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4 COMMONWEALTH OF MASSACHUSETTS  
5 BOARD OF REGISTRATION OF HAZARDOUS WASTE  
6 SITE CLEANUP PROFESSIONALS

7 Before the  
8 OFFICE OF APPEALS AND DISPUTE RESOLUTION

9 - - - - -

10 IN THE MATTER OF: Docket No. LSP 10 AP 01  
11 JAMES J. DECOULOS

12 - - - - -

13 DAY 3 - ADJUDICATORY HEARING

14 Honorable Tim Jones, Hearings Officer  
15 Massachusetts Department of Environmental  
16 Protection  
17 One Winter Street, 2nd Floor  
18 Boston, Massachusetts  
19  
20 Thursday, February 10, 2011  
21 commencing at 10:00 a.m.

22  
23 CAROL A. FIERIMONTE, CSR  
24 (781) 603-5221

1 APPEARANCES:

2 BOARD OF REGISTRATION OF HAZARDOUS WASTE  
3 SITE CLEANUP PROFESSIONALS

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

2 February 10, 2011

3 HEARINGS OFFICER: On the record,  
4 please, in the matter of James Decoulos,  
5 LSP, 10 AP-01. This is the third day of  
6 the adjudicatory hearing. It is February  
7 10, 2011.

8 And before we begin the cross  
9 examination of Mr. Decoulos, let me ask you  
10 this first, Ms. Read. Is there anything  
11 else that you wish to take up at this time?

12 MS. READ: No, thank you.

13 HEARINGS OFFICER: Okay. Mr.  
14 Decoulos?

15 MR. DECOULOS: No. No, thank you.

16 HEARINGS OFFICER: Okay. Then why  
17 don't we begin with the examination of Mr.  
18 Decoulos.

19 And Mr. Decoulos, do you have your  
20 pre-filed direct testimony with you?

21 MR. DECOULOS: No. I have my  
22 rebuttal testimony. I am not sure. Let me  
23 check.

24 HEARINGS OFFICER: Do you have a

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1 copy of it, Ms. Read?

2 MS. READ: I, yes, have a -- yes, I  
3 do.

4 MR. DECOULOS: Yes, I have a copy  
5 of it.

6 HEARINGS OFFICER: Okay. Never  
7 mind, Ms. Read.

8 MS. READ: Mm-hmm.

9 HEARINGS OFFICER: Well, Mr.  
10 Decoulos, I will ask you questions then  
11 about your testimony. Do you have in front  
12 of you your pre-filed direct testimony as  
13 well as your pre-filed rebuttal testimony?

14 MR. DECOULOS: Yes.

15 HEARINGS OFFICER: And do you  
16 adopt that as your testimony today?

17 MR. DECOULOS: Yes, I do.

18 HEARINGS OFFICER: Okay. Thank  
19 you. Ms. Read, you may proceed.

20 MS. READ: Thank you.

21 JAMES DECOULOS, SWORN,

22 CROSS EXAMINATION

23 BY MS. READ:

24 Q. Good morning Mr. Decoulos.

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1 A. Good morning.

2 Q. As an LSP, you have a requirement and a  
3 duty to follow the requirements of the  
4 Massachusetts Contingency Plan or MCP.  
5 Correct?

6 A. Yes.

7 Q. And one of the requirements of the MCP is  
8 that the Department may determine that an  
9 Immediate Response Action is needed at any  
10 site. Correct?

11 A. I am not sure if the MCP says that.

12 Q. Well, I would direct your attention to 309  
13 CMR 40.0411(3).

14 HEARINGS OFFICER: Do you have a  
15 copy of that for him, Ms. Read?

16 MS. READ: I do.

17 A. Thank you. Okay. I accept what 40.0411(3)  
18 says on its face.

19 Q. And you would accept the other provisions  
20 of the IRA requirements of the MCP,  
21 correct?

22 A. Whatever they say, I -- you know, I am not  
23 going to dispute what the MCP says, but I  
24 would like to note that that particular



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1           provision applies to the responsible party  
2           or the potentially responsible party. It  
3           does not apply to the LSP.

4       Q.   But if you are engaged as the LSP for a  
5           site for a responsible party and DEP  
6           determines that an Immediate Response  
7           Action is needed, it is your  
8           responsibility, isn't it, to conduct the  
9           Immediate Response Action in compliance  
10          with the MCP and the orders of the  
11          Department. Correct?

12      A.   Possibly.

13      Q.   How could it -- is it your position that  
14           you do not have a duty to comply with the  
15           orders of the Department or the MCP itself?

16      A.   It is my duty to comply to the best of my  
17           ability in representing my client as a  
18           responsible party or potentially  
19           responsible party. The problem that I had,  
20           that I have is that there are other  
21           responsible parties and potentially  
22           responsible parties that are involved in a  
23           site, then there is a question as to who  
24           has the duty to perform Immediate Response

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1           Actions first.

2       Q.   But that is not my question to you.  It is  
3           simply that you are responsible for  
4           complying with the IRA, the Immediate  
5           Response Action requirements of the MCP and  
6           orders made by the DEP related to the  
7           release on which you are working.  Correct?

8       A.   No.  My client is.  The responsible party  
9           or the PRP is.

10      Q.   But if you are engaged as that responsible  
11           party or potentially responsible party's  
12           LSP, it is your obligation, is it not, to  
13           oversee and report upon immediate response  
14           actions in compliance with the MCP and with  
15           the DEP's orders related to that release.  
16           Correct?

17      A.   Not always, no.

18      Q.   And when would it not be your duty to  
19           comply with the MCP or the orders of the  
20           DEP?

21      A.   It is always my duty to comply with the  
22           MCP.  As to orders of the Department, I  
23           have a duty to represent my client and  
24           advocate for my client and address releases

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1           and sources of releases that he or she may  
2           or may not be responsible for.

3       Q.   And DEP approval is required prior to  
4           implementing an Immediate Response Action  
5           or a significant modification.   Correct?

6       A.   Yes.

7       Q.   And it is true as regards to the Eagle Gas  
8           site that after you reported the diesel  
9           release in January of 2003, that the Notice  
10          of Responsibility to Eagle Gas, Exhibit  
11          B-15, required a proposal to include an  
12          active remediation system.   Correct?

13      A.   I would have to take a look at, see exactly  
14          what it says.   And you know, as far as my  
15          response goes, I think the exhibit speaks  
16          for itself.

17      Q.   I am handing you Exhibit B-15 and I am  
18          pointing your attention to page three and  
19          the third bullet point.

20                               (Witness perusing document.)

21      A.   Okay.

22      Q.   So you agree that that Notice of  
23          Responsibility required a proposal to  
24          include an active remediation system.

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1 Correct?

2 A. Yes.

3 Q. And you initially proposed an active  
4 remediation system, correct, in your IRA  
5 plan dated March 17, 2003, which is Exhibit  
6 B-16?

7 A. I would have to take a look at it.

8 Q. I am handing it to you and pointing your  
9 attention to Section 5.0 on page 12.

10 (Witness perusing document.)

11 A. No, that is not what I proposed.

12 Q. What did you propose?

13 A. I proposed to evacuate the diesel  
14 non-aqueous-phased liquid from Well BP5RR  
15 over a four-hour period, and if the NAPL  
16 reoccurred in that well then I would  
17 propose active remediation.

18 Q. So that was not in compliance with the  
19 Notice of Responsibility that required a  
20 proposal for an active remediation system,  
21 correct?

22 A. I don't know.

23 Q. And in your testimony you denied assertions  
24 in the Board's testimony that you had



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1           abandoned or reversed yourself on your plan  
2           to implement active recovery. And your  
3           testimony, and I am paraphrasing, was that  
4           the NAPL, N-A-P-L, didn't return to Well  
5           BP5RR, correct? And I would point your  
6           attention to paragraphs 57 and 88 of your  
7           rebuttal testimony.

8                       (Witness perusing document.)

9       A.    Okay. The paragraphs speak for themselves.

10      Q.   And you have submitted copies of field  
11           notes in support of your assertion that the  
12           NAPL did not return on that day. And those  
13           field notes are designated Exhibit RR-37.  
14           I would ask if you would take a look at  
15           that.

16                       MS. READ: I have a copy, but I  
17           think it would be most helpful for everyone  
18           if we looked at it on the projection.

19                       (Witness perusing document.)

20      Q.   And on the left-hand side of the page near  
21           the bottom it says "pumped". And I am  
22           sorry, I can't read the next word.

23      A.    "Again".

24      Q.    "Again, dry at 1:30." And then there are

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1 notes about recovery, no product, and at  
2 the bottom there is a notation that you  
3 left the site at 2:15.

4 A. That is correct.

5 Q. So that, the record demonstrates that,  
6 according to your notes, the NAPL did not  
7 return within the 45-minute period from  
8 1:30 to 2:15. And on that basis, you did  
9 not follow your proposal to implement an  
10 active remediation system. Correct?

11 A. No, I disagree.

12 Q. But this is what your record says, correct,  
13 that you pumped it at 1:30?

14 A. No.

15 Q. And that you left at 2:15, correct?

16 A. No.

17 Q. What does it say?

18 A. It says I started pumping at 11:40 and that  
19 I left the site at 2:15.

20 Q. But you don't, you are not disputing, are  
21 you, that your notes say that you again  
22 pumped it at 1:30 and that you left at  
23 2:15, correct?

24 A. Right.

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1 Q. Okay. And your report dated March --  
2 excuse me -- I am sorry -- Exhibit B-21,  
3 which is your first IRA status report, on  
4 page 13 records that on May 14th, NAPL was  
5 measured in that well again to an apparent  
6 thickness of 6.67 feet. Correct?

7 (Witness perusing document.)

8 A. That is what it says. I can't find it  
9 right now, but the document speaks for  
10 itself.

11 Q. Well, I can hand you the exhibit.

12 A. What page again?

13 Q. Page 13.

14 HEARINGS OFFICER: Which exhibit is  
15 this?

16 MS. READ: B-21.

17 HEARINGS OFFICER: Okay. Thank  
18 you.

19 MS. READ: The last text on the  
20 page that is not a footnote.

21 A. Okay. The last paragraph reads, "On May  
22 14, 2003, NAPL was measured within BP5RR to  
23 an apparent thickness of 6.67 feet with a  
24 Solinst oil-water phase meter. Total well

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1 depth was 10.72 feet." S-O-L-I-N-S-T.

2 Q. When you first reported the diesel release  
3 at the Eagle Gas site, the DEP issued a  
4 Notice of Responsibility which has been  
5 entered into evidence as Exhibit B-15. And  
6 that notice required, set forth certain IRA  
7 requirements. This, again, looking at page  
8 three of Exhibit B-15, for a proposal to  
9 conduct air monitoring for hazardous  
10 material vapors in all buildings and  
11 utility man ways. And I am handing you a  
12 copy.

