

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. Superior Court Dept  
CA No. 2005-2665

\* \* \* \* \*

JOHN AUFIERO, NEIL F. COLLINS, ROBYN L. DEFRANZO,  
DANIEL HYDE, PATRICK J. IRVING, THOMAS A. LEYNE,  
JOHN MAHONEY, JOSEPH E. MCCAIN, WILLIAM MCCARTHY,  
TIMOTHY MITSAKIS, LOUIS M. REMIGIO, SUSAN J. DESOUSA,  
individually and 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, 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.

\* \* \* \* \*

The deposition of ROBERT J. NICOTERA,  
a witness called on behalf of the Plaintiffs,  
provisions of Rule 30 of the Massachusetts Rules of  
Civil Procedure, before Carmen Branson, Court  
Reporter and Notary Public in and for the  
Commonwealth of Massachusetts, at the offices of  
D'Angelo & Hashem, 6 Beacon Street, Boston, MA  
02210, on Thursday, February 22, 2007, commencing at  
11 a.m.

1 APPEARANCES:  
STEPHEN L. D'ANGELO, ESQ.  
2 JAY MARSHALL WOLMAN, ESQ.  
D'Angelo & Hashem, LLC  
3 6 Beacon Street, Suite 505  
Boston, MA 02108  
4 (For the Plaintiffs)

5 MATTHEW BUCKLEY, ESQ.  
Assistant City Solicitor  
6 City of Somerville  
93 Highland Ave.  
7 Somerville, MA 02143  
(For the City of Somerville)

8 CYNTHIA J. STEPHENS, ESQ.  
9 Governo Law Firm, LLC  
260 Franklin Street  
10 Boston, MA 02110  
(For Envirotech)

11 CARLY B. GOLDSTEIN, ESQ.  
12 DONOVAN HATEM LLP  
World Trade Center East  
13 Two Seaport Lane  
Boston, MA 02210  
14 (For Simpson Gumpertz & Heger, Inc.)

15 KATHRYN B. PALMER, ESQ.  
The Commonwealth of Massachusetts  
16 Division of Occupational Safety  
399 Washington Street, 5th Floor  
17 Boston, MA 02108  
(For the Deponent)

18  
19  
20  
21  
22  
23

1	I N D E X				
2					
3	Deposition of:	Direct	Cross	Redirect	Recross
4	Robert J. Nicotera				
5	(By Mr. D'Angelo)	4		87	
6	(By Ms. Stephens)		72		
7	(By Ms. Goldstein)		79		
8	(By Mr. Buckley)		80		
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					

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

2 MR. D'ANGELO: Same Stipulations.

3 S T I P U L A T I O N S

4 It is stipulated by and between counsel  
5 for the respective parties that the deposition  
6 transcript is to be read and signed by the deponent,  
7 waive notary; and that the sealing and filing thereof  
8 are waived; and that all objections, except as to  
9 form and motions to strike are reserved to the time  
10 of trial.

11 ROBERT J. NICOTERA, Sworn

12 DIRECT EXAMINATION

13 Q. (By Mr. D'Angelo) Could you state your name  
14 for the record?

15 A. My name is Robert Nicotera.

16 Q. And your you are here on a Notice of  
17 Deposition, Exhibit Number 121. And you are an  
18 engineer at Division of Occupational Safety at the  
19 Commonwealth?

20 A. Correct.

21 Q. My name is Stephen D'Angelo. I represent  
22 the plaintiffs in this matter. I am going to be  
23 asking you questions relative to the City of

1 Somerville's Public Safety Building at 220 Washington  
2 Street in Somerville.

3 A. Yes.

4 Q. Have you been deposed before?

5 A. In my life? Yes. I have been through this.

6 Q. You are familiar with how to answer  
7 verbally?

8 A. Yes.

9 Q. Not shaking your head yes or no, but  
10 answering as you are right now?

11 A. Yes.

12 Q. If you need a moment to take a break or  
13 whatever, I just ask that I finish the question and  
14 the answer and then we will take the break. I don't  
15 expect to be here a whole huge amount of time.  
16 Unless you enlighten me with something that wasn't  
17 expected. To get started here why don't you tell me  
18 your position and what you do for the Commonwealth of  
19 Massachusetts?

20 A. Currently I am not with the same group that  
21 I was when I performed the inspection at the  
22 Somerville site. I am currently with the OSHA  
23 Consultation Group at the Division of Occupational

1 Safety. At the time I was an inspector, I was with  
2 the indoor air quality program. They call it the  
3 state side program with the Division of occupational  
4 Safety. The indoor air quality program, we  
5 conducted, I mean the name stands for basically the  
6 thrust of what we did. A lot of indoor air quality  
7 surveys. Currently I am an indoor OSHA consultant.  
8 I do private sector safety and health inspections  
9 based upon OSHA regulations currently.

10 Q. You still work for the Commonwealth?

11 A. Yes. Correct.

12 Q. How long have you worked for Commonwealth?

13 A. That is a good question. I am still trying  
14 to calculate that. It is approximately 21ish years  
15 totally.

16 Q. What is your educational background?

17 A. I have a Bachelor of Arts in biology from  
18 Boston University. And I also have a juris doctorate  
19 from Mass School of Law.

20 Q. Have you taken the bar?

21 A. Yes. I passed the bar. I am currently with  
22 the Mass Bar in good standing. I am inactive status.  
23 I devote my full time to my state job.

1 Q. When did you attend Mass School of Law?

2 A. Off and on. '91 to '94, part time nights.  
3 Yes. It was interesting start. Because the school  
4 was just getting started up, so it was a growing  
5 process there.

6 Q. How did you come to be involved with the  
7 Public Safety Building in Somerville?

8 A. Well we received a complaint as we typically  
9 do at that time in the indoor air quality program.  
10 And what happens it comes in typically by phone and  
11 sometimes by letter. And in this case it was a  
12 combination of things. And the complaint goes to the  
13 supervisor. At that time it was Nancy Comeau. And I  
14 call her a technical supervisor because basically she  
15 looks at the technical aspects of the survey and  
16 report. So she assigned me this situation because  
17 there was concern about a firing range and I had  
18 previously done work in firing ranges. So she  
19 thought it would be a good fit for this particular  
20 investigation.

21 Q. And do you remember what year that was?

22 A. That was in 2000 and referring to the -- can  
23 I refer to the main file?

1 Q. Sure.

2 A. It was sometime in the fall of 2000. And I  
3 don't know exactly when the complaint came in, but I  
4 know that paperwork came in. There was a letter  
5 about, you know, the concerns of the range. So what  
6 happens, you will get documentation that accompanies  
7 the complaint sometimes, so with that there was at  
8 least one piece of documentation that showed that  
9 there were concerns about the firing range.

10 Q. And was there anything else besides the  
11 firing range that you were looking into?

12 A. Initially that was what I went there for was  
13 about the firing range but after I got there, there  
14 was a lot of people at the initial meeting similar to  
15 what we are sitting here now, multiple groups  
16 representing multiple people in the city.

17 My whole purpose was the firing range,  
18 but after I arrived there which is really kind of  
19 typical in these types of investigations, it is very  
20 common when you go to a city or a town. You are  
21 going to an investigation and it kind of blossoms  
22 into many other things. And I think that is what  
23 happened here. It turned into from one focus to

1 other related indoor air quality matters, that, you  
2 know, I felt responsible that I had to, you know,  
3 look into and see what I could do.

4 Q. Do you recall who was at that meeting?

5 A. There were a lot of people. The room was  
6 full. I didn't take down names, et cetera. I  
7 typically don't because it's really -- my job is  
8 there to really to find, you know, what they are  
9 concerned about. I did take a lot of notes and I  
10 tried to put the notes in the report.

11 But I usually don't write down the names.  
12 I usually try to go to the person that is really  
13 going to help me get the investigation accomplished.  
14 But there was a lot of stuff, communications back and  
15 forth. So I just tried to focus on my job to get to  
16 that firing range and see what they wanted me to do.

17 Q. Was there anybody else with you besides  
18 yourself from the state?

19 A. No. Just myself. Just myself. I was the  
20 only person there.

21 Q. So after you had this person with unnamed  
22 people from the city and whatever, did anybody else  
23 join you after that?

1           A. Not from the state. Not that I can recall  
2 from my office.

3           Q. Was there anybody else from any entity that  
4 joined you?

5           A. Well there was a whole group of people. I  
6 had an entourage.

7           Q. You had an entourage following you in the  
8 public safety building?

9           A. Yes. I remember when I was in the range, for  
10 example, there was at least three or four people at  
11 times, and then it would filter down as I kept going  
12 and going. For the most part, there was always two  
13 or three people there.

14          Q. How did you conduct your investigation?  
15 What exactly did you do as part of your  
16 investigation?

17          A. I do a lot of things. I do a lot of things.  
18 Each area, it is hard to describe to be frank. It is  
19 hard to describe the things you do. A lot of it is  
20 basically communication and educating people. A lot  
21 of it is. It's a lot of questions and answers. A  
22 lot of investigations and questions. It is a lot,  
23 people ask a lot of questions and you get a lot of

1 information. So as I was walking through, people  
2 would make comments, I would ask questions, I make  
3 observations and take down notes, and I did conduct  
4 some tests also. I had to really do it step by step  
5 because it was a big building. There was a lot of  
6 things going on. It was a multi-use building. It is  
7 typical in this day and age. A multi-use building.

8                   So when you go, you go in like I  
9 mentioned. Initially for the firing range. That is  
10 a complex process in and of itself. After I got  
11 there, so many other things came up that I was drawn  
12 into, that other stuff. So I tried to see if indeed  
13 it was related in this concern. Part of the problem  
14 or whatever the concern in the indoor air quality is  
15 that people don't really understand exactly sometimes  
16 what indoor air quality is versus other industrial  
17 process that go on.

18                   That is part of the thing too is trying  
19 to educate people so that they can really determine  
20 what their concerns are. It is like a process of  
21 asking questions, getting answers, taking down notes,  
22 trying to focus on what they originally wanted but  
23 also taking into fact that there are other concerns

1 that may or may not be tied in. And that is what the  
2 report really turned into was a focus on the range  
3 and that was the crux of it. But then other things  
4 as I went along, I didn't want to refuse people and  
5 say no, I can't do that because I feel that part of  
6 my job is to help all of the workers at the site, you  
7 know, investigate their concerns.

8 Q. Did you look into any previous  
9 investigations that have been conducted by D.O.S  
10 before you went out to the site?

