

12 MR. DECOULOS: My witnesses, Mr. Wright,
13 who's in the room today, he operates a business
14 that's engaged in the snowplowing business, and he
15 represents municipalities and private companies
16 and homeowner associations. I'm just concerned as
17 to his availability because he needs to be
18 notified if there is a cancellation by 3 or 4 in
19 the morning. I just want to know --

20 HEARING OFFICER: We're not going to
21 know whether there's a cancellation until probably
22 about 5:30 or 6 in the morning when it becomes
23 apparent whether the governor is going to issue
24 either a delay of opening or a complete

1 cancellation of state services tomorrow. That's
2 typically when it appears.

3 Frankly, based upon the weather reports,
4 I don't think it's going to happen. The snow is
5 supposed to start falling now or a while ago, and
6 I think it's supposed to be over by early to mid
7 morning. So let's plan to be here. If it is
8 canceled or delayed, I will call Mr. Decoulos and
9 Ms. Read and let you know, and we'll make
10 alternative plans.

11 MR. DECOULOS: So what do we foresee as
12 the witness list? We have Mr. Luhrs first, and
13 then would Mr. Fitzgerald -- well, I guess, it
14 would depend on --

15 HEARING OFFICER: Mr. Fitzgerald at 11.

16 MR. DECOULOS: But we may be able to get
17 another witness on between them.

18 HEARING OFFICER: Sure. It depends on
19 you. The ball is in your court.

20 MR. DECOULOS: Okay.

21 MS. READ: There are no board witnesses
22 between those two.

23 HEARING OFFICER: That's correct.

24 MR. DECOULOS: All right. I'm all set.

1 Thank you.

2 HEARING OFFICER: I will leave the
3 responsibility of notifying the stenographer to
4 you, Mr. Decoulos.

5 MR. DECOULOS: That's fine. Thank you.

6 HEARING OFFICER: Both of you will be in
7 cell service in the morning?

8 MS. READ: Yes.

9 HEARING OFFICER: Okay. Thank you. If
10 there's nothing else, I will see everybody at 9 in
11 the morning.

12

13 (Whereupon at 5:21 p.m., the hearing
14 was suspended.)

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C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
NORFOLK, SS.

I, Camille Macomber, Notary Public and Registered
Professional Reporter and Certified Shorthand Reporter in
and for the Commonwealth of Massachusetts, do hereby
certify:

That the proceedings hereinbefore set forth on pages
4 through 248, inclusive, were recorded by me
stenographically and transcribed by me; and that such
transcript is a true record of the proceedings to the
best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I hereunto set my hand this 3rd
day of February 2011.

Camille Macomber, CSR, RPR
Court Reporter
CSR No. 149608
Notary Public

My Commission Expires:
July 27, 2012