13 (Witness perusing document.)

14 A. Okay.

15 Q. And the document also reflects that you  
16 received a copy of this document directly  
17 under the cc's on page four. Is that  
18 correct?

19 A. Yes.

20 Q. All right. But you did not inspect the  
21 storm drain system until May 16, 2003,  
22 which was more than three months later.  
23 Correct?

24 A. That's right, because I was on crutches.



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1 Q. For the -- were you on crutches when you  
2 received the February 12, 2003 Notice of  
3 Responsibility?

4 A. Yes.

5 Q. When you did inspect the storm drain  
6 system, you did not bring with you the PID  
7 meter, the photo ionization detector,  
8 correct?

9 A. That is correct.

10 Q. And later that day, when DEP came to the  
11 site, Mr. Yablonski brought it with him and  
12 utilized it, correct?

13 A. I utilized Mr. Yablonski's PID as well. He  
14 and I both used it.

15 Q. And you don't dispute the PID readings of  
16 the VOC, Volatile Organic Compound vapors  
17 that were taken on May 16, 2003, and that  
18 are recorded in your first IRA report,  
19 Exhibit B-21, do you?

20 A. No.

21 Q. And in fact, your Exhibit RR-37 includes  
22 the same readings in your field notes, I  
23 believe. Is that correct? I can show you  
24 a copy.

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1       A.    That is correct.

2       Q.    And you don't dispute, do you, that MassDEP  
3            believed that the diesel release was a  
4            probable source of the contamination that  
5            was detected at the outfall on May 16,  
6            2003, do you?

7       A.    I vehemently disputed it.

8       Q.    No.  My question is you don't dispute that  
9            MassDEP believed that, that they expressed  
10           that belief in the field Notice of  
11           Responsibility and the formal Notice of  
12           Responsibility, correct?

13      A.    No.  They did not know where the source of  
14           the outfall contamination came from.

15      Q.    But it is true, is it not, that you have  
16           stated that the field Notice of  
17           Responsibility and the Notice of  
18           Responsibility speak for themselves.  
19           Correct?

20      A.    Yes.

21      Q.    And the field Notice of Responsibility  
22           states, and this is a Notice of  
23           Responsibility for the release at the  
24           outfall, and it states, and I am quoting in

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1           the handwriting in the middle of the page  
2           of Exhibit B-19, "Eliminate source from  
3           leaking diesel fuel UST spill  
4           bucket/piping." Correct?

5       A.    If that's what it says.

6       Q.    And it also requires, on the third line of  
7           that handwriting, "Construct remedial  
8           system as necessary to stop diesel fuel  
9           discharge to storm drain." Correct?

10      A.    Yes.

11      Q.    And Exhibit B-20, which was the formal  
12           Notice of Responsibility, on pages two and  
13           three, repeated those requirements in the  
14           same wording. Correct?

15                   (Witness perusing document.)

16      A.    The document speaks for itself.

17      Q.    So my question is simply that MassDEP  
18           expressed itself in these documents as  
19           believing that the diesel release was a  
20           source of a contamination at the outfall.  
21           Correct?

22      A.    I -- no.

23      Q.    My question is only that DEP expressed  
24           itself as believing that the diesel release

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1           was a source of the contamination at the  
2           outfall, simply that they expressed it, not  
3           whether the expression was correct.

4       A.   No, no. I disagree.

5                       HEARINGS OFFICER: On what basis do  
6           you disagree?

7                       MR. DECOULOS: Because they used  
8           the words "as necessary" and they were un  
9           -- they just did not know where the source  
10          of the outfall contamination originated  
11          from. If they did, they would not have  
12          used the words "as necessary". And  
13          furthermore, there was clearly evidence  
14          that the contamination originated from the  
15          surface and that is why they described the  
16          spill buckets. The spill buckets are at  
17          the surface of the above ground, the  
18          underground storage tanks and they are  
19          designed to catch overfilling from the oil  
20          tanks, from the tanker who delivers the  
21          product to the tanks; and those spill  
22          buckets, if they are not working properly,  
23          will overfill on to the surface and  
24          discharge to Catch Basin 4.



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1       Q.    But the Notice of Responsibility, both of  
2            them, Exhibits B-19 and 20, both state  
3            eliminate source from leaking diesel fuel  
4            underground storage tank spill buckets and  
5            piping.  Correct?

6       A.    They speak for themselves.  And I would  
7            like to note that on the day of the  
8            identification of the outfall contamination  
9            that I identified, that there was an  
10           underground storage tank testing company at  
11           the site, as you can see in the  
12           photographs.  And so we were -- it was  
13           clearly a concern of ours to address both  
14           the spill bucket problem and the fill pipe  
15           problem.

16                   And if you look at the  
17           photographs, you will see that the  
18           underground storage tank company testing  
19           van and the equipment was at the site on  
20           that day.

21       Q.    And DEP has never disputed that to you,  
22            correct; that the tanks were tested, that  
23            has never been a source of dispute between  
24            you and DEP, correct?

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1       A.    No.  The tanks, no.  The piping, yes.  And  
2            that is why if you look at the photographs,  
3            for instance, Photograph 28, you will see  
4            that there was tightness testing being  
5            conducted of both the piping and the tanks  
6            on May 16, 2003.

7       Q.    And that has never been in dispute,  
8            correct?

9       A.    What is that?

10      Q.    That that testing was conducted on that  
11            date?

12      A.    Not that I am aware of.  No one has ever --

13      Q.    The Board has not disputed that?

14      A.    No.

15      Q.    And the DEP has never disputed that?

16      A.    No.

17      Q.    Okay.  And looking at Exhibit B-19, the  
18            field Notice of Responsibility, it is true,  
19            isn't it, that your client, that it  
20            reflects that your client, the person, the  
21            person on the scene, agreed to take the  
22            response actions deemed necessary by the  
23            Department.  Correct?

24      A.    It speaks for itself.

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1       Q.   And your first IRA status report, again  
2           Exhibit B-21, it directly disputes that  
3           Eagle Gas was a source, that the diesel  
4           release at Eagle Gas was the source of the  
5           release at the outfall.  Correct?  I am  
6           drawing your attention to page 20 of  
7           Exhibit B-21 under Section 5.0, the third  
8           full paragraph.

9                       And in the last sentence, the  
10          second clause of the sentence states, "It  
11          is clear from the recent investigations  
12          that the diesel delivery line failure has  
13          not caused the impact to the storm water  
14          system."  Correct?

15       A.   Yes.

16       Q.   And is it a fair reading of this report to  
17           state that the basis on which you drew that  
18           conclusion was the earlier finding, the  
19           findings stated earlier in the report that  
20           again on the same page but above Section  
21           5.0 in the paragraph immediately above,  
22           "The analytical results show that the  
23           diesel delivery line failure has not  
24           migrated along the potentially preferred

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1           pathway outside the storm water piping and  
2           Main Street."   Correct?

3       A.    Yes.

4       Q.    And you drew that conclusion from the  
5           analytical results from the DCW wells,  
6           correct?

7       A.    No.

8       Q.    And the soil borings that you had  
9           conducted?

10      A.    No.

11      Q.    So what does this phrase, the analytical  
12           results, refer to then?

13      A.    It also refers to soil sampling that  
14           occurred.   It also refers to PID readings  
15           that were taken in the field.

16      Q.    And none of those results per se, the  
17           numbers that are reflected in your reports  
18           for those analytical results have not been  
19           disputed by DEP, correct?

20      A.    That is correct.

21      Q.    And not by the LSP Board either, correct?

22      A.    That is correct.

23      Q.    And your report reflects that you sampled  
24           the groundwater in the DCW wells in May and



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1 June of 2003. Correct? I am sorry.

2 The DCW wells, the report reflects  
3 testing on June 12, 2003, and other  
4 preexisting wells that were on the site had  
5 been tested in May. But you didn't sample  
6 the groundwater in the DCW wells again for  
7 12 months, correct, until June of 2004?

8 A. I am not sure if I sampled these wells or  
9 whether they were sampled by one of my  
10 consultants or sub consultants or  
11 employees.

12 Q. But there is no dispute, is there, that  
13 your reports and the exhibits that have  
14 been offered in this case do not reflect  
15 any groundwater testing from after June 12,  
16 2003, until the testing in June of 2004.  
17 Correct?

18 A. As far as my reports go. But there are  
19 other reports that were prepared by  
20 Mr. Kaegael's firm, and I am not sure when  
21 those, when he sampled the wells.

22 Q. But your own testing, your own reports, as  
23 you say, do not indicate that you conducted  
24 any testing from June of '03 to June of

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1           '04. Correct?

2       A. They speak for themselves.

3       Q. So that when you detected NAPL in Well

4       DCW-1 in June of 2004, you had no

5       information about when that NAPL arrived in

6       DCW-1, about at what time between June of

7       2003 and June of 2004 the NAPL arrived in

8       DCW-1, correct?

9       A. All that I know is that I identified DCW-1,

10       that I identified NAPL in DCW-1 in June of

11       '04.

12       Q. So that until June of '04, you did not know

13       where NAPL might be located on the site

14       other than Well BP5RR. Correct?

15       A. No. I also conducted soil borings in May

16       of 2003 or June of 2003, and those soil

17       borings provided indication as to what the

18       extent of the NAPL was.

19       Q. But you have testified that those soil

20       borings did not contain NAPL, correct?

21       A. No. If you look at the soil borings, you

22       will see clearly in the report that they

23       were impacted by diesel NAPL. For

24       instance --

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1                   HEARINGS OFFICER: For the record,  
2                   what are you looking at, Mr. Decoulos?

3                   MR. DECOULOS: In Exhibit B-21,  
4                   Table 2, Borings DCA, DCB and DCE were  
5                   heavily impacted by diesel, as can be seen  
6                   from the high, from the elevated EPH  
7                   fractions that were obtained. And I am  
8                   sure if you look at the boring logs which  
9                   were expressed in the Phase I report, which  
10                  was Exhibit B-30, that the PID screening  
11                  from those soil borings would have also  
12                  confirmed there was a heavy fresh diesel  
13                  spill associated with other borings. So it  
14                  wasn't just the groundwater wells that were  
15                  providing an indication of the NAPL extent.

16                  And as a matter of fact, there was  
17                  a paper that was published around this time  
18                  with the LSP Association written by Tom  
19                  Nuzzo and some others who had suggested  
20                  that NAPL should best be assessed through  
21                  soil borings and soil screenings. And that  
22                  information was later confirmed by the LSP  
23                  Association's White Papers on addressing  
24                  LNAPL, and also the LNAPL Work Group that

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1 DEP is conducting.

2 So the point is is that  
3 groundwater is not necessarily the best  
4 indicator of LNAPL, of delineating an LNAPL  
5 release.

