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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
C.A. # 2005-2665

\* \* \* \* \*

JOHN AUFIERO, NEIL F. COLLINS, ROBYN L. DEFRANZO,  
DANIEL HYDE, PATRICK J. IRVING, THOMAS A. LEYNE,  
JOHN MAHONEY, JOSEPH E. MCCAIN, WILLLLIAM MCCARTHY,  
TIMOTHY MITSAKIS, LOUIS M. REMIGIO, SUSAN J. DESOUSA,  
Individually & next friend of CAMERON A. DESOUSA,  
JOHN DOE & JANE DOE,  
Plaintiffs,

vs.

CITY OF SOMERVILLE, JOSEPH CURTATONE, as Somerville  
Mayor, DONALD CALIGURI, as Former Somerville Police  
Chief, GEORGE MCLEAN, as Former Somerville Police  
Chief, ROBERT TRAHAN, individually and as former Head  
of Department of Public Works, ROBERT BRADLEY as  
Somerville Police Chief, COMMONWEALTH OF  
MASSACHUSETTS, MITT ROMNEY, JOAN LANGSAM, as Former  
City Solicitor, PAUL ZIRPOLO, as DPW Project Manager,  
DOROTHY KELLY GAY, as Former Somerville Mayor, ROBERT  
J. PREZIOSO, SIMPSON GUMPERTZ & HEGER, INC.,  
ENVIROTECH, VITHAL DESHPANDE, as Environmental  
Protection Engineer, and ANGELO R. BUONOPANE,  
Defendants,

\* \* \* \* \*

DEPOSITION OF VITHAL DESHPANDE, a witness  
called on behalf of the Plaintiffs, pursuant to  
Massachusetts Rules of Civil Procedure, before  
Carolyn McGill, a Shorthand Reporter and Notary  
Public in and for the Commonwealth of Massachusetts,  
for D'Angelo & Hashem, 6 Beacon Street, Boston, MA  
02210 on Tuesday, December 12, 2006 commencing at  
11:04 a.m.

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APPEARANCES

D'ANGELO & HASHEM, P.C.,  
(By Stephen D'Angelo, Esq.)  
(By Jay Wolman, Esq.)  
6 Beacon Street  
Boston, MA 02108  
Appearing for the Plaintiffs.

GOVERNO LAW FIRM, LLC,  
(By Cynthia J. Stephens, Esq.)  
260 Franklin Street  
Boston, MA 02110  
Appearing for the Defendant Envirotech.

DONOVAN HATEM,  
(By Rebecca L. Rausch, Esq.)  
Two Seaport Lane  
Boston, MA 02210  
Appearing for the Defendant Simpson,  
Gumpertz & Heger, Inc.

CITY OF SOMERVILLE,  
(By Matthew J. Buckley, Esq.)  
Somerville City Hall  
93 Highland Avenue  
Somerville, MA 02143  
Appearing for the Defendant City of  
Somerville.

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2

## I N D E X

3

4

WITNESS

PAGE

5

6

Vithal Deshpande

8

7

By Mr. D'Angelo

8

9

10

## E X H I B I T S

11

(All exhibits except #62 A were pre-marked).

12

NO. DESCRIPTION

13

46 Notice of Deposition, Vithal Deshpande

14

47 Notice of Deposition, Hillary Eustace

15

48 Notice of Deposition, Robert Trahan

16

49 12/20/00 Memorandum, Firing Range

17

50 DEP Tier II Transfer Transmittal Form

18

51 12/2/93 History of Air Quality Problems

19

52 5/17/99 Request for Emergency Waiver

20

53 7/14/98 Emergency Response Incident Report

21

54 Memorandum to P. Zirpolo Received 7/6/99

22

55 Memorandum to P. Zirpolo Received 7/6/99

23

56 Memorandum to P. Zirpolo Received 7/6/99

1           3-18323

2           57 Letter to Post Received 7/16/02

3           58 Letter to Post Received 7/16/02

4           59 Letter to Post Received 7/16/02

5           60 3/5/04 Somerville Health Department

6           Complaint Form

7           61 Somerville Public Safety Facility

8           Program

9           62 1/23/01 Public Safety Building Special

10           Commission Meeting

11          62A 1/23/01 Public Safety Building Special

12           Commission Meeting (Updated Program)

13          63 3/6/01 Memorandum

14          64 3/8/05 E-mail from Santangelo to Deshpande

15          65 File Tracking Record File #0550068

16          66 3/9/05 Letter to Comeau

17          67 8/8/05 Memorandum to Gannon and Curtatone

18          68 8/9/05 Fax to Warsh from Deshpande

19          69 8/16/05 Proposal from Foley & Buhl

20           Structural Engineers

21          70 8/7/05 Memorandum from Boyle to Deshpande

22           Re: Public Safety Building Repairs

23          71 9/23/05 Letter to Curtatone from DOS

1       72 Public Safety Building Response Actions  
2       73 10/20/05 Public Safety Building Agenda  
3       74 Public Safety Building Repair Estimates  
4       75 8/3/05 Handwritten Notes  
5       76 7/26/05 Handwritten Notes  
6       77 10/25/05 Notice of Reinforcement Conference  
7       78 11/10/05 JCH Consulting, Inc. Survey of East  
8       Elevation  
9       79 11/2/05 Letter to Bradley, Re: Plan of  
10       Correction  
11       80 Modern Pest Services Invoices  
12       81 Copies of Photographs  
13       82 4/22/05 Release  
14       83 Police Administrative Events  
15       84 Police Administrative Events  
16       85 Somerville Green Building Project  
17       86 2/21/01 Letter to Deshpande from DOS  
18       87 12/27/00 Letter to Deshpande from DOS  
19       88 3/29/01 Letter to Deshpande from DOS  
20       89 6/20/01 Letter to Nicotera  
21       90 3/28/90 Letter, Eastern Analytical  
22       Laboratories  
23       91 4/28/05 Letter to Curtatone from DOS

1       92 12/13/93 Letter to Ribeiro from Department  
2            Of Health and Human Services  
3       93 6/24/98 Memorandum to Capuano from DPW  
4            Commissioner  
5       94 4/22/05 Copy of News Article  
6       95 7/14/98 Letter to Eustace from DPH  
7       96 7/20/98 Letter to Kelleher from Department  
8            of Labor and Workforce Development  
9       97 9/29/06 Letter, Safdoc Systems, LLC  
10       98 8/23/06 Samples for Analyses  
11       99 Layout of Building  
12       100 10/99 Public Safety Building Structural  
13            Investigation  
14       101 8/1/85 Memorandum from Briggs, Project  
15            # 14796  
16       102 DEP Release Notification & Notification  
17            Retraction Form  
18       103 6/23/05 Report, Corporate Environmental  
19            Advisors, Inc.  
20       104 6/23/05 Report, Corporate Environmental  
21            Advisors, Inc.  
22       105 5/26/00 Memorandum, DEP Bureau of Waste Site  
23            Clean up

1       106 Various Documents from McPhail Associates,  
2                Inc.  
3       107 7/12/02 Letter to Post  
4       108 DEP Release Notification & Notification  
5                Retraction Form  
6       109 DEP Comprehensive Response Action  
7                Transmittal Form  
8       110 DEP Tier II Transfer Transmittal Form  
9       111 Notice of Initial Site Investigation  
10       112 4/30/02 Letter to Bureau of Waste Site  
11               Clean up  
12       113 5/26/00 Phase I Site Investigation Report  
13       114 McPhail Associates, Inc. Proposal for  
14                Geoenvironmental Engineering Services  
15       115 5/24/00 Underground Tank Survey  
16       116 5/3/05 Notice of Noncompliance with the MCP  
17                Non-ne-05-3A055  
18  
19  
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23

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

2 STIPULATIONS

3 It was stipulated and agreed by  
4 and between counsel for the respective parties  
5 that the witness will read and sign the  
6 deposition transcript within forty-five days of  
7 receipt of the transcript. And the sealing,  
8 filing and certification thereof are waived.

9 It was further stipulated and  
10 agreed that all objections, except as to the  
11 form of the question, shall be reserved until  
12 the time of trial.

13  
14 Vithal Deshpande, having been  
15 satisfactorily identified by the production of  
16 his driver's license and duly sworn by the  
17 Notary Public, called on behalf of the  
18 Plaintiffs, on oath deposes and says as follows:  
19 Examination by Mr. D'Angelo:

20 Q. Why don't you state your name for the  
21 record, sir?

22 A. My name is Vithal V. Deshpande.

23 Q. Can you spell that?

1           A.     V I T H A L, middle initial V, last  
2 name D E S H P A N D E.

3           Q.     Now, have you ever been deposed  
4 before, sir?

5           A.     No.

6           Q.     I'm going to ask you a lot of  
7 questions today.

8           A.     Okay.

9           Q.     I want you to answer them right like  
10 you are right now with a yes or no or answer  
11 verbally.

12          A.     Sure.

13          Q.     The stenographer can't recognize your  
14 head shaking or any signing gesture or whatever.  
15 Do you understand?

16          A.     Yes.

17          Q.     So everything that you state has to be  
18 on the record for her to record.

19          A.     Certainly.

20          Q.     The other issue that we have which is  
21 no reflection on you, is that you have a little  
22 bit of an accent. So you're going to have to  
23 speak clearly and slower than you might normally

1 speak so that she can understand what you're  
2 saying.

3 A. Yeah. And if you don't understand  
4 please ask me, just to clarify before writing,  
5 that way we'll be on the same page.

6 Q. The same is true here. If you don't  
7 understand a question that I'm asking you I want  
8 you to ask me to repeat the question for you or  
9 ask for clarification. I don't want you to  
10 guess what the answer is. I want you to  
11 basically give what you know.

12 A. Yeah.

13 Q. Could you tell us what your home  
14 address is for the record?

15 MR. BUCKLEY: Objection.

16 MR. D'ANGELO: I'm just asking for  
17 his home address.

18 MS. STEPHENS: May I make a  
19 suggestion? If you want to produce him --

20 MR. BUCKLEY: He'll come in any  
21 time as a witness. I don't think we need his  
22 home address.

23 MR. D'ANGELO: I want to make sure

1 we have it. Employees come and go in the City  
2 and I want to make sure we can --

3 MR. BUCKLEY: Just his name alone  
4 should be a pretty good identifier for him.

5 MR. D'ANGELO: All right. That's  
6 just an identification issue. I've never had  
7 really a lot of objections from people to home  
8 address.

9 Q. Can I ask just one question? Do you  
10 live in the City of Somerville?

11 A. Yes.

12 Q. Thank you. Could you tell us what  
13 your job is for the City of Somerville?

14 A. My official title is Environmental  
15 Coordinator. Sometimes it is also, people call  
16 me Environmental Protection Officer. But more  
17 or less it is one and the same and it reflects  
18 my responsibility as an environmental officer  
19 for the City to work on any issue or project or  
20 system within the environment within the city.  
21 That can include recycling to any other local  
22 issue.

23 Q. I have here marked as Exhibit 46 a

1 notice of taking of your deposition. I'm going  
2 to mark that for the record.

3 A. Okay.

4 Q. Now, can you tell me a little bit  
5 about your educational background, sir?

6 A. Yes. My Bachelor is in Civil  
7 Engineering from Bombay University in India. My  
8 Master's is in Environmental Engineering from  
9 Northeastern University, Boston. I graduated as  
10 Master MS Environmental Engineering in 1994  
11 working as environmental engineer within the  
12 U.S. since 1993.

