

NO. CV-03-0183606 : SUPERIOR COURT
NEW ENGLAND ESTATES : JUDICIAL DISTRICT
VERSUS OF WATERBURY
TOWN OF BRANFORD, ET AL : AUGUST 30, 2007
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BEFORE: THE HONORABLE WILLIAM C. CREMINS, JUDGE

APPEARANCES:

JAMES W. BERGENN, ESQUIRE
TIMOTHY S. HOLLISTER, ESQUIRE
ATTORNEY FOR NEW ENGLAND ESTATES

STEVEN R. HUMPHREY, ESQUIRE
BRIAN R. SMITH, ESQUIRE
ATTORNEYS FOR THOMAS SANTA BARBARA & FRANK
PERROTTI, JR.

KERRY CALLAHAN, ESQUIRE
DANIEL CANAVAN, ESQUIRE
ATTORNEYS FOR THE TOWN OF BRANFORD

JACQUELINE SAGLIANO
COURT RECORDING MONITOR

1 THE COURT: Good afternoon. Mr. Hurley,
2 sir, if you'd come back up please and take the
3 stand.

4 Counsel, any matters for the record
5 before the panel comes out please?

6 MR. SMITH: No, your Honor.

7 MR. BERGENN: No, your Honor.

8 MR. CALLAHAN: No.

9 THE COURT: Can we bring the panel out
10 please.

11 (Jury enters.)

12 THE COURT: I'd ask counsel to please
13 stipulate to the presence of all the jurors.

14 MR. CALLAHAN: Yes, your Honor.

15 MR. SMITH: Yes, your Honor.

16 THE COURT: Attorney Callahan, please.

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1 D A V I D H U R L E Y, having previously been sworn,
2 was examined and testified as follows:

3 **CONTINUED CROSS-EXAMINATION BY MR. CALLAHAN:**

4 Q You were asked some questions, Mr. Hurley, on
5 direct examination about phase studies, Phase 1s,
6 Phase 2s, things like that. Do you recall?

7 A Yes.

8 Q Okay. And the document you were shown, that
9 proposal letter from June of 2003, you indicated that
10 IES had done a Phase 1, correct?

11 A That's correct.

12 Q And do you still have that letter in front of
13 you, the June -- I think it was June 23, 03?

14 A No, I do not.

15 Q All right. Well -- Exhibit 57. Would you
16 look at the second bullet point on page 1, please?

17 A Yes.

18 Q You were asked about the IES Phase 2?

19 A That's correct.

20 Q And what IES actually performed was a limited
21 Phase 2, right?

22 A That's correct.

23 Q And do you know by whom or by what IES' Phase
24 2 was limited?

25 A Well, the scope of the Phase 2 was limited.

26 Q By whom or what?

27 A I think that -- Our understanding --

1 MR. BERGENN: Objection. Foundation.

2 THE COURT: Overruled.

3 **BY MR. CALLAHAN:**

4 A From the meeting that we had with IES, for
5 example, we -- we were led to believe that the -- that
6 their scope was limited, both by the physical
7 conditions on the site, as well as the budgets that
8 they had to work with.

9 Q Okay. Well, you testified about that meeting
10 on direct examination as well. Do you recall who took
11 part in it?

12 A Beth Critton.

13 Q Did you know at the time of the meeting who
14 she was?

15 A Yes, that was explained to us. Alice Bruno,
16 a representative from IES, who -- Kevin -- I think his
17 name -- who prepared the -- who prepared the Phase 1
18 and Phase 2 -- the Phase 2 report anyway. And then
19 three members of our firm, myself, Wayne Walburton
20 (phonetic) and Craig Lapinski.

21 Q Okay. So when you say that IES' Phase 2 was
22 limited in budget, do you mean the amount of money
23 that they were allowed or allotted to perform the
24 testing?

25 A Yes.

26 Q Now, you were asked some questions on direct
27 about things like feasibility and impracticability.

1 All I want to talk about is on a site like the 77-acre
2 parcel, before you can get to a point -- You said too,
3 I think, we didn't have enough information at that
4 time, as of April of 03, right?

5 A That's correct.

6 Q But in order to get to the point where you
7 have enough information to determine what's feasible,
8 do you need more than a Phase 1 and a Phase 2?

9 A Yes, you do.

10 Q What's next?

11 A You need a Phase 3. The Phase 3, and I
12 believe I mentioned this before, but a Phase 3 is
13 where you actually -- once you've identified or
14 confirmed during the Phase 2 process where there have
15 been releases by the presence of contaminant, it can
16 be above the RSRs or it can below the RSRs, you then
17 have to delineate its extent and find out what its
18 maximum concentration is. So it's multiple samples,
19 multiple -- typically multiple borings of a single
20 release area.

21 Q Okay. So if there's a release area and you
22 do a circle of borings around it --

23 A Yes.

24 Q And it doesn't -- I guess define is the word,
25 the extent area, do you then have to go out in
26 circles?

27 A Yes. We typically call that an iterative