6 Q. And it has been your testimony, isn't it,  
7 that the soil borings and monitoring wells  
8 that you placed on the site in May and June  
9 or, excuse me, June of 2003, were in the  
10 backfill of the storm water pipe. Correct?

11 A. Yes.

12 Q. So your testimony today is that the Borings  
13 DCA, B and E were heavily impacted by the  
14 diesel NAPL, which is in contradiction to  
15 the statement in your record, is it not,  
16 that the analytical results show that the  
17 diesel delivery line failure has not  
18 migrated along the outside of the storm  
19 water piping?

20 A. No, it is not contradiction at all. The  
21 key word is "migrated". There was clearly  
22 an impact of NAPL at BP5RR. The assessment  
23 that took place was to determine what the  
24 extent of that LNAPL was and whether that



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1 LNAPL had migrated along the exterior of  
2 the storm water piping. And the assessment  
3 that was conducted demonstrated that it did  
4 not migrate, there was no possibility of  
5 LNAPL, the fresh LNAPL release migrating to  
6 the south along the exterior of the piping.

7 And as a matter of fact, if you  
8 look at DEP's own markup of my report, you  
9 will see, for instance, themselves, they  
10 actually circled the three borings that I  
11 just identified, A, B and E on Exhibit  
12 B-21, Figure 4. These are DEP's markups.

13 Q. So your -- despite what you describe as a  
14 heavy impact of diesel NAPL in the exterior  
15 of the storm pipe, you, nevertheless,  
16 rendered an opinion that it was clear that  
17 the diesel delivery line failure had not  
18 caused the impact to the storm water  
19 system. Correct?

20 A. That is correct.

21 Q. And it is also true, is it not, that the  
22 text of your report, Exhibit B-21, does not  
23 contain a discussion or an evaluation of  
24 the results of the sampling of surface

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1 water at the storm water outfall, which are  
2 noted on Table 3, the EPH fractions?

3 A. That is right, because it was at that time  
4 a separate release. It was a second  
5 release. It had nothing to do -- this  
6 report was specifically for Release  
7 Tracking No. 4-17582.

8 The purpose of this release or,  
9 rather, the reason of this release was the  
10 failure of a remote diesel fill line which  
11 had leaked pure diesel product into the  
12 ground and that was the source, and my, my  
13 requirement was to assess the extent of  
14 that source as it had leached into the  
15 ground.

16 So there were two separate  
17 releases so I don't know how you can mingle  
18 those two separate releases and why I would  
19 be required to discuss that outfall  
20 contamination in this report.

21 Q. But you did discuss that outfall  
22 contamination in this report at some length  
23 in Section 4.2. Correct?

24 (Witness perusing document.)

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1       A.    Right.  Just for providing some background  
2            and trying to address the Department's  
3            concerns as to whether or not there was a  
4            connection between the two separate  
5            releases.

6       Q.    And your report also states, does it not,  
7            that on page 16 that the water at the  
8            outfall "appeared to be impacted from  
9            either diesel fuel or home heating oil."  
10           Correct?

11      A.    Yes.  It speaks for itself.

12      Q.    And it also states that DEP issued a Notice  
13            of Responsibility to your client "due to  
14            the likelihood that the source of the  
15            outfall contamination originated from the  
16            site."  And I am reading there from Page  
17            21.

18                   (Witness perusing document.)

19                   HEARINGS OFFICER:  What exhibit is  
20           that again?

21                   MS. READ:  This is B-21.

22                   HEARINGS OFFICER:  Thank you.

23                   MS. READ:  The July 3, 2003 IRA  
24           Status Report.

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1 A. I am sorry. What page number again?

2 Q. I believe it is B-21.

3 A. What page number?

4 Q. It is 21?

5 A. 21?

6 Q. I am sorry.

7 A. 21 appears to be Table 3 in the report that  
8 you provided. I am not sure if it is an  
9 accurate copy or not.

10 Q. Yes. I am sorry. This was a misstatement.  
11 Let's see.

12 The second quotation that I read  
13 is also on page 16 in the fourth paragraph  
14 that begins with the word "although".

15 (Witness perusing document.)

16 A. Okay.

17 Q. And your paragraph refers to the likelihood  
18 that the source of the outfall  
19 contamination originated from the site. Is  
20 that correct?

21 A. That is correct.

22 Q. And so despite this lengthy discussion in  
23 your report about the outfall  
24 contamination, you didn't see any need to



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1           -- and its report of what you described as  
2           heavy NAPL impact in the backfill of the  
3           storm pipe, you didn't need to, you didn't  
4           see any need to discuss the significance of  
5           the EPH results reported in Table 3 in the  
6           text of your report?

7       A.   That is correct.

8       Q.   And in fact, none of your reports submitted  
9           to DEP discuss the significance of those  
10          analytical results, do they?

11      A.   No, that is incorrect.

12      Q.   You later opined that the source of the  
13          contamination at the outfall was surface  
14          water runoff that flowed into what we have  
15          numbered Catch Basin No. 3.   Correct?

16      A.   No.   Catch Basin 4.

17      Q.   Could it --

18      A.   Catch Basin 1, as seen on Chalk 1 which is  
19          a representation of Figure 4 from Exhibit  
20          B-21, Catch Basin 1 is located north of the  
21          Eagle Gas building on the westerly side of  
22          Main Street.   Catch Basin 2 is located  
23          across Main Street to the east.   Catch  
24          Basin 3 is located directly across the

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1 street from the Eagle Gas building on the  
2 easterly side of Main Street. And Catch  
3 Basin 4 is located south, southeasterly of  
4 the Eagle Gas building on the westerly side  
5 of Main Street. And Catch Basin 4 is the  
6 first downgradient catch basin of surface  
7 runoff from the Eagle Gas pad.

8 Q. All right. Thank you. I stand corrected.  
9 I misspoke.

10 But it has been your opinion that  
11 there was surface water runoff into Catch  
12 Basin No. 4 that was the source of the  
13 contamination at the outfall. Correct?

14 A. Well, you are mischaracterizing what I was  
15 stating.

16 Q. How, how would you characterize it?

17 A. Because surface water runoff was simply a  
18 conduit to carry contaminants which had  
19 either been spilled or disposed of at the  
20 Eagle Gas surface.

21 Q. But you didn't present any evidence in your  
22 submittals to MassDEP of any spills or  
23 disposals on the surface, any specific  
24 spills or disposals on the surface. Is

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1           that correct?

2       A.    That is correct.

3       Q.    And the high concentrations noted in Table  
4           3 of Exhibit B-21 do not seem to correlate  
5           with the incidental surface spills that  
6           would occur at a gas station, correct?

7       A.    No, I strongly disagree.

8       Q.    And this was a gasoline station, correct?

9       A.    Yes.

10      Q.    And there were three gasoline tanks  
11           underground and one diesel tank, correct?

12      A.    That is correct.

13      Q.    So most of the business of this gas station  
14           was in gasoline, correct?

15      A.    No.

16      Q.    And these results are in EPH fractions,  
17           correct?

18      A.    That is correct but --

19      Q.    And you have not presented any evidence of  
20           any surface diesel releases at this gas  
21           station, have you, in your submittals to  
22           MassDEP?

23      A.    Oh, I disagree.

24      Q.    Could you please point me to information in

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1           your submittals to MassDEP of surface  
2           releases at the Eagle Gas station during  
3           the time that you were working on the Eagle  
4           Gas site of diesel fuel?

5       A.   DEP Representative Cynthia Baran directly  
6           witnessed a diesel spill in December of  
7           2004, while she was at the station.

8       Q.   And is it your testimony that a spill in  
9           December of 2004 would account for the  
10          recurring petroleum contamination beginning  
11          in May 2003 and recorded in your  
12          photographs on numerous dates including May  
13          16, 2003, May 19, 2003, May 24, 2003, and  
14          various additional dates as reported in  
15          your photographs?

16      A.   No.  It does not begin in May of 2003.  
17          That is when I identified the problem.

18                   It is my contention that the  
19          releases were occurring for decades and  
20          that I was the first one that identified  
21          the release in May of 2003.  What you --

22      Q.   But you have no specific information about  
23          diesel releases occurring at the Eagle Gas  
24          Station other than December 10, 2004,



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1 correct?

2 A. No. There was, there was another example  
3 of a release that occurred which the Carver  
4 Fire Chief reported to Cynthia Baran in  
5 November of 2005, which is part of the  
6 record.

7 Q. Okay. That is November 2005. But other  
8 than those two releases, you have no  
9 information about diesel releases on the  
10 surface of Eagle Gas Station during the  
11 time that you were working on the site.  
12 Correct?

13 A. That is correct.

14 HEARINGS OFFICER: Did you ever ask  
15 your client about the frequency of diesel  
16 releases on the surface of the Eagle Gas  
17 site?

18 MR. DECOULOS: Yes.

19 HEARINGS OFFICER: And what did  
20 your client say about that?

21 MR. DECOULOS: He said that there  
22 were occasional spills and overfills that  
23 had occurred. And as Mr. Wright had  
24 described a couple of weeks ago, there is

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1           no mechanism to prevent diesel spills when  
2           overfilling takes place, that it is very  
3           simple for diesel filling to overfill on to  
4           a gasoline pad.

5                       HEARINGS OFFICER: Occasional  
6           meaning how often?

7                       MR. DECOULOS: It could occur on a  
8           daily basis.

9                       HEARINGS OFFICER: And why would it  
10          occur on a daily basis?

11                      MR. DECOULOS: Because of the  
12          volume of diesel product that Eagle Gas is  
13          pumping. You can see --

14                      HEARINGS OFFICER: What was the  
15          volume of diesel product that Eagle Gas was  
16          pumping?

17                      MR. DECOULOS: I don't know  
18          offhand. But if you look at photographs,  
19          for instance --

20                      HEARINGS OFFICER: I don't want to  
21          look at photographs. I already looked at  
22          the photographs. I am just trying to get a  
23          better understanding of what you actually  
24          know about the volume of diesel releases,

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1           and so far you have just said that there  
2           were occasional releases. Do you know, do  
3           you know how often that occurred? Do you  
4           know what the volume of each release was?  
5           Do you know if it was ever reported? Did  
6           you ever try to document this?

7                       MR. DECOULOS: No.

8                       HEARINGS OFFICER: Is it documented  
9           anywhere?

10                      MR. DECOULOS: Well, the two  
11           releases that I have just described are the  
12           only documented releases. But it is my  
13           contention that there were significant  
14           releases that occurred that went  
15           undocumented.

16                      HEARINGS OFFICER: And what is the  
17           basis of that contention?

18                      MR. DECOULOS: The practices that I  
19           saw at the Eagle Gas Station of filling  
20           diesel trucks, as well as the messy  
21           operation, the housekeeping at that  
22           property was not, was not good. It was a  
23           messy operation, as you can see from the  
24           photographs.