13 Q. So when did you arrive in the United  
14 States?

15 A. 1991, August.

16 Q. When did you come to work for the City  
17 of Somerville?

18 A. November 1999.

19 Q. In what capacity did you come to work  
20 for the City in November 1999?

21 A. Environmental coordinator.

22 Q. That's been your job since coming?

23 A. That's right.

1 Q. One other thing I'd ask you to do.  
2 Let me finish asking the question before you  
3 answer it because I may have some additional  
4 things I'm going to put in there and it gives  
5 your attorney and other people here the  
6 opportunity to object.

7 A. Sure. Sure.

8 Q. The predecessor that you had working  
9 for the City was Hillary Eustace?

10 A. Yes.

11 Q. Do you know when she left the City of  
12 Somerville?

13 A. No.

14 Q. Was she still working for the City of  
15 Somerville when you became the environmental  
16 coordinator?

17 A. No.

18 Q. Do you know Hillary Eustace?

19 A. No.

20 Q. You never met Hillary Eustace?

21 A. I happen to meet after I joined only  
22 once, just in one conference somebody showed me.  
23 She was working at that time. I believe she was

1 working for the State. That was a State DEP  
2 sponsored conference. I just happened to say hi  
3 to her.

4 Q. Who was your predecessor with the City  
5 of Somerville in the position that you are in?

6 A. I believe it was Hillary Eustace.

7 Q. So she was the environmental  
8 coordinator before you were the environmental  
9 coordinator?

10 A. My position is a politically appointed  
11 position. So I don't know exactly what her role  
12 was and what exactly she was doing before I  
13 came. She was appointed by I believe the  
14 previous, then Mayor Michael Capuano. But I  
15 have no idea what she was doing about her work.

16 Q. When you came to work for the City of  
17 Somerville did you have an opportunity to review  
18 files that were in place at the time that you  
19 came to work for the City?

20 A. Files in regards to what?

21 Q. Anything that your predecessor may  
22 have had. Anything that was a file and that  
23 your predecessor had. And we're assuming

1 Hillary Eustace was your predecessor?

2 A. Yes.

3 Q. Did you have a chance to look at any  
4 of her files?

5 A. No.

6 Q. Did you inherit those files?

7 A. No.

8 Q. Do you know what happened to those  
9 files?

10 A. No.

11 Q. When you came to work for the City  
12 back in November of 1999 there were no files  
13 that somebody said, here's the files for various  
14 projects that the City has going on that you're  
15 going to be responsible for?

16 A. I would say that the recycling program  
17 and solid waste management, we, meaning myself  
18 and Hillary Eustace, my predecessor had nothing  
19 in common that I knew of.

20 Q. At the time that you came on board in  
21 1999 were you assigned to do any work at the  
22 public safety building at 220 Washington Street?

23 A. No.

1 Q. When was the first time that you had  
2 anything to do with 220 Washington Street?

3 A. That's a good question. I don't  
4 recall to be honest when I started or when I was  
5 notified about the public safety building. But  
6 I believe probably I got involved in public  
7 safety building issues because of the lead free  
8 bullets for the firing range.

9 Q. Do you recall when that took place?

10 A. That took place probably sometime, I  
11 think sometime in summer or late summer or early  
12 fall of 2000 if I remember correctly. Because  
13 of some other issues I have that recollection in  
14 my mind.

15 Q. So nearly a year into your job as  
16 environmental coordinator you became -- that was  
17 the first time that you got involved with the  
18 220 Washington Street building?

19 A. That's correct. At least I don't  
20 recall any before that, anything else.

21 Q. And is there any other person in the  
22 City of Somerville that does environmental type  
23 engineering work for the City?

1           A.     No.  Right now there's another person  
2           hired but he is not involved in it with anything  
3           with the public safety building.  And he's hired  
4           in July of this year.

5           Q.     So your involvement with the 220  
6           Washington Street was strictly involved with the  
7           lead paint issue beginning in September or  
8           August of 2000?

9           A.     That's correct.

10          Q.     Did you have any conversation with any  
11          other employees either at the Department of  
12          Public Works or at City Hall or anywhere else  
13          within the City regarding 220 Washington Street  
14          during that timeframe?

15          A.     Before the firing range issue or  
16          after?

17          Q.     During the first year that you worked  
18          for the City of Somerville?

19          A.     No.

20          Q.     When you became involved with the  
21          firing range in August, did you talk to anybody  
22          else about that issue?

23          A.     Again, based on my memory if I recall

1           correctly, firing range issue came to the  
2           Mayor's Office or probably to the Deputy  
3           Commissioner, David Dow, as a request from the  
4           Police Chief, the then Police Chief. The last  
5           name is Gregory or something like that.

6                           MR. BUCKLEY: Callahan --

7           A.       Not Callahan. I'm talking the Police  
8           Chief.

9                           MR. BUCKLEY: Callaguri?

10          Q.       Is that the one?

11          A.       Yes.

12                          MR. BUCKLEY: I don't mean to be  
13           testifying for my client but he's asking for a  
14           name. Is that all right? I assume you just  
15           want the information as to who he's talking  
16           about?

17                          MR. D'ANGELO: Right.

18          A.       So he basically I think requested to  
19           open the firing range which was closed. And one  
20           of the officers, I don't recall the name, but  
21           they said they suggest that we can work with the  
22           firing range with the lead free bullets meaning  
23           no lead in the bullets and no lead dust

1 basically which was sort of concern to the  
2 employees within the public safety building.

3 That time Mayor's Office called  
4 back to me and asked to review if these bullets  
5 are okay or what so on and so forth. I found  
6 whatever information I could and I was given by  
7 the Police Department. And I found it was  
8 fairly okay if the bullets are lead free to use.

9 Later police union still had some  
10 concerns so naturally they asked to review it  
11 even more deeper. So that time we hired Cashin  
12 Associates C A S H I N to just confirm about any  
13 lead issue. However regardless of the output of  
14 the test results the then Mayor, Dorothy Kelly  
15 Gay, just ordered to stop use of firing range.

16 So that was my first sort of  
17 contact with the public safety building.

18 Q. I'm going to show you Exhibit Number  
19 49.

20 A. Okay.

21 Q. There are other pages attached to it.

22 A. Okay. That's what I'm talking about.

23 Q. What you're talking about is --

1 A. Cashin Associates.

2 Q. That's part of Exhibit 49?

3 A. Okay.

4 Q. You're familiar with that letter?

5 A. Yes.

6 Q. It's basically you've got three pages  
7 which is marked on all three pages so it's a  
8 total of six pages?

9 A. That's correct.

10 Q. You've seen that before?

11 A. Yes.

12 Q. What does that document mean? Tell  
13 us.

14 A. I didn't read it.

15 (Discussion off the record).

16 MR. D'ANGELO: Just for the record  
17 real quick, we've skipped over Exhibit 47 and 48  
18 which were deposition notices for Hillary  
19 Eustace and Robert Trahan.

20 A. Well, this is the document which was  
21 part of the testing that was done by Cashin  
22 Associates. Just to confirm the use of lead  
23 free bullets in the firing range. That's all I

1 can tell you right now. I didn't read it.

2 Q. What did you do to prepare for today's  
3 deposition?

4 A. I was not sure what I'm supposed to  
5 do.

6 Q. Did you have any contact with anybody  
7 within the administration here to get ready for  
8 today's deposition?

9 A. No.

10 Q. So you didn't have a chance to review  
11 any records or documentation involving 220  
12 Washington Street?

13 A. No.

14 Q. Take a moment and look at this  
15 particular document. If you need a couple  
16 minutes to read through because I want your  
17 basic understanding of what it meant.

18 A. Okay. Basically what has happened if  
19 I understand correctly, and if I recall  
20 correctly with the quick browsing of this  
21 document, the lead testing of the actual bullets  
22 came below the OSHA standards as it says in  
23 discussion.

1                   However, there was some elevated  
2                   lead concentration at the outlet of the firing  
3                   range. And that was not -- the lab testing was  
4                   not sure where it's coming from. So they advise  
5                   to stop using the exhaust system. And that's  
6                   exactly what happened afterwards as I mentioned  
7                   earlier.

8                   Dorothy Kelly Gay, former Mayor  
9                   ordered to stop using firing range. So  
10                  basically if I know correctly, I don't know the  
11                  police records, but if I know correctly about  
12                  the use of firing range, I think that at worse  
13                  it was open not more than a month, month and a  
14                  half total. I don't know how many times they  
15                  use it in that period of time.

16                 Q.     During that timeframe approximately  
17                  looks like summer of 2000 --

18                 A.     That's correct.

19                 Q.     -- did you hear of any air quality  
20                  issues over at that particular building at 220  
21                  Washington Street?

22                 A.     No, but after this issue they started  
23                  complaining and that complaining was not

1 anything specific for air quality but it was  
2 more specific to the concern about use of firing  
3 range.

4 Q. What prompted them to want to get some  
5 air quality issues relative to the firing range?

6 A. Because the public safety building has  
7 several HVAC units and they were not sure if any  
8 of that unit is connected to the firing range as  
9 well as to any other office or employee occupied  
10 area and if it can have any implication for air  
11 quality.

12 Q. Did anybody test the air quality in  
13 other parts of the building besides the  
14 immediate area adjacent to the firing range?

15 MS. STEPHENS: Objection. I don't  
16 think he testified anybody tested the air.

17 MR. D'ANGELO: I'm asking did  
18 anybody test the air outside of the firing  
19 range.

20 Q. Did anybody test the area beyond the  
21 firing range?

22 A. Other than the Cashin Associates?

23 Q. Anybody. I don't care if it's Cashin

1 or --

2 A. Not as a part of this issue.

3 Q. Do you know why nobody tested to see  
4 if any lead had migrated to other parts of the  
5 building?

6 A. Basically what we were ordered, Cashin  
7 Associates and the City employees tried to  
8 figure it out. It's where the duct work and  
9 ventilation HVAC is connected and that portion  
10 was tested.

11 Q. What portion?

12 A. Basically they tested the portion  
13 wherever the duct work is connected. So the  
14 firing range itself and where the exhaust is  
15 going from the firing range.

16 Q. So you did test someplace else within  
17 the building?

18 A. That is exhaust.

19 Q. Do you know where that was?

20 A. It was the end of the firing range.

21 Q. Just in the firing range?

22 A. Yeah. I can draw the picture if you  
23 want.

1           Q.     I'm just asking if you knew. The duct  
2 work in that particular building is rather  
3 interesting.

4           A.     Yeah.

5           Q.     So I don't want to get into a complex  
6 discussion about where the ventilation systems  
7 go because I'm not prepared to really understand  
8 that myself right now.

9           A.     I can tell you very briefly and I hope  
10 I can explain it correctly. But basically next  
11 to the firing range there is a sort of  
12 maintenance garage for the police cars. And  
13 that is the point where there is duct work. And  
14 outside that maintenance garage is the parking  
15 lot. So realistically it doesn't go directly  
16 back into any area within the building.

17          Q.     Okay. So nobody tested anywhere else  
18 but in that general area?

19          A.     As a part of this, yes.

20          Q.     Nobody was concerned that air might  
21 have migrated into any other part of the  
22 buildings?

23          A.     Not that I know of.

1           Q.     Did you personally go and look at  
2           other parts of building to see if there was any  
3           indication that other stuff might have migrated  
4           into any parts of the building through the  
5           ventilation system?