11 A. Before I went out, no. I might have heard  
12 some information. But before I went out, no. And  
13 generally, I don't. I found through my empirical  
14 experience, it is probably better for me not to look  
15 at previous information. You always, you know, get  
16 information. You might get a letter or, you know,  
17 discussion with somebody, but typically I do not look  
18 at prior reports. Why. Because I like to go in  
19 fresh. I like to go in without any -- I want to go  
20 in and focus on what the complaint is and get that  
21 accomplished first. Then if other stuff comes in  
22 that might be related, then I look at it.

23 Q. So the first day you were there, do you know

1 how much time you spent there?

2 A. It must have been a very very long time.  
3 Typically they take a very very long time. I know I  
4 must have spent the entire day and then some of these  
5 turn into a full day affair. It could have easily  
6 been a full day.

7 Q. So you put in approximately a full day  
8 there?

9 A. Yes.

10 Q. And then what did you do next?

11 A. Then I go back to the office. Now, at that  
12 site the records show I took air sample result for  
13 volatile organic compounds. That is very very  
14 typical. We put a GC scan, gas chromatography scan.  
15 That is a very very common kind of -- it is a  
16 procedure. A scientific procedure where we try to  
17 look at a large group of things that might be present  
18 in the air, generally speaking. And that's what I  
19 typically do at almost every air quality inspection  
20 that I have ever done. And I ran those samples.

21 So typically what I will do, I will go  
22 back and I will prepare those samples for the lab.  
23 I'll fill out a form and I will submit them to our

1 lab at the office at West Newton and then I probably  
2 gathered my equipment and try to get things together  
3 as far as just, you know, trying to prepare for my  
4 results. You know my data. Trying to get it  
5 together so I can be prepared to write a report.

6 Q. So you have a lab?

7 A. Yes.

8 Q. So you actually take these samples and run  
9 them through, this is a state run lab?

10 A. Yes. We do have a laboratory. And they  
11 have some instruments and that's typically what we do  
12 for the state group that I was working for.

13 Q. So how did you take your samples? How did  
14 you collect your samples?

15 A. Typically what you do is you buy this  
16 standardized, in this case when you run the GC scan,  
17 you run a charcoal tube, because charcoal is a good  
18 absorbant for chemicals. As we know, like the Brita  
19 pitcher of water. It is a good media for which you  
20 collect samples and run this type of test. So that's  
21 what I did. I ran multiple tests in multiple areas  
22 and that is in the report to determine if there is  
23 any kind of significant organic compound in the

1 building.

2                   So I -- what we do is we buy the charcoal  
3 tubes in advance and we bring them with us just in  
4 case we encounter, you know, that opportunity to do  
5 it. But like I said I usually do it as a standard  
6 matter because, you know, I think we do that. We did  
7 that as a standard course of events to see hey, maybe  
8 there is something in the air. But I didn't find  
9 anything significant in those samples.

10           Q. So the samples you took you gave to the lab?

11           A. Yes.

12           Q. And the lab produced some kind of report to  
13 you?

14           A. Yes. Yes. What they do, they will run the  
15 samples. I will prepare them and I will log them  
16 into the lab logbook, and then they take the charcoal  
17 tubes, I labeled them et cetera, and I submit them to  
18 the lab and then the lab will run these samples on  
19 the instrumentation. And then they'll put out a  
20 report. And then what I do is I take that  
21 information and I transcribe it as best I can to the  
22 lab sheet.

23           Q. And besides that, what else did you do when

1 you went back to your office. Did you look at any  
2 other investigations on that building from the past?

3 A. Well, as part of the report, I included  
4 previous investigations of that building. Because I  
5 was, you know, from, you know, from the comments and  
6 information that I received during my investigation,  
7 I discovered we were there before. And it might be  
8 something that might shed some light on what other  
9 people are talking that I might not find during my  
10 survey. And also to emphasize that we were there  
11 before. Maybe it is something that is repeating.  
12 Maybe something unique. Maybe it is something  
13 noteworthy. For all of the above reasons.

14 I mean, I just thought it would be better  
15 in a general sense to provide previous information to  
16 try to draw some sort of insight on what the building  
17 is about. Maybe the history might be helpful. So I  
18 looked at three separate documents -- well they  
19 weren't necessarily all documents. One might have  
20 been just an inquiry. When they first opened, there  
21 was an investigation. And the scope and the nature  
22 of those investigations, I am not really, you know,  
23 totally clear about. I don't know what those people

1 did.

2                   But I tried to at least get some sort of  
3 main conclusion. Okay, what did they go for in the  
4 previous times. I mean what was it then because then  
5 it might have tied in something that maybe they were  
6 trying to figure out now. I thought that might be  
7 helpful.

8           Q. I am going to show you Exhibit Number 86  
9 which is dated February 21, 2001.

10                   Take a minute and just review it.

11           A. All set, thank you.

12           Q. And I am going to show you Exhibit  
13 Number 51. And see if you have ever seen that and  
14 those materials before.

15           A. This document doesn't look familiar to me.

16           Q. It is actually a collection of documents  
17 going back. That would probably be on file with  
18 D.O.S in a file some place. That is where we got it.

19           A. I am not familiar.

20           Q. So as part of your -- just keep looking.

21           A. This is from a lab.

22                   MS PALMER: The next page is.

23                   THE WITNESS: Department of Health and

1 Human Services request from services.

2 Q. Just keep going.

3 A. This one looks familiar but I don't know if  
4 I am assuming.

5 Q. Which one are you referring to?

6 A. The '93 one from our agency. Thinking that  
7 is the one I referred to. See it is an inquiry. I  
8 tried to define it in the report.

9 MR. BUCKLEY: Are we referring to  
10 June 23, '93, to Robert Carol.

11 MR. D'ANGELO: Correct.

12 MR. BUCKLEY: From Paul Boody. It is  
13 in the middle of 51. I don't think that is the best  
14 way to identify documents.

15 MS. GOLDSTEIN: Can we wait until we  
16 are all on the same page.

17 A. The first one that I recognize is the '93.  
18 I think this is the one that I was referring to as  
19 far as in my report, 1993 IAQ response attached. I  
20 might not have had the inquiry. I didn't have the  
21 inquiry. That's why I called the response. I might  
22 not have had the whole document. I wanted to include  
23 that information because it was another investigation

1 that I thought might be helpful. Hang on a second.  
2 Let me finish so we have everything. See this is the  
3 '93. If it says Joel Wettig, W-E-T-T-I-G.

4 MS PALMER: I am not sure why these  
5 particular documents are attached together.

6 MR. BUCKLEY: I think the reason is  
7 because this is the guy who's police union president  
8 at the time. He writes a memo to someone. He  
9 attaches all these things so it is part of his  
10 document.

11 MS PALMER: But there are multiple  
12 agencies.

13 A. I mean this stuff, I mean I know that there  
14 was a lot of news stuff, but I don't remember going  
15 through that. This is the '86 one. Now this is the  
16 other '86 one that I think I included. No. This  
17 might be the one that I was referring to.

18 MS PALMER: Does it have a number on  
19 it.

20 A. 86934. So I do recall that this one is  
21 probably the one that I was referring to and that the  
22 '93 one was probably the one that I was referring to  
23 here. But this other information, you know, a lot of

1 it I don't remember. You know it might have crossed  
2 my desk, but I don't remember it. I pretty much  
3 focussed on what we had done and I did know that it  
4 was in the media. I did know that.

5 Q. I am going to show you exhibit number '96.

6 A. Okay. Yes. I am familiar with this one.  
7 This is the July '98 one that I was referring to.  
8 June of '98 and I did work with Ken Ridlon and I did  
9 look at this and I got the extent of this and he had  
10 this so I knew that there was concerns about it.

11 And this here, again, '93. This looks  
12 familiar too, this one. Again and then this one.  
13 Again '86. So I did focus on the '86 and '83 and '98  
14 to include that.

15 Q. And I am go going to show you Exhibit 29  
16 which is a report that was prepared by Simpson  
17 Gumpertz & Heger.

18 MS PALMER: Am I going to be supplied  
19 copies of these?

20 MR. D'ANGELO: Sure.

21 A. This one I don't remember reviewing. I  
22 don't recall reviewing this document. I would have  
23 remembered this. But again there was a lot of

1 documents. The pictures might. This is a full  
2 review of the building. The wall leakage  
3 investigation in April '99.

4 MS PALMER: Did you get that document  
5 from us.

6 MR. D'ANGELO: No.

7 MS PALMER: I was going to say it  
8 doesn't look familiar.

9 A. It doesn't look familiar. Sometimes a  
10 picture will help you remember. The pictures really  
11 don't look familiar either. I might have seen some  
12 other pictures in a news item. That doesn't look  
13 familiar.

14 Q. I am going to show you Exhibit Number 87.

15 A. Yes. This is familiar with me. This is a  
16 response that I, a response letter to a meeting that  
17 I had with a representative of the city.

18 Q. Was this the first meeting that you  
19 attended?

20 A. No. My second.

21 Q. How many meetings did you have in total with  
22 the city?

23 A. As far as I can remember, two meetings and

1 then one I went back to the roof to do a followup  
2 survey on the roof because it was raining on the  
3 first survey date and I didn't want to go up on the  
4 roof because it was literally raining most of the  
5 day. So I asked to come back and go up on the roof  
6 on a dry day.

7 Q. And then I am going to show you Exhibit  
8 Number 88.

9 A. Yes. I do recognize this.

10 Q. Was that the report that you prepared for  
11 the city?

12 A. Well this is a follow-up report to the  
13 original report to follow up. And this was in  
14 reference to going up on the roof on a dry day, so I  
15 could review the exhaust vents on the roof. So I  
16 call like a followup, an addendum to the original  
17 survey.

18 Q. Which was Exhibit Number 86. That's this  
19 one right here?

20 A. Correct.

21 Q. So in this report that you prepared which is  
22 Exhibit Number 86, February 21, 2001, you go through  
23 the report, you give a kind of history, and then you

1 basically make recommendations?

2 A. Yes.

3 Q. And in the recommendations, you talk about  
4 corrective actions that need to be done?

5 A. Yes.

6 Q. You talk here about gathering additional  
7 information on different aspects of the building and  
8 forward the response and see what the occupants need.

9 A. Yes.

10 Q. And then your second recommendation is to  
11 address water damage materials?

12 A. Yes.

13 Q. We are on Page 15. So Item Number 2 is  
14 address the water damage materials.

15 What did you observe in terms of water  
16 damage materials in the building at the time you did  
17 your investigation?