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1                   HEARINGS OFFICER: So how many  
2 releases did you observe personally?

3                   MR. DECOULOS: Well, as I --  
4 personally, just one. But there were  
5 overfills that occurred and there were --  
6 it was just --

7                   HEARINGS OFFICER: I am just trying  
8 to get a better understanding of why you  
9 say that this occurred frequently. I mean  
10 I understand that that is your conclusion,  
11 but I am trying to understand where you  
12 derive that conclusion from. I mean I am  
13 just trying to get a better understanding  
14 of the factual basis. That is all.

15                  MR. DECOULOS: My numerous visits  
16 to the site and just seeing --

17                  HEARINGS OFFICER: Well, how many  
18 times did you visit the site?

19                  MR. DECOULOS: Possibly 30.

20                  HEARINGS OFFICER: And of those 30  
21 times, how many times did you personally  
22 observe a release?

23                  MR. DECOULOS: Maybe three or four  
24 minor spills.



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1                   HEARINGS OFFICER: And how much  
2                   during each spill?

3                   MR. DECOULOS: Maybe a cup or two,  
4                   you know, that, aside from that December of  
5                   '04 release.

6                   HEARINGS OFFICER: A cup as in a  
7                   kitchen cup measure?

8                   MR. DECOULOS: Yes, eight ounces.

9                   HEARINGS OFFICER: Okay. Thank  
10                  you. And how did that occur? How did the  
11                  cup spill?

12                  MR. DECOULOS: Just by overfilling.

13                  HEARINGS OFFICER: How does that --  
14                  can you describe the mechanism by which  
15                  that occurred?

16                  MR. DECOULOS: The truck is filled  
17                  with a nozzle, and as the nozzle is pulled  
18                  out of the tanker truck, fuel tank, the  
19                  spill occurs that way.

20                  HEARINGS OFFICER: A cup?

21                  MR. DECOULOS: Yes.

22                  HEARINGS OFFICER: Okay. Thank  
23                  you.

24        Q.       Drawing your attention to the Notice of

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1           Responsibility for the release to the  
2           brook, which is Exhibit B-20, the formal  
3           Notice of Responsibility, that notice  
4           requires that the IRA plan, and I am  
5           quoting, "The plan must include" -- I am  
6           sorry. I am reading my transcription which  
7           has an ellipsis in it. I am not sure where  
8           my copy of B-20 has gotten to.

9                       But it must include that you  
10          initiate active collection of NAPL from the  
11          impacted monitoring well. Correct?

12       A.   The document speaks for itself.

13       Q.   Looking at your January 2004 IRA plan which  
14           is Exhibit B-24, this IRA plan does not  
15           include any proposals for active collection  
16           of NAPL at the site, does it?

17       A.   Exhibit B-24 is for the release at the  
18           outfall. So it has no bearing, there is no  
19           connection between the release which was  
20           reported in January of '03. This, this  
21           Exhibit B-24 is for Release Tracking No.  
22           4-17825.

23       Q.   Right. And that is why I drew your  
24           attention to the Notice of Responsibility

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1           for RTN No. 4-17825, which states on page  
2           three that the IRA plan must, and the word  
3           -- well, it starts at the bottom of page  
4           four.

5                       "The written IRA plan must," and  
6           the word "must" is in bold face,  
7           "include" --

8       A.   I am sorry. I don't understand where you  
9           are pointing to.

10      Q.   I am on Exhibit B-20, the Notice of  
11           Responsibility for the release at the  
12           outfall, which was RTN 4-17825.

13      A.   You said page four?

14      Q.   No. Pages two and three. At the bottom of  
15           page two, "The IRA plan must include," and  
16           then there are items separated by semi  
17           colons. And an item that begins at the top  
18           of page three, "Initiate active collection  
19           of non-aqueous-phase liquid from impacted  
20           monitoring well."

21      A.   Okay. And it also says at the end of that  
22           to "construct a remedial system as  
23           necessary to stop the diesel fuel  
24           discharged to the storm drain."

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1 Q. And that was a separate requirement,  
2 correct?

3 A. No. It was all in the same paragraph  
4 separated by semi colons.

5 Q. Correct. Initiate active collection from  
6 the existing impacted monitoring well. I  
7 mean I am adding the word "existing" there,  
8 but those are two different requirements,  
9 correct?

10 A. It speaks for itself.

11 HEARINGS OFFICER: Well, no.  
12 Answer the question, Mr. Decoulos.

13 Do you interpret that as one  
14 requirement or as two separate  
15 requirements?

16 MR. DECOULOS: I interpret that as  
17 a collective set of requirements to address  
18 what DEP's concerns were.

19 HEARINGS OFFICER: A collective set  
20 of separate requirements, correct?

21 MR. DECOULOS: Yes.

22 HEARINGS OFFICER: Thank you.

23 Q. And this was issued in June of 2003, for  
24 this release, but you did not submit an IRA



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1           plan within the required time period and so  
2           a Notice of Noncompliance was issued,  
3           correct?

4       A.    I believe one was, but I am not certain.

5       Q.    Exhibit B-22 is the Notice of Noncompliance  
6           that required you to submit an IRA plan.  
7           It listed as a noncompliance the failure to  
8           submit the IRA plan or even a release  
9           notification form.  Correct?

10                   (Witness perusing document.)

11       A.    Exhibit B-22 is a Notice of Noncompliance  
12           issued to my client for his failure to file  
13           whatever, whatever the Notice of  
14           Noncompliance says, which is on attachment  
15           one, to file the release notification form  
16           and to submit an Immediate Response Action  
17           Plan within 60 days of providing  
18           notification to the Department.

19       Q.    And you responded on behalf of your client,  
20           correct, by filing a release notification  
21           form in December of 2003, and the IRA plan  
22           in January of 2004, correct?

23       A.    That is correct.  Those are Exhibits B-23  
24           and B-24 that you are referring to.

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1 Q. So having laid that ground work, it is  
2 true, isn't it, that Exhibit B-24, which is  
3 the IRA plan, does not include any active  
4 collection of NAPL, correct?

5 (Witness perusing document.)

6 A. I am going to refer to Section 6.0 which  
7 begins on page 18 to answer your question.

8 Q. And can you point me on page 18 to a  
9 proposal for active, to initiate active  
10 collection of NAPL from the impacted  
11 monitoring wells?

12 A. There is no proposal to conduct active  
13 remediation from the monitoring well.

14 Q. And it didn't propose either to construct a  
15 remedial system as necessary to stop the  
16 diesel fuel discharge to the storm drain?

17 A. That's right, because it was unnecessary.

18 Q. And but it does not explain why it was not  
19 necessary not to --

20 A. Oh, I disagree.

21 Q. Can you please identify where it explains  
22 why it was not necessary to conduct active  
23 recovery of NAPL?

24 A. Because all the evidence that was described

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1           in this report points to there not being a  
2           connection between the two releases, that  
3           it was unnecessary for the two releases,  
4           one being reported in January of '03 which  
5           was a subsurface release caused by the  
6           failure of a remote fill line, and the  
7           second release, which was caused in my  
8           opinion due to surface releases.

9                     The information that I provided in  
10          this report described why there was no  
11          connection between the two. And as a  
12          matter of fact, the measures that I took  
13          that I proposed in this report were  
14          designed to address surface releases that  
15          occurred. And if you look at the four  
16          proposals, you will see that that's what  
17          was being proposed.

18       Q.    This report states and you pointed out  
19              earlier in your testimony today that the  
20              report is stating that the diesel delivery  
21              line failure has not migrated southward  
22              along the storm pipe. Correct?

23       A.    That is correct.

24       Q.    But you also testified that soil borings

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1 DCA, DCB and DCE showed a heavy NAPL impact  
2 on the soil borings in the storm, in the  
3 bedding of the storm pipe. Correct?

4 A. Not the bedding of the storm pipe. In the  
5 vicinity of the storm pipe.

6 Q. If you would refer to your rebuttal, page  
7 13, lines four and five, you describe the  
8 DCW wells as immediately adjacent to the  
9 storm pipe. Correct?

10 (Witness perusing document.)

11 A. Page 13?

12 Q. Of exhibit -- no. Of your rebuttal  
13 testimony.

14 A. Exhibit RR-1.

15 Q. Lines four and five on page 13.

16 (Witness perusing document.)

17 A. I don't know what you are referring to.

18 Okay. It says my, quote unquote, theory,  
19 which begins on line two, was supported by  
20 visual observations of the storm water  
21 collection system, a knowledge as to how  
22 the system functioned, PID readings of  
23 various storm water control structures, the  
24 results of soil borings and monitoring



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1 wells along the pervious backfill of the  
2 storm water piping and observations of  
3 storage and handling practices at the Eagle  
4 Gas site.

5 Q. Yes. And on line -- that phrase states  
6 that the soil borings and monitoring wells  
7 were along the pervious backfill of the  
8 storm water piping. Correct?

9 A. Yes.

10 Q. So the opinion that the diesel NAPL release  
11 was not migrating southward along the storm  
12 pipe is not the same as an opinion that the  
13 diesel NAPL was not in the pervious  
14 backfill of the piping. Correct?

15 A. That is correct.

16 Q. After you submitted your IRA plan in  
17 January of 2004, you attended a meeting in  
18 March, on March 11, 2004, with MassDEP, and  
19 accompanied two MassDEP representatives on  
20 a site visit. Correct?

21 A. I -- I can't remember if it was after that  
22 March 11th meeting or if it was in April of  
23 '04. It was so long ago.

24 Q. But you have yourself submitted exhibits

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1           documenting, I believe, a meeting between  
2           you and MassDEP in March, 2004. Correct?

3       A.    I know that there were meetings, meeting  
4           notes that I have presented as exhibits,  
5           but I don't know exactly what the dates are  
6           offhand.

7       Q.    Drawing your attention to Exhibit 13-B,  
8           MassDEP meeting notes dated March 11, 2004,  
9           to refresh your recollection.

10                   (Witness perusing document.)

11       A.    Okay.

12       Q.    That meeting was held in part because you  
13           had not tier classified the site. Correct?

14       A.    I am not sure.

15       Q.    And the Board has offered as Exhibit B-25  
16           photos taken by MassDEP on that day of the  
17           site visit. And you have included them as  
18           well in your Picasso web page.

19                   But handing you what the Board  
20           marked as Exhibit B-25, photographs of the  
21           site of the outfall.

22       A.    Okay.

23       Q.    The photographs show that there is  
24           separate-phase oil and water emulsions on

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1 the water at the outfall. Correct?

2 (Witness perusing document.)