6           A.     No.

7           Q.     Did you hire anybody like Cashin and  
8           Associates or any other certified industrial  
9           hygienists to go and look at possible migration  
10          of lead from that particular location into other  
11          parts of the building?

12          A.     No.   Cashin was hired for the same  
13          services so we didn't hire anybody else.

14          Q.     So when you hired Cashin who hired  
15          Cashin?

16          A.     The City.

17          Q.     Do you know the person who hired  
18          Cashin?

19          A.     I don't remember.  I'm sorry.  I can  
20          not put some name on that.

21          Q.     Did you have any conversation with  
22          anybody at Cashin about doing this air quality  
23          testing?

1           A.     The same person, Robert Cashin. I was  
2 with him at the time of the testing.

3           Q.     When you were with him at the time of  
4 the testing do you remember what parts of the  
5 building he went to to do his testing?

6           A.     That's exactly what I'm telling you.  
7 Basically he was asked to consult that any lead  
8 is coming because of the lead free bullets. So  
9 the whole focus was on firing range and what  
10 kind of air quality it was creating within that  
11 range after the firing is done with the bullets  
12 by the Police Department.

13          Q.     At that time did Robert Cashin say to  
14 you we should look at any other parts of the  
15 building to determine if there is any other  
16 migration to other locations?

17          A.     No. Only thing he was not sure was  
18 about the end of the duct work, why there was  
19 elevated levels of lead as he said in  
20 recommendation Number 1.

21          Q.     Where are you pointing to? Okay.  
22 Recommendation. So he recommended that --

23          A.     That should be investigated.

1           Q.     On page four of that document  
2           recommendation one states the reason for the  
3           elevated lead concentrations at the outlet of  
4           the firing range exhaust system should be  
5           investigated.

6           A.     Yes.

7           Q.     Do you know if anybody did investigate  
8           that?

9           A.     No, because the whole system was shut  
10          down.

11          Q.     When was it shut down?

12          A.     Immediately.

13          Q.     Who ordered that?

14          A.     The Mayor.

15          Q.     The Mayor ordered that?

16          A.     Yes.

17          Q.     The Mayor at the time was?

18          A.     Dorothy Kelly Gay.

19          Q.     Did you have any conversation with  
20          anybody at City Hall in the administration  
21          regarding the shut down of that ventilation  
22          system?

23          A.     No.

1 Q. Do you know who actually shut down the  
2 ventilation system?

3 A. Probably the person who's responsible  
4 for ventilation system, Charlie Alliano.

5 Q. Who is he?

6 A. He worked -- I don't know his title  
7 but he looks after HVAC units for the whole  
8 city, I mean City owned buildings. And I  
9 believe he's part the Buildings and Grounds  
10 Division. I don't know his title.

11 Q. Does he work for the Department of  
12 Public Works?

13 A. Yes, within the Department of Public  
14 Works he works for the Buildings and Grounds  
15 Division.

16 Q. Did anybody confirm, including  
17 yourself, that the ventilation system was shut  
18 down at that time?

19 A. No.

20 Q. Okay. Exhibit Number 50 in front of  
21 you now, there is a date that appears on here  
22 with your signature?

23 A. Yes.

1 Q. May 23, 2000?

2 A. Yes.

3 Q. That's your signature on that  
4 document?

5 A. Yes.

6 Q. Can you tell me a little bit more  
7 about what a Tier Classification, Tier II  
8 Extension and Tier II Transfer Transmittal Form  
9 is?

10 A. Yes. Basically this is part of, as it  
11 says, T10 CMR 40 which is Massachusetts  
12 Contingency Plan, Department of Environmental  
13 Protection requirement for any contaminated  
14 site.

15 It is my understanding that this  
16 site which was all the locations for MBTA garage  
17 had some oil tanks or something underground  
18 storage which apparently they found way back in  
19 '96 or '97. And it's a state law that if you  
20 find any kind of leakage or contamination of  
21 soil anywhere you are supposed to notify. And  
22 then the whole MCP, Mass Contingency Planning  
23 system, they do the release tracking number in

1 the top right corner.

2 And based on the type of  
3 contamination, licensed sight professional or it  
4 is just called LSP, basically takes charge of  
5 the whole thing. In this case Ambrose Donovan  
6 was the LSP for the site hired by previous  
7 administration. That work was going on.

8 And this was one of the paperwork  
9 that they wanted to file. And I just signed  
10 this form because probably my previous  
11 predecessor or somebody else used to sign. And  
12 being environmental officer somebody asked me to  
13 sign.

14 Q. If you know, what does this involve,  
15 what location within the City of Somerville?

16 A. This form?

17 Q. Yes.

18 A. This can be a little bit -- I don't  
19 know. This is the last page so I don't know  
20 where it is considered.

21 Q. So you don't know --

22 A. I can tell you. There are a couple of  
23 sites where my signatures you can find on DEP

1 forms. It doesn't mean that I'm doing anything.  
2 I'm just signing it off as representative of the  
3 City.

4 One is DPW, 1 Franey Road, and the  
5 other one is public safety building, 220  
6 Washington Street. I don't know where this form  
7 belong to.

8 Q. Are there underground storage tanks at  
9 Franey Road that are leaking?

10 A. Yes. We may have to go to the release  
11 tracking number.

12 Q. I'm going to jump out of order and  
13 show you Exhibit 56.

14 A. Okay.

15 Q. So I'm looking at the tracking number  
16 on this document Number 56, it says 3-18323?

17 A. Yes.

18 Q. On Exhibit Number 50 you're looking at  
19 3-18323, so they are one and the same project?

20 A. Sure.

21 Q. So Exhibit Number 50 is relative to  
22 which location?

23 A. Public safety building, 220 Washington

1 Street.

2 Q. So this is your first exposure to 220  
3 Washington Street --

4 A. Yes.

5 Q. -- in May of 2002 when this document  
6 was signed by you?

7 A. Okay. Can I clarify?

8 Q. Sure.

9 A. When you asked me first exposure, if  
10 you want to say for indoor air quality. For  
11 employee issues it may not be.

12 Q. This is not a trick question.

13 MR. BUCKLEY: Don't read into the  
14 questions, just answer them.

15 Q. What I'm asking is, this was another  
16 opportunity that you had to have exposure to 220  
17 Washington Street?

18 A. That's the whole thing I'm explaining.  
19 I didn't get exposed that time. I just signed  
20 the paperwork. There is lots of paperwork. It  
21 doesn't mean that I went there and check out.  
22 That's why I want to clarify it.

23 Q. In terms of this environmental

1 protection problem with the underground storage  
2 tanks, did you become at some point later more  
3 intimately involved with the project or did you  
4 just continue to sign off?

5 A. No. I was not involved because the  
6 way state law is LSP is responsible. They work  
7 on it. And eventually all we have to make sure,  
8 whoever is having contaminated site, the owner  
9 of the site, in this case the City, has to make  
10 sure that the site will be closed for the  
11 contamination issues.

12 That particular project was later  
13 taken by Office of Housing and Community  
14 Development or HCD. Now it is called Office of  
15 Strategy Planning and Community Development for  
16 the City. Basically they took it as a  
17 Brownfield project and they are the responsible  
18 people.

19 Q. Who would be the person that would be  
20 responsible for that at this point within the  
21 City?

22 A. I don't know the status right now, but  
23 I think Peter Mills or Stu Winslow may be

1 responsible.

2 Q. Were those people working for the City  
3 back in 2000?

4 A. No.

5 Q. At what point did you not become  
6 responsible for overseeing and signing papers on  
7 this particular end of the project?

8 A. I don't recall.

9 Q. Was it in 2001?

10 A. Honestly I don't know because as I  
11 said sometimes DEP paperwork, somebody is just  
12 representing. I represented and signed. So my  
13 signature doesn't mean that -- I was just  
14 representing the City for signature.

15 Q. Does this person Ambrose Donovan  
16 periodically provide reports on the progress of  
17 the situation at 220 Washington Street for the  
18 underground storage tanks?

19 A. Not to me.

20 Q. Who does he report to?

21 A. Office of Housing and Community  
22 Development.

23 Q. When did that take place? Was that in

1 2001, 2002?

2 A. I'm sorry. I don't know.

3 (Discussion off the record).

4 Q. We're looking at a person over there  
5 at this point that might have had something to  
6 do with that back then.

7 A. At that time, Elaine Middleton.

8 Q. I'm going to show you Exhibit Number  
9 51 which is the memo to Mayor Capuano regarding  
10 air quality from Jim Ribeiro, Somerville Police  
11 Employees Association President.

12 MR. D'ANGELO: Thirty-four pages  
13 as I count them on Exhibit 51.

14 Q. I'd ask that you just take a quick  
15 look through it to see if you've ever seen this  
16 before?

17 A. No, I never saw that before.

18 Q. This report was several years before  
19 you came to work for the City. It's dated 1993.

20 A. Sure.

21 Q. Nobody ever shared this document with  
22 you on the air quality issues that were going on  
23 prior to your coming to employment with the

1 City?

2 A. No.

3 Q. Do you know any of the people that are  
4 mentioned here?

5 A. Which are you talking about?

6 Q. James Ribeiro.

7 A. No.

8 Q. It just says Mike. We don't know --  
9 oh, Mike is the Mayor at the time?

10 A. Yeah. That is the only person I know.

11 Q. So you didn't have any contact with  
12 Ribeiro?

13 A. No.

14 Q. Did you have any contact with the  
15 Commonwealth of Massachusetts besides doing the  
16 stuff for DEP occupational health and safety?

17 A. Yes.

18 Q. You did have contact?

19 A. Yes.

20 Q. Who did you have contact with?

21 A. I didn't contact, but the police union  
22 contacted. And whoever, each time presented the  
23 Office of Occupational Safety I was present with

1           them as the City's representative.

2           Q.     In 1999 did you have any contact with  
3           the Commonwealth of Massachusetts?

4           A.     I got to know this thing in 2000.

5           Q.     In 2000 did you have any contact?

6           A.     No.

7           Q.     In 2001 did you have any contact with  
8           the Commonwealth of Massachusetts?

9           A.     2001 if I recall the name correctly  
10          his name was Robert Nicotera.  N I C O T E R A.  
11          He came from the Massachusetts Office of  
12          Occupational Safety Industrial -- sorry.  Indoor  
13          Air Quality Unit.

14                    I believe he came up on the  
15          request from the police union or some other  
16          employee union.  I don't know who exactly called  
17          him.  When he came that time I was asked to  
18          present just as a representative.

19          Q.     So you were representing the City when  
20          he came by?

21          A.     That's correct.

22          Q.     What exactly did you do?

23          A.     The way he explained to us always

1 explained by the same department letter that  
2 they confirm that the air quality, indoor air  
3 quality in any government owned offices or  
4 buildings, to confirm the health and safety of  
5 the employees. And that's what he did.

6 He basically performed several --  
7 I think there are six or seven standard tests  
8 for air quality which he conducted in several  
9 areas within the whole public safety building  
10 and analyzed it.

11 Q. Did you accompany him during that time  
12 when he did that testing?

13 A. Not all the time. He was free to move  
14 wherever he wants. But I was available for any  
15 responses that he wanted.