18 A. Well if I can refer to my notes and this  
19 information should be included, well it would be  
20 included in a number of different areas. What I  
21 attempted to do was focus on the specific  
22 recommendation and then the appendix section in the  
23 back that I typically provide, the appendix on

1 Page 24, 25, and 26. On Page 24, 25 and 26 in the  
2 monitoring results.

3 In the note section I attempted to  
4 identify water damage related information, materials,  
5 and the like.

6 Q. At the time that you were out there when you  
7 tested for VOCs did you test for mold?

8 A. No.

9 Q. Do you have the ability to test for mold at  
10 that time in your department?

11 A. I am not sure. I think we did. But you  
12 know, I don't know to be frank.

13 Q. Did you ever test for mold?

14 A. Yes.

15 Q. Where?

16 A. After, in my consultation section.

17 Q. What kind of test did you run for mold?

18 A. You run an Anderson sampler with petri  
19 dishes. You order them special from the lab, and  
20 they ship them to you on ice and there is a special  
21 procedure that you must follow from the lab. And you  
22 can do that.

23 Q. Did you test for mold in the building at

1 that time?

2 A. As far as I know, I did not.

3 Q. Going back to the SGH report that you never  
4 had a chance to look at, did you know that there was  
5 mold in the building at that time?

6 MR. BUCKLEY: Objection.

7 A. At what time?

8 Q. At the time you did your investigation?

9 A. At the time I did my investigation, I noted  
10 water damage materials and water sources. Based on  
11 that is what I made my recommendations on. Such that  
12 if there is water damage, if there is water flowing,  
13 there is a potential concern about mold, bacteria  
14 growth, and water damage materials as an indication  
15 of prior leakage and, you know, another -- again,  
16 another potential for bacterial or mold growth.

17 Q. When you had meetings with the city, did  
18 they mention they had found mold in the building in  
19 the past?

20 A. I can't recall. Like I say, to me, to my  
21 knowledge, this information here standing alone is  
22 enough to understand that the potential exists.

23 Q. And is that why you put in here some

1 standard reference materials under?

2 A. Yes. Absolutely that is why we created the  
3 bulletins exactly for that reason. We wanted to  
4 educate people, we wanted to inform people, to  
5 empower people to understand that.

6 Q. Are there people at D.O.S. that are more  
7 familiar than you are with mold problems in  
8 buildings?

9 A. Say that again?

10 Q. Are there people at D.O.S. at the time that  
11 you were working there in that department that were  
12 more familiar with mold issues?

13 A. Probably not. It is a special field. It is  
14 a specialty field. There was nobody there with that  
15 specialty knowledge. That is exactly why we  
16 developed these bulletins was to get everybody on  
17 basically the same understanding, so when we address  
18 water damage, or water leaks, or concerns about it,  
19 we would have something that everybody at least  
20 understands.

21 Q. So do you have any familiarity with the mold  
22 that are mentioned in this report?

23 A. I have seen the names before. But I don't,

1 you know, I have seen some of these names before.

2 Q. Which name?

3 A. Penicillium, grand positive, penicillium.

4 You know some of them. They look like aspergillus.

5 Bacillus. Maybe the yeast. You know, I have seen

6 these names. Stachybotrys chartarum. I have seen

7 that name before. Staphylococcus. I have heard that

8 name before. Penicillium. Those are probably the

9 most common that I have seen, you know, named in

10 articles about mold and water damage and things like

11 that.

12 Q. You didn't, in number 2 you had a correction  
13 date of 30 calendar days?

14 A. Yes.

15 Q. What does that mean, thirty calendar days?

16 A. It's the date we think that's a reasonable  
17 time to address the problems. But, you know, that is  
18 the start, really, you know, to get things going in  
19 the right direction.

20 Q. What kind of enforcement powers does D.O.S  
21 have to ensure when they make statements like  
22 correction date, thirty calendar days, that it is  
23 going to be done?

1 A. I don't know.

2 Q. So you don't have any enforcement powers?

3 A. I have no knowledge.

4 MS PALMER: I am not sure he's the  
5 person to ask.

6 Q. Well, who would be the person that you would  
7 report to?

8 A. Nancy Comeau, my technical supervisor and  
9 Paul Boody. At the time he was the program manager.  
10 They reviewed -- Nancy would review my report for  
11 technical and Paul reviewed it for, again, to make  
12 sure that it was a report that, you know, that could  
13 be understood and followed, et cetera.

14 Q. And in your capacity as technical person out  
15 there, you are the engineer?

16 A. Yes.

17 Q. Now when you say you are an engineer, do you  
18 have any engineering licenses?

19 A. No.

20 Q. So is that like the job title?

21 A. Yes. Yes.

22 Q. So you only have basically, not to say only,  
23 you have a law degree and you have a bachelor of?

1 A. Bachelor of Arts in biology degree.

2 Q. Had you taken any courses in engineering?

3 A. No. I don't think so. I would have  
4 remembered.

5 Q. Item Number 37 says, "determine access water  
6 leaks"?

7 A. Yes.

8 Q. And it said that water leaks in Merian  
9 Street effecting walls and ceilings and so forth?

10 A. Yes.

11 Q. They should be repaired and materials should  
12 be replaced where needed?

13 A. Yes.

14 Q. Again you gave a correction due date of 30  
15 calendar days?

16 A. Yes.

17 Q. Item number 4 says "indoor renovations".

18 A. Yes.

19 Q. It says "if and when indoor renovations take  
20 place"?

21 A. Yes.

22 Q. So you weren't naming they had to make these  
23 indoor renovations?

1 A. No. I was anticipating.

2 Q. And you had a D.O.S. bulletin that you gave  
3 to them. Number 388?

4 A. Yes.

5 Q. And then Item Number 5 says general air  
6 circulation in the police station?

7 A. Yes.

8 Q. What did you find that required them to  
9 provide additional air circulation?

10 A. A lot. Like I mentioned previously, my  
11 attempt to explain that I put in the note section per  
12 area so that way if somebody had a question about the  
13 specific area which is what I encountered, because it  
14 was such a large building, I would find particular  
15 concerns in a particular area. So it wasn't an easy  
16 solution.

17 In some ways you can give a blanket  
18 recommendation, but I wanted to try to narrow it down  
19 per a particular area. So what I would do in the  
20 note section, I would state some conditions either  
21 that I experienced or that someone had mentioned to  
22 me they had experienced. So that's why, the way I  
23 said it, generally speaking, where there are

1 employees for an extended period of times, this is  
2 where I am focusing on.

3           A few examples. Then I give examples.  
4 If you look at the note section, you will see even  
5 more detail. And you know, this was again based upon  
6 my empirical experience with air quality situations,  
7 I have learned through my empirical experience that  
8 this is probably the best information that I can give  
9 based upon the information that I have.

10           Q. And that said, the correction due date was  
11 thirty calendar days?

12           A. Correct.

13           Q. When you say thirty calendar days, is that  
14 from the date of this letter or is that from the date  
15 of receipt?

16           A. In these situations, it is very very  
17 difficult sometimes to know exactly when it can be  
18 done. So as a standard practice, it is thirty  
19 calendar days.

20           Q. From the date of the letter?

21           A. From the date of when they get it. It is  
22 not as strict -- I mean, we want to be clear on  
23 calendar days versus business days because we wanted

1 to set the timeline. But as you know, you can  
2 imagine in these situations, contractors have to be  
3 contacted and scheduling and this and that. And  
4 sometimes, you know, under reasonable circumstances,  
5 thirty calendar days cannot be met. So thirty  
6 calendar days was the typical timeline that we  
7 presented and that's how we, you know, provided that  
8 information in the office.

9 Q. And then Item Number 6. It says "supply air  
10 vent covers in the police station." It says "Remove  
11 the filters from the exterior vent covers on the  
12 supply and return vents."

13 A. Yes.

14 Q. What was that all about?

15 A. Just like it sounds. The exterior vent  
16 covers. In other words the vent cover that you look  
17 up above you right now. That is a supply vent cover  
18 and there were filters visible on the exterior  
19 portion of the vent covers. So that is not an  
20 acceptable practice in that industry. So I made that  
21 a specific item. Why. Because that is not a specific  
22 practice under anything I have known at that time.  
23 So that's why I made that a separate item.

1 Q. This is in 2001 that you are making this  
2 observation or recommendation or corrective action?

3 A. Yes. Like I said, it is right on the  
4 report. "This is not a proper way to maintain  
5 vents." It also impedes air flow. If there are  
6 concerns of dust and dirt accumulation, the  
7 housekeeping should be more carefully monitored and  
8 maintained to reduce levels of dust indoors." So  
9 what I said in the report was the dust that is  
10 visible -- there was a dust concern. I guess it  
11 related to that. So I tried to instruct them on how  
12 to address that.

13 Q. All right. I am going to show you Exhibit  
14 Number 15. Page C. Are those the filters that you  
15 are describing?

16 MS. PALMER: By the way, these are not  
17 our pictures.

18 MR. D'ANGELO: No.

19 MS PALMER: Where did these come from.  
20 Were they taken recently?

21 A. It says 8-14-05. Way off after the fact. I  
22 don't know if that is the type, but clearly I saw --

23 MR. BUCKLEY: Objection.

1           A. It was way off after the fact. I described  
2 exactly what I saw in the report. I saw on the cover  
3 of the vent, filters similar to that type of filter.  
4 A filter element on the exterior cover and like I say  
5 I wanted that to be changed.

6           Q. I am going to show you the same Exhibit  
7 Number 15 and picture labeled E.

8           A. Like I say I don't know if this is how it  
9 looked. This is from again August 14 of 2005. Way  
10 after the fact I was there, but again I don't know if  
11 it was that type of nature, but again it was a  
12 filtering element material that I saw on the exterior  
13 portion of the vent.

14          Q. I am going to show you from the same group  
15 Exhibit 15, Number H?

16          A. Again I don't know if that's the similar  
17 type that I saw on that day. I saw a filter element.  
18 I can't describe it.

19          Q. And I am going to show you Exhibit Number L?

20          A. Again I do not recognize that to be the one  
21 that I saw or the type that I saw, but I did see a  
22 filter.

23                           MS PALMER: What does that appear to

1 be.

2 A. It appears to be some sort of covering over  
3 the filter.

4 MS PALMER: Can you tell what it is.

5 A. It does look like some kind of filtration  
6 element. Blue is a typical filter color. Gray,  
7 black. So that is not extraordinary. It is some  
8 kind of cover. But you never know what that could  
9 be. It could be anything.