3 A. Yes. These photos show separate-phase  
4 product from the surface water.

5 Q. And is it your testimony, your testimony is  
6 that separate-phase product was consistent  
7 with surface runoff?

8 A. It is consistent with what I believed would  
9 have washed off with surface runoff.

10 Q. So it is your testimony that that amount of  
11 oil and emulsion at the outfall was  
12 consistent with product running off into  
13 Catch Basin No. 4. Correct?

14 A. That is correct.

15 Q. And those photos show new booms that had  
16 been placed that day or certainly very  
17 recently. Correct?

18 (Witness perusing document.)

19 A. I can't tell. I can't tell when these  
20 booms were placed.

21 Q. But they are certainly very white in the  
22 photographs, correct?

23 A. I am not going to make a subjective  
24 interpretation.

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1 Q. What is your memory about whether new booms  
2 were placed that day?

3 A. I don't know.

4 HEARINGS OFFICER: Do you recall  
5 placing booms that day?

6 MR. DECOULOS: No.

7 HEARINGS OFFICER: You have no  
8 recollection whatsoever of placing booms  
9 that day?

10 MR. DECOULOS: No.

11 HEARINGS OFFICER: Did anyone else  
12 place booms on your behalf?

13 MR. DECOULOS: There were people  
14 continuously placing booms and pads on my  
15 behalf at that outfall.

16 HEARINGS OFFICER: How often would  
17 they replace the booms on your behalf?

18 MR. DECOULOS: Every few weeks. I  
19 mean they were inspected by Mr. Badaoui  
20 probably three or four times a week. I had  
21 asked him to keep an eye on the outfall and  
22 making sure that none of this product was  
23 breaking through into the brook.

24 HEARINGS OFFICER: And he inspected



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1           it three or four times a week for what  
2           period of time?

3                     MR. DECOULOS: Oh, for since the  
4           release was identified in May of '03.

5                     HEARINGS OFFICER: Until when?

6                     MR. DECOULOS: Until I was  
7           involved, until my involvement ended.

8                     HEARINGS OFFICER: And he went  
9           there three or four times a week during  
10          that whole period, and how often would he  
11          replace booms during that period?

12                    MR. DECOULOS: He would replace  
13          booms and pads, but Paul Wright was also  
14          responsible for replacing booms and pads as  
15          well and properly disposing of them in the  
16          55-gallon drums that we had on site which  
17          you can see in one of the photographs.

18                    HEARINGS OFFICER: And how often  
19          would Mr. Wright go to the outfall?

20                    MR. DECOULOS: I would guess  
21          approximately every month.

22                    HEARINGS OFFICER: During the  
23          entire period that you were working on the  
24          site?

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1 MR. DECOULOS: Yes.

2 HEARINGS OFFICER: And how often  
3 did he replace booms and pads?

4 MR. DECOULOS: I can't, I can't say  
5 for certain.

6 MS. READ: And you didn't have him  
7 -- I am sorry. May I?

8 HEARINGS OFFICER: Well, I just  
9 have one follow-up question.

10 MS. READ: I am sorry.

11 HEARINGS OFFICER: You didn't keep  
12 a log of how often he was replacing the  
13 booms and the pads?

14 THE WITNESS: I am not sure.  
15 There may have been a log somewhere, but I  
16 am not sure.

17 HEARINGS OFFICER: And with respect  
18 to Mr. Badaoui, you have no knowledge as to  
19 how often he was replacing booms and pads?

20 MR. DECOULOS: No. The main  
21 objective was to make sure that there was  
22 no break through, and I instructed both of  
23 them to just make sure that the booms were  
24 replaced according to the need for

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1 replacement. There were some periods in  
2 which there was absolutely no sheen  
3 whatsoever. As you can see from some of  
4 the photographs, there were significant  
5 periods, probably eight or nine months of  
6 the year when there was absolutely no need  
7 to have booms out there.

8 HEARINGS OFFICER: I don't actually  
9 recall seeing a photograph when there was  
10 no sort of emulsion on the surface of the  
11 water at the outfall.

12 MR. DECOULOS: I would be glad to  
13 show you. Photograph 76.

14 HEARINGS OFFICER: Wait. No. Go  
15 back to Photograph 76. Are you telling me  
16 that there is no emulsion on the surface of  
17 the water there?

18 MR. DECOULOS: That is correct.

19 HEARINGS OFFICER: Please go back.  
20 Where, can you show me where you do not see  
21 an emulsion on the surface and why are  
22 there so many pads and booms there?

23 MR. DECOULOS: Because --

24 HEARINGS OFFICER: Because it is

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1 running clear, is that your testimony?

2 MR. DECOULOS: Yes. That it was  
3 running clear past the booms. That is  
4 clear, that is a clear -- at the bottom of  
5 the photograph it is a clear -- if you look  
6 at photograph 77, you will see that the  
7 water that is flowing out of that pipe is  
8 clear.

9 HEARINGS OFFICER: I am sorry. I  
10 can't draw that conclusion.

11 MR. DECOULOS: That is clear water.  
12 If you zoom in on Photograph 77, it is  
13 discharging from that pipe.

14 HEARINGS OFFICER: It is your  
15 testimony, Mr. Decoulos, that that is clear  
16 water?

17 MR. DECOULOS: I can give you the  
18 pointer, Mr. Jones.

19 HEARINGS OFFICER: No, that is  
20 okay.

21 MR. DECOULOS: I can, I can show  
22 you other photographs if you'd like.

23 HEARINGS OFFICER: That would be  
24 great. I would like to see a photograph



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1           that you are referring to where it was  
2           running clear.

3                       MR. DECOULOS: Photograph 54,  
4           Photograph --

5                       HEARINGS OFFICER: Could you go  
6           back to Photograph 54, please.

7                       MR. DECOULOS: Yes.

8                       HEARINGS OFFICER: Thank you. And  
9           is there a boom in that picture?

10                      MR. DECOULOS: Yes, in the lower  
11           right-hand corner.

12                      HEARINGS OFFICER: Okay. You can  
13           proceed.

14                      MR. DECOULOS: Photograph 55 is the  
15           same, is taken on the same date, October  
16           16, 2003, and it shows --

17                      HEARINGS OFFICER: And is it your  
18           testimony that there is no emulsion on the  
19           surface of the water in that photograph?

20                      MR. DECOULOS: That is correct.

21                      HEARINGS OFFICER: What is that in  
22           the upper left?

23                      MR. DECOULOS: Those are pine  
24           needles, I believe.

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1 HEARINGS OFFICER: No. In the  
2 upper left corner?

3 MR. DECOULOS: I believe that they  
4 are pine needles.

5 HEARINGS OFFICER: Okay.

6 MR. DECOULOS: Do you want me to  
7 continue to identify photographs?

8 HEARINGS OFFICER: Sure.

9 MR. DECOULOS: May 19, 2004.

10 HEARINGS OFFICER: This is one we  
11 already saw, correct?

12 MR. DECOULOS: I believe so, yes.

13 HEARINGS OFFICER: That was the one  
14 you referred to before?

15 MR. DECOULOS: Yes. Photograph 76  
16 and 77.

17 Beginning with Photograph 88 on  
18 June 24, 2004, again, the outfall is  
19 running clean. And I took an interior view  
20 of the pipe as Photograph 89 just to give a  
21 perspective as to the extent of the  
22 historic staining of that pipe.

23 HEARINGS OFFICER: Okay. I am all  
24 set. You can proceed with your questions,

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1 Ms. Read.

2 MR. DECOULOS: Okay.

3 MS. READ: Thank you.

4 Q. After the visit by DEP to the site on March  
5 11, 2004, a request for immediate response  
6 action plan modification was issued, and  
7 that has been entered as Exhibit B-28.  
8 This document, this document put you on  
9 notice that the IRA plan did not provide  
10 sufficient information to support the  
11 assertion that the impact to the surface  
12 water body was caused solely by surface  
13 water runoff from the gasoline station and  
14 not contributed to by an ongoing subsurface  
15 release at the site. Correct? I am  
16 quoting from the bottom of page two of  
17 Exhibit B-28.

18 (Witness perusing document.)

19 A. Okay. Well, the document speaks for  
20 itself.

21 Q. And this document also required,  
22 specifically required you to perform  
23 assessment to determine whether groundwater  
24 infiltration was occurring. Correct?

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1 A. Where are you referring to?

2 Q. I am reading from page four, numbered  
3 paragraph one in the middle of the page.

4 (Witness perusing document.)

5 A. Okay. What was the question?

6 Q. I am just asking you to acknowledge that  
7 this request for a modification requested  
8 specifically assessment to determine  
9 whether groundwater was infiltrating the  
10 storm pipe. Correct?

11 A. They cite that as an example. It says,  
12 "For example, through groundwater  
13 infiltration."

14 Q. And it also requested that you, on page  
15 three, that you perform an imminent hazard  
16 evaluation, correct?

17 A. I am sorry. On page three?

18 Q. Yes.

19 A. Whereabouts?

20 Q. The second full paragraph, the last  
21 sentence of that paragraph.

22 (Witness perusing document.)

23 A. Okay.

24 Q. But you didn't perform an imminent hazard



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1 evaluation until January of 2005, correct?

2 You did not document an imminent hazard  
3 evaluation?

4 A. That is a better way to put it, because I  
5 was continuously performing imminent hazard  
6 evaluations in evaluating for critical  
7 exposure pathways.

8 Q. But you did not document that evaluation  
9 until January 2005, correct?

10 A. I may have -- I don't know. I may have  
11 documented it in an e-mail to Ms. Baran,  
12 but I am just not sure.

13 Q. Is it your contention that an e-mail would  
14 be an appropriate way to document the  
15 imminent hazard evaluations requirements  
16 that are set forth in the MCP?

17 A. Given what I was told by Ms. Baran's  
18 supervisor, John Hobill, at the first  
19 meeting I had with him, my answer is yes.

20 Q. But according to the terms of the MCP,  
21 would an e-mail suffice as an imminent  
22 hazard evaluation?

23 A. I don't know. I don't know what the MCP  
24 says exactly about imminent IH evaluations.

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1       Q.   In response to this request for a  
2           modification you submitted Exhibit B-29, an  
3           Immediate Response Action modification plan  
4           dated April 21, 2004. And you proposed  
5           surface water and sediment sampling,  
6           groundwater sampling, forensic geochemistry  
7           evaluations of soil, sediment and water,  
8           and a video survey. And here I am looking  
9           at pages 11 and 12 of your modification,  
10          Exhibit B-29. You did not -- you describe  
11          the forensic geochemistry assessment as  
12          peak area reports and which is -- and you  
13          provided information about those assessment  
14          techniques. Correct?

15       A.   Yes. Appendix E, that is correct.

16       Q.   And your testimony describes those  
17           techniques as emerging techniques, correct?

18       A.   That testimony speaks for itself.

19       Q.   But you did not perform the forensic  
20           geochemistry that you proposed in Exhibit  
21           B-29, correct?