16 Q. Did you have any other further  
17 conversation with him after he did the air  
18 quality testing?

19 A. After he completed air quality testing  
20 he gave a written report and in that report  
21 there were certain corrective actions that he or  
22 the state asked the City to perform just to keep  
23 the building in good condition.

1 Q. Okay. Who did he give that to?

2 A. I don't recall if it was to me. I may  
3 have a copy. I mean I do have that copy. It  
4 might be addressed to me or to the Mayor.

5 Q. I'm just asking right now if you  
6 recall any conversation you had with him  
7 regarding the air quality testing, not  
8 necessarily the report itself. But did he ask  
9 you any questions or ask for you to give him any  
10 additional information regarding the building?

11 A. Not specific because there are several  
12 people available. And because he was called by  
13 the employee union he was taking their  
14 interviews as the priority other than mine.  
15 Because I didn't know much about the building.  
16 So he basically was taking their interviews.

17 What I'm saying is that he was  
18 taking interviews of the employees within the  
19 public safety building. I was there present but  
20 I was not much available at that time about the  
21 more details or the issues with the building and  
22 what employees had concerns. I was just getting  
23 used to that whole issue. So I was there to

1 help whatever I can.

2 And the other person, his name is  
3 Charlie Alliano who was responsible for that  
4 work in HVAC units. He was there to help him.  
5 He didn't ask any specific questions that day.

6 Q. That was back in 2001?

7 A. I believe so.

8 Q. I'm just going to show you Exhibit  
9 Number 52 which is directed to George Matthews,  
10 Ashburton Place from the City of Somerville  
11 signed by Robert Trahan.

12 (Discussion off the record).

13 MR. D'ANGELO: It includes the  
14 Simpson Gumpertz and Hager report directed to  
15 Paul Zirpolo which we had marked as an exhibit  
16 previous which was part of Exhibit 29 previous.

17 Q. Have you seen this report before?

18 A. Not that time, but --

19 Q. Not at that time. I'm just asking  
20 you --

21 A. I have seen it.

22 Q. When did you first see this report?

23 A. Probably about two, three years ago.

1 Q. Two or three years ago?

2 A. Yes.

3 Q. That would put us --

4 A. 2003 around.

5 Q. So at the time that the air quality  
6 testing was being done by the folks at OSHA, Mr.  
7 Nicotera --

8 A. Yes.

9 Q. -- you had not seen this report?

10 A. No. Just to make on the record  
11 clarify, it is not OSHA. Because many times I  
12 have to explain to people. OSHA doesn't come to  
13 the City. It's a federal body.

14 Q. It's a state OSHA that Mr. Nicotera  
15 worked for, not federal OSHA?

16 A. Yes.

17 MS. STEPHENS: Is it DOS?

18 MR. D'ANGELO: Yes.

19 MS. STEPHENS: Can we call it DOS?

20 MR. D'ANGELO: DOS is fine.

21 Q. DOS stands for?

22 A. Department of Occupational Safety.

23 Q. They have jurisdiction over the City

1 of Somerville?

2 A. That's what I understand. They have  
3 jurisdiction over all government and public  
4 owned buildings.

5 Q. Now you got your Master's Degree from  
6 Northeastern University in Environmental  
7 Engineering?

8 A. That's correct.

9 Q. What exactly do you have to do to get  
10 a degree in Environmental Engineering? What  
11 kind of studies do you take?

12 A. Sure. I studied -- there are certain  
13 of course required credits and certain optional  
14 or electives. Basically water and wastewater  
15 treatment, water pollution, water treatment  
16 design, solid waste management, hazardous waste  
17 management, air quality, air pollution.

18 So these are the general topics  
19 I'm talking about and in all the courses we  
20 learned that. Of course some were related with  
21 ground water and some were related to computer  
22 modeling.

23 Q. Do you have anything else in terms of

1 special licenses or any kind of license for  
2 engineering?

3 A. No.

4 Q. Certifications?

5 A. No.

6 Q. Since graduating in 1993 --

7 A. '94.

8 Q. -- from Northeastern University, have  
9 you attended any kind of workshops or seminars  
10 relative to the kind of occupational work that  
11 you do?

12 A. Yes.

13 Q. What kind of seminars and so forth  
14 have you attended?

15 A. There are several seminars I attended  
16 as a part of my current job or in the past also.  
17 Some were with the DEP, Department of  
18 Environmental Protection. Some were conducted  
19 by EPA.

20 Q. What kind of topics were discussed  
21 during these seminars?

22 A. Sometimes they are related with  
23 management issues meaning like for example there

1 is one institute called Toxic Use Reduction  
2 Institute. It's part of the University of  
3 Massachusetts Lowell. And it's a state body.  
4 So they have some workshops in the past where  
5 they explain how to deal with the toxic  
6 substances. Then there are some workshops  
7 concerned with hazardous waste. Sometimes they  
8 are concerned with air quality. So nothing  
9 specific but several workshops.

10 Q. Getting back to this report that was  
11 done in April of 1999, the first time that you  
12 looked at it was in 2003?

13 A. Yes.

14 Q. What made you look at that report in  
15 2003?

16 A. See, I think I made or read this  
17 report and that is why I said two or three years  
18 ago. Because the second time the Department of  
19 Occupational Safety was called by the union,  
20 that time I found about this report. Until that  
21 time I had no idea or I was not given that list.

22 And when I read the report I  
23 realized that most of the things were related

1 with the structural integrity of the building  
2 which is not my work. That might be the reason.

3 Q. So you read that report?

4 A. Yes.

5 Q. And did you read any other reports or  
6 do any further investigations into the building  
7 to determine if any of the corrective measures  
8 should be taken at that time in 2003?

9 A. Well, again this report is more  
10 related with the structure not with the  
11 environment. And that's why it was not part of  
12 my decision.

13 Q. Okay. Let me point you to in the  
14 report itself on page 20, April 1999, it talks  
15 about the mechanical systems.

16 A. Yes.

17 Q. In that paragraph it says the diesel  
18 exhaust fumes rise to the air intakes for the  
19 building. Did you ever read that paragraph?

20 (Discussion off the record).

21 Q. Midway in the paragraph there's a  
22 sentence that says diesel exhaust fumes then  
23 rise to the air intakes for the building.

1           A.     You want before I read this particular  
2     part --

3           Q.     But you did read that part?

4           A.     Yes.

5           Q.     That's what the question is.

6           A.     Yes.

7           Q.     So you read that part?

8           A.     Yeah.

9           Q.     You also read at the top of that page  
10    there's the presence of fungi and bacteria on  
11    samples of interior material --

12          A.     Yeah.

13          Q.     So you read that as well?

14          A.     Yes.

15          Q.     And you saw at the very end of the  
16    report that they had found some kind of mold  
17    that was in the building.  Were you familiar  
18    with mold at that time, anything to do with  
19    mold?  And this is in 2003 that you read that?

20          A.     Yes.

21          Q.     So in 2003 you were familiar with  
22    mold?

23          A.     In the building?

1 Q. In general your knowledge --

2 A. Knowledge of the mold?

3 Q. Yeah.

4 A. Yeah.

5 Q. And you had knowledge of exhaust fumes  
6 that would come into the building and you  
7 understood what that potentially could mean?

8 A. If I can explain I can tell you.

9 Q. Go ahead.

10 A. Basically, yes, about when you said  
11 2003 if I was knowing about the exhaust fumes.  
12 That was addressed in 2001. So basically --

13 (Phone interruption).

14 A. In that question you asked me in 2003  
15 if I had the knowledge. So I had that knowledge  
16 in 2001. That's exactly what I'm telling you --

17 Q. You knew in 2001 that there was a  
18 problem?

19 A. That's what I'm trying to tell you  
20 that not because of this report but as part of  
21 the first visit by Department of Occupational  
22 Safety that was another thing which was  
23 addressed.

1                   And what we suggested was first of  
2 all most of the duct work that could have  
3 potentially affected was closed to my knowledge.  
4 And also because there was a mechanical work was  
5 going on and off on all the police cars in that  
6 area, it was told to continually have exhaust  
7 outside regardless of cars running or not.

8                   So that's what we started doing.  
9 We asked the mechanical department or the  
10 mechanics within the public safety building to  
11 keep the exhaust continually on so that there  
12 won't be any issue with the diesel fumes.

13           Q.     Who monitored that?

14           A.     Off and on that time I did it although  
15 I was not responsible, just to make sure they  
16 were working. And that's what they continually  
17 started doing.

18           Q.     How did you monitor that?

19           A.     Just by going there.

20           Q.     How often did you go there?

21           A.     As often as I could. I'm sorry.

22           Q.     Was that once a week, once a month?

23           A.     Yeah. At least once a week, yes,

1 initially. Not -- if you ask me right now I  
2 won't.

3 Q. Did you fill out any paperwork to  
4 verify that?

5 A. No.

6 Q. So you didn't have any paperwork to  
7 verify the times that you went there?

8 A. No.

9 Q. When you work where is your office  
10 located?

11 A. DPW.

12 Q. Where is that?

13 A. One Franey Road.

14 Q. Are you there most of the day?

15 A. Yes.

16 Q. Do you punch in and punch out on a  
17 time clock?

18 A. No.

19 Q. So who do you report to there?

20 A. I'm technically reporting to the  
21 Mayor.

22 Q. So you don't have a boss over at DPW?

23 A. No.

1 Q. Your comings and goings are basically  
2 your agenda only. You set your own agenda each  
3 day?

4 A. That's correct.

5 Q. If the Mayor needs you you come down  
6 to City Hall?

7 A. That's correct.

8 Q. So there's no record of how many times  
9 that you went over to 220 Washington Street?  
10 You didn't keep a diary?

11 A. No.

12 Q. You didn't keep any kind of record of  
13 your times that you spent over at 220 Washington  
14 Street?

15 A. No.

16 Q. Did you write any reports on any  
17 progress that was being made in terms of making  
18 sure that these various systems that the  
19 Commonwealth or DOS had said need to be done?

20 A. I wrote one report as a response to  
21 the Department of Occupational Safety and that  
22 was after confirming with all relevant  
23 personnel, basically relevant personnel from the

1 Department of Public Works about if they have  
2 taken care of specific issues.

3 There are certain issues cited by  
4 the Department of Occupational Safety that was  
5 supposed to be taken care of by DPW. There were  
6 certain issues that were supposed to be taken  
7 care of by Police Department itself. And I just  
8 made sure and I informed Department of  
9 Occupational Safety.

10 Q. So when you arrived over at 220  
11 Washington Street was this more or less a moment  
12 that you decided to go over there or is this  
13 pre-arranged to go over there?

14 A. I did it random.

15 Q. So when you went there what did you  
16 find in terms of them conforming to the  
17 requirements that had been basically required of  
18 them to do?