10 Q. I am going to show you Exhibit Number N?

11 A. Again I don't recognize this as the type of  
12 filter that I saw on the day of my survey.

13 Q. I am going to show you Exhibit R?

14 A. Again I do not recall if that was the same  
15 type of filter element that I saw or whatever on the  
16 filter cover.

17 Q. But in Item Number 6 on your report, it says  
18 remove the filters on exterior vent covers on the  
19 supply and return vents?

20 A. Correct.

21 Q. Would this be the type of filter you are  
22 talking about in your report?

23 A. You know there are many filters out there.

1 Many types and they all they pretty much do the same  
2 type of thing to a certain degree. I just know in  
3 that item that it is not an acceptable practice.

4 Q. To have vents on there?

5 A. Correct.

6 Q. I mean filters on the vents?

7 A. Yes. Filter element on the exterior of a  
8 vent cover.

9 Q. How do you know that?

10 A. Through my years of work in the indoor air  
11 quality group and reviewing buildings, talking with  
12 HVAC personnel and with my colleagues, and reviewing  
13 codes on ventilation et cetera.

14 Q. And on Page 17 of this report at the top you  
15 have standard references?

16 A. Yes. On page 17.

17 Q. And is that where you established your  
18 recommendation from?

19 A. Yes. Yes.

20 Q. And you said corrective due date was 30  
21 calendar days on that as well?

22 A. Correct.

23 Q. And item number 7. Scheduling of air supply

1 and return units. What exactly is that about?

2 A. This one I just want to make sure I  
3 understand it correctly. It will just take me a  
4 minute. This is more of a blanket statement. This  
5 is something that we commonly put in. Most of our  
6 air quality reports. Why. Because we know again  
7 through our empirical surveys, knowledge, some  
8 training, reviewing literature, et cetera, that this  
9 is a good standard practice for any building with  
10 your handling units, et cetera, a preventative  
11 maintenance program. That is the key really to a  
12 building's, you know, air quality kind of thing. It  
13 is the heart and soul in many respects.

14 Q. Item number 8. Did you take pressured tests  
15 when you were out there?

16 A. I think what I did was I used a smoke tube.

17 Q. What does that smoke tube do?

18 A. It gives you a good sense of which way the  
19 air is flowing. It is a good visual aid and it is a  
20 good demonstration to people, to educate and empower  
21 people to understand, okay. What is Bob talking  
22 about anyway. What is he really talking about. What  
23 is he getting at here. It is a very good tool. What

1 you do is you just break open a smoke tube. It is an  
2 acid, so it hits the air. At least most of the tube.  
3 I don't know if the one I used was. But typically it  
4 is a acid kind of thing, when it hits the air, it  
5 reacts and causes a smoke. So what you do is you use  
6 that to see how air is flowing. And in a building  
7 you want to see, okay. Where is the air flowing  
8 possibly. You don't know all the time that the air  
9 is flowing, but you try to get a general sense so  
10 that if you are in a suspicious area, what you want  
11 to try rule out are things likely to move this way or  
12 that way. That is basically what you are trying to  
13 do.

14 Q. Where did you take your smoke tests?

15 A. Well from my understanding reviewing the  
16 report, that I checked out a number of different  
17 areas. Basically the firing range areas, the garage  
18 areas. I don't think I took any at the fire station.  
19 I think that was towards the end of the day. I might  
20 have. But I took them all over the place. At  
21 certain junctions that I thought were critical to  
22 determine whether or not that air might go in the  
23 wrong place that it shouldn't go into.

1 Q. And what did you do recommend here?

2 A. That certain areas be negatively pressured  
3 and other areas, well, basically the negative  
4 pressure was the crux of Item Number 8.

5 Q. What does that exactly mean?

6 A. I'm sorry. Positively pressured was also  
7 included.

8 Well, what it means is that the areas  
9 where you have suspect odors, chemicals, anything.  
10 In this office, for example, the bathroom would be  
11 the perfect example of where you would want a  
12 negative exhaust. And the kitchen would be and it is  
13 a simple example of where you would want air having a  
14 tendency to be removed from the room, from the space.  
15 And in this building, there were examples, it is a  
16 multi-use building. There are examples where the air  
17 should not be flowing back into the building, but it  
18 should be flowing directly outside of the building.

19 So here I tried to explain, look, I want  
20 positively pressured, "Provide that the police space  
21 should be positively pressured and the garage, the  
22 garages, the boiler room, the firing range would be  
23 under pressure." So in theory what you hope to

1 provide, that fresh air is coming in like a balloon  
2 so the building, pretend that the building is a  
3 balloon, and the balloon is expanding and fresh air  
4 is coming in, and that in these other designated  
5 areas, the fire station, the police garage, the  
6 boiler room and the firing range, that the air would  
7 have a tendency to flow out of those rooms. So that  
8 you would have a general summary flow of good air  
9 going into the occupied spaces and the bad air  
10 flowing out of the areas where there is concern about  
11 activities.

12 Q. So your smoke tests show that there was air  
13 coming from the garages?

14 A. Yes.

15 Q. And you gave them thirty days to correct  
16 that?

17 A. Yes.

18 Q. Item number 9.

19 A. Yes.

20 Q. Did you observe this or did you take smoke  
21 tests to determine this?

22 A. I don't think I did. I think I remember  
23 when I had them turn on the exhaust to see if it

1 works, and I remember it was noisy and loud, and  
2 there wasn't much going on that day. But they told  
3 me about activity that goes on in that space on a  
4 routine basis, so I wanted to make sure that they use  
5 these tail pipe exhausts and the local exhausts. But  
6 I don't recall. I do remember noting and I think I  
7 made a notation in here that it was working. It was  
8 a working system and that it would provide, you know,  
9 exhaust ventilation.

10 Q. But you have a corrective due date of thirty  
11 calendar days on it?

12 A. Correct.

13 Q. And you had a recommendation number 10  
14 install carbon monoxide detectors in a police garage?

15 A. Correct.

16 Q. Did you have a timeframe for that as well?

17 A. No. I didn't put a timeframe on that  
18 because I didn't identify any elevated levels of  
19 carbon monoxide that day. But I thought it was  
20 enough so that they should do it.

21 Q. And then Item Number 11, thermal controls  
22 and thermostat status?

23 A. Yes.

1 Q. What did you recommend on that?

2 A. "That the thermostats should be checked and  
3 inspected to determine if temperature settings and  
4 readings are accurate. Check the heating systems to  
5 see if the heat control switches are calibrated to  
6 provide heat on demand at the local heater. If the  
7 controls are not in good working order, it will be  
8 difficult to maintain a comfortable temperature with  
9 the units on all day. This could be part of the  
10 reason why some occupants are too cold whereas others  
11 are too warm."

12 Q. And how did you test that?

13 A. Well, you know, well we do -- I use an  
14 instrument called a Q-Trak. It is an instrument that  
15 was specifically designed for air quality  
16 inspections. We purchased some a number of years  
17 previous to this inspection, and we use that as a  
18 general tool for air quality where it measure carbon  
19 monoxide, temperature, relative humidity and carbon  
20 monoxide. And so what I did was I took temperature  
21 readings and relative humidity readings as I went  
22 through as noted in the Appendix, and I jotted down  
23 my numbers.

1                   But I also, you know, temperature is the  
2 type of thing where it is not only a number that you  
3 generate and observe and feel, but it is also an  
4 experience. So that is what my empirical experience  
5 has shown me that temperature is not necessarily, we  
6 don't treat it as a health issue, we treat it as  
7 comfort issue generally speaking. So I put that in  
8 there as a general kind of statement because we find  
9 that a lot of times people complain about temperature  
10 and in this building, you know, I wouldn't be  
11 surprised if they didn't. The numbers seem to be on  
12 the warm side, I think I noted.

13                   So I used the Q-trak to take the  
14 temperature out to the humidity numbers and I also  
15 talked to people.

16                   (A brief recess was taken.)

17                   Q. We are moving to Number 12. Exhaust air  
18 ventilation. "Corrective action to induce fresh air  
19 flow, force stale outdoor air. Should be inspected  
20 twice a year."

21                   Did you know if these HVAC systems were  
22 being maintained or inspected or anything?

23                   A. Well they did mention Honeywell. And but,

1 you know, going in, you don't assume anything. They  
2 will mention Honeywell does this and such and such.  
3 I mean, you just tell them. Because, you know, you  
4 just want to tell them that you want to explain to  
5 them and that is really, this is not a bolded item.

6           Although I did find some exhaust fans  
7 that weren't working on the followup visit on the  
8 clear day, and I did identify those specifically.  
9 But here I am saying as a general statement that, you  
10 know, keep these going. And twice a year is a good  
11 practice. We believe that twice a year and depending  
12 on the building, even more than twice a year. We  
13 just want to make sure, I put that statement in there  
14 because I want to make sure that they do not let that  
15 go. They remember that. It is a component of HVAC  
16 and that negative pressure ties into the other  
17 components.

18           Q. And Item Number 13. Police repair garage  
19 chemicals and lubricants. Is this something that you  
20 observed?

21           A. Well, I know that I probably saw some stuff  
22 there. It was a mechanic's garage. They wash cars  
23 and they fix cars. There is an assumption that they

1 have stuff there. And I probably saw they didn't  
2 have it in an orderly fashion. And as a safety  
3 person, we want things in order so that they can work  
4 with them safely and deal with them safely. So  
5 that's why I put that one in there.

6 Q. Item number 14. The exhaust ventilation in  
7 the fire station?

8 A. Yes. Yes.

9 Q. And you described their current system as  
10 not adequate or ideal, I should say.

11 A. Well I wasn't familiar with the system when  
12 I was there. I was not familiar with the system. I  
13 don't think I ever heard of the system when I was  
14 there. But they told me that it was a system, it  
15 sounded like a contemporary system, meaning that it  
16 was something that was maybe new or recently new or  
17 something new. And it was in another station. You  
18 know I had a little more confidence. It was in  
19 another station in Somerville.

20 I said, okay, maybe they know more about  
21 it than I do. But I for my understanding and my  
22 empirical experience and my knowledge with my office,  
23 we recommend you remove the exhaust out, namely at

1 the tail pipe of the vehicle in question. "This  
2 method would not only be a better exhaust capture,  
3 but more efficient to my understanding. The total  
4 amount of the air exhausted would be less and it  
5 would result in a much lower needed fuel heating  
6 cost." That is my recommendation.

7 Q. And is this something that when you were  
8 doing your smoke test, you saw the positive and  
9 negative air flows and were concerned about air  
10 coming from that section into the main part of the  
11 building?