22       A.   I disagree. I attempted to, and the labs  
23           were unable to provide me with the  
24           information I was taught at the LSP course.

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1 Q. But other forensic techniques were  
2 available to you, including the  
3 fingerprinting that you also performed on  
4 the NAPL samples, correct?

5 A. Yes.

6 Q. But you did not have the geochemistry,  
7 those, that fingerprinting done on water  
8 sediment or soil data. Correct?

9 A. I disagree.

10 Q. And you did not have a video survey  
11 performed, correct, as you had proposed?

12 A. That is correct.

13 Q. If a client prevents you or prohibits you  
14 for any reason from performing, from  
15 obtaining data that you believe are  
16 required to render an opinion in accordance  
17 with the MCP and MassDEP's orders, then you  
18 should not render that opinion, correct, as  
19 an LSP?

20 A. That is correct.

21 Q. Your immediate -- the modification plan was  
22 dated on April 21st of 2004. And your next  
23 submittal, I believe, was the Phase I  
24 report dated April 30, 2004. And in this

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1           submittal you again claimed that the diesel  
2           had not migrated along a preferred pathway  
3           outside the storm water pipe and that  
4           migration through soil or groundwater to  
5           the storm pipe has not developed. And here  
6           I point you to page 25 of Exhibit B-30.

7                       (Witness perusing document.)

8       A.    Okay.

9       Q.    Was this not the very question that you had  
10           just been directed by MassDEP to  
11           investigate and that you had proposed to  
12           investigate approximately a week earlier in  
13           the IRA modification plan?

14      A.    I am sorry. I don't understand the  
15           question.

16      Q.    You are rendering an opinion here that the  
17           pathway of groundwater infiltration into  
18           the storm water collection system had not  
19           developed. And I am pointing you to page  
20           25 of Exhibit B-30.

21      A.    Okay.

22      Q.    But was that not the very assessment that  
23           you had just been asked to perform and that  
24           you had just proposed to perform a week



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1 earlier?

2 A. We are dealing with two separate releases  
3 here. This Phase I report was prepared for  
4 17582. And aren't you referring to the --

5 Q. But your opinion is that the diesel release  
6 at the Eagle Gas site, the subsurface  
7 diesel release had not infiltrated the  
8 storm pipe. Correct?

9 A. Yes.

10 Q. And you had just been asked to evaluate  
11 that very question, correct, in the request  
12 for IRA modification?

13 A. For 17852.

14 Q. And it is your testimony here that it was  
15 perfectly acceptable to render this  
16 opinion, having been asked to investigate  
17 that very question in a related RTN that  
18 was also issued to your client?

19 A. Yes.

20 Q. And isn't it also true that when you  
21 submitted this report in which you rendered  
22 this opinion, you requested that the two  
23 RTN's be linked, correct, your cover letter  
24 for this report?

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1 A. Yes.

2 Q. And that would mean that you did not need  
3 to make duplicates submittals of the same  
4 information for the two RTN's, correct?

5 A. No. The main reason for linking the  
6 releases was that the DEP was charging  
7 money for compliance with two separate  
8 releases. The purpose was to reduce the  
9 compliance fees for my client.

10 Q. But it also meant that you could submit  
11 submittals that would relate to both of the  
12 release tracking numbers, correct?

13 A. That was one of the benefits.

14 Q. And there is no indication in your Phase I  
15 report that MassDEP was requiring more data  
16 on the question whether the groundwater had  
17 infiltrated the storm system. Correct?

18 A. It wasn't necessary.

19 Q. Because, again, is it your testimony that  
20 it wasn't necessary because it was a  
21 separate release tracking number?

22 A. They were not connected. There was no  
23 physical connection between the diesel  
24 release from the fill pipe and the storm

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1 water outfall contamination.

2 Q. But DEP had specifically asked you to  
3 provide more information on that very  
4 question in the request for IRA  
5 modification, correct?

6 A. Yes. And that was one of the purposes of  
7 this report is to help document that for  
8 them.

9 Q. The Phase I report which was issued on  
10 April 30, 2004, was intended to provide  
11 additional information in response, in  
12 compliance with your proposal?

13 A. It was to document all of the information  
14 that was gathered to that point to help  
15 document that there was no connection  
16 between the source at the fill pipe and the  
17 outfall.

18 Q. And again, I just ask that you confirm that  
19 there is no indication in your Phase I  
20 report that you had been requested to  
21 investigate, to provide further information  
22 about that question of infiltration,  
23 correct?

24 A. If, if you are asking did I specifically

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1 address that in this Phase I report, I am  
2 not sure. The document will speak for  
3 itself. But I was just trying to, with  
4 this Phase I report, assemble all the  
5 information to date which the Department  
6 was unaware of, which included septic  
7 designs, which included an historic map of  
8 the outfall that the Department was unaware  
9 of, which compiled other reports, which  
10 documented the public water supply in  
11 Appendix G that the prior responsible  
12 party, Richard Nantais, failed to  
13 adequately demonstrate.

14 There was a lot of information in  
15 this report that supported my opinion that  
16 there was no connection between the two  
17 releases.

18 Q. In June 2004, NAPL was detected in  
19 Monitoring Well DCW-1, correct?

20 A. I believe so.

21 Q. Okay. And it is also -- isn't it true that  
22 your first report of this discovery to --  
23 excuse me -- that in an e-mail to Ms. Baran  
24 that you submitted as Exhibit RR-30, you



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1           characterized the NAPL in DCW-1 as  
2           gasoline. Correct?

3                       (Witness perusing document.)

4       A.    I would have to take a look at the e-mail.  
5            But it speaks for itself. I would like to  
6            note that the first sampling of DCW-1  
7            revealed, which was in the IRA plan filed  
8            in June or July of 2003, showed DCW-1 as  
9            having predominantly gasoline constituents  
10          in it. Now, you mentioned RR-30.

11       Q.   Yes. Question three to Ms. Baran --

12       A.    Okay.

13       Q.    -- characterizes the NAPL in DCW-1 as  
14            gasoline, correct?

15       A.    Yes.

16       Q.    But it was later fingerprinted, the NAPL  
17            was later fingerprinted as diesel, correct?

18       A.    I believe so. But you have to remember  
19            that that fingerprinting was very coarse.  
20            It was not an accurate fingerprinting  
21            analysis whatsoever.

22       Q.    So you are disputing the results of the  
23            fingerprint that you submitted to --

24       A.    Absolutely.

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1 Q. On what basis?

2 A. It is not very accurate. It is a very  
3 simple chromatograph opinion.

4 C-H-R-O-M-A-T-O-G-R-A-P-H. If I could  
5 direct your attention to the June 2003  
6 report, and you can see the gasoline  
7 constituents.

8 Q. There is no dispute about the -- we have  
9 already established that DEP and the LSP  
10 Board are not disputing the analytical  
11 results in your reports.

12 A. Okay. That is good.

13 Q. After that discovery of the NAPL in DCW-1,  
14 you did not videotape the pipe interior,  
15 correct?

16 A. Correct.

17 Q. And until April of 2005, you did not sample  
18 any water inside the storm drain system,  
19 correct?

20 A. Correct.

21 Q. And in your earlier report that you,  
22 Exhibit B-21, you documented some  
23 groundwater elevations on page 18 of  
24 Exhibit B-21.

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1 A. Okay.

2 Q. And as a layperson, I am going to refer to  
3 the groundwater, the column of that table  
4 that refers to groundwater depths. And  
5 those are depths from the surface down to  
6 the surface of the groundwater, correct?

7 A. Yes.

8 Q. From the ground surface to the surface of  
9 the groundwater, the shallowest of which  
10 was 4.16 feet from the surface of the  
11 ground to the surface of the groundwater,  
12 correct?

13 A. Yes.

14 Q. At KEI-4. But after the discovery of the  
15 NAPL in DCW-1, you did not -- up to that  
16 point you had not measured the invert of  
17 the storm water pipe system, correct?

18 A. That is correct.

19 Q. And you did not do so until December of  
20 2004, correct?

21 A. That is correct.

22 Q. In your June 2004 IRA plan after the NAPL  
23 had been discovered in DCW-1, you proposed  
24 a passive bailing system, and you testified

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1           that you complied with DEP's requirements  
2           for an active system because you had an  
3           option for an active recovery. Correct?

4       A.    I -- where did I make that statement?

5       Q.    In your rebuttal, paragraphs 32 and 59.

6                       (Witness perusing document.)

7       A.    Okay.

8       Q.    But isn't it also true that when you had  
9           vacuumed Well BP5RR in April of 2003,  
10          multiple feet of NAPL had returned to that  
11          well in May of 2003, correct?

12      A.    Yes.

13      Q.    And Exhibit B-33 itself documents that the  
14          proposal documents that in October of  
15          2003 -- strike that question.

16                       Turning to your proposal in  
17          November of 2004, the second proposal after  
18          the discovery of NAPL in the DCW-1.

19      A.    What exhibit is that?

20      Q.    It is Exhibit B-37.

21      A.    Okay.

22      Q.    You continue to rely in this proposal on  
23          your conclusion that NAPL was not migrating  
24          along the outside of the pipe, correct? I



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1           am pointing you to page one at the bottom.

2                       (Witness perusing document.)

3       A.    Okay.

4       Q.    But you still didn't know at this time  
5           whether groundwater or NAPL was in contact  
6           with the storm pipe at that point, correct?

7       A.    No.

8       Q.    You had not provided a cross section to DEP  
9           by this time, correct?

10      A.    No.

11      Q.    And you had not measured the invert of the  
12           storm drain system to compare them with the  
13           groundwater elevations, had you?

14      A.    No.

15      Q.    So --

16      A.    I don't understand how you are drawing that  
17           conclusion.  Everything that would have  
18           impacted the storm water collection piping  
19           system would have gone through Drainage  
20           Manhole No. 2.  And it was my professional  
21           opinion that if there was any impact to the  
22           storm water collection system, it would  
23           have appeared going through DMH-2.  And  
24           there was no need to do anything other than

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1 to simply observe what was going on at  
2 DMH-2.

3 Q. It is your opinion that a visual  
4 observation of DMH-2 was a sufficient basis  
5 for your opinion as an LSP that NAPL was  
6 not infiltrating the storm water pipe?

7 A. It was part of it.

8 Q. What were the other bases?

9 A. PID screening.

10 Q. And that was done in June of 2003 and  
11 September of 2003, correct?

12 A. No. It was done more frequently than that.

13 Q. But you have only documented two  
14 indications of PID readings in June of 2003  
15 and September of 2003, correct?