19 A. The exhaust fans were on which was  
20 required for the garage, maintenance garage.

21 Q. That's the maintenance garage?

22 A. That was the thing I was talking  
23 about.

1 Q. What about, there's another section in  
2 there that housed fire trucks as well?

3 A. That is on the other side of  
4 Somerville Avenue.

5 Q. Were you monitoring that?

6 A. No.

7 Q. Why weren't you monitoring that?

8 A. That was not part of the whole  
9 discussion with Department of Occupational  
10 Safety.

11 Q. So DOS never looked at that location?

12 A. No. I don't recall at least.

13 Q. When you accompanied Mr. Nicotera from  
14 DOS he didn't go into that part of the building?

15 A. I don't recall. Honestly I don't  
16 recall that part.

17 MR. BUCKLEY: What part of the  
18 building is that?

19 MR. D'ANGELO: Where the fire  
20 trucks are housed.

21 Q. Did he go into the adjacent area to  
22 that where there were -- in the basement  
23 adjacent to that?

1 A. Within that building?

2 Q. Within that building. Do you recall  
3 him going in there?

4 A. I don't remember Bob Nicotera going in  
5 there but I remember the other visit we went  
6 there.

7 Q. What other visit?

8 A. In 2003, 2004 when second time. I  
9 don't remember about first visit.

10 MR. BUCKLEY: We're still talking  
11 about the area where the fire trucks go?

12 MR. D'ANGELO: Yes.

13 Q. In terms of this Exhibit Number 52,  
14 were there any things that were looked at in  
15 2003 that had been corrected since this report  
16 was written in 1999?

17 MS. STEPHENS: I'm going to object  
18 to that question.

19 MR. BUCKLEY: Do you recall  
20 anything that was in -- answer the question.

21 Q. In this report here --

22 A. I know. I don't know that answer.

23 Q. So you don't know if any improvements

1 had been made since 1999 that had been  
2 recommended in this report in 2003 when you  
3 first read it?

4 A. No, I don't know.

5 Q. When you read this report did you go  
6 through it and go over to 220 Washington Street  
7 to see if you could observe some of the things  
8 that were written about in this report?

9 A. No.

10 Q. I'm going to show you Exhibit Number  
11 53 which is six pages basically. Do you recall  
12 ever seeing this report, this memo, this letter?

13 A. Excuse me one second.

14 Q. No problem.

15 A. No.

16 Q. So you never saw this before?

17 A. No.

18 Q. Looking at Exhibit Number 54 which is  
19 the urgent legal matter prompt action necessary,  
20 certified mail return receipt requested from  
21 notice of responsibility 21E 310 CMR. It's RTN  
22 # 3-18329. It's dated July 1999.

23 A. No.

1 Q. So this pre-dates your involvement?

2 A. Yes.

3 Q. Did you have any contact with Paul  
4 Zirpolo when he was employed with the City of  
5 Somerville?

6 A. About the building or in general?

7 Q. In general.

8 A. In general, yes, I had a contact.

9 Q. Did ever have any discussions with him  
10 about 220 Washington Street?

11 A. No.

12 Q. Exhibit Number 55, that is RTN  
13 # 3-18328 dated July 2, 1999. Have you seen  
14 this document before?

15 A. No.

16 Q. Did you ever have any contact with  
17 Mary Bester Colby from the Commonwealth of  
18 Massachusetts Department of Environmental  
19 Affairs?

20 A. No.

21 Q. Number 56 we have already had a  
22 discussion about. Number 57, July 12, 2002.  
23 It's RTN # 3-2195.

1 MS. STEPHENS: 21795?

2 MR. D'ANGELO: Yes.

3 Q. Once again, have you seen this?

4 A. No.

5 Q. Did you have any contact with Steven  
6 Post during that timeframe? This is dated July  
7 2002.

8 A. Yes, but not for public safety  
9 building.

10 Q. What did you have contact with him  
11 about?

12 A. He was Executive Director for Office  
13 of Housing and Community Development, so on  
14 various issues we talked. Just to refer my  
15 previous response, this is part of the  
16 Brownfield program what his office -- not his  
17 office but was happening.

18 Q. So you never saw this before?

19 A. No.

20 Q. Number 58 is RTN #3-21794. Have you  
21 ever seen this one before?

22 A. No.

23 Q. In the last couple documents up here I

1 notice post office Vithal. Do you know what  
2 that means?

3 A. I can tell you.

4 Q. Several of them had this up here.

5 A. Any document lettered with  
6 Massachusetts Contingency Planning within the  
7 City, either owned by the City property or  
8 private property that goes by law to public  
9 health department. Many times I'm not required  
10 to get any of those documents. Sometimes they  
11 send it and I just keep it filing.

12 Q. So you don't review the document, you  
13 just file it?

14 A. No.

15 Q. Do you even see this? Do you have a  
16 secretary that works for you?

17 A. No. Nothing.

18 Q. Do you have an assistant that works  
19 for you?

20 A. No.

21 Q. So each one of these would come to  
22 your office and you'd just put it in a file?

23 A. I told them not to send it to me also.

1 I'm not required to know.

2 Q. I understand they would come to you.  
3 But you did put them in a file? You didn't  
4 throw them out?

5 A. Eventually yes, I do. I don't know if  
6 I hold those. Because I'm not required to keep  
7 anything.

8 Q. I understand. Then we have Number 59.  
9 RTN #3-21796. This is dated July 12, 2002  
10 received July 16. Again your name appears on  
11 there?

12 A. Yeah. Whenever you see private  
13 properties the same thing you'll see.

14 Q. We're looking at Exhibit Number 60,  
15 which is the Somerville Health Department  
16 Complaint Form?

17 A. Yeah.

18 Q. It's attached to it looks like an  
19 e-mail from Jack Vondress to Harry Vaughn. It  
20 says we received a complaint today from the Mass  
21 Department of Public Health concerning mold at  
22 the Somerville Police Department. It says  
23 because this complaint is from the State we will

1 need to respond to them with action steps in the  
2 next week. I recommend that Vithal perform an  
3 initial inventory and look at consulting with an  
4 industrial hygienist. And this is dated 2004?

5 A. Yes.

6 Q. Do you remember seeing this?

7 A. Oh, yes. I have some basically  
8 communication with Jack Vondress also.

9 Q. Who?

10 A. Jack Vondress who was the Board of  
11 Health director.

12 Q. He was the Board of Health director?

13 A. Yes, he was.

14 Q. At the time that that was written?

15 A. Yes.

16 Q. And you had contact with him and had  
17 discussions with him about mold complaints at  
18 220 Washington Street?

19 A. Not discussions with him. I don't  
20 recall any specific discussion with him about  
21 mold. But he forwarded this request to me.

22 Q. Does the Department of Public Health  
23 or the City -- that's who he worked for,

1 correct? Or is this --

2 Clarify for me who the parties are  
3 here. Jack Vondress is who?

4 A. Jack Vondress used to be Board of  
5 Health which is the City --

6 Q. City of Somerville Board of Health.

7 A. He used to be director of that.

8 Q. Now when he gets a complaint about a  
9 City building do you know what his  
10 responsibilities are?

11 A. No, I don't know. I'm sorry.

12 Q. This was just passed on to you to  
13 investigate?

14 A. Yes.

15 Q. Do you know if the City Department of  
16 Public Health did their own investigation?

17 A. No, I don't know.

18 Q. And somehow the Mass Department of  
19 Public Health got involved. Did you have any  
20 contact with them?

21 A. I don't recall right now.

22 Q. Do you know when you received this  
23 what you did to follow up on this?

1           A.     I remember finding out. I'm sorry but  
2 I don't remember right now.

3           Q.     Do you remember having -- did you look  
4 at consulting an industrial hygienist to do an  
5 investigation back then in 2004?

6           A.     In the last four, five years I have  
7 talked with many times so I don't remember the  
8 chain of events.

9           Q.     Let me ask you this. In your several  
10 years did you ever contract with an industrial  
11 hygienist to come in and do an investigation to  
12 find out what the environmental concerns were at  
13 220 Washington Street?

14          A.     Cashin Associates was industrial  
15 hygienist. He was hired by us.

16          Q.     When was that?

17          A.     He was hired I think in 2001 and  
18 probably he did one more time. He did at least  
19 two times as I recall.

20          Q.     What did he do testing for or did he  
21 do any testing?

22          A.     He did testing for air quality.

23          Q.     What happened to the results of those

1 air quality tests? What were you looking for?

2 What did you ask him to do?

3 A. We asked him -- I'm not industrial  
4 hygienist so we asked him to confirm if there is  
5 any health issue related to the air quality.

6 Q. He strictly just tested for air?

7 A. That's correct.

8 Q. He didn't do any other kind of  
9 testing?

10 A. I don't recall.

11 Q. Was he told to do anything else  
12 besides air quality testing?

13 A. We asked him to confirm about the  
14 health regulations. So air quality was the  
15 major issue. I don't recall anything else.

16 Q. So did you ask him to test to see if  
17 there was any mold in the air?

18 A. I don't recall.

19 Q. Did you ask him to test to see if  
20 there was any carbon monoxide in the air?

21 A. We didn't specifically say what he  
22 should do. He is a certified industrial  
23 hygienist. It was his call what to do. He did

1 testing for carbon monoxide to the best of my  
2 knowledge. He did testing for particulate  
3 matters.

4 Q. Particulate matter being what?

5 A. Particulate matter meaning like any  
6 small particles under ten microns that can  
7 affect. So basically how many particulate  
8 matter can be in any given area. Like say this  
9 office or this committee room or in the public  
10 safety building so on and so forth.

11 Q. We know he did some testing for lead  
12 at one time?

13 A. That's not what we hired for. We  
14 talked about that.

15 Q. Did he do anything else besides test  
16 for lead in that regard?

17 A. No.

18 Q. So when he came in he was just testing  
19 for lead back in 2000?

20 A. 2001. I'm sorry 2000.

21 Q. So after 2000 did you or anybody else  
22 that you know of within the City ask somebody to  
23 come back in including Cashner to do testing for

1 semi volatile, volatile, or mold or carbon  
2 monoxide or whatever that might have been in the  
3 air affecting the complaints people were having  
4 about their health?

5 A. I don't recall.

6 Q. Would anybody else know? Would they  
7 have come to somebody else to get involved in  
8 that testing besides you?

9 A. It can be DPW Commissioner at that  
10 time, David Dow or it can be Mayor's Office.  
11 I'm talking about 2004.

12 Q. Would you have been notified if  
13 somebody was going in to be doing any of this  
14 testing as part of your responsibilities of your  
15 job?

16 MR. BUCKLEY: Objection. You can  
17 answer if you know. You can answer.

18 A. It's not required.

19 Q. I'm not saying required. They weren't  
20 required to notify you. So somebody  
21 independently at the DPW would go in and would  
22 say, we're going in to test the air quality next  
23 week, do you want to come with us? Would

1           somebody do something like that or would they  
2           put something formally to you?

3           A.     Yeah.  They would formally but there  
4           is no definition for that, that they have to do  
5           like that.

6           Q.     So the Fire Chief at the time if he  
7           had issues with air quality down there would not  
8           necessarily consult with you on this or he would  
9           consult with you on this?

10          A.     They can consult with me.

11          Q.     But they don't have to?

12          A.     It's pretty vague.  My position is  
13          pretty vague.  It's not defined for any specific  
14          issue.  So most of the time I get calls for many  
15          things from air quality to solid waste,  
16          anything.  But I can not state that they will  
17          call me or they have to call me.  So that's the  
18          only thing I'm differentiating.

19          Q.     Nobody from the City would say, hey  
20          Vithal, we got this report back.  Can you help  
21          us interpret what it means?  Did anybody ever do  
22          that?