12 MR. BUCKLEY: Objection.

13 A. I don't remember doing that for that. I did  
14 note that people did complain it is in the report  
15 here. See Page Number, I think it is 24. Well the  
16 dispatch note, "I do remember the employees noticed  
17 an odor from the vehicle garage below."

18 MR. BUCKLEY: Just for a clarification,  
19 can we get a page number from where he is reading.

20 A. Page number 26 in the notes halfway down.  
21 In the location of the dispatch area, I remember  
22 people telling me, that's why I wrote it down.  
23 "Employees notice odor from vehicle garage below."

1 So that I did do the smoke test at the doorway.  
2 However, as far as the firing, I'm sorry as far as  
3 the fire station is concerned, and the exhaust  
4 ventilation related to that, I do not recall doing  
5 the smoke test. But I thought I do recall somebody  
6 complaining about diesel fumes. I am just trying to  
7 locate what that room was.

8 Okay. Detail office. Location on  
9 Page 25 in the detail office. I have a note.  
10 "Occupants smell fire truck exhaust when are started  
11 below." So to me that was an indication, well, if  
12 they smell something, they smell it. Period. So I  
13 thought that was noteworthy.

14 Q. Were any of the fire trucks operating that  
15 day when you took your tests for CO2?

16 A. I don't recall. There may have been a truck  
17 in and out, but I didn't make a note of it and I  
18 don't recall.

19 Q. If a vehicle such as a police car or fire  
20 truck were operating down in the basement, would that  
21 have made a difference in your CO2 results?

22 A. See I didn't understand the CO2 system.  
23 Carbon monoxide, may possibly.

1 MR. BUCKLEY: Objection to that.

2 Q. Carbon monoxide?

3 A. Vehicle exhaust, a gas combustion engine is  
4 known to -- as a bi-product create carbon monoxide.  
5 So there would be a possibility that if there was a  
6 gas combustion engine that carbon monoxide would be  
7 an issue. With the diesel, less likely.

8 Q. What kind of things produced out of a  
9 diesel?

10 A. Diesel, to my understanding does not  
11 produce, it might produce carbon monoxide, but not in  
12 appreciable quantities.

13 Q. What does it produce?

14 A. Many other particles.

15 Q. Such as?

16 A. A lot of soot particles, stuff like that.

17 Q. Do you know anything about soot particles?

18 A. Well it is my understanding they are not  
19 good for you. Soot particles are not good for you.  
20 It is part of urban living. You know, traffic. You  
21 know, it is my understanding that carbon monoxide in  
22 an urban setting, carbon monoxide, you will get a  
23 background sometime of elevated numbers.

1                   So in an urban setting, you expect to a  
2 certain degree, whether there is a gas or diesel  
3 exhaust -- with the diesel exhausts, you know, the  
4 soot, the particles, the soot, kind of situation I  
5 know that is not good for you. So it should be under  
6 control.

7           Q. Getting on to item No. 15, 16, 17 -- those  
8 are items that you were there originally called on.

9           A. Yes.

10          Q. There was some concern about lead that might  
11 be distributed through the building?

12          A. Those items are related to the firing range  
13 request.

14          Q. And did you test for lead?

15          A. No.

16          Q. You were just checking to see if the HVAC  
17 system was venting out of those locations where the  
18 firing range was?

19          A. That was part of it, yes.

20          Q. What was the other part?

21          A. The other part is all the things that are  
22 related to the firing range, both operation,  
23 maintenance. Because it covers ammunition,

1 ventilation, cleaning, short and long-term cleaning,  
2 maintenance, possible impacts with the building.

3 Q. Item number 18. Housekeeping and carpeting.  
4 What, if anything, did you observe about carpeting in  
5 the building?

6 A. There was some inconsistencies. Some places  
7 were very very clean. And some places were very very  
8 dirty. But it is a big building. It is a multi-use  
9 building, so that didn't surprise me. Just try to  
10 identify what's clean, what's dirty, what needs  
11 housekeeping. That is a very very common item in  
12 almost every air quality inspection. If there is  
13 carpeting, this goes into the report. There is  
14 always concerns and questions about it. So we want  
15 to highlight this. We want to emphasize this because  
16 we know this is a big component that we don't think  
17 -- again people need to be educated on, enlightened  
18 on because we think that that is big and we developed  
19 a bulletin on that. Number 396. That is referenced  
20 in that item. That was again to educate and inform.

21 Q. Who did you provide those bulletins to?

22 A. Well, I attached them with this -- as far as  
23 I know. I attached them with this report, and I

1 provided a list at the end and to everybody that I  
2 sent this to. I hope they all got them. And they  
3 are on the website, too.

4 Q. So anybody could download them off the  
5 website?

6 A. Yes. Hopefully. I know people have had  
7 problems. So what we try to do is we try to provide  
8 a hard copy and we also refer them to the website.

9 Q. Did you have a website set up to do that in  
10 2001?

11 A. As far as I know, we did. And we also refer  
12 on the back to EPA documents and their website, IAQ.  
13 Indoor air quality.

14 Q. And item number 19 is a communication  
15 regarding IAQ to employees. And did you talk to  
16 employees?

17 A. Yes.

18 Q. And were they aware of this report?

19 A. Well, they were aware of me. And I think my  
20 role and function and I felt that they -- I got a lot  
21 of people talking to me so I felt that people had the  
22 opportunity to freely comment to me. And that's what  
23 I did with the note section. So I felt that. But I

1 also felt an obligation to put it in the report. And  
2 that's what I thought my job was to report what  
3 people are telling me and what I observe. And I  
4 tried my best to put that in the note section. So  
5 some of these notes are taken right from people's  
6 comments. And I tried to express that in that way.  
7 Like if I smelled it, I noted something, but I would  
8 say, you know, there are concerns. You know by me or  
9 by somebody.

10                   So I think, I think I got a fair amount  
11 of one-on-one conversation with a fair amount of  
12 people in almost every single area that I was in,  
13 people spoke freely.

14           Q. But the question did this report get into  
15 those same people's hands. Do you know?

16                   MR. BUCKLEY: Objection.

17           A. What I did was I sent it to the addressee,  
18 Vithal and to the people that are noted here. And  
19 that's to the extent of what I initially did. The  
20 mayor at the time. The police association, captain,  
21 Somerville police, fire department. To the best of  
22 my understanding, these are the people that got the  
23 report. It was a very thick kind of product, so I am

1 hoping that everything was sent away. Because we had  
2 people in the office that would help me do this. And  
3 they did a good job at identifying, marking on the  
4 top, what had occurred with the process of sending  
5 this out to people.

6 Q. And Item Number 20, develop an indoor air  
7 quality management plan. Do you know if that was  
8 ever done?

9 A. Again that's a boiler plate item that we  
10 provide to almost every single solitary indoor air  
11 quality inspection because it is something that we  
12 strongly believe in. To my knowledge, I don't know  
13 if they did that. I could refer to the response that  
14 they sent to see what they said at that time.

15 Q. And then you were back out there in February  
16 which was the time that you went up and looked at the  
17 other parts of the building?

18 A. Yes. It was a dry day. We actually walked  
19 on the roof and checked out the exhaust vents that we  
20 could see on the roof and that we could access. The  
21 flat roof and hopefully in those cases.

22 Q. And do you have a copy of that there, and to  
23 look at that recommendation real quick?

1           A. I am on Exhibit Number 88. Yes. So again, I  
2 walked, performed a survey that day, and I checked  
3 out everything that we could survey that day.  
4 Fourteen exhaust fans on the roof.

5           Q. So the recommendations that you stated in  
6 these two reports, investigations. Some had  
7 corrective actions like these two here, this lab  
8 report, fixing these items?

9           A. Yes.

10          Q. And they were to be done within thirty  
11 calendar days?

12          A. Yes.

13          Q. Did you go back out at any time after this  
14 report to investigate whether or not they were done?

15          A. As far as I know, I did not.

16          Q. And do you have a reason why you wouldn't  
17 have gone back out and taken a look at it again?

18          A. No. If we got a response, a written  
19 response, signed by the parties, that was basically  
20 how we, you know, handled that. The reporting and  
21 response situation.

22          Q. I am going to show you Exhibit Number 89,  
23 dated June 20, 2001?

1 A. Okay.

2 Q. Do you have a copy there that you can refer  
3 to?

4 A. No.

5 Q. You received this item and you attached it  
6 to the report. When did you actually receive it?

7 A. It is date-stamped in our office June 25,  
8 2001.

9 Q. And in it the recommendations are gone  
10 through one by one?

11 A. Yes.

12 Q. Mirroring the report that you had submitted  
13 to them?

14 A. Yes.

15 Q. And in it they basically tell you that, for  
16 instance, in Item Number 1. Gather information and  
17 communicate with employees or employee. This work is  
18 on-going?

19 A. Yes.

20 Q. And Item Number 2. Remove and repair all  
21 water damage materials such as ceiling tiles, and it  
22 says here, "All water damage ceiling tiles replaced  
23 in room numbers." And it is all listed here where

1 they removed them.

2 A. Yes.

3 Q. And it said here "Determine all real  
4 potential source of moisture including water leaks in  
5 the firing range, tile wall in Merian." And it says,  
6 "The firing range is kept closed at this time. At  
7 present all preventive action are taken, however,  
8 real potential source of moisture leaks is still  
9 ongoing."

10 "Indoor renovation. This work is  
11 ongoing. That is listed in number 3."

12 Item number 5 says, "Provide improved air  
13 circulation."

14 A. Yes.

15 Q. And it says the responsible technician for  
16 air circulation has been notified and directed to  
17 take necessary action, is that correct?

18 A. Correct.

19 Q. And it says here Number 6, "Apply air vent  
20 covers in police station."

21 A. Yes.

22 Q. "An outside contractor from Envirotech  
23 performs this entire work quarterly and, hence, it is

1 already an ongoing activity."

2           Seven. "Scheduling the air supply and  
3 return units." It says "HVAC manufacturer Honeywell  
4 has a special contract with city for comprehensive  
5 preventative management plan."

6           A. Yes.

7           Q. Did you have a chance to look at what the  
8 Honeywell comprehensive preventative management plan  
9 was?

10          A. No.

11          Q. Did anybody provide that to you?

12          A. No. As far as I know.

13          Q. Had you dealt with these kind of contracts  
14 that Honeywell had with other kinds of commercial  
15 buildings in the past?

16          A. I always heard of Honeywell, so I assumed  
17 that they were a company in the business of doing  
18 HVAC work. But, no, I did not and I have not had  
19 experience with Honeywell's programs. At least not  
20 in this situation. I might over the years but I  
21 don't recall.