16 A. No.

17 Q. The only -- well, I would just like to  
18 state for the record that the only  
19 documentation that I have found in your  
20 exhibits of an additional PID reading after  
21 June of 2003 was November of 2004. There  
22 are additional indications of visual  
23 observations, but none of PID readings.

24 A. That is incorrect.

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1 Q. Well, if you could point me to those.

2 A. Well, the first one was made in May of  
3 2003, on May 16, 2003. That is when the  
4 first PID --

5 Q. I misspoke. That is what I meant when I  
6 said June of 2003.

7 A. And if you look at the documents that I  
8 gave to the Board, I documented in field  
9 notes, I provided documentation of all the  
10 PID screening that I conducted at DMH-2.  
11 And then there are photographs that were  
12 taken. So between those two, the  
13 photographs and the PID screening, that is  
14 what led me to draw that conclusion. There  
15 was no sheen in the water.

16 Q. But all right.

17 A. Nor were the PID responses any indication  
18 that there was any impact at that drain  
19 manhole.

20 HEARINGS OFFICER: Mr. Decoulos, I  
21 have a question for you. How do you, how  
22 do you come to the conclusion, I am just  
23 trying to clarify in my own mind, you state  
24 in what exhibit is this again that we are

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1 looking at?

2 MR. DECOULOS: B-37, upper  
3 left-hand corner.

4 HEARINGS OFFICER: Well, I can't  
5 see that from here. But you state, "The  
6 results continue to show that the diesel  
7 release is not migrating along the  
8 preference pathway outside the 15-inch  
9 reinforced concrete storm water drain pipe  
10 along Main Street."

11 How do you come to that conclusion  
12 when you had found, I think you testified  
13 before, you found NAPL in the pervious  
14 backfill upgradient outside the storm water  
15 drain pipe?

16 MR. DECOULOS: Because there is a  
17 well right next to DMH-2, and that well  
18 showed no impact. If there was to be any  
19 impact of the diesel release at the  
20 outfall, it would have had to have gone  
21 around DMH-2. And there was no evidence in  
22 any of the analytical testing to  
23 demonstrate that that had occurred.

24 Q. So is it your testimony that the discovery



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1           of NAPL in DCW-1 in June of 2004 did not  
2           indicate migration after it had not been  
3           there previously?

4       A.    That is correct.

5       Q.    On what ground do you come to that  
6           conclusion when it had not been there  
7           previously?

8       A.    Because as all the recent papers and as API  
9           has described in their work demonstrate  
10          NAPL is not migrating in the pancake model  
11          that has been relied on in the past as  
12          migrating as one large blob underground.  
13          It simply discharges into the ground and  
14          expands and contracts as groundwater rises  
15          and recedes throughout the season.

16                What was happening here was that  
17          the LNAPL was simply spreading out and then  
18          retracting. And all of the reports filed  
19          after my work by ECS and CEA demonstrate  
20          that.

21                HEARINGS OFFICER: Should we take a  
22          break?

23                MS. READ: That would be great.

24                HEARINGS OFFICER: We have been

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1           going for two hours. Let's take a luncheon  
2           recess.

3                       (Luncheon recess.)

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1 (Witness perusing document.)

2 A. I am sorry. The upper portion of the table  
3 or the lower portion?

4 Q. I am looking at Table 2, all of it. There  
5 are NAPL measurements recorded. I am just  
6 asking to identify the wells at which NAPL  
7 measurements were recorded. And those are  
8 at ERW-1, 2 and 4, BP5RR, and DCW-7,  
9 correct?

10 A. On October 7th, that is correct, 2004.

11 Q. And looking at the site plan that  
12 accompanies Exhibit B-37, DCW-7 is located  
13 right near the building. Correct?

14 A. Yes.

15 Q. And the NAPL that was found in that well  
16 was determined to be diesel, according to  
17 the laboratories that you engaged for  
18 fingerprinting. Correct?

19 A. I believe so. Again, that fingerprinting  
20 was a coarse and rough forensic analysis.

21 Q. The discovery of NAPL in DCW-7 showed that  
22 you had not determined the extent of the  
23 NAPL across the site. Correct?

24 A. Yes, that is correct.



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1 Q. And it also gave substance to DEP's  
2 concerns, additional substance to DEP's  
3 concerns that active recovery near the  
4 frontage of the site could exacerbate a  
5 NAPL migration by drawing it from other  
6 locations on the site. Correct?

7 A. No, no. The extent of LNAPL had no bearing  
8 on the recoverability of the NAPL.

9 Q. In your -- after you submitted this  
10 proposal to DEP, Exhibit B-37, you sent Ms.  
11 Baran, Cynthia Baran at DEP an e-mail that  
12 is Exhibit B-40. And it lists deficiencies  
13 and action steps, correct?

14 A. Yes.

15 Q. And one of the items was to -- well, the  
16 document requires, states that you are to  
17 provide plans, construction plans from the  
18 storm water collection system. Correct?

19 A. Where does it say that?

20 Q. Item 4 of Exhibit B-40.

21 (Witness perusing document.)

22 A. No, it doesn't say that. I mean it speaks  
23 for itself. But the purpose of number four  
24 was to document any construction records

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1           that may have been available when the storm  
2           water collection system was installed.

3       Q.   At this time you submitted an e-mail to Ms.  
4           Baran on December 15th, proposing another  
5           IRA modification. And the Board had  
6           submitted an Exhibit B-41, which includes  
7           e-mail relating, dated on that date  
8           relating to your proposed modification.  
9           And you also have submitted e-mail, other  
10          e-mails from the same date and related  
11          dates in your Exhibits RR-11 and RR-47 and  
12          RR-52 related to the construction of, the  
13          proposed construction of the trench in the  
14          right of way in Main Street, but none of  
15          these include a complete design plan for  
16          the trench or a narrative that describes  
17          the storm pipe, excuse me, the construction  
18          of the trench in the roadway, do they?

19       A.   I gave the Department what they asked for.

20       Q.   So it is your testimony that these e-mails  
21           comply with the Department's requirement  
22           for an IRA modification with a design plan  
23           for a trench?

24       A.   I gave the Department what they asked for.

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1           We had a meeting on December 2nd, I think  
2           that earlier exhibit references, on  
3           December 2nd, and there was a set of  
4           requirements that John Hobill and Cynthia  
5           Baran laid out. I formalized it in this  
6           e-mail which is identified as Exhibit B-40,  
7           and I gave them what they asked for.

8       Q.   It is true, however, isn't it, that you did  
9           not submit a complete design for the trench  
10          that was constructed in the roadway until  
11          -- I am sorry -- your IRA plan dated July  
12          of 2005. Correct?

13    A.    No, I disagree.

14    Q.    Exhibit B-50?

15    A.    I disagree.

16    Q.    Could you identify the documents in which  
17          your complete design plan appeared other  
18          than Exhibit B-50?

19    A.    After the December 2nd meeting in 2004,  
20          there were a series of e-mails which  
21          documented the design of the trench that  
22          DEP wanted and would only permit. And in  
23          addition to those e-mails, there was an IRA  
24          plan modification submitted on December 22,

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1           2004, which is Exhibit B-42. There was an  
2           additional modification on January 18,  
3           2005, and additional e-mails.

4       Q.    A moment ago you testified that the  
5           presence of NAPL in DCW-7 would not present  
6           the possibility of the recovery located at  
7           the frontage of this site drawing NAPL  
8           across the site.

9                   Am I characterizing your testimony  
10          correctly?

11       A.   No, no. I just said that there was no  
12           bearing on the extent of NAPL and the  
13           recoverability of the NAPL.

14       Q.   The location of your proposed recovery  
15           trench -- no, strike that.

16                   On December 22nd of 2004, you  
17           submitted an IRA modification which is  
18           Exhibit B-42. And it is denoted as a plan  
19           and it includes on page 16 a proposal for  
20           pilot pump testing or a description of  
21           pilot pump testing. This is -- this  
22           document is dated December 22, and it  
23           records that on December 22, 2004, the  
24           pilot pump test was conducted.



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1                   So this was not a proposal that  
2           DEP had an opportunity to approve or  
3           disapprove, correct?

4       A.   I disagree. I specifically discussed  
5           anything that was going to be proposed with  
6           DEP before it was conducted.

7       Q.   But you did not provide a written IRA plan  
8           for the pilot pump testing before it was  
9           actually conducted, correct?

10      A.   That is the way they operated in the  
11           southeast region. I followed the  
12           procedures that they laid out for me and  
13           from that very first meeting in March of  
14           2004 they told me that they do things  
15           differently in the southeast region, and I  
16           gave them information both in formalized  
17           written submissions as well as through  
18           e-mails and discussions. They did not have  
19           a problem with that.

20      Q.   Your last submittal for this site, Exhibit  
21           B-50, which was the Immediate Response  
22           Plan, Action Plan Modification dated July  
23           8th of 2005, includes a discussion of the  
24           prior plans and correspondence between you

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1           and the Department which lays out the  
2           history of the deficiencies in your  
3           submittals. And at this point,  
4           nevertheless, you still were not proposing  
5           to -- you were still asserting that active  
6           recovery was not required at this site,  
7           correct, despite DEP's continued requests  
8           for active recovery?

9       A.    I don't think so. Where did I say that?

10      Q.    I am drawing your attention to Section 4.5  
11           of Exhibit B-50. You were still arguing  
12           that active recovery was not required at  
13           this site, correct?

14      A.    Where?

15      Q.    The second paragraph and the following.

16                               (Witness perusing document.)

17      A.    I was just providing more information that  
18           supported my original opinion that active  
19           recovery wasn't necessary. However, the  
20           whole purpose of this plan and the  
21           construction of the trench in December of  
22           2004 was to actively recover both  
23           groundwater and LNAPL. So I went ahead and  
24           gave them what they wanted, but I asserted

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1           that it was not necessary.

2                       MS. READ: I would like to turn  
3           our attention to the Speedy Lube site at  
4           this point unless --

5                       HEARINGS OFFICER: No, that is  
6           fine.

7                       MS. READ: Okay. Could we just go  
8           off the record for a second while I pull  
9           those documents together?

10                      HEARINGS OFFICER: Sure.

11                      MS. READ: Thank you.

12                      (Discussion off the record.)

13                      HEARINGS OFFICER: Back on the  
14           record, please. You may proceed, Ms.  
15           Read.

16                      MS. READ: Thank you.

17       Q.   Mr. Decoulos, referring to Exhibit B-55,  
18           your response action outcome statement for  
19           the Speedy Lube site, and turning your  
20           attention to your analytical results for  
21           this site in the groundwater sampling data  
22           in Table 3, as well as the site plan.  
23           Thank you.

24                      Given that Monitoring Well DMW-4

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1           had exceeded the Method I standards for  
2           gasoline constituents and that it was the  
3           farthest downgradient well, what data did  
4           you have to support your opinion that the  
5           nature and extent of contamination had been  
6           defined?