23          A.     Nobody from Fire Department or Police

1 Department did that.

2 Q. How about DPW?

3 A. There was discussions but not request  
4 for interpretation.

5 Q. What were the discussions with the  
6 DPW?

7 A. Just what are the correct actions to  
8 be taken based on the report.

9 Q. So they wanted to know what they had  
10 to do to fix the problem?

11 A. Yeah.

12 Q. Did they fix the problem?

13 A. That's what my understanding is.

14 Q. Did you monitor them fixing the  
15 problem?

16 A. I'm not expert all on what their  
17 actions are so I have to depend on their answer.

18 Q. Whose answers?

19 A. They can be different people or  
20 personnel. It can be Buildings and Grounds. It  
21 can be person related with HVAC units. It can  
22 be somebody else.

23 Q. So was anybody at that time from

1 Buildings and Grounds, DPW or any other City  
2 agencies consulting with you on trying to make  
3 this issue go away?

4 MS. STEPHENS: What year?

5 Q. Between the time that you worked in  
6 2000 until present.

7 A. Can you repeat the question? I'm  
8 sorry.

9 Q. In your timeframe, I'm just trying to  
10 understand if anybody from any City agency  
11 consulted you regarding the air quality issues  
12 over at 220 Washington Street.

13 And the reason why I'm asking that  
14 question is that we have Cashner's records and  
15 we had some recommendations from somebody from  
16 the City at DPW saying we need to have an  
17 industrial hygienist come into the building. We  
18 know that Cashner came in and tested lead. But  
19 you're not aware of any other testing that was  
20 done during that timeframe that you have been  
21 environmental coordinator?

22 MR. BUCKLEY: Objection.

23 MS. STEPHENS: Objection.

1                   MR. D'ANGELO:  If you understand  
2                   the question you can answer it.

3                   A.     No, I don't.

4                   Q.     You're not aware of any other testing  
5                   besides what Cashner did for air quality?

6                   A.     I don't recall.

7                   Q.     So you have no other reports from any  
8                   other certified industrial hygienist?

9                   A.     I don't recall at this point.  I have  
10                  to check it out.

11                  Q.     So you're not sure?

12                  A.     I'm not sure.

13                  Q.     We have a report, Public Safety  
14                  Facility Program from some architects and urban  
15                  designers, Exhibit Number 61.  It's got 42 pages  
16                  as I count them.

17                                 Why don't you take a few minutes  
18                                 and look at this report or whatever it is,  
19                                 program and just look through real quickly and  
20                                 see if you're familiar with it, whether you've  
21                                 seen it before?

22   (Exhibit No. 62A; so marked).

23                  Q.     So we're looking at 61, 62 and 62 A,

1 the dates being January 23 on 61, the Somerville  
2 Safety Facility Program, 62 is Public Safety  
3 Building Special Commissioner Meeting dated  
4 January 23, 2001 and an Updated Program  
5 Requirements and Conclusions on 62 A dated  
6 January 31. Have you had a chance to look at  
7 all three of those?

8 A. No.

9 Q. Why don't you take a look at them?

10 A. I saw them but I've never seen those  
11 in the past.

12 Q. So you've never seen these before?

13 A. No. I'm not aware of these reports.

14 Q. So you never had any contact with  
15 DiMarnici and Wolf Architects, Urban Designers?

16 A. No.

17 Q. We're going to Exhibit Number 62 which  
18 is the memorandum dated March 26, 2001 --

19 A. Yes.

20 Q. -- from Heather Rowe to Captain James  
21 Tatowsky.

22 A. Yes. Can I correct it? It is from me  
23 I believe.

1 Q. I'm sorry. This is from you. CC to  
2 Heather Rowe. On the back of that page it says  
3 it came from the environmental coordinator,  
4 Vithal Deshpande?

5 A. Yes.

6 Q. What is this exactly?

7 A. This is the report I was talking  
8 about, corrective action. It's a compilation or  
9 summary of corrective actions recommended by  
10 Massachusetts Department of Occupational Safety.  
11 Details, specifically selected actions that are  
12 required to be addressed by the Somerville  
13 Police Department.

14 Q. These corrective actions recommended  
15 by Massachusetts Department of Occupational  
16 Safety on that next page, was that your  
17 responsibility to do that communication?

18 A. I wrote that responsible party at  
19 Somerville Police Department.

20 Q. So you filled out the responsible  
21 party part of that. Who filled out that report?

22 A. I just compiled it. It's a  
23 compilation of the points taken from the

1 Department of Occupational Safety report which  
2 is in 2001 Bob Nicotera's report.

3 Q. Who made the decision to assign these  
4 to the various people at the Somerville Police  
5 Department?

6 A. At that time I interviewed several  
7 people from the DPW, from Police Department. I  
8 think probably somebody from fire but I don't  
9 think so. These are the two departments I talk  
10 with and make sure who is responsible for what.

11 And this particular report, what's  
12 there is an attachment with the memorandum to  
13 the police Captain Tatowsky to make them aware  
14 about their responsibilities.

15 Q. Did you monitor whether any of these  
16 items listed on this page were completed?

17 A. I never got a response back from the  
18 Police Department.

19 Q. Did you follow that up?

20 A. No.

21 Q. Why not?

22 A. Because I was expecting for everything  
23 to be done. Whenever I went there I checked it.

1 If I found something is working then nobody  
2 complain. That's what happened.

3 I didn't follow it for one simple  
4 reason that I'm not the whole responsible party  
5 here for the public safety building. It's the  
6 Police Department who are supposed to take care.  
7 I outlined it. I was never asked.

8 Q. So at the time that you wrote this  
9 memo when Dorothy Kelly Gay was the Mayor you  
10 addressed it to George McLean who was then  
11 Police Chief?

12 A. That's correct.

13 Q. Is it your testimony today that it was  
14 his responsibility to implement these items?

15 A. Yeah. That was sent and nobody send  
16 me back saying it is not our responsibility or  
17 nobody said that we are doing it.

18 Q. So who is responsible to report back  
19 to the Massachusetts Department of Occupational  
20 Safety that these things were done?

21 A. I wrote the report on behalf of the  
22 City and mentioned these are the points. Some  
23 of them are addressed. But again, as I said, I

1 got no formal notification from the Police  
2 Department or from the DPW for that matter.

3 Q. So the question I'm pointing to you  
4 is, who wrote back or who contacted or  
5 communicated to DOS that stuff was being  
6 implemented that was recommended by the report?

7 A. I contacted Department of Occupational  
8 Safety not necessarily saying that everything is  
9 implemented.

10 Q. When did you do that?

11 A. I don't know that date right now.

12 Q. Was it done within --

13 A. Within immediate future.

14 Q. This was March 2001. When did you get  
15 back to DOS to tell them, if anything, that  
16 things were being completed?

17 A. Probably in April or May. I don't  
18 know. I don't remember. I'm sorry. I don't  
19 have my reports with me.

20 Q. Let's jump ahead to Exhibit 89. It's  
21 in your file down a bit. It's June 20, 2001  
22 from the City of Somerville to Robert Nicotera.  
23 Why don't you take a quick look at that?

1 A. Sure.

2 MR. BUCKLEY: Let's take a quick  
3 break.

4 (Short recess).

5 Q. You have had a chance to review it?

6 A. Yes.

7 Q. The report to Robert Nicotera. And is  
8 this a report that you filled out and sent to  
9 Mr. Nicotera?

10 A. Yes.

11 Q. In this report you basically took care  
12 of filling out this information as required by  
13 their report to you?

14 A. Yes.

15 Q. For instance, Item Number 1, gather  
16 information and communication with employees.  
17 It states here this work is ongoing in this  
18 report. How did you know that?

19 A. That's what my understanding was from  
20 whatever information I got from the Somerville  
21 Police Department or from the Mayor's Office. I  
22 don't recall who told me.

23 Q. But you testified a few minutes ago

1 before we took our break that you sent this over  
2 to Chief McLean?

3 A. Yes.

4 Q. And he never got back to you?

5 A. No. He never got back to me. I'm  
6 still saying the same thing. I never got a  
7 departmental response. All I had was some talk  
8 with the different people within the Police  
9 Department, within DPW and within the Mayor's  
10 Office. Based on all the calls and discussions  
11 I just created the report on City's behalf.

12 Q. So your responses here are just  
13 basically -- who told you to respond on Item  
14 Number 8 here that a responsible technician is  
15 notified and necessary action has been taken.  
16 How did you know that?

17 A. The responsible technician was Charlie  
18 Alliano I believe, the person from the HVAC  
19 unit. And from him I understood that the  
20 necessary action was taken.

21 Q. Did he give you a report?

22 A. No.

23 Q. Did you have a conversation with him?

1 A. Yes.

2 Q. What did he tell you?

3 A. He provided an assurance that the  
4 police space will be positively pressured and  
5 the fire station garage --

6 Q. He's reading from the document. And  
7 if I could, it just says here recommended action  
8 is, provide assurance that the police space will  
9 be positively pressured and the fire station  
10 garage, police garage, police boiler room and  
11 firing range will be negatively pressured.

12 And the action taken it says here  
13 is that responsible technician is notified and  
14 necessary action has been taken.

15 A. Yes.

16 Q. You knew that because you had a  
17 conversation with --

18 A. Charlie Alliano.

19 Q. He told you this was done?

20 A. Yes.

21 Q. You didn't go out and check it  
22 yourself?

23 A. I'm not expected.

1           Q.     I'm just asking if you did.  Item  
2           Number 9, again the same thing.  There was a  
3           recommendation and the response was responsible  
4           technician was notified and the necessary action  
5           has been taken.  And that again was?

6           A.     Charlie Alliano.

7           Q.     It wasn't the police chief that told  
8           you this?

9           A.     No.  If I may give you a little bit  
10          more information?

11          Q.     That's why we're here.

12          A.     Basically Charlie Alliano used to sit  
13          in public safety building at that time and he  
14          was directly handling the HVAC units.  We had  
15          and we have Honeywell as our contractor to take  
16          care of our HVAC work throughout the City as of  
17          now.

18                         So whatever is the problem, police  
19          in this particular case, used to inform Charlie  
20          and Charlie on his own through the computer  
21          controls or responding to any technician from  
22          Honeywell used to take care of it.

23          Q.     So who at Honeywell did you have any

1 contact with?

2 A. No.

3 Q. You never had any contact with  
4 Honeywell?

5 A. No.

6 Q. Who would have had contact with them?

7 MR. BUCKLEY: Objection.

8 A. Charlie Alliano.

9 Q. So he is the person that would have  
10 been the person that would have contact?

11 A. Yes.

12 Q. In Number 10 on the list was carbon  
13 monoxide detectors in police garage. Action

14 taken, all carbon monoxide detectors are in  
15 place as directed. You wrote that in?

16 A. Yes.

17 Q. You actually observed those at the  
18 time yourself?

19 A. No.

20 Q. Did somebody tell you they were put  
21 in?

22 A. Yes.

23 Q. Who told you they were put in?

1 A. Again Charlie Alliano.

2 Q. Did you ever go back and make sure  
3 before you wrote this report?

4 A. I looked whatever I could understand.  
5 I sensed that I'm getting the truth.

6 Q. But you wouldn't know a carbon  
7 monoxide detector from a fire detector?

8 A. I'm not expert. So if I am told  
9 detector is ten feet high, I don't know.

10 Q. Again, this is strictly on the police  
11 side of things?

12 A. Yes.

13 Q. This has nothing to do with the Fire  
14 Department garage where they house the fire  
15 trucks?

16 A. This report is strictly as a response  
17 to the actions required or asked by the DOS  
18 during and what days -- they will be good to  
19 keep public safety working.