22          Q. Number 8. "Air pressure and control of  
23 odors." It says here, "A responsible technician is

1 notified and necessary action has been taken."

2 A. Yes.

3 Q. And then number 9. "Exhaust ventilation in  
4 police garage." Again, a repeat of the same response  
5 as above. "Responsible technician has been notified  
6 and necessary action has been taken."

7 A. Yes.

8 Q. Carbon Monoxide detectors police garage. It  
9 says, "All carbon monoxide detectors are in place as  
10 directed."

11 A. Yes.

12 Q. Thermal control and thermostats status.  
13 Honeywell checked and confirmed the thermal controls  
14 are thermostats are in working conditions. It says  
15 that on this report?

16 A. Yes.

17 Q. "Exhaust air ventilation. It is confirmed  
18 that all exhaust air ventilation are in good working  
19 condition."

20 A. Yes.

21 Q. Police repair, garage chemicals and  
22 lubricants. It says here, "All chemicals are well  
23 maintained according to existing standards and

1 routinely examined by the fire department."

2 A. Yes.

3 Q. Fire prevention department.

4 A. Yes.

5 Q. Fire station bay exhaust ventilation. "This  
6 information will be provided in due course." Did  
7 they ever provide you with information in due course  
8 regarding that?

9 A. I don't recall.

10 Q. Fire range ventilation. "Currently  
11 Honeywell is reviewing the system and the Department  
12 of Occupational Safety will be notified upon  
13 availability of report." Did you ever get that  
14 report?

15 A. I don't recall that.

16 Q. Well, it says that the firing range was  
17 closed and no action was necessary because it was  
18 closed, correct?

19 A. Correct.

20 Q. Same thing in the next one number 17.

21 A. Yes. Correct.

22 Q. Housekeeping cleaning. It says, "This is  
23 ongoing and underway to improve existing practices."

1 Correct?

2 A. Correct.

3 Q. And communications regarding the  
4 environmental air quality to employees. This work is  
5 ongoing?

6 A. Correct.

7 Q. That's what they told you?

8 A. Correct.

9 Q. And number 20. A comprehensive air quality  
10 management plan was being developed. And will be  
11 provided upon completion. Did you ever get a copy of  
12 that?

13 A. Not to my knowledge.

14 Q. And exhaust units on roof. Observations.  
15 None in report. Status confirmed. It is in working  
16 condition.

17 And item number 8, everything is in  
18 working condition on that. That's what they reported  
19 to you on that, correct?

20 A. Yes.

21 Q. Everything you reported in that second  
22 report is in working condition.

23 Did you ever go back at any time yourself

1 and confirm any of these things that they said was in  
2 the report that was done?

3 A. To my knowledge, no. To my knowledge, no.

4 Q. Why wouldn't somebody from D.O.S. go back  
5 and do another inspection.

6 MR. BUCKLEY: Objection.

7 A. Well the practice at our office is that if  
8 we get the response in writing and they outline what  
9 they did, that is sufficient for our purposes of  
10 addressing it. That's the procedure that we follow.

11 Q. I want to take you back to Item Number 6.  
12 Same report. The response. It says in there, it  
13 said, "Remove the filters from exterior vent covers  
14 on the supply and return vents. Housekeeping should  
15 be more carefully monitored and maintained to reduce  
16 dust indoors."

17 It says, "An outside contracting company,  
18 Envirotech, performs this entire work quarterly and,  
19 hence, it is already ongoing activity." So did that  
20 raise any flags to you about something that was being  
21 done quarterly that shouldn't be done at all.

22 A. Ask the question again.

23 MS. STEPHENS: Objection.

1 Q. Should the filters have been removed  
2 permanently, not quarterly?

3 A. I thought it was clear what I wanted to do.  
4 So I thought that response seemed to address what I  
5 wanted them to do.

6 Q. Which is what?

7 A. Remove the filters from the exterior vent  
8 covers on the supply and return vent if that's what I  
9 said in the major report and it refers to that here.

10 Q. So you wanted them permanently removed, not  
11 quarterly removed?

12 MS. STEPHENS: Objection.

13 A. I didn't want them there at all.

14 Q. So if they said it was being done quarterly,  
15 what would that have told you?

16 A. That means they are keeping an eye on  
17 things. That was my interpretation. That they  
18 needed to do it. Generally speaking, in HVAC,  
19 quarterly checks are the common, the typical  
20 preventative maintenance type of thing. Quarterly.  
21 So when I saw a company hired to do something,  
22 referred to the action, I thought that they would  
23 keep those filters removed. Whoever was putting them

1 on there. There was a lot I didn't know about, how  
2 they got there and this and that, so.

3           There were statements made, but I really  
4 didn't know. I told them what I wanted them to do,  
5 and I thought that what he responded, addressed what  
6 I explained and what I wanted him to do. And that  
7 the company would follow through on that.

8           Q. I am going to show you Exhibit Number 66A.

9           A. And he refers to the housekeeping which was  
10 another point that I made to not need the filters.  
11 It was a two part response that I thought he was  
12 addressing.

13          Q. I am going to show you Exhibit 66A. If you  
14 could just take a look at that?

15          A. Yes.

16          Q. It is dated October 21, 2004?

17          A. Okay.

18          Q. At that time were you still working in that  
19 department?

20          A. No. I wasn't.

21          Q. When did you leave that department?

22          A. I think it was May, 2003. It was in the  
23 spring of 2003. So I left this indoor air quality

1 program to the OSHA consultation program. So this  
2 report appears to be a report from the indoor air  
3 quality group, and it appears that Nancy Comeau my  
4 former program supervisor provided that document.

5 Q. Did you have any contact with the City of  
6 Somerville regarding a public safety building after  
7 you received this correspondence from Vithal  
8 Deshpande in June of 2001?

9 A. I didn't document every single solitary call  
10 or whatever conversation. Sometimes I did.  
11 Sometimes I didn't. I mean I might have had a phone  
12 contact or this. But nothing that was furnished in a  
13 document or report as a followup kind of thing.

14 Q. In this 2004 report. It has again for  
15 various corrective actions needed. If you could just  
16 take a quick look at Item Number 2.

17 MS PALMER: He's not the author of this  
18 document.

19 MR. D'ANGELO: I understand.

20 A. Yes.

21 MS PALMER: What do you call that  
22 exhibit.

23 MR. D'ANGELO: 66A.

1           A. Item number 2. I went over that. Thank  
2 you.

3           Q. And I want you to take a look at Item  
4 Number 4.

5           A. Number 4. Okay.

6           Q. So, in your report, you address in item  
7 Number 2, addresses water damage materials and item  
8 number 3 determined in excess water leaks and I am  
9 going to show you again item number -- Exhibit  
10 Number 89 which was the Vithal Deshpande  
11 environmental coordinators report back to you.

12          A. Yes. Item number 4.

13          Q. Item number 2 and item number 3.

14                   Now looking at the report I just gave  
15 you and reading it, is that basically in summary the  
16 same basic issues that you were trying to get  
17 addressed in your report?

18                   MR. BUCKLEY: Objection.

19                   MS PALMER: What does it say.

20          A. Remove and repair all water damaged  
21 materials.

22                   MS PALMER: I am not sure whether  
23 having both of them in the same room.

1 MR. D'ANGELO: That is not my question.

2 Q. My question is the water damage that he has  
3 observed in 2000, is that the same water damage that  
4 is being observed in 2004.

5 MS. STEPHENS: Objection.

6 MR. BUCKLEY: Objection. I don't think  
7 it is appropriate for him to compare. It is one  
8 thing to --

9 MS PALMER: He was there in 2001.

10 MR. BUCKLEY: It is one thing to go off  
11 into a tangent.

12 MR. D'ANGELO: I am not going off into  
13 tangent.

14 MS PALMER: You have got the wrong  
15 person.

16 Q. Assuming the report that you have is talking  
17 about the water problems, are these the same water  
18 problems addressed in 2004.

19 MR. BUCKLEY: I object.

20 MS PALMER: It could be a different  
21 location. You can't -- how could you possibly know.

22 A. I know in my report, I asked him to do -- I  
23 underlined all water damage materials. Remove all

1 water damage ceiling tiles and dispose of properly.  
2 I know what I referenced as water damage materials,  
3 all, inclusive. All water damaged materials.

4 MS PALMER: May I ask one question.  
5 Were you with Nancy Comeau when she did her 2004  
6 inspection.

7 THE WITNESS: No, I was not.

8 MS PALMER: So you don't know what she  
9 observed.

10 A. No. No.

11 Q. But the fact of the matter is that the 2004  
12 report still addresses water problems coming into the  
13 building, correct.

14 MR. BUCKLEY: Objection.

15 Q. Well that speaks for itself, doesn't it?

16 A. Well, I mean, the report states what it  
17 states.

18 Q. It states water coming into the building in  
19 2004.

20 MS. STEPHENS: Objection.

21 A. Yes.

22 MS PALMER: I am a little confused  
23 here. I thought today was an examination of Bob

1 Nicotera about his inspection and his report. And  
2 now we are moving on to somebody else's inspection  
3 and her report.

4 MR. WOLMAN: To the extent that the  
5 report says what it says. Was is that mean his  
6 vis-a-vis his earlier observation.

7 MS. STEPHENS: Is there a question in  
8 front of the witness.

9 MS. PALMER: What are we doing.

10 MR. BUCKLEY: That is the basis of our  
11 objection.

12 MR. WOLMAN: It is how it relates to  
13 how his report was implemented.

14 MR. BUCKLEY: We don't know an he  
15 doesn't either. He doesn't know if this building was  
16 struck by lightening between then and now.

17 Q. It says in here if you will read this first  
18 paragraph. "Water continues to enter the building  
19 causing severe water damage and mold growth. This  
20 infiltration occurs on all sides of the building but  
21 especially on Merian Street building."

22 Did you observe when you were there water  
23 damage on the Merian Street side of the building?

1 A. Yes.

2 Q. Okay thank you. So the corrective actions  
3 that the city told you back in 2001, according to the  
4 2004 report, weren't fixed.

5 MR. BUCKLEY: Objection.

6 MS. STEPHENS: Objection.

7 A. I don't know.

8 Q. You don't know. But nobody from your  
9 organization came out and did a followup inspection  
10 to see if any of the corrective actions that the city  
11 told you were being done, were being done?

12 A. As far as I know, no.

13 MR. D'ANGELO: We will take a quick  
14 break here.

15 (A recess was taken.)