7       A.   The subsurface investigation that was  
8           conducted at this site included a boring  
9           program that evaluated the refusal of  
10          borings that were hindered or obstructed by  
11          bedrock. And those borings, that boring  
12          information was provided in the boring logs  
13          as well as presented on the site plan. On  
14          the site plan, there were -- there was a  
15          legend which identified soil borings,  
16          monitoring wells and groundwater contours,  
17          and the first symbol on the legend  
18          described the refusal depth of the borings,  
19          which indicated bedrock. The source of the  
20          contamination at this site, leaking  
21          underground storage tank, had been removed,  
22          and the bedrock acted as a barrier to  
23          prevent any further downgradient migration  
24          of gasoline constituents off the site.



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1       Q.    But what data did you have to show that  
2            there were no exceedences of the "green up"  
3            standards farther west and towards the  
4            drainage pipe that is shown in your plan in  
5            North Main Street?

6       A.    I relied not just on these boring logs and  
7            -- well, if you look at the boring logs  
8            which were an exhibit, which were in  
9            Appendix A, you did see that there was PID  
10           screening that took place.  And in  
11           addition, in addition to showing the  
12           refusal of particular borings at a specific  
13           depth, the borings also showed PID screens  
14           that were measured along the boring  
15           sampling length.  So that information,  
16           together with the preexisting Phase I  
17           report that was submitted by Sage  
18           Environmental, led me to form that opinion.

19       Q.    In your rebuttal testimony in Paragraphs 80  
20            and 112, you discussed the increase in the  
21            contaminant concentrations between the two  
22            sampling rounds at this site.  And you  
23            identified the destroyed cover of  
24            Monitoring Well MW-3 as being destroyed

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1           and, therefore, contaminants could enter  
2           the subsurface.

3                       But it is true, isn't it, that  
4           between the two sampling rounds, there was  
5           an increase in the concentrations at  
6           Monitoring Well DMW-2, which is upgradient  
7           of Monitoring Well 3 that you identified as  
8           the source, correct?

9       A.    I am sorry.  I would have to refer to the  
10           table and see for myself what you are  
11           referring to.

12       Q.   On Table 3, the results for Monitoring Well  
13           DMW-2 show an increase between the two  
14           sampling rounds.

15                       You will need to expand it so that  
16           we can see which compounds are being  
17           discussed.  But the two sampling rounds  
18           from May 10, 2002, to June 4, 2002, show an  
19           increase in xylene and in C9-10 aromatics.  
20           Correct?

21       A.    Yes.

22       Q.    So a potential source at MW-3, which is  
23           downgradient of DMW-2, could not account  
24           for that increase.  Correct?

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1       A.   DMW-2 is located right next to the gasoline  
2           pad and in extremely close proximity, I  
3           would estimate ten to 15 feet away from  
4           that cover that had been breached at MW-3.  
5           So it would not be unusual to find a direct  
6           impact, particularly with lighter gasoline  
7           constituents at DMW-2 from the failed well  
8           cover at MW-3.

9       Q.   There is also an increase at DMW-3,  
10          correct, an increase of C5-C8 aromatics?

11      A.   Yes. But that increase was a duplicate.  
12          You can see here that the sampling that  
13          took place on June 4, 2002, the increase  
14          that you are referring to was a duplicate  
15          so that the second column of DMW-3 showed  
16          significant, showed substantially exact  
17          value of that that was collected on May  
18          10th.

19      Q.   What do you mean by a duplicate?

20      A.   We collect duplicates to validate data that  
21          is collected in the field. So the second  
22          and third columns of DMW-3 were the same  
23          exact, were collected from the same exact,  
24          on the same exact day from the same exact

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1 location and are designed to verify the  
2 laboratory analysis and make sure that it  
3 is representative of what exists in the  
4 ground.

5 Q. But one of those two duplicates does  
6 indicate an increase at above the May 2002  
7 analytical results, correct?

8 A. It is practically insignificant.

9 Q. But it is above the standards, above the --  
10 it is shown in bold face as being in  
11 exceedens of the standard --

12 A. That is correct.

13 Q. -- that applies, the 1,000 parts per  
14 billion?

15 A. That is correct, for the DW-2 Method I  
16 standard.

17 Q. And in any case, in looking at the site  
18 plan, an increase from one month to the  
19 next at MW-3 could not be attributable to  
20 the broken cover at -- I am sorry -- an  
21 increase at DMW-3 would not be attributable  
22 to the broken cover of MW-3, since DMW-3 is  
23 significantly upgradient of MW-3, correct?

24 A. That is correct.



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1                   MS. READ: I don't have any further  
2                   questions.

3                   HEARINGS OFFICER: Okay. Now, Mr.  
4                   Decoulos, did you want to do any redirect  
5                   of yourself, which would -- I mean I would  
6                   allow that if you want to explain some  
7                   things that you feel you didn't have an  
8                   adequate opportunity to.

9                   MR. DECOULOS: Yes, I would. And  
10                  thank you for giving me the opportunity.

11                  What I wanted to just simply  
12                  clarify is the issue of forensic analysis  
13                  that was discussed at the Eagle Gas site,  
14                  and that the analysis that I attempted to  
15                  collect using the techniques that were  
16                  taught LSP's a year earlier at that  
17                  forensic geochemistry course that I took,  
18                  those were far more accurate forensic  
19                  techniques than the chromatographs that Ms.  
20                  Read was referring to earlier.

21                  But in addition to the detailed  
22                  forensic geochemistry techniques and the  
23                  chromatographs, there is actually a third  
24                  forensic analytical technique that I relied

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1           on, which is expressed in the data and was  
2           one of the reasons why I sought to correct  
3           Exhibit B-53 earlier this week.

4                     Mr. Fitzgerald, who testified two  
5           weeks ago, as he testified, was one of the  
6           authors, was the primary author maybe of  
7           the implementation of the MassDEP VPH/EPH  
8           approach, which was issued as a final draft  
9           in June of 2001. And in that final draft,  
10          which I believe may have become policy  
11          after 2002 but I am not sure of that,  
12          Section 3.7.2 on page 14, and again this is  
13          Exhibit B-10, talks about environmental  
14          forensic techniques. And he talks about  
15          using chromatographs in this particular  
16          section.

17                    But what they also talk about are  
18          using polycyclic aromatic hydrocarbons as  
19          another forensic technique to determine  
20          what a product might consist of. And in  
21          this, on Table 3-2 of Exhibit B-10 which is  
22          on page 13, it is recommended to  
23          differentiate between two types of PAH's,  
24          petrogenic PAH's and pyrogenic PAH's.

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1                   When we conduct analysis of diesel  
2                   using the extractable petroleum hydrocarbon  
3                   analysis, many times we ask the lab to  
4                   simply analyze for the petrogenic PAH's.  
5                   We don't want to know about these other  
6                   PAH's because it is part of the EPH  
7                   analysis.

8                   Now, when I first conducted the  
9                   analysis at the outfall, I wanted to know  
10                  what all the PAH's were. So if you look at  
11                  in the Phase I report the groundwater  
12                  analysis or surface water analysis from the  
13                  outfall which is in Table 3, you will see  
14                  that there are the four --

15                  HEARINGS OFFICER: Table 3 of --

16                  MR. DECOULOS: Table 3, Phase I  
17                  report.

18                  HEARINGS OFFICER: Which exhibit?

19                  MR. DECOULOS: Which is Exhibit --

20                  MS. READ: B-30.

21                  MR. DECOULOS: -- B-30. You will  
22                  see that there are the four standard  
23                  petrogenic PAH's which are naphthalene, two  
24                  metal naphthalene, anthracene, and

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1           fluoranthrene. In addition to that, there  
2           is ten other PAH's which are indicative of  
3           other sources for the PAH's, what they  
4           refer to as petrogenic PAH's.

5                     Petrogenic PAH's are what we  
6           normally see from combustion, the  
7           pre-friction, the beginning of the word  
8           "petro" for combustion. And as is  
9           described in this VPH/EPH policy, an  
10          identification of petrogenic PAH's is  
11          indicative of waste oil.

12                    Now, if you look at Table 3 in  
13          Exhibit B-30, you are going to see elevated  
14          -- do you want me to put it up on the  
15          screen?

16                    HEARINGS OFFICER: No, that is  
17          okay.

18                    MR. DECOULOS: You are going to see  
19          elevated PAH constituents, petrogenic PAH  
20          constituents, the first sampling that I  
21          conducted at the outfall in May, in May of  
22          2003.

23                    Now, that, to me, meant that there  
24          was more than just -- there was more than



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1           just pure diesel product here because pure  
2           diesel product would not reveal petrogenic  
3           PAH's in it.

4                       Now, Exhibit B-53, which I finally  
5           received in full form last week --

6                       MS. READ: Which you requested last  
7           week.

8                       MR. DECOULOS: Which I requested  
9           last week. The sampling that was conducted  
10          at the outfall was limited to pyrogenic  
11          PAH's. It did not look at other petrogenic  
12          PAH compounds.

13                      And what I tried to do, I tried to  
14          point that out in the table that I  
15          corrected and make it clear that that was  
16          outside of what is considered normal  
17          because there was no indication, and ECS  
18          themselves admits that they could not  
19          target or relate the pure, virgin diesel  
20          NAPL release with what they saw at the  
21          outfall. So they should have asked their  
22          laboratory to conduct petrogenic PAH  
23          analysis as well.

24                      So again, my final point is that

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1 reviewing PAH data is a third type of  
2 forensic analysis which the Department has  
3 acknowledged in their VPH/EPH policy and  
4 Section 3.7.2, and it does nothing but  
5 further support my conclusion that the  
6 outfall contamination was more than pure  
7 diesel or home heating oil contamination.  
8 It originated from all kinds of dumping and  
9 spills that occurred at the gas pad at the  
10 Eagle Gas site.

11 HEARINGS OFFICER: Okay. Thank  
12 you. Anything else, Ms. Read?

13 MS. READ: I don't think so.

14 HEARINGS OFFICER: Okay.

15 MS. READ: Thank you.

16 HEARINGS OFFICER: All right. Why  
17 don't we go off the record and we will talk  
18 about scheduling of closing briefs.

19 (At which time the matter was  
20 concluded at 1:25 p.m.)  
21  
22  
23  
24

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## 1 C E R T I F I C A T E

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3 I, Carol A. Fierimonte, Certified  
4 Shorthand Reporter and Notary Public in and  
5 for the Commonwealth of Massachusetts, do  
6 hereby certify that the foregoing  
7 transcript is a true and accurate  
8 transcription of the proceedings taken  
9 before me, to the best of my knowledge,  
10 skill and ability.

11 DATED this 23rd day of February, 2011,  
12 at Westwood, Massachusetts.

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18 Carol A. Fierimonte

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