20 Q. The gentleman, Mr. Nicotera from the  
21 Department of Labor and Workforce Development,  
22 he was accompanied by you when they went on a  
23 tour of this facility to write this report up

1 that required certain things to be done, the  
2 recommendations here listed that you responded  
3 to?

4 A. He visited afterwards.

5 Q. So you weren't with him when he  
6 visited the building?

7 A. No.

8 Q. Do you know who was with him?

9 A. No. Just for the record, if you go on  
10 Item 14 --

11 Q. Fire station bay exhaust ventilation?

12 A. Yeah. That was required by the  
13 Department of Occupational Safety. And  
14 basically to the best of my knowledge afterwards  
15 there were some detection systems installed,  
16 carbon monoxide detection system. But I'm not  
17 hundred percent confident about that.

18 Q. Was this report ever amended to  
19 provide additional updated information to DOS  
20 and Mr. Nicotera?

21 A. No.

22 Q. And this report was written up after  
23 Cashner had gone in and done the lead evaluation

1 test?

2 A. That's correct.

3 Q. Was the firing range being used at  
4 that time?

5 A. No.

6 Q. So Number 16 states here that there  
7 was no operation of the firing range. Was there  
8 some concern about lead contamination within the  
9 building still at that time?

10 A. No, not that I know of.

11 Q. So this recommendation report that you  
12 had given to Chief McLean, he didn't come to you  
13 afterwards and help you fill out this report  
14 that you filed?

15 A. No, neither he nor his representative.

16 Q. So you were basically relying on  
17 information that Mr. Alliano had given to you  
18 that these things had been completed?

19 A. Yes.

20 Q. We're going on to Number 64 which is  
21 an e-mail.

22 A. Okay.

23 Q. It states here that we have removed

1 all the filtration material that was stuffed in  
2 the air vents restricting the flow. What was  
3 that about?

4 A. That was one of recommendations by the  
5 Department of Occupational Safety when they  
6 visited in 2004, 2005 sometime. I think 2004.

7 Q. This is dated 2005, right?

8 A. Yes.

9 Q. And they had recommended that?

10 A. Yes.

11 Q. The stuff that was stuffed in the  
12 ventilation system be removed?

13 MS. STEPHENS: Objection. Go  
14 ahead.

15 A. Yes.

16 Q. What had been stuffed in the  
17 ventilation system?

18 A. Apparently I was not involved in that,  
19 but there was one company contracted by DPW  
20 commissioner, past commissioner, not the current  
21 one in 2000 probably 1, 2, around that time.  
22 The name was Envirotech. They were supposed to  
23 clean up the duct work. And as part of their

1           technology they put some sort of filtration  
2           system to the exhaust. That particular thing,  
3           the DOS had some issues with that. So they  
4           asked to remove.

5                                 And that was part of Buildings and  
6           Grounds Division work so it was Frank  
7           Santangelo, Superintendent.

8           Q.     Okay. Approximately three or four  
9           weeks ago you accompanied an expert that went  
10          through the building --

11          A.     Yes.

12          Q.     -- to check on air quality and took  
13          samples and so forth?

14          A.     Yes.

15          Q.     You saw him go through the building?

16          A.     Yes.

17          Q.     At the time he actually pulled  
18          something off the air vents?

19          A.     That's correct.

20          Q.     What did he pull off the vents?

21          A.     It's the same thing after that.

22          That's why I asked again Frank how these things  
23          are coming up again. Probably I don't know, I

1           feel I notified him and also I notified Charlie  
2           Alliano who is the other person responsible for  
3           that. That's all I can do.

4           Q.     So you had a recent conversation after  
5           we went to the building?

6           A.     Yes.

7           Q.     Do you know if they went back in there  
8           and removed the rest of those filtration --

9           A.     I don't know.

10          Q.     Do you recall how long those  
11          filters -- what were they called?

12          A.     You can say that. There's no specific  
13          word for that.

14          Q.     Okay. I'm going to show what was  
15          marked in Exhibit Number 15. This is 15 E. We  
16          labeled them A through whatever. 15 E is a  
17          picture. Is that the item that we're talking  
18          about that was mentioned in this report?

19          A.     Yes.

20          Q.     That's the same item that --

21                   MS. STEPHENS: Objection to the  
22          question. Go ahead. I'm sorry.

23          Q.     This is Item 15 E. As we were going

1 on our view and on the building with our experts  
2 back a couple, three weeks ago in November there  
3 were still filters like that stuffed in vents,  
4 is that correct?

5 MS. STEPHENS: Objection.

6 MR. BUCKLEY: Objection to the  
7 word stuffed.

8 MR. D'ANGELO: You can answer the  
9 question.

10 Q. Well, as it's depicted here in this  
11 picture, did we observe anything there?

12 A. Yes.

13 Q. Yes, we did. Okay. In this memo it  
14 says that all the filtration material that was  
15 stuffed in the vent was removed, correct?

16 A. Yes.

17 Q. That wasn't the case?

18 MR. BUCKLEY: Objection.

19 Q. Mr. Santangelo stated to you that it  
20 had been done?

21 MR. BUCKLEY: That was '05. How  
22 do you know they weren't all removed and taken  
23 back? So you can't make that assumption.

1                   MR. D'ANGELO: Sure we can. We  
2                   have had testimony in previous deposition as to  
3                   when they finished their contract period.

4                   MR. BUCKLEY: Right. Are they the  
5                   only ones that have those filters?

6                   Q. Let me ask you this question. Was  
7                   anybody else hired to do any kind of putting  
8                   filters on the vents besides the folks --

9                   A. I'm not required to know everything.  
10                  That is a point I made earlier. So I don't know  
11                  as I said.

12                  MR. BUCKLEY: Just answer the  
13                  question. If you don't know you don't know.

14                  A. I don't know. Specifically  
15                  Envirotech, I don't know when they are there and  
16                  when they stopped. And right now I don't know  
17                  if anybody was hired.

18                  Q. But the report that we talked about  
19                  goes back to 2001?

20                  A. Yes.

21                  Q. Then your report in 2005 said that the  
22                  stuff was taken care of?

23                  MS. STEPHENS: Objection.

1 MR. BUCKLEY: Objection. He's  
2 asking you to comment on someone else's letter.

3 MR. D'ANGELO: To him.

4 MR. BUCKLEY: Santangelo. He  
5 never made a report that said it was taken care  
6 of. You said he did. That's incorrect.

7 A. Number 1, it was not asked by DOS in  
8 2001. It was asked in 2004.

9 Q. Right.

10 A. So you are showing me report from 2001  
11 and referring it to 2005 e-mail that somebody  
12 sent to me. So I don't think I can answer it.  
13 You have to see report from 2004.

14 Q. In the report on Item Number 6 on  
15 Exhibit Number 89, page two it says here, remove  
16 the filters from the exterior vent covers on the  
17 supply and return vents. The housekeeping  
18 should be more carefully monitored and  
19 maintained to reduce the levels of dust indoors.  
20 It says action taken, an outside contracting  
21 company, Envirotech, performs this entire work  
22 quarterly hence it's already an ongoing  
23 activity.

1                   The question I posed to you is to  
2                   remove the filters back in 2001.

3                   A.     Yeah.

4                   Q.     Do you know if the filters were  
5                   removed in 2001?

6                   A.     Yes.  There are two different answers  
7                   to that.  This one is specifically mentioned not  
8                   to remove forever.  That was specifically  
9                   mentioned in the Department of Occupational  
10                  Safety, if I remember correctly, 2004 report  
11                  which was not by Bob Nicotera but somebody else.  
12                  I don't recall her name right now.

13                  Here it was just asked to make  
14                  sure that the filters which are already full of  
15                  dust should be removed.  And at that time as  
  
16                  part of the corrective action to make sure that  
17                  duct work is clean.  This particular company was  
18                  hired and they were doing the whole work.

19                  As part of their work they always  
20                  used to remove the filters and replace them with  
21                  a clean one.  Then in 2004 when Department of  
22                  Occupational Safety came again they just asked  
23                  to stop having those filters at all.

1                   So what Frank Santangelo's e-mail  
2                   is, the e-mail by Frank Santangelo, that is in  
3                   response to removing the filters forever in  
4                   2005.

5                   Q.       So there was another DOS report in  
6                   2004 saying those filters should be removed?

7                   A.       I don't recall if there was a formal  
8                   report or it was a walk through.  But the person  
9                   who came from DOS in 2004 specifically mentioned  
10                  that just stop that thing.  We don't want it.  
11                  Because they are not getting the point and they  
12                  just want to stop it.

13                  Q.       We already confirmed that the filters  
14                  were still there in 2006 when we walked through  
15                  a few weeks ago?

16                               MR. BUCKLEY:  Objection.

17                               MS. STEPHENS:  Objection.

18                  A.       Some of them.

19                  Q.       Some of them.  Did anybody ever raise  
20                  an issue about the stuff that was being put on  
21                  the filters themselves?

22                               MS. STEPHENS:  Objection.

23                  Q.       Did anybody have any conversation

1           about what the substance was that were on the  
2           filters?

3                           MS. STEPHENS:  Objection.

4           A.     No.

5           Q.     Let's look at Exhibit Number 65.  It  
6           has a file tracking record on it, 05S0068.  An  
7           engineer signed it, Comeau.  Is that a person --

8           A.     That's correct, Nancy Comeau.

9           Q.     That person works for who?

10          A.     C O M E A U.  She was basically from  
11          Department of Occupational Safety who advised us  
12          to remove the filters.

13          Q.     This was dated September 27, 2004,  
14          e-mail on the second page of that, of Number 65?

15          A.     Yeah.

16          Q.     In summary of this it asks that they  
17          stop putting -- it asks Envirotech to stop their  
18          services?

19          A.     Correct.

20          Q.     Do you know what their services were  
21          at the time?

22          A.     I'm sorry.

23          Q.     Do you know what the services of

1 Envirotech at that time were?

2 A. No.

3 Q. In this e-mail from you to Carol  
4 Antonelli which is on that same page, it appears  
5 the filters used by Envirotech are at return air  
6 exhaust which apparently is becoming a barrier  
7 in the HVAC operation of the building.

8 Is that something that you  
9 investigated yourself or somebody else told you  
10 that?

11 A. DOS, Nancy Comeau told me.

12 Q. What did you do if anything to make  
13 sure that that problem was resolved?

14 A. That's why I wrote the e-mail and  
15 that's why I followed up with the Buildings and  
16 Grounds.

17 Q. Who did you speak over at Buildings  
18 and Grounds Division to?

19 A. Frank Santangelo.

20 Q. What did Frank tell you?

21 A. That's what his e-mail is.

22 Q. That's what his e-mail was, that it  
23 was taken care of?

1 A. Yeah. Afterwards.

2 Q. Number 66, March 9, 2005. This is a  
3 letter from you to Nancy Comeau?

4 A. Yes.

5 Q. She's a certified industrial hygienist  
6 with DOS?

7 MR. BUCKLEY: If you know.

8 Q. It says on the letter from him to her.

9 A. That's what her business card, I just  
10 copied it from. Yes, she has her certification  
11 too.

12 Q. It says on Item Number 1, we have  
13 removed all the filtration material that was  
14 stuffed in the air vents restricting the flow.