16 Q. I am going to show you Exhibit Number 96.  
17 And refer you to the bottom of page 3.

18 A. 1998 report. July 20, 1998, report. Ken  
19 Ridlon.

20 Q. We are looking at Page 3 of the first group  
21 which is the D.O.S. report?

22 A. Yes.

23 Q. And at the bottom of that report, could you

1 read the last sentence of that?

2 A. "Preventing further water damage either from  
3 the leak on the Merian side of the building or from  
4 flooding."

5 Q. And you referred to the 1998 D.O.S. report  
6 in your report, correct?

7 A. Yes.

8 Q. And when you were out there, you also  
9 observed that that was one of the issues that you  
10 were concerned about, and one of the recommendations  
11 that you had put into your report, correct. That  
12 water damage on the Merian Street side?

13 A. No. No.

14 Q. So you are saying that you didn't observe  
15 any water damage on that side of the building?

16 A. No.

17 Q. Can I address on Page 16 of your report. If  
18 you would read that first paragraph and then the  
19 second sentence right here?

20 A. Second sentence. "Water leaks on an entire  
21 wall on Merian Street side effecting ceiling, walls,  
22 and windows."

23 Q. So you observed that at that time?

1 MR. BUCKLEY: Objection.

2 A. Yes.

3 Q. And your recommendation was what?

4 A. They should be repaired and materials should  
5 be replaced after all water and moisture sources have  
6 been determined, they should be repaired and  
7 materials should be replaced where needed.

8 Q. Is that the same Merian Street that is in  
9 the 1998 report?

10 MS. STEPHENS: Objection.

11 A. I don't know.

12 Q. And I am going to refer you to in the 2004  
13 report 66A, item number 7?

14 A. Yes.

15 Q. Could you just read that whole to yourself  
16 for a minute. Just read that.

17 A. Nancy Comeau's report dated October 21,  
18 2004, on Page 17 of 32. Item number 7 I am going to  
19 review.

20 Okay. I read it.

21 Q. And does that refer to your report dated  
22 February 21, 2001?

23 A. Yes, it does.

1 Q. And I am going to show you that report, Item  
2 Number 7?

3 A. Yes. I see it.

4 Q. Is that basically is the same issue, the  
5 same filter material?

6 MS. STEPHENS: Objection.

7 MR. BUCKLEY: Objection.

8 A. I don't know.

9 Q. So the person that wrote the report for 2004  
10 is assuming it is the same material.

11 MR. BUCKLEY: Objection.

12 MS. STEPHENS: Objection.

13 MS PALMER: Objection.

14 Q. As to what you know?

15 A. I don't know.

16 MR. D'ANGELO: I don't have any further  
17 questions.

18 MS. STEPHENS: I have some.

19 CROSS EXAMINATION

20 Q. (By Ms. Stephens) My name is Cindy  
21 Stephens and I represent Envirotech in this case. I  
22 think when you first started the deposition, you  
23 testified you had a BA in biology and a J.D.?

1 A. Yes.

2 Q. Do you hold any licenses, let me ask you  
3 that?

4 A. Yes. A license to practice law. Other than  
5 than that, no. Oh, I have a real estate license.

6 Q. So you don't have any license in HVAC  
7 cleanings, or anything like that?

8 A. No. No.

9 Q. Let's go to your report. I think that  
10 is 86. Do you have 86 there so he could look at it.

11 I just want to -- sorry I don't have it  
12 numbered yet. I think it is page 16. It would be  
13 item 6?

14 A. Yes.

15 Q. I direct your attention to Page 17. And at  
16 the top it says refer to BOCA code?

17 A. Yes.

18 Q. And is that the building code for  
19 Massachusetts?

20 A. It is a building code. I don't know if it  
21 is for Massachusetts. I know it is a building code  
22 industry code.

23 Q. Is that different from what's listed below

1 that which says standard reference state building  
2 code, Appendix A. Is that a different code?

3 A. I don't think it is the same. No.

4 Q. And also I think you refer here under  
5 standard referenced number 392, Mechanical  
6 Ventilation Systems and Air Quality?

7 A. Yes.

8 Q. And I think you testified that that is a  
9 bulletin that D.O.S. prepares?

10 A. Yes.

11 Q. Do you know in a sense -- 2001, if there has  
12 been any revisions to that bulletin?

13 A. I don't know.

14 Q. So if I were to go on the website today and  
15 find that bulletin, I can't tell whether that is what  
16 you attached to this?

17 A. There might be a reference on the bulletin.

18 Q. As to whether it had been revised. Do you  
19 have a copy of bulletin 392 that was sent in 2001?

20 A. I might. I might. I had copies made. I  
21 thought I saw references to the code in some of these  
22 attachments. I know I saw BOCA. But, see, that is a  
23 separate code. Then the other one would be the 392.

1 I know some of these have attachments. But there was  
2 so many, I couldn't attach everything. There were  
3 just so many. But I did see other attachments.

4 Q. All right. After my questioning, we can  
5 take a look at that. See if you actually find that.

6 A. But basically we referenced the standing  
7 bulletin that we had at the time.

8 Q. Now when you were talking about the filters  
9 here?

10 A. Yes.

11 Q. Do you remember how many of these filters  
12 you happened to see when you were there?

13 A. I remember seeing at least one. I know one  
14 was pointed out. I saw it. I was puzzled by it.

15 Q. Do you remember what room that was in?

16 A. I might have put it in the report. I put it  
17 in the report. I will look at the field notes. I  
18 wanted to double check to make sure I made a  
19 reference to it.

20 Q. Check Page 25, I think.

21 A. Okay. I am reading 25. I just want to  
22 double check. I am on page 25. "All return vents  
23 covered with material -- men's locker room." The

1 female locker room was locked. In the men's locker  
2 room, I made a note, supply -- "All return vents  
3 covered with filter material. It was reported that  
4 vents were cleaned and filter was installed and  
5 covered trapped dirt, et cetera."

6 Q. So, am I correct in saying, that you  
7 observed that the return vents were covered with the  
8 filter media, but it had been reported to you that it  
9 had been cleaned in the past?

10 A. Yes.

11 Q. Do you remember how many vents in that room  
12 had filters?

13 A. No.

14 Q. Do you think it was more than one?

15 A. Yes. Might have one. Usually I look for  
16 more than one. It might have been just one. I don't  
17 recall the exact number.

18 Q. Can you tell by looking at a vent whether  
19 it's a return or exhaust vent?

20 A. You just don't know. Sometimes you can and  
21 sometimes you can't. Sometimes you can tell by, you  
22 know, if there is a dust on it or whatever. But you  
23 can't tell, you just don't know.

1 Q. But once it is covered with a filter, is  
2 it possible to determine if that is an exhaust or  
3 return vent?

4 A. No.

5 Q. Are you aware of any code that prevents  
6 these filters from being placed on return vents?

7 A. No. No. I discussed it with people at the  
8 office, too. And I mentioned that and they said no.  
9 This is not accepted practice.

10 Q. You had discussed that with people at your  
11 office?

12 A. Yes.

13 Q. Do you remember who they were?

14 A. I don't remember exactly who. I know I  
15 mentioned it.

16 Q. Why do you think that they should have been  
17 removed?

18 A. Because I try to follow standard practice in  
19 this industry. And that is to the best of my  
20 knowledge that is something.

21 Q. Do you see any harm from having them on the  
22 return vents?

23 A. You know --

1                   MR. D'ANGELO: I am going to object to  
2 that question.

3           A. My experience, well, put it this way, any  
4 time, for example, it is a housekeeping matter to me.  
5 So a housekeeping matter is something that we do  
6 touch upon, so in that respect.

7           Q. In your experience as a D.O.S. officer and  
8 inspector, have you come cross any situation where  
9 there has been a person that has been physically  
10 harmed by having a filter media on the return covers?

11                   MR. D'ANGELO: Objection.

12           A. No knowledge.

13           Q. I mean in your experience?

14           A. I don't know.

15           Q. You can't remember?

16                   MR. D'ANGELO: Objection.

17           A. I don't know if that has ever happened.

18           Q. But you are not aware of any occasion where  
19 a person has been injured?

20           A. No.

21           Q. And your, I think you said the reason why  
22 you were chosen to come into the public safety  
23 building was your experience with firing ranges?

1 A. Yes.

2 Q. And what is that experience.

3 A. I have done surveys on other types of police  
4 firing ranges. And I surveyed, sampled, and  
5 measurements, calculations, written reports.

6 Q. How many fire ranges, for example, have you  
7 investigated or inspected prior to going to the  
8 public safety building?

9 A. I don't know how many total, but it is a  
10 fair amount.

11 MS. STEPHENS: That's all the questions  
12 I have.

13 MS. GOLDSTEIN: I have a couple.

14 CROSS-EXAMINATION.

15 Q. (By Ms. Goldstein) I am Carly Goldstein and  
16 I Simpson Gumpertz & Heger, Inc. Do you know who  
17 that is?

18 A. No.

19 Q. So is it a fair accurate statement that you  
20 have never had any communications at SGH in  
21 connection with the public safety building?

22 A. Correct.

23 MS. GOLDSTEIN: Thank you. I am all

1 set.

2 MR. BUCKLEY: Thank you.

3 CROSS-EXAMINATION.

4 Q. (By Mr. Buckley) Mr. Nicotera, my name is  
5 Matthew Buckley. I am an attorney with the City of  
6 Somerville.

7 A. Yes.

8 Q. When was it that you first went to the  
9 Public Safety Building in Somerville. What was the  
10 date you recall?

11 A. November 10, 2000.

12 Q. And you went back only one other time, is  
13 that correct?

14 A. To my recollection, yes. There could have  
15 been another time, but it is to my best recollection  
16 -- actually well there was a meeting and then the  
17 followup on the roof. So three times total.

18 Q. Now, with regard to the people that you were  
19 communicating with, and there was a number of people  
20 that are noted in your report that you gave a copy of  
21 your report of February of '01 that you wrote the  
22 report?

23 A. Yes.

1 Q. And one of those was given to the Somerville  
2 Police Association, is that correct?

3 A. Let me double check.

4 Q. The one who is bank rolling this lawsuit?

5 MR. D'ANGELO: Objection.

6 A. Captain Tatowski, Somerville Police  
7 Department and John Lucher, Somerville Police  
8 Association. So there were two in the main report.