15 A. That was based on the e-mail from  
16 Frank Santangelo.

17 Q. But you never looked at that yourself?

18 A. I looked at many places. I didn't  
19 see.

20 Q. You have been out to that building how  
21 many times in the last year?

22 A. Less than ten or ten maximum.

23 Q. Did you observe at any time the

1 filters -- prior to our visit did you ever  
2 observe those filters in there?

3 MS. STEPHENS: Objection.

4 A. No.

5 Q. So the first time you saw those  
6 filters was when we were out there three weeks  
7 ago?

8 MS. STEPHENS: Objection.

9 A. I don't know which areas we looked at  
10 filters and I don't remember which areas I went  
11 to. It's a huge building, so not necessarily  
12 I'm always going to go to the same location  
13 where we saw the filters.

14 Q. It says here we have implemented a  
15 vigorous regiment of cleaning and vacuuming  
16 around the building in spots where we get  
17 complaints. Where were you getting complaints?

18 A. From the police.

19 Q. Where were the areas that you were  
20 getting complaints about?

21 A. Their complaint -- this is  
22 specifically -- this particular point is the  
23 specific response to the question of

1 housekeeping. And she asked us to make sure  
2 that there was continuous vacuum and  
3 cleanliness, more and more cleanliness.

4 Q. Who is responsible for that?

5 A. Buildings and Grounds.

6 Q. Specifically at Buildings and Grounds?

7 A. I don't know. There's a custodian who  
8 was responsible to clean it up and the Buildings  
9 and Grounds superintendent is Frank Santangelo.

10 Q. It says we have addressed many roof  
11 leaks which are causing dampness and moisture in  
12 walls in various locations throughout the  
13 building. That was Item Number 2. How did you  
14 address that issue? That's Item Number 2 on the  
15 first page.

16 A. If you see again the same e-mail from  
17 Frank Santangelo, Item Number 64.

18 Q. So he was telling you that the problem  
19 was --

20 A. That's correct.

21 Q. Again, we were out there three weeks  
22 ago, do you recall?

23 A. Yes.

1           Q.     Do you recall if there was water  
2           leaking in the front foyer as we were in the  
3           building?

4           A.     When she asked about the roof she  
5           specifically asked for the roof leak in the  
6           office area on the second floor.  And Frank  
7           Santangelo is referring to that particular area.

8           Q.     But it doesn't say that in this memo  
9           or letter from you to --

10          A.     No, it doesn't say but I'm explaining.

11          Q.     But you do recall the water leaking  
12          into the front part of the building when we were  
13          there?

14          A.     But I also recall about what is  
15          written there.

16          Q.     But there was water leaking all over  
17          the front end of the building?

18          A.     Yeah, but that was not a part of this  
19          e-mail.

20          Q.     It says in Number 4, you have given  
21          repair orders to Honeywell Corp to do some  
22          restructuring of the ventilation system.  When  
23          you say we, who are you talking about?

1           A.     When I say we I am representing the  
2           City of Somerville. I'm writing this letter on  
3           behalf of the City of Somerville. So when I say  
4           we it is by the City.

5           Q.     Did you see those repair orders go to  
6           Honeywell?

7           A.     I didn't see personally. I was told  
8           by again Charlie Alliano who is responsible for  
9           HVAC for the City. But I'm sure that we can --  
10          we may be able to find some standard process  
11          to --

12                   MR. D'ANGELO: We'd like to see  
13          those repair -- when we got our records back  
14          from you we never saw any repair orders to  
15          Honeywell --

16                   MR. BUCKLEY: I'm not aware of  
17          any.

18                   MR. D'ANGELO: Off the record.

19                           (Discussion off the record).

20          Q.     So just for clarification, the repair  
21          orders could be from -- who might issue those?

22                   MR. BUCKLEY: What number is that?

23                   MR. D'ANGELO: Number 4. It says

1 specifically we have given repair orders to  
2 Honeywell Corp to do some restructuring of the  
3 ventilation system. And what we're looking for  
4 is who might have copies of those repair orders  
5 that went to Honeywell or any communications or  
6 documents that went to Honeywell that are  
7 relevant.

8 A. Sure.

9 MR. D'ANGELO: Because it's  
10 relevant material. Whatever you send to us I'm  
11 sure other counsel would be interested in as  
12 well.

13 MR. BUCKLEY: Maybe.

14 Q. We are going to Number 67, a  
15 memorandum to John Gannon and Joseph Curtatone  
16 from Vithal Deshpande. So the question is you  
17 drafted this document?

18 A. That's correct.

19 Q. And what did you rely on to get this  
20 information to put this together?

21 A. On all my experience with this  
22 building.

23 Q. Did you review certain documents to

1 put this together?

2 A. As you can see some of the documents  
3 are lettered with firing range, state inspection  
4 August 200 and state inspection September 2004  
5 all we discussed right now. And those are the  
6 documents that I relied upon as well as my  
7 communication with the DPW folks including but  
8 not limited to Charlie Alliano about the  
9 Honeywell and other issues and also with my  
10 discussion with Elaine Middleton related with  
11 the DEP regulations.

12 Q. So starting with the section public  
13 safety building, who did you talk to  
14 specifically to get that information regarding  
15 that first paragraph?

16 A. I don't recall a specific person  
17 because this information I had gathered while  
18 talking with many people within the public  
19 safety building, police officers as well as some  
20 of the other administrative people. I don't  
21 recall anything specific given the reference  
22 here so I don't want to quote any specific  
23 reference.

1 Q. The second paragraph something about a  
2 major storm. After a major storm in 1997.  
3 Where did you get that information from?

4 A. That is also from the Police  
5 Department, Fire Department and through DPW.

6 Q. Did you interview somebody over there  
7 specifically to get this information?

8 A. I didn't specifically interview  
9 because that wasn't the intent.

10 Q. Was it something that you had in your  
11 files regarding this particular location that  
12 you used to put those paragraphs together?

13 A. No.

14 Q. How did you know that the exterior  
15 wall referred to as the Miriam Street side wall  
16 had some structural deficiencies resulting in  
17 water damage in interior rooms? How did you  
18 know that?

19 A. That was something that came into  
20 discussion during DOS visit in 2004 by Nancy  
21 Comeau. And around that time as I mentioned  
22 earlier I came across the SGH report regarding  
23 the situation.

1 Q. Then it says nature of complaints.  
2 Did you interview anybody to talk about the  
3 nature of complaints?

4 A. I always talk. I can not define them  
5 as interviews.

6 Q. You said you talked to the office  
7 staff?

8 A. I talked with captains. Then I talked  
9 with policemen. I talked with 911 officials.

10 Q. Did you take down notes when you took  
11 those meetings?

12 A. No, not necessarily. No formal notes.

13 Q. So you just went in and -- you don't  
14 remember who you talked to?

15 A. I don't recall the names but I can --

16 Q. What was the nature of their  
17 complaints when you talked to them?

18 A. Basically their complaints are first  
19 of all related with the cleanliness and the  
20 concern about air quality if there is any  
21 problem. Many times I also heard that because  
22 the Fire Department who used to house in the  
23 same building in the basement or on the first

1 floor from the Somerville Avenue site, they  
2 vacated that offices after 1997 storm.

3 So there must be some issues and  
4 we don't want to be placed at the location which  
5 may have some issues. So all complaints are  
6 logically related with that 1997 storm and any  
7 potential water damage.

8 Q. Going to page two of this confidential  
9 report labeled confidential at the bottom, do  
10 you know why it was confidential?

11 A. If you see any of my e-mail I always  
12 put that in.

13 Q. In paragraph Number 2 state inspection  
14 August 2000. It says here no test results  
15 showed any indoor air quality parameter that  
16 could have adverse impact on the health of the  
17 occupant. What testing was done at that time on  
18 air quality?

19 A. As mentioned about Number 2 and Number  
20 3, state inspection 2000.

21 Q. I'm talking about the air quality.  
22 Who did the testing?

23 A. DOS.

1 Q. What type of air quality testing did  
2 they do?

3 A. They did for carbon monoxide, carbon  
4 dioxide, volatile organic compounds, humidity,  
5 temperature. There might be a few I don't  
6 remember.

7 Q. At that time in August of 2000 you had  
8 just started work for the City?

9 A. Yeah.

10 Q. How long had you been working for the  
11 City in 2000?

12 A. Less than one year.

13 Q. Did the air quality issues for the  
14 testing, did they test for mold at the time in  
15 2000?

16 A. Not that I recall.

17 Q. Did they take any kind of samples from  
18 inside the air ducts at that time?

19 A. I don't think so.

20 Q. So they just strictly sampled air at  
21 that particular moment in time?

22 A. They did indoor air quality testing by  
23 their own regulation requirements.

1           Q.     And again in 2004 you state again that  
2           visit second time for inspection again found no  
3           test results that would prove indoor air quality  
4           having any adverse health effects.  What air  
5           quality testing did they do at that time?

6           A.     They did the same testing.

7           Q.     So they didn't do any testing for  
8           mold?

9           A.     They didn't do any testing for mold.  
10          Basically if I understand correctly, both times  
11          Department of Occupational Safety was called or  
12          they came upon receiving the complaint from the  
13          Police Department or police union -- I don't  
14          know who complained -- or some police employees.  
15          And they checked to confirm if there is any  
16          health issue.

17                         Because my understanding that they  
18          had concerns about certain things within the  
19          building but they didn't specifically mention  
20          that it is creating any health impact.

21          Q.     What were their concerns, do you  
22          recall?

23          A.     Like the filter.  I'm just giving an

1           example. Cleanliness, because they wanted the  
2           area to be more clean in the sense because the  
3           location is Union Square. Sometimes it can be  
4           more dust so they wanted to have more  
5           cleanliness.

6           Q.     Did anybody test the dust at any of  
7           those particular times, August 2000 or September  
8           2004?

9           A.     No. Can I ask one question?

10          Q.     If you want to add something.

11          A.     Yes. When you say dust what do you  
12          mean by testing dust?

13          Q.     Several reports --

14          A.     Because when they test the particulate  
15          matter that consists of dust so that's what I  
16          want to clarify.

17          Q.     Well, there was stuff that was  
18          appearing on the filters themselves, correct?

19          A.     Yes.

20          Q.     Did anybody ever test to see what that  
21          stuff was on the filters?

22          A.     No.

23                         MR. BUCKLEY: Objection.

1 MS. STEPHENS: Objection.

2 MR. BUCKLEY: Let's take the  
3 break.

4 (Short recess).

5 MR. D'ANGELO: We are continuing  
6 today's deposition until Tuesday, January 23 or  
7 a date that is acceptable to the attorneys  
8 involved in the matter.

9 (The deposition was suspended at  
10 1:42 p.m.)

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

2

3

4           STATE OF MASSACHUSETTS

5           COUNTY OF PLYMOUTH

6

7                   I, Carolyn McGill, a Notary Public in  
8           and for the State of Massachusetts, do hereby  
9           certify that the foregoing transcript of the  
10          deposition of Vithal Deshpande, having been duly  
11          sworn by the Notary Public, on Tuesday, December  
12          12, 2006, is true and accurate to the best of my  
13          knowledge, skill and ability.

14                   IN WITNESS WHEREOF, I have hereunto set  
15          my hand and seal this 12th day of December,  
16          2006.

17

18

19                                   Carolyn McGill

20

21          My commission expires:

22          April 21, 2011

23