9 Q. Was that John Lucher that you said is the  
10 president of the Somerville Police Association?

11 A. Yes.

12 Q. And he got that report, correct?

13 A. I assume so.

14 Q. And now with respect to your followup or  
15 lack thereof, attention from D.O.S. is prompted by  
16 what mostly?

17 A. A complaint. A complaint driven.

18 Q. And does it matter to D.O.S. where the  
19 complaint emanates from.

20 A. Employee complaints or requests by cities  
21 and towns, you know.

22 Q. And between 2001 and 2004, were you aware of  
23 any complaint that was put forward to D.O.S. by the

1 Somerville Police Association or any officer?

2 A. Well it was brought to my attention that the  
3 firing range was a concern to the city.

4 Q. I am talking about the time you wrote the  
5 report going to the time the next report was written,  
6 are you aware of when the next complaints were made,  
7 are you aware of any other complaints that are made?

8 A. No.

9 Q. Now with respect to your expertise at the  
10 time, I assume, it still is to some extent is indoor  
11 air quality?

12 A. I don't know if I am an expert. That's the  
13 area we focus on.

14 Q. That is your area of concentration?

15 A. I don't believe I am an expert.

16 Q. Now with respect to that, you said you are  
17 measuring for a volatile organic compound, is that  
18 correct?

19 A. Correct.

20 Q. Which ones, do you know?

21 A. Well we did identify some in the report that  
22 we were looking at. The types of things that we are  
23 looking at. And they are identified in a section of

1 the air sample results. So it is a whole class of  
2 chemicals.

3 Q. But you don't test for them yourself. You  
4 send them to a lab, is that correct?

5 A. I perform an air sampling and then we take  
6 an air sample to and have the lab analyze it.

7 Q. And they are analyzing for virtually all  
8 volatile organic compounds?

9 A. Those that are commonly found, I guess, in  
10 that procedure.

11 Q. And that was done in your case. And how  
12 many air samples did you take?

13 A. I took -- what I do is I ran split samples.  
14 So I ran a total of ten samples. One was a blank.  
15 And that's what I ran.

16 Q. And you previously testified that you got no  
17 significant levels of volatile organic compounds, is  
18 that correct?

19 A. As far as I know.

20 Q. Now with respect to that, you are not saying  
21 that you found no volatile organic compounds. Just  
22 that they weren't at significant levels. Would that  
23 be a correct statement?

1 A. Let me double check. Correct.

2 Q. Now with respect to volatile organic  
3 compounds, have you ever had an experience where you  
4 found none whatsoever?

5 A. For practical purposes, I typically don't  
6 find any.

7 Q. When you say practical purposes, is that the  
8 same as when you said you found no significant level?

9 A. Right.

10 Q. What I am trying to get is that it is  
11 typical that you don't find them in significant  
12 levels, like you said, but is it also typical that  
13 you find absolute zero or is there always some --

14 A. I don't know to be frank. If the lab finds  
15 something of significance, they will report it to  
16 you. If they don't, they don't.

17 Q. So you don't know if there were  
18 insignificant levels?

19 A. Well, they said less than -- all results  
20 less than one parts per million. So there may have  
21 been residual stuff.

22 Q. When they find less than one part per  
23 million, then that means they found some, but it was

1 so small, so minute, it was insignificant?

2 A. Correct.

3 Q. And these are the kind of things that can be  
4 found in insignificant levels virtually everywhere in  
5 an urban environment?

6 A. Ask it again.

7 Q. The volatile organic compounds, would you  
8 say that in your experience and your knowledge, they  
9 could be found everywhere at these insignificant  
10 levels in an urban environment?

11 A. It is not atypical. Well, you will find  
12 residual stuff. Not in every case. But in some  
13 cases more so than others.

14 Q. Now with respect to the filters we were just  
15 talking about them a minute ago. And you said you  
16 found filters on the vents. And you said that that  
17 was not -- you didn't find that to be a proper  
18 practice, is that correct?

19 A. Correct. Correct.

20 Q. Now is that because it impedes the flow of  
21 air?

22 A. I don't know.

23 Q. You don't know if that's the reason. You

1 don't know without the filters, the air replacement  
2 will take place at a faster level or not? Does that  
3 make sense?

4 A. It depends. I don't know.

5 Q. When you talk about a particulate being in  
6 the air and if you had a building that had  
7 particulate matter in it, that was at a higher level  
8 than some other places, would the filters be helpful  
9 or harmful. Do you know?

10 A. A filter's job in life is to filter things  
11 out so depending upon what it is and depending on the  
12 filter and depending upon what you are trying to  
13 filter out, that will determine that. That has to be  
14 determined. You can't apply one rule to all  
15 situations.

16 Q. So there is nothing about a filter that is  
17 adding anything bad to the environment. Would you  
18 say that's accurate?

19 A. If it is in good condition. If there is not  
20 anything. I mean that is hard to say. A filter in  
21 and of itself, you know, you won't be damaging.

22 Q. It is a static item that collects  
23 particulate of various kinds, correct?

1 A. Yes.

2 Q. It generally tends to clean things, make  
3 them cleaner?

4 A. Yes. To remove stuff. Particulates. If it  
5 is a particulate filter, particulates. If it is a  
6 specialized filter, other things. Because it could  
7 be a special filter. You don't know. But generally  
8 speaking, if it is a membrane situation, particles  
9 will be filtered out depending upon the filter and  
10 the environment.

11 Q. So is it safe to say between 2001 and 2004  
12 D.O.S. had no communication with the City of  
13 Somerville over the Public Safety Building that you  
14 are aware of?

15 A. No. I am not aware of.

16 MR. BUCKLEY: I have nothing further.

17 MR. D'ANGELO: Just a couple of quick  
18 questions here follow-ups.

19 REDIRECT EXAMINATION

20 Q. (By Mr. D'Angelo) As far as complaints go  
21 from anybody, are you in the path to receive those  
22 complaints directly from anyone?

23 A. Well we are assigned phone duty days. So if

1 we are on phone duty that day, you will take in the  
2 complaint, fill out the complaint form, and forward  
3 it to Nancy Comeau to be assigned.

4 Q. Did you ever receive any direct complaints  
5 while you were on phone duty from anyone from the  
6 City of Somerville?

7 A. I don't recall receiving the complaint.

8 Q. Had you received a complaint yourself  
9 directly, would that still be something you would act  
10 on or somebody else would act on?

11 A. I would have to give it to my boss to act on  
12 it. Either that or I would discuss it with her if  
13 she preferred that it was okay for me to act on it.  
14 I would have to pass it by Nancy Comeau.

15 Q. One thing we never discussed was your  
16 training to take air samples. What kind of training  
17 did you receive?

18 A. On-the-job training by Nancy Comeau when I  
19 started.

20 Q. So she showed you how to take air samples?

21 A. Yes. Generally, yes.

22 Q. What is a split sample?

23 A. I had two tubes on one collector. So I ran

1 two tubes. I would have two tubes coming up and you  
2 connect two tubes on two collectors, so you would  
3 have two tubes. In case one tube broke or whatever.  
4 Or sometimes to see -- it's a cross check on your  
5 methods, et cetera. So you run a split sample or you  
6 could run it to maybe do one test with one tube and  
7 another test with another tube. You run split  
8 samples just as a standard practice.

9 Q. Do they go into the same receptacle?

10 A. They are treated the same way. Processed  
11 the same way. In this case the tubes were handed to  
12 the lab and treated the same way.

13 Q. I am not clear. The air comes in through two  
14 tubes and it goes into the same receptacle.

15 A. There is an air sampling pump that draws air  
16 and there is one tube that comes out of the pump, and  
17 the pump goes to a tube holder, and the tube holder  
18 has two branches, so you can have the option of  
19 running more than one tube.

20 So typically what I did and I did it in  
21 this case, I would run two tubes at the same spot.  
22 Run by one air sample pump and sample for the period  
23 of time. That's why the times are a same. For

1 example 284, 285, they were both run at 323 minutes.  
2 So those two samples would be submitted to the lab as  
3 such, and then both at the detail office so it could  
4 be as a standard check, a standard procedure, if you  
5 want to do separate analysis on each tube for  
6 whatever purposes.

7 Q. So there were ten samples or were there five  
8 samples?

9 A. Five different areas.

10 Q. Five different areas and the ten samples  
11 represent two tubes?

12 A. Five different areas, right.

13 Q. So you used two tubes with two air sampling  
14 pieces to go in to get the ten samples?

15 A. Actually, I only used a single tube in the  
16 range. I did a single tube there for no particular  
17 reason. I like to run split tubes just to use that  
18 methodology in case, you know, whatever.

19 Q. And that's what you were taught from Nancy  
20 Comeau?

21 A. No, not necessarily.

22 Q. Did you take any kind of training on how to  
23 take samples at all? Seminars?

1           A. I might have had some along the way because  
2 I did go to an OSHA training but, no, it was  
3 basically hands on. She taught me. And you know I'd  
4 ask questions of fellow people, workers.

5           Q. You were asked by Attorney Buckley the  
6 significance of the VOCs. Do you know what would be  
7 a significant or non significant VOC?

8           A. The lab would tell me because they would  
9 have to identify it.

10          Q. But you wouldn't know?

11          A. No. I would need a lot of information  
12 before I could.

13          Q. The lab would make that determination, not  
14 you?

15          A. Yes. They would identify it.

16          Q. Would you know if long-term exposure to low  
17 doses of VOC like containing benzene or chromium  
18 would be harmful to somebody?

19          A. No.

20          Q. Do you have any expertise in filters?

21          A. No.

22                           MR. D'ANGELO: I have no other  
23 questions.

1 MS. STEPHENS: Just before we suspend.

2 BOCA and 392.

3 A. I don't. I will give you what I got.

4 (The deposition concluded at 3:15 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

WITNESS CERTIFICATE

I, Robert J. Nicotera the within named deponent have read the transcript of my deposition taken on February 22, 2007, and have listed any corrections to my testimony on an attached errata sheet.

Signed under the pains and penalties of perjury:

\_\_\_\_\_

Robert J. Nicotera

\_\_\_\_\_

DATE

C E R T I F I C A T E

STATE OF MASSACHUSETTS )  
 ) ss.  
COUNTY OF NORFOLK )

I, CARMEN W. BRANSON, a Shorthand Reporter and Notary Public in and for the County of Norfolk and State of Massachusetts, do hereby certify that:

That the witness in the foregoing deposition was present at the time and place therein state;

That the said proceeding was taken before me as a Notary Public at the said time and place and was taken down in machine shorthand writing by me;

That I am a Court Reporter and Notary Public of the State of Massachusetts, that the said proceeding was thereafter under my direction transcribed into computer-assisted transcription, and that the foregoing transcript constitutes a full, true, and correct report of the proceedings which then and there took place;

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my official seal this 3rd day of March, 2007.

CARMEN W. BRANSON  
My Commission expires March 6, 2009

THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING REPORTER.